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Presidential Documents

Title 3—

The President

Proclamation 7627 of November 14, 2002

America Recycles Day, 2002

By the President of the United States of America

A Proclamation

Americans are dedicated to protecting our land, ensuring that our air is clean, and preserving the purity of our water. To help fulfill these responsibilities, government, businesses, community organizations, and every citizen must work together to serve as good stewards of all of our natural resources. On America Recycles Day, we renew our commitment to preserving our resources by recycling and using products made with recycled materials.

Recycling has become one of the most successful environmental initiatives in our Nation's history. In 1990, Americans recycled or composted 34 million tons of material. In the following decade, this number more than doubled to nearly 70 million tons. These efforts are helping to safeguard our environme by reducing the need for landfills and incinerators. Last year, the Federal Government contributed to these important goals by purchasing paper, retread tires, re-refined oil, concrete, insulation, and other products containing recycled materials.

Our Nation also continues to develop innovative ways to reduce, reuse, and recycle our waste. Although we have made significant progress, much work still remains. Americans generate more than 230 million tons of solid waste each year. Simple measures can help communities, businesses, and individuals decrease waste and extend the use of our natural resources. Individuals and families can participate in the recycling programs offered in their neighborhoods.

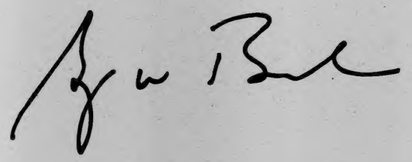
At home and in school, parents and teachers can educate children about the benefits of recycling and the importance of caring for our environment. By purchasing products made from recycled materials, American consumers provide economic incentives for businesses to collect, produce, and market more products that are recycled and recyclable. Our recycling and reuse industry provides approximately 1.4 million jobs, producing billions of dollars in annual revenues that contribute to the prosperity of our country. By recycling, we conserve our valuable resources, protect our air and water from harmful pollutants, and strengthen our economy.

On America Recycles Day, I encourage all Americans to rededicate themselves to using our resources more wisely by reusing and recycling the materials they purchase. Through these efforts, we help make our communities more livable, our businesses more competitive, and our Nation a healthier place for future generations to enjoy.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 15, 2002, as America Recycles Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–02–11]

RIN 0581–AC20

Tobacco Inspection; Mandatory Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that amended the regulations to provide mandatory grading for kinds of tobacco approved by a majority of producers voting in the mandatory grading referenda and to reduce the fee for mandatory grading from $.01 per pound to $.009 per pound.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: In accordance with section 759 of the Appropriations Act (Pub. L. 107–76; 7 U.S.C. 511s), USDA conducted referenda among producers of each kind of tobacco that is eligible for price support under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) to determine whether a majority of producers of a kind of tobacco voting in the referendum favored the mandatory grading of that kind of tobacco.

A notice of referenda was published in the **Federal Register** on March 5, 2002 (67 FR 9895) together with a final rule establishing procedures for the referenda. The USDA's Farm Service Agency (FSA) certified the results of the referenda on March 27, 2002, and April 3, 2002.

A majority of producers voting in the referenda favored the mandatory grading of flue-cured tobacco, types 11, 12, 13, and 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; and dark air-cured tobacco, types 35 and 36.

Producers of cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55 did not approve mandatory grading.

The Appropriations Act provided that, if a majority of the producers voting in the referenda favored the mandatory grading of that kind, USDA was directed to ensure that the kind of tobacco is graded at the time of sale for the 2002 and subsequent marketing years. The USDA was also directed to establish user fees for any such inspections. To the maximum extent practicable, these fees must be established, collected, and used in the same manner as user fees for the grading of tobacco sold at auction authorized under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

The USDA published in the **Federal Register** on May 23, 2002 (67 FR 36079) an interim final rule and notice of referenda results to amend the regulations to provide mandatory grading for flue-cured tobacco, types 11, 12, 13, 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37, and dark air-cured tobacco, types 35 and 36. The interim final rule also reduced the fee for mandatory inspection from $0.01 per pound to $0.009 per pound. The USDA requested comments on the interim final rule and the comment period expired on July 22, 2002. One comment was received from a tobacco purchasing company. The respondent stated that the purchasing companies should be allowed to establish their own operating hours to properly serve the growers, requested that all USDA employees be required to sign in at the receiving station's main office prior to beginning work, and all USDA employees be required to wear identification at all times. The USDA has flexible work schedules that can ordinarily accommodate purchasing companies establishing their own operating hours. Any grading services required to be performed outside of a regular work schedule, such as overtime and holidays, would be assessed to the purchasing company. The USDA implemented a program for the 2002 marketing season that requires grading personnel to wear picture identification cards and safety vests while performing grading services at receiving stations, and USDA personnel will notify any receiving station's main office of their arrival whenever this is requested.

This rule amended 7 CFR part 29, subpart B, regulations, to provide for mandatory grading at places other than designated tobacco auction markets. The regulations prior to the effective date of the interim rule only required grading of tobacco that was sold at auction on designated markets as set forth in § 29.8001. The regulations were amended in this rule to include producer tobacco sold at locations (receiving stations) where tobacco is offered for marketing or shipment into commerce, other than at designated auction markets. Additionally, the regulations were amended, at subpart B, to reference the implementing authority contained in the Appropriations Act. The Tobacco Inspection Act will continue to be referenced for kinds of tobacco sold at auction on designated markets not required under the Appropriations Act.

In the past, producers sold almost all of their tobacco at auction on designated markets. Last year, most producer tobacco was sold under contract and was delivered to receiving stations operated by buying concerns. Some of this tobacco was graded under the permissive grading program.

This rule added a definition of "receiving station" as meaning "Points at which producer tobacco is offered for marketing (other than sale at auction on a designated market), including tobacco auction warehouses, packing houses, prizeries, or places where tobacco is handled or stored." This definition is intended to be flexible enough to cover the circumstances in which producer tobacco may be marketed.

Also, the regulations were amended to provide for proper display of tobacco, adequate space to perform inspections at receiving stations and the issuance of

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an inspection certificate. The requirements are similar to those at auction markets but are flexible because conditions will differ at the receiving stations. When the tobacco is inspected or graded by the receiver, the tobacco must be made available for mandatory inspection at the same time and at the same location within the receiving station. In order to provide a meaningful service to growers, who are paying for the inspection service, it is necessary to require the proper display of the tobacco and to require that the mandatory inspection be conducted at the same time and under the same conditions as any other inspections, and that the results be readily available to the producer. It is also necessary to provide that, as at auction markets, no one may interfere with the inspector in the process of grading tobacco.

The user fee for mandatory inspection of tobacco was increased from $.0083 to $.0100 per pound in 2001 to cover the costs of performing grading services and to maintain an adequate reserve to cover program financial responsibilities. During the 2001 crop-year, the Department only graded 31 percent of the total amount of tobacco marketed. However, with the adoption of mandatory grading of all tobacco, except cigar types, approximately 98 percent of tobacco marketed will require federal grading for the 2002 and subsequent crop years.

As a result of resources being more efficiently utilized over a larger geographical area and the additional revenue generated, the fee is reduced from $.010 to $.009 per pound. The reduced fee was recommended by the National Advisory Committee for Tobacco Inspection Services at its meeting on April 16, 2002.

The AMS reviews its user fee programs annually to determine if fees are adequate. The most recent review determined that the previous fee schedule was more than adequate for the 2002 crop-year and would exceed the target level for the operating reserve balances.

Due to an estimated 69 percent increase in tobacco to be inspected for the 2002 crop-year, obligations are estimated at $10,152,000 and revenues are expected to be $8,503,000 for a loss of $1,649,000. An analysis of available data indicates that a fee of $.009 per pound would result in maintaining the operating reserve balance at $6,279,000 for the 2002 crop-year and $4,357,000 for the 2003 crop-year which is adequate to meet financial obligations.

Executive Order 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 12.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are about 190 tobacco warehouses and about 450,000 tobacco producers. There will also be about 35 receiving stations, most of which will be operated under contract at former tobacco auction warehouses and a few of which will be operated at tobacco auction warehouses. These would also be small businesses. It has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The requirements of this rule are the minimum necessary for the implementation of the requirements of the Appropriations Act for the mandatory inspection of tobacco. The provisions are similar, but somewhat more flexible, that the requirements for the inspection and certification of tobacco sold at auction on designated markets, which have previously been determined not to have a significant economic impact on a substantial number of small entities.

The information collection requirements that appear in part 29 have been previously approved by the Office of Management and Budget under OMB Control No. 0581–0056.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Accordingly, the interim final rule amending 7 CFR part 29 which was published at 67 FR 36079 on May 23, 2002, is adopted as a final rule without change.

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29031 Filed 11–18–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV–98–303]

Apples; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the United States Standards for Grades of Apples. These standards are issued under the Agricultural Marketing Act of 1946. The rule will provide for the mixed varieties and change the color requirements for apples by reducing the number of apple varieties required to meet specific minimum color requirements. It also deletes the provision that apples be "carefully hand-picked." The "U.S. No. 1 Early grade" and the "Unclassified" section will be deleted. Size specifications will be changed to allow Red Delicious and Golden Delicious varieties to meet either a minimum diameter or a minimum weight (currently these varieties must meet a minimum diameter designation). Changes will also be made to the application of tolerances for the purpose of allowing greater tolerances for defects in individual packages which contain 10 pounds or less, provided that the averages for the lot as a whole are met. The marking requirements will be changed by adding variety and grade to required markings on containers. The term "brown surface discoloration" will be added to the provisions which contain the requirements for the various grades of apples. The classification of "Bitter pit" and "Jonathan spot" will be clarified. The definition of "fairly tight" will be revised. Also, the U.S. Condition Standards for Export will be revised by removing the tolerance for slight scald and by changing the individual container tolerances in these requirements from one defective apple to three defective apples, provided the averages for the lot as a whole are met. In addition, the rule will provide metric equivalents for dimensions given in terms of U.S. customary units and contains conforming and editorial changes. The purpose for this revision is to update and revise the standards to more accurately represent today's marketing practices.

EFFECTIVE DATES: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2065 South Building, STOP 0240, Washington, DC 20250; Fax (202) 720–8871.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Regulatory Flexibility Act

The Agricultural Marketing Service (AMS) received a request to update and revise the United States Standards for Grades of Apples from the U.S. Apple Association (USAA). The USAA is a trade association representing over 500 individual apple business-related firms including growers, packers, shippers, processors, and industry suppliers. In addition, the USAA also represents approximately 9,000 apple growers throughout the U.S. through affiliation with state or regional apple associations. The Department and the USAA have been working closely together over the past eleven years to identify issues, defects, tolerances, and marketing practices related to apples for fresh market sale for the purpose of updating the United States Standards for Grades of Apples. This rule revising the United States Standards for Grades of Apples will benefit all aspects of the apple industry with regard to these areas and make the standards current with today's marketing trends and practices.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this final regulatory flexibility analysis.

This rule will revise the U.S. Standards for Grades of Apples that were issued under the Agricultural Marketing Act of 1946. This amendment of the standards will: Revise the basic requirement sections of each grade by providing for mixed varieties; delete the reference to "carefully hand-picked" revise the reference to "scald" by using the term "brown surface discoloration"; clarify the classification of "Bitter pit" and "Jonathan spot"; place the definitions for bruising in their appropriate places; delete the "U.S. No. 1 Early grade"; revise the color requirements section by redefining the requirements and requiring less varieties to meet these requirements; delete the "Unclassified" section; designate weight equivalents (in grams) for certain diameter sizes of Red Delicious and Golden Delicious varieties; revise the "application of tolerances" section in regard to consumer packages; and add variety and grade to the marking requirements section. Based on comments received, the definition of "fairly tight" will be revised.

The U.S. Standards for Grades of Apples and the U.S. Condition Standards for Export are both voluntary standards. There are no regulatory provisions that require the use of these standards with the exception of the Export Apple Act (7 U.S.C. 581 *et seq.*) and its regulations (7 CFR part 33) in regard to the U.S. Standards for Grades of Apples. Under the Export Apple Act, shipments of apples to foreign countries must meet a minimum requirement of the U.S. No. 1 grade (there are exemptions based on lot size, destination, etc.)

According to USDA's National Agricultural Statistics Service (NASS) report of the 1997 Census of Agriculture, there are approximately 18,500 apple farms in the United States. Further, NASS information indicates that, in 1998, these 18,500 farms produced over 11 billion pounds of apples. Approximately 55 percent of the 1998 crop was eaten as fresh fruit. In 1999, apple production was down to 10 billion pounds. The top five producing states were Washington, New York, Michigan, California, and Pennsylvania, respectively. These five states collectively produced over 83 percent of the total 1998 U.S. apple crop.

Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. The apple industry is characterized by growers and handlers whose farming operations generally involve more than one type (such as fresh market utilization versus processed market utilization) and variety of apple, and whose income from farming operations is not exclusively dependent on one apple variety or even one commodity. Typical apple growers and shippers produce multiple varieties of fresh market apples within a single year. It is estimated that the majority of the producers do have overall gross annual receipts greater than $750,000. Additionally, there are approximately 5,100 apple handlers (*i.e.*, packers, brokers, distributors, importers, *etc.*). It is estimated that the majority of apple handlers do not fit SBA's definition of a small entity. Further, there are 48 state inspection agencies in addition to Fruit and Vegetable Programs (FVP) that perform inspections using these standards.

This rule will revise the U.S. Standards for Grades of Apples. These changes are intended to update the standards to maintain their usefulness in today's markets. For example, the color requirements that appear in the current standards are much the same as those that were published in 1923, even though many of the varieties marketed then are no longer marketed, or marketed in a significant volume. This action will make the standards more consistent and uniform with current marketing trends and commodity characteristics. Therefore, it should benefit handlers and growers regardless of their size. Further, the benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities. Alternatives were considered for this action. One alternative would be to not issue the rule. However, the need for revision increases due to ever changing market characteristics, and the revisions represents approximately 10 years of research, surveys, and other input from all sectors of the apple industry and government. Further, since the purpose of these standards is to facilitate the marketing of agricultural commodities, not revising them by upgrading the

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standard could result in confusion in terms of the proper application of the U.S. grade standards.

This action will not impose any additional reporting or recordkeeping requirements on either small or large apple producers, handlers, or importers. In addition, other than discussed above, the Department has not identified any Federal rules that duplicate, overlap, or conflict with this rule.

The proposed rule, United States Standards for Grades of Apples, was published in the **Federal Register** on March 26, 2002 (Docket Number FV–98–303). A comment period of 60 days was issued which closed on May 28, 2002.

Comments

A total of six comments were received during the comment period. These included comments from industry associations representing growers, packers, shippers, processors, and State Departments of Agriculture.

One comment, received from an industry association, was in favor of the proposal in its entirety. This comment stated that it is expected that these changes will more accurately represent typical commercial practices and standards within the apple industry.

Two comments were received in favor of the proposal with the exception of the allowing for weight equivalents for diameter sizes of the Red Delicious and Golden Delicious varieties. One comment received from a State Department of Agriculture opposed this change. The reason given was that this change would burden inspection services in all states by requiring the purchase of multiple gram scales. State inspection services generally inspect other products which require the use of scales. AMS believes that although there may be a need to purchase additional scales, the cost of these scales would not be substantial enough to override the industry's request to allow for these equivalents. In another comment, an FVP staff member expressed the opinion that weight equivalents for diameter sizes would make it difficult to perform inspections. Additionally, the commenter expressed concern that by only allowing two varieties to use the weight equivalent for diameter sizes would be inequitable. AMS experience with performing inspection for products having weight equivalents for diameter sizes has not proven to increase the level of difficulty. In regard to the commentors concern of only allowing two varieties to use weight equivalents, these two varieties were specified due to their characteristic shape. Their shape can often be elongated rather than wide. The result is a product that actually has more edible flesh but is still unable to meet minimum diameter size requirements. AMS believes that the use of weight equivalents for diameter sizes should remain as stated in the proposal.

One comment was received from a company which stores, packs, and markets apples both domestically and for export; this company also represents growers. The comment was generally in agreement of the proposal. However, the comment addressed two issues. The first being the removal of the phrase "carefully handpicked." The commenter felt that this phrase is useful in encouraging growers to be careful in the handling of apples. AMS proposed this deletion and its corresponding definition because it is difficult to determine if an apple has been "carefully handpicked." Further, this requirement was not intended to prevent machine picked apples from making a U.S. grade. Therefore, AMS believes "carefully handpicked" and its corresponding definition should be deleted as proposed. The commenter also stated, in its opinion the term "surface scald" would be a better term than "brown surface discoloration." As stated in the proposed rule, there are several defects that occur simply as brown surface discoloration. Surface scald cannot be differentiated from these defects by the naked eye. AMS believes it is more accurate to group these defects together as "brown surface discoloration" rather than "scald."

One comment by a State Department of Agriculture recommended removing the word "surface" in the definition of damage by bitter pit. This commenter stated, "Often bitter pit cannot be detected unless the fruit is cut and examined internally." The Department's Agricultural Handbook 376 states (with regard to bitter pit), "If observed at the earliest visible stage, the skin over the affected area appears as water-soaked." Although bitter pit does affect the flesh of the apple it is not discernable until the skin is affected. Therefore, AMS believes the definition damage by bitter pit should remain as in the proposal. This commenter also noted an error in the proposed rule. The "Discussion of the Proposed Rule" section stated "section 51.300, U.S. Extra Fancy, section 51.301, U.S. Fancy, and section 51.303, U.S. Utility currently states that apples must be 'of one variety.' This would be changed to '* * * consists of apples of one variety (except when more than one variety is printed on the container)' to allow for mixed variety lots." However, in the actual wording of the standards section of the proposed rule, these sections state, "* * * consists of apples of similar varietal characteristics (except when the name of more than one variety is printed on the container)." These sections should be as stated in the "Discussion of the Proposed Rule" section and are corrected in this final rule.

A comment from a State Department of Agriculture stated, "I would urge USDA to consider exempting the "Euro" carton from the requirements of fairly well filled and fairly tight which will allow for new marketing trends to enhance marketing rather than impede progress." Apples packed in tray or cell packed cartons are required to be at least fairly tight or fairly well filled in order to meet packing requirements in section 51.310. Fairly tight and fairly well filled are defined within these requirements as follows: "Fairly tight" means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The top layer of apples, or any pad or space filler over the top layer of apples, shall be not more than ¾ inch below the top edge of the carton; "Fairly well filled" means that the net weight of apples in containers ranging from 2,100 to 2,900 cubic inch capacity is not less than 37 pounds for Cortland, Gravenstein, Jonathan, McIntosh and Golden Delicious varieties and not less than 40 pounds for all other varieties. The commenter notes, "In recent years the apple industry has been going through significant changes in the way apples are being packed and marketed. Tray pack cartons are being modified in many ways and these types of cartons may not meet the definitions of fairly well filled or fairly tight." AMS agrees with the commenter's observation in that the current definition of fairly tight and fairly well filled would restrict the use of the "Euro" carton. However, rather than exempting a particular container, it would be more appropriate and beneficial to the apple industry to update the definition of fairly tight to reflect current marketing practices. Therefore, based on this comment the definition of fairly tight will be revised to read as follows: "Fairly tight" means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[Amended]

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621—1627.

2. Subpart—United States Standards for Grades of Apples is revised to read as follows:

Subpart—United States Standards for Grades of Apples

Grades

51.300 U.S. Extra Fancy.
51.301 U.S. Fancy.
51.302 U.S. No. 1.
51.303 U.S. Utility.
51.304 Combination grades.

Color Requirements

51.305 Color requirements.

Tolerances

51.306 Tolerances.

Application of Tolerances

51.307 Application of tolerances.

Methods of Sampling and Calculation of Percentages

51.308 Methods of sampling and calculation of percentages.

Condition after Storage or Transit

51.309 Condition after storage or transit.

Packing Requirements

51.310 Packing requirements.

Marking Requirements

51.311 Marking requirements.

Definitions

51.312 Mature.
51.313 Overripe.
51.314 Clean.
51.315 Fairly well formed.
51.316 Injury.
51.317 Damage.
51.318 Serious damage.
51.319 Seriously deformed.
51.320 Diameter.

U.S. Condition Standards for Export

51.321 U.S. Condition Standards for Export.

Metric Conversion Table

51.322 Metric conversion table.

Grades

§ 51.300 U.S. Extra Fancy.

"U.S. Extra Fancy" consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, free from decay, internal browning, internal breakdown, soft scald, scab, freezing injury, visible water core, and broken skins. The apples are also free from injury caused by bruises, brown surface discoloration, smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means. The apples are free from damage caused by bitter pit or Jonathan spot and by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, as well as damage by invisible water core after January 31st of the year following the year of production except for the Fuji variety of apples. Invisible water core shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table I of § 51.305, each apple of this grade has the amount of color specified for the variety. (*See* §§ 51.305 and 51.306.)

§ 51.301 U.S. Fancy.

"U.S. Fancy" consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, and free from decay, internal browning, internal breakdown, soft scald, freezing injury, visible water core, and broken skins. The apples are also free from damage caused by bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, bitter pit, Jonathan spot, or damage by other means, or invisible water core after January 31st of the year following the year of production, except for the Fuji variety of apples. Invisible water core shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table I of § 51.305, each apple of this grade has the amount of color specified for the variety. (*See* §§ 51.305 and 51.306.)

§ 51.302 U.S. No. 1.

"U.S. No. 1" consists of apples which meet the requirements of U.S. Fancy grade except for color, russeting, and invisible water core. In this grade, less color is required for all varieties listed in table I of § 51.305. Apples of this grade are free from excessive damage caused by russeting which means that apples meet the russeting requirements for U.S. Fancy as defined under the definitions of "damage by russeting," except the aggregate area of an apple which may be covered by smooth net-like russeting shall not exceed 25 percent; and the aggregate area of an apple which may be covered by smooth solid russeting shall not exceed 10 percent: *Provided*, That, in the case of the Yellow Newtown or similar varieties, the aggregate area of an apple which may be covered with smooth solid russeting shall not exceed 20 percent. Each apple of this grade has the amount of color specified in § 51.305 for the variety. Invisible water core shall not be scored in this grade. (*See* §§ 51.305 and 51.306.)

(a) *U.S. No. 1 Hail:* "U.S. No. 1 Hail" consists of apples which meet the requirements of U.S. No. 1 grade except that hail marks where the skin has not been broken and well healed hail marks where the skin has been broken, are permitted, provided the apples are fairly well formed. (*See* §§ 51.305 and 51.306.)

(b) [Reserved]

§ 51.303 U.S. Utility.

"U.S. Utility" consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, not seriously deformed and free from decay, internal browning, internal breakdown, soft scald, and freezing injury. The apples are also free from serious damage caused by dirt or other foreign matter, broken skins, bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, visible water core, bitter pit or Jonathan spot, disease, insects, or other means. (*See* § 51.306.)

§ 51.304 Combination grades.

(a) Combinations of the above grades may be used as follows:

(1) Combination U.S. Extra Fancy and U.S. Fancy;

(2) Combination U.S. Fancy and U.S. No. 1; and

(3) Combination U.S. No. 1 and U.S. Utility.

(b) Combinations other than these are not permitted in connection with the U.S. apple grades. When Combination grades are packed, at least 50 percent of the apples in any lot shall meet the requirements of the higher grade in the combination. (*See* § 51.306.)

Color Requirements

§ 51.305 Color requirements.

In addition to the requirements specified for the grades set forth in §§ 51.300 to 51.304, apples of these grades shall have the percentage of color specified for the variety in table I appearing in this section. All apple varieties other than those appearing in table I shall have no color requirements pertaining to these grades. For the solid red varieties, the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety: *Provided*, That an apple having color of

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a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade. Faded brown stripes shall not be considered as color. (A) Color standards USDA Visual Aid APL-CC–1 (Plates a—e) consists of a folder containing the color requirements for apples set forth in this section and five plates illustrating minimum good shade of solid red or striped red color, minimum compensating color and shade not considered color, for the following 12 varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York.

These color standards will be available for examination and purchasing information in the Fresh Products Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, South Building, Washington, DC 20250; in any field office of the Fresh Products Branch; or upon request of any authorized inspector of the Fresh Fruit and Vegetable Inspection Service.

TABLE 1 [1]

[Only the varieties listed below shall be required to meet a minimum color requirement]

Variety	U.S. extra fancy (Percent)	U.S. fancy (Percent)	U.S. No. 1 (Percent)
Red Delicious	66	40	25
Red Rome	66	40	25
Empire	66	40	25
Idared	66	40	25
Winesap	66	40	25
Jonathan	66	40	25
Stayman	50	33	25
McIntosh	50	33	25
Cortland	50	33	25
Rome Beauty	50	33	25
Delicious	50	33	25
York	50	33	25

[1] Variations on varietal designations listed above must meet or exceed those color requirements listed.

Tolerances

§ 51.306 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the grades in 51.300, 51.301, 51.302, 51.303, and 51.304 the following tolerances are provided as specified:

(a) *Defects:* (1) U.S. Extra Fancy, U.S. Fancy, U.S. No. 1, and U.S. No. 1 Hail grades: 10 percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged, including therein not more than 1 percent for apples affected by decay or internal breakdown.

(2) *U.S. Utility grade:* 10 percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged by insects, and including in the total tolerance not more than 1 percent for apples affected by decay or internal breakdown.

(b) When applying the foregoing tolerances to Combination grades, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 50 percent of apples of the higher grade required in the combination, but individual containers shall have not less than 40 percent of the higher grade.

(c) *Size:* When size is designated by the numerical count for a container, not more than 10 percent of packages in the lot may fail to be fairly uniform.[1] When size is designated by minimum or maximum diameter, not more than 5 percent of the apples in any lot may be smaller than the designated minimum, and not more than 10 percent may be larger than the designated maximum. For Red Delicious or Golden Delicious varieties only, a combination of minimum diameter and/or weight may be used. When this designation is used, an individual apple will be considered to have met the minimum size requirement even if the apple is smaller than the minimum diameter, provided it is equal to or greater than the weight provided in table II of this section. However, not more than 5 percent of the apples in any lot may fail to meet either the minimum diameter or minimum weight when so designated. In addition, when Red Delicious or Golden Delicious apples are designated with diameter/weight combinations, they may only be designated according to the following table:

[1] "Fairly uniform" means the size of the fruit within the container does not vary more than ½ inch diameter from the smallest to largest fruit.

TABLE II

Red delicious	Golden delicious
2⅛ inches or 65 grams	63 grams
2¼ inches or 75 grams	70 grams
2⅜ inches or 84 grams	82 grams
2½ inches or 100 grams	95 grams
2⅝ inches or 115 grams	109 grams
2¾ inches or 139 grams	134 grams

Application of Tolerances

§ 51.307 Application of tolerances.

The contents of individual packages in the lot, are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(a) Packages which contain more than 10 pounds:

(1) Shall have not more than one and one-half times a specified tolerance of 10 percent or more and not more than double a tolerance of less than 10 percent, except that at least one apple which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any package.

(2) [Reserved]

(b) Packages which contain 10 pounds or less:

(1) No package may have more than 3 times the tolerance specified, except that at least three defective apples may be permitted in any package: *Provided*, That not more than three apples or more than 18 percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown.

(2) [Reserved]

Methods of Sampling and Calculation of Percentages

§ 51.308 Methods of sampling and calculation of percentages.

(a) When the numerical count is marked on the container, containers are packed to weigh ten pounds or less, or in any container where the minimum diameter of the smallest apple does not vary more than ½ inch from the minimum diameter of the largest apple, percentages shall be calculated on the basis of count.

(b) In all other cases except those listed in paragraph (a) of this section, they shall be calculated on the basis of weight.

Condition After Storage or Transit

§ 51.309 Condition after storage or transit.

Decay, scald, or any other deterioration which may have developed on apples after they have been in storage or transit shall be considered as affecting condition and not the grade.

Packing Requirements

§ 51.310 Packing requirements.

(a) Apples tray packed or cell packed in cartons shall be arranged according to approved and recognized methods. Packs shall be at least fairly tight [2] or fairly well filled.[3]

(b) Closed cartons containing apples not tray or cell packed shall be fairly well filled or the pack shall be sufficiently tight to prevent any appreciable movement of the apples.

(c) Packs in wooden boxes or baskets shall be sufficiently tight to prevent any appreciable movement of apples within containers when the packages are closed. Each wrapped apple shall be completely enclosed by its individual wrapper.

(d) Apples on the shown face of any container shall be reasonably representative in size, color and quality of the contents.

(e) Tolerances: In order to allow for variations incident to proper packing, not more than 10 percent of the containers in any lot may fail to meet these requirements.

Marking Requirements

§ 51.311 Marking requirements.

Variety (or varieties if more than one is packed in the container), grade, and the numerical count or minimum diameter of apples packed in a closed container shall be indicated on the container. For apple lots utilizing the combined diameter/weight designations for Red Delicious and Golden Delicious varieties, the minimum diameter and minimum weight of apples packed in a closed container shall be indicated on the container.

(a) When the numerical count is not shown, the minimum diameter or, in the case of Red Delicious or Golden Delicious lots where minimum diameter/weight designations have been chosen, the minimum diameter and weight as designated in table II, shall be plainly stamped, stenciled or otherwise marked on the container in terms of whole inches, or whole inches and not less than eighth inch fractions thereof in the following manner: "A" inches or "B" grams, where "A" corresponds to one of the diameter measurements in terms of inches listed in table II and "B" corresponds to the weight measurement in grams as indicated in table II. Both diameter and weight must be shown using the word "or" between the given measurements.

(b) The word "minimum," or its abbreviation, when following a diameter size marking, means that the apples are of the size marked or larger. (*See* §§ 51.306 and 51.307.)

Definitions

§ 51.312 Mature.

"Mature" means that the apples have reached the stage of development which will insure the proper completion of the ripening process. Before a mature apple becomes overripe it will show varying degrees of firmness, depending upon the stage of the ripening process. The following terms are used for describing different stages of firmness of apples:

(a) *"Hard"* means apples with a tenacious flesh and starchy flavor.

(b) *"Firm"* means apples with a tenacious flesh but which are becoming crisp with a slightly starchy flavor, except the Delicious variety.

(c) *"Firm ripe"* means apples with crisp flesh except that the flesh of the Gano, Ben Davis, and Rome Beauty varieties may be slightly mealy.

(d) *"Ripe"* means apples with mealy flesh and soon to become soft for the variety.

§ 51.313 Overripe.

"Overripe" means apples which have progressed beyond the stage of ripe, with flesh very mealy or soft, and past commercial utility.

§ 51.314 Clean.

"Clean" means that the apples are free from excessive dirt, dust, spray residue, and other foreign material.

§ 51.315 Fairly well formed.

"Fairly well formed" means that the apple may be slightly abnormal in shape but not to an extent which detracts materially from its appearance.

§ 51.316 Injury.

"Injury" means any specific defect defined in this Section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which more than slightly detract from the appearance or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to *"inch"* or *"inches in diameter"* refers to that of a circle of the specified diameter. Any reference to *"aggregate area," "total area,"* or *"aggregate affected area"* means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as injury:

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether an apple is injured by russeting. Smooth net-like russeting outside of the stem cavity or calyx basin shall be considered as injury when an aggregate area of more than 10 percent of the surface is

[2] "Fairly tight" means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible.

[3] "Fairly well filled" means that the net weight of apples in containers ranging from 2,100 to 2,900 cubic inch capacity is not less than 37 pounds for Cortland, Gravenstein, Jonathan, McIntosh and Golden Delicious varieties and not less than 40 pounds for all other varieties.

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covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the amount permitted above.

(b) Sunburn or sprayburn, when the discolored area does not blend into the normal color of the fruit.

(c) Dark brown or black limb rubs which affect a total area of more than one-fourth inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of injury by russeting.

(d) Hail marks, drought spots, other similar depressions or scars:

(1) When the skin is broken, whether healed or unhealed;

(2) When there is appreciable discoloration of the surface;

(3) When any surface indentation exceeds one-sixteenth inch in depth;

(4) When any surface indentation exceeds one-eighth inch in diameter; or

(5) When the aggregate affected area of such spots exceeds one-half inch in diameter.

(e) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 1/8 inch in depth;

(2) 5/8 inch in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraphs (1) or (2) of this section.

(f) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 1/4 inch in diameter.

(g) Disease: (1) Cedar rust infection which affects a total area of more than three-sixteenths inch in diameter.

(2) Sooty blotch or fly speck which is thinly scattered over more than 5 percent of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.

(3) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.

(h) Insects: (1) Any healed sting or healed stings which affect a total area of more than one-eighth inch in diameter including any encircling discolored rings.

(2) Worm holes.

§ 51.317 Damage.

"Damage" means any specific defect defined in this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detract from the appearance, or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to *"inch"* or *"inches in diameter"* refers to that of a circle of the specified diameter. Any reference to *"aggregate area," "total area,"* or *"aggregate affected area"* means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as damage:

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether an apple is damaged by russeting, except that excessively rough or bark-like russeting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russeting outside of the stem cavity or calyx basin shall be considered as damage:

(1) Russeting which is excessively rough on Roxbury Russet and other similar varieties.

(2) Smooth net-like russeting, when an aggregate area of more than 15 percent of the surface is covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the amount permitted above.

(3) Smooth solid russeting, when an aggregate area of more than 5 percent of the surface is covered, and the pattern and color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russeting when the appearance is affected to a greater extent than the above amount permitted.

(4) Slightly rough russeting which covers an aggregate area of more than one-half inch in diameter.

(5) Rough russeting which covers an aggregate area of more than one-fourth inch in diameter.

(b) Sunburn or sprayburn which has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russeting.

(c) Limb rubs which affect a total area of more than one-half inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of damage by russeting.

(d) Hail marks, drought spots, other similar depressions, or scars:

(1) When any unhealed mark is present;

(2) When any surface indentation exceeds one-eighth inch in depth;

(3) When the skin has not been broken and the aggregate affected area exceeds one-half inch in diameter; or

(4) When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth inch in diameter.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-fourth inch.

(f) Invisible water core existing around the core and extending to water core in the vascular bundles, or surrounding the vascular bundles when the affected areas surrounding three or more vascular bundles meet or coalesce, or existing in more than a slight degree outside the circular area formed by the vascular bundles. *Provided*, That invisible water core shall not be scored as damage against the Fuji variety of apples under any circumstances.

(g) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 3/16 inch in depth;

(2) 7/8 inch in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraphs (1) or (2) of this section.

(h) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 1/2 inch in diameter.

(i) Disease: (1) Scab spots which affect a total area of more than one-fourth inch in diameter.

(2) Cedar rust infection which affects a total area of more than one-fourth inch in diameter.

(3) Sooty blotch or fly speck which is thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(4) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(5) Bitter pit or Jonathan spot when one or more spots affects the surface of the apple.

(j) Insects: (1) Any healed sting or healed stings which affect a total area of more than three-sixteenths inch in diameter including any encircling discolored rings.

(2) Worm holes.

§ 51.318 Serious damage.

"Serious damage" means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which seriously detract from the appearance, or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to "inch" or "inches in diameter" refers to that of a circle of the specified diameter. Any reference to "aggregate area," "total area," or "aggregate affected area" means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as serious damage:

(a) The following types and amounts of russeting shall be considered as serious damage:

(1) Smooth solid russeting, when more than one-half of the surface in the aggregate is covered, including any russeting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russeting, which detracts from the appearance of the fruit to a greater extent than the amount of smooth solid russeting permitted: *Provided*, That any amount of russeting shall be permitted on Roxbury Russet and other similar varieties.

(2) [Reserved]

(b) Sunburn or sprayburn which seriously detracts from the appearance of the fruit.

(c) Limb rubs which affect more than one-tenth of the surface in the aggregate.

(d) Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than one-tenth of the surface in the aggregate: *Provided*, That no hail marks which are unhealed shall be permitted and not more than an aggregate area of one-half inch shall be allowed for well healed hail marks where the skin has been broken.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-half inch.

(f) Visible water core which affects an area of more than one-half inch in diameter.

(g) *Disease:* (1) Scab spots which affect a total area of more than three-fourths inch in diameter.

(2) Cedar rust infection which affects a total area of more than three-fourths inch in diameter.

(3) Sooty blotch or fly speck which affects more than one-third of the surface.

(4) Red skin spots which affect more than one-third of the surface.

(5) Bitter pit or Jonathan spot which is thinly scattered over more than one-tenth of the surface.

(h) *Insects:* (1) Healed stings which affect a total area of more than one-fourth inch in diameter including any encircling discolored rings.

(2) Worm holes.

(i) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 3/8 inch in depth;

(2) 1 1/8 inches in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraph (i)(1) or (2) of this section.

(j) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 3/4 inch in diameter.

§ 51.319 Seriously deformed.

"Seriously deformed" means that the apple is so badly misshapen that its appearance is seriously affected.

§ 51.320 Diameter.

When measuring for minimum size, "diameter" means the greatest dimension of the apple measured at right angles to a line from stem to blossom end. When measuring for maximum size, "diameter" means the smallest dimension of the apple determined by passing the apple through a round opening in any position.

U.S. Condition Standards for Export

§ 51.321 U.S. Condition Standards for Export.[4]

(a) Not more than 5 percent of the apples in any lot shall be further advanced in maturity than firm ripe.

(b) Not more than 5 percent of the apples in any lot shall be damaged by storage scab.

(c) Not more than a total of 5 percent of the apples in any lot shall be affected by scald, internal breakdown, freezing injury, or decay; or damaged by bitter pit, Jonathan spot, water core [5] except that invisible water core shall not be scored as damage when these condition standards are applied to the Fuji variety of apples, or other condition factors: *Provided*, That:

(1) Not more than a total of 2 percent shall be allowed for apples affected by decay and soft scald;

(2) Not more than 2 percent shall be allowed for apples affected by internal breakdown;

(d) Container packs shall comply with packing requirements specified in § 51.310 of the United States Standards for Grades of Apples.

(e) Any lot of apples shall be considered as meeting the U.S. Condition Standards for Export if the entire lot averages within the requirements specified: *Provided*, That no package in any lot shall have more than double the percentages specified, except that for packages which contain 10 pounds or less, individual packages in any lot may have not more than three times the tolerance or three apples (whichever is the greater amount).

Metric Conversion Table

§ 51.322 Metric conversion table.

Inches	Millimeters (mm)
1/16 equals	1.6
1/8 equals	3.2
3/16 equals	4.8
1/4 equals	6.4
3/8 equals	9.5
1/2 equals	12.7
5/8 equals	15.9
3/4 equals	19.1
7/8 equals	22.2
1 1/8 equals	28.6
2 1/8 equals	54.0
2 1/4 equals	57.2
2 3/8 equals	60.3
2 1/2 equals	63.5
2 3/4 equals	69.9

Cubic Inches	Cubic Centimeters (cc)
2100 equals	34,412.7
2900 equals	47,522.3

Pounds	Grams (g)
10 equals	4,536.0
37 equals	16,783.2
40 equals	18,144.0

[4] These standards may be applied to domestic shipments of apples as well as export lots, and may be referred to as "U.S. Condition Standards."

[5] "Damage by water core" means externally invisible water core existing around the core and extending to water core in the vascular bundles, or surrounding the vascular bundles when the affected areas surrounding three or more vascular bundles meet or coalesce, or existing in more than slight degree outside the circular area formed by the vascular bundles, or any externally visible water core.

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Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29034 Filed 11–18–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Doc. No. AO–368–A29; DA–01–06]

Milk in the Pacific Northwest Marketing Area; Interim Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain pooling provisions of the Pacific Northwest Federal milk order on an interim basis. This interim order implements amendments to the *Pool plant* provisions which establish a cooperative manufacturing plant provision and a procedure for "system pooling" by cooperative manufacturing plants. For the *Producer milk* provisions, this interim order implements amendments that establish a standard of at least 3 days' milk production for the number of days during the month that the milk of a producer needs to be delivered to a pool plant (a "touch-base" standard) in order for the rest of the milk of that producer to be eligible to be diverted to nonpool plants, provides authority to the Market Administrator to adjust the "touch-base" standard, and establishes a year-round diversion limit of 80 percent of total receipts for pool plants. More than the required number of producers in the Pacific Northwest marketing area have approved the issuance of the interim order as amended.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address *Gino.Tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Prior documents in this proceeding:

Notice of Hearing: Issued November 14, 2001; published November 19, 2001 (66 FR 57889).

Tentative Final Decision: Issued August 30, 2002; published September 6, 2002 (67 FR 56936).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Pacific Northwest order:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings. It is necessary and in the public interest to make these interim amendments to the Pacific Northwest order effective January 1, 2003. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The interim amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on August 30, 2002.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on January 1, 2003. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Pacific Northwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR part 1124 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.7 is amended by:

a. Removing paragraphs (c)(2) and (c)(3);

b. Redesignating paragraph (c)(4) as (c)(2);

c. Adding new paragraphs (d) and (f); and

d. Revising paragraph (g).

The revisions and additions read as follows:

§ 1124.7 Pool plant.

* * * * *

(d) A manufacturing plant located within the marketing area and operated by a cooperative association, or its wholly owned subsidiary, if, during the month, or the immediately preceding 12-month period ending with the current month, 20 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other that Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association, or its wholly owned subsidiary, and from plants of the cooperative association, or its wholly owned subsidiary, for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(3) A request is filed in writing with the market administrator before the first day of the month for which it is to be effective. The request will remain in effect until a cancellation request is filed in writing with the market administrator before the first day of the month for which the cancellation is to be effective.

* * * * *

(f) A system of two or more plants identified in § 1124.7(d) operated by one or more cooperative handlers may qualify for pooling by meeting the above shipping requirements subject to the following additional requirements:

(1) The cooperative handler(s) establishing the system submits a written request to the market administrator on or before the first day of the month for which the system is to be effective requesting that such plants qualify as a system. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system until the handler(s) establishing the system submits a written request before the first day of the month to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system. In the event of an ownership change or the business failure of a handler that is a participant in the system, the system may be reorganized to reflect such a change if a written request to file a new marketing agreement is submitted to the market administrator; and

(2) If a system fails to qualify under the requirement of this paragraph, the handler responsible for qualifying the system shall notify the market administrator of which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continue up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentage of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

* * * * *

2. Section 1124.13 is amended by:

a. Redesignating paragraphs (e)(1) through (5) as paragraphs (e)(2) through (6);

b. Adding a new paragraph (e)(1); and

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c. Revising redesignated paragraphs (e)(2),(e)(5), and (e)(6).

The revisions and additions read as follows:

§ 1124.13 Producer Milk.

* * * * *

(e) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least 3 days' production of such dairy farmer's production is physically received at a pool plant during the month.

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent.

* * * * *

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5).

(6) The delivery day requirement in paragraph (e)(1) of this section and the diversion percentage in paragraph (e)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure the orderly marketing and efficient handling of milk in the marketing area. Before making such finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29032 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951 and 3550

Servicing and Collections

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule explains the procedures used by certain Rural Development Agencies and the Farm Service Agency, Farm Loan Programs to refer accounts to the Department of the Treasury for administrative offset (TOP) and cross-servicing as required by the Debt Collection Improvement Act (DCIA), and by the Treasury Department's rules regarding the Federal Claims Collection Standards concerning administrative offset, cross-servicing procedures, and Treasury Offset of Internal Revenue Service (IRS) tax refund payments.

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Barry G. Sykes, Chief, Program Reporting Branch, Program Management Division, Rural Development, USDA, Office of the Deputy Chief Financial Officer, P.O. Box 200011, FC–351, St. Louis, Missouri 63120–0011, Telephone (314) 539–2222.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

Programs Affected

The catalog of Federal Domestic Assistance programs impacted by this action are as follows:

10.404—Emergency Loans
10.405—Farm Labor Housing Loans and Grants
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Very Low to Moderate Income Housing Loans
10.411—Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415—Rural Rental Housing Loans
10.417—Very Low-Income Housing Repair Loans and Grants
10.420—Rural Self-Help Housing Technical Assistance
10.427—Rural Rental Assistance Payments
10.760—Water and Waste Disposal Systems for Rural Communities
10.766—Community Facilities Loans and Grants
10.767—Intermediary Relending Program
10.768—Business and Industry Loans
10.770—Water and Waste Disposal Loans and Grants (section 306C)
10.854—Rural Economic Development Loans and Grants

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before litigation against the Department is instituted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0119. This rule does not revise or impose any new information collection requirements from those approved by OMB.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The Agencies have determined that this action does not constitute a major Federal action significantly affecting the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned have determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Discussion of Final Rule

The final rule adopts the Department of Treasury (Treasury) Debt Collection procedures required by the Debt Collection Improvement Act (DCIA), Pub. L. 104–434, April 26, 1996, the Federal Claims Collection Standards concerning administrative offset at 31 CFR 901.3, cross-servicing procedures at 31 CFR part 285, subpart A and Treasury Offset of Internal Revenue Service (IRS) tax refund payments at 31 CFR 285.2. The Rural Business-Cooperative Service and the Rural Housing Service, Community Facilities program, both part of the Rural Development mission area, are adopting this rule to enable it to refer delinquent accounts to Treasury for administrative offset (TOP) and cross-servicing as required by the DCIA. A new section has been added explaining the Farm Service Agency (FSA), Farm Loan Programs (FLP) procedures for referring accounts to Treasury. Additional revisions have been made for readability and to make corrections to conform to Treasury regulations which have consolidated the IRS offset program with the Treasury Offset Program (TOP). Therefore, this rule revises the reference contained in the Rural Housing Service's regulations at 7 CFR 3550.210(a) to reference the correct authorities for conducting IRS offsets.

Rural Development is also revising its servicing and collections regulations to reflect that the Rural Housing Service, for its Single Family Housing and Multi-Family Housing programs and the Rural Utilities Service for its Water and Environmental program have developed their own servicing handbooks providing internal administrative guidance to agency personnel for their Treasury Offset and Cross-Servicing procedures. Farm Services Agency is amending its salary offset guidance to clarify when salary offset will begin and to clarify when notification will be sent to the borrower. There is no additional burden being imposed upon the public and no financial impact imposed on the Government or on the public as a result of this action.

List of Subjects

7 CFR Part 1951

Accounting, Accounting servicing, Credit, Loan programs—Agriculture, Low and moderate income housing loans—Servicing.

7 CFR Part 3550

Direct single family housing loan and grants.

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

2. Section 1951.101 is revised to read as follows:

§ 1951.101 General.

Federal debt collection statutes provide for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS) for its community facility program, and Rural Business-Cooperative Service (RBS), herein referred to collectively as "United States Department of Agriculture (USDA) Agency," to collect delinquent debts. Any money that is or may become payable from the United States to an individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with § 1951.102 of this subpart. This subpart does not apply to direct single family housing loans, direct multi-family housing loans, and the Rural Utilities Service. Section 1951.136 of this subpart only applies to RHS for its community facility program and RBS for the offset of Federal payments. Nothing in this subpart affects the common law right of set off available to USDA Agencies.

2a. In section 1951.102, paragraph (b)(1) is revised to read as follows:

§ 1951.102 Administrative offset.

* * * * *

(b) * * *

(1) *Agency* means Farm Service Agency, Farm Loan Programs; Rural Housing Service, except direct Single Family Housing loans and direct Multi-Family Housing loans; and Rural Business-Cooperative Service, or any successor agency.

* * * * *

3. In Section 1951.111 the introductory text and paragraph (d) (1) are revised to read as follows:

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which

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arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquent debts owed to them by employees of the USDA Agency, excluding county committee members. Administrative offset, rather than salary offset, will be used to collect money from Federal employee retirement benefits. For delinquent Farm Loan Programs direct loans, salary offset will not begin until the borrower has been notified of servicing options in accordance with 7 CFR 1951.907. In addition, for Farm Loan Programs direct loans, salary offset will not be instituted if the Federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. For Farm Loan Programs guaranteed debtors, salary offset can not begin until a final loss claim has been paid. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount against an employee's salary.

* * * * *

(d) *Notice to debtor.*

(1) After the Certifying Official determines that collection by salary offset is feasible, the debtor should be notified within 15 calendar days after the salary offset determination. This notice will notify the debtor of intended salary offset at least 30 days before the salary offset begins. For Farm Loan Programs direct loans, this notice will be sent after the borrower is over 90 days past due and immediately after sending notification of servicing rights in accordance with 7 CFR 1951.907 of this subpart. For Farm Loan Programs guaranteed debtors, this notice will be sent after a final loss claim has been paid. The salary offset determination notice will be delivered to the debtor by regular mail.

* * * * *

4. Section 1951.136 and 1951.137 are added to read as follows:

§ 1951.136 Procedures for Department of Treasury Offset and Cross-Servicing for the Rural Housing Service (Community Facility Program only) and the Rural Business-Cooperative Service.

(a) The National Offices of the Rural Housing Service (RHS), Community Facilities (CF) and the Rural Business-Cooperative Service (RBS) will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, may be excluded from TOP or Cross-Servicing.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;

(2) An opportunity to inspect and copy the records related to the debt from the Agency;

(3) An opportunity to review the matter within the Agency or the National Appeals Division, if there has not been a previous opportunity to appeal the offset; and

(4) An opportunity to enter into a written repayment agreement.

(c) In referring debt to the Department of Treasury the Agency will certify that:

(1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;

(3) The Agency has made reasonable efforts to obtain payment; and

(4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

§ 1951.137 Procedures for Treasury Offset and Cross-Servicing for the Farm Service Agency (FSA) Farm Loan Programs

(a) The Farm Service Agency, Farm Loan Programs, will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, may be excluded from TOP or Cross-Servicing. Guaranteed debtors will only be referred to TOP upon confirmation of payment on a final loss claim.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing by the Director of Kansas City Finance Office. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;

(2) An opportunity to inspect and copy the records related to the debt, from the Agency;

(3) An opportunity to review the matter within the Agency; and

(4) An opportunity to enter into a written repayment agreement.

(c) In referring debt to the Department of Treasury the Agency will certify that:

(1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;

(3) The Agency has made reasonable efforts to obtain payment; and

(4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

PART 3550—[AMENDED]

5. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301 and 42 U.S.C. 1480.

6. In § 3550.210, paragraph (a) is revised to read as follows:

(a) *IRS offset.* RHS may take action to effect offset of claims due RHS against tax refunds due to RHS debtors under 31 U.S.C. 3720a and 31 CFR 285.2.

Dated: October 2, 2002.

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

Dated: October 2, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Dated: October 3, 2002.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

Dated: October 25, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–29050 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

[REG–251003–96]

RIN 1545–AR99

Statement of Procedural Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amendments to Statement of Procedural Rules.

SUMMARY: This document amends the Statement of Procedural Rules to reflect changes effected by the Electronic Freedom of Information Act Amendments of 1996 to update organizational titles and addresses, and to make certain changes in the IRS's procedures for processing Freedom of Information Act requests. The rules affect persons requesting records from the IRS.

DATES: Effective Date: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Michael B. Frosch, 202–622–4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final rules amending the Statement of Procedural Rules (SPR) (26 CFR 601.701 and 26 CFR 601.702), issued under the authority contained in 5 U.S.C. 301 and 552. The SPR is being updated to reflect changes effected by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Public Law 104–231, 110 Stat. 2422. Other amendments conform to procedures set forth in the Department of the Treasury's regulations on disclosure of records under the FOIA. 65 FR 40503 (June 30, 2000). Other amendments reflect procedures heretofore only available to the public in the Internal Revenue Manual, which is maintained in the IRS Freedom of Information Reading Room. The SPR is also updated to reflect changes in title or nomenclature and to reflect changes of addresses to be contacted for Freedom of Information requests in light of the IRS reorganization mandated by section 1001 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA).

Discussion of Amendments in Section 601.701

Section 601.701 is removed and reserved. Section 601.701 was simply a restatement of the statute as interpreted by the courts and does not need to be repeated in regulations.

Discussion of Amendments in Part 601.702

The amendments are described in the order of the sections of the SPR being amended.

Paragraph (a)(1) is amended to reflect changes in nomenclature.

Paragraph (a)(2) is amended to reflect changes in nomenclature.

Paragraph (b)(1) is amended to incorporate changes required by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). Specifically, this provision implements the new statutory requirement that any records that an agency processes and discloses in response to a FOIA request that the agency determines to have become or are likely to become the subject of subsequent requests for substantially the same records be placed in public reading rooms so that they are readily available to potential FOIA requesters. This provision also implements the statutory mandate to enhance the availability of reading room records by requiring: (1) That reading room records created on or after November 1, 1996, be available to the public by electronic means, *e.g.*, the Internet, by November 1, 1997; and (2) an index of reading room records shall be made available on the Internet by December 31, 1999.

Paragraph (b)(2) is amended to implement the EFOIA requirement that the extent of any deletion of information be indicated on the portion of the record which is made available or published, and where technically feasible, that the deletion be indicated at the place in the record where made.

Paragraph (b)(3) is amended to reflect a change in the room location of the Freedom of Information Reading Room at the National Office. As a consequence of RRA, the IRS no longer has regional offices, and, therefore, the regional reading rooms have been eliminated. Paragraph (b)(3)(iii) is revised to clarify that fees shall not be charged for copying materials in the Freedom of Information Reading Room. Paragraph (b)(3)(iv), pertaining to mailing reading room material to other IRS office locations for personal inspection or directly to the requester, is removed. Neither the FOIA nor Department of the Treasury regulations or policy requires the IRS to provide this assistance to persons unable or unwilling to use the Freedom of Information Reading Room. The IRS determined that the administrative cost of providing such assistance outweighed the marginal public benefit, especially since all required records are on the Internet.

Paragraph (c)(1) is amended to clarify IRS practice regarding the processing of valid FOIA requests within the statutory time period. It explicitly provides that invalid requests are not subject to the time constraints provided in paragraphs (c)(9) through (11). Newly designated paragraph (c)(1)(ii) reflects IRS practice that requests for the continuing production of records created after the date of receipt of the request shall not be honored.

Paragraph (c)(2), a new provision, covers electronic format records. It implements the EFOIA requirement that the agency provide a requested record in any form or format requested if the record is readily reproducible by the agency in that form or format. Furthermore, it directs the IRS to make reasonable efforts to search for records in electronic form or format.

Paragraph (c)(3), an amendment of former paragraph (c)(2) relating to requests for records not in control of the IRS, contains only minor revisions of word usage and cross references.

Paragraph (c)(4), an amendment of former paragraph (c)(3), concerning the form of a request, is revised to clarify the procedures for making requests when the requesters are uncertain as to which office they should submit their requests; and to clarify IRS practice when requesters have an outstanding FOIA fee balance when subsequent requests are received.

Paragraph (c)(5), an amendment of former paragraph (c)(4), dealing with reasonable description of records and identity and legal entitlement of the requester, is clarified to conform to section 6103(e)(1)(D) and the Conference and Practice requirements of 26 CFR 601.503 as to who may make a request on behalf of a corporation; to require the submission of the taxpayer identification number where the request seeks tax information to ensure the

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requester's legal entitlement to statutorily protected records; and to conform to case law which permits the submission of a sworn statement, under penalty of perjury, in lieu of a notarized statement, as to proof of identity.

Paragraph (c)(6), a new provision, implements the EFOIA requirement that agencies provide for expedited processing in cases where a requester demonstrates a compelling need. The provision defines compelling need; establishes the procedures for requesting expedited processing; sets a ten day time limit for determining whether a request for expedited processing will be granted; and sets a ten day time limit for deciding appeals of initial determinations to deny expedited processing.

Paragraph (c)(7), a revision of paragraph (c)(5) concerning the date of receipt of a request, is amended to eliminate the requirement that the disclosure office issue a separate letter advising of the statutory period for response, where the final determination letter will be sent before the expiration of the statutory period or where a voluntary or statutory extension of time letter is sent.

Paragraph (c)(8), a revision of paragraph (c)(6), is amended: (1) To eliminate language that the IRS is not required to tabulate or compile information for the purpose of creating a record (deemed confusing in light of EFOIA); and (2) to clarify that, as a general rule, only records in the possession and control of the IRS on the date of receipt of the FOIA request shall be considered in determining records responsive to the request.

Paragraph (c)(9), an amendment of paragraph (c)(7), is revised to reflect nomenclature changes; to clarify IRS official's discretion not to issue a statement of fees before issuance of the determination letter, but rather to disclose the records simultaneous with the issuance of the determination letter under this provision; to clarify that fees will be incurred for the photocopying of records being made available for inspection; and to establish that IRS denial letters should identify the date the request was received in the appropriate disclosure office and the number of pages at issue.

Paragraph (c)(10), an amendment of paragraph (c)(8) concerning administrative appeals, is amended to clarify that administrative appeals may be submitted from denials of fee waiver or reduction requests, as well as adverse fee category determinations, in addition to denials of records, and to reflect changes in nomenclature.

Paragraph (c)(11), an amendment of paragraph (c)(9) relating to the unusual circumstances where extensions of time may be granted and the aggregation of requests, is amended to provide that consultations with business submitters regarding requests for disclosure of their information in records, in conformance with new paragraph (g), is one type of unusual circumstance; and to clarify that searches in Federal Records Centers or other storage locations for IRS records stored in such facilities is another. New paragraph (c)(11)(ii) is added to permit aggregation of requests, as authorized in EFOIA.

Paragraph (c)(12), an amendment of paragraph (c)(10) on failure to comply, is amended in light of EFOIA to define the exceptional circumstances under which a court may retain jurisdiction and allow the IRS additional time to complete its processing of a FOIA request.

Paragraph (c)(13), an amendment of paragraph (c)(11) relating to judicial review, is revised to clarify that judicial review may be sought from actual or constructive denials of fee waiver or reduction requests, as well as adverse fee category determinations, in addition to denials of records; and to change the office to which service of process on the IRS is to be made, from General Legal Services (GLS) to the Associate Chief Counsel (Procedure and Administration) (PA).

Paragraph (c)(14), an amendment of paragraph (c)(12), contains no revisions. Former paragraph (c)(13) is removed.

Paragraph (d) is amended to clarify that, for those types of records described in paragraphs (d) (1) through (8), requests denominated as Freedom of Information Act requests shall be diverted to other procedures provided for by the Internal Revenue Code for their appropriate handling and fee schedules, which procedures are generally as, or more expeditious than, handling through FOIA.

Paragraph (d)(1) is amended to reflect that fees to be charged for requests for photocopies of tax returns and certain transcripts, made on IRS form 4506, "Request for Copy or Transcript of Tax Form" will be reasonable fees as determined by the Commissioner from time to time.

Paragraph (d)(2) is amended to reflect a change in citation form.

Paragraph (d)(3) is amended to reflect changes in the manner in which members of the public may obtain access to information relating to certain tax exempt organizations and certain trusts, consistent with section 6104.

Paragraph (d)(4) is amended to reflect changes in the manner in which members of the public may obtain access to applications of certain organizations for tax exemption, consistent with section 6104.

Paragraph (d)(5) is amended to reflect changes in which members of the public may obtain access to information relating to certain deferred compensation plans and accounts, consistent with section 6104.

Paragraph (d)(7) is amended to clarify that comments received in response to solicitations for public comments, prepublication comments, as well as comments received in response to notices of proposed rulemaking, are available for inspection upon written request as set forth in the regulations; and to reflect changes in nomenclature and mailing address.

Paragraph (d)(8) is amended to reflect that form 7249, "Offer Acceptance Report," is the form which records accepted offers-in-compromise.

Paragraph (f)(1) is amended to reflect changes in nomenclature.

Paragraph (f)(2) is amended to remove redundant information and to clarify that administrative appeals shall be received within 35 days of the date of the initial denial letter.

Paragraph (f)(3) is amended to clarify that news media entities include computerized news services; to clarify that the category of educational institution requester does not include individuals wanting records for use in meeting individual academic research requirements; to confirm that the IRS shall determine the category of a requester based upon a review of the requester's submission and the IRS' own records; and to conform to Treasury regulations which permit only duplication fees to be charged to individual requesters seeking records about themselves maintained in agency systems of records.

Paragraph (f)(4) is reorganized and amended to reflect changes in nomenclature.

Paragraph (f)(5) is amended to clarify that fees for searches for non-computerized records are charged at the salary rate (basic pay plus 16 percent) of the employee making the search; to clarify that searches for computerized records are charged based upon the actual direct cost of the search, including computer search time, runs, and the operator's salary; to clarify that services or material requested under, but not required by, the Freedom of Information Act may be chargeable to the requester at the actual direct cost in the discretion of the appropriate agency official; to reflect that the actual costs of duplicating videotapes and audiotapes will be borne by the requester; to conform the fees chargeable for certain information relating to exempt organizations and deferred compensation plans to the fees charged for material requested under the Freedom of Information Act; to conform to case law that does not require agency officials to create new records where the condition of the existing record responsive to the request does not enable legible copies to be duplicated.

Paragraph (f)(6) is amended to reflect changes in nomenclature.

Paragraph (f)(7) is amended to reflect changes in citation form.

Paragraph (f)(9) is amended to clarify that, in the event previous fees have not been paid in a timely fashion, or where estimated fees exceed $250, no processing of subsequently received requests will occur until such time as the requester remits all past due fees, as well as the fees estimated to be due as a result of the new request; and to clarify that the IRS reserves the right to require payment of fees after a request is processed and before any records are released to a requester.

Paragraph (f)(10) is amended to reflect changes in nomenclature.

Paragraph (g) has been amended to contain the revised business information procedures which were previously detailed in paragraph (h).

Paragraph (h) is amended to contain the revised list of responsible officials and their addresses previously contained in paragraph (g).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these rules and therefore a Regulatory Flexibility Analysis is not required. The IRS has not published a notice of proposed rulemaking on these revisions, as allowed by 5 U.S.C. 553 when the agency determines, for good cause, that it is unnecessary to publish a proposed rule and obtain comments from interested persons. The IRS has determined that publication of a proposed rule is unnecessary inasmuch as these revisions (1) generally involve revisions consistent with the Department of the Treasury's title 31 revised FOIA regulations (65 FR 40503 (June 30, 2000)); (2) involve only nomenclature and address changes; (3) merely represent the publication of existing procedures already in place as set forth in the Internal Revenue Manual; or (4) merely reflect procedures accepted or required by the courts.

Drafting Information

The principal author of these rules is Michael B. Frosch of the Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Freedom of Information, Reporting and recordkeeping requirements, Taxes.

Amendments to the Statement of Procedural Rules

Accordingly, 26 CFR part 601 is amended as follows:

PART 601—STATEMENT OF PROCEDURAL RULES

Paragraph 1. The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 301 and 552.

§ 601.701 [Removed]

Par. 2. Section 601.701 is removed.

Par. 3. Section 601.702 is revised to read as follows:

§ 601.702 Publication, public inspection, and specific requests for records.

(a) *Publication in the* **Federal Register**—(1) *Requirement.* (i) Subject to the application of the exemptions and exclusions described in the Freedom of Information Act, 5 U.S.C. 552(b) and (c), and subject to the limitations provided in paragraph (a)(2) of this section, the IRS is required under 5 U.S.C. 552(a)(1), to state separately and publish currently in the **Federal Register** for the guidance of the public the following information—

(A) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, from the IRS;

(B) Statement of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available;

(C) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the IRS; and

(E) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1)(i)(A) through (D) of this section.

(ii) Pursuant to the foregoing requirements, the Commissioner publishes in the **Federal Register** from time to time a statement, which is not codified in this chapter, on the organization and functions of the IRS, and such amendments as are needed to keep the statement on a current basis. In addition, there are published in the **Federal Register** the rules set forth in this part 601 (Statement of Procedural Rules), such as those in paragraph E of this section, relating to conference and practice requirements of the IRS; the regulations in part 301 of this chapter (Procedure and Administration Regulations); and the various substantive regulations under the Internal Revenue Code of 1986, such as the regulations in part 1 of this chapter (Income Tax Regulations), in part 20 of this chapter (Estate Tax Regulations), and in part 31 of this chapter (Employment Tax Regulations).

(2) *Limitations.* (i) *Incorporation by reference in the* **Federal Register**. Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, shall be deemed published in the **Federal Register** for purposes of paragraph (a)(1) of this section when it is incorporated by reference therein with the approval of the Director of the Office of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter, the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the IRS, may not be incorporated in the **Federal Register** by reference. Matter may be incorporated by reference in the **Federal Register** only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR part 20.

(ii) Effect of failure to publish. Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a)(1) of this section which is required to be published in the **Federal Register**, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to paragraph (a)(2)(i) of this section. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference shall not

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adversely change or affect a person's rights.

(b) *Public inspection and copying*—(1) *In general.*

(i) Subject to the application of the exemptions described in 5 U.S.C. 552(b) and the exclusions described in 5 U.S.C. 552(c), the IRS is required under 5 U.S.C. 552(a)(2) to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information:

(A) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases;

(B) Those statements of policy and interpretations which have been adopted by the IRS but are not published in the **Federal Register**;

(C) Its administrative staff manuals and instructions to staff that affect a member of the public; and

(D) Copies of all records, regardless of form or format, which have been released to any person under 5 U.S.C. 552(a)(3) and which, because of the nature of their subject matter, the IRS determines have become or are likely to become the subject of subsequent requests for substantially the same records. The determination that records have become or may become the subject of subsequent requests shall be based on the following criteria:

(*1*) The subject matter is clearly of interest to the public at large or to special interest groups from which more than one request is expected to be received; or

(*2*) When more than four requests for substantially the same records have already been received.

(ii) The IRS is also required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying current indexes identifying any matter described in paragraphs (b)(1)(i)(A) through (C) of this section which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. In addition, the IRS shall also promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable, in which case the IRS shall nonetheless provide copies of such indexes on request at a cost not to exceed the direct cost of duplication. No matter described in paragraphs (b)(1)(i)(A) through (C) of this section which is required by this section to be made available for public inspection or published may be relied upon, used, or cited as precedent by the IRS against a party other than an agency unless such party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this paragraph (b). This paragraph (b) applies only to matters which have precedential significance. It does not apply, for example, to any ruling or advisory interpretation issued to a taxpayer or to a particular transaction or set of facts which applies only to that transaction or set of facts. Rulings, determination letters, technical advice memorandums, and Chief Counsel advice are open to public inspection and copying pursuant to 26 U.S.C. 6110. This paragraph (b) does not apply to matters which have been made available pursuant to paragraph (a) of this section.

(iii) For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) and paragraphs (b)(1)(i)(A) through (D) of this section, which are created on or after November 1, 1996, the IRS shall make such records available on the Internet within one year after such records are created.

(iv) The IRS shall make the index referred to in paragraph (b)(1)(ii) of this section available on the Internet.

(2) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the IRS shall, in accordance with 5 U.S.C. 552(a)(2), delete identifying details contained in any matter described in paragraphs (b)(1)(i)(A) through (D) of this section before making such matter available for inspection or publication. Such matters shall also be subject to any applicable exemption set forth in 5 U.S.C. 552(b). In every case where identifying details or other matters are so deleted, the justification for the deletion shall be explained in writing. The extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(3) *Freedom of Information Reading Room*—(i) *In general.* The Headquarters Disclosure Office of the IRS shall provide a reading room where the matters described in paragraphs (b)(1)(i)(A) through (D) of this section which are required to be made available for public inspection, and the current indexes to such matters, shall be made available to the public for inspection and copying. The Freedom of Information Reading Room shall contain other matters determined to be helpful for the guidance of the public, including a complete set of rules and regulations (except those pertaining to alcohol, tobacco, firearms, and explosives) contained in this title, any Internal Revenue matters which may be incorporated by reference in the **Federal Register** (but not a copy of the **Federal Register** so doing) pursuant to paragraph (a)(2)(i) of this section, a set of Cumulative Bulletins, and copies of various IRS publications. The public shall not be allowed to remove any record from the Freedom of Information Reading Room.

(ii) *Location of Freedom of Information Reading Room.* The location of the Headquarters Disclosure Office Freedom of Information Reading Room is: IRS, 1111 Constitution Avenue, NW., Room 1621, Washington, DC.

(iii) *Copying facilities.* The Headquarters Disclosure Office shall provide facilities whereby a person may obtain copies of material located on the shelves of the Freedom of Information Reading Room.

(c) *Specific requests for other records*—(1) *In general.* (i) Subject to the application of the exemptions described in 5 U.S.C. 552(b) and the exclusions described in 5 U.S.C. 552(c), the IRS shall, in conformance with 5 U.S.C. 552(a)(3), make reasonably described records available to a person making a request for such records which conforms in every respect with the rules and procedures set forth in this section. Any request or any appeal from the initial denial of a request that does not comply with the requirements set forth in this section shall not be considered subject to the time constraints of paragraphs (c)(9), (10), and (11) of this section, unless and until the request or appeal is amended to comply. The IRS shall promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this section. If a requester does not resubmit a perfected request or appeal within 35 days from the date of a communication from the IRS, the request or appeal file shall be closed. When the resubmitted request or appeal conforms with the requirements of this section, the time constraints of paragraphs (c)(9), (10), and (11) of this section shall begin.

(ii) Requests for the continuing production of records created or for records created after the date of receipt of the request shall not be honored.

(iii) Specific requests under paragraph (a)(3) for material described in paragraph (a)(2)(A)through(C) and which is in the Freedom of Information Reading Room shall not be honored.

(2) *Electronic format records.* (i) The IRS shall provide the responsive record or records in the form or format requested if the record or records are readily reproducible by the IRS in that form or format. The IRS shall make reasonable efforts to maintain its records in forms or formats that are reproducible for the purpose of disclosure. For purposes of this paragraph, the term *readily reproducible* means, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, computer disk (CD), tape, or other electronic medium using equipment currently in use by the office or offices processing the request. Even though some records may initially be readily reproducible, the need to segregate exempt from nonexempt records may cause the releasable material to be not readily reproducible.

(ii) In responding to a request for records, the IRS shall make reasonable efforts to search for the records in electronic form or format, except where such efforts would significantly interfere with the operation of the agency's automated information system(s). For purposes of this paragraph (c), the term *search* means to locate, manually or by automated means, agency records for the purpose of identifying those records which are responsive to a request.

(iii) Searches for records maintained in electronic form or format may require the application of codes, queries, or other minor forms of programming to retrieve the requested records.

(3) *Requests for records not in control of the IRS.* (i) Where the request is for a record which is determined to be in the possession or under the control of a constituent unit of the Department of the Treasury other than the IRS, the request for such record shall immediately be transferred to the appropriate constituent unit and the requester notified to that effect. Such referral shall not be deemed a denial of access within the meaning of these regulations. The constituent unit of the Department to which such referral is made shall treat such request as a new request addressed to it and the time limits for response set forth in paragraphs (c)(9) and (c)(10) of this section shall commence when the referral is received by the designated office or officer of the constituent unit. Where the request is for a record which is of a type that is not maintained by any constituent unit of the Department of the Treasury, the requester shall be so advised.

(ii) Where the record requested was created by another agency or constituent unit of the Department of the Treasury and a copy thereof is in the possession of the IRS, the IRS official to whom the request is delivered shall refer the request to the agency or constituent unit which originated the record for direct reply to the requester. The requester shall be informed of such referral. This referral shall not be considered a denial of access within the meaning of these regulations. Where the record is determined to be exempt from disclosure under 5 U.S.C. 552, the referral need not be made, but the IRS shall inform the originating agency or constituent unit of its determination. Where notifying the requester of its referral may cause a harm to the originating agency or constituent unit which would enable the originating agency or constituent unit to withhold the record under 5 U.S.C. 552, then such referral need not be made. In both of these circumstances, the IRS official to whom the request is delivered shall process the request in accordance with the procedures set forth in this section.

(iii) When a request is received for a record created by the IRS (*i.e.*, in its possession and control) that includes information originated by another agency or constituent unit of the Department of the Treasury, the record shall be referred to the originating agency or constituent unit for review, coordination, and concurrence prior to being released to a requester. The IRS official to whom the request is delivered may withhold the record without prior consultation with the originating agency or constituent unit.

(4) *Form of request.* (i) Requesters are advised that only requests for records which fully comply with the requirements of this section can be processed in accordance with this section. Requesters shall be notified promptly in writing of any requirements which have not been met or any additional requirements to be met. Every effort shall be made to comply with the requests as written. The initial request for records must—

(A) Be made in writing and signed by the individual making the request;

(B) State that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or regulations thereunder;

(C) Be addressed to and mailed to the office of the IRS official who is responsible for the control of the records requested (*see* paragraph (h) of this section for the responsible officials and their addresses), regardless of where such records are maintained. Generally, requests for records pertaining to the requester, or other matters of local interest, should be directed to the office servicing the requester's geographic area of residence. Requests for records maintained in the Headquarters of the IRS and its National Office of Chief Counsel, concerning matters of nationwide applicability, such as published guidance (regulations and revenue rulings), program management, operations, or policies, should be directed to the Headquarters Disclosure Office. If the person making the request does not know the official responsible for the control of the records being requested, the person making the request may contact, by telephone or in writing, the disclosure office servicing the requester's geographic area of residence to ascertain the identity of the official having control of the records being requested so that the request can be addressed, and delivered, to the appropriate responsible official. Misdirected requests that otherwise satisfy the requirements of this section shall be immediately transferred to the appropriate responsible IRS official and the requester notified to that effect. Such transfer shall not be deemed a denial of access within the meaning of these regulations. The IRS official to whom the request is redirected shall treat such request as a new request addressed to it and the time limits for response set forth in paragraphs (c)(9) and (c)(11) of this section shall commence when the transfer is received by the designated office;

(D) Reasonably describe the records in accordance with paragraph (c)(5)(i) of this section;

(E) In the case of a request for records the disclosure of which is limited by statute or regulations (as, for example, the Privacy Act of 1974 (5 U.S.C. 552a) or section 6103 and the regulations thereunder), establish the identity and the right of the person making the request to the disclosure of the records in accordance with paragraph (c)(5)(iii) of this section;

(F) Set forth the address where the person making the request desires to be notified of the determination as to whether the request shall be granted;

(G) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them;

(H) State the firm agreement of the requester to pay the fees for search, duplication, and review ultimately determined in accordance with paragraph (f) of this section, or, in accordance with paragraph (c)(4)(ii) of this section, place an upper limit for

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such fees that the requester is willing to pay, or request that such fees be reduced or waived and state the justification for such request; and

(I) Identify the category of the requester and, with the exception of "other requesters," state how the records shall be used, as required by paragraph (f)(3) of this section.

(ii) As provided in paragraph (c)(4)(i)(H) of this section, rather than stating a firm agreement to pay the fee ultimately determined in accordance with paragraph (f) of this section or requesting that such fees be reduced or waived, the requester may place an upper limit on the amount the requester agrees to pay. If the requester chooses to place an upper limit and the estimated fee is deemed to be greater than the upper limit, or where the requester asks for an estimate of the fee to be charged, the requester shall be promptly advised of the estimate of the fee and asked to agree to pay such amount. Where the initial request includes a request for reduction or waiver of the fee, the IRS officials responsible for the control of the requested records (or their delegates) shall determine whether to grant the request for reduction or waiver in accordance with paragraph (f) of this section and notify the requester of their decisions and, if their decisions result in the requester being liable for all or part of the fee normally due, ask the requester to agree to pay the amount so determined. The requirements of this paragraph shall not be deemed met until the requester has explicitly agreed to pay the fee applicable to the request for records, if any, or has made payment in advance of the fee estimated to be due. If the requester has any outstanding balance of search, review, or duplication fees, the requirements of this paragraph shall not be deemed met until the requester has remitted the outstanding balance due.

(5) *Reasonable description of records; identity and right of the requester.* (i) The request for records must describe the records in reasonably sufficient detail to enable the IRS employees who are familiar with the subject matter of the request to locate the records without placing an unreasonable burden upon the IRS. While no specific formula for a reasonable description of a record can be established, the requirement shall generally be satisfied if the requester gives the name, taxpayer identification number (*e.g.*, social security number or employer identification number), subject matter, location, and years at issue, of the requested records. If the request seeks records pertaining to pending litigation, the request shall indicate the title of the case, the court in which the case was filed, and the nature of the case. It is suggested that the person making the request furnish any additional information which shall more clearly identify the requested records. Where the requester does not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine the request. Such opportunity may involve a conference with knowledgeable IRS personnel at the discretion of the disclosure officer. The reasonable description requirement shall not be used by officers or employees of the Internal Revenue as a device for improperly withholding records from the public.

(ii) The IRS shall make a reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in 5 U.S.C. 552(b) or any exclusion described in 5 U.S.C. 552(c). In any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the IRS, the person making the request shall be asked to be more specific and to narrow the request, or to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effect on IRS operations.

(iii) *Statutory or regulatory restrictions*—(A) In the case of records containing information with respect to particular persons the disclosure of which is limited by statute or regulations, persons making requests shall establish their identity and right to access to such records. Persons requesting access to such records which pertain to themselves may establish their identity by—

(*1*) The presentation of a single document bearing a photograph (such as a passport or identification badge), or the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a credit card or organization membership card), in the case of a request made in person,

(*2*) The submission of the requester's signature, address, and one other identifier (such as a photocopy of a driver's license) bearing the requester's signature, in the case of a request by mail, or

(*3*) The presentation in person or the submission by mail of a notarized statement, or a statement made under penalty of perjury in accordance with 28 U.S.C. 1746, swearing to or affirming such person's identity.

(B) Additional proof of a person's identity shall be required before the requests shall be deemed to have met the requirement of paragraph (c)(4)(i)(E) of this section if it is determined that additional proof is necessary to protect against unauthorized disclosure of information in a particular case. Persons who have identified themselves to the satisfaction of IRS officials pursuant to this paragraph (c) shall be deemed to have established their right to access records pertaining to themselves. Persons requesting records on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to access the requested records before the requirement of paragraph (c)(4)(i)(E) of this section shall be deemed met.

(C) In the case of an attorney-in-fact, or other person requesting records on behalf of or pertaining to other persons, the requester shall furnish a properly executed power of attorney, Privacy Act consent, or tax information authorization, as appropriate. In the case of a corporation, if the requester has the authority to legally bind the corporation under applicable state law, such as its corporate president or chief executive officer, then a written statement or tax information authorization certifying as to that person's authority to make a request on behalf of the corporation shall be sufficient. If the requester is any other officer or employee of the corporation, then such requester shall furnish a written statement certifying as to that person's authority to make a request on behalf of the corporation by any principal officer and attested to by the secretary or other officer (other than the requester) that the person making the request on behalf of the corporation is properly authorized to make such a request. If the requester is other than one of the above, then such person may furnish a resolution by the corporation's board of directors or other governing body which provides that the person making the request on behalf of the corporation is properly authorized to make such a request, or shall otherwise satisfy the requirements set forth in section 6103(e). A person requesting access to records of a partnership or a subchapter S Corporation shall provide a notarized statement, or a statement made under penalty of perjury in accordance with 28 U.S.C. 1746, that the requester was a member of the partnership or subchapter S corporation for a part of each of the years included in the request.

(6) *Requests for expedited processing.* (i) When a requester demonstrates compelling need, a request shall be taken out of order and given expedited

treatment. A compelling need involves—

(A) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(B) An urgency to inform the public concerning actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information. A person primarily engaged in disseminating information, if not a full-time representative of the news media, as defined in paragraph (f)(3)(ii)(B) of this section, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A person primarily engaged in disseminating information does not include individuals who are engaged only incidentally in the dissemination of information. The standard of urgency to inform requires that the records requested pertain to a matter of current exigency to the American public, beyond the public's right to know about government activity generally, and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public;

(C) The loss of substantial due process rights.

(ii) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of his or her knowledge and belief, explaining in detail why there is a compelling need for expedited processing.

(iii) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, requests for expedited processing must be submitted to the responsible official of the IRS who maintains the records requested except that a request for expedited processing under paragraph (c)(6)(i)(B) of this section shall be submitted directly to the Director, Communications Division, whose address is Office of Media Relations, CL:C:M, Internal Revenue Service, Room 7032, 1111 Constitution Avenue, NW., Washington, DC 20224.

(iv) Upon receipt by the responsible official in the IRS, a request for expedited processing shall be considered and a determination as to whether to grant or deny the request shall be made, and the requester notified, within ten days of the date of the request, provided that in no event shall the IRS have less than five days (excluding Saturdays, Sundays, and legal public holidays) from the date of the responsible official's receipt of the request for such processing. The determination to grant or deny a request for expedited processing shall be made solely on the information initially provided by the requester.

(v) An appeal of an initial determination to deny expedited processing must be made within ten days of the date of the initial determination to deny expedited processing, and must otherwise comply with the requirements of paragraph (c)(10) of this section. Both the envelope and the appeal itself shall be clearly marked, "Appeal for Expedited Processing."

(vi) IRS action to deny or affirm denial of a request for expedited processing pursuant to this paragraph, and IRS failure to respond in a timely manner to such a request shall be subject to judicial review, except that judicial review shall be based on the record before the IRS at the time of the determination. A district court of the United States shall not have jurisdiction to review the IRS's denial of expedited processing of a request for records after the IRS has provided a complete response to the request.

(7) *Date of receipt of request.* (i) Requests for records and any separate agreement to pay, final notification of waiver of fees, or letter transmitting payment, shall be promptly stamped with the date of delivery to or dispatch by the office of the IRS official responsible for the control of the records requested. A request for records shall be considered to have been received on the date on which a complete request containing the information required by paragraphs (c)(4)(i)(A) through (I) has been received by the IRS official responsible for the control of the records requested. A determination that a request is deficient in any respect is not a denial of access, and such determinations are not subject to administrative appeal.

(ii) The latest of such stamped dates shall be deemed for purposes of this section to be the date of receipt of the request, provided that the requirements of paragraphs (c)(4)(i)(A) through (I) of this section have been satisfied, and, where applicable—

(A) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search, duplication, and review determined due in accordance with paragraph (f) of this section, or

(B) The fees have been waived in accordance with paragraph (f) of this section, or

(C) Payment in advance has been received from the requester.

(8) *Search for records requested.* (i) Upon the receipt of a request, search services shall be performed by IRS personnel to identify and locate the requested records. Search time includes any and all time spent looking for material responsive to the request, including page-by-page or line-by-line identification of material within records. Where duplication of an entire record would be less costly than a line-by-line identification, duplication should be substituted for this kind of search. With respect to records maintained in computerized form, a search shall include services functionally analogous to a search for records which are maintained on paper.

(ii) In determining which records are responsive to a request, the IRS official responsible for the control of the records requested shall include only those records within the official's possession and control as of the date of the receipt of the request by the appropriate disclosure officer.

(9) *Initial determination.* (i) *Responsible official.*

(A) The Associate Director, Personnel Security or delegate shall have the sole authority to make initial determinations with respect to requests for records under that office's control.

(B) The Director of the Office of Governmental Liaison and Disclosure or delegate shall have the sole authority to make initial determinations with respect to all other requests for records of the IRS maintained in the Headquarters and its National Office of the Chief Counsel. For all other records within the control of the IRS, the initial determination with respect to requests for records may be made either by the Director, Office of Governmental Liaison and Disclosure, or by the IRS officials responsible for the control of the records requested, or their delegates (see paragraph (h) of this section).

(ii) *Processing of request.* The appropriate responsible official or delegate shall respond in the approximate order of receipt of the requests, to the extent consistent with sound administrative practice. In any event, the initial determination shall be made and notification thereof mailed within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (c)(7) of this section, unless the responsible official invokes an extension pursuant to paragraph (c)(11) of this section, the requester otherwise agrees to an extension of the 20 day time

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limitation, or the request is an expedited request.

(iii) *Granting of request.* If the request is granted in full or in part, and if the requester wants a copy of the records, a statement of the applicable fees, if there are any, shall be mailed to the requester either at the time of the determination or shortly thereafter. In the case of a request for inspection, the records shall be made available promptly for inspection, at the time and place stated, normally at the appropriate office where the records requested are controlled. If the person making the request has expressed a desire to inspect the records at another office of the IRS, a reasonable effort shall be made to comply with the request. Records shall be made available for inspection at such reasonable and proper times so as not to interfere with their use by the IRS or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request shall not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by paragraph (f) of this section.

(iv) *Denial of request.* If it is determined that some records shall be denied, the person making the request shall be so notified by mail. The letter of notification shall specify the city or other location where the requested records are situated, contain a brief statement of the grounds for not granting the request in full including the exemption(s) relied upon, the name and any title or position of the official responsible for the denial, and advise the person making the request of the right to appeal to the Commissioner in accordance with paragraph (c)(10) of this section.

(A) In denying a request for records, in whole or in part, the IRS shall include the date that the request was received in the appropriate disclosure office, and shall provide an estimate of the volume of the denied matter to the person making the request, unless providing such estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) or (c) pursuant to which the denial is made; and

(B) The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by an exemption in 5 U.S.C. 552(b) under which the deletion is made. If technically feasible, the amount of the information deleted and the asserted exemption shall be indicated at the place in the record where such deletion is made.

(v) *Inability to locate and evaluate within time limits.* Where the records requested cannot be located and evaluated within the initial twenty day period or any extension thereof in accordance with paragraph (c)(11) of this section, the search for the records or evaluation shall continue, but the requester shall be notified, and advised that the requester may consider such notification a denial of the request for records. The requester shall be provided with a statement of judicial rights along with the notification letter. The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. Such voluntary extension of time shall not constitute a waiver of the requester's right to appeal or seek judicial review of any denial of access ultimately made or the requester's right to seek judicial review in the event of failure to comply with the time extension granted.

(10) *Administrative appeal.* (i) The requester may submit an administrative appeal to the Commissioner of Internal Revenue by letter that is postmarked within 35 days after the later of the date of any letter of notification described in paragraph (c)(9)(iv) of this section, the date of any letter of notification of an adverse determination of the requester's category described in paragraph (f)(3) of this section, the date of any letter of notification of an adverse determination of the requester's fee waiver or reduction request described in paragraph (f)(2) of this section, the date of any letter determining that no responsive records exist, or the date of the last transmission of the last records released. An administrative appeal for denial of a request for expedited processing must be made to the Commissioner of Internal Revenue by letter that is postmarked within 10 days after the date of any letter of notification discussed in paragraph (c)(6)(iv) of this section.

(ii) The letter of appeal shall—(A) Be made in writing and signed by the requester;

(B) Be addressed to the Commissioner and mailed to IRS Appeals, 6377A Riverside Avenue, Suite 110, Riverside, California 92506–FOIA Appeal;

(C) Reasonably describe the records requested to which the appeal pertains in accordance with paragraph (c)(5)(i) of this section;

(D) Set forth the address where the appellant desires to be notified of the determination on appeal;

(E) Specify the date of the request, the office to which the request was submitted, and where possible, enclose a copy of the initial request and the initial determination being appealed; and

(F) Ask the Commissioner to grant the request for records, fee waiver, expedited processing, or favorable fee category, as applicable, or verify that an appropriate search was conducted and the responsive records were either produced or an appropriate exemption asserted. The person submitting the appeal may submit any argument in support of the appeal in the letter of appeal.

(iii) Appeals shall be stamped promptly with the date of their receipt in the Office of Appeals, and the later of this stamped date or the stamped date of a document submitted subsequently which supplements the original appeal so that the appeal satisfies the requirements set forth in paragraphs (c)(10)(ii)(A) through (F) of this section shall be deemed by the IRS to be the date of receipt of the appeal for all purposes of this section. The Commissioner or a delegate shall acknowledge receipt of the appeal and advise the requester of the date of receipt and the date a response is due in accordance with this paragraph. If an appeal fails to satisfy any of the requirements of paragraph (c)(10)(ii)(A) through (F) of this section, the person making the request shall be advised promptly in writing of the additional requirements to be met. Except for appeals of denials of expedited processing, the determination to affirm the initial denial (in whole or in part) or to grant the request for records shall be made and notification of the determination shall be mailed within twenty days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal unless extended pursuant to paragraph (c)(11)(i) of this section. Appeals of initial determinations to deny expedited processing must be made within 10 calendar days of the determination to deny the expedited processing. If it is determined that the appeal from the initial denial is to be denied (in whole or in part), the requester shall be notified in writing of the denial, the reasons therefor, the name and title or position of the official responsible for the denial on appeal, and the provisions of 5 U.S.C. 552(a)(4) for judicial review of that determination.

(11) *Time extensions.* (i) *Unusual circumstances.* (A) In unusual circumstances, the time limitations specified in paragraphs (c)(9) and (10) of this section may be extended by written notice from the official charged with the duty of making the determinations to the person making the request or appeal setting forth the reasons for this extension and the date on which the determination is expected to be sent. As used in this paragraph, the term *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular request:

(*1*) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(*2*) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(*3*) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more constituent units of the Department of the Treasury having substantial subject matter interest therein; and

(*4*) The need for consultation with business submitters to determine the nature and extent of proprietary information in accordance with this section.

(B) Any extension or extensions of time for unusual circumstances shall not cumulatively total more than ten days (exclusive of Saturday, Sunday and legal public holidays). If additional time is needed to process the request, the IRS shall notify the requester and provide the requester an opportunity to limit the scope of the request or arrange for an alternative time frame for processing the request or a modified request. The requester shall retain the right to define the desired scope of the request, as long as it meets the requirements contained in this section.

(ii) *Aggregation of requests.* If more than one request is received from the same requester, or from a group of requesters acting in concert, and the IRS believes that such requests constitute a single request which would otherwise satisfy the unusual circumstances specified in subparagraph (c)(11)(i) of this section, and the requests involve clearly related matters, the IRS may aggregate these requests for processing purposes. Multiple requests involving unrelated matters shall not be aggregated.

(12) *Failure to comply.* If the IRS fails to comply with the time limitations specified in paragraphs (c)(9), (10), or paragraph (c)(11)(i) of this section, any person making a request for records satisfying the requirements of paragraphs (c)(4)(i)(A) through (I) of this section, shall be deemed to have exhausted administrative remedies with respect to such request. Accordingly, this person may initiate suit in accordance with paragraph (c)(13) of this section.

(13) *Judicial review.* If an administrative appeal pursuant to paragraph (c)(10) of this section for records or fee waiver or reduction is denied, or if a request for expedited processing is denied and there has been no determination as to the release of records, or if a request for a favorable fee category under paragraph (f)(3) of this section is denied, or a determination is made that there are no responsive records, or if no determination is made within the twenty day periods specified in paragraphs (c)(9) and (10) of this section, or the period of any extension pursuant to paragraph (c)(11)(i) of this section, or by grant of the requester, respectively, the person making the request may commence an action in a United States district court in the district in which the requester resides, in which the requester's principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B). The statute authorizes an action only against the agency. With respect to records of the IRS, the agency is the IRS, not an officer or an employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process upon the IRS shall be directed to the Commissioner of Internal Revenue, Attention: CC:PA, 1111 Constitution Avenue, NW., Washington, DC 20224. The IRS shall serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon it, unless the court otherwise directs for good cause shown. The district court shall determine the matter *de novo*, and may examine the contents of the IRS records in question *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions described in 5 U.S.C. 552(b) and the exclusions described in 5 U.S.C. 552(c). The burden shall be upon the IRS to sustain its action in not making the requested records available. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the person making the request in any case in which the complainant has substantially prevailed.

(14) *Preservation of records.* All correspondence relating to the requests received by the IRS under this chapter, and all records processed pursuant to such requests, shall be preserved, until such time as the destruction of such correspondence and records is authorized pursuant to title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under 5 U.S.C. 552.

(d) *Rules for disclosure of certain specified matters.* Requests for certain specified categories of records shall be processed by the IRS in accordance with other established procedures.

(1) *Inspection of tax returns and attachments or transcripts.* The inspection of returns and attachments is governed by the provisions of the internal revenue laws and regulations thereunder promulgated by the Secretary of the Treasury. See section 6103 and the regulations thereunder. Written requests for a copy of a tax return and attachments or a transcript of a tax return shall be made using IRS form 4506, "Request for Copy or Transcript of Tax Form." A reasonable fee, as the Commissioner may from time to time establish, may be charged for such copies.

(2) *Record of seizure and sale of real estate.* Subject to the rules on disclosure set forth in section 6103, record 21, part 2, "Record of seizure and sale of real estate", is available for public inspection in the local IRS office where the real estate is located. Copies of Record 21, part 2 shall be furnished upon written request. Members of the public may call the toll-free IRS Customer Service number, 1–800–829–1040, to obtain the address of the appropriate local office. Record 21 does not list real estate seized for use in violation of the internal revenue laws (see section 7302).

(3) *Public inspection of certain information returns, notices, and reports furnished by certain tax-exempt organizations and certain trusts.* Subject to the rules on disclosure set forth in section 6104: Information furnished on any form 990 series or form 1041–A returns, pursuant to sections 6033 and 6034, shall be made available for public inspection and copying, upon written request; information furnished by organizations exempt from tax under section 527 on forms 8871, Political Organization Notice of Section 527 Status, and forms 8872, Political Organization Report of Contributions and Expenditures, are available for

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public inspection and copying from the IRS Web site at www.eforms.irs.gov. In addition, forms 8871 and 8872 shall be made available for public inspection and copying, upon written request; and information furnished by organizations exempt from tax under section 527 on form 1120–POL pursuant to section 6012(a)(6) shall be made available for public inspection and copying upon written request. Written requests to inspect or obtain copies of any of the information described in this paragraph (d)(3) shall be made using form 4506–A, "Request for Public Inspection or Copy of Exempt or Political Organization IRS Form," and be directed to the appropriate address listed on form 4506–A.

(4) *Public inspection of applications and determinations of certain organizations for tax exemption.* Subject to the rules on disclosure set forth in section 6104, applications, including forms 1023 and 1024, and certain papers submitted in support of such applications, filed by organizations described in section 501(c) or (d) and determined to be exempt from taxation under section 501(a), and any letter or other document issued by the IRS with respect to such applications, shall be made available for public inspection and copying, upon written request. Written requests to inspect or obtain copies of this information shall be made using form 4506–A, "Request for Public Inspection or Copy of Exempt or Political Organization IRS Form" and be directed to the appropriate address listed on form 4506–A.

(5) *Public inspection of applications and annual returns with respect to certain deferred compensation plans and accounts and employee plans.* Subject to the rules on disclosure set forth in section 6104; forms, applications, and papers submitted in support of such applications, with respect to the qualification of a pension, profit sharing, or stock bonus plan under sections 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b), or with respect to the exemption from tax of an organization forming part of such a plan or account, and any document issued by the IRS dealing with such qualification or exemption, shall be open to public inspection and copying upon written request. This paragraph shall not apply with respect to plans with no more than 25 plan participants. Written requests to inspect or obtain copies of such material shall be directed to IRS Customer Service—Tax Exempt & Government Entities Division (TEGE), PO Box 2508, Room 2023, Cincinnati, Ohio 45201; and information furnished on the Form 5500 series of returns, pursuant to section 6058, shall be made available for public inspection and copying upon written request. Except for requests for form 5500–EZ, written requests to inspect or to obtain a copy of this information shall be directed to the Department of Labor, Public Disclosure, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210. Written requests to inspect or to obtain a copy of form 5500–EZ shall be directed to the Internal Revenue Service Center, PO Box 9941, Stop 6716, Ogden, Utah 84409.

(6) *Publication of statistics of income.* Statistics with respect to the operation of the income tax laws are published annually in accordance with section 6108 and § 301.6108–1.

(7) *Comments received in response to a notice of proposed rulemaking, a solicitation for public comments, or prepublication comments.* Written comments received in response to a notice of proposed rulemaking, a solicitation for public comments, or prepublication comments, may be inspected, upon written request, by any person upon compliance with the provisions of this paragraph. Comments may be inspected in the Freedom of Information Reading Room, IRS, 1111 Constitution Avenue, NW., Room 1621, Washington, DC. The request to inspect comments must be in writing and signed by the person making the request and shall be addressed to the Commissioner of Internal Revenue, Attn: CC:ITA:RU, PO Box 7604, Ben Franklin Station, Washington, DC 20044. The person submitting the written request may inspect the comments that are the subject of the request during regular business hours. If the requester wishes to inspect the documents, the requester shall be contacted by IRS Freedom of Information Reading Room personnel when the documents are available for inspection. Copies of comments may be made in the Freedom of Information Reading Room by the person making the request or may be requested, in writing, to the Commissioner of Internal Revenue, Attn: CC:ITA:RU, PO Box 7604, Ben Franklin Station, Washington, DC 20044. The IRS shall comply with requests for records under the paragraph within a reasonable time. The provisions of paragraph (f)(5)(iii) of this section, relating to fees for duplication, shall apply with respect to requests made in accordance with this paragraph.

(8) *Accepted offers in compromise.* For one year after the date of execution, a copy of the form 7249, "Offer Acceptance Report," for each accepted offer in compromise with respect to any liability for a tax imposed by title 26 shall be made available for inspection and copying in the location designated by the Compliance Area Director or Compliance Services Field Director within the Small Business and Self-Employed Division (SBSE) of the taxpayer's geographic area of residence.

(9) *Public inspection of written determinations.* Certain rulings, determination letters, technical advice memorandums, and Chief Counsel advice are open to public inspection pursuant to section 6110.

(e) *Other disclosure procedures.* For procedures to be followed by officers and employees of the IRS upon receipt of a request or demand for certain internal revenue records or information the disclosure procedure for which is not covered by this section, *see* § 301.9000–1.

(f) *Fees for services*—(1) *In general.* Except as otherwise provided, the fees to be charged for search, duplication, and review services performed by the IRS, with respect to the processing of Freedom of Information Act requests, shall be determined and collected in accordance with the provisions of this subsection. A fee shall not be charged for monitoring a requester's inspection of records which contains exempt matter. The IRS may recover the applicable fees even if there is ultimately no disclosure of records. Should services other than the services described in this paragraph be requested and rendered, which are not required by the Freedom of Information Act, fees shall be charged to recover the actual direct cost to the IRS.

(2) *Waiver or reduction of fees.* (i) The fees authorized by this paragraph may be waived or reduced on a case-by-case basis in accordance with this subsection by any IRS official who is authorized to make the initial determination pursuant to paragraph (c)(9) of this section. Fees shall be waived or reduced by such official when it is determined that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the IRS and is not primarily in the commercial interest of the requester. Such officials shall consider several factors, including, but not limited to, paragraphs (f)(2)(i) through (vi), in determining requests for waiver or reduction of fees-(A) Whether the subject of the releasable records concerns the agency's operations or activities;

(B) Whether the releasable records are likely to contribute to an understanding of the agency's operations or activities;

(C) Whether the releasable records are likely to contribute to the general public's understanding of the agency's operations or activities (*e.g.*, how will the requester convey the information to the general public);

(D) The significance of the contribution to the general public's understanding of the agency's operations or activities (*e.g.*, is the information contained in the releasable records already available to the general public);

(E) The existence and magnitude of the requester's commercial interest, as that term is used in paragraph (f)(3)(i)(A) of this section, being furthered by the releasable records; and

(F) Whether the magnitude of the requester's commercial interest is sufficiently large in comparison to the general public's interest.

(ii) Requesters asking for reduction or waiver of fees must state the reasons why they believe disclosure meets the standards set forth in paragraph (f)(2)(ii) of this section in a written request signed by the requester.

(iii) The indigence of the requester shall not be considered as a factor to determine if the requester is entitled to a reduction or waiver of fees.

(iv) Normally, no charge shall be made for providing records to federal, state, local, or foreign governments, or agencies or offices thereof, or international governmental organizations.

(v) The initial request for waiver or reduction of fees shall be addressed to the official of the IRS to whose office the request for disclosure is delivered pursuant to paragraph (c)(4)(i)(C) of this section. Appeals from denials of requests for waiver or reduction of fees shall be decided by the Commissioner's delegate in accordance with the criteria set forth in paragraph (f)(2)(ii) of this section. Appeals shall be received by the Commissioner's delegate within 35 days of the date of the letter of notification denying the initial request for waiver or reduction and shall be decided promptly. *See* paragraph (c)(10)(ii)(B) of this section for the appropriate address. Upon receipt of the determination on appeal to deny a request for waiver of fees, the requester may initiate an action in a United States district court to review the request for waiver of fees. In such action, the court shall consider the matter de novo, except that the court's review of the matter shall be limited to the record before the IRS official to whose office the request for waiver is delivered. In such action, the court shall consider the matter under the arbitrary and capricious standard.

(3) *Categories of requesters*—(i) *Attestation.* A request for records under this section shall include an attestation as to the status of the requester for use by the IRS official to whose office the request is delivered in determining the appropriate fees to be assessed. No attestation is required for a requester who falls within paragraph (f)(3)(ii)(E)(an "other requester").

(ii) *Categories.* (A) *Commercial use requester.* Any person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(B) *News media requester.* Any person actively gathering news for an entity that is organized and operated to publish or broadcast news (*i.e.*, information about current events or of current interest to the public) to the public. News media entities include, but are not limited to, television or radio stations broadcasting to the public at large, publishers of periodicals, to the extent they disseminate news, who make their periodicals available for purchase or subscription by the general public, computerized news services and telecommunications. Free lance journalists shall be included as media requesters if they can demonstrate a solid basis for expecting publication through a qualifying news entity (*e.g.*, publication contract, past publication record). Specialized periodicals, although catering to a narrower audience, may be considered media requesters so long as they are available to the public generally, via newsstand or subscription.

(C) *Educational institution requester.* Any person who, on behalf of a preschool, public or private elementary or secondary school, institution of undergraduate or graduate higher education, institution of professional or vocational education, which operates a program or programs of scholarly research, seeks records in furtherance of the institution's scholarly research and is not for a commercial use. This category does not include requesters wanting records for use in meeting individual academic research or study requirements.

(D) *Noncommercial scientific institution requester.* Any person on behalf of an institution that is not operated on a commercial basis, that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(E) *Other requester.* Any requester who does not fall within the categories described in paragraphs (f)(3)(ii)(A) through (D).

(iii) *Determination of proper category.* Where the IRS has reasonable cause to doubt the use to which a requester shall put the records sought, or where that use is not clear from the record itself, the IRS shall seek additional clarification from the requester before assigning the request to a specific category. In any event, a determination of the proper category of requester shall be based upon a review of the requester's submission and may also be based upon the IRS' own records.

(iv) *Allowable charges.* (A) *Commercial use requesters.* Records shall be provided to commercial use requesters for the cost of search, duplication, and review (including doing all that is necessary to excise and otherwise prepare records for release) of records. Commercial use requesters are not entitled to two hours of free search time or 100 pages of free duplication.

(B) *News media, educational institution, and noncommercial scientific institution requesters.* Records shall be provided to news media, educational institution, and noncommercial scientific institution requesters for the cost of duplication alone, excluding fees for the first 100 pages.

(C) *Other requesters.* Requesters who do not fit into any of the above categories shall be charged fees that shall cover the full actual direct cost of searching for and duplicating records, except that the first two hours of search time and first 100 pages of duplication shall be furnished without charge. Requests from individuals for records about themselves maintained in the IRS's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974, which permits fees only for duplication after the first 100 pages are furnished free of charge.

(4) *Avoidance of unexpected fees.* (i) In order to protect requesters from unexpected fees, all requests for records shall state the agreement of the requesters to pay the fees determined in accordance with paragraph (f)(5) of this section or state the upper limit they are willing to pay to cover the costs of processing their requests.

(ii) When the fees for processing requests are estimated by the IRS to exceed the upper limit agreed to by a requester, or when a requester has failed to state a limit and the costs are estimated to exceed $250, and the IRS has not then determined to waive or reduce the fees, a notice shall be sent to the requester. This notice shall—

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(A) Inform the requester of the estimated costs;

(B) Extend an offer to the requester to confer with agency personnel in an attempt to reformulate the request in a manner which shall reduce the fees and still meet the needs of the requester;

(C) If the requester is not amenable to reformulation, which would reduce fees to under $250, then advance payment of the estimated fees shall be required; and

(D) Inform the requester that the time period, within which the IRS is obliged to make a determination on the request, shall not begin to run, pending a reformulation of the request or the receipt of advance payment from the requester, as appropriate.

(5) *Fees for services.* The fees for services performed by the IRS shall be imposed and collected as set forth in this paragraph. No fees shall be charged if the costs of routine collecting and processing the fees allowable under 5 U.S.C. 552(a)(4)(A) are likely to equal or exceed the amount of the fee.

(i) *Search services.* Fees charged for search services are as follows:

(A) *Searches for records other than computerized records.* The IRS shall charge for search services at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. An average rate for the range of grades typically involved may be established. Fees may be charged for search time as prescribed in this section even if the time spent searching does not yield any records, or if records are denied.

(B) *Searches for computerized records.* Actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the "other requester" category, the charge for the computer search shall begin when the cost of the search (including the operator time and the cost of operating the computer) equals the equivalent dollar amount of two hours of the salary of the person performing the search.

(C) *Searches requiring travel or transportation.* Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(ii) *Review Services*—(A) *Review defined.* Review is the process of examining records in response to a commercial use requester, as that term is defined in paragraph (f)(3)(i)(A), upon initial consideration of the applicability of an exemption described in 5 U.S.C. 552(b) or an exclusion described in 5 U.S.C. 552(c) to the requested records, be it at the initial request or administrative appeal level, to determine whether any portion of any record responsive to the request is permitted to be withheld. Review includes doing all that is necessary to excise and otherwise prepare the records for release. Review does not include the time spent on resolving general legal or policy issues regarding the applicability of exemptions to the requested records.

(B) *Fees charged for review services.* The IRS shall charge commercial use requesters for review of records at the initial determination stage at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the review. An average rate for the range of grades typically involved may be established by the Commissioner.

(iii) *Duplication other than for tax returns and attachments.* (A) Duplication fees charged for copies of paper records shall be a reasonable fee, as the Commissioner may from time to time establish.

(B) The actual direct cost of duplication for photographs, films, videotapes, audiotapes, compact disks, and other materials shall be charged.

(C) Records may be provided to a private contractor for copying and the requester shall be charged for the actual cost of duplication charged by the private contractor.

(D) When other duplication processes not specifically identified above are requested and provided pursuant to the Freedom of Information Act, their actual direct cost to the IRS shall be charged.

(E) Where the condition of the record does not enable the IRS to make legible copies, the IRS shall not attempt to reconstruct it. The official having jurisdiction over the record shall furnish the best copy that is available and advise the requester of this fact.

(iv) *Charges for copies of tax returns and attachments, and transcripts of tax returns.* A charge shall be made for each copy of a tax return and its attachments, and transcripts of tax returns, supplied in response to a form 4506, "Request for Copy of Tax Form." The amount of the charge shall be a reasonable fee as computed by the Commissioner from time to time, and as set forth on form 4506.

(v) *Other services.* Other services and materials requested (*e.g.*, certification, express mailing) which are not specifically covered by this part and/or not required by the Freedom of Information Act are provided at the discretion of the IRS and are chargeable at the actual direct cost to the IRS.

(6) *Printed material.* Certain relevant government publications which shall be placed on the shelves of the Freedom of Information Reading Room shall not be sold at that location. Copies of pages of these publications may be duplicated on the premises and a fee for such service may be charged in accordance with paragraph (f)(5)(iii) of this section. A person desiring to purchase the complete publication, for example, an Internal Revenue Bulletin, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(7) *Search, duplication, and deletion services with respect to records open to public inspection pursuant to section 6110.* Fees charged for searching for, making deletions in, and copies of records subject to public inspection pursuant to section 6110 only upon written request shall be at the actual cost, as the Commissioner may from time to time establish.

(8) *Form of payment.* Payment shall be made by check or money order, payable to the order of the Treasury of the United States.

(9) *Advance payments.* (i) If previous fees have not been paid in a timely fashion, as defined in paragraph (f)(10) of this section, or where the estimated fees exceed $250, the IRS shall require payment in full of any outstanding fees and all estimated fees prior to processing a request. Additionally, the IRS reserves the right to require payment of fees after a request is processed and before any records are released to a requester. For purposes of this paragraph, a requester is the individual in whose name a request is made; however, where a request is made on behalf of another individual, and previous fees have not been paid within the designated time period by either the requester or the individual on whose behalf the request is made, then the IRS shall require payment in full of all outstanding fees and all estimated fees before processing the request.

(ii) When the IRS acts pursuant to paragraph (f)(9)(i) of this section, the administrative time limits prescribed in paragraphs (c)(9) and (10) of this section, plus permissible extensions of these time limits as prescribed in paragraph (c)(11)(i) of this section, shall begin only after the IRS official to whom the request is delivered has received the fees described above in paragraph (f)(9)(i) of this section.

(10) *Interest.* Interest shall be charged to requesters who fail to pay the fees in a timely fashion; that is, within 30 days following the day on which the statement of fees as set forth in paragraph (c)(9)(i) of this section was sent by the IRS official to whom the request was delivered. Whenever interest is charged, the IRS shall begin assessing interest on the 31st day following the date the statement of fees was mailed to the requester. Interest shall be at the rate prescribed in 31 U.S.C. 3717. In addition, the IRS shall take all steps authorized by the Debt Collection Act of 1982, including administrative offset, disclosure to consumer reporting agencies, and use of collection agencies, as otherwise authorized by law to effect payment.

(11) *Aggregating requests.* When the IRS official to whom a request is delivered reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the IRS shall aggregate such requests and charge accordingly, upon notification to the requester and/or requesters.

(g) *Business information and contractor proposal procedures*— (1) *In general.* Business information provided to the IRS by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(2) *Definition.* Business information is any trade secret or other confidential financial or commercial (including research) information.

(3) *Notice to business submitters.* Except where it is determined that the information is covered by paragraph (g)(9), the official having control over the requested records, which includes business information, shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required in accordance with paragraph (g)(4) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(4) *When notice is required.* (i) For business information submitted to the IRS prior to October 13, 1987, the official having control over the requested records shall provide a business submitter with notice of a request whenever—

(A) The business information was submitted to the IRS upon a commitment of confidentiality; or

(B) The business information was voluntarily submitted and it is of a kind that would customarily not be released to the public by the person from whom it was obtained; or

(C) The official has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(ii) For business information submitted to the IRS on or after October 13, 1987, the IRS shall provide a business submitter with notice of a request whenever—

(A) The business submitter has designated the information as commercially or financially sensitive information; or

(B) The official has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(iii) The business submitter's designation that the information is commercially or financially sensitive information should be supported by a statement or certification by an officer or authorized representative of the business providing specific justification that the information in question is, in fact, confidential commercial or financial information and has not been disclosed to the public.

(iv) Notice of a request for business information falling within paragraph (g)(4)(ii)(A) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(5) *Opportunity to object to disclosure.* Through the notice described in paragraph (g)(3) of this section, the official having control over the requested records shall afford a business submitter ten days (excepting Saturdays, Sundays and legal public holidays) within which to provide the official with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information, with particular attention to why the information is claimed to be trade secret or commercial or financial information that is privileged and confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under 5 U.S.C. 552.

(6) *Notice of intent to disclose.* The IRS shall consider a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the official having control over the requested records decides to disclose business information over the objection of a business submitter, the official shall forward to the business submitter a written notice which shall include—

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date, which is ten days (excepting Saturdays, Sundays and legal public holidays) after the notice of the final decision to release the requested records has been mailed to the submitter. Except as otherwise prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(7) *Judicial review.* (i) *In general.* The IRS' disposition of the request and the submitter's objections shall be subject to judicial review under paragraph (c)(14) of this section. A requester is not required to exhaust administrative remedies if a complaint has been filed under this paragraph by a business submitter of the information contained in the requested records. Likewise, a business submitter is not required to exhaust administrative remedies if a complaint has been filed by the requester of these records.

(ii) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (g)(4) of this section, the official having control over the requested records shall promptly provide the business submitter with written notice thereof.

(iii) *Exception to notice requirement.* The notice requirements of this paragraph shall not apply if—

(A) The official having control over the records determines that the business information shall not be disclosed;

(B) The information lawfully has been published or otherwise made available to the public; or

(C) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(8) *Appeals.* Procedures for administrative appeals from denials of requests for business information are to be processed in accordance with paragraph (c)(10) of this section.

(9) *Contractor Proposals.* (i) Pursuant to 41 U.S.C. 253b(m), the IRS shall not release under the Freedom of Information Act any proposal submitted by a contractor in response to the requirements of a solicitation for a competitive proposal, unless that proposal is set forth or incorporated by reference in a contract entered into between the IRS and the contractor that submitted the proposal. For purposes of this paragraph, the term *proposal* means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

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(ii) A copy of the FOIA request for information protected from disclosure under this paragraph shall be furnished to the contractor who submitted the proposal.

(h) *Responsible officials and their addresses.* For purposes of this section, the IRS officials in the disclosure offices listed below are responsible for the control of records within their geographic area. In the case of records of the Headquarters Office (including records of the National Office of the Office of Chief Counsel), except as provided in paragraph (c)(9)(i)(A), the Director, Office of Governmental Liaison and Disclosure, or delegate, is the responsible official. Requests for these records should be sent to: IRS FOIA Request, Headquarters Disclosure Office, CL:GLD:D, 1111 Constitution Avenue, NW., Washington, DC 20224.

(1) For Personnel Background Investigation Records, the address of the responsible official is: Internal Revenue Service, Attn: Associate Director, Personnel Security, Room 4244, A:PS:PSO, 1111 Constitution Avenue, NW. Washington, DC 20224.

(2) For records of the Office of Chief Counsel other than those located in the Headquarters or Division Counsel immediate offices, records shall be deemed to be under the jurisdiction of the local area Disclosure Office. Requesters seeking records under this section should send their requests to the local area Disclosure Office address listed for the state where the requester resides or any activity associated with the records occurred (for states with multiple offices, the request should be sent to the nearest office):

Alabama

IRS FOIA Request
New Orleans Disclosure Office
Mail Stop 40
600 S. Maestri Place
New Orleans, LA 70130

Alaska

IRS FOIA Request
Oakland Disclosure Office
1301 Clay Street, Suite 840–S
Oakland, CA 94612–5210

Arkansas

IRS FOIA Request
Nashville Disclosure Office
MDP 44
801 Broadway, Room 480
Nashville, TN 37203

Arizona

IRS FOIA Request
Phoenix Disclosure Office
Mail Stop 7000 PHX
210 E. Earll Drive
Phoenix, AZ 85012

California

IRS FOIA Request
Laguna Niguel Disclosure Office
24000 Avila Road, M/S 2201
Laguna Niguel, CA 92677–0207

IRS FOIA Request
Los Angeles Disclosure Office
Mail Stop 1020
300 N. Los Angeles Street
Los Angeles, CA 90012–3363

IRS FOIA Request
Oakland Disclosure Office
1301 Clay Street, Suite 840–S
Oakland, CA 94612

IRS FOIA Request
San Jose Disclosure Office
Mail Stop HQ–4603
55 South Market Street
San Jose, CA 95113

Colorado

IRS FOIA Request
Denver Disclosure Office
Mail Stop 7000 DEN
600 17th Street
Denver, CO 80202–2490

Connecticut

IRS FOIA Request
Hartford Disclosure Office
William R. Cotter F.O.B.
Mail Stop 140
135 High Street
Hartford, CT 06103

Delaware

IRS FOIA Request
Baltimore Disclosure Office
George Fallon Fed. Bldg.
31 Hopkins Plaza, Room 1210
Baltimore, MD 21201

District of Columbia

IRS FOIA Request
Baltimore Disclosure Office
George Fallon Fed. Bldg.
31 Hopkins Plaza, Room 1210
Baltimore, MD 21201

Florida

IRS FOIA Request
Fort Lauderdale Disclosure Off.
Mail Stop 4030
7850 SW 6th Court, Rm. 260
Plantation, FL 33324–3202

IRS FOIA Request
Jacksonville Disclosure Office
MS 4030
400 West Bay Street
Jacksonville, FL 32202–4437

Georgia

IRS FOIA Request
Atlanta Disclosure Office
Mail Stop 602D, Room 1905
401 W. Peachtree Street, NW
Atlanta, GA 30308

Hawaii

IRS FOIA Request
Laguna Niguel Disclosure Office
24000 Avila Road, M/S 2201
Laguna Niguel, CA 92677–0207

Idaho

IRS FOIA Request
Seattle Disclosure Office
Mail Stop W625
915 2nd Avenue
Seattle, WA 98174

Illinois

IRS FOIA Request
Chicago Disclosure Office
Mail Stop 7000 CHI, Room 2820
230 S. Dearborn Street
Chicago, IL 60604

Indiana

IRS FOIA Request
Indianapolis Disclosure Office
Mail Stop CL 658
575 N. Penn. Street
Indianapolis, IN 46204

Iowa

IRS FOIA Request
St. Paul Disclosure Office
Stop 7000
316 N. Robert Street
St. Paul, MN 55101

Kansas

IRS FOIA Request
St. Louis Disclosure Office
Mail Stop 7000 STL
PO Box 66781
St. Louis, MO 63166

Kentucky

IRS FOIA Request
Cincinnati Disclosure Office
Post Office Box 1818, Rm. 7019
Cincinnati, OH 45201

Louisiana

IRS FOIA Request
New Orleans Disclosure Office
Mail Stop 40
600 S. Maestri Place
New Orleans, LA 70130

Maine

IRS FOIA Request
Boston Disclosure Office
Mail Stop 41150
Post Office Box 9112
JFK Building
Boston, MA 02203

Maryland

IRS FOIA Request
Baltimore Disclosure Office
George Fallon Fed. Bldg.
31 Hopkins Plaza, Room 1210
Baltimore, MD 21201

Massachusetts

IRS FOIA Request

Boston Disclosure Office
Mail Stop 41150
JFK Building
Post Office Box 9112
Boston, MA 02203

Michigan

IRS FOIA Request
Detroit Disclosure Office
Mail Stop 11
Post Office Box 330500
Detroit, MI 48232–6500

Minnesota

IRS FOIA Request
St. Paul Disclosure Office
Stop 7000
316 N. Robert Street
St. Paul, MN 55101

Mississippi

IRS FOIA Request
New Orleans Disclosure Office
Mail Stop 40
600 S. Maestri Place
New Orleans, LA 70130

Missouri

IRS FOIA Request
St. Louis Disclosure Office
Mail Stop 7000 STL
PO Box 66781
St. Louis, MO 63166

Montana

IRS FOIA Request
Denver Disclosure Office
Mail Stop 7000 DEN
600 17th Street
Denver, CO 80202–2490

Nebraska

IRS FOIA Request
St. Paul Disclosure Office
Stop 7000
316 N. Robert Street
St. Paul, MN 55101

Nevada

IRS FOIA Request
Phoenix Disclosure Office
Mail Stop 7000 PHX
210 E. Earll Drive
Phoenix, AZ 85012

New Hampshire

IRS FOIA Request
Boston Disclosure Office
Mail Stop 41150
Post Office Box 9112
JFK Building
Boston, MA 02203

New Mexico

IRS FOIA Request
Phoenix Disclosure Office
Mail Stop 7000 PHX
210 E. Earll Drive
Phoenix, AZ 85012

New Jersey

IRS FOIA Request
Springfield Disclosure Office
PO Box 748
Springfield, NJ 07081–0748

New York (Brooklyn, Queens, and the Counties of Nassau and Suffolk)

IRS FOIA Request
Brooklyn Disclosure Office
10 Metro Tech Center
625 Fulton Street
4th Floor, Suite 611
Brooklyn, NY 11201–5404

New York (Manhattan, Staten Island, the Bronx, and the Counties of Rockland and Westchester)

IRS FOIA Request
Manhattan Disclosure Office
110 W. 44th Street
New York, NY 10036

New York (All Other Counties)

IRS FOIA Request
Buffalo Disclosure Office
111 West Huron St., Room 505
Buffalo, NY 14202

North Carolina

IRS FOIA Request
Greensboro Disclosure Office
320 Federal Place, Room 409
Greensboro, NC 27401

North Dakota

IRS FOIA Request
St. Paul Disclosure Office
Stop 7000
316 N. Robert Street
St. Paul, MN 55101

Ohio

IRS FOIA Request
Cincinnati Disclosure Office
Post Office Box 1818, Rm. 7019
Cincinnati, OH 45201

Oklahoma

IRS FOIA Request
Oklahoma City Disclosure Office
Mail Stop 7000 OKC
55 N. Robinson
Oklahoma City, OK 73102

Oregon

IRS FOIA Request
Seattle Disclosure Office
Mail Stop W625
915 2nd Avenue
Seattle, WA 98174

Pennsylvania

IRS FOIA Request
Philadelphia Disclosure Office
600 Arch Street, Room 3214
Philadelphia, PA 19106

Rhode Island

IRS FOIA Request
Hartford Disclosure Office
William R. Cotter F.O.B.
Mail Stop 140
135 High Street
Hartford, CT 06103

South Carolina

IRS FOIA Request
Greensboro Disclosure Office
320 Federal Place, Room 409
Greensboro, NC 27401

South Dakota

IRS FOIA Request
St. Paul Disclosure Office
Stop 7000
316 N. Robert Street
St. Paul, MN 55101

Tennessee

IRS FOIA Request
Nashville Disclosure Office
MDP 44
801 Broadway, Room 480
Nashville, TN 37203

Texas

IRS FOIA Request
Austin Disclosure Office
Mail Stop 7000 AUS
300 East 8th Street, Room 262
Austin, TX 78701

IRS FOIA Request
Dallas Disclosure Office
Mail Stop 7000 DAL
1100 Commerce Street
Dallas, TX 75242

IRS FOIA Request
Houston Disclosure Office
Mail Stop 7000 HOU
1919 Smith Street
Houston, TX 77002

Utah

IRS FOIA Request
Denver Disclosure Office
Mail Stop 7000 DEN
600 17th Street
Denver, CO 80202–2490

Vermont

IRS FOIA Request
Boston Disclosure Office
Mail Stop 41150
Post Office Box 9112
JFK Building
Boston, MA 02203

Virginia

IRS FOIA Request
Richmond Disclosure Office
PO Box 10107
Richmond, VA 23240

Washington

IRS FOIA Request
Seattle Disclosure Office
Mail Stop 625
915 2nd Avenue
Seattle, WA 98174

West Virginia

IRS FOIA Request

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Cincinnati Disclosure Office
Post Office Box 1818, Rm. 7019
Cincinnati, OH 45201

Wisconsin

IRS FOIA Request
Milwaukee Disclosure Office
Mail Stop 7000 MIL
310 W. Wisconsin Avenue
Milwaukee, WI 53203–2221

Wyoming

IRS FOIA Request
Denver Disclosure Office
Mail Stop 7000 DEN
600 17th Street
Denver, CO 80202–2490

All APO and FPO Addresses

IRS FOIA Request
Headquarters Disclosure Office
CL:GLD:D
1111 Constitution Avenue, NW.
Washington, DC 20224

David Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 02–29077 Filed 11–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 1293

Removal of Parts Concerning Standards of Conduct

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: This document removes information in title 32 of the Code of Federal Regulations concerning the DLA Standards of Conduct Program. Because the Department of Defense has promulgated rules prescribing standards of conduct applicable to all DoD entities, individual DoD Component rules are no longer required. Accordingly, the DLA Standards of Conduct rules may be removed.

EFFECTIVE DATE: November 19, 2002.

ADDRESSES: Defense Logistics Agency, Office of the General Counsel, ATTN: DG, 8725 John J. Kingman Road, STOP 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Saviet (703) 767–5023 or *richard_saviet@hq.dla.mil.*

SUPPLEMENTARY INFORMATION: DoD Directive 5500.7, Standards of Conduct, and DoD 5500.7–R, Joint Ethics Regulation, are available via the Internet at *http://www.dtic.mil/whs/directives/.* Paper copies of the current documents may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Electronic orders may be placed at *http://csrc.nist.gov/publications/ordering-pubs.html*

List of Subjects in 32 CFR Part 1293

Standards of Conduct

PART 1293—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 1293 is removed.

Walter Thomas,

Associate General Counsel, Defense Logistics Agency.

[FR Doc. 02–29288 Filed 11–18–02; 8:45 am]

BILLING CODE 3620–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–138; KY–140; KY–141–200303(a); FRL–7409–1]

Approval and Promulgation of Implementation Plans for Kentucky: Approval of Revisions to the Jefferson County Portion of the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 19, 2002, June 16, 2002, and July 15, 2002 the Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) submitted revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The Revisions pertain to definitions, portland cement kilns, abbreviations and acronyms, and solvent metal cleaning.

DATES: This direct final rule is effective January 21, 2003 without further notice, unless EPA receives adverse comment by December 19, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Scott Martin, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

Air Pollution Control District of Jefferson County, 850 Barrett Avenue—Suite 200, Louisville, Kentucky 40204. (502/574–6000)

FOR FURTHER INFORMATION CONTACT: Scott Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Today's Action
II. Background
III. Final Action
IV. Administrative Requirements

I. Today's Action

The EPA is approving into the Jefferson County portion of the Kentucky SIP revisions which were submitted on February 19, 2002, June 6, 2002, and July 15, 2002.

II. Background

Description of Revisions Submitted on February 19, 2002

Regulation 1.02 "Definitions" was revised to amend the current version to ensure consistency with with current definitions used by EPA and to remove definitions that are no longer used by Jefferson County.

Description of Revisions Submitted on June 6, 2002

Regulation 6.50 "NO_X Requirements for Portland Cement Kilns" is being added by Jefferson County to incorporate the requirements of Kentucky Division for Air Quality (DAQ) regulation 401 KAR 51.170 NO_X Requirements for cement kilns. The Kosmos Cement Company (Kosmos), which is located in Jefferson County, is the only company in the Commonwealth of Kentucky that has a Portland cement kiln. Thus, this regulation applies only to Kosmos.

Description of Revisions Submitted on July 15, 2002

Regulation 1.03 "Abbreviations and Acronyms" is being amended to make technical corrections to the abbreviations and acronyms, add new abbreviations and acronyms, and remove abbreviations and acronyms that are no longer used.

Regulation 1.19 "Administrative Hearings" is being added. This regulation is being added to establish an administrative hearing process for resolving alleged violations and providing an opportunity to be heard for persons who consider themselves aggrieved by actions on orders or permits.

Regulation 6.18 "Standards of Performance for Existing Solvent Metal Cleaning Equipment" is being revised. The main purpose of the action is to remove requirements that are no longer applicable. In early 2000, a requirement was added that specified that after March 1, 2000, no solvent with a vapor pressure greater than 1 mm Hg may be sold for or used in cold cleaners in Jefferson County. Because the cold cleaner material compliance date is now in the past, other requirements for solvents with haigher vapor pressures are no longer applicable, and therefore may be removed.

Another purpose of the action is to combine Regulation 7.18 "Standards of Preformance for New Solvent Metal Cleaning Equipment" with Regulation 6.18 because both regulations have identical requirements and differ only in the applicability to existing or newly affected facilities. By combining these regulations, Regulation 7.18 is no longer needed and is being repealed.

III. Final Action

The EPA is approving the revisions to the Jefferson County portion of the Kentucky SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 21, 2003 without further notice unless the Agency receives adverse comments by December 19, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 21, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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Dated: October 31, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920 is amended by revising the entries for "1.02, 1.03 and 6.18;" adding two new entries in numerical order for "1.19 and 6.50," and removing the entry for "7.18;" to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
Reg 1	General Provisions. . . .			
1.02	Definitions	12/19/02	[insert FRN publication]	12/19/01
1.03	Abbreviations and Acronyms	12/19/02	[insert FRN publication]	5/15/02
1.19	Administrative Hearings	12/19/02	[insert FRN publication]	5/15/02
Reg 6	Standards of Performance for Existing Affected Facilities. . . .			
6.18	Standards of Performance for Existing Solvent Metal Cleaning Equipment	12/19/02	[insert FRN publication]	5/15/02
6.50	NO_x Requirements for Portland Cement Kilns	12/19/02	[insert FRN publication]	3/20/02

* * * * *

[FR Doc. 02–29179 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7409–2]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Georgia's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on January 21, 2003 unless EPA receives adverse written comment by December 19, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. We must receive your comments by December 19, 2002. You can view and copy Georgia's application from 8 a.m. to 4:30 p.m. at The Georgia Department of Natural Resources, Environmental Protection Division, 205 Butler Street, Suite 1154 East Tower, Atlanta, Georgia 30334–9000, and from 8:30 a.m. to 3:45 p.m., EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency. Phone: (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Georgia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Georgia Final authorization to operate its hazardous waste program with the changes described in the authorization application. Georgia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Georgia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Georgia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Georgia has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Georgia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Georgia Previously Been Authorized for?

Georgia initially received Final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 7, 1986, effective September 18, 1986 (51 FR 24549), July 28, 1988, effective September 26, 1988 (53 FR 28383), July 24, 1990, effective September 24, 1990 (55 FR 30000), February 12, 1991, effective April 15, 1991 (56 FR 5656), May 11, 1992, effective July 10, 1992 (57 FR 20055), November 25, 1992, effective January 25, 1993 (57 FR 55466), February 26, 1993, effective April 27, 1993 (58 FR 11539), November 16, 1993, effective January 18, 1994 (58 FR 60388), April 26, 1994, effective June 27, 1994 (59 FR 21664), May 10, 1995, effective July 10, 1995 (60 FR 24790), August 30, 1995, effective October 30, 1995 (60 FR 45069), March 7, 1996, effective May 6, 1996 (61 FR 9108), September 18, 1998, effective November 17, 1998 (63 FR 49852), October 14, 1999, effective December 13, 1999 (64 FR 55629), and November 28, 2000, effective March 30, 2001 (66 FR 8090).

G. What Changes Are We Authorizing With Today's Action?

On June 25, 2002, Georgia submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Georgia's revision consists of provisions promulgated July 1, 1999 through June 30, 2000, otherwise known as RCRA Cluster X. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Georgia Final authorization for the following program changes:

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Description of Federal requirement	Federal Register	Analogous State authority[1]
Checklist 181, Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps.	64 FR 36466–36490, 7/6/99	Georgia Hazardous Waste Management Act (GHWMA), Official Code of Georgia Annotated (O.C.G.A.) §§ 12–8–62(10), (14), (20), and (23), 12–8–64 (1) (A), (B), (D), (E), and (I), 12–8–65(a)(16) and (21); Rules 391–3–11-.02, 391–3–11-.07(1), 391–3–11-.10(2), 391–3–11-.10(1), 391-3–11-.16, 391–3–11-.11(1)(a), and 391–3–11-.18.
Checklist 182, NESHAPS: Hazardous Air Pollutant Standards for Combustors; Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements; Technical Correction to Fast-track Rule.	64 FR 52828-53077; 64 FR 63209-63213, 9/30/99; 11/19/99.	GHWMA, O.C.G.A. §§ 12–8–62(10) and (20), 12–8–64(1)(D) and (J), and 12–8–65(a)(16) and (21); Rule 391–3–11-.07(1). GHWMA, O.C.G.A. §§ 12–8–62 (4), (10), and (20), 12–8–64(1)(A), (C), and (I), and 12–8–65(a)(3), (16), and (21); Rules 391–3–11-.10(2), 391–3–11-.11(10)(1), 391-3–11-.11(3)(h), and 391–3–11-.11(10). GHWMA, O.C.G.A. §§ 12–8–62 (4), (10), and (20), 12–8–64(1)(A),(C), and (I), and 12–8-65(a)(3), (16), and (21); Rule 391–3–11-.10(2). GHWMA, O.C.G.A. §§ 12–8–62 (4), (10), and (20), 12–8–64 (1)(A), (B), (C), (D), (E), and (F), and 12–8–65(a)(3), (16), and (21), 12–8–66; Rule 391–3–11-.11(7)(d). GHWMA, O.C.G.A. §§ 12–8–62 (4), (10), and (20), 12–8–64 (1) (A), (B), (C), (D), (E), and (F), and 12–8–65(a) (3), (16), and (21), 12–8–66; Rule 391–3–11-.11(7)(d). GHWMA, O.C.G.A. §§ 12–8–62 (10), (13), and (20), 12–8–64(1)(A), (B), (C), (D), (E), and (F), and 12–8–65(a)(3), (16), and (21); Rule 391–3–11-.02, and 391–3–11-.10(3). GHWMA, O.C.G.A. §§ 12–8–62 (10), (20), and (24), 12–8–64(1)(A), (B), (C), (D), and (I), and 12–8-65(a)(3), (16), and (21), 12–8- 66; Rule 391–3–11-.10(3), 391–3–11-.11(3)(h), and 391–3–11-.11(13). GHWMA, O.C.G.A. §§ 12–8–62 (7), (10), (13), (20), and (24), 12–8-64(1)(A), (D), and (I), and 12–8-65(a)(16), and (21); Rule 391–3-11-.10(3). GHWMA, O.C.G.A. §§ 12–8–62 (7), (10), (13), (20), and (23), 12–8-64(1)(A), (B), (C), (D), and (I), and 12–8-65(a)(3), (16), and (21); Rule 391–3–11-.10(3).
Checklist 183, Land Disposal Restrictions Phase IV-Technical Corrections.	64 FR 56469-56472, 10/20/99	GHWMA, O.C.G.A. §§ 12–8–62 (10), (13), (14), and (20), 12–8-64(1)(B), (D), and 12–8-65(a)(16), and (21); Rule 391–3-11-.07(1). GHWMA, O.C.G.A. §§ 12–8–62 (4), (7), (9), (10), (13), (14), (20), (23) and (24), 12–8–64(1) (A), (B), (D), (E), (I), and (J), and 12–8-65(a) (10), (16) (17), (19), and (21); Rule 391–3–11-.16. GHWMA, O.C.G.A. §§ 12–8–62 (4), (7), (9), (10), (13), (14), (20), (23) and (24), 12–8–64(1) (A), (B), (D), (E), (I) and (J), and 12–8-65(a)(10), (14), (16), (17), (19), and (21), 12–8–69(a); Rule 391–3–11-.16. GHWMA, O.C.G.A. §§ 12–8–62 (4), (7), (9), (10), (13), (14), (20), (23) and (24), 12–8–64(1) (A), (B), (D), (E), (I) and (J), and 12–8-65(a)(10), (14), (16), (17), (19), and (21); Rule 391–3–11-.16. GHWMA, O.C.G.A. §§ 12–8–62 (4), (7), (9), (10), (13), (14), (20), (23) and (24), 12–8–64(1) (A), (B), (D), (E), (I) and (J), and 12–8-65(a)(10), (14), (16), (17), (19), and (21); Rule 391–3–11-.16.
Checklist 184, Accumulation Time for Waste Water Treatment Sludges.	65 FR 12378-12398, 03/08/00	GHWMA, O.C.G.A. §§ 12–8–62 (10), (13), (15), and (21), 12–8-64(1)(A), (B), (D),and (E) and 12–8–65(a) (10), (16), and (21); Rule 391–3–11-.08(1).
Checklist 185, Vacatur of Organobromine Production Waste Listings.	65 FR 14472-14475, 03/17/00	GHWMA, O.C.G.A. §§ 12–8–62 (10), of (13), (14), and (20), 12–8-64(1)(B), (D), and 12–8-65(a)(16), and (21); Rule 391–3- 11-.07(1). GHWMA, O.C.G.A. §§ 12–8–62(4), (7), (10), (13), (14), (20), (23), and (24), 12–8–64(1) (A), (B), (D), (E), (I), and (J) and 12–8-65(a)(10), (14), (16), (17), (19),and (21); Rule 391–3–11-.16.
Checklist 187, Petroleum Refining Process Wastes—Clarification.	64 FR 36365-36367, 06/08/00	GHWMA, O.C.G.A. §§ 12–8–62(10), (12), (13), (20), and (24), 12–8-64(1)(A), (B), (D), (E), (F), (I), (J) and (L), 12–8–65(a)(16) and (21); Rule 391–3–11-.07(1).

[1] The Georgia provisions are from the Georgia Hazardous Waste Management Regulations effective November 16, 2000.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not yet authorized.

J. What Is Codification and Is EPA Codifying Georgia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart L for this authorization of Georgia's program until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective January 21, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 12, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–29177 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2818; MM Docket No. 01–224; RM–10101]

Radio Broadcasting Services; Shelbyville and LaVergne, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WYCQ, Inc., reallots Channel 275C1 from Shelbyville to LaVergne, Tennessee, as the community's first local aural transmission service, and modifies Station WBUZ(FM)'s license accordingly. *See* 66 FR 48107, September 18, 2001. Channel 275C1 can be reallotted to LaVergne in compliance with the Commision's minimum distance separation requirements at Station WBUZ(FM)'s presently authorized site. The coordinates for Channel 275C1 at LaVergne are 35–48–01 North Latitude and 86–37–17 West Longitude.

DATES: Effective December 9, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–224, adopted October 16, 2002, and released October 25, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

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List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding LaVergne, Channel 275C1 and by removing Shelbyville, Channel 275C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–29237 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2816; MM Docket No. 01–341; RM–10346]

Radio Broadcasting Services; Coosada, Alabama

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document grants a petition for reconsideration filed by Media Equities Corporation, seeking reconsideration of the *Report and Order* in this proceeding, and requesting deletion of Channel 226A at Coosada, Alabama. *See* 67 FR 20459, April 25, 2002. That *Report and Order* allotted, at Media Equities' request, Channel 226A at Coosada, Alabama. Media Equities requests reconsideration of this allotment and withdraws its expression of interest. With no other expression of interest in the allotment, the allotment is deleted.

DATES: Effective December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 01–341, adopted October 16, 2002, and released October 25, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Coosada, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–29238 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021101265–2265–01; I.D. 101602A]

RIN 0648–AQ50

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exemption Supplement to Framework Adjustment 35

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to modify the regulations implementing Framework Adjustment 35 (Framework 35) to the Northeast Multispecies Fishery Management Plan (FMP). Framework 35 established an exempted small mesh whiting fishery in the Gulf of Maine (GOM), near Provincetown, MA. The fishery occurs from September 1 through November 20 each year and requires the use of raised footrope trawl gear. This final rule modifies the boundaries of the current exemption area through inclusion of an area east of Cape Cod and allows the fishery to continue in the newly added eastern portion of the exemption area through December 31 of each year.

DATES: Effective November 14, 2002.

ADDRESSES: Copies of Amendment 12 to the FMP, its regulatory impact review (RIR), the initial regulatory flexibility analysis contained within the RIR, and its final Supplemental Environmental Impact Statement, along with Framework 35, its RIR and Environmental Assessment (EA), and other supporting documents for both Amendment 12 and Framework 35, and the EA and RIR prepared for this final rule are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, NMFS, 978–281–9272.

SUPPLEMENTARY INFORMATION: The final rule implementing Framework 35 (65 FR 49942, August 16, 2000) established an exempted whiting raised footrope trawl fishery in an area in upper Cape Cod Bay effective September 1, 2000, based on the low bycatch of regulated multispecies encountered in the fishery while using raised footrope trawl gear. The overall reduction of regulated multispecies bycatch has been significant with the raised footrope trawl gear compared to landings and bycatch of regulated multispecies in regulated multispecies directed fisheries. Also, use of the raised footrope trawl has been demonstrated to significantly reduce total bycatch compared to traditional whiting trawl gear.

The Northeast (NE) multispecies regulations, at 50 CFR 648.80(a)(8)(i)(A), specify that, in order for any fishery to occur in the GOM/Georges Bank (GB) Regulated Mesh Area, it must be shown to have a bycatch of regulated multispecies that is less than 5 percent of the catch of all species. This regulation is intended to prevent the bycatch and discard of large amounts of regulated multispecies that could be caught in fisheries targeting other species. Small mesh bottom trawl fisheries are of particular concern because of the interactions of bottom fish, the limited selectivity of small mesh, and the high potential for regulated multispecies bycatch.

In May 2002, the Massachusetts Division of Marine Fisheries (MADMF) submitted a request to the Administrator, Northeast Region, NMFS (Regional Administrator) for an exempted fishery in the so-called "Area 3" east of Cape Cod and immediately adjacent to the present raised footrope trawl exempted fishery. Since 1997, the MADMF has tested the raised footrope trawl design in Area 3 east of Cape Cod from September 1 through December 31 each year. Section 648.80(a)(8)(i)(A) of the NE multispecies regulations provides for expansion of the existing exemption area boundaries, to include Area 3, if the Regional Administrator, after consultation with the New England Fishery Management Council (Council), determines that the percentage of regulated multispecies bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives of the FMP.

The Regional Administrator consulted with the Council and, at its June 24–26, 2002, meeting, the Council voted to support the MADMF request to the Regional Administrator to grant exempted fishery status in Area 3 east of Cape Cod. The Council asked that NMFS base its decision on the results of MADMF-funded sea sampling, which demonstrated that regulated multispecies bycatch had been reduced to less than 5 percent, by weight, of the total catch.

In the last 2 years, the landings of whiting in the experimental area have been substantial and have exceeded 800,000 lb (362,874 kg) annually. Effort in 2001 increased by approximately 50 percent over 2000, with the number of participating vessels increasing from 10 to 15, and reported trips increased from 108 to 164. MADMF expended significant effort in documenting fishing performance in 2000 and 2001. There were 269 observed and unobserved trips in the experimental raised footrope trawl fishery in Area 3 during 2000 and 2001. According to the data submitted by MADMF, the overall percentage of regulated multispecies bycatch in the experimental fishery was 4 percent on seven observed trips, and 0.9 percent on 80 unobserved trips in 2000; and 1.7 percent on 18 observed trips, and 1.9 percent on 164 unobserved trips in 2001. The data indicate that the majority of the trips with regulated multispecies bycatch percentages higher than 5 percent resulted from either very low whiting catches, or apparently aborted trips (trips with total catch less than 500 lb (226.8 kg)), and not from significantly high levels of regulated multispecies bycatch. With a few exceptions, the amount of regulated multispecies bycatch on these trips was no greater than the trips that fell below 5 percent regulated multispecies bycatch.

The Regional Administrator has a reasonable basis to determine that a modification of the boundaries of the Raised Footrope Trawl Whiting Fishery Exemption Area, to include the adjacent area east of Cape Cod (Area 3), will not exceed the 5–percent bycatch allowance of regulated multispecies. In addition, while the current exempted fishery area is closed to exempted fishing on November 20 of each year in order to minimize expected cod bycatch (while still maximizing whiting catch), this rationale does not apply to Area 3 east of Cape Cod. While the landings data for Framework 35 justify closing the existing exempted fishery on November 20, the landings data for the newly added eastern portion of the Raised Footrope Trawl Whiting Fishery Exemption Area support the eastern portion remaining open through December 31.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). The proposed exempted fishery is seasonal, intended to begin on September 1 and continue only through the end of the calendar year. Fishermen depend upon access to this fishery (for the past five years, they have been able to participate in the experimental exempted fishery), and this dependence has been increased as a result of recent changes to the NE multispecies regulations as a result of the *Conservation Law Foundation, et al.* v. *Evans, et al.* Court order.

Immediate publication of this action as a final rule will provide the fishing industry with full access to the seasonal whiting fishery in as quick a timeframe as possible. Should implementation of this action be delayed, the fishing industry would be denied access to this alternative fishery for a significant part of the fishing season for whiting. Because this is a seasonal fishery, there is an urgency to conclude the rulemaking process and implement the exemption as soon as possible. Delays in implementation are contrary to the public interest and would have potentially significant adverse impacts on industry, who would be denied access to this fishery. Therefore, since this action relieves a burden to the fishing industry without compromise of the conservation objective, it would be contrary to the public interest to delay the implementation of this rule through prior notice and comment.

Moreover, it would be impracticable to provide prior public notice and comment. Consideration of this exempted fishery proceeded with the utmost diligence. The Regional Administrator (RA) could not act upon MADMF's application until consultation with the New England Fishery Management Council. Consultation occurred at the first opportunity at the end of June 2002. Following this meeting, the RA instructed her staff to begin analyzing the data submitted by Massachusetts in order to determine (1) whether the data supported the creation of an exempted fishery under 50 CFR § 648.80(a)(8)(i)(A); and (2) the type of National Environmental Policy Act document required to analyze the potential impacts on the human environment. The NMFS, Northeast Regional Office determined that in order to ensure adequate consideration of the environmental impacts of the exempted whiting fishery, the preparation of an Environmental Assessment was necessary.

Finally, the public has been given several opportunities to comment on the creation of this exempted fishery. Public meetings were held by the Council to discuss inclusion of Area 3 (which roughly encompasses the area defined in this rule) in the exempted fishery

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during the development of management measures for Framework Adjustment 35 and Amendment 12 to the FMP. The development of Amendment 12 to the FMP included the preparation of a full EIS, including notification in the **Federal Register** and a series of public hearings on the proposed management system, as well as proposed and final rulemaking.

In addition, prior to requesting that the existing exemption area be expanded, MADMF had requested, and been granted, experimental exempted fishery permits (EFP) for this expanded area in each of the previous 5 years. Each request for an EFP, which covered the same area and approximately the same number of fishing vessels as would be likely to participate in the exempted fishery, involved a prior notice to the public and solicitation for comments in the **Federal Register**. Lastly, the RA is required by regulation to consult with the Council prior to making a decision on the exemption request. This consultation occurred at the end of June 2002, at a Council meeting, with full prior public notification (the agenda item was specific to the request for input on the request and was noted in all public announcements of the agenda, including a **Federal Register** notice). These processes provided an opportunity for public comment to be considered. Additional opportunity would unnecessarily delay the promulgation of a rule benefitting fishers without any likely benefit coming from the delay.

The AA, under 5 U.S.C. 553(d)(3), finds good cause to waive the 30–day delay in the effectiveness of these measures, as this rule relieves a restriction. Because this fishery is set to close on November 20, 2002, additional fishing opportunities would be prohibited. In order to avoid an interruption in fishing activity in the expanded area, it is necessary to waive the 30–day delayed effectiveness period. This would allow the continued harvest of the whiting stock for the remainder of the calendar year without compromising the conservation objective.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 13, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.80, paragraph (a)(15) introductory text (including the table) and paragraph (a)(15)(i)(F) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. The exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(h) and (i). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(September 1 through November 20)

Point	N. Lat.	W. Long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 10	42°04.75′	70°16.95′
RF 11	42°01.9′	70°14.75′
RF 12	41°59.45′	70°23.65′
RF 13	42°07.85′	70°30.1′
RF 1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(November 21 through December 31)

Point	N. Lat.	W. Long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 1	42°14.05′	70°08.8′

(i) * * *

* * * * * *

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

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[FR Doc. 02–29351 Filed 11–14–02; 3:34 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 223
Tuesday, November 19, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[USCG–2001–8661]

RIN 2115–AG05

Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; meeting and extension of comment period.

SUMMARY: The Coast Guard will hold a public meeting to let members of the public present oral comments on proposed rules for planholders transporting or transferring petroleum oil. A proposed rule published on October 11, 2002, would require changes to the requirements for oil-spill removal equipment under vessel response plans and marine transportation-related facility response plans. These changes would increase the minimum available spill removal equipment required for tank vessels and facilities, add requirements for new response technologies, and clarify methods and procedures for responding to oil spills in coastal waters.

DATES: The Coast Guard will hold this public meeting on Wednesday, December 18, 2002, from 9:30 a.m. to 3:30 p.m., except that the meeting may close early if all business is finished. Other comments must reach the Docket Management Facility on or before April 8, 2003.

ADDRESSES: The Coast Guard will hold this public meeting in room 4618, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

You may submit your comments directly to the Docket Management Facility. To make sure that your comments and related material are not entered more than once in the docket [USCG–2001–8661], please submit them by only one of the following means:

(1) By mail to the Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this notice. Comments, and related material as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call or e-mail Mr. Robert Pond, G–MOR, Coast Guard, at telephone 202–267–6603, or *rpond@comdt.uscg.mil*. For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages you to submit comments and related material concerning the notice of proposed rulemaking (NPRM) on Vessel and Facility Response Plans for Oil published October 11, 2002 [67 FR 63331]. If you do so, please include your name and address, identify the docket number [USCG–2001–8661] and give the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to seek special assistance at the meeting, contact Mr. Pond at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background Information

In 1996, the Coast Guard published final tank vessel response plan regulations [61 FR 1052, January 12, 1996] and final MTR facilities response plan regulations [61 FR 7890, February 29, 1996]. These regulations contain minimum on-water oil removal equipment requirements that planholders transporting or transferring petroleum oil are required to meet in planning for an oil discharge. These regulations also state that the Coast Guard will periodically review the existing oil removal equipment requirements to determine if increases in mechanical recovery systems and additional requirements for new response technologies are practicable.

On October 11, 2002, we published a notice of proposed rulemaking in the **Federal Register** [67 FR 63331] entitled "Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions". It proposes an increase in the minimum available spill removal equipment required for tank vessels and facilities, added requirements for new response technologies, and it clarifies methods and procedures for responding to oil spills in coastal waters. A letter sent to the docket gave a number of reasons supporting the need for a public meeting and extension of time to file comments on the NPRM. The Coast Guard agrees with some of those reasons, so we are planning to hold the meeting announced by this notice, and we are extending the comment period until April 8, 2003.

Public Meeting

The Coast Guard encourages interested persons to attend the meeting and present oral comments during the meeting. The meeting is open to

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members of the public. Please note that the meeting may close early if all business is finished. We request that members of the public who plan to attend this meeting contact Mr. Pond at the telephone number or e-mail address listed under **FOR FURTHER INFORMATION CONTACT** so that building security officials may be notified. If you would like to present an oral comment during the meeting, please notify Mr. Pond no later than, December 11, 2002. If you are unable to attend the meeting, you may submit comments as indicated under **SUPPLEMENTARY INFORMATION.**

Dated: November 12, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–29168 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Bound Printed Matter: Flat-Size Mail Co-Packaging, Co-Sacking, and Higher DDU Rate Minimum Weight

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing revisions to the *Domestic Mail Manual* (DMM) that would provide new mail preparation standards for co-packaging and co-sacking flat-size Bound Printed Matter. The standards for co-packaging would be optional, while the standards for co-sacking would be mandatory beginning on June 1, 2003. Prior to that date, the use of the co-sacking standards would be optional.

Also proposed is a change in the minimum weight for Presorted Bound Printed Matter flats claimed at the destination delivery unit (DDU) rate. The minimum weight for such pieces is proposed to change from "more than 1 pound" to "more than 20 ounces."

DATES: Submit comments on or before December 19, 2002.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may also be submitted via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jane Stefaniak at (703) 292–3548, Mail Preparation and Standards, United States Postal Service.

SUPPLEMENTARY INFORMATION: Through several past rulemakings (65 FR 52480, 66 FR 28659, and 66 FR 58944) the Postal Service has established mail preparation standards in *Domestic Mail Manual* (DMM) M900 for co-packaging and co-traying flat-size First-Class Mail, and for co-packaging and co-sacking flat-size Periodicals and Standard Mail. At this time, the Postal Service is proposing to further extend these standards to allow the co-packaging and co-sacking of flat-size Bound Printed Matter pieces that are compatible with processing on the automated flat sorting machine (AFSM) 100.

Bound Printed Matter Presorted rate flats (no barcode required) and Presorted rate flats that bear a ZIP+4 or delivery point barcode and claim the barcoded discount are usually processed by the Postal Service within the same operation. For this reason, allowing packages of flat-size barcoded and nonbarcoded pieces to be combined within the same container (*i.e.*, co-sacking) can provide operational efficiencies that could reduce costs. Additionally, the need for the Postal Service to segregate flat-size barcoded and nonbarcoded pieces within a package no longer exists due to advances, such as the optical character reader (OCR) and image lift capabilities of the AFSM 100. Therefore, it would not be operationally beneficial to continue to require the separate preparation of Bound Printed Matter Presorted rate flats that qualify for the barcoded discount and Presorted rate flats that do not qualify for the barcoded discount. Continuing to segregate barcoded and nonbarcoded flats would result in more packages and sacks, reduce the average depth of sort, and cause additional workhours for the Postal Service associated with sorting, opening, and prepping flats for processing.

Under the proposed co-sacking standards for flat-size Bound Printed Matter, mailers would be required, beginning June 1, 2003, to co-sack (*i.e.*, sort into the same sack) packages of Presorted rate pieces qualifying for the barcoded discount with packages of Presorted rate pieces not claiming the barcoded discount. Additionally, mailers would have the option to co-package (*i.e.*, sort into the same package) flat-size Bound Printed Matter Presorted rate pieces qualifying for the barcoded discount and Presorted rate pieces not qualifying for the barcoded discount within the same package. Co-packaged pieces would be required to be co-sacked under DMM M910. The containerization methods permitted for First-Class Mail, Periodicals, and Standard Mail in existing DMM M920, M930, and M940 would not be available for Bound Printed Matter.

The proposed standards for the optional co-packaging of Bound Printed Matter flats would include the following:

- All pieces would be required to weigh 20 ounces or less and meet the AFSM 100 criteria for automation-compatible flat-size mail in DMM M820.
- Presorted rate pieces qualifying for the barcoded discount would be required to be part of a Presorted rate mailing of at least 300 flat-size pieces and be prepared under DMM M820. Presorted rate pieces not claiming the barcoded discount would be required to be part of a mailing of at least 300 pieces prepared under DMM M722.
- Each piece in the Presorted rate mailing qualifying for the barcoded discount would be required to bear a correct and readable ZIP+4 or delivery point barcode (DPBC) under DMM C840. Each piece in the Presorted rate mailing would be required to bear a correct and readable 5-digit barcode under DMM C840.
- Presorted rate pieces qualifying for the barcoded discount would be required to be sorted together with the Presorted rate pieces, but only one physical package for each logical presort destination would be permitted to include pieces for both rate categories, unless presented using an approved manifest mailing system under DMM P910.
- Mailing that are co-packaged pieces would be required to be co-sacked under DMM M910.

The proposed standards for the co-sacking of Bound Printed Matter flats would include the following:

- Packages prepared as part of the Presorted rate mailing qualifying for the barcoded discount and packages prepared as part of the Presorted rate mailing not qualifying for the barcoded discount would be required to be co-sacked, effective June 1, 2003.
- Packages of flats qualifying for the barcoded discount that are co-sacked with packages of Presorted rate flats would be required to be part of the same mailing job.
- Both the Presorted rate mailing qualifying for the barcoded discount and the Presorted rate mailing not qualifying for the barcoded discount would be required to separately meet the applicable rate eligibility and volume requirements.
- Packages that are co-sacked under DMM M910 would not be required to be co-packaged.

Standardized documentation under DMM P012 would be required for mailings prepared under the proposed standards for co-packaging and co-sacking as follows:

- Documentation for a co-packaged mailing would be required to indicate by zone (when applicable) the number of Presorted rate pieces qualifying for the barcoded discount and the number of Presorted rate pieces not claiming the barcoded discount that are contained in each package.
- Documentation for a co-sacked mailing would be required to indicate by zone (when applicable) for each sack sortation level, the number of Presorted rate pieces qualifying for the barcode discount, and the number of Presorted rate pieces not claiming the barcoded discount that are contained in each sack.

If this proposal is adopted, mailers could begin using the co-packaging and co-sacking standards for Bound Printed Matter flats immediately. The standards for co-packaging would be optional. The Postal Service is proposing the mandatory use of the co-sacking preparation standards beginning on June 1, 2003. The delayed implementation date would ensure that mailers could meet all operational requirements for the co-sacking standards.

As part of this notice, an additional DMM revision is proposed that would change the minimum weight in DMM E752.4.2 for Presorted rate Bound Printed Matter flats claimed at the destination delivery unit (DDU) rates from "more than 1 pound" to "more than 20 ounces." The corresponding text in DMM R700.2.5 would also be revised. Based on operational conditions and requirements, this proposed change would position the minimum weight for DDU rate Presorted Bound Printed Matter flats to begin after the point where the maximum weight of 20 ounces for AFSM 100 Bound Printed Matter flats ends. The maximum weight for AFSM 100 Bound Printed Matter flats was published in a previous **Federal Register** final rule (67 FR 40164). That final rule established a maximum weight of 20 ounces for AFSM 100 Bound Printed Matter flats which became effective on June 30, 2002. This change to the minimum weight for DDU rate Bound Printed Matter flats would allow the Postal Service to maximize the use of its automated processing equipment.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subject in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

E ELIGIBILITY

* * * * *

E700 Package Services

* * * * *

E752 Bound Printed Matter

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4.0 DESTINATION DELIVERY UNIT (DDU) RATES

* * * * *

4.2 Presorted Flats

[Revise 4.2 by changing "1 pound" to "20 ounces" in order to align the weight with the previously implemented AFSM 100 requirements, to read as follows:] Presorted flats that weigh more than 20 ounces in 5-digit sacks, on 5-digit scheme or 5-digit pallets, or prepared as bedloaded 5-digit packages may claim DDU rates. Mail must be entered at the appropriate facility under 4.1. Presorted flats weighing 20 ounces or less are not eligible for the DDU rate.

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.3 Preparation Instructions

For purposes of preparing mail:

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[Revise 1.3ad to read as follows:]

ad. Co-packaging is an alternate preparation method available under M950 for First-Class Mail, Periodicals, and Standard Mail that allows the combining of flat-size automation rate and Presorted rate pieces within the same package under the single minimum package size requirement. Co-packaging is also available for combining flat-size Bound Printed Matter Presorted pieces qualifying for the barcoded discount and Presorted rate pieces not qualifying for the barcoded discount within the same package. Pieces may not be combined in more than one physical package for each logical presort destination unless presented using an approved manifest mailing system under P910.

1.4 Mailing

Mailings are defined as:

* * * * *

[Revise item e by adding references to the advanced preparation options for flat-sized Bound Printed Matter in M900, to read as follows (the remainder of 1.4 is unchanged):]

e. Package Services. Except for single-piece rate pieces not otherwise subject to a minimum mailing requirement that are presented under an approved manifest mailing system under P910, the types of Package Services listed below may not be part of the same mailing even if in the same processing category. See M910 and M950 for the advanced preparation options available for flat-size Bound Printed Matter.* * *

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M030 Containers

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M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

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Exhibit 1.3a 3-Digit Content Identifier Numbers

[Revise Exhibit 1.3a by adding new categories and Content Identifier Numbers for co-sacked Bound Printed Matter, to read as follows:]

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PACKAGE SERVICES

BPM Flats—Co-Sacked Barcoded and Presorted:		
5-digit sacks	648	PSVC FLTS 5D BC/NBC.
3-digit sacks	661	PSVC FLTS 3D BC/NBC.
SCF sacks	667	PSVC FLTS SCF BC/NBC.
ADC sacks	668	PSVC FLTS ADC BC/NBC.
Mixed ADC sacks	669	PSVC FLTS BC/NBC WKG.

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M700 Package Services

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M720 Bound Printed Matter

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M722 Presorted Bound Printed Matter

1.0 BASIC STANDARDS

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[Add new 1.5 to read as follows:]

1.5 Co-Sacking Flats With Barcoded Mail

The following standards apply:

a. If the mailing job contains a carrier route mailing, a Presorted mailing qualifying for the barcoded discount, and a Presorted rate mailing, then it must be prepared using one of the following options:

(1) All three mailings in the mailing job must be prepared using the appropriate standards in M722, M723, and M820.

(2) The carrier route mailing must be prepared under E712 and M723, and the Presorted mailing qualifying for the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910.

b. If the mailing job contains a Presorted mailing qualifying for the barcoded discount and a Presorted rate mailing, then it must be prepared using one of the following options:

(1) Both mailings must be prepared using the appropriate preparation in M722 and M820.

(2) Both mailings must be prepared under the co-sacking standards in M910.

c. If the mailing job contains a carrier route mailing and a Presorted rate mailing, then it must be separately sacked under M722 and M723.

d. At the mailer's option, Presorted pieces qualifying for the barcoded discount may be co-packaged with Presorted rate pieces under M950.

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M800 All Automation Mail

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M820 Flat-Size Mail

1.0 BASIC STANDARDS

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1.9 Co-Traying, Co-Sacking, and Co-Packaging With Presorted Rate Mail

The following standards apply:

* * * * *

[Add new item d for Bound Printed Matter to read as follows:]

d. Bound Printed Matter:

(1) If the mailing job contains a carrier route mailing, a Presorted mailing qualifying for the barcoded discount, and a Presorted rate mailing, then it must be prepared using one of the following options:

(a) All three mailings in the mailing job must be prepared using the appropriate preparation in M722, M723, and M820.

(b) The carrier route mailing must be prepared under E712 and M723, and the Presorted mailing qualifying for the barcoded discount and the Presorted rate mailing must be prepared under the co-sacking standards in M910.

(2) If the mailing job contains only a Presorted rate mailing qualifying for the barcoded discount and a Presorted rate mailing, then it must be prepared using one of the following options:

(a) Both mailings must be prepared using the appropriate preparation in M722 and M820.

(b) Both mailings must be prepared under the co-sacking standards in M910.

(3) If the mailing job contains only a carrier route mailing and a Presorted mailing qualifying for the barcoded discount, then it must be separately prepared under M723 and M820.

(4) At the mailer's option, Presorted pieces qualifying for the barcoded discount may be co-packaged with Presorted rate pieces under M950.

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6.0 BOUND PRINTED MATTER

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6.2 Sack Preparation and Labeling

[Revise 6.2 to read as follows:]

Preparation sequence, sack size, and labeling:

a. 5-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination of packages, preceded for military mail by correct prefix under M031.

(2) Line 2: "PSVC FLTS 5D BC."

b. 3-digit (required); minimum 20 addressed; labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "PSVC FLTS 3D BC."

c. SCF (required for each 3-digit ZIP Code served by the SCF of the origin (verification) office; optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office); minimum 20 addressed pieces; labeling:

(1) Line 1: L005.

(2) Line 2: "PSVC FLTS SCF BC."

d. ADC (required); minimum 20 addressed pieces (use L004 to determine ZIP Codes served by each ADC); labeling:

(1) Line 1: L004.

(2) Line 2: "PSVC FLTS ADC BC."

e. Mixed ADC (required); no minimum; labeling:

(1) Line 1: L803. If entered by mailer at an ASF or BMC, L802.

(2) Line 2: "PSVC FLTS BC/NBC WKG."

* * * * *

M900 Advanced Preparation Options for Flats

M910 Co-Traying and Co-Sacking Packages of Automation and Presorted Mailings

[Revise the Summary to include the new option for preparing flat-size Bound Printed Matter, to read as follows:]

Summary

M910 describes the eligibility and preparation requirements for co-traying flat-size packages of automation rate and Presorted rate First-Class Mail. It also describes the eligibility and preparation requirements for co-sacking flat-size packages of nonletter-size automation rate and Presorted rate Periodicals, flat-size packages of automation rate and Presorted rate Standard Mail, and flat-size packages of Bound Printed Matter Presorted rate qualifying for the barcoded discount and Presorted rate (not qualifying for the barcoded discount).

* * * * *

[Add new 4.0, Bound Printed Matter, to provide preparation requirements for co-sacking flat-size BPM, to read as follows:]

4.0 BOUND PRINTED MATTER

4.1 Basic Standards

Effective June 1, 2003, mailers must co-sack packages of flat-size pieces from a Presorted mailing qualifying for the barcoded discount with packages of flat-size pieces from a Presorted rate mailing under the following conditions:

a. The Presorted pieces qualifying for the barcoded discount and the Presorted rate pieces are part of the same mailing job and are reported on the same postage statement.

b. The Presorted pieces qualifying for the barcoded discount must meet the criteria for flat-size mail under C050 and C820. Pieces in the Presorted rate mailing must meet the criteria for flat-size mail under C050.

c. The Presorted mailing qualifying for the barcoded discount must meet the eligibility criteria in E712, except that the sacking and documentation criteria in 4.1 and 4.4 must be met rather than the sacking and documentation criteria in M820.

d. The Presorted rate mailing must meet the eligibility criteria in E712, except that the sacking and documentation criteria in 4.1 and 4.4 must be met rather than the sacking and documentation criteria in M722.

e. The rates for pieces in the Presorted mailing qualifying for the barcoded discount are applied based on the number of pieces in the package, the level of package to which they are sorted under M722, and when applicable, the zone. The rates for pieces in the Presorted rate mailing are based on the number of pieces in the package, the level of sack in which they are placed under E712, and when applicable, the zone.

f. The pieces must be marked according to M012.

g. The packages prepared from the Presorted mailing qualifying for the barcoded discount and the packages prepared from the Presorted rate mailing must be sorted into the same sacks as described in 4.4.

h. A complete, signed postage statement(s), using the correct Postal Service form or an approved facsimile, must accompany each mailing job prepared under these procedures. Standardized documentation under P012 must also be submitted with each co-sacked mailing job and must describe for each sack sortation level, the number of pieces qualifying for the barcode discount, and the number of pieces that qualify for each applicable Presorted rate. i. Barcoded sack labels under M032 must be used to label the sacks.

4.2 Package Preparation

Except for mail prepared under the co-packaging option in 4.3, the Presorted mailing qualifying for the barcoded discount must be packaged and labeled under M820 and the Presorted rate mailing must be packaged and labeled under M722.

4.3 Optional Co-Packaging Preparation

As an option to the basic packaging requirements in 4.2, a mailer may co-package flat-size Presorted pieces qualifying for the barcoded discount and flat-size Presorted rate pieces, subject to M950.

4.4 Sack Preparation and Labeling

Packages of Presorted pieces qualifying for the barcoded discount and Presorted rate pieces prepared under 4.2 and 4.3 must be presorted together into sacks (co-sacked) using the following preparation sequence, sack size, and labeling:

a. 5-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination of packages, preceded for military mail by correct prefix under M031.

(2) Line 2: "PSVC FLTS 5D BC/NBC."

b. 3-digit (required); minimum 20 addressed pieces; labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "PSVC FLTS 3D BC/NBC."

c. SCF (required for each 3-digit ZIP Code served by the SCF of the origin (verification) office; optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office); minimum 20 addressed; labeling:

(1) Line 1: L005.

(2) Line 2: "PSVC FLTS SCF BC/NBC."

d. ADC (required); minimum 20 addressed (use L004 to determine ZIP Codes served by each ADC); labeling:

(1) Line 1: L004.

(2) Line 2: "PSVC FLTS ADC BC/NBC."

e. Mixed ADC (required); no minimum; labeling:

(1) Line 1: L803. If entered by mailer at an ASF or BMC, L802.

(2) Line 2: "PSVC FLTS BC/NBC WKG."

* * * * *

M950 Co-Packaging Automation Rate and Presorted Rate Pieces Summary

[Revise the Summary to include the new option for preparing flat-size Bound Printed Matter, to read as follows:]

M950 describes the eligibility and preparation requirements for co-packaging flat-size automation rate and Presorted rate First-Class Mail, nonletter-size automation rate and Presorted rate Periodicals, flat-size automation rate and Presorted rate Standard Mail, and flat-size Presorted rate qualifying for the barcoded discount and Presorted rate (not qualifying for the barcoded discount) Bound Printed Matter.

* * * * *

[Add new 4.0, Bound Printed Matter, to provide co-packaging preparation requirements for flat-size BPM under M950, to read as follows:]

4.0 BOUND PRINTED MATTER

4.1 Basic Standards

Mailers may choose to co-package flat-size Presorted pieces qualifying for the barcoded discount and Presorted rate pieces as an option to the basic packaging requirements in M722 and M820, subject to the following conditions:

a. The pieces in the Presorted mailing qualifying for the barcoded discount and the pieces in the Presorted rate mailing must be part of the same mailing job and must be reported on the same postage statement.

b. The pieces in the mailing job must be flat-size and meet any other size and mailpiece design requirements applicable to the rate category for which they are prepared.

c. Mailings prepared in sacks must meet the basic standards in M910.

d. A minimum of 300 Presorted pieces qualifying for the barcoded discount and a minimum of 300 Presorted rate pieces are required. The total number of pieces qualifying for the barcoded discount and the total number of pieces qualifying for the Presorted rate must be used to meet the minimum volume requirements for packages and containers.

e. Presorted rate pieces must contain a 5-digit barcode and be co-packaged with Presorted pieces qualifying for the barcoded discount for the same presort destination. If this optional preparation method is used, all barcoded discount pieces and Presorted rate pieces in the same mailing job and reported on the same postage statement must be co-packaged.

f. All pieces must meet the AFSM 100 requirements described in C820.

g. Unless presented using an approved manifest mailing system under P910, mailers must sort Presorted pieces qualifying for the barcoded discount and Presorted rate pieces for each presort destination so that only one physical package for each logical presort destination includes both Presorted pieces qualifying for the barcoded

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discount (containing a ZIP+4 or delivery point barcode) and Presorted rate pieces (containing a 5-digit barcode).

4.2 Package Preparation

Package size, preparation sequence, and labeling:

a. 5-digit (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; red Label D or optional endorsement line (OEL).

b. 3-digit (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; green Label 3 or OEL.

c. ADC (required); minimum 10 addressed pieces or 10 pounds, maximum package weight 20 pounds; pink Label A or OEL.

d. Mixed ADC (required); no minimum, maximum package weight 20 pounds; tan Label MXD or OEL.

R RATES AND FEES

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R700 Package Services

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2.0 BOUND PRINTED MATTER

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2.5 Destination Entry Rates—Flats

[Remove the last sentence and replace it with the following sentence:]

* * * Presorted flats weighing 20 ounces or less are not eligible for the DDU rate.

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An appropriate amendment to 39 CFR 111 to reflect the changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–29340 Filed 11–18–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–138; KY–140; KY–141–200303(b); FRL–7406–9]

Approval and Promulgation of Implementation Plans for Kentucky: Approval of Revisions to the Jefferson County Portion of the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 19, 2002, June 16, 2002, and July 15, 2002, the Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) submitted revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The EPA is proposing to approve these revisions to the SIP. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 19, 2002.

ADDRESSES: All comments should be addressed to: Scott Martin, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382).

Air Pollution Control District of Jefferson County, 850 Barrett Avenue—Suite 200, Louisville, Kentucky 40204. (502/574–6000).

FOR FURTHER INFORMATION CONTACT: Scott Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *Martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 31, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–29180 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7410–1]

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule amendments; reopening of public comment period.

SUMMARY: The EPA is announcing the reopening of the public comment period on the proposed amendments to the national emission standards for hazardous air pollutants (NESHAP) for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. We originally requested comments on the proposed rule amendments by August 5, 2002 (67 FR 38809, June 5, 2002). We are reopening the comment period and extending the deadline for written comments to January 21, 2003, because pertinent information related to the proposed rule amendments was not submitted to the docket and thus not available for inspection prior to August 1, 2002.

DATES: *Comments.* Submit comments on or before January 21, 2003.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–88–02, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–88–02, Room Number B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in

WordPerfect file format. All comments and data submitted in electronic form must be identified by the docket number A–88–02. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, C404–02, Attention: Mr. Phil Mulrine, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. Information related to the proposed standards is available for inspection at the Air and Radiation Docket and Information Center, Docket No. A–88–02. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Room Number B108, Washington, DC 20460, telephone (202) 566–1742. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Metals Group, Emission Standards Division, C439–02, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5289; facsimile number (919) 541–5450; electronic mail address *mulrine.phil@epa.gov.*

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: November 8, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–29334 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7409–3]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Georgia. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by December 19, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440. You can examine copies of the materials submitted by Georgia during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone number: (404) 562–8190, Kathy Piselli, Librarian; or The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154, East, Atlanta Georgia 30334–4910, Phone number: 404–656–7802.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: August 12, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–29178 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2814; MB Docket No. 02–330, RM–10585; MB Docket No. 02–331, RM–10586]

Radio Broadcasting Services; Jasper, AR, and Milford, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition filed by JEM Broadcasting Company, Inc. proposing the allotment of Channel 245A at Jasper, Arkansas, as the community's first local aural transmission service. Channel 245A can be allotted to Jasper in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 245A at Jasper are 36–00–29 North Latitude and 93–11–11 West Longitude. The Audio Division also requests comments on a petition filed by Larry Jackson proposing the allotment of Channel 288C2 at Milford, Utah, as the community's first local aural transmission service. Channel 288C2 can be allotted to Milford in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 288C2 at Milford are 38–23–49 North Latitude and 113–00–36 West Longitude.

DATES: Comments must be filed on or before December 16, 2002, and reply comments on or before December 31, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as

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follows: JEM Broadcasting Company, Inc., c/o Elvis Moody, President, 101 Christian Lane, Bentonville, Arkansas 72712; and Larry Jackson, 7107 Bur Oak Ct. Apt. 1, Louisville, Kentucky 40291.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–330 and 02–331, adopted October 16, 2002, and released October 25, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Jasper, Channel 245A.

3. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Milford, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–29236 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 111302C]

Endangered and Threatened Wildlife and Plants; 12–Month Finding on a Petition To List Bocaccio as Threatened

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of petition finding and availability of a status review document.

SUMMARY: NMFS announces a 12–month finding on a petition to list the southern population of bocaccio (*Sebastes paucispinis*) as a threatened species and to designate critical habitat under the Endangered Species Act (ESA). Based on a review of the best scientific and commercial information on the status of the species, and on the recent actions adopted by the Pacific Fishery Management Council, NMFS finds that listing the southern population of bocaccio is not warranted at this time.

DATES: The finding announced in this document was made on November 14, 2002.

ADDRESSES: The bocaccio status review and accompanying stock assessment and rebuilding analysis are available electronically at the NMFS Web site at *http://www.nmfs.noaa.gov*. Paper copies of the status review and a list of references are available by submitting requests to Cathy Campbell, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. The status review, along with the accompanying stock assessment and rebuilding analysis, are the basis for the following discussions, except where other references are noted.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, NMFS, Southwest Region, Protected Resources Division, (562) 980–4060 or David O'Brien, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2001, NMFS received a petition from the Natural Resources Defense Council, Center for Biological Diversity, and Center for Marine Conservation (now known as The Ocean Conservancy) to list the central/southern distinct population segment (DPS) of bocaccio (*Sebastes paucispinis*) or, in the alternative, to list bocaccio throughout its entire range as threatened under the ESA. The petition also requested that NMFS designate critical habitat for bocaccio. The petitioners contend that bocaccio have suffered precipitous population declines over the last several decades and that these population declines threaten bocaccio with extinction and compromise its ability to recover. The petitioners identified overutilization, specifically the direct and indirect harvest of bocaccio in groundfish fisheries, as the primary cause of bocaccio's decline. The petitioners identified other factors contributing to the status of bocaccio including inadequate regulatory mechanisms and habitat modification due to the effects of bottom trawling gear, pollution of nearshore juvenile habitat, and shifts in oceanographic conditions.

In reviewing the petition, NMFS also reviewed stock assessments, fishery independent and dependent data and other reports prepared prior to and from the time that bocaccio and other Pacific rockfish species came under Federal management. On June 14, 2001, NMFS published its determination (66 FR 32304) that the petition presented substantial scientific and commercial information indicating that listing may be warranted, and announced the initiation of a formal status review as required by section 4(b)(3)(A) of the ESA. To ensure a comprehensive review, NMFS concurrently solicited additional information and comment from the public on historical abundance, current abundance, factors contributing to population declines, sources of mortality, habitat use, habitat condition, factors affecting habitat condition, and distinctness of the southern population. In addition, NMFS solicited information regarding the adequacy of bocaccio conservation efforts and on areas that may qualify for critical habitat for bocaccio.

In response to the 90–day petition finding, NMFS received one public comment. The comment focused on the inadequacy of existing regulatory measures and, in particular, the underestimate of discards of bocaccio and the authorization of continued overfishing.

NMFS Southwest Fisheries Science Center staff prepared a comprehensive status review for the southern stock of bocaccio. This document summarizes the results of the status review. Copies of the status review are available on the internet or upon request (see **ADDRESSES**).

Life History

Bocaccio is a common rockfish, belonging to the genus Sebastes. Bocaccio are found in coastal waters of the Pacific Ocean, ranging from Baja California, Mexico to Alaska. Adults have been found at depths of 40–1578 ft. (12–481 m), but are most abundant at 165–825 ft. (50–251 m). Adults are often found in association with rocky areas. Larvae and small juveniles are pelagic and are commonly found in the upper 300 ft. (91 m) of the water column.

Bocaccio generally copulate in the late summer to early fall, and females bear their young live in the winter months. Off California, some bocaccio produce multiple broods in one season (Moser 1967). Larvae and early juveniles are pelagic until early June, when they move toward the shore and settle to the bottom where they develop as juveniles. Juvenile bocaccio (age 3 to 6 months) sometimes form dense schools in the nearshore area and are often found under drifting kelp mats.

Juvenile bocaccio grow rapidly, but typically take five years to mature. Based on the oldest fish that have been seen, bocaccio may live up to 40 years. The mean generation time (the average time required for offspring to replace the parents) is 12 years.

Bocaccio eat a variety of fish. Bocaccio are prey to larger organisms, including marine mammals, and juvenile bocaccio can at times provide a significant component of seabird diets.

Bocaccio recruitment (the addition of young fish to a population) is highly variable. Successful reproduction, where production of offspring offsets natural loss of adults, has occurred in only 26 percent of years. No large recruitments have occurred since 1978. Because of this highly variable recruitment pattern, abundance naturally fluctuates greatly.

Consideration as a "Species" Under the ESA

The ESA defines species as "any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature." This definition allows for the recognition of distinct population segments at levels below taxonomically recognized species or subspecies. On February 7, 1996, the U.S. Fish and Wildlife (FWS) and NMFS adopted a joint policy to clarify their interpretation of the phrase "distinct population segment (DPS)" for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722). The joint policy identifies two criteria that must be met for a population segment to be considered a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

Discreteness

According to the joint policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

Bocaccio are geographically separated into northern and southern populations divided by an area of scarcity off of Northern California and southern Oregon. Genetic analysis of the northern and southern populations indicates that there is a 90 percent probability that they are genetically distinct from each other. Thus, these segments can be considered discrete segments under the DPS policy.

The southern bocaccio segment extends into Mexican waters, where regulatory mechanisms differ from those in the United States. As a result, the Mexican portion of bocaccio's range could be considered discrete and, if also found to be "significant," it could be a DPS. However, as stated below, the Mexican population of bocaccio is not considered significant and therefore not a separate DPS, but a component of the southern DPS.

Significance

The DPS policy identifies several factors that may be considered in determining the significance of a discrete population segment to the taxon to which it belongs. These considerations include, but are not limited to: (1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the DPS would result in a significant gap in the range of a taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

As noted above, genetic analysis indicates that there is a 90–percent probability that the northern and southern population segments are genetically distinct. In addition, the loss of either population segment would result in a significant gap in the range of the taxon. As a result, both the northern and southern population segments would be considered significant under the DPS policy.

A rough estimate indicates that approximately 10 percent of total bocaccio abundance occurs in Mexican waters. Thus, despite the fact that regulatory mechanisms and bocaccio catches in Mexico could influence the conservation status of bocaccio in the United States, that influence is presumably small given the relative sizes of the stock segments. As a result, the portion of the southern bocaccio range in Mexican waters is not significant and is not considered a separate DPS, but a part of the southern population.

The northern and southern bocaccio population segments are both the discrete and significant as defined in the joint DPS policy. Thus, NMFS is recognizing a northern DPS and a southern DPS for bocaccio. This is consistent with the current NMFS and Council management of bocaccio, which recognize two separate West coast bocaccio populations. The remainder of this document will primarily address the southern stock as a DPS, since this was the subject of the petition.

Abundance

The current abundance of the southern bocaccio stock is estimated to be 3000 metric tons (mt) or approximately 1.6 million fish (of age 1 and older).

Spawning potential or output, which is the number of spawn that the population is capable of producing, is used as a measure of abundance for bocaccio. This measure accounts for both numerical abundance and the effects of age structure and maturation, where older individuals are disproportionally more fecund. The current spawning output of the stock is 720 billion eggs, and the estimated spawning output in the absence of fishing is 19,849 billion eggs (coefficient of variation (CV) of 31 percent). Thus, the current spawning output is 3.6

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percent of the estimated unfished abundance.

The abundance of bocaccio naturally fluctuates greatly, due to rare, large recruitment events. Between 1951 and 1969, abundance fluctuated between 26 percent (in 1960–61) and 95 percent (1969) of the estimated average unfished level. Since 1969, there has been a gradual decline in abundance to its current level of 3.6 percent of estimated unfished abundance.

Fishery Management

Bocaccio have been an important component of commercial and recreational catches off California for several decades. The estimated catch of bocaccio in 1950 was approximately 5000 mt. Landings of bocaccio in California gradually increased over the next 20 years, reaching a maximum annual harvest level of almost 12,000 mt in the mid–1970s.

In 1982, the Pacific Fishery Management Council (Council) completed its fishery management plan (FMP) for west coast groundfish, including bocaccio. The Council is one of eight regional fishery management councils established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to prepare fishery management plans for U.S. fisheries in need of federal management. The Council's area of responsibility covers fisheries off California, Oregon, and Washington.

During the early 1980's, under the FMP, the allowable annual harvest of bocaccio was approximately 6,000 mt. After a 1990 bocaccio stock assessment showed a decline, NMFS established a harvest guideline of 1,100 mt for 1991–1992. During these two years, actual harvest exceeded the harvest guideline by 300–500 mt.

NMFS increased the allowable catch of bocaccio to 1,540 mt in 1992 and to 1,700 mt in 1995. Actual landings during the mid–1990's were significantly less than the allowable catch, however, with 864 mt and 599 mt harvested in 1995 and 1996 respectively. A 1996 stock assessment then indicated that bocaccio were in severe decline, which could account for the low harvests in 1995 and 1996.

Until the mid–1990s, NMFS believed that bocaccio were capable of withstanding an exploitation rate that was commonly applied in fisheries worldwide. This fishing rate of F(0.35; read as "F–35 percent") reduces the expected average lifetime reproductive output of a fish to 35 percent of the output it would achieve under natural unfished conditions. Recognizing that rockfish stocks were continuing to decline at this exploitation level, NMFS recommended the more conservative rockfish harvest policy of F(0.40) in 1998 and adopted an allowable catch of 230 mt for 1998 and 1999.

In 1999, the bocaccio resource was formally declared overfished by the Secretary of Commerce, in accordance with the Magnuson-Stevens Act. Following this declaration, NMFS adopted a rebuilding policy based on the 1999 stock assessment and a rebuilding analysis (MacCall, 1999). The rebuilding analysis indicated that rebuilding of bocaccio would take 37 years if the annual harvest was limited to 100 mt. NMFS set the optimum yield (OY) at 100 mt for 2000–2002 and, in 2001, adopted a more conservative rockfish harvest policy of F(0.50). The actual levels of harvest in 2000 and 2001 exceeded the OY, with 233 mt taken in 2000 and 214 mt taken in 2001. In response to indications that the harvest levels for 2002 were nearing the OY level too early in the year, NMFS implemented additional fishery restrictions in July 2002 to minimize further 2002 catch of bocaccio.

A new 2002 stock assessment confirmed that the southern stock was in severe decline. The Council reviewed the accompanying rebuilding analysis at its September 2002 meeting and has proposed an even lower fishing rate which would allow a harvest of not more than 20 mt in 2003. Based on the rebuilding analysis, this harvest rate would provide an 80–percent probability that the stock would not decline in 100 years.

In establishing the harvest levels for 2002 and 2003, the Council incorporated new information available on the bycatch rates of bocaccio in the commercial trawl fishery. As a result of recent litigation, NMFS and the Council reviewed historic bycatch rates and discard assumptions and re-evaluated their approach to estimating discards in the trawl fishery. The result was a model developed by Hastie (Hastie, 2001) that estimates the co-occurrence rate of overfished groundfish species, including bocaccio, relative to the landings of key target groundfish species. Using this model, the Council was able to estimate the level of discards of bocaccio that can be expected for a given groundfish harvest in the trawl fishery. This model enables the Council to fully evaluate the impacts of management measures and protects against the adoption of management measures that may increase the level of bocaccio bycatch.

Summary of Factors Affecting the Species

The ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." A threatened species is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened due to one or more of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or nation to protect such species. These factors and their application to the southern stock of bocaccio are described below.

(1) The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Adult bocaccio are primarily found in rocky habitat. This habitat has likely been degraded by large commercial trawling operations, but there is little information regarding the level of habitat loss. Since this type of trawling has now been excluded from primary bocaccio habitat, it is expected that the future threats to rocky bottom habitat are minimal.

Little information is available on the habitat requirements of juvenile bocaccio. While kelp and eelgrass are utilized by larvae and juvenile bocaccio, there is no information to indicate that this habitat is critical to the survival of bocaccio or that any reduction in kelp or eelgrass has had a significant impact on bocaccio.

Bocaccio have not been observed to have any significant reduction in their range.

(2) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Bocaccio have been overutilize for the last several decades. A combination of overutilization and poor recruitment have resulted in a severe decline of the southern bocaccio stock to 3.6 percent of their estimated pre-exploitation level.

Although historical overutilization has been the primary cause of bocaccio's decline, recent conservation measures have drastically reduced fishing effort in times and areas where bocaccio occur and are expected to allow the stock to recover. As a result, under new management measures, overutilization is not expected to place the bocaccio stock at risk of becoming endangered in the foreseeable future. See further discussion under "Conservation Factors" below.

(3) Disease or Predation

Bocaccio are prey to larger organisms, including marine mammals, and juvenile bocaccio can at times provide a significant component of seabird diets. This predation is not considered significant and is not likely to threaten the survival of the stock. There are no known threats of disease for bocaccio.

(4) The Inadequacy of Existing Regulatory Mechanisms

Previous fishery management measures have been inadequate to protect bocaccio, and the southern stock of bocaccio has been heavily overutilized during the entire period of Council management. However the Council has taken strict measures over the past few years to promote bocaccio recovery, and NMFS believes that the Council's most recent proposed measures, adopted in September 2002, will ensure that the southern stock of bocaccio will not become endangered within the foreseeable future. See further discussion under "Conservation Factors" below.

(5) Other Natural or Manmade Factors Affecting its Continued Existence

Long-term ocean climate patterns appear to have a strong influence on the frequency of large recruitments of southern bocaccio. The protracted and extremely warm ocean conditions of the 1990s was associated with poor reproduction of most rockfish species, including bocaccio, and undoubtedly contributed to the decline in abundance. Although this relationship cannot yet be quantified, the cooler ocean since 1998 is similar to the cool conditions of the 1960s and early 70s, and may be associated with better bocaccio recruitment. Although the specific impacts are uncertain, it is probable that ocean-climate patterns will continue to affect the recruitment of bocaccio.

Juvenile bocaccio have been documented in the intake of power plants along the California coast. In fact, power plant intakes have provided useful indices of rockfish recruitment. However, the level of mortality of juvenile bocaccio from power plant intake is very low and is not expected to impact the survival of bocaccio.

Conservation Factors

Previous fishery management measures have been inadequate to protect bocaccio, and the southern stock of bocaccio has been heavily overutilized during the entire period of Federal management. However, NMFS has adopted increasingly more restrictive measures over the past few years to promote bocaccio recovery, and NMFS believes that the Council's most recent proposed measures, adopted in September 2002, will ensure that the southern stock of bocaccio will not become endangered within the foreseeable future.

In 1999, the bocaccio resource was formally declared overfished. The 1999 NMFS bocaccio stock assessment and rebuilding analysis indicated a rebuilding time of 37 years, based on a harvest rate of 100 mt per year. Based on this stock assessment, NMFS adopted a rebuilding policy in 2000 that set the catch at 100 mt for 2000–2002. This rebuilding policy was strongly influenced by the assumed strength of the 1999 yearclass, based on unusually high intake levels at certain power plants. The 100–mt harvest rate was a significant restriction from previous catch limits, which were as high as 1,700 mt in 1996. During the first 2 years of implementation of the 100 mt catch limit, the Council struggled to track catches on a real-time basis so it could recommend effective means to restrict the catch of bocaccio, which co-occur with many other species. This was not possible, however, and the catch limit of 100 mt was exceeded in both 2000 and 2001. In 2002, the Council closely monitored catch rates and recommended that NMFS implement mid-year closures and restrictions when the mid-year catch level indicated that the 100 mt limit was likely to be exceeded. As a result of NMFS mid-year actions in 2002, the bocaccio catch for 2002 will be near or below the 100 mt catch limit.

In June 2002, NMFS prepared a revised stock assessment that indicated that the 1999 stock assessment and accompanying rebuilding analysis were overly optimistic because the 1999 bocaccio yearclass was not as strong as initially estimated. This analysis showed that the stock continued to be in severe decline and indicated that more restrictive measures would be necessary to ensure both the survival and rebuilding of the southern stock of bocaccio. NMFS further refined this analysis and prepared a rebuilding analysis in August 2002, which modeled the probable outcomes for bocaccio at 25 and 100 years at varying levels of harvest. Based on this analysis, NMFS recommended to the Council that the annual harvest of bocaccio be reduced to as close to zero as possible, but not to exceed 20 mt.

Bocaccio Rebuilding Policy and Measures for 2003

At its September 2002 meeting, the Council considered the August rebuilding analysis and adopted a catch rate (catch/total biomass) which would allow a catch of up to 20 mt in 2003. Based on the rebuilding analysis, this catch rate would provide an 80 percent probability that the stock would not decline in 100 years. Under this rebuilding policy, allowable catch rates are very low. The catch rate for 2003 is 0.5 percent, compared with an average catch rate of 11 percent during the preceding 50 years. Under this rebuilding analysis, rebuilding is expected to take a median time of 170 years at this harvest level.

The Council recommended that NMFS implement several management measures for 2003 in order to limit the catch for 2003. The Council has proposed that all directed fishing for bocaccio be eliminated in 2003 and that the catch rate of 20 mt would be used to account for discards of bocaccio incidentally taken in fisheries for co-occurring species. The Council recommended new depth-based management measures that would prohibit bottom trawl, limited entry fixed gear, and open access fishing in the times and areas where bocaccio are expected to occur. In addition, the Council proposed that no retention of bocaccio be allowed in the commercial fisheries. In addition, recreational fisheries south of Cape Mendocino (40° 10′ N.) would be closed from January through June and open shoreward of 20 fathoms from July though December.

The State of California has worked closely with the Council in developing measures to reduce bocaccio bycatch. In fact, the depth-based restrictions recently adopted by the Council were originally developed by the state. The state has recently adopted several conservation measures to provide additional protection for bocaccio. The state implemented regulations in 2002 that prohibit the retention of bocaccio in the recreational fishery. For 2003, the recreational season for all rockfish was reduced to six months and a new groundfish bag limit was created which will reduce the overall take of rockfish, including bocaccio. The state recently adopted a regulation that will require

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that observers be carried on California vessels, if requested by the State. The state recently adopted a network of reserves around the Channel Islands, which will provide protection for important bocaccio habitat. In addition, the Council has adopted a plan that, when implemented, will reduce the size of the nearshore fishery and is considering a number of options for significantly restricting or eliminating the spot prawn trawl fishery for 2003. Further, a rockfish closure intended to protect cowcod in a large area off southern California will also provide substantial protection for bocaccio.

With this combination of Federal and state management measures, the Council estimates that the bycatch of bocaccio (meaning the total harvest of bocaccio) in 2003 will be 10.3 mt. The Council plans to closely monitor harvest throughout 2003 and would implement additional mid-year management measures if necessary to ensure that the 20–mt harvest level is not exceeded. In order to evaluate the harvest levels of bocaccio in 2003, the Council will consider the results of the trawl bycatch model, information from the NMFS Marine Recreational Fisheries Statistical Survey (MRFSS), and logbook and other data. Modifications being made in the MRFSS program are also expected to result in faster availability of higher quality data in recreational catches of bocaccio. In addition, in early 2003, the initial results from the NMFS Groundfish Observer Program will be available for NMFS and Council review. The observer program has monitored both the limited entry and open access components of the commercial groundfish fishery since August 2001. Preliminary results of the observer program will be available early in 2003 and will be used to further refine the Hastie bycatch model (Hastie 2001).

NMFS has prepared emergency regulations to implement the Federal management measures discussed above. These emergency regulations will be in effect by January 1, 2003, and will remain effective for 60 days. Concurrently, NMFS will be issuing a proposed rule to implement these measures for the remainder of 2003 and soliciting public comment on these measures.

Future Harvest Levels

The Council's current rebuilding policy is based on the 2000 rebuilding analysis which indicated that it will take 170 years to rebuild the bocaccio stock, with the recently adopted catch rate (which is 20 mt for 2003). According to the National Standard Guidelines (Guidelines), NMFS' regulations that implement the Magnuson-Stevens Act, the maximum length of time to rebuild an overfished species is the time to rebuild in the absence of fishing, plus one generation time. For bocaccio, the maximum time to rebuild is 106 years. Therefore, the Council must adopt a rebuilding plan that will have at least a 50–percent probability of rebuilding bocaccio within 106 years. Given the current abundance of bocaccio, and their natural tendency for rare, large recruitment events, analyses indicate that, even in the absence of fishing, the southern stock of bocaccio would not have a 50–percent probability of recovering within 106 years. Since the Guidelines do not address the unique situation in which rebuilding a species in the maximum time allowed is not possible, NMFS reviewed the Magnuson-Stevens Act and has determined that the Council's recommended level of bocaccio harvest (20 mt) meets its standards for rebuilding overfished stocks. Although the Council has not yet adopted a revised rebuilding plan for bocaccio, NMFS expects that the rebuilding plan will maintain the catch rate adopted for 2003, since this would be necessary in order to meet the rebuilding requirements under the MSA given bocaccio's current status.

Determination

After reviewing the best scientific and commercial information available and considering the expected effects of conservation measures, NMFS has determined that listing the southern DPS of bocaccio is not warranted at this time. While NMFS recognizes that the southern stock of bocaccio has severely declined over the past several decades, NMFS believes that the catch rate of 0.5 percent (20 mt in 2003) recently adopted by the Council will prevent bocaccio from becoming endangered within the foreseeable future. NMFS will retain bocaccio on the Candidate Species list and closely monitor the status of the bocaccio population and future Council measures. If necessary, NMFS will re-evaluate its decision regarding whether the southern stock of bocaccio warrants listing under the ESA, including evaluating whether emergency listing is warranted and whether an additional status review is necessary. Reasons for a re-evaluation include, but are not limited to: (1) if future Council decisions allow for increased exploitation rate; or (2) if future data or analysis indicate that conservation efforts are inadequate.

References

A list of references is available upon request (see **ADDRESSES**).

Authority

The authority for this section is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 13, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–29356 Filed 11–15–02; 9:16 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 021106270–2270–01; I.D. 102602C]

RIN 0648–AQ53

Endangered and Threatened Species; Finding for a Petition To Revise Critical Habitat for Northern Right Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 90–day finding.

SUMMARY: NMFS announces the receipt of a petition to revise critical habitat for the endangered western North Atlantic right whales, *Eubalaena glacialis*, (right whales). NMFS finds that the petition presents substantial scientific information indicating that this action may be warranted and is soliciting public comment and information on the petition. NMFS will determine how to proceed with the petitioned action within 12 months after receiving the petition.

DATES: Comments on this action must be postmarked or transmitted by facsimile by January 21, 2003. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Comments concerning this action may be submitted to Mary Colligan, Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, Northeast Region, telephone 978–281–9116, fax 978–281–9394; Kathy Wang, Southeast Region, telephone 727–570–5312, fax 727–570–5517; or Patricia Lawson, telephone 301–713–2322, fax 301–713–0376.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2002, NMFS received a petition dated July 9, 2002, from The Ocean Conservancy requesting that NMFS revise and expand the current critical habitat designation for right whales. The petitioner requested that NMFS expand the existing Southeast critical habitat designation to the following coordinates: 31° 30′ N to 29 40′ N from the shoreline out to 30 nautical miles (55.6 km2); 29° 4'' N to 28 °00′ N from the shoreline out to 10 nautical miles (18.5 km^2). The petitioned area would add approximately 2,700 nm^2 (5,003.6 km^2) to the current critical habitat coverage. The petitioner also requested that NMFS expand and combine both the existing Northeast critical habitat designations (Cape Cod Bay and Great South Channel) into one critical habitat area bounded by the following coordinates: 41° 41.2′N/69° 58.2′ W; 41° 00.0′ N/69° 05.0′ W; 41° 00.0′ N/68° 13.0′ W; 42° 12.0′ N/68° 13.0′ W; 42° 12.0′ N/70° 30.0′ W; 41° 46.8′ N/70° 30.0′ W; and on the southwest corner by the shoreline of Cape Cod, MA.

Section 4(b)(3)(D) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1533(b)(3)(D)), requires that NMFS make a finding on whether a petition to revise a designation of critical habitat presents substantial scientific information to demonstrate that the petitioned action may be warranted. NMFS' ESA implementing regulations at 50 CFR 424.14 define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In making this finding, NMFS must consider the information that is presented by the petitioner and any new unassessed information on habitat that was added to NMFS' file regarding the species after critical habitat was designated but before NMFS received the petition to revise it. To the maximum extent practicable, this finding is to be made within 90 days of the petition, and the finding is to be published promptly in the **Federal Register**. Within 12 months after receiving a petition that NMFS has found to present substantial information indicating that the revision may be warranted, NMFS must determine how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

Critical habitat is defined in section 3(5)(A) of the ESA as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation is defined in section 3 of the ESA as "... the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary."

In determining what areas are critical habitat, NMFS must consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations. Physical and biological features essential to the conservation of the species include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Special management considerations or protections mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of the listed species (50 CFR 424.02(j)).

Section 4(b)(2) of the ESA requires NMFS to take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. NMFS may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

The right whale was listed as endangered under the Endangered Species Conservation Act, the precursor to the ESA, on June 2, 1970 (35 FR 8495; codified at 50 CFR 17.11). NMFS was petitioned by the Right Whale Recovery Team to designate critical habitat for right whales on May 18, 1990. A document was published in the **Federal Register** on July 12, 1990 (55 FR 28670), requesting information and comments on the petition. The proposed rule was published on May 19, 1993 (58 FR 29186), and the final rule was published on June 3, 1994, (59 FR 28793; codified at 50 CFR 226.203). The designation identified habitat with features essential to the conservation of the species, such as foraging, calving, and nursing. Specifically, this designation includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida.

In general, the petitioner stated that since the 1994 designation of right whale critical habitat, knowledge regarding distribution and mortality of the North Atlantic right whale has increased substantially, indicating that critical habitat boundaries need to be revised and expanded to provide proper protection for right whales.

Specifically, the petitioner stated that 10 years of new data regarding right whale distribution and causes of mortality along the east coast of the United States show that the current critical habitat designation is not sufficient to protect right whales from further anthropogenic mortality. The petitioner stated that the proposed critical habitat expansion contains several features essential to the conservation of the right whale in the western North Atlantic and proposed that these features require specific protection or management considerations to ensure the survival and recovery of the species. The petitioner stated that the areas proposed for expanded critical habitat experience high levels of human disturbance in the form of shipping activities, fisheries, military activities, dredging operations, increased pollution, and general habitat disturbance. The essential features associated with the proposed critical habitat cited by the petitioner include the following: space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of species.

The petitioner acknowledged that some areas in the northeastern U.S. have already received special management attention in the form of fishing regulations, but maintains that essential right whale habitat along the eastern seaboard lacks protection from ship strikes. In addition, the petitioner noted that when several habitats, each satisfying the requirements for

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designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat. The petitioner stated that the continued high mortality of North Atlantic right whales from ship strikes indicates the immediate need for management actions to reduce ship strikes and maintains that accurately designated critical habitat boundaries will facilitate the management process. In addition, the petitioner stated that since the time critical habitat was originally designated in the southeastern U.S., extensive and expansive survey efforts have shown that right whales occur further offshore than originally known. The petitioner contended that the importance of this area as the only known calving ground for right whales warrants the revision of critical habitat to protect the animals within this region.

Petition Finding

NMFS has reviewed the petition and other available information. On the basis of that information, NMFS finds that the petition presents substantial scientific information indicating that the requested action may be warranted. Within 1 year of the receipt of the petition, NMFS will determine how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 13, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–29360 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 223

Tuesday, November 19, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–074–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity in support of regulations requiring the certification of facilities for the treatment of fruits, vegetables, and other articles. The certification of treatment facilities is necessary to ensure that the facilities are capable of performing treatments required under our regulations to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States.

DATES: We will consider all comments that we receive on or before January 21, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–074–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–074–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–074–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the certification of treatment facilities, contact Mr. Jim Smith, Director, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, MD 20737–1236; (301) 734–8295. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Certification of Treatment Facilities.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for, among other things, preventing plant pests and noxious weeds from entering the United States and controlling and eradicating plant pests and noxious weeds in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine program of USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the regulations promulgated under the Act.

To carry out this mission, APHIS administers regulations intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. These regulations are contained in title 7, chapter III, of the Code of Federal Regulations (CFR).

Under the regulations, certain articles such as fruits, vegetables, and seeds must be treated to be eligible for entry into the United States or interstate movement within the United States. In some cases, treatments are performed in facilities in foreign countries; in other cases, treatments are performed aboard ship while the articles are in transit; and in still other cases, treatments are performed in facilities in the United States. All facilities that provide treatments required under our regulations, including refrigeration compartments on ships, must be certified by APHIS before they can provide those treatments.

Facilities wishing to be certified must supply APHIS with specifications, which may include plans, blueprints, drawings, or other information. Specific requirements for the certification of facilities are contained in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at 7 CFR 300.1. We need this information to determine whether a facility can provide the treatments required for quarantine security.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for certification of facilities for the treatment of fruits, vegetables, and other articles.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.25 hours per response.

Respondents: U.S. shippers, importers, State and Plant Health

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Protection authorities, owners and operators of facilities that perform quarantine treatments.

Estimated annual number of respondents: 250.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 312.5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 13th day of November, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29303 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Public Hearing on New Entrant's 2003-Crop Cane Sugar Marketing Allocation

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of opportunity to request a public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to advise sugarcane processors and growers that they may request a public hearing as a result of an application made by a new sugarcane processor, the Arizona Sugar Factory, L.L.C., for a cane-sugar allocation for the 2003 crop year.

DATES: CCC will conduct a hearing if one is requested by December 4, 2002. CCC will publicly announce details of the hearing if one is requested.

ADDRESSES: Please send hearing requests to Thomas Bickerton, Farm Service Agency, United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave, SW., Washington, DC 20250–0540. Phone: (202) 720–6733. Fax: (202) 690–1480. e-mail: *sugar@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Bickerton at (202) 720–6733.

SUPPLEMENTARY INFORMATION: The Arizona Sugar Factory, L.L.C., a new entrant, is requesting a 2003-crop year allocation of 10,000 short tons, raw value, and wants its allocation to increase to 50,000 short tons, raw value, for the 2005 crop. The new processor will be located in California, a mainland State which does not currently have a cane allotment. Section 359d(b)(1)(E) of the Agricultural Adjustment Act of 1938, as amended, authorizes CCC to provide a sugarcane processor, who begins processing after May 13, 2002, with an allocation that provides a fair, efficient, and equitable distribution of the allocations from the allotment for the State in which the processor is located. CCC would have to allot California a share of the overall cane allotment in order to accommodate the new entrant's allocation. The new California allotment would be subtracted, on a pro rata basis, from the allotments otherwise provided to each mainland State.

Signed in Washington, DC, on November 8, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–29304 Filed 11–18–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions Under 36 CFR Part 217 and Corrections Under 36 CFR Part 215 for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on June 6, 2002, of principal newspapers to be utilized for publishing notice of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Elaine Cloward, Acting Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30309, Phone: 404–347–2788.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notice of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico *Atlanta Journal*, published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 14 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL.

District Ranger Decisions

Bankhead Ranger District: Northwest Alabamian, published bi-weekly (Wednesday & Saturday) in Haleyville, AL.

Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL.

Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.

Talladega Ranger District: The Daily Home, published daily in Talladega, AL.

Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR

San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Supervisor Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday and Friday) in LaFayette, GA

Toccoa Ranger District: The News Observer (primary) published by-weekly (Tuesday & Friday) in Blue Ridge, GA

The Dahlonega Nuggett, (additional) published weekly (Wednesday) in Dahlonega, GA

Brasstown Ranger District: North Georgia News, (Primary) published weekly (Wednesday) in Blairsville, GA

Towns County Herald, (additional) published weekly (Thursday) in Hiawassee, GA

The Dahlonega Nuggett, (additional) published weekly (Wednesday) in Dahlonega, GA

Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA

Chattooga Ranger District: Northeast Georgian, (primary) published bi-weekly (Tuesday & Friday) in Cornelia, GA

Chieftain & Toccoa Record, (additional) published bi-weekly (Tuesday & Friday) in Toccoa, GA

White County News Telegraph, (additional) published weekly (Thursday) in Cleveland, GA

The Dahlonega Nuggett, (additional) published weekly (Thursday) in Dahlonega, GA

Cohutta Ranger District: Chatsworth Times, published weekly (Wednesday) in Chatsworth, GA

Oconee Ranger District: Eatonton Messenger, published weekly (Thursday) in Eatonton, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN

District Supervisor Decisions

Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN

Tellico Ranger District: Monroe County Advocate, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN

Nolichucky-Unaka Ranger District: Greeneville Sun, published daily (except Sunday) in Greeneville, TN

Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Supervisor Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY

Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Stanton, KY

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY

Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY

Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY

Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Supervisor Decisions

Apalachicola Ranger District: Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL

Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL

Osceloa Ranger District: The Lake City Reporter, published daily (Monday-Saturday) in Lake City, FL

Seminole Range District: The Daily Commercial, published daily in Leesburg, FL

Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Ranger Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC

Andrew Pickens Ranger District: The Daily Journal, published daily in Seneca, SC

Long Cane Ranger District: The Augusta Chronicle, published daily in Augusta, GA

Wambaw Ranger District: Post and Courier, published daily in Charleston, SC

Witherbee Ranger District: Post and Courier, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions:

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA

Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA

James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA

Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA

Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA

New River Ranger District: Roanoke Times, published daily in Roanoke, VA

Glenwood/Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA

New Castle Ranger District: Roanoke Times, published daily in Roanoke, VA

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA

Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN

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Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: Minden Press Herald, (primary) published daily in Minden, LA
Homer Guardian Journal, (additional) published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA
Calcasieu Ranger District: The Town Talk, (primary) published daily in Alexandria, LA
The Leesville Ledger, published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA
Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA
Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

The Paducah Sun, published daily in Paducah, KY

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS
Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS
Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS
De Soto Ranger District: Clarion-Ledger, published daily in Jackson, MS
Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS
Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS
Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Appalachian Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC
Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: The Sun Journal, published daily (except Saturday) in New Bern, NC
Grandfather Ranger District: McDowell News, published daily in Marion, NC
Highlands Ranger District: The Highlander, published weekly (mid May-mid Nov Tues & Fri; mid Nov-mid May Tues only) in Highlands, NC
Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC
Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC
Wayah Ranger District: The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Jessieville/Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Mena/Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Poteau/Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak) Tulsa World, published daily in Tulsa, OK

Ozark-St. Francis National Forest, Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR

Buffalo Ranger District: Newton County Times, published weekly in Jasper, AR
Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR
Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR
St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions

Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX
Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX
Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX
Sam Houston National Forest: The Courier, published daily in Conroe, TX
Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on June 6, 2002, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

National Forests in Florida, Florida

District Ranger Decisions

Apalachicola Ranger District

Correct:

Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL

Dated: November 13, 2002.

R. Gary Pierson,

Deputy Regional Forester.

[FR Doc. 02–29287 Filed 11–18–02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is to initiate the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Self-Determination Act of 2000. The agenda for this initial meeting includes a discussion of how the Yakutat Resource Advisory Committee will operate, how often they will meet and how they will solicit project proposals.

DATES: The meeting will be held December 2, 2002, from 6–9 p.m.

ADDRESSES: The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Tricia O'Connor, c/o Forest Service, USDA, P.O. Box 327, Yakutat, AK 99689, (907) 784–3359 or electronically to *poconnor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tricia O'Connor, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784–3359.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring resource projects or other Resource Advisory Committee matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 27, 2002 will have the opportunity to address the Council at those sessions.

Dated: November 12, 2002.

Fred S. Salinas,

Deputy Forest Supervisor Tongass National Forest.

[FR Doc. 02–29353 Filed 11–18–02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1252]

Expansion of Foreign-Trade Zone 191, Palmdale, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Palmdale, grantee of Foreign-Trade Zone 191, submitted an application to the Board for authority to expand FTZ 191 to include a site at the California City Airport Industrial Park (40 acres) in California City, California (Site 10), adjacent to the Los Angeles-Long Beach Customs port of entry (FTZ Docket 20–2002; filed 4/16/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 20086, April 24, 2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 191 is approved, subject to the Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 4th day of November, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29343 Filed 11–18–02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Participation Agreement and Trade Mission Application; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (2) (A)).

DATES: Written comments must be submitted on or before January 21, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. Phone number: (202) 482–0266. e-mail: *dhynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Joseph J. English, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2110, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–3334, and fax number: (202) 482–0115.

SUPPLEMENTARY INFORMATION:

I. Abstract

The ITA–4008P, AParticipation Agreement", is the vehicle by which individual firms agree to participate in any of ITA's trade promotion program, and record their required participation fee to the U.S. Department of Commerce (DOC). Together with the relevant ITA–4008P–A, AConditions of Participation", it forms a contract between the individual firm and the DOC. The ITA–4008P–1, ATrade Mission Application", is used to solicit information from firms seeking to participate in DOC overseas trade missions covered by the Statement of Policy Governing Overseas Trade Missions of the Department of Commerce issued on March 3. 1997. Trade Mission participants are required to complete the Forms ITA–4008P, ITA–4008P–1, and ITA–4008P–A. Other DOC trade event (not trade mission) participants complete Forms ITA–4008P and ITA–4008P–A.

II. Method of Collection

The forms are sent by request to potential U.S. firms.

III. Data

OMB Number: 0625–0147.
Form Number: ITA–4008P, ITA–4008P–1 and ITA–4008P–A.
Type of Review: Regular Submission.
Affected Public: Business or other for profit.
Estimated Number of Respondents: 7,500.
Estimated Time Per Response: 20–70 minutes.
Estimated Total Annual Burden Hours: 2,792 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $150,315.00 ($100,495.00 for respondents and $56,720.00 for federal government).

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IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: November 5, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–29201 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–809

Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On October 1, 2002, the Department of Commerce published a notice of preliminary results of its changed circumstances review on certain circular welded non-alloy steel pipe from Korea (*see Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Changed Circumstances Review*, 67 FR 61578). We have now completed the review and determine Husteel Company, Ltd. to be the successor-in-interest to Shinho Steel Company, Ltd.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1279.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (2002).

Background:

On October 1, 2002, the Department published its preliminary results in the **Federal Register** (*see Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Changed Circumstances Review*, 67 FR 61578) ("*Preliminary Results*"), preliminarily finding Husteel Company, Ltd. ("Husteel") to be the successor-in-interest to Shinho Steel Company, Ltd. ("Shinho"). We invited interested parties to comment on these preliminary findings. No comments were received from interested parties.

Scope of the Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following *Harmonized Tariff Schedule* of the United States ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and Customs Service purposes, our written description of the scope of this proceeding is dispositive.

Successorship and Final Results of Review

Because we received no comments on the preliminary results, for the reasons stated in the *Preliminary Results* and based on the facts on the record, we find Husteel to be the successor-in-interest to Shinho for antidumping duty cash deposit purposes.

Therefore, Husteel will be assigned the same cash deposit rate with respect to the subject merchandise as the predecessor company, Shinho (i.e., 2.99 percent) (*see Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Amended Final Results of Antidumping Administrative Review*, 66 FR 28422 (May 23, 2001)). This cash deposit requirement will be effective upon publication of this notice of final results of changed circumstances review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review involving Husteel.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(c)(3).

Dated: November 12, 2002.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29348 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Scot Fullerton, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2312 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2002).

Background

In accordance with 19 CFR § 351.214(b)(2), on March 29, 2002, the Department received the timely and properly filed request from Tianjin Tiancheng Pharmaceutical Co., Ltd. (TTPC), for a new shipper review of its exports of glycine. On May 17, 2002, the Department initiated a new shipper review of the antidumping duty order on glycine for the period of review of March 1, 2001 through February 28, 2002. (67 FR 36572)

Extension of Time Limit for Preliminary Results

Section 351.214(i)(1) of the Department's regulations requires the Department to issue preliminary results of a new shipper review within 180 days of the date of initiation. However, if the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days under section 351.214(i)(2) of the Department's regulations. Because of the complex nature of both TTPC's supplier relationships and its reported factors of production information, and the resultant need to gather additional information and conduct further analysis into these areas, we find this review to be extraordinarily complicated.

Accordingly, the Department is extending the time limit for the completion of the preliminary results to 300 days after the date of initiation, in accordance with section 751(a)(2)(B)(iv) of the Act and 351.214(i)(2) of the Department's regulations. The preliminary results will now be due on March 13, 2003. The final results will in turn be due 90 days after the date of issuance of the preliminary results, unless extended.

Dated: November 12, 2002.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–29345 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Administrative Duty Review.

SUMMARY: On July 10, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China. We gave interested parties an opportunity to comment. Based upon our analysis of the comments and information received, we have made changes to the margin calculations presented in the final results of the review. We find that helical spring lock washers from the People's Republic of China are not being sold in the United States below normal value by Hangzhou Spring Washer Company, Co. Ltd., also known as Zhejiang Wanxin Group Co., Ltd.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (2001).

Background

On July 10, 2002, the Department published in the **Federal Register** the preliminary results of its administrative review of helical spring lock washers ("HSLWs") from the People's Republic of China ("PRC") (*Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 45702 (July 10, 2002) ("*Preliminary Results*"). We received surrogate value information from the petitioner, Shakeproof Assembly Components Division of Illinois Tool Works Inc., on July 29, 2002. The petitioner submitted a case brief on August 8, 2002. Hangzhou Spring Washer Co., Ltd., also known as Zhejiang Wanxin Group Co., Ltd. ("Hangzhou"), the respondent, submitted case and rebuttal briefs on August 8, 2002 and August 13, 2002, respectively.

The Department determined that the petitioner's case brief contained new factual information and, on August 22, 2002, the Department formally requested the new factual information submitted by petitioner in its case brief. Hangzhou was asked to comment on the new information and it did so September 3, 2002.

The Department has completed the antidumping duty administrative review in accordance with section 751 of the Act.

Scope of Order

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off- line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States*

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("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

The period of review ("POR") is from October 1, 2000 through September 30, 2001.

Comparisons

We calculated export price and normal value based on the same methodology used in the *Preliminary Results* with the following exception:

For labor, we used the regression-based wage rate for the PRC as revised in September 2002. See "Expected Wages of Selected NME Countries" located on the Internet at http://ia.ita.doc.gov/wages/00wages/00wages/htm.

In valuing the steel wire rod input, we have included certain movement charges that were omitted in the preliminary results.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the November 7, 2002, Issues and Decision Memorandum ("Decision Memorandum") which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum.

Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/summary/list.htm. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of the Review

The weighted-average dumping margin for the period October 1, 2000 through September 30, 2001 is as follows:

Manufacturer/exporter	Time Period	Margin (percent)
Hang Zhou Spring Washer Co., Ltd/Zhejiang Wanxin Group Co., Ltd.	10/01/00–09/30/01	0.13 (*de minimis*)

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer- specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer and dividing this amount by the total value of the sales to that importer. Where an importer-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer and dividing this amount by the total quantity sold to that importer.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for Hangzhou, which has had a separate rate in the investigation and all reviews, no deposit will be required because the company had a *de minimis* (*i.e.*, less than 0.5 percent) rate in this review; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, 128.63 percent, which is the All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and, (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of thereturn/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

Comment 1: Department's Acceptance of New Information
Comment 2: Valuation of Steel Wire Rod (SWR); Inconsistencies in Reported Data
Comment 3: Valuation of SWR; Comparison of Prices Paid by Hangzhou to PRC Import Prices
Comment 4: Valuation of SWR; Allegations that Imports into the PRC Are Dumped
Comment 5: Verification for "Good Cause"
Comment 6: Valuation of Hydrochloric Acid
Comment 7: Calculation of Factory Overhead

[FR Doc. 02–29346 Filed 11–18–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination to revoke order in part.

SUMMARY: On August 6, 2002, the Department of Commerce published the preliminary results of the 2000–2001 administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. This review covers three manufacturers/exporters of the subject merchandise to the United States. The products covered by this order are all grades of sebacic acid which include but are not limited to CP Grade, Purified Grade, and Nylon Grade. The period of review is July 1, 2000, through June 30, 2001.

We are revoking the antidumping duty order with respect to one manufacturer/exporter because this company has met the requirements under 19 CFR 351.222.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Patrick Connolly, AD/CVD Enforcement, Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–1779, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) regulations are to 19 CFR part 351 (2001).

Background

On August 6, 2002, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC). *See Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke*, 67 FR 50870 (Aug. 6, 2002) (*Preliminary Results*). The review covers two exporters and their respective manufacturers. The period of review (POR) is July 1, 2000, through June 30, 2001.

We invited interested parties to comment on the preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500 ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Separate Rates

Two of the three respondents in this case, Guangdong Chemicals Import and Export Corporation (Guangdong) and Tianjin Chemicals Import and Export Corporation (Tianjin), have requested separate, company-specific antidumping duty rates. In the *Preliminary Results*, we found that Guangdong and Tianjin had met the criteria for the application of separate antidumping duty rates. *See Preliminary Results*, 67 FR 50871. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to these companies. We therefore determine that Guangdong and Tianjin should be assigned individual dumping margins in this administrative review.

With respect to the third respondent, Sinochem International Chemicals Corp. (Sinochem International), which did not respond to the Department's questionnaire, we determine that this company does not merit a separate rate. The Department assigns a single rate to companies in a non-market economy (NME), unless an exporter demonstrates an absence of government control. We determine that Sinochem International is subject to the country-wide rate for this review because it failed to demonstrate an absence of government control.

Use of Facts Available

As explained in the preliminary results, the use of facts available is warranted in this case because Sinochem International, which is part of the PRC entity (*see* the "Separate Rates" section above), has failed to respond to the original questionnaire and has refused to participate in this administrative review. Therefore, in accordance with sections 776(a)(2)(A) and (C) of the Act, we find that the use of facts available is appropriate for Sinochem International. Furthermore, in the preliminary results we determined that Sinochem International did not cooperate to the best of its ability with our request for necessary information. Therefore, in accordance with section 776(b) of the Act, we applied adverse inferences in selecting from among the facts available. As adverse facts available in this proceeding, in accordance with the Department's practice, we preliminarily assigned Sinochem International and all other exporters subject to the PRC-wide rate the petition rate of 243.40 percent, which is the PRC-wide rate established in the less than fair value (LTFV) investigation, and the highest dumping margin determined in any segment of this proceeding. *See Antidumping Duty Order: Sebacic Acid From the People's Republic of China (PRC)*, 59 FR 35909 (July 14, 1994). As explained in the preliminary results, we determined that this margin was corroborated in accordance with section 776(c) of the

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Act in the LTFV investigation. *See Preliminary Results*, 67 FR 50871–72. There is no evidence on the record which warrants revisiting this issue in these final results, and no interested party submitted comments on our use of adverse facts available. Accordingly, we continue to use the petition rate from the LTFV investigation of 243.40 percent as adverse facts available.

Determination To Revoke Order, in Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, inter alia, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

As noted in the *Preliminary Results*, Tianjin submitted the proper certifications pursuant to 19 CFR 351.222(e)(1), and requested revocation of the antidumping duty order, in part, based on an absence of dumping for at least three consecutive years. Because Tianjin was found to have made sales below NV in the preliminary results of this administrative review, we preliminarily determined that Tianjin did not qualify for revocation. As a result of changes made since the preliminary results of this review, however, we now find that Tianjin meets the first criterion of 19 CFR 351.222(b)(2)(i).[1] Moreover, after consideration of Tianjin's certifications and its comments submitted in response to the *Preliminary Results*, we determine that Tianjin is not likely to sell the subject merchandise in the United States below NV in the future. Furthermore, at verification, we examined the quantity and value of sales for all three years that form the basis for the request, and we confirmed that Tianjin's aggregate sales to the United States have been made in commercial quantities during each of these years. *See* the July 10, 2002, memorandum to Louis Apple from Shawn Thompson and Patrick Connolly entitled "Verification of the Sales Responses of Tianjin Chemicals Import and Export Corporation in the Antidumping Duty Administrative Review on Sebacic Acid from the People's Republic of China" at pages 7–8. *See also* the November 7, 2002, memorandum to the file from Patrick Connolly entitled "Analysis of Commercial Quantities for Tianjin Chemicals Import and Export Corporation's Request for Revocation." As stated above, Tianjin has agreed in writing to the immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that Tianjin, subsequent to the revocation, sold the subject merchandise at less than NV. Finally, based on our review of the record, there is no basis to find continued application of the antidumping order necessary to offset dumping. Therefore, we find that Tianjin and its supplier, Hengshui Dongfeng Chemical Co., Ltd. (Hengshui), qualify for revocation of the antidumping duty order on sebacic acid under 19 CFR 351.222(b)(2)(i) and (3).[2] Accordingly, we are revoking the order with respect to subject merchandise produced by Hengshui and exported by Tianjin.

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced by Hengshui and are exported by Tianjin, and are entered, or withdrawn from warehouse, for consumption on or after July 1, 2001. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct the Customs Service to refund with interest any cash deposits on entries made after July 1, 2001.

Analysis of Comments Received

All issues raised in the case brief by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated November 7, 2002, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn/summary/countrylist.htm* under the heading "China." The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Moreover, for these final results, we have revalued labor for both Guangdong and Tianjin based on the regression-based wage rate for 2000 in accordance with 19 CFR 351.408(c)(3). For purposes of the preliminary results, we used the 1999 data because more recent data was not yet available.

Final Results of Review

We determine that the following percentage weighted-average margin percentages exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Guangdong Chemicals Import and Export Corporation	1.34
Tianjin Chemicals Import and Export Corporation	0.47
PRC Country-Wide Rate	243.40

Because we have revoked the order with respect to Tianjin's exports of subject merchandise produced by Hengshui, we will order the Customs Service to terminate the suspension of liquidation for exports of such merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, and to refund all cash deposits collected.

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer-specific duty assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on the export prices. We will direct the Customs Service to assess the resulting assessment rates uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.* less than 0.50 percent). The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and, therefore, *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters will be 243.40 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for a non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Universe of Sales.
2. Valuation of Activated Carbon.
3. Partial Revocation.

[FR Doc. 02–29344 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DS–P

[1] We note that the Department did not conduct an administrative review of the antidumping duty order on sebacic acid for the 1999–2000 review period. However, pursuant to 19 CFR 351.222(d), we are not required to conduct a review of the intervening year so long as we conduct a review in the first and third years of the three year consecutive time period.

[2] On October 18, 2002, Tianjin certified that Hengshui was its only supplier during all three years that form the basis for the revocation request.

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–810

Stainless Steel Bar from India: Final Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of New Shipper Antidumping Duty Administrative Review.

SUMMARY: On August 19, 2002, the Department of Commerce published the preliminary results of the new shipper administrative review of the antidumping duty order on stainless steel bar from India. We gave interested parties an opportunity to comment on the preliminary results. Based on an examination of our calculations, we have made a change for the final results. We find that the reviewed company made sales of stainless steel bar from India in the United States below normal value during the period of review, February 1 through July 31, 2001.

DATES: *Effective Date:* November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Cole Kyle, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1503.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended effective January 1, 1995, ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (April 2001).

Background

The manufacturer/exporter that requested this new shipper antidumping duty administrative review is Uday Engineering Works ("Uday"). The period of review ("POR") is February 1 through July 31, 2001. Since the publication of the preliminary results of this review (*see Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 67 FR 53775 (August 19, 2002)), the following events have occurred:

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On September 10, 2002, we issued a supplemental questionnaire to Uday. Uday filed its response on September 23, 2002. Uday filed a case brief on October 2, 2002. Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steel Corp., Empire Specialty Steel, and the United Steelworkers of America (collectively, "the petitioners") filed a rebuttal brief on October 16, 2002. On October 28, 2002, Uday submitted additional written argument. As this submission did not meet the definition of case or rebuttal briefs outlined in the Department's regulations, the Department did not consider this submission in making its decision (*see* 19 CFR 351.309).

Scope of Review

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which, if less than 4.75 mm in thickness, have a width measuring at least 10 times the thickness, or, if 4.75 mm or more in thickness, have a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this new shipper administrative review are addressed in the "Issues and Decision Memorandum" from Susan Kuhbach, Acting Deputy Assistant Secretary, Import Administration, to Richard Moreland, Acting Assistant Secretary for Import Administration, dated November 12, 2002, ("*Decision Memorandum*"), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in Import Administration's Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Normal Value Comparisons

To determine whether sales of stainless steel bar from India to the United States were made at less than normal value, we compared export price to normal value. Our calculations followed the methodologies described in the preliminary results, except that we corrected a clerical error in the recalculation of Uday's imputed credit expense reported on its U.S. sale (*see Uday Engineering Works Final Results Calculation Memorandum* dated November 12; 2002.

Final Results of Review

We determine that the following percentage margin exists for the period February 1 through July 31, 2001:

Producer/Manufacturer/ Exporter	Weighted-Average Margin
Uday Engineering Works	19.80%

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

Pursuant to its published announcement, the Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review (*see* "Announcement Concerning Issuance of Liquidation Instructions Reflecting Results of Administrative Reviews" (August 9, 2002) (*http://ia.ita.doc.gov/download/liquidation-announcement.html*).

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this new shipper antidumping duty administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate indicated above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the "all others" rate established in the less-than-fair-value investigation (*see Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994)).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: November 12, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix 1

Issues in Decision Memorandum

Comment 1. Calculation of U.S. Imputed Credit Expenses
Comment 2. Variable Cost of Manufacturing
Comment 3. Duty Drawback

[FR Doc. 02–29347 Filed 11–18–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102F]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application to modify an existing scientific research/enhancement permit (1112) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit modification from the Southwest Fisheries Science Center (SWFSC) in Santa Cruz, CA (1112). The modified permit would affect five Evolutionarily Significant Units (ESUs) of salmonids identified in Supplementary Information below. This document serves to notify the public of the availability of the permit modification application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on December 19, 2002.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment: Daniel Logan, Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 6528 (ph: 707 575 6053, fax: 707 578 3435). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Daniel Logan at phone number 707–575–6053, or e-mail: *dan.logan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222 226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following five threatened salmonid ESUs: threatened California Coastal Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central California Coast coho salmon (*O. kisutch*), threatened Central California Coast steelhead (*O. mykiss*), threatened Northern California steelhead, and threatened South-central California Coast steelhead.

Modification Request Received

SWFSC requests a modification to permit 1112 for takes of adult and juvenile ESA-listed Chinook salmon, coho salmon, and steelhead associated with studies monitoring the ecology of salmonids in streams, estuaries, and the coastal ocean of California. Presently, permit 1112 authorizes take of juvenile, endangered, Sacramento River winter-run Chinook salmon. This requested modification would add intentional takes of threatened California Coastal Chinook salmon, threatened Central California Coast coho salmon, threatened Central California Coast steelhead, threatened Northern California Coast steelhead, and threatened South-central California Coast steelhead to SWFSC's permit.

Dated: November 12, 2002.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29358 Filed 11–18–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111202F]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session, which is open to the public.

DATES: The HMSPDT will meet Tuesday, December 3, 2002 from 9 a.m. until 5 p.m.; and Wednesday, December 4, 2002 from 9 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Hubbs-Sea World Research Institute, East Room, 2595 Ingraham Street, San Diego, CA 92109, telephone: (619) 226–3870.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

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FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council, (503) 820-2280.

SUPPLEMENTARY INFORMATION: On October 29, 2002, the Council adopted the fishery management plan (FMP) for West Coast highly migratory species (HMS). The primary purpose of this HMSPDT work session is to incorporate Council guidance, perform editorial work, and prepare the FMP for submission to the U.S. Secretary of Commerce.

Although nonemergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during this meeting. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: November 13, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29359 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

United States Climate Change Science Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of open workshop.

SUMMARY: The U.S. Global Change Research Act of 1990 initiated the U.S. Global Change Research Program (USGCRP) that continues today as a major sponsor of global change research. In June 2001 President George W. Bush directed the USGCRP agencies to develop a focused Climate Change Research Initiative (CCRI) with the goal of accelerating the USGCRP research activities in the next 2 to 5 years to assist in the development of public policy and natural resource management tools related to climate change issues. The U.S. Climate Change Science Program (CCSP), incorporating the USGCRP and the CCRI, will hold a comprehensive workshop to receive participants' individual comments on a discussion draft version of its Strategic Plan for climate change and global change studies. When finalized, the draft strategic Plan reviewed during and after the Workshop will provide the principal guidance for the U.S. global change and climate change research programs during the next several years, subject to revisions as appropriate to respond to newly developed information and decision support tools.

TIME AND DATE: The workshop will be held Tuesday, December 3, 2002, from 9:30 a.m.–5:30 p.m., Wednesday, December 4, 2002, from 8:30 am–5:30 p.m., and Thursday, December 5, 2002, from 8:30 a.m.–4 p.m. *These times may be subject to change. Refer to the Web site listed below for a final meeting agenda.*

PLACE: The workshop will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., in Washington, DC.

STATUS: The meeting will be open to registered participants. The public may register at the Web site below or by sending a fax to 303–497–8633 with the following information: (1) Prefix: (Dr., Mr., Ms., other); (2) first name/given name; (3) middle initial; (4) last name/surname; (5) name as you want it printed on your name badge; (6) organization/institution; (7) department, division or program; (8) street address; (9) city; (10) state/province (if applicable); (11) ZIP or postal code; (12) country; (13) telephone number; (14) fax number; and (15) email address. *Limited registration may be available at the Workshop, but cannot be guaranteed due to space consideration.* The Workshop will include daily plenary sessions and several breakout sessions. Each breakout session will include invited reviewer comments as well as the opportunity for general attendee comments. All comments must be submitted by individual participants. Group consensus comments will not be accepted. The discussion draft of the Strategic Plan and directions for submitting comments has been posted on the Web site below. Comments, questions and suggestions are welcomed from both scientific and stakeholder communities during and after the Workshop. Comments on the Strategic Plan can be submitted up to January 13, 2003.

MATTERS TO BE CONSIDERED: To assure the continued scientific credibility of the CCSP, the Workshop will provide a comprehensive review of the discussion draft of the Strategic Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy MacCracken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave, NW., Washington, DC 20006. (Phone: 202–223–6262, Fax: 202–223–3065, e-mail: *smaccrac@usgcrp.gov*); or visit the CCSP Web site at *http://www.climatescience.gov.*

James R. Mahoney,

Assistant Secretary for Oceans and Atmosphere and Director, U.S. Climate Change Science Program.

[FR Doc. 02–29317 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–KB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103102C]

Marine Mammals; File Nos. 358–1564, 782–1532, 1016–1651, 800–1664, 434–1669, 1010–1641, and 881–1668

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that the following individuals/organizations have been issued a permit or permit amendment to take Steller sea lions (Eumetopias jubatus) for the purposes of scientific research: Dr. Glenn VanBlaricom, Washington Cooperative Fish and Wildlife Research Unit, School of Aquatic and Fishery Sciences, University of Washington, Seattle, WA 98195; Dr. Randall Davis, Department of Marine Biology, Texas A M University, Galveston, TX 77551; the Oregon Department of Fish and Wildlife (ODFW), Corvallis, Oregon 97330 (PI: Robin Brown); the Alaska SeaLife Center (ASLC), Seward, Alaska 99664 (PI: Don Calkins); the National Marine Mammal Laboratory (NMML), National Marine Fisheries Service, NOAA, Seattle, WA 98115–0070 (PI: Dr. Thomas Loughlin); the Alaska Department of Fish and Game (ADFG), Juneau, Alaska 99802–5526 (PI: Dr. Thomas Gelatt).

ADDRESSES: The permits, permit amendments, and related documents, are available for review upon written request, by downloading from the internet, or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301)713–2289, or the Division's Web Page at *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_review.html.*

For permit 782–1532 (NMML) and Files No. 1016–1651 (Univ. of Washington) and 434–1669 (ODFW): Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700,(206)526–6150; and

For permits 782–1532 (NMML), 358–1564–02 (ADFG) and Files No. 1016–1651 (Univ. of Washington), 800–1664 (Davis), and 881–1668 (ASLC): Alaska Region, NMFS, PO Box 21668, Juneau, AK 99802–1668,(907)586–7221.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 27, 2002 , notice was published in the **Federal Register** (67 FR 43283) that requests for scientific research permits and permit amendments to take Steller sea lions had been submitted by the above-named individuals/organizations. The requested permits and permit amendments have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 358–1564–02, which expires on June 30, 2005, authorized the permit holder to take Steller sea lions of all ages and both sexes in Alaska and British Columbia by aerial/boat surveys, capturing, handling, flipper tagging, blood/biopsy sampling, hot-branding, collection of blood and tissue samples, attachment of scientific instruments, recaptures, and accidental mortality. The amended permit authorizes takes of additional sea lions by increased frequency of aerial surveys, and additional takes of individual sea lions by additional recaptures, increased blood and tissue sampling, tagging, administering Evans blue dye, and additional accidental mortality.

Permit No. 782–1532, which expires on December 31, 2004, authorizes the permit holder to take Steller sea lions of all ages and both sexes in Alaska, by aerial/boat surveys, capturing, handling, flipper tagging, blood/biopsy sampling, attachment of scientific instruments, and hot-branding. The amended permit increase the frequency of takes by aerial surveys; includes Southeast Alaska in monthly surveys; increases the number of animals to be incidentally harassed during scat collection; and allows additional procedures for animals already authorized for capture, including using gas anesthesia, branding of any animal captured, injecting Evan's blue dye and deuterated water, collecting additional blood and tissue samples, using bioelectric impedance analysis, and an increase in the number of accidental mortalities.

Permit No. 800–1664 authorizes takes of threatened and endangered juvenile and adult female Steller sea lions in Alaska by capture, anesthesia, hot-branding, tissue sampling (including blood, skin, and blubber), attachment of scientific instruments (video system/data logger and satellite transmitters), and accidental mortality.

Permit No. 1016–1641 authorizes takes of threatened and endangered Steller sea lions in the Aleutian Islands, Gulf of Alaska, and southeast Alaska by remote biopsy darting, incidental harassment, and accidental mortality, to collect blubber samples for analysis to assess prey selection. Some samples will be exported to Canada for analysis. Northern fur seals (Callorhinus ursinus) and harbor seals (Phoca vitulina richardsi) may be incidentally harassed during biopsy sampling.

Permit No. 434–1669 authorizes takes of threatened Steller sea lions in California, Washington, and Oregon by capture, hot-branding, flipper tagging, collection of blood and tissue samples from, attachment external scientific instruments to, harassment incidental to these activities and remote monitoring, and accidental mortality.

Permit No. 881–1668, issued to the Alaska SeaLife Center, authorizes takes of threatened and endangered Steller sea lions in Alaska by capture, hot-branding, flipper tagging, collection of blood and tissue samples from, attachment of external scientific instruments, accidental mortality, and harassment incidental to these activities and remote monitoring.

Permit No. 1010–1641 authorizes takes of Steller sea lions of all ages by harassment during aerial surveys and vessel-based behavioral observations in the western Gulf of Alaska, and scat collection at rookeries and haulouts along the Alaska Peninsula and Eastern Aleutian Islands.

Issuance of these permits and permit amendments, as required by the ESA, was based on a finding that the permits (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of these permits, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 12, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29357 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102I]

Marine Mammals; File No. 821–1588

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Texas A&M University, Department of Marine Biology, PO Box 1675, Galveston, Texas 77551 (Principal Investigator: Dr. Randall W. Davis) has requested an amendment to scientific research Permit No. 821–1588–01.

DATES: Written or telefaxed comments must be received on or before December 19, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those

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individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Carrie Hubard (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 821–1588–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 821–1588–01 authorizes the permit holder to conduct research under three projects: (1) capture, tag, sample, release Weddell seals (*Leptonychotes weddelli*) on McMurdo Sound, Antarctica; (2) approach, tag, biopsy, photograph sperm whales (*Physeter macrocephalus*) in the Gulf of Mexico, and conduct research activities on Odontocetes that may result in Level B harassment; and (3) import/export marine mammal specimens obtained from dead animals. The permit holder requests authorization to take up to two times each, 30 adult female northern elephant seals (*Mirounga angustirostris*) and 10 subadult seals of either sex during each of three years by capture, restraint, sedation, attachment of instruments, placement of catheters into blood vessels, placement of subcutaneous temperature and intravenous oxygen sensors, and taking muscle biopsies. Adult females may be pregnant, although no late-term pregnant seals will be sampled. Level B harassment may occur on an additional 40 seals per year during observations to check flipper tags for identification. Up to two accidental mortalities per year are requested for this amendment. Research will occur at Ano Nuevo Point, California. The purpose of this research is to investigate the behavioral and energetic adaptations that enable elephant seals to forage at depth in the northern Pacific Ocean.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 14, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29361 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

November 12, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 300/301 and 604 are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63030, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 19, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Other specific limits	
300/301	5,343,847 kilograms.
604	1,631,178 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–29293 Filed 11–18–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On September 11, 2002, the Department of Education published a 60-day public comment period notice in the **Federal Register** (Page 57584, Column 1) for the information collection, "Direct Loan Income Contingent Repayment Plan Alternative Document of Income". The correct title for this collection is "Income Contingent Repayment Plan—Consent to Disclosure of Tax Information". The Leader, Regulatory Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Lew Oleinick at his e-mail address *Lew.Oleinick@ed.gov*.

Dated: November 13, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–29223 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2157. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–29224 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Performance Information on Students Served by McKinney-Vento Homeless Education Subgrants.
Frequency: One time.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 51.
Burden Hours: 612.
Abstract: State Education Agencies will submit information for a single State application to the Department to be able to receive formula grant funds under Title X Part C of the No Child Left Behind Act of 2001. The purpose of the Education for Homeless Children and Youth Program is to improve the educational outcomes for children and youth in homeless situations. The statues for this program are designed to ensure all homeless children and youth have equal access to public school education and for States and LEAs to review and revise policies and regulations to remove barriers to enrolling, attendance and academic achievement.

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Dated: November 13, 2002.

John Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Local-Flex Application.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 240.

Burden Hours: 19,200.

Abstract: Application for local educational agencies (LEAs) seeking to enter into local flexibility demonstration agreements ("Local-Flex" agreements). By statute, the Department can select 80 LEAs through a competitive process with which to enter into Local-Flex agreements. These agreements give LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the Elementary and Secondary Education Act (ESEA) in order to meet the State's definition of adequate yearly progress (AYP) and specific measurable goals for improving student achievement and narrowing achievement gaps.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2059. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–29298 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 13, 2002.

John Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of English Language Acquisitions

Type of Review: New.

Title: School Improvement: Foreign Language Assistance Program for State Educational Agencies.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 4,000.

Abstract: This application is used by State educational agencies to apply for discretionary grants authorized under the Foreign Language Assistance Program for State Educational Agencies.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2188. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–29299 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 13, 2002.

John Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of English Language Acquisitions

Type of Review: New.

Title: School Improvement: Foreign Language Assistance Program for Local Educational Agencies.

Frequency: Annually.

Affected Public:

State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 150.

Burden Hours: 12,000.

Abstract: This application is used by local educational agencies to apply for discretionary grants authorized under the Foreign Language Assistance Program for Local Educational Agencies.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2188. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–29300 Filed 11–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, December 5, 2002; 6 p.m. to 9:30 p.m.

ADDRESSES: Double Tree Hotel, 8773 Yates Drive, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Update on Rocky Flats site closure progress
2. Review and finalize draft end-state recommendation language
3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday-Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML*.

Issued at Washington, DC, on November 13, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–29306 Filed 11–18–02; 8:45 am]

BILLING CODE 6450–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–17–001]

Gulf States Pipelines Corporation; Notice Shortening Comment Period

November 13, 2002.

On October 29, 2002, Gulf States Pipeline Corporation (Gulf States) filed an Offer of Settlement in the above-docketed proceeding. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Offer of Settlement. Gulf States states that there are no intervenors in this docket and the Commission Staff supports the Settlement. Consequently, we are shortening the date for filing initial comments to and including November 18, 2002. Reply comments should be filed on or before November 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29279 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–11–000]

Jupiter Energy Corporation; Notice of Application

November 13, 2002.

On November 4, 2002, Jupiter Energy Corporation (Jupiter), 14141 Southwest Freeway, Sugar Land, Texas 77478, a wholly owned subsidiary of Union Oil Company of California (Unocal), filed an application in Docket No. CP03–11–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon all of Jupiter's certificated services, to rescind its certificates, and to declare Jupiter to be exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–8659.

Jupiter states that it performs primarily a non-jurisdictional gathering function, and that it provides this service to only a single customer, Unocal, its parent corporation. Based upon the proposed abandonment and the rescinding of certificates, Jupiter states that it also requests the Commission to determine that Jupiter will no longer be a "natural gas company" subject to the Commission's jurisdiction under the NGA.

Jupiter states that it was the first offshore, natural gas pipeline facility constructed in the Gulf of Mexico. The facility was constructed around 1950 and was located approximately 10 miles offshore in about 40 feet of water in what is now designated as Vermillion Block No. 39 and it served the offshore production of Unocal's predecessor, The Pure Oil Company (Pure).

According to Jupiter, as originally configured, the Jupiter System consisted of two parallel pipelines: one approximately 8.5-mile pipeline with a diameter of 8 5/8 inches (the 8-inch Line) and one approximately 10.2-mile pipeline with a 10 3/4-inch diameter (the 10-inch Line). The 8-inch Line is connected to a platform in Vermillion Block No. 39 that was originally owned by Pure and now by Unocal (Platform 39A). The 10-inch Line was originally connected to both that platform and another nearby platform owned by Phillips Petroleum/Kerr McGee, which has been abandoned for at least a decade. The two Jupiter Lines connected at the shoreline with two parallel pipelines owned by Tennessee Gas Transmission Company (Tennessee).

Jupiter states that in February 2000, shortly after being acquired by Unocal, Jupiter constructed a sub sea interconnect at an existing intersection of Jupiter's 8-inch Line and a 24-inch lateral line of Transcontinental Gas Pipe Line Corporation (Transco) in Vermillion Block No. 22. The Transco interconnection is located approximately 3.2 miles downstream from Platform 39A. Jupiter constructed the interconnect and then abandoned in-place the remainder of its 8-inch Line downstream of the Transco interconnect pursuant to blanket authority granted in Docket No. CP99–536. Tennessee subsequently abandoned its shoreline interconnect with Jupiter's 8-inch Line.

According to Jupiter, the Jupiter pipelines transport unprocessed gas from Platform 39A to the nearest interstate pipelines: either approximately 3 miles on the 8-inch Line to the sub sea interconnect with Transco or approximately 10 miles on the 10-inch Line to the shoreline interconnect with Tennessee. The pipelines operate at pressures ranging from 750 to 950 psig. The gas transported to Tennessee's system on the Jupiter 10-inch Line reaches, after approximately 22 miles of transportation on Tennessee, a separation and dehydration facility that is owned by Jupiter (Jupiter Plant), which straddles the Tennessee line and separates out gas condensate. At the outlet of the Jupiter Plant, the gas is metered and continues on the Tennessee system.

Jupiter states that Unocal owns a series of gathering facilities attached to the wells located in Vermillion Block Nos. 23, 38 and 39 that feed into Platform 39A and then into Jupiter. Those gathering facilities consist of platforms and lease pipelines ranging in diameter from 4.5-inches to 8 and 5/8ths-inches. Jupiter states that it essentially functions as part of this Unocal gathering system and that Unocal expects to integrate the Jupiter gathering facilities into its own gathering operations following Commission approval of this application.

Jupiter also states that Unocal has been the only shipper on Jupiter since at least 1992. Unocal owns all of the gas transported on Jupiter and currently produces over 97.5% of that gas, purchasing the remaining small amounts prior to transportation on Jupiter. Unocal acquired Jupiter in 1997 and, since then, has actively sought other potential shippers for Jupiter without success and it is most unlikely that any other potential shipper will seek access to the Jupiter system.

Any questions regarding this application may be directed to Carol Westmoreland, Union Oil Company of California, Law Department, 14141 Southwest Freeway, Sugar Land, Texas 77478 at (281) 287–7492 or J. Patrick Nevins, Hogan & Hartson, L.L.P., 555 Thirteenth Street, NW., Washington, DC 20004 at (202) 637–6441.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 4, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and instructions on Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29276 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–4–003]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

November 13, 2002.

Take notice that on November 7, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub 1st First Revised Sheet No. 265, to become effective on November 1, 2001.

Maritimes proposes to comply with the Commission's November 4, 2002 order, in Docket No. RP02–4–002, by restoring the existing language to the last sentence of Section 11.6(c) of the General Terms and Conditions of its FERC Gas Tariff.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29280 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–111–000]

Midwest Independent System Operator, PJM Interconnection, L.L.C., et al.; Notice of Initiation of Proceeding and Refund Effective Date

September 4, 2002.

Take notice that on July 31, 2002, the Commission issued an order in the above-indicated docket initiating a proceeding in Docket No. EL02–111–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL02–111–000 will be 60 days after publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29247 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–65–000]

MIGC, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 13, 2002.

Take notice that on November 7, 2002, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, the following tariff sheets, to become effective January 1, 2003:

First Revised Sheet No. 17
First Revised Sheet No. 32
Third Revised Sheet No. 48
Original Sheet No. 90F

MIGC asserts that the purpose of this filing is to clarify, consistent with Commission policy, the specific types of transportation discounts that may be granted by MIGC in a manner consistent with FERC-approved discounts on other pipelines. The revised tariff sheets modify the General Terms and Conditions (GTC) of MIGC's Tariff which are applicable to the various throughput Rate Schedules and add a reference to the provisions in the rate schedules. By including this additional language in the GTC, MIGC seeks to avoid the need for filing individual discount agreements on the grounds that they contain "material deviations" from the *pro forma* service agreements, consistent with the Commission's rulings in Natural Gas Pipeline Company of America, 84 FERC ¶ 61,099 (1998), Columbia Gas Transmission Corp., 92 FERC ¶ 61,080 (2000) and subsequent orders. The identification of the types of discounts to which MIGC and an individual shipper may agree will clarify MIGC's flexibility to provide the services required to meet competitive market conditions.

In addition to its ability to agree to a basic discount from the stated maximum rates, MIGC proposes to create a new Section 26 in the General Terms and Conditions of its Tariff entitled "Types of Discounting" which reflects the various kinds of discounts MIGC may give to meet competitive circumstances. For example, MIGC may provide a specified discounted rate: to

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certain specified quantities under the Service Agreement; if specified quantity levels are actually achieved or with respect to quantities below a specified level; to production reserves committed by the Shipper; during specified time periods; to specified points of receipt, points of delivery, supply areas, transportation paths or defined geographical areas; in a specified relationship to the quantities actually transported (*i.e.*, that the rates shall be adjusted in a specified relationship to quantities actually transported); or to provide a specified discount rate to provide for upward or downward adjustments to rate components to achieve an agreed-upon overall rate so long as all rate components remain within their respective minimum and maximum amounts, may be made only prospectively, and may not affect the determination of refunds that may be due under applicable law for the time prior to the adjustment of such components.

In all circumstances the discounted rate shall be between the maximum rate and minimum rate applicable to the service provided.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29281 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–67–000]

North Baja Pipeline, LLC; Notice of Tariff Filing

November 13, 2002.

Take notice that on November 8, 2002, North Baja Pipeline, LLC (NBP), tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 124, with an effective date of December 8, 2002.

NBP states that the filing is being made to remove the five-year term matching cap provided for in the right of first refusal section of its Tariff. NBP indicates that this modification is consistent with the FERC's October 31, 2002 Order on Remand in Docket No. RM98–10–011.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29282 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–68–000]

PG&E Gas Transmission Northwest Corporation; Notice of Tariff Filing

November 13, 2002.

Take notice that on November 8, 2002, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the tariff sheets attached to Appendix A to the filing, with an effective date of December 8, 2002.

GTN states that the filing is being filed to remove the five-year term matching cap provided for in the right of first refusal section of its Tariff. GTN also states, that this modification is consistent with the FERC's October 31, 2002 Order on Remand in Docket No. RM98–10–011.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29283 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–13–000]

South Carolina Electric & Gas Company; Notice of Application

November 13, 2002.

Take notice that on November 4, 2002, South Carolina Electric & Gas Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue promissory notes and other evidences of unsecured short-term indebtedness through December 31, 2003, in an amount not to exceed $350 million at any one time.

Any person desiring to be hear or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. *Comment Date:* December 4, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29277 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88–67–078]

Texas Eastern Transmission, LP

November 13, 2002.

Take notice that on October 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2002.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect an decrease in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the decrease in the 100% load factor average cost of long-haul service under Rate Schedule FT–1 from Access Area Zone ELA to Market Zone 3 is $0.0001 per dekatherm.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.* (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29284 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–011]

Texas Gas Transmission Corporation; Notice of Negotiated Rate

November 13, 2002.

Take notice that on November 7, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 2002:

Seventh Revised Sheet No. 40

Texas Gas states that the purpose of this filing is to reflect a negotiated rate agreement with Tennessee Valley Authority.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the service list, Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

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Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29278 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–054]

TransColorado Gas Transmission Company; Notice of Compliance Filing

November 13, 2002.

Take notice that on November 7, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifty-Third Revised Sheet No. 21 and Twenty-Sixth Revised Sheet No. 22A to be effective November 7, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

The tendered tariff sheets propose to revise TransColorado's Tariff to reflect a new negotiated-rate contract with United Energy Trading, LLC.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29285 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–11–000, et al.]

Harold E. Dittmer, et al.; Electric Rate and Corporate Filings

November 8, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Harold E. Dittmer, Hanover Power, LLC

[Docket No. EC03–11–000]

Take notice that on November 5, 2002, Harold E. Dittmer (Mr. Dittmer), and Hanover Power, LLC (HP) (collectively, the Applicants), filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities whereby Applicants request approval of the transfer of 49% of the upstream membership interests in Wellhead Power Panoche, LLC to HP.

Comment Date: November 26, 2002.

2. Fresno Power Investors, L.P., Harold E. Dittmer, Hanover Power (Gates), LLC

[Docket No. EC03–12–000]

Take notice that on November 5, 2002, Fresno Power Investors, L.P. (FPILP), Harold E. Dittmer (Mr. Dittmer), and Hanover Power (Gates), LLC (HPG) (collectively, the Applicants), filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities whereby Applicants request approval of the transfer of 92.5% of the upstream membership interests in Wellhead Power Gates, LLC to HPG.

Comment Date: November 26, 2002.

3. Harbor Cogeneration Company

[Docket No. EC03–13–000]

Take notice that on November 5, 2002, Harbor Cogeneration Company (Harbor Cogeneration), ABB Equity Ventures Inc. (ABB Equity), and Black Hills Energy Capital, Inc. (BH Energy Capital) filed an application with the Federal Energy Regulatory Commission requesting authorization from the Commission for ABB Equity to transfer to BH Energy Capital its limited partnership interests in two investment funds that indirectly own interests in Harbor Cogeneration.

Comment Date: November 29, 2002.

4. High Winds, LLC

[Docket No. EG03–12–000]

Take notice that on November 4, 2002, High Winds, LLC (the Applicant), filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an up to 166 MW wind-powered generation facility located in Solano County, California. Electric energy produced by the facility will be sold at wholesale.

Comment Date: November 25, 2002.

5. Mirant Las Vegas, LLC

[Docket No. EG03–13–000]

Take notice that on November 4, 2002, Mirant Las Vegas, LLC (Mirant Las Vegas) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Mirant Las Vegas proposes to own a 575 MW net generating capability facility located near the city of Las Vegas, Nevada (Facility). The proposed Facility is expected to commence commercial operation in March, 2003. All output from the Facility will be sold by Mirant Las Vegas exclusively at wholesale.

Comment Date: November 25, 2002.

6. Choctaw Generation Limited Partnership

[Docket No.EL03–24–000]

Take notice that on November 4, 2002, Choctaw Generation Limited Partnership filed with the Federal Energy Regulatory Commission a petition for declaratory order requesting that the Commission disclaim jurisdiction under the FPA with respect to the passive owner/lessor(s) that will assume ownership of its facility in connection with a sale-leaseback financing.

Comment Date: November 18, 2002.

7. Westar Generating, Inc.

[Docket No. ER01–1305–005]

Take notice that on November 4, 2002, Westar Generating, Inc. (WGI) submitted for filing a refund report in compliance with the Commission's Order issued September 5, 2002 in the above-referenced docket.

WGI states that a copy of the filing has been served on Westar Energy, Inc. and the Kansas Corporation Commission.

Comment Date: November 25, 2002.

8. Entergy Services, Inc.

[Docket No. ER01–1951–004]

Take notice that on November 4, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a supplement to its compliance refund report filed on September 23, 2002, in accordance with the Commission's Order.

The supplemental refund report details the refunds for Conway Corporation, West Memphis Utilities, Farmers Electric Cooperative Corporation, Brazos Electric Power Cooperative, and the City of Prescott.

Comment Date: November 25, 2002.

9. BOC Energy Services, Inc.

[Docket No. ER03–44–002]

Take notice that, on November 5, 2002, BOC Energy Services, Inc. (BOC) filed corrected designations to supplement BOC's Petition For Acceptance of Initial Rate Schedule, Waiver, and Blanket Authority, filed with the Federal Energy Regulatory Commission on October 15, 2002.

BOC submits these corrected designations to: (1) Modify the format of BOC's FERC Electric Rate Schedule; and (2) supplement BOC's Rate Schedule to list the specific ancillary services BOC plans to provide and the areas in which BOC intends to provide these services.

Comment Date: November 26, 2002.

10. Xcel Energy Services, Inc., Public Service Company of Colorado

[Docket No. ER03–154–000]

Take notice that on November 4, 2002, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSCo) submitted for filing with the Federal Energy Regulatory Commission (Commission) the Generation Interconnection Agreement between PSCo and Thermo Cogeneration Partnership, L.P.

PSCo requests the letter agreements be accepted for filing effective October 1, 2001, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: November 25, 2002.

11. High Winds, LLC

[Docket No. ER03–155–000]

Take notice that on November 4, 2002 High Winds, LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: November 25, 2002.

12. PECO Energy Company

[Docket No. ER03–156–000]

Take notice that on November 5, 2002 PECO Energy Company (PECO) submitted for filing revised pages of an Interconnection Agreement dated January 12, 2001 by and between PECO and the Joint Owners of the Peach Bottom Atomic Power Station. Copies of this filing were served on the Joint Owners and PJM Interconnection, L.L.C.

Comment Date: November 26, 2002.

13. Florida Power & Light Company

[Docket No.ER03–157–000]

Take notice that on November 5, 2002, Florida Power & Light Company (FPL) tendered for filing Amendment Number Six to the Network Service Agreement between FPL and the Florida Municipal Power Agency (NSA), and related agreements. Amendment Number Six adds the City of Lake Worth, Florida as a Network Member under the NSA. FPL also proposes to terminate the Non-Firm Transmission Service Agreement Between Florida Power & Light Company and the City of Lake Worth; the Short Term Firm Transmission Service Agreement Between Florida Power & Light Company and the City of Lake Worth; and the Rate Schedule designated for the Territorial Agreement and Contract for Interchange Service Between Florida Power & Light Company and Lake Worth Utilities Authority City of Lake Worth, Florida. FPL proposes an effective date for the agreements and terminations of October 1, 2002.

Comment Date: November 26, 2002.

14. Entergy Services, Inc.

[Docket No. ER03–158–000]

Take notice that on November 5, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc. (Entergy Louisiana), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Louisiana and Duke Energy Ruston, LLC.

Comment Date: November 26, 2002.

15. Virginia Electric and Power Company

[Docket No. ER03–159–000]

Take notice that Virginia Electric and Power Company (Dominion Virginia Power), on November 5, 2002, tendered for filing a revised service agreement providing for sales of capacity and energy to its affiliate, Dominion Retail, Inc., pursuant to Dominion Virginia Power's cost-based power sales tariff, FERC Electric Tariff No. 7. Dominion Virginia Power is making the revision to include, as part of the service agreement, the Master Power Purchase and Sale Agreement between the Company and Dominion Retail, which contains language that the Virginia State Corporation Commission (SCC) has ordered Dominion Virginia Power to include and file with the Federal Energy Regulatory Commission.

Copies of the filing were served upon the public utility's jurisdictional customers, and the Virginia State Corporation Commission *Comment Date:* November 26, 2002.

16. Mirant Las Vegas, LLC

[Docket No. ER03–160–000]

Take notice that on November 5, 2002, Mirant Las Vegas, LLC (Mirant Las Vegas) tendered for filing an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. Mirant Las Vegas requested expedited Commission consideration. Mirant Las Vegas requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or December 10, 2002. Mirant Las Vegas also filed its FERC Electric Tariff No. 1.

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Comment Date: November 26, 2002.

17. Boston Edison Company

[Docket No. ER03–161–000]

Take notice that on November 6, 2002, Boston Edison Company (Boston Edison) tendered for filing an executed Related Facilities Agreement between Boston Edison and Lake Road Generating Company, L.P. Boston Edison requests an effective date of the Agreement of January 5, 2003.

Boston Edison states that it has served a copy of the filing on Lake Road and the Massachusetts Department of Telecommunications and Energy.

Comment Date: November 26, 2002.

18. Earth Resources, Inc.

[Docket No. QF03–1–000]

Take notice that on October 7, 2002, Earth Resources, Inc. Filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying Small Power Production facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be a 5.35 MW Waste Wood-fired Small Power Production Facility (Facility) and will be located in the Town of Carnesville, Franklin County, Georgia. The Facility will be interconnected with the Hart EMC transmission system.

Comment Date: November 29, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at http://www.ferc.gov, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29409 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–15–000, et al.]

Entergy Power Generation Corporation, et al. Electric Rate and Corporate Regulation Filings

November 12, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Entergy Power Generation Corporation, *et al.*

[Docket No. EC03–15–000]

Take notice that on November 6, 2002, Entergy Power Generation Corporation (EPGC), on behalf of itself and Entergy Asset Management, Inc. (EAM), Entergy Power Crete Corporation, Entergy Power Ventures, L.P. (EPV), Entergy Power Ventures Corp II (Ventures II), Entergy Power Warren Corporation I, and Warren Power, LLC (WP) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act to engage in a corporate reorganization. Under the terms of the proposed reorganization, interests in EPV, Crete Energy Venture, LLC, and WP, currently indirectly held by EPGC, would be transferred to EAM, a subsidiary of EPGC, in exchange for EAM stock. EPV owns a 70 percent interest in an approximately 550 megawatt (MW) generating facility under construction in Harrison County, Texas. Crete Energy Venture, LLC owns an approximately 320 MW generation facility located in Crete, Illinois. WP owns an approximately 300 MW generation facility located in Vicksburg, Mississippi.

Copies of this filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the City Council of New Orleans, the Mississippi Public Service Commission, and the Texas Public Utility Commission.

Comment Date: November 27, 2002.

2. American Ref-Fuel Company of Essex County

[Docket No. EG98–75–000]

On November 7, 2002, American Ref-Fuel Company of Essex County tendered for filing information with respect to a change in facts relative to its status as an exempt wholesale generator and a demonstration that such change does not affect its status as an exempt wholesale generator pursuant to Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, and Section 365.8 of the Commission?s Regulations.

Comment Date: December 3, 2002.

3. Conectiv Pennsylvania Generation, Inc.

[Docket No. EG03–14–000]

Take notice that on November 7, 2002, Conectiv Pennsylvania Generation, Inc. (CPG) filed an Application for Determination of Exempt Wholesale Generator Status (Application) pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), all as more fully explained in the Application.

CPG either owns or has on order seven natural gas-fired combustion turbines that will be operated as components of three separate 500 MW combined cycle generating modules (the Eligible Facilities for the purposes of PUHCA and the Commission?s EWG regulations). While no specific site or sites have been selected for the location of the Eligible Facilities, it is anticipated that they will be interconnected to the transmission system operated by the PJM Interconnection, LLC via transmission voltage facilities. CPG has served this filing on the Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Board of Public Utilities, Virginia State Corporation Commission, District of Columbia Public Service Commission and the Securities and Exchange Commission (SEC).

Comment Date: December 3, 2002.

4. Minnesota Power

[Docket No. ER02–2587–001]

Take notice that on November 7, 2002, Minnesota Power tendered for filing an amendment to the Wholesale First Revised Rate Schedule, FERC No. 153 for Dahlberg Light & Power Company. The amendment includes the Commission?s Order No. 84 adder for Third-Party purchase and resale transactions and therefore are subject to FERC Order No. 84.

Comment Date: November 29, 2002.

5. Reliant Energy Mid-Atlantic Power Holdings, LLC

[Docket No. ER02–2600–000]

Take notice that on November 6, 2002 Reliant Energy Mid-Atlantic Power Holdings, LLC (REMPH) filed an amended notice of the cancellation of the FERC Electric Rate Schedule No. 1 for Sithe Warren LLC (the Warren Station). REMPH states that the cancellation results from the decommissioning of the units at the Warren Station and will be effective on September 30, 2002.

Comment Date: November 27, 2002.

6. Northwest Regional Transmission Association

[Docket No. ER03–162–000]

Take notice that on November 5, 2002, the Northwest Regional Transmission Association (NRTA) tendered for filing a Second Revised Sheet No. 53 (superseding both Original and First Revised Sheets No. 53) of the Governing Agreement of the Northwest Regional Transmission Association (NRTA). This filing revises NRTA?s filing of August 23, 2000 under Docket No. ER99–4508–001, by which NRTA submitted its entire Governing Agreement (including an index of customers) as Northwest Regional Transmission Organization First Revised Electric Rate Schedule FERC No.1 in compliance with Order No. 614, Docket No. RM99–12–000, 90 FERC 61,352, issued March 31, 2000.

NRTA is submitting the enclosed Second Revised Sheet No. 53 of its Governing Agreement because NRTA?s membership has changed. Specifically, Kootenai Electric Coop, Kaiser Aluminum & Chemical Corporation, Columbia Falls Aluminum Company and Tenaska Power Services Company have withdrawn from NRTA. Montana Power Company has become NorthWestern Energy and PECO Energy Power Team has become Exelon Corporation. Finally, the enclosed Second Revised Sheet No. 53 reflects the NRTA membership of B.C. Ministry of Energy, Oregon Department of Energy and Washington Utilities and Transportation Commission. NRTA?s index of customers is revised to reflect all of these matters.

Comment Date: November 26, 2002.

7. Duke Energy Corporation

[Docket No. ER03–163–000]

Take notice that on November 5, 2002, Duke Energy Corporation filed revisions to the Appendices to a contract between Duke Energy Corporation and the Southeastern Power Administration.

Comment Date: November 26, 2002.

8. Entergy Services, Inc.

[Docket No. ER03–164–000]

Take notice that on November 5, 2002, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Mississippi and MissChem Nitrogen, L.L.C.

Comment Date: November 26, 2002.

9. American Ref-Fuel Company of Essex County

[Docket No. ER03–170–000]

Take notice that on November 7, 2002, American Ref-Fuel Company of Essex County (ARC Essex) tendered for filing an application for blanket authorizations, certain waivers, to reassign transmission rights, to resell firm transmission rights, and authorization to sell energy, capacity and ancillary services as market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: November 29, 2002.

10. Basin Electric Cooperative, Inc.

[Docket Nos. NJ00–7–001, NJ01–6–001 and NJ01–8–001]

Take notice that on November 7, 2002, Basin Electric Power Cooperative, Inc. filed an amendment to its standards of conduct procedures in the above-captioned proceedings. Basin Electric requests that the Commission declare the open access tariff that it filed in the above-captioned proceedings is an acceptable reciprocity tariff under Order No. 888.

Copies of the filing were served upon Basin Electric's transmission customers.

Comment Date: November 29, 2002.

11. Riverside Energy Center, LLC

[Docket No. ES03–11–000]

Take notice that on October 31, 2002, Riverside Energy Center, LLC (Riverside) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term debt securities in an amount not to exceed $300 million under a credit facility.

Riverside also requests a waiver of the Commission?s competitive bidding requirement under 18 CFR 34.2.

Comment Date: November 29, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29153 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM02–16–000]

Hydroelectric Licensing Regulations under the Federal Power Act; Notice of Post-Forum Stakeholder Meeting and Drafting Sessions

November 13, 2002.

In continuing efforts to solicit comments on a new hydroelectric licensing process, Federal Energy Regulatory Commission staff will host a one-day post-forum stakeholder meeting, and a two-day post-forum stakeholder drafting session.

The one-day post-forum meeting will be held in the Commission Meeting Room on December 10, 2002, and the two-day post-forum drafting session will be held on December 11 and 12, 2002, in conference room 3M–2, A & B, both at 888 First Street, NE., Washington, DC.

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The post-forum meeting and drafting sessions will start at 9:00 a.m. An agenda for these activities may be viewed on the Commission's Web site by November 27, 2002, at: *http://www.ferc.gov/hydro/docs/hydro_rule.htm.*

The post-forum meeting and drafting sessions are not intended to address issues pending in individually docketed hydropower cases before the Commission. Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings.

The goal of the one-day post-forum meeting is for Commission staff to: (1) Summarize comments received at the public forums conducted throughout the country in October and November and; (2) discuss general issues associated with a rulemaking effort such as retention of the Traditional and/or the Alternative Licensing Processes. The goal of the two-day post-forum drafting session is to provide stakeholders with an opportunity to participate in drafting concepts and language for a new integrated licensing process. All interested persons are invited to attend these activities, however, persons wishing to participate in the two-day post-forum drafting session will need to pre-register.

Participation in the December 11 and 12, 2002, Post-Forum Drafting Session

In addition to full group discussions at the beginning and end of each of the post-forum drafting sessions, participants will be asked to take part in one of three drafting groups. These drafting groups include: (1) Early application development; (2) study plan development (including dispute resolution); and (3) post license application filing. Therefore, those persons wishing to participate in the two-day post-forum drafting session will need to pre-register by December 6, 2002, by registering on-line at *http://www.ferc.gov/registration.* Anyone without access to the web will need to pre-register by contacting Susan Tseng at 202–502–6065. In both pre-registration procedures, participants must indicate their preference for a particular drafting group.

Opportunities for Listening and Viewing the December 10, 2002, Post-Forum Meeting Offsite and for Obtaining a Transcript

The Capitol Connection offers the opportunity for remote listening and viewing of the one-day post-forum meeting, which is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection website at *http://www.capitolconnection.gmu.edu* and click on "FERC".

The one-day post-forum meeting will also be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact Ace-Federal Reporters, Inc. at 202–347–3700, or 1–800–336–6646. Two weeks after the post-forum meeting, the transcript will be available for free on the Commission's FERRIS system. Anyone without access to the Commission's web site or who have questions about the post-forum activities should contact Tim Welch at 202–502–8760, or e-mail *timothy.welch@ferc.gov.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29296 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OIG–2002–0001; FRL–7410–4]

Agency Information Collection Activities; Submission of EPA ICR No. 2094.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Survey of Air Quality Issues After September 11, 2001 (EPA ICR No. 2094.01) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 19, 2002.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION SECTION.**

FOR FURTHER INFORMATION CONTACT: Sarah Fabirkiewicz, Office of Program Evaluation, 2460T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2717; fax number: 202–566–0837; e-mail address: *fabirkiewicz.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. EPA was granted a waiver from the 60 day public comment period for a proposed ICR.

EPA has established a public docket for this ICR under Docket ID No. OIG–2002–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752). An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to: oei.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket.

Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Title: Survey of Air Quality Issues After September 11, 2001 (EPA ICR Number 2094.01). This is a request for a new collection.

Abstract: The purpose of this ICR is to obtain information, through use of a public survey, about the impact of government communications regarding air quality concerns associated with the collapse of the World Trade Center towers on September 11, 2001. This ICR represents one component of a larger evaluation of EPA's response to air quality concerns associated with the collapse of the World Trade Center towers. The survey will be distributed to randomly selected individuals residing in the five boroughs of New York City. Persons residing in New York City are hereafter referred to as "the public." Data generated from the questionnaire will provide information regarding the public's perception of the adequacy of the information it received about air quality, the public's interpretation of the air quality information it received, and actions taken by the public based on the air quality information received. Findings from the questionnaire in these three areas can be used to improve the way information about air quality is disseminated during times of future emergency and/or disaster. Findings will be useful not only to EPA, but to any agency seeking to improve the effectiveness of its emergency and/or disaster mitigation, response, and recovery activities. In some instances, it may be possible to use the data to inform future emergency and/or disaster response techniques in other cities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Randomly selected individuals residing in the five boroughs of New York City.

Estimated Number of Respondents: 1067.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 266.75 hours.

Estimated Total Annual Cost: $5,908.51 includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: November 12, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–29337 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–8; FRL–7409–9]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Monroe Power Company; Monroe (Walton County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated October 9, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Monroe Power Company (Monroe Power) located in Monroe, Walton County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI or Petitioner) on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/monroepower_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on November 14, 2001, requesting that EPA object to a state title V operating permit issued by EPD to Monroe Power. The Petitioner maintains that the Monroe Power permit is inconsistent with the Act because of: (1) The inadequacy of the public participation process and related public notice; (2) the permit's apparent limitation of enforcement authority and credible evidence; (3) the inadequacy of the monitoring and reporting requirements; (4) the permit's exclusion of startups, shutdowns, and malfunctions; and (5) the incompleteness of permit itself.

On October 9, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the Monroe Power permit is not in compliance with

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the requirements of the Act on the grounds raised.

Dated: November 6, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–29332 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–6; FRL–7409–8]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for King Finishing; Dover (Screven County), Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated October 9, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to King Finishing located in Dover, Screven County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI or Petitioner) on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/kingfinishing_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on October 9, 2001, requesting that EPA object to a state title V operating permit issued by EPD to King Finishing. The Petitioner maintains that the King Finishing permit is inconsistent with the Act because of: (1) The inadequacy of the public participation process and related public notice; (2) the permit's apparent limitation of enforcement authority and credible evidence; and (3) the inadequacy of the monitoring and reporting requirements.

On October 9, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the King Finishing permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: November 6, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–29333 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[WA–01–003; FRL–7410–3]

Adequacy Status of the State Implementation Plan Revision for Carbon Monoxide in the Spokane Serious Nonattainment Area, Spokane, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found the motor vehicle emissions budget submitted in the State Implementation Plan Revision for Carbon Monoxide in the Spokane Serious Nonattainment Area, Spokane, Washington adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Spokane Regional Transportation Council, Washington Department of Transportation, and the U.S. Department of Transportation are required to use the motor vehicle emissions budget in this submitted attainment plan for future transportation conformity determinations.

DATES: This finding is effective December 4, 2002.

FOR FURTHER INFORMATION CONTACT: The finding will be available at EPA's conformity Web site: *http://www.epa.gov/oms/traq,* (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). You may also contact Wayne Elson, U.S. EPA, Region 10 (OAQ–107), 1200 Sixth Ave, Seattle WA 98101; (206) 553–1463 or *elson.wayne@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region 10 sent a letter to the Washington Department of Ecology on November 1, 2002, stating that the motor vehicle emissions budget in the State Implementation Plan Revision for Carbon Monoxide in the Spokane Serious Nonattainment Area, Spokane, Washington is adequate.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budget is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 4, 2002.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

[FR Doc. 02–29338 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7410–2]

Notice of the Ninth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This notice announces the Ninth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force, consisting of Federal, State, and Tribal members, is to lead efforts to coordinate and support nutrient management and hypoxia-related activities in the Mississippi River and Gulf of Mexico watersheds. The major matter to be discussed at the meeting is implementation of the Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico. The Action Plan was developed in fulfillment of a requirement of section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act (Pub. L. 105–383—Coast Guard Authorization Act of 1998) to submit a scientific assessment of hypoxia and a plan for reducing, mitigating, and controlling hypoxia in the Gulf of Mexico. The Action Plan was submitted as a Report to Congress on January 18, 2001. Also, a summary will be provided of the Monitoring, Modeling, and Research subworkgroup meeting, held October 16–18, 2002 in St. Louis. The public will be afforded an opportunity to provide input to the Task Force during open discussion periods.

DATES: The one day meeting will be held from 9:30 a.m.–4:30 p.m., Tuesday, December 10, 2002 in Washington, DC.

ADDRESSES: Please see the Web site http://www.epa.gov/msbasin/new.htm for registration, specific meeting location, and hotel information. The meeting room accommodates approximately 125 people, therefore, registration is required. A registration form can be downloaded from the Web site.

FOR FURTHER INFORMATION CONTACT: Katie Flahive, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Phone (202)–566–1206; E-mail: *flahive.katie@epa.gov.* For additional information on logistics, registration, and accommodations, contact Ansu John, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, VA 22030; Phone: (703) 385–6000; E-mail: *ansu.john@tetratech-ffx.com.*

Dated: November 13, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–29336 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

THE PRESIDENT'S CRITICAL INFRASTRUCTURE PROTECTION BOARD

National Strategy To Secure Cyberspace

November 14, 2002.

AGENCY: President's Critical Infrastructure Protection Board, Executive Office of the President, The White House.

ACTION: Notice of request for ongoing public comment regarding the National Strategy to Secure Cyberspace for comment, notwithstanding the public comment deadline of September 18, 2002.

SUMMARY: Pursuant to the President's charge in Executive Order 12321, the President's Critical Infrastructure Protection Board (the "Board") has been engaged in development of the National Strategy to Secure Cyberspace. On September 18, 2002, the Board released to the public a draft of the Strategy "For Comment" (the "Strategy"). The Strategy was made available online at *http:/www.securecyberspace.gov* for viewing and downloading. At the time of the release of the Strategy, the Board invited public comments and set a deadline of November 18, 2002 for such comments. On Oct 11, 2002, through a **Federal Register** Notice, the Board issued a formal public notice soliciting further comments and views from the public on the Strategy, and reiterated the public comment deadline of November 18, 2002. It was noted from the first that—due to the fact that cyberspace security operates in a dynamic landscape where the nature of the threats, solutions, technology, applications and other factors are subject to rapid and sometimes dramatic change "America's cyberstrategy must be dynamic and continually refreshed to adapt to the changing environment." Thus, because the development of the National Strategy to Secure Cyberspace is an ongoing, iterative process, the Board has indicated all along that the Strategy will be a dynamic, evolutionary document, one that will include a formal official release and subsequent, periodic updated versions. As a result, the public dialogue will continue to be interactive, and additional public comments will be welcome and considered first not only following the November 18, 2002 date, but also after the release of the first official version of the Strategy. Comments will be considered in a timely manner and, as appropriate, will be reflected into the evolving Strategy at the earliest possible date. There is no guarantee, however, that comments submitted after the November 18, 2002 deadline will be considered for the current draft of the strategy. Comments not considered for this draft may be reflected in subsequent drafts.

DATES: Comments are invited on an ongoing basis.

ADDRESSES: Comments may be submitted electronically as provided at *http://www.securecyberspace.gov.* In addition, written comments may be sent to: PCIPB/ Strategy Public Comment; The White House; Washington, DC 20502. Individual hard copies of the draft Strategy may be obtained by calling 202–456–5420.

FOR FURTHER INFORMATION CONTACT: Tommy Cabe 202–456–5420.

SUPPLEMENTARY INFORMATION: On October 16, 2001, the President created the Board by Executive Order 12321. The President noted that "[t]he information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures." In the Executive Order, the President directed the Board to "recommend policies and coordinate programs for protecting information systems for critical infrastructure," and called for the Board to "coordinate outreach to and consultation with the private sector, * * * State and local governments, [and] communities and representatives from academia and other relevant elements of society."

Pursuant to the President's charge, the Board has been engaged in development of the National Strategy to Secure Cyberspace. On September 18, 2002, the Board released to the public a draft Strategy "For Comment," identifying 24 strategic goals and listing over 80 recommendations. The Strategy was made available online at *http://*

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www.securecyberspace.gov for viewing and downloading.

The Strategy was developed based on input from a broad spectrum of individuals and groups that represent the owners and operators of cyberspace, as well as from the key sectors that rely on cyberspace, including Federal departments and agencies, private companies, State and local governments, educational institutions, nongovernmental organizations, and the general public. Town hall meetings to facilitate discussion and stimulate input were held during the spring in Denver, Chicago, Portland Oregon, and Atlanta and this month in Philadelphia. In addition, a list of 53 key questions was compiled, published, and publicized to spark public debate and facilitate informed input. The Board has convened additional town hall meetings around the country in recent weeks to raise awareness about cybersecurity issues, and to solicit and receive the views and input of concerned citizens regarding the Strategy. Town hall meetings were held in Boston, MA (October 14), Pittsburgh, PA (October 24), and New York, NY (November 7), and will be held in Phoenix, AZ (November 14). For further information about specific town hall meetings, see *http://www.securecyberspace.gov.*

At the time of the release of the Strategy and in a subsequent **Federal Register** notice, the Board invited public comments and set a deadline of November 18, 2002 for such comments. While the official comment period will end on November 18th, because the development of the Strategy is an iterative, ongoing process that will include a formal release and subsequent updates, this notice invites additional input because of a recognition that such input will be invaluable for making the strategy even more effective. This reflects recognition of the importance of an ongoing exchange of views, discussion, and input regarding the cyber strategy and the issues it addresses. At a minimum the Strategy must continue to evolve to address changing technologies and to respond appropriately as we better understand the effectiveness of the measures taken and other lessons learned.

By this Notice, the Board solicits further comments and views from the public on the draft Strategy and the first and subsequent official releases of the Strategy, notwithstanding the November 18, 2002 deadline. The Board will consider all comments and, as appropriate, reflect those comments as appropriate into the initial or subsequent versions of the official Strategy. There is no guarantee, however, that comments submitted after the November 18, 2002 deadline will be considered for the current draft of the strategy. Comments not considered for this draft will be reflected in subsequent drafts.

The most efficient way to provide public comment is to do so online through the feedback link at *http://www.securecyberspace.gov.* In order to facilitate review and consideration of public comment, commenters are requested to use this electronic feedback link if at all possible. Comments will also be accepted if mailed to the postal address listed below, but it is requested that such commenters also provide an electronic version of their comments as well as the hard copy (*e.g.*, CD or floppy disc) if possible. In addition, it is requested that all commenters, including those submitting their comments in hard copy form rather than online, make every effort to organize the comments by reference to specific sections of the Strategy and if applicable) the numbered recommendation or discussion topic commented upon.

Those preferring to submit their comments by hard copy (preferably with an accompanying electronic version of the comment) should send them to: PCIPB/ Strategy Public Comment; The White House; Washington, DC 20502. The Board will consider all relevant comments in the further development of the Strategy. However, there are no plans to respond individually to each comment.

Dated: November 14, 2002.

Richard A. Clarke,

Chair, President's Critical Infrastructure Protection Board.

[FR Doc. 02–29394 Filed 11–18–02; 8:45 am]

BILLING CODE 3165–03–P

FEDERAL COMMUNICATIONS COMMISSION

Media Security and Reliability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of a meeting of the Media Security and Reliability Council (Council). The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, May 28, 2003 at 10:00 a.m. to 11:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman at 202–418–1600 or TTY 202–418–7172.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the broadcast and multichannel video programming distribution industries and experts from consumer, public safety and other organizations to explore and recommend measures that would enhance the security and reliability of media facilities and services.

The Council will receive mid-term reports and potential initial recommendations from its working groups. The Council may also discuss such other matters as come before it at the meeting. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Barbara Kreisman, the Commission's Designated Federal Officer for the Media Security and Reliability Council, by email (*bkreisma@fcc.gov*) or U.S. mail (2–A666, 445 12th St. SW, Washington, DC 20554). Real Audio and streaming video Access to the meeting will be available at *http://www.fcc.gov/*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–29291 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2562]

Petition for Reconsideration of Action in Rulemaking Proceeding

November 13, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by December 4, 2002 See section 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b) (1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ardmore, Brilliant, Brookwood, Gadsden, Hoover, Moundville, New Hope, Pleasant Grove, Russellville, Scottsboro, Troy, Tuscaloosa and Winfield, Alabama; Okolona and Vardaman, Mississippi; Linden, McMinnville, Pulaski and Walden, Tennessee) (MM Docket No. 01–62, RM–10053, RM–10109, RM–10110 RM–10111, RM–10112, RM–10113, RM–10114, and RM–1011

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–29235 Filed 11–18–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Interagency Biographical and Financial Report.

OMB Number: 3064–0006.

Annual Burden

Estimated annual number of respondents: 2,040.

Estimated time per response: 4 hours.

Total annual burden hours: 8,160 hours.

Expiration Date of OMB Clearance: December 31, 2002.

SUPPLEMENTARY INFORMATION: The Interagency Biographical and Financial Report is submitted to the FDIC by each individual director or officer of a proposed or operating financial institution applying for federal deposit insurance as a state nonmember bank. The information is used by the FDIC to evaluate the general character of bank management as required by the Federal Deposit Insurance Act.

2. *Type of Review:* Renewal of a currently approved collection.

Title: External Audits.

OMB Number: 3064–0113.

Annual Burden

Estimated number of responses: 1,215 (insured institutions with assets of $500 million or more); 15,033 (insured institutions with assets less than $500 million)

Estimated time per response: 32 hours (insured institutions with assets of $500 million or more); 3/4 hours (insured institutions with assets less than $500 million).

Total annual burden hours: 42,639 hours.

Expiration Date of OMB Clearance: December 31, 2002.

SUPPLEMENTARY INFORMATION: Section 36 of the Federal Deposit Insurance Act imposes auditing and reporting requirements on insured depository institutions which have total assets of $500 million or more. An interagency policy statement extended those requirements on a voluntary basis to institutions with less than $500 million.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before December 19, 2002 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: November 13, 2002.

Federal Deposit Insurance Corporation:

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 02–29273 Filed 11–18–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1435–DR]

Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana, (FEMA–1435–DR), dated September 27, 2002, and related determinations.

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 27, 2002:

Assumption Parish for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29309 Filed 11–18–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–

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1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 5, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms, tornadoes, and flooding on October 24, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later requested and warranted, Federal funds provided under each program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sandra L. Coachman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Texas to have been affected adversely by this declared major disaster:

Nueces County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29307 Filed 11–18–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Aransas, Hardin, Harris, Jefferson, Orange, and San Patricio Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29308 Filed 11–18–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 3, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Stephen Randolph Buford, Sam Dunkin Buford, Gentner Frederick Drummond, all of Tulsa, Oklahoma, and Sharon Buford Linsenmeyer, Beatrice, Nebraska; to acquire voting shares of N.B.C. Bancshares in Pawhuska, Inc., Pawhuska, Oklahoma, and thereby indirectly acquire voting shares of NBC Bank, Pawhuska, Oklahoma.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Joyce Anne Chiles, Centerville, Washington; William John Firstenburg and Bruce Edward Firstenburg, Vancouver, Washington; to acquire additional voting shares of First Independent Investment Group, Inc., Vancouver, Washington, and thereby indirectly acquire additional voting shares of First Independent Bank, Vancouver, Washington.

Board of Governors of the Federal Reserve System, November 13, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29274 Filed 11–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Davis Trust Financial Corp., Elkins, West Virginia; to acquire 21.63 percent of the voting shares of First Clay County Banc Corporation, Clay, West Virginia, and thereby indirectly acquire voting shares of Clay County Bank, Inc., Clay, West Virginia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Prairieland Bancorp Employee Stock Ownership Plan and Trust, Bushnell, Illinois; to increase its ownership of Prairieland Bancorp, Inc., Bushnell, Illinois, from 44.73 percent to 49.77 percent, and thereby indirectly acquire Farmers and Merchants State Bank, Bushnell, Illinois.

Board of Governors of the Federal Reserve System, November 13, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29275 Filed 11–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EST) November 18, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street NW., Washington, DC

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the October 21, 2002, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG LLP audit reports:

U.S. Department of Treasury Operations relating to the Thrift Savings Plan Investments in the Government Securities Investment Fund

System Enhancement and Software Change Controls of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center

Administrative Review of the Thrift Savings Plan Legacy System Subsystems at the United States Department of Agriculture, National Finance Center

Pre-Implementation Review of the New Thrift Savings Plan Record Keeping System

Preliminary Report on the Thrift Savings Plan's Retention of the National Finance Center as Record Keeper

4. Semiannual review of status of audit recommendations.
5. Labor Department audit briefing.
6. Quarterly investment policy review.
7. Annual ethics briefing.

Parts Closed to the Public

1. Discussion of litigation.
2. Discussion of personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 15, 2002.

David L. Hutner,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–29482 Filed 11–15–02; 12:44 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11¼% for the quarter ended September 30, 2002. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 31, 2002.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 02–29492 Filed 11–15–02; 2:06 pm]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

White House Initiative on Asian Americans and Pacific Islanders; President's Advisory Commission; Notice of Cancelled Meeting

In FR Document Number 02–28880 appearing on page 68874 in the issue for Wednesday, November 13, 2002, the meeting of the President's Advisory Commission on Asian Americans and Pacific islanders scheduled for Friday, November 22, 2002 from 10 a.m.–5 p.m. EST at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209, has been cancelled.

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Dated: November 14, 2002.

Regina B. Schofield,

Director, Office of Intergovernmental Affairs.

[FR Doc. 02–29491 Filed 11–15–02; 2:06 pm]

BILLING CODE 4185–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Native Employment Works (NEW) Program Plan Guidance and Program Report.

OMB No.: 0970–0174.

Description: The Native Employment Works (NEW) program plan is the application for NEW program funding. As approved by the Department of Health and Human Services (HHS), it documents how the grantee will carry out its NEW program. The NEW program plan guidance specifies the information needed to complete a NEW program plan and explains the process for plan submission every third year.

The NEW program report provides information on the activities and accomplishments of grantees' NEW programs. The NEW program report and instructions specify the program data that NEW grantees report annually.

Respondents: Federally-recognized Indian tribes and tribal organizations that are NEW program grantees:

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours (annually)
NEW program plan guidance	26	One, every 3 years	30	780
New program report	53	One annually	15	795

Estimated Total Annual Burden Hours: 1575.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copes of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 12, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–29225 Filed 11–18–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee Unaccompanied Minor Placement Report, Refugee Unaccompanied Minor Progress Report.

OMB No.: 0970–0034.

Description: The two reports collect information necessary to administer the refugee unaccompanied minor program. The ORR–3 (Placement Report) is submitted to ORR by the service provider agency at initial placement and whenever there is a change in the child's status, including termination from the program. The ORR–4 is submitted annually and records the child's progress toward the goals listed in the child's case plan.

Respondents. State governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–3	12	15	.417	75
ORR–4	12	60	.250	180

Estimated Total Annual Burden Hours: 255.

In compliance with the requirements of section 3506(c)(21)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20477, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 11, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–29226 Filed 11–18–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0319]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 19, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Establishment Registration and Product Listing, Form FDA 2830—21 CFR Part 607—(OMB Control Number 0910–0052)—Extension

Under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, on or before December 31 of each year, his or her name, place of business and all such establishments, and submit, among other information, a listing of all drug or device products manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution. In part 607 (21 CFR part 607), FDA has issued regulations implementing these requirements for manufacturers of human and products. Section 607.20(a) requires certain establishments that engage in the manufacture of products to register and to submit a list of products in commercial distribution. Section 607.21 requires the establishments entering into the manufacturing of products to register within 5 days after beginning such operation and to submit a product listing at that time. In addition, establishments are required to register annually between November 15 and December 31 and update their product listing every June and December. Section 607.22 requires the use of Form FDA 2830 for registration and product listing. Section 607.25 indicates the information required for establishment registration and product listing. Section 607.26 requires certain changes to be submitted as an amendment to the establishment registration within 5 days of such changes. Section 607.30 requires establishments to update, as needed, their product listing information every June and at the annual registration. Section 607.31 requires that additional product listing information be provided upon FDA request. Section 607.40 requires foreign product establishments to register and submit the product listing information, the name and address of the establishment, and the name of the individual responsible for submitting product listing information. Among other uses, this information assists FDA in its inspections of facilities, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the nation's supply. Form FDA 2830, Establishment Registration and Product Listing, is used to collect this information. The likely respondents are banks, collection facilities, and component manufacturing facilities. FDA estimates the burden of this collection of information based upon the database and past experience of the Center for Biologics Evaluation and Research, Division of Applications in regulatory establishment registration and product listing. Most banks are familiar with the regulations and registration requirements to fill out this form.

In the **Federal Register** of August 2, 2002 (67 FR 50445), FDA published a 60-day notice requesting public comment on the information collection provisions. One comment was received. The comment agrees that the information collection is necessary and the Form FDA 2830 is helpful with the registration process.

The comment stated that we underestimated the hours per response regarding the initial registration and product listing update. The comment stated that it might take up to 2 hours to complete the initial registration and 0.5 hours to complete the product listing update. We decline to change the estimates based on our review of the activities associated with completing the form. Although it may take some establishments longer to complete the form, others may complete the form more quickly. Since the reporting burden includes an estimated average of the time to complete the various activities associated with the form, we believe that the current burden estimates accurately reflect the range of time to complete the form.

The comment also requested that the annual registration process be automated so that each facility could electronically submit the form, if they desire to do so, and also requested that we continue to send a hard copy of the form and instructions as a reminder to registrants to re-register. We are currently in the process of setting up a program for electronic registration. Use of the electronic system will be voluntary. We intend to continue sending a hard copy of the form and instructions for the foreseeable future.

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TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR	Form FDA 2830	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
607.20(a), 607.21, 607.22, 607.25, and 607.40	Initial registration	300	1	300	1	300
607.21, 607.22, 607.25, 607.26, 607.31, and 607.40	Re-registration	2,867	1	2,867	0.5	1,434
607.21, 607.25, 607.30, 607.31, and 607.40	Product listing update	75	1	75	0.25	19
Total						1,753

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29295 Filed 11–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: December 9, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To discuss the Stomach and Esophageal Cancers Progress Review Group Report.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lisa Stevens, Executive Secretary, National Institutes of Health, Building 31, Room 3A30, Bethesda, MD 20892, 301/496–1458.

Information is also available on the Institute's/Center's home page; *deainfo.nci.nih.gov/advisory/joint/htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29258 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of K23 Grants.

Date: November 26, 2002.

Time: 1 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert B Moore, PhD, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–3541.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 13, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29248 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix (2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research Grant (R18) Program.

Date: December 10, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21060.

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, 301/435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Disease and Resources Research, National Institutes of Health, HHS)

Dated: November 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29252 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel. ELSI Genetic Variation Review.

Date: December 12–13, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzati, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402-0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29249 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: December 10, 2002.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Building 31, NHGRI Conference Room B2B32, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29250 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 6, 2002.

Open: 8 am to 11 am.

Agenda: A review and discussion of current NICHD intramural research activities will be discussed.

Place: 9000 Rockville Pike, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Closed: 11 am to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 9000 Rockville Pike, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Contact Person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, room 2A50, Bethesda, MD 20892, (301) 496–2133, *rennerto@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: www.nichd.nih.gov/about/bsd/htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for

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Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 12, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29251 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, U01 Cooperative Agreement Review.

Date: November 20–21, 2002.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Katherine Woodbury, Phd., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: November 7, 2002.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29253 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH and HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. Marrow Stromal Cell Teleconference.

Date: December 10, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd, Rockville, MD 20852.

Contact Person: Richard D. Crosland, Ph.D, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29254 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of closed meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Career Development Awards.

Date: December 18, 2002.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Blvd, Suite 800, Rockville, MD 20876 (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

Dated: November 8, 2002.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29259 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: November 18–20, 2002.

Time: November 18, 2002, 6 pm to recess.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: November 19, 2002, 8:30 am to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Peter E. Lipsky, MD, Scientific Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Bldg. 10; Room 9N228, Bethesda, MD 20892, (301) 496–2612.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the intramural review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29260 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Biostatistics Training.

Date: November 26, 2002.

Time: 11 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29261 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Molecular and Cellular Regulation of Tolerance.

Date: December 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 2148A, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, NIH/NIAID/DHHS/SRP, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 98.856, Microbiology and Infectious Disease Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29262 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Disease Research Opportunities.

Date: December 2, 2002.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Room 1205, Bethesda, MD 20892–7612, (Telephone Conference Call).

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29263 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel ICIDR Competitive Supplements in Biodefense.

Date: December 16, 2002.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAID, 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSCV 7616, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases, Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29264 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 27, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: The Committee will provide advise on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700-B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29265 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Disease Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: January 27, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: January 27, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 27, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room A, 45 Center Drive, E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 27, 2003.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: The meeting of the full Council will be open to the public for general discussion.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Information is also available on the Institute's/Center's home page: *http://www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29266 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Influence of Viral Infection on Transplantation Tolerance.

Date: December 10, 2002.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge, Room 2217, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29267 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Cellular and Molecular Mechanisms of Autoimmunity.

Date: December 16, 2002.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, NIH/NIAID, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, clapham@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29268 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, T Cell Memory to Pathogens: Generation and Function.

Date: December 20, 2002.

Time: 10 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge, Room 2223, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29270 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Library of Medicine Special Emphasis Panel, November 18, 2002, 9 a.m. to November 19, 2002, 5 p.m., which was published in the **Federal Register** on August 29, 2002, 67 FR 55414.

The meeting will be rescheduled to January 13–14, 2003, to allow for sufficient time for an optimal review process. The meeting is closed to the public.

Dated: November 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29257 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to review HIV/AIDS Molecular Biology grant applications.

Date: November 12–13, 2002.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: The Westin Seattle, 1900 Fifth Avenue, Seattle, WA 98101.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human Brain Project.

Date: November 12, 2002.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *lysterp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reproductive Epidemiology.

Date: November 14, 2002.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/ZRG1 BDCN–5 (12) SBIR.

Date: November 21, 2002.

Time: 5:30 pm to 6:30 pm.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW, Washington, DC 20036.

Contact Person: Sherry L Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycles.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/ZRG1 BDCN–4 (10) SBIR.

Date: November 25, 2002.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, 301–435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycles.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BISTI Pre Centers of Excellence in Biomedical Computing.

Date: November 26, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7806, Bethesda, MD 20892, 301–435–1256, *lysterp@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endothelin, Neural Control and Hypertension.

Date: December 4, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, 301–435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–6(50) R: Autism STAART Centers.

Date: December 8–10, 2002.

Time: 6 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Franklin Square, 815 14th Street, NW., Washington, DC 20005.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fungal Functional Genomics.

Date: December 9–10, 2002.

Time: 7 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *djr@helix.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome Review Panel.

Date: December 10, 2002.

Time: 10 a. to 3 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockedge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Empahsis Panel, Prokaryotic Transcription.

Date: December 12, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7808, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29255 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 12, 2002, 1:10 pm to November 12, 2002, 3:30 pm, which was published in the **Federal Register** on October 28, 2002, 67 FR 65807–65809.

The meeting will be held December 2, 2002, from 3 pm to 5 pm. The location remains the same. The meeting is closed to the public.

Dated: November 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29256 Filed 11–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for grant program to provide substance abuse treatment and reentry services to sentenced juveniles and young offenders returning to the community from the criminal justice system (short title: Young Offender Reentry Program).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment(CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Request for Applications (RFA), including part I, Grant Program to Provide Substance Abuse Treatment and Reentry Services to Sentenced Juveniles and Young Offenders Returning to the Community from the Criminal Justice System (TI 03–001), and part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. No. of awards	Project period
Grant Program to Provide Substance Abuse Treatment and Reentry Services to Sentenced Juveniles and Young Offenders Returning to the Community from the Criminal Justice System.	Jan. 17, 2003	$6.0 million	12–14	4 years

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under section 509 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes standard form 424 (face page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), PO Box 2345, Rockville, MD 20847–2345. Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov* (click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), is seeking applications for Fiscal Year 2003 funds to expand and/or enhance substance

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abuse treatment and related reentry services in agencies currently providing supervision of and services to sentenced juvenile and young adult offenders returning to the community from incarceration for criminal/juvenile offenses. Applicants are expected to form stakeholder partnerships that will plan, develop and provide community-based substance abuse treatment and related reentry services for the targeted populations. Because reentry transition must begin in the correctional or juvenile facility before release, funding may be used for limited activities in institutional correctional settings in addition to the expected community-based services.

Eligibility: Public and domestic private non-profit entities may apply. For example, the following may apply: State and local governments; Indian Tribes and tribal organizations; courts; community-based organizations; and faith-based organizations.

Availability of Funds: It is expected that approximately $6 million will be available for FY 2003. Approximately 12–14 awards will be made. The average annual award will range from $300,000 to $500,000 in total costs (direct and indirect). The total funds available and actual funding levels will depend on the receipt of an appropriation. Annual continuation of the award depends on the availability of funds and progress achieved.

Period of Support: An award may be requested for a project period of up to 4 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Kenneth W. Robertson, Public Health Advisor, Division of Services Improvement, CSAT/SAMHSA, Rockwall II Building, Suite 740, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–7612. E-Mail: *kroberts@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9666. E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (standard Form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: November 14, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–29339 Filed 11–18–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Sandhill Crane Harvest Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We accept comments until January 21, 2003.

ADDRESSES: Mail your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203; or e-mail *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, and related forms, contact by phone at Anissa Craghead at(703) 358–2445, or electronically at Anissa_Craghead@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the Sandhill Crane Harvest Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0023.

Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird harvest. Knowledge attained by determining harvests and harvest rates of migratory game birds is used to regulate populations (by promulgating hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested populations occur. Based on information from harvest surveys, hunting regulations can be adjusted as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

This information collection approval request seeks approval for us to continue conducting the Sandhill Crane Harvest Survey. This is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and send those people a questionnaire that asks them to report the date, State, county, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of sandhill crane permits issued, enables the Service to estimate the total harvest of sandhill cranes.

The Sandhill Crane Harvest Survey enables us to annually estimate the magnitude of the harvest and the portion it constitutes of the total mid-continent sandhill crane population. Based on information from this survey, hunting regulations are adjusted as needed to optimize harvest at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Title: Sandhill Crane Harvest Survey.

Approval Number: 1018–0023.

Service Form Number(s): 3–530, 3–530A, 3–2056N.

Frequency of Collection: Annually.

Description of Respondents: Individuals and households.

Number of Respondents: About 6,500 hunters will respond to the Sandhill Crane Harvest Survey annually.

Total Annual Burden Hours: The reporting burden is estimated to average 5 minutes per respondent. Total annual burden is 540 hours.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C 552(a)).

Dated: November 6, 2002.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–29290 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AI56

Fiscal Year 2002 Private Stewardship Grants Program; Proposal Due Date Extension

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; extension of the due date.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a due-date extension for submission of project proposals for Federal assistance under the fiscal year 2002 Private Stewardship Grants Program (PSGP). Project proposals must now be submitted to the appropriate Service Regional Office by January 15, 2003.

DATES: Project proposals must be received by the appropriate Regional Office (*see* Table 1 in **SUPPLEMENTARY INFORMATION**) no later than January 15, 2003.

ADDRESSES: For additional information contact the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 under **SUPPLEMENTARY INFORMATION** below. Information on the PSGP is also available from the Branch of Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 or electronically at *http://endangered.fws.gov/grants/private_stewardship.html* or e-mail: *Privatestewardship@fws.gov.*

To submit a project proposal send your project proposals to the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur (see Table 1 under **SUPPLEMENTARY INFORMATION**). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

FOR FURTHER INFORMATION CONTACT: The Program Contact in the appropriate Regional Office identified in Table 1 under **SUPPLEMENTARY INFORMATION** or Martin Miller, Chief, Branch of

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Recovery and State Grants (703/358–2061).

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2002, we published in the **Federal Register** (67 FR 61649) a notice announcing the final implementation guidelines and requesting proposals for the fiscal year 2002 Private Stewardship Grants Program. In that notice, we stated that project proposals must be received by the appropriate Regional Office by no later than December 2, 2002. In order to provide the public with additional time to become familiar with the program requirements and prepare proposals for this new program, we are now extending the due date for submission of project proposals under this program to January 15, 2003.

How To Apply for a PSGP Grant

You must follow the instructions in the October 1, 2002, **Federal Register** (67 FR 61649) document in order to apply for financial assistance under the PSGP. For a description of the information that must be included in a project proposal, please see "The PSGP Project Proposal" section in the October 1, 2002, **Federal Register** document. Your project proposal should not be bound in any manner and must be printed on one side only. You must submit one signed original and two signed copies of your project proposal (including supporting information). Your unbound (a binder clip is allowed) project proposal must now be received by the appropriate Regional Office listed in Table 1 by January 15, 2003. We encourage you to contact the Regional contact person listed in Table 1 prior to submitting a project proposal should you have questions regarding what information must be submitted with the project proposal. An incomplete proposal will not be considered for funding.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States or territory where the project will occur	Where to send your PSGP project proposal	Regional PSGP contact and phone no.
Region 1	Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.	Regional Director U.S. Fish and Wildlife Service Eastside Federal Complex 911 N.E. 11th Avenue Portland, OR 97232–4181.	Heather Hollis (503/231–6241).
Region 1	California and Nevada	Office Manager U.S. Fish and Wildlife Service Federal Building, 2800 Cottage Way, Room W-2606 Sacramento, CA 95825–1846.	Miel Corbett (916/414–6464).
Region 2	Arizona, New Mexico, Oklahoma, and Texas.	Regional Director U.S. Fish and Wildlife Service 500 Gold Avenue SW., Room 4012 Albuquerque, NM 87102.	Susan MacMullin (505/248–6671).
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director U.S. Fish and Wildlife Service Bishop Henry Whipple Federal Building One Federal Drive Fort Snelling, MN 55111–4056.	Peter Fasbender (612/713–5343).
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.	Regional Director U.S. Fish and Wildlife Service 1875 Century Boulevard, Suite 200 Atlanta, GA 30345.	Noreen Walsh (404/679–7085).
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director U.S. Fish and Wildlife Service 300 Westgate Center Drive Hadley, MA 01035–9589.	Diane Lynch (413/253–8628).
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director U.S. Fish and Wildlife Service P.O. Box 25486 Denver Federal Center Denver, CO 80225–0486.	Pat Mehlhop (303/236–7400 ext. 225).
Region 7	Alaska	Regional Director U.S. Fish and Wildlife Service 1011 East Tudor Road, Anchorage, AK 99503–6199.	Susan Detwiler (907/786–3868).

Authority

This notice is published under the authority of the Department of the Interior and Related Agencies Appropriations Act, 2002, H.R. 2217/ Public Law 107–63.

Dated: October 31, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29352 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(OR–120–5101 ER–H019) (2–0200)]

Notice of Availability for the Final Environmental Impact Statement (FEIS) on a Proposed Natural Gas Pipeline Right-of-Way

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Coos Bay District, directed the preparation of an EIS by Biological Information Specialists, Inc., a third party contractor, on the impacts of a proposed natural gas pipeline from near Roseburg in Douglas County, Oregon, to Coos Bay in Coos County, Oregon. BLM received a right-of-way application from the Coos County Board of Commissioners, under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1737) on May 17, 2000. The proposed pipeline will cross approximately 60 miles of public and private lands in Coos and Douglas Counties, Oregon. This notice initiates the public review process on the FEIS. The public is invited to review and comment on the range and adequacy of the alternatives and associated environmental effects.

DATES: The FEIS will be distributed and made available to the public approximately November 19, 2002, for a 30-day review period. Copies of the FEIS will be mailed to individuals, agencies, or companies who previously requested copies or who responded to the Bureau of Land Management on the Draft EIS. No decisions on the proposed action shall be made until at least 30 days after publication of a Notice of Availability by the Environmental Protection Agency (EPA).

ADDRESSES: Written comments should be sent to Bob Gunther, Project Coordinator, Coos Bay District, BLM, 1300 Airport Lane, North Bend, OR 97459. Documents pertinent to this proposal may be examined at the Coos Bay District Office in North Bend, Oregon and local libraries. The FEIS will also be available electronically at the BLM Coos Bay District Web site (*http://www.or.blm.gov/coosbay*) and the Coos County web site (*http://www.co.coos.or.us*). Comments, including names and street addresses of respondents, will be available for public review at the Coos Bay District Office during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Bob Gunther, Project Coordinator, at address above or telephone (541–751–4295), fax: 541–751–4303, or e-mail comments to the attention of *Bob_Gunther@or.blm.gov*. For Technical Information contained in the EIS contact Melanie Little, Biologist, Biological Information Specialists, Inc., P.O. Box 27, Camas Valley, Oregon 97416, Telephone: (541) 445–2008.

SUPPLEMENTARY INFORMATION: The Coos County Board of Commissioners has applied for a right-of-way proposing to contract construction of a 12-inch natural gas transmission pipeline to be buried within the existing rights-of-ways of the Pacific Corp. (PP&L) and Bonneville Power Administration (BPA) electric transmission lines, and within the existing roadbed of the Coos Bay Wagon Road. The total length of the pipeline is approximately 60 miles, with approximately 3.0 miles located on lands administered by the BLM. The proposed pipeline would connect to the Williams Gas Pipeline at a meter facility southwest of Roseburg, in or near Section 33 Township 27 South, Range 6 West in Douglas County and would terminate at Ocean Boulevard in the city of Coos Bay (Section 27 Township 25 South, Range 13 West).

The natural gas transmission pipeline will deliver gas to distribution facilities built by Northwest Natural Gas in the communities of Coos Bay and North Bend. Smaller 6-inch or 4-inch laterals will be built off the mainline to serve the cities of Coquille, Myrtle Point, and perhaps Bandon at a later date. The location of the laterals has not been finalized, but they are anticipated to follow the location of existing powerline, State highway, or railroad rights-of-way. Locations of the distribution lines within the city limits are not known at this time, but are anticipated to be located within existing road rights-of-way.

The proposed pipeline will fall under the jurisdiction of U.S. Department of Transportation (DOT), as a natural gas transmission pipeline. It will be built and operated to all current specifications in 49 CFR Part 192 (Natural Gas Pipelines) and other relevant sections. The Oregon Public Utility Commission will administer DOT Pipeline Safety regulations for this pipeline.

The proposed pipeline will be designed with the appropriate design safety factors. The mainline is proposed as a welded steel pipeline with a Maximum Allowable Operating Pressure (MAOP) of 1,000 pounds per square inch (psi). The finished pipeline will be pressure tested to at least 150% of MAOP, to detect leakage or failure.

All construction will be done during daylight hours. Mainline construction will take about 6 months. Applicant plans to construct in the relatively dry summer months of April through October.

Pipeline construction will require a working space up to 60 feet wide. DOT requires a minimum of 30″ of cover in normal soils, 18″ in consolidated rock, 36″ under roads. The pipe will be installed to a target depth of 48″ to top of pipe. Some grading will be required to install the pipe, but shall be substantially restored to original grade before revegetation. All earth disturbance operations shall be subject to an erosion control plan to comply with U.S. Environmental Protection Agency (EPA) guidelines.

In sections along electrical transmission lines, the contractor shall be required to have and follow a plan to continuously ground the pipe, to protect workers from shock from induced currents.

Coos County plans to contract pipeline operations with an experienced pipeline operator. The County and its operator are required under DOT to formulate and use an Operations and Maintenance Plan specifically for this pipeline. The Operations and Maintenance Plan will include an Emergency Plan for specific procedures

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and notifications in case of an emergency.

Coos County plans to provide cathodic protection against corrosion, as required by DOT. Magnesium anodes will be placed at regular intervals along the pipeline, to sacrificially corrode and protect the coated steel pipe. This method normally mitigates most induced alternating current (AC). In sections near electrical transmission lines, supplemental anodes and other measures will be taken as necessary to minimize induced AC on the pipeline.

Long-term pipeline operation will require approximately 40 feet of space to be kept clear of larger brush and trees. Access roads to the BPA corridor will be restored as needed for pipeline construction and access for Operations and Maintenance.

After the initial pipeline construction period, there is no need to ever excavate any particular segment of pipe. Annual maintenance consists of checking depth of pipe in roadways, repairing any soil erosion, controlling brush, replacing line markers, painting and operating block valves, conducting leak surveys, and checking the effectiveness of the corrosion control system.

The Draft EIS was issued in December 2001. EPA published its Notice of Availability on January 25, 2002, with the formal public comment period closing on March 25, 2002. Thirty-nine comment letters were received. Comments have been analyzed, and appropriate changes have been made in the FEIS. Public comments have been summarized and printed in the FEIS along with BLM's responses.

A Notice of Availability for the Record of Decision on the project will be published at a later date.

Mark E. Johnson,

Acting District Manager.

[FR Doc. 02–29098 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement\General Management Plan Santa Monica Mountains National Recreation Area Los Angeles and Ventura Counties, CA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a final environmental impact statement assessing the potential impacts of the proposed General Management Plan (GMP) for Santa Monica Mountains National Recreation Area. This conservation planning and environmental impact analysis effort to date has identified and analyzed five alternatives (and appropriate mitigation strategies) for the management and use of the Santa Monica Mountains National Recreation Area over the next 15 to 20 years.

Proposal and Alternatives: The final environmental impact statement (FEIS) includes five alternatives, including the "no action" (existing conditions) alternative. The No Action Alternative assumes that physical facilities would remain largely unchanged and staffing and operational funding would remain relatively constant over the next 15 to 20 years. The Preferred Alternative incorporates the exceptional elements of all of the alternatives to provide protection of significant natural and cultural resources while promoting compatible recreation and educational opportunities. The Preservation Alternative emphasizes the preservation of all-natural and cultural systems and removing some park-related development. Virtual media and exhibits would provide visitors with alternative experiences and information. Visitor disturbance would be reduced while visitor appreciation for the resource would increase. The Education Alternative would promote strong environmental and cultural education programs that reach the public and especially the school systems. The Recreation Alternative maximizes recreation with any new park development in non-sensitive areas.

Background: A notice of intent to prepare an EIS was published by the National Park Service (NPS) in the **Federal Register** on August 19, 1997. During the subsequent scoping phase leading to the development of the Draft EIS, Newsletter One was sent out in September 1997 (and included a comment form). This newsletter, available in English and Spanish, was direct mailed as well as posted on the internet. The NPS, California State Parks and the Santa Monica Mountains Conservancy then jointly conducted seven public meetings in Los Angeles and Ventura Counties, and one meeting with representatives from at least 60 public and municipal entities and the tribes. In December 1997, Newsletter Two summarizing those comments was distributed (again with a comment form). Newsletter Three was distributed in June 1998, presenting the alternatives. Nine public meetings were held to solicit comments, and 200 comments were received. A notice of availability of the Draft EIS\GMP was published in the **Federal Register** on December 14, 2000. The document was available for public review for an extended comment period through May 31, 2001. The NPS received approximately 600 written responses and many oral comments from the five additional public meetings conducted in February 2001 in Los Angeles and Ventura County. All of these comments were duly considered in preparing the Final EIS\GMP. All comments obtained are preserved in the administrative record.

ADDRESSES: Copies of the Final EIS\GMP are available from the Superintendent, Santa Monica Mountains National Recreation Area, 401 West Hillcrest Drive, Thousand Oaks, California 91360 (telephone is (805) 370–2300). In addition the document is posted on the internet at *www.nps.gov/samo.* Public reading copies will also be available at public libraries in Los Angeles and Ventura Counties, and at the NPS Office of Public Affairs, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240; Telephone: (202) 208–6843.

If individuals responding to this notice request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of such responses. There may also be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and business; and, anonymous comments may not be considered.

Decision: A Record of Decision may be approved by the Regional Director, Pacific West Region, no sooner than 30 days after the publication by the Environmental Protection Agency of the notice of filing of this Final EIS\GMP in the **Federal Register**. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation of the GMP is the Superintendent, Santa Monica Mountains National Recreation Area.

Dated: October 3, 2002.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 02–29341 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan, Minidoka Internment National Monument, Jerome County, ID; Notice of Extension oF Public Scoping Period

SUMMARY: In accord with § 102(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), the National Park Service is undertaking a conservation planning and environmental impact analysis process for the first General Management Plan (GMP) for the Minidoka Internment National Monument, Idaho. An Environmental Impact Statement will be prepared concurrently with the GMP. The GMP is intended to set forth the basic management philosophy for this new unit of the National Park System and provide strategies for addressing issues and achieving identified management objectives for that unit, thus serving as a "blueprint" to guide management of natural and cultural resources and visitor use during the next 15–20 years. The notice of intent initiating scoping for this effort was published in the **Federal Register** on April 24, 2002, with the original public scoping period set to conclude on September 30, 2002. In an effort to comprehensively involve all interested parties and to solicit additional concerns and information about management issues that should be addressed, the scoping period has been extended through December 2002.

SUPPLEMENTARY INFORMATION: All individuals, organizations, agencies, American Indian tribes, and other interested parties with information pertinent to preparation of the GMP are encouraged to contact the Superintendent, Minidoka Internment National Monument. To be considered, comments must be postmarked or transmitted no later than December 31, 2002.

Comments: As part of this comprehensive public involvement effort, the National Park Service anticipates holding public scoping meetings in Idaho, Oregon, and Washington, during the month of November 2002. Details of these meetings will be announced widely in local and regional news media, via direct park mailings, and posted on the park's Web site (see below). All responses should be submitted directly to the Superintendent, Minidoka Internment National Monument, P.O. Box 570, 221 North State Street, Hagerman, Idaho 83332. Emailed comments should be sent to *MIIN_GMP@nps.gov.* Current information is available at (208) 837–4793 or *www.nps.gov/miin/.*

All comments received will become part of the public record. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always, NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Dated: September 26, 2002.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–29342 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 19, 2002. OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention Mr. Jeffrey Addiego, Boulder Canyon Operations Office, PO Box 61470, Boulder City, NV 89006–1470.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information, contact Mr. Jeffrey Addiego, (702) 293–8525, or e-mail at *JAddiego@lc.usbr.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title: Lower Colorado River Well Inventory.

OMB No.: Extension of 1006–0014.

Description of respondents: All diversions of mainstream Colorado River water along the lower Colorado River must be accounted for and, for non-Indian diverters, in accordance with a water use contract with the Secretary of the Interior. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined. This requires an inventory of wells along the lower Colorado River and the gathering of specific information concerning each well.

Frequency: These data will be collected only once for each well owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made.

Estimated completion time: An average of 30 minutes is required for Reclamation to interview individual well owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

Annual responses: 1,000.

Annual burden hours: 500 hours.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the forms.

A Federal Register notice with a 60-day comment period soliciting comments on this collection of

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information was published on August 12, 2002 (67 FR 52499). No comments were received.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Gary Palmeter,

Manager, Property and Office Services Division.

[FR Doc. 02–29286 Filed 11–18–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

Notice of Meeting: President's Council on the 21st Century Workforce and the Committees on Skills Gap, Demographics and Workplace Issues

AGENCY: Office of the Secretary of Labor.

ACTION: Notice of meeting of the President's Council on the 21st Century Workforce and meeting of Committees.

SUMMARY: Pursuant to Executive Order 13218, the Secretary of Labor will hold a meeting of the President's Council on the 21st Century Workforce, hereafter (The Council). This is the second meeting of The Council and its Committees on the Skills Gap, Changing Demographics, and Workplace Issues. The Council and Committees will provide information and advice to the President, through the Secretary of Labor and the Office of the 21st Century Workforce, on issues guided by Executive Order 13218.

DATE, TIME AND LOCATION: The Council and the Committees will meet on November 21, 2002 from 8:30 a.m. to approximately 2 p.m. The location of the meeting will be the Secretary's Conference Room, U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Shelley Hymes, Director, Office of the 21st Century Workforce, U.S. Department of Labor, Room S–2235, 200 Constitution Avenue, NW., Washington, DC 20210. The contact telephone number is (202) 693–6490.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The agenda for this meeting includes:

- Welcome and remarks by U.S. Secretary of Labor Elaine L. Chao
- Welcome and remarks by the Director of the Office of the 21st Century Workforce
- Briefing by Department of Labor (DOL) Officials;
- Committee meeting on the Skills Gap, Changing Demographics and Workplace Issues

An official record of the meeting will be available for public inspection in the Office of the 21st Century Workforce. All inquiries should be addressed to the Office of the 21st Century Workforce at the address and telephone number provided above.

Individuals needing special accommodations for the Council or Committee meeting should contact Shelley Hymes at 202–693–6490 before November 19, 2002.

Interested parties may submit written data, views or comments, preferably 20 copies, to Shelley Hymes at the address listed above. The Office of the 21st Century Workforce will forward submissions received prior to the meeting to the appropriate Council or Committees and will include each submission in the record of the meeting.

Due to unforeseen administrative delay, we are unable to provide the full 15 days of advanced notice of this meeting.

Dated: Signed in Washington DC on November 14, 2002.

Shelley S. Hymes,

Director, Office of the 21st Century Workforce.

[FR Doc. 02–29432 Filed 11–18–02; 8:45 am]

BILLING CODE 4510–23–M

LEGAL SERVICES CORPORATION

Rulemaking Protocol

AGENCY: Legal Services Corporation.

ACTION: Announcement of adoption of revised rulemaking protocol.

SUMMARY: This notice sets forth the text of a revised rulemaking protocol adopted by the LSC Board of Directors which will govern LSC rulemaking activites.

DATES: This Rulemaking Protocol became effective upon its adoption at the LSC Board of Directors Meeting on November 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE., Washington, DC 20002–4250; 202/336–8817 (phone); 202/336–8952 (fax); *mcondray@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Legal Services Corporation is authorized by Congress to issue regulations as necessary to carry out its mission. *See* 42 U.S.C. 2996(e). LSC, however, is not a "department, agency, or instrumentality of the Federal Government." 42 U.S.C. 2996(d). As such, LSC is not subject to the requirements of the Administrative Procedures Act, which governs the rulemaking activities of Federal agencies. Rather, LSC is required to "afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the **Federal Register** at least 30 days prior to their effective date all its rules, regulations, guidelines and instructions." 42 U.S.C. 2999(g).

Throughout its history, LSC has conducted its rulemaking in compliance with the statutory requirements described above, but has not had a written statement of the Board of Directors ("Board") setting forth the procedures to be followed in the course of LSC rulemaking activities. The Board determined that, while there is no legal requirement for LSC to have a written protocol related to rulemaking, having one would serve to advance LSC's policy of conducting its rulemaking activities in a spirit of cooperative dialog with our recipients and other interested parties. Accordingly, on September 18, 2000, at a meeting of its Board of Directors, the Legal Services Corporation adopted a new Rulemaking Protocol to govern its rulemaking activities.

At its September 2002 meeting, the Board discussed how the Rulemaking Protocol and how rulemaking has proceeded under the Protocol, citing concerns over cost of the Negotiated Rulemakings being undertaken while endorsing the collaborative rulemaking approach promoted by the Protocol. The Board requested that staff provide at the next meeting a report detailing experience with the Rulemaking Protocol, to date, and recommending changes, as necessary to improve the Protocol. The requested report, including proposed changes to the Protocol was provided and taken up by the Board at it meetings on November 8–9, 2002. The Board adopted the proposed revised Protocol, with some minor amendments. The text of the Protocol, as revised, is set forth below.

It should be noted that, since this Protocol is a statement of LSC internal procedure and is not a "rule, regulation, guideline or instruction," LSC is not required by law to publish this Protocol or seek public comment. LSC is choosing to publish this Protocol in the **Federal Register** (and has also posted it on the LSC website at *http:\\www.lsc.gov*) in furtherance of LSC's interest in and policy of conducting its business in a fair and open manner.

LSC Rulemaking Protocol (as Revised by the LSC Board of Directors 11/9/02)

This Rulemaking Protocol is intended to reflect the policy of LSC to conduct its rulemaking activities in a spirit of cooperative dialog with our recipients and other interested parties [1] and has the following six objectives:

1. Enhanced implementation of the will of Congress as expressed in the LSC Act, amendments thereto and other statutory enactments;
2. Increased public participation in the manner and method in which LSC promulgates rules;
3. The adoption of procedures that reflect the best practices in rulemaking as articulated in the Administrative Procedures Act, the Negotiated Rulemaking Act of 1990 and Executive Order 12866;
4. Implementation of LSC's strategic initiatives as set forth in Strategic Directions, 2000–2005 (adopted January 29, 2000);
5. Formalization of LSC's policies governing rulemaking and specifically reserving specific responsibilities and authorities unto the Board; and
6. Development of a rulemaking protocol that is efficient and effective.

Regulatory Policy Direction

The Board, through the Operations and Regulations Committee ("Committee"), provides direction on LSC regulatory policy and establishes priorities for LSC rulemaking activities. The Committee will look to staff to effectuate LSC rulemaking policies and priorities through this Protocol. Final authority over LSC rulemaking policies and actions rests with the Board.

Initiation of Rulemaking

The impetus for a rulemaking [2] may come from any one of several sources; Congressional directive; internal LSC initiative (Board or Committee members and/or staff); or a formal request from a member of the regulated community or general public. Decisions on whether to undertake rulemakings will be made by the Board upon the recommendation of the Committee.

In most instances,[3] prior to undertaking a rulemaking LSC's Office of Legal Affairs ("OLA"), in close consultation with appropriate Corporation staff, will develop a Rulemaking Options Paper ("ROP"). The ROP will contain a discussion of the subject for the potential rulemaking, and will include an outline of the policy and legal issues involved. The ROP shall also recommend whether the potential rulemaking should be accomplished by Notice and Comment Rulemaking, including whether holding a Rulemaking Workshop would be appropriate, or whether it should be Negotiated.

Once the ROP is developed and approved by the LSC President, it will be submitted to the Committee. The Committee will have the opportunity to deliberate and determine whether to recommend to the Board that the Board initiate a rulemaking. If the Committee recommends that the Board initiate a rulemaking, the Committee deliberations will also provide an opportunity for the Committee to recommend policy direction on the scope and issues expected to be involved in the rulemaking. As noted above, the Board will make decisions regarding whether to undertake a rulemaking, the method to be used for the rulemaking, and any policy direction to be given to staff at the outset. The appropriate rulemaking process shall be selected on a case-by-case basis consistent with the objectives of this Protocol.

If the Board decides to undertake a rulemaking, notice that a rulemaking proceeding has begun will be posted on the LSC website, indicating the subject matter of the rulemaking and whether the rulemaking will be accomplished through Notice and Comment, including whether the Corporation anticipates holding a Rulemaking Workshop, or be Negotiated. In addition to website notice, notice by mail will also be given those who have previously requested such notice and are included in the Corporation's mailing list dedicated to that purpose.

Notice and Comment Rulemaking; Rulemaking Workshops

In Notice and Comment Rulemaking, LSC develops rulemaking proposals and receives comment on them in writing and at certain publicly designated meetings of the Committee. As an adjunct to the Notice and Comment Process, LSC will, when appropriate, conduct Rulemaking Workshops. Rulemaking Workshops will enable LSC Board members and staff to meet with stakeholders prior to the development of a draft NPRM to discuss, but not negotiate, LSC rules and regulations. LSC believes the Notice and Comment process, including Rulemaking Workshops, will allow for an effective dialog between LSC and its recipients and other interested parties, in those instances in which Negotiated Rulemaking is not used.

When the Board has decided to initiate a rulemaking and to conduct a Rulemaking Workshop, OLA will work with the Board and staff to select a date for the Rulemaking Workshop and will invite participants from the interested stakeholder community. The Workshop will be a meeting at which the participants hold open discussions designed to elicit information about problems or concerns with the regulation (or certain aspects thereof) and provide an opportunity for sharing ideas regarding how to address those issues. The Workshop is not intended to develop detailed alternatives or to obtain consensus on regulatory proposals. Upon the conclusion of the Workshop, the Board shall provide LSC staff with policy guidance on the issues discussed to aid staff in the development of the Draft Notice of Proposed Rulemaking ("NPRM").

OLA will have the primary responsibility for the drafting of the Draft NPRM, which includes both the proposed regulatory text and the proposed preamble, working with management, appropriate staff and the Office of Inspector General ("OIG"). The Draft NPRM will be shared with the OIG for review and comment. The Draft NPRM will be submitted to the President. The President may then approve the Draft NPRM for submission to the Committee for its consideration or return the Draft NPRM to OLA for revisions as necessary.

Once approved, the Draft NPRM will be set for consideration by the

[1] Although this Protocol reflects LSC policy, it is not intended to and shall not create or confer any rights for or on behalf of any person or party and shall not establish legally enforceable rights against LSC or establish any legally enforceable obligations on the part of LSC, its directors, officers, employees and other agents.

[2] Rulemaking includes both the development of new rules and regulations and the amendment of existing rules and regulations.

[3] The Committee and the Board retain the authority to initiate a rulemaking whether or not a ROP has been prepared. The ROP process is intended to aid the Committee and the Board in their respective deliberations and decisionmaking process.

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Committee at a public meeting. The Draft NPRM will be provided to the Committee sufficiently in advance of the meeting to permit appropriate consideration. The notice of the meeting announcing the placement of the Draft NPRM on the Committee agenda will be published in the **Federal Register** and will recite that the Draft NPRM will be publicly available and will be posted on the LSC Web site. In addition, the Draft NPRM will be distributed to each participant in the Rulemaking Workshop, if one has been held. Posting of the Draft NPRM to the LSC Web site and distribution to Workshop participants will be made upon distribution of the Draft NPRM to the Committee and sufficiently in advance of the Committee meeting to permit appropriate consideration by interested parties.

At the Committee meeting, management will present the Draft NPRM with the assistance of OLA and opportunity for public comment will be provided. The Committee will then deliberate and shall decide whether to publish the NPRM, return it to staff for revisions, or recommend to the Board that the Board terminate the rulemaking.

Once the NPRM has been approved, OLA will make any necessary technical revisions to document before it is published in the **Federal Register** for comment.[4] The comment period will be at least 30 days and, it is anticipated, in most instances will be 60 days (but could, under appropriate circumstances, be longer). However, the decision as to whether to limit the notice period to 30 days or to provide a longer comment period is a matter entirely within discretion of the Board.

Copies of all comments received will be provided to the Committee and made available to other Board Members upon request. Copies of all comments will also be placed in a public docket available for inspection and copying in the FOIA Reading Room at the Corporation's offices. Copies of comments received in electronic format, along with an index of all comments received, will be placed into an electronic docket on the LSC website.

Upon the close of the comment period, OLA will draft a Final Rule (which consists of the regulatory text and preamble).[5] The draft of the Final Rule will be shared with the OIG for review and comment. The draft of the Final Rule will be submitted to the President. The President may then approve the draft of the Final Rule for submission to the Committee for its consideration or return it to OLA for revisions as necessary.

Once approved, the draft of the Final Rule will be set for consideration by the Committee at a public meeting. The draft of the Final Rule will be provided to the Committee and the Board sufficiently in advance of the meeting to permit appropriate consideration. In addition, a notice of the meeting announcing the placement of the Final Rule on the Committee agenda will be published in the **Federal Register**. At the Committee meeting, management will present a summary of the Comments and the draft Final Rule with the assistance of OLA. It is anticipated that the Committee will accept public comment as needed to assist in its deliberations. The Committee will vote on whether to recommend the Final Rule to the Board, return it to staff for revisions, or recommend that the Board terminate the rulemaking.

If the draft Final Rule is approved by the Committee for review by the Board, the Board will consider the draft Final Rule and vote to adopt it, to return it to the Committee for further action, or to terminate the rulemaking. At its discretion, the Board may request the participation of members of the public during its deliberations. Once the Final Rule is adopted by the Board, OLA will make any necessary technical revisions to it and submit the final version for approval for publication to the Board's designee (for example, the Board Chair or the Committee Chair). The Final Rule will then be published in the **Federal Register** and placed on LSC's Web site.

Negotiated Rulemaking

In a Negotiated Rulemaking, a group comprised of LSC representatives and affected and/or interested parties will meet under the direction of a trained, neutral facilitator, ("Working Group") with the intention of developing consensus-based positions leading to regulations. The key feature of Negotiated Rulemaking is its collaborative approach, which seeks consensus where possible and decisionmaking by LSC after full dialog with the regulated community and other interested parties. LSC intends to use negotiated rulemaking in instances in which LSC believes that the Notice and Comment process, including the use of Rulemaking Workshops, will not suffice and that the Negotiated Rulemaking process is necessary to properly address complex and/or controversial issues posed by the rulemaking.

The President, in consultation with the Committee Chair, will solicit suggestions for appointment to the Working Group from the regulated community, its clients, advocates, the organized bar and other interested parties. The President, working in consultation with the Committee, acting through its Chair, will make appointments of individuals and organizations to the Working Group, including the facilitator and the OLA representative. Working Groups will have no more than 15 members, representing the diversity of the legal services community and other interested parties. All groups or organizations asked to participate in a Working Group shall be responsible for selecting and designating their representatives. No members will be appointed to a Working Group after the Working Group had held its first meeting.

The Working Group shall meet as necessary to develop a draft NPRM. The members of the Working Group will, drawing upon their substantive expertise, discuss the subjects prompting the need for rulemaking and work toward developing a consensus on solutions to the problems identified. During this process, staff will provide detailed status reports to the Committee during Committee meetings, including briefings on the substance of tentative areas of consensus and disagreement in order to provide the Committee with an opportunity to provide additional policy guidance to LSC staff (and other Working Group members in attendance at the Committee meeting) at that time.

The OLA representative on the Working Group, with the assistance of a subgroup of the membership, shall draft the regulatory language consistent with achieved consensus. The Working Group will review the regulation to ensure it reflects any consensus reached, although the Corporation retains ultimate responsibility for crafting the regulatory language.

The consensus proposal of the group, once developed, must go through the formal rulemaking process as an NPRM. At this point the Notice and Comment process described above will be followed.

On occasion it may happen that no consensus can be reached by the Working Group on a regulatory proposal or some element thereof. In those instances, the President will report this to the Committee and seek direction from the Committee, acting through its Chair, on whether to continue the rulemaking using the Notice and Comment process or to terminate the rulemaking.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–29231 Filed 11–18–02; 8:45 am]

BILLING CODE 7050–01–P

[4] During the comment period, LSC may, in its discretion, hold a public hearing at which interested parties make oral presentations, followed by written comments.

[5] On rare occasions, it may become necessary for LSC to raise additional issues for comment. In such a case, LSC may issue a Revised NPRM and repeat the comment process.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before December 19, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on August 28, 2002 (67 FR 55277 through 55279). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Court Order Requirements.
OMB number: 3095–0038.
Agency form number: NA Form 13027.
Type of review: Regular.
Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.
Estimated number of respondents: 5,000.
Estimated time per response: 15 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 1,250 hours.
Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

2. *Title:* Forms Relating to Military Service Records.
OMB number: 3095–0039.
Agency form number: NA Forms 13036, 13042, 13055, and 13075.
Type of review: Regular.
Affected public: Veterans, their authorized representatives, state and local governments, and businesses.
Estimated number of respondents: 79,800.
Estimated time per response: 5 minutes.
Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).
Estimated total annual burden hours: 6,650 hours.
Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

3. *Title:* Military Personnel Records (MPR) Customer Satisfaction Survey.
OMB number: 3095–0042.
Agency form number: N/A.
Type of review: Regular.
Affected public: Federal, state and local government agencies, veterans, and individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

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Estimated number of respondents: 4,960.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent writes to MPR requesting information from official military personnel files).

Estimated total annual burden hours: 827 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to initially support the business process reengineering (BPR) of the MPR reference service process and then provide MPR management with an ongoing mechanism for monitoring customer satisfaction. In particular, the purpose of the Military Personnel Records (MPR) Customer Satisfaction Survey is to (1) provide baseline data concerning customer satisfaction with MPR's reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the Military Personnel Records (MPR) Customer Satisfaction Survey will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: November 13, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–29297 Filed 11–18–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0143.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR part 760 Loans in Areas Having Special Flood Hazards.

Description: Federally insured credit unions are required by statute and by proposed 12 CFR part 760 to file reports, make certain disclosures and keep records. Borrowers use this information to make valid purchase decisions. The NCUA uses the records to verify compliance.

Respondents: All federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 5,500.

Estimated Burden Hours Per Response: 7 minutes.

Frequency of Response: Recordkeeping and on occasion.

Estimated Total Annual Burden Hours: 101,333.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29365 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0142.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR 741.6 (c) Requirements for Insurance.

Description: Credit Unions that submit late or inaccurate call reports are required to submit a proposal that describes how it will avoid another late or inaccurate report.

Respondents: Federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 630.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 1,260.

Estimated Total Annual Cost: $21,186.60.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29366 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following Web site: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0129.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Corporate Credit Unions.

Description: Part 704 of NCUA's Rules and Regulations direct corporate credit unions to maintain records concerning their activities.

Respondents: Corporate credit unions.

Estimated No. of Respondents/Record keepers: 34.

Estimated Burden Hours Per Response: 153 hours.

Frequency of Response: Reporting, recordkeeping, on occasion and annually.

Estimated Total Annual Burden Hours: 70,142 hours.

Estimated Total Annual Cost: $2,248.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29367 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0068.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR 701.31 Non Discrimination Policy.

Description: This regulation requires a federal credit union (FCU) to keep a copy of the property appraisal. It also requires that a FCU using geographical factors in evaluating real estate loan applications must disclose such facts on the appraisal and state for justification. This regulation insures compliance with the Fair Housing anti-redlining requirements.

Respondents: Federal Credit Unions.

Estimated No. of Respondents/Record Keepers: 4,000.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Recordkeeping on occasion.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29368 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, FaxNo. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of

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Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0032.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Records Preservation. Part 749 of NCUA Regulations directs each credit union to store copies of their members' share and loan balances away from the credit union's premises.

Respondents: All credit unions.

Estimated No. of Respondents/Record keepers: 9,984.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 19,968.

Estimated Total Annual Cost: $998,400.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29369 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

It is also available on the following Web site: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0141.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: 12 CFR 701.22 Organization and Operation of Credit Unions.

Description: NCUA has authorized federal credit unions to engage in loan participations, provided they establish written policies and enter into a written loan participation agreement. NCUA believes written policies are necessary to ensure a plan is fully considered before being adopted by the Board.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/Record keepers: 1,000.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: $100,000.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29370 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0057.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: FCU Recordkeeping of Meeting Minutes and Other Documents.

Description: The Federal Credit Union Act and NCUA's Federal Credit Union Bylaws require each federal credit union to prepare and maintain minutes of its board and member meetings and copies of other important documents and election results. In addition, the board's secretary must inform the NCUA Board of any address change of a federal credit union.

Respondents: Federal credit unions.

Estimated No. of Respondents/Record keepers: 6,118.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Recordkeeping and reporting on occasion and annually.

Estimated Total Annual Burden Hours: 21,107.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on November 14, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–29371 Filed 11–18–02; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power Corporation (the licensee) to withdraw its August 14, 2002, application for proposed amendment to Facility Operating License No. DPR–72 for Crystal River, Unit No. 2, located in Citrus County, Florida.

The proposed amendment would have revised the Technical Specifications pertaining to two inoperable control complex chillers.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 6, 2002 (67 FR 57042). However, by letter dated October 24, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 14, 2002, and the licensee's letter dated October 24, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of November 2002.

For the Nuclear Regulatory Commission.

Ram Subbaratnam,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29327 Filed 11–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Future Plant Designs; Canceled

The meeting of the ACRS Subcommittee on Future Plant Designs scheduled to be held on November 21, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland, has been canceled due to the unavailability of documents. Notice of this meeting was published in the **Federal Register** on Monday, November 4, 2002 (67 FR 67218).

FOR FURTHER INFORMATION CONTACT: Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (EST) or by e-mail *MME@NRC.gov*

Dated: November 13, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–29326 Filed 11–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of November 18, 25, December 2, 9, 16, 23, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 18, 2002

Thursday, November 21, 2002

10 a.m.—Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, "Risk-Informed Caterogization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors" (Public Meeting) (Contract: Eillen McKenna, 301–415–2189, or Timothy Reed, 301–415–1462)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2 p.m.—Discussion of Security Issues (Closed—Ex.1)

Week of November 25, 2002—Tentative

Tuesday, November 26, 2002

9:30 a.m.—Discussion of Security Issues (Closed—Ex.1)

Week of December 2, 2002—Tentative

Wednesday, December 4, 2002

10 a.m.—Briefing on Decommissioning Bankruptcy Issues (Closed—Ex. 4 & 9)

Week of December 9, 2002—Tentative

There are no meetings scheduled for the Week of December 9, 2002.

Week of December 16, 2002—Tentative

Wednesday, December 18, 2002

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of December 23, 2002—Tentative

There are no meetings scheduled for the Week of December 23, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 14, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–29487 Filed 11–15–02; 2:32 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Performance of Commercial Activities

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed revision to Office of Management and Budget Circular No. A–76, "Performance of Commercial Activities."

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SUMMARY: The Office of Management and Budget (OMB) proposes major revisions to Circular No. A–76 to improve the management of commercial activities that are needed to conduct the business of government. The revisions would expand the use of public-private competitions to all activities performed in-house and through commercial inter-service support agreements (ISSAs). The revisions would also incorporate principles of the Federal Acquisition Regulation (FAR) into the competitive sourcing process, including the ability to conduct an expanded best value cost-technical trade-off source selection process. In addition, the revisions would provide guidance for the development of inventories identifying the commercial and inherently governmental activities agencies perform, and prescribe limitations regarding the reimbursable services federal agencies may provide to state and local governments.

To accomplish these changes, OMB is proposing to revise and incorporate the following documents into the revised Circular A–76: the "Revised Supplemental Handbook to OMB Circular A–76" (March 1999); OMB Circular A–76 Transmittal Memoranda Nos. 1–24; Office of Federal Procurement Policy (OFPP) Policy Letter 92–1, "Inherently Governmental Functions"; and OMB Circular A–97, "Provision of Specialized or Technical Services to State and Local Units of Government by Federal Agencies Under Title III of the Intergovernmental Cooperation Act of 1968." The Revised Supplemental Handbook to Circular A–76 (hereafter "Supplemental Handbook"), OFPP Policy Letter 92–1 and OMB Circular A–97 would be rescinded.

DATES: Interested parties should submit comments to OFPP, Office of Management and Budget, at the address shown below on or before December 19, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic comments may be submitted to: *A-76comments@omb.eop.gov*. Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–5105. Comments may be mailed to Mr. David C. Childs, Office of Federal Procurement Policy, Office of Management and Budget, 725 17th Street NW., New Executive Office Building, Room 9013, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Childs, Office of Federal Procurement Policy, NEOB Room 9013, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 (tel: (202) 395–6104).

Availability: Copies of the proposed revision to OMB Circular A–76 may be obtained at the OMB home page at www.whitehouse.gov/OMB/circulars/index.html#numerical. Copies of the current OMB Circular A–76, the Revised Supplemental Handbook, applicable Transmittal Memoranda, OFPP Policy Letter 92–1, and OMB Circular A–97 are also available on the OMB home page. Paper copies of any of the documents identified above may be obtained by calling OFPP (tel: (202) 395–7579).

SUPPLEMENTARY INFORMATION:

A. Overview

To lower costs for taxpayers and improve program performance to citizens, OMB has undertaken major revisions to the processes and practices in OMB Circular A–76 that govern how federal agencies determine whether commercial activities will be performed by public or private sources. The proposed revisions would:

- Significantly expand the use of public-private competition by (i) eliminating exceptions that have permitted federal agencies to provide services to one another on a sole-source basis under reimbursable fee-for-service agreements (*i.e.*, commercial ISSAs) and (ii) requiring periodic recompetitions of commercial activities performed for the government;
- Make processes simpler and easier to understand, including greater reliance on concepts and practices set forth in the FAR that are familiar to, and well tested by, the acquisition community;
- Improve the effectiveness of competitions by giving agencies greater flexibility to consider quality in source selections, including the use of cost-technical tradeoffs for information technology (IT) and certain other activities;
- Improve public trust in public-private competitions by avoiding any appearance of conflicts of interest;
- Increase visibility into the management of government by requiring agencies to develop lists of their commercial and inherently governmental activities and make them available to the public; and
- Strengthen accountability for achieving results by centralizing agency oversight for the management of commercial activities and increasing the focus on post-award administration of agreements with public providers to be more consistent with practices applied to contracts with private sector providers.

B. The Purpose and Procedures of OMB Circular A–76

Federal agencies rely on a mix of public and private sector sources to perform a wide variety of recurring commercial activities that are needed to conduct the business of government. These activities range all the way from custodial services to data collection, computer services and research, testing, and maintenance of equipment used by our nation's war fighters. OMB Circular A–76 establishes the policies and procedures for identifying commercial activities and determining whether these activities should be provided through contract with commercial service providers, by in-house government personnel, or through reimbursable fee-for-service providers under ISSAs with other government agencies.

Before an agency shifts commercial work from one sector to another (*e.g.*, from in-house performance to contract, or vice versa), Circular A–76 generally requires the agency to conduct a public-private competition in which the cost of performance is compared between and among the public and private sectors. To perform a "cost comparison" under the current Circular, agencies must:

- Develop a performance work statement (PWS);
- Create a management plan to determine the government's "most efficient organization" (MEO);
- Establish an in-house government cost estimate for the in-house plan that is then certified by an independent reviewing official (IRO) for compliance with the PWS and costing policies set forth in the Circular;
- Issue a solicitation in accordance with the FAR seeking offers from private and public sector sources, except for the in-house source, whose cost estimate is submitted and evaluated independently;
- Identify the best offer submitted in response to the solicitation and compare it to the in-house estimate; and
- Make award to the lower cost alternative (which is subject to review under an administrative appeals process).

The Circular also recognizes a variety of circumstances in which agencies are not required to conduct cost comparisons.

No shifting of work contemplated. Cost comparisons are not required where work is not presently being performed in-house and the agency seeks to award a contract for a new or expanded service requirement or for a service that is currently being obtained through a competitively awarded contract.

Direct conversions. The Circular allows agencies to directly convert work to or from the private sector without cost comparison under certain circumstances. For example, work may be directly converted where an activity is or will be performed by an aggregate of 10 or fewer "full-time-equivalent" employees (FTEs), or where conversion will result in no employee impact (*e.g.*, because they are reassigned to comparable federal positions or voluntarily retire).

Ongoing agency performance. Commercial services activities that have been continuously performed by an in-house provider or another agency through an ISSA are not subject to recurring cost comparisons. In March 1996, OMB amended the Supplemental Handbook to require cost comparisons before new or expanded work is performed in-house or through an ISSA. However, there is no limitation on the length of the new agency performance agreements, thus allowing indefinite deferral of further competitions.

Exercise of agency waivers. Agency heads are authorized to waive cost comparisons under certain conditions. For instance, an agency may waive the cost comparison requirement where a conversion will result in a significant financial or service quality improvement and the proposed conversion will not serve to reduce significantly the level or quality of competition in the future award or performance of work.

C. Shortcomings of Current Circular A–76 Processes

Since its original issuance in 1966, Circular A–76 has been revised three times—in 1967, 1979, and 1983. The Supplemental Handbook, first issued in 1979, has been revised three times—in 1983, 1996 and 1999. Despite the revisions, including the development of streamlined cost comparisons for activities with 65 or fewer FTEs, the policies and processes of Circular A–76 have not been widely applied. While the Department of Defense has undertaken some noteworthy efforts, most of the 850,000 FTEs that agencies have identified as performing commercial activities (nearly half of all federal employees) remain insulated from the dynamics of competition.

A variety of factors have limited the Circular's use and effectiveness:

The Circular's exceptions allow for significant amounts of agency work to be performed without competition. As described above, ISSAs between federal agencies for commercial support services in place before 1996 enjoy a special exemption from the Circular's competition requirements. Simply put, there is no requirement to subject these reimbursable agreements to competition unless an agency voluntarily decides to consider changing its current provider. As a result, billions of taxpayer dollars continue to be spent on federal operations that have never been exposed to the innovation and efficiency that competition generates. Even where competitions are conducted, there are no requirements to limit the period of performance if a public provider wins the competition. Consequently, many public providers continue to escape the competitive pressures that would likely motivate optimal performance.

The competition process is complicated and not well understood. Conducting a cost comparison can be time consuming and complex. In-house providers often lack the training and technical support needed to develop management plans, solicitations, or fully allocated cost estimates. In addition, the Circular includes numerous procedures that are different from the established acquisition processes set forth in the FAR for conducting competitions among private sector sources. These differences serve as necessary safeguards for public-private competitions, especially when in-house performance is contemplated. However, many believe the process for carrying out public-private competitions under Circular A–76 could be made more understandable by using basic FAR principles.

Current processes do not give agencies sufficient flexibility to make best value decisions. Historically, Circular A–76 has focused agency sourcing decisions on cost. Cost must always be a factor and often should be the most important factor. At the same time, securing good performance often hinges on quality considerations that may require agencies to make tradeoffs between cost and quality when evaluating sources. The 1996 Supplemental Handbook introduced the concept of best value to public-private competitions. However, it places significant limitations on an agency's ability to use cost-technical tradeoffs in a public-private source selection process.

Many believe the process is susceptible to gaming. Despite various safeguards, including costing principles that allow federal managers to make cost comparisons between sectors that have vastly divergent approaches to cost accounting, there remains a general sense that public-private competitions are not always fair. This perception is driven, in part, by the fact that agencies have considerable control over the timing of competitions. Managers often delay the start of, or unnecessarily draw out, competitions without consequence, hurting morale and reducing the number of private sector firms willing to compete. In addition, federal employees historically have been allowed to participate both in defining performance requirements and developing the in-house offer—causing some to question if conflicts of interest could exist. These concerns serve to discourage participation in public-private competitions and weaken taxpayer confidence in the overall process.

Accountability for results is limited. When public employees compete and win work, government managers are often not held fully accountable for making good on the projected savings and improved performance identified in the agency's offer. Current guidance requires post-competition reviews, but only for 20 percent of the functions performed by the government following a cost comparison. As a result, even where competition is used to transform a public provider into a high-value service provider, few steps are routinely taken to ensure this potential translates into positive results.

D. Proposed Revisions to Circular A–76

OMB is committed to improving significantly the processes and practices federal agencies use to determine whether commercial activities will be performed by public or private sector sources. These decisions have a direct and substantial effect on the government's ability to deliver quality service to our citizens in a cost-effective, timely, and responsible manner. Therefore, OMB is proposing major revisions to Circular A–76 to: (1) Improve and expand the use of competition in public-private sourcing decisions, (2) better ensure fairness, integrity, and transparency in the decision-making process, and (3) strengthen accountability for achieving results.

In addition to making significant substantive changes, OMB is modifying the organization of the Circular to improve clarity and ease of use. The main body of the Circular (now a two-page document) lays out the basic

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policy tenants and responsibilities that agencies must undertake. Guidance for carrying out these responsibilities, and a detailed glossary of acronyms and definition of key terms, are set forth in six attachments:

Attachment A—Inventory Process
Attachment B—Public-Private Competition
Attachment C—Direct Conversion Process
Attachment D—Inter-Service Support Agreements
Attachment E—Calculating Public-Private Competition Costs
Attachment F—Glossary of Acronyms and Definitions of Terms

The key substantive changes in the proposed revision to Circular A–76 are as follows:

1. Improving and Expanding the Use of Competition

This Administration's general policy is to rely on competition to select the providers of commercial activities that agencies perform in carrying out their missions. The benefits of competition are well documented. The General Accounting Office (GAO) and the Center for Naval Analysis repeatedly have concluded that subjecting larger in-house operations to competition has consistently generated cost savings exceeding 30 percent. See, e.g., Future Years Defense Program: Funding Increase and Planned Savings in Fiscal Year 2000 Program Are at Risk, GAO/NSIAD–00–11 (November 1999); Evidence on Savings from DOD A–76 Competitions, Center for Naval Analysis, CRM 98–125 (November 1998); Long-Run Costs and Performance Effects of Competitive Sourcing, Center for Naval Analysis, CRM D0002765.A2 (February 2001).

The President has identified competitive sourcing—i.e., the process of opening the government's commercial activities to the discipline of competition—as one the five main initiatives of his Management Agenda for improving the performance of government. Changes set forth in the proposed revisions to Circular A–76 are designed to facilitate broader and more strategic use of competitive sourcing as a management tool for improving agency performance.

a. Competition as the Norm

i. Presumption that an activity is commercial. The revised Circular will require agencies to presume that all activities are commercial in nature unless an activity is justified as inherently governmental. See § 4.b. of the Circular and ¶ D.1 of Attachment A. To reinforce this presumption, agencies will be required to submit annual inventories of their inherently governmental positions. See ¶ C.3. of Attachment A. The Circular offers a more concise definition of "inherently governmental" and rescinds the more complex description contained in OFPP Letter 92–1 to achieve greater consistency in the identification of inherently governmental positions. The responsibility to develop an inherently governmental activities inventory will be in addition to the general obligation for agencies to prepare comprehensive annual inventories of their commercial activities performed by Federal activities, a requirement derived from the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270; 31 U.S.C. 501 note). See ¶ C.1. of Attachment A. With limited exception, the list of inherently governmental activities will be made available for public review. These additional steps should help to improve the accuracy of inventories and cast greater transparency on the government's commercial activities overall.

ii. Elimination of anti-competitive agency-to-agency arrangements. The revised Circular will eliminate the "grandfather clause" that currently permits public reimbursable service providers working under commercial ISSAs in existence prior to March 1996 to perform work indefinitely without being subject to competition. Agencies relying on public reimbursable providers will be required to develop plans for competing these commercial ISSAs within five years. All commercial ISSAs that are not competed or directly converted within this timeframe will be terminated, unless specific approval is granted by OMB's Deputy Director for Management, based on a report submitted by the head of the customer agency demonstrating why competition is not yet feasible. See ¶ B.3.of Attachment D.

In addition, customer agencies will be required to periodically test the marketplace by recompeting requirements performed by public reimbursable providers, just as they would with private sector contractors. This will help to ensure that all sources, public and private, are appropriately incentivized to perform at their best. Generally, agencies will be required to recompete commercial ISSAs every five years. The exact performance period will be identified in the ISSA or in a letter of obligation when the work is performed in house directly by the agency employees. See ¶¶ C.2.a.(5). and C.5.a.(4). and b.(2). of Attachment B.

There will be limited exceptions to the recompetition requirement. For example, commercial ISSAs will not be subject to competition if the revenue generated to the public reimbursable service provider performing under the ISSA does not exceed $1 million on an annual basis. An exemption will also be provided for inherently governmental ISSAs that, among other things, establish contracts for inter-agency use *e.g.*, such as a government-wide acquisition contract or multi-agency contract), and where the public reimbursable provider bears no responsibility to the customer agency for performance of the work and the customer agency is responsible for making all payments directly to the contractor. See ¶ A of Attachment D.

Finally, the revised Circular will incorporate long-standing limitations imposed on federal agencies regarding the reimbursable services they provide to state and local governments. See ¶ H of Attachment D. These requirements, which are based on section 302 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6505), are currently implemented in OMB Circular A–97. Circular A–97 states that federal agencies may provide only specialized or technical commercial services to a state or local government if, among other things: (1) The requesting state or local government entity demonstrates that it has sought but has been unable to identify a satisfactory private sector source, (2) the provision of such specialized and technical services shall not require additional resources, beyond those necessary to meet federal requirements, and (3) the service is currently provided by the agency for its own use and, if commercial in nature, has been competed in accordance with Circular A–76. By rescinding Circular A–97 and incorporating its requirements in Circular A–76, the key policies addressing the appropriate parameters of federal performance of commercial activities will be set forth in one document.

b. Expanded Reliance on Well-Established FAR Practices

The revised Circular requires that agencies generally comply with the FAR in conducting competitions. *See* § 4.d. of the Circular and ¶ C.2. of Attachment B. The general principles of the FAR are well established and enjoy widespread familiarity within the procurement community. Greater application of FAR-type principles and practices throughout the Circular is intended to bring public-private competitions closer to mainstream source selection and reduce confusion that may currently make it more difficult for parties to compete. Examples of FAR-type principles that have been incorporated into the revised Circular include:

- Greater uniformity in the application of basic requirements to private and in-house providers. For instance, in-house offers (referred to in the proposed Circular as "agency tenders") will be required to respond to a solicitation within the same timeframes required of private sector offerors or public reimbursable tenders or risk elimination from the competition. *See* ¶ C.3.a.(2), (8) and (9) of Attachment B. Furthermore, instead of having an IRO review the agency tender, while all other offerors are reviewed by the source selection evaluation board (SSEB), the SSEB will simultaneously evaluate all tenders simultaneously with all offers. *See* ¶¶ C.4.a.(1).a, a.(2)., and a.(3).a. of Attachment B;
- Ability to conduct cost-technical tradeoffs in certain circumstances, largely in accordance with FAR Part 15, including the ability to eliminate an agency tender from the competitive range (see further discussion below);
- Exchanges between public tenders and the government in accordance with the general principles set forth in the FAR for exchanges between the government and the private sector. *See* ¶ C.4.a(3)(a). of Attachment B;
- Post award accountability for in-house performance similar to that expected of private sector contractors. Agencies relying on an in-house provider or a public reimbursable provider will be required to document changes to the solicitation, track actual costs, and terminate for failure to perform. *See* ¶ C.5.a.(4). of Attachment B. As described above, agencies will also be required to recompete work being performed by in-house or public reimbursable providers in accordance with the same time limitations imposed by the FAR on contracts with the private sector.

The revised Circular recognizes the talents and conditions under which the federal workforce operates and the importance of providing them with adequate training and technical support during the competition process to ensure they are able to comply with the requirements of the Circular and compete effectively. In this regard, the Circular requires that the agency tender official, the PWS team, and the MEO team be assisted by specific experts, including human resources, procurement, and management experts. *See* generally ¶ B.3.a. of Attachment B.

c. Greater Emphasis on Best Value

Cost comparisons have been the traditional focal point of Circular A–76. Reflective of the focus of the Circular for most of its history, the term connotes a cost-only sourcing decision. While cost will always be an important consideration in sourcing decisions, and often the most important consideration, agencies should also have the ability to take quality and innovation into account, especially where needs may require complex and inter-related services. For this reason, the term "cost comparison" has been dropped from the proposed Circular and replaced with the term competition.

The new focal point will be on "standard competitions," or direct conversions when appropriate. Recognizing that agency needs cannot be met through a "one-size-fits all" approach, the Circular's guidance is broader and more accommodating than that which was developed over the years for the conduct of cost comparisons.

For example, when conducting a standard competition, agencies will have three options for considering non-cost factors. First, an agency may conduct a low price technically acceptable source selection where the performance decision is based on the low cost of offers that have been determined to be technically acceptable. *See* ¶ C.4.a.(3).b. of Attachment B. Second, if an agency wishes to have the flexibility of considering alternative performance levels that sources may wish to propose, the agency may conduct a "phased evaluation process." During the first phase when technical factors are considered, the in-house provider, public reimbursable providers and private sector offerors may propose performance standards different from those specified in the solicitation. If the agency determines that the proposed alternative performance standards are appropriate and are within the agency's current budget, the agency could issue a formal amendment to the solicitation and allow revised submissions. The technically qualified offerors and the in-house offeror would then compete based on price against the revised performance standard. *See* ¶ C.4.a.(c).2. of Attachment B.

Finally, if non-cost factors are likely to play a more dominant role, agencies may conduct an "integrated evaluation process" with cost-technical tradeoffs similar to those authorized by FAR Part 15. Like the FAR Part 15 process, private sector offers, public reimbursable providers and in-house providers may submit higher performance standards than the solicitation. If the in-house offer is not among the most highly rated proposals, it could be eliminated from the competitive range, as would be envisioned by FAR 15.306(c). The source selection authority (SSA) would be required to document its rationale for any tradeoffs as required by FAR 15.406. Given the special considerations that must be taken into account with a public-private competition, the Circular recognizes that this integrated evaluation technique may not be appropriate for all needs and should be tested before wider application is authorized. For this reason, the Circular limits usage to (1) IT activities currently performed by federal employees, (2) contracted commercial activities, new requirements, or segregable expansions where an agency tender will be submitted, or (3) any other commercial activities where the agency's assistant secretary or equivalent level official with responsibility for implementing the Circular (*i.e.*, the "4.e official") receives approval from OMB prior to issuance of the solicitation. *See* ¶ C.4.a(c)1. of Attachment B.

2. Ensuring Fairness, Integrity, and Transparency

The revised Circular will establish new rules to separate the team that is formed to write the solicitation from that established to develop the agency tender. In addition, the agency MEO team, directly affected personnel (and their representatives) and any individual with detailed knowledge of the MEO or agency cost estimate in the agency tender will not be allowed to be members of the SSEB. *See* ¶ D.2. of Attachment B. These steps are intended to avoid any appearance of a conflict of interest and garner the public's trust in the processes used to make critical sourcing decisions.

3. Strengthening Accountability for Results

The ultimate success of Circular A–76 to deliver results for the taxpayer requires that appropriate mechanisms be in place to ensure selected public or private sources make good on their promises. To this end, the revised Circular will:

- *Require agencies to centralize oversight responsibility.* Agencies will be required to establish a program office responsible for the daily implementation and enforcement of the Circular. Improved oversight will serve to enhance communications, facilitate sharing of lessons learned, and significantly improve overall

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compliance with the Circular. *See* ¶ C.1.b.(5). of Attachment B.

• *Impose competition timeframes.* The revised Circular states that a standard competition shall be completed within one year of the public announcement that a competition will be conducted. The 4.e. official (*i.e.*, an agency assistant secretary or equivalent level official with responsibility for implementing the Circular) may waive the one-year completion requirement at announcement of the competition and set an alternative completion date if the competition is particularly complex and notification is provided to OMB. *See* ¶ C.1.b.(3). of Attachment B. These timeframes are designed to incentivize agencies to complete competitions and will instill greater confidence by all participants that agencies are committed to competitive sourcing and selecting the best provider. It will also ensure that the benefits of competition are realized.

• *Improve post competition oversight.* To ensure public providers are subjected to the same oversight that private providers routinely face, customer agencies will be required to document changes in the solicitation and agency tender and track actual costs. Before exercising an option for additional performance, the agency will be required to determine that performance by the in-house, public reimbursable, or private contract provider meets the requirements of the solicitation and that continued performance is advantageous to the agency. *See* ¶ C.5.b.(2). of Attachment B.

Mitchell E. Daniels, Jr.,

Director.

[FR Doc. 02–29472 Filed 11–15–02; 12:37 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46800; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving Amendment to the Plan Allocating Regulatory Responsibility Among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

November 8, 2002.

Notice is hereby given that the Securities and Exchange Commission ("SEC or "Commission") has issued an Order, pursuant to sections 17(d)[1] and 11A(a)(3)(B)[2] of the Securities Exchange Act of 1934 ("Act"), approving an amendment to the plan for allocating regulatory responsibility filed pursuant to Rule 17d–2 of the Act,[3] by the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc. ("ISE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "SRO participants").

I. Introduction

Section 19(g)(1) of the Act[4] requires, among other things, every national securities exchange and registered securities association ("SRO") to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d)[5] or 19(g)(2)[6] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for, and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d–1[8] and Rule 17d–2[9] under the Act. Rule 17d–1, adopted on April 20, 1976,[10] authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[11] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilties allocated by the plan to another SRO.

On October 11, 2002, the Commission published notice of the SRO participants' amended plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[12] No comments were received. The primary purpose of the amendment is to allocate regulatory responsibilities among all of the SRO participants.[13] In addition, the amended plan allows an SRO participant that has been allocated regulatory responsibilities under the plan (*i.e.*, a DOEA) to contract with The Options Clearing Corporation, a national securities exchange registered under section 6(a) of the Act,[14] or a national securities association registered under section 15A of the Act[15] to perform the DOEA's responsibilities under the plan.

II. Discussion

The Commission continues to believe that the proposed plan, as amended, is an achievement in cooperation among the SRO participants and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

With respect to the DOEA's ability to contract with another SRO to perform the DOEA's regulatory responsibilities under the plan, the Commission has previously recognized that contractual regulatory agreements between SROs outside of the Rule 17d–2 context may be permissible in instances where it is consistent with the public interest.[16] The Commission believes that it is reasonable and consistent with the public interest to allow an SRO to contract with another SRO to perform regulatory functions and services. At the same time, the Commission believes that it is important for, and that the Act requires, the ultimate responsibility and primary liability for self-regulatory failures to rest with the DOEA itself, rather than the SRO retained to perform the regulatory responsibilities. Thus, the DOEA will bear ultimate legal responsibility for the performance of the regulatory responsibilities allocated to it under the 17d–2 plan. The SRO contracting to carry out the responsibilities, however, may nonetheless bear liability for causing or, in appropriate circumstances, aiding and abetting the DOEA's violations.

This order gives effect to the amended plan submitted to the Commission that is contained in File No. S7–966. The SRO participants shall notify all members affected by the amended plan of their rights and obligations under the amended plan.

It is therefore ordered, pursuant to sections 17(d) and 11A(a)(3)(B) of the Act, that the amended plan of the Amex, the CBOE, the ISE, the NASD, the NYSE, the PCX, and the Phlx filed pursuant to Rule 17d–2 is approved.

It is further ordered that those SRO participants that are not the DOEA as to a particular member are relieved of those responsibilities allocated to the member's DOEA under the amended plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29246 Filed 11–18–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Extension of the Permissible Maturity of Flexible Exchange Index Options to Ten Years

November 12, 2002.

[Release No. 34–46815; File No. SR–CBOE–2002–23]

On April 30, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise CBOE Rule 24A.4, "Terms of FLEX Options," to provide a maximum term of up to ten years for Flexible Exchange ("FLEX") index options[3] under certain circumstances.

The proposed rule change was published for comment in the **Federal Register** on August 21, 2002.[4] No comments were received regarding the proposal. This order approves the proposed rule change.

Currently, CBOE Rule 24A.4(a)(4)(i) provides a maximum term of five years for FLEX index options. The CBOE proposes to amend CBOE Rule 24A.4(a)(4)(i) to provide a maximum term of up to ten years for FLEX index options, provided that the FLEX Post Official determines that sufficient liquidity exists among FLEX index participating members to support a request for a quote for such options. To determine whether sufficient liquidity exists to support a request for a quote, the FLEX Post Official will ask FLEX index market makers and other FLEX index traders (including the Submitting Member) whether they are interested in making a two-sided market in the proposed series for the size requested.[5] If the FLEX index market makers and FLEX index traders respond affirmatively, the FLEX Post Official will open a Request for Quotes for the proposed series, which will trade pursuant to the provisions of CBOE Rule 24A.5, "FLEX Trading Procedures and Principles."[6] The CBOE believes that this requirement will help to prevent the proliferation of longer-term FLEX index options where there is no interest in trading such options.

The margin requirements for the proposed FLEX index options will be the same as the margin requirements that apply currently to existing FLEX index options and to other listed options.[7] Thus, the required minimum initial and maintenance margin for a proposed FLEX index option with more than nine months to expiration will be at least 75% of the current market value of the option.[8] The required minimum initial and maintenance margin for a short position in the proposed FLEX index options will be the same as the margin required for short positions in other listed broad-based index options.[9]

According to the CBOE, the Exchange has received numerous requests from broker-dealers to extend the maturity of FLEX index options to ten years to permit their institutional customers that trade or issue securities with five-to ten-year terms to hedge their long-term risk. The CBOE states that the proposal will allow institutions to use long-term FLEX

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[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] 17 CFR 240.17d–2.

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d).

[6] 15 U.S.C. 78s(g)(2).

[7] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[8] 17 CFR 240.17d–1.

[9] 17 CFR 240.17d–2.

[10] Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

[11] Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

[12] Securities Exchange Act Release No. 46590 (October 2, 2002), 67 FR 63474.

[13] Under the previous agreement, only the Amex, the CBOE, the NASD, and the NYSE were designated options examining authorities ("DOEAs"). *See* Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 34759 (May 31, 2000).

[14] 15 U.S.C. 78f(a).

[15] 15 U.S.C. 78o–3.

[16] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000).

[17] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FLEX index options allow investors to customize certain option terms, including size, expiration date, exercise style, and exercise price.

[4] *See* Securities Exchange Act Release No. 46363 (August 15, 2002), 67 FR 54243.

[5] See letter from Jaime Galvan, Attorney II, CBOE, to Yvonne Fraticelli, Division of Market Regulation, Commission, dated October 14, 2002 ("October 14 Letter").

[6] *See* October 14 Letter, supra note 5.

[7] *See* October 14 Letter, supra note 5.

[8] *See* CBOE Rule 12.3(c)(4)(B).

[9] *See* October 14 Letter, supra note 5. Under the CBOE's rules, the required minimum initial and maintenance margin for an unhedged position in a listed broad-based index option carried short in a customer's account is 100% of the current market value of the option plus 15% of the product of the current index group value and the applicable index multiplier, reduced by any out-of-the-money amount, with a minimum margin requirement equal to 100% of the current market value of the option plus 10% of the product of the current index group value and the applicable index multiplier. See CBOE Rule 12.3(c)(5)(A).

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index options to protect their portfolios from long-term market moves at a known and limited cost. In addition, the CBOE believes that the proposal will better serve the long-term hedging needs of institutional investors and provide those investors with an alternative to hedging their portfolios with off-exchange customized index options and warrants.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act [10] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with the requirements under section 6(b)(5) of the Act [11] that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[12]

The Commission believes that extending the permissible maturity of FLEX index options to a maximum term of up to ten years will help to meet the long-term hedging requirements of institutional investors and other market participants.[13] The proposal should benefit market participants with long-term hedging needs by allowing them to hedge positions on a long-term basis through an investment in one option series, rather than having to roll shorter-term expirations into new series to remain hedged over an extended period of time. In addition, the proposal will allow market participants to hedge long-term risk with an exchange-traded option, thereby providing an alternative to hedging positions with over-the-counter ("OTC") products and extending the benefits of a listed, exchange market to longer-term index options.[14] The extension of the permissible maturity term for FLEX index options to up to ten years also could help to expand the depth and liquidity of the FLEX index option market.

The Commission notes that a series of the proposed FLEX index options may be issued only if a FLEX Post Official determines that there is sufficient liquidity among FLEX index participating members to support the request for a quote for such options. This requirement should help to prevent the proliferation of longer term FLEX index options series where there is no interest in trading such options. In addition, as with all exchange-traded options, the OCC will act as the counter-party guarantor, thereby ensuring that obligations will be met over the long term. In approving this proposal, the Commission notes that the extension to ten years is based, in part, on the nature of the FLEX market, which is geared toward institutional investors and high net worth individuals.[15] The Commission believes that because of their experience, these market participants may be better able to assess the risks of longer term index option products.[16]

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR-CBOE-2002-23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-29240 Filed 11-18-02; 8:45 am]

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[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] FLEX index options are designed to appeal to institutional investors or extremely high net worth individuals who have the experience and ability to engage in negotiated, customized transactions. In this regard, the Commission notes that the required minimum size for an opening transaction in any FLEX index option series in which there is no open interest is $10 million Underlying Equivalent Value (the aggregate underlying monetary value covered by that number of contracts, derived by multiplying the index multiplier by the current index value times the given number of FLEX index options). See CBOE Rule 24A.4(a)(4)(ii).

[14] As the Commission has noted previously, the benefits of the CBOE's market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded on the CBOE. See Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (File No. SR-CBOE-92-17) (approving the CBOE's proposal to list and trade FLEX options on the S&P 500 Index and the S&P 100 Index).

[15] *See* note 13, supra.

[16] *See also* note 12 in Securities Exchange Act Release No. 39524 (January 8, 1998), 63 FR 3009 (January 20, 1998) (order approving File No. SR-CBOE-97-57) (noting certain concerns that may be raised by long-term options).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46806; File No. SR-CBOE-2002-30]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Amending Rule 8.85(a)(xi) and Rule 17.50 To Require Members To Use and Maintain CBOE's AutoQuote System as a Back-up Quoting System

November 12, 2002.

I. Introduction

On June 11, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending Rule 8.85(a)(xi) and Rule 17.50 to require Exchange members to use and maintain CBOE's AutoQuote System as a back-up quoting system. On September 3, 2002 the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for public comment in the **Federal Register** on October 3, 2002.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposed Rule Change

The Exchange is adopting new Rule 8.85(a)(xi) which states that, with respect to a Designated Primary Market-Maker ("DPM") trading station utilizing a proprietary autoquote system, such DPM is obligated to assure that the CBOE AutoQuote system is maintained as a back-up autoquote system at all times during market hours. While many DPMs utilize CBOE's AutoQuote system, some DPMs have opted to use non-CBOE proprietary automated quotation updating systems. CBOE has allowed members to employ proprietary autoquote systems provided such systems are approved by the Exchange's appropriate Floor Procedure Committee. The failure of a proprietary autoquote system could result in CBOE's inability to open for an entire group of listed option classes for a brief or sometimes lengthy time period. Thus, CBOE strongly encouraged, and now requires, that members have CBOE's AutoQuote system ready as a back-up should a proprietary system fail. The Exchange also proposes to add subparagraph (g)(10) to CBOE Rule 17.50—Imposition of Fines for Minor Rule Violations, to incorporate in its Minor Rule Violation Plan violations of new Rule 8.85(a)(xi).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Angelou Evangelou, Senior Attorney, CBOE, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 30, 2002.

[4] Securities Exchange Act Release No. 46539 (September 24, 2002), 67 FR 62084.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[6] which requires, among other things, that the rules of the exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is also consistent with section 6(b)(6) of the Act,[7] which generally requires that the Exchange provide for the appropriate discipline of its members, and Rule 19d-1(c)(2) under the Act,[8] which governs minor rule violation plans.

The proposed rule change removes impediments to and perfects the mechanism of a free and open market because by requiring members of the Exchange to maintain CBOE's AutoQuote system as a back-up, the Exchange provides a mechanism for ensuring the smooth and uninterrupted operation of the Exchange in the event of a failure by a member's proprietary autoquote system. Without CBOE's AutoQuote system in place as a back-up, the Exchange might be unable to open trading for an entire group of listed option classes if a proprietary autoquote system fails. Requiring members to maintain CBOE's AutoQuote system as a back-up would avoid such disruptions, which in turn would benefit investors and the public interest.

The Commission also finds that adding Rule 8.85(a)(xi) to the list of violations included in the Exchange's Minor Rule Violation Plan ("Plan") is consistent with requirements of Section 6(b)(6) of the Act[9] because it provides an additional option for the appropriate discipline of Exchange members. The Commission notes that while the Plan provides the Exchange with the option of proceeding under the Plan against a member found to be in violation of a rule included in the Plan, the Exchange must continue to conduct surveillance of its members and ensure their compliance with the Exchange's rules, and to proceed with formal disciplinary action if a particular case warrants such action. Finally, the Commission finds that the addition of Rule 8.85(a)(xi) to the list of violations included in the Exchange's Plan is consistent with Rule 19d-1(c)(2) under the Act,[10] which governs minor rule violation plans because the Plan provides an efficient means to punish violations of Exchange rules, consistent with the public interest and the protection of investors.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR-CBOE-2002-30), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-29315 Filed 11-18-02; 8:45 am]

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[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 17 CFR 240.19d-1(c)(2).

[9] 15 U.S.C. 78f(b)(6).

[10] 17 CFR 240.19d-1(c)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46814; File No. SR-ISE-2002-23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Stock Exchange, Inc. To Amend Rule 720 Regarding Options Priced Under $3.00

November 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 16, 2002, the International Stock Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 720 (the "Obvious Error Rule") as it pertains to transactions in options priced under $3.00. The text of the proposed rule change is set forth below. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

Rule 720. Obvious Errors

The Exchange shall either bust a transaction or adjust the execution price of a transaction that results from an Obvious Error as provided in this Rule.

(a) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when:

(1) if the Theoretical Price of the option is less than $3.00[,]:

(i) during regular market conditions (including rotations) the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of [25] *35* cents or more; or

(ii) during fast market conditions (i.e., the Exchange has declared a fast market status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more.

(2) if the Theoretical Price of the option is $3.00 or higher:

(i) during regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two (2) times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more; or

(ii) during fast market conditions (*i.e.*, the Exchange has declared a fast market status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three (3) times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of the proposed rule change and discussed any comments it received on the proposed

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rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 25, 2002, the Commission approved an amendment to the ISE Rule 720 ("June Amendment"),[3] which gives the Exchange authority to bust or adjust trades that result from an obvious error based upon objectives standards for determining the circumstances under which a trade should be adjusted or busted. In the June Amendment, the Exchange changed the standard for determining the existence of an obvious error for options series trading under $3.00. Specifically, the June Amendment provided that an obvious error would be deemed to have occurred if the difference between the execution price and the theoretical price is at least $.25. The June Amendment did not change ISE Rule 720 with respect to options trading at or above $3.00, which requires the difference between the execution price and theoretical price of an option be at lease twice the allowable spread in normal market conditions and three times the allowable spread in fast market conditions.

The Exchange's experience since the June Amendment indicates that a difference of only $.25 is too low and may allow trades that are not obviously erroneous to qualify for obvious error treatment. In addition, the June Amendment did not provide for a larger difference between the execution price and the theoretical price during fast market conditions, as is the case for options price at and above $3.00. Accordingly, the Exchange proposes to increase the amount by which the execution price of an option priced under $3.00 must differ from the theoretical price from $.25 to $.35 in normal market conditions, and to provide that the difference must be at least $.50 in fast market conditions. This proposal will allow fewer executions to qualify as obvious errors, and therefore fewer situations where a trade may be busted or adjusted under ISE Rule 720.

The ISE developed Rule 720 to address the need to handle errors in a fully electronic market where orders and quotes are executed automatically before an obvious error may be discovered and corrected by ISE members. In formulating ISE Rule 720, the Exchange has weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made an obvious error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. This proposed rule change reflects the Exchange's constant evaluation of the obvious error rule and its fairness to all market participants.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[4] in general and furthers the objectives of section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing the proposed rule change as required by Rule 19b–4(f)(6). In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing the proposed rule change as required by Rule 19b–4(f)(6). At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The ISE has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that it is reasonable for the ISE, based upon its experience in administering the Rule, to amend the Rule to state that the standard for determining the existence of an obvious error for options series trading at less than $3.00 be whether, in regular market conditions, the difference between the execution price and the theoretical price for the series is at least $.35, and whether, during fast market conditions, the difference between the execution price and the theoretical price for the series is at least $.50. The Commission notes that the proposal refines the June Amendment, which itself was noticed for public comment and received no comment. For these reasons, the Commission designates the proposal to be effective and operative as of the date of this order.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–23 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29243 Filed 11–18–02; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 46110 (June 25, 2002), 67 FR 44487 (July 2, 2002).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46819; File No. SR–MSRB–2002–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of the Proposed Rule Change Relating to Rule G–14, on Reports of Sales or Purchases

November 12, 2002.

On September 24, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–10). The proposed rule change relates to MSRB Rule G–14, on reports on sales or purchases, by lowering the trade per day threshold for frequently traded municipal securities.

The Commission published the proposed rule change for comment in the **Federal Register**, October 18, 2002.[3] The Commission did not receive any comment letters relating to the forgoing proposed rule change.

I. Description of the Proposed Rule Change

The MSRB filed with the Commission the proposed rule change relating to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report, which has been provided to subscribers each day since January 2000. The report is made available each morning by 7 am and includes details of transactions in municipal securities which were "frequently traded" the previous business day. From the beginning of the Transaction Reporting Program in 1994 through the spring of 2002, "frequently traded" securities were defined as those that were traded four or more times on a given business day. In May 2002, the Board defined "frequently traded" securities as those that were traded three or more times on a given day.[4]

When transparency was initially being introduced into the municipal securities market, the Board was concerned that an observer unfamiliar with the market might mistake an isolated reported transaction or pair of transactions as providing a reliable indicator of "market price." Because of this concern, the Board adopted the "frequently traded" threshold of four trades. At the same time, the Board has made a commitment to review the use of these reports as experience is obtained and eventually to move to transparency reporting on a more contemporaneous and comprehensive basis.[5]

Since 1994, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a report, published the day after trading ("T+1"), that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began, as well, to publish individual transaction data on frequently traded securities. The Board has also introduced "comprehensive" transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than one week after trade date.[6]

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that information about a municipal security is to be disseminated in the T+1 Daily Transaction Report. The proposed rule change would lower the threshold from three to two trades per day.

Impact of Proposed Report on Transparency

The proposed threshold would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. On a typical day, there are approximately 26,000 transactions in about 10,000 issues, with a total par value traded of about $9.5 billion. The present Daily Transaction Report, with a threshold of three or more trades per day, includes an average of 14,400 trades in 2,600 different issues, with a total par value of about $5.2 billion. Under the proposed threshold, the report is expected to include an average of 15,760 trades in 5,600 issues, with a total par value of about $7.7 billion. This represents a 37 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 48 percent increase in par value reported.[7]

Description of Service

The enhanced Daily Transaction Report with the two-trade threshold will replace the current report and will be made available each day to subscribers via the Internet. Subscribers to the current Service receive the report free of charge, and their subscriptions will continue should the proposed Service be implemented. New subscriptions will be available free to parties who sign a subscription agreement. In addition,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–46636 (October 10, 2002) 67 FR 64435.

[4] *See* Release No. 34–45861 (May 1, 2002) 67 FR 30989–30990.

[5] *See, e.g.*, "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Securities and Exchange Commission noted that the Board, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading." *See* Release No. 34–34955 (November 9, 1994) 59 FR 59810.

[6] The first comprehensive report was introduced in October 2000 and listed all trades after a one-month delay. The latest comprehensive report began operation in August 2002 and has a one-week delay. *See* Release No. 34–46380 (August 19, 2002) 67 FR 54831–54832.

[7] Data is based upon market activity from April 1, 2001 through July 31, 2001.

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recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

Implementation Schedule

The enhanced report will be available to subscribers as soon as practical after Commission approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

II. Summary of Comments

The Commission did not receive any comment letters addressing the Board's proposed rule change, but the Board had earlier received a comment letter from The Bond Market Association ("TBMA").[8] TBMA sent the comment letter in reference to the August 2002 change to the comprehensive daily report, in which TBMA also commented on the Board's announced plan to lower the threshold to two trades.[9] In its letter, TBMA expressed its continued support for the Board's steps to expand transparency in the municipal securities market. TBMA also stated its belief that T+1 dissemination of information on bonds that have traded at least twice a day "would provide useful information to investors and other market participants and is not likely to have a deleterious impact on the market for such bonds or mislead investors."[10] TBMA did state a reservation regarding the method of counting trades toward the reporting threshold. TBMA believes that when a dealer "matches or crosses purchase and sale transactions," this constitutes a single trade because this is the economic reality of such transactions, regardless of whether dealers report two transactions to the MSRB.[11]

Consistent with the Board's previous decisions,[12] the transaction reporting system will continue to treat two transactions that constitute "matched" or "crossed" transactions like other trades. In the general case, only the dealer that effects a purchase and subsequent sale could identify the two trades as crossed agency trades or matched riskless principal transactions. The transaction reporting system does not require dealers to match the two sides of agency trades nor specifically to match or identify riskless principal transactions. Therefore, it is not possible to count those trades differently in the current system for purposes of the T+1 reporting threshold.

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.[13] The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[14]

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act in that it applies equally to all dealers in municipal securities.

After careful review, the Commission finds that the MSRB's proposed rule change relating to Rule G–14, on reports of sales or purchases, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Act, as set forth above.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[15] that the proposed rule change (File No. SR–MSRB–2002–10) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29311 Filed 11–18–02; 8:45 am]

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[8] *See* letter from Frank Chin, Chair, Municipal Executive Committee, The Bond Market Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated August 8, 2002.

[9] *Id.*

[10] *Id.*, at 2.

[11] *Id.*

[12] In 1994, a commentator made a similar suggestion with reference to the Board's filing that initiated the transaction reporting program. The commentator, a brokers' broker, suggested that the Board should count as one transaction the situation in which a brokers' broker purchases securities from a dealer and sells them to another dealer. The Board noted in its reply that these are "riskless principal" transactions and that other dealers may also do riskless principal transactions. The Board noted that its transaction reporting system would treat the sale to the intermediate dealer (*e.g.*, the brokers' broker) and the intermediate dealer's subsequent sale as two transactions, and that it would treat these trades like any other trades.

[13] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78o–4(b)(2)(C).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46806; File No. SR–NASD–2002–115]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities To Allocate Credits To Liquidity Providers

November 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to modify Nasdaq's transaction credit pilot program for exchange-listed securities. Nasdaq will implement the proposed rule change as soon as practicable following Commission approval. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.[3]

7010. System Services

(a)–(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit

For a pilot period, NASD members that trade securities listed on the NYSE ("*Tape A*") and Amex ("*Tape B*") in over-the-counter transactions [reported by the NASD to the Consolidated Tape Association] may receive from the NASD transaction credits based on the number of [trades so reported] *transactions attributed to them. A transaction is attributed to a member if (i) the transaction is executed through CAES or ITS and the member acts as liquidity provider (i.e., the member sells in response to a buy order or buys in response to a sell order) or (ii) the transaction is not executed through CAES or ITS and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association.* An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. An NASD member may earn credits from the pools according to the member's pro rata share of [the NASD's] *all* over-the-counter [trade reports] *transactions attributed to NASD members* in each of Tape A and Tape B for each calendar quarter, ending with the calendar quarter starting on October 1, 2002.

(d)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[4] The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. InterMarket comprises the Computer Assisted Execution System ("CAES"), a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and the Intermarket Trading System ("ITS"), a national market system plan that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[5]

Nasdaq is proposing to modify the InterMarket Transaction Credit Pilot Program (the "Program") that it began in 1999.[6] Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association (the "CTA"), by providing a transaction credit to members who engage in OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program is also a tool for Nasdaq to compete against other exchanges (particularly CSE and CHX) that offer similar programs.[7]

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: One representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA ("Tape A"), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades ("Tape B"). Eligibility for transaction credits is based on concurrent quarterly trading activity.[8]

Hitherto, trade reports of ITS and CAES transactions, which are reported to Nasdaq automatically, have been attributed to the sell side of the trade.[9] As an added encouragement for members to provide liquidity for executions through ITS and CAES, however, Nasdaq is modifying the Program to attribute ITS and CAES trades to a member that provides liquidity (*i.e.*, that sells in response to an order to buy or that buys in response to an order to sell). Nasdaq believes that by encouraging the provision of liquidity by InterMarket participants, the proposed rule change will increase the efficiency of InterMarket transactions and enhance the competitiveness of InterMarket vis-a-vis the exchanges with which it competes.

It should be noted that the NASD receives revenue from the CTA for ITS transactions in which an NASD member is the selling party, and under the Program as currently in effect, Nasdaq shares a portion of the revenue with members that are selling parties. By contrast, under the proposed rule change, Nasdaq would share 40% of the revenue it receives from the CTA with NASD members that provide liquidity in a transaction. As a result, in instances where an NASD member executes a sell order that it receives through the ITS, Nasdaq will provide a transaction credit to the NASD member even though NASD receives no revenue from the CTA with respect to the transaction. Similarly, in instances where an NASD member sends a sell order to an exchange through the ITS, Nasdaq would not provide a transaction credit to the NASD member even though NASD does receive revenue from the CTA with respect to the transaction. The total pool of revenue shared with NASD members (40% of Tape A revenue and 40% of Tape B revenue) will not change, however. Moreover, since there is no requirement that Nasdaq share any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text is marked to show changes from the language of the rule as proposed to be amended by SR–NASD–2002–111, and assumes that the Commission will approve SR–NASD–2002–111 before approving SR–NASD–2002–115. If the Commission determines that SR–NASD–2002–111 should not be approved, Nasdaq will submit an amendment to SR–NASD–2002–115 to reflect the disposition of SR–NASD–2002–111.

[4] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[5] *See* CAES/ITS User Guide, p. 5, at www.intermarket.nasdaqtrader.com.

[6] *See* Securities Exchange Act Release No. 41174 (Mar. 16, 1999), 64 FR 14034 (Mar. 23, 1999) (SR–NASD–99–13). The SEC issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42065 (Nov. 3, 1999), 64 FR 61680 (Nov. 12, 1999) (SR–NASD–99–59); 42672 (Apr. 12, 2000), 65 FR 21225 (Apr. 20, 2000) (SR–NASD–00–10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–00–32); 43831 (Jan. 10, 2001), 66 FR 4882 (Jan. 18, 2001) (SR–NASD–00–72); 44098 (Mar. 23, 2000), 66 FR 17462 (Mar. 30, 2001) (SR–NASD–01–15); 44734 (Aug. 22, 2001), 66 FR 4537 (Aug. 28, 2001) (SR–NASD–2001–42); 45273 (Jan. 14, 2002), 67 FR 2716 (Jan. 18, 2002) (SR–NASD–2001–92); and 46232 (July 19, 2002), 67 FR 48691 (July 25, 2002) (SR–NASD–2002–94).

[7] *See* Securities Exchange Act Release No. 38237 (Feb. 4, 1997), 62 FR 6592 (Feb. 12, 1997) (SR–CHX–97–01) and Securities Exchange Act Release No. 39395 (Dec. 3, 1997), 62 FR 65113 (Dec. 10, 1997) (SR–CSE–97–12).

[8] Under the current Program, a member must print an average of 500 daily trades of Tape A securities during a quarter to qualify for Tape A sharing and must print an average of 500 daily trades of Tape B securities during a quarter to qualify for Tape B sharing. Nasdaq has filed a separate proposed rule change to seek Commission approval for the elimination of these thresholds, effective retroactively as of July 1, 2002. SR–NASD–2002–111 (Aug. 9, 2002).

[9] Non-ITS/CAES trades that are reported to Nasdaq are attributed to the member identified in the trade report as the executing party, which is either the reporting party or a "give up" on whose behalf the trade is reported. The crediting of non-ITS/CAES trades remains unchanged.

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of its tape revenue, Nasdaq does not believe that there is any requirement that a plan for sharing tape revenue with NASD members must use the same formula as the plan under which NASD receives the revenue. Indeed, by providing transaction credits to liquidity providers, Nasdaq hopes to encourage members to commit capital to transactions through InterMarket and/or to allow customer orders to interact with orders that they receive through InterMarket. Accordingly, Nasdaq believes that the proposed rule change will foster the provision of additional liquidity through InterMarket, thereby enhancing its efficiency by increasing the likelihood that InterMarket orders will be promptly executed. By contrast, the current program grants credits solely on the basis of whether a member happens to be selling in a particular transaction.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[10] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change will lower the cost of conducting business through InterMarket for members that provide liquidity through ITS or CAES. Nasdaq believes that encouraging members to provide liquidity will enhance the efficiency of InterMarket and benefit investors whose trades are routed to InterMarket by increasing the likelihood that they will be promptly executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–115 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29242 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78o–3(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46818; File No. SR–NASD–2002–147]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Sunsetting Revisions to NASD By-Laws Regarding the Regulatory Fee and SEC Section 31 Transaction Fee Made in SR–NASD–2002–98

November 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On November 5, 2002, the NASD amended the proposal.[3] The NASD again amended the proposed rule change on November 8, 2002.[4] The Association filed the proposal pursuant to section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(3) thereunder[6] as being concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to: (1) Amend Schedule A of the NASD By-Laws to sunset the Trading Activity Fee ("TAF") established in SR–NASD–2002–98,[8] terminating on December 31, 2002; and (2) correct language in section 2 that was mistakenly referenced in SR–NASD–2002–98. The NASD is sunsetting the changes made in SR–NASD–2002–98 in response to member comments asserting that a full notice and comment period would be beneficial to NASD members. In addition, the NASD would like an opportunity to review the published TAF rates. The NASD also filed SR–NASD–2002–148, a proposed rule change that is substantially similar to SR–NASD–2002–98 under section 19(b)(1) of the Act.

In the instant filing, the NASD is including the TAF rates (retroactively effective to October 1, 2002, but giving members until January 15, 2003 to remit such fees), correcting the heading of section 2, deleting footnotes containing TAF rates (because the rate information is now included in the body of the filing), inserting a reference to a recent *Notice to Members* that discusses the TAF in appropriate footnotes, and making minor technical, non-substantive changes to the filing.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

* * * * *

Section 2—Member [Regulation] *Regulatory* Fees

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect [M]member [Regulation] *regulatory* fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, *and* policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions *that* [which]are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3–1 and any approved plan filed thereunder. NASD may exempt other securities and transactions as it deems appropriate. (3) Fee Rates*

(i) Each member shall pay to NASD a fee per share for each sale of a covered *equity* security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

**Trading Activity Fee rates are as follows: Each member shall pay to NASD $0.00005 per share for each sale of a covered equity security, with a maximum charge of $5 per trade; $0.002 per contract for each sale of an option; and $0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate ($0.00005 for covered equity securities, $0.002 for covered option contracts, or $0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.*

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

* * * * *

Section [2] *4*—Fees

* * * * *

(b) [The] NASD shall assess each member a fee of:

* * * * *

[(3) $20.00 for each amended Form U–4 or Form U–5 filed by the member with the NASD;]

[(4)]*(3)* $95.00 for the additional processing of each initial or amended Form U–4 or Form U–5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

[(5)]*(4)* $10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

[(6)]*(5)* $30.00 annually for each of the member's registered representatives and principals for system processing.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the NASD filed SR–NASD–2002–98 and SR–NASD–2002–99, which proposed a new member regulatory pricing structure.[9] With the instant filing (SR–NASD–2002–147), the NASD is establishing a sunset provision for the TAF established by SR–NASD–2002–98. The TAF will cease to exist after December 31, 2002, and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 4, 2002 letter from Barbara Z. Sweeney, Senior Vice President ("SVP") and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[4] *See* November 7, 2002 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1 and the original filing.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(3).

[7] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 8, 2002, the date the NASD filed Amendment No. 2.

[8] Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

[9] Securities Exchange Act Release Nos. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR–NASD–2002–98) and 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002)(SR–NASD–2002–99). The NASD also published three *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. *See Notice to Members 02–41* (July 2002), *Notice to Members 02–63* (September 2002), and *Notice to Members 02–75* (October 30, 2002).

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member regulatory pricing structure will revert to section 8 of Schedule A of the By-Laws as amended, absent further action. The NASD is sunsetting the changes made to the TAF in SR–NASD–2002–98 in response to member comments asserting that a full notice and comment period would be beneficial to NASD members. In addition, the NASD would like an opportunity to review its published rates. Further, the NASD is amending Schedule A, section 2 of the By-Laws, to correct language that was mistakenly referenced in SR–NASD–2002–98.[10] In the instant filing, the NASD is including the TAF rates (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), correcting the heading of section 2, deleting footnotes in the filing regarding the TAF rates and inserting the rate language into the body of the proposed rule language, inserting a reference to *Notice to Members 02–75* (issued October 30, 2002, and discussing the TAF), and making minor technical, non-substantive changes to the filing.

On September 27, 2002, the NASD announced the initial TAF rates. The TAF rates were as follows:

- $0.0001 per share for each sale of a covered equity security
- $0.002 per contract for each sale of an option
- $0.08 per contract for each round turn transaction of a security future

On October 3, 2002, in response to members' comments, the NASD modified the TAF rates to incorporate a per trade maximum, retroactively effective to October 1, 2002. The revised TAF rates were modified as follows:

- For each sale of a covered equity security, each member shall pay to the NASD $0.0001 per share, with a maximum charge of $10 per trade.
- For each sale of an option, each member shall pay to the NASD $0.002 per contract.
- For each round turn transaction of a security future, each member shall pay to the NASD $0.08 per contract.
- Additionally, if the execution price for a covered equity security is less than the TAF rate ($0.0001) on a per share basis, then no fee will be assessed.

On October 18, 2002, the NASD filed two subsequent proposed rule changes that are directly related to SR–NASD–2002–98. The first is the instant filing (SR–NASD–2002–147), which establishes a sunset provision that terminates on December 31, 2002 the changes made to Schedule A to the NASD By-Laws in SR–NASD–2002–98, and makes corrections to language that was mistakenly referenced in SR–NASD–2002–98. The second proposed rule change is SR–NASD–2002–148, which contains substantially the same proposed rule language that was contained in SR–NASD–2002–98, but is submitted pursuant to section 19(b)(1) of the Act[11] to allow for an additional notice and comment period. The NASD filed SR–NASD–2002–148 in response to comments made by NASD members that the TAF should not be effective upon filing, but instead should be given a full notice and comment period. In addition, this subsequent comment period allows the NASD to examine further the impact of the published TAF rates currently in effect. The NASD will adjust the TAF rates accordingly if the rates are inconsistent with the NASD's overall intent that the amendments to its pricing structure be revenue neutral. The NASD intends that SR–NASD–2002–148 be read in conjunction with SR–NASD–2002–99. The two separate yet related proposed rule changes are the result of a review of the overall NASD pricing structure, and will be used to fund the NASD's member regulatory activities.

On January 1, 2003, if the Commission has not approved SR–NASD–2002–148, the TAF as established in SR–NASD–2002–98 will terminate and will revert to section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

On October 30, 2002, based on further analysis of trading volumes and feedback from member firms, the NASD again adjusted the rate structure. The TAF was revised (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), as follows:

- The initial rate of $0.0001 for covered equity securities was reduced to $0.00005.
- The maximum charge on covered equity securities was reduced to $5.00.
- The initial rate of $0.08 for security futures was reduced to $0.04.
- The minimum exclusion was extended to cover options and futures, clarifying that if the execution price for a covered security is less than the TAF rate on a per share, per contract, or round turn transaction basis, then no fee will be assessed.

[10] In its efforts to amend rule language to reflect its corporate restructuring, the NASD inadvertently added incorrect rule text. The correct rule language cited herein was approved by the Commission in SR–NASD–99–43.

[11] 15 U.S.C. 78s(b)(1).

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[12] which requires, among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[13] and subparagraph (f)(3) of Rule 19b–4 thereunder,[14] because it is concerned solely with the administration of the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–147 and should be submitted by December 10, 2002.

[12] 15 U.S.C. 78o–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29314 Filed 11–18–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46817; File No. SR–NASD–2002–148]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to the Regulatory Fee and the SEC Section 31 Transaction Fee

November 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Association amended the proposed rule change on November 5, 2002.[3] On November 8, 2002, the NASD again amended the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Schedule A to the NASD By-Laws to amend its member regulatory pricing structure. Under the structure this rule proposal is intended to change, three types of fees and assessments are used to fund the NASD's member regulatory activities: Regulatory Fee,[5] Personnel Assessment, and Gross Income Assessment.[6] The proposed restructuring is comprised of four amendments: (1) Eliminate the Regulatory Fee; (2) institute a new transaction-based Trading Activity Fee ("TAF") similar to the SEC's Section 31 Fee; (3) increase the rates assessed to member firms under the Personnel Assessment; and (4) implement a simplified three-tiered flat rate for the Gross Income Assessment and eliminate current deductions and exclusions.[7] This rule filing is to be read as a part of a package of two separate yet related rule filings[8] submitted to the SEC as a result of a review of the overall NASD pricing structure[9] and is intended to address the first two amendments to NASD pricing restructuring by eliminating the Regulatory Fee and instituting a new transaction-based TAF.

These fees assessed upon and paid by member firms are used by the NASD to fund NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretative, and enforcement activities. These amendments to this pricing structure are intended to serve the following purposes: (1) Simplify the NASD's fee structure; (2) ensure fairness in the NASD's fee structure by assessing higher fees to those member firms that require more NASD regulatory services; (3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; (4) reduce the cyclical nature of the current NASD fee structure; and (5) eliminate the NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

The NASD believes assessing Regulatory Fees only for Nasdaq transactions is no longer appropriate for three reasons. First, Nasdaq is separating from the NASD and registering as a national securities exchange. Second, the current fee structure is out of step with recent changes in the markets, such as the drastic growth in trading volumes, reductions in average trade size, decimalization, and trading no longer remaining exclusive to the listing exchange. Finally, the Regulatory Fee is only assessed against Nasdaq-listed and other transactions that are reported through the Automated Confirmation Transaction (ACT) system,[10] although these fees are used to support member regulatory activities across all markets.

In the instant proposed rule change, the NASD is including the TAF rates (retroactively effective to October 1, 2002, but giving members until January 15, 2003 to remit fees for the preceding quarter), including a reference to *Notice to Members 02–75* (issued on October 30, 2002 and discussing the TAF), and making minor technical, non-substantive changes to the proposed rule change. In addition, certain footnotes containing TAF rates have been deleted (because the TAF rate information is now included in the body of the proposed rule language).

Below is the text of the proposed rule change. The text below shows amended rule language that would be necessary if SR–NASD–2002–98 were not in place.[11] Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to [the] NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of [the] NASD shall be determined on the following basis.

* * * * *

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 4, 2002 letter from Barbara Z. Sweeney, Senior Vice President ("SVP") and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[4] *See* November 7, 2002 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1 and the original proposed rule change.

[5] The Regulatory Fee is described in section 8(a) of Schedule A to NASD By-Laws.

[6] The Personnel Assessment and Gross Income Assessment are described in Section 1 of Schedule A to NASD By-Laws.

[7] The changes resulting from the proposed restructuring would be revenue neutral.

[8] *See also* SR–NASD–2002–99.

[9] The NASD, in its pricing restructuring review, proposed changes to the Regulatory Fee in *Special Notice to Members 02–09* and requested comments. The NASD received a number of comments. In response to those comments, the proposal set forth in *Special Notice to Members 02–09* is not being pursued.

[10] This package of filings proposed rule changes to NASD's Member Regulation fees. It is not related to the recent Nasdaq filing regarding Nasdaq's Regulatory Fee. *See* Nasdaq SR–NASD–2002–61.

[11] The Commission notes that, because SR–NASD–2002–98 was effective upon filing with the Commission, the rule language that was proposed in SR–NASD–2002–98 is in fact a rule. The Commission recognizes, however, that the instant filing presents rule language that would be necessary if SR–NASD–2002–98 were not an established rule to more clearly demonstrate how the NASD's member regulatory pricing structure is proposed to be amended by the recent filings described in this proposed rule change.

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Section [8] *2*—*Member Regulatory* [Transaction] Fees

[(a) NASD fee on cleared transactions. Each member shall be assessed a transaction charge of $.0625 per 1,000 shares, with a minimum charge per side of $.025 and a maximum charge per side of $.46875 for each over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.]

[(b) SEC transaction fee. Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.]

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect member regulatory fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3–1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

*(3) Fee Rates**

(i) Each member shall pay to NASD a fee per share for each sale of a covered equity security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

**Trading Activity Fee rates are as follows: Each member shall pay to NASD $0.00005 per share for each sale of a covered equity security, with a maximum charge of $5 per trade; $0.002 per contract for each sale of an option; and $0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate ($0.00005 for covered equity securities, $0.002 for covered option contracts, or $0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.*

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

Section 3—SEC Transaction Fee

Each member shall be assessed an SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.

Section [2] 4—Fees

(a) Each member shall be assessed a fee of $75.00 for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) $75.00 per registered branch, or (2) the product of $75.00 and the number of registered representatives and registered principals associated with the member at the end of [the Association] *NASD*'s fiscal year.

(b) [The] NASD shall assess each member a fee of:

(1) $85.00 for each initial Form U–4 filed by the member with [the] NASD for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U–4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of registered personnel transferred	Discount
1,000—1,999	10%
2,000—2,999	20%
3,000—3,999	30%
4,000—4,999	40%
5,000 and over	50%

(2) $40.00 for each initial Form U–5 filed by the member with [the] NASD for the termination of a registered representative or registered principal, plus a late filing fee of $80.00 if the member fails to file the initial Form U–5 within 30 days after the date of termination;

(3) through (5) No Change.

(c) through (k) No Change.

(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of $100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to [the Association] *NASD* at least three business days prior to the due date; and

(2) through (3) No Change.

* * * * *

Section [3] 5—Elimination of Duplicate Assessments and Fees

No Change to rule language.

* * * * *

Section [4] 6—Assessments and Fees for New Members, Resigning Members and Successor Organizations

(a) The assessment of a firm, which is not a member throughout [the Association] *NASD*'s full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's letter of resignation is received in [the Association] *NASD*'s Executive Office.

(b) A member [which] *that* is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a previous member or members shall be determined by [the Association] *NASD* upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member [which] *that* has simply acquired the personnel and offices of another member under circumstances [which] *that* do not constitute the member a successor organization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

Section [5] 7—Gross Revenue for Assessment Purposes

No Change to rule language.

Section [6] *8*—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [the] NASD pursuant to the Corporate Financing Rule equal to $500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed $30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [the] NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed $30,500.

Section [7] *9*—Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to Rule 15c3–3(n) shall be $2.00; provided, however, that the service charge shall be $1.00 for extension of time requests filed electronically by members using [the Association] *NASD*'s Automated Regulatory Reporting System.

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Section [9] *10*—Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section [10] *11*—Request for Data and Publications

No Change to rule language.

Section [11] *12*—Reserved

No Change to rule language.

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Section [12] *13*—Application and Annual Fees for Member Firms With Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article III, Section 4 of [the Association] *NASD*'s By-Laws shall, upon the filing of an application pursuant to Article III, Section 3, paragraph (d) of [the Association] *NASD*'s By-Laws, pay to [the Association] *NASD* a fee of $1,500.00. Any member firm whose application filed pursuant to Article III, Section 3, paragraph (d) of [the Association] *NASD*'s By-Laws results in a full hearing for eligibility in [the Association] *NASD* pursuant to the Rule 9640 Series, shall pay to [the Association] *NASD* an additional fee of $2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article III, Section 4 of [the Association] *NASD*'s By-Laws shall pay annually to [the Association] *NASD* a fee of $1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

Section [13] *14*—Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [the Association] *NASD*, except for items that are filed or submitted in response to a written request from [the Association] *NASD*'s Advertising Regulation Department issued pursuant to the spot check procedures set forth in [the Association] *NASD*'s Rules as follows: (1) for printed material reviewed, $75.00, plus $10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, $75.00, plus $10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of $500.00 per item plus $25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the NASD filed SR–NASD–2002–98 and SR–NASD–2002–99, which proposed a new member

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regulatory pricing structure.[12] By filing SR–NASD–2002–147, the NASD is establishing a sunset provision for the TAF. The TAF, as established in SR–NASD–2002–98, will cease to exist after December 31, 2002, and the member regulatory pricing structure will revert to section 8 of Schedule A of the By-Laws as amended, absent further action. The NASD is sunsetting the changes made to the TAF in SR–NASD–2002–98 in response to member comments asserting that a full notice and comment period would be beneficial to NASD members. In addition, the NASD would like an opportunity to review its published rates. Further, the NASD is amending Schedule A, section 2 of the By-Laws to correct language that was mistakenly referenced in SR–NASD–2002–98.[13] The instant proposed rule change includes the TAF rates (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees) and inserts the rate language into section 2. In addition, the instant proposed rule change updates certain footnotes to include a reference to *Notice to Members 02–75* (issued October 30, 2002 and discussing the TAF), deletes footnotes that included TAF rates and inserts the TAF rate information in the body of the proposed rule language, and makes minor technical, non-substantive changes to the proposed rule change.

On September 27, 2002, the NASD announced the initial TAF rates. The TAF rates were as follows:

- $0.0001 per share for each sale of a covered equity security.
- $0.002 per contract for each sale of an option.
- $0.08 per contract for each round turn transaction of a security future.

On October 3, 2002, in response to members' comments, the NASD modified the TAF rates to incorporate a per trade maximum, retroactively effective to October 1, 2002. The revised TAF rates were modified as follows:

- For each sale of a covered equity security, each member shall pay to the NASD $0.0001 per share, with a maximum charge of $10 per trade.
- For each sale of an option, each member shall pay to the NASD $0.002 per contract.
- For each round turn transaction of a security future, each member shall pay to the NASD $0.08 per contract.
- Additionally, if the execution price for a covered equity security is less than the TAF rate $0.0001) on a per share basis, then no fee will be assessed.

On October 18, 2002, the NASD filed two subsequent proposed rule changes with the Commission that are directly related to SR–NASD–2002–98. The first proposed rule change was SR–NASD–2002–147, which was effective upon filing with the Commission. SR–NASD–2002–147 established a sunset provision that terminates on December 31, 2002 the changes made to Schedule A to the NASD By-Laws in SR–NASD–2002–98. In addition, language that was mistakenly referenced in SR–NASD–2002–98 was corrected in SR–NASD–2002–147.

The second proposed rule change is the instant filing, which contains substantially the same proposed rule language as proposed in SR–NASD–2002–98, but is filed pursuant to section 19(b)(1) of the Act [14] to allow for an additional notice and comment period. The NASD filed SR–NASD–2002–148 in response to comments made by NASD members that the TAF should not be filed as immediately effective, but instead should be given a full notice and comment period. In addition, this subsequent comment period allows the NASD to examine further the impact of the published TAF rates currently in effect, and to adjust the TAF rates accordingly if they are inconsistent with the NASD's overall intent that the amendments to its pricing structure be revenue neutral. The NASD intends that SR–NASD–2002–148 be read in conjunction with SR–NASD–2002–99. The two separate yet related proposed rule changes are the result of a review of the overall NASD pricing structure, and will be used to fund the NASD's member regulatory activities.

On January 1, 2003, if the Commission has not approved SR–NASD–2002–148, the TAF as established in SR–NASD–2002–98 will terminate and will revert to Section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

On October 30, 2002, based on further analysis of trading volumes and feedback from member firms, the NASD further adjusted the rate structure. The NASD revised the TAF (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), as follows:

- The initial rate of $0.0001 for covered equity securities was reduced to $0.00005.
- The maximum charge on covered equity securities was reduced to $5.00.
- The initial rate of $0.08 for security futures was reduced to $0.04.
- The minimum exclusion was extended to cover options and futures, clarifying that if the execution price for a covered security is less than the TAF rate on a per share, per contract, or round turn transaction basis, then no fee will be assessed.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[15] which requires among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. The NASD believes that the TAF is objectively allocated to NASD members. Moreover, the NASD believes that the level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received on the current proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–2002–148 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29316 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

[12] Securities Exchange Act Release Nos. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002)(SR–NASD–2002–98) and 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002)(SR–NASD–2002–99). The NASD also published three Notices to Members describing the proposed changes and addressing interpretive questions posed by NASD members. See Notice to Members 02–41 (July 2002), Notice to Members 02–63 (September 2002), and Notice to Members 02–75 (October 30, 2002).

[13] In its efforts to amend rule language to reflect its corporate restructuring, the NASD inadvertently added incorrect rule text. The correct rule language cited herein was effective upon filing in SR–NASD–99–43. See Securities Exchange Act Release No. 41937 (September 28, 1999), 64 FR 53762 (October 4, 1999).

[14] 15 U.S.C. 78s(b)(1).

[15] 15 U.S.C. 78o–3(b)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46802; File No. SR–NYSE–2001–46]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Amending Section 804 to the NYSE Listed Company Manual and NYSE Rule 499

November 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 30, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On November 7, 2002, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 804 of the NYSE Listed Company Manual and NYSE Rule 499 to make the procedures for appealing delisting determinations more efficient and effective, and to charge issuers a non-refundable appeal fee in the amount of $20,000. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

804.00 Procedure for Delisting

- If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's web site.
- The notice to the issuer shall also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange (comprised of a majority of public Directors), provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice. *Such written request must state with specificity the grourds on which the issuer intends to challenge the determination of the Exchange staff, must indicate whether the issuer desires to make an oral presentation to the Committee, and must be accompanied or preceded by payment of a non-refundable appeal fee in the amount of $20,000.* [Such review will be conducted on the next monthly Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange. If the next Review Day is in less than 25 business days, the review will be scheduled for the following Review Day.]
- If the issuer does not request a review within the specified period, the Exchange shall suspend trading in the security and an application shall be submitted by the Exchange staff to the Securities and Exchange Commission to strike the security from listing and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.
- If a review is requested, the review will be [conducted by a Committee of the Board of Directors.] *scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. The Committee's review shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties. The company shall not be permitted to argue grounds for reversing the staff's decision that are not identified in its request for review, however, the company may ask the Committee for leave to adduce additional evidence or raise arguments not identified in its request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. This section shall not, however, (i) authorize a company to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 29, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the original proposed rule change in its entirety, and clarifies: (1) The scope of the NYSE Committee for Review's review on appeal; (2) that neither document discovery nor depositions are available; and (3) the rationale for requiring payment of a non-refundable fee in connection with a request for review.

[4] See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission ("Amendment No. 2"). Amendment No. 2 makes a technical correction to the proposed rule change.

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staff for further review. Should the Committee remand the matter to the staff, the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.

• A request for review will ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend trading any security pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade.

• *Promptly following receipt of a request for review and the appeal fee, the Exchange's Office of the General Counsel will notify the issuer and the Exchange staff of the scheduled Review Day and the briefing schedule. The schedule will be set by the Office of the General Counsel so as to provide the Committee adequate time to review materials submitted to it, with the remaining time split so as to afford the issuer and the Exchange staff substantially equal periods for the submission of a brief by the issuer and a responsive brief by the Exchange staff.* [Any brief or memorandum dealing with the issuer's or the Exchange staff's position as well as any other written material which the aforementioned parties want the Committee to consider must be received by the Office of the General Counsel of the Exchange within 17 business days from the date the issuer receives the notice of its right to a review so that such material can be furnished to the members of the Committee.] Each party must [also serve such materials] *submit its brief and any accompanying materials to* [on]*both* its counterparty [simultaneously with the submission to] *and to* the Office of the General Counsel of the Exchange, *and must do so by means calculated to ensure the party's submission reaches both the Office of the General Counsel and the counterparty at or prior to the deadline specified in the briefing schedule.* [The counterparty service must be made in the same manner as such material is filed with the Office of the General Counsel of the Exchange.]

• The Committee, in its sole discretion upon written motion of either party or upon its own motion, may extend any of the time periods specified above. *The Committee in its sole discretion* [and] may permit the parties to make oral presentations on their Review Day in accordance with such procedures as the Committee may specify at the time. If the Committee denies a request by either party to make an oral presentation, its reason for doing so must be included in its written decision on the review, which decision is provided to all parties. *Document discovery and depositions will not be permitted.*

• If the Committee decides that the security of the issuer should be removed from listing, the Exchange shall suspend trading in the security as soon as practicable and an application shall be submitted by the Exchange to the Securities and Exchange Commission to strike the security from listing and registration and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. If the Committee decides that the security should not be removed from listing, the issuer will receive from the Exchange a notice to that effect.

* * * * *

Rule 499

Delisting of Securities

Suspension from Dealings or Removal From List by Action of the Exchange

* * * * *

* * * Supplementary Material:

.70 Procedure for Delisting.

a. If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously: (1) Issue a press release disclosing the company's status and basis for the Exchange' s determination and (2) begin appending a suffix to the security's ticker symbol identifying the security's status. The notice to the issuer shall also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange (comprised of a majority of public Directors), provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice. *Such written request must state with specificity the grounds on which the issuer intends to challenge the determination of the Exchange staff, must indicate whether the issuer desires to make an oral presentation to the Committee, and must be accompanied or preceded by payment of a non-refundable appeal fee in the amount of $20,000.* [Such review will be conducted on the next monthly Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange. If the next Review Day is in less than 25 business days, the review will be scheduled for the following Review Day.]

b. If the issuer does not request a review within the specified period, the Exchange shall suspend trading in the security and an application shall be submitted by the Exchange staff to the Securities and Exchange Commission to strike the security from listing and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

c. If a review is requested, the review will be [conducted by a Committee of the Board of Directors.] *scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. The Committee's review shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties. The company shall not be permitted to argue grounds for reversing the staff's decision that are not identified in its request for review, however, the company may ask the Committee for leave to adduce additional evidence or raise arguments not identified in its request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. This section shall not, however, (i) authorize a company to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the staff for further review. Should the Committee remand the matter to the staff, the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.*

A request for review *will* ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend from trading any security pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade.

d. *Promptly following receipt of a request for review and the appeal fee, the Exchange's Office of the General Counsel will notify the issuer and the Exchange staff of the scheduled Review Day and the briefing schedule. The schedule will be set by the Office of the General Counsel so as to provide the Committee adequate time to review materials submitted to it, with the remaining time split so as to afford the issuer and the Exchange staff substantially equal periods for the submission of a brief by the issuer and a responsive brief by the Exchange staff.* [Any brief or memorandum dealing with the issuer's or the Exchange staff's position as well as any other written material which the aforementioned parties want the Committee to consider must be received by the Office of the General Counsel of the Exchange within 17 business days from the date the issuer receives the notice of its right to a review so that such material can be furnished to the members of the Committee.] Each party must [also serve such materials] *submit its brief and any accompanying materials to* [on]*both* its counterparty [simultaneously with the submission to]*and to* the Office of the General Counsel of the Exchange, *and must do so by means calculated to ensure the party's submission reaches both the Office of the General Counsel and the counterparty at or prior to the deadline specified in the briefing schedule.* [The counterparty service must be made in the same manner as such material is filed with the Office of the General Counsel of the Exchange.]

e. The Committee, in its sole discretion upon written motion of either party or upon its own motion, may extend any of the time periods specified above. *The Committee in its sole discretion* [and] may permit the parties to make oral presentations on their Review Day in accordance with such procedures as the Committee may specify at the time. If the Committee denies a request by either party to make an oral presentation, its reason for doing so must be included in its written decision on the review, which decision is provided to all parties. *Document discovery and depositions will not be permitted.*

f. If the Committee decides that the security of the issuer should be removed from listing, the Exchange shall suspend trading in the security as soon as practicable and an application shall be submitted by the Exchange to the Securities and Exchange Commission to strike the security from listing and registration and a copy of such application shall be furnished to the issuer in accordance with section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. If the Committee decides that the security should not be removed from listing, the issuer will receive from the Exchange a notice to that effect.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 804 of the NYSE *Listed Company Manual* and NYSE Rule 499 describe the procedures to be followed when the Exchange determines that a security should be removed from listing with the Exchange. They provide that the issuer has a right to request a review of the Exchange's determination by a committee of the Exchange's Board of Directors ("Committee For Review" or "Committee"), and contains the procedures to be followed in connection with such an appeal. In 2000, the SEC approved certain changes in the appeal procedures to allow companies to continue to trade on the Exchange during the appeal process, and set certain time parameters intended to ensure that appeals for delisting determinations are handled expeditiously by the Exchange.[5] After more than a year's experience under the new procedures, the Exchange believes that certain changes are needed to make the process more efficient and effective, for both issuers and the Committee.

Under the current procedures, both the issuer and the Exchange staff are required to file their appeal briefs at the same time. In contrast, the Exchange asserts that most court procedures call for the appellant to submit its brief first. This allows the respondent to focus on the arguments advanced by the appellant, rather than having to speculate on what issues the appellant will raise. The Exchange believes that having the appellant submit its brief first would more effectively utilize the resources of both the Committee and the Exchange staff. Accordingly, the Exchange proposes to amend the procedures to specify that the issuer will submit its written brief first, including any accompanying materials, with the Exchange permitted to respond. In addition, the Exchange proposes to clarify that the briefing schedule will be set to provide the Committee with adequate time to review the materials submitted to it in advance of the review date.

The Exchange's Office of the General Counsel, which oversees the appeals process on behalf of the Committee, will schedule reviews on the first review day that is at least 25 business days from the date an issuer files the request for review, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule,[6] and can establish a briefing schedule that takes account of both the Committee's caseload and the complexities of the specific case. To assist in the Committee's evaluation, an issuer will be required to specify in its written request for review the grounds on which it intends to challenge the Exchange staff's determination, and whether it is requesting to make an oral presentation to the Committee. To cover other procedural questions, the Exchange proposes to specify in the procedures that document discovery and depositions are not permitted.

The Exchange also proposes to specify in its appeal procedures the scope of the Committee's review on appeal and the guidelines pursuant to which the Committee may decide to hear new issues or evidence not identified in an issuer's original request for review.[7] The

[5] See Securities Exchange Act Release No. 42863 (May 30, 2000), 65 FR 36488 (June 8, 2000) (File No. SR–NYSE–99–30).

[6] The Committee For Review typically meets every two months.

[7] In this regard, the Commission specifically notes that the NYSE's proposal would not permit the issuer to argue grounds for reversing the NYSE staff's decision that are not identified in its request for review. However, the issuer would be permitted to ask the Committee for leave to adduce additional evidence or raise arguments not identified in its

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proposed rule changes states that the Committee for Review's review shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties. Typically, accompanying materials include materials the issuer or NYSE staff relies on in support of its position and are supplied as exhibits to the brief submitted by the party.

In addition, the Exchange proposes to institute a non-refundable appeal fee in the amount of $20,000. The Exchange has not previously considered it necessary to charge a separate fee to companies appealing an Exchange delisting decision. The Exchange believes that this historical approach, however, has to be considered in the context of the delisting and related appeal policies in effect at the time. According to the Exchange, changes in policies and procedures adopted or formalized in 1999 have resulted in a larger number of companies being delisted, compared to prior years.[8] More recently, the Exchange notes that the percentage of delistings that are appealed has significantly increased, a result the Exchange ascribes to the changes made to the appeal procedures in 2000, whereby a company that has appealed a delisting would likely be permitted to trade on the Exchange during the appeal process. In a 21-month period since the new appeal procedures were in effect, there were 18 appeals out of 114 delisting determinations. In contrast, during the previous 21 months, there were only 6 appeals out of 104 delisting determinations. In sum, there are now more potential appellants, and they are appealing at a greater rate. Finally, while difficult to evidence with statistics, the Exchange staff is also under the impression that the appeals since the rule change have been more zealously contended by the companies involved, compared with previous years.

The Exchange has elected to use outside counsel to represent the Exchange's Financial Compliance staff in these delisting appeals. During the 12 months ending December 31, 2001, the Exchange paid slightly in excess of $300,000 in legal fees to cover 11 delisting appeals completed during that time, giving an average out of pocket cost of slightly less than $30,000 for each appeal. This does not include the resources of the Exchange's own Financial Compliance and Office of the General Counsel personnel consumed in servicing these appeals. The Exchange considers it only fair and appropriate that the companies incurring these added out of pocket costs defray these costs by paying the proposed $20,000 appeal fee.

The Exchange does not believe that the appeal fee will deter companies from taking reasonable appeals. Most companies that do appeal Exchange staff determinations are represented in that appeal by their own outside counsel, suggesting that they are able to invest a significant sum in the prosecution of their appeal. While the proposed Exchange appeal fee is greater than the amount charged at other listing markets, the Exchange notes that its original and continuing annual listing fees are also higher than those at other markets, and that its listed company population in general represents larger capitalization companies than on the other markets. The Exchange also notes that, particularly in the case of companies that have been delisted after attempting to utilize the financial plan process outlined in Section 802 of the NYSE *Listed Company Manual*, companies delisted by the Exchange typically have received a significant quantum of service and attention from the Exchange's Financial Compliance staff. For these reasons the Exchange believes that companies electing to appeal a delisting decision can bear, and should pay, the $20,000 appeal fee that has been proposed.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2001–46 and should be submitted by December 10, 2002.

request for review, if it can demonstrate that the proposed additional evidence or new arguments are material to its request for review and that there was reasonable ground for not adducing such evidence or identifying such issues earlier. The proposed rule language would not, however, (i) authorize an issuer to seek to file a reply brief in support of its request for review or (ii) be deemed to limit the NYSE staff's response to a request for review to the issues raised in the request for review. Upon review of a properly supported request, the Committee may in its sole discretion permit new arguments or additional evidence to be raised before the Committee. Following such event, the Committee may, as it deems appropriate, (i) itself decide the matter, or (ii) remand the matter to the NYSE staff for further review. Should the Committee remand the matter to the staff, the proposed rules provide that the Committee will instruct the staff to (i) give prompt consideration to the matter, and, (ii) complete its review and inform the Committee of its conclusions no later than seven (7) days before the first Review Day which is at least 25 business days from the date the matter is remanded to the staff.

[8] For example, there were an average of 22 financial delistings per year during the three years from 1996 through 1998, but an average of 61 per year during the period 1999 through 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29244 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46816; File No. SR–NYSE–2002–56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Arbitration

November 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 30, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[3] On November 8, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend Rule 600 relating to arbitrations for a six-month pilot period. During this six-month pilot period, the amendment to Rule 600 will require industry parties in arbitration to waive application of the California arbitrator disclosure standards upon the request of customers that have waived the application. The amendment will also require industry parties in arbitration to waive application of the California arbitrator disclosure standards upon the request of associated persons. Below is the text of the proposed rule change, as well as the text of two forms relating to the waiver procedures that the Exchange proposes to distribute pursuant to the terms of the proposed rule change. Proposed new language is *italicized*.

* * * * *

New York Stock Exchange, Inc.

Constitution and Rules

* * * * *

Arbitration

* * * * *

Rule 600

(g) This paragraph applies to the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations promulgated by the Judicial Council of California (the "California Standards"), which, were they to have effect in connection with arbitrations conducted pursuant to this Code, would conflict with this Code.

In light of this conflict, the affected customer(s) or an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated may:

- *Request the Director to appoint arbitrators and schedule a hearing outside California, or*
- *Waive the California Standards and request the Director to appoint arbitrators and schedule a hearing in California. A written waiver by a customer or associated person who asserts a claim against the member or member organization with which he or she is associated on a form provided by the Director of Arbitration under this Code shall also constitute and operate as a waiver for all other parties to the arbitration who are members, allied members, member organizations, and/or associated persons of a member or member organization.*

* * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change.[5] The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is intended to provide options to customers and associated persons in California whose claims in arbitration cannot proceed because of the state's adoption of a law, and the Ethics Standards for Neutral Arbitrators in Contractual Arbitration ("the California Standards") promulgated thereunder, that purport to apply to arbitrations conducted pursuant to Exchange rules. The California Standards, were they to have effect, would conflict with the Exchange's arbitration rules.

The proposed amendment to Rule 600 responds to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission. On July 1, 2002, as a result of the purported application to Exchange arbitrations and arbitrators of the California Standards, the Exchange suspended the appointment of arbitrators for cases pending in California. The Exchange, along with NASD Dispute Resolution, Inc. (the "NASD"), is seeking a judgment in the United States District Court for the Northern District of California declaring that the California Standards are preempted by the Act and the Federal Arbitration Act. The SEC has sought leave to appear as a friend of the court ("amicus curiae") in the litigation and has submitted a brief that argues that the California Standards are preempted by the Act and by the Federal Arbitration Act.[6]

Shortly after filing the declaratory judgment action, the Exchange began to offer customers the option to have their cases heard outside of California. This proposed amendment enables the Exchange to offer customers in California the additional option of having their cases heard in California if they choose to waive application of the California Standards.

In disputes between a customer and a member, allied member, member organization, and/or associated person

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission corrected a typographical error, and added a reference to define the duration of the proposed pilot period, to the description of the proposed rule change, with the consent of the Exchange. Telephone conversation between Robert S. Clemente, Director of Arbitration, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, (November 7, 2002).

[4] Amendment No. 1 made technical edits to the proposed rule text.

[5] The discussion in this section represents the NYSE's views on the situation in California and does not in any way represent a Commission position on this issue.

[6] See Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California*, No. C 02 3486 SBA (N.D. Cal.). The brief is available on the SEC Web site at: *http://www.sec.gov/litigation/briefs/nasddispute.pdf*.

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of a member or member organization, customers affected by the conflicting California Standards may elect to either have the arbitration hearing in another state, or waive the California Standards and have the hearing in California. The customer's waiver operates to waive the California Standards for any other party who is a member, allied member, member organization, and/or associated person of a member or member organization. Under the proposed amendment, the Exchange would also offer the waiver option to an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated. The Exchange is proposing that Rule 600(g) be adopted as a six-month pilot amendment, from November 12, 2002 to May 12, 2003,[7] during which period the Exchange's Director of Arbitration will monitor the progress of the above-described litigation and determine whether there is a continuing need for the waiver option.

Customers or associated persons who requested, between July 1, 2002 and the effective date of this proposed rule, that a hearing be held outside of California, but have not had arbitrators appointed, may choose to sign the waiver, which will void their previous request for a hearing outside of California. Customers or associated persons who elect, after the effective date of this proposed rule, to have a hearing held outside of California may not subsequently rescind that choice.

The Exchange will notify parties (and their representatives, if any) who currently are awaiting the appointment of arbitrators in California of the terms of this new rule upon its approval by the Commission, and will provide them with the waiver forms.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of section 6(b)(5) of the Act,[8] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

[7] The Commission adjusted the proposed pilot period based on the date that the Commission approved the proposed rule change. Telephone conversation between Robert S. Clemente, Director of Arbitration, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, (November 8, 2002).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. NYSE–2002–56 and should be submitted by December 10, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[9] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[10] The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is necessary to protect investors in that the rules are designed to help address the backlog of cases created by the confusion over the new California Standards, are designed to provide them with a mechanism to help resolve their disputes with broker-dealers in a more expedited manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the proposed rule change will become effective as a pilot program for six months, from November 12, 2002 to May 12, 2003, during which time the Commission and NYSE will monitor the status of the previously discussed litigation.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2002–56) is hereby approved on an accelerated basis through May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29313 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

[9] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46805; File No. SR–PCX–2002–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., to Amend the PCX's Market Data Revenue Sharing Program for Tape A Securities Traded on the Archipelago Exchange

November 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 4, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

III below, which Items have been prepared by PCXE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through PCXE, proposes to modify its market data revenue sharing program for Tape A securities traded on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX proposes to amend its fee schedule for services provided to ETP Holders[3] and Sponsored Participants[4] (collectively "Users") on the ArcaEx by increasing the level of the transaction credits paid to Users with respect to transactions in issues listed on the New York Stock Exchange ("Tape A" securities) that are traded on ArcaEx.

Background

On May 28, 2002, the Exchange filed with the Commission a proposed rule change to implement, on a pilot basis through June 28, 2002, a mechanism for sharing market data revenue with Users on ArcaEx.[5] The proposed rule change was effective upon filing, and the PCXE implemented the program on June 1, 2002. On June 27, 2002, the Exchange filed with the Commission a proposed rule change to extend the market data revenue pilot program through August 30, 2002.[6] On July 2, 2002, the Commission summarily abrogated the PCX's proposed rule change and certain proposed rule changes of the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange relating to market data revenue sharing.[7] Accordingly, on July 9, 2002, the PCX filed with the Commission a proposed rule change to reinstate its market data revenue sharing program, and to reduce the level of the transaction credits paid to Users with respect to transactions in issues listed on the American Stock Exchange ("Tape B" securities).[8] On August 6, 2002, the PCX filed a similar proposed rule change to reinstate its market data revenue sharing program for Tape A securities.[9] Both SR–PCX–2002–42 and SR–PCX–2002–56 were effective upon filing with the Commission. The PCX subsequently amended its Tape A revenue sharing program on September 30, 2002, reducing the transaction credits from 50% to 40% per qualifying transaction.[10]

With the instant proposed rule change, the Exchange proposes to modify its Tape A market data revenue sharing program by increasing the level of the transaction credits paid to Users with respect to transactions in such securities from 40% to 50%. No other changes are proposed at this time.

Summary of Proposed Changes

Under the current market data revenue sharing program for Tape A securities, the Exchange shares 40% of its gross revenues derived from related market data fees with (i) any User that provides liquidity in a Tape A security by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the Display Order, Working Order, or Tracking Order processes; (ii) any Market Maker that executes against a Directed Order in a Tape A security within the Directed Order Process;[11] and (iii) any User that represents all of one side and all or a portion of the other side of a Cross Order[12] execution in a Tape A security. The Exchange is seeking to increase the level of the transaction credits from 40% to 50% (per qualifying transaction) that will be paid to a User that meets the requirements stated above. The proposed increase in the Tape A revenue credit is intended to create additional incentives to market participants to provide liquidity on the ArcaEx facility.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)[13] of the Act, in general, and furthers the objectives of section 6(b)(5),[14] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Exchange also believes that the proposal is consistent with section 6(b)(4)[15] of the Act, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[3] *See* PCXE Rule 1.1(n).

[4] A "Sponsored Participant" is "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to (PCXE) Rule 7.29." *See* PCXE Rule 1.1(tt).

[5] *See* Securities Exchange Act Release No. 46070 (June 12, 2002), 67 FR 42089 (June 20, 2002) (SR–PCX–2002–28).

[6] *See* SR–PCX–2002–37.

[7] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR–PCX–2002–37, SR–NASD–2002–61, SR–NASD–2002–68, and SR–CSE–2002–06) (Order of Summary Abrogation).

[8] *See* Securities Exchange Act Release No. 46293 (August 1, 2002), 67 FR 51314 (August 7, 2002) (SR–PCX–2002–42).

[9] *See* File No. SR–PCX–2002–56.

[10] *See* File No. SR–PCX–2002–61.

[11] The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to the particular market maker by the User. *See* PCXE Rule 7.37(a) (description of "Directed Order Process").

[12] A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. *See* PCXE Rule 7.31(a).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(4).

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longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.[16] In that Order, the Commission expressed concern that the subject proposed rule changes raised "serious questions as to whether they are consistent with the Act and with the protection of investors." Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on the instant proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–PCX–2002–62, and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29241 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46804; File No. SR–PCX–2002–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

November 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The PCX filed Amendment No. 1, which replaces the original filing in its entirety, on November 7, 2002. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its Schedule of Fees and Charges with respect to the following fees for options: broker-dealer and market maker transaction charges, the continued listings fee, and the shortfall fee. The text of the proposed rule change is below. New text is italicized; deleted text is in brackets.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

PCX Options: Trade-Related Charges	
Transactions:	
Customer	$0.00 per contract side.
PCX Market Maker	$0.21 per contract side.
Firm	$0.10 per contract side for customer facilitation.
Broker/Dealer	[$0.19] *$0.21* per contract side.

PCX Options: Floor and Market Maker Fees	
Continued Listings Fee	Difference between $500 and average monthly revenue for issues with less than $500 in volume based charges (average monthly revenue based on trailing 3 months). *The fee will be capped at $15,000 per month per LLM firm.*
Shortfall Fee	$.35 per contract on shortfall volume.*

* Only applies to the top 120 options. Shortfall volume is the difference between 12% of the total national market share in an option issue for one month and the percentage executed by the LMM. *For the purpose of this calculation, the national market share of any equity option industry volume will be capped at 2.9 million contracts per day.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCX is proposing to change its broker-dealer transaction charge, market maker transaction charges, continued listings fee, and shortfall fee effective with the October 2002 trading month.[3] Other than the fees listed herein, the PCX does not seek to make any other changes to its fee schedule.

1. Broker-Dealer Transaction Charge

The PCX currently imposes a fee of $0.19 per contract side on all transactions of broker-dealers. The PCX proposes to increase this fee to $0.21 per contract side, which would bring the transaction fee to the same level as the PCX Market Maker transaction charge.

2. Continued Listing Fee

The PCX currently imposes upon LMMs a continued listing fee for issues that have not generated at least $500 in monthly revenues to the PCX on a trailing three-month average basis.[4] The continued listing fee is calculated as the incremental difference between the $500 threshold and the amount of revenue that the issue generates. The PCX proposes to cap the amount of the continued listings fee that can be charged to an LMM firm at $15,000 per month per LMM firm.

The PCX also proposes to modify the continued listing fee in order to adjust the method of calculating the average monthly volume-based charges for recently transferred issues. Currently, LMM firms that are transferred issues from another LMM assume the continued listings fee from the transferring firm. To help foster demand for issues during a period of continuing consolidation among trading firms, the PCX proposes to modify the way the continued listings fee is applied to transferred issues. Under the PCX's proposal, an LMM would not be subject to the continued listings fee for an issue that it acquired by transfer for any portion of the month that it acquired the issue, assuming a mid-month transfer. The LLM firm would be subject to a fee based upon the activity of the first full month that it trades an issue. After the second full month of trading the issue, the transferee LMM would be subject to a continued listings fee based upon the trailing two-month activity level. In future months, the transferee LMM would be subject to the fee based on a three-month rolling average.

3. Shortfall Fee

In June 2002, the PCX increased the LMM shortfall fee from 10% to 12% for the top 120 equity options traded nationally. Due to periodic spikes in national industry volume, the PCX proposes to cap the shortfall fee when equity industry volume reaches 2.9 million contracts per day or higher. As proposed, LMM firms would not be charged a shortfall fee on contracts in a top 120 issue that exceeds the calculated volume cap amount.

The PCX believe that the proposal is consistent with section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)[7] because it changes the PCX fee schedule. At any time within 60 days after the filing of Amendment No. 1 to the the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–65 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29245 Filed 11–18–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3460]

State of Alabama

Henry County and the contiguous counties of Barbour, Dale and Houston in the State of Alabama; and Clay, Early

[16] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (Order of Summary Abrogation).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 217 CFR 240.19b–4.

[3] In its original filing, which the PCX filed with the Commission on September 27, 2002, the PCX proposed to increase from $0.21 to $0.26 the transaction fee imposed on members for orders that originate from non-PCX options market makers. The PCX subsequently withdrew that particular proposed fee change when it filed Amendment No. 1 with the Commission on November 7, 2002.

[4] See Securities Exchange Act Release No. 42050 (October 21, 1999), 64 FR 58117 (October 28, 1999) (SR–PCX–99–32)

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

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and Quitman in the State of Georgia constitute a disaster area due to damages caused by severe storms and tornadoes on November 5, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 13, 2003 and for economic injury until the close of business on August 13, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 346011 for Alabama and 346111 for Georgia. The number assigned to this disaster for economic injury is 9S4900 for Alabama and 9S5000 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 2002.

Melanie R. Sabelhaus,

Acting Administrator.

[FR Doc. 02–29271 Filed 11–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4207]

Discretionary Grant Programs Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 2003 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Central and East Europe and Eurasia. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 2003 under a program administered by the Department of State. The program seeks to build and sustain expertise among Americans willing to make a career commitment to the study of Central and East Europe and Eurasia.

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by of this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

Applications for an award must be sent by Express Mail, commercial courier (*e.g.* FEDEX, UPS, or DHL), or hand-delivered by February 14, 2003.

Applications must be addressed to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 2251, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–6510.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 2251, 2201 C Street, NW., Washington, DC. Please use the entrance on 21st St., just north of the intersection with C St., and phone at (202) 736–4572 for pick up at the entrance.

The Advisory Committee staff will accept hand-delivered applications between 9 a.m. and 4 p.m. e.s.t. daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983, the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The program provides financial support for advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Central and East Europe and the NIS, the program contributes to the overall objectives of the FREEDOM Support and SEED Acts.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Serbia (including Kosovo and Montenegro), Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary or Deputy Secretary of State, after consultation with the Advisory Committee, approves policies and makes the final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on Central and East Europe and Eurasia and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral level, and must have demonstrated a likely career commitment to the study of Central and East Europe and/or Eurasia.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Central and East Europe and/or Eurasia by proposing:

(1) *National programs* that award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* that offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Central and East Europe and Eurasia, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) *National programs* that provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Central and East Europe and Eurasia, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) *National programs* that provide advanced training and research on a reciprocal basis in the countries of Central and East Europe and Eurasia by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* that facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Central and East Europe and Eurasia in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies and priorities:

- *Support for Transitions.* The Advisory Committee strongly encourages support for research activities which, while building expertise among U.S. specialists on the region, also: (1) Promote fundamental goals of U.S. assistance programs such as helping establish market economies and promoting democratic governance and civil societies, and (2) provide knowledge to both U.S. and foreign audiences related to current U.S. policy interests in the region, broadly defined. This includes, but is not limited to, such topics as resolution of ethnic, religious, and other conflict; terrorism; security and defense reform; transition economics; media studies; women's issues and trafficking in persons; human rights; and citizen participation in politics and civil society. For on-site research, applicants are encouraged to think creatively about how individuals' work may complement democratization and marketization assistance activities in the region. Examples might include lecturing at a university or participating in workshops with host government and parliamentary officials, nongovernmental organizations, and other assistance target audiences on issues related to market and democratic transitions.

The Advisory Committee gives priority to programs on Central Asia, the Caucasus, Ukraine and the Balkans, especially the former Yugoslavia, where gaps in knowledge exist. The Advisory Committee encourages research on Russia that focuses on regions and areas outside capital cities. Historical or cultural research that promotes understanding of current events in the region is acceptable if an explicit connection can be made to contemporary political and/or economic transitions. Research on such topics as musicology or mathematics generally is not appropriate for funding.

- *Promoting Federal Service for Title VIII Grant Recipients.* Although the title VIII program does not have a federal service commitment for individuals receiving funding, the Advisory Committee would like grantees to explore ways to encourage end-users, where appropriate, to pursue U.S. Government career opportunities, internships, or short-term sabbaticals after completing their awards.

In this competition, the Advisory Committee welcomes proposals that promote opportunities for individuals in disciplines with Eurasian and/or East European studies concentrations to serve on a temporary basis as policy or other experts in U.S. Embassies and/or with Non-Governmental Organizations (NGOs) in the region.

Publications. Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

- *Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.
- *Library Activities.* Funds may be used for certain library activities that clearly strengthen research and training on the countries of Central and East Europe and Eurasia and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.
- *Language Support.* The Advisory Committee encourages attention to the non-Russian languages of Eurasia and the less commonly taught languages of Central and East Europe. Support provided for Russian language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above that has appropriate peer group review mechanisms.

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• *Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Central and East Europe and Eurasia. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (*i.e.*, U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, *i.e.*, nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure. Despite this restriction on support for non-Americans, collaborative projects are encouraged—where the non-American component is funded from other sources—and priority is given to institutions whose programs contain such an international component.

• *Balanced National Program.* In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Central and East Europe and Eurasia. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort that will ensure attention to all the countries of the area.

• *Cost-sharing.* Legislation requires and this announcement indicates under Program Information of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost sharing is strongly encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $5.0 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 2002, the Congress appropriated to the program $5.0 million from the FREEDOM Support and Support for East European Democracies (SEED) Acts, which funded grants to 8 national organizations, with $3.4 million for activities on Eurasia and $1.6 million for those on Central and East Europe, including the Baltic states. The number of awards varies each year, depending on the level of funding and the quality of the applications submitted.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years after the grant's effective beginning date.

Applications

Applications must be prepared and submitted in 20 copies in Times New Roman font, 12 pitch in the following format: One-page, single-spaced Executive Summary; budget presentation with footnotes detailing line items; narrative description of proposed programs not to exceed 20 double-spaced pages; one-page, single-spaced *vitae* of key professional staff; and required certifications. Applicants may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully.

Budget

Because funds will be appropriated separately for Central and East Europe (including the Baltic states) and Eurasia programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR part 145, "Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"; 22 CFR part 137, "Department of State Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)"; OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"; and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions"; and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations";

(2) A detailed program budget indicating direct expenses with clearly identified administrative costs by program element and by region (Eurasia or Central and East Europe), indirect costs, and the total amount requested. The budget should indicate clearly the total amount requested as the sum of the amount requested for Eurasia activities plus the amount requested for Central and East Europe activities. The budget also should reflect administrative costs as a percentage of the total requested funding. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to, supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it, showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report, if available) and the name, address, and point of contact of the audit agency. N.B.: The threshold for grants that trigger an audit requirement has been raised from $25,000 to $300,000.

(5) An indication of the applicant's priorities if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the U.S. Government-run Payment Management System (PMS).

Narrative Statement

The Applicant must describe fully the proposed programs, including detailed information about plans for advertising and recruiting for programs, peer review and selection procedures and identification of anticipated selection committee participants, estimates of the types and amounts of anticipated awards, and benefits of these programs for the Central and East European and Eurasian fields.

Applicants who have received previous grants from this State Department program should provide detailed information on the end-user awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. Applicants should specify both past and anticipated applicant to award ratios. A summary of an organization's past grants under this State Department program also should be included.

Proposals from national organizations involving language instruction programs should provide, for those programs supported in the past year, information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), indications of progress achieved by title VIII-funded students, instructors' qualifications, and budget information showing estimated costs per student.

Certifications

Applicants must include a description of affirmative action policies and practices and certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L. 100–690), in accordance with appendix C of 22 CFR part 137, subpart F; and (2) section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with appendix A of 22 CFR part 138, New Restrictions on Lobbying Activities.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in Program part II, Information (45 points);

(2) The professional qualifications of the applicant's key personnel and selection committees, and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Central and East Europe and/or the Eurasia (35 points); and

(3) Budget presentation and cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 2251, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–6510. Telephone: (202) 736–4572 or 736–4386, fax: (202) 736–4851 or (202) 736–4557.

Dated: November 13, 2002.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 02–29350 Filed 11–18–02; 8:45 am]

BILLING CODE 4710–32–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1542).

TIME AND DATE: 9 a.m. (CST), November 20, 2002, Mississippi State University, Hunter Henry Center, Barr Ave., Mississippi State, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 10, 2002.

New Business

Budget and Financing

A1. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury.

A2. Approval of tax-equivalent payments for Fiscal Year 2002 and estimated payments in Fiscal Year 2003.

B—Purchase Awards

B1. Contract with Computer Associates International, Inc., for software and maintenance of proprietary software.

C—Energy

C1. Contract with ABB, Inc., for extra-high voltage transformers.

C2. Contract with Motion Industries, Inc., for bearings and power transmission equipment.

C3. Contract with ADVATECH LLC to design, manufacture, deliver, and install gas desulfurization process equipment.

C4. Contract with Ingram Barge Company for barging services to Cumberland Fossil Plant.

C5. Contract with Canal Barge Company, Inc., for barging services to Colbert Fossil Plant.

C6. Contracts with Law Engineering and Environmental Services, Inc., and S&ME, Inc., for geotechnical and environmental services at various TVA locations.

E—Real Property Transactions

E1. Grant of a permanent easement to the Town of Dandridge, Tennessee, for a water and sewer line expansion affecting approximately 3.5 acres of land on Douglas Reservoir in Jefferson County, Tennessee, Tract No. XTDR–35U.

E2. Modification of certain deed restrictions affecting approximately 0.4 acre of former TVA land on Norris Reservoir in Union County, Tennessee, Tract No. XNR–232, S.2X.

E3. Grant of a permanent easement to Darlene Hester for a road access affecting approximately 0.3 acre of land on Little Bear Creek Reservoir in Franklin County, Alabama, Tract No. XTBCLR–3H.

E4. Grant of noncommercial, nonexclusive permanent easement to Riverbrook Shoreline Owners Association for construction and maintenance of recreational water-use facilities affecting approximately 4.7 acres of land on Fort Loudoun Reservoir in Blount County, Tennessee, Tract No. XTFL–132RE.

E5. Sale of a 30-year term commercial recreation easement to Corliss Smith (operator of Southlake RV Park) affecting approximately 11.2 acres of land on Fort Loudoun Reservoir in Knox County, Tennessee, Tract No. XFL–131RE.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights-of-way affecting Tract Nos. EPH–54, –55, –55A, –56, –56B and –58, East Point-Hanceville Transmission Line, Cullman County, Alabama, and right to enter affecting Tract No. 2WCJR–1000TE, Waynesville-Clifton City Transmission Line, Wayne County, Tennessee.

Information Items

1. Approval of an amendment to the Trust Agreement between the TVA Retirement System Board of Directors and Fidelity Management Trust Company to eliminate the annual participant recordkeeping fee.

2. Approval of amendments to the Rules and Regulations of the TVA Retirement System and to the Provisions of the TVA Savings and Deferral Retirement Plan to provide System credit for certain lump-sum payments made to TVA employees in lieu of base wage or salary increases for FY 2003, and to provide System compliance with qualified domestic relations orders.

3. Approval of the TVA contribution rate to the TVA Retirement System for Fiscal Year 2003.

4. Approval of the filing of condemnation cases to acquire tree removal rights affecting Tract Nos. EPH–61, 61A–CR, and easements and rights-of-way affecting Tract Nos. EPH–15, –48, –66, and –71, East Point-Hanceville Transmission Line, Cullman County, Alabama, and Tract Nos. SBFP–36, –38, –40A, –45 (86/189 interest, –55 (403/1176 interest), –63, –75, (¾ interest), –76, –77C (107/108 interest), –85, and –86A (47/56 interest), Sebastopol Switching Station-Five Points, Scott County, Mississippi.

5. Approval of the filing of condemnation cases to acquire

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easements and rights of way affecting Tract Nos. CRF–3A, –3AA, and –4, Chickamauga\Ridgedale-Oglethorp Loop Into Hawthorn Substation Transmission Line, Hamilton County, Tennessee; Tract No. SBFP–6, Sebastopol Switching Station-Five Point Transmission Line, Scott County, Mississippi; and right to enter affecting Tract Nos. MECGM–1000TE, –1001TE, and –1002TE, Morgan Energy Center-General Motors Transmission Line, Limestone County, Alabama.

6. Approval of the appointment of Bill Forsyth of Murphy, North Carolina, to be a member of the Regional Resource Stewardship Council.

7. Approval of the sale of permanent and temporary construction easements for a water intake and discharge for water treatment facilities for Southeast Tissue Company, LLC, affecting approximately 2.7 acres of land on Pickwick Reservoir in Colbert County, Alabama, Tract No. XPR–4641E.

8. Approval of a public auction sale of the former Singleton Laboratory site consisting of approximately 3.4 acres of Fort Loudoun Reservoir land in Blount County, Tennessee, Tract No. XFL–133.

9. Approval of negotiated pay adjustments for Fiscal Years 2003, 2004, and 2005, covering TVA Police employees represented by the Law Enforcement Employees Association.

10. Approval of negotiated pay adjustments for Fiscal Year 2003 for custodial employees represented by Local 544, Service Employees' International Union, AFL–CIO.

11. Approval of negotiated adjustments to the pay plan for engineer, scientist, and technician employees represented by the Engineering Association, Inc., for Fiscal Years 2003, 2004, and 2005.

12. Approval of a new classification and Market Pricing pay plan and pay adjustments for employees represented by the Office and Professional Employees International Union for Fiscal Year 2003.

13. Approval of a contract with Bechtel Power Corporation for engineering services for the Browns Ferry Nuclear Plant Unit 1 recovery effort.

14. Approval of a delegation of authority for the Executive Vice President, Transmission/Power Supply Group, to execute the Public Power Regional Transmission Grid Coordination Agreement.

15. Approval of revised Dispersed Power Production Guidelines for TVA and distributors of TVA power.

16. Approval of an extension of temporary authority to waive the Enhanced Growth Credit Program requirement that a facility must first be shut down for at least 12 months before becoming eligible for the program.

17. Approval of a revision of the formula used to calculate credits under the Low Density Credit Program.

18. Approval of a delegation of authority to the President and Chief Operating Officer, or a designee, to approve a Power Purchase Agreement for green power to be supplied from a wind-powered generation expansion project on Buffalo Mountain in support of TVA's Green Power Switch Program.

19. Approval for the Senior Vice President of Procurement, or a designee, to enter into individual contracts and incremental changes of up to $30 million each for Browns Ferry Nuclear Plant Unit 1 materials and services through Fiscal Year 2007, with the total dollar amount of contacts entered into in any fiscal year not to exceed &250 million.

20. Approval of a grant of a 30-year term public recreation easement, with conditional option for renewals, to the City of Florence, Alabama, affecting approximately 27 acres of land on Pickwick Reservoir in Lauderdale County, Alabama, Tract N. XTWDNC–1RE.

FOR FURTHER INFORMATION CONTACT: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 13, 2002.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 02–29523 Filed 11–15–02; 3:33 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procedures for Further Consideration of Requests (Anniversary) for Exclusion of Particular Products From Actions With Regard to Certain Steel Products Under Section 203 of the Trade Act of 1974, as Established in Presidential Proclamation 7529 of March 5, 2002

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In a notice published on October 26, 2001 (66 FR 54321) (Notice), the Trade Policy Staff Committee (TPSC) established procedures for interested persons to request the exclusion of particular products from any action the President might take under section 203 of the Trade Act of 1974, as amended, (19 U.S.C. 2253) (Trade Act) with regard to certain steel products. Presidential Proclamation 7529 of March 5, 2002, established such actions with regard to certain steel products (safeguard measures), but excluded some of the particular products identified in requests for exclusion made in response to the Notice. See 67 FR 10553 (March 7, 2002). Proclamation 7529 authorized the United States Trade Representative (USTR) in March of each year in which any of the safeguard measure remains in effect to further exclude particular products from the pertinent safeguard measure established by the proclamation. The USTR is modifying procedures established on April 18, 2002 (67 FR 19307) for further consideration of such exclusion requests.

DATES: The USTR and the Department of Commerce will hold a public information session to review the anniversary exclusion filing procedures on Thursday, November 21, 2002, at 4 p.m. in room 3407 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. Information will available on the USTR website at *www.ustr.gov/sectors/industry/steel.shtml* indicating how interested persons may participate in this public information session by teleconference. Persons submitting requests for the exclusion of certain steel products from the safeguard measures must file completed questionnaires by December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Please send inquiries regarding the exclusion process by e-mail simultaneously to: *exclusion_support@ita.doc.gov* and *FR001@ustr.gov*. You may also contact the Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: Slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States ("HTS") ("safeguard measures") for a period of three years plus 1 day.

Within 120 days after the date of that proclamation, the USTR was authorized to further consider any request for exclusion from the section 201 measures of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provisions created by the annex to the proclamation to exclude such particular product from the pertinent safeguard measure established by the proclamation.

Proclamation 7529 also delegated to the USTR the authority, in March of each year in which any safeguard measure established by this proclamation remains in effect, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provisions created by the annex to this proclamation to exclude such particular product from the pertinent safeguard measure established by this proclamation. This **Federal Register** notice provides notice of the procedures for the consideration of these anniversary exclusion requests.

To facilitate the consideration of new exclusion requests, USTR requests persons interested in obtaining an exclusion from the safeguard measures of a particular product to send an e-mail to *exclusion_support@ita.doc.gov* to request an identifying "A" number. The "Subject" line of the e-mail must give the name of the requesting party and the words "A-number Request" as in the following example: XYZSteelCo—A-number Request. Each submitting party will be assigned only one identifying A number, regardless of the number of total exclusion requests a submitting party may ultimately file. That party's individual product requests will then be differentiated using the "decimal point" numbers. Further instructions about decimal numbers will be provided to the submitting party in the e-mail which supplies the submitting party with its A-number.

USTR, in conjunction with the U.S. Department of Commerce, has developed a series of questions designed to elicit information that clearly identifies the product under consideration, and provides detailed information on the requester's situation. These questions, presented in the form of a requester questionnaire, are available on the USTR website at *http://www.ustr.gov/sectors/industry/steel.shtml*. The questionnaire contains detailed filing instructions. Interested parties must submit a complete questionnaire by December 3, 2002.

In addition to the instructions contained in the questionnaire, USTR has developed guidelines in response to frequently asked questions to assist a requester in preparing a response to the questionnaire. The Guidelines further elaborate upon the questionnaire and provide sample responses to selected questions within the questionnaire. The Guidelines will be available on the USTR website at *http://www.ustr.gov/sectors/industry/steel.shtml*.

USTR and the Commerce Department will review each exclusion request for the minimum level of sufficiency necessary to initiate each exclusion request. In the case of a deficient exclusion request, USTR or Commerce will transmit by e-mail a notice to the submitting party that briefly summarizes the nature of the deficiency and/or requests supplemental information. By providing a deficiency notice, USTR and the Commerce Department will otherwise make no comment on the merits of an exclusion request. Exclusion requesters will have 10 days from the date of transmission of the deficiency notice to remedy and file a correction or submit requested supplemental information to its exclusion request.

Short descriptions of the particular products covered by complete questionnaire responses will be posted in groups on the USTR website, and the requester questionnaires will be made available to the public in the Commerce Department Central Records Unit. The timing and size of the posting of such groups will be determined and announced at a future date by USTR and will depend on the volume and nature of exclusion requests received by USTR.

USTR, in conjunction with the Commerce Department, has developed a series of questions designed to substantiate any objections. These questions, presented in the form of an objector questionnaire, will be available on the USTR website at *http://www.ustr.gov/sectors/industry/steel.shtml*. The filing deadlines of such objector questionnaires will be determined and announced at a future date in accord with the above-referenced public posting process.

If a complete response to the requester questionnaire with regard to a particular product has not been received by December 3, 2002, USTR may disregard the exclusion request for that product. If a complete response to the objector questionnaire with regard to a particular product has not been received by the date that will be established by USTR, USTR will assume that the domestic industry does not object to the exclusion of that particular product.

USTR and the Commerce Department will make time available to meet with interested persons in the latter half of January 2003 to review the submissions related to exclusion requests. USTR will publish instructions on the USTR website in December for requesting meetings with the exclusion analysis team, and will notify the parties of the meeting schedule in the first half of January 2003. If the number of meetings requested exceeds the time available for such meetings, priority will be given to those meetings that discuss exclusion requests that, in the opinion of USTR and Commerce, require further inquiry.

Each exclusion request will be evaluated on a case-by-case basis. USTR will grant only those exclusions that do not undermine the objectives of the safeguard measures. In analyzing the requests, USTR will consider whether the product is currently being produced in the United States, whether substitution of the product is possible, whether qualification requirements affect the requester's ability to use domestic products, current inventory levels, whether the requested product is under development by a U.S. producer who will imminently be able to produce it in marketable quantities, and any other relevant factors.

Submission of Requests for Exclusion and Opposition to Requests for Exclusion

Parties who wish to place an exclusion request on the record will be required to submit paper copies of each questionnaire response to the Department of Commerce Central Records Unit (B099) via Room 1870. Four paper copies of a public version of an exclusion request must be filed. Parties who wish to file business proprietary versions must submit four paper copies of the business proprietary version and two paper copies of the public version. In addition to paper copies, interested parties must also file an electronic version via e-mail in a WordPerfect or Microsoft Word format to *exclusion_support@ita.doc.gov* and *FR001@ustr.gov*. Detailed filing instructions are contained in both the requester and objector questionnaires

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located in the aforementioned USTR website address.

Any long description of the product subject to an exclusion request must include only publicly available information, in text form (no tables or graphs), with all units of measurement converted to metric equivalents. The description must be sufficient to differentiate the product from other products, and to allow for enforcement of the exclusion, if granted, by the U.S. Customs Service.

We strongly discourage the submission of business proprietary information. Any questionnaire response that contains business proprietary information must be accompanied by two paper copies of a public summary that do not contain business proprietary information and four paper copies that do contain business proprietary information.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) that the Office of Management and Budget (OMB) has approved. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to request the exclusion of a product from the safeguard measures. It is expected that the collection of information burden will be no more than 20 hours. This collection of information contains no annual reporting or record keeping burden. OMB approved this collection of information under OMB control number 0350–0011. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–29292 Filed 11–18–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Extension of waiting period.

SUMMARY: Delta Air Lines, Northwest Airlines, and Continental Airlines have submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and authorizes the Department to extend the waiting period for these agreements at the end of the thirty-day period. The Department has determined to extend the waiting period for the Delta/Northwest/Continental code-share agreements for an additional thirty days, from November 21 to December 21, 2002.

Any supplemental comments must be submitted by December 4, 2002.

ADDRESSES: Comments must be filed with Randall Bennett, Director, Office of Aviation Analysis, Room 6401, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file three copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: Delta, Northwest, and Continental submitted code-sharing and frequent-flyer program reciprocity agreements to us for review under 49 U.S.C. 41720 on August 23. That statute requires such agreements between major U.S. airlines to be submitted to us more than thirty days before their planned implementation, and it authorizes us to extend the waiting period by up to 150 days for code-sharing agreements and by up to sixty days for other types of agreements. We have already extended the waiting period for these agreements twice by thirty days. 67 FR 59328 (September 20, 2002); 67 FR 64960 (October 22, 2002). We have determined to extend the waiting period for the code-share agreement for an additional thirty days to give us time to consider the supplemental comments being submitted by other parties interested in the agreement. While we cannot extend the waiting period for the frequent flyer reciprocity agreement again, we are continuing to examine the competitive issues raised by the frequent flyer reciprocity agreement, and we request that parties address those issues in their comments as well.

We have been informally reviewing the agreements submitted by Delta, Continental, and Northwest and discussing the competitive issues with the Justice Department. Our review of the agreements is focusing on whether they may reduce competition. To bar the parties from implementing the agreements, we would need to determine that they were unlawful under 49 U.S.C. 41712 as an unfair method of competition, that is, that the agreements violate the antitrust laws or antitrust principles. *See United Air Lines* v. *CAB*, 766 F.2d 1101 (7th Cir. 1985). Our review is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we are considering whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

To assist us in our review, we have given interested parties the opportunity to submit comments on the agreements, initially on the basis of redacted copies of the agreements and more recently on the basis of unredacted copies, subject to restrictions designed to ensure that the confidential business information in the agreements does not become public. We made the unredacted copies of the agreements available to the parties on November 12 after giving Delta, Continental, and Northwest some advance notice of our decision to make the copies available. 67 FR 69297 (November 15, 2002).

Any supplemental comments must be submitted no later than December 4. That deadline will give the parties adequate time to submit any additional analysis based on their review of the unredacted material. We will then consider all of the comments and the information provided by Delta, Continental, and Northwest and further consult with the Justice Department. We hope to make a final decision by December 21 on whether more formal action should be taken on the agreements.

Issued in Washington, DC on November 15, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–29490 Filed 11–15–02; 2:06 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 8, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13751.
Date Filed: November 5, 2002.
Parties: Members of the International Air Transport Association.
Subject: CAC/30/Meet/009/002 dated November 4, 2002, Cargo Agency Conference—Resolution 805zz, Intended effective date: October 1, 2002.

Docket Number: OST–2002–13771.
Date Filed: November 6, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC EUR 0481 dated October 25, 2002,
TC2 Within Europe Expedited Resolutions 002ap, 074my r1–r2,
PTC2 EUR 0482 dated October 25, 2002,
TC2 Within Europe Expedited Resolutions r3–r8,
PTC2 EUR 0483 dated October 25, 2002,
TC2 Within Europe Expedited Resolutions 002ar, 004a r9–r10,
Intended effective date: December 1, 2002, December 15, 2002, January 1, 2003.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–29227 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 8, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–3419.
Date Filed: November 5, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 26, 2002.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41101, 14 CFR part 377 and subpart B, requesting renewal and amendment of its certificate for Route 752, authorizing American to engage in scheduled foreign air transportation of persons, property, and mail between Chicago/New York-Tokyo and Dallas/Ft. Worth-Osaka, and to substitute Los Angeles for Boston as a U.S. gateway to Tokyo.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–29228 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Honoring Tickets of National Airlines Pursuant to the Requirements of Section 145 of the Aviation and Transportation Security Act

The Department issued a notice on August 8, 2002, providing guidance for airlines and the traveling public regarding the obligation of airlines under section 145 of the Aviation and Transportation Security Act ("Act") to transport passengers of airlines that have ceased operations due to insolvency or bankruptcy. (Pub. L. 107–71, 115 Stat. 645 (November 19, 2001)) That notice, which was issued after Vanguard Airlines' July 2002 cessation of service, was intended to provide immediate guidance in response to numerous complaints from ticketed passengers and inquiries from airlines. On November 6, 2002, National Airlines ceased operations. The purpose of this notice is to remind carriers that the provisions of section 145 also apply to National Airlines' cessation of service.

As guidance to the industry, the Department's August 8 notice mentioned several factors that we would look to in determining whether airlines were complying with section 145.[1] Section 145 requires, in essence, that airlines operating on the same route as an insolvent carrier that has ceased operations shall transport the ticketed passengers of the insolvent carrier "to the extent practicable." The Department stated, among other things, our preliminary view that, at a minimum, section 145 requires that passengers holding valid confirmed tickets, whether paper or electronic, on an insolvent or bankrupt carrier be transported by other carriers who operate on the route for which the passenger is ticketed on a space-available basis, without significant additional charges. We further pointed out that, under section 145, passengers whose transportation has been interrupted have 60 days after the date of the service interruption to make alternative arrangements with an airline for that transportation. We made clear in our guidance, however, that we did not believe that, in enacting section 145, Congress intended to prohibit carriers from recovering from accommodated passengers the amounts associated with the actual cost of providing such transportation. We wish to reiterate that advice with respect to the current situation involving National Airlines' cessation of service.

After the issuance of our August 8 notice, several carriers informally sought additional clarification, specifically regarding recovery of the costs of accommodating passengers under section 145. In our August 8 notice, we stated that we did not foresee that such costs would exceed $25.00.[2] We wish to make clear that the $25.00 amount stated above was simply an estimate of the magnitude of the additional direct costs carriers might incur in transporting affected passengers on a standby basis.

Several carriers have informally raised concerns that the $25.00 cost estimate was too low. In each such instance, Department staff has advised those carriers that, to the extent they experienced and could document reasonable direct costs in excess of the $25.00 estimated amount, they should be entitled to recover such costs under the statute. Department staff has specifically requested each airline that had expressed concern to provide evidence demonstrating that its reasonable direct costs exceeded the estimated $25.00 amount. No airline has provided any documentation in

[1] Failure by an airline to comply with section 145 may constitute an unfair and deceptive practice in violation of 49 U.S.C. 41712.

[2] We pointed out that examples of such costs include the cost of rewriting tickets, providing additional onboard meals, and the incremental fuel cost attributable to transporting an additional passenger.

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response to that request.[3] We thus have no information demonstrating that the estimated amount of $25.00 would be inadequate to cover additional direct costs to transport persons holding Vanguard Airline tickets on a space available basis.

With respect to National Airlines, the Department has not received any written comments or other evidence from any airline demonstrating that $25.00 would be insufficient to cover additional direct costs to transport persons holding tickets on a space-available basis. However, we have received reports that in some instances airlines have charged far in excess of $25.00 for transportation. Because we wish to ensure that airlines have had the opportunity to demonstrate that costs in excess of $25.00 each way are reasonable, the Department has not yet taken any action with respect to any airline in connection with section 145 involving either Vanguard Airlines' or National Airlines' cessations of operations. To obtain further information on this issue from the traveling public and the airlines, we request that any airline or person who believes that the Department's estimate of $25.00 is either insufficient, or is more than necessary to cover the direct costs of accommodating ticketed passengers on a space available basis, contact the Department's Office of Aviation Enforcement and Proceedings, at the address below, within seven days of the date of this notice and provide written comments and evidence of costs in support of their position.

Questions regarding this notice may be addressed in writing to Dayton Lehman, Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings, 400 7th St., SW., Washington, DC 20590, or he may be contacted by telephone at (202) 366–9342.

An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov/reports.*

Dated: November 14, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–29442 Filed 11–15–02; 11:31 am]

BILLING CODE 4910–62–P

[3] A few airlines also expressed separate concerns about difficulties in verifying confirmed reservations of passengers holding electronic tickets, in which case a hard-copy ticket would not be available. Department staff suggested it would be appropriate to require such passengers to provide proof of payment and confirmation, such as receipts and printed itineraries.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13767]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0606, 2115–0077, 2115–0096, 2115–0549, 2115–0603 and 2115–0640

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of six Information Collection Requests (ICRs). The ICRs comprise (1) National Response Resource Inventory; (2) Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual; (3) Records on Oil and Hazardous Material Pollution Prevention and Safety: Equivalents, Alternatives, and Exemptions; (4) Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels; (5) Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old; and (6) Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before January 21, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2002–13767) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. DOT, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document by docket number (USCG 2002–13767), and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* National Response Resource Inventory.

OMB Control Number: 2115–0606.

Summary: The information is needed to improve the effectiveness of deploying response equipment in the event of an oil spill. It may also be used in the development of contingency plans.

Need: Section 4202 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) requires the Coast Guard to compile and maintain a comprehensive list of spill-removal equipment. This collection helps fulfill that requirement.

Respondents: Organizations that remove oil spills.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,224 hours a year.

2. *Title:* Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual (OM).

OMB Control Number: 2115–0077.

Summary: A Letter of Intent is a notice to the Coast Guard Captain of the Port that an operator intends to operate a facility that will transfer bulk oil or hazardous materials to or from vessels. An OM establishes procedures to follow when conducting the transfer and in the event of a spill.

Need: 33 U.S.C. 1321 authorizes the Coast Guard to prescribe rules for preventing pollution. 33 CFR 154.110 prescribes the rules for a letter of intent, and 33 CFR 154 subpart B prescribes those for an OM.

Respondents: Operators of facilities that transfer oil or hazardous materials in bulk.

Frequency: On occasion.

Burden Estimate: The estimated burden is 27,819 hours a year.

3. *Title:* Records on Oil and Hazardous Material Pollution Prevention and Safety: Equivalents, Alternatives, and Exemptions.

OMB Control Number: 2115–0096.

Summary: This information is needed to minimize the number and impact of pollution discharges and accidents occurring during transfer of oil or hazardous materials. It also helps to evaluate proposed alternatives and requests for exemptions.

Need: The information collected under this rule is needed to: (1) Prevent or mitigate the results of an accidental release of liquid hazardous materials being transferred in bulk at waterfront facilities; (2) ensure that facilities and vessels that use vapor-control systems are in compliance with the safety standards developed by the Coast Guard; (3) provide requirements for equipment and operations by facilities and vessels that transfer oil or hazardous materials in bulk to or from vessels with a capacity of 250 or more barrels; and (4) provide procedures for operators of vessels or facilities who request exemption or partial exemption from the requirements of the rules for preventing pollution.

Respondents: Operators of facilities and vessels transferring oil and hazardous materials in bulk.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,440 hours a year.

4. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 2115–0549.

Summary: The collection of information requires passenger vessels to have posted two placards that contain safety and operating instructions on the use of cooking applinces that employ liquefied gas or compressed natural gas.

Need: 46 U.S.C. 3306(a)(6) authorizes the Coast Guard to prescribe rules for the use of vessel stores of a dangerous nature. These rules cover both uninspected and inspected passenger vessels.

Respondents: Owners and operators of passenger vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 2,680 hours a year.

5. *Title:* Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 2115–0603.

Summary: OPA 1990 requires the issuance of rules for the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. This also helps to verify the structural integrity of older such vessels.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules for tank vessels, including rules on design, construction, alteration, repair, and maintenance. 46 CFR 31.10–21a prescribes those for periodic gauging and engineering analyses of certain tank vessels over 30 years old.

Respondents: Owners and operators of certain tank vessels.

Frequency: Every 5 years.

Burden Estimate: The estimated burden is 13,688 hours a year.

6. *Title:* Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States.

OMB Control Number: 2115–0640.

Summary: The information is needed to reduce the number of ship collisions with endangered northern right whales. The rules establish two mandatory ship-reporting systems off the northeast and southeast coasts of the United States.

Need: The collection involves ships' reporting by radio to a shore-based authority when entering the areas covered by the reporting system. The ships will, in return, receive information to reduce the likelihood of collisions between themselves and northern right whales—an endangered species—in the areas established with critical-habitat designation.

Respondents: Operators of certain vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 88 hours a year.

Dated: November 7, 2002.

C.I. Pearson,

Director of Information and Technology.

[FR Doc. 02–29324 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13766]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0142, 2115–0089, 2115–0137, 2115–0143, and 2115–0541

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise (1) Approval of Plans and Records for Marine Engineering Systems—46 CFR Subchapter F; (2) Ships Carrying Bulk Hazardous Liquids; (3) Report of Discharge of Oil or Hazardous Substance; (4) Records Relating to Citizenship of Personnel on Units Engaged in Activities on Outer Continental Shelf (OCS); and (5) Barges Carrying Bulk Hazardous Materials. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before January 21, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2002–13766) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at

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Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. DOT, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document by docket number (USCG 2002–13766), and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Approval of Plans and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 2115–0142.

Summary: This collection of information requires an owner or builder of a commercial vessel to submit to the U.S. Coast Guard, for review and approval, plans pertaining to marine-engineering systems to ensure that the vessel will meet regulatory standards.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe rules for safety of vessels, including those related to marine-engineering systems. 46 CFR subchapter F prescribes them. They provide the specifications, standards, and requirements for strength and adequacy of design, construction, installation, inspection, and choice of materials for machinery, boilers, pressure vessels, safety valves, and piping systems upon which safety of life depends.

Respondents: Owners and builders of commercial vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 3,090 hours a year.

2. *Title:* Ships Carrying Bulk Hazardous Liquids.

OMB Control Number: 2115–0069.

Summary: This information is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules for protection against hazards to life, property, and the marine environment. 46 CFR part 153 prescribes rules for the safe transport by vessel of bulk hazardous liquids.

Respondents: Owners and operators of chemical tank vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 738 hours a year.

3. *Title:* Report of Discharge of Oil or Hazardous Substance.

OMB Control Number: 2115–0137.

Summary: The collection of information requires any person in charge of a vessel or an onshore or offshore facility to report to the National Response Center, as soon as he or she knows of any discharge of oil or a hazardous substance.

Need: 33 CFR 153.203, 40 CFR 263.30 and 264.56, and 49 CFR 171.15 mandate that the Center be the central place for the public to report all polluting spills. The information collected goes to it.

Respondents: Persons in charge of vessels or onshore or offshore facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 8,667 hours a year.

4. *Title:* Records Relating to Citizenship of Personnel on Units Engaged in Activities on OCS.

OMB Control Number: 2115–0143.

Summary: Vessels and units engaged in activities on the Outer Continental Shelf OCS (exploration and exploitation of offshore resources such as gas and oil) must be manned and crewed by U.S. citizens or permanent resident aliens (43 U.S.C. 1356). Employers must, by 33 CFR 141.35, maintain records demonstrating compliance.

Need: This information is needed to ensure compliance with the statutory mandates to man or crew OCS facilities with U.S. citizens or permanent resident aliens.

Respondents: Operators of vessels and units engaged in activities on the OCS.

Frequency: On occasion.

Burden Estimate: The estimated burden is 442 hours a year.

5. *Title:* Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 2115–0541.

Summary: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules related to the carriage of liquid bulk dangerous cargoes. 46 CFR part 151 prescribes rules for barges carrying bulk liquid hazardous materials.

Need: This information is needed to ensure the safe shipment of bulk hazardous liquids in barges. In particular, it is needed to ensure that barges meet safety standards and to ensure that barges' crewmembers have the information necessary to operate barges safely.

Respondents: Owners and operators of tank barges.

Frequency: On occasion.

Burden Estimate: The estimated burden is 10,903 hours a year.

Dated: November 7, 2002.

C.I. Pearson,

Director of Information and Technology.

[FR Doc. 02–29325 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Tenth Quarterly Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Announcement.

SUMMARY: This notice announces the Tenth Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at ten Level 1 Trauma Centers linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 5 p.m. on Thursday, December 5, 2002.

ADDRESSES: The meeting will be held at the Department of Transportation Headquarters, (Nassif Building), 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. CIREN cases may be viewed from the NHTSA/CIREN Web site at: *http://www-nrd.nhtsa.dot.gov/departments/nrd-50/ciren/CIREN.html*. NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous CIREN conferences is also available through the NHTSA Web site. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes; the second quarterly meeting on July 21, 2000, with a topic of side impact crashes; the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes; the fourth quarterly meeting on March 16, 2001, with a topic of offset frontal collisions; the fifth quarterly meeting on June 21, 2001, on CIREN outreach efforts; the sixth quarterly meeting (held in Ann Arbor, Michigan) with a topic of injuries involving sport utility vehicles, the seventh quarterly meeting on December 6, 2001, with a topic of Age Related Injuries (Elderly and Children), the eighth quarterly meeting on April 25, 2002, with a topic of Head and Traumatic Brain Injuries, and the ninth quarterly meeting on August 22, 2002 at Harborview Injury Prevention and Research Center in Seattle, Washington with presentations highlighting the various research specialities of the Centers. Presentations from these meetings are available through the NHTSA website.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the tenth such meeting. The ten CIREN Centers will be presenting papers on the research specialty for their particular center regarding crash injury mechanisms. The next meeting is tentatively scheduled for April 3, 2003.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/*. If you do not have access to the Web site, you may call the contact listed below and leave your telephone or fax number. You will be called only if the meeting is postponed or canceled.

FOR FURTHER INFORMATION CONTACT: Catherine McCullough, Office of Advanced Safety Research, 400 Seventh Street, SW, Room 6220, Washington, DC 20590, telephone: (202) 366–4734.

Issued on: November 8, 2002.

Raymond P. Owings,

Associate Administrator for Advanced Research and Analysis, National Highway Traffic Safety Administration.

[FR Doc. 02–29229 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–10175; Notice 2]

Decision That Nonconforming 2001 Mercedes Benz Gelaendewagen 5-Door Long Wheel Base Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2001 Mercedes Benz Gelaendewagen 5-door long wheel base multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 2001 Mercedes Benz Gelaendewagen 5-door long wheel base MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards ("FMVSS") shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, MD, ("J.K.") (Registered Importer 90–006) petitioned NHTSA to decide whether 2001 Mercedes Benz Gelaendewagen MPVs are eligible for importation into the United States. NHTSA published notice of the petition on August 1, 2001 (66 FR 39823) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from the Original Automobile Manufacturers' Association of Concord, New Hampshire. This comment was signed by a James Linder, who identified himself as President of the organization. The comment questioned the adequacy of the documentation submitted by J.K. to demonstrate that the 2001 Mercedes Benz Gelaendewagen MPV complies with, or is capable of being altered to comply with, a number of FMVSSs. The comment recommended that the NHTSA engineer responsible for each of the standards cited (Standard Nos. 103, 104, 105, 108, 113, 114, 118, 124, 201, 202, 204, 206, 207, 208, 209, 210, 212, 214, 216, 219, 301, and 302, as well as the Federal Bumper Standard found in 49 CFR Part 581) review the data submitted by J.K. to determine whether it is sufficient to certify the compliance of the 2001 Mercedes Benz Gelaendewagen MPV with the standard. After receiving this comment, NHTSA learned that the names of both the organization that purportedly submitted it, and the individual who signed it, are fictitious. In light of this circumstance, as well as the fact that the comment essentially offers little more than suggestions to guide the agency in its review of the petition, we have concluded that it does not merit further discussion in this document. We do note, however, that in processing import eligibility petitions, the agency does obtain, when necessary, input of the kind the comment

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recommended from its professional engineering staff.

After initially reviewing the petition, the agency informed J.K., by letter dated December 7, 2001, that it had submitted insufficient test data to demonstrate that the 2001 Mercedes Benz Gelaendewagen MPV complies with, or is capable of being altered to comply with, Standard Nos. 105 Hydraulic Brake Systems, 208 Occupant Crash Protection, 214 Side Impact Protection, and 301 Fuel System Integrity. The letter asked J.K. how it intended to bring the vehicle into compliance with these standards.

In lieu of responding to this request, J.K. asked the agency, by letter dated January 24, 2002, to disregard and destroy the data submitted in support of its original petition, and to process the petition instead under 49 U.S.C. 30141(a)(1)(A), on the basis that there is a U.S.-certified version of the vehicle. J.K. identified that vehicle as the 2002 Gelaendewagen Type 463 MPV (identified in the letter as the "G500 model") that Mercedes-Benz had begun to import into the United States. The letter asserted that this was an appropriate comparative vehicle because the vehicle that was the subject of the petition was actually produced after some of the vehicles that Mercedes had been importing with a 2002 model year designation.

The agency next received an inquiry concerning the status of the petition from an individual who identified himself as a client of J.K.'s. The individual stated that he had contracted with J.K. for the importation of a 3-door short wheel base convertible version of the 2001 Mercedes Benz Gelaendewagen. The agency subsequently learned from Mercedes Benz North America that the only model year 2002 Gelaendewagen being offered for sale in the United States is the 5-door long wheel base version of the vehicle. Based on this information, the agency asked J.K. to clarify which versions of the vehicle were covered by its petition, and to modify the petition if J.K. intended it to cover both long wheel base and short wheel base versions. J.K. responded, by letter dated April 15, 2002, that it intended the petition to cover all versions of the 2001 Mercedes Benz Gelaendewagen.

The agency then informed J.K., by letter dated May 15, 2002, that due to the 18-inch wheelbase difference and weight difference between the short wheel base and long wheel base versions of the vehicle, as well as the body difference with regard to the convertible model, the compliance of the 5-door long wheel base version with Standard Nos. 201, 204, 208, 210, 214, 216, and 301 does not necessarily demonstrate compliance of the 3-door short wheel base and convertible versions with those standards. The agency accordingly asked J.K. to supply it with additional information substantiating that the 3-door short wheel base and convertible models of the vehicle comply with those standards if J.K. wished the agency to construe the petition as applying to all three models. J.K. responded by letter dated August 12, 2002, requesting the agency to process the petition as applicable to the 5-door long wheel base version of the 2001 Gelaendewagen alone. J.K. stated that it would later submit separate petitions covering the other versions of the vehicle.

Since there was no substantially similar U.S.-certified version of the 2001 Mercedes Benz Gelaendewagen, 49 U.S.C. 30141(a)(1)(B) provides the only basis for the agency to decide that the vehicle is eligible for importation. As previously noted, that section permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test or such other evidence as NHTSA decides to be adequate. In this instance, the fact that there is a U.S.-certified counterpart for the 5-door long wheel base version of the 2002 model Mercedes Benz Gelaendewagen has led the agency to conclude that the non-U.S. certified 5-door long wheel base model built in 2001 has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS. In light of this circumstance, the agency has decided to grant import eligibility to that model.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–21 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2001 Mercedes Benz Gelaendewagen 5-door long wheel base multipurpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal-motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 13, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–29230 Filed 11–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34275]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company; Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

Pursuant to a written trackage rights and joint ownership agreement dated April 5, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant limited overhead trackage rights to Union Pacific Railroad Company (UP) between BNSF milepost 3.3x near Argo, WA, and BNSF milepost 9.5x near Black River, WA, a distance of 6.2 miles, and UP has agreed to grant limited overhead trackage rights to BNSF between UP milepost 176.4 near Rhodes, WA, and UP milepost 173.1 near Black River, WA, a distance of 3.3 miles.[1]

The parties state that consummation of the transaction was scheduled to occur immediately upon the November 6, 2002 effective date of the exemption (7 days after the exemption was filed) and that operations under the exemption were scheduled to begin on or after November 7, 2002.

The purpose of the trackage rights is to allow the phase-in of commuter rail enhancements to accommodate the Central Puget Sound Regional Transit Authority's commuter operations between Seattle and Tacoma, WA.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the exemption.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34275, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039, and Robert T. Opal, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: November 12, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29194 Filed 11–18–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The notice refers to an exchange of "temporary" overhead trackage rights in connection with a "joint relocation project." The transaction appears to be an exchange of trackage rights for a term of 40 years and has been processed as such. In the future, if circumstances warrant, BNSF and UP may need to seek approval to discontinue the trackage rights.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 8, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before December 19, 2002, to be assured of consideration.

Bureau of Engraving and Printing (BEP)

OMB Number: 1520–0002.
Form Number: BEP 5287.
Type of Review: Extension.
Title: Claim for Amounts Due in the Case of Deceased Owner of Mutilated Currency.
Description: BEP Form 5287 is used when Treasury is required to determine ownership in cases of a deceased owner of damaged or mutilated currency.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 180.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 165 hours.
Clearance Officer: Pamela Grayson, Bureau of Engraving and Printing, Room 3.2.C, Engraving and Printing Annex, 14th and C Streets, SW., Washington, DC 20228, (202) 874–2212.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–29233 Filed 11–18–02; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 8, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 19, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1414.
Form Number: IRS form 8846.
Type of Review: Extension.
Title: Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
Description: Employers in food or beverage establishments where tipping is customary can claim an income tax credit for the amount of social security and Medicare taxes paid (employer's share) on tips, other than tips used to meet the minimum wage requirement.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 68,684.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 hr., 7 min.
Learning about the law or the form—18 min.
Preparing and sending the form to the IRS—26 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 609,228 hours.
OMB Number: 1545–1417.
Form Number: IRS form 8845.
Type of Review: Extension.
Title: Indian Employment Credit.
Description: Employers can claim a credit for hiring American Indians or their spouses to work within an Indian reservation. The credit is figured by multiplying by 20% the increase in wages and health insurance costs over the comparable amount paid or incurred during calendar year 1993.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,246.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 53 min.
Learning about the law or the form—1 hr., 40 min.
Preparing and sending the form to the IRS—1 hr., 53 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 14,292 hours.
OMB Number: 1545–1500.
Form Number: IRS form 8850.
Type of Review: Extension.
Title: Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.
Description: A job applicant completes and signs, under penalties of perjury, the top portion of the form to indicate that he or she is a member of a targeted group. If the employer has a belief that the applicant is a member of a targeted group, the employer signs the other portion of the form under penalties of perjury and submits it to the state employment security agency (SESA) as part of a written request for certification.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 400,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

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Recordkeeping—2 hr., 47 min.
Learning about the law or the form—37 min.
Preparing, and sending this form to the SESA—36 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1,596,000 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Officer.
[FR Doc. 02–29234 Filed 11–18–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of Public Debt, Treasury.
ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before January 17, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:
Title: New TreasuryDirect.
OMB Number: 1535–0138.
Abstract: The information is requested to establish a new account and process transactions.
Current Actions: None.
Type of Review: Extension.
Affected Public: Individuals.
Estimated Number of Respondents: 1.93 million.
Estimated Total Annual Burden Hours: 231,075.
Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 13, 2002.

Vicki S. Thorpe,
Manager, Graphics, Printing and Records Branch.
[FR Doc. 02–29289 Filed 11–18–02; 8:45 am]
BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463 (Federal Advisory Committee Act), gives notice that a meeting of the Advisory Committee on Homeless Veterans will be held from Thursday, December 12, 2002 through Friday, December 13, 2002, at the VA Service Center, 2nd Floor—VOA Meeting Room, 1492 West Flagler Street, Miami, FL 33135. A public meeting will convene Thursday and Friday at 8:30 a.m. and end at 4 p.m. daily. There will be a town hall forum on Thursday from 4 p.m. to 6 p.m. at St. John Bosco Church, 1301 West Flager Street, Miami, FL 33135. The meeting and town hall forum are open to the public. Members of the public must sign up at the town hall meeting in order to speak at the town hall forum. The purpose of the Committee is to advise the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On December 12, the Committee will receive information about efforts to coordinate services and increase veteran access to homeless services from VA and other health and benefits programs and review new initiatives to assist veterans. A town hall forum will be held to hear comments and concerns from current and formerly homeless veterans, service providers, faith-based organizations and tribal governments. On December 13, the Committee will continue reviews of presentations and discuss future actions for the Committee including formulation of Committee recommendations.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public, except during the town hall forum. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 12, 2002.

By Direction of the Secretary.

Nora E. Egan,
Committee Management Officer.
[FR Doc. 02–29269 Filed 11–18–02; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 67, No. 223
Tuesday, November 19, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

Correction

In notice document 02–28741 appearing on page 68842 in the issue of Wednesday, November 13, 2002, make the following correction:

On page 68842, in the second column, in the **DATES** section, in the second line, "January 13, 2002" should read "January 13, 2003".

[FR Doc. C2–28741 Filed 11–18–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

October 24, 2002.

Correction

In notice document 02–27939 beginning on page 67176 in the issue of Monday, November 4, 2002 make the following correction:

On page 67176, in the third column, the docket number was removed, the heading is corrected to read as set forth above.

[FR Doc. C2–27939 Filed 11–18–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–66]

Notice of Submission of Proposed Information Collection to OMB: Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance

Correction

In notice document 02–28289 beginning on page 67860 in the issue of Thursday, November 7, 2002, make the following correction:

On page 67860, in the third column, under the **ADDRESSES** heading, in the fifth line, the E-mail address is corrected to read as set forth as set below, "*Lauren_Wittenberg@omb.eop.gov.*"

[FR Doc. C2–28289 Filed 11–18–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–25–AD; Amendment 39–12905; AD 2002–20–08]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes

Correction

In rule document 02–26370 beginning on page 64792 in the issue of Tuesday, October 22, 2002, make the following corrections:

§ 39.13 [Corrected]

1. On page 64794, in § 39.13, in the table, in the second column, in the first entry, in the third and fourth lines, "June 23, 2002" should read "June 23, 2000".

2. On the same page, in the same section, in the same table, in the same column, in the same entry, in the fourth and fifth lines, "200–09–13" should read, "2000–09–13".

[FR Doc. C2–26370 Filed 11–18–02; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Tuesday,
November 19, 2002

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 35, 101, et al.
Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations; Proposed Rule

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 101, 154, 201, 346, and 352

[Docket No. RM02–7–000]

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations

Issued: October 30, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations to update the accounting and reporting requirements for liabilities for asset retirement obligations under its Uniform Systems of Accounts for public utilities, licensees, natural gas companies, and oil pipeline companies.

The Commission proposes to establish uniform accounting and financial reporting for the recognition and measurement of liabilities arising from retirement and decommissioning obligations of tangible long-lived assets and the related capitalized costs. The Commission also proposes to add new income statement accounts to the Uniform Systems of Accounts to record the accretion of the liability and the depreciation of the related capitalized costs. The Commission proposes to add or revise as necessary the definitions, general and plant instructions, and balance sheet and income statement accounts contained in the Uniform Systems of Accounts. Additionally, the Commission proposes to revise its rate filing requirements to incorporate the above mentioned changes.

Finally, the Commission proposes to revise the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and revised schedules proposed by this rulemaking.

An important objective of the proposed rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The new instructions and accounts will result in improved, consistent and complete accounting and reporting of liabilities for obligations associated with the retirement of tangible long-lived assets and the related asset retirement costs capitalized. The additions of new accounts and changes to the FERC Forms noted above will add visibility, completeness and consistency of the accounting and reporting of liabilities for asset retirement obligations and the related asset retirement costs capitalized.

DATES: Comments on the proposed rulemaking are due on or before January 3, 2003.

ADDRESSES: File written comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments should reference Docket No. RM02–7–000. Comments may be filed electronically or by paper (an original and 14 copies, with an accompanying computer diskette in the prescribed format requested).

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I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to revise its Uniform Systems of Accounts [1] for public utilities and licensees,[2] natural gas companies [3] and oil pipeline companies [4] for the recognition of liabilities for legal obligations associated with the retirement of tangible long-lived assets and the associated capitalization of these amounts as part of the cost of the asset giving rise to the obligation.

2. The purpose of the NOPR is to improve the usefulness of financial information provided to the Commission and other users of the FERC Forms by establishing uniform accounting and reporting requirements for legal obligations associated with the retirement of tangible long-lived assets. The Commission proposes to add or revise as necessary the definitions, general and plant instructions, and balance sheet and income statement accounts contained in the Uniform Systems of Accounts to incorporate the proposed changes for the accounting for asset retirement obligations. The Commission is of the view that such requirements are needed because these types of transactions and events are not clearly or consistently reported. This NOPR is part of the Commission's ongoing effort to address emerging accounting developments within the context of the Uniform Systems of Accounts.

3. The proposed accounting for asset retirement obligations is consistent with the accounting and reporting requirements that jurisdictional entities will use in their general purpose financial statements provided to shareholders and the Securities Exchange Commission (*e.g.*, companies will separately account and report the liability for the asset retirement obligations, capitalize the asset costs, and charge earnings for depreciation of the asset and operating expense for the accretion of the liability).

4. An asset retirement obligation is a liability resulting from a legal obligation to retire or decommission a plant asset. The types of work activities typically include removing or dismantling the asset. For example, public utilities have a legal liability to decommission nuclear plants under certain Nuclear Regulatory Commission (NRC) regulations. The activities would include the dismantlement and removal of the reactor vessel and the related contaminated facilities. Natural gas pipeline companies may have legal liabilities to remove compressor stations and related piping under state regulations, local ordinances or agreements entered into with the landowners. Offshore pipelines may have legal obligations that arise under federal and state site clearance requirements to remove the offshore platforms, wells, pilings and other appurtenances resulting from the retirement of such facilities. However, certain assets may not have legal obligations if no law, statute, ordinance, or contract exists to remove or dismantle the facilities.

5. Business entities have accounted for legal obligations in various ways. Some business entities recognize these asset retirement obligations gradually over the life of the asset as part of depreciation expense while others have not recognized any liability for the legal obligations for the asset to be retired. Under the proposed accounting all entities must record the present value of the legal obligation at the time it is incurred.

6. To illustrate, the owner of a nuclear plant estimates that the cost to decommission the facilities as required by law is $400,000 ten years from today. Under the current practice the owner records $40,000 ($400,000/10 years) of additional depreciation expense each year for the cost of removing the plant. This simplified example ignores interest earnings, etc. on amounts placed in an external fund.

7. The new accounting standard requires that the owner record a liability for the present value of the $400,000. Assuming a $100,000 present value, the owner initially records a liability of $100,0000 and capitalizes a corresponding amount as part of the asset costs. The liability recorded will increase or grow over time (time value of money) until the actual retirement activity commences and the liability is settled (paid). Both approaches recognize the same total expenses of $400,000 over the asset's useful life. Under the new accounting standard, the total expenses are made up of $100,000 in depreciation on the capitalized asset costs plus $300,000 for the time value of money, while under the current practice the decommissioning liability is recognized on a pro rata basis over the life of the plant as depreciation expense of $400,000.

8. In summary, the new accounting standard requires the present value of the liability to be recorded for all assets. Additionally, the entity capitalizes this amount as part of the cost of the plant and depreciates it over the useful life of the related asset.

9. Finally, a gain or loss may be recognized for any difference between the estimated liability and the actual amount paid to settle the asset retirement obligation. In the example above, if the owner paid a contractor $380,000 to remove the plant and thereby settle the obligation, a gain of $20,000 will be recognized for the difference between the $400,000 liability recorded on its books and the $380,000 paid to the contractor for the work performed.

10. The Commission also proposes to revise its rate filing requirements to accommodate the above mentioned changes. In that regard, we specifically note that the proposed accounting will not affect jurisdictional entities' ability to recover costs arising from asset retirement obligations in rates. However, public utilities, licensees, natural gas and oil pipeline companies with formula rate tariffs must seek approval with the Commission prior to implementing the accounting changes, if doing so would affect tariff billings.

11. Finally, the Commission proposes to revise the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and the revised schedules proposed in this rulemaking.[5]

II. Background

12. The recognition and measurement of legal liabilities associated with the retirement and decommissioning of long-lived assets by various entities, including Commission jurisdictional entities, has been inconsistent over the years. The usefulness of consistently recognizing and measuring asset retirement obligations in the financial statements resulted in the Financial Accounting Standards Board (FASB) issuing a new accounting pronouncement affecting the manner in which legal obligations are measured and reported in the financial statements applicable to entities in general.[6] The

[1] Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g and section 20 of the Interstate Commerce Act (ICA) 49 App. U.S.C. 20 (1988), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purposes of administering the FPA, NGA and the ICA. The Commission may prescribe a system of accounts for jurisdictional entities and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

[2] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. *See* 18 CFR part 101 (2002).

[3] Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. *See* 18 CFR part 201 (2002).

[4] Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. *See* 18 CFR part 352 (2002).

[5] The FERC Annual Reports bear the following OMB approval control numbers: Form 1 has OMB approval number 1902–0021; Form 1–F has OMB approval number 1902–0029; Form 2 has OMB approval number 1902–0028; Form 2–A has OMB approval number 1902–0030; and Form 6 has OMB approval number 1902–002.

[6] The accounting pronouncement issued by FASB was Financial Accounting Standards (FAS) No. 143, Accounting for Asset Retirement Obligations, issued in June 2001. The accounting may be obtained from FASB at *http://accounting.rutgers.edu/raw/fasb/*.

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major objective of this change in accounting by FASB is to provide standards for the recognition and measurement of liabilities for asset retirement obligations associated with the retirement of tangible long-lived assets. When an entity acquires or constructs an asset, it may incur certain legal obligations associated with the future retirement of that asset. These obligations are generally referred to as asset retirement obligations. An asset retirement obligation is a legal obligation associated with the retirement of a tangible long-lived asset that an entity is required to settle as a result of an existing enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel.[7]

13. An entity essentially recognizes a liability for the fair value of an asset retirement obligation at the time the asset is constructed, acquired, or when a change in the law creates a legal obligation to perform the retirement activities. Upon initial recognition of that liability, an entity also increases the cost of the related asset that gives rise to the legal obligation by the same amount.[8] The liability is increased over time until the actual retirement activity commences.[9] Additionally, the asset retirement cost capitalized is depreciated over the same life of the related asset giving rise to the obligation. An entity is required to remeasure the liability due to the passage of time and certain other changes in the estimate of the liability.[10]

14. Business entities are required to apply the standards for accounting for asset retirement obligations to all existing assets as if the accounting requirements had always been in existence for such assets, as well as those under construction that have associated legal obligations for their disposal or retirement.[11]

15. The accounting standards for asset retirement obligations rely on the general standards of accounting for the effects of regulation for regulated entities in accordance with FASB Statement No. 71, *Accounting for the Effects of Certain Types of Regulation*, (FAS 71).[12] Therefore, an entity must recognize a regulatory asset or regulatory liability if the requirements of FAS 71 are met. The Commission established regulatory assets and liabilities which apply to public utilities, licensees and natural gas companies.[13]

16. The Commission considers it desirable for its accounting requirements and those used by jurisdictional entities for general purpose financial reporting to be consistent. Currently, some jurisdictional entities do not recognize asset retirement obligations in the Uniform Systems of Accounts while other jurisdictional entities only recognize the amounts included in the rate setting process as a component of accumulated depreciation. The Commission is of the view that the accounting for asset retirement obligations to be an improvement in financial accounting and reporting practices. The Commission notes that the proposed rule will improve consistency in accounting and reporting of legal obligations to retire tangible long-lived assets which under current accounting practices are accounted and reported in an inconsistent manner. The Commission also notes that the proposed rule will provide the Commission's stakeholders with more transparent financial statement disclosure of the costs related to the legal obligation in the FERC Annual Reports. The proposed rule is consistent with the enhanced disclosure initiatives announced by the Security Exchange Commission to ensure more important transparent and comprehensive accounting and reporting information will be provided by business entities to their stakeholders.

17. In an effort to eliminate the inconsistencies in accounting practices by jurisdictional entities for asset retirement obligations, the Commission proposes to provide in the Uniform Systems of Accounts accounting requirements for the recognition and measurement of liabilities for obligations associated with the retirement and decommissioning of tangible long-lived assets. The Commission considers that the proposed rule for asset retirement obligations will provide consistent accounting and reporting requirements for the recognition and measurement of liabilities for legal obligations associated with the retirement of long-lived assets and the capitalization of the related asset retirement costs. The proposed rule, if adopted, will initially result in a minimal increase in burden as a result of standardizing the accounting and reporting for asset retirement obligations for regulatory purposes. The proposed rule will eliminate the need by jurisdictional entities to maintain duplicate sets of books.

18. Finally, on May 7, 2002, Commission staff held an informal technical conference to discuss the financial accounting, reporting and ratemaking implications related to obligations associated with the retirement of tangible long-lived assets.[14] The main purpose for convening this technical conference was to afford an opportunity for the electric, natural gas and oil pipeline industries and other interested parties to discuss the financial and reporting implications related to asset retirement obligations on the Commission's existing accounting and rate regulations. The Commission staff received suggestions from the participants at the technical conference which have been incorporated into the NOPR, to the maximum extent possible.

III. Discussion of Proposed Revisions to Regulation for Public Utilities, Licensees, and Natural Gas Companies

A. General

19. The Commission's existing Uniform Systems of Accounts and Annual Report Forms for public utilities, licensees, and natural gas companies do not contain adequate instructions and accounts to provide for the recording of liabilities for asset retirement obligations and the associated asset retirement costs. Therefore, the following changes are proposed to our existing accounting and reporting regulations to provide transparent accounting and reporting to this Commission and other users of the FERC Forms 1, 1–F, 2 and 2–A any legal liabilities related to the future retirement or decommissioning of utility and nonutility plant.

B. Proposed New Accounts for Asset Retirement Obligations

20. The Commission proposes to create a new noncurrent liability account entitled account 230, Asset retirement obligations, to record legal liabilities related to the future retirement or decommissioning of utility and nonutility plant for public utilities and licensees in part 101 (part 101) of the Commission's regulations and for natural gas companies in part 201 (part 201) of the Commission's regulations. The new proposed account 230, Asset retirement obligations, will record the fair value of the liability based upon a present value calculation. These amounts will increase or grow over time until the liability is settled. The process of increasing the liabilities recorded in account 230, Asset retirement obligations, is referred to as an "accretion" to record the increase or growth in the liability due to the passage of time. The Commission proposes to create a new income statement account entitled account 411.10, Accretion expense, in parts 101 and 201 of the Commission's regulations to record the increase or growth in the liability due to the passage of time. The proposed account 411.10 will provide for the accretion expense of asset retirement obligations due to the passage of time.

C. Proposed New Accounts for Capitalized Asset Retirement Costs

21. Under the new accounting requirements, when an entity records a liability for an asset retirement obligation, it concurrently capitalizes that amount as part of the asset's cost. Effectively, the fair value of the obligation becomes part of the overall cost of the asset, similar to other amounts that are capitalized as part of the asset's construction or acquisition cost to separately identify these in the electric and gas utility plant records. The Commission proposes to create the following new primary plant accounts for each plant functions within account 101, Electric plant in service (Major only), for public utilities and licensees in part 101 of the Commission's regulations, and account 101, Gas plant in service, for natural gas companies in part 201 of the Commission's regulation, to record separately these amounts across the life of the asset.

22. For account 101, Electric plant in service (Major only), the new proposed primary plant accounts are shown in the following table:

	Public utilities and licensees	Proposed new primary plant accounts
1	Steam Production Plant	317, Asset retirement costs for steam production plant.
2	Nuclear Production Plant	326, Asset retirement costs for nuclear production plant.
3	Hydraulic Production Plant	337, Asset retirement costs for hydraulic production plant.
4	Other Production Plant	347, Asset retirement costs for other production plant.
5	Transmission Plant	359.1, Asset retirement costs for transmission plant.
6	Distribution Plant	374, Asset retirement costs for distribution plant.
7	General Plant	399.1, Asset retirement costs for general plant.

23. For account 101, Gas plant in service, the new proposed primary plant accounts are shown in the following table below:

	Natural gas companies	Proposed new primary plant accounts
1	Manufactured Gas Production Plant	321, Asset retirement costs for manufactured gas production plant.
2	Natural Gas Production Plant	339, Asset retirement costs for natural gas production and gathering plant.
3	Products Extraction Plant	348, Asset retirement costs for products extraction plant.
4	Underground Storage Plant	358, Asset retirement costs for underground storage plant.
5	Other Storage Plant	363.6, Asset retirement costs for other storage plant.
6	Base Load Liquefied Natural Gas Terminaling and Processing Plant	364.9, Asset retirement costs for base load liquefied natural gas terminaling plant.
7	Transmission Plant	372, Asset retirement costs for transmission plant.
8	Distribution Plant	388, Asset retirement costs for distribution plant.
9	General Plant	399.1, Asset retirement costs for general plant.

24. The Commission proposes that the amounts in the above primary plant accounts be depreciated over the life of the electric and gas utility plant giving rise to the asset retirement obligations. In order to separately identify the depreciation expense recorded on capitalized asset retirement costs related to electric and gas utility plant, the Commission proposes to create a new depreciation expense account entitled account 403.1, Depreciation expense for asset retirement costs, in parts 101 and 201 of the Commission's regulations to record these amounts on the income statement.

D. Proposed New General Instructions for Accounting for Asset Retirement Obligations

25. In addition to the above mentioned new accounts, the Commission also proposes to create a new General Instruction 25, Accounting for asset retirement obligations, for public utilities and licensees in part 101 and a new General Instruction 24, Accounting for asset retirement obligations, for natural gas companies in part 201 of the Commission's regulations to provide additional direction for the accounting for the recognition of asset retirement costs and related obligations. These proposed General Instructions provide for the capitalization of the asset retirement costs in electric and gas utility plant and nonutility plant accounts as appropriate. It also provides for the liability to be recorded in the new proposed noncurrent liability account 230, Asset retirement obligations, in parts 101 and 201 of the Commission's regulations.

26. Under proposed General Instruction 25 in part 101 and General Instruction 24 in part 201 of the Commission's regulations, the Commission proposes that the accretion of the liability be debited to the new proposed account 411.10, Accretion expense, for electric and gas utility plant, and the existing account 413, Expenses of electric plant leased to others, and account 413, Expenses of gas plant leased to others, for utility plant

[7] *See* FAS 143, Appendix A, paragraphs A2 through A5, for a discussion of the scope of the legal obligations covered under the pronouncement.

[8] *See* FAS 143, paragraphs 11, for a discussion of the recognition and allocation of an asset retirement cost.

[9] *See* FAS 143, paragraphs 8 and 9, for a discussion of the "credit adjusted risk free rate" used to measure the fair value of the asset retirement obligation.

[10] *See* FAS 143, paragraphs 13 through 16, for a discussion of the discussion of the subsequent recognition and measurement of the asset retirement obligation.

[11] *See* FAS 143, paragraphs 24 and 25, for a detailed of the accounting for the cumulative effect of a change in accounting principle.

[12] *See* FAS 143, paragraphs 19 through 21 for a discussion of the subsequent recognition and measurement of the asset retirement obligation.

[13] *See* Order No. 552, 58 FR 17,982 (Apr. 7, 1993), *FERC Stats. & Regs., Regulations Preambles January 1991–June 1996* ¶ 30,967, at pp. 30,823–26 (Mar. 31, 1993) for guidance on the recognition of regulatory assets and regulatory liabilities when certain criteria conditions are met.

[14] *See* 67 FR 16,071 (April 4, 2002) and 67 FR 20,922 (April 29, 2002).

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leased to others and account 421, Miscellaneous nonoperating income, for nonutility plant.

27. Finally, when an asset retirement obligation is settled by a jurisdictional entity, a gain or loss can result from the difference between the estimated amount of the asset retirement obligation liability included in proposed account 230, Asset retirement obligations, and the actual amount paid to settle the obligation. For example, an entity may settle its asset retirement obligation by either using its internal workforce or paying a third party to perform the work to retire the electric or gas utility plant. If the amount of the liability included in account 230, Asset retirement obligations, is greater or less than the actual amount paid to settle the obligation, a gain or loss will be incurred. The Commission proposes to record gains or losses resulting from the settlement of asset retirement obligations for electric and gas utility plant in account 411.6, Gains from disposition of utility plant, and the account 411.7, Losses from disposition of utility plant, respectively.[15] The Commission proposes to revise the text of accounts 411.6 and 411.7 in Parts 101 and 201 of the Commission's regulations to record gains in account 411.6 and losses in account 411.7 resulting from the settlement of asset retirement obligations related to utility property.

28. The Commission proposes that any gains or losses relating to the settlement of asset retirement obligations for nonutility plant must be recorded directly in account 421, Miscellaneous nonoperating income, and account 426.5, Other deductions, respectively. The Commission proposes to revise the text of accounts 421 and 426.5 in parts 101 and 201 of the Commission's regulations to record gains in account 421 and losses in account 426.5 resulting from the settlement of asset retirement obligations related to nonutility property.

29. Finally, the Commission proposes that jurisdictional entities keep subsidiary records and supporting documentation for each asset retirement obligation in order to be able to furnish accurately and expeditiously the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating of each component and supporting computations related to the measurement of the asset retirement obligation.

E. Other Revisions to the Uniform Systems of Accounts

30. The Commission also proposes to revise the following additional existing definitions and general instructions, and revise the text of certain balance sheet and income statement accounts to the Uniform Systems of Accounts in parts 101 and 201 of the Commission's regulations to incorporate the accounting for asset retirement obligations as discussed above.

1. Proposed Revisions to the Cost of Removal Definition

31. Under the Uniform Systems of Accounts in parts 101 and 201 of the Commission's regulations, jurisdictional entities record cost of removal related to the disposition and retirement of long-lived assets as a component of depreciation expense. The definition of cost of removal as presently contained in the Uniform Systems of Accounts includes the costs of demolishing, dismantling, tearing down or otherwise removing the electric or gas plant.[16] Certain cost of removal activities falling within this definition may relate to a legal obligation associated with the retirement of a long-lived asset while others may not relate to a legal obligation to retire a long-lived asset. Under the proposed rule, retirement activities which constitute legal obligations must be removed from cost of removal and accounted for separately as liabilities for legal obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. The Commission proposes to amend the definition of cost of removal to exclude legal obligations related to the retirement of long-lived assets at the end of their service life because the asset retirement costs and related obligations will be separately recognized on the balance sheet and income statement.

2. Proposed Revisions to Electric and Gas General Instruction 20, Accounting for Leases

32. Under the Uniform Systems of Accounts in parts 101 and 201 for public utilities, licensees, and natural gas companies, there are no provisions under General Instruction 20, Accounting for leases, for the recognition of a liability for an asset retirement obligation and the related asset retirement costs that are not recognized as part of the liability related to minimum lease payments for a capital lease. The Commission proposes to add a new instruction to General Instruction 20, Accounting for leases, that provides when an entity incurs an asset retirement obligation through assumption of a capital lease, the entity must recognize the liability in account 230, Asset retirement obligations, and record the related asset retirement costs in account 101.1, Property under capital leases, account 120.6, Nuclear fuel under capital leases, or account 121, Nonutility property, as appropriate.

3. Proposed Revisions to Electric and Gas Plant Instructions

33. For public utilities, licensees, and natural gas companies, there are no specific provisions under the Uniform Systems of Accounts to allow for the capitalization of asset retirement costs related to legal obligations that were incurred during the construction of tangible long-lived assets. The Commission proposes to revise Electric and Gas Plant Instructions 3, Components of construction cost, in parts 101 and 201 of the Commission's regulations by adding asset retirement costs to the item list as a new construction cost component that is capitalized if incurred during the construction phase of a long-lived asset that gives rise to a legal obligation. However, since there will be no immediate cash expenditure during the construction phase for this cost, the Commission proposes to exclude this cost from the construction work in progress base for calculating the allowance for funds used during construction (AFUDC).

4. Proposed Revision to Account 121, Nonutility Property

34. The Commission proposes to revise the instructions to account 121, Nonutility property, contained in parts 101 and 201 of the Commission's regulations to require the asset retirement costs associated with the nonutility plant to be recorded in account 121. The Commission also proposes that the depreciation expense on the asset retirement costs included in account 121 must be recorded in account 421, Miscellaneous nonoperating income, in parts 101 and 201 of the Commission's regulations.

5. Proposed Revisions to Electric and Gas Utility Operating Income Accounts

35. The Commission proposes to add a new instruction to account 411.6, Gains from disposition of utility plant, and account 411.7, Losses from disposition of utility plant, to record gains and losses, respectively, resulting from the settlement of asset retirement obligations in accordance with the accounting prescribed in the new proposed General Instruction 25 in part 101 of the Commission's regulations. The Commission also proposes to add a similar instruction in accounts 411.6 and 411.7 to record gains or losses in accordance with the accounting prescribed for natural gas companies in the new proposed General Instruction 24 in part 201 of the Commission's regulations.

F. Proposed Accounting for Transition Adjustments

36. The Commission proposes that at the adoption of the final rule, jurisdictional entities must apply the proposed requirements of the rule to all existing long-lived assets at January 1, 2003, with legal obligations associated with the future retirement or disposal of those assets.

37. The Commission proposes at the initial date of the adoption of the accounting for asset retirement obligations rule, jurisdictional entities recognize a transition adjustment for a liability for any existing asset retirement obligation adjusted for the cumulative accretion on the liability and capitalize the associated asset retirement costs and the related accumulated depreciation on the capitalized costs. The Commission proposes that jurisdictional entities measure the transitional adjustment for the asset retirement cost and related liability for the retirement obligations for existing long-lived asset as of the date that the retirement obligation was incurred and would have been recognized through January 1, 2003. The transitional adjustment recognized for the existing long-lived asset represents the cumulative accretion of the liability and the accumulated depreciation on the related capitalized asset retirement cost from the date the obligation would have been incurred through January 1, 2003.

38. The Commission proposes that when the amount of any previously recognized asset retirement obligation recorded in account 108 and account 110 for major and non-major public utilities and licensees, respectively, and account 108 for natural gas companies is greater than the amount recognized under the proposed rule, the excess must be credited to account 254, Other regulatory liabilities. However, when the amount of any previously recognized asset retirement obligation in account 108 and account 110 for major and non-major public utilities and licensees, respectively, and account 108 for natural gas companies is less than the amount recognized under the proposed rule, the Commission proposes that the difference must be charged to income in account 435, Extraordinary deductions, and the related income taxes recorded in account 409.3, Income taxes, extraordinary items, and reported as a cumulative effect of a change in accounting principle.[17] The Commission notes that jurisdictional entities must record a regulatory asset for part, or all of the cumulative effect of a change in accounting principle in account 182.3, Other regulatory assets, if the requirements for recording a regulatory asset under Order No. 552 are met.[18]

39. For public utilities, licensees and natural gas companies, the instructions to account 108 and account 110 for major and non-major public utilities and licensees, respectively, in part 101 of the Commission's regulations[19] and account 108 for natural gas companies in part 201 of the Commission's regulations[20] requires the Commission's approval to remove amounts from these accounts. For any excess amounts removed from account 108 and 110, the Commission proposes that the final rule issued in this proceeding will constitute the requisite authority for jurisdictional entities to remove amounts from account 108 and 110 to account 254.

40. The Commission proposes that jurisdictional entities must charge the cumulative accretion expense on the liability for existing legal obligations to account 435, Extraordinary deductions, and the related income taxes in account 409.3, Income taxes, extraordinary items, under parts 101 and 201 of the Commission's regulations and report such amounts in net income as a cumulative effect of a change in accounting principle.[21] The Commission also proposes that the cumulative accretion expense related to the liabilities for the asset retirement obligations may be included in account 182.3, if the requirements for recording a regulatory asset under Order No. 552 are met.[22]

41. In summary, the Commission proposes at the date of adoption of the final rule, jurisdictional entities must record the liability for asset retirement obligation associated with those long-lived asset existing at January 1, 2003, in the new proposed account 230, Asset retirement obligations. The jurisdictional entities must capitalize the related asset retirement costs in the proposed primary plant accounts within the plant functions applicable to the utility plant that gives rise to the obligations. The Commission also proposes that jurisdictional entities must record any cumulative transition adjustments associated with the asset retirement obligations for existing long lived assets at the date of the adoption of the final rule in the appropriate accounts in the manner as prescribed above.

G. Proposed Revisions to Tariff Filing Requirements Under 18 CFR Part 35 and 18 CFR Part 154

42. The Commission's proposed rule will require public utilities, licensees or natural gas companies for accounting purposes to recognize asset retirement obligations. The Commission is not requiring jurisdictional entities with stated rate tariffs to make any tariff filings with the Commission due to this rulemaking at this time. However, public utilities, licensees and natural gas companies with formula rate tariffs must not include any cost components related to asset retirement obligations in their formula rate billing determinations for automatic recovery prior to obtaining Commission approval.

43. The Commission proposes that to the extent, if any, a particular asset retirement cost should be allowed recovery through jurisdictional rates, it shall be addressed on a case by case basis in the individual rate change proposals filed by public utilities, licensees, and natural gas companies. Although the proposed accounting rules require the recording of an asset retirement cost, the Commission recognizes that no actual cash expenditures are made or required until

[15] *See* Order No. 552, *supra* note 13 for guidance on the recognition of regulatory assets and regulatory liabilities when certain criteria conditions are met.

[16] *See* Definition 10 in 18 CFR part 101 (Public Utilities and Licensees), and Definition 10 in 18 CFR part 201 (Natural Gas Companies).

[17] When authorized by the Commission, amounts related to a cumulative effect of a change in accounting principles have been reported in account 435. The effect on net income for amounts charged to account 435 must be reported on the income statement on the lines designated for extraordinary deductions in FERC Forms 1, 1–F, 2, and 2–A. Public utilities, licensees and natural gas companies must disclose in a footnote in the FERC Forms 1, 1–F, 2, and 2–A the full particulars of the amounts reported as a cumulative effect of a change in accounting principle.

[18] *See* Order No. 552, *supra* note 13, for guidance on the recognition of regulatory assets and regulatory liabilities when certain criteria conditions are met.

[19] *See* paragraph E to account 108, Accumulated provision for depreciation of electric utility plant (Major only), and paragraph E to account 110, Accumulated provision for depreciation and amortization of electric utility plant (Nonmajor only), in 18 CFR part 101 (Public Utilities and Licensees).

[20] *See* paragraph E to account 108, Accumulated provision for depreciation of gas utility plant, in 18 CFR part 201 (Natural Gas Companies).

[21] *See* supra note 17.

[22] *See* Order No. 552, *supra* note 13, for guidance on the recognition of regulatory assets and regulatory liabilities when certain criteria conditions are met.

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the long-lived assets are retired from service.

44. Therefore, it would be inappropriate for public utilities, licensees, and natural gas companies to include these asset retirement costs in rate base and collect a rate of return allowance and related income taxes on these amounts in jurisdictional rates. To ensure that all rate base amounts related to these assets can be identified and excluded from the rate base calculation in a rate change filing, the Commission is proposing to add new §§ 35.18 and 154.315 to its rate change filing requirements. These new regulations require that public utilities, licensees, and natural gas companies which have recorded an asset retirement obligation on their books in accordance with this proposed rule must, as part of any initial rate filing or general rate change filing, provide a schedule identifying all cost components related to the asset retirement obligation that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. In addition, the proposed regulations require that all rate base items related to asset retirement obligations be removed from the rate base computation through an adjustment. If the public utility, licensee or natural gas company is seeking recovery of an asset retirement obligation in rates, it must also provide a detailed study supporting the amounts proposed to be collected in rates. If the public utility, licensee or natural gas company is not seeking recovery of the asset retirement obligation in rates, then it must remove all cost components related to asset retirement obligations from its cost of service.

45. The Commission is aware that a number of natural gas companies are currently collecting an allowance in jurisdictional rates to cover the future cost of retiring and removing facilities. This allowance is referred to as a negative salvage allowance. The Commission believes that these negative salvage allowances do not necessarily reflect the existence of a legal asset retirement obligation. Therefore, the Commission will require that negative salvage allowances that are not established due to an asset retirement obligation be identified for rate making purposes separately from asset retirement obligation allowances. The current rate change filing requirements for natural gas companies at § 154.312(d), Statement D, requires that any authorized negative salvage must be maintained in a separate subaccount of account 108, Accumulated provision for depreciation of gas utility plant. The Commission proposes to amend this section to ensure that this subaccount must not include any amounts related to asset retirement obligations.

IV. Discussion of Proposed Revisions to Regulations for Oil Pipeline Companies

A. General

46. Similar to the accounting changes for public utilities, licensees and natural gas companies, the Commission proposes to provide accounting requirements for asset retirement obligations in the Uniform Systems of Accounts for oil pipeline companies in part 352 of the Commission's regulations. Therefore, the following changes are proposed to the Commission's existing accounting regulations to provide transparent accounting and reporting of these amounts to this Commission and other users of the FERC Form 6.

B. Proposed New Accounts for Asset Retirement Obligations

47. The Commission proposes to create a new noncurrent liability account entitled account 67, Asset retirement obligations, in part 352 of the Commission's regulations to record legal liabilities related to the future decommissioning or retirement of carrier and noncarrier property. The Commission also proposes to create a new income statement account entitled account 591, Accretion expense, to record the increase in the liability due to the passage of time.

C. Proposed New Accounts for Capitalized Asset Retirement Costs

48. Under the new accounting requirements, when an oil pipeline records a liability for its asset retirement obligation, it concurrently capitalizes that amount in the carrier property accounts. In order to separately identify this cost in the carrier property records, the Commission proposes to create new carrier primary property accounts within existing account 30, Carrier property, for oil pipelines in part 352 of the Commission's regulations to separately identify these amounts throughout the life of the asset. The new proposed carrier primary property accounts are shown on the following table below:

	Oil pipeline companies	Proposed new primary property accounts
1	Gathering Lines	117, Asset retirement costs for gathering lines.
2	Trunk Lines	167, Asset retirement costs for trunk lines.
3	General Property	186.7, Asset retirement costs for general.

49. The Commission proposes the amounts in the above carrier primary property accounts be depreciated over the life of the carrier property that gives rise to the asset retirement obligations. In order to identify the depreciation expense recorded on capitalized asset retirement costs, the Commission proposes to create a new depreciation expense account entitled account 541, Depreciation expense for asset retirement costs, to separately record these amounts on the income statement.

D. Proposed New General Instruction for Accounting for Asset Retirement Obligations

50. The Commission also proposes to create a new General Instruction 1–19, Accounting for asset retirement obligations, to provide the accounting for the recognition of asset retirement costs and obligations, in part 352 of the Commission's regulations. The new proposed General Instruction 1–19 will provide for the liability to be recorded in the new proposed noncurrent liability account entitled account 67, Asset retirement obligations, and the capitalization of the asset retirement costs in carrier and noncarrier property accounts.

51. Under proposed General Instruction 1–19, the Commission proposes to provide for recording the accretion of the liability for carrier property in the new proposed account 591, Accretion expense, and for noncarrier property in the existing account 620, Income (net) for noncarrier property.

52. Under proposed General Instruction 1–19, the Commission proposes that gains or losses resulting from the difference between the amount of the liability for the asset retirement obligation in account 67, Asset retirement obligations, and the actual amount of the settlement of the obligation for carrier property be recorded directly in the new proposed account 592, Gains or losses on asset retirement obligations, and for noncarrier property in the existing account 620, Income (net) from noncarrier property. The Commission proposes to add a new account 592, Gains or losses on asset retirement obligations, in part 352 of the Commission's regulations to include gains and losses resulting from the settlement of asset retirement obligations.

53. The Commission also proposes in General Instruction 1–19 that oil pipeline companies maintain for purposes of analyses subsidiary records and supporting documentation for each asset retirement obligation to be able to furnish accurately and expeditiously the full details of the nature of the legal obligations and full particulars of the components and computations relating to the recognition and measurement of the asset retirement obligation.

E. Other Revisions to the Uniform Systems of Accounts

54. The Commission also proposes to revise certain existing definitions, certain existing general instructions, and the text of certain balance sheet accounts in the Uniform Systems of Accounts for oil pipeline companies in part 352 of the Commission's regulations to incorporate the accounting for asset retirement obligations.

1. Proposed Revisions to the Cost of Removal Definition

55. Under the Uniform Systems of Accounts under part 352 of the Commission's regulations, certain oil pipelines record cost of removal related to the disposition and retirement of long-lived assets as a component of depreciation expense. The Uniform Systems of Accounts definition of cost of removal as presently written includes the cost of demolishing, dismantling, tearing down or otherwise removing the property.[23] Certain cost of removal activities falling within this definition may relate to a legal obligation associated with the retirement of a long-lived asset while others may not relate to the legal obligation to retire the long-lived asset. The Commission proposes to amend the definition of cost of removal to exclude legal obligations related to the retirement of long-lived assets at the end of their service life because the asset retirement costs and related obligations will be separately recognized on the balance sheet and income statement.

2. Proposed Revisions to Instructions for Carrier Property Accounts

56. Under the Uniform Systems of Accounts in part 352 of the Commission's regulations for oil pipelines, there are no specific provisions to allow for the capitalization of an asset retirement cost related to a legal obligation that was incurred during the construction of tangible long-lived assets. The Commission proposes to revise the instructions for carrier property accounts, Instruction 3–3, Cost of property constructed, to add a new item for asset retirement costs incurred during the construction that will constitute a component of construction costs. The Commission proposes to exclude this cost from the construction work in progress base for calculating interest during construction because there will be no immediate cash expenditure during the construction phase for this cost.

3. Proposed Revisions to Account 34, Noncarrier Property

57. The Commission proposes to include the asset retirement costs associated with noncarrier property that gives rise to the obligation in account 34, Noncarrier property, in part 352 of the Commission's regulations. The Commission also proposes that depreciation expense related to the capitalized retirement costs included in account 34, Noncarrier property, must be recorded in account 620, Income (net) from noncarrier property.

4. Proposed New Account for Operating Expenses

58. As discussed above under the new proposed General Instruction 1–19, the Commission proposes to add a new account 592, Gains or losses on asset retirement obligations, in part 352 of the Commission's regulations to include gains and losses resulting from the settlement of asset retirement obligations for carrier property.

F. Proposed Accounting for Transition Adjustments

59. The Commission proposes that at the adoption of the final rule, oil pipeline companies recognize the liability for existing asset retirement obligation and recognize the cumulative accretion of the liability, associated asset retirement costs and the related accumulated depreciation for the capitalized costs. The transition adjustment for the cumulative effect of the accretion of the liability and the accumulated depreciation on the related capitalized asset retirement costs is measured from the date the obligation would have been incurred and recognized through January 1, 2003, the initial date of adoption of the final rule.

60. The Uniform Systems of Accounts for oil pipeline companies in part 352 of the Commission's regulations provides that any change in accounting principle must be referred to this Commission for approval.[24] For oil pipeline companies the cumulative effect of a change in accounting principle is ordinarily reflected in account 697, Cumulative effect of changes in accounting principles, in the year of adoption. The Commission proposes that the final rule in this proceeding will constitute the requisite authorization for oil pipeline companies to reflect the change as a cumulative effect of a change in accounting principles in account 697.

61. The Commission proposes that the difference of any amount previously recognized for the asset retirement obligation recorded in account 31, Accrued depreciation—carrier property, and the amount recognized under the proposed rule, must be charged to account 697. The Commission also proposes that oil pipeline companies must charge the cumulative accretion expense on the liability for existing legal obligations to account 697 as a cumulative effect of a change in accounting principle.

62. In summary, the Commission proposes that oil pipeline companies must record the liabilities associated with asset retirement obligations for those existing assets that would be incurred at the initial date of adoption of the final rule in the new proposed account 67, Asset retirement obligations, and capitalize the related asset retirement costs in the new proposed primary carrier property accounts within the carrier property class related to the carrier property that gives rise to the legal obligations. The Commission proposes that oil pipeline companies must include the cumulative accretion of the liability for the legal obligations in account 67, Asset retirement obligations, from the date incurred through the initial date of adoption of the final rule by charging account 697. The Commission also proposes that oil pipeline companies

[23] *See* Definition 12 in 18 CFR part 352 (Oil Pipeline Companies) (2002).

[24] *See* General Instruction 1–6, Extraordinary, unusual or infrequent items, prior period adjustments, discontinued operations and accounting changes, paragraphs (e) and (g) and the instructions to account 697, Cumulative effect of changes in accounting principles. *See* 18 CFR part 352 (Oil Pipeline Companies) (2002).

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must adjust the accrued depreciation in account 31, Accrued depreciation—carrier property, for the cumulative depreciation from the date incurred through the initial date of adoption of the final rule with the offsetting adjustment to account 697.

G. Proposed Revisions to Tariff Filing Requirements Under 18 CFR Part 346

63. The Commission's proposed rule will require oil pipeline companies to recognize for accounting purposes asset retirement obligations. The Commission is not requiring oil pipeline companies with stated rate tariffs to make any tariff filings with the Commission due to this rulemaking at this time. However, oil pipeline companies with formula rate tariffs must not include any cost components related to asset retirement obligations in their formula rate tariffs for automatic recovery in their billing determinations prior to obtaining Commission approval.

64. For the same reasons discussed above for public utilities, licensees and natural gas companies, the Commission proposes that to the extent, if any, a particular asset retirement cost should be allowed recovery through oil pipeline companies rates, it shall be addressed on a case by case basis in the individual rate change proposals filed by oil pipeline companies. The Commission proposes to add a new § 346.3 to cost-of-service filing requirements for oil pipelines. These new regulations require that oil pipelines who have recorded an asset retirement obligation on their books in accordance with this proposed rule must, as part of any initial rate filing or general rate change filing, provide a schedule identifying all cost components related to the asset retirement obligation that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. In addition, the proposed regulations require that all rate base items related to asset retirement obligations be removed from the rate base computation through an adjustment. Oil pipeline companies seeking recovery of an asset retirement obligation in rates must also provide a detailed study supporting the amounts proposed to be collected in rates. If the oil pipeline is not seeking recovery of the asset retirement obligation in rates, then it must remove all asset retirement obligation related cost components from its cost of service.

65. The Commission is aware that a number of oil pipelines are currently collecting an allowance in jurisdictional rates to cover the future cost of retiring and removing facilities referred to as a dismantling, removal and restoration (DR&R) allowance. The Commission believes that these DR&R allowances do not necessarily reflect the existence of a legal obligation for the retirement of long-lived assets. Therefore, the Commission will require that DR&R allowances that are not established due to an asset retirement obligation be identified for rate making purposes separately from asset retirement obligation allowances.

V. Proposed Effective Date

66. The Commission proposes the rule for accounting and reporting purposes be effective January 1, 2003, for public utilities, licensees, natural gas companies and oil pipeline companies. This is the date jurisdictional entities that file FERC Forms 1, 1–F, 2, 2–A and 6, will record the transitional adjustment to recognize asset retirement obligations in their books and records.[25] The proposed reporting will be effective for the FERC Forms 1, 1–F, 2 and 2–A and 6 annual reports for the reporting year 2003.[26]

VI. Proposed Changes to the FERC Annual Report Forms

67. The proposed changes, if adopted, will require revising the existing schedules in the FERC Forms 1, 1–F, 2, 2–A, and 6 filed with the Commission. A table summarizing the changes to the various schedules is shown in Appendix A. As a result of the Commission proposed accounting changes referred to above for public utilities, licensees, natural gas and oil pipeline companies, the Commission proposes to report in the Forms 1, 1–F, 2, 2–A and 6 the new noncurrent liability account for asset retirement obligations in the comparative balance sheet schedules, the new depreciation expense accounts and new accretion expense accounts in the income statement schedules.

68. The Commission also proposes to report in the Forms 1, 1–F, 2, 2–A and 6 the new primary plant accounts for asset retirement costs for each function for electric and gas utility plant and oil pipeline carrier property. The Commission proposes to report in the Forms 1, 1–F, 2, 2–A and 6 the depreciation expense related to the asset retirement costs separately in the accumulated provision for depreciation schedules for electric and gas utility plant and the accrued depreciation schedules for carrier property. In addition, the Commission proposes for public utilities and licensees to change the plant statistical schedules to include the asset retirement costs related to electric utility plant.

69. The Commission is proposing to revise the reporting requirements in the Forms 1, 1–F, 2, 2–A and 6 financial reports consistent with the changes in the proposed rule to promote consistent reporting practices for asset retirement obligations to the Commission by jurisdictional entities. The Commission believes that asset retirement obligations must be identified and reported in the Forms 1, 1–F, 2, 2–A and 6 separately in the financial statements and supporting schedules because of the long-term nature of the obligations to retire long-lived assets. Furthermore, the Commission believes separate reporting of the accounts for asset retirement obligations on the balance sheet, income statement and certain other schedules in the Forms 1, 1–F, 2, 2–A and 6 provides more transparent reporting of the asset retirement obligations to meet the Commission's information needs.

70. The reporting would include certain disclosure for asset retirement obligations in the "Notes to Financial Statements" in the FERC Forms 1, 1–F, 2, 2–A and 6.[27] The Commission expects that financial statement disclosures provided by jurisdictional entities in the FERC Forms 1, 1–F, 2, 2–A and 6 must be no less than that provided in their general purpose financial statements that are provided to shareholders and the Securities and Exchange Commission.

71. The Commission proposes that jurisdictional entities that report a liability for asset retirement obligations must disclose the following: (1) A general description of the asset retirement obligations and the associated long-lived assets; (2) the fair value of assets that legally are restricted for purposes of settling the asset retirement obligations; (3) a reconciliation of the beginning and ending aggregate carrying amount of asset retirement obligations showing separately the changes attributable to (i) liabilities incurred in the current period, (ii) liabilities settled in the current period, (iii) accretion expense, and (iv) revisions in estimated cash flows, whenever there is a significant change in one or more of those four components during the reporting period. If the fair value of an asset retirement obligation cannot be reasonably estimated, that fact and the reasons therefore must be disclosed.

72. The Commission proposes jurisdictional entities must report on a separate line in the Statement of Cash Flows in FERC Forms 1, 1–F, 2, 2–A and 6 under the "Operating Activities" classification any cash payments made to settle asset retirement obligations.[28] Although, the transition adjustment requirements as discussed above does not permit jurisdictional entities to go back and restate prior year balances in the initial year of adoption of this rule, the Commission proposes jurisdictional entities must provide pro forma disclosure of the effect of adopting this change in accounting for asset retirement obligations in the Notes to the Financial Statements in the FERC Forms 1, 1–F, 2, 2–A and 6. The pro forma disclosure must disclose in a footnote in the Notes to the Financial Statements of the FERC Annual Reports what the asset retirement obligation would have been at the beginning of the earliest year presented in the Balance Sheet and Income Statement, and at the end of the year of each year presented, as if this rule had been applied during those periods. This is the same disclosure requirement that jurisdictional entities will have to include in their general purpose financial statements that are provided to shareholders and the Securities and Exchange Commission.

73. The Commission concludes that the above reporting requirements would not be a significant reporting burden since the information would be captured in jurisdictional entities accounting systems for internal and external reporting as needed.

VII. Regulatory Flexibility Act Statement

74. The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[29] The Commission is not required to make such analyses if a rule would not have such an effect.

75. The Commission does not believe that this proposed rule would have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of a small entity.[30] Further, the Commission concludes that this reporting would not be a significant burden because the information jurisdictional entities will be required to report to the Commission specifically focuses on the activities of the jurisdictional entities that will be captured in their accounting systems and generally be reported to their shareholders and others at a company, or at a consolidated business level. Therefore, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

76. However, if the reporting requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the disclosure requirements from the Commission.

VIII. Environmental Impact Statement

77. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[31] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulation being amended,[32] and also for information gathering, analysis, and dissemination.[33] The proposed rule updates the parts 35, 101, 154, 201, 346 and 352 of the Commission's regulations, and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. In addition, the Final Rule involves information gathering, analysis and dissemination. Therefore, this Final Rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

IX. Information Collection Statement and Public Reporting Burden

78. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3707(d) of the Paperwork Reduction Act of 1995.[34] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[35] The Commission identifies the information provided for under this rule as FERC Forms 1, 1–F, 2, 2–A and 6.

79. Comments are solicited on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates are for complying with this proposed rule as follows:

Estimated Annual Burden:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC Form 1	216	216	17	3,672
FERC Form 1–F	26	26	8	208
FERC Form 2	57	57	13	741
FERC Form 2–A	53	53	8	424
FERC Form 6	159	159	10	1,590
Totals	511	511	.....	6,635

[25] On February 20, 2002, the Commission's Chief Accountant issued interim guidance stating that jurisdictional entities may not early adopt this accounting standard for financial accounting and reporting to the Commission pending the Commission action on this matter. *See* All Jurisdictional Public Utilities, Licensees, Natural Gas Companies, and Oil Pipeline Companies, 98 FERC ¶ 62,222 (2002).

[26] The FERC Forms 1–F and 2–A and 6 annual reports for the year 2003 are due on or before March 31, 2004. The FERC Forms 1 and 2 annual reports for the year 2003 are due on or before April 30, 2004.

[27] *See* the instructions to the Notes to Financial Statements schedule for FERC Forms 1, 1–F, 2, 2–A and 6 that requires respondents to report important notes and information related to the financial statements.

[28] *See* FASB's Emerging Issues Task Force (EITF) No. 02–6, Classification in the Statement of Cash Flows of Payments Made to Settle an Asset Retirement Obligation within the Scope of FASB Statement No. 143, issued in March 2002. The accounting publication may be obtained from FASB at *http://accounting.rutgers.edu/raw/fasb/*.

[29] 5 U.S.C. 601–612.

[30] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act,. 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[31] Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[32] 18 CFR 380.4(a)(2)(ii).

[33] 18 CFR 380.4(a)(5).

[34] 44 U.S.C. 3507(d).

[35] 5 CFR 1320.11.

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80. In addition, the Commission will address changes to tariffs on a case by case basis, it has not provided estimates for the number of entities that will make filings under FERC–516, FERC–545 or FERC–550.[36] However, the Commission will entertain comments on what resources and time will be placed on jurisdictional entities in order to make the appropriate filings with the Commission.

81. Total Annual Hours for Collection (reporting + recordkeeping, if appropriate) = 6,635 hours. The total hours associated with this proposed rule is equal to 6,635 hours. It should be noted that burden if the proposed rule if adopted, applies only for jurisdictional entities to comply with the Commission's Uniform Systems of Accounts, Annual Reports, and Rate Schedule Filings. Jurisdictional entities must maintain much of this information in order to implement the accounting for asset retirement obligations for reporting under generally accepted accounting principles. The proposed rule will eliminate the need by jurisdictional entities to maintain duplicate sets of books.

82. *Information Collection Costs:* The Commission seeks comments on the cost to comply with these requirements. It has projected the average annualized cost of all respondents to be: Annualized Capital Startup Costs: 6,635 hours + 2080 × $117,041 = $373,350. This is a one-time cost for the initial implementation of the proposed schedules.

83. Annualized Costs (Operations & Maintenance)—If adopted, costs for performing the proposed schedules will be rolled into the total costs for completing the Commission's annual financial reports.

84. Total Annualized costs—$373,350.

85. OMB's regulations require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.[37]

86. *Title:* FERC Form 1, Annual Report of Major Electric Utilities, Licensees, and Others; FERC Form 1–F, Annual Report for Non-Major Public Utilities and Licensees; FERC Form 2, Annual Report for Major Natural Gas Companies; FERC Form 2–A, Annual Report for Nonmajor natural gas companies; FERC Form 6, Annual Report of Oil Pipeline Companies.

87. *Action:* Proposed Data Collections.

88. *OMB Control Nos.* 1902–0021; 1902–0029; 1902–0028; 1902–0030; and 1902–0022.

89. The applicant will not be penalized for failure to respond to these collections of information unless the collection of information displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

90. *Respondents:* Businesses or other for profit.

91. *Frequency of Responses:* Annually.

92. *Necessity of the Information:* The proposed rule would revise the Commission's regulations to specifically address the proper accounting and reporting for asset retirement obligations. This requires the reporting of obligations associated with the retirement of tangible long-lived assets and their associated retirement costs. The addition of these new accounts and their corresponding general instructions are intended to provide accounting standards for recognition and measurement of liabilities for asset retirement obligations and associated asset retirement costs in reports to the Commission. The addition of these new accounts and related general instructions is intended to improve the visibility, completeness and consistency of accounting practices for asset retirement obligations. Without specific instructions and accounts for recording and reporting the above transactions and events, inconsistent and incomplete accounting will result.

93. *Internal Review:* The Commission has reviewed the requirements pertaining to the Uniform Systems of Accounts and to the financial reports it prescribes and has determined the proposed revisions are necessary because the Commission needs to establish uniform accounting and reporting requirements for asset retirement obligations. All of the companies regulated by the Commission are capital-intensive and therefore involve substantial risk. The reporting of this information ensures that regulated companies' balance sheets clearly reflect the economic realities of the retirement obligations associated with long-lived assets and review by the Commission provides both regulated companies and their customers with timely regulatory treatment.

94. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric, natural gas and oil pipeline industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

95. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Michael Miller, Office of the Chief Information Officer, Phone (202) 502–8415, fax: (202) 208–2425, e-mail: *michael.miller@ferc.gov*]

96. For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285].

X. Public Comment Procedures

97. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due within 45 days from publication in the **Federal Register**. Comments must refer to Docket No. RM02–7–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

98. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's Web site at *http://ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

99. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

100. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the FERRIS link.

XI. Document Availability

101. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m., to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

102. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this document, excluding the last three digits in the docket number field. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our 103.Help Line at (202) 502–8222 (e-mail to *WebMaster@ferc.gov*) or the Public Reference at (202) 502–8371 Press 0, TTY (2020) 502–8659 (e-mail to *public.reference.room@ferc.gov*).

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Electricity, Reporting and recordkeeping requirements.

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 154

Alaska Natural gas, Natural gas companies, Pipelines, Rate schedules and tariffs, Reporting and recordkeeping requirements.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 35, 101, 154, 201, 346 and 352, chapter I, title 18, Code of Federal Regulations, as follows.

Regulatory Text

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.18 is added to read as follows:

§ 35.18 Asset retirement obligations.

(a) A public utility that files a rate schedule under § 35.12 or § 35.13 and has recorded an asset retirement obligation on its books must provide a schedule, as part of the supporting work papers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as electric plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A public utility seeking to recover nonrate base costs related to asset retirement costs in rates must provide, with its filing under § 35.12 or § 35.13, a detailed study supporting the amounts proposed to be collected in rates.

(c) A public utility who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

* * * * *

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

3. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

4. In Definitions, Definition 10 is revised to read as follows:

Definitions

* * * * *

10. *Cost of removal* means the cost of demolishing, dismantling, tearing down or otherwise removing electric plant, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (See General Instruction 25).

* * * * *

5. In General Instructions, Instruction 20, paragraphs C. and D. are redesignated as paragraphs D. and E. and new paragraph C. is added; and a new Instruction 25 is added to read as follows:

General Instructions

* * * * *

20. *Accounting for leases.*

* * * * *

C. The utility, as a lessee, shall recognize an asset retirement obligation (See General Instruction 25) arising from the plant under a capital lease unless the obligation is recorded as an asset and liability under a capital lease. The utility shall record the asset retirement cost by debiting account 101.1, Property under capital leases, or account 120.6, Nuclear fuel under capital leases, or account 121, Nonutility property, as appropriate, and crediting the liability for the asset retirement obligation in account 230, Asset retirement obligations. Asset retirement costs recorded in account 101.1, account 120.6, or account 121 shall be amortized by charging rent expense (See Operating Expense Instruction 3), or account 518, Nuclear fuel expense (Major only), or account 421, Miscellaneous nonoperating income, as appropriate, and crediting a separate subaccount of the account in which the asset retirement costs are recorded. Charges for the periodic accretion of the liability in account 230, Asset retirement obligations, shall be recorded by a charge to account 411.10, Accretion expense, for electric utility plant, and account 421, Miscellaneous nonoperating income, for nonutility plant and a credit to account 230, Asset retirement obligations.

* * * * *

25. *Accounting for asset retirement obligations.*

[36] These information collection requirements are covered by OMB Control Nos. 1902–0096, 1902–0154 and 1902–0089.

[37] 5 CFR 1320.11

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A. An *asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

B. The utility shall initially record a liability for an asset retirement obligation in account 230, Asset retirement obligations, and charge the associated asset retirement costs to electric utility plant (including accounts 101.1 and 120.6), and nonutility plant, as appropriate, related to the plant that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a utility shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement changes to the initial liability for the legal obligation recorded in account 230, Asset retirement obligations, as follows:

(1) The utility shall record the accretion of the liability by debiting account 411.10, Accretion expense, for electric utility plant, account 413, Expenses of electric plant leased to others, for electric plant leased to others, and account 421, Miscellaneous nonoperating income, for nonutility plant and crediting account 230, Asset retirement obligations; and

(2) The utility shall recognize any subsequent measurement changes of the liability initially recorded in account 230, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 230 with the corresponding adjustment to electric utility plant, electric plant leased to others, and nonutility plant, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

C. Gains or losses resulting from the settlement of asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligations, and the actual amount paid to settle the obligation shall be accounted for as follows:

(1) Gains shall be credited to account 411.6, Gains from disposition of utility plant, and;

(2) Losses shall be charged to account 411.7, Losses from disposition of utility plant.

D. Gains or losses on the settlement of asset retirement obligations associated with nonutility plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 230, Asset retirement obligations, and the amount paid to settle the obligation, shall be accounted for as follows:

(1) Gains shall be credited to account 421, Miscellaneous nonoperating income, and;

(2) Losses shall be charged to account 426.5, Other deductions.

E. Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a utility shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating of each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

6. In Electric Plant Instructions, paragraph 3.A.(17)(a) the (W) element is revised; and a new paragraph 3.A.(21) is added to read as follows:

Electric Plant Instructions

* * * * *

3. *Components of construction cost.*

A. * * *

(17) * * *

(a) * * *

(W) = Average balance in construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment and fabrication, less asset retirement costs (See General Instruction 25) related to plant under construction.

* * * * *

(21) *Asset retirement costs.* The costs recognized as a result of asset retirement obligations incurred during the construction and testing of utility plant shall constitute a component of construction costs.

* * * * *

7. Balance Sheet Accounts is amended as follows:

(a) Account 101.1 is amended by adding a sentence to the end of paragraph C.;

(b) Account 103 paragraph C. is revised;

(c) Account 108 paragraph A.(2) through A.(7) are redesignated as paragraphs A.(3) through A.(8) and a new paragraph A.(2) is added;

(d) Account 110 paragraph A.(2) through A.(4) are redesignated as paragraphs A.(3) through A.(5) and a new paragraph A.(2) is added;

(e) Account 121, paragraph A. is amended by adding a sentence to the end of the paragraph; and

(f) Account 230 is added.

The revision and additions read as follows:

Balance Sheet Accounts

* * * * *

101.1 Property under capital leases.

* * * * *

C. * * * Records shall also be maintained for plant under a lease, to identify the asset retirement obligation and cost originally recognized for each lease and the periodic charges and credits made to the asset retirement obligations and asset retirement costs.

* * * * *

103 Experimental electric plant unclassified (Major only).

* * * * *

C. The depreciation on plant in this account shall be charged to account 403, Depreciation expense, and account 403.1, Depreciation expense for asset retirement costs, as appropriate, and credited to account 108, Accumulated provision for depreciation of electric utility plant (Major only). The amounts herein shall be depreciated over a period which corresponds to the estimated useful life of the relevant project considering the characteristics involved. However, when projects are transferred to account 101, Electric plant in service, a new depreciation rate based on the remaining service life and undepreciated amounts, will be established.

* * * * *

108 Accumulated provision for depreciation of electric utility plant (Major only).

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, for current depreciation expense related to asset retirement costs in electric plant in service in a separate subaccount.

* * * * *

110 Accumulated provision for depreciation and amortization of electric utility plant (Nonmajor only).

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, in electric utility plant in service in a separate subaccount.

* * * * *

121 Nonutility property.

A. * * * This account shall also include, where applicable, amounts recorded for asset retirement costs associated with nonutility plant.

* * * * *

230 Asset retirement obligations.

A. This account shall include the amount of liabilities for the recognition of asset retirement obligations related to electric utility plant and nonutility plant that gives rise to the obligations. This account shall be credited for the amount of the liabilities for asset retirement obligations with amounts charged to the appropriate electric utility plant accounts or nonutility plant account to record the related asset retirement costs.

B. The utility shall charge the accretion expense to account 411.10, Accretion expense, for electric utility plant, account 413, Expenses of electric plant leased to others, for electric plant leased to others, or account 421, Miscellaneous nonoperating income, for nonutility plant, as appropriate, and credit account 230, Asset retirement obligations.

C. This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

D. The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 25.

* * * * *

8. In Electric Plant Accounts, new primary plant accounts, 317, 326, 337, 347, 359.1, 374, and 399.1 are added to read as follows:

Electric Plant Accounts

* * * * *

317 Asset retirement costs for steam production plant.

This account shall include asset retirement costs on plant included in the steam production function.

* * * * *

326 Asset retirement costs for nuclear production plant (Major only).

This account shall include asset retirement costs on plant included in the nuclear production function.

* * * * *

337 Asset retirement costs for hydraulic production plant.

This account shall include asset retirement costs on plant included in the hydraulic production function.

* * * * *

347 Asset retirement costs for other production plant.

This account shall include asset retirement costs on plant included in the other production function.

* * * * *

359.1 Asset retirement costs for transmission plant.

This account shall include asset retirement costs on plant included in the transmission plant function.

* * * * *

374 Asset retirement costs for distribution plant.

This account shall include asset retirement costs on plant included in the distribution plant function.

* * * * *

399.1 Asset retirement costs for general plant.

This account shall include asset retirement costs on plant included in the general plant function.

* * * * *

9. Amend Income Accounts as follows:

a. Account 403.1 is added,

b. Accounts 411.6 and 411.7 are amended by designating the current paragraph as A., and adding a new paragraph B.,

c. Account 411.10 is added,

d. In account 421, paragraphs 4. through 6. are added, and

e. In account 426.5 paragraph 6 is added.

The additions read as follows:

Income Accounts

* * * * *

403.1 Depreciation expense for asset retirement costs.

This account shall include the depreciation expense for asset retirement costs included in electric utility plant in service.

* * * * *

411.6 *Gains from disposition of utility property.*

A. * * *

B. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

411.7 *Losses from disposition of utility property.*

A. * * *

B. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

411.10 *Accretion expense.*

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 230, Asset retirement obligations, related to electric utility plant.

* * * * *

421 *Miscellaneous nonoperating income.*

* * * * *

4. This account shall include the accretion expense on the liability for an asset retirement obligation included in account 230, Asset retirement obligations, related to nonutility plant.

5. This account shall include the depreciation expense for asset retirement costs related to nonutility plant.

6. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

426.5 *Other deductions.*

* * * * *

6. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

PART 154—RATE SCHEDULES AND TARIFFS

10. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

11. In § 154.312 paragraph (d), introductory text, is amended by removing the sentence "Any authorized negative salvage must be maintained in a separate subaccount of account 108,"

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and adding in its place the following sentence to read as follows:

§ 154.312 Composition of Statements.

(d) * * * Any authorized negative salvage must be maintained in a separate subaccount of account 108, and shall not include any amounts related to asset retirement obligations.* * *

* * * * *

12. Section 154.315 is added to read as follows:

§ 154.315 Asset retirement obligations.

(a) A natural gas company that files a tariff change under this part and has recorded an asset retirement obligation on its books must provide a schedule, as part of the supporting workpapers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as gas plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A natural gas company seeking to recover nonrate base costs related to asset retirement obligations in rates must provide, with its filing under § 154.312 or § 154.313, a detailed study supporting the amounts proposed to be collected in rates.

(c) A natural gas company who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

PART 201— UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

13. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

14. In Definitions, Definition 10 is revised to read as follows:

Definitions

* * * * *

10. *Cost of removal* means the cost of demolishing, dismantling, tearing down or otherwise removing gas plant, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (See General Instruction 24).

* * * * *

15. In General Instructions, Instruction 20 paragraphs C. and D. are redesignated as paragraphs D. and E. and a new paragraph C. is added; and a new Instruction 24 is added to read as follows:

General Instructions

* * * * *

20. *Accounting for leases.*

* * * * *

C. The utility, as a lessee, shall recognize an asset retirement obligation (*See* General Instruction 24) arising from the plant under a capital lease unless the obligation is recorded as an asset and liability under a capital lease. The utility shall record the asset retirement cost by debiting account 101.1, Property under capital leases, or account 121, Nonutility property, as appropriate, and crediting the liability for the asset retirement obligation in account 230, Asset retirement obligations. Asset retirement costs recorded in account 101.1 or account 121 shall be amortized by charging rent expense (See Operating Expense Instruction 3) or account 421, Miscellaneous nonoperating income, as appropriate, and crediting a separate subaccount of the account in which the asset retirement costs are recorded. Charges for the periodic accretion of the liability in account 230, Asset retirement obligations, shall be recorded by a charge to account 411.10, Accretion expense, for gas utility plant, and account 421, Miscellaneous nonoperating income, for nonutility plant and a credit to account 230, Asset retirement obligations.

* * * * *

24. *Accounting for asset retirement obligations.*

A. *An asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a utility is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

B. The utility shall initially record a liability for an asset retirement obligation in account 230, Asset retirement obligations, and charge the associated asset retirement costs to gas utility plant and nonutility plant, as appropriate, related to the plant that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a utility shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement changes to the initial liability for the legal obligation recorded in account 230, Asset retirement obligations, as follows:

(1) The utility shall record the accretion of the liability by debiting account 411.10, Accretion expense, for gas utility plant, account 413, Expenses of gas plant leased to others, for gas plants leased to others, and account 421, Miscellaneous nonoperating income, for nonutility plant and crediting account 230, Asset retirement obligations; and

(2) The utility shall recognize any subsequent measurement changes of the liability initially recorded in account 230, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 230 with the corresponding adjustment to gas utility plant, gas plant leased to others, and nonutility plant, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

C. Gains or losses resulting from the settlement of asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligations, and the actual amount paid to settle the obligation shall be accounted for as follows:

(1) Gains shall be credited to account 411.6, Gains from disposition of utility plant, and;

(2) Losses shall be charged to account 411.7, Losses from disposition of utility plant.

D. Gains or losses on the settlement of the asset retirement obligations associated with nonutility plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 230, Asset retirement obligations, and the amount paid to settle the obligation, shall be accounted for as follows:

(1) Gains shall be credited to account 421, Miscellaneous nonoperating income, and;

(2) Losses shall be charged to account 426.5, Other deductions.

E. Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a utility shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating of each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

16. In Gas Plant Instructions, paragraph 3.A.(17)(a) the (W) element is revised; and new paragraph 3.A.(23) is added to read as follows:

Gas Plant Instructions

* * * * *

3. *Components of construction cost.*

A. * * *

(17) * * *

(a) * * *

(W) = Average balance in construction work in progress less asset retirement costs (See General Instruction 24) related to plant under construction.

* * * * *

(23) "Asset retirement costs." The costs recognized as a result of asset retirement obligations incurred during the construction and testing of utility plant shall constitute a component of construction costs.

* * * * *

17. Balance Sheet Accounts are amended as follows:

(a) Account 101.1, is amended by adding a sentence to the end of paragraph C.;

(b) Account 103, paragraph C. is revised;

(c) Account 108, paragraphs A.(2) through A.(7) are redesignated as paragraphs A.(3) through A.(8) and a new paragraph A.(2) is added;

(d) Account 121, paragraph A. is amended by adding a sentence to the end of the paragraph; and

(f) Account 230 is added.

The additions and revisions read as follows:

Balance Sheet Accounts

* * * * *

101.1 Property under capital leases.

* * * * *

C. * * * Records shall also be maintained for plant under a lease, to identify the asset retirement obligation and cost originally recognized for each lease and the periodic charges and credits made to the asset retirement obligations and asset retirement costs.

* * * * *

103 Experimental gas plant unclassified.

* * * * *

C. The depreciation on plant in this account shall be charged to account 403, Depreciation expense, and account 403.1, Depreciation expense for asset retirement costs, as appropriate, and credited to account 108, Accumulated provision for depreciation of gas utility plant. The amounts herein shall be depreciated over a period which corresponds to the estimated useful life of the relevant project considering the characteristics involved. However, when projects are transferred to account 101, Gas plant in service, a new depreciation rate based on the remaining service life and undepreciated amounts, will be established.

* * * * *

108 Accumulated provision for depreciation of gas utility plant.

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, for current depreciation expense related to asset retirement costs in gas plant in service in a separate subaccount.

* * * * *

121 Nonutility property.

A. * * * This account shall also include, where applicable, amounts recorded for asset retirement costs associated with nonutility plant.

* * * * *

230 Asset retirement obligations

A. This account shall include the amount of liabilities for the recognition of asset retirement obligations related to gas utility plant and nonutility plant that gives rise to the obligations. This account shall be credited for the amount of the liabilities for asset retirement obligations with amounts charged to the appropriate gas utility plant accounts or nonutility plant accounts to record the related asset retirement costs.

B. This account shall also include the period to period changes for the accretion of the liabilities in account 230, Asset retirement obligations. The utility shall charge the accretion expense to account 411.10, Accretion expense, for gas utility plant, account 413, Expenses of gas plant leased to others, for gas plant leased to others, or account 421, Miscellaneous nonoperating income, for nonutility plant, as appropriate, and credit account 230, Asset retirement obligations.

C. This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

D. The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 24.

* * * * *

18. In Gas Plant Accounts, new primary plant accounts, 321, 339, 348, 358, 363.6, 364.9, 372, 388, and 399.1 are added to read as follows:

Gas Plant Accounts

* * * * *

321 Asset retirement costs for manufactured gas production plant.

This account shall include asset retirement costs on plant included in the manufactured gas production plant function.

* * * * *

339 Asset retirement costs for natural gas production and gathering plant.

This account shall include asset retirement costs on plant included in the natural gas production and gathering plant function.

* * * * *

348 Asset retirement costs for products extraction plant.

This account shall include asset retirement costs on plant included in the products extraction plant function.

* * * * *

358 Asset retirement costs for underground storage plant.

This account shall include asset retirement costs on plant included in the underground storage plant function.

* * * * *

363.6 Asset retirement costs for other storage plant.

This account shall include asset retirement costs on plant included in the other storage plant function.

* * * * *

372 Asset retirement costs for transmission plant.

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This account shall include asset retirement costs on plant included in the transmission plant function.

* * * * *

388 Asset retirement costs for distribution plant.

This account shall include asset retirement costs on plant included in the distribution plant function.

* * * * *

399.1 Asset retirement costs for general plant.

This account shall include asset retirement costs on plant included in the general plant function.

* * * * *

19. Income Accounts are amended as follows:

a. Account 403.1 is added,

b. Accounts 411.6 and 411.7 are amended by designating the current paragraph as A. and adding a new paragraph B.,

c. Account 411.10 is added,

d. In account 421, paragraphs 4. through 6. are added, and

e. In account 426.5 paragraph 6. is added.

The additions read as follows:

Income Accounts

* * * * *

403.1 Depreciation expense for asset retirement costs.

This account shall include the depreciation expense for asset retirement costs included in gas utility plant in service.

* * * * *

411.6 Gains from disposition of utility property.

A. * * *

B. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

411.7 Losses from disposition of utility property.

A. * * *

B. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

411.10 Accretion expense.

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 230, Asset retirement obligations, related to gas utility plant.

* * * * *

421 Miscellaneous nonoperating income.

* * * * *

4. This account shall include the accretion expense on the liability for an asset retirement obligation included in account 230, Asset retirement obligations, related to nonutility plant.

5. This account shall include the depreciation expense for asset retirement costs related to nonutility plant.

6. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

426.5 Other deductions.

* * * * *

6. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

20. The authority citation for part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

21. Section 346.3 is added to read as follows:

§ 346.3 Asset retirement obligations.

(a) A carrier that files material in support of initial rates or change in rates under § 346.2 and has recorded asset retirement obligations on its books must provide a schedule, as part of the supporting workpapers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as carrier property and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A carrier seeking to recover nonrate base costs related to asset retirement costs in rates must provide, with its filing under § 346.2 of this part, a detailed study supporting the amounts proposed to be collected in rates.

(c) A carrier who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

22. The authority citation for part 352 continues to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

23. In List of Instructions and Accounts, under Definitions, Definition 12 is revised to read as follows:

Definitions. * * *

12. *Cost of removal* means cost of demolishing, dismantling, tearing down, or otherwise removing property including costs of handling and transportation. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (See General Instruction 1–19).

* * * * *

24. In General Instructions, paragraph 1–19 is added to read as follows:

General Instructions

* * * * *

1–19 *Accounting for asset retirement obligations.*

(a) An *asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a utility is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

(b) The carrier shall initially record a liability for an asset retirement obligation in account 67, Asset retirement obligations, and charge the associated asset retirement costs to account 30, Carrier property, and account 34, Noncarrier property, as appropriate, related to the property that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a carrier shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement revisions to the initial liability for the legal obligation recorded in account 67, Asset retirement obligations, as follows:

(1) The carrier shall record the accretion of the liability by debiting account 591, Accretion expense, for carrier property, account 620, Income (net) from noncarrier property, for noncarrier property and crediting account 67, Asset retirement obligations; and

(2) The carrier shall recognize any subsequent measurement changes of the liability initially recorded in account 67, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 67 with the corresponding adjustment to carrier property and noncarrier property accounts, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

(c) Gains or losses resulting from the final settlement of asset retirement obligations for carrier plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 67, Asset retirement obligation, and the actual amount to settle the obligation, shall be recorded in account 592, Gains or losses on asset retirement obligations.

(d) Gains or losses resulting from the final settlement of asset retirement obligations for noncarrier plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 67, Asset retirement obligation, and the actual amount to settle the obligation, shall be recorded in account 620, Income (net) from noncarrier property.

(e) Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a carrier shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating of each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

25. In Instructions for Carrier Property Accounts, Instruction 3–3, paragraph (11)(iii) and paragraph (13) are added to read as follows:

Instructions for Carrier Property Accounts

* * * * *

3–3 *Cost of property constructed.*

* * *

(11) * * *

(iii) Interest during construction shall not be recognized on the asset retirement costs incurred during the construction of carrier and noncarrier property.

* * * * *

(13) Asset retirement costs that are recognized as a result of asset retirement obligations incurred during the construction shall be included in the cost of construction costs.

* * * * *

Balance Sheet Accounts

26. In Balance Sheet Accounts, account 34 is amended by adding a sentence to the end of paragraph and account 67 is added to read as follows:

* * * * *

34 * * * This account shall also include, amounts recorded for asset retirement costs associated with noncarrier property.

* * * * *

67 Asset retirement obligations.

A. This account shall include liabilities arising from the recognition of asset retirement obligations. The carrier shall credit account 67, Asset retirement obligations, for the liabilities for asset retirement obligations and charge the appropriate carrier property accounts or noncarrier property accounts to record the related asset retirement costs.

B. This account shall also include the period to period changes for the accretion of the liabilities in account 67, Asset retirement obligations. The carrier shall charge the accretion expense to account 591, Accretion expense, for carrier property, and account 620, Income (net) from noncarrier property, for noncarrier property, as appropriate, and credit account 67, Asset retirement obligations.

C. This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

D. The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 1–19.

* * * * *

27. In Carrier Property Accounts, accounts 117, 167, 186.1 are added to read as follows:

Carrier Property Accounts

* * * * *

117, 167, 186.1 Asset retirement costs.

This account shall include asset retirement costs on plant included in carrier property.

* * * * *

28. In Operating Expenses, accounts 541, 591 and 592 are added to read as follows:

Operating Expenses

* * * * *

541 Depreciation expense for asset retirement costs.

This account shall include charges for the depreciation of asset retirement costs related to transportation property.

* * * * *

591 Accretion expense.

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 67, Asset retirement obligations. The carrier shall record in this account the settlement amounts for asset retirement obligations related to carrier property in accordance with the accounting prescribed in General Instruction 1–19.

592 Gains or losses on asset retirement obligations.

The carrier shall record in this account gains or losses resulting from the settlement amounts for asset retirement obligations related to carrier property plant. (See General Instruction 1–19).

* * * * *

Note: Appendix A will not be published in the Code of Federal Regulations.

Appendix A—Summary of Proposed Changes to Schedules for Forms 1, 1–F, 2, 2–A and 6

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	Schedule title	Forms 1 and 1–F public utilities and licensees	Forms 2 and 2A natural gas companies	Form 6 oil pipeline companies
1	List of Schedules	Revise to show schedule changes.	Same as Public Utilities and Licensees.	Same as Public Utilities and Licensees.
2	Comparative Balance Sheet	Add new account 230 to report asset retirement obligations.	Same as Public Utilities and Licensees.	Add account 67 to report asset retirement obligations.
3	Statement of Income for the Year.	Add new accounts 403.1, to report depreciation expense and 411.10, to report accretion expense.	Same as Public Utilities and Licensees.	Add accounts 541, to report depreciation expense, 591, to report accretion expense, and 592, to report gains or losses on asset retirement obligations.
4	Plant in Service	Add new Instruction 4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.	Same as Public Utilities and Licensees.	N/A.
		Add new primary asset retirement accounts, 317, 326, 337, 347, 359.1, 374 and 399.1, for each plant function.	Add new primary asset retirement accounts, 339, 348, 358, 363.6, 364.9, 372, 388, 399.1, for each plant function.	N/A.
5	Undivided Joint Interest Property	N/A	N/A	Add new primary asset retirement accounts, 117, 167, and 186.1, for each carrier property account function.
6	Accumulated Provisions for Depreciation of Utility Plant.	Added lines to report "403.1 Depreciation Expense for Asset Retirement Costs" and "Book Cost of Asset Retirement Costs Required".	Same as Public Utilities and Licensees.	N/A.
7	Accrued Depreciation—Carrier Property.	N/A	N/A	Add new primary asset retirement accounts, 117, 167, and 186.1, for each carrier property account function and revise column (c) to read Debits to Accounts 540 and 541 and US of A (in dollars).
8	Accrued Depreciation—Undivided Joint Interest Property.	N/A	N/A	Same as above for Accured Depreciation—Carrier Property.
9	Depreciation and Amortization of Plant (Except Amortization of Acquisition Adjustments).	Add new Column (c), Depreciation Expense for Asset Retirement Costs (403.1).	Same as Public Utilities and Licensees. Form 2–A N/A	N/A.
10	Amortization Base and Reserve	N/A	N/A	Revise header over columns (b), (c), (d) and (e) to read (Base 540 and 541).
11	Steam-Electric Generating Plant Statistics (Large Plants).	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A.
12	Hydroelectric Generating Plant Statistics (Large Plants).	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A.
13	Pumped Storage Generating Plant Statistics (Large Plants).	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A.
14	Generating Plant Statistics (Small Plants) (Continued).	Form 1—Revise Column (g), to read "Plant Cost (Including Asset Retirement Costs) Per MW Installed Capacity". Form 1–F N/A	N/A	N/A.
15	Transmission Lines Added During the Year.	Form 1—Add column (o) "Asset Retirement Costs" to report asset retirements costs as part of line cost. Form 1–F N/A	N/A	N/A.

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -1-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Electric Utility)

Enter in column (d) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
General Information	101	Ed. 12-87	
Control Over Respondent	102	Ed. 12-96	
Corporations Controlled by Respondent	103	Ed. 12-96	
Officers	104	Ed. 12-96	
Directors	105	Ed. 12-95	
Security Holders and Voting Powers	106-107	Ed. 12-96	
Impodant Changes During the Year	108-109	Ed. 12-96	
Comparative Balance Sheet	110-113	Rev. 12-02	
Statement of Income for the Year	114-117	Rev. 12-02	
Statement of Retained Earnings for the Year	118-119	Ed. 12-96	
Statement of Cash Flows	120-121	Ed. 12-96	
Statement of Accumulated Comprehensive Income and Hedging Activities	122 (a) (b)	New 12-02	
Notes to Financial Statements	122-123	Ed. 12-96	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201	Ed. 12-89	
Nuclear Fuel Materials	202-203	Ed. 12-89	
Electric Plant in Service	204-207	Rev. 12-02	
Electric Plant Leased to Others	213	Rev. 12-95	
Electric Plant Held for Future Use	214	Ed. 12-89	
Construction work in Progress -- Electric	216	Ed. 12-87	
Construction Overheads -- Electric	217	Ed. 12-89	
General Description of Construction Overhead Procedure	218	Ed. 12-88	
Accumulated Provision for Depreciation of Electric Utility Plant.	219	Ed. 12-02	
Nonutility Property	221	Rev. 12-95	
Investment in Subsidiary Companies	224-225	Ed. 12-89	
Materials and Supplies	227	Ed. 12-87	
Allowances	228-229	Ed. 12-89	
Extraordinary Property Losses	230	Ed. 12-88	
Unrecovered Plant and Regulatory Study Costs	230	Ed. 12-88	
Other Regulatory Assets	232	Ed. 12-95	
Miscellaneous Deferred Debits	233	Ed. 12-94	
Accumulated Deferred Income Taxes (Account 190)	234	Ed. 12-88	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
Capital Stock	250-251	Ed. 12-91	
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and installments Received on Capital Stock	252	Rev. 12-95	
Other Paid-in Capital	253	Ed. 12-87	
Discount on Capital Stock	254	Ed. 12-87	
Capital Stock Expense	254	Ed. 12-86	
Long-Term Debt	256-257	Ed. 12-96	

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -2

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Electric Utility) (Continued)

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits) (Continued)			
Reconciliation of Reported Net Income with for Federal Income Taxes	261	Ed. 12-96	
Taxes Accrued, Prepaid and Charged During Year	262 - 263	Ed. 12-96	
Accumulated Deferred Investment Tax Credits	266 - 267	Ed. 12-89	
Other Deferred Credits	269	Ed. 12-88	
Accumulated Deferred Income Taxes -- Accelerated Amortization Property	272 - 273	Ed. 12-96	
Accumulated Deferred Income Taxes -- Other Property	274 - 275	Ed. 12-96	
Accumulated Deferred Income Taxes Other	276 - 277	Ed. 12-96	
Other Regulatory Liabilities	278	Ed. 12-94	
INCOME ACCOUNT SUPPORTING SCHEDULES			
Electric Operating Revenues	300 - 301	Ed. 12-96	
Sales of Electricity by Rate Schedules	304	Ed. 12-95	
Sales of Resale	310 - 311	Ed. 12-88	
Electric Operation and Maintenance Expenses	320 - 323	Ed. 12-95	
Number of Electric Department Employees	323	Ed. 12-93	
Purchased Power	326 - 327	Ed. 12-95	
Transmission of Electricity for Others	328 - 330	Ed. 12-90	
Transmission of Electricity by Others	332	Ed. 12-90	
Miscellaneous General Expenses -- Electric	335	Ed. 12-94	
Depreciation and Amortization of Electric-- Plant	336 - 337	Rev. 12-02	
Particulars Concerning Certain Income Deduction and Interest Charges Account	340	Ed. 12 - 87	
COMMON SECTION			
Regulatory Commission Expenses	350 - 351	Ed. 12-96	
Research, Development and Demonstration Activities	352 - 353	Ed. 12-87	
Distribution of Salaries and Wages	354 - 355	Ed. 12-88	
Common Utility Plant and Expenses	356	Ed. 12-87	
ELECTRIC PLANT STATISTICAL DATA			
Electric Energy Account	401	Rev. 12-90	
Monthly Peaks and Output	401	Rev. 12-90	
Steam-Electric Generating Plant Statistics (Large Plants)	402 - 403	Rev. 12-02	
Hydroelectric Generating Plant Statistics (large Plants)	406 - 407	Ed. 12-02	
Pumped Storage Generating Plant Statistics (Large Plants)	408 - 409	Ed. 12-02	
Generating Plant Statistics (Small Plants)	410 - 411	Ed. 12-02	

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -3-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Electric Utility) (Continued)

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
ELECTRIC PLANT STATISTICAL DATA (Continued)			
Transmission Lines Statistics	422-423	Ed. 12-87	
Transmission Lines Added During Year	424-425	Ed. 12-02	
Substations	426-427	Ed. 12-96	
Electric Distribution Meters and Line Transformers	429	Ed. 12-88	
Environmental protection Facilities	430	Ed. 12-88	
Environmental Protection Expenses	431	Ed. 12-88	
Footnote Data	450	Ed. 12-87	
Stookholders' Reports Check appropriate box:			
[ ] Four copies will be submitted.			
[ ] No annual report to stockholders is prepared.			

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -4-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid in Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock expense (214)	254		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	122 (a) (b)		
15	TOTAL Proprietary Capital (Enter Total of Lines 2 thru 14)	-		
16	LONG-TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	-		
22	(Less) Unamortized Discount on Long-Term Debt-Debit (226)	-		
23	TOTAL Long-Term Debt (Enter Total of Lines 16 thru 21)	-		
24	OTHER NONCURRENT LIABILITIES			
25	Obligations Under Capital Leases-Noncurrent (227)	-		
26	Accumulated Provision for Property Insurance (228.1)	-		
27	Accumulated Provision for Injuries and damages (228.2)	-		
28	Accumulated Provision for Pensions and Benefits (228.3)	-		
29	Accumulated Miscellaneous Operating Provision (228.4)	-		
30	Accumulated Provision for Rate Refunds (229)	-		
31	Asset Retirement Obligations (230)	-		
32	TOTAL OTHER Noncurrent Liabilities (Enter Total of Lines 24 thru 30)			
33	CURRENT AND ACCRUED LIABILITIES			
34	Notes Payable (231)	-		
35	Accounts Payable (232)	-		
36	Notes Payable to Associated Companies (233)	-		
37	Account Payable to Associated Companies (234)	-		
38	Customer Deposits (235)	-		
39	Taxes Accrued (236)	262-263		
40	Interest Accrued (237)	-		
41	Dividends Declared (238)	-		
42	Matured Long-Term Debt (239)	-		
43	Matured Interests (240)	-		
44	Tax Collections Payable (241)	-		
45	Miscellaneous Current and Accrued Liabilities(242)			
46	Obligations Under Capital Leases-Current (243)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -5-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (o)	Balance at End of Year (d)
47	Derivative Instrument Liabilities (244)			
48	Derivative Instrument Liabilities - Hedging (245)			
49	TOTAL Current and Accrued Liabilities (Enter Total of Lines 34 thru 48)			
50	DEFERRED CREDITS			
51	Customer Advances for Construction (252)			
52	Accumulate Deferred Investment Tax Credits (255)	266-267		
53	Deferred Gains from Disposition of Utility Plant (256)			
54	Other Deferred Credits (253)	269		
55	Other Regulatory Liabilities (254)	278		
55	Unamortized Gain on Reacquired Debt (257)	269		
56	Accumulated Deferred Income Taxes (281-283)	272-277		
57	TOTAL Deferred Credits (Enter Total of Lines 48 thru 54)			
58				
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
	TOTAL Liabilities and Other Credits (Enter Total of Lines 15, 23, 32,49 and 57)			

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -6-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts 412 and 413, Revenue and Expenses from Utility Plant Leased to Others, in another Utility column (i,k,m,o) in a similar manner to a utility department. Spread the amount(s) over Lines 02 thru 24 as appropriate. include these amounts in columns (c) and (d) totals.
2. Report amounts in account 414, Other Utility Operating income, in the same manner as accounts 412 and 413 above.
3. Report data for lines 7,9, and 10 for Natural Gas companies using accounts 404.1, 404.2, 404.3, 407.1 and 407.2.
4. Use pages 122-123 for important notes regarding the statement of income or any account thereof.
5. Give concise explanations concerning unsettled rate proceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the rights of the utility to retain such revenues or recover amounts paid with respect to power and gas purchases.
6. Give concise explanations concerning significant amounts of any refunds made or received during the year.

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
1	UTILITY OPERATING INCOME			
2	Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	320-323		
5	Maintenance Expenses (402)	320-323		
6	Depreciation Expenses (403)	336-337		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-337		
8	Amortization. & Depletion of Utility Plant (404-405)	336-337		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-337		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)			
11	Amortization of Conversion Expenses (407)			
12	Regulatory Debits (407.3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other than Income Taxes (408.1)	262-263		
15	Income Taxes - Federal (409.1)	262-263		
16	- Other (409.1)	262-263		
17	Provision for deferred Income Taxes (410.1)	234,272-277		
18	(Less) Provision for Deferred Income Taxes - Cr. (411.1)	234,272-277		
19	Investment Tax Credit Adj. - Net (411.4)	266		
20	(Less) Gains from Disp. Of Utility Plant (411.6)			
21	Losses from Disp. Of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Enter Total of Lines 4 thru 24)			
26	Net Utility Operating Income (Enter Total of line 2 less 25) (Carry forward to page 117, line 25)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -7-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

resulting from settlement of any rate proceeding affecting revenues received or costs incurred for power or gas purchases, ard a summary of the adjustments made to balance sheet, income, and expense accounts.
7. If any notes appearing in the report to stockholders are applicable to this Statement of Income, such notes may be included on pages 122-123.
8. Enter on pages 122-123 a concise explanation of only those changes in accounting methods made during the year which had an effect on net income, including the basis of allocations and apportiorunents from those used in the precedingl year. Also give the approximate dollar effect of such changes.
9. Explain in a footnote if the previous year's figures are different from that reported in prior reports.
10. If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles, lines 2 to 23, and report the information in the blank space on pages.122-123 or in a footnote.

ELECTRIC UTILITY		GAS UTILITY		OTHER UTILITY		Line No.
Current Year (e)	Previous Year (f)	Current Year (g)	Previous Year (h)	Current Year (i)	Previous Year (j)	
						1
						2
						3
						4
						5
						6
						7
						8
						9
						10
						11
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						25
						26

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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	OTHER UTILITY Current Year (k)	OTHER UTILITY Previous Year (l)	OTHER UTILITY Current Year (m)	OTHER UTILITY Previous Year (n)	OTHER UTILITY Current Yar (o)	OTHER UTILITY Previous Year (p)
1						
2						
3						
4						
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26						

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No	Account (a)	(Ref.) Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
27	Net Utility Operating Income (Carried forward from page 114)	--		
28	Other Income and Deductions			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues From Merchandising, Jobbing and Contract Work (415)			
32	(Less) Costs and Exp. Of Merchandising, Job & Contract Work (416)			
33	Revenues From Nonutility Operations (417)			
34	(Less) Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income (418)			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.2)			
41	TOTAL Other Income (Enter Total of Lines 31 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)	340		
45	Miscellaneous Income Deductions (426.1-426.5)	340		
46	TOTAL Other Income Deductions (Total of Lines 43 thru 45)			
47	Taxes Applicable To Other Income and Deductions			
48	Taxes Other than Income Taxes (406.2)	262-263		
49	Income Taxes - Federal (409.2)	262-263		
50	Income Taxes - Other (409.2)	262-263		
51	Provision for Deferred Inc. Taxes (410.2)	234,272-277		
52	(Less) Provision for Deferred Income Taxes - Credit (411.2)	234,272-277		
53	Investment Tax Credit Adj. - Net (411.5)			
54	(Less) Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of 48 thru 54)			
56	Net Other Income and Deductions (Enter Total of Lines 41, 46, 55)			
57	Interest Charges			
58	Interest on Long-Term Debt (427)			
59	Amort. Of Debt Disc. And Expense (428)			
60	Amortization of Loss on Reacquired Debt (428.1)			
61	(Less) Amort. Of Premium on Debt - credit (429)			
62	(Less) Amortization of Gain on Reacquired Debt - Credit (429.1)			
63	Interest on Debt to Assoc. Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction-Cr. (432)			
66	Net Interest Charges (Enter Total of Lines 58 thru 65)			
67	Income Before Extraordinary Items (Total of Lines 27, 56 and 66)			
68	Extraordinary Items			
69	Extraordinary Income (434)			
70	(Less) Extraordinary Deductions (435)			
71	Net Extraordinary Items (Enter Total of Line 69 less Line 70)			
72	Income Taxes-Federal and Other (409.3)	262-263		
73	Extraordinary Items After Taxes (Enter Total of Line 71 less Line 72)			
74	Net Income (Enter Total of Lines 67 and 73)			

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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.
5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed ac- counts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year- reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
1	1. INTANGIBLE PLANT		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of Lines 2, 3, and 4)		
6	2. PRODUCTION PLANT		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Tubogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of Lines 8 thru 15)		
17	B. Nuclear Production Plant		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbo generator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of Lines 18 thru 24)		
26	C. Hydraulic Production Plant		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Misc. Power Plant Equipment		
33	(336) Roads, Railroad, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of Lines 27 thru 34)		
36	D. Other Production Plant		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

column (d) reversals of tentative distributions of prior year of unclassified retirements. Show in a footnote the account distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.
7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e)
the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column(f) only the offset to the debits or credits distributed in column (f) to primary account classifications.
8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.
9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
					1
				(301)	2
				(302)	3
				(303)	4
					5
					6
					7
				(310)	8
				(311)	9
				(312)	10
				(313)	11
				(314)	12
				(315)	13
				(316)	14
				(317)	15
					16
					17
				(320)	18
				(321)	19
				(322)	20
				(323)	21
				(324)	22
				(325)	23
				(326)	24
					25
					26
				(330)	27
				(331)	28
				(332)	29
				(333)	30
				(334)	31
				(335)	32
				(336)	33
				(337)	34
					35
					36
				(340)	37
				(341)	38
				(342)	39
				(343)	40
				(344)	41
				(345)	42

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -12-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	TOTAL Other Prod. Plant (Enter Total of Lines 37 thru 44)		
46	TOTAL Prod. Plant (Enter Total of Lines 16, 25, 35, and 45)		
47	3. TRANSMISSION PLANT		
48	(350) land and Land Rights		
49	(352) Structures and Improvements		
50	(353)Station Equipment		
51	(354)Towers and Fixtures		
52	(355)Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of Lines 44 thru 52)		
59	4. DISTRIBUTION PLANT		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
63	(363) Storage Battery Equipment		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	total distribution plant (enter total OF lines 60 thru 74)		
76	5. GENERAL PLANT		
77	(389) Land and Land Rights		
78	(390) Structures and Improvements		
79	(391) Office Furniture and Equipment		
80	(392) Transportation Equipment		
81	(393) Stores Equipment		
82	(394) Tools, Shop and Garage Equipment		
83	(395) Laboratory, Equipment		
84	(396)Power Operated Equipment		
85	(397) Communication Equipment		
86	(398) Miscellaneous Equipment		
87	SUBTOTAL (Enter Total of Lines 77 thru 86)		
88	(399) Other Tangible Property		
89	(399.1) Asset Retirement Costs for General Plant		
90	TOTAL General Plant (Enter Total of Lines 87, 88, and 89)		
91	TOTAL (Accounts 101 and 106) (Lines 5, 16, 25, 35, 45, 58, 75,90)		
92	(102) Electric Plant Purchased (See Instr. 8)		
93	(Less) (102) Electric Plant Sold (See Instr. 8)		
94	(103) Experimental Plant Unclassified		
95	TOTAL Electric Plant in Service (Enter Total of Lines 91 thru 94)		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -13-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No
				(346)	43
				(347)	44
					45
					46
					47
				(350)	48
				(352)	49
				(353)	50
				(354)	51
				(355)	52
				(356)	53
				(357)	54
				(358)	55
				(359)	56
				(359.1)	57
					58
					59
				(360)	60
				(361)	61
				(362)	62
				(363)	63
				(364)	64
				(365)	65
				(366)	66
				(367)	67
				(368)	68
				(369)	69
				(370)	70
				(371)	71
				(372)	72
				(373)	73
				(374)	74
					75
					76
				(389)	77
				(390)	78
				(391)	79
				(392)	80
				(393)	81
				(394)	82
				(395)	83
				(396)	84
				(397)	85
				(398)	86
					87
				(399)	88
				(399.1)	89
					90
					91
				(102)	92
					93
				(103)	94
					95

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -14-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column (d), excluding retirements of nondepreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant Leased to Others (e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to:				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Electric Plant Leased to Others				
6	Transportation Expenses-Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify):				
9					
10	Total Depreciation, Provision For Year (Enter Total of Lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Charges For Plant Retired (Enter Total of Lines 12 thru 14)				
16	Other Debit or Credit Items (Describe):				
17					
18	Book Cost of Asset Retirement Costs Retired				
19	Balance End of Year (Enter Total of lines 1, 10, 15, 16 and 18)				

Section B. Balances at End of Year According to Functional Classifications

20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
24	Other Production				
25	Transmission				
26	Distribution				
27	General				
28	TOTAL (Enter Total of Lines 20 thru 27)				

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -15-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Accounts 403, 403.1, 404, 405)
(Except Amortization of Acquisition Adjustments)

1. Report in Section A for the year the amounts for: (a) Depreciation Expense (Account 403); (b) Amortization of Limited-Term Electric Plant (Account 404); and (c) Amortization of Other Electric Plant (Account 405).
2. Report in section B the rates used to compute amortization charges for electric plant (Accounts 404 and 405). State the basis used to compute charges and whether any changes have been made in the basis or rates used from the preceding report year.
3. Report all available information called for in section C every fifth year beginning with report year 1971, reporting annually only changes to columns (c) through (g) from the complete report of the preceding year.
Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of section C the type of plant included in any subaccount used.
In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional Classifications and showing composite total. Indicate at the bottom of section C the manner in which column balances are obtained. If average balances, state the method of averaging used.
For columns (c), (d), and (e) report available information for each plant subaccount, account or functional classification Listed in column (a). If plant mortality studies are prepared to assist in estimating average service Lives, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g), If available, the weighted average remaining life of surviving plant.
If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis.
4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of section C the amounts and nature of. the provisions and the plant items to which related.

A. Summary of depreciation and Amortization Charges

Line No	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization of Limited-Term Electric Plant (Account 404) (d)	Amortization of Other Electric Plant (Account 405) (e)	Total (f)
1	Intangible Plant					
2	Steam Product Plant					
3	Nuclear Production Plant					
4	Hydraulic Production Plant -- Conventional					
5	Hydraulic Production Plant -- Pumped Storage					
6	Other Production Plant					
7	Transmission Plant					
8	Distribution Plant					
9	General Plant					
10	Common Plant -- Electric					
11	TOTAL					

B. Basis for Amortization Charges

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -16-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STEAM-ELECTRIC GENERATING PLANT STATISTICS (Large Plants)

1. Report data for plant in Service only.
2. Large plants are steam plants with installed capacity (name plate rating) of 25,000 Kw or more. Report in this page gas-turbine and internal combustion plants of 10,000 KW or more, and nuclear plants.
3. Indicate by a footnote any plant leased or operated as a joint facility.
4. If net peak demand for 60 minutes is not available. Give data which is available, specifying period.
5. If any employees attend more than one plant, report on line 11 the approximate average number of employees assignable to each plant
6. If gas is used and purchased on a therm basis report the Btu content of the gas and the quantity of fuel burned converted to Mct.
7. Quantities of fuel burned (line 39) and average cost per unit of fuel burned (line 42) must be consistent with charges to expense accounts 501 and 547 (line 41) as show on line 21.
8. If more than one fuel is burned in a plant furnish only the composite heat rate for all fuels burned.

Line No	Item (a)	Plant Name: (b)	Plant Name: (c)
1	Kind of Plant (Steam, Internal Combustion, Gas Turbine or Nuclear)		
2	Type of Plant Construction (Convention, Outdoor Boiler, Full Outdoor, Etc.)		
3	Year Originally Constructed		
4	Year Last Unit was Installed		
5	Total Installed Capacity (Maximum Generator Name Plate Ratings in MW)		
6	Net Peak Demand on Plant -- MW (60 minutes)		
7	Plant Hours Connected to Load		
8	Net Continuous Plant Capability (Megawatts)		
9	When not Limited by Condenser Water		
10	When Limited by Condenser Water		
11	Average Number of Employees		
12	Net Generation, Exclusive of Plant Use --KWh		
13	Cost of Plant: Land and Land Rights		
14	Structures and Improvements		
15	Equipment Costs		
16	Asset Retirement Costs		
17	Total Cost		
18	Cost per KW of Installed Capacity (Line 17/ Line 5) Including Asset Retirement Costs		
19	Production Expenses: Oper. Supv. & Engr.		
20	Fuel		
21	Coolants and Water (Nuclear Plants Only)		
22	Steam Expenses		
23	Steam From Other Sources		
24	Steam Transferred (Cr.)		
25	Electric Expenses		
26	Misc. Steam (or Nuclear) Power Expenses		
27	Rents		
28	Allowances		
29	Maintenance Supervision and Engineering		
30	Maintenance of Structures		
31	Maintenance of Boiler (Or Reactor) Plant		
32	Maintenance of Electric Plant		
33	Maintenance Misc. Steam (or Nuclear) Plant		
34	Total Production Expenses		
35	Expenses per Net KWh		
36	Fuel: Kind (Coal, Gas, Oil, or Nuclear)		
37	Unit: (Coal=tons of 2,000 lb.) (Oil-barrels of 42 gals.) (Gas=Mcf) (Nuclear-indicate)		
38	Quantity (Units) of Fuel Burned		
39	Avg. Heat Cont. Of Fuel Burned (Btu per lb. Of coal per gal. Of oil or per Mcf of gas) (Give unit if nuclear)		
40	Average Cost of Fuel per Unit, as Delivered f. o. b. Plant During Year		
41	Average Cost of Fuel per Unit Burned		
42	Avg. Cost of Fuel Burned per Million Btu		
43	Avg. Cost of Fuel Burned per Kwh Net Generation		
44	Average Btu per Kwh Net Generation		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -17-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STEAM-ELECTRIC GENERATING PLANT STATISTICS (Large Plants) (Continued)

9. Items under Cost of Plant are based on U.S. of A. Accounts. Production expenses do not include Purchased Power, System Control and Load Dispatching, and Other Expenses Classified as Other Power Supply Expenses.
10. For IC and GT plants, report Operating Expenses, Account Nos. 547 and 549 on line 26 "Electric Expenses," and Maintenance Account Nos. 553 and 554 on line 331. "Maintenance of Electric Plant." Indicate plants designed for peak load service. Designate automatically operated plants.
11. For a plant equipped with combinations of fossil fuel steam, nuclear steam, hydro, internal combustion or gas-turbine equipment, report each as a separate plant. However, if a gas -turbine unit functions in a combined cycle operation with a conventional steam unit, include the gas-turbine with the steam plant.
12. If a nuclear power generating plat, briefly explain by footnote (a) accounting method for cost of power generated including any excess costs attributed to research and development; (b) types of cost units used for the various components of fuel cost; and (c) any other informative data concerning plant type fuel used, fuel enrichment type and quantity for the report period and other physical and operating characteristics of plant.

Plant Name: (d)	Plant Name: (e)	Plant Name: (f)	Line No.
			1
			2
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -18-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

HYDROELECTRIC GENERATING PLANT STATISTICS (Large Plants)

1. Large plants are hydro plants of 10,000 Kw or more of installed capacity (name plate ratings).
2. If any plant is leased, operated under a license from the Federal Energy Regulatory Commission, or operated as a joint facility, indicate such facts in a footnote. If licensed project, give project number.
3. If net peak demand for 60 minutes is not available, give that which is available specifying period.
4. If a group of employees attends more than one generating plan, report on line 11 the approximate average number of employees assignable to each plant.

Line No	Item (a)	FERC Licensed Project No. Plant Name: (b)	FERC Licensed Project No. Plant Name: (c)
1	Kind of Plant (Run-of-River or Storage)		
2	Type of Plant Construction (Conventional or Outdoor)		
3	Year Originally Constructed		
4	Year Last Unit was Installed		
5	Total installed Capacity (Generator Name Plate Rating in MW)		
6	Net Peak Demand on Plant-Megawatts (60 minutes0		
7	Plant Hours Connected to Load		
8	Net Plant Capability (in megawatts)		
9	(a) Under the Most Favorable Operating Conditions		
10	(b) Under the Most Adverse Operating Conditions		
11	Average Number of Employees		
12	Net Generation, Exclusive of Plant Use-KWh		
13	Cost of Plant:		
14	Land and Land Rights		
15	Structures and Improvements		
16	Reservoirs, Dams, and Waterways		
17	Equipments Costs		
18	Roads, Railroads, and Bridges		
19	Asset Retirement Costs		
20	TOTAL Cost (Enter Total of Lines 14 thru 19)		
21	Cost per KW of Installed Capacity (Line 5) including Asset Retirement Costs		
22	Production Expenses:		
23	Operation Supervision and Engineering		
24	Water for Power		
25	Hydraulic Expenses		
26	Electric Expenses		
27	Misc. Hydraulic Power Generation Expenses		
28	Rents		
29	Maintenance Supervision and Engineering		
30	Maintenance of Structures		
31	Maintenance of Reservoirs, Dams, and Waterways		
32	Maintenance of Electric Plant		
33	Maintenance of Misc. Hydraulic Plant		
34	Total Production Expenses (Total lines 23 thru 33)		
35	Expenses per net KWh		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -19-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

HYDROELECTRIC GENERATING PLANT STATISTICS (large Plants) (Continued)

5. The items under Cost of Plant represent accounts or combinations of accounts prescribed by the uniform System of Accounts. Production Expenses do not include P6rchased Power, System control and Load Dispatching, and Other Expenses classified as "Other Power Supply Expenses."
6. Report as a separate plant any plant equipped with combinations of steam, hydro, internal combustion engine, or gas turbine equipment.

FERC Licensed Project No. Plant Name: (d)	FERC Licensed Project No. Plant Name: (e)	FERC Licensed Project No. Plant Name: (f)	Line No
			1
			2
			3
			4
			5
			6
			7
			8
			9
			10
			11
			12
			13
			14
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -20-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PUMPED STORAGE GENERATING PLANT STATISTICS (Large Plants)

1. Large plants and pumped storage plants of 10,000 Kw or more of installed capacity (name plate ratings).
2. If any plant is leased, operating under a license from the Federal Energy Regulatory Commission, or operated as a joint facility, indicate such facts in a footnote. Give project number.
3. If net peak demand for 60 minutes is not available, give the which is available, specifying period.
4. If a group of employees attends more than one generating plant, report on line 8 the approximate average number of employees assignable to each plant.
5. The items under Cost of Plant represent accounts or combinations of accounts prescribed by the Uniform System of Accounts. Production Expenses do not include Purchased Power System Control and Load Dispatching, and Other Expenses classified as "Other Power Supply Expenses."

Line No	Item (a)	FERC Licensed Project No. Plant Name: (b)
1	Type of Plant Construction (Conventional or Outdoor)	
2	Year Originally Constructed	
3	Year Last Unit was Installed	
4	Total Installed Capacity (Generator Name Plate Ratings in MW)	
5	Net Peak Demand on Plant-Megawatts (60 minutes)	
6	Plant Hours Connected to Load While Generating	
7	Net Plant Capability (In megawatts):	
8	Average Number of Employees	
9	Generation Exclusive of Plant Use-KWh	
10	Energy Used for Pumping-KWH	
11	Net Output for Load (Line 9 minus Line 10)-KWh	
12	Cost of Plant	
13	Land and Land Rights	
14	Structures and Improvements	
15	Reservoirs, Dams, and Waterways	
16	Water Wheels, Turbines, and Generators	
17	Accessory Electric Equipment	
18	Miscellaneous Powerplants Equipment	
19	Roads, Railroads, and Bridges	
20	Asset Retirement Costs	
21	TOTAL Cost (Enter Total of Lines 13 thru 20)	
22	Cost per KW of installed Capacity (Line 21 ÷ Line 4) including Asset Retirement Costs	
23	Production Expenses	
24	Operation Supervision and Engineering	
25	Water for Power	
26	Pumped Storage Expenses	
27	Electric Expenses	
28	Misc. Pumped Storage Power Generation Expenses	
29	Rents	
30	Maintenance Supervision and Engineering	
31	Maintenance of Structures	
32	Maintenance of Reservoirs, Dams, and Waterways	
33	Maintenance of Electric Plant	
34	Maintenance of Misc. Pumped Storage Plant	
35	Production Exp. Before Pumping Exp. (Enter Total of Lines 24 thru 34)	
36	Pumping Expenses	
37	Total Production Expenses (Enter Total of Lines 35 and 36)	
38	Expenses per Kwh (Enter result of line 37 divided by Line 9)	

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -21-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PUMPED STORAGE GENERATING PLANT STATISTICS (Large Plants) (Continued)

6. Pumping energy (line 10) is that energy measured as input to the-plant for pumping purposes.
7. Include on line 35 the cost of energy used in pumping into the storage reservoir. When this item cannot be accurately computed leave Lines 35, 36 and 37 blank and footnote the company's principal sources of pumping power, the estimated amounts of energy from each station or other source that individually provides more than 10 percent of the total energy used for pumping, and production expenses per net MWH as reported herein for each source described. Group together stations and other resources which individually provide less than 10 percent of total pumping energy. If contracts are made with others to purchase power for pumping, give the supplier contract number, and date of contract.

FERC Licensed Project No. Plant Name: (d)	FERC Licensed Project No. Plant Name: (e)	FERC Licensed Project No. Plant Name: (f)	Line No
			1
			2
			3
			4
			5
			6
			7
			8
			9
			10
			11
			12
			13
			14
			15
			16
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			20
			21
			22
			23
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			37
			38
			39

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -22-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GENERATING PLANT STATISTICS (Small Plants) (Continued)

3. List plants appropriately under subheadings for steam, hydro, nuclear, internal combustion and gas turbine plants. For nuclear, see instruction 11, page 403.
4. If net peak demand for 60 minutes is not available, give the which is available, specifying period.
5. If any plant is equipped with combinations of steam, hydro internal combustion or gas turbine equipment, report each as a separate plant. However, if the exhaust heat from the gas turbine is utilized in a steam turbine regenerative feed water cycle, or for preheated combustion air in a boiler, report as one plant.

Plant Cost (Including Asset Retirement Costs) Per MW Installed Capacity (g)	Operation Excluding Fuel (h)	Production Expenses Fuel (i)	Production Expenses Maintenance (j)	Kind of Fuel (k)	Fuel Cost (In cents per million Btu) (l)	Line No
						1
						2
						3
						4
						5
						6
						7
						8
						9
						10
						11
						12
						13
						14
						15
						16
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						20
						21
						22
						23
						24
						25
						26
						27
						28
						29
						30
						31
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						41
						42
						43
						44
						45
						46

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -23-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

TRANSMISSION LINES ADDED DURING YEAR

7. Report below the information called for concerning Transmission lines added or altered during the year. It is not necessary to report minor revisions of lines.
2. Provide separate subheadings for overhead and underground construction and show each transmission line separately. If actual costs of competed construction are not readily available for reporting columns (l) to (p), it is permissible to report in these columns the estimated final completion.

Line No	LINE DESIGNATION From (a)	LINE DESIGNATION To (b)	Line Length in Miles (c)	SUPPORTING STRUCTURE Type (d)	SUPPORTING STRUCTURE Average Number Per Miles (e)	CIRCUITS PER STRUCTURE Present (f)	CIRCUITS PER STRUCTURE Ultimate (g)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
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29							
30							
31							
32							
33							
34							
35							
36							
37							
38							
39							
40							
41							
42							
43							
44	TOTAL						

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -24-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

TRANSMISSION LINES ADDED DURING YEAR (Continued)

costs. Designate, however, if estimated amounts are reported. Include costs of Clearing Land and Rights-of-Way, and Roads and Trails, in column (l) with appropriate footnote, and costs of Underground Conduit in column (m)

3. If design voltage differs from operating voltage, indicate such fact by footnote; also where line is other than 60 cycle, 3 phase, indicate such other characteristic.

CONDUCTORS				LINE COST					
Size (h)	Specification (i)	Configuration and Spacing (j)	Voltage KV (Operating) (k)	Land and Land Rights (l)	Poles, Towers and Fixtures (m)	Conductors and Devices (n)	Asset Retirement Costs (o)	Total (p)	Line No.
									1
									2
									3
									4
									5
									6
									7
									8
									9
									10
									11
									12
									13
									14
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									42
									43
									44

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -25-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART III: COMPARATIVE BALANCE SHEET (Continued)

	Liabilities and Other Credits (a)	Balance at Beginning of year (b)	Balance at End of Year (c)
01	Common Stock Issued (201)		
02	Preferred Stock Issued (204)		
03	Miscellaneous Paid-in Capital (211)		
04	Installments Received on Capital Stock (212)		
05	Discount on Capital Stock - Debit (213)		
06	Capital Stock Expenses - Debit (214)		
07	Retained Earnings (215-216)		
08	Reacquired Capital Stock - Debit (217)		
09	Noncorporate Proprietorship (218)		
10	Accumulated Other Comprehensive Income (219)		
11	TOTAL PROPRIETARY CAPITAL (Enter total of lines 01 thru 10)		
12	Bonds (221)		
13	Advances From Associated Companies (223)		
14	Other Long-term Debt (Specify in footnote) (224)		
15	Unamortized Premium on Long-term Debt (225)		
16	Unamortized Discount on Long-term Debt - Debit (226)		
17	TOTAL LONG-TERM DEBT (Enter total of lines 12 thru 16)		
18	Other Noncurrent Liabilities:		
19	Obligations Under Capital Leases - Noncurrent (227)		
20	Accumulated Provision for Property Insurance (228.1)		
21	Accumulated Provision for Injuries and Damages (228.2)		
22	Accumulated Provision for Pensions and Benefits (228.3)		
23	Accumulated Miscellaneous Operating Provisions (228.4)		
24	Accumulated Provision for Rate Refunds (229)		
25	Asset Retirement Obligations (230)		
26	TOTAL OTHER NONCURRENT LIABILITIES (Enter Total of Lines 19 thru 25)		
27	Current and Accrued Liabilities:		
28	Notes and Accounts Payable (Report amounts applicable to associated companies in a footnote) (231 to 234)		
29	Customer Debits (235)		
30	Taxes Accrued (236)		
31	Interest Accrued (237)		
32	Miscellaneous Current and Accrued Liabilities (242)		
33	Obligations Under Capital Leases-Current (243)		
34	Derivative Instrument Liabilities (244)		
35	Derivative Instrument Liabilities - Hedges (245)		
36	TOTAL CURRENT AND ACCRUED LIABILITIES (Enter total of lines 28 thru 35)		
37	Deferred Credits:		
38	Customer Advances for Construction (252)		
39	Other Deferred Credits (253)		
40	Other Regulatory Liabilities (254)		
41	Accumulated Deferred Investment Tax Credits (255)		
42	Deferred Gains from Disposition of Utility Plant (256)		
43	Unamortized Gain on Reacquired Debt (257)		
44	Accumulated Deferred Income Taxes (281-283)		
45	TOTAL DEFERRED CREDITS (Enter total of lines 38 thru 44)		
46	TOTAL LIABILITIES AND OTHER CREDITS (Enter total of lines 11, 17, 26, 36 and 45)		

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -26-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

1. Report amounts for accounts 412 and 413, Revenues and expenses from Utility Plant Leased to Others, in the Other Utility column (h, I or j, k) in a similar manner to a utility department. Spread the amount(s) over lines 01 to 22 as appropriate. Include these amounts in column (b) and (c) totals.
2. Report amounts for account 414, Other Utility Operating Income, in the same manner as accounts 412 and 413.
3. Provide an explanation in Part VII. Notes to Financial Statements, of such unsettled rate proceedings where a contingency exists that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects; include an explanation for the major factors which affect the rights of the utility to retain such revenues or to recover amounts paid with respect to power or gas purchases.

	Account (a)	Total (d to k)		Electric Utility	
		Current Year (b)	Change From Previous Year (c)	Current Year (d)	Change From previous Year (e)
01	UTILITY OPERATING INCOME				
02	Operating Revenues *(400)*				
03	Operating Expenses:				
04	Operating Expenses (401)				
05	Maintenance Expense (402)				
06	Depreciation Expense (403)				
07	Depreciation Expense for Asset Retirement Costs (403.1)				
08	Amortization Expense (Specify by account)				
09					
10	Regulatory Debits (407.3)				
11	(Less) Regulatory Credits (407.4)				
12	Taxes Other Than Income Taxes (408.1)				
13	Federal Income Taxes (409.1)				
14	Other Income Taxes (409. 1)				
15	Provision For Deferred Income Taxes (410.1)				
16	Provision For Deferred Income Taxes - Credit (411.1)				
17	Investment Tax Credit Adjustments - Net (411.4)				
18	Gains From Disposition of Utility Plant (411.6)				
19	Losses From Disposition of Utility Plant (411.7)				
20	Gains From Disposition of Allowances (411.8)				
21	Losses From Disposition of Allowances (411.9)				
22	Accretion Expense (411.10)				
23	TOTAL UTILITY OPERATING EXPENSES *(Enter total of lines 04 thru 22)*				
24	Net Utility Operating Income *(Enter total of line 02 less 23)*				

FERC FORM NO. 1-F (REVISED 12-02) Page 6

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -27-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

4. Provide an explanation in Part VII, Notes to Financial Statements, of significant amounts of any refunds made or received during the year resulting from settlement of any rate proceeding affecting revenued received for costs incurred for power or gas purchases and a summary of the adjustment made to balance sheet, income, and expense accounts.
5. If any note appearing in the report to stockholders are applicable to the statement of income, either include such note in an attachment, or enter such data in Part VII.
6. Provide an explanation in Part VII, Note " " " of only those changes in account methods made during the year which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding year. Also, give the approximate dollar effects of such changes.

Gas Utility		Other Utility		Other utility			
Current Year (f)	Change From Previous Year (g)	Current Year (h)	Change From Previous Year (i)	Current Year (j)	Change From Previous Year (k)	Account	
							01
						(400)	02
							03
						(401)	04
						(402)	05
						(403)	06
						(403.1)	07
							08
							09
						(407.3)	10
						(407.4	11
						(408.1)	12
						(409.1)	13
						(409.1)	14
						(410.1)	15
						(411.1)	16
						(411.4)	17
						(411.6)	18
						(411.7)	19
						(411.8)	20
						(411.9)	21
						(411.10)	22
						TOTAL	23
						NET	24

FERC FORM NO. 1-F (REVISED 12-02) Page 7

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -28-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

	Account (a)	Total Current Year (b)	Total Change From Previous Year (c)
24	Net Utility Operating Income *(Carrier Forward from line 24, page 6)*		
25	OTHER INCOME AND DEDUCTIONS		
26	Other Income:		
27	Nonutility Operating Income *(415-418)*		
28	Interest and Dividend Income *(419)*		
29	Allowance for Other Funds Used During Construction *(419.1)*		
30	Miscellaneous Nonoperating Income *(421)*		
31	Gain on Disposition of Property *(415-418)*		
32	TOTAL OTHER INCOME *(Enter Total of lines 27 thru 31)*		
33	Other Income Deductions:		
34	Loss on Disposition of Property *(421.2)*		
35	Miscellaneous Amortization *(425)*		
36	Miscellaneous Income Deductions *(426.1 - 426.5)*		
37	TOTAL OTHER INCOME DEDUCTIONS *(Enter total of lines 34 thru 36)*		
38	Taxes Applicable to Other Income and Deductions:		
39	Taxes Applicable to Other Income and Deductions:		
40	Federal Income Taxes *(409.2)*		
41	Other Income Taxes *(409.2)*		
42	Provision for Deferred Income Taxes *(410.2)*		
43	Provision for Deferred Income *(411.2)*		
44	Investment Tax Credit Adjustments - Net *(411.5)*		
45	Investment Tax Credits *(420)*		
46	TOTAL TAXES APPLICABLE TO OTHER INCOME AND DEDUCTIONS *(Enter total of lines 40 thru 45)*		
47	Net Other Income and Deductions *(Enter total of line 32 less 37 and 46)*		
48	INTEREST CHARGES		
49	Interest on Long-term Debt *(427)*		
50	Amortization of Debt Discount and Expense *(428)*		
51	Amortization of Loss on Reacquired Debt *(428.1)*		
52	Amortization of Premium on Debt - Credit *(429)*		
53	Amortization of Gain on Reacquired Debt - Credit *(429. 1)*		
54	Interest on Debt to Associated Companies *(430)*		
55	Other Interest Expense *(431)*		
56	Allowance For Borrowed Funds Used During Construction - Credit *(432)*		
57	Net Interest Charge *(Enter total of lines 49 thru 56)*		
58	Income Before Extraordinary Items *(Enter total of lines 24 and 47, less 57)*		
59	EXTRAORDINARY ITEMS		
60	Extraordinary Income *(434)*		
61	Extraordinary Deduction - Debit *(435)*		
62	Net Extraordinary Items *(Enter total of line 60 less 61)*		
63	Income Taxes - *(409.3)*		
64	Extraordinary Items After Taxes *(Enter total of line 62 less 63)*		
65	Net Income *(Enter total of lines 58 and 64)*		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -29-

[SUBSTITUTE PAGE FOR PART III]

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income *(219)*	122 (a) (b)		
15	TOTAL Proprietary Capital *(Enter Total of lines 2 thru 14)*	-		
16	LONG-TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	-		
22	(Less) Unamortized Discount on Long-Term Debt-Debit (226)	-		
23	TOTAL Long-Term Debt (Enter Total of lines 17 thru 22)	-		
24	OTHER NONCURRENT LIABILITIES			
25	Obligations Under Capital Leases - Noncurrent (227)	-		
26	Accumulated Provision for Property Insurance (228.1)	-		
27	Accumulated Provision for Injuries and Damages (228.2)	-		
28	Accumulated Provision for Pensions and Benefits (228.3)	-		
29	Accumulated Miscellaneous Operating Provisions (228.4)	-		
30	Accumulated Provision for Rate Refunds (229)	-		
31	Asset Retirement Obligations (230)	-		
32	TOTAL Other Noncurrent Liabilities (Enter Total of lines 25 thru 31)			
33	CURRENT AND ACCRUED LIABILITIES			
34	Notes Payable (231)	-		
35	Accounts Payable (232)	-		
36	Notes Payable to Associated Companies (233)	-		
37	Accounts Payable to Associated Companies (234)	-		
38	Customer Deposits (235)	-		
39	Taxes Accrued (236)	262-263		
40	Interest Accrued (237)	-		
41	Dividends Declared (238)	-		
42	Matured Long-Term Debt (239)	-		
43	Matured Interest (240)	-		
44	Tax Collections Payable (241)	-		
45	Miscellaneous Current and Accrued Liabilities (242)	-		
46	Obligations Under Capital Leases-Current (243)	-		

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -30-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
47	Derivative Instrument Liabilities (244)			
48	Derivative Instrument Liabilities - Hedging (245)			
49	TOTAL Current and Accrued Liabilities *(Enter Total of lines 34 thru 48)*			
50	DEFERRED CREDITS			
51	Customer Advances for Construction (252)			
52	Accumulated Deferred Investment Tax Credits (255)	266-267		
53	Deferred Gains from Disposition of Utility Plant (256)			
54	Other Deferred Credits (253)	269		
55	Other Regulatory Liabilities (254)	278		
56	Unamortized Gain on Reacquired Debt (257)	-		
57	Accumulated Deferred Income Taxes (281-283)	272-277		
58	TOTAL Deferred Credits *(Enter Total of lines 51 thru 57)*			
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
71				
72	TOTAL Liabilities and Other Credits *(Enter Total of lines 15, 23, 32, 49 and 58)*			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -31-

(SUBSTITUTE PAGE FOR PART IV)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts *412* and *413, Revenue and Expenses from Utility Plant Leased to Others*, in another utility column (l, k, m, o) in a similar manner to a utility department. Spread the amount(s) over lines *02* thru *24* as appropriate. Include these amounts in columns (c) and (d) totals.
2. Report amounts in account *414, Other Utility* Operating Income, in the same manner as accounts *412* and *413* above.
3. Report data for lines *7, 9,* and 10 for Natural Gas companies using accounts *404.1, 404.2, 404.3, 407.1,* and *407.2*.
4. *Use* page *122* for important notes regarding the statement of income or any account thereof.
5. Give concise explanations concerning unsettled rate proceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the rights of the utility to retain such revenues or recover amounts paid with respect to power and gas purchases.
6. Give concise explanations concerning significant amounts of any refunds made or received during the year.

Line No.	Title of Account (a)	Ref Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
1	UTILITY OPERATING INCOME			
2	Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	320-325		
5	Maintenance Expenses (402)	320-325		
6	Depreciation Expense (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization & Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-338		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)			
11	Amortization of Conversion Expenses (407)			
12	Regulatory Debits (407-3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other Than Income Taxes (408.1)	262-263		
15	Income Taxes - Federal (409.1)	262-263		
16	- Other (409.1)	262-263		
17	Provision for Deferred Income Taxes (410.1)	234, 272-277		
18	(Less) Provision for Deferred Income Taxes-Cr. (411.1)	234, 272-277		
19	Investment Tax Credit Adjustment - Net (411.4)	266		
20	(Less) Gains from Disp. of Utility Plant (411.6)			
21	Losses from Disp. of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Enter Total of lines 4 thru 24)			
26	Net Utility Operating Income (Enter Total of line 2 less 25) (Carry forward to page 117, line 27)			

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -32-

(SUBSTITUTE PAGE FOR PART IV)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
27	Net Utility Operating Income *(Carried forward from page 114)*			
28	Other Income and Deductions			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues From Merchandising, Jobbing and Contract Work (415)			
32	(Less) Costs and Expenses of Merchandising, Jobbing & Contract Work (416)			
33	Revenues From Nonutility Operations (417)			
34	(Less) Expenses of Nonutility operations (417.1,)			
35	Nonoperating Rental Income (418)			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
38	Interest and Dividend Income (419)			
39	Allowance for Other Funds Used During Construction (411.1)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other income *(Enter Total of lines 31 thru 40)*			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)	340		
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions(Total of lines 43 thru 45)			
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other Than income Taxes (408.2)	262-263		
49	Income Taxes-Federal (409.2)	262-263		
50	Income Taxes-Other (409.2)	262-263		
51	Provision for Deferred Inc. Taxes (410.2)	234,272-277		
52	(Less) Provision for Deferred Income Taxes--Cr. (411.2)	234,272-277		
53	Investment Tax Credit Adjustment - Net (411.5)			
54	(Less) Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Enter Total of 48 thru 54)			
56	Net Other Income and Deductions (Enter Total of lines 41, 46, 55)			
57	Interest Charges			
58	Interest on Long-Term Debt (427)			
59	Amort. of Debt Disc. and Expense (428)			
60	Amortization of Loss on Reacquired Debt (428.1)			
61	(Less) Amortization of Premium on Debt-Credit (429)			
62	(Less) Amortization of Gain on Reacquired Debt-Credit (429.1)			
63	Interest on Debt to Assoc. Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction--Cr. (432)			
66	Net Interest Charges (Enter Total of lines 58 thru 65)			
67	Income Before Extraordinary Items (Enter Total of lines 27, 56 and 66)			
68	Extraordinary Items			
69	Extraordinary income (434)			
70	(Less) Extraordinary Deductions (435)			
71	Net Extraordinary Items (Enter Total of line 69 less line 70)			
72	Income Taxes-Federal and Other (409.3)	262-263		
73	Extraordinary Items After Taxes (Enter Total *of line 71* less line 72)			
74	Net Income *(Enter Total of lines 67 and 73)*			

Appendix A Revised Schedules for FERC Forms 1; 1-F, 2, 2-A, and 6 -33-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments 5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
5. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d) reversals of tentative distributions of prior year of unclassified retirements.

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
1	1. INTANGIBLE PLANT		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of Lines 2, 3, and 4)		
6	2. PRODUCTION PLANT		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Tubogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of Lines 8 thru 15)		
17	B. Nuclear Production Plant		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbo generator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of Lines 18 thru 24)		
26	C. Hydraulic Production Plant		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Misc. Power Plant Equipment		
33	(336) Roads, Railroad, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of Lines 27 thru 34)		
36	D. Other Production Plant		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -34-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Show in a footnote the account distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column (f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount, footnote and provide a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
					1
				(301)	2
				(302)	3
				(303)	4
					5
					6
					7
				(310)	8
				(311)	9
				(312)	10
				(313)	11
				(314)	12
				(315)	13
				(316)	14
				(317)	15
					16
					17
				(320)	18
				(321)	19
				(322)	20
				(323)	21
				(324)	22
				(325)	23
				(326)	24
					25
					26
				(330)	27
				(331)	28
				(332)	29
				(333)	30
				(334)	31
				(335)	32
				(336)	33
				(337)	34
					35
					36
				(340)	37
				(341)	38
				(342)	39
				(343)	40
				(344)	41
				(345)	42

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -35-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	TOTAL Other Production Plant (Enter Total of Lines 37 thru 44)		
46	TOTAL Production Plant (Enter Total of Lines 16, 25, 35, and 45)		
47	3. TRANSMISSION PLANT		
48	(350) Land and Land Rights		
49	(352) Structures and Improvements		
50	(353) Station Equipment		
51	(354) Towers and Fixtures		
52	(355) Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of Liens 44 thru 52)		
59	4. DISTRIBUTION PLANT		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
63	(363) Storage Battery Equipment		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	Total Distribution Plant (Enter Total of lines 60 thru 79)		
76	5. GENERAL PLANT		
77	(389) Land and Land Rights		
78	(390) Structures and Improvements		
79	(391) Office Furniture and Equipment		
80	(392) Transportation Equipment		
81	(393) Stores Equipment		
82	(394) Tools, Shop and Garage Equipment		
83	(395) Laboratory, Equipment		
84	(396)Power Operated Equipment		
85	(397) Communication Equipment		
86	(398) Miscellaneous Equipment		
87	SUBTOTAL (Enter Total of Lines 77 thru 86)		
88	(399) Other Tangible Property		
89	(399.1) Asset Retirement Costs for General Plant		
90	TOTAL General Plant (Enter Total of Lines 87, 88, and 89)		
91	TOTAL (Accounts 101 and 106) (Lines 5, 16, 25, 35, 45, 58, 75, and 90)		
92	(102) Electric Plant Purchased (See Instr. 8)		
93	(Less) (102) Electric Plant Sold (See Instr. 8)		
94	(103) Experimental Plant Unclassified		
95	TOTAL Electric Plant in Service (Enter Total of Lines 91 thru 94)		

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -36-
(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
				(346)	43
				(347)	44
					45
					46
					47
				(650)	48
				(352)	49
				(353)	50
				(354)	51
				(355)	52
				(356)	53
				(357)	54
				(358)	55
				(359)	56
				(359.1)	57
					58
					59
				(360)	60
				(361)	61
				(362)	62
				(363)	63
				(364)	64
				(365)	65
				(366)	66
				(367)	67
				(368)	68
				(369)	69
				(370)	70
				(371)	71
				(372)	72
				(373)	73
				(374)	74
					75
					76
				(389)	77
				(390)	78
				(391)	79
				(392)	80
				(393)	81
				(394)	82
				(395)	83
				(396)	84
				(397)	85
				(398)	86
					87
				(399)	88
				(399.1)	89
					90
					91
				(102)	92
					93
				(103)	94
					95

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -37-
(SUBSTITUTE PAGE FOR PART XII)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column 9d), excluding retirements of nondepreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service.

If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant leased to Others (e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expenses of Electric Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify):				
9					
10	Total Depreciation Provision For Year (Enter Total of Lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Charges For Plant Retired (Enter Total of Lines 12 thru 14)				
16	Other Debit or Credit Items (Describe):				
17					
18	Book Cost of Asset Retirement Costs				
19	Balance End of Year (Enter Total of lines 1, 10, 15, 16, and 18)				

Section B. Balances at End of Year According to Functional Classifications

20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
24	Other Production				
25	Transmission				
26	Distribution				
27	General				
28	TOTAL (Enter Total of Lines 20 thru 27)				

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -38-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No	Title of Schedule	Reference Page No (b)	Date Revised (c)	Remarks (d)
	GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
1	General Information	101		
2	Control Over Respondent	102		
3	Corporations Controlled by Respondent	103		
4	Security Holders and Voting Powers	107		
5	Important Changes During the Year	108		
6	Comparative Balance Sheet	110-113		
7	Statement of Income for the Year	114-116		
8	Statement of Retained Earnings for the Year	118-119		
9	Statements of Cash Flows	120-121		
10	Notes to Financial Statements	122		
	BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
11	Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201		
12	Gas Plant in Service	204-209		
13	Gas Property and Capacity Leased from Others	212		
14	Gas Property and Capacity Leased to Others	213		
15	Gas Plant Held for Future Use	214		
16	Construction Work in Progress-Gas	216		
17	General Description of Construction Overhead Procedure	218		
18	Accumulated Provision for Depreciation of Gas Utility Plant	219		
19	Gas Stored	220		
20	Investments	222-223		
21	Investments in Subsidiary Companies	224-225		
22	Prepayment	230		
23	Extraordinary Property Losses	230		
24	Unrecovered Plant and Regulatory Study Costs	230		
25	Other Regulatory Assets	232		
26	Miscellaneous Deferred Debits	233		
27	Accumulated Deferred Income Taxes	234-235		
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
28	Capital Stock	230-251		
29	Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock	252		
	Other Paid-in Capital	253		
30	Discount on Capital Stock	254		
31	Capital Stock Expense	254		
32	Securities issued or Assumed and Securities Refunded or Retired During the Year	255		
33	Long-Term Debt	256-257		
34	Unamortized Debt Expense, Premium, and Discount on Long-Term Debt	258-259		
35	Unamortized Loss and Gain on Reacquired Debt	260		
	Reconciliation of Reported Net Income with Taxable Income for Federal	261		
36	Income Taxes			
37				

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -39-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No	Title of Schedule	Reference Page No (b)	Date Revised (c)	Remarks (d)
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits) (Continued)			
38	Taxes Accrued, Prepaid, and Charged During Year	262-263		
39	Miscellaneous Current and Accrued Liabilities	268		
40	Other Deferred Credits	269		
41	Accumulated Deferred Income Taxes-Other Property	274-275		
42	Accumulated Deferred Income Taxes-Other	276-277		
43	Other Regulatory Liabilities	278		
	INCOME ACCOUNT SUPPORTING SCHEDULES			
44	Gas Operating Revenues	300-301		
45	Revenues from Transportation of Gas of Others Through Gathering Facilities	302-303		
46	Revenues from Transportation of Gas of Others Through Transmission Facilities	304-305		
47	Revenues from Storage Gas of Others	306-307		
48	Other Gas Revenues	308		
49	Gas Operation and Maintenance Expenses	317-325		
50	Exchange and Imbalance Transactions	328		
51	Gas Used in Utility Operations	331		
52	Transmission and Compression of Gas by Others	332		
53	Other Gas Supply Expenses	334		
54	Miscellaneous General Expenses-Gas	335		
55	Depreciation, Depletion, and Amortization of Gas Plant	336-338		
56	Particulars Concerning Certain income Deduction and Interest Charges Accounts	340		
	COMMON SECTION			
57	Regulatory Commission Expenses	350-351		
58	Distribution of Salaries and Wages	354-355		
59	Charges for Outside Professional and Other Consultative Services	357		
	GAS PLANT STATISTICAL DATA			
60	Compressor Stations	508-509		
61	Gas Storage Projects	512-513		
62	Transmission Lines	514		
63	Transmission System Peak Deliveries	518		
64	Auxiliary Peaking Facilities	519		
65	Gas Account-Natural Gas	520		
66	System Map	522		
67	Footnote Reference	551		
68	Footnote Text	552		
69	Stockholders' Reports (check appropriate box)			
	☐ Four copies will be submitted			
	☐ No annual report to stockholders is prepared			

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Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	*(Less)* Discount on Capital Stock (213)	254		
10	*(Less)* Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216 1)	118-119		
13	*(Less)* Reacquired Capital (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	118 (a) (b)		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	*(Less)* Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases -- Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228 1)			
28	Accumulated provision for Injuries and Damages (228 2)			
29	Accumulated Provision for Pensions and Benefits (228 3)			
30	Accumulated Miscellaneous Operating Provision (228 4)			
31	Accumulated Provision for Rate Refunds (229)			
32	Asset Retirement Obligations (230)			
33	TOTAL Other Noncurrent Liabilities (total of lines 26 thru 32)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
34	CURRENT AND ACCRUED LIABILITIES			
35	Current Portion of Long-Term Debt			
36	Notes Payable (231)			
37	Accounts Payable (232)			
38	Notes Payable to Associated Companies (233)			
39	Accounts Payable to Associated Companies (234)			
40	Customer Deposits (235)			
41	Taxes Accrued (236)	262-263		
42	Interest Accrued (237)			
43	Dividends Declared (238)			
44	Matured Long-Term Debt (239)			
45	Matured Interest (240)			
46	Tax Collections Payable (241)			
47	Miscellaneous Current and Accrued Liabilities (242)	268		
48	Obligations Under Capital Leases – Current (243)			
49	Derivative Instrument Liabilities (244)			
50	Derivative Instrument Liabilities - Hedges (245)			
51	TOTAL Current and Accrued Liabilities (Total of lines 35 thru 50)			
52	DEFERRED CREDITS			
53	Customer Advances for Construction (252)			
54	Accumulated Deferred Investment Tax Credits (255)			
55	Deferred Gains from Disposition of Utility Plant (256)			
56	Other Deferred Credits (253)	269		
57	Other Regulatory Liabilities (254)	278		
58	Unamortized Gain on Reacquired Debt (257)	260		
59	Accumulated Deferred Income Taxes (281-283)			
60	TOTAL Deferred Credits (Total of lines 53 thru 59)			
61	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 33, 51, and 60)			

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -42-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR

1 Report amounts for accounts 412 and 413, *Revenue and Expenses from Utility Plant Leased to Others*, in another utility column (i,j) in a similar manner to a utility department Spread the amount(s) over lines 2 thru 24 as appropriate Include these amounts in columns (c) and (d) totals

2 Report amounts in discount 414, *Other Utility Operating Income*, in the same manner as accounts 412 and 413 above

3 Report data for lines 7, 9, and 10 for Natural Gas companies using accounts 404.1, 404.2, 404.3, 407 1, and 407. 2

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	UTILITY OPERATING INCOME			
2	Gas Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	317-325		
5	Maintenance Expenses (402)	317-325		
6	Depreciation Expenses (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization and Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acu Adjustment (406)	336-338		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407.1)			
11	Amortization of Conversion Expenses (407 2)			
12	.Regulatory Debits (407 3)			
13	(Less) Regulatory Credits (407 4)			
14	Taxes Other than Income Taxes (408 1)	262-263		
15	Income Taxes – Federal (409 1)	262-263		
16	Income Taxes – Other (409 1)	262-263		
17	Provision of Deferred Income Taxes (410 1)	234-235		
18	(Less) Provision for Deferred Income Taxes -- Credit (411 1)	234-235		
19	Investment Tax Credit Adjustment – Net (411 4)			
20	(Less) Gains from Disposition of Allowances (411 6)			
21	Losses from Disposition of Utility Plant (411 7)			
22	(Less) Gains from Disposition of Allowances (411 8)			
23	Losses from Disposition of Allowances (411 9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Total of lines 4 thru 24)			
26	Net Utility Operating Income (Total of lines 2 less 24) (Carry forward to page 116, line 27)			

FERC FORM NO. 2 (12-02) Page 114

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -43-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
27	Net Utility Operating Income (Carrier forward from page 114)			
28	OTHER INCOME AND DEDUCTIONS			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues form Merchandising, Jobbing and Contract Work (415)			
32	*(Less)* Costs and Expenses of Merchandising, Jobbing & Contract Work (416)			
33	Revenues from Nonutility Operations (417)			
34	*(Less)* Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other Income (Total of lines 31 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)			
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions (Total of lines 43 thru 45)	340		
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other than Income Taxes (406.2)	262-263		
49	Income Taxes -- Federal (409.2)	262-263		
50	Income Taxes -- Other (409.2)	262-263		
51	Provision for Deferred Income Taxes (410.2)	234-235		
52	*(Less)* Provision for Deferred Income Taxes- Credit (411.2)	234-235		
53	Investment Tax Credit Adjustments--Net (411.5)			
54	*(Less)* Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of lines 48-54)			
56	Net Other Income and Deductions (Total of lines 41, 46, and 55)			
57	INTEREST CHARGES			
58	Interest on Long-Term Debt (427)			
59	Amortization of Debt Discount and Expense (428)	258-259		
60	Amortization of Loss on Reacquired Debt (428.1)			
61	*(Less)* Amortization of Premium on Debt-Credit (429)	258-259		
62	*(Less)* Amortization of Gain on Reacquired Debt- Credit (429.1)			
63	Interest on Debt to Associated Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less)-Allowance for Borrowed Funds Used During Construction-Credit (432)			
66	Net Interest Charges (Total of line 58 thru 65)			
67	Income Before Extraordinary Items (Total of lines 27, 56 and 66)			
68	EXTRAORDINARY ITEMS			
69	Extraordinary Income (434)			
70	*(Less)* Extraordinary Deductions (435)			
71	Net Extraordinary Items (Total of line 69 less 70)			
72	Income Taxes--Federal and Other (409.3)	262-263		
73	Extraordinary Items after Taxes (Total of line 71 less line 72)			
74	Net Income (Total of lines 67 and 73)			

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -44-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106)

1. Report below the original cost of gas plant in service according to the prescribed accounts.
2. In addition to Account 101, *Gas Plant in Service (Classified)*, this page and the next include Account 102, Gas Plant Purchased or Sold, Account 103, Experimental Gas Plant Unclassified, and Account 106, Complete Construction Not Classified-Gas.
3. Include in column (c) and (d), as appropriate corrections of additions and retirements for the current or preceding year.
4. Include subsequent measurement revisions to the asset retirement costs capitalized in column (e) adjustments.
5. Enclose in parenthesis credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Like wise, if the respondent has a significant amount of plant retirement which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirement, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d) reversals of tentative distributions of prior year's unclassified retirement. Attach supplemental statement showing the account distributions of these tentative classifications in column (c) and (d).

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
1	INTANGIBLE PLANT		
2	301 Organization		
3	302 Franchises and Consents		
4	303 Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2 thru 4)		
6	PRODUCTION PLANT		
7	Natural Gas Production and Gathering Plant		
8	325.1 Producing Lands		
9	325.2 Producing Leaseholds		
10	325.3 Gas Rights		
11	325.4 Rights-of-Way		
12	325.5 Other Land and Land Rights		
13	326 Gas Well Structures		
14	327 Field Compressor Station Structures		
15	328 Field Measuring and Regulating Station Equipment		
16	329 Other Structures		
17	330 Producing Gas Wells-Well Construction		
18	331 Producing Gas Wells-Well Equipment		
19	332 Field Lines		
20	333 Field Compressor Station Equipment		
21	334 Field Measuring and Regulating Station Equipment		
22	335 Drilling and Cleaning Equipment		
23	336 Purification Equipment		
24	337 Other Equipment		
25	338 Unsuccessful Exploration and Development Costs		
26	339 Asset Retirement Costs for Natural Gas Production and Gathering Plant		
27	TOTAL Production and Gathering Plant (Enter Total of lines 8 thru 26)		
28	PRODUCTS EXTRACTION PLANT		
29	340 Land and Land Rights		
30	341 Structures and Improvements		
31	342 Extraction and Refining Equipment		
32	343 Pipe Lines		
33	344 Extracted Products Storage Equipment		
34	345 Compressor Equipment		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -45-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
35	346 Gas Measuring and Regulating Equipment		
36	347 Other Equipment		
37	348 Asset Retirement Costs for Products Extraction Plant		
38	TOTAL Products Extraction Plant (Enter Total of lines 29 thru 37)		
39	TOTAL Natural Gas Production Plant (Enter Total of lines 27 and 38)		
40	Manufactured Gas Production Plant *(Submit Supplementary Statement)*		
41	TOTAL Production Plant (Enter Total of lines 39 and 40)		
42	NATURAL GAS STORAGE AND PROCESSING PLANT		
43	Underground Storage Plant		
44	350.1 Land		
45	350.2 Rights-of-Way		
46	351 Structures and Improvements		
47	352 Wells		
48	352.1 Storage Leaseholds and Rights		
49	352.2 Reservoirs		
50	352.3 Non-recoverable Natural Gas		
51	353 Lines		
52	354 Compressor Station Equipment		
53	355 Measuring and Regulating Equipment		
54	356 Purification Equipment		
55	357 Other Equipment		
56	358 Asset Retirement Costs for Underground Storage Plant		
57	TOTAL Underground Storage Plant (Enter Total of lines 43 thru 56)		
58	359 Other Storage Plant		
59	360 Land and Land Rights		
60	361 Structures and Improvements		
61	362 Gas Holders		
62	363 Purification Equipment		
63	363.1 Liquefaction Equipment		
64	363.2 Vaporizing Equipment		
65	363.2 Compressor Equipment		
66	363.4 Measuring and Regulating Equipment		
67	363.5 Other Equipment		
68	363.6 Asset Retirement Costs for Other Storage Plant		
69	TOTAL Other Storage Plant (Enter Total of lines 58 thru 68)		
70	Base Load Liquefied Natural Gas Terminaling and Processing Plant		
71	364.1 Land and Land Rights		
72	364.2 Structures and Improvements		
73	364.3 LNG Processing Terminal Equipment		
74	364.4 LNG Transportation Equipment		
75	364.5 Measuring and Regulating Equipment		
76	364.6 Compressor Station Equipment		
77	364.7 Communications Equipment		
78	364.8 Other Equipment		
79	364.9 Asset Retirement Costs for Base Load Liquefied Natural Gas Terminaling and Processing Plant		
80	TOTAL Base Load Liquefied Natural Gas Terminaling and Processing Plant (Lines 71 thru 79)		
81	TOTAL Natural Gas Storage and Processing Plant (Total of lines 57, 69 and 80)		
82	TRANSMISSION PLANT		
83	365.1 Land and Land Rights		
84	365.2 Right-of-Way		
85	366 Structures and Improvements		

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -46-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
86	367 Mains		
87	368 Compressor Station Equipment		
88	369 Measuring and Regulating Station Equipment		
89	370 Communication Equipment		
90	371 Other Equipment		
91	372 Asset Retirement Costs for Transmission Plant		
92	TOTAL Transmission Plant (Enter Totals of lines 83 thru 91)		
93	DISTRIBUTION PLANT		
94	374 Land and Land Rights		
95	375 Structures and Improvements		
96	376 Mains		
97	377 Compressor Station Equipment		
98	378 Measuring and Regulating Station Equipment-General		
99	379 Measuring and Regulating Station Equipment-City Gate		
100	380 Services		
101	381 Meters		
102	382 Meter Installations		
103	383 House Regulators		
104	384 House Regulator Installations		
105	385 Industrial Measuring and Regulating Station Equipment		
106	386 Other Property on Customers' Premises		
107	387 Other Equipment		
108	388 Asset Retirement Costs for Distribution Plant		
109	TOTAL Distribution Plant (Enter Total of lines 94 thru 108)		
1110	GENERAL PLANT		
111	389 Land and Land Rights		
112	390 Structures and Improvements		
113	391 Office Furniture and Equipment		
114	392 transportation Equipment		
115	393 Stores Equipment		
116	394 Tools, Shop, and Garage Equipment		
117	395 Laboratory Equipment		
118	396 Power Operated Equipment		
119	397 Communication Equipment		
120	398 Miscellaneous Equipment		
121	Subtotal (Enter Total of lines 111 thru 120)		
122	399 Other Tangible Property		
123	399.1 Asset Retirement Costs for General Plant		
124	TOTAL General Plant (Enter Total of lines 121, 122 and 123)		
125	TOTAL (Accounts 101 and 106)		
126	Gas Plant Purchased (See Instruction 8)		
127	*(Less)* Gas Plant Sold (See Instruction 8)		
128	Experimental Gas Plant Unclassified		
129	TOTAL Gas Plant in Service (Enter Total of lines 125 thru 128)		

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -47-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ACCUMULATED PROVISION FOR DEPRECIATION OF GAS UTILITY PLANT (ACCOUNT 108)

1 Explain in a footnote any important adjustments during year
2 Explain in a footnote any difference between the amount for book cost of plant retired, line 10, column (c), and that reported for gas plant in service, page 204-209, column (d), excluding retirements of nondepreciable property
3 The provisions of Account 108 in the Uniform System of Accounts require that retirements of depreciable plant be recorded when such plant is removed from service If the respondent has a significant amount of plant retired at year end which had not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications
4 Show separately interest credits under a sinking fund or similar method of depreciation accounting
5 At lines 8 and 15, add rows as necessary to report all data Additional rows should be numbered in sequence, e g, 8. 01, 8.02, etc.

Line No	Item (a)	Total (c + d + e) (b)	Gas Plant in Service (c)	Gas Plant Held for Future Use (d)	Gas Plant Leased to Others (e)
	Section A. BALANCES AND CHANGES DURING YEAR				
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Gas Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Clearing (Specify):				
8.01					
9	TOTAL Depreciation Provision For Year (Total of Lines 3 thru 8)				
10	Net Charges for Plant Retired:				
11	Book Cost of Plant Retired				
12	Cost of Removal				
13	Salvage (Credit)				
14	TOTAL Net Charges for Plant Retirements (Total of Lines 11 thru13)				
15	Other Debit or Credit Items (Describe):				
15.01					
16	Book Cost of Asset Retirement Costs				
17	Balance End of Year (Total of lines 1, 9, 14, 15, and16)				
	Section B. BALANCES AT END OF YEAR ACCORDING TO FUNCTIONAL CLASSIFICATIONS				
18	Productions-Manufactured Gas				
19	Production and Gathering -Natural Gas				
20	Products Extraction-Natural Gas				
21	Underground Gas Storage				
22	Other Storage Plant				
23	Base Load LNG Terminating and Processing Plant				
24	Transmission				
25	Distribution				
26	General				
27	TOTAL (Total of lines 18 thru 26)				

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -48-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

DEPRECIATION, DEPLETION, AND AMORTIZATION OF GAS PLANT (ACCOUNTS 403, 403.1, 404 1, 404 2, 404 3, 405) *(Except Amortization of Acquisition Adjustments)*

1 Report in Section A the amounts of depreciation expense depletion and amortization for the accounts indicated and classified according to t he plant functional groups shown

2 Report in Section B, column (b) all depreciable or amortizable plant balances to which rates are applied and show a composite total (if more desirable, report by plant account, subaccount or functional classifications other than those pre-printed in column (a) Indicate in a footnote the manner in which column (b) balances are

Section A. Summary of Depreciation, Depletion, and Amortization Charges

Line No	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization and Depletion of Production Natural Gas Land and Land Rights (Account 404.1) (d)	Amortization of Underground Storage Land and Land Rights (Account 404.2) (e)
1	Intangible plant				
2	Production plant, manufactured gas				
3	Production and gathering plant, natural gas				
4	Products extraction plant				
5	Underground gas storage plant				
6	Other storage plant				
7	Base load LNG terminaling and processing plant				
8	Transmission plant				
9	Distribution plant				
10	General plant				
11	Common plant-gas				
12	TOTAL				

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -49-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

DEPRECIATION, DEPLETION, AND AMORTIZATION OF GAS PLANT (ACCOUNTS 403, 403.1 404 1, 404 2, 404 3, 405) *(Except Amortization of Acquisition Adjustments)* (Continued)

obtained If average balances are used, state the method of averaging used For column (c) report available information for each plant functional classification listed in column (a) If composite depreciation accounting is used, report available information called for in columns (b) and (d) on this basis Where the unit-of-production method is used

to determine depreciation charges, shown in a footnote any revisions made to estimated gas reserves.

3 If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state in a footnote the amounts and nature of the provisions and the plant items to which related.

Section A. Summary of Depreciation, Depletion, and Amortization Charges

Amortization of Other Limited-term Gas Plant (Account 404 3) (f)	Amortization of Other Gas Plant (Account 405) (g)	Total (b to g) (h)	Functional Classification (a)	Line No
			Intangible plant	1
			Production plant, manufactured gas	2
			Production and gathering plant, natural gas	3
			Products extraction plant	4
			Underground gas storage plant	5
			Other storage plant	6
			Base Load LNG terminaling and processing plant	7
			Transmission plant	8
			Distribution plant	9
			General plant	10
			Common plant-gas	11
			TOTAL	12

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -50-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of R eport (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	*(Less)* Discount on Capital Stock (213)	254		
10	*(Less)* Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	*(Less)* Reacquired Capital (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	117		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	*(Less)* Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases -- Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228.1)			
28	Accumulated provision for Injuries and Damages (228.2)			
29	Accumulated Provision for Pensions and Benefits (228.3)			
30	Accumulated Miscellaneous Operating Provision (228.4)			
31	Accumulated Provision for Rate Refunds (229)			
32	Asset Retirement Obligations (230)			
33	TOTAL Other Noncurrent Liabilities (Total of lines 26 thru 32)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -51-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
34	CURRENT AND ACCRUED LIABILITIES			
35	Current Portion of Long-Term Debt			
36	Notes Payable (231)			
37	Accounts Payable (232)			
38	Notes Payable to Associated Companies (233)			
39	Accounts Payable to Associated Companies (234)			
40	Customer Deposits (235)			
41	Taxes Accrued (236)	262-263		
42	Interest Accrued (237)			
43	Dividends Declared (238)			
44	Matured Long-Term Debt (239)			
45	Matured Interest (240)			
46	Tax Collections Payable (241)			
47	Miscellaneous Current and Accrued Liabilities (242)	268		
48	Obligations Under Capital Leases -- Current (243)			
49	Derivative Instrument Liabilities (244)			
50	Derivative Instrument Liabilities - Hedges (245)			
51	TOTAL Current and Accrued Liabilities (Total of lines 35 thru 50)			
52	DEFERRED CREDITS			
53	Customer Advances for Construction (252)			
54	Accumulated Deferred Investment Tax Credits (255)			
55	Deferred Gains from Disposition of Utility Plant (256)			
56	Other Deferred Credits (253)	269		
57	Other Regulatory Liabilities (254)	278		
58	Unamortized Gain on Reacquired Debt (257)	260		
59	Accumulated Deferred Income Taxes (281-283)			
60	TOTAL Deferred Credits (Total of lines 53 thru 59)			
61	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 33, 51, and 60)			

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Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR

1 Report amounts for accounts 412 and 413, *Revenue and Expenses from Utility Plant Leased to Others*, in another utility column (i,j) in a similar manner to a utility department Spread the amount(s) over lines 2 thru 26 as appropriate Include these amounts in columns (c) and (d) totals

2 Report amounts in discount 414, *Other Utility Operating Income*, in the same manner as accounts 412 and 413 above

3 Report data for lines 7, 9, and 10 for Natural Gas companies using accounts 404 1, 404 2, 404.3, 407.1, and 407.2

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	UTILITY OPERATING INCOME			
2	Gas Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	317-325		
5	Maintenance Expenses (402)	317-325		
6	Depreciation Expense (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization and Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-338		
10	Amort of Prop Losses, Unrecovered Plant and Reg Study Costs (407.1)			
11	Amortization of Conversion Expenses (407.2)			
12	Regulatory Debits (407.3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other than Income Taxes (408.1)	262-263		
15	Income Taxes -- Federal (409.1)	262-263		
16	Income Taxes -- Other (409.1)	262-263		
17	Provision of Deferred Income Taxes (410.1)	234-235		
18	(Less) Provision for Deferred Income Taxes -- Credit (411.1)	234-235		
19	Investment Tax Credit Adjustment -- Net (411.4)			
20	(Less) Gains from Disposition of Allowances (411.6)			
21	Losses from Disposition of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Total of lines 4 thru 24)			
26	Net Utility Operating Income (Total of lines 2 less 25) (Carry forward to page 116, line 27)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

4 Explain in a footnote if the previous year's figures are different from those reported in prior reports

5 If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles, lines 2 to 26, and report the information on page 122 or in a supplemental statement.

Electric Utility Current Yee (in dollars)	Electric Utility Previous Year (in dollars)	Gas Utility Current Year (in dollars)	Gas Utility Current Year (in dollars)	Other Utility Current Tear (in dollars)	Other Utility Previous Year (in dollars)	
						1
						2
						3
						4
						5
						6
						7
						8
						9
						10
						11
						12
						13
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						25
						26

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -54-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
27	Net Utility Operating Income (Carrier forward from page 114)			
28	OTHER INCOME AND DEDUCTIONS			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues form Merchandising, Jobbing and Contract Work (415)			
32	*(Less)* Costs and Expense of Merchandising, Job & Contract Work (415.1)			
33	Revenues from Nonutility Operations (417)			
34	*(Less)* Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other Income (Total of lines 29 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421 2)			
44	Miscellaneous Amortization (425)			
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions (Total of lines 43 thru 45)	340		
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other than Income Taxes (406.2)	262-263		
49	Income Taxes -- Federal (409.2)	262-263		
50	Income Taxes -- Other (409.2)	262-263		
51	Provision for Deferred Income Taxes (410.2)	234-235		
52	*(Less)* Provision for Deferred Income Taxes-Credit (410. 2)	234-235		
53	Investment Tax Credit Adjustments--Net (411.5)			
54	*(Less)* Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of lines 48-54)			
56	Net Other Income and Deductions (Total of lines 41, 46, and 55)			
57	INTEREST CHARGES			
58	Interest on Long-Term Debt (427)			
59	Amortization of Debt Disc and Expense (428)	258-259		
60	Amortization of Loss on Reacquired Debt (428.1)			
61	*(Less)* Amortization of Premium on Debt-Credit (429)	258-259		
62	*(Less)* Amortization of Gain on Reacquired Debt-Credit (429.1)			
63	Interest on Debt to Associated Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction- Credit			
66	Net Extraordinary Items (Total of line 69 less line70)			
67	Income Before Extraordinary Items (Total of lines 27, 56 and 66)			
68	EXTRAORDINARY ITEMS			
69	Extraordinary Income (434)			
70	*(Less)* Extraordinary Deductions (435)			
71	Net Extraordinary Items (Total of line 69 less 70)			
72	Income Taxes--Federal and Other (409.3)	262-263		
73	Extraordinary Items after Taxes (Total of line 71 less line 72)			
74	Net Income (Total of lines 67and 73)			

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -55-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106)

1 Report below the original cost of gas plant in service according to the prescribed accounts.
2 In addition to Account 101, *Gas Plant in Service (Classified)*, this page and the next include Account 102, Gas Plant Purchased or Sold, Account 103, Experimental Gas Plant Unclassified, and Account 106, Completed Construction Not Classified-Gas.
3 Include in column (c) and (d), as appropriate corrections of additions and retirements for the current or preceding year.
4. For subsequent measurement revisions to initial asset retirement costs capitalized include any net increase or net decrease amount by primary plant account for the asset retirement costs in column (c) additions.
4 Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts
5 Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c) Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b) Like wise, if the respondent has a significant amount of plant retirement which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirement, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision Include also in column (d) reversals of tentative distributions of prior year s unclassified retirement Attach supplemental statement showing the account distributions of these tentative classifications in column (c) and (d).

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
1	INTANGIBLE PLANT		
2	301 Organization		
3	302 Franchises and Consents		
4	303 Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2 thru 4)		
6	PRODUCTION PLANT		
7	Natural Gas Production and Gathering Plant		
8	325.1 Producing Lands		
9	325.2 Producing Leaseholds		
10	325.3 Gas Rights		
11	325.4 Rights-of-Way		
12	325.5 Other Land and Land Rights		
13	326 Gas Well Structures		
14	327 Field Compressor Station Structures		
15	328 Field Measuring and Regulating Station Equipment		
16	329 Other Structures		
17	330 Producing Gas Wells-Well Construction		
18	331 Producing Gas Wells-Well Equipment		
19	332 Field Lines		
20	333 Field Compressor Station Equipment		
21	334 Field Measuring and Regulating Station Equipment		
22	335 Drilling and Cleaning Equipment		
23	336 Purification Equipment		
24	337 Other Equipment		
25	338 Unsuccessful Exploration and Development Costs		
26	339 Asset Retirement Costs for Natural Gas Production & Gathering Plant		
27	TOTAL Production and Gathering Plant (Enter Total of lines 8 thru 26)		
28	PRODUCTS EXTRACTION PLANT		
29	340 Land and Land Rights		
30	341 Structures and Improvements		
31	342 Extraction and Refining Equipment		
32	343 Pipe Lines		
33	344 Extracted Products Storage Equipment		
34	345 Compressor Equipment		

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -56-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106 (Continued)

including the reversals of the prior years tentative account distributions of these amounts Careful observance of the above instructions and the texts of Account 101 and 106 will avoid serious omissions of respondent's reported amount for plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102. In showing the clearance of Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc.,

And show in column (f) only the offset to the debits or credits to primary account classifications

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirements of these pages

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchaser, and date of transaction If proposed journal entries have been filed with the commission as required by the Uniform System of Accounts, give date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				1
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -57-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
35	346 Gas Measuring and Regulating Equipment		
36	347 Other Equipment		
37	348 Asset Retirement Costs for Products Extraction Plant		
38	TOTAL Products Extraction Plant (Enter Total of lines 29 thru 37)		
39	TOTAL Natural Gas Production Plant (Enter Total of lines 27 and 38)		
40	Manufactured Gas Production Plant *(Submit Supplementary Statement)*		
41	TOTAL Production Plant (Enter Total of lines 39 and 40)		
42	NATURAL GAS STORAGE AND PROCESSING PLANT		
43	Underground Storage Plant		
44	350.1 Land		
45	350.2 Rights-of-Way		
46	351 Structures and Improvements		
47	352 Wells		
48	352.1 Storage Leaseholds and Rights		
49	352.2 Reservoirs		
50	352.3 Non-recoverable Natural Gas		
51	353 Lines		
52	354 Compressor Station Equipment		
53	355 Measuring and Regulating Equipment		
54	356 Purification Equipment		
55	357 Other Equipment		
56	358 Asset Retirement Costs for Underground Storage Plant		
57	TOTAL Underground Storage Plant (Enter Total of lines 44 thru 56)		
58	Other Storage Plant		
59	360 Land and Land Rights		
60	361 Structures and Improvements		
61	362 Gas Holders		
62	363 Purification Equipment		
63	363.1 Liquefaction Equipment		
64	363.2 Vaporizing Equipment		
65	363.2 Compressor Equipment		
66	363.4 Measuring and Regulating Equipment		
67	363.5 Other Equipment		
68	363.6 Asset Retirement Costs for Other Storage Plant		
69	TOTAL Other Storage Plant (Enter Total of lines 59 thru 68)		
70	Base Load Liquefied Natural Gas Terminating and Processing Plant		
71	364.1 Land and Land Rights		
72	364.2 Structures and Improvements		
73	364.3 LNG Processing Terminal Equipment		
74	364.4 LNG Transportation Equipment		
75	364.5 Measuring and Regulating Equipment		
76	364.6 Compressor Station Equipment		
77	364.7 Communications Equipment		
78	364.8 Other Equipment		
79	364.9 Asset Retirement Costs for Base Load Liquefied Natural Gas Terminaling and Processing Plant		
80	TOTAL Base Load Liquefied Natural Gas, Terminating and Processing Plant (Lines 71 thru 79)		
81	TOTAL Natural Gas Storage and Processing Plant (Total of lines 57, 69 and 80)		
82	TRANSMISSION PLANT		
83	365.1 Land and Land Rights		
84	365.2 Rights-of-Way		
85	366 Structures and Improvements		

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -58-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				35
				36
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -59-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
86	367 Mains		
87	368 Compressor Station Equipment		
88	369 Measuring and Regulating Station Equipment		
89	370 Communication Equipment		
90	371 Other Equipment		
91	372 Asset Retirement Costs for Transmission Plant		
92	TOTAL Transmission Plant (Enter Totals of lines 83 thru 91)		
93	DISTRIBUTION PLANT		
94	374 Land and Land Rights		
95	375 Structures and Improvements		
96	376 Mains		
97	377 Compressor Station Equipment		
98	378 Measuring and Regulating Station Equipment-General		
99	379 Measuring and Regulating Station Equipment-City Gate		
100	380 Services		
101	381 Meters		
102	382 Meter Installations		
103	383 House Regulators		
104	384 House Regulator Installations		
105	385 Industrial Measuring and Regulating Station Equipment		
106	386 Other Property on Customers' Premises		
107	387 Other Equipment		
108	388 Asset Retirement Costs for Distribution Plant		
109	TOTAL Distribution Plant (Enter Total of lines 94 thru 108)		
110	GENERAL PLANT		
111	389 Land and Land Rights		
112	390 Structures and Improvements		
113	391 Office Furniture and Equipment		
114	392 Transportation Equipment		
115	393 Stores Equipment		
116	394 Tools, Shop, and Garage Equipment		
117	395 Laboratory Equipment		
118	396 Power Operated Equipment		
119	397 Communication Equipment		
120	398 Miscellaneous Equipment		
121	Subtotal (Enter Total of lines 111 thru 120)		
122	399 Other Tangible Property		
123	399.1 Asset Retirement Costs for General Plant		
124	TOTAL General Plant (Enter Total of lines 121, 122 and 123)		
125	TOTAL (Accounts 101 and 106)		
126	Gas Plant Purchased (See Instruction 8)		
127	(Less) Gas Plant Sold (See Instruction 8)		
128	Experimental Gas Plant Unclassified		
129	TOTAL Gas Plant in Service (Enter Total of lines 125 thru 128)		

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -60-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106 (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				86
				87
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -61-

Name of Respondent	This Report is: ☐ An Origina ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ACCUMULATED PROVISION FOR DEPRECIATION OF GAS UTILITY PLANT (ACCOUNT 108)

1 Explain in a footnote any important adjustments during year
2 Explain in a footnote any difference between the amount for book cost of plant retired, line 10, column (c), and that reported for gas plant in service, page 204-209, column (d), excluding retirements of nondepreciable property.
3 The provisions of Account 108 in the Uniform System of Accounts require that retirements of depreciable plant be recorded when such plant is removed from service If the respondent has a significant amount of plant retired at year end which had not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications
4 Show separately interest credits under a sinking fund or similar method of depreciation accounting
5 At lines 7 and 14, add rows as necessary to report all data Additional rows should be numbered in sequence, e g. 7.01, 7.02, etc.

Line No	Item (a)	Total (c + d + e) (b)	Gas Plant in Service (c)	Gas Plant Held for Future Use (d)	Gas Plant Leased to Others (e)
	Section A. BALANCES AND CHANGES DURING YEAR				
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Gas Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Clearing (Specify):				
8.01					
9	TOTAL Depreciation Provision For Year (Total of lines 3 thru 7)				
10	Net Charges for Plant Retired:				
11	Book Cost of Plant Retired				
12	Cost of Removal				
13	Salvage (Credit)				
14	TOTAL Net Charges for Plant Ret. (Total of lines 11 thru 13)				
15	Other Debit or Credit Items (Describe):				
15.01					
16	Book Cost of Asset Retirement Costs Retired				
17	Balance End of Year (Total of lines 1, 9, 14, 15 and 16)				
	Section B. BALANCES AT END OF YEAR ACCORDING TO FUNCTIONAL CLASSIFICATIONS				
18	Productions-Manufactured Gas				
19	Production and Gathering -Natural Gas				
20	Products Extraction-Natural Gas				
21	Underground Gas Storage				
22	Other Storage Plant				
23	Base Load LNG Terminating and Processing Plant				
24	Transmission				
25	Distribution				
26	General				
27	TOTAL (Total of lines 18 thru 26)				

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -62-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

LIST OF SCHEDULES

Enter in column (d) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none," "not applicable," or "NA."

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
General Information	101	ED 12-91	
Control Over Respondent	102	REV 12-95	
Companies Controlled by Respondent	103	NEW 12-95	
Principal General Officers	104	ED 12-91	
Directors	105	REV 12-95	
Important Changes During the Year	108-109	REV 12-95	
Comparative Balance Sheet Statement	110-113	REV 12-02	
Income Statement	114	REV 12-02	
Statement of Accumulated Comprehensive Income and Hedging Activities	115 (a) (b)	NEW 12-02	
Appropriated Retained Income	118	REV 12-95	
Unappropriated Retained Income Statement	119	REV 12-95	
Dividend Appropriations of Retained Income	119	REV 12-95	
Statement of Cash Flows	120-121	REV 12-95	
Notes to Financial Statements	122-123	REV 12-95	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debts)			
Receivables From Affiliated Companies	200	REV 12-00	
General Instructions Concerning Schedules 202 thru 205	201	REV 12-95	
Investments in Affiliated Companies	202-203	ED 12-91	
Investments in Common Stocks of Affiliated Companies	204-205	ED 12-91	
Companies Controlled Directly by Respondent Other Than Through Title to Securities	204-205	ED 12-02	
Instructions for Schedules 212 Thru 217	211	REV 12-00	
Carrier Property	212-213	REV 12-02	
Undivided Joint Interest Property	214-215	REV 12-02	
Accrued Depreciation-Carrier Property	216	REV 12-02	
Accrued Depreciation-Undivided Joint Interest Property	217	REV 12-02	
Amortization Base and Reserve	218-219	REV 12-02	
Noncarrier Property	220	REV 12-00	
Other Deferred Charges	221	REV 12-00	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
Payables to Affiliated Companies	225	REV 12-00	
Long-Term Debt	226-227	ED 12-00	
Analysis of Federal Income and Other Taxes Deferred	230-231	REV 12-00	
Capital Stock	250-251	REV 12-95	
Capital Stock Changes During the Year	252-253	ED 12-91	
Additional Paid-in Capital	254	ED 12-87	

Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -63-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

COMPARATIVE BALANCE SHEET STATEMENT - LIABILITIES (Continued)

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	CURRENT LIABILITIES			
47	Notes Payable (50)			
48	Payables to Affiliated Companies (51)			
49	Accounts Payable (52)			
50	Salaries and Wages Payable (53)			
51	Interest Payable (54)			
52	Dividends Payable (55)			
53	Taxes Payable (56)			
54	Long - Term Debt - Payable Within One Year (57)	226-227		
55	Other Current Liabilities (58)			
56	Deferred Income Tax Liabilities (59)	230-231		
57	TOTAL Current Liabilities *(Total of lines 47 thru 56)*			
	NONCURRENT LIABILITIES			
58	Long-Term Debt - Payable After One Year (60)	226-227		
59	Unamortized Premium on Long-Term Debt (61)			
60	(Less) Unamortized Discount on Long-Term Debt-Dr. (62)			
61	Other Noncurrent Liabilities (63)			
62	Accumulated Deferred Income Tax Liabilities (64)	230-231		
63	Derivative Instrument Liabilities (65)			
64	Derivative Instrument Liabilities - Hedges (66)			
65	Asset Retirement Obligations (67)			
66	TOTAL Noncurrent Liabilities *(Total of lines 58 thru 65)*			
67	TOTAL Liabilities *(Total of lines 57 and 66)*			
	STOCKHOLDERS' EQUITY			
68	Capital Stock (70)	250-251		
69	Premiums on Capital Stock (71)			
70	Capital Stock Subscriptions (72)			
71	Additional Paid-In Capital (73)	254		
72	Appropriated Retained Income (74)	118		
73	Unappropriated Retained Income (75)	119		
74	(Less) Unrealized Loss on Noncarrier Marketable Equity-Securities (75.5)			
75	(Less) Treasury Stock (76)			
76	TOTAL Stockholders' Equity *(Total of lines 68 thru 75)*			
77	TOTAL Liabilities and Stockholders' Equity *(Total of lines 67 and 76)*			

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INSTRUCTIONS FOR SCHEDULES 212-213

1.) Give an analysis of changes during the year in Account No. 30, *Carrier Property*, by carrier property accounts, excluding investments in undivided joint interest property reported on pages 214 and 215. The total carrier property reported on page 213 (column i, line 44) and the total undivided joint interest property reported on all pages 215 (column i, line 44) should represent all carrier property owned by the reporting entity at year end.

2.) Enter in column (c) the cost of newly constructed property, additions, and improvements made to existing property. Include amounts distributed to carrier property accounts during the year which were previously charged to Account No. 187, *Construction Work in Progress*. In column (d) enter expenditures for existing pipeline property purchased or otherwise acquired. Enter in column (e) - property sold, abandoned, or otherwise retired during the year. This will generally be a positive number, so that the calculation in column (f) works properly.

3.) If pipeline operating property was acquired from or sold to some other company during the year, footnote the acquisition or sale if it exceeded $250,000. Include the following in the footnote: the name of the company the property was acquired from or sold to, the mileage acquired or sold, and the date of acquisition or sale. Include termini, the original cost of property acquired from an affiliate or other common carrier (see Instruction 3-1, Property acquired, Instructions for Carrier Property Accounts in Uniform System of Accounts), and the cost of the property to the respondent. Also give the amount debited or credited to each company account representing such property acquired or disposed of.

4.) Enter in column (g) for each account the net of all other accounting adjustments, transfers, and clearances applicable to prior years' accounting.

5.) Explain fully each adjustment, clearance, or transfer in excess of $500,000 in a footnote. Explain transfers to or from Account No. 34, *Noncarrier Property*, in Schedule 219.

6.) Indicate in parenthesis any entry in columns (f), (g), or (h) which represents an excess of credits over debits.

INSTRUCTIONS FOR SCHEDULES 214-215

1.) Give an analysis of changes during the year in Account No. 30, *Carrier Property*, by carrier property accounts, for investments in undivided joint interest property. The respondent will only report its portion of the carrier property of any undivided joint interest pipeline in which it has an interest. If the respondent owns an interest in multiple undivided joint interest pipelines, prepare and submit a separate schedule 214-215 for each undivided joint interest pipeline in which it has an interest. If multiple schedules 214-215 are submitted, number all schedules subsequent to the first with a number and letter page designator (For example ... 214, 215; 214a, 215a; 214b, 215b; etc...).

2.) Enter in column (c) the cost of newly constructed property, additions, and improvements made to existing property. Include amounts distributed to carrier property accounts during the year which were previously charged to Account No. 187*Construction Work in Progress*. In column (d) enter expenditures for existing pipeline property purchased or otherwise acquired. Enter in column (e) property sold, abandoned, or otherwise retired during the year. This will generally be a positive number so that the calculation in column (f) works properly.

3.) If pipeline operating property was acquired from or sold to some other company during the year, footnote the acquisition or sale if it exceeded $250,000. Include the following in the footnote: the name of the company the property was acquired from or sold to, the mileage acquired or sold, and the date of acquisition or sale. Include termini, the original cost of property acquired from an affiliate or other common carrier (see Instruction 3-1, Property acquired, Instructions for Carrier Property Accounts in Uniform System of Accounts), and the cost of the property to the respondent. Also give the amount debited or credited to each company account representing such property acquired or disposed of.

4.) Enter in column (g) for each account the net of all other accounting adjustments, transfers, and clearances applicable to prior years' accounting.

5.) Explain fully each adjustment, clearance, or transfer in excess of $500,000 in a footnote. Explain transfers to or from Account No. 34, *Noncarrier Property*, in Schedule 219.

6.) Indicate in parenthesis any entry in columns (f), (g), or (h) which represents an excess of credits over debits.

INSTRUCTIONS FOR SCHEDULES 216-217

1.) On schedule 216, give an analysis of changes during the year in Account No. 31, *Accrued Depreciation - Carrier Property*, by carrier property accounts, excluding depreciation on undivided joint interest property reported on page 217.

On schedule 217, give an analysis of changes during the year in Account No. 31, *Accrued Depreciation - Carrier Property*, by carrier property accounts for property owned as part of an undivided joint interest pipeline. If the respondent owns an interest in multiple undivided joint interest pipelines, prepare and submit a separate schedule 217 for each undivided joint interest pipeline in which it has an interest. If multiple schedules 217 are submitted, number all schedules subsequent to the first with a number and letter page designator (For example ... 217, 217a, 217b, etc...).

2.) In column (c), enter debits by carrier property account to Account No. 540, *Depreciation and Amortization*, and 541, *Depreciation Expense for Asset Retirement Costs*, during the year.

3.) In column (d), enter all debits to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year resulting from the retirement of carrier property.

4.) In column (e), enter the net of any other debits and credits made to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year.

5.) If composite annual depreciation rates are prescribed, enter those in effect at the end of the year in column (g). If component rates are prescribed, the composite rates entered in column (g) should be computed from the charges developed for December by using the prescribed component rates. Whether component or composite rates are prescribed, the entries on lines 17, 34, 42, and 43 of column (g) should be computed from December depreciation charges.

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

CARRIER PROPERTY

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	PROPERTY CHANGES DURING THE YEAR (In dollars) Expenditures for New Construction, Additions, and Improvements (c)	PROPERTY CHANGES DURING THE YEAR (In dollars) Expenditures for Existing Property Purchased or Otherwise Acquired (d)
	GATHERING LINES			
1	Land (101)			
2	Right of Way (102)			
3	Line Pipe (103)			
4	Line Pipe Fittings (104)			
5	Pipeline Construction (105)			
6	Buildings (106)			
7	Boilers (107)			
8	Pumping Equipment (108)			
9	Machine Tools and Machinery (109)			
10	Other Station Equipment (110)			
11	Oil Tanks (111)			
12	Delivery Facilities (112)			
13	Communication Systems (113)			
14	Office Furniture and Equipment (114)			
15	Vehicles and Other Work Equipment (115)			
16	Other Property (116)			
17	Asset Retirement Costs for Gathering Lines (117)			
18	TOTAL *(Lines 1 thru 17)*			
	TRUNK LINES			
19	Land (151)			
20	Right of Way (152)			
21	Line Pipe (153)			
22	Line Pipe Fittings (154)			
23	Pipeline Construction (155)			
24	Buildings (156)			
25	Boilers (157)			
26	Pumping Equipment (158)			
27	Machine Tools and Machinery (159)			
28	Other Station Equipment (160)			
29	Oil Tanks (161)			
30	Delivery Facilities (162)			
31	Communication Systems (163)			
32	Office Furniture and Equipment (164)			
33	Vehicles and Other Work Equipment (165)			
34	Other Property (166)			
35	Asset Retirement Costs for Trunk Lines (167)			
36	TOTAL *(Lines 19 thru 35)*			
	GENERAL			
37	Land (171)			
38	Buildings (176)			
39	Machine Tools and Machinery (179)			
40	Communication Systems (183)			
41	Office Furniture and Equipment (184)			
42	Vehicles and Other Work Equipment (185)			
43	Other Property (186)			
44	Asset Retirement Costs for General Property (186.1)			
45	Construction Work in Progress (187)			
46	TOTAL (Lines 37 thru 45)			
47	GRAND TOTAL (Lines 18, 36 and 46)			

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -66-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

CARRIER PROPERTY (Continued)

PROPERTY CHANGES DURING		Other Adjustments, Transfers and Clearances (In dollars) (g)	Increase or Decrease During the Year (f ± g) (In dollars) (h)	Balance at End of Year (b ± h) (In dollars) (i)	Line No.
Property Sold, Abandoned, or Otherwise Retired During the Year (e)	Net (c + d - e) (f)				
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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -67-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

UNDIVIDED JOINT INTEREST PROPERTY

Name of Undivided Joint Interest Pipeline:

Line No.	Account (a)	Balance at Beginning of Year (in dollars) (b)	PROPERTY CHANGES DURING THE YEAR (In dollars)	
			Expenditures for New Construction, Additions, and Improvements (c)	Expenditures for Existing Property Purchased or Otherwise Acquired (d)
	GATHERING LINES			
1	Land (101)			
2	Right of Way (102)			
3	Line Pipe (103)			
4	Line Pipe Fittings (104)			
5	Pipeline Construction (105)			
6	Buildings (106)			
7	Boilers (107)			
8	Pumping Equipment (108)			
9	Machine Tools and Machinery (109)			
10	Other Station Equipment (110)			
11	Oil Tanks (111)			
12	Delivery Facilities (112)			
13	Communication Systems (113)			
14	Office Furniture and Equipment (114)			
15	Vehicles and Other Work Equipment (115)			
16	Other Property (116)			
17	Asset Retirement Costs for Gathering Lines (117)			
18	TOTAL *(Lines 1 thru 17)*			
	TRUNK LINES			
19	Land (151)			
20	Right of Way (152)			
21	Line Pipe (153)			
22	Line Pipe Fittings (154)			
23	Pipeline Construction (155)			
24	Buildings (156)			
25	Boilers (157)			
26	Pumping Equipment (158)			
27	Machine Tools and Machinery (159)			
28	Other Station Equipment (160)			
29	Oil Tanks (161)			
30	Delivery Facilities (162)			
31	Communication Systems (163)			
32	Office Furniture and Equipment (164)			
33	Vehicles and Other Work Equipment (165)			
34	Other Property (166)			
35	Asset Retirement Costs for Trunk Lines (167)			
36	TOTALS *(Lines 19 thru 35)*			
	GENERAL			
37	Land (171)			
38	Buildings (176)			
39	Machine Tools and Machinery (179)			
40	Communication Systems (183)			
41	Office Furniture and Equipment (184)			
42	Vehicles and Other Work Equipment (185)			
43	Other Property (186)			
44	Asset Retirement Costs for General Property (186.1)			
45	Construction Work in Progress (187)			
46	TOTAL *(Lines 37 thru 45)*			
47	GRAND TOTAL *(Lines 18, 36, and 46)*			

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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

UNDIVIDED JOINT INTEREST PROPERTY (Continued)

PROPERTY CHANGES DURING THE YEAR (In dollars)		Other Adjustments, Transfers, and Clearances (In dollars) (g)	Increase or Decrease During the Year (f ± g) (In dollars) (h)	Balance at End of Year (b + h) (In dollars) (i)	Line No.
Property Sold, Abandoned, or Otherwise Retired During the Year (e)	Net (c+d-e) (f)				
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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

ACCRUED DEPRECIATION - CARRIER PROPERTY
(EXCLUSIVE OF DEPRECIATION ON UNDIVIDED JOINT INTEREST PROPERTY REPORTED IN SCHEDULE 217)

Give particulars (details) of the credits and debits to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year.

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	Debits to Accounts No. 540 and 541 of USofA (In dollars) (c)	Net Debit From Retirement of Carrier Property (In dollars) (d)	Other Debits and Credits - Net (In dollars) (e)	Balance at End of Year (b + c + d + e) (In dollars) (f)	Annual Composite/ Component Rates (In percent) (g)
	GATHERING LINES						
1	Right of Way (102)						
2	Line Pipe (103)						
3	Line Pipe Fittings (104)						
4	Pipeline Construction (105)						
5	Buildings (106)						
6	Boilers (107)						
7	Pumping Equipment (108)						
8	Machine Tools and Machinery (109)						
9	Other Station Equipment (110)						
10	Oil Tanks (111)						
11	Delivery Facilities (112)						
12	Communication Systems (113)						
13	Office Furniture and Equip (114)						
14	Vehicles and Other Work Equip (115)						
15	Other Property (116)						
16	Asset Retirement Costs for Gathering Lines (117)						
17	TOTAL *(Lines 1 thru 16)*						
	TRUNK LINES						
18	Right of Way (152)						
19	Line Pipe (153)						
20	Line Pipe Fittings (154)						
21	Pipeline Construction (155)						
22	Buildings (156)						
23	Boilers (157)						
24	Pumping Equipment (158)						
25	Machine Tools and Machinery (159)						
26	Other Station Equipment (160)						
27	Oil Tanks (161)						
28	Delivery Facilities (162)						
29	Communication Systems (163)						
30	Office Furniture and Equip (164)						
31	Vehicles and Other Work Equip (165)						
32	Other Property (166)						
33	Asset Retirement Costs for Trunk Lines (167)						
34	TOTAL *(Lines 18 thru 33)*						
	GENERAL						
35	Buildings (175)						
36	Machine Tools and Machinery (179)						
37	Communication Systems (183)						
38	Office Furniture and Equip (184)						
39	Vehicles and Other Work Equip (185)						
40	Other Property (186)						
41	Asset Retirement Costs for General Property (186.1)						
42	TOTAL *(Lines 35 thru 41)*						
43	GRAND TOTAL *(Lines 17, 34, 42)*						

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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

ACCRUED DEPRECIATION - UNDIVIDED JOINT INTEREST PROPERTY

Give particulars (details) of the credits and debits to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year.

Name of Undivided Joint Interest Pipeline:

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	Debits to Accounts No. 540 and 541 of USofA (In dollars) (c)	Net Debit From Retirement of Carrier Property (In dollars) (d)	Other Debits and Credits-Net (In dollars) (e)	Balance at End of Year (b + c + d + e) (In dollars) (f)	Annual Composite/ Component Rates (In percent) (g)
	GATHERING LINES						
1	Right of Way (102)						
2	Line Pipe (103)						
3	Line Pipe Fittings (104)						
4	Pipeline Construction (105)						
5	Buildings (106)						
6	Boilers (107)						
7	Pumping Equipment (108)						
8	Machine Tools and Machinery (109)						
9	Other Station Equipment (110)						
10	Oil Tanks (111)						
11	Delivery Facilities (112)						
12	Communication Systems (113)						
13	Office Furniture and Equip. (114)						
14	Vehicles and Other Work Equip. (115)						
15	Other Property (116)						
16	Asset Retirement Costs for Gathering Lines (117)						
17	TOTAL *(Lines 1 thru 16)*						
	TRUNK LINES						
18	Right of Way (152)						
19	Line Pipe (153)						
20	Line Pipe Fittings (154)						
21	Pipeline Construction (155)						
22	Buildings (156)						
23	Boilers (157)						
24	Pumping Equipment (158)						
25	Machine Tools and Machinery (159)						
26	Other Station Equipment (160)						
27	Oil Tanks (161)						
28	Delivery Facilities (162)						
29	Communication Systems (163)						
30	Office Furniture and Equip. (164)						
31	Vehicles and Other Work Equip. (165)						
32	Other Property (166)						
33	Asset Retirement Costs for Trunk Lines (167)						
34	TOTAL (Lines 18 thru 33)						
	GENERAL						
35	Buildings (176)						
36	Machine Tools and Machinery (179)						
37	Communication Systems (183)						
38	Office Furniture and Equip. (184)						
39	Vehicles and Other Work Equip. (185)						
40	Other Property (186)						
41	Asset Retirement Costs for General Property (186.1)						
42	TOTAL (Lines 35 thru 41)						
43	GRAND TOTAL *(Lines 17, 34, 42)*						

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

AMORTIZATION BASE AND RESERVE

1.) Enter in columns (b) thru (e) the cost of pipeline property used as the base in computing amortization charges included in Account 540, *Depreciation and Amortization*, and Account 541, *Depreciation Expense for Asset Retirement Costs* of the accounting company.

2.) Enter in columns (f) thru (i) the balances at the beginning and end of the year and the total credits and debits during the year in Account No. 32, *Accrued Amortization - Carrier Property*.

3.) The information requested for columns (b) thru (i) may be shown by projects or for totals only.

4.) If reporting by project, briefly describe in a footnote.

Line No.	Items (a)	BASE (540 and 541) Balance at Beginning of Year (In dollars) (b)	Debits During Year (In dollars) (c)	Credits During Year (In dollars) (d)	Balance at End of Year (In dollars) (e)
1					
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3					
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46					
47	TOTAL				

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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

AMORTIZATION BASE AND RESERVE (Continued)

note each project amounting to $100,000 or more. Reference the kind of property reported; do not include location. Items less than $100,000 may be combined in a single entry titled Minor items, each less than $100,000.

5.) If the amounts in column (g) do not correspond to the amounts actually charged to Account No. 540 and/or 541, explain such differences in a footnote.

6.) Explain in a footnote adjustments included in column (h) that affect operating expenses.

RESERVE (32)				Line No.
Balance at Beginning of Year (In dollars) (f)	Credits During Year (In dollars) (g)	Debits During Year (In dollars) (h)	Balance at End of Year (In dollars) (i)	
				1
				2
				3
				4
				5
				6
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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

OPERATING EXPENSE ACCOUNTS (Account 610)

Report the respondent's pipeline operating expenses for the year, classifying them in accordance with the USofA.

Line No.	Operating Expense Accounts (a)	CRUDE OIL (In dollars) Gathering (b)	Trunk (c)	Delivery (d)	Total (b + c + d) (e)
	OPERATIONS and MAINTENANCE				
1	Salaries and Wages (300)				
2	Materials and Supplies (310)				
3	Outside Services (320)				
4	Operating Fuel and Power (330)				
5	Oil Losses and Shortages (340)				
6	Rentals (350)				
7	Other Expenses (390)				
8	TOTAL Operations and Maintenance Expenses				
	GENERAL				
9	Salaries and Wages (500)				
10	Materials and Supplies (510)				
11	Outside Services (520)				
12	Rentals (530)				
13	Depreciation and Amortization (540)				
14	Depreciation Expense for Asset Retirement Costs (541)				
15	Employee Benefits (550)				
16	Insurance (560)				
17	Casualty and Other Losses (570)				
18	Pipeline Taxes (580)				
19	Other Expenses (590)				
20	Accretion Expense (591)				
21	Gains or losses on Asset Retirement Obligations (592)				
22	TOTAL General Expenses				
23	GRAND TOTALS				

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Appendix A Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -74-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

OPERATING EXPENSE ACCOUNTS (Continued)

Line No.	Products (in dollars)			
	Trunk (f)	Delivery (g)	Total (f+g) (h)	Grand Total (e+h) (I)
1				
2				
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4				
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FERC FORM NO. 6 (REV. 12-00) Page 303 Next page is 305

[FR Doc. 02-28294 Filed 11-18-02; 8:45 am]
BILLING CODE 6717-01-C

Federal Register

Tuesday,
November 19, 2002

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1032

Milk in the Central Marketing Area; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and to Order; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Doc. No. AO–313–A44; DA–01–07]

Milk in the Central Marketing Area; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative decision adopts, on an interim final and emergency basis, provisions that amend certain features of the pooling standards of the Central Federal milk order. Specifically, this tentative decision adopts amendments to the *Pool plant* provisions which: Establish lower but year-round supply plant performance standards; will not consider the volume of milk shipments to distributing plants regulated by another Federal milk order as a qualifying shipment on the Central order; exclude from receipts diverted milk made by a pool plant to another pool plant in determining pool plant diversion limits; and establish a "net shipments" provision for milk deliveries to distributing plants. This decision recommends adopting provisions to limit supply plant system formation, but not on an emergency basis. For *Producer milk*, this tentative decision adopts amendments that: Establish higher year-round diversion limits; will base diversion limits for supply plants on deliveries to Central order distributing plants; and eliminate the ability to simultaneously pool milk on the Central milk order and a State-operated milk order that has marketwide pooling. Public comments on these actions and the other pooling and payment issues not adopted by this tentative decision are requested. Additionally, this decision requires determination of whether producers approve the issuance of the amended order on an interim basis.

DATES: Comments are due on or before January 21, 2003.

ADDRESSES: Comments (6 copies) should be filed with the Hearing Clerk, United States Department of Agriculture, Room 1083—Stop 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Room 2968, 1400 Independence Avenue, SW., STOP 0231, Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

These amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Approximately 9,695 of the 10,108 dairy producers (farmers), or 95.9 percent, whose milk was pooled under the Central Federal milk order at the time of the hearing, November 2001, would meet the definition of small businesses. On the processing side, approximately 10 of the 56 milk plants associated with the Central milk order during November 2001 would qualify as "small businesses," constituting about 17.9 percent of the total.

Based on these criteria, more than 95 percent of the producers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Central milk marketing area and are not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Prior documents in this proceeding:

Notice of Hearing: Issued October 17, 2001; published October 23, 2001 (66 FR 53551).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative final decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Central marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1083—Stop 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, by January 21, 2003. Six (6) copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. While no evidence was received that specifically addressed these issues, some of the evidence encompassed entities of various sizes.

The proposed amendments set forth below are based on the record of a public hearing held at Kansas City, Missouri, on November 14–15, 2001, pursuant to a notice of hearing issued October 17, 2001, and published October 23, 2001 (66 FR 53551).

The material issues on the record of the hearing relate to:

1. Pooling Standards:
   a. Supply plant pooling standards.
   b. Cooperative supply plant performance standards.
   c. Supply plant system standards.
   d. Standards applicable for Producer milk.
   e. Establishing pooling standards for "State units."
2. Simultaneous pooling of milk on the order and on a State-operated milk order providing for marketwide pooling.
3. Rate of partial payments to producers.
4. Determining whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards of the Order

a. Supply Plant Pooling Standards

Several amendments to the pooling provisions of the Central order should be adopted immediately. Certain inadequacies of the supply plant pooling provisions are resulting in disorderly marketing conditions and the unwarranted erosion of the blend price received by those producers who are consistently providing milk to meet the fluid demands of the Central marketing area. Specifically, the following amendments for pool supply plants should be adopted immediately: (1) Lower the performance standards to 20 percent in each of the months of August through February and 15 percent in each of the months of March through July. Accordingly, automatic pool plant status during the 3-month period of May through July is thereby eliminated from the order; (2) Eliminate the volume of milk shipments made by supply plants to distributing plants regulated by another Federal milk marketing order as qualifying shipments in meeting the Central supply plant shipping standard; (3) Exclude from receipts the diversions made by a pool plant to a second pool plant from the calculation of the diversion limits established for pool plants; and (4) Provide a "net shipments" standard for supply plant deliveries to the order's distributing plants for the purpose of meeting the Central order's supply plant shipping standard. Expanding pool supply plant qualification to include milk shipments to any plant that is part of a distributing plant unit is not adopted.

The Central order currently provides a supply plant performance standard whereby 35 percent of the milk received directly from dairy farms and cooperative handlers must be transferred or diverted to distributing plants, including milk diverted by the plant operator, during each of the months of September through November and January. For all other months a 25 percent standard applies.

The Central marketing order currently provides automatic pool plant status during the 3-month period of May through July for supply plants provided they were pool plants during each of the immediately preceding months of August through April. The order does not currently include a performance standard which considers shipments to any plant that is part of a distributing plant unit as a qualifying shipment. The current order does not limit supply plant shipments to distributing plants on a "net shipments" basis.

In addition, handlers may currently qualify supply plants as pool plants located inside or outside the market area by diverting milk to a pool distributing plant regulated by the Central order. Supply plant transfers to distributing plants regulated by another Federal order currently are considered as qualifying shipments for the purpose of determining if the Central supply plant shipping standard has been met.

These amendments to the supply plant pooling standards were presented in testimony related to a proposal published in the hearing notice as Proposal 1. This proposal was offered by Dairy Farmers of America (DFA), Prairie Farms Cooperative (Prairie Farms), and Swiss Valley Farms (Swiss Valley). These organizations are cooperative associations that historically have pooled milk on the Central milk order or one of the nine orders consolidated to form the Central milk order. Hereinafter, this decision will refer to these proponents as "DFA, *et al.*" All three cooperative associations have ownership interests in fluid milk processing plants. Prairie Farms and Swiss Valley operate fluid plants.

Amendments to the supply plant pooling standards were offered, the proponents assert, because the pooling provisions of the order are not appropriately linking the ability to pool milk on the order with demonstrating consistent service in supplying the fluid needs of the market. DFA, *et al.*, proposed changing the seasonally adjusted performance standard for supply plants to 25 percent during each of the months of August through November and to 20 percent for each of the months of December through July.

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Adopting these standards would also eliminate automatic pool plant status for the 3-month period of May through July currently provided by the order.

Proposal 1 as offered would no longer consider milk deliveries to distributing plants regulated by another Federal milk marketing order as qualifying shipments for determining if the supply plant performance standard for the Central Order had been met. Similarly, the proposal would not consider milk deliveries to distributing plants that are part of a distributing plant unit as qualifying shipments for determining if the supply plant performance standard had been met.

Proposal 1 also would limit a handler's ability to qualify supply plants located outside the Central Order marketing area as pool plants through direct deliveries of milk to pool distributing plants. The proposal also calls for establishing a "net shipments" provision. A net shipments standard would exclude from a supply plant's qualifying shipments any transfer or diversion of bulk fluid milk products made by a distributing plant receiving a qualifying shipment.

In support for Proposal 1, the DFA, *et al.*, witness testified that the orderly marketing of milk requires appropriate performance standards for supply plants to ensure that distributing plants are adequately supplied with milk as a condition for receiving the Central order's blend price. The witness explained that performance standards should require a level of association to a market by demonstrating the ability to supply the Class I needs of that market. The witness testified that milk located far from the market also should have performance standards that are workable and consistent with Federal order policy. According to the witness, the current practice of using direct deliveries from farms to distributing plants located inside the marketing area as a method to qualify plants located outside of the Central order marketing area as pool supply plants is inappropriate because milk pooled in this manner does not provide any reasonable service to the Class I needs of the market.

According to the DFA, *et al.*, witness, the reform of Federal milk orders provided unique pooling standards that apply to each market on an individual basis. The witness testified that during the reform process, the more lenient performance standard was often selected for the new consolidated orders. According to the witness, such standards are proving to be inappropriate for the larger consolidated Central milk marketing order.

As evidence that milk is being inappropriately pooled on the order, the DFA, *et al.*, witness noted that at the time of implementing Federal milk order reform, the consolidated Central order was expected to have Class I use of nearly 50 percent. Instead, Class I use is averaging below 30 percent, the witness noted. The witness was of the opinion that this shortfall in projected Class I use was due to pooling much more milk from sources outside the marketing area than could be explained by consolidating the nine pre-reform orders into the current Central order. The DFA, *et al.*, witness asserted that milk order reform did not intend to provide for pooling milk supplies on the Central order that would not also provide a consistent and reliable service to the Class I needs of the market. Stressing that such milk does not provide a consistent and reliable service to the Class I needs of the market, the witness maintained that such milk should not be pooled on the Central order and receive the order's blend price.

The DFA, *et al.*, witness testified that the ability of handlers to pool large volumes of milk from distant sources without having to actually deliver the milk to the market has resulted in a significant reduction of the blend price received by producers who are serving the market's Class I needs. The witness also asserted that some Central order fluid handlers are having difficulties in obtaining sufficient milk supplies and find themselves competing for a supply of milk with other fluid handlers regulated under adjacent orders where blend prices are higher.

The DFA, *et al.*, witness also explained that a portion of the pre-reform Southwest Plains order area had contributed a significant share of the milk supply needed for fluid use in the southeastern portion of the current Central marketing area. Much of the milk produced in Arkansas and southern Missouri became part of the milk supply for the Southeast order area, added the DFA, *et al.*, witness. The witness was of the opinion that adoption of Proposal 1 would result in a higher blend price for the Central order dairy farmers and enhance the ability of local Class I handlers to procure local milk supplies.

A DFA, *et al.*, witness from Prairie Farms testified that the significantly higher blend prices paid to producers under the neighboring Southeast and Appalachian orders are attracting milk supplies located in the southern and southeastern areas of the Central marketing area. The witness observed that these producers receive a higher price for their milk without incurring a significant change in hauling costs. The witness indicated that this situation is resulting in distributing plants needing to pay substantial over-order premiums to obtain a supply of milk for distribution in the Central marketing area.

Witnesses representing several distributing plant operators confirmed that they are experiencing problems obtaining an adequate supply of milk for fluid use, especially during the fall months. These fluid handlers supported the adoption of Proposal 1 because the link between milk pooled on the Central order needs to be tied to actual deliveries of milk to the order's pool distributing plants.

A witness from Anderson-Erickson (A–E), a distributing plant operator regulated by the Central order, testified that the order's pooling provisions need to be revised to better condition the receiving of the order's blend price to actual performance in supplying the market's Class I needs. Similarly, a witness representing Suiza Foods (Suiza), a company which owns and operates distributing plants regulated by the Central order, testified that the pooling of milk on the Central order needs to be directly tied to actual performance in serving the fluid market. The Suiza witness stressed that actual performance in serving the fluid market should be necessary because it is the fluid market that generates the additional dollars to the marketwide pool.

The Suiza witness testified that their costs and ability to obtain raw milk for Class I use are tied directly to the pooling provisions of Federal milk orders, including the Central milk order. The witness stressed that blend prices, especially relative blend prices, provide the incentives for producers to move milk to where it is needed. However, explained the witness, Suiza faces new challenges in the Central marketing area since its formation under milk order reform. Specifically, the witness noted difficulty in procuring milk at one of their plants because local dairy farmers are delivering their milk to plants regulated on the Southeast and Appalachian orders. According to the witness, the blend prices in those orders are higher than in the Central milk order and therefore attract milk to those markets.

The Suiza witness was of the opinion that milk order reform placed other Central order distributing plants at a similar competitive disadvantage in competing for a supply of milk. While noting that the purpose of this proceeding is to address pooling problems resulting in lower blend prices to Central order dairy farmers, the witness stressed that in their opinion, the real issue that needs to be addressed is whether the Central order is too large. The witness cited the geographic diversity of the order and vastly differing marketing conditions within the marketing area's boundaries to question whether the Central order is truly a viable, single milk marketing area.

A witness from Mid States Dairy, an organization that operates a distributing plant regulated by the Central order, testified that they were no longer able to source milk from their usual milksheds in southern Missouri and central Illinois. This witness stated that until recently, they had to rely on contracts with southern milk sources at premium prices to obtain a supply of milk because milk supplies were not available locally.

The DFA, *et al.*, witness testified that the order's supply plant performance standards should continue to be adjusted seasonally but at slightly different times. According to the witness, a higher standard of performance is needed for the months of August through November because increased customer demand occurs in those months. More importantly, the witness indicated that performance should be specified for every month of the year. In this regard, the witness from Prairie Farms added that specifying August through November for increased performance would help to ease their need to obtain additional milk supplies from other marketing areas.

Using milk located within the marketing area to qualify milk for pooling at plants located far from the marketing area was described by the DFA, *et al.*, witness as "pyramiding." The witness also attributed pyramiding to inadequate performance standards. As an illustration, the witness provided evidence to show how pooling provisions permit the pooling of milk volumes that cannot reasonably demonstrate performance in serving the Class I needs of the Central marketing area. As an example, the witness explained how a single tanker load of milk delivered to a pool plant within the Central order marketing area can qualify as many as 15 additional tanker loads of milk for pooling on the order though diversions. The witness contended that the ability to pyramid milk for pooling in this way reveals the inadequacy of the current pooling standards. Eliminating the ability to pyramid milk for pooling, the witness stressed, provides a basis for lowering the order's supply plant performance standard.

The DFA, *et al.*, witness testified that supply plants delivering milk to distributing plants not regulated by the Central milk order should not be counted in determining if the Central order's performance standards have been met. The witness indicated that such milk does not serve the Class I needs of the Central order. The witness offered that standards allowing for pool qualification to be earned from shipments to another order's distributing plants stem from pre-reform pooling provisions that were generally associated with "reserve supply" orders where Class I use was relatively small. The witness contended that the consolidated Central order is not such an order. While deliveries of milk to another order could still occur, noted the witness, the deliveries should not count toward pool qualification.

The witness from DFA, *et al.*, also offered a modification to Proposal 1 for incorporating a "net shipments" feature for pool supply plants as a way to ensure that fluid milk was actually received and retained at a distributing plant for Class I use. According to the witness, this feature would prevent a supply plant from physically shipping milk into the facilities of a distributing plant only to have the milk reloaded and moved to another plant for uses other than Class I. The witness also noted that without a "net shipments" provision, suppliers could qualify milk for pooling on the Central order without that milk ever being available to service the Class I needs of the market.

The witnesses from A–E concurred with the need for a "net shipments" provision, as did a witness from Foremost Farms, a fluid handler whose plants were regulated under the Central and Upper Midwest milk marketing orders. A witness from Suiza, testified that while they did not oppose a "net shipments" provision, they were of the view that milk actually delivered to a distributing plant was performing a service to the Class I needs of the market. To the extent that the same milk is subsequently pumped back out of the plant, indicated the witness, that decision is made by the receiving handler. Therefore, concluded the Suiza witness, such milk should be counted in determining if the supply plant performance standard is being met.

Briefs from both A–E and Dean Foods [1] reaffirmed their opposition to the inclusion of supply plant shipments to distributing plant unit plants as counting towards meeting pool qualifying performance standards noting that a relatively large non-Class I volume of milk is often associated with distributing plant units. The briefs contended that pooling stand-alone Class II operations could result in placing pooling priority for milk used in Class II dairy products on a par with milk used for Class I. They viewed that adoption of expanding supply plant qualifying deliveries to distributing plant units would create inequities and perhaps even result in creating new disorderly marketing conditions.

A group of cooperative associations with members located primarily in the Upper Midwest milk marketing area opposed amendments included in Proposal 1 because it was their view that the amendments would limit their ability to pool milk on the Central order. The cooperative associations included: Associated Milk Producers, Inc. (AMPI); Foremost Farms USA (Foremost); Land O'Lakes (LOL); First District Association (FDA); Family Dairies USA; and Lakeshore Federated Dairy Cooperative (Lakeshore), comprised of Midwest Dairymen's Company, Manitowoc Milk Producers Cooperative, and Milwaukee Cooperative Milk Producers. Hereinafter this decision will collectively refer to this group of cooperative associations as the "Upper Midwest Cooperatives."

Testimony by the Upper Midwest Cooperatives' witnesses argued that the adoption of more restrictive pooling standards would force milk that currently is pooled on the Central order to be pooled instead with the Upper Midwest pool. According to the witnesses, this would result in lower blend prices to Upper Midwest producers because of the lower Class I use in that area. The witnesses also argued that adopting the amendments contained in Proposal 1 would establish the more stringent pooling provisions that were in effect prior to milk order reform. According to the witnesses, this would establish a barrier to pooling the milk of producers who had long been associated with the markets merged to form the Central order.

To illustrate their point that the amendments of Proposal 1 would limit their ability to pool milk on the Central order, an Upper Midwest Cooperatives' witness testified that under current pooling provisions, every pound of milk delivered to Central order pool distributing plants provides the ability to pool 15 additional pounds of milk. If the pooling provisions proposed are adopted, the witnesses indicated that only 3 additional pounds of milk could

[1] Suiza Foods Corporation merged with Dean Foods Company on December 21, 2001, at which time the name of the merged company became Dean Foods Company.

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be pooled for each pound of milk delivered on the Central order.

The Foremost Farms witness, testifying on behalf of AMPI, LOL, Family Dairies, Midwest Dairymen, and First District Association, testified that if Proposals 1 and 5 (Proposal 5 is discussed in more detail later in this decision) were adopted, and if they were pooling the maximum amount of milk allowed in the pre-reform orders, approximately 400 million pounds of milk per month would no longer be pooled on the Central order. Instead, the witness testified, this milk would be pooled on the Upper Midwest order. The witness maintained that this would increase the blend price differences between the two orders.

According to the Foremost Farms witness, the blend price differences would have ranged between 32 cents per hundredweight (cwt) to as much as 91 cents per cwt for the one-year period of September 2000 through August 2001 if the pooling standards proposed had been in effect during that time. The witness emphasized this would have had an enormous adverse effect on the net income of Upper Midwest producers.

An Upper Midwest Cooperatives' witness from Family Dairies testified in opposition to pooling provision amendments that would limit the ability to pool milk on the Central Order and result in lower blend prices to producers located in the Upper Midwest. The witness stated that adoption of such proposals would result in creating more regional pricing problems and give selected handlers the ability to use the blend price as a procurement tool in areas outside the Central Order.

A witness for Lakeshore joined other Upper Midwest Cooperatives' witnesses by also stating their concern that the proposed pooling changes specifically in Proposals 1, 3, 5, and 7 (Proposals 3, 5 and 7 are discussed later in this decision) could force milk currently pooled on the Central order to instead be pooled on the Upper Midwest order. According to the witness, this would result in decreasing producer returns for those dairy farmers located in Northern Illinois and the surrounding area. Specifically, the Lakeshore witness explained that while a fluid milk plant at Rockford, Illinois, and a Dubuque, Iowa, distributing plant have the same federal order-dictated Class I price, the Rockford plant is disadvantaged because it has to pay a higher competitive value to attract Class I milk, adversely impacting their northern Illinois businesses.

A witness from LOL emphasized the necessity of basing pooling provisions on performance in serving the Class I needs of the market rather than the location of where milk originates. The witness was also of the opinion that the current order provisions provide adequate incentives to service Central order distributing plants. Stating that producers who share in the pool must be willing to serve the market, the LOL witness nevertheless stressed that the ability to pool milk on the Central order pool should not be restricted for the benefit of a select few. The LOL witness testified that milk no longer pooled on the Central order would instead be pooled on adjoining milk orders such as the Upper Midwest or Western marketing areas and characterized these areas as already carrying a disproportionate volume of reserve milk.

In response to concerns that Central order Class I handlers are having difficulty in obtaining a supply of milk, the LOL witness provided an analysis which suggested that tightening pooling provisions would not achieve what the proponents of Proposal 1 assert. The witness estimated that adopting the proposed pooling provisions would result in an increase of 35 cents per cwt in the Central Order blend price. According to the witness, such an increase would still leave the Central order blend price $1.48 per cwt below the blend price of the Southeast order thus weakening the argument that the higher blend prices in orders to the south and southeast would mitigate the problem of Central order distributing plants securing a supply of milk.

The LOL witness asserted that the combination of Proposals 1, 3, 5, and 7 would place unreasonable restrictions on milk produced outside the marketing area relative to milk produced inside the marketing area. The witness indicated that supply plants located outside the marketing area would be required to receive milk and transfer it to distributing plants, thereby causing uneconomic movements of milk, adding costs and degrading milk quality due to additional handling. Furthermore, barriers to trade would be created by adopting these proposals, indicated the witness.

Two of the Upper Midwest Cooperatives' witnesses introduced cost-of-production studies conducted by universities indicating that dairy farmers in northern Illinois and Wisconsin enjoy little financial return from their dairy operations. The Foremost Farms witness cited the Wisconsin study to indicate that in Wisconsin the marginal return of producing milk can be less than zero. According to the witnesses, the financial impact by limiting participation in the Central order pool through increased performance standards would be detrimental to Upper Midwest dairy farmers. In this regard, all of the Upper Midwest Cooperatives' witnesses stressed that their member producers are considered small businesses pursuant to the Regulatory Flexibility Act and that such status should be considered in determining appropriate performance standards for the Central order.

The witnesses for A–E and Suiza testified in opposition to considering supply plant shipments to distributing plant "units" as counted in determining pool-qualifying deliveries unless each plant of the "unit" could independently be a distributing plant under the terms of the order. The witness noted that relatively large non-Class I volumes of milk associated with a distributing plant unit could result in reducing the actual need for qualifying shipments made to distributing plants. In post-hearing briefs, Dean Foods indicated opposition to expanding qualifying shipments to any plant that is part of a distributing plant unit, noting that such performance standards would be inequitable and result in the creation of new disorderly marketing conditions.

The record of this proceeding strongly supports concluding that the various features of the Central milk marketing order's supply plant pooling standards are either inadequate or unnecessary. These deficiencies contained in the pooling standards for supply plants are causing much more milk to be pooled on the Central milk order than can reasonably be considered as properly associated with the Central marketing area. Such milk does not demonstrate reasonable levels of performance necessary to conclude that it provides a regular and reliable service in satisfying the Class I milk demands of the Central marketing area.

The pooling standards of all milk marketing orders, including the Central order, are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market and to provide the criteria for identifying those who are reasonably associated with the market as a condition for receiving the order's blend price. The pooling standards of the Central order are represented in the *Pool Plant*, *Producer*, and the *Producer milk* provisions of the order. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market. In addition, it provides the criteria for identifying those whose milk is reasonably associated with the market by meeting the Class I needs and thereby sharing in the marketwide distribution of proceeds arising primarily from Class I sales. Pooling standards of the Central order are based on performance, specifying standards that, if met, qualify a producer, the milk of a producer, or a plant to share in the benefits arising from the classified pricing of milk.

Pooling standards that are performance-based provide the only viable method for determining those eligible to share in the marketwide pool. This is because it is the additional revenue from the Class I use of milk that adds additional income, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the distribution of pool proceeds. Pool plant standards—specifically standards that provide for the pooling of milk through supply plants—also need to reflect the supply and demand conditions of the marketing area. This is important because producers whose milk is pooled receive the market's blend price.

Similarly, supply plant pooling standards should provide for those features and accommodations that reflect the needs of proprietary handlers and cooperatives in providing the market with milk and dairy products. When a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that cannot reasonably be determined as serving the fluid needs of the market, it is appropriate to re-examine the need for continuing to provide that feature as a necessary component of the pooling standards of the order. Because one of the objectives of pooling standards is ensuring an adequate supply of fluid milk for the market, a feature which results in pooling milk on the order that does not provide such service should be considered as unnecessary for that marketing area.

Pooling standards are needed to identify the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns of those producers who actually incur the costs of servicing and supplying the fluid needs of the market.

The post-hearing brief received from the Upper Midwest Cooperatives continued to stress opposition to the amendments offered by Proposals 1 (and Proposals) 3, 5, and 7. They view that such changes to the Central milk marketing order are discriminatory and that the proposed amendments would foster inefficiencies in milk marketing. The brief re-iterated their view that the Department's policy has been to design plant and producer pooling provisions that provide a regulatory balance between the fluid needs of the market and transportation efficiency to meet those needs. In this regard, the brief stressed the opinion that orderly marketing is promoted by not requiring shipments to distributing plants when such shipments are not needed for fluid uses. Additionally, the brief asserts that the Department has long recognized that excluding milk from the pool is a greater threat to orderly marketing in surplus marketing areas than is the pooling of surplus milk supplies under rigid performance rules.

The Upper Midwest Cooperatives' brief added that marketwide pooling has been determined as a constitutional means for surplus Grade A milk to share in the additional revenue resulting from fluid sales. Additionally, the brief noted that the 43-day national hearing review and reform proceeding of 1990—and the Second Amplified Decision of 1996 of that proceeding—articulate the policy of the Department to allow milk to shift to different markets in response to blend price changes. The brief also cited case law to maintain that the statutory scheme for promoting orderly marketing is the sharing of proceeds among producers in the form of uniform, or blend, prices. The opinion expressed in the Upper Midwest brief cites that case law has concluded that producer blend prices cannot be thwarted by a discriminatory transportation burden imposed on distant producers by government mandate.

The record of this proceeding clearly supports a finding that certain features of pooling standards of the Central Order established under the Federal order reform process, especially as they relate to supply plants, are either inadequate or unnecessary. The Final Decision of milk order reform examined and discussed the various pooling standards and features of the pre-reform orders for their applicability in a new, larger consolidated milk order. The pooling standards and features adopted for the consolidated Central Order were designed to reflect and retain those standards and features of the pre-reform orders so as not to cause a significant change and indeed to provide for the continued pooling of milk that had been pooled by those market participants.

The record provides strong evidence to conclude that several features of the *Pool plant* definition, specifically the provisions and features for supply plants, are not being used for the reasons they were intended. Other shortcomings of the Central order, specifically as they relate to producer milk (discussed later in this decision) also contribute to the inappropriate pooling of the milk of producers who are not a legitimate part of the Central milk marketing area. Here too the impact is an unwarranted pooling of milk classed at lower prices resulting in a lower blend price to those producers who actually and consistently supply the Class I needs of the market.

This decision finds that the milk of some producers is benefitting from the blend price of the Central order while not demonstrating actual and consistent service in satisfying the Class I needs of the Central milk marketing area. This finding is attributed to faulty pooling standards. The pooling provisions provided in the Final Decision of milk order reform established pooling standards and pooling features that envisioned the needs of the market participants resulting from the consolidation of nine pre-reform milk marketing areas consolidated to form the current Central milk marketing area. The reform Final Decision, as it related to the Central marketing area, did not intend or envision that the pooling standards and pooling features adopted would result in the sharing of Class I revenues with those persons, or the milk of those persons, who would not be demonstrating a measure of service in providing the Class I needs of the Central marketing area.

The reform Final Decision examined and discussed various pooling standards and features of the pre-reform orders for applicability in a new, larger consolidated milk order. The pooling standards and features adopted for the Central order were intended to reflect and retain those standards and features of the pre-reform orders so as to not cause a significant change, and indeed to provide for the continued pooling of milk that had been pooled by those market participants. The pooling provisions of the Central order were based largely on the predecessor Iowa milk marketing order (then known as Order 79). The Iowa milk marketing order contained the more liberal pooling provisions of the nine orders consolidated to form the current Central order. The record of this proceeding reveals that the combination and features adopted for pool plants, especially as they apply to pool supply plants, are not reasonable or appropriate

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standards for the much larger consolidated Central order.

The record of this proceeding reveals that two-thirds of the Central marketing area population (and corresponding demand for fluid milk) is located in the southern and western portions of the marketing area. However, the adoption of the current Central order pooling provisions did not anticipate that the adopted pooling standards would not adequately consider the impact on the northern Central marketing area resulting from the Arkansas and southern Missouri portions of the pre-reform Southwest Plains marketing area becoming part of the current Southeast marketing area. Milk produced in these regions had been regularly pooled on the Southeast milk order prior to the expansion of the Southeast order as part of milk order reform and is an integral part of the current Southeast marketing area milkshed. Changes in marketing conditions, as revealed in the record, have resulted from the existing pooling standards as an important factor in explaining why fluid handlers in the southern reaches of the Central order have had difficulties obtaining a supply of milk.

As previously indicated, pooling milk on the Central order without demonstrating actual performance in servicing the Class I needs of the market area is neither appropriate nor intended. The record indicates that the volume of milk pooled on the Central Order originating from sources far outside the marketing areas of the nine predecessor marketing areas increased by 186 percent when comparing, for example, the pre-reform month of December 1998 with the post-reform month of December 2000. Of the increase shown in this comparison, milk pooled on the order and originating within the marketing area increased by only 10 percent. Of the additional milk pooled on the Central order, the greatest increase is represented by milk priced at lower class prices. Additionally, testimony by Upper Midwest Cooperatives' witnesses clearly indicated that under the Central order's current pooling provisions, milk pooled on the Central order is not necessarily available to fill the Central market's fluid needs.

This decision agrees with the proponents and those entities who expressed support for adopting Proposal 1 that the order's pooling standards warrant changes. This decision finds, however, that the performance standards of Proposal 1 are unreasonably high when considering the complete context of the pooling provision modifications made in this decision. If adopted as proposed together with the other amendments adopted in this decision, milk that has had a long-established association in supplying those pre-reform marketing order areas consolidated to form the Central order may no longer be pooled on the Central order. Most of this milk originates from areas in the Upper Midwest marketing area. The performance standards sought in Proposal 1 may unintentionally compound the difficulties of Central order distributing plants in securing needed milk supplies that could be made available if not for unreasonably high performance standards. Accordingly, this decision adopts the following amendments to the pooling standards and features of the order:

1. Performance standards for supply plants are reduced to (1) 20 percent in each of the months of August through February and (2) 15 percent in each of the months of March through July. Lower supply plant shipping performance standards are established because of accompanying adjustments to the order's other pooling provisions and features. Lowering supply plant performance standards also addresses the concern by Upper Midwest Cooperatives that a "tightening" of the order's performance standards would erect an unreasonable barrier in supplying to, and to pooling milk on, the Central order. To the extent that the supply plant performance standards may warrant further refinement, the order already provides the means for initiating a change by providing authority for the Market Administrator to consider and make needed changes.

Given that performance standards are specified in every month, the need to continue with the automatic pool plant feature for supply plants during the 3-month period of May through July is rendered unnecessary and contrary to establishing such standards of performance in the first place. The adoption of year-round performance standards, adjusted seasonally, will better assure that a consistent and reliable supply of milk will be provided to the fluid market throughout the year.

August should be included for those months in which a higher performance standard is warranted. Including August in the higher performance months is supported by record evidence which reveals August as the beginning of seasonal increased demand due to the opening of schools occurring at the same time as a general overall decline in milk supplies.

2. This decision eliminates a handler's ability to qualify plants located outside the marketing area by cooperative handlers (as defined in § 1000.9(c)) or diversions from a pool plant of the Central order to another pool plant of the Central order. The record supports a finding that milk pooled in this manner does not actually demonstrate real service in meeting the Class I needs of the Central marketing area. Milk pooled in this manner was often referred to in record testimony as "pyramiding." No reasonable basis can be found in the record evidence to conclude that milk pooled in this manner warrants receiving the Central order blend price. The record can only support concluding that milk pooled in this manner serves to lower the blend price paid to producers who actually do supply the market's Class I needs.

3. This decision finds that shipments of milk to distributing plants regulated by another Federal milk marketing order should not be considered in determining if a supply plant meets the specified performance standard for pooling. The performance standards adopted in this decision for the Central order are designed so that its distributing plants are adequately supplied with milk. Milk shipments to distributing plants regulated by another Federal order only serve the Class I needs of that other order. Pooling standards for the Central marketing area provide the criteria for determining the milk of those producers who are serving the Class I needs of the Central marketing area and who would thereby receive the Central order blend price. It is reasonable in light of this objective to conclude that serving the needs of another market is not providing a service to the Central marketing area. Accordingly, such milk should not be considered as a qualifying shipment for meeting the supply plant performance standards of the Central order.

4. This decision finds that the modification of Proposal 1 offered by DFA to limit pool qualifying deliveries to distributing plants on a "net shipments" basis is warranted. Milk deliveries to distributing plants will be limited to milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from the distributing plant. Relying on net shipments for determining pool qualifying deliveries to distributing plants is applicable to both supply plant deliveries and milk moved to distributing plants directly from the farms of producers. Adoption of this feature will help ensure that milk not serving the market's Class I needs will not be counted towards meeting the specified performance standard.

Providing a net shipments feature for the Central order is reasonable and will likely not be burdensome despite opposition to its adoption. Even with the inappropriate pooling of milk on the order, lower supply plant performance standards adopted in this decision are at levels below the Central market's Class I use of milk. While distributing plants do have some transfers and diversions of milk resulting from variations in demand arising from changing fluid milk needs on weekend days and holidays, this decision finds it is doubtful that the magnitude of these transfers and diversions would be such that a supply plant would risk loss of pool plant status. Additionally, other changes to the order's pooling standards adopted in this decision (discussed below) should provide the necessary safeguards that would make it even more unlikely that a supply plant would lose its pool status. This decision finds that adoption of a net shipments feature in the pooling standards of the Central order also will aid in properly identifying the milk of those producers who actually supply milk to meet the Central marketing area's fluid needs.

b. Cooperative Supply Plant Performance Standards

A cooperative supply plant pooling provision, together with the feature of authorizing the market administrator to adjust the performance standards for cooperative supply plants, should be retained. It is unclear whether Proposals 2 and 4, seeking removal of the cooperative supply plant performance standard and the corresponding provision authorizing the market administrator to adjust those standards, should be adopted in this tentative decision. Based on this, the Department has not adopted these proposals in this tentative decision.

The Central marketing order provides for a cooperative association plant as a type of supply plant on the order provided the cooperative association's plant is located within the marketing area and that at least 35 percent of the milk which the cooperative association handles is shipped to a Central order distributing plant during any current month or in the immediately preceding 12-month period. In addition, the provision requires that the cooperative association plant not qualify as a distributing or supply plant under the Central order or any other Federal milk marketing order.

The DFA, *et al.*, witness stated that adoption of some of the other proposals considered in this proceeding, such as modifying supply plant performance standards and providing for net shipments and a one-time "touch base" standard, makes retaining this provision unnecessary. The witness also testified that the provision has not been used since implementation of the consolidated Central order.

Elimination of the provision was supported in testimony by witnesses representing both A–E and Suiza Foods. Both witnesses stated that the provision is unnecessary and is not being used. In their post-hearing briefs, both A–E and Dean Foods reiterated that no plant is presently qualified under the cooperative supply plant definition.

Although there was no opposition testimony to the removal of the cooperative supply plant provision in the Central Order, this provision and the corresponding provision authorizing the market administrator to make needed adjustments should be retained pending further public comment. The testimony contained in the record does not contain sufficient reason for a finding to eliminate this standard other than it is a provision that is not used. The provision allows pool qualification for cooperative supply plants on either an average of the preceding 12-month's shipments or the current month's shipments and provides pooling flexibility for cooperatives. The cooperative supply plant definition contains features that are unique and intentional. While the proponents and supporters of Proposals 2 and 4 testified that the cooperative supply plant provision is not currently being used, testimony received did not address the apparently diminished importance of this pooling provision that was used in four of the nine pre-reform milk orders consolidated to form the Central order. The provision also is a pooling feature provided in most other Federal orders and, as with the Central order, is not currently being used in most of the other Federal orders containing this provision. Given the current record, removing this provision from the Central order may result in the unintended removal of a pooling provision intended for cooperative associations that may be needed at some future time. Accordingly, this decision does not adopt Proposals 2 and 4.

c. Supply Plant System Standards

Proposal 3 of the hearing notice seeking to increase the performance standards for a system of supply plants—and modified at the hearing to limit supply plant system formation to single handler entities instead of currently allowing such systems to be formed by multiple handlers—is not adopted in this tentative decision. As previously discussed, the record contains evidence that distributing plants regulated by the Central milk order are having difficulty obtaining an adequate supply of milk for fluid use. While this proposal's aim is, in part, to address this problem, there nevertheless remains the potential for a supply plant system to pool milk supplies that may not demonstrate actual service to the fluid needs of the Central marketing area. The modification of the proposal seeking to limit supply plant system formation to a single handler entity has merit. However, taking into account the current record, it should not be adopted as a modification to the order's current system pooling provision in this tentative decision. It is noted that the hearing testimony often referred to supply plant systems as "supply plant units." Nevertheless, it is clear that hearing participants intended to mean "supply plant systems" and accordingly, this tentative decision considered the testimony in the context intended.

The supply plant system provisions of the Central order currently provide that a system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable performance standards established for a supply plant. A supply plant system would qualify to pool all of its milk receipts, including diversions, by meeting a performance standard of 25 percent in each of the months of September through November and January and of 35 percent for all other months. The order currently limits the formation of a supply plant system to plants located within the marketing area.

Proposal No. 3, by DFA, *et al.*, would raise the performance standards for supply plant systems by 5 percentage points for each of the months of August through November and by 3 percentage points higher in all other months. The proponent witness (representing DFA, *et al.*) testified that providing for supply plant systems extends benefits and efficiencies not otherwise available for individual handlers to reduce transportation costs by delivering milk from a more advantageously located supply plant at a volume that would satisfy the performance standards as if all supply plants not as advantageously located had individually met the indicated performance standard. According to the witness this also would avail plant efficiencies in the manufacturing operation of all supply plants that are part of the system. The witness also envisioned that the proposal could ease otherwise disruptive shipping obligations to their manufacturing operations, potentially

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reduce paperwork, and provide the opportunity for producers to receive prices higher than regulated minimum prices. Because system pooling offers a rewarding degree of pooling flexibility, the witness was of the opinion that a supply plant system should meet slightly higher performance standards than those applicable for a single supply plant. This rationale is consistent, the witness indicated, with the pre-reform Chicago Regional order which specified a performance standard at twice the rate for supply plant systems than was applicable for individual supply plants.

According to the DFA, *et. al.*, witness, a higher performance standard for supply plant systems would contribute to making it easier to obtain additional milk supplies in the most efficient manner. Additionally, the witness was of the opinion that this change, together with other changes proposed, would eliminate the ability to "pyramid" the pooling of milk on the order and renew interest in supply plant systems for the market.

A witness from Associated Milk Producers, Inc. (AMPI), who also testified on behalf of the Upper Midwest Cooperatives, opposed adoption of Proposal 3. The witness explained that increased performance standards would simply cause a handler to discontinue pooling its plants as a system, thus forcing the handler to ship a lower percentage of milk receipts from each of the individual supply plants. The witness asserted that this alternative would increase transportation costs without providing additional milk to distributing plants.

An Upper Midwest Cooperatives' witness of AMPI also testified that a supply plant system operated by multiple handlers has the potential for one handler with substantially more sales to distributing plants than needed to meet the supply plant performance standard to pool the milk receipts of other handlers. According to the witness, this could reduce the total volume of milk shipments to distributing plants while technically meeting the order's performance standards. According to the witness, such a provision allows some handlers to entirely escape responsibility for supplying the fluid market and encourages handlers to pay other handlers to qualify their milk supplies for pooling. In light of these concerns, the witness offered a modification to Proposal 3 that limits supply plant system formation to single handler entities.

A witness testifying on behalf of Foremost, AMPI, LOL, Family Dairies, Midwest Dairymen, and First District Association supported the advantages supply plant systems offer as a means to promote more efficient movement of milk to distributing plants. However, given the higher performance standards called for by the proposal, the witness indicated opposition to Proposal 3. The witness was of the opinion that there is no justification for supply plant systems to be required to meet higher performance standards than individual supply plants. The witness did note that a higher performance standard for a supply plant system formed by multiple handlers may be appropriate.

Providing pooling flexibility by permitting more than a single supply plant to form into a single pooling system offers the potential to increase efficiencies by minimizing transportation costs that may not be obtainable when each supply plant of the handler would need to meet the performance standards separately for each plant. Additionally, providing for supply plant systems serves to accommodate the specialization of plant operations without otherwise encouraging such a plant to deliver milk to a distributing plant solely to retain pool status. Providing the opportunity to gain such efficiencies is intended by the supply plant system provision because it does not disrupt the flow of milk for Class I use from supply plants to distributing plants.

The record suggests that supply plant systems formed by multiple handler entities offer the potential to pool milk on the Central order without meeting intended performance standards. The modification to Proposal 3, which would limit the formation of a supply plant system to a single handler entity, may offer a warranted change in the current supply plant system provisions without changing the current performance standards. However, this tentative decision finds that the record does not provide sufficient evidence to tentatively adopt a change in the performance standards for supply plant systems or to limit the formation of supply plant systems.

d. Standards for Producer Milk

Several changes to the pooling standards contained in the *Producer milk* definition of the Central Order should be adopted immediately. The adopted amendments were largely contained in a proposal, published in the hearing notice as Proposal 5, which was modified at the hearing by its proponents. These producer milk pooling standard changes are necessary to more accurately identify the milk of those dairy farmers who actually serve the Class I needs of the market. The amendments include: (1) Establishing year-round diversion limits, adjusted seasonally, for the amount of milk that a pool plant may divert to nonpool plants at 80 percent for each of the months of August through February and at 85 percent for each of the months of March through July. Accordingly, the current lack of diversion limits for the months of May through August is corrected; (2) Diversion limits for supply plants will be based on deliveries to Central order pool distributing plants and will not include deliveries to other pool supply plants of the Central order. This will eliminate the ability of a pool plant to pool increased volumes of milk by diversion to nonpool plants by diverting milk to a second pool plant; and (3) Establishing a net shipments feature for producer milk. These amendments will maintain the integrity of the performance standards for pool plants of the Central marketing area and will more appropriately identify those producers whose milk actually is supplying the Central marketing area's Class I milk needs.

The *Producer milk* provision of the Central order provides for diversion limits of 65 percent during the months of September through November and January and 75 percent during the months of February through April and December. While the Central order limits the pooling eligibility of diverted milk to nonpool plants in specified months, the order places no limits on milk diversions to other pool supply plants of the order. Milk diverted from one pool plant to another pool plant enables the diverting pool plant to increase the amount of milk that can be pooled but diverted to nonpool plants. During the months of May through August, an unlimited amount of producer milk may be diverted by pool plants to nonpool plants. The milk of a producer is not eligible for diversion until at least one day's production of a dairy farmer has been physically received at a pool plant and the producer has continually retained producer status on the Central order. Finally, the order does not currently determine producer milk on a net-shipments basis.

Proposal No. 5, offered by DFA, *et al.*, seeks to establish new year-round diversion limits for producer milk at 75 percent for each of the months of August through November and at 80 percent for each of the months of December through July. These limits are subject to satisfying certain performance measures and would specify that at least 20 percent of receipts in each of the months of August through February and 15 percent in each month of all other months are delivered to Central order distributing plants. Because year-round diversion limits would be established for all months, the proposal is intended to eliminate the ability to pool an unlimited amount of milk on the order during May through August by diversion.

Proposal 5, offered by DFA, *et al.*, was modified in testimony by the DFA witness. The modification proposed sought also to incorporate a net-shipments feature for producer milk as they had proposed as a modification to Proposal 1. According to the witness, the net-shipments feature would be used to determine pool-qualifying diverted milk on the basis of milk receipts transferred or diverted to and physically received by Central order distributing plants less any transfers or diversions of milk from such distributing plants.

The DFA, *et al.*, witness testified that the core issues of the hearing are restoring orderly marketing conditions and economically justifying the appropriate performance standards that, if met, warrant receiving the Central Order blend price. The witness explained that orderly marketing embodies the principles of common terms and pricing that attracts milk to move to the highest-valued use when needed and for milk to clear the market when not needed in higher-valued uses. The DFA witness was of the opinion that the percentage of allowable diversions should be increased over those currently applicable in the Central order. The witness indicated that this becomes possible with the adoption of the other pooling provision amendments, including changing performance standards and considering milk deliveries to distributing plants on a net shipments basis.

The DFA, *et al.*, witness testified that the Central order should provide a limit on the amount of milk that can be diverted to nonpool plants each month by conditioning diversions on the basis of milk shipments to pool distributing plants or distributing plant units of the Central order. The witness stated that the aim of these features is to provide a better correlation between the order's pooling provision standards.

A witness representing several fluid milk processing plants joined in expressing their support for adopting year-round diversion limits. They were of the opinion that this would enhance pooling the milk of only those who provide an adequate supply of milk for fluid uses.

Witnesses representing the Upper Midwest cooperatives testified in opposition to the adoption of Proposal 5 and to the proposal's modification to incorporate a net-shipments feature. In their opinion, these changes would unnecessarily limit the amount of milk that could be pooled on the Central order. The witnesses indicated that this would force surplus milk supplies to be pooled instead on the Upper Midwest order. As a result, they testified, the Upper Midwest pool would be diluted and result in a lower blend price for their producers in the Upper Midwest.

A witness for the First District Association testified that diversion limits are not always needed for every month. The witness maintained that having year-round diversion limits would reduce competition and result in lower milk prices for producers of the Central marketing area. The witness argued that diversion limits should be provided only for ensuring the orderly marketing of fluid milk but should not be used so as to constitute a barrier to pooling milk.

The Central milk order, as all other Federal milk marketing orders, provides and accommodates for diverting milk because it facilitates the orderly and efficient disposition of the market's milk not needed for fluid use without the loss of the benefits that arise from being pooled on the order. When producer milk is not needed by the market for Class I use, its movement to nonpool plants for manufacturing should be provided for without loss of producer milk status. Preventing or minimizing the inefficient movement of milk solely for pooling purposes also needs to be reasonably accommodated. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

A diversion limit establishes the amount of producer milk that may be an integral milk supply of a pool plant. With regard to the pooling issues of the Central order, it is the lack of diversion limits to nonpool plants, in part, that significantly contributes to the pooling of much more milk on the order that does not provide service to the Class I market yet receives the Central order blend price. Such milk is not a legitimate part of the reserve supply of the plant.

Milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant. While diverted milk is not physically received at the diverting plant, it is nevertheless an integral part of the milk supply of that plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not be associated with the diverting plant. Therefore, such milk should not be pooled.

The lack of diversion limits only provides a means for associating much more milk with the market without the burden of demonstrating actual service in meeting the Class I needs of the market. Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers. Without diversion limits, the order's ability to provide for effective performance standards and orderly marketing is weakened.

The lack of diversion limit standards applicable to pool plants opens the door for pooling much more milk on the market. While the potential size of the pool should be established by the order's pooling standards, the lack of diversion limits renders the potential size of the pool as undefined. With respect to the marketing conditions of the Central marketing area evidenced by the record, this decision finds that the lack of year-round diversion limits on producer milk has caused much more milk to be pooled on the order than can reasonably be considered part of the legitimate reserve supplies of the pool plants and does not provide any actual service in meeting the Central market's Class I needs.

The lack of standards applicable for diversions to nonpool plants for the months of May through August has resulted in the pooling of much more milk than can demonstrate any actual service in meeting the Class I needs of the Central marketing area. The diversion limit standards of Proposal 5 address this concern. However, the diversion limits adopted herein are higher than those proposed. Increasing the diversion limit standard is made possible because of other changes being adopted by this tentative decision. The changes adopted to the diversion limits standards in this tentative decision are set at a level to appropriately complement the adopted performance standards. Accordingly, this decision establishes a diversion limit for producer milk of 80 percent for each of the months of August through February and 85 percent for each of the months of March through July. In addition, it should be noted that the diversion limits may be adjusted by the Market Administrator.

As previously discussed, this decision has determined that only deliveries or diversions to pool distributing plants, and not deliveries to pool supply plants, should be allowed to qualify subsequent supply plant diversions for pooling on

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the order. Such conditions are carried into the producer milk definition as a condition for diversion eligibility. It is also consistent, in light of such linkage, that a net shipments feature should be provided as part of the producer milk provision. However, as discussed earlier in the section on pooling standards, the evidence contained in the record does not support the inclusion of deliveries to pool distributing plant units to qualify supply plant diversions for pooling. Accordingly, this feature of Proposal 5 is not adopted.

A proposal, published in the hearing notice as Proposal 9, seeking to allow milk to be eligible for diversion to nonpool plants and for such milk to retain its association with the market for any months during which a handler failed to pool a dairy farmer's milk under any milk marketing order is not adopted. This decision finds that a dairy farmer's milk must be physically received at a pool plant of the Central order before it is eligible for diversion to nonpool plants. Additionally, this decision finds that if milk is not continuously pooled, that it again must be received at a pool plant before regaining pooling eligibility.

The Central order currently specifies that the milk of a new producer, or a producer who has broken association with the market, is not eligible for diversion until one day's production is physically received at a pool plant in the first month, and the dairy farmer continuously retained producer status in following months. The dairy farmer's milk is associated with the market if it is included in the pool each month, except as a result of a temporary loss of Grade A approval.

Proposal 9 would allow milk diverted to a nonpool plant before the producer's milk is actually delivered to a pool plant in the same month to be considered producer milk. Proposal 9 also included a provision to allow the milk of a dairy farmer to retain its association with the market for any months during which the handler failed to pool the producer's milk under any order.

Proposal 9 was offered by the Upper Midwest Cooperatives. A witness from AMPI, testifying on behalf of the Upper Midwest Cooperatives, explained that Proposal 9 is needed to assure that producers' milk can be pooled for the entire month as long as one day's production is physically received at a pool plant any day during the month. According to the witness, producers could miss several days of being able to pool milk on the Central order due to unexpected phenomena, such as weather, trucking problems, and scheduling conflicts.

According to the AMPI witness, Proposal 9 also would allow milk to return for pooling on the order in the month following the month in which it was not pooled due to a price inversion (when the blend price is less that the Class III or Class IV price). In this regard, the witness noted that the order currently provides for milk to be pooled at least one day each month before being eligible for diversion to nonpool plants regardless of whether it is economically sound to pool milk based on the blend price that would result for the month.

The touch base standard of an order establishes an initial association by the producer, and the milk of the producer, with the market. In this way, the touch base provision serves to maintain the integrity of the order's performance standards. The record does not contain sufficient evidence for setting conditions that negate the need to properly re-establish association with the market. Doing so is neither burdensome nor unreasonable considering that only one day's milk production of a dairy farmer needs to be delivered to a plant and pooled in order to maintain association with the market. The possible occurrence of a price inversion which may cause cooperatives to not pool milk for a given month to date is speculative and is an unlikely event because of milk order reform changes in how Class I prices are established. Class I prices are established on the basis of the higher of an advance Class III or Class IV price. In part, such change was made so as to minimize the possibility of price inversions. Accordingly, Proposal 9 is not adopted.

e. Establishing Pooling Standards for "State units"

A proposal, published in the hearing notice as Proposal 7, seeks to establish pooling units organized and reported by State, specifying that in order to pool milk from those States located outside of the States and specified counties that comprise the Central marketing area, each State unit would need to meet the performance standards applicable for pool supply plants. This proposal is not adopted. The Central order does not currently provide for pooling milk located outside of the marketing area in this manner.

Proposal 7, offered by Dairy Farmers of America (DFA), would group and report milk in State units and specify performance standards for such State units as those applicable to pool supply plants. The milk that would be affected would be milk located outside the States of Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and South Dakota, the Minnesota counties of Fillmore, Houston, Lincoln, Mower, Murray, Nobles, Olmstead, Pipestone, Rock, and Winona, and the Wisconsin counties of Crawford, Grant, Green, Iowa, Lafayette, Richland and Vernon.

The DFA witness testified that milk is being pooled on the Central order that is located in areas so far from the marketing area that such milk cannot and does not service the Class I needs of the Central market. The witness argued that milk from such distant areas was never intended to be a source of milk or a part of the Central milk marketing area. According to the witness, large portions of the States of Minnesota and Wisconsin, characterized as a "distant" source of milk, had not historically been part of the supply area for the pre-reform marketing areas consolidated to form the Central milk marketing area. DFA argued that milk from these areas should be subject to the same performance standards as milk from other distant areas such as California or New Mexico.

According to the DFA witness, distant milk currently pooled on the Central order likely would not seek to be pooled on the order because the benefits of receiving a higher blend price for milk actually delivered to Central order pool plants would not offset the costs that would be incurred in transporting milk. In attempting to clarify what would be determined as being not distant, the DFA witness offered a method to distinguish between historical and distant milk supplies. Milk from counties associated with the Central market's pre-reform orders, which in 1998 had a daily supply volume in excess of one 50,000 pound load, would be included with milk considered to be local or in-area and not distant milk.

The principal problem confronting the Central order, as identified by the DFA witness, is that the distant milk receives the order's blend price without the burden of providing any regular and consistent service to the market beyond meeting a one-day touch-base standard. The witness argued that their proposal would set standards for milk from distant areas identical to local milk as a condition for receiving the order's blend price. Providing for this would not, according to the witness, discriminate, penalize, or establish any barriers to the pooling of milk on the Central order because the standards for local milk supplies and distant milk supplies are the same. Support was given in testimony for establishing State units by witnesses representing Prairie Farms and Suiza.

A number of hearing participants opposed the adoption of the State unit pooling proposal, specifically the witnesses representing Upper Midwest cooperative associations. The Foremost Farms witness argued that adoption of the proposal would discourage efficient movements of milk to distributing plants and that such a provision would be inconsistent with the Agricultural Marketing Agreement Act (AMAA). This witness questioned why an organization with milk in the Central marketing area should be required to transport milk from distant areas in Minnesota and Wisconsin when the same organizations already have enough milk in the marketing area to satisfy the order's pooling standards. The witness indicated that this could result in forcing milk located within the marketing area to be hauled long distances to make room for the receipt of milk from distant locations.

The AMPI witness agreed with the Foremost witness's testimony and the witness representing the First District Association which asserted that adopting State unit pooling for distant milk would destroy the benefits of pooling milk on the Central order. They held this opinion because the differences between Class I use and blend prices between the Central and Upper Midwest orders would narrow.

In post-hearing briefs, the Upper Midwest Cooperatives continued to express opposition to DFA's Proposal 7 (and to Proposals 1, 3, and 5). They characterized their opposition as establishing barriers to pooling on the basis of where milk is located through government-mandated transportation costs. As indicated above on proposals affecting pool plants and producer milk, their brief cited case law to advance their contention that such amendments would not be legal.

The record does not support the adoption of performance standards for pooling milk on the order on the basis of its location, or as the proponent and supporters of Proposal 7 describe as State units. The marketing conditions of the Central order do not exhibit the need to require additional performance standards for milk located outside of the marketing area beyond those adopted in this tentative decision. Accordingly, all plants, regardless of location, may become eligible to have the milk of producers pooled on the Central order by meeting the performance standards specified for the various types of pool plants.

It is not important who provides the milk for Class I use or from where this milk originates. The order boundaries of the Central order were not intended to limit or define which producers, which milk of those producers, or which handlers could enjoy the benefits of being pooled on the Central order. What is important and fundamental to all Federal orders, including the Central order, is assuring an adequate supply of milk to meet the market's fluid needs, the proper identification of those producers who supply the market, and an equitable means of compensating those producers from the market's pool proceeds.

As discussed earlier on pooling standards for pool supply plant qualification, the provisions of the consolidated Federal milk orders were not intended to exclude any milk from being pooled on any order, as long as the fluid needs of a marketing area are being served by the milk. At the same time, reform of Federal milk orders did not adopt open pooling, but attempted to provide that each market pool would include the milk that actually is available for serving the fluid needs of the market. The determination of the boundaries of the Central marketing area was guided by the identification of the common characteristics of the predecessor orders that could be consolidated to form the marketing area and to promulgate a marketing order to provide for orderly marketing conditions. The consolidation of the pre-reform orders into the current Central order was not intended to determine those areas from which milk should, or should not, be obtained to serve the market. The adoption of revised pooling standards in this tentative decision should assure milk will be available for the Central market's fluid needs and therefore renders the proposed State unit provision unnecessary. Proposal 7 is not adopted.

2. Simultaneous Pooling on More Than One Marketwide Pool

A proposal, published in the hearing notice as Proposal 8, seeking to exclude the same milk from being simultaneously pooled on the Central order and any State-operated order which provides for marketwide pooling should be adopted immediately. The practice of pooling milk on a Federal order and simultaneously pooling the same milk on a State-operated order also has come to be referred to as "double dipping." The Central order does not currently prohibit milk to be simultaneously pooled on the order and a State-operated order that provides for marketwide pooling. Proposal 8 was offered by A–E, Swiss Valley Dairy, AMPI, Family Dairies USA, FDA, Foremost, Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, and Mid-West Dairymen's Company.

The AMPI witness, testifying on behalf of all the proponents of Proposal 8, stressed that a producer is prohibited from pooling the same milk on more than one Federal order. The witness maintained that the same restriction should be applicable between the Central order and any other regulatory authority that provides for marketwide pooling and the marketwide distribution of pooling revenue. According to the witness, this has been occurring with milk pooled under the California State-operated milk order program since March 2001, and continues.

The AMPI witness explained that the Central order pooling provisions allow a one-time minimal delivery of a single day's milk production of California producers to a Central order pool plant to qualify all subsequent milk production of California producers on the Central order by diversion. However, the witness stressed, all of the same California milk is pooled on the State's milk order program and receives the pricing benefits that the California state program offers its dairy farmers.

The AMPI witness testified that the volume of California milk pooled on the Central order has been increasing since March 2001 and is unnecessarily reducing milk prices paid to Central order producers. The witness presented calculations that indicated that the impact on the Central order blend price was an average reduction of about 2 cents per hundredweight, amounting to almost $2 million in the 7-month period of March through September 2001. The witness stated that due to the obvious injurious effect on Midwest dairy farmers, the Department should put an end to the practice of double dipping and to do so on an emergency basis.

A witness testifying on behalf of the proponents explained that the reason milk used in manufactured products is included in a marketwide pool is that such milk represents a reserve supply of milk that is available to serve fluid distributing plants when needed. Accordingly, the witness stressed that the same milk cannot be considered to be available as a supply for fluid distributing plants regulated under two different marketwide pools. The witness explained that Proposal 8 would not preclude the pooling of California milk, or milk from any other jurisdiction that has marketwide pooling on the Central order. However, the proposal would preclude the pooling of the same milk on the Central order when pooled under the other order, like the California State milk order that provides for marketwide pooling. In this regard, the witness stated that there is no doubt that California's milk order pooling plan

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provides for marketwide pooling, adding that those who say it does not probably are basing their conclusion on California's quota and overbase pricing for milk.

Several other proponent witnesses representing cooperative associations whose member milk is pooled under the Central order supported the adoption of the proposal to eliminate "double dipping" as did two distributing plant operators. Both of the fluid processor representatives argued that milk originating from outside of a 500-mile radius of any of the order's distributing plants is not realistically available to serve the Class I market on a regular basis.

The representative from Land O'Lakes was opposed to adopting Proposal 8. The witness asserted that, despite evidence to the contrary, California does not have a marketwide pool. The witness explained that producers are paid on the basis of a quota price for milk used in fluid and soft dairy product uses, while the basis for non-quota milk is manufacturing values. The returns to producers arising from quota uses of milk, stated the LOL witness, are not distributed marketwide.

The LOL witness proposed a modification to Proposal 8 that would eliminate "double dipping" only with respect to the "quota" portion of the milk associated with the Central order and allow simultaneous pooling of "overbase" California milk on both the California and Central orders. The witness expressed concern that elimination of the ability of the same milk to be pooled simultaneously under a Federal order and a State order with marketwide pooling would cause problems in dealing with milk supplies from other States—such as Pennsylvania and North Dakota—that are considering modifying provisions to include marketwide pooling.

For over 60 years, the Federal Government has operated the milk marketing order program. The law authorizing the use of milk marketing orders, the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders as an instrument which dairy farmers may voluntarily opt to use to achieve objectives consistent with the AMAA and that are in the public interest. An objective of the AMAA, as it relates to milk, was the stabilization of market conditions in the dairy industry. The declaration of the AMAA is specific: "the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce."

The AMAA provides authority for employing several methods to achieve more stable marketing conditions. Among these is classified pricing, which entails pricing milk according to its use by charging processors differing milk prices on the basis of form and use. In addition, the AMAA provides for specifying when and how processors are to account for and make payments to dairy farmers. Plus, the AMAA requires that milk prices established by an order be uniform to all processors and that the price charged can be adjusted by, among other things, the location at which milk is delivered by producers (section 608(c)(5)).

As these features and constraints provided for in the AMAA were employed in establishing prices under Federal milk orders, some important market stabilization goals were achieved. The most often recognized goal was the near elimination of ruinous pricing practices of handlers competing with each other on the basis of the price they paid dairy farmers for milk and in price concessions made by dairy farmers. The need for processors to compete with each other on the price they paid for milk was significantly reduced because all processors are charged the same minimum amount for milk, and processors had assurance that their competitors were paying the same value-adjusted minimum price.

The AMAA also authorizes the establishment of uniform prices to producers as a method to achieve stable marketing conditions. Marketwide pooling has been adopted in all Federal orders because of its superior features of providing equity to both processors and producers, thereby helping to prevent disorderly marketing conditions. A marketwide pool, using the mechanism of a producer settlement fund to equalize on the use-value of milk pooled on an order, meets that objective of the AMAA of ensuring uniform prices to producers supplying a market.

The California State milk order program clearly has objectives similar to those of the AMAA. Exhibits presented at the hearing indicate that the California State order program has a long history in the development and evolution of a classified pricing plan and in providing equity in pricing to handlers and producers. Important as classified pricing has been in setting minimum prices, the issue of equitable returns to producers for milk could not be satisfied by only the use of a classified pricing plan. Some California plants had higher Class I fluid milk use than did others and some plants processed little or no fluid milk products. As with the Federal order system, producers who were fortunate enough to be located nearer Class I processors had been receiving a much larger return for their milk than producers shipping to plants with lower Class I use or to plants whose main business was the manufacturing of dairy products. Over time, disparate price differences grew between producers located in the same production area of the state which, in turn, led to disorderly marketing conditions and practices. These included producers who became increasingly willing to make price concessions with handlers by accepting lower prices and in paying higher charges for services such as hauling. Contracts between producers and handlers were the norm, but the contracts were not long-term (rarely more than a single month) and could not provide a stable marketing relationship from which the dairy farmers could plan their operations.

In 1967, the California State legislature passed and enacted the Gonsalves Milk Pooling Act. The law provided the authority for the California Agriculture Secretary to develop and implement a pooling plan, which was implemented in 1968. The California pooling plan provides for the operation of a State-wide pool for all milk that is produced in the State and delivered to California pool plants. It uses an equalization fund that equalizes prices among all handlers and sets minimum prices to be paid to all producers pooled on the State order. While the pooling plan details vary somewhat from pooling details under the Federal order program, the California pooling objectives are basically identical to those of the Federal program.

It is clear from this review of the Federal and the California State programs that the orderly marketing of milk is intended in both systems. Both plans provide a stable marketing relationship between handlers and dairy farmers and both serve the public interest. It would be incorrect to conclude that the Federal and California milk order programs have differing purposes when the means, mechanisms, and goals are so nearly identical. In fact, the Federal order program has precedent in recognizing that the California State milk order program has marketwide pooling. Under milk order provisions in effect prior to milk order reform, and under § 1000.76(c), a provision currently applicable to all Federal milk marketing orders, the Department has consistently recognized California as a State government with marketwide pooling.

Since the 1960's the Federal milk order program recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages. The need to prevent "double pooling" became critically important as distribution areas expanded and orders merged. The issue of California milk, already pooled under its State-operated program and able to simultaneously be pooled under a Federal order, has, essentially, the same undesirable outcomes that Federal orders once experienced and subsequently corrected. It is clear that the Central order should be amended to prevent the ability of milk to be pooled on more than one order when both orders employ marketwide pooling.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York operates a milk order program for the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the exclusion of milk from the State pool when the same milk is already pooled under a Federal order. Because of the impossibility of the same milk being pooled simultaneously, the Federal order program has had no reason to specifically address double dipping or double pooling issues, the disorderly marketing conditions that arise from such practice, or the primacy of one regulatory program over another. The other states with marketwide pooling similarly do not double-pool Federal order milk.

The record testimony and evidence show milk pooled on the Central order originating from places distant from the area. However, this decision acknowledges that with the advent of the economic incentives for California milk to be pooled on the Central order and, at the same time, enjoy the benefits of being pooled under California's State-operated milk order program, more milk has come to be pooled on the order that has no legitimate association with the integral milk supplies of the Central order pool plants. The association at present has been made possible only through what some market participants describe as a regulatory loophole.

California milk should only be eligible for pooling on the Central order when it is not pooled on the California State order and when it meets the Central's pooling standards. It is the ability of milk from California to "double dip" that is a source of disorderly marketing conditions and for much more milk being pooled on the Central order.

Proposal 8 offers a reasonable solution for adding a prohibition on allowing the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against allowing the same milk to participate in two Federal order pools simultaneously. Adoption of Proposal 8 will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Central market's need for milk used in Class I.

3. Rate of Partial Payments to Producers

A proposal that would change the rate of the partial payment to producers and cooperatives for milk delivered during the first 15 days of the month to the lowest class price for the prior month times 110 percent, published in the hearing notice as Proposal 6, is not adopted. Therefore, the partial payment rate will remain as currently provided for by the order—at the lowest class price for the prior month.

This proposal offered by DFA intends to improve producer cash flow by bringing the partial payment into a closer relationship to the final blend price and to have the partial payment more closely reflect the value of the milk delivered to handlers during the first 15 days of the month. According to the DFA *et al.*, witness, the partial payment rate has declined as a share of the final payment since the consolidation of the Central market under milk order reform.

The DFA, *et al.*, witness stressed that producers need a more consistent cash flow than they currently are experiencing. The witness acknowledged that overpayment in the partial payment could be a problem if the producer does not have enough funds coming in the month's final payment to cover the producer's authorized deductions. The witness noted that the existing $1.00 per hundredweight premiums above minimum order prices enjoyed by Central order producers are probably adequate to cover any overpayments made to producers.

Data provided by the DFA, *et al.*, witness sought to indicate that since order reform on January 1, 2000, the amount of the partial payment received by producers relative to the total payment for milk each month has been reduced when compared to the pre-reform orders. The analysis consisted of approximating a weighted average blend price as a proxy for a comparable order from the pre-reform order's information. The analysis, explained the witness, is a comparison of the current month's blend price with the lowest of the two lower class prices of the prior month. For the entire 56-month period, the witness stated, the average of the blend price minus the lowest class price was $1.59; the first 36 months the average was $1.52; and the last 20 months the average was $1.75. The witness concluded that the main concern revealed by this data is that the spread is widening. After evaluating several differing partial payment rates, the witness concluded that a five percent inflation at the prior month's lowest class price was a reasonable adjustment to approximating the spread that existed over the first 36-month period.

The DFA, *et al.*, witness also testified that there are a wide variety of payment dates and payment levels among the 11 orders. There are currently, said the DFA witness, three groupings: The Southern orders' payments are a percentage of the prior month's blend price adjusted for location; the Northwest and Central orders areas set the advanced payment at the prior month's lowest class price; and the Western orders use an add-on percentage applied to the prior month's lowest class price. The witness also noted that while most orders have one partial payment, the Florida order has two partial payments before a final payment is due.

Several individual dairy farmers also testified that their cash flow situations have deteriorated since the current partial payment rate provisions became effective. In this regard, all dairy farmers testified in support of increasing the rate of partial payment.

A representative of Leprino Foods, a national cheese-processing firm, testified that USDA should reject Proposal 6 since it does not appropriately address the issue it purports to remedy and since it violates the minimum pricing concepts for manufacturers, but not because there is lack of need for an amendment. The Leprino witness testified that the cause of the disparity between the partial and final payment rates is a combination of a failure to blend the pool's higher use values into the partial payment and the use of a price level from the previous month rather than the current month. This witness argued that rather than addressing these problems in the

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proposal, the proposed increase in the rate merely transfers the burden to processors. The witness stated that the proposal violates minimum pricing principles by setting the partial rate above the equivalent market value for Classes III and IV, with the resulting differences in partial payment rates between orders causing disparate economic positions for competing Class III and IV handlers in different orders.

The witness from Leprino concluded that the most appropriate approach to address the root cause of the disparity between the partial and final payment would be the implementation of a similar minimum payment in pooling structure for the partial payment that exists in the final payment. However, the witness did not propose its adoption because such a remedy would require significant administration in terms of plant reporting, report analysis, pool calculation, and movement of funds into and out of the pool in the current system of minimum payment at the lowest class price. This concept was not properly noticed, the witness argued, and a more comprehensive review of all provisions of the order that would be affected and the magnitude of the impact would be necessary.

The Department reconstructed noticed data that recreated the intended analysis presented by witnesses. The Department's reconstruction relied, in part, on the partial payment provisions of the pre-reform orders. The Department used the previous month's Class III price of the pre-reform orders as the lowest class price because the Class III price was used then to set the rate of partial payment. In this regard, comparing partial payment relationship outcomes using actual historical provisions provided for comparing pre- and post-reform partial payment relationships as to the total payment for milk in a month.

Even with the limited amount of data available since the implementation of order reform, the Department's comparison of pre- and post-reform partial payment relationships to total payments does appear to support the observations made by the DFA witness. However, this initial observation alone is not a sufficient basis for changing the rate of the partial payment. Some significant differences in certain key assumptions were made by the proponents of Proposal 6 from those assumptions used by the Department in comparing pre- and post-reform time periods.

Also of concern is the limitation inherent in comparing a 36-month period to one of only 21 months. The 36-month time period shows price trends rising and falling, while the 21-month time shows a period of generally an upward trend in prices. This may suggest that there has not yet been a sufficient period of elapsed time to infer the impact of downward trends in prices and the possible effect on the relationship between the partial and final payments to producers.

With regard to Leprino's concern about uniformity of partial payment rates between orders, the current milk orders have a variety of partial payment rates. Several orders use a partial payment rate based on a percentage of the previous month's blend price, and the Florida order, for example, provides for two partial payments. Additionally, the Western and Arizona-Las Vegas orders, both of which pool significant volumes of milk used in cheese, provide for partial payment rates of 120 and 130 percent, respectively, of the previous month's lowest class price.

There may be times when the partial payment rate exceeds the balance due for the month. In this regard, handler interests point to this outcome as requiring them to pay more for milk for part of the month than its actual total value for the month. It is appropriate to note that this exact outcome occurred several times during the pre-reform 36-month period used by DFA. This decision finds the concerns of handlers in this regard as unpersuasive.

Deductions authorized by producers are more often made in the final payments for milk. There could be times when the amount deducted from the final payment exceeds the amount of the final payment. If the deductions are high enough for this to happen, it would be reasonable to conclude that producers desiring to smooth their cash flow would opt to allow a larger portion of their deductions to be made with receipt of the partial payment, as the order allows.

The partial payment provision in Federal orders is a minimum requirement placed on handlers to pay producers for milk delivered. It is notable that cooperatives and handlers are not restricted to paying only one partial payment at the rate specified in the order; partial payments for milk can be made more often. Additionally, cooperatives and handlers are also at liberty to negotiate agreements for more frequent billings for milk and payments for milk above the minimum established by the order. As made evident by the record, more flexible partial payment options are available to both producers and handlers than relying solely on changing the minimum payment provisions.

As the Leprino witness noted, DFA's proposal does not incorporate or blend the higher-valued uses of milk in their analysis. In response to this observation, the Department compared the relationships between the partial and total payment using various percentages of the Central order's previous month's blend price. Interestingly, if the desired objective is to more closely approximate the partial payment rate using the 36-month period before order reform, the proponents' 105 percent rate of the previous month's lowest class price does seem to best accomplish this. Nevertheless, the same limitations and concerns mentioned above prevent a finding that the Central order's rate for partial payment should be increased.

This decision finds that the cash flow concerns of producers may be better served by the adoption of other proposals considered in this proceeding. Other amendments adopted in this decision affecting the pooling of milk in the Central order will likely reduce the erosion in the blend price received by Central producers. It is expected that higher blend prices will result from more accurately identifying those producers and the milk of those producers who actually serve the Class I needs of the market. Similarly, the relationship between the partial payment and the total price received by producers may change by the adoption of these pooling standard amendments. Accordingly, a finding that the rate of partial payment to producers by handlers should be increased is not supported by the evidence contained in the record of this proceeding.

4. Determination of Emergency Marketing Conditions

Evidence presented at the hearing establishes that the pooling standards of the Central order are inadequate and result in the erosion of the blend price received by producers who are serving the Class I needs of the market and should be changed on an emergency basis. The unwarranted erosion of such producers' blend prices stems from improper performance standards as they relate to pool supply plants and the lack of limits for pool plant diversions to pool and nonpool plants. These shortcomings of the pooling provisions have allowed milk that does not provide a reasonable or consistent service to meeting the needs of the Class I market to be pooled on the Central order. Consequently, it is determined that emergency marketing conditions exist and the issuance of a recommended decision is therefore being omitted. The record clearly establishes a basis as noted above for amending the order on an interim basis and the opportunity to file written exceptions to the proposed amended order remains.

Evidence presented at the hearing also establishes that California milk pooled simultaneously on the California State-operated order and the Central Federal order, a practice commonly referred to as double dipping, renders the Central Federal milk order unable to establish prices that are uniform to producers and to handlers and also has contributed to the unwarranted erosion of milk prices to Central producers.

In view of this situation, an interim final rule amending the order will be issued as soon as the procedures are completed to determine the approval of producers.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Central order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreement and order:

(a) The interim marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the order regulating the handling of milk in the Central marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of November 2001 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Central marketing area is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The agent of the Department to conduct such referendum is hereby designated to be Donald R. Nicholson, Ph.D.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

Dated: November 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Interim Order Amending the Order Regulating the Handling of Milk in the Central Marketing Area

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Central marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.7 is amended by:

(a) Revising the introductory text of paragraph (c),

(b) Revising paragraph (c)(1),

(c) Revising paragraph (c)(2),

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(d) Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4); and

(e) Adding a new paragraph (c)(5).

The revisions read as follows:

§ 1032.7 Pool plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 20 percent during the months of August through February and 15 percent in all other months of the grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and from handlers described in § 1000.9(c), including milk diverted pursuant to § 1032.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (a) or (b) of this section;

(2) The operator of a pool plant located in the marketing area may include as qualifying shipments milk delivered directly from producer's farms pursuant to § 1000.9(c) or § 1032.13(c). Handlers may not use shipments pursuant to § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area;

* * * * *

(5) Shipments used in determining qualifying percentages shall be milk transferred or diverted to and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

2. Section 1032.13 is amended by:

(a) Revising paragraph (d)(2)

(b) Redesignating paragraphs (d)(3), (d)(4), and (d)(5), as (d)(4), (d)(5), and (d)(6), respectively.

(c) Adding a new paragraph (d)(3)

(d) Adding a new paragraph (e).

The revision and additions read as follows:

§ 1032.13 Producer milk.

* * * * *

(d) * * *

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of August through February, and not more than 85 percent during the months of March through July, provided that not less than 20 percent of such receipts in the months of August through February and 15 percent of the remaining months' receipts are delivered to plants described in § 1032.7(a) and (b);

(3) Receipts used in determining qualifying percentages shall be milk transferred to or diverted to or physically received by a plant described in § 1032.7(a), (b) or (e) less any transfer or diversion of bulk fluid milk products from such plants.

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Central Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1032.1 to 1032.86, all inclusive, of the order regulating the handling of milk in the Central marketing area (7 CFR PART 1032) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ 2001, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 02–29030 Filed 11–18–02; 8:45 am]

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Federal Register

Tuesday,
November 19, 2002

Part IV

Federal Election Commission

11 CFR Parts 102 and 110
Contribution Limitations and Prohibitions; Final Rule

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FEDERAL ELECTION COMMISSION

11 CFR Parts 102 and 110

[Notice 2002–22]

Contribution Limitations and Prohibitions

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is issuing these final rules to implement amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA") to the contribution limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). These rules increase the limits on contributions made by individuals and political committees; index certain contribution limits for inflation; prohibit contributions by minors to candidates, authorized committees and committees of political parties and donations by minors to committees of political parties; and prohibit contributions, donations, expenditures, independent expenditures and disbursements by foreign nationals. These rules also revise the Commission's rules for designating contributions to particular elections and attributing contributions to particular donors. Further information is provided in the Supplementary Information that follows.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Acting Special Assistant General Counsel (redesignations and reattributions), or Attorneys Mr. Michael G. Marinelli (contribution limitations), Ms. Dawn M. Odrowski (contributions by minors) or Ms. Anne A. Weissenborn (foreign nationals), 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (Mar. 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one of a series of rulemakings the Commission is undertaking to implement the provisions of BCRA.

Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA. The President of the United States signed BCRA into law on March 27, 2002, so the 270-day deadline is December 22, 2002.

Because of the brief period before the deadline for promulgating these rules, the Commission received and considered public comments expeditiously. The Notice of Proposed Rulemaking ("NPRM") on which these final rules are based was published in the **Federal Register** on August 22, 2002. 67 FR 54,366 (Aug. 22, 2002). The written comments were due by September 13, 2002. The names of commenters and their comments are available at *http://www.fec.gov/register.htm* under "Contribution Limitations and Prohibitions." The NPRM stated that the Commission would hold a hearing on the proposed rules if it received a sufficient number of requests to testify. After reviewing the comments received and in light of the relatively small number of requests to testify, the Commission decided not to hold a public hearing on this rulemaking. A notice canceling the proposed hearing was published on the Commission's website on October 2, 2002 (*http://www.fec.gov/press/20021002cancel.html*) and in the **Federal Register** on October 7, 2002, 67 FR 62,410 (Oct. 7, 2002).

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on contribution limitations and prohibitions were transmitted to Congress on November 8, 2002.

Introduction

The final rules address five major topics: (1) Increased limits on contributions made by certain persons to candidates, by political party committees to Senate candidates, and by individuals in a 2-year period; (2) indexing of certain contributions limits for inflation; (3) prohibition on contributions, donations, expenditures, independent expenditures and disbursements by foreign nationals; (4) prohibition on contributions by minors to candidates, authorized committees, and committees of political parties and on donations by minors to committees of political parties; and (5) designating contributions to particular elections and attributing contributions to particular contributors.

Four of the five topics involve implementing specific provisions of BCRA. BCRA's amendments to 2 U.S.C. 441a(a) that increase contribution limits for individuals and political committees are implemented by amending 11 CFR 110.1, 110.2 and 110.5 and adding new § 110.17 on indexing the contributions limits for inflation. BCRA's amendments to 2 U.S.C. 441e to strengthen and expand the ban on campaign contributions and donations by foreign nationals is implemented by removing and reserving 11 CFR 110.4(a), the former regulation addressing foreign nationals, and adding new § 110.20. BCRA's ban on contributions by minors to Federal candidates and contributions and donations by minors to committees of political parties at 2 U.S.C. 441k is implemented by removing 11 CFR 110.1(i)(2), the former regulation addressing contributions by minors, and adding new § 110.19.

In light of BCRA's focus on contribution limits, the Commission has also decided to streamline its rules for redesignating contributions for a particular election and reattributing contributions to particular contributors. These changes are reflected in amendments to 11 CFR 110.1(b)(5) and 110.1(k)(3).

Explanation and Justification

11 CFR 102.9 Accounting for Contributions and Expenditures

Recordkeeping requirements play a crucial role in ensuring compliance with FECA's and BCRA's contributions limitations, as noted in the NPRM. 64 FR at 54,372. Accordingly, the Commission sought comment on a variety of proposals to modify the recordkeeping requirements in 11 CFR 102.9. Two commenters were opposed to any change; one noted that electronic records should be sufficient, provided they are in readable form. Another commenter supported the Commission's proposal to require political committees to maintain photocopies or electronic copies of contributors' checks. The Commission has determined that requiring retention of photocopies or electronic copies of contributors' checks will facilitate audits that determine compliance with contribution limits. Therefore, 11 CFR 102.9(a) is amended to require political committee treasurers to maintain either a full-size photocopy or a digital image of each check or written instrument by which a contribution is made. If a political committee elects to retain digital images, it must be prepared to provide the Commission with the computer equipment and software needed to retrieve and read the digital images at no cost to the Commission. New 11 CFR 102.9(a)(4).

Additionally, the Commission is also amending the supporting evidence requirements for redesignations and reattributions in connection with other changes made to redesignations and reattributions, as explained below in the discussion of 11 CFR 110.1(l).

Paragraph (e)(1) of 11 CFR 102.9 is amended to clarify that its requirements apply to contributions designated in writing by the contributor pursuant to 11 CFR 110.1(b)(2)(i), contributions treated as such pursuant to 11 CFR 110.1(b)(2)(ii), contributions redesignated in writing by the contributor pursuant to new 11 CFR 110.1(b)(5)(ii)(A), or contributions designated by presumption pursuant to new 11 CFR 110.1(b)(5)(ii)(B). New paragraph (e)(2) makes the standard for acceptable accounting methods explicit by stating that the committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. Additionally, a technical change is made to recodify existing regulatory text as new paragraph (e)(3) in order to clarify that the requirement for candidates not in the general election to refund any contributions designated or treated as contributions for the general election applies to all candidates and authorized committees.

11 CFR 110.1 Contributions by Persons Other Than Multi-Candidate Political Committees

1. 11 CFR 110.1(a) Scope

Section 110.1(a) sets out the scope of the regulations in 11 CFR 110.1. The final rules in this paragraph contain amended citations to the provisions concerning minors and foreign nationals. This final rule is substantially identical to the proposed rule, and the Commission did not receive any comments concerning paragraph (a).

2. 11 CFR 110.1(b)(1) Increases in Limitations on Contributions to Candidates

The Act limits the amount that individuals and certain other persons may contribute to candidates and political committees, including political party committees with respect to Federal elections. 2 U.S.C. 441a(a)(1). The pre-BCRA provisions of the Act permitted persons to contribute up to $1,000 to Federal candidates per election and up to $20,000 per calendar year to political committees established and maintained by national political parties. For contributions made on or after January 1, 2003, BCRA amends 2 U.S.C. 441a(a)(1)(A) to increase the amount persons may contribute to Federal candidates to $2,000 per election. Section 110.1(b)(1), which contains the contribution limitation of 2 U.S.C. 441a(a)(1)(A), is therefore, being amended to incorporate the new increased $2,000 contribution limit. Paragraph (b)(1) in the final rules, with some minor revisions, is substantially identical to proposed paragraph (b)(1) in the NPRM. The Commission did not receive any comments on this provision.

FECA also permits certain persons to contribute up to $5,000 per year to any other political committees. 2 U.S.C. 441a(a)(1)(C). This contribution limit was left unchanged by BCRA. However, BCRA did revise 2 U.S.C. 441a(a)(1) by adding paragraph (D), which permits persons to make up to $10,000 in contributions to a political committee established and maintained by a State committee of a political party in a calendar year. This statutory provision was implemented by the addition of new paragraph (c)(5) to § 110.1. *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money Final Rules, 67 FR 49,063 (July 29, 2002).

BCRA mandates that the limit for contributions by individuals and other persons under 2 U.S.C. 441a(a)(1)(A) be increased every odd-numbered year by the percentage difference in the price index between the current year and the base year of 2001. 2 U.S.C. 441a(c)(1)(B). The mechanics of the indexing are set forth in 11 CFR 110.17, which is discussed below. However, in order to alert the reader that the contribution limits are adjusted every two years, § 110.1(b)(1)(i) contains a cross reference to section 110.17. Additionally, paragraph (b)(1)(ii) sets forth the 2-year time period in which the increased contribution limits are to be in effect. That 2-year period starts the day after the previous general election and ends on the day of the next regularly scheduled general election.

Because the contribution limits may change every two years, depending upon the consumer price index, paragraph (b)(1)(iii) states that the Commission will publish the new contribution limits in effect in the **Federal Register** every odd-numbered year and maintain that information on its website. One commenter supported this change.

3. 11 CFR 110.1(b)(3) Net Debts Outstanding

The NPRM raised the issue of the effect of the increase on contribution limits due to the inflation adjustment on contributions made after an election that are used to satisfy the net debts outstanding of a candidate's authorized committees related to that previous election. The NPRM sought comment on the following hypothetical: If the contribution limit were to be increased from $2,000 to $2,100, effective November 3, 2004, and contributor X makes a $2,000 contribution to candidate Y in October of 2004, could contributor X make a $100 contribution after November 3, 2004 designated for that general election, provided that candidate Y's principal campaign committee still has net debts outstanding?

The Commission received several comments concerning this issue. All the commenters who addressed this, including the Congressional sponsors of BCRA, argued against permitting the increase in the contribution limits to apply to contributions made to pay off net debts outstanding from any election held prior to the increase in the contribution limits. Instead, these commenters proposed that any increased contribution limits should only apply to elections held after the date on which the indexing triggers a higher contribution limit. Several of these commenters noted the confusion that would ensue for both contributor and recipient committees if multiple contribution limits applied to the same election. The Commission agrees with this reasoning. In addition, it finds no evidence that Congress intended candidates in a deficit position after an election to have the benefit of accepting larger contributions than candidates who have no debts outstanding for that election. Consequently, the Commission is persuaded that the increase in the contribution limits should not be applied to previous elections. This interpretation will reduce the occurrence of multiple changes to the contribution limits for elections. The Commission also notes that the retroactive application of 2 U.S.C. 441a(c)(1)(C) specifically begins on the date after the previous general election, and can thus be construed to mean that the increase in the contribution limits does not apply to any previous election.

To make clear that the increase in contribution limits cannot be used to retire net debts outstanding from previous elections, the Commission is amending § 110.1(b)(3)(iii). This regulation sets forth the conditions under which candidates may accept contributions to retire net debts outstanding after the date of a previous primary or general election. The Commission is renumbering the two existing conditions as paragraphs (b)(3)(iii)(A) and (B) and is adding the

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additional requirement at paragraph (b)(3)(iii)(C) that contributions received for net debts outstanding arising from previous elections do not exceed the contribution limitations in effect on the date of such election.

4. 11 CFR 110.1(b)(5)(ii) Redesignations

A. Introduction

In the NPRM, the Commission stated that BCRA's renewed focus on contribution limits coincided with the Commission's consideration of updating and streamlining its rules for designating contributions for a particular election or attributing contributions to particular contributors. *See* NPRM, 67 FR at 54,371. Under existing regulations, all contributions are either designated in writing by the contributor, 11 CFR 110.1(b)(2)(i), or treated as contributions for the next election after the contribution is made. 11 CFR 110.1(b)(2)(ii). This is in order to ensure that no person contributes more than the individual contribution limit to any candidate with respect to a particular election. 2 U.S.C. 441a(a)(1)(A). Commission regulations permit political committees in certain circumstances to obtain a written redesignation signed by the contributor. 11 CFR 110.1(b)(5)(ii). The Commission presented proposed rules in the NPRM that would permit the authorized committees of candidates to redesignate contributions pursuant to a presumption in certain circumstances. NPRM, 67 FR at 54,376. Additionally, the NPRM proposed amending the rules pertaining to reattribution of contributions similar to the rules on redesignation. This proposal is addressed in the Explanation and Justification for 11 CFR 110.1(k)(3)(ii), discussed below.

One commenter applauded the Commission's consideration of the contribution redesignation regulations that it characterized as "confusing and burdensome both for committees and contributors." In contrast, several commenters noted that BCRA neither requires nor anticipates a reexamination of the redesignation rules. BCRA's silence on these issues led one commenter to the conclusion that these issues would be more appropriately addressed in a separate rulemaking that does not arise from BCRA, while another found the Commission's reexamination well-timed, as an effort to simplify FECA compliance generally, which will improve the ability of political committees to comply with the new requirements of BCRA. In light of the new contribution limits and other statutory changes in BCRA, the Commission has concluded that this rulemaking provides an appropriate vehicle for simplifying the rules governing redesignation.

B. 11 CFR 110.1(b)(5)(ii)(A) Existing Redesignation Rule

Because the Commission has decided to provide for an alternative method for redesignation of contributions, 11 CFR 110.1(b)(5)(ii) requires a technical amendment in order to incorporate the new provision within this section. Thus, this rulemaking redesignates former 110.1(b)(5)(ii)(A) and (B) as 110.1(b)(5)(ii)(A)(1) and (2), respectively. This rulemaking does not amend the regulatory language of these provisions.

C. 11 CFR 110.1(b)(5)(ii)(B) Redesignation of Certain Excessive Primary Contributions

Current 11 CFR 110.1(b)(5) sets forth the procedure for the redesignation of excessive contributions to candidates and authorized committees from any person, except multicandidate committees and those persons prohibited from making contributions. *See* 11 CFR 110.1(a). When seeking a redesignation of an excessive contribution, a committee treasurer must offer the contributor a refund and obtain a signed, written redesignation from the contributor within 60 days of the treasurer's receipt of the contribution. *See* 11 CFR 110.1(b)(5)(ii). These requirements apply to excessive contributions that were designated in writing by the contributor, 11 CFR 110.1(b)(5)(i)(A) and (B), or that were not designated in writing by the contributor, 11 CFR 110.1(b)(5)(i)(C) and (D), in which case 11 CFR 110.1(b)(2)(ii) treats the contributions as made for the next election for that Federal office after the contributions are made.[1] In addition to written redesignations, the Commission is amending 11 CFR 110.1(b)(5) to permit authorized committees to redesignate contributions that would otherwise be excessive without obtaining a signed, written document under certain circumstances, as discussed below.

As proposed in the NPRM, the Commission is amending these regulations to include a mechanism to simplify redesignation procedures for certain excessive primary contributions by using a presumption. *See* NPRM, 67 FR at 54,371, new 11 CFR 110.1(b)(5)(ii)(B). This presumption applies only when a contributor makes an excessive contribution to a candidate's authorized committee before a primary election that is not designated in writing for a particular election. In such circumstances, a candidate's authorized committee may presume that the contributor intended to contribute any excessive amount to that candidate's general election, without obtaining written permission from the contributor to treat the excess as a general election contribution. This presumption should not be inferred, however, in instances where the contributor has expressly designated a contribution in writing for a different election.

The Commission agrees with the commenter who noted the reasonableness of a presumption that a contributor of a large contribution to a primary election campaign would also support the general election campaign of the same candidate. That commenter reasoned that the primary and general elections occur in the same year and are two stages of one process to elect a candidate to a particular office. However, the Commission disagrees with another commenter who argued that written redesignations most often serve as barriers to contributor intent, which in the commenter's view is generally to support the candidate to the maximum extent possible. The Commission retains its rules on written redesignations in all other situations described in 11 CFR 110.1(b)(5)(i)(A) through (D). Only in the specific circumstance presented in new 11 CFR 110.1(b)(5)(ii)(B) will the presumption suffice to replace a written redesignation.

Thus, the Commission is revising § 110.1(b)(5)(ii)(B) to permit an authorized committee to redesignate excessive contributions to the general election if the following conditions are satisfied. First, the contribution must be made before the primary election. Second, the contribution must not have been designated in writing for another election. Third, the contribution would be excessive if treated as a contribution made for the primary election, and fourth, the redesignation does not cause the contributor to exceed any other contribution limit. These conditions are set forth in paragraphs (b)(5)(ii)(B)(*1*) through (*4*), respectively. The committee must be permitted to accept general election contributions in order to designate contributions by presumption. Therefore, if a presidential candidate's authorized committee accepts public funding in the general election, the presumption is available to any such committees only to the extent they are permitted to accept contributions to a general election legal and accounting compliance fund. The final rule also requires that the authorized committee notify the contributor of the redesignation. This requirement is discussed in further detail below.

[1] These requirements apply whether the contributions are excessive on their face or in aggregation with other contributions, 11 CFR 110.1(b)(5)(i)(A) and (C), or were designated for an election and were made after the election, but cannot be accepted because the contributions exceed net debts outstanding from the past election, 11 CFR 110.1(b)(5)(i)(B), or were received after an election but undesignated, and the authorized committee has net debts outstanding from the previous election. 11 CFR 110.1(b)(5)(i)(D).

D. 11 CFR 110.1(b)(5)(ii)(B)(5) and (6) Notice to Contributors

With respect to the redesignation of certain primary contributions, the NPRM included two alternatives, Alternatives 1–A and 1–B. *See* proposed 11 CFR 110.1(b)(5)(ii)(B), NPRM, 67 FR at 54,371 and 54,376. The alternatives differed in whether an authorized committee employing the presumption to redesignate a contribution would be required to notify the contributor that such action is being taken. Alternative 1-A would not have required any notification to the contributor, while Alternative 1-B would have required notification through the addition of paragraphs (b)(*5*)(ii)(B)(*5*) and (*6*). *See* NPRM, 67 FR at 54,371 and 54,376.

Alternative 1–A was designed to minimize the administrative burden on authorized committees when a contributor's intent could be reasonably inferred. *See id.* at 54,371. Some commenters preferred this approach. One viewed it as a better balance between the Commission's need to ensure that committees follow procedures and the committees' need for flexibility. Greater flexibility for the committees was the basis for another commenter's support. Another found Alternative 1–A to be consistent with contributor intent and with BCRA's change in the individual aggregate contribution limit from an annual to an election cycle basis. *See* 2 U.S.C. 441a(a)(3). The Commission notes, however, that BCRA changes the individual aggregate contribution limit to a bi-annual basis that only approximates the election cycle for the U.S. House of Representatives. More importantly, Congress did not change the per candidate contribution limits from a per-election to an election-cycle basis.

Alternative 1–B in the Commission's proposal would have required that the authorized committee inform the contributor that a portion of the contribution is being redesignated to the general election, and that the contributor may request a refund instead. As with Alternative 1–A, no confirmation from the contributor would have been required.

This alternative attracted the support of several commenters, as well. One commenter found that the presumption combined with notice to the contributor reasonably approximates contributor intent, with notice ensuring that any other contributor intent can be honored. Similarly, another argued Alternative 1–B strikes the appropriate balance between the administrative burden imposed on authorized committees and the need to honor contributor intent, noting that some primary election contributors might plan to support a different candidate in the general election. Another commenter supported the notice required under Alternative 1–B because it would provide an opportunity for the contributor to "opt-out" and receive a refund, instead of permitting the redesignation, and because it is more likely to prevent the contributor from inadvertently making an excessive contribution to the general election.

The Commission has determined that notifying contributors is necessary when authorized committees redesignate excessive contributions that were initially considered primary contributions by operation of 11 CFR 110.1(b)(2)(ii) to be general election contributions. The Commission has therefore adopted Alternative 1–B as proposed in the NPRM, with clarification to the notice procedure as described below. *See* NPRM, 67 FR at 54,371 and 54,376. The Commission believes that, in the precise circumstances discussed, it is reasonable to infer that the contributor of an otherwise excessive primary contribution would likely not object to redesignating a portion of that contribution to the general election campaign. The contributor's check establishes the contributor's intent to contribute the funds to the candidate's authorized committee. The contribution limits in FECA prohibit the excessive contributions at issue, so the presumption permits the authorized committee to honor the contributor's intent in a manner that avoids a violation of law by both the recipient committee and the contributor.

The notice and refund procedure serves to confirm the presumption that a contributor of an excessive, undesignated contribution to the primary election would consent to a redesignation of the excessive portion of the contribution to the general election. The authorized committee may assume acquiescence on the part of the contributor if the contributor does not respond to the notification. However, if the contributor does not want the contribution to be redesignated, the notice provides a mechanism by which the contributor may object to the redesignation and request a refund or a reattribution under 11 CFR 110.1(k)(3)(ii). Additionally, the Commission notes that the trigger for a committee's use of the presumption—an undesignated excessive contribution—suggests the contributor may benefit from information about the contribution limits in FECA. Contributors need to know if a contribution was redesignated or reattributed so that they can avoid an inadvertent excessive contribution. Any authorized committee that seeks to retain a contribution that would otherwise constitute a violation of law can fairly be required to notify the contributor of the means by which it has remedied the violation of law. Thus, new paragraph (b)(5)(ii)(B)(*5*) requires the treasurer to notify the contributor of the redesignation and provide an opportunity to the contributor to request a refund. In such a notice, the committee may, if it wishes, also seek a written reattribution under 11 CFR 110.1(k)(3)(ii)(A); however, authorized committees are not required to include this information in the notice pursuant to 11 CFR 110.1(b)(5)(ii)(B)(*5*).

Authorized committees may notify contributors by paper mail, email, fax, or any other written method. The authorized committee must do so within sixty days of the treasurer's receipt of the contribution. *See* new 11 CFR 110.1(b)(5)(ii)(B)(*6*). The notice must be written in order to avoid opportunities for fraud, so the option to communicate orally has been deleted from paragraph (b)(5)(ii)(B)(*6*). The sixty-day requirement protects contributor intent by providing notice on a reasonably contemporaneous basis.

E. 11 CFR 110.1(b)(5)(ii)(C) Redesignation of Certain Excessive General Election Contributions

The Commission sought comment on whether to permit backward-looking presumptions, so that excessive general election contributions received after a primary election could be designated by an authorized committee to pay off primary debt. *See* NPRM, 67 FR at 54,371. Three commenters favored a backward-looking presumption in certain circumstances. One supported the presumption in the situation described, provided that the authorized committee has net debts outstanding for the primary election. Another supported the presumption, provided that it is limited to elections in the same election cycle. A third supported the presumption, provided that the contributor receives notice. Finally, one commenter argued against such a

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backward-looking presumption because it would require more complex considerations by the contributors. However, the Commission notes that the burden of calculating net debts outstanding for the primary election falls on the authorized committees, not on the contributors.

The Commission has determined that the backward-looking presumption, in limited circumstances, should apply subject to the same conditions as the redesignation presumption in 11 CFR 110.1(b)(5)(ii)(B). The Commission notes that current 11 CFR 110.1(b)(3)(iv) permits a candidate in the general election to pay primary election debts and obligations with general election contributions. Thus, if a contributor designates in writing that a non-excessive contribution should be considered for the general election, the recipient committee may nonetheless use those funds to pay primary debts, pursuant to 11 CFR 110.1(b)(3)(iv). In this situation, it would be incongruous if a recipient committee had less flexibility with contributions that are *not* designated in writing than it would have with those that are designated in writing.

Consequently, the Commission has incorporated such a presumption in new 11 CFR 110.1(b)(5)(ii)(C). The presumption can be applied to an excessive contribution that is made after the primary election date, but before the general election and that was not designated in writing by the contributor. 11 CFR 110.1(b)(5)(ii)(C)(*1*) and (*2*). The committee must have more net debts outstanding as calculated under 11 CFR 110.1(b)(3)(ii) from the primary than the excessive portion of the contribution. 11 CFR 110.1(b)(5)(ii)(C)(*5*). The conditions in 11 CFR 110.1(b)(5)(ii)(C)(*3*), (*4*), (*6*), and (*7*) are similar or identical to the conditions set forth in 11 CFR 110.1(b)(5)(ii)(B)(*3*), (*4*), (*5*), and (*6*), respectively. It is important to note, however, that if a contributor makes an excessive contribution and designates the contribution in a signed writing for the general election, then the authorized committee would be required to obtain a signed writing from the contributor to redesignate any portion of the contribution to the primary. *See* new 11 CFR 110.1(b)(5)(ii)(C)(*2*).

5. 11 CFR 110.1(c) Contributions to Political Party Committees

The pre-BCRA provisions of the Act permitted persons to contribute up to $20,000 per calendar year to the political committees established and maintained by the national political parties. BCRA amends 2 U.S.C. 441a(a)(1)(B) to increase the amount that may be contributed by individuals and certain other persons to political committees established and maintained by national political parties to $25,000 per calendar year. Consequently, the Commission is amending 11 CFR 110.1(c)(1) to increase the amount that may be contributed by those covered by 2 U.S.C. 441a(a)(1)(B) to committees established and maintained by national political parties to $25,000 per year. No comments were received on this change. Paragraph (c)(2) of this section provides that these committees consist of the national committees, and the House and Senate campaign committees.

The Commission is adding new paragraphs (c)(1)(i), (ii) and (iii) to § 110.1. These paragraphs parallel new paragraphs (b)(1)(i), (ii) and (iii) discussed above. Paragraph (c)(1)(i) provides for application of the indexing provisions at 11 CFR 110.17 to the contribution limitation for contributions to national party committees. New paragraph (c)(1)(ii) establishes the two-year period in which the indexing is applied. New paragraph (c)(1)(iii) provides for the periodic publication by the Commission of the increased contribution limits. When proposed in the NPRM, the new paragraphs (c)(1)(i) and (c)(1)(iii) received no comments. These paragraphs are left substantially unchanged from the NPRM in the final rules. The comments relating to paragraph (c)(1)(ii) regarding the timing of the increase in the contribution limit due to the application of the indexing provisions are addressed below in the Explanation and Justification for new § 110.17.

6. 11 CFR 110.1(i) Contributions by Spouses

As explained below in the Explanation and Justification for new 11 CFR 110.19, 2 U.S.C. 441k prohibits contributions made by minors to Federal candidates and contributions and donations to committees of political parties, but it does not prohibit contributions or donations to other types of political committees such as corporate and labor organization separate segregated funds and non-connected political committees (often referred to as "PACs").

The proposed rules would have amended the pre-BCRA provision governing contributions by minors at former 11 CFR 110.1(i)(2) to reflect this point. The Commission has decided instead to move the pre-BCRA minors provision to new 11 CFR 110.19 so that all of the provisions regarding minors are addressed in one section of the regulations. Therefore, the final rules move the minors provision at former 11 CFR 110.1(i)(2) to new 11 CFR 110.19(d). As a result of this move, § 110.1(i) addresses only contributions by spouses, a provision that is unchanged. Therefore the final rules amend the title of paragraph (i) to "Contributions by Spouses" to reflect the remaining focus of this paragraph.

7. 11 CFR 110.1(k)(3)(ii) Reattribution

A. Introduction

In connection with the proposed amendments to the redesignation rules, the NPRM also included a similar proposal to amend the reattribution rules. Current 11 CFR 110.1(k)(3) sets forth the procedures for the reattribution of excessive contributions to other joint contributors. Contributions from more than one person must include each contributor's signature, and each such contributor is attributed an equal share of the contribution unless other instructions are provided. 11 CFR 110.1(k)(1) and (2). A committee may ask a contributor who made an excessive contribution if a joint contribution was intended. 11 CFR 110.1(k)(3)(i). In order to reattribute a contribution in such a situation, a committee treasurer must offer the contributor a refund and must obtain within sixty days of the contribution a written reattribution signed by each of the contributors. 11 CFR 110.1(k)(3)(ii). (Unlike redesignation, which is limited to authorized committees because of the relationship of the contribution to particular elections pursuant to 2 U.S.C. 441a(a)(1)(A), the reattribution procedure is available to all political committees, any of which could receive joint contributions.) The commenters who supported the Commission's proposal to amend the redesignation rules also supported the proposal to amend the reattribution rules for the same reasons. Likewise, commenters who did not favor the Commission's proposal regarding redesignation also did not support amending the reattribution rules at this time.

B. The Proposal and Comments

The Commission proposed a presumption related to reattribution in the NPRM. When funds are contributed by a check or other written instrument with two or more names imprinted on the check, but with only one signature, the entire contribution is attributed to the individual whose signature appears on the check. *See* 11 CFR 104.8(c) and 110.1(k)(1). Alternatives 2–A and 2–B in proposed 11 CFR 110.1(k)(3)(ii)(B) in the NPRM both included a presumption that with respect to such contributions that are excessive, a committee would be permitted to presume that the contribution should be attributed equally among those whose names appeared on the check or other instrument. *See* NPRM, 67 FR at 54,371 and 54,377. Like the redesignation alternatives, Alternative 2–B would have required the recipient committee to notify the contributors, while Alternative 2-A would not have required any notice. *See id.*

Three commenters opposed both Alternatives 2–A and 2–B. The three agreed that inferring a non-signer's intent to contribute in the absence of any indication from that individual is extremely unreliable and carries a greater risk of error than the redesignation presumption. One commenter observed that the non-signer might not support the same candidates and political committees that the signer supports. Even if he or she does support the same candidates, if the non-signer is unaware of the contribution, he or she may inadvertently make an excessive contribution to the same committee. Another of the three found Alternative 2–B unacceptable because the burden of "opting-out," that is, choosing to request a refund instead of permitting the reattribution, would be on the contributor, whereas the commenter believed the burden should be on the recipient committee. A fourth commenter agreed with the presumption, arguing that contributors do not generally believe more than one signature would be required because usually only one person signs a particular check. This commenter also argued that any indication of intent to make a joint contribution should suffice, citing examples of accompanying correspondence, a donor card, or a notation on a check. Under such circumstances, this commenter would not require notification. In the absence of any indication of such an intent, this commenter supports the approach of Alternative 2–B, which would require the recipient committee to notify the contributors of the reattribution.

C. 11 CFR 110.1(k)(3)(ii)(A) Existing Reattribution Rule

Because the Commission has decided to provide for an alternative method for reattribution of contributions, 11 CFR 110.1(k)(3)(ii) requires a technical amendment in order to incorporate the new provision within this section. Thus, this rulemaking redesignates former § 110.1(k)(3)(ii)(A) and (B) as § 110.1(k)(3)(ii)(A)(1) and (2), respectively. This rulemaking does not amend the regulatory language of these provisions.

D. 11 CFR 110.1(k)(3)(ii)(B) Presumption of a Reattribution

The Commission has concluded that the changes required by BCRA provide an appropriate occasion to promulgate regulations that will provide authorized committees with additional means of reattributing certain contributions. Thus, it has adopted Alternative 2–B with two modifications. Under paragraph (k)(3)(ii)(B)(*1*), if an excessive contribution is made with a written instrument with more than one individual's name imprinted upon it, but only one signature, the permissible portion of the contribution will be attributed to the signer, and the committee may reattribute any excessive portion of the contribution to any other individual whose name is imprinted on the written instrument. Thus, the final rule differs from the proposed rule in that the proposed rule would have divided excessive contributions equally among the names listed on the check. The final rule takes a different approach in order to attribute the maximum permissible amount to the signer because that contributor's intent is clear. Only excessive funds would be reattributed pursuant to the presumption to another contributor whose name appears preprinted on the check, and only to the extent that this reattribution would not cause that other individual to exceed his or her contribution limit.

The Commission has determined that notice to the contributors is essential to make any presumption in this situation reasonable. The political committee employing this presumption is required to notify all contributors and offer the signer contributor a refund under paragraph (k)(3)(ii)(B)(*2*).

As noted in the NPRM, the Commission and political committees have devoted significant resources to ensure compliance with the reattribution requirements. The Commission agrees with the commenter who noted that joint contributors often indicate their intention to jointly contribute in some fashion other than by both signing one personal check. However, the Commission also agrees that a presumption based only on an individual's name appearing on a check is not reliable standing alone. Consequently, the Commission is adopting the requirement that political committees notify all of the joint contributors to whom any portion of the contribution is reattributed. The committee may make the notice in any written form and must do so within sixty days of the treasurer's receipt of the contribution. *See* new 11 CFR 110.1(k)(3)(ii)(B)(*3*). The sixty-day requirement protects contributor intent by providing notice on a reasonably contemporaneous basis. Like the redesignation notice provision, section 110.1(k)(3)(ii)(B)(3) has been clarified to permit notice by any written method, including email. Authorized committees may, if they choose, provide contributors with a single notice as to any permissible redesignation and any permissible reattribution.

E. Other Proposals Relating to Redesignation and Reattribution for Which No Changes to the Rule Are Being Made

(1) 11 CFR 110.2 Multicandidate Contributions

Current 11 CFR 110.2(b)(5) sets forth the procedure for redesignation of excessive contributions made by multicandidate committees. In the NPRM, the Commission asked commenters to address whether excessive contributions from multicandidate committees should be subject to any form of redesignation by presumption. Only one commenter supported any such application, while two opposed it. These two argued that a signed writing should be required from multicandidate committees because these committees are likely to be sufficiently familiar with the existing Commission requirements so that the higher standard of specificity required from them is not burdensome. The Commission agrees that the redesignation presumption is inappropriate for multicandidate committees, so no change has been made to 11 CFR 110.2.

(2) Expanding the Redesignation Presumption Beyond the Election Cycle

The Commission also asked in the NPRM if presumptions that would permit authorized committees to redesignate contributions beyond the current election cycle to either earlier or subsequent cycles were appropriate. *See* NPRM, 67 FR at 54,371. Only one commenter supported any presumption that reaches beyond a current cycle; that commenter argued that redesignations to elections in future cycles were acceptable if the contributors were notified. The other commenters argued that any presumptions should be limited to the current cycle. One said inferring donative intent would be difficult as the extent to which a contributor supports a candidate can vary significantly from one election cycle to another. Another noted that this might be so because candidates' positions on issues can change, and

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candidates are likely to face different opponents in previous or subsequent cycles. Another noted that recordkeeping would be complicated for the committees (which may change from one election to the next), the contributors, and the Commission if such a presumption were adopted. The Commission agrees with many of these comments and has decided to limit the redesignation and reattribution presumptions to within one election cycle.

(3) Separate Accounts for Redesignated Contributions

The Commission asked in the NPRM if it should revise 11 CFR 102.9 to require that an authorized committee maintain a separate account for general election contributions accepted before the primary election occurs. *See* NPRM, 67 FR at 54,371–72. Three commenters addressed this proposal. Two commenters who opposed the requirement stated that separate accounts are unnecessary. One argued that the public record consists of all of a candidate committee's accounts combined, even if the funds are in fact in separate accounts. Consequently, they argued that the public record, which specifies to which election contributions are designated, would not be augmented by a committee's, maintenance of separate accounts. Should an authorized committee be subject to a Commission audit, this commenter argued that the Audit Division is capable of calculating whether a committee spent general election funds on the primary election campaign. Another commenter noted that separate accounts do not "specifically aid in compliance" and that separate accounts are not required by BCRA. One commenter supported the requirement, arguing that the Commission has a valid concern regarding the use of general election funds in a primary election campaign, which could permit the contributor and the committee to effectively double the contribution limit with respect to the primary election. This commenter also argued that separate accounts are a modest burden for committees and may be preferable to maintaining separate books and records.

Although the Commission believes maintaining a separate account is the best way for an authorized committee to show its compliance with the prohibition on spending general election contributions in connection with a primary election, the Commission is reluctant to require that authorized committees maintain separate accounts when other means of accounting, which may be better suited to an organization, will suffice to prevent the use of general election contributions in connection with a primary election. Consequently, the Commission declines to amend 11 CFR 102.9 in this regard.

(4) Eliminating the Signature Requirements

The Commission sought comment on whether it should eliminate the signature requirement for all redesignations and reattributions under 11 CFR 110.1 and 110.2, and instead permit authorization from the contributor by email or through oral communications with the contributor when the recipient committee creates and maintains a contemporaneous signed record of the conversation. *See* NPRM, 67 FR at 54,371.

All of the commenters who addressed this issue thought an email should suffice, instead of a writing signed by the contributor. Some commenters were opposed to permitting committees to memorialize conversations to serve as documentation of redesignations or reattributions, as discussed above in connection with 11 CFR 110.1(l).

In adopting the new means of redesignation and reattribution in 11 CFR 110.1(b)(5)(ii)(B), 110.1(b)(5)(ii)(C), and 110.1(k)(3)(ii)(B), the Commission has concluded that no contributor response is required for the reattributions and redesignations pursuant to the new presumptions, so no contributor signature is required. However, the designation and attribution regulations require contributor signatures in other instances. *See, e.g.*, 11 CFR 110.1(b)(4)(ii), new 110.1(b)(5)(ii)(A)(*2*), 110.1(k)(1), and new 110.1(k)(3)(ii)(A)(*2*). In these situations, the regulations require a response from the contributor, and thus require the response to be in writing and signed by the contributor in order to prevent fraud and to clearly indicate who is contributing. *Cf.* 11 CFR 104.8(c) (requiring contributions to be reported as made by the last person signing the instrument). While email may be an appropriate vehicle for contacting contributors such as new 11 CFR 110.1(b)(5)(ii)(B)(*6*) and (C)(*7*) or for contributor responses in some instances, it may raise complicating issues that have not been addressed in this rulemaking. For example, with respect to reattributions, how could a committee determine whether both contributors have consented to the reattribution? The Commission has concluded that permitting email to replace a contributor's signature should be undertaken in connection with a rulemaking that considers all of the instances in Commission regulations in which this issue is present, rather than making that change in some instances, but not others, and in the absence of a full consideration of issues similar to the one raised above. Therefore, the Commission has concluded that existing rules should not be amended in this rulemaking to eliminate the signature requirements across the board or to permit email messages to take the place of signed written redesignations or reattributions under revised 11 CFR 110.1(b)(5)(ii)(A)(*2*) or 11 CFR 110.1(k)(3)(ii)(A)(*2*). Consequently, no further changes to the regulations are being made in this rulemaking.

8. 11 CFR 110.1(l)(4) and (5) Supporting Evidence

As noted in the NPRM, the adoption of the notification approach requires 11 CFR 110.1(l)(4) to be amended to specify the supporting evidence required to be retained under such an approach. *See* NPRM, 67 FR at 54,371. A full-size copy of the check or written instrument, any signed writings from the contributors that accompanied the contribution, and the political committee's notices required for redesignations under 11 CFR 110.1(b)(5)(ii)(B) or (C) or reattributions under 11 CFR 110.1(k)(3)(ii)(B) are included among the supporting evidence that must be retained for the redesignation or reattribution to be effective. *See* new 11 CFR 110.1(l)(4)(ii). Paragraph (l)(5) has also been revised to state that if a political committee fails to retain the notices, then the presumptions for the redesignations or the reattributions will not be effective.

Some commenters supported the proposal that would have permitted committees to orally notify contributors and write a memorandum regarding the conversation to document it. Others opposed this aspect of the proposal as an inherently unreliable process that would provide too great an opportunity for fraud and abuse. The Commission agrees with the latter comments, so the final rules with regard to the redesignation and reattribution presumptions require the notice to be in writing, including by email. *See* new 11 CFR 110.1(b)(5)(ii)(B)(*6*); 110.1(b)(5)(ii)(C)(*7*); and 110.1(k)(3)(ii)(B)(*3*).

One technical correction is included in 11 CFR 110.1(l)(5) as well. The citation to paragraph (l)(2) in the first sentence should be to paragraph (l)(1) instead.

11 CFR 110.2 Contributions by Multicandidate Political Committees

Section 110.2 sets forth the dollar limits on contributions made by multicandidate committees, as generally established by 2 U.S.C. 441a(a)(2). BCRA substantially amended the contribution limit for certain types of multicandidate committees specified in 2 U.S.C. 441a(h), which is addressed in § 110.2. As a result, the Commission is amending the regulations to reflect the new limits set forth in more detail below.

Under pre-BCRA 2 U.S.C. 441a(h), the Republican and Democratic Senatorial campaign committees or the national committee of a political party or any combination of such committees were permitted to contribute up to $17,500 to a candidate for election or nomination for election to the U.S. Senate during the year of the election. BCRA amends this section of the Act to increase the amount that may be contributed by these committees to Senatorial candidates to $35,000 on or after January 1, 2003. Consequently, 11 CFR 110.2(e), which contains this contribution limit, is being amended to increase the limit to $35,000.

New paragraph (e)(1) sets forth the amended contribution limit. The Commission did not receive any comment on its proposal to amend paragraph (e)(1). New paragraph (e)(2) parallels the provisions in § 110.1(c)(1)(i), (ii) and (iii) and 110.1(b)(1)(i), (ii) and (iii). New paragraph (e)(2) provides for the application of the indexing provisions at 11 CFR 110.17 to this contribution limitation and establishes the two-year period in which the increased contribution limits are in effect. New paragraph (e)(2) also provides for the periodic publication by the Commission of the increased contribution limit. When first proposed in the NPRM, this paragraph received one comment supporting the intention to publish information regarding the adjusted contribution limit. The comments relating to paragraph (e)(2) that concern the timing of the increase in the contribution limit due to the application of the indexing provisions are addressed in the Explanation and Justification for new § 110.17, below.

11 CFR 110.4 Contributions in the Name of Another; Cash Contributions

Previously, 11 CFR 110.4(a) set forth regulations implementing the prohibitions on contributions and expenditures by foreign nationals codified at 2 U.S.C. 441e. In light of the amendments to 2 U.S.C. 441e contained in BCRA, § 110.4(a) is being removed and reserved, and new 11 CFR 110.20 is being created to implement BCRA's prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals.

In addition, the section heading has been changed to cover the two topics addressed in this section: (1) Contributions made in the name of another and (2) cash contributions.

11 CFR 110.5 Aggregate Bi-Annual Contribution Limitations for Individuals

Aside from the limits on the dollar amounts that individuals may contribute to candidates and political committees, 2 U.S.C. 441a(a)(3) also contains aggregate limits on the amount that individuals may give within a specified period of time. These contribution limits are set forth in the Commission's regulations at 11 CFR 110.5. However, as with §§ 110.1 and 110.2 discussed above, BCRA substantially amended the FECA by restructuring the aggregate contribution limits. As a result, the Commission is amending the regulations in § 110.5 to reflect the new contribution limits in BCRA.

1. 11 CFR 110.5(a) Scope

Section 110.5(a) sets forth the scope of the regulations in 11 CFR 110.5. The final rules in this paragraph contain amended citations to the provisions concerning minors and foreign nationals. This final rule is identical to the proposed rule, on which the Commission received no comments.

2. 11 CFR 110.5(b) Bi-Annual Limitations

BCRA amends the provisions in FECA that establish the total amount of contributions that may be made by individuals within the prescribed time periods. Under former 2 U.S.C. 441a(a)(3), individuals were permitted to make no more than $25,000 in aggregate contributions per calendar year. This section was revised by BCRA to establish new bi-annual aggregate limits that permit individuals to make up to $95,000 in contributions, including up to $37,500 in contributions to candidates and their authorized committees, and up to $57,500 in contributions to any other political committees. 2 U.S.C. 441a(a)(3)(A) and (B). The $57,500 aggregate contribution limit contains a further restriction in that no more than $37,500 of this amount may be given to political committees that are not the political committees of national political parties. 2 U.S.C. 441a(a)(3)(B).

Current 11 CFR 110.5(b) is being amended to incorporate the increased bi-annual aggregate contribution limits, which are effective on January 1, 2003. New paragraph (b)(1)(i) contains the new bi-annual aggregate limit for contributions to candidates and their authorized committees. New paragraph (b)(1)(ii) contains the new bi-annual aggregate limit for contributions to other political committees. The Commission received no comments on the changes to paragraphs (b)(1)(i) and (ii) of this section.

Sections 441a(i)(1)(C) and 441a–1(a)(1)(B) of FECA contain an exception to the bi-annual contribution limits for individuals. Under these new provisions of BCRA, the individual contribution limits to candidates for the U.S. House of Representatives and U.S. Senate are increased during certain limited time periods if the candidate is opposing another candidate who makes expenditures from his or her personal funds above a certain threshold. Contributions made under these increased dollar limits do not apply to the individual contributor's bi-annual aggregate limits. 2 U.S.C. 441a(i)(1)(C) and 441a–1(a)(1)(B). Accordingly, new § 110.5(b)(2) reflects this exception, which will be addressed in greater detail in a separate rulemaking concerning the so-called "millionaires" amendment." One commenter, while agreeing generally with proposed paragraph (b)(1)(iii), suggested that the language in the draft rule was not direct enough in making this point. The Commission agrees and thus, new paragraph (b)(2) states more precisely the circumstances under which the individual bi-annual limits on contributions do not apply to contributions coming under 2 U.S.C. 441a(i)(1)(C) or 441a–1(a)(1)(B).

Section 110.5(b)(3) provides for the increase, if necessary, in the bi-annual aggregate contribution limits by the percent difference in the price index, as described in 11 CFR 110.17. The issues relating to the relationship of the statutory time frame for aggregating contributions and the inflation adjustment time frame are discussed below regarding 11 CFR 110.17(b). New paragraph (b)(4) states the Commission's intention to publish information regarding the adjusted contribution limits in the **Federal Register** and on the Commission's Web site. One commenter supported publishing the adjusted contribution limits. New paragraphs (b)(3) and (b)(4) contain provisions parallel to that found 11 CFR 110.1(b) and (c) and 110.2(e). These paragraphs of the final rules contain minor wording revisions but are nearly identical to the

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proposed versions, on which the Commission received no comments.

11 CFR 110.9 Violations of Limitations

The final rules at 11 CFR 110.9, formerly entitled, "Miscellaneous provisions," are being amended to address only violations of the contribution and expenditure limitations. Other provisions in 11 CFR 110.9 addressing fraudulent misrepresentations, the price index increase, and the voting age population are being or will be amended and moved in this rulemaking and other BCRA rulemaking projects.[2] The title of section 110.9 is also being changed to "Violations of limitations" to reflect these changes. Finally, the final rules add the word "knowingly" in two places pertaining to the acceptance of contributions in violation of the limitations and prohibitions set forth in 11 CFR part 110. This revision mirrors the knowledge requirement in 2 U.S.C. 441a(f) and 441f. No comments were received on this revision or the reorganization of these provisions.

The prohibition on contributions by minors is contained in 2 U.S.C. 441k and not in 2 U.S.C. 441a of the Act. Therefore, the Commission notes that in instances where a candidate, an authorized committee, or a committee of a political party knowingly accepts a contribution from a minor, it would be in violation of § 110.9 only if the contribution is made in the name of another, but not if the contribution was made with the minor's own funds. *See* 2 U.S.C. 441a(f)("no candidate or political committee shall knowingly accept any contribution * * * in violation of the provisions of this section").

11 CFR 110.17 Price Index Increase

Pre-BCRA 2 U.S.C. 441a(c) mandated yearly indexing to inflation of the expenditure limitations established by 2 U.S.C. 441a(b) (the limits on expenditures by candidates for nomination and election to the office of President of the United States who accept public funding) and 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office). BCRA amends 2 U.S.C. 441a(c) to extend the inflation indexing to: (1) The limitations on contributions made by persons under 2 U.S.C. 441a(a)(1)(A) (contributions to candidates) and 441a(a)(1)(B) (contributions to national party committees); (2) the bi-annual aggregate contribution limits applicable to individuals now found at 2 U.S.C. 441a(a)(3); and (3) the limitation on contributions made to U.S. Senate candidates by certain political party committees at 2 U.S.C. 441a(h). 2 U.S.C. 441a(c)(1)(B). Under the statute, the adjustments for inflation for 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B), 441a(a)(3) and 441a(h) are to be made only in odd-numbered years and such increases are to be in effect for the 2-year period beginning on the first day following the date of the general election in the preceding year and ending on the date of the next regularly scheduled general election. 2 U.S.C. 441a(c)(1)(C).

Former 11 CFR 110.9(c), which described the expenditure limits subject to inflation indexing, did not include any of the new inflation indexing discussed above. In order to address the price indexing for the new contributions and expenditures limitations in a comprehensive manner, the Commission is adding new § 110.17 to track the changes to 2 U.S.C. 441a(c).

1. 11 CFR 110.17(a) Price Index Increases for Party Committee Expenditure and Presidential Candidate Expenditure Limitations

New § 110.17(a) replaces and restates, with some minor rewording, former section 110.9(c) regarding the price index increases that apply to the political party committee and Presidential candidate spending limits established by 11 CFR 110.7 and 110.8. However, paragraph (a) contains one important change from former section 11 CFR 110.9(c). Section 110.9(c) had incorrectly stated that the expenditure limitations established by §§ 110.7 and 110.8 would be increased by the annual percent difference of the price index, as certified to the Commission by the Secretary of Labor. Section 441a(c) of the Act does not use an annual percent difference of the price index to calculate the increases. Instead, it requires the use of the percent difference between the price index for the 12 months preceding the beginning of the calendar year in which the change is made and the base period. For the party committee expenditures limitations and the Presidential candidate expenditures limitations, the base period is calendar year 1974, with each change remaining in effect for a calendar year. Consequently, paragraph (a) of new 11 CFR 110.17 correctly states the standard to be applied and deletes the term "annual" from the regulation. The Commission received no comment on this change.

2. 11 CFR 110.17(b) Price Index Increases for Contributions by Persons, by Political Party Committees to Senatorial Candidates, and the Bi-Annual Aggregate Contribution Limitation for Individuals

As noted above, BCRA increased the number of contribution limitations now subject to price index increases. 2 U.S.C. 441a(c)(1)(B). New 11 CFR 110.17(b) tracks BCRA by providing that the following contribution limits will be indexed to inflation: 11 CFR 110.1(b)(1) (limits for persons contributing to candidates and authorized political committees); 11 CFR 110.1(c)(1) (limits for contributions made to national party committees); 11 CFR 110.2(e) (limits for contributions made by party committees to Senatorial candidates); and 11 CFR. 110.5 (bi-annual aggregate contribution limits for individuals). New § 110.17(b)(1) specifies that these contribution limitations will be increased during odd-numbered years and that the increased limit would be in effect for a two-year period.

The NPRM raised the issue of the interaction between the statutory provision that indexes certain contribution limits, 2 U.S.C. 441a(c)(1)(C), and the various contribution limits themselves. Particular focus was centered on the retroactive effective date in the indexing provision as it relates to the two calendar year-based aggregate contribution limit of 2 U.S.C. 441a(a)(3).

In the NPRM, the Commission proposed at 11 CFR 110.5(b)(3) to interpret the statute in a way that required donors to aggregate contributions using the two-year period referenced in the effective date language of the indexing provision, rather than the 'January 1 of odd year through December 31 of even year' time frame of Section 441a(a)(3).

Several commenters, including the Congressional sponsors of BCRA, urged that the Commission not adopt the proposed approach and instead apply the calendar year approach set forth in the statutory provision setting out the contribution limit itself. The commenters noted that the inflation adjustment language was confusing and its effective date language stems largely from an intention to assure that the revised 'per election' limit on giving to candidates was revised after each general election. They urged, in essence, that the Commission simplify application of the inflation adjustment provision so that for affected limits based on calendar year aggregations, the effective date would only affect the next upcoming calendar year-based period. This would mean that the inflation adjustments on the limit on contributing to national parties (2 U.S.C. 441a(a)(1)(B)), the limit on national party contributions to Senate candidates (2 U.S.C. 441a(h)), and the two-year limit on aggregate contributions (2 U.S.C. 441a(a)(3)) would only affect the next calendar-year based period, not the calendar year-based period when the effective date period technically begins under section 441a(c)(1)(B).

The Commission has decided to adopt the approach suggested by the commenters. It would be somewhat confusing if the calendar year-based contribution limits were to be increased in the midst of the calendar year period involved. Accordingly, the Commission is adopting final rules that delete the language at proposed 11 CFR 110.5(b)(3), and is modifying the language at proposed 11 CFR 110.1(c)(1)(ii), 110.2(e)(2), and 110.5(b)(2) and 110.17(b)(1) to clarify that for the calendar year-based limits, the indexing changes will only affect the calendar year-based periods that follow. Please note that the indexing changes for the 'per election' limit at 11 CFR 110.1(b)(1) will still take effect, pursuant to 11 CFR 110.1(b)(1)(ii), on the day after the general election and will only affect elections held after that general election. *See* discussion above regarding 11 CFR 110.1(b)(3) and Net Debts Outstanding.

New paragraph (b)(2) of 11 CFR 110.17 establishes that 2001 is the base year for the calculation of the price index difference. No comments were received regarding this paragraph. One commenter noted that while the contribution limits may be increased due to indexing to inflation, the exact amount of the increase may not be precisely known or formally published until after January of the odd-numbered year. The commenter urged that the Commission establish a "safe harbor" to deal with these circumstances. This commenter suggested allowing political committees to receive contributions in excess of previous contributions limits while granting a period of time after the publication of the new limits to refund "*de minimis* excessive contributions" without triggering enforcement consequences.

The Commission believes that the creation and implementation of this approach would be problematic. Determining or defining what amounts should be treated as *de minimis* poses difficulties. In the discussion regarding net debts outstanding and increased contribution limits, the Commission noted the confusion that would exist if multiple contribution limits attached to the same election. Similarly, allowing political committees to determine what amounts to accept in anticipating the indexing adjustments would also create confusion and, in effect, multiple contribution limits. The operation of a safe harbor would, therefore, be administratively challenging and could also undermine the contribution limits. Also, during times when inflation is low, it is possible that there would be no increase in certain limits due to the operation of the rounding provisions. *See* the Explanation and Justification for new 11 CFR 110.17(c) below. For these reasons, the Commission has determined that the acceptance of "*de minimis*" excessive contributions is not appropriate and is not included in the final rules.

3. 11 CFR 110.17(c) Rounding of Price Index Increases

A further change in 2 U.S.C. 441a(c) is the introduction of a rounding provision for all the amounts that are increased by the indexing to inflation in 2 U.S.C. 441a (including the Presidential expenditure limits at 2 U.S.C. 441a(b) and coordinated party spending limits at 2 U.S.C. 441a(d)). If the inflation—adjusted amount is not a multiple of $100, it is rounded to the nearest multiple of $100. 2 U.S.C. 441a(c)(1)(B)(iii). New section 110.17(c) implements the new rounding provision found at 2 U.S.C. 441a(c)(B)(iii). This final rule, which is identical to the proposed rule, did not draw any comments.

4. 11 CFR 110.17(d) Definition of Price Index

New § 110.17(d) tracks 2 U.S.C. 441a(c)(2)(A) by specifically defining the "price index" as the average over a calendar year of the Consumer Price Index (all items—United States city average) published by the Bureau of Labor Statistics. The Department of Labor computes the CPI using two population groups: All Urban Consumers (CPI–U) and Clerical Workers (CPI–W). The CPI–U represents approximately 87% of the total United States population while the CPI–W, a subset of the CPI–U, represents 32% of the total United States population.[3] While neither the FECA nor BCRA specifies which population group is to be used, the Commission has historically used the more inclusive CPI–U since that appears to be the best method to calculate changes in the affected limitations. The Commission received one comment supporting the use of the CPI–U and no comments supporting the use of the CPI–W. Therefore, for the reasons identified above, the Commission will continue to use the CPI–U when calculating the percent change in the Consumer Price Index.

5. 11 CFR 110.17(e) Publication of Price Index Increases

New § 110.17(e) in the final rules states that the Commission will announce the amount of the adjusted expenditure and contribution limitations in the **Federal Register** and on the Commission's Web site. The Commission received one comment supporting this provision and none opposing it.

6. Application of the First Increase Due to Percent Changes in the Price Index

The increased contribution limits of 2 U.S.C. 441a(a)(1)(A) and (B), 441a(a)(3), and 441a(h) apply to contributions made on or after January 1, 2003. However, under the interpretation outlined above, 2 U.S.C. 441a(c)(1)(C) requires that these same contribution limits be increased through indexing for inflation in odd-numbered years with the increase in effect starting with the day following the last general election in the previous year. This could imply that the initial contribution limits authorized by BCRA to take legal effect on January 1, 2003 should also be increased by the difference in the price index. Several comments, including one from the Congressional sponsors of BCRA, disagreed with this interpretation and instead urged that the first increase in the limits should occur in 2005 and take effect in November 3, 2004, which is the day after the general election.

One comment noted that it was legally impossible for the indexing provision to be given their full effect in 2003. According to the commenter, the new contribution limits are effective on or after January 1, 2003. For the indexing provisions to be given a full effect in 2003, any increase in the contribution limit would be retroactively applied, making the effective date November 6, 2002, rather than the statutorily mandated effective date of January 2, 2003. Even though the legislative history is otherwise silent on this point, this legal impossibility strongly implies that these provisions were intended to be applied first in 2005. After considering these

[2] The BCRA rulemaking project entitled "Other Provisions" will address the fraudulent misrepresentation provisions. *See* Notice of Proposed Rulemaking ("NPRM") at 67 FR 55,348, 55,356 (Aug. 29, 2002). The BCRA rulemaking project entitled "Coordinstion and independent Expenditures" will address the voting age population provisions. *See* NPRM at 67 FR 60,042, 60,060 (Sept. 24, 2002).

[3] The CPI published by the Department of Labor may be found at *http://www.bls.gov/cpi/home.htm.*

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comments, the Commission agrees that the indexing provisions should be first applied in 2005.

11 CFR 110.19 Contributions and Donations by Minors

1. Introduction

BCRA prohibits individuals who are 17 years old and younger (minors) from making contributions to Federal candidates and contributions and donations to committees of political parties. *See* 2 U.S.C. 441k. Senator McCain, a primary sponsor of BCRA, stated during the Senate debate on the legislation that the prohibition on contributions by minors "restores the integrity of the individual contribution limits by preventing parents from funneling contributions through their children, many of whom are simply too young to make such contributions knowingly." 148 Cong. Rec. S2145–2146 (daily ed. March 20, 2002).

The final rules at new 11 CFR 110.19 implement BCRA's prohibitions on contributions and donations by minors at 2 U.S.C. 441k. Because 2 U.S.C. 441k expressly prohibits only contributions by minors to candidates and contributions and donations by minors to committees of political parties, contributions by minors to other types of political committees, such as separate segregated funds and non-connected political committees, will continue to be governed by the provisions of the pre-BCRA regulations. These regulations are being moved from former 11 CFR 110.1(i)(2) to 11 CFR 110.19(d).

2. 11 CFR 110.19(a) Contributions to Candidates

Paragraph (a) of 11 CFR 110.19 prohibits contributions by minors to Federal candidates. The paragraph specifies that the prohibition on contributions by minors to Federal candidates includes contributions to a candidate's principal campaign committee, to any other authorized committee of that candidate, and to any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

The Commission sought comment on whether prohibiting contributions by minors to entities directly or indirectly established, financed, maintained or controlled by one or more Federal candidates is within the scope of 2 U.S.C. 441k. The only commenter to address this issue supported prohibiting minors' contributions to such entities, opining that the prohibition would further BCRA's purpose of ensuring that contribution limits are not evaded by a parent funneling money through a child. The Commission agrees.

The Commission also sought comment in the NPRM as to whether the regulations should make clear that the relevant time for determining whether a minor has made a prohibited contribution or donation is the age of the minor at the time he or she makes a contribution. No comments were received on this issue. The final rules do not include a separate provision addressing this point because reference in the rules to 11 CFR 110.1(b)(6), which addresses when a contribution is made, provides sufficient clarification.

3. 11 CFR 110.19(b) Contributions and Donations to Committees of Political Parties

New 11 CFR 110.19(b) implements BCRA's prohibition on contributions and donations by minors to "a committee of a political party." The proposed rules at 11 CFR 110.19(b) interpreted this provision as a prohibition on contributions and donations to national, State, district, and local party committees. In light of BCRA's language prohibiting donations as well as contributions to political party committees, the Commission proposed to interpret 2 U.S.C. 441k to prohibit minors from making any donations whatsoever to State, district, and local party committees, including to their non-Federal accounts. In the alternative, the Commission sought comment on whether a narrower construction of BCRA's prohibition on donations to State, district, and local party committees was warranted. Specifically, the Commission sought comment on prohibiting donations by minors to the extent such amounts are used to conduct activities affecting Federal elections but to permit these donations if used for exclusively non-Federal purposes to the extent permitted by State law.

Two commenters addressed this issue. One commenter stated that BCRA's prohibition should not extend to minors' contributions to State, district, and local party committees because the purpose of the provision is to prevent parents from evading federal contribution limits by funneling contributions to their children. The commenter argued that aside from limits on Levin funds, which can be used to finance certain "Federal election activities" by State, district, and local parties, BCRA does not limit funds given to State, district, and local parties. The same commenter also rejected the narrower construction described in the NPRM that would prohibit minors' donations to State, district, and local party committees only to the extent that they were to finance activities affecting Federal elections. The commenter argued that concerns that minors' contributions might be used as Levin funds should be addressed in a rulemaking addressing those funds.

A second commenter stated that though contributions by minors to State, district, and local party committees do not risk circumvention of federal contribution limits "since there are no such limits," the statutory language at 2 U.S.C. 441k does not limit the prohibition on contributions or donations by minors to federal accounts of State, district, and local party committees. Other commenters, including the Congressional sponsors of BCRA, did not directly address the issue of minors' donations to political party committees but noted that minors may continue to make donations directly to State and local candidates to the extent permitted under State law.

The final rule at 11 CFR 110.19(b)(1) follows the proposed rule by prohibiting contributions and donations by minors to national, State, district, and local committees of a political party. Further, the Commission believes that interpreting the prohibition on donations to encompass both non-Federal accounts and Federal accounts of political party committees is appropriate. Interpreting the phrase "committee of a political party" to encompass only national party committees would render the prohibition on "donations" meaningless because national party committees must no longer accept non-Federal funds under 2 U.S.C. 441i. Similarly, the prohibition on "donations" would have no meaning if the minor's prohibition encompassed only Federal accounts of party committees since funds accepted by Federal accounts, used for the purpose of influencing Federal elections, are considered to be "contributions" not "donations." Thus, BCRA preempts State law to the extent that State law permits minors to make donations to State, district, and local party committees.

Prohibiting donations by minors to all committees of State, district, and local parties also has a Federal purpose because donations of non-Federal funds to State parties could otherwise be used, in part, to finance Federal election activities, as defined at 2 U.S.C. 431(20). *See also*, 11 CFR 100.24(a) and (b) in Final Rules for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49,064, 49,110–49,111 (July 29, 2002). These activities, including voter registration and get-out-the vote activities conducted within a

specific time frame, are required under BCRA to be funded either wholly with Federal funds or with a combination of Federal funds and another category of funds regulated by BCRA known as "Levin funds." *See* 67 FR at 49,098 and 49,125–49,126 (11 CFR 300.32(c) and 300.33(a) and accompanying Explanation and Justification). Although Levin funds may be raised from sources permitted under State law, BCRA limits the amount of such funds to $10,000 per donor. Thus, to the extent that donations to State, district, and local party committees may be used for such activities, BCRA limits those donations. Prohibiting minors from making donations serves to prevent parents from circumventing those donation limits through minor children, just as the prohibition on contributions by minors serves to prevent evasion of the contribution limits.

The Commission has decided not to include in the final rules the alternative suggested in the NPRM that would permit minors to make donations to non-Federal accounts of State, district, and local party committees if the recipient committee can show by establishing separate accounts or through a reasonable accounting method that the donation is used for exclusively non-Federal purposes. As discussed above, the statutory language is broad and does not distinguish between Federal and non-Federal accounts of party committees. Additionally, this approach would require State, district, and local party committees to track yet another type of donation or establish another account in addition to those it already tracks or maintains, thereby resulting in an additional administrative burden to those groups. *See, e.g.*, 67 FR at 49,093 (Explanation and Justification for 11 CFR 300.30).

Accordingly, as interpreted by the final rules, BCRA preempts State law to the extent that State law permits individuals under 18 years of age to donate funds to State, district, and local party committees. This preemption may have little practical effect in some states. As pointed out in the NPRM, many states treat contributions by minors as contributions by their parent(s) or guardian(s). *See* for example, Kan. Stat. Ann. 25–4153(c) and Okla. Stat. t. 74, 257:10–1–2(a)(1) and (h)(2).

Paragraph (b)(2) of the final rules is unchanged from the proposed rules. It prohibits contributions and donations by minors to entities directly or indirectly established, financed, maintained or controlled by a committee of a national, State, district or local political party. No comments were received on this provision.

As discussed above in the Explanation and Justification for paragraph (b)(1), the Commission interprets the prohibition on contributions and donations by minors to committees of political parties to include accounts of party committees and entities established, financed, maintained or controlled by these party committees, including their Federal and non-Federal accounts. Consequently, new paragraph (b)(3) of the final rules makes clear that the prohibition on contributions and donations by minors encompasses donations to any account of a committee or entity described in paragraphs (b)(1) and (b)(2) of this section.

4. Contributions and Donations by Minors for Certain Runoffs, Recounts and Election Contests

BCRA provides that its prohibition on contributions and donations by minors to candidates and political parties does not apply with respect to runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. *See* 2 U.S.C. 431 note. Proposed 11 CFR 110.1(i)(3) addressed this provision. No commentes were received on it. The final rules do not address 2 U.S.C. 431 note because the Commission has concluded that regulatory provisions for it are unnecessary.

5. 11 CFR 110.19(c) Contributions to Political Committees That Are Not Authorized Committees or Committees of Political Parties

Because 2 U.S.C. 441k specifically prohibits contributions by minors to candidates and political party committees and not to other types of unauthorized committees, proposed 11 CFR 110.19(c) contemplated that minors could continue to make unearmarked contributions to unauthorized political committees except political party committees, in accordance with the requirements of 11 CFR 110.1(i)(2), the prior rules governing contributions by minors. The Commission sought comment in the NPRM as to whether 2 U.S.C. 441k could be interpreted to also prohibit contributions by minors to other political committees such as separate segregated funds and non-connected political committees. None of the commenters addressed this issue.

The final rules adhere to the plain language of 2 U.S.C. 441k in permitting minors to continue to make contributions to these other political committees under the existing rules. Thus, the final rules at 11 CFR 110.19(c)(1) through (c)(3) restate the regulations governing contributions by minors, which are being moved from 11 CFR 110.1(i)(2) and amended to reflect that they now govern unearmarked contributions by minors to unauthorized political committees other than political party committees. Paragraph (c) provides that an individual under 18 years of age may make contributions in accordance with the contribution limits set out at 11 CFR 110.1 and 110.5, if all of the following conditions are satisfied: (1) The minor voluntarily and knowingly makes the decision to contribute; (2) the funds, goods or services contributed are owned or controlled exclusively by the minor; (3) the contribution is not made from the proceeds of a gift given to the minor to make a contribution or is not in any way controlled by an individual other than the minor; and (4) the contribution is not earmarked or otherwise directed to one or more Federal candidates or political committees or organizations described in §§ 110.19(a) and (b).

The reorganization of the final rule clarifies that the types of committees to which a minor may continue to contribute are political committees not described in §§ 110.19(a) and (b), provided that the contribution is not earmarked to a candidate, committee or organization described in §§ 110.19(a) and (b). The final rules also clarify that non-earmarked contributions to these other political committees will continue to be governed by the existing regulations governing contributions by minors. No comments were received on this provision.

6. 11 CFR 110.19(d) Volunteer Services

Paragraph (d) of the final rules makes clear that minors are not prohibited from volunteering their services to Federal candidates, political party committees or other political committees, in accordance with legislative intent. *See* 148 Cong. Rec. S2146 (daily ed. March 20, 2002) (statement of Senator McCain). The final rule is identical to proposed 11 CFR 110.19(d). The Commission received one comment addressing volunteer services. The commenter agreed that under 2 U.S.C. 441k minors could continue to participate in any type of political campaign by volunteering.

7. 11 CFR 110.19(e) Definition of Directly or Indirectly Establish, Maintain, Finance, or Control

The final rule at 11 CFR 110.19(e) is similar to the language of the proposed rule in 11 CFR 110.19(e). It refers the reader to 11 CFR 300.2(c) for the definition of "directly or indirectly establish, maintain, finance, or control." For the definition, *see* Final Rules for

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Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money, 67 FR at 49,121. The Commission believes that it is preferable to use the same definition of a term throughout the BCRA regulations to promote consistency and avoid confusion where, as here, doing so would not undermine the purpose of the statute. One commenter expressed support for using the same definition of the term throughout the BCRA regulations, although the same commenter noted that it had disagreed with the definition of "directly or indirectly establish, maintain, finance, or control" contained in 11 CFR 300.2(c) in its comments on the NPRM on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money.

8. Proposed Exemption for Emancipated Minors

The Commission also sought comment in the NPRM as to whether minors who are emancipated under State law should be exempt from the prohibition. Under many State laws, a petition for a judicial declaration or order of emancipation requires consideration as to whether a minor manages his or her own financial affairs or is financially self-supporting. Emancipation also has the effect, in most cases, of conferring upon a minor the rights and responsibilities of an adult, and relieving a child of parental control, thereby diminishing the possibility that a parent would funnel contributions or donations through an emancipated minor child.

Five commenters addressed this issue. Four commenters, including the congressional sponsors of BCRA, expressed support for such an exemption. These commenters agreed that the risk of parental evasion of the contribution limits through an emancipated minor was either not present or diminished. The fifth commenter agreed that the risk of parental circumvention of contribution limits was less of a concern in the case of an emancipated minor. However, this commenter argued that the statutory language clearly prohibited contributions by minors based solely on age.

The Commission has decided not to include an exemption for emancipated minors in the final rules given the plain language of 2 U.S.C. 441k, which prohibits certain contributions and donations by minors on the basis of age alone and not on a minor's legal or financial independence from a parent.

11 CFR 110.20 Prohibition on Contributions, Donations, Expenditures, Independent Expenditures and Disbursements by Foreign Nationals

As indicated by the title of section 303 of BCRA, "Strengthening Foreign Money Ban," Congress amended 2 U.S.C. 441e to further delineate and expand the ban on contributions, donations, and other things of value by foreign nationals. BCRA expressly applies the ban to contributions and donations solicited, accepted, received, or made directly or indirectly in connection with State and local, as well as Federal office. 2 U.S.C. 441e(a)(1)(A) and (a)(2). Furthermore, the prohibition applies to: (1) Contributions and donations to committees of political parties; (2) donations to Presidential inaugural committees; (3) donations to party committee building funds; (4) disbursements for electioneering communications; (5) expenditures; and (6) independent expenditures. 2 U.S.C. 441e(a)(1)(B) and (C); 36 U.S.C. 510. Consequently, the Commission is amending 11 CFR part 110 to implement the revised statutory provision. The final rules remove and reserve 11 CFR 110.4(a), the former regulation that addressed foreign nationals. New § 110.20 implements BCRA's prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals. This new section also implements the provision in 2 U.S.C. 441e(a)(2) that prohibits persons from knowingly soliciting, accepting, or receiving contributions and donations from foreign nationals, and adds prohibitions against the knowing provision of substantial assistance with foreign national contributions or donations, including, but not limited to, serving as a conduit or intermediary. "Foreign national" and "knowingly" are defined for purposes of this section.

1. 11 CFR 110.20(a)(1) and (2) Definitions of "Disbursement" and "Donation"

New § 110.20(a) defines for purposes of this section several words or phrases that are either not defined in other sections of the Act or that are defined elsewhere so as to cover only Federal elections. Two of these, namely "disbursement" and "donation" were not defined in the proposed rules; however, comments were sought as to whether the final rules should include definitions of these terms.

Although the Commission did not receive any comments regarding a definition of "disbursement," it believes additional guidance to be necessary in light of the use of "disbursement" in BCRA in the context of the foreign national prohibition, and its corresponding and repeated use in new § 110.20. Thus, the final rule at 11 CFR 110.20(a)(1) incorporate the definition of this term in new 11 CFR 300.2(d). One commenter urged the Commission to import the definition of "donation" in 11 CFR 300.2(e) into § 110.20(a). For the same reason that the Commission considers it necessary to provide guidance as to "disbursement" in § 110.20, it agrees that § 110.20(a) should also include a definition of "donation." Consequently, paragraph (a)(2) incorporates the definition of "donation" at 11 CFR 300.2(e) into § 110.20.

2. 11 CFR 110.20(a)(3) Definition of "Foreign National"

Section 110.20(a)(3), which defines "foreign national," generally follows the definition at former 11 CFR 110.4(a)(4). Section 110.20(a)(3)(i) incorporates "foreign principal" as defined in 22 U.S.C. 611(b) within the definition of "foreign national." Paragraph (a)(3)(ii) includes non-citizens but excludes permanent residents of the United States as defined in 8 U.S.C. 1101(a)(20). Paragraph (a)(3)(iii) narrows the definition of "foreign national" by excluding both citizens of the United States and, in keeping with BCRA, United States nationals pursuant to 8 U.S.C. 1101(a)(22).[4] The final rule is the same as the language in proposed 11 CFR 110.20(i). No comments addressing this definition were received.

3. 11 CFR 110.20(a)(4) and (a)(5) Definition of "Knowingly"

Both the former and the current foreign national prohibitions in 2 U.S.C. 441e are silent as to what degree of knowledge, if any, a person soliciting, accepting, or receiving a contribution or donation must have regarding the foreign national status of the contributor or donor to establish a violation of the statute. In contrast, some other prohibitions in FECA and BCRA expressly provide that knowledge is an element of the violation.[5]

The Commission in recent years has addressed the issue of required knowledge in a number of enforcement matters arising under former 2 U.S.C.

[4] "National of the United States" is defined as "(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." 8 U.S.C. 1101(a)(22). The addition of (B) covers residents of American Samoa.

[5] 5 *E.g.*, 2 U.S.C. 441a(f) "No candidate or political committee shall *knowingly* accept any contribution * * * in violation of the provisions of this section * * *." (Emphasis added).

441e(a). *See*, for example, Matter Under Review ("MUR") 4530, *et al.* In this and related matters, the Commission confronted questions of whether the statute or the First Amendment requires a person to have knowledge of a contributor or donor's foreign national status in order to be in violation of the foreign-national prohibition, and, if so, what degree of knowledge is required.

The Commission considered, for example, whether actual knowledge at the time of a solicitation or receipt is a prerequisite for a violation, or whether the person has a duty of inquiry when circumstances would raise the suspicions of an objective observer. Another alternative with regard to the level of knowledge required would be to assume, given the silence in both FECA and BCRA on this question, that Congress intended this to be a strict liability statute. The fact that Congress has used "knowingly" in other provisions of FECA and BCRA, but did not include this standard with regard to the solicitation, acceptance, or receipt of foreign national contributions and donations, could be construed as intent not to require knowledge in this regard.

The U.S. Supreme Court has found that "'the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, * * * the sole function of the courts is to enforce it according to its terms'." Sutherland Statutory Construction 40:01, *quoting Caminetti* v. *U.S.*, 242 U.S. 470, 485 (1917). However, one exception to this "plain meaning rule" is that the rule should not be applied when an injustice would result. Sutherland Statutory Construction 47:25. Based upon its prior enforcement experience with political committees, and, in particular, with the frequent involvement of volunteers in the solicitation and receipt of contributions and donations, the Commission has determined that a knowledge requirement may produce a less harsh result than a strict liability standard.

The final rules at 11 CFR 110.20(a)(4), like the proposed rules, contain three standards of knowledge, any one of which would satisfy the knowledge requirements: (1) Actual knowledge; (2) reason to know; and (3) the equivalent of willful blindness. Additionally, both the proposed rules and the final rules in paragraph (a) contain a list of facts that would lead a reasonable person to conclude that, or inquire as to whether, a contribution or donation was made by a foreign national.

The NPRM sought comments as to whether the additions of a knowledge requirement and of specific standards of knowledge were appropriate and whether there were other potential facts that should be added to those proposed as circumstances that should trigger an inquiry. Further, comments were requested as to whether the regulation should expressly require that recipient candidates, political committees and other organizations actively seek information as to the citizenship of contributors and donors whenever one of the factors listed is at issue.

Several of the commenters opposed a strict liability standard, but supported the inclusion of explicit knowledge requirements in the rules. However, some commenters opposed as too high the standard in proposed paragraph (g)(4)(ii) that would find knowledge when a person was aware of facts that would lead a reasonable person to conclude that there is "a substantial probability" the source of certain funds is a foreign national; one of these commenters suggested that a "preponderance of the evidence" or "more likely than not" standard would be more appropriate. Divergent views were expressed as to the inclusion of a duty to inquire about the nationality of a donor, with one commenter urging reliance upon current 11 CFR 103.3 rather than upon the addition of an affirmative duty to inquire,[6] and another arguing that a "reasonable inquiry" should include asking "directly" whether or not a donor is a foreign national.

As is also discussed below with regard to new section 110.20(g) and (h), the final rules make knowledge an element of any violation of 2 U.S.C. 441e arising from the solicitation, acceptance, or receipt of foreign national contributions and donations, or that results from the substantial provision of assistance in the solicitation, making, acceptance, or receipt of such contributions and donations. The final rules at 11 CFR 110.20(a)(4) provide a definition of "knowingly," whereby satisfaction of any one of three standards will establish knowledge for purposes of 11 CFR 110.20(g) and (h). Section 110.20(a)(5) contains a list of facts that would lead a reasonable person to conclude, or inquire as to whether, a contribution or donation was made by a foreign national, as discussed below.

In the final rules, the first standard of knowledge at paragraph (a)(4)(i) is that of actual knowledge of the source of funds solicited, accepted, or received. The second standard at paragraph (a)(4)(ii) requires awareness on the part of the person soliciting, accepting, or receiving a contribution or donation of certain facts that would lead a reasonable person to conclude that there is a substantial probability that the contribution or donation comes from a foreign source. Substantial probability means that there is a considerable likelihood that the donor is a foreign national. *See* Black's Law Dictionary, Fifth Edition, 1979, and the Random House Dictionary of the English Language, 1987. This is, in effect, a "reason to know" standard under which a person should have acted as though a fact existed until it could be proven otherwise. *See* Restatement (Second) of Agency, sec. 9, cmt. d (1958).

The third standard of knowledge at paragraph (a)(4)(iii) is satisfied when the person soliciting, accepting, or receiving a contribution or donation is, or becomes aware of, facts that would lead a reasonable person to inquire as to whether the source of the funds solicited, accepted, or received is a foreign national. This third standard is in effect willful blindness, which is applicable to situations in which a known fact should have prompted a reasonable inquiry, but did not.

Each of the three paragraphs focus on the source of the funds at issue. The source of funds may or may not be the putative contributor or donor who provides a check or other negotiable instrument to a candidate or committee; rather, the source would be the person or persons who originated the contribution or donation, even if it passed through the hands or accounts of a U.S. citizen or permanent resident.

Paragraph (a)(5) sets forth categories of facts that are intended to be illustrative of the types of information that should lead a recipient to question the origin of a contribution or donation under paragraphs (a)(4)(ii) or (iii). These consist of: (i) The use of a foreign passport or passport number; (ii) the provision of a foreign address; (iii) the use of a check or other written instrument drawn on a foreign bank or a wire transfer from a foreign bank; or (iv) contributors or donors who reside abroad. Failure to conduct a reasonable inquiry in the face of any of these facts constitutes evidence of a knowing violation of the Act.

[6] The Commission's regulations at 11 CFR 103.3(b) require that political committee treasurers examine all contributions received for evidence of illegality. If a contribution presenting genuine questions as to legality is deposited, the treasurer has an affirmative duty to investigate the contribution and use best efforts to determine the legality of the contribution. 11 CFR 103.3(b)(1). If, despite such due diligence, the treasurer is unable to determine the legality of the contribution within 30 days of receipt, the treasurer is required to refund the contribution to the contributor. *Id.*

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4. 11 CFR 110.20(a)(6) Definition of "Solicit"

The NPRM sought comments as to whether the Commission should incorporate into the regulations at 11 CFR 110.20 the definition of "solicit" at 11 CFR 300.2(m), whether it should leave the term undefined, or whether it should give the term a more expansive or a narrower reading in this context. The term "to solicit" is defined in 11 CFR 300.2(m) as "to ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary." Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 FR 49,064–49,122 (July 29, 2002).

Two of the comments received strongly urged the Commission not to incorporate the definition of "solicit" at 11 CFR 300.2(m), deeming it too narrow. One such commenter characterized the definition as "radically underinclusive" and inferred that it would allow "a broad range of solicitations to escape [regulation,]" and, if adopted in part 110, would allow candidates and officials to "suggest or request that foreign nationals make contributions to their campaigns." In promulgating 11 CFR 300.2(m), however, the Commission was advised of the need for clear definitions to avoid ambiguity, vagueness and confusion as to what activities or conversations would constitute solicitations. 67 FR at 49,086–49,087 (July 29, 2002). By using the term "ask," the Commission defined "solicit" to require some affirmative verbalization or writing, thereby providing members of Congress, candidates and committees with an understandable standard. It is the impressionistic or subjective aspects of the term "suggest" and "request" that the Commission rejected in the Title I rulemaking. The Commission also notes that while the terms "suggest" or "request" recommended by one commenter encompass a wide array of activity, it is not clear that they would cover more direct verbalizations or writings captured by terms such as "demand," "instruct," or "tell," which the Commission believes are captured by the term "ask."

The Commission is aware that the decision to define "solicit" as "ask" rather than as "request, suggest or recommend" (proposed by the Commission staff) was controversial. The Commission notes that "request" and "ask" are essentially synonymous. (See American Heritage College Dictionary, 34d Edition: "request" is defined as "1. To express a desire for; ask for. 2. To "ask" (a person) to do something;" "ask" is defined as "* * * 4. To make a request of or for.") The Commission was unwilling to use the far more expansive term "suggest," for concern that such a vague term could subject persons to investigation and prosecution based on highly subjective judgments about whether a particular remark or action constituted a "suggestion." The definition of "solicit" is intended to include "a palpable communication intended to, and reasonably understood to, convey a request for some action * * *" The Democratic National Committee, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee, Comments on Coordinated and Independent Expenditures, 3 (Oct. 11, 2002).

In addition, the basic canons of statutory construction argue strongly against using the phrase "request or suggestion" to define "solicit." BCRA, and FECA prior to passage of BCRA, use the term "request or suggestion" in the definition of "independent expenditure" (See BCRA section 211, 2 U.S.C. 431(17)) and in the reciprocal definition of "coordination" (See BCRA section 213, 2 U.S.C. 441a(a)(7)(B)). "We find the contrasting language to be particularly telling. Where Congress includes particular language in one section of a statute but omits it in another * * * it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (*FEC* v. *NRA Political Victory Fund*, 513 U.S. 88, 95 (1994) quoting *Keene Corp.* v. *United States*, 508 U.S. 200, 208 (1993) (internal quotations and citation omitted).

The Commission believes that the need to craft clear and understandable definitions marking the boundary between permissible and impermissible solicitations by candidates, parties, or their agents in the realm of non-Federal funds, applies equally to the realm of foreign national funds. A single definition has the added benefit of reducing confusion among those who solicit campaign funds often, and from a variety of individuals. Accordingly, the term "solicit" in the final rules at 11 CFR part 110.20 has the same meaning as in 11 CFR 300.2(m).

5. 11 CFR 110.20(a)(7) Safe Harbor for Knowledge Standard

The Commission in the NPRM also sought comment on whether it should create safe harbors within which political committees would be deemed to have satisfied their duty to investigate contributions or donations in order to confirm that they do not come from foreign sources. One commenter requested that the Commission expressly create such a safe harbor if "reasonable efforts" have been made to follow guidelines in the regulations.

Whether a person has the requisite knowledge under 11 CFR 110.20(a)(4) and whether a contributor or donor is a foreign national are often fact-intensive determinations. Given the wide range of factual situations that could arise, and the likelihood that some foreign donors or contributors will take steps to conceal the illegal nature of their actions, it is not possible in all circumstances to craft appropriate safe harbors to safeguard recipient committees who do not and cannot know of the illegality while at the same time holding accountable those who do or should know.

However, the Commission is adopting one narrowly tailored safe harbor. Under 11 CFR 103.3(b)(1), with respect to contributions that present "genuine questions" that they may come from a foreign source, political committee treasurers have an affirmative duty to investigate the contributions and use best efforts to determine the legality of the contribution. If, despite such due diligence, the treasurer is unable to determine the legality of the contribution within 30 days, the treasurer is required to refund the contribution to the contributor. Id. During the last several years, many political committees and other organizations, out of an abundance of caution, have adopted a policy of requesting and keeping on file copies of U.S. passport papers from all their contributors who reside outside the United States, or who list a foreign address, or who make a contribution through a foreign bank. The Commission believes such prudent practices are appropriate and satisfy a political committee's affirmative duty to investigate such questionable contributions. Accordingly, the Commission is creating a safe harbor at 11 CFR 110.20(a)(7) whereby any person shall be deemed to have conducted a reasonable inquiry under 11 CFR 110.20(a)(4)(iii) if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who are contributors or donors who (i) use a foreign passport or passport number for identification purposes, (ii) provide a foreign address, (iii) make a contribution or donation by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank, or (iv) reside abroad. *See* 11 CFR 110.20(a)(5)(i) through (iv). Under those circumstances, the political committee shall also be deemed to have satisfied its affirmative duty to investigate such contributions under 11 CFR 103.3(b)(1).

Current 11 CFR 103.3(b)(2) provides the steps necessary for a treasurer who discovers that an illegal contribution has been deposited to fully remedy the situation; this provision applies "to contributions from foreign nationals * * * when there is no evidence of illegality on the face of the contributions themselves." Explanation and Justification, 52 FR 760, 768–69 (Jan. 9, 1987). In light of 11 CFR 103.3(b)(2), the Commission has concluded that no additional safe harbor is necessary in this area.

6. 11 CFR 110.20(b) "Indirectly"

BCRA amends 2 U.S.C. 441e by banning foreign national contributions and donations, or express or implied promises to make such contributions or donations, that are made "directly or indirectly." Previously, 2 U.S.C. 441e(a) banned foreign national contributions made directly "or through any other person." The legislative history of BCRA does not reveal whether Congress intended "indirectly" to have a broader meaning than "through any other person," the language used in pre-BCRA 2 U.S.C. 441e(a).

The Commission solicited comments in the NPRM as to whether "indirectly" should be construed to have a broader meaning than "through any other person" and if so, whether the rules should explicitly reflect this interpretation by defining "indirectly." Several of the commenters urged the Commission not to interpret "indirectly" as having a broader meaning, arguing that there is nothing in the legislative history to support such a reading, and that to do so would involve speculation as to Congressional intent.

The NPRM further solicited comments as to whether "indirectly" should be interpreted to cover U.S. subsidiaries of foreign corporations that make non-Federal donations with corporate funds or that have a separate segregated fund that makes Federal contributions. Specifically, the Commission sought comment on whether BCRA's new statutory language prohibits a foreign-controlled U.S. corporation, including a U.S. subsidiary of a foreign corporation, from making corporate donations, or from making Federal contributions from a separate segregated fund, or both.

Numerous comments were received addressing the involvement in elections of U.S. subsidiaries of foreign corporations, all of which strongly urged the Commission not to extend the prohibition on foreign national involvement to the activities of foreign-owned U.S. subsidiaries. The comment submitted by the BCRA sponsors stated that Congress in this legislation did not address "contributions by foreign-owned U.S. corporations, including U.S. subsidiaries of foreign corporations." A number of the other commenters cited the absence, in BCRA and in its legislative history, of express Congressional intent to reach either donations by such corporate entities in state elections, where permitted by state law, or the involvement of their separate segregated funds in Federal elections. They stressed the significance of such silence given the series of Commission advisory opinions over more than two decades that have affirmed the participation of such subsidiaries in elections in the United States, either directly in states where state law permits, or through separate segregated funds with regard to Federal elections, so long as there is no involvement of foreign nationals in decisions regarding such participation and so long as foreign nationals are not solicited for the funds to be used. *See* Advisory Opinions 2000–17, 1999–28, 1995–15, 1992–16, 1992–07, 1990–08, 1989–29, 1982–34, 1981–36, 1980–100, and 1978–21. Several commenters asserted further that the impetus for Congress to amend 2 U.S.C. 441e in 2002 was the involvement of individual foreign nationals in the financing of the 1996 presidential election campaign, not the activities of foreign-owned U.S. subsidiaries.

A number of commenters argued that the use of "indirectly" in BCRA with regard to foreign national contributions and donations represented only a codification of the Commission's earlier use of this word in advisory opinions and regulations to prohibit the direct or indirect involvement of individual foreign nationals in decisions concerning either corporate donations at the State or local level or Federal contributions made by separate segregated funds. See Advisory Opinions 2000–17, 1995–15, 1992–16, 1990–08, and 1989–29, and 11 CFR 110.4(a)(3). A joint comment stressed that Congress had earlier addressed and rejected a ban on U.S. subsidiary participation, the House of Representatives in 1998 and the Senate earlier in 1992, and that this legislative history showed that the use of "indirectly" in BCRA addresses only foreign national involvement in corporate decision-making.[7] These comments, plus one received from two members of the U.S. Senate, argued that, because Congress was thus very familiar with the U.S. subsidiary issue, any Congressional intent to prohibit such activity in the context of BCRA would have been addressed in debate and made explicit in the legislation.

Several commenters questioned the constitutionality of prohibiting U.S. employees of foreign-owned subsidiaries from participation in U.S. elections. They argued that such a ban would discriminate against these employees on the basis of their employers' parent companies. One commenter noted that, by definition, U.S. subsidiaries are U.S. companies. Another asserted that a ban on U.S. subsidiary election-related activity would be counter to the globalization of financial activity; yet another argued that it would be counter to NAFTA and other treaties. One commenter noted possible negative effects upon U.S. trade associations if certain of their member corporations could not form separate segregated funds.

The Commission agrees with those who have argued that "indirectly" should not be deemed to cover U.S. subsidiaries of foreign corporations. This agreement is based upon the lack of evidence of Congressional intent to broaden the prohibition on foreign national involvement in U.S. elections to cover such entities, and upon the

[7] These legislative references are to the histories of the Congressional Campaign Spending Limit and Election Reform Act of 1992, which was vetoed by the President, and of the Bipartisan Campaign Reform Act, H.R. 2183, when it was considered by the House of Representatives in 1998. In 1992, Senator Bentsen offered an amendment to prohibit federal contributions by the separate segregated funds of U.S. subsidiaries when such a subsidiary is more than 50% owned or controlled by a foreign corporation. The amendment would have changed the definition of "foreign national" to include 50% owned or controlled subsidiaries, and would also have applied the foreign national prohibition to the separate segregated funds of such subsidiaries.

In response, Senator Breaux offered a substitute amendment that would have codified (1) the right of U.S. subsidiary employees to participate in elections through separate segregated funds and (2) the prohibition in the Commission's regulations against the participation of foreign nationals, "directly or indirectly," in decision-making regarding contributions or expenditures made in connection with elections at all levels and in the administration of a political committee. The Senate voted to substitute the Breaux amendment. The commenters stressed the use of "indirectly" in the Breaux amendment and argued that its use in BCRA was for the same purpose; *i.e.*, the codification of the regulation prohibiting the participation of foreign nationals in decision-making.

In 1998, the House voted with no opposition for an amendment introduced by Representative Gillmor and Representative Tanner to assure the right of a U.S. subsidiary of a foreign owned or controlled corporation to maintain a separate segregated fund ("SSF"). An amendment proposed by Representative Kaptur to prohibit Federal contributions or expenditures by such SSFs was later modified to address only reporting by U.S. subsidiaries.

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substantial policy reasons set forth in the long line of Commission advisory opinions that have permitted U.S. subsidiaries to administer separate segregated funds and to make corporate donations for State and local elections where they are allowed to do so by state law.

The Commission has determined that the activities of U.S. subsidiaries of foreign corporations are governed by new § 110.20(i), which prohibits involvement of foreign nationals in the decision-making of separate segregated funds, and of corporations that plan to make donations in connection with State and local elections where they are permitted to do so. [See further discussion below.) Thus, the final rules do not define "indirectly" or contain additional rules pertaining to U.S. subsidiaries of foreign corporations.

7. 11 CFR 110.20(b) Addition of "Donation" in the Foreign National Ban

In BCRA, Congress added the "donation" of funds by foreign nationals to the existing ban on contributions by foreign nationals. In 1999, 2000, and 2001 the Commission included in its legislative recommendations to Congress a proposal that 2 U.S.C. 441e be amended to clarify that the statutory prohibition on foreign national contributions extends to State and local elections. The Commission noted, *inter alia*, that this could be accomplished by changing "contribution" to "donation."

Congress chose to retain "contribution" and to add "donation" in BCRA as a prohibited activity. Congress also revised 2 U.S.C. 441e to delete references to "elections" and "candidates" for "any political office," and substituted the broader phrase "Federal, State, or local election." 2 U.S.C. 441e(a)(1)(A). Through this two-fold approach, Congress left no doubt as to its intention to prohibit foreign national support of candidates and their committees and political organizations and foreign national activities in connection with all Federal, State, and local elections.

The legislative history indicates that the revision to 2 U.S.C. 441e "prohibits foreign nationals from making any contribution to a committee of a political party or any contribution in connection with Federal, State or local elections, including any electioneering communications. This clarifies that the ban on contributions [by] foreign nationals applies to soft money donations." Statement of Sen. Feingold, 148 Cong. Rec. S1991–1997 (daily ed. Mar. 18, 2002). The NPRM proposed a definition of "election," based to some extent on the definition in 11 CFR 100.2, which drew no comments. This proposed definition is not included in the final rules. Instead, the wording of new 11 CFR 110.20 tracks the statutory language in BCRA.

As discussed above, the definition of "donation" in 11 CFR 300.2(e) applies to paragraph 110.20(b). Under this provision, both contributions and donations by foreign nationals are prohibited.

8. 11 CFR 110.20(c) Contributions and Donations to Committees and Organizations of Political Parties

BCRA expressly extends the prohibition on foreign national contributions and donations to those made to committees of political parties. 2 U.S.C. 441e(a)(1)(B). The particular committees covered include the national party committees; the national congressional campaign committees; and all State, district, local, and subordinate committees, including the non-Federal accounts of State, district, and local party committees.

In light of BCRA's addition of "donation" to the statutory language, the proposed rules further extended the foreign national prohibition to organizations of political parties, whether or not they are political committees under the Act and 11 CFR 100.5. Because many party organization activities affect Federal, State, and local elections, this extension to all party organizations reinforces the prohibition at 2 U.S.C. 441e(a)(1)(A) on foreign national contributions and donations in connection with elections at all levels. Two commenters on the proposed rules agreed with this interpretation, and no commenters objected. Because of the interaction between 2 U.S.C. 441e(a)(1)(A) and (B), the final rule at 11 CFR 110.20(c) adopts this extension to all political party organizations.

9. 11 CFR 110.20(d) Contributions and Donations to Building Funds

BCRA prohibits foreign nationals from making any contribution or donation to national party committees, including donations for the purchase or construction of an office building. *See* 2 U.S.C. 441e. In addition, new 11 CFR 300.35(a) explicitly provides that the prohibitions in BCRA against contributions and donations by foreign nationals do not permit party committees to spend funds contributed or donated by foreign nationals for the purchase or construction of State or local party committee office buildings. Final Rule and Explanation and Justification, 67 FR 49,101, 49,127 (July 29, 2002). The Explanation and Justification for 11 CFR 300.35 indicates that this prohibition on foreign national funding also extends to in-kind contributions or donations.

Consistent with new 11 CFR 300.35(a), new 11 CFR 110.20(d) explicitly states that foreign nationals are prohibited from making contributions or donations directly or indirectly to committees or organizations of a political party for the construction or purchase of any office building. This final rule is identical to the language in proposed § 110.20(f). The only two commenters who addressed this topic agreed with this addition to the regulations.

10. 11 CFR 110.20(e) and (f) Expenditures, Independent Expenditures, and Disbursements

BCRA prohibits a foreign national from making "an expenditure, independent expenditure, or disbursement for an electioneering communication." 2 U.S.C. 441e(a)(1)(C). The Commission in the NPRM interpreted the prohibitions against an "expenditure" or an "independent expenditure" by a foreign national as being general in scope, and the phrase "for an electioneering communication" at 2 U.S.C. 441e(a)(1)(C) as modifying only "disbursement." This interpretation is based upon the fact that BCRA expressly exempts from the definition of "electioneering communication" "a communication which constitutes an expenditure or an independent expenditure under this Act * * *." 2 U.S.C. 434(f)(3)(B)(ii).[8] This exemption apparently left "disbursement" as the sole transaction category applicable to electioneering communications. Several commenters agreed with this interpretation. The final rule at § 110.20(e) specifically prohibits disbursements for electioneering communications by foreign nationals.

Section 431(9)(A)(1) of FECA defines "expenditure" as "any purchase, payment, * * * or anything of value made for the purpose of influencing any election for Federal office," and 2 U.S.C. 431(17) defines "independent expenditure" as "an expenditure by a person expressly advocating the election or defeat of a clearly defined candidate which is made without cooperation or

[8] BCRA defines "electioneering communication" as a "broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office," that is made within particular time frames, and that is targeted to the relevant electorate if it refers to a candidate other than those for the office of President or Vice-President. 2 U.S.C. 434(f)(3)(A)(i)(I). For a more extensive discussion of electioneering communications, *see* the Final Rules on "Electioneering Communications," 67 FR 65190 (Oct. 23, 2002).

consultation with any candidate * * *." Thus, the terms "expenditure" and "independent expenditure" apply only to amounts spent with respect to Federal elections. In contrast, "disbursement," a term used in both FECA and BCRA but not defined in the statutes, is defined in 11 CFR 300.2 as "any purchase or payment made by any person that is subject to the Act." As discussed above, this definition of "disbursement" covers payments beyond those that constitute "expenditures," and "independent expenditures," such as those made in connection with non-Federal elections.

BCRA does not contain an express prohibition against foreign national disbursements for activities other than electioneering communications. This omission left in question the status of disbursements by foreign nationals in connection with State and local elections that are by definition not "expenditures" or "independent expenditures" because they are not made in connection with Federal elections. The Commission's treatment of a similar issue in the past has, however, provided guidance on this question.

Previously, 2 U.S.C. 441e contained no express prohibition against expenditures by foreign nationals. Nevertheless, the Commission revised 11 CFR 110.4(a) in 1989 to state that foreign nationals were prohibited from making expenditures as well as contributions. The Explanation and Justification for that amendment stated: "The FECA generally prohibits expenditures when it prohibits contributions by a specific category [of] persons, thereby ensuring that the persons cannot accomplish indirectly what they are prohibited from doing directly." 54 FR 4858 (Nov. 24, 1989). The Explanation and Justification continued: "Nothing in section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion." *Id.*

As discussed above, BCRA added "donations" to the activities prohibited to foreign nationals, this being one way in which the reach of the statute is extended to State and local elections to which the term "contributions" does not apply. As was the case earlier with the FECA, there is nothing in BCRA that would indicate an intent on the part of Congress to treat disbursements for State or local elections any differently than it now treats expenditures for Federal elections, or any intent to not consider donations and disbursements to be parallel concepts. The addition of "disbursements" also serves to strengthen even more the ban on foreign money.

The proposed rule treated "donations" and "disbursements" in the same fashion as "contributions" and "expenditures" have been addressed in the past, by prohibiting at proposed paragraph (d) all disbursements for elections by foreign nationals, not just the disbursements made for electioneering communications that were explicitly prohibited at proposed 11 CFR 110.20(e). Three commenters affirmed the Commission's approach. No commenters were opposed.

Consequently, while the final rule at § 110.20(e) prohibits any disbursement for an electioneering communication by foreign nationals, the final rule at paragraph (f) prohibits all expenditures, independent expenditures, and disbursements by foreign nationals in connection with Federal, State and local elections for the reasons stated above.

11. 11 CFR 110.20(g) Solicitation, Acceptance or Receipt of Contributions and Donations From Foreign Nationals

BCRA prohibits any person from soliciting, accepting, or receiving from a foreign national a contribution or donation made in connection with a Federal, State, or local election, or made to a party committee. 2 U.S.C. 441e(a)(2). Proposed § 110.20(g)(1) sought to prohibit the knowing solicitation, acceptance or receipt of contributions or donations from foreign nationals. As noted above, the final rule at § 110.20(g) contains the same prohibition. The Commission's additions of a knowledge requirement and of knowledge standards with regard to the solicitation, acceptance or receipt of foreign national contributions and donations are discussed above in connection with 11 CFR 110.20(a)(4) and (5).

12. 11 CFR 110.20(h) Assisting Foreign National Contributions or Donations

The foreign national prohibition at 2 U.S.C. 441e as amended by BCRA also raised issues concerning the liability of persons who knowingly assist foreign nationals in making contributions or donations. The proposed rules included a prohibition on the assisting of foreign national contributions and donations. Section 441e of the Act does not explicitly address those who assist others to violate its prohibition on foreign national contributions, donations, expenditures, independent expenditures, and disbursements. Recently, however, the Commission has addressed in the enforcement context a number of situations in which there arose questions about the liability of individuals who had provided substantial assistance to a foreign national or to a recipient committee with regard to a foreign national contribution or donation. These individuals had functioned as conduits or intermediaries for the funds involved. *See* MUR 4530, *et al.* The Commission concluded in these enforcement matters that, because the wording of 2 U.S.C. 441e at the time prohibited foreign nationals from making contributions directly or through any other person, and because the statute also prohibited persons from soliciting, accepting or receiving such contributions from a foreign national, the activities of conduits and intermediaries of foreign national funds were prohibited when the funds involved had been passed on for the purpose of making contributions. It is also worth noting that, in some instances, the foreign national making a prohibited contribution can easily evade U.S. jurisdiction, while a U.S. citizen serving as a conduit or rendering substantial assistance can be more easily reached.

The Commission has now concluded that, in light of Congressional intent in BCRA to strengthen the foreign money ban, nothing in amended 2 U.S.C. 441e should be construed to alter the Commission's pre-BCRA determinations in this respect. Additionally, the Commission has broad rulemaking authority in 2 U.S.C. 437d(a)(8) to make rules that are "necessary to carry out the provisions of the Act." *See also* BCRA, Public Law 107–155, sec. 402(c). It has determined that a rule that prohibits persons from knowingly providing substantial assistance to foreign nationals to circumvent the FECA is necessary to effectuate one of the key purposes of BCRA, that is, to prevent foreign national funds from influencing elections. One commenter expressed agreement with extending the prohibition to those who assist foreign national contributions and donations.

For purposes of paragraphs (h)(1) and (2), "substantial assistance" means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction. *See, e.g., IIT, An International Investment Trust* v. *Cornfield*, 619 F.2d 909, 922, 925–926, (2nd Cir. 1980), *citing, inter alia, Rolf* v. *Blyth, Eastman Dillon & Co., Inc.*, 570 F.2d 38, 47–48 (2nd Cir.), *cert. denied*, 438 U.S. 1030 (1978); and *U.S.* v. *Peoni*,

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100 F.2d 401 (2nd Cir. 1938).[9] "Substantial assistance" does not include strictly ministerial activity undertaken pursuant to the instructions of an employer, manager or supervisor.

The final rule at paragraph (h)(1) combines proposed paragraphs (h)(3) and (4) by prohibiting any person from knowingly providing substantial assistance in the solicitation, making, receipt, or acceptance of a contribution or donation from a foreign national. This provision covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations and who thus would also violate the statutory prohibition against receiving contributions or donations from a foreign national. The final rule at paragraph (h)(2) extends the prohibition on knowingly providing substantial assistance to assisting foreign nationals in the making of expenditures, independent expenditures and disbursements in connection with Federal or non-Federal elections.

The three standards of knowledge set forth at § 110.20(a)(4) are applicable to anyone who provides the kinds of assistance prohibited by paragraph (h).

13. 11 CFR 110.20(i) Prohibition on Participation by Foreign Nationals in Decisions Related to Election Activities

Section 110.20(i) retains the prohibition at former 11 CFR 110.4(a)(3) on participation by foreign nationals in decisions made by any person, including entities such as corporations, labor organizations or political committees, that are related to Federal and non-Federal elections. The only changes involve the addition of "political organization" to the listing of decision-making entities and of "donations" and "disbursements" to the list of transactions about which decisions are made; all of these additions are needed to address fully the prohibition on the funding of State and local elections. Foreign nationals are prohibited from taking part in decisions about contributions and donations to any Federal, State, or local candidates or to, or by, any political committees or political organizations, and in decisions about expenditures and disbursements made in support of, or in opposition to, such candidates, political committees or political organizations. Foreign nationals also are prohibited from involvement in the management of a political committee, including a separate segregated fund, a non-connected committee or the non-Federal accounts of these committees.

Numerous comments received regarding the proposed rules supported this provision as the appropriate way to prevent foreign nationals from engaging in election-related activities, particularly in the context of U.S. subsidiaries of foreign-owned corporations. No commenter opposed the proposed regulation.

14. Donations to Presidential Inaugural Committees

In the NPRM the Commission proposed to include a BCRA-related rule prohibiting knowing acceptance by Presidential inaugural committees of donations from foreign nationals. Proposed 11 CFR 110.20(c), 67 FR at 54,379. The Commission had stated in the NPRM entitled "Disclaimers, Fraudulent Solicitations, Civil Penalties, and Personal Use of Campaign Funds," that it would address rules pertaining to inaugural committees in a future rulemaking. 67 FR 55, 348 (Aug. 29, 2002). The Commission has determined that the rules concerning inaugural committees should be addressed in a comprehensive manner. Therefore, donations by foreign nationals to Presidential inaugural committees will also be part of this future rulemaking and are not included in these final rules.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The entities affected by these rules are political committees, minors, foreign nationals and U.S. nationals. The basis of this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions.

Minors and many foreign nationals are individuals, and therefore, not small entities. Furthermore, the final rules, which are based on statutory language, clarify and describe in further detail the already existing ban on contributions by foreign nationals. Additionally, to the extent that there may be foreign nationals that may fall within the definition of "small entities," their numbers are not substantial, particularly the number that would make a donation, expenditure, independent expenditure, or disbursement in connection with a Federal, State, or local election.

In addition, to the extent that the rules apply to any small entities, they are not unduly burdened by the increased contribution limitations, which give such small entities more latitude in the amount they contribute. Furthermore, the new rules for redesignating contributions for a particular election and reattributing contributions to particular donors provide political committees with flexibility and additional means to ensure compliance with FECA and BCRA, thereby reducing any economic costs they may have incurred under the previous rules.

List of Subjects

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, Subchapter A of Chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

2. Section 102.9 is amended by adding paragraph (a)(4) and revising paragraph (e) to read as follows:

§ 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).

* * * * *

(a) * * *

(4) In addition to the account to be kept under paragraph (a)(1) of this section, for contributions in excess of $50, the treasurer of a political committee or an agent authorized by the treasurer shall maintain:

(i) A full-size photocopy of each check or written instrument; or

(ii) A digital image of each check or written instrument. The political committee or other person shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission.

* * * * *

[9] As stated in *IIT*, Judge Learned Hand observed in *Peoni*, a criminal case involving possession of counterfeit money, that for centuries courts had required that an accessory to an activity be a person who must "in some sort associate himself with the venture, that he participate in it as something that he wishes to bring about, that he seek by his action to make it succeed. All the words used [by courts] * * * carry an implication of purposive attitude towards it." 100 F.2d at 402.

(e)(1) If the candidate, or his or her authorized committee(s), receives contributions that are designated for use in connection with the general election pursuant to 11 CFR 110.1(b) prior to the date of the primary election, such candidate or such committee(s) shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. Acceptable accounting methods include, but are not limited to:

(i) The designation of separate accounts for each election, caucus or convention; or

(ii) The establishment of separate books and records for each election.

(2) Regardless of the method used under paragraph (e)(1) of this section, an authorized committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made.

(3) If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3), as appropriate.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441k.

4. Section 110.1 is amended by revising paragraphs (a), (b)(1), (b)(3)(iii), (b)(5)(ii), (c)(1), (i), (k)(3)(ii), (l)(4), and (l)(5) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

(a) *Scope.* This section applies to all contributions made by any person as defined in 11 CFR 100.10, except multicandidate political committees as defined in 11 CFR 100.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR parts 114 and 115.

(b) * * *

(1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed $2,000.

(i) The contribution limitation in the introductory text of paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased contribution limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the contribution limitation is increased and ending on the date of the next general election. For example, an increase in the contribution limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limitation in effect and place such information on the Commission's Web site.

* * * * *

(3) * * *

(iii) The amount of the net debts outstanding shall be adjusted as additional funds are received and expenditures are made. The candidate and his or her authorized political committee(s) may accept contributions made after the date of the election if:

(A) Such contributions are designated in writing by the contributor for that election;

(B) Such contributions do not exceed the adjusted amount of net debts outstanding on the date the contribution is received; and

(C) Such contributions do not exceed the contribution limitations in effect on the date of such election.

* * * * *

(5) * * *

(ii) (A) A contribution shall be considered to be redesignated for another election if—

(*1*) The treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation; and

(*2*) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

(B) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the general election, provided that:

(*1*) The contribution was made before the primary election;

(*2*) The contribution was not designated for a particular election;

(*3*) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the primary election;

(*4*) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section;

(*5*) The treasurer of the recipient authorized political committee notifies the contributor of the amount of the contribution that was redesignated and that the contributor may request a refund of the contribution; and

(*6*) Within sixty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide notification required in paragraph (b)(5)(ii)(B)(5) of this section to the contributor by any written method including electronic mail.

(C) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the primary election, provided that:

(*1*) The contribution was made after the primary election but before the general election;

(*2*) The contribution was not designated for a particular election;

(*3*) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the general election;

(*4*) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section;

(*5*) The contribution does not exceed the committee's net debts outstanding for the primary election;

(*6*) The treasurer of the recipient authorized political committee notifies the contributor of how the contribution was redesignated and that the contributor may request a refund of the contribution; and

(*7*) Within sixty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide notification required in paragraph (b)(5)(ii)(C)(6) of this section to the

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contributor by any written method, including electronic mail.

* * * * *

(c) * * *

(1) No person shall make contributions to the political committees established and maintained by a national political party in any calendar year that in the aggregate exceed $25,000.

(i) The contribution limitation in paragraph (c)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased contribution limitation shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitation is increased.

(iii) In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limitation in effect and place such information on the Commission's Web site.

* * * * *

(i) *Contributions by spouses.* The limitations on contributions of this section shall apply separately to contributions made by each spouse even if only one spouse has income.

* * * * *

(k) * * *

(3) * * *

(ii) (A) A contribution shall be considered to be reattributed to another contributor if—

(*1*) The treasurer of the recipient authorized political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and

(*2*) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

(B)(*1*) Notwithstanding paragraph (k)(3)(ii)(A) of this section or any other provision of this section, any excessive portion of a contribution described in paragraph (k)(3)(i) of this section that was made by a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless a different instruction is on the instrument or in a separate writing signed by the contributor(s), provided that such attribution would not cause any contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

(*2*) The treasurer of the recipient authorized political committee shall notify each contributor of how the contribution was attributed and that the contributor may request the refund of the excessive portion of the contribution if it is not intended to be a joint contribution.

(*3*) Within sixty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide such notification to each contributor by any written method, including electronic mail.

(l) * * *

(4)(i) If a political committee chooses to rely on a postmark as evidence of the date on which a contribution was made, the treasurer shall retain the envelope or a copy of the envelope containing the postmark and other identifying information; and

(ii) If a political committee chooses to rely on the redesignation presumption in 11 CFR 110.1(b)(5)(ii)(B) or (C) or the reattribution presumption in 11 CFR 110.1(k)(3)(ii)(B), the treasurer shall retain a full-size photocopy of the check or written instrument, of any signed writings that accompanied the contribution, and of the notices sent to the contributors as required by 11 CFR 110.1(b)(5)(ii)(B) and (k)(3)(ii)(B).

(5) If a political committee does not retain the written records concerning designation required under 11 CFR 110.1(l)(1), the contribution shall not be considered designated in writing for a particular election, and the provisions of 11 CFR 110.1(b)(2)(ii) or 11 CFR 110.2(b)(2)(ii) shall apply. If a political committee does not retain the written records concerning redesignation or reattribution required under 11 CFR 110.1(l)(2), (3), (4)(ii) or (6), including the contributor notices, the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

* * * * *

5. Section 110.2 is amended by revising paragraph (e) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

* * * * *

(e) *Contributions by political party committees to Senatorial candidates.*

(1) Notwithstanding any other provision of the Act, or of these regulations, the Republican and Democratic Senatorial campaign committees, or the national committee of a political party, may make contributions of not more than a combined total of $35,000 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by such committee to a Senatorial candidate under this paragraph in a year other than the calendar year in which the election is held shall be considered to be made during the calendar year in which the election is held.

(2) The contribution limitation in paragraph (e)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased contribution limitation shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitation is increased. In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limitation in effect and place such information on the Commission's Web site.

* * * * *

6. Section 110.4 is amended by revising the section heading and by removing and reserving paragraph (a) to read as follows.

§ 110.4 Contributions in the name of another; cash contributions (2 U.S.C. 441f, 441g, 432(c)(2)).

(a) [Removed and reserved].

* * * * *

7. Section 110.5 is amended by revising the section heading and paragraphs (a), (b), (d) and (e) to read as follows:

§ 110.5 Aggregate bi-annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR part 115.

(b) *Bi-annual limitations.*

(1) In the two-year period beginning on January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year, no individual shall make contributions aggregating more than $95,000, including no more than:

(i) $37,500 in the case of contributions to candidates and the authorized committees of candidates; and

(ii) $57,500 in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees that are not political committees of any national political parties.

(2) Contributions to candidates made under the increased contribution limitations under 11 CFR part 400, during periods in which such candidates may accept such contributions, are not subject to the contribution limitations of paragraph (b)(1) of this section.

(3) The contribution limitations in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased contribution limitations shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitations are increased.

(4) In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limitations in effect and place such information on the Commission's Web site.

* * * * *

(d) *Independent expenditures.* The bi-annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The bi-annual limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

8. Section 110.9 is revised to read as follows:

§ 110.9 Violation of limitations.

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 11 CFR part 110. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

§§ 110.15 and 110.16 [Reserved]

9. Sections 110.15 and 110.16 are added and reserved.

10. Section 110.17 is added to read as follows:

§ 110.17 Price index increase.

(a) *Price index increases for party committee expenditure limitations and Presidential candidate expenditure limitations.* The limitations on expenditures established by 11 CFR 110.7 and 110.8 shall be increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) Each expenditure limitation so increased shall be the expenditure limitation in effect for that calendar year.

(2) For purposes of this paragraph (a), the term base period means calendar year 1974.

(b) *Price index increases for contributions by persons, by political party committees to Senatorial candidates, and the bi-annual aggregate contribution limitation for individuals.* The limitations on contributions established by 11 CFR 110.1(b) and (c), 110.2(e), and 110.5, shall be increased only in odd-numbered years by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) The increased contribution limitations shall be in effect as provided in 11 CFR 110.1(b)(1)(ii), 110.1(c)(1)(ii), 110.2(e)(2) and 110.5(b)(3).

(2) For purposes of this paragraph (b) the term *base period* means calendar year 2001.

(c) *Rounding of price index increases.* If any amount after the increases under paragraph (a) or (b) of this section is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(d) *Definition of price index.* For purposes of this section, the term *price index* means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(e) *Publication of price index increases.* In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the expenditure and contribution limitations in effect and place such information on the Commission's Web site.

§ 110.18 [Reserved]

11. Section 110.18 is added and reserved.

12. Section 110.19 is added to read as follows:

§ 110.19 Contributions and donations by minors.

(a) *Contributions to candidates.* An individual who is 17 years old or younger shall not make a contribution to a candidate for Federal office, including a contribution to any of the following:

(1) A principal campaign committee designated pursuant to 11 CFR 101.1(a);

(2) Any other political committee authorized by a candidate under 11 CFR 101.1(b) and 102.13 to receive contributions or make expenditures on behalf of such candidate; or

(3) Any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

(b) *Contributions and donations to committees of political parties.* An individual who is 17 years old or younger shall not make a contribution or donation to:

(1) A national, State, district, or local committee of a political party, including a national congressional campaign committee;

(2) Any entity directly or indirectly established, financed, maintained or controlled by a national, State, district, or local committee of a political party, including a national congressional campaign committee; or

(3) Any account of a committee or entity described in paragraphs (b)(1) and (b)(2) of this section.

(c) *Contributions to political committees that are not authorized committees or committees of political parties.* An individual who is 17 years old or younger may make contributions to a political committee not described in paragraph (a) or (b) of this section that in the aggregate do not exceed the limitations on contributions of 11 CFR 110.1 and 110.5, if—

(1) The decision to contribute is made knowingly and voluntarily by that individual;

(2) The funds, goods, or services contributed are owned or controlled exclusively by that individual, such as income earned by that individual, the proceeds of a trust for which that individual is the beneficiary, or a savings account opened and maintained exclusively in that individual's name;

(3) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual; and

(4) The contribution is not earmarked or otherwise directed to one or more Federal candidates, authorized committees, political party committees, or other organizations covered by paragraph (a) or (b) of this section. See 11 CFR 110.6.

(d) *Volunteer Services.* Nothing in this section shall prohibit an individual who is 17 years old or younger from providing volunteer services to any Federal candidate or political committee.

(e) *Definition of directly or indirectly establish, maintain, finance, or control. Directly or indirectly establish, maintain, finance, or control* has the same meaning as in 11 CFR 300.2(c).

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13. Section 110.20 is added to read as follows:

§ 110.20 Prohibition on contributions, donations, expenditures, independent expenditure, and disbursements by foreign nationals. (2 U.S.C. 441e).

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Disbursement* has the same meaning as in 11 CFR 300.2(d).

(2) *Donation* has the same meaning as in 11 CFR 300.2(e).

(3) *Foreign national* means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20); however,

(iii) *Foreign national* shall not include any individual who is a citizen of the United States, or who is a national of the United States as defined in 8 U.S.C. 1101(a)(22).

(4) *Knowingly* means that a person must:

(i) Have actual knowledge that the source of the funds solicited, accepted or received is a foreign national;

(ii) Be aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or

(iii) Be aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry.

(5) For purposes of paragraph (a)(4) of this section, pertinent facts include, but are not limited to:

(i) The contributor or donor uses a foreign passport or passport number for identification purposes;

(ii) The contributor or donor provides a foreign address;

(iii) The contributor or donor makes a contribution or donation by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank; or

(iv) The contributor or donor resides abroad.

(6) *Solicit* has the same meaning as in 11 CFR 300.2(m).

(7) *Safe Harbor.* For purposes of paragraph (a)(4)(iii) of this section, a person shall be deemed to have conducted a reasonable inquiry if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who are contributors or donors described in paragraphs (a)(5)(i) through (iv) of this section. No person may rely on this safe harbor if he or she has actual knowledge that the source of the funds solicited, accepted, or received is a foreign national.

(b) *Contributions and donations by foreign nationals in connection with elections.* A foreign national shall not, directly or indirectly, make a contribution or a donation of money or other thing of value, or expressly or impliedly promise to make a contribution or a donation, in connection with any Federal, State, or local election.

(c) *Contributions and donations by foreign nationals to political committees and organizations of political parties.* A foreign national shall not, directly or indirectly, make a contribution or donation to:

(1) A political committee of a political party, including a national party committee, a national congressional campaign committee, or a State, district, or local party committee, including a non-Federal account of a State, district, or local party committee, or

(2) An organization of a political party whether or not the organization is a political committee under 11 CFR 100.5.

(d) *Contributions and donations by foreign nationals for office buildings.* A foreign national shall not, directly or indirectly, make a contribution or donation to a committee of a political party for the purchase or construction of an office building. *See* 11 CFR 300.10 and 300.35.

(e) *Disbursements by foreign nationals for electioneering communications.* A foreign national shall not, directly or indirectly, make any disbursement for an electioneering communication as defined in 11 CFR 100.29.

(f) *Expenditures, independent expenditures, or disbursements by foreign nationals in connection with elections.* A foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election.

(g) *Solicitation, acceptance, or receipt of contributions and donations from foreign nationals.* No person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation prohibited by paragraphs (b) through (d) of this section.

(h) *Providing substantial assistance.*

(1) No person shall knowingly provide substantial assistance in the solicitation, making, acceptance, or receipt of a contribution or donation prohibited by paragraphs (b) through (d), and (g) of this section.

(2) No person shall knowingly provide substantial assistance in the making of an expenditure, independent expenditure, or disbursement prohibited by paragraphs (e) and (f) of this section.

(i) *Participation by foreign nationals in decisions involving election-related activities.* A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.

Dated: November 8, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–28886 Filed 11–18–02; 8:45 am]

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Federal Register

Tuesday,
November 19, 2002

Part V

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–7408–6]

RIN 2040–AD72

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final regulation, EPA ratifies approval of several test procedures for measuring the toxicity of effluents and receiving waters. The test procedures are commonly referred to as whole effluent toxicity or WET test methods. EPA also withdraws two WET test methods from the list of nationally-approved biological test procedures for the analysis of pollutants. This action also revises some of the WET test methods to improve performance and increase confidence in the reliability of the results. Today's action will satisfy settlement agreement obligations designed to resolve litigation over an earlier rulemaking that originally approved WET test methods.

DATES: This regulation is effective December 19, 2002. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Standard Time on December 3, 2002 in accordance with 40 CFR 23.7. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Marion Kelly; Engineering and Analysis Division (4303T); Office of Science and Technology; Office of Water, U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW; Washington, DC 20460, or call (202) 566–1045, or E-mail at kelly.marion@epa.gov. For technical information regarding method changes in today's rule, contact Debra L. Denton, USEPA Region 9, c/o SWRCB, 1001 I Street, Sacramento, CA 95814, or call (916) 341–5520, or E-mail *denton.debra@epa.gov.*

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I. General Information

A. Potentially Regulated Entities

EPA Regions, as well as States, Territories, and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, NPDES permitting authorities make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limits for those pollutants in permits. If EPA has "approved" (*i.e.*, promulgated through rulemaking) standardized test procedures for a given pollutant, the NPDES permitting authority must specify one of the approved testing procedures or an EPA-approved alternate test procedure for the measurements required under the permit. In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the approved testing procedures. Categories and entities that may be regulated include:

Category	Examples of potentially regulated entities
Federal, State, Territorial, and Indian Tribal Governments.	Federal, State, Territorial, and Tribal entities authorized to administer the NPDES permitting program; Federal, State, Territorial, and Tribal entities providing certification under Clean Water Act section 401.
Municipalities	Municipal operators of NPDES facilities required to monitor whole effluent toxicity.
Industry	Private operators of NPDES facilities required to monitor whole effluent toxicity.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or organization is regulated by this action you should carefully examine 40 CFR 122.41(j)(4), 122.44(i)(1)(iv), and 122.21. If you have questions regarding the applicability of this action to a particular entity, consult the first person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. WET–X (Electronic Docket No. OW–2002–0024). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Water (OW) Docket, in the EPA Docket Center (EPA/DC), EPA West, Room B–102, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OW Docket is (202) 566–2426.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

II. Statutory Authority

EPA promulgates today's rule pursuant to the authority of sections 301, 304(h), 402, and 501(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. 1311, 1314(h), 1342, 1361(a) (the "Act"). Section 101(a) of the Act sets forth the "goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters" and prohibits "the discharge of toxic pollutants in toxic amounts." Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his function under this Act." EPA publishes CWA analytical method regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 403.12).

III. Background

A. Regulatory History

On October 16, 1995, EPA amended the "Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 CFR part 136, to add a series of standardized toxicity test methods to the list of Agency approved methods for conducting required testing of aqueous samples under the CWA (60 FR 53529) (WET final rule). The WET final rule amended 40 CFR 136.3 (Tables IA and II) by adding acute toxicity methods and short-term methods for estimating chronic toxicity. These methods measure the toxicity of effluents and receiving waters to freshwater, marine, and estuarine organisms. Acute methods (USEPA, 1993) generally use death of some percentage of the test organisms during 24 to 96 hour exposure durations as the measured effect of an effluent or receiving water. The short-term methods for estimating chronic toxicity (USEPA, 1994a; USEPA, 1994b) use longer durations of exposure (up to nine days) to ascertain the adverse effects of an effluent or receiving water on survival, growth, and/or reproduction of the organisms. The methods listed at 40 CFR part 136 for measuring aquatic toxicity are referred to collectively as "WET test methods," methods specific to measuring acute toxicity are referred to as "acute" test methods, and short-term methods for estimating chronic toxicity are referred to as "chronic" methods.

EPA standardized the test procedures for conducting the approved acute and chronic WET test methods in the following three method manuals, which were incorporated by reference in the WET final rule: Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms, Fourth Edition, August 1993, EPA/600/4–90/027F (acute method manual); Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Third Edition, July 1994, EPA/600/4–91/002 (freshwater chronic method manual); and Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Marine and Estuarine Organisms, Second Edition, July 1994, EPA/600/4–91/003 (marine chronic method manual). EPA explains in the Technical Support Document for Water Quality-Based Toxics Control (TSD) (USEPA, 1991) that these WET test methods, along with chemical controls and bioassessments, are a component of EPA's integrated strategy for water quality-based toxics control. The TSD recommends that WET tests using the most sensitive of at least three test species from different phyla be used for monitoring the toxicity of effluents.

Since the 1995 WET final rule, EPA has issued several rulemakings and guidance documents in fulfillment of settlement agreements to resolve judicial challenges to the WET final rule (see Settlement Agreement discussion in Section III.B). On February 2, 1999, EPA published technical corrections that incorporated into the WET final rule an errata document to correct minor errors and omissions, provide clarification, and establish consistency among the WET final rule and method manuals (64 FR 4975; February 2, 1999). On July 18, 2000, EPA announced the availability of a WET Variability Guidance Document (65 FR 44528; July 18, 2000). On July 28, 2000, EPA published the availability of a WET Method Guidance Document (65 FR 46457; July 28, 2000). On September 28, 2001, EPA proposed specific revisions to the WET test methods, and EPA proposed to ratify its previous

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approval of these methods (66 FR 49794; September 28, 2001) (*see* section III.C). Today, EPA takes final action on the September 2001 proposal.

B. Settlement Agreement

Following promulgation of the WET methods on October 16, 1995, several parties challenged the rulemaking (*Edison Electric Institute* v. *EPA*, No. 96–1062 (D.C. Cir.); *Western Coalition of Arid States* v. *EPA*, No. 96–1124 (D.C. Cir.); and *Lone Star Steel Co.* v. *EPA*, No. 96–1157 (D.C. Cir.)). To resolve the litigation, EPA entered into settlement agreements with the various parties and agreed to publish a technical correction notice, publish a method guidance document and a variability guidance document, conduct an interlaboratory variability study, publish a peer-reviewed interlaboratory variability study report (including a table of coefficients of variation), address pathogen contamination, propose specific technical method changes, and propose to ratify or withdraw WET test methods evaluated in the interlaboratory variability study. Today's final action fulfills EPA's obligations under the settlement agreements.

C. Proposed Rule

On September 28, 2001, EPA proposed modifications to the WET test methods (66 FR 49794). The proposal included updates to the methods, minor corrections and clarifications, and specific technical changes in response to stakeholder concerns. Specifically, EPA proposed technical changes to (1) require "blocking" by known parentage in the Ceriodaphnia dubia Survival and Reproduction Test; (2) specify procedures to control pH drift that may occur during testing; (3) incorporate review procedures for the evaluation of concentration-response relationships; (4) clarify recommendations regarding nominal error rate assumptions; (5) clarify limitations in the generation of confidence intervals; (6) add guidance on dilution series selection; (7) clarify requirements regarding acceptable dilution waters; and (8) add procedures for determining and minimizing the adverse impact of pathogens in the Fathead Minnow Survival and Growth Test.

EPA also solicited comment on other modifications to improve the performance of the methods, including the incorporation of variability criteria and increases in the minimum number of test replicates. EPA proposed to incorporate WET method changes into new editions of each of the WET method manuals (USEPA, 1993; USEPA, 1994a; USEPA, 1994b) and to update Table IA at 40 CFR part 136 to cite the new method manual editions.

In the September 28, 2001 proposed rule, EPA also proposed to ratify 11 of the 12 WET methods evaluated in EPA's WET Interlaboratory Variability Study. EPA proposed to ratify the Ceriodaphnia dubia Acute Test; Fathead Minnow Acute Test; Sheepshead Minnow Acute Test; Inland Silverside Acute Test; Ceriodaphnia dubia Survival and Reproduction Test; Fathead Minnow Larval Survival and Growth Test; Selenastrum capricornutum Growth Test; Sheepshead Minnow Larval Survival and Growth Test; Inland Silverside Larval Survival and Growth Test; Mysidopsis bahia Survival, Growth, and Fecundity Test; and Champia parvula Reproduction Test. To support ratification of these methods, EPA presented the results of the WET Interlaboratory Variability Study (USEPA, 2001a; USEPA, 2001b), a national study of 12 WET methods involving 56 laboratories and over 700 samples. EPA proposed to withdraw Holmesimysis costata as an acceptable substitute species for use in the Mysidopsis bahia Acute Test method protocol. In its place, EPA proposed a new Holmesimysis costata Acute Test protocol.

EPA invited public comment for 60 days and later extended the comment period for an additional 45 days (66 FR 58693; November 23, 2001). EPA received 38 comment packages during the allotted comment period.

IV. Summary of Final Rule

A. Proposed WET Method Changes

Today's action incorporates most of the method changes proposed on September 28, 2001 (66 FR 49794) with minor modifications to address public comments. For a summary of major changes from the proposed rule, including proposed actions not incorporated in today's rule, see Section V of this preamble. Method manual revisions promulgated in today's action include:

- Minor corrections and clarifications,
- Incorporation of updated method precision data,
- Requirement for "blocking" by known parentage in the Ceriodaphnia dubia Survival and Reproduction Test,
- Specification of procedures to control pH drift that may occur during testing,
- Review procedures for the evaluation of concentration-response relationships,
- Clarification of limitations in the generation of confidence intervals,
- Guidance on dilution series selection,
- Clarification of requirements regarding acceptable dilution waters,
- Procedures for determining and minimizing the adverse impact of pathogens in the Fathead Minnow Survival and Growth Test,
- Requirement for the use of ethylenediaminetetraacetic acid (EDTA) in the Selenastrum capricornutum Growth Test.

B. Additional Revisions to WET Test Methods

In addition to requesting comment on the specific modifications to WET test methods mentioned above, EPA solicited comment on any additional modifications that would improve the overall performance of the methods. Specifically, EPA solicited comment on application of variability criteria to test results, modification of test acceptability criteria, and increases in test replication requirements. In response to comments, today's final rule also incorporates the following additional modifications to WET test methods:

- Requirement to meet specific variability criteria when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing,
- Increases in the required minimum number of replicates for several tests,
- Clarification of required and recommended test conditions for the purposes of reviewing WET test data submitted under NPDES permits,
- Additional clarification of sample holding times,
- Clarification of requirements for reference toxicant testing and additional guidance on evaluating reference toxicant test results,
- Clarification of allowable sample holding temperatures,
- Clarification of biomass as the measured endpoint in survival and growth tests,
- Clarification of requirements for measuring total residual chlorine in WET samples,
- Modification of the test termination criteria for the Ceriodaphnia dubia Survival and Reproduction Test to exclude the counting of fourth brood neonates,
- Additional minor corrections identified by commenters.

C. Ratification and Withdrawal of Methods

Based on the WET Interlaboratory Variability Study, peer review comments, and comments on the proposed rule, EPA is ratifying ten methods evaluated in the WET Interlaboratory Variability Study and withdrawing two methods. EPA is ratifying the Ceriodaphnia dubia Acute Test; Fathead Minnow Acute Test; Sheepshead Minnow Acute Test; Inland Silverside Acute Test; Ceriodaphnia dubia Survival and Reproduction Test; Fathead Minnow Larval Survival and Growth Test; Selenastrum capricornutum Growth Test; Sheepshead Minnow Larval Survival and Growth Test; Inland Silverside Larval Survival and Growth Test; and Mysidopsis bahia Survival, Growth, and Fecundity Test. In accordance with EPA's Report to Congress on the Availability, Adequacy, and Comparability of testing procedures (USEPA, 1988), EPA has confirmed that the methods ratified today are repeatable and reproducible (*i.e.*, exhibit adequate within-laboratory and between-laboratory precision), available and applicable (*i.e.*, adaptable to a wide variety of laboratories and use widely available organisms and supplies), and representative (*i.e.*, predictive of receiving system impacts). *See* section VI.C.1 of this preamble.

EPA's WET Interlaboratory Variability Study demonstrated that the methods ratified today generally have a high rate of successful completion, do not often produce false positive results, and exhibit precision comparable to chemical methods approved at 40 CFR part 136. Table 1 summarizes the performance characteristics for the ten WET test methods ratified today. In ratifying these WET test methods, EPA reaffirms the conclusion expressed in the 1995 WET final rule (60 FR 53529; October 16, 1995), that these methods, including the modifications in today's rule, are applicable for use in NPDES permits.

TABLE 1.—SUMMARY OF PERFORMANCE CHARACTERISTICS FOR RATIFIED WET METHODS

Test method	Successful test completion rate (%)	False positive rate [a] (%)	Interlaboratory precision (%CV) [b]
Ceriodaphnia dubia Acute Test	95.2	0.00	29.0
Ceriodaphnia dubia Survival and Reproduction Test	82.0	3.70	35.0
Fathead Minnow Acute Test	100	0.00	20.0
Fathead Minnow Larval Survival and Growth Test	98.0	4.35	20.9
Selenastrum capricornutum Growth Test	63.6	0.00	34.3
Mysidopsis bahia Survival, Growth, and Fecundity Test	97.7	0.00	41.3
Sheepshead Minnow Acute Test	100	0.00	26.0
Sheepshead Minnow Larval Survival and Growth Test	100	0.00	10.5
Inland Silverside Acute Test	94.4	0.00	38.5
Inland Silverside Larval Survival and Growth Test	100	0.00	43.8

[a] False positive rates reported for each method represent the higher of false positive rates observed for hypothesis testing or point estimate endpoints.

[b] Coefficients of variation (CVs) reported for each method represent the CV of LC50 values for acute test methods and IC25 values for chronic test methods. CVs reported are based on total interlaboratory variability (including within-laboratory and between-laboratory components of variability) and averaged across sample types.

EPA is withdrawing the Holmesimysis costata Acute Test and the Champia parvula Reproduction Test methods from 40 CFR part 136. EPA was unable to obtain interlaboratory precision data for these methods in the WET Interlaboratory Variability Study due to laboratory unavailability. EPA was unable to contract with a minimum of six laboratories qualified and willing to conduct these test methods within the time frame of the Study. Due to this lack of interlaboratory precision data generated from the Study for these methods, several commenters recommended that these methods not be approved at 40 CFR part 136 for national use. In response, today's action removes the Holmesimysis costata Acute Test method (1995 version) and the Champia parvula Reproduction Test method from the list of test methods approved for nationwide use at 40 CFR part 136.

By withdrawing these methods from 40 CFR part 136 for nationwide use, EPA does not reject their use on more limited bases. Today's withdrawal simply reflects that the Agency has not validated these methods for national use. EPA continues to support the use of these methods for applications other than for the determination of compliance with NPDES permit limits, as well for limited, localized, or regional use where the methods have been validated by other entities. In addition, EPA continues to support the use of the Holmesimysis costata Acute Test to measure toxicity to marine organisms of the Pacific Ocean. Because test procedures for measuring toxicity to estuarine and marine organisms of the Pacific Ocean are not listed at 40 CFR part 136, permit writers may include (under 40 CFR 122.41(j)(4) and 122.44(i)(1)(iv)) requirements for the use of test procedures that are not approved at part 136, such as the Holmesimysis costata Acute Test and other West Coast WET methods (USEPA, 1995b) on a permit-by-permit basis.

D. Amendment to 40 CFR 136.3, Table IA

Today's rule amends 40 CFR 136.3 by removing the Champia parvula Reproduction Test method (Method 1009.0) from Table IA, modifying the reference to acute "mysid" tests in Table IA to include only Mysidopsis bahia (and not Holmesimysis costata), adding method numbers to acute tests, revising the parameter measured in marine tests to refer to organisms "of the Atlantic Ocean and Gulf of Mexico," and modifying footnotes and references to cite the updated versions of the method manuals.

V. Changes From the Proposed Rule

A. Proposed WET Method Changes

On September 28, 2001, EPA proposed technical method changes to improve the performance and clarity of WET test methods and to address specific stakeholder concerns. These provisions were presented and discussed in section III of the proposed rule preamble (66 FR 49794) and detailed in the document titled, Proposed Changes to Whole Effluent Toxicity Method Manuals (USEPA, 2001e). In today's action, EPA is withdrawing or revising some of the proposed revisions based on comments received on the proposed rule. These revisions are discussed below. Other comments that EPA addressed but did not result in changes from the proposal are discussed in section VI.

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1. Blocking by Known Parentage

EPA proposed specific method manual modifications that would require blocking by known parentage in the Ceriodaphnia dubia Survival and Reproduction Test method. Today, EPA is finalizing the proposed method changes with a minor modification to clarify that neonates from a single known parent may be used in the initiation of more than one test. This minor modification mitigates some commenters' concerns regarding the increased cost of blocking by known parentage. Blocking by known parentage requires the use of at least six neonates from each of at least ten separate parents. If more than six neonates from a given parent remain after allocating organisms to a test, those remaining neonates may be discarded, used as future culture organisms, or used in another test initiated on the same day (provided that the neonates meet age requirements).

2. pH Drift

During the conduct of static or static-renewal WET tests, the pH in test containers may fluctuate or drift from the initial pH value. EPA proposed specific procedures that may be used to control this pH drift in chronic WET tests. Today, EPA is revising the specified procedures in response to stakeholder comments. Some commenters requested that EPA clarify the pH that should be maintained in pH-controlled tests. Today's action clarifies that, when the test objective is to determine the toxicity of an effluent in the receiving water, the target pH to maintain in a pH-controlled test is the pH of the receiving water measured at the edge of any mixing zone authorized in a permit. When the test objective is to determine the absolute toxicity of the effluent, the target pH to maintain in a pH-controlled test is the pH of the sample upon completion of collection. The revisions also clarify that in pH-controlled tests, the pH should be maintained within ±0.2 pH units of the target pH in freshwater chronic tests and within ±0.3 pH units for marine/estuarine chronic tests. EPA also added guidance on interpreting the results of parallel testing.

The revisions also remove language from the proposed method manual changes that warned about effects from pH drift in the absence of pH-dependent toxicants. To address the concern that the daily cycle of pH drift and renewal caused artifactual toxicity by "shocking" test organisms, EPA proposed language in the method manuals that warned of such potential interference from pH drift even when pH-dependent toxicants were not present. EPA specifically requested that commenters provide "any data that show the value of proposed pH control measures in situations where ammonia or other pH-dependent toxicants are not present." EPA did not receive such data. EPA believes that pH drift alone is not a test interference if pH is within the organism's tolerance range. The degree of pH drift typically observed in effluent samples should generally only interfere with test results if the sample contains a compound with toxicity that is pH dependent and at a concentration that is near the toxicity threshold. Because EPA did not receive data to suggest otherwise, EPA is removing any reference to pH drift interference in the absence of pH-dependent toxicants.

Many commenters recommended that EPA include the proposed pH control guidance for acute test methods as well as chronic methods because of the insufficiency of static renewal testing to control the pH drift and the impracticability and cost of flowthrough testing. In today's action, EPA has not provided additional techniques that involve modification of the sample to control pH drift in acute test methods, because EPA believes that the current acute methods provide adequate remedies for pH drift without modifying the sample. In acute tests, pH drift may be remedied by more frequent test renewals or use of flowthrough testing. While EPA agrees that flowthrough testing is more costly than static or static renewal testing, today's action does not impose any additional costs by requiring flowthrough testing. Today's action simply retains the options for pH control that are currently described in the acute method manual and does not add additional options.

3. Nominal Error Rates

Today's action does not incorporate the proposed method manual changes regarding nominal error rates. The method manuals maintain the original statement recommending a nominal error rate of 0.05. EPA proposed changes to its recommendation regarding nominal error rate assumptions, specifically, the change from 0.05 to 0.01 under specific circumstances. EPA proposed changes to its recommended error rate assumptions based on the settlement agreement, which identified the circumstances under which EPA would change its recommendations regarding nominal error rate reductions. These specified circumstances do not necessarily represent cases where the risk of false positive results increase, but rather situations for which the petitioners sought specific relief.

Commenters on the proposed rule commented that there was no scientific justification for reducing nominal error rate assumptions in only these circumstances and recommended reducing the nominal error rate in all circumstances. EPA agrees with the commenters that there is not a scientific justification for allowing reduced nominal error rates in these specific circumstances, but disagrees that nominal error rates should be reduced in all circumstances. Some commenters claimed that a reduced nominal error rate is needed to improve confidence in the test results. Reducing the nominal error rate, however, does not inherently improve confidence in test results. Because of the relationship between Type I and Type II statistical errors, reductions in nominal error rates improve confidence in results that identify toxicity, but reduce confidence in results that do not identify toxicity. This reduces the power of the test and the chance of identifying toxic discharges, thereby reducing environmental protection. In addition, the statistical test designs (*i.e.*, test replication requirements) of WET methods and all supporting method validation data were based on a nominal error rate of 0.05. Because there is no scientific justification for recommending reductions in nominal error rates in the circumstances proposed and commenters did not provide such supporting rationale or data, EPA has not incorporated the proposed method manual recommendations regarding nominal error rates. The method manuals maintain the original recommendation to assume a nominal error rate of 0.05.

4. Dilution Series

EPA is finalizing the proposed guidance on the selection of dilution series in WET testing. In addition to the proposed guidance, EPA has made minor modifications in response to comments to further clarify that no one particular dilution series is required. Specific dilution series used in the WET method manuals are provided as examples and recommendations, not requirements.

5. Dilution Waters

EPA is finalizing the proposed guidance on the selection of dilution waters in WET testing. In addition to the proposed guidance, EPA has made minor modifications in response to comments to further clarify that no single dilution water type is required for all tests. The method manuals now clarify that receiving waters, synthetic waters, or synthetic waters adjusted to approximate receiving water characteristics may be used for dilution water, provided that the water meets the qualifications for an acceptable dilution water. EPA clarified in the method manuals that an acceptable dilution water is one which is appropriate for the objectives of the test; supports adequate performance of the test organisms with respect to survival, growth, reproduction, or other responses that may be measured in the test (*i.e.*, consistently meets test acceptability criteria for control responses); is consistent in quality; and does not contain contaminants that could produce toxicity. EPA also provided clarification on the use of dual controls. When using dual controls, the dilution water control should be used for determining the acceptability of the test and for comparisons with the tested effluent. If test acceptability criteria (*e.g.*, minimum survival, reproduction, or growth) are not met in the dilution water control, the test must be repeated on a newly collected sample. Comparisons between responses in the dilution water control and in the culture water control can be used to determine if the dilution water, which may be a receiving water, possesses ambient toxicity.

6. Pathogen Interference

In today's action, EPA finalizes the proposed guidance on controlling pathogen interference in the Fathead Minnow Larval Survival and Growth Test with several modifications to address commenter concerns. Some commenters were concerned that the proposed guidance allowed the use of pathogen control techniques such as UV, chlorination, filtration, and antibiotics only after the recommended modified test design (fewer fish per cup) failed to control pathogen interference. Today's revisions clarify that EPA recommends pathogen control techniques that do not modify the sample, such as the modified test design technique, over ones that do. Upon approval by the regulatory authority, however, analysts also may use various sample sterilization techniques that modify the sample to control pathogen interference, provided that parallel testing of altered and unaltered samples further confirms the presence of pathogen interference and demonstrates successful pathogen control.

The manuals also now provide further explanation regarding the purpose for and required extent of pathogen source determination. Commenters were concerned that EPA was requiring permittees to generate data that was irrelevant to correcting for pathogen test interference. This is not the case. Determining whether tests are adversely affected by pathogens in the effluent or pathogens in the receiving water used for test dilution is an important first step in selecting an appropriate pathogen control technique. If the source of interfering pathogens in the test is the receiving water used as the dilution water, then pathogen interference may be controlled by simply using an alternative dilution water. If the source of interfering pathogens in the test is the effluent, then pathogen control techniques are appropriate to control the interference. To further address the comments, EPA removed mention of pathogen source identification beyond determining whether the pathogen source was the effluent or dilution water. EPA also made several minor modifications in response to comments, including an acknowledgment that pathogen control techniques may not eliminate pathogens, but should minimize the adverse influence of pathogens so that test results are not confounded by mortality due to pathogens.

7. EDTA in the Selenastrum capricornutum Growth Test

In the WET Interlaboratory Variability Study, EPA found that performance of the Selenastrum capricornutum Growth Test was much higher (lower interlaboratory variability and lower false positive rate) when the test was conducted with EDTA (ethylenediaminetetraacetic acid). Based on this finding, EPA proposed to recommend the use of EDTA in the Selenastrum capricornutum Growth Test. Several commenters expressed concern that EPA only recommended, rather than required, the use of EDTA. Commenters stated that this recommendation was not sufficient to ensure the acceptable performance of the method and encouraged EPA to require the use of EDTA. To address these comments, the Selenastrum capricornutum Growth Test now requires the addition of EDTA to nutrient stock solutions when conducting the Selenastrum capricornutum Growth Test and submitting data under NPDES permits. To address concerns that EDTA may interfere with (*i.e.*, mask) the toxicity of metals, the method continues to caution that the addition of EDTA may cause the Selenastrum capricornutum Growth Test to underestimate the toxicity of metals. EPA cautions regulatory authorities to consider this possibility when selecting test methods for monitoring effluents that are suspected to contain metals. As recommended in EPA's Technical Support Document for Water Quality-Based Toxics Control (TSD) (USEPA, 1991), the most sensitive of at least three test species from different phyla should be used for monitoring the toxicity of effluents.

B. Additional Revisions to WET Test Methods

1. Variability Criteria

Today's action incorporates mandatory variability criteria for five chronic test methods. EPA recommends the use of point estimation techniques over hypothesis testing approaches for calculating endpoints for effluent toxicity tests under the NPDES Permitting Program. However, to reduce the within-test variability and to increase statistical sensitivity when test endpoints are expressed using hypothesis testing rather than the preferred point estimation techniques, variability criteria must be applied as a test review step when NPDES permits require sublethal hypothesis testing endpoints (*i.e.*, no observed effect concentration (NOEC) or lowest observed effect concentration (LOEC)) and the effluent has been determined to have no toxicity at the permitted receiving water concentration These variability criteria must be applied for the following methods: Fathead Minnow Larval Survival and Growth Test; Ceriodaphnia dubia Survival and Reproduction Test; Selenastrum capricornutum Growth Test; Mysidopsis bahia Survival, Growth, and Fecundity Test; and Inland Silverside Larval Survival and Growth Test. Within-test variability, measured as the percent minimum significant difference (PMSD), must be calculated and compared to upper bounds established for test PMSDs. Under this new requirement, tests conducted under NPDES permits that fail to meet the variability criteria (*i.e.*, PMSD upper bound) and show "no toxicity" at the permitted receiving water concentration (*i.e.*, no significant difference from the control at the receiving water concentration or above) are considered invalid and must be repeated on a newly collected sample. Lower bounds on the PMSD are also applied, such that test concentrations shall not be considered toxic (*i.e.*, significantly different from the control) if the relative difference from the control is less than the lower PMSD bound.

In the proposed rule, EPA solicited comment on the required use of upper and lower PMSD bounds in the calculation of NOEC and LOEC values.

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According to the proposed approach, any test treatment with a percentage difference from the control (*i.e.*, [mean control response—mean treatment response]/ mean control response * 100) that is greater than the upper PMSD bound would be considered as significantly different; and any test treatment with a percentage difference from the control that is less than the lower PMSD bound would not be considered as significantly different.

EPA received comments on this proposed approach that expressed concern that variability criteria were used only to adjust NOEC and LOEC values and not to invalidate tests. Commenters argued that the proposed approach does not control variability unless tests failing to meet the variability criteria are invalidated. In response to these comments, EPA has modified the application of variability criteria in today's action. Rather than implementing variability criteria as a component of endpoint calculation, today's method modifications implement variability criteria (upper and lower PMSD bounds) as a test review step that is required when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing for the five test methods previously listed. Reviewed tests that fail to meet the variability criteria and do not detect toxicity at the receiving water concentration are invalid and must be repeated on a newly collected sample.

EPA received comments both for and against implementation of variability criteria as test acceptability criteria. To balance these comments, the final rule implements the variability criteria as a required test review step when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing for the five test methods previously listed. As such, the variability criteria have the potential to invalidate highly variable tests. Invalidation, however, is contingent upon other data evaluation steps. For instance, tests that exceed the variability criteria are only invalidated when the test also fails to detect toxicity at the permitted receiving water concentration. The method manuals continue to restrict use of the term "test acceptability criteria" to biological measurements in test controls (*i.e.*, control survival, reproduction, and growth) that independently assess test acceptability. Unlike the variability criteria instituted today, the use of "test acceptability criteria" to invalidate tests are not contingent on any other data evaluation steps. For this reason, the term "test acceptability criteria" is not applicable to the variability criteria established in today's action.

EPA received comments that recommended alternative measures for controlling within test variability, such as limits on the coefficient of variation (CV) for the control treatment. In developing variability criteria, EPA considered other measures of test precision, including the standard deviation and coefficients of variation for treatments and control, minimum significant difference (MSD), and the mean square for error from the analysis of variance of treatment effects. EPA considers the PMSD to be the measure that is most easily understood and that is most directly applied to determination of NOEC and LOEC values. The PMSD quantifies the smallest percentage difference between the control and a treatment (effluent dilution) that could be declared as statistically significant. It thus includes exactly that variability affecting determination of the NOEC and LOEC. The CV for the control or any one treatment, or selected treatments, represents only a portion of the variability affecting the NOEC and LOEC. Some State or Regional WET programs have requirements on the CV for the control and the treatment representing the receiving water concentration (RWC). Such requirements can provide finer control over the variability influencing a single comparison between the control and the RWC treatment. The PMSD upper bound provides control over the total within-test variability and is intended specifically for multi-concentration tests in which the NOEC or LOEC are determined by using hypothesis testing. Regulatory authorities may continue to use variability control strategies adopted within their jurisdiction, but when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing, the variability criteria required by today's action must be implemented as well. Requiring such variability criteria provides national consistency and control of WET test precision when hypothesis testing approaches are chosen. In today's action, EPA reiterates the recommendation of the method manuals and the TSD (USEPA, 1991) by stating that for the NPDES Permit Program, point estimation techniques are preferred over hypothesis testing approaches for calculating endpoints for effluent toxicity tests.

EPA received comments that the upper and lower bounds established for PMSD variability criteria were arbitrary or unrepresentative. EPA established the proposed variability criteria as performance-based standards set at the 10th and 90th percentiles of PMSD values from EPA's evaluation of national reference toxicant test data (USEPA, 2000c). In today's action, EPA has revised the variability criteria to reflect the 10th and 90th percentiles of PMSD values based on EPA's Interlaboratory Variability Study. The use of data from this study reflects not only tests performed on reference toxicants, but tests performed on effluents, receiving waters, and non-toxic "blank" samples as well. Data from this study also is representative of qualified laboratories that routinely conduct WET testing for permittees (see Section VI.C.2 of this preamble). In method development, EPA routinely uses such data from interlaboratory validation studies to set performance-based criteria.

In September 2001, EPA proposed variability criteria for four methods. Some commenters recommended that EPA expand the variability criteria to other test methods and other test endpoints. EPA did not propose variability criteria for the Selenastrum capricornutum Growth Test and the Sheepshead Minnow Larval Survival and Growth Test because these methods showed lower within-test variability in EPA's evaluation of national reference toxicant test data (USEPA, 2000c). EPA's WET Interlaboratory Variability Study confirmed that the Sheepshead Minnow Larval Survival and Growth Test was less variable than the methods for which EPA proposed variability criteria, however, the Selenastrum capricornutum Growth Test showed comparable within-test variability to methods for which EPA proposed variability criteria. For this reason, EPA is today requiring variability criteria for the Selenastrum capricornutum Growth Test in addition to the four methods for which variability criteria were proposed.

As previously stated in the method manuals (USEPA, 1993; USEPA, 1994a; USEPA, 1994b) and EPA's Technical Support Document (USEPA, 1991), EPA recommends the use of point estimation techniques over hypothesis testing approaches for calculating endpoints for effluent toxicity tests under the NPDES Permitting Program. EPA is instituting variability criteria to reduce within-test variability and to increase statistical sensitivity when test endpoints are expressed using hypothesis testing rather than the preferred point estimation techniques. For the five methods for which EPA is instituting variability criteria when test results are analyzed by hypothesis test methods, less than 90% of tests are able to detect a 25% reduction in growth or reproduction (from the control treatment) as statistically significant using the hypothesis test. A 25% reduction in growth or reproduction is equivalent to the effect level measured using the preferred point estimation endpoint for chronic methods (*i.e.*, the IC25). Instituting variability criteria for these five chronic methods will improve the overall statistical sensitivity when using hypothesis testing and allow hypothesis testing approaches to achieve a level of statistical sensitivity that is more comparable to the preferred point estimation endpoint (IC25).

EPA is not requiring variability criteria for the Sheepshead Minnow Larval Survival and Growth Test, because the WET Interlaboratory Variability Study confirmed that this method is less variable than the five methods for which EPA is requiring variability criteria. In EPA's WET Interlaboratory Variability Study, all Sheepshead Minnow Larval Survival and Growth Tests were able to detect effects of 25% or less as statistically significant in hypothesis testing without instituting variability criteria. The 90th percentile PMSD for the Sheepshead Minnow Larval Survival and Growth Test was 17%, compared to 29%, 47%, 30%, 37%, and 28% for the five methods for which EPA is requiring variability criteria. For the chronic methods that were not evaluated in the WET Interlaboratory Variability Study, EPA does not have sufficient data to support the implementation of mandatory variability criteria at this time.

EPA is not requiring variability criteria for survival endpoints of acute methods because, in general, these methods are less variable than sublethal chronic test methods, and hypothesis testing approaches are able to achieve a level of statistical sensitivity similar to the preferred point estimation endpoint for acute methods and survival endpoints (*i.e.*, the LC50). The preferred point estimation endpoint for the analysis of survival in acute methods is the LC50, which represents an effect level of 50% mortality. Over 90% of acute tests in the WET Interlaboratory Variability Study were able to detect effects of 50% mortality or less as statistically significant in hypothesis testing without instituting variability criteria. The 90th percentile of PMSD values in the WET Interlaboratory Variability Study was 39% for the Fathead Minnow Acute Test, 25% for the Ceriodaphnia dubia Acute Test, 17% for the Sheepshead Minnow Acute Test, and 31% for the Inland Silverside Acute Test. Based on these measured PMSD values, well over 90% of acute tests should be able to detect effects at the LC50 as statistically significant without instituting variability criteria.

By requiring application of variability criteria today in five methods, EPA does not intend to discourage permitting authorities from applying variability criteria for other endpoints or methods, or from applying more stringent variability criteria for the five chronic methods subject to today's action. While EPA continues to recommend that permitting authorities apply variability criteria to additional methods as recommended in EPA guidance (USEPA, 2000c), today's rule does not require such variability criteria for additional methods or endpoints.

2. Minimum Number of Replicates

EPA solicited comment on increasing the minimum number of replicates in certain WET tests from three to four. Commenters were supportive of this proposed change and stated that this change was needed to support the use of non-parametric hypothesis tests as outlined in the method manuals. In today's action, EPA is increasing the minimum number of replicates as proposed.

3. Test Requirements/Recommendations

Several commenters on the proposed rule expressed concern that WET methods do not adequately differentiate between mandatory test conditions (*i.e.*, those required using the words "must" or "shall") and discretionary test conditions (*i.e.*, those recommended using the word "should"). Commenters claimed that this situation causes difficulty in reviewing, validating, and certifying test results submitted under NPDES permits. To address this concern, EPA modified the WET methods to clearly distinguish between required and recommended test conditions for the purposes of reviewing WET test data submitted under NPDES permits. In today's action, EPA has modified the tables of test conditions and test acceptability criteria presented in the method manuals for each method, such that each test condition is identified as required or recommended. In addition, EPA has added to each method manual a section on test review. This section provides guidance on the review of sampling and handling procedures, test acceptability criteria, test conditions, statistical methods, concentration-response relationships, reference toxicant testing, and test variability. This section also establishes two new requirements for WET test review: mandatory review of concentration-response relationships and, for some methods, the mandatory variability criteria described earlier.

4. Sample Collection and Holding Times

In today's action, EPA has further clarified the requirements for sample collection and sample holding times. EPA made these modifications in response to comments requesting additional clarification and additional flexibility. In today's action, EPA has not modified the default maximum 36 hour sample holding time (up to 72 hours with regulatory authority approval), which must be met for first use of the sample; but EPA has provided additional clarification and additional flexibility for the use of samples for test renewals when the samples meet the initial sample holding times for first use. Sample holding times apply to "first use of the sample," and samples may be used for renewal at 24, 48, and/or 72 hours after first use.

The method manuals also now provide additional flexibility when shipment of renewal samples is delayed during an ongoing test. If shipping problems (*e.g.*, unsuccessful Saturday delivery) are encountered with renewal samples after a test has been initiated, the permitting authority may allow the continued use of the most recently used sample for test renewal. EPA also clarified that sample collection on days one, three, and five is the recommended (not required) sample collection scheme. A minimum of three samples are required for seven-day chronic tests, but variations in the sampling scheme (*i.e.*, the days on which new samples are collected) also are allowed.

5. Reference Toxicant Testing

Today's action clarifies the purpose and requirements of reference toxicant testing and the appropriate use of reference toxicant test results. Several commenters identified inconsistencies in the requirements for reference toxicant testing and recommended that EPA clarify the purpose of generating reference toxicant test data. In today's action, EPA clarifies that reference toxicant testing is used to (1) initially demonstrate acceptable laboratory performance, (2) assess the sensitivity and health of test organisms, and (3) document ongoing laboratory performance. EPA has made method manual modifications consistent with this stated purpose. Regardless of the source of test organisms (in-house cultures or purchased from external suppliers), the testing laboratory must perform at least one acceptable reference toxicant test per month for each type of toxicity test method conducted in that month. If a test

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method is conducted only monthly, or less frequently, a reference toxicant test must be performed concurrently with each effluent toxicity test. This requirement will document ongoing laboratory performance and assess organism sensitivity and consistency when organisms are cultured in-house. When organisms are obtained from external suppliers, concurrent reference toxicant tests must be performed with each effluent sample, unless the test organism supplier provides control chart data from at least the last five months of reference toxicant testing. This requirement assesses organism sensitivity and health when organisms are obtained from external vendors. To initially demonstrate acceptable laboratory performance, the method manuals require a laboratory to obtain consistent, precise results with reference toxicants before it performs toxicity tests with effluents under NPDES permits.

In today's action, EPA also clarifies the appropriate use of reference toxicant test results. Commenters recommended that EPA provide additional guidance on evaluating reference toxicant test results and using these results to validate toxicity tests on test samples of unknown toxicity. In response, EPA clarifies that reference toxicant test results should not be used as a *de facto* criterion for rejection of individual effluent or receiving water tests. Reference toxicant testing is used for evaluating the sensitivity and consistency of organisms over time and for documenting initial and ongoing laboratory performance. EPA clarified the steps to take when more than 1 in 20 reference toxicant tests falls outside of control chart limits, or when a reference toxicant test result falls "well" outside of control limits. Under these circumstances, the laboratory should investigate sources of variability, take corrective actions to reduce identified sources of variability, and perform an additional reference toxicant test during the same month.

In response to comments that reference toxicant testing only compares variability within a laboratory, EPA added guidance for evaluating test precision among laboratories and for limiting excessive variability in reference toxicant testing. EPA has recommended that laboratories compare the calculated coefficient of variation, also referred to as the CV (*i.e.*, standard deviation/mean), of the IC25 or LC50 for the 20 most recent data points to the distribution of laboratory CVs reported nationally for reference toxicant testing (USEPA, 2000c). If the calculated CV exceeds the 75th percentile of CVs reported nationally for LC50s or IC25s, the laboratory should use the 75th and 90th percentiles to calculate warning and control limits, respectively, and the laboratory should investigate options for reducing variability.

Several commenters recommended standardizing reference toxicants and acceptance ranges for reference toxicant test results. Other comments opposed mandatory reference toxicants and required acceptance ranges claiming that insufficient guidance and data are available for instituting such requirements and that such requirements would impose additional costs on laboratories. In today's action, EPA is not requiring the use of specific reference toxicants or setting required acceptance ranges for reference toxicant testing. EPA agrees that requiring specific reference toxicants and acceptance ranges would increase laboratory costs. Many laboratories would be forced to develop initial and ongoing documentation of laboratory performance (*e.g.*, reference toxicant control charts) using a new reference toxicant. For these laboratories, years of historic performance information using the original reference toxicant would be rendered useless. In addition, EPA believes that certain advantages gained by requiring reference toxicant acceptance ranges are already provided by method modifications instituted in today's action. For instance, today's action institutes variability criteria when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing. This method modification limits WET test variability, which would be one of the primary purposes of any standardized reference toxicant acceptance ranges.

6. Sample Holding Temperature

Today's action clarifies the allowable sample holding temperatures for WET samples as 0°–6°C. EPA received comments that the Agency should establish acceptable ranges for the current sampling holding temperature of 4°C. EPA has defined the acceptable range as 0°–6°C based on current NELAC (National Environmental Laboratory Accreditation Conference) standards which state that, "for samples with a specified storage temperature of 4°C, storage at a temperature above the freezing point of water to 6°C shall be acceptable" (NELAC, 2001). EPA also clarifies that hand-delivered samples used on the day of collection do not need to be cooled to 0°–6°C prior to test initiation.

7. Biomass

Today's action clarifies that the sublethal endpoint used in survival and growth tests is based on the number of initial organisms exposed. Comments expressed concern that by calculating the chronic endpoint based on the number of initial organisms (rather than surviving organisms), the growth endpoint was in error and biased. EPA disagrees. In the 1995 WET final rule, EPA changed the test endpoint from a growth endpoint that was based on the number of surviving organisms, to a combined growth and survival endpoint that is based on the number of initial organisms. This does not represent an error in the endpoint calculation, but rather a change in the endpoint itself. EPA made this change: (1) to provide consistency with other methods (*e.g.*, Ceriodaphnia dubia Survival and Reproduction Test) that incorporate survival along with sublethal effects, and (2) because the survival and growth endpoint is a more sensitive measure than the growth endpoint alone. While the 1995 WET final rule changed the test endpoint to a combined survival and growth endpoint, the method manuals continued to refer to the endpoint as a "growth" endpoint. Today's action clarifies that the endpoint is, in fact, a combined survival and growth endpoint that is more accurately termed biomass.

8. Total Residual Chlorine

Today's action clarifies the requirements for measuring total residual chlorine in WET test samples. Several commenters stated that certain requirements for measuring total residual chlorine were unnecessary when the absence of the chemical has already been determined. In response to these comments, EPA has clarified that if total residual chlorine is not detected in effluent or dilution water at test initiation, it is unnecessary to measure total residual chlorine at test solution renewal or at test termination. If total residual chlorine is detected at test initiation, then measurement of total residual chlorine at test solution renewal and test termination would continue to be required. EPA also has clarified that the measurement of total residual chlorine is unnecessary in laboratory prepared synthetic dilution water.

Commenters also recommended that EPA remove the requirement for the analysis of total residual chlorine immediately following sample collection. EPA has maintained this requirement in today's action, because information on chlorine at the site and time of collection is important for evaluating the effectiveness of chlorination/dechlorination processes and comparing the results of WET testing with instream effects.

9. *Ceriodaphnia dubia* Survival and Reproduction Test Termination Criteria

Commenters recommended various modifications to the test termination criteria in the Ceriodaphnia dubia Survival and Reproduction Test. Some commenters recommended a strict seven-day test, and others recommended that the test last no longer than seven days. Other commenters recommended that the test be terminated when 80% of control females produce three broods, rather than the current criteria of 60%. Still other commenters recommended that fourth brood neonates not be counted. To evaluate the recommended approaches to terminating Ceriodaphnia dubia Survival and Reproduction Tests, EPA analyzed test data from the WET Interlaboratory Variability Study using each of the recommended test termination criteria. EPA compared the recommended criteria to the current criteria by calculating within-test variability and successful test completion rates under each of the test termination scenarios. While some of the recommended test termination criteria (such as termination when 80% of control females produce three broods or a maximum of seven days) slightly improved the within-test variability of the method (from a median PMSD of 23.2% to 19.9%), these criteria caused significant reductions in successful test completion (from 83% successful completion to 66%). Only the recommendation to exclude fourth brood neonates resulted in a decrease in within-test variability without an offsetting decrease in the rate of successful test completion. Based on these results, EPA is modifying the Ceriodaphnia dubia Survival and Reproduction Test to specify that neonates from fourth broods are excluded from the number of neonates counted in the test. With the exception of excluding fourth brood neonates, EPA is maintaining the current test termination criteria. These criteria state that the test is terminated when 60% or more of the surviving control females have produced their third brood, or at the end or eight days, whichever occurs first. These criteria may be met at six, seven, or eight days.

10. Additional Minor Corrections

Some commenters identified additional errors in the WET method manuals or the proposed changes that EPA was not aware of at the time of proposal. In today's action, EPA has made these additional corrections and minor clarifications.

C. Ratification and Withdrawal of Methods

In the September 28, 2001 proposal, EPA proposed to ratify the following eleven test methods evaluated in the WET Interlaboratory Variability Study: Ceriodaphnia dubia Acute Test; Fathead Minnow Acute Test; Sheepshead Minnow Acute Test; Inland Silverside Acute Test; Ceriodaphnia dubia Survival and Reproduction Test; Fathead Minnow Larval Survival and Growth Test; Selenastrum capricornutum Growth Test; Sheepshead Minnow Larval Survival and Growth Test; Inland Silverside Larval Survival and Growth Test; Mysidopsis bahia Survival, Growth, and Fecundity Test; and Champia parvula Reproduction Test. EPA proposed to withdraw the Holmesimysis costata Acute Test and, in its place, proposed a revised version of the method. As explained previously, EPA is ratifying ten of these methods today based on the results of EPA's WET Interlaboratory Variability Study that demonstrate the adequacy, availability, and comparability of the methods (*see* Section IV.C). For these ten methods, EPA generated sufficient interlaboratory validation data, and those data justify ratification. EPA's WET Interlaboratory Study evaluated interlaboratory precision, successful test completion rates, and false positive rates of the WET methods from the testing of over 700 samples in 56 laboratories. For each method ratified in today's action, EPA obtained interlaboratory data on four sample matrices from at least seven laboratories to as many as 35 laboratories.

Several commenters expressed concern that EPA did not properly validate WET test methods, specifically, the Champia parvula Reproduction Test and the Holmesimysis costata Acute Test. EPA was unable to obtain interlaboratory precision data for these methods in the WET Interlaboratory Variability Study. Because these WET methods are not used widely in NPDES permits, EPA was unable to contract with a minimum of six laboratories qualified and willing to conduct these test methods within the time frame of the Study. In the proposed rule, EPA supported these methods with intralaboratory precision data and limited interlaboratory precision data (two trials of the Holmesimysis costata Acute Test in two laboratories), but commenters questioned the sufficiency of such data for validating methods for nationwide use, as well as the necessity to approve such methods for nationwide use.

EPA has reviewed its proposal to ratify the Champia parvula Reproduction Test in light of comments received and has decided to withdraw the method from the list of nationally-approved test methods at 40 CFR part 136. At the current time, an insufficient number of laboratories nationwide have the capabilities to perform the method. As noted, EPA was thus unable to obtain a rigorous multi-laboratory performance data set to comprehensively evaluate this method. EPA had predicted that as the requirements for use of this organism in the NPDES permit program increased, the resulting increase in market demand would result in an increase in the number of laboratories capable of performing the test. However, the number of permits requiring the Champia parvula chronic test has remained low (DeGraeve *et al.*, 1998), so few laboratories have invested in developing Champia parvula cultures or standard operating procedures for the method. While today's action removes the Champia parvula chronic test method from the 40 CFR part 136 listing, EPA retains the standardized method in the marine chronic method manual with an explanation that the method is not listed at 40 CFR part 136 for nationwide use. Accordingly, retention of the method in the method manual continues to enable standardization of the method for developmental and other non-regulatory purposes and may foster laboratories to maintain or even develop expertise in performing the method.

EPA also has reviewed its proposal of the Holmesimysis costata Acute Test in light of comments received. As proposed, EPA now withdraws Holmesimysis costata as an acceptable species for use in the Mysidopsis bahia Acute Test method. EPA does not, however, promulgate the proposed Holmesimysis costata Acute Test method as a nationally-approved method at 40 CFR part 136 at this time. Because the Holmesimysis costata Acute Test is used in only a small number of permits on the West Coast, EPA was unable to obtain sufficient interlaboratory data on this method during the time that the WET Interlaboratory Variability Study was conducted to support today's rulemaking. While today's action removes the Homesimysis costata Acute Test from the 40 CFR part 136 listing, EPA includes the proposed method in the method manual with an explanation

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that the method has not yet been approved at 40 CFR part 136 for nationwide use.

Three commenters, including the California State Water Resources Control Board, supported ratification of the Holmesimysis costata Acute Test method. The California State Water Resources Control Board added that ratification of this method was "particularly important, as it is the only method employing a marine species that is indigenous to the Pacific coast." The California State Water Resources Control Board has been proactive in developing, testing, validating, and implementing WET test methods specific to West Coast species (USEPA, 1995b), and EPA does not intend to frustrate that effort by today's action. For this reason, EPA is specifying in Table IA of 40 CFR part 136 that the marine acute and marine chronic test methods ratified in today's rulemaking measure toxicity to estuarine and marine organisms "of the Atlantic Ocean and Gulf of Mexico." By defining the parameter measured by promulgated marine methods as toxicity to organisms "of the Atlantic Ocean and Gulf of Mexico," today's action does not displace West Coast methods that have been approved for use in States such as California. Because test procedures for measuring toxicity to estuarine and marine organisms of the Pacific Ocean are not listed at 40 CFR part 136, permit writers may include (under 40 CFR 122.41(j)(4) and 122.44(i)(1)(iv)) requirements for the use of test procedures that are not approved at part 136, such as West Coast WET methods (USEPA, 1995b) on a permit-by-permit basis. Furthermore, this rule does not preclude permit writers addressing marine or estuarine waters of the Pacific Ocean from requiring, on a permit-by-permit basis, any method designated as approved for "estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico," where such method is suitable for the specific application.

VI. Response to Major Comments

EPA encouraged public participation in this rulemaking and requested comments on the proposed revision and ratification of WET methods. EPA also requested data supporting comments, if available. Thirty-eight stakeholders provided comments on the proposal. Stakeholders included eight laboratories, eight regulatory authorities, 11 industries/industry groups, nine publicly-owned treatment works (POTWs), and two environmental consulting companies.

This section summarizes major comments received on the proposed rule that were not previously addressed in Section V and provides a summary of EPA's responses. The complete comment summary and response document can be found in the public record for this final rule.

A. Proposed WET Method Changes

EPA received comments on each of the proposed method changes, and those comments that prompted modifications to the proposed method changes are discussed in pection V of this preamble. Other substantial comments on proposed method changes follow.

1. Cost

Several commenters expressed concern that proposed method modifications will increase test costs. Of the WET method modifications instituted in today's action, only four are additional mandatory changes that have the potential to increase test costs. These four modifications include: (1) The requirement for blocking by known parentage in the Ceriodaphnia dubia Survival and Reproduction Test; (2) the requirement to review test results for concentration-response relationships; (3) the incorporation of mandatory variability criteria for certain test methods when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing; and (4) the increase in the minimum number of replicates for the Fathead Minnow Larval Survival and Growth Test, Selenastrum capricornutum Growth Test, Sheepshead Minnow Larval Survival and Growth Test, Inland Silverside Larval Survival and Growth Test, and Sea Urchin Fertilization Test. EPA believes that the overall cost increases due to these changes will be minor and that the potential benefits of these modifications outweigh the incremental costs. EPA has estimated that the total cost of these modifications for all permittees will be less than five million dollars per year nationwide for all tests (Table 2 and USEPA, 2002). EPA believes that these costs also would be alleviated by a potential reduction in costs for retesting and additional investigations (*e.g.*, toxicity identification evaluations). The modifications should result in improved test performance and increased confidence in the reliability of testing results.

TABLE 2.—ESTIMATED TOTAL COST RESULTING FROM WET METHOD MODIFICATIONS REQUIRED BY TODAY'S ACTION (FROM USEPA, 2002)

Modification	Cost ($/yr)
Blocking-by-parentage	$352,592
Concentration-response relationship	98,069
Increased replicates	886,634
Variability criteria	2,595,873
Total	3,933,168

2. Concentration-Response Relationships

Today, EPA is finalizing proposed method modifications to require the review of concentration-response relationships for all multi-concentration tests. Under this requirement, the concentration-response relationship generated for each multi-concentration test must be reviewed to ensure that calculated test results are interpreted appropriately. In conjunction with this requirement, EPA has provided recommended guidance for concentration-response relationship review (USEPA, 2000a).

Several commenters expressed concern that the proposed method modifications require that the concentration-response relationship be reviewed but does not require that a concentration-response relationship be established before determining that toxicity is present. Commenters recommended that EPA require the establishment of a "valid" concentration-response relationship prior to determining toxicity. Though within the scope of the proposed rule, EPA does not consider such a requirement appropriate for several reasons. First, WET methods and the WET testing program rely on the measurement of specific test endpoints (NOECs, LC50s, IC25s) for determining toxicity, not on achievement of specified concentration-response patterns. Second, the concentration-response guidance is a component of test review that ensures that test endpoints, which are used to determine toxicity, are calculated and interpreted appropriately. Second, concentration-response relationships are empirical; and a single definition for a "valid" concentration-response relationship is not appropriate. A range of toxicants may produce an infinite range of different shaped responses. In addition, a single response pattern may be due to several different reasons, some indicating toxicity, and some not. For example, the presence of pathogens, considered an adverse effect confounding WET tests, may produce the same concentration-response pattern as a true toxicant. For this reason, EPA designed the guidance as a step-by-step review process that investigates the causes for non-ideal concentration-response patterns and provides for proper interpretation of test endpoints. Third, WET testing has inherent characteristics that may limit the ability to achieve ideal concentration-response relationships. For instance, WET testing is constrained to 100% effluent sample as the highest test concentration. This sometimes inhibits the ability to establish an ideal concentration-response relationship that extends gradually from no effect at one concentration to complete effect at some higher concentration. Traditional toxicology on pure substances, from which the concentration-response relationship concept is borrowed, is not similarly constrained. Test concentrations can be increased or lowered until an ideal response is generated. The typical WET test design of five concentrations and a control also may limit the ability to generate ideal concentration-response relationships. The location or spacing of these five concentrations may miss the gradual transition from no effect to complete effects. In traditional toxicology using pure substances, tests can be rerun with altered or additional test concentrations of the same compound, but in WET testing each individual sample and test is unique and cannot be exactly duplicated due to the complex and dynamic nature of the test samples over time. Non-ideal concentration-response relationships will occasionally be encountered in WET testing, and the goal of concentration-response relationship review is to properly interpret these non-ideal patterns.

Fourth, the concentration-response relationship guidance has been shown to be very effective at reducing false positives. For instance, in the WET Interlaboratory Variability Study, the use of the concentration-response relationship guidance reduced false positive incidences from above 14% to below 5% for some methods (USEPA, 2001a).

3. Confidence Intervals

EPA is finalizing the proposed method modifications that provide guidance when confidence intervals are not generated. This guidance clarifies that confidence intervals may not be generated by EPA software when test data do not meet specific assumptions required by the statistical methods, when point estimates are outside of the test concentration range, or when specific limitations imposed by the software are encountered. EPA also provides guidance for proceeding under each circumstance. Some commenters stressed the importance of obtaining confidence intervals in all circumstances and recommended that EPA use confidence intervals in assessing the reliability of results and determining compliance. EPA believes that the failure to generate confidence intervals should not adversely affect WET test result reporting because confidence intervals surrounding point estimates are not currently reported in the Permit Compliance System (the national database tracking compliance with NPDES permits) or used in compliance determinations. Compliance with permit requirements is based on the point estimate itself and not confidence intervals surrounding the estimate. This approach is no different in WET testing than in chemical testing, where compliance is also based on the analytical result itself. EPA demonstrated in the WET Interlaboratory Variability Study that the WET methods provide adequate precision and adequate protection from false positives. Therefore, EPA is not altering the compliance determination approach to include the use of confidence intervals.

B. Additional Revisions to WET Test Methods

In addition to receiving comment on proposed method modifications, EPA received comments recommending additional method modifications. Those recommendations that EPA incorporated in today's action and those comments that prompted additional modifications are discussed in section V of this preamble. Other substantial comments on additional method changes are discussed below.

1. Method Flexibility

EPA received comments that requested additional requirements be added to WET test methods, as well as comments that WET test methods are overly restrictive and would benefit from additional flexibility. As with all promulgated methods, EPA has attempted to balance these two opposing objectives. EPA has prescribed certain method elements when necessary to ensure the reliability of results, and allowed flexibility in other method elements so that the performance of analytical methods can be optimized. As noted in section V.B.3, EPA reevaluated the use of mandatory and discretionary terms in the WET test methods to ensure that the terms are included in the manuals as intended.

EPA received comments that WET test methods do not adequately distinguish between required and recommended procedures. In response, EPA modified the tables of test conditions and test acceptability criteria presented in the method manuals for each method, such that each item is identified as required or recommended. In addition, EPA added to each method manual a section on test review. This section provides direction on the review of sampling and handling procedures, test acceptability criteria, test conditions, statistical methods, concentration-response relationships, reference toxicant testing, and test variability.

EPA believes that these method modifications clarify the requirements for acceptable WET test results submitted under NPDES permits. However, EPA acknowledges that these method modifications will not solve all commenters concerns regarding inconsistencies in WET test review and acceptance. In the WET test methods, EPA established the minimum requirements for acceptable WET tests. In some cases, NPDES permits incorporate recommendations from the WET test method manuals as requirements in the permit (on a permit-by-permit basis). Authorized States retain the authority to establish more stringent requirements or to require additional procedures, test conditions, or QC elements. Thus, WET requirements ultimately reflected as NPDES permit requirements may continue to differ among States.

2. Test Acceptability Criteria

In the proposed rule, EPA solicited comments on increasing the test acceptability criteria for mean control reproduction in the Ceriodaphnia dubia Survival and Reproduction Test and mean control weight in the Fathead Minnow Larval Survival and Growth Test. EPA also requested that commenters submit supporting data. EPA received comments both in favor of and opposed to increasing test acceptability criteria for these methods, but these comments were not accompanied by supporting data. Because EPA does not currently possess and did not receive data indicating that such changes would improve the performance of the methods, EPA is not modifying the survival, growth and reproduction test acceptability criteria for these methods in today's action.

EPA also received comments recommending the Agency establish requirements for additional test acceptability criteria, such as limits on

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control variability. Today's action does establish mandatory variability criteria when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing. EPA has incorporated these variability criteria as a required test review step for five methods rather than as test acceptability criteria, meaning that, depending on the reviewed result, retesting may be necessary. EPA continues to use the term "test acceptability criteria" only to refer to the evaluation of biological measurements in test controls (*i.e.*, control survival, reproduction, and growth).

3. Quality Assurance/Quality Control Requirements

Some commenters expressed concern that WET test methods do not contain adequate quality assurance/quality control (QA/QC) requirements. Each of the toxicity test method manuals contains separate, detailed, QA/QC guidelines, and each analytical method within these manuals discusses all aspects of the tests which are related to QA/QC. Section 4 of each method manual provides QA/QC requirements and guidance for facilities, equipment, and test chambers; test organisms; culturing and test dilution water; effluent and receiving water sampling and handling; test conditions; food quality; test acceptability criteria; calibration and standardization; replication and test sensitivity; demonstrating acceptable laboratory performance; documenting ongoing laboratory performance; and record keeping. The primary QA/QC requirements of WET test methods, as contained in section 4 of the method manuals, remain the requirements for acceptable biological performance (survival, reproduction, and growth) in test controls and the requirement for the routine analysis of reference toxicants. In today's action, however, EPA added additional QA/QC requirements including the required review of concentration-response relationships and mandatory variability criteria when NPDES permits require sublethal WET testing endpoints expressed using hypothesis testing. EPA believes that the QA/QC requirements of WET tests will adequately ensure that results are reliable and of known and acceptable quality.

4. Statistical Methods

Several commenters recommended that EPA approve and use alternative statistical methods (such as percent effect approaches and Generalized Linear Models). EPA has not included such alternative statistical methods in today's modifications to WET test methods. EPA believes that the statistical methods currently recommended in the WET methods are appropriate, and acknowledges that these recommended statistical methods are not the only appropriate techniques. The method manuals state that, "the statistical methods recommended in this manual are not the only possible methods of statistical analysis." The recommended statistical methods described in the method manuals were selected because they are "(1) applicable to most of the different toxicity test data sets for which they are recommended, (2) powerful statistical tests, (3) hopefully "easily" understood by nonstatisticians, and (4) amenable to use without a computer, if necessary" (*see* subsection 9.4.1.2 of USEPA, 1994a).

Several commenters also expressed concern over bias introduced by the smoothing technique that is used in the recommended Inhibition Concentration Procedure (ICp). EPA has acknowledged in the method manuals and in method guidance (USEPA, 2000a) that the smoothing process may result in an upward adjustment in the control mean. EPA has provided guidance on concentration-response relationship review that corrects anomalous results that may arise from this smoothing procedure (USEPA, 2000a). This guidance warns that results from point estimation techniques should be interpreted carefully when the response pattern includes stimulation at low concentrations and no significant effect at higher concentrations. Under these conditions, the smoothing process could result in anomalous results, so EPA guidance recommends evaluating the ICp calculation without smoothing in these cases. If the percent effect at the receiving water concentration (RWC) is less than 25% when calculated without smoothing, and the response at the RWC is not statistically significantly different from the control response, then a calculated IC25 of less than the RWC should be noted as anomalous and the effluent determined to be non-toxic at the RWC.

C. Ratification and Withdrawal of Methods

1. Validation of Performance Characteristics

Several commenters stated that EPA did not properly validate WET test methods because it did not evaluate essential performance characteristics. Commenters referenced EPA's Report to Congress on the Availability, Adequacy, and Comparability of Testing Procedures (USEPA, 1988) and stated that EPA failed to validate the following performance characteristics required by this report: accuracy, precision, dynamic range, detection limits, interferences, ruggedness (applicability), reporting, and representativeness/method comparability. EPA disagrees with this assertion and maintains that the WET test methods ratified in today's action were adequately validated according to all of the applicable criteria identified in the 1988 Report to Congress.

The list of performance characteristics cited by the commenters is provided in the 1988 Report to Congress within the context of chemical methods, and several of these characteristics are not applicable to biological test methods such as the WET methods that EPA is ratifying today. The 1988 Report to Congress specifically notes that not all such criteria apply to biological testing. The Report explains that the generation of scientifically accurate and valid biological measurements for environmental pollutants requires approximately the same criteria for assessing the adequacy of a method as previously described for chemical analyses, however, there are several differences which are important. Detection limits and dynamic range are specifically listed as characteristics that "are not usually appropriate concepts for all biological measurements unless instrumentation is required." Because some performance characteristics listed in the 1988 Report to Congress for chemical methods are not applicable to biological test methods, EPA did not (and, in fact, could not) evaluate those inapplicable performance characteristics for WET test method validation.

In ratifying the previously approved WET test methods, EPA applied the availability, adequacy, and comparability criteria identified in the Report as relevant to biological measurements. The WET test methods ratified today are "available" because EPA has identified a sufficient number of laboratories that can conduct the test and culture the test organisms. The ratified WET test methods are "adequate" because the multi-laboratory tests (as well as aggregation of single laboratory tests) demonstrate high degrees of precision; the tests are reproducible. In addition, the manuals identify interferences and ways to control interference. Finally, the test acceptability criteria for control performance and requirements for reference toxicant testing provide sufficient standards to ensure data integrity, absent the "calibration" procedures available with non-living analytical instrumentation.

The Report specifically identified detection limits and dynamic range as performance characteristics that are usually not applicable to biological measurements, and the 1988 conclusions remain true today. In addition, accuracy is a performance characteristic that is not completely applicable to WET testing. Accuracy as a performance characteristic of a measurement system describes the closeness of measured results to a known result. Chemical methods generally measure some surrogate property (*e.g.*, absorption of light at a particular wavelength) of an analyte (*e.g.*, copper) to determine the concentration of that analyte. To confirm that the surrogate measure accurately represents the true concentration of the analyte, the pure analyte can be weighed, diluted to a known concentration, and measured using the analytical procedure under study. This procedure cannot be conducted for whole effluent toxicity. Toxicity cannot be purified, weighed, or diluted to a known concentration of "toxicity." Toxicity is only defined by its effects on organisms, and it is these effects that are directly measured in the toxicity test. Because toxicity is inherently defined by the measurement system (a "method-defined analyte"), and toxicity cannot be independently measured apart from a toxicity test, accuracy as a performance characteristic is not completely applicable. The inapplicability of the accuracy performance characteristic does not mean that WET tests are not accurate or that permittees are incapable of certifying the accuracy of WET test results reported on discharge monitoring reports. It means simply that the procedures commonly used in analytical testing to measure the performance characteristic that is termed "accuracy" cannot be applied to WET test methods.

Notwithstanding the previous explanation, one component of accuracy can be described for WET tests. The American Society for Testing and Materials (ASTM) defines accuracy as "a measure of the degree of conformity of a single test result generated by a specific procedure to the assumed or accepted true value and *includes both precision and bias*" (ASTM, 1998; emphasis added). Bias is defined as "the persistent positive or negative deviation of the average value of a test method from the assumed or accepted true value" (ASTM, 1998). Precision is defined as "the degree of agreement of repeated measurements of the same property, expressed in terms of dispersion of test results about the arithmetical mean result obtained by repetitive testing of a homogeneous sample under specified conditions' (ASTM, 1998). Like ASTM, the 1988 Report to Congress (USEPA, 1988) also explains that accuracy includes both bias and precision. As explained previously, EPA conducted an Interlaboratory Variability Study of the ratified methods in order to, among other things, generate a quantified estimate of the precision for each method studied. WET tests are therefore amenable to the precision portion of accuracy. It is the bias portion of accuracy that is not applicable to WET test methods and cannot be described for WET as it is described for chemical analytes.

The additional performance characteristics listed in the 1988 Report to Congress, namely precision, interferences, ruggedness (applicability), reporting, and representativeness, are applicable to biological test methods, and EPA evaluated and considered these characteristics in ratifying the WET test methods. To establish the precision of the methods, EPA conducted an Interlaboratory Variability Study for each of the WET methods ratified today. From the Study, EPA established single-laboratory and multi-laboratory precision estimates for multiple sample matrices for each method (USEPA, 2001a; USEPA, 2001b). EPA also conducted a study of within laboratory precision measured when testing reference toxicants (USEPA, 2000c). In today's action, EPA is modifying the WET method manuals to include this new and updated single-laboratory and multi-laboratory precision data for each method. Precision data from the WET Interlaboratory Variability Study confirmed that the WET test methods provided adequate precision (CVs ranged from 10.5 to 43.8%). The measured precision ranges for the ratified toxicity tests demonstrate the tests are comparable to (no more variable than) chemical analytical methods approved at 40 CFR part 136. Finally, the precision had improved since the time the methods were promulgated in 1995, thus confirming EPA's conclusions that precision would improve with time, *i.e.*, as analysts developed more expertise the methods would be "validated by use."

In addition to precision, EPA evaluated and considered the performance characteristic of interferences. Each WET test method contains a section describing possible test interferences. In today's action, EPA has expanded that section to address two additional interference concerns that were raised by stakeholders by including guidance for controlling test interference that could be due to pH drift in the test and interference caused by pathogens.

EPA also evaluated and considered the performance characteristic of ruggedness or applicability. The methods ratified today use materials that are widely available and organisms that can be easily cultured in the laboratory. By conducting a national interlaboratory study of these methods, EPA also confirmed that the methods are adaptable to a wide variety of laboratories and that the methods generate reproducible results in those laboratories. In the WET Interlaboratory Variability Study, EPA documented successful test completion rates of 63.6% to 100% for WET methods. EPA anticipates that method modifications instituted today will improve the successful test completion rate for methods at the bottom of this range, such as the Selenastrum capricornutum Growth Test. Today, EPA is requiring the use of EDTA in this test. As laboratories gain experience in performing the test with EDTA, EPA anticipates that successful test completion rates will improve. See section VI.C.4 of this preamble.

EPA also considered the aspect of result reporting in its development and validation of WET test methods. Each method manual contains a section devoted to test review and reporting. In today's action, EPA has supplemented this section by providing guidance on the review of sampling and handling, test acceptability criteria, test conditions, statistical methods, concentration-response relationships, reference toxicant testing, and test variability. In addition, EPA clarified the required and recommended test conditions when submitting data under NPDES permits.

EPA documented and considered the representativeness or comparability of WET methods. Prior to approving the WET test methods in the 1995 WET final rule, EPA conducted several studies that demonstrated the ability of WET tests to predict impacts of effluents on the biological integrity of receiving waters (USEPA, 1991). In a 1995 workshop of nationally recognized WET experts (the Society of Environmental Toxicology and Chemistry's Pellston Workshop), including those from academia, government, and the regulated community (*e.g.*, POTWs and industry), the experts concluded that "WET testing is an effective tool for predicting receiving system impacts when appropriate considerations of

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exposure are considered" (Waller *et al.*, 1996). The workgroup also agreed that "further laboratory-to-field validation is not essential for the continued use of WET testing" (Waller *et al.*, 1996).

2. Interlaboratory Variability Study

Several commenters expressed concern that EPA used data from the Interlaboratory Variability Study that was of poor quality and would have been discarded in a regulatory context. In conducting the WET Interlaboratory Variability Study, EPA's objective was to validate the WET methods as promulgated. EPA was not attempting to validate the diversity of testing requirements that may be implemented in various States. State regulatory authorities retain the discretion to enhance the requirements of a method for implementation in their State as well as to require procedures that EPA otherwise recommends. In the WET Interlaboratory Variability Study, EPA appropriately evaluated data according to the promulgated methods and ASTM guidance for measuring interlaboratory method precision. EPA accurately invalidated tests according to test acceptability criteria specified in each method. EPA acknowledges that the promulgated methods allow flexibility in the review of test conditions. The method manuals state that departures in specified test condition ranges do not necessarily invalidate test results. In today's action EPA modified the methods to better clarify this allowable flexibility. For the purposes of reviewing data submitted under NPDES permits, the manuals now clearly distinguish between requirements of the method and recommended test condition ranges.

Several commenters expressed concern that EPA did not use the results of reference toxicant tests from the WET Interlaboratory Variability Study to qualify or disqualify data. EPA agrees. EPA used reference toxicant tests in the manner in which they are described in the method manuals. Failure of reference toxicant tests do not necessarily invalidate a test. In today's action, EPA has incorporated method modifications to clarify reference toxicant testing requirements and the appropriate use of reference toxicant test data. EPA has clarified that reference toxicant test results should not be used as a de facto criterion for rejection of individual effluent or receiving water tests, but rather, reference toxicant testing is used for evaluating the health and sensitivity of organisms over time and for documenting initial and ongoing laboratory performance.

Several commenters expressed concern that too few data points were used to estimate method performance in the WET Interlaboratory Variability Study. In accordance with ASTM guidance on determining interlaboratory method precision, EPA set a data quality objective of a minimum of six complete and useable data sets for each WET test method evaluated in the Study. To meet this data quality objective, EPA endeavored to sponsor a minimum of nine laboratories per method. For all of the methods that EPA is ratifying today, seven or more laboratories participated in interlaboratory testing. For several individual sample matrices and test method combinations that were tested (blank sample analyzed using the Selenastrum capricornutum Growth Test, receiving water sample analyzed using the Selenastrum capricornutum Growth Test without EDTA, and the receiving water sample analyzed using the Inland Silverside Acute Test), fewer than six useable data sets were obtained. EPA did not, however, establish precision criteria in today's rule based on results from a single sample matrix. EPA tested four sample matrices (blank, reference toxicant, effluent, and receiving water) with each test method, and precision estimates were based on the combined results of reference toxicant, effluent and receiving water testing. Because multiple sample matrices were used to generate precision estimates, more than six useable data sets were used for each method. In fact, at least 17 data sets were used to establish precision estimates for each method.

Several commenters also expressed concern that the selection of laboratories for the WET Interlaboratory Variability Study was biased. EPA disagrees. EPA believes that the laboratories that participated in the WET Interlaboratory Variability Study were representative of the laboratory community that commonly conducts WET testing for permittees. From the outset, EPA and the regulated community wanted to ensure that participants in the Study were representative. Industry trade groups, such as AMSA (Association of Metropolitan Sewerage Agencies), surveyed their member permittees to identify the laboratories that provide their routine WET testing services. AMSA requested that members sponsor those laboratories' participation in the Study. Of the 55 participant laboratories involved in the Study, 44 (or 80%) were specifically recommended by AMSA with commitments from AMSA members to sponsor such laboratories' participation in the Study. Thirty-seven of these laboratories were ultimately sponsored by AMSA members to analyze samples using one or more methods. The remaining seven laboratories had commitments of sponsorship from AMSA members, but were ultimately sponsored by EPA in the Study because their bids were among the nine lowest. The high percentage (80%) of laboratories in the Study that were sponsored by permittees for participation demonstrates that the laboratories involved in the Study are representative of those that commonly conduct WET testing for permittees.

Several commenters expressed concern that a majority of laboratories did not detect toxicity in the reference toxicant sample type distributed for the Ceriodaphnia dubia Survival and Reproduction Test method. Prior to interlaboratory testing in the WET Interlaboratory Variability Study, referee laboratories conducted preliminary testing to determine the appropriate composition of samples to prepare for the Study. This preliminary testing was important for ensuring that test samples prepared for the Study produced results within the test concentration range. Despite these preliminary testing efforts, the spiking level selected for the reference toxicant sample type in the Ceriodaphnia dubia Survival and Reproduction Test method was insufficient to produce the targeted level of effect. The spiking concentration of KCl for this sample was selected to achieve an IC25 of approximately 50% sample based on preliminary testing, but the spiked sample missed this targeted effect level. The prepared sample was only slightly toxic and could not be detected as toxic in 67% of tests. Depending on the sensitivity of test organisms at individual laboratories, some laboratories identified the sample as toxic, while other laboratories did not. Similarly, marginally toxic effluents may exhibit intermittent toxicity in routine monitoring. In such cases, permittees and regulatory authorities should consult EPA guidance that addresses marginal and intermittent toxicity (USEPA, 1991; USEPA, 2000c; USEPA, 2001f).

The reference toxicant sample used in the Study also was prepared as an ampule that was reconstituted at each participant laboratory. This reconstitution process also likely produced minor variations (from laboratory to laboratory) in the final sample composition that influenced whether toxicity was detected. While the concentration of potassium ions was not measured in each final reconstituted sample, conductivity was measured and can be used as an approximate surrogate measure. In samples that showed toxicity, the average conductivity was 873 µmhos, and in samples that did not show toxicity, the average conductivity was 797 µmhos. The differences in conductivity between tests that indicated toxicity and tests that did not were statistically significantly different (at the alpha = 0.05 level). This finding indicates that those samples which were less diluted in the reconstitution process, were also more likely to be toxic.

Several commenters also expressed concern over the way EPA handled outlier data points in the WET Interlaboratory Variability Study. EPA believes that outliers were treated according to standard practice and according to ASTM standards for measuring method precision. EPA identified outliers using ASTM's h and k statistics, and discarded outliers only when a probable cause for the outlier was identified. In all, only eight tests in the entire study of 698 tests were excluded based on outlier analysis.

3. Variability

Several commenters stated that the variability of the WET methods (measured in terms of CV) is too high for use in NPDES permits. Commenters also recommended that specific steps be taken to account for variability in the permit limit derivation and compliance determination process. EPA believes that the WET Interlaboratory Variability Study accurately estimated the precision of WET test methods, and that this precision is adequate for regulatory use of the WET methods. The precision measured for the WET test methods is comparable to that of chemical methods. While EPA agrees with commenters that WET test methods cannot be compared in all aspects to chemical methods, the comparison of interlaboratory precision values does demonstrate that WET test methods are no more variable than other methods approved at 40 CFR part 136 and used for regulatory compliance purposes.

In a recent peer-reviewed guidance document (USEPA, 2000c), EPA thoroughly evaluated the issue of WET test method variability and accounting for such variability in NPDES applications. The document concluded that "comparisons of WET method precision with method precision for analytes commonly limited in NPDES permits clearly demonstrate that the variability of the promulgated WET methods is within the range of variability experienced in other types of [required regulatory] analyses." The analytical variability of WET test methods is accounted for appropriately in the development of permit limits derived according to EPA's Technical Support Document (TSD) (USEPA, 1991). The TSD approach accounts for both effluent variability and method variability. The TSD statistical approach to determination of reasonable potential and permit limit derivation considers combined effluent and analytical variability through the CV of measured effluent values. Because the determination of effluent variability is based on empirical measurements, the variability estimated for effluent measurements includes the variability of pollutant levels, sampling variability, and a smaller component owed to method variability.

EPA does not recommend additional approaches or factors to account for variability, because the TSD approach appropriately accounts for method variability in the permit derivation process. In the guidance document, EPA evaluated additional approaches to account for variability in the permit derivation process and concluded that such approaches would not ensure adequate protection of water quality. The TSD approach was designed to provide a reasonable degree of protection for water quality as well as from effluent and analytical variability. Alternative approaches would undermine these objectives.

Some commenters expressed specific concern that the Selenastrum capricornutum Growth Test method was too variable. EPA believes that the variability of the Selenastrum capricornutum Growth Test method, as measured in the WET Interlaboratory Variability Study (USEPA, 2001a) and variability guidance document (USEPA, 2000c), is acceptable for the intended regulatory use of the methods. EPA observed in the WET Interlaboratory Variability Study that the variability of the Selenastrum capricornutum Growth Test method was lower when the method was conducted with the addition of EDTA. In today's action, EPA is removing the option to conduct the test without the addition of EDTA when data is submitted under NPDES permits. EPA believes that this modification will improve the overall performance of the test method. False positive rates decreased from 33.3% to 0.00% and interlaboratory variability decreased from 58.5% to 34.3% when EDTA was added. EPA cautions, however, that the required addition of EDTA may make the Selenastrum capricornutum Growth Test less sensitive, thus less useful, for measuring the toxicity of some test samples, specifically, samples that contain toxic levels of metals.

4. Successful Test Completion Rate

Some commenters stated that EPA incorrectly calculated successful test completion rates in the WET Interlaboratory Variability Study by failing to invalidate tests that did not meet specific test condition ranges. As previously discussed (see section VI.C.2 of this preamble), EPA accurately invalidated tests according to the test acceptability criteria specific to each method, and successful test completion rates were based on meeting these criteria. EPA acknowledges that the promulgated methods allow flexibility in the review of test conditions. The method manuals state that departures in specified test condition ranges do not necessarily invalidate test results. In today's action EPA has modified the methods to better clarify this allowable flexibility. For the purposes of reviewing data submitted under NPDES permits, the manuals now clearly distinguish between requirements of the method and recommended test condition ranges.

Several commenters stated that the successful test completion rate measured for the Ceriodaphnia dubia Survival and Reproduction Test method was unacceptable and indicates a lack of ruggedness. EPA believes that the successful test completion rate observed for the Ceriodaphnia dubia Survival and Reproduction Test method in the WET Interlaboratory Variability Study was artificially suppressed by very poor performance in a small subset of laboratories. Only ten of the 34 participant laboratories performed invalid tests, but eight of these laboratories performed invalid tests on 50% or more of the samples tested. The low rate of successful test completion in these eight laboratories may have been influenced by the Study's strict testing schedule, which required that each test be conducted on a given day and that all tests be conducted within a 15-day time period. When invalid tests conducted in a given laboratory were likely due to marginal or poor health of the test organism cultures, then it was logical that the laboratory would fail a high percentage of tests during the Study because culture health was unlikely to fully recover within 15 days. EPA believes that measuring an individual laboratory's rate of successful test completion over a 15-day period may not be representative of that laboratory's overall successful test completion rate. For instance, several laboratories had successful test completion rates of 0% during the WET

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Interlaboratory Variability Study. Obviously, this result is not indicative of the laboratory's overall successful test completion rate. If so, the laboratory would not be in business or would not have been able to prequalify for participation in the Study. EPA believes that successful test completion rates for this method are higher in routine use because testing laboratories are allowed flexibility in the timing of sample collection and can avoid initiating tests during periods of marginal to poor culture health.

Some commenters expressed concern that the successful test completion rate for the Selenastrum capricornutum Growth Test method was too low. In today's action, EPA is removing the option to conduct the test without the addition of EDTA. EPA believes that this modification will improve successful test completion rates for the method as laboratories consistently culture and test with EDTA. The successful test completion rate of 63.6% (when conducted with EDTA) was in part due to laboratory inexperience in using both the with and without-EDTA techniques. For example, two laboratories that cultured organisms without EDTA and generally conducted tests without EDTA showed poor successful test completion rates (failing eight of eight tests) when EDTA was used. These laboratories failed all eight tests conducted with EDTA and passed all but one test (seven of eight) without EDTA. Commenters point out that laboratories were prequalified for participation in the WET Interlaboratory Variability Study, but this prequalification required only experience with the method, not experience with both the with and without-EDTA procedures of the method. Some laboratories cultured organisms and typically conducted tests with EDTA, and other laboratories cultured organisms and typically conducted tests without EDTA.

5. False Positive Rate

Several comments stated that EPA underestimated the false positive rates measured in the WET Interlaboratory Variability Study and that the measured rates are unacceptably high for regulatory use. In the context of WET methods, the false positive rate is the rate at which tests conducted on non-toxic dilution waters indicate the presence of toxicity (*i.e.*, NOEC, LC50, or IC25 test endpoints are <100% effluent). EPA disagrees with comments that stated that false positive rates for WET test methods are unacceptably high. EPA's WET Interlaboratory Variability Study conclusively showed that measured false positive rates were below the theoretical rate of 5% estimated for the methods. Measured false positive rates were 3.7% for the Ceriodaphnia dubia Survival and Reproduction Test method, 4.35% for the Fathead Minnow Larval Survival and Growth Test method, and 0% for all other methods evaluated in the WET Interlaboratory Variability Study (with the exception of the Selenastrum capricornutum Growth Test conducted without EDTA, which EPA is removing as an option in today's action). A total of 150 valid WET tests were conducted on blank samples in the Study. Of these, only two tests (1.3%) resulted in a false positive result.

The WET Interlaboratory Variability Study conclusively demonstrated that the false positive rate of WET methods is at or below the level expected for the methods. While this rate is low (below 5%), false positives do occur. EPA accounts for this possibility in the compliance and enforcement guidance. EPA policy states that "EPA does not recommend that the initial response to a single exceedance of a WET limit, causing no known harm, be a formal enforcement action with a civil penalty" (USEPA, 1995a). EPA policy suggests additional testing is an appropriate initial response to a single WET limit exceedance.

Several commenters expressed concern that WET tests do not have method detection limits as contained in chemical methods to protect from reporting false positive results. As previously discussed (see section VI.C.1 of this preamble), method detection limit concepts are not applicable to WET test methods and have not been applied historically to toxicity testing methods developed by EPA or by voluntary consensus standards bodies.

EPA established the method detection limit (MDL) concept specifically for chemical methods, where results generally consist of a single measurement of the pollutant of interest by an analytical instrument. The MDL concept uses information about the variability of the measurement system to determine a response level at which the measurement can be reliably distinguished from background "noise," thus providing protection from false positive results. In WET testing, the final result is not based on a single measurement, but is the product of a series of replicated measurements on a range of effluent concentrations. The additional measurements, controls, replication, and statistical approaches included in the WET test method "measurement system" ensure that measured responses can be reliably distinguished from background noise.

While results from chemical methods may rely on a single instrument measurement, each WET test is designed as an experiment. WET tests contain at least six treatments, each replicated from four to ten times. Measurements are made on each replicate of each treatment, so that results reflect average responses and the variability of those responses can be estimated. Each test also includes a control treatment, which is also replicated. This control treatment provides a measure of the background response and the "noise" or variability associated with that response.

The control response is then compared to the response in effluent treatments using statistical methods to test the hypothesis that treatments containing effluent are not significantly different from the control treatment. If this hypothesis is rejected (considering the measured background or control responses, the treatment responses, and the variability associated with those responses), then the effluent is considered toxic. Hypothesis testing techniques provide protection from false positive results by specifically setting the Type I error rate allowed in rejecting the null hypothesis. Point estimation techniques use regression analysis to determine the effluent concentration that produces a specified level of response (*e.g.*, the IC25 endpoint specifies a 25% difference between control and effluent treatment response in order for the effluent to be determined as toxic). In this case, false positive protection is inherently provided by the level of response required for generation of the selected endpoint. EPA believes that the test design employed in WET testing (including controls, replication, and hypothesis testing or point estimation) provides adequate protection from false positives.

6. Implementation

Some commenters commented on issues specifically related to the implementation of WET permits, such as reasonable potential determinations, independent applicability of WET limits, discharge monitoring report certifications, and use of WET methods in NPDES permits. Many such comments are beyond the scope of this rulemaking. In the proposed rulemaking, EPA invited comments "only on the conduct of WET test methods and not on the implementation of WET control strategies through NPDES permits." EPA recognizes that NPDES permittees have continuing concerns about implementation of WET requirements in NPDES permits. In a 'WHEREAS' clause to the Settlement Agreement described previously, EPA acknowledged that the provisions of the Settlement Agreement, which focused primarily on test methodology and, to a lesser extent, interpretation of test results, did not address all of the litigants' concerns regarding applicability of WET testing requirements to particular waterbodies (with specific reference to intermittent or effluent dependent waterbodies located in the Arid West) and did not address many of the litigants' concerns regarding regulatory implementation of WET control programs (*e.g.*, toxicity identification evaluation requirements, toxicity reduction evaluation requirements, compliance determinations, and trigger thresholds). In addition, the Settlement Agreement also acknowledged that the 1995 rule, which incorporated the WET test methods in dispute, did not specify means to adjust for the frequency, duration, or magnitude of instream exposure conditions, and that such decisions are to be made by the regulatory authority in the context of water quality standard setting and/or NPDES permitting decisions. EPA continues to acknowledge these continuing concerns and will continue to address implementation concerns as they arise in concrete circumstances or through guidance, as appropriate.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* This rule revises and ratifies test methods that are currently approved for use in NPDES permits and does not impose any additional information collection requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the U.S. Small Business Administration definitions at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's rule revises and ratifies EPA WET test methods currently approved for use at 40 CFR part 136. Overall, the costs of these revisions are minimal. While some of the revisions may increase costs (*e.g.*, quality control requirements), EPA believes that these costs will be alleviated by a potential reduction in retesting and additional investigations (*e.g.*, accelerated testing, toxicity identification evaluations, or toxicity reduction evaluations) by the permittee that may result from improved test performance and increased confidence in the reliability of testing results. Many of the laboratories that conduct WET testing are already implementing the additional requirements, further minimizing any potential cost increases. EPA estimates that the average incremental cost per permit per year for today's method revisions is $276. Because monitoring frequency is typically less frequent for small entities than large entities, EPA expects the average incremental cost per permit per year to be even less than $276 for small entities. Using a cost of $276 and average revenue information for small governmental jurisdictions and businesses, EPA estimates that the incremental costs for these method revisions are less than 0.1 percent of revenue for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-

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effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for the notification of potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year. This rule promulgates revisions to WET test methods that are currently approved for use in NPDES permits and certification of Federal licenses under the CWA. The revisions are minor and the cost to implement them is minimal. Thus, today's rule is not subject to sections 202 and 205 of the UMRA. For the same reasons, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule also is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255; August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule promulgates revisions to WET test methods that are currently approved for use in NPDES permits and certification of Federal licenses under the CWA. The revisions are minor and the cost to implement them is minimal. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249; November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Today's rule promulgates revisions to WET test methods that are currently approved for use in NPDES permits and certification of Federal licenses under the CWA. The revisions are minor and the cost to implement them is minimal. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885; April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to the Executive Order because it is neither "economically significant" as defined in Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies (VCSBs). The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking would revise existing EPA WET test methods. For the methods that EPA is revising, the Agency did not conduct a search to identify potentially applicable voluntary consensus standards, because the revisions EPA is promulgating today would merely incorporate more specificity and detail into currently approved EPA test methods. EPA did, however, consult available voluntary consensus standards, such as ASTM standards, for guidance in conducting the Interlaboratory Variability Study and in defining certain performance characteristics of the methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on December 19, 2002.

VIII. References

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List of Subjects at 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 8, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended:

a. In Table IA of paragraph (a) by revising entries 6 to 9.

b. In paragraph (b) by revising references (34), (38), and (39).

c. In paragraph (b) by removing and reserving reference (42).

The revisions read as follows:

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§ 136.3 Identification of test procedures.

(a) * * *

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS

Parameter and units	Method[1]	EPA	Standard methods 18th, 19th, 20th Ed.	ASTM	USGS
*	*	*	*	*	*
Aquatic Toxicity:					
6. Toxicity, acute, fresh water organisms, LC50, percent effluent.	Ceriodaphnia dubia acute	[7]2002.0			
	Daphnia pulex and Daphnia magna acute	[7]2021.0			
	Fathead minnow, Pimephales promelas, and Bannerfin shiner, Cyprinella leedsi, acute.	[7]2001.0			
	Rainbow trout, Oncorhynchus mykiss, and brook trout, Salvelinus fontinalis, acute.	[7]2019.0			
7. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC50, percent effluent.	Mysid, Mysidopsis, bahia, acute	[7]2007.0			
	Sheepshead minnow, Cyprinodon variegatus, acute	[7]2004.0			
	Silverside, Menidia beryllina, Menidia menidia, and Menidia peninsulae, acute.	[7]2006.0			
8. Toxicity, chronic, fresh water organisms, NOEC or IC25, percent effluent.	Fathead minnow, Pimephales promelas, larval survival and growth.	[8]1000.0			
	Fathead minnow, Pimephales promelas, embryo-larval survival and teratogenicity.	[8]1001.0			
	Daphnia, Ceriodaphnia dubia, survival and reproduction	[8]1002.0			
	Green alga, Selenastrum capricomutum, growth	[8]1003.0			
9. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC25, percent effluent.	Sheepshead minnow, Cyprinodon variegatus, larval survival and growth.	[9]1004.0			
	Sheepshead minnow, Cyprinodon variegatus, embryo-larval survival and teratogenicty.	[9]1005.0			
	Inland silverside, Menidia beryllina, larval survival and growth.	[9]1006.0			
	Mysid, Mysidopsis bahia, survival, growth, and fecundity	[9]1007.0			
	Sea urchin, Arbacia punctulata, fertilization	[9]1008.0			

[1] The method must be specified when results are reported.

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[7] USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–012.

[8] USEPA. October 2002. Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–013.

[9] USEPA. October 2002. Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–014.

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(b) * * *

References, Sources, Costs, and Table Citations

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(34) USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–012. Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Publ. No. PB2002–108488. Table IA, Note 7.

* * * * *

(38) USEPA. October 2002. Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–013. Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Publ. No. PB2002–108489. Table IA, Note 8.

(39) USEPA. October 2002. Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 821–R–02–014. Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Publ. No. PB2002–108490. Table IA, Note 9.

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(42) [RESERVED]

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[FR Doc. 02–29072 Filed 11–18–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
November 19, 2002

Part VI

Securities and Exchange Commission

17 CFR Parts 239 and 274

Disclosure of Costs and Expenses by Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Annuity Contracts; Final Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–8147; IC–25802; File No. S7–07–02]

RIN 3235–AI39

Disclosure of Costs and Expenses by Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Annuity Contracts

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. The amendments revise the format of the fee table to require disclosure of the range of total expenses for all of the mutual funds offered through the separate account, rather than disclosure of the expenses of each fund. In addition, the Commission is amending the fee table of the registration form for variable life insurance policies to require disclosure of the range of total expenses of all of the mutual funds offered, consistent with the amendments to the fee table of the registration form for variable annuities.

DATES: *Effective Date:* December 23, 2002.

Compliance Dates:

1. *Initial Compliance Date:* All new registration statements, and post-effective amendments that are annual updates to effective registration statements, filed on Form N–4 or Form N–6 on or after January 1, 2003, must comply with the amendments to Form N–4 or Form N–6, respectively.

2. *Final Compliance Date:* All insurance company separate accounts that are registered as unit investment trusts and that currently offer variable annuity contracts or variable life insurance policies with effective registration statements must comply with the amendments to Form N–4 or Form N–6, respectively, for post-effective amendments that are annual updates to their registration statements on Form N–4 or N–6 filed on or after January 1, 2003, and no later than January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Katy Mobedshahi, Senior Counsel, (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Form N–4 [17 CFR 239.17b; 17 CFR 274.11c], the form used by separate accounts organized as unit investment trusts and offering variable annuity contracts to register under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("Investment Company Act") and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"). The Commission is also adopting amendments to Form N–6 [17 CFR 239.17c; 17 CFR 274.11d], the form used by separate accounts organized as unit investment trusts and offering variable life insurance policies to register under the Investment Company Act and to offer their securities under the Securities Act.

I. Discussion

A. Disclosure of Range of Portfolio Company Expenses

Form N–4 is the registration form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register under the Investment Company Act and to register their securities under the Securities Act. Form N–4 requires that a prospectus for a variable annuity contract include a fee table, similar to the fee table required by Form N–1A for mutual funds.[1] The fee table of Form N–4 requires disclosure of the costs and expenses that a variable annuity contractowner will bear, directly or indirectly. This includes the annual operating expenses for each mutual fund in which a contractowner may invest ("Portfolio Company").[2]

Today, the Commission is adopting amendments that will require that the fee table of Form N–4 disclose the range of expenses for the Portfolio Companies offered through the separate account, rather than the expenses of each Portfolio Company. As we stated in the release proposing these amendments ("Proposing Release"), we believe that the use of a range of Portfolio Company expenses is warranted in order to simplify fee tables for variable annuity contracts, which have grown longer and more complex.[3] The number of investment options available through a typical variable annuity contract has expanded considerably in recent years.[4] Variable annuity fee tables have also become more complicated in recent years because insurers have increasingly offered variable annuity contracts with a variety of so-called "unbundled" optional features, each of which has a separate charge.[5]

We received four comment letters on the proposed amendments.[6] Two of the commenters supported the proposed requirement for disclosure of the range of expenses for all of the Portfolio Companies offered, while one commenter favored disclosure of the expenses of each Portfolio Company in the variable annuity prospectus.

We continue to believe that our approach will assist investors in understanding the fees and charges that they will pay for a variable annuity contract. The amendments will streamline the fee table in the contract prospectus and make it more understandable, while at the same time investors will continue to have access to information about the fees and expenses of each Portfolio Company. We recently amended Form N–1A, the form used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act, to require that every mutual fund that offers its shares as an investment option for a variable annuity contract include a fee table in its prospectus.[7] Investors in variable annuity contracts now have access to information about the fees and expenses of each Portfolio Company in the prospectus for the Portfolio Company.[8] The amendments that we are adopting to the fee table of Form N–4 will require a statement referring investors to the Portfolio Company prospectuses for more detail concerning Portfolio Company fees and expenses. In addition, the requirement that the fee table of Form N–4 include the range of Portfolio Company expenses will clearly indicate to investors the maximum fees that may be charged by any of the Portfolio Companies offered, so investors will receive disclosure in the variable annuity contract prospectus of the highest possible amount of Portfolio Company expenses that they may pay.

We note, further, that the amendments we are adopting to Form N–4 will permit registrants to continue to include disclosure of the fees and expenses for each Portfolio Company in the fee table of Form N–4, in addition to the required disclosure of the range of expenses for the Portfolio Companies. This approach will provide registrants with the flexibility to include this detailed information when they determine that it would be helpful, and not overwhelming, to investors.[9]

We are, however, modifying our proposal to require disclosure of the range of total Portfolio Company expenses.[10] Our proposal would have required line item disclosure of the range of each of several categories of Portfolio Company expenses, including management fees, distribution (12b–1) fees, and other expenses, as well as total annual operating expenses. Two commenters suggested that we require disclosure of the range of total annual operating expenses only, rather than the ranges of the various categories. The commenters reasoned that disclosing the minimum and maximum expenses for several categories of expense, as well as total annual operating expenses, would result in two columns of category expenses in the fee table that would not necessarily add up to the minimum and maximum total operating expenses shown. For example, if Portfolio Company A had management fees of 0.5%, 12b–1 fees of 0.25%, other expenses of 0.3%, and total expenses of 1.05%; Portfolio Company B had management fees of 0.9%, 12b–1 fees of 0%, other expenses of 0.25%, and total expenses of 1.15%; and Portfolio Company C had management fees of 1.0%, 12b–1 fees of 0%, other expenses of 0.25%, and total expenses of 1.25%, then the range of total expenses for all three Portfolio Companies required to be disclosed would be 1.05% to 1.25%, rather than the sum of the minimum and maximum category expenses columns, which would be 0.75% (0.5% + 0% + 0.25%) to 1.55% (1.0% + 0.25% + 0.3%). We were persuaded by the commenters that this result might confuse investors, rather than simplifying disclosure. In order to help investors understand the types of expenses that are included in total Portfolio Company operating expenses, we are revising the caption in the Portfolio Company expenses section of the fee table to state explicitly that total expenses include management fees, distribution (12b–1) fees, and other expenses.[11]

We are also amending Form N–6, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies, to require disclosure of the range of total expenses for all the Portfolio Companies, rather than line item disclosure of the range of each category of expenses.[12] We had indicated in the Proposing Release that if we modified the proposed amendments to the fee table of Form N–4 in response to comments, we intended to make conforming changes to Form N–6.[13]

B. Other Fee Table Changes

We are adopting other amendments to the format and instructions for the fee table of Form N–4 substantially as proposed, with minor changes to address commenters' suggestions.

Expense Reimbursement and Fee Waiver Arrangements. We are adopting, as proposed, a requirement that Portfolio Company operating expenses be disclosed before expense reimbursement and fee waiver arrangements. Expenses after reimbursement or waiver could be disclosed in a footnote.[14]

Expense Example. We are adopting, substantially as proposed, amendments to the expense example and accompanying instructions of the fee table of Form N–4. These amendments would require an expense example based on the maximum expenses charged by any of the Portfolio Companies.[15] Registrants would be permitted to provide an additional example, based on the minimum expenses charged by any of the Portfolio Companies.[16] In lieu of providing examples based on the maximum and minimum expenses charged by the Portfolio Companies offered through the contract, a registrant would be permitted to include expense examples for each of the Portfolio Companies.[17]

In response to a commenter's suggestion, we are modifying the Instructions to the expense example of Item 3(a) regarding conversion of annual contract fees to a percentage basis by providing that the total amount of the contract fees collected during the year should be divided by the total average net assets for the contract (which includes both general account and separate account assets), rather than only separate account assets, as we had proposed and as the instructions to Item

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[1] Item 3(a) of Form N–4.

[2] Variable annuity separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different Portfolio Company. Each contractowner selects the sub-accounts, and thus the Portfolio Companies, in which his or her account value is invested. A "Portfolio Company" may be a registered investment company, or a series of a registered investment company, in the case of a series company.

[3] Investment Company Act Release No. 25521 (Apr. 12, 2002) [67 FR 19886, 19886 (Apr. 23, 2002)].

[4] Rick Carey, *9-Month Variable Annuity Sales Fell 17.8% To $113 Billion Last Year*, National Underwriter Life & Health/Financial Services Edition, March 11, 2002, at 16 (estimating that average number of funds available in a variable annuity contract increased from five in 1988 to 33 in 2001).

[5] Timothy C. Pfeifer, *Growing Rider Use Furthers Flexibility But Also Complexity*, National Underwriter Life & Health/Financial Services Edition, Sept. 3, 2001, at 22 (describing growth in optional riders on both variable annuities and variable life insurance).

[6] The comment letters and a summary of comments prepared by our staff are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth St., NW., Washington, DC 20549, in File No. S7–07–02. Public comments submitted electronically and a summary of comments are also available electronically on our website at www.sec.gov.

[7] Investment Company Act Release No. 25522 (Apr. 12, 2002) [67 FR 19847, 19860 (Apr. 23, 2002)] ("N–6 Adopting Release"); Item 3 of Form N–1A. Prior to this amendment, a mutual fund that offered its shares exclusively as investment options for variable life insurance policies and variable annuity contracts was permitted to omit the fee table from its prospectus. *See* Investment Company Act Release No. 16766 (Jan. 23, 1989) [54 FR 4772 (Jan. 31, 1989)] (adopting Form N–4 fee table and eliminating the fee table requirement in Form N–1A for Portfolio Companies offering shares exclusively to insurance company separate accounts).

[8] Investors in variable annuity contracts receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies they have selected.

[9] Instruction 20 to Item 3(a) of Form N–4; Instruction 4(f) to Item 3 of Form N–6.

[10] Item 3(a) and Instruction 17(a) to Item 3(a) of Form N–4.

[11] Item 3(a) of Form N–4. If none of the Portfolio Companies offered by a variable annuity contract charge distribution (12b–1) fees, the reference to these fees may be omitted.

[12] Item 3 and Instructions 4 and 5 to Item 3 of Form N–6.

[13] Proposing Release, *supra* note 3, 67 FR at 19888.

[14] Instructions 18(a), 19, and 22(a) to Item 3(a) of Form N–4. We intend that the staff construe the amendments to the fee table of Form N–4 consistent with the approach taken under Form N–1A, to permit the addition of one line to the fee table showing the range of net Portfolio Company operating expenses after taking account of contractual limitations that require reimbursement or waiver of expenses. This additional line would be placed immediately under the "Total Annual [Portfolio Company] Operating Expenses" line of the fee table and would have to use appropriate descriptive captions. A footnote to the fee table would be required to describe the contractual arrangement. *See* Proposing Release, *supra* note 3, 67 FR at 19887 n.15.

[15] Instruction 21(b) to Item 3(a) of Form N–4. Under Form N–1A, the staff has permitted mutual funds with fees that are subject to a contractual limitation that requires reimbursement or waiver of expenses to take account of the reimbursement or waiver in calculating the example required by the fee table of Item 3, but only for the duration of the contractual limitation. Funds may not assume that the reimbursement or waiver will continue for periods subsequent to the contractual limitation period in calculating expenses shown in the example. *Cf.* Letter from Barry D. Miller, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998) (permitting funds with fees that are subject to a contractual limitation that requires reimbursement or waiver to add two lines to the fee table showing the amount of the reimbursement or waiver and total net expenses). We intend that the staff construe the amendments to the expense example requirements of Form N–4 consistent with the approach it has taken with the expense example of the fee table of Form N–1A, to permit expense examples to take into account contractual limitations on Portfolio Company operating expenses that require reimbursement or waiver of expenses, but only for the period of the contractual limitation.

[16] Instruction 21(b) to Item 3(a) of Form N–4.

[17] *Id.*

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3(a) of Form N–4 currently require.[18] This revision will result in a more accurate calculation of the annual contract fee percentage, by attributing the contract fee to both separate account and general account assets.

In addition, in response to a commenter's suggestion, we are revising the narrative that would be required to precede the expense example, to clarify that expenses reflected in the example include separate account fees and charges, as well as the maximum expenses charged by any of the Portfolio Companies.[19]

Requirement to Disclose All Fees and Charges. We are adopting, as proposed, an instruction to the fee table of Form N–4 that would require registrants to disclose all recurring fees and charges, including fees and charges for all optional features.[20] One commenter suggested that we clarify the instruction requiring disclosure of all recurring fees and charges, to indicate that mutually exclusive fees (such as fees for mutually exclusive death benefit options) do not need to be presented in the fee table. We disagree with this approach because it would result in charges for some available features not being disclosed. As a result, investors who are considering these features would be unable to assess their cost. Registrants may, however, indicate, through a footnote or other means, that charges for certain features shown in the fee table are mutually exclusive. We note that registrants should not include multiple mutually exclusive fees in the expense example, but should include the highest of these charges. For example, if a contract offers two mutually exclusive death benefit options, with mortality and expense risk charges of 1.25% and 1.40%, respectively, the expense example should reflect a mortality and expense risk charge of 1.40%.

II. Effective Date and Compliance Date

The effective date of these amendments is December 23, 2002. All new registration statements, and post-effective amendments that are annual updates to effective registration statements, filed on Form N–4 or N–6 on or after January 1, 2003, must comply with these amendments. The final compliance date for filing amendments to effective registration statements to conform to these amendments is January 1, 2004. A registrant may, at its option, comply with the requirements of these amendments to Forms N–4 and N–6 at any time after the effective date.

As noted above, the Commission recently amended Form N–1A, the registration form for mutual funds, to require a Portfolio Company that offers its shares exclusively as investment options for variable annuity contracts and variable life insurance policies to include a fee table in its prospectus.[21] Registrants on Form N–1A are required to comply with this amendment with respect to all new registration statements, and post-effective amendments that are annual updates to effective registration statements, filed on or after September 1, 2002.[22] During the transition period, a separate account that is registered on Form N–4 or Form N–6 should include in Item 3(a) of Form N–4, or Item 3 of Form N–6, a fee table for any Portfolio Company whose Form N–1A has not been updated to include a fee table.[23]

III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules on affected persons and entities. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments, but received none.

Form N–4 is the registration form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register under the Investment Company Act and to register their securities under the Securities Act.[24] Form N–4 requires that a prospectus for a variable annuity contract include a fee table showing the costs and expenses that a variable annuity contractowner will bear, directly or indirectly, including the annual operating expenses for each mutual fund in which a contractowner may invest ("Portfolio Company"). The amendments adopted today will revise the fee table in the prospectus of Form N–4 to require registrants to disclose the range of total expenses for all of the Portfolio Companies offered, rather than separately disclosing the fees and expenses of each Portfolio Company. Registrants will still be permitted to include additional disclosure of the fees and expenses of each Portfolio Company offered through a sub-account of the registrant. Use of a range of Portfolio Company expenses is warranted in order to streamline and improve fee tables for variable annuity contracts, which have grown increasingly longer and more complex in recent years as the number of investment options available through a typical variable annuity contract has expanded. In addition, the amendments that we are adopting include a conforming change to the fee table of Form N–6, to require disclosure of only the range of total expenses for all the Portfolio Companies, and not line item disclosure of the range of each category of expenses.

The amendments will also make other technical changes conforming the format and the instructions for the fee table of Form N–4 more closely to the fee tables in Forms N–6 and N–1A, and for purposes of consistency with the disclosure of the range of Portfolio Company expenses, as described in the Proposing Release. These changes will improve transparency of fee disclosure. These amendments, discussed in more detail in the Proposing Release, include the following:

- Revising the expense example in the fee table to require only an example based on the maximum expenses charged by any Portfolio Company.
- Making other modifications to the format of the example.
- Prescribing narrative explanations to precede each section of the fee table.
- Adding an instruction requiring disclosure of all recurring fees and charges other than Portfolio Company operating expenses.

A. Benefits

We believe that the amendments adopted today to Form N–4 will benefit investors by making the variable annuity prospectus easier for investors to understand. As noted above, disclosure of a range of Portfolio Company expenses should make fee tables for variable annuity contracts, which have grown increasingly longer and more complex in recent years, shorter and more comprehensible. Investors will continue to have access to information about the fees and expenses of each Portfolio Company in the prospectus for the Portfolio Company. The amendments will also modify the expense example of the Form N–4 fee table, consistent with the use of the range of Portfolio Company expenses in the fee table.

The amendments will make technical changes to the format and instructions of the fee table of Form N–4, in order to improve transparency of the fees and charges that contractowners will pay, to make the Form N–4 fee table more consistent with its counterpart in Form N–6, and to reflect changes in the types of fees and charges assessed by variable annuity contracts since the fee table of Form N–4 was adopted. We believe these changes may improve disclosure of variable annuity fees and expenses to investors. It is difficult to quantify the effects of this improved disclosure, though we note that the changes we are adopting are limited in nature.

The amendments may also result in slightly reduced printing and mailing costs to registrants. Disclosure of the range of Portfolio Company expenses rather than the expenses of each Portfolio Company may shorten the typical variable annuity prospectus, because disclosure of these expenses sometimes comprises a full page, or more, of a variable annuity prospectus.[25] We do not expect that any of the other changes in the amendments will lengthen the variable annuity prospectus, as these changes will largely affect the format in which fee and expense information is to be presented, rather than the quantity of information presented. Based on a print run of 20,000 copies for a typical variable annuity prospectus, and printing and mailing costs of $0.05 per page, the reduction in printing and mailing costs attributable to the proposed amendments may equal $1,000 for a typical variable annuity contract.[26] Based on an estimate of 814 variable annuity contracts currently being actively marketed, therefore, these printing and postage savings could total $814,000 annually.[27]

In addition, conforming the disclosure requirements for Portfolio Company expenses in variable annuity prospectuses to those in variable life prospectuses may simplify the process of preparing registration statements for some registrants, because frequently insurance companies that issue variable annuities also issue variable life insurance.[28] We believe that these cost savings will be relatively small, however.

Finally, the conforming amendments we are adopting to the fee table of Form N–6 will reduce the potential for confusion to investors that may occur if the disclosure of the range of minimum and maximum expenses for each category of Portfolio Company operating expenses results in two columns that do not add up to the range of minimum and maximum total operating expenses. This change will streamline the Form N–6 fee table, while continuing to ensure that investors have access to fee information about the Portfolio Companies in which they invest.

B. Costs

Although the amendments to the fee table of Form N–4 are limited and many of them are technical in nature, they differ from the current requirements of the fee table of Form N–4, which have been in place since 1989. Therefore, variable annuity issuers may incur a one-time cost for training in order for their personnel, particularly lawyers and others who are responsible for supervising the preparation of filings on Form N–4, to review and analyze the disclosure requirements of the amendments to Form N–4. Because the amendments will make mostly minor changes to the current format of the Form N–4 fee table, and will not require the disclosure of information that the current fee table does not require, we estimate that this cost will be fairly small. We lack data necessary to make a more precise estimate of the cost resulting from the amendments, but we estimate that this cost will be approximately $500 for each insurance company that sponsors separate accounts that are registered on Form N–4 and issue variable annuity contracts that are actively being sold. Further, we estimate that there are 94 such insurance companies.[29] We therefore estimate the one-time cost attributable to the proposed amendments to Form N–4 to be $47,000. We requested comment on these cost estimates in the Proposing Release, but received none.

We do not expect that the amendments to Form N–4 will result in any net effect on the aggregate hour burden for completing and filing Form N–4. We expect that in preparing their fee tables for Form N–4, registrants will still need to collect information about the expenses for each Portfolio Company offered through the contract, in order to determine the minimum and maximum total operating expenses of the Portfolio Companies offered through the contract. We also expect that the other proposed amendments modifying the format and instructions of the Form N–4 fee table to conform more closely to the Form N–6 fee table will have no net effect on the burden hours for completing and filing Form N–4, because they will not require disclosure of any additional information by issuers.

Finally, we do not anticipate that the conforming changes we are making to the fee table of Form N–6 will result in any increased costs to issuers or investors. Issuers will be required to disclose only the range of total Portfolio Company operating expenses, rather than the range of each category of expenses as well as the range of total expenses. In addition, issuers have only recently begun using new Form N–6, or have not yet begun doing so. Therefore, any cost for training personnel to apply the amendment to the fee table of Form N–6 may be incorporated in the overall cost for training personnel in the disclosure requirements of Form N–6 as a whole.

IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Securities Exchange Act of 1934 require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[30] The Commission has considered these factors. We requested comments regarding the effects of the proposed amendments on efficiency, competition and capital formation and received none.

The amendments to Form N–4 and Form N–6 are expected to have minimal effects on efficiency and competition among issuers of variable insurance products. As adopted, the amendments will revise the fee table in the prospectus of Form N–4 to require registrants to disclose the range of expenses for all the Portfolio Companies offered through the separate account, rather than disclosing separately the

[18] Instruction 21(f) to Item 3(a) of Form N–4; Instruction 21(e) to Item 3(a) of current Form N–4.

[19] Item 3(a) and Instructions 21(a) and (b) to Item 3(a) of Form N–4.

[20] Instruction 15 to Item 3(a) of Form N–4.

[21] *See supra* note 7 and accompanying text.

[22] N–6 Adopting Release, *supra* note 7, 67 FR at 19860 (discussing compliance date for amendment to Form N–1A).

[23] *Id.* at 19860 n.83.

[24] Under a variable annuity contract, purchase payments are invested in an insurer's separate account created under state law and legally segregated from the assets of the insurer's general account. The separate account offers the contract owner a number of investment options, which generally consist of mutual funds.

[25] The amendments will require a registrant to include a statement referring investors to Portfolio Company prospectuses for more detail concerning Portfolio Company fees and expenses. This required statement would not impose any additional disclosure burden on registrants, because the instructions to Form N–4 currently require a similar cross-reference to the Portfolio Company prospectuses. *See* General Instruction 1 to Item 3(a) of current Form N–4.

[26] An insurance company that issues variable annuities provided the staff with estimates of the typical print run of a prospectus and the associated printing and mailing costs.

[27] The estimate of 814 variable annuity contracts is based on the number of contracts tracked by Morningstar, Inc. Morningstar, Principia Pro Plus, Variable Annuities/Life (May 2002). While Morningstar tracks a substantial majority of variable annuity contracts, it does not track all existing contracts.

[28] We estimate, based on an analysis of data from the EDGAR filing system for 2000 and 2001, that approximately two-thirds of insurers issuing variable annuities also issue variable life insurance policies.

[29] The estimate of the number of insurance companies issuing variable annuities is based on the staff's analysis of data from the EDGAR filing system for 2000 and 2001.

[30] 15 U.S.C. 77b(b), 78c(f), and 80a-2(c).

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fees and expenses of each Portfolio Company. The amendments will make certain other technical changes to conform the format and instructions to the fee table of Form N–4 more closely to its counterparts in Form N–6 and Form N–1A. In addition, the amendments will revise the fee table of Form N–6 to require disclosure of the range of total expenses for all the Portfolio Companies offered, and not disclosure of the range of each category of Portfolio Company expenses, consistent with the amendments to the fee table of Form N–4. The amendments will allow fee table disclosure of Portfolio Company expenses in both Form N–4 and Form N–6 to be shorter, and generally make fee table disclosure clearer and more understandable to investors. However, we do not expect the amendments to have any significant effect on competition and efficiency because they will not change the quantity of information about fees and expenses that investors in variable annuity contracts receive. Similarly, it is unclear whether the amendments to Form N–4 and Form N–6 will affect capital formation.

V. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of Form N–4 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. The title for the collection of information is "Form N–4 under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Separate Accounts Organized as Unit Investment Trusts." The information collection requirements imposed by Form N–4 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

We published a notice soliciting comments on the collection of information requirements of Form N–4 in the Proposing Release. The Commission did not receive any comments on the Paperwork Reduction Act portion of the Proposing Release.

Form N–4 (OMB Control No. 3235–0318) was adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 5 of the Securities Act [15 U.S.C. 77e].[31] As stated above, the purpose of Form N–4 is to meet the registration and disclosure requirements of the Securities Act and Investment Company Act and to enable separate accounts organized as unit investment trusts that offer variable annuity contracts to provide investors with information necessary to evaluate an investment in a variable annuity contract.

The Commission proposed to amend Form N–4 to conform the disclosure of Portfolio Company expenses in the fee table to the format used in Form N–6, the registration form for insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies. Under the proposed amendments, registrants on Form N–4 will be required to disclose only the range of the expenses for all of the Portfolio Companies in which the separate account invests. Variable annuity investors will continue to have access to complete information about the Portfolio Company fees and expenses because disclosure of the fees and expenses for each Portfolio Company will be included in its prospectus under the requirements of Form N–1A. The amendments will also make other technical changes in order to conform the format and instructions for the fee table of Form N–4 to its counterparts in Form N–6 and Form N–1A.

We do not expect that the amendments to Form N–4 will result in any net effect on the aggregate hour burden for completing and filing Form N–4, and therefore the amendments to Form N–4 will not impose any additional collection of information on registrants. We expect that in preparing their fee tables for Form N–4, registrants will still need to collect information about the total operating expenses for each Portfolio Company offered through the contract, in order to determine the minimum and maximum expenses of the Portfolio Companies. We also expect that the other amendments modifying the format of the Form N–4 fee table to conform more closely to the fee tables of Forms N–6 and N–1A will have no net effect on the burden hours for completing and filing Form N–4, because they will not require any additional information to be disclosed.

In addition, we expect that the conforming amendments we are adopting to Form N–6, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies, requiring disclosure of only the range of total expenses for all of the Portfolio Companies offered through the separate account rather than line item disclosure of the range of each category of expenses as well as the range of total expenses, will have no effect on the burden of completing Form N–6. Form N–6 already requires variable life insurance issuers to calculate the range of total expenses for each Portfolio Company offered through a variable life insurance policy, and therefore the amendments will not impose any additional costs on issuers.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendments to Form N–4 would not, if adopted, have a significant economic impact on a substantial number of small entities. The initial certification was attached to the Proposing Release as Appendix A. We requested comments on the certification, but received none.

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Commission certifies that the amendments to Form N–6 adopted as part of this Adopting Release will not have a significant economic impact on a substantial number of small entities. The amendments will revise the fee table of Form N–6 to require only disclosure of the range of total expenses for all of the Portfolio Companies offered through a variable life insurance policy, rather than line item disclosure of the range of each category of expenses as well as the range of total expenses. The economic impact of the amendments will not be significant. Form N–6 already requires variable life insurance issuers to calculate the range of total expenses for each Portfolio Company offered through a variable life insurance policy, and therefore the amendments will not impose any additional costs on issuers.

VII. Statutory Authority

The amendments to Form N–4 and Form N–6 are being adopted pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 24, 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24, 80a–29, and 80a–37].

[31] OMB approved the collection of information requirements contained in Form N–6 (OMB Control No. 3235–0503) The title for the collection of information is "Form N–6 Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Variable Life Insurance Separate Accounts Registered as Unit Trust."

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Form Amendments

For the reasons set out in the preamble, the Commission amends Chapter II, Title 17 of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The general authority citation for Part 239 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

3. Form N–4 (referenced in §§ 239.17b and 274.11c), Item 3(a), is amended by:

a. Revising Item 3(a);

b. Revising Instructions: General Instructions 1, 3, and 5;

c. Removing the heading "Portfolio Company Annual Expenses" preceding Instruction 15;

d. Removing Instructions 16 through 21;

e. Redesignating Instruction 15 as Instruction 16;

f. Adding new Instruction 15;

g. Adding the heading "Annual [Portfolio Company] Operating Expenses" to precede newly redesignated Instruction 16; and

h. Adding new Instructions 17 through 22.

The additions and revisions read as follows:

Note: The text of Form N–4 does not and these amendments will not appear in the *Code of Federal Regulations*.

Form N–4

* * * * *

Item 3. Synopsis

(a) Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 430.421(d)]:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the contract. The first table describes the fees and expenses that you will pay at the time that you buy the contract, surrender the contract, or transfer cash value between investment options. State premium taxes may also be deducted.

Contractowner Transaction Expenses:	
Sales Load Imposed on Purchases (as a percentage of purchase payments)	____ %
Deferred Sales Load (as a percentage of purchase payments or amount surrendered, as applicable)	____ %
Surrender Fees (as a percentage of amount surrendered, if applicable)	____ %
Exchange Fee	____ %

The next table describes the fees and expenses that you will pay periodically during the time that you own the contract, not including [portfolio company] fees and expenses.

[Annual] Contract Fee.	
Separate Account Annual Expenses (as a percentage of average account value)	
Mortality and Expense Risk Fees	____ %
Account Fees and Expenses	____ %
Total Separate Account Annual Expenses	____ %

The next item shows the minimum and maximum total operating expenses charged by the portfolio companies that you may pay periodically during the time that you own the contract. More detail concerning each [portfolio company's] fees and expenses is contained in the prospectus for each [portfolio company].

Total Annual [Portfolio Company] Operating Expenses	Minimum	Maximum
(Expenses that are deducted from [portfolio company] assets, including management fees, distribution [and/or service] (12b–1) fees, and other expenses)	____ %	____ %

Example

This Example is intended to help you compare the cost of investing in the contract with the cost of investing in other variable annuity contracts. These costs include contract owner transaction expenses, contract fees, separate account annual expenses, and [portfolio company] fees and expenses.

The Example assumes that you invest $10,000 in the contract for the time periods indicated. The Example also assumes that your investment has a 5% return each year and assumes the maximum fees and expenses of any of the [portfolio companies]. Although your actual costs may be higher or lower, based on these assumptions, your costs would be:

(1) If you surrender your contract at the end of the applicable time period:

1 year	3 years	5 years	10 years
$____	$____	$____	$____

(2) If you annuitize at the end of the applicable time period:

1 year	3 years	5 years	10 years
$____	$____	$____	$____

(3) If you do *not* surrender your contract:

1 year	3 years	5 years	10 years
$____	$____	$____	$____

Instructions

General Instructions

1. Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown.

* * * * *

3. A Registrant may omit captions if the Registrant does not charge the fees or expenses covered by the captions. A Registrant may modify or add captions if the captions shown do not provide an accurate description of the Registrant's fees and expenses.

* * * * *

5. In the Contractowner Transaction Expenses, [Annual] Contract Fee, and Separate Account Annual Expenses tables, the Registrant must disclose the maximum guaranteed charge, unless a specific instruction directs otherwise. The Registrant may disclose the current charge, in addition to the maximum charge, if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge. In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may

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include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges.

* * * * *

15. If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge other than annual portfolio company total operating expenses, add another caption describing it and list the (maximum) amount or basis on which the charge is deducted.

Total Annual [Portfolio Company] Operating Expenses

* * * * *

17. (a) If a Registrant has multiple sub-accounts, it should disclose the minimum and maximum "Total Annual [Portfolio Company] Operating Expenses" for any portfolio company. "Total Annual [Portfolio Company] Operating Expenses" include all expenses that are deducted from a portfolio company's assets. The amount of expenses deducted from a portfolio company's assets are the amounts shown as expenses in the portfolio company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S-X [17 CFR 210.6–07]).

(b) "Total Annual [Portfolio Company] Operating Expenses" do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any portfolio company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum "Total Annual [Portfolio Company] Operating Expenses" would have been had the extraordinary expenses been included.

18. (a) Base the percentages of "Total Annual [Portfolio Company] Operating Expenses" on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a portfolio company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the portfolio company. If the Registrant or a portfolio company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Total Annual [Portfolio Company] Operating Expenses."

(b) If there have been any changes in "Total Annual [Portfolio Company] Operating Expenses" that would materially affect the information disclosed in the table:

(i) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(ii) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(c) A change in "Total Annual [Portfolio Company] Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Total Annual [Portfolio Company] Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a portfolio company's assets.

19. A Registrant may reflect minimum and maximum actual total [portfolio company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a portfolio company.

20. A Registrant may include additional tables showing annual operating expenses separately for each portfolio company immediately following the required table of "Total Annual [Portfolio Company] Operating Expenses." The additional tables should be prepared in the format, and in accordance with the Instructions, prescribed in Item 3 of Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] for disclosing "Annual Fund Operating Expenses."

Example

21. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Separate Account Annual Expenses" remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses;

(b) Assume deduction of the maximum percentage amount of expenses shown under "Total Annual [Portfolio Company] Operating Expenses," and that this amount remains the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses. An additional example that assumes deduction of the minimum percentage amount of expenses shown under "Total Annual [Portfolio Company] Operating Expenses" may also be provided, immediately following the required expense example based on maximum portfolio company expenses. In lieu of providing the required example based on maximum portfolio company expenses, a Registrant may include separate expense examples based on the expenses of each portfolio company;

(c) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(d) For any breakpoint in any fee, assume that the amount of the Registrant's (and the portfolio company's) assets remains constant as of the level at the end of the most recently completed fiscal year;

(e) Assume no exchanges or other transactions;

(f) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Separate Account Annual Expenses," and assume that it remains the same in each year of the 1-, 3-, 5-, and 10-year periods;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon a complete surrender; and

(i) Include in the Example the information provided by the caption "If you annuitize at the end of the applicable time period" only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

22. *New Registrants.* For purposes of this Item, a "New Registrant" is a Registrant that does not include in Form N–4 financial statements reporting operating results or that includes financial statements for the Registrant's initial fiscal year reporting operating results for a period of 6 months or less.

The following Instructions apply to New Registrants:

(a) Base the percentages in "Total Annual [Portfolio Company] Operating Expenses" on payments that will be made, but include in expenses amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of expenses that are not established pursuant to contract. Disclose in a footnote to the table that "Total Annual [Portfolio Company] Operating Expenses" are based, in part, on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce the minimum and/or maximum total [portfolio company] operating expenses shown in the table. If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a portfolio company.

(c) Complete only the 1- and 3-year period portions of the Example, and estimate any [annual] contract fees collected.

* * * * *

4. Form N–6 (referenced in § 239.17c and § 274.11d), Item 3 is amended by:

a. Revising the introductory text and fee tables; and

b. Revising Instructions 4 and 5.

The revisions read as follows:

Note: The text of Form N–6 does not and these amendments will not appear in the *Code of Federal Regulations.*

Form N–6

* * * * *

Item 3. Risk/Benefit Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], after Item 2:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the Policy. The first table describes the fees and expenses that you will pay at the time that you buy the Policy, surrender the Policy, or transfer cash value between investment options.

TRANSACTION FEES

Charge	When charge is deducted	Amount deducted
Maximum Sales Charge Imposed on Premiums (Load)		
Premium Taxes		
Maximum Deferred Sales Charge (Load)		
Other Surrender Fees		
Transfer Fees		

The next table describes the fees and expenses that you will pay periodically during the time that you own the Policy, not including [Portfolio Company] fees and expenses.

PERIODIC CHARGES OTHER THAN [PORTFOLIO COMPANY] OPERATING EXPENSES

Charge	When charge is deducted	Amount deducted
Cost of Insurance*: Minimum and Maximum Charge		
Charge for a [Representative Contractowner]		
Annual Maintenance Fee		
Mortality and Expense Risk Fees		
Administrative Fees		

*[Footnote: Include disclosure required by Instruction 3(b).]

The next item shows the minimum and maximum total operating expenses charged by the portfolio companies that you may pay periodically during the time that you own the contract. More detail concerning each [Portfolio Company's] fees and expenses is contained in the prospectus for each [Portfolio Company].

Total Annual [Portfolio Company] Operating Expenses	Minimum	Maximum
(Expenses that are deducted from [Portfolio Company] assets, including management fees, distribution [and/or service] (12b–1) fees, and other expenses)	_____%	_____%

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Instructions

* * * * *

4. *Total Annual [Portfolio Company] Operating Expenses.*

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) If a registrant has multiple sub-accounts, it should disclose the minimum and maximum "Total Annual [Portfolio Company] Operating Expenses" for any Portfolio Company. "Total Annual [Portfolio Company] Operating Expenses" include all expenses that are deducted from a Portfolio Company's assets. The amount of expenses deducted from a Portfolio Company's assets are the amounts shown as expenses in the Portfolio Company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(c) "Total Annual [Portfolio Company] Operating Expenses" do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any Portfolio Company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum "Total Annual [Portfolio Company] Operating Expenses" would have been had the extraordinary expenses been included.

(d)(i) Base the percentages of "Total Annual [Portfolio Company] Operating Expenses" on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a Portfolio Company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the Portfolio Company. If the Registrant or a Portfolio Company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Total Annual [Portfolio Company] Operating Expenses."

(ii) If there have been any changes in "Total Annual [Portfolio Company] Operating Expenses" that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in "Total Annual [Portfolio Company] Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Total Annual [Portfolio Company] Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a Portfolio Company's assets.

(e) A Registrant may reflect minimum and maximum actual total [Portfolio Company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

(f) A Registrant may include additional tables showing annual operating expenses separately for each Portfolio Company immediately following the required table of "Total Annual [Portfolio Company] Operating Expenses." The additional tables should be prepared in the format, and in accordance with the Instructions, prescribed in Item 3 of Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] for disclosing "Annual Fund Operating Expenses."

5. *New Registrants.* For purposes of this Item, a "New Registrant" is a Registrant that does not include in Form N–6 financial statements reporting operating results or that includes financial statements for the Registrant's initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Registrants:

(a) Base the percentages in "Total Annual [Portfolio Company] Operating Expenses" on payments that will be made, but include in expenses amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of expenses that are not established pursuant to contract. Disclose in a footnote to the table that "Total Annual [Portfolio Company] Operating Expenses" are based, in part, on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce the minimum and/or maximum total [Portfolio Company] operating expenses shown in the table. If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

Dated: November 13, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29312 Filed 11–18–02; 8:45 am]

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Federal Register

Tuesday,
November 19, 2002

Part VII

The President

Executive Order 13276—Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region

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Presidential Documents

Title 3—

The President

Executive Order 13276 of November 15, 2002

Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and section 301 of title 3, United States Code, and in order to delegate appropriate responsibilities to Federal agencies for responding to migration of undocumented aliens in the Caribbean region, it is hereby ordered:

Section 1. *Duties and Authorities of Agency Heads.* Consistent with applicable law,

(a)(i) The Attorney General may maintain custody, at any location he deems appropriate, of any undocumented aliens he has reason to believe are seeking to enter the United States and who are interdicted or intercepted in the Caribbean region. In this regard, the Attorney General shall provide and operate a facility, or facilities, to house and provide for the needs of any such aliens. Such a facility may be located at Guantanamo Bay Naval Base or any other appropriate location.

(ii) The Attorney General may conduct any screening of such aliens that he deems appropriate, including screening to determine whether such aliens should be returned to their country of origin or transit, or whether they are persons in need of protection who should not be returned without their consent. If the Attorney General institutes such screening, then until a determination is made, the Attorney General shall provide for the custody, care, safety, transportation, and other needs of the aliens. The Attorney General shall continue to provide for the custody, care, safety, transportation, and other needs of aliens who are determined not to be persons in need of protection until such time as they are returned to their country of origin or transit.

(b) The Secretary of State shall provide for the custody, care, safety, transportation, and other needs of undocumented aliens interdicted or intercepted in the Caribbean region whom the Attorney General has identified as persons in need of protection. The Secretary of State shall provide for and execute a process for resettling such persons in need of protection, as appropriate, in countries other than their country of origin, and shall also undertake such diplomatic efforts as may be necessary to address the problem of illegal migration of aliens in the Caribbean region and to facilitate the return of those aliens who are determined not to be persons in need of protection.

(c)(i) The Secretary of Defense shall make available to the Attorney General and the Secretary of State, for the housing and care of any undocumented aliens interdicted or intercepted in the Caribbean region and taken into their custody, any facilities at Guantanamo Bay Naval Base that are excess to current military needs and the provision of which does not interfere with the operation and security of the base. The Secretary of Defense shall be responsible for providing access to such facilities and perimeter security. The Attorney General and the Secretary of State, respectively, shall be responsible for reimbursement for necessary supporting utilities.

(ii) In the event of a mass migration in the Caribbean region, the Secretary of Defense shall provide support to the Attorney General and the Secretary

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of State in carrying out the duties described in paragraphs (a) and (b) of this section regarding the custody, care, safety, transportation, and other needs of the aliens, and shall assume primary responsibility for these duties on a nonreimbursable basis as necessary to contain the threat to national security posed by the migration. The Secretary of Defense shall also provide support to the Coast Guard in carrying out the duties described in Executive Order 12807 of May 24, 1992, regarding interdiction of migrants.

Sec. 2. *Definitions.* For purposes of this order, the term "mass migration" means a migration of undocumented aliens that is of such magnitude and duration that it poses a threat to the national security of the United States, as determined by the President.

Sec. 3. *Scope.*

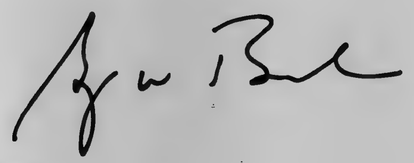
(a) Nothing in this order shall be construed to impair or otherwise affect the authorities and responsibilities set forth in Executive Order 12807 of May 24, 1992.

(b) Nothing in this order shall be construed to make reviewable in any judicial or administrative proceeding, or otherwise, any action, omission, or matter that otherwise would not be reviewable.

(c) This order is intended only to improve the management of the executive branch. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity or otherwise against the United States, its departments, agencies, entities, instrumentalities, officers, employees, or any other person.

(d) Any agency assigned any duties by this order may use the provisions of the Economy Act, 31 U.S.C. 1535 and 1536, to carry out such duties, to the extent permitted by such Act.

(e) This order shall not be construed to require any procedure to determine whether a person is a refugee or otherwise in need of protection.



THE WHITE HOUSE,
November 15, 2002.

[FR Doc. 02–29580
Filed 11–18–02; 11:24 am]
Billing code 3195–01–P

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Rules and Regulations

Federal Register
Vol. 67, No. 224
Wednesday, November 20, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH05

List of Approved Spent Fuel Storage Casks: VSC–24 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Pacific Sierra Nuclear Associates VSC–24 system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to Certificate of Compliance No. 1007. Amendment No. 4 will modify the present cask system design to permit the storage of different specific fuel control elements as integral components to fuel assemblies under a general license. Technical Specification (TS) 1.1.1 will be amended to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4, and 1.2.6 will be amended to address the additional fuel control elements approved for storage, and TS 1.2.10 will be deleted to eliminate redundant requirements for controlling moderator density.

DATES: The final rule is effective February 3, 2002, unless significant adverse comments are received by December 20, 2002. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary Safety Evaluation Report (SER) can be found under ADAMS Accession No. ML 022490171. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737or by e-mail to *pdr@nrc.gov*.

CoC No. 1007, the revised Technical Specifications (TS), the underlying SER for Amendment No. 4, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'" Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.'"

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17948), that approved the VSC–24 design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1007.

Discussion

On March 30, 2001, and as supplemented on July 26, 2001, and April 29, May 16, and August 8, 2002, BNFL Fuel Solutions Corporation submitted an application to the NRC to amend CoC No. 1007 to permit a part 72 licensee to store different specific fuel

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control elements as integral components to fuel assemblies. The certificate holder for the VSC–24 system is Pacific Sierra Nuclear Associates, which is a partnership between BNFL Fuel Solutions Corporation and Sierra Nuclear Corporation. Specifically, TS 1.1.1 will be amended to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4, and 1.2.6 will be amended to address the additional fuel control elements approved for storage; and TS 1.2.10 will be deleted to eliminate redundant requirements for controlling moderator density. The NRC staff revised TS 1.2.1 to limit the allowable fuel burnup to specifically 45 gwd/mtu, which clarified the previous ambiguous terminology. No other changes to the VSC–24 system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the VSC–24 design listing in § 72.214 by adding Amendment No. 4 to CoC No. 1007. The amendment consists of revisions to TS 1.1.1 to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s) and TS 1.2.1, 1.2.4, and 1.2.6 to address the additional fuel control elements approved for storage. In addition, TS 1.2.10 is deleted to eliminate redundant requirements for controlling moderator density. The particular TS which are changed are identified in the NRC Staff's SER for Amendment No. 4.

The amended VSC–24 system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1007 is revised indicating the addition of Amendment No. 4 and its effective date.

Procedural Background

This rule is limited to the changes contained in Amendment 4 to CoC No. 1007 and does not include other aspects of the VSC–24 system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on February 3, 2003. However, if the NRC receives significant adverse comments by December 20, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by December 20, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the VSC–24 system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the VSC–24 system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to permit a Part 72 licensee to store different specific fuel control elements as integral components to fuel assemblies. TS 1.1.1 will be amended to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4, and 1.2.6 will be amended to address the additional fuel control elements approved for storage; and TS 1.2.10 will be deleted to eliminate redundant requirements for controlling moderator density. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On April 7, 1993 (58 FR 17948), the NRC issued an amendment to Part 72 that approved the VSC–24 design by adding it to the list of NRC-approved cask designs in § 72.214. On March 30, 2001, and as supplemented on July 26, 2001, and April 29, May 16, and August 8, 2002, BNFL Fuel Solutions Corporation submitted an application to the NRC to amend CoC No. 1007 to permit a part 72 licensee to store different specific fuel control elements as integral components to fuel assemblies. TS 1.1.1 will be amended to change the flood condition velocity from 7.62 meters per second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4, and 1.2.6 will be amended to address the additional fuel control elements approved for storage; and TS 1.2.10 will be deleted to eliminate redundant requirements for controlling moderator density.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and BNFL Fuel Solutions Corporation. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.

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Initial Certificate Effective Date: May 7, 1993.

Amendment Number 1 Effective Date: May 30, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: May 21, 2001.

Amendment Number 4 Effective Date: February 3, 2003.

SAR Submitted by: Pacific Sierra Nuclear Associates.

SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.

Docket Number: 72–1007.

Certificate Expiration Date: May 7, 2013.

Model Number: VSC–24.

* * * * *

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 1st day of Nov., 2002.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–29485 Filed 11–19–02; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 366

RIN 3064–AC29

Minimum Standards of Integrity and Fitness for an FDIC Contractor

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing this rule which governs conflicts of interest, ethical responsibilities, and use of confidential information by independent contractors seeking to do business with the FDIC. This rule ensures that any individual who is performing, directly or indirectly, any function or service on behalf of the FDIC meets minimum standards of integrity and fitness. It also prohibits certain persons from performing any service on behalf of the FDIC. This rule makes four changes from the interim final rule that the FDIC published on May 15, 2002. These changes are described below in Section II of the **SUPPLEMENTARY INFORMATION.**

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Martin A. Blumenthal, Counsel, (202) 736–0359, Peter M. Somerville, Counsel, (202) 736–0110, or Thomas E. Nixon, Senior Attorney, (202) 898–8766, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

This rule sets forth integrity and fitness provisions for FDIC contractors in three areas. The first area regards those persons from whom the FDIC is prohibited from entering into a contract. The second area identifies integrity and fitness responsibilities for independent contractors. These include conflicts of interest, minimum standards of ethical responsibility, confidential information, and information that contractors must disclose to the FDIC. The last area regards a contractor's expectations, rights and obligations. These include what advice and determinations the FDIC will provide a contractor, reconsiderations and reviews of those determinations, and the possible consequences a person may face for violating the provisions of this rule.

B. Authority

The statutory authorities for adopting this rule are our general rulemaking authority found at section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); and sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4). Section 19 of the Resolution Trust Corporation Completion Act (RTCCA), Public Law 103–204, 107 Stat. 2369 (1993), required the addition of section 12(f) to the FDI Act.

We may establish other integrity and fitness policies where we determine such policies are required by law or appropriate to maintain the integrity of our programs. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this rule.

We may also, temporarily or permanently, suspend this rule or exempt a person from compliance with any part of this rule for good cause shown, in order to protect our interests or to provide an orderly transfer of services to another person.

C. Background

The contractor integrity and fitness rules, based on statutory requirements, are regulatory tools the FDIC uses to assure that certain of its contractors meet minimum standards of competence, experience, integrity and fitness. *See* Federal Home Loan Bank Act, section 21A(p)(6), as added by section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183. This statute was enacted to ensure that no person who contributed to the failure of an insured depository institution could contract with the FDIC without disclosure and considerable scrutiny.

On June 24, 1994, we published a proposed rule applicable to independent contractors (59 FR 32661–32668), as required by section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3). That rulemaking proposed standards governing conflicts of interest, ethical responsibilities, and use of confidential information. It also proposed procedures for ensuring that independent contractors meet minimum standards for competence, experience, integrity, and fitness. We received six comment letters. After careful consideration of each comment and numerous changes that the Office of Government Ethics (OGE) requested, we made appropriate modifications to the proposal resulting in the reorganization and modification of some provisions.

On March 11, 1996, we adopted an interim final rule entitled, "Contractor Conflicts of Interest", (61 FR 9590), with the concurrence of OGE. We determined that an interim final rule was appropriate in order to allow interested parties to comment on the rule while providing prompt implementation of the rule to satisfy concerns relating to the merger of the RTC into the FDIC. We received only one comment on the interim final rule and it was non-substantive.

On May 15, 2002, we published an interim final rule requesting public comment. The interim rule represented a fundamental reconsideration of our obligations under the RTCCA. We received no public comments in response to our May 2002 interim final rule.

II. Final Rule

We are adopting the May 2002 interim final rule with four minor changes. First, in the interim final rule, § 366.12(c) stated that contractors are required to disclose waste, fraud, abuse or corruption to us. We are adding to § 366.12(c) a telephone number and an email address that can be used to make such reports to the FDIC Inspector General. Second, in the interim final rule, § 366.12(d)(4) prohibited contractors from making impermissible gifts or entertainment to an FDIC employee. We are extending this prohibition to gifts made by FDIC contractors to other FDIC contractors, as well as FDIC employees. This is because there can be occasions in which FDIC contractors may make decisions on behalf of the FDIC. Third, in the interim final rule, § 366.14(f) established retention requirements for information that FDIC contractors submit to the FDIC pursuant to this rule. The interim final rule broadly described the information that must be retained as any information that the contractor relies upon regarding their compliance with part 366. The final rule clarifies that information the contractor relies upon includes information that they prepare. Finally, because the May 2002 interim final rule was unclear as to which event triggers the three year retention period, we are adding the phrase "which ever occurs last" at the end of the sentence for further clarification. As a result, § 366.12(f) will require contractors to retain any information they prepare or rely upon regarding the provisions of part 366 for a period of three years following termination or expiration and final payment of the related contract for services whichever occurs last.

III. Matters of Regulatory Procedure

A. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. This rule, which finalizes the May 2002 interim final rule, imposes no new compliance burdens on small entities within the meaning of the Regulatory Flexibility Act.

Our May 2002 interim final rule noted that we were reviewing this rule pursuant to our responsibilities under section 610 of the Regulatory Flexibility Act and requested public comment about our review. A section 610 review requires us to consider how we could minimize the economic impact of the rule on small businesses while remaining consistent with the objectives of the statute that requires the rule. Our May 2002 interim rulemaking resulted from a careful consideration of how we could minimize the burden of the 1996 rule. Based on our review under section 610, we conclude that the May 2002 rule changes should successfully reduce burden on small businesses with whom we contract and that no further changes are necessary now.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. We submitted two collections of information to OMB for review when we published the May 2002 interim final rule.

One collection is titled "Acquisition Services Information Requirements," and includes forms that we use to ensure compliance with our contractor integrity and fitness regulation and to make contracting decisions for contractors other than legal service providers. The May 2002 rule changed the definitions of some of the terms used on OMB approved contracting forms. Each of the changes reduced estimated burden on our contractors. OMB approved our changes to the information collection under control number 3064–0072, which will expire June 30, 2005.

The second collection is titled, "Forms Relating to FDIC Outside Counsel Services" and includes forms we use to ensure compliance with our contractor integrity and fitness regulation, to make contracting decisions, and to control payments to law firms and legal support service providers. The May 2002 rulemaking affected the definition of terms on one of the 13 forms in that collection and reduced the estimated burden in completing the form. OMB approved our changes to the information collection under control number 3064–0122, which will expire June 30, 2005.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

We have determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by the SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a "major rule" as defined by the SBREFA.

List of Subjects in 12 CFR Part 366

Contractor conflicts of interest, Government contracts, Reporting and recordkeeping requirement.

For the reasons set forth in the preamble, we hereby revise part 366 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 366—MINIMUM STANDARDS OF INTEGRITY AND FITNESS FOR AN FDIC CONTRACTOR

Sec.

366.0 Definitions.
366.1 What is the purpose of this part?
366.2 What is the scope of this part?
366.3 Who cannot perform contractual services for the FDIC?
366.4 When is there a pattern or practice of defalcation?
366.5 What causes a substantial loss to a federal deposit insurance fund?
366.6 How is my ownership or control determined?
366.7 Will the FDIC waive the prohibitions under § 366.3?
366.8 Who can grant a waiver of a prohibition or conflict of interest?
366.9 What other requirements could prevent me from performing contractual services for the FDIC?
366.10 When would I have a conflict of interest?
366.11 Will the FDIC waive a conflict of interest?
366.12 What are the FDIC's minimum standards of ethical responsibility?
366.13 What is my obligation regarding confidential information?
366.14 What information must I provide the FDIC?
366.15 What advice or determinations will the FDIC provide me on the applicability of this part?
366.16 When may I seek a reconsideration or review of an FDIC determination?
366.17 What are the possible consequences for violating this part?

Authority: Section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4); and section 19 of Pub. L. 103–204, 107 Stat. 2369.

§ 366.0 Definitions.

As used in this part:

(a) The word *person* refers to an individual, corporation, partnership, or other entity with a legally independent existence.

(b) The terms *we, our,* and *us* refer to the Federal Deposit Insurance Corporation (FDIC), except when acting as conservator or operator of a bridge bank.

(c) The terms *I, me, my, mine, you,* and *yourself* refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on our behalf.

(d) The phrase *insured depository institution* refers to any bank or savings

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association whose deposits are insured by the FDIC.

§ 366.1 What is the purpose of this part?

This part establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on our behalf. This part includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3), and the prohibitions and the requirements for submission of information in accordance with section 12(f)(4) of the FDI Act, 12 U.S.C. 1822(f)(4).

§ 366.2 What is the scope of this part?

(a) This part applies to a person who submits an offer to perform or performs, directly or indirectly, a contractual service or function on our behalf.

(b) This part does not apply to:

(1) An FDIC employee for the purposes of title 18, United States Code; or

(2) The FDIC when we operate an insured depository institution such as a bridge bank or conservatorship.

§ 366.3 Who cannot perform contractual services for the FDIC?

We will not enter into a contract with you to perform a service or function on our behalf, if you or any person that owns or controls you, or any entity you own or control:

(a) Has a felony conviction;

(b) Was removed from or is prohibited from participating in the affairs of an insured depository institution as a result of a federal banking agency final enforcement action;

(c) Has a pattern or practice of defalcation; or

(d) Is responsible for a substantial loss to a federal deposit insurance fund.

§ 366.4 When is there a pattern or practice of defalcation?

(a) You have a pattern or practice of defalcation under § 366.3(c) when you, any person that owns or controls you, or any entity you own or control has a legal responsibility for the payment on at least two obligations that are:

(1) To one or more insured depository institutions;

(2) More than 90 days delinquent in the payment of principal, interest, or a combination thereof; and

(3) More than $50,000 each.

(b) The following are examples of when you have or do not have a pattern or practice of defalcation. These examples are not inclusive.

(1) You have five loans at insured depository institutions. Three of them are 90 days past due. Two of the three loans have outstanding balances of more than $50,000 each. You have a pattern or practice of defalcation.

(2) You have five loans at insured depository institutions. Two of them are 90 days past due. One of the two is with ABC Bank for $170,000. The other one is with XYZ bank for $60,000. You have a pattern or practice of defalcation.

(3) You have five loans at insured depository institutions. Three of them are 90 days past due. One of the three has an outstanding balance of more than $50,000. The other two have outstanding balances of less than $50,000. You do not have a pattern or practice of defalcation.

(4) You have five loans at insured depository institutions. Three of them have outstanding balances of more than $50,000. Two of those three were 90 days past due but are now current. You do not have a pattern or practice of defalcation.

§ 366.5 What causes a substantial loss to a federal deposit insurance fund?

You cause a substantial loss to a federal deposit insurance fund under § 366.3(d) when you, or any person that owns or controls you, or any entity you own or control has:

(a) An obligation to us that is delinquent for 90 days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than $50,000;

(b) An unpaid final judgment in our favor that is in excess of $50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;

(c) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of $50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or

(d) A loss to us that is in excess of $50,000 that we report on IRS Form 1099–C, Information Reporting for Discharge of Indebtedness.

§ 366.6 How is my ownership or control determined?

(a) Your ownership or control is determined on a case-by-case basis. Your ownership or control depends on the specific facts of your situation and the particular industry and legal entity involved. You must provide documentation to us to use in determining your ownership or control.

(b) The interest of a spouse or other family member in the same organization is imputed to you in determining your ownership or control.

(c) The following are examples of when your ownership or control may or may not exist. These examples are not inclusive.

(1) You have control if you are the president or chief executive officer of an organization.

(2) You have ownership or control if you are a partner in a small law firm. You might not have ownership or control if you are a partner in a large national law firm.

(3) You have control if you are a general partner of a limited partnership. You have ownership or control if you have a limited partnership interest of 25 percent or more.

(4) You have ownership or control if you have the:

(i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;

(ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or

(iii) Ability to exercise a controlling influence over the company's management and policies.

§ 366.7 Will the FDIC waive the prohibitions under § 366.3?

We may waive the prohibitions for entities other than individuals for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors. The statute does not allow us to waive the prohibitions for individuals.

§ 366.8 Who can grant a waiver of a prohibition or conflict of interest?

The FDIC's Board of Directors delegates to the Chairman, or his designee, authority to issue waivers and implement procedures for part 366.

§ 366.9 What other requirements could prevent me from performing contractual services for the FDIC?

You must avoid a conflict of interest, be ethically responsible, and maintain confidential information as described in §§ 366.10 through 366.13. You must also provide us with the information we require in § 366.14. Failure to meet these requirements may prevent you from contracting with us.

§ 366.10 When would I have a conflict of interest?

(a) You have a conflict of interest when you, any person that owns or controls you, or any entity you own or control:

(1) Has a personal, business, or financial interest or relationship that relates to the services you perform under the contract;

(2) Is a party to litigation against us, or represents a party that is;

(3) Submits an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition; or

(4) Engages in an activity that would cause us to question the integrity of the service you provided, are providing or offer to provide us, or impairs your independence.

(b) The following are examples of a conflict of interest. These examples are not inclusive.

(1) You submit an offer to perform property management services for us and you own or manage a competing property.

(2) You audit a business under a contract with us and you or a partner in your firm has an ownership interest in that business.

(3) You perform loan services on a pool of loans we are selling, and you submit a bid to purchase one or more of the loans in the pool.

(4) You audit your own work or provide nonaudit services that are significant or material to the subject matter of the audit.

§ 366.11 Will the FDIC waive a conflict of interest?

(a) We may waive a conflict of interest for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors.

(b) The following are examples of when we may grant you a waiver for a conflict of interest. These examples are not inclusive.

(1) We may grant a waiver to an outside counsel who has a representational conflict. We will weigh all relevant facts and circumstances in making our determination.

(2) We may grant a waiver to allow a contractor to acquire an asset from us who is providing or has provided services on that asset. We will consider whether granting the waiver will adversely affect the fairness of the sale, the type of services provided, and other facts and circumstances relevant to the sale in making our determination.

§ 366.12 What are the FDIC's minimum standards of ethical responsibility?

(a) You and any person who performs services for us must not provide preferential treatment to any person in your dealings with the public on our behalf.

(b) You must ensure that any person you employ to perform services for us is informed about their responsibilities under this part.

(c) You must disclose to us waste, fraud, abuse or corruption. Contact the Inspector General at 1–800–964–FDIC or *Ighotline@fdic.gov*.

(d) You and any person who performs contract services to us must not:

(1) Accept or solicit for yourself or others any favor, gift, or other item of monetary value from any person who you reasonably believe is seeking an official action from you on our behalf, or has an interest that the performance or nonperformance of your duties to us may substantially affect;

(2) Use or allow the use of our property, except as specified in the contract;

(3) Make an unauthorized promise or commitment on our behalf; or

(4) Provide impermissible gifts or entertainment to an FDIC employee or other person providing services to us.

(e) The following are examples of when you are engaging in unethical behavior. These examples are not inclusive.

(1) Using government resources, including our Internet connection, to conduct any business that is unrelated to the performance of your contract with us.

(2) Submitting false invoices or claims, or making misleading or false statements.

(3) Committing us to forgive or restructure a debt or portion of a debt, unless we provide you with written authority to do so.

§ 366.13 What is my obligation regarding confidential information?

(a) Neither you nor any person who performs services on your behalf may use or disclose information obtained from us or a third party in connection with an FDIC contract, unless:

(1) The contract allows or we authorize the use or disclosure;

(2) The information is generally available to the general public; or

(3) We make the information available to the general public.

(b) The following are examples of when your use of confidential information is inappropriate. These examples are not inclusive.

(1) Disclosing information about an asset, such as internal asset valuations, appraisals or environmental reports, except as part of authorized due diligence materials, to a prospective asset purchaser.

(2) Disclosing a borrower's or guarantor's personal or financial information, such as a financial statement to an unauthorized party.

§ 366.14 What information must I provide the FDIC?

You must:

(a) Certify in writing that you can perform services for us under § 366.3 and have no conflict of interest under § 366.10(a).

(b) Submit a list and description of any instance during the preceding five years in which you, any person that owns or controls you, or any entity you own or control, defaulted on a material obligation to an insured depository institution. A default on a material obligation occurs when a loan or advance with an outstanding balance of more than $50,000 is or was delinquent for 90 days or more.

(c) Notify us within 10 business days after you become aware that you, or any person you employ to perform services for us, are not in compliance with this part. Your notice must include a detailed description of the facts of the situation and how you intend to resolve the matter.

(d) Agree in writing that you will employ only persons who meet the requirements of this part to perform services on our behalf.

(e) Comply with any request from us for information.

(f) Retain any information you prepare or rely upon regarding the provisions of this part for a period of three years following termination or expiration and final payment of the related contract for services whichever occurs last.

§ 366.15 What advice or determinations will the FDIC provide me on the applicability of this part?

(a) We are available to you for consultation on those determinations you are responsible for making under this part, including those with respect to any person you employ or engage to perform services for us.

(b) We will determine if this part prohibits you from performing services for us prior to contract award, after contract award, and during the performance of a contract.

(c) We may determine what corrective action you must take.

(d) We may grant you a waiver for good cause shown where provided for under this part.

§ 366.16 When may I seek a reconsideration or review of an FDIC determination?

(a) You may seek reconsideration or review of our initial determination by sending a written request to the individual who issued you the initial decision.

(b) You must provide new information or explain a change in circumstances for our reconsideration of an initial decision. The individual who issued you the initial decision may either make a new determination or refer your request to a higher authority for review.

(c) You must provide an explanation of how you perceive that we misapplied

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this part that sets forth the legal or factual errors for our review of an initial decision.

§ 366.17 What are the possible consequences for violating this part?

Depending on the circumstances, violations of this part may result in rescission or termination of a contract, as well as administrative, civil, or criminal sanctions.

Dated in Washington, DC, this 12th day of November, 2002.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–29407 Filed 11–19–02; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–48–AD; Amendment 39–12954; AD 2002–23–10]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Piaggio Aero Industries S.p.A. Model P–180 airplanes. This AD requires you to inspect for proper clearance between the first outboard flap control rod and the bleed air duct for interference, replace worn or damaged parts or correct interference, and adjust clearance. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to detect and correct interference or damage of the first outboard flap control rod and bleed air duct, which could result in failure of the flap control rod. Such failure could lead to loss of airplane control.

DATES: This AD becomes effective on December 17, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of December 17, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before January 22, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–48–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Piaggio Aero Industries S.p.A., Via Cibrario 4, 16154 Genoa, Italy. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on all Piaggio Model P–180 airplanes. The ENAC reports an incorrect installation with insufficient clearance between the first outboard flap control rod and the bleed air duct. This caused interference with consequent loss of flap control.

What Are the Consequences If the Condition Is Not Corrected?

The failure of the flap control rod could lead to loss of airplane control.

Is There Service Information That Applies to This Subject?

PIAGGIO has issued Alert Service Bulletin No. 80–0182, Original Issue: June 7, 2002.

The service bulletin includes procedures for:

—Inspecting for interference between the first outboard flap control rod and bleed air duct, and inspecting for damage or wear in this area;

—Replacing damaged parts or correcting interference; and

—Correcting where clearance is less than the correct value, but no interference is found.

What Action Did the ENAC Take?

The ENAC classified this service bulletin as mandatory and issued Italian AD Number 2002–442, dated August 22, 2002, in order to ensure the continued airworthiness of these airplanes in Italy.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept us informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Piaggio Model P–180 airplanes of the same type design;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the actions in the previously-referenced service bulletin.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in failure of the flap control rod and loss of airplane control, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–48–AD." We will date stamp and mail the postcard back to you.

Compliance Time of this AD

What Is the Compliance Time of This AD?

The compliance time of this AD is within the next 15 days after the effective date of the AD.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The compliance of this AD is presented in calendar time instead of hours TIS because the affected first outboard flap control rod and bleed air duct components are unsafe as a result of an incorrect installation. The problem has the same chance of existing on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, we believe that a compliance time of 15 days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–23–10 Piaggio Aero Industries S.P.A.: Amendment 39–12954; Docket No. 2002–CE–48–AD

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct interference or damage of the first outboard flap control rod and bleed air duct, which could result in failure of the flap control rod. Such failure could lead to loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the first outboard flap control rod part number (P/N) C132761–1, and the bleed air ducts, P/N 80–247475–405 (left-hand wing), and P/N 80–247475–407 (right-hand wing) for required clearance and wear/damage.	Within the next 15 days after December 17, 2002 (the effective date of the AD), unless already accomplished.	In accordance with the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Alert Service Bulletin No.: ASB–80–0182, Original Issue: June 7, 2002.
(2) If interference or wear/damage is found during the inspection required in paragraph (d)(1) of this AD, correct the interference and replace any damaged parts.	Accomplish any necessary replacements or correct interference prior to further flight after the inspection required by paragraph (d)(1) of this AD, unless already accomplished.	In accordance with the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Alert Service Bulletin No.: ASB–80–0182, Original Issue: June 7, 2002, and the applicable maintenance manual.

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Actions	Compliance	Procedures
(3) If neither wear/damage nor interference is found but the clearance between the first outboard flap control rod and bleed air duct on both the left- and right-hand side is less than the correct value, adjust to the correct value, adjust to the correct value specified in the service bulletin.	Accomplish any necessary adjustment prior to further flight after the inspection required by paragraph (d)(1) of this AD, unless already accomplished.	In accordance with the Accomplishment instructions in Piaggio Aero Industries S.p.A. Alert Service Bulletin No.: ASB–80–0182, Original Issue: June 7, 2002, and the applicable maintenance manual.
(4) If no wear/damage or interference is found and the clearance between the first outboard flap control rod and bleed air duct on both the left- and right-hand side is correct, no further action is required.	Not Applicable	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Piaggio Aero Industries S.p.A. Alert Service Bulletin No. 80–0182, dated June 7, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy. You may view copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 17, 2002.

Note 2: The subject of this AD is addressed in Italian AD No. 2002–442, issued August 22, 2002.

Issued in Kansas City, Missouri, on November 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29133 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–21–AD; Amendment 39–12955; AD 2002–23–11]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 200, 300, and 1900 Series, and Models F90 and A100–1 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) 200, 300, and 1900 series, and Models F90 and A100–1 airplanes. This AD requires you to check the airplane logbook to determine if the elevator(s) has/have been removed from the airplane. If the elevator(s) has/have been removed, this AD also requires you to inspect the elevator balance weight attachment screws for correct length, and, if necessary, install new bolts that are of improved design and rebalance the elevator, depending on the results of the inspection. This AD is the result of the elevator balance weight attachment screws and balance weights being improperly installed when balancing the elevator after it had been removed for repair or repainting. The actions specified by this AD are intended to prevent the balance weight attachment screws from becoming loose. Loose screws could come into contact and interfere with the horizontal stabilizer. This interference could restrict elevator movement and result in loss of elevator pitch control.

DATES: This AD becomes effective on January 10, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 10, 2003.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. 9709 E. Central, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Raytheon notified FAA of three incidents in which the elevator jammed during takeoff and landing on Models 200, B300, and 1900C airplanes. Investigations showed the cause for the elevator to jam was that the attachment screws and balance weights were not properly installed when the elevators were balanced after they were removed for repair or repainting.

Improperly installed balance weight attachment screws could result in the screws becoming loose and contacting and interfering with the horizontal stabilizer. Interference with the horizontal stabilizer could result in restricted elevator movement.

What Is the Potential Impact if FAA Took no Action?

If this condition is not detected and corrected, loose screws could interfere with the horizontal stabilizer, which could cause restricted elevator movement. This condition could result in loss of elevator pitch control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon 200, 300, and 1900 series, and Models F90 and A100–1 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 17, 2002 (67 FR 46928). The NPRM proposed to require you to check the airplane logbook to determine if the elevator(s) has/have been removed from the airplane. If the elevator(s) has/have been removed, the NPRM would also require you to inspect the elevator balance weight attachment screws for correct length, and, if necessary, install new bolts that are of improved design and rebalance the elevator, depending on the results of the inspection.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response to comment:

Comment Issue: Replace All Elevator Balance Weight Attachment Screws

What Is the Commenter's Concern?

The commenter states that if the purpose of the proposed AD is to prevent the elevator balance weight attachment screws from becoming loose, then all elevator balance weight attachment screws should be replaced with the new bolts, or at the very least, when the elevators are removed for any reason.

What Is FAA's Response to the Concern?

We do not concur with the commenter. According to reports and service history, only elevators that were removed and rebalanced (such as would occur after repainting) were reinstalled with incorrect length screws. We have not received any reports of elevator balance weight attachment screws becoming loose on airplanes in which an elevator had not been removed and rebalanced.

Unless an elevator has been removed and rebalancing is necessary, we have no justification for replacing the elevator balance weight attachment screws with the new bolts when an elevator is removed and reinstalled and rebalancing is not necessary.

In paragraph (d)(5) of the proposed AD, we address installing the new balance weight attachment bolts any time an elevator is removed and rebalancing is necessary.

We have not changed the final rule AD based on this comment.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2,334 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/operators of the Affected Airplanes?

We estimate the following costs to accomplish the check of the airplane logbook:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	None required	$60	$140,040

We estimate the following costs to accomplish the inspection of the elevator balance weight attachment screws that will be required based on the results of the logbook check. We have no way of determining the number of airplanes that will need such inspection:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 = $120	None required	$120

We estimate the following costs to accomplish the replacement of the elevator balance weight attachment screws that will be required based on the results of the inspection for airplanes in which the logbook check reveals that further inspection is necessary. We have no way of determining the number of airplanes that will need such replacements:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	$16 per bolt × 2 bolts per elevator = $32	$92

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Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–23–11 Raytheon Aircraft Company: Amendment 39–12955; Docket No. 2001–CE–21–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) F90	LA–2 through LA–236
(2) A100–1 (U–21J)	BB–3 through BB–5
(3) A200 (C–12C)	BC–1 through BC–75 and BD–1 through BD–30
(4) A200C (UC–12B)	BJ–1 through BJ–66
(5) A200CT (C–12D), (C–12F), (RC–12D), (FWC–12D), (RC–12G), (RC–12H), (RC–12K), or (RC–12P).	BP–1, BP–7 through BP–11, BP–22, BP–24 through BP–63, FC–1 through FC–3, GR–1 through GR–19, FE–1 through FE–9, FE–25 through FE–36
(6) B200	BB–734, BB–793, BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, and BB–913 through BB–1652
(7) B200C	BL–37 through BL–57, BL–61 through BL–72, BL–124 through BL–140
(8) B200C (C–12F), (C–12R), (UC–12M), or (UC–12F)	BL–73 through BL–112, BL–118 through BL–123, BP–64 through BP–71, BU–1 through BU–12, BV–1 through BV–12, and BW–1 through BW–29
(9) B200CT	BN–2 through BN–4, FG–1 and FG–2
(10) B200T and 200T	BT–1 through BT–38
(11) 200	BB–2, BB–6 through BB–733, BB–735 through BB–792, BB–794 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912
(12) 200C	BL–1 through BL–23 and BL–25 through BL–36
(13) 200CT	BN–1
(14) 300 and 300LW	FA–1 through FA–230 and FF–1 through FF–19
(15) B300	FL–1 through FL–241
(16) B300C	FM–1 through FM–9 and FN–1
(17) 1900	UA–2 and UA–3
(18) 1900C	UB–1 through UB–74 and UC–1 through UC–174
(19) 1900C(C–12J)	UD–1 through UD–6
(20) 1900D	UE–1 through UE–358

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the balance weight attachment screws from becoming loose. Loose screws could come into contact and interfere with the horizontal stabilizer. This interference could restrict elevator movement and result in loss of elevator pitch control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Check the airplane logbook to determine whether the elevator(s) has/have been removed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.	Within the next 200 hours time-in-service (TIS) after January 10, 2003 (the effective date of this AD).	No special procedures required to check the logbook. Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, references this airplane logbook check.

Actions	Compliance	Procedures
(2) If, by checking the airplane logbook: (i) the pilot can positively show that both elevators have never been removed, then the requirements of paragraphs (d)(2)(ii) and (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). (ii) the pilot identifies that the elevator(s) has/have been removed, or if complete records of elevator(s) do not exist, inspect the elevator balance weight attachment screws to determine if they are the correct length.	Within the next 200 hours time-in-service (TIS) after January 10, 2003, (the effective date of this AD).	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001.
(3) If, during the inspection required in paragraph (d)(2)(ii) of this AD, the elevator balance weight attachment screws are found to be the correct length, paragraph (d)(4) of this AD does not apply.	Not applicable	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1 Revised: September, 2001.
(4) If, during the inspection required in paragraph (d)(2)(ii) of this AD, the elevator balance weight attachment screw(s) is/are found to be the incorrect length, remove and rebalance the elevator(s) by installing the balance weights with the appropriate new elevator balance weight attachment bolts, part number (P/N) in the range of NAS6703HU12 through NAS6703HU22, that have drilled head and are secured with safety wire, and re-install the elevator.	Prior to further flight after the inspection required in paragraph (d)(2)(ii) of this AD.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, and the applicable maintenance manual.
(5) Do not install, on any affected airplane, an elevator that has been rebalanced unless it has been rebalanced by installing the balance weights with the appropriate new elevator balance weight attachment bolts, P/N in the range of NAS6703HU12 through NAS6703HU22, that have drilled heads and are secured with safety wire.	As of January 10, 2003 (the effective date of this AD).	Not applicable.

Note 1: The compliance times specified in Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001, are different from those required by this AD. The compliance times in this AD take precedence over those in the service bulletin.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 27–3187, Rev. 1, Revised: September, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 10, 2003.

Issued in Kansas City, Missouri, on November 12, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29132 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–50–AD; Amendment 39–12961; AD 2002–23–07]

RIN 2120–AA64

Airworthiness Directives; Cameron Balloons Ltd. (Sky Balloons) Mk1 (BR1) & Mk2 (Mistral) Burners

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all aircraft (specifically balloons) that incorporate certain Cameron Balloons Ltd. (Sky Balloons) Mk1 (BR1) & Mk2 (Mistral) burners. This AD requires you to replace the valve stems of the main blast, liquid fire, and pilot light valves. This AD is the result of mandatory continuing airworthiness information (MCAI)

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issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to correct the mechanical failure of the valve stem/seat pinned joint, which could result in a propane vapor leak. Such failure could lead to a propane explosion and fire.

DATES: This AD becomes effective on January 7, 2003.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of January 7, 2003.

ADDRESSES: You may get the service information referenced in this AD from Cameron Balloons Ltd. (Sky Balloons), St. Johns Street, Bedminster, Bristol; BS3 4NH; telephone: +44 (0)117 9637216; facsimile: +44 (0)177 966168; or Cameron Balloons, PO Box 3672, Ann Arbor, Michigan 46106; telephone: (734) 426–5525; facsimile: (734) 426–5026. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–50–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on aircraft (specifically balloons) that incorporate certain Cameron Balloons Ltd. (Sky Balloons) Mk1 (BR1) & Mk2 (Mistral) burners. The CAA reports there have been reports of mechanical failure of the valve stem/seat pinned joint. This could result in a propane vapor leak.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could lead to a propane explosion and fire.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all aircraft (specifically balloons) that incorporate certain Cameron Balloons Ltd. (Sky Balloons) Mk1 (BR1) & Mk2 (Mistral) burners. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 13, 2002 (67 FR 57992). The NPRM proposed to require you to replace the valve stems in the main blast, liquid fire, and pilot light valves.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Aircraft Does This AD Impact?

We estimate that this AD affects 100 aircraft (specifically balloons) in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Aircraft?

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per aircraft	Total cost on U.S. operators
1 workhour × $60 per hour = $60	$35 per burner	$60 + $35 = $95	$95 × 100 = $9,500

Why Is a Compliance of 20 Hours Time-in-Service (TIS) Used for the Actions of This AD?

Normally, FAA uses a 20-hour TIS compliance time for urgent safety of flight conditions. However, balloon operation varies among operators. It might take operators between 3 months to 12 months or more to accumulate 20 hours TIS. For this reason, FAA has determined that compliance time of this AD should be 20 hours TIS to ensure this condition is corrected in a timely manner but does not unduly penalize operators.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–23–07 Cameron Balloons Ltd. (Sky Balloons): Amendment 39–12951; Docket No. 2000–CE–50–AD.

(a) *What aircraft are affected by this AD?* This AD affects any aircraft (specifically balloons), certificated in any category, that incorporate at least one of the following burners:

Model	Serial Nos.
Mk1 (BR1)	001 through 098, 100, and 101.
Mk2 (Mistral) ..	001 through 098, 100, and 101.

(b) *Who must comply with this AD?* Anyone who wishes to operate any aircraft (specifically balloons) with the equipment identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the mechanical failure of the valve stem/seat pinned joint, which could result in a propane vapor leak. Such failure could lead to a propane explosion and fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) On the main blast, liquid fire, and pilot light valves of the Mk1 (BR1) and Mk2 (Mistral) burners, replace: (i) Valve stem part number (P/N) A4/BR1/2000/012 with a new improved-design valve, P/N CB6425; (ii) Valve stem P/N A4/BR2/2000/006 with a new improved-design valve, P/N CB6426; and (iii) Rubber sealing ring with O-ring P/N BS1806–008.	Within 20 hours time-in-service after January 7, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Cameron Balloons LTD (Sky Balloons) Service Bulletin No. SB10, Issue A, dated May 12, 2000.
(2) Only install: (i) Valves that are P/N CB6425 and P/N CB6426, or FAA-approved equivalent P/Ns; and (ii) O-ring P/N BS1806–008, or FAA-approved equivalent P/N.	As of January 7, 2003 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each aircraft (specifically balloons) with a Cameron Balloons Ltd. (Sky Balloons) Mk1 or Mk2 burner identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft (specifically balloons) that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

(g) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cameron Balloons LTD (Sky Balloons) Service Bulletin No. SB10, Issue A, dated May 12, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Cameron Balloons Ltd. (Sky Balloons), St. Johns Street, Bedminster, Bristol; BS3 4NH; telephone: +44 (0)117 9637216; facsimile: +44 (0)177 966168; or Cameron Balloons, PO Box 3672, Ann Arbor, Michigan 46106; telephone: (734) 426–5525; facsimile: (734) 426–5026. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in British AD 003–05–2000, dated May 31, 2000.

(h) *When does this amendment become effective?* This amendment becomes effective on January 7, 2003.

Issued in Kansas City, Missouri, on November 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29131 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–26–AD; Amendment 39–12947; AD 2002–23–03]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model MD900 helicopters that requires inspecting and, if necessary, repairing the longitudinal drive link (drive link) and modifying certain nonrotating swashplate (swashplate) assemblies. This AD also requires recording compliance with the AD on a component history card or equivalent record. This amendment is prompted by reports of damage to the drive link assembly caused by the sharp inner edge of the bushing in the swashplate assembly. The actions specified by this AD are intended to prevent damage to the drive link, loss of control of the main rotor system, and subsequent loss of control of the helicopter.

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DATES: Effective December 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at *www.mdhelicopters.com*. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for certain MDHI Model MD900 helicopters was published in the **Federal Register** on May 29, 2002 (67 FR 37356). That action proposed to require modifying each swashplate assembly, part number (P/N) 900C2010192–105, –107, and –109. That action also proposed dye-penetrant inspecting for gouging and cracking and, if necessary, repairing the drive link assembly, P/N 900C2010212–101. Recording compliance with the AD on the component history card or equivalent record was also proposed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with minor changes in paragraph (b) and Note 2 to further clarify that the dye-penetrant inspection required after modifying the nonrotating swashplate is required before further flight. The dye-penetrant inspection is required whether the drive-link assembly has been dye-penetrant inspected previously. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 28 helicopters of U.S. registry, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1164 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $35,952.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–23–03 MD Helicopters, Inc.: Amendment 39–12947. Docket No. 2001–SW–26–AD.

Applicability: Model MD900 helicopters, serial numbers 0008 through 0068, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated.

To prevent damage to the longitudinal drive link (drive link), loss of control of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) or 3 months, whichever occurs first, unless previously accomplished, modify the nonrotating swashplate assembly, part number (P/N) 900C2010192–105, –107, or –109, in accordance with the Accomplishment Instructions, paragraphs 2.A.(1). and 2.A.(2)., of MD Helicopters Service Bulletin SB900–078, dated April 23, 2001 (SB).

(b) After modifying the nonrotating swashplate assembly, P/N 900C2010192–105, –107 or –109, in accordance with paragraph (a) of this AD, before further flight, dye-penetrant inspect the drive link assembly, P/N 900C2010212–101, for gouging or cracking in accordance with the Accomplishment Instructions, paragraph 2.B.(1). and 2.B.(2). of the SB, except that returning cracked parts to MDHI is not required by this AD.

(1) If a crack is found, before further flight, replace the drive link assembly, P/N 900C2010212–101, with an airworthy drive link assembly.

(2) If gouging is found without a crack, before further flight, rework the drive link assembly, P/N 900C2010212–101, in accordance with the Accomplishment Instructions, paragraph 2.B.(3). of the SB.

Note 2: Even if you have previously dye-penetrant inspected the drive link assembly, you must accomplish the inspection required by paragraph (b) of this AD after modifying the swashplate assembly in accordance with paragraph (a) of this AD.

(c) Record compliance with this AD on the component history card or equivalent record for the nonrotating swashplate assembly.

(d) Accomplishing the actions required by paragraphs (a) and (b) of this AD is terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspection and modification shall be done in accordance with the Accomplishment Instructions, paragraphs 2.A.(1)., 2.A.(2)., 2.B.(1)., 2.B.(2)., and 2.B.(3). of MD Helicopters Service Bulletin SB900–078, dated April 23, 2001 (SB). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at *www.mdhelicopters.com*. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(h) This amendment becomes effective on December 26, 2002.

Issued in Fort Worth, Texas, on November 6, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–29156 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–218–AD; Amendment 39–12949; AD 2002–23–05]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 750 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 750 airplanes, that requires replacement of reset circuit breakers for the auxiliary hydraulic pump system and the King KHF 950 high frequency communication system(s) with new circuit breakers. This amendment is prompted by a report from the airplane manufacturer indicating that the trip levels for the reset circuit breakers installed in the auxiliary hydraulic pump system and the King KHF 950 high frequency system(s) are too high, which can prevent corresponding high current remote control circuit breakers from tripping when excessive electrical loads are present. The actions specified by this AD are intended to prevent overloading of the affected airplane electrical wiring and circuits, which could result in a fire.

DATES: Effective December 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Cessna Aircraft Co., PO Box 7706, Wichita, Kansas 67277. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jose Flores, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4133; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Cessna Model 750 airplanes was published in the **Federal Register** on November 4, 1999 (64 FR 60136). That action proposed to require replacement of reset circuit breakers for the auxiliary hydraulic pump system and the King KHF 950 high frequency communication system(s) with new circuit breakers.

Comment

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Withdraw Proposed AD

One commenter, the airplane manufacturer, states that it has verified that 100 percent of the affected Cessna Model 750 airplanes have done the replacement required by the proposed AD per Cessna Service Bulletin SB750–24–15, dated May 7, 1999 (which is referenced as an acceptable means of compliance in the proposed AD). The commenter adds that "production aircraft units; 750–0073 through 750–0100 received replacement circuit breakers by disposition," and that this change was serialized on airplanes having serial number 750–0101 in production, with the incorporation of the split bus.

From this comment, the FAA infers that the commenter is requesting that the proposed AD be withdrawn. We do not agree. The airplane manufacturer provided no data that all affected airplanes, worldwide, have had the required replacement incorporated; therefore, this AD is necessary to address the identified unsafe condition on the affected airplanes.

Because the language in Note 2 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (b) of this final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 82 airplanes of the affected design in the worldwide fleet. The FAA estimates that 80 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. The airplane manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the costs of those parts are not attributable to this AD. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $14,400, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for parts and labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

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Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–23–05 Cessna Aircraft Company: Amendment 39–12949. Docket 99–NM–218–AD.

Applicability: Model 750 airplanes, serial numbers–0001 through–0100 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overloading of certain airplane electrical wiring and circuits, which could result in a fire, accomplish the following:

Replacement

(a) Within 90 days after the effective date of this AD, replace the 5.0–ampere reset circuit breakers for the auxiliary hydraulic pump system and the King KHF 950 high frequency communication system(s) with 0.5–ampere reset circuit breakers, in accordance with Cessna Service Bulletin SB750–24–15, Revision 1, dated May 24, 1999.

(b) Circuit breaker replacement accomplished prior to the effective date of this AD in accordance with Cessna Service Bulletin SB750–24–15, dated May 7, 1999, is considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Cessna Service Bulletin SB750–24–15, Revision 1, including Supplemental Data, Revision A, dated May 24, 1999. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Co., PO Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 26, 2002.

Issued in Renton, Washington, on November 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29119 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–13–AD; Amendment 39–12946; AD 2002–23–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–8C1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness (AD), that is applicable to General Electric Company CF34–8C1 turbofan engines. This amendment requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment also requires an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. Air carriers with an approved continuous airworthiness maintenance program will be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual, or establish an acceptable alternate method of record keeping. This amendment is prompted by the need to require enhanced inspection of selected critical life-limited parts of CF34–8C1 turbofan engines at each piece-part exposure. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective December 26, 2002.

ADDRESSES: The information contained in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to General Electric Company CF34–8C1 turbofan engines was published in the **Federal Register** on July 10, 2002 (67 FR 45675). That action proposed to require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. That action also proposed that air carriers with an approved continuous airworthiness maintenance program would be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual, or establish an acceptable alternate method of record keeping.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter expresses concern that compliance with this amendment will require removal of coatings on four parts located in noncritical areas. These include the HPT outer torque coupling, HPT shaft, HPC aft shaft spool and the HPC discharge rotating seal listed in Table 805 of the proposal. The FAA agrees that it is unnecesssary to remove the coating on these four parts to meet the intent of the enhanced inspection procedures specified in this AD. Table 805 has been changed accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

Since this proposal was published in July of 2002, additional aircraft have been added to the domestic and worldwide fleet. Therefore, the numbers cited in the Economic Analysis have also increased.

There are approximately 104 General Electric Company CF34–8C1 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 60 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 75 work hours per engine to perform the required actions, and that the average labor rate is $60 per work hour. Using average shop visitation rates, five engines are expected to be affected per year. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $22,500 per year.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–23–02 General Electric Company: Amendment 39–12946. Docket No. 2002–NE–13–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company CF34–8C1 turbofan engines. These engines are installed on, but not limited to, Bombardier Aerospace CRJ700 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the manufacturer's Engine Manual (EM), GEK 105091 and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the parts listed in the following Table 805 at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

TABLE 801.—MANDATORY INSPECTION REQUIREMENTS

Part nomenclature	Manual/Chapter Section /Subject	Mandatory Inspection
Fan Disk	72–21–15, INSPECTION	All areas (FPI).[1] Bores (ECI).[2]
Fan Drive Shaft	72–22–00, INSPECTION	All areas (FPI).[1]

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TABLE 801.—MANDATORY INSPECTION REQUIREMENTS—Continued

Part nomenclature	Manual/Chapter Section /Subject	Mandatory Inspection
Stage 1 High Pressure Turbine (HPT) Rotor Disk	72–51–06, INSPECTION	All areas (FPI).[1] Bores (ECI).[2] Boltholes (ECI).[2] Air Holes (ECI).[2]
HPT Rotor Outer Torque Coupling	72–51–10, INSPECTION	All non-coated areas (FPI).[1] Bores (ECI).[2]
Stage 2 HPT Rotor Disk	72–51–14, INSPECTION	All areas (FPI).[1] Bores (ECI).[2]
HPT Shaft	72–51–03, INSPECTION	All non-coated areas (FPI).[1]
Stage 1 and Stage 2 High Pressure Compressor (HPC) Rotor Blisks.	72–33–01, INSPECTION	All areas (FPI).[1]
HPC Forward Shaft	72–33–02, INSPECTION	All areas (FPI).[1]
Stage 3 HPC Rotor Blisk	72–33–03, INSPECTION	All areas (FPI).[1]
HPC Aft Shaft Spool	72–33–05, INSPECTION	All non-coated areas (FPI).[1]
HPC Discharge Rotating Seal	72–33–08, INSPECTION	All non-coated areas (FPI).[1]
Stage 3 Low Pressure Turbine (LPT) Rotor Disk	72–57–10, INSPECTION	All areas (FPI).[1]
Stage 4 LPT Rotor Disk	72–57–16, INSPECTION	All areas (FPI).[1]
Rear LPT Shaft	72–57–23, INSPECTION	All areas (FPI).[1]
Stage 5 LPT Rotor Disk	72–57–20, INSPECTION	All areas (FPI).[1]
Stage 6 LPT Rotor Disk	72–57–28, INSPECTION	All areas (FPI).[1]

[1] FPI = Fluorescent Penetrant Inspection Method
[2] ECI = Eddy Current Inspection Method

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered at "piece-part opportunity", when it is completely disassembled in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the TLS of the GE CF34–8C1 EM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) must maintain records of the mandatory inspections that result from revising the CF34 Engine Maintenance Program and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)). However, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34–8C1 Engine Manual.

Effective Date

(f) This amendment becomes effective on December 26, 2002.

Issued in Burlington, Massachusetts, on November 7, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29355 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM02–3–000; Order 627]

18 CFR Part 101,201, and 352

Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; notice of correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of November 6, 2002, a final rule amending its regulations to update its accounting and financial reporting requirements under its Uniform Systems of Accounts. The effective date is incorrect as published. This document corrects the effective date of the Final Rule to be December 6, 2002.

DATES: The date of the final rule published November 6, 2002, (67 FR 67692) is corrected from January 6, 2003 to December 6, 2002.

FOR FURTHER INFORMATION CONTACT:
Mark Klose (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8283.
Julia A. Lake (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8370.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission published in the **Federal Register** of November 6, 2002 a Final Rule amending its regulations to update its accounting and financial reporting requirements under its Uniform Systems of Accounts. The effective date is incorrect as published in the **Federal Register**. In the **Federal Register** Document 02–26809 published on November 6, 2002 (67 FR 67692) make the following correction: On page 67692, in the second column, correct the **EFFECTIVE DATE** section to read as follows:

"**EFFECTIVE DATE:** The rule will become effective December 6, 2002."

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29571 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–237–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; denial of approval of amendment.

SUMMARY: We are not approving a proposed amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed to revise its program by creating a new section of KRS Chapter 350 to provide that a mining permit is not required of a landowner if coal extraction is incidental to and a necessary requirement of construction, under 5000 tons, and the coal or proceeds thereof are donated to charitable, governmental, or educational organizations.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400, Internet address: *bkovacic@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the Kentucky program in the May 18, 1982 **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated April 12, 2002 (Administrative Record No. KY–1529), Kentucky sent us an amendment to its program, under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment on its own initiative.

The amendment proposed a new section of the Kentucky Revised Statutes at Chapter 350 and is referenced as Kentucky House Bill 405. In sum, the proposed amendment provides that a mining permit is not required of a landowner if coal extraction on "private land" is incidental to and a necessary requirement of construction, under 5000 tons, and the coal or proceeds thereof are donated to charitable, governmental, or educational organizations. "Private land" is defined as property owned by a not-for-profit organization or by a noncommercial private owner and subject to the construction of improvements. The amendment requires that the landowner seeking the permit exemption notify the cabinet when the coal is first encountered and prior to removal, and requires the cabinet to conduct an inspection and review of site plans, construction contracts, and other relevant information prior to deciding whether to grant the exemption. Finally, the amendment states that the cabinet may require implementation of any best management practices that are necessary to ensure compliance with stormwater discharge limits. The full text of the proposed amendment can be found in the proposed rule notice at 67 FR 38446 (June 4, 2002).

We announced receipt of the proposed amendment in the June 4, 2002 **Federal Register** (67 FR 38446). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. KY–1537). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 5, 2002. We received comments from the Kentucky Coal Association, the Mine Safety and Health Administration, the Fish and Wildlife Service, and the Kentucky Resources Council.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Based on these findings, we are declining to approve the amendment.

Kentucky's proposed amendment is inconsistent with and less stringent than SMCRA and less effective than its implementing regulations because it excludes from regulation certain surface coal mining operations specifically regulated under Federal law. Under SMCRA and Federal regulations, all surface coal mining and reclamation operations are subject to regulation unless an exemption applies. SMCRA section 528 and 30 CFR 700.11(a) list such exemptions.

First, SMCRA section 528(2) exempts "the extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction * * *" Congress' intent regarding this exemption is clear. As discussed in a March 13, 1979, **Federal Register** notice, 44 FR 14949, the House/Senate Conference Committee explicitly limited exemptions for incidental coal removal to government financed construction projects. As originally added by the Senate, the exemption for incidental coal removal was not limited to government-financed construction. The Conference Committee modified the Senate language to "limit(s) the exemption to

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extraction of coal as an incidental part of government-funded construction only, rather than all construction as originally provided in the Senate language." Since Kentucky's proposed amendment involves privately financed construction, it directly contradicts Congress' intent and cannot be approved.

We have consistently maintained that the removal of coal incidental to development for commercial, industrial, residential, or civic use constitutes a surface coal mining operation. In 64 FR 6201 (February 9, 1999), we did not approve a proposed amendment by West Virginia which would have allowed a person to engage in surface coal mining incidental to the development of land for commercial, residential, industrial, or civic use after obtaining a special authorization from the State. In that **Federal Register** notice, we stated that "in promulgating its definition of 'surface coal mining operations' at 30 CFR 700.5, OSM considered and rejected a provision that would have clarified that the definition did not apply to coal removal incidental to private construction * * * OSM found that such an exemption was inconsistent with Section 528 of SMCRA." 64 FR at 6204.

Rejecting West Virginia's proposed amendment, we also referred to two Interior Board of Land Appeals (IBLA) decisions supporting our decision: "The [IBLA] * * * twice ruled that 'the extraction of coal as an incidental part of privately financed construction is not an activity excluded as such from the coverage of the * * * regulatory program.'" *Id.* On May 5, 2000 (65 FR 26130, 26133), we referred again to these decisions when declining to approve a similar proposal by West Virginia.

Second, 30 CFR 700.11(a)(2) exempts surface coal mining and reclamation operations that involve extraction of 250 tons of coal or less. Therefore, no exemption is permitted for the extraction of more than 250 tons of coal. Kentucky's proposal is inconsistent with and less effective than this Federal requirement because it exempts the extraction of up to 5000 tons of coal incidental to privately financed construction. For the foregoing reasons, the proposed amendment is inconsistent with and less effective than Federal law and cannot be approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. KY–1537), and received two. First, in a letter dated June 27, 2002 (Administrative Record No. KY–1543), the Kentucky Resources Council (KRC) commented that SMCRA does not provide an exemption allowing removal of over 250 tons of coal absent a permit unless another recognized exemption applies. As explained in the findings above and because no other exemption applies, we agree with KRC. We also agree with KRC that removing the quantity of coal that Kentucky's proposal seeks to exempt without advance planning, bonding, and reclamation requirements can result in significant off-site impacts that may not be remediated. Finally, KRC commented that the proposed amendment furthers the potential for "sham" operations because the exemption would be granted on the assumption that future construction would occur.

The second public comment received was from the Kentucky Coal Association (KCA). Although KCA urged OSM to approve the proposed amendment, it did not provide specific comments or reasons why the amendment should be approved. For the reasons set forth in the above findings, we are not approving the amendment.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (Administrative Record No. KY–1537). We received one comment from the Fish and Wildlife Service (FWS) and one from the Mine Safety and Health Administration (MSHA). In a letter dated July 9, 2002 (Administrative Record No. KY–1548), FWS stated that it believed the terms of the proposed amendment are appropriate given adequate implementation of best management practices to protect water quality. As discussed in the findings above, Kentucky's proposed amendment is inconsistent with SMCRA and its implementing regulations. Even given adequate implementation of best management practices to protect water quality, the proposed amendment would still exceed the Federal exemption limit of 250 tons. Thus, even if best management practices are followed, the amendment cannot be approved.

Comments from MSHA, submitted in a letter dated June 17, 2002 (Administrative Record No. KY–1541), simply stated MSHA does not have jurisdiction over incidental coal removal since the activity would not be functioning for the purpose of producing a mineral.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 12, 2002, we requested comments on Kentucky's amendment (Administrative Record No. KY–1537), but neither the SHPO nor the ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we are not approving Kentucky's proposed amendment. The Federal regulations at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Kentucky to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 17, 2002.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.12 is amended by adding the following paragraph:

§ 917.12 State regulatory program and proposed program amendment provisions not approved.

* * * * *

(c) The amendment submitted by letter dated April 12, 2002, proposing a new section of the Kentucky Revised Statutes at Chapter 350 and referenced as Kentucky House Bill 405, is hereby not approved, effective November 20, 2002.

[FR Doc. 02–29305 Filed 11–19–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. MT–001–0043, FRL–7397–4]

Approval and Promulgation of Air Quality Implementation Plans for the State of Montana; Revisions to the Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Governor of Montana on April 30, 2001. The April 30, 2001 submittal revises the State's Administrative Rules of Montana (ARM) by adding a Credible Evidence Rule. The intended effect of this action is to make the Credible Evidence Rule Federally enforceable. Finally, the Governor's April 30, 2001 submittal contains other SIP revisions which have been addressed separately. This action is being taken under section 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective December 20, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202 and copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski , EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: On August 19, 2002 (67 FR 53765), EPA published a notice of proposed rulemaking (NPR) for the State of Montana. The NPR proposed approval of a State Implementation Plan (SIP) revision submitted by the Governor of Montana on April 30, 2001. The April 30, 2001 submittal revises the State's Administrative Rules of Montana (ARM) by adding a Credible Evidence Rule (ARM 17.8.132). The intended effect of this action is to make the Credible Evidence Rule Federally enforceable.

I. Final Action

Since we received no comment on the August 19, 2002 notice of proposed rulemaking, EPA is approving a State Implementation Plan (SIP) revision submitted by the Governor of Montana on April 30, 2001. The April 30, 2001 submittal revises the State's Administrative Rules of Montana (ARM) by adding a Credible Evidence Rule (ARM 17.8.132).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 10, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

40 CFR part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(58) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(58) On April 30, 2001, the Governor of Montana submitted a request to add a credible evidence rule to the Administrative Rules of Montana (ARM). ARM 17.8.132—"Credible Evidence" has been approved into the SIP.

(i) Incorporation by reference.

(A) ARM 17.8.132 effective December 8, 2000.

[FR Doc. 02–29335 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN145–1a; FRL–7398–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to particulate matter (PM) emissions regulations for Union Tank Car's railcar manufacturing facility located in Lake County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations to EPA on April 30, 2002 and September 6, 2002 as an amendment to Indiana's State Implementation Plan (SIP). The revisions consist of relaxing the PM limits for one emissions unit; however, actual emissions will not increase, and the PM National Ambient Air Quality Standards (NAAQS) should be protected. EPA is approving revisions for Union Tank Car because complying with the current limits is infeasible, and because the revisions should not harm air quality.

DATES: This rule is effective on January 21, 2003, unless the EPA receives relevant adverse written comments by December 20, 2002. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524, E-Mail: *rau.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

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VI. Administrative requirements.

I. What Is the EPA Approving?

The EPA is approving revisions to the particulate matter emissions regulations for Union Tank Car, which operates a railcar manufacturing facility in Lake County, Indiana. IDEM submitted the revisions to EPA on April 30, 2002 and September 6, 2002 as an amendment to Indiana's SIP at 326 IAC 6–1–10.1.

II. What Are the Changes From the Current Rule?

IDEM changed the emission limits for particulate matter less than 10 μm in diameter (PM–10) at the grit blasting unit from 0.002 pounds per ton (lbs/ton) to 0.01 grains per dry standard cubic foot (gr/dscf), and from 0.020 to 9.9 pounds per hour (lb/hr). IDEM changed the units from pounds per ton to grains per dry standard cubic foot because grains per dry standard cubic foot can be measured directly. The new limit of 9.9 lb/hr results from the unit emitting 0.01 gr/dscf when operated at 117,000 actual cubic feet per minute (acf/min). IDEM revised emission limits because the previous limits were far more stringent than the limits for similar sources; and were not feasible.

III. What Is the EPA's Analysis of the Supporting Materials?

Indiana submitted a letter to EPA on May 6, 2002, in which it stated that meeting the current PM–10 limits is infeasible for the Union Tank Car grit blaster or any other similar sources. In that letter, Indiana noted that the present limit of 0.020 lb/hr is equivalent to 0.00039 gr/acf. Indiana stated that the Union Tank Car limits are 100 times more stringent than those that apply to similar Lake County, Indiana sources. The letter also indicated that the actual PM–10 emissions from Union Tank Car will not increase as a result of this regulatory change.

IV. What Are the Environmental Effects of These Actions?

Particulate matter interferes with lung function when inhaled. Exposure to PM can cause heart and lung disease. PM also aggravates asthma. Airborne particulate is the main source of haze that causes a reduction in visibility. It also is deposited on the ground and in the water. This harms the environment by changing the nutrient and chemical balance.

Although Union Tank Car's allowable PM–10 emission limits are being relaxed, its actual emissions will not increase. Indiana included the company's actual emissions in the Lake County PM–10 modeling analysis, which EPA approved on June 15, 1995 (60 FR 31412). In the Lake County modeling analysis, Indiana showed that the PM–10 NAAQS will be protected with Union Tank Car's current emission levels. Therefore, this SIP revision should not harm air quality.

V. What Rulemaking Actions Are the EPA taking?

The EPA is approving, through direct final rulemaking, revisions to the particulate matter emissions regulations for Union Tank Car in Lake County, Indiana. The new PM–10 emission limits for the grit blasting are 0.01 gr/dscf and 9.9 lb/hr.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 21, 2003 without further notice unless we receive relevant adverse written comment by December 20, 2002.

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If the EPA receives adverse written comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 15, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(153) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(153) On April 30, 2002 and September 6, 2002, Indiana submitted revised particulate matter regulations for Union Tank Car's railcar manufacturing facility in Lake County, Indiana. The submittal amends 326 IAC 6–1–10.1. The revisions consist of relaxing the limits for the grit blaster. The new limits are 0.01 grains per dry standard cubic foot and 9.9 pounds per hour.

(i) Incorporation by reference.

Amendments to Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Non-attainment Area Limitations, Section 10.1: Lake County PM_{10} emission requirements. Filed with the Secretary of State on July 26, 2002 and effective on August 25, 2002. Published in 25 *Indiana Register* 4076 on September 1, 2002.

[FR Doc. 02–29473 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0291; FRL–7277–3]

Bacillus Cereus Strain BPO1; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus cereus* strain BPO1 on raw and processed food when applied/used as a foliar applied biological plant growth regulator intended to promote root mass growth, earlier fruit initiation, increased fruit retention, and increased nutrient utilization. Micro Flow Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus cereus* strain BPO1.

DATES: This regulation is effective November 20, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0291, must be received on or before January 21, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Robyn Rose, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9581; e-mail address: rose.robyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NACIS 111, 112, 311, 32532), e.g., Crop Production, Animal Production, Food Manufacturing, Pesticide Manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0291. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of November 21, 2001 (66 FR 58481) (FRL–6802–1), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 1F6324) by Micro Flow Company, P.O. Box 5948 Lakeland, FL 33807–5948. This notice included a summary of the petition prepared by the petitioner Micro Flow Company. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1181 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus cereus* strain BPO1.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section of the FFDCA (b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acute mammalian toxicity/pathogenicity studies via oral, dermal, inhalation, eye, intratracheal, and

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intravenous routes were conducted with *Bacillus cereus* strain BPO1. No pathogenicity was observed. BPO1 was also tested for entero toxin emetic-toxin production; no toxins were detected. *Bacillus cereus* has been implicated in nosocomial infections in rare instances and in food poisoning incidents. In the ELISA Analysis of Enterotoxin data submitted, there was no evidence of diarrhoeal type enterotoxin production in the culture filtrates of *Bacillus cereus* strain BOP1 or the end use product. In a blood agar hemolysis assay conducted with BPO1, weak alpha hemolysis was observed. Based on the results of the studies in this unit, subchronic, reproductive, teratology, chronic, and mutagenicity studies were not deemed necessary.

1. *Acute oral toxicity/pathogenicity* (OPPTS 870.1100; 152A–10 and 152B–10; MRIDs 4417737–05 and 441773–06). In the acute oral toxicity test, five male and five female rats were treated with a split dose, (10 milliliters/kilograms/dose) (mL/kg) for a total of 5,000 milligrams (mg)/kg of *Bacillus cereus* strain BP01; the second dose administered 1 hour after the first dose. Rats were weighed and observed for mortality or abnormalities for 14 days. No abnormalities were noted in body weight or weight gain throughout the study or upon necropsy. The oral lethal dose $(LD)_{50}$ *Bacillus cereus* strain BP01 was determined to be greater than 5,000 mg/kg body weight.

In the acute oral toxicity/pathogenicity test, 15 males and 15 females received a dose of 1.23×10^8 colony forming units (CFU) of the test substance by oral gavage; nine males and nine females were treated with 1.23×10^8 CFU killed test substance (by steam sterilization). Rats were weighed on days 0, 3, 7, 14, and 18 and signs of toxicity were observed daily. Randomly sampled rats from each sex and each test group were sacrificed on days 0, 3, 7, 14, and 18 and examined for any macroscopic abnormalities. Samples of the kidneys, liver, spleen, and stomach as well as feces were homogenized and plated to determine the number of typical *Bacillus cereus* colonies after incubation at 30 °C for at least 18 hours. No clinical sign were noted throughout the study and no abnormalities were noted in any animal at necropsy. Two males displayed a loss in body weight from day 0 to 3 and five females lost weight from day 7 to 14. No other abnormalities were noted in body weights or weight gain. *Bacillus cereus* strain BP01 is not toxic, pathogenic or infective when 1×10^8 CFU was administered orally. A distinct clearance pattern was observed throughout the study.

2. *Acute dermal toxicity* (OPPTS 870.1200; 152A–11; MRID 441773–07). Five male and five female rabbits were given a dose of 4.4×10^{10} CFU (2 grams (g)) dermally for 24 hours and observed after dosing for signs of toxicity and dermal irritation for 14 days. No clinical signs, except dermal irritation, were noted during the study and no abnormalities were noted upon necropsy. Two males and five females displayed a loss in body weight from day 0 to day 7. All animals displayed a weight gain through the end of the study. All males and females showed slight to well defined redness through day 4; very slight erythema was present in up to three males and three females through day 11. Dermal irritation was no longer apparent by day 12. Slight signs of edema were apparent in two males on day 3. Edema was no longer present by day 4. The LD_{50} of *Bacillus cereus* strain BP01 is greater than 2 grams per animal. Mild to moderate dermal irritation was noted and was no longer present by day 13.

3. *Acute intratracheal toxicity/pathogenicity* (OPPTS 885.3150; 152A–12; MRID 441773–08). Fifty female and fifty male rats received a single dose of 7×10^7 (males), or 9.33×10^7 CFU (females) of the test substance in a volume of 0.5 mL by intratracheal administration; fifty females and fifty males were treated with the same concentration of killed test substance (by steam sterilization); an additional fifty males and fifty females served as controls. Rats were weighed weekly and observed for signs of toxicity daily. Ten rats of each sex from each group were sacrificed on days 0, 7, 14, 21, and 36. Animals were examined for macroscopic abnormalities by necropsy. Lungs were evaluated by histopathological examination. Samples of the kidneys, liver, spleen, brain, mesenteric lymph nodes, blood, lungs, and caecum were homogenized, plated, and incubated for at least 18 hours then examined for typical *Bacillus cereus* colonies. Body weight losses were noted in females from the test substance group, one during the first, second and third weeks. No other abnormalities were noted in body weight or weight gain throughout the study. In the group treated with the test substance, three females displayed a rough hair coat, two females showed signs of labored respiration, and one female had hunched posture on day 0. Clinical signs were no longer apparent by day 2. Each treatment group had three males and females displaying mottled, dark red lungs on day 0. Red to tan lesions remained on the majority of animals through day 21. *Bacillus cereus* strain BP01 is not toxic, pathogenic or infective to rats at an intratracheal dose of either 7×10^8 or 9.33×10^8 CFU. A slow but typical clearance pattern was observed; slow clearance in the lung with distinct clearance pattern noted in the liver and spleen. The lesions present in the histopathology sections in both the killed and live test substance animals indicate an inflammatory response to the treatment due to the presence of particulate material.

4. *Acute intravenous toxicity* (OPPTS 885.3200; 152A–13; MRID 441773–09). Five male and five female rates were intravenously injected with either 0.5 mL of *Bacillus cereus*, 0.5 mL of the killed test substance, or kept as a naive control. The rats were weighed before initial dosing and weekly thereafter. Animals were observed for clinical signs twice daily for 14 days. All rats were examined by necropsy for any macroscopic abnormalities at the end of the study. One female displayed a loss in body weight from day 0 to day 17. No other abnormalities were noted in body weight or weight gain throughout the study. No clinical signs were reported by the testing facilty and no abnormalities were noted upon necropsy. Although *Bacillus cereus* strain BP01 is not toxic to rats at an intravenous dose of 2.0×10^7 CFU, the registrant failed to submit the clearance portion of the study. However, this study does not need to be repeated because the oral and intratracheal studies demonstrated distinct clearance patterns.

5. *Primary eye irritation* (OPPTS; 870.2400; 152A–14; MRID 441773–10). Three male and three female, young adult, New Zealnad White rabbits were given a single dose of 0.1g (equivalent to 2.2×10^9 CFU) of the microbial pest control agent (MPCA) in the everted lower right eyelid of each animal. The eye was gently held together for 2 seconds to prevent a loss of material. The left eye served as the control for each animal. The Draize Method was used to score ocular irritation and lesions at 1 hour, and 1, 2, 3, 4, and 7 days post dosing. A 2% fluorescein solution and ultraviolet light was used after 24 hours to evaluate corneal epithelial damage. Slight to moderate redness, chemosis, and occasional discharge was observed in all 6 animals within 1 hour post dosing. Clinical signs were no longer apparent by day 3. No abnormalities were observed in any control eye during the study. The primary irritation scores at 24 hours post dosing was 4.8 when a 0.1g (2×10^9 CFU) ocular dose was administered.

Ocular irritation was no longer present by day 3.

6. *Immunotoxicity* (OPPTS 880.3800). Immune response, teratogenicity, virulence enhancement, and mammalian mutagenicity (40 CFR 158.740(c)(2)(vi) through (xv), were not required since survival, replication, infectivity, toxicity, or persistence of the microbial agent was not observed in the test animals treated in the Tier I infectivity tests.

7. *Hypersensitivity* (OPPTS 870.2600; 152–15). Incidents of hypersensitivity must be reported to the Agency in a timely manner. There have been no reports of incidents of hypersensitivity to *Bacillus cereus* since it was registered.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* While the suggested use pattern may result in dietary exposure with possible residues on food and feed, negligible risk is expected for both the general population, infants and children. Submitted acute toxicology tests confirm that based upon the use sites, use patterns, application method, use rates, low exposure, and lack of significant toxicology concerns, the potential risks, if any, to humans are considered negligible, therefore an exemption from the requirement of a tolerance is warranted. Acute exposure could occur from the proposed outdoor use sites but would be very low because of the low application rates of less than 48 fluid ounces of BP01/acre/year in cotton and less than 32 fluid ounces of BP01/acre/year in soybean. Considering the low application rates, lack of toxicity/pathogenicity, ubiquitous nature and natural occurrence of *Bacillius cereus*, no residue data were required.

2. *Drinking water exposure.* The microorganism *Bacillus cereus* is ubiquitous in many soils throughout the world. *Bacillus cereus* is not known as an aquatic bacterium and therefore is not expected to proliferate in aquatic habitats. The potential exists for *Bacillus cereus* strain BPO1 to enter ground water or other drinking water sources, after application. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure to *Bacillus cereus* through drinking water. Moreover, *Bacillus cereus* strain BPO1 is not considered to be a risk to drinking water. The Agency has no drinking water exposure concerns, because exposure is minimal to non-existent and the demonstrated lack of toxicity or pathogenicity for the *Bacillus cereus* Strain BP01 microbe.

B. Other Non-Occupational Exposure

The potential of non-dietary exposures to *Bacillus cereus* strain BPO1 pesticide residues for the general population, including infants and children, is unlikely since this is only an agricultural use pesticide. The Agency believes that the potential aggregate exposure, derived from dermal and inhalation exposure via mixing, loading, and applying *Bacillus cereus* strain BPO1, should fall well below the currently tested microbial safety levels.

1. *Dermal exposure.* Dermal exposure via the skin would be the primary route of exposure for mixer/loader applications. Unbroken skin is a natural barrier to microbial invasion of the human body. Dermal absorption could occur only if the skin were cut, if the microbe were a pathogen equipped with mechanisms for entry through or infection of the skin, or if metabolites were produced that could be dermally absorbed. Submitted acute dermal toxicity data confirmed a lack of dermal toxicity and mild to moderate dermal irritation was only observed until day 13 of the study.

2. *Inhalation exposure.* Inhalation would be the primary route of exposure for mixer/loader applications. Because the pulmonary study showed no adverse effects, the risks anticipated for the route of exposure are considered minimal.

VI. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to this, the Agency is confident that there will not be cumulative effects from the registration of this product

VII. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population.* There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population from exposure to *Bacillus cereus.* This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity (no toxicity at the maximum doses tested, Toxicity Categories III and IV for irritation) associated with *Bacillus cereus* strain BP01 and the history of safe use of *Bacillus cereus.*

2. *Infants and children.* FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. A battery of acute toxicity/pathogenicity studies is considered sufficient by the Agency to perform a risk assessment for microbial pesticides. Other strains of *Bacillus cereus* have been implicated in nosocomial infections in rare instances and in food poisoning incidents. In the ELISA Analysis of Enterotoxin test data submitted there was no evidence of diarrhoeal type enterotoxin production in the culture filtration of *Bacillus cereus* strain BPO1 or the end use product. Data relating to the post application die off of *Bacillus cereus* species *vs.* background soil population counts demonstrated that this organism is very stable in the soil and rhizosphere. Also, for food use of microbial pesticides, the acute toxicity/pathogenicity studies have allowed for the conclusion that an exemption from the requirement of a tolerance is appropriate and adequate to protect human health, including that of infants and children.

VIII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no

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scientific basis for including, as part of the program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, *Bacillus cereus* may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

Based on available data, no endocrine system-related effects have been identified with consumption of *Bacillus cereus* strain BP01. It is a naturally occurring bacteria. To date, there is no evidence to suggest that *Bacillus cereus* affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation based upon the lack of mammalian toxicity of *Bacillus cereus* and the lack of exposure with the plant growth regulator use pattern. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purpose for *Bacillus cereus*.

C. Codex Maximum Residue Level

There are no Codex harmonization consideration since there is currently no codex tolerance for *Bacillus cereus* residues.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0291 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 21, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by telephone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0291, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications " is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 31, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1181 is revised to read as follows:

§ 180.1181 Bacillus cereus strain BP01; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance for residues of the *Bacillus cereus* strain BPO1 in or on all raw agricultural commodities when applied/used in accordance with label directions.

[FR Doc. 02–29331 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2231, MB Docket No. 02–223, RM–10520]

Digital Television Broadcast Service; Avalon, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Pappas Southern California License, LLC., and pursuant to Section 531 of the Public Health, Security and Bioterrorism Preparedness and Reponse Act of 2002, allots DTV channel 47c at Avalon, California. DTV channel 47c can be allotted to Avalon at the

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coordinates 34–13–35 N. and 118–3–58 W.

With this action, this proceeding is terminated.

DATES: This document will become effective 60 days after concurrence of the Mexican government is obtained. The FCC will publish a document announcing when the concurrence has been obtained, and also give that effective date.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–223, adopted September 10, 2002, and released September 17, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Allotments under California, is amended by adding Avalon, DTV channel 47c.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29381 Filed 11–19–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231309–2090–03; I.D. 111302A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason trip limit adjustments and correction; request for comments.

SUMMARY: NMFS announces trip limit changes in the Pacific Coast groundfish fisheries for flatfish sub-limits in the exempted trawl fishery for California halibut and trip limit corrections for minor nearshore and widow rockfish in the limited entry trawl fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries access to healthy groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours local time November 20, 2002 until the 2003 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *carrie.nordeen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at:*http://www.access.gpo.gov/su_docs/ca/docs/aces/aces140.html.* Background information and documents are available at the NMFS Northwest Region Web site at: *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's Web site at: *http://www.pcouncil.org.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the current fishing year (January 1–December 31, 2002) were initially published in the **Federal Register** as an emergency rule for January 1–February 28, 2002 (67 FR 1540, January 11, 2002), as a proposed rule for all of 2002 (67 FR 1555, January 11, 2002), and as a final rule effective March 1, 2002 (67 FR 10490, March 7, 2002). The final rule was subsequently amended at 67 FR 15338, April 1, 2002; at 67 FR 18117, April 15, 2002; at 67 FR 30604, May 7, 2002; at 67 FR 40870, June 14, 2002; at 67 FR 44778, July 5, 2002; at 67 FR 48571, July 25, 2002; at 67 FR 50835, August 6, 2002; at 67 FR 55166, August 28, 2000; at 67 FR 56497, September 4, 2002; at 67 FR 57973, September 13, 2002; at 67 FR 62204, October 4, 2002; at 67 FR 62401, October 7, 2002; and at 67 FR 64826, October 22, 2002.

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its October 29–November 1, 2002, meeting in Foster City, CA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments will be made as necessary to allow achievement of or to avoid exceeding the 2002 optimum yields (OYs) and allocations.

Limited Entry Trawl Small Footrope Limits for Nearshore Rockfish and Widow Rockfish North of 40°10′ N. lat.

On September 10, 2002, NMFS implemented an emergency rule to establish new depth-based management measures in the Pacific Coast groundfish fishery north of 40°10′ N. lat. for September-December 2002 (67 FR 57973, September 13, 2002). This emergency rule created the Darkblotched Rockfish Conservation Area (DBCA) to protect darkblotched rockfish, an overfished species, and re-opened areas outside the DBCA to limited entry trawl harvest of healthy groundfish stocks that otherwise would have been foregone to protect darkblotched rockfish. Fishing with limited entry trawl large footrope gear has been permitted seaward of the DBCA September-December and fishing with limited entry small footrope gear has been permitted shoreward of the DBCA during October-December.

When setting rockfish incidental catch allowance recommendations for the area shoreward of the DBCA in October's inseason action (67 FR 62401, October 7, 2002), the Pacific Council overlooked allowances for nearshore rockfish and widow rockfish. After discussing this issue at its October/November meeting, instead of prohibiting retention of nearshore and widow rockfish, the Pacific Council recommended limited entry trawl small footrope limits of 300 lb (136 kg) per month for nearshore rockfish and 500 lb (227 kg) per month for widow rockfish for the November-December cumulative period north of 40°10′ N. lat. These incidental catch allowances will decrease the discard of rockfish incidentally taken with nearshore flatfish species, but are not expected to cause the 2002 OYs for any rockfish species or species group to be exceeded.

Exempted California Trawl Sub-limit for Flatfish South of 40°10′ N. lat.

Another incidental catch allowance issue brought to the Pacific Council's attention at their October/November meeting was that of groundfish retention in the exempted trawl fishery for California halibut. Since July 1, 2002 (67 FR 44778), all groundfish retention with exempted trawl gear south of 40°10′ N. lat. has been prohibited to protect bocaccio. In addition to slowing the catch of bocaccio, prohibiting the retention of all groundfish species taken with exempted trawl gear has resulted in the discard of small amounts of valuable flatfish species in the trawl fishery for California halibut. Because flatfish species are taken incidentally with California halibut at depths shallower than where bocaccio are typically found (less than 40 fm (73 m)), an incidental catch allowance for nearshore flatfish is not expected to result in additional catch of bocaccio rockfish. Therefore, the Pacific Council recommended a California halibut exempted trawl flatfish sub-limit of up to 100 lb (45 kg) per day, provided that flatfish are landed with at least one California halibut, and an exempted trawl flatfish limit of between 100 lb (45 kg) and 300 lb (136 kg) per day, not to exceed 3,000 lb (1,361 kg) per month, provided the amount of flatfish landed does not exceed the amount of California halibut landed. Because of the small size of this incidental catch allowance and the variability of California halibut catch rates, the Pacific Council recommended suspension of the previous requirement that groundfish poundage not exceed non-groundfish poundage for flatfish landings of less than 100 lb (45 kg). These low incidental catch allowances are not expected to result in an effort shift whereby vessels would be targeting flatfish.

NMFS Actions

For the reasons stated herein, NMFS concurred with the Pacific Council's recommendations and hereby announces the following changes to the 2002 specifications and management measures:

1. On page 10517 in the March 7, 2002, issue of the **Federal Register**, in section IV., under B. Limited Entry Fishery, at the end of paragraph (1), Table 3 is revised to read as follows:

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IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

Table 3. Trip Limits[1/] and Gear Requirements[2/] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	**, NOTE FOR NORTH OF 40°10' N. LAT.: ALL TRAWLING WITH GROUNDFISH GEAR IS PROHIBITED WITHIN THE DBCA[11/]. ALL TRAWLING IS PROHIBITED SHOREWARD OF THE DBCA DURING SEPTEMBER. SMALL FOOTROPE GEAR[12/] IS REQUIRED SHOREWARD OF THE DBCA OCT-DEC. AND LARGE FOOTROPE GEAR IS PERMITTED SEAWARD OF THE DBCA SEP-DEC.						
1	Minor shelf rockfish						
2	North	1,800 lb/ 2 months				600 lb / 2 months	1,800 lb / 2 months
3	South						
4	40°10' - 38° N. lat.	50,000 lb/ 2 months		5,000 lb/ 2 months			
5	South of 38° N. lat	50,000 lb/ 2 months				25,000 lb/ 2 months	40,000 lb/ 2 months
6	Splitnose - South[9/]						
7	40°10' - 38° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
8	South of 38° N. lat	25,000 lb/ 2 months				25,000 lb/ 2 months	40,000 lb/ 2 months
9	Pacific ocean perch - North[9/]	2,000 lb/ month		4,000 lb/ month		4,000 lb/ 2 months	3,000 lb / month
10	Chilipepper - South[9/]						
11	mid-water trawl	25,000 lb/ 2 months					
12	small footrope trawl	7,500 lb/ 2 months		4,000 lb/ 2 months			
13	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year.				CLOSED[7/]	
14	DTS complex - North						
15	Sablefish	6,000 lb/ 2 months		3,500 lb/ 2 months	3,000 lb/ 2 months	In times and areas where open - 3,500 lb/ 2 months	2,800 lb/ 2 months
16	Longspine thornyhead	10,000 lb/ 2 months		8,000 lb/ 2 months	1,500 lb/ 2 months	In times and areas where open - 10,000 lb/ 2 months	8,000 lb/ 2 months
17	Shortspine thornyhead	2,800 lb/ 2 months		2,000 lb/ 2 months	1,500 lb/ 2 months	In times and areas where open - 2,800 lb/ 2 months	2,200 lb/ 2 months
18	Dover sole	30,000 lb/ 2 months	28,000 lb/ 2 months	14,000 lb/ 2 months		In times and areas where open - 20,000 lb/ 2 months	22,000 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during entire limit period. If small footrope bottom trawl is used at any time in any area (North or South) during the entire limit period, then 12,000 lb/ 2 months.
19	DTS complex - South						
20	Sablefish[9/]	4,500 lb/ 2 months					
21	Longspine thornyhead	10,000 lb/ 2 months					
22	Shortspine thornyhead	2,800 lb/ 2 months					
23	Dover sole	22,000 lb/ 2 months					
24	Flatfish - North						
25	All other flatfish [10/]	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder SMALL FOOTROPE: 15,000 lb/ month; 35,000 lb/ month		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of petrale and rex sole prohibited if large footrope gear is onboard. SMALL FOOTROPE: 30,000 lb/ month, no more than 10,000 of which may be petrale sole	SMALL FOOTROPE REQUIRED: 40,000 lb/ month, no more than 15,000 of which may be petrale sole	In times and areas where open - 25,000 lb/ month, no more than 10,000 of which may be petrale sole.	50,000 lb/ month, no more than 20,000 lb / month of which may be petrale
26	Petrale sole	Not limited, large footrope allowed					
27	Rex sole						
28	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit SMALL FOOTROPE: 30,000 lb/ trip		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited		In times and areas where open - 3,500 lb/ trip, no more than 15,000 lb/ month	30,000 lb/ trip
29	Flatfish - South						
30	All other flatfish [10/]	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of petrale and rex sole prohibited if large footrope gear is onboard. SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. Of the species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole.	CLOSED[7/] With the exception of 1,000 lb/ trip of rex sole, petrale sole, English sole, and arrowtooth flounder combined when landed with DTS complex. The amount of per trip flatfish landings must not exceed the amount of DTS landed. Landings may be made with small or large footrope gear.	CLOSED[7/] With the following exceptions: Petrale sole 30,000 lb/ 2 months; Rex sole 2,000 lb/ trip, and 1,000 lb/ trip of English sole and arrowtooth flounder combined when landed with DTS complex or Petrale sole. The amount of per trip flatfish landings (Rex sole, English sole, and arrowtooth flounder) must not exceed the amount of DTS and Petrale sole landed. Landings me be made with small or large footrope gear.
31	Petrale sole	Not limited, large footrope allowed					
32	Rex sole						
33	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit SMALL FOOTROPE: 30,000 lb/ trip		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited			
34	Whiting[6/]	20,000 lb/ trip		Primary Season		CLOSED[7/]	

Table 3. (CONTINUED) Trip Limits[1/] and Gear Requirements[2/] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	**, NOTE FOR NORTH OF 40°10' N. LAT.: ALL TRAWLING WITH GROUNDFISH GEAR IS PROHIBITED WITHIN THE DBCA[11/]. ALL TRAWLING IS PROHIBITED SHOREWARD OF THE DBCA DURING SEPTEMBER. SMALL FOOTROPE GEAR[12/] IS REQUIRED SHOREWARD OF THE DBCA OCT-DEC. AND LARGE FOOTROPE GEAR IS PERMITTED SEAWARD OF THE DBCA SEP-DEC.						
35	Minor shelf rockfish						
36	North	300 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		CLOSED[7/]	300 lb / month
37	South	500 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		CLOSED[7/]	
38	Canary rockfish						
39	North[13/]	300 lb/ 2 months		800 lb/ 2months	600 lb/ 2 months	CLOSED[7/]	200 lb / month
40	South				CLOSED[7/]		CLOSED[7/]
41	Widow rockfish						
42	North						
43	mid-water trawl[12/]	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[7/]	13,000 lb/ 2 months, no more than 2 trips per vessel per 2 month period
44	small footrope trawl	1,000 lb/ month				CLOSED[7/]	500 lb / month
45	South						
46	mid-water trawl	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[7/]	
47	small footrope trawl	1,000 lb/ month				CLOSED[7/]	
48	Yellowtail - North[8/]						
49	mid-water trawl[12/]	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month		CLOSED[7/]	20,000 lb/ 2 months, no more than 2 trips per vessel per 2 month period
50	small footrope trawl	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 30,000 lb/ 2 months.				CLOSED[7/]	As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder not to exceed 4,500 lb/ month
51	Bocaccio - South[9/]	600 lb/ 2 months		1,000 lb/ 2 months		CLOSED[7/]	
52	Cowcod	CLOSED[7/]					
53	Blues/ bocaccio/ widow rockfish						
54	North	300 lb/ month				CLOSED[7/]	300 lb / month
55	South	300 lb/ month				CLOSED[7/]	
56	Lingcod[9/]						
57	North	800 lb/ 2 months		1,000 lb/ 2 months		500 lb / month	
58	South			1,000 lb/ 2 months		CLOSED[7/]	
59	Other Fish[10/]						
60	North	Not limited			Grenadier retention permitted		Not limited, except spiny dogfish prohibited with large footrope gear
61	South						CLOSED[7/], except grenadier retention permitted

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained above. See IV.A.(14).
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits
4/ The whiting "per trip" limit in the Eureka area shoreward 100 fm is 10,000 lb/ trip from January 1 - August 31, 2002. From September 1 - December 31, 2002, the whiting fishery is closed.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. In areas where trawl gear is restricted, only one type of trawl gear is allowed on board at any one time. See above.
6/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7)
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ The minimum size requirement for sablefish is 20 inches (51 cm) total length and no more than 500 lb of undersized sablefish may be landed per trip.
10/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline
11/ All trawling is prohibited within the DBCA (between approximately 100 and 250 fathoms north of 40°10' N. lat.); gear must be covered and stowed when transiting through the area. See IV.A.(22).
12/ The states of Washington and Oregon require a declaration of intent prior to fishing with midwater trawl gear in the DBCA (between approximately 100 and 250 fathoms north of 40°10' N. lat.). Contact the appropriate state enforcement officials for details. Fishing for widow and yellowtail rockfish with midwater trawl gear is permitted in the DBCA during Nov-Dec as noted in the Table 3.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

2. On page 10520 in the same issue, in section IV., under C. Trip Limits in the Open Access Fishery, at the end of paragraph (1), Table 5 is revised to read as follows:

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C. Trip Limits in the Open Access Fishery

(1) * * *

Table 5. Trip Limits[1] for Open Access Gears
Other Limits and Requirements Apply – Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/group	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	Minor slope rockfish	Per trip, no more than 25% of weight of the sablefish landed					
2	North						
3	South						
4	40°10' - 36° N. lat.	10,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.			10,000 lb/ 2 months			
6	Splitnose - South[2]			200 lb/ month			
7	Pacific ocean perch - North[2]			100 lb/ month			
8	Sablefish						
9	North of 36° N. lat.[3]	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months				300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 2,700 lb/ 2 months	
10	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
11	Thornyheads						
12	North of 34° 27' N. lat.	CLOSED[2]					
13	South of 34° 27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
14	Dover sole				North of 40°10': 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 40°10': Shoreward of 20 fm, 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs, otherwise CLOSED[2].		
15	Arrowtooth flounder	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs					
16	Petrale sole						
17	Rex sole						
18	All other flatfish[4]						
19	Whiting	300 lb/ month				CLOSED[2]	
20	Shelf rockfish, including minor shelf rockfish, widow and yelloweye rockfish[5]	200 lb/ month					
21	North						
22	South						
23	40°10' - 34°27' N. lat.	300 lb/ month	CLOSED[2]	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED[2]	CLOSED[2]		
24	South of 34°27' N. lat.	CLOSED[2]	500 lb/ month				
25	Canary rockfish	CLOSED[2]					
26	Yelloweye rockfish	CLOSED[2]					
27	Cowcod	CLOSED[2]					
28	Bocaccio - South[6]						
29	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[2]		CLOSED[2]		
30	South of 34°27' N. lat.	CLOSED[2]	200 lb/ month				
31	Chilipepper - South[6]						
32	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[2]		CLOSED[2]		
33	South of 34°27' N. lat.	CLOSED[2]	2,500 lb/ month				
34	Minor nearshore rockfish						
35	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[7]		8,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[7]		7,000 lb/ 2 months no more than 3,000 lb of which may be species other than black or blue rockfish[7]	
36	South						
37	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	CLOSED[2]	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED[2]	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED[2]	CLOSED[2]	
38	South of 34°27' N. lat.	CLOSED[2]	1,200 lb/ 2 months				
39	Lingcod[6]						
40	North	CLOSED[2]		300 lb/ month		CLOSED[2]	
41	South						
42	40°10' - 34°27' N. lat.	CLOSED[2]		Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED[2]	Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED[2]	CLOSED[2]	
43	South of 34°27' N. lat.			300 lb/ month			
44	Other Flatfish[8]						
45	North	Not limited			Grenadier retention permitted	Not limited, except spiny dogfish prohibited.	
46	South					CLOSED[2], except grenadier retention permitted.	
47	CALIFORNIA HALIBUT EXEMPTED TRAWL GEAR						
48	North	CLOSED[2] (groundfish retention prohibited)					
49	South	For November - December: Vessels using groundfish gear to target California halibut south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb of flatfish per day, provided that flatfish are landed with at least one California halibut, and (2) land between 100 lb and 300 lb of flatfish per day, not to exceed 3,000 lb per month, provided the amount of flatfish landed does not exceed the amount of California halibut landed.					

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40°10' N. lat. To the U.S.-Mexico border 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See RA(F).

4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish at the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

5/ Pyt Rock rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38.00' N.lat.) there is an additional limit of 400 lbs or 50 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ The minimum size requirement for sablefish is 22 inches (51 cm) total length between 42°42 N. lat. and 36° N. lat.

8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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3. On page 10521, in column 1, section IV., under C. Trip Limits in the Open Access Fishery, paragraph (2)(a) is revised to read as follows:

(a) Trip limits. (i) North of 40°10' N. lat. The trip limit is 300 lb (136 kg) of groundfish per fishing trip. Limits in Table 5 also apply and are counted toward the 300 lb (136 kg) groundfish limit. In any landing by a vessel engaged in fishing for spot prawns with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed. The daily trip limits for sablefish may not be multiplied by the number of days of the fishing trip.

(ii) South of 40°10' N. lat. "It is prohibited to take and retain, possess, or land any groundfish species with exempted trawl gear with the following exceptions: vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to land up to 100 lb (45 kg) of flatfish per day, provided that flatfish are landed with at least one California halibut, and vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to land between 100 lb (45 kg) and 300 lb (136 kg) of flatfish per day, not to exceed 3,000 lb (1,361 kg) per month provided that the amount of flatfish landed does not exceed the amount of California halibut landed."

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the trip limit adjustments are for the November-December cumulative trip limit period and affording prior notice and opportunity for public comment would not allow fishers to take advantage of this harvest opportunity. This would impede the agency's function of managing fisheries to approach without exceeding the OY for federally managed species. The AA is also waiving the 30-day delay in effectiveness requirement under 5 U.S.C. 553(d)(1) because this rule relieves a restriction. Delaying implementation of these trip limit adjustments may cause unnecessary hardship among the West Coast groundfish fleets. In 2002, the West coast groundfish fleet has suffered severe cutbacks in season lengths, areas, and species available to be fished in an effort by the Pacific Council to primarily protect darkblotched and bocaccio rockfish, both overfished species. Both of the trip limit adjustments in this document are increases from the status quo. Increases to trip limits for healthy stocks must be implemented in a timely manner to alleviate some of the economic and social burden fishermen and fishing communities have to bear to protect overfished and depleted groundfish species. Delaying implementation of these trip limit adjustments would restrict fishermen to the reduced trip limits put in place by the July and October inseason actions.

These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et. seq.

Dated: November 14, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29510 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 011029263–2255–02; I.D. 010201A]

RIN 0648–AO93

Atlantic Highly Migratory Species; Quotas and Fishing Areas; Trade Monitoring

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations governing the Atlantic swordfish fishery to implement recommendations adopted at the 2000 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). To facilitate a future 400 metric ton (mt), one-time quota transfer to Japan and to amend the procedures by which any reserve quota will be appropriated to other fishing categories, NMFS establishes a reserve quota for North Atlantic swordfish. This final rule also maintains the status quo South Atlantic swordfish, North Atlantic albacore, and South Atlantic albacore quotas for 2001; and prohibits imports of Atlantic bigeye tuna harvested by certain countries. NMFS also reinstates regulations inadvertently removed during regulatory consolidation that would prohibit persons and vessels subject to the jurisdiction of the United States from possessing fish taken in violation of ICCAT recommendations or from violating another country's fisheries regulations pertaining to species managed by ICCAT. Finally, NMFS corrects existing trade restrictions to facilitate the enforcement of the swordfish dead discard allowance and to better monitor the importation of swordfish from designated countries. The intent of these actions is to improve the conservation of Atlantic highly migratory species (HMS) and to improve management of the fisheries targeting these species, while allowing harvest and trade consistent with recommendations of ICCAT.

DATES: All provisions of this final rule are effective December 20, 2002.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review supporting this action may be obtained from Tyson Kade, Highly Migratory Species Management Division, F/SF1, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or on the Web site at *www.nmfs.noaa.gov/sfa/hmspg.html*.

FOR FURTHER INFORMATION CONTACT: Tyson Kade, by phone: 301–713–2347; by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery and the tuna fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT. The November 15, 2001, proposed rule (66 FR 57409) contains the background information for these promulgated measures and that information is not repeated here.

The 2000 ICCAT recommendation relating to the Atlantic bigeye tuna import prohibitions for Belize, Cambodia, Equatorial Guinea, and St.

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Vincent and the Grenadines is implemented herein. The recommendation indicates that the import prohibition on Atlantic bigeye tuna and its products in any form from Honduras shall take effect on January 1, 2002, unless ICCAT decided otherwise at its 2001 meeting. In 2001, ICCAT did not come to consensus to not impose the import prohibitions scheduled to go in effect in January 2002. There was no decision concerning whether Honduras had brought its fishing practices into conformity with ICCAT conservation and management measures and whether trade restrictions on Honduras should be removed. At the 2002 ICCAT meeting, it was recommended that the ban on imports of bigeye tuna from Honduras be lifted. Pending a review of the 2002 ICCAT recommendations and an assessment of the need for further rulemaking, NOAA Fisheries is not finalizing the trade sanctions with regards to Honduras that had been included in the proposed rule.

Comments and Responses

NMFS held three public hearings in November and December 2001 in Fort Lauderdale, FL; Fairhaven, MA; and Barnegat Light, NJ. Comments were received from fishery participants and other members of the public regarding the proposed regulations. In addition, two written comments were submitted to NMFS during the 45–day comment period. The comments are summarized here together with responses.

Reserve Quota

Comment 1: One commenter supports the 400–mt quota transfer as a one-time transfer from the Incidental category to a reserve quota as a short-term solution for the United States to retain its unharvested quota under U.S. authority. Several commenters opposed the establishment of a reserve for under-harvested quota. One commenter was disappointed that the quota to fill the new reserve would be unused directed fishery quota instead of incidental quota which was agreed to by industry at the 2000 ICCAT meeting.

Response: NMFS will carry over unused directed and incidental quota as is currently authorized in the regulations, except if a reserve quota is needed for a specific reason. Recently, NMFS carried over unused 1999 directed and incidental quota and allocated it to the incidental quota for the 2001 fishing year. Because the directed fishery is not harvesting its allocated quota, it will not affect fishery participants to fill the reserve quota with unused directed quota from the past.

Comment 2: We should not transfer quota free of charge for use by other ICCAT countries. We should sell them quota, as is currently being done elsewhere.

Response: As part of its allocation criteria, ICCAT prohibits participating countries from trading or selling their quota allocation. Goodwill transfers such as this one may result in increased research and cooperation with respect to all ICCAT-managed species. Further, the environmental benefits are substantial because they facilitate maintaining compliance with the ICCAT rebuilding plan.

Comment 3: The regulations need to clarify if establishing a reserve quota category is intended to represent a one-time quota transfer or if the reserve category would be replenished in the future by unused quota from other categories (e.g, unused incidental quota).

Response: The reserve category is established permanently and could, but would not necessarily, be replenished in the future. This rule does not place a standard amount of quota into that category annually.

Comment 4: Underharvests in the incidental catch quota category should be transferred to the directed fishery quota.

Response: NMFS will consider the need for underharvests of the incidental catch quota to be allocated to the directed fishery following each fishing year. Because the directed fishery is currently not catching its quota allocation, transferring unused quota to that category may only serve to increase the amount of quota left unharvested. By transferring unharvested quota to the reserve quota category, NMFS could apply the unused quota to the incidental catch or directed catch categories as necessary or for other purposes consistent with ICCAT recommendations and objectives of the HMS FMP.

South Atlantic Swordfish

Comment 5: NMFS should interpret ICCAT's recommendations in a manner similar to the way other countries implement those recommendations. If underharvests are being carried over by other countries, NMFS should also utilize such a process to benefit U.S. fishermen.

Response: ICCAT authorizes quota to be carried over for North Atlantic swordfish, but fails to mention any authorization with respect to carryover of South Atlantic swordfish. NMFS does not believe this to be an oversight and therefore interprets the recommendation as stated: no carry over of unused South Atlantic swordfish quota.

Comment 6: NMFS should clarify that U.S. fishermen may land their catch in foreign ports and that these landings will be counted against the U.S. quota.

Response: As required by ATCA, U.S. fishermen on U.S. vessels that offload in foreign ports will have their landings count against the U.S. quota. NMFS adds that fishermen, regardless of port of offloading must complete all logbooks within 48 hours of completing that day's activities and, for a 1–day trip, before offloading. The owner or operator of the vessel must submit the logbooks to NMFS within 7 days of offloading, 50 CFR 635.5(a)(1). Further, NMFS reminds fishermen that all swordfish, sharks, and tunas must be sold to a U.S.-permitted dealer, 50 CFR 635.31(d)(1), who is also required to report purchases from U.S. vessels on a regular basis, 50 CFR 635.5(b)(1).

Authorized Fishing Areas

Comment 7: NMFS should clarify that vessels fishing under charter/contract for another nation's quota must adhere to the contract nation's regulations.

Response: U.S.-flagged vessels must comply with all U.S. regulations wherever they fish. Vessels under contract may apply for an exempted fishing permit if they provide NMFS with information regarding specific regulations from which they would like to be exempt. NMFS will consider submitted information and issue exempted fishing permits on a case-by-case basis. NMFS cannot exempt U.S. vessels from regulations which may be inconsistent with U.S. fishery management goals.

Comment 8: One commenter strongly opposes the measure to authorize fishing areas at this time. There is concern that this action is not recommended by ICCAT.

Response: This regulation serves to clarify the existing regulations concerning U.S. vessels targeting eastern stock bluefin tuna. In the proposed rule, NOAA Fisheries proposed to prohibit retention of bluefin tuna caught in the east Atlantic Ocean because the United States has not been allocated quota for bluefin tuna in that area. However, the United States has been allocated quota for North Atlantic swordfish and bluefin tuna are caught incidentally to swordfish fishing. A retention prohibition for bluefin tuna from the east Atlantic Ocean would likely result in increased dead discards of bluefin tuna caught by U.S. vessels fishing for North Atlantic swordfish, inconsistent with HMS FMP objectives. Accordingly, NOAA Fisheries has modified the final rule to clarify allowable fishing areas for highly migratory species (HMS) fisheries by prohibiting bluefin tuna fishing in the Mediterranean Sea by U.S. vessels, consistent with the ICCAT agreement to prevent transfer of fishing effort for bluefin tuna from the west Atlantic to the east Atlantic. NOAA Fisheries will count all bluefin tuna caught incidentally to swordfish fishing in the east Atlantic against the west Atlantic U.S. bluefin tuna quota to ensure that those catches are monitored and appropriately accounted for. Furthermore, bycatch in the east Atlantic bluefin tuna fishery may be discussed at ICCAT in 2002.

Comment 9: NMFS should alter the method by which landings and discards of bluefin tuna are submitted to ICCAT. These data should accurately report landings of east Atlantic bluefin tuna to ICCAT which would reflect historical participation in the fishery. This would allow for the United States to enter into quota negotiations.

Response: NMFS intends to evaluate the catch locations of bluefin tuna landings in order to revisit the procedure by which these data are submitted to ICCAT.

Comment 10: NMFS needs to report U.S. historic catches of eastern bluefin, bigeye, yellowfin and albacore tunas and sharks to ICCAT. Reporting forms need to be revised to specify eastern versus western bluefin tuna and to include more space for recording latitude and longitude.

Response: NMFS will examine the reporting forms and suggest alternatives as deemed necessary.

Trade Restrictions/Trade Documentation Programs

Comment 11: NMFS should extend the documentation program to include yellowfin tuna and should unilaterally prohibit the importation of HMS that is non-compliant with ICCAT recommendations.

Response: NMFS would propose extending statistical documentation requirements to bigeye tuna, yellowfin tuna, and swordfish if ICCAT recommends such a program. In 2001, ICCAT issued a recommendation requiring the implementation of the bigeye tuna statistical document program and NMFS is currently working on implementing it.

Other Issues

Comment 12: No action should be taken to implement the temporary U.S. share allocated by ICCAT for North Atlantic albacore.

Response: NMFS agrees and is not changing the regulations regarding this topic.

Changes From the Proposed Rule

This final rule contains several changes from the November 15, 2001, proposed rule (66 FR 57409) regarding the authorized fishing areas. To discourage unauthorized fishing, while trying to minimize dead discards, the proposed prohibition on the retention of bluefin tuna from the east Atlantic Ocean has been modified to prohibit the retention of bluefin tuna from the Mediterranean Sea. This modification is consistent with ICCAT agreements to prevent transfer of fishing effort for bluefin tuna from the west Atlantic to the east Atlantic, and vice versa, and is consistent with HMS FMP objectives to reduce dead discards of bluefin tuna. In addition, based on the 2002 ICCAT meeting, ICCAT recommended that the ban on imports of bigeye tuna from Honduras be lifted. Pending a review of the 2002 ICCAT recommendations and an assessment of the need for further rulemaking, NOAA Fisheries is not finalizing the trade sanctions with regards to Honduras that had been included in the proposed rule. The regulatory text of the final rule has been modified to reflect this decision. Other minor editorial changes to the regulatory text were also made to ensure consistency with existing regulations.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* The Assistant Administrator for Fisheries, NOAA, has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries. The objective of this final rule is to improve conservation and management of Atlantic swordfish and tunas. Under 5 U.S.C. 553(d), the regulations promulgated by this final rule will enter into effect not less than 30 days after its publication date.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion (BiOp) was issued on June 14, 2001, which found that the continued existence of the HMS pelagic longline fishery jeopardizes the continued existence of loggerhead and leatherback sea turtles. On July 9, 2002, NMFS promulgated a final rule (67 FR 45393) that implemented the measures required by the BiOp for the pelagic and bottom longline and shark gillnet fisheries. These regulations are necessary to alleviate the jeopardy situation for HMS fisheries. No irreversible or irretrievable commitments of resources are expected from this final action as the measures implemented by this final rule are not expected to alter fishery interactions with endangered species.

NMFS has determined that these regulations will be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. All of the states that replied to the letter regarding compliance of the proposed rule with the Coastal Zone Management Act found NMFS' proposed actions to be consistent with their coastal zone management programs. NMFS presumes that the remaining states that did not respond also concur.

NMFS has prepared a regulatory impact review that examines the impacts of the selected alternatives, discussed previously in this rulemaking. The preparation of an initial regulatory flexibility analysis was not required as the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Association that this rule would not have a significant economic impact on a substantial number of small entities. During the proposed rule stage of this rulemaking, NMFS received no comments regarding the economic impact of this rule. As a result a Final Regulatory Flexibility Analysis was not prepared. The commercial fishery is composed of fishermen who hold a swordfish directed, incidental, or handgear permit and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities. In October 2001, there were approximately 208 fishermen with a directed swordfish limited access permit, 112 fishermen with an incidental swordfish limited access permit, and 100 fishermen with a handgear limited access permit for swordfish. The formation of a reserve quota category for the North Atlantic swordfish fishery will not have any impact on the amount of fish that can be harvested by U.S. swordfish fishermen. When NMFS makes the one-time transfer of 400 mt (300.8 mt dw) of previously unused swordfish quota to this category, it is not expected to have

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an impact on U.S. fishermen considering the amounts of recent quota underages, the impacts of recent management actions, and the recent levels of effort present in this fishery. The 400 mt (300.8 mt dw) of swordfish would have a value of $2.3 million if it was caught by U.S. fishermen; however, the quota has no value to fishermen until the swordfish are landed and sold. As previously mentioned, it is unlikely given the current level of effort that the amount to be transferred will be caught now or in the near future by U.S. fishermen. Thus, the current economic impact of establishing a reserve quota category is negligible. The other regulations promulgated by this rule to maintain existing quotas, reinstate or clarify previous regulations, and improve trade monitoring also will have no significant impacts on U.S. fishermen.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: November 15, 2002

Rebecca J. Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. A new § 635.25 is added to read as follows:

§ 635.25 Fishing areas.

(a) *General.* Persons on board fishing vessels subject to the jurisdiction of the United States are authorized to fish for, catch, retain, or land species governed by an international catch sharing agreement implemented under this part only in or from those management areas for which the United States has received an allocation.

(b) *Exemptions.* Persons and vessels subject to the jurisdiction of the United States intending to fish for regulated species in fishing areas not otherwise authorized under this part, whether for the purposes of scientific research or commercial fishing under a chartering arrangement, must have a permit from NMFS issued under § 635.32.

(c) *Atlantic bluefin tuna.* No person aboard a U.S. fishing vessel shall fish for bluefin tuna in, or possess on board that fishing vessel a bluefin tuna taken from, the Mediterranean Sea.

3. In § 635.27, paragraph (c) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) *Swordfish.* (1) *Categories.* Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species and, as needed, a reserve category. In addition, a dead discard allowance is established for the North Atlantic swordfish stock.

(i) *North Atlantic swordfish.* (A) A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the directed fishery quota. The annual directed fishery quota for the North Atlantic swordfish stock is 1,919 mt dw for each fishing year beginning June 1, 2000. The annual directed fishery quota is subdivided into two equal semiannual quotas of 959.5 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish has been issued, landed by fishermen without swordfish permits consequent to recreational fishing, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the incidental catch quota. The annual incidental catch quota for the North Atlantic swordfish stock is 300 mt dw.

(C) The dead discard allowance for the North Atlantic swordfish stock is: 320 mt ww for the fishing year beginning June 1, 2000; 240 mt ww for the fishing year beginning June 1, 2001; and 160 mt ww for the fishing year beginning June 1, 2002. All swordfish discarded dead from U.S. fishing vessels, regardless of whether such vessels are permitted under this part, shall be counted against the allowance.

(D) A portion of the total allowable catch of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives.

(ii) *South Atlantic swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock is 289 mt dw. The entire quota for the South Atlantic swordfish stock is reserved for pelagic longline vessels for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities or with other fishing gear is prohibited in the Atlantic Ocean south of 5° N. lat.

(2) *Inseason adjustments.* (i) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota or, as applicable, the reserve category, to reflect actual directed fishery and incidental fishing category catches during the June 1 through November 30 semiannual period.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quota or to the reserve.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual fishing season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual season will be used to adjust the annual incidental catch quota or the reserve as necessary to maintain landings and discards within the required annual limits.

(iv) NMFS will file with the Office of the Federal Register for publication notification of any inseason swordfish quota adjustment and its apportionment to fishing categories or to the reserve made under this paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota shall be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Any adjustments to the 12–month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication notification of any adjustment or apportionment made under this paragraph (c)(3)(ii).

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year or from the reserve category. NMFS will file with the Office of the Federal Register for publication notification of any adjustment made under this paragraph (c)(3)(iii).

4. Section 635.45 is revised to read as follows:

§ 635.45 Products denied entry.

(a) All shipments of Atlantic swordfish, or its products, in any form, harvested by a vessel under the jurisdiction of Belize or Honduras will be denied entry into the United States.

(b) All shipments of Atlantic bluefin tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Belize, Honduras, or Equatorial Guinea will be denied entry into the United States.

(c) All shipments of Atlantic bigeye tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Belize, Cambodia, Equatorial Guinea, or St. Vincent and the Grenadines will be denied entry into the United States. It is a rebuttable presumption that any shipment containing bigeye tuna or its products offered for entry or imported into the United States has been harvested by a vessel or vessels of the exporting nation.

5. Section 635.47 is revised to read as follows:

§ 635.47 Ports of entry.

NMFS shall monitor imported shipments of bluefin tuna, bigeye tuna, and swordfish into the United States. If NMFS determines that the diversity of handling practices at certain ports at which any of these species is being imported into the United States allows for circumvention of the bluefin tuna statistical document, swordfish Certificate of Eligibility requirements, or trade restrictions for these species or for Atlantic bigeye tuna, NMFS may designate, after consultation with the U.S. Customs Service, those ports at which these species may be lawfully imported into the United States. NMFS shall announce the names of such designated ports and the effective dates of entry restrictions through publication of a notice in the **Federal Register**.

6. In § 635.71, paragraphs (a)(24) and (a)(29) are revised, and a new paragraph (a)(38) is added, to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any import requirements or import restrictions specified at §§ 635.40, 635.41, 635.45, and 635.46, or at other than an authorized port of entry designated by NMFS under § 635.47.

* * * * *

(29) Land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control:

(i) Any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

(ii) Any fish of a species regulated pursuant to a recommendation of ICCAT that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

* * * * *

(38) Fish for, or possess on board a fishing vessel, species regulated under this part in unauthorized fishing areas as specified in § 635.25.

* * * * *

[FR Doc. 02–29509 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020313058–2094–02; I.D. 111302H]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Annual Quota Harvested

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; commercial fishery.

SUMMARY: NMFS announces that the annual spiny dogfish commercial quota available to the coastal states from Maine through Florida for the fishing year, May 1, 2002 - April 30, 2003, has been harvested. Federally permitted commercial vessels may no longer land spiny dogfish for the duration of the fishing year (through April 30, 2003). Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing spiny dogfish in these states.

DATES: Effective 0001 hrs local time, November 21, 2002, through 2400 hrs local time, April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Supervisory Fishery Policy Analyst, at (978) 281–9101.

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages of the annual quota. The commercial quota is distributed to the coastal states from Maine through Florida as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2002 fishing year was 4,000,000 lb (1,814 mt) (67 FR 30614, May 7, 2002). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30), with trip limits intended to preclude directed fishing. Quota period 1 was allocated 2,316,000 lb (1,050 mt) and quota period 2 was allocated 1,684,000 lb (764 mt) of the commercial quota, respectively. The total quota cannot be exceeded, so landings in excess of the amount allocated to quota period 1 have the effect of reducing the quota available to the fishery during quota period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data and other available information, determines when the total commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the spiny dogfish commercial quota has been harvested and no commercial quota is available for landing spiny dogfish for the remainder of a given quota period. The Regional Administrator has determined, based upon dealer reports and other available information, that the

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2002 annual commercial quota for spiny dogfish has been harvested.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. Therefore, effective 0001 hrs local time, November 21, 2002, landings of spiny dogfish in coastal states from Maine seb 29355 through Florida by vessels holding commercial Federal fisheries permits are prohibited through April 30, 2003, 2400 hrs local time. The fishing year 2003 quota for quota period 1 will be available for commercial spiny dogfish harvest on May 1, 2003. Effective November 21, 2002, through April 30, 2003, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 14, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29504 Filed 11–15–02; 3:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 224

Wednesday, November 20, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 1001

RIN 3206–AJ 69

OPM Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing a plain language rewrite of its regulations regarding the standards that govern OPM employee responsibilities and conduct as part of a broader review of OPM's regulations. The purpose of the revisions is to make the regulations more readable.

DATES: Comments must be submitted on or before January 21, 2003.

ADDRESSES: Send or deliver written comments to Wade Plunkett, Principal Deputy Ethics Official, Office of the General Counsel, Office of Personnel Management, Room 7532, 1900 E St., NW., Washington, DC 20415, FAX: 202–606–0082 or e-mail them to *wmplunke@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Wade Plunkett, by telephone at 202–606–1700; by FAX at 202–606–0082; or by e-mail at *wmplunke@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is revising part 1001, which deals with OPM employee responsibilities and conduct, as part of a larger review of OPM regulations for plain language purposes. The purpose of this revision to part 1001 is not to make substantive changes, but rather to make part 1001 more readable. The proposed regulations have been converted to a question-and-answer format and we have made minor changes to the wording to enhance clarity.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 1001

Conflicts of Interest.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to revise part 1001 as follows:

Subchapter C—Regulations Governing Employees of the Office of Personnel Management

PART 1001—OPM EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.

1001.101 In addition to this part, what other rules of conduct apply to Office of Personnel Management employees?

1001.102 What are the Privacy Act rules of conduct?

Authority: 5 U.S.C. 552a, 7301.

§ 1001.101 In addition to this part, what other rules of conduct apply to Office of Personnel Management employees?

In addition to the regulations contained in this part, employees of the Office of Personnel Management (OPM) should refer to:

(a) The Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulations at 5 CFR part 2634;

(b) The Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635;

(c) The Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees regulations at 5 CFR part 2636;

(d) Regulations Concerning Post Employment Conflict of Interest at 5 CFR part 2637;

(e) Post-employment Conflict of Interest Restrictions regulations at 5 CFR part 2641;

(f) The OPM regulations at 5 CFR part 4501, which supplement the executive branch-wide standards;

(g) The Employee Responsibilities and Conduct regulations at 5 CFR part 735;

(h) The restrictions upon use of political referrals in employment matters at 5 U.S.C. 3303.

§ 1001.102 What are the Privacy Act rules of conduct?

(a) An employee shall avoid any action that results in the appearance of using public office to collect or gain access to personal data about individuals beyond that required by or authorized for the performance of assigned duties.

(b) An employee shall not use any personal data about individuals for any purpose other than as is required and authorized in the performance of assigned duties. An employee shall not disclose any such information to other agencies or persons not expressly authorized to receive or have access to such information. An employee shall make any authorized disclosures in accordance with established regulations and procedures.

(c) Each employee who has access to or is engaged in any way in the handling of information subject to the Privacy Act, 5 U.S.C. 552a, shall be familiar with the regulations of this subsection as well as the pertinent provisions of the Privacy Act relating to the treatment of such information.

[FR Doc. 02–29439 Filed 11–19–02; 8:45 am]

BILLING CODE 6325–46–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH–05

List of Approved Spent Fuel Storage Casks: VSC–24 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Pacific Sierra Nuclear Associates VSC–24 system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to the Certificate of Compliance. Amendment No. 4 would modify the present cask system design to permit the storage of different specific fuel control elements as integral components to fuel assemblies under a general license. Also, Technical Specification (TS) 1.1.1 would be amended to change the flood condition velocity from 7.62 meters per

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second (m/s) [25 feet per second (ft/s)] to 5.39 m/s (17.7 ft/s); TS 1.2.1, 1.2.4., and 1.2.6 would be amended to address the additional fuel control elements approved for storage; and TS 1.2.10 would de deleted to eliminate redundant requirements for controlling moderator density.

DATES: Comments on the proposed rule must be received on or before December 20, 2002.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary Safety Evaluation Report (SER) can be found under ADAMS Accession No. ML 022490171. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 4 to CoC No. 1007 and does not include other aspects of the VSC–24 system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on February 3, 2003. However, if the NRC receives significant adverse comments by December 20, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(20, 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993.
Amendment Number 1 Effective Date: May 30, 2000.
Amendment Number 2 Effective Date: September 5, 2000.
Amendment Number 3 Effective Date: May 21, 2001.
Amendment Number 4 Effective Date: February 3, 2003.
SAR Submitted by: Pacific Sierra Nuclear Associates.
SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.
Docket Number: 72–1007.
Certificate Expiration Date: May 7, 2013.
Model Number: VSC–24.

* * * * *

Dated at Rockville, Maryland, this 1st day of November, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–29486 Filed 11–19–02; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–127380–02]

RIN 1545–BA79

Outbound Liquidations to Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the application of section 367(e)(2) to certain outbound liquidations. The regulations amend the anti-abuse rule of § 1.367(e)–2(d) by narrowing the scope of the rule to apply only to outbound transfers to a foreign corporation in a complete liquidation of a domestic corporation in which a principal purpose of the liquidation is the avoidance of U.S. tax. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 18, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 3, 2003, at 10 a.m. must be received by February 11, 2003.

ADDRESSES: Send submissions to CC:ITA:RU (REG–127380–02), room 5226, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 5 pm to: CC:ITA:RU (REG–127380–02), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Aaron A. Farmer (202) 622–3860; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Lanita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Generally, a liquidating corporation does not recognize gain or loss under section 337(a) on a distribution of any property to an 80-percent distributee (as defined in section 337(c)) in a complete liquidation to which section 332 applies. Section 367(e)(2) provides that, in the case of any liquidation to which section 332 applies, section 337(a) and (b)(1) shall not apply where the 80-percent distributee is a foreign corporation except as provided in regulations. The purpose of section 367(e)(2) generally is to prevent the removal of appreciated assets from U.S. taxing jurisdiction without the imposition of a U.S. corporate level tax. *See* H.R. Conf. Rep. No. 99–841, at II–202 (1986).

On August 9, 1999, the IRS and Treasury published final regulations (TD 8834 in the **Federal Register** at 64 FR 43072) under section 367(e)(2) regarding distributions of property in a complete liquidation under section 332 by a domestic corporation to a foreign parent corporation (outbound liquidation) and by a foreign corporation to a foreign parent corporation (foreign-to-foreign liquidations).

With regard to foreign-to-foreign liquidations, § 1.367(e)–2(c) generally provides that nonrecognition treatment applies under section 337(a) and (b)(1) when a foreign corporation (foreign liquidating corporation) makes a distribution of property in complete liquidation under section 332 to a foreign corporation that meets the ownership requirements of section 332(b). The regulations require gain to be recognized in a foreign-to-foreign liquidation if the foreign liquidating corporation makes a distribution of property which either is used by the foreign liquidating corporation in the conduct of a trade or business within the United States (a U.S. trade or business) at the time of the distribution or which ceased to be used in the conduct of a U.S. trade or business within the ten-year period ending on the date of distribution and would have been subject to section 864(c)(7) had it been disposed. The final regulations include an exception to this gain recognition rule in certain circumstances where the property is distributed to a foreign corporation that uses such property in a U.S. trade or business for the ten-year period following the distribution, provided that certain requirements are satisfied. § 1.367(e)–2(c)(2).

The final regulations included an anti-abuse rule providing that the Commissioner may require a foreign or domestic liquidating corporation to recognize gain (or treat the liquidating corporation as if it had recognized a loss) on a liquidating distribution if a principal purpose of the liquidation is the avoidance of U.S. tax. The final regulations further provide that a liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes (taken together or separately).

The preamble to the final regulations states that the anti-abuse rule would apply, for example, if a principal purpose of a liquidation is the distribution of a domestic liquidating corporation's earnings and profits without a U.S. withholding tax. The preamble to the final regulations also states that, in certain circumstances, the IRS is also concerned about a liquidation of a domestic corporation into a U.S. branch of a foreign corporation in a manner that facilitates the avoidance of U.S. tax, including the inappropriate use of attributes such as net operating losses. The preamble does not address the potential application of the anti-abuse rule to foreign-to-foreign liquidations.

Explanation of Provisions

Since the final regulations were issued, various commentators have expressed concern that the anti-abuse rule is overly broad because it is not limited by its express terms to outbound liquidations. Specifically, it has been brought to the attention of Treasury and the IRS that uncertainty regarding the potential application of the anti-abuse rule is preventing taxpayers from

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engaging in legitimate business transactions involving foreign-to-foreign liquidations. Although the preamble to the final regulations does not address any circumstances in which the anti-abuse rule would apply to a foreign-to-foreign liquidation, the rule by its express terms could so apply. Application of this rule to require gain recognition in a foreign-to-foreign liquidation is not consistent with the approach of the final regulations that require gain recognition in the case of a foreign-to-foreign liquidation only in particular and limited circumstances. Accordingly, these proposed regulations would amend the anti-abuse rule to limit its application only to outbound liquidations.

The proposed regulations also would clarify what constitutes a principal purpose of tax avoidance for purposes of the anti-abuse rule. The proposed regulations similarly would clarify the anti-abuse rule in § 1.367(e)–2(b)(2)(iii)(C)(1).

Effective Date

These regulations are proposed to apply to distributions occurring on or after September 7, 1999, or to distributions in taxable years ending after August 8, 1999, if the taxpayer has elected to apply the final regulations to such distributions. The IRS intends that, prior to the publication of these regulations in final form, the Commissioner will exercise its authority under the anti-abuse rules in § 1.367(e)–2(b)(2)(iii)(C)(1) and (d) in a manner that is consistent with these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 3, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 11, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Aaron A. Farmer of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.367(e)–2, is amended as follows:

1. Paragraph (b)(2)(iii)(C)(*1*) is amended by removing the parenthetical "(taken together or separately)" and adding "when taken together" in its place.

2. Paragraph (d) is revised.

The revision reads as follows:

§ 1.367(e)–2 Distributions described in section 367(e)(2).

* * * * *

(d) *Anti-abuse rule.* The Commissioner may require a domestic liquidating corporation to recognize gain on a distribution in liquidation described in paragraph (b) of this section (or treat the liquidating corporation as if it had recognized loss on a distribution in liquidation), if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–29508 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242–0328; FRL–7410–8]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval to a revision to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP) concerning particulate matter (PM–10) emissions from emission units, electrical generation units, and fuel burning equipment. We are also proposing to approve a revision to the ICAPCD portion of the California SIP concerning oxides of nitrogen (NO_X) emissions from fuel burning equipment. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by December 20, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	403	General Limitations on the Discharge of Air Contaminants	07/24/01	10/30/01
ICAPCD	400	Fuel Burning Equipment—Oxides of Nitrogen	09/14/99	05/26/00

On January 18, 2002 and October 6, 2000, respectively, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved versions of Rule 403 into the SIP on May 31, 1972 (37 FR 10842) as Rule 131, on February 3, 1989 (54 FR 5448) as Rule 403, and on January 27, 1981 (46 FR 8471) as Rules 404 and 406. We approved a version of Rule 400 into the SIP on May 31, 1972 (37 FR 10842) as Rule 131.

C. What Are the Changes in the Submitted Rules?

The significant changes to SIP Rule 131 are as follows:

- The limitation to not emit more than 200 pounds per hour of sulfur dioxide was moved to submitted Rule 405.B.4.a.2, which was approved by EPA on February 7, 2002 (67 FR 5727).
- The limitation to not emit more than 10 pounds per hour of combustion contaminants from fuel burning equipment was moved to submitted Rule 403.B.5.
- The limitation to not emit more than 140 pounds per hour of nitrogen oxides (NO_2) was moved to submitted Rule 400.B.

SIP Rule 404 would be superseded by submitted Rule 403.B.1. SIP Rule 406 would be superseded by submitted Rule 403.B.3.

Additional changes in submitted Rule 403 relative to all of the SIP rules are as follows:

- 403.B.1: The limitation on the mass discharge of particulate matter from emission units was made more stringent.
- 403.B.2: A limitation on the discharge concentration of air contaminants from emission units was added.
- 403.B.4: A very stringent limitation on the discharge concentration of combustion contaminants from electrical utility generating units was added.
- 403.C: Compliance test methods were added.

An additional change in submitted Rule 400 relative to SIP Rule 131 is as follows:

- 400.C: Compliance test methods, monitoring requirements, and a records retention period were added.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, PM–10 SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193).Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas with significant PM–10 sources to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT). RACM/RACT is not required for source categories that are not significant (*de minimis*) and do not have major sources. *See Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994). Based on the latest emissions inventory data contained in *Imperial County PM–10 State Implementation Plan Attainment Demonstration*, Draft Report (July 2001), Imperial County has at least three major PM sources: Santa Fe Pacific Gold Corp (541 tpy), U.S. Gypsum (Plaster City) (156 tpy), and American Girl Mine (136 tpy). Therefore, we conclude that submitted rule 403 must meet RACT in the absence of a demonstration by the State that these major sources do not contribute significantly to PM–10 levels which exceed the PM–10 NAAQS in the area. We also note that ICAPCD's Draft Report, which formed a basis for our 2001 attainment finding, refers to Rule 403 as one of the controls that should be considered RACT for stationary sources in Imperial County (see pages 37–38 of that report).

Generally, NO_X SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). However, the ICAPCD regulates a section 185A transitional ozone nonattainment area (see 40 CFR 81.305). Section 185A of the Act exempts transitional areas from all subpart 2

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requirements until December 31, 1991, and that exemption continues until EPA redesignates the area as attainment or designates the area as nonattainment under section 107(d)(4). See 57 FR 13498, at 13525 (April 16, 1992). Submitted Rule 400 improves upon the SIP by adding test methods, monitoring requirements, and a record retention period, all of which improve the practical enforceability of the NO_X emissions limits contained in the rule.

Guidance and policy documents that we used to define specific enforceability and RACM/RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).
- *PM–10 Guideline Document* (EPA–452/R–93–008).
- *Imperial County PM–10 State Implementation Plan Attainment Demonstration*, Draft Report (July 2001).
- *State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown*, Steven A. Herman, memorandum (September 20, 1999).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice*, (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (the "NO_X Supplement to the General Preamble"), U.S. EPA, 57 FR 55620 (November 25, 1992).

B. Do the Rules Meet the Evaluation Criteria?

Rule 403 improves the SIP by establishing more stringent PM–10 emission limits and by adding test methods. This rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

Rule 400 improves the SIP by adding test methods, monitoring requirements, and a record retention period, all of which improve the practical enforceability of the NO_X emissions limits contained in the rule. This rule is consistent with the relevent policy regarding enforceability, RACT, and SIP relaxations. These issues are discussed further in the TSD.

C. What Are the Rule Deficiencies?

The following are deficiencies that preclude full approval:

- Rule 403 should have monitoring and recordkeeping requirements in order to assure compliance with PM emission standards.
- Rule 403 should have some limitation on the period or conditions allowed for the exemption from PM emission standards during start-up and load changes.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of submitted ICAPCD Rule 403 to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the ICAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We are proposing full approval of submitted ICAPCD Rule 400 because we believe it fulfills all relevant requirements. We will accept comments from the public on the proposed limited approval/limited disapproval of ICAPCD Rule 403 and proposed full approval of ICAPCD Rule 400 for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8962; 40 CFR 81.305.
July 1, 1987 ...	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
November 15, 1990.	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

NO_X helps produce ground-level nitrogen dioxide, ozone, smog, and particulate matter which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 3 lists some of the national milestones leading to the submittal of these local agency NO_X rules.

TABLE 3.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8962; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP- Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

TABLE 3.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that

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may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 29, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–29477 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN145–1b; FRL–7396–6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to particulate matter (PM) emissions regulations for Union Tank Car of Lake County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on April 30, 2002 and September 6, 2002 as an amendment to its State Implementation Plan (SIP). The revisions consist of relaxing the PM limits for one emissions unit; however, actual emissions will not increase, and the PM National Ambient Air Quality Standards (NAAQS) should be protected. EPA is approving revisions for Union Tank Car because complying with the current limits is infeasible, and because the revisions should not harm air quality.

DATES: The EPA must receive written comments on this proposed rule by December 20, 2002.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–6524, E-Mail Address: *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve revisions to particulate matter emissions regulations for Union Tank Car's railcar manufacturing facility in Lake County, Indiana. IDEM submitted the revised regulations to EPA on April 30, 2002 and September 6, 2002 as an amendment to its SIP.

The revisions consist of relaxing the limits for one emissions unit; however, actual emissions will not increase, and the PM NAAQS should be protected. EPA is proposing approving revisions for Union Tank Car because complying with the current limits is infeasible, and because the revisions should not harm air quality.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: October 15, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 02–29474 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0280; FRL–7278–3]

Pesticides; Minimal Risk Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to reorganize certain existing tolerance exemptions. All of these chemical substances were reviewed as part of the tolerance reassessment process required under the Food Quality Protection Act of 1996 (FQPA). As a result of that review, certain chemical substances are now classified as "minimal risk," and are therefore being shifted to the section of 40 CFR part 180 that holds minimal risk chemical substances. The Agency is merely moving certain tolerance exemptions from one section of the CFR to another section: No tolerance exemptions are lost as a result of this action.

DATES: Comments, identified by docket ID number OPP–2002–0280, must be received on or before January 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products or if you market certain pesticides that have been exempted from the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pursuant to section 25(b) of FIFRA. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Antimicrobial pesticides (NAICS 32561)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0280. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit

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comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0280. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0280. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0280.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0280. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

In the **Federal Register** published on May 24, 2002 (67 FR 36534) (FRL–6834–8) EPA established a new § 180.950 to list the pesticide chemical substances that are exempted from the requirement of a tolerance based on the Agency's determination that these chemical substances are of "minimal risk." As the first step in populating this section, the Agency shifted the existing tolerance exemptions for commonly consumed food commodities, animal feed items, and edible fats and oils to this section.

This proposed rule shifts existing tolerance exemptions for certain inert ingredients that have been classified by the Agency as List 4A, "minimal risk," to 40 CFR 180.950. The decision documents supporting the minimal risk, List 4A-Classification, are in the docket.

The following tolerance exemptions are being shifted from 40 CFR 180.2: Citric acid, fumaric acid, lime, sodium chloride, and sulfur. The following tolerance exemptions are being shifted from 40 CFR 180.1001(c): Animal glue; bentonite; calcareous shale; calcite; calcium carbonate; calcium citrate; calcium silicate; α-cellulose; citric acid; coffee grounds; corn dextrin; dextrin; dolomite; graphite; guar gum; gypsum; hydroxyethyl cellulose; hydroxypropyl methylcellulose; iron oxide; kaolinite-type clay; lecithin; licorice root; magnesium carbonate; magnesium-lime; magnesium oxide; magnesium silicate; magnesium sulfate; methylcellulose; mica; montmorillonite-type clay; potassium aluminum silicate; potassium chloride; potassium citrate; potassium sulfate; silica, hydrated; silicon dioxide, fumed, amorphous; sodium acetate; sodium alginate; sodium aluminum silicate; sodium bicarbonate; sodium carboxymethylcellulose; sodium chloride; sodium sulfate; vermiculite; xanthan gum; zeolite (hydrated alkali aluminum silicate); and zinc oxide.

The following tolerance exemptions are being shifted from 40 CFR 180.1001(d): Cellulose acetate; graphite; hydroxypropylcellulose; locust bean gum; paper fiber, deinked or recycled; paper fiber, produced by the kraft (sulfate) or sulfite pulping processes; silicon dioxide, fumed, amorphous; soap bark (quillaja); sodium citrate; and wool fat (anhydrous lanolin). The following tolerance exemptions are being shifted from 40 CFR 180.1001(e): Calcium carbonate; calcium silicate (hydrated calcium silicate); calcium sulfate; castor oil, u.s.p.; α-cellulose; citric acid; dextrin; graphite; iron oxide; kaolinite-type clay; magnesium carbonate; methylcellulose; montmorillonite-type clay; potassium citrate; silica, amorphous, fumed (crystalline free); silica, hydrated silica; silica aerogel; sodium carboxymethylcellulose, sodium sulfate; sulfur; xanthan gum; and zinc oxide.

The following tolerance exemptions are also being shifted from: § 180.1036: Hydrogenated castor oil, § 180.1176: Sodium bicarbonate, § 180.1177: Potassium bicarbonate, and § 180.1180: Kaolin. Because this action merely moves certain tolerance exemptions from one section of the CFR to another section, it will have no substantive or procedural effect on the moved tolerance exemptions. No tolerance exemptions are lost as a result of this action.

III. What is the Agency's Authority for Taking this Action?

This proposed rule is issued under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemical substances in or on raw agricultural commodities and processed foods.

IV. What is "Minimal Risk?"

The term "minimal risk" has been used by EPA for over 10 years, and has generally meant List 4A inert ingredient chemical substances. On April 22, 1987 (52 FR 13305), EPA created a series of four lists as part of an initiative to address the risks potentially posed by inert ingredients in pesticide products. At that time all List 4 inert ingredients were classified as "inerts of minimal concern." The 4A Inert Ingredient List was created on November 22, 1989 (54 FR 48314) by subdividing List 4 into Lists 4A and 4B. List 4B inert ingredients are "inerts for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect public health or the environment." List 4A inert ingredients are "minimal risk inert ingredients." Only substances on List 4A are permitted to be used as inert ingredients in certain pesticides that have been exempted from FIFRA, 7 U.S.C. 136 *et seq.*, pursuant to section 25(b) of FIFRA, 7 U.S.C. 136w(b).

Minimal risk does not imply no risk under any circumstances. Every substance can present some risk in certain circumstances. Minimal risk is used to indicate a substance for which there is no information to indicate that there is a basis for concern. Many minimal risk or List 4A substances are naturally occurring substances to which some refinement has occurred, such as beeswax, limestone, red cedar chips, salt, and sugar. The determination that a chemical substance is minimal risk would be based on a recognition of the overall safety of the chemical (such as very low toxicity or practically non-toxic) considering the widely available information on the chemical substances known properties, and a history of safe use under reasonable circumstances. Minimal risk (List 4A) chemical substances are recognized as safe for use in all pesticide products subject only to good agricultural practices or good manufacturing practices. Classification as a List 4A, minimal risk, chemical substance is a high standard to meet. As an example, chemical substances of high acute toxicity are usually not considered for classification to List 4A. The critical distinction between List 4A minimal risk chemical substances and other chemical substances, is that the Agency does not define how, where, when or in what manner the chemical substance can be used. Any reasonably foreseeable use of these chemical substances in a pesticide product is not expected to present a risk to humans. Accordingly, there should not be any unreasonable adverse effects from the inclusion of a List 4A chemical substance in a pesticide product to the person applying a pesticide product in and around their home, to a child in a daycare center, or when ingesting a food commodity that has been treated. A List 4A chemical substance used as an inert ingredient, incorporated into a 25(b) product (meeting all the appropriate exemption criteria) is subject to no Federal regulation under FIFRA except as provided in 40 CFR 152.25(g).

The Agency must give consideration to all routes of exposure to determine that a chemical substance used in a pesticide product can be classified as minimal risk. Several of the chemical substances being shifted to the new section are naturally occurring materials that have been referred to as weathered materials. Weathered materials is the term that the Agency is using to describe a group of substances that could also be referred to as rocks and minerals. Generally, weathered materials are decayed or weathered rocks that are mostly unrefined, i.e., not altered or manufactured by man. When referring to weathered materials as mostly unrefined, the Agency is including the mechanical grinding of larger rocks into smaller pieces that are essentially the same, but not the chemical or physical alteration of the rock into a different substance. Naturally occurring materials such as these can contain impurities such as asbestos or silica which can lead to health effects including pneumoconiosis, silicosis, or kaolinosis. To evaluate these effects, the Agency conducted a screening-level assessment on weathered materials that compared an estimated residential exposure to the OSHA threshold limit value (TLV). A TLV is a limit on inhalation exposure in the workplace. Only those chemical substances that passed this screening level assessment were considered for List 4A status.

V. Nomenclature Changes

For some of the chemical substances that are being shifted to 40 CFR 180.950, EPA is making minor changes to the chemical substance names that were previously used. Additionally, the Agency has attempted to identify each of the listed chemical substances using the Chemical Abstracts Service Registry Number (CAS No.). The CAS No. provides one of the most distinct and universally accepted means of identifying chemical substances. The lack of a CAS No. will not preclude the Agency from including substances in 40 CFR 180.950. Generally, there will be only one CAS No. per listed substance; however, it is possible that more than one CAS No. may be appropriate for some substances, such as when there is both a hydrated and anhydrous form. EPA has both broadened and consolidated names to account for differing terminologies and current usage status. Also, additional information to better define the impurities in some naturally occurring substances and thus limit the inhalation concerns that can occur with naturally-occurring materials in a respirable form may have been added.

VI. Issues for Future Agency Actions

A. Chemical Substances Being Transferred From List 4A to List 4B

The proposed rule published in the **Federal Register** of January 15, 2002 (67 FR 1925) (FRL–6807–8) indicated that several allergen-containing food commodities would be moved from List 4A to List 4B. The Agency has now determined that there are additional chemical substances that no longer meet the criteria of List 4A. These chemical substances are acetic acid, activated charcoal, attapulgite clay, gum arabic, and granite. These chemical substances will be transferred from the Agency's 4A list to the 4B list. Pesticide products containing these inert ingredients will no longer be considered exempt under FIFRA section 25(b) once that transfer is made. Manufacturers of such products will have the option of either reformulating their product, substituting a different List 4A inert ingredient, or of registering the product with the Agency. It is noted that vinegar (maximum of 8% acetic acid in solution), a commonly consumed food commodity, is still classified as List 4A.

B. Chemical Substances That Have Been Classified as List 4A

The Agency has classified more chemical substances as List 4A, and is likely to classify additional chemical substances as List 4A. Shifting the

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existing tolerance exemptions for all of these chemical substances to 40 CFR 180.950 is a multi-step process that will continue. Additionally, on its own initiative, the Agency will propose to establish tolerance exemptions in 40 CFR 180.950 for some chemical substances that are currently classified as List 4A, but do not have tolerance exemptions. At the conclusion of this multi-step process, all chemical substances classified as List 4A will be included in 40 CFR 180.950 and will thus have tolerance exemptions.

VII. Regulatory Assessment Requirements

This proposed rule merely reorganizes existing exemptions in 40 CFR part 180. This has no substantive effect and hence causes no impact. The Agency is acting on its own initiative under FFDCA section 408 (e) in shifting these existing tolerance exemptions to a new section. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). Because the proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations under Executive Order 12898 entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that these proposed actions will not have significant negative economic impact on a substantial number of small entities. As noted in this unit, this action will have no substantive or procedural effect on the tolerance exemptions affected. However, by grouping tolerance exemptions that have qualified as minimal risk inerts in one location in the CFR, this action will make it easier for small entities to efficiently use EPA's tolerance regulations.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

§ 180.2 [Amended]

2. In § 180.2, paragraph (a), is amended by removing "citric acid," "fumaric acid," "lime," "sodium chloride," and "sulfur."

3. In § 180.950, paragraph (e) is amended by alphabetically adding the following chemical substances to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical substances	CAS No.
Acetic acid, sodium salt	127–09–3
Animal glue	None
Bentonite	1302–78–9
Bentonite, sodian	85049–30–5
Calcium oxide silicate ($Ca_3O(SiO_4)$)	12168–85–3
Carbonic acid, calcium salt, (limestone) (marble) (chalk) (mollusc/bivalve shells) (no asbestos and less than 1% crystalline silica)	1317–65–3
Carbonic acid, calcium salt (calcite) (no asbestos and less than 1% crystalline silica)	13397–26–7
Carbonic acid, calcium salt (1:1), (no asbestos and less than 1% crystalline silica)	471–34–1
Carbonic acid, calcium salt (1:1), hexahydrate	15634–14–7
Carbonic acid, magnesium salt (1:1) (less than 1% crystalline silica)	546–93–0
Carbonic acid, monopotassium salt	298–14–6
Carbonic acid, monosodium salt	144–55–8
Carob gum (locust bean gum)	9000–40–2
Castor oil	8001–79–4
Castor oil, hydrogenated	8001–78–3
Cellulose	9004–34–6
Cellulose acetate	9004–35–7
Cellulose, carboxy methyl ether, sodium salt	9004–32–4
Cellulose, 2-hydroxyethyl ether	9004–62–0
Cellulose, 2-hydroxypropyl ether	9004–64–2
Cellulose, 2-hydroxypropyl methyl ester	9004–65–3
Cellulose, methyl ether	9004–67–5
Cellulose, mixture with cellulose carboxymethyl ether, sodium salt	51395–75–6
Cellulose, pulp	65996–61–4
Cellulose, regenerated	68442–85–3
Citric acid	77–92–9
Citric acid, calcium salt	7693–13–2
Citric acid, calcium salt (2:3)	813–94–5
Citric acid, dipotassium salt	3609–96–9
Citric acid, disodium salt	144–33–2
Citric acid, monohydrate	5949–29–1
Citric acid, monopotassium salt	866–83–1
Citric acid, monosodium salt	18996–35–5
Citric acid, potassium salt	7778–49–6
Citric acid, sodium salt	994–36–5
Citric acid, tripotassium salt	866–84–2
Citric acid, tripotassium salt monohydrate	6100–05–6
Citric acid, trisodium salt	68–04–2
Citric acid, trisodium salt, dihydrate	6132–04–3
Citric acid, trisodium salt, pentahydrate	6858–44–2
Coffee grounds	68916–18–7
Dextrins	9004–53–9
Dolomite ($CaMg(CO_3)_2$) (no asbestos and less than 1% crystalline silica)	16389–88–1
Feldspar - group minerals (no asbestos and less than 1% crystalline silica)	68476–25–5
Fuller's earth	8031–18–3
Fumaric acid	110–17–8
Graphite (no asbestos and less than 1% crystalline silica)	7782–42–5
Guar gum	9000–30–0
Gypsum (sulfuric acid, calcium salt, dihydrate) (no asbestos and less than 1% crystalline silica)	13397–24–5
Iron oxide (FeO)	1345–25–1
Iron oxide (Fe_2O_3)	1309–37–1
Iron oxide (Fe_2O_3), hydrate	12259–21–1
Iron oxide (Fe_3O_4)	1317–61–9
Kaolin (no asbestos and less than 1% crystalline silica)	1332–58–7
Lanolin	8006–54–0
Lecithins	8002–43–5
Lecithins, soya	8030–76–0
Licorice Extract	68916–91–6
Lime (chemical) dolomitic (magnesium and calcium carbonate) (magnesium-lime)	12001–27–3
Magnesium oxide	1309–48–4
Magnesium silicon oxide ($Mg_2Si_3O_8$)	14987–04–3
Maltodextrin	9050–36–6
Mica - group minerals (no asbestos and less than 1% crystalline silica)	12001–26–2
Montmorillonite	1318–93–0
Paper	None
Perlite (no asbestos and less than 1% crystalline silica)	130885–09–5
Perlite, expanded (no asbestos and less than 1% crystalline silica)	93763–70–3
Plaster of Paris (sulfuric acid, calcium salt, hemihydrate); (no asbestos and less than 1% crystalline silica)	26499–65–0
Potassium chloride	7447–40–7
Silica aerogel	
Silica, amorphous, diatomaceous earth (Kieselguhr)(less than1% crystalline silica)	61790–53–2
Silica, amorphous, fumed (crystalline free)	112945–52–5
Silica, amorphous, perlite,	
Silica, amorphous, precipitated and gel	7699–41–4
Silica (crystalline-free forms only)	7631–86–9
Silica gel	63231–67–4
Silica gel, precipitated, crystalline-free	112926–00–8
Silica, hydrate	10279–57–9
Silica, vitreous	60676–86–0
Silicic acid, aluminum potassium salt	1327–44–2
Silicic acid, aluminum salt	1327–36–2
Silicic acid, aluminum salt, hydrate	1335–30–4
Silicic acid, aluminum sodium salt (1:1:1)	12003–51–9
Silicic acid, aluminum sodium salt	1344–00–9
Silicic acid, calcium salt	1344–95–2
Silicic acid, calcium salt, (wollastonite) (no asbestos and less than 1% crystalline silica)	13983–17–0
Silicic acid, magnesium salt	1343–88–0
Silicic acid, magnesium salt, hydrate	1343–90–4
Silicic acid, magnesium salt (1:1)	13776–74–4
Soapbark (Quillaja saponin)	1393–03–9
Sodium alginate	9005–38–3
Sodium chloride (table salt)	7647–14–5
Sulfur	7704–34–9

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Chemical substances	CAS No.
Sulfuric acid, calcium salt (1:1)	7778–18–9
Sulfuric acid, calcium salt, dihydrate (1:1)	10101–41–4
Sulfuric acid, calcium salt, hydrate (2:2:1)	10034–76–1
Sulfuric acid, magnesium salt, (1:1)	7487–88–9
Sulfuric acid, magnesium salt (1:1) heptahydrate	10034–99–8
Sulfuric acid, magnesium salt (1:1) monohydrate	14168–73–1
Sulfuric acid, monopotassium salt	7646–93–7
Sulfuric acid, dipotassium salt	7778–80–5
Sulfuric acid, disodium salt	7757–82–6
Sulfuric acid, disodium salt, decahydrate	7727–73–3
Sulfuric acid, disodium salt, heptadydrate	13472–39–4
Vermiculite (no asbestos and less than 1% crystalline silica)	1318–00–9
Xanthan gum	11138–66–2
Zeolites (excluding erionite; CAS No. 12510–42–8)	1318–02–1
Zinc oxide	1314–13–2

§ 180.1001 [Amended]

4. In § 180.1001 the table in paragraph (c) is amended by removing the following entries: "Animal glue;" "Bentonite;" "Calcareous shale;" "Calcite;" "Calcium carbonate;" "Calcium citrate;" "Calcium silicate;" "α-Cellulose;" "Citric acid;" "Coffee grounds;" "Corn dextrin;" "Dextrin;" "Dolomite;" "Graphite;" "Guar gum;" "Gypsum;" "Hydroxyethyl cellulose;" "Hydroxypropyl methylcellulose;" "Iron oxide;" "Kaolinite-type clay;" "Lecithin;" "Licorice root;" "Magnesium carbonate;" "Magnesium-lime;" "Magnesium oxide;" "Magnesium silicate;" "Magnesium sulfate;" "Methylcellulose;" "Mica;" "Montmorillonite-type clay;" "Potassium aluminum silicate;" "Potassium chloride;" "Potassium citrate;" "Potassium sulfate;" "Silica, hydrated;" "Silicon dioxide, fumed, amorphous;" "Sodium acetate; "Sodium alginate;" "Sodium aluminum silicate;" "Sodium bicarbonate;" "Sodium carboxymethylcellulose;" "Sodium chloride;" "Sodium sulfate;" "Vermiculite;" "Xanthan Gum;" "Zeolite (hydrated alkali aluminum silicate;" "Zinc oxide."

5. In § 180.1001 the table in paragraph (d) is amended by removing the following inert ingredients: "Cellulose acetate (CAS Reg. No. 9004–35–7), minimum number average molecular weight, 28,000; "Graphite;" "Hydroxypropyl cellulose;" "Locust bean gum;" "Paper fiber, deinked or recycled, conforming to 21 CFR 109.30(a)(9) and 21 CFR 176.260;" "Paper fiber, produced by the kraft (sulfate) or sulfite pulping processes;" "Silicon dioxide, fumed, amorphous;" "Soap bark (quillaja);" "Sodium citrate;" "Wool fat (anhydrous lanolin)."

6. In § 180.1001 the table in paragraph (e) is amended by removing the following inert ingredients: "Calcium carbonate;" Calcium silicate (hydrated calcium silicate);" Calcium sulfate;" "Castor oil, U.S.P.;" "α-Cellulose;" "Citric acid;" "Dextrin (CAS Reg. No. 9004–53–9);" "Graphite;" "Iron Oxide (CAS Reg. No. 1309–37–1);" "Kaolinite-type clay;" "Magnesium carbonate;" "Methylcellulose;" "Montmorillonite-type clay;" "Potassium citrate (CAS Reg. No. 866–84–2);" "Silica, amorphous, fumed (crystalline free) (CAS Reg. No. 112945–52–5);" "Silica, hydrated silica,;" "Silica aerogel (finely powdered microcellular silica foam having a minimum silica content of 89.5%);" "Sodium carboxymethylcellulose;" "Sodium sulfate;" "Sulfur (CAS Reg. No. 7704–34–9);" "Xanthan gum;" "Zinc oxide."

§ 180.1036 [Removed]

7. Section 180.1036 is removed.

§ 180.1176 [Removed]

8. Section 180.1176 is removed.

§ 180.1177 [Removed]

9. Section 180.1177 is removed.

§ 180.1180 [Removed]

10. Section 180.1180 is removed.

[FR Doc. 02–29172 Filed 11–19–02; 8:45 am]
BILLING CODE 6560–50–S

Notices

Federal Register
Vol. 67, No. 224
Wednesday, November 20, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on December 4, 2002, at the Doubletree Hotel-Lloyd Center, located at 1000 NE Multnomah in Portland, Oregon 97220. The primary purpose of the meeting is to continue with discussions on implementation of the Northwest Forest Plan (NWFP). IAC members are invited to meet at the hotel prior to the meeting for lunch at 12 noon. The meeting is scheduled to begin at 1 p.m. and continue until 5 p.m. Agenda items for the meeting include, but are not limited to: Introductions of new members, potential NWFP improvements, future IAC agenda topics, and recent court rulings related to the NWFP. The meeting is open to the public and is fully accessible for people with disabilities. Interpreters are available upon request at least 10 days in advance of the meeting. Written comments may be submitted for the record at the meeting. A time slot for oral public comments during the meeting is scheduled. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Steve Odell, Executive Director, Regional Ecosystem Office, 333 SW First Avenue, PO Box 3623, Portland, OR 97208 (Phone: 503–808–2165).

Dated: November 12, 2002.

Stephen J. Odell,

Designated Federal Official.

[FR Doc. 02–29411 Filed 11–19–02; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Southeast Washington Resource Advisory Committee (RAC) will meet on November 20, 2002, in Pomeroy, Washington. The purpose of the meeting is to discuss the selection of title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act, for Fiscal Year 2002 and outyears.

DATES: The meeting will be held on November 20, 2002, from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Forest Service office located at 71 West Main Street, Pomeroy, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the Committee for several months, so a review of duties and responsibilities will be needed before discussing title II projects.

The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: November 12, 2002.

Monte Fujishin,

Designated Federal Official.

[FR Doc. 02–29379 Filed 11–19–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue three revised conservation practice standards in section IV of the FOTG. The revised standards are: Hedgerow Planting (422), Stream Crossing (578) and Heavy Use Area Protection (561). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

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Dated: November 4, 2002.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 02–29462 Filed 11–19–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Census Bureau

Questionnaire for Building Permit Official

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 21, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, Census Bureau, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 763–5161.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaire SOC–QBPO to collect information from state and local building permit officials, such as (1) the types of permits they issue, (2) the length of time a permit is valid, (3) how they store permits, and (4) the geographic coverage of the permit system. We need this information to carry out the sampling for the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as Survey of Construction (SOC). The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts, Housing Completions, and New Housing Sales.

We plan no changes to the information collection methodology. In addition, there are no plans to change the sample size.

II. Method of Collection

The Census Bureau uses its field representatives to obtain information on the operating procedures of a permit office. The field representative visits the permit office, conducts the interview, and completes the electronic form.

III. Data

OMB Number: 0607–0125.
Form Number: SOC–QBPO.
Type of Review: Regular review.
Affected Public: State and local governments.
Estimated Number of Respondents: 900.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 225 hours.
Estimated Total Annual Cost: The estimated cost to the respondent is $4,230 based on an average hourly salary of $18.80 for state and local government employees. This estimate was taken from the Census Bureau's Annual Survey of State and Local Government Employment, 2001.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 14, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–29377 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: Quarterly Survey of the Finances Of Public-Employee Retirement Systems.
Form Number(s): F–10.
Agency Approval Number: 0607–0143.
Type of Request: Revision of a currently approved collection.
Burden: 300 hours.
Number of Respondents: 100.
Avg Hours Per Response: 45 minutes.
Needs and Uses: The Census Bureau requests continued OMB clearance of the Quarterly Survey of the Finances of Public Employee Retirement Systems. Over 2.1 trillion dollars in public-employee retirement system assets in the financial markets are controlled by a small number of large systems. The 1997 Census of Governments identified 2,276 state and local government administered public-employee retirement systems. The 100 largest systems, as measured by the system assets, account for about 90 percent of the total assets of all systems. This survey is used to collect financial data from these 100 systems for policy makers and economists to follow the changing characteristics of these funds.

We are proposing significant revisions to the survey form to make the form easier to complete. These changes pertain to decreasing the number of data items for the respondent to complete from forty-one to nineteen and the use of market value of assets. Previously, data on market and book values was collected but in light of the fact that most retirement systems use market in keeping with General Accounting Board Standards (GASB) rules, book has been removed from form F–10.

This survey was initiated by the Census Bureau at the request of both the Council of Economic Advisors and the Federal Reserve Board. The most important information this survey provides is the quarterly change in composition of the securities holdings of the public employee retirement systems component of the economy. The Federal Reserve Board uses these data to track the public sector portion of the flow of funds accounts. The Bureau of Economic Analysis uses the quarterly retirement information on corporate stock holdings to estimate dividends received by state and local government retirement systems that, in turn, are used in preparing the national income and product accounts. Additionally, these data are a significant part of the information base needed to analyze investment trends and help in the formulation of governmental economic policies and investment decisions.

Affected Public: State, local or Tribal government.
Frequency: Quarterly.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C., section 182.
OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: November 14, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–29378 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010209034–2251–07]

Qualifying Urban Areas for Census 2000; Correction

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice.

SUMMARY: On May 1, 2002 (67 FR 21962), the Bureau of the Census (Census Bureau) published a **Federal Register** Notice listing the areas that qualified as urbanized areas and urban clusters based on the results of Census 2000. The Census Bureau is correcting the lists of urbanized areas and urban clusters.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, U.S. Census Bureau, 4700 Silver Hill Road, Stop 7400, Washington, DC 20233–7400; telephone (301) 457–2131; e-mail at: *ua@geo.census.gov.*

SUPPLEMENTARY INFORMATION: On May 1, 2002 (67 FR 21962), the Census Bureau published a **Federal Register** Notice listing the areas that qualified as urbanized areas and urban clusters based on the results of Census 2000. The Census Bureau is correcting the lists of urbanized areas and urban clusters. The corrections contained in this Notice are in addition to the corrections that were published in a **Federal Register** Notice on August 23, 2002 (67 FR 54630). These corrections do not affect the earlier correction Notice.

The Census Bureau is providing the following corrections to the original Notice.

Page 21963, Column 3, Section A., *Significant Urbanized Area Changes,* Number 4, the Census Bureau is removing Section A.4 that reads as follows: "One 1990 census urbanized area failed to qualify as a Census 2000 urbanized area: Cumberland, MD–WV." The Census Bureau is removing this Section as a result of a correction to the "Urban Area Criteria for Census 2000" Notice (67 FR 11663; March 15, 2002) that creates a Census 2000 urbanized area for the Cumberland, MD–WV–PA area. The criteria correction is being published in a separate Notice in this issue of the **Federal Register.**

Page 21965, Column 3, Section B., *List of Urbanized Areas,* the Census Bureau is adding "Cumberland, MD–WV–PA 52,115" to the list of urbanized areas, as the 28th list item in Column 3 following Corvallis, OR. The Cumberland, MD–WV–PA, Urbanized Area includes the area in the previously published Census 2000 Cumberland, MD–WV–PA, Urban Cluster and the Frostburg, MD, Urban Cluster. This correction is being made as a result of a correction to the Urban Area Criteria for Census 2000. The former separate urban clusters of Cumberland, MD–WV–PA, and Frostburg, MD, are no longer recognized.

Executive Order 12866

This Notice is not significant for purposes of Executive Order 12866.

Administrative Procedure and Regulatory Flexibility Acts

Because a Notice and opportunity for public comment are not required by 5 U.S.C. 553, or any other law, for lists of urbanized areas, this Notice is not subject to the analytical requirements of the Regulatory Flexibility Act. Thus, a Regulatory Flexibility Analysis is not required and none has been prepared (5 U.S.C. 603(a)).

Paperwork Reduction Act

This Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

Dated: November 15, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–29464 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010209034–2252–06]

Urban Area Criteria for Census 2000; Correction

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice.

SUMMARY: On March 15, 2002 (67 FR 11663), the Bureau of the Census (Census Bureau) published a **Federal Register** Notice of Final Program Criteria announcing its criteria for defining urban and rural territory based on the results of Census 2000. The Census Bureau is correcting the final criteria as they apply to 1990 urbanized areas that did not qualify as part of a Census 2600 urbanized area.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, U.S. Census Bureau, 4700 Silver Hill Road, Stop 7400, Washington, DC 20233–7400; telephone (301) 457–2131; e-mail at: *ua@geo.census.gov.*

SUPPLEMENTARY INFORMATION: On March 15, 2002 (67 FR 11663), the Census Bureau published a **Federal Register** Notice of Final Program Criteria announcing its criteria for defining urban and rural territory based on the results of Census 2000. The Census Bureau is correcting the final criteria as they apply to 1990 urbanized areas that did not qualify as part of a Census 2000 urbanized area. The corrections contained in this Notice are in addition to the corrections that were published in a **Federal Register** Notice on August 23, 2002 (67 FR 54631). These corrections do not affect the earlier correction Notice.

The Census Bureau is providing the following correction to the original Notice.

Page 11667, Column 1, Section I, *Census 2000 Urbanized Area (UA) and Urban Cluster (UC) Definitions,* the

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Census Bureau is adding a new paragraph, between the first and second paragraphs of this Section, to read as follows: "In addition, the Census Bureau will designate a Census 2000 UA when all the territory in a previously existing 1990 UA is not included in any other Census 2000 UA, contains two or more clusters of urban population that reside in more than half the territory of the previously existing UA, and the combined population of the clusters totals 50,000 or greater."

Executive Order 12866

This Notice has been determined to be not significant for purposes of Executive Order 12866.

Administrative Procedure and Regulatory Flexibility Acts

Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553), or any other law, for rules of agency organization, procedure or practice (5 U.S.C. 553(b)(A)). Because notice and comment are not required, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Paperwork Reduction Act

This program Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44,U.S.C., Chapter 35.

Dated: November 15, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–29463 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1258]

Expansion of Foreign-Trade Zone 135, Palm Beach, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Palm Beach District, grantee of Foreign-Trade Zone 135, submitted an application to the Board for authority to include an additional site at the Palm Beach Park of Commerce (Site 8) in Palm Beach, Florida, within the West Palm Beach Customs port of entry (FTZ Docket 19–2002; filed April 11, 2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 19393, April 19, 2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 135 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 8th day of 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29497 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1256]

Grant of Authority for Subzone Status GE Engine Services Distribution LLC (Gas Turbine Engines), Erlanger, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Greater Cincinnati Foreign Trade Zone, Inc./Northern Kentucky Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 47, has made application to the Board for authority to establish special-purpose subzone status at the manufacturing and distribution facilities (gas turbine engines) of GE Engine Services Distribution LLC, located in Erlanger, Kentucky (FTZ Docket 25–2002, filed May 28, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 38638–38639, June 5, 2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the gas-turbine engine manufacturing facilities of GE Engine Services Distribution LLC located in Erlanger, Kentucky (Subzone 47C), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed in Washington, DC, this 8th day of November, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29502 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51–2002]

Foreign-Trade Zone 124—Gramercy, LA; Application for Subzone Status: J. Ray McDermott, Inc. (Offshore Drilling Platforms)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of South Louisiana Commission, grantee of FTZ 124, requesting special-purpose subzone status for the offshore drilling platform manufacturing facilities of J. Ray McDermott, Inc. (JRM), in Amelia, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 12, 2002.

The proposed subzone would consist of two sites leased by JRM in Amelia, Louisiana: Site 1 (589 acres)—"East/Southeast Yard", 2317 Highway 662 South (Assumption Parish), and Site 2 (50 acres)—"West Yard", 539 Degravelle Road (St. Mary Parish), located about 50 miles southwest of New Orleans. The facilities (1,440 employees) are used for the construction, fabrication, and repair of offshore floating and fixed oil drilling platforms and components thereof for domestic and international customers. Foreign components that may be used at the JRM yards (representing about 20% of finished platform value) may include gas turbines, gas compressors, generator sets, steel mill products, valves, pumps, centrifuges, flexible tubing, electrical flow control systems, and generators (2002 general duty rate range: free—5.0%, *ad valorem*).

FTZ procedures would exempt JRM from Customs duty payments on the foreign components (except steel mill products) used in export activity. On its domestic sales, the company would not be required to pay applicable Customs duties on the foreign components, or it would be able to choose the duty rate that applies to finished offshore drilling platforms (duty free) for the foreign-origin components noted above except for steel mill products. The manufacturing activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products (*e.g.*, angles, pipe, plate), which requires that full Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is January 21, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 3, 2003.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 1170, 365 Canal Street, New Orleans, LA 70130.

Dated: November 12, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29498 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50–2002]

Foreign-Trade Zone 2—New Orleans, LA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans (the Port), grantee of FTZ 2, requesting authority to expand its zone in the New Orleans, Louisiana area, within the New Orleans Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 2002

FTZ 2 was approved by the Board on July 16, 1946 (Board Order 12, 11 FR 8235, July 31, 1946). The zone has since been expanded four times (Board Orders 245, 331, 544 & 1000) and currently consists of seven sites (1,035 acres) in the New Orleans, Louisiana area:

Site 1 (4 Parcels, 19 acres total) as follows:

—8 acres at 100 Napoleon Avenue
—7 acres at 500 Louisiana Avenue (expires 12/1/02)
—1 acre at 500 N. Cortez Street
—3 acres at 720 Richard Street (expires 12/1/02);

Site 2 (76 acres) within the Almonaster-Michoud Industrial District (AMID) on the Inner Harbor Navigation Canal and the Mississippi River Gulf Outlet;

Site 3 (573 acres)—within the Newport Industrial Park, adjacent to AMID;

Site 4 (4 acres, 159,000 sq. ft.) at 200 Crofton Road, adjacent to the New Orleans International Airport, Kenner (Jefferson Parish);

Site 5 (21 parcels (some temporary), 111 acres total) at public/LME warehouse facilities at or adjacent to the Port of New Orleans as follows:

—7 acres at 5200 Coffee Drive, operated by Port Cargo Services, Inc. (PCS)
—2 acres at 601 Market Street, operated by PCS
—2 acres at 1601 Tchoupitoulas Street, operated by Neeb-Kearney, & Company, Inc. (NKI)
—12 acres at 5630 Douglas Street, owned and operated by Dupuy Storage and Forwarding Corporation (DSFC)
—9 acres at 6230 Bienvenue Street, operated by Metro International Trade Services, Inc. (MITSI)
—7 acres at 1400 Montegut Street, owned and operated by DSFC
—1 acre at 1645 Tchoupitoulas Street, operated by PCS
—1 acre at 1770 Tchoupitoulas Street, operated by Pacorini USA, Inc. (PUI)
—9 acres at 1930 Japonica Street, operated by MITSI
—2 acres at 2941 Royal Street, operated by NKI
—2 acres at 600 Market Street, operated by MITSI
—1 acre at 3101 Charters Street, operated by MITSI
—1 acre at 2601 Decatur Street, operated by DSFC
—1 acre at 2520 Decatur Street, operated by DSFC
—13 acres at 5300 Old Gentilly Boulevard, operated by DSFC
—8 acres at 4400 Florida Avenue, operated by PCS
—2 acres at 410, 420 & 440 Josephine Street and 427 Jackson Avenue, operated by PUI
—12 acres at 701/801 Thayer Street & 700/800 Atlantic Street operated by PCS
—9 acres at 500 Edwards Avenue, Harahan, operated by PCS
—9 acres at 14100 Chef Menteur Highway, New Orleans; operated by NKI; and,
—1 acre at 2114–2120 Rousseau Street, operated by PCS.

Site 6 (136 acres)—Arabi Terminal and Industrial Park, at Mile Point 90.5 on the Mississippi River, Arabi, owned and operated by the St. Bernard Port Harbor and Terminal District; and,

Site 7 (216 acres)—Chalmette Terminal and Industrial Park, one mile down river from the Arabi Terminal, owned and operated by the St. Bernard Port Harbor and Terminal District.

The applicant is now requesting authority to update, expand and reorganize the zone as described below. The proposal seeks to reorganize the site plan and site designations, to extend zone status to parcels with temporary authority, to restore zone status to parcels previously deleted from the zone in earlier changes, and to expand existing Site 5 by adding 8 new public/LME warehouse facilities.

Site 1 will be reduced to include only the 8-acre site at 100 Napoleon Avenue, New Orleans with the three other parcels being shifted to Site 5;

Site 3 will be reorganized to reinstate the 112 acres previously deleted through the approval of temporary modifications. The reorganized site would cover 685 acres within the Newport Industrial Park, Paris Road, Chalmette;

Site 5 will be reorganized and expanded to include all parcels listed above on a permanent basis, to include the three parcels from Site 1 on a permanent basis, and to include 8 new parcels at additional public/LME warehouse facilities at or adjacent to the Port of New Orleans (49 acres total) as follows:

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—10 acres at 1000 Burmaster Street, New Orleans, operated by NKI;
—7 acres at 6025 River Road, New Orleans, operated by MITSI;
—17 acres at 620/640 River Road, Westwego, operated by PCS;
—1 acre at 1806 Religious Street, New Orleans, operated by James P. Stoyanoff;
—3 acres at 1050 S. Jeff Davis Parkway, New Orleans, operated by The Delivery Network, Inc.;
—2 acres at 1600 Annunciation Street, New Orleans, operated by PCS;
—5 acres at 402 Alabo Street, New Orleans, operated by the the Port; and,
—4 acres at 4400 N. Galvez Street, New Orleans, operated by NKI.

Site 5, as proposed, will consist of a total of 171 acres total.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 21, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period February 3, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 423 Canal Street, New Orleans, LA 70130.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100 W, 1099 14th St. NW., Washington, DC 20005.

Dated: November 13, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29499 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1255]

Grant of Authority for Subzone Status; General Electric Aircraft Engines (Gas Turbine Engines), Research Triangle Park/Durham, NC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Triangle J Council of Governments, grantee of Foreign-Trade Zone 93, has made application to the Board for authority to establish special-purpose subzone status at the manufacturing and distribution facilities (gas turbine engines) of General Electric Aircraft Engines, located in Research Triangle Park/Durham, North Carolina (FTZ Docket 24–2002, filed May 28, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 38940–38941, June 6, 2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the gas-turbine engine manufacturing facilities of General Electric Aircraft Engines located in Research Triangle Park/Durham, North Carolina (Subzone 93F), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 8th day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29501 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1254]

Grant of Authority for Subzone Status General Electric Aircraft Engines (Gas Turbine Engines), Cincinnati, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Greater Cincinnati Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 46, has made application to the Board for authority to establish special-purpose subzone status at the manufacturing and distribution facilities (gas turbine engines) of General Electric Aircraft Engines, located in Cincinnati, Ohio (FTZ Docket 23–2002, filed May 28, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 38639–38640, June 5, 2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the gas-turbine engine manufacturing facilities of General Electric Aircraft Engines located in Cincinnati, Ohio (Subzone 46A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed in Washington, DC, this 8th day of November, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29500 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1257]

Grant of Authority for Subzone Status; Kiewit Offshore Services, Ltd. (Offshore Drilling Platforms), Ingleside, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, an application from the Port of Corpus Christi Authority, grantee of FTZ 122, for authority to establish special-purpose subzone status for the offshore drilling platform manufacturing facility of Kiewit Offshore Services, Ltd., in Ingleside, Texas, was filed by the Board on June 3, 2002, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 26–2002, 67 FR 40269, June 12, 2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

Now, therefore, the Board hereby grants authority for subzone status at the offshore drilling platform manufacturing facility of Kiewit Offshore Services, Ltd. (KOS), in Ingleside, Texas (Subzone 122P), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to the following special conditions:

1. Any foreign steel mill product admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

2. In addition to the annual report, KOS shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 8th day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–29503 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 020904209–2209–01]

Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency Concerning the Application of Safeguards in the United States of America (short title "U.S. Additional Protocol")

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: On May 9, 2002, the President transmitted the Protocol Additional to the Agreement Between the United States and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States of America (hereinafter referred to as the U.S. Additional Protocol), signed by the United States in 1998, to the Senate for its advice and consent to ratification. The requirements of the U.S. Additional Protocol would supplement the existing Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States (U.S.–IAEA Safeguards Agreement) by expanding the declaration, reporting and on-site access requirements of the U.S.–IAEA Safeguards Agreement to capture elements of the domestic nuclear fuel-cycle additional to those covered by the present U.S.–IAEA Safeguards Agreement. These elements include mining and milling of nuclear materials, nuclear-related equipment manufacturing, nuclear-related imports and exports, nuclear fuel cycle research and development not involving nuclear material, and forms of nuclear material not currently subject to the U.S.–IAEA Safeguards Agreement. The Department of Commerce, in consultation with other Executive Branch agencies, is working to reach an understanding of the universe of commercial locations that would be affected by implementation of the Additional Protocol. This Notice of Inquiry is part of an effort to collect information to estimate the potential impact that the implementation of the U.S. Additional Protocol will have on U.S. industry and to gain a better understanding of the universe of locations that may be affected by implementation, should the Additional Protocol enter into effect.

DATES: Comments are due on or before January 21, 2003.

ADDRESSES: Written comments (four copies) should be submitted to Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. In order to meet the due date for comments, single copies may be faxed to (202) 482–3355, provided that you follow up by submitting the appropriate number (four copies) of written comments.

FOR FURTHER INFORMATION CONTACT: For questions on the U.S. Additional Protocol, contact Brandon Williams, Treaty Compliance Division, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (703) 605–4400. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

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SUPPLEMENTARY INFORMATION:

Background

The requirement for a comprehensive international safeguards system to prevent the spread of nuclear weapons was first established by the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The NPT was signed by the United States on July 1, 1968, and entered into force on March 5, 1970. The treaty banned nuclear weapon states (NWS) from transferring nuclear weapons to non-nuclear weapon states (NNWS) or assisting NNWS to acquire such weapons, and stipulated that each non-nuclear weapon State Party to the NPT would undertake to accept safeguards as set forth in an agreement to be negotiated and concluded with the IAEA. Although the NPT required the establishment of safeguards, the formulation of detailed provisions for a model NPT Safeguards Agreement was not completed by the IAEA until 1971. These safeguards were designed to provide assurance that the nuclear material of States Parties which had not already developed nuclear weapons would not be diverted from peaceful use to making nuclear weapons.

During deliberations of the NPT, several major industrialized nations expressed concern that the absence of requirements for IAEA safeguards in NWS would place NNWS at a commercial and industrial disadvantage in developing nuclear energy for peaceful purposes. Specifically, the NNWS were concerned that application of safeguards would interfere with the efficient operations of their commercial activities and would possibly compromise industrial and trade secrets as a result of access by IAEA inspectors to their facilities and records. In order to allay these concerns, the United States voluntarily offered in 1967 to permit the IAEA to apply safeguards to all nuclear facilities in the United States except only for those associated with activities of direct national security significance. Since then, the other four NWS recognized under the NPT (China, France, the Russian Federation and the United Kingdom) have also agreed to subject all or part of their civil nuclear activities to IAEA safeguards.

The U.S.–IAEA Safeguards Agreement was signed on November 18, 1977, and entered into force on December 9, 1980. At that time the United States submitted to the IAEA a list of more than 200 eligible facilities for which safeguards could be applied if selected by the IAEA. This list included facilities licensed by the NRC and eligible Department of Energy facilities. The United States has added additional facilities to the eligible facilities list since that time. Under the U.S.–IAEA Safeguards Agreement, about a dozen commercial facilities have been selected for inspection since 1980.

Although the U.S.-IAEA Safeguards Agreement is based on the model safeguards agreement developed by the IAEA, the terms of the U.S. offer and the obligations of NNWS party to the NPT differ in several respects. First, the U.S. offer excludes nuclear facilities associated with activities of direct national security significance and does not contain any limitations on use of nuclear material by the United States. Also, the United States decides which U.S. facilities are eligible for safeguards and the IAEA decides which eligible facilities will be selected for application of safeguards, although the IAEA need not select any. Furthermore, the United States has made separate commitments to provide to the IAEA, for safeguards purposes, information on exports of nuclear material.

In the aftermath of the 1991 Persian Gulf War, international inspectors determined that Iraq had been engaged in a clandestine nuclear weapon development program at locations not directly subject to IAEA safeguards, despite inspections. The international community determined that the safeguards system needed to be strengthened and negotiated a model Additional Protocol to amend existing bilateral safeguards agreements. The model Additional Protocol requires enhanced information collection and access to provide IAEA inspectors with greater ability to detect clandestine nuclear activities in NNWS, and covers almost all of a state's nuclear fuel cycle. The United States, as a NWS party to the NPT, is not obligated to accept IAEA safeguards on its nuclear activities. However, the United States voluntarily signed the U.S. Additional Protocol on June 12, 1998. By submitting itself to the same safeguards on all of its civil nuclear activities that NNWS parties to the NPT are subject to, the United States intends to demonstrate that adherence to the model Additional Protocol does not place other countries at a commercial disadvantage. In this Additional Protocol, the United States accepts all of the measures of the Model Protocol except where their application would result in access by the IAEA to activiites with direct national security significance to the United States or to locations or information associated with such activities.

On May 9, 2002, the President transmitted the U.S. Additional Protocol to the Senate for its advice and consent to ratification. The U.S. Additional Protocol will not enter into force until the United States notifies the IAEA that the statutory and constitutional requirements for entry into force have been met. These requirements include ratification, implementing legislation, and issuance of regulations.

Declarations submitted under the U.S. Additional Protocol would provide the IAEA with information about additional aspects of the U.S. nuclear fuel cycle, including mining and milling of nuclear materials, nuclear-related equipment manufacturing, nuclear-related imports and exports, research and development not involving nuclear material, and other nuclear material activities not currently subject to the U.S.-Safeguards Agreement. There are no routine inspections under the Additional Protocol, but IAEA inspectors may be provided access (referred to as "complementary access") to the U.S. nuclear fuel cycle where there is a question or an inconsistency about the completeness or correctness of the U.S. declaration, which could relate to declared or undeclared industrial locations. Access to industrial locations is predicated upon an IAEA request for clarification of a declaration and may be exercised by the IAEA with a minimum of 24-hours notice. As with the U.S.-IAEA Safeguards Agreement, the IAEA would not be required to seek access to any U.S. locations. In carrying out responsibilities delegated to it for implementation of the U.S. Additional Protocol, the Department would apply a philosophy of ensuring compliance while minimizing intrusion and the burden on commercial activities.

Discussion and Request for Comments

The U.S. Additional Protocol is based on the model Additional Protocol (INFCIRC/540) which is organized into eighteen different Articles. INFCIRC/540 is available on the IAEA website (www.iaea.org). Article 2 describes the information required in a U.S. declaration to be submitted to the IAEA and in periodic reports and updates. The Department recognizes that some of this information is already being reported by commercial entities to U.S. Government agencies under U.S. Government regulations but is seeking to gain a better understanding of the number and type of locations that may be impacted by the declaration requirements of the U.S. Additional Protocol in order to refine estimates of the potential burden on U.S. industry and design future information collection systems. Where practical, the intent is to avoid redundancy in reporting required under an existing legislative mandate. However, in some of these instances, the Additional Protocol may require more information than is currently being provided, such as mining capacity or the scale of operations of equipment manufactured but not exported. Such cases would require additional submission of information. Also, for example, in cases where the data has been previously collected by voluntary survey, submissions to the Department would be mandated under the U.S. Additional Protocol. Data submissions related to activities such as public and private research and development are expected to comprise predominantly information previously unreported under any existing regulatory authority. There are some instances, such as the U.S. right to exclude activities or locations with direct national security significance under the U.S. Additional Protocol, where the model Additional Protocol, designed for NNWS, does not have relevance in the United States. This notice takes those instances into account.

It is the intent of the Department, by publishing this Notice of Inquiry, to gauge the scope of the impact of the Additional Protocol, both in newly reportable entities and additional impacts on those already reporting similar information under existing regulations. Information received will be used by the Executive Branch agencies who are given responsibility to implement the Additional Protocol a better understanding of the universe of commercial locations that will be affected. It would be most useful for the Department to receive comments on: (1) Estimated numbers of commercial locations that would be subject to reporting under the specific declaration elements and (2) whether this information is already reported to U.S. Government agencies and if so, to whom. For the purpose of this Notice of Inquiry, commercial locations are those not owned by or leased to the U.S. Government. The Department also welcomes discussion regarding: (1) Any concerns with the potential release of proprietary or confidential business information; (2) what information should not be subject to disclosure; (3) the type of information that could best satisfy the Additional Protocol requirements; (4) redundancy of reporting and data requirements; (5) the degree to which impacted companies would have new reporting requirements; and (6) the burden, including cost estimates, represented by requirements for companies to collect and report new information both initially and for annual updates. The specific elements to be reported to the IAEA in the U.S. declaration and a general discussion of the expected sources of this information are described below.

1. Research and Development Activities (Public and Private)

Article 2.a(i) of the model Additional Protocol requires a general description and information specifying the location of nuclear fuel cycle-related research and development activities not involving nuclear material, carried out anywhere, that are funded, specifically authorized or controlled by, or carried out on behalf of, the government of the United States. Article 2.b(i) requires this information for nuclear fuel cycle-related research and development activities not involving nuclear material that are not funded, specifically authorized or controlled by, or carried out on behalf of, the government of the United States. General description requirements are expected to include brief information regarding the fuel cycle stage to which the project is related, title of the project, the project number or other unique designation, description of work being performed, objectives of the project, degree of project completion, and intended application of the project results.

For the purpose of the Additional Protocol, "nuclear material" is defined as any source or special fissionable material (*i.e.*, enriched, natural, and depleted uranium and thorium—processed beyond the raw ore stage; *i.e.*, mill products and subsequent materials) it does not include ore or ore residue. "Nuclear fuel cycle-related research and development activities" are defined in the Additional Protocol as those activities which are specifically related to any process or system development aspect of any of the following: conversion (from one chemical species to another) of nuclear material, enrichment of nuclear material, nuclear fuel fabrication, reactors, critical facilities, reprocessing of nuclear fuel, processing (not including repackaging or conditioning not involving the separation of elements, for storage or disposal) of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233.

Declaration requirements exclude activities related to theoretical or basic scientific research or to research and development on industrial radioisotope applications, medical, hydrological and agricultural applications, health and environmental effects and improved maintenance.

2. Operational Activities of Safeguards Relevance

Article 2.a(ii) of the model Additional Protocol requires information identified by the IAEA on operational activities of safeguards relevance at facilities and locations outside facilities where nuclear material is customarily used. In the United States, this element will apply only at nuclear facilities where the IAEA is applying safeguards in the United States and where agreed to by the United States Government. At the present time, only four facilities are subject to safeguards. Examples of such operational activities include, but are not limited to, nuclear material transfers, empty spent fuel cask transfers, crane movement records, reactor fuel production, isotope production, and maintenance activities. A "facility" is defined in the Additional Protocol as a reactor, critical facility, conversion plant, fabrication plant, reprocessing plant, isotope separation plant or separate storage installation, or any location where nuclear material in amounts greater than one effective kilogram is customarily used.

The Department expects that these activities are subject to license by the NRC and the collection of this information will be the responsibility of the NRC.

3. Nuclear Facility Site Descriptions and Site Maps

Article 2.a(iii) of the model Additional Protocol requires a general description of each building on a site, including the building's use and, if not apparent from that description, its contents. In the United States, this element will apply only in instances where the United States has provided to the IAEA the relevant design information. Under the terms of the U.S.–IAEA Safeguards Agreement, the U.S. has provided such information on the nuclear facilities that have been inspected in the United States. The description is expected to include a building number or other unambiguous identification, approximate size of the building (*i.e.*, number of floors and total area), use of the building, and the main contents of the building. A map of the site is also required.

A "site" is defined in the model Additional Protocol as that area delimited by the United States in the relevant design information for a facility, including a closed-down facility, and in the relevant information on a location outside facilities where nuclear material is customarily used, including a closed-down location outside facilities where nuclear material

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was customarily used (this is limited to locations with hot cells or where activities related to conversion, enrichment, fuel fabrication or reprocessing were carried out). A "site" also includes all installations, co-located with the facility or location, for the provision or use of essential services, including: hot cells for processing irradiated materials not containing nuclear material; installations for the treatment, storage and disposal of waste; and buildings associated with specified activities identified by the United States under Article 2.a(iv) (see discussion below under Equipment Manufacturers).

The Department expects that the collection of information pertaining to facilities licensed by the NRC will be the responsibility of the NRC. However, the definition of "site" extends beyond areas involving nuclear material activities.

4. Equipment Manufacturers

Article 2.a(iv) of the model Additional Protocol requires a description of the scale of operations for each location engaged in certain nuclear-related manufacturing and/or assembly activities described in detail in Annex I to the model Additional Protocol and listed below (items a–s). The activities relate to equipment and non-nuclear material listed in Annex II to the model Additional Protocol. Scale of operations could mean, for example, approximate production capacity and capacity utilization during a declaration period. Although information is already being reported to the U.S. Government on the export of such equipment, the Department is not aware of any regulatory authorities currently collecting information on the scale of operations for manufacturing such equipment.

The model Additional Protocol requires declaration and reporting for the following nuclear-related manufacturing activities which are focused primarily on the manufacture of items "especially designed or prepared" for uranium enrichment (a-k) or other items related to the nuclear fuel cycle:

(a) The manufacture of centrifuge rotor tubes or the assembly of gas centrifuges that are especially designed or prepared for the separation of isotopes of uranium;

(b) The manufacture of gaseous diffusion barriers with thin, porous filters which are especially designed or prepared for the enrichment of uranium;

(c) The manufacture or assembly of laser-based isotope separation systems especially designed or prepared for enrichment of uranium;

(d) The manufacture or assembly of electromagnetic isotope separators especially designed or prepared for enrichment of uranium;

(e) The manufacture or assembly of columns or extraction equipment especially designed or prepared for enrichment of uranium;

(f) Uranium oxidation systems (chemical exchange) especially designed or prepared for enrichment of uranium;

(g) Fast-reacting ion exchange resins/adsorbents (ion exchange) especially designed or prepared for enrichment of uranium;

(h) Ion exchange columns (ion exchange) for isotope separation especially designed or prepared for enrichment of uranium;

(i) Ion exchange reflux systems (ion exchange) for isotope separation especially designed or prepared for enrichment of uranium;

(j) The manufacture of aerodynamic separation nozzles or vortex tubes especially designed or prepared for enrichment of uranium;

(k) The manufacture or assembly of uranium plasma generation systems especially designed or prepared for enrichment of uranium;

(l) The manufacture of zirconium tubes especially designed or prepared for use in a reactor;

(m) The manufacture or upgrading of heavy water or deuterium in which the ration of deuterium to hydrogen atoms exceeds 1:5000;

(n) The manufacture of nuclear grade graphite at a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 g/cm^3

(o) The manufacture of flasks for irradiated fuel;

(p) The manufacture of reactor control rods especially designed or prepared for the control of the reaction rate in a nuclear reactor;

(q) The manufacture of criticality safe tanks and vessels especially designed or prepared for use in a reprocessing plant;

(r) The manufacture of irradiated fuel element chopping machines especially designed or prepared for use in a reprocessing plant; and

(s) The construction of hot cells with a cell or interconnected cells totaling at least 6 cubic meters in volume with shielding equal to or greater than the equivalent of 0.5 meters of concrete, with a density of 3.2 g/cm^3 or greater, outfitted with equipment for remote operations.

5. Uranium and Thorium Mines and Mills

Article 2.a(v) of the model Additional Protocol requires information on the location, operational status and the estimated annual production capacity of uranium mines and concentration plants and thorium concentration plants, and the current annual production of such mines and concentration plants in the United States. Uranium and thorium concentration plants engage in the processing and milling of ore. Currently, the Department of Energy collects information via the Energy Information Agency regarding uranium mines. This includes some but not all of the required information regarding ore processing. The NRC licenses uranium and thorium mills, and the Department expects the collection of this information to be the responsibility of the NRC. Information on mine production capacity represents new reporting requirements under the Additional Protocol.

6. Source Material Not Suitable for Fuel Fabrication or Isotopic Enrichment

Article 2.a(vi) of the model Additional Protocol requires information on natural and depleted uranium in quantities greater than 10 metric tons or on thorium in quantities greater than 20 metric tons. The Department expects that these activities are subject to license by the NRC and the collection of this information will be the responsibility of the NRC.

7. Nuclear Material Exempted From Safeguards

Article 2.a(vii) of the model Additional Protocol requires information on nuclear material declared by the United States but exempted from safeguards by arrangement with the IAEA. There is no such material in the United States. If there were, the Department expects that the nuclear material would be subject to license by the NRC, and the collection of this information would be the responsibility of the NRC.

8. Waste for Which Safeguards Have Been Terminated

Article 2.a(viii) of the model Additional Protocol requires information on the location or further processing of intermediate or high-level waste containing plutonium, high-enriched uranium or uranium-233 on which IAEA safeguards have been terminated. High-enriched uranium means uranium containing 20 percent or more of the isotope uranium-235. There is no nuclear material in the United States on which IAEA safeguards have been terminated.

9. Export and Import of Specified Equipment and Non-Nuclear Material

Article 2.a(ix) of the model Additional Protocol requires information on the export and import of certain nuclear-related equipment and non-nuclear material listed in Annex II to the model Additional Protocol and listed below (items a-m). These items are subject to export license by the NRC and the Department expects the collection of this information will be the responsibility of the NRC. The Department is not aware of any current regulatory authority for collecting information on imports of such equipment and non-nuclear material. There will be no routine reporting requirements for import data since the submission of import data is upon specific request by the IAEA. The equipment and non-nuclear material subject to Article 2.a(ix) are described in Annex II to the U.S.-IAEA Additional Protocol and include:

(a) Reactors and equipment including complete nuclear reactors, and specially designed reactor pressure vessels, reactor fuel charging and discharging machines, reactor control rods, reactor pressure tubes, zirconium tubes, primary coolant pumps;

(b) Non-nuclear materials for reactors including deuterium and nuclear grade graphite;

(c) Specially designed irradiated fuel element chopping machines, dissolvers, solvent extractors and solvent extraction equipment, chemical holding or storage vessels, plutonium nitrate to oxide conversion system, plutonium oxide to metal production system;

(d) Specially designed equipment that seals the nuclear material within the cladding, and any other which normally comes in direct contact with, or directly processes, or controls, the production flow of nuclear material;

(e) Specially designed gas centrifuges and assemblies and components especially designed or prepared for use in gas centrifuges;

(f) Specially designed gas diffusion assemblies and components especially designed or prepared for use in gas diffusion enrichment;

(g) Specially designed or prepared systems, equipment and components especially designed for use in aerodynamic enrichment plants;

(h) Specially designed or prepared systems, equipment and components for use in chemical exchange or ion exchange enrichment plants;

(i) Specially designed or prepared systems, equipment and components for use in laser-based enrichment plants;

(j) Specially designed or prepared systems, equipment and components for use in plasma separation enrichment plants;

(k) Specially designed or prepared systems, equipment and components for use in electromagnetic enrichment plants;

(l) Specially designed or prepared equipment for plants for the production of heavy water, deuterium and deuterium compounds; and

(m) Specially designed or prepared systems for the conversion of uranium ore concentrates to UO_3, conversion of UO_3 to UF_6, conversion of UO_3 to UO_2, conversion of UO_2 to UF_4, conversion of UF_4 to UF_6, conversion of UF_4 to U metal, conversion of UF_6 to UO_2, and conversion of UF_6 to UF_4.

10. Ten-Year General Plans

Article 2.a(x) of the model Additional Protocol requires information regarding general plans for the succeeding ten-year period relevant to the development of the nuclear fuel cycle (including planned nuclear fuel cycle-related research and development activities) when approved by the appropriate authorities in the United States. The Department expects that the Department of Energy will be the approving authority for these plans and will be responsible for the collection of such data.

11. Activities Related to a "Site"

Article 2.b(ii) requires, upon specific request by the IAEA, a general description of activities and the identity of the person or entity carrying out activities at a particular location which has not been included as part of a "site" but which the IAEA considers may be functionally related to the activities on a "site" declared under 2(a)(iii) The U.S. Government will review such requests on a case-by-case basis. This provision relates only to element 3 above, where the United States has provided site descriptions and site maps.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close January 21, 2003. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration, at (202) 482–0637, for assistance.

Dated: November 14, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–29513 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–874]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Preliminary Determination.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Cindy Lai Robinson, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone:(202) 482–3965 and (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citationsto the Department

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of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR part 351 (2001).

Significant Ministerial Errors

The Department is amending the preliminary determination of sales at less than fair value in the antidumping duty investigation of certain ball bearings and parts thereof from the People's Republic of China (PRC) to reflect the correction of several ministerial errors made in that determination's margin calculations, pursuant to 19 CFR 341.224(g)(1) and (g)(2).

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. *See* 19 CFR 351.224(f). A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g). In this case, correction of the ministerial errors results in a change in the margin considered significant within the meaning of 19 CFR 351.224(g)(1). We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e). As a result of this amended preliminary determination, we have revised the antidumping rates for two of the respondents and the weight-averaged rate applied to the cooperative exporters who were not selected as mandatory respondents.[1]

Scope of Investigation

For purposes of this investigation, the products covered are ball bearings and parts thereof. For a comprehensive description of the scope of this investigation, please see the preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 67 FR 63609 (October 15, 2002) (*Preliminary Determination*).

Ministerial-Errors Allegation

On October 15, 2002, the Department published its preliminary determination in this proceeding. *See Preliminary Determination*. On October 15, 2002, the Department received timely allegations of ministerial errors in the *Preliminary Determination*, in accordance with section 351.224(c)(2) of the Department's regulations, from the petitioner, a domestic producer/interested party, and each of the three mandatory respondents.

The Department has reviewed the preliminary calculations, and, while disagreeing with several of the allegations, agrees that there are errors in the *Preliminary Determination* that constitute ministerial errors within the meaning of 19 CFR 351.224(f). Furthermore, we determine that the change in Wanxiang and Cixing's margins, as well as the change in the rate applied to the un-investigated cooperative exporters, resulting from the correction of these errors, is significant pursuant to 19 CFR 351.224(g)(1). We are amending the *Preliminary Determination* to reflect the correction of these ministerial errors pursuant to 19 CFR 351.224(e). For a detailed discussion of specific ministerial error allegations and Department responses *see Memorandum From Melissa Skinner to Bernard Carreau: Ministerial Error Memorandum* dated November 13, 2002, on file in the Central Records Unit (CRU), room B-099 of the main Commerce building.

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with sections 733(d) and (f) of the Act.

Amended Preliminary Determination

As a result of our correction of the ministerial errors, we have determined that the following dumping margins apply. In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amounts as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The percentage weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-Average Margin (percent)
Xinchang Peer Bearing Company Ltd.	2.39
Wanxiang Group Corporation	2.50
Ningbo Cixing Group Corp and CW Bearings USA, Inc.	2.32
B&R Bearing Co.	2.41
Changshan Import & Export Company, Ltd.	2.41
Changzhou Daya Import and Export Corporation Limited	2.41
China Huanchi Bearing Group Corp. AND Ningbo Huanchi Import & Export Co. Ltd.	2.41
China National Automotive Industry Guizhou Import & Export Corp.	2.41
China National Machinery & Equipment Import & Export Wuxi Co., Ltd.	2.41
Chongqing Changjiang Bearing Industrial Corporation	2.41
CSC Bearing Company Limited	2.41
Dongguan TR Bearing Corporation, Ltd.	2.41
Fujian Nanan Fushan Hardware Machinery Electric Co., Ltd.	2.41
Guangdong Agricultural Machinery Import & Export Company	2.41
Harbin Bearing Group AND Heilongjiang Machinery and Equipment Import and Export Corporation	2.41

[1] Specifically, the amended rate for Ningbo Cixing Group Corp. ("Cixing") is now 2.32, changed from 32.69 in our *Preliminary Determination*; the amended rate for Wanxiang Group Corporation ("Wanxiang") is 2.50, changed from 39.93; and the amended weighted-average rate is 2.41, changed from 22.99. The revised rate for Xinchang Peer Bearing Company Ltd. ("Peer") is 7.11, compared with 2.39; however, the overall effect on the weighted-average dumping margin is not significant and therefore does not warrant amendment of the *Preliminary Determination* with respect to Peer. Moreover, because we are not amending Peer's margin at this time, we have not included Peer's revised dumping margin in the re-calculated weighted-average dumping margin for the cooperative exporters who were not selected as mandatory respondents; rather, we used Peer's original *Preliminary Determination* margin.

Manufacturer/exporter	Weighted-Average Margin (percent)
Jiangsu CTD Imports & Exports Co., Ltd.	2.41
Jiangsu General Ball & Roller Co., Ltd.	2.41
Jiangsu Hongye Intl. Group Industrial Development Co., Ltd.	2.41
Jinrun Group Ltd. Haining	2.41
Ningbo Cixi Import Export Co.	2.41
Ningbo Economic and Technological Development Zone AND Tiansheng Bearing Co. Ltd AND TSB Group USA Inc. AND TSB Bearing Group America, Co. (TSB Group)	2.41
Ningbo General Bearing Co., Ltd.	2.41
Ningbo Jinpeng Bearing Co., Ltd. AND Ningbo Mikasa Bearing Co. Ltd. AND Ningbo Cizhuang Bearing Co. Tahsieh Development Zone	2.41
Ningbo MOS Group Corporation, Ltd.	2.41
Norin Optech Co., Ltd.	2.41
Premier Bearing & Equipment, Ltd.	2.41
Sapporo Precision Inc./Shanghai Precision Bearing Co., Ltd.	2.41
Shaanxi Machinery & Equipment Import & Export Corp.	2.41
Shandong Machinery Import & Export Group Corp.	2.41
Shanghai Bearing (Group) Company Limited	2.41
Shanghai Foreign Service and Economic Cooperation Co. Ltd.	2.41
Shanghai General Pudong Bearing Co., Ltd.	2.41
Shanghai Hydraulics & Pneumatics Corp.	2.41
Shanghai Nanshi Foreign Economic Cooperation & Trading Co., Ltd.	2.41
Shanghai SNZ Bearings Co., Ltd.	2.41
Shanghai Zhong Ding I/E Trading Co., Ltd. AND Shanghai Li Chen Bearings	2.41
Shaoguan Southeast Bearing Co. Ltd.	2.41
Sin NanHwa Bearings Co. Ltd. AND Sin NanHwa Co. Ltd.	2.41
TC Bearing Manufacturing Co. Ltd.	2.41
Wafangdian Bearing Company Ltd.	2.41
Wholelucks Industrial Limited	2.41
Wuxi New-way Machinery Co., Ltd.	2.41
Zhejiang Rolling Bearing Co. Ltd.	2.41
Zhejiang Shenlong Bearing Co. Ltd.	2.41
Zhejiang Wanbang Industrial Co., Ltd.	2.41
Zhejiang Xinchang Xinzhou Industrial Co. Ltd.	2.41
Zhejiang Xinchun Bearing Co. Ltd.	2.41
Zhejiang ZITIC Import & Export Co. Ltd.	2.41
PRC-Wide Rate	59.30

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the US industry.

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal-brief deadline date at the US Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, US Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than February 26, 2003.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: November 13, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29496 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–504]

Petroleum Wax Candles From the People's Republic of China (PRC): Notice of Extension of Time Limit of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Brett Royce, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230;

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telephone: (202) 482–3148 or (202) 482–4106, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351(2001).

Background

On August 28, 1986, the Department of Commerce (the Department) published the antidumping duty order on petroleum wax candles from the PRC (51 FR 30686). On August 1, 2001, the Department published an opportunity to request an administrative review of the order (66 FR 39729). On August 31, 2001, the Department received a request from Dongguan Fay Candle Co., Ltd. (Fay Candle) to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC. On October 1, 2001, the Department published a notice of initiation of this administrative review covering the period of August 1, 2000 through July 31, 2001 (66 FR 49924). On April 18, 2002, the Department extended the due date for the preliminary results of this review (67 FR 19159). On September 10, 2002, the Department published the preliminary results of this review (67 FR 57384). On October 4, 2002, Fay Candle, requested an extension of the due date for the case and rebuttal briefs and any hearing requests. On October 17, 2002, the Department extended the case brief and hearing request due date to November 25, 2002, and the rebuttal brief due date to December 9, 2002.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the final results of an administrative review if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that it is not practicable to complete the final results of this review within the statutory time limit. During the course of this review, numerous issues have been raised concerning the applicability of facts available. Due to the complexity of the issues involved, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(1) of the Department's regulations.

Therefore, the Department is extending the time limits for the final results by an additional 60 days (180 days from the date of publication of the preliminary results pursuant to section 19 CFR 351.213(h)(2)), until no later than March 10, 2003 (the calculated due date is March 9, 2003; however, since March 9, falls on a weekend, the due date will fall on the next business day, March 10). This notice is published in accordance with section 751(1)(3)(A) of the Act and section 19 CFR 351.213(h)(2) of the Department's regulations.

Dated: November 13, 2002.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–29495 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of open meeting.

Date: December 6, 2002.

Time: 9 a.m. to 12 p.m and 2:30 to 3:30 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Room 3407.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on December 6, 2002 at the U.S. Department of Commerce.

The ETTAC will discuss administrative and trade issues including the status of trade negotiations in regards to environmental technologies trade liberalization. Time will be permitted for public comment. The meeting is open to the public.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2004.

For further information phone Corey Wright, Office of Environmental Technologies Industries (ETI), International Trade Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: November 2, 2002.

Carlos F. Montoulieu,

Director, Office of Environmental Technologies Industries.

[FR Doc. 02–29435 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Processing (Updating); Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 21, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at 703–308–7400; by e-mail at *susan.brown@uspto.gov*; or by facsimile at 703–308–7407.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at 703–308–5107; or by electronic mail at *bob.spar@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 to examine an application for patent and, when appropriate, issue a patent. Also, the USPTO is required to publish patent applications, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under Title 35, United States Code ("eighteen-month publication"). Certain situations may arise which require that additional information be supplied in order for the USPTO to further process the patent or application. The USPTO administers the statutes through various sections of the rules of practice in 37 CFR part 1.

The kind of information generally needed by the USPTO to continue to process the patent or application, or for regulatory compliance, is outlined below:

- Each individual associated with the filing and prosecution of a patent application has a duty to disclose all information known to be material to the patentability of that application.
- All applicants for patents are required to pay statutory fees. Applicants with small entity status are entitled to a 50% reduction in the fees.
- Applicants who want to establish small entity status must assert a claim to small entity status, which may be payments of a small entity filing fee.
- Applicants should identify the type of information they are submitting, the person or representative submitting the information, and complete a certificate of mailing to ensure the timely filing of the information in the USPTO.
- A petition and extension fee is required when an applicant wants an extension to respond beyond a nonstatutory or shortened statutory time.
- An applicant must request in writing the abandonment of an application, if and when an express abandonment is desired.
- Disclaimers are required when an applicant or assignee wants or needs to disclaim or dedicate to the public the term, or any part of the term (or at least one complete claim that is deemed invalid without deceptive intent), of a patent or a patent to be granted.
- A notice of appeal must be filed when an applicant appeals the decision of the examiner to the Board of Patent Appeals and Interferences.
- An information disclosure citation may be filed during the enforceability of a patent, when a person cites prior art consisting of patents and printed publications which the person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of a particular patent.
- Petitions are required for revival of applications for patent that were unavoidably or unintentionally abandoned.
- An applicant, counsel of record, or the assignee, must provide written authorization to grant permission to designated individuals to inspect and make copies of an application when the application is required to be kept confidential by 35 U.S.C. 122.
- Deposit account information is needed when a customer wishes to order and pay for articles or services from the USPTO (other than copies of printed patents) with a deposit account.
- Certificate of mailing statements (PTO/SB/92/97) are necessary when an applicant relies upon the date of deposit with the U. S. Postal Service or the date of facsimile transmission of correspondence as proof of the timely filing of that correspondence.
- A request to not publish the application (PTO/SB/35) is required upon filing of the application if the applicant meets certain conditions as set forth in 35 U.S.C. 122.
- A request for voluntary publication, republication, or publication of a redacted application must be filed along with a copy of the application to be published via the USPTO's electronic filing system.

This information can be used by the USPTO to continue the processing of the patent or application or to ensure that applicants are complying with the patent regulations. The USPTO also uses the information to assist in the printing of patents, to calculate the correct fees, to route the correspondence to the correct departments, and to process orders. Other forms assist the USPTO in determining whether applications have been expressly abandoned, to expedite examination of design applications if so requested, and to assure that only those individuals who are authorized can access and copy applications.

The USPTO is adding a new form to this collection, PTO/SB/24A, Petition for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c). This petition was originally part of the Express Abandonment Form (PTO/SB/24). When the petition option was selected on the form, the form had to be processed at a different office at the USPTO than other options on the express abandonment form. Therefore, to improve the efficiency and effectiveness of processing, it was decided to create a new form for the petition to ensure that the petition is correctly and promptly directed to the proper office for a decision.

The paper copy of the application for publication is being deleted from this collection. This requirement was never implemented, as the Electronic Filing System (EFS) was determined to be fully operable and reliable to only require an electronic copy of an application for purposes of voluntary publication, redacted publication, or republication of a patent application. There is no form associated with this requirement.

A Change Worksheet was approved by the Office of Management and Budget (OMB) on February 14, 2002, that deleted two forms from this collection, PTO/SB/61/PCT Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unavoidable under 37 CFR 1.137(a) and PTO/SB/64/PCT Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally under 37 CFR 1.137(b), and moved them into information collection 0651–0021 Patent Cooperation Treaty. The USPTO believes that these two forms more appropriately belong in 0651–0021 in the interest of uniformity and because the information contained in these two forms specifically applies to international applications. The values for these two forms were changed accordingly on the OMB Inventory listing for these two collections, but the forms were never physically moved out of 0651–0031 into 0651–0021. Therefore, forms PTO/SB/61/PCT and PTO/SB/64/PCT are now part of collection 0651–0021.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO. The eIDS (electronic information disclosure statements) and the electronic filing system (EFS) copy of application for publication may be submitted electronically over the Internet.

III. Data

OMB Number: 0651–0031.

Form Number(s): PTO/SB/08A/08B/21/22/23/24/24A/25/26/27/30/31/32/35/36/37/42/43/61/62/63/64/67/68/91/92/96/97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, and electronic version of Information Disclosure Statements (eIDS).

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the

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Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 2,202,764 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public between 1 minute, 48 seconds (0.03 hours) to four hours, depending upon the complexity of the situation, to gather, prepare, and submit the various documents in this information collection. There are 30 forms associated with this collection.

Estimated Total Annual Respondent Burden Hours: 824,677 hours per year.

Estimated Total Annual Respondent Cost Burden: $151,736,520 per year. The USPTO expects that the transmittal form; the petition for extension of time under 37 CFR 1.136(a); express abandonment; requests to access, inspect and copy; deposit account order form; certificates of mailing; electronic filing system (EFS) copy of application for publication; copy of the applicant or patentee's record of the application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not); and the petition for express abandonment to avoid publication under 37 CFR 1.138(c) forms will be prepared by paraprofessionals. Using the paraprofessional rate of $30 per hour, the USPTO estimates that the respondent cost burden will be $7,578,660. The USPTO estimates that the other items in this collections will be prepared by associate attorneys in private firms. Using the professional hourly rate of $252 per hour for associate attorneys in private firms, the USPTO estimates $144,157,860 per year for salary costs associated with respondents for the other items in this information collection. The total respondent cost burden is $151,736,520 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Information Disclosure Statements—Paper	2 hours	265,300	530,600
eIDS (Information Disclosure Statements) filed	1 hour	14,000	14,000
Transmittal Form	12 minutes	1,039,500	207,900
Petition for Extension of Time under 37 CFR 1.138(a)	6 minutes	189,000	18,900
Petition for Extension of Time under 37 CFR 1.138(b)	30 minutes	54	27
Express Abandonment	12 minutes	13,825	2,765
Disclaimers	12 minutes	15,000	3,000
Request for Expedited Examination of a Design Application	12 minutes	130	26
Notice of Appeal	12 minutes	16,500	3,300
Information Disclosure Citation	2 hours	1,830	3,660
Petitions to Revive Unintentionally or Unavoidably Abandoned Applications	1 hour	4,940	4,940
Requests to Access, Inspect and Copy	12 minutes	18,650	3,730
Deposit Account Order Form	12 minutes	1,160	232
Certificates of Mailing	1 minute, 48 seconds	543,000	16,290
Statement Under 37 CFR 3.73(b)	12 minutes	19,450	3,890
Non-publication Request	6 minutes	31,500	3,150
Rescission of Non-publication Request	6 minutes	525	53
Electronic Filing System (EFS) Copy of Application for Publication	2 hours, 30 minutes	1,000	2,500
Copy of File Content Showing Redactions	4 hours	12	48
Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	1 hour	235	235
Request for Continued Examination (RCE)	12 minutes	26,000	5,200
Request for Oral Hearing Before the Board of Patent Appeals and Interferences	12 minutes	750	150
Request for Deferral of Examination 37 CFR 1.103(d)	12 minutes	53	11
Petition for express abandonment to avoid publication under 37 CFR 1.138(c)	12 minutes	350	70
Total		2,202,764	824,677

Estimated Total Annual Nonhour Respondent Cost Burden: $141,055,924. There are no maintenance costs associated with this information collection. However this collection does have capital start-up costs, record keeping costs, postage fees, and filing fees.

The capital start-up costs are associated with the information disclosure statements (IDS) that only cite U.S. patent documents which may be filed electronically via EFS and also with the republication, voluntary publication, early publication, or redacted publication of patent applications, which must be submitted to the USPTO via EFS. When an IDS or a republication, voluntary publication, early publication, or redacted publication of a patent application is completed electronically using ePAVE, the supporting attachments must be prepared in TIFF format, which may require a scanner if the supporting documents are not already in digital form. The average cost of a scanner is $200. The scanned or saved image files can be converted into standard TIFF format using image processing software. The electronic forms are prepared and submitted using the free ePAVE software from the USPTO, and the XML documents created by ePAVE can be viewed or printed with the free Internet Explorer version 5.5 browser. There are no costs to the applicant associated with the authoring software or ePave. The USPTO provides this software to the applicant after he or she applies to the USPTO for a digital certificate and is approved. Therefore, there is a total of $200 in capital start-up costs associated with this collection.

The public may submit the paper forms and petitions in this collection to the USPTO by mail through the United States Postal Service. If the submission is sent by first-class mail, the public may also include a signed certification of the date of mailing in order to receive credit for timely filing. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents, and that customers filing the documents associated with this information collection may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 2,187,764 submissions per year may be mailed to the USPTO at an average first-class postage cost of 49 cents, for a total postage cost of $1,072,004.

A record keeping cost of $450 is being added into this collection for the eIDS as well as for the EFS submissions. The applicant is strongly urged to retain a copy of the file submitted to the USPTO as evidence of authenticity in addition to keeping the acknowledgment receipt as clear evidence that on the date noted the file was received by the USPTO. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the eIDS and EFS submissions and that approximately 15,000 (14,000 eIDS and 1,000 EFS) submissions per year will use this option, for a total of 15 hours per year for printing this receipt. Using the paraprofessional rate of $30 per hour, the USPTO estimates that the record keeping cost associated with this collection will be $450 per year.

There is also annual nonhour cost burden in the way of filing fees associated with this collection. Since the filing fees have not previously been included in this collection for all items, the total number of filings is being used to calculate these costs. The submission of an Information Disclosure Statement (IDS) normally does not have any fees associated with it, unless it is submitted in the time frame defined by 37 CFR 1.97(c) or (d). When an IDS is submitted under 37 CFR 1.97(c) or (d), it is submitted late in the prosecution of the application, and a fee of $180 is required. It is estimated that 30,450 out of the total estimated 279,300 IDS filings per year will be filed under 37 CFR 1.97(c) or (d). When filing a request for deferral of examination, the applicant must pay the processing fee of $130 indicated by 37 CFR 1.17(i) and the publication fee of $300 indicated by 37 CFR 1.18(d). The combined filing cost of $430 for each request results in a total annual nonhour cost burden of $21,500 associated with this form.

The total estimated filing costs for this collection of $139,983,270 are calculated in the accompanying chart.

Item	Responses (a)	Filing fee ($) (b)	Total non-hour cost burden (a) × (b)
Submission of an Information Disclosure Statement (IDS) under 37 CFR 1.97(c) or (d)	30,450	$180.00	$5,481,000.00
Transmittal forms	1,039,500	None	0
One month extension of time under 37 CFR 1.136(a)	60,270	150.00	9,040,500.00
One month extension of time under 37 CFR 1.136(a) (small entity)	23,503	75.00	1,762,725.00
Two month extension of time under 37 CFR 1.136(a)	31,225	540.00	16,861,500.00
Two month extension of time under 37 CFR 1.136(a) (small entity)	12,891	270.00	3,480,570.00
Three month extension of time under 37 CFR 1.136(a)	32,724	1,240.00	40,577,760.00
Three month extension of time under 37 CFR 1.136(a) (small entity)	16,413	620.00	10,176,060.00
Four month extension of time under 37 CFR 1.136(a)	3,370	1,940.00	6,537,800.00
Four month extension of time under 37 CFR 1.136(a) (small entity)	2,267	970.00	2,198,990.00
Five month extension of time under 37 CFR 1.136(a)	2,163	2,640.00	5,710,320.00
Five month extension of time under 37 CFR 1.136(a) (small entity)	4,174	1,320.00	5,509,680.00
Extension of time under 37 CFR 1.136(b)	54	None	0
Express Abandonment	13,825	None	0
Petition for express abandonment to avoid publication under 37 CFR 1.138(c)	350	130.00	45,500.00
Statutory Disclaimer	11,250	110.00	1,237,500.00
Statutory Disclaimer (small entity)	3,750	55.00	206,250.00
Requests for Expedited Examination of a design application	130	900.00	117,000.00
Notice of Appeal	12,570	600.00	7,542,000.00
Notice of Appeal (small entity)	3,930	300.00	1,179,000.00
Request for an Oral Hearing	600	460.00	276,000.00
Request for an Oral Hearing (small entity)	150	230.00	34,500.00
Information Disclosure Citations	1,830	None	0
Petition to Revive Unavoidably Abandoned Application	170	110.00	18,700.00
Petition to Revive Unavoidably Abandoned Application (small entity)	235	55.00	12,925.00
Petition to Revive Unintentionally Abandoned Application	2,690	1,280.00	3,443,200.00
Petition to Revive Unintentionally Abandoned Application (small entity)	1,845	640.00	1,180,800.00
Requests to Access, Inspect and Copy	18,650	None	0
Deposit Account Order Form	1,160	None	0
Certificates of Mailing	543,000	None	0
Statement Under 37 CFR 3.73(b)	19,450	None	0
Non-publication Request	31,500	None	0
Rescission of Non-publication Request	525	None	0
Electronic Filing System (EFS) Copy of Application for Publication	1,000	None	0
Copy of File Content Showing Redactions	12	None	0
Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	235	None	0
Request for Continued Examination (RCE)	20,800	740.00	15,392,000.00
Request for Continued Examination (RCE) (small entity)	5,200	370.00	1,924,000.00
Processing fee for deferral of examination	53	130.00	6,890.00
Request for voluntary publication or republication	70	430.00	30,100.00
Total	1,953,984		139,983,270.00

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The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of capital start-up costs, record keeping costs, postage costs, and filing fees is 141,055,924.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 13, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 02–29380 Filed 11–19–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice/extension of comment period.

SUMMARY: On November 8, 2002, the Department of Education published two 30-day public comment period notices in the **Federal Register** (page 68110, column 1 and page 68110, column 3) for the information collections, "Federal PLUS Program Master Promissory Note," and "Federal Direct PLUS Loan Applications and Master Promissory Note (PLUS MPN), and Endorser Addendum." Because of a system software error, the contents of *http://edicsweb.ed.gov* were not updated to reflect the materials submitted to OMB. The Leader, Regulatory Management Group, Office of the Chief Information Officer, sincerely apologizes for any inconvenience caused by this error and hereby extends the public comment period through December 15, 2002.

While the contents of *http://edicsweb.ed.gov* have been updated to reflect the correct information, written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at *Lew.Oleinick@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Lew Oleinick at his e-mail address *Lew.Oleinick@ed.gov*.

Dated: November 14, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–29402 Filed 11–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–556–001]

Algonquin Gas Transmission Company; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub Second Rev Second Rev Sheet No. 651, effective October 25, 2002.

Algonquin states that the purpose of this filing is to comply with the letter order issued by the Commission on October 24, 2002 in Docket No. RP02–556–000 (October 24 Order). Algonquin states that on September 24, 2002, it filed a revised tariff sheet (September 24 Filing) with proposed changes to the capacity release provisions of the General Terms and Conditions of its tariff. Algonquin states that the Commission's October 24 Order accepted the proposed changes subject to Algonquin making certain further revisions to the tariff sheet within 15 days of the October 24 Order. Algonquin states that the tariff sheet included herewith includes the required revisions in compliance with the October 24 Order.

Algonquin states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29422 Filed 11–19–02; 8:45 am]

BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–557–001]

Algonquin LNG, LP; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, Algonquin LNG, LP (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, effective October 25, 2002:

Sub Fifth Revised Sheet No. 66
Original Sheet No. 66A

ALNG states that the purpose of this filing is to comply with the letter order issued by the Commission on October 24, 2002 in Docket No. RP02–557–000 (October 24 Order). ALNG states that on September 24, 2002, it filed revised tariff sheets (September 24 Filing) with proposed changes to the capacity release provisions of the General Terms and Conditions of its tariff. ALNG states that the Commission's October 24 Order accepted the proposed changes subject to ALNG making certain further revisions to the tariff sheets within 15 days of the October 24 Order. ALNG states that the tariff sheets included herewith include the required revisions in compliance with the October 24 Order.

ALNG states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29423 Filed 11–19–02; 8:45 am]

BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–42–001]

Distrigas of Massachusetts L.L.C.; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, Distrigas of Massachusetts LLC (DOMAC), tendered for filing in the above-captioned proceeding an errata to its October 24, 2002, filing of a modified Storage Service Agreement by and between DOMAC and Boston Gas Company (Boston Gas) redesignating Third Revised Sheet No. 87 as Fourth Revised Sheet No. 87.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29427 Filed 11–19–02; 8:45 am]

BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–558–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, effective October 25, 2002:

Sub First Rev Original Sheet No. 147A
Sub Fifth Revised Sheet No. 155
Sub Original Sheet No. 155A

East Tennessee states that the purpose of this filing is to comply with the letter order issued by the Commission on October 24, 2002 in Docket No. RP02–558–000 (October 24 Order). East Tennessee states that on September 24, 2002, it filed revised tariff sheets (September 24 Filing) with proposed changes to the capacity release provisions of the General Terms and Conditions of its tariff. East Tennessee states that the Commission's October 24 Order accepted the proposed changes subject to East Tennessee making certain further revisions to the tariff sheets within 15 days of the October 24 Order. East Tennessee states that the tariff sheets included herewith include the required revisions in compliance with the October 24 Order.

East Tennessee states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

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instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29424 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–12–000]

Egan Hub Partners, L.P.; Notice of Application

November 14, 2002.

Take notice that on November 5, 2002, Egan Hub Partners, L.P. (Egan Hub), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket an application, pursuant to section 7(c) of the Natural Gas Act (NGA) and the Commission's regulations thereunder, for a certificate of public convenience and necessity authorizing the expansion of its existing storage facility at the Jennings Salt Dome in Acadia Parish, Louisiana (Egan Storage Facility Expansion). This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Currently, Egan Hub has three salt caverns at its storage facility. Egan Hub seeks authorization to expand its existing salt dome storage facility working gas capacity from 16.0 Bcf to 24.0 Bcf and its maximum aggregate operating capacity from 21.0 Bcf to 31.5 Bcf. No new surface facilities are proposed. In addition, Egan Hub states that the proposed increase in operating capacity will not affect Egan Hub's existing maximum deliverability capability of 1,500 MMcfd, nor will it change the existing maximum injection capability of 800 MMcfd.

Egan Hub also proposes to continue charging market-based rates. As a result, Egan Hub requests waivers of certain of the Commission's regulations that are required when an applicant seeks cost-based rate authority.

Egan Hub states that it requests approval of its application on or before January 22, 2003, in order to meet the anticipated future market needs of its customers.

Any questions regarding this application should be directed to Steven E. Tillman, General Manager—Regulatory Affairs, Egan Hub Partners, L.P., PO Box 1642, Houston, Texas 77251–1642 at (713) 627–5113 or by fax at (713) 627–5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 5, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29415 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–559–001]

Egan Hub Partners, L.P.; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, Egan Hub Partners, L.P. (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub Original Sheet No. 70A, with an effective date of October 25, 2002.

Egan Hub states that the purpose of this filing is to comply with the letter order issued by the Commission on October 24, 2002 in Docket No. RP02–559–000 (October 24 Order). Egan Hub states that on September 24, 2002, it filed a tariff sheet (September 24 Filing) with proposed changes to the capacity release provisions of the General Terms and Conditions of its tariff. Egan Hub states that the Commission's October 24 Order accepted the proposed changes subject to Egan Hub making certain further revisions to the tariff sheet within 15 days of the October 24 Order. Egan Hub states that the tariff sheet included herewith include the required revisions in compliance with the October 24 Order.

Egan Hub states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29425 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–466–003 and RP00–618–004]

Enbridge Offshore Pipelines (UTOS) LLC; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, Enbridge Offshore Pipelines (UTOS) LLC (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute First Revised Sheet No. 125, effective October 1, 2002.

UTOS states that the filing is being made in compliance with the Commission's November 1, 2002, letter order in the captioned proceedings:

UTOS states that a complete copy of its filing is being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29419 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–14–000]

ISO New England Inc.; Notice of Application

November 14, 2002.

Take notice that on November 8, 2002, ISO New England Inc. (ISO New England) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term debt securities in an amount not to exceed $20 million pursuant to one or more credit facilities.

ISO New England also requests a waiver of the Commission's competitive bidding and negotiated placement requirements under 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 2, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29417 Filed 11–19–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–014]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate

November 14, 2002.

Take notice that on November 12, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing of the following tariff sheets, to be effective November 1, 2002:

Fourth Revised Volume No. 1–A
Ninth Revised Sheet No. 4G
Second Revised Sheet No. 4H
Third Revised Sheet No. 4I

The above-referenced tariff sheets reflect a negotiated rate contract effective November 1, 2002. The tariff sheets are being filed pursuant to Section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1-B, and the procedures prescribed by the Commission in its December 31, 1996 "Order Accepting Tariff Filing Subject to Conditions", in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001, and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29431 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–560–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Original Sheet No. 259A, effective October 25, 2002.

Maritimes states that the purpose of this filing is to comply with the letter order issued by the Commission on October 24, 2002 in Docket No. RP02–560–000 (October 24 Order). Maritimes states that on September 24, 2002, it filed a tariff sheet (September 24 Filing) with proposed changes to the capacity release provisions of the General Terms and Conditions of its tariff. Maritimes states that the Commission's October 24 Order accepted the proposed changes subject to Maritimes making certain further revisions to the tariff sheet within 15 days of the October 24 Order. Maritimes states that the tariff sheet included herewith includes the required revisions in compliance with the October 24 Order.

Maritimes states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29426 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–6–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub 2nd First Revised Sheet No. 265 to become effective on November 1, 2002.

Maritimes proposes to comply with the Commission's October 31, 2002 Order in Docket No. RP03–6–000 by revising Tariff Sheet No. 265 to include the phrase "subject to refund" following the phrase "interim period." In addition, Maritimes has revised the tariff sheet at issue to subtract the cost of fuel in the calculation of the Index Price.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29428 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. RP03–70–000]

Federal Energy Regulatory Commission

November 14, 2002.

Take notice that on November 8, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, certain tariff sheets as listed in Appendix A to the filing.

GTN indicates that these Tariff sheets are being submitted in order to clarify creditworthiness provisions in its General Terms & Conditions to more clearly articulate its existing creditworthiness policies and to update its policies to be consistent with the current market environment.

GTN states further that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29430 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–397–005, et al.]

Questar Pipeline Company; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 12, 2002, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective as indicated on each tariff sheet:

Substitute Seventh Revised Sheet No. 44, effective December 1, 2002
Substitute Eighth Revised Sheet No. 45, effective December 1, 2002
Substitute Tenth revised Sheet No. 46, effective December 1, 2002
Substitute Sixth revised Sheet No. 46A, effective December 1, 2002
Fourth Revised Sheet No. 56A, effective December 1, 2002
Substitute Sixth Revised Sheet No. 60B, effective October 1, 2002
First Revised Sheet No. 60C, effective October 1, 2002
Substitute Fourth Revised Sheet No. 71A, effective December 1, 2002
First Revised Fourth Revised Sheet No. 165, effective July 7, 2002
Substitute Fifth Revised Sheet No. 165, effective August 1, 2002
First Revised Fifth Revised Sheet No. 167, effective July 7, 2002
Substitute Sixth Revised Sheet No. 167, effective August 1, 2002
First Revised Original Sheet No. 167A, effective July 7, 2002
First Revised Sheet No. 167A, effective August 1, 2002
First Revised Third Revised Sheet No. 171, effective July 7, 2002
Substitute Fourth Revised Sheet No. 171, effective August 1, 2002
First Revised Sixth Revised Sheet No. 172, effective July 7, 2002
Second Substitute Seventh Revised Sheet No. 172, effective August 1, 2002

Questar states that this filing combines the approved language from three proceedings in Docket Nos. RP00–397, *et al.*, RP02–357, *et al.* and RP02–459–000 that were simultaneously pending approval. The tariff language approved in each docket was previously independently filed in compliance with individual orders. This filing (1) rectifies tariff sheet pagination so that effective dates are in chronological order and (2) combines conforming language. In addition, several minor clarifications have been made to integrate the three sets of tariff revisions.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29418 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–555–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 8, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to be effective October 25, 2002:

Sub First Revised Original Sheet No. 539
Original Sheet No. 539A
Sub First Revised Sheet No. 540

Texas Eastern states that the purpose of this filing is to comply with the letter order issued by the Commission on October 24, 2002 in Docket No. RP02–555–000 (October 24 Order). Texas Eastern states that on September 24, 2002, it filed revised tariff sheets (September 24 Filing) with proposed changes to the capacity release provisions of the General Terms and Conditions of its tariff. Texas Eastern states that the Commission's October 24 Order accepted the proposed changes subject to Texas Eastern making certain further revisions to the tariff sheets within 15 days of the October 24 Order. Texas Eastern states that the tariff sheets included herewith include the required revisions in compliance with the October 24 Order.

Texas Eastern states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29421 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–490–002]

Transwestern Pipeline Company; Notice of Compliance Filing

November 14, 2002.

Take notice that on November 12, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1), the following tariff sheets to become effective January 1, 2003:

Fourth Revised No. 9A
Tenth Revised Sheet No. 20
Second Revised No. 20D
Fourth Revised Sheet No. 27
Twenty-Third Revised Sheet No. 37
Third Revised Sheet No. 37A
Eleventh Revised Sheet No. 38
Original Sheet No. 38A
Sixth Revised Sheet Nos. 39–40
Twenty-first Revised Sheet No. 48
Ninth Revised Sheet No. 51B
Seventh Revised No. 70
Eighth Revised Sheet No. 80B
Second Revised Sheet No. 81D
Fifth Revised Sheet No. 92C
Fifth Revised Sheet No. 92D
Third Revised Sheet No. 92E
Fourth Revised Sheet No. 92F
Eighth Revised Sheet No. 95B.01
Eighth Revised No. 95L
First Revised Sheet No. 98
First Revised Sheet No. 99
Ninth Revised Sheet No. 147
Third Revised Sheet No. 148
Fourth Revised Sheet No. 149
First Revised Sheet No. 151
First Revised Sheet No. 154
First Revised Sheet No. 155
Original Sheet No. 157
Original Sheet No. 158
Original Sheet No. 159
Original Sheet No. 160
Original Sheet No. 161
Original Sheet No. 162

Transwestern states that these tariff revisions are being filed in compliance with the Commission's October 10, 2002 Order in the instant docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29420 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–69–000]

Vector Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2002.

Take notice that on November 8, 2002, Vector Pipeline L.P. (Vector), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 157, with an effective date of January 1, 2003.

Vector states that the filing is being made to reflect the Commission's determination to remove the five year matching term from the right of first refusal rights available to recourse shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29429 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–16–000, et al.]

Power Contract Finance, L.L.C., et al.; Electric Rate and Corporate Filings

November 13, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Power Contract Finance, L.L.C.

[Docket Nos. EC03–16–000 and ER02–1485–002]

Take notice that on November 7, 2002, Power Contract Finance, L.L.C. (PCF) (the Applicant), filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities that will result from the sale of all of the membership interests in PCF to Morgan Stanley Capital Group Inc. (MSCG). PCF, a limited liability company formed under the laws of Delaware, is a power marketer. PCF does not own any generating facilities. PCF also requests that the Commission accept the filing as a notice of change in status in its rate docket.

Comment Date: November 29, 2002.

2. Morgan Stanley Capital Group Inc.

[Docket Nos. EC03–17–000]

Take notice that on November 7, 2002, Morgan Stanley Capital Group Inc. (MSCG or the Applicant) filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization to purchase all of the membership interests in Power Contract Finance, L.L.C. (PCF). MSCG and PCF are FERC-authorized power marketers.

Comment Date: November 29, 2002.

3. Central Illinois Generation, Inc.

[Docket No. ER02–1688–003]

Take notice that, on November 8, 2002, Central Illinois Generation, Inc. (CIGI) filed in compliance with the Commission's October 25, 2002, order in this proceeding. CIGI's compliance filing includes (1) a revised market-based rate tariff; (2) a revised Power Supply Agreement between CIGI and Central Illinois Light Company (CILCO); and (3) an Interconnection Agreement (IA) between CIGI and CILCO filed in accordance with Order No. 614.

Comment Date: November 29, 2002.

4. American Electric Power Service Corporation

[Docket No. ER03–166–000]

Take notice that on November 6, 2002, American Electric Power Service Corporation (AEPSC) tendered for filing pursuant to section 35.15 of the Federal Energy Regulatory Commission's (Commission) regulations, a notice of cancellation of service agreement no. 334 between Indiana Michigan Power Company and Duke Energy Vigo, LLC under American Electric Power Operating Companies' Open Access Transmission Tariff (OATT).

AEPSC requests an effective date of January 4, 2002 for the cancellation. AEPSC served copies of the filing upon Duke Energy Vigo, LLC c/o Duke Energy North America, LLC.

Comment Date: November 27, 2002.

5. The Empire District Electric Company

[Docket No. ER03–167–000]

Take notice that on November 6, 2002, The Empire District Electric Company filed a proposal to cancel parts of its Open Access Transmission Tariff and to substitute an Ancillary Services Form of Agreement. The Empire District Electric Company filed this proposal in order to accommodate the administration of the Open Access Transmission Tariff of the Resulting Company from the consolidation of the Midwest Independent Transmission System Operator, Inc. and the Southwest Power Pool. The proposed effective date for this filing is January 6, 2003.

Comment Date: November 27, 2002.

6. Morgan Stanley Capital Group Inc.

[Docket No.ER03–168–000]

Take notice that on November 7, 2002, Morgan Stanley Capital Group Inc. (MSCG) tendered for filing a revised Wholesale Market-Based Rate Schedule updating the format of the rate schedule and certain language. MSCG requests an effective date of November 15, 2002.

Comment Date: November 29, 2002.

7. Tampa Electric Company

[Docket No. ER03–169–000]

Take notice that on November 7, 2002, Tampa Electric Company (TEC) tendered for filing pursuant to section 205 of the Federal Power Act an executed Interconnection and Operating Agreement between TEC and Cargill Fertilizer, Inc. as a service agreement under TEC's open access transmission tariff.

Comment Date: November 29, 2002.

8. Entergy Services, Inc.

[Docket No. ER03–171–000]

Take notice that on November 7, 2002, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing a unilaterally executed Interconnection and Operating Agreement with South Mississippi Electric Power Association (SMEPA), a Generator Imbalance Agreement with SMEPA, and New Delivery Point Agreements.

Comment Date: November 29, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–173–000]

Take notice that on November 8, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing a revised interconnection service agreement between PJM and Reliant Energy Services, Inc. (Reliant). The agreement is revised to remove and replace the specifications pages for two generating units that have been retired.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a November 4, 2002, effective date for the revised agreement. Copies of this filing were served upon Reliant and the state regulatory commissions within the PJM region.

Comment Date: November 29, 2002.

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Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29416 Filed 11–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

November 13, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 20, 2002, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, secretary, telephone (202) 502–8400, for a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

811TH—Meeting November 20, 2002, Regular Meeting, 10 A.M.

Administrative Agenda

A–1. Docket# AD02–1, 000, Agency Administrative Matters

A–2. Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1. Omitted

E–2. Docket# EC02–96, 000, Ameren Services Company on behalf of Ameren's Public Utility Company Subsidiaries

E–3. Omitted

E–4. Docket# ER02–2595, 000, Midwest Independent Transmission System Operator, Inc.

E–5. Omitted

E–6. Docket# ER03–13, 000, New York Independent System Operator, Inc.

E–7. Docket# ER03–42, 000, Sithe/Independence Power Partners, L.P.

E–8. Omitted

E–9. Docket# ER98–3760, 000, California Independent System Operator Corporation
Other#s EC96–19, 009, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company
ER96–1663, 010, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company
EC96–19, 030, California Independent System Operator Corporation
ER96–1663, 031, California Independent System Operator Corporation

E–10. Docket# ER02–854, 000, Florida Power and Light Company
Other#s ER02–854, 003, Florida Power and Light Company

E–11. Docket# ER02–170, 002, Boston Edison Company
Other#s ER02–170, 003 Boston Edison Company
ER02–170, 004, Boston Edison Company

E–12. Docket# ER02–2598, 000, Commonwealth Edison Company

E–13. Omitted

E–14. Docket# ER02–1266, 002, Niagara Mohawk Power Corporation
Other#s ER02–1266, 003, Niagara Mohawk Power Corporation

E–15. Docket# ER01–3149, 003, Nevada Power Company

E–16. Docket# EL01–50, 002, *KeySpan-Ravenswood, Inc.* v. *New York Independent System Operator, Inc.*

E–17. Docket# EL96–17, 003, Citizens Communications Company
Other#s ER95–1586, 006, Citizens Communications Company
ER95–1586, 007, Citizens Communications Company
ER95–1586, 008, Citizens Communications Company
ER95–1586, 009, Citizens Communications Company
OA96–184, 004, Citizens Communications Company
OA96–184, 005, Citizens Communications Company
EL01–20, 000, Citizens Communications Company

E–18. Docket# ER98–1440, 000, Central Vermont Public Service Corporation

E–19. Docket# ER02–2609, 000, Sierra Pacific Power Company and Nevada Power Company

E–20. Omitted

E–21. Docket# RT01–15, 005, Avista Corporation, Nevada Power Company, Portland General Electric Company and Sierra Pacific Power Company
Other#s ER02–323, 001, TransConnect, LLC

E–22. Docket# EL99–58, 001, *Village of Freeport, New York* v. *Consolidated Edison Company of New York*

E–23. Docket# EL00–114, 001, *Dynegy Power Marketing, Inc.* v. *Ameren Services Company*

E–24. Docket# EL02–86, 001, *Exelon Generation Company LLC,* v. *Southwest Power Pool, Inc.*

E–25. Omitted

E–26. Docket# ER02–108, 006, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–108, 007, Midwest Independent Transmission System Operator, Inc.

E–27. Docket# ER02–1710, 001, Southwest Power Pool, Inc.

E–28. Omitted

E–29. Omitted

E–30. Docket# ER02–1817, 001, American Electric Power Service Corporation
Other#s ER02–1817, 002, American Electric Power Service Corporation

E–31. Omitted

E–32. Docket# ER02–1834, 001, California Independent System Operator Corporation
Other#s ER02–1835, 001, California Independent System Operator Corporation

E–33. Docket# ER02–2651, 000, PJM Interconnection L.L.C.

E–34. Omitted

E–35. Docket# EL02–41, 000, Pittsfield Generating Company, L.P.
Other#s QF88–21, 009, Pittsfield Generating Company, L.P.

E–36. Docket# EL02–72, 000, PPL Large Scale Distribution Generation II, LLC and PPL Midwest Finance, LLC

E–37. Docket# EL02–126, 000, *City of Corona, California* v. *Southern California Edison Company*

E–38. Docket# EL02–110, 000, *New England Coalition on Nuclear Pollution and Citizens Awareness Network* v. *Vermont Yankee Nuclear Power Corporation, New England Power Company, Green Mountain Power Company, Central Vermont Public Service Corporation, Central Maine Power Company, Cambridge Electric Light Company, Northeast Utilities (through its affiliates and operating companies Western Massachusetts Electric Company, Connecticut Light and Power Company, and Public Service Company of New Hampshire) and Entergy Nuclear Vermont Yankee, LLC*

E–39. Docket# EL01–100, 000, *Corn Belt Energy Corp.,* v. *Soyland Power Cooperative, Inc.*
Other#s EL01–107, 000, *Corn Belt Energy Corp.,* v. *Soyland Power Cooperative, Inc.*
EL01–108, 000, *Monroe County Electric Cooperative* v. *Soyland Power Cooperative, Inc.*

E–40. Docket# EL03–9, 000, *Alternate Power Source, Inc.*, v. *Western Massachusetts Electric Company and Northeast Utilities System*

E–41. Omitted

E–42. Docket# ER01–889, 011, California Independent System Operator Corporation
Other#s EL00–95, 059, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
EL00–95, 060, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
ER01–889, 012, California Independent System Operator Corporation
ER01–889, 013, California Independent System Operator Corporation
ER01–3013, 003, California Independent System Operator Corporation
ER01–3013, 004, California Independent System Operator Corporation
ER01–3013, 005, California Independent System Operator Corporation

E–43. Docket# ER02–2126, 000, Consolidated Edison Company of New York, Inc.
Other#s ER02–2126, 001, Consolidated Edison Company of New York, Inc.
ER02–2126, 002, Consolidated Edison Company of New York, Inc.
ER02–2126, 003, Consolidated Edison Company of New York, Inc.

E–44. Docket# EL02–87, 000, *Cities of Anaheim, Azusa, Banning, Colton and Riverside, California and the City of Vernon, California* v. *California Independent System Operator Corporation*

E–45. Docket# EL02–127, 000, PPL Electric Utilities

E–46. Docket# EL00–66, 000, *Louisiana Public Service Commission and the Council of the City of New Orleans* v. *Entergy Corporation*
Other#s EL95–33, 002, *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
ER00–2854, 000, Entergy Services, Inc.

E–47. Docket# EL02–23, 001, *Consolidated Edison Company of New York* v. *Public Service Electric and Gas Company, PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.*

E–48. Docket# ER02–863, 002, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–330, 002, Alliant Energy Corporate Services, Inc.

E–49. Docket# EL02–112, 000, *FirstEnergy Solutions Corp.*, v. *PJM Interconnection, L.L.C.*
Other#s EL02–120, 000, *Edison Mission Energy* v. *PJM Interconnection, L.L.C.*

E–50. Docket# ER02–1451, 001, Ameren Energy Marketing Company

E–51. Docket# EL03–8, 000, LMB Funding, Limited Partnership

E–52. Docket# ER03–37, 000, Sierra Pacific Power Company and Nevada Power Company
Other#s ER02–2609, 000, Sierra Pacific Power Company and Nevada Power Company

E–53. Docket# ER02–2613, 000, American Electric Power Service Corporation

E–54. Docket# ER02–10, 000, Duke Energy Oakland, LLC and Duke Energy South Bay, LLC
Other#s ER98–496, 000, Duke Energy South Bay, LLC
ER02–10, 002, Duke Energy Oakland, LLC and Duke Energy South Bay, LLC
ER02–10, 001, Duke Energy Oakland, LLC and Duke Energy South Bay, LLC
ER02–10, 003, Duke Energy Oakland, LLC and Duke Energy South Bay, LLC
ER02–239, 003, Duke Energy South Bay, LLC
ER02–239, 000, Duke Energy South Bay, LLC
ER02–239, 001, Duke Energy South Bay, LLC
ER02–239, 002, Duke Energy South Bay, LLC
ER02–240, 000, Duke Energy Oakland, LLC
ER02–240, 001, Duke Energy Oakland, LLC
ER02–240, 002, Duke Energy Oakland, LLC
ER02–240, 003, Duke Energy Oakland, LLC
ER02–1478, 001, Duke Energy Oakland, LLC
ER02–1478, 000, Duke Energy Oakland, LLC
ER02–1478, 002, Duke Energy Oakland, LLC

E–55. Docket# ER02–711, 002, American Electric Power Service Corporation

E–56. Omitted

E–57. Docket# EL00–95, 000, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
Other#s EL00–95, 048, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
EL00–98, 000, Investigation of Practices of California Independent System Operator Corporation & California Power Exchange
EL00–98, 042, Investigation of Practices of California Independent System Operator Corporation & California Power Exchange

Miscellaneous Agenda

M–1. Docket# PL02–5, 000, Statement of Administrative Policy on Separation of Functions

Markets, Tariffs and Rates—Gas

G–1. Omitted

G–2. Omitted

G–3. Omitted

G–4. Omitted

G–5. Omitted

G–6. Omitted

G–7. Docket# RP03–32, 000, Stingray Pipeline Company, L.L.C.

G–8. Omitted

G–9. Omitted

G–10. Docket# RP00–404, 000, Northern Natural Gas Company
Others#s RP00–404, 002, Northern Natural Gas Company
RP00–404, 005, Northern Natural Gas Company
RP00–627, 000, Northern Natural Gas Company
RP00–627, 001, Northern Natural Gas Company

G–11. Docket# RP02–153, 000, Horizon Pipeline Company, L.L.C.
Other#s RP02–153, 001, Horizon Pipeline Company, L.L.C.

G–12. Docket# RP02–356, 000, Canyon Creek Compression Company

G–13. Omitted

G–14. Docket# RP00–409, 000, Natural Gas Pipeline Company of America
Other#s RP00–409, 001, Natural Gas Pipeline Company of America
RP00–631, 000, Natural Gas Pipeline Company of America
RP00–631, 002, Natural Gas Pipeline Company of America

G–15. Docket# RP98–206, 009, Atlanta Gas Light Company

G–16. Docket# RP00–329, 002, Great Lakes Gas Transmission Limited Partnership

G–17. Omitted

G–18. Docket# RP97–288, 025, Transwestern Pipeline Company
Other#s RP01–507, 001, Transwestern Pipeline Company

G–19. Docket# RP00–533, 003, Algonquin Gas Transmission Company

G–20. Docket# RP01–265, 001, Colorado Interstate Gas Company
Other#s RP01–441, 000, Colorado Interstate Gas Company
RP01–574, 000, Colorado Interstate Gas Company
RP02–102, 000, Colorado Interstate Gas Company
RP02–195, 000, Colorado Interstate Gas Company
RP02–348, 000, Colorado Interstate Gas Company
RP02–528, 000, Colorado Interstate Gas Company

G–21. Docket# RP00–472, 002, USG Pipeline Company
Other#s RP01–31, 002, USG Pipeline Company

G–22. Docket# RP00–535, 003, Texas Eastern Transmission, LP

G–23. Docket# IS01–441, 000, Olympic Pipe Line Company

G–24. Docket# RP02–340, 002, ANR Pipeline Company

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Other#s RP02–340, 001, ANR Pipeline Company
G–25. Docket# RP02–307, 001, Texas Gas Transmission Corporation
G–26. Docket# RP02–252, 002, Columbia Gulf Transmission Company
G–27. Docket# RP02–254, 002, Columbia Gas Transmission Corporation
G–28. Docket# RP02–248, 002, Kern River Gas Transmission Co.
G–29. Omitted
G–30. Docket# RP02–448, 001, National Fuel Gas Supply Corporation
Other#s RP02–448, 002, National Fuel Gas Supply Corporation
G–31. Docket# RM96–1, 024, Standards for Business Practices of Interstate Natural Gas Pipelines
G–32. Docket# RP03–16, 000, *Pan-Alberta Gas (U.S.) Inc., and Mirant Americas Energy Marketing, L.P.* v. *Northern Border Pipeline Company*
G–33. Omitted
G–34. Omitted
G–35. Omitted
G–36. Docket# GT02–15, 002, Horizon Pipeline Company, L.L.C.
Other#s GT02–15, 001, Horizon Pipeline Company, L.L.C.
G–37. Docket# CP00–6, 006, Gulfstream Natural Gas System, L.L.C.
G–38. Docket# RP00–411, 002, Iroquois Gas Transmission System, L.P.
Other#s RP01–44, 004, Iroquois Gas Transmission System, L.P.

Energy Projects—Hydro

H–1. Docket# DI99–2, 003, Alaska Power & Telephone Company
H–2. Omitted
H–3. Omitted
H–4. Docket# P–2114, 106, The Yakama Nation v. Public Utility District No. 2 of Grant County, WA
H–5. Docket# P–2727, 046, PPL Maine, LLC
H–6. Docket# P–1862, 085, City of Tacoma, Washington

Energy Projects—Certificates

C–1. Docket# CP02–379, 000, Southern LNG Inc.
Other#s CP02–380, 000, Southern LNG Inc.
C–2. Docket# CP02–155, 000, Gulf South Pipeline Company, LP
C–3. Docket# CP02–90, 000, AES Ocean Express LLC
Other#s CP02–90, 001, AES Ocean Express LLC
CP02–91, 000, AES Ocean Express LLC
CP02–92, 000, AES Ocean Express LLC
CP02–93, 000, AES Ocean Express LLC
C–4. Omitted
C–5. Docket# CP02–428, 000, Ozark Gas Transmission, LLC
C–6. Docket# CP01–415, 001, East Tennessee Natural Gas Company
Other#s CP01–375, 000, East Tennessee Natural Gas Company
CP01–415, 000, East Tennessee Natural Gas Company
CP01–415, 002, East Tennessee Natural Gas Company
CP01–415, 003, East Tennessee Natural Gas Company
C–7. Docket# RM01–6, 000, Assignment of Firm Capacity on Upstream Interstate Pipelines

Magalie R. Salas,

Secretary.

[FR Doc. 02–29535 Filed 11–15–02; 4:20 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

November 13, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 20, 2002 (Within a relatively short time before or after the regular Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-public investigations and inquiries and enforcement related matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on November 20, 2002. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29536 Filed 11–15–02; 4:20 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7410–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Approval of State Coastal Nonpoint Pollution Control Programs; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), on October 25, 2002, EPA published a notice in the **Federal Register** (67 FR 65563) announcing that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Approval of State Coastal Nonpoint Pollution Control Programs, EPA ICR Number 1569.05, OMB Control Number 2040–0153, expiring on April 30, 2003. This notice extends the comment period 30 days to December 26, 2002, to solicit comments on the proposed information collection.

DATES: Comments must be submitted on or before December 26, 2002.

ADDRESSES: Comments should be sent to, and copies of the ICR may be obtained without charge from, the Nonpoint Source Control Branch, Assessment and Watershed Protection Division (4503–T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Stacie Craddock at EPA by phone at (202) 566–1204, by fax at (202) 566–1545, by email at *craddock.stacie@epa.gov*, or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1569.05.

Dated: November 13, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–29476 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7410–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed Consent Decree. On November 13, 2002, the American Lung Association and eight other public interest groups filed a complaint pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), alleging that the United States Environmental Protection Agency ("EPA") failed to meet its mandatory duty to designate areas for the 8-hour ozone national ambient air quality standard ("NAAQS"). *American Lung Association, et al.* v. *EPA*, No. 02–2239 (D.D.C.). On November 13, 2002, EPA lodged the Consent Decree with the United States District Court for the District of Columbia Circuit. The Consent Decree establishes a time frame for EPA to promulgate designations for the 8-hour ozone NAAQS.

DATES: Written comments on the proposed consent decree must be received by December 20, 2002.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed Consent Decree are available from Phyllis J. Cochran, (202) 564–5566. On November 13, 2002, a copy of the proposed consent decree was lodged with the Clerk of the United States District Court for the District of Columbia.

SUPPLEMENTARY INFORMATION: The American Lung Association and eight other public interest groups [1] (collectively referred to as "American Lung Association") allege that EPA failed to promulgate designations for the 8-hour ozone NAAQS by the Congressionally-enacted deadline.

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS. 62 FR 38856 38856. The revised ozone NAAQS was challenged and on May 14, 1999, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") determined that EPA's interpretation of its authority to establish the NAAQS resulted in an unconstitutional delegation of authority. The Court also determined that EPA's implementation scheme was flawed because the CAA mandated that a revised ozone standard be implemented in accordance with specific provisions ("subpart 2") of the Act, which EPA had indicated would not apply. The Court remanded the rule to EPA. *American Trucking Assoc.* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999) reh'g denied American Trucking Assoc. v. EPA, 195 F.3d 4 (D.C. Cir. 1999). Both EPA and the petitioners sought review in the Supreme Court of several aspects of the D.C. Circuit's decision.[2]

On February 27, 2001, the Supreme Court issued a decision, holding that EPA's interpretation of its authority to promulgate the 8-hour ozone NAAQS did not constitute an unconstitutional delegation of power. *Whitman* v. *American Trucking Assoc.*, 121 S.Ct. 903 (2001). The Court also remanded the implementation issue to the Agency to develop a reasonable interpretation that provides a role for subpart 2 in implementing the 8-hour ozone NAAQS.

Section 107(d)(1) of the CAA provides that EPA must designate areas for a revised NAAQS no later than two years following promulgation of the standard. It also provides for the Agency to take an additional year for designating areas if "insufficient information" is available. In June 1998, as part of the Transportation Equity Act for the 21st Century, Public Law 105–178, Congress enacted legislation that expressly provided EPA with three years to promulgate designations for the 8-hour ozone NAAQS. In the fall of 2000, as part of the appropriations bill for EPA, Congress precluded EPA from spending funds to designate areas for the 8-hour ozone NAAQS until the earlier of June 15, 2001 or a ruling by the Supreme Court in the litigation concerning the NAAQS. The Supreme Court issued its decision on February 27, 2001.

The Consent Decree provides that EPA will sign a notice promulgating designations for the 8-hour ozone NAAQS no later than April 15, 2004. It further provides that EPA will submit the designation notice to the Office of **Federal Register** no later than five days following signature. Finally, it provides for EPA to publish a notice of availability of the promulgated designations no later than April 30, 2004.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Consent Decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Consent Decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Consent Decree will be final.

Dated: November 14, 2002.

Lisa K. Friedman,

Associate General Counsel.

[FR Doc. 02–29475 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7411–2]

EPA Science Advisory Board Executive Committee Teleconference; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee of the U.S. EPA Science Advisory Board (SAB) will meet on Thursday, December 5, 2002, from 11 a.m.–2 p.m. eastern time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (*see* contact information below). The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included in the FR citations given below.

Purpose of the Meeting—In this meeting, the Executive Committee plans

[1] The other eight plaintiffs are: Environmental Defense, Natural Resources Defense Council, Sierra Club, Alabama Environmental Council, Clean Air Council, Michigan Environmental Council, Ohio Environmental Council and Southern Alliance for Clean Energy.

[2] The Court also remanded the rule to EPA because EPA had not considered whether ground-level ozone had beneficial health effects. In particular, some petitioners argued that EPA had ignored whether higher levels of ground-level ozone acted as a shield from the harmful effects of ultraviolet radiation. EPA did not seek Supreme Court review of this issue.

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to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) *Executive Committee Subcommittee—Scientific and Technological Achievement Awards Subcommittee (STAA)*—Recommendations on the Agency's FY2001 Scientific and Technological Achievement Awards Program: An SAB Report (*see* 67 FR 44200 (July 1, 2002), for further details).

(b) *Environmental Economics Advisory Committee (EEAC)*—Affordability: An SAB Report (*see* 67 FR 46506 (July 15, 2002), for further details).

Please check with Ms. Diana Pozun (*see* contact information below) prior to the meeting to determine which reports will be on the agenda as last minute changes can take place.

Availability of Review Materials: Drafts of the SAB reports that will be reviewed at the meeting will be available to the public at the SAB website under the heading for the Executive Committee Public Teleconference, December 5, 2002, (*http://www.epa.gov/sab/whatsnew.htm*) approximately two weeks prior to the meeting.

Charge to the Executive Committee: The focus of the EC review of these reports will be on the following questions: (a) Has the SAB adequately responded to the questions posed in the Charge? (b) Are the statements and/or responses in the draft report clear? And (c) Are there any errors of fact in the report? (**Note:** In the case of the STAA report, the charge to the committee was to review over 100 scientific papers and make recommendations for awards. The draft report that will be available for comment at this meeting will only contain the description of the overall process and recommendations on that process. The actual award recommendations are embargoed until approved and processed by the Office of Research and Development. The final report that will be posted on the SAB website, once awards are announced, will include the complete list of recommended awards.)

In accord with the Federal Advisory Committee Act (FACA), the public and the Agency are invited to submit written comments on these three questions that are the focus of the review. Written comments should be received in the SAB Staff Office by November 27, 2002. Forward comments to Ms. Diana Pozun (*see* contact information below).

The SAB will have a brief period available for applicable public comment. Therefore, anyone wishing to make oral comments on the three focus questions above, but that are not duplicative of the written comments, should contact the Designated Federal Officer for the Executive Committee, Mr. A. Robert Flaak (*see* contact information below).

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; FAX (202) 501–0582; or via e-mail at *flaak.robert@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Flaak no later than noon eastern standard time on November 27, 2002. Written comments should be sent to: Ms. Diana Pozun, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (Telephone (202) 564–4544, FAX (202) 501–0323; or via e-mail at: *pozun.diana@epa.gov*. Submission by e-mail to Ms. Pozun will maximize the time available for review by the Executive Committee.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the face-to-face meetings. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend face-to-face meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2001 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 13, 2002.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–29478 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0306; FRL–7280–2]

The Association of American Pesticide Control Officials (AAPCO) State FIFRA Issues Research and Evaluation Group SFIREG; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on December 9, 2002 and ending December 10, 2002. This notice announces the location and times for the meeting, and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, December 9, 2002, from 8:30 a.m. until 4 p.m. (A CLOSED SESSION 4 p.m. until 5 p.m.) and Tuesday, December 10, 2002 from 8:30 a.m. until noon.

ADDRESSES: The meeting will be held at Doubletree Hotel, 300 Army Navy Drive, Arlington, VA

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506c), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov. or Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: aapco@plainfield.bypass.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to "those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the FIFRA". Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0306. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register document electronically through the EPA Internet under the "Federal Register"** listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Tentative Agenda:

1. Committee Business Issues.
2. Regional Reports & Introduction of Issue Papers/Action Items.
3. Comments to the Committee/Open Discussion with EPA Senior Managers (To be determined).
4. Worker Protection Standard (WPS) Program Element Review Update.
5. Non-English/Multiple Language Labels.
6. Tribal Pesticide Program Council (TPPC)/Section 18s & other Tribal Issues.
7. Update on Current OPP & OECA Activities.
8. SFIREG Issue Paper Status Report.
9. Closed Session.
10. Pesticide Regulatory Education Program (PREP) Briefing/Issues.
11. Soybean Rust Pest/Section 18s Requests.
12. Status (SLA) Label Improvement Project Proposals i.e. Mosquito Products/West Nile virus Issues
13. States Label Issue Tracking System (SLITS) Update
14. Certification Training Assessment Group (CTAG) Update & Discussion
15. Issue Papers/Past & Present

List of Subjects

Environmental protection, Pesticide and pests.

Dated: November 6, 2002.

Jay Ellenberger,

Associate Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 02–29171 Filed 11–19–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0126; FRL–7184–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0126, must be received on or before December 20, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0126 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division, Office of Pesticide Programs, (7505C) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop productionmption Animal production Food manufacturing Pesticide manufacturing

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This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should examine the applicability provisions in OPP–2002–0126. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0126. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasable, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any indentifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment,

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0126. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0126. In contrast to EPA's electronic public docket, EPA's email system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number Opp–2002–0126.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0126. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM ckearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 27, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Nichino America Incorporated, and represents the view of Nichino America Incorporated. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

Nichino America Incorporated

PP 1F6428

EPA has received a pesticide petition (1F6428) from Nichino America Incorporated, 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerances for combined residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) and its acid metabolite, E–1, (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetic acid) expressed as the ester equivalent in or on the raw agricultural commodities (RACs) derived from cotton; undelinted seed at 0.05 parts per million (ppm); and gin byproducts at 1.5 ppm; in or on the RAC potato at 0.02 ppm; in or on the RACs corn grain, corn stover, corn forage, soybean seed, soybean forage, and soybean hay at 0.01 ppm; wheat forage, wheat hay, wheat straw, and wheat grain at 0.01 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of pyraflufen-ethyl (ET–751) in cotton, potatoes, corn, soybeans, and wheat is adequately understood. The metabolism of pyraflufen-ethyl has been studied in cotton, wheat, and potato. Metabolism in the plant involves ester hydrolysis, de-methylation on the pyrazole ring and further degradation of the phenoyxyacetate moiety to bound polar metabolites. The nature of the residue is adequately understood and the residues of concern are the parent, pyraflufen-ethyl, and the acid metabolite, E–1, only.

2. *Analytical method.* The enforcement analytical method utilizes gas chromatography/mass spectrophotometry with selected ion monitoring for detecting and measuring levels of pyraflufen-ethyl and the acid metabolite with a general limit of quantification (LOQ) of 0.02 ppm (combined E–1 and parent). This method allows detection of residues at or above the proposed tolerances. The method has undergone independent laboratory validation as required by PR Notices 88–5 and 96–1.

3. *Magnitude of residues in crops*—i. *Potato.* No apparent residues of pyraflufen-ethyl were observed in potato at or above 0.02 ppm (the LOQ

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for the analytical method). The field studies, conducted at 3x the highest intended label use rate, in 16 trials in 11 states, clearly support the proposed tolerances of 0.02 ppm (combined E–1 and parent). No detectable residues of parent or the acid metabolite were observed in any processed potato fraction at 5x the maximum proposed application rate and proposed pre-harvest interval (PHI) in a field study, with the LOQ of 0.02 ppm (combined E–1 and parent). The tolerance that is being proposed for the use of pyraflufen-ethyl plus the acid metabolite on potato is 0.02 ppm.

ii. *Cotton.* Twelve field residue trials were conducted in seven different states. Applications in the trials were 3x the proposed label directions for use and at the proposed PHI of 7 days. Analysis of the treated samples showed that the residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) plus its acid metabolite, E–1, (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetic acid) expressed as the ester equivalent at the exaggerated rate, were below the proposed tolerance of 0.05 ppm in cotton seed at the proposed labeled PHI in all samples. No residues were seen in the processed fractions of meal, hull, and oil, when one trial was run in a typical cotton growing area. The application rate for this processing study was 15x the maximum proposed application rate and at the proposed PHI. This indicates that there is no concentration of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) plus its acid metabolite, E–1, (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetic acid), expressed as the ester equivalent in any of the processed fractions. Low residues seen in the undelinted cottonseed were consistent with the magnitude of residue trials. Combined residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) plus its acid metabolite, E–1 (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetic acid) in cotton gin byproducts from applications at 3x the proposed application rate ranged from 0.125 ppm to 1.314 ppm, and averaged 0.035 ppm from applications made at 1x the proposed application rate. The proposed tolerance of 0.05 ppm for pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) plus its acid metabolite, E–1, (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetic acid) in cotton seed and 1.5 ppm in cotton gin byproducts are supported by the field residue data.

iii. *Corn.* Three exaggerated rate residue trials were conducted in three different states on different soil types. Applications in the trials were 5x to 10x the proposed label directions for use as a pre-plant burndown herbicide. Analysis of the treated samples showed zero residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) plus its acid metabolite, E–1, (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetic acid) expressed as the ester equivalent at the exaggerated rate. The LOQ for the parent and the metabolite was 0.005 ppm in each case. Since no residues were observed at exaggerated rates in RACs, no processing studies were conducted.

iv. *Soybean.* Three exaggerated rate residue trials were conducted in three different states on different soil types. Applications in the trials were 5x to 10x the proposed label directions for use as a pre-plant burndown herbicide. Analysis of the treated samples showed zero residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) plus its acid metabolite, E-1, (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetic acid) expressed as the ester equivalent at the exaggerated rate. The LOQ for the parent and the metabolite was 0.005 ppm in each case. Since no residues were observed at exaggerated rates in RACs, no processing studies were conducted.

v. *Wheat.* Three exaggerated rate residue trials were conducted in three different states on different soil types. Applications in the trials were 5x to 10x the proposed label directions for use as a pre-plant burndown herbicide. Analysis of the treated samples showed zero residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) plus its acid metabolite, E–1, (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetic acid) expressed as the ester equivalent at the exaggerated rate. The LOQ for the parent and the metabolite was 0.005 ppm in each case. Since no residues were observed at exaggerated rates in RACs, no processing studies were conducted.

4. *Magnitude of the residue in animals.*—i. *Ruminants.* The maximum dietary burden in beef and dairy cows results from a diet comprised of undelinted cottonseed, cotton meal, cotton hulls, cotton gin byproducts, potato culls, potato waste, and from grain (seed), forage, hay, stover (fodder), silage, meal, hulls, straw, aspirated grain fractions, and milled byproducts of corn, soybeans, and wheat for a total dietary burden that is significantly lower than levels that would require the proposal of tolerances in ruminants. This conclusion is based on exaggerated rate animal metabolism studies carried out on pyraflufen-ethyl and its significant metabolites. Therefore, an exemption from tolerances in milk, meat, and meat by-products under 40 CFR 180.6(a)(3) and (b) is proposed as it is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues.

ii. *Poultry.* The maximum poultry dietary burden results from a diet comprised of cotton meal, corn grain, corn milled byproducts, soybean seed, soybean meal, soybean hulls, wheat grain, and wheat milled byproducts for a total dietary burden that is significantly lower than the levels that would require the proposal of tolerances in poultry. This conclusion is based on the exaggerated rate metabolism studies carried out on pyraflufen-ethyl and its acid metabolite. Therefore, an exemption from tolerances in poultry meat, meat byproducts, fat, and eggs under 40 CFR 180.6(a)(3) and (b) is proposed as it is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues.

B. Toxicological Profile

1. *Acute toxicity.* Pyraflufen-ethyl technical is considered to be nontoxic (toxicity category IV) to the rat by the oral route of exposure. In an acute oral toxicity study conducted in rats, the oral LD_{50} value for technical pyraflufen-ethyl was determined to be >5,000 milligrams/kilograms body weight (mg/kg bwt). The results from the acute dermal toxicity study in rabbits indicate that pyraflufen-ethyl is slightly toxic (toxicity category III) to rabbits by the dermal route of exposure. The dermal LD_{50} value of technical pyraflufen-ethyl was determined to be >2,000 mg/kg for both male and female rabbits. Pyraflufen-ethyl technical is considered to be nontoxic (toxicity category IV) to the rat by the respiratory route of exposure. Inhalation exposure of rats to pyraflufen-ethyl technical resulted in an LC_{50} >5.53 milligrams/Liter (mg/L) (analytical) for both males and females. Pyraflufen-ethyl technical was shown to be non-irritating to rabbit skin (toxicity category IV). Pyraflufen-ethyl technical was shown to be slightly irritating to rabbit eyes (toxicity category III). Application of technical material to the rabbit eye resulted in iris and conjunctival irritation from 1 to 24 hours, which was clear by 72 hours. Based on the results of a dermal sensitization study, pyraflufen-ethyl technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicity.* Pyraflufen-ethyl technical was not mutagenic in any of the following genotoxicity studies. Point mutations in bacteria in an Ames study with *Salmonella typhimurium*, and *Escherichia coli;* negative in chromosome aberrations *in vitro* human lymphocytes, and in the mouse micronucleus; negative for DNA repair in *in vitro* and *in vivo* rat liver hepatocyte assays and *Bacillus subtillis*. For mammalian gene mutation, in one *in vitro* mouse lymphoma mutation assay, no evidence of mutagenicity was seen in the absence of metabolic activation. With S9 activation at levels up to 200 ìg/Liter, equivocal results were seen. The study report provided no criteria for positive or negative responses. When this *in vitro* study was repeated, no positive or equivocal results in the presence of activation with S9 at levels of S9 up to 350 ìg/Liter were seen. These levels of activation were greater than those tested in the earlier study and both small and large colonies were counted. The overall weight of evidence indicates that pyraflufen-ethyl is not genotoxic.

3. *Reproductive and developmental toxicity.* The developmental toxicity study in rats conducted with pyraflufen-ethyl technical showed no evidence of teratogenic effects in fetuses and no evidence of developmental toxicity. Thus, pyraflufen-ethyl is neither a developmental toxicant nor a teratogen in the rat. Pyraflufen-ethyl was administered by gavage during gestation and showed no adverse effects on dams or fetuses at dose levels of 0, 100, 300, up to and including a limit dose of 1,000 mg/kg/day. The maternal and developmental toxicity no observe adverse effects (NOAELs) were both >1,000 mg/kg/day. Results from a developmental toxicity study in rabbits conducted with pyraflufen-ethyl technical also indicated no evidence of teratogenicity or developmental toxicity. Thus, pyraflufen-ethyl technical is neither a developmental toxicant nor a teratogen in the rabbit. Rabbits fed pyraflufen-ethyl at 0, 20, 60, or 150 mg/kg/day, resulted in severe maternal toxicity, including lethality, from gastrointestinal irritation at doses of 60 and 150 mg/kg/day. The maternal NOAEL was 20 mg/kg/day. The NOAEL for the offspring was 60 mg/kg/day, based on increased post-implantation loss observed at 150 mg/kg/day. Neither the rat nor the rabbit developmental study showed evidence of unique fetal susceptibility to pyraflufen-ethyl.

In a multigeneration rat reproduction study conducted at dietary concentrations of 0, 100, 1,000 and 10,000 ppm, pyraflufen-ethyl had no effect on reproductive parameters, including mating indices, fertility index, gestation index, duration of gestation, numbers of implantation sites, numbers and morphology of epididymal sperm, and estrous cycle at any dose level. Reproductive performance was not affected by pyraflufen-ethyl at the highest dose level of 10,000 ppm (male 721 to 844 mg/kg/day and female 813 to 901 mg/kg/day). The pup NOAEL was 1,000 ppm, based on decreased body weight in the F1 and F2 male and female pups on day 17 at the 10,000 ppm dose level. Results from the reproduction study and the developmental toxicity studies conducted with pyraflufen-ethyl technical show no increased sensitivity to developing offspring as compared to parental animals, because the NOAELs for growth and development of offspring were equal to or greater than the NOAELs for parental or maternal toxicity.

4. *Subchronic toxicity.* A short-term (28–day) dermal study in rabbits was conducted with pyraflufen-ethyl technical. Pyraflufen-ethyl was administered dermally to rats for 28 days at dose levels of 0, 300, and 1000 mg/kg day. Slight, transient erythema was observed during week 3 in 3 treated males. This finding was not dose-related, was not considered to be adverse, and the relationship to the test material administration was unclear. The NOAEL was considered to be 1,000 mg/kg/day. A 90–day rat feeding study was conducted at dose levels of 0, 200, 1,000, 5,000, or 15,000 ppm pyraflufen-ethyl. The NOAEL in this study was considered to be 1,000 ppm (85.6 mg/kg/day for males and 95.4 mg/kg/day for females), based on slightly increased phosphorous concentrations in females and hepatocytic hypertrophy in males at 5,000 ppm. In addition, the highest dose of 15,000 ppm resulted in erythocyte toxicity, mitochondrial changes in the hepatocytes and the presence of Kupffer cells. Also, at the high dose level increased kidney weights in males and increased absolute and relative spleen weights in both sexes were observed.

In a 90–day oral toxicity study in dogs, pyraflufen-ethyl was administered via capsule at dose levels of 0, 40, 200, and 1,000 mg/kg/day. No treatment-related findings were observed and the NOAEL was determined to be >1,000 mg/kg/day. At the limit dose, no effects in body weight or organ weights, clinical chemistry, hematology, histopathology, and gross pathology were observed. To determine whether the test material was absorbed or not, plasma was collected 1–hour after administration of pyraflufen-ethyl during week 13. The detection of 2 major degradation products, E–1 and E–9, confirmed the adsorption and gastrointestinal and systemic exposure to pyraflufen-ethyl.

5. *Chronic toxicity.* A 1–year chronic dog study was conducted in Beagle dogs, with pyraflufen-ethyl administered orally by gelatin capsule at doses of 0, 40, 200, and 1,000 mg/kg/day. There were no mortalities and no clinical signs of toxicity. No treatment-related effects were noted on body weights, food consumption, hematology and clinical chemistry parameters, urinalysis, ophthmoscopy, and organ weights. No macrosopic or microscopic lesions were noted. The NOAEL was >1,000 mg/kg/day.

In a 2–year chronic toxicity/oncogenicity study, pyraflufen-ethyl was administered to CD rats at dietary levels of 0, 80, 400, 2,000, or 10,000 ppm (equivalent to 0, 3.4, 17.2, 86.7, and 468.1 mg/kg/day for males and 0, 4.4, 21.8, 111.5, and 578.5 mg/kg/day for females). Mortality was unaffected by treatment. Body weight gain was statistically significantly depressed for those rats fed 10,000 ppm at 1–year compared to the control. Treatment-related histopathology was seen in the kidney, liver, and bile duct at 10, 000 ppm. At 2,000 and 10,000 ppm, vacuoles within the mitochondria of centriacinar and periacinar hepatocytes were seen. Effects on urine volume, urine specific gravity, and kidney weights were seen at 2,000 ppm in males. The NOAEL was 17.2 mg/kg/day for males and 21.8 mg/kg/day for females. No evidence of carcinogenicity was observed.

In a 78–week carcinogenicity study, mice were fed pyraflufen-ethyl in the diet at levels of 0, 200, 1,000, or 5,000 ppm (equivalent to 0, 21, 110, 547 mg/kg/day for males and 0. 20, 98, 524 mg/kg/day for females). An maximum tolerance dose (MTD) was reached at 1,000 ppm, based on increased liver weight and liver histopathological changes (including necrosis) seen at this

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feeding level. In the highest dose group, effects of pyraflufen-ethyl on hematological parameters were observed. The incidence of hepatocellular adenoma was increased in animals receiving 5,000 ppm, compared to controls. This benign tumor was likely induced by the adaptive response to the hepatocellular degeneration and not as a result of any genotoxic potential of pyraflufen-ethyl. In addition the response was observed only at a dose level that was in excess of an MTD.

6. *Animal metabolism.* The qualitative nature of the residues of pyraflufen-ethyl and its acid metabolite, E–1, in animals is adequately understood. Pyraflufen-ethyl is rapidly absorbed, metabolized, and excreted to feces and urine, with greater than 90% of the administered dose excreted within 24 hours in rats. Based on metabolism studies with goats, hens, and rats, there is no reasonable expectation that measurable pyraflufen-ethyl-related residues will occur in meat, milk, poultry, or eggs from the proposed use.

7. *Metabolite toxicology.* No toxicologically significant metabolites were detected in plant or animal metabolism studies for cotton or potatoes.

8. *Endocrine disruption.* Chronic, lifespan, and multigenerational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal any endocrine effects for pyraflufen-ethyl. Any endocrine related effects would have been detected in this comprehensive series of required tests. The probability of any such effect due to agricultural uses of pyraflufen-ethyl is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* The potential dietary exposure to pyraflufen-ethyl has been calculated from the proposed tolerances for use on cotton, and potato. While tolerances at the LOQ are proposed for corn, soybean, and wheat, it is concluded that there is no potential for residues in these crops and thus no dietary exposure. These very conservative chronic dietary exposure estimates used the tolerance value for all the raw agricultural commodities. In addition these estimates assume that 100% of the cotton and potato crops contain pyraflufen-ethyl residues.

i. *Food.* The chronic population adjusted dose (cPAD) for the general population, based on residues at the tolerance levels and 100% of potato and cotton crops treated is expected to be approximately 0.000020 mg/kg bwt/day or <0.1% of the reference dose (RFD) (0.172 mg/kg/day). Of the standard subgroups analyzed by the dietary exposure evaluation model (DEEM), the subgroup with the highest exposures are children ages 1 to 6 years, with a cPAD of 0.000041 mg/kg/day or less than 0.1% of the RfD mg/kg/day. With children ages 7 to 12 with exposures of 0.000027 mg/kg/day, the exposure is less than 0.1% of the RfD.

ii. *Drinking water.* As a screening level assessment for aggregate exposure, EPA evaluates drinking water level of comparison (DWLOC); which is the maximum concentration of a chemical in drinking water that would be acceptable in terms of total aggregate exposure to that chemical. Based on the chronic RFD of 0.172 mg/kg/day, based on the NOAEL of 17.2 mg/kg/day observed in the chronic rat feeding study and an uncertainty factor (UF) of 100, and EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of pyraflufen-ethyl and the acid metabolite, E–1, in water. For the adult population, the chronic DWLOC was 35,086 parts per billion (ppb) for the U.S. population, and for children 10,172 ppb.

Chronic drinking water exposure analyses were calculated using EPA screening models, screening concentration in ground water (SCI-GROW) for ground water and generic expected environmental concentration (GENEEC) for surface water). The calculated peak GENEEC value for the acid metabolite, E–1, the major degradation of pyraflufen-ethyl which is formed within an hour of addition to a water solution or to soil, is 0.3321 ppb and the SCI-GROW value is 0.00024 ppb. These values are very conservative estimates compared to the values derived from the parent. Nonetheless, for the U.S. adult population, the estimated exposures of the E–1 acid metabolite in surface water and ground water are approximately 0.00094% and 0.0000007%, respectively, of the DWLOC. For children, the estimated exposures of the acid metabolite in surface water and ground water are approximately 0.0033% and 0.000002%, respectively of the DWLOC. Therefore, the exposures to drinking water from the acid metabolite are negligible. Based on the dietary and drinking water assessments, aggregate exposure to residues of pyraflufen-ethyl and the acid metabolite in food and water can be considered to be negligible.

2. *Non-dietary exposure.* It is being proposed that pyraflufen-ethyl be registered in the following non-food sites: airports, commercial plants, fence lines, farmyards, and farm buildings; storage and lumber yards; barrier strips and firebreaks; equipment areas, nurseries and ornamental plantings; established ornamental turf; railroad, roadside, and utility rights-of-ways; dry ditches and ditch banks; fuel tank farms and pumping stations; other similar non-crop areas. Exposure to pyraflufen-ethyl for the mixer/loader/groundboom/aerial applicator was calculated using the Pesticides Handlers Exposure Database (PHED). These PHED assessments were based on a 70 kg operator treating 80 acres per day using ground boom equipment on both cotton and potato fields; an operator treating 1,200 acres per day using aerial equipment on cotton fields; and an operator treating 350 acres per day using aerial equipment on potato fields (EPA, 1999) at a maximum use rate of 0.009 pounds active ingredient per acre for potato and 0.0045 pounds active ingredient per acre for cotton. All workers were assumed to be wearing long pants and long-sleeved shirts. Mixer-loaders were assumed to be wearing gloves, while aerial and ground applicators and flaggers were not assumed to be wearing gloves. Margins of exposure (MOE) for acute and short-term exposure were calculated utilizing a dermal and inhalation NOAEL of 20 mg/kg/day, based on maternal toxicity seen in the rabbit teratology study at 60 mg/kg/day, and assuming 100% dermal absorption. MOEs for intermediate-term exposure were calculated utilizing a dermal endpoint of 250 mg/kg/day, the systemic NOAEL from the 28–day dermal toxicity study in the rat with the 2.5% EC formulation. This was the highest dose level in the study and no systemic effects were seen at this dose level. For the acute inhalation endpoint we used 86 mg/kg/day, based on a NOAEL of 1,000 ppm or 85.6 mg/kg/day in males in the 90–day oral feeding study in the rat. The combined MOE (inhalation plus dermal) for pyraflufen-ethyl was greater than 4,900 for acute and short-term exposure, while the intermediate-term total MOEs were all greater than 56,000. The results indicate that large margins of safety exist for the proposed uses of pyraflufen-ethyl.

D. Cumulative Effects

Pyraflufen-ethyl belongs to the protox inhibitor class of compounds, and chemically is a 3-phenylpyrazole. The herbicidal activity of protox inhibitors is due to the inhibition of protoporphyrinogen IX oxidase. All relevant toxicological data has been provided to EPA. Chemicals with a similar mode of action, i.e., the protox inhibitors, have different chemical structures compared to pyraflufen-ethyl. Although other protox inhibitors have a similar herbicidal mode of action, there is no information available to suggest that these compounds exhibit a similar toxicity profile in the mammalian system. We are aware of no information to indicate or suggest that pyraflufen-ethyl has any toxic effects on mammals that would be cumulative with those of any other chemical. Since pyraflufen-ethyl is relatively non-toxic, cumulative effects of residues and other compounds are not anticipated. Therefore, for the purposes of this Food Quality Protection Act (FQPA) document, there should be no consideration of cumulative risk that would require assessment.

E. Safety Determination

1. *U.S. population.* Based on the chronic toxicity data, the RfD for pyraflufen-ethyl is considered to be 0.172 mg/kg/day. This value is based on the NOAEL of 17.2 mg/kg/day observed in the chronic rat feeding study and a safety (uncertainty) factor of 100, the worse case estimate of chronic dietary exposure of pyraflufen-ethyl from cotton, potatoes, corn, or soybean will utilize less than 0.1% of the RfD for the general U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The complete and reliable toxicity data and the conservative chronic exposure assumptions support the conclusion that there is a reasonable certainty of no harm from dietary (food) exposure to pyraflufen-ethyl and the acid metabolite residues. Moreover, as exposure to residues of pyraflufen-ethyl and the acid metabolite via water is negligible, there is a reasonable certainty of no harm from aggregate exposure to pyraflufen-ethyl and the acid metabolite residues.

2. *Infants and children.* The conservative estimates, as described above, indicate that chronic dietary exposure of pyraflufen-ethyl and the acid metabolite from cotton and potato will utilize less than 0.1% of the RfD for non-nursing infants, less than 0.1% of the RfD for children ages 1 to 6; and less than 0.1% of the RfD for all populations examined. No developmental, reproductive, or fetotoxic effects were noted at the highest doses of pyraflufen-ethyl tested in guideline reproductive or developmental toxicity studies. Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete, valid and reliable. Results from the teratology studies and the 2–generation reproduction study support NOAELs for fetal/developmental effects or reproductive/offspring effects, respectively, equivalent to the highest concentrations tested. As such, there is no increased sensitivity of infants and children to residues of pyraflufen-ethyl. Therefore, an additional safety (uncertainty) factor is not warranted, and the RfD of 0.172 mg/kg/day, which utilizes a 100–fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There is no Codex maximum residue level established for residues of pyraflufen-ethyl and the acid metabolite on any crops.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7410–5]

Notice of Availability of Enforcement and Compliance History Online Web Site for 60-Day Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of information availability and request for comments.

SUMMARY: The Office of Compliance (OC), within EPA's Office of Enforcement and Compliance Assurance (OECA), announces the availability of and invites comments on its new Web site, Enforcement and Compliance History Online (ECHO), which contains searchable, facility-level enforcement and compliance information.

DATES: Comments must be submitted no later than January 21, 2003.

ADDRESSES: The Web site is available at *http://www.epa.gov/echo.* Comments may be submitted to *echo@epa.gov* as a Word or WordPerfect file or mailed to Rebecca Kane, Environmental Protection Agency, Office of Enforcement and Compliance Assurance, MC 2222A, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Specific data errors should be submitted using the error correction process on the ECHO site.

FOR FURTHER INFORMATION CONTACT: Rebecca Kane at *kane.rebecca@epa.gov* or (202) 564–5960.

SUPPLEMENTARY INFORMATION:

I. ECHO Background

EPA is committed to public access to environmental information and has worked to develop a format for providing Internet access to facility-level compliance and enforcement information contained in core EPA data systems. Though the data included within ECHO previously were available to the public primarily through Freedom of Information Act requests, the information was not available in a searchable Web format. This new e-government initiative makes it much easier for the public to obtain these data records on the Internet.

EPA has worked with State governments to develop the content of the site and ensure accurate data and has pilot tested Internet access. A Joint EPA-State Enforcement and Compliance Public Access Workgroup developed the template for the type, sources, and amount of data to be included within ECHO. This workgroup, developed in partnership with the Environmental Council of the States (ECOS), made its recommendations in June 2000. EPA has field tested the approach and the data through: the Sector Facility Indexing Project (*http://www.epa.gov/sfipmtn1/*), which shows data for a limited number of industrial sectors, and a four-State pilot in the Pacific Northwest (*http://www.epa.gov/idea/region10*). Public feedback and lessons learned from these projects contributed to the development of the ECHO site.

To prepare for launch of ECHO, EPA and the States conducted a comprehensive data review to ensure high quality information. ECHO also includes on the site an online error reporting process that allows users to alert EPA and the States to possible errors. This notice announces a 60-day comment period, which is being provided to give interested parties, particularly those responsible for facilities included within the database, the opportunity to review ECHO's content, design, and accuracy of data.

II. ECHO Data

ECHO provides integrated compliance and enforcement information for approximately 800,000 regulated facilities nationwide. The site allows users to find facility-level inspection, violation, enforcement action, and penalty information for the past two years. Facilities regulated under the Clean Air Act (CAA) Stationary Source Program, Clean Water Act (CWA) National Pollutant Elimination Discharge System (NPDES), and Resource Conservation and Recovery Act (RCRA) are included. ECHO reports provide a snapshot of a facility's environmental record, showing dates and types of violations, as well as the State or Federal government's response.

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ECHO reports also contain demographic information from the National Census.

Data included are drawn from the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS), Permit Compliance System (PCS), Resource Conservation and Recovery Act Information System (RCRAInfo), and, for Federal enforcement actions, the Integrated Compliance Information System (ICIS), as well as Facility Registry System (FRS) and U.S. Census data. EPA, State, and local environmental agencies and the facilities collect/report the data that are submitted to these Agency databases.

III. Specific Questions for Consideration

EPA is soliciting comments on the usability of the site as well as the accuracy of the data. EPA is specifically asking for responses to the following questions:

(1) Does the site provide meaningful and useful information about the compliance and enforcement program?

(2) Is the site easy to navigate?

(3) Does the help text adequately explain the data?

(4) What additional features, content, and/or modifications would improve the site?

(5) For members of the regulated community:

A. Were your facility reports accurate?

B. If you did need to submit an online error report, was the error reporting process easy to use?

Please note that comments are requested for the project in general; specific data errors should be reported through the error correction process on ECHO. (This feature is on every facility report—click on the red button on the top right of the page.) Also, please include question numbers in responses.

IV. Response to Comments

EPA will analyze comments received and will use these to guide any modifications to this site.

Dated: November 13, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–29471 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0070; FRL–7281–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.*, a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 19, 2002, to November 1, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT– 2002–0070 and the specific PMN number or TME number, must be received on or before December 20, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0070. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e- mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number— OPPT–2002–0070. The system is an" anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov,* Attention: Docket ID Number OPPT–2002–0070 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0070 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

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6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.*, a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 19, 2002, to November 1, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 46 PREMANUFACTURE NOTICES RECEIVED FROM: 10/19/02 TO 11/01/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-03-0046	10/22/02	01/20/03	Marchem Technologies	(S) Oilfield foamer	(S) 1-propanaminium, 3-amino-n-(carboxymethyl)-n,n-dimethyl-, n-soya acyl derivs., inner salts
P-03-0047	10/22/02	01/20/03	Marchem Technologies	(S) Oilfield corrosion inhibitor	(S) Benzenemethanaminium, n-(3-aminopropyl)-n,n-dimethyl-, n-soya acyl derivs., chlorides
P-03-0048	10/22/02	01/20/03	CBI	(G) Polymer for waterborne paints	(G) Modified styrenated acrylated methacrylate polymer
P-03-0049	10/23/02	01/21/03	Hi-tech Color, Inc.	(S) Polyurethane paint for plastics	(G) Polyurethane polymer
P-03-0050	10/23/02	01/21/03	Degussa Corporation	(S) Mechanical rubber goods	(S) Thiocyanic acid, 3-(triethoxysilyl)propyl ester, reaction products with silica
P-03-0051	10/21/02	01/19/03	Cook Composites and Polymers Co.	(S) Reinforced structural plastics resin	(G) 2-butenedioic acid (2e)-, polymer with 1,2-alkanediol, 2,5-furandione and 2,2'-oxybis[ethanol], 2,3,3a,4,7,7a-hexahydro-4,7-methano-1h-indene-1(or 2)-yl ester
P-03-0052	10/24/02	01/22/03	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P-03-0053	10/24/02	01/22/03	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P-03-0054	10/24/02	01/22/03	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P-03-0055	10/24/02	01/22/03	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P-03-0056	10/24/02	01/22/03	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P-03-0057	10/24/02	01/22/03	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P-03-0058	10/24/02	01/22/03	Rhein Chemie Corporation	(G) High density crosslinked polymer in resins composites and adhesives	(G) Aromatic polycarbodiimide
P-03-0059	10/24/02	01/22/03	Degussa Corporation	(S) Monomer in the production of a polymer	(G) Alkylamino functional silane
P-03-0060	10/25/02	01/23/03	Degussa Corporation	(S) Crosslinking agent for systems used in the metal and/or gas industry	(G) Meko blocked prepolymer of cycloaliphatic isocyanate and hydroxyalkane carboxylic acid, neutralized with aminoalkanol
P-03-0061	10/28/02	01/26/03	Chemfirst Electronic Materials LP	(S) High density crosslinker polymer in resins, composites, and adhesives	(G) Aromatic epoxy ether
P-03-0062	10/28/02	01/26/03	Johnson Polymer	(G) Open, non-dispersive use.	(G) Acrylic resin
P-03-0063	10/24/02	01/22/03	CBI	(G) Binder for graphic arts coatings and printing inks.	(G) 2,5-furandione, polymer with ethenylbenzene,4-[(1-oxo-2-propenyl)oxy]butyl propyl ester, compound with ammonia and amine

I. 46 PREMANUFACTURE NOTICES RECEIVED FROM: 10/19/02 TO 11/01/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-03-0064	10/24/02	01/22/03	CBI	(G) Binder for graphic arts coatings and printing inks.	(G) 2,5-furandione, polymer with ethenylbenzene,4-[(1-oxo-2-propenyl)oxy]butyl propyl ester, compound with ammonia and amine
P-03-0065	10/24/02	01/22/03	CBI	(G) Binder for graphic arts coatings and printing inks.	(G) 2,5-furandione, polymer with ethenylbenzene,4-[(1-oxo-2-propenyl)oxy]butyl propyl ester, compound with ammonia and amine
P-03-0066	10/24/02	01/22/03	CBI	(G) Binder for graphic arts coatings and printing inks.	(G) 2,5-furandione, polymer with ethenylbenzene,4-[(1-oxo-2-propenyl)oxy]butyl propyl ester, compound with ammonia and amine
P-03-0067	10/29/02	01/27/03	CBI	(G) Paint additive	(G) Fluoroalkene substitutedalkene polymer
P-03-0068	10/29/02	01/27/03	CBI	(S) Resin for inks, coatings	(G) Polyester polyurethane dispersion
P-03-0069	10/29/02	01/27/03	CBI	(G) Polymer additive	(G) Alkylaminoethylcarboxylic acid ester
P-03-0070	10/29/02	01/27/03	CBI	(S) Internal intermediate; insulating gel component	(G) Organomodified siloxane
P-03-0071	10/29/02	01/27/03	CBI	(G) Industrial specialty coating	(S) 2-propenoic acid, 2-hydroxyethyl ester, adduct with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane (1:1), reaction products with ethoxylated reduced me ethers of reduced polymd. oxidized tetrafluoroethylene
P-03-0072	10/31/02	01/29/03	CBI	(G) Descaler additive	(G) Aminocarboxylic acid potassium salt
P-03-0073	10/31/02	01/29/03	Essential Industries	(S) Raw material for wood coatings	(G) Aliphatic polyurethane dispersion
P-03-0074	10/31/02	01/29/03	CIBA Specialty Chemicals Corporation	(S) Wetting and leveling agent for solvent-based paints, coatings and inks	(G) Polymeric fluorocarbon
P-03-0075	10/31/02	01/29/03	Zeon Chemicals L.P.	(S) Polymerization monomer	(G) Aliphatic ester
P-03-0076	10/30/02	01/28/03	Hi-Tech Color, Inc.	(S) Thermal - transfer sheet (black coating agent)	(G) Polyurethane - silicone
P-03-0077	11/01/02	01/30/03	3M Company	(S) Cure catalyst	(S) Phosphonium, tributyl(2-methoxypropyl)-, salt with 1,1,2,2,3,3,4,4,4-nonafluoro-n-methyl-1-butanesulfonamide (1:1)
P-03-0078	11/01/02	01/30/03	CBI	(G) Colourant	(G) Sulphonated azo dye
P-03-0079	11/01/02	01/30/03	CBI	(G) Colourant	(G) Sulphonated azo dye
P-03-0080	11/01/02	01/30/03	CBI	(S) Epoxy crosslinking agent for industrial coating applications over metal and concrete substrates.	(G) Polymer of diethylenetriamine with polyepoxy functional polymers
P-03-0081	11/01/02	01/30/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Amines, polyethylenepoly-, reaction products with 5 (or6)-carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, pentaethylenehexamine and substituted ethyleneamines, hydrochlorides
P-03-0082	11/01/02	01/30/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Amines, polyethylenepoly-, reaction products with 5 (or6)-carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, pentaethylenehexamine and substituted ethyleneamines, acetates
P-03-0083	11/01/02	01/30/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Amines, polyethylenepoly-, reaction products with 5 (or6)-carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, pentaethylenehexamine and substituted ethyleneamines, phosphates
P-03-0084	11/01/02	01/30/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Amines, polyethylenepoly-, reaction products with 5 (or6)-carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, pentaethylenehexamine and substituted ethyleneamines, hydrochlorides

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I. 46 PREMANUFACTURE NOTICES RECEIVED FROM: 10/19/02 TO 11/01/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0085	11/01/02	01/30/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Amines, polyethylenepoly-, reaction products with 5 (or6)-carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, pentaethylenehexamine and substituted polyamines, acetates
P–03–0086	11/01/02	01/30/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Amines, polyethylenepoly-, reaction products with 5 (or6)-carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, pentaethylenehexamine and substituted polyamines, phosphates
P–03–0087	11/01/02	01/30/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier	(G) Amines, polyethylenepoly-, reaction products with 5 (or6)-carboxy-4-hexyl-2-cyclohexane-1-octanoic acid, pentaethylenehexamine and substituted ethylenemines
P–03–0088	11/01/02	01/30/03	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier	(G) Amines, polyethylenepoly-, reaction products with 5 (or6)-carboxy-4-hexyl-2-cyclohexane-1-octanoic acid, pentaethylenehexamine and substituted polyamines
P–03–0089	11/01/02	01/30/03	CBI	(G) Use as adhesives component. non-dispersive use.	(G) Naphtha (petroleum), light steam-cracked, debenzenized, polymers, hydrogenated polymers with carbomonocyclic diketone.
P–03–0090	11/01/02	01/30/03	CBI	(G) Open, non-dispersive use.	(G) Acrylic resin
P–03–0091	11/01/02	01/30/03	CBI	(G) Antioxidant	(G) Sulfurized alkenes

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 19 NOTICES OF COMMENCEMENT FROM: 10/19/02 TO 11/01/02

Case No.	Received Date	Commencement/Import Date	Chemical
P–01–0011	10/31/02	10/23/02	(G) Pentaerythritol ester of branched and linear fatty acids
P–01–0748	10/23/02	10/11/02	(G) Phenol, reaction products with an aromatic amine and an isocyanate
P–01–0756	10/29/02	10/11/02	(G) Amine salted polyurethane
P–02–0004	10/21/02	10/07/02	(G) Aqueous polyurethane dispersion
P–02–0005	10/21/02	09/18/02	(G) Aqueous polyurethane dispersion
P–02–0197	10/21/02	09/11/02	(G) Carboxylated amine
P–02–0300	10/24/02	09/24/02	(G) Glycerides, animal, reaction products with polyamines, hydrochlorides
P–02–0454	10/29/02	10/10/02	(G) Amine functional epoxy resin salted with an organic acid
P–02–0468	10/24/02	09/30/02	(S) Amides, C_{16-18} and C_{18}-unsaturated, branched and linear, n,n-bis(hydroxyethyl), phosphates (esters)
P–02–0564	10/21/02	09/09/02	(G) Isophorone diisocyanate, polymer with polyethylene- propyleneoxide bisphenol a epichlorohydrin copolymer
P–02–0645	10/22/02	09/30/02	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, diesters with polyethylene glycol
P–02–0652	10/29/02	10/20/02	(G) Polyurethane derivative
P–02–0698	10/22/02	09/24/02	(G) Treated metal oxide
P–02–0735	10/30/02	10/11/02	(G) Acid functional polyester resin amine salted
P–02–0757	10/23/02	09/25/02	(G) Rosin modified phenolic resin
P–02–0759	10/30/02	10/07/02	(G) Silsesquioxane, siloxane
P–02–0766	10/30/02	10/07/02	(G) Polyphosphoric acids, amine salt
P–02–0800	10/21/02	10/09/02	(G) Aromatic polyester polyol
P–02–0835	10/31/02	10/15/02	(G) Polyester modified polyurethane amine salted

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 12, 2002.

Carolyn Thornton,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–29479 Filed 11–19–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011794–001.
Title: COSCON/KL/YMUK/Hanjin/Senator Worldwide Slot Allocation & Sailing Agreement.
Parties:
COSCO Container Lines Company, Limited
Kawasaki Kisen Kaisha, Ltd.
Yangming (UK), Ltd.
Hanjin Shipping Co., Ltd.
Senator Lines GmbH.

Synopsis: The proposed amendment revises the slot allocations among the parties, revises the number of vessels contributed by the parties, and expands the geographic scope to worldwide. The amendment also conforms the agreement to European Union requirements, makes various editorial changes, and republishes the agreement in a second edition. Several existing space sharing and sailing agreements between some or all of the parties will be cancelled.

Agreement No.: 011832.
Title: Contship/CMA CGM–UASC Space Charter Agreement.
Parties:
Contship Containerlines
CMA CGM, S.A.
United Arab Shipping Co. S.A.G.

Synopsis: The agreement authorizes Contship and CMA CGM to charter space to United Arab Shipping in the trade between United States East Coast ports, on the one hand, and ports in India, Sri Lanka, and South East Asia (Bangladesh to Philippines range) and ports bordering the Mediterranean and Red Seas, on the other hand.

Agreement No.: 201140.
Title: NYSA–ILA Tonnage Assessment Agreement.
Parties:
New York Shipping Association, Inc.
International Longshoremen's Association.

Synopsis: This agreement replaces and supersedes the current NYSA–ILA Assessment Agreement, FMC Agreement No. 200063 and all amendments thereto, and updates and revises the assessment programs for the funding of obligations arising under NYSA–ILA collective bargaining agreements.

By Order of the Federal Maritime Commission.

Dated: November 15, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–29505 Filed 11–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
17642N	Direct Shipping, Corp. dba Direct Shipping Line, 1371 South Santa Fe Avenue, Compton, CA 90221.	September 29, 2002.
16321N	Express Consolidation Systems Corp., 253 Academy Street, Jersey City, NJ 07306.	September 28, 2002.
9867N	Harro Schumacher dba Schumacher Cargo Lines, 2205 E. Carson Street, Unit B–4, Long Beach, CA 90810.	September 29, 2002.
17613N	Utopia Logistic New York, Inc., 149–35 177th Street, #104, Jamaica, NY 11434.	September 26, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–29507 Filed 11–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

World Connection Express, Inc., 400 S. Atlantic Blvd., Suite 311, Monterey Park, CA 91754. Officer: Melody Juanzhi Hoong, C.E.O. (Qualifying Individual).
Trans Global Auto Logistics, Inc., 2454 NW Dallas Street, Grand Prairie, TX 75050. Officer: Sandra Kay Lester, President, (Qualifying Individual).
International Port Services, Inc. dba Interport, 8390 NW 53 Street, Suite 220, Miami, FL 33166. Officers: Anthony J. Pupo, Managing Director (Qualifying Individual), Esteban A. Szalay, President.
JP Express Shipping, 1894 Washington Avenue, Bronx, NY 10457. Officer: Felipe Vasquez, President, (Qualifying Individual).
Airmar Cargo Services, Inc., 8376 NW 64th Street, Miami, FL 33166. Officer:

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Herman Cordero, President, (Qualifying Individual).
J.G. River Shipping, 948 Columbus Avenue, New York, NY 10025–3109. Juan Garcia, Sole Proprietor.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Sea-Line-Cargo, Inc. 135 Post Avenue, 1st Floor, New York, NY 10034. Officer: Edickson Burgos, President, (Qualifying Individual).
OWS Logistics, Inc., 1000 Corporate Center Dr., Suite 120, Monterey Park, CA 91754. Officers: Danny Tam, Secretary, (Qualifying Individual), Hoi-Sing Tong, President.
Marisol International LLC, 1645 W Republic Road, Suite B–2, Springfield, MO 65807, Officers: Arthur C. Vogt, President, (Qualifying Individual), James T. Simmons, Vice President.
American Baggage & Box Transport, 236 Pleasant Street, Methuen, MA 01844. Officer: Harry Gibley, President, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

GIF Services, Inc., 2525 Brunswick Avenue, Linden, NJ 07036. Officers: John Callea, Vice President, (Qualifying Individual), Lynne Callea, President.

Dated: November 15, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–29506 Filed 11–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 5, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *John Mark McLaughlin*, San Angelo, Texas; to acquire voting shares of Texas Bancorp, Inc., San Angelo, Texas, and thereby indirectly acquire voting shares of Texas State Bank, San Angelo, Texas.

Board of Governors of the Federal Reserve System, November 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29493 Filed 11–19–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *Neighbors Bancshares, Inc.*, Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Neighbors Bank, Roswell, Georgia (in organization).

Board of Governors of the Federal Reserve System, November 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29382 Filed 11–19–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

TIME AND DATE: 11 a.m., Monday, November 25, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29560 Filed 11–15–02; 5:06 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Responsibilities of Awardees and Applicant Institutions for Reporting Possible Misconduct in Science (42 CFR part 50 subpart A)—0937–0198—Revision—As required to section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and awardee institutions receiving PHS funds must investigate and report instances of alleged or apparent misconduct in science. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions—Reporting Burden Information—*Number of Respondents:* 3,330; *Number of Annual Responses:* 3,430—*Average Burden per Response:* .273 hours; *Total Reporting Burden:* 938 hours—Disclosure Burden—*Number of Respondents:* 3,330; *Number of Annual Responses:* 3,390; *Average Burden per Response:* .5 hours; *Total Disclosure Burden:* 1,695 hours—Recordkeeping Burden Information—*Number of Respondents:* 40; *Number of Annual Responses:* 140; *Average Burden per Response:* 7.77 hours; *Total Recordkeeping Burden:* 1,088 hours—Total Burden—3,721 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: November 7, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–29395 Filed 11–19–02; 8:45 am]

BILLING CODE 4150–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Health Care Policy and Research Special Emphasis Panel; Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Health Services Research Dissertation Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Health Services Research Dissertation Grant on Patient Safety.

Date: December 3, 2002 (open on December 3, from 3 p.m. to 3:10 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the December 3 meeting, due to the time constraints of reviews and funding cycles.

Dated: November 14, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–29470 Filed 11–19–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Time and Date: 1 p.m.–4 p.m., December 12, 2002.

Place: Teleconference call will originate at the Centers for Disease Control and Prevention, National Institutes for Occupational Safety and Health, Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by ports available.

Background

The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by Department of Health and Human Services (HHS) as Final Rule: Guidelines for Determining Probability of Causation—42 CFR part 81; advice on methods of dose reconstruction which have been promulgated as Final Rule: Methods for Radiation Dose Reconstruction Under the Act—42 CFR part 82; evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants; and, advice on the addition of classes of workers to the Special Exposure Cohort.

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In December, 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the Centers for Disease Control and Prevention (CDC). NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001 and in November, 2001, the President completed the appointment of an initial roster of 10 Board members. The initial tasks of the Board have been to review and provide advice on the proposed, interim, and final rules of HHS.

Purpose

This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this meeting will focus on the Scope of Work and the Evaluation Plan for the procurement of technical consultation to the Board regarding the scientific validity and quality of completed dose reconstructions.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled for 1 p.m. Eastern Standard Time. To access the teleconference you must dial 1–800–311–3437. To be automatically connected to the call, you will need to provide the operator with the participant code "278909" and you will be connected to the call.

FOR MORE INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 14, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–29412 Filed 11–19–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 62474–77, dated October 2, 2002) is amended to reorganize the Office of Management and Operations, CDC.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Office of Management and Operations (CAD)* and insert the following:

(1) Provides leadership and direction on the development, operation, and appraisal on all aspects of human resource programs and policies; (2) designs human resource programs that support and enhance the CDC mission; (3) provides assistance to the CIOs in building the capacity to evaluate the effectiveness of their human resource programs and policies; (4) provides direction for the Agency's ethics program and alternative dispute resolution and activities; (5) carries out facilities and real property and space management functions for CDC, including new or expanded facilities, and a major repair and improvement program; and (6) plans, directs, and coordinates a security and emergency management program for CDC facilities and personnel.

Delete the functional statement for the *Office of the Director (CAD1)* and insert the following:

(1) Manages, directs, and coordinates the activities of the Office of Management and Operations (OMO); (2) provides leadership, guidance, and evaluation of management operations, human resources management, security management and facilities operations preformed by or on behalf of the Centers/Institute/Offices; (3) advises and assists the Director, CDC, and other key officials on all phases of these functions; (4) maintains liaison with officials of the HHS on management matters; and (5) participates in the development of CDC's goals and objectives.

Delete the functional statement for the *Human Resources Management Office (CAD3)* and insert the following:

(1) Provides service, support, advice, and assistance to CDC organizations, management, and employees in all areas of human resources management; (2) conducts and coordinates personnel management for CDC's civil service and Commissioned Corps personnel; (3) conducts CDC's fellowship programs; (4) develops and issues policies and procedures; conducts recruitment, special emphasis, staffing, position classification, position management, pay administration, performance management systems, employee training and development, and labor relations programs; (5) maintains personnel records and reports, and processes personnel actions and documents; (6) administers the Federal life and health insurance programs; (7) administers the employee recognition, suggestion, and incentive awards programs; (8) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims; (9) conducts CDC's substance abuse programs; (10) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses of CDC personnel and staffing to CDC management and employees; (11) maintains liaison with the Department of Health and Human Services and the U.S. Office of Personnel Management (USOPM) in the area of human resources management; and (12) administers the National Performance Review and Human Resources initiatives to meet current and future requirements.

Delete the functional statement for the *Technical Services Section (CAD357)* and insert the following:

(1) Provides central personnel services and assistance in the area of employee benefits, personnel action processing, data quality control/assessment, and files/records management; (2) serves as liaison between CDC and the HHS payroll office resolving discrepancies with pay and leave; (3) administers the leave donor program and processes time and attendance amendments; (4) provides policy guidance and technical advice and assistance on retirement, the Thrift Savings Plan, health/life insurance, and savings bonds; (5) codes and finalizes all personnel actions in the automated personnel data system; (6) assists with new employee orientation; (7) establishes and maintains the official personnel files system and administers personnel records storage and disposal program; (8) responds to employment verification inquiries; and (9) provides assistance in the implementation of the HHS Plan for a Drug Free Workplace.

After the *Human Resources Management Office (CAD3)*, insert the following:

Office of Security and Emergency Preparedness (CAD4). (1) Plans, directs, coordinates, and evaluates a comprehensive protection and security program that requires the development of protection and security criteria to eliminate or control protection and security vulnerabilities encountered in the construction, operations, and maintenance of CDC's research laboratories, administration and support facilities, and the physical plant; (2) is responsible for all security and protection programs including education, training, technical assistance, physical security, identification badges, personnel security to include background/NACI checks, security clearances, adjudications, as well as door locks and card readers, parking and traffic control, vehicle inspections, clearing delivery vehicles, directly respond to emergency services personnel; (3) implements Federal and Departmental regulations and establishes CDC policies and procedures in the area of security, emergency management preparedness, and protection; (4) as the focal point for the receipt and transmittal of classified documents, clearances, and provides security briefing and debriefing for persons holding security clearances, and destroys outdated classified documents; (5) maintains liaison with international, national, State, and local law enforcement, emergency management agencies, and other institutions that are in geographic proximity to CDC facilities; (6) develops, implements and maintains an agency wide and comprehensive internal Emergency Management and Continuity of Operations Plans, this includes (but is not limited to) updates, training, testing and management of the system; (7) plans, conducts and coordinates programs to protect life, property, and the environment in the event of fire, explosions, hazardous materials and natural disasters; and (8) works closely with the Information Resources Management Office in the interrelationships between physical, personnel, and information security programs and critical infrastructure protection.

Dated: October 29, 2002.

Julie Louise Gerberding,

Director.

[FR Doc. 02–29414 Filed 11–19–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–69]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Notice of Funding Availability for Research Studies on Homeownership and Affordable Lending; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail; *Lauren_Wittenberg@omb.eop.gov;* fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to Identifying the social, economic, demographic, and fiscal change occurring in American cities is an important part of HUD's mission. Empirical research on urban dynamics would provide an understanding of what factors are driving change and the impact of public policy on change.

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for Research Studies on Homeownership and Affordable Lending.

Description of Information Collection: A notice of funding availability funding a study of homeownership and affordable lending will aid in the formulation of policies in support of the President's goal of increasing the number of minority homeowners.

OMB Control Number: Pending.

Agency Form Numbers: HUD 424, HUD 424 CB, HUD 424–B, HUD 424 CBW, SF LLL, HUD 2880 HUD 2993, HUD 2994.

Members of Affected Public: Not-for-profit institutions, State, local or Tribal government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 1,750, number of respondents is 40, frequency of response is on occasion and quarterly, and the hours of response is 43.75.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 13, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–29398 Filed 11–19–02; 8:45 am]

BILLING CODE 4210–72–M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–06]

Manufactured Housing Construction and Safety Standards: Notice Appointing the Nonvoting Member and DFO for the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice appointing nonvoting member and DFO of Manufactured Housing Consensus Committee.

SUMMARY: Section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974 provides that the Secretary appoint a Consensus Committee for manufactured housing consisting of 21 voting members and one nonvoting member. The voting members have been previously announced. William W. Matchneer III, Administrator of the Department's Manufactured Housing Program is appointed as the nonvoting member and Designated Federal Officer (DFO) of the Manufactured Housing Consensus Committee.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 *et seq.*) ("the Act"), the Department initiated a program that, in part, provides for establishment of standards by which all manufactured homes are constructed. The Act provides that these construction and safety standards preempt all standards of a State or political subdivision applicable to the same aspect of performance of a manufactured home that are not identical to the Federal Manufactured Home Construction and Safety Standards.

The Manufactured Housing Improvement Act of 2000 (title VI, Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000) (the 2000 Act) amended the Act in several areas. The 2000 Act specifically provides for the establishment of a Consensus Committee for manufactured housing. The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations. Twenty-one individuals have been selected by the Secretary to serve as voting members on the committee and those persons have been previously announced in the **Federal Register**.

Additionally, in accordance with GSA regulations at 41 CFR 102–3.120, the agency must designate a DFO for the Consensus Committee. William W. Matchneer III is appointed as the nonvoting member representing the Secretary and the DFO of the Manufactured Housing Consensus Committee.

Dated: November 5, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–29397 Filed 11–19–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–05]

Second Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: Meetings will be held on Wednesday, December 4, 2002, 9 a.m.–4 p.m.; and Thursday, December 5, 2002, 9 a.m.–4 p.m.

ADDRESSES: These meetings will be held at the Capitol Hilton, 1001 16th Street, NW., Washington, DC 20036, telephone (202) 393–1000.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app.2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards. The purpose of this meeting is to begin the development of proposed model manufactured home installation standards.

Tentative Agenda

A. Welcome and Introductions
B. Committee Procedures and By-Laws
C. Installation Standards
D. Scheduling of future meeting(s)

Dated: November 5, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–29396 Filed 11–19–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public the Bureau of Indian Affairs (BIA) intends to file a Final Programmatic Environmental Impact Statement (FPEIS) for the proposed Navajo Nation Ten-Year Forest Management Plan with the U.S. Environmental Protection Agency. The FPEIS, which was prepared in cooperation with the Navajo Nation, is now available for public review. Details on the project location and on the alternatives and environmental issues addressed in the FPEIS are provided under the **SUPPLEMENTARY INFORMATION** section.

DATES: Comments on the Final Programmatic Environmental Impact Statement must be received by December 21, 2002.

ADDRESSES: You may mail or hand carry written comments to Jonathan Martin, Regional Forester, Bureau of Indian Affairs, Navajo Regional Office, PO Box 1060, Gallup, New Mexico 87305.

Copies of the FPEIS have been sent to all agencies and individuals who participated in the scoping process or public hearings, and to those who commented on the Draft FPEIS. To get a copy of the FPEIS, please write to the Navajo Nation Forestry Department, PO Box 230, Fort Defiance, Arizona 86504, or call (928) 729–4007. The FPEIS is available for review at two locations: (1) The Branch of Environmental Services, Navajo Regional Office, Federal Building, 301 West Hill, Gallup, New Mexico; and (2) the Branch of Forestry, Bureau of Indian Affairs, 1 mile north on Route 12, Fort Defiance, Arizona.

FOR FURTHER INFORMATION CONTACT: Jonathan Martin, (928) 729–7228.

SUPPLEMENTARY INFORMATION: The proposed action is to adopt a ten-year forest management plan for the Navajo Forest. The Navajo Forest lies in the Chuska Mountains and Defiance Plateau areas of the Navajo Nation, along the Arizona-New Mexico border. The area encompasses nearly 600,000 acres.

The FPEIS presents a preferred alternative, the no action alternative and three other alternatives. The preferred alternative uses even-aged and uneven-aged management for timber harvesting, with consideration for Special Management Areas (SMAs) that would be excluded from commercial timberland to protect critical wildlife habitat and vital watershed areas. The other alternatives are (1) No action, which would continue current levels of timber harvesting with even-aged management and without consideration for SMAs; (2) even-aged management for timber harvesting, with consideration for SMAs; (3) uneven-aged management for timber harvesting, without consideration for SMAs; and (4) no timber harvesting or SMAs. All of the alternatives include timber protection plus monitoring and/or mitigation measures.

Areas of environmental concern addressed in the FPEIS include timber resources, other forest resources, water resources, biological resources, air quality, cultural resources and socio-economics.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR part 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: October 25, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–29404 Filed 11–19–02; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Outer Continental Shelf (OCS), Central Gulf of Mexico (GOM), Oil and Gas Lease Sale 185

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

SUMMARY: Gulf of Mexico OCS; Notice of Availability of the proposed Notice of Sale for proposed Oil and Gas Lease Sale 185 in the Central GOM. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice of Sale 185 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 19, 2003.

Dated: October 31, 2002.

Johnnie Burton,

Director, Minerals Management Service.

[FR Doc. 02–29489 Filed 11–19–02; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 20, 2002.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Office of Policy, Attention: Diana Trujillo, D–5300, PO Box 25007, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information form, contact Diana Trujillo at (303) 445–2914.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of

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Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology.

Title: Right-of-Use Application.

OMB No.: 1006–0003.

Abstract: Reclamation is responsible for over 8 million acres of land in the 17 western States. Parties wishing to use any of that land must submit a Right-of-Use application. Reclamation will review the application and determine whether the granting of the right-of-use is compatible with the present or future uses of the land. After preliminary review of the application, the applicant will be advised of the estimated administrative costs for processing the application. In addition to the administrative costs, the applicant will also be required to pay a land use fee based on the fair market value for such land use, as determined by Reclamation. If the Right-of-Use application is for a bridge, building, or other type of major structure, Reclamation may require that all plans and specifications be signed and sealed by a professional engineer licensed by the State where the work is proposed. Linear facilities such as roads, pipelines, and transmission lines require a centerline survey defining the limits of the requested right-of-use.

Description of respondents: Individuals, corporations, companies, and State and local entities that desire to use Reclamation lands.

Frequency: Each time a right-of-use is requested.

Estimated completion time: An average of 2 hours per respondent.

Annual responses: 500 respondents.

Annual burden hours: 1,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the form.

A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2002 (67 FR 51292). Reclamation did not receive any comments on this collection of information during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

Wayne O. Deason,

Acting Deputy Director, Office of Policy.

[FR Doc. 02–29410 Filed 11–19–02; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Preliminary)]

Barium Carbonate From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (the Act),[2] that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of barium carbonate, provided for in subheading 2836.60.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations.

The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On September 30, 2002, a petition was filed with the Commission and Commerce by Chemical Products Corp., Cartersville, GA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of barium carbonate from China. Accordingly, effective September 30, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1020 (Preliminary). Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 4, 2002 (67 FR 62263). The conference was held in Washington, DC, on October 22, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 14, 2002. The views of the Commission are contained in USITC Publication 3561 (November 2002), entitled Barium Carbonate From China: Investigation No. 731–TA–1020 (Preliminary).

Issued: November 14, 2002.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] 19 U.S.C. 1673b(a).

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission

[FR Doc. 02–29438 Filed 11–19–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1006, 1008, and 1009 (Final)]

Urea Ammonium Nitrate Solutions From Belarus, Russia, and Ukraine

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: Effective October 3, 2002, the Commission established a schedule for the conduct of the final phase of the subject investigations (**Federal Register** of October 23, 2002, p. 65143). Subsequently, the Department of Commerce extended the date for its final determination in the investigations from December 17, 2002, to February 18, 2003 (**Federal Register** of November 7, 2002, p. 67823). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule. The Commission's new schedule for these investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 13, 2003; the prehearing conference, if necessary, will be held at the U.S. International Trade Commission Building at 9:30 a.m. on February 18, 2003; the prehearing staff report will be placed in the nonpublic record on February 6, 2003; the deadline for filing prehearing briefs is February 13, 2003; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on February 20, 2003; the deadline for filing posthearing briefs is February 27, 2003; the Commission will make its final release of information on March 17, 2003; and final party comments are due on March 19, 2003. For further information concerning these investigations see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: November 14, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–29436 Filed 11–19–02; 8:45 am]

BILLING CODE 7020–02–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2002–1 CARP DTRA3]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for notices of intent to participate and written comments on scheduling.

SUMMARY: The Copyright Office of the Library of Congress is requesting written comments and proposals for the scheduling of Copyright Arbitration Royalty Panel (CARP) proceedings to adjust royalty rates and terms under provisions of the Copyright Act governing ephemeral recordings and digital transmissions of performances of sound recordings, as well as notices of intent to participate in the CARP to set rates and terms under the statutory license for eligible nonsubscription services to make certain digital audio transmissions of sound recordings for the 2003–2004 period.

DATES: Notices of intent to participate are due on or before December 23, 2002. Comments and proposals for the scheduling of the CARP proceedings are due on or before December 2, 2002.

ADDRESSES: An original and five copies of notices of intent to participate, and written comments and proposals on scheduling, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 112 and section 114 of the Copyright Act create statutory licenses for eligible nonsubscription services to make certain digital audio transmissions of sound recordings. The Library of Congress recently conducted a CARP proceeding which produced the royalty rates and terms for these licenses applicable to eligible nonsubscription services for the period from October 28, 1998, to December 31, 2002. *See* 67 FR 45239 (July 8, 2002). On January 30, 2002, the Library published a notice initiating a six-month voluntary negotiation period to adjust the rates and terms for the 2003–2004 period. 67 FR 4472 (January 30, 2002). No settlements were reached and the Library received a petition to initiate a CARP proceeding. Consequently, the Library is directing interested parties that wish to participate in the CARP proceeding to submit their notices of intent to participate on or before December 23, 2002. Parties should be mindful of this deadline as failure to submit a timely notice may preclude their participation in the proceeding.

The Library must also schedule this CARP proceeding. However, before a schedule can be determined, other proceedings under the section 112 and 114 licenses must be considered. Currently, there are three CARP proceedings for sections 112 and 114 that the Library must schedule in the upcoming months: (1) A proceeding to adjust the terms and rates for preexisting subscription services and to establish rates and terms for preexisting satellite digital audio services; (2) a proceeding to establish rates and terms for new subscription services; and (3) a proceeding to adjust rates and terms for nonsubscription services. Adding to the complications associated with scheduling three proceedings under the

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same two statutory licenses [1] is the fact that several of the parties affected by the outcomes will appear in all three proceedings. This can result in these parties, and their counsel, litigating more than one proceeding at a time. In the past, the Library has attempted to avoid such a scenario by scheduling proceedings sufficiently far apart. However, if the Library were to continue this practice, CARP proceedings would not be concluded until on or after the period in which the rates and terms established in that proceeding have expired. For example, the Library must schedule a proceeding for nonsubscription services for the 2003–2004 period. The parties in the preexisting subscription service/preexisting satellite digital audio service proceeding have petitioned the Library to postpone the start of that proceeding until March 20, 2003. If the Library grants their motion, the Librarian's decision setting forth rates and terms for preexisting subscription services and preexisting satellite digital audio services will not be issued until the end of 2003. Based on past practice, the Library would then have to wait several months after that to permit parties participating in both proceedings to prepare their cases for the nonsubscription service proceeding. The end result would be that a final determination in the nonsubscription service proceeding would not be made until the end of 2004 or the beginning of 2005. And this does not take into account the scheduling of the proceeding for new subscription services.

It is the position of the Library that CARP proceedings to establish or adjust royalty rates for statutory licenses should be, to the extent possible, scheduled so that final rates and terms are announced by the beginning of the time period to which they are applicable. Users of a statutory license should not be forced to use the license without knowing what the royalty obligations will be for the period prescribed by the license. This goal cannot be met if the section 112 and 114 CARPs are scheduled to run *seriatim;* serious consideration must be given to running multiple CARPs concurrently. To that end, the Library is requesting the parties in this proceeding to propose, in written comments on or before December 2, 2002, solutions to the problems identified above in scheduling three CARP proceedings for the section 112 and 114 statutory licenses.

Dated: November 15, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–29511 Filed 11–19–02; 8:45 am]

BILLING CODE 1410–33–P

[1] This does not consider the CARP proceedings for other statutory licenses in the Copyright Act that must also be scheduled during the same time period.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–142)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Wednesday, December 11, 2002, 8 a.m. to 6 p.m.; and Thursday, December 12, 2002, 8 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–6H46, overflow room MIC–3H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms.Kathy Dakon, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Proceedings of the NAC will be shown live via video feed in the overflow room, MIC–3H46. The agenda for the meeting is as follows:

—International Space Station Management and Cost Evaluation(IMCE) Task Force Status Report
—Review of Aerospace Technology
—Strategic Planning and Budget/Performance Integration
—Committee Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–29376 Filed 11–19–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on December 5–7, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, December 5, 2002

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:15 a.m.: Davis-Besse Lessons Learned Task Force Report and Status of NRC Oversight (0350) Panel's Investigation of the Davis-Besse Event (Open)—The Committee will hear a presentation by and hold discussions with the Chairman of the NRC Oversight (0350) Panel regarding the status of investigation of the Panel on the Davis-Besse reactor vessel head degradation. The Committee will also hear presentations by and hold discussions with representatives of the NRC staff and industry regarding the findings, conclusions, and recommendations of the Davis-Besse Task Force on the reactor vessel head degradation event at the Davis-Besse Nuclear Power Station.

10:30 a.m.–12 Noon: Framatome ANP, INC., S–RELAP5 Realistic Large-Break (LB) LOCA Code (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of Framatome ANP, INC., and the NRC staff regarding the S–RELAP5 Realistic large-break LOCA Code and the associated NRC staff's draft Safety Evaluation Report.

[**Note:** A portion of this session may be closed to discuss Framatome ANP, INC. proprietary information.]

1:30 p.m.–2:15 p.m.: Meeting with Mr. Lawrence Williams, NII, United Kingdom (Open)—The Committee will hold discussions with Mr. Williams, NII, United Kingdom on items of mutual interest.

2:15 p.m.–3:45 p.m.: North Anna and Surry License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Dominion regarding the license renewal application for the North Anna and Surry Nuclear Power Stations and the associated NRC staff's final Safety Evaluation Report.

4 p.m.–5:15 p.m.: Status of the Development of the Review Standard for Power Uprates (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the development of the review standard for core power uprates.

5:15 p.m.–5:30 p.m.: Subcommittee Report (Open)—The Chairman of the Thermal-Hydraulic Phenomena Subcommittee will provide a report to the Committee regarding the Rod Bundle Heat Transfer Experimental Program.

5:45 p.m.–7:15 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a draft annual ACRS report to the Commission on the NRC Safety Research Program.

Friday, December 6, 2002

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9 a.m.: Safeguards and Security Activities (Open)—The Committee will discuss a proposed ACRS plan for reviewing safeguards and security matters.

9 a.m.–9:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

9:45 a.m.–10 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:15 a.m.–12:30 p.m.: Proposed Options for Resolving Policy Issues for Future Non-Light Water Reactors (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed options for resolving policy issues related to future non-light water reactors.

1:30 p.m.–3:15 p.m.: Draft Final ANS External Events Methodology Standard (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the American Nuclear Society (ANS) regarding the draft final ANS Standard on External Events Methodology.

3:30 p.m.–4 p.m.: Election of ACRS Officers (Open)—The Committee will elect Chairman and Vice Chairman for the ACRS and Member-at-Large for the Planning and Procedures Subcommittee for CY 2003.

4 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, December 7, 2002

8:30 a.m.–12 Noon.: Proposed ACRS Reports (Open)—The Committee will continue to discuss proposed ACRS reports.

12–12:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss proprietary information per 5 U.S.C.552b(c)(4)

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACRS meeting dates for Calendar Year 2003 are provided below:

ACRS meeting No.	Meeting dates
	January 2003—No Meeting.
499	February 6–8, 2003.
500	March 6–8, 2003.
501	April 10–12, 2003.
502	May 8–10, 2003.
503	June 11–13, 2003.
504	July 9–11, 2003.
	August 2003—No Meeting.
505	September 11–13, 2003.
506	October 2–4, 2003.
507	November 6–8, 2003.
508	December 4–6, 2003.

Dated: November 14, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–29486 Filed 11–19–02; 8:45 am]

BILLING CODE 7590–01–P

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SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 20a–1, SEC File No. 270–122, OMB Control No. 3235–0158]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title of the collection of information is "Rule 20a–1 under the Investment Company Act of 1940, Solicitation of Proxies, Consents and Authorizations." Rule 20a–1(a) requires that the solicitation of a proxy, consent or authorization with respect to a security issued by a registered fund be in compliance with Regulation 14A (17 CFR 240.14a–1 to 14a–104), Schedule 14A (17 CFR 240.14a–101), and all other rules and regulations adopted under section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)). Rule 20a–1(b) requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation.

Regulation 14A and Schedule 14A establish the disclosure requirements applicable to the solicitation of proxies, consents and authorizations. In particular, Item 22 of Schedule 14A contains extensive disclosure requirements for registered investment company proxy statements. Among other things, it requires the disclosure of information about fund fee or expense increases, the election of directors, the approval of an investment advisory contract and the approval of a distribution plan.

The Commission requires the dissemination of this information to assist investors in understanding their fund investments and the choices they may be asked to make regarding fund operations. The Commission does not use the information in proxies directly, but reviews proxy statement filings for compliance with applicable rules.

It is estimated that approximately 1,000 registered investment companies are required to file one proxy statement annually. The total annual reporting and recordkeeping burden of the collection of information is estimated to be approximately 106,200 hours (1,000 responses × 106.2 hours per response).

Rule 20a–1 does not involve any recordkeeping requirements. Providing the information required by the rule is mandatory and information provided under the rule will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 13, 2002.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–29484 Filed 11–19–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46822; File No. SR–NASD–2002–152]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Regarding Trade Throughs and Locked Markets in the Nasdaq InterMarket

November 13, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On November 6, 2002, Nasdaq filed an amendment to the proposed rule change.[3] On November 12, 2002, Nasdaq filed another amendment to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Lisa N. Jones, Attorney, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 makes a technical amendment to the rule text of the proposal.

[4] See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Lisa N. Jones, Attorney, Division, Commission ("Amendment No. 2"). Amendment No. 2 makes a further technical amendment to the rule text of the proposal. For purposes of calculating the 60-day abrogation period, the Commission considers the period to begin the date of the original proposed rule change, October 25, 2002.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing to change NASD Rule 5262 ("Trade-Throughs") to conform its rule to the Commission order of August 28, 2002,[5] which establishes a limited exemption from the trade through provisions of the ITS Plan. In addition, Nasdaq is proposing to change NASD Rule 5263 ("Locked or Crossed Markets"), which addresses locked and crossed markets in exchange-listed securities, to conform its rule more closely with the locked markets rule contained in the ITS Plan. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 5262. Trade Throughs

(a) A member registered as an ITS/CAES Market Maker in an ITS/CAES security, shall avoid purchasing or selling such security, whether as principal or agent, at a price which is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES Market Maker ("trade-through"), unless the following conditions apply:

(1)–(8) No Change.

(9) *The transaction involves QQQs, DIAMONDs, and SPDRs, and the execution occurs at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This exemption shall apply for a pilot period ending June 4, 2003, or for such other period specified by the SEC.*

(b) No Change.

(c) No Change.

* * * * *

NASD Rule 5263. Locked or Crossed Markets

(a) No Change.

(b) No Change.

(c)*(1)*

(A) Unless excused by operation of paragraphs (c)(1)(B) or (d) below [A]*an* ITS/CAES Market Maker *that* [who] makes a bid or offer and in so doing creates a locked or crossed market with an[other] ITS Participant *Exchange* [or ITS/CAES Market Maker] *and that receives a complaint through ITS/CAES from the party whose bid (offer) was locked or crossed (the "aggrieved party"), the ITS/CAES Market Maker responsible for the locking or crossing offer (bid) shall, as specified in the complaint, either promptly "ship" (i.e., satisfy through ITS/CAES the locked or crossed bid (offer) up to the size of his locking or crossing offer (bid)) or "unlock" (i.e., adjust his locking or crossing offer (bid) so as not to cause a locked or crossed market). If the complaint specifies "unlock", it may nevertheless ship instead.* [shall promptly send to such other ITS Participant Exchange or ITS/CAES Market Maker a commitment to trade seeking either the bid or offer which was locked or crossed, unless excused by operation of paragraph (d) below. Such commitment shall be for either the number of shares he has bid for (offered) or the number of shares offered (bid for) on the ITS Participant Exchange or by the ITS/CAES Market Maker, whichever is less.]

(B) If there is an error in a locking or crossing bid or offer that relieves the locking or crossing ITS/CAES Market Maker from its obligations under paragraph (c)(2) of Rule 11Ac1–1 and if the ITS/CAES Market Maker receives a "ship" complaint through ITS/CAES from the aggrieved party, the locking or crossing ITS/CAES Market Maker shall promptly cause the quotation to be corrected and, except as provided in paragraph (d) below, it shall notify the aggrieved party through ITS/CAES of the error within two minutes of receipt of the complaint. If the locking or crossing ITS/CAES Market Maker fails to so notify the aggrieved party, he shall promptly ship.

(2) An ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with another ITS/CAES Market Maker shall promptly send to such other ITS/CAES Market Maker an order seeking either the bid or offer which was locked or crossed, unless excused by operation of paragraph (d) below. Such order shall be for either the number of shares he has bid for (offered) or the number of shares offered (bid for) by the ITS/CAES Market Maker, whichever is less.

(d) The provisions of paragraph (c) above shall not apply when:

1. No Change.

2. The issuance of the commitment to trade *or order* referred to above would be prohibited *by an NASD rule or* by SEC Rule 10a–1 under the Act.

3.–6. No Change.

7. The locking bid or offer no longer prevails at the time the complaint is received by the ITS/CAES Market Maker.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 5262—Trade Throughs. The ITS Plan requires that each of the national securities exchanges and the NASD adopt a similar rule governing the practice of "trading through" the quote of another ITS participant that trades ITS-eligible securities. The trade through rule prohibits market participants from purchasing or selling such securities at prices that are lower than the bid or higher than the offer displayed by another ITS Participant. NASD Rule 5262, the NASD's trade through rule, governs the conduct of NASD members that have registered as market makers in ITS-eligible securities.

On August 28, 2002, the Commission issued an order granting a *de minimis* exemption ("Exemption") for transactions in certain exchange-traded funds ("ETFs") from the trade through provisions of the ITS Plan.[6] At present, the exemption extends to transactions in three designated ETFs—the Nasdaq-100 Index ("QQQ"), the Dow Jones Industrial Average ("DIAMONDs"), and the Standard & Poor's 500 Index ("SPDRs"). Pursuant to the Exemption, transactions in these ETFs may be "executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS" ("Exempted Trade-Through"). The Exemption is effective from September 4, 2002 through June 4, 2003.

According to Nasdaq, the Exemption was proposed by the Commission to permit the rapid execution of orders in ETFs at prices that may trade through the quotations of other markets, including the NBBO price. Because Exempted Trade-Throughs will, by definition, be exempt from ITS restrictions, a market participant that reports execution of an Exempted Trade-Through will not be required to satisfy an administrative request from any ITS participant for satisfaction following the Exempted Trade-Through.[7] The SEC will measure the impact of the Exemption on the trading of those securities during the pilot period.

Nasdaq has decided to add the same exemption to its own trade-through rule, in Nasdaq's case, NASD Rule 5262. This measure will ensure that ITS/CAES Market Makers are aware that they must operate under equivalent terms of the ITS Plan as other ITS Plan participants.

NASD Rule 5263—Locked or Crossed Markets. The ITS Plan requires each of the national securities exchanges and the NASD to adopt a similar lock/cross rule governing trading in ITS-eligible securities. The current wording of the NASD rule is more stringent than required by the ITS Plan. Nasdaq believes that the more stringent wording of the rule is burdensome and places the NASD at a competitive disadvantage with other ITS participant exchanges that have adopted the lock/cross language prescribed by the ITS Plan.

NASD Rule 5263 currently requires ITS/CAES Market Makers that create locked or crossed markets with another ITS Participant or ITS/CAES Market Maker promptly to send that other party a commitment to trade seeking either the bid or offer which was locked or

[5] See note 4, *supra*.

[7] Pursuant to the ITS Plan, if an ITS participant trades through the quotation of another ITS participant, thereby violating the ITS trade through prohibition, the non-violating participant is entitled to send an administrative message noting the trade-through and the violating participant is required to respond with a commitment to trade at the price and size quoted by the non-violating participant.

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crossed. Nasdaq believes that the requirement to promptly send a commitment contrasts with the current procedure expressed in the ITS Plan, which requires that a locking participant respond only after a locked market complaint has been properly registered. Nasdaq believes that the more stringent NASD requirement could cause ITS/CAES Market Makers to prematurely send a commitment to trade without having the input or an understanding of the locked or crossed party's intentions to trade. To eliminate this disparity and competitive disadvantage with other markets, Nasdaq will mirror the language of the ITS Plan and remove the more restrictive language with respect to locks or crosses that occur between ITS/CAES Market Makers and the exchange participants of the ITS Plan.

Nasdaq will, however, maintain its current, stricter standard of conduct with respect to locked and crossed markets that occur between ITS/CAES Market Makers within the Nasdaq InterMarket, which are not addressed by the ITS Plan. Specifically, Nasdaq believes that the requirement that ITS/CAES Market Makers promptly send orders whenever they lock or cross other ITS/CAES Market Makers, reduces the number and duration of locks and crosses that do, inevitably, occur within a competing dealer market. Nasdaq also believes that locking and crossing behavior can provide valuable price discovery information to market participants. Nasdaq believes, however, that economic and regulatory incentives help minimize the extent to which such locks and crosses interfere with the smooth operation of the InterMarket and with ITS/CAES Market Makers' internal systems. This is particularly important because CAES and ITS/CAES Market Makers operate on an automatic execution basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general and with Section 15A(b)(6) of the Act,[9] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster competition and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, provided that Nasdaq has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notification requirement and the 30-day operative delay. The Commission believes that waiving the 5-day pre-filing notification requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[12] In particular, the proposed rule changes bring Nasdaq rules into conformity with the approved ITS Plan and the August 28, 2002 Commission's Exemptive Order. For this reason, the Commission waives both the 5-day pre-filing notification requirement and the 30-day operative waiting period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2002–152 should be submitted by December 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–29483 Filed 11–19–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46824; File No. SR–NYSE–2002–43]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Arbitration

November 13, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 2002, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to rules 601 (Simplified Arbitration), 607 (Designation of Number of Arbitrators), 612 (Initiation of Proceedings), 617 (Adjournments), 629 (Schedule of Fees), 631 (Schedule for Member Controversies) and 632 (Member Controversies). The text of the proposed rule change is set forth below. New text is italicized; deletions are in brackets.

Rule 601. Simplified Arbitration

(a) Any dispute, claim or controversy, arising between a [public] customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding $[10,000] *25,000* exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required *non-refundable filing fee and* deposit, together with the documents in support of the Claim. Sufficient copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the Arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether or not a hearing is demanded.

(c) The Claimant shall pay a *non-refundable* filing fee and [remit] a hearing deposit as [specified in rule 629 upon the filing of the Submission Agreement.] *follows:*[3]

FEES FOR SIMPLIFIED ARBITRATION CUSTOMER AS CLAIMANT

Amount in dispute (excluding interest and costs)	Filing fee	Decision on papers	Decision after hearing
$1,000 or less	$15	$15	$15
1,001 to 2,500	25	25	25
2,501 to 5,000	50	75	100
5,000 to 10,000	75	75	200
10,001 to 25,000	100	100	400

INDUSTRY AS CLAIMANT

Amount in dispute (excluding interest and costs)	Filing fee	Decision on papers	Decision after hearing
$25,000 or less	$500	$300	$300

(Excluding Interest Decision Decision after and Costs) Filing Fee On Papers Hearing $25,000 or less $500 $300 $600

The final disposition of the [sum] filing fee and hearing deposit shall be determined by the Arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from the receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient[4] copies for the Arbitrator(s) along with any deposit required under the schedule of fees *above*. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third Party Claim, the Respondent(s) shall serve the Third Party Respondent with an executed Submission Agreement, a copy of Respondent's answer containing the Third Party Claim, and a copy of the original Claim filed by the Claimant. The Third Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding $[10,000] *25,000*, the Arbitrator may refer the Claim, Counterclaim and/or Third Party Claim, if any, to a panel of three (3) arbitrators in accordance with rule 607 of this Code, or he may dismiss the Counterclaim and/or Third Party Claim, without prejudice to the counter-claimants and/or third party claimants pursuing the Counterclaim and/or Third Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified [in rule 629] *in the schedule above*.

(e) to (h) Unchanged.

[(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel which shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.]

[(k)] *(i)* In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

[(l)]*(j)* Except as otherwise provided herein, the general arbitration rules of the New York Stock Exchange, Inc. shall be applicable to the proceedings instituted under this Rule.

Rule 607. Designation of Number of Arbitrators

(a)(1) In all arbitration matters involving [public] customers and non-members where the matter in controversy exceeds $[10,000] *25,000*, or

[3] The original proposed rule change omitted "(c) " from the first line of this subparagraph. Commission staff made the correction. Telephone conference between Robert Clemente, Director—Arbitration, NYSE, and Steven Johnston, Special Counsel, Division of Market Regulation ("Division"), Commission on November 4, 2002.

[4] There appears to be confusion among various texts of current NYSE rule 601 as to whether this word should be "sufficient" or "additional." The NYSE intends to use the word "sufficient." Telephone conversation among Robert Clemente, Director—Arbitration, NYSE and Florence Harmon, Senior Special Counsel, and Steven Johnston, Special Counsel, Division, Commission on October 24, 2002.

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where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the [public] customer or non-member requests a panel consisting of at least a majority from the securities industry.

Rule 612. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Statement of Claim

The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim together with documents in support of the claim and the required *filing fee and hearing* deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) Unchanged.[5]

(c)(1) and (c)(2) Unchanged.[6]

(c)(3) Respondent(s) shall serve each party with a copy of any Third Party Claim. The Third Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under [the] *rule 629(i)* schedule of fees. Third Party Respondent(s) shall answer in the manner provided for response to the Claim, as provided in paragraphs (1) and (2) above.

Rule 617. Adjournments

(a) Unchanged.[7]

(b) A party requesting an adjournment after arbitrators have been appointed shall, if an adjournment is granted, deposit a fee, equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed $[1,000] *1,500*, for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of this fee or in their awards may direct the return of the adjournment fee.

Rule 629. Schedule of Fees

(a)–(g) Unchanged.

(h) The fee for a pre-hearing conference with an arbitrator shall be:

SCHEDULE FOR PRE-HEARING CONFERENCE WITH ONE ARBITRATOR[(S)]: [1]

Amount in controversy	Conference fee
$1,000 or less	$15.00
1,00[0.01] *1* up to 2,500	25.00
2,50[0.01] *1* up to 5,000	100.00
5,00[0.01] *1* up to 10,000	200.00
10,00[0.01] *1* up to [30,000] *25,000*	300.00
[30,000.01 up to 50,000	300.00
50,000.01 up to 100,000	300.00
100,001 up to 500,000	300.00
500,001 up to 5 million	300.00
Greater than 5 million	300.00]
Over 25,000	450.00

[1] Fee for pre-hearing conference with three arbitrators shall be based on applicable hearing session deposit fee.

(i) Schedule of Fees

For purposes of the schedule of fees the term "claim" includes Claims, Counterclaims, Third-Party Claims or Cross-Claims. Any such claim submitted by a customer is a customer claim. Any such claim submitted by a member, allied member, registered representative, member firm or member corporation against a [public] customer or other non-member is an industry claim.

For claims of $25,000 or less see schedule of fees in Rule 601. Simplified Arbitration.

CUSTOMER AS CLAIMANT

Amount of dispute ([exclusive of] *excluding* interest and expenses)	Hearing deposit		
	Filing fee	[Simplified]	[Hearing]
[$1,000 or less	$15	$15	$15
1,001 to 2,500	25	25	25
2,501 to 5,000	50	75	100
5,001 to 10,000	75	75	200
10,001 to 30,000	100	N/A	400]
[30,001] *25,001* to 50,000	120	[N/A]	400
50,001 to 100,000	150	[N/A]	500
100,001 to 500,000	200	[N/A]	750
500,001 to 5,000,000	250	[N/A]	1,000
Over 5,000,000	300	[N/A]	1,500

[5] NYSE authorized Commission staff to clarify omitted rule text. Telephone conversation Robert Clements, Director—Arbitration, NYSE and Florence Harmon, Senior Special Counsel, and Steven Johnston, Special Counsel, Division, Commission on November 7, 2002.

[6] See footnote 5, above.

[7] See footnote 5, above.

INDUSTRY AS CLAIMANT [1]

Amount of Dispute [exclusive of] *excluding* interest expenses)	Filing fee	Hearing deposit	
		1 Arb.	3 Arbs.
[$1,000 or less	$500	$300	$600
1,001 to 2,500	500	300	600
2,501 to 5,000	500	300	600
5,001 to 10,000	500	300	600
10,001 to 30,000	500	300	600]
30,001 to 50,000	500	[300]	600
[50,001] *25,001* to 100,000	500	[300]	750
100,001 to 500,000	500	[300]	1,000
500,001 to 5,000,000	500	[300]	1,500
Over 5,000,000	500	[300]	1,500

[1] This is the fee schedule for claims submitted by members, member firms, member corporations or allied members against *members, member firms, member corporations or allied members*, [public] customers, registered representatives or non-members other than [public] customers, and for claims submitted by registered representatives or non-members other than [public] customers against members, member firms, member corporations, allied members or non-members. [The one arbitrator column is for pre-hearing conferences and for simplified arbitration, where the industry party is a claimant against a public customer].

[Rule 631. Schedule for Member Controversies

At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and remit a hearing session deposit with the New York Stock Exchange, Inc. in the amounts indicated below:

Amount in dispute	Filing fee	Hearing deposit
$5,000 or less	$100	$200
5,001 to $100,000	200	750
100,001 or more	300	1,000

Where the claim or controversy does not involve or disclose a money claim or is unspecified, the filing fee will be $300 and the hearing session deposit shall be $1,000 per hearing session.

The fee for a pre-hearing conference with an arbitrator in a member controversy shall be as follows:

Amount in dispute	Conference fee
$5,000 or less	$150
5,001 to 100,000	300
100,001 or more	500

Rule 632. Member Controversies

Any controversy between parties who are members, allied members, member firms or member corporations shall be submitted for arbitration to members of the Board of Arbitration, unless non-members are also parties to the controversy. If the amount ([exclusive of] *excluding* interest and costs) involved in the controversy is less than $[10,000] *25,000* the controversy shall be heard by one arbitrator. If such amount is $[10,000] *25,000* or more the controversy shall be heard by [at least] three (3) [but not more than five (5)] arbitrators *unless the parties consent to one arbitrator*. If non-members are also parties to such controversies, the arbitrators shall be appointed in accordance with rule 607 unless the non-member(s) consent to arbitration before members of the Board of Arbitration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The proposed rule changes are intended to:

- Increase the ceiling for claims eligible for submission under the Simplified Arbitration procedures from $10,000 to $25,000 (rules 601, 607 and 629).
- Clarify that both a filing fee and hearing deposit must be submitted with the filing of a claim in arbitration (rule 612).
- Increase the maximum adjournment fee from $1,000 to $1,500 to conform to the maximum hearing deposit upon which adjournment fees are based (rule 617).
- Increase pre-hearing conference fees in claims over $25,000 from $300 to $450 (rule 629(h)).
- Incorporate filing fees and hearing deposits for disputes between members into the schedule of fees for "Industry as Claimants" (rules 629(i) and 631).
- Increase the ceiling from $10,000 to $25,000 for claims between members to be decided by one arbitrator. In addition eliminate reference to a panel "of no more than five arbitrators" (rule 632).

The proposed amendments to rules 601, 607 and 629 increase the ceiling on claims eligible for submission under the Simplified Arbitration procedures from $10,000 to $25,000. Under the Simplified Arbitration procedures, one arbitrator is appointed to decide the dispute based upon the parties' submissions, unless the customer requests a hearing. These proposed amendments conform to amendments to the Uniform Code of Arbitration adopted by the Securities Industry Conference on Arbitration ("SICA") and adopted by other SROs.[8]

In addition, the amendments simplify the rules by placing the fee schedule for Simplified Arbitration in rule 601 rather than referring to rule 629. The proposed

[8] NASD rule 10302(a).

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amendment to rule 607 conform the rule to the increase in the claims eligible for submission under the Simplified Arbitration procedure (rule 601). These amendments do not impact the cost to customers who submit their claims to arbitration.

The proposed amendments to rules 612 and 617 are housekeeping in nature and not substantive changes. The amendments to rule 612 clarify that both a filing fee and hearing deposit must be submitted with the filing of a claim in arbitration. The amendments to rule 617 increase the maximum adjournment fee from $1,000 to $1,500. This is to conform the adjournment fees to the maximum hearing deposit, upon which adjournment fees are based.

In addition, the Exchange is proposing to increase pre-hearing conference fees in claims over $25,000 from $300 to $450 (rule 629(h)). The increase in pre-hearing conference fees is warranted by the increased frequency and complexity of pre-hearing conferences. This increase conforms to the pre-hearing conference fees assessed by other SROs.[9]

The proposed amendments to rule 629(i) eliminate the need for rule 631 by incorporating the fees and deposits for disputes between members into the schedule of fees for "Industry Claimants" under rule 629. These amendments will increase the cost to members in disputes with other members and provides for a more equitable distribution of the cost of arbitration of member to member disputes with all other disputes initiated by a member or associated person. These amendments also simplify the fee schedules by deleting rule 631 (Schedule for Member Controversies) and consolidating that fee schedule with the Schedule of Fees for Industry Claimants (rule 629).

The proposed amendments to rule 632 increase the ceiling from $10,000 to $25,000 for claims between members that are heard and decided by one arbitrator. In addition, the proposed amendment eliminates the clause that provided for an arbitration panel of no more than five arbitrators. The Exchange has not impaneled five arbitrators on a case since the mid-1980s when the general rules were amended to provide for a panel of no less than three arbitrators. A panel of five arbitrators is unnecessarily burdensome and provides no benefit to the process.

[9] NASD rule 10332(k).

2. Statutory Basis

The proposed changes are consistent with section 6(b)(5) of the Act[10] in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to SR-NYSE–2002–43 and should be submitted by December 11, 2002.

[10] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29403 Filed 11–19–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P001]

State of Alaska

As a result of the President's major disaster declaration for Public Assistance on November 8, 2002, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit businesses that provide essential services of a governmental nature. I find that Fairbanks North Star Borough, Denali Borough, Matanuska-Susitna Borough, the Regional Education Attendance Areas (REAA) of Delta Greely, Alaska Gateway, Copper River and Yukon-Koyukuk, and the cities of Tetlin, Mentasta Lake, Northway, Dot Lake, Chistochina, Tanacross and the unincorporated communities of Slana and Tok in the State of Alaska constitute a disaster area due to damages caused by an earthquake occurring on November 3, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 7, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere	3.324
Non-profit organizations with credit available elsewhere	5.500

The number assigned to this disaster for physical damage is P00102.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 13, 2002.

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. 02–29434 Filed 11–19–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later January 21, 2003.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: TVA Accounts Payable Customer Satisfaction Survey.

Frequency of Use: On occasion.

Small Business or Organizations Affected: Yes.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 333.

Estimated Average Burden Hours Per Response: 10 minutes.

Need For and Use of Information: This information collection will be distributed by email to TVA's suppliers that receive remittance information by email. The information collected will be used to evaluate current performance of the Accounts Payable Department (ADP) which will identify areas for improvement and enable ADP to provide better service to suppliers and facilitate commerce between TVA and its suppliers.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations Information Services.

[FR Doc. 02–29413 Filed 11–19–02; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 91–60A, the Continued Airworthiness of Older Airplanes; AC 120–AAR, Aging Airplane Inspections and Records Review; and AC 91–56B, Continuing Structural Integrity Program for Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed Advisory Circular (AC) 91–60A, which provides guidance about development and use of service-history based Structural Supplemental Inspection Programs to design-approval holders, owners, and operators of U.S.-registered multi-engine airplanes certificated with nine or less passenger seats; AC 120-AAR, which provides guidance about aging airplane inspections and records reviews that are accomplished to satisfy the requirements of the final rule "Aging Airplane Safety;" and AC 91–56B, which provides guidance on developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational life. These proposed ACs address airplanes affected by the "Aging Airplane Safety Rule" and provide guidance on the development and use of a damage-tolerance-based Supplemental Structural Inspection Program (SSIP) for all airplanes operated under title 14 of the Code of Federal Regulations (14 CFR) part 121; all U.S.-registered multi-engine airplanes operated under 14 CFR part 129 certificated with 10 or more passenger seats; and all multiengine airplanes used in scheduled operations under 14 CFR part 135 certificated with 10 or more passenger seats. These ACs outline an acceptable method, but not the only method, of compliance with the Aging Airplane Safety Rule.

DATES: Comments must be received on or before December 20, 2002.

ADDRESSES: Send all comments on the proposed ACs to: Brent Bandley, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, ANM–120L, Federal Aviation Administration; 3960 Paramount Boulevard, Lakewood, CA 90712—4137; telephone number: (562) 627–5237, facsimile: (562) 627–5210.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, ANM–120L, Federal Aviation Administration; 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone number: (562) 627–5237, facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Copies of the draft ACs may be obtained by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or at *http://faa.gov/avr/afs/acs/ac-idx.htm*. Interested parties are invited to submit comments on the proposed ACs. Commenters must identify AC 91–60A, AC 120–AAR, or AC 91–56B and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final ACs.

Discussion

These proposed ACs provide guidance to type certificate holders and airplane operators on how to incorporate an FAA-approved Aging Aircraft Program into FAA-approved maintenance or inspection programs. Previous versions of AC 91–56 (AC 91–56 and AC 91–56A) provided guidance to operators of large transport category airplanes on how to develop a damage-tolerance-based SSIP. In this proposed AC, the FAA expands this guidance to small transport category airplanes. In addition, AC 91–56 and AC 91–56A considered only the effects of repair and modifications approved by the type certificate holder and the effects of repairs and operator-approved modifications on individual airplanes. This proposed AC considers the effect of all major repairs, major alterations, and modifications approved by the type certificate holder. In addition, the AC includes an expanded discussion of repairs, alterations, and modifications to take into consideration all major repairs and operator-approved alterations and modifications on individual airplanes. The proposed AC also describes the current Mandatory Modifications Program, Corrosion Prevention and Control Program, the Repair Assessment Program, and Evaluation for Widespread Fatigue Damage.

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Issued in Washington, DC, on November 7, 2002.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 02–29445 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 20–XX, Methodology for Dynamic Seat Certification by Analysis for Use in Parts 23, 25, 27, and 29 Airplanes and Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC, which provides information and guidance concerning demonstrating compliance to computer modeling analysis techniques validated by dynamic tests. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Send all comments on the proposed AC to: Mr. Pat Mullen, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Mullen, telephone (816) 329–4128 or fax (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 20–XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Small Airplane Directorate before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/DraftAC* by taking the following steps: Under "Search Help" click on "Open for Comment." A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

The subject advisory circular describes how to demonstrate compliance to the following by computer modeling analysis techniques validated by dynamic tests:

- Title 14 Code of Federal Regulations (14 CFR) parts 23, 25, 27, and 29, §§ 23.562, 25.562, 27.562, and 29.562.
- The Technical Standard Order (TSO) associated with the above regulations, TSO–C127/C127a.

The AC provides guidance on how to validate the computer model and under what conditions the model may be used in support of certification or TSO approval/authorization. Material in the AC is neither mandatory nor regulatory in nature and does not constitute a regulation. In addition, the material is not to be construed as having any legal status and should be treated accordingly.

Issued in Kansas City, Missouri on November 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29446 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23.1419–2B, Certification of Part 23 Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Advisory Circular 23.1419–2B, Certification of Part 23 Airplanes for Flight in Icing Conditions.

SUMMARY: This notice announces the availability of Advisory Circular 23.1419–2B, Certification of Part 23 Airplanes for Flight in Icing Conditions, which provides information on demonstrating compliance with the ice protection requirements in Title 14 of the Code of Federal Regulations (14 CFR) part 23.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

You may download a copy from the FAA Web site at [*http://www.faa.gov/certification/aircraft/small_airplane_directorate_news_latest.htm*], or request a copy by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

This advisory circular (AC) sets forth an acceptable means, but not the only means, of demonstrating compliance with the ice protection requirements in Title 14 of the Code of Federal Regulations (14 CFR) part 23. The FAA developed this AC to give more detailed and uniform guidance for approval of airplane ice protection systems for operating in the icing environment defined by 14 CFR part 25, Appendix C. The guidance should be applied to new Type Certificates (TCs), Supplemental Type Certificates (STCs), and amendments to existing TCs for airplanes under Part 3 of the Civil Aviation Regulations (CAR) and part 23, for which approval under the provisions of § 23.1419 is desired.

Issued in Kansas City, Missouri on October 4, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29449 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on one currently approved public information collection which will be submitted to OMB for renewal.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613 Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1955, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearance of the following information collection.

1. *2120–0010, Repair Station Certification.* Information is collected from applicants who wish to gain repair station certification. Applicants submit form 8310–3 to the appropriate FAA district office for review. If the application is satisfactory, an onsite inspection is conducted. When all the requirements have been met, an air agency certificate and repair station operation specifications with appropriate ratings and limitations are issued. The current estimated annual reporting burden is 304,647 hours.

Issued in Washington, DC, on November 6, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 02–29458 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, San Antonio International Airport, San Antonio, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of San Antonio, Texas, under the provisions of Title 49, U.S.C., Chapter 475 and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 16, 2002, the FAA determined that the noise exposure maps submitted by the—City of San Antonio, Texas, under part 150 were in compliance with applicable requirements. On September 30, 3003, the Administrator approved the noise compatibility program. Some of the recommendations of the program were approved.

DATES: The effective date of the FAA's approval of the San Antonio International Airport, San Antonio, Texas, noise compatibility program is September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5607. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the San Antonio International Airport, San Antonio, Texas, effective September 30, 2002.

Under Title 49 U.S.C. Section 47504 (hereinafter referred to as "Title 49"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and Title 49 and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provision and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150; section 150.5 Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, request for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The City of San Antonio submitted to the FAA on January 16, 2002, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1998 to 2002. The San Antonio International Airport's noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 16, 2002. Notice of this determination was published in the **Federal Register** on January 25, 2002.

The San Antonio International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 2005. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program on April 3, 2002, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

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The submitted program contained 13 proposed actions for noise abatement and mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR Part 150 have been satisfied. The Administrator effective, therefore, approved the overall program, September 30, 2002.

Outright approval was granted for 7 of 13 the specific program elements. Many of the air traffic and airport development measures are recommended for disapproval due to their potential impact on capacity or efficiency, potential increase in noise over noncompatible land uses, airspace conflicts or inconsistency with FAA policy regarding the application of Advisory Circular 91–53A. The land use measures include remedial sound attenuation for some noncompatible structures within the DNL 65 dB noise contour, with priority given to those located within the 70 dB. This Part 150 includes a measure to study mechanisms to maintain compatible land use and prevent new incompatible land use.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 30, 2002. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the San Antonio International Airport, at 9800 Airport Road, San Antonio, Texas 78216.

Issued in Fort Worth, Texas, November 5, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–29454 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–63]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 10, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–XXXX at the beginning of your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot. gov*.

FOR FURTHER INFORMATION CONTACT: Susan Boylon, (425–227–1152), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on November 13, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13451
Petitioner: Fokker Services B.V.
Section of 14 CFR Affected: SFAR 88
Description of Relief Sought: To permit Fokker Services Model F27 Mk05011 airplanes to operate without meeting the requirements of SFAR–88.

Docket No.: FAA–2002–13488
Petitioner: Mitsubishi Heavy Industries, Ltd.
Section of 14 CFR Affected: SFAR 88
Description of Relief Sought: To permit Mitsubishi Model YS–11 airplanes to operate without meeting the requirements of SFAR–88.

[FR Doc. 02–29459 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 193/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases.

DATES: The meeting will be held December 9–13, 2002 for 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Honeywell Int'l, 15001 NE 36th Street, Redmond, WA, 98073.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting. The agenda will include:

- December 9:
- Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review Summary of Previous Meeting)
- Presentations/Discussions
- Subgroup 4 (Database Exchange Format)
- Resolution of Action Items
- Feature catalogue review:

—Aerodrome database
—Terrain database
—Obstacle database

- December 10:
- Subgroup 4 (Continue previous day activities)
- December 11:
- Subgroup 4 (Continue previous day activities)
- Metadata Review
- December 11:
- Subgroup 4 (Continue previous day activities)
- Quality specific requirements
- December 12:
- Subgroup 4 (Continue previous day activities)

- Discuss application schemes
- December 13:
- Closing Plenary Session (Summary of Subgroup 4, Assign Tasks, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 12, 2002.

Norman Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 02–29450 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held December 5, 2002 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The agenda will include:

- December 5:
- Opening Session (Welcome and Introductory Remarks, Review/ Approve Summary of Previous Meeting).
- Publication Consideration/ Approval:
- Final Draft, DO–235A, Assessment of Radio Frequency Interference Relevant to the GNSS, RTCA Paper No. 259–02/PMC–244, prepared by SC–159.
- Final Draft, Next Generation Air/ Ground Communication System (NEXCOM) Safety and Performance Requirements (SPC), RTCA Paper No. 263–02/PMC–246, prepared by SC–198.
- Final Draft, Change 3 to DO–160D, Environmental Conditions and Test Procedures for Airborne Equipment, RTCA Paper No. 260–02/PMC–245, prepared by SC–135.
- Discussion:
- Special Committee 186, ADS–B.
- Update to Terms of Reference.
- Special Committee Chairman's Reports.
- Action Item Review:
- Review/Status—All Open Action Items.
- Other Business:
- EUROCAE Activity.
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interest public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 12, 2002.

Norman Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 02–29451 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held December 3–5, 2002, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- December 3:
- Working Group 1: Aircraft Cockpit Weather Display.
- Progress on Change 1 to DO–267, Minimum Aviation System Performance Standards (MASPS) for Flight Information Services-Broadcast (FIS–B) Data Link.
- December 4:
- Opening Plenary Session (Welcome and Introductory Remarks, Approval of Agenda, Approval of Minutes, Review of Action Items).
- Discuss Work Plan.
- Report from Working Group 1.
- Review of Product Registry Document.
- Work on DO–267 Change 1.
- December 5:
- Review of Aerodrome and Airspace Product Specifications.
- Review of Appendix F, Universal Access Transceiver Material.
- Work on DO–267 Change 1.
- Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 12, 2002.

Norman Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 02–29452 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–GPT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Gulfport International Airport, Gulfport, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gulfport International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 20, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 100 West Cross Street, Suite B, Jackson, Mississippi 39208–2307. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruch Frallic, Executive Director of the Gulfport-Biloxi Regional Airport Authority at the following address: 14035–L Airport Road, Gulfport, MS 39503.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Gulfport–Biloxi Regional Authority under §158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Jackson Airports District Office, Patrick D. Vaught, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9885. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from PFC at Gulfport International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 7, 2002 the FAA determined that the application to impose and use the revenue from a PFC submitted by Gulfport–Biloxi Regional Airport Authority was substantially complete within the requirements of §158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 22, 2003.

The following is a brief overview of the application.

Proposed charge effective date: July 1, 2003.

Proposed charge expiration date: August 31, 2012.

Level of the proposed PC: $4.5.

Total estimated PC revenue: $14,722,349.

Brief description of proposed project(s): Terminal Expansion: Baggage Claim Area, Baggage Screening Area, Security Screening Checkpoint, Flight Information Display System and Baggage Information Display System, Baggage Claim PHD II & 2nd Floor Expansion, and Airline Security Reimbursement.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Gulf Port-Biloxi Regional Airport Authority.

Issued in Jackson, Mississippi on November 7, 2002.

Wayne Atkinson,

Manager, Jackson Airports District Office.

[FR Doc. 02–29460 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Southwest Georgia Regional Airport, Albany, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Southwest Georgia Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 20, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Federal Aviation Administration, DOT, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard C. Howell, Airport Director of the Albany-Dougherty County Aviation Commission (ADCAA) at the following address: 3905 Newton Road, Albany, Georgia 31707–3460.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the ADCAA under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Philip Cannon, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747. (404) 305–7152.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Southwest Georgia Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 6, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by ADCAA was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 8, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–03–C–00–ABY.

Level of the proposed PFC: $4.50.

Proposed charged effective date: August 1, 2003.

Proposed charged expiration date: July 1, 2006.

Total estimated PFC revenue: $456,648.

Brief description of proposed project(s):

1. Airfield fence/locks replacement.
2. Baggage claim enclosure.
3. Terminal environmental (phase I).
4. PFC application charges.
5. AIP local share reimbursement, rapid response ARFF vehicle and ARFF generator.
6. AIP local share reimbursement, design cargo apron—phase I and II and install runway visual guidance system.
7. AIP local share reimbursement, construct cargo apron—phase I and II.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the ADCAA.

Issued in College Park, Georgia, on November 7, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–29444 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13840]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lennis Fludd, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2308; FAX: 202–366–9580, or E-MAIL: *lennis.fludd@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Records Retention Schedule.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0501.

Form Numbers: None.

Expiration Date of Approval: Three years from approval by the Office of Management and Budget.

Summary of Collection of Information. Section 801, Merchant Marine Act, 1936, as amended, requires retention of financial records pertaining to financial assistance programs for ship construction and ship operations. These records are required to be retained to permit proper audit of pertinent records at the conclusion of a contract.

Need and Use of the Information: The information will be used to audit pertinent records at the conclusion of a contract when the contractor was receiving financial assistance from the government.

Description of Respondents: U.S. shipping companies.

Annual Responses: 3.

Annual Burden: 150 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: November 14, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–29408 Filed 11–19–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 33926]

Norfolk Southern Corporation and Norfolk Southern Railway—Construction and Operation in Indiana County, PA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of availability of environmental assessment and request for comments.

SUMMARY: The Norfolk Southern Corporation and Norfolk Southern Railway (Norfolk Southern) has petitioned the Surface Transportation Board (Board) for authority to construct and operate a 5.26-mile line of railroad between Saltsburg and Clarksburg, in Indiana County, Pennsylvania (the Saltsburg Connection). The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) has prepared a Environmental Assessment (EA) for this project. Based on the information provided and the environmental analysis conducted to date, the EA preliminarily concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA recommends, that if the Board approves this project, Norfolk Southern be required to implement the mitigation set forth in the EA. Copies of the EA have been served on all interested parties and will be made available to additional parties upon request. SEA will consider all comments received when making its final environmental recommendation to the Board. The Board will consider SEA's final recommendations and the complete environmental record in making its final decision in this proceeding.

DATES: The EA is available for public review and comment for 30 days. Parties should provide written comments to the Board no later than December 19, 2002.

ADDRESSES: Comments (an original and 10 copies) regarding this EA should be submitted in writing to: Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Suite 700, Washington, DC 20423 to the attention of Ms. Phillis Johnson-Ball, Environmental Comments, Finance Docket 33929.

FOR FURTHER INFORMATION CONTACT: Ms. Phillis Johnson-Ball, Environmental Project Manager, at (202) 565–1530 (TDD for the hearing impaired (1–800–877–8339). To obtain a copy of the EA, contact Da 2 Da Legal, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7776 or visit the Board's Web site at *http://www.stb.dot.gov.*

SUPPLEMENTARY INFORMATION: The construction and operation of the Saltsburg Connection is part of a larger Norfolk Southern project, the Keystone Project, which would also involve the rehabilitation of 10.89 miles of an out-of-service line between Clarksburg and Shelocta and the modification of the existing Keystone Connection near Shelocta by the addition of 1,450 feet of new single track that will connect the rehabilitated Clarksburg Segment with an existing industrial track that services the Keystone Plant. The Keystone Project would create a new route from the south, the Southern Route, for Norfolk Southern to serve the Keystone Plant. The proposed rehabilitation of the Clarksburg Segment and the modification of the Keystone Connection are not actions before the

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Board and do not trigger an environmental review under the National Environmental Policy Act or the Board's environmental rules at 49 CFR 1105. Board approval is not required to improve or upgrade an existing line that does not extend the railroad's territory. Nor is approval required to construct or modify an existing connection, so long as the purpose and effect is not to extend the railroad's territory.

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29329 Filed 11–19–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

[Docket No. TSA–2002–13827]

Operation Safe Commerce

SUMMARY: The Transportation Security Administration (TSA), working in conjunction with an interagency Executive Steering Committee for Operation Safe Commerce (OSC), announces a program to identify and fund business driven initiatives to enhance security for the movement of cargo through the supply chain. The goal of OSC is to explore business processes and technology prototypes that protect commercial shipments from threats of terrorist attack, illegal immigration, and contraband while minimizing the economic impact upon the transportation system. The Ports of Los Angeles, Long Beach, Seattle, Tacoma, and the Port Authority of New York and New Jersey will be invited to submit proposals for funding consideration under this initiative. Persons and entities representing components of the supply chain may seek funding through these ports. The ports are encouraged to maximize their eligibility for funding by including representatives from all components of the supply chain, including major and minor load centers and feeder locations, their overseas customers and port partners, and the shipping lines serving these locations.

The TSA is requesting comments on the proposed project criteria for the selection of candidate projects submitted by the ports noted above for funding consideration as Operation Safe Commerce projects.

DATES: Send your comments on or before December 5, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number TSA–2002–13827 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Walter (Bud) Hunt, Office of Maritime and Land Security, Transportation Security Administration, 400 Seventh Street, SW., TSA–8, Washington, DC 20590; e-mail: *WalterBud.Hunt@tsa.dot.gov;* telephone: 202–772–1045.

Background

Over the past several years, the U.S. Department of Transportation (DOT) has sponsored numerous studies, conferences, outreach initiatives, and operational tests designed to facilitate and improve the efficiency of inter-modal freight movement. Much of this work has direct applicability to ensuring container cargo security within the transportation environment.

In December 2001, Secretary of Transportation Mineta established the Container Working Group (CWG), which is co-chaired by the DOT and the U.S. Customs Service (Customs). This group, largely comprised of Federal agency representatives and members of the trade and transportation communities, has put forth a number of recommendations for improving the security of the cargo supply chain that need to be operationally tested.

Building upon the successes of their existing programs, Customs has launched two key programs to ensure cargo security: the Customs—Trade Partnership Against Terrorism (C–TPAT) and the Container Security Initiative (CSI). Under C–TPAT, Customs is working with importers, carriers, brokers and other industry sectors in creating a seamless security conscious environment throughout the entire international commercial process. By providing a forum in which the business community and Customs can exchange anti-terrorism ideas, concepts and information, C–TPAT allows both the government and the business community to increase the security and efficiency of the entire commercial process from the point of manufacture through importation and distribution. Private sector participants in C–TPAT have made a commitment to improve the overall security of their supply chains, and communicate their established security procedures, guidelines, and expectations to their business partners.

Through the CSI, Customs is working with the foreign ports that send the highest volume of container traffic into the United States, as well as the governments in these locations, to facilitate the detection of potential problems in the supply chain at the earliest possible opportunity. CSI will establish the necessary foundation for a more secure international supply chain through the implementation of the four core CSI elements: (1) Establishing security criteria to identify high-risk containers; (2) pre-screening those containers identified as high-risk before they arrive at U.S. ports; (3) using technology to quickly pre-screen high-risk containers; and (4) developing and using smart and secure containers.

Operation Safe Commerce (OSC) is an innovative public-private partnership dedicated to enhancing security throughout international and domestic supply chains while facilitating the efficient cross-border movement of legitimate commerce. This initiative began in New England as a local public-private partnership where Federal, State and local law enforcement entities and key private sector entities combined efforts to design, develop, and implement a means to test available technology and procedures in order to develop secure supply chains. The OSC New England initiative analyzed a supply chain shipment between Eastern Europe and New Hampshire. The full container shipment was fitted with onboard tracking, sensors and door seals. It was constantly monitored through the various transportation modes as it traveled through numerous countries and government control functions.

OSC intends to build upon existing freight and information system operational tests sponsored by DOT and to support the procedural programs sponsored by Customs (*e.g.* C–TPAT and CSI) and to coordinate these efforts with new initiatives brought forward by the partnerships that carry out OSC operational testing. The synergies among these various efforts are critical to the success of OSC.

Congress, through the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States, provided funds for OSC to improve the security of international and domestic supply chains through discreet pilot projects involving the three largest container load centers. *See* Pub. L. 107–206, 116 Stat. 820 (Aug. 2, 2002); S. Rep 107–156, 107th Cong., 2nd sess. 84–85 (May 29, 2002). As a result, the Ports of Los Angeles, Long Beach, Seattle, Tacoma, and the Port Authority of New York and New Jersey (hereafter referred to as load centers) will be invited to submit proposals for funding consideration under this initiative. Persons and entities representing components of the supply chain may seek funding through these ports. The ports are encouraged to maximize their eligibility for funding by including representatives from all components of the supply chain, including major and minor ports or port authorities and feeder locations, their overseas customers and port partners, and the shipping lines serving these locations.

An Executive Steering Committee (ESC) provides OSC oversight, guidance, and support. The ESC is co-chaired by the Associate Deputy Secretary of the Department of Transportation and the Deputy Commissioner of the U.S. Customs Service, and includes representatives of the Transportation Security Administration, the U.S. Coast Guard, the Departments of State, Justice, and Commerce, and the Office of Homeland Security. Other appropriate government agencies may be invited to provide a representative to the ESC.

Goals

The goal of OSC is to explore commercially viable options that support cargo management systems that keep pace with expanding trade while protecting commercial shipments from threats of terrorist attack, illegal immigration, illegal drugs and other contraband. OSC will address three key components to secure the supply chain through pilot projects funded by TSA. OSC will demonstrate what is needed to ensure that parties associated with commercial shipping exert reasonable care and due diligence in packing, securing and manifesting the contents of a shipment of goods in a container. OSC will also demonstrate various methods to ensure that the information and documentation associated with these shipments is complete, accurate and secure from unauthorized access. These methods may entail transmitting the associated shipping information and documentation in a secure electronic format. OSC will also test supply chain security procedures and practices in order to determine the impact of these procedures when combined with the implementation of enhanced manifest data elements and container sealing procedures (including effective intrusion detection). The ESC will examine the three components to determine the most effective method to lessen the susceptibility of a container shipment to being compromised while in transit in the international or domestic supply chain.

OSC will serve as a technology and business practice "laboratory" to identify and explore innovative solution sets that support the principles and objectives associated with numerous Federal initiatives such as the CWG, CSI, C–TPAT, and other ongoing initiatives like the DOT Intelligent Transportation System. The ESC believes successful operational tests will require innovative public-private partnerships that bring all the necessary participants together. Private companies will need to join with representatives from key Federal, State, and local authorities to support these tests.

Through these public and private partnerships, OSC requires the use of an actual operating environment to assess various prototypes for the secure movement of containerized freight. Utilizing these partnerships, OSC provides a "virtual laboratory" for designing and evaluating security and transportation solutions. OSC thus supports identification of an appropriate set of standard security practices to govern the handling and movement of cargo throughout the supply chain. The results of these tests offer decision makers a timely and sound basis for developing Federal standards.

Criteria for Operation Safe Commerce Projects

OSC seeks proposals from the transport sector practioners who can recognize and propose projects that will meet these goals. If these technologies and procedures are to be successful and minimize the impact upon all parties, they must employ efficient and cost effective methods of validating the security of processes for stuffing and deconsolidating containers, physically securing and monitoring the containers throughout the supply chain, and exchanging timely and reliable information. These cost effective solutions must have the ability to be replicated and scaled for use in commercial shipping applications.

Projects receiving funding under OSC should analyze and prototype a secure and efficient supply chain by addressing one or more of the following key components to secure the supply chain:

- Validate security at the point of origin, to include the security of the shipment itself (*i.e.*, the security of the facility and the people where the container is stuffed) and the information that describes it;
- Secure the supply chain from the point of origin of the shipment to its final destination, which shall include all waypoints;
- Enhance the accuracy and communication of cargo information used by Federal agencies, carriers, and shippers;
- Monitor the movement and integrity of cargo in transit (*e.g.*, pilot the use of commercial-off-the-shelf (COTS) technology and emerging technologies such as Global Positioning System (GPS) transceivers, sensors, electronic seals, container design, and data querying).

The ESC will provide oversight, guidance and support to OSC projects so they can integrate with broader governmental objectives and communicate governmental efforts to address container security and efficiency. The ESC will review, coordinate, and monitor the projects funded by OSC. The ESC is considering adopting the following funding criteria which proposed projects must meet for the ESC to recommend the project for funding through the TSA:

(a) A private/public partnership (hereafter referred to as the "partnership") must be established that includes participants in the supply chain such as all affected shippers (*e.g.*, exporters, importers, manufacturers), carriers (all modes), intermediaries (*e.g.*, freight forwarders, freight consolidators, freight brokers), terminal operators, labor, local DOT and Customs, and other relevant local and State governmental officials as needed, depending on the supply chain being proposed. Partnerships requesting funding for projects must be sponsored by one of the following U.S. based load centers: Ports of Los Angeles, Long Beach, Seattle, Tacoma, and the Port Authority of New York and New Jersey

(b) The partnership's proposal should articulate how the operational test will complement and include stakeholders currently participating in existing freight and information system operational tests sponsored by DOT, and the supply chain security initiatives sponsored by Customs (*e.g.* C–TPAT and CSI).

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(c) The partnership must obtain signed letters of commitment from all members of the partnership that describe and quantify the assets they will utilize during the operational tests.

(d) The partnership must be willing to have all information resulting from the analysis available to supply chain participants. Prototyped solutions should reside in the public domain. Proprietary information (*i.e.*, data relating to specific, identifiable transactions or assets of participants that are sensitive and of commercial value to their competitors, or reveals specific threats to the supply chain that could be exploited) is not considered to be part of the public domain for purposes of these analyses and operational tests, and will be made available only by authorized release from the owner of the information.

(e) The partnership must establish a point-of-contact and an alternate to interface with the ESC or its representative. The point of contact must be included in the written application.

(f) The partnership must be willing to assemble participants in the supply chain to test procedures and technologies identified as potential solutions. The partnership should also consider including typical supply chain activities originating or transshipped outside the immediate port area.

(g) The TSA will provide full or partial funding for selected projects. TSA encourages grant recipients to consider partial funding of projects from other sources including internal funding.

TSA invites comments on these proposed criteria. Once finalized, these criteria may also be used in the selection of future projects under OSC.

Proposal Submission

Partnerships that meet the above criteria should submit their applications for grants to the address provided in the forthcoming Grant Program Announcement (GPA).

External Funding Through Grants

The GPA will contain instructions on how to submit the application. Subject matter experts, in accordance with a Technical Evaluation Plan, will review the applications. Evaluations and final selection of the application will be based on criteria published in the GPA. TSA will administer the grants issued under the OSC.

Federal Advisory Committee

The OSC ESC will seek industry and private sector input and discussion on OSC related issues by soliciting feedback and comments from existing Federal Advisory Committees already designated to afford the Departments of Treasury and Transportation advice. Consequently, the Customs Operational Advisory Committee (COAC) and the Marine Transportation System National Advisory Committee (MTSNAC) will serve this purpose and will be invited to afford the OSC ESC comments, input, and advice on OSC related issues at the request of the OSC ESC.

Comments

TSA is providing a 15-day comment period during which members of the public are invited to submit comments on the selection criteria for projects to be funded under OSC. Before finalizing the selection criteria, consideration will be given to any written comments that are received by the TSA prior to the end of the comment period. A 15-day comment period is being provided due to the urgent necessity for TSA to move forward in achieving the goals of OSC. Comments received after the comment period will be considered to the extent that it is practicable. The TSA specifically requests comments on the project criteria for OSC and comments on specific potential projects including whether consideration should be given to projects that test shipments originating in specific countries of interest. Commenters should not use this process to propose projects for funding under OSC. They should follow the process described in the forthcoming GPA.

Issued in Washington, DC on November 12, 2002.

J.M. Loy,

ADM, Acting Under Secretary of Transportation for Security.

[FR Doc. 02–29441 Filed 11–19–02; 8:45 am]

BILLING CODE 4110–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, SB/SE Payroll Taxes Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, SB/SE Payroll Taxes Committee will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Peterson or Judi Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, SB/SE Payroll Taxes Committee will be held Tuesday, December 3, 2002, from 3 pm e.s.t. to 5 pm e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Mary Peterson, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with either Mary Peterson or Judi Nicholas. Ms. Peterson and Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 7, 2002.

John J. Mannion,

Director, Program Planning & Quality.

[FR Doc. 02–29383 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted (via Conference call).

DATES: The meeting will be held Tuesday, November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be held Tuesday, November 19, 2002, from 1 pm e.s.t. to 2 pm e.s.t. via a telephone conference call. If you would like to have the TAP consider a written statement or would like to attend the conference call, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Due to a formatting error, this notice will not be posted for the customary 14 days.

The agenda will include the following: monthly summary report, self-assessment report, getting started issues, and discussions of next meetings.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 21, 2002.

John J. Mannion,

Director, Program Planning and Quality.

[FR Doc. 02–29384 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel Committee (Area 7 Includes California State)

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be held in Los Angeles, California.

DATES: The meeting will be held Wednesday, November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Peterson or Judi Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel Committee will be held Wednesday, November 20, 2002, from 10 a.m. to 2 p.m. at the Federal Building located at 300 North Los Angeles St., Los Angeles, CA 90012.

The public is invited to offer written comments. If you would like to have the TAP consider a written statement, please call Mary Peterson-O'Brien or Judi Nicholas at 1–888–912–1227 or 206–220–6096, or write Mary Peterson-O'Brien or Judi Nicholas at 915 2nd Avenue, Mail stop W 406, Seattle, WA 98174.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Addendum: "Due to a formatting error, this notice will not appear for the customary fourteen full days."

Dated: November 7, 2002.

John J. Mannion,

Director, Program Panning and Quality.

[FR Doc. 02–29385 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Ad Hoc Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Ad Hoc Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Gruber or Judi Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Ad Hoc Committee will be held Thursday, December 5, 2002, from 1 pm p.s.t. to 3 pm p.s.t. via a telephone conference call. The public is invited to make written comments. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber or Judi Nicholas. Ms. Gruber and Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 21, 2002.

John J. Mannion,

Director, Program Planning and Quality.

[FR Doc. 02–29386 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, November 27, 2002, from 12 noon e.s.t. to 1 pm e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd., Rm. 225, Sunrise, FL 33351. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 1, 2002.

John J. Mannion,

Director, Program Planning & Quality.

[FR Doc. 02–29387 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

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SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, December 18, 2002 from 12 noon EST to 1 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 1, 2002.

John J. Mannion,

Director, Program Planning Quality.

[FR Doc. 02–29388 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel will be held by teleconference.

DATES: The meeting will be held Tuesday, November 19, 2002, at 1:00 p.m. EST

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227 or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel will be held Tuesday, November 19, 2002, from 1 to 2 pm. EST. If you would like to have the TAP consider a written statement or would like to attend the teleconference, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, Taxpayer Advocacy Panel, 310 West Wisconsin MS 1006–MIL, Milwaukee, WI 53203–2221. Due to limited telephone lines, notification of intent to attend the meeting must be made with Barbara Toy.

The Agenda will include the following: monthly summary report, self-assessment report, getting started issues, and discussion of next meetings.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 4, 2002.

John J. Mannion,

Direction Program Planning and Quality.

[FR Doc. 02–29389 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Los Angeles, CA)

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference), Los Angeles, California.

DATES: The meeting will be held Wednesday, November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Peterson-O'Brien at 1–888–912–1227 or 1–206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel will be held Wednesday, November 20, 2002 from 10 a.m. to 2 p.m. at the Federal Building located at 300 North Los Angeles St., Los Angeles, CA 90012.

The public is invited to offer written comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call Mary Peterson-O'Brien or Judi Nicholas at 1–888–912–1227 or 206–220–6096, or write Mary Peterson-O'Brien or Judi Nicholas at 915 2nd Avenue, Mail stop W 406, Seattle, WA 98174.

The Agenda will include the following: Introduction of TAP Members, IRS issues, and Administrative Processes.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 30, 2002.

John J. Mannion,

Director, Program Planning & Quality.

[FR Doc. 02–29390 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, December 18, 2002 from 12 noon EST to 1 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 1, 2002.

John J. Mannion,

Director, Program Planning Quality.

[FR Doc. 02–29391 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Opening Meeting of the Area 4 Taxpayer Advocacy Panel (Including the states of Ohio, Illinois, Indiana, Kentucky, Michigan, West Virginia and Wisconsin)

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area Four Taxpayer Advocacy Panel (TAP) will be held by telephone on Wednesday, December 4, 2002, from 11 a.m. to 12 p.m. Central Time. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227, or 414–297–1604 for dial-in information. The Agenda will include the following: reports by TAP members and discussion of taxpayer service issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 4, 2002.

John Mannion,

Director, Program Planning & Quality.

[FR Doc. 02–29392 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Gruber or Judi Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, November 18, 2002 from 2 pm PST to 4 pm PST via a telephone conference call. The public is invited to make written comments. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber or Judi Nicholas. Ms. Gruber and Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Addendum: "Due to a formatting error, this notice will not appear for the customary fourteen full days."

Dated: October 21, 2002.

John J. Mannion,

Director, Program Planning & Quality.

[FR Doc. 02–29393 Filed 11–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel Committee (Area 7 Includes California State)

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be held in Los Angeles, California.

DATES: The meeting will be held Wednesday, November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Peterson or Judi Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel Committee will be held Wednesday, November 20, 2002, from 10 a.m. to 2 p.m. at the Federal Building located at 300 North Los Angeles St., Los Angeles, CA 90012.

The public is invited to offer written comments. If you would like to have the TAP consider a written statement, please call Mary Peterson-O'Brien or Judi Nicholas at 1–888–912–1227 or 206–220–6096, or write Mary Peterson-O'Brien or Judi Nicholas at 915 2nd Avenue, Mail stop W 406, Seattle, WA 98174.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 18, 2002.

Cynthia Vanderpool,

Chief, Business Liaison Branch, Communications and Liaison.

[FR Doc. 02–29645 Filed 11–18–02; 1:52 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–11: OTS Nos. H–3916 and 04055]

CCSB Financial Corporation and Clay County Savings & Loan Association, Liberty, Missouri; Approval of Conversion Application

Notice is hereby given that on November 12, 2002, the Director, Supervision Policy, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Clay County Savings & Loan Association, Liberty, Missouri, to convert from the mutual to the stock form of organization and to change its name to Clay County Savings Bank. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Midwest Regional Office, 225

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E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: November 14, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–29406 Filed 11–19–02; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–10: OTS No. 04980]

First Pennsylvania Savings Association, Pittsburgh, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on November 12, 2002, the Director, Supervision Policy, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of First Pennsylvania Savings Association, Pittsburgh, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 14, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–29405 Filed 11–19–02; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Matching Program.

SUMMARY: Pursuant to 5 U.S.C. section 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Social Security Administration (SSA). Data from the proposed match will be utilized to verify the earned income (*i.e.*, wages, income from self employment, *etc.*) of nonservice-connected veterans, and those veterans who are zero percent service-connected (noncompensable), whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

EFFECTIVE DATE: This match will start no sooner than 30 days after publication in the **Federal Register**, unless comments dictate otherwise.

ADDRESSES: Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1154, Washington, DC 20420. All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Watkins, Assistant Director, Income Verification Division, Health Eligibility Center, (404) 235–1340.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has a statutory authorization under 38 U.S.C. 5317, 38 U.S.C. 5106 and 5 U.S.C. 552a to establish matching agreements and request and use income information from other agencies for purposes of verification of income for determining eligibility for benefits. 38 U.S.C. 1710 (a)(2) (G), identifies those veterans whose basic eligibility for medical care benefits is dependent upon their financial status. Eligibility for nonservice-connected and zero percent noncompensable service-connected veterans is determined based on the veteran's inability to defray the expenses for necessary care as defined in 38 U.S.C. 1722. This determination can impact their responsibility to participate in the cost of their care through copayments and their assignment to an enrollment priority group.

The goal of this match is to obtain SSA earnings data needed for the income verification process. The VA records involved in the match are "Healthcare Eligibility Records" (89VA19). The SSA records are from the Earnings Recording and Self-Employment Income System, SSA/OSR 09–0–059. A copy of this notice has been sent to both Houses of Congress and OMB.

This matching agreement expires September 30, 2003. The agreement may be extended by the involved Data Integrity Boards (DIBs) for an additional twelve month period provided all agencies involved certify to the DIBs, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching program has been conducted in compliance with the original matching agreement. The match will not continue past the legislative authorized date to obtain this information.

Approved: November 4, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–29374 Filed 11–19–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Matching Program.

SUMMARY: Pursuant to 5 U.S.C. section 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Internal Revenue Service (IRS). Data from the proposed match will be utilized to verify the unearned income (*i.e.*, interest, dividends, *etc.*) of nonservice-connected veterans, and those veterans who are zero percent service-connected (noncompensable), whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

EFFECTIVE DATE: This match will start no sooner than 30 days after publication in the **Federal Register**, unless comments dictate otherwise.

ADDRESSES: Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1154, Washington, DC 20420. All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Watkins, Assistant Director, Income Verification Division, Health Eligibility Center, (404) 235–1340.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has a statutory authorization under 38 U.S.C. 5317, 38 U.S.C. 5106, 26 U.S.C. 6103 (1)(7)(D)(viii) and 5 U.S.C. 552a to establish matching agreements and request and use income information from other agencies for purposes of verification of income for determining eligibility for benefits. 38 U.S.C. 1710 (a)(2) (G), identifies those veterans whose basic eligibility for medical care benefits is dependent upon their financial status. Eligibility for nonservice-connected and zero percent noncompensable service-connected veterans is determined based on the veteran's inability to defray the expenses for necessary care as defined in 38 U.S.C. 1722. This determination can impact their responsibility to participate in the cost of their care through copayments and their assignment to an enrollment priority group.

The goal of this match is to obtain IRS unearned income information data needed for the income verification process. The VA records involved in the match are "Healthcare Eligibility Records" (89VA19). The IRS records are from the Wage and Information Returns (IRP) Master File, Privacy Act System, Treasury IRS 22.061. A copy of this notice has been sent to both Houses of Congress and OMB.

This matching agreement expires June 30, 2003. The matches will not continue past the legislative authorized date to obtain this information.

Approved: November 4, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–29375 Filed 11–19–02; 8:45 am]

BILLING CODE 8320–01–P

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Corrections

Federal Register
Vol. 67, No. 224
Wednesday, November 20, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Stumpy Point Purchase Unit, Phillips and Lee Counties, AR

Correction

In notice document 02–28757 beginning on page 68831 in the issue of Wednesday, November 13, 2002, make the following correction:

On page 68831, in the third column, the subject heading is correct to read as set forth above.

[FR Doc. C2–28757 Filed 11–19–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2762; Amdt. 195–73]

RIN 2137–AD24

Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines

Correction

In rule document 01–31655 beginning on page 66994 in the issue of Thursday, December 27, 2001, make the following correction:

§ 195.573 [Corrected]

On page 67006, in § 195.573 (c), in the first column, the table is corrected to read as set forth below.

Device	Check frequency
Rectifier	At least six times each calendar year, but with intervals not exceeding 2½ months.
Reverse current switch.	
Diode	
Interference bond whose failure would jeopardize structural protection.	
Other interference bond.	At least once each calendar year, but with intervals not exceeding 15 months.

[FR Doc. C1–31655 Filed 11–19–02; 8:45 am]
BILLING CODE 1505–01–D

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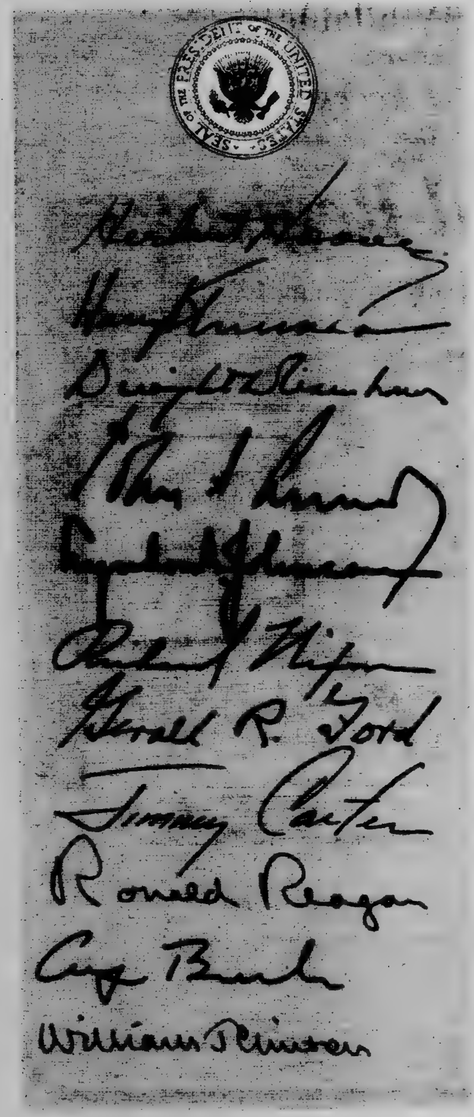
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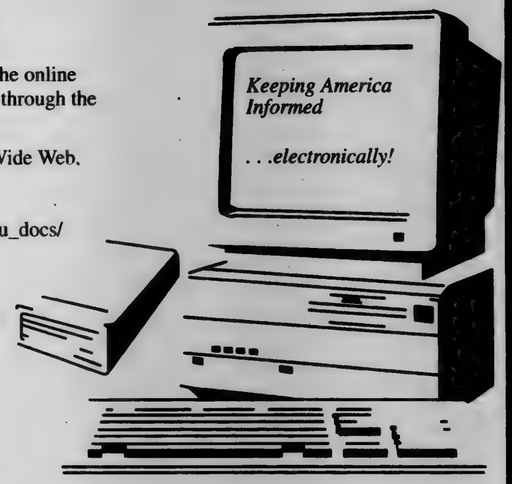
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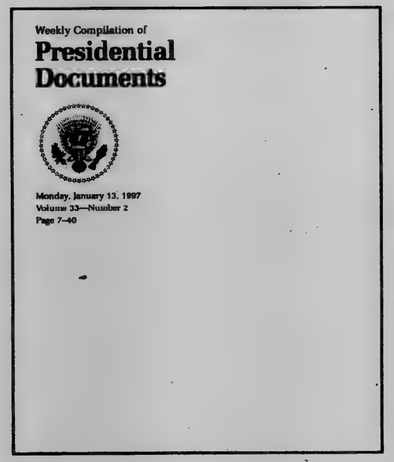
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AJ53

Excepted Service—Schedule A Authority for Chinese, Japanese, and Hindu Interpreters

AGENCY: Office of Personnel Management

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revoking the Schedule A excepted service appointing authority for Chinese, Japanese and Hindu interpreters because the conditions justifying the original exception no longer exist. Revocation brings the positions filled under this Schedule A authority into the competitive service. it also permits the noncompetitive conversion of persons serving under the authority to either competitive or excepted service appointments.

DATES: *Effective date:* November 21, 2002.

Compliance date: Agencies may move any incumbents from § 213.3102(f) authority by February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Christina Vay on 202–606–0960.

SUPPLEMENTARY INFORMATION: The Governmentwide Schedule A authority, 5 CFR 212.3102(f), was established in 1903. Competitive examining to fill Federal jobs has changed drastically in the almost 100 years since this authority's creation. Agencies can now successfully examine for positions with specific language requirements. They already do so for interpreters of many languages, including Chinese, Japanese, and Hindu.

Proposed regulations were published January 23, 2002 (67 FR 3128). We received two comments from agencies supporting the revocation. Because we did not received comments to support continuing the authority, we are continuing with our proposal to revoke it.

Agencies may no longer appoint persons under this authority as of November 21, 2002. Agencies will have 90 days from the date of publication to move the employees currently serving under § 213.3102(f) to the competitive service. The authority to retain persons in the competitive service based on revocation of an excepted appointing authority is 5 CFR 316.702.

We recognize the fact that agencies have critical workforce skill gaps for positions requiring foreign language skills. The General Accounting Office reported this in their January 2002 report on correcting foreign language staffing and proficiency shortfalls. However, almost all of the agencies identified in the report operate different personnel systems that do not follow OPM regulations. Consequently, the Schedule A we are revoking does not affect or help their efforts to fill the skill gaps.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees. Reporting and recordkeeping requirements.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; and Pub. L. 106–117 (113 Stat. 1545).

§ 213.3102 [Amended]

2. Paragraph (f) of § 213.3102 is removed and reserved.

[FR Doc. 02–29440 Filed 11–20–02; 8:45 am]

BILLING CODE 6325–39–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 652

Technical Service Provider Assistance

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule sets forth the Department's process for administering the provision of conservation technical assistance by technical service providers as authorized under section 1242 of the Food Security Act, as amended by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill). The Secretary of Agriculture has delegated responsibility for administering technical services provided by technical service providers to the Natural Resources Conservation Service (NRCS). NRCS seeks comments from the public on this interim final rule.

DATES: *Effective date:* March 1, 2003. Comments must be received by February 19, 2003.

ADDRESSES: Send comments by mail to Melissa Hammond, Technical Service Provider Coordinator, Natural Resources Conservation Service (NRCS), P.O. Box 2890, Washington, DC 20013, or by e-mail to: *melissa.hammond@usda.gov;* attn: Technical Service Provider Assistance. This interim final rule may also be accessed via the Internet through the NRCS homepage at *http://www.nrcs.usda.gov* and selecting Farm Bill 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–6731; fax: (202) 720–3052; submit e-mail to:

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gary.gross@usda.gov, Attention: Technical Service Provider Assistance.

SUPPLEMENTARY INFORMATION:

Background

In 1994, the Department of Agriculture reorganized and transferred increased responsibilities for administration of conservation programs to the Natural Resources Conservation Service (NRCS) to provide technical and financial assistance to producers to improve the natural resource conditions on their land. The Federal Agricultural Improvement and Reform Act of 1996 (the 1996 Farm Bill), Public Law 104–127, created several new conservation programs for which the Secretary of Agriculture delegated administrative responsibility to NRCS.

Through the implementation of its conservation programs, NRCS utilizes its technical expertise to provide producers with information to help them make land management decisions. When a producer applies to participate in a conservation program, NRCS helps the producer evaluate the resource conditions on their land to determine the most appropriate way to meet the producer's conservation objectives. Through its conservation planning process, NRCS helps the producer develop a conservation plan and, depending upon the availability of funds, the Department provides financial assistance to the producer to implement identified conservation practices or systems.

The 2002 Farm Bill

The Farm Security and Rural Investment Act of 2002 (the "2002 Farm Bill"), Public Law 107–171, expanded the availability of financial and technical assistance funds for the implementation of conservation programs. At the time of enactment, the Congressional Budget Office estimated that the 2002 Farm Bill represented a $17 billion increase in the level of funding for conservation programs.

The current staffing levels of NRCS are insufficient to adequately meet the increased need for technical assistance under the conservation programs authorized or re-authorized by the 2002 Farm Bill. Section 2701 of the 2002 Farm Bill amended section 1242 of the Food Security Act of 1985 ("Food Security Act"), as amended, to require the Secretary of Agriculture to provide technical assistance under the Food Security Act conservation programs to a producer eligible for that assistance "directly * * * or at the option of the producer, through a payment * * * to the producer for an approved third party, if available." The Secretary of Agriculture delegated authority to implement section 1242 to NRCS.

Section 1242 of the Food Security Act greatly expands the availability of technical assistance to producers by encouraging other potential providers of technical assistance to assist in the delivery of technical services. To ensure that high quality technical services are available to all producers, section 1242 requires the Secretary of Agriculture to establish, by regulation, a system for "approving individuals and entities to provide technical assistance to carry out programs under the (Farm Bill) * * * and establishing the amounts and methods for payments for that assistance."

This interim final rule establishes a certification process under which NRCS may evaluate and approve individuals, entities, and public agencies as eligible to provide conservation technical services for certain conservation programs. The interim final rule establishes the criteria by which NRCS will evaluate all potential providers of technical assistance. NRCS will only make payment to a producer for technical services obtained from a technical service provider that has been certified by NRCS to provide such assistance.

The interim final rule distinguishes between certification of an individual working under his or her own auspices and that of an organization, such as a corporation or a public agency, which has individuals working on its behalf. Certification of an individual means the individual has the requisite education and technical expertise to perform the technical services. Certification of an entity or public agency means that the organization may receive payment for the services provided by individuals working under its auspices, but the work must be performed or warranted by certified individuals and the organization must assume the liability for the quality of work performed.

The interim final rule also sets forth conditions and procedures by which NRCS may determine that a certified technical service provider has failed to provide producers high quality technical services and thus, should not remain certified as a provider of technical assistance for conservation programs under Title XII of the Food Security Act.

While section 1242 increases a producer's available sources of technical assistance, it also maintains the options available to NRCS to acquire assistance in meeting its own responsibilities under Title XII. In particular, section 1242(b)(4) of the Food Security Act provides that the Secretary may request the services of, and enter into cooperative agreements or contracts with, non-Federal entities to assist in providing technical assistance necessary to develop and implement Title XII conservation programs. NRCS may utilize its inherent contracting authority or the authority under section 714 of the Agricultural Appropriations Act for FY 2001, Public Law 106–387, 7 U.S.C. 6962a, to obtain technical services. NRCS may also enter into a cooperative agreement with a technical service provider or other cooperator to stimulate the availability of technical assistance. NRCS will only utilize technical assistance from technical service providers that have been certified under the provisions of this interim final rule.

NRCS has determined that producers will need the delivery of high quality technical assistance immediately. Therefore, NRCS believes that the provisions of this rule are appropriately promulgated as an interim final rule.

Summary of Provisions

Through this rulemaking process, the Department seeks to establish processes that provide efficient and effective technical services to producers participating in USDA conservation programs in a manner that optimizes conservation benefits. In particular, the Department aims to provide a performance-based system where producers can take full advantage of the marketplace and obtain cost-effective delivery of quality technical services.

The regulations promulgated by this interim final rule are divided into three subparts. Subpart A sets forth the general provisions related to the delivery of technical services. Subpart B sets forth the certification criteria and process NRCS will utilize to evaluate a technical service provider to determine whether such provider is eligible to provide technical assistance under Title XII. Subpart C sets forth the process and causes under which a technical service provider may become decertified and, therefore, ineligible to provide technical services.

Subpart A—General Provisions

Subpart A describes how program participants choose technical service providers, and how program participants may receive payment from the Department for those services. Specifically, the Department will reimburse a program participant if they select a technical service provider from the approved list of technical service providers and the technical services provided meet all legal and program requirements. The Department may also pay the technical service provider directly if the program participant submits an assignment of payment form.

Subpart A also describes how the Department will expand its delivery of technical services to program participants. Though not in the rule, the Department intends to establish in policy that it will not hire additional Federal employees above its baseline staffing levels unless it has first sought to meet the additional demand for technical services from non-Federal sources through contracts, contribution agreements, and cooperative agreements.

The Department must follow existing procurement and financial assistance laws when it enters into transactions to expand the availability of technical services. The types of transactions are described in greater detail in the preamble discussion under § 652.6.

Additionally, the Department and any technical service provider it hires must abide by Federal disclosure and privacy laws, including the Freedom of Information Act and the Privacy Act. However, the technical service providers hired directly by program participants are not subject to these legal requirements. Therefore, the Department encourages program participants to ensure that their contracts with their technical service providers provide for the appropriate confidentiality of personal information.

Subpart A also addresses the quality assurance measures that the Department will utilize to maintain high quality technical service delivery. The Department may decertify technical service providers based on information obtained through the quality assurance process.

Section 652.1, Definitions, sets forth the definitions for the terms used throughout the regulation.

Section 652.2, Applicability, sets forth the purpose and scope of the regulations for technical services. The purpose of the regulations is to establish a system for expanding the delivery of technical services available to producers under the Food Security Act.

Section 652.3, Administration, describes the basic responsibilities NRCS has in the management of the technical service delivery process, including certification, decertification, recertification, and certification renewal. NRCS will establish the processes and procedures for certification of technical service providers and will assess the availability and utilization of such providers. NRCS wants to ensure that technical service providers are available to producers. NRCS encourages all sources of technical service providers to participate in the delivery of conservation programs. In its management of the technical service delivery process, NRCS will track payments for the technical service provided by technical service providers. NRCS will also track conservation accomplishments based on information reported to NRCS by technical service providers pursuant to § 652.4(g).

Historical relationships and agreements between USDA and conservation partners will need to be evaluated, and modified as needed, to avoid conflicts of interest, or the appearance thereof, as those partners engage in providing technical services as technical service providers in accordance with this rule.

Section 652.4, Technical service standards, sets forth the technical service standards that all technical service providers must meet in order to receive payment from the Department for the technical services provided. In particular, all technical services provided by technical service providers must meet applicable NRCS standards and specifications. The regulations identify several of those standards but are not exhaustive. NRCS National standards, and State standards and specifications, may be found through links at the Web site *http://www.nrcs.usda.gov.* NRCS establishes this minimum standard for technical services to ensure uniformity among the various sources of technical service providers, conformity with NRCS conservation program requirements, and dependability of the quality of service that producers will receive.

NRCS has historically encouraged the development and utilization of new and innovative conservation practices through adoption of such practices when proven effective, for example, practices related to air quality. In particular, the Environmental Quality Incentives Program provides for the utilization of such new and innovative conservation practices. However, until NRCS has evaluated the effectiveness of such practices, it will not provide payment for the technical services needed to plan and implement new practices. Therefore, the interim final rule requires that a technical service provider seek NRCS approval prior to initiating teehnical services for a new or innovative technology or practice.

To assist NRCS with its quality assurance process set forth in § 652.7, NRCS incorporated in § 652.4 several requirements of technical service providers. In particular, NRCS requires that the technical service provider sign a written certification that the technical services provided for a particular practice or plan complies with all program requirements, legal requirements, and NRCS standards and specifications, and is consistent with the conservation goals and programs under which the assistance is given. This requirement makes it clear that a technical service provider is responsible for the quality of the assistance provided to either the producer or the Department.

NRCS requires a technical service provider to assume all legal responsibility for the quality of the work provided. Thus, if a producer implements a deficient conservation plan developed by a technical service provider and implementation of the plan results in harm or injury, the technical service provider, not the producer, is liable. This provision protects a producer from liability that was not caused through any fault of the producer. The producer is responsible in all cases for complying with the terms and conditions of the program contract or agreement, which includes meeting USDA technical standards and specifications.

Language is also included in the regulations regarding incorporation of low-cost alternatives, where appropriate, to address the resource issues and meet the objectives of both the program and program participant.

Finally, this section provides that NRCS is not contractually bound to the program participant to provide reimbursement for technical services or practice implementation that is not consistent with NRCS standards and specifications. Where NRCS does not provide the technical assistance for the development of a conservation plan incorporated into its program agreements, NRCS reserves the right to ensure that a program agreement is implemented in accordance with program requirements, including requiring that practices meet NRCS standards and specifications. This provision allows NRCS to continue to meet the conservation program goals and objectives for which it has the delegated responsibility.

This section also requires technical service providers to input data into the NRCS conservation accomplishments tracking system. NRCS will utilize this information as part of its quality assurance process under § 652.7.

Section 652.5, Program participant acquisition of technical services, describes how program participants may obtain technical services from sources other than the Department and receive reimbursement for those technical services. This section describes that a

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program participant may obtain technical services from the Department or any individual, entity, or public agency certified by NRCS under this interim final rule to provide technical services.

If a producer wishes the Department to provide technical services, he or she should contact NRCS at the local USDA Service Center. If the producer wishes to utilize a different source of technical service, he or she should obtain information from the Department about program requirements and payment terms. To ensure necessary funds are available to reimburse the program participant, the Department and the program participant must incorporate and obligate under the program contract or agreement the estimated amount of funds needed.

A producer must choose a certified technical service provider from the appropriate NRCS approved list of technical service providers in order to obtain reimbursement for the costs associated with those services. The list of approved technical service providers for the particular category of technical services will be available through the NRCS home page on the Internet, or can be obtained from the local USDA service center. In order to receive reimbursement, once the technical services have been provided and meet program requirements, the program participant would submit to NRCS or FSA, as appropriate, an invoice, any supporting documentation, and a request for payment.

In many situations, a program participant needs to obtain technical services prior to entering into a program contract or agreement with either NRCS or the Farm Service Agency. NRCS or the Farm Service Agency (collectively referred to as the Department) may reimburse a participant for pre-program contract or agreement technical services obtained to complete program related activities prior to entering a program contract or agreement and develop a conservation plan. The participant must provide to either NRCS or the Farm Service Agency an invoice and documentation of the technical services provided by a certified technical service provider in order to be reimbursed for these costs.

The terms and conditions of a program contract or agreement will provide for the reimbursement of the producer for technical services provided by a certified technical service provider. The Department is interested in developing a dynamic approach to its payment rates schedule in order to ensure that its payment rates do not lag behind the development of technological efficiencies that decrease the time and price associated with the delivery of technical services.

The Department's goal in developing a method of setting payment rates is to obtain the most competitive payment rates while ensuring that program participants have access to the widest available range of qualified technical service providers. The Department is seeking comments on how to design rate payments that are transparent, easy to implement, and ensure competition in program participant acquisition of technical services. The Department intends to publish an amendment to this interim final rule within the next 30 days that will explain in detail the payment rate process. The Department is seeking comments on how to design a rate setting process that would be easy to implement yet sensitive to regional or local pricing variation.

The Department is considering whether to establish payment rates by conducting a State by State solicitation of technical service prices from individuals, private-sector entities, and public agencies in order to ascertain the current market prices for delivering technical services. If chosen, the Department would utilize an existing Internet based notice posting system to solicit from technical service provider sources their respective price data for particular technical services. This process would involve electronically uploading a Departmental "Sources Sought Notice" to the posting system, requesting potential technical service providers to submit a listing of service prices, and consolidating the price data from all respondents. The Department would analyze the information submitted pursuant to its solicitation as part of its process for determining payment rates. After the first year of operation, the Department would adjust the rates each year thereafter, or more frequently if needed, using current market data it obtained from technical service providers, an updated solicitation to all sources, or a combination thereof.

In using the information obtained from this solicitation, the Department could set a "not-to-exceed" rate. To ensure healthy competition within the market, this rate could not be set so low as to discourage all participation by viable technical service providers nor could it be set so high as to result in wasteful federal expenditures. To encourage competition, the Department is also considering options that would create incentives for producers to choose the most efficient provider of technical services in the market place, such incentives could include providing a cost savings to program participants that choose a technical service provider with a price below a "not-to-exceed" rate.

The Department is also considering basing technical service payments upon a flat rate. Under this option, the Department would pay a flat rate for each project. Thus, if a project costs $20,000 to install, the program participant would be reimbursed $4000, or 20% of the project cost, for the technical services obtained from a technical service provider. However, this approach may not adequately reflect the actual price for technical services on any particular project and might adversely affect obtaining technical services for projects that are small or more complex in scope because the actual price for the design could exceed the flat rate.

In addition, the Department is also considering basing technical service payment rates based on its own costs to deliver the technical services. Under this option, the Department would estimate the technical service rates and establish not-to-exceed rates for use in program contracts or agreements. These rates would not exceed the Federal Government rates to deliver the same service. The Department is interested in obtaining public comment on these or other feasible methods for establishing payment rates that will provide the greatest opportunity for the market place to inform the price of technical services while providing maximum flexibility to program participants to choose a technical service provider.

Section 652.6, Department delivery of technical services, describes the types of legal instruments the Department may enter into to deliver technical services to producers. The Department will provide technical services directly to a producer when chosen by the producer to provide those services. When Department baseline staffing levels do not meet the demand for its technical services, the Department may procure additional technical services through a procurement contract or a cooperative agreement entered into under the authority of section 714 of the Agricultural Appropriations Act of 2001 (the 2001 Act), Public Law 106–387, 7 U.S.C. 6962a. As mentioned above, the Department intends to adopt by policy that it will seek to meet the additional demand for technical services from non-Federal sources. To avoid confusion, "non-assistance" cooperative agreements under section 714 are identified as "contribution agreements" to distinguish them from cooperative agreements as defined by the Federal Grant and Cooperative Agreement Act (FGCAA), 31 U.S.C. 6301 *et seq.* The Department may also meet the additional demand for technical services by stimulating the availability of additional technical services through a cooperative agreement as defined by the FGCAA.

NRCS utilizes contribution agreements for obtaining technical services and receives from a contributing party financial and in-kind donation of goods, services, and personal services. NRCS ensures Federal funds are wisely spent by requiring that the level of contribution by the other party justify the non-competitive nature of the transaction. For transactions where NRCS seeks to obtain technical services for a particular project or for more widespread programmatic needs, NRCS will only enter into a contribution agreement with a certified technical service provider where such a provider donates at least 50% of the technical services needed.

Contribution agreements that do not include the provision of technical services are outside of the scope of this rule, and NRCS will evaluate the merit of entering into each such agreement based upon the particular nature of the project and the level of contribution by the other party.

For transactions where the Department seeks to stimulate the expansion of the level of technical services provided to producers, the Department may enter into a cooperative agreement that is governed by the FGCAA and its implementing regulations and circulars.

The Department reaffirms its commitment to competitive cooperative agreements by referencing in § 652.6 the competition requirements in 7 CFR part 3015. Section 652.6(b) identifies that the Chief of the NRCS or his designee, or the Administrator of FSA as appropriate, are authorized to determine that an exception to the competition requirements are in the best interest of the Government and needed to fulfill the objectives of the program.

The Department anticipates that most technical service providers will be selected and hired directly by the program participant and paid under the terms of the program contract or agreement entered into between the program participant and the Department. However, because of the anticipated increase in workload that the 2002 Farm Bill creates, the Department may need to procure services from technical service providers in meeting its own responsibilities to deliver conservation program technical assistance.

Department policy encourages the expansion of technical services provided by all sources, especially private and commercial sources. Wherever appropriate and in the best interest of the Government, the Department will utilize the procurement process to obtain any additional technical services necessary to implement the conservation programs. The interim final rule, in § 652.6(b) indicates that the Chief or the Administrator of FSA may limit the utilization of cooperative agreements and contribution agreements in obtaining or stimulating technical services in order to ensure openness and competitiveness in the process.

Section 652.6(c) addresses an NRCS concern about the possibility of unfair competitive advantage by the individuals, private-sector entities, and public agencies with which NRCS may enter into a contract or agreement. NRCS believes that a technical service provider hired directly by NRCS to assist the agency with its responsibilities could have an unfair competitive advantage over other technical service providers when being selected by program participants. For example, individuals and organizations hired by NRCS may have superior knowledge regarding the technical service needs of particular producers that would give them a competitive advantage over other providers. In addition, NRCS is concerned that a technical service provider may receive payment twice for performing the same work, once through the contract or agreement with the Department and a second time through the producer's program contract or agreement.

Therefore, NRCS requires in the interim final rule that a technical service provider hired by NRCS to provide technical services to a particular program participant is ineligible to receive a payment under a program contract or agreement for that same program participant.

Section 652.7, Quality assurance, provides that NRCS will evaluate the quality of the technical services provided by certified technical service providers. This section provides for a process through which NRCS will evaluate technical services performed by technical service providers. NRCS requires under § 652.4(g) that technical service providers make available certain information that can be utilized in its quality assurance process. While this information may be utilized to decertify a technical service provider, the purpose is to discover deficiencies in the technical service delivery and allow the technical service provider to take remedial action before such decertification action becomes necessary.

Subpart B—Certification

This subpart contains technical service provider criteria for certification requirements; processes to certify individuals, private-sector entities, and public agencies; requirements for recommending organizations; and the process and requirements for certification renewal.

In order to meet the requirements of 16 U.S.C. 3842(b)(3) regarding "Interim Assistance," NRCS will consider entities and individuals who are currently providing technical services through the Department under a contract, cooperative agreement, or contribution agreement as "conditionally certified" to ensure the continued availability of technical services from these providers for a transitional period before this regulation is effective and implemented. The terms of this conditional certification are: (1) The individual or entity must be operating under a contract, cooperative agreement, or contribution agreement that is in effect on the date of publication of this rule; (2) the individual or entity must submit an Application for Certification by March 1, 2003; and (3) the conditional certification expires by either the date a Certification Agreement is entered or September 30, 2003, whichever is earlier. These terms will allow entities and individuals to continue to provide technical services under their respective contracts, cooperative agreements, or contribution agreements during FY 2003 until NRCS is able to evaluate such individuals and organizations under the certification process set forth in this part. Section 652.21(f) of this rule sets forth these terms and conditions for conditional certification of individuals, private-sector entities, and public agencies providing technical services under current contracts, cooperative agreements, or contribution agreements.

Additionally, NRCS will also consider individuals that are certified under NRCS policies in place prior to the publication of this interim final rule as conditionally certified. The terms of this conditional certification are: (1) The individual or entity must have been certified under such policies prior to the publication of this interim final rule; (2) the individual or entity must submit an Application for Certification by March 1, 2003; and (3) the conditional certification expires either by the date a Certification Agreement is entered or September 30, 2003, whichever is earlier. Section 652.21(g) of this rule

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sets forth these terms and conditions for conditional certification of individuals who were certified under pre-existing NRCS policy.

NRCS believes that the availability of training is essential to the successful implementation of the certification process. NRCS anticipates that a substantial amount of training will be needed for applicants to become certified as technical service providers. The specific training needed will vary from State-to-State depending on the type and quantity of technical services needed to address the additional Title XII Farm Bill workload in each State, the overall interest by applicants to become technical service providers, and the private and public sector mix in providing technical services.

NRCS encourages the development and presentation of training opportunities from a wide variety of sources. NRCS anticipates that universities, colleges, land grant institutions, the Extension Service, private entities, and other sources may be used by the Department to develop and provide the training. NRCS is particularly interested in comments from the public regarding all aspects of technical service provider training.

Individuals interested in becoming certified are responsible for obtaining the training they need to become certified as technical service providers, for keeping their own training records current, and for providing documentation for certification purposes on the training they have received. Costs associated with becoming a technical service provider, as well as maintaining or renewing certification, are the responsibility of the individual seeking certification.

NRCS will publish on its home web page by December 31, 2002, further instructions, guidance, forms, and the process related to the submittal of applications for certification. NRCS will begin to accept applications and recommendations for certification on January 2, 2003, and will review these submittals as they are received. While NRCS may enter into Certification Agreements with technical service providers prior to March 1, 2003, such certifications will not be effective until the effective date of this interim final rule.

NRCS is seeking comments and ideas for streamlining the certification process to make it as efficient and effective as possible. NRCS is also seeking input regarding methods to minimize the burden of certification for applicants seeking certification for more than one state. Of particular interest is how variation in State laws and requirements should be addressed within a certification system.

Section 652.21, Certification criteria and requirements, sets forth the certification criteria and other requirements for certification of individuals. All individuals must meet the NRCS certification criteria and requirements in order to be certified by the agency to provide technical services to program participants and the Department. NRCS requires that all certified individuals have the necessary training, experience, and knowledge to perform the technical services for which certification is sought. Because the technical services are performed to assist producers to participate in Department conservation programs, the certified individual must have working familiarity with Department standards, specifications, and program requirements. These requirements are set forth in Department manuals, handbooks, and other references that are available on the web at *http://www.nrcs.usda.gov* to the technical service provider.

In conjunction with the certification, NRCS will enter into a Certification Agreement with the applicant. The Certification Agreement documents the terms and conditions of the certification. Technical service providers are certified for a three-year time period and may have their certification renewed for subsequent time periods. The interim final rule also provides that NRCS will establish and collect fees related to the certification of technical service providers. NRCS will make available to the public any fee schedule established under this provision.

Section 652.22, Certification process for individuals, sets forth the certification process for individuals to become certified. In order to be considered for certification, individuals must: submit an Application for Certification to NRCS, be recommended for certification by a recommending organization as provided by § 652.25, or be included as part of the certification application submitted by a private-sector entity or public agency. Whatever avenue is chosen by the individual, NRCS will determine within 60 days of receipt of an application if the applicant meets the requirements for certification and will enter into a Certification Agreement with the applicant at the time of certification. After execution of a Certification Agreement, NRCS then place the individual's name on the approved list of technical service providers for that State. The list will be available on the Department's Web site. A payment will not be made for technical services provided by the individual under this part until the individual is certified and placed on the approved list.

The Application for Certification and the Certification Agreement will be available on the National and State NRCS Web sites in a PDF format for easy accessibility and use.

Section 652.23, Certification process for private-sector entities, sets forth the certification process for private-sector entities. Certification of an entity means that the entity may receive payment for the services provided by individuals working under its auspices, but the work must be warranted first by a certified individual within the entity, and the organization must assume the liability for the quality of work performed.

Thus, a private-sector entity may be approved to provide technical services and receive payment for those services as long as the entity has at least one certified individual acting on its behalf. In addition, the entity must identify an official of the entity that is authorized to receive official correspondence related to the status of the entity's certification. The interim final rule provides that an individual(s) may seek certification as part of the application package of the private-sector entity.

All individuals warranting technical services on behalf of the entity must be individually certified and identified on the entity's Application and Certification Agreement. Non-certified individuals may provide input to the technical services provided by the entity, but the work products developed by these individuals must be adopted and warranted by one of the certified individuals identified on the entity's Application and Certification Agreement. Thus, if a non-certified engineer drafts an engineering drawing, the engineer who is certified to provide such engineering services must sign the final drawing and warrant that it meets the requirements set forth in § 652.4. Individuals working under the private-sector's auspices must act within the terms and conditions of a signed Certification Agreement between NRCS and the entity.

NRCS may decertify the entire entity or any individual or individuals working under the auspices of such entity in accordance with the provisions of Subpart C.

Section 652.24, Certification process for public agencies, sets forth the certification process for public agencies. Public agencies possess through their employees certain expertise and skills to carry out their mission that may match the expertise and skills needed to provide technical services to program participants and the Department.

The interim final rule distinguishes between certification of a public agency under this section and certification of an individual working under the individual's own auspices. Certification of a public agency means that the agency may receive payment for the services provided by individuals working under its auspices, but the work must first be warranted by a certified individual within the agency, and the public agency must assume liability for the quality of the work provided.

Thus, a public agency may be approved to provide technical services and receive payments for those services as long as the agency has at least one certified individual acting on its behalf. In addition, the agency itself must identify an official that is authorized to receive official correspondence related to the status of the agency's certification. The interim final rule provides that an individual may seek certification as part of the application package of the public agency.

Employees of the public agency that warrant technical services on behalf of the agency must be individually certified and identified by the public agency as those employees authorized to perform the technical services in the Application and Certification Agreement. Just as described for private-sector entities, a non-certified employee of a public agency may provide input into the technical services provided by the public agency, but the work products developed by these individuals must be adopted and warranted by one of the certified individuals identified on the agency's Application and Certification Agreement. These individuals must operate within the terms and conditions of a signed Certification Agreement between the agency and NRCS.

NRCS believes that there exists a potential appearance of impropriety where public officials provide similar duties in both their official public and private capacities. NRCS is concerned that program participants may be confused about the capacity under which a certified individual that works for a public agency is providing services to them. Public employees are held to a higher standard of conduct when providing assistance than private sector individuals and entities providing a similar service to a customer. For example, public agencies have certain disclosure and confidentiality requirements regarding information they obtain from producers that do not apply to private sector individuals and entities.

While nearly all public agencies already have restrictions regarding outside employment of its employees, the Department requires, as part of the public agency's certification that its employees may not provide technical services as an individual or as a member of a public-sector entity outside of the auspices of that agency.

Section 652.25, Alternative application process for individual certification, provides for an alternative to the process set forth in § 652.22 for individuals to be considered for certification by NRCS. In lieu of submitting an Application for Certification directly to NRCS pursuant to § 652.22, individuals may be considered for certification through the recommendation of an organization ("recommending organization") with which NRCS has a memorandum of understanding or other appropriate agreement providing for such recommendation. A recommending organization is a professional organization, association, licensing board or other entity that NRCS has determined has an accreditation program to train, test, and evaluate individuals for competency in a particular area or areas of technical service delivery and whose accreditation program meets the certification criteria set forth in § 652.25.

NRCS's use of, or partnership with, recommending organizations is intended to streamline the certification process to the greatest extent possible by eliminating the need for each individual to submit an Application for Certification and by recognizing the specific accreditation expertise of various organizations.

Prior to entering into an agreement with a recommending organization, NRCS determines whether the organization's accreditation program meets NRCS standards and specifications for the particular technical services to be provided. As set forth in § 652.25(b), the agreement between NRCS and a recommending organization contains specific requirements related to how the organization recommends individuals to NRCS for certification.

NRCS makes the final determination whether to certify for each individual recommended by an organization. The authority of the agency to certify is non-delegable and is made by the appropriate NRCS official based upon his or her assessment of whether an applicant meets the criteria as set forth in this part. NRCS may terminate an agreement with a recommending organization if NRCS determines that the organization has violated any of the terms of the agreement or if any other problems arise in the organization's certification recommendations. In considering whether to terminate any agreement with a recommending organization, the agency's duty to ensure that only qualified individuals are certified to be technical service providers is paramount.

Section 652.26, Certification renewal, sets forth the process and requirements for certification renewal for individuals, private-sector entities, and public agencies. NRCS believes that technical service provider certifications should have a finite time limit in order to ensure that the certification requirements are still being met and to reaffirm the terms and conditions of the current Certification Agreement. Accordingly, all technical service providers must renew their certification every three years. Technical service providers decertified in accordance with the provisions in Subpart C, who are seeking to become re-certified after the period of decertification has expired, must reapply for certification through the regular application process.

NRCS is providing a streamlined process for certification renewal in the interim rule. A standard renewal form, Certification Renewal, will be available on the National and State NRCS Web sites in a PDF format. The technical service provider must complete and submit their request for Certification Renewal to NRCS at least 60 days prior to the current certification expiration date. All renewals are in effect for three years and may be subsequently renewed for three-year periods.

Subpart C—Decertification

In order to protect the public interest and to ensure the adequate provision of technical assistance under its conservation programs, the Department's policy is to certify and maintain certification of only those individuals who meet the criteria set forth in this rule and who act responsibly in the provision of technical assistance. The decertification process set forth in subpart C is the means by which the Department carries out this policy. The Department is promulgating these regulations to provide for a decertification process because neither the National Appeals Division nor Government-wide Suspension and Debarment regulations apply to the decertification of technical service providers. Specifically, the National Appeal Division's regulations apply to appeals related to program participants

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as that term is defined by 7 CFR 11.1. Technical service providers are not "program participants." The decertification process described herein is more akin to the Government-wide Debarment and Suspension (Nonprocurement) regulations at 7 CFR part 3017, which are specifically excluded from the definition of program participant in 7 CFR 11.1. However, the Government-wide Suspension and Debarment regulations at 7 CFR 3017.110(a)(3)(iii) exclude conservation programs from applicability.

The dual goals of the decertification process are: (1) To establish an efficient administrative process by which technical service providers who fail to meet NRCS standards and specifications in the provision of technical service or otherwise fail to meet the terms of the Certification Agreement, i.e., act responsibly, are decertified from providing technical services to the Department and to program participants, and (2) to ensure adequate due process to the technical service providers who are proposed for decertification. The purpose of the decertification process is to protect the public interest by removing those technical service providers from the approved list who fail to act responsibly.

Section 652.31, Policy, sets forth general guidelines regarding the causes for decertification. It is not the Department's intent to decertify an otherwise responsible technical service provider for minor inconsistencies with NRCS standards and specifications if those failures are infrequent events, and the technical service provider works in good faith to remedy any problems. The Department encourages technical service providers to act proactively in remedying any technical services that fail to meet NRCS standards and specifications. To the extent it is able, NRCS will work with those technical service providers who ask for assistance in addressing deficiencies in their provision of technical service. The Department will decertify those technical service providers who demonstrate a failure to act responsibly in the provision of technical service.

Accordingly, *§ 652.32*, Causes of decertification, sets forth the causes for decertification. These causes include failures in the provision of technical service to the extent that the practice is ineffective or environmentally harmful and/or other violations of the terms of the Certification Agreement. In addition, a catch-all provision is included under this section to cover any other cause of a serious or compelling nature demonstrating a technical service provider's failure to fulfill the terms of their Certification Agreement.

Section 652.33, Notice of proposed decertification, provides that the State Conservationist will send to any technical service provider proposed for decertification a Notice of Proposed Decertification. This section also sets forth the required content of the Notice of Proposed Decertification. In addition, this section provides that the Notice will identify the certified individuals who work under the auspices of a technical service provider (such as a public agency or private-sector organization), who are also being considered for decertification. Certified individuals have a separate right of appeal. In order to appeal, certified individuals must follow the process and deadlines set forth in this subpart.

Section 652.34, Opportunity to contest decertification, sets forth the process, including the deadlines, for a technical service provider to contest any Notice of Proposed Decertification.

Section 652.35, State Conservationist decision, provides the time lines for the State Conservationist's decision regarding whether to decertify, the basis for the decision, and the required notices to the technical service provider of the State Conservationist's decision.

Section 652.36, Appeals of decertification decisions, provides for appeal by the technical service provider of a State Conservationist's decision to the Chief, deadlines for appeal, issuance of the final decision, and the contents of the Chief's final decision. Section 652.36 also provides that the Chief may delegate his duties as the decertifying officer to an NRCS employee in the National Office.

Section 652.37, Period of decertification, provides general guidelines for the decertifying official's (the State Conservationist or Chief, as appropriate) determination regarding the period of decertification. These guidelines are meant to be flexible while at the same time providing technical service providers with a general idea of how the period of decertification is decided upon. As is true of the entire decertification process, determination of the length of the decertification period is intended to protect the public interest by removing from the list of approved providers those technical service providers who fail to act responsibly in the provision of technical service. The length of the decertification period is commensurate with the degree to which the technical service provider has violated the terms of the Certification Agreement, including meeting NRCS standards and specifications. It is within the decertifying official's discretion to decide the period of decertification based upon the general guidelines, the facts of the particular case, and any mitigating factors.

Section 652.38, Scope of decertification, provides guidance on the scope of a decertification. Decertification applies to an entire entity and all organizational elements thereunder of a technical service provider, whether the provider is a private sector entity or a public agency. The decertifying official must determine, based upon the facts of a situation, whether to decertify the entire organization (including the individuals identified as authorized to provide technical services under the auspices of such organization); the organization only; a particular individual or individuals acting under the auspices of that organization; and/or an organizational element of the public agency or private sector entity. For example, the decertifying official may decertify the private sector entity or public agency and a particular individual or individuals, but not all the individuals identified in the Certification Agreement, if the decertifying official finds that the actions of the entity or public agency and/or particular authorized individuals cannot be imputed to all the individuals identified as authorized to provide technical services under the auspices of the organization. The intent of this subpart is to decertify only those organizations or elements thereof and employees that are deficient in the provision of technical services. In making this determination, the decertifying official will also consider the terms of the Certification Agreement itself, which require the public agency and private sector to be responsible for the actions of their employees and/or agents.

As set forth in *§ 652.39*, Mitigating factors, the decertifying official takes into consideration any mitigating factors presented by the technical service provider when deciding whether to decertify as well as the scope and the period of decertification. Even though mitigating factors may be presented by a technical service provider, the decertifying official may still decide to decertify. This section provides general examples of mitigating factors. For example, subsection (c) provides as a mitigating factor actions a technical service provider takes to prevent future deficiencies in the provision of technical services which led to the Notice of Proposed Decertification, including deficiencies in the provision of technical service or in otherwise complying with the terms of the Certification Agreement. Technical service providers are encouraged to mitigate any deficiencies in the provision of technical services.

Section 652.40, Effect of decertification, sets forth the effect of a decertification determination. During the time period of decertification, NRCS will not procure or cooperate with a decertified technical service provider nor will the Department reimburse a program participant for the services of a decertified provider. Current or on-going procurements, cooperative agreements or program agreements will not be affected retroactively by the listing of a technical service provider as decertified.

In addition, § 652.40 provides that the agency shall maintain a list of decertified technical service providers. When a technical service provider is decertified in one State, the effect is to decertify that provider in all States. NRCS will work diligently to keep the list current. The list will be available to the public through NRCS's Web site and at USDA Service Centers. It is the program participant's responsibility to check the list prior to securing a technical service provider's services. Further, the rule requires that no program participant may knowingly hire a decertified technical service provider.

Section 652.41, Effect of filing deadlines, provides that the failure of a technical service provider to meet filing deadlines results in the forfeiture of appeal rights and also clarifies the deadline for contest and appeal filings. These policies assist in the efficient and fair administration of the decertification process.

Finally, *section 652.42*, Recertification, states the agency's recertification policy for those technical service providers who have been decertified.

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this interim final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB). Pursuant to section 6(a)(3) of Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this rulemaking, and included the analysis as part of a Regulatory Impact Analysis document prepared for this interim final rule. The analysis estimates that the technical service provider process will have a beneficial impact on the Nation's natural resources by accelerating adoption of conservation practices, increasing environmental and resource benefits, maintaining and enhancing long-term productivity of the resource base, reducing non-point source pollution damage, reducing farming costs, and contributing to an increase in net farm income. A copy of this analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or by e-mail to *gary.gross@usda.gov*; attn: Technical Service Provider Assistance—Economic Analysis, or at the following Web address: *http://www.nrcs.usda.gov*.

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim final rule are not retroactive. The USDA has not identified any State or local laws that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such conflict is identified, the provisions of this interim final rule preempt State and local laws to the extent such laws are inconsistent with this rule.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(c) of the Regulatory Flexibility Act, it has been determined that this rule will not have a significant impact on a substantial number of small entities as defined by the Act. This rule sets forth the process by which entities could, on a voluntary basis, become certified providers. Therefore, a regulatory flexibility analysis is not required for this interim final rule. This interim final rule sets forth the policies and procedures for the provision of technical service provider assistance, which involves the voluntary participation of technical service providers.

National Environmental Policy Act

The regulations promulgated by this rule do not authorize any action that may negatively affect the human environment. Accordingly, an analysis of impacts under the National Environmental Policy Act has not been performed. The technical service provider process will help implement new and existing USDA conservation programs which are subject to the environmental analyses pursuant to the National Environmental Policy Act.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the promulgation of regulations and the administration of Title II of said act be carried out without regard to the chapter 35 of title 44 of the United States Code (commonly known as the Paperwork Reduction Act). Accordingly, these regulations and the forms, and other information collection activities need to administer technical service provider assistance under these regulations, are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and NRCS in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in technical services delivery under this rule are not fully implemented for the public to conduct business with NRCS electronically. However, the required standard forms discussed in this rule will be available electronically through the USDA eForms Web site at *www.sc.egov.usda.gov* for downloading. The regulation will be available at the NRCS homepage at *www.nrcs.usda.gov*. Applications may be submitted as provided for in this rule. At this time, electronic submission is not available. However, NRCS is currently working on fully implementing electronic submission so that it is available in the future.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the effects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 104–354, USDA classified this interim final rule as not major.

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Civil Rights Impact Analysis

A Civil Rights Impact Analysis has been completed regarding this rule. The review reveals no factors indicating any disproportionate adverse civil rights impacts for participants in NRCS programs and services who are minorities, women, or persons with disabilities. A copy of this analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890, or by e-mail to *gary.gross@usda.gov;* attn: Technical Service Provider Assistance—Civil Rights Impact Analysis, or at the following web address: *http://www.nrcs.usda.gov.*

List of Subjects in 7 CFR Part 652

Natural Resources Conservation Service, Soil conservation, Technical assistance, Water resources.

For the reasons stated in the preamble, the Natural Resources Conservation Service hereby amends Title 7 of the Code of Federal Regulations as set forth below:

Accordingly, Title 7 of the code of Federal Regulations is amended by adding a new part 652 to read as follows:

PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

Subpart A—General Provisions

Sec.

652.1 Definitions.
652.2 Applicability.
652.3 Administration.
652.4 Technical service standards.
652.5 Program participant acquisition of technical services.
652.6 Department delivery of technical services.
652.7 Quality assurance

Subpart B—Certification

652.21 Certification criteria and requirements.
652.22 Certification process for individuals.
652.23 Certification process for private-sector entities.
652.24 Certification process for public agencies.
652.25 Alternative application process for individual certification.
652.26 Certification renewal.

Subpart C—Decertification

652.31 Policy.
652.32 Causes of decertification.
652.33 Notice of proposed decertification.
652.34 Opportunity to contest decertification.
652.35 State Conservationist decision.
652.36 Appeals of decertification decisions.
652.37 Period of decertification.
652.38 Scope of decertification.
652.39 Mitigating factors.
652.40 Effect of decertification.
652.41 Effect of filing deadlines.
652.42 Recertification.

Authority: 16 U.S.C. 3842.

Subpart A—General Provisions

§ 652.1 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Approved list means the list of individuals, private sector entities, or public agencies certified by the State Conservationist in each State to provide technical services to a program participant or to the Department.

Chief means the Chief of NRCS or designee.

Certification means the action taken by NRCS to approve:

(1) An individual as meeting the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system; or

(2) An entity or public agency as having an employee or employees that meet the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

Conservation practice means a specified treatment, such as a structural or vegetative practice, or a land management practice, that is planned and applied according to NRCS standards and specifications.

Contract means the same as that term is defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

Contribution agreement means the acquisition of technical services entered into under the authority of 7 U.S.C. 6962a.

Cooperative agreement means the same as that term is defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

Department means the Natural Resources Conservation Service, the Farm Service Agency, or any other agency or instrumentality of the United States Department of Agriculture that is assigned responsibility for all or a part of a conservation program subject to this part.

Entity means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.

Program participant or participant means a person who is eligible to receive technical or financial assistance under a conservation program covered by this rule.

Public agency means a unit or subdivision of Federal, State, local, or Tribal government, other than the Department.

Recommending organization means a professional organization, association, licensing board or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as technical service providers for specific technical services.

Secretary means the Secretary of the United States Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

Technical service means the technical assistance provided by technical service providers, including conservation planning, and/or the design, layout, and installation of approved conservation practices.

Technical service provider means an individual, entity, or public agency certified by the State Conservationist and placed on the approved list to provide technical services to program participants or to the Department.

§ 652.2 Applicability.

The regulations in this part set forth the policies, procedures, and requirements related to delivery of technical assistance by individuals and entities other than the Department, hereinafter referred to as technical service providers.

§ 652.3 Administration.

(a) As provided in this part, the Department will provide technical assistance to program participants directly, or at the option of the program participant, through a technical service provider in accordance with the requirements of this part.

(b) The Chief, Natural Resources Conservation Service (NRCS) will direct and supervise the administration of the regulations in this part.

(c) NRCS will:

(1) Provide overall leadership and management for the development and administration of a technical service provider process;

(2) Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of technical service providers and the implementation of technical service;

(3) Establish policies, procedures, guidance, and criteria for the certification, recertification, decertification, certification renewal, and implementation of the use of technical service providers;

(4) Certify, decertify, and recertify technical service providers as well as renew certification for technical service providers.

(5) Encourage development and availability of training opportunities for individuals interested in becoming technical service providers;

(6) Track payment and accomplishment data related to technical services delivery; and

(7) Provide quality assurance for technical services provided by technical service providers.

(d) The Department will not make payments under a program contract or agreement, a contract, contribution agreement, or cooperative agreement for technical services provided by a technical service provider unless the technical service provider is certified by NRCS and is identified on the approved list.

(e) The Department will evaluate the terms and conditions of existing agreements with technical service providers to ensure that they are consistent with this part.

§ 652.4 Technical service standards.

(a) All technical services provided by technical service providers must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation practice application, and other areas of technical assistance.

(b) The Department must approve all new technologies and innovative practices, including applicable standards and specifications, prior to a technical service provider initiating technical services for those technologies and practices.

(c) Pursuant to any contract or agreement with NRCS or with the program participant, the technical service provider must warrant in writing that the particular technical service provided:

(1) Complies with all applicable Federal, State, Tribal, and local laws and requirements;

(2) Meets applicable Department standards, specifications, and program requirements;

(3) Is consistent with the particular conservation program goals and objectives for which the program agreement or contract was entered into by the Department and the program participant; and

(4) Incorporates, where appropriate, low-cost alternatives that would address the resource issues and meet the objectives of both the program and program participants for which assistance is provided.

(d) Technical service providers, including entities and public agencies, must assume all legal responsibility for the technical services provided. Technical service providers, including entities and public agencies, must indemnify and hold the Department and the program participant harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the technical service provider in connection with the technical service provided.

(e) The Department will not be in breach of any program contract or agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.

(f) The program participant is responsible for complying with the terms and conditions of the program contract or agreement, which includes meeting USDA technical standards and specifications for any technical services procured by the participant or obtained in accordance with this part.

(g) The technical service provider shall report in the NRCS conservation accomplishment tracking system the appropriate data elements associated with the technical services provided to the Department or program participant.

§ 652.5 Program participant acquisition of technical services.

(a) Program participants may obtain technical assistance directly from the Department or from a certified technical service provider.

(b) To acquire technical assistance directly from the Department, program participants should contact their local USDA Service Center.

(c) To acquire technical services from a technical service provider, program participants must:

(1) Comply with the program agreement when acquiring technical services; and

(2) Select a certified technical service provider from the approved list of technical service providers.

(d) To obtain payment for technical services, the program participant must submit to the Department an invoice, supporting documentation, and a request for payment. The Department may pay a program participant for technical services provided by a technical service provider hired by the program participant through:

(1) A reimbursement payment made directly to the program participant; or

(2) Upon receipt of an assignment of payment from the program participant, a payment made directly to the technical service provider.

(e) The Department will identify in the particular program contract or agreement the payment provisions for technical service providers hired directly by the program participant.

(f) Unless authorized under paragraph (g) of this section, the program participant must enter into a program contract or agreement with the Department prior to acquisition of technical services by a technical service provider.

(g) A program participant may be reimbursed for technical service provider costs incurred prior to entering into a program contract or agreement as long as the individual meets the eligibility requirements for participating in the program. These costs include program related activities that need to be accomplished prior to entering into a program contract or agreement as well as the development of a conservation plan that is subsequently incorporated into the program contract or agreement. To be reimbursed for these technical service provider costs, the program participant must:

(1) Utilize the services of a certified technical service provider from the NRCS approved list of technical service providers; and

(2) Provide to NRCS invoice and related documentation of the technical services provided.

(h) Program participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific technical service providers.

(i) Payments for technical services will only be made one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.

§ 652.6 Department delivery of technical services.

(a) The Department may procure the services of certified technical service providers through a contract or a contribution agreement to assist the Department in providing technical services necessary to develop and implement the conservation programs subject to this part. The Department shall only enter into a contribution agreement with a certified technical service provider if the certified

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technical service provider contributes at least 50 percent of the technical services needed to accomplish the goals of the project under which the contribution agreement is entered. The Chief may establish minimum contribution rates or limit the utilization of contribution agreements.

(b) The Department may also enter into a cooperative agreement after competition as specified by part 3015 of this title if the principal purpose of the cooperative agreement is to transfer a thing of value to carry out a public purpose of support or stimulation authorized by law. The Chief or the Administrator, Farm Service Agency (FSA) may limit the utilization of cooperative agreements by NRCS or FSA, respectively. Only the Chief, NRCS or the Administrator, FSA may make a determination that competition is not deemed appropriate for a particular transaction and such determination shall only be based where a non-competitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program.

(c) A certified technical service provider, or an individual providing technical services under the auspices of a technical service provider's certification, shall not be eligible to receive payment under a program contract or agreement for technical services provided directly to a program participant if that technical service provider has entered into a contract, cooperative agreement, or contribution agreement with NRCS to provide technical services to that program participant.

(d) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

§ 652.7 Quality assurance.

(a) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by technical service providers. As a requirement of certification, technical service providers will be required to develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical services provided, and furnish this documentation to NRCS and the program participant when the particular technical service is completed. NRCS may utilize information obtained through its quality assurance process, documentation submitted by the technical service provider, and other relevant information in determining how to improve the quality of technical service, as well as determining whether to decertify a technical service provider under subpart C of this part.

(b) Upon discovery of a deficiency in the provision of technical service through its quality assurance process or other means, NRCS will, to the greatest extent practicable, send a notice to the technical service provider detailing the deficiency and requesting remedial action by the technical service provider. Failure by the technical service provider to promptly remedy the deficiency, or the occurrence of repeated deficiencies in providing technical services, may trigger the decertification process set forth in subpart C of this part. A failure by NRCS to notice any deficiency does not affect any action under the decertification process. Technical service providers are solely responsible for providing technical services that meet all NRCS standards and specifications.

Subpart B—Certification

§ 652.21 Certification criteria and requirements.

(a) To qualify for certification an individual must:

(1) Have the technical training, education, or experience to perform the level of technical assistance for which certification is sought;

(2) Meet any applicable licensing or similar qualification standards established by State law;

(3) Demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, criteria, standards, and specifications as set forth in the applicable NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning and applying of specific conservation practices and management systems for which certification is sought; and

(4) Not be decertified in any State under subpart C of this part at the time of application for certification.

(b) To qualify for certification an entity or public agency must have a certified individual providing, in accordance with this part, technical services on its behalf.

(c) A technical service provider, as part of the certification by NRCS, must enter into a Certification Agreement with NRCS specifying the terms and conditions of the certification, including adherence to the requirements of this part, and acknowledging that failure to meet these requirements may result in ineligibility to receive payments from the Department, either directly or through the program participant, for the technical services provided or may result in decertification.

(d) NRCS certification shall be in effect for three years unless the technical service provider is decertified in accordance with subpart C of this part. NRCS certifications expire at the end of three years unless they are renewed in accordance with § 652.25.

(e) NRCS may, pursuant to 31 U.S.C. 9701, establish and collect fees for the certification of technical service providers.

(f) An individual, private-sector entity, or public agency is conditionally certified provided they had entered into a contract, cooperative agreement, or contribution agreement with the Department prior to November 21, 2002 to provide technical services and they submit an Application for Certification by March 1, 2003. An individual, private-sector entity, or public agency with conditional certification status under this paragraph may continue to provide technical services in accordance with the terms and conditions of the above-described contract, cooperative agreement, or contribution agreement. Conditional certification shall expire either by the date NRCS and the individual, private-sector entity, or public agency enter into a Certification Agreement, as described in § 652.22(c)(1) or September 30, 2003, whichever is earlier.

(g) An individual is conditionally certified if the individual was certified under NRCS policy in effect prior to November 21, 2002 and submits an Application for Certification by March 1, 2003. An individual with conditional certification status under this paragraph may continue to provide technical services to the Department and to program participants in accordance with the above-described prior certification. Conditional certification shall expire either by the date NRCS and the individual enter into a Certification Agreement, as described in § 652.22(c)(1) or September 30, 2003, whichever is earlier.

§ 652.22 Certification process for individuals.

(a) In order to be considered for certification as a technical service provider, an individual must:

(1) Submit an Application for Certification to NRCS in accordance with this section;

(2) Request certification through a recommending organization pursuant to § 652.25; or

(3) Request certification through an application submitted by a private-sector entity or public agency pursuant to § 652.23 or § 652.24 as appropriate.

(b) The application must contain the documentation demonstrating that the individual meets all requirements of paragraph (a) of § 652.21.

(c) NRCS will review within 60 days the application submitted by an individual under paragraph (a)(1) of this section and determine whether the applicant meets the requirements set forth in paragraph (a) of § 652.21. If all requirements are met, NRCS will:

(1) Enter into a Certification Agreement and certify the applicant as qualified to provide technical services for a specific category or categories of technical service;

(2) Place the applicant on the list of approved technical service providers when certified; and

(3) Make available to the public the list of approved technical service providers by category of technical services.

(d) NRCS may decertify an individual in accordance with the decertification process set forth in subpart C of this part.

§ 652.23 Certification process for private-sector entities.

(a) A private sector entity that applies for certification must identify, and provide supporting documentation, that an individual, or individuals, authorized to act on its behalf:

(1) Has been certified as an individual in accordance with § 652.22; or

(2) Seeks certification as an individual as part of the private-sector entity's certification and ensures that the requirements set forth in § 652.21(a) are contained within the private-sector entity's application to support such certification.

(b) NRCS will determine whether the individual(s) identified in the private-sector entity's application meets the certification standards set forth in § 652.22 for the specific services the entity wishes to provide.

(c) NRCS will review within 60 days the application submitted by an entity. If NRCS determines that all requirements for the private-sector entity and the identified individual(s) are met, NRCS will complete the actions described in paragraphs (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the private-sector entity shall:

(1) Identify the certified individuals who are authorized to perform technical services on behalf of and under the auspices of the entity's certification;

(2) Require that the entity have, at all times, an individual who is a certified technical service provider authorized to act on the entity's behalf;

(3) Require that the entity promptly provide to NRCS for NRCS approval an amended Certification Agreement when the list of certified individuals performing technical services under its auspices changes;

(4) Require that any work performed by non-certified individuals be warranted by a certified individual who is authorized to act on the entity's behalf; and

(5) Require that the entity assume liability for the quality of work performed by any individual working under the auspices of its certification.

(d) NRCS may, in accordance with the decertification process set forth in this part, decertify the private sector entity, the certified individual(s) acting under the auspices of its certification, or both the private sector entity and the certified individual(s) acting under the auspices of its certification.

§ 652.24 Certification process for public agencies.

(a) A public agency that applies for certification must identify, and provide supporting documentation, that an individual or individuals authorized to act on its behalf:

(1) Has been certified as an individual in accordance with § 652.22; or

(2) Seeks certification as an individual as part of the public agency's certification and sufficient information as set forth in § 652.21(a) is contained within the public agency's application to support such certification.

(b) NRCS shall determine whether the individual identified in the public agency's application meets the certification standards set forth in § 652.22.

(c) NRCS will review within 60 days the application submitted by a public agency. If NRCS determines that all requirements for the public agency and the identified individual(s) are met, NRCS will perform the actions described in paragraph (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the public agency shall:

(1) Identify the certified individuals that are authorized to perform technical services on behalf of and under the auspices of the public agency's certification;

(2) Require that the public agency have, at all times, an individual that is a certified technical service provider and is an authorized official of the public agency;

(3) Require that the public agency promptly provide to NRCS for NRCS approval an amended Certification Agreement when the list of certified individuals performing technical services under its auspices changes;

(4) Require that any work performed by non-certified individuals be warranted by a certified individual that is authorized to act on the public agency's behalf;

(5) Require that the public agency assume liability for the quality of work performed by any individual working under the auspices of its certification; and

(6) Prohibit any individual who provides technical services under the auspices of the public agency's certification from providing services to program participants and the Department as an individual or part of a private-sector entity.

(d) NRCS may, in accordance with the decertification process set forth in subpart C of this part, decertify the public agency, the certified individual(s) acting under its auspices, or both the public agency and the certified individual(s) acting under its auspices.

§ 652.25 Alternative application process for individual certification.

(a) NRCS may enter into an agreement, including a memorandum of understanding or other appropriate instrument, with a recommending organization that NRCS determines has an adequate accreditation program in place to train, test, and evaluate candidates for competency in a particular area or areas of technical service delivery and whose accreditation program NRCS determines meets the certification criteria as set forth for the technical services to be provided.

(b) Recommending organizations will, pursuant to an agreement entered into with NRCS:

(1) Train, test, and evaluate candidates for competency in the area of technical service delivery;

(2) Recommend to the NRCS official individuals who it determines meet the NRCS certification requirements of § 652.21(a) for providing specific categories of technical services;

(3) Inform the recommended individuals that they must meet the requirements of this part, including entering into a Certification Agreement with NRCS, in order to provide technical services under this part;

(4) Reassess individuals that request renewal of their certification pursuant to § 652.26 through the recommendation of the organization; and

(5) Notify NRCS of any concerns or problems that may affect the organization's recommendation concerning the individual's

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certification, recertification, certification renewal, or technical service delivery.

(c) Pursuant to an agreement with NRCS, a recommending organization may provide to the appropriate NRCS official a current list of individuals identified by the recommending organization as meeting NRCS criteria as set forth in § 652.21(a) for specific categories of technical service and recommend that the NRCS official certify these individuals as technical service providers in accordance with this part.

(d) NRCS will make a determination within 60 days. If NRCS determines that all requirements for certification are met by the recommended individual(s), NRCS will perform the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.

(e) NRCS may terminate an agreement with a recommending organization if concerns or problems with its accreditation program, its recommendations for certification, or other requirements under the agreement arise.

§ 652.26 Certification renewal.

(a) NRCS certifications are in effect for three years and automatically expire unless they are renewed for an additional three years in accordance with this section.

(b) A technical service provider may request renewal of an NRCS certification by:

(1) Submitting a complete certification renewal application to NRCS or through a private sector entity, a public agency, or a recommending organization to NRCS at least 60 days prior to expiration of the current certification;

(2) Providing verification on the renewal form that the requirements of this part are met; and

(3) Agreeing to abide by the terms and conditions of a Certification Agreement.

(c) All certification renewals are in effect for three years and may be renewed for subsequent three-year periods in accordance with this section.

Subpart C—Decertification

§ 652.31 Policy.

In order to protect the public interest, it is the policy of NRCS to maintain certification of those technical service providers who act responsibly in the provision of technical service, including meeting NRCS standards and specifications when providing technical service to program participants. This section, which provides for the decertification of technical service providers, is an appropriate means to implement this policy.

§ 652.32 Causes for decertification.

A State Conservationist, in whose State a technical service provider is certified to provide technical service, may decertify the technical service provider, in accordance with these provisions, for the following reasons:

(a) Failure to meet NRCS standards and specifications in the provision of technical services rendering to the extent that the practice is ineffective or environmentally harmful;

(b) Violation of the terms of the Certification Agreement, including but not limited to, a demonstrated lack of understanding of, or an unwillingness or inability to implement, NRCS standards and specifications for a particular practice for which the technical service provider is certified, or the provision of technical services for which the technical service provider is not certified; and

(c) Any other cause of a serious or compelling nature as determined by NRCS that demonstrates the technical service provider's inability to fulfill the terms of the Certification Agreement in providing technical service.

§ 652.33 Notice of proposed decertification.

The State Conservationist will send by certified mail, return receipt requested, to the technical service provider proposed for decertification a written Notice of Proposed Decertification, which will contain the cause(s) for decertification, as well as any documentation supporting decertification. In cases where a private sector entity or public agency is being notified of a proposed decertification, any certified individuals working under the auspices of such organization who are also being considered for decertification will receive a separate Notice of Decertification and will be afforded separate appeal rights following the process set forth below.

§ 652.34 Opportunity to contest decertification.

To contest decertification, the technical service provider must submit in writing to the State Conservationist, within 20 calendar days from the date of receipt of the Notice of Proposed Decertification, the reasons why the State Conservationist should not decertify, including any mitigating factors as well as any supporting documentation.

§ 652.35 State Conservationist decision.

Within 30 calendar days from the date of the notice of proposed decertification, the State Conservationist will issue a written determination. If the State Conservationist decides to decertify, the decision will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the State Conservationist decides not to decertify the technical service provider, the technical service provider will be given written notice of that determination. The decertification determination will be based on an administrative record, which will be comprised of: The Notice of Proposed Decertification and supporting documents, and, if submitted, the technical service provider's written response and supporting documentation. Both a copy of the decision and administrative record will be sent promptly by certified mail, return receipt requested, to the technical service provider.

§ 652.36 Appeals of decertification decisions.

(a) Within 20 calendar days from the date of receipt of the State Conservationist's decertification determination, the technical service provider may appeal, in writing, to the Chief of NRCS. The written appeal must state the reasons for appeal and any arguments in support of those reasons. If the technical service provider fails to appeal, the decision of the State Conservationist is final.

(b) *Final decision.* Within 30 calendar days of receipt of the technical service provider's written appeal, the Chief or his designee, will make a final determination, in writing, based upon the administrative record and any additional information submitted to the Chief by the technical service provider. The decision of the Chief, or his designee, is final and not subject to further administrative review. The Chief's determination will include the reasons for decertification, the period of decertification, and the scope of decertification.

§ 652.37 Period of decertification.

The period of decertification will not exceed three years in duration and will be decided by the decertifying official, either the State Conservationist or Chief, as applicable, based upon their weighing of all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

(a) For failures in the provision of technical service for which there are no mitigating factors, *e.g.*, no remedial action by the technical service provider, a maximum period of three years decertification;

(b) For repeated failures in the provision of technical assistance for which there are mitigating factors, *e.g.*, the technical service provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and

(c) For a violation of certification agreement terms, e.g, failure to possess technical competency for a listed practice, a period of one year or less, if the technical service provider can master such competency within a year period.

§ 652.38 Scope of decertification.

(a) When the technical service provider is a private sector entity or public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of such private sector entity or public agency. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.

(b) In cases where specific individuals are decertified only, an entity or public agency must promptly file an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement. In addition, the entity or public agency must demonstrate, to the satisfaction of the State Conservationist, that the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

§ 652.39 Mitigating factors.

In considering whether to decertify, the period of decertification, and scope of decertification, the deciding official will take into consideration any mitigating factors. Examples of mitigating factors include, but are not limited to the following:

(a) The technical service provider worked, in a timely manner, to correct any deficiencies in the provision of technical service;

(b) The technical service provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS and sought NRCS advice to remediate the situation; and

(c) The technical service provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.

§ 652.40 Effect of decertification.

(a) The Department will not make payment under a program contract for the technical services of a decertified technical service provider that were provided during the period of decertification. Likewise, NRCS will not procure the services of a decertified technical service provider during the period of decertification.

(b) *National decertification list.* NRCS will maintain a list of decertified technical service providers. NRCS will remove decertified providers from the list of certified providers. Program participants must not knowingly hire a decertified technical service provider. It is the program participant's responsibility to check the decertified list before hiring a technical service provider. Decertification of a technical service provider in one State decertifies the technical service provider from providing technical services under current programs in all States, the Caribbean Area, and the Pacific Basin Area.

§ 652.41 Effect of filing deadlines.

A technical service provider's failure to meet the filing deadlines under this subpart will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) the last day of the filing period.

§ 652.42 Recertification.

A decertified technical service provider may apply to be re-certified under the certification provisions of this part after the period of decertification has expired. A technical service provider may not utilize the certification renewal process in an attempt to be recertified after being decertified.

Signed in Washington, DC, on November 7, 2002.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 02–29301 Filed 11–20–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–5 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) administers the order locally and recommended this action. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2002–03 season by continuing in effect the weekly percentages established for each of the 22 weeks, beginning September 16, 2002. This action supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

EFFECTIVE DATE: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905),

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regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2002–03 season by continuing in effect the weekly percentages established for each of the 22 weeks, beginning September 16, 2002. This action supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This rule limits the volume of sizes 48 (3 9/16 inches minimum diameter) and 56 (3 5/16 inches minimum diameter) red seedless grapefruit entering the fresh market by continuing in effect the weekly percentages established for the first 22 weeks of the 2002–03 season. This rule establishes weekly percentages at 45 percent for weeks 1 and 2 (September 16 through September 29), 35 percent for weeks 3 through 19 (September 30, 2002 through January 26, 2003), and 40 percent for weeks 20, 21, and 22 (January 27 through February 16). The Committee recommended this action by a vote of 14 in favor and 2 against at a meeting on May 22, 2002.

The Committee believes the over shipment of smaller-sized red seedless grapefruit has a detrimental effect on the market. While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. However, when there is too much volume of the smaller sizes available, the overabundance of small sized fruit pulls the prices down for all sizes.

For the past four seasons, the volume of small sizes available throughout the season has been considerably larger than in past seasons. The smaller sizes have represented a larger portion of the crop at the beginning of the season and this trend has continued throughout the season. The fruit has not been sizing well. This means a greater number of small sizes are available later in the season. The percentage of total available volume represented by small sizes has been higher for nearly every month of the season when compared to the same months in previous seasons. This has exacerbated the problems stemming from the oversupply of small sizes and increased the number of weeks of a season impacted.

For the last three seasons, 1999–2000, 2000–01, and 2001–02, the percentage of the remaining crop represented by small sizes in February has averaged around 53 percent. This compares to an average of 31 percent for the same month for the seasons 1995–96 through 1997–98. In fact, the last three seasons have averaged a greater percentage of smaller sizes across each month, October through February, than over the three seasons 1995–96 through 1997–98. For the last seven seasons there has been a movement toward an increased volume of small sizes as a percentage of the overall crop. This is most dramatically evidenced by the 72 percent increase in small sizes as a percentage of the overall crop from February 1996 to February 2001.

The volume of small-sized red seedless grapefruit available in December, January, and February for the 1999–2000, 2000–01, and 2001–02 seasons were comparable or exceeded the volume available in October, November, and December for the 1995–96, 1996–97, and 1997–98 seasons. The following chart shows the volume of sizes 48 and smaller red seedless grapefruit available for these months as a percentage of the total crop.

SIZES 48 AND SMALLER AS A PERCENTAGE OF TOTAL CROP

	95–96	96–97	97–98		99–00	00–01	01–02
October	43%	62%	73%	December	58%	56%	64%
November	34%	56%	61%	January	49%	54%	60%
December	30%	51%	52%	February	50%	53%	56%

The chart shows the percentage of the crop represented by small sizes increasing fairly substantially beginning as early as the 1996–97 season. It was following the 1995–96 season that the Committee began its initial discussions regarding the need to control the volume of small-sized red seedless grapefruit entering the fresh market. Percentage of size regulation was first used to control the volume of small sizes during the first 11 weeks of the 1997–98 season.

The Committee recognized that small sizes were a problem at those volume levels for the months of October through December for the 1995–96, 1996–97, and 1997–98 seasons. Having comparable or greater volumes of small sizes available during the early and midseason also represents a problem for the industry.

For the 2002–03 season, the Committee believes there will continue to be a surplus of red seedless grapefruit. The Committee believes for the 2002–03 season fruit size will continue to follow the trend toward smaller sizes as seen in the past few years and will have an abundant number of small-sized fruit. To address the volume of small-sized red seedless grapefruit available and to prevent the over shipment of small sizes, the Committee voted to utilize the provisions of § 905.153 and establish percentage of size regulation for each of the 22 weeks of the regulatory period for the 2002–03 season.

In making its recommendation, the Committee considered the success of previous percentage of size regulations and their experience from past seasons. The Committee believes the over shipment of smaller-sized red seedless grapefruit contributes to poor returns for growers and lower prices. The Committee has successfully used the provisions of § 905.153 to address these problems, recommending percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons, and for the first 22 weeks of the 2001–02 season. Under percentage of size regulation, prices increased and movement stabilized when compared to seasons without regulation.

For the three seasons prior to the use of percentage size regulation, 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $6.87 per box (1 3/5 bushel) during the 1991–92 season, to $3.38 per box during the 1993–94 season, to $1.91 per box during the 1996–97 season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes percentage of size regulation has been effective in stabilizing prices, both f.o.b. and on-tree. In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the five seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.03 per carton in October, to an average f.o.b. price of $7.01 per carton in December, and remained at around $6.70 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.00 for the last five years compared to $5.83 for the three prior years.

The University of Florida, Citrus Research and Education Center published an estimated cost of production per acre for the 2000–2001 season. The cost to produce Florida citrus fruit for the fresh market was estimated at $882.25 per acre for the SunRidge area, or the interior of the State, $907.72 per acre for the Gulf production area, and $974.46 per acre for the Indian River area, or the Atlantic coast region. Using an average of these estimates, it cost approximately $921 per acre to cultivate citrus for the fresh market in 2000–2001. This average represents a somewhat lower cost of production than what most growers of red seedless grapefruit experience because a major share of production is in the Indian River area.

During the past five seasons, red seedless grapefruit production has averaged around 409 boxes per acre. Based on the cost of production above, and the number for the average boxes per acre, growers need to earn a total on-tree value (fruit going both to the fresh market and to processing) of approximately $2.25 per box in order to break even. For the three seasons prior to the use of percentage of size regulation, the total on-tree value averaged $1.78 per box. Comparatively, for the seasons with regulation, 1997–98 through 2000–01, the on-tree value averaged $2.36 per box.

On-tree prices for fresh red seedless grapefruit have also been higher during seasons with percentage of size regulation than for the three seasons prior to regulation. The average on-tree price for fresh red seedless grapefruit was $4.30 for the seasons 1997–98 through 2000–01 with percentage of size regulation compared to $3.08 for the three years prior to regulation. Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, these higher returns mean the difference between profit and loss.

Another benefit of percentage of size regulation has been in maintaining higher prices for the larger-sized fruit. At the start of the season, larger-sized fruit command a premium price. In some cases, the f.o.b. price is $4 to $10 more a carton than for the smaller sizes. The last three seasons, the f.o.b. price for a size 27 has averaged around $13.50 per carton in October. This compares to an average f.o.b. price of around $5.80 per carton for a size 56 during the same period. In the three years before the issuance of a percentage size regulation, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes by the middle of the season due to the oversupply of small sizes.

Percentage of size regulation has helped sustain the price differential, maintaining higher prices for the larger-sized fruit. During the three years before regulation, the average differential between the carton price for a size 27 and a size 56 was $3.47 at the end of October. However, by mid-December the price for the larger-size had dropped to within $1.68 of the price for the smaller-size fruit. In the five years with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.44 at the end of October, was $3.87 in mid-December, and remained at $3.49 the first week in April.

The margins between the prices for the various sizes of red grapefruit have remained fairly constant throughout the seasons covered under percentage of size regulation. According to the Economic Analysis and Program Planning Branch (EAPP), USDA, if the domestic market becomes glutted with too many small-sized grapefruit (48 and 56), these margins would be negatively impacted and total grower returns would be reduced.

The goal of this percentage of size rule is to reduce the volume of the least

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valuable fruit in the market and strengthen grower prices and revenues. Without this rule, the fresh grapefruit market will become glutted with small-sized fruit, which will have a negative impact on prices for larger-sized fruit and grower returns. Absent this rule, the price margins between sizes (23, 27, 32, 36, 40, 48, and 56) will diminish and ultimately result in lower grower returns. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit size 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues.

Shipments during the 22 weeks covered by this regulation account for nearly 60 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the very limited returns from grapefruit for processing, it is important that returns from the fresh market be maximized during this period. Even a small increase in price when coupled with the volume shipped represents a significant increase in the overall return to growers.

The Committee believes percentage of size regulation has also helped stabilize the volume of small sizes entering the fresh market. During deliberations in past seasons, the Committee considered how shipments of small sizes had effected the market. Based on available statistical information, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices will stabilize and demand for larger, more profitable sizes will increase.

The last five seasons during the weeks regulated by a percentage of size regulation, the weekly shipments of sizes 48 and 56 red seedless grapefruit remained near or below 250,000 cartons for 90 percent of the regulated weeks. There has also been a 43 percent reduction in the volume of small sizes entering the fresh market during the weeks regulated from the 1995–96 season to the 2000–01 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, also found that weekly percentage regulation was effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

In addition to the success of previous regulations, there are other surrounding circumstances that warrant the consideration of the establishment of percentage of size regulation. The production area was up until June, suffering through a period of insufficient rainfall. The area received normal to above normal rainfall during the months of June, July, August, and September. However, it is unclear how this will affect the sizing of the crop. In previous seasons, when insufficient rainfall was followed by normal rainfall, a large volume of small-sized red seedless grapefruit was produced.

Problems with the European and Asian markets could also impact the volume of small sizes available. In past seasons, these markets have shown a strong demand for the smaller-sized red seedless grapefruit. However, the reduction in shipments to these areas experienced during the last few years is expected to continue during the current season. This could result in a greater amount of small sizes for remaining markets to absorb.

The condition of the market for processed grapefruit is also a consideration. Approximately 52 percent of red seedless grapefruit on average is used for processing, with the majority being squeezed for juice. However, this outlet offers limited returns and currently is not profitable. Statistics from the Florida Department of Citrus (FDOC) projected that over 32 weeks worth of red grapefruit juice would remain in inventory at the start of the season. This is expected to have an additional negative impact on returns.

For the 2000–2001 season, on-tree returns were negative for processed red seedless grapefruit. During the last five years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit that exceeded one dollar per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. Consequently, growers prefer to ship grapefruit to the fresh market.

A fair percentage of red seedless grapefruit shipped for processing tend toward the smaller sizes. When returns for processed red grapefruit are low, an additional volume of small sizes could be shifted toward the fresh market, further aggravating problems with excessive volumes of small sizes. Due to current inventories, on-tree prices for processed red seedless grapefruit for the 2002–03 season will most likely mirror prices from past seasons and remain below a dollar. This could force an additional volume of small sizes toward the fresh market.

Further, red seedless grapefruit production continues to exceed demand. This has contributed to the low returns and led to economic abandonment of grapefruit. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit. Complete data for the 2001–02 season is not yet available. However, it is likely that some economic abandonment did occur last season. Economic abandonment and prices falling below the cost production support the use of percentage of size regulation to control the volume of small sizes. The percentage of size regulation has an impact and is intended to make the most economically viable fruit available to the fresh market without oversupplying small-sized fruit. These considerations further support the need to control the volume of small sizes during the season to prevent the volume of small sizes from overwhelming all markets.

The Committee believes the problems associated with an uncontrolled volume of small sizes entering the market will recur without regulation and that establishing weekly percentages during the last five seasons has proven successful. Consequently, the Committee recommended weekly percentages be established for all 22 weeks of the regulatory period, beginning at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and 40 percent for weeks 20, 21, and 22.

The Committee considered the percentages set last year as a basis for discussing this year's percentages. Committee members believed relaxing last season's percentages from the most restrictive level allowed of 25 percent had worked well, providing some restriction while affording volume for those markets that prefer small sizes. Also, while the Committee has in past seasons initially voted to set weekly percentages at 25 percent, the Committee has never maintained the percentages at the 25 percent level, but has always relaxed the percentages closer to the start of the season.

Drawing on this experience, the Committee decided to make its initial recommendations for each of the 22 weeks at levels higher than 25 percent. The recommended percentages closely approximate the final percentages recommended last season. The percentages are the same as last season for weeks 1, 2, 3, 19, 21, and 22, represent a 5 percent increase for weeks 4 through 10 and weeks 15 through 18 and for week 20, and represent a 5 percent decrease for weeks 11 through 14. All are within 5 percent of those recommended last season.

More information helpful in determining the appropriate weekly percentages was available after August. At the time of the May meeting, grapefruit had just begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate issued in October. Further, the first reports on how the crop was sizing were not available until after September. Consequently, the Committee believed it was best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant. The Committee met again on September 10, 2002, and agreed to maintain the percentages as established.

The Committee recognized that they could meet again during the regulation period, as needed, and use the most current information to consider adjustments in the weekly percentage rates. This will help the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages set by this rule will require additional rulemaking and the approval of USDA.

During deliberations in past seasons, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

The Committee considered the 250,000-carton level when recommending the weekly percentages. The first two weeks were set high at 45 percent because it was anticipated that only a limited volume would be shipped. In the last four seasons, shipments of sizes 48 and 56 have never exceeded 250,000 cartons during the first two weeks. Setting weekly percentages at 35 percent for the majority of weeks provides a total available allotment of around 269,150 cartons (35 percent of the total industry base of approximately 769,000 cartons) per week. While this is slightly more than 250,000 cartons, it is unlikely all available allotment will be used each week, and this allows individual handlers some additional flexibility. The increase to 40 percent for the last three weeks is to provide a little more allotment at the end of the regulated period to provide some transition to the period of no regulation and to help prevent the dumping of small sizes following the end of regulation. The Committee believes these percentages provide some flexibility while holding weekly shipments of sizes 48 and 56 close to the 250,000-carton mark.

The Committee believes the volume of small red seedless grapefruit available will have a detrimental effect on the market if it is not controlled. Members believe the problems successfully addressed by percentage of size regulation the last five seasons will return without regulation. Consequently, the Committee believes weekly percentage of size regulation should be established for each of the 22 weeks of the regulatory period. Therefore, this rule establishes weekly percentages at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and at 40 percent for weeks 20 through 22. The Committee plans to meet as needed during the 22-week period to ensure that the weekly percentages are at the appropriate levels.

While the recommendation to establish percentage of size regulation was accepted by a majority of Committee members, some raised concerns about export markets and the loan and transfer system. These concerns provided the basis for the two Committee members who opposed the Committee's recommendation.

One area of concern was the impact this regulation may have on exports. One member stated that market share was being lost in Europe to Turkey and Israel. The purpose of this regulation is not to eliminate the marketing of sizes 48 and 56, but rather to prevent the over shipment of such sizes from saturating all markets.

In making its recommendations, the Committee recognized that markets exist for small sizes. That is why they recommended limiting the volume of small sizes instead of eliminating them. The Committee considered the markets available for small sizes and set a weekly percentage sufficient to address these markets. The weekly percentages are set to allow handlers enough volume of small sizes to meet the markets that prefer them, such as the export market, while preventing an oversupply that effects other markets. Also, there are provisions to handle potential allotment shortfalls an individual handler might have. These include loans and transfers, or using the allowances for over shipment.

In terms of exports of red seedless grapefruit, volume the last two seasons has averaged around 13,832,750 cartons according to the Florida Department of Agriculture (FDOA). Based on information available on sizes exported, the last two seasons sizes 48 and 56 have averaged 42 percent of the exports of red seedless grapefruit (FDOA). On average, 53 percent of exports occur after the end of the 22 week regulated period. Industry members have stated that the largest markets for small sizes do not usually start until late January or in February. This would skew the volume of small sizes exported toward the latter part of the season where there are no limitations on small sizes. Consequently, that would mean a greater percent of small sizes are shipped after regulation. Therefore, using the 42 percent figure to calculate the volume of small sizes shipped during the first 22 weeks is probably close or exceeds the actual percentage represented by small sizes for those weeks.

For the 22 weeks of regulation, when total weekly exports were multiplied by 42 percent to estimate the volume of small sizes exported each week, total allotment available during the 22 weeks as established by the percentages in this rule exceeds the calculated weekly volume of small sizes exported during each regulation week. In addition, the higher percentages recommended by the Committee for the last three weeks of the regulatory period will also help provide additional allotment as the major export period begins. Thus, the allotment of small sizes provided under this rule should be sufficient to service export demand for small sizes, allowing Florida to maintain those markets.

In regard to foreign competitors taking markets from Florida, available information indicates that this should not be a significant problem. The UF–IFAS study determined that foreign

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competition is minimal. It also inferred that even in cases of tightened standards, foreign competitors are not likely to take market share from Florida. Information from the Foreign Agricultural Service, USDA, and the Florida Department of Citrus indicates production and fresh shipments are of limited quantities in both Israel and Turkey. Current statistics show their available volume would significantly limit their ability to consistently impact Florida's market share. Total production of grapefruit in Israel is less than 18 percent of the Florida grapefruit crop while Turkey's is less than 8 percent. Turkey and Israel may have lower transportation costs due to their closer proximity to Europe.

Another concern was the loans and transfers system. One member expressed concern about the fairness of the program and the availability of allotment for loans and transfers. The purpose of loans and transfers is to promote the movement of allotment between those who have allotment but no fruit to those with fruit but no allotment. It is an individual handler's responsibility to try to locate available allotment when they need it. Last season, there were 451 loans and transfers representing 645,386 cartons. Nearly all grapefruit handlers participated in the loan and transfer process last season.

In some weeks, there was more allotment available than in others. However, the purpose of this regulation is to limit the volume of small sizes that are entering the fresh market. The allotment available is calculated using the prior period so that when the Committee considers establishing percentage of size regulation they have a good idea of the total allotment made available each week by establishing different percentages. By allowing loans and transfers, a greater share of the total allotment available each week can be utilized. This allows the actual shipments of small sizes to closely approximate the shipments the Committee believes the market can handle when it recommends weekly percentages. Without loans and transfers there would be less volume available and the regulation would be more restrictive.

After considering the concerns expressed, and the available information, the Committee determined that this rule was needed to regulate shipments of small-sized red seedless grapefruit.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the set weekly percentage. A handler's allotment of small sizes is calculated by taking the weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons. The product is that handler's total allotment of sizes 48 and 56 red seedless grapefruit for the given week. This average week is the base for each handler for each of the 22 weeks of the regulatory period. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments is within the established limits. The Committee staff performs the specified calculations and provides them to each handler.

The regulatory period began the third Monday in September, September 16, 2002. Each regulation week begins Monday at 12:00 a.m. and ends at 11:59 p.m. the following Sunday.

Section 905.153(d) provides the allowances for overshipments, loans, and transfers of allotment. These tolerances allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers' party to the loan. The Committee will inform each handler of the quantity of sizes 48 and 56 red seedless grapefruit they can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2001–02 season was approximately $7.12 per 4/5 bushel carton, and total fresh shipments for the 2001–02 season are estimated at 25.6 million cartons of red grapefruit. Approximately 33 percent of all handlers handled 72 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 66 percent of the grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

The over shipment of small-sized red seedless grapefruit contributes to poor returns and lower on-tree values. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2002–03 season by continuing in effect the weekly percentages established for each of the 22 weeks, beginning September 16, 2002. This rule sets the weekly percentages at 45 percent for weeks 1 and 2, 35 percent for week 3 through week 19, and at 40 percent for weeks 20, 21, and 22. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the percentages set. This action supplies enough small red seedless grapefruit, without saturating all markets with small sizes. This action helps stabilize the market and improve grower returns. This rule uses the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee recommended this action on a vote of 14 in favor and 2 opposed at a meeting on May 22, 2002.

The Committee believes there will continue to be an oversupply of red seedless grapefruit and that the volume of small sizes available will continue to

be a problem in the 2002–03 season. The Committee also believes that fruit size for the 2002–03 season will continue to follow the trend toward smaller sizes as seen in the past few years and will have an abundant number of small-sized fruit. Consequently, the Committee voted to utilize the provisions of § 905.153 and establish percentage size regulation for each of the 22 weeks of the regulatory period.

While the establishment of volume regulation may necessitate additional spot picking, which could entail slightly higher harvesting costs, in most cases this is already a standard industry practice. In addition, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit, because undersized fruit is not harvested. This may result in a cost savings through reduced processing and packing costs. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. Consequently, this rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 22-week period for the three seasons prior to the 1997–98 season, an average of 3.1 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

In addition, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the over shipment is deducted from the following week's shipments. Approximately 451 loans and transfers were utilized last season. Statistics for 2001–02 show that, in only 2 weeks of the regulated period was the total available allotment used. Therefore, with the weekly percentages for the majority of weeks set slightly higher than for last season, the overall impact of this regulation on total shipments should be minimal.

The Committee believes establishing percentage of size regulation during the 2002–03 season will have benefits similar to those realized under past regulations. Handlers and producers have received higher returns under percentage of size regulation. In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the five seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.03 per carton in October, to an average f.o.b. price of $7.01 per carton in December, and remained at around $6.70 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.00 for the last five years compared to $5.83 for the three prior years.

On-tree earnings per box for fresh red seedless grapefruit have also improved under regulation, providing better returns to growers. The average on-tree price for fresh red seedless grapefruit was $4.30 for the seasons 1997–98 through 2000–01 with percentage of size regulation, compared to $3.08 for the three years prior to regulation. Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, the higher returns mean the difference between profit and loss.

Shipments during the 22 weeks covered by this regulation account for nearly 60 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the very limited returns from grapefruit for processing, it is imperative that returns from the fresh market be maximized during this period. Even a small increase in price when coupled with the volume shipped represents a significant increase in the overall return to growers.

Even if this action was only successful in raising returns by $.10 per carton, this increase in combination with the substantial number of shipments generally made during this 22-week period, would represent an increased return of nearly $1.4 million. Consequently, any increased returns generated by this action should more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns. Percentage of size regulation is intended to reduce the volume of the least valuable fruit in the market, and shift it to those markets that prefer small sizes. This regulation helps the industry address marketing problems by keeping small sizes (sizes 48 and 56) more in balance with market demand without glutting the fresh market with these sizes.

This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not expected to decrease the overall consumption of red seedless grapefruit. With supply in excess of demand, this rule is not expected to impact consumer prices or demand. The benefits of this rule are expected to be available to all red seedless grapefruit growers and handlers regardless of their size of operation. This rule will likely help small under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee considered several alternatives to taking this action. One alternative was to establish the weekly percentages at 25 percent for all weeks and adjust the percentages later in the season as was done in previous seasons. This alternative was rejected as the Committee drew on past experiences and sought to provide handlers with specific shipping percentages earlier in the season to allow them greater flexibility in formulating marketing plans in a timely manner.

Another alternative discussed was to provide each handler with the equivalent of one extra week of allotment to use any time during the season and to eliminate loans and transfers. This would have allowed a handler to over-ship any quantity of small sizes up to his extra allotment in one week or divided up through the season. The Committee believed that if prices were at a premium, most handlers would take advantage of these higher prices and ship well over what the market channels could absorb. This alternative was also rejected.

Other alternatives considered centered around setting the weekly percentages at levels different than those recommended. After discussion, the Committee agreed on the percentages established in the rule. Members thought it was best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant. The Committee recognized that they could meet again during the regulation period, as needed, and use the most current information to consider adjustments in the weekly percentage rates. Therefore, these alternative percentages were also rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office

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of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 10, 2002. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 30-day comment period, which ended October 10, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 57319, September 10, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 67 FR 57319, September 10, 2002, is adopted as a final rule without change.

Dated: November 13, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29533 Filed 11–20–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–3 FIR]

Kiwifruit Grown in California; Relaxation of Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which revised pack and container requirements prescribed under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for three size designations and one less piece of fruit per 8-pound sample for one size designation. This rule also continues in effect revisions to lot stamping requirements for plastic containers, suspension of the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removal of obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

EFFECTIVE DATE: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect container and pack requirements currently prescribed for California kiwifruit under the order. This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for three size designations and one less piece of fruit per 8-pound sample for one size designation. This rule continues in effect revisions to lot stamping requirements for plastic containers, suspension of the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removal of obsolete language from the text of the regulation. These changes were unanimously recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns. The Committee unanimously recommended these changes at its April 9, 2002, meeting.

Numerical Count Size Designations

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume filled, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season, while imports from Europe have increased 1,409 percent. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe. Imports from Europe are in direct competition with California kiwifruit. Additionally, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. A recent review of FOB values showed that the average FOB value for the 1992–93 season through the 1999–2000 season was $0.56 per pound, a decline of $0.58 per pound.

As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume filled, or bulk containers. California and imported fruit size designations by weight have differed since the implementation of the order. In 1998, the Committee addressed these differences by revising the numerical count per size designation specified in § 920.302(a)(4)(iv) of the order's administrative rules and regulations. An interim final rule published in the **Federal Register** on September 3, 1998 (63 FR 46861), increased the number of fruit that could be packed per 8-pound samples of size designations 30 through 42. A final rule concerning this matter was published in the **Federal Register** on July 29, 1999 (64 FR 41010).

Buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. Therefore, at its September 19, 2001, meeting, the Committee again addressed the differences in size designations between California kiwifruit and imported kiwifruit and unanimously recommended relaxing pack requirements under § 920.302(a)(iii) to permit handlers to pack more individual pieces of fruit in an 8-pound sample for various sizes.

The Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 42 through 25, eliminating size 21, and adding new sizes 20 and 23. These changes as shown in the following chart were implemented through an interim final rule (66 FR 1413, October 29, 2001) and a final rule (67 FR 11396, March 14, 2002). Changes are in bold.

Size designation	Maximum number of fruit per 8-pound sample
20	27
23	29
25	32
27/28	35
30	38
33	43
36	45
39	49
42	54
45	55

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample allowed some smaller-sized fruit to be packed into a larger-size category. This change allowed one more piece of fruit to be packed per 8-pound sample in sizes 42 and 39, three more pieces of fruit to be packed in size 36, seven more pieces of fruit to be packed in size 33, and five more pieces of fruit to be packed in sizes 27/28 and 25.

Increasing the maximum number of fruit permitted per 8-pound samples during the 2001–02 season enabled handlers to better meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold.

The changes to the size designation chart helped reduce the sizing differences between California and imported kiwifruit during the 2001–02 season and allowed more fruit to be sold; however, handlers found that adjustments were still needed in some of the size designations to bring them closer to imported fruit size designations and to allow more accurate sorting into the size categories with handler sizing equipment. Sizing equipment had difficulty during the 2001–02 season distinguishing between sizes.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved increasing the maximum number of fruit per 8-pound sample for sizes 23, 30, and 36, and reducing the maximum number of fruit per 8-pound sample for size 42 (67 FR 54327, August 22, 2002). The maximum number of fruit allowed in size 23 increased from 29 pieces of fruit per 8-pound sample to 30 pieces; in size 30, 39 pieces of fruit were allowed instead of 38 pieces; in size 36, 46 pieces of fruit were allowed instead of 45; and in size 42, the number of fruit allowed was decreased from 54 pieces of fruit per 8-pound sample to 53 pieces. These changes are shown in bold in the following chart.

Size designation	Maximum number of fruit per 8-pound sample
20	27
23	**30**
25	32
27/28	35
30	**39**
33	43
36	**46**
39	49
42	**53**
45	55

The Committee believes that increasing the number of fruit permitted per 8-pound samples of sizes 23, 30, and 36, and decreasing the number of fruit per 8-pound sample for size 42 will result in more clearly defined size categories, and allow sizing equipment to more uniformly separate fruit of different sizes. Additionally, these adjustments will make the four size designations more similar to those for imported fruit. This action will not affect import requirements.

Lot Stamping Requirements

Section 920.52 of the order authorizes the establishment of container requirements. Section 920.55 of the order requires inspection and certification of kiwifruit, handled by handlers.

Prior to issuance of the interim final rule (67 FR 54327, August 22, 2002),

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§ 920.303(d) required all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. It further required that individual consumer packages of kiwifruit placed directly on a pallet have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. However, kiwifruit packed into individual consumer packages within a master container that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service (inspection service) were exempted, and continue to be exempted, from the lot stamp number requirement. The lot stamp number is used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of kiwifruit.

During the 2001 season, the kiwifruit industry began using plastic containers of various dimensions that can hold either bulk or tray packed kiwifruit. Some of these containers are reusable. Kiwifruit packed in reusable plastic containers (RPCs) is typically delivered to the retailer, where the containers are emptied and returned to a clearinghouse for cleaning and redistribution. As RPCs do not support markings that are permanently affixed to the container, all markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed and contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, enabling a handler to avoid inspection on a lot or lots of kiwifruit.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs; however, manufacturers found that it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that increased labor was needed to affix the adhesive labels and lot stamp number to the plastic containers. Handler members calculated that affixing adhesive labels to RPCs and one-way plastic containers cost the kiwifruit industry approximately $0.10 per container in materials and labor.

The inspection service and the Committee have presented their concerns to the manufacturers of these types of containers. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the plastic container. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended and the USDA approved allowing handlers to use any method of positive lot identification (PLI) in accordance with Federal or Federal-State Inspection Service (inspection service) procedures (67 FR 54327, August 22, 2002). The Committee estimated that allowing handlers to use any method of PLI acceptable to the inspection service will reduce handler costs by $8,700, and will make handler operations more efficient. This action will not affect import requirements.

Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.52 authorizes the establishment of pack requirements. Paragraphs (a)(1) and (3) of § 920.52 specify that the USDA may fix the weight of containers used in the handling of kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to issuance of the interim final rule (67 FR 54327, August 22, 2002), § 920.302(a)(4)(v) required that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers or molded trays. Handlers may ship volume filled containers marked by either the appropriate count or net weight of kiwifruit. Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended and USDA established standard packaging for certain volume filled containers designated by weight. At that time 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers did not differentiate between an imported 19.8-pound (9-kilogram) and a 22-pound (10-kilogram) net weight volume filled container from California. Because buyers paid the same price for each container in 2001, the effect was not favorable for California handlers.

Additionally, prior to publication of the above-mentioned interim final rule, § 920.302(a)(4)(v) required handlers to utilize a standard packaging of 22-pounds (10-kilograms) net weight for volume filled containers that were over 10-pounds or less than 35-pounds net weight of kiwifruit. This restriction limited California kiwifruit handlers in meeting buyer's demands for other types of packaging.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season (67 FR 54327, August 22, 2002). The Committee expects that this suspension will enable California handlers to meet the packaging demands of retailers for volume filled containers, make California kiwifruit more competitive by allowing handlers to match other packaging styles, and reduce handlers' packaging costs. This change will not affect the import regulation.

Removal of Obsolete Language

Paragraphs (a) and (b) of § 920.60 authorize reporting requirements for kiwifruit handlers under the marketing order.

Section 920.160 requires each handler who ships kiwifruit to file a report of shipment and inventory data to the Committee no later than the fifth day of the month following such shipment. Handlers who ship less than 10,000 trays or the equivalent thereof, per fiscal year, and who have qualified with the Committee are only required to furnish such report of shipment and inventory data twice each year. Prior to publication of the interim final rule (67 FR 54327, August 22, 2002), paragraphs (a)(1) through (a)(6) of § 920.160 specified the types of information to be provided on the shipment report.

Paragraph (a)(4) required handlers to report inventory at the end of the reporting period by container; paragraph (a)(5) required handlers to report the amount of kiwifruit lost in repack; and paragraph (a)(6) required handlers to report the amount of fruit set aside for processing.

The Committee had not been collecting this information from handlers since the early 1990's. Therefore, the Committee unanimously recommended removing these obsolete reporting requirements from § 920.160 of the order's rules and regulations at the April 9, 2002, meeting.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 52 handlers of California kiwifruit subject to regulation under the marketing order and approximately 326 growers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 52 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. Two of the 326 growers subject to regulation have annual sales of at least $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for three size designations and one less piece of fruit per 8-pound sample for one size designation. This rule continues in effect revisions to lot stamping requirements for plastic containers, suspension of the standard packaging requirement for volume filled containers of kiwifruit designated by weight for the 2002–03 season, and removal of obsolete language contained in paragraphs (a)(4), (a)(5), and (a)(6) of § 920.160 that has not been applicable for several years. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns. Authority for these actions is provided in §§ 920.52, 920.55, and 920.60 of the order.

Numerical Count Size Designations

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume filled, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season, while imports from Europe have increased 1,409 percent. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe. Imports from Europe are in direct competition with California kiwifruit. Additionally, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. A recent review of FOB values showed that the average FOB value for the 1992–93 season through the 1999–2000 season was $0.56 per pound, a decline of $0.58 per pound.

As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume filled, or bulk containers. California and imported fruit size designations by weight have differed since the implementation of the order. In 1998, the Committee addressed these differences by revising the numerical count per size designation specified in § 920.302(a)(iv) of the order's administrative rules and regulations. An interim final rule published in the **Federal Register** on September 3, 1998 (63 FR 46861), increased the number of fruit that could be packed per 8-pound samples of size designations 30 through 42. A final rule concerning this matter was published in the **Federal Register** on July 29, 1999 (64 FR 41010).

Buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. Therefore, at its September 19, 2001, meeting, the Committee again addressed the differences in size designations between California kiwifruit and imported kiwifruit and unanimously recommended relaxing pack requirements under § 920.302(a)(4)(iii) to permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

The Committee unanimously recommended increasing the maximum number of fruit per 8-pound sample for sizes 42 through 25, eliminating size 21, and adding new sizes 20 and 23. These changes, as shown in the following chart, were implemented through an interim final rule (66 FR 1413, October 29, 2001), and finalized by a final rule (67 FR 11396, March 14, 2002). Changes are shown in bold.

Size designation	Maximum number of fruit per 8-pound sample
20	**27**
23	**29**
25	32
27/28	35
30	38
33	43
36	45
39	49
42	54
45	55

This chart is commonly referred to as the "Size Designation Chart" in the industry. Increasing the maximum number of fruit per 8-pound sample allowed some smaller-sized fruit to be packed into a larger-size category. This change allowed one more piece of fruit to be packed per 8-pound sample in sizes 42 and 39, three more pieces of fruit to be packed in size 36, seven more pieces of fruit to be packed in size 33, and five more pieces of fruit to be packed in sizes 27/28 and 25.

Increasing the maximum number of fruit permitted per 8-pound samples during the 2001–02 season enabled handlers to better meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold.

The changes to the size designation chart helped reduce the sizing differences between California and imported kiwifruit during the 2001–02 season and allowed more fruit to be sold. However, handlers found that adjustments were still needed in some of the size designations to bring them closer to imported fruit size designations and to allow more accurate sorting into the size categories with handler sizing equipment. Sizing

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equipment had difficulty during the 2001–02 season distinguishing between sizes.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved increasing the maximum number of fruit per 8-pound sample for sizes 23, 30, and 36, and reducing the maximum number of fruit per 8-pound sample for size 42 (67 FR 54327, August 22, 2002). Size 23 was increased from 29 pieces of fruit per 8-pound sample to 30 pieces, size 30 was increased from 38 pieces of fruit per 8-pound sample to 39 pieces of fruit, size 36 was increased from 45 pieces of fruit per 8-pound sample to 46 pieces, and size 42 was decreased from 54 pieces of fruit per 8-pound sample to 53 pieces. These changes are shown in the following chart in bold.

Size designation	Maximum number of fruit per 8-pound sample	
20		27
23	29	**30**
25		32
27/28		35
30	38	**39**
33		43
36	45	**46**
39		49
42	54	**53**
45		55

The Committee believes that increasing the number of fruit permitted per 8-pound samples of sizes 23, 30, and 36, and decreasing the number of fruit in 8-pound samples for size 42 will result in more clearly defined size categories and allow sizing equipment to more uniformly separate fruit of different sizes. Additionally, these adjustments will make the four size designations more similar to those for imported fruit. This action will not affect import requirements.

The Committee discussed alternatives to these changes. It considered suspending the size designation chart to lower inspection costs and allow handlers to pack similar to imports. However, it did not adopt this option because it concluded inspection costs will not be significantly lowered and because a recent grower survey showed that uniform sizing is one of the most important issues to California kiwifruit growers.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers will benefit from the revised numerical counts for sizes 23, 30, 36, and 42.

After considering these alternatives, the Committee recommended and the USDA approved relaxing the pack requirements for three sizes and tightening the pack requirements for one size (67 FR 54327, August 22, 2002). Small and large growers and handlers are expected to benefit from these changes. A reasonable crop estimate for the 2002–03 season is 7.5 million tray equivalents. The average FOB value for the 2001–02 season is estimated to be $3.50 per tray equivalent. The Committee estimated that the changes to the numerical count for size designations 23, 30, 36, and 42 will increase the average FOB value for the 2002–03 season to $3.75 per tray equivalent. It is anticipated that the FOB value for the 2002–03 season will increase by $1,875,000 ($3.75 − $3.50 × 7,500,000 tray equivalents). This change will not affect the minimum size and will not allow fruit currently considered "undersized" to be shipped. These changes will not affect import requirements. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve grower returns.

Lot Stamping Requirements

Prior to issuance of the interim final rule (67 FR 54327, August 22, 2002), § 920.303(d) required all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. It further required that individual consumer packages of kiwifruit placed directly on a pallet have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. However, kiwifruit packed into individual consumer packages within a master container that are being directly loaded into a vehicle for export shipment under the supervision of the inspection service were exempted, and continue to be exempted, from the lot stamp number requirement. The lot stamp number is used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of kiwifruit and the information in the working papers is used by the inspector to determine the grade of the inspected lot.

During the 2001 season, the kiwifruit industry began using plastic containers of various dimensions that can hold either bulk or tray packed kiwifruit. Some of these containers are reusable. Kiwifruit packed in reusable plastic containers (RPCs) is typically delivered to the retailer where the containers are emptied and returned to a clearinghouse for cleaning and redistribution. As RPCs do not support markings that are permanently affixed to the container, all markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, enabling a handler to avoid inspection on a lot or lots of kiwifruit.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs; however, manufacturers found that it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that increased labor was needed to affix the adhesive labels and lot stamp number to the plastic containers. Handler members calculated that affixing adhesive labels to RPCs and one-way plastic containers cost the kiwifruit industry approximately $0.10 per container in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of containers. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the plastic container. However, this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that handlers be allowed to use any method of PLI in accordance with Federal or Federal-State Inspection Service (inspection service) procedures. The Committee estimated that allowing handlers to use any method of PLI acceptable to the inspection service will reduce handler costs by $8,700, and will make handler operations more efficient. This action will not affect import requirements.

The Committee discussed alternatives to this change including not changing the lot stamp requirements for plastic containers. After considering this alternative, the Committee recommended and the USDA approved relaxing the container marking requirements provided that plastic containers meet any approved method of PLI (67 FR 54327, August 22, 2002). The Committee believes that handlers and growers will benefit from such a relaxation. This change is expected to help handlers compete more effectively in the marketplace and to improve grower returns, and will not affect import requirements.

Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to issuance of the interim final rule (67 FR 54327, August 22, 2002), § 920.302(a)(4)(v) required all volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit.

In a volume filled container, fairly uniform size kiwifruit are loosely packed without cell compartments, cardboard fillers or molded trays. Handlers may ship volume filled containers marked by either the appropriate count or net weight of kiwifruit. Handler shipments are based upon the preference of the receiver.

In 1994, the Committee unanimously recommended, and USDA established standard packaging for certain volume filled containers packed by weight. At that time, 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern Hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) volume filled containers, whereas the order limits California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between an imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled container from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

Prior to publication of the interim final rule (67 FR 54237, August 22, 2002), § 920.302(a)(4)(v) required handlers to utilize a standard 22-pound (10-kilogram) net weight standard for packaging volume filled containers that were over 10-pounds or less than 35-pounds net weight. This restriction limited California kiwifruit handlers in meeting buyer's demands for other types of packaging.

Therefore, at its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved suspending the standard 22-pounds (10-kilograms) net weight packaging requirement for volume filled containers designated by weight for the 2002–03 season (67 FR 54327, August 22, 2002). The Committee expects that this suspension will enable California handlers to meet packaging demands of retailers for volume filled containers; make California kiwifruit more competitive with imports by allowing handlers to pack similar to imports; and reduce handlers' packaging costs. This change will not impact import requirements.

The Committee discussed alternatives at the April 9, 2002, meeting. One Committee member suggested leaving the standard packaging requirement unchanged. However, the Committee believes that relaxing the standard packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers designated by weight will allow handlers the flexibility to meet buyer container preferences and to increase sales.

The Committee considered other alternatives to revising packing and container requirements, but determined that these suggestions will not adequately address the industry problems.

Removal of Obsolete Language

Paragraphs (a) and (b) of § 920.60 authorize reporting requirements for kiwifruit handlers under the marketing order.

Section 920.160 requires each handler who ships kiwifruit to file a report of shipment and inventory data to the Committee no later than the fifth day of the month following such shipment. Handlers who ship less than 10,000 trays or the equivalent thereof, per fiscal year, and who have qualified with the Committee are only required to furnish such report of shipment and inventory data twice each year. Prior to publication of the interim final rule (67 FR 54327, August 22, 2002), paragraphs (a)(1) through (a)(6) of § 920.160 specified the types of information to be provided on the shipment report. Paragraph (a)(4) required handlers to report inventory at the end of the reporting period by container; paragraph (a)(5) required handlers to report the amount of kiwifruit lost in repack; and paragraph (a)(6) required handlers to report the amount of fruit set aside for processing.

The Committee had not been collecting this information from handlers since the early 1990's. Therefore, the Committee unanimously recommended removing these obsolete reporting requirements from § 920.160 of the order's rules and regulations at the April 9, 2002, meeting. It is estimated that the handler burden will not be impacted, as the current shipment report form approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189 does not contain these data elements.

This rule will continue to relax pack and container requirements under the kiwifruit order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on August 22, 2002. Copies of the rule were mailed by the Committee Staff to all Committee members and kiwifruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. The rule provided for a 60-day comment period which ended October 21, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without

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change, as published in the **Federal Register** (67 FR 54327, August 22, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 67 FR 54327, August 22, 2002, is adopted as a final rule without change.

Dated: November 13, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29530 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV02–984–1 IFR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Walnut Marketing Board (Board) for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2002–03 anticipated expenses of $2,970,000. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective November 22, 2002. Comments received by January 21, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984 both as amended, (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Board for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts.

The California Walnut marketing order provides authority for the Board, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0124 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 13, 2002, and unanimously recommended 2002–03 expenditures of $2,970,000 and an assessment rate of $0.0120 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $3,124,800. The recommended assessment rate is $0.0004 lower than the $0.0124 rate currently in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 275,000 tons (247,500,000 kernelweight pounds merchantable), and the budget is about 5 percent less than last year's budget. Thus, sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for the 2002–03 year include $2,438,403 for program expenses, including marketing and production research projects, $333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, $80,500 for office expenses, $79,500 for other operating expenses, and $38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001–02 were $2,566,569 for program expenses including marketing and production research projects, $313,200 for employee expenses, $130,600 for office expenses, $76,000 for other operating expenses, and $38,431 as a reserve for a contingency, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 247,500,000 kernelweight pounds which should provide $2,970,000 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2002–03 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,800 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Currently industry information shows that 14 of the 43 handlers (32.5 percent) shipped over $5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under $5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 58 walnut producers, or about 1 percent of the 5,800 total producers, would be considered large producers with annual income over $750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2002–03 expenditures of $2,970,000. The decreased assessment rate should generate sufficient income to meet the Board's 2002–03 anticipated expenses. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget.

Major categories in the budget recommended by the Board for the 2002–03 year include $2,438,403 for program expenses, including marketing and production research projects, $333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, $80,500 for office expenses, $79,500 for other operating expenses, and $38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001–02 were $2,566,569 for program expenses including marketing and production research projects, $313,200 for employee expenses, $130,600 for office expenses, $76,000 for other operating expenses, and $38,431 as a reserve for a contingency, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended $0.0120 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 247,500,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2002–03 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2002–03 year as a percentage of total grower revenue could range between 1.7 and 2.5 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all

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issues. Like all Board meetings, the September 13, 2002 meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002–03 marketing year began on August 1, 2002, and the order requires that the rate of assessment for each marketing year apply to all merchantable walnuts handled during the year; (2) this action decreases the assessment rate for merchantable California walnuts; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984–WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.0120 per kernelweight pound is established for California merchantable walnuts.

Dated: November 14, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29601 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–4 FIR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 2002–03 and subsequent crop years from $2.80 to $2.60 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 2002–03 and subsequent crop years from $2.80 per ton to $2.60 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 27, 2002, and unanimously recommended 2002–03 expenditures of $386,880 and an assessment rate of $2.60 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were $384,370. The assessment rate of $2.60 per ton is $0.20 lower than the rate currently in effect. The $0.20 per ton decrease in the assessment rate will allow the Committee to meet its 2002–03 expenses. The Committee was able to recommend a lower assessment rate this year because salable prune production this year is expected to be 148,800 tons, 16,750 tons higher than production last year. Although 2002–03 recommended expenses are slightly higher than 2001–02 expenses, an assessment rate of $2.60 per ton will provide sufficient funds for Committee operations this year.

The following table compares major budget expenditures recommended by the Committee on June 27, 2002, and major budget expenditures in the revised 2001–02 budget.

Budget expense categories	2001–02 (Revised)	2002–03
Total Personnel Salaries	$226,315	$232,575
Total Operating Expenses	123,700	136,850
Reserve for Contingencies	34,355	17,455

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated at 148,800 salable tons, which should provide $386,880 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Interest income also will be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 2001–02 crop year (currently estimated at $76,878) for up to 5 months beyond the end of the crop year to meet 2001–02 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated prune industry profile shows that 9 of the 24 handlers (37.5%) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5%) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3% of the 1,205 total producers, will be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from $2.80 per ton to $2.60 per ton of salable dried prunes. The Committee unanimously recommended 2002–03 expenditures of $386,880 and an assessment rate of $2.60 per ton of salable dried prunes. The assessment rate is $0.20 lower than the previous rate. The quantity of assessable dried prunes for the 2002–03 crop year is now estimated at 148,800 salable tons. Thus, the $2.60 rate should provide $386,880 in assessment income and be adequate to meet this year's expenses. Interest income also will be available to cover budgeted expenses if the 2002–03 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 27, 2002, and major budget expenditures in the revised 2001–02 budget.

Major budget expense categories	2001–02 (Revised)	2002–03
Total Personnel Salaries	$226,315	$232,575
Total Operating Expenses	123,700	136,850

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Major budget expense categories	2001–02 (Revised)	2002–03
Reserve for Contingencies	34,355	17,455

The Committee reviewed and unanimously recommended 2002–03 expenditures of $386,880. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee. An alternative to this action would be to continue with the $2.80 per ton assessment rate, but the anticipated larger crop, with an assessment rate of $2.80 per ton, would generate monies in excess of that needed to fund all the budget items. The assessment rate of $2.60 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 2001–02 crop year (currently estimated at $76,878) for up to 5 months beyond the end of the crop year to fund 2002–03 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 2002–03 will be adequate to cover authorized expenses.

The grower price for the 2002–03 season is expected to average above the estimated 2001–02 average grower price of about $750 per salable ton of dried prunes. Based on estimated shipments of 148,800 salable tons, assessment revenue during the 2002–03 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 27, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on August 15, 2002 (67 FR 53293). Copies of that rule were also mailed or sent via facsimile to all prune handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 15, 2002, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 993 which was published at 67 FR 53293 on August 15, 2002, is adopted as a final rule without change.

Dated: November 13, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29532 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB65

Demand Side Management and Renewable Energy Systems

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is removing its regulations which detail separate policies and requirements for loans for renewable energy systems and demand side management. Many of these requirements overlap provisions found elsewhere in part 1710. Others do not seem well suited for the smaller scale projects of this type that are becoming increasingly common in the industry. RUS believes that it is more appropriate to consider such small scale projects in this rapidly developing segment of the energy industry by proceeding on a case-by-case basis. By contrast, the balance of part 1710 affords a useful framework for considering utility-scale energy projects without regard to whether they are for demand side management or renewable resources.

EFFECTIVE DATES: November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Georg A. Shultz, Chief, Energy Forecasting Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. Telephone: (202) 720–1921. FAX: (202) 720–7491. E-mail: *gshultz@rus.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted before an action against the Department or its agencies.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Information Collection and Recordkeeping Requirements

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

Background

The Rural Utilities Service (RUS) is removing from part 1710 of its regulations entitled "General and Pre-Loan Policies and Procedures" subpart H thereof, which separately treats demand side management and renewable energy systems. Subpart H has seldom been used. Since it was first promulgated in 1994, RUS has averaged less than one of these loans a year. More recently, changes in the energy industry and technological advances have produced increased interest in utilizing these approaches for smaller scaled projects and projects employing innovative technologies. However, subpart H with its requirements for such things as integrated resource plans (IRP's) and demand side management plans present formidable barriers for the development of smaller projects. Furthermore, the usefulness of such traditional analytical devices in today's radically changed energy industry has become questionable. In addition, projects of this sort often possess unique attributes that make the application of detailed regulations impractical and sometimes even counterproductive. For example, subpart H precludes the use of innovative technologies. See 7 CFR 1710.351(a) and 1710.353. For all of these reasons, RUS believes that subpart H has become unjustified and unnecessary as a result of changed circumstances and should be removed or substantially revised.

After considering the low volume of loan requests RUS receives annually for these loans, the disparate nature of the projects that can be characterized as demand side management or renewable energy systems, and the rapidly evolving nature of this industry, RUS has determined that the removal of subpart H is the better alternative. Accordingly, RUS will proceed case-by-case in considering requests for demand side management and renewable energy system loans.

RUS expects that utility scale projects will continue to conform to the remaining provisions of part 1710 establishing its general and pre-loan policies and procedures. RUS recognizes that the particular circumstances of an individual project may necessitate adjustments in the application or interpretation of its general polices and procedures to specific demand side management or renewable energy systems loans regardless of scale. The Administrator may, of course, waive or reduce any requirement imposed by part 1710 by resorting to the exception authority contained in the rule itself. See 7 CFR 1710.4. In light of their rarity so far, RUS anticipates that it may be necessary to interpret the application of part 1710 to utility scale demand side management and renewable energy system loans on a somewhat frequent basis at first. RUS will treat small-scale projects as pilot projects for which the remainder of part 1710 will serve merely as guidance. As used in this rule, "small scale project" refers to projects requesting loans less than $5 million or generating less than 10 MW (nameplate rating). "Utility scale project" refers to everything else.

As RUS acquires greater experience with loans for demand side management and renewable energy systems, it may reissue regulations on this subject in the event that the volume of loans requests or the number of recurring issues raised warrant it. Accordingly, subpart H is being reserved.

A proposed rule was issued April 25, 2001, at 66 FR 20759, inviting comments this action. The comment period for this proposed rule ended May 25, 2001. Only one comment was received. The Regulatory Flexibility Act Certification discussion has been modified in the Supplementary Information section of this final rule to respond to the comment. No changes where made to the text of the rule from that as proposed.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RUS amends 7 CFR chapter XVII, part 1710, as follows:

PART 1710—GENERAL AND PRELOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

Subpart H—Demand Side Management and Renewable Energy Systems

§§ 1710.350–1710.363 (Subpart H) [Removed and Reserved]

2. Remove and reserve subpart H.

Dated: November 13, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–29598 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710 and 1717

RIN 0572–AB68

Exceptions of RUS Operational Controls Under Section 306E of the RE Act

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

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SUMMARY: In an effort to streamline requirements of borrowers and make regulations simple and direct, the Rural Utilities Service (RUS) will eliminate regulations on Exceptions of RUS Operational Controls under Section 306E of the RE Act in its entirety. Because borrowers are now afforded the same exemptions of RUS operational controls by way of other provisions, RUS has determined that the regulation can now be removed from its regulations.

DATES: This rule will become effective on December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick R. Sarver, Management Analyst, Rural Utilities Service, Electric Program, Room 4024 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–690–2992, FAX: 202–690–0717, E-mail: *psarver@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees from coverage were not covered by Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before and action against the Department or its agencies.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Background

On May 24, 2002, at 67 FR 101, RUS published a proposed rule, 7 CFR Part 1710 and 1717, Exceptions of RUS Operational Controls Under Section 306E of the RE Act, which proposed the elimination of 7 CFR 1710.7. RUS currently treats the general subject of operational controls for recipients of electric loans and guarantees in three separate places, namely in RUS loan documents, in 7 CFR part 1717, subpart M, and in 7 CFR 1710.7. In the interest of eliminating confusion and to continue in its ongoing program to streamline RUS regulations, RUS will eliminate 7 CFR 1710.7.

Written comments were received June 24, 2002, from Tex-LA Electric Cooperative of Texas, Inc., Northeast Texas Electric Cooperative, Inc, and Sam Rayburn G&T Electric Cooperative, Inc., on behalf of themselves and their respective member distribution cooperatives. The three cooperatives support the removal of 7 CFR 1710.7 and provided additional comments on regulations not covered in this rulemaking. Specifically the cooperatives ask that more precise reference be made throughout the regulations when the phrase "other RUS regulations" is used as reference. The three cooperatives also ask that RUS take the opportunity to correct a typographical error found in 7 CFR 1717.615 (f)(2). RUS agrees with the comments made by the three cooperatives that whenever possible, precise reference to other sections of the regulations should be made instead of a more general statement and will continue to make rules with clear reference to other sections of its regulations as appropriate. RUS will also take this opportunity to correct the typographical error that was identified.

In this rulemaking, as presented in the proposed rule, it appears that 7 CFR 1710.7 has become an anachronism because the subsequent promulgation of new loan documents and subpart M effectively conferred the benefits of 7 CFR 1710.7 to all borrowers. Borrowers who are relying on subpart M are encouraged to switch to the new forms of loan documents so that subpart M itself can eventually be removed at a later date once the universe of legacy borrowers has sufficiently contracted to the point that any remaining legacy borrowers could be dealt with either informally or on a case-by-case basis. RUS does not believe this action will diminish or abrogate any rights or privileges conferred upon 110 percent borrowers by section 306e of the RE Act, and no such consequences are intended.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter X of title 7 of the Code of Federal Regulations, RUS amends 7 CFR parts 1710 and 1717 as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart A—General

§ 1710.7 [Removed and Reserved]

2. Section 1710.7 is removed and reserved.

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

3. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart S—Lien Accommodations for Supplemental Financing Required by 7 CFR 1710.110

4. Section 1717.615(f)(2) is revised to read as follows:

§ 1717.615 Consolidations and Mergers.

* * * * *

(f) * * *

(2) A pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years;

§ 1717.904 [Amended]

5. Section 1717.904 is amended by removing paragraphs (c) and (d) and redesignating paragraph (e) as paragraph (c).

Dated: November 13, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–29597 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–7]

Modification of Class D Airspace; Knob Noster, Whiteman AFB, MO; Modification of Class E Airspace; Knob Noster, Whiteman AFB, MO; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the effective date of a final rule that was published in the **Federal Register** on Friday, October 25, 2002 (67 FR 65498). The rule modifies Class D and Class E airspace at Knob Noster, Whiteman AFB, MO.

EFFECTIVE DATE: January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 02–27176 published on Friday, October 25, 2002, (67 FR 65498) modifies Class D and Class E airspace at Knob Noster, Whiteman AFB, MO.

Correction of Publication

Accordingly, pursuant to the authority delegated to me, the effective date of the modification of Class D and Class E airspace, Knob Noster, Whiteman AFB, MO, as published in the **Federal Register** Friday, October 25, 2002, (67 FR 65498), (FR Doc. 02–27176), is corrected as follows:

§ 71.1 [Corrected]

On page 65498, Column 2, EFFECTIVE DATE paragraph, after EFFECTIVE DATE: Change "0902 UTC, December 26, 2002." to read "0901 UTC, January 23, 2003."

Issued in Kansas City, MO, on October 29, 2002.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–29457 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–26]

Amendment of Class E5 Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Memphis, TN. The Twinkletown Airport, within the Memphis, TN, Class E5 airspace area, has closed. Therefore, the Memphis, TN, Class E5 legal description must be amended to reflect the closure.

DATES: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The Twinkletown Airport, within the Memphis, TN, Class E5 airspace area, has closed. Therefore, the Memphis, TN, Class E5 legal description must be amended to reflect the closure. This amendment will become effective on the date specified in the **DATE** section. Since this action has no impact on the users of the airspace in the vicinity of the Memphis, TN, Class E5 airspace area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Designations for Class E are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Memphis, TN.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February

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26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, incorporated by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Memphis, TN [REVISED]

Memphis International Airport, TN
Lat. 35°02′33″ N, long. 89°58′36″ W
Olive Branch Airport
Lat. 34°58′44″ N, long. 89°47′13″ W
West Memphis Municipal Airport
Lat. 35°08′06″ N, long. 90°14′04″ W
General DeWitt Spain Airport
Lat. 35°12′02″ N, long. 90°03′14″ W
Elvis NDB
Lat. 35°03′41″ N, long. 90°04′18″ W
West Memphis NDB
Lat. 35°08′22″ N, long. 90°13′57″ W

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles each side of the 179° bearing from the Elvis NDB extending from the 8-mile radius to 7 miles south of the NDB, and within a 7.5-mile radius of Olive Branch Airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 2.5 miles each side of the 198° and 352° bearings from the West Memphis NDB extending from the 6.5-mile radius to 7.4 miles north and south of the NDB, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Milington, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on November 6, 2002.

Marvin Burnette,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–29456 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30339; Amdt. No. 3031]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 21, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on November 8, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, AND VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMS, MLS MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

...Effective November 28, 2002

Searcy, AR, Searcy Muni, RNAV (GPS) RWY 1, Orig
Searcy, AR, Searcy Muni, RNAV (GPS) RWY 19, Orig
Searcy, AR, Searcy Muni, NDB RWY 1, Amdt 4
Searcy, AR, Searcy Muni, GPS RWY 19, Amdt 1B, CANCELLED
Sacramento, CA, Sacramento Mather, ILS RWY 22L, Amdt 3
Jacksonville, FL, Cecil Field, ILS RWY 36R, Orig
Olney-Noble, IL, Olney-Noble, LOC RWY 11, Amdt 5
Batesville, MS, Panola County, LOC/DME RWY 19, Orig
Picayune, MS, Picayune Muni, NDB RWY 18, Orig
Picayune, MS, Picayune Muni, NDB RWY 36, Orig
Teterboro, NJ, Teterboro, VOR/DME–A, Amdt 2A
Teterboro, NJ, Teterboro, VOR/DME–B, Amdt 2B
Teterboro, NJ, Teterboro, FMS/ILS RWY 6, Orig–B, CANCELLED
Teterboro, NJ, Teterboro, NDB OR GPS RWY 6, Amdt 17C, CANCELLED
Teterboro, NJ, Teterboro, VOR/DME RWY 24, Amdt 8, CANCELLED
Teterboro, NJ, Teterboro, VOR/DME RNAV RWY 24, Orig–C, CANCELLED
Teterboro, NJ, Teterboro, GPW RWY 24, Orig–A, CANCELLED
Teterboro, NJ, Teterboro, RNAV (GPS) RWY 6, Orig
Clayton, NM, Clayton Municipal Airpark, NDB RWY 2, Orig
Clayton, NM, Clayton Municipal Airpark, NDB RWY 20, Orig
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 18, Orig
Dayton, OH, James M. Cox Dayton Intl, RNAV (GPS) RWY 36, Orig
Portland, OR, Portland-Hillsboro, ILS RWY 12, Amdt 6
Meadville, PA, Port Meadville, VOR RWY 7, Amdt 7
Meadville, PA, Port Meadville, LOC RWY 25, Amdt 4
Meadville, PA, Port Meadville, GPS RWY 25, Orig-B, CANCELLED
Meadville, PA, Port Meadville, RNAV (GPS) RWY 7, Orig
Meadville, PA, Port Meadville, RNAV (GPS) RWY 25, Orig
Pottstown, PA, Pottstown-Limerick, LOC RWY 28, Amdt 2
Dallas-Fort Worth, TX, Dallas-Forth Worth International, ILS RWY 35C, Amdt 7
Dallas-Fort Worth, TX, Dallas-Forth Worth International, CONVERGING ILS RWY 35C, Amdt 5
Dallas-Fort Worth, TX, Dallas-Forth Worth International, RNAV (GPS) RWY 35C, Orig
Dallas-Fort Worth, TX, Dallas-Forth Worth International, GPS RWY 35C, Orig-A, CANCELLED

...Effective December 26, 2002

Grand Isle, LA, Grande Isle Seaplane Base, NDB OR GPS–B, Amdt 9A, CANCELLED

...Effective January 23, 2003

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 26, Orig
Needles, CA, Needles, VOR–A, Amdt 3
Needles, CA, Needles, RNAV (GPS) RWY 29, Orig
Rock Rapids, IA, Rock Rapid Muni, NDB RWY 16, Amdt 2, CANCELLED
Monroe, LA, Monroe Regional, RADAR–A, Amdt 6
Berrien Springs, MI, Andrews University Airpark, VOR–A, Orig
Brookfield, MO, General John J. Pershing Memorial, NDB OR GPS–A, Amdt 4, CANCELLED
Brookfield, MO, General John J. Pershing Memorial, NDB OR GPS RWY 35, Amdt 4, CANCELLED
Kansas City, MO, Kansas City Intl, ILS RWY 27, Amdt 1
St. Louis, MO, Lambert-St. Louis Intl, VOR/DME RWY 17, Orig-A, CANCELLED
Scottsbluff, NE, Western Nebraska Regional/William B. Heilig Field, LOC BC RWY 12, Amdt 8C, CANCELLED
Taos, NM, Taos Rgnl, NDB RWY 4, Amdt 1
Isabel, OK, McCurtain County Regional, NDB–A Orig
Dallas-Forth Worth, TX, Dallas Fort Worth International, ILS, RWY 36L, Amdt 1
Dallas-Forth Worth, TX, Dallas Fort Worth International, ILS Z RWY 36L, Orig, CANCELLED
Dallas-Forth Worth, TX, Dallas Fort Worth International, CONVERGING ILS RWY 36L, Amdt 1
Dallas-Forth Worth, TX, Dallas Fort Worth International, CONVERGING ILS Z RWY 36L, Orig, CANCELLED

[FR Doc. 02–29448 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30340; Amdt. No. 3032]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 21, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designed FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on November 8, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication

FDC Date	State	City	Airport	FDC Number	Subject
10/24/02	AZ	TUCSON	TUCSON INTL	2/1218	RNAV (GPS) RWY 11L, ORIG
10/25/02	OH	RAVENNA	PORTAGE COUNTY	2/1248	VOR/DME RNAV OR GPS RWY 27, AMDT 2A
10/25/02	OK	HENRYETTA	HENRYETTA MUNI	2/1276	NDB RWY 35, AMDT 2B
10/25/02	OK	HENRYETTA	HENRYETTA MUNI	2/1277	GPS RWY 35, ORIG-A
10/28/02	NV	LAS VEGAS	MCCARRAN INTL	2/1342	RNAV (GPS) RWY 19L, ORIG
10/28/02	NV	LAS VEGAS	MCCARRAN INTL	2/1343	RNAV (GPS) RWY 19R, ORIG
10/29/02	IL	CHAMPAIGN-URBANA.	UNIVERSITY OF ILLINOIS-WILLARD	2/1359	ILS RWY 32L, AMDT 11A
10/29/02	IL	CHAMPAIGN-URBANA.	UNIVERSITY OF ILLINOIS-WILLARD	2/1360	LOC BC RWY 14R, AMDT 7B
10/29/02	IL	CHAMPAIGN-URBANA.	UNIVERSITY OF ILLINOIS-WILLARD	2/1361	VOR/DME OR GPS RWY 22R, AMDT 7B
10/29/02	IL	CHAMPAIGN-URBANA.	UNIVERSITY OF ILLINOIS-WILLARD	2/1362	VOR OR GPS RWY 4L, AMDT 11
10/29/02	IL	CHAMPAIGN-URBANA.	UNIVERSITY OF ILLINOIS-WILLARD	2/1363	NDB OR GPS RWY 32L, AMDT 10B
10/29/02	IL	CHAMPAIGN-URBANA.	UNIVERSITY OF ILLINOIS-WILLARD	2/1364	RADAR INSTRUMENT APPROACH MINIMUMS, AMDT 6
10/29/02	TX	MOUNT PLEASANT	MOUNT PLEASANT	2/1366	RNAV (GPS) RWY 35, ORIG
10/29/02	TX	MOUNT PLEASANT	MOUNT PLEASANT	2/1367	RNAV (GPS) RWY 17, ORIG
10/29/02	FL	MIAMI	KENDALL-TAMIAMI EXECUTIVE	2/1382	NDB OR GPS RWY 9R, AMDT 1A
10/29/02	WI	BELOIT	BELOIT	2/1386	VOR OR GPS-A, AMDT 5A
10/29/02	IL	FLORA	FLORA	2/1391	NDB RWY 21, AMDT 5
10/29/02	IL	FLORA	FLORA	2/1392	LOC/DME RWY 21, ORIG
10/30/02	NC	HICKORY	HICKORY REGIONAL	2/1428	VOR/DME RWY 24, ORIG
10/31/02	NY	NEWBURGH	STEWART INTL	2/1463	ILS RWY 27, ORIG-A
11/01/02	WY	LARAMIE	LARAMIE REGIONAL	2/1522	VOR/DME OR TACAN OR GPS RWY 30, AMDT 6A
11/01/02	WY	LARAMIE	LARAMIE REGIONAL	2/1523	VOR OR TACAN OR GPS RWY 13, AMDT 5A
11/04/02	MI	SAGINAW	SAGINAW COUNTY H.W. BROWN	2/1640	RNAV (GPS) RWY 27, ORIG

[FR Doc. 02–29447 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 021106271–2271–01]

RIN 0694–AC72

Corrections to Rule Entitled: Missile Technology Production Equipment and Facilities

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: On September 18, 2002, the Bureau of Industry and Security (BIS) published a final rule clarifying that all missile technology (MT) production equipment and facilities are controlled on the Commerce Control List. This rule corrects errors in the List of Items Controlled sections.

DATES: This rule is effective November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich in the Office of Exporter Services, Bureau of Industry and Security, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: This document corrects two errors in the List of Items Controlled sections for Export Controlled Classification Numbers (ECCNs) 9B115 and 9B116, which were revised in a final rule that was published by the Bureau of Industry and Security (BIS) on September 18, 2002 (67 FR 58691).

The **SUPPLEMENTARY INFORMATION** section of the September 18, 2002 rule stated that BIS was revising the headings for ECCNs 9B115 and 9B116 and adding a List of Items Controlled section to those ECCNs to clarify that all missile technology production equipment and facilities are subject to the Export Administration Regulations (EAR) and controlled on the Commerce Control List (CCL). The September 18, 2002 rule inadvertently omitted ECCN 9A011 from the List of Items Controlled sections of ECCNs 9B115 and 9B116, although it appears in the headings of those ECCNs. This document corrects that oversight.

In addition, this rule corrects for an inadvertent omission by adding the

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"Related Definitions" paragraph for these respective ECCNs.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications as this term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Matthew Blaskovich, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or *mblaskov@bis.doc.gov*. Accordingly, in the final rule FR Doc. 02–23716 (Doc. 020830206–2206–01) published at 67 FR 58691, make the following corrections:

PART 774—[CORRECTED]

Supplement No. 1 to Part 774—[Corrected]

1. On page 58692, third column, in the List of Items Controlled for ECCN 9B115, the following paragraphs are corrected to read as follows:

9B115 Specially designed "production equipment" for the systems, sub-systems and components controlled by 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119.

* * * * *

List of Items Controlled

Unit: * * *.

Related Controls: Although items described in ECCNs 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109; 9A111, 9A116 to 9A119 are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121), the "production equipment" controlled in this entry that is related to these items is subject to the export licensing authority of BIS.

Related Definitions: NA.

Items: The list of items controlled is contained in the ECCN heading.

2. On page 58692, third column, in the List of Items Controlled for ECCN 9B116, the following paragraphs are corrected to read as follows:

9B116 Specially designed "production facilities" for the systems, sub-systems, and components controlled by 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119.

* * * * *

List of Items Controlled

Unit: * * *.

Related Controls: Although items described in ECCNs 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109; 9A111, 9A116 to 9A119 are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121), the "production equipment" controlled in this entry that is related to these items is subject to the export licensing authority of BIS.

Related Definitions: NA.

Items: The list of items controlled is contained in the ECCN heading.

Dated: November 14, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services, Export Administration.

[FR Doc. 02–29512 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM03–1–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 14, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 2002 through September 30, 2003 the fees in this notice will become effective October 1, 2002. The fees will apply to fiscal year 2003 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry, Financial Services Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6108.

SUPPLEMENTARY INFORMATION:

Document Availability:

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for FERRIS and the FERC Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 804(2).

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director, Office of the Executive Director.

Accordingly, the Commission, effective October 1, 2002, amends part 11 of chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 11—[AMENDED]

1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In part 11, appendix A is revised to read as follows:

Appendix A to Part 11—Fee Schedule for FY 2003

State/County	Rate per acre
Alabama:	
All counties	$26.25
Arkansas:	
All counties	19.69
Arizona:	
Apache	6.54
Cochise	
Gila	
Graham	
La Paz	
Mohave	
Navajo	
Pima	
Yavapai	
Yuma	
Coconino (north of Colorado R.)	
Coconino (south of Colorado R.)	26.25
Greenlee	
Maricopa	
Pinal	
Santa Cruz	
California:	
Imperial	13.12
Inyo	
Lassen	
Modoc	
Riverside	
San Bernardino	
Siskiyou	19.69
Alameda	32.81
Alpine	
Amador	
Butte	
Calaveras	
Colusa	
Contra Costa	
Del Norte	
El Dorado	
Fresno	
Glenn	
Humboldt	
Kern	32.81
Kings	
Lake	
Madera	
Mariposa	
Mendicino	
Merced	
Mono	
Napa	
Nevada	
Placer	
Plumas	
Sacramento	
San Benito	
San Joaquin	
Santa Clara	
Shasta	
Sierra	
Solano	
Sonoma	
Stanislaus	
Sutter	
Tehama	
Trinity	
Tulare Kings	
Tuolumne	
Yolo	
Yuba	
Los Angeles	39.39
Marin	
Monterey	
Orange	
San Diego	
San Francisco	
San Luis Obispo	
San Mateo	
Santa Barbara	
Santa Cruz	
Ventura	
Colorado:	
Adams	6.54
Arapahoe	
Bent	
Cheyenne	
Crowley	
Elbert	
El Paso	
Huerfano	
Kiowa	
Kit Carson	
Lincoln	6.54
Logan	
Moffat	
Montezuma	
Morgan	
Pueblo	
Sedgewick	
Washington	
Weld	
Yuma	
Baca	13.12
Broomfield [1]	
Dolores	
Garfield	
Las Animas	
Mesa	
Montrose	
Otero	
Prowers	
Rio Blanco	
Routt	
San Miguel	
Alamosa	26.25
Archuleta	
Boulder	
Chaffee	
Clear Creek	
Conejos	
Costilla	
Custer	
Denver	
Delta	
Douglas	
Eagle	
Fremont	
Gilpin	
Grand	
Gunnison	
Hinsdale	
Jackson	
Jefferson	
Lake	
La Plata	
Larimer	
Mineral	
Ouray	
Park	
Pitkin	
Rio Grande	
Saguache	
San Juan	26.25
Summit	
Teller	
Connecticut:	
All Counties	6.54
Florida:	
Baker	39.39
Bay	
Bradford	
Calhoun	
Clay	
Columbia	
Dixie	
Duval	
Escambia	
Franklin	
Gadsden	
Gilchrist	
Gulf	
Hamilton	
Holmes	
Jackson	
Jefferson	
Lafayette	
Leon	
Liberty	
Madison	
Nassau	
OKaloosa	
Santa Rosa	
Suwannee	
Taylor	
Union	
Wakulla	

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State/County	Rate per acre
Walton	
Washington	
All Other Counties	65.61
Georgia:	
All Counties	39.39
Idaho:	
Cassia	6.54
Gooding	
Jerome	
Lincoln	
Minidoka	
Oneida	
Owyhee	
Power	
Twin Falls	
Ada	$19.69
Adams	19.69
Bannock	19.69
Bear Lake	19.69
Benewah	19.69
Bingham	19.69
Blaine	19.69
Boise	19.69
Bonner	19.69
Bonneville	19.69
Boundary	19.69
Butte	19.69
Camas	19.69
Canyon	19.69
Caribou	19.69
Clark	19.69
Clearwater	19.69
Custer	19.69
Elmore	19.69
Franklin	19.69
Fremont	19.69
Gem	19.69
Idaho	19.69
Jefferson	19.69
Kootenai	19.69
Latah	19.69
Lemhi	19.69
Lewis	19.69
Madison	19.69
Nez Perce	19.69
Payette	19.69
Shoshone	19.69
Teton	19.69
Valley	19.69
Washington	19.69
Illinois:	
All counties	19.69
Indiana:	
All counties	32.81
Kansas:	
Morton	13.12
All other counties	6.54
Kentucky:	
All counties	19.69
Louisiana:	
All counties	39.39
Maine:	
All counties	19.69
Michigan:	
Alger	19.69
Baraga	19.69
Chippewa	19.69
Delta	19.69
Dickinson	19.69
Gogebic	19.69
Houghton	19.69
Iron	19.69
Keweenaw	19.69
Luce	19.69
Macking	19.69
Marquette	19.69
Menominee	19.69
Ontonagon	19.69
Schoolcraft	19.69
All other counties	26.25
Minnesota:	
All counties	19.69
Mississippi:	
All counties	26.25
Missouri:	
All counties	19.69
Montana:	
Big Horn	6.54
Blaine	6.54
Carter	6.54
Cascade	6.54
Chouteau	6.54
Custer	6.54
Daniels	6.54
Mccone	6.54
Meagher	6.54
Dawson	6.54
Fallon	6.54
Fergus	6.54
Garfield	6.54
Glacier	6.54
Golden Valley	6.54
Hill	6.54
Judith Basin	6.54
Liberty	6.54
Musselshell	6.54
Petroleum	6.54
Phillips	6.54
Pondera	6.54
Powder River	6.54
Prairie	6.54
Richland	6.54
Roosevelt	6.54
Rosebud	6.54
Sheridan	6.54
Teton	6.54
Toole	6.54
Treasure	6.54
Valley	6.54
Wheatland	6.54
Wibaux	6.54
Yellowstone	6.54
Beaverhead	19.69
Broadwater	19.69
Carbon	19.69
Deer Lodge	19.69
Flathead	19.69
Gallatin	19.69
Granite	19.69
Jefferson	19.69
Lake	19.69
Lewis & Clark	19.69
Lincoln	19.69
Madison	19.69
Mineral	19.69
Missoula	19.69
Park	19.69
Powell	19.69
Ravalli	19.69
Sanders	19.69
Silver Bow	19.69
Stillwater	19.69
Sweet Grass	19.69
Nebraska:	
All counties	6.54
Nevada:	
Churchill	8.28
Clark	3.28
Elko	3.28
Esmeralda	3.28
Eureka	3.28
Humboldt	3.28
Lander	3.28
Lincoln	3.28
Lyon	3.28
Mineral	3.28
Nye	3.28
Pershing	3.28
Washoe	3.28
White Pine	3.28
Carson City	32.81
Douglas	32.81
Story	32.81
New Hampshire:	
All counties	19.69
New Mexico:	
Chaves	6.54
Curry	6.54
De Baca	6.54
Dona Ana	6.54
Eddy	6.54
Grant	6.54
Guadalupe	6.54
Harding	6.54
Hidalgo	6.54
Lea	6.54
Luna	6.54
McKinley	6.54
Otero	6.54
Quay	6.54
Roosevelt	6.54
San Juan	6.54
Socorro	6.54
Torrence	6.54
Rio Arriba	13.12
Sandoual	13.12
Union	13.12
Bernalillo	26.25
Catron	26.25
Cibola	26.25
Colfax	26.25
Lincoln	26.25
Los Alamos	26.25
Mora	26.25
San Miguel	26.25
Santa Fe	26.25
Sierra	26.25
Taos	26.25
Valencia	26.25
New York:	
All counties	26.25
North Carolina:	
All counties	39.39
North Dakota:	
All counties	6.54
Ohio:	
All counties	26.25
Oklahoma:	
Beaver	13.12
Cimarron	13.12
Roger Mills	13.12
Texas	13.12
LeFlore	19.69
McCurtain.	
All other counties	6.54
Oregon:	
Harney	6.54
Lake	
Malheur	
Baker	13.12

State/County	Rate per acre
Crook	
Deschutes	
Gilliam	
Grant	
Jefferson	
Klamath	
Morrow	
Sherman	
Umatilla	
Union	
Wallowa	
Wasco	
Wheeler	
Coos	19.69
Curry	
Douglas	
Jackson	
Josephine	
Benton	26.25
Clackamas	
Clatsop	
Columbia	
Hood River	
Lane	
Lincoln	
Linn	
Marion	
Multnomah	
Polk	
Tillamook	
Washington	
Yamhill	
Pennsylvania:	
All counties	26.25-
Puerto Rico:	
All	39.39
South Carolina:	
All counties	39.39
South Dakota:	
Butte	19.69
Custer	
Fall river	
Lawrence	
Mead	19.69
Pennington	
All other counties	6.54
Tennessee:	
All counties	26.25
Texas:	
Culberson	6.54
El Paso	
Hudspeth	
All other counties	39.39
Utah:	
Beaver	6.54
Box Elder	
Carbon	
Duchesne	
Emery	
Garfield	
Grand	
Iron	
Juab	
Kane	
Millard	
San Juan	
Tooele	
Uintah	
Wayne	
Washington	13.12
Cache	19.69
Daggett	
Davis	
Morgan	
Piute	
Rich	
Salt Lake	
Sanpete	
Sevier	
Summit	
Utah	
Wasatch	
Weber	
Vermont:	
All counties	26.25
Virginia:	
All counties	26.25
Washington:	
Adams	13.12
Asotin	
Benton	
Chelan	
Columbia	
Douglas	
Franklin	
Garfield	
Grant	
Kittitas	
Klickitat	
Lincoln	
Okanogan	
Spokane	
Walla Walla	
Whitman	
Yakima	
Ferry	19.69
Pend Oreille	
Stevens	
Clallam	26.25
Clark	
Cowlitz	
Grays Harbor	
Island	
Jefferson	
King	
Kitsap	
Lewis	
Mason	
Pacific	
Pierce	
San Juan	
Skagit	
Skamania	
Snohomish	
Thurston	
Wahkiakum	
Whatcom	
West Virginia:	
All Counties	26.25
Wisconsin:	
All Counties	19.69
Wyoming:	
Albany	6.54
Campbell	
Carbon	
Converse	
Goshen	
Hot Springs	
Johnson	6.54
Laramie	
Lincoln	
Natrona	
Niobrara	
Platte	
Sheridan	
Sweetwater	
Fremont	
Sublette	
Uinta	
Washakie	
Big Horn	19.69
Crook	
Park	
Teton	
Weston	
All Other Zones:	6.20

[1] Note: Broomfield County created November 2001 from parts of Adams, Boulder, Jefferson and Weld Counties.

[FR Doc. 02-29400 Filed 11-20-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA-99-6190]

RIN 2125-AE67

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; amendment.

SUMMARY: This document corrects the final rule on color specifications published in the **Federal Register** on July 31, 2002 (67 FR 49569). The FHWA is removing the sentence that requires the traffic control materials to maintain the color and luminance factors throughout the service life and making a typographical correction to a number in one of the color tables.

EFFECTIVE DATE: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Ernest Huckaby, Office of Transportation Operations (HOTO), (202) 366-9064. For legal information: Mr. Raymond Cuprill, Office of the Chief Counsel (HCC-40), (202) 366-0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the final rule, the NPRM, and all comments received may be viewed online through the Document Management System (DMS) at: *http://*

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dms.dot.gov. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's web page at: *http://www.access.gpo.gov*.

Background

The final rule on Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials, was published in the **Federal Register** on July 31, 2002, at 67 FR 49569. This final rule went into effect on August 30, 2002. In response to the final rule, we received 17 comments to the docket. These comments are discussed below.

Discussion of Comments to the Final Rule

Several docket comments to the Notice of Proposed Amendment, published in the **Federal Register** on December 21, 1999, stated that the FHWA did not specify if the specifications were for "service life" or new product installation. As a result of these comments, the FHWA published the final rule inserting "service life" of the product without providing further justification. The FHWA received 17 comments submitted to the docket as a result of the final rule (9 from State and local DOTs; 2 from industry; 3 from associations; 3 from other individuals). The FHWA received significant comments from the American Association of State Highway and Transportation Officials (ASSHTO), the National Association of County Engineers (NACE), the National Committee on Uniform Traffic Control Devices Markings Technical Subcommittee, and several State and local highway agencies that objected to the FHWA inserting the language "service life" into the final rule. These commenters stated that the FHWA did not provide sufficient research results or further justification for such a requirement. Additionally, these commenters did not believe there was sufficient opportunity for public comment before the FHWA adopted this requirement.

These commenters went on to indicate that traditionally, color specifications are considered as initial values only and are used only in the acceptance of new materials. By specifically stating that the color specifications apply throughout the service life of signs and markings, these commenters believe that the FHWA has significantly changed the traditional application of color specifications and placed additional burden on transportation agencies.

The FHWA believes these comments received after publication of the final rule have merit and warrant immediate correction to the final rule. The FHWA made some initial assumptions about maintenance of traffic control devices and was not fully aware of the economic impact that the State and local jurisdictions may face. We agree that this "service life" requirement, without an extended phase-in compliance period, may have an unknown economic impact on compliance with these specifications. Therefore, the FHWA is removing this language from the appendix to subpart F of Part 655.

Furthermore, the FHWA plans to undertake a study on color fastness testing, to include weathering studies, and human factors studies related to color recognition by motorists. The FHWA anticipates that this will be a multi-year research effort.

The Reflexite Corporation advised the FHWA of a typographical error in table 2 to the appendix to part 655, subpart F—Nighttime Color Specification Limits for Retroreflective Material with CIE 2° Standard Observer and Observation Angle of 0.33°, Entrance Angle of +5° and CIE Standard Illuminant A. The first value for the color blue was mistakenly typed incorrectly while the table was being reformatted from the notice of proposed rulemaking (NPRM).

Therefore, the FHWA is correcting the typographical error. The first "x" coordinate value for the color "blue" is corrected to read "0.033" instead of "0.33". The value "0.033" was correctly stated in the NPRM.

We also received a comment from the Virginia Department of Transportation (VDOT) regarding the use of Color Tolerance Charts as a valid source for daytime color measurement. The VDOT believes that the color tolerance charts for assessing nighttime color is not appropriate as the traditional highway color charts were developed for painted signs with button copy legend and thus are not even suitable for daytime color retroreflective materials.

The FHWA will have to address this issue through a separate rulemaking to solicit public comment.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The amendment of the final rule is considered a ministerial correction with no economic impact expected.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated above, the removal of the language "service life" will alleviate the concerns surrounding the unknown economic impact on complying with this requirement. The minor correction to the first value of the color blue in Table 2 is considered editorial in nature. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq*).

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: November 12, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, as follows:

PART 655—[AMENDED]

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Appendix to Subpart F of Part 655—[AMENDED]

2. Amend paragraph number 6 by removing the second sentence.

3. Amend table 2 by correcting the first value for the color "blue" to read "0.033".

[FR Doc. 02–29443 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF JUSTICE

28 CFR part 16

[AAG/A Order No. 297–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records entitled "Personnel Investigation and Security Clearance Records for the Department of Justice (DOJ), DOJ–006," from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). The Department also will delete as obsolete provisions exempting two former Justice Management Division systems of records entitled "Security Clearance Information System (SCIS) (JUSTICE/JMD–008)," and "Freedom of Information/Privacy Act Records System (JUSTICE/JMD–019)." The records in JMD–019 are now covered by DOJ–004.

EFFECTIVE DATE: This final rule is effective November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Cahill at 202–307–1823.

SUPPLEMENTARY INFORMATION: On September 24, 2002 (67 FR 59798) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR Part 16 is amended as follows:

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, and 9701.

§ 16.76 [Amended]

2. Section 16.76 is amended by removing paragraphs (c), (d), (e), (f), (g) and (h).

Subpart E—Exemption of Records Systems Under the Privacy Act

3. Section 16.132 is added to subpart E to read as follows:

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§ 16.132 Exemption of Department of Justice System—Personnel Investigation and Security Clearance Records for the Department of Justice (DOJ), DOJ–006.

(a) The following Department of Justice system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1),(2),(3),(5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k): Personnel Investigation and Security Clearance Records for the Department of Justice (DOJ), DOJ–006. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) *Subsection (c)(3).* To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1).* Disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Disclosure may also reveal information relating to actual or potential criminal investigations. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2).* Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(8) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: November 14, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–29615 Filed 11–20–02; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 776

RIN 0703–AA70

Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This final rule amends regulations concerning the professional conduct of attorneys practicing law under the cognizance and supervision of the Judge Advocate General of the Navy by incorporating several changes and revising the regulations. This revision will ensure the professional supervision of judge advocates, military trial and appellate military judges, and other lawyers who practice in Department of the Navy proceedings and other legal programs.

DATES: Effective November 21, 2002.

FOR FURTHER INFORMATION CONTACT: LCDR Jason Baltimore, Legislation and Regulations Branch, Administrative Law Division (Code 13), Office of the Judge Advocate General, 1322 Patterson Avenue, SE., Suite 3000, Washington Navy Yard, Washington, DC 20374–5066, (703) 604–8208.

SUPPLEMENTARY INFORMATION: This part establishes policy, assigns responsibilities, and prescribes procedures for attorneys practicing law under the supervision of the Judge Advocate General (JAG) for relations with non-DOD civilian counsel, petitions for outside law practice of naval service attorneys, and a description of the complaint processing procedure. This part ensures that attorneys practicing law under the supervision of the JAG will be provided with rules of professional conduct with which they must comply in order to remain in "good standing."

Although the rules of professional conduct do not apply to non-lawyers, they do define the type of ethic conduct that the public and the military community have a right to expect not only of lawyers but also of their non-lawyer employees. It has been determined that invitation of public comment on these changes to the JAG's Instruction prior to adoption would be impractical and unnecessary, and is therefore not required under the public rule-making provisions of 32 CFR parts 336 and 701. However, interested persons are invited to comment in writing. Written comments received will be considered in making amendments or revisions to 32 CFR 776 or the JAG Instruction 5803.1 series upon which it is derived. It has been determined that this final rule is not a major rule within the criteria specified in Executive Order 12291 and does not have substantial impact on the public. This submission is a statement of policy and as such can be effective upon publication in the **Federal Register**.

Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

This rule does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR part 1320).

List of Subjects in 32 CFR Part 776

Conflict of interests, Lawyers, Legal services, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Navy amends 32 CFR part 776 as follows:

PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL

1. Section 776.20 is revised to read as follows:

§ 776.20 Competence.

(a) *Competence.* A covered attorney shall provide competent, diligent, and prompt representation to a client. Competent representation requires the legal knowledge, skill, access to evidence, thoroughness, and expeditious preparation reasonably necessary for representation. Initial determinations as to competence of a covered USG attorney for a particular assignment shall be made by a supervising attorney before case or issue assignments; however, assigned attorneys may consult with supervisors concerning competence in a particular case.

(b) [Reserved]

2. Section 776.53 is amended by revising paragraph (a)(4) to read as follows:

§ 776.53 Responsibilities of the Judge Advocate General and supervisory attorneys.

(a) * * *

(4) A supervisory attorney is responsible for ensuring that the subordinate covered attorney is properly trained, is competent to perform the duties and has all appropriate credentials, including security clearances, to perform the duties to which the subordinate covered attorney is assigned.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 02–29566 Filed 11–20–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–112]

Drawbridge Operation Regulations; US17 Highway Bridges, Ashley River, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the US17 highway bridges across the Ashley River, miles 2.4 and 2.5, at Charleston, South Carolina. This deviation allows both bridges to provide single-leaf openings, upon proper signal, from 7 a.m. on November 8, 2002 until 7 p.m. on December 30, 2002. This temporary deviation is necessary to allow the bridge owner to safely complete repairs to the bridge structures.

DATES: This deviation is effective from 7 a.m. on November 8, 2002 until 7 p.m. on December 30, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–02–112] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The existing regulations in 33 CFR 117.915(a) govern the operation of the US17 highway bridges across the Ashley River. Those regulations require the bridges to open on signal; except that from 7 a.m. to 9 a.m., Monday through Friday and from 4 p.m. to 7 p.m. daily, the draws need only open if at least 12 hours notice is given. The draws of either bridge shall open as soon as possible for the passage of vessels in an emergency involving danger to life or property.

The US17 bridges across the Ashley River, miles 2.4 and 2.5, are both twin double-leaf bascule bridges with vertical clearances of 14 feet at mean high water and horizontal clearances of 100 feet between the fenders. On July 8, 2002, the Industrial Company (TLC), representing the South Carolina Department of Transportation, requested a temporary deviation from the existing regulations governing the US17 bridges to facilitate repairs to the bridge structures. The Industrial Company requested permission to be able to keep one span of each bridge in the closed position for a period to facilitate repairs. This temporary deviation allows the US17 bridges to only open a single leaf of each bridge from 7 a.m. on November 8, 2002 until 7 p.m. on December 30, 2002. The single leaf openings will still provide a horizontal clearance of 50 feet. The Coast Guard is unaware of any vessel that will be unable to pass through this 50-foot horizontal clearance.

The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.915(a) to allow the US17 bridges to only open a single leaf of each bridge from 7 a.m. on November 8, 2002 until 7 p.m. on December 30, 2002.

Dated: November 6, 2002.

Greg Shapley,

Chief, Bridge Administration Branch, Seventh Coast Guard District.

[FR Doc. 02–29653 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB48

Sale and Disposal of National Forest System Timber; Extension of Timber Sale Contracts To Facilitate Urgent Timber Removal From Other Lands

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for comments.

SUMMARY: The Forest Service is proceeding with an interim rule to provide authority for Regional Foresters to authorize Contracting Officers to extend the contract performance time on certain National Forest System timber sale contracts to facilitate the harvest of damaged timber from private or other non-National Forest System lands. These contract extensions will allow the expeditious removal of timber in other ownerships damaged by catastrophic events beyond the landowner's control. Catastrophic events include, but are not limited to, severe wildfire, flood, insect and disease infestations, drought, and

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windthrow. This interim rule also provides for adjustment of future periodic payment determination dates as an element of these contract extensions.

The purposes of this interim rule are to save volume and value of damaged non-National Forest System timber, to improve protection of National Forest System lands from fire and disease that could otherwise develop on these damaged lands, to reduce the threat to public safety and property due to fire and hazardous dead trees, and to promote the wise use and conservation of the Nation's natural resources. An urgent removal extension will not be approved for any National Forest System timber sale contracts that contain dead or dying timber subject to rapid deterioration.

DATES: This interim rule is effective November 21, 2002. Comments must be received in writing by January 21, 2003.

ADDRESSES: Send written comments to the Director of Forest and Rangeland Management, via the U.S. Postal Service to MAIL STOP 1105, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–1105; via e-mail to *rbaumback@fs.fed.us;* or via facsimile to 202–205–1045. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this interim rule in the office of the Director of Forest and Rangeland Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Forest and Rangeland Management, (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

Periodically, catastrophic events such as severe drought conditions, insect and disease outbreaks, wildfires, floods, and windthrow occur on forested lands within, or near, National Forest System (NFS) lands. As a result of such catastrophic events, substantial amounts of private and other public timber may be severely damaged. This damaged timber must be harvested within a relatively short time period to avoid substantial losses in both the quantity and quality of the timber due to deterioration. The critical time period available for harvesting this damaged timber and avoiding substantial deterioration varies with the season of the year, the species of timber, the damaging agent, and the location of the damaged timber. In most cases, substantial deterioration can be avoided if the damaged timber is harvested within 1 year of the catastrophic event. The number of wildfires and the extent of damage experienced in the last few years has resulted in renewed requests by forest products companies and forest industry associations for the Forest Service to adjust its contracting procedures to support expeditious removal of damaged timber on non-National Forest System lands.

Regulatory and Administrative Framework

The National Forest Management Act of 1976 (16 U.S.C. 472a(c)) provides that timber sale contracts with an original term of 2 years or more may not be extended unless there is a finding that substantial overriding public interest justifies an extension. Section 223.115 of Title 36 of the Code of Federal Regulations delegates the authority to make extensions of timber sale contracts to Contracting Officers once a substantial overriding public interest finding has been made.

The Forest Service timber sale contract provides authority to allow additional contract time on undamaged (green) NFS timber sale contracts in order to harvest damaged timber outside the sale area on NFS lands. However, the Forest Service does not have the current authority to allow additional contract time on NFS timber sale contracts for the harvest of damaged timber from private or other non-National Forest System (non-NFS) lands.

Impediments to Timely Harvest

When significant catastrophic events occur on non-NFS lands, timber sale purchasers often do not have the personnel, equipment, or mill capacity to take on new contracts. Thus, landowners who have suffered from catastrophic events may find themselves competing for available loggers, buyers, and mill capacity to get damaged timber removed before deterioration occurs. If a purchaser has an opportunity to contract for timber on non-NFS land that is now damaged and also holds an NFS timber sale contract for undamaged (green) timber, that purchaser may face three choices: (1) Declining to bid on the contract for harvest of damaged timber from non-NFS lands, and harvesting the NFS undamaged (green) timber contract, thus allowing the damaged non-NFS timber to deteriorate; (2) harvesting both the NFS undamaged (green) timber and the damaged non-NFS timber under the terms and deadlines of the applicable contracts; (3) or harvesting only the damaged, non-NFS timber and potentially breaching the NFS undamaged (green) timber sale contract. If a purchaser already has a non-NFS timber sale contract, which now must be operated more quickly than anticipated because of catastrophic damages, that purchaser also faces difficult and costly choices.

Even if the purchaser has personnel and equipment to handle NFS and non-NFS timber sale contracts, a purchaser may face significant additional costs arising from stockpiling the undamaged (green) NFS timber, if manufacturing capacity is not available. The additional costs incurred in this scenario include the cost of carrying inventories, logging expenses, stumpage payments, and other payments required under the NFS contract terms. If log-decking space is not available, stockpiling inventory may not be possible. If logging equipment is scarce, a purchaser may have little to no opportunity to remove the damaged non-NFS timber in a timely manner.

Risks and Benefits Associated With Removal of Damaged Timber

Damaged timber can provide a source of highly flammable fuel for future wildfires, with inherent risks to public safety and property as well as to resource values of any nearby NFS lands. Damaged timber also can provide a habitat conducive to the development of insect infestations and subsequent diseases that could threaten nearby undamaged (green) timber stands on private, NFS, or other public land.

The overriding public benefit and justification for extending certain NFS timber sale contracts to allow the harvest of damaged timber requiring expeditious removal from non-NFS lands is the improved protection of nearby NFS lands from loss due to fire and/or insect and disease outbreaks, reduction of the threat to public safety and property from such catastrophic events, and promotion of wise use and conservation of the natural resources of the Nation by utilizing rather than wasting damaged timber. In addition, expeditiously harvesting the damaged non-NFS timber before it deteriorates provides private and other public landowners direct economic benefits from the utilization of the resource through revenues received through sale of the timber and indirect benefits as a result of the employment generated by converting the raw salvage timber into marketable products.

Finding of Substantial Overriding Public Interest

Having considered (1) the plight of private and other non-NFS landowners whose timber has been damaged by wildfire and other catastrophes this year; (2) the Forest Service statutory and regulatory framework for adjusting contracts; (3) the need for purchasers to plan their operation and to enter into contracts for the timely removal of damaged timber, and (4) the ability to protect the U.S. taxpayer from any losses associated with Forest Service contract extensions or loss of valuable timber; the Chief of the Forest Service has found there is substantial overriding public interest in extending NFS timber sale contracts for the harvest of undamaged (green) timber not requiring expeditious removal, when such an extension will expedite the rapid harvest of damaged timber requiring expeditious removal from private or other non-NFS lands. Extensions of undamaged (green) NFS timber sale contracts will only be approved if the delay of harvesting will not cause resource damage, delay the completion of needed projects, delay the harvest of damaged NFS timber, or in any other manner adversely impact the management of National Forest System lands. Highest priority consideration will be given to requests for extensions that involve damaged non-NFS timber adjacent to National Forest System lands.

Changes to 36 CFR Part 223, Subpart B

Section 223.53 Urgent Removal Extensions. This interim rule adds a new § 223.53. Paragraph (a) of this new section documents the Chief's finding that there is substantial, overriding public interest in extending NFS timber sale contracts to facilitate expeditious removal of timber on non-NFS lands damaged by a specific catastrophic event.

Paragraph (b) requires that the Regional Forester make a written determination on whether cause for an urgent removal extension exists. It also sets out the criteria that Regional Foresters must apply when making this determination. The rule provides that, in making this determination, the Regional Forester must document that the specific conditions, listed in paragraph (b), items 1 through 4, exist and that an extension of NFS timber sale contracts for the expeditious removal of damaged timber from non-NFS land is in the public interest.

Paragraph (c) lists the required documentation that purchasers must provide to the Contracting Officer when requesting urgent removal extensions of undamaged (green) NFS timber sale contracts to expedite salvage operations of catastrophically damaged timber on non-NFS lands. The agency has limited this information to only that essential to determine that expeditious removal is in the public interest. A full disclosure of the information required is set out later in this document under the heading "Controlling Paperwork Burdens on the Public."

Paragraph (d) assigns Contracting Officers the authority to grant an urgent removal extension on an individual sale, up to a maximum of one year, for the purpose of expeditious removal of damaged non-NFS timber.

Paragraph (e) sets forth terms and conditions that must be included in a mutual contract modification before a Contracting Officer may grant an extension of an NFS timber sale contract. A formula is provided in this paragraph that must be used to determine the amount that purchasers must pay at the time of a contract modification in consideration for the additional contract term. This payment would be in keeping with the Comptroller General's long-standing rule that no officer or agent of the Government has the authority to waive contractual rights which have accrued to the United States or to modify existing contracts to the detriment of the Government without legal consideration (44 Comp. Gen. 746, 749 (1965); 5 Comp. Gen. 605 (1926)).

Purchasers are also required by paragraph (e) to make payment to cover the cost of re-marking timber, if necessary. Such a payment is consistent with the Comptroller General's rule requiring reimbursement to the Government for costs incurred if remarking of the timber or reestablishing cutting unit boundaries is required due to the extension. This payment is also a standard requirement for other NFS contract extensions under the terms of the timber sale contract (contract provision B/BT8.23).

Paragraph (f) states that the information purchasers are required to provide, as outlined in paragraph (c), constitutes a new information collection and cites the Office of Management and Budget's control number.

Section 223.50 Periodic Payments. Establishment of a contract extension for the purposes of expeditious removal at § 223.53 requires a conforming amendment to § 223.50. The interim rule revises paragraph (e) of this section to authorize adjustments of dates for determining future periodic payment date(s) when an urgent removal extension is granted under the new rule and when contract term extensions are granted under the general authority of § 223.115(b).

The current text, at § 223.50(e), provides for adjustment of future periodic payment determination dates when contract term adjustments are granted under § 223.46 or when market-related contract term additions are granted under § 223.52, but explicitly prohibits a similar adjustment when contract term extensions are granted under the general authority of § 223.115.

Therefore, the adjustment of periodic payment determination date(s) is necessary to allow purchasers to transfer their financial resources from an NFS contract to facilitate harvesting of non-NFS timber needing expeditious removal.

Conclusion

By adoption of this interim rule, the Chief of the Forest Service is making a finding that there is substantial overriding public interest in extending NFS timber sale contracts when such an extension will facilitate the expeditious removal of timber damaged by catastrophic events on non-NFS lands, thus reducing the threat to public safety and property and promoting the wise use and conservation of the Nation's natural resources. An urgent removal extension will not be approved for an NFS timber sale contract that contains dead or dying timber subject to rapid deterioration.

Good Cause Statement

The 2002 fire season is on pace to be more damaging than that seen in 1988, 1994, and 2000. These fire seasons are considered to be some of the more noteworthy in modern times. Over 6.7 million acres have been burned this year, nearly doubling the 10-year average. Two-thirds of the acreage burned, 4.5 million acres, has been on private or other non-NFS lands. This interim rule is necessary because burned timber not harvested promptly will deteriorate and lose volume and value, making harvest and utilization of the damaged timber uneconomical. Without prompt removal of damaged timber, nearby NFS lands will be more likely to experience fire or insect and disease outbreaks, the threat to public safety and property from such catastrophic events will be higher, and affected landowners would not be able to achieve wise use and conservation of the natural resources on their lands. Further, without prompt harvest, private and other public landowners will be unable to obtain the economic benefits and revenues from the utilization of the resource and the public will lose the

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indirect benefits that will result from the employment generated by converting the raw salvage timber into marketable products.

This interim rule will assist timber sale purchasers who, with limited processing or manufacturing capacity or limited logging equipment capacity, must make immediate decisions on whether to meet their contract requirements by harvesting undamaged (green) NFS timber under contract or to purchase and harvest salvage timber burned during the summer of 2002 on private, tribal, State, or other Federal land. Under these circumstances, the Department has determined that prior notice and opportunity for public comment are not practicable and are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective immediately after publication in the **Federal Register**.

Comments received on this interim rule will be considered in adoption of a final rule, notice of which will be published in the **Federal Register**. The final rule will include a response to comments received and identify any revisions made to the rule as a result of the comments.

Regulatory Certifications

Regulatory Impact

This interim rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. OMB has determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interim rule is not subject to OMB review under Executive Order 12866.

Moreover, this interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The interim rule imposes minimal additional requirements on all timber purchasers for the purpose of validating the need for such extensions and to determine whether or not to approve the requested extension. The information required is easily within the capability of small entities to produce. All businesses that desire an urgent removal extension must show that the extension is needed in order to harvest and salvage deteriorating non-NFS timber, while avoiding contract default on NFS timber.

Environmental Impact

This interim rule establishes uniform criteria to be followed when consideration is being given to extending an NFS timber sale contract because of the need for expeditious removal of damaged non-NFS timber. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions" that do not significantly affect the quality of the human environment. The agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. The intent of this interim rule is to provide authority to allow additional contract time on NFS timber sale contracts for the harvest of damaged timber from private or other non-NFS lands, thus saving valuable resources from deterioration. No change in resources on NFS land would occur from implementation of this rule except to defer operations on an NFS timber sale. A final determination will be made upon adoption of a final rule.

Controlling Paperwork Burdens on the Public

This interim rule represents a new information requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1995 as amended (44 U.S.C. 3501, *et seq.*), the Forest Service has requested emergency approval from the Office of Management and Budget for this new information collection.

The information to be collected from purchasers applying for an urgent removal extension (para. c of § 223.53) is the minimum needed for the Contracting Officer to make an informed decision on whether good cause exists to grant an extension.

Description of Information Collection

Title: Contract Extension Request to Harvest Damaged Non-National Forest System Timber.

OMB Number: 0596–0167.

Expiration Date of Approval: April 30, 2003.

Type of Request: The following collection requirements are new and have not previously received approval by the Office of Management and Budget.

Abstract: This collection requires a purchaser to provide information needed to grant an extension of NFS timber sale contracts to allow the harvest of damaged timber, located on private or other public lands, which is in need of expeditious removal because of catastrophic events beyond the control of the landowner. Catastrophic events, which may result in the need for expeditious removal of damaged timber, include, but are not limited to, severe wildfire, flood, insect and disease infestations, drought, and windthrow. Specifically, purchasers applying for an extension would be required to provide:

(1) An explanation of how the harvest of the damaged non-NFS timber in need of expeditious removal affects or prevents the removal of undamaged (green) NFS timber within the term of the existing NFS contract(s);

(2) Documentation that the manufacturing facilities or logging equipment capacity available to a purchaser would be insufficient to provide for both the rapid salvage of damaged non-NFS timber in need of expeditious removal and continued harvest of undamaged (green) NFS timber under contract with the Forest Service; and

(3) A notarized statement that the purchaser will not hold the Forest Service liable for any damages or lost time incurred on the non-NFS and NFS contracts in the event that a request for an extension is delayed or denied, or for any damages under NFS contracts due to delay, suspension, modification, or cancellation (in whole or in part) subsequent to or during the extension.

Estimate of Burden: The public reporting burden to provide information when requesting a timber sale contract extension is estimated to average 2 hours per response.

Respondents: Individuals, large and small businesses, and corporations purchasing NFS timber sales.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1 response per year.

Estimated Total Annual Burden on Respondents: 50 hours.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments: All comments received in response to this information collection will be summarized and included in the request for final OMB approval. All comments, including names and addresses when provided, will become a matter of public record.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This interim rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 223

Administrative practices and procedures, Exports, Government contracts, Forests and forest products, National forests, Reporting and recordkeeping requirements.

Therefore, for the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for Part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Revise paragraph (e) of § 223.50 to read as follows:

§ 223.50 Periodic payments.

* * * * *

(e) Dates for determining future periodic payments shall be adjusted as follows:

(1) When contract term adjustments are granted under § 223.46,

(2) When market-related contract term additions are granted under § 223.52,

(3) When urgent removal extensions are granted under § 223.53, or

(4) When extensions in the substantial overriding public interest are granted under § 223.115(b). Periodic payment determination dates shall not be adjusted when a contract term extension is granted under the general authority of § 223.115(a).

* * * * *

3. Add a new § 223.53 under the undesignated center heading "Contract Conditions and Provisions" to read as follows:

§ 223.53 Urgent removal contract extensions.

(a) *Finding.* There is substantial, overriding public interest in extending National Forest System timber sale contracts for undamaged (green) timber not requiring expeditious removal in order to facilitate the rapid harvest of catastrophically damaged timber requiring expeditious removal on private or other non-National Forest System lands. Such an extension may be granted when a specific catastrophic event beyond the control of the landowner occurs on non-National Forest System lands that poses a threat to general forest health, public safety, and property. Catastrophic events include, but are not limited to, severe wildfire, wind, floods, insects and disease infestation, and drought.

(b) *Regional Forester determination.* If the Regional Forester determines that adequate cause for urgent removal extensions exists, Contracting Officers may extend a National Forest System timber sale contract, up to a maximum of 1 year, for the estimated amount of time required to harvest and process the damaged timber on non-National Forest System lands. The Contracting Officer may grant an urgent removal extension only when the Regional Forester verifies in writing that:

(1) A specific catastrophe occurred on the particular geographic area for which urgent removal extensions may be granted;

(2) There is a high risk that substantial timber quantities or values of the damaged non-National Forest System timber in the affected geographic area would deteriorate unless expeditiously removed;

(3) The manufacturing facilities or logging equipment capacity available to purchasers are insufficient to provide for both the rapid harvest of damaged non-National Forest System timber in need of expeditious removal and the continued harvest of undamaged (green) timber under contract with the Forest Service; and

(4) Failure to harvest the damaged non-National Forest System timber promptly could result in the following:

(i) Significant private or other public resource loss,

(ii) Pose a threat to public safety, or

(iii) Create a threat of an insect or disease epidemic to National Forest System or other lands or resources.

(c) *Purchaser request.* In order to obtain an urgent removal extension on a National Forest System timber sale contract, a purchaser must make a written request to the Contracting Officer, which includes the following:

(1) An explanation of why the harvest of the damaged non-National Forest System timber in need of expeditious removal will prevent or otherwise impede the removal of undamaged (green) National Forest System timber within the term of the existing National Forest System contract(s);

(2) Documentation that the manufacturing facilities or logging equipment capacity available to a purchaser would be insufficient to provide for both the rapid salvage of damaged non-National Forest System timber in need of expeditious removal and continued harvest of undamaged (green) National Forest System timber under contract with the Forest Service; and

(3) A notarized statement that the purchaser will not hold the Forest Service liable for any damages or lost time incurred on the non-National Forest System and National Forest System contracts in the event that a request for an extension is delayed or denied, or for any damages under National Forest System contracts due to delay, suspension, modification, or cancellation (in whole or in part) subsequent to or during the extension.

(d) *Contracting Officer determination.* In order to grant an urgent removal extension, the timber sale Contracting Officer must verify the following:

(1) That it is likely that the undamaged (green) timber from National Forest System land would be delivered to the same manufacturing facilities as are needed to process the damaged non-National Forest System timber or the National Forest System timber sale contract would require the use of the same logging equipment as is needed to remove the damaged non-National Forest System timber from the area affected by the catastrophe;

(2) That extension of the National Forest System contract will not be injurious to the United States and will protect, to the extent possible, the health of the National Forest System lands;

(3) That the urgent removal extension does not adversely affect other resource management objectives to be

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implemented by the National Forest System timber sale being extended;

(4) That the National Forest System timber sale contract to be extended is not a sale containing damaged, dead, or dying timber subject to rapid deterioration;

(5) That the National Forest System timber sale contract at issue has not been granted a previous urgent removal extension;

(6) That the revised National Forest System timber sale contract term will not exceed 10 years from the date the National Forest System contract was awarded;

(7) That the National Forest System contract is not in breach, and all work items, payments, and deposits are current; and

(8) That the purchaser has signed and had notarized the following statement:

By submission of this request, I release, waive, and abandon any and all claims against the United States for delay in the processing or denial of this request for an urgent removal extension of my National Forest System timber sale(s), contract number(s) _____, including, but not limited to, all claims for costs, expenses, attorney fees, compensatory damages, and exemplary damages arising out of or related to any non-National Forest System timber sale contract(s) and the National Forest System timber sale(s) contract(s) identified above. Should my request be granted, I release, waive, and abandon any and all claims against the United States due to delay, suspension, modification, or cancellation (in whole or in part) of the extended National Forest System timber sale contract(s), including, but not limited to, all claims for costs, expenses, attorney fees, compensatory damages, and exemplary damages. This liability limitation supersedes any other compensation or liability provisions set forth in the timber sale contract, Federal regulation, or the common law.

(e) *Execution of contract extension.* An urgent removal extension of a National Forest System timber sale contract is executed through a mutual agreement contract modification pursuant to § 223.112, which must include specific contract provisions. An agreement to modify a contract must identify the specific provision(s) of the contract being modified and must include the following terms and conditions:

(1) Purchasers must make cash payment to the Forest Service at the time of modification granting an urgent removal extension in consideration for the additional contract term. Such payment (P) shall be equal to interest on the difference between current contract value (CCV) at the time of the modification and the credit balance of any deposits (D). The interest rate (i) shall be the prevailing U.S. Department of the Treasury current value of funds rate in effect at time of modification. The time period (t) to be used in the calculation of interest shall be the number of months of contract extension granted. Payments so made shall not be refunded as excess cash deposits. This calculation is expressed by the following formula:

$$P = i(CCV - D)(t/12)$$

(2) Purchasers must make cash payment to cover the costs of remarking timber on the sale area or reestablishing cutting unit boundaries if the Contracting Officer determines such work is necessary.

(3) For sales subject to stumpage rate adjustment, future adjustment of tentative rates will not result in rates less than the current contract rates at the time of the extension.

(f) *Information collection.* The information required of a purchaser to request an extension of an National Forest System timber sale contract, as outlined in paragraph (c) of this section, to facilitate expeditious removal of timber from non-National Forest System lands constitutes an information collection requirement as defined in 5 CFR Part 1320 and has been assigned Office of Management and Budget control number 0596–0167.

Dated: November 13, 2002.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 02–29542 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–7411–4]

Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, Nebraska; and City of Omaha, Nebraska, for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP); and Maximum Achievable Control Technology (MACT) Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The states of Iowa, Kansas, Missouri, Nebraska, and the local agencies of Lincoln-Lancaster County, Nebraska, and city of Omaha, Nebraska, have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

DATES: This rule is effective on December 23, 2002. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 N 5th Street, Kansas City, Kansas 66101.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document should be submitted to the Region 7 office, and, with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa 50322.

Kansas Department of Health and Environment, Bureau of Air and Radiation, 1000 SW., Jackson, Suite 310, Topeka, Kansas 66612.

Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, P.O. Box 176, Jefferson City, Missouri 65102.

Nebraska Department of Environmental Quality, Air and Waste Management Division, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509.

Lincoln-Lancaster County Division of Environmental Health, Air Pollution Control Agency, 3140 "N" Street, Lincoln, Nebraska 68510.

City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68107.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7603.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What does this action do?
What is the authority for delegation?
What does delegation accomplish?
What has been delegated?
What has not been delegated?

List of Delegation Tables

Table I—NSPS, 40 CFR part 60
Table II—NESHAPS, 40 CFR part 61
Table III—NESHAPS, 40 CFR part 63

What Does This Action Do?

The EPA is providing notice that it has delegated authority for implementation and enforcement of the Federal standards shown in the tables below to the state and local air agencies in Region 7. This rule updates the delegation tables previously published at 66 FR 50110 (October 2, 2001). The EPA has established procedures by which these agencies are automatically delegated the authority to implement the standards when they adopt regulations which are identical to the Federal standards. We then periodically provide notice of the new and revised standards for which delegation has been given.

What Is the Authority for Delegation?

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS standards are codified at 40 CFR part 60.

2. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes the EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63, respectively.

What Does Delegation Accomplish?

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective state and local air agencies. However, EPA also retains the authority to enforce the standards if it so desires.

What Has Been Delegated?

Tables I, II, and III below list the delegated standards. The first date in each block is the reference date to the CFR contained in the state rule. In general, the state or local agency has adopted the applicable standard through this date as noted in the table. The second date is the most recent effective date of the state agency rule for which the EPA has granted the delegation.

What Has Not Been Delegated?

1. The EPA regulations effective after the first date specified in each block have not been delegated, and authority for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. You should review the applicable standard for this information.

3. In some cases, the agency rules do not adopt the Federal standard in its entirety. Each agency rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between the EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the state agencies, or from this office.

5. With respect to 40 CFR part 63, subpart A, General Provisions (see Table III), the EPA has determined that sections 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in an EPA memorandum titled "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies' from John Seitz, Director, Office of Air Quality Planning and Standards, dated July 10, 1998.

List of Delegation Tables

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A	General Provisions	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
D	Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971.	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
Da	Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
Db	Industrial-Commercial-Institutional Steam Generating Units	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
E	Municipal Incinerators	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
Ea	Municipal Waste Combustors Constructed after December20, 1989, and on or before September 20, 1994.	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
Eb	Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994.	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
Ec	Hospital/medical/infectious Waste Incinerators for Which Construction Commenced after June 20, 1996.	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
F	Portland Cement Plants	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
G	Nitric Acid Plants	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
H	Sulfuric Acid Plants	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02
I	Asphaltic Concrete Plants	08/14/01 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02

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TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
J	Petroleum Refineries	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
K	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
Ka	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
Kb	Volatile Organic Liquid Storage Vessels for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
L	Secondary Lead Smelters	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
M	Brass & Bronze Production Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
N	Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
Na	Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
O	Sewage Treatment Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
P	Primary Copper Smelters	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
Q	Primary Zinc Smelters	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
R	Primary Lead Smelters	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
S	Primary Aluminum Reduction Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
T	Wet Process Phosphoric Acid Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
U	Superphosphoric Acid Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
V	Diammonium Phosphate Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
W	Triple Superphosphate Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
X	Granular Triple Superphosphate Storage Facilities	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
Y	Coal Preparation Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
Z	Ferroalloy Production Facilities	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
AA	Steel Plant Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983.	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
AAa	Steel Plant Electric Arc Furnaces & Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
BB	Kraft Pulp Mills	08/14/01	07/01/98	12/31/00	.....
		04/24/02	06/11/99	09/30/02	
CC	Glass Manufacturing Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
DD	Grain Elevators	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
EE	Surface Coating of Metal Furniture	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
GG	Stationary Gas Turbines	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
HH	Line Manufacturing Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
KK	Lead-Acid Battery Manufacturing Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
LL	Metallic Mineral Processing Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
MM	Auto & Light-Duty Truck Surface Coating Operations	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
NN	Phosphate Rock Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
PP	Ammonium Sulfate Manufacture	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
QQ	Graphic Arts Industry: Publication Rotogravure Printing	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
RR	Pressure Sensitive Tape Label Surface Coating Operations	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Sub-Part	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
SS	Industrial Surface Coating: Large Appliances	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
TT	Metal Coil Surface Coating	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
UU	Asphalt Processing & Asphalt Roofing Manufacture	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
VV	SOCMI Equipment Leaks (VOC)	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
WW	Beverage Can Surface Coating Industry	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
XX	Bulk Gasoline Terminals	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
AAA	New Residential Wood Heaters	08/31/93	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
BBB	Rubber Tire Manufacturing Industry	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
DDD	Polymer Manufacturing Industry (VOC)	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
FFF	Flexible Vinyl and Urethane Coating and Printing	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
GGG	Equipment Leaks of VOC in Petroleum Refineries	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
HHH	Synthetic Fiber Production Facilities	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
III	SOCMI AIR Oxidation Unit Processes	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
JJJ	Petroleum Dry Cleaners	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
KKK	VOC Leaks from Onshore Natural Gas Processing Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
LLL	Onshore Natural Gas Processing: SO_2	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
NNN	VOC Emissions from SOCMI Distillation Operations	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
OOO	Nonmetallic Mineral Processing Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
PPP	Wool Fiberglass Insulation Manufacturing Plants	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
RRR	VOC Emissions from SOCMI Reactor Processes	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
SSS	Magnetic Tape Coating Facilities	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
TTT	Surface Coating of Plastic Parts for Business Machines	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
UUU	Calciners & Dryers in Mineral Industries	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
VVV	Polymeric Coating of Supporting Substrates Facilities	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
WWW	New Municipal Solid Waste Landfills Accepting Waste On or After May 30, 1991	08/14/01	07/01/98	12/31/00	07/01/01
		04/24/02	06/11/99	09/30/02	07/10/02
AAAA	New Small Municipal Solid Waste Combustion Units	08/14/01	.....	12/31/00	07/01/01
		04/24/02		09/30/02	07/10/02
CCCC	New Commercial and Industrial Solid Waste Incineration Units	08/14/01	.....	12/31/00	07/01/01
		04/24/02		09/30/02	07/10/02

TABLE II.—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	05/16/95	04/04/98
B	Radon Emissions from Underground Uranium Mines	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
C	Beryllium	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98

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TABLE II.—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
D	Beryllium Rocket Motor Firing	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		12/23/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
E	Mercury	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
F	Vinyl Chloride	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
L	Benzene Emissions from Coke By-Product Recovery Plants.	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
M	Asbestos	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants.	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
O	Inorganic Arsenic Emissions from Primary Copper Smelters.	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
Q	Radon Emissions from Department of Energy Facilities	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
R	Radon Emissions from Phosphogypsum Stacks	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
T	Radon Emissions from the Disposal of Uranium Mill Tailings.	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
V	Equipment Leaks (Fugitive Emission Sources)	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
W	Radon Emissions from Operating Mill Tailings	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
Y	Benzene Emissions from Benzene Storage Vessels	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
BB	Benzene Emissions from Benzene Transfer Operations	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98
FF	Benzene Waste Operations	10/14/97	07/01/98	12/31/00	07/01/01	07/01/92	07/01/97
		05/13/98	06/11/99	09/30/02	07/10/02	07/31/01	04/04/98

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
B	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Section 112(g) & (j).	08/16/01	07/01/98	12/31/00	07/01/00	.....	12/27/96
		04/24/02	06/11/99	09/30/02	04/02/02	.....	04/01/98 (112 (G) only)
D	Compliance Extensions for Early Reductions of Hazardous Air Pollutants.	08/16/01	07/01/98	12/31/00	12/29/92	11/21/94	12/29/92
		04/24/02	06/11/99	09/30/02	04/02/02	07/31/01	04/01/98
F	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	.....
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
G	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	.....
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
H	Organic Hazardous Air Pollutants for Equipment Leaks	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	.....
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	08/16/01	07/01/98	2/31/00	07/01/01	07/01/00	.....
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
J	Polyvinyl Chloride and Copolymers Production	.....	.....	.....	.....	.....	.....
L	Coke Oven Batteries	08/16/01	07/01/98	12/31/00	.....	.....	.....
		04/24/02	06/11/99	09/30/02			
M	Perchloroethylene Emissions from Dry Cleaning Facilities	08/16/01	07/01/98	12/31/00	07/01/00	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
N	Chromium Emissions from Hard and Decorative Chromium Electroplating Anodizing Tanks.	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/07
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
O	Ethylene Oxide Sterilization Facilities	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
Q	Industrial Process Cooling Towers	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
R	Gasoline Distribution Facilities	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/98
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
S	Pulp and Paper MACT I and MACT III	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	.....
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
T	Halogenated Solvent Cleaning	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
U	Polymers and Resins Group I	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/00
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
W	Polymers & Resins II	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
X	Secondary Lead Smelting	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
Y	Marine Tank Vessel Loading Operations	08/16/01	07/01/98	12/31/00	.....	.....	.....
		04/24/02	06/11/99	09/30/02			
AA/BB	Phosphoric Acid/Phosphate Fertilizers	08/16/01	.....	12/31/00	07/01/01	07/01/00	
		04/24/02		09/30/02	07/10/02	07/31/01	
CC	Petroleum Refineries	08/16/01	07/01/98	12/31/00	07/01/01	07/81/97	.....
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
DD	Off-Site Waste Recovery Operations	01/20/00	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
EE	Magnetic Tape Manufacturing	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	.....
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
GG	Aerospace Manufacturing and Rework Facilities	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
HH	Oil & Natural Gas Production	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
II	Shipbuilding and Ship Repair	08/16/01	07/01/98	12/31/00	.....	.....	07/01/97
		04/24/02	06/11/99	09/30/02			04/01/98
JJ	Wood Furniture Manufacturing Operations	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
KK	Printing and Publishing Industry	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
LL	Primary Alumium Production	08/16/01	07/01/98	12/31/00	07/01/01	07/01/00	.....
		04/24/02	06/11/99	09/30/02	07/10/02	07/31/01	
MM	Combustion Sources at Kraft, Soda, and Sulfite Pulp & Paper Mills.	08/16/01	.....	.....	07/01/01	.....	.....
		04/24/02			07/10/02		
OO	Tanks—Level	.....	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
			06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
PP	Containers	.....	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
			06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
QQ	Surface Impoundments	.....	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
			06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
RR	Individual Drain Systems or a Process	.....	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
			06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
TT	Equipment Leaks—Control Level 1 Standards	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
UU	Equipment Leaks—Control Level 2 Standards	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
VV	Oil-Water Separators & Organic-Water Separators	.....	07/01/98	12/31/00	07/01/01	07/01/00	07/01/97
			06/11/99	09/30/02	07/10/02	07/31/01	04/01/98
WW	Storage Vessel (Tanks)—Control Level	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
YY	Generic MACT +	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
CCC	Steel Pickling—HLC Process	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
DDD	Mineral Wool Production	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
EEE	Hazardous Waste Combustors	08/16/01	.....	12/31/00	.....	07/01/00	.....
		04/24/02		09/30/02		07/31/01	
GGG	Pharmaceutical Production	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	
HHH	Natural Gas Transmission and Storage	08/16/01	.....	12/31/00	07/01/01	07/01/00	.....
		04/24/02		09/30/02	07/10/02	07/31/01	

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TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
III	Flexible Polyurethane Foam Production	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/04/01 07/10/02	07/01/00 07/31/01	.....
JJJ	Polymers and Resins Group IV	08/16/01 04/24/02 04/24/02	07/01/98 06/11/99	12/31/00 09/30/02	07/01/01 07/10/02	07/01/00 07/31/01	07/01/97 04/01/98
LLL	Portland Cement Manufacturing	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	07/01/00 07/31/01	.....
MMM	Pesticide Active Ingredient Production	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	07/01/00 07/31/01	.....
NNN	Wool Fiberglass Manufacturing	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	07/01/00 07/31/01	.....
OOO	Polymers & Resins III, Amino Resins/Phenolic Resins	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	07/01/00 07/31/01	.....
PPP	Polyether Polyols-Production	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	07/01/00 07/31/01	.....
QQQ	Primary Copper	.....	.....	.....	.....	.....	.....
RRR	Secondary Aluminum	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	.....	.....
TTT	Primary Lead Smelting	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	07/01/00 07/31/01	.....
UUU	Petroleum Refineries	.....	.....	.....	.....	.....	.....
VVV	Publicly Owned Treatment Works	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	.....	.....
XXX	Ferroalloys Production	08/16/01 04/24/02	.....	12/31/00 09/30/02	07/01/01 07/10/02	07/01/00 07/31/01	.....
CCCC	Manufacturing Nutritional Yeast	08/16/01 04/24/02	.....	.....	07/01/01 07/10/02	.....	.....
GGGG	Solvent Extraction for Vegetable Oil Production	08/16/01 04/24/02	.....	.....	.....	07/01/01 07/10/02	.....
HHHH	Wet Formed Fiberglass Mat Production	.....	.....	.....	.....	.....	.....
NNNN	Large Applicance Surface Coating	.....	.....	.....	.....	.....	.....
SSSS	Metal Coil Surface Coating	.....	.....	.....	.....	.....	.....
TTTT	Leather Finishing Operations	.....	.....	.....	.....	.....	.....
UUUU	Cellulose Products Manufacturing	.....	.....	.....	.....	.....	.....
VVVV	Boat Manufacturing	08/16/01 04/24/02	.....	.....	.....	.....	.....
XXXX	Tire Manufacturing	.....	.....	.....	.....	.....	.....

Summary of This Action

All sources subject to the requirements of 40 CFR Parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This notice informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

Authority: This notice is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: November 12, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–29606 Filed 11–20–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 02–243]

Compliance with Federal Financial Management Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Commission's rules to require any Bureau or Office recommending action to the Commission or taking action under delegated authority on any matter that may affect compliance with Federal financial management requirements, to confer with the Office of the Managing Director.

DATES: November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Regina Dorsey at 202–418–1993.

SUPPLEMENTARY INFORMATION: To better assure comprehensive and consistent management of the agency's financial responsibilities and compliance with all Federal financial management requirements, including the Federal Debt Collection Act and implementing regulations adopted by the Department of Justice and the Department of Justice, the Federal Financial Management Improvement Act of 1996 (FFMIA), the Federal Managers Financial Integrity Act of 1982 (FMFIA), the Government Management Reform Act of 1994 (GRMA), the Information Technology Management Reform Act of 1996 (ITMRA), the Federal Credit Reform Act of 1990 (FCRA), the Federal Acquisition Regulation (FAR), and the Government Performance and Results Act of 1993, and others, the Commission thinks it necessary and prudent to involve the Office of the Managing Director in any such matters. The Commission's Managing Director currently has responsibility for overseeing Commission financial management activities, including compliance with the foregoing requirements, as well as the responsibility for advising the Commission on management implications of Commission and Bureau actions. *See* 47 CFR 0.11(a)(4), (8). As such, in this order, we amend section 0.5 of the Commission's rules, 47 CFR 0.5, to require any Bureau or Office recommending Commission action or taking action under delegated authority on any matter that may affect compliance with Federal financial management requirements to confer with the Office of the Managing Director. Upon forwarding any such item to the Commission the Office or Bureau must indicate the position of the Managing Director. The amended rule will not, however, affect the existing authority of the various Bureaus and Offices over substantive regulatory matters associated with their programs. *See* 47 CFR 0.11(a)(1)

The rule amendments adopted herein involve rules of agency organization, procedure, or practice, and the notice and comment and effective date provisions of the Administrative Procedure Act are therefore inapplicable. 5 U.S.C. 553(b)(A), (d).

Accordingly, it is ordered, that pursuant to sections 4(i), 4(j), 5(c), 303(r), 47 U.S.C. 4(i), 4(j), 5(c), 303(r), 47 CFR part 0 is amended as set forth below, effective November 21, 2002.

List of Subjects in 47 CFR Part 0

Organization and functions (government agencies).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.5 is amended by adding paragraph (e) to read as follows:

§ 0.5 General Description of Commission organization and operations.

* * * * *

(e) *Compliance with Federal financial management requirements.* Any Bureau or Office recommending Commission action that may affect agency compliance with Federal financial management requirements must confer with the Office of Managing Director. Such items will indicate the position of the Managing Director when forwarded to the Commission. Any Bureau or Office taking action under delegated authority that may affect agency compliance with Federal financial management requirements must confer with the Office of the Managing Director before taking action.

[FR Doc. 02–29581 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3090, MM Docket No. 01–208, RM–10205]

Digital Television Broadcast Service; Harrisburg, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harrisburg Television, Inc, licensee of station WHTM–TV, substitutes DTV channel 10 for DTV channel 57 at Harrisburg. *See* 66 FR 47904, September 14, 2001. DTV channel 10 can be allotted to Harrisburg, Pennsylvania, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 40–18–57 N. and 76–57–02 W. with a power of 14, HAAT of 346 meters and with a DTV service population of 1793 thousand. Since the community of Harrisburg is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–208, adopted November 7, 2002, and released November 15, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania, is amended by removing DTV channel 57 and adding DTV channel 10 at Harrisburg.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29574 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3089, MB Docket No. 02–219, RM–10505]

Digital Television Broadcast Service; Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KSWO Television Company, Inc., substitutes DTV channel 11 for DTV channel 23 at Lawton, Oklahoma. *See* 67 FR 52922, August 14, 2002. DTV channel 11 can be allotted to Lawton, Oklahoma, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 34–12–55 N. and 98–43–13 W. with a power of 138, HAAT of 327 meters and with a DTV service population of 431 thousand. With this action, this proceeding is terminated.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–219, adopted November 7, 2002, and released November 15, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference

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Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73— [AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma, is amended by removing DTV channel 23 and adding DTV channel 11 at Lawton.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29575 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3092, MM Docket No. 02–00–125, RM–9906]

Digital Television Broadcast Service; Miami, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of NBC Stations Management, Inc., licensee of station WTVJ(TV), substitutes DTV channel 31 for DTV channel 30 at Miami. *See* 65 FR 4407, July 17, 2000. DTV channel 31 can be allotted to Miami, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 25–58–07 N. and 80–13–20 W. with a power of 1000, HAAT of 318 meters and with a DTV service population of 3995 thousand. With this action, this proceeding is terminated.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–125, adopted November 7, 2002, and released November 15, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel 30 and adding DTV channel 31 at Miami.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29576 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3091, MB Docket No. 02–221, RM–10519]

Digital Television Broadcast Service; Wailuku, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of LeSea Broadcasting Corporation, substitutes DTV channel 45 for DTV channel 20 at Wailuku, Hawaii. *See* 67 FR 52922, August 14, 2002. DTV channel 45 can be allotted to Wailuku in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 20–40–58 N. and 156–19–07 W. with a power of 87, HAAT of 1298 meters and with a DTV service population of 113 thousand. With this action, this proceeding is terminated.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–221, adopted November 7, 2002, and released November 15, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Hawaii, is amended by removing DTV channel 20 and adding DTV channel 45 at Wailuku.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29578 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3154, MM Docket No. 00–180, RM–9956]

Digital Television Broadcast Service; Fort Myers, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Fort Myers Broadcasting Company, substitutes DTV channel 9 for DTV channel 53 at Fort Myers. *See* 65 FR 59389, October 5, 2000. DTV channel 9 can be allotted to Fort Myers, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 26–48–01 N. and 81–45–47 W., with a power of 20, HAAT of 451 meters and with a DTV service population of 1134 thousand. With this action, this proceeding is terminated.

DATES: Effective January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–180, adopted November 14, 2002, and released November 20, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel 53 and adding DTV channel 9 at Fort Myers.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29686 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2815; MM Docket Nos. 01–263, 01–264, 01–265, 01–266, 01–267; RM Nos. 10281, 10282, 10283, 10284, 10285]

Radio Broadcasting Services; Arkadelphia, Arkansas; Aspermont, Texas; Chino Valley, Arizona; Cotulla, Texas; Junction, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Audio Division allots new channels to Arkadelphia, AR, Aspermont, TX, Chino Valley, AZ, Cotulla, TX and Junction, TX in a multiple docket Report and Order. At the request of Maurice Salsa, Channel 292A is allotted at Junction, Texas, as the community's second commercial FM transmission service. Channel 292A is allotted at Junction without a site restriction at coordinates 30–29–21 NL and 99–46–18 WL. Mexican concurrence has been received for this allotment. At the request of Charles Crawford, Channel 223A is allotted at Chino Valley, Arizona as the community's second commercial FM transmission service. Channel 223A is allotted at Chino Valley at a site 6 kilometers (3.7 miles) west of the community at coordinates 34–46–10 NL and 112–31–03 WL. Mexican concurrence has been requested for this allotment. At the request of Charles Crawford, Channel 228A is allotted at Arkadelphia, Arkansas, as the community's second commercial FM transmission service. Channel 228A is allotted at Arkadelphia with a site restriction of 11.5 kilometers (7.2 miles) west of the community at coordinates 34–07–10 NL and 93–10–43 WL. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective December 9, 2002.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood, TX 77345 (petitioner for Junction, TX); Charles Crawford, 4553 Bordeaux Ave., Dallas, TX 75205 (petitioner for Chino Valley, AZ and Arkadelphia, AR); Jeraldine Anderson, 1702 Cypress Drive, Irving, TX 75061 (petitioner for Aspermont, TX and Cotulla, TX) .

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 01–263, 01–264, 01–265, 01–266, and 01–267, adopted October 16, 2002, and released October 25, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

At the request of Jeraldine Anderson, Channel 226C2 is allotted at Aspermont, Texas, as the community's first local aural transmission service. Channel 226C2 is allotted at Aspermont with a site restriction of 6.7 kilometers (4.1 miles) at coordinates 33–11–27 NL and 100–14–50 WL.

At the request of Jeraldine Anderson, Channel 289A is allotted at Cotulla, Texas, as the community's second local aural service. Channel 289A is allotted at Cotulla with a site restriction of 5.0 kilometers (3.1 miles) southwest of the community at coordinates 28–24–57 NL and 99–16–49 WL. Mexican concurrence has been received for this allotment.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

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PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 223A at Chino Valley.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 228A at Arkadelphia.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Aspermont, Channel 226C2, Channel 289A at Cotulla, and Channel 292A at Junction.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–29579 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 021107268–2268–01; I.D. 102402A]

RIN 0648–AQ54

Taking and Importing Marine Mammals; Taking of Marine Mammals Incidental to Power Plant Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is amending the regulations governing the unintentional take of small numbers of seals incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH. The purpose of this amendment is to replace the power plant's official owner/operator's name with a generic owner/operator designation. The technical amendment will also remove mitigation measures that are no longer applicable to the owner/operator of the Seabrook Station nuclear power plant.

DATES: Effective November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128, or David Gouveia, Northeast Regional Office, NMFS, 978–281–9280.

SUPPLEMENTARY INFORMATION:

Background

A final rule authorizing the unintentional take of small numbers of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) incidental to the routine operation of the Seabrook Station nuclear power plant was issued for the North Atlantic Energy Services Corporation (NAESC) on May 25, 1999 (64 FR 28114). That final rule put in place the regulations found at § 216.132, which state that under a Letter of Authorization (LOA) the NAESC, specifically, may incidentally but not intentionally, take marine mammals in the course of operating the station's intake cooling water system while in possession of a valid LOA issued by NMFS. The regulations also require that the LOA holder report, within 6 months from the issuance of a final rule, to the Administrator, Northeast Region, NMFS on possible mitigation measures effecting the least practicable adverse impacts on seals.

Need for Correction

Subsequent to the publication of the final rule, a tentative sale agreement was reached between the NAESC and the FPL Energy Seabrook, LLC, for the Seabrook Station nuclear power plant. The closing date for the sale of the Seabrook Station nuclear power plant is tentatively scheduled for the fall of 2002. As noted above, the regulations authorizing the unintentional take of seals specifically names the NAESC as the owner. Since the sale of the power plant is imminent, this action will change the regulatory language regarding the power plant ownership to a generic owner/operator designation.

In addition, the final rule contains a reporting requirement and a schedule for implementation of mitigation measures, which are no longer applicable to the owner/operator of the Seabrook Station nuclear power plant. Specifically, § 216.134 requires NAESC to issue a report to NMFS by January 2000 regarding possible mitigation measures to address any adverse impacts on seals. The report was generated and the recommended mitigation measure (installation of seal deterrent barriers on all three cooling water system intakes) was completed prior to January 2000; therefore, this amendment will remove this reporting requirement and implementation schedule since NAESC has already complied with this requirement. Consequently, this final rule corrects the regulatory language to reflect the fact that this reporting requirement and schedule are no longer applicable, by reserving § 216.134 and removing cross-references to that section in § 216.135(i) and § 216.136(a)(3).

Classification

The Assistant Administrator for Fisheries (AA) finds that providing prior notice and opportunity to comment on this final rule is unnecessary, because the rule merely removes the specific name of the power plant's owner/operator, inserts a generic designation in its place, removes the requirement that has already been complied with and has no future effect, and removes cross-references to that former section. This action does not change the number of regulated entities, nor does it create new requirements or relieve any current restrictions. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive requirements for prior notice and opportunity for comment. Also, because this final rule does not impose any new requirements on entities subject to these regulations, it is not a substantive rule subject to a 30–day delay in effective date under 5 U.S.C. 553(d).

This final rule is exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Dated: November 16, 2002.

Rebecca Lent,

Deputy Assistant Administrator National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.132 is revised to read as follows:

§ 216.132 Permissible methods of taking.

Under a Letter of Authorization issued to the owner/operator of Seabrook Station nuclear power plant, the owner/operator may incidentally but not intentionally, take marine mammals specified in § 216.130 in the course of operating the station's intake cooling water system.

§ 216.134 [Reserved]

3. Section 216.134 is removed and reserved.

§ 216.135 [Amended]

4. In § 216.135, paragraph (i) is removed.

5. In § 216.136, paragraph (a) is revised.

§ 216.136 Renewal of the Letter of Authorization.

(a) A Letter of Authorization issued under § 216.106 for the activity identified in § 216.130(a) may be renewed annually provided the following conditions and requirements are satisfied:

(1) Timely receipt of the reports required under § 216.135, which have been reviewed by the Administrator, Northeast Region, NMFS, and determined to be acceptable; and

(2) A determination that the maximum incidental take authorizations in § 216.130(b) will not be exceeded.

* * * * *

[FR Doc. 02–29683 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–22–S

VOL 67 ISS 225 NO 21 2002 UMI

Proposed Rules

Federal Register
Vol. 67, No. 225
Thursday, November 21, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–7 PR]

Raisins Produced From Grapes Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Raisin Administrative Committee (Committee) for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The Committee locally administers the Federal marketing order which regulates the handling of raisins produced from grapes grown in California (order). Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year runs from August 1 through July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by December 2, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable raisins beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The order authorizes volume control provisions that establish free and reserve percentages for raisins acquired by handlers. Free tonnage raisins may be sold by handlers to any outlet, and reserve tonnage raisins are held by handlers for the account of the Committee or released or sold to handlers for sale to free tonnage outlets. Reserve raisins held for the account of the Committee are not assessable. With projected assessable tonnage about 81,000 tons less than last year's assessable tonnage, sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. This action was recommended by the Committee at a meeting on July 24, 2002.

Sections 989.79 and 989.80, respectively, of the order provide authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and

assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

A continuous assessment rate of $6.50 per ton has been in effect since the 2000–01 crop year. For the 2002–03 crop year, the Committee recommended increasing the assessment rate to $8.00 per ton of assessable raisins to cover recommended administrative expenditures of $1,912,000. This compares to budgeted expenses of $2,080,000 for the 2001–02 crop year. Major expenditures include $663,000 for export program administration and related activities, $500,000 for salaries, $164,800 for contingencies, and $160,000 for compliance activities. Budgeted expenses for these items in 2001–02 were $662,500, $500,000, $303,500, and $220,000, respectively.

The recommended $8.00 per ton assessment rate was derived by dividing the $1,912,000 in anticipated expenses by an estimated 239,000 tons of assessable raisins. The Committee recommended increasing its assessment rate because the projected 2002–03 assessable tonnage of 239,000 tons is 81,000 tons lower than last year's assessable tonnage. Sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining seven handlers have sales less than $5,000,000. No more than seven handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of assessable raisins acquired by handlers. The Committee recommended 2002–03 expenditures of $1,912,000. Major expenditures include $663,000 for export program administration and related activities, $500,000 for salaries, $164,800 for contingencies, and $160,000 for compliance activities. Budgeted expenses for these items in 2001–02 were $662,500, $500,000, $303,500, and $220,000, respectively. With anticipated assessable tonnage at 239,000 tons, about 81,000 tons lower than last year's assessable tonnage, sufficient income should be generated at the $8.00 per ton assessment rate to meet expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The industry considered various alternative assessment rates prior to arriving at the $8.00 per ton recommendation. The Committee's Audit Subcommittee met on July 24, 2002, to review preliminary budget information. The subcommittee was aware that the full Committee would be meeting later that day to consider actions that would impact the 2002 free tonnage percentage and, thus, the quantity of 2002 assessable tonnage. The Audit Subcommittee considered assessment rates of $7.50 and $8.00 per ton based on varying levels of assessable tonnage. Ultimately, the full Committee adopted the subcommittee's recommendation of $8.00 per ton based on 239,000 tons of assessable tonnage.

A review of statistical data on the California raisin industry indicates that assessment revenue has consistently been less than one percent of grower revenue in recent years. Although no official estimates or data are available for the upcoming season, it is anticipated that assessment revenue will likely continue to be less than one percent of grower revenue in the 2002–03 crop year, even with the increased assessment rate.

Regarding the impact of this action on affected entities, this action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

Additionally, the Audit Subcommittee and full Committee meetings held on July 24, 2002, where this action was deliberated were public meetings widely publicized throughout the California raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the

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compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because a final decision on increasing the rate as proposed should be made by mid-November. This is when the Committee is anticipated to begin billing handlers for assessments.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2002, an assessment rate of $8.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: November 14, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29600 Filed 11–18–02; 4:50 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 60, 61, 63, 141, and 142

[Docket No. FAA–2002–12461; Notice No. 02–11]

RIN 2120–AH07

Flight Simulation Device Initial and Continuing Qualification and Use

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of on-line public forum.

SUMMARY: On September 25, 2002, the FAA published a notice of proposed rulemaking (NPRM), which proposes requirements to establish flight simulation device qualification requirements in a new part. (67 FR 60284; Notice No. 02–11). The comment period closes on February 24, 2003. To supplement the traditional comment period, we are announcing an on-line public forum, allowing you to answer specific questions we will ask on the Internet. We are offering the forum to assist us in providing a clear and comprehensive final rule. You can continue to submit comments to the docket during the public forum, as outlined below and in the NPRM.

DATES: You may access the on-line public forum beginning December 2, 2002, at 9 a.m. e.s.t. until December 13, 2002, at 4:30 p.m. e.s.t.

ADDRESSES: You may access the on-line public forum at *http://www2.faa.gov/avr/arm/rulemakingforum.cfm?nav=part*. Under the "View Docket/Comments" column, click once on "Enter Public Forum." Follow the instructions to access the questions.

If you are unable to participate in the on-line public forum and wish to submit written comments, address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12461 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to *http://dms/dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level at the Department of Transportation building at the address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Edward Cook, National Simulator Program Staff (AFS–205), Flight Standards Service, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6100.

SUPPLEMENTARY INFORMATION

On-Line Public Forum

We are soliciting on-line discussion and written comments on the questions below. You will be able to read the questions on-line and submit your answers and comments electronically. We will monitor your responses throughout the 2-week forum and may ask you clarifying questions. While we have selected topics that we are particularly interested in, we still welcome all of your comments and suggestions. We will not make any commitments or draw any conclusions while the docket is open for public comment.

On-Line Questions

The questions that will appear on the Internet for the on-line public forum are as follows:

1. The FAA would like to assist any reader who may have had difficulty understanding the proposed rule. If you need clarification on the proposed rule (in general or in a specific section), please describe what you would like clarified here.

Note: We will exert every effort to post our reply below your description in as short a time as possible.

2. The FAA seeks the public's opinion on the format of the part 60 appendices "A" through "D." Specifically, does this format aid the reader in determining the context of the material being read (*i.e.*, awareness that the text is rule language, additional requirements, or information)? If not, what are your recommendations for modifying the format?

3. The FAA seeks the public's recommendations for additions, modifications, and/or deletions to the definitions of terms used in the proposed rule (as found in the dedicated section of the rule and the dedicated attachment in each appendix to the rule). The recommendations we are seeking are strictly to make the proposed rule clearer.

4. The FAA seeks the public's opinion on where the National Simulator Program (NSP) should publish the Statement of Qualification?* The options are as follows:

(a) Shared with the public on the NSP's Internet website;

(b) Shared only among NSP staff, FAA personnel (for example, Principal Operations Inspector (POI) or Training Center Program Manager (TCPM)) and the sponsor; or

(c) Shared only between NSP staff and the sponsor.

* **Note:** The Statement of Qualification consists of the following three parts:

(a) *A Certificate*—names the sponsor; the aircraft being simulated; the category of Flight Simulation Device (FSD); the FAA identification number; and the qualification level for the device.

(b) *A Configuration List*—outlines the aircraft configuration; types of visual, motion, or other simulator systems installed; the aircraft equipment being simulated; alternative configurations available for engines, instrumentation, and other equipment; and includes the date each above item was qualified.

(c) *Qualifications/Restrictions to Qualifications List*—lists the flight tasks flown by the sponsor (or the sponsor's representative) in preparation for the sponsor's request for initial evaluation (*see* § 60.15). It also lists and describes the flight tasks and the Flight Simulation Device (FSD) systems for which qualification is or is not originally sought and is or is not granted.

5. The FAA seeks the public's opinion on whether to continue the practice of "grandfathering." Please include whether this practice should have an end point either in general or for some specific aspects of the practice. If you believe "grandfathering" should be discontinued, include suggestions on the conditions for instituting an end point.

Note: The term "grandfathering" is used to allow standards, in effect at the time of original qualification of a specific Flight Simulation Device (FSD), to continue to apply to that specific FSD regardless of subsequent modification to those standards. This provision addresses areas such as visual systems, motion systems, aerodynamic data, required tests, and individual test tolerances.

6. The FAA seeks the public's opinion on whether the current list of objective tests is practicable and viable and on whether this list may be modified by either reducing or expanding the number of objective tests. The resulting list of tests must not compromise the overall objective review of the performance and handling of the simulator in comparison to the simulated airplane.

7. The FAA seeks the public's opinion on the effectiveness of using an Internet website (to discuss aspects of flight simulation device evaluation and qualification and explain National Simulator Program (NSP) policy and/or the proposals and suggestions for alteration of those policies). Do you have additional suggestions on how FAA's communication with the aviation industry and the public in general may be promoted through this or similar media?

8. Please identify which affiliation you are associated with.

Note: Select one of the following categories:

(a) Airlines or Training Centers.
(b) Pilots or Pilot Organizations.
(c) Simulator or FTD Manufacturers.
(d) Airplane Manufacturers.
(e) Academic Institutions.
(f) U.S. Agencies (such as NASA, NTSB, Customs, *etc.*).
(g) U.S. or Foreign Military.
(h) Foreign Regulatory Authorities.
(i) Other.

Issued in Washington, DC, on November 15, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–29646 Filed 11–18–02; 3:50 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC–C2Y(K,R)–1BF/F8477–4 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to certain Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA-Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. This proposal would require removal of the anti-ice boots, rework of the anti-ice boot area of the propeller blades, and installation of new anti-ice boots. This proposal is prompted by a report of TKS (Aircraft De-icing) Ltd. anti-ice boots on the blades of a model HC–C2Y(K,R)–1BF/F8477–4 propeller that were installed by SOCATA-Groupe AEROSPATIALE using processes that could lead to blade corrosion and failure. The actions specified by the proposed AD are intended to prevent propeller blade separation, damage to the airplane, and possible loss of the airplane.

DATES: Comments must be received by January 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

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Discussion

The FAA received a report of a Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propeller that was returned to Hartzell Propeller Inc. for correction of a service problem. SOCATA-Groupe AEROSPATIALE, the aircraft manufacturer, had installed TKS (Aircraft De-icing) Ltd. anti-ice boots onto the propeller blades as specified in TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. Procedure P232 calls for the removal of both the paint and anodized coating from the blades where the anti-ice boots attach. In addition, the process used by SOCATA included the use of scribe lines to outline the anti-ice boot area on the blade and the scribe lines were not subsequently removed. The removal of paint and anodized coating can lead to corrosion of the propeller blade under the boot and could result in blade failure. Scribe lines in the blade metal can produce a stress riser condition on the blade, and could result in blade failure. The FAA has concluded that about 230 other propellers in the U.S. might be affected with anti-ice boots installed in this fashion. This condition, if not corrected, could result in propeller blade separation, damage to the airplane, and possible loss of the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) HC–ASB–61–251, dated April 10, 2001, that describes procedures for inspection and rework of model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other model HC–C2Y(K,R)–1BF/F8477–4 propellers of the same type design with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA-Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes, the proposed AD would require inspection and rework of model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots installed. The actions would be required to be done in accordance with the ASB described previously, except using the compliance schedule in the proposed AD.

Economic Analysis

There are approximately 750 Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots installed by SOCATA-Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. The FAA estimates that 230 propellers installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 10 work hours per propeller to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $900 per propeller. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $345,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Hartzell Propeller Inc.: Docket No. 2001–NE–47–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA-Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. These propellers are installed on, but not limited to American Champion 8GCBC, Cessna 170 series, 172 series, 175 series, Piper PA–18 series, Sky International Inc. (Husky) A–1 (previous owners were Christen Industries; Aviat, Inc.; White International, LTD.), and SOCATA-Groupe AEROSPATIALE TB–20 and TB–21 airplanes.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent propeller blade separation, damage to the airplane, and possible loss of the airplane, do the following:

(a) For propellers that have been overhauled after the installation of TKS (Aircraft De-icing) Ltd. Anti-ice boots, and have had the anti-ice boots re-installed using Hartzell Manual 133C (ATA 61–13–33) "Aluminum Blade Overhaul", AS&T Procedure 4700INS, or other approved procedures (excluding TKS Procedure P232) no further action is required.

(b) For propellers that have had the anti-ice boots installed using the TKS Procedure P232, but have not had anti-ice boots re-installed using Hartzell Manual 133C (ATA 61–13–33) "Aluminum Blade Overhaul", AS&T Procedure 4700INS or other approved procedures (excluding TKS Procedure P232), remove anti-ice boots, rework anti-ice boot areas of propeller blades, and install new anti-ice boots in accordance with paragraph 3 of the Accomplishment Instructions of Hartzell Propeller Inc. Alert Service Bulletin (ASB) HC–ASB–61–251, dated April 10, 2001 using the compliance schedule in Table 1 as follows:

TABLE 1.—COMPLIANCE SCHEDULE

For propellers with—	Replace anti-ice boots—
(1) Fewer than 500 hours time-in-service (TIS) and fewer than 3 years time-since-new (TSN).	Within 200 hours TIS from the effective date of this AD, not to exceed 600 hours TSN, or prior to accumulating 4 years TSN, whichever occurs first.
(2) Five hundred or more hours TIS, or 3 years or more TSN but less than 6 years TSN.	Within 100 hours TIS, or 1 year from the effective date of this AD, whichever occurs first.
(3) Six years or more TSN	Within 50 hours TIS, or within 6 months from the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on November 15, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29676 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piaggio Aero Industries S.P.A. (Piaggio) Model P–180 airplanes. This proposed AD would require you to install a placard on the inside of the lavatory door that prohibits occupying the lavatory seat during takeoff and landing. This proposed AD also requires you to incorporate a temporary revision into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM). This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to prevent passengers from occupying the lavatory seat during takeoff and landing. The lavatory/cabin partition could fail and lead to passenger injury in an emergency situation.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 13, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2002–CE–47–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–47–AD." We will date stamp and mail the postcard back to you.

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Discussion

What Events Have Caused This Proposed AD?

The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA of a manufacturing/installation defect on the lavatory/cabin partitions on certain Piaggio model P–180 airplanes. The lavatory/cabin partitions were installed improperly and are not of sufficient strength. This condition was found during a quality control inspection.

If the lavatory seat is occupied during takeoff or landing, the lavatory/cabin partition could fail and lead to passenger injury.

What Are the Consequences if the Condition Is Not Corrected?

Occupying the lavatory seat during takeoff or landing could result in failure of the lavatory/cabin partition. Such failure could result in passenger injury in an emergency situation.

Is There Service Information That Applies to This Subject?

Piaggio has issued Alert Service Bulletin No. ASB–80–0164, Original Issue: September 10, 2001, and PIAGGIO Service Bulletin (Recommended) No. SB–80–0165, Original Issue: September 10, 2001.

What Are the Provisions of This Service Information?

These service bulletins include procedures for:

—Installing a placard on the inside of the lavatory door that prohibits occupying the lavatory seat during takeoff and landing;

—Incorporating a temporary revision into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM); and

—Modifying the lavatory/cabin partition.

What Action Did the ENAC Take?

The ENAC classified this service bulletin as mandatory and issued Italian AD Number 2001–513, dated November 30, 2001, in order to ensure the continued airworthiness of these airplanes in Italy.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other PIAGGIO Model P–180 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to:

—Install a placard on the inside of the lavatory door that prohibits occupying the lavatory seat during takeoff and landing; and

—Incorporate a temporary revision into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM).

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 12 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed installation of the placard:

Labor Cost	Parts Cost	Total Cost Per Airplane	Total Cost on U.S. Operators
1 workhour × $60 = $60	$20	$80	12 × $80 = $960.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 30 days after the effective date of this AD, unless already accomplished."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The compliance of this proposed AD is presented in calendar time instead of hours TIS because the lavatory/cabin partitions are unsafe as a result of an improper installation. The unsafe condition has the same chance of occurring on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, we believe that a compliance time of 30 days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administratot, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Piaggio Aero Industries S.p.A.: Docket No. 2002–CE–47–AD

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, serial numbers 1002, 1004, 1006 through 1037,1039,1040, 1042, 1043, and 1045, that are:

(1) Equipped with a toilet seat; and

(2) are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent passengers from occupying the lavatory seat during takeoff and landing. The lavatory/cabin partition could fail and lead to passenger injury in an emergency situation.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Fabricate a placard that incorporates the following words (using at least ¼-inch black letters on a white background) and install this placard on the inside of the lavatory door in front of the lavatory seat: "LAVATORY SEAT CANNOT BE OCCUPIED DURING TAKEOFF AND LANDING".	Within the next 30 days after the effective date of this AD, unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate and install the placard. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Incorporate into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM), page 4 of Piaggio Alert Service Bulletin No. ASB–80–0164, Original Issue: September 10, 2001.	Within the next 30 days after the effective date of this AD, unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the POH/AFM manual insertion of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) As an alternative method of compliance to this AD, you may modify the lavatory/cabin partition.	At any time as terminating action for the placard and POH/AFM requirements of this AD.	In accordance with Piaggio Service Bulletin (Recommended) No. SB–80–0165, Original Issue: September 10, 2001.

Note 1: Information about fabricating and installing the placard and the POH/AFM manual insertion is referenced in Piaggio Alert Service Bulletin No. ASB–80–0164, Original Issued: September 10, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD Number 2001–513, dated November 30, 2001.

Issued in Kansas City, Missouri, on November 14, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29677 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–334–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all

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Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require repetitive inspections for discrepancies of the internal fuselage skin panels located in the stub wing areas; and corrective action if necessary. This action is necessary to detect and correct heat damage to the fuselage skin panels caused by the leakage of hot air from one of the bleed air ducts inside the stub wing, which could result in reduced structural integrity of the engine support structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–334–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–334–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–334–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–334–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The CAA–NL advises that it has received reports of heat damage to the internal fuselage skin panels located in the stub wing areas. The cause of the heat damage was the leakage of hot air from one of the bleed air ducts inside the stub wing. Evidence of the heat damage was yellow discoloration of the primer paint on the inside of the fuselage. This condition, if not corrected, could result in reduced structural integrity of the engine support structure.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Service Bulletin F28/53–151, dated June 4, 2001. The service bulletin describes procedures for repetitive visual inspections of the internal fuselage skin panels in the stub wing areas to detect discoloration of the primer paint due to heat damage, buckling or waviness of the skin panel, loose or missing fasteners, or fasteners with sheared-off heads; and corrective actions if necessary. The corrective actions include an eddy current inspection; measurement of the length and depth of buckles or waves in the skin panel; repair or replacement of skin panels with heat damage, buckling, or waviness that are not within the acceptable limits specified in the service bulletin; and replacement of loose and/or missing fasteners, or fasteners having sheared-off heads, with new fasteners. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 2001–093, dated July 31, 2001, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be an interim action until a final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,440, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on the assumption that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 2001–NM–334–AD.

Applicability: All Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct heat damage to the fuselage skin panels caused by the leakage of hot air from one of the bleed air ducts inside the stub wing, and consequent reduced structural integrity of the engine support structure; accomplish the following:

Repetitive Inspections

(a) Within 6,000 flight cycles after the effective date of this AD: Perform a general visual inspection of the internal fuselage structure between frames 16060 and 16660 and the beams at the upper and lower stub wing angles in the stub wing (engine pylon) areas, for discoloration of the primer paint, buckling or waviness of the skin panel, loose and/or missing fasteners, or fasteners with sheared-off heads, by accomplishing all actions specified in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/53–151, dated June 4, 2001. Repeat the inspection at intervals not to exceed 6,000 flight cycles.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions

(b) Except as provided by paragraph (c) of this AD, if any discrepancy is found (*i.e.*, primer paint discoloration; buckling or waviness of the skin panel; missing, damaged, or loose rivets) during the general visual inspection required by paragraph (a) of this AD, before further flight, perform the applicable follow-on corrective actions (*e.g.*, eddy current inspection; measurement of the length and depth of buckles or waves in the skin panel; repair of skin panels with heat damage, buckling, or waviness that are not within the acceptable limits specified in the service bulletin, or replacement with new skin panels; and replacement of loose and/or missing fasteners, or fasteners having sheared-off heads with new fasteners; as applicable) specified in the Accomplishment Instructions of Fokker Service Bulletin F28/53–151, dated June 4, 2001.

(c) If buckling or waviness of the skin panel is detected during the general visual inspection required by paragraph (a) of this AD, and the depth is within the limits specified in Part 2, paragraph C.(2) of the Accomplishment Instructions of Fokker Service Bulletin F28/53–151, dated June 4, 2001, the affected area must be repaired within 2,000 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD.

(d) Repair or replacement of damaged fuselage skin panels or fasteners does not terminate the repetitive inspections required by this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2001–093, dated July 31, 2001.

Issued in Renton, Washington, on November 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29678 Filed 11–20–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–411–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–131 and –132; A320–231, –232, and –233; and A321–131 and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A319–131 and –132; A320–231, –232, and –233; and A321–131 and –231 series airplanes, that would have required installing new anti-swivel plates and weights on the engine fan cowl door latches. This new action revises the proposed rule by adding airplanes to the applicability and a requirement to install a new hold-open device. This action specified by this new proposed AD is necessary to prevent separation of the engine fan cowl door from the airplane in flight, which could result in damage to the airplane and hazards to persons or property on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–411–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–411–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–411–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–411–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A319–131 and "132; A320–231, –232, and "233; and A321–131 and –231 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 4, 2001 (66 FR 46246). That NPRM would have required installing new anti-swivel plates and weights on the engine fan cowl door latches. That NPRM was prompted by several incidents in which the fan cowl door on an International Aero Engine Model V2500 engine separated from the airplane during takeoff because the door was not fully latched prior to dispatch. That condition, if not corrected, could result in damage to the airplane and hazards to persons or property on the ground.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comment received in response to the NPRM:

One commenter requests that the NPRM be revised to mandate Airbus Service Bulletin A320–71–1028, dated March 23, 2001, and to update the applicability, as specified in French airworthiness directive, 2001–381(B), dated September 5, 2001. The commenter states that French airworthiness directive 2001–381(B) supersedes French airworthiness directive 2000–444–156(B), dated October 31, 2000, which was referenced in the NPRM.

The FAA agrees. Since the issuance of the NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued French airworthiness directive 2001–381(B) to introduce an additional fan cowl latch improvement by installing a hold-open device and to revise the service information referenced in the applicability. That French airworthiness directive cancels French airworthiness directive 2000–444–156(B), which was referenced in the original NPRM.

In addition, Airbus has issued Service Bulletin A320–71–1028, dated March 23, 2001, which describes procedures for modification of the door latches of the fan cowl of both engines (*i.e.*, installation of new anti-swivel plates and weights), and installation of a new hold-open device; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–381(B) in order to assure the continued airworthiness of these airplanes in France. Therefore, we have revised this supplemental NPRM to parallel that French airworthiness directive.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 154 airplanes of U.S. registry would be affected by this proposed AD.

For certain airplanes, it would take approximately 5 work hours per airplane to accomplish the proposed modification (*i.e.*, installation of new anti-swivel plates and weights), and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,400 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $1,700 per airplane.

For all airplanes, it would take approximately 3 work hours per airplane to accomplish the proposed installation of the hold-open device, and that the average labor rate is $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $43,120, or $280 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2000–NM–411–AD.

Applicability: Model A319–131 and –132; A320–231, –232, and –233; and A321–131 and –231 series airplanes; certificated in any category; except those airplanes on which the following have been incorporated: Airbus Modifications 21948/P6222 and 30869 in production; Airbus Modifications 24259/P6222 and 30869 in production; Airbus Modifications 24259/P6222 and 24259/P6473 in production; or Airbus Service Bulletin A320–71–1028, dated March 23, 2001, in-service.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the engine fan cowl door from the airplane in flight, which could result in damage to the airplane and hazards to persons or property on the ground, accomplish the following:

Modification and/or Installation

(a) Within 18 months after the effective date of this AD, do the action(s) specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Configuration 01 airplanes identified in Airbus Service Bulletin A320–71–1028, dated March 23, 2001: Modify the door latches of the fan cowl of both engines (*i.e.*, installation of new anti-swivel plates and weights), and install a new hold-open device, per the service bulletin.

(2) For Configuration 02 airplanes identified in Airbus Service Bulletin A320–71–1028, dated March 23, 2001: Install a new hold-open device per the service bulletin.

Alternative Method Of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–381(B), dated September 5, 2001.

Issued in Renton, Washington, on November 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29679 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–000]

Extension of Time and Further Procedures

November 12, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Energy Regulatory Commission is extending the deadline for filing of comments on the Advance Notice of Proposed Rulemaking (ANOPR) and comments on the consensus documents that are currently due to be filed on November 12, 2002.

DATES: Comments are extended to and including December 9, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, 888 First Street, NE., Washington, DC 20426, (202) 508–8400.

SUPPLEMENTARY INFORMATION:

Standardization of Small Generator Interconnection Agreements and Procedures

On August 16, 2002, the Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) in the above-docketed proceeding. On October 23, 2002, a Notice extending the period for filing of comments until November 26, 2002 was issued. Notice is given that the deadline for the filing of comments on the ANOPR and comments on the consensus documents (which are due to be filed November 12, 2002) is hereby extended to December 20, 2002. Furthermore, on or before December 9, 2002, the stakeholders who have participated in the development of the consensus documents will file statements explaining their various positions on the consensus documents. Upon receipt of these statements, Commission staff will prepare a summary table showing various issues and delineating the positions and explanations of the various parties and file the summary table in this proceeding.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29401 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Office of International Investment

31 CFR Part 800

Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons

AGENCY: Office of International Investment, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends regulations in part 800 of 31 CFR that implement section 721 of Title VII of the Defense Production Act of 1950 (the "DPA"), as added by section 5021 of the Omnibus Trade and Competitiveness Act of 1988. The proposed regulation amends only those provisions relating to the filing of voluntary notice with the Committee on Foreign Investment in the United States (CFIUS).

DATES: Written comments on the proposed rule may be submitted on or before December 23, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only. Comments may be mailed to Gay Sills, Director, Office of International Investment, Room 4201 NY, Department of the Treasury, Washington, DC 20220, or sent electronically to *CFIUS@do.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Gay Sills, Director, Office of International Investment, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220, (202) 622–1860.

SUPPLEMENTARY INFORMATION: Section 136 of the Defense Production Act Amendments of 1992 (Pub. L. 102–558) amended section 709 of the DPA by requiring that any regulation issued under the DPA be published in the **Federal Register** and that opportunity for public comment be provided for not less than thirty days. Due to the relatively routine nature of these regulations, the comment period will be 30 days.

This proposed regulation provides parties that file a notice with CFIUS under section 721 with the option of filing electronically, providing just a single paper copy to CFIUS, or the option of continuing the current practice of providing CFIUS 13 paper copies. By filing electronically, companies could substantially decrease the paperwork burden of providing CFIUS notice under section 721.

Executive Order 12866

These regulations are not subject to the requirements of Executive Order 12866 because they relate to a foreign and military affairs function of the United States.

Paperwork Reduction Act

The collections of information provided for in this rule have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under OMB control number 1505–0121. The proposed rule does not change the information collection other than to permit an alternative means of submitting notice to the Committee on Foreign Investment in the United States.

Regulatory Flexibility Act

This regulation implements section 721 of the Defense Production Act of 1950 ("Section 721") (50 U.S.C. App. 2170)("DPA"). Section 709 of the DPA (50 U.S.C. App. 2159) provides that the regulations issued under it are not subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). Notwithstanding this exemption, section 709 of the DPA was amended by section 136 of the Defense Production Act Amendments of 1992 (Pub. L. 102–558) to require any regulation issued under the DPA to be published in the **Federal Register** for at least thirty days to provide for public comment. This requirement subjects this proposed rule to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is hereby certified that this proposed rule will not impose a significant economic impact on a substantial number of small businesses. Currently, the Treasury Department estimates that an average filing requires about 60 hours of preparation time. This proposed rule will permit parties to file notifications electronically, which is expected to reduce the preparation time somewhat because it will no longer be necessary to provide 13 paper copies of a filing. Instead, a filer can provide a single paper copy to the Treasury Department along with the electronic filing. Therefore, the impact of the proposed rule on small companies that file notifications with CFIUS is expected to be marginally beneficial.

List of Subjects in 31 CFR Part 800

Foreign investments in United States, Investigations, National defense, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, Title 31, chapter VIII, part 800 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 800—[AMENDED]

1. Section 800.401 is revised to read as follows:

§ 800.401 Procedures for notice.

(a) A party or parties to an acquisition subject to section 721 may submit a voluntary notice to the Committee of the proposed or completed acquisition by:

(1) Sending thirteen copies of the information set out in § 800.402 to the Staff Chairman of the Committee on Foreign Investment in the United States ("Staff Chairman"), Office of International Investment, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220; or

(2) Sending—

(i) One signed paper copy of the information set out in § 800.402 to the Staff Chairman of the Committee on Foreign Investment in the United States ("Staff Chairman"); Office of International Investment, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20220; and

(ii) One electronic copy of this same information in Adobe Acrobat (PDF) or Microsoft Word format to the following e-mail address: *CFIUS@do.treas.gov*. Electronic filings that exceed 5 Megabytes (MB) will need to be divided into smaller transmissions of no more than 5 MB each, which should be sent individually as attachments to separate e-mails.

(b) Any member of the Committee may submit an agency notice of a proposed or completed acquisition to the Committee through its Staff Chairman if that member has reason to believe, based on facts then available, that the acquisition is subject to section 721 and may have adverse impacts on the national security. In the event of agency notice, the Committee will promptly furnish the parties to the acquisition with written advice of such notice.

(c) No agency notice, or review or investigation by the Committee, shall be made with respect to a transaction more than three years after the date of conclusion of the transaction, unless the Chairman of the Committee, in consultation with other members of the Committee, requests an investigation.

(d) No communications other than those described in paragraphs (a), (b) and (c) of this section shall constitute notice for purposes of section 721. In any case where a party or parties file(s) electronically under paragraph (a) of this section, the signed paper copy shall constitute the original copy, and CFIUS will not notify the parties of its acceptance of a filing until the original copy has been received by the Office of International Investment.

Dated: October 28, 2002.

John B. Taylor,

Under Secretary for International Affairs.

[FR Doc. 02–29622 Filed 11–20–02; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3017, MB Docket No. 02–348, RM–10455].

Television Broadcast Service; Presque Isle, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Western Broadcasting Company, LLC, an applicant for channel 62+, proposing the substitution of channel 47 for channel 62+ at Presque Isle, Maine. Channel 47 can be allotted to Presque Isle, Maine, with a zero offset at reference coordinates 46–45–12 N. and 68–10–28 W. Since the community of Presque Isle is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before January 3, 2003, and reply comments on or before January 21, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays & Handler, LLP, 901 Fifteenth Street, NW., Suite 1100, Washington, DC 20005–2327 (Counsel for Western Broadcasting Company, LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–348, adopted November 4, 2002, and released November 12, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Maine, is amended by removing Channel 62+ and adding Channel 47 at Presque Isle.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29577 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–318; RM–10184; FCC 02–281]

Airport Terminal Use Frequencies in the 450–470 MHz Band of the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document grants the Petition for Rulemaking (Petition) filed by the Personal Communications Industry Association (PCIA), which seeks to initiate a proceeding to explore amending of the Commission's Rules. Specifically, the NPRM seeks comment on revising the power limits governing frequencies designated on a primary basis for "Airport Terminal Use" (ATU). The NPRM also seeks comment on what measures, if any, are necessary to safeguard the integrity of communications by public safety, railroad and utility entities (namely: water, energy and gas) as well as other licensed operations, such as Wireless Medical Telemetry Service (WMTS), that may be impacted by PCIA's proposed rule changes. The NPRM also seeks comment on class codes to recognize ATU operations.

DATES: Comments are due on or before December 23, 2002 and reply comments are due on or before January 6, 2003.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Esq., at (202) 418–0848, *jevanoff@fcc.gov*, or Thomas Eng, (202) 418–0019, *teng@fcc.gov*, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 02–281, adopted on October 4, 2002, and released on October 10, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on revisions to the use of the Airport Terminal Use (ATU) frequencies in the 450–470 MHz Private Land Mobile Radio (PLMR) Industrial Business (I/B) Pool. We find that a rulemaking proceeding is warranted to allow consideration of the issues and proposals presented in the Personal Communications Industry Association's (PCIA) Petition for Rulemaking (Petition). Accordingly, we grant PCIA's Petition to initiate this proceeding.

2. Specifically, this NPRM seeks comment on revising § 90.35(c) of our Rules regarding the ATU frequencies to:

- Delete the 3-watt total output power (TPO) limit for transmitters operating on ATU mobile-only frequencies and adopt a general effective radiated power (ERP) standard.
- Convert the power limit for base transmitters operating on ATU base/mobile frequencies from 20-watts TPO to 100-watts ERP.

In addition, the NPRM seeks comment on whether the Universal Licensing System (ULS) should be modified to recognize ATU frequencies and the associated operational requirements, and if so, how.

3. We believe that revising the current power limits could enhance airport terminal communications and thereby further the public interest. We nonetheless are concerned that such rule changes may adversely impact aviation-related communications, public safety, railroad and utility (namely: energy, water and gas) communications and wireless medical telemetry service (WMTS) operations. We are also concerned that such rule changes may adversely impact the operations of non-ATU I/B entities that are co-channel licensees—on a secondary basis to ATU licensees—at sites located at least 10 miles from 242 airports for which the ATU frequencies are designated. Accordingly, in commencing this proceeding, we specifically urge interested parties to comment on the impact that any proposed rule changes would have on the operations of non-ATU licensees. We also seek comment on alternatives to PCIA's proposals.

I. Procedural Matters

A. Ex Parte Rule—Permit-but-Disclose Proceeding

4. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, if they are disclosed as provided in the Commission's Rules.

B. Initial Regulatory Flexibility Analysis

5. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth further. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in this NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

C. Initial Paperwork Reduction Analysis

6. This NPRM does not contain either a proposed or modified information collection.

D. Alternative Formats

7. Alternative formats (computer diskette, large print, audio cassette and Braille) are available from Brian Millin, Consumer and Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*. This NPRM can also be downloaded at *http://wireless.fcc.gov/releases.html*.

E. Comment Dates

8. Pursuant to §§ 1.415 and 1.419 of our rules interested parties may file comments on or before December 23, 2002, and reply comments on or before January 6, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

II. Initial Regulatory Flexibility Certification

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 23, supra. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

11. In this NPRM, we propose to amend the maximum output power for airport terminal use frequencies identified in 47 CFR 90.35(c)(48) to 100-watts maximum effective radiated power. We believe such modification would be in the public interest because it would enhance the efficient use of spectrum, permit greater efficiency in use of airport terminal communications, and facilitate Homeland Security measures at airports. In this NPRM we also propose to delete the maximum output power for airport use frequencies identified in 47 CFR 90.35(c)(11) and (68).

B. Legal Basis

12. Authority for the proposed rules included in this NPRM is contained in Sections 1, 4(i), 302, 303(f), and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

14. *Estimates for Private Land Mobile Radio (PLMR) Licensees.* PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small cellular and telecommunications, which has the small business size standard of no more than 1,500 employees. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

15. *Equipment Manufacturers.* The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, business firms are considered small if they have 750 or fewer employees. Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of broadcast equipment manufacturers to others in this category is approximately 22%, so we estimate that the number of broadcast equipment manufacturers with employment under 500 was actually closer to 253, with an additional 8 establishments having employment of between 500 and 999.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. The proposed rules will not entail reporting, recordkeeping, and or third-party consultation. These changes do not contain any new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities." The Commission invited public comment on alternative proposals to address the

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problems identified by PCIA. Specifically, the Commission sought comment on measures to minimize the impact of granting PCIA's proposals on PLMR licensees, and on waivers of the existing power limits for ATU mobile stations, which would exempt, on a case-by-case basis, PLMR licensees from coverage of the specified rules. The proposed rule changes contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

18. None.

III. Ordering Clauses

19. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), 332, the Petition for Rulemaking filed by the Personal Communications Industry Association, Inc., on June 25, 2001, and supplemented on May 21, 2002, is *granted* to the extent indicated herein.

20. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), 332, *notice is hereby given* of the proposed regulatory changes described in this Notice of Proposed Rule Making, and that *comment is sought* on these proposals.

21. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rule Making, WT Docket No. 02–318, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

Part 90 of Chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(c)(7).

2. In § 90.35, paragraph (b)(3) is amended by revising the entries for frequencies 460.650 through 460.89375 and 465.650 through 465.89375 and by revising paragraph (c)(48) to read as follows:

§ 90.35 Industrial business pool.

* * * * *

(b) * * *

(3) * * *

Frequency or band	Class of station(s)	Limitations	Coordinator
460.650	do	48, 61, 62.	
460.65625	do	33, 48, 61, 62.	
460.6625	do	30, 48, 61, 62, 69.	
460.66875	do	33, 48, 61, 62.	
460.675	do	48, 61, 62.	
460.68125	do	33, 48, 61, 62.	
460.6875	do	30, 48, 61, 62, 69.	
460.69375	do	33, 48, 61, 62.	
460.700	do	48, 61, 62.	
460.70625	do	33, 48, 61, 62.	
460.7125	do	30, 48, 61, 62, 69.	
460.71875	do	33, 48, 61, 62.	
460.725	do	48, 61, 62.	
460.73125	do	33, 48, 61, 62.	
460.7375	do	30, 48, 61, 62, 69.	
460.74375	do	33, 48, 61, 62.	
460.750	do	48, 61, 62.	
460.75625	do	33, 48, 61, 62.	
460.7625	do	30, 48, 61, 62, 69.	
460.76875	do	33, 48, 61, 62.	
460.775	do	48, 61, 62.	
460.78125	do	33, 48, 61, 62.	
460.7875	do	30, 48, 61, 62, 69.	
460.79375	do	33, 48, 61, 62.	
460.800	do	48, 61, 62.	
460.80625	do	33, 48, 61, 62.	
460.8125	do	30, 48, 61, 62, 69.	
460.81875	do	33, 48, 61, 62.	
460.825	do	48, 61, 62.	
460.83125	do	33, 48, 61, 62.	
460.8375	do	30, 48, 61, 62, 69.	
460.84375	do	33, 48, 61, 62.	
460.850	do	48, 61, 62.	
460.85625	do	33, 48, 61, 62.	
460.8625	do	30, 48, 61, 62, 69.	
460.86875	do	33, 48, 61, 62.	
460.875	do	48, 61, 62.	
460.88125	do	33, 48, 61, 62.	
460.8875	do	30, 48, 61, 62, 69.	
460.89375	do	33, 48, 61, 62.	
465.650	do	61, 62.	
465.65625	do	33, 61, 62.	
465.6625	do	30, 61, 62, 69.	
465.66875	do	33, 61, 62.	

Frequency or band	Class of station(s)	Limitations	Coordinator
465.675	do	61, 62.	
465.68125	do	33, 61, 62.	
465.6875	do	30, 61, 62, 69.	
465.69375	do	33, 61, 62.	
465.700	do	61, 62.	
465.70625	do	33, 61, 62.	
465.7125	do	30, 61, 62, 69.	
465.71875	do	33, 61, 62.	
465.725	do	61, 62.	
465.73125	do	33, 61, 62.	
465.7375	do	30, 61, 62, 69.	
465.74375	do	33, 61, 62.	
465.750	do	61, 62.	
465.75625	do	33, 61, 62.	
465.7625	do	30, 61, 62, 69.	
465.76875	do	33, 61, 62.	
465.775	do	61, 62.	
465.78125	do	33, 61, 62.	
465.7875	do	30, 61, 62, 69.	
465.79375	do	33, 61, 62.	
465.800	do	61, 62.	
465.80625	do	33, 61, 62.	
465.8125	do	30, 61, 62, 69.	
465.81875	do	33, 61, 62.	
465.825	do	61, 62.	
465.83125	do	33, 61, 62.	
465.8375	do	30, 61, 62, 69.	
465.84375	do	33, 61, 62.	
465.850	do	61, 62.	
465.85625	do	33, 61, 62.	
465.8625	do	30, 61, 62, 69.	
465.86875	do	33, 61, 62.	
465.875	do	61, 62.	
465.88125	do	33, 61, 62.	
465.8875	do	30, 61, 62, 69.	
465.89375	do	33, 61, 62.	

* * * * *

(c) * * *

(48) Except as noted in paragraph (c)(61) of this section, operation on this frequency is limited to a maximum of 100 watts effective radiated power in accordance with the maximum ERP and reference HAAT for a specific service area radius provisions of § 90.205 table 2.

* * * * *

[FR Doc. 02–29437 Filed 11–20–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH76

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for Scotts Valley Polygonum *(Polygonum hickmanii)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment periods; notice of availability of draft economic analysis and final addendum.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis and final addendum for the proposed designation of critical habitat for Scotts Valley polygonum *(Polygonum hickmanii)*, a species restricted to the northern Scotts Valley area in Santa Cruz County, California. We are also reopening the comment periods for the proposal to list this species as endangered and on the proposal to designate critical habitat for this species to allow all interested parties to comment simultaneously on the proposed rules, draft economic analysis, and final addendum. The economic analysis shows a range of likely costs from the designation of the proposed critical habitat of between $165,000 to $565,000 over a 10-year period. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: We will accept comments until December 6, 2002. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decisions.

ADDRESSES: Written comments and information should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Written comments may also be sent by fax to 805–644–3958 or hand-delivered to our Ventura Fish and Wildlife Office at the above address. You may also send comments by electronic mail (e-mail) to *fw1svpolygonum@r1.fws.gov*.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service's Ventura Fish and Wildlife Office at the above address. You may obtain copies of the proposed rule and draft economic analysis from the above address, by calling 805–644–1766, or from our Web site at *http://ventura.fws.gov/*.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, at the above

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address (telephone 805–644–1766; facsimile 805–644–3958).

SUPPLEMENTARY INFORMATION:

Background

Polygonum hickmanii is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in)) tall, and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in) long and 1 to 1.5 cm (0.4 to 0.6 in) wide and tipped with a sharp point. The single white flowers consist of two outer petals and three inner petals and are found in the axils of the bracteal leaves. The plant flowers from late May to August. Seed production ranges from a few dozen in a typical individual to as many as 200 in a particularly robust individual (Randy Morgan, biological consultant, pers. comm., 1998). Although pollination for this species has not been studied, Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual of *P. hickmanii* (R. Morgan, pers. comm., 1998). Other potential pollinators have not been identified at this time, and the degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined. The nearest location of a closely related species, *Polygonum parryi*, is at Mount Hamilton, about 48 kilometers (km) (30 miles (mi)) inland. *P. hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and seeds, and longer, straight stem sheath (Hinds and Morgan 1995).

Polygonum hickmanii is known from two sites about 1.6 km (1 mi) apart at the northern end of Scotts Valley in Santa Cruz County, California. The species is found on gently sloping to nearly level fine-textured shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). *Polygonum hickmanii* occurs with *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower), a federally endangered species, and other small annual herbs in patches within a more extensive annual grassland habitat. These small patches have been referred to as "wildflower fields" because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of non-native grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of non-native grasses and herbs. The surface soil texture in the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Elevation of the sites is from 215 to 245 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995).

Polygonum hickmanii and *Chorizanthe robusta* var. *hartwegii* are associated with a number of native herbs including goldfields *(Lasthenia californica)*, sandwort *(Minuartia douglasii)*, California sandwort *(Minuartia californica)*, gilia *(Gilia clivorum)*, owl's clover *(Castilleja densiflora)*, sky lupine *(Lupinus nanus)*, brodiaea *(Brodiaea terrestris)*, Mount Diablo cottonweed *(Stylocline amphibola)*, Gray's clover *(Trifolium grayii)*, and coast tarplant *(Hemizonia corymbosa)*. Non-native species present include filago *(Filago gallica)* and rattail *(Vulpia myuros)* (California Natural Diversity Data Base (CNDDB) 1998; R. Morgan, pers. comm., 1998). In many cases, the habitat also supports a crust of mosses and lichens (BRG 1998).

Approximately 11 colonies of *Polygonum hickmanii* occur on 2 sites in the Scotts Valley area. The first site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley. Referred to as the Glenwood site, it contains five colonies of *P. hickmanii* that occur on two privately owned parcels of land. Several colonies are situated within a 4-hectare (ha) (9-acre (ac) preserve on a 19-ha (48-ac) parcel that is owned by the Scotts Valley Unified School District (Denise Duffy and Associates 1998), and other colonies are located approximately 0.08 km (0.13 mi) to the west of the School District colony on a parcel of land owned by the Salvation Army (CNDDB 1998).

Additional patches of suitable but unoccupied habitat for *Polygonum hickmanii*, Scotts Valley spineflower, and other wildflower field taxa have been mapped on adjacent parcels directly east and north of the School District preserve (Denise Duffy and Associates 1998). These parcels are owned by American Dream/Glenwood L.P. A residential development has been approved for construction; it includes a proposed open space parcel that includes all of the suitable but unoccupied habitat for *P. hickmanii* (Impact Sciences 2000a).

The second site is referred to as the "Polo Ranch" site. Located just east of Highway 17 and north of Navarra Road in northern Scotts Valley, this site is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. Colonies within the Polo Ranch site occur on a parcel of land owned by Greystone Homes (Lyons, *in litt.*, 1997). Six colonies of *Polygonum hickmanii*, as well as Scotts Valley spineflower, occur within 0.2 km (0.1 mi) of each other on the Polo Ranch site (Lyons, *in litt.*, 1997; Impact Sciences 2000b).

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *Polygonum hickmanii* was proposed as endangered on November 9, 2000 (65 FR 67335). On February 15, 2001, we published in the **Federal Register** (66 FR 10440) a rule proposing critical habitat for *P. hickmanii* and *Chorizanthe robusta* var. *hartwegii* concurrently. Since a final listing determination had not been made for *P. hickmanii*, on September 19, 2001, we published in the **Federal Register** (66 FR 48227) a notice requesting the public to comment on the draft economic analysis for only *C. robusta* var. *hartwegii*. Based on the comments received, a final addendum to the draft economic analysis was prepared. The final addendum for the economic analysis included both species because it was based on the proposed critical habitat designation. The final critical habitat determination for *C. robusta* var. *hartwegii* was published on May 29, 2002 (67 FR 37336). A final critical habitat determination has not been made for *P. hickmanii*. We anticipate publishing the final listing and critical habitat determinations for *P. hickmanii* concurrently.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the *Polygonum hickmanii*, and comments received during the previous comment period, we have prepared a draft economic analysis and final addendum of the proposed critical habitat designation.

Copies of the draft economic analysis and final addendum are available on the Internet at *http://www.r1.fws.gov* or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

Public Comments Solicited

We have reopened the comment periods at this time in order to accept the best and most current scientific and commercial data available regarding the proposed listing and critical habitat determinations for *Polygonum hickmanii*, and the draft economic analysis and final addendum associated with the designation of critical habitat. Previously submitted written comments on the listing or critical habitat proposals need not be resubmitted. We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

You may mail or hand-deliver written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Hand deliveries must be made during normal business hours.

You may also send comments by electronic mail (e-mail) to *fw1svpolygonum@r1.fws.gov*. Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AH62" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644–1766.

We solicit comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal or the draft economic analysis. We particularly seek comments concerning:

(1) Does the analysis adequately address the indirect effects *eg:* property tax losses due to reduced home construction, losses to local business due to reduced construction activity.

(2) Does the analysis accurately define and capture opportunity costs.

Author

The primary author of this notice is Connie Rutherford (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 7, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29621 Filed 11–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI26

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of the draft economic analysis for the proposed designation of critical habitat for four vernal pool crustaceans and eleven vernal pool plants in California and southern Oregon. The economic analysis identifies potential costs between $6 and $7 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. We are extending the comment period for the proposal to designate critical habitat for these species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: We will accept comments on both the draft economic analysis and the proposed critical habitat designation until December 23, 2002.

ADDRESSES: Written comments and information should be submitted to Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825. Written comments may also be sent by fax to 916/414–6710 or hand-delivered to our Sacramento Fish and Wildlife Office at the above address. You may also send comments by electronic mail (e-mail) to *fw1_vernalpool@fws.gov*.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service's Sacramento Fish and Wildlife Office at the above address. You may obtain copies of the proposed rule and draft economic analysis from the above address, by calling 916/414–6600, or from our Web site at *http://sacramento.fws.gov/*.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2002, we published a proposed rule to designate critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act) for four vernal pool crustaceans and eleven vernal pool plants (67 FR 59884). The four vernal pool crustaceans involved in this critical habitat designation are the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*) and vernal pool tadpole shrimp (*Lepidurus packardi*). The eleven vernal pool plant species are Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), succulent (or fleshy) owl's-clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana*), Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*). We proposed a total of 128 units of critical habitat for these 15 species, totaling approximately 672,920 hectares (ha) (1,662,762 acres (ac)) in 36 counties in California and one county in Oregon.

All the species listed above live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of these species have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico. The species have all adapted to the generally mild climate and seasonal periods of inundation and drying which help make the vernal pool ecosystems of California and southern Oregon unique.

Critical habitat receives protection from destruction or adverse modification through required

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consultation under section 7 of the Act with regards to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat.

The public comment period for the September 24, 2002, proposal originally closed on November 25, 2002. We have prepared a draft economic analysis on the effects of the proposed critical habitat designation, and are now announcing its availability for review. The draft analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. The economic analysis identifies potential costs between $6 and $7 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. At this time the Service has not identified any areas to exclude under Section 4(b)(2) or 3(5)(A) of the Act. The Service will consider excluding areas if they do not require special management or if the benefits of excluding them from the critical habitat designation outweigh the benefits of including them. The economic analysis presents the Service's tentative conclusions with respect to the economic effects of the proposed critical habitat designation. The Service will not make any final decisions about exclusions, however until it has obtained public comment on the economic analysis and produced an addendum to the economic analysis containing its final conclusions. The Service is interested in comments from the public on the economic analysis, on whether any of the areas identified in the economic analysis as having economic effects should be excluded for economic reasons, and whether those or any other areas should be excluded for other reasons. Extension of the comment period will provide the public an opportunity to evaluate and comment on both the proposed rule and the draft economic analysis. Comments already submitted on the proposed designation of critical habitat for four vernal pool crustaceans and eleven vernal pool plants do not need to be resubmitted as they will be fully considered in the final determination.

Public Comment Solicited

The final economic analysis concerning the designation of critical habitat for four vernal pool crustaceans and eleven vernal pool plants will consider information and recommendations from all interested parties. We particularly seek comments concerning:

(1) Assumptions reflected in the economic analysis regarding land use practices and current, planned, or reasonably foreseeable activities in the subject areas, including comments or information relating to the potential effects that the designation could have on private landowners as a result of actual or foreseeable State and local government responses due to the California Environmental Quality Act;

(2) Land use practices and current, planned, or foreseeable activities in the subject areas and their possible impacts on proposed critical habitats;

(3) Any foreseeable economic or other impacts resulting from the proposed designation of these critical habitats, including impacts that may not have been addressed in the draft economic analysis and, in particular, any impacts on small entities or families;

(4) Economic and other values associated with designating critical habitat for these species; and

(5) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

You may mail or hand-deliver written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, at the above address. Hand deliveries must be made during normal business hours.

You may also send comments by electronic mail (e-mail) to *fw1_vernalpool@fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at our office listed in the **ADDRESSES** section. Copies of the draft economic analysis are available on the Internet at *http://www.r1.fws.gov* or by writing or calling Arnold Roessler, at the address or telephone number listed above.

Author

The primary author of this notice is Susan Moore (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 7, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29619 Filed 11–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI46

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Announcement of Public Hearings on Designation of Critical Habitat for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of public comment period and announcement of public hearings.

SUMMARY: The Fish and Wildlife Service (Service) is reopening the comment period on the Service's proposal to designate critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (67 FR 47154, July 17, 2002). The comment period will remain open for 60 days. In addition, the Service will host two public hearings on the proposal on November 21, 2002, at the Jefferson County Courts and Administrative Building in Golden, Colorado.

DATES: The public comment period for the proposed rule is reopened for a period of 60 days, beginning November 21, 2002 and ending January 21, 2003.

ADDRESSES: You may submit written comments and information to Preble's Mouse Comments, Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, or by facsimile to 303–275–2371. You may hand deliver written comments to our Colorado Ecological Services Field Office at the address given above. You may send comments by electronic mail (e-mail) to *fw6_pmjm@fws.gov*. *See* the "Public Comments Solicited" section below for file format and other information on electronic filing. You may review comments and materials received, as well as supporting documentation used in preparation of this proposed rule, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Colorado Field Office.

FOR FURTHER INFORMATION CONTACT: LeRoy Carlson, Colorado Field Supervisor, at the above address or telephone 303–275–2370.

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse, a small rodent in the family Zapodidae, is known to occur only in eastern Colorado and southeastern Wyoming. It lives primarily in heavily vegetated riparian habitats and immediately adjacent upland habitats. Habitat loss and degradation caused by agricultural, residential, commercial, and industrial development resulted in the Preble's meadow jumping mouse being listed as a threatened species throughout its range on May 13, 1998 (62 FR 26517).

On July 17, 2000, the Service proposed to designate critical habitat for the Preble's meadow jumping mouse pursuant to the Endangered Species Act (67 FR 47154). The proposed designation includes 19 habitat units totaling approximately 23,248 hectares (57,446 acres) found along 1,058.1 kilometers (657.5 miles) of rivers and streams in Colorado and Wyoming.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Endangered Species Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency; and Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Endangered Species Act.

Public Comments Solicited

We intend any final action resulting from the proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule.

If you wish to comment, you may submit your comments and materials concerning the proposal by any one of several methods (*see* **ADDRESSES**). If you would like to submit comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your message, contact us directly by calling our Colorado Ecological Services Field Office at 303–275–2370.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address listed under **ADDRESSES.**

Public Hearings

The Service will host two public hearings on the proposal on November 21, 2002, at the Jefferson County Courts and Administrative Building at 100 Jefferson County Parkway in Golden, Colorado. The hearings will be held in the First Floor Hearing Room. Information sessions followed by an opportunity to ask questions regarding the proposal will begin at 1 p.m. and 6 p.m. and formal hearings, providing an opportunity to present comments on the proposal, will begin at 2 p.m. and 7 p.m.

Author

The author of this notice is Peter Plage, Colorado Field Office (*see* **ADDRESSES** above), telephone 303–275–2370.

Authority

Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 31, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–29618 Filed 11–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI47

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Nine Bexar County, TX, Invertebrate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis for the proposed designation of critical habitat for nine endangered karst-dwelling invertebrate species pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed rule published in the **Federal Register** on August 17, 2002 (67 FR 55064) and the current comment period is open until November 25, 2002. We are extending the comment period for the proposal to designate critical habitat for these species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. The draft economic analysis shows a range of likely costs from the designation of the proposed critical habitat, including those costs attributable coextensively to listing, of between $17.8 to $22.1 million over a 10-year period. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: We will accept comments on both the draft economic analysis and the proposed critical habitat designation until December 23, 2002.

ADDRESSES: You may submit written comments and materials concerning the

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proposal and draft economic analysis at the hearing or send them directly to Renne Lohoefener, Texas State Administrator, Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Written comments may also be sent by facsimile to 512/490–0974. You may also hand-deliver written comments to our U.S. Fish and Wildlife Service's Austin Ecological Services Field Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service's Austin Ecological Services Field Office at the above address. You may obtain copies of the proposed rule and draft economic analysis from the above address, by calling 512/490–0057, or from our Web site at *http://ifw2es.fws.gov/Library/*.

FOR FURTHER INFORMATION CONTACT: Bill Seawell, Acting Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, at the above address (telephone: 512/490–0057; facsimile: 512/490–0974).

SUPPLEMENTARY INFORMATION: The following nine Bexar County, Texas, invertebrate species were listed as endangered on December 26, 2000 (65 FR 81419): *Rhadine exilis* (ground beetle, no common name); *Rhadine infernalis* (ground beetle, no common name); *Batrisodes venyivi* (Helotes mold beetle); *Texella cokendolpheri* (Cokendolpher cave harvestman); *Cicurina baronia* (Robber Baron Cave meshweaver); *Cicurina madla* (Madla Cave meshweaver); *Cicurina venii* (Braken Bat Cave meshweaver); *Cicurina vespera* (Government Canyon Bat Cave meshweaver); and *Neoleptoneta microps* (Government Canyon Bat Cave spider). All of these species are karst dwelling species of local distribution in north and northwest Bexar County. They spend their entire lives underground.

The proposed critical habitat consists of 25 units (a total of approximately 9,516 acres) in Bexar County, Texas, each encompassing one or more caves or other karst features known to contain one or more of the listed species. "Karst" is a type of terrain that is formed by the slow dissolution of calcium carbonate from limestone bedrock by mildly acidic groundwater. This process creates numerous cave openings, cracks, fissures, fractures, and sinkholes and the bedrock resembles a honeycomb (USFWS 1994). Critical habitat identifies areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

The proposed rule published in the **Federal Register** on August 17, 2002 (67 FR 55064) and the current comment period is open until November 25, 2002. We are extending the comment period for the proposal to designate critical habitat for these species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. We have prepared a draft economic analysis on the effects of the proposed critical habitat designation, and are now announcing its availability for review. The draft analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. The draft economic analysis shows a range of likely costs from the designation of the proposed critical habitat of between $17.8 to $18 million over a 10-year period. Extending the comment period will provide the public an opportunity to evaluate and comment on both the proposed rule and the draft economic analysis. Comments already submitted on the proposed designation of critical habitat do not need to be resubmitted as they will be fully considered in the final determinations.

Public Comment Solicited

The final economic analysis concerning the designation of critical habitat for these species will consider information and recommendations from all interested parties. We will accept written comments and information during this extended comment period.

We solicit comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal or the draft economic analysis. We particularly seek comments concerning:

(1) Plans or potential for development within the area proposed to be designated;

(2) Plans or potential for agricultural land-uses within the area proposed to be designated, which might require a permit under section 404 of the Clean Water Act, or other types of Federal permits; and

(3) The likelihood of "stigma effects" and costs associated with the designation; and

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at our office listed in the **ADDRESSES** section.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 7, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29620 Filed 11–19–02; 10:15 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 225
Thursday, November 21, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. LS–02–16]

Notice of Request for Emergency Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Agricultural Marketing Service is requesting emergency approval from the Office of Management and Budget for the new information collection, "Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Agricultural Marketing Act of 1946."

DATES: Comments must be received by January 21, 2003, to be considered.

ADDRESSES: Send written comments to: (1) Country of Origin Labeling Program, Agricultural Marketing Service, USDA STOP 0249, Room 2092–S, 1400 Independence Avenue, SW., Washington, DC 20250–0249, or fax to (202) 720–3499 or send by E-mail to *cool@usda.gov;* (2) Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503, Attention: Desk Officer; and to (3) Clearance Officer, USDA–OCIO, Room 404–W, Jamie L. Whitten Building, STOP 7602, 1400 Independence Avenue, SW., Washington, DC 20250–7602.

All comments will become a matter of public record. Comments will be available for public inspection from the Agricultural Marketing Service (AMS) at the above address and over the Agency's Web site at: *http://www.ams.usda.gov/cool/*.

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, at: *eric.forman@usda.gov,* or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, at: *william.sessions@usda.gov.*

SUPPLEMENTARY INFORMATION: Title: Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946.

OMB Number: 0581–XXXX.

Type of Request: New Collection.

Abstract: Section 10816 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to require the Department of Agriculture (USDA) to issue country of origin labeling guidelines for use by retailers who wish to notify their customers voluntarily of the country of origin of beef (including veal), lamb, pork, fish, perishable agricultural commodities, and peanuts. These guidelines for the interim voluntary country of origin labeling of beef, lamb, pork, fish, perishable agricultural commodities, and peanuts were published in the September 11, 2002, **Federal Register** (67 FR 63367). Public Law 107–171 also requires the Secretary to promulgate requirements for mandatory labeling by September 30, 2004. It is the intent of the Agency that these guidelines, and experience gained through their voluntary adoption by the industry, will serve as the basis of the requirements that will be developed to implement the mandatory labeling program.

The voluntary guidelines prescribe minimum requirements for a recordkeeping system and refer to the enforcement provisions that will be a part of the mandatory program. Recordkeeping is essential to the integrity of any country of origin labeling program, whether it be a voluntary program or a mandatory program. Recordkeeping creates a paper trail that is a critical element in carrying out any internal reviews of a system conducted by industry representatives under a voluntary program or in enforcement audits that will be necessary for the Agency to conduct under the mandatory program. Additionally, the establishment of minimum recordkeeping requirements for the voluntary program serves the industry by providing a basis for the evaluation of compliance with the guidelines, for administering the program, for management decisions and planning, and for establishing the cost of the program. In addition, under the mandatory program, it supports administrative and regulatory actions the Agency may have to take in response to findings of noncompliance.

In general, under the voluntary program, the information collected will be used by industry personnel. It will be created, maintained, and/or submitted by producers, importers, handlers, and retailers. Additionally, it will necessitate that all of these entities have recordkeeping procedures in place.

The burden on each industry sector is discussed below. One major estimate made about each entity is the number of entities likely to participate in this voluntary program. Because the Agency has no basis to determine the level of participation in this program, it has estimated that all industry members that could be affected by the mandatory program will participate in the voluntary program. In estimating the burden hours associated with the recordkeeping requirements imposed on each industry sector, AMS drew upon its experience with the oversight of auditable and verifiable origin-based documented marketing programs already administered by the Agency.

Producers (commercial farms, ranches, and fishermen). USDA estimates that there are approximately 2 million commercial farms, ranches, and fishermen in the United States. Although a number of these farms, ranches, and fishermen may not produce products that are covered by these guidelines, or sell to outlets that would require their suppliers to adopt these guidelines, this analysis assumes that all of these farms, ranches, and fishermen will implement a system for the voluntary labeling of the country of origin for the products these farms, ranches, and fishermen produce. AMS estimates that the time required for a producer to develop a recordkeeping system that would meet the requirements of these guidelines to be 1 day. AMS estimates that the ongoing

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time required generating and maintaining the required records to be approximately 1 hour per month. Although AMS recognizes that many large-scale producers, such as large cattle feedlots, will require substantial more time than these estimates, AMS believes that the overall averages presented here to be accurate. For the purposes of this program, AMS also estimates the hourly rate, or value of time for a producer to be $25 per hour.

Accordingly, AMS estimates that the total burden for producers to develop a recordkeeping system that would comply with these guidelines to be 2 million producers × $25 per hour × 8 hours, or $400 million. In addition, AMS estimates that the total annual burden for producers to generate and maintain the records required to comply with these voluntary guidelines to be 2 million producers × $25 per hour × 12 hours, or $600 million. Therefore, the total potential burden of this program on producers in the first year could be $400 million + $600 million, or $1 billion.

Food Handlers (including packers, processors, importers, wholesalers, and distributors): AMS estimates that there are 100,000 food handlers. Although a number of these food handlers may not process or handle products that are covered by these guidelines or sell to outlets that would require their suppliers to adopt these guidelines, this analysis assumes that all of these food handlers will implement a system for the voluntary labeling of the country of origin for the products they process or handle. AMS estimates that the time required for a food handler to develop a recordkeeping system that would meet the requirements of these guidelines to be 2 days. AMS estimates that the ongoing time required generating and maintaining the required records to be approximately 1 hour per week. Although AMS recognizes that many large facilities, such as large-scale meatpackers, will require substantially more time than these estimates, AMS believes that the overall averages presented here to be accurate. For the purposes of this program, AMS also estimates the hourly rate, or value of time for a food handler to be $50 per hour.

Accordingly, AMS estimates that the total burden for food handlers to develop a recordkeeping system that would comply with these guidelines to be 100,000 food handlers x $50 per hour x 16 hours, or $80 million. In addition, AMS estimates that the total annual burden for food handlers to generate and maintain the records required to comply with these voluntary guidelines to be 100,000 food handlers x $50 per hour x 52 hours, or $260 million. Therefore, the total potential burden of this program on food handlers in the first year could be $80 million + $260 million, or $340 million.

Retailers: There are currently approximately 31,000 Perishable Agricultural Commodities Act licensee outlets that would be considered retailers and covered by these voluntary guidelines. Although a number of these retailers may choose not to adopt these guidelines, this analysis assumes that all of these retailers will implement a system for the voluntary labeling of the country of origin for the products they sell. AMS estimates that the time required for a retailer to develop a recordkeeping system that would meet the requirements of these guidelines to be 5 days. AMS estimates that the ongoing time required generating and maintaining the required records to be approximately 1 hour per day. Although AMS recognizes that many large retailers, such as supermarkets, will require substantially more time than these estimates, AMS believes that the overall averages presented here to be accurate. For the purposes of this program, AMS also estimates the hourly rate, or value of time for the employee of a retailer to be $50 per hour and that a retailer will work 7 days a week.

Accordingly, AMS estimates that the total burden for retailers to develop a recordkeeping system that would comply with these guidelines to be 31,000 retailers x $50 per hour x 40 hours, or $62 million. In addition, AMS estimates that the total annual burden for retailers to generate and maintain the records required to comply with these voluntary guidelines to be 31,000 retailers x $50 per hour x 365 hours, or $565.75 million. Therefore, the total potential burden of this program on retailers in the first year could be $62 million + $565.75 million, or $627.75 million.

Annual Reporting and Recordkeeping Burden for the First Year:

Estimated Number of Respondents: 2,131,000.

Total Annual Hours: 59,355,000.

Total Cost: $1,967,750,000.

Comments. Comments are requested on these recordkeeping requirements. Comments are specifically invited on: (1) Whether the recordkeeping is necessary for the proper operation of this voluntary program, including whether the information would have practical utility; (2) the accuracy of USDA's estimate of the burden of the recordkeeping requirements, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the records to be maintained; and (4) ways to minimize the burden of the recordkeeping on those who are to maintain and/or make the records available, including the use of appropriate automated, electronic, mechanical, or other technological recordkeeping techniques or other forms of information technology.

Dated: November 14, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29602 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # TM–02–09]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice Inviting Proposals for fiscal year (FY) 2003 grant funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given that for the Federal-State Marketing Improvement Program (FSMIP) for FY 2003 the Continuing Budget Resolution as well as U.S. House of Representatives and U.S. Senate Appropriations Bills provide $1,347,000, the same amount as for FY 2002. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry groups and community-based organizations in the development of proposals and the conduct of projects.

DATES: Funds will be allocated on the basis of one round of consideration. Proposals will be accepted through February 14, 2003.

ADDRESSES: Proposals may be sent to: FSMIP Staff, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4009 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FSMIP Staff Officer, (202) 720–2704.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). FSMIP provides matching grants on a competitive basis

to assist State Departments of Agriculture or other appropriate State agencies in conducting studies or developing innovative approaches related to the marketing of U.S. food and agricultural products. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division to discuss their proposal.

Proposals are submitted by the State Agency and must be accompanied by completed Standard Forms (SF)–424 and SF–424A. Under this program, AMS will not approve the use of funds for advertising or, with limited exceptions, for the purchase of equipment or facilities. Detailed program guidelines may be obtained from your State Department of Agriculture, the above AMS contact, or the FSMIP Web site: *http://www.ams.usda.gov/tmd/fsmip.htm* .

FSMIP funds can be requested for a wide range of marketing research and marketing service activities, including projects aimed at:

(1) Developing and testing new or more efficient methods of processing, packaging, handling, storing, transporting, and distributing food and other agricultural products;

(2) Assessing customer response to new or alternative agricultural products or marketing services and evaluating potential opportunities for U.S. producers, processors and other agribusinesses, in both domestic and international markets; and,

(3) Identifying problems and impediments in existing channels of trade between producers and consumers of agricultural products and devising improved marketing practices, facilities, or systems to address such problems.

While all proposals which fall within the FSMIP guidelines will be considered, States are encouraged to submit proposals that have regional or national significance and that foster innovation in the following arenas:

(1) Global Economy—preparing U.S. producers to market profitably in a rapidly changing global environment where 96 percent of the world's consumers reside outside the United States;

(2) Consumer-Driven Agriculture—responding to consumer concerns about health and food safety; developing new products that address the needs of the mobile, time-pressed consumer; and studying the uses and value to consumers of food labeling and packaging alternatives;

(3) Agricultural Diversity—identifying niche market opportunities; exploring new markets for agricultural products, such as for industrial and nutraceutical applications; developing value-added products that meet consumer needs while enabling producers to retain a larger share of the food dollar; and developing marketing tools and strategies that will foster long term sustainability of the environment and viable rural communities;

(4) Technical Innovation—using technology to improve food quality, develop new products or processing methods, and address food safety concerns through improved handling processing, or and packaging; and

(5) Transportation and Distribution—fostering efficiencies in the transportation and distribution of U.S. food and agricultural products both domestically and overseas; addressing challenges to exporters of identity-preserved grain and other specialty commodities; assisting small and medium scale producers overcome barriers to accessing new or expanded markets; and applying supply chain management in the marketing system.

FSMIP is listed in the "Catalog of Federal Domestic Assistance" under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: November 13, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29531 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Uruguay Round Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notification of Special Safeguard Duty on Imports of American-type Cheese.

SUMMARY: After reviewing the volume of American-type cheese imports, the Secretary of Agriculture determined that the yearly special safeguard trigger level had been met and a special safeguard duty on imports of American-type cheese would be imposed effective from the date of this notification through December 31, 2002. This additional duty, as described in subheading 9904.05.82 of the Harmonized Tariff Schedule of the United States (HTS), is 35.2 cents per kilogram.

DATES: The additional duty will be effective November 21, 2002 through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Charles R. Bertsch, Multilateral Trade Negotiations Division, STOP 1022, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1022, or telephone (202) 720–6278.

SUPPLEMENTARY INFORMATION: U.S. Notes 1 and 2 to Subchapter IV, of Chapter 99 of the HTS, contain the safeguard measures established pursuant to Article 5 of the Agreement on Agriculture (as approved by section 101 of the Uruguay Round Agreements Act). These safeguard measures include the imposition of additional duties based upon the volume of imports into the United States for certain products, including American-type cheese. Subheading 9904.05.82 provides for the imposition of 35.2 cents per kilogram additional duty on imports of American-type cheese upon notification in the **Federal Register** by the Secretary of Agriculture or the Secretary's designated representative that a specific volume of imports has been exceeded (the trigger level for 2002 is 16,528,242 kg).

Subheading 9904.05.82 covers American-type cheese, which enters under subheadings 0406.10.38, 0406.20.39, 0406.20.71, 0406.30.38, 0406.30.71, 0406.90.54, and 0406.90.84 of Chapter 4 of the HTS.

Section 405(a) of the Uruguay Round Agreements Act requires, among other things, that the President shall determine and cause to be published in the **Federal Register** the list of special safeguard agricultural goods and the applicable trigger prices and, on an annual basis, trigger levels. Section 405(b) of that Act provides, in relevant part, that if the President determines with respect to a special safeguard agricultural good that it is appropriate to impose the volume-based safeguard, then the President shall determine the amount of the duty to be imposed, the period such duty shall be in effect, and any other terms and conditions applicable to the duty.

Further to the application of such special agricultural safeguard duties, the President proclaimed on December 23, 1994 (Presidential Proclamation No. 6763) the provisions of U.S. Notes 1 and 2 to Subchapter IV, Chapter 99, of the HTS as well as the automatically applicable safeguard duties set forth in such subchapter upon satisfaction of the requisite conditions. Such U.S. Notes 1 and 2 set forth the other terms and

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conditions for application of any such duty.

As also provided in Presidential Proclamation 6763, the President delegated to the Secretary of agriculture the authority to make the determinations and effect the publications described in section 405(a) of the Uruguay Round Agreements Act. The Secretary of Agriculture has further delegated this authority to the Under Secretary for Farm and Foreign Agricultural Services (7 CFR 2.16(a)(3)(x1ii)), who has in turn further delegated such authority to the Administrator of the Foreign Agricultural Service (7 CFR 2.43(a)(42)).

The Administrator determined that the 2002 trigger level for American-type cheese is 16,528,242 kilograms (67 FR 38927), June 6, 2002.

Notice

The Administrator has determined that the amount of American-type cheese imported during 2002 has exceeded the trigger level of 16,528,242 kilograms. In accordance with U.S. Notes 1 and 2, Subchapter IV, Chapter 99 of the HTS and Subheading 9904.05.82 an additional duty of 35.2 cents per kilogram shall apply from the date of publication of this notice through December 31, 2002.

As provided in U.S. Note 1, goods of Canada or Mexico imported into the United States are not subject to such duty. As provided in U.S. Note 2, this duty shall not apply to any goods en route on the basis of a contract settled before the date of publication of this notice.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 02–29599 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to a request from Georgia Transmission Corporation for financing assistance from RUS to finance the construction of a 230/115 kV substation and a 230 kV transmission line in Cobb County, Georgia.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct a 230 kV transmission line and substation in western Cobb County, Georgia. The proposed 230/115 kV McConnell Road Substation will be located approximately ½ mile west of the intersection of Lost Mountain Road and Dallas Highway (State Road 120). The proposed transmission line will traverse east from the proposed substation adjacent to Dallas Highway for approximately 6.3 miles and connect to an existing 230 kV transmission line near the intersection of Dallas Highway and Mt. Calvary Road. The transmission line would be supported by steel, single-pole, self-supporting and guyed structures. The proposed transmission line will be constructed as an overbuild of the existing distribution line along Highway 120 between the 230 kV tap point and the Lost Mountain Substation. The distribution line will share the proposed 230 kV transmission line structures with intermediate poles put in place to reduce sag of the distribution conductors. The existing distribution line easement is within the Georgia Department of Transportation Dallas Highway right-of-way. Georgia Transmission Corporation proposes to place the new poles near the same locations as the existing poles wherever possible. However, Georgia Transmission Corporation will need to purchase and clear an additional 20-feet of easement on private property.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Ms. Gayle Houston of Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–2088 telephone (770) 270–7748. Ms. Houston's e-mail address is *gayle.houston@gatrans.com.*

Dated: November 15, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–29596 Filed 11–20–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Licensing Responsibilities and Enforcement.

Agency Form Number: None.

OMB Approval Number: 0694–0122.

Type of Request: Extension of a collection.

Burden: 70,104 hours.

Average Time Per Response: Up to 2.5 hours per response.

Number of Respondents: 145,372 respondents.

Needs and Uses: This information collection package supports the various collections, notifications, reports, and information exchanges that are needed by the Office of Export Enforcement and Customs to enforce the Export Administration Regulations and maintain the National Security of the United States.

(a) *Assumption Writing.* This writing is necessary to establish who will be responsible for compliance with license requirements in the Export Administration Regulations.

(b) *Information sharing requirements.* This information sharing requirement is necessary because the foreign principal and/or his agent has taken on the responsibility for license requirements without necessarily having all the information necessary to make a license determination or obtain a license.

(c) *Power of attorney or other written authorization.* It is necessary to establish the principal/agent relationship in writing, so that BIS can determine who was responsible for compliance of the EAR and the proper party can be charged when a violation of the Export Administration Regulations has occurred.

(d) *Procedures for unscheduled unloading.*

(e) *Return or Unloading at Direction of U.S. Dept of Commerce.* Where there are reasonable grounds to believe that a violation of the EAR has occurred or will occur with respect to a particular export from the U.S., BIS or any U.S. Customs officer may order any person in possession or control of such shipment to return or unload the shipment.

(f) *Destination Control Statement.* The DCS is a preventive enforcement measure to remind the public that the goods covered by a document that contains the DCS are controlled for export by the U.S. Government and if they plan to export or reexport it they should look at the EAR to make sure they are in compliance.

(g) *Notation on export documents for exports exempt from SED requirements.* The bill of lading or other loading document must be available for inspection along with the items prior to lading on the carrier.

(h) *Exports by U.S. Mail.* Whenever you export items subject to the EAR by mail that meets one of the exemptions for submission of an SED, you must enter the appropriate export authority on the parcel, *i.e.*, either the number of and expiration date of a license issued by BIS, the appropriate License Exception symbol, or NLR "No License Required" designator.

(i) *Issuance of License, Responsibility of the licensee.* When required by the license, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the parties to whom those conditions apply.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, Office of the Chief Information Officer (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: November 15, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–29528 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Procedure to Initiate an Investigation under the Trade Expansion Act of 1962, as amended.

Agency Form Number: n/a.

OMB Approval Number: 0694–0120.

Type of Request: Revision.

Burden: 3,000 hours.

Average Time Per Response: 5,000 hours.

Number of Respondents: .6 (6 respondents in 10 years).

Needs and Uses: The information is used by the Secretary of Commerce to conduct an investigation, and to present the Department's findings to the President within 270 days as required by the statute. The statute also requires the Secretary of Commerce to consult with the Secretary of Defense regarding methodology and policy questions that arise during the conduct of an investigation.

During the course of an investigation, Commerce may provide the public with an opportunity to comment and present information and advice relevant to the investigation, including holding public hearings, through a notice in the **Federal Register**. Additional information is gathered from such sources as: surveys of producers, importers, and end-users; on-the-record meetings with interested parties; site visits; and a review of public literature.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6625; 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: November 15, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–29529 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 021113273–2273–01]

Removal of Person From the Unverified List—Guidance as to "Red Flags" Under Supplement No. 3 to 15 CFR Part 732

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security ("BIS") published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks ("PLC") or post-shipment verifications ("PSV") could not be conducted for reasons outside the control of the U.S. Government ("Unverified List"). The notice also advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a "red flag" as described in the guidance set forth in supplement no. 3 to 15 CFR part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notice also stated that, when warranted, BIS would remove persons from the Unverified List. Recently, a PSV was completed at the facilities of S.B. Submarine Systems Co., Ltd., 1591 Hongqiao Rd., Bldg 15, People's Republic of China, ("S.B. Submarine"). Accordingly, by this notice, S.B. Submarine is removed from the Unverified List.

DATES: This notice is effective November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR parts 730 to 774) ("EAR"), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, selectively conduct PLCs to verify the *bona fides* of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials

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sometimes carry out PSVs to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other federal officials acting on BIS's behalf, have been unable to perform a PLC or PSV with respect to certain export control transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). In a notice issued on June 14, 2002 (67 FR 40910), BIS set forth an Unverified List of certain foreign end-users and consignees involved in such transactions.

The June 14 notice also advised exporters that the participation of a person on the Unverified List in a proposed transaction will be considered by BIS to raise a "red flag" under the "Know Your Customer" guidance set forth in supplement no. 3 to 15 CFR part 732 of the EAR. Under that guidance, whenever there is a "red flag," exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR.

The **Federal Register** notice further stated that persons on the Unverified List would be removed from the list when warranted. BIS has now conducted a PSV in a transaction involving S.B. Submarine Systems Co., Ltd., 1591 Hongqiao Rd., Bldg. 15, People's Republic of China, ("S.B. Submarine"), a person included on the Unverified List. This notice advises exporters that S.B. Submarine is removed from the Unverified List, and the "red flag" resulting from S.B. Submarine's inclusion on the Unverified List is rescinded.

The Unverified List, as modified by this notice, is set forth below.

Dated: November 15, 2002.

Michael J. Garcia,

Assistant Secretary for Export Enforcement.

Unverified List as of November 21, 2002

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check ("PLC") or a post-shipment verification ("PSV") for reasons outside of the U.S. Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a "red flag" with respect to such transaction within the meaning of the guidance set forth in supplement no. 3 to 15 CFR part 732. The red flag applies to the person on the Unverified List regardless of where the person is located in the country include on the list.

Name	Country	Last known address
Power Test & Research Institute of Guangzhou	People's Republic of China	No. 38 East Huangshi Road, Guangzhou.
Civil Airport Construction Corporation	People's Republic of China	111 Bei Sihuan Str. East, Chao Yang District, Beijing.
Xian XR Aerocomponents Co., Ltd	Peopole's Republic of China	Xujiawen Beijiao, Xian, Shaanxi.
Shaanxi Telecom Measuring Station	People's Republic of China	39 Jixiang Road, Yanta District, Xian Shaanxi.
Beijing San Zhong Electronic Equipment Engineer Co., Ltd.	People's Republic of China	Hai Dian Fu Yuau, Men Hao1 Hao, Beijing.
Huabei Petroleum Administration Bureau Logging Company.	People's Republic of China	South Yanshan Road, Ren Qiu City, Hebei.
Yunma Aircraft Mfg.	People's Republic of China	Yaopu, Anshun, Guizhou.
Daqing Production Logging Institute	People's Republic of China	No. 3 Fengshou Village, Sartu District, Daqing City, Heilongjiang.
Dee Communications MSDN. BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.

[FR Doc. 02–29680 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 90–5A005."

The California Kiwifruit Commission and California Kiwifruit Exporters Association's ("CKC") original Certificate was issued on August 10, 1990 (55 FR 33740, August 17, 1990) and previously amended on November 27, 1990 (55 FR 50204, December 5, 1990); January 29, 1991 (56 FR 4601, February 5, 1991); February 24, 1992 (57 FR 6712, February 27, 1992); and January 14, 2002 (67 FR 2636, January 18, 2002). A summary of the application for an amendment follows.

Summary of the Application

Applicant: California Kiwifruit Commission and California, Kiwifruit Exporters Association, 9845 Horn Road, Suite 160, Sacramento, California 95827.

Contact: Linda LaFrancis, President. Telephone: (916) 362–7490.

Application No.: 90–5A005.

Date Deemed Submitted: November 7, 2002.

Proposed Amendment: CKC seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Oppenheimer, David & Associates, LP, Seattle, Washington; and Pacific Trellis Fruit, Reedley, California;

2. Delete the following companies as "Members" of the Certificate: Sunny Cal Farms, Reedley, California; and George Brothers, Sultana, California; and

3. Change the listing of the company names for the current Members: Universal Produce Corp. to the new listing Phillips Farms Marketing; Chase National Kiwi Farms, Inc. to the new listing Chase National Kiwi Farms; Kings Canyon/Corrin Sales Corp. to the new listing Kings Canyon Corrin Sales, LLC; Regatta Tropicals to the new listing Regatta Tropicals, LTD; Stellar Distributing to the new listing Stellar Distributing, Inc.; Sun Pacific Marketing Coop. to the new listing Sun Pacific Marketing Cooperative, Inc.; Trinity Fruit Sales Co. to the new listing Trinity Fruit Sales Company; Venida Packing Co. to the new listing Venida Packing, Inc.; and WKS/Wil-Ker-Son Ranch to the new listing WKS Sales.

Dated: November 15, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 02–29582 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, U.S. Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 02–00004." A summary of the application follows.

Summary of the Application

Applicant: California Pistachio Export Association ("CPEA"), 5497 E. Olive Avenue, Fresno, California 93727.

Contact: Carter Brown, Esquire.

Telephone: (202) 543–4455.

Application No.: 02–00004.

Date Deemed Submitted: November 7, 2002.

Members (in addition to applicant): A&P Growers Cooperative, Inc., Tulare, CA; CalPure Pistachios, Inc., Lost Hills, CA; Gold Coast Pistachios, Inc., Fresno, CA; Keenan Farms, Inc., Avenal, CA; Monarch Nut Company, Delano, CA; Nichols Pistachio, Hanford, CA; Primex Farms, LLC, Wasco, CA; Santa Barbara Pistachio Company, Inc., Santa Barbara, CA; Setton Pistachio of Terra Bella, Inc., Terra Bella, CA; and South Valley Farms, LLC, Wasco, CA.

CPEA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

California in-shell and shelled pistachios, raw and roasted. Including all forms.

2. Export Trade Facilitation Services (as they Relate to the Export of Products)

All export trade-related facilitation services, including but not limited to: Development of trade strategy; sales, marketing, and distribution; foreign market development; promotion; and all aspects of foreign sales transactions, including export brokerage, freight forwarding, transportation, insurance, billing, collection, trade documentation, and foreign exchange; customs, duties, and taxes; and inspection and quality control.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States of

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America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

CPEA and its Members seek to have the following conduct certified:

1. CPEA, on its own behalf or on behalf of all or less than all of its Members, through CPEA or through Export Intermediaries (to the extent provided in section 1.g) may:

a. *Export Sales Prices.* Establish sales price, minimum sales price, target sales price and/or minimum target sales price, and other terms of sale;

b. *Marketing and Distribution.* Conduct marketing and distribution of Products;

c. *Promotion.* Conduct joint promotion of Products;

d. *Quantities.* Agree on quantities of Products to be sold, provided each Member shall be required to dedicate only such quantity or quantities as each such Member shall independently determine;

e. *Market and Customer Allocation.* Allocate geographic areas or countries in the Export Markets and/or customers in the Export Markets among Members;

f. *Refusals to Deal.* Refuse to quote prices for Products, or to market or sell Products, to or for any customers in the Export Markets, or any countries or geographical areas in the Export Markets;

g. *Exclusive and Non-exclusive Export Intermediaries.* Enter into exclusive and non-exclusive agreements appointing one or more Export Intermediaries (as defined under "Definitions" paragraph 1) for the sale of Products with price, quantity, territorial and/or customer restrictions as provided in sections 1.a. through 1.f., inclusive, above;

h. *Non-Member Activities.* Purchase Products from non-Members to fulfill specific sales obligations, provided that CPEA and/or its Members shall make such purchases only on a transaction-by-transaction basis and when the Members are unable to supply, in a timely manner, the requisite Products at a price competitive under the circumstances. In no event shall a non-Member be included in any deliberations concerning any Export Trade Activities; and

i. *Transportation Activities.* Negotiate favorable transportation rates (volume discounts) and consolidate shipments.

2. CPEA and its Members may exchange and discuss the following information:

a. Information about sales and marketing efforts for the Export Markets, activities and opportunities for sales of Products in the Export Markets, selling strategies for the Export Markets, sales for the Export Markets, contract and spot pricing in the Export Markets, projected demands in the Export Markets for Products, customary terms of sale in the Export Markets, prices and availability of Products from competitors for sale in the Export Markets, and specifications for Products by customers in the Export Markets;

b. Information about the price, quality, quantity, source, and delivery dates of Products available from the Members to export;

c. Information about terms and conditions of contracts for sale in the Export Markets to be considered and/or bid on by CPEA and its Members;

d. Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans- or intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties and taxes;

f. Information about U.S. and foreign legislation and regulations, including Federal marketing order programs, affecting sales for the Export Markets;

g. Information about CPEA's or its Members' export operations, including without limitation, sales and distribution networks established by CPEA or its Members in the Export Markets, and prior export sales by Members (including export price information); and

h. Information about export customer credit terms and credit history.

3. CPEA and its Members may meet to engage in the activities described in paragraphs 1 and 2 above.

Definitions

1. "Export Intermediary" means a person, including a Member, who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

2. "Member" means a person who has membership in the CPEA Export Trade Certificate and who has been certified as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1) (2002).

Dated: November 15, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 02–29583 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of meeting.

SUMMARY: The APAC will have a closed meeting on December 4, 2002 at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Public Law 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation. At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on November 15, 2002, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the December 4th meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: November 15, 2002.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 02–29562 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Corrected notice of decision of NAFTA panel.

SUMMARY: On October 15, 2002 the NAFTA Panel issued its decision in the matter of Pure Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–05.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiosly the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information: On August 4, 2000, the Government of Quebec filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of the Full Sunset Review made by the International Trade Administration respecting Pure Magnesium from Canada. This determination was published in the **Federal Register** on July 5, 2000 (65 FR 41,436). The request was assigned File No. USA–CDA–00–1904–06.

Panel Decision: The Panel remanded this matter back to the Department (i) for further consideration of the record concerning the "other factors" which are required to be taken into account pursuant to our conclusion in sections 2 and 3 of this opinion; (ii) to reconsider whether the normal preference for the investigation rate should not be followed here.

The Panel ordered the Department to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The Panel instructed DOC to provide a report in 45 days detailing how it will comply with these instructions (by November 29, 2002) and to complete the remand within sixty (60) days thereafter (not later than January 28, 2003).

Dated: November 13, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–29612 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: National Institute of Standards and Technology, Technology Partnerships Division, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov*, or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

[Docket No.: 01–024US]

Title: Method For Combinatorially Measuring Adhesion Strength.

Abstract: This invention is available for nonexclusive licensing only. A new method for measuring the adhesive strength of polymer materials arranged in a combinatorial library is described. In this invention, a combinatorial library consisting of two parts: A periodic distribution of curved surfaces, such as a lens array, and a complementary substrate. These two library components are brought into contact under controlled displacement conditions. Upon contact, a combinatorial array of polymer interfaces is created. After reaching maximum contact, the two library components are separated at a controlled displacement rate. During both the contact and separation processes, the contact area created by each contact point and the corresponding displacement is recorded. This information of contact area and displacement is used to quantitatively determine the adhesion energy of the polymer interface. Additionally, a qualitative mapping of the combinatorial array is simply given by imaging the contact areas over the entire array. With this information, the conditions for optimal adhesion at the polymer interface can be determined as a function of the parameters varied in the combinatorial library. In addition to empirically determining optimal adhesion conditions for a specific

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application, this technique will have significant impact in guiding the molecular engineering of optimized adhesive materials for industries such as, but not limited to, electronic packaging, biomaterials, and coatings.

Dated: November 14, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–29515 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, December 3, 2002, from 9 a.m. until 5 p.m., Wednesday, December 4, 2002, from 9 a.m. until 5 p.m. and on Thursday, December 5, 2002, from 9 a.m. until 3:30 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/csspab/*.

DATES: The meeting will be held on December 3, 2002, from 9 a.m. until 5 p.m., December 4, 2002, from 9 a.m. until 5 p.m., and December 5, 2002, from 9 a.m. until 3:30 p.m.

ADDRESSES: The meeting will take place at the Washington D.C./North Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland.

Agenda:

—Welcome and Overview
—CSSPAB Work Plan Reports
—GSA Update on E-Authentication Effort
—Updates on Recent Computer Security Legislation
—Update by OMB on Privacy and Security Issues
—Briefing on OMB Enterprise Architecture Effort
—Briefing on NIST Certification and Authentication Effort
—Agenda Development for March 2003 CSSPAB meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than November 25, 2002. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Dr. Fran Nielsen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3669.

Dated: November 14, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–29516 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110802D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fisheries for Dolphin and Wahoo

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Dolphin and wahoo fishery of the U.S. Atlantic coast; request for public comments.

SUMMARY: On June 23, 1999, NMFS, under authority granted to the Secretary of Commerce (Secretary) under the Magnuson-Stevens Fishery Conservation and Management Act, designated the South Atlantic Fishery Management Council (SAFMC) as the council with the administrative lead in jointly preparing and amending a dolphin, *Coryphaena hippurus*, and wahoo, *Acanthocybium solanderi*, Fishery Management Plan (FMP) with the Gulf of Mexico (GMFMC) and Caribbean (CFMC) Fishery Management Councils. The New England (NEFMC) and Mid-Atlantic (MAFMC) Fishery Management Councils already indicated their preference not to manage the stocks directly in their area of jurisdiction, but to limit their participation in such an FMP to an advisory capacity to the SAFMC.

Because of continued logistic delays in finalizing and implementing the jointly developed dolphin and wahoo FMP, and because of identified problems specific to the fishery in the SAFMC's area of jurisdiction (the US. Atlantic coast), on July 16, 2002, the SAFMC requested that the Secretary allow the SAFMC to withdraw from joint preparation of a dolphin and wahoo FMP, and that the Secretary re-designate the SAFMC as lead for a dolphin and wahoo FMP encompassing only the U.S. Atlantic coast (i.e. excluding the Gulf of Mexico and U.S. Caribbean regions).

Public comments are solicited concerning the SAFMC's request.

DATES: Comments must be received no later than 4:30 p.m., eastern standard time, on December 23, 2002.

ADDRESSES: Written comments should be sent to Rolland Schmitten, Acting Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: On September 15, 1997, the SAFMC requested that the Secretary designate the SAFMC as lead Council to develop a fishery management plan for dolphin and wahoo. On March 9, 1998, (63 FR 11422) and May 5, 1998, (63 FR 24774), NMFS, on behalf of the Secretary, published notices in the **Federal Register** requesting public comment on the SAFMC's proposal to develop a joint dolphin and wahoo FMP. After considering the SAFMC's request and the public comment received, NMFS designated the SAFMC as the council with the administrative lead in jointly preparing and amending a dolphin and wahoo FMP with the GMFMC and CFMC (64 FR 33468).

The SAFMC's 1997 request to initiate development of a dolphin and wahoo FMP was prompted by public and Congressional concerns regarding possible localized reductions of these two species because of increased harvesting by commercial and recreational fishermen. The SAFMC believed that an FMP was necessary to protect and manage dolphin and wahoo resources and to address user group conflicts. The Magnuson-Stevens Act requires that, to the extent practicable, stocks shall be managed throughout their range. In the case of dolphin and wahoo, the ranges of these stocks extend beyond the SAFMC's area of jurisdiction. For this reason, NMFS initially designated the SAFMC as administrative lead in the development of a joint FMP in cooperation with the GMFMC, CFMC, NEFMC, and MAFMC.

Nevertheless, the National Standard Guidelines (50 CFR 600.320) suggest that alternative management units may be justified if complementary management is planned for other geographic areas or if the unmanaged portion of the stocks are immaterial to proper management within the area under consideration for the alternate management unit, especially if designated alternate management units are specifically relevant to the FMP's objectives.

In the case of the dolphin and wahoo FMP, social and economic issues are identified as the SAFMC's primary objectives in the FMP. The proposed FMP is not attempting to rectify a biological problem with the stocks; neither stock is overfished nor approaching an overfished condition because of overfishing. The SAFMC has specific objectives to: (1) reduce localized reductions in fish abundance, which can have economic and social impacts; (2) minimize market disruptions from intense landings by all sectors; (3) minimize conflicts and competition between recreational and commercial user groups; and (4) optimize social and economic benefits by recognizing and maintaining the historical importance of the recreational fishery.

No similar economic and social issues requiring management have been identified for the Gulf of Mexico and Caribbean areas. In the Gulf of Mexico, about 90 percent of the combined dolphin and wahoo commercial and recreational landings are from the west coast of Florida. Of the two species, dolphin dominate the landings, and Florida has regulations in place that restrict the commercial harvest of dolphin to hook-and-line fishing in state waters (where most of the harvest occurs), thus limiting the potential for user group conflicts. Similarly, catches and landings for both dolphin and wahoo in the Caribbean are minimal compared to the catches in the other areas, and in many instances, the catches are incidental to the catch of targeted species such as billfishes. Therefore, because of anticipated delays in finalizing a joint FMP, which could lead to exacerbated user conflicts in the South Atlantic's area of jurisdiction (U.S. Atlantic coast), NMFS finds merit in the SAFMC's request to forego further development of a joint FMP, and to develop an FMP for the U.S. Atlantic coast.

Inclusion of dolphin in the proposed FMP also would require removal of the U.S. Atlantic Ocean component of the dolphin stock from management in the Coastal Migratory Pelagics (CMP) FMP. The CMP FMP is implemented under authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. The CMP FMP is a joint plan involving both the GMFMC and SAFMC, and species in the fishery include king mackerel, Spanish mackerel, cero, cobia, dolphin, little tunny, and in the Gulf only, bluefish. Presently, the only regulations in the CMP FMP that pertain to dolphin are those that specify authorized fishing gears in the Atlantic and Gulf of Mexico exclusive economic zone. Removal of the U.S. Atlantic component of the dolphin stock from the CMP FMP would require a plan amendment and would have to be approved by a majority of the voting members, present and voting, of both the SAFMC and GMFMC. Wahoo in the Atlantic, the Gulf of Mexico, and Caribbean Sea, is not included in any Federal FMP.

NMFS requests public comments on the South Atlantic Council's proposal to be designated as the lead Council to prepare a new FMP to manage dolphin and wahoo for the U.S. Atlantic coast. Written comments will be reviewed and considered prior to NMFS' decision on this request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29685 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111502A]

Southwest Region, Pacific Islands Area Office; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Islands Area Office will hold public meetings on November 26 and November 27, 2002, from 3 p.m. to 6 p.m., to gather input to aid in the development of the American Samoa Observer Program.

ADDRESSES: The public meetings will be held at the Utelei Convention Center, Pago Pago, American Samoa.

FOR FURTHER INFORMATION CONTACT: Kevin Busscher, Port Coordinator; telephone: 973–2937, Ext. 215.

SUPPLEMENTARY INFORMATION:

Public Meetings

Public meetings will be conducted to gather input to aid in the development of the American Samoa Observer Program on Tuesday, November 26th and Wednesday November 27th from 3 p.m. to 6 p.m.

Topics to be discussed will include observer placement and specific duties, safety procedures, and vessel reimbursement.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kevin Busscher, 808–973–2937 Ext. 215 (voice) or 808–973–2941 (fax), at least 5 days prior to the meeting date.

Dated: November 15, 2002

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29682 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–22–S

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110602C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral, Coral Reefs, and Live/Hard Bottom Habitats and the Snapper-Grouper Fisheries of the South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Mr. Chris Ivers, Project Manager, on behalf of the North Carolina Aquariums (applicant), Raleigh, North Carolina. If granted, the EFP would authorize the applicant, with certain conditions, to collect up to 50 red porgy and up to 500 lb (227 kg) of coral/live rock each year for two years in Federal waters off North Carolina for public display. The three North Carolina Aquariums are located at Roanoke Island, Pine Knoll Shores, and Kure Beach, North Carolina. This EFP would replace the current EFP which expires on December 31, 2002.

DATES: Comments must be received no later than 5 p.m., eastern time, on December 23, 2002.

ADDRESSES: Comments on the application must be mailed to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet. The application and related documents are available for review upon written request to the address listed here.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; fax: 727–570–5583; e-mail: *peter.eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b), concerning scientific research activity, exempted fishing permits, and exempted educational activity.

According to the applicant, the North Carolina Aquariums (NCA), located at Roanoke Island, Pine Knoll Shores, and Kure Beach, are public, non-profit, self-supporting institutions established to promote an awareness, understanding and appreciation of the diverse natural and cultural resources associated with North Carolina's ocean, estuaries, rivers, streams and other aquatic environments. The aquariums are major educational and conservation institutions with free admission to school children in groups, and extensive field study and outreach programs. The specimens will be maintained in the NCA for public display.

The applicant intends, over a period of 2 years, to collect for public display up to 50 red porgy and up to 500 lb (227 kg) of coral/live rock annually.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plans for Coral, Coral Reefs, and Live/Hard Bottom Habitats and the Snapper-Grouper Fisheries of the South Atlantic Region (FMPs). The applicant requires authorization to harvest and possess corals, live rock, and red porgy off North Carolina.

Based on a preliminary review, NMFS finds that this application warrants further consideration and intends to issue an EFP. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with North Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard. The applicant requests a 24–month effective period for the EFP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29681 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110602B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagic Resources, and Snapper-Grouper Fisheries of the South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Mr. Steve Vogel III, Curator, South Carolina Aquarium on behalf of the South Carolina Aquarium (applicant), Charleston, South Carolina. If granted, the EFP would authorize the applicant, with certain conditions, to collect an average of 25 specimens each of numerous species of marine invertebrates and marine fish from Federal waters off South Carolina for public display. This EFP would replace a former EFP which expires on December 31, 2002.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on December 23, 2002.

ADDRESSES: Comments on the application must be mailed to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

The application and related documents are available for review upon written request to the address listed here.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; fax 727–570–5583; e-mail: peter.eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b), concerning scientific research activity, exempted fishing permits, and exempted educational activity.

According to the applicant, the South Carolina Aquarium (SCA), located in Charleston, is a public, non-profit, self-supporting institution devoted to the understanding and conservation of South Carolina's natural aquatic habitats and is a major educational and conservation institution with free admission to school children in groups, and extensive field study and outreach programs. The specimens will be maintained in the SCA for public display.

The applicant intends, over a period of 2 years, to collect for public display an average of 25 specimens each of 76 species of marine invertebrates and 221 species of marine fish from Federal waters off South Carolina, using a variety of fishing gears and the fish anesthetic, quinaldine.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plans for Coral, Coral Reefs, and Live/Hard Bottom Habitats, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagics, Calico Scallop, and Snapper-Grouper Fisheries of the South Atlantic Region (FMPs). The applicant requires authorization to harvest and possess corals, live rock, golden crab, rock shrimp, red drum, wreckfish, Nassau grouper, warsaw grouper, and jewfish taken from Federal waters off South Carolina. In addition, authorization is required to use quinaldine in a coral area and to possess spiny lobster, bluefish, cobia, king and Spanish mackerel, groupers and snappers, greater amberjack, hogfish and red porgy below the minimum size limit, in excess of established bag limits, or taken with prohibited gear.

The applicant also intends to collect a large number of species that are either not subject to Federal fishery management in the South Atlantic Region or are included under a fishery management plan that contains no management measures restricting possession or harvest. The applicant was referred to the Highly Migratory Species Division for authorization to collect highly migratory species such as sharks and tunas for public display.

Based on a preliminary review, NMFS finds that this application warrants further consideration and intends to issue an EFP. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with South Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard. The applicant requests a 24–month effective period for the EFP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29684 Filed 11–20–02; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by January 21, 2003.

ADDRESSES: Send comments to the Corporation for National and Community Service, Jodi Raybuck, Associate Director for Grants Management, Learn and Serve America, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Jodi Raybuck at (202) 606–5000, ext. 529 or *jraybuck@cns.gov*.

SUPPLEMENTARY INFORMATION: Currently, the Corporation is soliciting comments concerning the proposed applications entitled:

a. Learn and Serve America: Higher Education Application Instructions; and

b. Learn and Serve America: School and Community-Based Program Application Instructions.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The Corporation publishes application guidelines and notices of funding availability that include information about the funding and requirements. The application instructions provide the information, instructions and forms that potential applicants need to complete an application to the Corporation for funding.

The Corporation has recently developed an electronic grants management system that meets the requirements of Public Law 106–107. As part of the development process, the Corporation is redesigning its application forms and instructions to reflect the electronic system design.

Current Action

Part I

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application instructions.

Type of Review: Revised collection.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Higher Education Application Instructions.

OMB Number: 3045–0046.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 400 respondents.

Frequency: Once per year.

Average Time Per Response: Six (6) hours.

Estimated Total Burden Hours: 2,400 hours.

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Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part II

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application instructions.

Type of Review: Revised collection.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America School and Community-Based Program Application Instructions.

OMB Number: 3045–0045.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 225 respondents.

Frequency: Annually.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 2,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 18, 2002.

Jodi Raybuck,

Associate Director for Grants Management, Learn and Serve America.

[FR Doc. 02–29616 Filed 11–20–02; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 21, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Office of the Assistant G–1 (Civilian Personnel Policy), Plans and Strategies Division, Hoffman I, ATTN: DAPE–CP–PL (Murray J. Mack), 2661 Eisenhower Avenue, Hoffman I, Room 400, Alexandria, VA 22332–0300. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title: Evaluation Reasons for Non-Acceptance of Department of Army Civilian Job Offers.

Needs and Uses: Applicants for Department of Army civilian jobs will be surveyed to assess reasons why they declined Army jobs offers. The purpose of the survey is to determine which factors contributed to the job candidate's non-acceptance and to make recommendations for improvements.

Affected Public: Individuals or household.

Annual Burden Hours: 292.

Number of Respondents: 2,500.

Responses per Respondent: 1.

Average Burden per Response: 7 minutes.

Frequency: Semi-annually.

SUPPLEMENTARY INFORMATION: This information collection will provide a deeper understanding of the problems the Army faces in recruiting talented and qualified employees. The Department of the Army has a special interest in maintaining a qualified work force in that our national security rests on a foundation of good, capable, knowledgeable people working for the Department of the Army. The purpose of this information collection is to provide a better understanding of which factors influenced job applicants to decline a position with the Department of the Army so that these factors may be addressed and subsequently lead to a better work force.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–29585 Filed 11–20–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Protective Peptides of Neurotoxin of C. Botulinum

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 6,287,566 entitled "Protective Peptides of Neurotoxin of C. Botulinum," issued September 11, 2001 and related U.S. Patent Application No. 09/917,791 entitled "Protective Peptides of Neurotoxin of C. Botulinum," filed July 31, 2001. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Methods for developing vaccines to protect from neurotoxins of C. botulinum have been developed. Truncated BoNT/A proteins of about 15–30 kDa in size produced immune responses that provided protection from neuronal damage by botulinum neurotoxins.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–29588 Filed 11–20–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Purification Method and Apparatus

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/444.095 entitled "Purification Method and Apparatus," filed November 22, 1999. Foreign rights are also available (PCT/US99/27741). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to a method, an apparatus, and kit for performing purification of nucleic acids, proteins and cells. More specifically, the invention relates to an apparatus and methods for purification and concentration of nucleic acids, proteins (*e.g.*, antigens and antibodies) and cells without the need of centrifigation, precipitation or lengthy incubations. The apparatus and methods can be adapted to non-specific or specific capture of nucleic acids, proteins or cells in a biological or environmental samples and can be adapted for detection of the captured moiety by enzymatic colorimetric, fluorescent, luminescent or electrochemical formats with or without nucleic acids amplication.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–29587 Filed 11–20–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant a Partially Exclusive Patent License; RMZ Biotech, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to RMZ Biotech, Inc., a revocable, nonassignable, partially exclusive, license to practice worldwide the Government-Owned invention described in U.S. Patent Number 5,895,651 entitled "Recombinant Dengue Virus Envelop Protein/Maltose-Binding Protein Antigens and Subunit Vaccine Compositions Containing Said Antigens," issued 20 April 1999, in the field of rapid diagnostic test kits for Dengue Virus infection.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

Dated: November 12, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–29614 Filed 11–20–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant a Partially Exclusive Patent License; U.S. Harvest Postal Protection Services Corp.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to U.S. Harvest Postal Protection Services, Corp., a revocable, nonassignable, partially exclusive, license to practice worldwide the Government-Owned inventions described in U.S. Patent application Serial No. 10/060605 entitled "A Rapid and Non-Invasive Method to Evaluate Anthrax Immunization Status," filed 30 January 2002, in the field of medical vaccine evaluation tests for salivary anti-anthrax antibodies in U.S. military and Homeland Security Personnel including; hazardous material (HAZMAT), police, fire, and hospital workers.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

Dated: November 12, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–29613 Filed 11–20–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting

AGENCY: Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to mental health services for young children with disabilities and their families. The meeting will be open and accessible to the general public.

DATE AND TIME: FICC Meeting: Thursday, December 12, 2002 from 9 a.m. to 4:30 p.m.

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ADDRESSES: U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–29522 Filed 11–20–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–411–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

November 15, 2002.

Take notice that on November 12, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below to become effective October 1, 2002:

Substitute Fourth Revised Sheet No. 3
Substitute Fifth Revised Sheet No. 18
Substitute Third Revised Sheet No. 18A
Substitute Sixth Revised Sheet No. 19
Substitute Seventh Revised Sheet No. 19A
Substitute Second Revised Sheet No. 19A.01
Substitute Second Revised Sheet No. 19A.02
Substitute Seventh Revised Sheet No. 19B
Substitute Fourth Revised Sheet No. 19C
Substitute Fourth Revised Sheet No. 31
1st Rev Original Sheet No. 31A 1st Rev Third Revised Sheet No. 32
1st Rev Original Sheet No. 32A
Original Sheet No. 47B
Substitute Original Sheet No. 52B
Substitute Original Sheet No. 56A
Fourth Revised Sheet No. 65
Second Revised Sheet No. 65A
Second Revised Sheet No. 67A
Fourth Revised Sheet No. 68
Substitute Sixth Revised Sheet No. 69A

Chandeleur asserts that the purpose of this filing is to comply with the Commission's directives in Docket No. RP02–411–000, issued on September 27, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29724 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–071]

Columbia Gulf Transmission Company; Notice of Compliance Filing

November 15, 2002.

Take notice that on November 6, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of November 1, 2002:

Original Sheet No. 20C
Original Sheet No. 20E
Original Sheet No. 20G
Original Sheet No. 20D
Original Sheet No. 20F

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's orders approving negotiated rate agreements in Docket Nos. RP96–389–052, 054, 055, 060 and 067.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29726 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2014–004]

Entergy Services, Inc.; Notice of Filing

November 15, 2002.

Take notice that on November 12, 2002, Entergy Services, Inc. (Entergy Services) filed proposed revisions to its proposed Attachment Q (proposed Generator Operating Limits Procedure) to its Open Access Transmission Tariff filed in Docket ER02–2014–000. The proposed Generator Operating Limits Procedure addresses local transmission constraints on the Entergy transmission system and provides an alternate process for generators to participate in short-term bulk power markets.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29717 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–462–003 and RP01–37–005]

Equitrans, L.P.; Notice of Compliance Filing

November 15, 2002.

Take notice that on November 12, 2002, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective on November 1, 2002:

First Revised Sheet No. 201
First Revised Sheet No. 227
Second Revised Sheet No. 245
First Revised Sheet No. 246
First Revised Sheet No. 249
Second Revised Sheet No. 253
Second Revised Sheet No. 254
Second Revised Sheet No. 267
First Revised Sheet No. 268
First Revised Sheet No. 269
Second Revised Sheet No. 270
First Revised Sheet No. 271
Second Revised Sheet No. 286
Second Revised Sheet No. 306

Equitrans states that the purpose of this tariff filing is to comply with the Commission's Order issued October 10, 2002, on the compliance by Equitrans with Commission Order Nos. 637, 587–G and 587–L.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29721 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–499–002]

Equitrans, L.P.; Notice of Compliance Filing

November 15, 2002.

Take notice that on November 12, 2002, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 276C; and Original Sheet No. 276D, to become effective on October 1, 2002.

Equitrans states that the purpose of this tariff filing is to comply with the Commission's Letter Order, issued in Docket No. RP02–499–000, on September 27, 2002, where the Commission accepted the Equitrans tariff sheets to comply with Commission Order 587–O, subject to its filing certain modifications to include and delete standards in accordance with Version 1.5 of the North American Energy Standards Board.

Equitrans further states that Original Sheet Nos. 276C and 276D were not originally filed on October 9, 2002, because they had previously been filed in another proceeding. However, in an order issued October 10, 2002, in Equitrans' Docket Nos. RP00–462–001, *et al.*, the Commission indicated that this proceeding is the proper proceeding for their filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be

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filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29725 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–392–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

November 15, 2002.

Take notice that on November 13, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Original Sheet No. 7, with an effective date of September 1, 2002.

Kern River states that the purpose of this filing is to revise Kern River's tariff to reflect the correct FERC Annual Charge Adjustment of $.0021/Dth for Rate Schedules KRF–L1 and KRI–L1 for service on the High Desert Lateral.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Dated:

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29723 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR03–1–000]

Phillips Petroleum Company, Complainant v. Platte Pipe Line Company, Respondent; Notice of Complaint

November 15, 2002.

Take notice on November 14, 2002, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343.1(a)), Phillips Petroleum Company (Phillips) filed a Complaint in the captioned proceeding. Phillips alleges that Platte Pipe Line Company (Platte) has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App. 1 *et seq.*, by charging unjust, unreasonable, unduly preferential, and unduly discriminatory rates for its pump-over service which transfers crude oil to the Frontier Pipeline Company at Casper, Wyoming, as more fully set forth in the Complaint.

Phillips requests that the Commission: (1) Examine Platte's challenged rates for its interstate pump-over service at Casper; (2) order refunds and/or reparations to Phillips, including appropriate interest thereon, for the applicable refund and/or reparation periods to the extent the Commission finds that such rates are unlawful; (3) determine just, reasonable, and nondiscriminatory rates for Platte's jurisdictional interstate pump-over service; (4) award Phillips reasonable attorneys' fees and costs; and (5) order such other relief as may be appropriate.

Phillips states that it has served the Complaint on Platte. Pursuant to Rule 343.3 of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, Platte's response to this Complaint is due within 30 days of the filing of the Complaint.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29718 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–13–005>

Portland Natural Gas Transmission System: Notice of Compliance Filing

November 15, 2002.

Take notice that on November 12, 2002, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, to become effective on November 12, 2002:

3rd Rev. Sheet 100
1st Rev. Sheet 201
1st Rev. Original Sheet 302
1st Rev. Original Sheet 303
1st Rev. Original Sheet 304
1st Rev. Original Sheet 305
1st Rev. Original Sheet 306
1st Rev. Original Sheet 307
1st Rev. Sheet 504
1st Rev. Sheet 510
1st Rev. Sheet 511

PNGTS asserts that the purpose of its filing is to comply with the Commission's order issued on October 10, 2002 in Docket No. RP02–13–001. That order required PNGTS to modify its tariff to ensure that its long-term firm seasonal service is available on a nondiscriminatory basis.

PNGTS states that copies of this filing are being served on all jurisdictional customers, applicable state commissions, and participants in Docket No. RP02–13–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29722 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–055]

TransColorado Gas Transmission Company; Notice of Compliance Filing

November 15, 2002.

Take notice that on November 13, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifty-Fourth Revised Sheet No. 21 and Twenty-Seventh Revised Sheet No. 22A , to be effective November 13, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect an amended negotiated-rate contract with Williams Energy Marketing & Trading Company.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29727 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

November 14, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference agenda.

SUMMARY: As announced in the Notice of Technical Conferences issued on October 22, 2002, Commission staff will convene a technical conference on November 19, 2002 to discuss aspects of the resource adequacy requirement proposed in the Notice of Proposed Rulemaking issued in this docket on July 31, 2002. *See* 67 FR 65, 913–15 (Oct. 29, 2002). This notice provides further organizational details and the conference agenda.

DATES: The conference will take place on November 19, 2002.

ADDRESSES: The conference will take place at: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

Notice of Technical Conference Agenda

1. As announced in the Notice of Technical Conferences issued on October 22, 2002, Commission staff will convene a technical conference on November 19, 2002 to discuss aspects of the resource adequacy requirement proposed in the Notice of Proposed Rulemaking issued in this docket on July 31, 2002. This notice provides further organizational details and the conference agenda.

2. The conference will begin at 9:30 a.m. and will adjourn at about 5:15 p.m. It is scheduled to take place at the Commission's offices, 888 First Street, NE., Washington, DC, in the Commission Meeting Room on the

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second floor. The agenda is appended to this notice as Attachment A. As specified in the October 22, 2002 Notice, the discussions will attempt to clarify and seek consensus on specific issues. The discussion questions are appended to this notice as Attachment B.

3. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to notify the Commission of their intent to attend by sending an e-mail message to *customer@ferc.gov*. Members of the Commission may attend the conference and participate in the discussions.

4. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

5. Questions about the conference program should be directed to: Sarah McKinley, Manager of State Outreach, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

Attachment A

Schedule

9:30–9:35 AM Introductions
9:35–9:45 AM Opening Remarks Kevin Kelly, Commission Staff
9:45–11:15 AM Session I

Panelists:

Regina M. Carrado, Regulatory Specialist, Exelon Corporation, Exelon Generation, L.L.C.
David LaPlante, Vice President, Markets Development, ISO New England Inc.
Ronald G. Lukas, Senior Vice President, KeySpan Energy Supply, LLC
Marc Montalvo, Manager of Wholesale Market Analytics, Lacapra Associates, Inc., on behalf of the Pennsylvania Office of Consumer Advocates
Karen Krug O'Neill, Vice President, New Markets, Green Mountain Energy
Mark Reeder, Chief, Regulatory Economics, New York Public Service Commission
11:15–11:30 AM Break
11:30–1:00 PM Session II

Panelists:

Michael Alcantar, Attorney, Alcantar & Kahl LLP, on behalf of the Cogeneration Association of California (CAC) and the Energy Producers and Users Coalition (EPUC)
Kieran Connolly, Public Utilities Specialist, Bonneville Power Administration
Kellan L. Fluckiger, Senior Advisor to the Chair and CEO, California Consumer Power and Conservation Financing Authority
John Meyer, Vice President of Asset Commercialization, Reliant Resources
Charles Reinhold, WestConnect RTO Project Manager, Electric Resource Strategies
Gary Stern, Director of Market Monitoring and Analysis, Southern California Edison Company
To be determined, Silicon Valley Manufacturing Association
1:00–2:00 PM Lunch
2:00–3:30 PM Session III

Panelists:

James Caldwell, Policy Director, American Wind Energy Association
William F. Hall, III, Senior Vice President, Energy Policy & Strategy, Duke Energy Corporation
William J. Head, Chief Operating Officer, MAPPCOR, representing the Mid-Continent Area Power Pool
Stephen L. Huntoon, Senior Director & Regulatory Counsel, Dynegy Power Marketing, Inc.
Sam Randazzo, Partner, McNees, Wallace & Nurick, LLC, on behalf of Ohio Industrial Consumers
Rick Riley, Director, Transmission Policy, Entergy Services, Inc. on behalf of SeTrans Sponsors
Raymond J. Wahle, P.E., Director, Power Supply and Operations, Missouri River Energy Services
3:30–3:45 PM Break
3:45–5:15 PM Session IV

Panelists:

The Honorable Thomas Welch, Chairman, Maine Public Utilities Commission
The Honorable Robert B. Nelson, Commissioner, Michigan Public Service Commission
Richard Campbell, Director, Energy & Technology, American Forest & Paper Association
David R. Nevius, Vice President, North American Electric Reliability Council
Roy Shanker, Consultant and Participant of the Northeast Joint Capacity Adequacy Group
David M. Velazquez, Vice President, Business Planning, Conectiv Energy Supply Inc., on behalf of The Edison Electric Institute (EEI) and the Alliance of Energy Suppliers

Attachment B

Discussion Questions

Each panel will discuss the following questions:

1. Should there be a standard resource adequacy plan for the entire grid?
a. If not, what other measures can be used to ensure regional resource adequacy?
2. For LSEs in states with bundled retail sales which have met state planning guidelines, what more must the ITP do?
a. Should the ITP independently verify that the guidelines have been met?
b. Should the ITP ensure the physical deliverability of identified resources?
c. Should the ITP verify that no resources have been double counted on a regional basis?
d. Is there value to coordinating these state planning guidelines regionally?
3. What should the resource adequacy product requirement be?
a. Combination energy/call contracts requirement.
b. Capacity requirements, where energy and capacity are separate products sold in the market. The seller of a capacity product would be obligated to offer energy into the market.
4. How should the penalty structure on deficient LSEs be set?
a. Is a penalty on LSEs in real time sufficient?
b. Should an LSE who failed to meet its forward obligation in the appropriate planning horizon be able to avoid a real-time penalty by procuring its resources past the deadline?
5. What disincentives should exist for adequacy suppliers to prevent non-performance?
6. Should the resource adequacy requirement be met solely through bilateral contracts or should a centralized market (accommodating bilateral contracts) be available?
7. What process should be implemented if the ITP identifies a shortage of planned resources?
a. Should the ITP implement a market to ensure such resources are available?
b. If so, who should pay for the availability of such resources?
c. Further, should existing resources be able to participate in such a market?
8. How will the ITP ensure deliverability of adequacy resources?
a. Must resources be physically identified to meet the adequacy requirement?
b. Should liquidated damages contracts without specific resources identified be sufficient?
c. How should transmission rights to distant generation sources be allocated to meet the adequacy requirement?
9. What guidelines should the Regional State Advisory Committee (RSAC) follow in determining the planning horizons and adequacy procurement deadlines?
a. Should a ladder approach to procurement be allowed? This approach would require LSEs to procure an increasing percentage of their total adequacy requirement at intermediate points during the span of the planning horizon.
10. What should the RSAC process be to determine each region's adequacy requirement?
11. What should be the relationship between the RSAC and the ITP in the load forecasting and resource evaluation process?
12. How should each LSE's obligation be set in a fluid retail access environment? a. Should the adequacy product necessarily be liquid and fungible?
13. How can demand resources be measured to count equally toward adequacy requirements?
14. How can intermittent resources be evaluated to count appropriately toward adequacy?

[FR Doc. 02–29461 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2964–006]

City of Sturgis, Michigan; Notice of Availability of Final Environmental Assessment

November 15, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Strugis Hydroelectric Project located on the St. Joseph River, in St Joseph County, Michigan, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental effects of the project and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll free 1–866–208–3676.

Any comments should be filed within 30 days from the issuance date of this notice and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1-A, Washington, DC 20426. Please affix "Sturgis Project No. 2964" to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "e-Filing" link. For further information, contact Patrick Murphy at (202) 502–8755.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29719 Filed 11–20–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

November 15, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Exempt

Docket No.	Date filed	Presenter or requester
1. Project No. 2574–000	11–08–02	Bonnie Newson (Frank Winchell)
2. Project Nos. 10100–000 and 10416–000	11–08–02	Judith Leckrone Lee
3. CP01–384–000	11–14–02	Particia A. Karkul

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Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–29720 Filed 11–20–02; 8:45 am]
BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Meeting of the Board of Directors of the Export-Import Bank of the United States

Time and Place: Tuesday, November 26, 2002, at 9:30 am. The meeting will be held at Export-Import Bank in Room 1143, 811 Vermont Avenue., NW., Washington, DC 20571.

Open Agenda Items: Draft Revised Economic Impact Procedures, Annual Review of the Jordanian Framework Agreement.

Public Participation: The meeting, or a portion thereof, will be open to public observation.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571, (Telephone No. (202) 565 3857 or 3336).

Peter B. Saba,
General Counsel.
[FR Doc. 02–29787 Filed 11–19–02; 2:12 pm]
BILLING CODE 6690–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 21, 2002, Meeting open to the public. The starting time has been changed to 1 p.m.

The following item has been added to the agenda: FEC Policy Statement: Interim Reporting Procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.
[FR Doc. 02–29806 Filed 11–19–02; 3:18 pm]
BILLING CODE 6715–01–M

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Revision of an Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration is revising the OF 55, U.S. Government Identification to update the address in the "If found * * *" statement.

Since the form is authorized for local reproduction, agencies may request a camera copy to use for printing from:

Forms Management, (202) 501–0581, e-mail: *barbm.williams@gsa.gov;* or

The Internet: *http://www.gsa.gov/forms.*

DATES: Effective November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

SUPPLEMENTARY INFORMATION:

Dated: November 7, 2002.

Barbara M. Williams,
Deputy Standard and Optional Forms Management Officer, General Services Administration.
[FR Doc. 02–29604 Filed 11–20–02; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: This meeting will be held on Tuesday, December 10, from 8:30 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland 20852, (301) 594–7216. For press-related information, please contact Karen Migdail at (301) 594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144 no later than December 5, 2002.

Agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Quality and Research, 2101 E. Jefferson Street, Suite 400, Rockville, Maryland 20852. Her phone number is (301) 594–1846. Minutes will be available after December 31, 2002.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve the outcomes, reduce the costs of health care services, improve access to such services through scientific research, and to promote improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

II. Agenda

On Tuesday, December 10, 2002, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairwoman. The Acting Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. Tentative agenda items include AHRQ's research on health care costs, on long term care and on patient safety. The official agenda will be available on AHRQ's Web site at *http://www.ahrq.gov* no later than December 2, 2002. The meeting will adjourn at 4 p.m.

Dated: November 13, 2002.

Carolyn M. Clancy,
Acting Director.
[FR Doc. 02–29589 Filed 11–20–02; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under

review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Longitudinal Surveillance for Beryllium Disease Prevention OMB No. 0920–0463 (formerly titled Gene-Environment Interactions in Beryllium Sensitization and Disease Among Current and Former Beryllium Industry Workers)—Extension—National Institute for Occupational Safety and Health (NIOSH)—Centers for Disease Control and Prevention (CDC).

Background

Beryllium is a light weight metal with wide application in modern technology. The size of the USA workforce at risk of beryllium exposure is estimated at approximately one million, with exposed workers in primary production, nuclear power and weapons, aerospace, scrap metal reclaiming, specialty ceramics, and electronics industries. Demand for beryllium is growing worldwide, which means that increasing numbers of workers are likely to be exposed. An acute pneumonitis due to occupational exposure to beryllium was common in the 1940s and 1950s, but has virtually disappeared with improvements in work-site control measures. However, even with improved controls as many as 5% of currently-exposed workers will develop chronic beryllium disease (CBD).

CBD is a chronic granulomatous lung disease mediated through a poorly understood immunologic mechanism in workers who become sensitized. Sensitization can be detected using a blood test, that is used by the industry as a surveillance tool. The blood test for sensitization was first reported in 1989, but many questions remain about the natural history of sensitization and disease, as well as exposure risk factors. Sensitized workers, identified through workplace surveillance programs, undergo clinical diagnostic tests to determine whether they have CBD. The proportion of sensitized workers who have beryllium disease at initial clinical evaluation has varied from 41–100% in different workplaces. Sensitized workers often develop CBD with follow-up, but whether all sensitized workers will eventually develop beryllium disease is unknown. Early diagnosis at the subclinical stage and careful follow-up seems prudent in that CBD usually responds to corticosteroid treatment. However, the efficacy of screening in preventing adverse outcomes of the disease has not yet been evaluated. Research has indicated certain genetic determinants in the risk of CBD; follow-up studies will be invaluable for further characterizing the genetic contribution to sensitization and disease.

The National Institute for Occupational Safety and Health (NIOSH) wants to determine how beryllium workers and former workers develop beryllium disease and how to prevent it. Through the proposed study, NIOSH has the opportunity to contribute to the scientific understanding of this disease in the context of environmental and genetic etiologic factors. The goals of this investigation are to: (1) Determine the occurrence of beryllium sensitization or disease; (2) seek an association with exposure measurements; (3) explore genetic determinants of susceptibility to CBD; and (4) characterize genetic determinants to ascertain if they are associated with clinical impairment or progression of disease. Through a greater understanding of the environmental and genetic risk factors associated with the onset and progression of CBD, NIOSH will be able to develop strategies for both primary and secondary prevention applicable to beryllium-exposed workers. The total annualized burden for this data collection is 263 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)
Former Workers	525	1	30/60

Dated: November 13, 2002.

Nancy E. Cheal,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.
[FR Doc. 02–29669 Filed 11–20–02; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Termination of Two Food and Drug Administration Advisory Committees: Medical Imaging Drugs Advisory Committee and the Pharmacy Compounding Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the termination of two FDA advisory committees: The Medical Imaging Drugs Advisory Committee, a nonstatutory advisory committee to FDA's Center for Drug Evaluation and Research (CDER), and the Pharmacy Compounding Advisory Committee, a statutory committee to the FDA's Center for Drug Evaluation and Research.

DATES: November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Ann Sherman, Director Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: Under its current charter, the Medical Imaging Drugs Advisory Committee will expire on February 28, 2004. The Medical Imaging Drugs Advisory Committee is responsible for: (1) Reviewing and evaluating data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and for use as contrast media in diagnostic radiology and (2) making appropriate recommendations to the Commissioner of Food and Drugs. The Commissioner has determined that a separate advisory committee for these products is not necessary as these products can be more effectively reviewed by an existing advisory committee or a by a subcommittee of an existing committee with responsibility for providing advice and recommendations regarding the specific systemic product area at issue with a given product.

The charter for the Pharmacy Compounding Advisory Committee was renewed February 3, 2002, for a 2-year

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term. This Committee was created by section 503A(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353a(d)(1)). Section 503a(d)(1) specifically directed the Secretary of Health and Human Resources to convene and consult an advisory committee on compounding.

On April 29, 2002, the *United States Supreme Court in Thompson, et al.* v. *Western States Medical Center Pharmacy, et al.*, 122 S.Ct. 1497 (2002), affirmed a decision of the U.S. Court of Appeals for the Ninth Circuit invalidating section 503A of act. Section 503A of the act, enacted as part of the Food and Drug Administration Modernization Act of 1997, exempted drugs compounded by pharmacies from the act's new drug approval, adequate directions for use, and good manufacturing practice requirements if specified conditions, including two restrictions on commercial speech, were met. The Supreme Court held that these two speech related restrictions violate the first amendment to the U.S. Constitution. The Ninth Circuit had also concluded that these unconstitutional speech restrictions may not be severed from the rest of the provisions in section 503A of the act, and that section 503A is invalid in its entirety. Because neither the Government nor the compounding pharmacy plaintiffs sought review of this aspect of the Ninth Circuit's decision, the Supreme Court did not reach the issue. As a result, the Ninth Circuit's invalidation of section 503A of the act in its entirety stands. Because the entire section 503A of the act is invalid, the statutory authorization for an advisory committee on compounding no longer exists.

For the reasons stated previously, the Medical Imaging Drugs Advisory Committee and the Pharmacy Compounding Advisory Committee are terminated.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2)).

Dated: November 14, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–29573 Filed 11–20–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Medical Device User Fee Rates for Fiscal Year 2003 and Interim Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and interim procedures for medical device user fees for fiscal year (FY) 2003. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), authorizes FDA to collect user fees for certain medical device applications. This notice establishes fee rates for FY 2003. These fees are effective for applications submitted on October 1, 2002, and will remain in effect through September 30, 2003. However, FDA may not begin to collect these fees until enabling appropriations are enacted. FDA will issue invoices for all fees payable for applications submitted between October 1, 2002, and 30 days after the date of the **Federal Register** notice the agency will issue after enactment of enabling appropriations. Those invoices will be due and payable within 30 days of issuance. Subsequently, fees must be submitted to FDA at the time that applications are submitted.

ADDRESSES: Visit the FDA Web site that provides further information on MDUFMA at http://www.fda.gov/cdrh/mdufma/index.html.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management and Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

The act establishes fees in sections 737 and 738 (21 U.S.C. 379i and j) for different kinds of medical device applications. Fees are assessed on certain types of medical device applications and supplements. When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379j(d) and (e)).

For FY 2003 through FY 2007, MDUFMA establishes revenue amounts for the aggregate of all application fee revenues. Revenue amounts established for years after FY 2003 are subject to adjustment for inflation, workload, and revenue shortfalls from previous years. Fees for applications are to be established each year by FDA so that revenues will approximate the levels established in the statute, after those amounts have first been adjusted for inflation, workload, and, if required, revenue shortfalls from previous years.

This notice establishes fee rates for FY 2003. These fees are effective on October 1, 2002, and will remain in effect through September 30, 2003.

II. Inflation, Workload, and Compensating Adjustment Process

MDUFMA provides that fee revenue amounts for each FY after 2003 shall be adjusted for inflation. The adjustment must reflect the greater of: (1) The total percentage change that occurred in the Consumer Price Index (all items, U.S. city average) during the 12-month period ending on June 30 preceding the FY for which fees are being set, or (2) the total percentage pay change for the previous FY for Federal employees stationed in the Washington, DC metropolitan area. MDUFMA provides for this annual adjustment to be cumulative and compounded annually after 2003 (21 U.S.C. 379j(c)(1)). No inflation adjustment is to be made with respect to fee revenue amounts established in the statute for FY 2003.

For each FY beginning in FY 2004, MDUFMA provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of medical device applications (21 U.S.C. 379j(c)(2)). No workload adjustment is to made be with respect to fee revenue amounts established in the statute for FY 2003.

For each FY beginning in FY 2004, MDUFMA provides that fee revenue amounts, after they have been adjusted for inflation and workload, shall be further adjusted, if necessary, to compensate for any shortfall in fee revenue from previous years (21 U.S.C. 379j(c)(3)). No compensating adjustment is to be made with respect to fee revenue amounts established in the statute for FY 2003.

Inflation, workload, and compensating adjustments do not apply to the revenue amounts established in MDUFMA for FY 2003.

III. Fee Calculations for FY 2003

MDUFMA establishes the fee for a premarket application (PMA) at $154,000 in FY 2003. All other fees are set as a percent of this fee. At these rates, the medical device user fees are expected to generate $25,125,000 in FY 2003. The applications subject to fees, the rate of each fee as a percent of a premarket application, and the FY 2003 fee rate are set out in table 1 of this document. For all applications other than premarket notification submissions, the small business rate is 38 percent of the full fee rate. For premarket notification submissions, there is no small business rate in FY 2003. In FY 2004 and subsequent fiscal years, fees for premarket notification submissions will be set so that a small business fee will be 80 percent of a full application fee.

TABLE 1.—FEE TYPES, PERCENT OF PMA FEE, AND FY 2003 FEE RATES

Application Fee Type	Full Fee Amount as a Percent of PMA Fee (percent)	FY 2003 Full Fee (dollars)	FY 2003 Small Business Fee (dollars)
PMA (submitted under section 515(c)(1) or 515(f) of the act or section 351 of the Public Health Service Act (PHS Act))		154,000	58,520
Premarket Report (PMR) (submitted under section 515(c)(2) of the act)	100	154,000	58,520
Panel Track Supplement (to an approved PMA or PMR that requests a significant change in design or performance of the device, or a new indication for use of the device, and for which clinical data are generally necessary to provide reasonable assurance of safety and effectiveness)	100	154,000	58,520
Efficacy Supplement (to an approved PMA under section 351 of the PHS Act)	100	154,000	58,520
180-Day Supplement (to an approved PMA or PMR that is not a panel track supplement and requests a significant change in components, materials, design, specification, software, color additives, or labeling)	21.5	33,110	12,582
Real Time Supplement (to an approved PMA or PMR that is not a panel track supplement and requests a minor change to the device, such as a minor change to the design of the device, software, manufacturing, sterilization, or labeling, and for which the applicant has requested and the agency has granted a meeting or similar forum to jointly review and determine the status of the supplement)	7.2	11,088	4,213
Premarket Notification (submitted under section 510(k) of the act)	1.42	2,187	None in FY 2003

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of MDUFMA, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379j(h)(4)). No adjustments under this provision are required for fees assessed in FY 2003.

V. Implementation of Fee Collections

A. No Fees May Be Collected Until Enabling Appropriations are Enacted

Under section 738(h) of the act, fees authorized by MDUFMA may neither be collected nor available for obligation unless they are first provided for in appropriation acts. For this reason FDA is not able to accept or deposit any fee revenues until such appropriations are enacted for FY 2003. Therefore, no fees are to be submitted until such appropriations are enacted. After the enactment of enabling appropriations, FDA will publish another notice in the **Federal Register** with detailed payment instructions.

B. Procedures for Firms Seeking to Qualify for Small Business Exemption for First PMA or for Lower Fees for Subsequent Applications.

Firms with gross sales and revenues of $30 million or less, including gross sales and revenues of all affiliate, partner, and parent firms, may qualify for a waiver of the fee for their first PMA, and for lower rates for subsequent PMAs, PMRs, and supplements. Such firms may also qualify for lower rates for premarket notification submissions in FY 2004 and subsequent years. To qualify, these firms will have to submit certified copies of their Federal income tax return for the most recent taxable year, including certified copies of the income tax returns of their affiliate, partner, and parent firms. More detailed procedures for qualifying for small business first-time PMA waiver and lower rates will also be included in the **Federal Register** notice published after the date of enabling appropriations.

C. Subsequent Payment of Fees

Any application or supplement subject to fees under MDUFMA that is submitted after September 30, 2002, is subject to the fee set out in table 1 of this document. FDA will issue invoices for all fees payable for applications submitted between October 1, 2002, and 30 days after the date of the **Federal Register** notice the agency will issue after enactment of enabling appropriations. Those invoices will be due and payable within 30 days of issuance. Subsequently, fees must be submitted to FDA at the time that applications are submitted.

Payment, when due, must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of FDA. More complete payment instructions will be included in the **Federal Register** notice published after the date of enabling appropriations.

Dated: November 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29572 Filed 11–20–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

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ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402@0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Countercurrent Chromatography Separation of Polar Sulfonated Compounds

Adrian Weisz, Yoichiro Ito (NHLBI)

DHHS Reference No. E–304–2002 filed 26 Aug 2002.

Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov.*

The invention is a method and apparatus for separating a quantity of a sulfonated polar compound from other compounds in a mixture using countercurrent chromatography. The inventors have found that countercurrent chromatography techniques may be employed to separate different species of polar sulfonated compounds that have resisted isolation in preparative amounts by other chromatographic methods. Countercurrent chromatography is a technique that has been used to separate a variety of compound mixtures, but has not been previously employed to separate multigram quantities of polar sulfonated compounds without use of a ligand. In one embodiment, pH-zone-refining countercurrent chromatography has been found especially successful in this application. It has also been found that the use of an X-type planetary centrifuge is beneficial to obtaining good results. For two particular species of polar sulfonated compounds, the use of a cross-axis (X1.5L-type) centrifuge successfully separated preparative quantities (100 mg, gram, or multi-gram quantities) of material to greater than 99% purity. The cross axis centrifuge facilitated the use of polar solvent systems with high retention of the stationary phase, resulting in successful separation and/or purification of large quantities of polar compounds.

MRI Navigator Methods and Systems

Vinay Pai, Han Wen (NHLBI)

DHHS Reference No. E–164–2002 filed 16 Sep 2002.

Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov.*

The invention is a non-breathhold flow sensitive navigator (FLOSEN) technique for reducing respiratory motion artifacts in MR images that tracks the cardiac position using a blood flow based complex difference scheme. The approach tracks the fast moving blood during systole as a marker for the heart position, while stationary or slow moving spins are suppressed. By this approach, the position of the heart can be determined directly, without needing fractional correlation with the diaphragm motion. The method uses a spoiled-Fast Low Angle Shot (FLASH) sequence and incorporates an alternating pair of bipolar velocity-encoding gradients. This method appears to be capable of resolving heart motions greater than +/-0.1 pixel. The navigator based on the position of the fast moving blood volume in the left ventricle may be applied prospectively to shift a subsequent imaging slice to compensate for subject motion, and thereby provide MRI images with increase clarity and resolution.

Method for Functional Kidney Imaging Using Small Dendrimer Contrast Agents

Martin Brechbiel (NCI), Robert Star (NIDDK), Hisataka Kobayashi

DHHS Reference No. E–151–2002 filed 26 Aug 2002.

Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov.*

The invention is a method for functional kidney imaging using small dendrimer-based MRI contrast agents that transiently accumulate in renal tubules. The accumulation enables visualization of renal structure and function, permitting assessment of structural and functional damage to the kidneys. Six small dendrimer-based MRI contrast agents have been synthesized, and their pharmacokinetics, whole body retention and renal MRI images were evaluated in mice. Surprisingly, despite having unequal renal clearance properties, all of the dendrimer agents clearly visualized the renal anatomy and proximal straight tubules of the mice better than Gd-[DTPA]-dimeglumine. Dendrimer conjugate contrast agents prepared from PAMAM-G2D, DAB-G3D and DAB-G2D dendrimers were excreted rapidly and may be acceptable for use in clinical applications.

Modified Defensins and Their Use

Dr. Joel Moss et al. (NHLBI)

DHHS Reference No. E–080–2002/0 filed 19 Feb 2002.

Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov.*

The ubiquitous use of antibiotics has resulted in the selection of bacteria that are relatively resistant to these drugs. Furthermore, few drugs are effective against viral and fungal microorganisms. There is therefore a continuing need to identify novel agents that reduce or inhibit the growth of such microorganisms, or to identify ways of modifying existing agents in order to give them superior antimicrobial activities, or to identify agents that may recruit inflammatory cells.

Defensins are broad-spectrum antimicrobial molecules that act against infectious agents and play important roles in the innate immune defense in vertebrates. These molecules exhibit a wide range of antimicrobial activities, including cytotoxicity towards bacteria cells, but are also cytotoxic for mammalian cells, which limits their usefulness as antimicrobial agents. The NIH announces the creation of modified defensins through their arginine residues. These compounds can be used to inhibit the toxic effect of defensins, while retaining their T cell chemotactic properties and promoting recruitment of inflammatory cells. In the case of pulmonary disease, these agents can be delivered directly to the site of inflammation by inhalation.

Dated: November 8, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer National Institutes of Health.

[FR Doc. 02–29559 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: December 7, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: Overcoming Barriers to Cancer Care.

Place: Marriott Wardman Park Hotel, 2660 Woodley Road Northwest, Washington, DC 20008.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* when an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29552 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Mentored Research Scientist Development Award.

Date: December 3, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 2-Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797, *connaughton@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29544 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Ischemic/Reflow Injury in Aging Heart.

Date: December 3–4, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn by Mariott, Downtown Bethesda, 7335 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Study of Menopause.

Date: December 3–4, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29545 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, SBIR Phase II: Topic #70: Detection and Assessment of Urologic and Renal Diseases.

Date: December 6, 2002.

Time: 3 pm to 4:30 pm.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6707 Democracy Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *ls38z@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

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limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29546 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Anorexia Nervosa and Bone Health.

Date: December 10, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, 301–594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Weight Reduction and Malnutrition.

Date: December 11, 2002

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard; National Institutes of Health, Bethesda, MD 20892, (301) 594–7791, milesc@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29547 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Data Repository.

Date: December 12, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Maxine A. Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, George M. O'Brien Kidney Research Centers.

Date: December 17–19, 2002.

Time: 7 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29548 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RO3HD043773–01 DIAS JAMES.

Date: November 20, 2002.

Time: 3 p.m. to 4 p.m..

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29550 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Special Emphasis Panel Teleconference.

Date: January 14, 2003.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982, (Telephone Conference Call).

Contact Person: Laura K. Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, 301–594–3998, *moenl@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29551 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel UTERINE TRANSPLANTATION IN BABOONS.

Date: December 9, 2002.

Time: 4 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29553 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel THORNBURG, KENT L.

Date: November 20, 2002.

Time: 1:30 p.m. to 2:50 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd, Room 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.208, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29554 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH OF HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel P01HD039942–02S1 DONAHOE, PATRICIA.

Date: November 20, 2002.

Time: 9:30 a.m. to 10:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd, Room 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852 (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29555 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Demographic Behavioral Science-R25.

Date: November 25, 2002.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd, Room 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carla T. Walls, Phd, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5e03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29556 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: December 4–6, 2002.

Time: December 4, 2002, 1 pm to 5:15 pm.

Agenda: The Committee will discuss a clinical trial for X-linked SCID, and selected safety and protocol data related to human gene transfer clinical trials.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Agenda: The Committee will discuss a clinical trial for X-linked SCID, selected safety and protocol data related to human gene transfer clinical trials, and review selected human gene transfer protocols.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Time: December 6, 2002, 8:30 am to 1 pm.

Agenda: The Committee will review selected human gene transfer protocols.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Stephen M. Rose, Phd, Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *sr8j@nih.gov.*

Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29549 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB(04)S: Nodal bundles.

Date: November 26, 2002.

Time: 11 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (02) BBBP–7 Member Reviews in the Physiology of Speech and Swallowing.

Date: December 2, 2002.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *Krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BIO (2) Improved Adenoviral Vectors For Hepatic Gene Therapy.

Date: December 4, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Biochemistry Study Section, Biochemical Sciences IRG, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Photo products as Anticancer Agents.

Date: December 5, 2002.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (05) BBBP—2 Member reviews in Stress, Depression and Cardiovascular Function.

Date: December 5, 2002.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.

Date: December 20, 2002.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1718. *perkinsp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29543 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: December 4, 2002.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Immunology I.

Date: December 4, 2002.

Time: 5 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Immunology II.

Date: December 5, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: December 9, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology—T cell development.

Date: December 11, 2002.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes and Vascular Function.

Date: December 16, 2002.

Time: 2:30 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.306, Comparative Medicine, 93.333, Clinical Research, 93.333, 93.337, 93.939–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29557 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group. AIDS and Related Research 6.

Date: November 18–19, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29558 Filed 11–20–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 23, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Roger D. Barker, Birmingham, AL, PRT–064497.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Anthony S. Makris, Alexandria, VA, PRT–064413.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Tom L. Peveler, Lovington, NM, PRT–064499.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Circus Tihany, Sarasota, FL, PRT–064004.

The applicant requests a permit to export, re-export, and re-import a captive-born tiger (*Panthera tigris*) and its future progeny to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Lost Creek Animal Sanctuary Foundation, Mound Valley, KS, PRT–061855.

The applicant requests a permit to export, re-export, and re-import captive-born tigers (*Panthera tigris*) and their future progeny to/from Canada to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Memphis Zoo, Memphis, TN, PRT–052166.

The applicant requests a permit to import one male and one female captive born giant panda (*Ailuropoda melanoleuca*) from the Chinese Association of Zoological Gardens, Shanghai Zoo and Beijing Zoo, China, for the purpose of scientific research and enhancement of the survival of the species through captive propagation.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: November 1, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–29534 Filed 11–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Reopening of Public Comment Period for the Technical/Agency Draft Revised Recovery Plan for the Red-Cockaded Woodpecker (*Picoides borealis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce that we are reopening the comment period for the Technical/Agency Draft Revised Recovery Plan for the Red-cockaded Woodpecker. We are reopening the comment period to enter into the record a revised "Recovery Units" section that discusses our approach to conducting jeopardy analyses as part of interagency consultation under section 7 of the Endangered Species Act. We solicit review and written comments from the public on this section of the recovery plan.

DATES: We must receive comments by December 23, 2002.

ADDRESSES: You may obtain a copy of the technical/agency draft revised recovery plan (July 2000) by downloading or printing a copy from *http://rcwrecovery.fws.gov* (under the recovery plan link). If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments to the Field Supervisor, Clemson Field Office, U.S. Fish and Wildlife Service, Clemson University, Clemson, South Carolina 29634 (telephone 864/656–2432).

2. You may fax your comments to the Field Supervisor at 864/656–1350.

3. You may send comments by electronic mail to the Field Supervisor at *ralph_costa@fws.gov*

Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Costa (*see* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Red-cockaded woodpeckers (RCW) are endemic to mature pine woodlands of the southeastern United States. Because of habitat loss and alteration associated with clearing forests for settlements, agriculture, and commercial forestry operations, during the later part of the 19th century and early part (through the 1930s) of the 20th century, the RCW suffered severe population declines. We officially listed the RCW as an endangered species on October 13, 1970 (35 FR 16047). The original recovery plan for the RCW was approved on August 24, 1979, and subsequently revised on April 11, 1985. Research has greatly increased our understanding of the ecology of the RCW to the point where we now have management tools that have proven successful in increasing the acres of optimum RCW habitat, and RCW numbers, in the past decade. The draft revised recovery plan developed in July 2000 (65 FR 55269) describes the ecology and management of red-cockaded woodpeckers in detail and outlines the management necessary to recover the species based on new insight into population viability.

Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires Federal agencies to consult with us to ensure that the actions they authorize, fund, or carry out will not jeopardize the continued existence of a federally listed species. To jeopardize means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). The majority of Federal actions that we consult on are not found to jeopardize listed species. In most consultations, the proposed action is not found to jeopardize the listed species although some incidental take of the species may occur. In those cases, we work with the Federal agency to devise reasonable and prudent measures that will minimize the effects of such incidental take to the species. In the few cases where we determine that a proposed federal project would jeopardize a listed species, we work with the Federal agency to determine reasonable and prudent project alternatives.

In analyzing whether or not the proposed project will jeopardize a listed species, our general policy, as outlined in our Consultation Handbook (Procedures for Conducting

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Consultation and Conference Activities Under Section 7 of the Endangered Species Act, March 1998) is to analyze the total impacts of the proposed project on the entire species (or the entire subspecies or vertebrate population if the listed entity is a subspecies or vertebrate population). However, for some wide-ranging species, or those with disjunct or fragmented distributions, we may perform this analysis by recovery units. Recovery units are geographic or otherwise identifiable subunits of the listed entity that individually are necessary to conserve genetic robustness, demographic robustness, important life stages, or some other feature necessary for long-term sustainability of the overall listed entity. Therefore, an action that would jeopardize a recovery unit would jeopardize the species. Defining the value of each recovery unit to the whole in the recovery plan, therefore, simplifies the analysis of whether the action jeopardizes the species. In these species, we may base our jeopardy analyses on assessment of impacts to an individual recovery unit determined as necessary to both the survival and recovery of the species in a final recovery plan. The red-cockaded woodpecker is a wide-ranging species with a fragmented distribution and as such, we have determined that the establishment of recovery units would facilitate jeopardy analyses under section 7.

In the draft revised Recovery Plan, we have defined primary and secondary core populations and essential, significant, and important support populations. Some or all of these types of populations may occur within a recovery unit. A primary core population is one that will harbor at least 350 potential breeding groups at the time of delisting. Populations of this size are above minimum estimates necessary to withstand threats of extirpation from demographic stochasticity, environmental stochasticity, and inbreeding depression. However, even a population of less than 350 breeding groups is not considered capable of retaining sufficient genetic variability for long-term viability in the absence of immigration. Secondary core populations are those that will harbor at least 250 potential breeding groups at the time of delisting. A population of 250 breeding groups is the minimum estimate considered necessary to withstand threats of extirpation from environmental stochasticity, and is considered highly robust to threats from demographic stochasticity and inbreeding depression. These populations are not large enough to withstand threats to long-term viability from the process of genetic drift unless immigration is maintained (naturally or via translocation).

All populations not designated a primary or secondary core are designated support populations. There are three classifications of support populations—essential, significant, and important. Essential support populations are those populations, identified in downlisting and delisting recovery criteria, that represent unique habitat types and/or geographic locations within the historic range that cannot support a larger, core population. These populations will harbor 15 to 100 potential breeding groups at the time of delisting. Significant support populations are populations, not identified in recovery criteria, that contain or have a population goal of 10 or more potential breeding groups. A population size of 10 potential breeding groups, if highly aggregated in space, has a good probability of persistence over a 20-year time period. Important support populations are populations, not identified in recovery criteria, that contain and/or have a population goal of less than 10 potential breeding groups.

Support populations are important reservoirs of genetic resources. They help represent natural variation in habitats occupied by RCWs. Support populations are an important source of immigrants for core populations to increase retention of genetic variation and could potentially provide a buffer against stochastic loss of core populations. These functions are especially critical now, because many core populations are currently well below the population sizes necessary to withstand threats of environmental, demographic, and genetic uncertainty.

The 13 primary core populations, 12 secondary core populations, and numerous support populations of RCWs are well distributed throughout the species' range, within the 11 recovery units. This widespread distribution serves several critical ecological objectives. First, such a distribution conserves RCWs in varied habitats and geographic regions in which they currently exist. Second, the wide distribution and relatively high number of populations reduces the threat of species extinction from catastrophic events such as hurricanes. Finally, core populations, along with support populations, together create a network which, when population goals are reached, will facilitate the natural dispersal among populations and recovery units that is necessary and critical to long-term genetic viability.

The following text is the portion of the Recovery Plan that we have revised to clarify how we will analyze whether a proposed action will jeopardize the continued existence of the species.

Recovery Units

Recovery Units are geographic or otherwise identifiable subunits of the listed entity that individually are necessary to conserve genetic robustness, demographic robustness, important life history stages, or some other feature necessary for long-term sustainability of the overall listed entity. The Recovery units established for red cockaded-woodpeckers are a surrogate for likely genetic variation and adaptation to local environments, because they are based on changing environmental conditions, *i.e.*, they are geographic areas delineated according to ecoregions. Substantial genetic variation has been documented in red-cockaded woodpeckers across their range, although distinct boundaries for this variation have not been identified. Red-cockaded woodpeckers exhibit a correlation between genetic variation and geographic distance, meaning the farther apart populations are geographically, the larger the genetic variation. This has been documented using both randomly amplified polymorphic DNA (used as a genetic marker) and allozyme data. As molecular markers gain resolution, we may be able to identify more distinct genetic boundaries, but the correlation between genetic variation and geographic distance is a classic sign of species that were once distributed primarily as a continuous population.

The names of red-cockaded woodpecker recovery units are the same as their respective ecoregion, with one exception (South/Central Florida). There are eleven designated recovery units for red-cockaded woodpeckers. All but two recovery units contain one or more core recovery populations and one or multiple support populations. The remaining two recovery units contain support populations only.

Maintaining viable populations within each recovery unit is essential to the survival and recovery of the red-cockaded woodpecker across its range. Conservation of populations in all habitats, forest types, and ecoregions, represented within and by recovery units is critical to the species survival and recovery primarily because these varied populations have crucial ecological and genetic values. The loss, or reduction of the likelihood of survival and recovery, of core and essential support populations within one or more of the designated recovery units could not only jeopardize the recovery goals for the individual recovery unit(s), but also jeopardize the recovery of the entire species in several ways.

First, without immigration, no red-cockaded woodpecker population will be large enough to avoid loss of genetic variability through genetic drift. Genetic drift results in loss of genetic variation, which may reduce a species' ability to adapt and persist in a changing environment (ecoregion), and thereby reduce its viability over long time periods. One practical way to reduce the threat of genetic drift is to promote immigration, both natural (dispersal) and artificial (via translocation). Multiple recovery units, harboring all of the habitat types and representing all ecoregions where the red-cockaded currently exists, provide the means to ensure that natural and artificial immigration can occur and be managed, respectively.

Second, the vast majority of red-cockaded woodpecker populations are threatened today by demographic stochasticity and will remain so for the foreseeable future. Therefore, the short-term survival of many individual populations in most recovery units is dependent upon translocated birds from other recovery units. Because donor populations for many small (less than 30 potential breeding groups), at-risk populations are in adjacent recovery units, actions adversely affecting donor populations in one recovery unit can jeopardize the survival and recovery of populations in other recovery units, thereby jeopardizing the entire species.

A third and significant threat to red-cockaded woodpecker populations are catastrophes, including hurricanes and outbreaks of southern pine beetles, which point to several reasons for identifying and conserving multiple recovery units. First, red-cockaded woodpecker populations in similar habitats/forest types and with more closely related genetic makeup may occur in recovery units adjacent to those impacted by the catastrophic event, thus helping ensure that the ability of the species to adapt to these ecological conditions of habitat and forest type would be protected. Second, by maintaining a number of recovery units, with their associated populations, that are broadly spaced geographically, and including as many inland populations as possible, the threat from catastrophic loss is significantly reduced. Additionally, when losses do occur in one recovery unit, other recovery units can be relied upon to supply birds for population restoration programs, thereby ensuring the continued likelihood of survival and recovery of the species.

To achieve and maintain species viability, we must maintain a network of interacting populations within and between recovery units. This strategy will promote natural immigration from support and core populations, over the long-term, within and between recovery units, thereby reducing the species susceptibility to loss of genetic viability through genetic drift. If, in the future, natural immigration rates are determined to be inadequate to reach or maintain genetic variability, artificial immigration (via translocation) within and between recovery units will be necessary to ensure the survival and recovery of the red-cockaded woodpecker. Similarly, the recovery unit system provides the means today and into the future to overcome the threats of demographic stochasticity via translocation of birds. Additionally, the recovery unit system provides the opportunity to respond aggressively to stabilize and restore recovery units and populations impacted by catastrophic events. Thus, the system of recovery units, with respective primary core, secondary core, and support populations, provides the foundation of the strategy to recover the red-cockaded woodpecker.

Recovery Units as the Basis for Jeopardy Analysis in Interagency Consultation

In the past, exceptions from applying the jeopardy standard (*see* "Background" section) to an entire species were granted by a Director's memorandum, dated March 3, 1986, for specific populations of a species. Since the mid-1980's, in compliance with the Director's 1986 memorandum, we conducted jeopardy analyses for the red-cockaded woodpecker at the "population" level.

Our guidance on this topic changed with the release of our Consultation Handbook in 1998. The Handbook states that when determining whether the action jeopardizes the continued existence of the species, we are to analyze the total impacts of the proposed project on the entire species. However, the Handbook acknowledges that for some wide-ranging species, this analysis can be facilitated by the establishment of recovery units in a final recovery plan. The Consultation Handbook notes that species' recovery plans provide the best available scientific information relative to the areas and environmental elements needed for the species to recover, and may even describe recovery units essential to recovering the species. Given that actions that appreciably impair or preclude the capability of such a recovery unit from providing the survival and recovery functions identified for it in a recovery plan may therefore represent jeopardy to the species, the Consultation Handbook indicates the jeopardy standard may be applied to individual recovery units identified as necessary for survival and recovery of the species in an approved final recovery plan. Thus, the designation of recovery units in recovery plans facilitates recovery both by focusing the species' recovery program on the need to conserve the geographic, demographic, and genetic features of the recovery unit for its contribution to the whole species, and by facilitating the evaluation of potential jeopardy to the species when the survival and recovery of an individual recovery unit is in question.

Previous Federal Action

On September 13, 2000, we published in the **Federal Register** a notice of availability of the Technical/Agency Draft Revised Recovery Plan for the Red-cockaded Woodpecker (*Picoides borealis*) for review and comment (65 FR 55269). On October 17, 2000, we published a notice to extend the public comment period for the Technical/Agency Draft Revised Recovery Plan for the Red-cockaded Woodpecker (*Picoides borealis*) (65 FR 61355). The public review and comment period ended on December 13, 2000. We subsequently have revised the "Recovery Units" section to discuss our approach to conducting jeopardy analyses as part of interagency consultation under section 7 of the Act.

Public Comments Solicited

We solicit written comments on the "Recovery Unit" section of the recovery plan as discussed above. We will consider all comments regarding recovery units received by the date specified in the **DATES** section, prior to approval of the plan.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous

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comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Author

The primary author of this notice is Ralph Costa (*see* **ADDRESSES** section).

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: October 22, 2002.

J. Mitch King,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 02–29565 Filed 11–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–PG; GP03–0030]

Notice of Public Meeting, John Day/Snake Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held December 4, 2002 at the Oxford Inn Suites in Pendleton, OR beginning at 8 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North East Oregon.

Meeting Topics

The National Resource Advisory Council Conference/National Accomplishment Report
BLM National Mountain Biking Strategy
Blue Mountain Demo Area-Plan Review
Interior Columbia Basin Environmental Management Plan
Forest/BLM Plan Revisions
Hells Canyon/Wallowa Whitman National Forest Comprehensive Plan
Noxious Weeds-Forest Service Environmental Impact Statement and Bureau of Land
Management Vegetation Management
Rehab/Restoration Plans—2002 Fire Season
Sage Grouse Team Charter
Native Plant Plan

Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR, 97754.

Dated: November 13, 2002.

A. Barron Bail,

District Manager, Prineville District, Oregon, Bureau of Land Management.

[FR Doc. 02–29525 Filed 11–20–02; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–03–1420–BJ]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of the survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John K. Bunce II, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. 36800, Billings, Montana 59107–6800, telephone (406) 896–5364 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs (BIA), and was necessary to determine ownership of accreted land and to also identify lands which have been lost to the river by erosion. The lands we surveyed are:

Principal Meridian, Montana

T. 26 N., R. 44 E.

The plat, representing the dependent resurvey of portions of the west boundary, subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream through section 18 and the subdivision of section 18, and the survey of the meanders of the present left bank of the Missouri River, downstream through section 18, and certain division of accretion lines in section 18, Township 26 North, Range 44 East, Principal Meridian, Montana, was accepted November 1, 2002.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: November 13, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–29524 Filed 11–20–02; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–467]

Certain Canary Yellow Self-Stick Repositionable Note Products; Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Print-Inform GMBH & Co. on the Basis of a Settlement Agreement, and Terminating the Investigation in Its Entirety

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the above-captioned investigation as to respondent Print-Inform GmbH & Co. ("Print-Inform") on the basis of a settlement agreement. Inasmuch as Print-Inform is the last remaining respondent, its termination terminates the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3095. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 7, 2002, based on a complaint filed by Minnesota Mining and Manufacturing Company (now known as 3M Company) of St. Paul, Minnesota ("3M"). The complaint named Janel, S.A. de C.V. of the Distrito Federal, Mexico ("Janel") and Print-Inform of Kaltenkirchen, Germany as respondents. The complaint alleged that the respondents violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain canary yellow self-stick repositionable note products that infringe U.S. Trademark Registration No. 2,390,667. On August 27, 2002, the Commission determined not to review an ID terminating the investigation as to Janel based on a settlement agreement. On or before September 4, 2002, 3M entered into a settlement agreement with Print-Inform as well. On September 25, 2002, 3M filed a motion to terminate the investigation as to Print-Inform. The Commission investigative attorney supported the motion. On October 18, 2002, the ALJ issued an ID (Order No. 12) granting the motion to termination the investigation as to Print-Inform. The ID also terminated the investigation in its entirety. No petitions for review of the ID were filed. The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42). Copies of the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: November 15, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–29569 Filed 11–20–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–470]

Certain Semiconductor Memory Devices and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the above-captioned investigation in its entirety on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On May 9, 2002, the Commission instituted this investigation based on a complaint filed by Mosel Vitelic Inc. of Hsinchu, Taiwan and Mosel Vitelic Corp. of San Jose, CA (collectively,'complainants") against Hitachi, Ltd. of Tokyo, Japan; Hitachi Semiconductor (America) Inc. of San Jose, CA; Elpida Memory, Inc. of Tokyo, Japan; and Elpida Memory (USA) Inc. of Santa Clara, CA (collectively, "respondents"). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, or the sale after importation of certain semiconductor memory devices or products containing same by reason of infringement of certain claims of U.S. Letters Patent 5,452,261; 5,412,257; and 5,917,214. 67 FR 31369 (2002).

On September 10, 2002, complainants and respondents filed a joint motion to terminate the investigation based on a settlement agreement and to amend the ALJ's protective order. On September 20, 2002, the Commission investigative attorney filed a response supporting the joint motion. On October 18, 2002, the ALJ issued an ID (Order No. 6) granting the joint motion to terminate. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

By order of the Commission.

Issued: November 15, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–29568 Filed 11–20–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

National Instant Criminal Background Check System Section

Agency Information Collection Activities: Proposed Collection, Comments Requested

AGENCY: 60 day notice of information collection under review: extension of a currently approved collection; Federal Firearms Licensee (FFL) enrollment e-check enrollment form FFL officer employee acknowledge of responsibilities under the National Instant Criminal Background Check System (NICS) form.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), National Instant Criminal Background

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Check System (NICS) Section has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until January 21, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Natalie Goff-Haggerty, Program Analyst, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, NICS Section, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile at (304) 625–2356.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the form:* Federal Firearms Licensee (FFL) Enrollment/E-check Enrollment Form, FFL Officer/Employee Acknowledgment of Responsibilities under the National Instant Criminal Background Check System (NICS) Form.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection: Form number:* 1110–0026.

Sponsor: Criminal Justice Information (CJIS) Services Division of Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Any Federal Firearms Licensee (FFL) or State Point of Contact (POC) requesting access to conduct NICS Checks telephonically or by the Internet through the NICS E-Check.

Brief abstract: The Brady Handgun Violence Prevention Act of 1993, required the Attorney General to establish a national instant criminal background check system that any Federal Firearms Licensee may contact, by telephone or by other electronic means, such as the NICS E-Check, for information, to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate state or federal law. Information pertaining to licensees who may contact the NICS is being collected to manage and control access to the NICS and to the NICS E-Check, to ensure appropriate resources are available to support the NICS, and also to ensure the privacy and security of NICS information.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:

It is estimated that enrollment occurs at approximately 500 per month for a total of 6,000 per year.

The average response time for reading the directions for the Federal Firearms Licensee Enrollment/E-Check Enrollment Form is estimated to be two minutes; time to complete the form is estimated to be three minutes; and the time it takes to assemble, mail, or fax the form to the FBI is estimated to be three minutes, for a total of eight minutes. It is estimated that enrollment occurs at approximately 500 per month for a total of 6,000 per year.

The average hour burden for this specific form is 6,000 × 8 minutes/60 = 800 hours.

The FFL Officer/Employee Acknowledgment of Responsibilities Form takes approximately three minutes to read the responsibilities and two minutes to complete the form, for a total of five minutes. The average hour burden for this specific form is 6,000 × 5 minutes/60 = 500 hours.

The accompanying letter mailed with the packet takes an additional two minutes to read which would be 6,000 × 2 minutes/60 = 200 hours.

The entire process of reading the letter and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the accompanying letter would be 6,000 × 15/60 = 1,500 hours.

(6) An estimate of the total public burden (in hours) associated with the collection:

The entire process of reading the letter and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the accompanying letter would be 6,000 × 15/60 = 1,500 hours.

If additional information is required, contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 18, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–29584 Filed 11–20–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day notice of Information collection under review; notice to student or exchange visitor; form I–515

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 21, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–515. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form will be used to notify students or exchange visitors admitted to the United States as nonimmigrants that they have been admitted without required forms and that they have 30 days to present the required forms and themselves to the appropriate office for correct processing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 15, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–29519 Filed 11–20–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day notice of information collection under review; aircraft/vessel report; form I–92.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 21, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Aircraft/Vessel Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–92. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is part of the manifest requirements of sections 231 and 251 of the I & N Act and is used by the INS and other agencies for data collection and statistical analysis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 11 minutes (.183) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 129,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 15, 2002.

Richard A. Sloan,

Director, Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service,

[FR Doc. 02–29520 Filed 11–20–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-Day notice of information collection under review; passenger list, crew list; form I–418.

The Department of Justice, Immigration and Naturalization Service has submitted the following information

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collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 31, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will be practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other form of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Passenger List, Crew List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–418. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is prescribed by the Attorney General for the INS for use by masters, owners or agents of agent of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 95,000 respondents at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 95,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s0 contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 15, 2002.

Richard A. Sloan,

Director, Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service

[FR Doc. 02–29521 Filed 11–20–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately 2:15 p.m. on Thursday, November 14, 2002, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four petitions for reconsideration pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Michael J. Gaines, and John R. Simpson.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: November 15, 2002.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 02–29731 Filed 11–19–02; 9:33 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,039; Wisconsin Pattern Co., Racine, WI
TA–W–42,033; Bridgeport Machines, Inc., Bridgeport, CT, A; Delran, NJ, B; Webster, MA, C; Elgin, IL, D; Detroit, MI
TA–W–41,381; Red Wing Shoe Co., Inc., Potosi Plant, Potosi, MO
TA–W–42,237; Penn American Coal, a Wholly Owned Subsidiary of Mill Creek Mining, Inc., a Wholly Owned Subsidiary of Coal Resources, Inc., Black Lick, PA

TA–W–42,000; Daicolor-Pope, Inc., Paterson, NJ
TA–W–41,589; Shamrock Conduit Products, Inc., Barnesville, OH

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,143; Dana Corp., Perfect Circle Div., Hastings, NE
TA–W–41,370; The Boeing Co., Battlefield Command and Control, Space Systems, El Paso, TX

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–42,234; Joy Mining Machinery, a Div. of Joy Global, Inc., Co., Mt Vernon, IL
TA–W–42,242; Super Shrimp, Inc., Yuma, AZ
TA–W–42,097; Jones Apparel Group USA, Inc., El Paso, TX
TA–W–41,396; Bell Sponging Co., Inc., Allentown, PA

The investigation revealed that criteria (1) has not been met. A Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,943; ADC Telecommunications, Inc., Eden Prairie, MN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W–42,199; Harting Manufacturing, Inc., Elgin, IL: September 19, 2001
TA–W–42,125; River Oaks Furniture, Inc., Tupelo, MS: August 30, 2001
TA–W–42,058; Cross Wire Cloth and Manufacturing Co., a Subsidiary of MDN, Inc, Bellmawr, NJ: August 23, 2001
TA–W–42,056; Kadant Black Clawson, a Wholly Owned Subsidiary of Kadant, Inc., Mason, OH: July 30, 2001
TA–W–42,035; Piece Dye Acquisition Corp., d/b/a Piece Dye Works, Edenton, NC: August 10, 2001
TA–W–41,981; Carolina Mills, Inc., Plant #21 and Plant #24, Gastonia, NC: July 19, 2001
TA–W–41,431; Sterling Fluid Systems (USA), Inc., Process Metals Foundry, White Pigeon, MI: April 1, 2001
TA–W–42,252; Leslie Fay Marketing, Inc., Trio Div., New York, NY: October 11, 2001
TA–W–42,223; Nash Garment Co., Inc., Nashville, NC: July 11, 2001
TA–W–42,313; Premier Machining Industries, LLC, Concord, NC: October 23, 2001
TA–W–42,179; Kirkwood Industries, Inc., Dayton Precision Div., Hebron, OH: September 9, 2001
TA–W–42,178; Microtek Medical, Inc., Columbus, MS: April 1, 2002
TA–W–42,146; Apex Automation, Elizabethtown, PA: August 28, 2001
TA–W–42,142; Tinplate Partners International, Inc., Gary, IN: August 24, 2001
TA–W–42,082; Nordic Gear, Inc., Newport, PA: August 28, 2001
TA–W–42,081; Nordic Gear, Inc., Millersburg, PA: August 28, 2001
TA–W–41,660; Amspec Chemical Corp., Gloucester, NJ: May 18, 2001

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05696; Pittsburgh Gear Co., a Subsidiary of Brad Foote Gear Works, Inc., Pittsburgh, PA
NAFTA–TAA–06077; The Boeing Co., Battlefield Command and Control/ Space Systems, El Paso, TX

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06129; Bell Sponging Co., Inc., Allentown, PA
NAFTA–TAA–06520; Jones Apparel Group USA, Inc., El Paso, TX
NAFTA–TAA–07619; Empire Blue Cross Blue Shield, Syracuse, NY

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–07245; Permit #60091M, King Salmon, AK
NAFTA–TAA–07039; Permit #68757A, Togiak, AK
NAFTA–TAA–07244; Permit #58575Q, King Salmon, AK
NAFTA–TAA–06450; ADC Telecommunication, Corporate Headquarters, Eden Prairie, MN

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06560; Permit #61977V, Clarks Point, AK: September 5, 2001
NAFTA–TAA–06590; Permit #59590W, New Stuyahok, AK: September 5, 2001
NAFTA–TAA–06758; Permit #56087G, Ekwok, AK: September 5, 2001
NAFTA–TAA–06768; Permit #57814M, Iliamna, AK: September 5, 2001
NAFTA–TAA–06794; Permit #67507U, King Salmon, AK: September 5, 2001
NAFTA–TAA–06888; Permit #61249B, Naknek, AK: September 5, 2001

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NAFTA–TAA–06890; Permit #56569N, Anchorage, AK: September 5, 2001
NAFTA–TAA–06931; Permit #57641L, New Stuyahok, AK: September 5, 2001
NAFTA–TAA–06953; Permit #62030E, Pilot Point, AK: September 5, 2001
NAFTA–TAA–07007; Permit #68074I, Togiak, AK: September 5, 2001
NAFTA–TAA–07308; Permit #57390J, Manokotak, AK: September 5, 2001
NAFTA–TAA–07429; Permit #58385W, Pilot Point, AK: September 5, 2001
NAFTA–TAA–07449; Permit #58296E, South Naknek, AK: September 5, 2001
NAFTA–TAA–07450; Permit #59803W, South Naknek, AK: September 5, 2001
NAFTA–TAA–07551; Nordic Gear, Inc., Millersburg, PA: August 28, 2001
NAFTA–TAA–07552; Nordic Gear, Inc., Newport, PA: August 28, 2001
NAFTA–TAA–07588; Nash Garment Co., Inc., Nashville, NC: July 11, 2001
NAFTA–TAA–06411; Carolina Mills, Inc., Plant #21 and Plant #24, Gastonia, NC: July 19, 2001
NAFTA–TAA–06480; Piece Dye Acquisition Corp., d/b/a Piece Dye Works, Edenton, NC: August 10, 2001
NAFTA–TAA–06947; 59469B, Newhalen, AK: September 5, 2001

I hereby certify that the aforementioned determinations were issued during the month of October 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 1, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–29626 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,317]

Boise Cascade, Jackson Sawmill, Jackson, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002, in response to a worker petition dated October 15, 2002, filed by the Paper, Allied-Industrial, Chemical, and Energy Workers International Union, on behalf of workers at Boise Cascade, Jackson Sawmill, Jackson, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 7th day of November, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29642 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,321]

Boxboard Packaging Company, a Division of Welch Packaging Group, Worwalk, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002, in response to a worker petition dated September 30, 2002, filed by the Norwalk Printing Specialties and Paper Products Union, Local 731, on behalf of workers at Boxboard Packaging Company, a Division of Welch Packaging Group, Norwalk, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 4th day of November, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29643 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 2, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 2, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC, this 28th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 10/28/2002

TA–W	Subject Firm (Petitioners)	Location	Date of Petition	Product(s)
42,277	Eaton Corporation (Wkrs)	Rochester Hills, MI	10/10/2002	Intake manifold tuning valves.
42,278	Intra, Inc. (Wkrs)	Spartanburg, SC	07/31/2002	Textile machines and equipment.
42,279	LaGrange Foundry (GMP)	LaGrange, MO	09/18/2002	Gray iron and ductile castings.
42,280	Covington Industries (Comp)	High Point, NC	10/08/2002	Home furnishing textiles.
42,281	Dorel Juvenile Group (Wkrs)	Cartersville, GA	10/09/2002	Metal cribs, toddler beds, step stools.
42,282	CT Gamble Acquisition (Wkrs)	Delanco, NJ	10/04/2002	Electrical resistors and components.
42,283	Facility Pro (Comp)	Dublin, OH	10/02/2002	Administrative services.
42,284	Custom Forest Products (Comp)	Grayling, MI	10/08/2002	Venetian wood blind slats.
42,285	General Electric Company (IUE)	Murfreesboro, TN	10/21/2002	Two speed washing machine motor.
42,286	Best Manufacturing Co. (Wkrs)	Fayette, AL	09/14/2002	Synthetic latex gloves.
42,287	Crystal Dyeing and Finish (Comp)	Hickory, NC	10/15/2002	Dyeing and finishing of apparel fabrics.
42,288	Warp Knit Mills, Inc. (Comp)	Lincolnton, NC	10/15/2002	Warp knitted fabrics for apparel product.
42,289	Interlake Material (Wkrs)	Pontiac, IL	02/10/2002	Industrial racks.
42,290	Glen Raven Inc. (Wkrs)	Burnsville, NC	09/30/2002	Textiles—woven fabric.
42,291	Playtex Apparel Inc. (Wrks)	Dover, DE	10/10/2002	Apparel.
42,292	MacNeill Worldwide (Wkrs)	Laconia, NH	10/12/2002	Plastic injection molding.
42,293	Rollway Bearing Corp. (UAW)	Liverpool, NY	09/25/2002	Cylindrical precision bearings.
42,294	Glucona America Inc. (Wkrs)	Janesville, WI	10/10/2002	Gluconic acid and glucono delta lactone.
42,295	Master Carrier, Inc. (Wkrs)	Mayport, PA	10/09/2002	Transporting.
42,296	Westwood Industries (Wkrs)	New York, NY	10/02/2002	Textile products for home.
42,297	Choctaw Electronics (Comp)	Choctaw, MS	10/11/2002	Automotive radio speakers.
42,298	Massillon Stainless, Inc. (Comp)	Massillon, OH	10/02/2002	Stainless steel cold rolls.
42,299	Alcoa Printing Plant (GCIU)	Gilbertsville, PA	09/26/2002	Plastic bags.
42,300	Lake Village Industries (Comp)	Lake Village, AR	10/10/2002	Pajamas, pants, flameouts, belts.
42,301	Tennecast/CDT (Comp)	Barberton, OH	10/21/2002	Aluminum castings and molds.
42,302	Trends Clothing Corp. (Wkrs)	Miami, FL	10/09/2002	Junior sportswear.
42,303	Abel Conn (Wkrs)	Cokato, MN	10/08/2002	Back panels and custom interconnects.
42,304	Virkler Company (The) (Comp)	Charlotte, NC	10/11/2002	Specialty chemicals for textiles.
42,305	Unison Industries (Comp)	Ft. Worth, TX	10/08/2002	Electrical wire harnesses.
42,306	Atlas Copco (UE)	Holyoke, MA	10/09/2002	Air compressors and generators.
42,307	Cadence Design Systems (Wkrs)	Irvine, CA	10/11/2002	Analog simulators.
42,308	Shipping Systems, Inc. (Wkrs)	Crossett, AR	10/02/2002	Paper and polypropylene dunnage bags.
42,309	Advanced Glassfiber Yarns (Comp)	Huntingdon, PA	08/01/2002	e-glass yarns, fine yarns, D fiber.
42,310	Inteplast Group Ltd. (Wkrs)	Lolita, TX	10/07/2002	Plastic trash bags, garment bags.
42,311	New England Iron, LLC (Comp)	Springfield, MA	10/18/2002	Sand shell molded gray iron.
42,312	Analog Devices (Wkrs)	Norwood, MA	10/18/2002	Marketing service.
42,313	Premier Machining Indust. (Co.)	Concord, NC	10/23/2002	Fabricated machine parts.

[FR Doc. 02–29627 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been

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received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 2500 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than December 2, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than December 2, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW. Washington, DC 20210.

Signed at Washington, DC this 28th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
Fred B. Moe Logging (Co.)	Centralia, WA	09/16/2002	NAFTA–7,547	Logging.
ADC Telecommunications (Wkrs)	Vadnais Heights, MN	09/10/2002	NAFTA–7,548	Pump lasers, broad area lasers.
Exide Technologies (Wkrs)	Columbus, GA	09/10/2002	NAFTA–7,549	Automotive and industrial batteries.
Volex, Inc. (Comp)	Clinton, AR	09/10/2002	NAFTA–7,550	Rubber electrical power cords.
Nordic Gear (Co.)	Newport, PA	09/11/2002	NAFTA–7,551	Sew fleece products.
Nordic Gear (Co.)	Millersburg, PA	09/11/2002	NAFTA–7,552	Sew fleece products.
Foothills (Co.)	Albany, KY	09/10/2002	NAFTA–7,553	Apparel.
VF Imagewear (Co.)	Sparta, TN	09/10/2002	NAFTA–7,554	Work wear coveralls and pants.
Federal Mogul (Co.)	Sevierville, TN	09/10/2002	NAFTA–7,555	Lighting components.
Waukesha Electric Systems (Co.)	Milpitas, CA	09/09/2002	NAFTA–7,556	Large power transformers.
MEI—Mars, Inc. (Co.)	West Chester, PA	09/12/2002	NAFTA–7,557	Validators and coin acceptors.
Traction Technologies Group (Co.)	Jonesboro, AR	09/11/2002	NAFTA–7,558	Axle components.
Makita Corporation of America (Co.)	Buford, GA	09/12/2002	NAFTA–7,559	Battery and electric power tools.
Toyo Tanso PA Graphite, Inc. (Comp).	Brookville, PA	09/13/2002	NAFTA–7,560	Isomolded graphite.
Comair Rotron (Co.)	San Diego, CA	09/11/2002	NAFTA–7,561	Fans and blowers—cooling systems.
Tritex Sportsware (Co.)	Altoona, PA	09/16/2002	NAFTA–7,562	Men's, women's and children's outerwear.
dj Orthopedics, LLC (Co.)	Vista, CA	09/16/2002	NAFTA–7,563	Rigid bracing products.
Georgia Pacific (Wkrs)	Bowden, NC	09/18/2002	NAFTA–7,564	Lumber.
Baker Electrical Products (Co.)	Memphis, MI	09/17/2002	NAFTA–7,565	Coil windings.
Hy Lift (UAW)	Muskegon, MI	09/17/2002	NAFTA–7,566	Valve lifters.
Holloway Sportwear, Inc. (Wkrs)	Many, LA	06/16/2002	NAFTA–7,567	Suits, pants, pullovers, jackets.
Holloway Sportwear, Inc. (Wkrs)	Olla, LA	06/16/2002	NAFTA–7,567	Suits, pants, pullovers, jackets.
Molded Container (Wkrs)	Portland, OR	08/12/2002	NAFTA–7,568	Packaging for food industry.
Emerson Power Transmission (Wkrs).	Liverpool, NY	09/18/2002	NAFTA–7,569	Bearings.
Jackson Industries (Co.)	Maquoketa, IA	09/18/2002	NAFTA–7,570	Tooling.
International Comfort (IBB)	Lewisburg, TN	09/23/2002	NAFTA–7,571	Heating ventilation & air conditioning.
Percision Threading (UAW)	Cheboygan, MI	09/24/2002	NAFTA–7,572	Taps, thread milling cutters.
Pass and Seymour (Co.)	Whitsett, NC	09/24/2002	NAFTA–7,573	Electrical switch.
Radio Frequency Systems (Wrks)	Corvallis, OR	09/19/2002	NAFTA–7,574	Multi Couplers.
Celestica Corp (Comp)	Foothill Ranch, CA	09/24/2002	NAFTA–7,575	Electrical Systems.
Ametek, Inc (IUE)	Wilmington, MA	09/24/2002	NAFTA–7,576	Aircraft/Aerospace Cables.
Decatur Mold Tool and Engineering (Wrks).	Sanford, NC	09/26/2002	NAFTA–7,577	Design Molds and Tools.
Eviro Systems Furniture, Inc (Comp)	Grand Rapids, MI	09/25/2002	NAFTA–7,578	Panels, Overhead File Cabinets.
Marconi Communications (Wrks)	Lorain, OH	09/30/2002	NAFTA–7,579	Power and Power Distribution.
JTM Group, Inc. (Wrks)	Jamestown, NY	09/11/2002	NAFTA–7,580	Plastic Injection Molds.
Inabata America Corp (Wrks)	El Paso, TX	09/27/2002	NAFTA–7,581	Computer Ink Cartridge Assembly.
BBA Nonwovens Washougal, Inc (AWPPW).	Washougal, WA	09/27/2002	NAFTA–7,582	Nonwoven Rolled Goods.
Doe Run Resources Corp. (The) (Comp).	Viburnum, MO	10/02/2002	NAFTA–7,583	Lead Mining, Concentrating, Smelting.
Classic Clay Concepts (Comp)	Lake Oswego, OR	09/25/2002	NAFTA–7,584	Terra Cotta, Earthenware Planters.
J and A Industrial Sheetmetal (Comp).	Bend, OR	09/25/2002	NAFTA–7,585	Metal Parts.
Hershey Chocolate and Confectionery (Comp).	Wheatridge, CO	09/18/2002	NAFTA–7,586	Chocolate.
Groupe Carbone Lorraine (UAW)	Wooster, OH	09/30/2002	NAFTA–7,587	Pressure Vessels, Heat Exchangers.
Nash Garment Co (UNITE)	Nashville, NC	07/16/2002	NAFTA–7,588	Children's Dresses.
Georgia Pacific Corp. (IAm)	Ft. Bragg, CA	09/27/2002	NAFTA–7,589	Logs.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
Jabil Circuit, Inc. (Wkrs)	Meridian, ID	09/24/2002	NAFTA–7,590	Printed Circuit Assemblies.
Barth and Dreyfuss of California (Wrks).	Burbank, CA	10/01/2002	NAFTA–7,591	Home Furnishing.
J-Star Industries, Inc. (Comp)	Ft. Atkinson, WI	10/07/2002	NAFTA–7,592	Dairy Farm Equipment.
Deluxe Craft Photo Albums (Wrks)	Chicago, IL	10/01/2002	NAFTA–7,593	Photo Albums.
Juno, Inc. (Wrks)	Blytheville, AR	09/16/2002	NAFTA–7,594	Plastic Tool Parts.
Microelectronic Modules Corp (Wrks)	New Berlin, WI	10/03/2002	NAFTA–7,595	Computer Chips.
La Grange Foundry, Inc. (Wrks)	La Grange, MO	10/03/2002	NAFTA–7,596	Castings.
Spicer Axle Division (UAW)	Syracuse, IN	10/03/2002	NAFTA–7,597	Cases and Carriers (Axle Components).
General Mills (Comp)	Hillsdale, MI	10/02/2002	NAFTA–7,598	Bake Goods.
Waltec Forgings, Inc. (Comp)	Port Huron, MI	10/07/2002	NAFTA–7,599	Non-Ferrous Forgings.
Autoline Industries, Inc. (Comp)	Oakbrook, IL	10/07/2002	NAFTA–7,600	Water Pumps, Master Brake Cylinders.
Panavision (Wrks)	Woodland Hills, CA	09/23/2002	NAFTA–7,601	Motion Pictures, Cameras, Lenses.
Anderson Packaging, Inc. (Comp)	Rockford, IL	10/07/2002	NAFTA–7,602	Dentifrice in Pastic Dispensing Units.
Midwest Electric Products (Comp)	Mankato, MN	08/19/2002	NAFTA–7,603	Electrical Equipment.
Nortel Networks (Wrks)	Research Triangle Park, NC.	09/23/2002	NAFTA–7,604	Optical Long Haul Backbone Networs.
Consolidated Freight Ways (Wrks)	El Paso, YX	10/07/2002	NAFTA–7,605	Transports Freight.
MJ Soffe (Wrks)	Wallace, NC	10/09/2002	NAFTA–7,606	T-Shirts.
RBX Industries, Inc. (Comp)	Colt, AR	10/04/2002	NAFTA–7,607	Closed Cell Foam Rubber.
Arkansas Metal Castings, Inc. (Comp).	Fort Smith, AR	10/08/2002	NAFTA–7,608	Gray and Ductile Iron Castings.
General Electric Transportation Systems (Comp).	Warrensburg, MO	10/07/2002	NAFTA–7,609	Printed Circuit Boards.
Mountain Fir Chip Co (Wrks)	The Dalles, OR	10/08/2002	NAFTA–7,610	Wood Chips.
Unison Industries (Comp)	Fort Worth, TX	10/14/2002	NAFTA–7,611	Electrical Wire Harnesses.
SMTC Manufacturing Corp. (Co.)	Austin, TX	08/22/2002	NAFTA–7,612	Computer Printed Circuit Assemblies.
Legato Systems, Inc. (Wrks)	Orem, UT	10/15/2002	NAFTA–7,613	Customer Support Functions.
Interlake Material Handling (Wrks)	Pontiac, MI	10/09/2002	NAFTA–7,614	Industrial Rack and Beams.
Sermatech-Mal Tool (Wrks)	Manchester, CT	10/10/2002	NAFTA–7,615	Aircraft Engine Components.
Oneida Limited Silversmiths (Wrks)	Sherrill, NY	10/11/2002	NAFTA–7,616	Silverware.
Tecmotiv Corp. (Wrks)	Tonawanda, NY	10/18/2002	NAFTA–7,617	Tank and Trucks Replacement Parts.
Alcatel USA, Inc. (Wrks)	Plano, TX	10/18/2002	NAFTA–7,618	Litespan 2000 Access Products.
Empire Blue Cross Blue Shield (Wrks).	Syracuse, NY	09/27/2002	NAFTA–7,619	Technical Help Deck—Insurance.
Trailmobile LLC (PACE)	Charleston, IL	09/23/2002	NAFTA–7,620	Semi-Trailers.
Intertape Polymer Group (Co.)	Menasha, WI	10/21/2002	NAFTA–7,621	Tape.
Eaton Corp (Wrks)	Rochester Hills, MI	10/14/2002	NAFTA–7,622	Intake Manifolds.
ATK North America (Wrks)	Falmouth, KY	10/18/2002	NAFTA–7,623	Automotive Engines.
Pohlman Foundry Co., Inc (IAMAW)	Buffalo, NY	10/15/2002	NAFTA–7,624	Poured Iron Castings.
Pollak (Co.)	Boston, MA	10/22/2002	NAFTA–7,625	Actuators.

[FR Doc. 02–29624 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,119]

J-Star AG Division, JSI Industries, Inc., Fort Atkinson, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 16, 2002, in response to a petition filed on behalf of workers at J-Star AG Division, JSI Industries, Inc, Fort Atkinson, Wisconsin.

The petitioners have requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 12th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29637 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,047]

Marathon Ashland Pipe Line, LLC, Bridgeport, IL; Notice of Negative Determination of Reconsideration on Remand

The United States Court of International Trade (USCIT) remanded for further investigation and consideration of the Trade Adjustment Assistance (TAA) petition for *Former Employees of Marathon Ashland Pipe Line LLC* v. *Elaine Chao, U.S. Secretary of Labor*, No. 00–04–00171.

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The Department's initial denial for the workers transporting crude oil and petroleum products at Marathon Ashland Pipe Line, LLC, Bridgeport, Illinois, issued on December 2, 1999, and published in the **Federal Register** on December 28, 1999 (64 FR 72691), was based on the finding that the group eligibility requirements of section 222 of the Trade Act of 1974, as amended, were not met.

The petitioners request for reconsideration resulted in a negative determination regarding the application which was issued on February 11, 2000, and was published in the **Federal Register** on February 22, 2000 (64 FR 8743). The Department's findings affirmed that the workers were providing a service and were not producing an article.

On remand, in order to determine if the worker group supported crude oil production of the parent company, the Department contacted officials of Marathon Ashland Pipe Line LLC, to obtain additional information regarding the transportation of articles produced by the parent company, Marathon Oil Company, Inc. The Department found that in 1997, 1998 and in January through March of 1999, Marathon Ashland Pipe Line Company did not transport via pipeline any articles produced by the parent company, Marathon Oil Company, Inc.

The Department further found that in 1997, the parent company purchased crude oil at the lease (Illinois Basin) that was transported by Marathon Pipe Line Company. In 1998, Marathon Ashland Petroleum LLC was formed and it purchased from the lease crude oil which it transported via the pipe line. In 1999, Marathon Ashland Petroleum LLC did not purchase from the lease.

On July 16, 2002, the court remanded to the Department of Labor, USCIT Case No. 00–04–00171, that they investigate the duties and nature of the work performed by the gaugers of Marathon Ashland Pipe Line, Bridgeport, Illinois and provide a reasoned analysis as to whether such duties qualify as "producing" an article within the provisions of 19 U.S.C., section 2272(a).

After the investigation, the Department of Labor found that Marathon Ashland Pipe Line LLC is a common carrier pipeline company. The company provides a service by transporting crude oil and petroleum products. The subject workers were primarily responsible for activities related to the transportation of crude oil produced in Southern Illinois/Indiana via Marathon Ashland Pipe Line LLC pipelines. The gaugers, a part of the group for Marathon Ashland Pipe Line LLC, were not engaged in activities related to the production of crude oil. They were responsible for determining the quality and quantity of crude oil bought by the purchasing company from third party leases. The gaugers were responsible for ensuring quality control by collecting representative samples from crude oil tanks and certifying that the crude oil was acceptable for purchase. Once the crude oil quality was certified, the gauger would verify the quantity of the product from the tank and allow delivery into the Marathon Ashland Pipe Line facility either by truck to the pipeline or directly into the pipeline. After the crude oil was placed in the pipeline, it was then delivered to the customer's specified destination or Marathon Ashland Petroleum's refinery in Robinson, Illinois. Thus, based on the functions performed by the gaugers they did not "produce" an article.

The court also ordered that if the workers do not "produce" an article, the Department of Labor shall determine and explain whether a "causal nexus" exists between the gaugers' responsibilities and the production of an "article".

Since the gaugers, who are employed by the pipeline company were merely responsible for certifying the quality and quantity of crude oil being shipped to customers, the gaugers were not engaged in activities related to the exploration or production of crude oil. The gaugers worked from crude oil already in tanks. Their functions were after the stage of the production of crude oil. The gaugers' functions were related to ensuring that crude oil purchasers received the quality and quantity of crude oil they were purchasing. Once the gaugers performed these functions, the crude oil was shipped via truck to the pipeline or directly to the pipeline to the customer or Marathon Ashland Petroleum's refinery located in Robinson, Illinois. The Robinson, Illinois refinery was not under an existing Trade Adjustment Assistance certification during the relevant period.

The court further ordered that the Department of Labor investigate the reasons behind the sale of Marathon Oil's assets and the plaintiffs' claim that a decision by Marathon Oil to import crude oil caused their separation from Marathon Ashland.

Of note, the parent of Marathon Ashland Pipe line, LLC is Marathon Ashland Petroleum LLC which is a joint venture owned by Marathon Oil Corporation (formerly Marathon Oil Company) and Ashland, Inc. Marathon Oil owns 62 percent of Marathon Ashland Petroleum, LLC and Ashland, Inc. owns 38 percent of Marathon Ashland Petroleum, LLC.

The Department found that the sale of assets in question were not assets sold by Marathon Oil, but rather a sale of Marathon Ashland Petroleum LLC. In 1999 Marathon's Ashland Petroleum's LLC sold Scurlock Permian LLC, a crude oil gathering and transportation business in an area from the Rocky Mountains to the Gulf of Mexico, part of its Illinois Basin assets, to Plains All American Pipeline, L.P. These assets were part of an overall sale of assets by Marathon Ashland Petroleum LLC because they were not of strategic value to the company. Marathon Ashland Pipeline LLC still transports Illinois Basin crude oil (gauged and trucked by various companies from the wellhead to Marathon Ashland Pipeline LLC facilities) to locations determined by the crude oil purchases. The company indicated that the employees at Marathon Ashland Pipe Line LLC, Bridgeport, Illinois were terminated as a result of an asset sale in May 1999, not the decision by Marathon to import crude oil. In any event, since the workers were engaged in a service, they can not be certified under the Trade Act of 1974, as amended, since they were not in direct support of a TAA certified facility during the relevant period.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Marathon Ashland Pipe Line, LLC, Bridgeport, Illinois.

Signed in Washington, DC, this 17th day of October, 2002.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–29625 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 2, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 2, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 09/30/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,178	Microtek Medical, Inc. (Comp)	Columbus, MS	09/10/2002	Microscope drapes, camera drapes.
42,179	Kirkwood Industries (Comp)	Hebron, OH	09/09/2002	Commutators, electromechanical component.
42,180	Hy Lift (UAW)	Muskegon, MI	09/17/2002	Valve Lifters.
42,181	Georgia Pacific (Wrks)	Bowden, NC	09/11/2002	Hardwood lumber.
42,182	American Tramway's (Wrks)	Watertown, NY	09/10/2002	Aerial tramways and chairlifts.
42,183	Inabata (Wrks)	El Paso, TX	09/17/2002	Assembling.
42,184	Graphic Sportswear (Wrks)	Austin, TX	09/10/2002	T-shirts, polo shirts, and sweatshirts.
42,185	Juno (Wrks)	Blytheville, AR	09/11/2002	Plastic tool parts.
42,186	AMF Reece, Inc. (Comp)	Mechanicsville, VA	09/10/2002	Sewing machines and parts.
42,187	Faith Apparel, Inc. (Comp)	Richlands, VA	09/09/2002	Ladies sleepwear and lounge wear.
42,188	Laird Technologies (Wrks)	Del Water Gap, PA	09/12/2002	Copper metal stampings, tool dye work.
42,189	Baker Electrical Products (Comp)	Memphis, MI	09/12/2002	Coil windings.
42,190	Pechiney Rolled Products (Comp)	Ravenswood, WV	09/11/2002	Aluminum flat rolled sheet plates.
42,191	Tytex, Inc USA (Wrks)	Woonsocket, RI	09/11/2002	Hip protector plants, cotton briefs.
42,192	Waukesha Electric Systems (Comp)	Milpitas, CA	08/08/2002	Large power transformers.
42,193	Vulcan Chemicals (Comp)	Wichita, KS	09/19/2002	Chloroform.
42,194	Jean Michael's, Inc. (UNITE)	Willingboro, NJ	09/20/2002	Women's skirts.
42,195	3M EdUSA (Wrks)	El Paso, TX	08/11/2002	Bandages, first aid kits, dressings.
42,196	Hy-Tec Manufacturing (Wrks)	Ada, OK	09/13/2002	Alternator and starter parts.
42,197	Georgia Pacific Corp. (PACE)	Baileyville, ME	09/16/2002	Wood construction panels.
42,198	Tritex Sportswear, Inc. (Comp)	Altoona, PA	09/09/2002	Men's, women's and children's outerwear.
42,199	Harting Manufacturing (Comp)	Elgin, IL	09/19/2002	Cable and related components assemblies.
42,200	Multi Tool, Inc. (Wrks)	Saegertown, PA	08/27/2002	Plastic injection molds.
42,201	International Rectifier (Wrks)	\Temecula, CA	09/24/2002	Wafer chips for semiconductors.
42,202	Empire Blue Cross (Wrks)	Syracuse, NY	09/09/2002	Technical assistance service.
42,203	Motorola (Wrks)	Austin, TX	09/16/2002	Semiconductor packaging.
42,204	G.S. of West Virginia (Comp)	Ravenswood, WV	09/13/2002	Automotive wire harness.
42,205	Sutherland Sheet Metal (Wrks)	Woonsocket, RI	09/11/2002	Custom fabrication and welding.
42,206	Hoffco/Comet (Comp)	Rushville, IN	09/16/2002	Transmission assembly.
42,207	Xerox Corp (UNITE)	Canandaigua, NY	09/17/2002	Printhead and ink tank.
42,208	Engelhard Corp (Wrks)	Erie, PA	09/18/2002	Nickel and maleic products.
42,209	Duro Industries, Inc. (Comp)	Fall River, MA	09/16/2002	Apparel dying, finishing, printing.

[FR Doc. 02–29623 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,291]

Playtex Apparel, Inc., Dover, DE; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 2002 in response to a worker petition, which was filed on behalf of workers at Playtex Apparel, Inc, Dover, Delaware.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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Signed in Washington, DC, this 12th day of November, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29641 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,098]

Pliant Solutions, Fort Edward, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 9, 2002, in response to a worker petition which was filed by PACE International Union, AFL–CIO, Local #01–003 on behalf of workers at Pliant Solutions, Fort Edward, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 30th day of October, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29636 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,186]

Swanson Erie Corporation, Assembly Systems, Erie, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 22, 2002, the Automobile, Aerospace & Agricultural Implementation Workers of America, International Union, United (UAW), Local 618 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on June 25, 2002, and published in the **Federal Register** on July 9, 2002 (67 FR 45550).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Swanson Erie Corporation, Assembly Systems, Erie, Pennsylvania engaged in the production of assembly of machines, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. Increased imports did not contribute importantly to worker separations at the subject plant. The workers assembled various assembly machines (*i.e.* 35mm disposable cameras, bare skin cutting machines, AA-rebuilding machines and acuvan catheter machines).

The petitioner alleges that the company increased their imports of articles like or directly competitive with articles produced by the subject firm thus contributing importantly to the separations at the subject firm. The petitioner in order to depict increased imports, attached a parts list of the imported parts (by part number), including the total value of each of the parts imported during 2000, 2001, and January through February 12, 2002.

The company was contacted to verify the import data provided by the petitioner. The company responded by indicating the products imported were cams, a component part of the machinery assembled by the subject firm. The company further indicated that they produced this product in-house (in combination of purchasing cams from other domestic sources) to mid-1997. In mid-1997, the company ceased their production of cams and began relying solely on imported cams from a foreign source through the current period. The imports of cams by the company are not like or directly competitive with articles currently being produced by the subject firm during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed in Washington, DC, this 22nd day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–29635 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,213]

John Boyle and Associates, LLC, DBA Synergetics, Easton, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 7, 2002 in response to a petition filed by a company official on September 16, 2002 on behalf of workers at John Boyle and Associates, LLC, dba Synergetics, Easton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 13th day of November, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29640 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,335]

Trans World Connections, Ltd., Lynchburg, Virginia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002, in response to a petition filed by a company official on behalf of workers at Trans World Connections, Ltd., Lynchburg, Virginia.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 13th day of November, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29644 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,172]

Volex, Inc. Power Cord Division Clinton, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 23, 2002, in response to a worker petition filed on the same date by a company official on behalf of workers at Volex, Inc., Power Cord Division, Clinton, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of November, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29638 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,207]

Xerox Corporation, (SOHO) Small Office/Home Office Division, Canandaigua, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 2002 in response to a petition filed on the same date by UNITE, Rochester Regional Joint Board, on behalf of workers at Xerox Corporation, Canandaigua, New York.

A negative determination applicable to the petitioning group of workers was issued on March 8, 2002 (TA–W–40,405). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 4th day of November, 2001.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29639 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6534]

Altadis U.S.A. Inc. McAdoo, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on September 9, 2002, in response to a petition filed by the International Brotherhood of Teamsters, Local 401, on behalf of workers at Altadis U.S.A. Inc., McAdoo, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 28th day of October, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29629 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6830]

Permit # 56860I Manokotak, AK; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit #56860I, Manokotak, Alaska.

The workers stopped fishing in July 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of October 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29630 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6873]

Permit # 65045K Naknek, AK; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit #64872Z, Dillingham, Alaska.

The workers stopped fishing in July 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of October 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29631 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6892]

Permit #58212Z, Naknek, Alaska; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit #58212Z, Naknek, Alaska.

The workers stopped fishing in September 1999, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of October 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29632 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7101]

Permit #57764U Dillingham, AK; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit #57764U, Dillingham, Alaska.

The workers stopped fishing in July 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of October 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29633 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7225]

Permit # 60833F, Egegik, AK; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit #60833F, Egegik, Alaska.

The workers stopped fishing in June 1999, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of October 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29634 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6508]

Pliant Solutions, Fort Edward, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 23, 2002, in response to a worker petition which was filed by PACE International Union, AFL–CIO, Local #01–0013 on behalf of workers at Pliant Solutions, Fort Edward, New York.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 30th day of October, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29628 Filed 11–20–02; 8:45 am]

BILLING CODE 4510–30–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Amendment of Privacy Act System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Notice of amendment to existing system of records.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is issuing public notice of its intent to amend a Government-wide system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a). MSPB/GOVT–1, "Appeals and Case Records," is being amended to reflect the Board's implementation of a Document Management System (DMS) to manage all documents created by the Board during the processing of a case and all documents that are received electronically from the parties. (At present, the DMS is used only to manage documents created by the Board. When the Board implements its planned electronic filing system, the DMS will be used to manage documents received from the parties as well.) The Board is also adding a routine use for the disclosure of information in case files to officials of State or local bar associations. The amended system of records reads as follows:

MSPB/GOVT–1

SYSTEM NAME:

Appeals and Case Records.

SYSTEM LOCATION:

Office of the Clerk of the Board and Office of Information Resources Management, Merit Systems Protection Board (MSPB), 1615 M Street, NW., Washington, DC 20419, and MSPB regional and field offices (see list of office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed appeals with MSPB or its predecessor agency, or with respect to whom the Special Counsel or a Federal agency has petitioned MSPB concerning any matter over which MSPB has jurisdiction.

b. Current and former employees of State and local governments who have been investigated by the Special Counsel and have had a hearing before MSPB concerning possible violation of the Hatch Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. These records contain information or documents such as briefs, pleadings, motions, exhibits, hearing transcripts, and MSPB decisions, which comprise the administrative records of appeals and other matters arising under the adjudicatory authority of the Board. These records also contain individual appellant's names, social security numbers, home addresses, veteran's status, race, sex, national origin, and disability status data.

b. This system also includes the Board's Case Processing System (CPS). The CPS was designed to manage all documents created by the Board during the processing of a case, as well as documents that are received electronically from the parties. At the present time, the CPS includes a Document Assembly System to create documents, a Document Management System to manage and store documents, and a Case Management System to record activities in cases, track the location of case files, and produce statistical reports on cases. When completely implemented, the CPS will also include an Electronic Filing and Electronic Publishing System to allow the parties to send and receive case documents electronically.

Note: This system includes records and documents compiled by Federal agencies in processing adverse actions and actions based on unacceptable performance, covered by OPM/GOVT–3, when such actions are appealed to MSPB.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1204.

PURPOSE(S):

a. These records are used to document and adjudicate appeals and other matters arising under the Board's appellate and original jurisdiction.

b. These records also serve a management information function by providing statistical data for reports, physical file location, and staff productivity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

a. To officials of the Equal Employment Opportunity Commission or a Special Panel convened under authority of 5 U.S.C. 7702 when requested in connection with the performance of their authorized duties;

b. To officials of the Office of Personnel Management, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, and the Office of Special Counsel in connection with the performance of their authorized duties;

c. To the Government Accounting Office in response to an official inquiry or investigation;

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual;

e. To an appropriate Federal or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation;

f. To the Office of Management and Budget at any stage in the legislative process in connection with private relief legislation as set forth in OMB Circular No. A–19;

g. To the Department of Justice when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States

is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required;

h. In any proceeding before a court or adjudicative body before which the Board is authorized to appear when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States

is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required;

i. To any person making a status inquiry regarding a proceeding before the MSPB;

j. To the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

k. In response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding;

l. To Federal and State agencies for the purpose of providing MSPB with information concerning MSPB appellants, which information will be used, absent personal identifiers, in MSPB research projects mandated by 5 U.S.C. 1204(a)(3);

m. To officials of the United States Court of Appeals for the Federal Circuit in connection with the performance of their judicial functions; or

n. To officials of State or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before the Board.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and in computer storage media.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained, by social security numbers, and by MSPB docket numbers.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Personal screening is employed to prevent unauthorized disclosure. Automated records in this system are maintained in a secure computer room in a building with restricted access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Paper records are maintained for up to one year after a final determination by MSPB or, in some instances, other administrative authorities or the courts. Thereafter, they are transferred to Regional Federal Records Centers or other appropriate facilities. Paper records are destroyed by the Federal Records Centers when the records are seven years old. Electronic records of the Case Management System may be maintained indefinitely, or until the Board no longer needs them.

SYSTEM MANAGERS AND ADDRESSES:

The Clerk of the Board and the Office of Information Resources Management, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419, and MSPB regional and field offices (see list of office addresses in the Appendix).

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Such requests should be addressed to the regional director or chief administrative judge (see list of office addresses in the Appendix).

Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment should write the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Such requests should be addressed to the regional director or chief administrative judge (see list of office addresses in the Appendix).

Requests for amendment of records must follow the MSPB Privacy Act regulations at 5 CFR 1205.21.

These provisions for amendment of the record are not intended to permit the alteration of evidence presented in the course of adjudication before the MSPB either before or after the MSPB has rendered a decision on the appeal.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The individual to whom the record pertains;

b. The agency employing the above individual;

c. The Merit Systems Protection Board, the Office of Personnel Management, the Equal Employment Opportunity Commission, the Office of the Special Counsel; and

d. Other individuals or organizations from whom the MSPB has received testimony, affidavits or other documents.

Appendix

Regional and Field Offices of the Merit Systems Protection Board

1. Atlanta Regional Office, Merit Systems Protection Board, 401 W. Peachtree Street, NE, Suite 1050, Atlanta, Georgia 30308
2. Boston Field Office, Merit Systems Protection Board, 99 Summer Street, Suite 1810, Boston, Massachusetts 02110
3. Central Regional Office, Merit Systems Protection Board, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604
4. Dallas Field Office, Merit Systems Protection Board, 1100 Commerce Street, Room 620, Dallas, Texas 75242
5. Denver Field Office, Merit Systems Protection Board, 165 South Union Blvd., Suite 318, Lakewood, Colorado 80228
6. New York Field Office, Merit Systems Protection Board, 26 Federal Plaza, Room 3137–A, New York, New York 10278
7. Northeastern Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106
8. Western Regional Office, Merit Systems Protection Board, 250 Montgomery Street, Suite 400, San Francisco, California 94104
9. Seattle Field Office, Merit Systems Protection Board, 915 Second Avenue, Room 1840, Seattle, Washington 98174
10. Washington, DC Regional Office, Merit Systems Protection Board, 1800 Diagonal Road, Suite 205, Alexandria, Virginia 22314

DATES: Comments on this amendment must be received by the Clerk of the Board on or before December 31, 2002. (The Privacy Act, at 5 U.S.C. 552a(e)(11), requires that the public be provided a 30-day period in which to comment on an agency's intended use of information in a system of records. Appendix I to Office of Management and Budget (OMB) Circular A–130 requires an additional 10-day period—for a total of 40 days—in which to make such comments.) The amended system of records will be effective, as proposed, at the end of the comment period unless the Board determines, upon review of the comments received, that changes should be made. In that event, the Board will publish a revised notice in the **Federal Register**.

ADDRESSES: Submit comments to the Office of the Clerk of the Board, ATTN: Privacy Act Officer, Merit Systems Protection Board, 1615 M St., NW, Washington, DC 20419. Comments may be submitted by regular mail to this address, by facsimile to (202) 653–7130, or by e-mail to *mspb@mspb.gov*.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Privacy Act Officer, at (202) 653–7200.

Dated: November 15, 2002.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 02–29561 Filed 11–20–02; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 6, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul Wester, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1505. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Information Systems Agency (N1–371–02–8, 7 items, 7 temporary items). Records relating to legal advice and opinions, litigation proceedings, and nondisclosure agreements with private industry. Also included are electronic copies of documents created using electronic mail and word processing.

2. Department of Defense, Defense Logistics Agency (N1–361–03–1, 1 item, 1 temporary item). Electronic records maintained in a system that is used to track and control requests for facility and administrative support services and products.

3. Department of Energy, Bonneville Power Administration (N1–305–03–1, 34 items, 34 temporary items). Records relating to the management of power assets of the Federal Columbia River Power System. Included are such files as long-term direction studies, risk management assessments, budget analyses, investment strategies, meeting minutes, and research and development studies. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Justice, Drug Enforcement Administration (N1–170–03–1, 3 items, 3 temporary items). Inputs, electronic data, and documentation associated with an electronic system pertaining to the use of confidential sources.

5. Department of Justice, Criminal Division (N1–60–03–1, 8 items, 6 temporary items). Records of the Office of Enforcement Operations' Witness Immunity Unit. Included are such records as attorney search warrants and subpoenas, multi-district agreement requests, and pre-trial diversions. Also included are electronic copies of documents created using word processing and electronic mail. Recordkeeping copies of files relating to the prosecution of previously immunized witnesses and Dual Prosecution Policy Case Files are proposed as permanent.

6. Federal Emergency Management Agency, Response and Recovery Directorate (N1–311–01–5, 2 items, 1 temporary item). Electronic copies of documents created using word processing and electronic mail relating to the agency's role as chair and coordinator of the Emergency Services Sector working group of the President's Council on Y2K Conversion. Recordkeeping copies of these files are proposed for permanent retention.

7. Federal Energy Regulatory Commission, Office of External Affairs (N1–138–02–2, 3 items, 3 temporary items). Annual reports of Freedom of Information Act activities that are submitted directly to the Department of Justice. Also included are electronic copies of documents created using electronic mail and word processing.

8. Federal Trade Commission, Office of Information Management and Dissemination (N1–122–96–1, 4 items, 4 temporary items). Investigative case files, background materials, and electronic copies of records created using electronic mail and word processing.

9. Federal Trade Commission, Information and Technology Management Office (N1–122–96–3, 4 items, 4 temporary items). Consent case files, including both public and non-public files, and electronic copies of records created using electronic mail and word processing.

10. Federal Trade Commission, Information and Technology Management Office (N1–122–96–4, 6 items, 5 temporary items). Docket files,

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including non-public and in camera files, procedural materials not entered into evidence, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of public documents that are made part of the record of each proceeding.

11. Millennial Housing Commission, Agency-wide (N1–220–02–24, 7 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing pertaining to agency activities. Recordkeeping copies of such files as surveys, reports, hearing transcripts, correspondence, meeting minutes, and the commission's web site are proposed for permanent retention.

12. National Commission on Library and Information Science, Library Statistics Program (N1–220–02–26, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the commission's Academic Library Survey. Recordkeeping copies of these files are proposed for permanent retention.

13. National Commission on Library and Information Science, Library Statistics Program (N1–220–02–27, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the commission's State Library Agency Survey. Recordkeeping copies of these files are proposed for permanent retention.

14. National Commission on Library and Information Science, Library Statistics Program (N1–220–02–28, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the commission's Library Cooperatives Survey. Recordkeeping copies of these files are proposed for permanent retention.

15. National Commission on Library and Information Science, Library Statistics Program (N1–220–02–30, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the commission's School Library Media Center Survey. Recordkeeping copies of these files are proposed for permanent retention.

16. National Commission on Library and Information Science, Library Statistics Program (N1–220–02–31, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the commission's Public Library Data Survey. Recordkeeping copies of these files are proposed for permanent retention.

17. National Commission on Library and Information Science, Library Statistics Program (N1–220–02–32, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to general program matters. Recordkeeping copies of these files are proposed for permanent retention.

18. Securities and Exchange Commission, Office of Filings and Information Services (N1–266–02–1, 3 items, 3 temporary items). Inputs and master files of the Complaint Handling, Assignment, Response, and Tracking System, an electronic imaging system used to support and facilitate the tracking and reporting of complaints from investors. The system includes such data as investors' names and contact information and details of how, why, and when a person was defrauded or encountered problems. Also included are paper documents that have not been imaged. Significant accusations of securities violations that warrant investigation become part of an investigative case file; recordkeeping copies of significant cases were previously approved for permanent retention.

19. Social Security Administration, Deputy Commissioner for Finance, Assessment, and Management (N1–47–01–1, 6 items, 6 temporary items). Inputs, master files, system backups, documentation, and outputs for the Talking and Listening to Customers Electronic System, which is used for suggestions, compliments, and complaints received from agency employees and the public. Also included are electronic copies of records created using electronic mail and word processing.

Dated: November 14, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–29518 Filed 11–20–02; 8:45 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 3, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Exemplary Education Projects, submitted to the Division of Education at the October 15, 2002 deadline.

2. *Date:* December 3, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

3. *Date:* December 4, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Schools for a New Millennium, submitted to the Division of Education at the October 1, 2002 deadline.

4. *Date:* December 6, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2002 deadline.

5. *Date:* December 6, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

6. *Date:* December 9, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Schools for a New Millennium, submitted to the Division of Education at the October 1, 2002 deadline.

7. *Date:* December 10, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Schools for a New Millennium, submitted to the Division of Education at the October 1, 2002 deadline.

8. *Date:* December 10, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Stabilization of Humanities Collections, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

9. *Date:* December 11, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Exemplary Education Projects, submitted to the Division of Education at the October 15, 2002 deadline.

10. *Date:* December 12, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Exemplary Education Projects, submitted to the Division of Education at the October 15, 2002 deadline.

11. *Date:* December 13, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Education at the July 1, 2002 deadline.

12. *Date:* December 16, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Exemplary Education Projects, submitted to the Division of Education at the October 15, 2002 deadline.

Daniel Schneider,

Advisory Committee Management Officer.

[FR Doc. 02–29687 Filed 11–20–02; 8:45 am]

BILLING CODE 7536–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 0–1 [17 CFR 270.0–1], SEC File No. 270–472, OMB Control No. 3235–0531

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collection of information discussed below.

Investment companies ("funds") are formed as corporations or business trusts under State law and, like other corporations and trusts, must be operated for the benefit of their shareholders.[1] Funds are unique, however, in that they are "organized and operated by people whose primary loyalty and pecuniary interest lie outside the enterprise."[2] As described below, this "external management" of most funds presents inherent conflicts of interest and potential for abuses.

An investment adviser typically organizes a fund and is responsible for its day-to-day operations. The adviser provides the seed money, officers, employees, and office space, and usually selects the initial board of directors. In many cases, the investment adviser sponsors several funds that share administrative and distribution systems as part of a "family of funds." As a result of this extensive involvement, and the general absence of shareholder activism, many investment advisers typically dominate the funds they advise.[3]

Investment advisers to funds are themselves generally organized as corporations, which have their own shareholders. These shareholders have an interest in the fund that is quite different from the interests of the fund's shareholders. For example, while fund shareholders ordinarily prefer lower fees (to achieve greater returns), shareholders of the fund's investment adviser might want to maximize profits through higher fees. And while fund shareholders might prefer that advisers use brokers that charge the lowest possible commissions, advisers might prefer brokers that will provide investment research in exchange for commissions. These types of conflicts (and others) resulted in the pervasive abuses in the fund industry that led Congress in 1940 to enact legislation regulating the activities of mutual funds.[4]

The Investment Company Act of 1940 ("Investment Company Act" or "Act") establishes a comprehensive regulatory scheme designed to protect fund investors by addressing the conflicts of interest between funds and their investment advisers and other affiliated persons. The Investment Company Act places significant responsibility on the board of directors in overseeing the operations of the fund and policing conflicts of interest.[5]

Independent fund directors represent the interests of shareholders, acting as watchdogs for investors and providing a check on management. On January 2, 2001, the Commission adopted amendments to ten exemptive rules under the Act that were designed to enhance the effectiveness of boards of directors of funds and to better enable investors to assess the independences of those directors.[6] In the Adopting Release, the Commission amended rule 0–1 to add a definition of "independent legal counsel." The Adopting Release amended the exemptive rules to require that any person who acts as legal counsel to the independent directors of any fund relying on the rules must be an "independent legal counsel." This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they

[1] See generally James M. Storey and Thomas M Clyde, Mutual Fund Law Handbook 7.2 (1998).

[2] Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 251 (1992).

[3] See SEC, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d. Sess. 12, 127, 148 (1966) (stating that funds generally are formed by their advisers and remain under their control, and that advisers' influence permeates fund activities).

[4] See Storey and Clyde, supra note 1.

[5] For instance, Fund directors must approve investment advisory and distribution contracts (15 U.S.C. 80a–15(a), (b), and (c)).

[6] Role of Independendent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3735 (Jan. 16, 2001)] ("Adopting Release").

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have the assistance of a truly independent legal counsel.

Rule 0–1 provides that a person is an independent legal counsel if a fund's independent directors determine (and record the basis for that determination in the minutes of their meeting) that any representation of the fund's investment adviser, principal underwriter, administrator (collectively, "management organizations") or their "control persons"[7] during the past two years is or was sufficiently limited that that it is unlikely to adversely affect the professional judgment of the person in providing legal representation. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with information necessary to make their determination and to update promptly that information when the person begins to represent, or materially increases his representation of, a management organization or control person. Generally, independent directors must re-evaluate their determination at least annually.

Any fund that relies on an exemptive rule in the Adopting Release is required to use the definition of independent legal counsel contained in rule 0–1. We assume that approximately 4,050 funds rely on at least one of the exemptive rules annually.[8] We further assume that the independent directors of approximately one-third (1,336) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.[9] We estimate that each of these 1,336 funds would be required to spend, on average, 0.75 hours annually to comply with the proposed recordkeeping requirement concerning this determination, for a total annual burden of approximately 1,002 hours. Based on this estimate, the total annual cost for all funds of this proposed definition would be approximately $22,712. To calculate this total annual cost, the Commission staff assumed that two-thirds of the total annual hour burden (668 hours) would be incurred by professionals with an average hourly wage rate of $27 per hour, and one-third of that annual hour burden (334 hours) would be incurred by clerical staff with an average hourly wage rate of $14[10] per hour.[11]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 14, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29591 Filed 11–20–02; 8:45 am]

BILLING CODE 8010–01–P

[7] A "control person" is any person—other than a fund—directly or indirectly controlling controlled by, or under common control, with any of the fund's management organizations. See 17 CFR 270.01(a)(6)(iv)(B).

[8] Based on statistics compiled by Commission staff, we estimate that there are approximately 4,500 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (4,050) actually rely on at least one exemptive rules annually.

[9] We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel (but instead rely in some circumstances on counsel who does not represent them), so that no determination by the independent directors would be necessary.

[10] The Commission's estimates concerning the wage rate for professional time and for clerical time are based on salary information for the securities industry complied by the Securities Industry Association. See Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry* (September 2001).

[11] (668 × $27/hour) + (334 × $14/hour) = $22,712.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27601; 70–10047]

PG&E Corporation, *et al.*; Order Authorizing an Extension of Time to File Comments

November 15, 2002.

PG&E Corporation ("PG&E Corp."), a holding company claiming exemption from registration under section 3(a)(1) of the Public Utility Holding Company Act of 1935, as amended ("Act") by rule 2, Pacific Gas and Electric Company ("PG&E"), a direct public-utility company subsidiary of PG&E Corp., Newco Energy Corporation ("Newco"), a direct nonutility subsidiary of PG&E, and Electric Generation LLC ("Gen"), a direct nonutility subsidiary of Newco (collectively, "Applicants"), all located in San Francisco, California, have filed an application ("Application") with the Securities and Exchange Commission ("Commission") under sections 9(a)(2) and 10 of the Act.

On October 16, 2002, the Commission issued a notice of the Application (Holding Co. Act Release No. 27578). The Commission issued a supplemental notice (Holding Co. Act Release No. 27583) of the Application, which replaced the original notice, on October 23, 2002. Under the supplemental notice, the public many submit to the Commission comments regarding the Application through November 18, 2002.

By letter dated October 23, 2002, the California Public Utilities Commission ("CPUC") requested an extension of time to file its comments with the Commission ("CPUC Request") due to "the press of other work." The CPCU asked that it be allowed to file its comments on or before December 4, 2002.

By letter dated October 30, 2002, Applicants indicated that they oppose the CPUC request, primarily because a further extension of the notice period would delay the ultimate resolution of the Application. However, a further short extension of the notice period is not likely to delay in any significant way a final decision on the Application. Moreover, because the Act is designed to augment State regulation, *see Alabama Electric Cooperative* v. *S.E.C.*, 353 F.2d 905, 907 (D.C. Cir. 1865), *cert. denied* 383 U.S. 968 (1966), we believe that it is particularly appropriate to provide a short additional extension of the Notice period at the request of a State Commission.

It is ordered, under the applicable provisions of the Act and rules under the Act, that comments and/or requests for hearing in this matter should be filed in writing by December 4, 2002.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–29538 Filed 11–20–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27802]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

November 15, 2002.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 10, 2002 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 10, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Service Corporation (70–8531)

American Electric Power Service Corporation ("AEPSC"), 1 Riverside Plaza, Columbus, Ohio 43215, a service company subsidiary of American Electric Power Corporation ("AEP"), a registered holding company, has filed a post-effective amendment to an application under sections 9(a) and 10 of the Act and rule 54 under the Act.

By order dated April 26, 1995 (HCAR No. 26280) ("Initial Order") the Commission authorized Central and South West Services, Inc. ("CSWS"), a service company subsidiary of Central and South West Corporation ("CSW"), a registered holding company, to use excess resources in its engineering and construction department, which resources may not be needed to provide services to affiliates within its system at any given time, to provide power plant control system procurement, integration and programming services, and power plant engineering and construction services to nonaffiliated utilities through December 31, 1997. By order dated December 11, 1997 (HCAR No. 26794) ("Extension Order"), the Commission extended the term of the authority granted by the Initial Order through December 31, 2002.By order dated July 21, 1998 (HCAR No. 26898) ("Supplemental Order") the Commission approved an application to more accurately define engineering and construction services provided to nonaffiliated entities and to permit the provision of environmental licensing, testing, compliance and remediation as well as equipment maintenance to nonaffiliated entities.

By order dated June 24, 2000 (HCAR No. 27186) ("Merger Order") the Commission approved, among other things the merger of CSW and AEP, the merger of CSWS into AEPSC, the succession of AEPSC to the authority granted in the Initial Order, the Extension Order and the Supplemental Order, and the extension of that authorized activity to all affiliate companies in the post-merger AEP system.

AEPSC now requests that the Commission amend the authority granted in the Initial Order, as amended by the Extension Order, the Supplemental Order, and the Merger Order, to extend through June 30, 2005.

Entergy Corporation, et al. (70–9123)

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company; Entergy's wholly owned subsidiaries Entergy Enterprises, Inc. ("Enterprises"), Entergy Global Power Operations Corporation ("Global"), Entergy Power Operations U.S., Inc. ("Power US"), all located at 20 Greenway Plaza, Houston, Texas 77046; Entergy Nuclear, Inc. ("Nuclear"), 1340 Echelon Parkway, Jackson, Mississippi 39213, Entergy Operations Services, Inc. ("Operations"), and Entergy Power, Inc., 110 James Parkway West, St. Rose, Louisiana 70087 ("Power" and combined "Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 13(b) of the Act and rules 54, 90, and 91 under the Act.

By order dated June 22, 1999 ("June Order"),[1] the Commission granted authority: (1) For Entergy to acquire, directly or indirectly, the securities of one or more companies ("New Subsidiaries") organized for purposes of performing development activities and/or for purposes of acquiring, including financing or refinancing an acquisition, owning and holding the securities of: (a) "exempt wholesale generators" ("EWGs"), as defined in section 32(a) of the Act, (b) "foreign utility companies" ("FUCOs"), as defined in section 33(a) of the Act, (c) "exempt telecommunications companies" ("ETCs"), as defined in section 34(a) of the Act, (d) other subsidiary companies that are authorized or permitted by rule, regulation or order of the Commission under the Act to engage in other businesses ("Authorized Subsidiary Companies"),[2] (e) other New Subsidiaries and/or, (f) "energy related companies", as defined in rule 58 under the Act ("Rule 58 Companies"); (2) for Entergy to acquire, directly or indirectly, the securities of one or more operating and management companies ("O&M Subs") organized for the purpose of providing operations and maintenance services ("O&M Services") to nonassociate companies and associate nonutility companies (collectively, with the companies described in (1) above, "Nonutility Companies"); (3) for Nonutility Companies to issue and sell securities to Entergy, to other Nonutility Companies and/or to nonassociate companies for the purpose of financing or refinancing investments in Nonutility Companies; (4) for Nonutility Companies to provide services at other than cost under specific circumstances; (5) for Nonutility Companies to pay dividends out of unearned surplus; and (6) for Entergy to consolidate or reorganize Entergy's ownership interests in one or more Nonutility Companies.

Applicants now request an extension of authority for the activities listed in (1) through (6) above, through December 31, 2005 ("Authorization Period"). In addition, Entergy requests a new authorization to make initial investments, directly or indirectly, in the New Subsidiaries or O&M Subsidiaries of up to an aggregate amount of $750 million ("Investment Limit") through the Authorization Period.

I. Acquisitions and Related Financings of New Subsidiaries and O&M Subs

Applicants propose to acquire, directly or indirectly, the securities of one or more New Subsidiaries. New Subsidiaries will be organized in order to: (1) Engage in service and development activities and/or (2)

[1] *See* HCAR No. 27039 (June 22, 1999).

[2] Authorized Subsidiary Companies currently consist of: Enterprises; Power; Entergy Nuclear, Inc.; Entergy Nuclear Operations, Inc.; Entergy Operations Services, Inc.; Global; Power U.S., Entergy Nuclear Fuels Company; Entergy Shaw, LLC; EN Services, LP; and Gulf South Pipeline, LP.

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acquire and/or finance the acquisition of the securities of one or more Nonutility Companies. Applicants also propose that Entergy organize and acquire the capital stock of O&M Subs through December 31, 2005. O&M Subs will be formed as domestic or foreign corporations, partnerships or other entities.

Applicants request authority for Entergy to make investments in New Subsidiaries and O&M Subsidiaries by any combination of: (1) Purchases of equity interests ("Equity Capital");[3] (2) capital contributions; (3) open account advances without interest and (4) loans and guarantees of securities or other obligations of New Subsidiaries and O&M Subs. Applicants state that Entergy will obtain funds for these investments from proceeds of previously authorized borrowings, sales of its common stock, future authorized securities issuances and other available cash resources. Applicants commit that the initial investments in the Equity Capital of New Subsidiaries and O&M Subs will be included in the Investment Limit.

Applicants state that loans by Entergy or a Nonutility Company to a Nonutility Company generally will have interest rates and maturity dates designed to parallel Entergy's effective cost of capital. Loans by Entergy or a Nonutility Company to a Nonutility Company that is partially owned by Entergy, directly or indirectly, however, may have interest rates and maturity dates designed to provide a return to the holding company of not less than its effective cost of capital ("Other Loans"). The principal amount of Other Loans by Entergy or a Nonutility Company to a Nonutility Company (including New Subsidiaries and O&M Subs) will be included in the Investment Limit. Applicants state that a Nonutility Company to which Other Loans are made will not provide any services to a Nonutility Company that does not meet one of the conditions for the rendering of services on a basis other than cost, as described below.

Applicants assert that there are a number of legal and business reasons for the use of special purpose subsidiaries such as the New Subsidiaries in connection with investments in Nonutility Companies. For example, the formation and acquisition of special purpose subsidiaries is often necessary or desirable to facilitate the acquisition and ownership of a FUCO, an EWG or another Nonutility Company. Furthermore, the laws of some foreign countries may require that the bidder in a privatization program be a domestic company in that country. In these cases, Applicants state that it would be necessary for Entergy to form a foreign subsidiary as the entity submitting the bid or other proposal. In addition, the interposition of one or more New Subsidiaries may allow Entergy to defer the repatriation of foreign source income, take full advantage of favorable tax treaties among foreign countries, or otherwise to secure favorable U.S. income tax treatment that would not otherwise be available. Applicants state that New Subsidiaries also serve to isolate business risks, facilitate subsequent adjustments or sales to ownership interests by the members of an ownership group, or to raise debt or equity capital in domestic or foreign markets.

Applicants state that, to the extent that Entergy provides funds to a New Subsidiary that are used for the purposes of investing in an EWG or FUCO, the amount of the investment will be included in Entergy's "aggregate investment" in these entities, as calculated in accordance with rule 53. Additionally, Applicants assert that, to the extent that Entergy provides funds to a New Subsidiary which are used to invest in a Rule 58 Company, the amount of the investment will be included in Entergy's "aggregate investment" as defined under rule 58.

II. Issuance of Securities

Applicants also requests authorization for Nonutility Companies to issue and/or sell equity or debt securities in an aggregate amount up to the Investment Limit, including common stock, LLC member interests, partnership and limited partnership interests, preferred stock or other preferred or equity-linked securities (collectively, "preferred securities"), short-term debt securities, such as promissory notes or commercial paper, and long-term debt securities (collectively, "Other Securities") to Entergy, to other Nonutility Companies or to nonassociate companies, including banks, insurance companies, and other financial institutions during the Authorization Period.

Other Securities will be subject to the following financing parameters:

(1) The effective cost of money on long-term debt borrowings will not exceed the greater of (i) 500 basis points over the comparable-term U.S. Treasury securities or (ii) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

(2) The effective cost of money on short-term debt borrowings will not exceed the greater of (i) 500 basis points over the comparable-term London Interbank Offered Rate ("LIBOR") or (ii) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

(3) The dividend rate on any series of preferred securities will not exceed the greater of (i) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of the series of preferred securities or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Also, in the case of the issuance of any Other Securities that involve loans by Entergy or a Nonutility Company to a Nonutility Company at interest rates and maturities designed to provide a return to the lending company in excess of its effective cost of capital, the borrowing Nonutility Company will not provide any services to any associate Nonutility Company except a company which meets one of the conditions for the rendering of services on a basis other than "at cost", as described below.[4]

Applicants state that the net proceeds from the issuance and sale of Other Securities would be used for general corporate purposes, for example: (1) For loans to and/or equity investments in Nonutility Companies; (2) for the repayment, refinancing or redemption of outstanding securities of Entergy or Nonutility Companies originally issued for purposes of acquiring interests in Nonutility Companies or providing funds for the authorized or permitted business activities of Nonutility Companies and (3) for working capital or other cash requirements of Nonutility Companies, provided that the net proceeds will only be applied to finance activities that are exempt under the Act or are otherwise authorized or permitted by rule, regulation or order of the Commission. Applicants state that at the time of issuance of any Other Securities that are recourse to Entergy, directly or indirectly, the proceeds of which are to be used to invest in any Exempt Project, the amount will be counted towards Entergy's "aggregate investment" in EWGs and FUCOs as required under rule 53.

Entergy represents that none of Entergy's operating companies ("Operating Companies")[5] will incur any indebtedness, extend any credit, or sell or pledge its assets, directly or indirectly, to or for the benefit of any Nonutility Company, and that any Other Securities that may be issued by a Nonutility Company, and any guarantees that may be issued by Entergy or a Nonutility Company, will not be recourse to any Operating Company.

III. Provision of O&M Services and Other Services

Applicants propose that Entergy provide O&M Services, through one or more O&M Subs. O&M Services would be provided to, or for the benefit of, associate and nonassociate developers, owners and operators of domestic and foreign power projects and other electric utility systems or facilities. O&M Services may be provided to projects that Entergy may develop on its own, through an associate Nonutility Company, or in collaboration with third parties.

O&M Services would include, for example, development, engineering, design, construction and construction management, pre-operational start-up, testing and commissioning, long-term operations and maintenance, fuel procurement, management and supervision, technical and training, administrative support, market analysis, consulting, coordination and any other managerial, technical, administrative or consulting required in connection with the business of owning or operating facilities used for the generation, transmission or distribution of electric energy (including related facilities for the production, conversion, sale or distribution of thermal energy) or coordinating their operations in the power market. Applicants also propose that an O&M Sub may also lease all or a portion of the facilities with respect to which it is providing O&M Services. However, Applicants state that an O&M Sub would not undertake to enter into leases without further approval of the Commission if, as a result thereof, the O&M Sub would become a "public utility company" as defined in the Act.

Applicants request authorization for Nonutility Companies (i) to provide other Nonutility Companies with administrative services ("Administrative Services"); (ii) to provide consulting services ("Consulting Services") to other Nonutility Companies and to nonassociate companies and (iii) to engage in development activities ("Development Activities"), all on a worldwide basis. These services are referred to collectively as "Other Services."

Applicants state that Administrative Services would include, for example, corporate and project development and planning, management, administrative, employment, tax, legal, accounting, engineering, consulting, marketing, utility performance and electric data processing services, and intellectual property development, marketing and other support services.

Applicants state that Consulting Services would include, for example, providing Entergy system technical capabilities and expertise primarily in the areas of electric power generation, transmission and distribution and ancillary operations. Applicants represent that, except for consulting required in connection with the performance of O&M Services, O&M Subs will not provide Consulting Services to associate or nonassociate companies.

Applicants state that Development Activities would include, for example, investigating sites, research, engineering and licensing activities, acquiring options and rights, contract drafting and negotiation, legal, accounting and financial analysis, preparing and submitting bids and proposals, and other activities necessary to identify and analyze investment opportunities on behalf of companies in the Entergy system.[6]

Applicants request an exemption from the at-cost requirements of rules 90 and 91 for O&M Services rendered to Nonutility Companies, if one or more of the following conditions applies:

(i) The Nonutility Company is a FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation and sale of electric energy within the United States;

(ii) The Nonutility Company is an EWG that sells electricity at market-based rates that have been approved by the FERC or the relevant state public utility commission, provided that the purchaser is not a Regulated Utility;

(iii) The Nonutility Company is a "qualifying facility" ("QF") under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, or to a electric utility company (other than a Regulated Utility) at the purchaser's "avoided costs" as determined under the regulations under PURPA and

(iv) The Nonutility Company is an EWG or QF that sells electricity at rates based upon its cost of service, as approved by the FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not a regulated utility.

The Nonutility Companies described in clauses (i)–(iv) are referred to collectively below as "Exempt Nonutility Companies."

Applicants state that Other Services would generally be performed by Nonutility Companies for associate Nonutility Companies at cost. However, Applicants request an exemption from the at cost requirements of rules 90 and 91 for Other Services rendered to Exempt Nonutility Companies and to partially owned Nonutility Companies, provided that the ultimate purchaser of the Other Services is not an Operating Company, System Energy Resources, Inc., System Fuels, Inc., Entergy Services, Inc., Entergy Operations, Inc. or any other subsidiary that Entergy may create, the activities and operations of which are primarily related to the domestic sale of electric energy at retail (exclusive of Nonutility Companies) or at wholesale, or the provision of goods or services to Entergy's affiliates. In addition, Entergy requests that the exemption apply to Other Services provided by Nonutility Companies to any Nonutility Company (a) that is engaged solely in the business of developing, owning, operating and/or providing Other Services to Exempt Nonutility Companies, or (b) that does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

IV. Reorganization

Entergy intends, from time to time, to consolidate or reorganize all or any part of its ownership interests in certain Nonutility Companies and/or New Subsidiaries under one or more New Subsidiaries. For example, to effect a reorganization, Entergy could directly or indirectly contribute to a New Subsidiary all of the outstanding Equity Capital of one or more Nonutility

[3] Equity Capital may include purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests.

[4] Applicants request that Non-utility Companies be permitted to modify the terms of their charters or other governing documents ("Charter Amendments") as necessary to effectuate the issuance of Other Securities. Entergy would describe the general terms of any Charter Amendment in the next quarterly certificate filed with the Commission pursuant to rule 24 in this file.

[5] Entergy's regulated public utility companies Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc. are referred to as the "Operating Companies."

[6] Applicants state that Development Activities would not be performed on behalf of any of Entergy's regulated utilities.

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Companies (including a New Subsidiary) or sell the Equity Capital of one or more Nonutility Companies to a New Subsidiary. Alternatively, a Nonutility Company could distribute, as a dividend, the securities of one or more Nonutility Companies to a New Subsidiary.

Applicants request authority for Entergy to consolidate or otherwise reorganize its ownership interest in one or more Nonutility Companies under the New Subsidiaries so long as the acquisition of the securities of the Nonutility Company is authorized by the Commission or is exempt from the Act.

V. Payment of Dividends Out of Capital or Unearned Surplus by Nonutility Companies

Applicants request authority for a Nonutility Company to declare and pay dividends out of capital or unearned surplus to its immediate parent companies through December 31, 2005, subject to applicable corporate law and any applicable financing agreement that restricts distributions to shareholders.

FirstEnergy Corp., et al. (70–10079)

FirstEnergy Corporation ("FirstEnergy"), a registered holding company, Ohio Edison Company ("Ohio Edison"), a public-utility company subsidiary of First Energy and exempt holding company under section 3(a)(2) of the Act,[7] The Cleveland Electric Illuminating Company, a public-utility company subsidiary of First Energy, The Toledo Edison Company, a public-utility company subsidiary of First Energy, American Transmission Systems, Incorporated, a public-utility company subsidiary of First Energy, all at 76 South Main Street, Akron, Ohio 44308, Pennsylvania Power Company, 1 E. Washington Street, P.O. Box 891, New Castle, Pennsylvania 16103, a public-utility company subsidiary of Ohio Edison, Metropolitan Edison Company, 2800 Pottsville Pike, Reading, Pennsylvania 19640–0001, a public-utility company subsidiary of First Energy, Pennsylvania Electric Company, 1001 Broad Street, Johnstown, Pennsylvania 15907, a public-utility company subsidiary of First Energy, and Jersey Central Power & Light Company (collectively, "Applicants"), Madison Avenue at Punchbowl Road, Morristown, New Jersey 07060–9871, a public-utility company subsidiary of First Energy, have filed an application under section 9(c)(3) of the Act.

[7] *See Ohio Edison*, HCAR No. 21019 (April 26, 1979).

By order dated October 29, 2001 (HCAR No. 27459), the Commission authorized FirstEnergy, which at the time was a holding company that claimed exemption from registration by rule 2, to merge with GPU, Inc., a registered holding company. In that order, the Commission also authorized FirstEnergy to retain its investments in low-income housing properties that qualified for Low Income Housing Tax Credits ("LITC Projects") under section 42 of the Internal Revenue Code ("IRC"). As of December 31, 2001, FirstEnergy held, directly or indirectly, approximately $102 million of these types of passive investments.

Applicants request authority to invest, through December 31, 2005, up to $100 million in: (1) New or existing LIHTC Projects located anywhere in the United States; and (2) historic building or other qualified rehabilitated building projects ("Section 47 Projects") located within their service territories. By investing in Section 47 Projects, Applicants would earn tax credits under section 47 of the IRC and, according to Applicants, FirstEnergy may also qualify for tax credits under state law.

Applicants would not take any active role in the development, management, or operation of any LIHTC Projects or Section 47 Projects (collectively, "Tax Credit Projects"), and would not acquire any interest in any venture holding a Tax Credit Project if that venture would consequently become an "affiliate" of First Energy. Tax Credit Projects would be organized as limited liability partnerships or limited liability companies, and Applicants would invest only as a limited partner or non-managing member, respectively. In general, a separate limited partnership or manager-managed LLC would be established for each new qualifying Tax Credit Project. This structure would: (1) Allow each Tax Credit Project to be financed on a stand-alone basis, under the control of an unaffiliated third party; (2) insulate each investment property from any liabilities that may arise in connection with the development or management of any other Tax Credit Project; and (3) facilitate compliance with the requirements of sections 42 and 47 of the IRC Code.

Applicants commit to dispose of their ownership interests in each Tax Credit Project upon becoming fully vested in the tax credits, including any state credits.

Georgia Power Company (70–10080)

Georgia Power Company ("Georgia "), 241 Ralph McGill Boulevard, NE., Atlanta, Georgia 30308, a public-utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Georgia proposes to issue and sell, from time-to-time, through March 31, 2006 (the "Authorization Period") up to an aggregate principal amount at any one time outstanding up to $3.2 billion of the following: (1) Short-term notes to lenders; (2) commercial paper to or through dealers; and/or (3) issue non-negotiable promissory notes to public entities for their revenue anticipation notes.

Georgia proposes to borrow from certain banks or other lending institutions through the Authorization Period. The institutional borrowings will be evidenced by notes to be dated as of the date of such borrowings and to mature in not more than one year after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature not more than one year after the date of issue. Georgia proposes that it may provide that any note evidencing such borrowings may not be prepayable, or that it may be prepaid with payment of a premium that is not in excess of the stated interest rate on the borrowing to be prepaid.

Borrowings will be at the lender's prevailing rate offered to corporate borrowers of similar quality. Such rates will not exceed the prime rate or (i) LIBOR plus up to 3% or (ii) a rate not to exceed the prime rate to be established by bids obtained from the lenders prior to a proposed borrowing. Compensation for the credit facilities may be provided by fees of up to 1% per annum of the amount of the facility. Compensating balances may be used in lieu of fees to compensate certain of the lenders.

Georgia also proposes to issue and sell commercial paper to or through dealers from time to time through the Authorization Period. Such commercial paper would be in the form of promissory notes with varying maturities not to exceed 390 days. Georgia states that the actual maturities would be determined by market conditions, the effective interest costs of issuing such commercial paper, and Georgia's anticipated cash flow, including the proceeds of other borrowings, at the time of issuance. The commercial paper notes will be issued in denominations of not less than $50,000 and will be sold by Georgia directly to or through dealer. The discount rate (or the interest rate in the case of interest-bearing notes), including any commissions, will not be in excess of the discount rate per annum (or equivalent interest rate) prevailing at the date of issuance for commercial paper of comparable quality of the particular maturity sold by issuers to commercial paper dealers.

Georgia also proposes, through the Authorization Period, to effect short-term borrowings in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Under an agreement with each such public entity, the entity would effectively loan to Georgia the proceeds of the sale of such revenue bond anticipation notes, having a maturity of not more than one year after date of issue, and Georgia in turn would issue Georgia's non-negotiable promissory note. Such note would provide for payments to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest, which shall not exceed the prime rate, on such revenue bond anticipation notes, whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

By order dated March 13, 1996 (HCAR No. 26490) ("1996 Order"), the Commission authorized Georgia to effect short-term debt borrowings prior to January 1, 2003. By order dated November 8, 2000 (HCAR No. 27273) ("2000 Order") (and together with the 1996 Order, the "Financing Orders"), the Commission authorized Georgia to effect any such short-term borrowings through Southern's consolidated commercial paper program prior to June 30, 2004. According to the Financing Orders, any borrowings under the Financing Orders must be aggregated and may not exceed $1.7 billion. Georgia states that at August 14, 2002, borrowings in an aggregate principal amount of approximately $531,800,000 were outstanding under the Financing Orders.

The proceeds from the proposed borrowings will be used by Georgia for working capital purposes, including the financing in part of its construction program. None of the proceeds from any borrowing or from the sale of any of the notes will be used by Georgia, directly or indirectly, for the acquisition of any interest in an "exempt wholesale generator" or a "foreign utility company," as those terms are defined in sections 32 and 33 of the Act, respectively. Georgia further states that, except as may be otherwise authorized by the Commission, any short-term borrowings of Georgia outstanding after March 31, 2006 will be retired from internal cash resources, the proceeds of equity financings or the proceeds of long-term debt.

Savannah Electric Power Company (70–10081)

Savannah Electric Power Company ("Savannah"), 600 East Bay Street, Savannah, Georgia 31401, a public-utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Savannah proposes to issue and sell, from time-to-time, through March 31, 2006 (the "Authorization Period") up to an aggregate principal amount at any one time outstanding up to $120 million of the following: (1) Short-term notes to lenders; (2) commercial paper to or through dealers; and/or (3) issue non-negotiable promissory notes to public entities for their revenue anticipation notes.

Savannah proposes to borrow from certain banks or other lending institutions through the Authorization Period. The institutional borrowings will be evidenced by notes to be dated as of the date of such borrowings and to mature in not more than one year after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature not more than one year after the date of issue. Savannah proposes that any note evidencing such borrowings may not be prepayable, or that it may be prepaid with payment of a premium that is not in excess of the stated interest rate on the borrowing to be prepaid.

Borrowings will be at the lender's prevailing rate offered to corporate borrowers of similar quality. The rates will not exceed the prime rate or (i) LIBOR plus up to 3% or (ii) a rate not to exceed the prime rate to be established by bids obtained from the lenders prior to a proposed borrowing. Compensation for the credit facilities may be provided by fees of up to 1% per annum of the amount of the facility. Compensating balances may be used in lieu of fees to compensate certain lenders.

Savannah also proposes to issue and sell commercial paper to or through dealers from time-to-time through the Authorization Period. The commercial paper would be in the form of promissory notes with varying maturities not to exceed 390 days. Actual maturities would be determined by market conditions, the effective interest costs of issuing such commercial paper, and Savannah's anticipated cash flow, including the proceeds of other borrowings, at the time of issuance. The commercial paper notes will be issued in denominations of not less than $50,000 and will be sold by Savannah directly to or through the dealer. The discount rate (or the rate in the case of interest-bearing notes), including any commissions, will not be in excess of the discount rate per annum (or equivalent interest rate) prevailing at the date of issuance for commercial paper of comparable quality of the particular maturity sold by issuers to commercial paper dealers.

Savannah also proposes, through the Authorization Period, to effect short-term borrowings in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Under an agreement with each public entity, the entity would effectively loan to Savannah the proceeds of the sale of such revenue bond anticipation notes, having a maturity of not more than one year after date of issue, and Savannah in turn would issue Savannah's non-negotiable promissory note. The note would provide for payments thereon to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest, which shall not exceed the prime rate, on such revenue bond anticipation notes, whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

By order dated March 13, 1996 (HCAR No. 26492) ("1996 Order"), the Commission authorized Savannah to effect short-term debt borrowings prior to January 1, 2003. By order dated November 8, 2000 (HCAR No. 27273) ("2000 Order") (and together with the 1996 Order, the "Financing Orders"), the Commission authorized Savannah to effect any such short-term borrowings through Southern's consolidated commercial paper program prior to June 30, 2004. According to the Financing Orders, any borrowings under the Financing Orders must be aggregated and may not exceed $90 million. At August 14, 2002, borrowings in an aggregate principal amount of approximately $29,400,000 were outstanding under the Financing Orders.

The proceeds from the proposed borrowings will be used by Savannah for working capital purposes, including the financing in part of its construction program. None of the proceeds from any borrowing or from the sale of any of the notes will be used by Savannah, directly

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or indirectly, for the acquisition of any interest in an "exempt wholesale generator" or a "foreign utility company," as those terms are defined in sections 32 and 33, respectively. Savannah further states that, except as may be otherwise authorized by the Commission, any short-term borrowings of Savannah outstanding after March 31, 2006 will be retired from internal cash resources, the proceeds of equity financings or the proceeds of long-term debt.

Mississippi Power Company (70–10082)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, an public-utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Mississippi proposes to issue and sell, from time-to-time, through March 31, 2006 (the "Authorization Period") up to an aggregate principal amount at any one time outstanding up to $500 million of the following: (1) Short-term and/or term-loan notes to lenders; (2) commercial paper to or through dealers; and/or (3) issue non-negotiable promissory notes to public entities for their revenue anticipation notes.

Mississippi proposes to borrow from certain banks or other lending institutions. The institutional borrowings will be evidenced by notes to be dated as of the date of such borrowings and to mature in not more than seven years after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature not more than seven years after the date of issue. Mississippi proposes that any note evidencing such borrowings may not be prepayable, or that it may be prepaid with payment of a premium that is not in excess of the stated interest rate on the borrowing to be prepaid.

Borrowings will be at the lender's prevailing rate offered to corporate borrowers of similar quality. Such rates will not exceed the lenders prime rate or (i) LIBOR plus up to 3% or (ii) a rate not to exceed the prime rate to be established by bids obtained from the lenders prior to a proposed borrowing. Compensation for the credit facilities may be provided by fees of up to 1% per annum of the amount of the facility. Compensating balances may be used in lieu of fees to compensate certain of the lenders.

Mississippi also proposes to issue and sell commercial paper to or through dealers from time-to-time through the Authorization Period. Such commercial paper would be in the form of promissory notes with varying maturities not to exceed 390 days. Actual maturities would be determined by market conditions, the effective interest costs of issuing such commercial paper, and Mississippi's anticipated cash flow, including the proceeds of other borrowings, at the time of issuance. The commercial paper notes will be issued in denominations of not less than $50,000 and will be sold by Mississippi directly to or through the dealer. The discount rate (or the rate in the case of interest-bearing notes), including any commissions, will not be in excess of the discount rate per annum (or equivalent interest rate) prevailing at the date of issuance for commercial paper of comparable quality of the particular maturity sold by issuers to commercial paper dealers.

Mississippi also proposes, through the Authorization Period, to effect short-term borrowings in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Under an agreement with each such public entity, the entity would effectively loan to Mississippi the proceeds of the sale of such revenue bond anticipation notes, having a maturity of not more than one year after date of issue, and Mississippi in turn would issue Mississippi's non-negotiable promissory note. The note would provide for payments thereon to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest, which shall not exceed the prime rate, on such revenue bond anticipation notes, whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

By order dated March 13, 1996 (HCAR No. 26491) ("1996 Order"), the Commission authorized Mississippi to effect short-term borrowings prior to January 1, 2003. By order dated November 8, 2000 (HCAR No. 27273) ("2000 Order") (and together with the 1996 Order, the "Financing Orders"), the Commission authorized Mississippi to effect any such short-term borrowings through a Southern consolidated commercial paper program prior to June 30, 2004. According to the Financing Orders, any borrowings under the Financing Orders must be aggregated and may not exceed $350 million. At August 14, 2002, borrowings in an aggregate principal amount of approximately $14,900,000 were outstanding under the Financing Orders.

The proceeds from the proposed borrowings will be used by Mississippi for working capital purposes, including the financing in part of its construction program. None of the proceeds from any borrowing or from the sale of any of the notes will be used by Mississippi, directly or indirectly, for the acquisition of any interest in an "exempt wholesale generator" or a "foreign utility company," as those terms are defined in sections 32 and 33 of the Act, respectively. Mississippi further states that, except as may be otherwise authorized by the Commission, any short-term or long-term borrowings of Mississippi outstanding after March 31, 2006 and March 31, 2013, respectively, will be retired from internal cash resources, the proceeds of equity financings or the proceeds of short-term or long-term debt.

Entergy Louisiana, Inc. (70–10086)

Entergy Louisiana, Inc. ("Entergy Louisiana"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a direct, wholly owned public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c), and 12(d) of the Act and rules 42, 44, and 46 under the Act.

I. Current Financing Authority

By order dated March 12, 1998 (HCAR No. 26839, "Prior Order"), the Commission authorized Entergy Louisiana to engage in a program of external financing and related transactions through December 31, 2002. Specifically, the Commission authorized Entergy Louisiana to: (1) Issue and sell up to a combined aggregate principal amount of $600 million of first mortgage bonds and/or debentures, with maturities not later than forty years and fifty years, respectively; (2) issue and sell up to a combined aggregate principal amount of $260 million of preferred stock and equity-linked securities; and (3) enter into arrangements for the issuance and sale of tax-exempt bonds in an aggregate principal amount of up to $420 million for the financing of pollution control facilities and sewage and/or solid waste disposal facilities, including the issuance and pledge of first mortgage bonds issued as collateral security for such tax-exempt bonds in an aggregate principal amount of up to $455 million (in addition to the $600 million referenced above).

II. Requested Authority

Entergy Louisiana requests authority, through March 31, 2006 ("Authorization Period"), to issue and sell up to an aggregate amount of $750 million ("Aggregate Limit") in any combination of: (1) Unsecured long-term indebtedness ("Long-Term Debt"); (2) first mortgage bonds ("First Mortgage Bonds"); (3) preferred stock ("Preferred Stock"); and (4) other forms of preferred or equity-linked securities ("Other Securities"). The terms of the proposed securities are described below. Generally, the proceeds from sales of the proposed securities will be used by Entergy Louisiana for its general corporate purposes, including: financing its capital expenditures; repaying, redeeming, refunding or purchasing any of its securities issued in reliance on rule 42 and/or those securities issued on Entergy Louisiana's behalf under section 9(c)(1); and financing its working capital requirements.

Long-Term Debt may be convertible into any other securities of Entergy Louisiana (except common stock), and would have a maturity ranging between one and fifty years. These securities may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above the principal amount. Long-Term Debt may be entitled to mandatory or optional sinking fund provisions, and may provide for reset of the coupon under to a remarketing arrangement. Additionally, Long-Term Debt may be issued at fixed or floating rates of interest, and may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, of Long-Term Debt, as well as any associated placement, underwriting or selling agent fees, commissions, and discounts, if any, would be established by negotiation or competitive bidding. The interest rate on Long-Term Debt would not exceed, at the time of issuance, the greater of: (1) 500 basis points over U.S. Treasury securities having a remaining term comparable to the term of such series, if issued at a fixed rate or, if issued at a floating rate, 500 basis points over the London Interbank Offered Rate ("LIBOR") for the relevant interest rate period; and (2) a spread over U.S. Treasury securities or LIBOR, as the case may be, that is consistent with similar securities of comparable credit quality and maturities.

All First Mortgage Bonds will have maturities ranging between one and fifty years. First Mortgage Bonds may be subject to optional and/or mandatory redemption, in whole or in part, at par or at premiums above the principal amount. They may be entitled to mandatory or optional sinking fund provisions and may be issued at fixed or floating rates of interest. First Mortgage Bonds may provide for reset of the coupon in accordance with a remarketing arrangement and may be called from existing investors by a third party. Additionally, they may be backed by a bond insurance policy. The interest rate on First Mortgage Bonds will not exceed at the time of issuance the greater of: (1) 500 basis points over U.S. Treasury securities having a remaining term comparable to the term of such series if issued at a fixed rate or, if issued at a floating rate, 500 basis points over LIBOR for the relevant interest rate period; and (2) a spread over U.S. Treasury securities or LIBOR, as the case may be, that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Entergy Louisiana may issue and sell series of Preferred Stock to underwriters for deposit, which would subsequently be delivered to purchasers in a public offering. Preferred Stock and Other Securities may be issued in one or more series with rights, preferences and priorities, including those related to redemption, designated in the instrument creating the series. Preferred Stock or Other Securities may be redeemable, or may be perpetual in duration. The dividend rate on any series of Preferred Stock or Other Securities would not exceed at the time of issuance the greater of: (1) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term comparable to the term of such series, if issued at a fixed rate or, if issued at a floating rate, 500 basis points over LIBOR for the relevant interest rate period; and (2) a rate that is consistent with similar securities of comparable credit quality and maturities. Dividends or distributions on Preferred Stock or Other Securities may be made subject to terms that allow the issuer to defer dividend payments for specified periods.

Entergy Louisiana requests authority to acquire during the Authorization Period all of the outstanding ownership interests of special purpose subsidiaries ("SPEs"), through which Entergy Louisiana would issue and sell Other Securities. Entergy Louisiana would hold the ownership interests of an SPE directly or indirectly. SPEs may be organized in any of the following corporate forms: A limited liability company; a limited partnership; a business trust; or any other domestic entity or structure considered advantageous by Entergy Louisiana.

Entergy Louisiana also requests authority to: (1) Acquire financing subsidiaries ("Financing Subsidiaries"), which would hold Entergy Louisiana's ownership interests in SPEs and, as discussed below, facilitate the issuance of Other Securities; and (2) acquire directly, or through a Financing Subsidiary, all of the ownership interests of one or more special purpose subsidiaries organized to hold certain types of ownership interests in SPEs ("Partner Subs"). Partner Subs would be created to hold: (1) Membership interests of an SPE where applicable State law requires that a limited liability company have at least two members; and (2) general partnership and/or limited partnership interests in an SPE to ensure that an SPE has a limited partner as may be required under applicable State law.

Entergy Louisiana, a Financing Subsidiary, and/or a Partner Sub would acquire all of the ownership interests of an SPE for an amount not less than the minimum required by applicable law.[8] Entergy Louisiana requests authority to issue and sell Other Securities either directly or through SPEs. Entergy Louisiana would finance any indirect issuance of Other Securities by directly, or through a Financing Subsidiary, issuing and selling to an SPE unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments ("Notes") governed by an indenture or other document. In turn, that SPE would use the Equity Contribution and proceeds from its sale of Other Securities (collectively, "Proceeds") to purchase those Notes. Alternatively, Entergy Louisiana and/or a Financing Subsidiary would enter into a loan agreement or agreements with a SPE under which the SPE would loan to Entergy Louisiana and/or a Financing Subsidiary the Proceeds from time to time, and Entergy Louisiana and/or the Financing Subsidiary would issue to the SPE Notes in an amount equal to the Proceeds. The terms (*e.g.*, interest rate, maturity, amortization, prepayment terms, default provisions, etc.) of all Notes would generally be designed to parallel the terms of the Other Securities to which the Notes relate, and so the maximum principal amount of Notes issued would not exceed the Proceeds. Correspondingly, Entergy Louisiana requests authority to issue and sell Notes directly and indirectly through a

[8] The aggregate amount of this investment by Entergy Louisiana, a Financing Subsidiary, and/or a Partner Sub is referred to here as the "Equity Contribution."

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Financing Subsidiary to the SPEs. Additionally, Entergy Louisiana requests authority for the Financing Subsidiaries and/or SPEs to transfer (directly or indirectly) the proceeds from sales of Other Securities to Entergy Louisiana, resulting in the payment of dividends out of capital to Entergy Louisiana.

Solely in connection with the issuance of Other Securities by a SPE, Entergy Louisiana and the Financing Subsidiaries also request authority to guarantee: (1) Payment of dividends or distributions on Other Securities by the SPE if and to the extent the SPE has funds legally available; (2) payments to the holders of such securities due upon liquidation of the SPE or redemption of the Other Securities of the SPE; and (3) certain additional amounts that may be payable in respect of such Other Securities. Entergy Louisiana also requests authority to provide credit support for any guaranty that is provided by a Financing Subsidiary.

Entergy Louisiana also requests authority through the Authorization Period to enter into arrangements ("Arrangements") with one or more government authorities (each, "Issuer") to issue and sell on behalf of the company up to an aggregate amount of $420 million of tax exempt bonds ("Tax-Exempt Bonds") under one or more trust indentures (collectively, "Indentures") between the Issuer(s) and one or more trustees.[9] Under the Arrangements, Entergy Louisiana would be obligated to make payments sufficient to provide for payment by the Issuer(s) of the principal or redemption price of, premium (if any) and interest on, and other amounts owing with respect to the Tax-Exempt Bonds, together with related expenses. Proceeds from the sale of the Tax-Exempt Bonds would be applied to financing, or refinancing existing tax-exempt bonds issued for the purpose of financing, certain Entergy Louisiana pollution control facilities and/or sewage or solid waste disposal facilities ("Facilities").

Under the Arrangements, Entergy Louisiana may be required to issue and pledge first mortgage bonds ("Collateral Bonds") as collateral for the Tax-Exempt Bonds. Correspondingly, Entergy Louisiana requests authority through the Authorization Period to issue and sell up to an aggregate amount of $470 million of Collateral Bonds.[10] Under the terms of the Facilities Agreement, the Issuer(s) may purchase from Entergy Louisiana the subject Facilities, and Entergy Louisiana would then repurchase the Facilities from the Issuer(s). Correspondingly, Entergy Louisiana requests authority through the Authorization to sell the Facilities, which are utility assets.

Each series of Tax-Exempt Bonds would have a maturity ranging from one to forty years. Additionally, Tax-Exempt Bonds may: (1) Be subject to optional and/or mandatory redemption at par or at premiums above the principal amount; (2) be subject to mandatory or optional sinking fund provisions; (3) provide for reset of the coupon in accordance with a remarketing arrangement; (4) be issued at fixed or floating rates of interest; (5) be called from existing investors by a third party; (6) be backed by a municipal bond insurance policy; (7) be supported by credit support such as a bank letter of credit and reimbursement agreement; and (8) may be supported by a subordinated lien on the facilities related to the Tax-Exempt Bonds. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Tax-exempt Bonds of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. The interest rate on Tax-Exempt Bonds would not exceed at the time of issuance the greater of: (1) 400 basis points over U.S. Treasury securities having a remaining term comparable to the term of such series if issued at a fixed rate or, if issued at a floating rate, 400 basis points over LIBOR for the relevant interest rate period; and (2) a spread over U.S. Treasury securities or LIBOR, as the case may be, that is consistent with similar securities of comparable credit quality and maturities issued on behalf of companies.

Entergy Louisiana represents that it would not issue any of the proposed securities if, as a consequence of the issuance, the common equity component of the company's capital structure would comprise less than thirty percent of its total capitalization. Entergy Louisiana also represents that it would not publicly issue any senior secured indebtedness that is rated by any nationally recognized statistical rating organization ("nationally recognized statistical rating organization"), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934, unless the securities are rated at the investment grade level as established by at least one such nationally recognized statistical rating organization, except for: (1) New debt issued to refund or redeem existing debt that, if voluntarily refunded is at a lower effective after-tax cost of money, (b) debt issued to replace currently maturing debt; or (2) privately-placed debt.

[9] Arrangements would consist of leases, subleases, installment sale agreements, or other agreements (collectively, "Facilities Agreement") or, alternatively, one or more refunding agreements (each, "Refunding Agreement").

[10] The proposed $470 million of Collateral Bonds is in addition to the Aggregate Limit.

American Electric Power Service Corporation (70–10092)

American Electric Power Service Corporation ("AEP Service"), a New York corporation, 1 Riverside Plaza, Columbus, Ohio 43215, and a wholly owned subsidiary of American Electric Power Company Inc., a New York corporation ("AEP") and a registered holding company under the Act, has filed an application-declaration ("Application") under sections 9(a), 10 and 11 of the Act and rule 54 under the Act.

AEP Service seeks an extension of the authority granted in previous orders to license and sell to nonassociate entities specialized computer programs and to provide support services to licensees and entities that have purchased this software. The authority is sought for the period through December 31, 2008 ("Authorization Period").

By order dated August 10, 1990 (HCAR No. 35–25132), the Commission authorized Central and South West Services Inc., a Delaware corporation ("CSW Services") to license and sell to nonassociate entities through December 31, 1992, specialized computer programs and to provide support services to licensees and entities that purchased the software. Support services included program enhancements and problem resolution. CSW Services was merged into AEP Service on December 31, 2000, as described below. By order dated December 18, 1992 (HCAR No. 35–25132), the Commission authorized CSW Services to license and sell to nonassociate entities through December 31, 1994, specialized computer programs and to provide support services to licensees and entities that purchased such software. These support services were to be sold to nonassociate entities for an amount not less than CSW Services' cost. By order dated December 28, 1994 (HCAR No. 35–26206), the Commission extended the term of the authority granted to CSW Services in the above described orders and granted CSW Services the authority through December 31, 1997, to make expenditures up to $1 million per calendar year and $250,000 per project to develop or change software for nonassociate entities, to market software, services, and reserve computer capacity and to add up to ten employees to support these activities. The order also authorized CSW Services to sell reserve computer capacity (in amounts up to 50% of its total capacity) and provide data management services to nonassociate entities, largely customers of its associate public utility companies. By order dated December 11, 1997 (HCAR No. 35–26795), the Commission extended the authorization granted in the previous order through December 31, 2002. By order dated June 14, 2000 (HCAR 35–27186), AEP was authorized to acquire by merger all of the outstanding common stock of Central and South West Corporation, a registered holding company and the parent of CSW Services. By that order, CSW Services was merged into AEP Service and the authority granted to CSW Services in HCAR No. 35–26206 was vested in AEP Service.

AEP Service is party to a Software Distribution and License Agreement with a corporation for the licensing and distribution and support for a software system and method for managing special or complex billing for larger utility customers or commodity/service providers. As the authority granted in HCAR No. 35–26206 expires December 31, 2002, AEP Service requests that the Commission authorize it to:

(1) License and sell to nonassociates through December 31, 2008, specialized computer programs;

(2) Provide support services to licensees and entities that purchase its software, including program enhancements and problem resolution;

(3) Make expenditures up to $1 million per calendar year and $250,000 per project to develop or change software, to market software and services;

(4) Sell reserve computer capacity (in amounts up to 50% of its total capacity); and

(5) Provide data management services to nonassociate entities.

Entergy Louisiana, Inc. (70–10098)

Entergy Louisiana, Inc. ("ELI"), 4809 Jefferson Highway, Jefferson, Louisiana 70121, a wholly owned electric public utility subsidiary of Entergy Corporation ("Entergy"), a registered holding company, has filed a declaration ("Declaration") under section 12(c) of the Act and rules 42, 46, 53, and 54 under the Act.

ELI states that it maintains a purchased power contract ("Power Contract") with Catalyst Old River Hydroelectric Limited Partnership. Under Internal Revenue Code Section 475, ELI was able to elect to take a mark-to-market tax deduction of approximately $2.316 billion in association with the Power Contract and in conjunction as part of the Entergy Corporation consolidated tax return for the tax year ending December 31, 2001. This election is expected to provide a cash flow benefit to ELI of approximately $700–$800 million during the fourth quarter of 2002. As of June 30, 2002, ELI had retained earnings of approximately $193 million. Subsequent to receipt of the cash flow benefit, but prior to December 31, 2003, ELI proposes to make one or more dividend payments to Entergy from capital surplus or to repurchase up to 46,000,000 shares of ELI's common stock from Entergy, provided that the aggregate of the dividends and common stock repurchases will not exceed $350 million ("Transaction Limit"). ELI states that it will pay book value for each share of common stock that it repurchases.[11]

ELI represents that, upon effecting any of the proposed dividend payments or common stock repurchase transactions, its common equity capital will not fall below thirty percent of its total consolidated capitalization. ELI further represents that its cash position after any payments or repurchase will be sufficient to allow it to continue to meet its projected capital requirements and other obligations.

ELI further states that certain supplemental indentures under ELI's April 1, 1944 Mortgage and Deed of Trust contain covenants ("Dividend Covenants") generally limiting the aggregate amount of dividends/distributions on ELI's common stock and repurchases by ELI of its common stock to the sum of (a) the aggregate amount credited to earned surplus subsequent to the date of the applicable supplemental indenture, (b) a specific dollar amount set forth in the applicable supplemental indenture, and (c) "such additional amounts as shall be authorized or approved, upon application by [ELI], by the Securities and Exchange Commission, or by any successor commission thereto, under the Public Utility Holding Company Act of 1935." ELI states that it anticipates that the aggregate amount of dividends or common stock purchases proposed in this Declaration will reduce the amount available to pay dividends under these Dividend Covenants by a like amount. Accordingly, ELI requests that the Commission specifically authorize or approve "such additional amounts" of dividends or common stock purchases as may be necessary to implement the dividends and stock repurchase activities up to the $350 million Transaction Limit for purposes of each applicable Dividend Covenant.

[11] Applicant defines book value per share as $7.75 per share at June 30, 2002.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29592 Filed 11–20–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46839; File No. SR–OPRA–2002–03]

Options Price Reporting Authority; Notice of Filing of a Proposal To Revise the Required Form of Vendor Agreement Under Section VII(b) of the OPRA Plan

November 14, 2002.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") and Rule 11Aa3–2 under,[1] notice is hereby given that on July 12, 2002, the Options Price Reporting Authority ("OPRA"),[2] submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The amendment would revise the form of Vendor Agreement that is required to be entered into between OPRA and vendors of options information under Section VII(b) of the OPRA Plan. The Commission is publishing this notice to solicit comments on the proposed amendment to the OPRA Plan from interested persons.

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

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I. Description and Purpose of the Amendment

The purpose of the proposed amendment is to revise the form of Vendor Agreement that is required to be entered into between OPRA and vendors of options information under Section VII(b) of the Plan. The Vendor Agreement governs the terms and conditions under which vendors are permitted to redistribute options market data to subscribers and other end users of the information. The proposed revisions are intended to update the Vendor Agreement (and attachments to the Vendor Agreement) in light of changes in technology and other developments that have occurred since that agreement was last revised. These changes have previously been reflected in a series of riders to the Vendor Agreement, consisting of the "Voice-Synthesized Market Data Service Rider", the "Radio-Paging Market Data Service Rider", the "Dial-up Market Data Service Rider" and the "Electronic Contract Rider." As technology has continued to develop, these riders have themselves become either irrelevant or outdated. The proposed amendment to the Vendor Agreement reflects the elimination of the Radio-Paging Rider, which is no longer in use, and the integration and updating of the other three riders in the body of the Vendor Agreement and in a new Attachment C to the Vendor Agreement.

The proposed amendment also responds to the fact that, pursuant to procedures described in the existing Dial-up Market Data Service Rider as well as in provisions of the current Vendor Agreement applicable to nonprofessional subscribers, an increasing number of OPRA Subscribers enter into contracts directly, and in some cases electronically, with vendors for the receipt of options information, rather than entering into Professional Subscriber Agreements with OPRA. All nonprofessional subscribers contract directly with vendors, as do "dial-up" customers, whether professional or nonprofessional.[3] Under the current Vendor Agreement and its riders, OPRA provides a form of Nonprofessional Subscriber Agreement and a form of electronic customer dial-up agreement for use by vendors in contracting with those of their customers to which these forms of agreement apply, and permits vendors to enter into other forms of agreements with their dial-up customers subject to OPRA's prior approval. The proposed revised Vendor Agreement consolidates these different forms of agreements between vendors and their customers into a single standard form "Subscriber Agreement," without making any significant substantive changes to the current forms. Attachments B–1 and B–2 to the Vendor Agreement represent electronic and hard-copy versions of the Subscriber Agreement, respectively. OPRA proposes that these new standard versions of the Subscriber Agreement could be used by vendors to contract with professional or nonprofessional subscribers without any further approval by OPRA. Vendors would still be permitted to use their own customized agreements to contract with subscribers, which would continue to be subject to prior approval by OPRA. Those vendors who choose to use their own agreements would nevertheless benefit from the new preapproved standard versions, which may serve as models for drafting customized agreements that will satisfy OPRA's requirements.

The proposed revised Vendor Agreement also updates certain terminology to reflect developments in technology. Specifically, the concept of a "dial-up" customer, which was an accurate description of the way many nonprofessional subscribers accessed options market data several years ago, has been eliminated in recognition of the transformation of the electronic distribution of information resulting from the availability of the Internet and other information networks. Although in practice OPRA has recognized this development by expanding its view of what constitutes "dial-up" access, the proposed amendment to the Vendor Agreement now codifies this practice in the language of the Agreement.

The proposed revised Vendor Agreement continues to describe two categories of Subscribers: "Professional Subscribers" and "Nonprofessional Subscribers." As is currently the case, any Professional Subscriber who pays either OPRA's traditional device-based information fees or its flat "enterprise rate" fee in order to access options market data would enter into a Professional Subscriber Agreement directly with OPRA. As an alternative to these arrangements, such persons may enter into Subscriber Agreements with vendors, in which case the vendors would pay usage-based fees to OPRA. Also as is currently the case, Nonprofessional Subscribers would be required to enter into Subscriber Agreements with vendors pursuant to which vendors pay to OPRA either a reduced, flat-rate nonprofessional subscriber fee or a usage-based fee that is capped at the reduced flat-rate fee. Commonly, vendors pass through to their customers any access fees paid to OPRA by the vendors on their customers' behalf, although they are not required to do so. The proposed revised Vendor Agreement does not change the substance of these arrangements and does not propose to change the amount of OPRA's access fees, but it does provide a single, all-purpose form of Subscriber Agreement (in both electronic and hard-copy versions) that may be used by vendors to contract directly with their customers.

The proposed revised Vendor Agreement also includes new provisions to implement various aspects of OPRA's proposed new BBO (best bid and offer) Service, which is currently the subject of a separate proposed Plan amendment currently pending before the Commission.[4] In this regard, the proposed revised Vendor Agreement provides that a vendor satisfies its obligation to include consolidated options market data in its market information service if, at a minimum, the service includes options last sale information and the consolidated BBO provided by OPRA. This would permit a vendor to include additional unconsolidated information in its service so long as this required minimum consolidated information is included. The proposed revised Vendor Agreement permits a vendor to exclude from its BBO service either the quote size or the market identifier associated with a BBO or both, so long as in excluding information the vendor does not discriminate on the basis of the market in which quotations are entered. Additionally, if a vendor excludes the market identifier associated with the BBO from a dynamically updated service, it would be required to make that information available to recipients of the dynamically updated service through an inquiry-only service provided without additional cost. Quote size and market identifier information included in a vendor's service would be required to be on as current a basis as the information is reported by OPRA. Because the proposed Plan amendment pertaining to OPRA's proposed BBO Service provides for the inclusion of an approximation of the size associated with the BBO rather than the actual size (in order to reduce the message-handling capacity needed to carry the BBO Service), the proposed revised Vendor Agreement requires any vendor that includes size in its BBO service to disclose to its customers that the included size is an approximation of the actual size, and that the actual size is available on OPRA's full quotation service.

Finally, Attachment A to the proposed revised Vendor Agreement is OPRA's current fee schedule, revised only to reflect changes in terminology without any changes in the nature or amount of the fees themselves.

The text of the proposed new Vendor Agreement, Fee Schedule, Form of Electronic subscriber Agreement, Form of Hardcopy Subscriber Agreement, and Conditions for Use of Electronic Subscriber Agreement, is available at the principal offices of OPRA, Commission's Public Reference Room, and on the Commission's Internet website (*http://www.sec.gov/rules/sro/shtml*).

II. Implementation of Plan Amendment

OPRA proposes to begin to use the revised Vendor Agreement as soon as it has been approved by the Commission. Existing vendors would be expected to sign the revised Vendor Agreement to replace their existing Agreements with OPRA, but would continue to be able to act as vendors under their existing Vendor Agreements. Existing vendors that wish to take advantage of the provision of the revised Agreement that allows them to satisfy their obligation to provide consolidated options market information by furnishing only last sale information and the BBO would be required to sign the revised Agreement. All new vendors would be required to sign the revised Agreement. Existing customers of vendors that have previously entered into nonprofessional subscriber agreements or dial-up customer agreements with their vendors would not be required to re-sign the new form of subscriber agreement.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–03 and should be submitted by December 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29593 Filed 11–20–02; 8:45 am]

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[3] The term "dial-up" customer is explained in the text below.

[4] *See* Securities Exchange Act Release No. 45532 (March 11, 2002), 67 FR 11727 (March 15, 2002) (File No. SR–OPRA–2002–01).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46835; File No. SR–Amex–2002–70]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Trust Certificates Linked to a Basket of Investment Grade Corporate Debt

November 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. On October 16, 2002, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide ("Company Guide"), trust certificates linked to a basket of investment grade fixed income corporate debt instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex proposes to list for trading under section 107A of the Company Guide, asset-backed securities (the "ABS Securities") representing ownership interests in the Select Income Trust 2002–1 (the "Trust"), a special purpose entity to be formed by Structured Obligations Corporation ("SOC"),[5] and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the ABS Securities are issued. The assets of the Trust will consist primarily of a basket or portfolio of up to approximately twenty-five investment-grade fixed-income securities (the "Underlying Corporate Bonds").

The issuance of the ABS Securities will be a repackaging of the Underlying Corporate Bonds with the obligation of the Trust to make distributions to holders of the ABS Securities depending solely on the amount of distributions received by the Trust in the Underlying Corporate Bonds. At the time of issuance, the ABS Securities will receive an investment grade rating from a nationally recognized securities rating organization (an "NRSRO"). Due to the pass-through and passive nature of the ABS Securities, the Exchange intends to

[5] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 15, 2002 ("Amendment No. 1"). Amendment No. 1 replaces Amex's original proposal in its entirety.

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[5] SOC is a wholly-owned special purpose entity of J.P. Morgan Securities Holdings Inc. and the registrant under the form S–3 Registration Statement (No. 333–70730) under which the securities will be issued.

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rely on the assets and stockholder equity of the Underlying Corporate Bonds rather than the Trust to meet the requirement in section 107A of the Company Guide. The distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities.[6] Thus, the ABS Securities will conform to the initial listing guidelines under section 107A[7] and continued listing guidelines under sections 1001–1003[8] of the Company Guide, except for the assets and stockholder equity characteristics of the Trust.

The basket of Underlying Corporate Bonds will not be managed and will generally remain static over the term of the ABS Securities. Each of the Underlying Corporate Bonds provides for the payment of interest on a semi-annual basis, but the ABS Securities will provide for monthly or quarterly distributions of interest. The Exchange represents that, to alleviate this cash flow timing issue, the Trust will enter into an interest distribution agreement (the "Interest Distribution Agreement") as described in the prospectus supplement related to the ABS Securities (the "Prospectus Supplement").[9] Principal distributions on the ABS Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Corporate Bonds. However, some of the Underlying Corporate Bonds may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.* upon an event of default) of the Underlying Corporate Bonds, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the ABS Securities. Each Underlying Corporate Bond will be issued by a corporate issuer and purchased in the secondary market.

Holders of the ABS Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the ABS Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Corporate Bonds. Distributions of interest will be made monthly or quarterly. Investors will also be entitled to be repaid the principal of their ABS Securities from the proceeds of the principal payments on the Underlying Corporate Bonds. The payout or return to investors on the ABS Securities will not be leveraged.

The ABS Securities will mature on the latest maturity date of the Underlying Corporate Bonds. Holders of the ABS Securities will have no direct ability to exercise any of the rights of a holder of the Underlying Corporate Bonds; however, holders of the ABS Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Corporate Bonds.

The Exchanges states that the proposed ABS Securities are similar to equity linked notes ("ELNs"), previously approved by the Commission, except that the cash flow from the proposed ABS Securities will come from a basket of investment-grade corporate bonds as compared to a single equity, basket of equity securities or equity index in the case of an ELN.[10] In addition, ELNs may or may not pay interest while the ABS Securities will pay interest monthly or quarterly based on the pass-through nature of the structure. Also, publicly issued asset-backed securities that repackage a single underlying corporate debt obligation are currently listed and traded on the New York Stock Exchange, Inc. ("NYSE").[11] The proposed ABS Securities are similar to those repackaging transactions, except that the Trust will own more than one corporate debt obligation and, in the single repackaging transactions, there is no need for an Interest Distribution Agreement because the timing of the payment of interest on the underlying debt obligation matches the obligation to distribute interest on the repackaged securities. Accordingly, the Exchange proposes to provide for the listing and trading of the ABS Securities where the Underlying Corporate Bonds meet the Exchange's Bond and Debenture Listing Standards set forth in section 104 of the Amex Company Guide. The Exchange represents that all of the Underlying Corporate Bonds in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market ("Nasdaq")[12]); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on Nasdaq) has guaranteed the debt security; (4) a NRSRO has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a Standard & Poor's Corporation ("S&P") "B" rating or an equivalent rating by another NRSRO to a pari passu or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Corporate Bond must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket is required to contain Underlying Corporate Bonds from issuances of $100 million or more. The maturity of each Underlying Corporate Bond is expected to match the payment of principal of the ABS Securities with the maturity date of the ABS Securities being the latest maturity date of the Underlying Corporate Bonds. Amortization of the ABS Securities will be based on: (1) The respective maturities of the Underlying Corporate Bonds; (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Corporate Bonds; and (3) any early redemption or liquidation of the Underlying Corporate Bonds.

Investors will be able to obtain the prices for the Underlying Corporate Bonds through Bloomberg L.P. or other market vendors, including the broker dealer through whom the investor purchased the ABS Securities. In addition, the Bond Market Association provides links to price and other bond information sources on its investor Web site at *http:\\www.investinginbonds.com.* Transaction prices and volume data for the most actively-traded bonds on the exchanges are also published daily in newspapers and on a variety of financial websites. The National Association of Securities Dealers, Inc. ("NASD") Trade Reporting and Compliance Engine ("TRACE") will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.[13] For a fee, investors can have access to intra-day bellwether quotes.[14] Price quotes are also available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices[15] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The prices of the Underlying Corporate Bonds generally will be determined by one or more market makers in accordance with applicable statutory rules, self-regulatory organization rules and generally accepted accounting principles regarding the valuation of securities.

The ABS Securities will be listed in $1,000 denominations with the Exchange's existing debt floor trading rules applying to trading. First, pursuant to Amex rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the ABS Securities.[16] Second, the ABS Securities will be subject to the debt margin rules of the Exchange.[17] Third, the Exchange will, prior to trading the ABS Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the ABS Securities and highlighting the special risks and characteristics of the ABS Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the ABS Securities: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ABS Securities. Specifically, the Amex will rely on its existing surveillance procedures governing debt, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change, a amended, is consistent with section 6 of the Act[18] in general and furthers the objectives of section 6(b)(5)[19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[6] Telephone Conversation between Jeff P. Burns, Assistant General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on November 13, 2002.

[7] The initial listing standards for the ABS Securities require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then there is no minimum holder requirement. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[8] The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the ABS Securities, the Exchange will rely, in part, on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[9] Pursuant to the Interest Distribution Agreement, shortfalls in the amounts available to pay monthly or quarterly interest to holders of the ABS Securities due to the Underlying Corporate Bonds paying interest semi-annually will be made to the Trust by JP Morgan Chase Bank or one of its affiliates and will be repaid out of future cash flow received by the Trust from the Underlying Corporate Bonds.

[10] *See, e.g.*, Securities Exchange Act Release Nos. 44483 (June 27, 2001) 66 FR35677 (July 6, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (approving the listing and trading of notes linked to a basket of no more than twenty equity securities); 40956 (January 20, 1999), 64 FR 4480 (January 28, 1999) (approving the listing and trading of notes linked to Select Sector SPDRs); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (approving the listing and trading of the Top Ten Yield MITTS); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (listing and trading of equity linked securities). *See also* Securities Exchange Act Release No. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (Bond Index Term Notes).

[11] *See, e.g.*, Structured Asset Trust Unit Repackagings (SATURNS), CSFB USA Debenture Backed Series 2002–10, 1,330,000 of 7.00% Class A Callable Units, dated August 15, 2002, and trading under the symbol "MKK"; 1,380,000 PreferredPlus 8.375% Trust Certificates, underlying 7.05% Debentures of Citizens Communications Company, dated August 24, 2001, and trading under the symbol "PIY"; and 1,980,000 Corporate Backed Trust Certificates, Royal & Sun Alliance Bond Backed Series 2002–2, underlying securities 8.95% subordinated guaranteed bonds issued by Royal & Sun Alliance Insurance Group plc, dated February 11, 2002, and trading under the symbol "CCS."

[12] The Exchange inadvertently omitted the reference to Nasdaq in its description of Amex's section 104 Bond and Debenture Listing Standards. Telephone Conversation between Jeff P. Burns, Assistant General Counsel, Amex, and Sapna C. Patel, Attorney, Division, Commission, on November 4, 2002.

[13] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/.*

[14] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/.*

[15] "Valuation Prices" refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[16] Amex rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[17] *See* Amex rule 462.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

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those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–70 and should be submitted by December 12, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[20] The Commission finds that this proposal is similar to several approved equity-linked instruments currently listed and traded on the Amex,[21] as well as to asset-backed securities listed and traded on the NYSE.[22] Accordingly, the Commission finds that the listing and trading of the ABS Securites is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[23]

As described more fully above, the ABS securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds, subject to certain distribution of interest obligations of the Trust. The ABS Securities are not leveraged instruments. The ABS Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Corporate Bonds. The Exchange represents that the value of the Underlying Corporate Bonds will be determined by one or more market makers, in accordance with Exchange rules and generally accepted principles of accounting regarding the valuation of securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Corporate Bonds. In addition, each Underlying Corporate Bond will pay interest on a semi-annual basis, while the ABS securities themselves will pay interest on a monthly or quarterly basis, pursuant to the Interest Distribution Agreement. In addition, the ABS securities will mature on the latest maturity date of the Underlying Corporate Bonds.[24] However, due to the pass-through nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securites is similar to the risk involved in the purchase or sale of traditional common stock. The Commission notes that asset-backed securities that repackage a single underlying debt instrument are currently listed and traded on the NYSE. However, because the ABS Securities are asset-backed securities that repackage a basket of Underlying Corporate Bonds, instead of a single underlying corporate bond, there are several issues regarding the trading of this type of product that the Exchange must address.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securites. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Corporate Bonds. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securites. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[25] The Commission notes that the Exchange has represented that the ABS Securities will be listed in $1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Corporate Bonds will be publicly available.[26]

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Corporate Bonds rather than the Trust to meet the requirement in section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under section 107A and continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from a nationally recognized securities rating organization (an "NRSRO").

The Commission also believes that the listing and trading of the ABS Securites should not unduly impact the market for the Underlying Corporate Bonds or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Corporate Bonds meet the Exchange's section 107A listing requirements, the Underlying Corporate Bonds will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from am NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Corporate Bonds from issuances of $100 million or more. The Amex has also represents that the basket of Underlying Corporate Bonds will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Corporate Bonds through market venders such Bloomberg, L.P., or though Web sites such as *http://www.investinbonds.com*.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other equity-linked instruments currently listed and traded on the Amex,[27] and other asset-backed securities currently listed and traded on the NYSE.[28] The Commission believes that the ABS Securites will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securites promptly. Additionally, the ABS Securites will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act [29] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–2002–70), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–29539 Filed 11–20–02; 8:45 am]

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[20] *Id.*

[21] *See* Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities ("MITTS")) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[22] *See, e.g., supra* note 11.

[23] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] The Commission notes, however, that the Exchange has represented that the Underlying Corporate Bonds may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. *See* Prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Corporate Bond and for a description of payment default and acceleration of the maturity date. Telephone Conversation between Jeff P. Burns, Assistant General Counsel, Amex, and Sapna C. Patel, Attorney, Division, Commission, on November 4, 2002.

[25] *See* Company Guide section 107A.

[26] The ABS Securities will be registered under section 12 of the Act.

[27] *See supra* note 21.

[28] *See, e.g., supra* note 11.

[29] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46823; File No. SR–CBOE–2002–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. to Make Certain Changes Pertaining to the Enforcement of Trading Conduct and Decorum Policies

November 13, 2002.

On July 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change relating to the enforcement of trading conduct and decorum policies. On August 30, 2002, CBOE submitted Amendment No. 1 to the proposed rule change.[3] On September 17, 2002, CBOE submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 11, 2002.[5] The Commission received no comments on the amended proposal. This order approves the proposed rule change, as amended.

The Exchange proposes to amend CBOE rule 6.20(c) (Admission to and Conduct on the Trading Floor—Fines Imposed by Floor Officials) to authorize two Floor Officials, in consultation with a designated senior executive officer of the Exchange, to summarily exclude a member or person associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense, except for those Class A offenses specifed by Exchange Regulatory Circulars [6] as not qualifying the offender for summary exclusion. The proposed rule will enable an excluded member or associated person to request reinstatement to the Trading Floor from Floor Officials after a sufficient "cooling off period" has elapsed.

Class A offenses are the most serious offenses regarding trading conduct and decorum policies, including but not limited to, violations such as physical violence (*e.g.*, shoving or fighting), unbusinesslike conduct,[7] harassment, failure to abide by a floor official determination, or property damage. Most Class A offenses affect the safety or security of personnel and/or property on the Exchange in ways that may be ameliorated by temporarily excluding the offender from Exchange premises. The Exchange also proposes that members be summarily excluded from Exchange premises for enabling or assisting a suspended member or associated person to gain improper access to the floor, and failing to supervise a visitor. As specified in the proposed Regulatory Circular, the Exchange proposes to distinguish three Class A offenses as not qualifying the offender for summary exclusion. These are (1) Failure to Attend Exchange Mandated Educational Training; (2) Effecting or Attempting to Effect a Transaction with No Public Outcry; and (3) Violation of CBOE Rule 8.51 (Firm Quote). According to the Exchange, it did not classify these offenses as qualifying for summary expulsion because it believes that, unlike the other Class A offenses, they do not raise

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* form 19b–4 received on August 30, 2002 ("Amendment No. 1").

[4] *See* letter from Christopher R. Hill, Attorney II, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation ("Division"), Commission, dated September 16, 2002 ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 46600 (October 4, 2002), 67 FR 63480.

[6] Currently, only the proposed Regulatory Circular specifies which Class A offenses do, and which Class A offenses do not qualify the offender for summary exclusion. CBOE will file any additional Regulatory Circulars that specify which Class A offenses do or do not qualify the offender for summary exclusion with the Commission as a proposed rule change. Telephone call between Christopher R. Hill, Attorney II, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division, Commission, on November 13, 2002.

[7] In general, "unbusinesslike conduct" is conduct, other than harassment, that disrupts trading. Telephone call between Christopher R. Hill, Attorney II, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division, Commission, on September 30, 2002.

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significant issues of safety or security at the Exchange.

The Exchange also proposes to amend CBOE rule 17.50(g)(6) (Imposition of Fines for Minor Rules Violations—Violations of Trading Conduct and Decorum Policies) to reflect the incorporation into the fine policies of specified higher fine levels for "subsequent" offenses. For example, the amended provision would enable the imposition of the fine authorized for a Class A "subsequent" offense to be imposed for a first, second or third Class A offense, if such is deemed warranted under the circumstances in the view of two Floor Officials.[8] Generally, however, the two Floor Officials will impose fines based upon the number of the offense that has occurred within a rolling 12-month period, except for Firm Quote violations, which will have a 24-month look back period.

Finally, the Exchange proposes to include in the proposed Regulatory Circular the fines that may be imposed under CBOE rule 17.50 for violations of CBOE rule 6.20.[9] Any person against whom a fine is imposed pursuant to CBOE rule 17.50(g) may contest that fine before the applicable CBOE Committee.[10]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[11] and, in particular, the requirements of section 6 of the Act[12] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with sections 6(b)(5)[13] and 6(b)(7)[14] of the Act because the proposed rule change should protect investors and the public interest by enhancing the effectiveness and fairness of the Exchange's disciplinary procedures.

In particular, the Commission believes having the authority to temporarily exclude disruptive or potentially dangerous rule violators from the Exchange premises should assist the Exchange in defusing volatile situations, safeguarding trading floor personnel and facilities, and minimizing disruptions to the maintenance of fair and orderly markets. The Commission also believes the new Regulatory Circular sets forth appropriate fine levels for violations of Trading and Decorum Policies, which should deter violations of the Exchange's rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2002–39), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[8] The amended provision would also enable the imposition of the fine authorized for a Class B "subsequent" offense to be imposed for a first or second Class B offense, if such is deemed warranted under the circumstances in the view of two Floor Officials.

[9] The proposed Regulatory Circular will supersede and replace current CBOE Regulatory Circular RG 98–123. The proposed Regulatory Circular does not include three types of offenses that were set forth in Regulatory Circular RG 98–123: Disruptive Announcements of Stock Prints, Failure to Abide by Floor Official Request for Information; and Book Priority Determinations. According to the Exchange, these offenses are either no longer necessary or covered by other rules.

[10] *See* paragraph (4) of the proposed Regulatory Circular.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(7).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46834; File No. SR–CHX–2002–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Incorporated Relating to the Listing and Trading of Fixed Income ETFs

November 14, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 12, 2002, CHX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to grant accelerated approval to the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Division of Market Regulation ("Division"), Commission, dated November 8, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange added a representation relating to its surveillance procedures and explained why its rule prohibiting certain relationships between specialists and the issuer of a security did not apply to this rule filing.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XXVIII, Rule 24, to permit the listing and trading of fixed income Exchange Traded Funds ("ETFs"), which are based on indices of fixed income securities. Additionally, the Exchange seeks approval to trade, pursuant to unlisted trading privileges, the following series of the iShares Trust: iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund and iShares Goldman Sachs Corporate Bond Fund. The text of the proposed rule change is below; new text is italicized.

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Chicago Stock Exchange Rules

Article XXVIII

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Investment Company Units

RULE 24. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, units of trading ("Units") that meet the criteria of this Rule. A Unit is a security that represents an interest in a registered investment company ("Investment Company") that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.

(A) Original Unit Listing Standards

(1) The Investment Company must:

(a) Hold securities *(including fixed income securities)* comprising, or otherwise based on or representing an interest in, an index or portfolio of securities; or

(b) hold securities in another registered investment company that holds securities as described in (a) above.

An index or portfolio may be revised as necessary or appropriate to maintain the quality and character of the index or portfolio.

(2) The Investment Company must issue Units in a specified aggregate number in return for a deposit (the "Deposit") consisting of either:

(a) A specified number of shares of securities *(or, if applicable, a specified portfolio of fixed income securities)* that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or

(b) shares of a registered investment company, as described in clause (A)(1)(a) above, and/or a cash amount.

(3) Units must be redeemable, directly or indirectly, from the Investment Company for securities *(including fixed income securities)* and/or cash then comprising the Deposit. Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CHX Article XXVIII, Rule 24 to permit the Exchange to list and trade fixed income ETFs, which are based on indices of fixed income securities.

CHX Article XXVIII, Rule 24 provides standards for listing Investment Company Units, which are defined as securities representing "an interest in a registered investment company that could be organized as a unit investment trust, open-end management investment company or similar entity." In addition to being registered under the Investment Company Act of 1940 (the "1940 Act"), these securities are registered under the Exchange Act. The Exchange is proposing to amend this definition to permit the listing and trading of index-based fixed income investment products that are based on an index of fixed income securities. Examples of such products include U.S. government securities and corporate and non-corporate (other than U.S. government) debt securities. As amended, CHX Article XXVIII, Rule 24 would accommodate the listing and trading of Units based on an index of U.S. government debt securities (*e.g.*, securities issued or guaranteed by the U.S. Treasury, an agency or instrumentality of the U.S. government, or by a government-sponsored entity). Other products that could be listed or traded under this rule, as amended, could include Units based on an index of corporate and/or non-corporate debt securities.[4] The Commission has recently approved the requests of both the American Stock Exchange LLC ("Amex") and the New York Stock Exchange ("NYSE") to list and trade fixed income ETFs.[5] The Exchange believes that its proposed rule changes are substantially similar to those of the Amex and NYSE.

Accordingly, the Exchange proposes to amend CHX Article XXVIII, Rule 24 to specify that Investment Company Units may be: (1) Based on a portfolio of fixed income securities; (2) issued in return for a deposit of a specified portfolio of fixed income securities and/or cash; and (3) redeemed at a holder's request by the investment company, which will pay the redeeming holder fixed income securities and/or cash.

Upon approval of the proposed amendments to CHX Article XXVIII, Rule 24, the Exchange proposes to trade on a UTP basis the following seven series of the iShares Trust, a registered open-end management investment company (the "Trust"): iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund; iShares Treasury Index Fund; iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund, and iShares Goldman Sachs Corporate Bond Fund (each, a "Fund," and jointly, the "Funds").

Each Fund will hold certain fixed income securities selected to correspond generally to the price and yield performance of a specified U.S. Treasury, Government/Credit, or Corporate Bond Index (each, an "Underlying Index") maintained either by Lehman Brothers, or, for the Goldman Sachs Corporate Bond Fund, by Goldman Sachs & Co.

Barclays Global Fund Advisors ("Advisor") is the investment advisor for each Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is a wholly owned subsidiary of Barclays Global Investors, N.A., which is in turn a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom. SEI Investments Distribution Co. ("Distributor"), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations (as defined below) of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

A. Operation of the Funds

Each Fund is designed to provide investment results that correspond generally to the price and yield performance of its Underlying Index. In seeking to achieve its respective investment objective, each Fund will utilize "passive" indexing investment strategies. Each Fund may fully replicate its Underlying Index, but currently intends to use a "representative sampling" strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities ("Component Securities") of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to a Fund that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index).[6]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of a Fund's portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into

[4] Investment Company Units based on a fixed income securities index are not eligible for listing or trading under the Exchange's generic listing criteria (CHX Article XXVIII, Rule 24, Interpretation and Policy .04). The Exchange understands that it must make separate rule filings for any additional series of such Investment Company Units based on fixed income indices prior to listing or trading those products, even if the Exchange is only trading the product on a UTP basis.

[5] *See* Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR–Amex–2001–35); and Securities Exchange Act Release No. 46299 (August 1, 2002), 67 FR 51907 (August 9, 2002) (SR–NYSE–2002–26).

[6] The Commission approved an "Application" by the Trust, the Advisor and the Distributor ("Applicants") for an Order under Sections 6(c) and 17(b) of the 1940 Act for the purpose of exempting the Funds from various provisions of the 1940 Act. *See* Investment Company Act Release No. 25622 (June 24, 2002) (approving File No. 812–12390). The information provided in this Rule 19b–4 filing relating to the Funds is based on information included in the Application and order, as well as in the rule change proposals submitted by the NYSE and Amex.

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smaller, more homogenous pieces. These subdivisions are sometimes referred to as "cells." A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: duration, sector, credit rating, coupon and the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed closely to correlate to the duration, sector, credit rating, coupon and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.[7]

According to the Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information, *e.g.*, coupon rates instead of dividend payments.

According to the Application, the Funds' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are "expensive names" (*i.e.*, bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a regulated investment company ("RIC") under the Internal Revenue Code. For example, if at the end of a calendar quarter a Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. It should be noted, however, that Applicants do not anticipate that the Funds would need to make such adjustments, particularly since these Funds (other than the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund) invest a very large percentage of their assets in U.S. Treasury securities.

The Applicants noted in the Application that they expect that each Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%). Each Fund's investment objectives, policies and investment strategies will be fully disclosed in its prospectus ("Prospectus") and statement of additional information ("SAI"). At least 90% of each of the iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, and iShares Government/Credit Index Fund's assets will be invested in Component Securities of its respective Underlying Index. Each of these Funds may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, these Funds may invest in securities not included in the relevant Underlying Index in order to reflect prospective changes in the relevant Underlying Index (such as future corporate actions and index reconstitutions, additions and deletions). Each of the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund may at times invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents as well as in bonds not included in its Underlying Index, but which the Advisor believes will help the Fund track its Underlying Index and which are either (i) included in the broader index upon which such Underlying Index is based (*i.e.*, the Lehman Credit Index for the Lehman Credit VLI Index or the Goldman Sachs Investment Grade Index for the Goldman Sachs InvesTop Index): or (ii) new issues entering or about to enter the Underlying Index or the broader index upon which such Underlying Index is based.

[7] As stated in the Application, the Goldman Sachs Index excludes bonds with embedded options. Although the Lehman Indices may include bonds with embedded options, the bonds in each Lehman Index (and the respective Deposit Securities and Fund Securities, as defined herein) should be liquid and easily tradable because each Lehman Index consists of U.S. Treasury and agency securities and/or liquid corporate and non-corporate bonds. To the extent a particular bond is less liquid than another bond with similar characteristics, the Advisor's representative sampling techniques should permit the Advisor to replace the less liquid bond with a more liquid one. For these reasons, the Applicants do not believe the presence of bonds with embedded options in an Underlying Index, the Deposit Securities or Fund Securities would have any material impact on the creation/redemption process and the efficiency of the arbitrage mechanism for each Fund.

B. Issuance of Creation Unit Aggregations

1. *In General.* Shares of each Fund (the "iShares") will be issued on a continuous offering basis in groups of 50,000 or more. These "groups" of shares are called "Creation Unit Aggregations." The Funds will issue and redeem iShares only in Creation Unit Aggregations.[8] As with other open-end investment companies, iShares will be issued at the net asset value ("NAV") per share next determined after an order in proper form is received. The anticipated price at which the iShares will initially trade is approximately $100.

The NAV per share of each Fund is determined as the close of the regular trading session on the Exchange on each day that the Exchange is open. The Trust sells Creation Unit Aggregations of each Fund only on business days at the next determined NAV of each Fund. Creation Unit Aggregations will be issued by Each Fund in exchange for the in-kind deposit of portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the Fund's Underlying Index (the "Deposit Securities"). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each fund in exchange for portfolio securities of the Fund ("Fund Securities") and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day. The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each Fund. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant ("Authorized Participant"). Authorized Participants, which are required to be Depository Trust Company ("DTC") participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable Fund and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted improper form. The Distributor will be responsible for delivering the prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

[8] Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately $5 million.

2. *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the Fund of the Deposit Securities together with an amount of cash (the "Balancing Amount") specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the differences between (1) the NAV (per Creation Unit Aggregation) of the Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a "Portfolio Deposit." The Advisor will make available to the market through the National Securities Clearing Corporation (the "NSCC") on each Business Day, prior to the opening of trading on the Exchange (currently 9:30 a.m. Eastern Time), the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on the information at the end of the previous Business Day) for the relevant Fund. The Portfolio Deposit will be applicable to a Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting of composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant Fund, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each Fund to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

C. Availability of Information Regarding iShares and Underlying Indices

1. *In General.* On each Business Day, the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the "Intra-day Optimized Portfolio Value" or "IOPV") will be calculated by Bloomberg L.P. ("Bloomberg") every 15 seconds during the Exchange's regular trading hours and disseminated every 15 seconds on the Consolidated Tape. Bloomberg will use Bloomberg Generic Prices ("BGN Prices") to reflect changing bond prices and update the IOPV throughout the day. BGN Prices are current prices on individual bonds as determined by Bloomberg using an automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers). BGN Prices are updated throughout the day based on an ongoing analysis of the bid/ask prices submitted by the third-party price contributors. When Bloomberg receives bid/ask prices from a price contributor, the prices are filtered and screened according to pre-determined criteria and set parameters in order to maximize the accuracy of the pricing data. The net result of this process is an individual bond "price" based on an analysis of multiple pricing sources. BGN Prices are available on Bloomberg systems and Applicants expect that the pricing of the Deposit Securities will be transparent to anyone with access to Bloomberg systems.

The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

Each Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each Fund will be calculated and disseminated daily. There will also be disseminated a variety of data with respect to each Fund on a daily basis by means of CTA and CQ High speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. The closing prices of the Funds' Deposit Securities are readily available from published or other public sources, or on-line information services provided by Merrill Lynch, IDC, Bridge, Bloomberg, Lehman Brothers and other pricing services commonly used by bond mutual funds. In addition, the website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Fund: (a) The prior Business Day's NAV and the mid-point of the bid-ask price[9] at the time of calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

2. *Information Regarding the Underlying Debt Securities.* The

[9] The Bid-Ask Price of a Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each Fund's NAV.

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secondary market for Treasury securities is a highly organized over-the-counter market. Many dealers, and particularly the primary dealers, make markets in Treasury securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury securities occurs through automated trading systems.[10]

The primary dealers are among the most active participants in the secondary market for Treasury securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker.[11] The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX,[12] for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.[13]

Real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

Retail investors do have access to free intra-day bellwether quotes.[14] The Bond Market Association provides links to price and other bond information sources on its investor Web site at *http://www.investinginbonds.com*. In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial websites.

Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman, Sachs & Co.

D. Redemption of iShares

Creation Unit Aggregations of each Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed or through an Authorized Participant.

Creation Unit Aggregations of any Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the "Creation List") and which a redeemer will receive from the Fund (the "Redemption List"). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ in the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

E. Clearance and Settlement

The Deposit Securities and Fund Securities of each Fund will settle via free delivery through the Federal Reserve System for U.S. government securities and the DTC for corporate securities and non-corporate (other than U.S. government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the "CNS System"), (i) iShares of the Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (T + 3), an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the

[10] See "eCommerce in the Fixed-Income Markets: The 2001 Review of Electronic Transaction Systems," December 2001. This survey of electronic trading systems in the bond market was prepared by the staff of The Bond Market Association and is available through the Association's Web site: *http://www.bondmarkets.com*.

[11] E.g., BrokerTec Global, Cantor Fitzgerald, Garban-Intercapital, and Liberty Brokerage.

[12] See *http://www.govpx.com*.

[13] See *http://www.tradeweb.com*.

[14] Corporate prices are available at 20 minute intervals from Capital Management Services at http://www.bondvu.com/quotmenu.htm.

receipt of all the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. The Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the Funds' Custodian through DTC, the Trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On T + 3, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNX System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an "in-kind" creation of iShares. In case of a failed delivery of one or more Deposit Securities, the Funds will hold the collateral until the delivery of such Deposit Security. The Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the Funds will be protected from failure to receive Creation Unit Aggregations of iShares because the Custodian will not now effect the Fund's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations. In order to simplify the transfer agency process and align the settlement of iShares of the Funds with the settlement of the Deposit Securities and Fund Securities, Applicants plan to settle transactions in U.S. government securities, corporate bonds, non-corporate bonds (other than U.S. government securities) and iShares on the same T + 3 settlement cycle.

The issuer does not believe that the clearing and settlement process will affect the arbitrage of iShares of the Funds.

F. Dividends and Distributions

Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each Fund. Certain of the Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Internal Revenue Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with amount received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

G. Other Issues

1. *Criteria for Initial and Continued Listing.* iShares are subject to the criteria for initial and continued listing of Investment Company Units in CHX Article XXVIII, Rule 24. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of Investment Company Units.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index.

2. *Original and Annual Listing Fees.* If the Funds were to list on the Exchange, they would be subject to the listing fees set out in the Exchange's Schedule of Membership Dues and Fees.

3. *Prospectus Delivery.* The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to iShares.

4. *Trading Halts.* Any decision to halt trading of fixed income ETFs is subject to CHX Article IX, Rule 10A and CHX Article IX, Rule 10(b). In exercising the discretion described in CHX Article IX, Rule 10(b), appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in underlying security(s); whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current portfolio value; and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

5. *Suitability.* The Information Circular distributed by the Exchange to its members will remind members of their obligations pursuant to CHX Article VIII, Rule 25 (Business Conduct).

6. *Purchases and Redemptions in Creation Unit Size.* In the Information Circular referenced above, members and member organizations will be informed

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that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable, but may redeemed only in Creation Unit Size aggregations or multiples thereof.[15]

7. *Surveillance.* Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Investment Company Units currently trading on the Exchange. The Exchange believes that these surveillance efforts will be adequate to properly monitor the trading of the Funds.

8. *Hours of Trading/Minimum Price Variation.* The Funds will trade on the Exchange until 4:15 p.m. (Eastern time), or, if the Exchange is trading the Funds pursuant to unlisted trading privileges, during the same hours that they are traded on the primary market. *See* CHX Article IX, Rule 10(b). The minimum price variation for quoting will be $.01.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[16] In particular, the proposed rule is consistent with Section 6(b)(5) of the Exchange Act[17] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[15] Other exchanges that have sought permission to list and/or trade the Funds have noted, in their filings, that their rules that prohibit certain types of relationships between an issuer and the specialist in the issuer's securities do not prohibit specialists from certain transactions in the Funds. *See* Release No. 46299 (August 1, 2002), 67 FR 51907 (August 9, 2002) (NYSE's Rule 460.10); and Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (Amex's Rule 190). The Exchange has a similar rule that prohibits certain relationships between its specialists and the issuer of a security, but it applies only to issues that are exclusively listed on the Exchange; therefore, this rule does not prohibit CHX specialists from certain transactions in the Funds. *See* CHX Article XXX, Rule 23.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–27 and should be submitted by December 12, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Exchange Act[18] and the rules and regulations thereunder applicable to a national securities exchange.[19] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act.[20] The Commission believes that the Exchange's proposal to list and trade fixed income ETFs (including the trading thereof on a UTP basis)[21] will provide investors with a convenient way of participating in the U.S. government, corporate and non-corporate (other than U.S. government) fixed income markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of stocks. The Commission believes that the availability of the Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Treasury, Government/Credit, or Corporate Bond Index. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[22]

iShares Trust and iShares, Inc. are each registered in the 1940 Act as an open-ended management investment company with multiple series. iShares Trust has created (or identified for creation) 66 separate series, while iShares, Inc. has created (or identified for creation) 35 separate series. All of these series operate (or will operate) as ETFs pursuant to six prior exemptive orders from the 1940 Act, and each of the ETFs seeks to match the return of an equity securities index. Additionally, the Commission has granted the Funds appropriate relief under various sections of the 1940 Act, including sections 6(c) and 17(b), so that each Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[23]

Barclays is registered as an investment adviser under the 1940 Act and serves as the investment adviser to the series of iShares Trust and iShares, Inc. Distributor acts as the principal underwriter and distributor for iShares Trust and iShares, Inc.

iShares Trust will create seven new series each of which operates as an ETF seeking to match the performance of a fixed income securities index. The seven indices are the following:

- Lehman Brothers 1–3 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 1 and 3 years);
- Lehman Brothers 7–10 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 7 and 10 years);
- Lehman 20+ Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 20 years);
- Lehman U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 1 year);
- Lehman Government/Credit Index (containing certain investment grade government and credit securities with maturities of more than 1 year);
- Lehman Credit VLI Index (containing the largest issues of investment grade credit securities with remaining maturities of more than 1 year); and
- Goldman Sachs InvesTop Index (containing the 100 most liquid and representative bonds in the U.S. investment grade corporate market with remaining maturities of at least 3 years).[24]

The Commission notes that this is the first ETF based on an underlying index of fixed income securities ("Fixed Income ETFs"). The Funds will operate in substantially the same manner as Equity ETFs. Like many other ETFs, each Fund will use a representative sampling strategy to track its index. With a sampling strategy, a Fund will seek to match the return of its index by holding some, but not all, of the fixed income securities contained in its underlying index. In constructing the portfolio for a Fund, Barclays will select a sample of bonds that will correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the underlying index as a whole. Barclays may also exclude less liquid bonds in order to create a more tradable portfolio to enhance arbitrage efficiency. As with its Equity ETFs, Barclays represents that the Funds will have a tracking error relative to the performance of their respective underlying indices of no more than 5%.

Shares of the Funds will be issued and redeemed in Creation Units priced at NAV in exchange for Portfolio Deposits and Redemption Baskets consisting of Bonds selected and announced by Barclays at the beginning of each business day.

The Commission finds that the Funds will provide benefits to investors in allowing investors to trade baskets of bonds in a single transaction at a cost comparable to that of trading existing equity securities and will allow investors to trade baskets of bonds throughout the day and thereby permit them to take advantage of (or protect themselves against) intra-day market movements. The Funds may make it easier for individual investors to diversify their portfolios across a broader range of assets and will provide institutional and other large investors with an alternative to futures for various hedging and other investment strategies that involve fixed income securities. Finally, the Funds will provide investors with a fund product that discloses its portfolio on a daily basis rather than semi-annually.

While the Funds will be operated in a manner that closely parallels the manner in which Equity ETFs are operated, one key potential difference may be the efficiency of the arbitrage process. The arbitrage mechanism for Equity ETFs generally has caused the market price of ETF shares to track closely the NAV of the ETF shares. With respect to liquidity of the debt securities likely to be in the ETF portfolios, to the extent these debt securities could not be readily purchased and sold, the arbitrage process would be less efficient. However, the Commission notes that the Funds will invest in some of the most liquid debt securities, including U.S. Government securities and investment grade corporate and non-corporate bonds.[25] In addition, Barclays will employ a sampling method of portfolio management that would allow the Funds to exclude any bonds contained in an underlying index that may not have sufficient liquidity for easy trading. As a result, the Commission believes that the Funds have addressed the liquidity issues that might hamper arbitrage.

In addition, differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the Funds than have been experienced by Equity ETFs. Specifically, because the pricing of debt securities can be less transparent than the pricing of equity securities, arbitrageurs might account for pricing uncertainty by waiting for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions.

The Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the Funds (*i.e.*, U.S. Government securities and investment grade corporate and non-corporate bonds), the pricing information should be available. The Exchange has indicated that real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Exchange has also represented that retail investors would have access to free intra-day bellwether quotes.[26] For instance, the Bond Market Association provides links to price and other bond information sources on its investor Web site at *http://www.investinginbonds.com.* In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial websites. Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing

[18] 15 U.S.C. 78f.

[19] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] The Commission notes that, pursuant to Rule 12f–5 under the Act, prior to trading a particular class or type of security pursuant to UTP, NYSE must have listing standards comparable to those of the primary market on which the security is listed. 17 CFR 240.12f–5. The Commission finds that adequate rules and procedures exist to govern the trading of the Fund on NYSE, pursuant to UTP.

[22] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[23] Investment Company Act Release No. 25622 (June 25, 2002).

[24] As of July 1, 2002, the composition of the Goldman Sachs Index, which underlies the iShares Goldman Sachs Corporate Bond Fund, was expanded from 30 to 100 investment grade bonds, and the index is permitted to include more than one bond per issuer.

[25] The Lehman Government/Credit Index, Lehman Credit VLI Index, and Goldman Sachs InvesTop Index may include investment grade corporate and non-corporate bonds issued by non-U.S. issuers (sovereign, supra-national, foreign agency, and foreign local government). In Barclays' 1940 Act Application, it stated that these bonds will be dollar denominated, registered for sale in the U.S., and traded on U.S. markets at negotiated and readily available prices. Barclays does not believe that these bonds present any unique pricing or liquidity issues and does not expect the bonds to negatively affect arbitrage efficiency. The Commission notes that if any of these major characteristics of these fixed income indices (e.g., investment grade, face amount issued, maturity classification) were to materially change, the Commission would expect NYSE to attend these listing standards accordingly.

[26] Corporate prices are available at 20 minute intervals from Capital Management Services at *http://www.bondvu.com/quotmenu.htm.*

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information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman Sachs & Co.

The Commission also believes that pricing information for the Treasury securities should also be available. Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG.

CHX represents that every 15 seconds a price calculated by Bloomberg reflecting the current value of the Portfolio Deposit on a per ETF share basis for the Funds will be disseminated. To calculate this intra-day value, Bloomberg intends to use Bloomberg Generic Prices, which are current prices for individual bonds as determined by Bloomberg using an automated pricing program that analyzed multiple bond prices contributed by third-part price contributors such as broker-dealers.[27] Accordingly, NYSE believes that the pricing of the bonds included in the Portfolio Deposit (and in the Redemption Basket) will be transparent to anyone with access to Bloomberg systems. Because the arbitrageurs of ETF shares are generally large institutional investors, including broker-dealers, the Commission believes that these investors likely will have access to Bloomberg systems, as well as other bond pricing information sources that should permit efficient arbitrage to occur. While the Commission believes that differences in the liquidity and pricing transparency of the underlying fixed income markets, as compared to the equity markets, may result in the Funds trading at slightly higher discounts and premiums, the Commission does not believe that this effect is likely to be so substantial as to undermine the benefits that Funds will provide to the markets and to investors. The Commission expects the Exchange to review the discounts or premiums for these products and to respond appropriately if there is in fact a significant pricing disparity.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in Barclays ETF shares without delivery a prospectus to the purchaser. Instead, under the exemption and under CHX's listing standards, sales in the secondary market must be accompanied by a "product description," describing the ETF and its shares.[28] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under CHX Article XXVIII, Rule 24 the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under CHX Article VIII, Rule 25 ("know your customer rule") regarding transactions in such Fixed Income ETFs. CHX Article VIII, Rule 25 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted. The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Funds is consistent with Section 6(b)(5) of the Exchange Act.[29]

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Investment Company Unit listing standards in CHX Article XXVIII, Rule 24, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the Funds.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Investment Company Units, including Funds. Funds will be deemed equity securities subject to CHX rules governing the trading of equity securities. These rules include general and floor rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions, members dealing for their own accounts, specialists, odd-lot brokers, and market makers, and handling of orders and reports; office rules, such as conduct of accounts, margin rules, and advertising; and contract rules, such as duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans.[30] CHX also will consider halting trading in any series of Investment Company Units under certain other circumstances such as the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.[31] The Commission believes that the application of these rules should strengthen the integrity of the Funds.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development and maintenance of a stock index upon which an ETF is based. Previously, the Commission noted the importance of an exchange adopting adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in a fixed income securities index.[32] Goldman and Lehman each have procedures in place to prevent the misuse of material, non-public information regarding changes to component stocks to the Funds. [33] The Commission believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices.

The Commission also believes that CHX has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

CHX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. CHX has requested accelerated approval because the 1940 Act Application relating to the Funds has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.[34] The Application disclosed the characteristics and risks associated with the Funds. No comments were submitted and the Commission granted the relief requested in the Application.[35] The Funds will trade on the Exchange in the same manner as Investment Company Units previously approved by the Commission. Furthermore, the Commission notes that it recently granted accelerated approval to the requests of the Amex and NYSE to list and trade fixed income ETFs.[36] Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[37] that the proposed rule change (File No. SR–CHX–2002–27), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[38]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–29541 Filed 11–20–02; 8:45 am]

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[27] The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

[28] Recently approved Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks ("ECNs") would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of Funds.

[29] 15 U.S.C. 78f(b)(f).

[30] Telephone conversation between Ellen J. Neely, Senior Vice President and General Counsel, CHX; and Jennifer Lewis, Division, Commission, on November 7, 2002.

[31] *Id.*

[32] *See* supra, note 4.

[33] The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

[34] Investment Company Act Release No. 25594 (May 29, 2002), 67 FR 38681 (June 5, 2002).

[35] Investment Company Act Release No. 25622 (June 25, 2002).

[36] *See supra*, note 5.

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.3–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3463]

State of Alabama

As a result of the President's major disaster declaration on November 14, 2002, I find that Barbour, Bibb, Blount, Calhoun, Cherokee, Cleburne, Cullman, Dale, DeKalb, Etowah, Fayette, Franklin, Greene, Hale, Henry, Houston, Jefferson, Lamar, Lawrence, Marion, Marshall, Morgan, Pickens, Shelby, St. Clair, Talladega, Tuscaloosa, Walker and Winston Counties in the State of Alabama constitute a disaster area due to damages caused by severe storms and tornadoes occurring on November 5 through November 12, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 13, 2003 and for economic injury until the close of business on August 14, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bullock, Chilton, Clay, Coffee, Colbert, Coosa, Geneva, Jackson, Lauderdale, Limestone, Madison, Marengo, Perry, Pike, Randolph, Russell and Sumter in the State of Alabama ; Holmes and Jackson counties in the State of Florida; Carroll, Chattooga, Clay, Dade, Early, Floyd, Haralson, Polk, Quitman, Seminole, Stewart and Walker counties in the State of Georgia; Itawamba, Lowndes, Monroe, Noxubee and Tishomingo counties in the State of Mississippi.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.324

The number assigned to this disaster for physical damage is 346312. For economic injury the number is 9S5500 for Alabama; 9S5600 for Florida; 9S5700 for Georgia; and 9S5800 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 15, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–29648 Filed 11–20–02; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3464, State of Mississippi

As a result of the President's major disaster declaration on November 14, 2002, I find that Clay, Lowndes, Monroe, Noxubee and Oktibbeha Counties in the State of Mississippi constitute a disaster area due to damages caused by severe storms and tornadoes occurring on November 10 through November 11, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 13, 2003, and for economic injury until the close of business on August 14, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Chickasaw, Choctaw, Itawamba, Kemper, Lee, Webster and Winston in the State of Mississippi; Marion, Lamar, Pickens and Sumter counties in the State of Alabama.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	

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	Percent
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 346412. For economic injury the number is 9S5900 for Mississippi; and 9S6000 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 15, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–29650 Filed 11–20–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3462]

State of Tennessee

As a result of the President's major disaster declaration on November 13, 2002, I find that Anderson, Bedford, Carroll, Coffee, Crockett, Cumberland, Gibson, Henderson, Madison, Marshall, Montgomery, Morgan, Rutherford, Scott, Sumner and Tipton Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on November 9 through November 12, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 13, 2003 and for economic injury until the close of business on August 13, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Benton, Bledsoe, Campbell, Cannon, Cheatham, Chester, Davidson, Decatur, Dickson, Dyer, Fayette, Fentress, Franklin, Giles, Grundy, Hardeman, Hardin, Haywood, Henry, Houston, Knox, Lauderdale, Lincoln, Loudon, Macon, Maury, Moore, Obion, Pickett, Putnam, Roane, Robertson, Rhea, Shelby, Stewart, Trousdale, Union, Van Buren, Warren, Weakley, White, Williamson and Wilson in the State of Tennessee; Crittenden and Mississippi counties in the State of Arkansas; Allen, Christian, McCreary, Simpson, Todd, Wayne and Whitley counties in the State of Kentucky.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 346212. For economic injury the number is 9S5200 for Tennessee; 9S5300 for Arkansas; and 9S5400 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 15, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–29649 Filed 11–20–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Internet Social Security Disability Report–Child—20 CFR 404.1512 and 416.912—0960–NEW.* SSA is developing an Internet Social Security Disability Report—Child. This Internet application, I3820, will collect information about a child who is applying for disabled child's benefits. It will solicit the details of the child's condition, how the condition affects the child's day-to-day life, and his or her medical treatment sources and/or other medical sources of evidence. Respondents will provide information on the disabled child by completing a series of screens on a personal computer. The information will then be transmitted to SSA electronically. However, until such time as SSA develops an acceptable electronic signature process and implements a Disability Determination Services (DDS) electronic disability process, applicants will also print, sign and mail a text formatted summary of the answers given on I3820. They will also print, sign and mail copies of the medical release form (SSA–827). The information collected on I3820 will be used by the State DDS's to develop medical evidence and to assess the alleged disability. The respondents will be applicants for child's disability benefits who opt to file via the Internet.

Type of Request: New information collection.

Number of Respondents: 52,300.

Frequency of Response: 1

Average Burden Per Response: 2 hours.

Estimated Annual Burden: 104,600 Hours.

2. *Work Activity Report—Employee—0960–0059.* Form SSA–821–BK collects information that determines whether individuals have worked in employment after becoming disabled and, if so, whether the work is substantial gainful activity. The data is reviewed and evaluated to determine if the recipient continues to meet the disability requirements of the law. The respondents are title II beneficiaries and title XVI recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 225,000 hours.

3. *Permanent Residence Under Color of Law—20 CFR 416.1615 and 416.1618–0960–0451.* Under Public Law (Pub. L.) 104–193, effective August 22, 1996, a noncitizen must be a "qualified alien" and meet certain additional requirements in order to be eligible for SSI. This law also established an exception to the new requirements for certain "nonqualified aliens" (*i.e.*, noncitizens who are not qualified aliens) who were receiving SSI on August 22, 1996. The exception allowed nonqualified aliens to remain on the rolls until September 30, 1997, at which time benefits would be suspended if the aliens had not acquired qualified alien status. Pub. L. 105–33 extended the suspension date to September 30, 1998 and Pub. L. 105–306, enacted October 28, 1998, provided that nonqualified aliens who are receiving SSI on August 22, 1996 would remain eligible after September 30, 1998 as long as other requirements were met (*e.g.*, income and resources, *etc.*). SSI eligibility for this group of aliens, "grandfathered nonqualified aliens," will continue to be determined based on the rules governing alien eligibility in effect prior to August 22, 1996, *i.e.*, the PRUCOL standard. Under this standard, PRUCOL aliens must present evidence of their status to SSA at the time of application and periodically thereafter. SSA will verify the validity of the evidence of PRUCOL aliens with the Immigration and Naturalization Service. Based on the INS response, SSA will determine whether the individual is eligible for SSI payments. The respondents are alien applicants for and recipients of SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 9,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 750 hours.

4. *Instructions for Completion of Federal Assistance Application—0960–0184.*

The information on Form SSA–96 will be used to assist the Commissioner in selecting grant proposals for funding based on their technical merits. The information will also assist in evaluating the soundness of the design of the proposed activities, the possibilities of obtaining productive results, the adequacy of resources to conduct the activities and the relationship to other similar activities that have been or are being conducted. The respondents are State and local Governments, State-designated protection and advocacy groups, colleges and universities and profit and nonprofit private organizations.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 8.

Average Burden Per Response: 14 hours.

Estimated Annual Burden: 22,400 hours.

5. *Certificate of Election for Reduced Spouse's Benefits—0960–0398.* SSA uses the information on the certificate of election, collected on form SSA–25, as the spouse's request for reduced benefits for the month of filing, and for months preceding the month of filing, as designated by the spouse (but not to exceed 12 months). The spouse must file a certificate of election with SSA to elect reduced benefits, if an entitled spouse (age 62–64) no longer has an entitled child in care. The respondents are individuals or households.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 1,000 hours.

6. *Annual Registration Statement Identifying Separated Participants with Deferred Benefits, Schedule SSA—0960–0606.* Schedule SSA is a form filed annually as part of a series of pension plan documents required by Section 6057 of the IRS Code. Administrators of pension benefit plans are required to report specific information on future plan benefits for those participants who left plan coverage during the year. SSA maintains the information until a claim for Social Security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for payments from the private pension plan. The respondents are administrators of pension benefit plans or their service providers employed to prepare the Schedule SSA on behalf of the pension benefit plan. Below are the estimates of the cost and hour burdens for completing and filing Schedule SSA(s). We have used an average to estimate the hour burden. However, the burden may be greater or smaller depending on whether the respondent is a large or small pension benefit plan and how many Schedule SSA's are filed in a given year.

Type of request: Extension of an OMB-approved information collection.

Number of Respondents: 88,000.

Frequency of Response: Annually.

Average Burden Per Respondent: 2.5 hours.

Estimated Annual Burden: 220,000 hours.

Estimated Annual Cost Burden for All Respondents: $12,194,400.

7. *Internet Report of Continuing Disability Interview—20 CFR 404.1589 and 20 CFR 416.989—0960–NEW.*

Background

The Government Paperwork Elimination Act (GPEA) of 1998 directed federal agencies to develop electronic service delivery instruments as an alternative to traditional paper-based methods. As a result, the Social Security Administration is actively expanding its Internet services to enable citizens to complete the application process as well as to process their requests for post-entitlement transactions online. One of the initiatives in this process is the development of the Internet version of the current paper-based form entitled Report of Continuing Disability Interview, SSA–454–BK, which is used by the agency in the continuing disability review (CDR) process.

The Collection

SSA will use the Internet Report of Continuing Disability Interview (I454) to collect information from individuals receiving disability benefits or their representatives. The information collected will be used to determine whether a person who receives Social Security benefits and/or SSI, based on disability or blindness continues to be disabled. The report will update the record of the disabled individual, providing information on recent medical treatment, vocational and educational experiences, work activity and evaluations of the potential for return to work. On the basis of the responses, additional medical and other evidence is developed to assist SSA in determining whether their disability continues or has ended, and if so when

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the disability ended. Respondents to 1454 are disabled individuals scheduled for CDRs.

Type of request: New information collection.

Number of Respondents: 85,200.

Frequency of Response: 1 per respondent.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 170,400 hours.

8. *Integrated Registration for Employers and Submitters (IRES)—0960–0626.*

The IRES authentication system is a free service designed to allow employers to access SSA's electronic wage reporting services, and to replace the use of a handwritten signature with an electronic signature. Employer representatives use an IRES generated PIN and password as their electronic signature. IRES was designed to be more efficient, reducing the costs to both employers and SSA, and will facilitate the filing of wage data electronically. SSA's paramount interest in the development of IRES was to ensure that the new electronic method of identifying wage report submitters provides the same security features as the current paper-based method. Security features include message integrity, originator authentication, non-repudiation and confidentiality. The PIN and password will be issued to an individual designated by the employer after SSA authenticates the company and contact information provided by the individual. SSA uses the IRES in conjunction with SSA's wage reporting processes. It is used as the gateway for electronic wage reporting and the online employee verification service. IRES will also be used when SSA implements additional electronic services such as electronic notices and error information, and to authenticate representatives of organizational representative payees in a limited Proof of Concept study. Also, the PIN will be used in the Annual Wage Reporting diskette process to replace the signature on IRS paper form 6559. SSA has received approval from IRS to use an alternative signature. Respondents to IRES will be Employers and Submitters who utilize SSA's electronic wage reporting and online employee verification services.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 250,040.

Number of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 8,335 hours.

9. *Report of New Information in Disability Cases—20 CFR 404.460, 404.468, 404.408 & 404.1588—0960–0071.* The information collected on Form SSA–612 is used to update the disability records of respondents, based on changes reported. The form is used to gather information on a number of topics that can affect the beneficiary's or the applicant's entitlement to disability benefits. This includes, but is not limited to, information about a return to work, improvement in the medical condition, workers' compensation settlements or representative payee issues. The respondents are applicants for and recipients of Title II disability benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 27,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,250 hours.

10. *Vocational Rehabilitation "301" Program Development—20 CFR, 404.408, 404.460 & 404.468, Subpart E and 20 CFR, 404.1588, Subpart P—0960–0282.* SSA uses Form SSA–4290 to collect information to determine whether an individual, whose disability or blindness has ceased, is eligible for continued benefit payments because of participation in an approved program of vocational rehabilitation services, employment services or other support services. The respondents are State vocational rehabilitation agencies, other public or private providers of vocational rehabilitation services and employment services or other support services.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 8,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 2,000 hours.

11. *Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Adult, Form SSA–3988–TEST; Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Child, Form SSA–3989–TEST—20 CFR Subpart B—416.204—0960–0643.*

Background

The Social Security Act mandates periodic redeterminations of the non-medical factors that relate to the SSI recipients' continuing eligibility for SSI payments. Recent SSA studies have indicated that as many as two-thirds of all scheduled redeterminations completed, with the assistance of a SSA employee, did not result in any change in circumstances that affected payment. Therefore, SSA is planning to increase the number of respondents and revise the test methodology of the currently approved test forms. The expansion of the test is needed to further validate whether the test redetermination process actually results in significant operational savings and a decrease in recipient inconvenience, while still timely obtaining the accurate data needed to determine continuing eligibility through the process.

The Collection

A test of forms SSA–3988–TEST and SSA–3989–TEST will be used to determine whether SSI recipients have met and continue to meet all statutory and regulatory non-medical requirements for SSI eligibility, and whether they have been and are still receiving the correct payment amount. The SSA–3988–TEST and SSA–3989–TEST are designed as self-help forms that will be mailed to recipients or to their representative payees for completion and return to SSA. The objectives of the expanded test are to determine the public's ability to understand and accurately complete the test forms. The respondents are recipients of SSI benefits or their representatives. In addition, SSA wants to determine the public's ability to understand and accurately complete a supplemental SSA–3988, which will be directed to a sample of beneficiaries that continue to receive Medicaid, but whose earnings from work are too high to allow payment of SSI benefits.

Type of Request: Revision of an OMB-approved information collection.

	Respondents	Frequency of response	Average burden per response (min.)	Estimated annual burden (hours)
SSA–3988–TEST	46,500	1	20	15,500
SSA–3988–SUP–TEST2	2,000	1	21	700

	Respondents	Frequency of response	Average burden per response (min.)	Estimated annual burden (hours)
SSA–3989–TEST	8,500	1	20	2,833
Total burden				19,033

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Authorization to Disclose Information to the Social Security Administration—20 CFR Subpart O, 404.1512 and Subpart I, 416.912—0960–0623. SSA must obtain sufficient medical evidence to make eligibility determinations for the Social Security disability benefits and SSI payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use one of the forms SSA–827, SSA–827 OP1 or SSA–827 OP2 to provide consent for the release of information. Generally, the State DDS completes the form(s) based on information provided by the applicant, and sends the form(s) to the designated medical source(s). The respondents are applicants for Social Security disability benefits and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,853,928.

Frequency of Response: 4.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2,569,285 hours.

Dated: November 15, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–29570 Filed 11–20–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4208]

Culturally Significant Objects Imported for Exhibition Determinations: "The Dead Sea Scrolls"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "The Dead Sea Scrolls," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Public Museum of Grand Rapids, Grand Rapids, Michigan, from on or about February 16, 2003, to on or about June 1, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: November 14, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–29594 Filed 11–20–02; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Textiles and Apparel (ISAC–15)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of an opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Textiles and Apparel (ISAC–15) will hold a meeting on December 10, 2002, from 10 a.m. to 12 p.m. The meeting will be opened to the public from 10 a.m. to 12 p.m.

DATES: The meeting is scheduled for December 10, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held at the North Carolina Center for Applied Textile Technology, 7220 Wilkinson Boulevard, Belmont, North Carolina.

FOR FURTHER INFORMATION CONTACT: Maria D'Andrea, DFO for ISAC–15 at (202) 482–4058, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or Christina Sevilla, Director for Intergovernmental Affairs, on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda item will be discussed.

- Department of Commerce (DOC)/Department of Energy (DOE) Project to Explore the Development of a Special "Textile Marker System."

Christopher A. Padilla,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 02–29537 Filed 11–20–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3584]

Proposed Modernization of the Coast Guard National Distress and Response System

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of finding of no significant impact.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's Regulations for Implementing NEPA, the U.S. Coast Guard announces that it has approved its Supplemental Program Environmental Assessment (SPEA) and has made available its Finding of No Significant Impact (FONSI) for the proposed modernization of the National Distress and Response System (NDRS) known as "Rescue 21."

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ADDRESSES: Both the SPEA and FONSI are available for review or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC, between the hours 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. The documents may also be viewed on the Internet at Web address: http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, the Supplemental Program Environmental Assessment, or the Finding of No Significant Impact, call Ms. Donna M. Meyer, Environmental Program Manager, National Distress and Response System Modernization Project, U.S. Coast Guard Headquarters, at 202–267–1496. For questions on viewing material in the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality's Regulations for Implementing NEPA (40 CFR parts 1500–1508), the Coast Guard is announcing that it has approved its Supplemental Program Environmental Assessment (SPEA) and has made available its Finding of No Significant Impact (FONSI) for the proposed modernization of the National Distress and Response System (NDRS) known as "Rescue 21."

Supplemental Program Environmental Assessment

The Coast Guard prepared an SPEA that assessed the impacts of the no action alternative and three action alternatives that could meet the system requirements for modernizing the National Distress and Response System (NDRS). On September 30, 2002, we published a notice of availability of the SPEA in the **Federal Register** (67 FR 61372). We also circulated 183 copies of the SPEA to interested persons. During the comment period, September 27, 2002, to October 28, 2002, a total of 18 comment letters were received. We reviewed the comments but they revealed no new or additional environmental information.

Finding of No Significant Impact

After considering the comments received during the review and comment period, the Coast Guard issued a Finding of No Significant Impact as a result of modernizing the National Distress and Response System. The modernization of the NDRS will utilize a combination of all three of the action alternatives analyzed in the SPEA by using existing antenna towers, leasing antenna space from a service provider, or constructing a new antenna tower site.

The purpose of this notice is to inform local, State, and Federal government agencies and the public that the Supplemental PEA and FONSI are available for review.

Dated: November 12, 2002.

C.D. Wurster,

RADM, U.S. Coast Guard, Assistant Commandant for Acquisitions.

[FR Doc. 02–29652 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13812]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Hazardous Cargo Security will meet to discuss security issues as they relate to the marine transportation of chemicals. This meeting will be open to the public.

DATES: The Subcommittee will meet on Wednesday, December 4, 2002, from 8 a.m. to 4 p.m. and Thursday, December 5, 2002, from 8 a.m. to 4 p.m. This 2-day meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 27, 2002. Requests to have a copy of your material distributed to each member of the Subcommittee should reach the Coast Guard on or before November 27, 2002.

ADDRESSES: The Subcommittee will meet at American Commercial Barge Line (ACBL) Company, 1701 E. Market St., Jeffersonville, Indiana. Send written material and requests to make oral presentations to Lieutenant Richard Teubner, Coast Guard Technical Representative for the Subcommittee, Commandant (G–MPS–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Lieutenant Richard Teubner, the Coast Guard Technical Representative for the Subcommittee, telephone 202–267–4129, fax 202–267–4130.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the 2-day meeting of the CTAC Subcommittee on Hazardous Cargo Security includes the following:

(1) Introduce subcommittee members and attendees.

(2) Review subcommittee tasking and desired outcome.

(3) Discuss ways to increase marine security awareness within the chemical transportation industry.

(4) Discuss ways to identify cargoes that warrant concern and establish a means to create secure transit environments for such cargoes.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the discretion of the Subcommittee Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard Technical Representative for the Subcommittee and submit written material on or before November 27, 2002. If you would like a copy of your material distributed to each member of the Subcommittee in advance of the meeting, please submit 25 copies to the Coast Guard Technical Representative for the Subcommittee no later than November 27, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Coast Guard Technical Representative for the Subcommittee as soon as possible.

Dated: November 14, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–29655 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 145–MAN, Guide for Developing and Evaluating Repair Station and Quality Control Manuals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a proposed AC; extension of Comment period.

SUMMARY: This notice announces the extension of the comment period on proposed AC 145–MAN, which provides an acceptable means, but not the only means, of developing manuals that are required by regulation for aeronautical repair stations. This notice is necessary to give all interested persons the opportunity to present their views about the proposed AC.

DATES: Comments about the proposed AC must be received on or before February 5, 2002.

ADDRESSES: Send comments about the proposed AC to Diana L. Frohn, General Aviation and Commercial Branch (AFS–340), Room 827, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–7027; e-mail: *diana.frohn@faa.gov*. You can also submit comments electronically using the Internet on the "Draft AW documents" page at *http://www.opspecs.com*. Comments may be inspected at the above office between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diana L. Frohn at the above address, e-mail address, or telephone number.

Availability of the of the Proposed Avisory Circular

You can get a copy of the proposed AC by contacting the person named under **FOR FURTHER INFORMATION CONTACT.** You can also get an electronic copy of the proposed AC using the Internet on the "Draft AW documents" page at *http://www.opspecs.com* or on the FAA's "Regulatory Guidance Library" page at *http://www1.airweb.faa.gov/Regulatory_and_Guidance_Library/rgDAC.nsf/MainFrame?OpenFrameSet*.

Comments Invited

Interested persons are invited to comment about the proposed AC by sending written data, views, or arguments. Commenters should indicate AC 145–MAN, Guide for Developing and Evaluating Repair Station and Quality Control Manuals, in the comment and send comments to the address specified above. The Continuous Airworthiness Maintenance Division will consider all comments before issuing the final AC.

Background

This proposed AC is the result of an amendment to part 145 of Title 14, Code of Federal Regulations (14 CFR), published in the **Federal Register** on August 6, 2001. The final rule changed procedures and requirements for aeronautical repair stations and requires repair stations to develop a repair station manual and a quality control manual. The current AC (AC 145–3, dated February 13, 1981) does not incorporate these new procedures and requirements, nor does it reflect industry practices used by certificated repair stations today. FAA, therefore, finds it necessary to discard current guidance materials and proposed new guidance material. This proposed AC would replace AC 145–3.

The proposed AC incorporates several examples of quality systems that repair stations may choose from to determine which best suits their individual needs. The proposed AC also incorporates several "checklists" to determine if the repair station has fully considered all its options and requirements. Further, this AC aids in the development of procedures and programs to assist the harmonizations efforts of FAA with the European Joint Aviation Authority and other regulatory authorities.

FAA will consider each comment about the proposed AC and incorporate appropriate changes. This proposed AC will be reviewed in conjunction with the regulatory requirements of 14 CFR parts 43, 65, and 121, as applicable. This proposed AC would not change, add, or delete any regulatory requirement or authorize any deviation from parts 43, 65, or 121.

Issued in Washington, DC on November 15, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–29666 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program and Determination on Noise Exposure Maps; Orlando Sanford International Airport, Sanford, Florida

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Sanford Airport Authority under the provisions of 49 U.S.C. 47501 *et. seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibility in Senate Report No. 96–52 (1980). On October 21, 2002, the FAA Approved the Orlando Sanford International Airport noise compatibility program. Most of the recommendations of the program were approved. The FAA also is announcing its determination that the noise exposure maps for Orlando Sanford International Airport for the years 2001 and 2006 and associated documentation, submitted with the noise compatibility program, are in compliance with applicable requirements of FAR Part 150 effective April 24, 2002.

EFFECTIVE DATE: The effective date of the FAA's approval of the Orlando Sanford International Airport Noise Compatibility Program is October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32882, (407) 812–6331, Extension 30. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Orlando Sanford International Airport, effective October 21, 2002, and that the noise exposure maps for this same airport are determined to be in compliance with applicable requirements of FAR Part 150.

Noise Exposure Maps: Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community,

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government agencies, and persons using the airport.

The FAA completed its review of the noise exposure maps and accompanying documentation submitted by Sanford Airport Authority for Orlando Sanford International Airport. The documentation that constitutes the "noise exposure maps" as defined in section 150.7 of Part 150 includes: Exhibit 7–1, "2001 DNL Noise Contours", Exhibit 10–2, "2006 DNL Noise Contours-Inclusive of All Operational Controls (With Future Land Use)", Tables 6–2 through 6–4, Baseline Operations, Tables 6–6 through 6–8, Forecast Operations, Table 6–11, Time of Day Operations, Exhibits 6–3 through 6–5, Arrival, Departure, and Training Tracks, and Exhibit 9–5, Helicopter Routes. The airport operator certified on December 28, 2001, that the 2001 and 2006 noise exposure map contours and accompanying documents are true and complete and that consultation required by section 150.21 was accomplished (page 8–1 of documentation). The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination was effective on April 24, 2002. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the noise exposure maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Noise Compatibility Program: Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations.

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Orlando Sanford International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 2006. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504(b) of the Act. The FAA began its review of the program on April 24, 2002, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submittal program contained nineteen (19) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator effective October 21, 2002.

Outright approval was granted for seventeen (17) specific program elements. One (1) element was disapproved for the purposes of Part 150, and one (1) element required no action at this time as the measure relates to flight procedures under section 47504(b) of the Aviation Safety and Noise Abatement Act. Additional review by the FAA is necessary. The FAA approved as voluntary the following flight procedures: (1) Maximize east flow at the airport between the hours of 6 a.m. and 11 p.m. (2) When the airport has a 24-hour control tower, between the hours of 11 p.m. to 6 a.m. maximize departures to the east and arrivals from the east (when air traffic conditions and weather permit); (3) For jet aircraft departures on Runway 9L, establish a departure turn that would direct northbound aircraft to turn to the northeast, as soon as possible after lift-off; (4) For jet departures to northern destinations on Runway 27R, establish a northwesterly turn approximately three miles west of the beginning of take-off roll on Runway 27R (a turn immediately west of US 17/92). (5) Maintain the current "close-in" procedure for jet aircraft departures on Runway 27R and implement the "distant" departure procedure for jet aircraft departures on Runway 9L; (6) During west flow (east flow is the preferred configuration at SFB), some aircraft are held at 2,000 feet in altitude to provide separation from crossing aircraft. Recent changes have been made to hold departing air carrier aircraft from SFB at the Runway 27R threshold. These aircraft are held until there is sufficient space to release the aircraft to depart without the 2,000-foot hold altitude restriction. Further improvements to this procedure should be pursued to allow more aircraft to have an unrestricted climb west out of SFB; and (7) A recommendation that departing helicopters ascend to and maintain 500 feet close to the airport, arriving helicopters maintain and descend from 500 feet close to the airport, having helicopters overfly roadways (in non-emergency situations) and maintain the highest altitude possible in the immediate vicinity of the airport.

The Flight procedure that was deferred pending FAA review is: For jet aircraft conducting ILS flight training on Runway 9L–27R direct aircraft to continue along the runway heading to gain altitude beyond the airport boundaries prior to making northerly turns. And the measure disapproved by the FAA for purposes of part 150 is the planned extension of Runway 9R–27L, which is included in the airport's master plan to enhance capacity. Although the airport proposes to design the extension on Runway 9R–27L to reduce noise impacts, its primary benefit is capacity.

Other measures approved by the FAA included: Evaluate the benefits of a noise fence (solid barrier) of sufficient height and length that noise during run-up activity would be directed up or reflected away from residences. The Sanford Airport Authority should also investigate the benefit of hush house options that would result in reduced noise exposure to close-in communities. Acquire three portable noise monitoring systems to be used in conducting short term monitoring in communities around the airport, in response to requests for short-term monitoring. It also will assist the SANAC and Authority in their efforts to provide information to the public and consider additional noise abatement measures. FAA's decision noted that monitoring equipment may not be used for enforcement purposes of aircraft in flight by in situ measurement of any present noise thresholds, for reasons of aviation safety.

FAA approved 8 land use measures, including: (1) Comprehensive Plans for both the City and the County should specifically identify that no new residential uses should be allowed in the 60 DNL contour; (2) The Land Development Codes for both the City and County should identify that no new residential uses should be allowed in thie 60 DNL; (3) Due to the planned southerly extension to Runway 18–36 and the amount of aircraft touch-and-go training activity south and east of the airport, it is preferred that no new residential uses be allowed east or south of the airport's new runway system to the Conservation area adjacent to Lake Jessup. If, due to other reasons, residential use must be permitted, no mobile homes or home ownership should be permitted; (4) No new public educational facilities should be allowed in areas east and south of the Airport, within the limits described in (3) Above; (5) If a restriction on all future residential uses can not be implemented for the entire area south and east of the airport, then, it is recommended that notification of noise exposure and overflight activity be required in the form of avigation easements for all new residential development in this area. FAA noted in its decision that FAA's policy published in 1998 (63 FR 16409) states that no Federal funding will be made available for mitigation of future noncompatible development on currently undeveloped land if it is located within the airport's published NEM contours; (6) One option for implementing additional limitations on residential use and requirements for avigation easements is through the use of overlay zoning. The overlay zone could include the property south of SR 46 and east of the currently zoned industrial areas located south of Runway 18–36 (east of Brisson Avenue South) to the Lake Jessup Conservation area. The overlay zone would allow permitted uses and development approval procedures instituted by the City and County but would identify additional residential use limitations and avigation requirements associated with the overlay zone. The FAA reiterated in 1998 policy in its decision here; (7) Airport staff should be notified of requests for modifications and related hearing dates for applications for planning and zoning modifications (comprehensive plan changes, land development code changes, site plan approval requests, rezoning, subdivision applications, etc.). An individual at the County, the City and the Airport staff should designated with the responsibility for this coordination; and (8) The airport proposes to offer to acquire incompatible property located in whole or in part within the DNL 65 dB noise contour of the official NEM's. The majority of the property would be east of the airport, although a few parcels are to the west and north within the DNL 65 dB noise contour. FAA stated in its decision that acquisitions are limited to existing non-compatible land uses located within the 65 DNL noise contour of the official NEM's, specifically "2001 DNL Noise Contours", and consistent with FAA's 1998 remedial mitigation policy (63 FR 16409).

These determinations are set forth in detail in a Record of Approval signed by the Associate Administrator on October 21, 2002.

Copies of the noise exposure maps and of the FAA's evaluation of the maps, and copies of the record of approval and other evaluation materials and the documents comprising the submittal to the FAA are available at the FAA office listed above and at the administrative office of the Sanford Airport Authority. Questions on either of these FAA determinations may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida on November 7, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 02–29455 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

User Input on the Use of the Current Icing Potential (CIP) Weather Product

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public meeting

SUMMARY: The FAA will hold an informal public meeting to seek aviation weather user input. Details: December 18, 2002; Federal Aviation Administration, 1575 "Eye" Street, Washington, DC.; 9 a.m. to 1 p.m. in the 9th Floor Conference Room. The objective of this meeting is to provide an opportunity for interested aviation weather users to discuss the use of the Current Icing Potential (CIP) product and provide input to FAA's plans for implementing this new weather product.

DATES: The meeting will be held in the 9th Floor Conference Room, 1575 "Eye" Street, Washington, DC Times: 9 a.m.–1 p.m. on December 18, 2002.

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FOR FURTHER INFORMATION CONTACT: Steve Albersheim, Aerospace Weather Policy Division, ARS–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7704; FAX: (202) 385–7701; e-mail: *steve.albersheim@faa.gov*. Internet address: *http:\\www.steve.albersheim@faa.gov*.

SUPPLEMENTARY INFORMATION:

History

On December 11, 2001, the Federal Aviation Administration's Aviation Weather Technology transfer (AWTT) Board approved the Current Icing Potential (CIP) for operational use. The CIP became operational in April 2002 for use by aviation meteorologists and airline operations center dispatchers who are trained on the use of the product. The CIP provides a graphical display of icing potential or the likelihood of icing in atmosphere. Further it allows users to obtain a visual portrayal of icing potential at different flight levels. The CIP does not indicate the severity of icing.

It is the intent of the FAA to allow all aviation users of the National Airspace System (NAS) to have access to this product. However, because the CIP cannot provide all the information that is currently contained in existing approved products as the AIRMET and SIGMET, limitations on its use have been stipulated.

The purpose of the proposed user meeting is to discuss needed changes in CIP to enable its use by pilots. The existing product uses input from satellite imagery and data, radar, surface observations, numerical models, and pilot weather reports to provide a three-dimensional diagnosis of hourly potential of icing and super cooled large droplets (SLD). Issues that need to be resolved for pilots is how this product in its planned future versions can be used in the following decisions: route/altitude selection, go-no go decisions, escape decisions, in-flight route changes, hazardous weather deviation, and landing decisions. It is important that pilots understand the attributes of the CIP and how it can be applicable in support of these various applications or decisions. This user meeting will begin the process to further evaluate how an improved CIP can be used to support these decisions. The meeting will be conducted in two parts

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Headquarters.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate.

(c) FAA personnel present will conduct a briefing on the AWTT process and the history of the approval of this product. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of the presentation that is not clear.

(d) FAA personnel will present a briefing on the physical attributes of the product and how the information is processed to provide a three-dimensional analysis of conventional and SLD icing potential in space and time. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of the presentation that is not clear

(e) FAA personnel will lead a discussion on issues that relate to what improvements are required in the next version of CIP to allow pilots to use this product in the applications listed above. Specific issues include: the validity period of the product and how icing severity can be linked with icing potential. Any person present may participate in the discussion.

(f) An official verbatim transcript or minutes of the informal meeting will not be made. However, a list of the attendees and a digest of discussions during the meeting will be produced. Any person attending may receive a copy of the written information upon request to the information contact, above.

(g) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback may also be submitted to FAA personnel for up to seven (7) days after the close of the meeting.

Agenda

(a) Opening Remarks and Discussion of Meeting Procedures.

(b) Briefing on AWTT Process history of the approval of this product.

(c) Briefing on the physical attributes of the product and information processing.

(d) Discussion on improvement issues for future versions of CIP.

(e) Closing Comments.

Issued In Washington, D.C. on November 21, 2002.

David Whatley,

Director, Aerospace Weather Policy and Standards Staff.

[FR Doc. 02–29453 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key West International Airport, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice.

In notice document 02–27731 appearing on page 64452, in the issue of Thursday, October 31, 2002, under Notice of Intent to Rule on Application, in the second column, in the 38th line, the PFC Application No., should read, 02–06–C–00–EYW.

In addition, under **SUPPLEMENTARY INFORMATION,** in the third column, in the 28th line, should read, "On October 22, 2002, the FAA determined * * *"

FOR FURTHER INFORMATION CONTACT: Susan A. Moore, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, (407) 812–6331, extension 20.

Issued in Orlando, Florida on November 13, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 02–29664 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–MSO To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Missoula International Airport, Submitted by the Missoula County Airport Authority, Missoula International Airport, Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Missoula International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 23, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David S. Stelling, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive, Helena, Montana 59602–1213.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John Seymour, AAE, Director of Airports: Missoula County Airport Authority, 5225 Highway 10 West, Missoula, Montana 59808.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Missoula International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David S. Stelling, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive, Helena, Montana 59602–1213. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–04–C–00–MSO to impose and use PFC revenue at Missoula International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 13, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Missoula County Airport Authority, Missoula International Airport, Missoula, Montana, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 5, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge—effective date: February 1, 2004.

Proposed charge—expiration date: April 1, 2006.

Total requested for use approval: $832,464.

Brief description of proposed project:

Rehabilitate air carrier apron (Phrase 2).

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Missoula International Airport.

Issued in Renton, Washington on November 13, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–29663 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Palm Beach International Airport, West Palm Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice. In notice document 02–26585 appearing on page 64444 in the issue of Friday, October 18, 2002, under **SUPPLEMENTARY INFORMATION,** in the first column, in the 48th line, the PFC Application No., should read, 02–07–C–00–PBI.

FOR FURTHER INFORMATION CONTACT: Matthew J. Thys, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, (407) 812–6331.

Issued in Orlando, Florida on November 13, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 02–29665 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Proposed Policy Statement No. ANE–2002–35.15–R0]

Policy for Propeller Safety Analysis

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy for propeller safety analysis.

DATES: Comments must be received by January 20, 2003.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jay.turnberg@faa.gov;* telephone: (781) 238–7116; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statement is available on the Internet at the following address: *http//www/airweb/faa/gov/rgl.* If you do not have access to the Internet, you may request a copy by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.** The FAA invites interested parties to comment on the proposed policy. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all comments received by the closing date before issuing the final policy.

Background

The intent of this proposed policy is to provide guidance for conducting a propeller safety analysis. Although part 35 of Title 14 of the Code of Federal Regulations (14 CFR part 35) does not explicitly require a safety analysis, safety analyses are frequently conducted to support part 35 requirements, special conditions, and aircraft manufacturer certification requirements. The proposed policy would not establish new requirements.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on November 6, 2002.

Francis A. Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29662 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–111–05]

Policy Statement With Respect to Part 25 Transport Category Airplanes Utilizing Displays With Geometric Altitude Labeled as a Mean Sea Level (MSL)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy that clarifies current FAA policy with respect to part 25 transport category airplanes utilizing displays with geometric altitude labeled as a mean sea level (MSL).

DATES: Send your comments on or before December 23, 2002.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Ken Schroer, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1154; fax (425) 227–1320; e-mail: *ken.schroer@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm*. If you do not have access to the Internet, you can obtain a copy of the policy statement by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement ANM–02–111–05."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed general statement of policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

This memorandum clarifies Federal Aviation Administration (FAA) certification policy with respect to installations that label Global Positioning System (GPS) derived geometric altitude as Mean Sea Level (MSL) altitude. The issue concerns the Terrain Awareness and Warning Systems (TAWS), Global Navigation Systems (GNS), and any other installation in which GPS derived altitude is presented as MSL altitude.

Regardless of the higher altitude accuracy that can be derived from GPS data, barometric altitude referenced to MSL remains the present standard used in the U.S. and internationally for vertical navigation. Even though there may be altitude errors while using barometric altitude, all aircraft within a particular sector are navigating (in principle) with the same error. Since there is a potential for large differences between barometric altitude and GPS derived altitude, labeling both as MSL may result in confusion and improper vertical navigation during high flightcrew workloads.

Issued in Renton, Washington, on November 13, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29659 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Alameda and Contra Costa Counties, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Alameda and Contra Costa Counties.

FOR FURTHER INFORMATION CONTACT: Maiser Khaled, Chief District Operations—North, Federal Highway Adminstration, California Division, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 498–5020 or John Webb, Chief Environmental Management, Caltrans North Region, Sacramento Area Office, PO Box 942874, Sacramento, CA. 94274–0001, Telephone: (916) 274–0588.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) for a proposed project to construct a forth bore of the Caldecott tunnel between the State Route 24/Broadway interchange in the City of Oakland in Alameda County and the State Route 24/Camino Pablo interchange in the City of Orinda in Contra Costa County, California.

Improvements to the corridor are considered necessary to alleviate congestion, improve safety, and provide for existing and projected trafic demand. Alternatives under consideration include (1) taking no action; (2) a 2-lane bore North or South; (3) a 3-lane bore North or South; and (4) a 4-lane bore North or South.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Two public scoping meetings will be held. One public scoping meeting will be held in the evening on December 11 at 6:30 p.m. at the Orinda Masonic Center, 9 Altarinda Road in Orinda. A second public scoping meeting will be held in the evening on December 12 at at 6:30 p.m. at the MetroCenter Auditorium, 101 Eighth Street in Oakland. Additional public meetings will be held. In addition, a public hearing will be held. The draft EIS will be available for public and agency review and comment prior to the public hearing. Public notice will be given of the exact time and location of the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 14, 2002.

Maiser Khaled,

Chief, District Operations—North Sacramento, California.

[FR Doc. 02–29564 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–13494

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the signal system, between milepost CTT–19.8 and milepost CTT–22.O, "WR Tower," on the Toledo Terminal Subdivision, Detroit Division, near Toledo, Ohio. The proposed changes are associated with the removal of the manually controlled location at "WR Tower," conversion of the method of operation between milepost CTT–19.8 and CTT–21.2 from Interlocking Rules 255–259 to Traffic Control System Rules 265–272, and relocation of control of the area to the dispatch center in Jacksonville, Florida. The proposed changes include removal of signals 44R, 44RC, and 44L, conversion of the power-operated No. 43 switch to hand operation, and removal of the power-operated derail switch between the outer yard and the Walbridge Yard.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on November 13, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–29656 Filed 11–20–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 23, 2002.

Address Comments to: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 18, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
New Exemptions				
13161–N	RSPA–02–13796	Honeywell International Inc., Morristown, NJ.	49 CFR 172.301(a)(1), 172.301(c), 172.400, 172.504, 173.202.	To authorize the transportation in a commerce of small quantity of Class 3 hazardous material in specially designed packaging to be transported as unregulated. (Modes 1, 4.)

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Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13164–N	RSPA–02–13802	United States Enrichment Corporation (USEC), Bethesda, MD.	49 CFR 173.420	To authorize the one-time transportation in commerce of 480M type cylinders for use in transporting Class 7 hazardous materials. (Modes 1, 2.)
13165–N	RSPA–02–13803	Harris Corporation, Melbourne, FL.	49 CFR 172.200	To authorize the transportation in commerce of non-bulk hazardous materials within the same facility along public roads with alternative shipping papers. (Mode 1.)

[FR Doc. 02–29657 Filed 11–20–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 6, 2002.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 18, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
11650–M		Autoliv ASP, Inc. Ogden, UT (See Footnote 1)	11650
12104–M	RSPA–98–4039	Mitsubishi Polyester Film, Greer, SC (See Footnote 2)	12104
12782–M	RSPA–01–10318	Air Liquide America L.P., Houston, TX (See Footnote 3)	12782
12927–M	RSPA–02–11628	Tri-Wall, A Weyerhaeuser Business, Butler, IN (See Footnote 4)	12927
12995–M	RSPA–02–12220	The Dow Chemical Company, Midland, MI (See Footnote 5)	12995
13032–M	RSPA–02–12442	CONAX Florida Corporation, St. Petersburg, FL (See Footnote 6)	13032
13100–M	RSPA–02–13244	Aztec Peroxides, Elyria, OH (See Footnote 7)	13100
131214–M	RSPA–02–13421	Brenntag Mid-South, Inc., Henderson, KY (See Footnote 8)	13124

[1] To modify the exemption to authorize a newly designed airbag inflator device with a maximum service pressure of 8500 PSIG for use as a component of a automobile vehicle safety system.

[2] To modify the exemption to upgrade loading procedures and drawings for the DOT Specification tank cars transporting Class 9 materials.

[3] To modify the exemption to authorize the transportation of certain Division 2.2 and 2.3 materials in DOT Specification cylinders equipped with plastic valve protection caps.

[4] To modify the exemption to authorize cargo vessel as an additional mode for the transportation of various waste hazardous materials.

[5] To modify the exemption to authorize the transportation of a Division 2.2 material in DOT 2Q Specification on-refillable containers.

[6] To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification, non-refillable composite pressure vessels for the transportation of Division 2.2 materials.

[7] To reissue the exemption originally issued on an emergency basis for the transportation of a Division 5.2 material in a UN31HAI intermediate bulk container (IBC).

[8] To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 8 materials in UN31H1 or UN31H2 intermediate bulk containters (IBC).

[FR Doc. 02–29658 Filed 11–20–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34273]

Indiana Northeastern Railroad Company—Change In Operators Exemption—Branch and St. Joseph Counties Rail Users Association, Inc.

Indiana Northeastern Railroad Company (INR), a Class III rail carrier, and the Branch and St. Joseph Counties Rail Users Association, Inc. (RUA) have jointly filed a notice of exemption under 49 CFR 1150.41 for INR to operate over approximately 24.34 miles of rail line owned by the RUA, from milepost 382.5 near Coldwater, MI, to milepost 406.84 near Sturgis, MI, in Branch and St. Joseph Counties, MI.[1]

The transaction was expected to be consummated on or shortly after November 1, 2002, the effective date of the exemption (7 days after the notice was filed).[2]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34273, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Carl M. Miller, 618 Professional Park Drive, PO Box 332, New Haven, IN 46774 [Attorney for INR], and Charles R. Bappert, Biringer, Hutchinson, Lillis & Bappert, P.C., 100 West Chicago Street, Coldwater, MI 49036–1897 [Attorney for RUA].

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 12, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29328 Filed 11–20–02; 8:45 am]
BILLING CODE 4915–00–P

[1] INR currently operates over that portion of RUA's rail line that runs from milepost 376.56, east of Quincy, MI, to milepost 386.96, west of Coldwater, in Branch County, MI. Michigan Southern Railroad Company, Inc., Michigan Southern Railroad Company f/k/a The Wabash & Western Railroad Company (collectively, Michigan Southern), currently operates over RUA's line from Coldwater to Sturgis, which is the portion of the line involved in the instant transaction. Michigan Southern and INR currently jointly operate that portion of RUA's line between milepost 382.5 (Coldwater) and milepost 386.96. *See The Indiana Northeastern Railroad Company—Operation Exemption—Branch and St. Joseph Counties Rail Users Association, Inc., in Branch County, MI*, STB Finance Docket No. 33760 (STB served June 30, 1999).

[2] The notice indicates that an agreement has been reached between INR, RUA and Michigan Southern, for Michigan Southern's operating rights to be transferred to INR upon the effective date of this notice. Thus, after this transaction, INR will be the sole operator over RUA's line from milepost 376.56 (Quincy) to milepost 406.84 (Sturgis). INR and RUA state that all shippers on the line have been notified of the change in operators, and that a copy of this verified notice of exemption was sent to Michigan Southern.

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determination Concerning Laser Printer Engines

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain laser printer engines which are sold to OEM's to be incorporated into laser printers which will be offered to the United States Government. The final determination found that, based upon the facts presented, the country of origin of laser printer engines is Japan.

DATES: The final determination was issued on November 8, 2002. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch, Office of Regulations and Rulings (202–572–8838).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 8, 2002, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued a final determination concerning the country of origin of certain laser printer engines which are sold to OEM's to be incorporated into printers offered to the United States Government . The U.S. Customs ruling number is HQ 562502. This final determination was issued at the request of Canon, Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that, based upon the facts presented, the assembly of the laser scanner unit subasssembly in Japan and the final assembly in Japan of the laser scanner unit with other components to create certain laser printer engines results in a substantial transformation of the components imported into Japan. Accordingly, the country of origin of the printer engines is Japan.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of November 21, 2002.

Dated: November 8, 2002.

Glen E. Vereb,

Acting Assistant Commissioner, Office of Regulations and Rulings.

Attachment

HQ 562502
MAR–05 RR:CR:SM 562502 KSG
CATEGORY: Marking

Harvey M. Applebaum, Esq.,
Covington & Burling, 1201 Pennsylvania Avenue NW., Washington, DC 20004–2401.

Re: Country of origin of computer laser printer engines; substantial transformation;19 CFR 177.22; procurement

Dear Mr. Applebaum: This is in response to your letter dated June 4, 2002, on behalf of Canon, Inc., requesting a final determination of origin pursuant to 19 CFR 177.22(c) regarding U.S. Government procurement of certain laser printer engines assembled in Japan.

Facts

Canon, Inc., is the foreign manufacturer and exporter of the printer engine and therefore, a party-in-interest as defined in 19 CFR 177.22(d).

This case involves the Canon P1070 printer engine that is the principal part of laser beam printers. Canon will sell the printer engines exclusively to OEM's. The printer engine carries out most of the electrophotographic process, including the exposure function.

The printer engine is composed of three subassemblies; the laser scanner unit, the transfer feeder unit and outer covers. The laser scanner unit is assembled in Japan using components manufactured in Japan and other countries. The laser scanner unit performs the exposure function. The transfer

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feeder unit is assembled in China using components from Japan, China and Thailand. The transfer feeder unit carries out the transfer and fixing functions. The outer covers are manufactured in China.

The first set of assembly steps for the laser scanner unit in Japan completes the laser unit subcomponent. Using setting equipment, a laser chip and collimator lens unit are attached to the laser unit printed circuit board ("PCB"). An operator solders the terminal of the laser chip to the laser unit PCB. An operator then adjusts the power of the laser beam radiated from the laser unit and checks the laser unit exterior.

Following completion of the laser unit, an operator attaches additional component parts to an optical case: using screws, an operator attaches the beam detect ("BD") sensor unit, scanner motor unit, laser unit and BD mirror; using a fixing spring, an operator attaches a reflection mirror; and using ultraviolet adhesives, an operator attaches a toric lens, fo lenses and a cylindrical lens. An operator measures and adjusts the power of the laser beam and jitter (distortion of rotating shaft of scanner motor).

Then, an operator determines the starting point of the laser scanning. Finally, an operator attaches to the laser scanner unit a BD sensor unit moltplane and motor wire harness moltplane (by seal), a connector (by hand) and an outer cover (with screws). An operator then checks the exterior of the laser scanner unit. You advised that the assembly of the laser scanner unit requires precision.

The transfer feeder unit transfers the toner on the photosensitive drum onto print paper. Assembly of the transfer feeder unit in China involves many steps and is a time-consuming process. This assembly includes attachment of the following components to a mold frame unit: paper pick-up unit, paper feed roller, registration roller unit, transfer charging roller unit, DC controller unit, pick-up drive unit, main drive unit, fixing unit and delivery roller unit. An operator then performs an electrical check of the transfer feeder unit. Using screws, an operator next attaches an outer cover and front cover to the transfer feeder unit. Finally, an operator checks the paper feed function of the transfer feeder unit.

The final assembly of the laser beam printer engine occurs in Japan. Using screws, an operator fixes the laser scanner unit to the transfer feeder unit. An operator attaches the following components by hand to the laser scanner unit and transfer feeder unit: a laser wire harness, scanner motor wire harness, and BD wire harness. An operator then checks the electrical function of the engine to meet internal electrical safety requirements. An operator next attaches an auxiliary cover and display wire harness along with an upper cover and panel unit. Following the engine assembly, an operator evaluates the image of test pattern printouts to confirm that the printer engine meets printing precision requirements. You indicate that precise assembly is required for the printer engine.

Issue

Whether the printer engines are substantially transformed in Japan so that they become products of Japan for U.S. Government procurement purposes.

Law and Analysis

Under subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

Also see 19 CFR 177.22(a).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *See Uniroyal Inc.* v. *United States*, 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

In *Texas Instruments Inc.* v. *United States*, 681 Fed 2d 778 (CCPA 1982), the court held that the assembly of encapsulated integrated circuits in Taiwan from materials imported from the U.S. constituted a double substantial transformation for the purposes of the Generalized System of Preferences ("GSP"). The imported goods involved in the case were electronic camera parts called "cue modules" that consist of a flexible circuit board with three integrated circuits attached. The court determined that silicon slices were imported into Taiwan and then further manufactured in Taiwan into IC chips. The IC chips were then manufactured into finished IC's. The court noted that the question presented was "a mixed question of technology and customs law. * * *" The court concluded that the finished IC's were "the result of extensive manufacturing operations in Taiwan which converted materials into articles, as distinguished from mere assembly * * *" and determined that a double substantial transformation had occurred.

Customs ruled in Headquarters Ruling Letter ("HRL") 561734, dated March 23, 2001, 66 Fed. Reg. 17222, that Sharp multifunctional machines (printer, copier and fax machine) assembled in Japan were a product of Japan for procurement purposes. The machines were comprised of 227 parts (108 parts sourced from Japan, 92 parts from Thailand, 3 parts from China, and 24 parts from other countries) and eight subassemblies, each of which was also assembled in Japan. Further, the scanner unit (one of the eight subassemblies) which was assembled in Japan was characterized as "the heart of the machine." *Also see* HRL 561568, dated March 22, 2001, 66 Fed. Reg. 17222.

In HRL 560433, dated September 19, 1997, Customs held that the assembly in the United Kingdom of audio/video stereo receivers from 16 subassemblies and other components originating from various countries resulted in a substantial transformation. Customs noted in that ruling that numerous skilled workers assembled the stereo receivers from numerous components and hundreds of raw materials. In HRL 734045, dated October 8, 1991, Customs held that foreign subassemblies and other components imported into Hong Kong which were processed and assembled with other domestic components to make laptop and notebook personal computers were substantially transformed as a result of the Hong Kong operations.

Based on the facts in this case and consistent with HRL 561734 and HRL 560433, we find that the printer engines are substantially transformed in Japan. When taken together, the manufacture of the laser scanner unit and final assembly of the printer engine in Japan is complex and meaningful. There are numerous parts involved in the assembly of the laser scanner unit and the final assembly of the printer engine. The assembly requires precision and trained workers. Further, as noted in HRL 561734, the scanner unit is an integral part of the printer engine. The name, character and use of the subassemblies and parts imported into Japan change as a result of the processing and other assembly operations performed in Japan. Therefore, pursuant to 19 U.S.C. 2518(4)(B), we find that the country of origin of the printer engines is Japan.

Holding

Based on the facts presented, the components imported into Japan that are used in the manufacture of the computer printer engines involved in this case are substantially transformed in Japan. Accordingly, pursuant to 19 U.S.C. 2518(4)(B), the country of origin of the printer engines is Japan.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Glen E. Vereb,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–29567 Filed 11–20–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–13: OTS Nos. 3915 and 17945]

First Niagara Financial Group, MHC, Lockport, New York, and First Niagara Bank, Lockport, NY; Approval of Conversion Application

Notice is hereby given that on November 14, 2002, the Director, Supervision Policy, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of First Niagara Financial Group, MHC, Lockport, New York, and First Niagara Bank, Lockport, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 15, 2002. By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–29527 Filed 11–20–02; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–12: OTS Nos. H–3799 and 12110]

Bridge Street Financial, Inc., and Oswego County Savings Bank, Oswego, New York; Approval of Conversion Application

Notice is hereby given that on November 14, 2002, the Director, Supervision Policy, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of Oswego County Savings Bank, Oswego, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 15, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–29526 Filed 11–20–02; 8:45 am]

BILLING CODE 6720–01–M

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Corrections

Federal Register
Vol. 67, No. 225
Thursday, November 21, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 010222048–2243–05]

The Housing Foreclosure, Repossession, and Default Notices Exception to the Electronic Signatures in Global and National Commerce Act

Correction

In notice document 02–29025 beginning on page 69201 in the issue of Friday, November 15, 2002, make the following correction:

On page 69201, in the third column, under the **DATES** heading, in the third and fourth lines, "[sixty (60) days after publication in the **Federal Register**]" should read, "January 14, 2003".

[FR Doc. C2–29025 Filed 11–20–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

Correction

In notice document 02–28160 beginning on page 67625 in the issue of Wednesday, November 6, 2002, make the following corrections:

1. On page 27625, in the second column, under heading 1., in the third paragraph, in the second line, "manufactures" should read "manufacturers".

2. On the same page, in the same column, under the same heading, in the same paragraph, in the third line, "imports" should read "importers".

3. On page 67626, in the first table, in the column titled "Burden hours", in the second entry, "8,500" should read "8,550".

4. On the same page, in the first column, footnote 2 should appear directly below the first table.

5. On the same page, in the first column, in the first paragraph, in the first line, "Staff 2" should read "Staff".

6. On page 67628, in the first column, footnote 8 should appear directly below the table.

7. On the same page, in the same column, in the first paragraph, in the first line, "Staff 8" should read "Staff".

[FR Doc. C2–28160 Filed 11–20–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Model RB211 Turbofan Engines

Correction

In proposed rule document 02–28954 beginning on page 69160 in the issue of Friday, November 15, 2002, make the following correction:

On page 69160, in the second column, in the **DATES** section, in the second line, "January 14, 2002" should read, "January 14, 2003".

[FR Doc. C2–28954 Filed 11–20–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
November 21, 2002

Part II

The President

Executive Order 13277—Delegation of Certain Authorities and Assignment of Certain Functions Under the Trade Act of 2002

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Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13277 of November 19, 2002

Delegation of Certain Authorities and Assignment of Certain Functions Under the Trade Act of 2002

By the authority vested in me as President by the Constitution and the laws of the United States, including the Trade Act of 2002 (the "Act") (Public Law 107–210) and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Trade Promotion.* (a) Except as provided in subsections (b) and (c) of this section, the authorities granted to and functions specifically assigned to the President under Division B of the Act are delegated and assigned, respectively, to the United States Trade Representative (U.S. Trade Representative).

(b) The exercise of the following authorities of, and functions specifically assigned to the President, under Division B of the Act are reserved to the President:

(1) Section 2102(c)(1), (c)(6), (c)(10) and (e) of the Act;

(2) Section 2103(a)(1), (a)(4), (a)(6), b(1), (c)(1)(B)(i), and (c)(2) of the Act;

(3) Section 2105(a)(1) of the Act; and

(4) Section 2108(b) of the Act.

(c) (i) The Secretary of State, in consultation with the Secretary of Labor and the U.S. Trade Representative, shall carry out the functions of section 2102(c)(2) of the Act with respect to establishing consultative mechanisms. The U.S. Trade Representative, in consultation with the Secretary of State and the Secretary of Labor, shall carry out the reporting function under section 2102(c)(2).

(ii) The Secretary of State, in consultation with the U.S. Trade Representative, shall carry out the functions under section 2102(c)(3) of the Act with respect to establishing consultative mechanisms, with the advice and assistance of the Secretary of the Interior, the Secretary of Health and Human Services, the Administrator of the Environmental Protection Agency, the Secretary of Commerce and, as the Secretary of State determines appropriate, the heads of such other departments and agencies. The U.S. Trade Representative, in consultation with the Secretary of State, shall carry out the reporting function under section 2103(c)(3).

(iii) The U.S. Trade Representative shall carry out the functions under section 2102(c)(5) of the Act. The U.S. Trade Representative shall, in consultation with the Secretary of Labor, carry out the reporting function and the function of making a report available under section 2102(c)(5).

(iv) The Secretary of Labor shall carry out section 2102(c)(7) of the Act, in consultation with the Secretary of State.

(v) The Secretary of Labor, in consultation with the Secretary of State and the U.S. Trade Representative, shall carry out the functions under section 2102(c)(8) and (c)(9).

(vi) The Secretary of the Treasury shall carry out section 2102(c)(12) of the Act, including any appropriate consultations with the Congress relating thereto.

Sec. 2. *Andean Trade.* (a) Except as provided in subsection (b) of this section, the authorities granted and the functions specifically assigned to

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the President under Division C of the Act are delegated and assigned respectively, to the U.S. Trade Representative, in consultation with the Secretaries of State, Commerce, the Treasury, and Labor.

(b) The exercise of the following authorities of, and functions specifically assigned to, the President under Division C of the Act are reserved to the President:

(i) The authority to proclaim under sections 204(b)(1) and 204(b)(3)(B)(ii), and the authority to designate beneficiary countries under section 204(b)(6)(B), of the Andean Trade Preference Act as amended by section 3103(a)(2) of the Act; and

(ii) The authority to make determinations under section 203(e)(1)(B) of the Andean Trade Preference Act as amended by section 3103(b) of the Act.

(c) The head of the executive department of which the United States Customs Service is a part shall take such actions to carry out determinations and actions pursuant to the Andean Trade Preference Act, as amended, as directed pursuant to the authority delegated to the U.S. Trade Representative under this order.

Sec. 3. *Guidance for Exercising Authority and Performing Duties.* (a) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) In exercising authority delegated by, or performing functions assigned in, this order, and in performing duties related to the trade agreements program as defined in Executive Order 11846, officers of the United States:

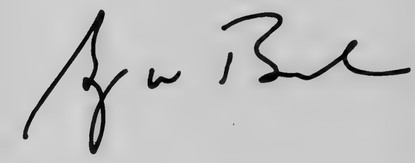
(i) Shall ensure that all actions taken by them are consistent with the President's constitutional authority to (A) conduct the foreign affairs of the United States, including the commencement, conduct, and termination of negotiations with foreign countries and international organizations, (B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties, (C) recommend for congressional consideration such measures as the President may judge necessary or expedient, and (D) supervise the unitary executive branch;

(ii) May redelegate authority delegated by this order and may further assign functions assigned by this order to officers of any other department or agency within the executive branch to the extent permitted by law and such redelegation or further assignment shall be published in the **Federal Register**; and

(iii) Shall consult the Attorney General as appropriate in implementing this subsection.

Sec. 4. *Amendment to Executive Order 11846.* Section 1 of Executive Order 11846 of March 27, 1975, as amended, is further amended by inserting ", Divisions B and C of the Trade Act of 2002," after "Trade Expansion Act of 1962, as amended".

Sec. 5. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
November 19, 2002.

[FR Doc. 02–29832
Filed 11–20–02; 8:50 am]
Billing code 3195–01–P

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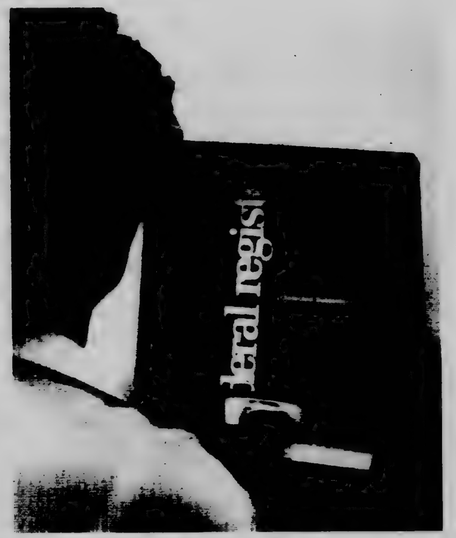
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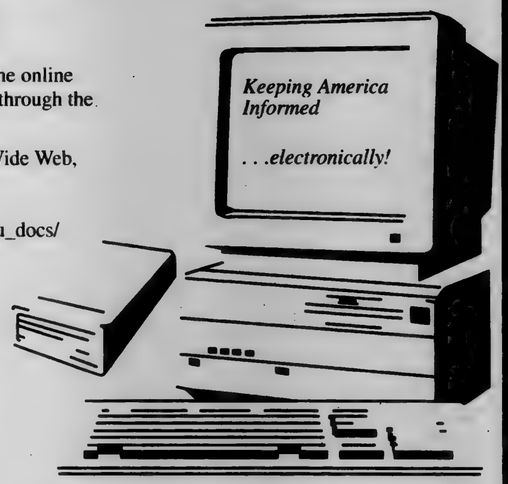
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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Rules and Regulations

Federal Register
Vol. 67, No. 226
Friday, November 22, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 01–095–2]

Brucellosis: Testing of Rodeo Bulls

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by eliminating the annual brucellosis testing requirement for rodeo bulls moving interstate between brucellosis Class Free States. This action is based on our determination that the testing requirement for rodeo bulls moving between such States is more restrictive than the requirements for other test-eligible cattle, given that other cattle moving between Class Free States are not required to be tested for brucellosis. This action updates our brucellosis regulations by making the requirements for moving rodeo bulls more consistent with those for moving other test-eligible cattle between Class Free States.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Debra Cox, Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations contained in 9 CFR part 78, subpart B (referred to below as the regulations) restrict the interstate movement of cattle in order to prevent the spread of brucellosis. Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The regulations provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a State's brucellosis eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are placed under Federal quarantine. The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification or reclassification as Class Free.

The regulations in § 78.14 have required rodeo bulls moving interstate to be tested for brucellosis once every 365 days. Since other test-eligible cattle being moved from a Class Free State are not required to be tested for brucellosis, this requirement for rodeo bulls moving between such States is more restrictive than the requirements for other test-eligible cattle.

On April 25, 2002, we published in the **Federal Register** (67 FR 20460–20461, Docket No. 01–095–1) a proposal to amend the brucellosis regulations by eliminating the annual brucellosis testing requirement for rodeo bulls moving interstate between brucellosis Class Free States. The proposal was intended to update our brucellosis regulations by making the requirements for moving rodeo bulls more consistent with those for moving other test-eligible cattle between Class Free States.

We solicited comments concerning our proposal for 60 days ending June 24, 2002. We received seven comments by that date. They were from industry and State government representatives, a representative of a rodeo cowboys' association, and members of the general public. Six of the seven commenters wrote in favor of the proposed rule.

The remaining commenter stated that he favored continuing the practice of having rodeo bulls tested for brucellosis when traveling interstate, but did not provide any information other than that statement.

We would point out that we are not eliminating the brucellosis testing requirement entirely. It will remain in effect for rodeo bulls moved between States that are not brucellosis Class Free. Secondly, as noted in our proposal, with 48 of the 50 States now classified as brucellosis Class Free, the risk of brucellosis transmission via interstate movement of rodeo bulls has been greatly reduced. Having more restrictive requirements for rodeo bulls than for other test-eligible cattle no longer appears necessary. Therefore, we are not making any changes in response to this comment

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

In this rule, we are also updating the authority citation for 9 CFR part 78 to reflect the enactment of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule eliminates the annual brucellosis testing requirement for rodeo bulls moving interstate between brucellosis Class Free States and relieves stock contractors who raise and supply bulls for rodeo events of the financial burden associated with the testing. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the brucellosis regulations in § 78.14 by eliminating the annual brucellosis testing requirement for rodeo bulls moving interstate in cases where the bulls are being moved only between brucellosis Class Free States.

This rule primarily affects stock contractors who raise and supply bulls for rodeo events. More specifically, this rule affects stock contractors who are located in States other than Texas and Missouri—the only two States not currently classified as Class Free States—and who do not move their bulls interstate to Texas and Missouri. The number of stock contractors who fall into this category, as well as the total number of stock contractors nationally, is unknown.

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Those stock contractors who move their bulls interstate only between Class Free States will realize a cost savings of about $25 to $30 per animal per year (*i.e.*, the cost of a brucellosis test and associated veterinary fees). Thus, a stock contractor with 20 bulls will see a savings of about $500 to $600 per year in testing expenses.

While stock contractors are not specifically categorized in the Small Business Administration's (SBA) table of small business size standards, they could be considered under either Subsector 112 of that table (Animal Production), which has a small entity threshold of $750,000, or Subsector 711 (Performing Arts, Spectator Sports and Related Industries), which has a small entity threshold of $6 million in annual sales. According to the National Agricultural Statistics Service, over 99 percent of all operations raising cattle and calves ($750,000 threshold) are small entities, while large operations account for less than 1 percent. Therefore, it is likely that most, if not all, stock contractors would be considered small entities under SBA size standards.

Given that the savings per animal in foregone testing costs ($25 to $30) can be expected to make up only a small percentage of the total expenses associated with maintaining a rodeo bull (*e.g.*, feed and routine veterinary care), the economic impact of this rule is expected to be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 is revised to read as follows:

Authority: 7 U.S.C. 8303–8306, 8308, 8310, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. Section 78.14 is amended by revising paragraph (a)(1) to read as follows:

§ 78.14 Rodeo bulls.

(a) * * *

(1) The bull is classified as brucellosis negative based upon an official test conducted less than 365 days before the date of interstate movement: *Provided, however,* That the official test is not required for a bull that is moved only between Class Free States;

* * * * *

Done in Washington, DC, this 19th day of November 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29753 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–57; Amendment 39–12938; AD 2002–22–12]

RIN 2120–AA64

Airworthiness Directives; Titeflex Corporation, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–22–12, applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses, that was published in the **Federal Register** on November 8, 2002 (67 FR 68024). An engine model referenced in the Applicability paragraph in the regulatory information is incorrect. This document corrects that reference. In all other respects, the original document remains the same.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive FR Doc. 02–28113 applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses, was published in the **Federal Register** on November 8, 2002 (67 FR 68024). The following correction is needed:

§ 39.13 [Corrected]

On page 68025, in the Regulatory Information, third column, third paragraph, thirteenth line, "General Electric CF6–80C and CFM–56 series, * * *." is corrected to read "CF6–80C and CFM56–5C, * * *."

Issued in Burlington, MA, on November 14, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29673 Filed 11–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9023]

RIN 1545–BA39

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Unexpected Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these final regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent and do not possess the required individual taxpayer identification number.

DATES: *Effective Date:* These regulations are effective November 22, 2002.

Applicability Date: For dates of applicability, *see* §§ 1.1441–6(h)(1) and 301.6109–1(g)(3).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2002, the IRS and Treasury published a notice of proposed rulemaking by cross reference to temporary regulations (REG–159079–01) in the **Federal Register** (67 FR 2387), and temporary regulations in TD 8977 (67 FR 2327), under section 1441 and conforming changes to the regulations under section 6109 of the Internal Revenue Code (Code). Written comments and requests for a public hearing were solicited. Several comments were received and are discussed below. No public hearing was requested. After consideration of all the comments, the proposed and temporary regulations under sections 1441 and 6109 are adopted as final regulations with no changes.

Summary of Public Comments and Explanation of Revisions

A. § 1.1441–6(c) Exemption From Requirement To Furnish a Taxpayer Identifying Number

Section 1.1441–6(c) provides an exemption from the requirement to furnish a taxpayer identifying number (TIN) for certain types of income.

One commentator suggested that a foreign individual receiving a distribution of a death benefit from a U.S. retirement plan should be allowed to claim treaty benefits without obtaining an individual taxpayer identification number (ITIN).

This comment is not directly related to these proposed regulations. Exemptions from the requirement to furnish a TIN were addressed in final regulations promulgated under section 1441 (TD 8734; 1997–2 C.B. 109). The IRS and Treasury do not believe that there has been any change in circumstances that warrants a change of the rules contained in § 1.1441–6(c).

B. § 1.1441–1(e)(4)(ii)(B)(1) Indefinite Validity of a Withholding Certificate Provided Certain Conditions Are Met

Under § 1.1441–1(e)(4)(ii)(A), a Form W–8BEN "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," generally will expire either at the end of the third calendar year following the date the certificate was signed or when a change in circumstances occurs that makes any information on the Form W–8BEN incorrect, whichever is earlier. Section 1.1441–1(e)(4)(ii)(B)(*1*) permits a Form W–8BEN to remain valid indefinitely, provided the withholding agent reports at least one payment annually and the certificate contains a TIN.

One commentator requested that a Form W–8BEN remain valid indefinitely without regard to the requirement that it contain a TIN. The commentator also proposed that a Form W–8BEN remain valid indefinitely, even if the withholding agent reports no annual payments to the beneficial owner.

This comment is not directly related to these proposed regulations. The period of validity of a beneficial owner's withholding certificate was addressed in final regulations promulgated under section 1441 (TD 8734). The IRS and Treasury do not believe that there has been any change in circumstances that warrants a change of the rules contained in § 1.1441–1(e)(4)(ii)(B)(*1*). The IRS and Treasury continue to believe that it is important for taxpayers to re-certify status periodically when no payments are reported because withholding agents would be unaware of any change in the taxpayer's status.

C. § 1.1441–6(h)(2)(i) Special Acceptance Agent Requirement

The proposed regulations provide that a withholding agent, who is also an acceptance agent, may enter into an agreement with the IRS that permits the acceptance agent to request an ITIN on an expedited basis because of the circumstances of payment or the unexpected nature of payments required to be made by the payor (special acceptance agent agreement). One commentator requested that certifying acceptance agents, as described in Rev. Proc. 96–52 (1996–2 C.B. 372), be permitted to utilize the expedited process, described in § 1.1441–6(h)(2), without entering into a special acceptance agent agreement with the IRS.

The commentator's suggestion was not adopted. The purpose of entering into a special acceptance agent agreement with the IRS is to provide notice to the IRS that the acceptance agent is seeking to utilize the expedited process and to have the acceptance agent agree to follow the special procedures necessary to complete that process. In contrast, a certifying acceptance agent agreement permits the acceptance agent to review and certify the applicant's ability to qualify for an ITIN. Because the purpose and scope of a certifying acceptance agent agreement differ from the purpose and scope of the special acceptance agent agreement, a separate agreement permitting the use of the expedited process must be entered into between the acceptance agent and the IRS.

D. § 1.1441–6(h)(2)(ii) Unexpected Payment Requirement

In order to lessen the administrative burden on foreign individuals receiving unexpected payments, the proposed regulations provide a limited exception to the requirement that a foreign individual provide a TIN to the withholding agent before obtaining a reduced rate of withholding tax under an income tax treaty. One commentator requested that the IRS should eliminate the unexpected payment requirement of § 1.1441–6(h)(2)(ii) and permit the use of the expedited process by any foreign individual regardless of whether the payor or payee knows of the impending payment.

The commentator's suggestion was not adopted. The expedited process has been initiated in limited circumstances in order to lessen the administrative burden on foreign individuals receiving unexpected payments. Although the IRS is continuing to consider increasing the availability of this expedited process in the future, the particular administrative issue addressed in these regulations generally does not exist with respect to expected payments. Thus, there is not a compelling reason to extend the expedited process at this time.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. These regulations impose no new collection of information on small entities; therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury

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Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1441–0 is amended by redesignating the entries for paragraph (g) of § 1.1441–6 as paragraph (h) and revising the entry for newly designated paragraph (h), and adding new entries for paragraphs (g) through (g)(5) to read as follows:

§ 1.1441–0 Outline of regulations provisions for section 1441.

* * * * *

(g) Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits.
(1) General rule.
(2) Special rule.
(3) Requirement that an ITIN be requested during the first business day following payment.
(4) Definition of unexpected payment.
(5) Examples.
(h) Effective dates.

* * * * *

Par. 3. Section 1.1441–1 is amended by adding paragraph (b)(7)(i)(D) to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *
(7) * * *
(i) * * *

(D) The withholding agent has complied with the provisions of § 1.1441–6(c) or (g).

* * * * *

§ 1.1441–1T [Removed]

Par. 4. Section 1.1441–1T is removed.

Par. 5. Section 1.1441–6 is amended as follows:

1. The fifth sentence of paragraph (b)(1) is amended by removing the language "and § 1.1441–6T(h)" and adding "and § 1.1441–6(g)" in its place.

2. Paragraph (g) is redesignated as paragraph (h) and new paragraph (g) is added.

3. Newly designated paragraph (h) section heading is revised.

4. Newly designated paragraph (h)(1) is revised.

5. Newly designated paragraph (h)(2) is amended by removing the language "(g)(2)" and adding "(h)(2)" in its place each place it appears in the third and fourth sentences.

The addition and revisions read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits*—(1) *General rule.* Except as provided in paragraph (c) or (g)(2) of this section, for purposes of paragraph (b)(1) of this section, a withholding agent may not rely on a beneficial owner withholding certificate, described in paragraph (b)(1) of this section, that does not include the beneficial owner's taxpayer identifying number (TIN).

(2) *Special rule.* For purposes of satisfying the TIN requirement of paragraph (b)(1) of this section, a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner's TIN, if—

(i) A withholding agent, who is also an acceptance agent, as defined in § 301.6109–1(d)(3)(iv) of this chapter (the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circumstances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS) because the IRS is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (g)(3) of this section.

(3) *Requirement that an ITIN be requested during the first business day following payment.* The payor must submit a beneficial owner payee application for an ITIN (Form W–7 "Application for IRS Individual Taxpayer Identification Number") that complies with the requirements of § 301.6109–1(d)(3)(ii) of this chapter, and also the certification described in § 301.6109–1(d)(3)(iv)(A)(*4*) of this chapter, to the IRS during the first business day after payment is made.

(4) *Definition of unexpected payment.* For purposes of this section, an *unexpected payment* is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (g)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

(5) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

Example 1. G, a citizen and resident of Country Y, a country with which the United States has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the United States for the first time. During his visit, G visits Casino B, a casino that has entered into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins $5000 in slot machine play at Casino B and requests immediate payment from Casino B. ITINs are not available from the IRS on Sunday and would not again be available until Monday. G, who does not have an individual taxpayer identification number, furnishes a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), to the Casino upon winning at the slot machine. The beneficial owner withholding certificate represents that G is a resident of Country Y (within the meaning of the U.S.—Y tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Y tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for G. On the following Monday, Casino B faxes a completed Form W–7, including the required certification, for G, to the IRS for an expedited ITIN. Pursuant to paragraph (b) and (g)(2) of this section, absent actual knowledge or reason to know otherwise, Casino B, may rely on the documentation furnished by G at the time of payment and pay the $5000 to G without withholding U.S. tax based on the treaty exemption.

Example 2. The facts are the same as *Example 1*, except G visits Casino B on Monday. G requests payment Monday afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the $5000 payment to G.

Example 3. The facts are the same as *Example 1*, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S.—Y tax treaty at the time of payment.

Example 4. P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the United States has an income tax treaty that exempts certain income earned from the performance of independent personal services from U.S. tax. It is P's first visit to the United States. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P $5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), to University U that represents that P is a resident of Country Z (within the meaning of the U.S.—Z tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Z tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for P. On Tuesday, University U faxes a completed Form W–7, including the required certification, for P, to the IRS for an expedited ITIN. Pursuant to paragraph (b) and (g)(2) of this section, absent actual knowledge or reason to know otherwise, University U may rely on the documentation furnished by P and pay $5000 to P without withholding U.S. tax based on the treaty exemption.

(h) *Effective dates*—(1) *General rule.* This section applies to payments made after December 31, 2000, except for paragraph (g) of this section which applies to payments made after December 31, 2001.

* * * * *

Section 1.1441–6T [Removed]

Par. 6. Section 1.1441–6T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 8. In § 301.6109–1, paragraph (g)(3) is revised to read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(g) * * *

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number, including disclosure of any taxpayer identifying number previously issued to the foreign person, and change of foreign status. This paragraph (g)(3) applies to payments made after December 31, 2001.

* * * * *

§ 301.6109–1T [Removed]

Par. 9. Section 301.6109–1T is removed.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.
Approved: Approved: November 13, 2002.

Pamela F. Olson,
Assistant Secretary of the Treasury.

[FR Doc. 02–29494 Filed 11–21–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans–02–022]

RIN 2115—AA97

Safety Zone; Lower Mississippi River, Miles 87.2 to 91.2, Above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Lower Mississippi River beginning at mile 87.2 and ending at mile 91.2, above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the cruise ship (C/S) CONQUEST beneath the Entergy Corporation power cable located at mile marker 89.2. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or his designated representative.

DATES: This rule is effective from 4:30 a.m. on November 12, 2002 until 8 p.m. on March 2, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans–02–022] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, Louisiana, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Matthew Dooris, Marine Safety Office New Orleans, at (504) 589–4251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST under the Entergy Corporation power cable, Lower Mississippi River, mile marker 89.2, above Head of Passes, New Orleans, Louisiana.

Background and Purpose

The Captain of the Port New Orleans is establishing a temporary safety zone on the Lower Mississippi River beginning at mile 87.2 and ending at mile 91.2, above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential

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safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST beneath the Entergy Corporation power cable located at mile marker 89.2. The C/S CONQUEST has an air draft of 208 feet and will be homeported at the Julia Street Wharf, Lower Mississippi River, mile marker 95.3, above Head of Passes, New Orleans, Louisiana. The Entergy Corporation power cable is 216.4 feet North American Vertical Datum (NAVD) at the center of the Lower Mississippi River and increases in height to a maximum of 312.7 feet NAVD on the East bank and a maximum of 342.6 feet NAVD on the West bank. As the C/S CONQUEST needs an air gap of 14 feet between it and the cable to prevent arcing, the vessel must maneuver within 600 feet of the East bank or within 700 feet of the West bank to safely transit under the Entergy Corporation power cable. Vessels transiting this area may restrict the maneuverability of the C/S CONQUEST through those safe passage lanes and possibly result in harm to life, damage to the cruise ship, the power cable, or nearby vessels.

The safety zone will be enforced from 4:30 a.m. until 5:30 a.m. and from 5 p.m. until 6 p.m. on November 12, November 15, November 19, November 21, and November 27, 2002. It will also be enforced from 4:30 a.m. until 5:30 a.m. and from 6:30 p.m. until 7:30 p.m. every Sunday between December 1, 2002 and March 2, 2003. Those periods of enforcement are based on the advance cruise schedule for the C/S CONQUEST and are potentially subject to change. Mariners will be advised of the periods the safety zone will be enforced via broadcast notice to mariners. Except as described in this rule, entry into the zone during the announced enforcement periods is prohibited to all vessels unless authorized by the Captain of the Port New Orleans or his designated representative. Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within the safety zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies procedures of DOT is unnecessary. This regulation will only affect maritime traffic for short periods of time and notifications to the marine community will be made through broadcast notice to mariners. The impact on routine navigation is expected to be minimal as the zone will only be in effect for a few hours each week.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Lower Mississippi River from miles 87.2 to 91.2 while the C/S CONQUEST is transiting inbound and outbound. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time each week.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Matthew Dooris, Marine Safety Office New Orleans, at (504) 589–4251.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, so we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–122 is added to read as follows:

§ 165.T08–122 Safety Zone; Lower Mississippi River, Miles 87.2 to 91.2, Above Head of Passes, New Orleans, LA.

(a) *Location.* The following area is a safety zone: the waters of the Lower Mississippi River, above Head of Passes, beginning at mile 87.2 and ending at mile 91.2, extending the entire width of the river.

(b) *Effective date.* This section is effective from 4:30 a.m. on November 12, 2002 until 8 p.m. on March 2, 2003.

(c) *Periods of enforcement.* This rule will be enforced from 4:30 a.m. until 5:30 a.m. and from 5 p.m. until 6 p.m. on November 12, November 15, November 19, November 21, and November 27, 2002. It will also be enforced from 4:30 a.m. until 5:30 a.m. and from 6:30 p.m. until 7:30 p.m. every Sunday between December 1, 2002 and March 2, 2003. Those periods of enforcement are based on the predicted cruise schedule for the C/S CONQUEST and are subject to change. The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, except as described in this rule, entry into this zone is prohibited unless authorized by the Captain of the Port New Orleans or his designated representative.

(2) The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(3) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within the safety zone.

(4) Vessels requiring entry into or passage through the zone during the enforcement periods must request permission from the Captain of the Port New Orleans or his designated representative. The Captain of the Port may be contacted via VHF Channel 13 or 16 or by telephone at (504) 589–6261.

(5) All persons and vessels shall comply with the instruction of the Captain of the Port New Orleans and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: November 1, 2002.

R.W. Branch,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 02–29654 Filed 11–21–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE061–DE066–1036; FRL–7411–3]

Approval and Promulgation of Air Quality Implementation Plans; Six Control Measures to Meet EPA-Identified Shortfalls in Delaware's One-Hour Ozone Attainment Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision consists of six control measures to meet EPA-identified shortfalls in Delaware's one-hour ozone attainment demonstration. The intended effect of this action is to approve the six control measures.

EFFECTIVE DATE: This final rule is effective on December 23, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 12, 2002 (67 FR 5776), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the Delaware SIP revision for six control measures based on the model rules developed by the Ozone Transport Commission (OTC), to meet EPA-identified attainment shortfalls for the Philadelphia-Wilmington-Trenton nonattainment area and 19 counties within 100 kilometers of the nonattainment area. The six control measures are: (1) Control of volatile organic compound (VOC) emissions from mobile equipment repair and refinishing; (2) control of VOC emissions from solvent cleaning and drying; (3) control of VOC emissions from Architectural and Industrial Maintenance (AIM) coatings; (4) control of VOC emissions from consumer products; (5) control of VOC emissions from portable fuel containers; and (6)

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control of nitrogen oxides (NO_X) emissions from industrial boilers. Other specific requirements of the six control measures and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the six control measures submitted on March 1, 2002, as revisions to the Delaware SIP.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to six control measures to meet EPA-identified shortfalls in Delaware's one-hour ozone attainment demonstration, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 14, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In Section 52.420, the table in paragraph (c) is amended:

a. Under Regulation 24 by revising the entries for Section 11 and Section 33.

b. By adding a new Regulation 41, including headings, with entries for Section 1, Section 2 and Section 3.

c. By adding a new Regulation 42, including headings, with an entry for Section 1.

The revisions and additions read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Regulation 24	CONTROL OF VOLATILE ORGANIC COMPOUND EMISSIONS			
Section 11	Mobile Equipment Repair and Refinishing	11/11/01	November 22, 2002, Federal Register page citation.	
Section 33	Solvent Cleaning and Drying	11/11/01	November 22, 2002, Federal Register page citation.	
Regulation 41	LIMITING VOC EMISSIONS FROM CONSUMER AND COMMERCIAL PRODUCTS			
Section 1	Architectural and Industrial Maintenance (AIM) Coatings	3/11/02	November 22, 2002, Federal Register page citation.	
Section 2	Commercial Products	1/11/02	November 22, 2002, Federal Register page citation.	
Section 3	Portable Fuel Containers	11/11/01	November 22, 2002, Federal Register page citation.	
Regulations 42	SPECIFIC EMISSION CONTROL REQUIREMENTS			
Section 1	Control of Nitrogen Oxides (NO_X) Emissions from Industrial Boilers.	12/11/01	November 22, 2002, Federal Register page citation.	

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[FR Doc. 02–29605 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 164–1164a; FRL–7412–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which pertains to a revision to the solvent metal cleaning rule applicable to the St. Louis area. This revision addresses paint spray gun cleaning solvents and emission controls. Approval of this revision will ensure consistency between the state and federally-approved rules, and ensure Federal enforceability of the revised state rule.

DATES: This direct final rule will be effective January 21, 2003, unless EPA receives adverse comments by December 23, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These

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SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Missouri rule 10 CSR 10–5.300, Control of Emissions From Solvent Metal Cleaning, has been revised to allow the use of a higher vapor pressure solvent when used to clean paint spray guns and nozzles. The lower vapor pressure solvent allowed prior to this revision was not effective at removing hardened paint from paint spray guns and nozzles. The revision also requires that when the higher vapor pressure solvent is used for this purpose, that it be used with closed-top cleaning machines only (as opposed to open-top cleaning machines). Closed-top cleaning machines are more effective at capturing emissions than open-top machines. Sources will still have the option of using the lower vapor pressure solvent with either open-top or closed-top cleaning machines.

The Missouri Department of Natural Resources has estimated that this revision will result in an increase in volatile organic compound emissions of .079 tons per day. This increase will have a negligible impact on modeled ambient air quality in the St. Louis area.

This rule is one of the rules used to meet the requirements for the 15% Rate of Progress (ROP) plan and attainment demonstration plan for the St. Louis nonattainment area. When the emission reductions from this rule were calculated in 1998 for these plans, spray gun cleaning emissions reduction credits were not considered. Thus, this revision will not have any effect on these plans.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Final action: We are approving as a revision to the Missouri SIP revisions to state rule 10 CSR 10–5.300, Control of Emissions From Solvent Metal Cleaning, which has a state effective date of May 30, 2002.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2003.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 8, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 5 by revising the entry for "10–5.300" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
	Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area			
10–5.300	Control of Emissions From Solvent Metal Cleaning	5/30/02	11/22/02	

* * * * *

[FR Doc. 02–29609 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 166–1166a; FRL–7412–1]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to Missouri rule "Submission of Emission Data, Emission Fees, and Process Information." This revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's most recent rule revision.

DATES: This direct final rule will be effective January 21, 2003, unless EPA receives adverse comments by December 23, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is the part 70 Operating Permits Program?

What is being addressed in this document?

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Have the requirements for approval of a SIP revision and part 70 program revision been met?

What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at ttle 40, part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM10; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

What Is Being Addressed in This Document?

The state of Missouri has requested that EPA approve as a revision to the Missouri SIP and part 70 Operating Permits Program recently adopted revisions to rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information." The rule addresses the emission reporting requirement of title I of the CAA and the emission fee requirements of title V.

This rule applies to sources that are required to obtain a construction or title V permit, to sources seeking an exemption from major source permitting requirements, and to additional source categories specified in the rule. The rule requires the submittal of an Emission Inventory Questionnaire (EIQ) and payment of emission fees based on information submitted in the EIQ.

Missouri updates this rule annually. The revisions this year were to make the rule applicable to calendar year 2002 emissions by revising the applicability date in section (5)(A) from 2001 to 2002, and to raise the annual emission fee from $25.70 to $31.00 per ton. This is the first fee increase since the state began collecting fees in 1994. This fee, along with program cash reserves, is sufficient to fund the cost of administering the part 70 program.

Further discussion and background information is contained in the technical support document prepared for this action, which is available from the EPA contact listed above.

Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revisions meet the substantive SIP requirements of the CAA, including section 110 and 40 CFR 51.211, relating to submission of emissions data. Finally, the submittal meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70, including the requirement in 40 CFR 70.9 relating to emission fees.

What Action Is EPA Taking?

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial, and make regulatory revisions required by state statute. Therefore, we do not anticipate any adverse comments.

Final Action: EPA is approving as an amendment to the Missouri SIP revisions to rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information" pursuant to section 110. EPA is also approving this rule as a program revision to the state's part 70 Operating Permits Program pursuant to part 70.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 12, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for "10–6.110" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
.	.	.	.	.
	Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri			

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EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10–6.110	Submission of Emission Data, Emission Fees, and Process Information.	8/30/02	November 22, 2002 [and FR page citation].	Section (5), Emission Fees, has not been approved as part of the SIP.

* * * * *

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Appendix A—[Amended]

2. Appendix A to Part 70 is amended by adding paragraph (m) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(m) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information" on September 9, 2002, approval effective January 21, 2003.

* * * * *

[FR Doc. 02–29607 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–1809–F2]

RIN 0938–AM21

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date

AGENCY: Centers for Medicare & Medicaid Services (CMS), DHHS.

ACTION: Final rule; extension of partial delay in effective date.

SUMMARY: This final rule further delays for 6 months, until July 7, 2003, the effective date of the last sentence of 42 CFR 411.354(d)(1). Section 411.354(d)(1) was promulgated in the final rule entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the **Federal Register** on January 4, 2001 (66 FR 856). A 1-year delay of the effective date of the last sentence in § 411.354(d)(1) was published in the **Federal Register** on December 3, 2001 (66 FR 60154). This extension of the 1-year delay in the effective date of that sentence will give us additional time to reconsider the definition of compensation that is "set in advance" as it relates to percentage compensation methodologies in order to avoid unnecessarily disrupting existing contractual arrangements for physician services. Accordingly, the last sentence of § 411.354(d)(1), which would have become effective January 6, 2003, will not become effective until July 7, 2003. We expect a future final rule with comment period, entitled "Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships" (Phase II), to further address this issue prior to this effective date.

DATES: *Effective date:* The effective date of the last sentence in § 411.354(d)(1) of the final rule published in the **Federal Register** on January 4, 2001 (66 FR 856), is delayed for an additional 6 month period to July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Karen Raschke, (410) 786–0016.

SUPPLEMENTARY INFORMATION:

Copies: This **Federal Register** document is available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

In addition, the information in this final rule will be available soon after publication in the **Federal Register** on our MEDLEARN Web site: *http://cms.hhs.gov/medlearn/refphys.asp.*

I. Background

The final rule, entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the **Federal Register** on January 4, 2001 (66 FR 856), interpreted certain provisions of section 1877 of the Social Security Act (the Act). Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) under the Medicare program, and the entity may not bill for the services, unless an exception applies. Many of the statutory and new regulatory exceptions that apply to compensation relationships require that the amount of compensation be "set in advance." Section 411.354(d)(1) of the final rule defines the term "set in advance."

The last sentence of § 411.354(d)(1) reads: "Percentage compensation arrangements do not constitute compensation that is 'set in advance' in which the percentage compensation is based on fluctuating or indeterminate measures or in which the arrangement results in the seller receiving different payment amounts for the same service from the same purchaser." Many of the comments we received regarding the January 4, 2001 physician self-referral final rule indicated that physicians are commonly paid for their professional services using a formula that takes into account a percentage of a fluctuating or indeterminate measure (for example, revenues billed or collected for physician services). According to the commenters, this compensation methodology is frequently used by hospitals, physician group practices, academic medical centers, and medical foundations. Several commenters pointed out that this aspect of the final rule, which is applicable to academic medical centers and medical foundations (among others), is inconsistent with the compensation methods permitted under the statute for many physician group practices and employed physicians (that is, neither section 1877(h)(4)(B)(i) of the Act nor section 1877(e)(2) of the Act contains the "set in advance" requirement). We understand that hospitals, academic medical centers, medical foundations and other health care entities would have to restructure or renegotiate thousands of physician contracts to comply with the language in § 411.354(d)(1) regarding percentage compensation arrangements.

Accordingly, we published a 1-year delay of the effective date of the last sentence in § 411.354(d)(1) in the **Federal Register** on December 3, 2001 (66 FR 60154) in order to reconsider the definition of compensation that is "set in advance" as it relates to percentage compensation methodologies.

II. Response to Public Comments

In response to the publication of the interim final rule with comment period on December 3, 2001 (66 FR 60154), we received a total of four comments. Because the sole purpose of that interim final rule with comment period was to delay the effective date of the last sentence in § 411.354(d)(1), we only accepted comments addressing the length of the delay of that sentence. The following discussion includes a description of the two pertinent comments that we received, along with our responses.

Comment: Two commenters requested that we further postpone the effective date for an additional year in order to better effectuate our stated goals of providing stability in the health care services available to Medicare beneficiaries, and of avoiding unnecessary disruption of existing contractual arrangements. They were of the opinion that, although the current 1-year delay in effective date may provide us with enough time to publish further guidance, physicians and other health care entities will need additional time to renegotiate reimbursement and compensation arrangements in order to avoid disrupting existing contractual arrangements.

Response: We agree that additional time is necessary, both for us to reconsider this issue, and for health care entities to bring their arrangements into compliance. However, we believe that a further 6-month delay in the effective date will suffice because we expect a future final rule with comment period entitled "Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships" (Phase II) to further address this issue prior to this effective date.

III. Provisions of This Final Rule

To avoid any unnecessary disruption to existing contractual arrangements while we consider modifying this provision, we are further postponing, for an additional 6 months, until July 7, 2003, the effective date of the last sentence of § 411.354(d)(1). This delay is intended to avoid disruptions in the health care industry, and potential attendant problems for Medicare beneficiaries, which could be caused by allowing the last sentence of § 411.354(d)(1) to become effective on January 6, 2003. In the meantime, compensation that is required to be "set in advance" for purposes of compliance with section 1877 of the Act may continue to be based on percentage compensation methodologies, including those in which the compensation is based on a percentage of a fluctuating or indeterminate measure. We note that the remaining provisions of § 411.354(d)(1) will still apply and that all other requirements for exceptions must be satisfied (including, for example, the fair market value and "volume and value" requirements).

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that the notice and comment rulemaking procedure is impracticable, unnecessary, or contrary to the public interest and if the agency incorporates in the rule a statement of such a finding and the reasons supporting that finding.

Our implementation of this action without opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553(b)(B). We find that seeking public comment on this action would be impracticable and unnecessary. We are implementing this additional delay of effective date as a result of our review of the public comments that we received on the January 4, 2001 physician self-referral final rule. As discussed above, we understand from those comments and the comments we received on the December 3, 2001 interim final rule that, unless we further delay the effective date of the last sentence of § 411.354(d)(1), hospitals, academic medical centers, and other entities will have to renegotiate numerous contracts for physician services, potentially causing significant disruption within the health care industry. We are concerned that the disruption could unnecessarily inconvenience Medicare beneficiaries or interfere with their medical care and treatment. We do not believe that it is necessary to offer yet another opportunity for public comment on the same issue in the limited context of whether to delay this sentence of the regulation. In addition, given the imminence of the January 6, 2003 effective date, we find that seeking public comment on this delay in effective date would be impracticable because it would generate uncertainty regarding an imminent effective date. This uncertainty could cause health care providers to renegotiate thousands of contracts with physicians in an effort to comply with the regulation by January 6, 2003 if the proposed delay is not finalized until after the opportunity for public comment. Thus, providing the opportunity for public comment could result in the very disruption that this delay of effective date is intended to avoid.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: September 27, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 19, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29797 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D005]

Defense Federal Acquisition Regulation Supplement; Foreign Military Sales Customer Involvement

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding the participation of foreign military sales (FMS) customers in the development of contracts that DoD awards on their behalf. The objective is to provide FMS customers with more visibility into the contract pricing and award process.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D005.

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SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 225.7304 to provide for greater involvement of FMS customers in the contract award process, while protecting against unauthorized disclosure of contractor proprietary data. DoD published a proposed rule at 67 FR 20713 on April 26, 2002. Seven sources submitted comments on the proposed rule. As a result of the public comments, the final rule differs from the proposed rule in that it contains additional language requiring the contracting officer to—

1. Consult with the contractor before making a decision regarding the degree of FMS customer participation in contract negotiations; and

2. Provide an explanation to the FMS customer if its participation in negotiations will be limited.

A discussion of public comments addressing other aspects of the rule is provided below:

Comment: In 225.7304(b), change "FMS customers should be encouraged to participate" to "FMS customers may participate."

DoD Response: Do not concur. The objective of the rule is to increase transparency for FMS customers. The word "may" does not accurately reflect this objective.

Comment: Revise 225.7304(c) to permit disclosure of proprietary data only "in limited circumstances where the contractor authorizes release of specific data" rather than when "the contractor authorizes its release."

DoD Response: Do not concur. The language in the final rule adequately protects the rights of the contractor.

Comment: The Defense Security Cooperation Agency should determine the degree of customer participation in contract negotiations, rather than leaving this decision to the sole discretion of the contracting officer.

DoD Response: Do not concur. The contracting officer is responsible for contract negotiations.

Comment: Add language to increase the role of the FMS customer in the supplier selection process.

DoD Response: Do not concur. The FMS customer may suggest additional supply sources for any acquisition. Section 225.7304(e)(1) of the rule specifies that the FMS customer may suggest the inclusion of additional firms in the solicitation process.

Comment: Amend 225.7304(e)(3) to limit FMS customer observation or participation in negotiations involving *any* cost information, including cost or pricing data.

DoD Response: Do not concur. A major concern is to preclude unnecessary exclusion of FMS customer representatives from negotiations when only top-level pricing information is discussed. There are sufficient protections in the rule for nondisclosure of proprietary information. Participation of the FMS customer in discussions involving information other than cost or pricing data would be at the discretion of the contracting officer, after consultation with the contractor. This DFARS rule implements DoD policy, as set forth in a memorandum of the Deputy Secretary of Defense dated January 9, 2002, Subject: Department of Defense Policy on Foreign Customer Participation in the Letter of Offer and Acceptance and Contracting Development Process, which requires a DFARS deviation only when the negotiations involve cost or pricing data.

Comment: In 225.7304(f), delete the parenthetical "(except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer)," because it appears to encourage untimely modification of the stated requirements.

DoD Response: Do not concur. Section 225.7304(f) of the rule specifically requires timely notice.

Comment: Include additional language regarding requirements for the contracting officer to justify price reasonableness.

DoD Response: Do not concur. Section 225.7304(h) of the rule requires the contracting officer, upon request, to demonstrate the reasonableness of the contract price to the FMS customer. How this demonstration is accomplished should be left to the discretion of the contracting officer.

Comment: In 225.7304(h), delete the word "sufficient" from the phrase requiring the contracting officer to "provide sufficient information to demonstrate the reasonableness of the price..." This term is indefinable in the sense that it is virtually impossible to objectively determine what is "sufficient" information.

DoD Response: Do not concur. The word "sufficient" describes the adequacy of the information to demonstrate the reasonableness of the price. Although the term cannot be objectively defined, DoD does not agree that this establishes a limitless requirement.

Comment: Add language to address U.S. export laws that limit FMS customer participation in the acquisition process.

DoD Response: Do not concur. An approved Letter of Offer and Acceptance constitutes the legal authorization for the export of the defense articles, technical data, or defense services described therein. 22 U.S.C. 2778(b)(2) provides that "* * * no license shall be required for exports or imports made by or for an agency of the United States Government * * * for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means."

Comment: Add language that clarifies the right of foreign auditors to conduct pre-contract award proposal audits and to have access to price negotiation memoranda and business clearance memoranda.

DoD Response: Do not concur. This DFARS rule is not the appropriate place to address the participation of foreign auditors in U.S. acquisitions or the release of price negotiation and business clearance memoranda to them. These topics are more appropriately addressed in the reciprocal procurement agreements with the foreign country.

Comment: Provide an explanation of what constitutes contractor proprietary data and the conditions under which a deviation would be granted for an FMS customer to participate in contract negotiations when cost or pricing data will be discussed.

DoD Response: What constitutes proprietary data is governed by U.S. law. The disclosure of proprietary data is generally controlled by the Trade Secrets Act (18 U.S.C. 1905) and the Freedom of Information Act (5 U.S.C. 552). A deviation to the regulations (for other than statutory requirements) may be granted when necessary to meet the specific needs and requirements of any procurement. Policy pertaining to deviations is provided in FAR Subpart 1.4 and DFARS Subpart 201.4.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the involvement of FMS customers in contract development should have no significant effect on offerors or contractors, and the rule provides for the protection of contractor proprietary data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7304 is revised to read as follows:

225.7304 FMS customer involvement.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302–4 provides authority to contract without full and open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR Subpart 6.3.

(b) FMS customers should be encouraged to participate with U.S. Government acquisition personnel in discussions with industry to—

(1) Develop technical specifications;

(2) Establish delivery schedules;

(3) Identify any special warranty provisions or other requirements unique to the FMS customer; and

(4) Review prices of varying alternatives, quantities, and options needed to make price-performance tradeoffs.

(c) Do not disclose to the FMS customer any data, including cost or pricing data, that is contractor proprietary unless the contractor authorizes its release.

(d) Except as provided in paragraph (e)(3) of this section, the degree of FMS customer participation in contract negotiations is left to the discretion of the contracting officer after consultation with the contractor. The contracting officer shall provide an explanation to the FMS customer if its participation in negotiations will be limited. Factors that may limit FMS customer participation include situations where—

(1) The contract includes requirements for more than one FMS customer;

(2) The contract includes unique U.S. requirements; or

(3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to—

(1) Direct the exclusion of certain firms from the solicitation process (they may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Observe or participate in negotiations between the U.S. Government and the contractor involving cost or pricing data, unless a deviation is granted in accordance with Subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This information—

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

[FR Doc. 02–29468 Filed 11–21–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 251 and 252 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, cross-references, and clause dates.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 251 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 251 and 252 and Appendix G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 251 and 252 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter1.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

251.102 [Amended]

2. Section 251.102 is amended in paragraph (e) introductory text, in the second sentence, by removing the parenthetical "(f)" and adding in its place "(e)".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

3. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read "(NOV 2002)"; and

b. In paragraph (b), in entries "252.225–7007" and "252.225–7021", by removing "(SEP 2001)" and adding in its place "(OCT 2002)".

4. Appendix G to Chapter 2 is amended by revising Part 2 to read as follows:

Appendix G—Activity Address Numbers

* * * * *

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

DAAA08, B7 Rock Island Arsenal, ATTN: SOSRI–CT, Rock Island, IL 61299–5000

DAAA09, BA U.S. Army Operations Support Command, ATTN: AMSOS–CCA, 1 Rock Island Arsenal, Rock Island, IL 61299–6000

DAAA10, 9X Blue Grass Army Depot, Procurement Office, Building S–14, ATTN:

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SMABC–IOO–P, 2091 Kingston Highway, Richmond, KY 40475–5115
DAAA12, ZM Sierra Army Depot, Building 74, Herlong, CA 96113–5009
DAAA14, BK Tooele Army Depot, Contracting Office, ATTN: SOSTE–CD, Building 501, Tooele, UT 84074–0839
DAAA22, BV Watervliet Arsenal, ATTN: SOSWV–IML–P, Building 10, 1 Buffington Street, Watervliet, NY 12189–4000
DAAA31, GJ McAlester Army Ammunition Plant, ATTN: SOSMC–PC, 1 C Tree Road, McAlester, OK 74501–9002
DAAA33 U.S. Army Materiel Command, Combat Equipment Group " Afloat, 103 Guidance Road, Goose Creek, SC 29445–6060
DAAB07, BG U.S. Army Communications-Electronics Command, CECOM Acquisition Center, ATTN: AMSEL–AC, Building 1208, Fort Monmouth, NJ 07703–5008
DAAB08, 2V U.S. Army Communications-Electronics Command, CECOM Acquisition Center, ATTN: AMSEL–AC, Building 1208, Fort Monmouth, NJ 07703–5008
DAAB15, BD U.S. Army Communications-Electronics Command, CECOM Acquisition Center Washington, ATTN: AMSEL–AC–W, 2461 Eisenhower Avenue, Alexandria, VA 22331–0700
DAAB17, ZS U.S. Army Communications-Electronics Command, Tobyhanna Depot Contracting Office, ATTN: AMSEL–TY–KO, 11 Hap Arnold Boulevard, Tobyhanna, PA 18466–5100
DAAB18, E4 U.S. Army Communications-Electronics Command, Technology Applications Office, ATTN: AMSEL–DSA–TA, 1671 Nelson Street, Fort Detrick, MD 21702–5004
DAAB32, Y6 U.S. Army Communications-Electronics Command, Southwest Operations Office, ATTN: AMSEL–AC–CC–S, Building 61801, Room 3212, Fort Huachuca, AZ 85613–5000
DAAD05, BM U.S. Army Robert Morris Acquisition Center, APG Contracting Division, Aberdeen Branch, ATTN: AMSSB–ACC–A, 4118 Susquehanna Avenue, Aberdeen Proving Ground, MD 21005–3013
DAAD11, B2 U.S. Army Robert Morris Acquisition Center, Denver Contracting Division, ATTN: AMSS–ACD, 72nd and Quebec Streets, Commerce City, CO 80022–1748
DAAD13, ZU U.S. Army Robert Morris Acquisition Center, APG Contracting Division, Edgewood Branch, ATTN: AMSSB–ACC–E, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5424
DAAD15, BB U.S. Army Robert Morris Acquisition Center, Natick Contracting Division, ATTN: AMSSB–ACN–M, Building 1, Kansas Street, Natick, MA 01760–5011
DAAD16, C5 U.S. Army Robert Morris Acquisition Center, Natick Contracting Division (R&D and BaseOps), ATTN: MSSB–ACN–S, Building 1, Kansas Street, Natick, MA 01760–5011
DAAD17, 1Y U.S. Army Robert Morris Acquisition Center, Adelphi Contracting Division, ATTN: AMSSB–ACA, 2800 Powder Mill Road, Adelphi, MD 20783–1197
DAAD19, YU U.S. Army Robert Morris Acquisition Center, Research Triangle Park Contracting Division, ATTN: AMSSB–ACR, PO Box 12211, Research Triangle Park, NC 27709–2211
DAAD21, B1 U.S. Army Robert Morris Acquisition Center, Pine Bluff Contracting Division, ATTN: AMSSB–ACP, 10020 Kabrich Circle, Pine Bluff, AR 71602–9500
DAAE07, BR TACOM " Warren, Acquisition Center, ATTN: AMSTA–AQ–AMB, E Eleven Mile Road, Warren, MI 48397–5000
DAAE08, SF TACOM " Warren, Acquisition Center, ATTN: AMSTA–AQ, E Eleven Mile Road, Warren, MI 48397–5000
DAAE20, DG TACOM—Rock Island, ATTN: AMSTA–AQ–AR, Rock Island Arsenal, Rock Island, IL 61299–7630
DAAE24, BH TACOM " Anniston, Directorate of Contracting, ATTN: AMSTA–AN–CT, 7 Frankford Avenue, Building 221, Anniston, AL 36201–4199
DAAE30, 2T TACOM " Picatinny, Center for Contracting and Commerce, ATTN: AMSTA–AQ–AP, Building 9, Picatinny Arsenal, NJ 07806–5000
DAAE32, D7 TACOM—Red River, Directorate of Contracting, ATTN: AMSTA–RR–P, 100 Main Drive, Building 431, Texarkana, TX 75507–5000
DAAG99, ZY U.S. Army Program Manager—SANG, ATTN: AMCPM–NGA, Unit 61304, APO AE 09803–1304
DAAH01, CC U.S. Army Aviation and Missile Command, ATTN: AMSAM–AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898–5280
DAAH03, D8 U.S. Army Aviation and Missile Command, ATTN: AMSAM–AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898–5280
DAAH10, D9 Aviation Applied Technology Directorate, AMCOM RDEC, ATTN: AMSAM–RD–AA–C, Building 401, Lee Boulevard, Fort Eustis, VA 23604–5577
DAAH12, ZF IAS21WG, AMCOM RDEC, ATTN: AMSAM–TASO–I, Building 401, Lee Boulevard, Fort Eustis, VA 23604–5577
DAAH13, BJ Corpus Christi Army Depot, ATTN: SIOCC–RS–AQ, 308 Crecy Street, Corpus Christi, TX 78419–6170
DAAH17, ZN Letterkenny Army Depot, Directorate of Contracting, ATTN: AMSAM-\–LE–KO, 1 Overcash Avenue, Building 2, Chambersburg, PA 17201–4152
DAAH23, BS U.S. Army Aviation and Missile Command, ATTN: AMSAM–AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898–5280
DABJ01, 1L ACA, North Region Contracting Center, Building 2798, Fort Eustis, VA 23604–5538
DABJ03, 2M Capitol Contracting Center, 9410 Jackson Loop, Suite 101, Fort Belvoir, VA 22060–5116
DABJ05, 1V ACA, Aberdeen Proving Ground, Directorate of Contracting, 4118 Susquehanna Avenue, Aberdeen Proving Ground, MD 21005–3013
DABJ07, BF ACA, Adephi, Directorate of Contracting, 2800 Powder Mill Road, Adelphi, MD 20783–1197
DABJ09, B6 Fort A.P. Hill, Directorate of Contracting, 14136 Burke Road, Fort A.P. Hill, VA 22427–3116
DABJ11, 2J ACA, Carlisle Barracks, Directorate of Contracting, 314 Lovell Avenue, Suite 1, Carlisle Barracks, PA 17013–5072
DABJ13, 1C ACA, Fort Carson, Directorate of Contracting, 1850 Mekong Street, Building 6222, Fort Carson, CO 80913–4323
DABJ15, 2G ACA, Fort Dix, Directorate of Contracting, 5418 South Scott Plaza, Fort Dix, NJ 08640–5097
DABJ17, 1M ACA, Fort Drum, Directorate of Contracting, 45 West Street, Fort Drum, NY 13602–5220
DABJ19, BP ACA, Dugway Proving Ground, Division of Contracting, Building 5330, Valdez Circle, Dugway, UT 84022–5000
DABJ21, 0S Fort Hamilton, Directorate of Contracting, 111 Battery Avenue, Room 115, Brooklyn, NY 11252–5000
DABJ23, 2F U.S. Army Engineer Center, Directorate of Contracting, PO Box 140, Fort Leonard Wood, MO 65473–0140
DABJ25, 1T ACA, Fort Lewis, Directorate of Contracting, Building 2015, Box 339500, Fort Lewis, WA 98433–9500
DABJ27, 1U ACA, Fort McCoy, Directorate of Contracting, Building 2103, 8th Avenue, Fort McCoy, WI 54656–5153
DABJ29, 0M National Defense University, Directorate of Contracting, 300 5th Avenue, Building 62, Room 203, Fort Lesley J. McNair, DC 20319–5066
DABJ31, 1J Fort George G. Meade, Directorate of Contracting, 4550 Parade Field Lane, Fort George G. Meade, MD 20755–5081
DABJ35, 0F Fort Myer Military Community, Building 205, Room 213, 204 Lee Avenue, Fort Myer, VA 22211–1199
DABJ37, 2Q ACA, Natick, Directorate of Contracting, Building 1, Kansas Street, Natick, MA 01760–5011
DABJ39, 2T ACA, Picatinny, Directorate of Contracting, Building 9, Picatinny Arsenal, NJ 07806–5000
DABJ41, 1G ACA, Fort Riley, Directorate of Contracting, PO Box 2248, Fort Riley, KS 66442–0248
DABJ45, G8 ACA, United States Military Academy, Directorate of Contracting, ATTN: MADC, 681 Hardee Place, West Point, NY 10996–1514
DABJ47, BN ACA, White Sands Missile Range, Directorate of Contracting, Building 143, Crozier Street, White Sands Missile Range, NM 88002–5201
DABJ49, B5 ACA, Yuma Proving Ground, Directorate of Contracting, Building 2100, Ocotillo Street, Yuma, AZ 85365–9106
DABK01, 1E ACA, South Region Contracting Center, 1301 Anderson Way SW, Fort McPherson, GA 30330–1096
DABK03, 2B ACA, Fort Benning, Directorate of Contracting, Building 6, Meloy Hall, Room 207, Fort Benning, GA 31905–5000
DABK05, 2L ACA, Fort Bliss, Directorate of Contracting, ATTN: ATZC–DOC, Building 2021, Club Road, Fort Bliss, TX 79916–6812
DABK07, 1N ACA, Fort Bragg, Installation Business Office—Contracting, Building 1–1333, Armistead & Macomb Street, Fort Bragg, NC 28307–0120
DABK09, 1H ACA, Fort Campbell, Directorate of Contracting, Building 2174, 13½ & Indiana Streets, Fort Campbell, KY 42223–1100
DABK11, 2C ACA, Fort Gordon, Directorate of Contracting, 419 B Street, Building

29718, 3rd Floor, Fort Gordon, GA 30905–5719
DABK13, BL ACA, Fort Huachuca, Directorate of Contracting, PO Box 12748, Fort Huachuca, AZ 85670–2748
DABK15, 1Q ACA, Fort Hood, Directorate of Contracting, 761st Tank Battalion Avenue, Room W103, Fort Hood, TX 76544–5025
DABK17, ZE ACA, Fort Irwin, Acquisition Command, PO Box 105095, Fort Irwin, CA 92310–5095
DABK19, 2K ACA, Fort Jackson, Directorate of Contracting, Building 4340, Magruder Street, Fort Jackson, SC 29207–5491
DABK21, 2E ACA, Fort Knox, Directorate of Contracting, Building 1109, Room 250, Fort Knox, KY 40121–5000
DABK23, 2A ACA, Fort McClellan, Directorate of Contracting, 291 Jimmy Parks Boulevard, Suite 215, Fort McClellan, AL 36205–5000
DABK25, G1 ACA, Fort Polk, Directorate of Contracting, PO Drawer 3918, Fort Polk, LA 71459–5000
DABK27, 0Q ACA, Presidio of Monterey, Directorate of Contracting, ATTN: ATZP–DOC, 1342 Plummer Street, Monterey, CA 93944–3328
DABK31, F6 ACA, Fort Rucker, Directorate of Contracting, Novosel Street, Building 5700, Room 380, Fort Rucker, AL 36362–5000
DABK33, F9 ACA, Fort Sam Houston, Directorate of Contracting, 2107 17th Street, Building 4197, Fort Sam Houston, TX 78234–5015
DABK35, 2H ACA, Fort Sill, Directorate of Contracting, PO Box 33501, Fort Sill, OK 73503–0501
DABK37, 1D ACA, Fort Stewart, Directorate of Contracting, 1042 William H Wilson Avenue, Suite 219, Fort Stewart, GA 31314–3322
DABL01, D0 ACA, ITEC4, Directorate of Contracting, 2461 Eisenhower Avenue, Alexandria, VA 22331–0700
DABL03, E1 ACA, Fort Huachuca, ITEC4 Contracting, Building 61801, Room 3212, Fort Huachuca, AZ 85613–5000
DABL05 , E7 ACA 5th Signal Command, Directorate of Contracting, ATTN: CMR 421, APO, AE 09056–0001
DABM03, 0L Headquarters, Third U.S. Army/ARCENT, ATTN: AFRD–PARC, 1881 Hardee Avenue SW, Building 363, Fort McPherson, GA 30330–7000
DABM06, 0P U.S. Army Central Command—Kuwait, ATTN: ARCENT–KU–DOC, Camp Doha, Kuwait, APO, AE 09889–9900
DABM09, 2D U.S. Army Central Command—Qatar, ATTN: ARCENT–QA–DOC, Doha, Qatar, APO, AE 09898
DABM13, G0 U.S. Army Central Command—Saudi Arabia, Directorate of Contracting, ATTN: ARCENT–SA, Eskan Village Riyadh, Saudi Arabia, APO, AE 09852
DABN01, G6 Wiesbaden Contracting Center, ATTN: AEUCC–C, CMR 410, Box 741, APO, AE 09096–0741
DABN03, G5 RCO Seckenheim, ATTN: AEUCC–S, Unit 29331, APO, AE 09266–0509
DABN06, F0 RCO Wuerzburg, ATTN: AEUCC–W, Unit 26622, APO, AE 09244–6622
DABN09, 8X RCO Grafenwoehr, ATTN: AEUCC–G, Unit 28130, APO, AE 09114–8130
DABN13 , 9Q RCO Vicenza, ATTN: AEUCC–I, Unit 31401, Box 33, APO, AE 09630–3326
DABN16, 9Z RCO Benelux, ATTN: AEUCC–B, PSC 79/BRCO, APO, AE 09714
DABN43, 0T JCC–Tuzla, ATTN: AEUCC–S3, Unit 29331, APO, AE 09266–0509
DABN46, G3 JCC–Taszar, ATTN: AEUCC–S3, Unit 29331, APO, AE 09266–0509
DABN49, G4 JCC–Sarajevo, ATTN: AEUCC–S3, Unit 29331, APO, AE 09266–0509
DABN53, 2N JCC–Bondsteel, ATTN: AEUCC–S3, Unit 29331, APO, AE 09266–0509
DABN56, E8 JCC–Camp Able Sentry, ATTN: AEUCC–S3, Unit 29331, APO, AE 09266–0509
DABN93, Y5 HQ USACCE, ATTN: AEUCC–S3, Unit 29331, APO, AE 09266–0509
DABP01, F4 HQ, EUSA, Asst Cofs Acquisition Management, ATTN: EAAQ (PARC), Unit 15236, APO, AP 96205–0009
DABQ01, 1K ACA, Pacific, Office of the Director/PARC, ATTN: SFCA–POH, Building T–115, B Street, Fort Shafter, HI 96858–5100
DABQ03, 8U ACA, Fort Richardson, Regional Contracting Office, Alaska, ATTN: SFCA–POH–A, PO Box 5–525, Fort Richardson, AK 99505–0525
DABQ06, CJ ACA, Fort Shafter, Regional Contracting Office, Hawaii, ATTN: SFCA–POH–H, Building 520, Pierce Street, Fort Shafter, HI 96858–5025
DABR01, Z2 ACA, OPARC, Mission Support Contracting Office, ATTN: Chief of the MSC, PO Box 34000, Fort Buchanan, PR 00934
DABR03, 1B ACA, Army BaseOps Support Activity, Westside Plaza II, ATTN: SOBO-DC, 8300 NW 33 Street, Suite 110, Miami, FL 33122–1940
DABR06, 8V U.S. Army South, Directorate of Contracting, ATTN: SOFB–DOC, Building 556, Fort Buchanan, PR 00934–3400
DABR09, ZC Joint Task Force Bravo, Contracting Office, ATTN: JTF–B–COA, Unit 5720, PSC 42, APO, AA 34042
DACA01, DACW01, CK U.S. Army Engineer District, Mobile, ATTN: CESAM–CT, PO Box 2288, Mobile, AL 36628–0001
DACA02, DACW02 U.S. Army Corps of Engineers, ATTN: CEPR–ZA, 441 G Street NW, Washington, DC 20314–1000
DACA03, DACW03, CL U.S. Army Engineer District, Little Rock, ATTN: CESWL–CT, PO Box 867, Little Rock, AR 72203–0867
DACA05, DACW05, CM U.S. Army Engineer District, Sacramento, ATTN: CESPK–CT, 1325 J Street, Sacramento, CA 95814–2922
DACA07, DACW07, CP U.S. Army Engineer District, San Francisco, ATTN: CESPN–CT, 333 Market Street, San Francisco, CA 94105–2195
DACA09, DACW09, CQ U.S. Army Engineer District, Los Angeles, ATTN: CESPL–CT, PO Box 532711, Los Angeles, CA 90053–2325
DACA17, DACW17, CS U.S. Army Engineer District, Jacksonville, ATTN: CESAJ–CT, PO Box 4970, Jacksonville, FL 32232–0019
DACA21, DACW21, CV U.S. Army Engineer District, Savannah, ATTN: CESAS–CT, PO Box 889, Savannah, GA 31402–0889
DACA23, DACW23, CX U.S. Army Engineer District, Chicago, ATTN: CELRC–CT, 111 North Canal Street, Chicago, IL 60606–7206
DACA25, DACW25, CD U.S. Army Engineer District, Rock Island, Clock Tower Building, ATTN: CEMVR–CT, PO Box 2004, Rock Island, IL 61204–2004
DACA27, DACW27, CY U.S. Army Engineer District, Louisville, ATTN: CELRL–CT, PO Box 59, Louisville, KY 40201–0059
DACA29, DACW29, CZ U.S. Army Engineer District, New Orleans, ATTN: CEMVN–CT, PO Box 60267, New Orleans, LA 70160–0267
DACA31, DACW31, DA U.S. Army Engineer District, Baltimore Contracting Division, ATTN: CENAB–CT, PO Box 1715, Baltimore, MD 21203–1715
DACA33, DACW33, DB U.S. Army Engineer District, New England, ATTN: CENAE–CT, 696 Virginia Road, Concord, MA 01742–2751
DACA35, DACW35, DC U.S. Army Engineer District, Detroit, ATTN: CELRE–CT, PO Box 1027, Detroit, MI 48321–1027
DACA37, DACW37, DD U.S. Army Engineer District, St. Paul, ATTN: CEMVP–CT, 190 Fifth Street East, St. Paul, MN 55101–1638
DACA38, DACW38, DE U.S. Army Engineer District, Vicksburg, ATTN: CEMVK–CT, 4155 Clay Street, Vicksburg, MS 39183–3435
DACA41, DACW41, DH U.S. Army Engineer District, Kansas City, ATTN: CENWK–CT, 700 Federal Building, 601 East 12th Street, Kansas City, MO 64106–2896
DACA42, DACW42, DF Vicksburg Consolidated Contracts Office, ATTN: ERDC, 4155 Clay Street, Vicksburg, MS 39183–3435
DACA43, DACW43, DJ U.S. Army Engineer District, St. Louis, ATTN: CEMVS–CT, 1222 Spruce Street, St. Louis, MO 63103–2833
DACA45, DACW45, DK U.S. Army Engineer District, Omaha, ATTN: CENWO–CT, 106 South 15th Street, Omaha, NE 68102–1618
DACA47, DACW47, DM U.S. Army Engineer District, Albuquerque, ATTN: CESPA–CT, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435
DACA49, DACW49, DN U.S. Army Engineer District, Buffalo, ATTN: CELRB–CT, 1776 Niagara Street, Buffalo, NY 14207–3199
DACA51, DACW51, CE U.S. Army Engineer District, New York, Contracting Division, ATTN: CENAN–CT, 26 Federal Plaza, New York, NY 10278–0090
DACA54, DACW54, DQ U.S. Army Engineer District, Wilmington, ATTN: CESAW–CT, PO Box 1890, Wilmington, NC 28402–1890
DACA56, DACW56, DS U.S. Army Engineer District, Tulsa, ATTN: CESWT–CT, 1645 South 101st East Avenue, Tulsa, OK 74128–4609
DACA57, DACW57, DT U.S. Army Engineer District, Portland, ATTN: CENWP–CT, PO Box 2946, Portland, OR 97208–2946
DACA59, DACW59, DV U.S. Army Engineer District, Pittsburgh, ATTN: CELRP–CT, 1000 Liberty Avenue, Pittsburgh, PA 15222–4186
DACA60, DACW60, DW U.S. Army Engineer District, Charleston, ATTN: CESAC–CT, 69–A Hagood Avenue, Charleston, SC 29403–5107
DACA61, DACW61, CF U.S. Army Engineer District, Philadelphia, Contracting

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Division, ATTN: CENAP–CT, 100 Penn Square East, Wanamaker Building, Philadelphia, PA 19107–3390
DACA62, DACW62, DX U.S. Army Engineer District, Nashville, ATTN: CELRN–CT, PO Box 1070, Nashville, TN 37202–1070
DACA63, DACW63, DY U.S. Army Engineer District, Fort Worth, ATTN: CESWF–CT, PO Box 17300, Fort Worth, TX 76102–0300
DACA64, DACW64, DZ U.S. Army Engineer District, Galveston, ATTN: CESWG–CT, PO Box 1229, Galveston, TX 77553–1229
DACA65, DACW65, EA U.S. Army Engineer District, Norfolk, ATTN: CENAO–SS–C, 803 Front Street, Norfolk, VA 23510–1096
DACA66, DACW66, EB U.S. Army Engineer District, Memphis, ATTN: CEMVM–CT, 167 North Main Street, Room B–202, Memphis, TN 38103–1894
DACA67, DACW67, EC U.S. Army Engineer District, Seattle, ATTN: CENWS–CT, PO Box 3755, Seattle, WA 98124–3755
DACA68, DACW68, YW U.S. Army Engineer District, Walla Walla, ATTN: CENWW–CT, 201 North 3rd Avenue, Walla Walla, WA 99362–1876
DACA69, DACW69, CG U.S. Army Engineer District, Huntington, ATTN: CELRH–CT, 502 8th Street, Huntington, WV 25701–2070
DACA72, DACW72, ZA U.S. Army Humphreys Engineer Center Support Activity, ATTN: CEHEC–CT, 7701 Telegraph Road, Alexandria, VA 22315–3860
DACA78, DACW78, 9V Transatlantic Programs Center, ATTN: CETAC–CT, 201 Prince Frederick Drive, Winchester, VA 22602–5000
DACA79, DACW79, 2R U.S. Army Engineer District, Japan, ATTN: CEPOJ–CT, Unit 45010, APO AP 96338–5010
DACA81, DACW81, CN U.S. Army Engineer District, Far East, ATTN: CEPOF–CT, Unit 15546, APO AP 96205–0610
DACA83, DACW83, ZH U.S. Army Engineer District, Honolulu, ATTN: CEPOH–CT, Building 230, Fort Shafter, HI 96858–5440
DACA85, DACW85, ZJ U.S. Army Engineer District, Alaska, ATTN: CEPOA–CT, PO Box 6898, Elemendorf AFB, AK 99506–6898
DACA87, DACW87, ZW U.S. Army Engineer and Support Center, Huntsville, ATTN: CEHNC–CT, PO Box 1600, Huntsville, AL 35807–4301
DACA90, DACW90, 2S U.S. Army Engineer District, Europe, ATTN: CENAU–CT, CMR 410, Box 7, APO AE 09096–9401
DADA08, BT U.S. Army Medical Command, HCAA, Southeast Regional Contracting Office, ATTN: MCAA–SE, 39706 40th Street, Fort Gordon, GA 30905–5650
DADA09, YY U.S. Army Medical Command, HCAA, Great Plains Regional Contracting Office, ATTN: MCAA–GP, 3851 Roger Brooke, L31–9V, Fort Sam Houston, TX 78234–6200
DADA10, ZQ U.S. Army Medical Command, HCAA, MEDCOM Contracting Center, ATTN: MCAA–C, Building 4197, 2107 17th Street, Fort Sam Houston, TX 78234–5015
DADA13, 0W U.S. Army Medical Command, HCAA, Western Regional Contracting Office, ATTN: MCAA–W, 9902 Lincoln Street, Tacoma, WA 98431–1110
DADA15, 0X U.S. Army Medical Command, HCAA, MEDCOM Contracting Center—North Atlantic, ATTN: MCAA–NA, Building T–20, 6900 Georgia Avenue NW, Washington, DC 20307–5000
DADA16, 0Y U.S. Army Medical Command, HCAA, Pacific Regional Contracting Office, ATTN: MCAA–P, Building 160, Krukowski Road, Tripler AMC, HI 96859–5000
DADA19, 8W U.S. Army Medical Command, HCAA, European Regional Contracting Cell, ATTN: MCAA–E, Landstuhl, Germany, APO, AE 09180–3460
DAHA01, 9B USPFO for Alabama, PO Box 3715, Montgomery, AL 36109–0715
DAHA02, 0G USPFO for Arizona, 5645 East McDowell Road, Phoenix, AZ 85008–3423
DAHA03, 9D USPFO for Arkansas, Camp Robinson, North Little Rock, AR 72199–9600
DAHA04, 9N USPFO for California, PO Box 8104, San Luis Obispo, CA 93403–8104
DAHA05, Z0 USPFO for Colorado, ATTN: Mail Stop 66, 660 South Aspen Street, Building 1005, Aurora, CO 80011–9551
DAHA06, 1S USPFO for Connecticut, 360 Broad Street, Hartford, CT 06105–3779
DAHA07, 9A USPFO for Delaware, Grier Building, 1161 River Road, New Castle, DE 19720–5199
DAHA08, 2W USPFO for Florida, PO Box 1008, 189 Marine Street, St. Augustine, FL 32085–1008
DAHA09, C0 USPFO for Georgia, PO Box 17882, Atlanta, GA 30316–0882
DAHA10, CU USPFO for Idaho, 3489 West Harvard Street, Boise, ID 83705–6512
DAHA11, 9E USPFO for Illinois, Camp Lincoln, 1301 North MacArthur Boulevard, Springfield, IL 62702–2399
DAHA12, 4E USPFO for Indiana, 2002 South Holt Road, Indianapolis, IN 46241–4839
DAHA13, 9L USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131–1902
DAHA14, 4Z USPFO for Kansas, 2737 South Kansas Avenue, Topeka, KS 66611–1170
DAHA15, 6P USPFO for Kentucky, Boone National Guard Center, 120 Minuteman Parkway, Building 120, Frankfort, KY 40601–6192
DAHA16, 0A USPFO for Louisiana, Jackson Barracks, Building 39, New Orleans, LA 70146–0330
DAHA17, 0B USPFO for Maine, Camp Keyes, Augusta, ME 04333–0032
DAHA18, 0C USPFO for Maryland, State Military Reservation, 301 Old Bay Lane, Havre de Grace, MD 21078–4094
DAHA19, 0D USPFO for Massachusetts, 50 Maple Street, Milford, MA 01757–3604
DAHA20, 9F USPFO for Michigan, 3111 West Saint Joseph Street, Lansing, MI 48913–5102
DAHA21, 9K USPFO for Minnesota, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345–4173
DAHA22, CW USPFO for Mississippi, 144 Military Drive, Jackson, MS 39208–8860
DAHA23, 9H USPFO for Missouri, 7101 Military Circle, Jefferson City, MO 65101–1200
DAHA24, 9P USPFO for Montana, PO Box 1157, Helena, MT 59624–1157
DAHA25, 9S USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508–1092
DAHA26 USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701–5596
DAHA27, 9U USPFO for New Hampshire, PO Box 2003, Concord, NH 03302–2003
DAHA28, ZK USPFO for New Jersey, 3601 Technology Drive, Fort Dix, NJ 08640–7600
DAHA29 USPFO for New Mexico, 47 Bataan Boulevard, Santa Fe, NM 87508–4695
DAHA30, D2 USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110–2224
DAHA31, D3 USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607–6412
DAHA32, D6 USPFO for North Dakota, PO Box 5511, Bismarck, ND 58506–5511
DAHA33, 9M USPFO for Ohio, 2811 West Dublin-Granville Road, Columbus, OH 43235–2788
DAHA34, 9J USPFO for Oklahoma, 3501 Military Circle, Oklahoma City, OK 73111–4398
DAHA35, 1X USPFO for Oregon, ATTN: USPFO–P, PO Box 14350, Salem, OR 97309–5047
DAHA36, DL USPFO for Pennsylvania, Department of Military and Veteran Affairs, Annville, PA 17003–5003
DAHA37, 9W USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906–1954
DAHA38, DU USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201–4763
DAHA39, VQ USPFO for South Dakota, 2823 West Main Street, Rapid City, SD 57702–8186
DAHA40, YX USPFO for Tennessee, PO Box 40748, Nashville, TN 37204–0748
DAHA41, 9C USPFO for Texas, ATTN: Contracting Officer, PO Box 5218, Austin, TX 78763–5218
DAHA42 USPFO for Utah, PO Box 2000, Draper, UT 84020–2000
DAHA43 USPFO for Vermont, 789 Vermont National Guard Road, Building 3, Colchester, VT 05446–3004
DAHA44, ZR USPFO for Virginia, Building 316, Fort Pickett, Blackstone, VA 23824–6316
DAHA45, ZX USPFO for Washington, Building 32, Camp Murray, Tacoma, WA 98430–5170
DAHA46 USPFO for West Virginia, 50 Armory Road, Buckhannon, WV 26201–6818
DAHA47, 9G USPFO for Wisconsin, 8 Madison Boulevard, Camp Douglas, WI 54618–5002
DAHA48 USPFO for Wyoming, 5500 Bishop Boulevard, Cheyenne, WY 82009–3320
DAHA49 USPFO for the District of Columbia, Anacostia Naval Air Station, 189 Poremba Court SW, Washington, DC 20373–5046
DAHA50 USPFO for Hawaii, 4208 Diamond Head Road, Honolulu, HI 96816–4495
DAHA51, 2Z USPFO for Alaska, PO Box B, Camp Denali, Fort Richardson, AK 99505–2510
DAHA70 USPFO for Puerto Rico, PO Box 34069, Fort Buchanan, PR 00934–4068
DAHA72 USPFO for Virgin Islands, RR #2, Box 9200, Kinghill, St. Croix, VI 00850–9731
DAHA74 USPFO for Guam, 622 East Harmon Industrial Park Road, Tamuning, GU 96911–4421
DAHA90, 2Y National Guard Bureau, Contracting Support, ATTN: NGB–AQC, 1411 Jefferson Davis Highway, Arlington, VA 22202–3231
DAHA92 National Guard Bureau, Environmental/Air Acquisition Division, 1411 Jefferson Davis Highway, Arlington, VA 22202–3231
DAHA94 National Guard Bureau, CIO Contracting Office, ATTN: NGB–RCS–BO, 1411 Jefferson Davis Highway, Suite 7200, Arlington, VA 22202–3231
DAMD17, B3 U.S. Army Medical Research Acquisition Activity, ATTN: MCMR–AAA, 820 Chandler Street, Frederick, MD 21702–5014
DAMT01, 0E Military Traffic Management Command, ATTN: MTAQ, 200 Stovall Street, Alexandria, VA 22332–5000
DASC01, YJ HQ USAINSCOM, Directorate of Contracting, ATTN: IAPC–DOC, 8825 Beulah Street, Fort Belvoir, VA 22060–5246
DASC02, YV National Ground Intelligence Center, ATTN: IANG–LOG, 220 Seventh Street NE, Charlottesville, VA 22902–5396
DASG60, CB U.S. Army Space and Missile Defense Command, Deputy Commander, ATTN: SMDC–CM–AP, PO Box 1500, Huntsville, AL 35807–3801
DASG62, CH U.S. Army Space Command, ATTN: SMDC–AR–CM, 350 Vandenberg Street, Peterson AFB, CO 80914–2749
DASW01, F7 Defense Contracting Command—Washington, ATTN: Special Actions Unit Chief, 5200 Army Pentagon, Room 1D245, Washington, DC 20310–5200
DASW02, 1W USAVIC/Production Acquisition Division, ATTN: JDHQS–AV–W, 601 North Fairfax Street, Room 334, Alexandria, VA 22314–2007
DATM01, 0R U.S. Army, ATEC Mission Support Contracting Activity, ATTN: CSTE–CA, PO Box Y, Fort Hood, TX 76544–0770

5. Appendix G to Chapter 2 is amended in Part 5 by revising entry "FA4452" to read as follows:

PART 5—AIR FORCE ACTIVITY ADDRESS NUMBERS

* * * * *

FA4452, RL AMC CONF/LGCF, 507 Symington Drive, Room W202, Scott AFB, IL 62225–5015.

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[FR Doc. 02–29469 Filed 11–21–02; 8:45 am]

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VOL 67 ISS 226 NO 22 2002 UMI

Proposed Rules

Federal Register
Vol. 67, No. 226
Friday, November 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF02

Small Business Size Standards; Job Corps Centers

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to establish a $30 million size standard in average annual receipts for Job Corps Centers activities classified within the "Other Technical and Trade Schools" industry (North American Industry Classification System code 611519). The current size standard for all activities within this industry is $6 million in average annual receipts.

DATES: Comments must be received on or before December 23, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416; via email to *SIZESTANDARDS@sba.gov*, or via facsimile at (202) 205–6930. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA has received requests from the U.S. Department of Labor (DOL) and three other organizations to review the size standard used for Federal Job Corps Center contracts. DOL operates most Job Corps Centers though private sector companies. DOL had classified its Job Corps Centers contracts under the Facilities Support Services industry, NAICS code 561210, and applied the previous Base Maintenance size standard of $20 million in average annual receipts (as defined in 13 CFR 121.401). A potential offeror on a recent solicitation appealed this NAICS designation to SBA's Office of Hearings and Appeals (OHA). OHA rendered a decision that the Job Corps Center contract was not properly classified under the Base Maintenance sub-category of Facilities Support Services. (See NAICS Appeal of Global Solutions Network, Inc., SBA No. NAICS–4478, dated March 5, 2002.) For the appealed requirement, OHA determined that the proper classification for an activity that trains individuals in life skills and readies them for the job market through academic studies and/or technical training is Other Technical and Trade Schools, NAICS code 611519. The effect of this decision was to change the size standard for Job Corps Center contracts from $20 million to $5 million. (On February 22, 2002, an inflation adjustment increased the $5 million size standard for NAICS 611519 to $6 million and the $20 million size standard for Base Maintenance to $23 million. *See* 67 FR 3041, dated January 23, 2002.)

According to DOL, Job Corps Center contracts account for more than $900 million annually in contracting and represent about 60 percent of DOL's procurement expenditures. SBA agreed to review the size standard for Job Corps Centers because of the large amount of contracting in one specific activity and the significant change in the size standard resulting from the OHA decision. Based on our review, this rule proposes to establish a $30 million size standard specifically for DOL Job Corp Center contracts. The discussion below describes SBA's general methodology for reviewing size standards, the basis for creating an industry sub-category of Job Corps Centers, the data obtained on Job Corp Center contracts and on the bidders to these contracts, the analysis leading to the decision to propose $30 million, and the alternative size standards considered by SBA.

Size Standards Methodology: Congress granted SBA discretion to establish detailed size standards (15 U.S.C. 632(a)(2)). SBA's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's Web site at *http:/www.sba.gov/library/soproom.html*) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: Section 3(a)(2) of the Small Business Act (15 U.S.C. 632 (a)(2)), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristic. SBA has two "base" or "anchor" size standards that apply to most industries—500 employees for manufacturing industries and $6 million in average annual receipts for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million average annual receipts size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was adjusted periodically for inflation so that, currently, the anchor size standard $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than the "typical industry."

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping.

If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group's characteristics, the larger the difference between the appropriate industry size standard and the anchor size standard. SBA will consider adopting a size standard below the anchor size standard only when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry under review.

The primary evaluation factors that SBA considers in analyzing the structural characteristics of an industry are listed in 13 CFR 121.102 (a) and (b). Those factors include average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs as an evaluation factor. SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. Average firm size is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry is significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. The distribution of firms by size examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. A size standard higher than the anchor size standard is supportable for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, assume for the industry under review that 50 percent of total industry receipts are generated by firms of $28.5 million in receipts and less. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million and less in receipts generated 50 percent of total industry receipts. Viewed in isolation, the higher figure for the industry under review suggests that a size standard higher than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40 percent, 60 percent, and 70 percent, as well as the 50 percent comparison discussed above. Usually, SBA uses information based on the most recent economic census conducted by the Department of Commerce's Bureau of the Census. However, Job Corps Centers are germane to the Federal government and involve approximately 35 organizations and firms from various industries. Information specific to Job Corps Centers under NAICS code 611519 is not reflected in the latest census data. Therefore, SBA gathered pertinent data on the various firms in this industry, which it will use along with the Census data.

3. Start-up costs affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into one industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA uses a proxy measure to assess the financial burden for entry-level firms. For this analysis, SBA has calculated nonpayroll costs per establishment for each industry. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs, which would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed a significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. Industry competition is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compares the proportion of industry receipts generated by the four largest firms in the industry generally referred to as the "four-firm concentration ratio" with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard in order to assist firms in a broader size range to compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40 percent for an industry under review, while its comparison groups also average less than 40 percent.

5. "Impact of size standard revisions on SBA programs" refers to the possible impact a size standard change may have on the level of small business assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

Another factor to evaluate the impact of a proposed size standard on SBA programs is the volume of guaranteed loans within an industry and the size of firms obtaining those loans. This factor is sometimes examined to assess whether the current size standard may

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be restricting the level of financial assistance to firms in that industry. If small businesses receive significant amounts of assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially if it is already above the anchor size standard) may not be necessary.

Establishing a Job Corps Centers Sub-Industry Category

The Other Technical and Trade Schools industry which OHA designated for Job Corps Center contracts comprises establishments primarily engaged in offering job or career vocational or technical courses that are not specifically designated under NAICS as industries in their own right. The curriculums offered by these schools are highly structured and specialized and lead to job-specific certification. Examples of these schools include truck driving schools, bartending schools, and graphic arts schools. These schools tend to offer trade specific training and certification, and are usually small. More than 95 percent of these firms have revenues at or below $6 million.

The DOL's Job Corps Centers, on the other hand, go beyond trade certification programs. Job Corps is a residential education and training program that helps students between the ages of 16 and 24 gain the experience they need to get a better job and take control of their lives. The mission is to prepare economically disadvantaged youth to obtain and hold gainful employment, pursue further education or training, or satisfy entrance requirements for careers in the Armed Forces. The centers provide comprehensive life skills training, comprehensive career preparation and development services which include academic, vocational, social and independent living skills, and career-readiness training and support services. The centers offer college preparatory training, military entrance training, career transition activities, and training and certification in a trade. Basic life-skills training include basic reading and math skills, English as a second language, dietary, dental, basic health, personal hygiene, as well as job life skills. The centers provide academic training that will lead to a high school diploma or equivalent and conduct training in computer skills, resume development, interview skills, and career development. Besides providing teachers for these requirements, several centers have agreements with local high schools as well as local community colleges. Centers also prepare interested participants for military service exams, and train students in various trades, including plumbing, carpentry, culinary arts, auto-mechanic, electrician, facilities maintenance, landscaping, brick masonry, etc. The Job Corps contractors are required to provide outreach activities and also to maintain the facility, purchase any equipment needed in the teaching of a trade (outfitting kitchens for culinary studies, purchasing heavy machinery for mechanical and automotive trades, *etc.*), provide medical and dental facilities, and perform admission physicals which include drug and alcohol abuse screening.

The significantly broader scope of activities performed by Job Corps Center contractors as compared with the activities of all other trade schools within its industry supports a separate assessment of an appropriate size standard. Job Corps Centers are larger than the typical trade school, with an average yearly funding of $8.8 million for one center (yearly funding for each center ranges from $5 million to over $44 million). The average size trade school in NAICS 611519 is less than one million dollars.

Because the performance of Job Corps Center contracts is a segment of the Other Technical and Trade Schools industry, SBA's proposal includes a footnote to the table of size standards defining the activities covered. It explains that contracts for Job Corps Centers require the complete maintenance and operation of the centers. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. SBA invites comment on this definition so that it is accurately depicts the scope of activities currently performed by Job Corps Center contractors.

Industry Data on Job Corp Centers

The U.S. Bureau of the Census does not published specific data on firms engaged in the operation and management of Job Corps Centers. Also, companies that perform and compete for these Job Corp Center contracts operate primarily in industries outside of the Other Technical and Trade Schools industry. To assess a size standard for the operation and maintenance of Job Corps Centers, SBA collected contract and company data from DOL and Dun and Bradstreet (D&B). Tables 1–3 summarize these data.

SBA collected fiscal years 2000–01 data from the DOL on organizations who have contracts or who have submitted proposals on Job Corps Center requirements, and used information provided on D&B Information Reports on these organizations. A review of those organizations shows the following information. There are approximately 35 organizations in this activity. The organizations include for-profit businesses, the YWCA, businesses owned by Native American tribes and nations, and several non-profit establishments. There are 21 organizations currently under contract with DOL to operate Job Corps Centers. According to D&B reports, these organizations are in the following industries: Management of youth facilities, vocational rehabilitation, facilities maintenance, home health care services, human resource counseling, management consulting, and information retrieval. Seven organizations were awarded contracts under Small Business Set-Aside procedures with the contracting officer using the appealed NAICS code of 561210 and the previous Base Maintenance size standard of $20 million. Five of the organizations in this activity have receipts below $6 million, but only one of these currently has a Job Corps Center contract. In addition, D&B information shows that four of the five organizations have receipts below $1 million. These firms are in the following industries: temporary help services, construction, investigation services, and engineering and technical services.

Twenty six of the 35 organizations are listed with D&B. Two non-profit organizations do not have receipts and employees listed on their D&B reports, therefore, SBA has relevant information on 24 organizations. D&B reports on eight organizations show the number of employees but lacked information on those firms' receipts. For these eight organizations, SBA estimated their receipts based organizations in similar industries with similar employee counts.

SBA calculated the average characteristics of the 24 Job Corp Center organizations that provided D&B with receipt and employee information. Table 1 shows the mean and median values of these organizations. Because of the small number of organizations competing for Job Corps Center contracts, the mean values are inordinately influenced by a few very large firms. The median values are considered more reflective of the average characteristics of Job Corps Center firms and are used in the analysis of industry structure discussed later in this rule.

TABLE 1.—INDUSTRY CHARACTERISTICS OF THE JOB CORPS CENTER ACTIVITY

Category	Mean		Median	
	Receipts (millions)	Employees	Receipts (millions)	Employees
Job Corps Center	$75.3	1,820	$30.0	400

Tables 2 and 3 examine the distribution of firms in relation to receipts and number of employees. In addition, Table 2 contains information on the percentage distribution of Job Corps Center contract dollars by receipts size of the firm.

TABLE 2.—RECEIPTS DISTRIBUTION AND PERCENTAGE OF CONTRACT DOLLARS FOR JOB CORPS CENTER ACTIVITY

Receipts (in millions)	Number of firms/organizations	Percent of total job corps center contract dollars
$100 and over	3	52
$50–$99,999	7	28
$30–$49,999	2	7
$20–$29,999	2	2
$10–$19,999	4	5
$6–$9,999	1	1
Below $6	5	1
Undetermined	[1]3	4

[1] Two organizations with Job Corps Center contracts are listed with D&B, but provided no receipt and employee information. One non-profit organization with a Job Corps Center contract is not listed with Dun and Bradstreet.

TABLE 3.—EMPLOYEE DISTRIBUTION FOR JOB CORPS CENTER ACTIVITY

Employees	Number of firms and organizations
Over 2,500	1
1,000–2,499	5
500–999	5
250–499	5
150–249	4
0–149	4
Undetermined	[1]3

[1] Two organizations with contracts are listed with D&B, but provided no receipt and employee information. One non-profit organization with a Job Corps Center contract is not listed with Dun and Bradstreet.

Evaluation of Size Standard for the Job Corps Center Sub-industry: Tables 4 and 5 below show the characteristics of the Job Corp Centers sub-industry and for two comparison groups. The first comparison group is comprised of all industries with a $6 million receipts-based size standard, referred to as the nonmanufacturing anchor group. Since SBA assumes that the $6 million anchor size standard is appropriate for a nonmanufacturing industry, this is the most logical set of industries to group together for the industry analysis to assess whether a size standard at the anchor size standard or higher is appropriate. The second comparison group consists of nonmanufacturing industries which have the highest levels of receipt-based size standards established by SBA, referred to as the nonmanufacturing higher-level size standard group. Size standards for these industries range from $21 million to $29 million. If an industry's characteristics are significantly larger than those of the nonmanufacturing anchor group, SBA will compare them to characteristics of the higher-level size standards group. By doing so, SBA can assess if a size standard among its highest receipts-based size standards is appropriate or an intermediate size standard between the anchor size standard and the range of higher size standards.

SBA examined economic data on the comparison group industries taken from a special tabulation of the 1997 Economic Census prepared under contract by the U.S. Bureau of the Census (Census). Data on Job Corps Centers contracts, contractors, and bidders were obtained from DOL and D&B, as described earlier. *Industry Structure Consideration:* Table 4 below examines the size distribution of firms. For this factor, SBA is evaluating the cumulative size of firm that account for predetermined percentages of total industry receipts (40 percent, 50 percent, 60 percent, and 70 percent). The table shows firms up to a specific size that, along with all other smaller firms, account for a specific percentage of total industry receipts. For the Job Corps Center bidders, the percentages reflect the value of awarded Job Corps Center contracts.

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TABLE 4.—SIZE DISTRIBUTION OF FIRMS IN THE JOB CORPS CENTER SUB-INDUSTRY, NONMANUFACTURING ANCHOR GROUP AND HIGHER-LEVEL SIZE STANDARD GROUP

[Data in millions of dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Job Corps Centers Bidders	$54.5	$68.6	$900.0	$900.0
Nonmanufacturing Anchor Group	$3.2	$5.8	$11.8	$28.0
Higher-level Size Standards Group	$24.2	$50.4	$135.6	$423.6

These data support a size standard significantly higher than $6 million for the Job Corps Centers industry. At a given coverage level the size of firms in the Job Corps Centers industry is substantially larger than in the two comparison groups. In relation to the nonmanufacturing anchor group, the Job Corp Center firms are 18 to 32 times larger, and almost double that of the higher-level size standard. Because the size distribution of Job Corps Centers firms is significantly higher than that of the nonmanufacturing anchor group, the analysis of this factor supports a size standard significantly above the $6 million nonmanufacturing anchor size standard and at or beyond the size standards of the higher-level size standard group.

Table 5 lists the two other evaluation factors of average firm size and the four-firm concentration ratio for the Job Corps Centers sub-industry and the comparison groups.

TABLE 5.—INDUSTRY CHARACTERISTICS OF THE JOB CORPS CENTER INDUSTRY, NONMANUFACTURING ANCHOR GROUP, AND HIGHER-LEVEL SIZE STANDARDS GROUP

Category	Average firm size		Four firm concentration ratio (percent)
	Receipts (millions)	Employees	
Job Corp Center Bidders	$30.0	400	50.0
Nonmanufacturing Anchor Group	$0.95	10.6	14.4
Higher-level Size Standards Group	$4.6	21.4	26.7

For Job Corps Centers, its average firm size in receipts is over 30 times larger than the average firm size in the nonmanufacturing anchor group and approximately six and one half times that of the higher-level size standards group. Moreover, its average firm size in employees is 19 to 37 times the average sizes of these two comparison groups. This factor is substantially higher than the comparison groups and supports a size standard far above $6 million. Because the size distribution of Job Corps Centers firms is significantly higher than that higher-level size standard group, this factor supports a size standard at or beyond the range of $21 million to $29 million.

The four-firm concentration ratio for Job Corps Center firms is about double that of the higher-level size standards group. This factor supports a size standard at least within the range of the higher-level size standards group.

The start-up costs evaluation factor is not analyzed since no data are not available for Job Corp Centers. However, the following discussion of program considerations addresses the issue of size of contract which indirectly relates to the start-up costs associated with Job Corps Centers.

SBA Program Considerations: SBA is proposing this rule to establish a size standard specifically for DOL's Job Corps Centers contracts. SBA's loan programs will be minimally affected as organizations participating in the Job Corps Centers primarily operate in other industries, namely facility support services, general construction, and home health care services.

SBA extensively reviewed the scope of Job Corp Centers and the organizations bidding on and winning these contracts. Since the beginning of the Job Corps Centers program, the Federal Government has relied on the private sector for the operation of most of these centers or parts of the centers. Since the inception of the Job Corps Centers program, DOL has contracted out the entire operation and maintenance of a facility. A Job Corps Center contract requires an organization to provide teachers, counselors, administrators and support personnel, outreach activities, medical and dental facilities; and perform admissions physicals, maintain the facility, and purchase any equipment needed in the teaching of a trade. Over the years the Job Corps program has developed many public-private partnerships with various trade unions, corporations, and organizations. Many trade unions provide teachers and provide opportunities for the participants to apprentice with master tradesmen. Because the mission of these centers prepares students for the job market, many of the functions of the centers are integrated as a teaching tool for the students. As an example, students interested in culinary arts studies will work in the cafeteria alongside chefs, or a student interested in learning the plumbing trade will work with the maintenance crews, gaining "hands-on" experience. This approach has been extremely successful in achieving the mission and goals of the Job Corps Center program.

DOL operates 118 Job Corps Centers, of which 88 centers are run by the private sector. All but two of these centers are residential where students are housed. Several centers operate as advanced centers. For example, the San Francisco center runs an advanced culinary institute that prepares participants with skills beyond the high school level. The yearly funding in fiscal year 2001 for these centers ranged from $5 million to more than $44 million for their residential centers, with an average yearly funding amounting to $8.8 million per year per center. Non-residential center contracts range from $4 million to more than $6 million.

Procurement statistics show that in fiscal year 2001, DOL expended $909.5 million in Job Corps Center contracts. There are 21 organizations currently under contract with DOL to operate Job Corps Centers. Seven firms were awarded their contracts under Small Business Set-Aside procedures. (For these set-aside contracts, DOL used the appealed NAICS code of 561210 and applied the previous $20 million size standard for Base Maintenance). These small businesses account for 6 percent of total Job Corps Center contract dollars.

The analysis of Job Corps Center contracts indicates that a size standard of $6 million inadequately identifies the smaller segment of organizations competing for and obtaining these types of contracts. A size standard of at least equal to the current Base Maintenance size standard of $23 million represents a more realistic and effective size standard. The size of winning contractors and the average size of Job Corps Center contracts support this assessment.

As discussed above, there are 21 organizations performing 88 Job Corps Center contracts. Table 6 below summarizes the size of the awardees and bidders on these contracts. Only one of the successful organizations has receipts below $6 million. This organization's contract is for $5.8 million per year. With a contract that is yearly funded just below the current $6 million size standard, this organization will probably outgrow the size standard by the end of its next fiscal year, potentially leaving no currently defined small Job Corps Center contractor eligible for future small business asides. Of four other organizations under $6 million in receipts competing for Job Corps Center contracts, none have been successful offerors.

TABLE 6.—BREAKDOWN ON FIRMS AND ORGANIZATIONS INVOLVED IN JOB CORPS CENTER ACTIVITY

	Number of firms	Industries
Firms and organizations involved or interested in Job Corps Center Activity.	35	
Firms and organizations with Job Corps Center contracts	21	Industries: tribal business, management of youth facilities, vocational rehabilitation, facilities maintenance, home-heal care services, human resource counseling, management consulting, and information retrieval.
Firms under $23 million	11	
Firms under $23 million with Job Corps Center Contracts	7	
Firms under $6 million	5	
Firms under $6 million with Job Corps Center contracts	1	
Firms with revenues under $1 million (none have Job Corps Center contracts).	4	Industries: Temporary help services, construction, investigation services, and engineering and technical services.

Table 2 above shows that 80 percent of the value of Job Corps Center contracts were awarded to organization with receipts of $50 million or more. All of the awards to small business were made as set-aside awards. Only one percent of Job Corps Center contract dollars go to small businesses using a $6 million size standard. In addition, 49 percent of contract dollars were expended with firms and organizations that have over $100 million in receipts. This shows that a significant proportion of economic activity within the Job Corps Centers industry is concentrated among a few relatively large organizations.

Tables 7 and 8 below illustrate that firms that have been successful in winning Job Corps Center contracts are concentrated in industries that have size standards significantly greater than $6 million, such as general construction, facilities maintenance services, and home health care services. These observations provide further evidence that a size standard greater than $6 million is needed to attract the type of firms capable of performing the broad range of activities of Job Corp Centers.

TABLE 7.—LISTING OF PRIMARY INDUSTRIES OF JOB CORPS CENTER CONTRACTORS

Primary industry	Size standard (million)
General Construction	$28.5
Facilities Maintenance Services	$23.0
Home Health Care Services	$11.5
Vocational Schools	$6.0

TABLE 8.—LISTING OF PRIMARY INDUSTRIES FOR FIRMS THAT HAVE SUBMITTED PROPOSALS AGAINST JOB CORPS CENTER SOLICITATIONS BUT HAVE NOT WON JOB CORPS CENTER CONTRACTS

Primary industry	Size standard (million)
Supply Services	$6.0
Investigation Services	$10.5
Engineering and Technical Services	$4.0
	$6.0
Behavioral Health Services	$6.0

The size of Job Corps Centers contracts explains to a great extent the pattern of awards by size of contractor. For an organization to perform on the average Job Corps Center contract of $8.8 million, it generally must be at least several times that size. Under the current $6 million size standard, if an organization receives an award for just one center, it is close to or over the current $6 million size standard. Those organizations under the current size standard would probably go over $6 million in receipts within a year if they receive any other substantial business. Thus, with a $6 million size standard, the opportunities for small businesses in this activity are severely limited.

Additionally, firms with receipts over $23 million currently handle from four to 22 Job Corps Centers. On average, they operate nine centers. Small businesses must be able to successfully compete with these large organizations, therefore, the size standard needs to be set at a threshold where these businesses can reach a competitive level. In discussions with DOL, an organization can achieve meaningful economies of scale by operating three to four centers. The total operational costs of three centers are $26.4 million (based on an average cost of $8.8 million per center), and indicates support of a size standard at that level as a viable alternative to the $6 million level.

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Overview: Based on a review of each evaluation factor, SBA is proposing a $30 million size standard for Job Corps Centers. All of the factors support a size standard comparable to those of the nonmanufacturing higher-level size standard group, which ranges between $21 million to $29 million. Most factors support even a higher size standard. A $30 million size standard takes into consideration that a Job Corps Center organization achieves economics of scales operating three to four centers. This suggests a size standard of $26.4 million or more. Since organizations involved with Job Corps Center contracts have other operations, SBA also needs to take that fact into account in establishing a size standard for Job Corps Centers. A $30 million size standard provides small businesses the ability to compete and grow at an appropriate level without losing their small business status, but not to a level where a few firms would be able to control a significant portion of Federal contracts at the expense of other small businesses.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that no organization at or below the proposed size standard in the Job Corps Centers activities would be of a sufficient size to dominate its field of operation. For Job Corps Centers, an organization with $30 million in receipts could obtain about three percent of the total dollar value of Job Corps Center contracts. This level of market share effectively precludes an organization at or below the proposed size standard to exert a controlling effect on Job Corps Center contracts.

Alternative Size Standards: SBA concluded that a single size standard of $6 million was inadequate to define small businesses in the entire Other Technical and Trade Schools industry. The size standard would be too low for Job Corps Centers or too high for all other industry activities, such as job training facilities, marine navigation schools, and truck driving schools. Establishing two size standards for these industries would enable SBA to determine the most appropriate size standard for disparate segments of the industry.

SBA considered restoring the $20 million size standard for Job Corps Centers previously applied by DOL. After reviewing the industry data, in particular procurement data, which show the average Job Corp Center contract is for $8.8 million, SBA concluded that a $20 million size standard would not be adequate for Job Corps Centers. The adoption of this size standard would allow a firm to receive only two Job Corps Center contracts and be at risk of outgrowing its small business status before reaching sufficient economies to be competitive against the larger incumbent Job Corps Center contractors. Therefore, SBA decided against a $20 million size standard for Job Corps Centers since it would not allow sufficient growth and business development.

SBA welcomes public comments on its proposed size standard for Job Corps Centers. SBA is concerned with how the proposed size standards may negatively impact those qualified under the current size standard. Comments supporting an alternative to the proposal, including the $20 million, or the option of retaining the size standard at $6 million discussed above, should explain why the alternative would be preferable to the proposed size standard, and how the alternative impacts current small businesses.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is not a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a size standard for Job Corps Centers is needed to better define small businesses engaged in these activities.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, approximately 10 additional firms will obtain small business status and become eligible for these programs. These include Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those for contracts awarded through full and open competition after application of the HUBZone or SDB price evaluation preference or adjustment. They may also become eligible for SBA financial assistance programs. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses sufficient to evaluate the impact of size standards changes. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level

would accrue to three groups: (1) Businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs, (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards, and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses may benefit from SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. Under this program SBA estimates that $700,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 10 additional businesses may result in only one or two small business guaranteed loans to businesses in this industry. As a guaranteed loan for larger firms averages $350,000 for firms in the Other Technical and Trade Schools industry and the Facilities Support Services industry, if two of the 10 business applied for a loan, SBA could expect to guarantee $700,000 in loans. However, most firms involved in Job Corps Centers are in other industries; thus their eligibility for SBA loan assistance would be under their primary NAICS industry. The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $53 million per year under the small business set-aside program, the 8(a) and HUBZone Programs, or unrestricted contracts. Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A larger base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Other than small businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 10 additional firms could become active in Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net small business database. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone Programs only if awards are expected to be made at fair and reasonable prices. In addition, the use of small business set-asides may encourage more competitors since small businesses would not have to compete against the major businesses in the industry.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to SDB or HUBZone businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. As currently there is only one small business that has a contract for a Job Corps Center, this transfer will be offset by initiating a number of Federal procurements than can now be set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers could result in up to $53 million or 5.8 percent of total contract dollars of $909 million being transferred from large businesses to small businesses. SBA based this estimate on the per year funding of the firms that currently have Job Corps Center contracts, which would gain small business status if this proposed rule is adopted.

The revision to current size standard for Job Corps Centers is consistent with SBA's statutory mandate to assist small businesses. This regulatory action is in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities engaged in Job Corps Center activities. As described in the above Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses interested in competing for Federal Job Corps Centers procurements reserved for small businesses, and SDB and HUBZone businesses eligible for price preferences, may face greater competition from

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newly eligible small businesses. Second, additional Federal procurements for the operation and management of Job Corps Centers may be set aside for small business as the pool of eligible small businesses expands. As discussed in the preamble, SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $53 million.

As Job Corps Center activity is limited to Federal procurements within DOL, SBA cannot guarantee that the proposed size standard will affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. For this particular proposed rule, SBA did consult with DOL regarding a possible increase to the Job Corps Centers size standard. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule on the Job Corps Centers industry addressing the following questions: (1) what is the need for and objective of the rule; (2) what is SBA's description and estimate of the number of small entities to which the rule will apply; (3) what is the projected reporting, record keeping, and other compliance requirements of the rule; (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What Is the Need for and Objective of the Rule?

A separate size standard for Job Corps Centers more appropriately defines the size of businesses in this industry activity that SBA believes should be eligible for Federal small business assistance programs. Currently, there are five firms in the Job Corps Centers activity that have revenues below $6 million size standard, however, only one of these firms has a contract for a Job Corps Center. This firm is likely to outgrow the current size standard within the next year as its current contract is for $5.8 million per year. This will leave only four firms below the size standard, all having revenues below $1 million. None of these firms have been successful in winning a Job Corps Center contract. This, along with the facts that the average contract funding is $8.8 million and the minimal funding for a Job Corps Center is $5 million for a residential center and $4 million for a non-residential center, indicates that the size standard for Job Corps Centers needs to be greater than the current $6 million.

(2) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that 35 organizations are engaged in the Job Corps Center industry, of which approximately 14 percent are small businesses currently at or just below the $6 million threshold. If this rule were adopted, 10 additional businesses would be considered small. Although this may not represent a substantial number of small businesses, SBA is preparing an IRFA to ensure that the impact on small businesses of higher size standards are known and being considered. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these firms and SBA's knowledge of contracting in this area, SBA estimates that small business coverage could increase by $53.1 million or 5.8 percent of total revenues in this activity. SBA based this estimate on the per year funding of the firms that currently have Job Corps Center contracts, which would gain small business status if this proposed rule is adopted.

(3) What Are the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

(5) What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

As discussed in the preamble, SBA considered several alternative size standards and their implications on small businesses. First, SBA considered retaining a single size standard of $6 million for the Other Technical and Trade Schools industry. In researching firms engaged in the operation and maintenance of Job Corps Centers, SBA concluded that no single size standard could adequately define small business in the whole industry. The size standard would be either too low for Job Corps Centers or too high for other industry activities, such as graphics arts schools, real estate schools, and broadcasting schools. Establishing two size standards for this industry would enable SBA to determine the most appropriate size standard for disparate segments of the industry.

SBA also considered restoring the $20 million size standard for Job Corps Centers. However, as discussed in the preamble, this size standard would not allow for sufficient growth and development of a small Job Corps Center contractor. A firm would be at risk of losing its small business status if it received two average-size contracts.

By establishing the size standard at $30 million, SBA will create opportunities for the small businesses in an industry where only five firms are below the size standard. Of these five firms, four have revenues below $1 million and only one firm has a Job Corps Center contract. If SBA retains the current $6 million size standard, it will not accurately reflect the smaller segment of businesses that participate in operating and maintaining Job Corps Centers.

SBA welcomes comments on other alternatives that minimize the impact of this rule on small businesses and achieve the objectives of this rule. Those comments should describe the alternative and explain why it is preferable to the proposed rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business. Loan programs—business. Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Amend § 121.201 as follows:

a. In the table "Small Business Size Standards by NAICS Industry" under the heading "Subsector 611—Educational Services," revise the entry for 611519 to read as follows; and

b. Add footnote 17 to the end of the table to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in million of dollars	Size standards in number of employees
. . .	. . .	.	.
Subsector 611—Educational Services			
. . .	. . .	.	.
611519	Other Technical and Trade Corps	$6.0	
EXCEPT	Job Corps Centers	[16] $30.0	
. . .	. . .	.	.

Footnotes:

. . . . .

[16] *NAICS codes 611519*—Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, lift skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

Dated: November 15, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–29647 Filed 11–21–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 134

RIN: 3245–AE82

Small Business Size Regulations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its small business size regulations and the regulations applying to appeals of size determinations. The proposed rule would amend the definitions of affiliation, annual receipts, and employees. It would also make procedural and technical changes to cover new programs such as SBA's HUBZone program and the government-wide Small Disadvantaged Business program. The proposed rule would codify several long-standing precedents of SBA's Office of Hearings and Appeals and would clarify the jurisdiction of that office.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Written comments should be addressed to John W. Klein, Associate General Counsel for Procurement Law, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Laura M. Eyester, Office of General Counsel, (202) 619–1801.

SUPPLEMENTARY INFORMATION: SBA's small business size regulations (13 CFR part 121) are used to determine eligibility for all SBA and Federal programs that require an entity to be a small business concern. In the past, to be considered small, concerns were required to qualify under a particular size standard that corresponded to a four-digit Standard Industrial Classification (SIC) code. Effective October 1, 2000, to be considered small, concerns are required to qualify under a particular size standard that corresponds to the six-digit North American Industrial Classification System (NAICS) code. SBA published its final rule setting forth the various NAICS codes and corresponding size standards at 65 FR 30836 (May 15, 2000). SBA published a technical correction to the final at 65 FR 53533 (September 5, 2000). That final rule changed all references to SIC codes in part 121 to NAICS codes. This proposed rule would not change any size standards currently corresponding to specific NAICS codes.

With a few exceptions, SBA size standards are based on either average annual receipts or number of employees, depending on the industry. When measuring a concern's size, the receipts or employees of affiliated concerns are included. The proposed rule would modify the definitions of affiliation, annual receipts, and number of employees. The proposed changes to part 134 would clarify the jurisdiction of SBA's Office of Hearings and Appeals (OHA) and make certain technical amendments.

Section-by-Section Analysis

SBA proposes to amend § 121.102 by adding a new paragraph (d) that would recognize that there currently exists an internal Size Policy Board at SBA that is responsible for making recommendations to the Administrator

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on size standards, other size eligibility requirements, and size protest procedures. In addition, SBA proposes to amend § 121.103 to specifically incorporate into the definition of "affiliation" certain provisions that were previously contained in the regulations. Because there may have been some confusion regarding the more generalized affiliation language when SBA amended its regulations in 1996, SBA believes it is necessary to again specifically state other bases of possible affiliation in the regulations. The section would be revised to state that control may be affirmative or negative, provide an example of negative control, state that control may be exercised indirectly through a third party, and state that affiliation may be found under the totality of the circumstances even though no single factor is sufficient to constitute affiliation. These three changes codify long-standing OHA rulings. *See, e.g., Size Appeal of Jensco Marine, Inc.*, SBA No. SIZ–4330 (1998); *Size Appeal of National Welders*, SBA No. SIZ–4315 (1998); *Size Appeal of First American Tax Valuation, Inc.*, SBA No. SIZ–4206 (1996); and *Size Appeal of Field Support Services, Inc.*, SBA No. SIZ–4176 (1996). (OHA decisions cited in this preamble can be located at *www.sba.gov/oha/searchpage.html* or by contacting OHA by e-mail at *oha@sba.gov* or by phone at 202–401–8200.)

This proposed rule would change the title of § 121.103(b) from "*Exclusion from affiliation coverage*" to "*Exceptions to affiliation coverage*" for clarity. In addition, the proposed rule would amend § 121.103(b)(2) to clarify the exception to affiliation for Indian tribes (including Alaska Native Corporations), Community Development Corporations (CDCs) or Native Hawaiian Organizations (NHOs). Specifically, the proposed rule would specify that the exception applies whether the tribe, CDC or NHO owns the concern whose size is at issue directly, or through another entity, which is wholly-owned by the tribe, CDC or NHO. The proposed rule would also provide that affiliation could not be found among several tribally, ANC, CDC or NOH-owned concerns based on common management. This is an extension of the current regulation, which precludes affiliation based solely on common ownership. SBA believes that this change is particularly needed in the context of tribally-owned concerns where tribal board members often are also board members of tribally-owned concerns. SBA specifically asks for comments as to whether this exception from affiliation goes far enough, or whether SBA should provide the same exception to affiliation as that contained for the 8(a) program in § 124.109(c)(2)(iii). SBA notes, however, that the exception to affiliation for the 8(a) program is statutorily based, while the general exception contained in § 121.103(b)(2) is not.

The proposed rule would also add language to both § 121.103(b)(2) and (b)(6) to clarify that SBA may find affiliation other than through common ownership or common management, and with respect to approved mentor/protégé relationships, other than on the basis of the mentor/protégé agreement. This is not a change in policy, but a clarification of existing policy.

SBA proposes two changes to § 121.103(c). Section 121.103(c)(1) would be amended by adding the word "voting" to clarify that only voting stock is considered in determining affiliation. In addition, SBA proposes adding a sentence to § 121.103(c)(2) stating that the presumption of control may be rebutted by showing that control does not in fact exist. For example, in *Size Appeal of Tri-Fuels, Inc.*, SBA No. SIZ–3563 (1992), OHA held that the presumption that minority shareholders owning substantially equal blocks of stock each control a firm was rebutted where a shareholder's agreement specified that each of the shareholders could appoint one of five directors. The proposed rule would also add a new § 121.103(c)(3), which would provide that where a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, SBA will deem the concern's Board of Directors and its Chief Executive Officer (CEO) or President to have the power to control the concern in the absence of evidence to the contrary. In the absence of evidence to the contrary, SBA will find control in such circumstances to rest with the Board of Directors and with the highest ranking officer of the concern (either its CEO or President) because control of the concern must rest somewhere.

Section 121.103(d) discusses affiliation, which arises under stock options, convertible debentures, and agreements to merge. SBA gives present effect to all such arrangements in determining affiliation. SBA proposes to amend the section by setting forth exceptions to this "present effect" rule that have been developed by OHA rulings. *See, e.g., Size Appeal of Consolidated Industries, Inc.*, SBA No. SIZ–4235 (1997). One proposed exception would not give present effect to agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date. Another proposed exception would not give present effect to options, debentures, and agreements that are subject to conditions that are incapable of fulfillment, speculative, conjectural, remote, or unenforceable under state or Federal law.

Section 121.103(e) covers control through common management and would be amended to clarify that affiliation arises when an officer, director, managing member, or partner controls two concerns. Section 121.103(f) would expand the current regulation at § 121.103(a)(3) covering the concept of "identity of interest." The concept is that two or more persons with an identity of interest, such as members of the same family or with common investments in more than one concern, may be treated as a single party for size determination purposes. *See, Size Appeal of Golden Bear Arborists*, SBA No. SIZ–1899 (1984). Although this provision was deleted as a separate basis for affiliation from part 121 in 1996, when SBA streamlined its regulations, *see*, 13 CFR 121.401(d) (1995), the concept remained under the "General Principles of Affiliation," and OHA continues to use the identity of interest concept in ruling on affiliation issues. *See, e.g., Size Appeal of Lyons Security Service, Inc.*, SBA No. SIZ–4264 (1997). SBA believes that for purposes of clarity this rule should be explicitly set forth as a separate basis for finding affiliation in the size regulations.

SBA also proposes to add § 121.103(g), "Affiliation based on the newly organized concern rule." This proposed section provides that affiliation may arise where former officers, directors, stockholders, managing members (in a limited liability corporation) or key employees of one concern organize a new concern in the same or related industry and serve as its officers, directors, stockholders, managing members or key employees, and the first concern will provide contractual, financial, or other assistance to the new concern. This provision also previously appeared in SBA's size regulations, and SBA believes that it is appropriate to add it back to the regulations as a separate basis for finding affiliation. SBA notes that even after the regulatory change removing the newly organized concern concept as a separate basis for finding affiliation, OHA has continued to use it from the general principles of affiliation contained in the regulations to find affiliation. *See, e.g., Size Appeal of Lyons Security Service, Inc., supra*; Size Appeal of Frontier Applied Sciences, Inc., SBA No. SIZ–4316 (1998).

SBA proposes to redesignate the joint venture regulation currently at § 121.103(f) to § 121.103(h), clarify it, and define its key terms. SBA receives numerous inquiries concerning the definition of the terms "joint venture" and "teaming arrangement." Therefore, SBA proposes to add definitions of these terms in its regulations. SBA is using the definitions of these terms as set forth in parts 9 and 19 of the Federal Acquisition Regulation (FAR), title 48 of the Code of Federal Regulations, for consistency in the government contracting field. In addition, in § 121.103(h)(5), SBA proposes to add language clarifying that for size purposes a concern must include in its revenues its proportionate share of joint venture receipts, or in its total number of employees its proportionate share of joint venture employees. A concern that was found to be affiliated through the "ostensible subcontractor" rule cannot, however, claim that because SBA found there to be a joint venture in effect for a particular contract it can exclude the receipts/employees of its subcontractor (*i.e.*, the ostensible subcontractor), which SBA deemed to be a joint venturer. SBA will exclude the proportionate share of receipts/employees only of true joint venture partners.

SBA is considering another change to the joint venture regulation, as well. SBA's regulations allow joint ventures to be considered small for larger procurements when certain requirements are met. *See* § 121.103(f)(3). In general, SBA regards joint ventures as short term relationships, which enable two or more concerns to enter into a business relationship to perform a specific contract. SBA is considering adopting a rule that would allow two or more small businesses to form a joint venture relationship that would go beyond a specific contract and still afford them the exclusion from affiliation (if the other requirements are met). In other words, the joint venture could be an ongoing relationship that would allow the concerns to seek out several different larger contract opportunities and still get an exclusion from affiliation without requiring the entities to form a separate joint venture for each contract opportunity. SBA is specifically requesting comments on this proposal.

SBA proposes several changes to § 121.104, which pertain to how the annual receipts of a concern are calculated. On January 31, 1996, SBA amended its size regulations to simplify the method by which it determines average annual receipts (aar). Under the current regulations, SBA bases its calculation of a concern's aar solely on information contained in the concern's Federal income tax returns over its last three completed fiscal years. 61 FR 3280 (January 31, 1996). Previously, SBA could rely either on a concern's regular books of account or Federal income tax returns to determine a concern's aar. That policy change was made by SBA in an effort to simplify its size regulations by using the information a business concern reports to the Internal Revenue Service (IRS) for tax purposes to determine the annual receipts of a concern. The 1996 revisions also deleted SBA's requirement that a concern whose small business size status had been protested had to restate its receipts based on the accrual method of accounting if its books of account or tax returns were prepared using a different method of accounting. Since 1996, a number of issues have arisen concerning that revision and SBA now believes the public would benefit from additional regulatory guidance on these matters. In addition, OHA has rendered several significant rulings relating to the calculation of annual receipts and SBA believes these rulings should be codified in SBA's size regulations so the public is aware of them.

Thus, SBA is proposing to modify its definition of receipts in § 121.104(a)(1). This modification would identify the items on a Federal tax return that are to be used to calculate receipts. Currently, the regulation states that receipts consist of "total income" and "gross income" plus the "cost of goods sold." Although these terms as defined by the IRS include income from all sources, SBA has received comments from some businesses stating that certain types of income not explicitly specified in the regulations could be excluded in determining receipts. To eliminate any such misinterpretation, SBA is proposing to remove the words "total income" and "gross income" and add in their place "gross receipts," "gross sales," and "other income." This change in terminology merely lists the items on a Federal tax return that comprise all or part of total or gross income. In addition, SBA is proposing a revision to the definition of receipts to include interest, dividends, rents and royalties received by partnerships, S corporations, and sole proprietorships. For corporations, income from these sources is included in total income as reported on IRS Form 1120. However, for partnerships and S corporations, these items are reported separately from total income on Schedule K of IRS Form 1165 and 1120S, respectively, and on Schedule C or S of IRS Form 1040 for sole proprietorships. Business entities such as limited liability corporations (LLCs) can elect the tax entity (partnership, corporation, or disregarded entity) that best suits their need. This is often referred to as "check the box." *See* 26 CFR 301.7701–3 (located at *http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1*) and IRS Form 8832 (located at *http://www.irs.gov/forms_pubs/forms.html*). To be consistent with the corporate tax return, and to continue SBA's long-standing policy of including income from all sources in its definition of receipts, SBA proposes to revise § 121.104(a)(1) to specifically include these sources of income in the definition of receipts.

SBA also proposes to expand its exclusion of receipts received by an agent for another. The existing regulation allows this exclusion only for agents specifically identified in the regulation, such as a travel agent. While the proposed regulation would continue to list those agency-type business entities for which amounts collected for another would be excluded, it would also permit SBA to find a similar agent-type situation to be equally excluded. SBA's concern is that this provision be applied consistently. Thus, SBA would exclude amounts collected for another only when a specific type of business (or industry) deomonstrates that that is the practice in the industry. SBA would not exclude amounts based on specific facts of one business entity. This revision will eliminate the need to conduct a separate study and rulemaking to expand the list of agents that can exclude amounts they receive for another and apply a general principle in the case of agents.

Finally, SBA would also clarify this section to state that the only exclusions from the definition are those specifically provided for in the section and that all other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. *See, e.g., Size Appeal of Uniband, Inc.*, SBA No. SIZ–4326 (1998); *Size Appeal of Aliron International, Inc.*, SBA No. SIZ–4317 (1998).

Proposed § 121.104(a)(1) would provide that the Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern, and that SBA will not consider tax returns or

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amendments filed with the IRS after the initiation of a size determination. This proposed change would preclude a concern that is the subject of a size protest from providing revised Federal tax returns to SBA while a size determination or appeal is pending. If SBA were to accept amended tax returns prepared after initiation of a size determination, SBA would constantly be re-evaluating cases that had already been completed or that were substantially prepared. This would invariably lead to delays in the size determination process and, in the case of pending procurements, delays in contract award. A business concern is expected to base its small business self-certification on information existing at that time. This rule is in accord with OHA rulings that size status must be based on documents in existence and available as of the date of self-certification. *See, e.g., Size Appeal of MTB Investments, Inc.*, SBA No. SIZ–4239 (1997); *Size Appeals of J.L. Associates, Inc. and HLJ Management Group, Inc.*, SBA No. SIZ–3102 (1988). Where a concern is determined to be other than small, but legitimately erred in reporting its income on its Federal tax returns, it could subsequently request recertification as a small business from SBA based on amendments filed with the IRS. SBA then would be able to conduct a review of the amended returns without delaying the size determination or the Federal procurement process.

Proposed § 121.104(a)(2) would cover situations where a concern has not filed a Federal income tax return for one or more of its most recently completed three fiscal years. This proposed regulation is intended to codify OHA's ruling in *Size Appeal of Troy Systems, Inc.*, SBA No. SIZ–4296 (1998). In that appeal, a concern had not filed a Federal income tax return for its most recently completed fiscal year at the time it self-certified as small. The appellant argued that because the tax return was not available, it did not have to submit any information for that year. OHA rejected that argument. The proposed rule provides that in such a situation, SBA may use any other information that is available, such as an audited financial statement or affidavit from the concern's accountant or chief financial officer.

Section 121.104(b)(3) is the formula SBA uses to determine annual receipts when the concern has a "short year" (as defined by the IRS) as one of the years within the period of measurement. The proposed rule would not change the substance of the formula. It would merely clarify the language for ease of use.

Section 121.104(d) applies to the annual receipts of a concern's affiliates and requires the inclusion of an affiliate's receipts during the entire period of measurement, not just the period after affiliation arose. This rule has existed for many years and SBA proposes to simply clarify the language.

Section 121.106 addresses how SBA counts a concern's number of employees. SBA proposes to amend § 121.106(a) to clarify that SBA may utilize the same criteria used by the IRS for Federal income tax purposes in determining whether individuals are employees. *See, e.g.*, IRS Publication 15A, "Employer's Supplemental Tax Guide" (*located at http://www.irs.gov/forms_pubs/forms.html*), which provides guidance on whether a person is a common-law employee, a statutory employee, a statutory nonemployee, or an independent contractor. In addition, SBA's proposed amendment states that it considers "leased" employees to be employees of the concern. The proposed rule continues to direct SBA to consider the totality of the circumstances when determining whether certain individuals are to be considered employees of the concern in question. This "totality of the circumstances" language stems from SBA Size Policy Statement No. 1, published in the **Federal Register** on February 20, 1986, 51 FR 6099, and that Size Policy Statement continues to have effect.

Further, SBA proposes to amend § 121.106(b)(4) by explicitly describing how employees of affiliates and former affiliates are treated, rather than simply referring to the manner in which annual receipts of affiliates and former affiliates are treated in § 121.104.

SBA also proposes to revise Footnote 14 to the Table of Small Business Size Standards by NAICS Industry in § 121.201. Specifically, the proposed revisions to Footnote 14(b) adds language to clarify that a Federal procurement involving a range of environmental services to restore a contaminated environment does not need to include remedial action as one of three activities to be classified under this size standard. SBA has learned that some Federal agencies have interpreted this footnote to require remedial action to be part of the procurement before it will classify the procurement under "Environmental Remediation Services." This was not the intention of SBA when it established the size standard. SBA intended this size standard to apply to large scale, multi-disciplined procurements involving environmental remediation. To be classified under Environmental Remediation Services, a procurement must satisfy two requirements. First, the general purpose of the procurement is to restore a contaminated environment. Second, the procurement requires tasks to be performed in a range of activities which can be classified in three or more NAICS industries, or sub-industries which have separate size standards, and that no industry or sub-industry accounts for 50 percent or more of the procurement. The statement "the general purpose of the procurement must be to restore a contaminated environment" was intended to mean that the procurement would be associated with environment remediation by performing a range of activities that would contribute to the eventual cleanup of a site. To clarify SBA's intent, the footnote is revised by stating "the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment * * *." Also, added is a list of activities usually associated with environmental remediation and related activities. This language makes clear that a procurement involving several activities, all in separate NAICS codes, that directly contribute to the eventual cleanup of a contaminated environment can be classified under this size standard, even though another procurement would be awarded to perform the actual cleanup.

SBA proposes to eliminate the existing dual size standard that currently applies to applicants for SBA financial assistance (§ 121.301(a)), and replace it with a single size standard requirement. Under the current regulation, an applicant for financial or disaster assistance must be small under two size standards. An applicant, along with its affiliates, must be small for the size standard for the industry in which the applicant alone is primarily engaged, and for the industry in which the applicant along with its affiliates is primarily engaged. Since most applicants are small businesses well below SBA's size standards, they generally do not have extensive affiliation relationships with other business concerns. Thus, SBA believes a dual size standard requirement is not needed for these programs. SBA also believes that the wording of the dual size standard is not clear, and has caused confusion as to its proper application. For these reasons, SBA is proposing a single size standard requirement in which a business concern eligible for financial and disaster assistance is a concern that, combined with its affiliates, does not exceed the size standard of the primary industry of the applicant concern alone.

Section 121.301(d)(1), which contains the size standard for surety bond guarantee assistance, would be amended by adding the words "together with its affiliates" to make it clear that the receipts of all affiliates must be included. This change is for clarity purposes only, as SBA always includes the receipts or employees of a concern's affiliates when determining the concern's size. SBA also proposes to revise § 121.301(e) to state that an applicant for financial assistance must use all of the assistance within a labor surplus area (LSA) in order to obtain the benefit of the 25% size standard differential. The current regulation does not clearly provide what percentage of work must be performed in an LSA. It has always been SBA's intent to require 100% of the assistance be used in an LSA in order to get the size differential, but a recent case has raised the question as to whether the regulation could be read to permit less than 100% of the assistance to be used in an LSA. This proposed change would clarify SBA's position in this regard.

Section 121.302 addresses when SBA determines the size status of an applicant for SBA financial assistance. The section would be amended to include a provision for financial assistance from a Small Business Investment Company (SBIC) licensee and from a New Markets Venture Capital Company.

Section 121.401, covering what procurement programs are subject to size determinations, would be amended for plain language purposes.

The proposed rule would amend the section heading for § 121.402 to read "What size standards are applicable to Federal Government Contracting programs?" In addition, SBA proposes to amend § 121.402(a) to state that a contracting officer (CO) must use the size standard in effect at the time the solicitation is issued. If SBA amends a size standard and it becomes effective after the solicitation is issued, then the CO would not be required to amend the solicitation and use the new size standard. However, the proposed regulation does note that if the size standard is amended and becomes effective before the date initial offers are due, the CO may modify the solicitation and use the new size standard. This has been a long-standing policy of SBA's, and SBA believes it should be specifically set forth in the regulations for clarity purposes.

Section 121.404 would be amended to add additional exceptions to the general rule that the size status of a concern is determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price. Proposed § 121.404(a)(1) would provide that a concern applying to be certified as a Participant in SBA's 8(a) Business Development (8(a) BD) program, as a small disadvantaged business (SDB), or as a HUBZone small business must qualify as small as of the date of certification by SBA. This is not a change in SBA policy. SBA currently requires a concern to be small at the date of certification for these programs, but those regulatory requirements are contained in the program specific regulations only. The proposed rule would simply add those requirements to the size regulations as well. When requiring an 8(a) BD, HUBZone, or SDB applicant to be small for "its primary industry classification," the concern's primary industry classification is determined by looking solely at the applicant concern (*i.e.*, by excluding its affiliates), but the size of the concern is determined by including the receipts or employees of all affiliates.

Another new exception would apply to the case where a solicitation is modified so that initial offers are no longer responsive to the solicitation. In such a case, proposed § 121.404(a)(4) would provide that a concern must recertify that it is small at the time it submits a responsive offer which includes price to the modified solicitation. SBA believes that this makes sense and flows from existing SBA policy. If a solicitation changes drastically so that a previous offer would no longer be responsive, it is in effect a new solicitation. As such, a firm must certify its status as a small business with respect to the new solicitation.

The proposed rule would also add an exception for the subcontracting program. Under proposed § 121.404(a)(5), for subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. The date of offers for or the award of the prime contract are not relevant to whether a concern is small for a subcontract. In addition, the applicable size standard would be the size standard in effect at the time the concern self-certifies that it is small for the subcontract, not the size standard that may have been in effect when the prime contract was awarded or otherwise.

The proposed rule would add a final exception applying to two-step sealed bidding under subpart 14.5 of the FAR, 48 CFR. Under two-step sealed bidding, the proposed rule would require that a concern must qualify as small as of the date that it certifies that it is small as part of its step one proposal. SBA believes that it makes sense to establish size as of the date of the step one proposal in order to give certainty early on in the process who is and who is not eligible for such an award.

Proposed § 121.404(b) would specify that a concern that qualified as a small business at the time it receives a contract is considered to be a small business throughout the life of that contract. This is not a change in policy, but merely puts into the regulations SBA's long-standing position on this issue. Proposed § 121.404(c) covers the case where an existing contract is "renewed" by a procuring activity. SBA believes that the renewal of an existing contract is a term that is imprecisely used. Renewal should refer to a follow-on contract. In that case, the date at which size is determined is set by the general rule specified in § 121.404(a) (*i.e.*, the date that the concern submits a written self-certification that it is small to the procuring agency for the renewal contract). Sometimes the term "renewal" is incorrectly used where a procuring agency exercises an option. In that case, there is no new contracting action. The authority for the option relates back to the original contract. As set forth in proposed § 121.404(b), mentioned above, as long as a concern qualified as a small business at the time it receives a contract, it is considered to be a small business throughout the life of that contract. Therefore, a concern that was small at the time of award would always be considered a small business for purposes of any options relating to that contract. Proposed § 121.404(b) would specifically provide that where a concern grows to be other than small, the procuring agency may exercise options and still count the award as an award to a small business. SBA is, however, considering a rule which would place a limit on the amount of time a concern would be deemed a small business. Specifically, SBA is considering a separate rule making that would permit a procuring agency to treat a concern as a small business for no more than 5 years from the date of award.

Section 121.406(b)(1)(ii) would be amended to delete the requirement that a nonmanufacturer must normally sell the items being supplied to the general public. This rule was based on provisions of the Walsh-Healey Public Contracts Act, which permitted Federal acquisitions of supplies only from manufacturers or "regular dealers." One of the requirements for being a regular dealer was to sell items to the general

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public. These provisions of the Walsh-Healey Act were repealed by the Federal Acquisition and Streamlining Act of 1994. SBA believes that requiring a firm to sell to the general public is overly restrictive. A firm may be a legitimate, viable business selling exclusively to government entities. SBA does not believe that a firm that sells only to the government should be excluded from being considered a small business just because it does not generally sell items to the general public. Therefore, so long as a firm normally sells the type of item either to public or private entities, it may qualify as a small business nonmanufacturer under SBA's size regulations. The proposed rule would also change the provision to require the concern to normally sell the same "type of item." The current regulation simply states that a concern must sell "the items" being supplied. SBA believes that the current provision could be read to be overly restrictive. Under the proposed rule, a firm would not need to have a track record of selling the exact item, but only items of the same type.

The proposed rule would also add clarifying language to § 121.406(b)(2) to explain what a firm that makes changes to an item and then resells it must do in order to qualify as an eligible small business manufacturer. The current regulation states that firms that perform only minimal operations upon the item being procured do not qualify as manufacturers. The proposed rule adds language, which states that "[f]irms that add substances, parts, or components to an existing end-item to modify its performance will not be considered the end-item manufacturer where those identical modifications can be performed by and are available from the manufacturer of the existing end item." If a firm adds something to an item that the manufacturer of that existing item does not provide, the firm will be considered the manufacturer of the ultimate end item (*i.e.*, the item plus the addition). For example, if firm A manufactures a saw, the Government wants to purchase a saw with a safety switch, and firm B adds a safety switch to the saw, firm B, and not firm A, will be considered the manufacturer of the end item (*i.e.*, saw with safety switch) provided firm A does not itself make or provide a saw with safety switch. Similarly, a firm that merely installs a video card that the manufacturer of a computer could have installed will not be considered the manufacturer of computer.

Currently, under § 121.410, a business concern is small for purposes of a subcontract awarded by a Federal prime contractor if: (a) For subcontracts of $10,000 or less, the concern bidding on the subcontract has 500 or fewer employees averaged over each pay period of the previous year, or, (b) for subcontracts of more than $10,000, the concern bidding on the subcontract is no larger than the size standard corresponding to the NAICS industry that best represents the scope of work of the subcontract.

This rule proposes to eliminate the 500-employee size standard provision for subcontracts of less than $10,000 and require that the size standard of the NAICS industry that best matches the purpose of the subcontract be used. This change merely adopts the size standard policy now in effect for subcontracts of $10,000 or greater.

SBA is proposing this change for two reasons. First, this proposed change makes the size standards requirements consistent for all prime Federal contracts and for subcontracts awarded by prime contractors. Under this policy, the small business status would not change depending on the size of a subcontract or whether the contract was awarded as a Federal prime contract or as a subcontract of a Federal prime contract. SBA is also concerned about inconsistencies of two-tiered subcontracting size standards. A prime contractor awarding a subcontract classified in a NAICS industry with a receipt-based size standard (primarily in the construction and service industries) will have a higher size standard associated with subcontracts of less than $10,000 than the size standard for the same type of subcontract but valued over $10,000. For example, a subcontract for analytical testing services falls under NAICS code 541620, Environmental Consulting Services, and SBA has established a size standard for this industry of $6 million in average annual receipts. If the value of the subcontract is more than $10,000, a small business is defined as one with $6 million or less in average annual receipts. A firm of this size has about 60 to 70 employees. Yet, under the current regulations, a subcontract of less than $10,000 allows firms of up to 500 employees to qualify as small businesses. SBA believes that one size standard should apply to the same type of subcontracts, regardless of their value.

Second, the two-tiered size standard based on the size of the subcontract is not widely known or followed by prime contractors and small businesses. SBA believes establishing a policy of having a consistent size standard requirement at the prime and subcontracting level is more desirable than retaining and educating the prime contractors and subcontractors about two-tiered size standards. Most prime contractors verify the status of their small business subcontractors based on the size standard of the subcontractor's primary NAICS industry or based on the size standard of the prime contract. These methods for ascertaining the small business status of a subcontractor lead to an incorrect small business determination in many cases, since the subcontractor must be small based on the industry of the subcontract, which is not necessarily the same as the primary industry of the subcontractor or the industry of the prime contract. SBA believes that the proposed change reflects how most prime contractors have been administratively determining the small business status of their subcontractors. Enforcing the current two-tiered size standard regulation would in essence subject prime contractors to a different size standard requirement than generally being followed. Thus, change should have little if any impact.

SBA invites comments to the elimination of the two-tiered subcontracting size standards requirement. SBA also welcomes suggestions on other approaches to size standards for the Subcontracting Program. Alternative size standards should address how they would be an improvement over the current and proposed subcontracting size standards and how they best protect the interests of small business.

Section 121.411 would be amended by deleting the words "Procurement Automated Source System (PASS)" and substituting the words "Procurement Marketing & Access Network (PRO-Net)." PASS no longer exists and has been replaced by PRO-Net. PRO-Net is an online database of information on thousands of small businesses. PRO-Net serves as a search engine for contracting officers, a marketing tool for small companies, and a "link" to procuring opportunities and other important information.

Sections 121.601 through 121.604 would be changed by removing all references to "Minority Enterprise Development" and "MED" and substituting "8(a) Business Development" and "8(a) BD." SBA no longer uses the former terms.

The proposed rule would amend § 121.702(a) to recognize that for purposes of the SBIR program a joint venture is permitted where each entity to the venture is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. The current requirement does not contain such an exception for joint ventures, and requires 51 percent direct ownership by individuals who are U.S. citizens or permanent resident aliens in every case. This change is being made to make the size regulations consistent with a recent change made to the SBIR Policy Directive.

SBA proposes to amend § 121.1001 entitled "Who may initiate a size protest or request a formal size determination?" Section 121.1001(a)(1)(i) presently allows "any offeror" to file a size protest in connection with a particular procurement or sale. The purpose of the proposed regulation is to give standing to those concerns whose successful challenge would enable them to compete for award. This section would be changed to provide that "any offeror whom the contracting officer has not eliminated for reasons unrelated to size" may file a protest. An offeror that has been eliminated for reasons unrelated to size would not be able to compete for award if the protest were successful, and, thus, should not have standing to question another firm's size status. This change would codify long-standing OHA precedent on this issue. *See, e.g., Size Appeal of Arcata Associates, Inc.*, SBA No. SIZ–3377 (1990).

The proposed rule would amend § 121.1001(a)(5)(iii) applying to protests under the SDB program to delete the reference to the Associate Administrator (AA) for MED, and substitute the SBA Associate Administrator for 8(a) Business Development. Section 121.1001(a)(6)(iv), applying to protests under the HUBZone program, would be changed to delete the reference to the AA for Government Contracting and substitute SBA's AA for the HUBZone program. Section 121.1001(a)(7)(3), applying to any unrestricted Government procurement in which status as a small business may be beneficial, would be changed by deleting the reference to the AA for MED and substituting the SBA AA for 8(a) BD.

The proposed rule would add new paragraphs (b)(7), (b)(8) and (b)(9) to § 121.1001 to authorize SBA program personnel to request formal size determinations regarding a firm's status as small for SDB certification, HUBZone certification, and being listed as a small business on PRO-Net, respectively.

SBA proposes to add a new § 121.1004(a)(4) to cover instances where notification of contract award is posted on the Internet, as authorized under Simplified Acquisition Procedures (SAP). In such cases, SBA proposes that a size protest must be made to the contracting officer within five business days after the electronic posting. SBA also proposes to add a new § 121.1004(a)(5) that would provide that where no written notification is required, either prior to or at the time of award, a protest will be considered timely if filed within five days after receipt of verbal notification from the contracting officer or other agency representative. Under SAP, there is no requirement for the contracting officer to provide either pre-award or award notification to unsuccessful offerors. Consequently, the date of verbal notification or date of posting on the internet will be considered the start of the 5-day period allotted for a timely size protest. There may be other instances where there is no notice provided (*e.g.*, award of a task order under a schedule contract), and this provision would apply there as well.

SBA proposes to amend § 121.1007 containing the requirement that a size protest must allege specific facts by restoring the six examples that were formerly found at § 121.1604(a) (1995). SBA has received comments that these examples were helpful in determining whether or not a particular protest satisfies the specificity requirement.

The proposed rule would amend § 121.1008, describing what occurs after SBA receives a size protest or request for formal size determination. The proposed rule would require the SBA Government Contracting Area Director to notify SBA's AA/8(a) BD, if a protest involves the size status of a concern that SBA has certified as a small disadvantaged business, and notify the appropriate SBA district office, if a protest pertains to the apparent successful offeror on a requirement that has been reserved for competition among eligible 8(a) Participants. Section 121.1008(d) would be amended by adding a sentence requiring a concern whose size status is at issue to furnish information about its alleged affiliates to SBA, notwithstanding any third party claims of privacy or confidentiality, because SBA does not disclose information obtained in the course of a size determination except as permitted by Federal law. This is intended to codify several OHA rulings. *See, e.g., Size Appeal of Donovan Travel, Inc., d/b/a Carlson Wagonlit Travel*, SBA No. SIZ–4270 (1997); Size Appeal of Quantrad Sensor, Inc., SBA No. SIZ–4255 (1997).

The proposed rule would add clarifying language to § 121.1009(b), "*Basis for determination.*" Section 121.1009(g), "*Results of an SBA Size Determination,*" would be amended by making it clear that contract award may be made based on a formal size determination by a SBA Government Contracting Area Director. It would also be amended to provide that an OHA decision on appeal will apply to the pending acquisition or sale if the decision is received before award. OHA decisions received after contract award will not apply to that acquisition or sale unless the contracting officer agrees to apply the OHA decision to that acquisition or sale.

The proposed rule would amend § 121.1101 by adding a new second paragraph providing that OHA will not review a formal size determination where the contract has been awarded and the issues raised in a petition for review are contract specific, such as compliance with the nonmanufacturer rule or joint venture/ostensible subcontractor rule. This change would conform the size appeal regulation to the re-certification regulation at § 121.1010(b) and codify long-standing OHA rulings. *See, e.g., Size Appeal of Lightcom International, Inc.*, SBA No. SIZ–4118 (1995).

Currently, § 121.1103 simply states that the procedures for NAICS code appeals are contained in section 19.303 of the Federal Acquisition Regulation (FAR), 48 CFR 19.303. SBA proposes to amend this section by setting forth in detail the specific procedures for NAICS code appeals rather than referring the reader to the FAR. The procedures set forth do not differ from those currently in the FAR.

Section 121.1205 would be amended by stating that a list of classes of products for which waivers of the Nonmanufacturer Rule have been granted may be obtained on SBA's Web site at *www.sba.gov/GC/approved.html*.

13 CFR part 134 contains rules of procedure governing cases before OHA, including size appeals and former SIC (now NAICS) code appeals. SBA is proposing several amendments to part 134, mainly to conform to the changes being proposed for part 121.

13 CFR 134.102 sets forth OHA's jurisdiction. The proposed rule would amend paragraph (k) to authorize an affected party to appeal a determination by the SBA Government Contracting Area Office as to whether two or more concerns are affiliated for purposes of SBA's financial assistance programs, or other programs for which an affiliation determination was requested. SBA financial assistance personnel may seek assistance from a Government Contracting Area Office in determining whether a loan applicant is affiliated with one or more other business entities. This may not be a "formal size determination" in the normal sense because the concerns even if affiliated may still qualify as small. However, this

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determination is necessary in order to determine whether the borrower, including the borrower's affiliates, has exceeded the $750,000 loan limit amount set forth in § 120.151 of this chapter. If the Area Office finds affiliation such that the borrower is determined to be ineligible to receive additional loan amounts, the firm may not currently appeal that determination to OHA as it is not a "formal size determination." This change would permit such an appeal.

Section 134.314 would be amended by adding a provision that the appellant has the burden of proof, by a preponderance of the evidence, in both size and NAICS code designations. This provision was formerly in the size regulations (*see* § 121.1707 (1995)), and since its deletion from the regulations, OHA has adopted this premise in its rulings. *See, e.g., Size Appeal of Rebmar, Inc.*, SBA No. SIZ–4173 (1996); *SIC Appeal of The Scientific Consulting Group, Inc.*, SBA No. SIZ–4186 (1996). SBA believes that it is appropriate to restore the provision to the regulations.

Finally, SBA proposes amending § 134.316(a) to state that an OHA judge will decline to decide substantive issues not properly raised on appeal, or which are abandoned, or have become moot. This would codify OHA precedent. *See e.g., Size Appeal of Lightcom International Inc.*, SBA No. SIZ–4118 (1995), *Size Appeal of Infotec Development, Inc.*, SBA No. SIZ–4197 (1996).

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

OMB has determined that this proposed rule does not constitute a "significant regulatory action" under Executive Order 12866. This rule would clarify SBA's procedural and definitional size rules. As such, the rule would have no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, the proposed rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule, if adopted in final form, would not impose new reporting or record keeping requirements.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

SBA has determined that this proposed rule, if adopted in final form, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Although the rule amends several definitions concerning the size of a business concern, the majority of these amendments are clarification of current policy.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

For the reasons set forth in the supplementary information, SBA proposes to amend parts 121 and 134 of Title 13, Code of Federal Regulations, as follows:

PART 121

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Amend § 121.102 by adding a new paragraph (e) to read as follows:

§ 121.102 How does SBA establish size standards?

* * * * *

(e) SBA's Size Policy Board considers and makes recommendations to the Administrator relating to improvements in SBA regulations, procedures, and policy concerning size matters, including size standards.

3. Amend § 121.103 as follows:

a. Revising the heading;

b. Revising (a)(1), (3), (4), and adding new paragraphs (a)(5) and (a)(6);

c. Revising the heading of paragraph (b);

d. Revising paragraph (b)(2);

e. Adding a new sentence to the end of paragraph (b)(6);

f. Revising paragraphs (c), (d), and (e);

g. Redesignating paragraph (f) as paragraph (h), and amending newly redesignated paragraph (h) by revising the introductory text, (h)(1), (h)(2), (h)(3), heading, (h)(3)(i), introductory text, (h)(3)(i)(B)(*1*), (h)(3)(ii), and (h)(4);

h. Redesignating paragraph (g) as (i); and

i. Adding new paragraphs (f) and (g).

The revisions and additions read as follows:

§ 121.103 How does SBA determine affiliation?

(a) *General Principles of Affiliation.* (1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) * * *

(3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

(4) Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.

(5) In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(6) In determining the concern's size, SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(b) *Exceptions to affiliation coverage.* (1) * * *

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs) authorized by 42 U.S.C. 9805, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered affiliates of such entities, or with other concerns owned by these entities because of their common ownership or common management. Affiliation may be found for other reasons.

* * * * *

(6) * * * Affiliation may be found for other reasons.

(c) *Affiliation based on stock ownership.* (1) A person (including any individual, concern or other entity) that owns, or has the power to control, 50 percent or more of a concern's voting stock, or a block of voting stock which is large compared to other outstanding blocks of voting stock, controls or has the power to control the concern.

(2) If two or more persons (including any individual, concern or other entity) each owns, controls, or has the power to control less than 50 percent of a concern's voting stock, and such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, SBA presumes that each such person controls or has the power to control the concern whose size is at issue. This presumption may be rebutted by a showing that such control or power to control does not in fact exist.

(3) If a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the concern's Board of Directors and CEO or President will be deemed to have the power to control the concern in the absence of evidence to the contrary.

(d) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* (1) In determining size, SBA considers stock options, convertible debentures, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, debentures, and agreements as though the rights granted have been exercised.

(2) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and are thus not given present effect.

(3) Options, debentures, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, remote, or unenforceable under state or Federal law are not given present effect.

(4) An individual or concern that controls one or more other concerns cannot use options, debentures, or agreements to appear to terminate such control before actually doing so.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors, managing members, or partners who control the board of directors and/or management of one concern also control the board of directors or management of one or more other concerns.

(f) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(g) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns.

(h) *Affiliation based on joint ventures or teaming arrangements.* A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management. A teaming arrangement for affiliation purposes is one in which two or more companies form a partnership or joint venture to act as a potential prime contractor. Affiliation may also be found between a potential prime contractor and its intended subcontractor pursuant to paragraph (h)(4) of this section.

(1) Parties to a joint venture or teaming arrangement are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture or teaming arrangement.

(2) Except as provided in paragraph (h)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers or teaming arrangement partners are affiliated with each other with regard to the performance of that contract.

(3) *Exception to affiliation for certain joint ventures and teaming arrangements.* (i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (h) of this section so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(A) * * *

(B) * * *

(*1*) For a procurement having a receipts based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

* * * * *

(ii) A joint venture or teaming arrangement of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation under paragraph (h) of this section so long as the requirements of § 124.513(b)(1) of this chapter are met.

(iii) * * *

(4) A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract, or of an order under a multiple award schedule contract, or a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

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(5) For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts, and in its total number of employees its proportionate share of joint venture employees.

* * * * *

4. Revise § 121.104 to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) *Receipts* means gross receipts, gross sales, interest, dividends, rents, royalties and other income as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts received in trust as an agent on behalf of another, in which the agent does not have a claim of right to such monies and the amounts do not increase the agent's asset base (such as a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker). For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.

(1) The Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern. SBA will not use tax returns or amendments filed with the IRS after the initiation of a size determination.

(2) When a concern has not filed a Federal income tax return with the IRS for a fiscal year which must be included in the period of measurement, SBA will calculate the concern's annual receipts for that year using any other available information, such as the concern's regular books of account, audited financial statements, or information contained in an affidavit by a person with personal knowledge of the facts.

(b) *Completed fiscal year* means a taxable year including any short year. "Taxable year" and "short year" have the meanings attributed to them by the IRS.

(c) *Period of measurement.* (1) Annual receipts of a concern that has been in business for three or more completed fiscal years means the total receipts of the concern over its most recently completed three fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52.

(d) *Annual receipts of affiliates.* (1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status includes the receipts of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose. Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this may result in using a different period of measurement to calculate an affiliate's annual receipts.

(2) The annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

5. Revise § 121.106(a) and (b)(4) to read as follows:

§ 121.106 How does SBA calculate number of employees?

(a) In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) * * *

(4)(i) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

6. In § 121.201, revise paragraph (b) of footnote 14 to the Table of Small Business Size Standards by NAICS Industry to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

Footnotes

* * * * *

14. *NAICS 562910—Environmental Remediation Services:*

(a) * * *

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts) and also the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.*, engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services, Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

* * * * *

7. Amend § 121.301 by revising paragraphs (a), (d)(1) and (e) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant, including its affiliates, must not exceed the size standard for the industry in which the applicant is primarily engaged.

* * * * *

(d) * * *

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, its average annual receipts does not exceed $6.0 million.

* * * * *

(e) The applicable size standards for purposes of SBA's financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25% whenever the applicant agrees to use all of the financial assistance within a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication "Area Trends in Employment and Unemployment."

8. Amend § 121.302 by revising paragraph (a), redesignating paragraph (d) as paragraph (e), revising newly redesignated paragraph (e), and adding the following new paragraph (d) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for the Preferred Lenders program, the Disaster Loan program, the SBIC program, and the New Markets Venture Capital program.

* * * * *

(d) For financial assistance from an SBIC licensee or a New Markets Venture Capital Company, size is determined as of the date a concern's application is accepted for processing by the SBIC or the New Markets Venture Capital Company.

(e) Changes in size after the applicable date when size is determined will not disqualify an applicant for assistance.

9. Revise the heading of § 121.305 to read as follows:

§ 121.305 What size eligibility requirements exist for obtaining financial assistance relating to particular procurements?

* * * * *

10. Revise § 121.401 to read as follows:

§ 121.401 What procurement programs are subject to size determinations?

The rules set forth in §§ 121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, the Very Small Business program, SBA's 8(a) Business Development program, SBA's HUBZone program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

11. Amend § 121.402 by revising the heading and paragraph (a), and by adding a new sentence to the end of paragraph (b) to read as follows:

§ 121.402 What size standards are applicable to Federal Government Contracting programs?

(a) A concern must not exceed the size standard for the NAICS code specified in the solicitation. The contracting officer must specify the size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may amend the solicitation and use the new size standard.

(b) * * * Procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale trade NAICS code.

* * * * *

12. Revise § 121.404 to read as follows:

§ 121.404 When does SBA determine the size status of a business concern?

(a) SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer (or other formal response to a solicitation) which includes price. The following are the only exceptions to this rule:

(1) A concern applying to be certified as a Participant in SBA's 8(a) Business Development program (under part 124, subpart A, of this chapter), as a small disadvantaged business (under part 124, subpart B, of this chapter), or as a HUBZone small business (under part 126 of this chapter) must qualify as a small business for its primary industry classification as of the date of certification by SBA.

(2) The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(3) Size status for purposes of compliance with the nonmanufacturer rule set forth in § 121.406(b)(1) and the ostensible subcontractor rule set forth in § 121.103(f)(4) is determined as of the date of the best and final offer.

(4) Where a solicitation is modified so that initial offers are no longer responsive to the solicitation, a concern must recertify that it is a small business at the time it submits a responsive offer, which includes price to the modified solicitation.

(5) For subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. The applicable size standard is that set forth in § 121.410 that is in effect at the time the concern self-certifies that it is small for the subcontract.

(6) For purposes of two-step sealed bidding under subpart 14.5 of the FAR, 48 CFR, a concern must qualify as small as of the date that it certifies that it is small as part of its step one proposal.

(b) A concern that qualified as a small business at the time it receives a contract is considered to be a small business throughout the life of that contract. Where a concern grows to be other than small, the procuring agency may exercise options and still count the award as an award to a small business.

(c) A follow-on or renewal contract is a new contracting action. As such, size is determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price for the follow-on or renewal contract.

13. Amend § 121.406 by revising paragraph (b)(1)(ii) and by adding a new sentence in paragraph (b)(2) after the fifth sentence to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts?

* * * * *

(b) *Nonmanufacturers.* (1) * * *

(ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied; and

* * * * *

(2) * * * Firms that add substances, parts, or components to an existing end-item to modify its performance will not

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be considered the end-item manufacturer where those identical modifications can be performed by and are available from the manufacturer of the existing end item. * * *

* * * * *

14. Revise § 121.410 to read as follows:

§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?

For subcontracting purposes pursuant to sections 8(d) of the Small Business Act, a concern is small for subcontracts which relate to Government procurements if it does not exceed the size standard for the NAICS code that best describes the product or service being acquired by the subcontract. However, subcontracts for engineering services awarded under the National Energy Policy Act of 1982 have the same size standard as Military and Aerospace Equipment and Military Weapons under NAICS 541213.

15. In § 121.411(a), remove the words "Procurement Automated Source System (PASS)" and add the words "Procurement Marketing & Access Network (PRO-Net)."

16. The undesignated center heading before § 121.601 is revised to read as follows:

SIZE ELIGIBILITY REQUIREMENTS FOR THE 8(A) BUSINESS DEVELOPMENT PROGRAM

17. Revise § 121.601 to read as follows:

§ 121.601 What is a small business for purposes of admission to SBA's 8(a) Business Development program?

An applicant must not exceed the size standard corresponding to its primary industry classification in order to qualify for admission to SBA's 8(a) Business Development Program.

§ 121.602 [Amended]

18. In § 121.602 replace the acronym "MED" in the heading and the text with the words "8(a) BD."

§ 121.603 [Amended]

19. In § 121.603 replace the acronym "MED" in the heading and in paragraphs (a), (b) and (d) with the words "8(a) BD."

§ 121.604 [Amended]

20. In § 121.604 replace the acronym "MED" in the heading and the text with the words "8(a) BD."

21. Section 121.702(a) is revised to read as follows:

§ 121.702 What size standards are applicable to the SBIR program?

* * * * *

(a) is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States;

* * * * *

22. Amend § 121.1001 by revising paragraphs (a)(1), (a)(2)(i), (a)(5)(i) and (iii), (a)(6)(i) and (iv), and (a)(7), introductory text, and (a)(7)(iii), and by adding new paragraphs (b)(1)(iii), (b)(7), (b)(8), and (b)(9) as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, or any instance in which a procurement or order has been restricted to small business or a particular group of small business, the following entities may file a size protest in connection with a particular procurement, sale or order:

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(2) * * *

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(5) * * *

(i) Any offeror for the specific SDB requirement whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) * * *

(iii) The responsible SBA Area Director for Government Contracting, the SBA Associate Administrator for Government Contracting, or the SBA Associate Administrator for 8(a) Business Development;

(6) * * *

(i) Any concern that submits an offer for a specific HUBZone set-aside procurement that the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(iv) The SBA Associate Administrator for the HUBZone Program, or designee.

(7) For any unrestricted Government procurement in which status as a small business may be beneficial, including, but not limited to, the award of a contract to a small business where there are tie bids, the opportunity to seek a Certificate of Competency by a small business, and SDB or HUBZone price evaluation preferences, the following entities may protest in connection with a particular procurement:

* * * * *

(iii) The responsible SBA Area Director for Government Contracting, the SBA Associate Administrator for Government Contracting, or the SBA Associate Administrator for 8(a) Business Development.

(b) * * * (1) * * *

(iii) The SBA Associate Administrator for Investment or designee may request a formal size determination for any purpose relating to the Small Business Investment Company (SBIC) program (*see* part 107 of this chapter). A formal size determination includes a request to determine whether or not affiliation exists between two or more entities for any purpose relating to the SBIC program.

* * * * *

(7) In connection with initial or continued eligibility for the Small Disadvantaged Business (SDB) program, the following may request a formal size determination:

(i) The applicant or SDB concern; or

(ii) The Assistant Administrator of the Division of Program Certification and Eligibility or the Associate Administrator for 8(a)BD.

(8) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or HUBZone concern; or

(ii) The Associate Administrator for the HUBZone program, or designee.

(9) For purposes of validating that firms listed in SBA's PRO-Net database are small, the Government Contracting Area Director may initiate a formal size determination when sufficient information exists that calls into question a firm's small business status. The current date will be used to determine size, and SBA will remove from the database any firm found to be other than small.

23. In § 121.1004 add new paragraphs (a)(4) and (a)(5) to read as follows:

§ 121.1004 What time limits apply to size protests?

(a) * * *

(4) *Electronic notification of award.* Where notification of award is made electronically, such as posting on the Internet under Simplified Acquisition Procedures, a protest must be received by the contracting officer before close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after the electronic posting.

(5) *No notice of award.* Where there is no requirement for written pre-award notice or notice of award, or where the contracting officer has failed to provide written notification of award, the 5-day protest period will commence upon oral notification by the contracting officer or authorized representative of the identity of the apparent successful offeror.

* * * * *

24. Revise the first sentence of § 121.1005 to read as follows:

§ 121.1005 How must a protest be filed with the contracting officer?

A protest must be delivered to the contracting officer by hand, telegram, mail, FAX, Federal Express or other overnight delivery service, e-mail, or telephone. * * *

25. Amend § 121.1007 by adding the following examples after paragraph (c):

§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?

* * * * *

Example 1: An allegation that concern X is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation is unspecific.

Example 2: An allegation that concern X is large because it exceeds the 500 employee size standard (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y is sufficiently specific.

Example 3: An allegation that concern X is affiliated with concern Y without setting forth any basis for the allegation is unspecific.

Example 4: An allegation that concern X is affiliated with concern Y because Mr. A is the majority shareholder in both concerns is sufficiently specific.

Example 5: An allegation that concern X has revenues in excess of $5 million (where $5 million is the applicable size standard) without setting forth a basis for the allegation is unspecific.

Example 6: An allegation that concern X exceeds the size standard (where the applicable size standard is $5 million) because it received Government contracts in excess of $5 million last year is sufficiently specific.

26. In § 121.1008, revise the heading and paragraphs (a) and (d) to read as follows:

§ 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?

(a) When SBA receives a size protest, the SBA Area Director for Government Contracting, or designee, will notify the contracting officer, the protested concern, and the protestor that the protest has been received. If the protest pertains to a requirement involving SBA's HUBZone program, the Area Director will also notify the AA/HUB of the protest. If the protest pertains to a requirement involving SBA's SBIR Program, the Area Director will also notify the Assistant Administrator for Technology. If the protest involves the size status of a concern that SBA has certified as a small disadvantaged business (SDB) (*see* part 124, subpart B of this chapter) the Area Director will notify SBA's AA/8(a) BD. If the protest pertains to a requirement that has been reserved for competition among concerns that participate in SBA's 8(a) BD Program, the Area Director will notify the SBA district office servicing the 8(a) concern whose size status has been protested. SBA will provide a copy of the protest to the protested concern together with SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to complete the form and respond to the allegations in the protest.

* * * * *

(d) If a concern whose size status is at issue fails to submit a completed SBA Form 355, responses to the allegations of the protest, or other requested information within the time allowed by SBA, or if it submits incomplete information, SBA may presume that disclosure of the information required by the form or other missing information would demonstrate that the concern is other than a small business. A concern whose size status is at issue must furnish information about its alleged affiliates to SBA, despite any third party claims of privacy or confidentiality, because SBA will not disclose information obtained in the course of a size determination except as permitted by Federal law.

27. In § 121.1009 revise paragraphs (b) and (g) to read as follows:

§ 121.1009 What are the procedures for making the size determination?

* * * * *

(b) *Basis for determination.* The size determination will be based primarily on the information supplied by the protestor or the entity requesting the size determination and that provided by the concern whose size status is at issue. The determination, however, may also be based on grounds not raised in the protest or request for size determination. SBA may use other information and may make requests for additional information to the protestor, the concern whose size status is at issue and any alleged affiliates, or other parties.

* * * * *

(g) *Results of an SBA size determination.* (1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed by OHA.

(2) A contracting officer may award a contract based on SBA's formal size determination.

(3) If the formal size determination is appealed to OHA, the OHA decision on appeal will apply to the pending procurement or sale if the decision is received before award. OHA decisions received after contract award will not apply to that procurement or sale, but will have future effect, unless the contracting officer agrees to apply the OHA decision to the procurement or sale.

(4) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(5) A concern determined to be other than small under a particular size standard is ineligible for any procurement or any assistance authorized by the Small Business Act or the Small Business Investment Act of 1958 which requires the same or a lower size standard, unless SBA recertifies the concern to be small pursuant to § 121.1010 or OHA reverses the adverse size determination. After an adverse size determination, a concern cannot self-certify as small under the same or lower size standard unless it is first recertified as small by SBA. If a concern does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on an application for SBA assistance, the concern must immediately inform the officials responsible for the pending procurement or requested assistance of the adverse size determination.

* * * * *

28. Revise § 121.1101 to read as follows:

§ 121.1101 Are formal size determinations subject to appeal?

(a) Appeals from formal size determinations may be made to OHA. Unless an appeal is made to OHA, the size determination made by a SBA Government Contracting Area Office or Disaster Area Office is the final decision of the agency. The procedures for appealing a formal size determination to OHA are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

(b) OHA will not review a formal size determination where the contract has been awarded and the issue(s) raised in

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a petition for review are contract specific, such as compliance with the nonmanufacturer rule (*see* § 121.406(b)), or joint venture or ostensible subcontractor rule (*see* § 121.103(h)).

29. Revise § 121.1103 to read as follows:

§ 121.1103 What are the procedures for appealing a NAICS code designation?

(a) Any interested party adversely affected by a NAICS code designation may appeal the designation to OHA. The only exception is that, for a sole source contract reserved under SBA's 8(a) Business Development program (*see* part 124 of this chapter), only SBA's Associate Administrator for 8(a) Business Development may appeal the NAICS code designation.

(b) The contracting officer's determination of the applicable NAICS code is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. OHA will summarily dismiss an untimely NAICS code appeal.

(2)(i) The appeal petition must be in writing and must be sent to the Office of Hearings & Appeals, U.S. Small Business Administration, 409 3rd Street, SW., Suite 5900, Washington, DC 20416.

(ii) There is no required format for a NAICS code appeal, but an appeal must include the following information: the solicitation or contract number; the name, address, and telephone number of the contracting officer; a full and specific statement as to why the NAICS code designation is erroneous, and argument in support thereof; and the name, address and telephone number of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon the contracting officer who assigned the NAICS code to the acquisition and SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 3rd Street, SW., Washington, DC 20416.

(4) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by notice and order of the date OHA received the appeal, the docket number, and the Judge assigned to the case. The contracting officer's response to the appeal must include argument and supporting evidence (*see* part 134, subpart C, of this chapter) and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the NAICS code appeal.

(5) After close of the record, OHA will issue a decision and inform all interested parties, including the appellant and contracting officer. If OHA's decision is received by the contracting officer before the date offers are due, the solicitation must be amended if the contracting officer's designation of the NAICS code is reversed. If OHA's decision is received by the contracting officer after the due date of initial offers, the decision will not apply to the pending procurement, but will apply to future solicitations for the same products or services.

30. Revise § 121.1205 to read as follows:

§ 121.1205 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted is maintained in SBA's website at *www.sba.gov/GC/approved.html*. A list of such waivers may also be obtained by contacting the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, or the nearest SBA Government Contracting Area Office.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

31. The authority citation for 13 CFR part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), and 637(a).

32. Revise § 134.102(k) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(k) Appeals from size determinations and NAICS code designations under part 121 of this chapter. "Size determinations" include decisions by Government Contracting Area Directors that determine whether two or more concerns are affiliated for purposes of SBA's financial assistance programs, or other programs for which an appropriate SBA official requested an affiliation determination;

* * * * *

33. In § 134.314, revise the heading and add the following sentence at the end to read as follows:

§ 134.314 Standard of review and burden of proof.

* * * The appellant has the burden of proof, by a preponderance of the evidence, in both size and NAICS code appeals.

34. Amend § 134.316(a) by adding the following sentence at the end to read as follows:

§ 134.316 The decision.

(a) * * * The Judge will not decide substantive issues raised for the first time on appeal, or which have been abandoned or become moot.

* * * * *

Dated: November 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–29272 Filed 11–21–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 963]

RIN 1512–AC72

Bennett Valley Viticultural Area (2002R–009T)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of the Bennett Valley viticultural area in Sonoma County, California. The petitioned area consists of approximately 8,140 acres of valley and upland terrain, with 650 acres currently planted to grapes. The proposed area is within the established Sonoma Valley viticultural area, except for a 281-acre overlap into the Sonoma Coast viticultural area. A portion of the proposed area also overlaps the Sonoma Mountain viticultural area, which is itself totally within the larger Sonoma Valley viticultural area.

DATES: Written comments must be received by January 21, 2003.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 963). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890. See the "Public Participation" section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105–1906; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR Part 9, American Viticultural Areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, *etc.*) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (USGS) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

If this proposed viticultural area is approved, bottlers using brand names similar to the name of the viticultural area must review their existing products to insure that they are eligible to use the viticultural area's name as the appellation of origin. To be eligible, 85% of the grapes in the wine must be grown within the viticultural area. If a product is not eligible to use the viticultural area name as an appellation, the bottler must obtain approval of a label with a different brand name for that wine. (See 27 CFR 4.39(i).)

Bennett Valley Petition

ATF has received a petition proposing a new viticultural area to be called "Bennett Valley." The proposed 8,140-acre viticultural area is located in Sonoma County, California, just southeast of the city of Santa Rosa and approximately 45 miles northeast of San Francisco. Sonoma County is entirely within the North Coast viticultural area. The petitioned area is almost entirely within the Sonoma Valley viticultural area, with a small 281-acre overlap into the Sonoma Coast viticultural area. It also partially overlaps the Sonoma Mountain viticultural area, which is entirely within the Sonoma Valley area. Currently, there are 650 acres of planted vineyards in the proposed area.

This proposed viticultural area is about 5.5 miles long, northwest to southeast, 3.15 miles across at its widest point, and resembles the shape of a downward-pointing bullet. The floor of Bennett Valley runs the petitioned area's length, and Bennett Valley Road meanders from its northwest to southeast boundaries. This proposed viticultural area, including the surrounding hills and mountains, comprises the Matanzas Creek watershed. This creek flows west into the Russian River drainage system and eventually to the Pacific Ocean. The petition states that differences in topography, soils, and climate distinguish the proposed Bennett Valley viticultural area from the surrounding areas.

Evidence That the Name of the Area Is Locally or Nationally Known

According to the petitioner, the area is locally known as Bennett Valley. The valley is named after James N. Bennett, an 1849 immigrant settler who arrived by wagon train. His arrival coincided with the 1849 Gold Rush that brought settlers to California, helping Bennett Valley grow as an agricultural region known for grapes, apples, hay, wheat, oats, barley, and livestock. The Bennett Valley Grange Hall was built in 1873, and it still stands on Grange Road within the proposed area as noted on the USGS Santa Rosa, CA, quadrangle map. The petition also includes an excerpt from the 1877 "Historical Atlas Map of Sonoma County," which states that if Bennett Valley "has any specialty, it is for fruit and grape culture."

The petition also offers documentation for the current usage of the proposed area's name. This includes references from a book by Don Edwards, "Making the Most of Sonoma County, A California Guide," which states, "Bennett Valley—squeezed between Taylor Mountain and the Sonoma Mountains on the west, Bennett Peak (Yulupa to the Indians) and Bennett Ridge to the east—has been ranching and farming country since the days when Missourian William Bennett settled here." The Bennett Valley Homeowner's Association's web site includes a boundary description similar to that of the proposed viticultural area. The Sonoma County telephone book has 24 business listings using the Bennett Valley name, including the Bennett Valley Union School District. The Bennett Valley School is identified on the USGS Santa Rosa, CA, quadrangle map just inside the proposed area's northwest boundary line. The petition also includes a reference to the Sonoma County government's Bennett Valley Area Plan. Only the Plan's northern-most portion, the petition notes, lies outside of the proposed viticultural area's boundaries.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

The petition states that the proposed area's boundaries are based on historical and current viticulture, geographical features, and a unique microclimate. The petition lists 24 grape growers who are historically linked with Bennett Valley agriculture. In 1862, early settler Isaac DeTurk planted a 30-acre vineyard at the base of Bennett Mountain. By 1878, the petition adds, he was producing 100,000 gallons of wine from his own and purchased grapes at his winery located within the proposed area on Grange and Bennett Valley roads.

Modern accounts referenced in the petition indicate that, around the turn of the century, phylloxera disease killed some of Bennett Valley's estimated 2,000 vineyard-acres, while Prohibition ended the balance of the Valley's wine grape industry. A resurgence of wine grape growing in Bennett Valley started in 1975, the petition notes, when the Matanzas Creek Winery planted 20 acres of grapes. The proposed area now has approximately 650 vineyard-acres. Twelve of the thirteen petition signers

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are vineyard owners within the proposed area.

Evidence Relating to the Geographical Features Which Distinguish the Proposed Area From Surrounding Areas

As described in the petition, the proposed boundaries of the Bennett Valley viticultural area are based on a combination of terrain and soil similarities, a climate with a strong coastal influence in a sheltered, inland location, and the common denominator of being within the Matanzas Creek watershed.

Physical Features

Bennett Valley is surrounded on three sides by the Sonoma Mountain Range and, on the north side, by the city of Santa Rosa. The mountainous boundaries, generally defined by ridgelines, indicate the outer limits of the Matanzas Creek watershed. Taylor and Bennett Mountains provide anchors for the proposed area's western and eastern boundary, respectively, while the 1,600-foot elevation line on Sonoma Mountain defines the southern boundary. Elevations within the proposed area range from 250 to 1,850 feet, with most vineyards between the 500 and 600-foot level.

The proposed area's northwestern boundary starts at Taylor Mountain's peak and continues straight northeast, coinciding with a portion of the Sonoma Valley viticultural area boundary line. The lower northern elevations open to the Santa Rosa Valley and city of Santa Rosa, where, at the northernmost point, the boundary line turns southeast at a 65-degree angle. The northeastern and eastern boundaries, primarily a series of straight lines connecting elevation points, follow the ridgelines through the peak of Bennett Mountain that outline the eastern side of the Matanzas Creek watershed.

The southern boundary follows the 1600-foot elevation line along Sonoma Mountain's north side and then a westerly straight line to a 900-foot elevation point. The southwestern boundary uses intersections and markers, within the Matanzas Creek watershed, to close the boundary line at Taylor Mountain. Crane Canyon, on the proposed area's southwestern side, provides an opening in the mountains for the cooling coastal fogs and breezes from the Pacific coast, which, according to the petitioners, moderate the Bennett Valley's climate.

Soils

The proposed Bennett Valley viticultural area's soils vary from the surrounding areas, the petition notes, due to the different composition percentages of its predominant Goulding-Toomes-Guenoc Association. The petition adds that there are differences in the distribution of Spreckels, Laniger, Haire, and Red Hill clay loam soils between the proposed area and nearby portions of the Sonoma Valley viticultural area. It also states that the soils in the Sonoma Mountain viticultural area, other than the overlapping portion, vary from those within the proposed Bennett Valley area.

The foothills soils, comprised primarily of the Goulding-Toomes-Guenoc Association, are of a volcanic origin that include lava flows, tuff beds and sandstone, gravel, and some conglomerate, according to the petitioner. The lower slopes and valley floor soils have more variety, including some of alluvial origin. The distribution of Spreckels loam, a well drained loam with clay subsoil, the petition states, is about 24 percent in the proposed Bennett Valley area, 27 percent in the Sonoma Mountain viticultural area, and almost 42 percent in the common area that overlaps the two areas.

Climate

The proposed Bennett Valley viticultural area has a unique microclimate, resulting from its sheltered inland location and access to coastal cooling elements, according to the petition. It notes that the broad and tall Sonoma Mountain diverts the foggy, south-to-north coastal breezes of the Petaluma gap to the north and into the Crane Canyon gap. This gap, between Sonoma Mountain and Taylor Mountain, funnels the coastal fog and winds into the Bennett Valley. Rainfall amounts in the Bennett Valley area are 17 to 25 percent higher than in the areas to the immediate north and east, according to the petition, which also quotes Valley residents who state that rainfall amounts vary with elevation and proximity to the mountains and their wind patterns.

Overlaps With the Sonoma Mountain and Sonoma Coast Viticultural Areas

The proposed Bennett Valley area is almost entirely within the Sonoma Valley viticultural area. The Sonoma Mountain viticultural area, which is totally within the larger Sonoma Valley viticultural area, overlaps 13.1 percent of the proposed Bennett Valley area. A small 3.4 percent of the proposed area overlaps into the Sonoma Coast viticultural area. The Sonoma Coast and the interior Sonoma Valley viticultural areas, both within the North Coast viticultural area, share a common boundary line along Sonoma Valley's western border. This common boundary line is the site of the petitioned boundary's small overlap into the Sonoma Coast area.

The following table summarizes the proposed 8,140-acre Bennett Valley viticultural area's overlaps with other, established viticultural areas:

Viticultural area	Acres within the proposed Bennett Valley area	Percent of the proposed Bennett Valley area in overlap
Sonoma Valley only	6,796	83.5
Sonoma Mountain (within Sonoma Valley area)	1,063	13.1
Total within Sonoma Valley	7,859	96.6
Sonoma Coast	281	3.4
Grand total	8,140	100.0

The petitioner believes these overlapping acreages provide more of a transition than a definitive contrast between the proposed and established viticultural areas.

Sonoma Valley Viticultural Area (27 CFR 9.29)

The proposed Bennett Valley viticultural area is 96.6 percent within the Sonoma Valley viticultural area. The petitioned Bennett Valley area occupies 7,859 acres, or approximately 7 percent, of the larger Sonoma Valley viticultural area's acreage. According to the petition, the Sonoma Valley viticultural area petition included the Bennett Valley due to its similar soil and climate. The Sonoma Mountain viticultural area is totally within, and located in the western portion of, the Sonoma Valley viticultural area.

Sonoma Mountain Viticultural Area (27 CFR 9.102)

The proposed Bennett Valley viticultural area overlaps 1,063 acres (13.1 percent of its territory) of the established Sonoma Mountain viticultural area, which is itself totally within the Sonoma Valley viticultural area. The overlap is in the southeast corner of the Bennett Valley area and the northwestern portion of the Sonoma Mountain area. The overlap is seen on the Glen Ellen and Kenwood USGS maps in Sections 11 through 14, T6N, R7W. The overlap is mainly that portion of the proposed Bennett Valley viticultural area north of the 1,600-foot elevation line on Sonoma Mountain in Sections 13, 14, and 23, and the land east of the common line between Sections 15 and 14, as shown on the Glen Ellen map. The northern limit of the overlap is the 800-foot elevation line from its southern most intersection with the common line between Sections 10 and 11 to its intersection with Bennett Valley Road, as shown on the Kenwood map.

According to the petition, the overlap area between the proposed Bennett Valley and the Sonoma Mountain viticultural areas contains common geographic features, such as the Matanzas Creek watershed, similar vineyard elevations, and the "thermal belt" phenomenon that drains cold air and fog from the upper mountain slopes to the lower elevations, which moderates temperatures at the lower levels. The thermal belt phenomenon is seen in this overlap due to its proximity to the Crane Canyon wind gap, which delivers the Pacific's cooling marine influence to the proposed area.

The petition also notes strong soil similarities in this overlapping area. For example, Goulding clay loam covers 30.2 percent of the proposed Bennett Valley area, 33.4 percent of this overlapping area, and from 7.4 to 49.8 percent of other sections of Sonoma County viticultural areas. Goulding cobbly clay loam covers 18.5 percent of the Bennett Valley area, 19.0 percent of the Sonoma Mountain overlap, and covers 10.8 to 43.1 percent of other areas.

The petition also quotes several Sonoma Mountain area grape growers who state that diverse growing conditions exist on different sides, and at various elevations, on Sonoma Mountain. Specifically, they note, the overlapping area benefits from the coastal influence and wind, which contrasts to the protected, warmer, eastern side of the mountain.

Sonoma Coast Viticultural Area (27 CFR 9.116)

The proposed Bennett Valley viticultural area overlaps approximately 281 acres (3.4 percent of its territory) of the established Sonoma Coast viticultural area. This overlapping area is in two portions on the petitioned area's west side. The first is located north of Crane Canyon Road and can be found in Sections 9 and 8, T6N, R7W, on the Cotati and Santa Rosa USGS maps. The second is located in Sections 15 and 16, T6N, R7W, on the Cotati map. This section of the Sonoma Valley and Sonoma Coast viticultural areas common boundary line spans a remote section of the Sonoma Mountains, where, according to the petitioners, determining the exact limits of the Matanzas Creek watershed might have challenged previous petitioners in drawing the two areas' boundary lines.

The petitioners originally intended to follow the Sonoma Valley area's western border and not overlap into the Sonoma Coast area. However, in the overlap north of Crane Canyon Road, the petitioners discovered that the former George N. Whitaker vineyard, a historically significant Bennett Valley vineyard, straddled the common boundary line between the Sonoma Coast and Sonoma Valley viticultural areas. The vineyard, and the immediately surrounding land, is similar to the proposed Bennett Valley viticultural area due to its drainage into the Matanzas Creek watershed, its direct receipt of the cooling marine influence from the Crane Canyon gap, and terrain and soils that are consistent with petitioned area. To avoid again dividing this vineyard between two viticultural areas, the petitioners extended their boundary line about a quarter-mile west into the Sonoma Coast viticultural area, causing the small, 281-acre overlap.

The petitioner claims the terrain, soils, and microclimate of this Sonoma Coast overlap are consistent with the proposed Bennett Valley viticultural area. The area is totally within the Matanzas Creek watershed and on the Sonoma Valley side of the dividing ridge. The elevations, from 680 to 960 feet, are consistent with the surrounding petitioned areas. The Goulding soils predominate the overlapping area and are similar to the rest of the proposed Bennett Valley area. The Crane Canyon gap gives this overlap area the same cooling marine influence as the rest of the proposed area.

Proposed Boundaries

The proposed viticultural area is in Sonoma County, California. The four approved USGS maps for determining the boundary of the proposed Bennett Valley viticultural area are the Santa Rosa Quadrangle, California—Sonoma Co., 7.5 Minute Series, edition of 1994; Kenwood Quadrangle, California, 7.5 Minute Series, edition of 1954, photorevised 1980; Glen Ellen Quadrangle, California—Sonoma Co, 7.5 Minute Series, edition of 1954, photorevised 1980; and Cotati Quadrangle, California—Sonoma Co, 7.5 Minute Series, edition of 1954, photorevised 1980.

The proposed Bennett Valley area is of an irregular five-sided shape, resembling a downward-pointing bullet, with Taylor Mountain, the city of Santa Rosa, and Bennett Mountain to the north, while the large Sonoma Mountain anchors the south side. The proposed viticultural area is totally within the North Coast viticultural area, is almost entirely within the Sonoma Valley viticultural area, with a small overlap into the Sonoma Coast viticultural area. The proposed area also overlaps a portion of the Sonoma Mountain viticultural area, which is itself totally within the Sonoma Valley area.

Public Participation

Comments Sought

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF is especially interested in comments about the small overlap into the Sonoma Coast viticultural area. This overlap departs from the common course of two established viticultural area boundary lines to avoid dividing an established vineyard that appears to meet the criteria of the Bennett Valley viticultural area. ATF is also interested in comments about the proposed area's overlap with the Sonoma Mountain viticultural area. Refer to the "Overlapping Areas" section of this

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document for more detailed information.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material that a commenter considers confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Submitting Comments

By U.S. Mail: Written comments may be mailed to ATF at the address listed in the **ADDRESSES** section.

By Fax: Comments may be submitted by facsimile transmission to 202–927–8602, provided the comments: (1) Are legible; (2) are 8½" x 11" in size, (3) contain a written signature, and (4) are five pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by fax in excess of five pages will not be accepted. Receipt of fax transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

By E-Mail: Comments may be submitted by e-mail to *nprm@atfhq.treas.gov*. E-mail comments must: contain your name, mailing address and e-mail address, and reference this notice number. We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals.

Comments may also be submitted using the comment form provided with the online copy of this proposed rule on the ATF Internet web site at *http://www.atf.treas.gov*.

By Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Reviewing Comments

You may view copies of the full comments received in response to this notice of proposed rulemaking by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890. You may request copies of the full comments (at 20 cents per page) by writing to the ATF Reference Librarian at the above address.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library as noted above. To access online copies of the comments on this proposed rulemaking, visit *http://www.atf.treas.gov/*, and select "Regulations," then "Notices of proposed rulemaking (alcohol)," and then click on the "View Comments" link for this notice.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

ATF certifies that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

ATF has determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is N. A. Sutton, Regulations Division (San Francisco), Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Section 9.____ to read as follows:

§ 9.____ Bennett Valley

(a) *Name.* The name of the viticultural area described in this section is "Bennett Valley".

(b) *Approved maps.* The appropriate maps for determining the boundary of the Bennett Valley viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) Santa Rosa Quadrangle, CA—Sonoma Co. 1994

(2) Kenwood Quadrangle, CA 1954, photorevised 1980

(3) Glen Ellen Quadrangle, CA—Sonoma Co. 1954, photorevised 1980

(4) Cotati Quadrangle, CA—Sonoma Co. 1954, photorevised 1980

(c) *Boundary.* The Bennett Valley viticultural area is entirely within Sonoma County, California, and is located northwest of the peak of Sonoma Mountain and southeast of the city of Santa Rosa. The point of beginning is the peak of Taylor Mountain (BM 1401), Section 6, T6N, R7W (Santa Rosa Quadrangle).

(1) Then proceed straight northeast to the intersection of the common line between Sections 31 and 32 and the 560-foot elevation line, T7N, R7W, and continue straight northeast at the same angle, crossing the Bennett Valley Golf Course and Matanzas Creek, to a point on the 500-foot elevation line approximately 400 feet north of the southern boundary of Section 20, T7N, R7W (Santa Rosa Quadrangle);

(2) From that point, proceed straight southeast to the center peak of the three unnamed peaks above the 1,100-foot elevation line, located approximately 1,600 feet southwest of Hunter Spring, in Section 28, T7N, R7W (Santa Rosa Quadrangle);

(3) Then proceed straight east-southeast to a 1,527-foot peak in the southeast corner of Section 28, T7N, R7W (Santa Rosa Quadrangle);

(4) Then proceed straight southeast to Bennett Mountain's 1,887-foot peak, Section 34, T7N, R7W (Kenwood Quadrangle);

(5) Then proceed straight southeast to the 1,309-foot peak located northwest of a water tank and approximately 400 feet north of the southern boundary of Section 35, T7N, R7W (Kenwood Quadrangle);

(6) Then proceed straight south-southeast to the 978-foot peak in the northeast quadrant of Section 11, T6N, R7W, and continue straight south-southeast approximately 800 feet to the "T" intersection of two unimproved roads located on the common boundary line between Sections 11 and 12, T6N, R7W (Kenwood Quadrangle);

(7) Then proceed south along the north-south unimproved road to its intersection with Sonoma Mountain Road, Section 13, T6N, R7W, and continue straight south to the 1,600-foot elevation line, Section 13, T6N, R7W (Glen Ellen Quadrangle);

(8) Then proceed west along the meandering 1,600-foot elevation line to the point where it crosses the common line between Sections 22 and 23, T6N, R7W (Glen Ellen Quadrangle);

(9) Then proceed straight west-northwest to the point where the 900-foot elevation line crosses the common line between Sections 15 and 16, T6N, R7W, approximately 500 feet north of the southwest corner of Section 15 (Cotati Quadrangle);

(10) Then proceed straight northwest to intersection of Grange Road (known as Crane Canyon Road to the west) and the southern boundary of Section 9, and continue straight west along that section boundary to the southwest corner of Section 9, T6N, R7W (Cotati Quadrangle);

(11) Then proceed straight north-northwest to the 961-foot peak on the east side of Section 8, T6N, R7W, (Santa Rosa Quadrangle) and

(12) From that peak, continue straight northwest to the peak of Taylor Mountain, returning to the point of beginning.

Dated: November 8, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–29590 Filed 11–21–02; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 164–1164; FRL–7412–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision pertains to changes to the solvent metal cleaning rule applicable to the St. Louis, Missouri, area. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by December 23, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 8, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–29610 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 166–1166; FRL–7411–9]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to Missouri rule "Submission of Emission Data, Emission Fees, and Process Information." This revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revision.

In the final rules section of this **Federal Register** issue, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by December 23, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 12, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–29608 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–6012–N3]

RIN 0938–AL13

Medicare Program; Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics; Meeting Announcement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this document announces additional public meetings of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The Committee was mandated by section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA).

DATES: The next two negotiated rulemaking committee meetings will be held January 6 and 7, 2003; and February 10 and 11, 2003 from 9 a.m. to 5 p.m. e.s.t.

These meetings are open to the public, and subsequent meetings will be announced in the **Federal Register**.

ADDRESSES: The Committee meetings will be held at the Hilton Pikesville at 1726 Reisterstown Road, Baltimore, MD 21208, (Telephone 410–653–1100). Any subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT:

Theresa Linkowich, (410) 786–9249 (General inquiries concerning prosthetics and custom-fabricated orthotics), Centers for Medicare & Medicaid Services (CMS), 7500 Security Blvd, Baltimore MD 21244; or

Lynn Sylvester, 202–606–9140, Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427; or

Ira Lobel, 518–431–0130, Federal Mediation and Conciliation Services, 1 Clinton Square, Room 952, Albany, NY 12207.

SUPPLEMENTARY INFORMATION: We published a document in the **Federal Register** on July 26, 2002 (67 FR 48839), announcing the establishment of the negotiated rulemaking committee to advise us on developing a proposed rule that would establish special payment provisions and requirements for suppliers of prosthetics and certain custom-fabricated orthotics under the Medicare program. The document also announced dates for the Committee's first two meetings on October 1 to 3, 2002, and October 29 to 31, 2002.

Through face-to-face negotiations, these meetings will help the Committee to reach consensus on the substance of the proposed rule. If consensus is reached, the Committee will transmit to us a report containing required information for developing a proposed rule, and we will use the report as the basis for the proposed rule. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and recommending the text and content of the proposed regulation. Detailed information is available on the CMS Internet Home Page: *http://cms.hhs.gov/faca/prosthetic/* or by calling the Federal Advisory Committee Hotline at (410) 786–9379.

The agendas for the January 5 and 6, 2002 and February 10 and 11, 2002 meetings will cover the following:

1. Review of the October 29 to 31 minutes (January 5 and 6) and review of the January 5 and 6 minutes (February 10 and 11).
2. Workgroup presentations on orthotics and prosthetics.
3. Consensus on workgroup items.
4. Development of new workgroups (as applicable).
5. Presentation by the American Society of Hand Therapists (January 5 and 6).
6. Public comment period.

Public Participation

All interested parties are invited to attend these public meetings, but attendance is limited to the space available. No advance registration is required. Seating will be available on a first-come first'served basis. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Theresa Linkowich, at e-mail address *tlinkowich@cms.hhs.gov*, or call (410) 786–9249 at least 10 days before the meeting. The Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the Committee members or other participants unless the facilitators have specifically approved these questions. The number of oral presentations may be limited by the time available.

Interested parties can file statements with the Committee. Mail written statements to the following address: Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester, or call Lynn Sylvester at (202) 606–9140.

Additional Meetings

Meetings will be held as necessary. We will publish notices of future meetings in the **Federal Register**. All future meetings will be open to the public without advance registration.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 19, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–29795 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 476, and 484

[CMS–3055–P]

RIN 0938–AK68

Medicare Program; Photocopying Reimbursement Methodology

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the rate of reimbursement for expenses incurred by prospective payment system (PPS) hospitals for photocopying medical records requested by Quality Improvement Organizations (QIOs), formerly known as Utilization and Quality Control Peer Review Organizations (PROs). We would increase the rate from 7 cents per page to 12 cents per page, in accordance with the formula for calculating this rate to reflect inflationary changes in the labor and supply cost components of the formula.

This proposed rule would also provide for the periodic review and adjustment of the per-page reimbursement rate to account for inflation and changes in technology. The methodology for calculating the per-page reimbursement rate would remain unchanged.

We also propose to provide for the payment of the expenses of furnishing photocopies to QIOs, to other providers subject to a PPS (for example, skilled nursing facilities and home health agencies), in accordance with the rules established for reimbursing PPS hospitals for these expenses.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS–3055–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3055–P, PO Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Valerie Mattison Brown, (410) 786–5958.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please call (410) 786–9994.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/nara/index.html*.

I. Background

Section 1866(a)(1)(F) of the Social Security Act (the Act) requires a hospital, as a condition of Medicare participation, to enter into an agreement with a quality improvement organization (QIO), for the peer review of Medicare services provided by the hospital. (**Note:** QIOs were formerly known as peer review organizations (PROs). We published a final rule with comment period on May 24, 2002 (67 FR 36539) changing the name to QIOs.) Our regulations at 42 CFR 476.78 provide that health care facilities that submit Medicare claims must cooperate in the conduct of QIO reviews, including providing the QIO with information necessary to its determinations. This often includes providing the QIO with photocopies of patients' medical records.

We published a final rule on October 20, 1992 in the **Federal Register** (57 FR 47779), following notice-and-comment rulemaking, which established a formula for calculating the rate of reimbursement for these photocopy costs incurred by hospitals. Using this formula, we set the rate at 7 cents per-page. The regulation requires us to determine a fixed payment amount per page by adding per-page labor costs and per-page supply costs. The regulation also provides for Medicare payment for the costs of first class postage for mailing records to QIOs. As discussed in detail in the October 20, 1992 final rule (57 FR 47779), the payment established by § 476.78 represents an additional payment to hospitals under the prospective payment system (PPS) for photocopy costs. Payment for the equipment and overhead costs associated with furnishing the QIO with required documentation is made under other Medicare payment provisions for capital-related costs and inpatient operating costs.

The formula for calculating the per-page reimbursement rate for photocopies is set forth at § 476.78(c), which provides:

Photocopying reimbursement methodology for prospective payment system hospitals. Hospitals subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the hospitals' responsibility to the QIOs to provide photocopies of requested hospital records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

(1) *Step one.* CMS adds the annual salary of a photocopy machine operator and the costs of fringe benefits as determined in accordance with the principles set forth in OMB circular A–76.

(2) *Step two.* CMS divides the amount determined in paragraph (c)(1) of this section by the number of pages that can be reasonably expected to be made annually by the photocopy machine operator to establish the labor cost per page.

(3) CMS adds to the per-page labor cost determined in paragraph (c)(2) of this section the per-page costs of supplies.

Using this formula we established the per-page rate of 7 cents in the October 20, 1992 final rule. The validity of this rule and its reimbursement methodology were challenged in a certified class action by Medicare-participating hospitals, in the U.S. Court of Appeals for the Ninth Circuit. *Queen of Angels/ Hollywood Presbyterian Medical Center* v. *Shalala*, 65 F.3d 1472, 1476 (9th Cir. 1995). The Court of Appeals upheld the validity of our photocopy reimbursement methodology and sustained the lawfulness of the 7 cents per page rate established in the rule.

Due to increases in labor and supply costs, we are proposing to increase the reimbursement rate from 7 cents per page to 12 cents per page in accordance with the established court-approved methodology set forth in § 476.78(c).

Current Photocopy Reimbursement Rate

Under the current regulation, we apply a uniform per-page rate on a nationwide basis to all PPS hospitals that have QIO agreements. We base the calculation on labor and supply costs. The calculation in the current rule, as discussed in the preamble to the October 20, 1992 rule, is based on the following:

- An operator will copy approximately 364,320 pages annually.

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- The salary level of an operator is equivalent to a GS–5 experienced midlevel secretary ($17,686) plus 27.9 percent fringe benefits ($4,934) for a total salary of $22,620.
- Paper costs are 0.5 cents per page ($25 per case of paper with 5,000 sheets in a case).
- Toner and developer costs are 0.5 cents per page.
- The total cost per page is 7 cents.

II. Provisions of the Proposed Regulations

We propose to increase the rate of QIO-related photocopy reimbursement from 7 cents to 12 cents per page. We calculated this rate by updating the salary, fringe benefits, and supply figures used in the October 20, 1992 final rule. In accordance with the methodology at § 476.78(c), we considered the following factors in calculating the proposed rate: (1) The labor costs associated with photocopying and (2) the costs of supplies.

A. Labor Costs

Labor costs were calculated consistent with the methodology at § 476.78(c), first, by adding the annual salary of a photocopy machine operator with the costs of fringe benefits, and second, by dividing that sum by the number of pages that can reasonably be expected to be made in a year.

B. Annual Salary of a Photocopy Machine Operator

In the October 20, 1992 rule, we adopted the salary level for an experienced (GS–5) midlevel secretary in the Federal government as representative of that of a photocopy machine operator. Use of this figure approximated or exceeded the actual salary information for individuals performing these tasks that had been submitted by various commenters. Furthermore, we determined that use of this salary level yielded payments that were more than adequate to ensure a sufficient skill level. The annual salary of $17,686 used in the October 20, 1992 rule was derived from the U.S. Office of Personnel Management's 1992 General Schedule.

In this proposed rule, we would continue to deem the salary of a Federal GS–5 midlevel secretary as representative of a photocopy operator's salary; however, we would update the figure to take into account increases in the payment rate of a midlevel secretary. Thus, we are using the GS–5 annual salary of $28,727 derived from the U.S. Office of Personnel Management's 2002 General Schedule to calculate the revised rate.

C. Fringe Benefits

In the October 20, 1992 final rule, we ascribed the fringe benefits of an employee to be 27.9 percent of the employee's salary, which was the standard percentage dictated by the cost principles set forth in the Office of Management and Budget (OMB) Circular A–76. While there may be other yardsticks to measure this component of costs, we find this to be a reasonable resource since the thrust of this OMB circular is to help the government compare potentially incurred costs to determine whether the costs can be more economically incurred internally or through contract with a commercial source. Therefore, we continue to use OMB Circular A–76 to calculate the annual fringe benefit cost. Accordingly, fringe benefits were calculated in this proposed rule based on 29.7 percent of the GS–5 salary as outlined in the OMB Circular A–76 Transmittal Memorandum 19—FY 2000 estimate. Thus, the annual fringe benefit cost is $8,532 ($28,727 * 29.7 percent).

D. Number of Pages Copied Annually

In this proposed rule, we are using 364,320 pages per year in the calculation of the annual labor cost. In the October 20, 1992 rule, we determined that 364,320 was the number of pages that could reasonably be expected to be copied in a year. Earlier, in the proposed rule "Changes to Peer Review Organizations Regulations", published on March 16, 1988 at 53 FR 8654, we had proposed the use of 748,000 pages per year in the calculation of the annual labor cost. This initial figure was determined based on copying documents at a rate of six pages per minute for each hour in an 8 hour day, 5 days a week, 52 weeks per year. The estimate was based on hand feeding of documents into the photocopying machine for duplication, although we recognized that there are many photocopying tasks that may be accomplished through automatic feeds. Automatic feeds greatly increase the number of pages that can be generated by a machine on an hourly basis, and as a result, greatly decrease the cost of photocopying per page.

In response to comments received on the March 16, 1988 proposed rule (53 FR 8654), we revised the 748,000 figure in the October 20, 1992 final rule to account for time spent by the photocopy machine operator in search and retrieval tasks, and time away from work on annual vacation, sick, and holiday leave. This resulted in a reduction from 748,000 to 364,320 in our estimate of the number of pages that may be reasonably expected to be made annually, and a corresponding increase in the per-page labor rate.

We are unaware of any significant changes in technology since the October 20, 1992 final rule (57 FR 47779) that would lead to either a significant decrease or increase in the annual number of pages that may be copied. Nor are we aware of any changes that would significantly increase or decrease the time allocated to search and retrieval tasks. Therefore, we continue to use the 364,320 figure to calculate the per-page labor cost in this proposed rule.

E. Calculation of Per-Page Labor Costs

To determine the per-page labor cost, the total of salary ($28,727) and fringe benefits ($8,532) costs, which amount to $37,259, was divided by 364,320 pages, the number of copies made in a year, resulting in an annual labor cost per page of 10 cents ($37,259/364,320 pages).

F. Supply Costs

In the October 20, 1992 final rule, supply costs were calculated based on 0.5 cents per page for paper and 0.5 cents per page for toner and developer. The paper cost was based on a cost of $25 per case of paper with 5,000 sheets in a case. The costs of toner and developer vary widely depending on the type of photocopy machine used. However, based on comments from hospitals and a large hospital association, it was determined at that time that a reasonable amount for toner and developer was 0.5 cents per page.

The total proposed supply cost is 2.3 cents per page. This is based on a per-page paper cost of 0.5 cents and a developer and toner cartridge cost of 1.8 cents per page. The paper costs were calculated based on $23 per case of paper with 5,000 sheets in a case. This equates to 0.5 cents per page ($23/5,000).

As previously stated, in the October 20, 1992 rule the toner and developer costs of 0.5 cents per page were determined on the basis of comments received on the proposed rule. In this rule, we have used an objective methodology to calculate the per-page cost for toner and developer that can also be used in future updates. We calculated these costs using estimates of the costs for toner cartridges and developer drums contained in the GSA supply catalogue, and on the basis of a photocopy machine producing 364,320 pages annually.

G. Payment Rate Per Page

Consistent with § 476.78(c)(3), the payment rate per page is the total of the per-page labor cost and the per-page supply cost, which is equivalent to 12 cents. The established calculation methodology actually results in a cost of 12.3 cents per page, however, consistent with CMS policy and generally accepted mathematics principles, we chose to round down to 12 cents. We believe this decision is both reasonable and supportable, based on the fact that the higher amount substantially exceeds all published OMB inflation indexes, including the CPI-Wage index (photocopying expense is largely comprised of labor costs).

H. Future Updates to Rate of Photocopy Reimbursement

In addition to updating the rate of reimbursement for photocopies, we also propose to amend the existing regulation to permit the rate to be adjusted without undergoing notice-and-comment rulemaking each time it needs to be adjusted to reflect inflationary or technology changes.

We intend to review and adjust the rate periodically in accordance with the same factors considered in establishing the rate in the October 20, 1992 final rule and the updated rate in this proposed rule. This review will include an examination of the labor and supply components of the formula, and we will update the rate as necessary to account for significant inflationary changes to these components.

Absent some compelling reason, in future updates, we will continue to deem the salary and fringe benefits of a Federal government GS–5 midlevel secretary as representative of the salary and fringe benefits of a photocopy machine operator and use those values to calculate the reimbursement rate. Also, absent some compelling reason or major technological change that would lead to a significant increase or decrease in the number of pages that can be made annually, we will not change the number of pages used in calculating the rate.

I. Reimbursement to Other PPS Providers of the Cost of Photocopying

We also propose to provide for the payment of the expenses of furnishing photocopies to QIOs, to other providers subject to a PPS (for example, skilled nursing facilities (SNFs) and home health agencies (HHAs)), in accordance with the rules established at § 476.78 for reimbursing PPS hospitals for these expenses.

Current regulations do not address reimbursement for providers other than hospitals for costs of photocopying medical records in cooperation with QIO review activities because in the past QIO review of providers other than hospitals was relatively insignificant. To the extent that this review activity took place, it was minimal, and the related costs were included on the provider's cost report. SNFs, HHAs, and other providers have recently converted from the cost-based reimbursement system to a PPS. Because QIO review of these providers has been minimal or nonexistent, costs related to this activity are not adequately reflected in the base PPS rate. Therefore, we believe it is appropriate to provide for a means of paying for these costs when they occur. To accomplish this change, we propose to replace the more narrow term "hospitals" with "providers," in § 476.78(b)(2) and (c), to include other providers subject to a PPS.

Additionally, we propose revising the payment provisions for SNFs and HHAs by adding a paragraph at § 413.355 and § 484.265, that authorizes reimbursement for the costs of photocopying and mailing medical records required for QIO review, to SNFs and HHAs.

We also propose amending § 476.78(d) to provide that, as with other disputes regarding Medicare payment to providers, disputes concerning payments for costs related to QIO review under § 476.78 and the other payment provisions of the Medicare statute and regulations must be presented in accordance with the administrative and judicial review requirements of section 1878 of the Act and subpart R of 42 CFR part 405.

III. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 476.78 of this regulation contains information collection requirements. In summary, § 476.78 requires providers to submit information to the QIO during the conduct of a QIO review. Because this information is collected during the conduct of an audit, investigation, and/or an administrative action, we believe these collection requirements are not subject to the PRA as stipulated under 5 CFR 1320.4.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies directly to the following:

Centers for Medicare and Medicaid Services, Office of Information Services, Standards and Security Group, Division of CMS Enterprise Standards,
Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.
Attn: John Burke CMS–3055–P; and
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, CMS Desk Officer, CMS–3055–P.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Orders 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million

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or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved.

The 53 separate QIO contracts are awarded on a staggered 3-year basis. Current sixth scope of work contracts provide photocopy reimbursement costs of 7 cents per page. The total dollars budgeted were $8.6 million per year and the 3-year costs were $25.9 million. We estimate by the time this regulation is published in final, 19 QIOs will have completed their 6th round contracts and the other 34 will have less than 153 months (combined) out of a total of 636 months (for all 53 QIOs) remaining in the final year of their 6th round contracts. This translates to 24 percent of the final 6th round year. As such, we project this regulation will increase the costs in the last (*i.e.*, current) year of the 6th scope of work by $1.5 million above the previous budgeted level of $8.6 million, to a total of $10.1 million. However, in future years—based on the full 12 months and all 53 QIOs under contract—the increase will be nearly $6.2 million annually.

Thus, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year. We have also determined that it does not otherwise constitute significant regulatory action.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less annually (see 65 FR 69432). Individuals and States are not included in the definition of a small entity.

We generally prepare a regulatory flexibility analysis that is consistent with the RFA unless we certify that a rule will not have a significant impact on a substantial number of small entities. We have not prepared an analysis for the RFA because we have determined, and certify, that this proposed rule would have no significant economic impact on small entities. The proposed regulation would not impose any economic or operational regulatory burdens on small entities. The regulation would only assist providers in performing the tasks required under the QIO program sixth scope of work, by increasing the reimbursement for providing copies of documents to the QIOs.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have not prepared an analysis for section 1102(b) of the Act because we have determined that this proposed regulation would not have a significant impact on the operations of small rural hospitals for the reasons stated above in our discussion of the RFA.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. We have determined that this proposed rule would not result in such an expenditure. Rather, the proposed rule would benefit providers by increasing the photocopy reimbursement rate.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 476

Grant programs—health, Health care, Health facilities, Health professions, Quality Improvement Organizations (QIO), reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV to read as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 412.115, revise paragraph (c) to read as follows:

§ 412.115 Additional payments.

* * * * *

(c) *QIO photocopy and mailing costs.* An additional payment is made to a hospital in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Add a new § 413.355 to read as follows:

§ 413.355 Additional payment: QIO photocopy and mailing costs.

An additional payment is made to a skilled nursing facility in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 476.78, revise the introductory text to paragraph (b); revise paragraphs (b)(2), (b)(4), and the introductory text to paragraph (c); add new paragraph (c)(4); and revise paragraph (d) to read as follows:

§ 476.78 Responsibilities of health care providers.

* * * * *

(b) *Cooperation with QIOs.* Health care providers that submit Medicare claims must cooperate in the assumption and conduct of QIO review. Providers must—

* * * * *

(2) Provide patient care data and other pertinent data to the QIO at the time the QIO is collecting review information that is required for the QIO to make its determinations. The provider must photocopy and deliver to the QIO all required information within 30 days of a request. QIOs pay providers paid under the prospective payment system for the costs of photocopying records requested by the QIO in accordance with the payment rate determined under the methodology described in paragraph (c) of this section and for first class postage for mailing the records to the QIO. When the QIO does postadmission, preprocedure review, the facility must provide the necessary information before the procedure is performed, unless it must be performed on an emergency basis.

* * * * *

(4) When the provider has issued a written determination in accordance with § 412.42(c)(3) of this chapter that a beneficiary no longer requires inpatient hospital care, it must submit a copy of its determination to the QIO within 3 working days.

* * * * *

(c) *Photocopying reimbursement methodology for prospective payment system providers.* Providers subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the providers' responsibility to the QIOs to provide photocopies of requested provider records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

* * * * *

(4) CMS will periodically review the photocopy reimbursement rate to ensure that it still accurately reflects provider costs. CMS will publish any changes to the rate in a Federal Register notice.

(d) *Appeals.* Reimbursement for the costs of photocopying and mailing records for QIO review is an additional payment to providers under the prospective payment system, as specified in §§ 412.115, 413.355, and 484.265 of this chapter. Thus, appeals concerning these costs are subject to the review process specified in part 405, subpart R of this chapter.

PART 484—HOME HEALTH SERVICES

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh) unless otherwise indicated.

2. Add a new § 484.265 to read as follows:

§ 484.265 Additional payment.

An additional payment is made to a home health agency in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 27, 2002.

Thomas A. Scully,

Administrator, Center for Medicare & Medicaid Services.

Approved: August 8, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29076 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1022–P]

RIN 0938–AJ36

Medicare Program; Hospice Care Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise existing regulations that govern coverage and payment for hospice care under the Medicare program. These revisions are required by the Balanced Budget Act of 1997 (BBA), the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA).

The BBA made changes to the time frame for completion of a physician's certification for admission of a patient; the duration of benefit periods; the requirement that hospices make certain services available on a 24-hour basis; the required core services; the coverage of services specified in a patient's plan of care; and the payment of claims according to area. The BBA also established hospice payment rates for Federal fiscal years 1998 through 2002. BBRA amended those rates. BIPA further amended those rates and clarified the physician certification rule.

This rule would also add to existing regulations certain established Medicare hospice policies that currently are available only in policy memoranda. These policies clarify the regulations regarding the content of the certification of terminal illness and the admission to, and discharge from, a hospice.

This rule does not address the requirement for hospice data collection, the changes to the limitation of liability rules, or the changes to the hospice conditions of participation that were included in the BBA.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1022–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1022–P, Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or

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courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Thomas Saltz, (410) 786–4480 or Carol Blackford, (410) 786–5909.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–9994.

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I. Background

A. Hospice Care

Hospice care is an approach to health care that recognizes that the impending death of an individual warrants a change in focus from curative care to palliative care, that is, relief of pain and other symptoms. The emphasis of hospice care is on the control of pain and the furnishing of services that enable the beneficiary to remain at home as long as possible with minimal disruption to normal activities. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as the unit of care.

B. Medicare Hospice Before the Balanced Budget Act of 1997

The Balanced Budget Act of 1997 changed and clarified numerous aspects of the Medicare hospice benefit including, the length of available benefit periods, the amount of annual updates, how local payment rates are determined, the time frame for physician certification, and what is considered a covered Medicare hospice service. Before explaining each change in detail, it is important to understand how the Medicare hospice benefit was structured prior to the BBA of 1997.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. Beneficiaries are eligible to elect the Medicare hospice benefit if they are eligible for Medicare Part A; are certified as terminally ill by their personal physician, if they have one, and by the hospice medical director; and elect to receive hospice care from a Medicare-certified hospice. Section 1861(dd)(3)(A) of the Act defines terminally ill as a medical prognosis with a life expectancy of 6 months or less. This definition was clarified to provide for a life expectancy of "6 months or less if the illness runs its normal course" when we amended 42 CFR 418.3 in our December 11, 1990 final rule with comment period titled "Hospice Care Amendments: Medicare" (55 FR 50834).

A Medicare beneficiary who has elected the hospice benefit can receive care for specific lengths of time referred to as benefit periods. Under the Tax Equity and Fiscal Responsibility Act of 1982, hospice care was made available in three distinct benefit periods, the first two lasting 90 days, and the third lasting 30 days. The total amount of Medicare hospice coverage was 210 days. Because of the scientific difficulty in making a prognosis of 6 months or less, the 210-day limit was repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 for services furnished on or after January 1, 1990. The benefit periods were restructured into two periods of 90 days duration, one period of 30 days duration, and a fourth period of unlimited duration. If a beneficiary voluntarily left the program or was discharged from it, he or she forfeited the remaining days in the benefit period. If this occurred during the fourth benefit period, the beneficiary could never again receive the Medicare hospice benefit. A beneficiary in the fourth benefit period who became ineligible for hospice care services because he or she no longer met the eligibility requirements would return to normal Medicare coverage and would never be eligible for the Medicare hospice program, even if his or her condition once again became terminal. This provision was amended by the BBA, as discussed below.

Once a patient elects Medicare hospice care, the patient gives up the right to have Medicare pay for hospice care furnished by any hospice provider other than the one that he or she has selected, unless the selected hospice provider arranges for services to be furnished by another provider or if the patient elects to change providers. Also during the benefit period, the beneficiary gives up the right to receive any other Medicare payment for services that are determined to be related to his or her terminal illness or other related conditions or that are duplicative of hospice care. Medicare will continue to pay for a beneficiary's covered medical needs unrelated to the terminal condition.

The Medicare hospice benefit includes nursing services, medical social services, physician services, counseling services including dietary and bereavement counseling, short-term inpatient care including respite care, medical appliances and drugs, home health aide and homemaker services, physical therapy, occupational therapy, and speech-language pathology services. Medicare-certified hospices furnish care using an interdisciplinary team of people who assess the needs of the beneficiary and his or her family and develop and maintain a plan of care that meets those needs.

Under section 1814(i) of the Act, Medicare payment for hospice care is based on one of four prospectively determined rates that correspond to four different levels of care for each day a beneficiary is under the care of the hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. The prospective payment rates are updated annually and are adjusted by a wage index to reflect geographic variation. The payment rules are in our regulations at part 418, subpart G, "Payment for Hospice Care."

II. Hospice Provisions of the Balanced Budget Act of 1997, the Balanced Budget Refinement Act of 1999, and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

As mentioned above, the Balanced Budget Act of 1997 (BBA) included a number of provisions affecting the Medicare hospice benefit. Additionally, the Balanced Budget Refinement Act (BBRA) of 1999 and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made some additional changes to the Medicare hospice benefit. This section will explain each change in detail and describe how these changes have been implemented. All of the BBA hospice provisions were implemented through a Program Memorandum (PM A–97–11) released in September 1997, which addresses all of the hospice-related BBA provisions, except the requirement for hospice data collection, the changes to the limitation of liability rules, the provision allowing contracting with physicians, and the new waivers for certain staffing requirements.

The provision allowing contracting with physicians and the new waivers for certain staffing requirements will be included in a proposed regulation to revise the hospice conditions of participation, which may be published in the near future. The limitation of liability rule changes were implemented through the Program Memorandum issued in September 1997. A hospice cost report for the hospice data collection was developed and issued in April 1999.

A. Payments for Hospice Services (Section 4441 of BBA)

Section 4441(b) of the BBA amended section 1814(i) of the Act to require hospice management to submit cost data for each fiscal year beginning with fiscal year 1999. A hospice cost report to collect this information was developed and issued in April 1999. To allow hospices enough time to prepare for the new requirement, the implementation of the hospice cost report was delayed until cost reporting periods beginning on or after April 1, 1999.

B. Payment for Home Hospice Care Based on Location Where Care Is Furnished (Section 4442 of the BBA)

Section 4442 of the BBA amended section 1814(i)(2) of the Act, effective for services furnished on or after October 1, 1997, to require that hospices submit claims for payment for hospice care furnished in an individual's home only on the basis of the geographic location at which the service is furnished. Previously, local wage index values were applied based on the geographic location of the hospice provider, regardless of where the hospice care was furnished. Hospices were able to inappropriately maximize reimbursement by locating their offices in high-wage areas and actually delivering services in a lower-wage area. Applying the wage index values for rate adjustments on the geographic area where the hospice care is furnished would provide a reimbursement rate that is a more accurate reflection of the wages paid by the hospice for the staff used to furnish care.

C. Hospice Care Benefit Periods (Section 4443 of the BBA)

Section 4443 of the BBA amended sections 1812(a)(4) and 1812(d)(1) of the Act to provide for hospice benefit periods of two 90-day periods, followed by an unlimited number of 60-day periods. This amendment changed the previous hospice care benefit periods. Each period requires a physician to certify at the beginning of the period that the individual has a terminal illness with a prognosis that the individual's life expectancy is 6 months or less, should the illness run its normal course. Though it continues to be true that the remaining days in a benefit period are lost once a beneficiary revokes election of the hospice benefit or is discharged from the hospice, the restructured benefit periods will allow the beneficiary, or the hospice, to make this type of decision without placing the beneficiary at risk of losing hospice benefit periods in the future.

Section 4449 of the BBA indicated that the benefit period change applied to the hospice benefit regardless of whether or not an individual had made an election of the benefit period before the date of enactment. Therefore, beneficiaries who elected hospice before the BBA, and who, after the passage of the BBA, are discharged from hospice care because they are no longer terminally ill, could avail themselves of the benefit at some later date if they should become terminally ill again and otherwise meet the requirements of the Medicare hospice benefit. If the beneficiary had been discharged during the initial 90-day period, he or she would enter the benefit in the second 90-day period. If the discharge took place during the final 90-day period or any subsequent 60-day period, the beneficiary would enter the benefit in a new 60-day period. A beneficiary who had been discharged from hospice during the fourth benefit period before the enactment of the BBA would be eligible to access the benefit again, if certified as being terminally ill, and would begin in a new 60-day period. The 90-day periods would not be available again, as amended section 1812(d)(1) of the Act still provides only for two 90-day periods during an individual's lifetime. There is no limit on the number of 60-day periods available as long as the beneficiary meets the requirements for the hospice benefit.

D. Other Items and Services Included in Hospice Care (Section 4444 of the BBA)

Section 1861(dd)(1) of the Act lists the specific services covered under the Medicare hospice benefit. Because the hospice provider is responsible for the palliation and management of the patient's terminal illness, it has always been Medicare's policy that Medicare hospice includes not only those specific services listed in Section 1861(dd)(1) of the Act but also any service otherwise covered by Medicare that is needed for the palliation and management of the terminal illness. Section 4444 of the BBA reiterates this policy by amending Section 1861(dd)(1) of the Act.

A new subparagraph "I" has been added to the list of covered hospice services in section 1861(dd)(1) of the Act, effective April 1, 1998. This new provision states that any other service that is specified in the plan of care, and for which payment may otherwise be made under Medicare, is a covered hospice service. As explained, this change underscores our previous construction of the law as requiring that the hospice is responsible for furnishing any and all services indicated as necessary for the palliation and management of the terminal illness, and related conditions, in the plan of care. A Medicare beneficiary who elects hospice care gives up the right to have Medicare pay for services related to the terminal illness, or related conditions, outside of the hospice benefit. Section 1861(dd)(1) of the Act contains a list of services and therapies covered under the Medicare hospice benefit. This list does not include services like radiation therapy, which are often furnished by hospices for palliative purposes. This change clarifies that these additional necessary services are covered under the hospice benefit and cannot be billed separately to Medicare.

E. Extending the Period for Physician Certification of an Individual's Terminal Illness (Section 4448 of the BBA)

Section 4448 of the BBA amended section 1814(a)(7)(A)(i) of the Act to eliminate the specific statutory time frame for the completion of a

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physician's certification of terminal illness for admission to a hospice for the initial 90-day benefit period and to require only that certification be done "at the beginning of the period." A literal interpretation of "at the beginning of the period," that is, on the first day of the benefit period, would produce time frames that are more stringent than previous requirements. However, it appears that the congressional intent of this change was to give us the discretion, as we currently have with home health certifications, to require instead that hospice certifications be on file before a Medicare claim is submitted. Thus, section 4448 is titled "Extending the Period for Physician Certification of an Individual's Terminal Illness."

Before the BBA, hospices were required to obtain, no later than 2 calendar days after hospice care was initiated, written certification that a person had a prognosis of a terminal illness with a life expectancy of 6 months or less. For the first benefit period, if the written certification could not be obtained within the 2 calendar days following the initiation of hospice care, a verbal certification could be made within 2 days following the initiation of hospice care, with a written certification not later than 8 calendar days after care was initiated. For subsequent benefit periods, written certification was required no later than 2 calendar days after the first day of each benefit period.

The new certification requirements also apply to individuals who had been previously discharged during a fourth benefit period and are being certified for hospice care again to begin in a new 60-day benefit period. Also, due to the restructuring of the benefit periods, any individual who revoked, or was previously discharged from, the hospice benefit, and then reelects to receive the hospice benefit in the next available benefit period, will need to be recertified as if entering the program in an initial benefit period. This means that the hospice must obtain verbal certification of terminal illness no later than 2 days after care begins, and written certification before the submission of a claim to the fiscal intermediary.

F. Effective Date (Section 4449 of the BBA)

The provisions of the BBA discussed above, unless noted otherwise, became effective for services furnished on or after the date of enactment of the BBA, or August 5, 1997. Section 4444, the other services provision, was effective on April 1, 1998.

G. Clarification of the Physician Certification Requirement (Section 322 of BIPA)

Section 322 of BIPA amended section 1814(a) of the Act by clarifying that the certification of an individual who elects hospice "* * * shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness." The amendment clarifies that the certification is based on a clinical judgment regarding the usual course of a terminal illness, and recognizes the fact that making medical prognostications of life expectancy is not always exact. This amendment at section 322(b) of BIPA clarifies and supports our current policy, which we are proposing to add to our regulations. The policy came about in response to Operation Restore Trust (ORT) and is discussed later in section III. B of this preamble. Briefly, ORT found that certification and recertification occurred without the documentation that would support the terminal illness prognosis. Accordingly, in 1995, we issued program memoranda requiring clinical findings and other documentation that support the medical prognosis. This documentation must accompany a certification and be filed in the patient's medical record.

We recognize that medical prognostications of life expectancy are not always exact, but the amendment regarding the physician's clinical judgment does not negate the fact that there must be a basis for a certification. A hospice needs to be certain that the physician's clinical judgment can be supported by clinical findings and other documentation that provide a basis for the certification of 6 months or less if the illness runs its normal course. A mere signed certification, absent a medically sound basis that supports the clinical judgment, is not sufficient for application of the hospice benefit under Medicare.

Section 322 of BIPA became effective for certifications made on or after the date of enactment, December 21, 2000.

III. Provisions of This Proposed Rule

We are proposing to make conforming changes to the Medicare hospice regulations to reflect the statutory changes discussed above. In addition, we are proposing to revise the regulation to reflect current policy on the documentation needed to support a certification of terminal illness, admission to Medicare hospice, and discharge from hospice. We are proposing to add one new requirement that would allow for discharges from hospice for cause under very limited circumstances.

We propose to amend 42 CFR chapter IV by revising part 418.

A. Duration of Hospice care Coverage—Election Periods (§ 418.21)

In § 418.21, we are revising paragraph (a) to make hospice benefit periods available in two 90-day periods followed by an unlimited number of 60-day periods (requirement of section 4443 of the BBA).

B. Certification of Terminal Illness (§ 418.22)

We are revising the cross reference in § 418.22(a)(1) from "§ 418.21" to "§ 418.21(a)" and removing the phrase "for two, three, or four periods" and replacing it with "for an unlimited number of periods" to reflect the changes in the hospice care election periods (requirement of section 4443 of the BBA). We are revising the basic requirement at paragraph (a)(2) to state that the hospice must obtain written certification before it submits a claim for payment (requirement of section 4448 of the BBA), and we are proposing to revise the exception at paragraph (a)(3) to state that, if the hospice cannot obtain the written certification within 2 calendar days, it must obtain an oral certification within 2 calendar days, and the written certification before it submits a claim for payment. Oral certifications, therefore, which are necessary only if the hospice is unable to obtain written certification within 2 calendar days of the start of the benefit period, would be required for each benefit period rather than for just the initial 90-day period. We are maintaining our requirement for verbal physician's certification no later than 2 days after hospice care begins because we continue to believe that proper and timely assessment of a patient's condition is of critical importance both to the hospice, which becomes responsible for the patient, and to the patient, who must have a sound basis for choosing palliative rather than curative care.

As a condition of eligibility for a Medicare hospice program, an individual must be entitled to Medicare Part A and be certified as terminally ill. The Act also requires that this certification be made in writing by either the hospice medical director or the physician member of the interdisciplinary group, and by the attending physician, if the patient has one. However, the law does not explicitly discuss what information a hospice physician needs to consider before making a certification of terminal illness.

Operation Restore Trust (ORT), a joint effort among the Centers for Medicare & Medicaid Services, the Office of the Inspector General, and the Administration on Aging to identify vulnerabilities in the Medicare program and to pursue ways to reduce Medicare's exposure to fraud and abuse, identified several areas of weakness in the hospice benefit, primarily in the area of hospice eligibility. In 1995, as a result of early ORT findings, we issued a letter to all Regional Offices and Regional Home Health Intermediaries (RHHIs) clarifying what should be included in a patient's medical record to support the certification of terminal illness. Subsequent ORT reports, and medical reviews conducted by RHHIs, have raised concerns about inappropriate certifications and recertifications and problems with a lack of documentation to support a prognosis of terminal illness. These reports and reviews found that certifications are being made for patients who are chronically ill but who are without complications or other circumstances that indicate a life expectancy of 6 months or less.

In response to these concerns, we are proposing to revise § 418.22(b) by adding introductory text, redesignating paragraph (b) as paragraph (b)(1), and adding an additional requirement for the content of certification as paragraph (b)(2). The introductory text will state that certification for the hospice benefit will be based upon the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. In paragraph (b)(2), we propose requiring that specific clinical findings and other documentation supporting the medical prognosis accompany the written certification and be filed in the medical record as required under § 418.22(d).

C. Election of Hospice Care (§ 418.24)

In § 418.24, we are proposing to add to paragraph (c), "Duration of election," a new paragraph (c)(3) to state that an election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual is not discharged from the hospice under the provisions of § 418.26. This addition would clarify that only revocation by the beneficiary or discharge by the hospice terminates an election.

D. Admission to Hospice Care (§ 418.25)

Also in response to concerns raised by ORT, we are proposing to establish general guidance on hospice admission procedures. Currently, there is no guidance in manuals or regulations regarding admission procedures. We are proposing to add a new § 418.25, "Admission to hospice care," which would establish specific requirements to be met before a hospice provider admits a patient to its care.

Paragraph (a) would permit a hospice to admit a patient only on the recommendation of the medical director in consultation with the patient's attending physician, if any. We realize that many hospice patients are referred to hospice from various "nonmedical" sources. This is entirely appropriate; however, it is the responsibility of the medical director, in concert with the attending physician, to assess the patient's medical condition and determine if the patient can be certified as terminally ill.

Paragraph (b) would require that the hospice medical director consider at least the following information when making a decision to certify that a patient is terminally ill: diagnosis of the patient's terminal condition; any related diagnoses or comorbidities; and current clinically relevant findings supporting all diagnoses.

E. Discharge From Hospice Care (§§ 418.26 and 418.28)

As with admission to hospice, the statute does not explicitly address when it is appropriate to discharge an individual from hospice care. Section 210 of the *Medicare Hospice Manual* (HCFA Pub. 21) explains that discharge is allowable only if the patient is no longer terminally ill or if the patient moves out of the service area.

We propose to add a new § 418.26, "Discharge from hospice care," to specify when a hospice may discharge a patient from its care. Paragraph (a), "Reasons for discharge," would specify that a hospice may discharge a patient if—

1. The patient moves out of the hospice's service area or transfers to another hospice;

2. The hospice determines that the patient is no longer terminally ill; or

3. The hospice determines, under a policy set by the hospice for the purpose of addressing "discharge for cause" that also meets the requirements discussed in the remainder of the new paragraph (a), that the patient's behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired. When the hospice seeks to discharge a patient, we would require it to make a serious effort to resolve the problem(s) presented by the patient's behavior or situation; ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into the patient's medical records; and obtain a written physician's order from the patient's attending physician and hospice medical director concurring with the discharge from the hospice.

Since the inception of the Medicare hospice program, we have received inquiries from hospices regarding patients and their family members or primary caregivers who elected hospice but subsequently became uncooperative or hostile (including threats of physical harm and to the extent that hospice staff could not provide care to the patient) when the facilities attempted to provide care. In the absence of regulations or guidance from Medicare regarding these situations, hospices were uncertain as to their authority to act to resolve this type of problem. We offered informal guidance that if the hospice had made a conscientious effort to resolve the problem and had documented that effort, and the patient refused to revoke the benefit voluntarily, a discharge would be indicated. Failure to revoke the benefit could place the patient in a compromised position in which the patient would not be able to receive services from the hospice but would at the same time be unable to obtain services under the standard Medicare program because of his or her hospice status. An additional concern is the issue of daily payments being made to a hospice when no services are being provided. We are interested in commenter responses to this proposed regulation, particularly as to whether it is needed, and, if it is, whether there are sufficient protections for patients in the proposed rule.

Paragraph (b), "Effect of discharge," would specify that an individual, upon discharge from the hospice during a particular election period for reasons other than immediate transfer to another hospice is no longer covered under Medicare for hospice care and resumes Medicare coverage of the benefits waived under § 418.24(d). If the beneficiary becomes eligible for the hospice benefit at a future time, he or she would be able to elect to receive this benefit again.

Although the statute does not explicitly address when a hospice may discharge a patient from its care, we

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realize that there are certain instances in which it is no longer appropriate for a hospice to provide care to a patient. We have attempted to capture those instances with our proposal; nevertheless, we are requesting that commenters share their experiences regarding situations that have arisen that would fall into one of our proposed categories.

A decision that a hospice patient is no longer terminally ill is generally not made during one assessment. However, once it is determined that the patient is no longer terminally ill, the patient is no longer eligible to receive the Medicare hospice benefit. Currently, the regulations do not provide any time for discharge planning between the determination that the patient is no longer terminally ill and discharge from the benefit. Since the BBA has ended the limitation on available benefit periods during a beneficiary's lifetime, we expect to see an increase in the number of beneficiaries being discharged from, or revoking, the hospice benefit because they can no longer be certified as terminally ill. However, it is common for these beneficiaries to remain in medically fragile conditions and in need of some type of medical services in order to remain at home. It is important that hospice providers consider these needs so that support structures can quickly be put into place should the patient's prognosis improve.

Therefore, we are proposing to add a paragraph (c), "Discharge planning," in new § 418.26. We would require at paragraph (c)(1) that the hospice have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill. Additionally, we are proposing at paragraph (c)(2) that the discharge planning process must ensure that planning for the potential of discharge includes consideration of plans for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

Finally, § 418.28(b)(1) is revised to permit discharges for cause (under proposed § 418.26(a)(3)) if a patient refuses to sign a revocation statement. A signed revocation statement serves to protect hospice patients whose hospice may seek to discharge them because of possible higher costs associated with use of necessary services. Under current regulations, if a patient who otherwise would be discharged for cause were to refuse to sign a revocation statement, the hospice would be in the anomalous position of receiving daily payments from Medicare for a person who cannot receive services. Earlier in this section, the implications for the hospice and the beneficiary were discussed. Paragraph (b)(1) would permit waiver of a signed revocation if one is not obtainable in cases of discharge for cause. It is our intention to take all comments into account prior to finalizing the "discharge for cause" policy. If implemented, our utmost concern is that there are sufficient patient protections in place to ensure appropriate delivery of care and, if needed discharge planning.

F. Covered Services (§ 418.202)

We would add a new paragraph (i) to § 418.202 to state that any other service that is specified in the patient's plan of care as reasonable and necessary for the palliation and management of the patient's terminal illness and related conditions, and for which payment may otherwise be made under Medicare, is a covered hospice service. This change was made by section 4444 of the BBA and was a clarification of long-standing Medicare policy.

G. Payment for Hospice Care (§§ 418.301, 418.302, 418.304, and 418.306)

In addition to reflecting the payment changes required by the BBA, we are proposing to add a new paragraph (c) to § 418.301, "Basic rules." This paragraph would restate the basic requirement, included in the provider agreement, that the hospice may not charge a patient for services for which the patient is entitled to have payment made under Medicare or for services for which the patient would be entitled to payment if the provider had completed all of the actions described in § 489.21. Since this requirement is currently included in the provider agreement, we would restate it in this part for clarification only.

We are adding a new paragraph (g) to § 418.302, "Payment procedures for hospice care," to provide that payment for routine home care and continuous home care would be made on the basis of the geographic location where the service is provided (requirement of section 4442 of the BBA).

We would also update the rules found at § 418.304, "Payment for physician services," to reflect current payment methodology for physician services under Medicare Part B. References to reimbursement based on reasonable charges would be replaced with references to the physician fee schedule. We would revise the first sentence of paragraph (b) to clarify that a specified Medicare contractor pays the hospice an amount equivalent to 100 percent of the physician fee schedule, rather than 100 percent of the physician's reasonable charge, for those physician services furnished by hospice employees or those under arrangement with the hospice. We would also revise the second sentence of paragraph (c) to specify that services of the patient's attending physician, if he or she is not an employee of the hospice or providing services under arrangements with the hospice, are paid by the carrier under the procedures in subpart A, part 414 of chapter IV.

Finally, in § 418.306, "Determination of payment rates," we would revise paragraph (b)(3) and add new paragraphs (b)(4) and (b)(5) to set the payment rate in Federal fiscal years 1998 through 2002 as the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase minus 1 percentage point, with the exception that the payments for the first half of FY 2001 shall be increased 0.5 percent, and then increased an additional 5 percent over the above calculation. Payments for all of FY 2002 will be increased 0.75 percent.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection report should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Sections 418.22 and 418.26 of this proposed regulation contain information collection requirements that are subject to review by OMB under the PRA.

Section 418.22 Certification of Terminal Illness

The current collection requirements referenced in § 418.22 have been approved by OMB under approval number 0938–0302, with a current expiration date of January 31, 2003. However, this rule proposes a new collection requirement, which requires CMS to solicit comment on the new information collection requirement and resubmit 0938–0302 to OMB for review and approval, as a revision to a currently approved collection.

The newly proposed requirement as referenced under paragraph (b)(2) of this section stipulates that specific clinical findings and other documentation that support the medical prognosis must accompany the certification of terminal illness and must be filed in the medical record with the written certification as set forth in paragraph (d)(2) of this section.

While this requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3 (b)(2) and (b)(3) because the requirement is considered a reasonable and customary business practice and/or is required under State or local laws and/or regulations.

Section 418.26 Discharge From Hospice Care

The requirement referenced in paragraph (a)(3)(iii) of this section requires the documentation of the problem(s) related to the patient and efforts made to resolve the problem(s) and enter this documentation into the patient's medical records.

The requirement referenced in paragraph (a)(3)(iv) of this section requires that a written physician's order from the patient's attending physician and hospice medical director concurring with discharge from hospice care be obtained and included in the patient's medical record.

While these requirements are subject to the PRA, we believe the burden associated with these requirements is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3) because the requirements are considered reasonable and customary business practices and/or are required under State or local laws and/or regulations.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Standards and Security Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, ATTN: John Burke, CMS–1022–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Eydt, CMS Desk Officer CMS–1022–P.

V. Regulatory Impact Analysis

The provisions of this proposed rule are based upon provisions in the BBA, BBRA, and BIPA, with statutorily-set timeframes, and have already been implemented through program memoranda. These include changes in election periods; timing requirements for written certification; covered services; payment based upon site of service; and annual payment update amounts. Other proposed provisions address documentation supporting certification; admission requirements; discharge from hospice; and clarification of current policy that has not previously been captured in regulations.

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). We have determined that this rule is not a major rule for the reasons discussed below.

The RFA requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and government agencies. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or having revenues of $25 million or less annually. For purposes of the RFA, all hospices are considered to be small entities. In 2001, there were approximately 2,277 Medicare-certified hospices. Of those 2,277, approximately 73 percent can be considered small entities because they were identified as being voluntary, government, or other agency.

Given the general lack of hospice data and the unpredictable nature of hospice care, it is extremely difficult to predict the savings or costs associated with the changes contained in this proposed rule. Originally, we estimated the Medicare hospice rate reductions required by section 4441(a) of the BBA would result in a $103 million savings to the Medicare program in FY 2002. Increases required by section 321 of BIPA, however, will add $37 million to Medicare program costs. While it is likely that all of the Medicare-certified hospices considered to be small entities have been required to make changes in their operations in some way due to the implementation of these statutory provisions and proposed changes, this NPRM does not propose any additional changes that are likely to significantly impact the operations of hospice providers. For these reasons, we certify that this proposed rule will not have a significant effect on a substantial number of small entities. However, we have prepared the following analysis to describe the impacts of this rule. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by the RFA and EO 12866.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This proposed rule largely codifies existing hospice requirements and will not result in a significant impact on a substantial number of small rural hospitals. Therefore, no analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule does not impose unfunded mandates, as defined by Section 202 of UMRA, as it will not result in the expenditure in any 1 year by either State, local or tribal governments, or by the private sector of $110 million.

Executive Order 13132 establishes certain requirements that an agency

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must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule has no impact on State law. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and we believe that it would not have substantial Federalism implications.

Section 1902(a)(13)(B) of the Act requires the Medicaid payment methodology for hospice care to be determined using the same methodology that is used for Medicare. State Medicaid programs with the optional Medicaid hospice benefit would be required to implement sections 4441(a) and 4442 of the BBA. We remain unaware of any impact of these provisions on State Medicaid programs since these provisions became effective. Nevertheless, it is possible that these payment-related provisions could impact particular State Medicaid programs. However, because each State Medicaid program is unique, it is impossible to quantify meaningfully, an estimate of the effect of the costs on State and local governments.

B. Anticipated Effects

1. Effects on Hospice Providers

Given the general lack of hospice data and the unpredictable nature of hospice care, it is extremely difficult to quantify the impact this proposed rule would have on hospice providers. Nevertheless, we have tried to estimate the impact of the following changes on hospice providers. In general, we believe that the effect of the proposed rule will have minimal economic impact on hospice providers or on the regulatory burden of small business. In the following sections we have indicated implementation actions already taken, and anticipated effects the proposed rules may have.

2. Effects on Payments

The BBA required hospice providers to bill for routine and continuous home care based on the geographic location where the service was provided. We expect that Medicare would experience some savings with this provision; however, it is impossible to predict the size of the savings attributable to this provision. These Medicare savings may reflect a cost to hospice providers. This BBA change has been implemented through program memoranda. This proposed rule merely codifies this statutorily required change.

3. Effects on Benefit Period Change

Medicare hospice is now available in two 90-day periods and an unlimited number of 60-day benefit periods. Because there is no longer a limit on the number of benefit periods available to a beneficiary, it is possible that this change would result in an increase in the number of revocations and reelections. However, we anticipate that this change would have a negligible effect on hospice providers. The change in benefit periods was implemented by a program memorandum issued shortly after passage of the BBA and has already been incorporated into hospice program operations.

4. Effects on Covered Services

The BBA clarified that the Medicare hospice benefit covers any service otherwise covered by Medicare and listed in the hospice plan of care as reasonable and necessary for the palliation and management of a terminal illness. This change should not generate any additional costs for Medicare hospices because it is merely a statutory clarification of existing Medicare policy. This clarification of covered hospice services was implemented through a program memorandum issued prior to the effective date set by the BBA, April 1, 1998 and is merely being codified by this regulation. It helped providers determine better the services they must provide.

5. Effects of Physician Certification

The requirement that a written certification of terminal illness for admission to a hospice for the initial 90-day benefit period be on file before a claim for payment is submitted would not impose any additional costs on hospice providers and removes the problem of obtaining the written certification according to a rigid timeframe. This requirement would provide hospices with more flexibility to establish cost-efficient procedures for obtaining the required certifications. However, the proposed expansion of the requirement for verbal certifications to every benefit period may impose costs on hospice providers. Before enactment of the BBA, verbal certifications were required within 2 days of the start of care during the first benefit period if a written certification could not be obtained within those 2 days. We are proposing to require that, absent written certification, verbal certifications of terminal illness be obtained within those 2 days for each benefit period. Although we believe the impact of this proposal would be negligible, it is difficult to estimate the exact size of the impact of this proposal because some costs may be negated by the increased flexibility, and time, a hospice provider has in obtaining the required written certifications.

Additionally, we believe that the proposal to require that written certifications of terminal illness be accompanied by specific clinical findings and documentation supporting the prognosis would not impose any new costs on hospice providers. We released a policy memorandum in 1995 to all hospice providers, through the fiscal intermediaries, requesting that all hospices maintain documentation demonstrating a beneficiary's terminal status. Because it has been 6 years since we issued the policy calling for specific clinical findings and other documentation supporting the terminal prognosis, we do not anticipate that the requirement will alter hospices' current practices.

6. Effects on Admission to Hospice Care

We believe that the proposed regulation describing admission responsibilities would impose no additional burden upon hospices. The responsibilities were referred to in various regulations, manuals, program memoranda, and other correspondence; this regulation brings them together in an organized rule. ORT and OIG investigations and reviews found that admission activities were not always executed fully, or when done, they were not always documented. This proposed regulation would specify the consultation between the attending physician and the hospice and its medical director that normally does or should take place when a physician seeks hospice care for his or her patient. The regulation would also describe the consideration that the medical director gives, when deciding upon certification, to the patient's diagnosis, related diagnoses, medical findings that support those diagnoses, the over all medical management needs of the patient, and the attending physician's future plans for the patient. We do not believe any new costs are associated with these proposed requirements, and the 1995 policy memorandum had made clear hospice admission responsibilities and the need to document their execution. We found that the hospice provider community was generally pleased that CMS had issued the guidance, which alleviated previous problems associated with admission of beneficiaries to hospice care.

7. Effects on Discharge and Discharge Planning

This proposed regulation may add a small additional burden to hospices providing services to Medicare beneficiaries, but at the same time it also should reduce certain other burdens they may currently experience, particularly with respect to making appropriate discharges. In the absence of specific regulations, hospices have often been uncertain what to do when a patient appeared appropriate for discharge from the program. There was limited manual guidance, although following the ORT and OIG investigations, some additional information on the appropriate time to discharge patients was communicated to the hospice industry. Our proposal would incorporate discharge planning, a normal part of health care provision, into the hospice's care planning procedures. Regular, ongoing care planning, including the potential for discharge, has always been part of a hospice's responsibilities, and the regulation would simply recognize this responsibility. It is not a new additional burden.

Discharge for certain disruptive, abusive, or uncooperative patients would entail a small additional burden upon very few hospices, based on past discussions with some providers before preparation of this proposed rule. We believe the burden is small, because we have rarely received requests from hospices over the years for relief in cases involving this type of behavior. Elsewhere in this preamble, we have elicited input on this particular proposed rule, particularly with respect to protection of patients. We are aware of the burden that individual providers have had when faced with difficult patients, and this proposal would provide a way for them to resolve it, and, we believe, also lessen burdens currently experienced when trying to provide care to this type of patient.

The section of this proposed regulation that discusses the effect of discharge, that is, that a beneficiary discharged from hospice care immediately resumes full coverage under the regular Medicare program, has always been the law. However, it has not been stated in regulation in a straightforward manner, and doing so offers reassurance to both the beneficiary and the hospice that discharge from the hospice does not mean the loss of Medicare benefits. This section also assures a beneficiary that he or she may again elect hospice at any future time if he or she meets eligibility requirements.

C. Effects on Other Providers

We do not anticipate that this rule would have any effects on other provider types.

D. Effects on the Medicare and Medicaid Programs

As discussed above, it is very difficult to estimate the size of any savings to the Medicare program attributable to this proposed rule. We have estimated that the hospice rate reduction for FY 1998 through FY 2002, as required by section 4441(b) of the BBA, section 131(a) of BBRA, and section 321 of BIPA, would result in a total savings of $108 million. Also, as discussed above, it is very difficult to estimate the size of any implementation costs to State Medicaid programs with optional Medicaid hospice benefits. However, it should be noted that the BBA provisions that State Medicaid programs are required to implement (rates of payment, payment based on location where care is furnished, other items and services, physician contracting) have been effective since August 5, 1997. Since that time, we have not received any correspondence from State Medicaid programs indicating that these provisions have had significant costs associated with implementation.

E. Alternatives Considered

Most of the proposed regulations are mandated requirements of the BBA, BBRA, and BIPA, and have already been implemented by CMS Program Memoranda, published in the month after passage of the BBA, and the month after the passage of BIPA. BBRA changes only concerned hospice payment amounts but did not affect the basic law. Discharge for cause will enable us to implement policies that permit hospices to act in those rare events that indicate the need, but with protection for the beneficiary included in the rules. Alternatively, hospices may continue to address this particular problem without certainty as to their authority in these special situations. Other proposed regulations represent current policies that have been implemented and recognized by the industry, clarification of current regulations, or suggested policies that the industry and CMS believe may help improve the Medicare hospice program.

F. Conclusion

The general lack of hospice data and the unpredictable nature of hospice care have made it extremely difficult to predict the savings or costs associated with the changes contained in this proposed rule. However, we believe that the proposed changes would create very little, if any, new economic or regulatory burdens on hospice providers. These proposed changes are either statements of current policy or clarifications of policy that would benefit hospice providers. We believe that we have made every effort to mitigate the effects of these proposed changes on hospice providers.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive in response to **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and Record keeping requirements.

For the reasons set forth in the preamble, 42 CFR, Chapter IV, part 418 is proposed to be amended as set forth below:

PART 418—HOSPICE CARE

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Eligibility, Election and Duration of Benefits

2. In § 418.21, paragraph (a) is revised to read as follows:

§ 418.21 Duration of hospice care coverage—Election periods.

(a) Subject to the conditions set forth in this part, an individual may elect to receive hospice care during one or more of the following election periods:

(1) An initial 90-day period;

(2) A subsequent 90-day period; or

(3) An unlimited number of subsequent 60-day periods.

* * * * *

3. In § 418.22, paragraphs (a) and (b) are revised to read as follows:

§ 418.22 Certification of terminal illness.

(a) *Timing of certification*—(1) *General rule.* The hospice must obtain written certification of terminal illness for each of the periods listed in

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§ 418.21(a), even if a single election continues in effect for an unlimited number of periods, as provided in § 418.24(c).

(2) *Basic requirement.* Except as provided in paragraph (a)(3) of this section, the hospice must obtain the written certification before it submits a claim for payment.

(3) *Exception.* If the hospice cannot obtain the written certification within 2 calendar days, it must obtain an oral certification within 2 calendar days and the written certification before it submits a claim for payment.

(b) *Content of certification.* Certification will be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. The certification must conform to the following requirements:

(1) The certification must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course.

(2) Specific clinical findings and other documentation that support the medical prognosis must accompany the certification and must be filed in the medical record with the written certification as set forth in paragraph (d)(2) of this section.

* * * * *

4. In § 418.24, paragraph (c) is revised to read as follows:

§ 418.24 Election of hospice care.

* * * * *

(c) *Duration of election.* An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual—

(1) Remains in the care of a hospice;

(2) Does not revoke the election under the provisions of § 418.28; and

(3) Is not discharged from the hospice under the provisions of § 418.26.

* * * * *

5. New §§ 418.25 and 418.26 are added to read as follows:

§ 418.25 Admission to hospice care.

(a) The hospice admits a patient only on the recommendation of the medical director in consultation with the patient's attending physician, if any.

(b) In reaching a decision to certify that the patient is terminally ill, the hospice medical director must consider at least the following information:

(1) Diagnosis of the terminal condition of the patient.

(2) Other health conditions, whether related or unrelated to the terminal condition.

(3) Current clinically relevant findings supporting all diagnoses.

§ 418.26 Discharge from hospice care.

(a) *Reasons for discharge.* A hospice may discharge a patient if—

(1) The patient moves out of the hospice's service area or transfers to another hospice;

(2) The hospice determines that the patient is no longer terminally ill; or

(3) The hospice determines, under a policy set by the hospice for the purpose of addressing discharge for cause that meets the requirements of paragraphs (a)(3)(i) through (a)(3)(iv) of this section, that the patient's behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired. The hospice must do the following before it seeks to discharge a patient:

(i) Make a serious effort to resolve the problem(s) presented by the patient's behavior or situation.

(ii) Ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services.

(iii) Document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into its medical records.

(iv) Obtain a written physician's order from the patient's attending physician and hospice medical director concurring with discharge from hospice care.

(b) *Effect of discharge.* An individual, upon discharge from the hospice during a particular election period for reasons other than immediate transfer to another hospice—

(1) Is no longer covered under Medicare for hospice care;

(2) Resumes Medicare coverage of the benefits waived under § 418.24(d); and

(3) May at any time elect to receive hospice care if he or she is again eligible to receive the benefit.

(c) *Discharge planning.* (1) The hospice must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill.

(2) The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

6. In § 418.28, paragraph (b)(1) is amended by adding the following sentence at the end of the paragraph.

§ 418.28 Revoking the election of hospice care.

* * * * *

(b) * * *

(1) * * * If a signed revocation is not obtainable by the hospice for a discharge under § 418.26(a)(3), the requirement of the section may be waived.

Subpart F—Covered Services

7. In § 418.202, the introductory text is republished, and a new paragraph (i) is added to read as follows:

§ 418.202 Covered services.

All services must be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

* * * * *

(i) Effective April 1, 1998, any other service that is specified in the patient's plan of care as reasonable and necessary for the palliation and management of the patient's terminal illness and related conditions and for which payment may otherwise be made under Medicare.

Subpart G—Payment for Hospice Care

8. Section 418.301 is amended by adding a new paragraph (c) to read as follows:

§ 418.301 Basic rules.

* * * * *

(c) The hospice may not charge a patient for services for which the patient is entitled to have payment made under Medicare or for services for which the patient would be entitled to payment, as described in § 489.21 of this chapter.

9. Section 418.302 is amended by adding a new paragraph (g) to read as follows:

§ 418.302 Payment procedures for hospice care.

* * * * *

(g) Payment for routine home care and continuous home care is made on the basis of the geographic location where the service is provided.

§ 418.304 [Amended]

10. In § 418.304, the following amendments are made:

a. In paragraph (b), the phrase "physician's reasonable charge" is removed and add in its place "physician fee schedule."

b. In paragraph (c), the phrase "subparts D or E, part 405 of this chapter" is removed and add in its place "subpart A, part 414 of this chapter."

11. In § 418.306, the introductory text of paragraph (b) is republished, paragraph (b)(3) is revised, and new paragraphs (b)(4) and (b)(5) are added to read as follows:

§ 418.306 Determination of payment rates.

* * * * *

(b) *Payment rates.* The payment rates for routine home care and other services included in hospice care are as follows:

* * * * *

(3) For Federal fiscal years 1994 through 2002, the payment rate is the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase minus—

(i) 2 percentage points in FY 1994;

(ii) 1.5 percentage points in FYs 1995 and 1996;

(iii) 0.5 percentage points in FY 1997; and

(iv) 1 percentage point in FY 1998 through FY 2002.

(4) For Federal fiscal year 2001, the payment rate is the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase plus 5 percentage points. However, this payment rate is effective only for the period April 1, 2001 through September 30, 2001. For the period October 1, 2000 through March 31, 2001, the payment rate is based upon the rule under paragraph (b)(3)(iv) of this section. The payment rate in effect during the period April 1, 2001 through September 30, 2001 is considered the payment rate in effect during fiscal year 2001.

(5) The payment rate for hospice services furnished during fiscal years 2001 and 2002 will be increased by an additional 0.5 percent and 0.75 percent, respectively. This additional amount will not be included in updating the payment rate as described in paragraph (b)(3) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare— Supplementary Medical Insurance)

Dated: June 3, 2002.

Thomas A. Scully,

Administrator, , Centers for Medicare & Medicaid Services.

Dated: August 21, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29798 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 482

[CMS–1224–P]

RIN 0938–AM01

Medicare Program; Nondiscrimination in Posthospital Referral to Home Health Agencies and Other Entities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a process for us to collect, maintain, and make available to the public, information about hospital referrals of Medicare patients to home health agencies (HHAs) and other entities with which the hospitals have a financial interest or which have a financial interest in the hospital. We would publicize this information in an effort to increase awareness regarding the availability of Medicare-certified HHAs and other entities to serve the Medicare population, and to inform beneficiaries of their freedom to choose among available Medicare-participating providers that are capable of furnishing the needed services.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1224–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1224–P, PO Box 8014, Baltimore, MD 21244–8014.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Elizabeth Carmody, (410) 786–7533.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Copies: Additional copies of the **Federal Register** containing this proposed rule can be made at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.**

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Section 4321 of the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, was enacted by the Congress to improve the administration of the Medicare Program by enabling Medicare beneficiaries to make more informed choices about the providers from which they receive Medicare services. We believe that this provision was intended to address concerns that some hospitals were referring patients only to home health agencies (HHAs) in which they had a financial interest. Section 4321 of the BBA addresses both quality and program integrity concerns inherent in financial relationships among hospitals, HHAs, and other entities.

Section 4321(a) of the BBA requires that Medicare participating hospitals, as part of the discharge planning process, share with each beneficiary a list of

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Medicare-certified HHAs that serve the beneficiary's geographic area and which request to be listed. In addition, the statute prohibits hospitals from specifying that beneficiaries receive services from a particular HHA. Further, the statute requires that hospitals identify any HHA or other entity in which they have a disclosable financial interest or which have a financial interest in them, although it does not define what is meant by "financial interest." The intent of section 4321(a) is to protect patient choice. Hospitals essentially have a captive population and, through the discharge planning process, can affect who provides posthospitalization services. CMS has already implemented the requirements of section 4321(a). A CMS directive was issued on October 31, 1997, and enforcement is carried out through the hospital survey and certification process. Moreover, the requirements of section 4321(a) are set forth in the proposed hospital conditions of participation, published on December 19, 1997 (62 FR 66726).

This proposed rule would establish a process for implementing sections 4321(b) and (c) of the BBA. Section 4321(b) of the BBA requires each Medicare participating hospital to maintain and disclose to the Secretary of Health and Human Services (the Secretary) the following information:

(1) The nature of any direct or indirect financial interest that exists among the hospital and those HHAs and other entities to which the hospital refers beneficiaries under a discharge plan.

(2) The number of beneficiaries who were discharged from the hospital and who were identified as requiring home health services.

(3) The percentage of those beneficiaries who received home health services from an HHA in which the hospital has a financial relationship.

Section 4321(c) of the BBA requires the Secretary to make available to the public the information disclosed under section 4321(b).

II. Provisions of the Proposed Regulations

We are proposing a process for collecting and publicizing the information required by sections 4321(b) and (c) of the BBA.

A. Claims-Level Information

Information regarding beneficiary utilization of hospital, HHA, and other services is readily available through the secure network governing the day-to-day claims processing operations of the Medicare Program. These claims data are available at the Medicare fiscal intermediaries and carriers as well as at the Centers for Medicare & Medicaid Services. We propose to use these data to identify hospital discharges and related, subsequent home health services. Further, these data will identify the hospitals, HHAs, and other entities that furnished the Medicare services.

B. Information About Financial Interests

We propose to allow hospitals to satisfy their financial disclosure obligations under the BBA through the Medicare provider enrollment process. The Medicare provider enrollment process already collects information that identifies financial relationships between hospitals, HHAs, and other entities. For example, when applying for a provider number for billing the Medicare program, a hospital must disclose the existence and nature of financial interests in HHAs and other entities. Accordingly, for the purpose of implementing section 4321(b) of the BBA, we propose to define a reportable "financial interest" as any financial interest that a hospital is required to report according to the provider enrollment process, which is governed by section 1124 of the Social Security Act (42 U.S.C. 1320a–3) and its implementing regulations and manual provisions. We do not believe, however, that section 4321 of the BBA should be interpreted to mean that the mere existence of a financial relationship between a hospital and an HHA constitutes a program abuse.

To implement sections 4321(b) and (c) of the BBA without placing any additional reporting burden on Medicare providers, we propose to systemically match and report information from the provider enrollment process on financial interests among hospitals, HHAs, and other entities with information from day-to-day Medicare claims processing on the utilization of home health services. We are soliciting comments on our proposed process, as well as alternative methods for collecting and reporting data.

C. Form and Manner for Disclosing Information

Information collected under sections II.A and B of this preamble will be made available annually in January for the prior October through September period, on a hospital-by-hospital basis. For each hospital, we propose collecting and reporting: (1) The total number of hospital discharges that led to home health services; (2) the percentage of those discharged beneficiaries who received home health services from an HHA that had a direct or indirect financial relationship with the discharging hospital; (3) the name(s) of the HHA(s) and other entities for which a financial relationship with the hospital exists and for which posthospital services were furnished; and (4) the nature of the financial interest.

We will determine the most effective and efficient ways to make the required information available to the public. Consideration will be given to using websites as well as hardcopy distribution. The form and manner for making the information available will be guided by the need to reach as many beneficiaries as possible in order to assist them in making informed choices about who furnishes their health care services. As such, we invite comments as to the preferred medium for disseminating this information. We anticipate releasing the initial report during the first January that is at least 90 days after the publication of the final rule.

III. Collection of Information Requirements

This document does not impose additional information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995. Information about hospital discharges and related home health services is available through Medicare claims processing systems and databases. Further, financial interest information is already available through the Medicare provider enrollment process.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This is not a major rule. It would not impose any additional costs on affected entities, as compliance with the statute and the rules proposed herein are possible through the management and disclosure of information already available to the Medicare Program. Some indeterminable benefits may result by enabling Medicare beneficiaries to make more informed choices about who furnishes their Medicare services. Therefore, no RIA is required.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.5 million or less annually. For purposes of the RFA, all hospitals, HHAs, and "other entities" are considered to be small entities. However, the nature of this proposed rule is such that no regulatory burden would be placed upon hospitals, HHAs, and other entities. Therefore, no regulatory relief options are considered.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We certify that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. Information needed to comply with the statute is already available through the Medicare claims processing and provider enrollment systems. Therefore, no regulatory impact analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would not have an impact on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would not have a substantial effect on State or local governments for the reasons noted above.

B. Anticipated Effects

1. Effects on Beneficiaries, Hospitals, HHAs, and Other Entities

The anticipated effects on Medicare's beneficiaries would be an enhanced ability to make informed choices about the care they receive from HHAs and other entities upon discharge from a hospital. There are approximately 6,000 Medicare-certified hospitals and 6,900 Medicare-certified HHAs, of which approximately 2,000 are hospital-based. At this time, we have not compiled additional data that may identify other financial relationships between hospitals, HHAs, and other entities, as further defined under the provider enrollment guidelines.

The effect of this proposed rule on hospitals, HHAs, and other entities is uncertain, but the requirements set forth in this proposed rule would place no additional burden on these providers. A possible outcome might be to influence hospital referral patterns, thus having an impact on HHAs and other entities. The information made available in compliance with the statute and this proposed rule may impact beneficiary choices about who furnishes Medicare services to them and, in turn, may have an indeterminable impact on HHAs and other entities that receive/do not receive the beneficiary's "business" as a result.

2. Effects on the Medicare and Medicaid Programs

This proposed rule would improve our information campaign to assist beneficiaries in their choices for health care delivery. In addition, the information made available through this proposed rule would serve to ensure that the financial interests between hospitals, HHAs, and other entities do not lead to program integrity abuses such as steering certain patients (for example, healthier patients) to certain HHAs (for example, hospital-owned). We do not believe, however, that section 4321 of the BBA should be interpreted to mean that the mere existence of a financial relationship between a hospital and an HHA constitutes a program abuse.

The effects on the Medicaid Program may be similar in that the information about financial relationships between hospitals, HHAs, and other entities would be made available to the public.

C. Alternatives Considered

We considered requiring hospitals to collect and provide the information necessary for implementation of this proposed rule. We decided to collect the information from existing sources, however, in order to create a process that would not be burdensome to the entities involved. We request comments on our proposed process as well as on alternative approaches of collecting this information. We also invite public comment on what impact provision of this information might have on home health referrals or beneficiaries' choices of providers.

D. Conclusion

As described above, this proposed rule proposes a process for implementing the statutory requirements under sections 4321(b) and (c) of the BBA. This approach would enhance the information made available to Medicare beneficiaries and reduce potential program abuses by hospitals. Further, the proposed approach for complying with the relevant statutory provisions would place no additional burden on all affected entities or on any entity, which may be indirectly affected.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 482 as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

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Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395hh).

2. Section 482.43 is amended by adding paragraphs (c)(6)(i) through (c)(6)(iii) to read as follows:

§ 482.43 Condition of participation: Discharge planning.

* * * * *

(c) * * *

(6) If a hospital refers a Medicare beneficiary to an HHA or another entity in which the hospital has a reportable financial interest, or the HHA or other entity has a reportable financial interest in the hospital, CMS will make available to the public the following information:

(i) The name of the hospital, HHA, or other entity and the nature of the financial interest to the hospital.

(ii) The number of beneficiaries who the hospital discharged and identified as requiring home health services.

(iii) The percentage of the referrals in paragraph (c)(6)(ii) of this section in which the hospital had financial interest in the HHA, or the HHA had a financial interest in the hospital.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 3, 2002.

Thomas A Scully,

Administrator, , Centers for Medicare & Medicaid Services.

Approved: August 5, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29563 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Financial Eligibility

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Legal Services Corporation ("LSC" or "Corporation") proposes to amend its regulations relating to financial eligibility for LSC-funded legal services. The proposed revisions are intended to reorganize the regulation to make it easier to read and follow; simplify and streamline the requirements of the rule to ease administrative burdens faced by LSC grantees in implementing the regulaiton and to aid LSC in enforcement of the regulation; and to clarify the focus of the regulation on the financial eligibility of applicants for LSC-funded legal services.

DATES: Comments must be submitted on or before December 23, 2002.

ADDRESSES: Comments must be submitted in writing and may be sent by regular mail, or may be transmitted by fax or email to: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002–4250; (202) 336–8952 (fax); *mcondray@lsc.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002–4250; (202) 336–7 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: Section 1007(a) of the Legal Services Corporation Act requires LSC to establish guidelines, including setting maximum income levels, for the determination of applicants' financial eligibility for LSC-funded legal assistance. Part 1611 implements this provision, setting forth the requirements relating to determination and documentation of client financial eligibility.

The current version of 1611 was adopted in 1983. In 1995, LSC published a proposed revision to part 1611 which represented a major overhaul of the regulation (60 FR 3798, January 15, 1995). The product of significant discussions and negotiation among LSC staff and representatives of the field, the proposed rule reflected an attempt to clarify and simplify the rule without changing most of the underlying policies and concepts of the rule. Following publication of the NPRM, however, no further action on the proposed revisions to part 1611 was taken. Many outstanding issues prompting the 1995 rulemaking remain extant and there are additional issues which have arisen since then. In addition, there are statutory changes which need to be incorporated into the regulation. In light of the above, the LSC Board of Directors identified 45 CFR part 1611, Eligibility, as an appropriate subject for rulemaking on January 27, 2001. On June 30, 2001, the LSC President and the Chair of the Operations and Regulations Committee of the Board of Directors made a determination to proceed with a Negotiated Rulemaking to consider amendments to part 1611. In accordance with the LSC Rulemaking Protocol, LSC published a notice in the **Federal Register** formally soliciting suggestions for appointment to the Negotiated Rulemaking Working Group from the regulated community, its clients, advocates, the organized bar and other interested parties (66 FR 46976, September 10, 2001).

After receiving submissions of interest, a Working Group was appointed. The members of the Working Group are: Legal Services Corporation, Washington, DC (represented by Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs; John Eidleman, Acting Vice President for Compliance and Administration; Anh Tu, Program Counsel, Office of Program Performance; and Danilo Cardona, Director, Office of Compliance and Enforcement); Legal Services Corporation, Office of Inspector General, Washington, DC (represented by Laurie Tarantowicz, Assistant Inspector General and Legal Counsel); Center for Law and Social Policy, Washington, DC (represented by Linda Perle, Senior Attorney—Legal Services); National Legal Aid and Defenders Association, Washington, DC (represented by Jon Asher, Member NLADA Regulations Committee and Executive Director of Colorado Legal Services); Legal Aid of North Carolina, Raleigh, NC (represented by George Hausen, Executive Director); Northwest Justice Project, Seattle, WA (represented by Deborah Perluss, Director of Advocacy/General Counsel); Blue Ridge Legal Services, Inc., Harrisonburg, VA (represented by John Whitfield, Executive Director); West Texas Legal Services, Fort Worth, TX (represented by Vernon Lewis, Deputy Director); Land of Lincoln Legal Assistance Foundation, Inc., Alton, IL (represented by Joseph Bartylak, Executive Director); Atlanta Legal Aid Society, Atlanta, GA (represented by Steven Gottlieb, Executive Director); and the American Bar Association's Standing Committee on Legal Aid and Indigents and Defendants (represented by Phyllis Holmen, Member SCLAID and Executive Director, Georgia Legal Services Program).

The Working Group held three meetings: January 7–8, 2002; February 11–12, 2002; and April 11–12, 2002. All three meetings were noticed in the **Federal Register** and were open to public observation. The Working Group conducted its work under the guidance of a professional facilitator. The facilitator, although selected by and under contract to LSC pursuant to LSC's Rulemaking Protocol, did not represent LSC on the Working Group and served as a neutral with the continuing support of the Working Group.

The Working Group developed a Draft NPRM which was considered by the Operations and Regulations Committee of the Board of Directors at its meeting on November 8, 2002. The Committee suggested two major revisions to the Draft NPRM (discussed below) and this NPRM (as revised) was approved for publication by the Board of Directors at its meeting on November 9, 2002. Except as noted, all of the specific proposed revisions contained herein represent the consensus opinion of the Working Group.

While specific revisions are discussed in greater detail in the Section-by-Section analysis, below, it should be noted that the proposed revisions reflect several overall goals of the Working Group: reorganization of the regulation to make it easier to read and follow; simplification and streamlining of the requirements of the rule to ease administrative burdens faced by LSC grantees in implementing the regulation and to aid LSC in enforcement of the regulation; and clarification of the focus of the regulation on the financial eligibility of applicants for LSC-funded legal services. In particular, LSC is proposing to significantly reorganize and simplify the sections of the rule which set forth the various requirements relating to establishment of recipient annual income and asset ceilings, authorized exceptions and determinations of eligibility. These changes are intended to improve the clarity of the regulation and include substantive changes to make intake simpler and less burdensome and basic financial eligibility determinations easier for recipients to make. LSC is also proposing to move the existing provisions on group representation, with some amendment, to a separate section of the regulation.

LSC also proposes to eliminate the retainer agreement requirement currently found at § 1611.8 of the regulation. The retainer agreement requirement was the subject of significant discussion in the Working Group. Representatives of the field agreed with the LSC representatives that a retainer agreement may be appropriate under certain circumstances, but argued that this regulatory requirement is not required by statute, is not justified under applicable rules of professional responsibility, may be unnecessarily burdensome in some instances and is not related to financial eligibility determinations. They contended that, barring a statutory mandate, decisions about the use of retainer agreements, like those involving many other matters relating to the best manner of providing high quality legal assistance, should be determined by a recipient's Board, management and staff, with guidance from the Corporation. They urged LSC to delete this requirement. The LSC representatives, however, were of the opinion that the existing provision in the regulations requiring the execution of retainer agreements is professionally desirable, authorized in accordance with LSC's mandate under section 1007(a)(1) of the Act to assure the maintenance of the highest quality of service and professional standards, and appropriate to assure that there are no misunderstandings as to what services are to be rendered to a particular client. Retainer agreements protect the attorney and recipient in cases of an unfounded malpractice claim and protect the client if the attorney and the recipient should fail to provide legal assistance measuring up to professional standards. In the end, the Working Group was unable to reach consensus on this issue and the Draft NPRM retained a provision generally requiring the execution of retainer agreements, along with proposing requirements for client service notices and PAI referral notices in lieu of retainer agreements under certain circumstances.

In its deliberations on the Draft NPRM, the Operations and Regulations Committee determined that while it agreed that retainer agreements are professionally desirable, it did not find it necessary, either by statute or policy, for LSC to continue to impose such a requirement on recipients. The Committee recommended that the entire proposed § 1611.7 in the Draft NPRM, entitled *Retainer Agreements, Client Service Notices and Referral Notices*, be stricken from the draft prior to publication. In approving the recommendation of the Committee, the Board directed that this action be taken and any conforming amendments necessary be made prior to publication of the NPRM for comment. This NPRM reflects this direction. LSC specifically invites comment on this issue.

One other general issue merits discussion. Section 509(h) of the FY 1996 LSC appropriations act, Pub. L. 104–134, provides that, among other records, eligibility records "shall be made available to any auditor or monitor of the recipient * * * except for such records subject to the attorney-client privilege." This provision has been retained in each subsequent appropriations measure and continues to be in force. The Office of the Inspector General has been interested in having this language expressly incorporated into part 1611.

The Working Group took up the issue and discussed the fact that there is some measure of disagreement about the scope and extent of the access authority granted to the OIG by the statute. Mindful of this disagreement, the Working Group determined that an appropriate approach would be simply to propose language that tracked very closely that of the statute and the Working Group was close to reaching consensus on what would have been proposed § 1611.10, Access to Records. The Working Group acknowledged that such an approach would not settle all of the questions about the meaning of the access provisions, but agreed that it was the best way to incorporate the statutory requirements without causing undue delay in completing its work on this proposed rule. Simultaneously, however, in the course of a similar discussion taking place in a separate negotiated rulemaking on LSC's alien eligibility regulations, 45 CFR part 1626, it became apparent that the 1626 Working Group would not be able to agree to such an approach, with several participants favoring either leaving an access provision out of the regulation or drafting a provision that reflects a more thorough discussion and interpretation of 509(h).

This situation created a problem for LSC because LSC is not willing either to adopt two differing regulations implementing the same statutory provision, or to have an access to records provision relating to 1611 eligibility records but not an access to records provision relating to 1626 eligibility records when both regulations are in the process of revision. Either of these situations would invite unnecessary implementation problems for LSC, the OIG and recipients. Moreover, upon reflection LSC has determined that, as 509(h) covers significantly more than eligibility records, conducting a full discussion of the meaning of 509(h) in the context of either 1611 or 1626, which deal only with eligibility issues, is not appropriate. The OIG's authority under the statute is not affected by a decision not to incorporate express access to records provisions in either 1611 or 1626. Consequently, LSC does not propose to include regulatory language implementing 509(h) with respect to records covered by this part. Similarly, LSC does not propose to add language regarding 509(h) access to the retainer agreement, client service notice and referral notice provisions of proposed § 1611.7.

Although the field representatives to the Working Group concur in this decision, the OIG dissents. As noted

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above, the OIG has been interested in incorporating the 509(h) authority in the regulations for some time. The OIG disagrees with LSC's position that conducting a full discussion of the meaning of 509(h) in the context of either 1611 or 1626 is inappropriate. Rather, the OIG is of the opinion that since one of the goals of this rulemaking (and the 1626 rulemaking) is to clarify the requirements applicable to recipients relating to eligibility records and since access to eligibility records is provided by 509(h), the 1611 and 1626 negotiated rulemakings provide an opportunity to clarify the statutory authority. Failing a full discussion of 509(h) in the current regulatory context, the OIG believes that including an access provision which closely trackes the statutory language would make clear that the documentation and records recipients are required to maintain under parts 1611 and 1626 are eligibility records to which LSC has access under 509(h).

Moreover, the OIG is of the opinion that even if a consensus could not be reached during the negotiated rulemaking process, LSC nonetheless should include an access provision in the rule. Negotiated rulemaking has at its ultimate goal the resolution of differences of all issues by consensus. Yet, the negotiated rulemaking process anticipates that consenses may not be achieved on all issues, and in such cases, LSC, as the entity responsible for implementing the law, promulgates the rule it deems appropriate. The OIG believes this is especially warranted in the case of access, where the anticipated lack of ability to reach consensus highlights the very problem the rulemaking should address and resolve. The OIG notes that the discussions among the Working Group members make clear that there are differences in interpretation regarding the access to which LSC is authorized. The OIG further notes that those differences have resulted in problems and delays when access to grantee information is sought, causing the unnecessary expenditure of time and resources for all involved. The OIG believes that attempting to avoid the problem by not including an access provision in the rule resolves nothing.

LSC acknowledges that not including an access provision in § 1611 does not resolve the issues relating to the meaning and scope of the 509(h) access provision. Indeed, as noted above, LSC has determined that, as section 509(h) covers a range of records beyond financial eligibility records, it is not appropriate for LSC to use this rulemaking to explore and resolve these contentious and important issues.

Title of Part 1611

LSC proposes to change the title of part 1611 from "Eligibility" to "Financial Eligibility." This proposed change is intended, first, to make clear that with respect to individuals seeking LSC-funded legal assistance, the standards of this part deal only with the financial eligibility of such persons. LSC believes this change will help clarify that a finding of financial eligibility under part 1611 does not create an entitlement to service. Rather, financial eligibility is merely a threshold question and the issue of whether any otherwise eligible applicant will be provided with legal assistance is a matter for the program to determine with reference to its priorities and resources. In addition, this part does not address eligibility based on citizenship or alienage status; those eligibility requirements are set forth in part 1626 of LSC's regulations, Restrictions on Legal Assistance to Aliens.

Section-by-Section Analysis

Section 1611.1 Purpose

LSC is proposing to revise this section to make clear that the standards of this part concern only the financial eligibility of persons seeking LSC-funded legal assistance and that a finding of financial eligibility under part 1611 does not create an entitlement to service. In addition, LSC proposes to remove the language in the current regulation referring to giving preferences to "those least able to obtain legal assistance." Although the original LSC Act contained language indicating that programs should provide preferences in service to the poorest among applicants, that language was deleted when the Act was reauthorized in 1977 and has remained out of the legislation ever since. Thus, as there is no statutory basis for a preference for those least able to afford assistance and because LSC believes that the regulation should focus on financial eligibility determinations without reference to issues relating to service determinations, this language should be removed from the regulation. Finally, LSC proposes to add language specifying that this part also sets forth financial standards for groups seeking legal assistance supported by LSC funds.

Section 1611.2; Definitions

LSC proposes to add definitions for several terms and to amend the definitions for each of the existing terms currently defined in the regulation. LSC believes that the new definitions and the amended definitions will help to make the regulation more easily comprehensible.

Section 1611.2(a) Applicable Rules of Professional Responsibility

LSC proposes to add a definition of the term "applicable rules of professional responsibility" as that term appears in proposed § 1611.7, Change in Financial Eligibility Status. This definition is intended to make clear that the references in the regulation refer to the rules of ethics and professional responsibility applicable to attorneys in the jursidiction where the recipient either provides legal services or maintains its records.

Section 1611.2(b) Applicant

Consistent with the intention throughout to keep the focus of the regulation on the standards and criteria for determining the financial eligibility of persons seeking legal assistance supported with LSC funds, LSC proposes to use the term "applicant" throughout the regulation to emphasize the distinction between applicants, clients, and persons seeking or receiving assistance supported by other than LSC funds. Accordingly, LSC proposes to add a definition of applicant providing that an applicant is an individual seeking legal assistance supported with LSC funds. Groups, corporations and associations would be specifically excluded from this definition, as the eligibility of groups would be addressed wholly within proposed § 1611.8.

Programs currently may provide legal assistance without regard to a person's financial eligibility under part 1611 when the assistance is supported wholly by non-LSC funds. LSC does not propose to change this (in fact, LSC proposes to restate this principle in proposed § 1611.4(a)) and believes that the use of the term applicant as proposed herein will help to clarify the application of the rule.

Section 1611.2(c) Assets

LSC proposes to add a definition of the term assets to the regulation. The proposed definition, "cash or other resources that are readily convertible to cash, which are currently and actually available to the applicant," is intended to provide some guidance to programs as to what is meant by the term assets, yet provide considerable latitude to programs in developing a description of assets that addresses local concerns and conditions. The key concepts intended in this definition are (1) ready convertibility to cash; and (2) availability of the resource to the applicant.

Although the term is not defined in the regulation, current § 1611.6(c) states that "assets considered shall include all liquid and non-liquid assets. * * *" The intent of this requirement is that programs are supposed to consider all assets upon which the applicant could draw in obtaining private legal assistance. While there was no intent to change the underlying requirement, in discussing the issues of assets and asset ceilings in the Working Group it became apparent that the terms "liquid" and "non-liquid" were obscuring the understanding of the regulation. To some, the term "non-liquid" implied something not readily convertible to cash, while to others the term implied an asset that was simply something other than cash, without regard to the ease of convertibility of the asset. Thus, the Working Group decided that the terms "liquid" and "non-liquid" should be eliminated and that the regulation should focus instead on the ready convertibility of the asset to cash.

The other key concept in the definition of asset is the availability of the resource to the applicant. Although the current regulation notes that the recipient's asset guidelines "shall take into account impediments to an individual's access to assets of the family unit or household," the Working Group was of the opinion that this principle could be more clearly articulated. LSC believes that the proposed language accomplishes that purpose.

Section 1611.2(d) Governmental Program for Low Income Individuals or Families

LSC proposes to change the term that is used in the regulation from "governmental program for the poor" to "governmental program for low income individuals and families." This change is not intended to create any substantive change in the current definition, but merely reflect preferred nomenclature.

Section 1611.2(e) Governmental Program for Persons With Disabilities

LSC is proposing to add a definition of the term "governmental program for persons with disabilities." LSC proposes to include in the authorized exceptions to the annual income ceilings an exception relating to applicants seeking to obtain or maintain governmental benefits for persons with disabilties. Accordingly, it is appropriate to include a proposed definition for this term. The proposed definition, "any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability," is intended to be similar in structure and application to the definition of the term "governmental program for low income individuals and families."

Section 1611.2(f) Income

LSC proposes to revise the current definition of income to refer to the total cash receipts of a "household," instead of a "family unit" and to make clear that programs have the discretion to define the term household in any reasonable manner. Currently, the definition of income refers to "family unit," while the phrase "household or family unit" appears in the section on asset ceilings. It appears that there is no difference intended by the use of different terms in these sections and LSC believes that it is appropriate to simplify the regulation to use the same single term in each place, without creating a substantive change in the meaning of either term. LSC proposes to use "household" instead of "family unit" because it is a simpler, more accessible term.

As noted above, LSC does not intend the use of the term "household" to have a different meaning from the current term "family unit." Under current guidance from the LSC Office of Legal Affairs, recipients have considerable latitude in defining the term "family unit". Specificially, OLA External Opinion No. EX–2000–011 states:

> Neither the LSC Act nor the LSC regulations define "family unit" for client eligibility purposes. The Corporation will defer to recipient determinations on this issue, within reason. Recipients may consider living arrangements, familial relationships, legal responsibility, financial responsibility or family unit definitions used by government benefits agencies, amongst other factors, in making such decisions.

LSC intends that this standard would also apply to definitions of "household" and the proposed definition would make this clear.

Field representatives on the Working Group also suggested deleting the words "before taxes" from the definition of income. Such a change is desirable, they contend, because automatically deducted taxes are not available for an applicant's use and the failure to take current taxes into account in determining income has an adverse impact on the working poor. While it is undoubtedly true that automatically deducted taxes are not available to an applicant, LSC does not believe that the definition of income is the appropriate place in the regulation to deal with this problem. Taking the phrase "before taxes" out of the definition of income would effectively change the meaning of income from gross income to net income. The term income has meant gross income since the original adoption of the eligibility regulation in 1976. See 41 FR 51604, at 51606, November 23, 1976. The maximum income guidelines are based on gross income, as are the underlying DHHS Federal Poverty Guidelines amounts. Changing the definition of income effectively from gross to net would introduce two different uses of the term income into the regulations. LSC believes that this action would cause greater confusion. Moreover, LSC believes that the practical problem (that taxes, indeed, represent funds unavailable to the applicant), is better addressed by considering taxes a fixed debt or obligation which can be considered by the recipient in making financial eligibility determinations. LSC invites comment on this issue. This matter is presented in greater detail in the discussion of proposed § 1611.5, below.

In addition, LSC proposes to move the information on what is encompassed by the term "total cash receipts" into the definition of income. LSC believes that having this information in the definition of income, rather than in a separate definition will make the regulation easier to use, particularly as the term "total cash reciepts" is used only in the definition of income. In incorporating the language on "total cash reciepts," LSC proposes to take the current defintion of the term without any substantive amendment, but reorganized to make it easier to understand. Specifically, LSC proposes to separate the definition into two sentences, one of which sets forth the list of things which are included in total cash receipts and one which sets forth those things which are specifically excluded from the definition of total cash receipts. It is worth noting that the sentence on items included is not intended to be exhaustive, while the sentence on items to be excluded is intended to be exhaustive.

Finally, LSC wishes to take this opportunity to restate in this preamble some guidance on the treatment of Indian trust fund monies in making income determinations. Several provisions of Federal law regulate whether or not income or interests in Indian trusts are taxable or should be considered as resources or income for federal benefits. Under the terms of those laws, LSC has determined that recipients may disregard up to $2000 per year of funds received by individual Native Americans that are derived from income or interests in Indian trusts from being considered income for the purpose of determining financial eligibility of Native American applicants for service, and that such

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funds or interests of individual Native Americans in trust or restricted lands should not be considered as a resource for the purpose of LSC eligibility. *See* LSC Office of Legal Affairs External Opinion 99–17, August 27, 1999.

As noted in External Opinion 99–17, the exclusion applies only to funds and other interests held *in trust* by the federal government and investment income accrued therefrom. The following have been found to qualify for the exclusion from income in determining eligibility for various government benefits: income from the sale of timber from land held in trust; income derived from farming and ranching operations on reservation land held in trust by the federal government; income derived from rentals, royalties, and sales proceeds from natural resources of land held in trust; sales proceeds from crops grown on land held in trust; and use of land held in trust for grazing purposes. On the other hand, per capita distributions of revenues from gaming activity on tribal trust property are not protected because such funds are not held in trust by the federal government. Thus, such distributions are considered to be income for purposes determining LSC financial eligibility.

Total Cash Receipts

LSC proposes to delete the definition of "total cash reciepts," currently at § 1611.2(h), as a separately defined term in the regulation. Rather, LSC proposes to reorganize the information contained in the definition and move it directly into the definition of "income." As noted above, the only place the term "total cash reciepts" is used is in the defintion of "income" and LSC believes that having a separate definition for "total cash reciepts" is cumbersome and unnecessary.

Section 1611.3 Financial Eligibility Policies

LSC proposes to create a new § 1611.3, Financial Eligibility Policies, based on requirements currently found in §§ 1611.5(a), 1611.3(a)–(c) and 1611.6. The new § 1611.3 would address in one section recipients' responsibilities for adopting and implementing financial eligibility policies. Under the proposed new section, the current requirement that recipients' governing bodies have to adopt policies for determining financial eligibility would be retained. LSC proposes, however, to change the current requirement for annual review of these policies and instead require recipients' governing bodies to conduct triennial reviews of policies. The Working Group agreed that an annual review was unnecessary and has tended to result in rather pro forma reviews of policies. In contrast, a triennial review requirement would be sufficient to ensure that financial eligibility policies remain relevant and would encourage a more thorough and thoughtful review when such review is undertaken. The section would also add an express requirement that recipients would be required to adopt implementing procedures. While this is already implicit in the current regulation, LSC believes it would be better for this requirement to be expressly stated. Such implementing procedures could be adopted either by a recipient's governing body or by the recipient's management.

Proposed § 1611.3 would also contain certain minimum requirements for the content of recipient's financial eligibility policies. Specifically, LSC proposes that the recipient's financial eligibility policy must:

- Specify that only applicants for service determined to be financially eligible under the policy may be further considered for LSC-funded service;
- Establish annual income ceilings of no more than 125% of the current Department of Health and Human Services Federal Poverty Guidelines amounts;
- Establish asset ceilings; and
- Specify that, notwithstanding any other provisions of the regulation or the recipient's financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the individual applicant and shall not consider any jointly held assets.

In establishing income and asset ceilings, the recipient would have to consider the cost of living in the locality; the number of clients who can be served by the resources of recipient; the potentially eligible population at various ceilings; and the availability of other sources of legal assistance. With respect to jointly held assets of domestic violence victims, this requirement applies when the applicant has made the recipient aware that he or she is a victim of domestic violence.

In addition, LSC proposes to permit recipients to adopt financial eligibility policies which provide for authorized exceptions to the annual income ceiling pursuant to proposed § 1611.5 and for waiver of the asset ceiling under unusual circumstances and when approved by the Executive Director or his/her designee. Finally, LSC proposes to permit recipients to adopt financial eligibility policies which permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with proposed § 1611.4(b).

These proposed provisions are, with two exceptions, based directly on current requirements with a few substantive changes. First among the changes, recipients would no longer be required to routinely submit their asset ceilings to LSC. This requirement appears to serve little or no purpose, as compliance with this requirement has been spotty and LSC has taken no action to obtain the information from programs which have not automatically submitted it. Moreover, the information collected is not being put to any routine use. In addition, LSC has not had a parallel requirement for the submission of income ceilings. The Working Group determined that this requirement could be eliminated without any adverse effect on program compliance with or Corporation enforcement of the regulation.

Another substantive change is that recipients would be permitted to provide in their financial eligibility policies for the exclusion of (in addition to a primary residence, as provided for in the existing regulation) vehicles, assets used in producing income and other assets excluded from attachment under State or Federal law from the calculation of assets. In identifying other assets excluded from attachment under State or Federal law, LSC has in mind assets that are excluded from bankruptcy proceedings or other assets that may not be attached for the satisfaction of a debt, *etc.*

There was discussion within the Working Group about the appropriate scope of this provision. Field representatives suggested that the list of exclusions should be illustrative, and not exhaustive, allowing programs greater discretion in developing asset ceilings. LSC representatives, however, prefered to retain the approach in the current regulation in which the list of excludable assets is set forth *in toto*, to emphasize the policy that most assets are to be considered and to maintain a basic level of consistency nationally with respect to this issue. However, the LSC representatives agreed that the regulation could afford recipients some additional flexibility in developing asset ceilings, consistent with the policy articulated above. The Working Group believes that the proposed language meets those objectives, particularly in light of the proposed amendment to the asset ceiling waiver standard discussed below. LSC invites comment on whether the list should be illustrative or exhaustive. LSC also invites comment on whether additional specific assets should be included in the list of excludable assets and, if so, what items might be appropriate.

LSC is also proposing to change the asset ceiling waiver standard slightly. The current regulation permits waiver in "unusual or extremely meritorious situations;" the proposed rule would permit waiver in "unusual circumstances." The Working Group determined that the current language is unnecessarily stringent and that it is unclear what the difference is intended to be between "unusual" and "extremely meritorious." It was suggested in the Working Group that the standard should be "where appropriate." LSC, however, felt that the regulation should continue to reflect the policy that waivers of the asset ceilings should only be granted sparingly and not as a matter of course. The Working Group agreed that the revised language accomplishes this goal, while providing some additional appropriate discretion to programs. In addition, where the current rule requires all waiver decisions to be made by the Executive Director, LSC proposes to permit those decisions to be made by the executive director or his/her designee. LSC believes it is important that a person in significant authority be involved in making asset ceiling waiver decisions, but recognizes that, especially as more programs consolidate and serve larger areas, it is important for programs to have the discretion to delegate certain authority to regional or branch office directors to increase administrative efficiency.

The first totally new element is the proposed language regarding victims of domestic violence. This proposal stems from LSC's FY 1998 appropriations law. Specifically, section 506 of that act provides:

> In establishing the income or assets of an individual who is a victim of domestic violence, under section 1007(a)(2) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)), to determine if the individual is eligible for legal assistance, a recipient described in such section shall consider only the assets and income of the individual and shall not include any jointly held assets.

Although this law has been in effect since 1997, it has never been formally incorporated into part 1611. LSC notes that this provision of law applies regardless of whether it appears in the regulation. However, incorporating this language into the regulation is appropriate, particularly in light of the goal of this rulemaking to clarify the requirements relating to financial eligibility determinations.

Finally, the proposal to permit recipients to adopt financial eligibility policies which permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with proposed § 1611.4(b) is also new. This proposal is discussed in greater detail below.

Section 1611.4 Financial Eligibility for Legal Assistance

This proposed section would set forth the basic requirement that recipients may provide legal assistance supported with LSC funds only to those individuals whom the recipient has determined are financially eligible for such assistance pursuant to their program's policies, consistent with this part. This section also proposes to contain a statement that nothing in part 1611 prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is supported wholly by funds from a source other than LSC (regardless of whether LSC funds were used as a match to obtain such other funds, as is the case with Title III or VOCA grant funds) and the assistance is otherwise permissible under applicable law and regulation. This proposed section would further provide that a recipient may find an applicant to be financially eligible if the applicant's assets are at or below the recipient's applicable asset ceiling level (or the ceiling has been properly waived) and the applicant's income is at or below the recipient's applicable income ceiling, or if one or more of the authorized exceptions to the ceiling applies. These provisions are based on existing provisions found in §§ 1611.3, 1611.4 and 1611.6. As revised, the new provisions do not represent a substantive change, but LSC believes having the basic statements as to who may be found to be financially eligible for assistance in one section makes the regulation much clearer. In addition, where the existing regulation uses a construction that speaks to when a recipient may provide legal assistance, the proposed new language emphasizes the point that the requirements speak only to determinations of financial eligibility and not to decisions regarding whether or not to actually provide legal assistance.

LSC also proposes to incorporate into this section two significant substantive changes to the regulation. First, LSC proposes to include a requirement that, in making financial eligibility determinations, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets and shall record income and asset information in the manner specified for determining eligibility in proposed § 1611.6. This requirement would replace the process currently required by § 1611.5, whereby a recipient is effectively required to conduct a lengthy and often cumbersome inquiry as to the applicant's income, assets and income prospects, including inquiry into a detailed list of factors relating to an applicant's specific financial situation and ability to afford private counsel. The Working Group discussed this issue at length and representatives of the field noted that conducting such a detailed inquiry in most cases is a task which is often difficult to accomplish efficiently at the point of intake, especially as much of intake is performed by volunteers, interns or receptionists. Rather, many recipients, in practice, conduct a somewhat abbreviated version of the otherwise required process, inquiring into current income, assets, income prospects and probing for additional information on the basis of the responses provided, based upon the requirements of the regulation and their knowledge of the applicant base and local circumstances. This approach, the field representatives noted, is less prone to error and assists in fostering an appropriate attorney-client relationship with individuals accepted as clients. As LSC is not finding widespread instances of service being provided to financially ineligible persons, it was agreed that that the process required by the existing regulation is unduly complicated and that the simplified requirement proposed would be adequate to ensure that recipients are making sufficient inquiry into applicants' financial situations to determine financial eligibility status under the regulation while being less adminstratively burdensome for recipients and more conducive to the development of the attorney-client relationship. LSC also believes that adoption of the proposed streamlined eligibility determination process will aid the Corporation in conducting compliance reviews.

The other major change is that, consistent with proposed § 1611.3 as discussed above, if adopted, the regulation would permit recipients to determine an applicant to be financially eligible because the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's

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governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Level amounts. For many recipients, a significant proportion of applicants rely on governmental benefits for low-income individuals and families as their sole source of income. In order to qualify for these benefits, such persons have already been screened and determined to be financially eligible for those benefits by the agency providing the benefits through an eligibility determination process that is stricter than the one required under LSC regulations. In Working Group discussions, many representatives of the field noted that if they could rely on the determinations made by these agencies without having to otherwise make an independent inquiry into financial eligibility, it would substantially ease the administrative workload involved in making eligibility determinations.

The Working Group also noted that current LSC practice permits recipients to determine that an applicant's assets are within the recipient's asset ceiling level without additional review if the applicant is receiving governmental benefits for low-income individuals and families, eligibility for which includes an asset test. Key to this practice is that the recipient's governing body has to take some identifiable action to recognize the asset test of the governmental benefit program being relied upon. This ensures that the eligibility standards of the other program have been carefully considered and are incorporated into the overall eligibility policies adopted and regularly reviewed by the governing body. As this practice has proved efficient and effective, it was determined that a parallel process could also be adopted for income screening and that these practices should be expressly included in the regulations. It is important to note that this provision would only apply to applicants whose sole income is derived from such benefits. Applicants who also have income derived from other sources would be subject to an independent inquiry and assessment of financial eligibility.

Section 1611.5 Authorized Exceptions to the Annual Income Ceiling

This proposed section provides for authorized exceptions to the annual income ceiling. The proposed language, like the current language of §§ 1611.4 and 1611.5, on which it is based, is permissive. A recipient would be free to include some, none, or all of the authorized exceptions discussed below in its financial eligibility policies. Thus, to the extent a recipient would choose to avail itself of the authority provided in this proposed section, a recipient would be permitted to determine an applicant to be financially eligible for assistance, notwithstanding that the applicant's income is in excess of the recipient's applicable income ceiling. In making such determinations, however, the recipient would have to detemine that the applicant's assets were at or below the recipient's applicable asset ceiling (or the ceiling would have had to have been waived). This requirement is consistent with the current regulation, but would be affirmatively stated for clarity.

Under the proposed section, there would be two situations in which an applicant's income could exceed the recipient's income ceiling without an absolute upper limit: (1) Where the applicant is seeking to maintain governmental benefits for low-income individuals and families; and (2) where the executive director (or his/her designee) determines, on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and, in considering only that portion of the applicant's income which is not so committed, the applicant would otherwise be financially eligible.

The first instance would be a new addition to the regulation. Currently, an applicant seeking to *obtain* governmental benefits for low income persons may be deemed financially eligible if the applicant's income does not exceed 150% of the national eligibility level. The existing regulation, however, does not specifically address applicants seeking to *maintain* such benefits. Thus, under the current regulation, an applicant whose income is over the income ceiling but under 150% of the national eligibility level may be deemed financially eligible for assistance in obtaining benefits, but not for assistance in maintaining them. Thus, the applicant seeking assistance to maintain benefits would have to be turned down, but that same applicant could then be found financially eligible for assistance to re-obtain such benefits once the benefits were lost. Accordingly, LSC proposes to address this problem in the regulation. However, unlike the situation in obtaining the benefits, in seeking to maintain benefits LSC considers an upper limit on income unnecssary since in such cases the applicant's income will necessarily be rather limited (for the applicant to have been eligible in the first place for the benefits he or she is seeking to maintain).

The second instance is taken from § 1611.5(b)(1)(B) of the current regulation addressing instances in which the applicant's income is primarily devoted to medical or nursing home expenses and does not represent a substantive change in the current regulation. LSC does propose to specify in the regulation, however, that in such cases the recipient is still required to make a determination of financial eligibility with regard to the applicant's remaining income. The existing regulation could be read to permit an applicant with an income of $300,000 to be deemed financially eligible if $250,000 of the income is devoted to nursing home expenses, notwithstanding that the applicant's remaining income is $50,000—substantially in excess of the income ceiling. This situation is not intended, and, indeed, LSC has no reason to believe recipients are serving such persons. However, consistent with the overall goal of clarifying the regulation, LSC believes that a requirement that an applicant must be otherwise financially eligible considering only that portion of the applicant's income which is not devoted to medical or nursing home expenses should be clearly set forth in the regulation.

LSC also proposes to permit exceptions for certain situations in which the applicant's income is in excess of the recipient's applicable income ceiling, but does not exceed 200% of the applicable Federal Poverty Guideline amount. At the outset, LSC notes that this section also proposes to change the current upper income limit of 150% of the national income guidelines amount, which is 150% of 125% of the Federal Poverty Guideline amounts, or 187.5% of the Federal Poverty Guidelines amounts. Under the proposed new regulation, the upper limit would increase to 200% of the Federal Poverty Guidelines amounts. This change is being proposed to further simplify the language of the regulation and in recognition of the changing demographic of the legal services client base, which now increasingly includes the working poor. The Working Group discussed the fact that this action would slightly increase the pool of potential applicants for service but was of the opinion that this would not have a negative impact on the quantity or quality of services delivered.

Turning to the exceptions, LSC proposes to retain the current exception for individuals seeking to obtain governmental benefits for low-income individuals and families. Second, LSC proposes to add an exception for individuals seeking to obtain or maintain governmental benefits for persons with mental and/or physical disabilties. Many disability benefit programs provide only subsistance support and those individuals should be treated the same way as those seeking to obtain benefits available on the basis of financial need. However, many persons with disabilties who are eligible for disability benefits may not be particularly economically disadvantaged and should not be eligible for legal assistance simply by virtue of the eligibility for such disability benefits. Therefore, those applicants must have incomes below 200% of the applicable poverty level in order to be considered financially eligible for LSC-funded services.

Finally, the proposed regulation maintains the current authorized exceptions found in the factors listed in § 1611.5. Specifically, the recipient may determine an applicant whose income is below 200% of the applicable Federal Poverty Guidelines amount to be financially eligible for legal assistance supported with LSC funds based on one or more enumerated factors that affect the applicant's ability to afford legal assistance. As in the current regulation, recipients would not be required to apply these factors in a "spend down" fashion. That is, although recipients would be permitted to do so, they would not be required to determine that, after deducting the allowable expenses, the applicant's income is below the applicable income ceiling before determining the applicant to be financially eligible. The regulation would also be amended to clarify that the factors apply to the applicant and members of the applicant's household. The factors proposed are identical to the ones in the current regulation, with the following exceptions:

- The factor relating to medical expenses would be restated to make clear that it refers only to unreimbused medical expenses, but that medical insurance premiums are included;
- The factor relating to employment expenses would be reorganized for clarity and would expressly include expenses related to job training or educational activities in preparation for employment;
- The factor relating to expenses associated with age or disability would no longer refer to resident members of the family as a reference to the applicant or members of the applicant's household is proposed to be incorporated elsewhere in this section of the regulation;
- The factor relating to fixed debts and obligations would be amended to read only "fixed debts and obligations."

With regard to "fixed debts and obligations," the current regulation provides little guidance as to what is meant by this term, except to specifically include unpaid taxes from prior years. LSC proposes to simply use the term "fixed debts and obligations," while providing guidance in the preamble as to what is encompassed by the term. LSC believes that this approach will provide recipients with flexibility in applying the rule, while providing for more guidance than could easily be contained in regulatory text.

Prior guidance from the LSC Office of Legal Affairs has stated that, "in the absence of any regulatory definition or guidance as to the meaning of "fixed debts and obligations," the common meaning of the term applies" and that it encompasses debts fixed as to both time and amount. See Letter of November 1, 1993 from J. Kelly Martin, Assistant General Counsel to Stephen St. Hilaire, Executive Director, Camden Regional Legal Services, Inc. Examples of such "fixed debts and obligations" would include morgage payments, child support, alimony, and business equipment loan payments. LSC intends that this term should also include rent in addition to mortgage payments. Previous OLA opinions have addressed mortgage payments but not rent and rent has, heretofore, not been considered a fixed debt. LSC now sees no rational distinction between the two for the purposes of this regulation and therefore proposes to treat these expenses in a similar manner.

With respect to taxes, prior to 1983, part 1611 included current taxes along with past due unpaid taxes as a fixed debt. When the regulation was changed in 1983, the reference to taxes was amended to refer only to unpaid prior year taxes. This change was justified on the basis that the § 1611.5 factors were intended to account only for "special circumstances" affecting the ability to afford legal assistance. See 48 FR 54201 at 54203 (November 30, 1983). However, given that other types of expenses included in the list do not seem to be particularly "special" (*e.g.*, mortgage payments; child care expenses), LSC no longer finds this explanation pursuasive. Rather, LSC believes that the exclusion of current taxes, but not prior unpaid taxes, from fixed debts and obligations has the effect of punishing those persons who are in compliance with the law in favor of persons who are delinquent in their legal responsibility to pay taxes. Moreover, as noted above, the legal services client base is increasingly comprises the working poor. Excluding current taxes from fixed debts has a disproportionate effect on applicants who work, versus applicants who do not work. Accordingly, LSC believes that including current taxes in fixed debts is appropriate to address this problem.

As noted above, the Working Group considered whether current taxes should just be excluded from the meaning of the term income, rather than including them as within the meaning of "fixed debts and obligations." Although representatives of the field preferred the former approach, LSC representatives preferred the latter approach. The Corporation has always considered income to be gross income and the eligibility ceilings are based on a gross income standard. Similarly, taxes, whether paid or unpaid, have always been considered within the rubric of the fixed debts and obligations exception. By proposing to include current taxes within the meaning of fixed debts and obligations, LSC proposes to return to the prior usage of that term from 1976 through 1983. However, as noted above, LSC invites comment on this issue.

The term "fixed debts and obligations," however, is not without limit. It is not intended to include expenses, such as food costs, utilities, credit card debt, etc. These types of debts are usually not fixed as to time and amount. Moreover, these sorts of expenses are typical living expenses which have not been, and are not intended to be, included as factors to be considered in assessing the financial eligibility of someone whose income exceeds the recipient's applicable annual income ceiling.

The Working Group considered whether there were additional factors which should be enumerated in this section and several members of the Working Group proposed adding other factors, such as utilities, to the list. Although the Working Group agreed in the end not to propose adding any additional factors, LSC specifically invites comment on this matter.

Section 1611.6 Manner of Determining Eligibility

LSC proposes several revisions to this section. First, LSC proposes to delete the requirement in existing paragraph (a) of this section that LSC eligibilility forms and procedures must be approved by the Corporation. It has been LSC's experience that receiving the forms has not enhanced its ability to conduct oversight of recipients. These documents are readily available to LSC from recipients when needed. This

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requirement appears only to create unnecessary work for recipients and LSC staff without serving any policy purpose.

LSC also proposes to add a provision to the regulation making clear that a recipient agreeing to extend legal assistance to a client referred from another recipient may rely upon the referring program's determination of financial eligibility, provided that the referring program provides and the receiving program retains a copy of the intake form documenting the financial eligibility of the client. This is the currently accepted practice, but is addressed nowhere in the existing regulation. A similar provision was included in the 1995 NPRM.

Section 1611.7 Change in Financial Eligibility Status

LSC proposes to add language to this section to provide that if a recipient later learns of information which indicates that a client is not, in fact, financially eligible, the recipient must discontinue the representation consistent with the applicable rules of professional responsibility. This addition is being proposed because sometimes, after an applicant has been accepted as a client, the recipient discovers or the client discloses information that indicates that the client was not, in fact, financially eligible for service. This situation is not covered by the existing regulation because the client may not have experienced a change in circumstance, but rather the recipient has discovered new pertinent information about the client. LSC notes that the proposed language, like the current regulation, is not intended to require a recipient to make affirmative inquiry after accepting an applicant as a client for information that would indicate a change in circumstance or the presence of additional information regarding the client's financial eligibility.

The proposed regulation would require that when a client is found to be no longer financially eligible on the basis of later discovered information, the recipient shall discontinue representation supported with LSC funds, if discontinuing the representation is not inconsistent with applicable rules of professional responsibility. This proposed language is parallel to the current requirement regarding discontinuation of representation upon a change in circumstance. LSC wishes to note that, to the extent that discontinuation of representation is not possible because of professional responsibility reasons, a recipient may continue to provide representation supported by LSC funds. This is currently the case and LSC intends to make no change in the regulation on this point.

In addition, LSC proposes to change the name of this section from "change in circumstances" to "change in financial eligibility status" to reflect the addition of the later discovered information provision.

Section 1611.8 Representation of Groups

The subject of the eligibility of groups for legal assistance supported with LSC funds was one of intense discussion among the members of the Working Group. Prior to 1983, the regulation permitted representation of groups that were either primarily composed of eligible persons, or which had as their primary purpose the furtherance of the interests of persons in the community unable to afford legal assistance. In 1983, the regulation was amended to preclude the use of LSC funds for the representation of groups unless they were composed primarily of individuals financially eligible for service and to add a requirement that any group seeking representation demonstrate that it lacks the funds or the means to obtain the funds to retain private counsel.

Representatives from the field proposed that LSC revise the regulation to once again permit the representation of groups which, although not primarily composed of eligible persons, have as a primary function the delivery of services to, or furtherance of the interests of, persons in the community unable to afford legal assistance. Examples of such a group might be a food bank or a rural community development corporation working to develop affordable housing in an isolated community. Field representatives noted that in such cases, there may not be local counsel willing to provide pro bono representation and that the group might not otherwise be able to afford private counsel. Further, the field representatives noted that restricting recipients to representing with LSC funds only those groups primarily composed of eligible individuals prevents them from providing legal assistance in the most efficient manner possible as other groups may be better able to accomplish results benefitting more members of the eligible community than would representation of eligible individuals or groups composed primarily of such individuals. Field representatives also noted that the rule requires that the group would have to provide information showing that it lacks and has no means of obtaining the funds to retain private counsel, so that the rule would not permit representation of well funded groups.

The LSC representatives were concerned that allowing the use of LSC funds to support the representation of groups not composed primarily of eligible clients would be problematic. In the examples given, the "primary function" of the group is easily discernable. It may be the case, however, that there is or can be a wide variety of opinion on what the "primary function" of any group is and on what is "in the interests" of the eligible client community. The LSC representatives were concerned that the risk and effort related to articulating and enforcing a necessarily subjective standard would be inappropriate in this case. Rather, LSC representatives were of the opinion that already scarce legal services resources would be better devoted to providing assistance to eligible individuals or groups of eligible individuals. In the end, the Working Group did not achieve consensus on this issue and the Draft NPRM did not propose to permit the representation of groups other than those primarily composed of eligible individuals.

In its deliberations on the Draft NPRM, the Operations and Regulations Committee acknowledged the legitimacy of the concerns of the LSC representatives, but determined that the value of permitting the representation of groups having a primary function of providing services to, or furthering the interests of, those who would be financially eligible outweighed any risks attendant upon such representation. In approving the recommendation of the Committee, the Board directed that the Draft NPRM be amended to propose permitting such representation (including any conforming amendments necessary) prior to publication of the NPRM for comment. This NPRM reflects this direction. LSC specifically invites comment on this issue.

Accordingly, the proposed rule would permit a recipient to provide legal assistance supported with LSC funds to a group, corporation, association or other entity if the recipient has determined that the group, corporation, association or other entity lacks and has not practical means of obtaining private counsel in the matter for which representation is sought and any of the following:

(1) At least a majority of the group's members are financially eligible for LSC-funded legal assistance; or

(2) For a non-membership group, at least a majority of the individuals who are forming or operating the group are financially eligible for LSC-funded legal assistance; or

(3) The group has as its principal function or activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance; or

(4) The group has as its principal function or activity the furtherance of the interests of those persons in the community who would be financially eligible for LSC-funded legal assistance and the representation sought relates to such function or activity.

The first two instances, relating to the eligibility and representation of groups composed primarily of eligible individuals, represent the current practice permitted by current § 1611.5(c). The language of the proposed rule would expressly incorporate the interpretation of "primarily composed" that has developed and been adopted in practice over the years since 1983. In the case of membership groups, at least a majority of the members would have to be eligible; in the case of non-membership groups, at least a majority of members of the governing body would have to be eligible persons. The latter two instances represent the situations permitted by the pre-1983 rule, although the language would be revised to focus on the primary "function" rather than the primary "purpose" of the group. This choice is intended to make the analysis required in determining the permissibility of the representation more objective.

Finally, the proposed rule would retain and restate the current provision of the rule that nothing in this part prohibits a recipient from providing legal assistance to a group without regard to the nature or financial eligibility of the group, if the legal assistance is supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

LSC notes that, as with other aspects of this rule, proposed § 1611.8 does not speak to eligibility of groups for legal assistance under other applicable law and regulations. For example, the eligibility of a group under proposed § 1611.8 does not address issues related to the eligibility of the group under part 1626 of the Corporation's regulations, concerning citizenship and alien status eligibility. Similarly, the fact that a recipient may determine a group to be eligible for legal assistance under this part, does not address other questions relating to permissibility of the representation (*i.e.*, this part does not confer authority for the representation of group on restricted matters, such as class action lawsuits or redistricting matters, etc.)

The OIG dissents from the proposed § 1611.8. The OIG's position is that, in permitting the representation of groups without a determination of financial eligibility of all group members, the proposed rule allows the representation of ineligible individuals and, therefore, is inconsistent with the LSC Act. The OIG contends that the LSC Act contemplates the representation of individuals, rather than groups. The LSC Act declares Congress's finding that "there is a need to provide equal access to the system of justice in our Nation for *individuals* who seek redress of grievances," Sec. 1001(1) (emphasis added). The LSC Act established the Corporation "for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to *persons* financially unable to afford legal assistance," Sec. 1003(a) (emphasis added). The Corporation is required to "establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several states, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for *individuals* eligible for legal assistance under this title," Sec. 1007(a)(2) (emphasis added.). In addition, the LSC authorizes the Corporation "to provide financial assistance to qualified programs furnishing legal assistance to eligible clients," Sec. 1006(a)(1)(A), and defines an "eligible client" as "any person financially unable to afford legal assistance." Sec. 1002(3). Although the LSC Act refers to "persons," and certain groups, such as corporations may be recognized as "persons" under the law, loose associations of individuals seeking representation as a group are not. Such a group exists only because it has members, that is individuals each of whose financial eligibility can be determined in the same way as any other individual client.

The OIG also expressed concern that the proposed rule does not address another issue growing out of allowing group representation without determining the financial eligibility of all group members. Group membership may, and likely will, change. It is easy to envision a case where a group might be eligible for representation when the case is accepted, but the composition of the group changes and ineligible individuals become the majority of the membership. This is particularly true if, as the proposed rule allows, only more than 50 percent of the individuals must be eligible when the case is accepted. For example, if a recipient accepts as a client a group of 100 members, with 51 eligible and 49 ineligible members, the eligibility status of the group would change with the departure of but one eligible member. Thus, the OIG is of the opinion that allowing a mere majority of eligible individuals to determine the eligibility of the group, when there is a liklihood that the eligiblity status of the group could easily change during the course of the representation, is problematic.

LSC disagrees and believes that the proposed regulatory requirements are consistent with the applicable laws. In particular, LSC believes that the legislative history of the 1977 LSC Act amendments demonstrates that Congress contemplated the representation of groups. In discussing an amendment relating to the prohibition by recipients on organizing, Senator Riegle stated:

> A similar clarification is made in section 9(c) (of the Senate Reauthorization Bill) regarding the prohibition on organizing activities. Legal Services should not directly organize groups. However, it should provide full representation, education and outreach to those organized groups who are made up of or which represent eligible clients. This section will remove any inhibition which may have been improperly used to prevent such full representation to groups of the poor.

Congressional Record of October 10, 1977, p. S 16804. In addition, the House Report accompanying the 1997 LSC Act amendments bill states that the bill:

> [P]rohibits the use of Corporation funds for direct organizing, but permits advice and legal assistance to clients who may themselves be engaged in such activities. * * * The Committee recognizes a distinction between proper activities such as (1) assisting groups of poor people to organize by providing advice on matters of incorporation, by-laws, tax problems and other matters essential to the planning of an organization; (2) providing counsel to poor people regarding appropriate behavior for group members; and (3) encouraging poor people aggrieved by particular problems to consider organizing to foster joint solutions to common problems on the one hand, and those activities that are improper on the part of legal services providers in that they usurp the rightful role of poor people as potential members of such organizations, namely, actually initiating the formation or organizing directly, an association, group, or organization.

House Report 95–310 at p. 14.

In terms of demonstrating and documenting eligibility of a group, the

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proposed rule would require the program to collect information that reasonably demonstrates that the group meets the eligibility requirements. The OIG also dissents from this position and, for groups comprised of eligible individuals, if group representation as set out in the proposed rule is to be permitted, would require that the eligibility of a majority of the individuals in the group be documented in the same manner as is required for individual clients.

The proposed rule would allow recipients to determine the eligibility of groups by collecting "information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility requirements set forth herein." If LSC determines that groups are eligible for federally funded legal assistance, then, as with individuals, the OIG believes that it is LSC's responsibility to set out the requirements by which such eligibility is to be determined. The OIG believes that the proposed rule does not provide sufficient guidance. In addition, by allowing representation of groups "primarily composed of individuals who are financially eligible for legal assistance," but then allowing that determination of eligibility to be assessed by some undefined "reasonableness" standard (presumably something less than that which is required for a determination of the eligibility of individuals), the proposed rule may result in the representation of groups that are not in fact even primarily composed of eligible clients.

LSC disagrees and believes that the proposed regulatory requirements are consistent with the applicable laws. LSC further notes that the proposed rule would, essentially, codify the current practice relating to financial eligibility and representation of groups primarily composed of eligible individuals, which has not proven to be problematic in the way envisioned by the OIG. LSC does not see why it would prove any more problematic for demonstrating the eligibility of groups which have as a primary function the delivery of services to, or furtherance of the interests of, those who would be financially eligible for legal assistance.

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set forth in the preamble, LSC proposes to amend 45 CFR part 1611 by revising §§ 1611.1 through 1611.8 to read as follows:

PART 1611—FINANCIAL ELIGIBILITY

Sec.

1611.1 Purpose.
1611.2 Definitions.
1611.3 Financial eligibility policies.
1611.4 Financial eligibility for legal assistance.
1611.5 Authorized exceptions to the annual income ceilings.
1611.6 Manner of determining financial eligibility.
1611.7 Changes in financial eligibility status.
1611.8 Representation of groups.

Authority: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2); sec. 509(h) of Pub. L. 104–134, 110 Stat. 1321 (1996); Pub. L. 105–119; 111 Stat. 2512 (1998).

§ 1611.1 Purpose.

This part sets forth requirements relating to the financial eligibility of applicants for legal assistance supported with LSC funds and recipients' responsibilities in making financial eligibility determinations. This part is not intended to and does not create any entitlement to service for persons deemed financially eligible. This part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. This part also sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds.

§ 1611.2 Definitions

Applicable rules of professional responsibility means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

Applicant means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

Assets means cash or other resources that are readily convertible to cash, which are currently and actually available to the applicant.

Governmental program for low income individuals or families means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

Governmental program for persons with disabilities means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

Income means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash receipts include, but are not limited to, money, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

§ 1611.3 Financial Eligibility Policies

(a) The governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups. The governing body shall review its financial eligibility policies at least once every three years and make adjustments as necessary. The recipient shall implement procedures consistent with its policy.

(b) As part of its financial eligibility policies, every recipient shall specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, every recipient shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Level amounts for family units. The Corporation shall annually calculate 125% of the Federal Poverty Guidelines amounts and publish such calculations in the **Federal Register** as a revision to appendix A to this part.

(2) As part of its financial eligibility policies, a recipient may adopt authorized exceptions to its annual income ceilings consistent with § 1611.5.

(d)(1) As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for individuals and households. In establishing asset ceilings, the recipient may exclude consideration of a family's principal residence, vehicles required for work, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

(2) The recipient's policies may provide authority for waiver of its asset ceilings under unusual circumstances and when approved by the recipient's Executive Director, or his/her designee. When the asset ceiling is waived, the recipient shall record the reasons for such waiver and shall keep such records as are necessary to inform the Corporation of the reasons for such waiver.

(e) Notwithstanding any other provision of this Part or the recipient's financial eligibility policies, as part of its financial eligibility policies, every recipient shall specify that in assessing the income or assets of an individual applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the individual applicant and shall not include any jointly held assets.

(f) As part of its financial eligibility policies, a recipient may adopt policies that permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with § 1611.4(d).

(g) Before establishing its financial eligibility policies, a recipient shall consider the cost of living in the service area or locality and other relevant factors, including but not limited to:

(1) The number of clients who can be served by the resources of the recipient;

(2) The population that would be eligible at and below alternative income and asset ceilings; and

(3) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area.

§ 1611.4 Financial eligibility for legal assistance.

(a) A recipient may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. Nothing in this Part, however, prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with the recipient's financial eligibility policies and this Part, the recipient may determine an applicant to be financially eligible for legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(d)(1), or the applicable asset ceiling has been waived pursuant § 1611.3(d)(2), and:

(1) The applicant's income is at or below the recipient's applicable annual income ceiling; or

(2) The applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in § 1611.5, applies.

(c) In making financial eligibility determinations, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. The recipient shall record income and asset information in the manner specified for determining eligibility under § 1611.6.

(d) Consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Level amounts and that the governmental program has eligibility standards which include an assets test.

§ 1611.5 Authorized exceptions to the annual income ceiling.

(a) Consistent with the recipient's policies and this Part, a recipient may determine that an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(c), or the asset ceiling has been waived pursuant to § 1611.3(c)(2) and:

(1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The Executive Director of the recipient, or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or

(3) The applicant's income does not exceed 200% of the applicable Federal Poverty Level amount and:

(i) The applicant is seeking to obtain governmental benefits for low income individuals and families; or

(ii) The applicant is seeking to obtain or maintain governmental benefits for persons with disabilities; or

(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Level amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses including medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses necessary for employment, job training or educational activities in preparation for employment, such as dependent care, transportation, clothing and equipment expenses;

(v) Non-medical expenses associated with age or disability; or

(vi) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

(b) In the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination. The recipient shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.

§ 1611.6 Manner of determining financial eligibility.

(a) A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.

(b) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a recipient shall

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make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(c) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in § 1611.7 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

§ 1611.7 Change in financial eligibility status.

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation suported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

§ 1611.8 Representation of groups.

(a) A recipient may provide legal assistance supported with LSC funds to a group, corporation, association or other entity if the recipient has determined that the group, corporation, association or other entity lacks and has not practical means of obtaining private counsel in the matter for which representation is sought and:

(1) At least a majority of the group's members are financially eligible for LSC-funded legal assistance; or

(2) For a non-membership group, at least a majority of the individuals who are forming or operating the group are financially eligible for LSC-funded legal assistance; or

(3) The group has as its principal function or activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance; or

(4) The group has as its principal function or activity the furtherance of the interests of those persons in the community who would be financially eligible for LSC-funded legal assistance and the representation sought relates to such function or activity.

(b) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility requirements set forth herein.

(c) Nothing in this part prohibits a recipient from providing legal assistance to a group without regard to the nature or financial eligibility of the group, if the legal assistance is supported by funds other than LSC, and is otherwise permissible under applicable law and regulation.

Appendix A—Legal Services Corporation Poverty Guidelines

Note: Appendix A: The Corporation is not requesting comments on the current Appendix. The Appendix is revised annually, after the Department of Health and Human Services issues the new Federal Poverty Guidelines for that year.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–29611 Filed 11–21–02; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 216

[DFARS Case 2001–D013]

Defense Federal Acquisition Regulation Supplement; Provisional Award Fee Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address the use of provisional award fee payments under cost-plus-award-fee contracts. The rule provides for successfully performing contractors to receive a portion of award fees within an evaluation period, prior to an interim or final evaluation for that period.

DATES: DoD will consider all comments received by January 21, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2001–D013 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D013.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

Cost-reimbursement contracts containing award fees typically provide for an award fee payment no more frequently than every 6 months. This practice may place an undue financial burden on an otherwise successfully performing contractor. Therefore, the proposed rule provides for the payment of provisional award fees within an evaluation period, prior to an interim or final evaluation for that period. The provisional payments are based on (1) successful evaluations for prior evaluation periods, and (2) the fee determining official's expectation that payment of provisional fee amounts will not reduce the overall effectiveness of the award fee incentive.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to cost-plus-award-fee contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 216 as follows:

1. The authority citation for 48 CFR Part 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 216—TYPES OF CONTRACTS

2. Section 216.405–2 is amended by adding paragraph (b)(3) to read as follows:

216.405–2 Cost-plus-award-fee contracts.

* * * * *

(b) * * *

(3) The CPAF contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to an interim or final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments'

(A) Are made no more frequently than monthly;

(B) Are limited to no more than—

(1) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(2) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period, *e.g.*, if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent x 80 percent) of the award fee available for the current period;

(C) Are superceded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the payment determined by the evaluation score for the applicable period, the contractor shall either credit the next payment voucher for the amount of the overpayment or refund the difference to the Government, as directed by the contracting officer; and

(D) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

* * * * *

[FR Doc. 02–29466 Filed 11–21–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2002–D013]

Defense Federal Acquisition Regulation Supplement; Indian Incentive Clause—Contract Types

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that the clause permitting incentive payments for use of Indian organizations as subcontractors may be used in all contract types.

DATES: DoD will consider all comments received by January 21, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D013 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D013.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.226–7001, Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DoD Contracts, provides for incentive payments to contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors. Paragraph (e) of the clause presently addresses incentive payments under cost-type, cost-plus-incentive-fee, fixed-price incentive, and firm-fixed-price contracts. Application of the Indian Incentive Program is not limited to these contract types; therefore, this proposed rule eliminates the references to contract types to avoid any misconceptions regarding contract types that are not listed.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is a clarification of existing policy regarding the Indian Incentive Program. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 252 as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.226–7001 is amended by revising the clause date and paragraph (e) to read as follows:

252.226–7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DoD Contracts.

* * * * *

Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DOD Contracts (XXX 2002)

* * * * *

(e)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an adjustment under the Indian Incentive Program.

(2) The amount of the adjustment that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization or Indian-owned economic enterprise.

(3) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(4) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization or Indian-owned economic enterprise.

* * * * *

[FR Doc. 02–29465 Filed 11–21–02; 8:45 am]
BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 67, No. 226
Friday, November 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–025–2]

Monsanto Co.; Availability of Determination of Nonregulated Status for Cotton Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company cotton designated as Event 15985, which has been genetically engineered for insect resistance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Monsanto Company in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our written determination and our finding of no significant impact.

EFFECTIVE DATE: November 5, 2002.

ADDRESSES: You may read a copy of the determination, an environmental assessment and finding of no significant impact, the petition for a determination of nonregulated status submitted by Monsanto Company, and all comments received on the petition and the environmental assessment in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5141. To obtain a copy of the determination or environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2000, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 00–342–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for cotton (*Gossypium hirsutum L.*) designated as Bollgard II Cotton Event 15985 (event 15985), which has been genetically engineered for resistance to certain lepidopteran insect pests. The Monsanto petition states that the subject cotton should not be regulated by APHIS because it does not present a plant pest risk.

On March 18, 2002, APHIS published a notice in the **Federal Register** (67 FR 11973–11974, Docket No. 01–025–1) announcing that the Monsanto petition and an environmental assessment (EA) were available for public review. That notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject cotton and food products developed from it. APHIS received seven comments on the petition and the EA during the 60-day comment period, which ended May 17, 2002. The comments were received from university entomologists and extension specialists, an agricultural services company, and a consumer advocacy group. Six comments were in support of the subject petition, and one comment was critical of the EA prepared for the proposed determination of nonregulated status. The commenters supporting nonregulated status for the subject cotton emphasized its effectiveness in insect control and the related reductions in insecticide applications, the importance of the two *Bacillus thuringiensis* (Bt) toxins in high dose insect resistance management strategies, its usefulness in integrated pest management, the absence of the risk of development of a new plant pest, and the similarities in the environmental effects of event 15985 cotton to traditionally-bred varieties. One commenter stated that the EA prepared for the petition was inadequate and the preparation of an environmental impact statement was necessary because allowing large-scale commerciaiization of this cotton constituted a major Federal action that would significantly impact the environment. The alleged inadequacies in the EA included failures to address the cumulative effects of gene stacking, the concerns of organic farmers, and the environmental impacts of the approval of a so-called illegal grant of the genetic resource of insect susceptibility to Bt from the public trust into the possession of commercial entities. We have provided a response to these comments as an attachment to our finding of no significant impact (FONSI), which is available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Cotton event 15985 has been genetically engineered to express a Cry2Ab insecticidal protein derived from the common soil bacterium *B. thuringiensis* subsp. *kurstaki* (*Btk*). The petitioner states that the Cry2Ab protein is effective in providing protection from the feeding of lepidopteran insect pests such as tobacco budworm, pink bollworm, and cotton bollworm. The subject cotton event also expresses the β-D-glucuronidase (GUS) protein used as a selectable marker. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens*. Particle acceleration technology was used to transfer the added genes into the recipient Delta and Pine Land Company variety 50B (DP50B). Cotton cultivar DP50B expresses a *Btk* Cry1Ac insecticidal protein and a NPTII selectable marker protein, and was developed from cotton event 531, which was deregulated by APHIS in 1995 (APHIS No. 94–308–01p).

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Cotton event 15985 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This cotton has been field tested since 1998 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject cotton, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Monsanto, a review of other scientific data, field tests of the subject cotton, and comments submitted by the public, APHIS has determined that cotton event 15985: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than cotton developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject cotton and any progeny derived from hybrid crosses with other nontransformed cotton varieties will be as safe to grow as cotton in traditional breeding programs that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that Monsanto's cotton event 15985 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject cotton or its progeny. However, importation of cotton event 15985 and seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine the potential environmental impacts associated with a determination of nonregulated status for Monsanto's cotton event 15985. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to its determination that cotton event 15985 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 19th day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29752 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–100–2]

Aventis CropScience; Extension of Determination of Nonregulated Status for Canola Genetically Engineered for Male Sterility, Fertility Restoration, and Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to additional canola events our determination that certain canola events developed by Aventis CropScience, which have been genetically engineered for male sterility, fertility restoration, and tolerance to the herbicide glufosinate, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by Aventis CropScience in its request for an extension of a determination of nonregulated status, an analysis of other scientific data, and a comment received from the public in response to a previous notice. This notice also announces the availability of our finding of no significant impact.

EFFECTIVE DATE: December 23, 2002.

ADDRESSES: You may read the extension request, the environmental assessment and finding of no significant impact, and the comment received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5490. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On July 25, 2001, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 01–206–01p) from Aventis CropScience (Aventis) of Research Triangle Park, NC, for canola (*Brassica napus* L.) transformation events designated as MS1 and RF1 and RF2, which have been genetically engineered for male sterility (MS1), fertility restoration (RF1 and RF2), and tolerance to the herbicide glufosinate (MS1, RF1, and RF2). Aventis requested an extension of a determination of nonregulated status issued in response to APHIS petition number 98–278–01p for male sterile canola transformation event MS8 and fertility restoration canola transformation event RF3, the antecedent organisms (see 64 FR 15337–15338, Docket No. 98–114–2, published March 31, 1999), which are also tolerant to the herbicide glufosinate. Based on the similarity of canola events MS1 and RF1 and RF2 to the antecedent organisms, Aventis requested a determination that MS1 and RF1 and RF2 do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On February 25, 2002, APHIS published a notice in the **Federal Register** (67 FR 8509–8510, Docket No. 01–100–1), announcing that an environmental assessment (EA) for the Aventis extension request had been prepared and was available for public comment. APHIS received one comment on the subject EA during the designated 30-day public comment period, which ended March 27, 2002. The comment, which was from a consumer organization, cited alleged deficiencies in the EA prepared for the antecedent organism and the EA for events MS1 and RF1 and RF2. APHIS has provided a response to this comment as an attachment to the finding of no significant impact (FONSI). The EA and FONSI are available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Analysis

Like the antecedent organisms, canola events MS1 and RF1 and RF2 have been genetically engineered to contain a *barnase* gene (MS1) for male sterility or a *barstar* gene (RF1 and RF2) for fertility restoration. The *barnase* gene expresses a ribonuclease that blocks pollen development and results in a male-sterile plant, and the *barstar* gene encodes a specific inhibitor of this ribonuclease and restores fertility. The *barnase* and *barstar* genes were derived from *Bacillus amyloliquefaciens*, and are linked in the subject canola events to the *bar* gene derived from *Streptomyces hygroscopicus*. The *bar* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. The subject canola events and the antecedent organisms were developed through use of the *Agrobacterium tumefaciens* method, and expression of the added genes in MS1 and RF1 and RF2 and the antecedent organisms is controlled in part by gene sequences derived from the plant pathogen *A. tumefaciens*. In summary, the Aventis extension request states that canola events MS1 and RF1 and RF2 and the antecedent organisms contain the same genetic elements with the exception of the antibiotic resistance marker gene *nptII* in MS1 and RF1 and RF2, which was used as a transformant selection tool during the developmental process. The parental variety Drakkar was used to develop both the antecedent organisms and MS1 and RF1 and RF2.

Canola events MS1 and RF1 and RF2 and the antecedent organisms were genetically engineered using the same transformation method and contain the same enzymes for male sterility, fertility restoration, and glufosinate herbicide tolerance. Accordingly, we have determined that canola events MS1 and RF1 and RF2 are similar to the antecedent organisms in APHIS petition number 98–278–01p, and that canola events MS1 and RF1 and RF2 should no longer be regulated under the regulations in 7 CFR part 340.

The subject canola events have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain gene sequences derived from a plant pathogen. However, canola events MS1 and RF1 and RF2 have been field tested in numerous countries, including the United States and Canada, and after having received the appropriate Canadian approvals, have been marketed commercially in Canada since 1996 with no reports of adverse effects on human health or the environment.

Determination

Based on an analysis of the data submitted by Aventis and a review of other scientific data, APHIS has determined that canola events MS1 and RF1 and RF2: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become a weed than canola varieties developed by traditional breeding techniques and are unlikely to increase the weediness potential for any other cultivated or wild species with which they can interbreed; (3) will not cause damage to raw or processed agricultural commodities; (4) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture; and (5) are unlikely to have any significant adverse impact on agricultural practices. Therefore, APHIS has concluded that canola events MS1 and RF1 and RF2 and any progeny derived from crosses with other canola varieties will be as safe to grow as canola that is not subject to regulation under 7 CFR part 340.

Because APHIS has determined that the subject canola events do not present a plant pest risk based on their similarity to the antecedent organisms, Aventis' canola events MS1 and RF1 and RF2 will be no longer be considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject canola events or their progeny. However, importation of canola events MS1 and RF1 and RF2 and seeds capable of propagation are still subject to the restrictions found in APHIS" foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine any potential environmental impacts associated with the proposed extension of a determination of nonregulated status for the subject canola events. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to the determination that Aventis canola events MS1 and RF1 and RF2 and events developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 19th day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29754 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–101–2]

Aventis CropScience; Extension of Determination of Nonregulated Status for Canola Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

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ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to one additional canola event our determination that a canola event developed by Aventis CropScience, which has been genetically engineered for tolerance to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by Aventis CropScience in its request for an extension of a determination of nonregulated status, an analysis of other scientific data, and a comment received from the public in response to a previous notice. This notice also announces the availability of our finding of no significant impact.

EFFECTIVE DATE: December 23, 2002.

ADDRESSES: You may read the extension request, the environmental assessment and finding of no significant impact, and the comment received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5490. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On July 25, 2001, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 01–206–02p) from Aventis CropScience (Aventis) of Research Triangle Park, NC, for a canola (*Brassica napus L.*) transformation event designated as Topas 19/2 (event Topas 19/2), which has been genetically engineered for tolerance to the herbicide glufosinate. Aventis requested an extension of a determination of nonregulated status issued previously for glufosinate-tolerant canola transformation event T45, the antecedent organism, in response to APHIS petition number 97–205–01p (see 63 FR 6703–6704, Docket No. 97–091–2, published February 10, 1998). Based on the similarity of canola event Topas 19/2 to the antecedent organism, Aventis requested a determination that glufosinate-tolerant canola event Topas 19/2 does not present a plant pest risk and, therefore, is not a regulated article under APHIS—regulations in 7 CFR part 340.

On March 1, 2002, APHIS published a notice in the **Federal Register** (67 FR 9431–9432, Docket No. 01–101–1) announcing that an environmental assessment (EA) for the Aventis extension request had been prepared and was available for public comment. APHIS received one comment on the subject EA during the designated comment period which ended April 1, 2002. We have provided a response to this comment as an attachment to our finding of no significant impact (FONSI). The EA and FONSI, including the attachment, are available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Analysis

Like the antecedent organism, canola event Topas 19/2 has been genetically engineered to contain a *pat* gene derived from *Streptomyces viridochromogenes.* The *pat* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. The subject canola event and the antecedent organism were developed through use of the *Agrobacterium tumefaciens* method, and expression of the added genes in Topas 19/2 and the antecedent organism is controlled in part by gene sequences derived from the plant pathogen cauliflower mosaic virus. In summary, canola event Topas 19/2 and the antecedent organism contain the same genetic elements with the exception of the antibiotic resistance marker gene *nptII* in Topas 19/2, which was used as a transformant selection tool during the developmental process. The parental variety used to develop the antecedent organism was the *B. napus* var. AC EXCEL, while the *B. napus* cultivar Topas was used for transforming canola event Topas 19/2.

Canola event Topas 19/2 and the antecedent organism were genetically engineered using the same transformation method and contain the same enzyme that makes the plants tolerant to the herbicide glufosinate. Accordingly, we have determined that canola event Topas 19/2 is similar to the antecedent organism in APHIS petition number 97–205–01p, and, therefore, that canola event Topas 19/2 should no longer be regulated under the regulations in 7 CFR part 340.

The subject canola event has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, canola event Topas 19/2 has been extensively field tested in Canada, and after having received the appropriate Canadian approvals, has been marketed commercially in Canada since 1995 with no reports of adverse effects on human health or the environment.

Determination

Based on an analysis of the data submitted by Aventis and a review of other scientific data, APHIS has determined that canola event Topas 19/2: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than the parental canola variety; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that canola event Topas 19/2 and any progeny derived from crosses with other canola varieties will be as safe to grow as canola that is not subject to regulation under 7 CFR part 340.

Because APHIS has determined that the subject canola event does not present a plant pest risk based on its similarity to the antecedent organism, Aventis canola event Topas 19/2 will no longer be considered a regulated article under APHIS regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject canola event or its progeny. However, importation of canola event Topas 19/2 and seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine any potential environmental impacts associated with the extension of a determination of nonregulated status for the subject canola event. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to the determination that Aventis' canola event Topas 19/2 and events developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the Aventis extension request and the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 19th day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29755 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Fork Eel Grazing Allotments EIS—Six Rivers National Forest

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: This notice is a revision of the original notice of intent (67 FR 68089) published in the **Federal Register** on November 8, 2002. The Six Rivers National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize grazing of up to 396 Animal Units on five allotments encompassing approximately 72,558 acres of National Forest System lands in the North Fork Eel River Watershed in Trinity County, California. The allotments within the analysis area include the Hoaglin, Soldier Creek, Zenia, Long Ridge and Van Horn. Portions of the latter four allotments extend into adjacent watersheds. Three units of the Van Horn Allotment located within the Upper Mad River Watershed will be evaluated in a separate environmental analysis. The analysis area is located in all or portions of the following townships: T2SR6E, T2SR7E, T3SR6E, T3SR7E, T3SR8E, T4S6E, T4S7E, T4SR8E, T5SR6E, T5SR7E, Humboldt Meridian; T25NR12W, Mount Diablo Meridian.

The purpose of this analysis is to evaluate the grazing management on five allotments within the North Fork Eel River watershed and to determine the level and conditions of grazing to be authorized on federal lands. The needs are to meet resource protection and enhancement goals in the Six Rivers National Forest Land and Resource Management Plan (LRMP), to manage for healthy rangeland ecosystems and to authorize grazing in a manner that maintains or improves rangeland productivity and desirable species while reducing noxious weeds. If approved, the Six Rivers National Forest would authorize grazing through term grazing permits for up to 10 years. The EIS will be designed to satisfy the requirements of the Federal Land Policy and Management Act of 1976 and implementing regulations (43 CFR 2310.1).

DATES: Comments concerning the scope of the analysis must be received on or before 30 days after publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in March 2003 and the final environmental impact statement is expected in June 2003.

ADDRESSES: Send written comments to S.E. "Lou" Woltering, Forest Supervisor, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501–3834. For further information, mail correspondence to Ruben Escatell, EIS Team Leader, Mad River Ranger District, Star Route Box 300, Bridgeville, CA 95526. A public meeting scheduled for December 3, 2002 will be held at the Mad River Community Hall located at 155–C Van Duzen Road, Mad River, CA 95552. Comments may be mailed electronically to *rescatell@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Ruben Escatell or Clara Bambauer Cross, EIS Team Leaders at (707) 574–6233.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this analysis is to evaluate the grazing management on five allotments within the North Fork Eel River watershed and to determine the level and conditions of grazing to be authorized on federal lands managed by the Six Rivers National Forest, Mad River Ranger District. The allotments within the project area are Hoaglin, Long Ridge, Soldier Creek, Van Horn and Zenia. There is a need to meet resource protection and enhancement goals in the Six Rivers National Forest LRMP through the implementation of Allotment Management Plans (AMPs) developed from this analysis, while protecting outstandingly remarkable values associated with the segment of the North Fork Eel River designated as Wild under the Wild and Scenic Rivers Act (1968). The goals and values of the LRMP include the following:

- Maintenance of water quality for aquatic ecosystems, particularly anadromous fish.
- Protection of heritage resources.
- Protection of habitat for wildlife and plant species of concern.
- Maintenance of values associated with inclusive Wilderness and Wild River designations.
- Maintenance of economic stability for the local community that relies on public rangelands.
- Fulfillment of a trust responsibility to the Round Valley Indian Tribes to manage grazing activities and policies so as to not adversely impact tribal trust properties and rights downriver of the analysis area.

There is also a need to manage for healthy rangeland ecosystems, and to authorize grazing in a way that maintains or improves rangeland productivity and desirable species while reducing noxious weeds.

A number of laws provide direction for grazing on public lands, including the Multiple-Use Sustained Yield Act (1960), the Wilderness Act (1964), the California State Wilderness Act (1984), the Forest and Rangeland Renewable Resources Planning Act (1974), the Federal Land Policy and Management Act (1976), and the National Forest Management Act (1976). The Six Rivers National Forest LRMP also contains provisions to implement this direction.

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Proposed Action

The Forest Service proposes to authorize grazing of up to 396 Animal Units on National Forest Systems lands on five cattle allotments within the North Fork Eel River watershed and prepare Allotment Management Plans to incorporate the elements included within the resulting decision. Grazing practices and construction or restoration of range improvements would be prescribed to protect and maintain water quality, anadromous fish habitat, and heritage sites, as well as improve livestock distribution to enhance rangeland health.

Responsible Official

S.E. "Lou" Woltering, Forest Supervisor, Six Rivers National Forest, USDA Forest Service, 1330 Bayshore Way, Eureka, CA 95501–3834, is the Responsible Official for any decision to authorize grazing and manage rangelands in the five cattle allotments within the North Fork Eel River watershed on National Forest system lands. He will document his decisions and rationale in a Record of Decision.

Nature of Decision To Be Made

The Forest Supervisor will make the following decision: whether or not to authorize cattle grazing in allotments within the North Fork Eel River watershed, and if so, the terms and conditions required for the term grazing permits and AMPs.

Scoping Process

The public is encouraged to take part in the scoping process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. A public meeting will be held to provide information on the proposal as well as on how to provide input to this analysis. The meeting will be held in Mad River, California at the Mad River Community Hall on December 3, 2002 from 6 to 8 p.m. Information from the meeting will be used in the preparation of the draft and final EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 18, 2002.

Jerry Boberg,

Acting Forest Supervisor, Six Rivers National Forest.

[FR Doc. 02–29730 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in Globe, Arizona. The purpose of the meeting is to review possible projects for funding and approve operating guidelines including the next meeting date.

DATES: The meeting will be held December 6, 2002, at 1 p.m.

ADDRESSES: The meeting will be held at the Gila County Courthouse in the Board of Supervisors hearing room, 1400 East Ash, Globe, Arizona 85501. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, PO Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Public Law 106–393 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Opportunity for public input will be provided.

Dated: November 18, 2002.

John C. Bedell,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 02–29728 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Corvallis, OR. The purpose of the meeting is to determine how to spend Title II Payments to Counties Funds. The agenda includes: how to distribute the balance of Title II funds; kinds of projects the RAC would like to see from the Forest Service; how much Title II money should be used on private lands versus public lands; the cost of NEPA implementation for public projects; and a public forum.

DATES: The meeting will be held December 13, 2002, beginning at 9 a.m.

ADDRESSES: The meeting will be held in the Siuslaw river Room, at the Siuslaw National Forest Headquarters, at 4077 SW Research Way, Corvallis, OR.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750–7210 or write to Forest Supervisor, Siuslaw National Forest, PO Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: A public input period will begin at 11:45 a.m. The meeting is expected to adjourn a few minutes after 12 noon.

Dated: November 18, 2002.

Gloria Brown,

Forest Supervisor.

[FR Doc. 02–29735 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–b]

Cancellation of Oregon's Designation, Request for Comments on the Need for Official Service in Oregon, and the Opportunity for Designation in the Oregon Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The Oregon Department of Agriculture (Oregon), is designated to provide official inspection services until June 30, 2005, according to the Act. Oregon informed Grain Inspection, Packers and Stockyards Administration (GIPSA) that they will cease providing official inspection effective November 27, 2002. Accordingly, GIPSA is announcing that Oregon's designation terminates effective November 27, 2002. GIPSA is also asking for comments on the need for service in the area, and asking for applicants for service in the area.

DATES: Applications and comments must be postmarked or electonically dated on or before December 23, 2002.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, room 1647–S, 1400 Independence Ave. SW., Washington, DC 20250–3604; FAX 202–690–2755; e-mail *Janet.M.Hart@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Oregon, main office in Salem, Oregon, to provide official inspection services under the Act on July 1, 2002.

Section 7(g)(1) of the Act provides that designations of official agencies will end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Oregon ends on June 30, 2005, according to the Act. However, Oregon advised GIPSA that they will close their sole specified service point in Pendleton, Oregon, on November 27, 2002. Accordingly, GIPSA is canceling Oregon's designation effective November 27, 2002, asking for comments on the need for official service in Oregon, and asking for applicants to provide service. GIPSA will select an applicant for service only if there is a demonstrated need.

Pursuant to Section 7(f)(2) of the Act, the following geographic area is open for designation; the entire State of Oregon, except those export port locations within the State which are serviced by GIPSA. Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.usda.gov/gipsa/oversight/parovreg.htm*.

Any firms in Oregon that require official service after November 27, 2002 should contact GIPSA's Portland Field Office at 503–326–7887.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 6, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–29756 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–04–A]

Opportunity for Designation in the Kansas, Minot (ND), and Tri-State (OH) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in June 2003. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies: Kansas Grain Inspection Service, Inc., (Kansas); Minot Grain Inspection, Inc., (Minot); and Tri-State Grain Inspection Service, Inc., (Tri-State).

DATES: Applications and comments must be postmarked or electronically dated or before January 2, 2003.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW.,

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Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647–S, 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Designation start	Designation end
Kansas	Topeka, KS	07/01/2000	06/30/2003
Minot	Minot, ND	07/01/2000	06/30/2003
Tri-State	Cincinnati, OH	07/01/2000	06/30/2003

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Colorado, Kansas, Nebraska, and Wyoming, is assigned to Kansas.

The entire State of Colorado.
The entire State of Kansas.
In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

Goshen, Laramie, and Platt Counties, Wyoming.

Kansas' assigned geographic area does not include the following grain elevators inside Kansas' area which have been and will continue to be serviced by the following official agency: Hastings Grain Inspection, Inc.: Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Minot.

Bounded on the North by the North Dakota State line east to State Route 14;

Bounded on the East by State Route 14 south to State Route 5; State Route 5 east to State Route 60; State Route 60 southeast to State Route 3; State Route 3 south to State Route 200;

Bounded on the South by State Route 200 west to State Route 41; State Route 41 south to U.S. Route 83; U.S. Route 83 northwest to State Route 200; State Route 200 west to U.S. Route 85; U.S. Route 85 south to Interstate 94; Interstate 94 west to the North Dakota State line; and

Bounded on the West by the North Dakota State line.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Harvey Farmers Elevator, Harvey, Wells County (located inside Grand Forks Grain Inspection Department, Inc.'s, area); and Benson Quinn Company, Underwood, and Falkirk Farmers Elevator, Washburn, both in McLean County (located inside Grain Inspection, Inc.'s, area).

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Ohio, is assigned to Tri-State.

Dearborn, Decatur, Franklin, Ohio, Ripley, Rush (south of State Route 244), and Switzerland Counties, Indiana.

Bath, Boone, Bourbon, Bracken, Campbell, Clark, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis (west of State Route 59), Mason, Montgomery, Nicholas, Owen, Pendleton, and Robertson Counties, Kentucky.

In Ohio:

Bounded on the North by the northern Preble County line east; the western and northern Miami County lines east to State Route 296; State Route 296 east to State Route 560; State Route 560 south to the Clark County line; the northern Clark County line east to U.S. Route 68;

Bounded on the East by U.S. Route 68 south to U.S. Route 22; U.S. Route 22 east to State Route 73; State Route 73 southeast to the Adams County line; the eastern Adams County line;

Bounded on the South by the southern Adams, Brown, Clermont, and Hamilton County lines; and

Bounded on the West by the western Hamilton, Butler, and Preble County lines.

2. Opportunity for Designation

Interested persons, including Kansas, Minot, and Tri-State, are hereby giyen the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning July 1, 2003, and ending June 30, 2006. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.usda.gov/gipsa/oversight/parovreg.htm*.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Kansas, Minot, and Tri-State official agencies. Commenters are encouraged to submit pertinent data concerning these official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 13, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–29757 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–02–S]

Designation for the Alabama, California, Kankakee (IL), Springfield (IL), and Washington Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Alabama Department of Agriculture and Industries (Alabama);
California Department of Food and Agriculture (California);
Kankakee Grain Inspection, Inc. (Kankakee);
Springfield Grain Inspection, Inc. (Springfield); and
Washington Department of Agriculture. (Washington).

EFFECTIVE DATES: January 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 3, 2002, **Federal Register** (67 FR 38249), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by July 1, 2002.

Alabama, California, Kankakee, and Washington were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them. There were two applicants for the Springfield area: Springfield applied for all of the area currently assigned to them, and Keokuk Grain Inspection Service (Keokuk), a designated official agency, applied for Cass and Schuyler Counties. GIPSA asked for comments on the applicants for service in the September 3, 2002, **Federal Register** (67 FR 13599). Comments were due by October 1, 2002. GIPSA received no comments by the due date.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Alabama, California, Kankakee, Springfield, and Washington are able to provide official services in the geographic areas specified in the June 3, 2002, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start—end
Alabama	Montgomery, AL, Additional Service Locations: Decatur, Mobile, AL, 334–415–2531	01/01/2003–12/31/2005
California	Sacramento, CA, Additional Service Locations: Bell, Corcoran, Imperial, Stockton, West Sacramento, Williams, CA, 916–654–0743.	01/01/2003–12/31/2005
Kankakee	Essex, IL, Additional Service Location: Tiskilwa, IL, 815–365–2268	01/01/2003–12/31/2005
Springfield	Springfield, IL, 217–522–5278	01/01/2003–12/31/2005
Washington	Olympia, WA, Additional Service Locations: Colfax, Kalama, Pacso, Seattle, Spokane, Tacoma, Tumwater, Vancouver, WA, 360–902–1921.	01/01/2003–12/31/2005

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 13, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–29758 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of a Public Meeting on Implementation of Section 9006 of the Farm Security and Rural Investment Act of 2002

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency in the Rural Development Mission Area of the United States Department of Agriculture, will hold a public meeting entitled "Expanding Rural Renewable Energy Systems." The purpose of this event is to initiate a dialogue about how to implement a loan guarantee, direct loan, and grant program to finance

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renewable energy systems and make energy efficiency improvements. Section 9006 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–71) (the Act) provides $23 million annually for this purpose. The program will be made available to farmers, ranchers, and rural small businesses. We anticipate that this program will support energy self-sufficiency and promote rural economic development.

DATES: The meeting will be held on December 3, 2002. Registration will start at 8:30 a.m.; the program will begin at 9 a.m. and conclude by 3 p.m.

ADDRESSES: Jefferson Auditorium, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC Participants should enter the building through the 4th wing entrance of the South Building located on Independence Avenue between 12th and 14th Street. Valid photo identification is required for clearance by building security personnel.

INSTRUCTIONS FOR PARTICIPATION: Although registration is encouraged, walk-ins will be accommodated to the extent that space permits. Registered participants will be given priority for making presentations prior to walk-ins. Anyone interested in renewable energy systems and energy efficiency improvements is encouraged to attend the public meeting. Presentations will be limited to 10 minutes in duration. To register and request time for an oral statement, contact Elsa De Leon, Office of the Deputy Administrator for Business Programs, Room 5050 South Agriculture Building, Stop 3220, 1400 Independence Avenue SW., Washington, DC 20250–3220; Email: *elsa.deleon@usda.gov*; Telephone: 202–720–0813. To submit comments by email, send to *pandor.hadjy@usda.gov* in an ASCII file. Written comments should follow the issues described in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Assistant Deputy Administrator, Business Programs, RBS, Room 5050 South Agriculture Building, Stop 3220, 1400 Independence Avenue, SW., Washington, DC 20250–3220, telephone: 202–720–9693.

SUPPLEMENTARY INFORMATION: The oral and written information obtained from interested parties will be considered in implementing provisions of Section 9006 of the 2002 Act, which authorizes the Department to make loan guarantees, loans, and grants to farmers, ranchers, and rural small businesses for renewable energy systems and energy efficiency improvements. In order to assure that the Act is implemented to meet constituent needs, RBS is sponsoring a listening forum and soliciting written comments to encourage public participation in gathering input and comments and in making recommendations on program implementation. All comments are welcome, and no attempt will be made to establish a concensus.

RBS is particularly interested in receiving comments on the following specific issues as they relate to Section 9006:

1. The Act stipulates that financial assistance may be provided to purchase renewable energy systems and make energy efficiency improvements.

—What projects should be eligible for funding?

—Should certain types of projects receive priority for funding?

—Should preference be given to new, innovative technologies or proven technologies?

2. Loan guarantees, direct loans, and grant programs are authorized under the legislation.

—What type of financial assistance is most in need (*i.e.*, grants, direct loans, or loan guarantees)?

3. Section 9006 states that, in determining the amount of grant or loan, the Secretary shall take into consideration as applicable:

a. The type of renewable energy system to be purchased;

b. The estimated quantity of energy to be generated by the renewable energy system;

c. The expected environmental benefits of the renewable energy system;

d. The extent to which the renewable energy system will be replicable;

e. The amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under Section 9005 of the Act;

f. The estimated length of time it would take for energy savings generated by the activity to equal the cost of the activity; and

g. Other factors as appropriate.

—What other factors, if any, should the Department consider in determining the amount of grant or loan?

—Should certain types of projects or geographic areas be targeted and given preference for financial assistance?

4. The Act states that the amount of grant shall not exceed 25 percent of the cost of the activity funded under the program. Additionally, the combined amount of a grant and loan made or guaranteed shall not exceed 50 percent of the cost of the activity funded.

—What are various sources of program matching funds (i.e., other Federal, State, local, or private programs)?

Those who wish to make oral presentations should restrict their presentation to 10 minutes and are encouraged to have written copies of their complete comments, including exhibits, for inclusion in the Agency record. Those who register their attendance at the meeting, but have not been scheduled in advance to present oral testimony, will be given an opportunity to do so if time permits. Otherwise, the opportunity will be given to submit their views in writing prior to December 6, 2002. Participants who require a sign language interpreter or other special accommodations should contact Ms. De Leon as directed above.

Copies of the presentations will not be available for distribution from the Department. However, they will be available for public inspection in Room 5050 South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours, 8 a.m. to 4:30 p.m. EST.

Dated: November 18, 2002.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 02–29703 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–XY–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: December 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, the entity of the Federal Government identified in the notice for the service will be required to procure the service listed below from nonprofit agency employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Food Service, 105th Airlift Wing, Newburgh, New York.
NPA: Occupations, Inc., Middletown, New York.
Contract Activity: 105th Airlift Wing/LGC, Newburgh, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–29770 Filed 11–21–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: December 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On September 13, September 20, and September 27, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 F.R. 58014, 59249, 61066 and 61067) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Braided Nylon, Type II Parachute Cord
4020–00–262–2019
NPA: East Texas Lighthouse for the Blind, Tyler, Texas
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania
Product/NSN: Dog Collar
M.R. 1975 (Small)
M.R. 1976 (Medium)
M.R. 1977 (Large)
Product/NSN: Dog Leash
M.R. 1978
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Services

Service Type/Location: Administrative Services—Human Resources, Department of Interior—South, Office of Surface Mining, Washington, DC
NPA: ServiceSource, Inc., Alexandria, Virginia
Contract Activity: Department of Interior—South, Washington, DC
Service Type/Location: Custodial Service, Building 4050, Fort Polk, Louisiana
NPA: Vernon Sheltered Workshop, Leesville, Louisiana
Contract Activity: Directorate of Contracting, Fort Polk, Louisiana
Service Type/Location: Telephone Switchboard Operations, Department of Veterans Affairs, Erie VA Medical Center, Erie, Pennsylvania
NPA: Elizabeth Pierce Olmsted, M.D. Center for the Visually Impaired, Buffalo, New York
Contract Activity: Erie Veterans Affairs Medical Center, Erie, Pennsylvania

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will not have a severe economic impact on future contractors for the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Clock, Atomic, Standard, Thermometer
6645–00–NIB–0076
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Clock, Wall, Battery
6645–01–467–8477
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois

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Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Label, Pressure-Sensitive Adhesive
7530–00–577–4373
7530–00–577–4374
7530–00–577–4375
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Sheath, Pen and Pencil
7510–00–052–2664
NPA: York County Blind Center, York, Pennsylvania
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: SPEAR Insulation Subsystem
8415–01–F01–0197 (Silk Weight Undershirt & Drawers—XX-Large/Regular)
8415–01–F01–0204 (Mid Weight Undershirt & Drawers—XX-Large/Regular)
8415–01–F01–0211 (Stretch Overall—XX-Large/Regular)
8415–01–F01–0218 (Fleece Jacket—XX-Large/Regular)
8415–01–F01–0219 (One Set of 4-Layer Clothing—Small/Regular)
8415–01–F01–0220 (One Set of 4-Layer Clothing—Medium/Regular)
8415–01–F01–0221 (One Set of 4-Layer Clothing—Large/Regular)
8415–01–F01–0222 (One Set of 4-Layer Clothing—Large/Long)
8415–01–F01–0223 (One Set of 4-Layer Clothing—X-Large/Regular)
8415–01–F01–0224 (One Set of 4-Layer Clothing—X-Large/Long)
8415–01–F01–0225 (One Set of 4-Layer Clothing—XX-Large/Regular)
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan
Contract Activity: U.S. Army Soldier Systems Command, Natick, Massachusetts

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–29771 Filed 11–21–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke two antidumping duty orders in part.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Extruded Rubber Thread from Malaysia and Certain Helical Spring Lock Washers from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2003.

	Period to be reviewed
Antidumping Duty Proceedings	
Malaysia: Extruded Rubber Thread, A–557–805	10/1/01–9/30/02
Heveafil Sdn. Bhd.	
The People's Republic of China: Helical Spring Lock Washers,[1] A–570–822	10/1/01–9/30/02
Hang Zhou Spring Washer Plant (aka Zhejiang Wanxin Group Co., Ltd.)	
The People's Republic of China: Barium Chloride,[2] A–570–007	10/1/01–9/30/02
China National Chemicals Import and Export Corp.	
Zhang Jia Ba Salt Chemical Plant	
Tangshan	
Tianjin Chemical Industry Corporation	
Qingdao Red Star Chemical Group	
Linshu	
Sichuan Ermeishan Salt Chemical Industry Group Company, Ltd.	
Hengnan	
Tianjin Buohai Chemical United Import/Export Company	
Kunghan	
Hebei Xinji Chemical Plant	
Countervailing Duty Proceedings	
Iran: Roasted In-Shell Pistachios, C–507–601	1/1/01–12/31/01
Tehran Negah Nima Trading Company, Inc.'s (dba Nima Trading Company)	
Suspension Agreements	
None.	

[1] If one of the above-named companies does not qualify for a separate rate, all other exporters of helical spring lock washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above-named companies does not qualify for a separate rate, all other exporters of barium chloride from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 18, 2002.

Holly A. Kuga,
Senior Office Director, Group II, Office 4, Import Administration.
[FR Doc. 02–29790 Filed 11–21–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–850, A–588–851)

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan: Notice of Rescission of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Reviews.

EFFECTIVE DATE: November 22, 2002.

SUMMARY: On July 24, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 48435) a notice announcing the initiation of administrative reviews of the antidumping duty orders on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan and certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Japan, covering the period June 1, 2001, through May 31, 2002. These reviews were requested by United States Steel Corporation, a U.S. producer of the domestic like product of the merchandise under review. We are now rescinding these reviews as a result of United States Steel Corporation's withdrawal of its requests for administrative reviews.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Carol Henninger, at (202) 482–0631 or (202) 482–3003, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2002).

Case History

On June 5, 2002, the Department published a notice of opportunity to request administrative reviews of the antidumping duty orders on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan and certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Japan (67 FR 38640). On June 28, 2002, United States Steel Corporation in accordance with 19 CFR 351.213(b), requested administrative reviews of these orders for Sumitomo Metal Industries, Ltd., NKK Tubes, and Kawasaki Steel Corporation. On July 24, 2002, in accordance with 19 CFR 351.221(c)(1)(i), we initiated administrative reviews of these orders for the period June 1, 2001 through May 31, 2002 (67 FR 48435). On October 22, 2002, United States Steel Corporation withdrew its requests for these reviews.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review. The Department may extend the time limit for withdrawing the request if it determines that it is reasonable to do so. United States Steel Corporation was the only party to request these reviews, and it has withdrawn its requests within the 90–day period. Accordingly, we are rescinding these reviews. The Department will issue appropriate assessment instructions to the U.S. Customs Service within 15 days of publication of this notice.

This notice is issued and published in accordance with section 751 of the Act (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: November 15, 2002.

Holly A. Kuga,
Acting Deputy Assistant Secretary for Import Administration.
[FR Doc. 02–29791 Filed 11–21–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China (PRC): Postponement of Time Limit for Preliminary Results of New Shipper Antidumping Review in Conjunction with Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 2, 2002, the Department of Commerce (the Department) received a request from China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp. (Lin Fen) for an expansion of the normal period of review (POR) of the new shipper review. In the same letter, Lin Fen agreed to waive the time limits of section 351.214(i) of the Department's regulations so that the Department may conduct the new shipper review concurrently with the administrative review of silicon metal from the PRC for the period June 1, 2001, through May 31, 2002 (67 FR 48435). Therefore, pursuant to Lin Fen's request and in accordance with the Department's regulations, we will expand the normal POR of the new shipper review by 45 days, from June 1, 2001 through November 30, 2001 to June 1, 2001 through January 14, 2002, and conduct this new shipper review concurrently with the administrative review.

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EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Christian Hughes or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0190 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On December 31, 2001, the Department received a timely request from Lin Fen to conduct a new shipper review of the antidumping duty order on silicon metal from the PRC. On January 31, 2002 (67 FR 5966), the Department initiated the new shipper antidumping review covering the period June 1, 2001, through November 30, 2001. On June 28, 2002, the Department received a timely request from Lin Fen to conduct an administrative review of this antidumping duty order. On July 24, 2002, the Department initiated the administrative antidumping review covering the period June 1, 2001, through May 31, 2002 (67 FR 48435).

Postponement of New Shipper Review

On October 2, 2002, Lin Fen, in accordance with section 351.214(j)(3), agreed to waive the applicable time limits for the new shipper review so that the Department might conduct the new shipper review concurrently with the June 1, 2001 through May 31, 2002 administrative review of silicon metal from the PRC, and also requested an expansion of the new shipper review POR in order to include both sales to an unaffiliated customer and entries of subject merchandise into the United States. The Department has the discretion to expand the POR in order to cover entries of the subject merchandise. *See* section 351.214(f)(2)(ii) of the Department's regulations, and the preamble to the Department's regulations, which specifically discusses the Department's ability to expand the POR by 30 days or more, at 66 FR 27319–27320 (May 19, 1997). Therefore, we have decided to expand the new shipper POR by 45 days until January 14, 2002 in order to capture both sales to an unaffiliated customer and entries of subject merchandise into the United States. Pursuant to Lin Fen's request, and in accordance with section 351.214(j)(3) the Department's regulations, we will conduct this new shipper review concurrently with the June 1, 2001 through May 31, 2002 administrative review of silicon metal from the PRC. Therefore, the preliminary results of the antidumping new shipper review, as well as the administrative review, will be due 245 days from the last day of the administrative review period, *i.e.*, March 2, 2003. *See* section 351.213(h) of the Department's regulations. Because this date falls on a weekend, we will issue the preliminary results of both reviews on the next business day, March 3, 2003.

This notice is published in accordance with section 751(a)(2)(B) of the Act and section 351.214(j)(3) of the Department's regulations.

Dated: November 15, 2002.

Barbara E. Tillman,

Acting Deputy Assistant Secretaryfor Import Administration, Group III.

[FR Doc. 02–29788 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 22, 2002.

SUMMARY: On May 10, 2002, the Department of Commerce (the Department) published the preliminary results of the antidumping administrative review of sulfanilic acid from the People's Republic of China. *See Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review of Sulfanilic Acid: Sulfanilic Acid from the People's Republic of China*, 67 FR 31770 (May 10, 2002) (*Preliminary Results*).

Based on our analysis of comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for Zhenxing Chemical Industry Company (Zhenxing) (also known as Baoding Mancheng Zhenxing Chemical Plant) is listed below in the section entitled "Final Results of Review."

We are rescinding the review with respect to Xinyu Chemical Plant (Xinyu) (formerly known as Yude Chemical Industry Company) as explained below in the "Final Rescission" section of this notice because Xinyu did not export the subject merchandise to the United States during the period of review (POR).

FOR FURTHER INFORMATION CONTACT: Sean Carey or Holly Hawkins, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230 at (202) 482–3964 or (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

All citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2002).

Background

Since the *Preliminary Results*, the following events have occurred. Petitioner, Nation Ford Chemical Company (NFC), timely submitted publicly available information regarding the valuation of factors of production on May 30, 2002, in accordance with section 351.301(c)(3)(ii) of the Department's regulations. In accordance with section 351.301(c)(1), respondents submitted timely factual information on June 10, 2002 in response to the factual information submitted by petitioner on May 30, 2002.

On June 10, 2002, petitioner and respondents submitted case briefs, and respondents made a timely request for a public hearing. Petitioner and respondents submitted rebuttal briefs on June 19, 2002 after the Department granted an extension for the filing of rebuttal briefs in response to a request from respondents. On August 29, 2002, we extended the deadline for the final results of this review. *See Extension of Time Limit for Final Results of Antidumping Duty Administrative Review; Sulfanilic Acid from the People's Republic of China*, 67 FR 57220 (September 9, 2002). Respondents withdrew their request for a public hearing on October 8, 2002.

Final Rescission

In the *Preliminary Results*, the Department noted that a query of U.S. Customs Service data on entries of sulfanilic acid from the People's Republic of China made during the POR confirmed that Xinyu made no entries during the POR. Although in a prior decision we had found that Xinyu and Zhenxing should be treated as a single entity (*see Notice of Amendment of Final Results of Antidumping Duty Administrative Review; Sulfanilic Acid from the People's Republic of China*, 65 FR 18300, April 7, 2000), our analysis in this review has revealed no evidence that Xinyu and Zhenxing should be treated as a single entity. No new information has been presented since the *Preliminary Results* to warrant reconsideration of our determination to rescind. Therefore, we are rescinding the review with respect to Xinyu.

Scope of the Antidumping Duty Order

Imports covered by this antidumping duty order are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of the Comments Received

All issues raised in the briefs filed by parties to this administrative review are addressed in the *Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Results of the Administrative Review of Sulfanilic Acid from the People's Republic of China*, dated November 15, 2002 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the internet at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memo* are identical in content.

Separate Rates

In the *Preliminary Results*, we found that Zhenxing met the requirements for receiving a separate rate. No new information or evidence of changed circumstances has been presented since then to warrant reconsideration of this finding. Accordingly, Zhenxing has been assigned a separate rate, the rate listed below under the section "Final Results of Review," for purposes of these final results.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. A complete discussion of the changes made to these calculations can be found in the "Memorandum to the File from Sean Carey, Trade Analyst, through Dana Mermelstein, Program Manager, AD/CVD Enforcement, Office 7: Analysis for the Final Results of the 2000/2001 Administrative Review of Sulfanilic Acid from the People's Republic of China," dated November 15, 2002.

Final Results of Review

We determine the weighted-average dumping margin for Zhenxing for the periodAugust 1, 2000 through July 31, 2001 to be 64.22 percent.

Assessment Rates

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Since the reported sales are CEP sales through a single affiliated importer, we will direct Customs to assess the rate that was calculated using the aggregate value of the calculated antidumping duties divided by the aggregate entered customs value of the subject merchandise from Zhenxing during the POR.

Cash Deposit Requirements

The deposit requirement, at the rate noted above under "Final Results of Review," will be effective for all shipments of subject merchandise by Zhenxing entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(2)(C) of the Act.

For all other companies, the following rates are in effect and remain unaffected by the results of this administrative review: (1) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (2) for all other PRC exporters, the rate will be the current PRC-wide *ad valorem* rate, which is 85.20 percent; and (3) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

Notification to Parties

This notice serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

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Dated: November 15, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Issues

1. Use of New Surrogate Value Information for Aniline and Sulfuric Acid
2. Supplementing or Adjusting New Surrogate Value Information for Aniline and Sulfuric Acid

[FR Doc. 02–29789 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–044. *Applicant:* Dartmouth College, 6015 McNutt, Room 104, Hanover, NH 03755. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used to study the basic principles of chromosome movement during cell division. Cells are grown in culture and at precise times during the cell cycle they are chemically fixed and embedded in acrylic polymer plastic. The cells are then cut into very thin sections and used to examine very fine mechanistic aspects of chromosome attachment to the spindle, the structure responsible for chromosome movement. *Application accepted by Commissioner of Customs:* September 27, 2002.

Docket Number: 02–046. *Applicant:* Brandeis University, Rosenstiel Research Center (MS–029), 415 South Street, Waltham, MA 02454–9114. *Instrument:* Electron Microscope, Model Tecnai F30 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study biological assemblies of proteins and collect images of these complexes which are then analyzed by computer to determine three-dimensional structures. Electron scattering and image formation will also be studied. *Application accepted by Commissioner of Customs:* October 31, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–29794 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Pennsylvania State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5 PM in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–042. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* Plate Filler, Model QFill2. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* See notice at 67 FR 64097, October 17, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the previously imported instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–29792 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Pennsylvania State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–043. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Colony Picking/Arraying Robot, Model Q PixII. Manufacturer: Genetix Limited, United Kingdom. Intended Use: See notice at 67 FR 64097, October 17, 2002.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: a unique multi-tasking robotic system for both picking and spotting as well as arraying specific cell colonies with a rapid picking rate of 3500 colonies per hour and the very high throughput required for large scale gene sequencing projects. The National Institutes of Health advises in its memorandum of October 7, 2002 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–29793 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111402C]

Alaska Transient Killer Whales; Notice of Petition Availability

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for information.

SUMMARY: NMFS has received a petition to designate a group (called the AT1 group) of killer whales (*Orcinus orca*) as a depleted stock under the Marine Mammal Protection Act (MMPA). In accordance with the MMPA, NMFS is announcing receipt of the petition and its availability for public review and is soliciting comments on the petition.

DATES: Comments must be received by December 23, 2002.

ADDRESSES: A copy of the petition may be requested from and comments should be submitted to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via facsimile (fax) to (301) 713–0376, but will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle, Office of Protected Resources, Silver Spring, MD (301) 713–2322, ext. 105, or Mr. Michael Payne, Alaska Regional Office, Juneau, AK (907)586–7235.

SUPPLEMENTARY INFORMATION:

Electronic Access

A copy of the petition and its attachments are available on the Internet at the following address:*http://www.fakr.noaa.gov/protectedresources/.*

The 2000 stock assessment report for Eastern North Pacific Transient Killer Whales is available on the Internet at the following address:*http://www.nmfs.noaa.gov/prot_res/overview/mm.html.*

Background

Section 3(1)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1362(1)(A)) defines the term, "depletion" or "depleted", to include any case in which "...the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals ..., determines that a species or population stock is below its optimum sustainable population." Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines "optimum sustainable population [(OSP)]...with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (i.e., K) to its maximum net productivity level (MNPL). MNPL is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

The MMPA provides for interested parties to submit a petition to designate a population stock of marine mammals as depleted. Section 115(a)(3) of the MMPA (16 U.S.C. 1383b(a)(3)) requires NMFS to publish a notice in the **Federal Register** that such a petition has been received and is available for public review. Within 60 days of receiving a petition, NMFS must publish a finding in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

If NMFS makes a positive 60–day finding, NMFS must promptly initiate a review of the status of the affected population stock of marine mammals. No later than 210 days after receipt of the petition, NMFS must publish a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Following a 60–day comment period on the proposed rule, NMFS must publish a final rule within 90 days of the close of the comment period on the proposed rule.

In its 2000 stock assessment report on the affected killer whales, NMFS recognized the AT1 group as a part of a population stock called Eastern North Pacific Transient Killer Whales, which includes transient killer whales in British Columbia, Southeastern Alaska, and the Gulf of Alaska in addition to the AT1 group (see Electronic Access to obtain a copy of this stock assessment report). The report states that the minimum number of whales in this stock is 346.

Petition on AT1 Killer Whales

On November 13, 2002, the National Wildlife Federation submitted a petition on behalf of itself and six other organizations to NMFS to designate the AT1 group of killer whales as a depleted population stock under the MMPA. The petition describes the AT1 group as one of three populations of transient killer whales in the Eastern North Pacific Ocean, which lives exclusively in Prince William Sound and the Kenai Fjords, and provides information related to this group of killer whales as a separate stock under the MMPA.

The petition includes an abundance of 22 AT1 killer whales when observations began in 1984 and a current abundance of nine whales and suggests that the decline in numbers demonstrates that the stock is depleted. The petition states that the causes of the decline include the following:

(1) The *Exxon Valdez* oil spill,

(2) Chemical contaminants,

(3) Increased vessel traffic, and

(4) Reduction in available prey species.

In a comment dated July 18, 2002, on draft 2002 marine mammal stock assessment reports the petitioners stated that the AT1 group should be a separate stock. However, the Eastern North Pacific Transient Killer Whale report was not scheduled for revision in 2002 and had not been modified when the draft 2002 reports were made available for public review and comment.

In accordance with the MMPA, NMFS announces receipt of this petition, and its availability for public review (See **ADDRESSES** and Electronic Access). The petition includes two attachments. Attachment A is the comment that the petitioners submitted to NMFS on draft 2002 marine mammal stock assessment reports. Attachment B is an extract from a petition submitted by other organizations related to Southern Resident killer whales in Puget Sound, WA. NMFS also solicits comments and information related to the statements in the petition and additional background on the status of the AT1 group of killer whales.

Dated: November 18, 2002.

Donald R. Knowles

Director, Office of Protected ResourcesNational Marine Fisheries Service.

[FR Doc. 02–29776 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–22–S

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 101602C]

Notice of Availability of a Draft Environmental Impact Statement for an Incidental Take Permit Application and Habitat Conservation Plan

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of application and availability for public comment.

SUMMARY: This document advises the public that J.L. Storedahl & Sons, Inc. (Storedahl), has submitted an application to the Fish and Wildlife Service and the National Marine Fisheries Service (together, the Services) for incidental take permits (permits) pursuant to the Endangered Species Act of 1973, as amended (Act). The permit application includes: (1) the proposed Habitat Conservation Plan (HCP); and, (2) the proposed Implementing Agreement. The Services also announce the availability of a draft Environmental Impact Statement (DEIS) for the permit application.

This notice is provided pursuant to section 10(a) of the Act, and National Environmental Policy Act regulations. The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments on the permit application, DEIS, HCP, and Implementing Agreement must be received from interested parties no later than January 21, 2003.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for addresses where hard-copies of the Plan and associated documents may be obtained or reviewed. Requests for documents on CD ROM should be made by calling the U.S. Fish and Wildlife Service at (360) 534–9330. The documents are also available electronically on the World Wide Web at *http://www.r1.fws.gov/*.

Comments and requests for information should be sent to Tim Romanski, Storedahl DEIS/HCP Comments, U.S. Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 102, Lacey, Washington 98503–1263, telephone (360) 753–5823, facsimile (360) 753–9518. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, Project Manager, U.S. Fish and Wildlife Service, (360) 753–5823; or Laura Hamilton, Project Manager, National Marine Fisheries Service, (360) 753–5820.

SUPPLEMENTARY INFORMATION: Hard bound copies are available for viewing, or partial or complete duplication, at the following libraries: Woodland Community Library, 770 Park St, Woodland, WA (360) 225–2115; Battle Ground Community Library, 12 W Main St. Battle Ground, WA (360) 687–2322; Ridgefield Community Library, 210 N Main Ave, Ridgefield, WA (350)887–8281; Vancouver Community Library, 1007 E Mill Plain Blvd, Vancouver, WA (360) 695–1566; and, Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA (360)352–0595.

Background

As required by section 10(a)(2)(B) of the Act, Storedahl has also prepared an HCP designed to minimize and mitigate any such take of endangered or threatened species. The permit application is related to gravel mining and reclamation activities on approximately 300 acres of Storedahl-owned lands located in Clark County, Washington. The proposed permits would authorize the take of the following threatened species incidental to otherwise lawful activities: steelhead (*Oncorhynchus mykiss*), bull trout (*Salvelinus confluentus*), chum salmon (*Oncorhynchus keta*), and chinook salmon (*Oncorhynchus tshawytscha*). Storedahl is also seeking coverage for 5 currently unlisted species (including anadromous and resident fish) under specific provisions of the permits, should these species be listed in the future. Section 9 of the Endangered Species Act and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3, 50 CFR 222.102).

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. U.S. Fish and Wildlife Service regulations governing permits for endangered species are promulgated in 50 CFR 17.22; and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. National Marine Fisheries Service regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Storedahl owns and operates a gravel processing plant in rural Clark County, Washington, near the East Fork Lewis River. This site is known as the Daybreak Mine. It is located approximately 4 miles (6.4 km) southeast of the town of LaCenter, and approximately 1 mile (1.6 km) downstream of Clark County's Daybreak Park. The 300–acre site is composed of two parcels. One parcel is approximately 80 acres and consists of 5 pits, which were mined intermittently, under different owners, from 1968 to 1995. No active extraction of gravel from this site is now occurring. Current operations are limited to processing and distributing sand and gravel that is mined off-site. Processing involves separating the sand from the gravel, and separating the gravel into different size classes. The second parcel is located immediately to the north and east of this previously mined area, on a low terrace above the 100–year floodplain. This 178–acre parcel contains high quality sand and gravel deposits that have not been mined. Current operations on this parcel include cattle grazing and hay and crop production.

Storedahl proposes to mine the sand and gravel deposits from 101 acres of this 178–acre parcel, and continue processing operations at the other parcel. These operations would continue until sand and gravel extraction at the 178–acre parcel is complete, projected to be 15 years or less. Concurrent with, and following sand and gravel extraction, Storedahl would implement a site reclamation plan.

The proposed mining, processing, and reclamation activities have the potential to affect fish and wildlife associated with the East Fork Lewis River ecosystem. The majority of the gravel to be mined is located just below the water table in a shallow aquifer, and the proposed gravel mining and reclamation plan would create a series of open water ponds and emergent wetlands. The created ponds and wetlands will drain via a controlled outlet to a small creek (Dean Creek) and then to the East Fork Lewis River. The shallow aquifer is connected to the East Fork Lewis River. The proposed mining and reclamation plan has the potential to affect a suite of habitat conditions, including, but not limited to, water quality, channel morphology, riparian function, off-channel connections, and the conversion of pastureland to forest, wetland, and open water habitats. Some of these effects could involve species subject to protection under the Endangered Species Act.

Section 10 of the Act, as previously stated, contains provisions for the issuance of permits to non-Federal land owners for the take of endangered and threatened species. Any such take must be incidental to otherwise lawful activities, and must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. As required under the permit application process, Storedahl prepared and submitted to the Services for approval an HCP containing a strategy for minimizing and mitigating take associated with the proposed activities to the maximum extent practicable. Storedahl's HCP contains a funding strategy, which is also required under the permit application process.

Activities proposed for permit coverage include the following.

(1) Gravel mining and related activities in the terrace above the 100–year floodplain, with potential impacts on groundwater quality and quantity, potential impacts on surface water quality and quantity, potential influence on channel migration, and potential access to gravel ponds by anadromous salmonids.

(2) Gravel processing.

(3) Site reclamation activities including, but not limited to the creation of emergent and open water wetland habitat, riparian and valley-bottom forest restoration, habitat rehabilitation, riparian irrigation, low flow augmentation to Dean Creek, and construction of facilities (such as trails and parking lots) to support future incorporation of the site into the open space and greenbelt reserve.

(4) Monitoring and maintenance of conservation measures. The duration of the proposed permits and HCP is 25 years, though some aspects of the conservation measures associated with the proposed HCP would continue in-perpetuity.

The Services formally initiated an environmental review of the project through publication of a notice of intent to prepare an environmental impact statement (EIS) in the **Federal Register** on December 27, 1999 (64 FR 72318). That document also announced a 30–day public scoping period during which interested parties were invited to provide written comments expressing their issues or concerns relating to the proposal. Following this announcement and public scoping, the DEIS was prepared.

The DEIS compares Storedahl's proposal against two no-action scenarios. Differences between the no-action scenarios and the proposed action are considered to be the effects that would occur if the proposed action were implemented. One additional alternative to Storedahl's proposal and the two no-action scenarios is also analyzed. These analyses, consisting of the comparisons and the expected effects, are contained in the DEIS.

Alternatives considered in the analysis include the following.

(1) Alternative A–1: Partition the property into 20–acre parcels and sell as rural residential/agricultural tracts - No Action.

(2) Alternative A–2: Mine the property without permits and avoid take - No Action.

(3) Alternative B: Mine and undertake habitat enhancement and reclamation activity at the Daybreak property implementing the May 2001 public review draft HCP - Preferred Alternative.

(4) Alternative C: Mine and undertake habitat enhancement and reclamation activity at the Daybreak property following a design and conservation measures presented to the Services in July, 2000.

One alternative was considered during scoping but not analyzed in detail. That alternative is essentially a combination of the two no-action scenarios listed above, Alternatives A–1 and A–2. That alternative would have involved mining on the portion of the property currently zoned for mining, with subsequent partitioning and sale of the mined and unmined property for low-density rural residential development. This was dismissed from detailed analysis because the vast majority of marketable sand and gravel on the portion of the property currently zoned for mining has already been extracted, rendering the alternative not feasible.

This notice is provided pursuant to section 10(a) of the Act, and National Environmental Policy Act regulations. The Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act and National Environmental Policy Act. If it is determined that the requirements are met, permits will be issued for the incidental take of listed species. The final permit decisions will be made no sooner than 30 days after the publication of the Final EIS.

Dated: October 28, 2002.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon

Dated: November 19, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 02–29778 Filed 11–21–02; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021108269]

RIN 0648–ZB33

Joint Program Announcement on Climate Variability and Human Health for FY 2003; National Oceanic and Atmospheric Administration (NOAA), in Collaboration With; National Science Foundation (NSF), Environmental Protection Agency (EPA), and EPRI (formerly the Electric Power Research Institute)

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: Due to an unavoidable administrative error, the wrong version of this notice was published on November 14, 2002, at 67 FR 69110. With the intent of stimulating integrated multidisciplinary studies and enhancing institutional collaboration, National Oceanic Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), the National Science Foundation (NSF), and the Electric Power Research Institute (EPRI), announce our interest in receiving research proposals to improve our understanding of the human health consequences related to climate variability and enhance the integration of useful climate information into public health policy and decision-making. This joint announcement is intended to support the formation of multidisciplinary teams working in close collaboration on integrated projects to illuminate the human, biological, and physical pathways by which climate may affect human health,

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and which explore the potential for applying climate and environmental information toward the goal of improved public health. We are also interested in understanding how the human health impacts and responses related to climate variability affect our knowledge of potential consequences of, and adaptation and vulnerability to, longer term changes in the climate system.

Investigators should also plan to participate in an annual meeting of researchers funded under this announcement. This meeting will be organized by the funding partners and is intended to facilitate midpoint discussions of research and methodology as well as presentations of final research results. The participation of other team members, particularly new researchers at the graduate and postdoctoral level, is highly encouraged.

DATES: Unless otherwise noted, strict deadlines by which NOAA OGP must receive proposals for submission to the FY 2003 process are: Pre-proposals must be received by OGP no later than December 16, 2002, and full proposals must be received no later than February 18, 2003; Applicants who have not received a response to their pre-proposal within four weeks should contact the program manager: Juli Trtanj (301) 427–2089, ext. 134 or Internet: *juli.trtanj@noaa.gov*. The time from target date to grant award varies. We anticipate that review of full proposals will occur in April 2003, for most approved projects. August 1, 2003, may be used as the earliest proposed start date on the proposal, unless otherwise directed by the Program Manager. Applicants should be notified of their status within six months of full proposal submission. All proposals must be submitted in accordance with the requirements listed below. Failure to heed the requirements may result in proposals being returned without review.

ADDRESSES: All submissions should be directed to: Office of Global Programs (OGP); National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address or phone (301) 427–2089, ext. 107, fax: (301) 427–2222, Internet: *irma.duPree@noaa.gov*.

SUPPLEMENTARY INFORMATION:

1. Funding Availability

NOAA, NSF, EPA, and EPRI believe that research on the relationship between climate variability and human health will benefit significantly from a strong partnership with outside investigators. An estimated $1.3 Million may be available for FY03. Current plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Funding may be provided by NOAA, NSF, EPA, or EPRI. Projects may be conducted for up to a three year period.

2. Eligibility

Participation in this competition is open to all institutions eligible to receive support for NOAA, NSF, EPA, and EPRI. For awards to be issued by NOAA, eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an intragency funds transfer. Proposals selected for funding from a non-NOAA Federal Agency will be funded through an interagency transfer. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

3. Program Authority

NOAA Authority: U.S.C. 2931 et seq.; (CFDA No. 11.431)—Climate and Atmospheric Research.

NSF Authority: 42 U.S.C. 1861–75; (CFDA No. 47.050)—Geosciences.

EPA Authority: 42 U.S.C. 7403(a); 42 U.S.C. 7403(b); 42 U.S.C.; 7403(g); 15 U.S.C. 2907(a); (CFDA No. 66.500)—Office of Research and Development.

4. Relevance of This Joint Announcement

Published in 2001, the U.S. National Research Council (NRC) report "Under the Weather: Climate, Ecosystems and Infectious Disease" highlights the need for strengthening research on the linkages between climate and infectious disease and recommends highly interdisciplinary collaboration involving modelers, meteorologists, climatologists, ecologists, social scientists, and a wide array of medical and public health professionals. The report recognizes that the effectiveness of disease early warning systems will depend upon the context in which they are used, and recommends that the development of such systems should involve the active participation of the system's end users. Also, the U.S. National Assessment of the Potential Consequences of Climate Variability and Change, Health Sector Report, published in 2000, calls for a greater scientific understanding of the causal relationships between climate and human health, and the need to take an interdisciplinary approach that actively involves decision-makers and practitioners.

Several multi-agency sponsored workshops such as the American Academy of Microbiology Colloquium on Climate Variability and Human Health: An Interdisciplinary Perspective, and the workshop on Climate Change and Vector-borne and other Infectious Disease: A Research Agenda, called for cross-agency collaboration in supporting integrated research in this emerging discipline. The 1999 NRC report, Global Environmental Change: Research Pathways for the Next Decade, recognizes that climate may have important impacts on human health but that further study is necessary, and that such studies must also address issues of social vulnerability and adaptability.

It is well recognized that although early research has demonstrated a connection between climate and health in some cases, more rigorous and interdisciplinary research is required. This, coupled with an evolving capacity to understand and predict natural changes in the climate system, and a desire to develop and provide climate and environmental information for social benefit, particularly in the public health sector, has driven demand for improved understanding of the relationship between climate variability and human health. Both the scientific research results and recommendations stemming from various reports and meetings highlight the complexity of the research questions and the need for a coordinated multi-agency and interdisciplinary approach. The very nature of the research required cuts across disciplinary boundaries, and spans a range of agency missions and mandates and private sector interests. The NOAA Office of Global Programs is interested in the effective use of climate information in climate-sensitive sectors. The NSF focuses on broadly based

fundamental research to improve understanding of the Earth system. EPA is concerned with the impacts of climate change and variability on human health, and EPRI addresses key research gaps in climate change and human health. This announcement is offered as an experimental mechanism to fill critical gaps in climate variability and human health research and to coordinate funding of overlapping agency and institutional interests in such research. Other private sector organizations interested in jointly funding research through this announcement process should contact the NOAA Program Manager, Juli Trtanj (301) 427–2089, ext. 134, or Internet: *juli.trtanj@noaa.gov*. Research projects will be funded for a one, two or three year period.

5. Program Objectives

The over-arching goal of this announcement is to develop and demonstrate the feasibility of new approaches or field studies that investigate or validate well-formed hypotheses or models of climate variability and health interactions. This announcement is offered as part of an interagency effort to build an integrated climate and health community. Proposed research submitted under this announcment is encouraged to build on existing research activities, programs, research sites and facilities, or data sets.

6. Proposal Requirements and General Guidance

Research teams should include, at a minimum, one investigator each from the public health or medical response, ecology, and climate communities working in close collaboration on an integrated project. Research proposals submitted under this announcement are strongly encouraged to include components addressing either the adaptation or vulnerability of human and public health systems to climate variability, or an economic analysis of using climate information, or both. (*See* Criteria for Evaluation b). The funding partners will look favorably on research activities that involve end-users from the public health arena (*i.e.*, local public health officials, regional or international health organizations, other public health or disaster management agencies and institutions) and which address the means by which public health policy and decision-makers can use their research results. (*See* Criteria for Evaluation d). Investigators are encouraged to demonstrate that they will disseminate research results through formal presentation during at least one professional meeting and publication in a peer-reviewed journal.

This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, NSF, EPA, and EPRI. The funding instrument for extramural awards will be a grant unless it is anticipated that any of the funding entities will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between a funding entity or funding entity scientist, and a recipient scientist or technician and/or contemplation by NOAA, NSF, or EPA of detailing Federal personnel to work on proposed projects. NOAA, NSF, and EPA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. This program does not require matching share.

Guidelines for Submission

1. Pre-Proposals

(a) Pre-proposals should include the names and institutions of all investigators, a statement of the problem, description of data and methodology including names of data sets and types of models or analysis, a general budget for the project, a description of intended use of results for public health policy and decision making, and brief biographical sketches for each investigator. Pre-proposals can be submitted electronically to Irma duPree at *irma.dupree@noaa.gov*, unless other arrangements have been made with the Program Manager. Pre-proposals must be no longer than eight pages in length and must be prepared using an 11 point font or larger, with one-inch margins. Pre-proposals longer than eight pages, with smaller fonts, or with attachments will not be accepted.

(b) The Program Officers will evaluate the pre-proposals.

(c) Submission of pre-proposals is not a requirement, but it is in the best interest of the applicants and their institutions.

(d) Email submissions are acceptable for pre-proposals only.

(e) Projects deemed unsuitable during pre-proposals review will not be encouraged to submit full proposals.

(f) Investigators who are not encouraged to submit full proposals will not be precluded from submitting full proposals.

2. Criteria for Evaluation

Below are the criteria for evaluation that will be used for making award decisions. Pre-proposals will be evaluated using these criteria.

(a) Scientific Merit—60% (to include: Methodology, proof of data quality and availability, experience of team and team members, and relevant peer-reviewed publications).

(b) Responsiveness to announcement—20%.

(c) Explicit multidisciplinary participation and collaboration—10%.

(d) Potential for use by climate, ecology and health community or public/environmental health community—10%.

3. Selection Procedures and Review Process

Applications will be screened to determine if applicants are eligible and proposals are complete. The proposals will undergo independent peer panel review and may receive independent peer mail review. The independent peer mail reviewers rate each proposal according to the above Criteria for Evaluation. Each independent peer panel review member will rate the proposals using the above-mentioned criteria and taking the mail reviews into consideration. No consensus advice will be given. Both agency and non-agency experts in the field may be used in this process. Program Officers, comprised of representatives both Federal and non-Federal funding institutions, will evaluate the proposal. None of the Program Officers are voting members of an independent peer panel. The non-Federal Program Officers will provide their recommendations to the Federal Program Officers. The Federal Agency Program Officers will then make funding selections taking into account these recommendations, the independent peer panel review and evaluations, and program policy factors listed below.

Proposals are usually awarded in the numerical order in which they are ranked. However, the Program Officers may consider the following program policy factors: (a) Whether proposals do not substantially duplicate other projects that are currently funded by NOAA, NSF, EPA, other Federal agencies or other funding sources; (b) whether proposals do not substantially duplicate other proposals submitted in response to this announcement; (c) whether proposals funded maximize use of available funds; (d) whether proposals provide programmatic balance and (e) whether proposal cost falls within remaining funds available. As a result of this review, either the non-Federal or Federal Program Officers may decide to select an award out of order. The Federal Program Officers will

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also determine the total duration and amount of funding for each selected proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. Federal agency employees are subject to statutes pertaining to non-disclosure and confidentiality requirements protecting proprietary information that may be contained in applications submitted for potential funding. Non-Federal evaluators have agreed in writing to similar non-disclosure and confidentiality provisions. Please note, however, that should EPRI or another participating private organization which jointly funds research under this notice select an application for funding, none of the participating Federal agencies is responsible for any unauthorized disclosure of information that may occur or any dispute that may arise.

4. Proposal Submission

The following forms are required in each application, with original signatures on each federal form. Failure to comply with these provisions will result in proposals being returned without review.

(a) Full Proposals: (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are required to submit 3 copies of the proposal; however, the normal review process requires 20 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. (3) Proposals must be limited to 40 pages (numbered), 11 point font or larger and 1 inch margins, including abstract, results of prior research, statement of work, budget justification, budget, investigators' vitae, and all appendices. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements: All proposals must include the following elements:

(1) Signed title page: The title page must be signed by the Principal Investigator (PI) and the institutional representative. If more than one investigator is listed on the title page, please identify the lead investigator. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The amount of Federal funds being requested should be listed for each budget period and for the total project.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period.

(3) Results from prior research: The results of related research activities should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency or institution, award number, PIs, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, and relevance to the announcement. Benefits of the proposed project to the general public and the scientific community should also be discussed. A summary of proposed work must be included clearly indicating that the proposed work is achievable. The statement of work, including references but excluding figures and other visual materials must not exceed 15 pages to text.

(5) Budget Justification: A brief description of the expenses listed on the budget and how they address the proposed work. Itemized justification must include salaries, equipment, publications, supplies, tuition, travel, *etc.*

(6) Budget: the proposal must include total and annual budget corresponding with the descriptions provided in the statement of work. A sample budget sheet can be found in the statement of work. A sample budget sheet can be found in the standard NOAA application kit-Federal Applicants must submit a Standard Form 424 (4–92) "Application for Federal Assistance", including a detailed budget using the Standard Form 424a (4–92). "Budget Information—Non-Construction Program". The form is included in the standard NOAA application Kit. Additional text to justify expenses should be included as necessary. Federal researchers should contact Irma duPree at (301) 427–2089 ext. 107, for guidance regarding the types of forms required for submission. Additionally, Federal researchers should provide, with their application, the appropriate statutory authority that allows their agency to receive funds from another Federal agency to complete the work outlined in their proposal.

(7) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to 10–15 of the most recent and relevant publications with up to five other relevant papers.

(8) Current and pending support: for each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(9) List of suggested reviewers: The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposals. Such lists may be considered at the discretion of the Program Officers.

Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreement contained in the Federal Register notice of October 1, 2001 (66 FR 49917), as amended by the Federal Register Notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for notices relating to public property, loans, grants, benefits or contracts. Because notice and comment are not required, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA).

The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 02–29765 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–KA–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111902B]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) and its Ecosystems Committee, its Executive Committee, and its Demersal Species Committee meeting as a Council Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Board, will hold a public meeting.

DATES: The meetings will be convened Tuesday, December 10, 2002, to Thursday, December 12, 2002.

On Tuesday, December 10, 2002, the Ecosystems Committee will meet from 12:30 to 3:30 p.m. Council will meet from 3:30 to 5 p.m.

On Wednesday, December 11, 2002, the Council will meet jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board from 8:30 a.m. to 5 p.m.

On Thursday, December 12, 2002, the Executive Committee will meet from 8 to 9 a.m. Council will meet from 9 a.m. until 1 p.m.

ADDRESSES: This meeting will be held at the Sanderling Inn Resort & Conference Center, 1461 Duck Road, Duck, NC, telephone 252–261–4111.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda items for the committees and Council meetings are: begin reviewing NMFS bycatch efforts and impacts to MAFMC fishery management plans, committee update on national workshop on fishing gear impacts to essential fish habitat, discuss ASMFC workshop on multispecies assessment; monkfish Stock Assessment and Fishery Evaluation Report 2001 and final action on Framework 2 to modify reference points and set trip limits/days at sea for 2003; summer flounder, scup, and black sea bass recreational management measures review and discuss Monitoring Committees' recommendations, review and discuss Advisory Panels' recommendations, and develop and approve recreational management measures for 2003; discuss and possibly identify summer flounder, scup, and black sea bass plan development priorities for 2003; review Council 2003 calendar, budget, and annual work plan; approve action to extend Illex limited access moratorium for one year, i.e., through June 30, 2004; receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting.

Although non-emergency issues not contained in this agenda may come before the Council and ASMFC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

Dated: November 19, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29777 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act (AGOA)

November 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric made in Lesotho and handmade articles made from such handloomed fabric that are made in Lesotho qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Lesotho with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-2000)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, handloomed, or folklore articles.

Under Section 2 of Executive Order 13191 of January 17, 2001, CITA is authorized to "consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles" (66 FR 7272). Consultations with Lesotho were held on October 30, 2002, and CITA has now determined that handloomed fabrics produced in and exported from Lesotho and handmade articles produced in and exported from Lesotho made from such handloomed fabrics are

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eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs to allow entry of such products of Lesotho under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in grouping "9".

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13101 of January 17, 2001, has determined that, effective on November 25, 2002 handloomed fabric produced in Lesotho and handmade articles produced in Lesotho from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Lesotho for Grouping "9" is a certification by the Government of Lesotho that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–29750 Filed 11–21–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0321]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Financing

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on its provisions. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through May 31, 2003, under OMB Control Number 0704–0321. DoD proposes that OMB extend its approval for use through May 31, 2006.

DATES: DoD will consider all comments received by January 21, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite OMB Control Number 0704–0321 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0321.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, at (703) 602–0296. The information collection requirements addressed in this notice are available electronically on the World Wide Web at *http://www.acq.osd.mil/dp/dars/dfars.html*. Paper copies are available from Mr. Euclides Barrera, OUSD(A&T)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Contract Financing, Progress Payments for Foreign Military Sales Acquisitions—Defense Federal Acquisition Regulation Supplement (DFARS) Part 232 and the clause at 252.232–7002; OMB Control Number 0704–0321.

Needs and Uses: Section 22 of the Arms Export Control Act (22 U.S.C. 2762) requires the U.S. Government to use foreign funds, rather than U.S. appropriated funds, to purchase military equipment for foreign governments. To comply with this requirement, the Government needs to know how much to charge each country. The clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, requires each contractor whose contract includes foreign military sales (FMS) requirements to submit a separate progress payment request for each progress payment rate, and to submit a supporting schedule that clearly distinguishes the contract's FMS requirements from U.S. requirements. The Government uses this information to determine how much of each country's funds to disburse to the contractor.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 5,508 (includes 1,836 response hours plus 3,672 recordkeeping hours).

Number of Respondents: 306.

Responses Per Respondents: 12.

Annual Responses: 3,672.

Average Burden Per Response: .5 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements relating to DFARS Part 232, Contract Financing, and the related clause at DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions.

a. DFARS 232.502–4–70(a) prescribes use of the clause at DFARS 252.232–7002 in any contract that provides for progress payments and contains FMS requirements.

b. DFARS 252.232–7002 requires each contractor whose contract includes FMS requirements to submit a separate progress payment request for each progress payment rate, and to submit a supporting schedule that distinguishes the contract's FMS requirements from U.S. requirements.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–29467 Filed 11–21–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Public Law 95–202 and Department of Defense Directive (DODD) 1000.20 "U.S. Civilian Crewmembers of the Flotilla Alaska Barge and Transport Company, Who Worked on the Inland and Coastal Waters of Vietnam as a Result of Contract MST–OT–35 (X) With the U.S. Navy for Direct Support of Military Operations in Vietnam From April 1966 Through April 1975."

Under the provisions of section 401, Public Law 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of a group known as: "U.S. Civilian Crewmembers of the Flotilla Alaska Barge and Transport Company, Who Worked on the Inland and Coastal Waters of Vietnam as a Result of Contract MST–OT–35 (X) With the U.S. Navy for Direct Support of Military Operations in Vietnam from April 1966 through April 1975." Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE-Wing, 3rd Floor, Andrews AFB, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–29729 Filed 11–21–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the inaugural meeting of the Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors (BoV). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). This board was chartered on February 1, 2002, in compliance with the requirements set forth in 10 U.S.C. 2166.

Date: December 12, 2002.

Time: 9 a.m. to 5 p.m.

Location: Pratt Hall, Building 35, 7011 Morrison Ave., Fort Benning, GA 31905.

Proposed Agenda: The WHINSEC BoV will approve its by-laws, establish its 2003 schedule and receive sub-committee and liaison reports of specific WHINSEC operations, activities and curriculum for compliance with the authorizing legislation—specifically the curriculum and the human rights mandatory training programs—in preparation of its annual report.

FOR FURTHER INFORMATION CONTACT: Ken LaPlante, Core Processes, Inc, Army G–3 (Room 2D337), 400 Army Pentagon, Washington, DC 20310, telephone (703) 692–7419 or LTC Andres Toro at (703) 692–7421.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. There will be time, specified, for public comments by individuals and organizations at the end of the meeting on December 12, 2002. Public comment and presentations will be limited to two minutes each and must be provided in writing and received before Wednesday, December 4, 2002. Mail written presentations and requests to register to attend the public sessions to: LTC Andres Toro, DAM–SSR (Rm 2D337), 400 Army Pentagon, Washington, DC 20310–0400. Public seating is limited, and is available on a first come, first served basis.

Dated: November 8, 2002.

John C. Speedy III,

SES, Designated Federal Officer, WHINSEC BoV.

[FR Doc. 02–29586 Filed 11–21–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 23, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 18, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Tech-Prep Demonstration Grants.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 2400.

Abstract: Section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Pub. L. 105–332) authorizes grants to consortia to carry out tech-prep education programs that involve the location of a secondary school on the campus of a community college. This collection solicits

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applications for grant funding from eligible applicants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–29713 Filed 11–21–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Secretary of Education's Commission on Opportunity in Athletics; Meeting

AGENCY: Secretary of Education's Commission on Opportunity in Athletics; Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the Secretary of Education's Commission on Opportunity in Athletics (the Commission). The Commission invites comments from the public regarding the application of current Federal standards for ensuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX of the Education Amendments of 1972 ("Title IX"). The meeting will take place in Philadelphia, Pennsylvania.

Individuals who will need accommodations for a disability in order to attend the meetings should notify the Commission office no later than November 27, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: December 4, 2002.

Location: Philadelphia Marriott. 1201 Market Street, Philadelphia, PA.

Times: December 4: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m.

Meeting Format: This meeting will be held according to the following schedule:

1. Date: December 4, 2002, Time: 9 a.m. to 12:30 p.m., 2 p.m.–5 p.m.

Attendees: If you would like to attend any or all of the above listed meetings, we ask that you register with the Commission office by email or fax to the address listed under **ADDRESSES**. Please provide us with your name and contact information.

Participants: The meeting scheduled for December 4, 2002 will consist of review and discussion by the Commissioners of the information from the previous public meetings in preparation for the Commission's forthcoming report to the Secretary of Education. The public is invited to observe this meeting; however there will not be opportunity for public comment.

Written comments will be accepted at each meeting site or may be mailed to the Commission at the address listed under **ADDRESSES**.

In addition to making reservations, individuals attending the public meetings, for security purposes, must be prepared to show photo identification in order to enter the meeting location.

Request for Written Comments: We invite the public to submit written comments relevant to the Commission.

DATES: We would like to receive your written comments on the Act by November 29, 2002.

ADDRESSES: Submit all comments to the Commission using one of the following methods:

1. *Internet.* We encourage you to send your comments through the Internet to the following address: *OpportunityinAthletics@ed.gov*.

2. *Mail.* You may submit your comments to The Secretary of Education's Commission on Opportunity in Athletics, 400 Maryland Avenue, SW., ROB–3 Room 3060, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

3. *Facsimile.* You may submit comments by facsimile at (202) 260–4560.

FOR FURTHER INFORMATION CONTACT: See the Commission address under the **ADDRESSES** section of this notice. View the Commission's web site at: *http://www.ed.gov/inits/commissionsboards/athletics*. The Commission office number is 202–708–7417.

SUPPLEMENTARY INFORMATION: The nation is commemorating the 30th anniversary of the passage of Title IX, the landmark legislation prohibiting recipients of Federal funds from discriminating on the basis of sex. Since this legislation was enacted, there has been a dramatic increase in the number of women participating in athletics at the high school and college levels. The Secretary of Education has determined that this anniversary provides an appropriate time to review the application of Title IX to educational institutions' efforts to provide equal opportunity in athletics to women and men. In order to do so, the Secretary established the Commission on Opportunity in Athletics. The Commission will produce a report no later than January 31, 2002, outlining its findings relative to the opportunities for men and women in athletics in order to improve the effectiveness of Title IX.

Comments are encouraged on the following priority areas:

1. Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?

2. Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?

3. Is further guidance or are other steps needed at the junior and senior high school levels where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?

4. How should activities such as cheerleading or bowling factor into the analysis of equitable opportunities?

5. How do revenue producing and large-roster teams affect the provision of equal athletic opportunities? The Department has heard from some parties that whereas some men athletes will "walk-on" to intercollegiate teams—without athletic financial aid and without having been recruited—women rarely do this. Is this accurate and, if so, what are its implications for Title IX analysis?

6. In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity? What are the implications for Title IX?

7. Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: November 18, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–29712 Filed 11–21–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–14; Radiopharmaceutical and Molecular Nuclear Medicine Science Research—Medical Applications Program

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for research to support DOE/OBER Medical Applications Program areas in radiopharmaceuticals and molecular nuclear medicine. These program areas involve multifunctional, highly designed tracer molecules for precise in vivo tagging and noninvasive imaging assay of cellular and subcellular elements at the dynamic organ function, onset and progression of disease, and response to successful or failing therapy.

Research areas of particular programmatic interest include:

1. New tracer technologies for real-time, in vivo imaging of gene expression in health and disease.

2. New radiotracer labeling of progenitor cells for noninvasively imaging and tracking their behavior and fate in vivo and their overall role in organ and tissue regeneration in disease states.

3. New radiotracers for in vivo targeting of mutated proteins critical to carcinogenesis and tumor cell growth.

4. New generation of radiotracers enabling in vivo imaging assay of neurotransmitter chemistry and brain function.

DATES: Preapplications (letters of intent), including information on collaborators, and a one-page summary of the proposed research, should be submitted by January 2, 2003.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., Monday, February 24, 2003, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Preapplications referencing Program Notice 03–14, should be sent to Ms. Sharon Betson by E-mail: *sharon.betson@science.doe.gov*, with a copy to Dr. Prem C. Srivastava at: *prem.srivastava@science.doe.gov*.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Prem C. Srivastava, Office of Biological and Environmental Research, Medical Sciences Division, U.S. Department of Energy, SC–73/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290, Telephone: (301) 903–4071, FAX: (301) 903–0567, E-mail: *prem.srivastava@science.doe.gov*. The full text of Program Notice 03–14 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/Fr03-14.html*.

SUPPLEMENTARY INFORMATION: For over 50 years, the Department's Office of Science and its predecessors have supported basic physical science research for meeting the Nation's defense and security needs. The SC's Office of Biological and Environmental Research program has served as the Department's primary research arm for addressing the health and environmental consequences and potential public pay-offs of atomic energy explorations and use by translating the fundamental energy science to basic technology innovations and development for medical applications. Along the way, the OBER's Medical Applications program has leveraged the Department's unique capabilities in radiation chemistry, physics, engineering, computation, and biology, together with capabilities in and responsibilities for radiation detection and nuclear materials to support basic, high-risk research that today provides the upstream basis to use radiation and other energy technologies in medicine.

The mission of the OBER Medical Applications subprogram is to deliver relevant scientific knowledge that will lead to innovative diagnostic and treatment technologies for human health. The basic research technologies growing out of this program offer applications for noninvasive detection, diagnosis and early intervention of natural causes of disease, as well as of human-health-risks associated with the exposure of chemical, biological and nuclear material.

The modern era of nuclear medicine is an outgrowth of the original charge of the Atomic Energy Commission (AEC), "to exploit nuclear energy to promote

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human health." Today the program through radiopharmaceutical, molecular nuclear medicine and multimodal imaging systems research, seeks to develop new applications of radiotracers and radionuclide detectors in diagnosis and treatment by integrating the latest concepts and developments in chemistry, pharmacology, genomic sciences and transgenic animal models, structural, computational and molecular biology, and instrumentation.

The Medical Applications program supports directed nuclear medicine research through radiopharmaceutical development, molecular nuclear medicine and medical imaging instrumentation program activities to study uses of radioisotopes for non-invasive diagnosis and targeted, internal molecular radiotherapy. Molecules directing or affected by homeostatic controls always interact and, thus, are targets for specific molecular substrates. The substrate molecules can be tailored to fulfill a specific need and labeled with appropriate radioisotopes to become measurable in real time in the body on their way to, and in interaction with their targets allowing the analysis of molecular function in homeostatic control in health and disease. The function of radiopharmaceuticals at various sites in the body is imaged by nuclear medical instruments, such as gamma cameras and positron emission tomographs (PET). This type of imaging refines diagnostic differentiation at molecular/metabolic levels between health and disease, and among various diseases, often leading to more effective therapy.

Basic research in molecular biology has provided new insights to the molecular basis of disease and molecular targets of human diseases. The current Radiopharmaceutical and Molecular Nuclear Medicine programs encourage development of new generation of radiolabeled molecules and technologies for molecular delivery of radioisotopes to the disease-target-sites with a high degree of precision, recognition, and target selectivity.

In addition, nuclear medicine, with the availability of miniaturized PET technology for small animal imaging, can facilitate mapping of the biochemistry of the metabolic organ function, visualizing the molecular biology of cell function, and zooming in on gene function for delineating differences in molecular biology of normal health from disease, in animals to humans.

With the advent of the genome project and the development of transgenic mice, there has been a rapid proliferation of small animal models of human diseases, and improvement in instrumentation technologies for in vivo optical and radionuclide imaging. These technological advancements have offered a paradigm shift in the current level of nuclear medicine research challenges and opportunities. It is expected that radiopharmaceutical and molecular nuclear medicine techniques will permit analysis of the molecular elements as markers of genetic manipulations, biological transformations and progression of the disease, and will provide insights to molecular pathways of disease and gene function.

This Notice is to solicit applications for grants in any of the four research areas of interest to OBER Medical Applications program listed above.

Imaging Gene Expression in Health and Disease: The specific goals include development of nuclear medicine driven technologies to image mRNA transcripts in real time in tissue culture and whole animals. Special consideration will be given to applications arising from a well integrated, multidisciplinary team effort of scientists with skills to address the needs, issues and importance of nucleic acid biochemistry, radioligand synthesis and macromolecular interactions; functional consequences of gene expression by targeting and perturbing the activity of a particular gene; and biological applications of optical and radionuclide imaging devices; contributing to the goal of imaging specific gene expression in real time in animals to humans. The access to, or availability of specialized molecular radioligands, transgenic animal models of human disease, and biological imaging devices for real time imaging in animals to humans, will be important factors for funding considerations. Methodological approaches that are applicable to any mRNA species are encouraged. The development of generic methods to image specific gene expression will result in major advances in our understanding of developmental biology, cancer induction and pathogenesis, and in the clinical detection of inherited and acquired diseases. Such studies are therefore one of the major focus areas of this program. Currently the expression of endogenous genes in animals (including humans) cannot be imaged, at least not directly. A well integrated team effort from the overlapping disciplines of chemistry and radiopharmaceutical chemistry, cellular and molecular biology, and biological and nuclear medicine imaging will be increasingly important. It will be important for each application to address response in view of the following research areas, which may be crucial for progress in imaging gene expression:

(1) New generation of radioligand molecules that will interact with the macromolecular nucleic acid structures in vivo.

(2) Molecular technologies which will significantly improve the signal to background ratio and will make in vivo imaging feasible. Molecular signal amplification methods are not yet available that work in vivo at the mRNA level and technological advancement in this area is well desired.

(3) Equally important is the hurdle of drug targeting technology, which must be developed to such an extent that the various biological barriers can be safely surmounted in vivo.

(4) Finally, the fluorescent molecular imaging technologies available for more routine in vitro screening and in vivo real time imaging, that can be used as a proof of principle and a prelude to in vivo nuclear medicine imaging, should be exploited in conjunction with nuclear medicine devices.

Radiopharmaceutical Research for Noninvasive Radiotracer-Cell Imaging (NRI) In Vivo

Progenitor Cells: The term progenitor cells implies non-embryonic stem cells, and does *not* include embryonic stem cells. For definitions, refer to National Institutes of Health (NIH) web sites, and all grantees must adhere to federal guidelines when involving human subjects. *http://www.nih.gov/news/stemcell/primer.htm* and *http://www.nih.gov/news/stemcell/index.htm.*

Breakthrough research in the biology of inter-organ and tissue cell repopulation and transformation has offered new paradigms for radiotracer imaging research in resolving the issues of progenitor cell administration including their trafficking, biodistribution, fate and progeny in organ and tissue regeneration, repair and replacement, with wide applications to human disease states such as neurogenesis, myogenesis, hematopoiesis, including stroke, ischemic heart disease, Parkinson's disease, hematopoetic disorders and cancers. This NRI specific program announcement offers challenging research opportunities for new radiotracer technology innovations for emerging new clinical research needs and medical applications.

The specific goals include radiotracer labeling of progenitor cells for noninvasively imaging and tracking their behavior and fate in vivo and their overall role in organ and tissue regeneration in disease states. The researchers should clearly demonstrate the relevance and important clinical need of the research proposed. Special consideration will be given to applications arising from a well-integrated, multidisciplinary team effort of scientists with relevant skills in radiopharmaceutical chemistry, biology, pharmacology and clinical nuclear medicine. The access to, or availability of specialized radiotracer-labeling and imaging instrumentation, equipment and facilities for real time imaging in animals to humans, will be important factors for funding considerations.

New Radiotracers for Targeting Mutated Proteins Critical to Carcinogenesis and Tumor Cell Growth

Radiolabeled molecular probes for targeting protein mutations critical to carcinogenesis and tumor cell growth would be unique tools for in vivo measuring of kinase pathways, for early diagnosis of cancer, for monitoring cancer therapy, and for understanding the mechanism of action of drugs targeting protein kinase activity in the development of new therapeutic drugs. Important therapeutic agents are being developed based on their specificity for protein kinases critically involved in intracellular signaling pathways, and there are likely to be about two thousand protein kinases encoded by the human genome. In recent years several small molecules have been identified to exhibit high degree of specificity for particular protein kinases, and a myriad of other compounds have also been identified as inhibitors of receptor tyrosine kinases and of mitogen-activated protein kinase cascades. Interaction of these compounds with these key kinases results in blockade of signal transduction and inhibition of cell cycle progression. This knowledge has resulted in the discovery of molecules with high specificity for several protein kinases and has provided a new view to cancer treatment. It also provides a challenging perspective for in vivo quantification of these intracellular pathways controlling cell proliferation and critically involved in cancer progression.

The Department, through its synchrotron light sources facilities, contributes significantly to genomics/proteomics, *i.e.* protein analysis and structural genomics, and allows the structural biologists to find the specific parts of the protein structure that are most vulnerable to drugs or that may be key to carcinogenesis. The Department's investments in biophysics, chemistry, robotics and supercomputing, have made it possible to rapidly investigate the detailed arrangements of atoms and understand the function of thousands of proteins whose structures are coded by the genome of animals, bacteria and plants. Harnessing of the structural genomics/proteomics information will be a key to designing new small radiotracer molecules for precisely targeting the vulnerable areas of a mutated protein structure expressing cancer. Radiotracer molecules like these will be useful in laboratory investigations, and validation as molecular imaging probes for early diagnosis of cancer and management of cancer therapeutics.

New generation of radiotracers enabling in vivo imaging assay of neurotransmitter chemistry and brain function: New generation of highly innovative and target specific radiotracer molecules are required as diagnostic markers for noninvasively imaging the regional biochemistry associated with metabolic organ function and performance, for guiding surgery, and for guiding new drug development.

Program Funding

It is anticipated that up to $4 million will be available for multiple grant awards during Fiscal Year 2003, contingent upon the availability of appropriated funds. Previous awards have ranged from $200,000 up to $400,000 per year (direct plus indirect costs) with terms lasting up to three years. Similar award sizes are anticipated for new grants. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs.

Preapplications

A brief preapplication (letter of intent) should be submitted. The preapplication should identify, on the cover sheet, the title of the project, the institution, principal investigator's name, address, telephone, fax, and E-mail address. The preapplication should consist of one to two pages identifying and describing the research objectives, methods for accomplishment, and the key members of the scientific team responsible for undertaking this effort, including information on collaborators. Preapplications will be evaluated relative to the scope and programmatic research needs.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

In addition, for this Notice, the Project Description must be 20 pages or less, exclusive of attachments, and the application must contain a Table of Contents, an abstract or project summary, letters of intent from collaborators (if any), and short curriculum vitae consistent with National Institutes of Health guidelines. On the SC grant face page, form DOE F4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address.

DOE policy requires that potential applicants adhere to 10 CFR 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall

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comply with NIH "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049 and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on November 15, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–29751 Filed 11–21–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–77–000]

Reliant Energy Services, Inc., Complainant, v. Florida Gas Transmission Company, Respondent; Notice of Complaint and Request for Fast Track Processing

November 18, 2002.

Take notice that on November 15, 2002, Reliant Energy Services, Inc. (RES) filed a Complaint and Request for Fast Track Processing against Florida Gas Transmission Company (FGT) requesting that the Federal Energy Regulatory Commission (Commission) find that FGT is in violation of its tariff by demanding a letter of credit far in excess of that permitted by the creditworthiness provisions of FGT's tariff and excluding, on an unduly discriminatory basis in violation of sections 5 and 7 of the Natural Gas Act (NGA), RES from an expansion project unless RES posts a letter of credit far in excess of that permitted by the creditworthiness provisions of FGT's tariff. RES also contends that FGT has indicated an intention to build an expansion project that is inconsistent with its certificate authorization. RES requests that the Commission issue an order finding and declaring that FGT's notification to RES that FGT intends to terminate its contractual obligation to provide firm transportation service to RES through use of the Phase VI facilities is unduly discriminatory, in violation of FGT's tariff, the Commission's certificate issued to FGT for its phase VI Facilities expansion in Docket No. CP02–27–000, and the NGA.

A copy of the filing was served upon the Respondent.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before November 25, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29749 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–15–000, et al.]

Termoelectrica U.S., LLC, et al.; Electric Rate and Corporate Filings

November 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Termoelectrica U.S., LLC

[Docket No.EG03–15–000]

On November 12, 2002, Termoelectrica U.S., LLC (Applicant), located at 101 Ash Street; San Diego, California 92101, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant will own the United States portion of a transmission line connecting a natural gas-fired and steam-fired generating facility located west of Mexicali in Baja California, United Mexican States to the already existing San Diego Gas & Electric Company Imperial Valley substation. The generating facility will be directly owned and operated by Termoelectrica de Mexicali, S. de R.L. de C.V.

Comment Date: December 6, 2002.

2. Riverview Energy Center, LLC

[Docket No. EG03–16–000]

Take notice that on November 12, 2002, Riverview Energy Center, LLC (Riverview) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Riverview, a Delaware limited liability company, proposes to own and operate a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility to be located in Contra Costa County, California. Riverview intends to sell the output at wholesale to an affiliated marketer.

Comment Date: December 6, 2002.

3. Manchief Power Company, L.L.C.

[Docket No. EG03–18–000]

Take notice that on November 13, 2002, Manchief Power Company, L.L.C., with its principal place of business at 1001 Louisiana Street, P.O. Box 2511, Houston, Texas, 77002, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Manchief Power Company, L.L.C. is a Delaware limited liability company that owns a generation facility near Brush, Colorado.

Comment Date: December 6, 2002.

4. PPL Great Works, LLC

[Docket No. ER99–4503–002

Take notice that on November 8, 2002, PPL Great Works, LLC filed an updated market power analysis pursuant to the Commission's order in Middleton Power LLC, 89 FERC ¶ 61,151 (1999).

PPL Great Works, LLC served a copy of this filing on the parties on the Commission's official service list for this docket.

Comment Date: November 29, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[FERC Docket No. ER02–290–002]

Take notice that on November 12, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing its Process for the Use of Network Resources Outside of the Midwest ISO and Resolving Competing Requests for Transmission Service Among Network Customers and between Point-to-Point and Network Customers as Attachment U to its Open Access Transmission Tariff in compliance with the Commission's October 10, 2002 Order issued in Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,030.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: December 3, 2002.

6. Thompson River Co-Gen, LLC

[Docket No. ER02–298–001]

Take notice that on November 12, 2002, Thompson River Co-Gen, LLC (Thompson) petitioned the Commission for acceptance of Thompson Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and waiver of certain Commission regulations.

Thompson intends to sell at wholesale electricity generated from a 16-megawatt cogeneration facility located in Thompson Falls, Montana, to NorthWestern Energy, LLC, (NWE). Thompson does not intend to make other wholesale sales of electricity to any entity other than NWE. Thompson is an LLC with passive ownership interests, and Barry Bates and Lawrence Underwood are the Partners and will manage Thompson's day-to-day business. Thompson has no legal or economic interest, and is not in any way related to, any utility or other entity that owns any generation, transmission or other jurisdictional facilities.

Comment Date: December 3, 2002.

7. Duke Energy Corporation

[Docket Nos. ER02–2480–002 and EL02–118–000]

Take notice that on November 12, 2002, Duke Energy Corporation filed its compliance filing in the above captioned proceeding.

Comment Date: December 3, 2002.

8. Consumers Energy Company

[Docket No. ER03–153–001]

Take notice that on November 12, 2002, Consumers Energy Company (Consumers) filed a Service Agreement No. 50 under its Electric Sales Tariff FERC No. 7. A cover sheet, in accordance with the provisions of Order 614, was mistakenly not included with the filing. Attached is a cover sheet.

Comment Date: December 3, 2002.

9. Westar Energy, Inc.

[Docket No. ER03–172–000]

Take notice that on November 12, 2002, Westar Energy, Inc. (Westar) submitted for filing Service Schedule WRC–10/2002 (Schedule), which will supercede Service Schedule WRC–8/2002 with Federal Energy Regulatory Commission (Commission) approval. The Schedule is proposed to be effective on October 31, 2002. The changes in the Schedule provide for customers taking service under the Schedule to receive billing credits for alternative resources obtained from third parties or other Westar tariffs.

A copy of this filing was served upon the Kansas Corporation Commission, Kaw Valley Electric, Nemaha-Marshall Electric Cooperative Association, Inc. and Doniphan Electric Cooperative.

Comment Date: December 3, 2002.

10. Cinergy Services, Inc.

[Docket No. ER03–174–000]

Take notice that on November 12, 2002, Cinergy Services, Inc.(Cinergy), on behalf of PSI Energy, Inc (PSI), a Cinergy Corp. utility operating company, tendered for filing a Notice of Termination of an Interconnection Agreement (IA) and Facility Construction Agreement (FCA) between Cinergy and Duke Energy Vigo, LLC. Termination of the IA and FCA has been mutually agreed to by Cinergy and Duke Energy Vigo, LLC.

Comment Date: December 3, 2002.

11. Termoelectrica U.S., LLC

[Docket No. ER03–175–000]

Take notice that on November 12, 2002, Termoelectrica U.S., LLC., (Termoelectrica US) tendered for filing pursuant to Rule 205, 18 CFR 3 85.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule authorizing Termoelectrica U.S. to make sales at market-based rates. Termoelectrica U.S. has requested waiver of the Commission's regulations to permit an effective date of sixty days from the date of this filing.

Termoelectrica U.S. intends to sell electric power and ancillary services at wholesale. In transactions where Termoelectrica U.S. sells electric power or ancillary services it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. I provides for the sale of energy and capacity and ancillary services at agreed prices.

Comment Date: December 3, 2002.

12. Kansas City Power & Light Company

[Docket No.ER03–176–000]

Take notice that on November 12, 2002, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 3, dated September 28, 2002 between Kansas City Power & Light Company(KCPL) and the Board of Public Utilities of Kansas City, Kansas. KCPL proposes an effective date of December 1, 2002 and requests any necessary waiver of the Commission's notice requirement.

Comment Date: December 3, 2002.

13. American Electric Power Service Corporation

[Docket No. ER03–177–000]

Take notice that on November 12, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed amended and restated Interconnection and Operation Agreement between Columbus Southern Power Company and Duke Energy Franklin LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 10, 2002.

AEP requests an effective date of June 25, 2001, the same effective date of the Interconnection and Operation Agreement in Commission's Order Conditionally Accepting Unexecuted Interconnection and Operation Agreement issued in this docket on June 28, 2001, 95 FERC ¶ 61,472. A copy of the filing was served upon the Ohio Public Utilities Commission.

Comment Date: December 3, 2002.

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14. PJM Interconnection, L.L.C.

[Docket No. ER03–178–000]

Take notice that on November 12, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Reliant Energy Hunterstown, L.L.C.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties. Copies of this filing were served upon Reliant Energy Hunterstown, L.L.C. and the state regulatory commissions within the PJM region.

Comment Date: December 3, 2002.

15. FPL Energy New Mexico Wind, LLC

[Docket No. ER03–179–000]

Take notice that on November 12, 2002, FPL Energy New Mexico Wind, LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: December 3, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29744 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI03–1–000]

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

November 18, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI03–1–000.

c. *Date Filed:* November 5, 2002.

d. *Applicant:* Jo A. Miller.

e. *Name of Project:* Miller/Fish Creek Project.

f. *Location:* The Miller/Fish Creek Project would be located in sec. 28, portion of Gov't Lot 4 and SW¼SE¼; sec. 33, W½NW¼NE¼, T. 32 N., R. 28 E., W.M., on Fish Creek 3/8 mile from Lake Chelan, Chelan County, Washington. The project will occupy Federal land.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Jo A. Miller, 22905 Riverview Road, Chelan, WA 98816, telephone (509) 689–0909.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray (202) 502–8838, or e-mail address: *diane.murray@ferc.gov*.

j. *Deadline for filing comments and/or motions:* December 20, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*.

Please include the docket number (DI03–1–000) on any comments or motions filed. k. *Description of Project:* The proposed Miller/Fish Creek Project would consist of: (1) A diversion, located on Government Lot No. 4, consisting of a 10-inch-diameter, 5-foot-long, stainless steel screened inlet; (2) a 42-foot-long, 10-inch steel pipeline encased in a 16-inch carrier pipe; (3) a 1,200-foot-long, 10-inch pipe reduced to 6 inches at the powerhouse; (3) a powerhouse containing one generating unit, with a total rated capacity of 6.7 kW; and (4) a 6-inch return flow pipe back to Fish Creek; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Deputy Secretary.

[FR Doc. 02–29742 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI03–2–000]

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

November 18, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI03–2–000.

c. *Date Filed:* October 15, 2002.

d. *Applicant:* Village of Milford, MI.

e. *Name of Project:* Pettibone Creek Hydro Project.

f. *Location:* The Pettibone Creek Hydro Project would be located on Pettibone Creek a tributary of the Huron River, Oakland County, Michigan. The project will not occupy Federal or tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Frank Christie, Christie Engineering, 359 River Street, Suite 202, Manistee, MI 49660, telephone number/FAX (231) 398–0625.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray (202) 502–8838, or E-mail address: *diane.murray@ferc.gov*.

j. *Deadline for filing comments and/or motions:* December 20, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*.

Please include the docket number (DI03–2–000) on any comments or motions filed.

k. *Description of Project:* The proposed Pettibone Creek Hydro Project would consist of: (1) A 15-foot-high, 90-foot-long dam; (2) a 3,400-foot-long penstock; (3) a generator with a capacity of 50 kW; (4) a tailrace discharging into the Huron River; (5) a 500-foot-long buried transmission line; and (6) appurtenant facilities. The plant will be serviced by the Detroit Edison Power Company.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29743 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

November 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12190–000.

c. *Date filed:* June 10, 2002.

d. *Applicant:* Lake Cachuma Hydro, LLC.

e. *Name and Location of Project:* The Lake Cachuma Project would be located on the Santa Ynez River in Santa Barbara County, California. The proposed project would utilize an existing dam administered by the U.S. Bureau or Reclamation (BOR) and would be partially located on lands administered by the BOR.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

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g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12190–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use the BOR's existing Bradbury Dam and Reservoir and would consist of: (1) A proposed powerhouse with a total installed capacity of 2 megawatts, (2) a proposed 500-foot-long, 5-foot-diameter penstock, (3) a proposed 1-mile-long, 25 kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 15.4 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3678 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Lake Cachuma Hydro, LLC., 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for a preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29745 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant-Prepared Environmental Assessment Tendered and Accepted for Filing, Notice Soliciting Motions To Intervene and Protests, Notice Soliciting Comments, Final Terms and Conditions, Recommendations and Prescriptions, Notice Establishing Procedures for Relicensing and Submission of Final Amendments

November 18, 2002.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been tendered and accepted for filing with the Commission, and is available for public inspection:

a. *Type of Application:* New License.

b. *Project No.:* 201–014.

c. *Date filed:* October 30, 2002.

d. *Applicant:* Petersburg Municipal Power and Light (PMPL).

e. *Name of Project:* Blind Slough Hydroelectric Project.

f. *Location:* On Crystal Creek, Mitkof Island, near the City of Petersburg, Alaska.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825).

h. *Applicant Contact:* Dennis C. Lewis, Superintendent, Petersburg Municipal Power and Light, P.O. Box 329, 11 South Nordic, Petersburg, Alaska 99833, 907–772–4203, email: pmpl@alaska.net; or Nan A. Nalder, Relicensing Manager, Acres International, 150 Nickerson St., Suite 310, Seattle, WA 98109, 206–352–5730 e-mail: *acresnan@serv.net.*

i. *FERC Contact:* Vince Yearick, FERC, 888 First Street, NE., Room 61–11, Washington, DC 20426, (202) 502–6174, e-mail: *vince.yearick@ferc.gov.*

j. *Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; and reply comments 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commissions, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Brief Project Description:* The 2.4-megawatt (MW) project is located on Crystal Creek in Southeast Alaska approximately 16.5 highway miles south of the City of Petersburg on the southern portion of Mitkof Island. The project does not occupy any federal lands. The project generates an average of about 11,308,410 kilowatt-hours (kWh) annually which provides approximately 28 percent of PMPL's energy requirements. The project is also the principal source of water supply for the Crystal Lake Hatchery. Petersburg proposes no new capacity and no new construction. The primary features of the project include: a dam at the outlet of Crystal Lake; a pumpback system located at the base of Crystal Lake Dam; approximately 4,600 feet of penstock with a static head of 1,256 feet; two powerhouse structures situated near Blind Slough; and a tailrace system providing water to the fish hatchery and returning water to Crystal Creek.

l. *Locations of the application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

m. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item o. below.

n. *Relicensing schedule and final amendments:* The application will be processed according to the following schedule:

Notice of the availability of the NEPA document—April, 2003.

Order issuing the Commission's decision on the application—July, 2003.

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice soliciting final terms and conditions.

o. *Comments, Recommendations, Terms and Conditions, Prescriptions, and Reply Comments:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to section 4.34(b) of the regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis; and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29746 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands-Excavation Proposal.

b. *Project No.:* P–2177–052.

c. Date filed: October 25, 2002.

d. *Applicant:* Georgia Power Company.

e. Name and Location of Project: Middle Chattahoochee Project located on Lake Oliver in Lee County, Alabama.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C.§§ 791(a)—825r).

g. *Applicant Contact:* William Glisson, Senior Land Management Specialist, Georgia Power Company, 1516 Bartletts Ferry Road, Fortson, Georgia 31808 (706) 322–0228.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* December 13, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2177–052) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Filing:* Georgia Power Company is requesting Commission approval to grant a permit to Mr. Steve Atchley (permittee) to excavate 2,500 cubic yards of material. The excavation site is at Lake Oliver in a slough adjacent to River Oak Way in Phenix City, Alabama. The excavation would occur during drawdown conditions. The material would be deposited on an upland site located away from the Lake.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659.

l. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

m. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

n. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29747 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 469–013]

Notice Extending Deadline for Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 469–013.

c. Date filed: October 30, 2001.

d. *Applicant:* ALLETE, Inc., d.b.a. Minnesota Power Inc.

e. *Name of Project:* Winton Hydroelectric Project.

f. *Location:* On the Kawishiwi River, near the Town of Ely, in Lake and St. Louis Counties, Minnesota. The project occupies federal lands within the Superior National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r)

h. *Applicant Contact:* John Paulson, Minnesota Power, 30 West Superior Street, Duluth, MN 55802, *jpaulson@mnpower.com*, 218–722–5642, ext. 3569.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.gov*, 202–502–6041.

j. In letters dated October 17, 2002, from the U.S. Forest Service, October 18, 2002, from the Minnesota Department of Natural Resources and the Conservationists With Common Sense, and October 21, 2002, from Minnesota Power requested an extension of time until February 14, 2002, to complete a Settlement Agreement (SA) and accompanying Explanatory Statement (ES), and to file comments, recommendations, terms and conditions, and prescriptions in response to a notice ready for environmental analysis (REA) issued on September 13, 2002. The REA notice set the deadline for filing comments and recommendations 60 days from the issuance date of the notice, or November 11, 2002.

The Commission is committed to processing license applications in a timely manner and can not suspend processing the application (including extending the REA comment deadline date) until February 2003, in hopes that the collaborative team will reach a settlement.

The Commission's goal is to issue a draft and final EA during the spring and summer of 2003, respectively, and be ready for a Commission decision on the application by September 2003, prior to the October 31, 2003, license expiration date. The requests to file the SA and ES by February 14, 2003, could delay taking final action on the license application beyond the license expiration date. Therefore, a limited extension of time is granted to file the SA, ES, and comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* December 27, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site*http://www.ferc.gov*under the "e-Filing" link.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29748 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. OAR–2002–0036; AD–FRL–7412–5]

National Emission Standards for Hazardous Air Pollutants: Revision of Area Source Category List Under Section 112(c)(3) and 112(k)(3)(B)(ii) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the area source category list under the Integrated Urban Air Toxics Strategy.

SUMMARY: This notice adds 23 area source categories of hazardous air pollutants (HAP) to the previous lists developed under the Integrated Urban Air Toxics Strategy (Strategy). With the addition of these categories, the requirement to identify and list area source categories representing at least 90 percent of the emissions of the 30 "listed" (or area source) HAP under section 112(c)(3) and 112(k)(3)(B)(ii) of the Clean Air Act (CAA) is fulfilled. The Strategy's area source category list constitutes an important part of EPA's agenda for regulating stationary sources of air topics emissions.

These revisions to the list of area sources have not been reflected in any previous notices and are being made without public comment on the Administrator's own motion. Such revisions are deemed by EPA to be without need for public comment based on the nature of the actions.

EFFECTIVE DATE: November 22, 2002.

ADDRESSES: The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara B. Driscoll, Policy, Planning and Standards Group, Emission Standards Division (C439–04), EPA, Research Triangle, Park, North Carolina 27711, facsimile number (919) 541–0942 telephone number (919) 541–1051, electronic mail (e-mail): *driscoll.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The EPA has established an official public docket for this action under the Docket ID No. OAR–2002–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this Federal Register document electronically through the EPA Internet under the **"Federal Register"** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document. Once in the system, select "search," then key in the appropriate docket identification.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network

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(TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page, *http://www.epg.gov/ttn/oarpg.* The TNN provides information and technology exchange in various areas of air pollution control. If more information regarding the TNN is needed, call the TNN HELP line at (919) 541–5384.

I. What Is the History of the Integrated Urban Air Toxics Strategy Area Source Category List?

The CAA includes two provisions, section 112(c)(3) and 112(k)(3)(B)(ii), that instruct EPA to identify and list area source categories accounting for at least 90 percent of the emissions of the 30 "listed" (or area source) HAP (64 FR 38706, July 19, 1999), and that are, or will be, subject to standards under section 112(d) of the CAA. For this effort, we have used urban area source information from the section 112(k) inventory, which represents a baseline year of 1990. In the July 1999 Strategy, we identified 16 area source categories that had already been listed for regulation under the CAA, and 13 area source categories that were being listed under section 112(c)(3) for the first time. These 29 area source categories are:

- Cyclic Crude and Intermediate Production
- Flexible Polyurethane Foam Fabrication Operations
- Hospital Sterilizers
- Industrial Inorganic Chemical Manufacturing
- Industrial Organic Chemical Manufacturing
- Mercury Cell Chlor-Alkali Plants
- Gasoline Distribution Stage 1
- Municipal Landfills
- Oil and Natural Gas Production
- Paint Stripping Operations
- Plastic Materials and Resins Manufacturing
- Publicly Owned Treatment Works
- Synthetic Rubber Manufacturing
- Chromic Acid Anodizing
- Commercial Sterilization Facilities
- Other Solid Waste Incinerators (Human/Animal Cremation)
- Decorative Chromium Electroplating
- Dry Cleaning Facilities
- Halogenated Solvent Cleaners
- Hard Chromium Electroplating
- Hazardous Waste Combustors
- Industrial Boilers
- Institutional/Commercial Boilers
- Medical Waste Incinerators
- Municipal Waste Combustors
- Open Burning Scrap Tires
- Portland Cement
- Secondary Lead Smelting
- Stationary Internal Combustion Engines.

Each of the first 13 area source categories above, which were listed for the first time in June 1999, contributed at least 15 percent of the total area source urban emissions for at least one of the 30 area source HAP. We also took credit for the percentage of emission contribution from the last 16 area source categories on the list above. Since then, we added Secondary Aluminum Production to our list of major and area source categories (66 FR 8220, January 30, 2001). On June 26, 2002, we listed an additional 18 area source categories:

- Acrylic Fibers/Modacrylic Fibers Production
- Plating and Polishing
- Agricultural Chemicals & Pesticides Manufacturing
- Autobody Refinishing Paint Shops
- Cadmium Refining & Cadmium Oxide Production
- Flexible Polyurethane Foam Production
- Iron Foundries
- Lead Acid Battery Manufacturing
- Miscellaneous Organic Chemical Manufacturing (MON)
- Pharmaceutical Production
- Polyvinyl Chloride & Copolymers Production
- Pressed and Blown Glass & Glassware Manufacturing
- Secondary Copper Smelting
- Secondary Nonferrous Metals
- Sewage Sludge Incineration
- Stainless and Nonstainless Steel Manufacturing Electric Arc Furnaces (EAF)
- Steel Foundries
- Wood Preserving.

The listing of all these categories, however, did not meet the requirement to list area sources representing 90 percent of the area source emissions of the 30 area source HAP. In the Strategy, we indicated that we would be adding additional area source categories as necessary to meet the 90 percent requirement and would complete our listing by 2003.

II. Why Is EPA Issuing This Notice?

Under the provisions of section 112(c)(3) and 112(k)(3)(B)(ii), this notice announces the addition of 23 area source categories to the list initially published on July 19, 1999 (64 FR 38721), amended on January 30, 2001 (66 FR 8220), and on June 26, 2002 (67 FR 43112). While this listing is again based on the section 112(k) inventory which represents urban area information for 1990, current information will be used for any type of regulatory development. Each of the source categories contributes a percentage of the total area source emissions for at least one of the 30 area source HAP and completes our requirement to address 90 percent of the emissions of each of the 30 area source HAP. The additional area source categories being listed pursuant to section 112(c)(3) and 112(k)(3)(B)(ii) are:

- Asphalt Processing and Asphalt Roofing Manufacturing
- Brick and Structural Clay Products Manufacturing
- Carbon Black Production
- Chemical Manufacturing: Chromium Compounds
- Chemical Preparations
- Clay Ceramics Manufacturing
- Industrial Machinery and Equipment: Finishing Operations
- Copper Foundries
- Electrical and Electronics Equipment: Finishing Operations
- Ferroalloys Production: Ferromanganese and Silicomanganese
- Fabricated Metal Products Manufacturing, not elsewhere classified (nec)
- Fabricated Plate Work (Boiler Shops)
- Fabricated Structural Metal Manufacturing
- Heating Equipment Manufacturing, Except Electric
- Inorganic Pigments Manufacturing
- Iron and Steel Forging
- Nonferrous Foundries, nec
- Paints and Allied Products. Manufacturing
- Plastic Parts and Products (Surface Coating)
- Prepared Feeds Manufacturing
- Primary Copper Smelters
- Primary Metals Products Manufacturing
- Valves and Pipe Fittings Manufacturing

In addition to adding these area source categories, EPA is also revising the name of the area source category Cadmium Refining and Cadmium Oxide Production to Primary Nonferrous Metals—Zinc, Cadmium and Beryllium. This category is also being expanded to include these other operations: Primary Smelting and Refining of Zinc, and Primary Nonferrous Metals. Expanding this source category to include these additional operations is needed to meet the 90 percent requirement for several HAP. The name of the area source category Lead and Acid Battery Manufacturing is also changed to Lead Acid Battery Manufacturing.

In a recent notice, addressed in a separate **Federal Register** notice), the area source category Open Burning of Scrap Tires was removed from source categories included in the inventory analysis for section 112(c)(6) and 112(k). Consequently, that source category will no longer be a candidate for regulation under either section 112(c)(6) or 112(k). As a result, two area source categories: Asphalt Processing and Asphalt Roof Manufacturing, and Carbon Black Production were added to the section 112(k) list above to ensure that 90 percent of the emissions of the HAP, polycyclic organic matter, are addressed.

III. Administrative Requirements

Today's notice is not a rule; it is essentially an information-sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be "significant" is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may either: (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action take or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The OMB has determined that this action is not significant under the terms of Executive Order 12866.

Dated: November 13, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–29774 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6535–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed November 11, 2002, through November 15, 2002,

Pursuant to 40 CFR 1506.9.

EIS No. 020466, Draft Supplement, FHW, MI, US–31 Freeway Connection from Napier Road to I–94 Project, transportation improvement, updated information, Berrien County, MI, comment period ends: January 3, 2003, contact: James Kirschensteiner (517) 702–1835.

EIS No. 020472, Draft Supplement, COE, FL, Upper ST. Johns River Basin and Related Areas, Central and Southern Florida Flood Control Project, proposed modifications to project features north of the Fellsmere Grade, to preserve and enhance floodplain and aquatic habitats, Brevard County, FL, comment period ends: January 3, 2003, contact: Esteban Jimerez (904) 232–2115.

EIS No. 020473, Draft EIS, BLM, NV, Ivanpah Energy Center Project, proposes to construct and operate a 500 Megawatt (MW) gas-fired electric power generating station in southern Clark County, NV, comment period ends: January 3, 2003, contact: Jerrold E. Crockford (505) 599–6333.

EIS No. 020474, Draft EIS, FHW, AK, South Extension of the Coastal Trail Project, to extend the existing Tony Knowles Coastal Trail from Kincaid Park through the project area to the Potter Weigh Station, COE section 10 and 404 permit, municipality of Anchorage, Anchorage, Alaska, comment period ends: January 8, 2003, contact: Tim A. Haugh (907) 586–7418. This document is available on the Internet at: *http://home.gci.net/~southtrail.*

EIS No. 020475, Draft EIS, USN, CA, China Lake Naval Air Weapons Station, proposed military operational increases and implementation of associated comprehensive land use and integrated natural resources management plans, located in the North and South Range, Inyo, Kern and San Bernardino Counties, CA, comment period ends: February 18, 2003, contact: John O'Gara (076) 093–9321.

EIS No. 020476, Final EIS, COE, FL, Miami River Dredged Material Management Plan, river sediments dredging and disposal maintenance dredging, Biscayne Bay, city of Miami, Miami-Dade County, FL, wait period ends: December 23, 2002, contact: Daniel Small (404) 562–5224.

Amended Notices

EIS No. 020405, Draft EIS, FHW, NH, Interstate 93 Improvements, from Salem to Manchester, IM–IR–93–1(174)0, 10418–C, funding, NPDES and COE section 404 permits, Hillsborough and Rockingham Counties, NH, comment period ends: December 16, 2002, contact: William F. O'Donnell (603) 228–3057. Revision of **Federal Register** notice published on 10/4/2002: CEQ comment period ending 11/18/2002 has been extended to 12/16/2002.

EIS No. 020445, Draft EIS, COE, Lake Sidney Lanier Project, to continue the ongoing operation and maintenance activities necessary of flood control, hydropower generation, water supply, recreation, natural resources management, and shoreline management, section 10 and 404 permits, Dawson, Forsyth, Lumpkin, Hill and Gwinnett Counties, GA, comment period ends: December 23, 2002, contact: Glen Coffee (251) 690–2727.

Revision of **Federal Register** notice published on 11/8/2002: correction to contact name and telephone number. Also Draft EIS is available on Internet at: *http://www.usacelakelanierеis.net/.*

Dated: November 19, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance, Office of Federal Activities.

[FR Doc. 02–29781 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6535–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section

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309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17922).

Draft EISs

ERP No. D–AFS–L65404–AK Rating EC2, Kosciusko Island Timber Sale(s), Timber Harvesting, Tongass National Forest, Thorne Bay Ranger District, Kosciusko Island, AK.

Summary: EPA expressed environmental concerns about potential adverse impacts to water quality and quantity from road construction and timber harvest and aquatic resources in roadless areas, especially the Van Sant Creek watershed. EPA recommends that the final EIS include additional information on project impacts to these resources and on the drinking water supply.

ERP No. D–FHW–F40407–IN Rating EO2, I–69 Evansville to Indianapolis Corridor Study, I–69 Completion in Southwestern Indiana and Corridor Selection, IN.

Summary: EPA expressed environmental objections regarding the magnitude of impacts to wetland and aquatic resources, forests, farmland, and potential impacts to sensitive karst features. EPA expressed concern regarding future project compliance with Section 404 of the Clean Water Act and recommended the agencies reevaluate alternatives.

ERP No. D–FHW–J40156–ND Rating EC2, US 2 Highway Transportation Improvements from near U.S. 85 (milepost 31.93) to west of U.S. 52 (milepost 131.24), Funding, NPDES and U.S. Army COE Section 404 Permits Issuance, Williams, Mountrail and Ward Counties, ND.

Summary: EPA has environmental concerns about substantial losses of wetlands as a result of expanding the highway from two to four lanes. EPA recommends the development of an alternative with fewer impacts to wetlands and inclusion of sufficient information that is necessary to streamline the NEPA and 404 permit processes.

ERP No. D–NPS–J61022–MT Rating EC2, Glacier National Park—Going-to-Sun Road Rehabilitation Plan to Protect and Preserve a National Historic Landmark, Waterton-Glacier International Peace Park, The World's First International Peace Park, A World Heritage Site, MT.

Summary: EPA expressed environmental concerns with potential construction impacts to water quality, especially consistency of proposed road improvements with restoration and TMDL development. EPA also has concerns about potential impacts from disturbance to sensitive and fragile vegetation (*e.g.*, State rare velvet-leaf blueberry plant), and wildlife and habitat adjacent to the roadway and near proposed visitor facility improvements.

ERP No. DS–AFS–F05123–00 Rating LO, Bond Falls Hydroelectric Project related to Terms and Conditions for Geology and Soils, Water Quality and Quantity, Fisheries, Terrestrial, Recreation, Aesthetic, Cultural, Socioeconomic and Land Use Resources, Ontonagon River Basin, Valas County, WI and Ontonagon and Gogebic Counties, MI.

Summary: EPA has no objections to the proposed terms and conditions for the Bond Falls Hydroelectric Relicensing Project.

ERP No. DS–AFS–L61199–ID Rating NS, Salmon Wild and Scenic River Management Plan, Timeline Change From December 31, 2002 to December 31, 2005 and Clarification of Economic Impacts on the Camps, Stub Creek, Arctic Creek and Smith Gulch Creek, Salmon National Forest, Salmon County, ID.

Summary: EPA Region 10 used a screening tool to conduct a limited review of the Salmon Wild and Scenic River Management Plan. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

Final EISs

ERP No. F–AFS–J65361–MT Black Ant Salvage Project, Salvage of 739 Acres of Dead Merchantable Trees from the Lost Fork Fire of 2001, Lewis and Clark National Forest, Meagher Basin County, MT.

Summary: EPA's environmental concerns about increased potential for erosion and sediment transport and compaction of sensitive post-fire soils during salvage logging were reduced with the selection of a new winter logging alternative. EPA recommended mitigation measures to avoid rutting of logging roads during spring breakup that could increase sediment to down-gradient 303(d) listed streams.

ERP No. F–NPS–E65058–GA Fort Frederica National Monument General Management Plan, Implementation, Saint Simons Island, Glynn County, GA.

Summary: EPA did not identify any potential environmental impacts.

Dated: November 18, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–29782 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0069; FRL–7280–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on December 9–11, 2002, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits: Development of proposed AEGLs, continued review of exisitng AEGLs, comments from the National Academy of Sciences (NAS) Subcommittee for AEGLs, and development of interim AEGLs.

DATES: The meetings will be held from 10 a.m. to 5 p.m. on December 9, 2002; from 8:30 a.m. to 5 p.m. on December 10, 2002; and from 8:30 a.m. to noon on December 11, 2002.

ADDRESSES: The meeting will be held at the Department of Labor, Bureau of Labor Statistics, 2 Massachusetts Ave., NE. (Union Station Metro Stop; 1st St. exit, Visitor's Entrance). Visitors should bring a photo ID for entry into the building and should contact the Designated Federal Officer (DFO) to have their names added to the security entry list.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, DFO, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0069. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Meeting Procedures

Chemicals listed under the following categories will be considered, as time permits:

1. Development of proposed AEGLs: Benzene, 1,4-dioxane, hydrogen bromide, sulfur dioxide, and trimethylchlorosilane.

2. Continued review: Allyl amine, chlorine trifluoride, chloromethyl methyl ether, cis- and trans-crotonaldehyde, iron pentacarbonyl, nitric acid, nitric oxide, nitrogen dioxide, perchloromethyl mercaptan, propionitrile, and vinyl chloride.

3. Comments from the NAS Subcommittee for AEGLs: Boron trifluoride, chloroform, dimethyldichlorosilane, methyl trichlorosilane, and toluene.

4. Development of interim AEGLs: Acetonecyanohydrin, ammonia, bromine, fluorine, Jet Fuel 8, methyl ethyl ketone, monochloroacetic acid, phosphorus oxychloride, phosphorus trichloride, and xylenes.

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is tentatively scheduled for March, 2003.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: November 19, 2002.

Allan S. Abramson,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 02–29888 Filed 11–20–02; 2:58 pm]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Interagency Notice of Change in Control; and (2) Asset Purchaser Eligibility.

DATES: Comments must be submitted on or before January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. FAX number (202) 898–3838; Internet address: *comments @ fdic.gov*.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collections of information:*

1. *Title:* Interagency Notice of Change in Control.

OMB Number: 3064–0019.

Form Number: 6822/01.

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Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 40.
Estimated Time per Response: 30 hours.
Total Annual Burden: 1,200 hours.
General Description of Collection: The Interagency Notice of Change in Control is submitted regarding any person proposing to acquire ownership control of an insured state nonmember bank. The information is used by the FDIC to determine whether the competence, experience, or integrity of any acquiring person, indicates that it would not be in the interest of the depositors of the bank or in the interest of the public, to permit such persons to control the bank.

2. *Title:* Asset Purchaser Eligibility.
OMB Number: 3064–0135.
Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 2,500.
Estimated Time per Response: 30 minutes.
Total Annual Burden: 1,250 hours.
General Description of Collection: The Purchaser Eligibility Certification implements the statutory requirement that assets held by the FDIC in the course of liquidating any federally insured institution not be sold to persons who contributed to the demise of an insured institution in specified ways.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC this 19th day of November, 2002.
Federal Deposit Insurance Corporation.
Valerie Best,
Assistant Executive Secretary.
[FR Doc. 02–29767 Filed 11–21–02; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Putnam Bancorp MHC, Inc., and PSB Holdings, Inc., both of Putnam, Connecticut; to become bank holding companies by acquiring 100 percent of the voting shares of Putnam Savings Bank, Putnam, Connecticut.

Board of Governors of the Federal Reserve System, November 18, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–29768 Filed 11–21–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Regional Delaware, Inc., Wilmington, Delaware, and Texas Regional Bancshares, Inc., McAllen, Texas; to merge with Corpus Christi Bancshares, Inc., Corpus Christi, Texas, and thereby indirectly acquire CCB–Nevada, Inc., Carson City, Nevada, and The First State Bank, Bishop, Texas.

Board of Governors of the Federal Reserve System, November 19, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–29831 Filed 11–21–02; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review Comment Request

The Department of Health and Human services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. *HHS Acquisition Regulations (HHSAR) Part 333:* Disputes and Appeals—0990–0133—Extension—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts—*Respondents:* State or local governments, businesses or other for-profit, non-profit institutions; *Number of respondents:* 80; *Average burden per response:* 30 minutes; *Total annual burden:* 40 hours.

2. *HHS Acquisition Regulations (HHSAR) Part 370:* Special Programs Affecting Acquisition—0990–0129—Extension—This section of the regulations establishes requirements for the accessibility of meetings, conferences and seminars to persons with disabilities; establishes requirements for Indian preference in employment, training and subcontracting opportunities—Burden Information for Accessibility—Number of Respondents: 310; Average Burden per Response: 10 hours; Total Accessibility Burden: 3,100 hours—Burden Information for Indian Preference—*Number of Respondents:* 932: *Average Burden per Response:* 8 hours; *Total Indian Preference Burden:* 7,456 hours—*Total Burden:* 10,566 hours.

3. *HHS Acquisition Regulation (HHSAR) Part 352:* Solicitation Provisions and Contract Clauses—0990–0130—Extension—The Key Personnel clause in HHSAR 352.270–5 is necessary for proper contract administration and the Publication and Publicity clause in HHSAR 352.270–6 is necessary to encourage publication of contract results.

Respondents: Businesses or other for-profit, non-profit institutions, State, local or Tribal governments—Burden Information for Key Personnel—*Number of Respondents:* 1501; *Average Burden per Response:* 2 hours; *Burden for Key Personnel:* 3002 hours—Burden Information for Publications—*Number of Respondents:* 1,501; *Average Burden per Response:* 2 hours; Total Burden Key Personnel—3,002 hours—Burden Information on Publication—*Number of Respondents:* 420; *Average Burden per Response:* 2 hours; *Total Burden for Publications:* 840 hours—*Total Burden:* 3,842 hours; *OMB Desk Office:* Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: November 14, 2002.
Kerry Weems,
Deputy Assistant Secretary, Budget.
[FR Doc. 02–29716 Filed 11–21–02; 8:45 am]
BILLING CODE 4151–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at chapter AA, Immediate Office of the Secretary, as last amended at 67 FR 48903–05, 7/26/02. This reorganization is to establish a new chapter AAC, "Office on Disability (OD)" within the Office of the Secretary. The Office on Disability will serve as the focal point within HHS for the implementation and coordination of policies, programs, and special initiatives related to disabilities within the Department and with other federal agencies. The changes are as follows:

I. Under part A, Office of the Secretary, chapter AA, make the following changes:

A. Under chapter AA, section AA.10 "Organization," add the following new component: Office on Disability (AAC).

B. Under chapter AA, establish a new chapter AAC, "Office on Disability (OD)" to read as follows:

Office on Disability

AAC.00 Mission
AAC.10 Organization
AAC.20 Functions

Section AAC.00 Mission: The Office on Disability (OD) oversees the implementation and coordination of disability programs, policies, and special initiatives. The Office will heighten the interaction of programs within HHS and with federal, state, community and valuable private sector partners. The Office will support plans and initiatives designed to tear down barriers facing people with disabilities, which prevent them from fully participating and contributing in an inclusive community life.

Section AAC.10 Organization: The Office on Disability (OD) is headed by a Director, who reports to the Secretary, and serves as an advisor on HHS activities relating to disabilities.

Section AAC.20 Functions: The Office of Disability (OD) includes the following activities: The OD advises the Secretary on matters relating to implementation and coordination of policies, disability-related programs, and special disability-focused initiatives within the Department and with other federal agencies; and the Office will serve as the focal point within the Department for disabilities issues, including the coordination of disability policy, programs and special disability-related initiatives within the Department and with other Federal agencies. The Deputy Director of the Office on Disability assists the Director in carrying out the responsibilities of the Office and acts as Director in the absence of the Director.

Dated: November 13, 2002.
Ed Sontag,
Assistant Secretary for Administration Management.
[FR Doc. 02–29715 Filed 11–21–02; 8:45 am]
BILLING CODE 4150–03–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for an Independent Scientist (K02) Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Independent Scientist (K02) Award on Managed Care.

Date: December 2, 2002 (Open on December 2, from 1 p.m. to 1:10 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2121 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the December 2 meeting, due to the time constraints of reviews and funding cycles.

Dated: November 18, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–29772 Filed 11–21–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–718–721]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services:

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Business Proposal Formats for Quality Improvement Organizations (QIOs)—previously known as Peer Review Organizations and Supporting Regulations in 42 CFR, Section 475.101–475.107; *Form No.:* CMS–718–721 (OMB# 0938–0579); *Use:* The submission of proposal information by current QIOs and other bidders, on the appropriate forms, will satisfy CMS's need for meaningful, consistent, and verifiable data with which to evaluate contract proposals. *Frequency:* tri-annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 455.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 14, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–29710 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–70, CMS–2567, CMS–R–107]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer Review Organization Information and Supporting Regulations in 42 CFR, Sections 480.104, 480.105, 480.116, and 480.134.; *Form No.:* CMS–R–70 (OMB# 0938–0426); *Use:* The Peer Review Improvement Act of 1982 authorizes quality improvement organizations (QIOs), formally known as PROs, to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. These requirements are on the QIOs to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Individuals or Households, and Not-for-profit institutions; *Number of Respondents:* 362; *Total Annual Responses:* 3,729; *Total Annual Hours:* 60,919.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction and Supporting Regulations in 42 CFR 488.18, 488.26, and 488.28; *Form No.:* CMS–2567 (OMB# 0938–0391); *Use:* This Paperwork package provides information regarding the form used by the Medicare, Medicaid, and the Clinical Laboratory Improvement Amendments (CLIA) programs to document a health care facility's compliance or noncompliance (deficiencies) with regard to the Medicare/Medicaid Conditions of Participation and Coverage, the requirements for participation for Skilled Nursing Facilities and Nursing Facilities, and for certification under CLIA. This form becomes the basis for both public disclosure of information and CMS certification decisions (including termination or denial of participation); *Frequency:* Biennially and Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 120,000.

3. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Determining Third Party Liability (TPL) State Plan Preprint and Supporting Regulations in 42 CFR 433.138; *Form No.:* CMS–R–107 (OMB# 0938–0502); *Use:* The collection of third party liability information results in significant program savings to the extent that liable third parties can be identified and payments can be made for services that would otherwise be paid for by the Medicaid program. *Frequency:* On occasion; *Affected Public:* Individuals or Households, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 1,900,000; *Total Annual Responses:* 1,900,000; *Total Annual Hours:* 329,965.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 14, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–29711 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1241–NC]

RIN 0938–AM37

Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waivers for Organ Procurement Service Areas

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces three applications that we have received from hospitals requesting waivers from entering into agreements with their designated organ procurement organizations (OPOs), in accordance with section 1138(a)(2) of the Social Security Act. This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant these waivers.

COMMENT DATE: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1241–NC. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1241–NC, PO Box 8010, Baltimore, MD 21244–8010.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mark A. Horney, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–9994.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that collect human organs from

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hospitals and distribute them to transplant centers around the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to collect organs in CMS-defined exclusive geographic service areas, according to section 371(b)(1)(F) of the Public Health Service Act (42 U.S.C. 273(b)(1)(F)) and our regulations at 42 CFR 486.307. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, according to section 1138(a) of the Social Security Act (the Act), and our regulations at § 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with that particular designated OPO.

However, section 1138(a)(2) of the Act provides that a hospital may obtain a waiver of these requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO, other than the one initially designated by CMS; if the hospital meets certain conditions specified in section 1138(a)(2) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) Is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application within 30 days of receiving the application and offer interested parties an opportunity to comment in writing for 60 days, beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.316(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of the waiver requests, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the requests and comments received. During the review process, we may consult on an as-needed basis with the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver requests and notify the affected hospitals and OPOs.

III. Hospital Waiver Requests

As permitted by § 486.316(e), three hospitals have requested waivers in order to enter into agreements with alternative, out-of-area OPOs. The listing below indicates the name of the facility, the city and State of the facility, the requested OPO, and the currently designated area OPO. These hospitals must continue to work with their designated OPOs until the completion of our review.

Name of facility	City	State	Requested OPO	Designated OPO
Pontotoc Health Services	Pontotoc	MS	MSOP	TNMS
Clay County Medical Center	West Point	MS	MSOP	TNMS
Iuca Hospital	Iuca	MS	MSOP	TNMS

IV. Keys to the OPO Codes

The keys to the acronyms used in the listings to identify OPOs and their addresses are as follows:

MSOP—Mississippi Organ Recovery Agency, Inc., 12 River Bend Place, Jackson, Mississippi 39208

TNMS—Mid-South Transplant Foundation, Inc., 910 Madison Avenue, Suite 1002, Memphis, Tennessee 38103

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection requirement should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques or other forms of information technology.

Section 486.316 sets forth the requirements for a Medicare or Medicaid participating hospital to request a waiver permitting the hospital to have an agreement with an OPO other than the OPO designated for the service area in which the hospital is located. The burden associated with these requirements is currently approved under OMB 0938–0688, HCFA–R–13, Conditions of Coverage for Organ Procurement Organizations, with an expiration date of February 28,2003.

VI. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this is not a major rule because it does not impose an economically significant impact on covered entities or the Medicare program.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Individuals and States are not included in the definition of a small entity. This notice will not result in a significant impact on small businesses because the notice simply announces three applications we have received from hospitals requesting waivers from entering into agreements with their designated OPOs.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice will not result in an impact of $110 million or more on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under these requirements and have determined that it will not impose substantial direct requirement costs on State or local governments.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sec. 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; Program No. 93.774, Medicare-Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: November 18, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–29796 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2154–FN]

Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations for Continued Deeming Authority for Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to re-approve the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as a national accreditation program for Ambulatory Surgical Centers (ASCs) seeking to participate in the Medicare program. Following our evaluation of the organizational and programmatic capabilities of JCAHO, we have determined that JCAHO standards for ASCs meet or exceed the Medicare conditions for coverage. Therefore, ASCs accredited by JCAHO will receive deemed status under the Medicare program.

EFFECTIVE DATE: This final notice is effective December 20, 2002 through December 20, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC), provided that the ASC meets certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) authorizes the Secretary of the Department of Health and Human Services (the Secretary) to establish distinct criteria for facilities seeking designation as ASCs. Under this authority, the Secretary has set forth in regulations minimum requirements that an ASC must meet in order to participate in Medicare. The regulations concerning supplier agreements are at 42 CFR part 489 and those pertaining to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for facility services.

Generally, in order to enter into an agreement, an ASC must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 416 of our regulations. Then, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation that all applicable Medicare conditions are met or exceeded, the Centers for Medicare & Medicaid Services (CMS) shall "deem" those provider entities to have met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the

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accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years or sooner as determined by CMS. The Joint Commission on Accreditation of Healthcare Organization's (JCAHO) current term of approval as a recognized accreditation program for ASCs expires December 19, 2002.

A. Deeming Application Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the nature of the request, and provides no less than a 30-day public comment period. At the end of the 210-day period we must publish an approval or denial of the application.

II. Proposed Notice

On June 28, 2002, we published a proposed notice at 67 FR 43612 announcing the JCAHO's request for reapproval as a deeming organization for ASCs. In this notice we detailed our evaluation criteria. Under section 1865(b)(2) of the Act and § 488.4, we conducted a review of the JCAHO application in accordance with the criteria specified by our regulation, which include, but are not limited to the following:

- An onsite administrative review of JCAHO's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors, (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of JCAHO's ASC accreditation standards to our current Medicare ASC conditions for coverage.
- A documentation review of JCAHO's survey processes to:

+ Determine the composition of the survey team, surveyor qualifications, and the ability of JCAHO to provide continuing surveyor training.
+ Compare JCAHO's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
+ Evaluate JCAHO's procedures for monitoring providers or suppliers found to be out of compliance with JCAHO program requirements. The monitoring procedures are used only when the JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).
+ Assess JCAHO's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
+ Establish JCAHO's ability to provide us with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of JCAHO's survey process.
+ Determine the adequacy of staff and other resources.
+ Review JCAHO's ability to provide adequate funding for performing required surveys.
+ Confirm JCAHO's policies with respect to whether surveys are announced or unannounced.
+ Obtain JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the proposed notice also solicited public comments regarding whether JCAHO's requirements met or exceeded the Medicare conditions of coverage for ASCs. We received no public comments in response to our proposed notice.

III. Provisions of the Final Notice

A. Differences Between JCAHO and Medicare's Conditions and Survey Requirements

We compared the standards contained in JCAHO's "Comprehensive Accreditation Manual for Ambulatory Care" (CAMAC) and its survey process in the "Ambulatory Surgery Centers Request for Continued Deeming Handbook" with the Medicare ASC conditions for coverage and CMS" State and Regional Operations Manual. Our review and evaluation of JCAHO's deeming application, which were conducted as described in section III of this notice, yielded the following:

- In order to meet the requirements of § 488.4(a)(4)(ii), JCAHO provided the education and experience requirements surveyors must meet. JCAHO surveyors must have 5 years of recent experience in an appropriate health care setting and a minimum of a Master's degree in an appropriate discipline.
- JCAHO addressed our regulations at § 488.4(a)(4)(v) by providing JCAHO's policy that no one may conduct a survey if they have had a relationship with the facility in the last 3 years. All JCAHO employees are required to sign a conflict-of-interest statement upon hire.
- JCAHO provided a list of all full and partial ASC accreditation surveys scheduled to be performed by the organization in 2002 to satisfy our requirements at § 488.4(a)(10).
- In reference to the CMS final rule published in the **Federal Register** November 13, 2001 (66 FR 56762), the Joint Commission recognized that the exception permitting certified registered nurse anesthetists (CRNAs) to administer anesthesia without supervision of a physician when requested by the Governor of a State, in consultation with the State's Board of Medicine and Nursing was not addressed. JCAHO will reference the role of and supervisory requirements for CRNAs in the next revision of the CAMAC. The crosswalk of the JCAHO standards to the Medicare Conditions will also be amended. JCAHO will also notify current and prospective ASCs seeking deemed status of this revised CMS requirement in JCAHO's official communication vehicle, *Perspectives*, which is published monthly.
- JCAHO recognizes CMS' expectation that an ASC is by definition an ambulatory health care occupancy with or without regard to size of the facility as incorporated in § 416.44(b). JCAHO agrees to survey ASCs seeking deemed status with this requirement and will add language to the CAMAC. In addition, JCAHO will review the application for survey submitted by ASCs to JCAHO and, as appropriate, will make this requirement more prominent to avoid any misunderstandings.
- JCAHO addressed our regulations at § 416.44 by recognizing that assessing compliance with the life safety code (LSC) is a JCAHO responsibility. In the evaluation of the LSC, the JCAHO surveyor physically inspects and evaluates the ASC's physical plant (both above and below the ceiling) in relationship to the requirements of the LSC. As an adjunct survey assessment technique and tool, the JCAHO uses and evaluates the organization's Statement of Condition (SOC) and Plan for Improvement (PFI) during the on-site inspection; however, the SOC/PFI is not used in lieu of nor does it replace, the on-site evaluation of the ASC's physical plant. In addition, JCAHO strongly supports CMS in the proposed adoption of the 2000 edition of the LSC for all providers. The JCAHO is in the process of adopting the 2000 edition of the LSC for all programs and expects to have this process completed consistent with CMS" adoption of the code.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that JCAHO's requirements for ASCs meet or exceed our requirements. Therefore, we recognize the JCAHO as a national accreditation organization for ASCs that request participation in the Medicare program, effective December 20, 2002 through December 20, 2008.

IV. Collection of Information Requirements

This final notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in 42 CFR part 488, "Survey, Certification, and Enforcement Procedures," are currently approved by OMB under OMB approval number 0938–0690.

V. Regulatory Impact Statement

We have examined the impacts of this final notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final notice recognizes JCAHO as a national accreditation organization for ASCs that request participation in the Medicare program. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. We have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In an effort to better assure the health, safety, and services of beneficiaries in ASCs already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we deem ASCs accredited by JCAHO as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local. Or tribal governments, in the aggregate, or by the private sector, of $110 million. This final notice will not have an effect on the governments mentioned nor on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final notice will not have a substantial effect on State and local governments. In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget. In accordance with Executive Order 13132, we have determined that this notice will not significantly affect the rights of States, local, or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare'Supplemental Medical Insurance Program)

Dated: November 2, 2002.

Thomas Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–29363 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2155–FN]

Medicare and Medicaid Program; Approval of Application for Deeming Authority for Ambulatory Surgical Centers by the Accreditation Association for Ambulatory Health Care

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Accreditation Association for Ambulatory Health Care's (AAAHC) application as a national accrediting organization for ambulatory surgical centers (ASCs) seeking to participate in the Medicare program. Following an evaluation of the organizational and programmatic capabilities of AAAHC, we have determined that AAAHC's standards for ASCs meet or exceed the Medicare conditions for coverage. Therefore, ASCs accredited by AAAHC will be granted deemed status under the Medicare program.

EFFECTIVE DATE: This final notice is effective December 20, 2002, through December 20, 2008.

FOR FURTHER INFORMATION CONTACT: Milonda Mitchell (410) 786–3511.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions and Regulations

Under the Medicare program, eligible beneficiaries may receive covered services in ambulatory surgical centers (ASCs), provided that the ASCs meet

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certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) authorizes the Secretary of the Department of Health and Human Services (the Secretary) to establish distinct criteria for facilities seeking ASC designation. Under this authority, the Secretary has set forth in regulations minimum requirements that ASCs must meet to participate in Medicare. The regulations at title 42 CFR part 416 (Ambulatory Surgical Services) of the Code of Federal Regulations (CFR) determine the basis and scope of covered services provided by ASCs and Conditions for Medicare payment for ASCs. Applicable regulations concerning provider agreements are at part 489 (Provider Agreements and Supplier Approval) and those pertaining to facility survey and certification are at part 488 (Survey, Certification, and Enforcement Procedures), subparts A (General Provisions) and B (Special Requirements).

B. Verifying Medicare Conditions for Coverage

For an ASC to enter into a provider agreement, a State survey agency must certify that the ambulatory surgical center is in compliance with the conditions or standards set forth in part 416 of CMS regulations. Then, the ASC is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. However, there is an alternative to State compliance surveys. Certification by a CMS-approved accreditation program can substitute for ongoing State review.

Section 1865(b)(1) of the Act states that provider entities accredited by CMS-approved accrediting organizations are deemed to be in compliance with Medicare conditions for coverage. Accreditation by an accreditation organization is voluntary and is not required of ASCs for participation in Medicare.

C. Deeming Application Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that CMS conducts its review of deeming applications in a timely manner. The Act provides CMS with 210 calendar days after the date of receipt of an application to complete its survey activities and application review process. Within 60 days of receiving a completed application, CMS must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the nature of the request, and provides no less than a 30-day public comment period.

II. Proposed Notice

On June 28, 2002, CMS published a proposed notice announcing AAAHC's request for approval as a deeming organization for ASCs (67 FR 43610). In the notice, CMS detailed its evaluation criteria. Under section 1865(b)(2) of the Act and § 488.4, CMS conducted a review of AAAHC's application in accordance with the criteria specified by CMS regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAHC's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors, (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of AAAHC's ASC accreditation standards to CMS' current Medicare conditions for coverage.
- A documentation review of AAAHC's survey processes to:
- Determine the composition of the survey team, surveyor qualifications, and the ability of AAAHC to provide continuing surveyor training.
- Compare AAAHC's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- Evaluate AAAHC's procedures for monitoring providers or suppliers found to be out of compliance with AAAHC program requirements. The monitoring procedures are used only when the AAAHC identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).
- Assess AAAHC's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- Establish AAAHC's ability to provide CMS with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of AAAHC's survey process.
- Determine the adequacy of staff and other resources.
- Review AAAHC's ability to provide adequate funding for performing required surveys.
- Confirm AAAHC's policies with respect to whether surveys are announced or unannounced.
- Obtain AAAHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey that CMS may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the proposed notice also solicited public comments regarding whether AAAHC's requirements met or exceeded the Medicare conditions for coverage for ASCs.

CMS received public comments from the American Academy of Facial Plastic and Reconstructive Surgery and the Federated Ambulatory Surgery Association recommending the approval of AAAHC's application as a national accrediting organization for ASCs.

III. Provisions of the Final Notice

A. Differences Between AAAHC and Medicare's Conditions and Survey Requirements

CMS compared the standards contained in AAAHC's "Accreditation Handbook for Ambulatory Health Care," its survey process in the "AAAHC Survey Report Form," and its "AAAHC Environmental Spot-Checklist," with the Medicare ASC conditions for coverage and CMS' State and Regional Operations Manual. CMS conducted its review and evaluation of AAAHC's deeming application as described in section III of this notice. It yielded the following:

- In order to meet the requirements of § 416.41 AAAHC added to its standard that all ASCs must have an effective procedure for transfer to a local hospital, of patients requiring emergency medical care beyond the capabilities of the ASC.
- AAAHC revised its Accreditation Handbook and Survey Report Form to meet the requirement set forth at § 416.44(c), by requiring ventilatory assistance equipment, including airways, manual breathing bags, and ventilators in all ASC operating rooms.
- AAAHC accepted CMS' recommendation to adopt the 2000 Life Safety Code. AAAHC will issue a transmittal of the new LSC requirements to its AAAHC Medicare deemed ASCs, AAAHC surveyors, and to its potential ASCs applicants requesting an AAAHC Medicare deemed status survey. Furthermore, AAAHC has agreed to revise its AAAHC Accreditation Handbook Standards Chapter 8 R-MS, Appendix H; AAAHC Survey Report Form Chapter 8 R-MS; and Physical Environment Checklist for Ambulatory Surgical Centers in February 2003 to reflect the implementation of the 2000 Life Safety Code.
- CMS requested that AAAHC clarify its standard regarding requiring only existing facilities to conform with existing codes as demonstrated by a fire marshal report performed by a State authority and its standard requiring that an existing facility which lacks a fire marshal report be required to solicit a Life Safety Code Survey from the State fire marshal. AAAHC indicated that it will perform a Life Safety Code survey for all ASCs applying for or re-applying for an AAAHC Medicare deemed status survey. A surveyor credentialed to perform such an inspection performs the AAAHC Life Safety Code survey.
- AAAHC provided clarification to its reference regarding the usage of batteries as an emergency power source by stating that its current requirement is based on the 1985 NFPA Life Safety Code. However, once CMS adopts the 2000 edition of the Life Safety Code, AAAHC agrees that the use of batteries will no longer be an acceptable source of emergency power in an ASC, unless specifically permitted by a CMS exception to the new NFPA standards. In addition, this clarification will be incorporated into the revisions of AAAHC's Physical Environment Spot-Check List for Ambulatory Surgical Centers, Appendix H; AAAHC Survey Report Form, Chapter 8; and the Facilities and Environment Section 18 B of the AAAHC Handbook when published in early 2003. Prior to these revisions, AAAHC will issue a transmittal to all ASCs currently deemed by AAAHC, AAAHC Medicare deemed status surveyors, and to ASCs applying for a AAAHC Medicare deemed status survey stating that in accordance with the 2000 edition of the Life Safety Code all new ambulatory health care facilities with "critical access areas" (including operating rooms and/or post-anesthesia recovery rooms) will be required to provide a "type I" essential electrical system (ESS).
- CMS requested AAAHC to clarify its descriptions of its accreditation decisions for ASCs deemed to participate in the Medicare program. AAAHC responded that its Accreditation Committee awards an ASC accreditation for a three-year term when it has no reservations about the accuracy of the survey findings or the ASC's commitment to continue providing high quality care and services, and when it concludes that the ASC is in compliance with all of Medicare's conditions for coverage all of AAAHC's standards. A one-year term of accreditation is awarded by AAAHC's Accreditation Committee when it concludes that the ASC meets the Medicare conditions for coverage, but that a portion of the ASC's operations require more time to achieve and sustain compliance with all AAAHC standards. Therefore, the organization would have a special on-site review within 10 months from the first survey date to avoid a lapse in accreditation. Such a special on-site review would be conducted by one or more surveyors and would not be limited to the recommendations in the previous survey report. Finally, AAAHC's Accreditation Committee awards an ASC a six-month term of accreditation when it concludes that the organization meets the Medicare conditions for coverage and is in compliance with the AAAHC standards, but is ineligible for a three-year term of accreditation because the ASC has not been operational for 6 months. However, a six-month term of accreditation may also be awarded to an ASC that has been in business for longer than 6 months, is seeking both AAAHC accreditation and Medicare deemed status for the first time, and AAAHC's Accreditation Committee has determined that it meets the Medicare conditions for coverage and is in compliance with the AAAHC standards. All ASCs with a six-month term of accreditation would have a special on-site review within 5 months from the previous survey date with a focus on the issue of sustained performance since the initial survey. Such a special on-site review would be conducted by one or more surveyors and would not be limited to the recommendations in the previous survey report. CMS deems an ASC accredited by AAAHC for any of these terms to have met or exceeded Medicare standards for the duration of that term.

B. Term of Approval

Based on the review and observations described in section III of this final notice, CMS has determined that AAAHC's requirements for ASCs meet or exceed CMS requirements. Therefore, CMS recognizes AAAHC as a national accreditation organization for ASCs that request participation in the Medicare program, effective December 20, 2002 through December 20, 2008.

IV. Collection of Information Requirements

This final notice does not impose any information collection and recordkeeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in 42 CFR part 488, "Survey, Certification, and Enforcement Procedures," are currently approved by OMB under OMB approval number 0938–0690.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 98–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS considers a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final notice recognizes AAAHC as a national accreditation organization for ASCs that request participation in the Medicare program. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. CMS has determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, CMS has not prepared analyses for either the RFA or section 1102(b) of the Act.

In an effort to better assure the health, safety, and services of beneficiaries in ASCs already certified as well as provide relief to State budgets in this

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time of tight fiscal restraints, CMS deems ASCs accredited by AAAHC as meeting its Medicare requirements. Thus, CMS continues its focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final notice will not have an effect on the governments mentioned nor on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final notice will not have a substantial effect on State and local governments. In accordance with Executive Order 13132, CMS has determined that this notice will not significantly affect the rights of States, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: November 2, 2002.

Thomas Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–29364 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1220–N]

RIN 0938–AL97

Medicare Program; Fee Schedule for Payment of Ambulance Services—Update for CY 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the Ambulance Inflation Factor (AIF) for ambulance services for calendar year (CY) 2003. The AIF is used in determining the payment limit for ambulance services required by section 1834(l) of the Social Security Act (the Act).

DATES: The AIF for 2003 is effective for ambulance services furnished during the period January 1, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Anne E. Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is *http://wwww.access.gpo.gov/nara/index.html*.

I. Background

Requirements of the Statute for Updating the Ambulance Inflation Factor (AIF) for Ambulance Services for CY 2003

On February 27, 2002, we published a final rule entitled "Medicare Program; Fee Schedule for Payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Nonemergency Ambulance Services; Final Rule" (HCFA–1002–FC) in the **Federal Register** (67 FR 9100), that established a fee schedule for ambulance services required by section 1834(l) of the Social Security Act (the Act). This final rule provided that the ambulance fee schedule would be updated by the AIF annually, based on the percentage increase in the consumer price index (CPI) for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year (§ 414.610(f)). It also provided that notice of the AIF would be published in the **Federal Register** without opportunity for prior comment (§ 414.620). We will follow applicable rulemaking procedures in publishing revisions to the fee schedule for ambulance services that result from any factors other than the inflation factor. In this notice, we set forth the ambulance inflation factor for CY 2003.

II. Provisions of the Notice

Section 1834(l)(3)(B) of the Act provides the basis for updating payment amounts for ambulance services. Specifically, this section provides for an update in payments for CY 2003 that is equal to the percentage increase in the CPI for all urban consumers (CPI–U), for the 12-month period ending with June of the previous year (that is, June 2002). For CY 2003 that percentage is 1.1 percent.

During the transition period, the AIF is applied to both the fee schedule portion of the blended payment amount and to the reasonable charge/cost portion of the blended payment amount separately for each ambulance provider/supplier. Then, these two amounts are added together to determine the total payment amount for each provider/supplier.

III. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** and provide a period for public comment before we make final the provisions of the notice. We can waive this procedure, however, if we find good cause that notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because the law specifies the method of computation of annual updates, and we have no discretion in this matter. Further, this notice does not change substantive policy, but merely applies the statutorily-specified update method. Therefore, under 5 U.S.C. 553(b)(B), for good cause, we waive notice and comment procedures.

IV. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This is not considered a major rule because it has an effect on the Medicare program of less than $100 million in 1 year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, all ambulance providers/suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This notice does not apply to small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice does not result in an expenditure in any 1 year by State, local, or tribal governments of $110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State or local governments.

This notice provides an update for inflation as mandated by statute. We estimate that the total expenditure for CY 2003 for ambulance services covered by the Medicare program is approximately $3 billion. Inflation of 1.1 percent will result in an additional total expenditure of approximately $30 million.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 4, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 1, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29850 Filed 11–20–02; 10:28 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Notice of Proposed Settlement and Fairness Hearing

The Centers for Medicare and Medicaid Services gives notice that if you are a medicare beneficiary you may be a member of a class action lawsuit involving local coverage policies. This case challenges, among other things, the notice given when claims are denied by Medicare based on local coverage policies. The United States District Court for the District of Arizona has certified a nationwide class action in this case, *Erringer* v. *Thompson*, No. CV 01–112 TUC BPV (D. Ariz.), and the parties have submitted a proposed Settlement Agreement to the Court for its approval. You have the right to receive a copy of, and comment on, the proposed settlement Agreement. To receive a copy of the Agreement, please write or email class counsel at one of the addresses listed below. A copy of the proposed Agreement is also available on the Web at: *http://www.acdl.com/legalnews.html*. If you want to comment on the proposed Agreement, you must submit written comments to the Court.

Summary of Agreement

The proposed Agreement settles all claims relating to the initial notice provided to Medicare beneficiaries, whose claims for payment are denied in whole or in part based on application of a Local Medical Review Policy (LMRP) or a Local Coverage Determination (LCD), regarding: (i) the use of such policies in the determination of a beneficiary's claim for benefits, and (ii) the beneficiary's opportunity to provide additional evidence or information in support of his/her claim for benefits. In exchange for Plaintiffs releasing all such claims, Defendant agrees to provide beneficiaries whose claims are denied based on an LMRP or LCD notice that: (1) An LMRP or LCD was used in making the decision to deny their claim; (2) an LMRP or LCD provides a guide to assist in determining whether a particular item or service is covered by Medicare; (3) a copy of the LMRP or LCD is available from the local intermediary or carrier by calling the toll free telephone number listed on the beneficiary's Medicare Summary Notice; (4) the beneficiary can compare the facts in his/her case to the guidelines set out in the LMRP or LCD to see whether additional information from his/her physician might change Medicare's decision; and (5) the beneficiary may also send any additional information regarding any appeal. The Agreement also provides for a way that beneficiaries may receive a copy of the LMRP or LCD used in their case, provides for monitoring of Medicare contractors' compliance with the proposed Agreement's provisions, and provides for a payment of $23,061 in attorney's fees and costs to Plaintiffs' counsel.

Fairness Hearing

The Court will conduct a fairness hearing before Magistrate Judge Bernardo P. Velasco, at the United States District Court, Evo A. DeConcini U.S. Courthouse, 405 W. Congress Street, Tucson, Arizona 85701, on February 3, 2003, at 9 a.m., to determine whether to approve the proposed Agreement as fair, adequate and reasonable. Objections to the proposed Agreement will be considered by the Court if such objections are filed in writing with the Clerk of Court at the above address, on or before December 31, 2002. Attendance at the hearing is not necessary to have an objection considered; however, class members wishing to be heard orally in opposition to the proposed Agreement should indicate in their written objection their intention to appear at the hearing.

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Class Counsel

The attorneys representing the plaintiffs and the class as class counsel are:

Sally Hart, Arizona Center for Disability Law and Center for Medicare Advocacy, Inc., 100 N. Stone Ave., Suite 305, Tucson, AZ 85701. (520) 327–9547. *shart@acdl.com.*

Dina Lesperance, Arizona Center for Disability Law, 3839 N. Third St., Suite 209, Tucson, AZ 85012–2069.

Gill Deford, Center for Medicare Advocacy, Inc., PO Box 350, Willimantic, CT 06266. (860) 456–7790.

Counsel for Defendant

Counsel for Defendant is:

Ori Lev, United States Department of Justice, PO Box 883, Washington, DC 20044.

Dated: November 5, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–28873 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Notice of Proposed Settlement and Fairness Hearing

We are giving notice that if you are a medicare beneficiary you may be a member of a class action lawsuit involving local coverage policies. This case challenges, among other things, the notice given when claims are denied by Medicare based on local coverage policies. The United States District Court for the District of Arizona has certified a nationwide class action in this case, *Erringer* v. *Thompson*, No. CV 01–112 TUC BPV (D. Ariz.), and the parties have submitted a proposed Settlement Agreement to the Court for its approval. You may request a copy of, and comment on, the proposed settlement agreement. To receive a copy of the Agreement, please write or email class counsel at one of the addresses listed below. A copy of the proposed Agreement is also available on the Web at: *http://www.acdl.com/legalnews.html.* If you want to comment on the proposed Agreement, you must submit written comments to the Court.

Summary of Agreement

The proposed Agreement settles all claims relating to the initial notice provided to Medicare beneficiaries, whose claims for payment are denied in whole or in part based on application of a Local Medical Review Policy (LMRP) or a Local Coverage Determination (LCD), regarding: (i) The use of such policies in the determination of a beneficiary's claim for benefits, and (ii) the beneficiary's opportunity to provide additional evidence or information in support of his/her claim for benefits. In exchange for Plaintiffs releasing all such claims, Defendant agrees to provide beneficiaries whose claims are denied based on an LMRP or LCD notice that: (1) An LMRP or LCD was used in making the decision to deny their claim; (2) an LMRP or LCD provides a guide to assist in determining whether a particular item or service is covered by Medicare; (3) a copy of the LMRP or LCD is available from the local intermediary or carrier by calling the toll free telephone number listed on the beneficiary's Medicare Summary Notice; (4) the beneficiary can compare the facts in his/her case to the guidelines set out in the LMRP or LCD to see whether additional information from his/her physician might change Medicare's decision; and (5) the beneficiary may also send any additional information regarding any appeal. The Agreement also provides for a way that beneficiaries may receive a copy of the LMRP or LCD used in their case, provides for monitoring of Medicare contractors' compliance with the proposed Agreement's provisions, and provides for a payment of $23,061 in attorney's fees and costs to Plaintiffs' counsel.

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The Court will conduct a fairness hearing before Magistrate Judge Bernardo P. Velasco, at the United States District Court, Evo A. DeConcini U.S. Courthouse, 405 W. Congress Street, Tucson, Arizona 85701, on February 3, 2003, at 9 a.m., to determine whether to approve the proposed Agreement as fair, adequate and reasonable. Objections to the proposed Agreement will be considered by the Court if such objections are filed in writing with the Clerk of Court at the above address, on or before December 31, 2002. Attendance at the hearing is not necessary to have an objection considered; however, class members wishing to be heard orally in opposition to the proposed Agreement should indicate in their written objection their intention to appear at the hearing.

Class Counsel

The attorneys representing the plaintiffs and the class as class counsel are:

Sally Hart, Arizona Center for Disability Law and Center for Medicare Advocacy, Inc., 100 N. Stone Ave., Suite 305, Tucson, AZ 85701, (520) 327–9547, *shart@acdl.com.*

Dina Lesperance, Arizona Center for Disability Law, 3839 N. Third St., Suite 209, Tucson, AZ 85012–2069.

Gill Deford, Center for Medicare Advocacy, Inc., P.O. Box 350, Willimantic, CT 06266, (860) 456–7790.

Counsel for Defendant

Counsel for Defendant is: Ori Lev, United States Department of Justice, P.O. Box 883, Washington, DC 20044.

Dated: November 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–29128 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1217–N]

Medicare Program; December 16, 2002, Meeting of the Practicing Physicians Advisory Council

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services. This meeting is open to the public.

Meeting Registration: Persons wishing to attend this meeting must contact the meeting coordinator Diana Motsiopoulos at *dmotsiopoulos@cms.hhs.gov* or (410)–786–3379 at least 72 hours in advance to register. Persons who are not registered in advance will not be permitted into the CMS Headquarters and thus will not be able to attend the meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

DATES: The meeting is scheduled for Monday, December 16, 2002 from 8:30 a.m. until 5 p.m. e.s.t.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Website: You may access the Internet at *http://cms.hhs.gov/faca/ppac/default.asp* for additional information and updates on committee activities.

CMS Advisory Committees Information Line: (1–877–449–5659 toll free)/(410–786–9379 local).

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard., Mail Stop C4–10–07, Baltimore, MD 21244–1850, (410) 786–3379. News media representatives should contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation shall occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) of the Act. The remaining members may include dentists, podiatrists, optometrists, and chiropractors. Members are invited to serve for overlapping 4-year terms contingent upon the renewal of the Council's term. Section 14 of the Federal Advisory Committee Act requires that the 2-year term of advisory committees, such as the Council, be renewed by appropriate action prior to its termination. Section 1868(a) of the Act provides that appointments for Council membership shall be based upon nominations to the Secretary made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Richard Bronfman, D.P.M.; Ronald Castellanos, M.D.; Rebecca Gaughan, M.D.; Joseph Heyman, M.D.; Stephen A. Imbeau, M.D.; Joe Johnson, D.O.; Christopher Leggett, M.D.; Dale Lervick, O.D.; Angelyn L. Moultrie-Lizana, D.O.; Barbara McAneny, M.D.; Michael T. Rapp, M.D. (Chairman); Amilu Rothhammer, M.D.; Victor Vela, M.D.; and Douglas L. Wood, M.D.

Council members will be updated on the status of recommendations. The agenda will provide for discussion and comment on the following topics:

- Program Integrity Customer Service Initiative.
- Is Immunoassay Fecal Occult Blood Testing an appropriate substitution for Guiac Fecal Occult Blood Testing in the screening for Colon and Rectal Cancer?
- Educational preparation for February PPAC meeting regarding Physician Fee Schedule.
- Physicians Regulatory Issues Team Update.
- Doctor's Office Quality Project: A Physician Level Measurement and Improvement Initiative.

For additional information and clarification on the topics listed, call the contact person in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, Friday, December 6, 2002, to be scheduled. Testimony is limited to agenda topics. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to the meeting coordinator at *dmotsiopoulos@cms.hhs.gov* no later than 12 noon, December 6, 2002, for distribution to Council members for review before the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Diana Motsiopoulos at *dmotsiopoulos@cms.hhs.gov* or (410) 786–3379 at least 10 days before the meeting.

(Sec. 1868 of the Social Security Act (42 U.S.C. 1395ee) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sect. 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–29362 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 17, 2002, from 12:30 p.m. to 6 p.m. and December 18, 2002, from 8 a.m. to 3:30 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, e-mail: *SomersK@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 17, 2002, the committee will discuss biologics licensing application BL STN 125011/0, BEXXAR, Tositumomab (Anti-B1) and Iodine-131-Tositumomab, Corixa Corp., indicated for the treatment of patients with relapsed or refractory low-grade, follicular or transformed low-grade, B-cell non-Hodgkin's lymphoma (NHL) including patients with rituximab

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refractory follicular NHL. On December 18, 2002, the committee will discuss new drug application (NDA) 20–498, S012, CASODEX (150 milligrams bicalutamide), AstraZeneca Pharmaceuticals LP, indicated as: (1) Adjuvant therapy to radical prostatectomy and radiotherapy of curative intent in patients with locally advanced nonmetastatic prostate cancer who have a high risk for disease recurrence, or (2) immediate treatment of localized nonmetastatic prostate cancer in patients for whom therapy of curative intent is not indicated.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 10, 2002. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 1:45 p.m. on December 17, 2002, and between approximately 8:15 a.m. and 8:45 a.m. on December 18, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 10, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by December 10, 2002, to address issues specific to the topic before the committee.

Background materials for this meeting will be posted at the Oncologic Drugs Advisory Committee Dockets Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.* (Click on the year 2002 and scroll down to the Oncologic Drugs Advisory Committee meetings.) The background materials for BEXXAR will be posted on December 16, 2002, and the background materials for CASODEX will be posted on December 17, 2002. The slides and transcripts from the meeting will be posted at this same web address about 3 weeks after the meeting.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen M. Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 15, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–29689 Filed 11–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines (ACCV); Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting. The meeting will be open to the public.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 4, 2002; 9 a.m.–5 p.m.

Place: Audio Conference Call and Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–877–960–9066 on December 4 and providing the following information:

Leader's Name: Thomas E. Balbier, Jr.

Password: ACCV.

Agenda: The agenda items for December 4 will include, but not limited to: an update on thimerosal class action lawsuits; a discussion of the revised National Vaccine Injury Compensation Program's Strategic Plan, a presentation on the Institute of Medicine's report, "SV40 Contamination of Polio Vaccine and Cancer," and updates from the Division of Vaccine Injury Compensation, the Department of Justice, and the National Vaccine Program Office. Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857 or by e-mail at *clee@hrsa.gov.* Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period on the audio conference call. These persons will be allocated time as time permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2124 or e-mail: *clee@hrsa.gov.*

Dated: November 15, 2002.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 02–29688 Filed 11–21–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–47]

Notice of Proposed Information Collection: Comment Request; Pre-Foreclosure Sales Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: January 21, 2003.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Pre-Foreclosure Sales Program.

OMB Control Number, if applicable: 2502–0464.

Description of the need for the information and proposed use: The respondents are homeowners who are attempting to sell their properties prior to foreclosure. The information collection records the process from the borrower's application to participate in the program and the lender's approval, to HUD's review and approval to the specifics of the sale. Homeowners participating in the program must also receive housing counseling, and confirm that counseling has been performed.

Agency form numbers, if applicable: HUD–90035, HUD–90036, HUD–90038, HUD–90041, HUD–90045, HUD–90051, & HUD–90052.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 7,000; the number of respondents is 23,000 generating approximately 32,000 annual responses; the frequency of response is on occasion, and the estimated time needed to prepare the response varies from three minutes to 30 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 13, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–29704 Filed 11–21–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–09]

Notice of Proposed Information Collection for Public Comment: Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* January 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph Riley, 202–708–9426, extension 5861. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology that will reduce respondent burden (*e.g.*, permitting electronic submission of responses).

This Notice also provides the following information:

Title of Proposal: Quality Control for Rental Assistance Subsidy Determinations

Description of the Need for Information and Proposed Use: The Department is conducting under contract a study to update its estimate of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.4 million households covered by Public Housing and Section 8 housing subsidies. The QC process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. On-site tenant interviews, file reviews, third-party income verifications, and income matching with other Federal data are conducted. The data obtained are used to identify the most serious problems and their associated costs. HUD programs offices are then responsible for designing and implementing corrective actions. In addition to providing current estimates of error, results will be compared with those from the 2000 study. These comparisons will indicate whether corrective actions initiated since the 2000 study have been effective and if changes in priorities are needed.

The first QC study found that about one-half of the errors measured using on-site tenant interviews and file reviews could not be detected with the 50058/50059 form data collected by the Department, which is why HUD and other agencies with means-tested programs have determined that on-site reviews and interviews are an essential complement to remote monitoring measures. The 2000 study showed that the calculation errors detectable with 50058/50059 data had further decreased, probably because these data

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were increasingly subject to automated computational checks.

This study will provide current information on the quality of tenant interviewing (*e.g.*, whether they are they being asked about all sources of income) and the reliability of eligibility determinations and income verifications. It is anticipated successive studies will be done on a one or two year cycle. Legislation that has been approved by the House and the Senate (H.R. 4878) may required annual updates.

Members of the Affected Pubic: Recipients of Public Housing and Section 8 housing assistance subsidies.

Estimation of the Total Number of Hours Needed With Those Surveyed to Conduct the Information Collection, Including Number of Respondents, Frequency of Response, and Hours of Response: The researchers will survey approximately 400 PHA/program sponsor staff about (re)certification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Although more than one staff member may need to be contacted to obtain answers to all questions, the questionnaire will be administered once at each participating project and the interviews are expected to take less than 35 minutes. Researchers will survey approximately 2,400 program participants to obtain information on household composition, expenses, and income. The time required for these interviews will vary, but is estimated to required an average of about 50 minutes per interview.

The time estimated provided are based on the 2000 QC survey. This survey will again make use of Computer Assisted Interviewing (CAI) questionnaire and equipment, which are being used in part because they are known to reduce interview times. This software also provides for consistency checks and ensures that all needed data have been collected, thereby reducing the need for follow-up contacts.

Status of the Proposed information Collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 13, 2002.

Harold L. Bunce,

Deputy Assistant, Secretary for Economic Affairs.

[FR Doc. 02–29707 Filed 11–21–02; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–02]

Announcement of Funding Awards for Fiscal Year 2002 Community Outreach Partnership Centers

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Community Outreach Partnerships Centers (COPC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to establish and operate Community Outreach Partnership Centers that will: (1) Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and (2) facilitate partnerships and outreach activities between institutions of higher education, local communities and local governments to address urban problems.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone numbers, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Community Outreach Partnership Centers Program was enacted in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Community Outreach Partnership Centers Program provides funds for: Research activities which have practical application for solving specific problems in designated communities and neighborhoods; outreach, technical assistance and information exchange activities which are designed to address specific problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing. On March 26, 2002 (67 FR 13927), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $7.5 million in Fiscal Year 2002 for the Community Outreach Partnership Centers Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded 15 applications for New Grants and 7 applications for New Directions Grants. New Grants, which cannot exceed $400,000, are for institutions of higher education just beginning a COPC project. New Directions Grants, which cannot exceed $150,000, are for institutions of higher education that are undertaking new activities or expanding into new neighborhoods. These grants, with their grant amounts are identified below.

The Catalog Federal Domestic Assistance number for this program is 14.511.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 2002 Community Outreach Partnership Center (COPC) Communities Program; Funding Competition, by Institution, Address and Grant Amount

New England

1. North Essex Community College, Ms. Mayte Rivera, Community Institute of Business Educations, North Essex Community College, 45 Franklin Street, Lawrence, MA 01841. Grant: $399,684.

2. University of Massachusetts-Lowell, Dr. Linda Silka, University of Massachusetts-Lowell, 600 Suffolk Street, Lowell, MA 01854. Grant: $150,000.

New York/New Jersey

3. Research Foundation of State University of New York at Binghamton, Dr. Alison Alden, School of Education and Human Development, Research Foundation of State University of New York at Binghamton, P.O. Box 6000, Binghamton, NY 13902–6000. Grant: $399,997.

4. Rutgers The State University of New Jersey, Maureen Thompson-Siegel, Rutgers The State University of New Jersey, 3 Rutgers Plaza, New Brunswick, NJ 08901. Grant: $149,999.

Mid-Atlantic

5. Robert Morris University, John Michalenko, Office of Academic and Student Affairs, Robert Morris University, 881 Narrows Run Road, Moon Township, PA 15108. Grant: $397,841.

6. Virginia Commonwealth University, Dr. Catherine W. Howard, Virginia Commonwealth University P.O. Box 980568, Richmond, VA 23298–0568. Grant: $149,993.

7. Frostburg State University, Cherie Krug, Center for Volunteerism and National Service, Frostburg State University, 101 Braddock Road, Frostburg, MD 21532. Grant: $383,709.

Southeast/Caribbean

8. East Carolina University, Al Delia, Regional Development Institute, East Carolina University, 300 East First Street, Willis Building, Greenville, NC 27858. Grant: $399,950.

9. Morehead State University, Michael W. Hail, Institute for Regional Analysis and Public Policy, Morehead State University, 150 University Boluveard, Morehead, KY 40351. Grant: $399,999.

10. Vanderbilt University, Debbie Miller, Institute for Public Policy Studies, Vanderbilt University, 512 Kirkland Hall, Nashville, TN 37240. Grant: $399,920.

11. Mercer University, Dr. Peter C. Brown, Mercer Center for Community Development, Mercer University, 1400 Coleman Avenue, Macon GA 31207. Grant: $149,996.

Midwest

12. The Regents of the University of Michigan-Dearborn, Dr. Paul Wong, The Regents of the University of Michigan, 3003 South State Street #1038, Ann Arbor, MI 48109–1274. Grant: $399,814.

13. Northern Illinois University, Katherine Harned, Center for Governmental Studies, Northern Illinois University, Lowden Hall 301, DeKalb, IL 60115–2854. Grant: $388,280.

14. University of Wisconsin-Milwaukee, Stephen Percy, University of Wisconsin-Milwaukee, P.O. Box 340, Milwaukee, WI 53201–0304. Grant: $150,000.

Southwest

15. University of Texas Health Science Center at San Antonio, Dr. Bankole Johnson, Southwest Texas Addiction Research & Technology Center, University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, TX 8229–3900. Grant: $399,000.

16. University of North Texas, Dr. Stan Ingman, Center for Public Service, University of North Texas, P.O. Box 305250, Denton, TX 76203–5250. Grant: $150,000.

17. University of Arkansas-Little Rock, Joni Lee, University of Arkansas-Little Rock, 2801 South University, Little Rock, AR 72204. Grant: $149,386.

Rocky Mountain

18. Colorado State University, Carmen Morales, College of Applied Human Science, Colorado State University, Sponsored Programs, Fort Collins, CO 89523. Grant: $396,704.

Pacific/Hawaii

19. Claremont Graduate University, School of Educational Studies, 152 Harper Hall, 150 East Tenth Street, Claremont, CA 91711. Grant: $349,955.

20. San Diego Community College District, Lois C. Bruhm, Economic Development, San Diego Community College District, 3375 Camino del Rio South, San Diego, CA 92118. Grant: $400,000.

Northwest/Alaska

21. Washington State Community Colleges District 17, Phosetta Rhodes, Spokane Falls Community College, 3410 West Fort George Wright Drive, MS 3010, Spokane, WA 99224. Grant: $397,246.

22. University of Washington, Louis Fox, Educational Partnerships & Learning Technologies, University of Washington, P.O. Box 352820, Seattle, WA 98195–2820. Grant: $399,912.

Dated: November 13, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–29705 Filed 11–21–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–03]

Announcement of Funding Awards for Fiscal Year 2002 Hispanic-Serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Hispanic-Serving Institutions Assisting Communities Program (HSIAC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Hispanic-Serving Institutions of Higher Education to expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG).

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone numbers, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Hispanic-Serving Institutions Assisting Communities Program was approved by Congress under section 107 of the Community Development Block Grant appropriations for the Fiscal Year 2002, and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HSIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.515.

On March 26, 2002 (67 FR 13969), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $10.1 million in Fiscal Year 2002 for the HSIAC Program. The Department reviewed, evaluated, and scored the applications received based

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on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2002 Hispanic-Serving Institutions Assisting Communities Program

Funding Competition, by Institution, Address and Grant Amount

New England

1. North Essex Community College, Ms. Mayte Rivera, Community Institute of Business Educations, North Essex Community College, 45 Franklin Street, Lawrence, MA 01841. Grant: $278,738.

New York/New Jersey

2. Boricua College, Dr. Victor G. Alicea, Boricua College, 584 Driggs Avenue, Brooklyn, NY 11211. Grant: $200,109.

Southeast/Caribbean

3. Universidad del Este, Alberto Maldonado-Ruiz, Office of Academic Affairs, Universidad del Este, P.O. Box 2010, Carolina, PR 00984–2010. Grant: $600,000.

4. Universidad del Turabo, Dr. Dennis Alicea, Universidad del Turabo, P.O. Box 3003, University Station Guarbo, PR 00778–3030. Grant: $600,000.

Southwest

5. University of Texas at San Antonio, Noe Saldana, University of Texas at San Antonio, 6900 North Loop 1604 West, San Antonio, TX 78249–0603. Grant: $584,972.

6. University of Texas at Brownsville & Texas Southmost College, Jim Holl, University of Texas at Brownsville & Texas Southnost College, 80 Fort Brown, Brownsville, TX 78520. Grant: $600,000.

Great Plains

7. Donnelly College, Sue Laird, Donnelly College, 608 North 18th Street, Kansas City, KS 66012. Grant: $174,462.

Pacific/Hawaii

8. California State University-Northridge, Dr. Warren Furmoto, College of Science & Math, California State University, Northridge, 1811 Nordhoff Street, Northridge, CA 91330–8232. Grant: $600,000.

9. Gavilian Joint Community College, Rachel Perez, Gavilian Joint Community College, 5055 Santa Teresa Boulevard, Gilroy, CA 95020. Grant: $599,660.

10. San Bernardino Community College, Larry Fugal, San Bernardino Community College, 114 South Del Rosa Drive, San Bernardino, CA 92408. Grant: $600,000.

11. Los Angeles Valley College, Dr. Deborah diCesare, Job Training and Economic Development, Los Angeles Valley College, 5800 Fulton Avenue, Valley Glen, CA 91401–4096. Grant: $ 599,992.

12. Southwestern College, William Kinney, Higher Education Center National City, Southwestern College, 900 Otay Lakes Road, Chula Vista, CA 91910. Grant: $594,534.

13. Yosemite Community College, Bennett Tom, Yosemite Community College, P.O. Box 4065, Modesto CA 95352. Grant: $161,538.

14. West Kern Community College, Jeff Ross, Student Services, West Kern Community College, 29 Emmons Park Drive, Taft CA 93268. Grant: $492,855.

15. California State University Dominguez Foundation, Dr. Margaret Wallace, California State University Dominguez Foundation, 1000 East Victoria Street, Carson, CA 90747. Grant; $502,034.

16. West Hills Community College District, Patty Scroggins, Child Development District Office, West Hills Community College, 300 Cherry Lane, Coalinga CA 93210. Grant: $600,000.

17. Phoenix College, Dr. James Moore, Phoenix College, 1202 West Thomas Road, Phoenix AZ 85013. Grant: $578,297.

18. University of Arizona Board of Regents, Robert S. Done, University of Arizona Board of Regents, P.O. Box 3308, Tucson AZ 85722–3308. Grant: $599,350.

Northwest/Alaska

19. Columbia Basin College, Dr. Lee R. Thornton, Columbia Basin College, 2600 North 20th Avenue, Pasco WA 99301–3379. Grant: $600,000.

Dated: November 13, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–29706 Filed 11–21–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–47]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 14, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–29399 Filed 11–21–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office for Equal Opportunity, Office of the Secretary, DOI.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office for Equal Opportunity announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by January 21, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office for Equal Opportunity, Attn: Samuel Bowser, Department of the Interior, 1849 C St, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Samuel Bowser, (202) 208–5549. The collection instrument is also available on the Internet at: *http://www.doi.gov/diversity/doc/di_1935.pdf.*

SUPPLEMENTARY INFORMATION: DOI is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Department's Strategic Human Capital Management Plan identifies the job skills that will be needed in our current and future workforce. The job skills we will need are dispersed throughout our eight bureaus and include, among others, making visitors welcome to various facilities, such as parks and refuges, processing permits for a wide variety of uses of the public lands, collecting royalties for minerals extracted from the public lands, rounding-up and adopting-put wild horses and burros found in the west, protecting archaeological and cultural resources of the public lands, and enforcing criminal laws of the United States. As a result of this broad spectrum of duties and services, the Department touches the lives of most Americans.

The people who deal with the Department bring with them a wide variety of backgrounds, cultures, and experiences. A diverse workforce enables the Department to provide a measure of understanding to its customers by relating to the diverse background of those customers. By including employees of all backgrounds, all DOI employees gain a measure of knowledge, background, experience, and comfort in serving all the Department's customers.

In order to determine if there are barriers in our recruitment and selection processes, we must rack the demographic groups that apply for our jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the demographic make-up of applicant pools and job selections within a given occupation or organizational group. The records of those applicants not selected are destroyed in accordance with the Department's records management process.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Title, Associated Form, and OMB Number: Applicant Background Survey, DI form 1935; *OMB Control No.:* 1091–0001.

Needs and Uses: This form is used to obtain the source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

Affected Public: Applicants for DOI jobs.

Annual Burden Hours: 9,960.

Number of Respondents: 120,000.

Responses Per Respondent: 1.

Average Burden Per Response: No more than 5 minutes.

Frequency: 1 per application.

Dated: November 5, 2002.

Samuel Bowser,

Assistant Director for Workforce Diversity, Department of the Interior.

[FR Doc. 02–29766 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before December 23, 2002 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–039305

Applicant: Michael Klein, San Diego, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*), and take (harass by survey) the coastal California gnatcatcher (*Polioptila californica californica*) in conjunction with demographic research throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–017352

Applicant: Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands.

The permittee requests an amendment to take (collect feathers) the Mariana moorhen (*Gallinula chloropus guami*) in conjunction with genetic research within the Northern Mariana Islands for the purpose of enhancing its survival.

Permit No. TE–064212

Applicant: Christine Moen, Temecula, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research in Riverside County, California for the purpose of enhancing its survival.

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Permit No. TE-064215

Applicant: Jessika Mejia, Santa Monica, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-064213

Applicant: Ryan Roberts, Irvine, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Dated: November 5, 2002.

Rowan Gould,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 02–29733 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for *Fritillaria Gentneri* (Gentner's fritillary) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review of the draft recovery plan for *Fritillaria gentneri* (Gentner's fritillary). Gentner's fritillary is restricted to southwestern Oregon, where it is known from scattered localities in the Rogue and Illinois River drainages in Jackson and Josephine Counties. The species is highly localized within a 48-kilometer (30-mile) radius of the Jacksonville Cemetery in Jacksonville, Oregon (the Jacksonville Cemetery harbors one of the largest known *Fritillaria gentneri* populations and serves as a convenient center reference point for the species' range). The majority of known individuals (about 73 percent) occur within an 11-kilometer (7-mile) radius of the Jacksonville Cemetery. *Fritillaria gentneri* has a distribution characterized by several distinct clusters of occurrences, as well as two outlying occurrences in the northeast and southeast corners of its range. We solicit review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received by January 21, 2003 to receive consideration by us.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Oregon State Office at 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266–1398. If you wish to comment, you may submit your comments and materials concerning this draft revised recovery plan to the Field Supervisor at the address above.

FOR FURTHER INFORMATION CONTACT: Andy Robinson, Fish and Wildlife Biologist, at the address above or at 503–231–6179.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our Endangered Species Program. To help guide the recovery effort, we are working to prepare recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish recovery criteria for reclassification and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with and other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

Fritillaria gentneri, also known as Gentner's fritillary and Gentner's mission-bells, is a member of the lily family (Liliaceae) with showy, deep red to maroon flowers. *Fritillaria gentneri* is a perennial herb arising from a fleshy bulb. Non-flowering individuals vastly outnumber flowering plants in natural populations, and are recognizable only by their single basal leaves, which appear virtually identical to those of other co-occurring *Fritillaria* species. Considered a mid-successional species, *Fritillaria gentneri* occupies grassland and chaparral habitats within, or on the edges of, dry, open, mixed-species woodlands at elevations below 1,360 meters (4,450 feet). The species is threatened by a variety of factors including habitat loss associated with rapidly expanding residential and agricultural development, alteration of habitat by invasive weeds and successional encroachment by trees and brush, habitat disturbance from timber harvest and recreational activities, and vulnerability associated with extremely small population sizes. Other potential threats include bulb collecting for gardens, herbivory by deer, and fungal pathogens. Conservation needs include establishing a network of protected populations in natural habitat distributed throughout its native range.

This plan identifies four Recovery zones. Recovery zones are geographically bounded areas containing extant *Fritillaria gentneri* populations that are the focus of recovery actions or tasks. Recovery zones include lands both essential and not essential to the long-term conservation of *Fritillaria gentneri*.

The overall objective of this recovery plan is to reduce the threats to *Fritillaria gentneri* to the point where it can be reclassified to threatened, with the ultimate goal of being removed from the Act's protection entirely.

Recovery of *Fritillaria gentneri* would be contingent upon the following criteria: each recovery zone would maintain at least 750 flowering plants for reclassification to threatened status, 1,000 flowering *Fritillaria gentneri* per zone would be a basis for delisting under the following criteria are met:

(1) To avoid the threat of habitat loss, the reserve areas within the recovery zones identified for recovery should be located on public land, or private land subject to permanent conservation easement or other permanently binding conservation agreements. Because populations elsewhere on public land continue to experience loss and degradation of habitat, each agency involved in land ownership or management in association with reserve areas should take appropriate steps to ensure the long term conservation of this species by outlining their specific responsibilities for site protection and maintenance in land management plans, conservation agreements, and the like.

(2) To remove threats inherent among populations comprised of too few and too widely scattered individuals, 2 of the reserve areas within each recovery zone would have to consist of at least 100 flowering individuals within a 0.8-kilometer (0.5-mile) radius, and exhibit net demographic stability or growth for at least 15 years, as determined through annual demographic monitoring. For the purposes of this plan, measurements of population size and structure are based only on flowering individuals because non-flowering plants cannot be reliably identified to species. If necessary, a reserve area would be subject to augmentation using genetically appropriate cultivated individuals to meet the minimum size criterion. Reserves should contain ample habitat to provide a spatial buffer around each population, and allow room for population migration and expansion over time.

(3) To avoid population vulnerability arising from the inordinate concentration of individuals within a very small area, potentially subject to unpredictable catastrophic events, flowering individuals must be distributed over a minimum of 500 square meters (0.05 hectares or 0.12 acres) of occupied habitat [1] within each recovery area. Thus, reserve populations may have more than the minimum of 1,000 flowering individuals if their distribution, densely confined to a small area, falls short of the occupied habitat requirement.

(4) To maintain favorable habitat conditions, a site-specific habitat management plan would be developed for each reserve area to prevent colonization of invasive weeds and maintain favorable mid-successional characteristics.

(5) To protect plants from bulb collecting and herbivory by deer, each reserve area would be subject to fencing or other measures if annual population monitoring determine the severity of these threats.

(6) To protect plants from fungal disease, each reserve area would be subject to treatment with fungicides or other measures if annual population monitoring to evaluate the severity of the fungal disease threat.

Public Comments Solicited

We solicit written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

[1] "Occupied habitat" is defined based on a vegetation sampling procedure employed by the Service using 1 meter by 1 meter plots that are scored for the presence or absence of *Fritillaria gentneri*. A plot with one or more *Fritillaria gentneri* flowering stems is considered a square meter of occupied habitat.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 30, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–29734 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Briargate Development, El Paso County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that La Plata Investments, LLC (Applicant) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended (Act). The Service proposes to issue a 30-year permit to the Applicant that would authorize the incidental take of the Preble's meadow jumping mouse (Preble's) (*Zapus hudsonius preblei*), federally-listed as threatened, and loss and modification of its habitat associated with construction of a residential and commercial development in El Paso County, Colorado. Construction of the proposed project will result in the temporary loss of approximately 10.68 hectares (26.38 acres) and the permanent loss of 23.29 hectares (57.55 acres) that provide potential foraging and hibernation habitat for Preble's. The permit application includes a combined Environmental Assessment/Habitat Conservation Plan (Plan), which is available for public review and comment. The Plan fully describes the proposed project and the measures the Applicant will undertake to minimize and mitigate project impacts to Preble's.

The Service requests comments on the Plan for the proposed issuance of an Incidental Take Permit. We provide this notice pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the Plan and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and Plan should be received on or before December 23, 2002.

ADDRESSES: Comments regarding the permit application or the Plan should be addressed to LeRoy Carlson, Field Supervisor, Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments may be sent by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the Plan and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibits the "take" of a species listed as endangered or threatened, respectively. (Take is defined under the Act, in part, as to harm, or harass a listed species.) However, the Service may issue permits to authorize "incidental take" (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity) of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The proposed action is the issuance of a permit under section 10(a)(1)(B) of the Act to allow the incidental take of Preble's during the construction of a residential and commercial development at the site. The project will directly affect approximately 33.97 hectares (83.93 acres), of which 10.68 hectares (26.38 acres) are temporary impacts and the remaining 23.29 hectares (57.55 acres) are permanent impacts to potential habitat for Preble's. A Plan has been developed as part of the preferred alternative.

The Preble's is the only federally-listed species that occurs on site and has the potential to be directly affected by the proposed project. The Applicant has agreed to implement the following measures to minimize and mitigate the impacts that may result from project construction:

1. Enhance 4.41 hectares (10.90 acres) of Preble's habitat along the North Fork

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of Pine Creek. Enhancement will include transplanting native shrubs from areas of impact to protected habitat, over-seeding of native grasses, and noxious weed control.

2. Restoration of 10.68 hectares (26.38 acres) along the main branch of Pine Creek, and the North and South forks of Pine Creek. Restoration will include the immediate revegetation of the site with native grass seed and clumps of native shrubs.

3. Preservation of 64.13 hectares (158.48 acres) of Preble's habitat by the placement of deed restrictions over the property. This is the result of protecting all remaining Preble's habitat within the project area. An additional 7.75 hectares (19.14 acres) of natural open space adjacent to Preble's habitat also will be protected.

4. Off-site enhancement and restoration of approximately 75 hectares (186 acres) along Kettle Creek, an area known to have a healthy population of Preble's. Enhancement will include transplanting native shrubs from areas of impact to protected habitat, over-seeding of native grasses, and noxious weed control. Existing horse trails along the creek bottom will be restored by stabilizing the immediate area, then seeding with native grass species.

5. Off-site preservation of the 75-hectare (186-acre) Kettle Creek Preserve. Initially the property will be protected by deed restrictions. After that, the deed to the entire property will be turned over to the Trust for Public Lands, who is in the process of forming a new not-for-profit organization to take control of these types of properties and manage them for the sole purpose of endangered species habitat.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, the Plan and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of Preble's. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: November 6, 2002.

John A. Blackenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 02–29732 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Great Lakes Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Great Lakes Panel will meet from 10 am to 5 pm on Tuesday, December 10, 2002, and 8 am to 1 pm on Wednesday, December 11, 2002.

ADDRESSES: The Great Lakes Panel meeting will be held at the Holiday Inn, North Campus, 3600 Plymouth Road in Ann Arbor, Michigan. Phone (734) 769–9800.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Project Manager, Great Lakes Commission, at 734–665–9135 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703_358–2308 or by e-mail at: *sharon_gross@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Great Lakes Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Great Lakes Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, performs the following activities:

(a) Identifies priorities for the Great Lakes Region with respect to aquatic nuisance species;

(b) Makes recommendations to the Task Froce regarding programs to carry out zebra mussel programs;

(c) Assists the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes region;

(d) Coordinates, where possible, aquatic nuisance species program activities in the Great Lakes region that are not conducted pursuant to th enonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

(e) Provides advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

(f) Submits an annual report describing activities within the Great Lakes region related to aquatic nuisance species prevention, research, and control.

Topics to be addressed at this meeting include: an update and a discussion on key provisions of the National Aquatic Invasive Species Act (NAISA) of 2002; a discussion on the Great Lakes Panel's Rapid Response Model Plan; a discussion on the development of Panel priorities through regional coordination; an update on the development of ballast water standards; a review of project and related concerns on Asian carp invasions; and a discussion on the review process for Sea Grant Proposals and the role of regional panels.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Dirve, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 30, 2002.

Robert J. Batky,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 02–29690 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–1430–BX]

Availability of Electronic Records

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the availability of electronic Title Records in Nevada.

EFFECTIVE DATES: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Robert M. Scruggs, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., PO Box 12000, Reno, Nevada 89520, 775–861–6644.

SUPPLEMENTARY INFORMATION: Beginning on November 1, 2002, the Bureau of Land Management's (BLM) Nevada State Office will make available its Master Title Plats, Use Plats, and Historical Indices (Title Records) in an electronic format. At the same time, the BLM will phase out the use of microfiche for these records. This change reflects the BLM's changeover from a manual to a computer aided drafting process in the maintenance of the Title Records. Until November 1, 2002, Title Records will continue to be available on microfiche, at which time the microfiche will be phased out.

Users of the BLM Nevada's Title Record will continue to have access to these records from any of its Information Access Center locations. BLM offices are located in Reno, Winnemucca, Battle Mountain, Elko, Ely, Tonopah, Caliente, Carson City and Las Vegas.

Users may continue to make printouts of these records for a nominal cost. Cost for each record printed will be in accordance with the BLM's cost recovery charging rates as stated in Manual 1270–2, Cost Recovery, dated June 23, 1994.

Dated: October 2, 2002.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02–29827 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG–03–0010; WAOR–57423]

Proposed Withdrawal and Opportunity for Public Meeting; Washington; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the Notice of Proposed Withdrawal and Opportunity for Public Meeting, 67 FR 57618, published September 11, 2002, as FR Doc. 02–23040, make the following correction:

On page 57618, in the metes and bounds portion of the legal description, T. 40 N., R. 44 E., Sec. 31, lots 2, 3, 4, NE¼NE¼, NE¼NW¼ , NE¼SE¼ , S½SW¼; , should read T. 40 N., R. 44 E., Sec. 31, lots 2, 3, 4, NE¼NE¼, NE¼NW¼, NE¼SE¼, S½SE¼.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 02–29828 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Eastern Planning Area Draft Environmental Impact Statement

AGENCY: Minerals Management Service.

ACTIONS: Notice of availability of the Draft Environmental Impact Statement and public hearings on proposed Eastern Planning Area oil and gas lease sales 189 and 197.

SUMMARY: The U.S. Department of the Interior, Minerals Management Service (MMS) has prepared a draft environmental impact statement (EIS) on two proposed oil and gas lease sales in the Eastern Planning Area (EPA) Outer Continental Shelf (OCS) of the Gulf of Mexico (GOM).

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Dennis Chew, telephone (504) 736–2793.

SUPPLEMENTARY INFORMATION: This EIS addresses two proposed Federal actions that offer for lease OCS areas in the EPA of the GOM that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and their projected activities are very similar, a single EIS is being prepared for the two proposed EPA lease sales scheduled in the Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007 (the 5-Year Program). Under the 5-Year Program, proposed lease sale 189 is scheduled for 2003, while proposed lease sale 197 is scheduled for 2005. At the completion of this EIS process, a decision will be made only for proposed lease sale 189. An additional National Environmental Policy Act (NEPA) review will be conducted in the year prior to proposed lease sale 197 to address any new information relevant to that proposed action.

EIS Availability: To find out which libraries along the Gulf of Mexico coast have copies of the draft EIS for review or to obtain single copies of the draft EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). A list of libraries and their locations is also available on the MMS Internet web site at *http://www.mms.gov.*

Public Hearings: Two public hearings will be held in order to receive comments on the draft EIS: on Wednesday, January 8, 2003, 1 p.m., at the Hampton Inn and Suites, 5150 Mounes Street, Harahan, Louisiana 70123, and Thursday, January 9, 2003, 2 p.m., at the Adams Mark Hotel, 64 South Water Street, Mobile, Alabama. If you wish to testify at a hearing, you may register one hour prior to the meeting. Each hearing will briefly recess when all speakers have had an opportunity to testify. If there are no additional speakers, the meeting will adjourn immediately after the recess. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearings, you may submit written statements until January 24, 2003. Send written statements to the Regional Director (MS 5412), Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 or to email address: *environment@mms.gov.*

Dated: November 15, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

Approved:

Dated: November 18, 2002.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–29769 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 16, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–343–1836. Written or faxed comments

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should be submitted by December 9, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Carroll County

Blue Spring Shelter, Address Restricted, Eureka Springs, 02001596

Craighead County

Stuck, C.A., and Sons Lumber, 215 Union St., Jonesboro, 02001597

Franklin County

Ozark Courthouse Square Historic District, Roughly W. Commercial, W. Main, 2nd and 3rd St., Courthouse Sq., Ozark, 02001599

Perry County

Hollis Country Store, (Arkansas Highway History and Architecture MPS), 2125 AR 7 S, Hollis, 02001598

Pulaski County

Allinder, Bailey, House, 301 Skyline Dr., North Little Rock, 02001600

CONNECTICUT

Hartford County

Grandview Terrace Blvd., Roughly along Grandview Terrace, Hartford, 02001624

IOWA

Humboldt County

Taft, Shephen Harris, House, 809 First Ave. N, Humboldt, 02001601

LOUISIANA

Iberville Parish

Lucky Plantation House, 1295 River Rd., Sunshine, 02001603

Morehouse Parish

Morehouse Parish Courthouse, 125 E. Madison, Bastrop, 02001622

St. Tammany Parish

Johnson House, 402 Lafitte St., Mandeville, 02001602

MARYLAND

Baltimore County

Cantonville Historic District, Old, Bet. Edmondson, Frederick, Melvin and Smithwood Aves., Catonsville, 02001573

Baltimore Independent City

American Ice Company Baltimore Plant No. 2, 330 W. 23rd St., Baltimore (Independent City), 02001589

Baltimore East/South Clifton Park Historic District, Roughly bounded by Clifton Park, N. Broadway, E. Chase St., and N. Rose St. Baltimore (Independent City), 02001611

Holy Cross Roman Catholic Church, 106–112 East West St., Baltimore (Independent City), 02001578

Maryland White Lead Works, 921–979 E. Fort Ave., Baltimore (Independent City), 02001604

National Brewing Company, 3601–3901 Dillon St., Baltimore (Independent City), 02001579

National Enameling and Stamping Company, 1901 Light St., Baltimore (Independent City), 02001583

North Central Historic District, Roughly bounded by North Ave., Greenmount Ave., Falls Rd., and I–83, Baltimore (Independent City), 02001606

Patterson Park—Highlandtown Historic District, Roughly bounded by Patterson Park Ave., E. Fayettte St., and Pulaski Hwy, Grundy St., Eastern Ave., Patterson Park, Baltimore (Independent City), 02001623

United States Parcel Post Station, 1501 St. Paul St., Baltimore (Independent City), 02001595

Windsor Hills Historic District, Roughly bounded by Chelsea Terrace, Windsor Mill Rd., Talbot Rd., Westchester Rd., and Woodhaven Ave., Baltimore (Independent City), 02001610

Gunther Brewing Company, 1200, 1211, 1301 S. Conkling St., 3601, 3701 O'Donnell St., E side S. Conkling St., Rear E side of S. Conkling St., Baltimore (Independent City), 02001607

Caroline County

Marble Head, 24435 Marblehead Rd., Ridgely, 02001577

Williston Mill Historic District, 24729 Williston Rd., Denton, 02001576

Carroll County

Hampstead School, 1211 N. Main St., Hampstead, 02001575

Frederick County

Hood College Historic District, 401 Rosemont Ave., Frederick, 02001581

Markell, George, Farmstead, 4825 Buckeystown Pike, Frederick, 02001584

Stonebraker and Harbaugh—Shafer Building, 100–104 W. Main St., Middletown, 02001585

Wolfe, James K.P., House, 1201 Motter Ave., Frederick, 02001582

Harford County

Church of the Holy Trinity, 2929 Level Rd., Churchville, 02001580

Prince George's County

Calvert Hills Historic District, Roughly bounded by Calvert rd., Bowdoin Ave., Erskine Rd., Calvert Park, Albion Rd., and Baltimore Rd., Collerge Park, 02001605

Riverdale Park Historic District, Roughly bounded by Tuckerman St., Taylor Rd., Oglethorpe St., the B&O RR tracks, Madison St. and Baltimore Ave., Riverdale Park, 02001608

West Riverdale Historic District, Roughly bounded by East-West Hwy, 44th Place, the City of Hyattsville and 43rd St., Riverdale Park, 02001609

Somerset County

Maddux House, 9084 Maddox Island Rd., Upper Fairmount, 02001574

Watkins Point Farm, 27737 Phoenix Church Rd., Marion Station, 02001586

Talbot County

Llandaff House, 28472 Old Country Club Rd., Easton, 02001587

Washington County

Fiery, Joseph, House, 15107 Hicksville Rd., Clear Spring, 02001588

Garden Hill, 1251 Frederick St., Hagerstown, 02001590

Good—Reilly House, 107 E. Main St., Sharpsburg, 02001591

Hagerman, William, Farmstead, 7207 Dam #4 Rd., Sharpsburg, 02001592

Highbarger, Jacob, House, 201 W. Main St., Sharpsburg, 02001593

Worcester County

Gunn, Samuel, House, 200 W. Market St., Snow Hill, 02001594

MASSACHUSETTS

Berkshire County

Upper North Street Commercial District, 239–555 North St., 33 Eagle St., Pittsfield, 02001615

Middlesex County

Parker Village Historic District, Concord, Carlisle, Old Lowell, Griffin Rds., Westford, 02001613

Norfolk County

Cohasset Central Cemetery, N. Main St. and Joy Place, Cohasset, 02001612

Wilson, Capt. John, House and Bates Ship Chandlery, 4 Elm St., Cohasset, 02001614

NEW JERSEY

Camden County

Ritz Theatre, 915 White Horse Pike, Haddon, 02001625

NEW YORK

Albany County

Rapp Road Community Historic District, Rapp Rd., Albany, 02001620

New York County

ADMIRAL DEWEY (tugboat), Pier 16, East River, New York, 02001619

OHIO

Lake County

Bedford Baptist Church, 750 Broadway Ave., Bedford, 02001618

VIRGINIA

Richmond Independent City

Tuckahoe Masonic Temple, 319 Maple Ave., Richmond (Independent City), 02001621

WASHINGTON

Chelan County

Cottage Avenue Historic District, 208–509 Cottage Ave., 103 Maple St., 107 Parkhill St., Cashmere, 02001617

Thurston County

Tenino Downtown Historic District, Sussex St. SE, Tenino, 02001616

[FR Doc. 02–29784 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places;Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 9, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by December 9, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

FLORIDA

Martin County

Olympia School, 9141 SE Apollo St., Hobe Sound, 02001534.

Miami-Dade County

US Coast Guard Air Station Hangar at Dinner Key, 2600 S. Bayshore Dr., Miami, 02001535.

Polk County

Lake Hunter Terrace Historic District, Roughly Central Ave., Greenwood St., Ruby St., and Sikes Blvd., Lakeland, 02001536.

INDIANA

Carroll County

Deer Creek Valley Rural Historic District, SE corner of Sec. 21, most of Sec. 22 and Areas N of Deer Creek, Delphi, 02001557.

Floyd County

East Spring Street Historic District, Roughly bounded by E. 5th, E. Spring, E. 8th, and E. Market Sts., New Albany, 02001566.

Hendricks County

Danville Courthouse Square Historic District, Roughly bounded by Clinton, Tennessee, Broadway, and Cross Sts., Danville, 02001559.

THI and E Interurban Depot—Substation, 401 S. Vine St., Plainfield, 02001562.

Lawrence County

Otis Park and Golf Course, Tunnelton Rd., Bedford, 02001560.

Ragsdale, William A., House, 607 Tunnelton Rd., Bedford, 02001565.

Monroe County

Woolery Stone Company, 2295 W. Tapp Rd., Bloomington, 02001563.

Parke County

Finney, Joseph, House, Cty Rd. 217, Bloomingdale, 02001564.

Tippecanoe County

Chauncey—Stadium Avenues Historic District, Roughly bounded by Meridian and Lincoln, River Rd., Fowler and Quincy, Northwestern and Allen Sts., West Lafayette, 02001558.

Wabash County

Roann—Paw Paw Township Public Library, 240 S. Chippewa Rd., Roann, 02001561.

IOWA

Black Hawk County

Black Hawk Hotel, 115–119 Naub St., Cedar Falls, 02001542.

Cerro Gordo County

Hotel Lester—Lester Cafe, 408–410 2nd St. NW, Mason City, 02001543.

Keerl—Decker House, 119 2nd St. SE, Mason City, 02001537.

Dubuque County

Bell, John, Block, 1307–07 Central Ave., Dubuque, 02001540.

Zieprecht Block, 1347–53 Central Ave., Dubuque, 02001541.

Linn County

Bohemian Commercial Historic District (Cedar Rapids, Iowa MPS), 1000 to 1300 Blks of 3rd St. SE and 100 to 200 Blcks of 14ths Ave SE, Cedar Rapids, 02001539.

Taylor County

Lenox Hotel, 114 S. Main St., Lenox, 02001538.

LOUISIANA

Beauregard Parish

Shady Grove School and Community Building, 2400 LA 26, DeRidder, 02001545.

East Baton Rouge Parish

City Park Golf Course, 1442 City Park Ave., Baton Rouge, 02001546.

Morehouse Parish, Bastrop High School, 715 S. Washington St., Bastrop, 02001544.

MONTANA

Big Horn County

Moncure Tipi, MT 212, Busby, 02001547.

NEW HAMPSHIRE

Hillsborough County

Carpenter and Bean Block, 1382–1414 Elm St., Manchester, 02001548.

Smith and Dow Block, 1426–1470 Elm St., Manchester, 02001549.

NEW MEXICO

San Juan County

Farmington Historic Downtown Commercial District, Approx. 8 blks, along Main St. and Broadway, from Auburn Ave. to Miller Ave., Farmington, 02001551.

Union County

Clayton Public Library (New Deal in New Mexico MPS), 116 Walnut St., Clayton, 02001550.

OHIO

Hocking County

Inter County Highway 360 (Little Cities of Black Diamonds—Athens, Hocking, Perry Counties MPS), Iles Rd., Logan, 02001552.

PENNSYLVANIA

Philadelphia County

Suffolk Manor Apartments, 1414–1450 Clearview St., Philadelphia, 02001567

TEXAS

Galveston County

Cedar Lawn Historic District, Bounded by 45th St., 48th St., Ave. L, and Ave. N, Galveston, 02001570

Sabine County

Toole Building, 202 Main St., Hemphill, 02001568

Tarrant County

Grapevine Commercial Historic District (Boundary Increase II) (Grapevine MPS), 500–530 S. Main St., Grapevine, 02001569

UTAH

Salt Lake County

McRae, Joseph and Marie N., House, 452 E 500 S, Salt Lake City, 02001555

Ulmer, Frank M. and Susan E., House, 1458 S 1300 E, Salt Lake City, 02001556

Utah County

American Fork Third Ward Meetinghouse (Mormon Church Buildings in Utah MPS), 190 W 300 N, American Fork, 02001554

VERMONT

Windsor County

White River Junction Historic District (Boundary Increase), N. Main St., S. Main St. Bridge St., Gates St. and Church St., Hartford, 02001553

WEST VIRGINIA

Cabell County

Chesapeake and Ohio 1308 Steam Locomotive, 1401 Memorial Blvd., Huntington, 02001571

WISCONSIN

Dane County

Dick, Christian, Block, 106 E. Doty St., Madison, 02001572

A request for removal has been made for the following resources:

MISSISSIPPI

Warren County

Confederate Avenue Steel Arch Bridge (Historic Bridges of Mississippi TR), Spans Jackson Rd. In Vicksburg National Military Park, Vicksburg, 88002483

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SOUTH DAKOTA

Fall River County

Edgemont Block, 610 2nd Ave., Edgemont, 96001232

[FR Doc. 02–29785 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 2, 2002.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by December 9, 2002.

Beth L. Savage,

Acting Keeper of the National Register of Historic Places.

DELAWARE

Kent County

St. Joseph's Industrial School, 355 W. Duck Creek Rd., Clayton, 02001491

GEORGIA

DeKalb County

Blair—Rutland Building, 215 Church St., Decatur, 02001492

Pickens County

Tate Gymnasium, 5600 GA 53 E, Tate, 02001493

INDIANA

Allen County

Smith Field, 426 W. Ludwig Rd., Fort Wayne, 02001495

MICHIGAN

Berrien County

South Berrien Center Uion Church and Cemetery, 10408 M–140, Berrien, 02001506

Jackson County

Michigan Central Railroad Jackson Depot, 501 E. Michigan Ave., Jackson, 02001504

Oakland County

Albertson, Eli and Sidney Teeter, House, 4480 Sheldon Rd., Oakland Township, 02001505

Otsego County

Kramer, Frank A. and Rae E. Harris, House, 221 N. Center Ave., Gaylord, 02001507

Wayne County

West Vernor—Junction Historic District (West Vernor Highway Survey Area, Detroit, Michigan MPS), W. Vernor Hwy., bet., Lansing and Cavalry, Detroit, 02001503

West Vernor—Lawndale Historic District (West Vernor Highway Survey Area, Detroit, Michigan MPS), W. Vernor Hwy., bet. Cabot and Ferris, Detroit, 02001501

West Vernor—Springwells Historic District (West Vernor Highway Survey Area, Detroit, Michigan MPS), W. Vernor Hwy, vet. Honorah and Norman, Detroit, 02001502

MISSISSIPPI

Bolivar County

Adath Israel Temple, 301 S. Bolivar Ave., Cleveland, 02001499

Jackson County

Bellevue, 3401 Beach Blvd., Pascagoula, 02001498

Kemper County

Zion Baptist Church, Little Zion Church Rd. W, 2 mi. N of Lauderdale/Kemper County Line, Collinsville, 02001497

MISSOURI

St. Louis Independent City

Brown, Paul, Building, 818 Olive St., St. Louis (Independent City), 02001496

Taylor—Olive Building, 4505 Olive St., St. Louis (Independent City), 02001494

NEW HAMPSHIRE

Cheshire County

Troy Village Historic District, Encompassing the village center, mostly along NH 12, Troy, 02001500

NEW JERSEY

Hunterdon County

Frog Hollow Road Bridge over minor tributary of the South Branch, Raritan River (Bridges of Tewksbury Township MPS), Frog Hollow Rd., approx. 1400' W of Beavers Rd., Tewksbury, 02001509

Hollow Brook Road Bridge over tributary of the Lamington River (Bridges of Tewksbury Township MPS), Hollow Brook Rd. approx. 700' W of Homestead Rd., Tewksbury, 02001510

Palatine Road Bridge over a minor tributary of the Lamington River (Bridges of Tewksbury Township MPS), Palatine Rd., jct. with Homestead and Cold Spring Rds., Tewksbury, 02001508

Ocean County

Little Egg Harbor Friends Meeting House, 21 E. Main St., Tuckerton, 02001511

OHIO

Summit County

Warwick Interlocking Tower (Canal, Railroad, and Industrial Resources of the Village of Clinton/Warwick, Ohio MPS), 2955 S 1st. St., Clinton, 02001516

TENNESSEE

Shelby County

High Point Terrace Historic District (Residential Resources of Memphis MPS), Bounded by Highland, Eastland and Swan Ridge Circle, Walnut Grove and Sam Cooper, Memphis, 02001513

TEXAS

Liberty County

Liberty County Courthouse, 1923 Sam Houston Blvd., Liberty, 02001514

Tarrant County

Fort Worth High School, 1015 S. Jennings Ave., Fort Worth, 02001515

Hogg, Alexander, School, 900 St. Louis Ave., Fort Worth, 02001512

VIRGINIA

Prince William County

Cabin Branch Pyrite Mine Historic District, Prince William Forest Park, Triangle, 02001517

WEST VIRGINIA

Berkeley County

Hedges Chapel, 668 Mountain Lake Rd., Hedgesville, 02001520

Martinsburg, Mining, Manufacturing & Improvement Co. Historic District, NY, VA, WV, MD, FL and Faulkner, Martinsburg, 02001519

Ropp, Baker, House, 2301 Harlan Spring Rd., Martinsburg, 02001522

Ropp, R.C., House, 2199 Harlan Spring Rd., Martinsburg, 02001523

Rosemont Historic District, Tennessee, Illinois, Georgia, Kentucky Aves., Martinsburg, 02001524

Speck, Peter, House, 1149 Ben Speck Rd., Martinsburg, 02001526

Turner, Priscilla Strode, House, 347 Carlyle Rd., Beddington, 02001527

Cabell County

Rotary Park Bridge, Rotary Park, 31 St. and Rotary Dr., Huntington, 02001525

Hancock County

Hellings, Nathan, Apple Barn, WV 2, Newell, 02001529

Waterford Park, WV 2, Newell, 02001528

Marshall County

Cockayne, Bennett, House, 1111 Wheeling Ave., Glen Dale, 02001521

Ohio County

Wheeling Warhouse Historic District, Roughly along Main St., Water St., 21 St., 22nd St., South St., 18th St., Eoff St. and Chapline St., Wheeling, 02001530

Wayne County

Camp Mad Anthony Wayne, 2125 Spring Valley Dr., Huntington, 02001531

WISCONSIN

Dane County

College Hills Historic District, Roughly bounded by Colombia Rd., Amherst Dr., Bowdoin Rd., Corporate Limit, University Bay, and Harvard Dr., Shorewood Hills, 02001518

A request for a move has been received for the following resource:

WISCONSIN

Dane County

Lie Aslak Cabin, 3022 County Trunk P, Mount Hoeb, 86000822

A request for removal has been received for the following resource:

TENNESSEE

Davidson County

DuPont Fire Hall, (Old Hickory MRA), Old Hickory, 85001558

[FR Doc. 02–29786 Filed 11–21–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–471]

Notice of Commission Decision Not To Review an Initial Determination Granting Complainant EMC Corporation's Motion To Terminate the Investigation as to Certain Claims and To Amend the Complaint and Notice of Investigation by Adding Two Claims

In the matter of: certain data storage systems and components thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting complainant EMC Corporation's motion to terminate the investigation as to certain claims and to amend the complaint and notice of investigation by adding two claims.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 9, 2002, based on a complaint filed by EMC Corporation of Hopkinton, Massachusetts ("EMC"), against Hitachi, Ltd. of Tokyo, Japan, and Hitachi Data Systems Corporation of Santa Clara, California. 67 FR 34472 (2002). The complaint alleges violations of section 337 in the importation and sale of certain data storage systems or components thereof by reason of infringement of certain claims of complainant's U.S. Patent Nos. 5,742,792; 5,544,347; 6,092,066; 6,101,497; 6,108,748; and 5,909,692.

On September 20, 2002, EMC filed a motion to terminate the investigation as to a total of 64 claims and to amend the complaint and notice of investigation by adding two claims. On October 4, 2002, respondents filed a response in which they stated that they did not oppose EMC's motion. Also on October 4, 2002, the Commission's investigative attorney filed a response in support of the EMC's motion. On October 8, 2002, the ALJ issued an ID granting complainant's motion. No party filed a petition for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

By order of the Commission.

Issued: November 18, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–29759 Filed 11–21–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Reinstatement, With Change; Comment Request

Action: 60-Day Notice of Information Collection Under Review: Reinstatement, with change, of a previously approved collection for which approval has expired; Postgraduate Evaluation of the FBI National Academy and FBI National Academy Training Needs Assessment For Agency Executives.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until January 21, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions or need a copy of the proposed information collection instrument with instructions or additional information, please contact Paul Laskiewicz, FBI Academy, Quantico, Va. 22135.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Postgraduate Evaluation of the FBI National Academy and FBI National Academy Training Needs Assessment For Agency Executives.

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(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Federal Bureau of Investigation, FBI Academy.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Officers. Other: None. Abstract: This survey will consist of the following two instruments: Post Graduate Evaluation of the FBI National Academy and FBI National Academy Training Needs Assessment For Agency Executives. These are surveys to collect training related information and there are no sensitive or personal questions, therefore confidentiality is not guaranteed or necessary.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 3700 respondents who will each require an average of 15 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden for this information collected is estimated to be 925 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, Untied States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street NW., Washington DC 2004.

Dated: November 19, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–29780 Filed 11–21–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October and November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,368; Komtek, Worcester, MA
TA–W–41,075; Altec Industries, Inc., Plains, PA
TA–W–41,451; Powerex, Inc., Youngwood, PA
TA–W–42,272; Mountain Fir Chip Co., Main Office, Salem, OR A; The Dalles Div., The Dalles, OR, B; Lewiston Div., Lewiston, ID C; Wilma Div., Clarkston, WA
TA–W–42,078; Americal Corp., Goldsboro, NC
TA–W–42,170; FMC Corp., Active Oxidants Div., Tonawanda, NY
TA–W–42,207A; Xerox Corp., Small Office/Home Office Div. (SOHO), Webster, NY
TA–W–42,247; Tecmotiv Manufacturing Corp., a Subsidiary of Tecmotiv (USA), Inc., Tonawanda, NY
TA–W–42,166; Best Manufacturing, Johnson City Div., Johnson City, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,046; B–W Specialty Manufacturing, Seattle, WA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–42,512A; Maintenance and Industrial Services, Greenville, SC
TA–W–42,152; Pringle Power-Vac, Inc., Walla Walla, WA
TA–W–42,130; Volt Services Group, Hewlett-Packard, Vancouver, WA

The investigation revealed that criteria (1) has not been met. A Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–42,260; Miss Dorby, Div. of Dorby Frocks, New York, NY

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–42,250; E.J. Snyder and Co., Inc., Albermarle, NC
TA–W–42,191; Tytex, Inc., USA, Woonsocket, RI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,512; Pillowtex Corp., Weave Plant and Finishing Plant Phenix City, AL: April 3, 2001.
TA–W–41,848; Jam'ng Five, Medley, FL: June 25, 2001.
TA–W–42,115; Federal-Mogul Corp., Lighting Div., Sevierville, TN: August 30, 2001
TA–W–42,123; Coleman Cable, Inc., El Paso, TX: August 27, 2001.
TA–W–42,174; Sterling Fibers, Inc., Pace, FL: September 17, 2001.
TA–W–42,259; Colabria Fashions, Inc., New Rochelle, NY: October 11, 2001.
TA–W–42,267; Simula Automotive Safety Devices, Inc., Tempe, AZ: September 20, 2001.
TA–W–42,073; Wilson Sporting Goods Compant, Golf Club Div., Tullahoma, TN: August 15, 2001.
TA–W–42,285; GE Motors Operation, Murfreesboro, TN: October 21, 2001.
TA–W–42,300; Lake Village Industries, a Subsidiary of Superior Uniform Group, Inc., Lake Village, AR: October 10, 2001.
TA–W–42,244; X-Cell Tool and Die, Inc., Erie, PA: September 23, 2001.
TA–W–42,221; Marconi Communications, Network Components, Lorain, OH and A; Avon, OH, B; Elyria, OH: September 3, 2001.
TA–W–42,216 &A; Alba-Waldensian, Inc., Pineburr Plant/Research and Development, Valdese, NC and Corporate Office, Valdese, NC: August 23, 2001.
TA–W–42,210; Presto Products Manufacturing Co., Alamogordo, NM: September 19, 2001.

TA–W–42,109; Ansell Healthcare Products, Inc., Troy, AL: September 6, 2001.
TA–W–42,096; Ralph Lauren Womenswear, Inc., Carlstadt, NJ: August 26, 2001.
TA–W–42,092; JTM Group, Inc., Jamestown, NY: August 11, 2001.
TA–W–42,072; Federal-Mogul Corp (Including Temporary Workers from Mictotech, Inc., Waltham, MA), Brighton, MA: August 21, 2002.
TA–W–42,064; SMTC Manufacturing Corp., Austin, TX: August 16, 2001.
TA–W–41,961; Gilman Engineering and Manufacturing Co., LLC, Janesville, WI: July 20, 2001.
TA–W–41,948; Buck Forkardt, Inc., Kalamazoo, MI: July 24, 2001.
TA–W–41,770; RFS Ecusta, Pisgah Forest, NC: May 21, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of October and November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06372; Jam'ng Five, Medley, FL
NAFTA–TAA–07580; JTM Group, Inc., Jamestown, NY
NAFTA–TAA–07610; Mountain Fir Chip Co., Main Office, Salem, OR, A; The Dalles Div., The Dalles, OR, B; Lewiston Div., Lewiston, ID, C; Wilma Div., Clarkston, WA
NAFTA–TAA–07617; Tecmotiv Manufacturing Corp., a Subsidiary of Tecmotiv (USA), Inc., Tonawanda, NY

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07561; Comair Rotron, Inc., San Diego, CA
NAFTA–TAA–07601; Panapage Co., Inc. d/b/a/ Panavision Chicago, Chicago, IL

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–07243; State of Alaska Commercial Fisheries Entry Commission Permit #64891C, King Salmon, AK
NAFTA–TAA–07310; State of Alaska Commercial Fisheries Entry Commission Permit #64922S, Manokotak, AK
NAFTA–TAA–07197; State of Alaska Commercial Fisheries Entry Commission Permit #64699Z, Dillingham, AK
NAFTA–TAA–07196; State of Alaska Commercial Fisheries Entry Commission Permit #61256Z, Dillingham, AK
NAFTA–TAA–07185; State of Alaska Commercial Fisheries Entry Commission Permit #S04T64806J, Dillingham, AK
NAFTA–TAA–07138; State of Alaska Commercial Fisheries Entry Commission Permit #56023B, Dillingham, AK
NAFTA–TAA–07071; State of Alaska Commercial Fisheries Entry Commission Permit #64825K, Togiak, AK
NAFTA–TAA–07069; State of Alaska Commercial Fisheries Entry Commission Permit #55947S, Togiak, AK
NAFTA–TAA–07050; State of Alaska Commercial Fisheries Entry Commission Permit #59350N, Togiak, AK
NAFTA–TAA–07049; State of Alaska Commercial Fisheries Entry Commission Permit #57680K, Togiak, AK
NAFTA–TAA–07011; State of Alaska Commercial Fisheries Entry Commission Permit #50141A, Togiak, AK
NAFTA–TAA–06998; State of Alaska Commercial Fisheries Entry Commission Permit #66428A, Togiak, AK
NAFTA–TAA–06993; State of Alaska Commercial Fisheries Entry Commission Permit #61322R, South Naknek, AK
NAFTA–TAA–06989; State of Alaska Commercial Fisheries Entry Commission Permit #55824M, South Naknek, AK
NAFTA–TAA–06992; State of Alaska Commercial Fisheries Entry Commission Permit #58847H, South Naknek, AK
NAFTA–TAA–06988; State of Alaska Commercial Fisheries Entry Commission Permit #60847U, South Naknek, AK
NAFTA–TAA–06983; State of Alaska Commercial Fisheries Entry Commission Permit #64247N, South Naknek, AK
NAFTA–TAA–06933; State of Alaska Commercial Fisheries Entry Commission Permit #58614S, New Stuyahok, AK
NAFTA–TAA–06916; State of Alaska Commercial Fisheries Entry Commission Permit #56222Z, New Stuyahok, AK
NAFTA–TAA–07444; State of Alaska Commercial Fisheries Entry Commission Permit #57783X, South Naknek, AK
NAFTA–TAA–07447; State of Alaska Commercial Fisheries Entry Commission Permit #58751S, South Naknek, AK
NAFTA–TAA–07452; State of Alaska Commercial Fisheries Entry Commission Permit #56213V, South Naknek, AK
NAFTA–TAA–07454; State of Alaska Commercial Fisheries Entry Commission Permit #65820Z, South Naknek, AK

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NAFTA–TAA–07473; State of Alaska Commercial Fisheries Entry Commission Permit #65633H, South Naknek, AK
NAFTA–TAA–07479; State of Alaska Commercial Fisheries Entry Commission Permit #68318S, Togiak, AK
NAFTA–TAA–07498; State of Alaska Commercial Fisheries Entry Commission Permit #59702V, Togiak, AK
NAFTA–TAA–07500; State of Alaska Commercial Fisheries Entry Commission Permit #64943H, Togiak, AK
NAFTA–TAA–06907; State of Alaska Commercial Fisheries Entry Commission Permit #60305A, Naknek, AK
NAFTA–TAA–06556; State of Alaska Commercial Fisheries Entry Commission Permit #59347M, Aleknagik, AK
NAFTA–TAA–06592; State of Alaska Commercial Fisheries Entry Commission Permit #57392Q, Dillingham, AK
NAFTA–TAA–06596; State of Alaska Commercial Fisheries Entry Commission Permit #66427I, Dillingham, AK
NAFTA–TAA–06674; State of Alaska Commercial Fisheries Entry Commission Permit #64887H, Dillingham, AK
NAFTA–TAA–06824; State of Alaska Commercial Fisheries Entry Commission Permit #56509B, Hevelock, AK
NAFTA–TAA–06867; State of Alaska Commercial Fisheries Entry Commission Permit #67004Z, Naknek, AK
NAFTA–TAA–06069; Permit #61913O, Manokotak, AK
NAFTA–TAA–07450; Permit #59803W, South Naknek, AK
NAFTA–TAA–07429; Permit #58385W, Pilot Point, AK
NAFTA–TAA–07449; Permit #58296E, South Naknek, AK
NAFTA–TAA–06560; Permit #61977V, Clarks Point, AK
NAFTA–TAA–06590; Permit #59590W, New Stuyahok, AK
NAFTA–TAA–06758; Permit #56087G, Ekwok, AK
NAFTA–TAA–06794; Permit #67507U, King Salmon, AK
NAFTA–TAA–06890; Permit #56569N, Anchorage, AK
NAFTA–TAA–06888, Permit #61249B, Naknek, AK
NAFTA–TAA–06931; Permit #57641L, New Stuyahok, AK
NAFTA–TAA–06953; Permit #62030E, Pilot Point, AK

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06482; Farley's and Sathers Candy Co., Inc., Oklahoma City Plant, Oklahoma City, OK: August 12, 2001.
NAFTA–TAA–06505; Hudson RCI, Temecula, CA: August 9, 2001.
NAFTA–TAA–06483; Federal-Mogul Corp., (Including Temporary Workers from Microtech, Inc., Waltham, MA), Brighton, MA: August 21, 2001.
NAFTA–TAA–06509; Dana Corp., Perfect Circle Div., Hastings, NE: August 23, 2001.
NAFTA–TAA–06855; Permit #651913O, New Stuyahok, AK: September 5, 2001.
NAFTA–TAA–06997; Permit #59196Q, Togiak, AK: September 5, 2001.
NAFTA–TAA–07258; Permit #60363F, King Salmon, AK: September 5, 2001.
NAFTA–TAA–07300; Permit #60027H, Manokotak, AK: September 5, 2001.
NAFTA–TAA–07555; Federal-Mogul Corp., Lighting Div., Sevierville, TN: August 30, 2001.
NAFTA–TAA–07579 A &B; Marconi Communications, Network Components, Lorain, OH, Avon, OH and Elyria, OH: September 30, 2001.
NAFTA–TAA–06505; Hudson RCI, Temecula, CA: August 9, 2001.
NAFTA–TAA–06201; Topsail Electronics, Inc., Wendell, NC: May 14, 2001.
NAFTA–TAA–06334; Nortel Networks Corp., Billerica, MA: July 1, 2001.
NAFTA–TAA–06421; Buck Forkardt, Inc., Kalamazoo, MI: July 24, 2001.
NAFTA–TAA–06623; State of Alaska Commercial Fisheries Entry Commission Permit #61948U, Dillingham, AK: September 5, 2001.
NAFTA–TAA–06807; State of Alaska Commercial Fisheries Entry Commission Permit #55325L, Koliganek, AK: September 5, 2001.
NAFTA–TAA–06847; State of Alaska Commercial Fisheries Entry Commission Permit #58402S, Manokotak, AK: September 5, 2001.
NAFTA–TAA–06939; State of Alaska Commercial Fisheries Entry Commission Permit #63406X, New Stuyahok, AK: September 5, 2001.
NAFTA–TAA–07009; Bristol Bay Salmon Fishermen State of Alaska Commercial Fisheries Entry Commission Permit #58110G, Togiak, AK: September 5, 2001.
NAFTA–TAA–07107; State of Alaska Commercial Fisheries Entry Commission Permit #59800U, Dillingham, AK: September 5, 2001.

I hereby certify that the aforementioned determinations were issued during the months of October and November, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 12, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–29701 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,342]

Auburn Hosiery Mills, Inc., a Division of the Kellwood Company, Auburn, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to a worker petition, which was filed by a company official on behalf of workers at Auburn Hosiery Mills, Inc., a division of the Kellwood Company, Auburn, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29698 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,525F]

The Boeing Company, Boeing Irving Company, Boeing Electronics Irving Company, Commercial Airplane Group, Irving, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 18, 2002, applicable to workers of The Boeing Company, Commercial Airplane Group, Irving, Texas. The notice was published in the **Federal Register** on July 29, 2002 (67 FR 49039–49040).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of large commercial aircraft and the components thereof.

New information shows that workers separated from employment at the Irving, Texas, location of the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Boeing Irving Company and Boeing Electronics Irving Company.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of The Boeing Company, Commercial Airplane Group, Irving, Texas, who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,525F is hereby issued as follows:

All workers of The Boeing Company, Boeing Irving Company, Boeing Electronics Irving Company, Commercial Airplane Group, Irving, Texas (TA–W–40,525F) who became totally or partially separated from employment on or after February 25, 2002, through March 18, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 21st day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29694 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,379 and TA–W–41,379A]

Williamson Dickie Manufacturing Company, McAllen #9, McAllen, TX, and Williamson Dickie Manufacturing Company, Weslaco, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 2, 2002, applicable to workers of Williamson Dickie Manufacturing Company, McAllen #9, McAllen, Texas. The notice was published in the **Federal Register** on July 18, 2002 (67 FR 47400).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Weslaco, Texas location of Williamson Dickie Manufacturing Company when the plant closed permanently in September, 2002. The workers were engaged in employment related to the production of men's work pants.

Accordingly, the Department is amending the certification to cover workers of Williamson Dickie Manufacturing Company, Weslaco, Texas.

The intent of the Department's certification is to include all workers of Williamson Dickie Manufacturing Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,379 is hereby issued as follows:

All workers of Williamson Dickie Manufacturing Company, McAllen #9, McAllen, Texas (TA–W–41,379) and Williamson Dickie Manufacturing Company, Weslaco, Texas (TA–W–41,379A) who became totally or partially separated from employment on or after April 9, 2001, through July 2, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 4th day of October, 2002.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29696 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6554; Permit # 55348J; Aleknagik, Alaska]

Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit # 55348J, Aleknagik,Alaska.

The workers stopped fishing in July 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29700 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,467]

I.C. Isaacs & Co., Inc., New York, NY; Notice of Revised Determination on Reconsideration

By application of August 1, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination, based on the finding that the workers of I.C. Isaacs & Co., Incorporated did not produce jeans, t-shirts and men's polo shirts during the relevant period. The denial notice was signed on June 25, 2002 and published in the **Federal Register** on July 9, 2002 (67 FR 455501).

The company on reconsideration provided additional information concerning the functions performed by the subject firm and further indicated that various firm functions were transferred to a third party independent contractor located in Asia during the relevant period.

This data, in conjunction with data provided in the initial investigation, shows that the firm was an apparel manufacturer during the relevant period.

On further review it has been determined that the firm's sales and employment declined during the relevant period.

The investigation also revealed that a meaningful portion of the functions performed by the subject firm workers were shifted to a foreign third party

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independent contractor and the company subsequently increased their imports of jeans, t-shirts and men's polo shirts from that foreign source during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of jeans, t-shirts and men's polo shirts contributed importantly to the decline in production and to the total or partial separation of workers at I.C. Isaacs & Co., Inc., New York, New York. In accordance with the provisions of the Act, I make the following revised determination:

Workers of I.C. Isaacs & Co., Inc., New York, New York, who became totally or partially separated from employment on or after April 10, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–29702 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,461 and NAFTA–4357]

Oxford Automotive, Argos, IN; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) has granted the Secretary of Labor's motion for a second voluntary remand for further investigation in *Former Employees of Oxford Automotive* v. *U.S. Secretary of Labor*, No. 01–00453.

The Department's initial denial of NAFTA-Transitional Adjustment Assistance for workers producing automotive side panels at Oxford Automotive, Argos, Indiana, was issued on January 24, 2001, and published in the **Federal Register** on May 9, 2001 (66 FR 23733–34). The negative determination was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. Oxford Automotive did not import articles from Mexico or Canada like or directly competitive with those produced at the Argos, Indiana plant. There was no shift in production from Argos, Indiana, to Mexico or Canada. Although some of the machinery from the Argos plant had been moved to Mexico and other foreign locations, the machinery was idle. The layoffs at the plant were attributable to the customer's decision to take back the production of the side panels.

The Department's initial denial of Trade Adjustment Assistance for the workers producing automotive side panels at Oxford Automotive, Argos, Indiana, was issued on January 24, 2001, and was published in the **Federal Register** on May 9, 2001 (66 FR 23733–34). The negative determination was based on the finding that the "contributed importantly" criterion of the group eligibility requirements of section 222 of the Trade Act of 1974, as amended, was not met. Oxford Automotive did not import articles like or directly competitive with those produced at the Argos, Indiana plant. The layoffs at the plant were attributable to the customer's decision to take back the production of the side panels.

The petitioners request for reconsideration of TA–W–38,461 and NAFTA–4357 resulted in a negative determination regarding the application, which was issued on April 30, 2001, and was published in the **Federal Register** on May 9, 2001 (66 FR 23732–33).

On remand, the Department contacted officials of Oxford Automotive to obtain clarification regarding a notation on the "Confidential Data Request", contained in the investigation record, that the company was importing from Canada and Mexico.

The investigation on remand confirmed that there were no company imports of side panels in 1998, 1999 or 2000.

Again, on the second voluntary remand, the Department contacted the officials of Oxford Automotive to obtain additional information concerning purchases of the products produced by the subject plant and further requested a list of products (by product number) that were sold to the major customer for the 1999 and 2000 periods.

The U.S. Department of Labor conducted a survey of the major declining customer regarding its purchases of side panels for the periods 1998, 1999 and 2000. The Department also verbally requested that the customer indicate where the products are now being purchased. The major customer revealed that they did not import side panels during the relevant period of the investigation. They further indicated that all products once produced by the Argos facility were subsequently purchased from other domestic Oxford Automotive facilities through the current period.

The customer further stated that over half of their purchases from domestic Oxford facilities are now shipped to Mexico to meet the customers' Mexican demand. The customer further concluded that all products previously purchased from Oxford Automotive, Argos, Indiana are still being purchased from other Oxford facilities located in the United States through the current period.

The Department of Labor also contacted Oxford Automotive regarding shifts in Argos plant equipment to Mexico during the relevant period.

The company indicated that all production was phased out during the year 2000. The company moved all press equipment to other facilities. The 180 Press Line went to Mexico, in the spring of 2001. Two other major presses (10 presses total and one blanking press) also went to a Mexican facility during the summer of 2002. The rest of the miscellaneous items went to other domestic Oxford plants from 2001 through the current period. All equipment shifted to Mexico remained idle. The equipment has never been used to produce any product in Mexico.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Oxford Automotive, Argos, Indiana.

Signed in Washington, DC, this 31st day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–29693 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,167 and NAFTA–05853]

Tri-Way Manufacturing, Inc., El Paso, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 9, 2002, the Texas Rural Legal Aid, Inc., Displaced Worker Project, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) under petition TA–W–41,167 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under NAFTA–5853, applicable to workers and former workers of the subject firm. The denial notices were signed on June 24, 2002, and published in the **Federal Register** on July 9, 2002 (67 FR 45550 and 45551, respectively).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition filed on behalf of workers at Tri-Way Manufacturing, Inc., El Paso, Texas, engaged in repair and production of injection molding was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers firm's customers. The survey revealed no imports of injection molds. There were no company imports of injection molds during the relevant period.

The NAFTA–TAA petition for the same group of workers was denied because criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no customer or company imports of injection molds from Mexico or Canada, nor did the subject firm shift production from El Paso to Mexico or Canada.

The petitioner requested that the Department of Labor survey an additional major customer of the subject firm regarding their purchases of injection molds.

On further review, the U.S. Department of Labor conducted a survey of an additional customer of the subject firm regarding their purchases of injection molds during the 2000 and 2001 periods. The survey revealed that the customer did not purchase injection molds from the subject firm during the relevant period. In fact, upon further clarification from the customer, it was revealed that Tri-Way Manufacturing, Inc. only repaired injection molds for the customer.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 31st day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–29695 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,672 and NAFTA–6243]

VMV Paducahbilt, VMV Enterprises, Paducah, KY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at VMV Paducahbilt, VMV Enterprises, Paducah, Kentucky. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–41,672 and NAFTA–06243; VMV Paducahbilt, VMV Enterprises, Paducah, Kentucky (October 16, 2002)

Signed at Washington, DC, this 5th day of November, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–29697 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06070 and NAFTA " 06070A]

Williamson Dickie Manufacturing Company, McAllen #9, McAllen, TX, and Williamson Dickie Manufacturing Company, Weslaco, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on July 2, 2002, applicable to workers of Williamson Dickie Manufacturing Company, McAllen #9, McAllen, Texas. The notice was published in the **Federal Register** on July 18, 2002 (67 FR 47401).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Weslaco, Texas location of Williamson Dickie Manufacturing Company when the plant closed permanently in September, 2002. The workers were engaged in employment related to the production of men's work pants.

Accordingly, the Department is amending the certification to cover workers of Williamson Dickie Manufacturing Company, Weslaco, Texas.

The intent of the Department's certification is to include all workers of Williamson Dickie Manufacturing Company who were adversely affected by the transfer of production to Mexico.

The amended notice applicable to NAFTA–06070 is hereby issued as follows:

All workers of Williamson Dickie Manufacturing Company, McAllen #9, McAllen, Texas (NAFTA–06070) and Williamson Dickie Manufacturing Company, Weslaco, Texas (NAFTA–6070A) who became totally or partially separated from employment on or after April 9, 2001, through July 2, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–29699 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–30–P

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DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
MA020003 (Mar. 1, 2002)
MA020005 (Mar. 1, 2002)
MA020006 (Mar. 1, 2002)
MA020007 (Mar. 1, 2002)
MA020009 (Mar. 1, 2002)
MA020010 (Mar. 1, 2002)
MA020012 (Mar. 1, 2002)
MA020013 (Mar. 1, 2002)
MA020015 (Mar. 1, 2002)
MA020017 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
MA020019 (Mar. 1, 2002)
MA020020 (Mar. 1, 2002)
MA020021 (Mar. 1, 2002)

Volume II

Maryland
MD020057 (Mar. 1, 2002)

Volume III

South Carolina
SC020023 (Mar. 1, 2002)

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

Hawaii
HI020001 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, *etc.*

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 14th day of November 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–29433 Filed 11–21–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–143]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Thursday, December 12, 2002, 9 a.m. to 4 p.m., and Friday, December 13, 2002, 9 a.m. to 12 Noon.

ADDRESSES: NASA Headquarters, 300 E. Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting
—Office of Small and Disadvantaged Business Utilization Update of Activities
—NAC Meeting Report
—Overview of Agency-wide initiatives
—Update of Small Business Program
—Public Comment
—Panel Discussion and Review
—Committee Panel Reports
—Status of Open Committee Recommendations
—New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–29773 Filed 11–21–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[ASLBP No. 03–806–01–CO (EA 02–124)]

Exelon Generation Company, LLC, Amergen Energy Company, LLC; Establishment of Atomic Safety and Licensing Board

In the matter of: Braidwood Station, Units 1 & 2/Docket Nos. 50–00456/457–CO; Byron Station, Units 1 & 2/Docket Nos. 50–00454/455–CO; Clinton Power Station/Docket No. 50–00461–CO; Dresden Nuclear Power Station, Units 1, 2, & 3/Docket Nos. 50–00010/237/249–CO; LaSalle County Station, Units 1 & 2/Docket Nos. 50–00373/374–CO; Limerick Generating Station, Units 1 & 2/Docket Nos. 50–00342/353–CO; Oyster Creek Nuclear Generating Station/Docket No. 50–00219–CO; Peach Bottom Atomic Power Station, Units 1, 2, & 3/Docket Nos. 50–00171/277/278–CO; Quad Cities Nuclear Power Station, Units 1 & 2/Docket Nos. 50–00254/265–CO; Three Mile Island, Unit 1/Docket No. 50–00289–CO; and Zion Nuclear Power Station, Units 1 & 2/Docket Nos. 50–00295/304–CO.

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Exelon Generation Company, LLC, and Amergen Energy Company, LLC, (Braidwood Station, Units 1 & 2, et al.).

This Board is being established pursuant to a November 4, 2002 petition for leave to intervene and request for a hearing submitted by Barry Quigley regarding an October 3, 2002 confirmatory order modifying licenses that provides, among other things, for corrective action in the form of counseling and training of personnel involved in violations of 10 CFR 50.7. The issuance of the order followed an investigation by NRC's Office of Investigations to ascertain whether an employee of the Byron Station was discriminated against for raising safety concerns. The October 3, 2002 order, effective immediately, was published in the **Federal Register** (67 FR 63169 (Oct. 10, 2002)).

The Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 18th day of November 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–29739 Filed 11–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247, and 50–286, License Nos. DPR–5, DPR–26, and DPR–64]

Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated November 6, 2001, filed by Riverkeeper, Inc., *et al.*, hereinafter referred to as the "Petitioners." The petition was supplemented on December 20, 2001. The petition concerns the operation of the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3 (IP1, 2, and 3).

The petition requested that the U.S. Nuclear Regulatory Commission (NRC): (1) Order the licensee to suspend operations, revoke the operating license, or adopt other measures resulting in a temporary shutdown of IP2 and 3; (2) order the licensee to conduct a full review of the facility's vulnerabilities, security measures, and evacuation plans; (3) require the licensee to provide information documenting the existing and readily attainable security measures which protect the IP facility against land, water, and airborne terrorist attacks; (4) immediately modify the IP2 and 3 operating licenses to mandate certain specified security measures sufficient to protect the facility; and (5) order the revision of the licensee's emergency response plan and Westchester County's radiological emergency response plan (RERP) to account for possible terrorist attacks and prepare a comprehensive response to multiple, simultaneous attacks in the region, which could impair the efficient

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evacuation of the area. In addition, the Petitioners requested that the NRC take prompt action to permanently retire the facility if, after conducting a full review of the facility's vulnerabilities, security measures, and evacuation plans, the NRC finds that the IP facility cannot be adequately protected against terrorist threats. Further, separately from the above issues, the Petitioners requested that the NRC order the licensee to undertake the immediate conversion of the current water-cooled spent fuel storage system to a dry-cask system.

As the basis for the November 8, 2001, request, the Petitioners stated that: (1) The IP facility is a plausible target of future terrorist actions, (2) actual threats against nuclear power plants have been documented, (3) IP is currently vulnerable to a catastrophic terrorist attack, (4) a terrorist attack on IP2 and 3 would have significant public health, environmental, and economic impacts, and (5) the Westchester County's RERP is inadequate because it is based on erroneous assumptions.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on May 16, 2002. The Petitioners responded with comments on August 9, 2002, and the licensee had no comments. The Petitioners' comments and the NRC staff's response to them are included with the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to order the licensee to suspend operations, revoke the operating license, or adopt other measures resulting in a temporary shutdown of IP2 and 3, be denied. The reasons for this decision, along with the reasons for decisions regarding the remaining Petitioners' requests, are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD 02–06), the complete text of which is available in the Agencywide Documents Access and Management System (ADAMS) for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the NRC Web site (*http://www.nrc.gov/reading-rm.html*).

As stated in its letter to the Petitioners on December 20, 2001, the NRC has, in effect, partially granted the Petitioners' request for an immediate security upgrade at IP2 and 3. On September 11, 2001, the NRC took action to enhance security at all nuclear facilities, including IP2 and 3. Immediately after the attacks, the NRC advised all nuclear power plants to go to the highest level of security, which they promptly did. These facilities have remained at a heightened security level since that time. The NRC continues to work with other Federal agencies and is monitoring relevant information it receives on security matters at nuclear facilities. The NRC is prepared to make immediate adjustments as necessary to ensure adequate protection of the public.

The NRC issued Orders on February 25, 2002, to all commercial nuclear power plants to implement interim compensatory security measures for the current threat environment. Some of the requirements made mandatory by the Orders formalized the security measures that NRC licensees had taken in response to advisories issued by the NRC in the aftermath of the September 11 terrorist attacks. The Orders also imposed additional security enhancements, which have emerged based on the NRC's assessment of the current threat environment and its ongoing security review. The requirements will remain in effect until the NRC determines that the level of threat has diminished, or that other security changes are needed. The specific actions are sensitive, but include increased patrols, augmented security forces and capabilities, additional security posts, installation of additional physical barriers, vehicle checks at greater stand-off distances, enhanced coordination with law enforcement and military authorities and more restrictive site access controls for all personnel. Regarding the Petitioners' request for specific information about the security measures, the NRC's policy is to not release safeguards information to the public. Thus, this request is denied.

The NRC in its February 25, 2002, Orders also directed licensees to evaluate and address potential vulnerabilities to maintain or restore cooling to the core, containment, and spent fuel pool and to develop specific guidance and strategies to respond to an event that damages large areas of the plant due to explosions or fires. These strategies are intended to help licensees to identify and utilize any remaining onsite or offsite equipment and capabilities. If NRC's ongoing security review recommends any other security measures, the NRC will take appropriate action.

The NRC denies the Petitioners' request to mandate certain security measures, as specified by the Petitioners, for the protection of the facility, such as a system to defend a no-fly zone. The NRC considers that the collective measures taken since September 11, 2001, provide adequate protection of public health and safety.

The NRC finds that the existing emergency response plans are flexible enough to respond to a wide variety of adverse conditions, including a terrorist attack. The NRC advisories and the Orders issued since September 11, 2001, directed licensees to take specific actions deemed appropriate to ensure continued improvements to existing emergency response plans. The Petitioners' concern that the emergency plans do not contemplate multiple attacks on the infrastructure is alleviated by the fact that the emergency plans are intended to be broad and flexible enough to respond to a wide spectrum of events. Thus, the Petitioners' request that the onsite and offsite emergency plans be revised to account for possible terrorist attacks has been, in part, granted.

The NRC finds that the current spent fuel storage system and the security provisions at IP adequately protect the spent fuel. Thus, the Petitioners' request to order the installation of a dry-cask storage facility is denied. However, the licensee has stated its intention to add such a facility.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 18th day of November, 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29738 Filed 11–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Solicitation of Public Comments on the Third Year of Implementation of the Reactor Oversight Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: Nearly 3 years have elapsed since the U.S. Nuclear Regulatory Commission (NRC) implemented its revised Reactor Oversight Process (ROP). The NRC is currently soliciting comments from members of the public, licensees, and interest groups related to the implementation of the ROP. This is a followup to the **Federal Register** notice (FRN) issued in November 2001 requesting feedback on the second year of implementation.

DATES: The comment period expires on December 27, 2002. The NRC will consider comments received after this date if it is practical to do so, but is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Comments may be e-mailed to *nrcrep@nrc.gov* or sent to Michael T. Lesar, Chief, Rules and Directives Branch, Office of Administration (Mail Stop T6–D59), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be hand-delivered to Mr. Lesar at 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Documents created or received at the NRC after November 1, 1999, are available electronically through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. From this site, the public can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. For more information, contact the NRC's Public Document Room (PDR) reference staff at 301–415–4737 or 800–397–4209, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Maley, Office of Nuclear Reactor Regulation (Mail Stop OWFN 7A15), U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Mr. Maley can also be reached by telephone at 301–415–2919 or by e-mail at *mjm3@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Program Overview

The mission of the NRC is to regulate the civilian uses of nuclear materials in the United States to protect the health and safety of the public and the environment, and to promote the common defense and security by preventing the proliferation of nuclear material. The mission is accomplished through the following activities:

- License nuclear facilities and the possession, use, and disposal of nuclear materials.
- Develop and implement requirements governing licensed activities.
- Inspect and enforce licensee activities to ensure compliance with these requirements and the law.

While the NRC's responsibility is to monitor and regulate licensee's performance, the primary responsibility for safe operation and handling of nuclear materials rests with each licensee.

As the nuclear industry in the United States has matured for more than 25 years, the NRC and its licensees have learned much about how to safely operate nuclear facilities and handle nuclear materials. In April 2000, the NRC began to implement more effective and efficient inspection, assessment, and enforcement approaches, which apply insights from these years of regulatory oversight and nuclear facility operation. The NRC has also incorporated risk-informed principles and techniques into its oversight activities. A risk-informed approach to oversight enables the NRC to more appropriately apply its resources to oversight of operational areas that contribute most to safe operation at nuclear facilities.

After conducting a 6-month pilot program in 1999, assessing the results, and incorporating the lessons learned, the NRC began implementing the revised Reactor Oversight Process (ROP) at all 103 nuclear facilities (except D.C. Cook) on April 2, 2000. Inherent in the ROP are the following key NRC performance goals:

(1) Maintain safety by establishing and implementing a regulatory oversight process that ensures that plants are operated safely.

(2) Enhance public confidence by increasing the predictability, consistency, and objectivity of the oversight process; providing timely and understandable information; and providing opportunities for meaningful involvement by the public.

(3) Improve the effectiveness, efficiency, and realism of the oversight process by implementing a process of continuous improvement.

(4) Reduce unnecessary regulatory burden through the consistent application of the process and incorporation of lessons learned.

Key elements of the ROP include revised NRC inspection procedures, plant performance indicators, a significance determination process, and an assessment program that incorporates various risk-informed thresholds to help determine the level of NRC oversight and enforcement. Since process development began in 1998, the NRC has frequently communicated with the public by various means. These have included conducting public meetings in the vicinity of each licensed commercial nuclear power plant, issuing FRNs soliciting feedback on the process, publishing press releases about the new process, conducting multiple public workshops, placing pertinent background information in the NRC's Public Document Room, and establishing an NRC Web site containing easily accessible information about the new program and licensee performance.

NRC Public Stakeholder Comments

The NRC continues to be interested in receiving feedback from members of the public, various public stakeholders, and industry groups on their insights regarding the third year of implementation of the ROP. In particular, the NRC is seeking responses to the questions listed below, which will provide important information that the NRC can use in ongoing program improvement. A summary of the feedback obtained will be provided to the Commission and included in the annual ROP self-assessment report.

Questions

Questions Related to Specific ROP Program Areas

(As appropriate, please provide specific examples and suggestions for improvement.)

(1) Does the Performance Indicator Program minimize the potential for licensees to take actions that adversely impact plant safety?

(2) Does appropriate overlap exist between the Performance Indicator Program and the Inspection Program?

(3) Do reporting conflicts exist, or is there unncessary overlap between reporting requirements of the ROP and those associated with the Institute of Nuclear Power Operations (INPO), the World Association of Nuclear Operations (WANO), or the Maintenance Rule?

(4) Does NEI 99–02, "Regulatory Assessment Performance Indicator Guideline" provide clear guidance regarding Performance Indicators?

(5) Is the information in the inspection reports useful to you?

(6) Does the Significance Determination Process yield equivalent results for issues of similar significance in all ROP cornerstones?

(7) Does the NRC take appropriate actions to address performance issues for those licensees outside of the Licensee Response Column of the Action Matrix?

(8) Is the information contained in assessment reports relevant, useful, and written in plain English?

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Questions Related to the Efficacy of the Overall Reactor Oversight Process (ROP)

(As appropriate, please provide specific examples and suggestions for improvement.)

(9) Are the ROP oversight activities predictable (*i.e.*, controlled by the process) and objective (*i.e.*, based on supported facts, rather than relying on subjecting judgement)?

(10) Is the ROP risk-informed, in that the NRC's actions are graduated on the basis of increased significance?

(11) Is the ROP understandable and are the processes, procedures and products clear and written in plain English?

(12) Does the ROP provide adequate assurance that plants are being operated and maintained safely?

(13) Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?

(14) Does the ROP enhance public confidence?

(15) Has the public been afforded adequate opportunity to participate in the ROP and to provide inputs and comments?

(16) Has the NRC been responsive to public inputs and comments on the ROP?

(17) Has the NRC implemented the ROP as defined by program documents?

(18) Does the ROP reduce unnecessary regulatory burden on licensees?

(19) Does the ROP result in unintended consequences?

(20) Please provide any additional information or comments on other program areas related to the Reactor Oversight Process.

Dated in Rockville, Maryland, this 15th day of November, 2002.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29736 Filed 11–21–02; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Huntsman Polymers Corporation, 11¾% Senior Notes (due 2004)) File No. 1–9968

November 18, 2002.

Huntsman Polymers Corporation, a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 11¾% Senior Notes (due 2004) ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer approved resolutions on October 15, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Issuer's Security from the Exchange, the Issuer's Board notes that the debt market for the Security is relatively small and offers significantly less liquidity and price discovery to investors compared to the NYSE equity market. In addition, the Board represents that competitive market forces, influenced both by the costs associated with maintaining the listing and by relative difference in trading volume, have made the over-the-counter markets the dominant venue for trading debt securities. The Issuer states that it is currently seeking quotation of the Security on the over-the-counter markets.

The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 12, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29762 Filed 11–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 25, 2002:

A closed meeting will be held on Monday, November 25, 2002, at 2:30 p.m., and an open meeting will be held on Tuesday, November 26, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Monday, November 25, 2002, will be:

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

The subject matter of the open meeting scheduled for Tuesday, November 26, 2002, will be:

1. The Commission will consider whether to issue a release proposing amendments to rule 10b–18 (the safe harbor for issuer repurchases), and amendments to regulations S–K and S–B under the Securities and Exchange Act of 1934, Exchange Act forms 10–Q, 10–QSB, 10–K, 10–KSB, and 20–F, and proposed form N–CSR under the Exchange Act and the Investment Company Act of 1940, regarding disclosure of issuer repurchases.

2. The Commission will consider whether to propose new rule 3a–8 under the Investment Company Act of 1940 that would provide a nonexclusive safe harbor from the definition of investment company for certain *bona fide* research and development companies.

[5] 17 CFR 200.30–3(a)(1).

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 19, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–29821 Filed 11–19–02; 4:18 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46843; File No. SR–NASD–2002–33]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for Nasdaq Data Entitlement Packages

November 18, 2002.

I. Introduction

On March 7, 2002, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] a proposed rule change to establish fees for new Nasdaq market data products. On April 25, 2002, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.[3] On July 29, 2002, Nasdaq filed Amendment No. 2 that entirely replaced the original rule filing and Amendment No. 1.[4] On August 23, 2002, Nasdaq filed Amendment No. 3 that entirely replaced the original rule filing and Amendment Nos. 1 and 2.[5] On September 13, 2002, the Nasdaq submitted Amendment No. 4 that entirely replaced the original rule filing and Amendment Nos. 1, 2, and 3.[6] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 27, 2002.[7] The Commission did not receive any comments on the proposed rule change. On October 3, 2002, Nasdaq filed Amendment No. 5 to the proposed rule change.[8] This order approves the proposed rule change, as amended, and notices and grants accelerated approval to Amendment No. 5.

II. Description of the Proposal

Nasdaq proposes to amend NASD rule 7010 to establish fees for new Nasdaq data entitlement packages. In its rule filings regarding SuperMontage,[9] Nasdaq described its new data feeds and products: the Nasdaq Prime data feed, which will provide the new data for a Nasdaq entitlement package called "TotalView," and the Aggregate Depth at Price ("ADAP") data feed, which will provide the new data entitlement packages called "DepthView" and "PowerView".[10]

A. TotalView

TotalView will provide, on a real-time basis: (1) All individual attributable quote/order information at the five best price levels displayed by the Nasdaq SuperMontage system; (2) the aggregate size of all unattributed quotes or orders at each of the top five price levels, on both sides of the market, that are in the SuperMontage system; (3) the aggregate attributable and unattributable quotes and orders at each of the top five price levels, on both sides of the market, that are in the SuperMontage system; (4) the quote and order data found in the Nasdaq Quotation Dissemination Service ("NQDS")[11] data feed, including the best attributed quotation from each Nasdaq participant, and (5) the Nasdaq Inside Price. Nasdaq proposes to charge distributors[12] of TotalView $7500.00 per month. In addition, Nasdaq proposes to charge $150.00 per month per controlled device.[13] According to Nasdaq, TotalView will use significantly more bandwidth than any Nasdaq data entitlement to date. In addition, Nasdaq believes that this data product is highly specialized and thus has not proposed a non-professional fee at this time.

B. DepthView

DepthView will provide the aggregated size at each of the top five price levels, both on the bid and the ask, within the Nasdaq SuperMontage system. Nasdaq proposes to charge $50.00 per month for each controlled device and $25.00 per month for each controlled device of a non-professional.[14] According to Nasdaq,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 25, 2002.

[4] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 26, 2002.

[5] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 22, 2002.

[6] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 13, 2002.

[7] *See* Securities Exchange Act Release No. 46521 (September 20, 2002), 67 FR 61179 ("notice").

[8] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 3, 2002 ("Amendment No. 5"). In Amendment No. 5, Nasdaq corrected grammatical errors in the rule language text of the proposed rule change; amended a footnote to the rule language text to state that Nasdaq itself is a distributor of its data feed(s); and added a footnote to rule 7010(q)(2)(A) stating that Nasdaq is a distributor of its data feed(s) and will execute a Nasdaq distributor agreement and pay the distributor charge.

[9] These rule filings were approved by the Commission in Securities Exchange Act Release Nos. 43883 (January 19, 2001), 66 FR 8020 (January 26, 2001) and 45790 (April 19, 2002), 67 FR 21007 (April 29, 2002).

[10] As described further below, PowerView includes data from ADAP and the NQDS data feed.

[11] The NQDS data feed currently consists of: (1) Real-time quotes for each Market Maker and Electronic Communication Network ("ECN") in NASDAQ National Market and SmallCap issues; (2) real-time best bid or offer ("BBO") quotes for each regional UTP exchange that quotes in NASDAQ-listed issues; and (3) real-time National BBO quote appendages for NASDAQ National Market and SmallCap issues. Telephone conversation between Eleni Constantine, Associate General Counsel, Office of General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, September 19, 2002.

[12] Nasdaq proposes that a "distributor" be defined as any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. Further, Nasdaq proposes that all distributors execute a Nasdaq distributor agreement. Nasdaq itself is a distributor if its data feeds. Accordingly it must execute an agreement and pay the distributor fee.

[13] Nasdaq proposes that a "controlled device" be defined as any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) Access the information in the Nasdaq Data Entitlement Package(s); or (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package. If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not have to pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not'a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service would be excluded from the entitlement requirement.

[14] Nasdaq proposes that a "non-professional" be defined as a natural person who is neither: (a) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor"

Continued

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DepthView requires more processing capacity to calculate its five aggregated price levels on each side of the market. Nasdaq represented that the price for DepthView was based on the increased processing capacity needed and a review of the prices charged by other major exchanges for aggregated order data.

C. PowerView

PowerView will include both the data available through DepthView and the data available in the NQDS data feed,[15] including the best-attributed quotation from each Nasdaq participant in each Nasdaq National Market and Small Cap Market stock. Nasdaq proposes to charge $75.00 per month per controlled device and $29.00 per month per controlled device of non-professionals.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[16] and in particular, the requirements of section 15A(b)(5) of the Act,[17] which requires that the rules of an association provide for the equitable allocation of reasonable fees, dues and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Specifically, the Commission believes that the NASD's proposed charges for these new data products are reasonable when compared to similar types of services provided by other markets.[18] Further, Nasdaq has represented that these new data products will provide more market data than currently provided and will require significantly more bandwidth and systems capacity.

Nasdaq has proposed lower fee charges for non-professionals for DepthView and PowerView. The Commission believes that should provide an opportunity for many investors to have access to the enhanced data provided by these services, which should help to increase transparency. Nasdaq represented that it may consider a non-professional fee for TotalView in the future.

Nasdaq has proposed a new definition for controlled devices. With this new definition, Nasdaq will impose charges on all devices that have the capacity to either access or to utilize a particular data feed, whether the controlled device displays the data, "receives" the data, or has the ability to utilize the data even though the data remains on another device. A distributor is required to pay the controlled device fee for all such devices that are part of a network that receives a particular data feed. Nasdaq has proposed, however, that distributors that can demonstrate that a particular controlled device in fact has no capacity to access or use the data will not be charged the controlled device fee. The Commission believes that the proposed definition of controlled device is consistent with the requirements of the Act, which permits an association to impose reasonable fees on persons who are using a facility or system of such association.

In its notice, Nasdaq represented that it will not impose any restrictions on redistribution of the data products to qualified vendors and broker-dealers that have entered into Distributor Agreements with Nasdaq. According to Nasdaq, its display requirements are covered by the Distributor Agreements. The Commission notes that this order only approves the fees proposed by Nasdaq for the data products and therefore, the Commission is not approving or disapproving the terms of Nasdaq's Distributor Agreements.

Finally, the Commission notes that Nasdaq has acknowledged that persons who subscribe to receive the new data products, to the extent that they act as a vendor, must comply with the requirements of the Vendor Display rule.[19] Specifically, the Vendor Display rule establishes minimum requirements governing the manner in which transaction, quotation, and other market information is displayed in certain exchange-listed and Nasdaq-listed securities ("subject securities"). Generally, under the rule, vendors that provide quotation information with respect to subject securities must provide a consolidated display of quotation information from all reporting market centers for that security. Because DepthView, PowerView, and TotalView do not, individually, satisfy the consolidated display requirement of the rule, vendors, including Nasdaq itself to the extent it acts as a vendor, will need to disseminate additional quotation information along with these data products to comply with the rule. In this connection, the Commission notes that Nasdaq has put statements to this effect on its website description of these services and it its subscription contracts.

The Commission finds good cause for approving Amendment No. 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 5 merely provides technical corrections and clarification to the proposed rule text, which was reflected in the notice of the proposed rule change. The Commission, therefore, believes that granting accelerated approval of Amendment No. 5 is appropriate and consistent with section 15A(b)(6)[20] and section 19(b)[21] of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–33 and should be submitted by December 13, 2002.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–2002–33), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29761 Filed 11–21–02; 8:45 am]

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as that term is defined in section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (c) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[15] *See* note 11, *supra*.

[16] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78o–3(b)(5).

[18] For example, the New York Stock Exchange's OpenBook service has a monthly charge of $5000.00 for receipt of the data feed and $50.00 for each end-user terminal. *See* Securities Exchange Act Release No. 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001).

[19] 17 CFR 240.11Ac1–2. Vendors purchasing data feeds from Nasdaq are likewise responsible for their compliance with the Vendor Display rule. *See also* notice, *supra* note 7.

[20] 15 U.S.C. 78o–3(b)(6).

[21] 15 U.S.C. 78s(b).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46840; File No. SR–Phlx–2002–59]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend its Pilot Program To Disengage its Automatic Execution System ("AUTO–X") for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO–X Minimum Guarantee for That Option

November 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis, for an additional six-month pilot, to expire on May 30, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for an additional six months, its pilot program effecting a systems change to AUTO–X, the automatic execution feature of the Exchange's Automated Options Market System ("AUTOM"),[3] that would disengage AUTO–X for a period of thirty seconds after the number of contracts automatically executed in a given option meets the AUTO–X minimum guarantee for that option. The pilot program was originally approved on a six-month basis for a limited number of eligible options,[4] and subsequently extended for an additional six-month period.[5] Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.[6] The pilot has since been extended twice for additional six-month periods, the latest extension is scheduled to expire November 30, 2002.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to extend the pilot program for an additional six-month period. On December 1, 2000, the Initial Pilot Program became effective.[8] The pilot program was then extended several times and is currently scheduled to end on November 30, 2002.[9] The pilot program includes the following features:

- Once an automatic execution occurs in an option via AUTO–X, the system would begin a "counting" program, which would count the number of contracts executed automatically for that option, up to the maximum guaranteed AUTO–X size,[10] regardless of the number of executions.
- When the number of contracts executed automatically for that option meets the maximum guaranteed AUTO–X size within a fifteen second time frame, the system would cease to automatically execute for that option, and would drop all AUTO–X eligible orders in that option for manual handling by the specialist for a period of thirty seconds to enable the specialist to refresh quotes in that option.[11]
- Upon the expiration of thirty seconds, automatic executions would resume and the "counting" program would be set to zero and begin counting the number of contracts executed automatically within a fifteen second time frame again, up to the maximum guaranteed AUTO–X size.
- Again, when the number of contracts automatically executed meets the maximum guaranteed AUTO–X size within a fifteen second time frame, the system would drop all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of thirty seconds.

A significant purpose of this pilot program is to enable the Exchange to move towards the dissemination of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange's trading floor.

[4] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96) ("Initial Pilot Program").

[5] *See* Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56).

[6] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[7] See Securities Exchange Act Release Nos. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR-Phlx-2002–22) ("Last Extension"); and 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[8] *See supra* note 4.

[9] *See* Last Extension, *supra* note 7.

[10] Recently, the Exchange filed proposed amendments to Exchange Rule 1080(c) to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum AUTO–X eligible size range, on an issue-by-issue basis. *See* SR–Phlx–2002–39 (submitted July 2, 2002), and Amendment No. 1 thereto (submitted August 23, 2002). Under that proposal, the maximum guaranteed AUTO–X size may be for a different number of contracts for customer orders than for broker-dealer orders. Upon implementation of that proposal, subject to Commission approval, when the maximum guaranteed AUTO–X size in an option is for a different number of contracts for customer orders than for broker-dealer orders, AUTO–X would be disengaged when the larger of the two maximum guaranteed AUTO–X sizes for the particular option is exhausted.

[11] Any orders delivered in excess of the minimum AUTO–X guarantee will be executed to the guaranteed amount and the excess will be dropped to the specialist for manual execution. *See* Initial Pilot Program, *supra* note 4. The Exchange has represented that, for the thirty seconds that AUTO–X is disengaged, the specialist will be required to honor the disseminated quote unless the specialist is in the process of refreshing his or her quote. The Exchange has further represented that, generally, it should not take the specialist the full thirty seconds to update his or her quote, and that the Exchange will surveil for any potential abuse. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, Division of Market Regulation ("Division"), Commission, on November 7, 2002.

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options quotations with size.[12] As discussed above, the "counting" feature of the pilot program functions to disengage AUTO–X for a period of thirty seconds in a given option once the number of contracts automatically executed meets the maximum guaranteed AUTO–X size for that option within a fifteen-second time frame. A similar "counting" mechanism is being utilized as part of the roll-out of a new Auto-Quote system that includes an AUTO–X guaranteed size equal to the Exchange's disseminated size, subject to a minimum and maximum guaranteed AUTO–X size, on an issue-by-issue basis, which is currently pending Commission approval.[13] Thus, the proposed extension of the pilot program should allow the Exchange to continue its efforts in the process of deploying the new Auto-Quote system.

The Exchange believes that an extension of the pilot program would enable specialists to continue to provide fair and orderly markets during peak market activity by manually executing orders at correct market prices and refreshing quotations to reflect market demand.

In addition, the Exchange recognizes that Commission staff has inquired into the possibility of re-engaging AUTO–X in less than thirty seconds once the specialist revises the quote. The Exchange's Financial Automation, Legal, and Regulatory staff have begun to review the issue, specifically as to whether it is feasible to re-engage AUTO–X for an entire issue based upon the revision of a quotation in one single series.[14] Pursuant to this review, the Exchange has determined to automate the re-engagement of AUTO–X for an option issue upon the revision of a quotation in a single series of such issue, provided that the revised quotation occurs in the series that exhausted the AUTO–X guarantee. The Exchange believes that, with the ultimate implementation of the new Auto-Quote system, the Exchange should, over the proposed additional six-month pilot period, be able to more accurately evaluate its ability to re-engage AUTO–X in an entire class of options upon the revision of a quote in a single option series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[15] in general, and with section 6(b)(5) in particular,[16] in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–59 and should be submitted by December 13, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[18] The Commission believes that an extension of the pilot program for an additional six months should allow the Exchange to continue its efforts to deploy its new Auto-Quote system to prepare for the dissemination of quotes with size. In addition, the Commission believes that the proposal should assist specialists in maintaining fair and orderly markets during periods of peak market activity.

The Commission notes that the Exchange is attempting to address its concern regarding the feasibility of re-engaging AUTO–X for a particular issue prior to thirty seconds if the quote has been revised by the specialist before that time period. The Exchange has represented that it will automate the re-engagement of AUTO–X for an option issue once the AUTO–X guarantee in a single series of such issue has been met and the quote has been updated prior to the thirty-second period. Consequently, the Commission believes that extending the pilot program for an additional six months should enable the Phlx to further evaluate its ability to re-engage AUTO–X in an entire class of options upon the revision of a quote in a single option series.

The Commission notes that the Exchange has represented that it will continue to evaluate the pilot program by reviewing specialists' performance, and by monitoring any complaints relating to the pilot program.[19] Furthermore, the Commission notes that the Exchange has represented that it will continue to post on its website a list of options included in the pilot program, as well as issue a circular to this effect to members, member organizations, participants, and participant organizations explaining the pilot program and the circumstances in which the AUTO–X system will not be available for customer orders.[20]

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[21] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that during the last six-month extension of the pilot program, the Phlx has received no complaints from customers, floor traders, or member firms. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow Phlx to continue, without interruption, the existing operation of its AUTO–X system.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Phlx–2002–59), is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29714 Filed 11–21–02; 8:45 am]

BILLING CODE 8010–01–P

[12] The Commission recently approved amendments to the Exchange's definition of "disseminated size" to mean, with respect to the disseminated price for any quoted options series, at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders. *See* Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR–Phlx–2002–15) (order approving amendments to Exchange Rule 1082(a)(ii) and Option Floor Procedure Advice F–7).

[13] *See* SR–Phlx–2002–39, and Amendment No. 1 thereto.

[14] Under Phlx's current pilot program, AUTO–X is programmed to re-engage after thirty seconds, regardless of whether the specialist has updated its quote prior to that period of time.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, and Sapna C. Patel, Attorney, Division, Commission, on November 6, 2002.

[20] Phlx has also represented that it will include language in its circular clarifying that AUTO–X will not be re-engaged until the expiration of the thirty second period, even after a quote is revised. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, and Sapna C. Patel, Attorney, Division, Commission, on November 6, 2002.

[21] 15 U.S.C. 78s(b)(2).

[22] Id.

[23] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Central America Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive Order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States-Central America Free Trade Agreement (US–CAFTA). The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than January 15, 2003.

ADDRESSES: Submissions by electronic mail: *FR0053@ustr.gov*.

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to Jonathan Fritz, Environment and Natural Resources Section, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified the Congress of the President's intent to enter into trade negotiations with the five member countries (*i.e.*, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) of the Central American Economic Integration System (CAEIS). Ambassador Zoellick outlined U.S. objectives for the US–CAFTA in the notification letters to the Congress. The letters to House Speaker Dennis Hastert and Senate President Pro Tempore Robert Byrd can be found on the USTR Website at *www.ustr.gov/releases/2002/2002–10–01-centralamerica-house.PDF* and *www.ustr.gov/releases/2002/2002–10–01-centralamerica-senate.PDF*, respectively. The TPSC invited the public to provide written comments and/or oral testimony at a public hearing on the proposed US–CAFTA scheduled for November 19, 2002, to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63954).

US–CAFTA will build on the Caribbean Basin Initiative (CBI). Since 1985, the U.S. trade relationship with Central America has been driven by U.S. unilateral trade preferences through the CBI. By moving from unilateral trade preferences to a reciprocal FTA, the US–CAFTA will seek to eliminate duties and unjustified barriers to trade in both U.S.- and Central American-origin goods and also address trade in services, trade in agricultural products, investment, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. US–CAFTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance, complementing ongoing domestic, bilateral, and multilateral efforts in the region. Finally, US–CAFTA will lend momentum to concluding the Free Trade Area of the Americas negotiations by January 2005.

Two-way trade in goods between the United States and the member countries of the CAEIS totaled $20 billion in 2001, consisting of $9 billion in U.S. exports and $11 billion in U.S. imports. Leading U.S. exports to Central America include apparel products, machinery, electrical machinery and equipment, and plastics. Leading U.S. imports from Central America include apparel and textile products and edible fruits.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. Determining the review's scope includes consideration of the environmental dimensions of the

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regulatory and trade policies at issue, including ways in which the trade agreement can complement U.S. environmental objectives. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "US–CAFTA Environmental Review" followed by "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

USTR also welcomes and will take into account the public comments on US–CAFTA environmental issues submitted in response to a previous notice—the **Federal Register** notice dated October 16, 2002 (67 FR 63954) requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection. General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–29691 Filed 11–21–02; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of the U.S.-Morocco Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive Order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed Free Trade Agreement (FTA) between the United States and Morocco. The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects (both positive and negative) that might flow from the free trade agreement, including the potential implications for our environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than January 15, 2003.

ADDRESSES: Submissions by electronic mail: *FR0054@ustr.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to Jennifer Prescott, Office of Environment and Natural Resources, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified the Congress of the President's intent to enter into trade negotiations with Morocco. Ambassador Zoellick outlined the specific U.S. objectives for the Morocco FTA in the notification to the Congress. The letters to House Speaker Dennis Hastert and Senate President Pro Tempore Robert Byrd can be found on the USTR Web site at *http://www.ustr.gov/releases/2002/2002–10–01-morocco-house.PDF* and *http://www.ustr.gov/releases/2002/2002–10–01-morocco-senate.PDF*, respectively. The TPSC has invited the public to provide written comments and/or oral testimony at a public hearing scheduled for November 21, 2002, to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63187) (Oct. 10, 2002).

The U.S.-Morocco FTA will build on the bilateral work that began in 1995 under the U.S.-Morocco Trade and Investment Framework Agreement (TIFA). The U.S.-Morocco FTA will seek to eliminate duties and unjustified barriers to trade in both U.S.- and Moroccan-origin goods and also address trade in services, trade in agricultural products, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. The FTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance. The FTA will also help to support and accelerate economic and political reforms already underway in Morocco.

Over the past six years, U.S. exports to Morocco averaged $475 million annually, led by exports in the aircraft, cereals, and machinery sectors. Morocco's average applied tariff is more than 20 percent. By comparison, U.S. tariffs on Moroccan exports to the United States are already low or zero in many cases. Transistors, semiconductors, phosphates, and other minerals, which make up a large share of Moroccan exports to the United States, are already granted duty-free entry.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. Determining the review's scope includes consideration of the environmental dimensions of the regulatory and trade policies at issue, including ways in which the trade agreement can complement U.S. environmental objectives. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "United States-Morocco Environmental Review" followed by "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

USTR also welcomes and will take into account the public comments on environmental issues submitted in response to a previous notice—the **Federal Register** Notice dated October 10, 2002 (67 FR 63187)—requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–29692 Filed 11–21–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation; Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9 a.m. on Monday, December 16, 2002, at 445 Antiqua Lane, Palm Beach, Florida. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than December 9, 2002, Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 18, 2002.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–29708 Filed 11–21–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS America) will hold a meeting of its Board of Directors on Monday, December 9, 2002. The meeting runs from 10 a.m. to 3 p.m. The session includes the following items: (1) Call to Order; (2) Welcome, Introductions, ITS America antitrust policy, Conflict of Interest Statements; (3) Consent Agenda: (a) Approval of Minutes of the October 17, 2002, Board Meeting; (b) ITS Federal Report; (c) Finance Committee Report; (d) TEA–21 Reauthorization Task Force Report; (e) Council Reports; (f) Coordinating Council; (g) International Affairs

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Council; (h) State Chapters Council; (i) Executive Forum for Business & Trade Charter; (4) Chairman's Report—Executive Committee Report; (5) President's Report—ITS World Congress, Staff News, Other; (6) Finance Committee Report—Investment Performance Report and 2003 Budget; (7) ITS World Congress/Annual Meeting Task Force Report; (8) Policy Manual—Presentation of Final Revisions and Approval; (9) Strategic Planning Committee Report & Discussion—Report Out from Group Discussion and Approve 2003–2007 Strategic Plan; (10) New Business; (11) Adjourn.

ITS America provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS America establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS America will meet on Monday, December 9, 2002, from 10 a.m.–3 p.m.

ADDRESSES: The Rosen Centre Hotel, 9840 International Drive, Orlando, Florida, 32819; phone: (800) 800–9840; Fax: (407) 996–2659.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS America, 400 Virginia Avenue, SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS America by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.s.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: November 15, 2002.

Jeffrey F. Paniati,

Acting Associate Administrator, Office of Operations, Federal Highway Administration, and Acting Director, ITS Joint Program Office, US Department of Transportation.

[FR Doc. 02–29760 Filed 11–21–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 178X)]

Union Pacific Railroad Company—Abandonment Exemption—in Yuma and Maricopa Counties, AZ

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 subpart *F—Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 76.61-mile rail line over the Phoenix Subdivision from milepost 782.25 near Roll to milepost 858.86 near Arlington, in Yuma and Maricopa Counties, AZ. The line traverses United States Postal Service zip codes 85322, 85326, 85333, 85347, 85354, and 85356.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line has not been used as an overhead route for the past 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 2, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 12, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 29, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 22, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: November 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29603 Filed 11–21–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs; Treasury International Capital (TIC) Forms CQ–1 and CQ–2

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it has revised the mandatory data collections on the Treasury International Capital (TIC) C-forms. The revisions are effective for all reports beginning with reporting periods ending March 31, 2003 and thereafter; until that time, the current mandatory TIC C-forms and instructions remain in force. The revisions include revised instructions and two revised forms: CQ–1 and CQ–2. This Notice constitutes legal notification to all United States persons, as defined below, who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this data collection. United States persons who meet the reporting requirements but who do not receive a set of the revised C-forms and instructions should contact the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, to obtain copies. Additional copies of the reporting forms and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms.html*.

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any state), and any government (including a foreign government, the United States Government, a state, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: U.S. persons (a) who are U.S. residents and are not owned 50 percent or more by another U.S.-resident entity but (b) who are not depository institutions, bank holding companies, financial holding companies, or securities brokers and dealers subject to the requirements for filing TIC B reports, must report: on Form CQ–1, Part 1 if the total of their reportable financial liabilities to foreigners (sections A and B) is $50 million or more; on Form CQ–1, Part 2 if the total of their reportable financial claims on foreigners (sections A and B) is $50 million or more; on Form CQ–2, Part 1 if the total of their reportable commercial liabilities to unaffiliated foreigners is $25 million or more; on Form CQ–2, Part 2 if the total of their reportable commercial claims on unaffiliated foreigners is $25 million or more. Provided, however, that insurance underwriting companies that are U.S. persons and that are subsidiaries of bank holding companies and financial holding companies are subject to the foregoing reporting requirements.

What to Report: These reports collect timely information on international portfolio capital movements vis-à-vis foreign countries and international and regional organizations as follows: Form CQ–1 collects information on reporter's financial liabilities to, and financial claims on, foreign residents; and Form CQ–2 collects information on reporter's commercial liabilities to, and commercial claims on, unaffiliated foreign residents.

How to Report: Copies of the reporting forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the statistics unit of the Federal Reserve Bank of New York at (212) 720–8037, e-mail: *Patricia.Selvaggi@ny.frb.org*. The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001.

When to Report: Data on the revised TIC C-forms should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, beginning with the reporting period as of March 31, 2003 and thereafter.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0024. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 02–29764 Filed 11–21–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held December 19, 2002.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on December 19, 2002, in Room 4200E beginning at 10 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694–1861 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on December 19, 2002, in Room 4200E beginning at 10 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

David B. Robison,

National Chief, Appeals.

[FR Doc. 02–29651 Filed 11–21–02; 8:45 am]

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Corrections

Federal Register
Vol. 67, No. 226
Friday, November 22, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–37 and 1027–33

[FPMR Amendment G–117]

RIN 3090–AH63

Management of Government Aircraft

Correction

In rule document 02–26841 beginning on page 67742 in the issue of Wednesday, November 6, 2002, make the following correction:

§102–33.370 [Corrected]

On page 67757, in §102–33.370 (b), Table 2 is corrected to read as set forth below:

TABLE 2 FOR DISPOSING OF INSTALLED LIFE-LIMITED PARTS

(1) If a life-limited part is installed in an aircraft or an engine, and it— (i) Is documented with service life remaining—	Then	(A) You may exchange or sell the aircraft or engine, or GSA may tranfer the aircraft or engine to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate the aircraft or engine for flight use; or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate it and mark it, "EXPIRED LIFE-LIMITED—NOT AIRWORTHY." (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving donee agrees to remove and mutilate the part, and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).
(ii) Is documented with no service life remaining, or undocumented—	Then	(A) You must remove and mutilate the part before you exchange or sell the aircraft or engine (see rules for disposing of uninstalled life-limited parts in Table 1 of paragraph (a) of this section). (Note: If an aircraft or engine is exchanged or sold to its OEM or PAH, you do not have to remove the expired life-limited part); (B) You must remove and mutilate it before GSA may transfer or donate the aircraft or engine for flight use (see the rules for disposing of uninstalled FSCAP in Table 1 in paragraph (a) of this section). (Note: An internal engine part may be left installed, if you identify the part individually to ensure that the receiving agency is aware of the part's service status and, as a condition of the transfer or donation agreement, the receiving agency agrees to remove and mutilate the part before the engine is put into service. You must certify mutilation for transfers, and the State Agency for Surplus Property must certify that the part has been mutilated for donations); or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate and mark it "EXPIRED LIFE-LIMITED—NOT AIRWORTHY." (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving agency agrees to remove and mutilate the part and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).

[FR Doc. C2–26841 Filed 11–21–02; 8:45 am]
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Federal Register

Friday,
November 22, 2002

Part II

Commission on Civil Rights

45 CFR Chapter VII

Operations, Functions, and Structure of Civil Rights Commission; Final Rule

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COMMISSION ON CIVIL RIGHTS

45 CFR Chapter VII

Operations, Functions, and Structure of Civil Rights Commission

AGENCY: U.S. Commission on Civil Rights Commission.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations of the United States Commission on Civil Rights to provide the organizational structure, procedures, and program processes of the Commission.

EFFECTIVE DATE: This final rule is effective August 30, 2002.

FOR FURTHER INFORMATION: Contact Debra A. Carr, Deputy General Counsel, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Washington, DC 20425, (202) 376–8351.

SUPPLEMENTARY INFORMATION: On April 10, 2002, (97 FR 17528) the U.S. Commission on Civil Rights published its proposed rule for public comment. Comments and inquiries were received from two sources.

The inquires generally concerned internal policies, practices and procedures of the Commission, many of which were not specifically related to the proposed revisions. In addition, there were inquiries and comments concerning the relationship, if any, between the Solicitor and the General Counsel; the impact of the proposed changes, if any, on current employees; the Commission's need for the revisions, as well as the process and timing.

The following information generally addresses the relevant and significant comments and inquiries received by the Commission: The United States General Accounting Office (GAO) conducted an audit of the Commission and issued a report in July 1997. The report noted that the Commission underwent a major reorganization in 1986, during which it eliminated several offices, including the Solicitor's Unit or Solicitor's Office. The GAO report further noted that the Commission has been operating under obsolete documentation of its operating structure, as reflected by regulations that have not been revised since 1985. Furthermore, the position of Solicitor has not been formally filled since 1995. Rather, for the past seven years, attorneys in the Office of General Counsel have been handling matters assigned to the Solicitor's Office under the outdated 1985 regulations. In 1998 the Commission approved changes to its regulations as recommended by GAO. The proposed revisions to the regulations published on April 10, 2002 in the **Federal Register** incorporate the GAO recommendations by reflecting the agency's organization, procedures, and practices. As such, the proposed regulations should not adversely impact any current Commission employee. Thus, after appropriate careful consideration of the comments and inquiries summarized above, the Commission determined that changes were not required for formulation of the final rule. The text of the final rule appears below.

List of Subjects

45 CFR Part 701

Organization and functions (Government agencies).

45 CFR Part 702

Administrative practice and procedure, Sunshine Act.

45 CFR Part 703

Advisory committees, Organization and functions (Government agencies).

45 CFR Part 704

Freedom of information.

45 CFR Part 705

Privacy.

45 CFR Part 706

Conflict of interests.

45 CFR Part 707

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

45 CFR Part 708

Claims, Government employees.

Accordingly, 45 CFR chapter VII is revised as follows:

CHAPTER VII—COMMISSION ON CIVIL RIGHTS

Part

701 Organization and functions of the Commission
702 Rules on hearings, reports, and meetings of the Commission
703 Operations and functions of State Advisory Committees
704 Information disclosure and communications
705 Materials available pursuant to 5 U.S.C. 552a
706 Employee responsibilities and conduct
707 Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by U.S. Commission on Civil Rights
708 Collection by salary offset from indebted current and former employees

PART 701—ORGANIZATION AND FUNCTIONS OF THE COMMISSION

Subpart A—Organizations and Functions

Sec.
701.1 Establishment.
701.2 Responsibilities.

Subpart B—Organization Statement

701.10 Membership of the Commission.
701.11 Commission meetings—duties of the Chairperson.
701.12 Staff Director.
701.13 Staff organization and functions.

Authority: 42 U.S.C. 1975, 1975a, 1975b.

Subpart A—Organizations and Functions

§ 701.1 Establishment.

The United States Commission on Civil Rights (hereinafter referred to as the "Commission") is a bipartisan agency of the executive branch of the Government. The predecessor agency to the present Commission was established by the Civil Rights Act of 1957, 71 Stat. 634. This Act was amended by the Civil Rights Act of 1960, 74 Stat. 86; the Civil Rights Act of 1964, 78 Stat. 241; by 81 Stat. 582 (1967); by 84 Stat. 1356 (1970); by 86 Stat. 813 (1972); and by the Civil Rights Act of 1978, 92 Stat. 1067. The present Commission was established by the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339. The statutes are codified in 42 U.S.C. 1975 through 1975d. (Hereinafter, the 1994 Act will be referred to as "the Act.")

§ 701.2 Responsibilities.

(a) The Commission's authority under 42 U.S.C. 1975a(a) may be summarized as follows:

(1) To investigate allegations in writing under oath or affirmation that citizens of the United States are being deprived of their right to vote and have that vote counted by reason of color, race, religion, sex, age, disability, or national origin;

(2) To study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of color, race, religion, sex, age, disability or national origin or in the administration of justice;

(3) To appraise the laws and policies of the Federal Government relating to discrimination or denials of equal protection of the laws under the Constitution because of, color, race, religion, sex, age, disability, or national origin or in the administration of justice;

(4) To serve as a national clearinghouse for information relating to discrimination or denials of equal protection of the laws because of color, race, religion, sex, age, disability, or national origin;

(5) To prepare public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the laws because of color, race, religion, sex, age, disability, or national origin.

(b) Under 42 U.S.C. 1975a(c), the Commission is required to submit at least one report annually that monitors Federal civil rights enforcement efforts in the United States and other such reports to the President and to the Congress at such times as the Commission, the Congress, or the President shall deem appropriate.

(c) In fulfilling these responsibilities the Commission is authorized by the Act to hold hearings and to issue subpoenas for the attendance of witnesses; to consult with governors, attorneys general; and other representatives of State and local governments, and private organizations; and is required to establish an advisory committee in each State. The Act also provides that all Federal agencies shall cooperate fully with the Commission so that it may effectively carry out its functions and duties.

Subpart B—Organization Statement

§ 701.10 Membership of the Commission.

(a) The Commission is composed of eight members (or "Commissioners"), not more than four of whom may be of the same political party. The President shall appoint four members, the President pro tempore of the Senate shall appoint two, and the Speaker of the House of Representatives shall appoint two.

(b) The Chairperson and Vice Chairperson of the Commission are designated by the President with the concurrence of a majority of the Commissioners. The Vice Chairperson acts as Chairperson in the absence or disability of the Chairperson or in the event of a vacancy in that office.

(c) No vacancy in the Commission affects its powers and any vacancy is filled in the same manner and is subject to the same limitations with respect to party affiliations as previous appointments.

(d) Five members of the Commission constitute a quorum.

§ 701.11 Commission meetings—duties of the Chairperson.

(a) At a meeting of the Commission in each calendar year, the Commission shall, by vote of the majority, adopt a schedule of Commission meetings for the following calendar year.

(b) In addition to the regularly scheduled meetings, it is the responsibility of the Chairperson to call the Commission to meet in a special open meeting at such time and place as he or she shall deem appropriate; provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.

(c) The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.

(d) In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.

§ 701.12 Staff Director.

A Staff Director for the Commission is appointed by the President with the concurrence of a majority of the Commissioners. The Staff Director is the administrative head of the agency.

§ 701.13 Staff organization and functions.

The Commission staff organization and function are as follows:

(a) *Office of the Staff Director.* Under the direction of the Staff Director, this Office defines and disseminates to staff the policies established by the Commissioners; develops program plans for presentation to the Commissioners; evaluates program results; supervises and coordinates the work of other agency offices; manages the administrative affairs of the agency; appoints an Equal Employment Opportunity Officer for the agency's in-house Equal Employment Opportunity Program; and conducts agency liaison with the Executive Office of the President, the Congress, and other Federal agencies.

(b) *Office of the Deputy Staff Director.* Under the direction of the Deputy Staff Director, this Office is responsible for the day-to-day administration of the agency; evaluation of quantity and quality of program efforts; personnel administration; and the supervision of Office Directors who do not report directly to the Staff Director.

(c) *Office of the General Counsel.* Under the direction of the General Counsel, who reports directly to the Staff Director, this office serves as legal counsel to the Commissioners and to the agency; legal aspects of agency-related personnel actions, employment issues, and labor relations issues; plans and conducts hearings and consultations for the Commission; conducts legal studies; prepares reports of legal studies and hearings; drafts or reviews proposals for legislative and executive action; receives and responds to requests for material under the Freedom of Information Act, Federal Advisory Committee Act, Administrative Procedures Act, and the Sunshine Act; serves as the agency's ethics office and responds to requests for advice and guidance on questions of ethical conduct, conflicts of interest, and reporting financial interest; and reviews all agency publications and congressional testimony for legal sufficiency.

(d) *Office of Management.* This Office is responsible for all administrative, management, and facilitative services necessary for the operation of the agency, including financial management, personnel, publications, and the National Clearinghouse Library. This office consists of three divisions reporting directly to the Staff Director.

(1) *Administrative Services and Clearinghouse Division.* Under the direction of the Chief of Administrative Services, this Division is responsible for the identification and acquisition of Commission hearing facilities; oversight of the Rankin Library and the distribution of publications; procurement; information and resources management; security; telecommunications; transportation; space management; repair and maintenance services; supplies; central mailing lists; and assorted other administrative duties and functions;.

(2) *Budget and Finance Division.* Under the direction of the Chief of Budget and Finance, this Division is responsible for budget preparation, formulation, justification, and execution; financial management; and accounting, including travel for Commissioners and staff; and

(3) *Human Resources Division.* Under the direction of the Director of Human Resources, this Division is responsible for human resources development, including career staffing, classification, benefits, time and attendance, training, and compensation.

(e) *Office of Federal Civil Rights Evaluation.* Under the direction of an Assistant Staff Director, this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for

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programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights to Federal agencies having appropriate jurisdiction; and receiving complaints alleging denial of civil rights because of color, race, religion, sex, age, disability, or national origin and referring these complaints to the appropriate government agency for investigation and resolution.

(f) *Congressional Affairs Unit.* This Unit is responsible for liaison with committees and members of Congress or their staffs, monitoring legislative activities relating to civil rights, and preparing testimony for presentation before committees of Congress when such testimony has been requested by a committee.

(g) *Public Affairs Unit.* Under the direction of the Chief of Public Affairs, this Unit is responsible for planning and managing briefings at which the Commission receives information regarding civil rights issues; developing plans for community outreach activities; managing the Commission's public service announcements; media releases and press conferences; preparing for publication periodic updates of Commission activities and a Commission civil rights magazine; and keeping the Commission and Commission staff apprised of civil rights conferences and activities.

(h) *Regional Programs Coordination Unit.* Under the direction of the Chief of the Regional Programs Coordination Unit, this Unit is responsible for directing and coordinating the programs and work of the regional offices and 51 State Advisory Committees to the Commission and maintaining liaison between the regional offices and the various headquarters' offices of the Commission.

(i) *Regional Offices.* The Commission has six regional offices, each headed by a Director, that coordinate studies and fact-finding activities on a variety of civil rights issues addressed by the State Advisory Committees (SAC) in their regions and approved by the Staff Director; report to the Commission on the results of SAC activities; submit SAC reports to the Commission for action; and assist with follow-up on recommendations included in SAC or Commission reports. The name of the Director, the address, and telephone and facsimile numbers for each regional office are published annually in the "United States Government Manual". The regions and the SACs that they serve are:

Region I: Eastern Regional Office, Washington, DC

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, Virginia, West Virginia.

Region II: Southern Regional Office, Atlanta, Georgia

Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee.

Region III: Midwestern Regional Office, Chicago, Illinois

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region IV: Central Regional Office, Kansas City, Kansas

Alabama, Arkansas, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, and Oklahoma.

Region V: Rocky Mountain Regional Office, Denver, Colorado

Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming.

Region VI: Western Regional Office, Los Angeles, California

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas, and Washington.

PART 702—RULES ON HEARINGS, REPORTS, AND MEETINGS OF THE COMMISSION

Subpart A—Hearings and Reports

Sec.

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702.3 Notice of hearing.
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Subpart B—Meetings

702.50 Purpose and scope.
702.51 Definitions.
702.52 Open meeting requirements.
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702.55 Public announcement of meetings.
702.56 Records.
702.57 Administrative review.

Authority: 42 U.S.C. 1975, 1975a, 1975b.

Subpart A—Hearings and Reports

§ 702.1 Definitions.

For purposes of this part, the following definitions shall apply unless otherwise provided:

(a) *The Act* means the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339, codified in 42 U.S.C. 1975 through 1975d.

(b) *The Commission* means the United States Commission on Civil Rights or, as provided in § 702.2, to any authorized subcommittee thereof.

(c) *The Chairperson* means the Chairperson of the Commission or authorized subcommittee thereof or to any acting Chairperson of the Commission or of such subcommittee.

(d) *Proceeding* means collectively to any public session of the Commission and executive session held in connection therewith.

(e) *Hearing* means collectively to a public session of the Commission and any executive session held in connection therewith, including the attendance of witnesses or the production of written or other matters for which subpoenas have been issued.

(f) *Witnesses* are persons subpoenaed to attend and testify or produce written or other matter.

(g) *The rules in this part* means the Rules on Hearings of the Commission.

(h) *Report* means statutory reports or portions thereof issued pursuant to 42 U.S.C. 1975a(c).

(i) *Verified answer* means an answer the truth of which is substantiated by oath or affirmation attested to by a notary public or other person who has legal authority to administer oaths.

§ 702.2 Authorization for hearing.

Under 42 U.S.C. 1975a(e)(1) the Commission or, on the authorization of the Commission, any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of the Act, hold such hearings and act at such times and locations as the Commission or such authorized subcommittee may deem advisable. The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission or by a majority of the members present at a meeting at which at least a quorum of five members is present.

§ 702.3 Notice of hearing.

At least 30 days prior to the commencement of any hearing, the Commission shall publish in the **Federal Register** notice of the date on which such hearing is to commence, the location at which it is to be held, and the subject of the hearing.

§ 702.4 Subpoenas.

(a) Subpoenas for the attendance and testimony of witnesses or the production of written or other matter may be issued by the Commission over the signature of the Chairperson and may be served by any person designated by the Chairperson.

(b) A witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the rules in this part at the time of service of the subpoena.

(c) The Commission may issue subpoenas for the attendance and testimony of witnesses or for the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the location wherein the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

(d) The Chairperson shall receive and the Commission shall dispose of requests to subpoena additional witnesses except as otherwise provided in § 702.6(e).

(e) Requests for subpoenas shall be in writing, supported by a showing of the general relevance and materiality of the evidence sought. Witness fees and mileage shall be computed and paid pursuant to § 702.15.

(f) Subpoenas shall be issued at a reasonably sufficient time in advance of their scheduled return, in order to give subpoenaed persons an opportunity to prepare for their appearance and to employ counsel, should they so desire.

(g) No subpoenaed document or information contained therein shall be made public unless it is introduced into and received as part of the official record of the hearing.

§ 702.5 Conduct of proceedings.

(a) The Chairperson shall announce in an opening statement the subject of the proceedings.

(b) Following the opening statement, the Commission shall first convene in executive session if one is required pursuant to the provisions of § 702.6.

(c) The Chairperson, subject to the approval of the Commission, shall:

(1) Set the order of presentation of evidence and appearance of witnesses;

(2) Rule on objections and motions;

(3) Administer oaths and affirmations;

(4) Make all rulings with respect to the introduction into or exclusion from the record of documentary or other evidence;

(5) Regulate the course and decorum of the proceedings and the conduct of the parties and their counsel to ensure that the proceedings are conducted in a fair and impartial manner.

(d) Proceedings shall be conducted with reasonable dispatch and due regard shall be had for the convenience and necessity of witnesses.

(e) The questioning of witnesses shall be conducted only by Members of the Commission, by authorized Commission staff personnel, or by counsel to the extent provided in § 702.7.

(f) In addition to persons served with a copy of the rules in this part pursuant to §§ 702.4 and 702.6, a copy of the rules in this part will be made available to all witnesses.

(g) The Chairperson may punish breaches of order and decorum by censure and exclusion from the proceedings.

§ 702.6 Executive session.

(a) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session.

(b) The Commission shall afford any persons defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by them, before deciding to use such evidence or testimony.

(1) Such person shall be served with notice, in writing, at least 10 days prior to the date, time, and location for the appearance of witnesses at executive session or where service is by mail at least 14 days prior to such date. This notice shall be accompanied by a copy of the rules in this part and by a brief summary of the information that the Commission has determined may tend to defame, degrade, or incriminate such person;

(2) The notice, summary, and rules in this part shall be served by certified mail or by leaving a copy thereof at the last known residence or business address of such person; and

(3) The date of service, for purposes of this section, shall be the day when the material is deposited in the mail or is delivered in person, whichever is applicable. When service is made by mail, the return post office receipt shall be proof of service; in all other cases, the acknowledgment of the party served or the verified return of the one making service shall be proof of the same.

(c) If a person receiving notice under this section notifies the Commission within five days of service of such notice or where service is by mail within eight days of service of such notice that the scheduled appearance constitutes a hardship, the Commission may, in its discretion, set a new date or time for such person's appearance at the executive session.

(d) In the event such persons fail to appear at executive session at the time and location scheduled under paragraph (b) or (c) of this section, they shall not be entitled to another opportunity to appear at executive session, except as provided in § 702.11.

(e) If such persons intend to submit sworn statements of themselves or others, or if they intend that witnesses appear in their behalf at executive session, they shall, no later than 48 hours prior to the time set under paragraph (b) or (c) of this section, submit to the Commission all such statements and a list of all witnesses. The Commission will inform such persons whether the number of witnesses requested is reasonable within the meaning of paragraph (b) of this section. In addition, the Commission will receive and dispose of requests from such persons to subpoena other witnesses. Requests for subpoenas shall be made sufficiently in advance of the scheduled executive session to afford subpoenaed persons reasonable notice of their obligation to appear at that session. Subpoenas returnable at executive session shall be governed by the provisions of § 702.4.

(f) Persons for whom an executive session has been scheduled, and persons compelled to appear at such session, may be represented by counsel at such session to the extent provided by § 702.7.

(g) Attendance at executive session shall be limited to Commissioners; authorized Commission staff personnel; witnesses, and their counsel at the time scheduled for their appearance; and such other persons whose presence is requested or consented to by the Commission.

(h) In the event the Commission determines to release or to use evidence or testimony that it has determined may tend to defame, degrade, or incriminate any persons in such a manner as to reveal publicly their identity, such evidence or testimony, prior to such public release or use, will be presented at a public session, and the Commission will afford them an opportunity to appear as voluntary witnesses or to file a sworn statement in their own behalf

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and to submit brief and pertinent sworn statements of others.

§ 702.7 Counsel.

(a) Persons compelled to appear in person before the Commission and any witness appearing at a public session of the Commission will be accorded the right to be accompanied and advised by counsel, who will have the right to subject their clients to reasonable examination, make objections on the record, and briefly argue the basis for such objections.

(b) For the purpose of this section, counsel shall mean an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State or Territory of the United States.

(c) Failure of any persons to obtain counsel shall not excuse them from attendance in response to a subpoena, nor shall any persons be excused in the event their counsel is excluded from the proceeding pursuant to § 702.6(g). In the latter case, however, such persons shall be afforded a reasonable time to obtain other counsel, said time to be determined by the Commission.

§ 702.8 Evidence at Commission proceedings.

(a) The rules of evidence prevailing in courts of law or equity shall not control proceedings of the Commission.

(b) Where a witness testifying at a public session of a hearing or a session for return of subpoenaed documents offers the sworn statements of other persons, such statements, in the discretion of the Commission, may be included in the record, provided they are received by the Commission 24 hours in advance of the witness' appearance.

(c) The prepared statement of a witness testifying at a public session of a hearing, in the discretion of the Commission, may be placed into the record, provided that such statement is received by the Commission 24 hours in advance of the witness' appearance.

(d) In the discretion of the Commission, evidence may be included in the record after the close of a public session of a hearing provided the Commission determines that such evidence does not tend to defame, degrade, or incriminate any person.

(e) The Commission will determine the pertinence of testimony and evidence adduced at its proceedings and may refuse to include in the record of a proceeding or may strike from the record any evidence it considers to be cumulative, immaterial, or not pertinent.

§ 702.9 Cross-examination at public session.

If the Commission determines that oral testimony of a witness at a public session tends to defame, degrade, or incriminate any person, such person, or through counsel, shall be permitted to submit questions to the Commission in writing, which, in the discretion of the Commission, may be put to such witness by the Chairperson or by authorized Commission staff personnel.

§ 702.10 Voluntary witnesses at public session of a hearing.

A person who has not been subpoenaed and who has not been afforded an opportunity to appear pursuant to § 702.6 may be permitted, in the discretion of the Commission, to make an oral or written statement at a public session of a hearing. Such person may be questioned to the same extent and in the same manner as other witnesses before the Commission.

§ 702.11 Special executive session.

If, during the course of a public session, evidence is submitted that was not previously presented at executive session and that the Commission determines may defame, degrade, or incriminate any person, the provisions of § 702.6 shall apply and such extensions, recesses or continuances of the public session shall be ordered by the Commission, as it deems necessary. The time and notice requirements of § 702.6 may be modified by the Commission provided reasonable notice of a scheduled executive session is afforded such person; the Commission may, in its discretion, strike such evidence from the record, in which case the provisions of § 702.6 shall not apply.

§ 702.12 Contempt of the Commission.

Proceedings and process of the Commission are governed by 42 U.S.C. 1975a(e)(2), which provides that in case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

§ 702.13 Intimidation of witnesses.

Witnesses at Commission proceedings are protected by the provisions of 18 U.S.C. 1505, which provide that whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress shall be fined under this title or imprisoned not more than five years, or both.

§ 702.14 Transcript of Commission proceedings.

(a) An accurate transcript shall be made of the testimony of all witnesses at all proceedings of the Commission. Transcripts shall be recorded solely by the official reporter or by any other person or means designated by the Commission.

(b) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that witnesses in a hearing held in executive session may be limited, for good cause, to inspection of the official transcript of their testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof.

(c) Persons who have presented testimony at a proceeding may ask within 60 days after the close of the proceeding to correct errors in the transcript of their testimony. Such requests shall be granted only to make the transcript conform to their testimony as presented at the proceeding.

§ 702.15 Witness fees.

A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments must be tendered at the witness' request upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

§ 702.16 Attendance of news media at public sessions.

Reasonable access for coverage of public sessions shall be provided to the various communications media, including newspapers, magazines, radio, newsreels, and television, subject

to the physical limitations of the room in which the session is held and consideration of the physical comfort of Commission members, staff, and witnesses. However, no witnesses shall be televised, filmed, or photographed during the session nor shall the testimony of any witness be broadcast or recorded for broadcasting if the witness objects.

§ 702.17 Communications with respect to Commission proceedings.

During any proceeding held outside Washington, DC, communications to the Commission with respect to such proceeding must be made to the Chairperson or authorized Commission staff personnel in attendance. All requests for subpoenas returnable at a hearing, requests for appearance of witnesses at a hearing, and statements or other documents for inclusion in the record of a proceeding, required to be submitted in advance, must be submitted to the Chairperson, or such authorized person as the Chairperson may appoint, at an office located in the community where such hearing or proceeding is scheduled to be held. The location of such office will be set forth in all subpoenas issued under the rules in this part and in all notices prepared pursuant to § 706.2.

§ 702.18 Commission reports.

(a) If a Commission report tends to defame, degrade, or incriminate any person, the report or relevant portions thereof shall be delivered to such person at least 30 days before the report is made public to allow such person to make a timely verified answer to the report. The Commission shall afford such person an opportunity to file with the Commission a verified answer to the report or relevant portions thereof not later than 20 days after service as provided by the regulations in this part.

(1) Such person shall be served with a copy of the report or relevant portions thereof, with an indication of the section(s) that the Commission has determined tend to defame, degrade, or incriminate such person, a copy of the Act, and a copy of the regulations in this part.

(2) The report or relevant portions thereof, the Act, and regulations in this part shall be served by certified mail, return receipt requested, or by leaving a copy thereof at the last known residence or business address or the agent of such person.

(3) The date of service for the purposes of this section shall be the day the material is delivered either by the post office or otherwise, to such person or the agent of such person or at the last known residence or business address of such person. The acknowledgement of the party served or the verified return of the one making service shall be proof of service except that when service is made by mail, the return post office receipt shall also constitute proof of same.

(b) If a person receiving a Commission report or relevant portions thereof under this part requests an extension of time from the Commission within seven days of service of such report, the Commission may, upon a showing of good cause, grant the person additional time within which to file a verified answer.

(c) A verified answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report.

(d) Such verified answer shall be published as an appendix to the report; however, the Commission may except from the answer such matter as it determines to be scandalous, prejudicial, or unnecessary.

Subpart B—Meetings

§ 702.50 Purpose and scope.

This subpart contains the regulations of the United States Commission on Civil Rights implementing sections (a)–(f) of 5 U.S.C. 552b, the "Government in the Sunshine Act." They are adopted to further the principle that the public is entitled to the fullest practicable information regarding the decision-making processes of the Commission. They open meetings of the Commission to public observation except where the rights of individuals are involved or the ability of the Commission to carry out its responsibilities requires confidentiality.

§ 702.51 Definitions.

(a) *Commission* means the United States Commission on Civil Rights and any subcommittee of the Commission authorized under the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339. The statutes are codified in 42 U.S.C. 1975 through 1975d.

(b) *Commissioner* means a member of the U.S. Commission on Civil Rights appointed by the President, the President pro tempore of the Senate, or the Speaker of the House of Representatives, as provided in 42 U.S.C. 1975.

(c) *Meeting* means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(1) The number of Commissioners required to take action on behalf of the Commission is four, except that such number is two when the Commissioners are a subcommittee of the Commission authorized under 42 U.S.C. 1975a(e)(1).

(2) Deliberations among Commissioners regarding the setting of the time, location, or subject matter of a meeting, whether the meeting is open or closed, whether to withhold information discussed at a closed meeting, and any other deliberations required or permitted by 5 U.S.C. 552b (d) and (e) and § 702.54 and § 702.55 of this subpart, are not meetings for the purposes of this subpart.

(3) The consideration by Commissioners of Commission business that is not discussed through conference calls or a series of two party calls by the number of Commissioners required to take action on behalf of the Commission is not a meeting for the purposes of this subpart.

(d) *Public announcement or publicly announce* means the use of reasonable methods, such as the posting on the Commission's website or public notice bulletin boards and the issuing of press releases, to communicate information to the public regarding Commission meetings.

(e) *Staff Director* means the Staff Director of the Commission.

§ 702.52 Open meeting requirements.

(a) Every portion of every Commission meeting shall be open to public observation, except as provided in § 702.53 of this subpart. Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this subpart.

(b) This subpart gives the public the right to attend and observe Commission open meetings; it confers no right to participate in any way in such meetings.

(c) The Staff Director shall be responsible for making physical arrangements for Commission open meetings that provide ample space, sufficient visibility, and adequate acoustics for public observation.

(d) The presiding Commissioner at an open meeting may exclude persons from a meeting and shall take all steps necessary to preserve order and decorum.

§ 702.53 Closed meetings.

(a) The Commission may close a portion or portions of a meeting and withhold information pertaining to such meeting when it determines that the

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public interest does not require otherwise and when such portion or portions of a meeting or the disclosure of such information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Disclose information relating solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and is privileged or confidential;

(5) Involve accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information that if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record received by the Commission from a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information received by the Commission and contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of that would:

(i) In the case of information received by the Commission from an agency that regulates currencies, securities, commodities, or financial institutions, be likely to:

(A) Lead to significant financial speculation in currencies, securities, or commodities, or

(B) Significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action, except that this paragraph shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) [Reserved]

§ 702.54 Closed meeting procedures.

(a) A meeting or portion thereof will be closed, and information pertaining to a closed meeting will be withheld, only after four Commissioners when no Commissioner's position is vacant, three Commissioners when there is a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(e)(1), vote to take such action.

(b)(1) A separate vote shall be taken with respect to each meeting, a portion or portions of which are proposed to be closed to the public under § 702.53, and with respect to any information to be withheld under § 702.53.

(2) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as:

(i) Each meeting in such series involves the same particular matters, and

(ii) Is scheduled to be held no more than thirty (30) days after the initial meeting in such series.

(c) The Commission will vote on the question of closing a meeting or portion thereof and withholding information under paragraph (b) of this section if one Commissioner calls for such a vote. The vote of each Commissioner participating in a vote to close a meeting shall be recorded and no proxies shall be allowed.

(1) If such vote is against closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner.

(2) If such vote is for closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner, and:

(i) A full written explanation of the decision to close the meeting or portions thereof (such explanation will be as detailed as possible without revealing the exempt information);

(ii) A list of all persons other than staff members expected to attend the meeting and their affiliation (the identity of persons expected to attend such meeting will be withheld only if revealing their identity would reveal the exempt information that is the subject of the closed meeting).

(d) Prior to any vote to close a meeting or portion thereof under paragraph (c) of this section, the Commissioners shall obtain from the General Counsel an opinion as to whether the closing of a meeting or portions thereof is in accordance with paragraphs (a)(1) through (10) of § 702.53.

(1) For every meeting closed in accordance with paragraphs (a)(1) through (10) of § 702.53, the General Counsel shall publicly certify in writing that, in his or her opinion, the meeting may be closed to the public and shall cite each relevant exemptive provision.

(2) A copy of certification by the General Counsel together with a statement from the presiding officer of the closed meeting setting forth the time and location of the meeting and the persons present, shall be retained by the Commission.

(e) For all meetings closed to the public, the Commission shall maintain a complete verbatim transcript or electronic recording adequate to record fully the proceedings of each meeting or portion of a meeting, which sets forth the time and location of the meeting and the persons present. In the case of a meeting or a portion of a meeting closed to the public pursuant to paragraphs (a)(8), (9)(i)(A), or (10) of § 702.53, the Commission may retain a set of minutes and such minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(f) Any person whose interests may be directly affected by a portion of a meeting may request that such portion be closed to the public under § 702.53 or that it be open to the public if the Commission has voted to close the meeting pursuant to § 702.53(a)(5), (6) or (7). The Commission will vote on the request if one Commissioner asks that a vote be taken. Such requests shall be made to the Staff Director within a reasonable amount of time after the meeting or vote in question is publicly announced.

§ 702.55 Public announcement of meetings.

(a) *Agenda.* The Staff Director shall set as early as possible but in any event at least eight calendar days before a meeting, the time, location, and subject matter for the meeting. Agenda items will be identified in adequate detail to inform the general public of the specific business to be discussed at the meeting.

(b) *Notice.* The Staff Director, at least eight calendar days before a meeting, shall make public announcement of:

(1) The time of the meeting;

(2) Its location;

(3) Its subject matter;

(4) Whether it is open or closed to the public; and

(5) The name and phone number of a Commission staff member who will respond to requests for information about the meeting.

(c) *Changes.* (1) The time of day or location of a meeting may be changed following the public announcement required by paragraph (b) of this section, if the Staff Director publicly announces such change at the earliest practicable time subsequent to the decision to change the time of day or location of the meeting.

(2) The date of a meeting may be changed following the public announcement required by paragraph (b) of this section, or a meeting may be scheduled less than eight calendar days in advance, if:

(i) Four Commissioners when no Commissioner's position is vacant, three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(d), determine by recorded vote that Commission business requires such a meeting at an earlier date; and

(ii) The Staff Director, at the earliest practicable time following such vote, makes public announcement of the time, location, and subject matter of such meeting and whether it is open or closed to the public.

(3) The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to the public may be changed following the public announcement required by paragraph (b) of this section if:

(i) Four Commissioners when no Commissioner's position is vacant, three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(e)(1) determine by recorded vote that Commission business so requires; and

(ii) The Staff Director publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time subsequent to the decision to make such change.

(d)(1) **Federal Register.** Immediately following all public announcements required by paragraphs (b) and (c) of this section, notice of the time, location, and subject matter of a meeting, whether the meeting is open or closed to the public, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about meeting, shall be submitted for publication in the **Federal Register**.

(2) Notice of a meeting will be published in the **Federal Register** even after the meeting that is the subject of the notice has occurred in order to provide a public record of all Commission meetings.

§ 702.56 Records.

(a) The Commission shall promptly make available to the public in an easily accessible place at Commission headquarters the following materials:

(1) A copy of the certification by the General Counsel required by § 702.54(e)(1).

(2) A copy of all recorded votes required to be taken by these rules.

(3) A copy of all announcements published in the **Federal Register** pursuant to this subpart.

(4) Transcripts, electronic recordings, and minutes of closed meetings determined not to contain items of discussion or information that may be withheld under § 702.53. Copies of such material will be furnished to any person at the actual cost of transcription or duplication.

(b)(1) Requests to review or obtain copies of records compiled under this Act, other than transcripts, electronic recordings, or minutes of a closed meeting, will be processed under the Freedom of Information Act and, where applicable, the Privacy Act regulations of the Commission (parts 704 and 705, respectively, of this title). Nothing in this subpart expands or limits the present rights of any person under the rules in this part with respect to such requests.

(2) Requests to review or obtain copies of transcripts, electronic recordings, or minutes of a closed meeting maintained under § 702.54(e) and not released under paragraph (a)(4) of this section shall be directed to the Staff Director who shall respond to such requests within ten (10) working days.

(c) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of two years after such meeting or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 702.57 Administrative review.

Any person who believes a Commission action governed by this subpart to be contrary to the provisions of this subpart shall file an objection in writing with the Staff Director specifying the violation and suggesting corrective action. Whenever possible, the Staff Director shall respond within ten (10) working days of the receipt of such objections.

PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

Sec.

703.1 Name and establishment.
703.2 Functions.
703.3 Scope of subject matter.
703.4 Advisory Committee Management Officer.
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703.7 Subcommittees—Special assignments.
703.8 Meetings.
703.9 Reimbursement of members.
703.10 Public availability of documents and other materials.

Authority: 42 U.S.C. 1975a(d).

§ 703.1 Name and establishment.

Pursuant to 42 U.S.C. 1975a(d), the Commission has chartered and maintains Advisory Committees to the Commission in each State, and the District of Columbia. All relevant provisions of the Federal Advisory Committee Act of 1972 (Public Law 92–463, as amended) are applicable to the management, membership, and operations of such committees and subcommittees thereof.

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§ 703.2 Functions.

Under the Commission's charter each Advisory Committee shall:

(a) Advise the Commission in writing of any knowledge or information it has of any alleged deprivation of the right to vote and to have the vote counted by reason of color, race, religion, sex, age, disability, or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(b) Advise the Commission concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws;

(c) Advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress;

(d) Receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the Advisory Committee;

(e) Initiate and forward advice and recommendations to the Commission upon matters that the Advisory Committee has studied;

(f) Assist the Commission in the exercise of its clearinghouse function and with respect to other matters that the Advisory Committee has studied;

(g) Attend, as observers, any open hearing or conference that the Commission may hold within the State.

§ 703.3 Scope of subject matter.

The scope of the subject matter to be dealt with by Advisory Committees shall be those subjects of inquiry or study with which the Commission itself is authorized to investigate, pursuant to 42 U.S.C. 1975(a). Each Advisory Committee shall confine its studies to the State covered by its charter. It may, however, subject to the requirements of § 703.4, undertake to study, within the limitations of the Act, subjects other than those chosen by the Commission for study.

§ 703.4 Advisory Committee Management Officer.

(a) The Chief of the Regional Programs Coordination Unit is designated as Advisory Committee Management Officer pursuant to the requirements of the Federal Advisory Committee Act of 1972 (Public Law 92–463, as amended).

(b) Such Officer shall carry out the functions specified in section 8(b) of the Federal Advisory Committee Act.

(c) Such Officer shall, for each Advisory Committee, appoint a Commission employee to provide services to the Committee and to be responsible for supervising the activity of the Committee pursuant to section 8 of the Federal Advisory Committee Act. The employee is subject to the supervision of the Regional Director of the Commission responsible for the State within which said Committee is chartered.

§ 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each Advisory Committee shall consist of at least 11 members appointed by the Commission. Members of the Advisory Committees shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the Advisory Committee may, at any time, be removed by the Commission.

(b) Membership on the Advisory Committee shall be reflective of the different ethnic, racial, and religious communities within each State and the membership shall also be representative with respect to sex, political affiliation, age, and disability status.

§ 703.6 Officers.

(a) The officers of each Advisory Committee shall be a Chairperson, Vice Chairperson, and such other officers as may be deemed advisable.

(b) The Chairperson shall be appointed by the Commission.

(c) The Vice Chairperson and other officers shall be elected by the majority vote of the full membership of the Committee.

(d) The Chairperson, or in his or her absence the Vice Chairperson, under the direction of the Commission staff member appointed pursuant to § 703.4(b) shall:

(1) Call meetings of the Committee;

(2) Preside over meetings of the Committee;

(3) Appoint all subcommittees of the Committee;

(4) Certify for accuracy the minutes of Committee meetings prepared by the assigned Commission staff member; and

(5) Perform such other functions as the Committee may authorize or the Commission may request.

§ 703.7 Subcommittees—Special assignments.

Subject to the approval of the designated Commission employee, an Advisory Committee may:

(a) Establish subcommittees, composed of members of the Committee, to study and report upon matters under consideration and authorize such subcommittees to take specific action within the competence of the Committee; and

(b) Designate individual members of the Committee to perform special projects involving research or study on matters under consideration by the Committee.

§ 703.8 Meetings.

(a) Meetings of a Committee shall be convened by the designated Commission employee or subject to his or her approval by the Chairperson or a majority of the Advisory Committee members. The agenda for such Committee or subcommittee meeting shall be approved by the designated Commission employee.

(b) A quorum shall consist of one-half or more of the members of the Committee, or five members, whichever is the lesser, except that with respect to the conduct of fact-finding meetings as authorized in paragraph (e) of this section, a quorum shall consist of three members.

(c) Notice of all meetings of an Advisory Committee shall be given to the public.

(1) Notice shall be published in the **Federal Register** at least 15 days prior to the meetings, provided that in emergencies such requirement may be waived.

(2) Notice of meetings shall be provided to the public by press releases and other appropriate means.

(3) Each notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the date, time, and location of such meeting.

(d) Except as provided for in paragraph (d)(1) of this section, all meetings of Advisory Committees or subcommittees shall be open to the public.

(1) The Chief of the Regional Programs Coordination Unit may authorize a Committee or subcommittee to hold a meeting closed to the public if he or she determines that the closing of such meeting is in the public interest provided that prior to authorizing the holding of a closed meeting the Chief of the Regional Programs Coordination Unit has requested and received the opinion of the General Counsel with respect to whether the meeting may be closed under one or more of the exemptions provided in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(2) In the event that any meeting or portion thereof is closed to the public, the Committee shall publish, at least annually, in summary form a report of the activities conducted in meetings not open to the public.

(e) Advisory Committees and subcommittees may hold fact-finding meetings for the purpose of inviting the attendance of and soliciting information and views from government officials and private persons respecting subject matters within the jurisdiction of the Committee or subcommittee.

(f) Any person may submit a written statement at any business or fact-finding meeting of an Advisory Committee or subcommittee.

(g) At the discretion of the designated Commission employee or his or her designee, any person may make an oral presentation at any business or fact-finding meeting, provided that such presentation will not defame, degrade, or incriminate any other person as prohibited by the Act.

§ 703.9 Reimbursement of members.

(a) Advisory Committee members may be reimbursed by the Commission by a per diem subsistence allowance and for travel expenses at rates not to exceed those prescribed by Congress for Government employees, for the following activities only:

(1) Attendance at meetings, as provided for in § 703.8; and

(2) Any activity specifically requested and authorized by the Commission to be reimbursed.

(b) Members will be reimbursed for the expense of travel by private automobile on a mileage basis only to the extent such expense is no more than that of suitable public transportation for the same trip unless special circumstances justify the additional expense of travel by private automobile.

§ 703.10 Public availability of documents and other materials.

Part 704 of this chapter shall be applicable to reports, publications, and other materials prepared by or for Advisory Committees.

PART 704—INFORMATION DISCLOSURE AND COMMUNICATIONS

Sec.

704.1 Material available pursuant to 5 U.S.C. 552.
704.2 Complaints.
704.3 Other requests and communications.
704.4 Restrictions on disclosure of information.

Authority: 5 U.S.C. 552, 552a, 552b.

§ 704.1 Material available pursuant to 5 U.S.C. 552.

(a) *Purpose, scope, and definitions.* (1). This section contains the regulations of the United States Commission on Civil Rights implementing the Freedom of Information Act, 5 U.S.C. 552. These regulations inform the public with respect to where and how records and information may be obtained from the Commission. Officers and employees of the Commission shall make Commission records available under 5 U.S.C. 552 only as prescribed in this section. Nothing contained in this section, however, shall be construed to prohibit officers or employees of the Commission from routinely furnishing information or records that are customarily furnished in the regular performance of their duties.

(2) For the purposes of this part the following terms are defined as indicated:

Commission means the United States Commission on Civil Rights;

FOIA means Freedom of Information Act, 5 U.S.C. 552;

FOIA Request means a request in writing, for records pursuant to 5 U.S.C. 552, which meets the requirements of paragraph (d) of this part. This part does not apply to telephone or other oral communications or requests not complying with paragraph (d)(1)(i) of this section.

Office of the General Counsel means the General Counsel of the Commission or his or her designee;

Staff Director means the Staff Director of the Commission.

(b) *General policy.* In order to foster the maximum participation of an informed public in the affairs of Government, the Commission will make the fullest possible disclosure of its identifiable records and information consistent with such considerations as those provided in the exemptions of 5 U.S.C. 552 that are set forth in paragraph (f) of this section.

(c) *Material maintained on file pursuant to 5 U.S.C. 552(a)(2).* Material maintained on file pursuant to 5 U.S.C. 552(a)(2) shall be available for inspection during regular business hours at the offices of the Commission at 624 9th Street, NW., Washington, DC 20425. Copies of such material shall be available upon written request, specifying the material desired, addressed to the Office of the General Counsel, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, and upon the payment of fees, if any, determined in accordance with paragraph (e) of this section.

(1) *Current index.* Included in the material available pursuant to 5 U.S.C. 552(a)(2) shall be an index of:

(i) All other material maintained on file pursuant to 5 U.S.C. 552(a)(2); and

(ii) All material published by the Commission in the **Federal Register** and currently in effect.

(2) *Deletion of identifying details.* Wherever deletions from material maintained on file pursuant to 5 U.S.C. 552(a)(2) are required in order to prevent a clearly unwarranted invasion of privacy, justification for the deletions shall be placed as a preamble to documents from which such deletions are made.

(d) *Materials available pursuant to 5 U.S.C. 552(a)(3)*—(1) *Request procedures.* (i) Each request for records pursuant to this section shall be in writing over the signature of the requester, addressed to the Office of the General Counsel, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425 and:

(A) Shall clearly and prominently be identified as a request for information under the Freedom of Information Act (if submitted by mail or otherwise submitted in an envelope or other cover, be clearly and prominently identified as such on the envelope or other cover—*e.g.*, FOIA); and

(B) Shall contain a sufficiently specific description of the record requested with respect to names, dates, and subject matter to permit such record to be identified and located; and

(C) Shall contain a statement that whatever costs involved pursuant to paragraph (e) of this section will be paid, that such costs will be paid up to a specified amount, or that waiver or reduction of fees is requested pursuant to paragraph (e) of this section.

(ii) If the information submitted pursuant to paragraph (d)(1)(i)(B) of this section is insufficient to enable identification and location of the records, the General Counsel shall as soon as possible notify the requester in writing indicating the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought. Time requirements under the regulations in this part are tolled from the date notification under this section is sent to the requester until an answer in writing to such notification is received from requester.

(iii) A request for records that is not in writing or does not comply with paragraph (d)(1)(i) of this section is not a request under the Freedom of Information Act and the 10 day time limit for agency response under the Act will not be deemed applicable.

(iv) Except as otherwise provided in this section, the General Counsel shall immediately notify the requester of noncompliance with paragraphs (d)(1)(i)(C) and (e) of this section.

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(2) *Agency determinations.* (i) Responses to all requests pursuant to 5 U.S.C. 552(a)(3) shall be made by the General Counsel in writing to the requester within 10 working days after receipt by the General Counsel of such request except as specifically exempted under paragraphs (d)(1) (ii), (iii) and (iv) of this section, and shall state:

(A) Whether and to what extent the Commission will comply with the request;

(B) The probable availability of the records or that the records may be furnished with deletions or that records will be denied as exempt pursuant to 5 U.S.C. 552(b)(1) through (9);

(C) The estimated costs, determined in accordance with paragraph (e) of this section, including waiver or reduction of fee as appropriate and any deposit or prepayment requirement; and

(D) When records are to be provided, the time and place at which records or copies will be available determined in accordance with the terms of the request and with paragraph (d)(3) of this section. Such response shall be termed a determination notice.

(ii) In the case of denial of requests in whole or part the determination notice shall state:

(A) Specifically what records are being denied;

(B) The reasons for such denials;

(C) The specific statutory exemption(s) upon which such denial is based;

(D) The names and titles or positions of every person responsible for the denial of such request; and

(E) The right of appeal to the Staff Director of the Commission and procedures for such appeal as provided under paragraph (g) of this section.

(iii) Each request received by the Office of the General Counsel for records pursuant to the regulations in this part shall be recorded immediately. The record of each request shall be kept current, stating the date and time the request is received, the name and address of the person making the request, any amendments to such request, the nature of the records requested, the action taken regarding the request, including waiver of fees, extensions of time pursuant to 5 U.S.C. 552(a)(6)(B), and appeals. The date and subject of any letters pursuant to paragraph (d)(1) of this section or agency determinations pursuant to paragraph (d)(2)(i) of this section, the date(s) any records are subsequently furnished, and the payment requested and received.

(3) *Time limitations.* (i) Time limitations for agency response to a request for records established by the regulations in this part shall begin when the request is recorded pursuant to paragraph (d)(2)(iii) of this section. A written request pursuant to FOIA but sent to an office of the Commission other than the Office of the General Counsel shall be date stamped, initialed, and redirected immediately to the Office of the General Counsel. The required period for agency determination shall begin when it is received by the Office of the General Counsel in accordance with paragraph (d)(2)(iii) of this section.

(ii) In unusual circumstances, pursuant to 5 U.S.C. 552(a)(6)(B), the General Counsel may, in the case of initial determinations under the regulations in this part, extend the 10 working day time limit in which the agency is required to make its determination notification. Such extension shall be communicated in writing to the requesting party setting forth with particularity the reasons for such extension and the date on which a determination is expected to be transmitted. Such extensions may not exceed 10 working days for any request and may only be used to the extent necessary to properly process a particular request. Such extension is permissible only where there is a demonstrated need:

(A) To search for and collect the requested records from field facilities or other establishments that are separate from the Office of the General Counsel;

(B) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(C) For consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the same agency having substantial subject matter interest therein.

(e) *Fees*—(1) *Definitions.* The following definitions apply to the terms when used in this section:

(i) *Direct costs* means those expenditures that the Commission actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under paragraph (d) of this section. Direct costs include, for example, the salary of the employee(s) performing the work (the basic rate of pay for the employee(s) plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(ii) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. However, an entire document will be duplicated if this would prove to be a more efficient and less expensive method of complying with a request than a more detailed manner of searching. Search is distinguished from review of material in order to determine whether the material is exempt from disclosure.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a request for disclosure of records. Such copies can take the form of paper or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the General Counsel will determine the use to which a requester will put the documents requested. When the General Counsel has reasonable cause to doubt such intended use, or where such use is not clear from the request itself, the General Counsel will seek additional clarification before assigning the request to a specific category.

(vi) *Educational institution* means a school, an institution of higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(viii) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. News media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(2) *Costs to be included in fees.* The direct costs included in fees will vary according to the following categories of requests:

(i) *Commercial use requests.* Fees will include the Commission's direct costs for searching for, reviewing, and duplicating the requested records.

(ii) *Educational and noncommercial scientific institution requests.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) *Requests from representatives of the news media.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (e)(1)(viii) of this section.

(iv) *All other requests.* The Commission will charge requesters who do not fit into any of the categories in paragraphs (e)(2)(i) through (iii) of this section fees that cover the direct costs of searching for and duplicating records that are responsive to the requests, except for the first two hours of search time and the first 100 pages duplicated. However, requests from persons for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 and § 705.10 of this chapter.

(3) *Fee calculation.* Fees will be calculated as follows:

(i) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search.

(ii) *Computer search.* At the actual direct cost of providing the search, including computer search time directly attributable to search for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) *Review* (commercial use requests only). At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee.

(iv) *Duplication.* At 20 cents per page for paper copy. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) *Additional services; certification.* Express mail and other additional services that may be arranged by the requester will be charged at actual cost. The fee for certification or authentication of copies shall be $3.00 per document.

(vi) *Assessment of interest.* The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(vii) No fee shall be charged if the total billable cost calculated under paragraphs (e)(2) and (3) of this section is less than $10.00.

(4) *Waiver or reduction of fees.* (i) Documents will be furnished without charge, or at a reduced charge, where disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) Whenever a waiver or reduction of fees is granted, only one copy of the record will be furnished.

(iii) The decision of the General Counsel on any fee waiver or reduction request shall be final and unappealable.

(5) *Payment procedures*—(i) *Fee payment.* Payment of fees shall be made by cash (if delivered in person), check, or money order payable to the United States Commission on Civil Rights.

(ii) *Notification of fees.* No work shall be done that will result in fees in excess of $25.00 without written authorization from the requester. Where it is anticipated that fees will exceed $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the projected fees. The notification shall offer the requester an opportunity to confer with the General Counsel in an attempt to reformulate the request so as to meet the requester's needs at a lower cost. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(6) *Advance payment of fees.* When fees are projected to exceed $250.00, the requester may be required to make an advance payment of all or part of the fee before the request is processed. If a requester has previously failed to pay a fee in a timely fashion (*i.e.*, within 30 days of the billing date), the requester will be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before a new or pending request is processed from that requester. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester has complied with this provision.

(7) *Other provisions*—(i) *Charges for unsuccessful search.* Charges may be assessed for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(ii) *Aggregating requests to avoid fees.* Multiple requests shall be aggregated when the General Counsel reasonably determines that a requester or group of requesters is attempting to break down a request into a series of requests to evade fees.

(iii) *Debt Collection Improvement Act of 1996.* The Debt Collection Improvement Act of 1996 (Pub. L. 104–134), including disclosure to consumer reporting agencies and use of collection agencies, will be used to encourage payment where appropriate.

(f) *Exemptions* (5 U.S.C. 552(b))–(1) *General.* The Commission may exempt from disclosure matters that are:

(i)(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and

(B) Are in fact properly classified pursuant to such Executive Order.

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters that would not be

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available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Could deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(E) Could disclose techniques and procedures for all enforcement investigations or prosecutions, or could disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual;

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) Investigatory records or information. (5 U.S.C. 552(b)(7)).

(i) Among the documents exempt from disclosure pursuant to paragraph (f)(1)(vii) of this section shall be records or information reflecting investigations that either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a violation(s) of legal right has taken place, but only to the extent that production of such records or information would fall within the classifications established in paragraphs (f)(1)(vii)(B) through (F) of this section.

(ii) Among the documents exempt from disclosure under paragraphs(f)(1)(vii)(D) and (f)(2)(i) of this section concerning confidential sources shall be documents that disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is sufficient under this section to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness could reasonably be expected to be inhibited by disclosure.

(iii) Whenever a request is made that involves access to records described in paragraph (f)(1)(vii)(A) of this section and the investigation or proceeding involves a possible violation of criminal law and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this section.

(3) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions that are exempt under this section.

(g) *Administrative appeals.* (1) These procedures apply whenever a requester is denied records under paragraph (d)(2)(i) of this section.

(2) Parties may appeal decisions under paragraph (d)(2)(i) of this section within 90 days of the date of such decision by filing a written request for review addressed to the Staff Director, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, by certified mail, including a copy of the written denial, and may include a statement of the circumstances, reasons or arguments advanced in support of disclosure. Review will be made by the Staff Director on the basis of the written record.

(3) The decision on review of any appeal filed under this section shall be in writing over the signature of the Staff Director will be promptly communicated to the person requesting review and will constitute the final action of the Commission.

(4) Determinations of appeals filed under this section shall be made within 20 working days after the receipt of such appeal. If, on appeal, denial of records is in whole or part upheld, the Staff Director shall notify the persons making such request of the provisions for judicial review of that determination under 5 U.S.C. 552(a)(6).

(5) An extension of time may be granted under this section pursuant to criteria established in paragraph (d)(3)(ii) (A) through (C) of this section, except that such extension together with any extension, which may have been granted pursuant to paragraph (d)(3)(ii) of this section, may not exceed a total of 10 working days.

§ 704.2 Complaints.

Any person may bring to the attention of the Commission a grievance that he or she believes falls within the jurisdiction of the Commission, as set forth in section 3 of the Act. This shall be done by submitting a complaint in writing to the Office of Civil Rights Evaluation, U.S. Commission on Civil Rights, 9th Street, NW., Washington, DC 20425. Allegations falling under section 3(a)(1) of the Act must be under oath or affirmation. All complaints should set forth the pertinent facts upon which the complaint is based, including but not limited to specification of:

(a) Names and titles of officials or other persons involved in acts forming the basis for the complaint;

(b) Accurate designations of place locations involved;

(c) Dates of events described in the complaint.

§ 704.3 Other requests and communications.

Requests for information should be addressed to the Public Affairs Unit and requests for Commission literature should be directed to National Clearinghouse Library, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington DC 20425. Communications with respect to Commission proceedings should be made pursuant to § 702.17 of this chapter. All other communications should be directed to Office of Staff Director, U.S. Commission on Civil Rights, 624 9th Street, Washington, DC 20425.

§ 704.4 Restrictions on disclosure of information.

(a) By the provisions of the Act, no evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission, and any person who releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000 or imprisoned for not more than 1 year.

(b) Unless a matter of public record, all information or documents obtained or prepared by any Commissioner, officer, or employee of the Commission, including members of Advisory Committees, in the course of his or official duties, or by virtue of his or her official status, shall not be disclosed or used by such person for any purpose except in the performance of his or her official duties.

(c) Any Commissioner, officer, or employee of the Commission, including members of Advisory Committees, who is served with a subpoena, order, or other demand requiring the disclosure of such information or the production of such documents shall appear in response to such subpoena, order, or other demand and, unless otherwise directed by the Commission, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this section. Any such person who is served with such a subpoena, order, or other demand shall promptly advise the Commission of the service of such subpoena, order, or other demand, the nature of the information or documents sought, and any circumstances that may bear upon the desirability of making available such information or documents.

PART 705—MATERIALS AVAILABLE PURSUANT TO 5 U.S.C. 552a

Sec.

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Authority: 5 U.S.C. 552a.

§ 705.1 Purpose and scope.

(a) The purpose of this part is to set forth rules to inform the public regarding information maintained by the United States Commission on Civil Rights about identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The rules in this part carry out the requirements of the Privacy Act of 1974 (Public Law 93–579) and in particular 5 U.S.C. 552a as added by that Act.

(c) The rules in this part apply only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 705.2 Definitions.

For the purpose of this part:

(a) *Commission* and *agency* mean the U.S. Commission on Civil Rights;

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* includes maintain, collect, use, or disseminate;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(e) *System record* means a group of any records under the control of the Commission from which information may be retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to that individual;

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided in 13 U.S.C. 8;

(g) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected;

(h) *Confidential source* means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence; and

(i) *Act* means the Privacy Act of 1974, Public Law 93–579.

§ 705.3 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or her or an individual seeking access to information or records pertaining to him or her, that are available under the Privacy Act of 1974, shall present his or her request in person or in writing to the General Counsel of the Commission.

(b) In addition to meeting the requirements set forth in § 705.4(c) or (d), any person who requests information under the regulations in this part shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. If possible, that description should include the nature of the records sought, the approximate dates covered by the record, and, if known by the requester, the system in which the record is thought to be included. Requested information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information cannot be treated as a formal request.

(c) If the description is insufficient, the agency will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

§ 705.4 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) The General Counsel is the designated Privacy Act Officer for the Commission.

(b) An individual making a request to the General Counsel in person may do so at the Commission's headquarters office, 624 9th Street, N.W., Washington, D.C. 20425, on any business day during business hours. Persons may also appear for purposes of identification only, at any of the regional offices of the Commission on any business day during business hours. Regional offices are located as follows:

Region I: Eastern Regional Office, Washington, DC

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Region II: Southern Regional Office, Atlanta, Georgia

Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee.

Region III: Midwestern Regional Office, Chicago, Illinois

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region IV: Central Regional Office, Kansas City, Kansas

Alabama, Arkansas, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, and Oklahoma.

Region V: Rocky Mountain Regional Office, Denver, Colorado

Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming.

Region VI: Western Regional Office, Los Angeles, California

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas, and Washington.

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(c) An individual seeking access to records in person may establish his or her identity by the presentation of one document bearing a photograph (such as a driver's license, passport, or identification card or badge) or by the presentation of two items of identification that do not bear a photograph, but do bear both a name and address (such as a credit card). When identification is made without photographic identification, the Commission will request a signature comparison to the signature appearing on the items offered for identification, whenever possible and practical.

(d) An individual seeking access to records by mail shall establish his or her identity by a signature, address, date of birth, and one other identification, such as a copy of a driver's license, passport, identification card or badge, credit card, or other document. The words *Privacy Act Request* should be placed in capital letters on the face of the envelope in order to facilitate requests by mail.

(e) An individual seeking access in person or by mail who cannot provide the required documentation of identification may provide a notarized statement, swearing or affirming to his or her identity and to the fact that he or she understands that there are criminal penalties for the making of false statements.

(f) The parent or guardian of a minor or a person judicially determined to be incompetent, in addition to establishing the identity of the minor or incompetent person he or she represents as required by paragraphs (a) through (c) of this section, shall establish his or her own parentage or guardianship by furnishing a copy of a birth certificate showing parentage or court order establishing guardianship.

(g) An individual seeking to review information about himself or herself may be accompanied by another person of his or her own choosing. In all such cases, the individual seeking access shall be required to furnish a written statement authorizing the discussion of his or her record in the presence of the accompanying person.

§ 705.5 Disclosure of requested information to individuals.

The General Counsel, or one or more assistants designated by him or her, upon receiving a request for notification of the existence of a record or for access to a record shall:

(a) Determine whether such record exists;

(b) Determine whether access is available under the Privacy Act;

(c) Notify the requesting person of those determinations within 10 (ten) working days (excluding Saturdays, Sundays, and legal public holidays); and

(d) Provide access to information pertaining to that person that has been determined to be available.

§ 705.6 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished to him or her under this part may request the agency to correct or amend all or part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the General Counsel.

(c) Each request for a correction or amendment of a record shall contain the following information:

(1) The name of the individual requesting the correction or amendment.

(2) The name of the system of records in which the record sought to be amended is maintained.

(3) The location of the record system from which the record was obtained.

(4) A copy of the record sought to be amended or a description of that record.

(5) A statement of the material in the record that should be corrected or amended.

(6) A statement of the specific wording of the correction or amendment sought.

(7) A statement of the basis for the requested correction or amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 705.7 Agency review of request for correction or amendment of the record.

Within ten (10) working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of the request for the correction or amendment of a record, the General Counsel shall acknowledge receipt of the request and inform the individual that his or her request has been received and inform the individual whether further information is required before the correction or amendment can be considered. Further, the General Counsel shall promptly and, under normal circumstances, not later than thirty (30) working days after receipt of the request, make the requested correction or amendment or notify the individual of his or her refusal to do so, including in the notification the reasons for the refusal and the procedures established by the Commission by which the individual may initiate a review of that refusal. In the event of correction or amendment, an individual shall be provided with one copy of each record or portion thereof corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment. The Commission shall also provide to all prior recipients of such a record, the corrected or amended information to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

§ 705.8 Appeal of an initial adverse agency determination.

(a) Any individual whose request for access or for a correction or amendment that has been denied, in whole or in part, by the General Counsel may appeal that decision to the Staff Director of the Commission, 624 9th Street, NW., Washington, DC 20425, or to a designee of the Staff Director.

(b) The appeal shall be in writing and shall:

(1) Name the individual making the appeal;

(2) Identify the record sought to be amended or corrected;

(3) Name the record system in which that record is contained;

(4) Contain a short statement describing the amendment or correction sought; and

(5) State the name of the person who initially denied the correction or amendment.

(c) Not later than thirty (30) working days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the agency received the appeal, the Staff Director shall complete his or her review of the appeal and make a final decision thereon, unless, for good cause shown, the Staff Director extends the appeal period beyond the initial thirty (30) day appeal period. In the event of such an extension, the Staff Director shall promptly notify the individual making the appeal that the period for a final decision has been extended.

(d) After review of an appeal request, the Staff Director will send a written notice to the requester containing the following information:

(1) The decision; and if the denial is upheld, the reasons for the decision;

(2) The right of the requester to institute a civil action in a Federal District Court for judicial review of the decision if the appeal is denied; and

(3) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's decision denying the request. The Commission shall make this statement available to any person to whom the record is later disclosed together with a brief statement, if the Commission considers it appropriate, of the agency's reasons for denying the requested correction or amendment. These statements shall also be provided to all prior recipients of the record to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

§ 705.9 Disclosure of records to a person other than the individual to whom the record pertains.

(a) Any individual who desires to have his or her record disclosed to or mailed to a third person may authorize that person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized. The agent shall also submit proof of his or her own identity as provided in § 705.4.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court to be incompetent, due to physical or mental incapacity, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship by birth certificate, copy of a court order or similar documents, and proof of the individual's identity as provided in § 705.4.

(c) An individual to whom a record is to be disclosed, in person, pursuant to this part may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 705.10 Fees.

If an individual requests copies of his or her records the charge shall be three (3) cents per page; however, the Commission shall not charge for copies furnished to an individual as a necessary part of the process of disclosing the record to an individual. Fees may be waived or reduced in accordance with § 704.1(e) of this chapter because of indigency, where the cost is nominal, when it is in the public interest not to charge, or when waiver would not constitute an unreasonable expense to the Commission.

§ 705.11 Penalties.

Any person who makes a false statement in connection with any request for a record, or in any request for an amendment to a record under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 705.12 Special procedures: Information furnished by other agencies.

When records or information sought from the Commission include information furnished by other Federal agencies, the General Counsel shall consult with the appropriate agency prior to making a decision to disclose or to refuse to disclose the record, but the decision whether or not to disclose the record shall be made by the General Counsel.

§ 705.13 Exemptions.

(a) Under the provision of 5 U.S.C. 552a(k), it has been determined by the agency that the following exemptions are necessary and proper and may be asserted by the agency:

(1) *Exemption (k)(2) of the Act.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act: Provided, however, That if any individual is denied any right, privilege, or benefit that he or she would otherwise be eligible for, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identify of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to [the effective date of this section], under an implied promise that the identity of the source would be held in confidence.

(2) *Exemption (k)(4) of the Act.* Statistical personnel records that are used only to generate aggregate data or for other evaluative or analytical purposes and that are not used to make decisions on the rights, benefits, or entitlements of individuals.

(3) *Exemption (k)(5) of the Act.* Investigatory material maintained solely for the purposes of determining an individual's qualifications, eligibility, or suitability for employment in the Federal civilian service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) *Exemption (k)(6) of the Act.* Testing or examination material used solely to determine individual qualifications for promotion or appointment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(b) Following are Commission systems of records that are partially exempt under 5 U.S.C. 552a(k)(2), (4), (5), and (6) and the reasons for such exemptions:

(1) Appeals, Grievances, and Complaints (staff)—Commission Project, CRC–001. Exempt partially under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(2) Complaints, CRC–003—Exempt partially under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(3) Commission projects, CRC–004—Partially exempt under 5 U.S.C. 552a(k)(2). The reasons for asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(4) Other Employee Programs: EEO, Troubled Employee, and Upward Mobility, CRC–006—Partially exempt under 5 U.S.C. 552a(k)(4), (5), and (6). The reasons for asserting the exemptions are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, primarily, to facilitate proper selection or continuance of the best applicants or persons for a given position.

(5) State Advisory Committees Projects, CRC–009—Partially exempt under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

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§ 705.95 Accounting of the disclosures of records.

(a) All disclosures of records covered by this part, except for the exemptions listed in paragraph (b) of this section, shall be accounted for by keeping a written record of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature, and purpose of the disclosure.

(b) No accounting is required for disclosures of records to those officials and employees of the Commission who have a need for the record in the performance of their duties or if disclosure would be required under the Freedom of Information Act. 5 U.S.C. 552.

(c) The accounting shall be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Records Administrator for storage, in which event, the accounting pertaining to those records, unless maintained separately, shall be transferred with the records themselves.

(d) The accounting of disclosures may be recorded in any system the Commission determines is sufficient for this purpose, however, the Commission must be able to construct from its system a listing of all disclosures. The system of accounting of disclosures is not a system of records under the definition in § 705.2(e) and no accounting need be maintained for disclosure of the accounting of disclosures.

(e) Upon request of an individual to whom a record pertains, the accounting of the disclosures of that record shall be made available to the requester, provided that he or she has complied with § 705.3(a) and with § 705.4(c) or (d).

PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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Authority: Part III of 5 U.S.C.

Subpart A—General Provisions

§ 706.1 Implementation of regulations.

The U.S. Commission on Civil Rights (hereinafter referred to as the Commission) through the regulations in this part, implements, with appropriate modifications, relevant sections of Part III of Title 5 of the United States Code.

§ 706.2 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government's business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Commission's regulations covering the agency's employees and special Government employees, prescribing standards of conduct and responsibilities and governing statements reporting employment and financial interests.

§ 706.3 Definitions.

In this part:

Commission means the United States Commission on Civil Rights, an Executive agency as defined by 5 U.S.C. 105.

Employee means an officer or employee of the Commission including a special Government employee, as defined in 18 U.S.C. 202.

Executive order means Executive Order 11222 of May 8, 1965, (3 CFR, 1964–1965 Comp., p. 306), prescribing standards of ethical conduct for Government officers and employees.

Person means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 706.4 Distribution.

(a) Within 90 days after August 30, 2002, the Commission shall furnish each employee with a copy of the regulations in this part.

(b) The Commission shall furnish all new employees with a copy of the regulations at the time of their entrance on duty.

(c) The Commission shall bring the regulations to the attention of each employee annually and at such other times as circumstances warrant.

(d) The Commission shall have available for review by employees copies of relevant laws, the Executive order, and pertinent Commission instructions relating to ethical and other standards of conduct.

§ 706.5 Counseling.

The General Counsel of the Commission shall serve as the agency's ethical conduct counselor and is the designated agency official for the purposes of the Ethics in Government Act. The General Counsel shall respond to requests by employees and special Government employees for advice and guidance respecting questions of ethical conduct, conflicts of interest, reporting of financial interests and other matters of law covered by the regulations in this part.

§ 706.6 Disciplinary and other remedial action.

An employee of the Commission who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interests may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by an employee of any conflicting interest; or

(c) Disqualification for a particular assignment.

§ 706.7 Outside employment and other activity.

Employees of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of their Government employment. Employees who wish to engage in outside employment shall first obtain the approval, in writing, of their supervisor.

§ 706.8 Prohibition against disclosure of evidence.

All employees of the Commission are subject to the prohibition on disclosure of evidence taken in executive session contained in § 702.6 of this chapter.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 706.9 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Commission efficiency or economy;

(d) Making a Commission decision outside official channels;

(e) Losing complete independence or impartiality; or

(f) Affecting adversely the confidence of the public in the integrity of the Commission.

§ 706.10 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are regulated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions from the prohibitions contained in paragraph (a) of this section are as follows:

(1) Gifts, entertainment, and favors that derive from family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned that are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) Employees shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than themselves. This paragraph, however, does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and 5 U.S.C. 7342.

(e) Neither this section nor § 706.11 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part, for which no Government payment or reimbursement is made. This paragraph, however, does not allow employees to be reimbursed, or payment to be made on their behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits.

§ 706.11 Proscribed outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflict(s) of interest; or

(2) Outside employment that tends to impair mental or physical capacity to perform Governmental duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for service to the Government as prohibited by 18 U.S.C. 209.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or Commission regulations. An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, which depends on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or which draws substantially on official data or ideas that have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational public service, or civic organization; or

(3) Outside employment permitted under the regulations in this part.

§ 706.12 Financial interests.

(a) Employees shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with their Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through their Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive order, or Commission regulations.

§ 706.13 Use of Government property.

Employees shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. Employees have a

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positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued them.

§ 706.14 Misuse of information.

For the purpose of furthering a private interest, employees shall not directly or indirectly use, or allow the use of, official information obtained through or in connection with their Government employment that has not been made available to the general public.

§ 706.15 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a just financial obligation means one acknowledged by the employee or reduced to judgment by a court, and in a proper and timely manner means in a manner that the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the disputed debt.

§ 706.16 Gambling, betting, and lotteries.

Employees shall not participate while on Government-owned or leased property or while on duty for the Government in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 706.17 General conduct prejudicial to the Government.

Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government.

§ 706.18 Miscellaneous statutory provisions.

Employees shall acquaint themselves with each statute that relates to their ethical and other conduct as an employee of the Commission and of the Government. The attention of Commission employees is directed to the following statutory provisions:

(a) House Document 103, 86th Congress, 1st Session, the "Code of Ethics for Government Service';

(b) The provisions relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (18 U.S.C. 201–225);

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913);

(d) The prohibitions against disloyalty and striking (5 U.S.C. 73811; 18 U.S.C. 1918);

(e) The prohibitions against the disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 1905);

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 1349(b));

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719);

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917);

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001);

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508);

(m) The prohibitions against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of the employee by reason of his or her employment (18 U.S.C. 654);

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285);

(o) The prohibitions against political activities (5 U.S.C. 7323 and 18 U.S.C. 602, 603, and 607); and

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agent Registration Act (18 U.S.C. 219).

Subpart C—Financial Reporting Requirements

§ 706.19 Statements of financial and property interests and outside employment.

Pursuant to the Ethics in Government Act of 1978 (Public Law 95–521, as amended by Public Law 101–194, 101–280, 102–90, 102–378, and 104–65, referred to hereinafter in this subpart as "the Act"), the following officers and employees of the Commission are required to file annual reports of financial and property interests and outside employment if they have served 61 days or more in their positions during the preceding calendar year:

(a) Officers or employees, including a special Government employee as defined in 18 U.S.C. 202, who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(b) Employees in the excepted service in positions that are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics; and

(c) Each designated agency ethics official.

§ 706.20 Time and place for filing of reports.

(a) Annual reports are to be filed no later than May 15 of each calendar year, except that persons assuming a position for which reports are required who have not immediately prior to this assumption occupied a covered position in another agency, must file a report within 30 days after assuming the position at the Commission. In the event an individual terminates employment with the Commission and does not accept another position for which reporting is required, the report must be filed no later than the 30th day after termination, covering:

(1) The preceding calendar year if the annual May 15 report has not been filed; and

(2) The portion of the present calendar year up to the date of termination.

(b) Reports shall be filed with the designated ethics officer (General Counsel) of the Commission. The reports of the designated ethics officer and nominees to and holders of positions that require confirmation by the Senate shall be transmitted by the General Counsel to the Office of Government Ethics of the Office of Personnel Management.

§ 706.21 Exclusion of certain positions from reporting requirements.

(a) Under section 101 of the Act, a report is required of any person in the executive branch in a position excepted from the competitive service by reason of being of a confidential or policymaker character. The exclusion of any position will be effective as of the time the Commission files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of its current occupant. Such a list must be filed with the Office of Government Ethics on or before the date on which such reports are due under the Act.

(b) In the event that the Office of Government Ethics finds that one or more positions have been improperly excluded, it will so advise the Commission and set a date for the filing of the report.

§ 706.22 Information required to be reported—reporting forms.

Information required to be reported by the Act shall be set forth in the manner specified in, and in accordance with the instructions contained in, Standard Forms issued by the Office of Personnel Management, to be used as follows:

(a) Standard Form 278—for use by an officer or employee filing:

(1) An annual report pursuant to section 101 of the Act, or

(2) A departure report upon termination of employment, pursuant to section 101 of the Act;

(b) Standard Form 278A—for use by:

(1) An individual assuming a position for which reporting is required pursuant to section 201(a) of the Act; or

(2) An individual whose nomination has been transmitted by the President to the Senate, pursuant to section 201(b) of the Act.

§ 706.23 Review of reports.

(a) Financial reports are reviewed by the Commission's designated Ethics official or the Director of the Office of Government Ethics, as appropriate. Reports are to be reviewed within 60 days after the date of their filing or transmittal to the Office of Government Ethics.

(b) After reviewing a report, the reviewing official is required to:

(1) State upon the report that the reporting individual is in compliance with applicable laws and regulations and to sign the report;

(2) Notify the reporting individual that additional information is required to be submitted and the time by which it must be submitted; or

(3) Notify the reporting individual that the report indicates noncompliance and afford the individual a reasonable opportunity for a written or oral response after which the reviewing official reaches an opinion whether the individual is in compliance.

(c) If the reviewing official determines that the reporting individual is not in compliance with applicable laws and regulations, the reviewing official will notify the individual of that opinion and after an opportunity for personal consultation notify the individual of the steps that should be taken to assure compliance and the date by which such steps should be taken.

(d) The use of any steps to bring the individual in compliance are to be in accordance with regulations issued by the Director of the Office of Government Ethics.

(e) To assist employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, the designated Commission ethics official is to maintain a list of those circumstances or situations that have resulted or may result in noncompliance and the lists are to be periodically published and furnished to individuals required to file reports under this Act.

§ 706.24 Public access to financial disclosure reports.

(a) Pursuant to section 105(b) of the Act, each report will be made available for public inspection within 15 days after the report is received by the agency, whether or not the review of the report prescribed by section 106 of the Act has been completed.

(b) Pursuant to section 105(b) of the Act, the following rules are applicable to public access to financial reports:

(1) A financial disclosure report may not be made available to any person nor may a copy thereof be provided to any person except upon written application by such person stating:

(i) That person's name, occupation, and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(iii) That such person is aware that it is unlawful to obtain or use a report:

(A) For any unlawful purpose;

(B) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) For determining or establishing the credit rating of any individual; or

(D) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose. Any application for a report shall be available to the public during the period in which the requested report is available to the public.

(2) [Reserved]

(c) Requests for copies of financial disclosure reports of officers appointed by the President by and with the advice and consent of the Senate, as well as nominees to such offices and designated Commission ethics officials, may be directed to the Director of the Office of Government Ethics.

(d) To gain access to or to obtain a copy of a report filed with the Commission, an individual should appear in person at the office of the General Counsel of the Commission, 624 9th Street, NW., Washington, DC 20425, during the hours 8:30 a.m. to 4:30 p.m. and complete an application form. Requests by mail should contain the information described in paragraph (b) of this section, together with the signature of the requester. Requests that do not contain the required information will be returned. Notice of the statutory prohibitions on use will be attached to copies of reports provided in response to a request otherwise properly filled out.

PART 707—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY U.S. COMMISSION ON CIVIL RIGHTS

Sec.

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Authority: 29 U.S.C. 791 *et seq.*

§ 707.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973, to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 707.2 Application.

This part applies to all programs and activities, including employment, conducted by the Agency.

§ 707.3 Definitions.

For the purposes of this part, the term—

(a) *Agency* means the U.S. Commission on Civil Rights and its State Advisory Committees.

(b) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision

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include readers, Braille materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

(c) *Complete complaint* means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(d) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, vehicles, or other real or personal property.

(e) *Individual with disabilities* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (e)(1) of this definition but is treated by the Agency as having such an impairment.

(f) *Qualified individual with disabilities* means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with disabilities who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to employment, an individual with disabilities who meets the definition set forth in 29 CFR 1614.203, which is made applicable to this part by § 707.7.

(3) With respect to any other Agency program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(g) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Public Law 93–112, 87 Stat. 394 (29 U.S.C. 794), as amended through 1998. As used in this part, section 504 applies only to programs or activities conducted by the Agency. The Agency does not operate any programs of Federal financial assistance to other entities.

§ 707.4 Self-evaluation and remedial measures.

(a) The Agency shall, before February 16, 1991 evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with disabilities and organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 707.5 Notice.

(a) The Agency shall make available to all employees, applicants, and other interested persons, as appropriate, information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and such information shall be made available to the extent the Staff Director finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall take appropriate steps to provide individuals with disabilities with information regarding their section 504 rights under the Agency's programs or activities.

§ 707.6 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b)(1) The Agency, in providing any aid, benefit, or service, shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit(s), or service(s);

(ii) Afford a qualified individual with disabilities an opportunity to participate in or benefit from the aid, benefit(s), or service(s) that are not equal to that afforded others;

(iii) Provide a qualified individual with disabilities with an aid, benefit(s), or service(s) that are not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than are provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards or committees; or

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit(s), or service(s).

(2) The Agency shall not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Agency shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The Agency shall not in determining the site or location of a facility or activity make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The Agency, in the selection of procurement contractors, shall not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(c) The exclusion of non-disabled persons from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§ 707.7 Employment.

No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR 1614.101 through 1614.110, shall apply to employment in programs or activities conducted by the Agency.

§ 707.8 Physical access.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with disabilities shall, because the Agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) *Existing facilities-program access*—(1) *Existing facilities defined.* For the purpose of this section, existing facilities means those facilities owned, leased or used through some other arrangement by the Agency on March 28, 1990.

(2) *General.* The Agency shall operate each program or activity conducted in an existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(i) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with disabilities

(ii) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this paragraph would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(3) *Methods.* (i) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with disabilities, delivery of services at alternative accessible sites, alteration of existing facilities and construction of new facilities, use of accessible vehicles, or any other methods that result in making its program or activities readily accessible to and usable by individuals with disabilities.

(ii) The Agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (b)(2) of this section. The Agency, in making alterations to existing buildings to achieve program accessibility, shall meet accessibility requirements imposed by the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157.

(iii) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(4) *Time period for compliance.* The Agency shall comply with the obligations established under this section before April 17, 1990, except that where structural changes in facilities are undertaken, such changes shall be made before February 16, 1993, but in any event as expeditiously as possible.

(5) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, before August 16, 1990, a transition plan setting forth the steps necessary to complete such changes. The Agency shall provide an opportunity to interested persons, including individuals with disabilities and organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public

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inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this paragraph and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official response for implementation of the plan.

(6) The Agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(c) *New purchases, leases, or other arrangements.* (1) Any building or facility acquired after March 28, 1990, whether by purchase, lease (other than lease renewal), or any other arrangement, shall be readily accessible to and usable by individuals with disabilities.

(2) Nothing in this paragraph requires the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this paragraph would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(d) New construction and alterations. Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities in accordance with the requirements imposed by the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157.

§ 707.9 Access to communications.

(a) Discrimination prohibited. Except as otherwise provided in this section, no qualified individual with disabilities shall, because the Agency's communications are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(c) Specific requirements regarding oral communications—(1) Telecommunications devices for deaf persons. (i) The Agency headquarters and each regional office shall maintain and reliably answer at least one telecommunications device for deaf persons (TDD) or equally effective telecommunications device.

(ii) The Agency shall ensure that all Agency letterhead, forms, and other documents listing any Agency telephone number list the appropriate TDD numbers.

(2) Interpreter service. (i) The Agency shall establish a reliable system for the provision of qualified interpreters to individuals with disabilities for Agency programs or activities. This provision does not require the Agency to have an interpreter on staff, but does require the Agency to be able to provide a qualified interpreter on reasonable notice.

(ii) Notice of the availability of interpreter service shall be included in all announcements notifying the public of Agency activities to which the public is invited or which it is permitted to attend, including but not limited to the Commission's meetings, consultations, hearings, press conferences, and State Advisory Committee conferences and meetings. This notice shall designate the Agency official(s) and the address, telephone and TDD number to call to request interpreter services.

(d) Specific requirements for printed communications. (1) The Agency shall establish a system to provide to individuals with disabilities appropriate reader or taping service for all Agency publications that are available to the public. This provision does not require the Agency to have a reader or taper on staff, but does require the Agency to be able to provide appropriate reader or taping service within a reasonable time and on reasonable notice. The Agency shall effectively notify qualified individuals with disabilities of the availability of reader or taping services.

(2) Notice of the availability of reader or taping service shall be included in all publications that are available to the public. This notice shall designate the Agency official(s) and the address, telephone, and TDD number to call to request interpreter services.

(e) Nothing in this section or § 707.10 requires the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this section or § 707.10 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this paragraph would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§ 707.10 Auxiliary aids.

(a) The Agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(b) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with disabilities.

(c) The Agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

§ 707.11 Eliminating discriminatory qualifications and selection criteria.

The Agency shall not make use of any qualification standard, eligibility requirement, or selection criterion that excludes particular classes of individuals with disabilities from an Agency program or activity merely because the persons are disabled, without regard to an individual's actual ability to participate. An irrebuttable presumption of inability to participate based upon a disability shall be permissible only if the condition would, in all instances, prevent an individual from meeting the essential eligibility requirements for participating in, or receiving the benefits of, the particular program or activity.

§ 707.12 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 U.S.C. 791 by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Office of General Counsel.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157, is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by paragraph (g) of this section. The Staff Director may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Staff Director or the Staff Director's designee.

(j) The Agency shall notify the complainant in writing of the results of the appeal within 60 days of the receipt of the request. If the head of the Agency determines that additional information is needed from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (d), (g), (h), and (j) of this section may be extended for an individual case when the Staff Director determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies; however, the authority for making the final determination may not be delegated to another Agency.

PART 708—COLLECTION BY SALARY OFFSET FROM INDEBTED CURRENT AND FORMER EMPLOYEES

Sec.

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Authority: 5 U.S.C. 5514.

§ 708.1 Purpose and scope.

(a) The regulations in this part provide the procedure pursuant to 5 U.S.C. 5514 and 5 CFR 550.1101 through 550.1110 for the collection by administrative offset of a Federal employee's salary without his or her consent to satisfy certain debts owed to the Federal government. This procedure applies to all Federal employees who owe debts to the U.S. Commission on Civil Rights (Commission). This provision does not apply when the employee consents to recovery from his or her current pay account.

(b) This procedure does not apply to debts or claims arising under:

(1) The Internal Revenue Code (26 U.S.C. 1 *et seq.*);

(2) The Social Security Act (42 U.S.C. 301 *et seq.*);

(3) The tariff laws of the United States; or

(4) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits programs requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of a salary overpayment under 5 U.S.C. 5584 or 10 U.S.C. 2774 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedures in the regulations in this part uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of the regulations in this part the following definitions apply:

(a) *Agency* means:

(1) An Executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court in the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

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(b) *Creditor agency* means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources, which include loans insured or guaranteed by the United States and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Deputy Staff Director* means the Deputy Staff Director of the Commission or in his or her absence, or in the event of a vacancy in the position or its elimination, the Director of Human Resources.

(e) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) *Former employee* means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR chapter I.

(i) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Deputy Staff Director of the Commission.

(j) *Paying agency* means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) *Pay interval* will normally be the biweekly pay period but may be some regularly recurring period of time in which pay is received.

(l) *Retainer pay* means the pay above the maximum rate of an employee's grade that he or she is allowed to keep in special situations rather than having the employee's rate of basic pay reduced.

(m) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 5 U.S.C. 8346(b), or any other law.

§ 708.4 Applicability.

The regulations in this part are to be followed when:

(a) The Commission is owed a debt by an individual who is a current employee of the Commission; or

(b) The Commission is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Deputy Staff Director or in his or her absence, or in the event of a vacancy in that position or its elimination, the Director of Human Resources (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the Deputy Staff Director, acting on behalf of the Commission, as the creditor agency, shall contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR chapter I);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (*i.e.*, within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) will be issued at the earliest practical date but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(11) A statement that an employee knowingly submitting false or frivolous statements (5 CFR 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. 7501 *et seq.* and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729–3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) A statement that an employee will be promptly refunded any amount paid or deducted for a debt that is later waived or found not valid unless there are applicable contractual or statutory provisions to the contrary; and

(14) The name, address, and phone number of an official who can be contacted concerning the indebtedness.

§ 708.6 Petitions for hearing.

(a) Except as provided in paragraph (d) of this section, an employee who wants a hearing must file a written petition for a hearing to be received by the Deputy Staff Director not later than 15 calendar days from the date of receipt of the Notice of Offset. The petition must state why the employee believes the determination of the Commission concerning the existence or amount of the debt is in error.

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses that the employee believes support his or her position.

(c) If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(d) If the employee files a petition for a hearing later than the 15 calendar days from the date of receipt of the Notice of Offset, as described in paragraph (a) of this section, the hearing official may accept the request if the employee can show that there was good cause (such as due to circumstances beyond his or her control or because he or she was not informed or aware of the time limit) for failing to meet the deadline date.

(e) An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with the Deputy Staff Director's offset schedule if he or she fails to show good cause why he or she failed to file the petition for a hearing within the stated time limits.

§ 708.7 Hearing procedures.

(a) If an employee timely files a petition for a hearing under § 708.6, the Deputy Staff Director shall select the time, date, and location for the hearing.

(b) The hearing shall be conducted by an impartial hearing official.

(c) The Commission, as the creditor agency, will have the burden of proving the existence of the debt.

(d) The employee requesting the hearing shall have the burden of proof to demonstrate that the existence or amount of the debt is in error.

§ 708.8 Written decision.

(a) The hearing official shall issue a written opinion no later than sixty (60) days after the filing of the petition for hearing; or no longer than sixty (60) days from the proceedings if an extension has been granted pursuant to § 708.5(b)(10).

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt; and, if applicable, the repayment schedule.

§ 708.9 Coordinating offset with another Federal agency.

(a) The Commission is the creditor agency when the Deputy Staff Director determines that an employee of another Federal agency owes a delinquent debt to the Commission. The Deputy Staff Director shall, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee of the paying agency owes the debt, the amount, and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt first accrued, and that the Commission's regulations for salary offset have been approved by the Office of Personnel Management;

(3) If the collection must be made in installments, the Commission, as the creditor agency, will advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and the commencement date of the installments;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken, unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission will submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification of the monies already collected and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to Civil Service or Foreign Service Retirement and Disability Fund or similar payments, it must provide written notification to the agency has been rendered in favor of the Commission.

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Assistant Staff Director for Management may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset. The Commission will provide the agency responsible for these payments with a properly certified claim.

(b) The Commission is the paying agency when an employee of this agency owes a debt to another Federal agency that is the creditor agency.

(1) Upon receipt of a properly certified debt claim from a creditor agency, deductions will be scheduled to begin at the next established pay interval.

(2) The Commission must give the employee written notice that it has received a certified debt claim from a creditor agency (including the amount), and the date that deductions will be scheduled to begin and the amount of the deduction.

(3) The Commission shall not review the merits of the creditor agency's determination of the amount of the certified claim or of its validity.

(4) If the employee transfers to another paying agency after the creditor agency has submitted its debt claim but before the debt is collected completely, the Commission must certify the total amount collected to the creditor agency with notice of the employee's transfer. One copy of this certification must be furnished to the employee. The creditor agency will submit a properly certified claim to the new paying agency before collection can be resumed.

(5) When the Commission, as a paying agency, receives an incomplete debt claim from a creditor agency, it must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

§ 708.10 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Assistant Staff Director for Management's written notice of intent to collect from the employee's current pay, unless alternative arrangements for repayment are made.

(b) If the employee filed a petition for a hearing with the Assistant Staff Director for Management before the expiration of the period provided, then deductions will begin after the hearing official has provided the employee with a hearing, and a final written decision has been rendered in favor of the Commission.

(c) A debt will be collected in a lump-sum if possible.

(d) If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of the installment deduction(s) will bear a reasonable relationship to the size of the debt and the deduction will be established for a period not greater than the anticipated period of employment. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years.

(e) Installment payments may be less than 15 percent of disposable pay if the Assistant Staff Director for Management determines that the 15 percent deduction would create an extreme financial hardship.

(f) Installment payments of less than $25.00 per pay period or $50.00 per

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month, will only be accepted in the most unusual circumstances.

(g) Unliquidated debts may be offset by the paying agency under 31 U.S.C. 3716 against any financial payment due to a separating employee including but not limited to final salary payment, retired pay, or lump sum leave, etc. as of the date of separation to the extent necessary to liquidate the debt.

(h) If the debt cannot be liquidated by offset from any final payment due a separated employee it may be recovered by the offset in accordance with 31 U.S.C. 3716 from any later payments due the former employee from the United States.

§ 708.11 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owned to the Commission when the debt is waived, found not owed to the Commission, or when directed by an administrative or judicial order; or the creditor agency will promptly return any amounts deducted and forwarded by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(b) Upon receipt of monies returned in accordance with paragraph (a) of this section, the Commission will refund the amount to the current or former employee.

(c) Unless required by law, refunds under this section shall not bear interest nor shall liability be conferred to the Commission for debt or refunds owed by other creditor agencies.

§ 708.12 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 708.13 Non-waiver of rights by payments.

An employee's involuntary payment of all or any part of a debt collected under the regulations in this part will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 708.14 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–28934 Filed 11–21–02; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Friday,
November 22, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Public Address System; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–13859; Notice No. 02–18]

RIN 2120–AH30

Public Address System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend an airworthiness standard for the public address system on transport category airplanes. The proposal would shorten from 10 seconds to 3 seconds, the time allowed for the system to become active after a flight crewmember removes the microphone from its stowage. A time requirement is imposed to assure the system is rapidly usable for emergency announcements. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before January 21, 2003.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13859 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–13859." We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: *http://dms.dot.gov*.

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kirk Baker, FAA, Systems and Equipment Branch, ANM–130L, Transport Airplane Directorate, Aircraft Certification Service, 3960 Paramount Boulevard, Lakewood, CA 90712; telephone 562–627–5345; facsimile 562–627–5210, e-mail *kirk.baker@faa.gov*.

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You may download an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339); the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202–512–1661); or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access recently published rulemaking documents at the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the *GPO's* Web page at *http://www.access.gpo.gov/nara*.

You may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by calling 202–267–9680. Communications must identify the docket number of this NPRM.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)-25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What is "Harmonization" and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and 2 the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC made no changes to this NPRM.

Discussion of the Proposal

What Is the Underlying Safety Issue Addressed by the Current Standards?

The public address system assures the operational availability within a specified time for passenger announcements in the event of an emergency situation. The system must be powerable in flight or on the ground to allow communication with all passengers at all times.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1423 is:

§ 25.1423 Public address system

(b) Be capable of operation within 10-seconds by a flight attendant at those stations in the passenger compartment from which the system is accessible.

The current text of JAR–25.1423 (Change 15, amendment 25/96/1) is:

JAR–25.1423 Public address system

(b) The system must be capable of operation within 3-seconds from the time a microphone is removed from its stowage by a flight attendant at those stations in the passenger compartment from which its use is accessible.

What Are the Differences in the Standards and What Do Those Differences Result in?

The JAR requirement is very specific in that the system must be operational within 3 seconds from the time the flight attendant removes the microphone from its stowage position. Part 25 specifies that the system must be operational within 10 seconds, but does not specify the start of the 10-second time period.

What, If Any, Are the Differences in the Means of Compliance?

Under the JAR requirements, a system must operate within three seconds from the time the microphone is removed from its stowed position. Under the part 25 requirements, the system can be approved if it is operational within 10 seconds by a flight attendant at those stations in the passenger compartment from which its use is accessible. Currently, the technology that is used in the amplifiers for the public address system is in compliance with the 3-seconds delay requirement. The old vacuum tube technology required 10 seconds for heating to be operational, whereas the technology used today does not require heating. The proposed 3-seconds delay is in line with current technology.

What Is the Proposed Action?

The proposed action is to revise part 25 by adopting the text of JAR 25.1423(b) in its entirety. The proposed revision would specify the 3-seconds operational compliance time and is in line with current technology.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would harmonize part 25 and the JAR by removing the 10 second requirement from § 25.1423, and inserting the JAR text. The new § 25.1423 will impose a 3-second operational requirement from the time the microphone is removed from its stowage position.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level of safety since current technology meets the 3-seconds requirement. The proposed standard would also clarify the requirement by specifying the start and end of the 3-seconds timeframe.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

Current industry practice is for systems to be designed to meet both part 25 and the JAR requirements. For these systems, the proposed standard would maintain the same level of safety.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the adoption of JAR 25.1423(b) in its entirety the most appropriate way to fulfill

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harmonization goals while maintaining safety.

Who Would Be Affected by the Proposed Change?

The proposed standard is in line with current design practices and the effect of the change is considered to be minimal for equipment manufacturers. For new equipment, it is not a problem since technology meets the 3-seconds standard.

Is Existing FAA Advisory Material Adequate?

The FAA considers developing new advisory material to be unnecessary.

What Regulatory Analyses and Assessments Has the FAA Conducted? What Other Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 as amended requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this proposal has benefits, but no costs, and that it is not "a significant regulatory action" under section 3(f) of Executive Order 12866. This proposal would not have a significant economic impact on a substantial number of small entities, reduces barriers to international trade, and imposes no unfunded mandates on State, local, or tribal governments, or the private sector.

Because there are no apparent costs associated with this proposal, it does not warrant the preparation of a full economic evaluation for placement in the docket. The FAA estimates that there are no costs associated this proposal. A review of current manufacturers of transport category aircraft has revealed that all such future aircraft are expected to be certificated under part 25 of both 14 CFR and JAR. Since future certificated transport-category aircraft are expected to meet the existing section 25.1423(b) of the JAR requirement and this rule simply adopts the same JAR requirement, manufacturers would incur no additional cost resulting from this proposal. Current technology enables compliance with the requirement that the public address system be operational within 3 seconds. In fact, manufacturers are expected to receive cost-savings by a reduction in the FAA/JAA certification requirements for new aircraft. The cost-savings of this proposed rule is a potential reduction in paperwork required for certification. The FAA, however, has not attempted to quantify the cost savings that may accrue due to this specific proposal, beyond noting that while they may be minimal, they contribute to a large potential harmonization savings. The agency concludes that because there is consensus among potentially impacted airplane manufacturers that savings will result, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C., 601–612, as amended, establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons. First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule requires that new transport category aircraft manufacturers meet just the "more stringent" European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR requirement. Secondly, all United States transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

International Trade Impact

The Trade Agreement Act of 1979, 19 U.S.C. *et seq.*, prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards

In accordance with the above statute, the FAA has assessed the potential effect of the proposed rule and has determined that it is consistent with the statutes requirements by using European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531–1538, 1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA had determined there are no requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704

2. Amend § 25.1423 by republishing the introductory text and revising the text of paragraph (b) to read as follows:

§ 25.1423 Public address system.

A public address system required by this chapter must—

* * * * *

(b) Be capable of operation within 3-seconds from the time a microphone is removed from its stowage by a flight attendant at those stations in the passenger compartment from which its use is accessible.

* * * * *

Issued in Renton, Washington, on November 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29668 Filed 11–21–02; 8:45 am]

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1, Parts 4, 7, et al.
Federal Acquisition Regulations; Final Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–10; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–10. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–10 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	General Records Schedule	2002–016	Nelson.
II	Executive Order 13202, Preservation of Open, Competition and Government Neutrality Towards Government Contractors' Labor Relations On Federal and Federally Funded Construction projects.	2001–016	Nelson.
III	Caribbean Basin Country End Products.	2000–306	Davis.
IV	Financing Policies	2000–007	Olson.
V	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–10 amends the FAR as specified below:

Item I—General Records Schedule (FAR Case 2002–016)

This final rule amends the FAR to reflect the previous language of FAR 4.705–2 exactly as it was written prior to revision of this subsection by FAC 97–18, item IV, General Records Schedule (FAR case 1999–615) published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705–2 made in FAC 97–18 inadvertently resulted in longer record retention periods for contractors and subcontractors. This final rule—

- Revises the subsection title of FAR 4.705–2 to read "Pay administration records" instead of "Construction contract pay administration records," thus, making all record retention requirements in the entire subsection applicable to all contracts rather than limiting it to construction contracts;
- Revises FAR 4.705–2(a) to change from a record retention period of 3 years after completion of contract unless contract performance is the subject of enforcement action, to 4 years after generation of the records.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the requirements published in FAC 97–18 is acceptable.

Item II—Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001–016)

This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change. The rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202, as amended by Executive Order 13208. Contracting officers, or any construction manager acting on behalf of the Government, may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to project labor agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive order under special circumstances, but the exemption may not be related to the possibility of, or an actual, labor dispute.

Item III—Caribbean Basin Country End Products (FAR Case 2000–306)

The interim rule published in the **Federal Register** as item V of FAC 2001–04 (67 FR 6116, February 8, 2002), is converted to a final rule with changes. The interim rule implemented the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1–101 of Executive Order 12260. Such treatment shall not apply to products originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

Item IV—Financing Policies (FAR Case 2000–007)

This final rule revises certain financing policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule—

- Removes the restriction on use of performance-based payments on fixed-price contracts prior to definitization; and
- Permits large businesses, in their billings to the Government, to include certain vendor and subcontractor costs that have been incurred, but not actually paid, provided that, ordinarily, they pay the subcontractor within 30 days.

Item V—Technical Amendments

These amendments update references and make editorial changes at FAR 7.105(b)(4)(i) and 19.502–2(a).

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–10 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–10 are effective December 23, 2002, except for items II, III, and V, which are effective November 22, 2002.

Dated: November 1, 2002.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: October 28, 2002.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: October 28, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02–29088 Filed 11–21–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001–10; FAR Case 2002–016; Item I]

RIN 9000–AJ49

Federal Acquisition Regulation; General Records Schedule

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise pay administration record retention requirements.

DATES: *Effective Date:* December 23, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–10, FAR case 2002–016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to reflect the previous language of FAR 4.705–2 exactly as it was written prior to revision of this subsection by FAC 97–18, item IV, General Records Schedule (FAR case 1999–615), published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705–2 made by FAC 97–18 inadvertently resulted in longer record retention periods for contractors and subcontractors.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the prior requirements published in FAC 97–18 is acceptable.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–10, FAR case 2002–016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 4 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 4.705–2 by revising the section heading and paragraph (a) to read as follows:

4.705–2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

* * * * *

[FR Doc. 02–29089 Filed 11–21–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17, 22, and 36

[FAC 2001–10; FAR Case 2001–016; Item II]

RIN 9000–AJ14

Federal Acquisition Regulation; Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; termination of stay of interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) published in the **Federal Register** at 66 FR 27414, May 16, 2001, an interim rule implementing Executive Order (E.O.) 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects. As a result of a permanent injunction against the E.O. and pending litigation to resolve the dispute, the Councils published an interim rule in the **Federal Register** at 67 FR 10527, March 7, 2002, staying the heart of the rule. The Federal Acquisition Regulatory (FAR) Council intended the stay would last until final judicial resolution of the dispute. The FAR Council requested comments on the FAR interim rule stay. This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change.

DATES: Effective November 22, 2002, the stay of 48 CFR 36.202(d) is terminated. As of November 22, 2002, the interim rule amending 48 CFR parts 17, 22, and 36 published on May 16, 2001 (66 FR 27414), is adopted as final without change.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–10, FAR case 2001–016.

SUPPLEMENTARY INFORMATION:

A. Background

On February 17, 2001, President George W. Bush signed Executive Order (E.O.) 13202 revoking E.O. 12836 of February 1, 1993, and Presidential Memorandum of June 5, 1997, entitled "Use of Project Labor Agreements for Federal Construction Projects." The E.O. was published in the **Federal Register** at 66 FR 11225, February 22, 2001, and amended by E.O. 13208 published in the **Federal Register** at 66 FR 18717, April 11, 2001.

The E.O. 13202 is intended to improve the internal management of the Executive branch by—

- Promoting and ensuring open competition on Federal and federally funded or assisted construction projects;
- Maintaining Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects;
- Reducing construction costs to the Government and to the taxpayers;
- Expanding job opportunities, especially for small and disadvantaged businesses;
- Preventing discrimination against Government contractors or their employees based upon labor affiliation or lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects; and
- Preventing the inefficiency that may result from the disruption of a previously established contractual relationship in particular cases.

To implement Executive Order 13202, as amended, an interim rule was published in the **Federal Register** on May 16, 2001, 66 FR 27414, as part of Federal Acquisition Circular 97–26. Consistent with Executive Order 13202, as amended, FAR 36.202(d) of that interim rule specified that agencies could not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. It also permitted agency heads to exempt a project from the requirements of the Executive order under special circumstances, but specified that such an exemption could not be related to a possible or an actual labor dispute. FAR 36.202(d) also provided for the exemption of a project governed by a project labor agreement in place as of February 17, 2001, which had a construction contract awarded as of February 17, 2001.

In response to the interim rule, the Councils received 179 letters. All but one of the respondents supported the rule. The one respondent (Building and Construction Trades Department, AFL–CIO) that did not support the rule believed the Executive order in which the rule was based is unlawful; that the interim rule is based both on misapprehensions about the nature of Project Labor Agreements and on economic assumptions that lack any factual basis; and that the interim rule is so vague as to mislead affected parties about their ability to exercise their statutory rights. Since the rule mirrors the directives contained in the Executive orders, the Councils agreed that no change to the rule was necessary.

This same respondent, along with other plaintiffs, commenced a lawsuit to enjoin the enforcement of the E.O. issued by the President. A permanent injunction against enforcement of Executive Order 13202 was issued November 7, 2001, by the U.S. District Court for the District of Columbia (*see* Building and Construction Trades Department, AFL–CIO v. Allbaugh, D.D.C., 172 F.Supp.2d 138, D.D.C. 2001). The Government submitted its appeal (No. 01–5436 (D.C. Cir.)). In order to comply with the court order, a stay of the heart of the interim rule with a request for comments was published in the **Federal Register** at 67 FR 10527, March 7, 2002, pending resolution of the litigation.

In response to the interim rule stay, one respondent (The Associated General Contractors of America (AGC)) submitted comments. AGC believed that the unresolved legal challenge to the Executive Order 13202 does not require a stay of the interim rule, and it is inappropriate for the Councils to impede the enforcement of the E.O. The Councils determined that the stay would remain pending resolution of the litigation.

A decision by the United States Court of Appeals for the District of Columbia Circuit on July 12, 2002, reversed the judgment of the District Court and vacated the injunction (295 F.3d 28, D.C. Cir. 2002). Accordingly, the Councils are terminating the stay and adopting the May 16, 2001, interim rule as final without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202 as amended on April 6, 2001 (E.O. 13208). The Executive orders require that any construction contract awarded after February 17, 2001, or any obligation of funds pursuant to such contract, must not require or prohibit offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related construction project(s); or otherwise discriminate against offerors, contractors, or subcontractors for becoming or refusing to become or remaining signatories or otherwise adhere to agreements with one or more organizations, on the same or other related construction projects. The rule primarily affects the internal operating procedures of Government agencies. The rule will apply to all large and small entities that seek award of construction contracts that are Federal and federally funded. During fiscal year 2001, there were over forty-seven thousand contract actions awarded to small businesses according to the Federal Procurement Data System. These actions were worth a total of over $6 billion. It is expected that the awarding offices neutrality toward Government contractors' and subcontractors labor relations regarding project labor agreements will expand job opportunities to small entities, specifically nonunion small businesses. This gives small businesses the ability to negotiate and establish business relationships to deliver efficient and cost effective high quality construction projects.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 17, 22, and 36

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Stay Terminated; Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA terminate the interim rule stay published in the **Federal Register** at 67 FR 10527 on March 7, 2002, and further adopt as a final rule without change the interim rule amending 48 CFR parts 17, 22, and 36, which was published in the **Federal Register** at 66 FR 27414 on May 16, 2001.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 02–29090 Filed 11–21–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2001–10; FAR Case 2000–306; Item III]

RIN 9000–AJ27

Federal Acquisition Regulation; Caribbean Basin Country End Products

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to convert this FAR case from an interim rule to a final rule with changes. This interim rule amended the FAR to implement the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–10, FAR case 2000–306.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amended the Federal Acquisition Regulation (FAR) to implement the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under the Act.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 67 FR 6116, February 8, 2002, and no comments were received. However, on July 12, 2002 (67 FR 46239), the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1–101 of Executive Order 12260. Such treatment shall not apply to products originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this case. The Councils have agreed to convert this FAR case from an interim rule to a final rule with changes.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

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rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only affects a limited number of products from a few Caribbean Basin countries. The Berry Amendment (formerly at 10 U.S.C. 2241, note, but recently codified at 10 U.S.C. 2533a) still prohibits the Department of Defense from buying most of the textile and apparel articles receiving duty-free treatment under this Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 25 and 52, which was published in the **Federal Register** at 67 FR 6116, February 8, 2002, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

2. Amend section 25.003 in the definition "Caribbean Basin country" by adding "Honduras," after "Haiti,".

25.400 [Amended]

3. Amend section 25.400 in paragraph (a)(2) by removing ", Honduras,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–5 [Amended]

4. Amend section 52.225–5 in the clause heading by removing "(Feb 2002)" and adding "(Nov 2002)" in its place; and in paragraph (a) in the definition "Caribbean Basin country", by adding "Honduras," after "Haiti,".

[FR Doc. 02–29091 Filed 11–21–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2001–10; FAR Case 2000–007; Item IV]

RIN 9000–AI92

Federal Acquisition Regulation; Financing Policies

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to permit the use of performance-based payments type of financing on fixed-price contracts prior to definitization, and to revise the criteria governing when a prime contractor can bill the Government for costs incurred, but not yet paid, for supplies and services purchased directly for the contract and for associated subcontractor financing payment requests.

DATES: Effective Date: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2001–10, FAR case 2000–007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 56454, September 18, 2000. The proposed rule—

- Revised the requirement at FAR 32.1003(b) to permit performance-based payments type of financing on fixed-price contracts prior to definitization;
- Completely removed the "paid cost rule" restriction from the payment clauses at FAR 52.216–26, Payments of Allowable Costs Before Definitization, and FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts. The "paid cost rule" is the requirement that a large business must actually pay (not just incur) costs for supplies and services purchased directly for the contract and financing payments to subcontractors before including the payments in its billings to the Government. A final rule under FAR case 1998–400 was published in the **Federal Register** at 65 FR 16274, March 27, 2000. The intent of that final rule was to remove this restriction from all the payment clauses if contractors met certain conditions. Inadvertently, this restriction was not removed in its entirety from FAR 52.216–26(d)(2) and FAR 52.232–7(b)(3). The proposed rule published under this FAR case 2000–007 corrected this oversight and the rule—
- Established, for both cost-reimbursement and fixed-price contracts, a standard time period of 30 days that contractors have to pay their subcontractors after the contractors have billed the Government for incurred subcontractor costs. As indicated in the previous paragraph, the final rule under FAR case 1998–400 amended the FAR to permit a large business to include, in its billings, certain costs that it had incurred but not actually paid, if the following conditions were met: The unpaid amounts were paid (1) in accordance with the terms and conditions of a subcontract or invoice; and (2) ordinarily prior to the submission of the contractor's next payment request to the Government. The second condition permitted a large business to submit cost vouchers on a cost-reimbursement contract every 14 days, but the large business could bill no more frequently than every 30 days when billing progress payments on a fixed-price contract. Therefore, contractors may need to maintain several systems and procedures to accommodate the timing differences for payments to subcontractors, depending on whether the costs are billed on a cost-reimbursement or fixed-price type prime contract. To eliminate the timing differences, the proposed FAR rule revised the second condition to establish a single standard time period of 30 days; and
- Made several editorial changes.

Four respondents submitted public comments to the proposed rule. The Councils considered all comments when developing the final rule which differs from the proposed rule with regard to when a contractor can bill the Government for supplies and services purchased directly for the contract and associated financing payment requests received from their subcontractors that have not yet been paid for by the prime contractors. As amended by this final rule, the contractor can bill the Government when contractor payment

for the amount determined due the supplier or subcontractor is scheduled to be made within 30 days of the submission of the contractor's current payment request to the Government. The Councils believe that a 30-day float period for the prime contractor represents a reasonable time period and do not believe it would be in the best interests of the Government or subcontractors to effectively encourage float periods in excess of 30 days.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, do not have the progress payment or performance-based payment type of financing. In addition, the "paid cost rule" restriction does not apply to small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Amend section 32.504 by revising the introductory text of paragraph (b) and paragraph (b)(2) to read as follows:

32.504 Subcontracts under prime contracts providing progress payments.

* * * * *

(b) The contractor's requests for progress payments may include the full amount of commercial item purchase financing payments, performance-based payments, or progress payments to a subcontractor, whether paid or unpaid, provided that unpaid amounts are limited to amounts determined due and that the contractor will pay—

* * * * *

(2) Ordinarily within 30 days of the submission of the contractor's progress payment request to the Government.

* * * * *

3. Amend section 32.1003 by revising the introductory text and paragraph (b) to read as follows:

32.1003 Criteria for use.

The contracting officer may use performance-based payments only if the following conditions are met:

* * * * *

(b) The contract is a fixed-price type contract; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.216–7 by revising the date of the clause; and by revising the introductory text of paragraph (b)(1)(ii)(A) and paragraph (b)(1)(ii)(A)(*2*) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Alowable Cost and Payment (Dec. 2002)

* * * * *

(b) *Reimbursing costs.* (1) * * *

(ii) * * *

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

* * * * *

(*2*) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

* * * * *

5. Amend section 52.216–26 by revising the date of the clause, the introductory text of paragraph (d)(2)(i), and paragraph (d)(2)(i)(B) to read as follows:

52.216–26 Payments of Allowable Costs Before Definitization.

* * * * *

Payments of Allowable Costs Before Definitization (Dec 2002)

* * * * *

(d) * * *

(2) * * *

(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

* * * * *

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

* * * * *

6. Amend section 52.232–7 by revising the date of the clause, and paragraphs (b)(3) and (b)(4)(ii) to read as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Dec 2002)

* * * * *

(b) * * *

(3) The Government will reimburse the Contractor for supplies and services purchased directly for the contract when the Contractor—

(i) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or

(ii) Will make these payments determined due—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(4)(i) * * *

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for supplies and services purchased directly for the contract when the Contractor has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

* * * * *

7. Amend section 52.232–16 by revising the date of the clause, the introductory text of paragraph (a)(2), and paragraph (a)(2)(ii) to read as follows:

52.232–16 Progress Payments.

* * * * *

Progress Payments (Dec 2002)

* * * * *

(a) * * *

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors—

* * * * *

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(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

* * * * *

[FR Doc. 02–29092 Filed 11–21–02; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 19

[FAC 2001–10; Item V]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–10, Technical Amendments.

List of Subjects in 48 CFR Parts 7 and 19

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 7 and 19 as set forth below:

1. The authority citation for 48 CFR parts 7 and 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Amend section 7.105 by adding a sentence to the end of paragraph (b)(4)(i) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.* (i) * * * Provide rationale if a performance-based contract will not be used or if a performance-based contract for services is contemplated on other than a firm-fixed-price basis (see 37.102(a) and 16.505(a)(3)).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.502–2 [Amended]

3. Amend section 19.502–2 in the first sentence of paragraph (a) by removing "13.202(g)" and adding "13.201(g)" in its place.

[FR Doc. 02–29093 Filed 11–21–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–10 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–10 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–10

Item	Subject	FAR case	Analyst
I	General Records Schedule	2002–016	Nelson
II	Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal And Federally Funded Construction Projects.	2001–016	Nelson
III	Caribbean Basin Country End Products	2000–306	Davis
IV	Financing Policies	2000–007	Olson
V	Technical Amendments.		

Item I—General Records Schedule (FAR Case 2002–016)

This final rule amends the FAR to reflect the previous language of FAR 4.705–2 exactly as it was written prior to revision of this subsection by FAC 97–18, Item IV, General Records Schedule (FAR case 1999–615) published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705–2 made in FAC 97–18 inadvertently resulted in longer record retention periods for contractors and subcontractors. This final rule—

- Revises the subsection title of FAR 4.705–2 to read "Pay administration records" instead of "Construction contract pay administration records," thus, making all record retention requirements in the entire subsection applicable to all contracts rather than limiting it to construction contracts;
- Revises FAR 4.705–2(a) to change from a record retention period of 3 years after completion of contract unless contract performance is the subject of enforcement action, to 4 years after generation of the records.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the requirements published in FAC 97–18 is acceptable.

Item II—Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001–016)

This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change. The rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202, as amended by Executive Order 13208. Contracting officers, or any construction manager acting on behalf of the Government, may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to project labor agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive order under special circumstances, but the exemption may not be related to the possibility of, or an actual, labor dispute.

Item III—Caribbean Basin Country End Products (FAR Case 2000–306)

The interim rule published in the **Federal Register** as Item V of FAC 2001–04 (67 FR 6116, February 8, 2002), is converted to a final rule with changes. The interim rule implemented the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1–101 of Executive Order 12260. Such treatment shall not apply to products originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

Item IV—Financing Policies (FAR Case 2000–007)

This final rule revises certain financing policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule—

- Removes the restriction on use of performance-based payments on fixed-price contracts prior to definitization; and
- Permits large businesses, in their billings to the Government, to include certain vendor and subcontractor costs that have been incurred, but not actually paid, provided that, ordinarily, they pay the subcontractor within 30 days.

Item V—Technical Amendments

These amendments update references and make editorial changes at FAR 7.105(b)(4)(i) and 19.502–2(a).

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–29094 Filed 11–21–02; 8:45 am]

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Part V

Department of Justice

Immigration and Naturalization Service

Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2631–2002]

Registration of Certain Nonimmigrant Aliens From Designated Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice requires certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service on or before January 10, 2003. It applies to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain in the United States until at least January 10, 2003. The specific requirements are set forth in the Notice.

EFFECTIVE DATES: This Notice is effective on December 2, 2002. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service on or before January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may "prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence."

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System. In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in this Notice shall be registered and required to provide specific information. The Attorney General has the sole discretion to make this determination.

In light of recent events, and based on intelligence information available to the Attorney General, the Attorney General has determined that the aliens described in paragraph (a) of this Notice must appear before the Immigration and Naturalization Service ("Service") and provide certain information. This Notice applies only to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain until at least January 10, 2003. Based on intelligence information available to the Attorney General, the Attorney General has determined that registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security. Accordingly, the Attorney General has determined that only males aged 16 years or older need to be registered at this time. Furthermore, the Attorney General has determined that aliens who have, on or before the date of publication of this Notice, applied for asylum, have already provided sufficient information in their applications for asylum, along with their fingerprints, to warrant exclusion from this Notice.

Although section 265(b) of the Act, 8 U.S.C. 1305(b), provides a minimum period of 10 days notice for covered aliens to provide their current address and other required information, this Notice allows an alien described by the Notice a period of more than 30 days to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

With this Notice, aliens from six of the seven designated state sponsors of terrorism (Iran, Iraq, Libya, North Korea, Sudan, and Syria) will have been asked to specially register. The remaining state sponsor of terrorism is Cuba. The Cuban Government has not undertaken significant actions to support the global coalition against terrorism, and continues to harbor members of terrorist organizations. However, given the various programs and practices in place dealing with Cubans arriving in the United States, the objectives of the National Security Entry—Exit Registration System are being generally met for this group.

Finally, until further notice, once enrolled within the National Security Entry—Exit Registration System by registration under this Notice, an alien described in paragraph (a) of the Notice is required to register annually with the Service. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5) through (f)(9).

A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). *See* 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the provisions of this Notice is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to this Notice fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). *See* 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) *Scope.* Except as provided in paragraph (g), an alien is required to register pursuant to this Notice if the alien:

(1) Is a male who was born on or before December 2, 1986;

(2) Is a national or citizen of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, or Yemen, who was inspected by the Immigration and Naturalization Service and was last admitted to the United States as a nonimmigrant on or before September 30, 2002; and

(3) Will remain in the United States at least until January 10, 2003.

(b) *Dual citizens.* This Notice is applicable to any alien who is a national or citizen of a designated country, notwithstanding any dual nationality or citizenship.

(c) *Requirement to appear before an immigration officer.* All aliens described in paragraph (a) shall, on or before January 10, 2003, appear before an immigration officer at any of the locations listed in the appendix to this Notice.

(d) *Information to be provided.* All aliens described in paragraph (a) shall:

(1) Answer questions under oath before an immigration officer, which answers shall be recorded by the immigration officer;

(2) Present to such immigration officer:

(i) The alien's travel documents, including passport and the Form I–94 issued upon admission, and any other forms of government-issued identification;

(ii) Proof of residence, such as, but not limited to, title to land or a lease or a rental agreement, and, if applicable, proof of matriculation at an educational institution, and, if applicable, proof of employment; and

(iii) Such other information as is requested by the immigration officer; and

(3) Shall be fingerprinted and photographed by the immigration officer.

(e) *Annual reporting obligations.* All aliens described in paragraph (a) shall appear, within 10 days of each anniversary of the date on which they were registered under this Notice, before an immigration officer at any of the locations listed in the appendix to this Notice and answer questions under oath. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5)–(9).

(f) *Notice of Change of Address.* All aliens described in paragraph (a) shall advise the Immigration and Naturalization Service, through the filing of Form AR–11, of any change of address within 10 days of such change of address. If an alien fails to notify the Immigration and Naturalization Service in writing of a change of address and the new address, as required by section 265(a) of the Act, 8 U.S.C. 1305(a), the alien may be subject to prosecution under section 266(b) of the Act, 8 U.S.C. 1306(b), and may be deportable as provided in section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A). If it becomes necessary to place the alien in removal proceedings, the Immigration and Naturalization Service may use the most recent address provided by the alien for service of the Notice to Appear.

(g) *Inapplicability.* The requirements of this Notice do not apply to any alien who:

(1) Is presently in a nonimmigrant classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, 8 U.S.C. 1101(a)(15)(A) or 8 U.S.C. 1101(a)(15)(G);

(2) Is lawfully admitted to the United States for permanent residence; or

(3) Has applied for asylum on or before November 22, 2002, or has been granted asylum, under section 208 of the Act, 8 U.S.C. 1158.

Dated: November 19, 2002.

Larry D. Thompson,

Acting Attorney General.

Appendix—Immigration and Naturalization Service Offices for Registration of Certain Nonimmigrants Pursuant to Notice of November 22, 2002

Alaska—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501.
Arizona—Phoenix, 2035 North Central Avenue, Phoenix, Arizona 85004.
Arizona—Tucson, 6431 South Country Club Road, Tucson, Arizona 85706–5907.
Arkansas—Fort Smith, 4991 Old Greenwood Road, Fort Smith, Arkansas 72903.
California—Fresno, 865 Fulton Mall, Fresno, California 93721.
California—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012.
California—Sacramento, 650 Capitol Mall, Sacramento, CA 95814.
California—San Bernardino, 655 West Rialto Avenue, San Bernardino, California 92410.
California—San Diego, 880 Front Street, Suite 1209, San Diego, California 92101.
California—San Francisco, 444 Washington Street, San Francisco, California 94111.
California—San Jose, 1887 Monterey Road, San Jose, California 95112.
California—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701.
Colorado—Denver, 4730 Paris Street, Denver, CO 80239.
Connecticut—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103.
Florida—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216.
Florida—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138.
Florida—Orlando, 9403 Tradeport Drive, Orlando, Florida 32827.
Florida—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708.
Florida—West Palm Beach, 301 Broadway, Riviera Beach, Florida 33401.
Georgia—Atlanta, 77 Forsyth Street, SW., Atlanta, Georgia 30303.
Guam—Agana, Sirena Plaza, Suite 100, 108 Hernan Cortez Avenue, Hagatna, Guam 96910.
Hawaii—Honolulu, 595 Ala Moana Boulevard, Honolulu, Hawaii 96813.
Idaho—Boise, 1185 South Vinnell Way, Boise, Idaho 83709.
Illinois—Chicago, 230 South Dearborn, 2nd Floor, Chicago, Illinois 60604.
Indiana—Indianapolis, 950 N. Meridian Street, Room 400, Indianapolis, Indiana 46204.
Iowa—Des Moines, 210 Walnut Street, Room 369, Des Moines, Iowa 50309.
Kansas—Wichita, 271 West 3rd Street North, Suite 1050, Wichita, Kansas 67202–1212.
Kentucky—Louisville, 601 West Broadway, Room 390, Louisville, Kentucky 40202.
Louisiana—New Orleans, 701 Loyola Avenue, New Orleans, Louisiana 70113.
Maine—Portland, 176 Gannet Drive, South Portland, Maine 04106.
Maryland—Baltimore, 31 Hopkins Place, Baltimore, Maryland 21201.
Massachusetts—Boston, Government Center, JFK Federal Building, Boston, Massachusetts 02203.
Michigan—Detroit, 333 Mount Elliot Street, Detroit, Michigan 48207–4381.
Minnesota—Minneapolis, 2901 Metro Drive, Suite 100, Bloomington, Minnesota 55425.
Missouri—Kansas City, 9747 Northwest Conant Avenue, Kansas City, Missouri 64153.
Missouri—St. Louis, 1222 Spruce Street, St. Louis, Missouri 63103.
Montana—Helena, 2800 Skyway Drive, Helena, Montana 59601.
Nebraska—Omaha, 3736 South 132nd Street, Omaha, Nebraska 68144.
Nevada—Las Vegas, 3373 Pepper Lane, Las Vegas, NV 89120–2739.
Nevada—Reno, 1352 Corporate Boulevard, Reno, Nevada 85902.
New Hampshire—Manchester, 803 Canal Street, Manchester, New Hampshire 03101.
New Jersey—Cherry Hill, 1886 Greentree Road, Cherry Hill, New Jersey 08003.
New Jersey—Newark, 970 Broad Street, Newark, New Jersey 07102.
New Mexico—Albuquerque, 1720 Randolph Road SE., Albuquerque, New Mexico 87106.
New York—Albany, 1086 Troy-Schenectady Road, Latham, New York 12110.
New York—Buffalo, 130 Delaware Avenue, Buffalo, New York 14202.
New York—New York City, 26 Federal Plaza, New York, New York 10278.
North Carolina—Charlotte, 210 E. Woodlawn Road, Building 6, Suite 138, Charlotte, North Carolina 28217.
Ohio—Cincinnati, 550 Main Street, Room 4001, Cincinnati, Ohio 45202.
Ohio—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199.
Ohio—Columbus, 50 West Broad Street, Suite 304D, Columbus, Ohio 43215.
Oklahoma—Oklahoma City, 4149 Highline Boulevard, Suite 300, Oklahoma City, Oklahoma 73108.
Oregon—Portland, 511 Northwest Broadway, Portland, Oregon 97209.
Pennsylvania—Philadelphia, 1600 Callowhill Street, Philadelphia, Pennsylvania 19130.
Pennsylvania—Pittsburgh, 1000 Liberty Avenue, Room 214, Pittsburgh, Pennsylvania 15222.
Puerto Rico—San Juan, 7 Tabonuco Street, Guaynabo, Puerto Rico 00968.
Rhode Island—Providence, 200 Dyer Street, Providence, Rhode Island 02903.

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St. Croix—Christiansted, Sunny Isle Shopping Center, Christiansted, St. Croix, U.S. Virgin Islands 00820.
St. Thomas—Charlotte Amalie, Nisky Center, Suite 1A, First Floor South, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00802.
South Carolina—Charleston, 170 Meeting Street, Fifth Floor, Charleston, South Carolina 29401.
South Carolina—Greer, 142–D West Philips Road, Greer, South Carolina 29650.
Tennessee—Memphis, 1314 Sycamore View Road, Suite 100, Memphis, Tennessee 38134.
Texas—Dallas, 8101 North Stemmons Freeway, Dallas, Texas 75247.
Texas—El Paso, 1545 Hawkins Boulevard, El Paso, Texas 79925.
Texas—Harlingen, 2102 Teege Avenue, Harlingen, Texas 78550–4667.
Texas—Houston, 126 Northpoint Drive, Houston, Texas 77060.
Texas—San Antonio, 8904 Fourwinds Drive, San Antonio, Texas 78239.
Utah—Salt Lake City, 5272 South College Drive, #100, Murray, Utah 84123.
Vermont—St. Albans, 64 Gricebrook Road, St. Albans, Vermont 05478.
Virginia—Norfolk, 5280 Henneman Drive, Norfolk, Virginia 23513.
Washington, DC, 4420 North Fairfax Drive, Arlington, Virginia 22203.
Washington—Seattle, 815 Airport Way, South, Seattle, Washington 98134.
Washington—Spokane, 920 W. Riverside, Room 691, Spokane, Washington 99201.
Washington—Yakima, 417 E. Chestnut, Yakima, Washington 98901.
West Virginia—Charleston, 210 Kanawha Boulevard West, Charleston, West Virginia 25302.
Wisconsin—Milwaukee, 310 East Knapp Street, Milwaukee, Wisconsin 53202.

For further information relating to this notice and information about local office hours and locations, the public may call the National Customer Service Center at 1–800–375–5283 or (TTY) 1–800–767–1833, or visit the INS Web site at *http://www.ins.gov/*.

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S. 1210/P.L. 107–292

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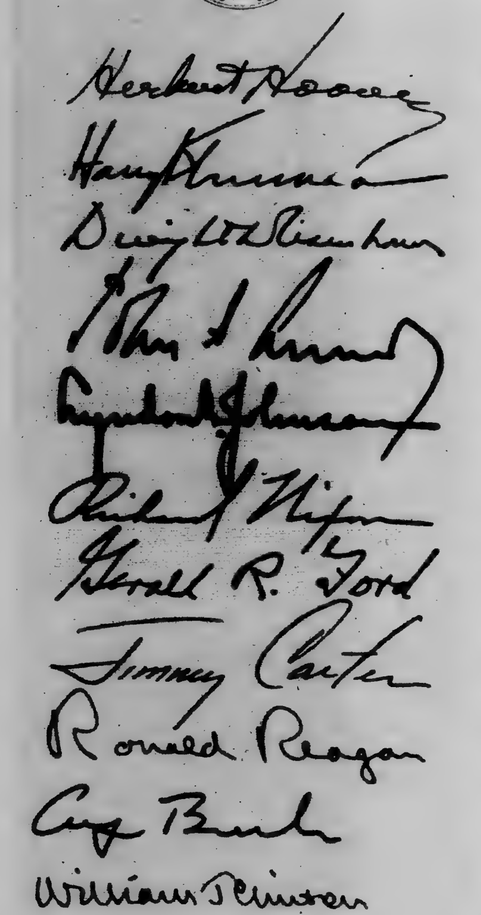
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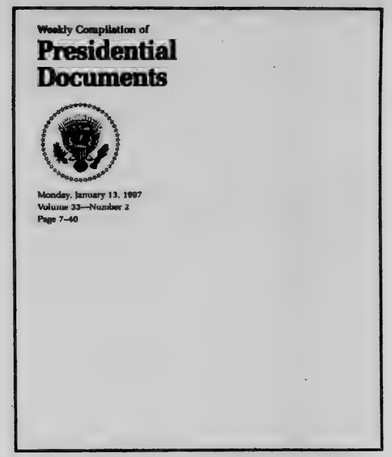
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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Chapters XVIII and XLII

Policy Statement for Direct Final Rulemaking

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Policy statement.

SUMMARY: The Rural Business-Cooperative Service (RBS) is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that RBS judges to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. "Adverse comments" are those comments that suggest a rule should not be adopted or suggest that a change should be made to the rule. Each direct final rule will advise the public that no adverse comments are anticipated, and that, unless written adverse comments or written notice of intent to submit adverse comments is received within 30 days from the date the direct final rule is published in the **Federal Register**, the rule will be effective 45 days from the date the direct final rule is published in the **Federal Register**. At the same time, RBS may publish a document in the proposed rules section of the same issue of the **Federal Register** proposing approval of and soliciting comments on the same action contained in the direct final rule. If adverse comments or notice of intent to file adverse comments are received by RBS, the direct final rule will be withdrawn prior to the effective date. RBS will address the comments received in response to the direct final rule in a subsequent final rule. This new policy should expedite promulgation of non-controversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

FOR FURTHER INFORMATION CONTACT: Pandor H. Hadjy, Assistant Deputy Administrator, Business Programs, RBS, U.S. Department of Agriculture, Room 5050–S, 1400 Independence Avenue, SW., STOP 3220, Washington, DC 20250–3220; Telephone: 202–720–9693; Facsimile: 202–690–0097; E-mail: *pandor.hadjy@usda.gov.*

SUPPLEMENTARY INFORMATION: RBS is committed to improving the efficiency of its regulatory process. In pursuit of this goal, we plan to employ the rulemaking procedure known as "direct final rulemaking" to promulgate some RBS rules.

The Direct Final Rule Process

Rules that RBS judges to be noncontroversial and unlikely to result in adverse comments will be published in the **Federal Register** as direct final rules. At the same time, RBS may publish a document in the proposed rules section of the same issue of the **Federal Register** proposing approval of and soliciting comments on the same action contained in the direct final rule. Each direct final rule will advise the public that no adverse comments are anticipated, and that, unless adverse comments are received within 30 days, the direct final rule will be effective 45 days from the date the direct final rule is published in the **Federal Register**. "Adverse comments" are comments that suggest that the rule should not be adopted or that suggest that a change should be made to the rule. A comment expressing support for the rule as published will not be considered adverse. Further, a comment suggesting that requirements in the rule should or should not be employed by RBS in other programs or situations outside the scope of the direct final rule will not be considered adverse. If RBS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a document withdrawing the direct final rule prior to its effective date will be published in the **Federal Register** stating that adverse comments were received. If RBS concurrently published a notice of proposed rulemaking RBS will address the comments received in response to the direct final rule in a subsequent final rule on the related proposed rule. In such cases, RBS will not institute a second comment period on the action.

In accordance with rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 533), the direct final rulemaking procedure gives the public general notice of RBS' intent to adopt a new rule and gives interested persons an opportunity to participate in the rulemaking process through submission of and consideration by RBS of comments. The major feature of the direct final rulemaking process is that if RBS receives no written adverse comments and no written notice of intent to submit adverse comments within the comment period specified, RBS will publish a document in the **Federal Register** stating that no adverse comments were received regarding the direct final rule and confirming that the direct final rule is effective on the date in the direct final rule.

Determining When To Use Direct Final Rulemaking

Not all RBS rules are good candidates for the direct final rulemaking. RBS intends to use the direct final rulemaking procedure only for rules that we consider non-controversial and unlikely to generate adverse comments. The decision whether to use the direct final rulemaking process for a particular action will be based on RBS' experience with similar actions.

Dated: October 31, 2002.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 02–29480 Filed 11–22–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 562

[No. 2002–64]

RIN 1550–AB54

Regulatory Reporting Standards: Qualifications for Independent Public Accountants Performing Audit Services for Voluntary Audit Filers

AGENCY: Office of Thrift Supervision, Treasury.

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ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting an interim final rule that amends its annual independent audit requirements for small, non-public, highly rated savings associations that voluntarily obtain independent audits. This change will make OTS's requirements more consistent with those of the other federal banking agencies and will avoid the potential regulatory burden that could otherwise result from other regulatory action.

DATES: This interim rule is effective November 25, 2002. Written comments must be received by December 26, 2002.

ADDRESSES:

Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2002–54.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, No. 2002–54.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: Regulations Comments, No. 2002–54.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2002–54, and include your name and telephone number.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Christine Smith, Project Manager, (202) 906–5740, Examination Policy Division, or Teresa A. Scott, Counsel (Banking & Finance), (202) 906–6478, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Changes

Savings associations that are publicly traded,[1] have assets of $500 million or more,[2] or have a 3, 4, or 5 CAMEL rating[3] must obtain and file an annual independent audit. Small, non-public, 1- or 2-rated savings associations are not required to obtain an independent audit. Currently, OTS regulations require that public accountants conducting these independent audits (whether required or voluntary) follow the SEC independence rules, including those governing outsourcing of non-audit services. 12 CFR 562.4(d) and (e) (2002).

In 1994 when OTS originally promulgated §§ 562.4(d) and (e), OTS believed that the SEC independence rules provided an appropriate standard for assessing auditor independence and that this standard would not unduly burden small, non-public, highly rated savings associations that file voluntary audits with OTS.[4] Because recent statutory changes intended to reach publicly traded institutions would indirectly affect these voluntary filers, OTS has reexamined the use of this standard.

On July 30, 2002, Congress passed the Sarbanes-Oxley Act of 2002.[5] Title II of that act sets forth standards for auditor independence. Specifically, section 201(g)(5) prohibits a registered public accountant from performing an audit for a public company contemporaneously with providing that company with delineated non-audit services, including internal audit outsourcing services. This congressional mandate would affect a change in the SEC independence rules.

If OTS rules remain unchanged, a savings association that obtains a voluntary audit may not use its external auditors to perform non-auditing services.[6] Although OTS encourages non-publicly held savings associations that voluntarily file audits with the agency to follow the prohibition from Sarbanes-Oxley, OTS is concerned that an absolute prohibition in this manner may be unnecessarily detrimental to some voluntary filers. Specifically, OTS believes that small institutions with less complex operations and limited staff, may, in some instances, use their independent public accountant to perform both an external audit and some or all of an audit client's non-audit activities consistent with the OTS's safety and soundness objectives. Some of these institutions may not have access to a full range of qualified public accountants such that they could engage both an external auditor and a different outside firm to perform non-audit functions. Other institutions may reasonably have determined that the costs of having a full time in-house staff to perform those services exceed the benefits.

Moreover, none of the other banking agencies require that institutions that file voluntary audits follow the SEC independence rules. Requiring savings associations to do so may place these savings associations at an unnecessary competitive disadvantage as these requirements became more restrictive. Therefore, OTS is amending its regulation to eliminate the requirement that institutions voluntarily filing audits comply with the SEC independence rules.[7]

On the other hand, OTS continues to believe that auditor independence is important to the safety and soundness of all institutions and thus OTS is retaining the requirement that institutions filing voluntary audits comply with the AICPA Professional Conduct Code, including those sections that address independence. Further, OTS may monitor voluntary audit filers' non-audit outsourcing to ensure that institutions are properly preserving the independence between the two functions. OTS believes that this approach is the most effective means of maintaining comparability and consistency with the other banking agencies. This approach also reduces regulatory burden on savings associations filing voluntary audits consistent with safe and sound regulation.

[1] 17 U.S.C. 78m (West 2002). Generally, federally-chartered publicly traded savings associations file annual audits with OTS, while generally publicly traded federally-chartered thrift holding companies file audits with the Securities and Exchange Commission (SEC).

[2] 12 CFR 363.2 (2002). These institutions file annual audits with the Federal Deposit Insurance Corporation and OTS.

[3] 12 CFR 562.4(b). These savings associations file annual audits with OTS.

[4] The SEC modified its independence rules in December 2000. The modified rules, although more restrictive than those in effect in 1994, continued to provide an appropriate standard for savings associations that file audits voluntarily. However, see discussion below concerning changes required by the Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, § 201, 116 Stat. 745 (2002).

[5] Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, § 201, 116 Stat. 745 (2002).

[6] These services include bookkeeping, financial information systems design, appraisal, valuation, and actuarial services, and internal audit outsourcing services. For a complete list of prohibited activities, see *id.* at § 201.

[7] OTS understands that passage of the Sarbanes-Oxley Act may place increased responsibilities on small publicly held savings associations, including the prohibitions against outsourcing internal non-audit services to the association's external auditor. Nothing in this rule affects those requirements.

II. Justification for Interim Rule

A. Notice and Comment Requirement

Section 553 of the Administrative Procedure Act (APA) permits an agency to issue rules without prior notice and comment if the agency finds good cause and explains its finding when it publishes the rule. 5 U.S.C. 553(b)(B). A finding that notice and comment are impracticable, unnecessary, or contrary to the public interest constitutes good cause.

As discussed more fully above, OTS has examined the legislative changes made by the Sarbanes-Oxley Act and the potential impact of any implementing regulations on small, non-public savings associations. OTS believes that the interaction of these changes with OTS's current regulations on voluntary audits could significantly increase the regulatory burden on these small thrifts. Small, non-public banks and non-depository institutions are not covered by the new independence rules. Small, non-public, highly rated thrifts do not pose any greater risks.

Elimination of the regulatory requirement decreases burden on the industry and permits certain savings associations more flexibility in accessing the marketplace in search of non-audit services that may be performed by outside entities. The change also aligns OTS regulations more closely to those of the other banking agencies. Accordingly, OTS concludes that public notice and comment on these changes in advance of implementation are unnecessary and contrary to the public interest. Nonetheless, OTS invites comments on this interim rule during the 60-day period following its publication. In developing a final rule, OTS will consider all public comments it receives within that period.

B. Effective Date Requirement

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new OTS regulations and amendments to existing regulations take effect on the first day of a calendar quarter that begins on or after the date of publication of the rule. This delayed effective date provision applies only if the rule imposes additional reporting, disclosure, or other new requirements on insured depository institutions.

As a related matter, section 553(d) of the APA states that a rule must not be made effective before 30 days after its publication. 5 U.S.C. 553(b)(B). This APA provision does not apply, however, if the rule grants or recognizes an exemption or relieves a restriction.

OTS concludes that neither CDRIA nor the APA precludes the publication of this rule with an immediate effective date. This rule makes only burden reducing amendments to OTS rules and relieves current requirements on independence and non-audit outsourcing activities.

II. Findings and Certifications

A. Executive Order 12866

The Director of OTS has determined that this interim rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, OTS must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this interim rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. It removes a requirement that could, if left unchecked, inadvertently lead to potential additional regulatory burden. The interim rule, which is written in plain language, reduces regulatory burden.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995[8] (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, section 202 of the Unfunded Mandates Act does not require the OTS to prepare a budgetary impact statement for this rule.

D. Paperwork Reduction Act

The OTS has determined that this interim final rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

For the reasons set out in the preamble, the Office of Thrift Supervision amends part 562 of chapter V, title 12, of the Code of Federal Regulations as follows:

PART 562—REGULATORY REPORTING STANDARDS

1. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463

2. Amend § 562.4 by revising paragraphs (d)(3) and (e) to read as follows:

§ 562.4 Audit of savings associations and savings association holding companies.

* * * * *

(d) * * *

(3)(i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

* * * * *

(e) *Voluntary audits.* When a savings association, savings and loan holding company, or affiliate (as defined by 12 CFR 563.41(b)(1)) obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3)(i) of this section.

Dated: November 18, 2002.

By the Office of Thrift Supervision.

James Gilleran,

Director.

[FR Doc. 02–29833 Filed 11–22–02; 8:45 am]

BILLING CODE 6720–01–P

[8] Pub. L. 104–4, 109 Stat. 48 (1995) (codified at 2 U.S.C. Chs. 17A, 25).

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–35–AD; Amendment 39–12953; AD 2002–23–09]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers. That AD currently requires initial and repetitive inspections of Torx head blade root lag screws that are used on certain serial number (SN) propellers and replacement of all lag screws on the propeller if any screws are found broken or with insufficient torque. In addition, that AD currently requires the replacement of certain part number (P/N) Torx head blade root lag screws with improved, hexagonal head blade root lag screws. This amendment requires the expansion of the applicability from certain SN propellers to all propellers with certain SN blades that may contain the suspect Torx head blade root lag screws. This amendment is prompted by FAA awareness that a propeller hub of an affected propeller could be changed, thereby changing the propeller serial number, creating a propeller that is not listed in the AD and that has affected blades and lag screws. The actions specified by this AD are intended to prevent failure of the blade root lag screw, which could result in propeller blade separation and loss of control of the airplane.

DATES: Effective December 30, 2002.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 23, 1999 (64 FR 36777, July 8, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33; fax (0 94 29) 84 32; Internet address: "*propeller@aol.com*". This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–14–06, Amendment 39–11216 (64 FR 36777, July 8, 1999), which is applicable to MT-Propeller Entwicklung GMBH models MTV–9–B–C and MTV–3–B–C propellers was published in the **Federal Register** on February 27, 2002 (67 FR 8910). That action proposed to require the expansion of the applicability from certain serial number (SN) propellers to all propellers with certain SN blades that may contain the suspect Torx head blade root lag screws in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5, 1999.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 250 propellers of the affected design in the worldwide fleet. The FAA estimates that 125 propellers installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 13 work hours per propeller to do the actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $97,500.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11216, (64 FR 36777 July 8, 1999) and by adding a new airworthiness directive, Amendment 39–12953, to read as follows:

2002–23–09 MT-Propeller Entwicklung GMBH: Amendment 39–12953. Docket No. 99–NE–35–AD. Supersedes AD 99–14–06, Amendment 39–11216.

Applicability: This airworthiness directive (AD) is applicable to MT-Propeller Entwicklung GMBH models MTV–9–B–C and MTV–3–B–C propellers equipped with CL250–27 or CL260–27 blades with serial numbers (SN's) starting with letter "A" through "P", equipped with Torx head blade root lag screws, part number (P/N) A–549–85 (3mm thread pitch), or P/N A–550–85 (4mm thread pitch); and Model MTV–3–B–C propellers, equipped with L250–21 blades with SN's starting with letter "A" through "P", equipped with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), or P/N A–550–85 (4mm thread pitch). These propellers are installed on, but not limited to, Sukhoi SU–26, SU–29, SU–31; Yakovlev YAK–52, YAK–54, YAK–55, and Technoavia SM–92 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Required as indicated, unless already done.

To prevent blade root lag screw failure, which could result in propeller blade separation and loss of control of the airplane, do the following:

(a) For propellers with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), inspect Torx head blade root lag screws for torque values and breakage in accordance with MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 17–A, dated March 5, 1999, as follows:

(1) Initially inspect within 50 hours time-in-service (TIS), or within two months after the effective date of this AD, whichever occurs first.

(2) Thereafter, inspect at intervals not to exceed 100 hours TIS, or within 12 months, whichever occurs first.

(3) Before further flight, if any lag screws are found broken or with torque less than 64 foot-pounds, replace all lag screws with new lag screws.

(b) For propellers with lag screws, P/N A–550–85 (4mm thread pitch), inspect lag screws for torque values and breakage in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5, 1999, as follows:

(1) Inspect within 50 hours TIS, or within two months after the effective date of this AD, whichever occurs first.

(2) Before further flight, if any lag screws are found broken or with torque less than 64 foot-pounds, replace all lag screws with improved, hexagonal head blade root lag screws, P/N A–983–85. Torque screws to 58–60 foot-pounds.

(c) Replace lag screws, P/N A–550–85, within 100 hours TIS, or within 12 months after the effective date of this AD, with lag screws, P/N A–983–85, in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5, 1999. Torque screws to 58–60 foot-pounds.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators must submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The actions must be done in accordance with MT-Propeller Entwicklung GMBH service bulletin: 17A, dated March 5, 1999.

The incorporation by reference of MT-Propeller Entwicklung GMBH service bulletin: 17A, dated March 5, 1999, was approved by the Director of the Federal Register as of July 23, 1999 (64 FR 36777, July 8, 1999). Copies may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet address: *propeller@aol.com*. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 30, 2002.

Issued in Burlington, Massachusetts, on November 8, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29354 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–13]

Establishment of Class D Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Griffiss Airpark, Rome, NY. This action is necessary to insure continuous altitude coverage for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On September 27, 2002 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace upward from the surface to and including 3,200 feet mean sea level (MSL) at Griffiss Airpark, Rome, NY was published in the **Federal Register** (67 FR 61045). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2003 and effective September 16, 2002. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace from the surface of the earth to and including 3,200 feet MSL within a 4 mile radius of the airport for aircraft conducting IFR operations at Griffiss Airpark, Rome, NY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth

* * * * *

AEA NY D Rome, NY [NEW]

Griffiss Airpark, Rome, NY
(Lat. 43°14'02" N., long. 75°24'25" W.)
Oneida County Airport, Utica, NY
(Lat. 43°08'43" N., long. 75°23'02" W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4-mile radius of Griffiss Airpark excluding the portion within the 4.2-mile radius of Oneida County Airport Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in Jamaica, New York on November 7, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–29902 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR 71

[Docket No. FAA–2002–13820; Airspace Docket No. 02–AGL–11]

Modification of Class E Airspace; Flint, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Flint, MI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) to several Runways (RWYS) have been developed for Prices Airport, Linden, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of existing controlled airspace at Bishop International Airport.

EFFECTIVE DATE: 0901 UTC, January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Flint, MI (67 FR 53534). The proposal was to modify existing Class E airspace at Bishop International Airport, MI, in order to protect for several new RNAV SIAPS.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Flint, MI, by increasing the radius of controlled airspace around the Prices Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Flint, MI [Revised]

Flint, Bishop International Airport, MI
(Lat. 42°57'56" N., long. 83°44'36" W.)
Owosso Community Airport, MI
(Lat. 42°59'35" N., long. 84°08'20" W.)
Davison, Athelone Williams Memorial Airport, MI
(Lat. 43°01'45" N., long. 83°31'47" W.)
Linden, Prices Airport, MI
(Lat. 42°48'27" N., long. 83°46'25" W.)
PETLI LOM
(Lat. 42°58'05" N., long. 83°53'25" W.)
Grand Blanc, Genesys Regional Medical Center, MI
Point in Space Coordinates
(Lat. 42°52'59" N., long. 83°39'05" W.)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Bishop International Ayirport, and within 4.4 miles north and 7 miles south of the Flint ILS localizer west course, extending from the 10.5-mile radius area to 10.5-miles west of the PETLI LOM, and within a 6.4-mile radius of the Owosso Community Airport, and within a 6.4-mile radius of the Prices Airport, and within a 6.3-mile radius of the Athelone Williams Memorial Airport, and within a 6-mile radius of the Point in Space serving the Genesys Regional Medical Center, excluding that airspace within the Detroit, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on November 13, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–29900 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13517; Airspace Docket No. 02–AGL–09]

Modification of Class E Airspace; Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Indianapolis, IN, Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) to several Runways (RWYS) have been developed for Indianapolis International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of existing controlled airspace at Indianapolis International Airport.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Indianapolis, IN (67 FR 53531). The proposal was to modify existing Class E airspace at Indianapolis International Airport, IN, in order to protect for several new RNAV SIAPs.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Indianapolis, IN, for Indianapolis International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Indianapolis, IN [Revised]

Indianapolis International Airport, IN
(Lat. 39° 43' 02"N., long. 86° 17' 40"W.)
Indianapolis, Greenwood Municipal Airport, IN
(Lat. 39° 37' 42", long. 86° 05' 16"W.)
Indianapolis, Eagle Creek Airpark, IN
(Lat. 39° 49' 51"N., long. 86° 17' 40"W.)
Indianapolis, Eagle Creek Airpark, IN
(Lat. 39° 49' 51"N., long. 86° 17' 40"W.)
Indianapolis, Helicopter VOR/DME 287° Approach Point in Space
(Lat. 39° 42' 12" long. 86° 06' 28"W.)
Brickyard VORTAC
(Lat. 39° 48' 53"N., long. 86° 22' 03"W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Greenwood Municipal Airport, within a 6.3-mile radius of Eagle Creek Airpark, and within 2.6 miles each side of the Brickyard VORTAC 257° radial, extending from the 6.3-mile radius of the Eagle Creek Airpark and the 7.4-mile radius of the Indianapolis International Airport to 7-miles west of the VORTAC, and within a 6-mile radius of the Point in space serving the helicopter VOR/DME 287° approach.

* * * * *

Issued in Des Plaines, Illinois on November 13, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–29899 Filed 11–22–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 234

[Docket No. OST 2000–8164]

RIN 2139–AA09

Reporting the Causes of Airline Delays and Cancellations

AGENCY: Office of Secretary, DOT.

ACTION: Final rule.

SUMMARY: As required by Federal statute, the Department of Transportation is modifying certain reporting requirements. We are requiring air carriers that file airline service quality performance reports to collect and report the causes of airline

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delays and cancellations. Currently, there is a lack of data on the specific causes of airline delays and cancellations. The changes are designed to fill the data gaps in reference to the causes of airline delays and cancellations and to provide this information to the public and other interested parties.

EFFECTIVE DATE: This rule is effective on June 1, 2003.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Clay Moritz, Office of Airline Information, K–14, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387 or 366–4385, respectively. You can also contact them by e-mail at *bernard.stankus@bts.gov* or *clay.moritz@bts.gov* or by fax at (202) 366–3383.

SUPPLEMENTARY INFORMATION:

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Background

Section 227 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires that we modify our airline data collection system, 14 CFR Part 234—Airline Service Quality Performance Reports, to explain more fully to the public the nature and source of airline delays and cancellations (See Pub. L. 106–181, 114 Stat. 61). AIR–21 also directed that DOT establish a Task Force to review airline delays and cancellations and develop recommendations for the associated reporting criteria. Since the passage of AIR–21, Congress has continued to express concern that DOT needs more accurate data to better understand gate, tarmac, and airborne delays. The DOT Office of the Inspector General (OIG) also highlighted the need to examine airline delays and cancellations in its July 25, 2000 report on air carrier flight delays and cancellations. Our own consumer complaint statistics also support regulatory action to reduce airline delays. Also, passengers have expressed frustration when not advised of the cause and length of delays.

In August 2000, we formed the Air Carrier On-Time Reporting Advisory Committee (the Task Force). The Task Force members were chosen to reflect a balanced cross section of interests. In addition to government representatives, they included representatives from consumer airline groups, air carriers, labor unions and airport operators. On September 25, 2000, the Task Force was chartered as a Federal advisory committee. Its mission was to consider changes to the current on-time reporting system so that the public would have clear information about the nature and sources of airline delays and cancellations.

In the Fall of 2000 (*i.e.*, October 25 and 26, November 1 and 2, and November 13), the Task Force held several meetings to identify the issues surrounding airline delays and cancellations and to develop reporting criteria. The meetings were announced in the **Federal Register** (65 FR 63285) and were open to the public. We opened a public docket for the submission of comments, Docket OST–2000–8164. On November 29, 2000, the Task Force submitted its report to DOT. The Task Force made a number of recommendations, including that we establish a reporting framework for collecting information about the causes of airline delays and cancellations. The Task Force also recommended that, prior to rulemaking, we conduct a pilot program to test the proposed reporting categories. Following up on that recommendation, we contacted a number of air carriers; four air carriers agreed to participate in a voluntary pilot project. The four carriers were American Airlines, Delta Air Lines, Southwest Airlines and United Air Lines. Over several months, we met with the four carriers and discussed what causal delay and cancellation information should be collected and how best to report that delay and cancellation data. After the parties agreed on a reporting framework, the carriers began submitting delay and cancellation data to us.

We used the recommendations from the Task Force, the results of our pilot project and our outreach efforts to craft the Notice of Proposed Rulemaking (NPRM) which was published on December 27, 2001 (66 FR 66833). In response to the NPRM, we received 16 comments.

The Proposed Rule

The Department proposed requiring air carriers that file airline service quality performance reports under Part 234 regulations to collect and report the causes of airline delays and cancellations. There was a lack of data on the specific causes of airline delays and cancellations. The Department proposed four delay categories and three cancellation categories as follows:

Delays	Cancellations
Air Carrier	Air Carrier.
Weather	Weather.
National Aviation System.	National Aviation System.
Late Arriving Aircraft	

The proposed changes were designed to fill the data gaps in reference to the causes of airline delays and cancellations and to provide this information to the traveling public and the parties most capable of addressing the causes of the delays and cancellations.

Public Comments

We received comments from America West Airlines, American Trans Air, Southwest Airlines, the Air Transport Association of America (ATA), the Regional Airline Association (RAA), the American Society of Travel Agents (ASTA), the Airports Council International—North America (ACI–NA), the American Automobile Association (AAA), the City of Boston, Save the Bay Association, the San Francisco Boardsailing Association (SFBA), the Paralyzed Veterans of America, Mr. B.E. Wendling, Mr. George Rummell, Ms. Melissa Davis, and Mr. Paul Asmus. The substance of these comments is discussed below under a series of topical captions.

The Continuing Need for Causal Reporting

Southwest Airlines believes that the operating environment since September 11, 2001, negates the need to impose new reporting requirements in the near future.

Mr. Paul D. Asmus believes that modifying the on-time data collection system, to explain more fully to the traveling public the source and nature of airline delays, may create a serious safety problem. Mr. Asmus states that, "The NPRM as envisioned, plans to add delays for aircraft maintenance in the data that the carriers are required to provide." He believes this could lead to mechanics being pressured "to work faster and cut corners." Mr. Asmus requested an Office of the Inspector General (IG) audit and, while the IG conducts its audit, that the Department place a hold on the rulemaking.

It is only a matter of time before traffic is back to or above the levels of the summers of 2000 and 2001. The Department wants to be pro-active in identifying problem areas and making the necessary improvements to the aviation system to avoid the gridlock which reached a peak in the summer of 2000. For the first eight months of 2001, on-time arrivals increased to 77.4% as compared to 72.7% for the first eight months of 2000. This was accomplished despite an increase of 17,440 flight operations. The improvement was accomplished in a large measure because the FAA made significant progress in correcting problems identified with respect to improving the flow of traffic through seven major airspace choke points in our national airspace system, American and Delta reduced operations at peak times at their hub airports, and Continental and United increased the size of aircraft operated at selected airports. The Department does not want to become complacent in its initiative to reduce air carrier delays. In the Office of the Inspector General's report titled Actions to Enhance Capacity and Reduce Delays and Cancellations (August 17, 2001), the number one item listed as needing attention is the creation of a uniform system for tracking the causes of flight delays and cancellations.

As to the inclusion of flights that are delayed or cancelled for maintenance, the Department has included statistics for such flights beginning in January 1995. While the Department tracked whether the flights experienced delays, the reasons for delays were not identified. The inclusion of all carrier operations in the airline service quality performance data base provides consumers with a more accurate picture of a carrier's overall on-time record. Moreover, we have seen no evidence whatsoever that inclusion of cancellations and delays related to maintenance has in any way diminished safety. To the contrary, there is an incentive for carriers to keep their equipment in top working condition. While the present proposal recommends collection of the causes of delays and cancellations, the proposed cause categories are broad and do not specifically identify maintenance delays or cancellations. As proposed, maintenance delays and cancellations would be reported as "Air Carrier" caused delays.

The safety of passengers and crew has always been the most important responsibility of air carriers and the number one priority of the Department. The Department does not believe a delay in the rulemaking is appropriate; however, the Department will investigate any specific allegation that air safety is being compromised and take appropriate action, including enforcement action, where necessary.

In the aftermath of the terrorist attacks of September 11, 2001, large certificated air carriers decreased commercial operations by about 20 percent, as many airlines grounded large numbers of older less efficient aircraft and deferred delivery of new aircraft. As a result of a less congested air transportation system, on-time performance has improved. In March 2002, the FAA held its Annual Commercial Aviation Forecast Conference. During the conference the FAA released The FAA Aerospace Forecasts, Fiscal Years 2002–2013, which estimates that domestic capacity will gradually return to pre-September 11 capacity levels over a 3-year period. At the same time, U.S. regional/commuter air operations continue to grow, albeit at a slower rate than the pre-September 11 growth rate. Thus, although recent on-time performance would not in and of itself indicate need for regulatory action, the Department's statutory mandate, the growing post September 11 airline operations, and our long-range forecasts require regulatory action in this area.

Extending the Reporting Requirements to Other Carrier Groups

We proposed that the requirement to report causes of delays at the present time apply only to the air carriers that are already required to report on-time data under Part 234. These air carriers not only account for the vast majority of domestic operations and enplanements, but they are in a position to quickly adopt the new reporting system, thus minimizing the regulatory burden on the industry and, at the same time, providing valuable information to the public, and to the parties best able to rectify delay problems.

Comments from the ATA, ACI–NA, Save the Bay, SFBA, the City of Boston, and Mr. George Rummell were in favor of extending the reporting requirements to code-share partners of the major carriers, to national air carriers and to large regional air carriers. The RAA is opposed to extending the requirements beyond the current major carriers and believes that American Eagle should be relieved of its current reporting obligation.

SFBA stated that code-share partners of major airlines should begin reporting as soon as practicable. It pointed out that many airports have extensive operations by such code-share carriers and the data from these flights "would be valuable in assessing the delay problems." SFBA stated that although the large certificated air carriers account for 87% of domestic enplanements, they account for a lower percentage of domestic operations. As an example, SFBA pointed to statistics for United Air Lines and its code-share partners at San Francisco-Oakland (SFO) airport for March 4, 1999, stating that while United accounted for 84% of the available seats at SFO, it accounted for only 69% of the operations there. SFBA claims that smaller aircraft "contribute to delay more than larger aircraft" because smaller aircraft are slower, require more space to avoid wake turbulence, and serve less passengers. According to SFBA, as a way to minimize reporting burden on code-share partners, reporting could be limited to reportable airports where the code-share operations account for 10% or more of the operations. A reportable airport is an airport that accounts for at least one percent of domestic scheduled enplanements.

The City of Boston believes that excluding from the proposed new causal reporting requirement 17% of passenger enplanements limits the usefulness of the proposed new data. It stated that "it will be impossible for the DOT to implement well-informed market-based approaches to minimize delays," without delay information from the carriers not required to report.

ACI–NA believes that DOT must design a system for tracking the causes of delays that is accurate and complete. The omission of code-share partners and other scheduled air carriers which account for 17% of passengers distorts and undermines the utility of delay data. According to ACI–NA, "More accurate data will enable smaller and regional carriers to understand their flight delay problems and ultimately help solve those problems. Currently, there is no mechanism that serves this function."

ATA stated that "all major, national and code-sharing partners should be included in the Part 234 reporting system," and each carrier must be responsible for its own reporting. ATA believes that "The 17% of enplanements exempt from reporting contribute a disproportionate, higher number of airplanes to the congestion mix since these airplanes generally have fewer seats." According to ATA, "By leaving out this 17%, we may inadvertently deny ourselves the ability to find out the triggering causes of delays, which increase exponentially at congested airports with each added flight, no

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matter how small the aircraft." ATA cited La Guardia as a good example of an increase in small aircraft operations overwhelming the system.

AAA supports extending the reporting requirements to all air carriers.

Mr. George Rummell believes that the airline industry should report all delays.

The RAA strongly opposes the expansion of the reporting requirements to all medium and large code-sharing regional airlines. It states that regional airlines generally operate routes in the 250 to 500 mile range, which subjects the regional carriers to a high level of ground delays not experienced by major carriers. Regional carriers do not have the technology to easily capture delay data. RAA cites a cost estimate, provided by one of its members, concerning the additional personnel needed to collect and report the data. The estimate places the additional costs at $75,000 per year. RAA further claims that, given the current environment of increased insurance costs and new security fees, the smaller communities served by regional airline may not be capable of absorbing higher air fares which the carriers would need to charge to recover the reporting costs.

The Department realizes that it is a difficult decision to determine the cutoff for which carriers should report on-time data. There were numerous comments that point out the difficulty of making accurate and informed decisions about correcting delay problems when 17% of enplanements and a higher share of operations are omitted. This is compounded by the fact that many of the missing operations are flown by slower moving aircraft. On the other hand, the Department is concerned about adding to the operating cost of small carriers. The Department is attempting to strike a balance between the competing interests. The public interest is best served at this time by applying the new reporting requirements to those airlines that already report on-time data to the Department. Therefore we disagree with RAA's request to relieve American Eagle from the reporting system. American Eagle operated almost 493,000 scheduled domestic passenger flights with almost 12 million domestic enplanements. Relieving American Eagle of its reporting obligation would create a data gap at a time when the Department is looking for economical ways to fill its data needs. American Eagle's data are especially important because American Eagle is the only carrier reporting regional jet operations.

The Department intends to revisit, at a later date, the issue of whether to expand the air carrier universe for on-time reporting. The Department will continue to analyze delay data to see if the reporting burden is too costly for smaller carriers to participate in the data collection. Also, the Department will look at alternative reporting means for less burdensome and costly reporting.

Causal Categories and Methodology

The City of Boston stated that it was unclear from the proposed rule as to which delay category deicing activities should be assigned. It also stated that "bird strikes" are associated with individual airports and should be assigned to the National Aviation System ("NAS"). The City of Boston took issue with the following statement in the NPRM:

> Consistent high volume delays are an indication to airport operators and to state and local governments that there is a need for infrastructure investments and improvements.

It believes volume delays can be addressed by actions such as peak-period pricing, auctioning of landing and takeoff rights, or increased use of secondary airports.

American Trans Air believes that "bird strikes" are acts of God and should be reported under "NAS" delays. The carrier also stated that:

> * * * the National Aviation System category for reporting delays is not adequately defined. There are codes and situations that fall under this category, which are now classified elsewhere or are not specific enough to be meaningful. For example, should not airport delays due to infrastructure, terminal and runway limitations and local and regional curfews fall under NAS? The current allocation of codes, we believe, needs to be less subjective, and include more government-controlled conditions to be labeled as NAS.

ATA believes that "bird strikes" should be attributed to NAS. FAR Part 139 requires airports to have a wildlife management program and there are specific air traffic control (ATC) procedures to alerting pilots to bird hazards. ATA also believes that data on late arriving aircraft is not useful. "Root delay causes for down-line late arriving aircraft cannot be consistently determined when multiple delay causes are involved."

America West asked, "What is the difference between extreme and non-extreme weather delays?" It believes that "bird strikes" should be coded as an external delay/cancellation (*e.g.* extreme weather), not as "Air Carrier" or "NAS." America West questions the logic of allowing carriers to choose whether or not to report the initial cause of delay for late arriving aircraft delays.

Weather

The Department realizes that reporting the causes of airline delays and cancellations adds subjectivity to the reporting system. There is a fine line between some delays coded as "Weather" (extreme weather) and others coded as "NAS" (non-extreme weather). The purpose of the assignment of codes is to identify the party or organization which is in the best position to take corrective action. Delays or cancellations coded "Air Carrier" are best corrected by the air carriers; delays or cancellations coded "NAS" are best corrected by the FAA, airport operators, or State or local governments; and delays or cancellations coded "Weather" (extreme weather) cannot be reduced by corrective action. Delays or cancellations coded "NAS" are the type of weather delays that could be reduced with corrective action by the airports or the FAA. Therefore, delays attributed to deicing are coded as "Weather" delays.

Extreme weather delays or cancellations are caused by weather conditions (*e.g.*, significant meteorological conditions), actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior delay or cancellation attributable to weather.

Security Delays

Ms. Melissa Davis believes that, in light of the terrorists attacks of September 11, 2001, airport disruption or security delays should be added to the list of delay or cancellation causes. Ms. Davis cites the evacuation of Hartsfield International Airport on November 16, 2001, as a prime example of the need for security delay reporting.

ATA recommends that a separate delay category be established to report security delays. ATA asserts that security delays are easily identified and these delays should be distinguished from "NAS" or "Air Carrier" caused delays.

The Department agrees with the commenters that requested a separate category for delays and cancellations that relate to security. We will adopt a new category known as "Security." Congress has assigned responsibility for aviation and other transportation security to the Transportation Security Administration (TSA). One of TSA's primary functions is to provide security screening of passengers and their accessible property transiting from an airport's common areas to its sterile areas where passengers board their flights. Delays in flight departures are not properly attributable to "Security" if they are caused by routine passenger screening. Carriers may or may not elect to delay a flight's departure for such passengers. Flight delays occurring because an air carrier holds a flight for screening are "Air Carrier" delays not "Security" delays. Not all screening and other security-related delays are attributable to "Security." Some security delays may result from actions of air carriers or airport employees who fail to follow security requirements. Air carriers should take care to ensure that delays and cancellations assigned to the "Security" category are not attributable to their own actions or caused by their own employees.

National Aviation System (NAS)

Delays and cancellations attributable to "NAS" refer to a broad set of conditions: weather-non extreme, airport operations, heavy traffic volume, air traffic control, etc.

Delays or cancellations resulting from "bird strikes" should be coded "NAS." While bird strikes could be viewed as an Act of God, improved wildlife management at airports could reduce the frequency of bird strikes.

While air traffic volume delays and cancellations in the short term are generally the result of over-scheduling by the airline industry, these types of delays and cancellations are coded "NAS." Volume delays occur when there are more flights scheduled than the airport can handle for a given period of time. An individual air carrier's schedule by itself does not create volume delays. Rather, it is the accumulation of all the commercial, general aviation, and military operations at the airport that contribute to the problem. Air carriers schedule flights to meet consumer demand. Volume delays can be reduced in the short term through changes in the air carriers' scheduling practices, which includes using larger equipment, or as the City of Boston suggests, by creating incentives to change consumer preference. Such delays may in the long term be reduced by improving the airport's infrastructure (*e.g.* building runways, improving FAA tower facilities, *etc.*). The airline industry must work together reduce volume delays.

Air carriers only track delays up to "push back from the gate." These delays are departure delays. After push back, the aircraft is under air traffic control. Delays occurring after departure are assigned by air carriers to the NAS. Therefore, whenever the arrival delay is greater than the departure delay, the air carriers apportion NAS minutes to make up the difference between the departure delay and the arrival delay (Departure delay + NAS delay = Arrival delay).

Whenever the departure delay is more than the arrival delay, the en route time savings would be prorated back to the departure delay categories. For example, if a 50 minute departure delay consists of a 15 minute "Air Carrier" delay, a 10 minute "NAS" delay, and a 25 minute "Late Arriving Aircraft," then the departure delay would be 30% "Air Carrier," 20% "NAS" and 50% "Late Arriving Aircraft". If the flight arrived 40 minutes late, this would be reported in minutes as 12 minutes "Air Carrier," 8 minutes "NAS" and 20 minutes "Late Arriving Aircraft."

Using the available internal data, the FAA will review the delays reported by the air carriers in the "NAS" category to identify the actual causes of the delays. Air carriers track delays up to the time the aircraft pushes away from the departure gate. Delays that occur after "push-back" are generally assigned to the "NAS" category. The FAA has various data sets that can be used to identify delays after "push-back." One of these is FAA's Air Traffic Operations Network (OPSNET) information. This data set provides information on delays incurred by aircraft while under the control of the air traffic system.

In addition, the National Oceanic and Atmospheric Administration provides the FAA with weather information. Airport operators provide the FAA with information on runway closures and other airport incidents. With these data sets, the FAA has the capability to refine the NAS delays into weather-non extreme, volume, equipment outages, runway closures, other, or "no match."

Carrier Delays

The Paralyzed Veterans of America requested that the Department remove the specific reference to "handling disabled passengers" from the guidance list of "Air Carrier" delays.

The Department concurs with the request of The Paralyzed Veterans of America to remove the specific reference to "handling disabled passengers" from the guidance list of "Air Carrier" delays. Slow boarding or seating covers all passengers and there is no intent to focus on an individual group. Delays attributed to slow boarding are coded as "Air Carrier."

The Department disagrees with the proposal to attribute to "NAS" a delay caused by an air carrier observing an airport curfew. Curfews are in place at many airports and air carriers must plan their schedules taking into account these curfews. If a delay or cancellation is the result of an airport curfew, the delay is an "Air Carrier" delay.

Delays caused by positive passenger/baggage matches are coded "Air Carrier" when the air carrier is responsible for conducting the match. Air carriers are responsible for advising passengers of the time needed for pre-boarding clearances and security screening. If delays are caused by inoperative security equipment or if the government institutes a security action which delays flights, then the delays will be coded as "Security."

Delays Attributed to Late Arriving Aircraft

Consumers have an interest in knowing if particular flights are consistently late due to late arriving aircraft. Delays reported under the "Late Arriving Aircraft" category demonstrate the ripple effects of an earlier flight delay problem. The cause of the initial delay must be addressed to cure the delays associated with late-arriving aircraft. Some carriers track the initial causes and use an internal code to identify the initial cause for downline late arriving aircraft. Other carriers do not track the downline effects of earlier delays and only record that the flight was late because of the previous flight's late "turn around." While data that identify the initial causes of downline delays are useful data, they are not critical. Originally, we proposed in the NPRM to create a two-tier system where carriers had the option to report the root cause of late arriving aircraft delays. We agree with ATA that this two-tier reporting system could be confusing to data users and not produce the desired results. Therefore, in such cases we have decided to require that carriers report only that the delay was the result of a "late arriving aircraft" and not report the initial delay cause. The Department will have the ability to track the ripple effects of downline delays since carriers report the aircraft tail number, which will enable the Department to follow an aircraft through its daily flight schedule.

Thus, based on our review of the public comments, we are adopting the following reporting codes:

Cancellation Codes

(A) Air Carrier;
(B) Extreme Weather;
(C) National Aviation System (NAS); and
(D) Security.

Delay Causes

Air Carrier;

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Extreme Weather;
National Aviation System (NAS);
Security; and
Late Arriving Aircraft.

Delay and Cancellations Causes

Below is a list of examples of causes for delays and cancellations. This list should be used as a guide for relating the types of occurrences and the associated delay or cancellation code. This list should not be considered a complete list. Carriers report delay categories when the arrival delay is 15 minutes or more. The rule does not require carriers to report causal data for flights that are considered "on-time."

Air Carrier

Aircraft cleaning
Aircraft damage (except bird strikes, lightning/hail damage)
Airport curfew
Awaiting the arrival of connecting passengers or crew
Awaiting alcohol test
Awaiting gate space
Baggage loading
Cabin servicing
Cargo loading
Catering
Computer outage—carrier equipment
Crew legality (pilot or attendant rest)
Damage by hazardous goods
Engineering Inspection
Flight paperwork
Fueling
Gate congestion
Government forms not properly completed—INS, FAA, Agriculture, Public Health, etc.
Ground equipment out of service
Hot brakes restriction
Last minute passenger
Late mail from Post Office
Late crew
Lavatory servicing
Maintenance
Medical emergency
Out of service aircraft
Oversales
Positive passenger baggage match
Passenger services
Potable water servicing
Pre-flight check
Ramp congestion—blocked by another aircraft under carrier's control
Ramp service
Removal of unruly passenger
Revised weight sheet
Shortage of ramp equipment
Slow boarding or seating
Snow removal (when it is a carrier ramp service function)
Stowing carry-on baggage
Weight and balance delays

Weather

Below minimum conditions
Clear ice inspection
Deicing aircraft
Earthquake
Extreme high or low temperatures
Hail Damage
Holding at gate for enroute weather
Hurricane
Lightning damage
Pre-planned cancellations that result from predicted weather
Snow Storm
Thunder Storm
Tornado

National Aviation System (NAS)

Airport conditions
Airport construction
Air Traffic Control (ATC)
Awaiting ATC clearance while still at gate
Air Traffic Quota Flow Program—ATC
Closed Runways
Computer failure—air carrier equipment
Equipment Outage—ATC
Gate hold—ATC
Ground delay program—ATC
Flow control program—FAA
Other disabled aircraft blocking runway
Ramp congestion—blocked by aircraft not under carrier's control
Ramp Traffic—Air Traffic Control
Restricted aircraft movement on runways
Volume Delays

Security

Bomb threat
Inoperative screening equipment
Evacuation of terminal or concourse or re-boarding aircraft resulting from security breech
Weapon confiscation

Late Arriving Aircraft

Means a previous flight with same aircraft arrived late which caused the present flight to depart late.

Passenger Notification

Several commenters stated that they support the rule to collect causal data, but more should be done to require passenger notification and to relieve passenger inconvenience at the time of the delay or cancellation. Mr. Rummell states that a passenger should receive compensation, similar to denied boarding compensation, when an air carrier's delayed flight causes a passenger to miss a connecting flight.

The Department agrees that air carriers should make their best efforts to alert passengers as early as possible of delays, the reason for the delay, and the actions the carrier is taking to deal with the problem. The instant rulemaking is focused on collecting data that can be used by consumers in making future travel plans and by the operators and managers of the air transportation system for strategic planning to decrease the frequency and severity of flight irregularities. Thus, these proposals suggesting notification requirements in the event of delays or cancellations as well as the proposal for compensation are outside the scope of this rulemaking.

Standardizing Flight Times

ACI–NA states that the current system does not take into account the common practice by air carriers of increasing flight times in their schedules to avoid the appearance of frequent delays. According to ACI–NA system inefficiencies are masked when carriers' flights are counted as "on-time" only because the air carriers padded their schedules. ACI-NA believes that, "DOT's establishment of a more uniform delay reporting system would go a long way towards rectifying these problems, but will only do so if most or all air carriers are required to comply."

We agree that the current reporting system has the capacity to conceal inefficiencies in the aviation system. However, we also believe that airlines are acting responsibly and in the best interests of the public in adjusting their schedules to reflect actual departure and arrival times. It is more important for the public to be able to rely on the stated time that their flight actually will arrive at its destination, than it is for them to know the time the flight would arrive if there were no inefficiencies in the system. Generally, carriers schedule their flight times based on the unimpeded taxi-out time, the unimpeded air time, the unimpeded taxi-in time, and the time of all anticipated delays. For example, if each morning an air carrier's flight experiences a 20 minute wait in a queue for take-off clearance, the air carrier will incorporate those 20 minutes into its flight schedule. Flights are late when the carrier experiences an unanticipated delay. If events causing delays occur regularly, these events are built into a carrier's schedule, which precludes the public from otherwise being deceived and permits the public to rely on the carrier's stated schedule.

The Department's Inspector General audited some flights at certain heavily used airports and found that scheduled flight times have increased in duration over time. The increase in scheduled flight time is related to the rise in operations in the aviation system. Generally, an increase in the volume of operations at an airport means an increase in taxi-out times. This is especially true during peak operating periods. Rather than creating a more "uniform" system for carriers to report their scheduled times, the Department has plans to develop an efficiency index for routes and airports. The route index would be based on the sum of the unimpeded taxi-out time, the unimpeded air time, the unimpeded taxi-in time divided into the scheduled times. The airport index would be an average of all route indices originating at the airport. High indices would represent an inefficiency on the route or at the airport. Accordingly, we do not find it in the public interest to adopt ACI–NA's suggestion to alter the way on-time flights are calculated.

Airline Service Quality Performance Data vs. Operations Network Data

ACI–NA states that, "The current system for reporting flight delays and cancellations is deeply flawed because of inconsistencies between the Airline Service Quality Performance (ASQP) data reported by the airlines to the BTS and the delay data collected by FAA personnel from manually recording aircraft via the FAA's Operations Network ("OPSNET" data). The OPSNET data are intended to measure system-wide ATC performance and to identify areas for ATC operational improvement."

The Department does not believe the reporting systems are flawed because ASQP and OPSNET reports have different delay results. As ACI–NA correctly points out, OPSNET measures how well the ATC system is performing. If a flight cannot lift-off within 15 minutes after departing the boarding gate, OPSNET records a departure delay because the ATC system did not service that aircraft in a timely manner. Conversely, ASQP measures how well the air carriers are meeting their published schedules. The most important delay statistic of ASQP is the percentage of scheduled on-time arrivals. As stated earlier, if an air carrier's flight routinely experiences a 20 minute wait in a departure queue, the carrier will add those 20 minutes into its flight schedule. That flight will probably have a consistent OPSNET delay and an on-time ASQP arrival. The largest discrepancies between OPSNET and ASQP occur when there are long ATC delays in the early morning. In these cases, both systems record delays for the initial morning flights. ASQP will continue to record delayed flights until the air carriers are able to meet their published schedules. OPSNET, on the other hand, would not record another delay unless there was another ATC problem.

The Department does not view different statistics from OPSNET and ASQP as flawed data. However, the public can be confused when the media uses OPSNET and ASQP data interchangeably without explaining the differences in the two systems. We believe that the proper source to advise the public of air carrier on-time performance is the ASQP data. OPSNET data are the proper data source for analyzing ATC delays. However, once causal data are included in the ASQP system, it should become the primary source for all delay studies.

Publication of Causal Data

The ATA believes air carrier causal data are proprietary and confidential and should only be released to the public in an aggregate form and that no individual carrier causal data should be publicly released. ATA also believes that the Department should not release the "refined" NAS data until the Department and airlines have had ample time to evaluate its utility for this purpose. In the NPRM, the Department stated that it would use OPSNET data and information from the National Oceanic and Atmospheric Administration to identify the actual causes of delays reported in the "NAS" category.

Given the existing reporting requirements in this area, ATA has failed to demonstrate why causal data should be viewed as proprietary data. Indeed, Congress and the Department have made the determination that overriding public interest calls for release of the data. Moreover, the causal category "Air Carrier" is inclusive of all types of delays under the control of the carrier. This level of summarization does not allow a competitor air carrier to gain a competitive advantage by studying another carrier's reported "Air Carrier" delays. For example, you could not gain insight as to a carrier's policy of holding a flight for delayed connecting passengers from delays coded "Air Carrier."

The Department also disagrees with the suggestion that the FAA should not identify the delays coded "NAS." It is important for management purposes for the FAA to identify the specific cause of "NAS" delays. The FAA has had ample experience using OPSNET data to identify ATC, airport, and weather related delays. The Department realizes that there will be some "NAS" delays which it will not be able to match with its internal data. For example, there probably will not be internal FAA data to identify delays or cancellations caused by bird strikes. From the information gathered by the Air Carrier On-Time Reporting Advisory Committee and our experience with the follow-on pilot program on causal reporting, it appears air carriers presently lack the necessary information to code those flight delays which occur after the aircraft pushes back from the departure gate. Because of this, air carriers code all delays after push back as "NAS" delays. Since air carriers lack the causal knowledge of delays after push back, we believe the FAA is the proper party to identify "NAS" delays. Moreover, if "NAS" delays were not identified, the public may be left with the perception that all "NAS" delays are solely ATC delays, which is not accurate.

Diverted Flights

We have concluded that air carriers should not report causal codes for diverted flights. Air carriers track and code delays only up to the time the aircraft pushes back from the gate at the origin airport. Carriers are instructed to code delays after push back as "NAS" delays because, after push back, the aircraft is generally under the command of the air traffic control system. Most diversions are caused by extreme weather conditions or mechanical malfunctions. There are only a minimal number of diverted flights and most diversions would be mis-coded if carriers followed the reporting instructions to code in-flight delays as "NAS" delays.

The Five Minute Rule

In the interest of keeping the reporting burden to a minimum, carriers will be required only to track delay causes of five minutes or more, however carriers may elect to track delays by the minute. Regardless of the method chosen, a carrier must ensure that, in all cases, the total minutes of the reported causal delays equal the actual minutes of arrival delays. For instructions, see examples 2, 3, 8, and 11 under the caption "Examples of delayed flight coding."

Reporting of Delayed Flights

Carriers use a fixed-length file format to report on-time data. We have added four-position numeric fields for each of the five possible causes of delays. Instead of reporting delay codes, carriers will report the number of minutes attributed to the cause of delay into the assigned fields for the appropriate cause of delay. There often are multiple reasons for delayed flights, and we are requiring air carriers to report each category of flight delay, as applicable. The Department has adopted the fixed-length file format as follows:

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FIELD SPECIFICATIONS FOR FORM 234, ON-TIME PERFORMANCE REPORTS

Field and description	Type	Location	Length	Comments
A—Carrier code	Alpha	1–2	2	
B—Flight number	Num	3–6	4	
C—Origin airport code	Alpha	7–9	3	
D—Destination airport code	Alpha	10–12	3	
E—Date of flight operation	Num	13–20	8	Format yyyymmdd.
F—Day of the week of flight operation	Num	21	1	Mon = 1, Sun = 7.
G—Scheduled departure time per OAG	Num	22–25	4	Local time 24 hour clock.
H—Scheduled departure time per CRS	Num	26–29	4	Local time 24 hour clock.
I—Gate departure time (actual)	Num	30–33	4	Local time 24 hour clock.
J—Scheduled arrival time per OAG	Num	34–37	4	Local time 24 hour clock.
K—Scheduled arrival time per CRS	Num	38–41	4	Local time 24 hour clock.
L—Gate arrival time (actual)	Num	42–45	4	Local time 24 hour clock.
M—Difference between OAG and CRS scheduled departure times.	Num	46–49	4	In minutes (2 hrs = 0120 min).
N—Difference between OAG and CRS scheduled arrival times.	Num	50–53	4	In minutes.
O—Scheduled elapsed time per CRS	Num	54–57	4	In minutes.
P—Actual gate-to-gate time	Num	58–61	4	In minutes.
Q—Departure delay time (actual minutes CRS)	Num	62–65	4	In minutes.
R—Arrival delay time (actual minutes CRS)	Num	66–69	4	In minutes.
S—Elapsed time difference (actual minutes CRS)	Num	70–73	4	In minutes.
T—Wheels-off time (actual)	Num	74–77	4	Local time 24 hour clock.
U—Wheels-on time (actual)	Num	78–81	4	Local time 24 hour clock.
V—Aircraft tail number	Alpha/ Num	82–87	6	Left justified, trailing blanks.
W—Cancellation code	Num	88	1	(A, B, C, or D).
X—Minutes late for delay	Num	89–92	4	Carrier Caused Delays—In minutes.
Y—Minutes late for delay	Num	93–96	4	Extreme Weather Delays—In minutes.
Z—Minutes late for delay	Num	97–100	4	NAS Delays—In minutes.
AA—Minutes late for delay	Num	101–104	4	Security—In minutes.
AB—Minutes late for delay	Num	105–108	4	Late Arriving Aircraft—In Minutes.

Cancellation codes	Delay causes
A—Carrier Caused	Carrier Caused.
B—Extreme Weather	Extreme Weather.
C—National Aviation System.	National Aviation System.
D—Security	Security.
	Late Arriving Aircraft.

All numeric fields for which data are unavailable will be zero-filled.

All alpha fields for which data are unavailable will be left blank.

The data fields in this document are Y2K compliant.

Examples of delayed flight coding: 1. A flight received a 20 minute ground hold because of congestion at the destination airport, and the flight was 18 minutes late arriving at the destination airport gate. The delayed flight would be coded 18 minutes for NAS.

2. A flight was 4 minutes late pushing back from the gate and arrived 21 minutes late. The delayed flight would be coded 21 minutes for NAS. Please note in this example that the air carrier delay was less than 5 minutes, and thus unless the carrier tracks delays by the minute, the 4 minute push-back delay would not be attributed to the air carrier.

3. A flight was delayed 4 minutes due to slow boarding of passengers and another 3 minutes to load late-arriving baggage. The flight arrived 15 minutes late. The delayed flight would be coded 7 minutes for air carrier and 8 minutes for NAS. Please note in this example that while no single air carrier caused delay was 5 minutes or more, the sum of the carrier delay was more than 5 minutes and the total delay was 15 minutes, and thus, reportable.

4. A flight was delayed 20 minutes waiting for connecting passengers from another flight and arrived 28 minutes late. The delayed flight would be coded 20 minutes for air carrier and 8 minutes for NAS.

5. A flight had a 16 minute ground hold and arrived 14 minutes late. There is no delay coding as the flight arrived within 15 minutes of scheduled arrival time, and thus, is considered on-time.

6. A flight is 20 minutes late because of weather and is coded 20 minutes for weather. The next flight with that aircraft is 15 minutes late leaving the gate and arrives 20 minutes late. The delayed flight would be coded 15 minutes for late arriving aircraft and 5 minutes NAS. Please note in this example that the air carrier made up 5 minutes of the initial late arriving aircraft delay, but then experienced a 5 minute en-route delay.

7. A flight was 30 minutes late pushing back from the gate. The 30 minute delay consisted of 10 minutes for a late arriving aircraft and 20 minutes for slow boarding process because of an oversales problem. The flight arrived 24 minutes late. The delayed flight would be coded 8 minutes for late arriving flight and 16 minutes for air carrier. Please note in this example that the 6 minutes gained after push back was prorated back to the two recorded delays. In this example, late arriving aircraft was 33.3% of the original delay and the air carrier delay was 66.6% of the delay. Therefore, late arriving aircraft was computed as 33.3% of 24 which equals 8; and air carrier was computed as 66.6% of 24 which equals 16.

8. A flight was 20 minutes late because of a thunderstorm and 6 minutes late because of a crew problem. The flight arrived 18 minutes late. The delayed flight would be coded 14 minutes for weather and 4 minutes for air carrier. In this example, the air carrier must round the prorated minutes to whole numbers. Carriers should not report fractions or decimals. Also, the carrier would report an air carrier delay of less than 5 minutes because the carrier was required to track the crew delay because it was 5 minutes or more.

9. Flight number 234 was 20 minutes late departing the gate because the air carrier substituted a spare aircraft to reduce a known upcoming delay. The flight was scheduled to be operated with an aircraft that, at the time, was experiencing a 3 hour extreme weather delay. Flight number 234 arrived 16 minutes late, and was reported as a 16 minute late arriving aircraft—extreme weather.

10. A flight was 2 hours late because the carrier's concourse was evacuated and passengers re-screened because of a breech of security. The flight would be coded 120 minutes—Security.

11. A flight was 3 minutes late because of late crew and 4 minutes late because of severe weather. The flight arrived 19 minutes late. Since the flight was 7 minutes late departing the gate, the carrier could report the delay as 7 minutes "Weather" (the predominant cause of the gate delay of over five minutes) and a "NAS" delay of 12 minutes. Also, acceptable would be 3 minutes "Air Carrier," 4 minutes "Weather" and 12 minutes "NAS."

Examples of cancelled flight coding: 1. A flight cancelled because of mechanical problems is coded "A" for air carrier.

2. Flight 123, BOS–DCA was cancelled because, overnight, the airport had two feet of snow. The cancellation would be coded "B" for weather.

3. The next segment of Flight 123, DCA–MIA was cancelled because the aircraft that was to be used for this flight is stuck in two feet of snow in Boston. The weather in Washington and Miami is clear. The cancellation would be coded "B" for weather, because the intended aircraft was out of position as a result of a prior cancellation attributed to weather.

4. It's a clear day at O'Hare, but there is a ground hold for flights to DFW because of a severe thunderstorm around the DFW airport. After a 3 hour wait, the weather at DFW has not changed; and the carrier cancels the flight. The cancellation would be coded "B" for weather.

5. It's a rainy, misty day at O'Hare. Operations have been slow all morning. The air carrier receives a call from air traffic control asking that it cancel one of its next five flights to allow the airport to return to normal operations. Other carriers receive similar calls. These cancellations would be coded "C" for NAS.

6. The airport is closed for two hours because of a breech in security. The carrier cancelled three flights because the number of scheduled departures exceeded airport capacity; and the FAA advised all air carriers that they must reduce the remainder of their daily schedule. The cancellation would be coded AD" for Security.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is "significant" under Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation (44 FR 11034), and was reviewed by the Office of Management and Budget. As discussed above, the purpose of the rule is to disclose more fully to the public and aviation managers the nature and source of the delays and cancellations experienced by air travelers. This objective is achieved by amending 14 CFR 234 to require reporting air carriers to identify and report causes of airline delays and cancellations. Based on information collected during the pilot project, we estimate that the new reporting requirements would require each reporting carrier to expend 10–20 hours to reconfigure its data system. Once these initial resources are expended, we estimate that there will be no additional costs or burdens for delay and cancellation reporting. We estimated reprogramming costs of $100.00/hour. Thus, we estimate that for the 10 reporting air carriers in total, there would be an initial reprogramming cost of $10,000—$20,000.

Prior to the issuance of the NPRM, the Air Carrier Association of America stated that the start-up costs for air carriers not presently reporting under Part 234 would be approximately $25,000, with annual costs as high as $100,000. The Air Carrier Association of America did not submit a comment in response to the NPRM. American Trans Air estimated its initial programming costs at $136,000 and an annual cost of $100,000 "to report on-time performance as well as causal data." The ATA stated that it would be "inappropriate" for it to estimate the costs to its members because "on-time flight performance reporting is the responsibility of each certificated carrier."

This final rule applies only to carriers reporting under Part 234 and, while American Trans Air submitted cost estimates, it has not reached the Part 234 reporting threshold at this time and thus, is not covered by the requirements of this rule. Thus, none of the air carriers covered by this final rule face development costs since they are already reporting under Part 234. None of the carriers, presently reporting under Part 234, indicated that the annual costs for reporting the causes of delays and cancellations would be $100,000 or more. A carrier whose business expands to such a point that it meets the Part 234 reporting requirements, must develop a computer system to file its quality performance reports of which the casual delay information would be a minor part of the overall development costs.

Finally, even using slightly higher cost estimates ($25,000–$50,000), we believe that the benefits to the traveling public and the availability of more accurate information for the allocation of transportation resources outweigh the modest costs that would be incurred by the reporting air carriers.

Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism") and we have determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review its regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of "small business" has the same meaning as under the Small Business Act (15 CFR parts 631–657c). For those companies providing scheduled passenger air transportation, the SBA defines a small business as an air carrier that has 1,500 employees or fewer (See NAICS Number 48111).

The rule applies only to those air carriers that meet the Part 234 reporting criteria (*i.e.*, carriers that hold a certificate under 49 U.S.C. 41102 and account for at least 1 percent of the domestic scheduled-passenger revenues in the past 12 months). We have reviewed our data base and find that none of the air carriers that report under Part 234 have 1,500 employees or fewer. In fact, our information indicates that all of these carriers employ more than 10,000 employees. Therefore, we believe that this rule does not apply to any "small business" as defined by the SBA. Thus, based on the above discussion, I certify this rule will not have a

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significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

Environmental Assessment

We believe that the changes to the Part 234 reporting system have no significant impact on the environment. The changes proposed in this final rule should increase the quality of data collected on the causes of airline delays and cancellations, thus increasing our ability to evaluate potential air traffic problems and allocate the appropriate resources toward mitigating these problems. These revisions should produce a small net benefit to the environment by improving the data sources used in regulatory development. Therefore, we find that there are no significant environmental impacts associated with this rule.

Paperwork Reduction Act Analysis

The reporting and record keeping requirements associated with this final rule are being sent to the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35 under OMB NO: 2138–0040. *Administration*: Bureau of Transportation Statistics; *Title*: Airline Service Quality Performance Reports; *Need for Information*: Statistical information on the causes of airline delays and cancellations; *Proposed Use of Information*: To disclose more fully to the public the nature and source of the delays and cancellations experienced by air travelers; *Frequency*: Monthly; *Burden Estimate*: 150 hours; *Average Annual Burden Hours per Respondent After Final Rule is Issued*—No burden. Based on information collected during the pilot project, we estimate that these reporting requirements will require each affected carrier to expend 10–20 hours to reconfigure its data system. We estimate reprogramming costs of $100.00/hour. Thus, we estimate that for the 10 reporting air carriers in total, there would be an initial reprogramming cost of $10,000–$20,000. Once these initial resources are expended, we estimate that there would be no additional annual burden. We invite comments on our burden estimates. For further information or to comment on the burden hour estimate contact: The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention Desk Office for the Department of Transportation or Bernie Stankus at the address listed under **FOR FURTHER INFORMATION CONTACT.**

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139–AA09 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Regulatory Text

Accordingly, the Bureau of Transportation Statistics, under delegated authority pursuant to 49 CFR part 1, amends Chapter II of 14 CFR, as follows:

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

PART 234—[AMENDED]

1. The authority citation for Part 234 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 413, 417.

2. Section 234.4 is amended by adding paragraphs (a)(16) through (a)(21), revising paragraph (b), and adding paragraph (g), (h) and (i) as follows:

§ 234.4 Reporting of on-time performance.

(a) * * *

(16) Causal code for cancellation, if any.

(17) Minutes of delay attributed to the air carrier, if any.

(18) Minutes of delay attributed to extreme weather, if any.

(19) Minutes of delay attributed to the national aviation system, if any.

(20) Minutes of delay attributed to security, if any.

(21) Minutes of delay attributed to a previous late arriving aircraft, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the original scheduled flight number and the original scheduled origin and destination airport codes. Carriers are not required to report causal information for diverted flights.

* * * * *

(g) Reporting carriers should use the following codes to identify causes for cancelled flights:

Code
A—Air Carrier
B—Extreme Weather
C—National Aviation System (NAS).
D-Security

(1) Air Carrier cancellations are due to circumstances that were within the control of the air carrier (*e.g.*, lack of flight crew, maintenance, etc.).

(2) Extreme weather cancellations are caused by weather conditions (*e.g.*, significant meteorological conditions), actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior cancellation or delay attributable to weather.

(3) NAS cancellations are caused by circumstances within the National Aviation System. This term is used to refer to a broad set of conditions: weather-non-extreme, airport operations, heavy traffic volume, air traffic control, etc.

(4) Security cancellations may be the result of malfunctioning screening or other security equipment or a breech of security that causes the evacuation of the airport or individual concourses, or the need to re-screen passengers.

(h) Reporting carriers should use the following causes to identify the reasons for delayed flights:

CAUSE
Air Carrier
Extreme weather
NAS
Security
Late arriving aircraft

(1) Air carrier delays are due to circumstances within the control of the air carrier.

(2) Extreme weather delays are caused by weather conditions (*e.g.*, significant meteorological conditions, actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior cancellation or delay attributable to weather.

(3) NAS delays are caused by circumstances within the National Aviation System. This term is used to refer to a broad set of conditions: weather-non-extreme, airport operations, heavy traffic volume, air traffic control, etc.

(4) Security delays may be the result of malfunctioning screening or other security equipment or a breech of security that causes the evacuation of the airport or individual concourses or the need to re-screen passengers.

(5) Late arriving aircraft delays are the result of a late incoming aircraft from the previous flight.

(i) When reporting causal codes in paragraph (a) of this section, reporting carriers are required to code delays only when the arrival delay is 15 minutes or greater; and reporting carriers must report each causal component of the reportable delay when the causal component is 5 minutes or greater.

3. Section 234.5 is revised as follows:

§ 234.5 Form of reports.

Except where otherwise noted, all reports required by this part shall be filed within 15 days of the end of the month for which data are reported. The reports must be submitted to the Office of Airline Information in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Assistant Director for Airline Information.

Issued in Washington, DC on November 15, 2002.

Rick Kowalewski,

Acting Director, Bureau of Transportation Statistics.

[FR Doc. 02–29910 Filed 11–22–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 738, 746, 758 and 774

[Docket No. 021009232–2232–01]

RIN 0694–AC57

Exports and Reexports to the Federal Republic of Yugoslavia: Lifting of UN Arms Embargo-Based Controls; Clarification of UN Arms Embargo-Based Controls on Rwanda

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by removing the special controls on the export and reexport of arms-related items imposed on July 14, 1998 on the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY). Consequently, arms embargo-based licensing requirements for exports and reexports of certain items subject to the EAR (*e.g.*, water cannon) to the FRY are removed, and a case-by-case license review policy is reinstated for the export and reexport of items controlled for regional stability and crime control reasons. This rule is consistent with United Nations Security Council (UNSC) Resolution 1367 of September 10, 2001, which terminated the international arms embargo against the FRY mandated by UNSC Resolution 1160 of March 3, 1998. This rule also makes a minor clarification to the arms embargo-based controls in place with respect to Rwanda pursuant to UNSC Resolution 918 of May 17, 1994.

DATES: This rule is effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Telephone (202) 482–0171, e-mail *jroberts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Consistent with United Nations Security Council (UNSC) Resolution 1160 of March 3, 1998, the Bureau of Industry and Security (BIS), formerly the Bureau of Export Administration (BXA), imposed new controls on the export and reexport of arms-related items subject to the EAR to the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY). UNSC Resolution 1160 mandated an embargo on the sale or supply of arms and arms-related matériel to the FRY. On July 14, 1998, BIS issued a rule consistent with the UNSC embargo against the FRY, applying a policy of denial on the export and reexport of items controlled for crime control and regional stability reasons and making additional items subject to control (*e.g.* certain shotgun shells, military helmets, water cannon and certain civil aircraft). BIS placed the specific provisions that implemented the embargo in section 746.9 of the EAR.

On September 10, 2001, in Resolution 1367, the UNSC terminated the international arms embargo against the FRY. Consistent with UNSC Resolution 1367, this rule removes the provisions in section 746.9 of the EAR that implemented the arms embargo against the FRY. With the publication of this rule, BIS is removing the UN arms embargo-based license requirements for the export and reexport of items controlled under Export Classification Control Numbers (ECCNs) 0A018, 0A984, 0A985, 0A986, 0A987, 0A988, 0B986, 0E018, 0E984, 1A005, 1B018, 1C018, 1C992 1D018, 2A993, 2B018, 2D018, 2E018, 6A002, 6A003, 6A018, 6E001, 6E002, 8A018, 9A018, 9A991, 9D018, 9E018 to the FRY. BIS is removing altogether ECCN 0A989, water cannon and specially designed components for water cannon, because it was a UN arms embargo-based control applying solely to the FRY. BIS also is reinstating a case-by-case licensing policy for the export and reexport of these items controlled for crime control or regional stability reasons destined to the FRY.

This rule also adds a new note number 4 in the License Exception sections of entries for "Technology" controlled by ECCNs 6E001 and 6E002, making License Exception Technology and Software under Restriction (TSR) unavailable for exports or reexports of 6E001 and 6E002 "Technology" to Rwanda, which is still subject to a UN arms embargo pursuant to UNSC Resolution 918 of May 17, 1994. With respect to Rwanda, "Technology" controlled by ECCN 6E001 is for the "development" of equipment, materials or "software" controlled by Category 6A002 or 6A003, and "Technology" controlled by ECCN 6E002 is for the "production" of equipment or materials controlled by 6A002 or 6A003. The license requirements for Rwanda are set forth in section 746.8 of the EAR.

Finally, this rule makes changes to sections 732.3 and 758.1 of the EAR to reflect the removal of the UN arms embargo-based controls against the FRY and removes Supplement 2 to part 746 describing international arms embargoes administered by the Department of State. For information on such embargoes, exporters are advised to consult with the Department of State, Office of Defense Trade Controls.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections have been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BIS–748P. Send comments regarding these burden

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estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 732

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping, requirements.

15 CFR Part 774

Exports, Foreign Trade.

Accordingly, parts 732, 738, 746, 758 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 732—[AMENDED]

1. The authority citation for part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

§ 732.3 [Amended]

2. Section 732.3 is amended:

a. By revising the phrase "For Angola, Bosnia-Herzegovina, Croatia, Rwanda, and Serbia and Montenegro" in paragraph (d)(4) to read "For Angola and Rwanda"; and

b. By revising the phrase "If your destination for any item is Bosnia-Herzegovina, Croatia, Cuba, Iran, Iraq, Libya, Rwanda, or Serbia and Montenegro you must consider the requirements of part 746 of the EAR." in introductory text in paragraph (i) to read "If your destination for any item is Cuba, Iran, Iraq, Libya or Rwanda you must consider the requirements of parts 742 and 746 of the EAR."

PART 738—[AMENDED]

3. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Publ. L. 106–387; Sec. 221, Publ. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

4. Supplement No. 1 to Part 738 is amended by removing the footnote notation "1" from the entry "Yugoslavia (Serbia and Montenegro), Federal Republic of".

PART 746—[AMENDED]

5. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; Sec. 901–911, Publ. L. 106–387; Sec. 221, Publ. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

§ 746.1 [Amended]

6. Section 746.1 is amended by removing paragraphs (e) and (f).

§ 746.9 [Removed]

7. Section 746.9 is removed and reserved.

8. Supplement No. 2 to Part 746 is removed and reserved.

PART 758—[AMENDED]

9. The authority citation for part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

§ 758.1 [Amended]

10. Section 758.1 is amended by revising the phrase "For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Serbia (except Kosovo), Sudan, or Syria," in paragraph (b)(1) to read "For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria,".

* * * * *

PART 774—[AMENDED]

11. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

12. In Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], the following Export Classification Numbers (ECCN's) are amended:

a. By revising the "License Requirements" section and the "License Exceptions" section for ECCNs 0A018 and 0E018;

b. By revising the "License Requirements" section for ECCNs 0A984, 0A985, 0A986, 0A987, 0A988, 0B986, and 0E984; and

c. By removing ECCN 0A989, to read as follows:

0A018 Items on the International Munitions List.

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $5000 for 0A018.a and .b, $3000 for 0A018.c, $1500 for 0A018.d through .f, $0 for Rwanda
GBS: N/A
CIV: N/A

* * * * *

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, FC, UN.

Control(s)	Country chart
FC applies to entire entry	FC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Rwanda.

* * * * *

0A985 Discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, UN.

Control(s)	
CC applies to entire entry. A license is required for ALL destinations, except Canada, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)	
UN applies to entire entry	Rwanda.

* * * * *

0A986 Shotgun shells, except buckshot shotgun shells, and parts.

License Requirements

Reason for Control: AT, FC, UN.

Control(s)	Country chart
AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.	
FC applies to entire entry	FC Column 1.
UN applies to entire entry. A license is required for items controlled by this entry to Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.	

* * * * *

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and parts, n.e.s.

License Requirements

Reason for Control: FC, CC, UN.

Control(s)	Country chart
FC applies to optical sights for firearms, including shotguns described in ECCN 0A984, and related parts.	FC Column 1.
CC applies to entire entry	CC Column 1.
UN applies to entire entry	Rwanda.

* * * * *

0A988 Conventional military steel helmets as described by 0A018.f.1; and machetes.

License Requirements

Reason for Control: UN.

Control(s): UN applies to entire entry. A license is required for conventional military steel helmets as described by 0A018.f.1 to Rwanda. A license is required for machetes to Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

* * * * *

0B986 Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells.

License Requirements

Reason for Control: AT, UN.

Control(s): AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

UN applies to entire entry. A license is required for items controlled by this entry to Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

* * * * *

0E018 "Technology" for the "development", "production", or "use" of items controlled by 0A018.b through 0A018.e.

License Requirements

Reason for Control: NS, UN, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
UN applies to entire entry	Rwanda.
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A
TSR: Yes, except N/A for Rwanda

* * * * *

0E984 "Technology" for the "development" or "production" of shotguns controlled by 0A984 and buckshot shotgun shells.

License Requirements

Reason for Control: CC, UN.

Control(s)	Country chart
CC applies to "technology" for shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) and shotgun shells, regardless of end-user.	CC Column 1.
CC applies to "technology" for shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to "technology" for shotguns with a barrel length over 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Rwanda.

* * * * *

13. In Category 1—Materials, Chemicals, "Microorganisms" & "Toxins", the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the "License Requirements" section and "License Exceptions" section for ECCNs 1B018 and 1C018; and

b. By revising the "License Requirements" section for ECCNs

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1A005, 1C992, and 1D018, to read as follows:

1A005 Body armor, and specially designed components therefor, not manufactured to military standards or specifications, nor to their equivalents in performance.

License Requirements

Reason for Control: NS, UN, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
UN applies to entire entry	Rwanda.
AT applies to entire entry	AT Column 1.

* * * * *

1B018 Equipment on the International Munitions List.

License Requirements

Reason for Control: NS, MT, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to equipment for the "production" of rocket propellants.	MT Column 1.
RS applies to 1B018.a	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $3000 for 1B018.a for countries WITHOUT an "X" in RS Column 2 on the Country Chart contained in Supplement No. 1 to part 738 of the EAR; $5000 for 1B018.b; N/A for Rwanda.
GBS: N/A
CIV: N/A

* * * * *

1C018 Commercial charges and devices containing energetic materials on the International Munitions List.

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $3000, except N/A for Rwanda
GBS: Yes for items listed in Advisory Note to 1C018, except N/A for Rwanda
CIV: N/A

* * * * *

1C992 Commercial charges and devices containing energetic materials, n.e.s.

License Requirements

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

* * * * *

1D018 "Software" specially designed or modified for the "development", "production", or "use" of items controlled by 1B018.

License Requirements

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to "software" for the "development", "production", or "use" of items controlled by 1B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

* * * * *

14. In Category 2—Materials Processing, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the "License Requirements" section of ECCN 2A993; and

b. By revising the "License Requirements" section and the "License Exceptions" section for ECCNs 2B018, 2D018, and 2E018, to read as follows:

2A993 Explosive detection systems, consisting of an automated device, or combination of devices, with the ability to detect the presence of different types of explosives, in passenger checked baggage, without need for human skill, vigilance, or judgment.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

* * * * *

2B018 Equipment on the International Munitions List.

License Requirements

Reason for Control: NS, MT, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) usable in systems that are controlled for MT reasons including their propulsion systems and components, and pyrolytic deposition and densification equipment.	MT Column 1.
RS applies to entire entry	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $3000, except N/A for Rwanda
GBS: Yes for Advisory Note in this entry to 2B018, except N/A for Rwanda
CIV: N/A

* * * * *

2D018 "Software" for the "development", "production" or "use" of equipment controlled by 2B018.

License Requirements

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to "software" for equipment controlled by 2B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

CIV: N/A
TSR: Yes, except N/A for Rwanda

* * * * *

2E018 "Technology" for the "use" of equipment controlled by 2B018.

License Requirements

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to "technology" for equipment controlled by 2B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

CIV: N/A
TSR: Yes, except N/A for Rwanda

* * * * *

15. In Category 6—Sensors and Lasers, the following Export Control Classification Numbers (ECCNs) are amended by revising the "License Requirements" section for ECCNs 6A002 and 6A003 and "License Requirements" section and the "License Exceptions" section for ECCNs 6A018, 6E001, and 6E002, to read as follows:

6A002 Optical sensors.

License Requirements

Reason for Control: NS, MT, CC, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
MT applies to optical detectors in 6A002.a.1, a.3, and .e that are specially designed or rated as electomagnetic (including and ionized particle radiation resistant.	MT Column 1.
RS applies to 6A002.a.1, a.2, a.3 and .c.	RS Column 1.
CC applies to police-model infrared viewers in 6A002.c.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to 6A002.a.1, a.2 a.3 and c.	Rwanda.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

6A003 Cameras.

License Requirements

Reason for Control: NS, NP, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
NP applies to items controlled in paragraphs 6A003.a.2, a.3 and a.4.	NP Column 1.
RS applies to items controlled in 6A003.b.3 and b.4.	RS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to items controlled in 6A003.b.3 and b.4.	Rwanda.

* * * * *

6A018 Magnetic, pressure, and acoustic underwater detection devices specially designed for military purposes and controls and components therefor.

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $5000, except N/A for Rwanda
GBS: N/A
CIV: N/A

* * * * *

6E001 "Technology" according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).

License Requirements

Reason for Control: NS, MT, NP, RS, CC, AT, UN.

Control(s)	Country chart
NS applies to "technology" for items controlled by 6A001 to 6A008, 6B004 to 6B008, 6C002 to 6C005, or 6D001 to 6D003.	NS Column 1.
MT applies to "technology" for items controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, 6B108, 6D001, 6D002, 6D102 or 6D103 for MT reasons.	MT Column 1.
NP applies to "technology" for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons.	NP Column 2.
RS applies to "technology" for equipment controlled by 6A002 or 6A003 for RS reasons.	RS Column 1.
CC applies to "technology" for equipment controlled by 6A002 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to "technology" for equipment controlled by 6A002 or 6A003 for UN reasons.	Rwanda.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

CIV: N/A
TSR: Yes, except for the following:
(1) Items controlled for MT reasons;
(2) Items controlled by 6A004.e; or
(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" of the following: (a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.l.3, 6B008, 6D003.a; (b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when specially designed for real time applications; or (c) "Software" controlled by 6D001 and specially designed for the "development" or "production" of equipment controlled by 6A008.l.3 or 6B008; or
(4) Exports or reexports to Rwanda.

* * * * *

6E002 "Technology" according to the General Technology Note for the "production" of equipment or materials controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).

License Requirements

Reason for Control: NS, MT, NP, RS, AT, CC, UN.

Control(s)	Country chart
NS applies to "technology" for equipment controlled by 6A001 to 6A008, 6B004 to 6B008, or 6C002 to 6C005.	NS Column 1.
MT applies to "technology" for equipment controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, or 6B108 for MT reasons.	MT Column 1.
NP applies to "technology" for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons.	NP Column 1.
RS applies to "technology" for equipment controlled by 6A002 or 6A003 for RS reasons.	RS Column 1.
CC applies to "technology" for equipment controlled by 6A002 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to "technology" for equipment controlled by 6A002 or 6A003 for UN reasons.	Rwanda.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

CIV: N/A
TSR: Yes, except for the following:
(1) Items controlled for MT reasons;
(2) Items controlled by 6A004.e; *or*
(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" of the following: (a) Items controlled by 6A001.a.2.a.1,

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6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, and 6A001.a.2.c; and (b) Equipment controlled by 6A001.a.2.e and 6A001.a.2.f when specially designed for real time applications; or (c) "Software" controlled by 6D001 and specially designed for the "development" or "production" of equipment controlled by 6A002.a.1.c, 6A008.1.3 or 6B008; or

(4) Exports or reexports to Rwanda.

* * * * *

16. In Category 8—Marine, Export Control Classification Number (ECCN) 8A018 is amended by revising the "License Requirements" section and the "License Exceptions" section to read as follows:

8A018 Items on the International Munitions List.

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $5000, except N/A for Rwanda
GBS: N/A
CIV: N/A

17. In Category 9—Propulsion Systems, Space Vehicles and Related Equipment, the following Export Control Classification Number (ECCNs) are amended:

a. By revising the "License Requirements" section and "License Exceptions" section for ECCN 9A018; and

b. By revising the "License Requirements" section for EGCNs 9A991, 9D018 and 9E018, to read as follows:

9A018 Equipment on the International Munitions List.

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
RS applies to 9A018.a and b	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $1500, except N/A for Rwanda
GBS: N/A
CIV: N/A

* * * * *

9A991 "Aircraft", n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.

License Requirements

Reason for Control: AT, UN.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.
UN applies to 9A991.a	Rwanda.

* * * * *

9D018 "Software" for the "use" of equipment controlled by 9A018.

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
RS applies to 9A018.a and .b.	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

* * * * *

9E018 "Technology" for the "development", "production", or "use" of equipment controlled by 9A018.

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
RS applies to 9A018.a and .b.	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

* * * * *

Dated: November 8, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–29222 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–040]

Drawbridge Operation Regulations; Three Mile Creek, Mobile, Baldwin County, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the CSX Transportation Railroad Swing Span Bridge across Three Mile Creek, mile 0.3, at Mobile, Baldwin County, AL. This deviation allows the bridge to remain closed to navigation on December 9, 2002. The deviation is necessary to lift the girder off the pivot pedestal in order to remove the worn disc and install a new disc that affect the operation of the swing span.

DATES: This deviation is effective from 7 a.m. through 3 p.m. on December 9, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: CSX Transportation has requested a temporary deviation in order to lift the girder off the pivot pedestal in order to remove the worn disc and install a new disc that affect the opening and closing of the swing span bridge across Three Mile Creek at mile 0.3 at Mobile, Baldwin County, Alabama. This maintenance is essential for the continued operation of the bridge and is expected to eliminate frequent breakdowns resulting in emergency bridge closures. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. through 6 p.m. on Monday, December 9, 2002.

The swing span bridge has a vertical clearance of 10 feet above mean high water and 12 feet above mean low water in the closed-to-navigation position. Navigation on the waterway is primarily commercial, consisting of tugs with tows and fishing vessels. There is no recreational boat traffic at the bridge site. The only known commercial users of the waterway, D.R. Jordan Pile Driving, Inc. and Mobile Ship Yard, were both contacted and have no objection to the closure. The bridge normally opens to pass navigation on an average of 3 times per day. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 15, 2002.

Marcus Redford,

Bridge Administrator.

[FR Doc. 02–29909 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–037]

Drawbridge Operation Regulations; Sabine River, Echo, Orange County, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across the Sabine River, mile 19.3, at Echo, Orange County, TX. This deviation allows the bridge to remain closed to navigation from December 3, 2002, through December 16, 2002. The deviation is necessary for bridge maintenance in order to continue safe operation of the swing span.

DATES: This deviation is effective from 7 a.m. on December 3, 2002, through 6 p.m. on December 16, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad has requested a temporary deviation in order to remove and replace the pivot casting and lenses that affect the opening and closing of the swing span bridge across the Sabine River at mile 19.3 near Echo, Orange County, Texas. This maintenance is essential in order to minimize the outage time for maintenance operations on the Union Pacific Railroad swing span bridge across the Calcasieu River at mile 36.4 near Lake Charles, Calcasieu Parish, Louisiana, where a trade of components will take place. The swing span pivot casting will be removed from the bridge at Echo for reconditioning and placement of new lenses on the bridge at Lake Charles. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. on Tuesday, December 3, 2002, through 6 p.m. on Monday, December 16, 2002.

The swing span bridge has a vertical clearance of 5.28 feet above 2 percent flow line, elevation 9.6 feet Mean Sea Level in the closed-to-navigation position. Navigation on the waterway consists of recreational boats only that launch from boat ramps upstream of the bridge. There is no commercial traffic at the bridge site. Recreational boat traffic is not a concern since recreational boating is minimal during the month of December and most recreational vessels can pass under the bridge while it is in the closed-to-navigation position. The bridge normally opens to pass navigation on an average of four times per year. In accordance with 33 CFR 117.493, the draw of the bridge opens on signal if at least 24 hours notice is given. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 15, 2002.

Marcus Redford,

Bridge Administrator.

[FR Doc. 02–29908 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–038]

Drawbridge Operation Regulations; Calcasieu River, Lake Charles, Calcasieu Parish, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across the Calcasieu River, mile 36.4, at Lake Charles, Calcasieu Parish, LA. This deviation allows the bridge to remain closed to navigation from December 7, 2002, through December 16, 2002. The deviation is necessary to remove the swing span pivot casting for placement of new lenses, resetting of reconditioned circular tracks and reconditioned balance wheels that affect the operation of the swing span.

DATES: This deviation is effective from 7 a.m. on December 7, 2002, through 6 p.m. on December 16, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad has requested a temporary deviation in order to remove and replace the pivot casting with reconditioned pivot casting and new lenses that affect the opening and closing of the swing span bridge across the Calcasieu River at mile 36.4 near Lake Charles, Calcasieu Parish, Louisiana. This maintenance is essential for the continued operation of the bridge and is being performed in conjunction with maintenance operations on the Union Pacific Railroad swing span bridge across the Sabine River at mile 19.3 near Echo, Orange County, Texas. Parts from the bridge at Echo will be removed, reconditioned and placed on the bridge at Lake Charles. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. on Saturday, December 7, 2002, through 6 p.m. on Monday, December 16, 2002.

The swing span bridge has a vertical clearance of 1.07 feet above mean high water, elevation 3.56 feet Mean Gulf Level in the closed-to-navigation position. Navigation on the waterway consists primarily of tugs with tows. There is very little commercial traffic at the bridge site. There are only three companies that transit above the bridge with barges. All three companies were contacted and have no objection to the 10 day closure. Recreational boat traffic is not a concern since recreational boating is minimal during the month of

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December. The bridge normally opens to pass navigation on an average of five times per day. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 15, 2002.

Marcus Redford,

Bridge Administrator.

[FR Doc. 02–29907 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–039]

Drawbridge Operating Regulations; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 46 (St. Claude Avenue) bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock) in New Orleans, Orleans Parish, Louisiana. This deviation allows the bridge to remain closed to navigation from 6:45 a.m. until 6:45 p.m. on Wednesday, December 4, 2002. This temporary deviation is necessary to allow for the replacement of the lakeside lower forward roller assembly for the operating strut guide of the bridge.

DATES: This deviation is effective from 6:45 a.m. until 6:45 p.m. on Wednesday, December 4, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Board of Commissioners of the Port of New Orleans has requested a temporary deviation in order to replace the lakeside lower forward roller assembly for the operating strut guide of the bridge. These repairs are necessary for the continued operation of the bridge. This deviation allows the draw of the St. Claude Avenue bascule bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock), to remain closed to navigation from 6:45 a.m. until 6:45 p.m. on Wednesday, December 4, 2002.

The bascule bridge has a vertical clearance of 1 foot above high water in the closed-to-navigation position. Navigation on the waterway consists mainly of tugs with tows and some ships. The bridge normally opens to pass navigation an average of eight times during the deviation period. In accordance with 33 CFR 117.458(a), the draw of the bridge opens on signal; except that, from 6:45 a.m. to 8:30 a.m. and from 4:45 p.m. to 6:45 p.m., Monday through Friday, except federal holidays, the draw need not open for the passage of vessels. Normally, the draw is required to open at any time for a vessel in distress. However, the bridge will not be able to open for emergencies during the closure period. An alternate route is available to mariners by proceeding down the Mississippi River to Venice, Louisiana, crossing the Breton Sound and proceeding up the Mississippi River Gulf Outlet.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 15, 2002.

Marcus Redford,

Bridge Administrator.

[FR Doc. 02–29906 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–02–014]

RIN 2115–AE47

Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0, in Wilmington, North Carolina. The final rule will reduce the number of bridge openings for transit of pleasure craft during a four-year bridge repair project. This change will reduce traffic delays while still providing for the reasonable needs of navigation. In addition, an administrative correction is being made to the name of the waterway. The "Northeast River" is being changed to the "Northeast Cape Fear River".

DATES: This rule is effective December 26, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as available in the docket, are part of docket CGD05–02–014 and are available for inspection or copying at Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 30, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Northeast Cape Fear River, Wilmington, North Carolina" in the **Federal Register** (67 FR 37746). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Isabel S. Holmes Drawbridge is owned and operated by the North Carolina Department of Transportation (NCDOT). The regulation in 33 CFR 117.5 requires the bridge to open promptly and fully once a request to open is received. When the bridge is closed there is 40 feet of vertical clearance.

The Isabel S. Holmes Bridge crosses the Northeast Cape Fear River. It makes connections with Route 133 and the US–17 corridor, which supports the general north/south flow of traffic through the region. The bridge is one of two river crossings under high vehicular use in the region. According to figures from 1999, approximately 19,000 vehicles pass over the bridge every day. Between 1999 and the present, an average of 12 pleasure craft per month transited the area and required bridge openings between the hours of 6 a.m. and 6 p.m. Motorists did not have an alternate route when traveling this stretch of highway unless they drove several traffic congested miles. Boaters did not have an alternate route to transit this waterway when the drawbridge was closed.

NCDOT requested permission to decrease the number of openings for pleasure craft to avoid excessive/hazardous traffic back-ups during repairs. NCDOT proposed an intermodal compromise that will limit the times of draw openings during hours of bridge repair. NCDOT asserts that by closing the bridge to pleasure craft during daytime hours, except for two scheduled openings per day for waiting vessels, vehicular traffic congestion will be reduced and highway safety will be enhanced. NCDOT provided statistical data, which supports the traffic counts for a two-way four-lane bridge being changed to a two-way two-lane bridge. The data also revealed that the draw was opened an average of 12 times/month for pleasure craft, between the hours of 6 a.m. and 6 p.m. The Coast Guard considered restricting all navigation but chose not to, due to the safety concerns of restricting commercial vessels with hazardous cargoes. The Coast Guard believes that closure during the proposed time periods will not overburden recreational marine traffic while allowing the continued use of two lanes for the two-way flow of vehicular traffic.

This final rule will revise 33 CFR 117.829, which regulates the scheduled openings of the Seaboard System Railroad Bridge across Northeast Cape Fear River at mile 27.0. The previous regulatory text contains no paragraph designation. The regulatory text describes the "Northeast River," and this section is incorrectly titled the "Northeast River." This final rule corrects the river name and includes the Isabel S. Holmes Bridge in the same section.

Discussion of Comments and Changes

The Coast Guard received one letter on the NPRM. This letter stated they had no objection to the proposed rule, therefore, no changes were made to the final rule.

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that these changes will not impede maritime traffic transiting the bridge, but merely require mariners to plan their transits in accordance with the scheduled bridge openings, while still providing for the needs of the bridge owner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities because the regulation does not restrict the movement of commercial navigation, but only restricts the movement of pleasure craft (approx. 12 openings each month). In addition, to avoid any potential restriction to navigation, maritime advisories will be widely available to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. In our notice of proposed rule making we provided a point of contact to small entities, who could answer questions concerning proposed provisions or options for compliance.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and could either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this final rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This final rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

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Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.829 is revised to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) The draw of the Isabel S. Holmes Bridge, at mile 1.0, at Wilmington, North Carolina will operate as follows:

(1) The draw will be closed to pleasure craft from 6 a.m. to 6 p.m. every day except at 10 a.m. and 2 p.m. when the draw will open for all waiting vessels.

(2) The draw will open on signal for Government and commercial vessels at all times.

(3) The draw will open for all vessels on signal from 6 p.m. to 6 a.m.

(b) The draw of the Seaboard System Railroad Bridge across the Northeast Cape Fear River, mile 27.0, at Castle Hayne, North Carolina shall open on signal if at least 4 hours notice is given.

Dated: November 12, 2002.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–29905 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT23–1–6402; FRL–7412–2]

Approval and Promulgation of Air Quality Implementation Plans; Montana; State Implementation Plan Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On September 19, 1975, we approved the East Helena Sulfur Dioxide (SO_2) State Implementation Plan (SIP). Additionally, on May 1, 1984, we approved revisions to the East Helena SO_2 SIP. Finally, on January 27, 1995, we approved additional revisions to the East Helena SO_2 SIP. The East Helena SO_2 SIP approved on January 27, 1995, superceded the East Helena SO_2 SIP approved on September 19, 1975, and terminated the East Helena SO_2 SIP approved on May 1, 1984. However, when we approved the SIP revision on January 27, 1995, we did not indicate that it superceded and terminated earlier SIP approvals. EPA is making a correction to the regulatory language to clarify that the earlier East Helena SO_2 SIP revisions have been superceded or terminated by the East Helena SO_2 SIP approved on January 27, 1995.

DATES: This rule is effective on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we" or "our" is used it means EPA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in previous rulemakings. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Correction

When we approved the East Helena Sulfur Dioxide (SO_2) State Implementation Plan (SIP) on January 27, 1995 (60 FR 5313) (codified at 40 CFR 52.1370(c)(37)), we should have indicated that our September 19, 1975 (40 FR 43216) (currently codified at 40 CFR 52.1370(c)(5)), approval of the East Helena SO_2 SIP was superceded and that effective after November 15, 1995, our May 1, 1984 (49 FR 18482) (codified at 40 CFR 52.1370(c)(16)), approval of a revision to the East Helena SO_2 SIP was terminated. The Board Order issued on March 18, 1994, by the Montana Board of Health and Environmental Sciences, and incorporated by reference at 40 CFR 52.1370(c)(37)(i)(B), indicates that the SIP supercedes all requirements contained in the existing provisions of the SIP relating to sulfur dioxide in East Helena * * * except the provisions that relate to catalyst screening which terminated effective after November 15, 1995. We approved the East Helena SO_2 SIP on January 27, 1995, that contained an attainment demonstration and a control strategy for the primary SO_2 NAAQS. Therefore, pursuant to section 110(k)(6) of the Clean Air Act, we are clarifying 40 CFR 52.1370(c)(37) to indicate that the East Helena SO_2 SIP revision submitted on March 30, 1994, supercedes the East Helena SO_2 SIP approved in paragraph (c)(5) and, effective after November 15, 1995, terminates the East Helena SO_2 SIP approved in paragraph (c)(16).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the September 19, 1975, May 1, 1984, and January 27, 1995, actions approving revisions to the East Helena SO_2 SIP.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 26, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the identification of plan for Montana is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 14, 2002.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

2. Section 52.1370 is amended by revising the introductory text of paragraph (c)(37) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(37) The Governor of Montana submitted a State Implementation Plan (SIP) revision meeting the requirements for the primary SO_2 NAAQS SIP for the East Helena, Montana nonattainment area with a letter dated March 30, 1994. The submittal was to satisfy those SO_2 nonattainment area SIP requirements due for East Helena on May 15, 1992. The East Helena SO_2 SIP revision submitted on March 30, 1994, supercedes the East Helena SO_2 SIP approved in paragraph (c)(5) of this section and, effective after November 15, 1995, terminates the East Helena SO_2 SIP approved in paragraph (c)(16) of this section.

* * * * *

[FR Doc. 02–29775 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272–0376; FRL–7412–9]

Withdrawal of Direct Final Rule Revising the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On October 7, 2002 (67 FR 62385), EPA published a direct final approval of a revision to the Bay Area Air Quality Management District (BAAQMD) State Implementation Plan (SIP). This revision concerned BAAQMD Rule 9–10, Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by November 6, 2002, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments and is, therefore, withdrawing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on October 7, 2002 (67 FR 62427). As stated in the parallel proposal, EPA will not institute a second comment period on this action. The interim final determination also published on October 7, 2002 and also regarding BAAQMD Rule 9–10 is not affected by this withdrawal.

EFFECTIVE DATE: The direct final rule published on October 7, 2002, is withdrawn as of November 25, 2002.

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FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 947–972–3960.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 2002.

Sally Seymour,

Acting Regional Administrator, Region IX.

Accordingly, the revision to 40 CFR 52.220, published in the **Federal Register** on October 7, 2002 (67 FR 62385), [FR Doc. 02–25297 Filed 10–4–02], which was to become effective on December 6, 2002, is withdrawn.

[FR Doc. 02–29884 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3176, MM Docket No. 00–138, RM–9896]

Digital Television Broadcast Service; Boca Raton, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, by this document, denies a petition for reconsideration filed by Sherjan Broadcasting Company, Inc., of the Report and Order, which substituted DTV channel *40 for station WPPB–TV's assigned DTV channel *44 at Boca Raton, Florida.[1] With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 00–138, adopted November 14, 2002, and released November 20, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

[1] This *Report and Order* was not published in the **Federal Register**.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29853 Filed 11–22–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. 111902A]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Reopening of Directed Fishery for Loligo Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Directed fishery reopening.

SUMMARY: NMFS announces that commercial quota is available to allow the directed fishery for Loligo squid to reopen. Vessels issued a Federal moratorium permit to harvest Loligo squid in excess of the incidental catch allowance may resume landing of Loligo squid effective 0001 hours, December 2, 2002, through 0001 hours, December 12, 2002. The intent of this action is to allow for the full utilization of the commercial quota allocated to the Loligo squid directed fishery.

DATES: Effective 0001 hours, December 2, 2002, through 0001 hours, December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 648.22 of part 50 CFR requires NMFS to close the directed Loligo squid fishery in the EEZ for the remainder of the year when 95 percent of the total annual domestic annual harvest (DAH) has been harvested. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, determined that 95 percent of the total DAH for *Loligo* squid would be harvested by November 2, 2002 (67 FR 66072, October 30, 2002). Therefore, effective 0001 hours, November 2, 2002, the directed fishery for *Loligo* squid was closed. However, the closure threshold level of *Loligo* harvest has not yet been attained. Therefore, NMFS announces that the directed *Loligo* squid fishery will reopen. Vessels issued a Federal moratorium permit to harvest *Loligo* squid in excess of the incidental catch allowance may resume fishing for, retaining and landing Loligo squid in excess of the incidental catch allowance from 0001 hours, December 2, 2002, through 0001 hours, December 12, 2002. After 0001 hours, December 12, 2002, the directed fishery for *Loligo* squid will be closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2003, when the 2003 quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29893 Filed 11–20–02; 4:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 111902D]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Connecticut

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; commercial quota harvested for Connecticut.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Connecticut has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Connecticut for the remainder of calendar year 2002, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Connecticut that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Connecticut.

DATES: Effective 0001 hours, November 20, 2002, through 2400 hours, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2002 calendar year was set equal to 14,578,288 lb (6,612,600 kg)(66 FR 66348, December 26, 2001). The percent allocated to vessels landing summer flounder in Connecticut is 2.25708 percent, resulting in a commercial quota of 329,044 lb (149,258 kg). The 2002 allocation was not adjusted because there was no overage of the 2001 quota, as of October 31, 2001.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Connecticut has attained its quota for 2002.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, November 20, 2002, further landings of summer flounder in Connecticut by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2002 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, November 20, 2002, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29892 Filed 11–20–02; 4:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 111802A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using pot and trawl gear to catcher/processor vessels using hook-and-line gear in the BSAI. These actions are necessary to allow the 2002 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective November 20, 2002, until 2400 hours, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

On October 2, 2002 (67 FR 61826), the harvest specifications for Pacific cod established by the emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002) were revised as follows: 300 mt to vessels using jig gear, 81,920 mt to catcher processor vessels using hook-and-line gear, 482 mt to catcher vessels using hook-and-line gear, 17,535 mt to vessels using pot gear, 40,475 mt to trawl catcher/processors, and 42,475 mt to trawl catcher vessels.

As of November 8, 2002, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 3,500 mt and trawl catcher vessels will not be able to harvest 1,000 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii)(C), NMFS apportions 4,500 mt of Pacific cod from trawl gear to catcher/processor vessels using hook-and-line gear.

The Regional Administrator determined that vessels using pot gear will not be able to harvest 3,500 of their Pacific cod allocation by the end of the year. Therefore, in accordance with §679.20(a)(7)(ii)(C), NMFS is reallocating the unused amount of 3,500 mt of Pacific cod allocated to vessels using pot gear to catcher/processor vessels using hook-and-line gear.

The harvest specifications for Pacific cod established by the emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002) and the reallocation of Pacific cod in the Bering Sea and Aleutian Islands management area (67 FR 61826, October 2, 2002) are revised as follows: 89,920 mt to catcher processor vessels using hook-and-line gear, 14,035 mt to pot gear, 36,975 mt to trawl catcher/processors, and 41,475 mt to trawl catcher vessels.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the

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requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the implementation of these measures in a timely fashion in order to allow full utilization of the Pacific cod TAC, and therefore reduce the public's ability to use the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20 and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 19, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29891 Filed 11–20–02; 4:27 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 227
Monday, November 25, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 960

RIN 3206–AJ68

Federal Executive Boards

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its regulations governing Federal Executive Boards. The proposed regulations are intended to make the regulations concerning the Boards consistent with the current OPM structure and not to make substantive changes.

DATES: Comments must be submitted on or before January 24, 2003.

ADDRESSES: Send or deliver written comments to Paula L. Bridgham, Director for Federal Executive Board Operations U.S. Office of Personnel Management, Room 5524, 1900 E Street, NW, Washington, DC 20415: (FAX: (202) 606–3350 or e-mail: *plbridgh@opm.gov*).

FOR FURTHER INFORMATION CONTACT: Paula L. Bridgham, Director for Federal Executive Board Operations, U.S. Office of Personnel Management, (202) 606–1000; FAX: (202) 606–3350 or e-mail: *plbridgh@opm.gov*.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is proposing to revise its current regulations concerning Federal Executive Boards. The purpose of this revision to part 960 is not to make substantive changes but, rather, to make part 960 more readable and consistent with current OPM structure. For example, we have deleted or revised repetitive and duplicative sections, updated titles and locations of agency officials, and made other simplifying changes.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the effects are limited primarily to federal employees and other entities doing business with OPM.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 960

Organization and functions (Government agencies).

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to revise part 960 of title 5 of the Code of Federal Regulations as follows:

PART 960—FEDERAL EXECUTIVE BOARDS

Sec.

960.101 Definitions.
960.102 What is the authority and status for Federal Executive Boards?
960.103 Where are Federal Executive Boards located?
960.104 Who are members of Federal Executive Boards?
960.105 How are Federal Executive Boards organized?
960.106 What is the Office of Personnel Management's leadership role?
960.107 What are the authorized activities of Federal Executive Boards?
960.108 Are there additional rules and directives for Federal Executive Boards?

Authority: Memorandum of the President for Heads of Departments and Agencies (November 10, 1961).

§ 960.101 Definitions.

For purposes of this part:

The term *Director* means the Director of the United States Office of Personnel Management.

The term *Executive agency* means a department, agency, or independent establishment in the Executive Branch.

The term *metropolitan area* means a geographic zone surrounding a major city, as defined by the Director.

The term *principal area officer* means, with respect to an Executive agency, the senor official of the Executive agency who is located in a metropolitan area and who has no superior official within that metropolitan area other than in the Regional Office of the Executive agency. Where an Executive agency maintains facilities of more than one bureau or other subdivision within the metropolitan area, and where the heads of those facilities are in separate chains of command within the Executive agency, then the a may have more than one principal area officer.

The term *principal regional officer* means, with respect to an Executive agency, the senior official in a Regional Office of the Executive agency.

The term *special representative* means, with respect to an Executive agency, an official who is not subject to the supervision of a principal regional officer or a principal area officer and who is specifically designated by the head of the Executive agency to serve as the personal representative of the head of the Executive agency.

§ 960.102 What is the authority and status for Federal Executive Boards?

Federal Executive Boards are established by direction of the President in order to strengthen the management and administration of Executive Branch activities in selected centers of field operations. Federal Executive Boards are organized and function under the authority of the Director.

§ 960.103 Where are Federal Executive Boards located?

There are Federal Executive Boards in the following metropolitan areas: Albuquerque-Santa Fe, Atlanta, Baltimore, Boston, Buffalo, Chicago, Cincinnati, Cleveland, Dallas-Fort Worth, Denver, Detroit, Honolulu, Houston, Kansas City, Los Angeles, Miami, Minneapolis-St. Paul, New Orleans, New York, Newark, Oklahoma City, Philadelphia, Pittsburgh, Portland, St. Louis, San Antonio, San Francisco, and Seattle. The Director may dissolve, merge, divide or expand any of the existing Federal Executive Boards, or establish new Federal Executive Boards.

§ 960.104 Who are members of Federal Executive Boards?

(a) *Presidential Directive.* The President directed the heads of agencies to arrange for the leading officials of their respective agencies' field activities to participate personally in the work of Federal Executive Boards.

(b) *Members.* The head of every Executive agency shall designate, by title of office, the principal regional

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officer, if any, and the principal area officer or officers, if any, who shall represent the agency on each Federal Executive Board; and by name and title of office, the special representative, if any, who shall represent the head of the agency on each Federal Executive Board. Such designations shall be made in writing and transmitted to the Director, and may be transmitted through the Chairs of the Federal Executive Boards. Designations may be amended at any time by the head of the Executive agency.

(c) *Alternate Members.* Each member of a Federal Executive Board may designate an alternate member, who shall attend meetings and otherwise serve in the absence of the member. An alternate member shall be the deputy or principal assistant to the member or another senior official of the member's organization.

§ 960.105 How are Federal executive Boards organized?

(a) *Bylaws.* A Federal Executive Board shall adopt bylaws or other rules for its internal governance, subject to the approval of the Director. Such bylaws and other rules may reflect the particular needs, resources, and customs of each Federal Executive Board, provided that they are not inconsistent with the provisions of this part or with the directives of the President or the Director. To the extent that such bylaws and other rules conflict with these provisions or the directives of the President or the Director, such bylaws and other rules shall be null and void.

(b) *Chair.* Each Federal Executive Board shall have a Chair, who shall be elected by the members from among their number, and who shall serve for a term of office not to exceed 1 year.

(c) *Staff.* As they deem necessary, members shall designate personnel from their respective organizations to serve as the staff or participate in the activities of the Federal Executive Board. Other personnel may serve as staff of a Federal Executive Board only with the approval of the Director.

(d) Unless otherwise expressly provided by law, by directive of the President or the Director, or by the bylaws of the Federal Executive Board, every committee, subcommittee, council, and other sub-unit of the Federal Executive Board, and every affiliation of the Federal Executive Board with external organizations, shall expire upon expiration of the term of office of the Chair. Such a committee, subcommittee, council, other sub-unit, or affiliation may be reestablished or renewed by affirmative action of the Federal Executive Board.

(e) *Board Actions.* A Federal Executive Board shall take actions only with the approval of a majority of the members thereof. This authority may not be delegated. All activities of a Federal Executive Board shall conform to applicable laws and shall reflect prudent uses of official time and funds.

§ 960.106 What is the Office of Personnel Management's leadership role?

(a) *Role of the Director.* The Director is responsible to the President for the organizational and programmatic activities of the Federal Executive Boards. The Director shall direct and oversee the operations of Federal Executive Boards consistent with law and with the directives of the President. The Director may consult with the Chairs, members, and staff of the Federal Executive Boards.

(b) *Communications.* The Office of Personnel Management shall maintain a channel of communication from the Director through the Director for Federal Executive Board Operations to the Chairs of the Federal Executive Boards. Any Executive agency may communicate with the Director and wit the Federal Executive Boards. Chairs of Federal Executive Boards may communicate with the Director on recommendations for action at the national level, on significant management problems that cannot be addressed at the local level, and on other matters of interest to the Executive Branch.

(c) *Reports.* Each Federal Executive Board shall transmit to the Director an annual strategic plan and an annual report, signed by the Chair, describing the significant programs and activities of the Federal Executive Board in each fiscal year. Each strategic plan shall set forth the proposed general agenda for the succeeding fiscal year. The strategic plan shall be subject to the approval of the Director. Each annual report shall describe and evaluate the preceding fiscal year's activities. Annual reports shall be submitted on or before January 1 and annual strategic plans shall be submitted on or before July 1. In addition, members of Federal Executive Boards shall keep the headquarters of their respective Executive agencies informed of their activities by timely reports through appropriate agency channels.

(d) *Conferences.* The Director may convene regional and national conferences of Chairs and other representatives of Federal Executive Boards.

§ 960.107 What are the authorized activities of Federal Executive Boards?

(a) Each Federal Executive Board serves as an instrument of outreach for the national headquarters of the Executive Branch in the metropolitan area. Each Federal Executive Board shall consider common management and program problems and develop cooperative arrangements that promote the general objectives of the Government and of the several Executive agencies in the metropolitan area. Efforts of members, alternates, and staff in those areas shall be made with the guidance and approval of the Director; within the range of the delegated authority and discretion they hold; within the resources available; and consistent with the missions of the Executive agencies involved.

(b) Each Federal Executive Board shall:

(1) Provide a forum for the exchange of information between Washington and the field, and among field elements in the metropolitan area, about programs and management methods and issues;

(2) Develop local coordinated approaches to the development and operation of programs that have common characteristics;

(3) Communicate management initiatives and other concerns from Washington to the field to achieve mutual understanding and support; and

(4) Refer problems that cannot be solved locally to the national level.

(c) Subject to the guidance of the Director, the Federal Executive Boards shall provide local leadership and coordination for:

(1) Presidential initiatives on management reforms; personnel initiatives of the Office of Personnel Management; programs of the Office of Management and Budget and the General Services Administration;

(2) The local Combined Federal Campaign, under the direction of the Director;

(3) The sharing of technical knowledge and resources in finance, internal auditing, personnel management, information technology, interagency use of training and meeting facilities, and similar commonly beneficial activities;

(4) The pooling of resources to provide, as efficiently as possible, and at the least possible cost to the taxpayers, common services such as cardiopulmonary resuscitation (CPR) training, preventive health programs, child care and elder care activities, blood donor programs, and savings bond drives;

(5) Encouragement of employee initiative and better performance through special recognition and other incentive programs, and provision of assistance in the implementation and upgrading of performance management systems;

(6) Emergency operations, such as under hazardous weather conditions and natural or man-made disasters; responding to blood donation needs; and communicating related leave policies;

(7) Recognition of the service of American Veterans and dissemination of information relating to programs and benefits available for veterans in the Federal service; and

(8) Other programs, projects, and operations as approved by the Director.

(d) The Office of Personnel Management shall advise Federal Executive Boards on activities in the areas of performance appraisal and incentives, interagency training programs, the educational development of Government employees, improvement of labor-management relations, equal employment opportunity, the Federal Women's Program, the Federal Equal Opportunity Recruitment Program, the Hispanic Employment Program, the Veterans Employment Program, and selective placement programs for individuals with disabilities.

(e) The Director may direct one or more of the Federal Executive Boards to address specific programs or undertake cooperative activities.

§ 960.108 Are there additional rules and directives for Federal Executive Boards?

The Director may issue additional rules, guidance, and directives to the Federal Executive Boards.

[FR Doc. 02–29848 Filed 11–22–02; 8:45 am]
BILLING CODE 6325–46–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 276 and 279

RIN 0584–AD23

Food Stamp Program: Administrative Review Requirements—Food Retailers and Wholesalers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action will revise Food Stamp Program regulations affecting the administrative review process available to retail and wholesale firms participating in the Food Stamp Program. It proposes to streamline and make technical corrections to this process by amending portions of current regulations. The changes will eliminate repetitious, outdated and unnecessary provisions without taking away a firm's right to an administrative review. This rule also proposes to make technical corrections.

DATES: Comments must be received on or before January 24, 2003 to be assured of consideration.

ADDRESSES: Comments should be submitted to Karen Walker, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Ms. Walker at (703) 305–1863, or by e-mail to *karen.walker@fns.usda.gov*. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 408.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Ms. Walker at the above address or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore, was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments and consult with them as they develop and carry out those policy actions. The Food and Nutrition Service (FNS) has considered the impact of this rule that proposes streamlining and making technical changes to FNS' administrative review process available to retail food stores and wholesale concerns participating in the Food Stamp Program. This proposed rule has no Federalism implications in that procedural changes set forth do not affect State and local governments. This proposed rule does not impose any substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. §§ 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. It proposes to eliminate repetitious, outdated and unnecessary provisions; aggrieved businesses will continue to have the right to administrative reviews under this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections.

Written comments must be submitted on or before January 24, 2003.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology. *Comments may be sent to:* Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20203. Comments may also be submitted to Karen Walker, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Ms. Walker at (703) 305–1863, or e-mailed to *Karen.Walker@fns.usda.gov*.

All responses to this notice will be summarized and included in the request

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for OMB approval. All comments will also become a matter of public record.

OMB Number: To be assigned.

Expiration Date: 3 years from date of approval.

Type of Request: New collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the Food Stamp Program. The Food Stamp Act of 1977, as amended, (7 U.S.C. 2011–2036) requires that the Agency determine the eligibility of firms and certain food service organizations to participate in the Food Stamp Program. If a retail food store is found to be ineligible by FNS, that store has the right to request an administrative review of the decision. Such requests must be made in writing. This is not a new collection requirement, but the Food Stamp Program has never accounted for the burden associated with this activity.

Affected Public: Retail food stores and wholesale concerns.

Estimated Number of Respondents: 1,140

Number of Responses per Respondent: 1.2

Estimated Total Annual Responses: 1,368

Hours per Response: .17.

Total Annual Reporting Hours: 232.56.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of the preamble of the final rule. In the Food Stamp Program, the administrative procedures for retailers and wholesalers are as follows: for Program retailers and wholesalers—administrative procedures are issued pursuant to section 14 of the FSA (7 U.S.C. 2023) and 7 CFR 279.

Public Law 104–4

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not economically significant, nor subject to the requirements of sections 202 and 205 of the UMRA.

Background

In this rule, FNS is proposing to revise food stamp regulations affecting the administrative review process for retail food stores and wholesale food concerns participating in the Food Stamp Program. The revisions will streamline the administrative review process by eliminating repetitive and unnecessary provisions and consolidating other provisions in current regulations found in 7 CFR 278 and 279. These revisions will not change the rights of aggrieved food retailers and wholesale food concerns to request and obtain an administrative review from FNS. Also, this rule proposes to make technical corrections involving regulatory cites listed in section 278.1.

7 CFR 278.1—Approval of Retail Food Stores and Wholesale Food Concerns

This section provides information regarding the authorization withdrawals and denials of firms participating or seeking to participate in the Food Stamp Program. References included in paragraphs (k)(1) and (2) and (l)(1)(ii) and (iii) are not correct and this rule proposes to correct them.

7 CFR 278.8—Administrative Review—Retail Food Stores and Wholesale Food Concerns

This section in current regulations provides information regarding how food retailers or wholesale food concerns aggrieved by an administrative action can file a request for an administrative review. It references sections that deal with specific administrative actions that are subject to review and provides the address where requests for reviews must be sent. This same information in more detail is provided in 7 CFR 279, and the Department believes including that same or similar information in two places is repetitive. Therefore, this rule proposes to remove the language from 7 CFR 278.8. Reference changes reflecting this removal have been made throughout in §§ 278.1, 278.6 and 278.7.

7 CFR 279 Subpart A—Administrative Review—General; Subpart B—Rules of Procedure; and, Subpart C—Judicial Review

Under Current regulations, 7 CFR 279 is divided into three subparts. Subparts A and B pertain to the administrative review process, while subpart C pertains to the judicial review process. The Department believes having two different subparts for the administrative review process may be confusing to readers and should be clarified. Therefore, the rule proposes to collapse subpart B into subpart A and re-designate subpart C as subpart B. This change will provide a clear distinction between the two different review processes. Under the proposed change, subpart A will cover the administrative review process and subpart B will cover the judicial review process. In addition, throughout part 279 of the proposed rule, the term "administrative review officer" is changed to "designated reviewer", which conforms to section 14(a)(5) of the Food Stamp Act of 1977 (7 U.S.C. § 2023(a)(5))), which gives the Secretary the authority to designate such reviewers. The responsibilities of the designated reviewer will be the same as the administrative review officer under current rules.

Scope and purpose—7 CFR 279.1

Scope and purpose: The introductory paragraph at 7 CFR 279.1 clarifies the scope of purpose of each of the subparts mentioned above. Since the proposed rule would collapse subpart B into subpart A, such clarification is unnecessary. Therefore, under the proposed regulation, the introductory paragraph at 7 CFR 279.1 is removed and replaced with amended language from 7 CFR 279.3 in current rules which explains the jurisdiction and authority of the administrative review process.

Administrative Review Officer—7 CFR 279.2.

Administrative review officer: Current regulations include a section describing how review officers are designated and are assigned cases to review. The Department believes this is internal guidance for FNS and does not belong in regulations. Therefore, the proposed rule would remove this section entirely.

Authority and Jurisdiction—7 CFR 279.3

Authority and jurisdiction: Current regulations describe the authority and jurisdiction of the administrative review process at 7 CFR 279.3. The proposed regulation would include that section at 7 CFR 279.1. It also proposes to amend that section for clarification purposes by adding a separate paragraph for disqualifications. Current regulations include that with a paragraph on the imposition of fines.

Rules of Procedure—7 CFR 279.4

Rules of procedures: Current regulations at 7 CFR 279.4 separate the administrative review process into two subparts, A and B. These regulations include an introductory paragraph clarifying what information is included under subpart A and subpart B, which is not included in the proposed rule. Under the proposed rule, all information involving the administrative review process is included under a single subpart (subpart A); therefore, there is no longer a need for an introductory paragraph clarifying two subparts.

Content of Request—7 CFR 279.6

Content of request for review: Current regulations at 7 CFR 279.6 include language regarding requests for in person meetings with administrative review officers. Currently there are only three locations where such meetings take place, so most firms that wish to have meetings must travel long distances to participate in them. The review is based on the facts of the case which can be presented in writing or orally by phone. Firms can and do talk with reviewers by phone. Even though very few firms request in-person meetings, the Department believes that offering in-person meetings gives the impression that stores which cannot avail themselves of the meeting are disadvantaged. Therefore, the rule proposes to eliminate these meetings. Aggrieved retailers can participate in conference calls with administrative review staff if requested.

Action Upon Receipt of a Request for Review—7 CFR 279.7

Failure to meet with review officer: Current regulations at 7 CFR 279.7(c), include a paragraph dealing with the in-person meetings. This provision would no longer be relevant if these meetings no longer take place; therefore, the proposed rule would remove this paragraph.

Determination of the Administrative Review Officer—7 CFR 279.8

Determination notification: Current regulations at 7 CFR 279.8(e) and (f) include information about the determination notification process. This proposed rule would combine paragraphs (e) and (f) into paragraph (e) and redesignate paragraph (g) as paragraph (f). In addition, technical corrections are proposed for paragraph (b) to reflect changes made by a prior regulation.

Implementation

The Department is proposing that the provisions of this rulemaking be implemented 60 days after publication of the final rule.

List of Subjects

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, General line-wholesalers, Groceries, Groceries-retail, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, General line-wholesalers, Groceries, Groceries-retail.

Accordingly, 7 CFR parts 278 and 279, are proposed to be amended as follows:

1. The authority citation for parts 278 and 279 continue to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

§ 278.1 [Amended]

2. In § 278.1:

a. Paragraph (k)(1) is amended by removing the reference "(g) or (h)" and adding in its place the reference "(g), (h) or (i)";

b. Paragraph (k)(2) is amended by removing in the first sentence the words "the Food Stamp Act of 1977, as amended;" and adding in its place the words "paragraph (b)(1)(i) of this section;" and by removing the reference "(b)(1)(iv)" and adding in its place the reference (b)(1)(vi)";

c. Paragraph (l)(1)(ii) is amended by removing the reference "(g), or (h)" and adding in its place the reference "(g), (h) or (i)";

d. Paragraph (l)(1)(iii) is amended by removing the words "the Food Stamp Act of 1977, as amended," and adding in its place the words "paragraph (b)(1)(i) of this section;" and by removing the reference "(b)(1)(iv)" and adding in its place the reference "(b)(1)(vi)".

e. The regulatory reference "§ 279.5" is removed in paragraph (l)(2) and the regulatory reference "part 279" is added in its place; and

f. The regulatory reference "§ 278.8," is removed in paragraph (p) and the regulatory reference "part 279" is added in its place.

§ 278.6 [Amended]

3. In 278.6, the regulatory reference "§ 279.5" is removed wherever it appears in paragraphs (b), (c) and (n), and the regulatory reference "part 279" is added in its place.

§ 278.7 [Amended]

4. In § 278.7, the regulatory reference "§ 278.8" is removed in paragraph (f) and the regulatory reference "part 279" is added in its place.

§ 278.8 [Removed and Reserved]

5. § 278.8 is removed and reserved.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

6. In part 279:

a. The words "administrative review officer" are removed wherever they appear and the words "designated reviewer" are added in their place; and

b. The words "review officer" are removed wherever they appear and the words "designated reviewer" are added in their place.

7. Subpart A is further amended by removing the word "—General" in the Subpart heading.

8. Revise § 279.1 to read as follows:

§ 279.1 Jurisdiction and authority.

A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 of this chapter may, within a period stated in this part, file a written request for review of the administrative action with FNS. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review, except in the case of a permanent disqualification as specified in § 278.6(e)(1) of this chapter.

(a) *Jurisdiction.* Reviewers designated by the Secretary shall act for the Department on requests for review filed by food retailers or wholesale food concerns aggrieved by any of the following actions:

(1) Denial of an application or withdrawal of authorization to participate in the program under § 278.1 of this chapter;

(2) Disqualification under § 278.6 of this chapter, except that a disqualification for failure to pay a civil

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money penalty shall not be subject to administrative review and a disqualification imposed under § 278.6(e)(8) of this chapter shall not be subject to administrative or judicial review;

(3) Imposition of a fine under § 278.6 of this chapter;

(4) Denial of all or part of any claim asserted by a firm against FNS under § 278.7(c), (d), or (e) of this chapter;

(5) Assertion of a claim under § 278.7(a) of this chapter; or

(6) Forfeiture of part or all of a collateral bond under § 278.1 of this chapter, if the request for review is made by the authorized firm. FNS shall not accept requests for review made by a bonding company or agent.

(b) *Authority.* The determination of the designated reviewer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and subpart B of this part.

§§ 279.2 through 279.4 [Removed]

9. Remove §§ 279.2 through 279.4.

§§ 279.5 through 279.11 [Redesignated and Transferred]

10. Subpart B is further amended by redesignating §§ 279.5 through 279.9 as §§ 279.2 through 279.6, respectively, and transferring them to Subpart A.

§ 279.2 [Amended]

11. Amend newly redesignated § 279.2 as follows:

a. The heading of paragraph (a) is amended by removing the word "Addressing" and adding in its place the word "Submitting".

b. Paragraph (a) is further amended by removing the words "Room 304".

c. Paragraph (c) introductory text is amended by removing the words "with the Director, Administrative Review Division,".

§ 279.3 [Amended]

12. Remove the last two sentences of paragraph (b) in newly redesignated § 279.3.

13. Amend newly redesignated § 279.4 as follows:

a. Paragraph (a) is amended by revising the first two sentences and by removing the last sentence;

b. Paragraph (c) is revised; and

c. Paragraph (d) is removed.

The revisions read as follows:

§ 279.4 Action upon receipt of a request for review.

(a) Upon receipt of a request for review of administrative action, the administrative action shall be held in abeyance until the designated reviewer has made a determination. However, permanent disqualifications for trafficking shall not be held in abeyance and shall be effective immediately as specified in § 278.6(b)(2) of this chapter.

* * *

* * * * * * *

(c) *Extensions of time.* Upon timely written request to FNS by the firm requesting the review, FNS may grant extensions of time if, in FNS' discretion, additional time is required for the firm to fully present information in support of its position. However, no extension may be made in the time allowed for the filing of a request for review.

14. Amend newly redesignated § 279.5 as follows:

a. The heading of this section is revised and the heading of paragraph (a) is amended by removing the word "officer",

b. Paragraph (b), (c) and (e) are revised; and

c. Paragraph (f) is removed and paragraph (g) is redesignated as paragraph (f).

The revisions read as follows:

§ 279.5 Determination of the designated reviewer.

* * * * * *

(b) *Review of denial or withdrawal of authorization.* When the action under review is the denial of an application for authorization or the withdrawal of an existing authorization, the designated reviewer shall sustain the action under review; sustain the action under review, but specify a shorter period of time the action will remain in effect; or direct that the action under review be reversed.

(c) *Review of disqualification or civil money penalty or fine.* When the action under review is disqualifying a firm from program participation or assessing a civil money penalty or fine against a firm, the designated reviewer shall: sustain the action under review; specify a shorter period of disqualification; specify a reduced money penalty or fine; direct that an official warning letter be issued to the firm in lieu of a disqualification, civil money penalty or fine; or, direct that the action under review be reversed. The designated reviewer may change a disqualification of a firm to a civil money penalty if the disqualification would cause a hardship to participating households (except in the case of a permanent disqualification). The designated reviewer, working with the appropriate FNS office, shall determine if circumstances warrant a civil money penalty in accordance with § 278.6 of this chapter.

* * * * * *

(e) *Determination notifications.* FNS shall notify the firm of the determination. Such notification will be sent to the representative of the firm who filed the request for review.

* * * * * *

15. In newly redesignated § 279.6, revise paragraph (a) to read as follows:

§ 279.6 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the Benefit Redemption Division shall obtain the advice of the Department's Office of the General Counsel.

* * * * * *

Subpart B—[Removed]

16. Subpart B is removed.

Subpart C—[Redesignated as Subpart B]

17. Subpart C is redesignated as Subpart B.

§§ 279.10 and 279.11 [Redesignated as §§ 279.7 and 279.8]

18. Redesignate §§ 279.10 and 279.11 as §§ 279.7 and 279.8.

§ 279.7 [Amended]

19. Amend newly redesignated § 279.7 as follows:

a. Paragraph (a) is amended by removing the regulatory reference "§ 279.8(e)" and adding in its place the regulatory reference "§ 279.5(e)".

b. Paragraph (b) is amended by removing the words the "officer or".

Dated: November 14, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–29889 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–20]

Amendment of Class D Airspace, White Plains, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class D airspace at White Plains, NY. Controlled airspace extending upward from the surface is needed to contain aircraft executing Instrument Flight Rule (IFR) procedures and provide a safer operating environment. This action would increase the limits of the existing Class D airspace by an extension along the runway 34 approach course.

DATES: Comments must be received on or before December 20, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–20, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AEA–20". The postcard will be date\time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at Westchester County Airport, White Plains, NY. This action would provide additional Class D Airspace extending two additional miles along the southeast and northwest localizer courses for Westchester County Airport up to but not including 3,000 feet to accommodate IFR operations using Runway 34.

Class D airspace designations for airspace areas extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K dated August 30, 2002, and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * * *

AEA NY D White Plains, NY

Westchester County Airport, White Plains, NY
(Lat. 41°04′01″ N., long. 73°42′27″ W.)
Westchester County ILS Localizer Northwest
(Lat. 41°03′27″ N., long. 73°41′58″ W.)
Westchester County ILS Localizer Southeast
(Lat. 41°04′37″ N., long. 73°42′52″ W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.1 mile radius of Westchester County Airport and within 1.5 miles each side of the Westchester County ILS northwest localizer course extending from the 4.1 mile radius to 6.1 miles northwest of the airport and within 1.5 miles each side of the Westchester County ILS southeast localizer course extending from the 4.1 mile radius to 6.1 miles southeast of the airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * * *

Issued in Jamaica, New York, on November 7, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–29904 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–21]

Establishment of Class E Airspace; William T. Piper Memorial Airport, Lock Haven, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at William T. Piper Memorial Airport (LHV), Lock Haven, PA. The development of a Standard Instrument Approach Procedure (SIAP) to serve flights operating into William T. Piper Memorial Airport under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 26, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–21, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basic supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AEA–21". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Regulations (14 CFR part 71) to establish Class E airspace area at Lock Haven, PA. The development of a SIAP to serve flights operating IFR into the William T. Piper Memorial Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K dated August 30, 2002 and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, Lock Haven [NEW]

William T. Piper Memorial Airport
(Lat. 41°08′09″ N., long. 77°25′24″ W.)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of William T. Piper Memorial Airport.

* * * * *

Issued in Jamaica, New York on November 7, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–29903 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 902

[NCPPC 102]

Dispute Adjudication Procedures

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed rule.

SUMMARY: The Compact Council established pursuant to the National Crime Prevention and Privacy Compact (Compact) is publishing a rule proposing to establish Dispute Adjudication Procedures. These procedures support Article XI of the Compact.

DATE: Submit comments on or before December 26, 2002.

ADDRESSES: Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Cathy L. Morrison. Comments may also be submitted by fax at (304)625–5388 or by electronic mail at *cmorriso@leo.gov*. To ensure proper handling, please reference "Dispute Adjudication" on your correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Rehmann, Compact Council Chairman, Montana Department of Justice, 303 North Roberts, 4th Floor, Post Office Box 201406, Helena, Montana 59620–1406, telephone number (406) 444–6194.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact, 42 U.S.C. 14611–14616, establishes uniform standards and processes for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was signed into law on October 9, 1998, (Pub. L. 105–251) and became effective on April 28, 1999, when ratified by the second state. The Compact eliminates barriers to the sharing of criminal history record information among the compact parties for noncriminal justice purposes. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

This proposed rule establishes Dispute Adjudication Procedures authorized under Article XI of the Compact. Article XI provides generally for the adjudication of disputes relating to the Compact and this rule provides a structured framework for the Council to efficiently and effectively implement the adjudication process.

Section 902.2(a) of the proposed rule provides that cognizable disputes may only be raised by a person or organization directly aggrieved by: (1) The Council's interpretation of the Compact; (2) any rule or standard established by the Council pursuant to the Compact; or (3) failure of a Compact Party to comply with a provision of the Compact or with any rule or standard established by the Council. Limiting disputes to those who are "directly aggrieved" by Council or Compact Party actions ensures that Council resources are devoted to reviewing substantive matters relating to direct Council or Compact Party actions and that standing is provided only to a person or organization substantially impacted by relevant actions of the Compact Council or a Compact Party.

Section 902.2(d) of the proposed rule provides that a dispute may not be based solely upon a disagreement with the merits of a rule or standard established by the Council. If a rule has been established by the Council, the Council has provided an opportunity for comments through the publishing of a proposed rule, has debated the merits and wisdom of the rule at meetings open to the public, and has determined that the rule should be enacted. Prior public notice is given in the **Federal Register** of each Council meeting, including the matters to be addressed at the meeting. Therefore, the public will have prior notice of the proposed rules to be discussed by the Council and will have an opportunity to comment on the merits of the proposed rules. Accordingly, prohibiting disputes based on the merits or wisdom of a Council rule ensures that Council time and resources are not spent adjudicating disputes in matters in which the Council has already invested significant time and effort and on which interested parties have had ample opportunity to comment. However, while a formal dispute on the merits of a rule may not be raised under these procedures, nothing prevents further discussion of the merits of the rule or efforts seeking its revocation at regularly scheduled Council meetings.

Section 902.3 of the proposed rule provides that disputes are preliminarily referred to the Council's Dispute Resolution Committee for a recommendation to the Council Chairman regarding whether a hearing should be held on the matter. Creating and utilizing a Dispute Resolution Committee enhances efficiency by having a small group assess pertinent information and make recommendations to the Chairman and full Council.

The hearing procedures provided for in the proposed rule ensure that disputants, as well as Compact Parties charged with violating Council rules, are given a full and fair opportunity to present matters to the Council both orally and in writing. Due to the Council's historically busy agenda and the costs involved in assembling the 15-member Council and its administrative support, the Council Chairman may limit the number of and the length of time allowed to presenters or witnesses. The Chairman also maintains the discretion to limit input, both orally and in writing, of other persons or organizations who may wish to participate in an adjudication proceeding.

Given the affected interests of the Compact Council, the proposed rule requires that appropriate notice of an appeal under Article XI be communicated to the Council Chairman by the appealing party to ensure that timely notice is provided to Council members and other appropriate individuals.

Administrative Procedures and Executive Orders

Administrative Procedures Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/federal state compact which was approved and enacted into legislation by Congress pursuant to Pub. L. 105–251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes. The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the **Federal Register**. *See* 42 U.S.C. 14616, Articles II(4), VI(a)(1) and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

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Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801–804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. *See* 5 U.S.C. 804.

List of Subjects in 28 CFR Part 902

Administrative practice and procedure, National Crime Prevention and Privacy Compact Council.

Accordingly, chapter IX of title 28 Code of Federal Regulations is amended by adding part 902 to read as follows:

PART 902—DISPUTE ADJUDICATION PROCEDURES

Sec.

902.1 Purpose and authority.
902.2 Raising disputes.
902.3 Referral to Dispute Resolution Committee.
902.4 Action by Council Chairman.
902.5 Hearing procedures.
902.6 Appeal to the Attorney General.
902.7 Court action.

Authority: 42 U.S.C. 14616.

§ 902.1 Purpose and authority.

The purpose of this part 902 is to establish protocols and procedures for the adjudication of disputes by the Compact Council. The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616.

§ 902.2 Raising disputes.

(a) Cognizable disputes must be raised by a Party State, the FBI, or a person, organization, or government entity directly aggrieved within the meaning of paragraph (b) of this section and may be based upon:

(1) A claim that the Council has misinterpreted the Compact or one of the Council's rules or standards established under Article VI of the Compact;

(2) A claim that the Council has exceeded its authority under the Compact;

(3) A claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its bylaws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

(4) A claim by a Compact Party that another Compact Party has failed to comply with a provision of the Compact or with any rule or standard established by the Council.

(b) A Party State, the FBI, or a person, organization, or government entity directly aggrieved by the Council's interpretation of the Compact or any rule or standard established by the Council pursuant to the Compact, or in connection with a matter covered under § 902.2(a)(4), may request a hearing on a dispute by contacting the Compact Council Chairman in writing at the Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The Chairman may ask the requester for more particulars, supporting documentation or materials as the circumstances warrant.

(d) A dispute may not be based solely upon a disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its authority under the Compact. However, nothing in this rule prohibits further discussion of the merits of a rule or standard at any regularly scheduled Council meeting.

§ 902.3 Referral to Dispute Resolution Committee.

(a) The five person Dispute Resolution Committee membership shall be determined according to Compact Article VI (g). Should a dispute arise with an apparent conflict of interest between the disputant and a Committee member, the Committee member shall recuse himself/herself and the Compact Council Chairman shall determine an appropriate substitute for that particular dispute.

(b) The Compact Council Chairman shall refer the dispute, together with all supporting documents and materials, to the Council's Dispute Resolution Committee.

(c) In making a decision as to whether to recommend a hearing, the Dispute Resolution Committee shall lean toward recommending hearings to all disputants who raise issues that are not clearly frivolous or without merit.

(d) The Dispute Resolution Committee shall consider the matter and:

(1) Refer it to the Council for a hearing;

(2) Recommend that the Council deny a hearing if the Committee concludes that the matter does not constitute a cognizable dispute under § 902.2(a); or

(3) Request more information from the person or organization raising the dispute or from other persons or organizations.

§ 902.4 Action by Council Chairman.

(a) The Chairman shall communicate the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

(b) If a hearing is not granted, the Federal Bureau of Investigation or a Party State may appeal this decision to the Attorney General pursuant to Section (c) of Article XI of the Compact (see § 902.6).

(c) If a hearing is granted, the Chairman shall:

(1) Include the dispute on the agenda of a scheduled meeting of the Council or, at the Chairman's discretion, schedule a special Council meeting;

(2) Notify the person or organization raising the dispute as to the date of the hearing and the rights of disputants under § 902.5 (Hearing Procedures); and

(3) Include the matter of the dispute in the prior public notice of the Council meeting required by Article VI (d)(1) of the Compact.

§ 902.5 Hearing procedures.

(a) The hearing shall be open to the public pursuant to Article VI (d)(1) of the Compact.

(b) The Council Chairman or his/her designee shall preside over the hearing and may limit the number of, and the length of time allowed to, presenters or witnesses.

(c) The person or organization raising the dispute or a Compact Party charged under the provisions of § 902.2(a)(4) shall be entitled to:

(1) File additional written materials with the Council at least ten days prior to the hearing;

(2) Appear at the hearing, in person and/or by counsel;

(3) Make an oral presentation; and

(4) Call witnesses.

(d) Subject to the discretion of the Chairman, other persons and organizations may be permitted to appear and make oral presentations at the hearing or provide written materials to the Council concerning the dispute.

(e) All Council members, including a member or members who raised the dispute that is the subject of the hearing, shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.

(f) The Council shall, if necessary, continue the hearing to a subsequent Council meeting.

(g) Summary minutes of the hearing shall be made and transcribed and shall be available for inspection by any person at the Council office within the Federal Bureau of Investigation.

(h) The proceedings of the hearing shall be recorded and shall be transcribed, as necessary. A record of the proceedings will be made and provided to the Attorney General if an appeal is filed pursuant to section (c) of Article XI of the Compact.

(i) The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present and voting at the hearing. The Council's decision on the dispute shall be published in the **Federal Register** as provided by section (a)(2) of Article XI and section (e) of Article VI.

(j) The Council Chairman shall advise Council members and hearing participants of the right of appeal provided by section (c) of Article XI of the Compact.

§ 902.6 Appeal to the Attorney General.

(a) The Federal Bureau of Investigation or a Compact Party State may appeal the decision of the Council to the U.S. Attorney General pursuant to section (c) of Article XI of the Compact.

(b) Appeals shall be filed and conducted pursuant to rules and procedures that may be established by the Attorney General.

(c) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

§ 902.7 Court action.

Pursuant to section (c) of Article XI of the Compact, a decision by the Attorney General on an appeal under § 902.6 may be appealed by filing a suit seeking to have the decision reversed in the appropriate district court of the United States.

Dated: November 1, 2002.

Wilbur Rehmann,

Compact Council Chairman.

[FR Doc. 02–29709 Filed 11–22–02; 8:45 am]

BILLING CODE 4410–02–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

RIN 3076AA09

Arbitration Schedule of Fees

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The Federal Mediation and Conciliation Service is proposing to revise the Appendix to 29 CFR Part 1404 to replace the fee schedule item for processing requests for panels of arbitrators with two new fee schedule categories—one for processing requests on-line and the other for requests which require processing by FMCS staff. In addition, FMCS proposes to increase the rates for requests which require staff processing and for requests for lists and biographic sketches of arbitrators.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 24, 2003.

ADDRESSES: Send comments to Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427 or by fax to (202) 606–3749. *See* **SUPPLEMENTARY INFORMATION** for other information concerning comments.

Submit copies of electronic comments to *vtraynham@fmcs.gov*. See **SUPPLEMENTARY INFORMATION** for other information concerning electronic filing.

FOR FURTHER INFORAMTION CONTACT: Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone, (202) 606–5111; Fax (202) 606–3749.

SUPPLEMENTARY INFORMATION: In this rulemaking, FMCS proposes to amend its regulations in the Appendix to 29 CFR part 1404 by replacing the general category on the fee schedule for requests for panels with two new categories, one for processing electronic requests for panels and the other for requests which require processing by FMCS staff.

Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS offers panels of arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements and to deal with fact finding and interest arbitration issues as well. On October 1, 1997, the Office of Arbitration Services (OAS) began charging a nominal fee for all requests for panels, lists and other major services. FMCS now proposes to amend the Appendix to 29 CFR part 1404 by adding a new category on the fee schedule for electronic requests and to increase the fees in other categories to take into account increases in the costs of processing the requests.

In May 2000, the OAS developed its electronic system to issue panels of arbitrators. Since the inception of the on-line system, nearly 500 labor and/or management representatives have utilized this on-line system, thereby reducing the time period for them to receive panels of arbitrators. The on-line system permits the parties to receive panels almost instantly—by fax, e-mail or mail. Ninety percent of all electronic requests are either faxed or e-mailed to the parties.

To encourage the use of electronic processing and receipt of panels, OAS is adding an entry on its fee schedule for on-line processing of panel requests. The on-line processing category will maintain the costs for this service at the fee of $30.00—the amount currently in effect for all requests for panels of arbitrators—since the costs for electronic processing have not significantly increased.

The proposed revision to the arbitration fee schedule in the Appendix to 29 CFR part 1404 would create another category for requests that have to be processed by FMCS staff. FMCS proposes to increase the fees in this category from the current $30.00 to $50.00 for each panel. The increase in cost is based on several factors. The complexity of the requests received and processed by the staff in OAS has increased greatly. Parties are requesting more than the standard seven names on a panel, and they are requesting multiple panels with up to 15 names on each panel that require manual exclusions, based on a collective bargaining agreement. As a result, the staff time to process these requests has increased, as well as the cost to mail the panels. In addition, several increases in postage have occurred since the agency began charging for panels in October 1997.

Finally, FMCS proposes to revise the Appendix to 29 CFR part 1404 by increasing the cost for lists and biographical sketches of arbitrators in specific areas from $10.00 per request

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plus $.10 per page to $25.00 per request and $.25 per page. All other fees in the Appendix would remain the same.

Access to Information in Comments

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as "CBI." Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 am to 4:30 pm, Monday through Friday, excluding legal holidays.

Electronic Access and Filing

All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The fees assessed by FMCS for requests for panels are nominal and should not cause any significant economic effect on small entities which may request arbitration panels..

Executive Order 12866

This regulation has been deemed significant under Section 3(f)(3) of Executive Order 12866 and as such has been submitted to and reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small Governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with Foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 1404

Arbitration, Arbitration fees.

For the reasons set forth in the preamble, FMCS proposes to amend the Appendix to 29 CFR part 1404 as follows:

PART 1404—ARBITRATION SERVICES

1. The authority citation for part 1404 continues to read as follows:

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

2. Appendix to part 1404 is revised to read as follows:

Appendix to Part 1404—Arbitration Policy; Schedule of Fees

Annual listing fee for all arbitrators—$100 for the first address; $50 for the second address

Request for panel of arbitrators processed by FMCS staff—$50.00

Request for panel of arbitrators processed on-line—$30.00

Direct appointment of an arbitrator when a panel is not used—$20.00 per appointment

List and biographic sketches of arbitrators in a specific area—$25.00 per request plus $.25 per page.

John J. Toner,

Chief of Staff.

[FR Doc. 02–29481 Filed 11–22–02; 8:45 am]

BILLING CODE 6372–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2277–06; I.D. 101802B]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Regulations Governing Northeast Multispecies and Monkfish Days-at-Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS proposes a regulatory amendment that would revise the monkfish days-at-sea (DAS) regulations found at 50 CFR part 648 in order to provide vessels possessing limited access Category C or D monkfish permits the opportunity to fish their full allocation of up to 40 monkfish DAS, regardless of the amount of Northeast (NE) multispecies DAS available to an individual vessel as of August 1, 2002. These regulations were modified as part of a August 1, 2002, interim final rule implementing the Settlement Agreement Among Certain Parties (Settlement Agreement), ordered by the U.S. District Court for the District of Columbia in a Remedial Order issued on May 23, 2002. However, the August 1, 2002, interim final rule unintentionally restricted monkfish DAS allocated under the Monkfish Fishery Management Plan (Monkfish FMP) for limited access Category C or D monkfish vessels that used NE multispecies DAS not in conjunction with a monkfish DAS, during May through July, 2002. This regulatory amendment would also revise ambiguous language to clarify that a vessel fishing under a Southern New England (SNE) and Mid-Atlantic (MA) Yellowtail Flounder Possession/Landing Letter of Authorization (LOA) may fish in the Gulf of Maine (GOM) or Georges Bank (GB) Regulated Mesh Areas (RMAs), provided the vessel abides by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat.

DATES: Public comments must be received on or before December 10, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments on regulatory amendment." Comments may also be submitted via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Regulatory Impact Review (RIR) prepared for this action are available from the Regional Administrator. The document is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, phone: 978–281–9103, fax: 978–281–9135, e-mail: *Allison.Ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS published an interim final rule on August 1, 2002 (67 FR 50292), to reduce overfishing consistent with and pursuant to section 305(c)(3) of the Magnuson-Stevens Fishery Conservation and Management Act, while Amendment 13 to the Northeast Multispecies Fishery Management Plan is being developed. Under the provisions of section 305(c)(3) of the Magnuson-Stevens Act, interim measures shall remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the **Federal Register** for one additional period of not more than 180 days, provided that the public has had an opportunity to comment on the interim measures. Because of the Court's Remedial Order, it is very likely that NMFS will extend the interim final rule beyond the first 180–day period. NMFS will announce any extension by publishing a notification in the **Federal Register**. Because this proposed rule will amend the August 1, 2002, interim rule, this proposed rule, if approved and implemented by NMFS, will remain in effect for the duration of the August 1, 2002, interim final rule, including any extensions.

The August 1, 2002, interim final rule implemented additional measures intended to reduce overfishing on species managed under the NE Multispecies Fishery Management Plan as specified in the Settlement Agreement, including a freeze on the use of DAS and a 20–percent reduction in effort from the highest amount of DAS fished during the fishing years 1996–2000. Under the monkfish DAS regulations implemented through the Monkfish FMP (64 FR 54732, October 7, 1999), all limited access monkfish vessels are allocated up to 40 monkfish DAS per fishing year (May 1 through April 30). Vessels that hold a limited access monkfish Category C or D permit (*i.e.*, vessels that possess both a limited access monkfish and limited access NE multispecies DAS permit) must run both their monkfish DAS clock and their NE multispecies DAS clock concurrently when fishing under a monkfish DAS. Limited access monkfish vessels that do not have a limited access NE multispecies permit (*i.e.*, Category A and B vessels) may fish their monkfish-only DAS in a fishery exempted under the 5–percent regulated multispecies bycatch provisions. Implementation of the freeze and reduction in DAS without regard for monkfish DAS, however, have restricted certain limited access monkfish vessels to fishing only the number of monkfish DAS equivalent to the number of NE multispecies DAS allocated under the August 1, 2002, interim final rule, minus the NE multispecies DAS fished during May - July, 2002. There was no intent specified in the Settlement Agreement to further restrict monkfish harvest through DAS or other measures, when NMFS revised § 648.92(b)(2) in the August 1, 2002, interim final rule. Therefore, NMFS intended to enable limited access Category C or D monkfish vessels to fish their full allocations of 40 DAS.

The August 1, 2002, interim final rule, as currently written, specifies that Category C or D monkfish vessels that have been allocated fewer than 40 NE multispecies DAS may fish, as monkfish-only DAS, those monkfish DAS equal to the difference between their NE multispecies DAS allocation and their monkfish DAS allocation for the fishing year May 1 through April 30. However, this does not account for those vessels that used NE multispecies DAS prior to August 1, 2002, and, as a result, had fewer unused NE multispecies than unused monkfish DAS as of August 1, 2002. This omission was recognized by NMFS shortly after implementation of the August 1, 2002, interim final rule. Because such vessels would not be provided the opportunity to fish their full 40 monkfish DAS allocations for the 2002 fishing year, NMFS is proposing this regulatory amendment to revise § .92(b)(2). This proposed regulatory amendment would enable Category C or D monkfish vessels to fish their monkfish DAS that were unused as of August 1, 2002, regardless of how many NE multispecies DAS are available to them. Therefore, for the 2002 fishing year, this regulatory amendment would authorize a vessel to fish its monkfish-only DAS (i.e., monkfish DAS that do not have to be fished concurrently with a NE multispecies DAS) equal to the difference between the number of its unused monkfish DAS and its unused NE multispecies DAS as of August 1, 2002, in addition to the unused monkfish DAS associated with the vessel's unused NE multispecies DAS as of August 1, 2002. An example of how the monkfish-only DAS are calculated under the current interim rule versus this proposed regulatory amendment for the 2002 fishing year follows.

Under the Current Interim Rule - For this example, a vessel was allocated 20 NE multispecies DAS pursuant to the August 1, 2002, interim rule. The vessel used 10 NE multispecies DAS from May 1 - July 31, 2002, but did not use any monkfish DAS. Under the August 1, 2002, interim rule calculation, the vessel can fish, as monkfish-only DAS, the difference between 40 (monkfish DAS) and the number of NE multispecies DAS allocated. In this case, the resulting number is 20 monkfish-only DAS (40 monkfish DAS - 20 allocated NE multispecies DAS = 20 monkfish-only DAS). However, because the vessel has only 10 unused NE multispecies DAS, it can only fish 10 of the remaining 20 monkfish DAS (which must be linked to NE multispecies DAS), plus the 20 monkfish-only DAS. Therefore, the vessel can use only 30 monkfish DAS out of its 40 allocated monkfish DAS for the 2002 fishing year under the August 1, 2002, interim final rule.

Under the Proposed Regulatory Amendment - Under this proposed regulatory amendment, assuming the same facts as above, the calculation of monkfish-only DAS would be based on the difference between the vessel's unused monkfish DAS and its unused NE multispecies DAS as of August 1, 2002. This would result in 30 monkfish-only DAS (40 unused monkfish DAS - 10 unused multispecies DAS = 30 monkfish-only DAS). The vessel could also fish an additional 10 monkfish DAS in combination with its 10 unused multispecies DAS, for a total of 40 monkfish DAS available for the 2002 fishing year.

This example, and the calculations of monkfish-only DAS under the August 1, 2002, interim final rule and this regulatory amendment are also illustrated in Table 1.

TABLE 1. CALCULATION OF MONKFISH-ONLY DAS UNDER INTERIM FINAL RULE AND PROPOSED REGULATORY AMENDMENT.

A	B	C	D	E	F	G	H
Monkfish DAS Allocated	Monkfish DAS used	Mult. DAS Allocated	Mult. DAS Used	Unused Monkfish DAS	Unused Mult. DAS	Monkfish only DAS	Total Monkfish DAS Available for 2002 FY
August 1, 2002, Interim Final Rule							

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TABLE 1. CALCULATION OF MONKFISH-ONLY DAS UNDER INTERIM FINAL RULE AND PROPOSED REGULATORY AMENDMENT.—Continued

A	B	C	D	E	F	G	H
40	0	20	10	40 (A - B)	10 (C - D)	20 (A - C)	30 (F + G)
Proposed Regulatory Amendment							
40	0	20	10	40 (A - B)	10 (C - D)	30 (E - F)	40 (F + G)

As under the current interim rule, vessels would be required to fish their monkfish-only DAS under the same provisions as limited access monkfish Category A and B vessels under these proposed regulations. Limited access monkfish Category A and B vessels are required to fish their monkfish DAS in an existing monkfish exempted fishery, which are specified under § 648.81. A map of these exemption areas is also available from the Northeast Regional Office of NMFS (*see* contact information).

This regulatory amendment would not apply to the 2003 fishing year. For the 2003 fishing year, vessels that have been allocated fewer NE multispecies DAS than monkfish DAS would fish the difference in DAS as monkfish-only DAS, as stipulated in the August 1, 2002, interim final rule.

This regulatory amendment would also revise ambiguous language at § 648.86(h)(2) (ii) to clarify that a vessel fishing under a SNE and MA Yellowtail Flounder Possession/Landing LOA may fish in the GOM or GB RMAs, provided the vessel abides by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat. Existing regulations authorize vessels that possess a SNE and MA Yellowtail Flounder Possession/Landing LOA to transit the GOM and GB RMAs, if the gear is stowed properly on board the vessel. However, this regulation neither prohibits nor allows such vessels to fish in the GOM or GB RMAs under the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs. The intent of the August 1, 2002, interim final rule was to allow vessels possessing a SNE and MA Yellowtail Flounder Possession/Landing LOA to fish any part of a trip in the GOM or GB RMAs, provided that they abide by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat. Therefore, this proposed regulatory amendment would revise the language at § 648.86(h)(2)(ii) to clarify that vessels possessing a SNE and MA Yellowtail Flounder Possession/Landing LOA may fish in the GOM or GB RMAs under the more restrictive yellowtail possession limits of the SNE and MA RMAs.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendment would impact those vessels possessing a limited access Category C or D monkfish permit that had fewer NE multispecies DAS than monkfish DAS as of August 1, 2002. Currently, there are 651 vessels that hold a limited access Category C or D monkfish permit, all of which are considered to be small entities. However, an analysis of NMFS' DAS database shows that only 141 vessels had fewer monkfish DAS than NE multispecies DAS remaining as of August 1, 2002, and therefore would be impacted by this proposed action. These 141 vessels would be allocated a total of 2,700 monkfish-only DAS; DAS that could be fished separate from a NE multispecies DAS, once a vessel's NE multispecies DAS have been utilized. The current interim rule impacts 121 vessels that have been allocated fewer monkfish DAS than NE multispecies DAS for the 2002 fishing year. These 121 vessels have been allocated a total of 2,200 monkfish-only DAS. Therefore, this proposed rule would provide approximately 20 additional vessels with the opportunity to utilize their full allocation of 40 monkfish DAS during the 2002 fishing year. The additional number of vessels impacted by this action is not considered to be substantial.

This proposed rule may also impact all vessels that hold a limited access NE multispecies permit, since it clarifies existing regulations concerning yellowtail flounder possession restrictions. There are currently 1,363 vessels that possess a limited access NE multispecies permit. These vessels might realize a slight positive impact, since it would be clear in the regulations that they could fish in the GOM and GB RMAs while in possession of a SNE and MA Yellowtail Flounder Possession/Landing LOA, but under the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat.

The proposed regulatory amendment will result in increased revenues to vessels participating in the directed monkfish fishery without increasing costs. Therefore, this regulation does not significantly reduce profit for a substantial number of small entities. Furthermore, the objective of the proposed regulatory amendment is to provide all limited access monkfish vessels with equal opportunity to use their full annual allocation of 40 monkfish DAS. As a result, this action will not affect small entities disproportionally, nor will it lessen their long-term profitability. In summary, this proposed regulatory amendment makes only minor revisions to the August 1, 2002, interim final rule. Therefore, a regulatory flexibility analysis was not prepared.

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements. This proposed rule also takes into consideration the monkfish regulations under § 648.92 in order to be consistent with the objectives of the Monkfish FMP.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: November 19, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.86, paragraph (h)(2) (ii) is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(h) * * *

(2) * * *

(ii) The vessel does not fish south of 40°00' N. lat. for a minimum of 30 consecutive days (when fishing under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D provisions). Vessels subject to these restrictions may fish any portion of a trip in the GOM and GB Regulated Mesh Areas, provided the vessel complies with the possession restrictions specified under this paragraph (h). Vessels subject to these restrictions may also transit the SNE and MA Regulated Mesh Areas south of 40°00' N. lat., provided the gear is stowed in accordance with one of the provisions of § 648.23(b).

* * * * *

3. In § 648.92, paragraph (b)(2) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) Category C and D limited access monkfish permit holders. (i) August 1, 2002 - April 30, 2003. Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable, unless otherwise specified in this paragraph (b). A Category C or D vessel that had fewer unused multispecies DAS than unused monkfish DAS as of August 1, 2002, may fish under the limited access monkfish provisions for Category A or B vessels, as applicable, for the number of DAS that equal the difference between its unused monkfish DAS and unused multispecies DAS as of August 1, 2002. For such vessels, when the total allocation of multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel has 10 NE multispecies DAS and 40 monkfish DAS remaining as of August 1, 2002, that vessel may use the remaining 30 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, once the remaining 10 NE multispecies DAS have been utilized. However, the vessel must fish the remaining 30 monkfish DAS under the regulations pertaining to a Category B vessel, and must not retain any regulated multispecies.)

(ii) Beginning May 1, 2003. Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of multispecies DAS under § 648.82(l) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated multispecies DAS. For such vessels, when the total allocation of multispecies DAS have been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel's multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 multispecies DAS would also be used. However, after all 30 multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated multispecies.)

* * * * *

[FR Doc. 02–29895 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021112272–2272–01; I.D. 110202D]

RIN 0648–AP88

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2003, through December 31, 2003. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Comments must be received by December 10, 2002.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. The report *Stock Assessment of Pacific Sardine with Management Recommendations for 2003* may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, and then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The CPS Team, Subpanel, and SSC meetings as described above were held as in the past. The Team meeting took place at the Southwest Regional Office in Long Beach, CA, on October 8, 2002. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its October-

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November meeting in Foster City, CA, when it heard comments from its advisory bodies and the public.

Based on a biomass estimate of 999,871 metric tons (mt), the harvest guideline for Pacific sardine for January 1, 2003, through December 31, 2003, is 110,908 mt. The biomass estimate is slightly lower than last year's estimate; however, this year's biomass is not statistically different from those estimates calculated in the past. Nevertheless, estimates from recent years suggest that the rapid growth of the biomass observed since 1983 is leveling off.

The harvest guideline is allocated one-third for Subarea A, which is north of 35°40′ N. lat. (Pt. Piedras Blancas, CA) to the Canadian border, and two-thirds for Subarea B, which is south of 35°′ N. lat. to the Mexican border. Under this proposed rule, the northern allocation for 2003 would be 36,969 mt; the southern allocation would be 73,939 mt. In 2002, the northern allocation was 39,481 mt and the southern allocation was 78,961 mt.

Normally, an incidental landing allowance of sardine in landings of other CPS is set at the beginning of the fishing season. The incidental allowance would become effective if the harvest guideline is reached and the fishery closed. A landing allowance of sardine up to 45 percent by weight of any landing of CPS is authorized by the FMP. An incidental allowance prevents fishermen from being cited for a violation when sardine occur in schools of other CPS, and it minimizes bycatch of sardine if sardine are inadvertently caught while fishing for other CPS. Sardine landed with other species also requires sorting at the processing plant, which adds to processing costs. Mixed species in the same load may damage smaller fish. The Subpanel discussed this issue and noted that the fish off Oregon and Washington, both sardine and mackerel, are generally larger than the fish off southern California and markets differ in the two areas; therefore, deciding what the allowance should be for the entire fishery was difficult. The Subpanel did not agree on an appropriate allowance. Public comment is sought on this issue.

The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine Two Area Model (CANSAR TAM). CANSAR-TAM is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2002. The modification of CANSAR-TAM was developed to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Sardine with Management Recommendations for 2003* (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of age one sardine and above.* For 2003, this estimate is 999,871 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *The portion of the sardine biomass that is in U.S. waters.* For 2003, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.

4. *The harvest fraction.* This is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2003, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

Based on the estimated biomass of 999,871 mt and the formula in the FMP, a harvest guideline of 110,908 mt was determined for the fishery beginning January 1, 2003. The harvest guideline is allocated one-third for Subarea A, which is north of 35°40′ N. lat. (Pt. Piedras Blancas, California) to the Canadian border, and two-thirds for Subarea B, which is south of 35°40′ N. lat. to the Mexican border. The northern allocation is 36,969 mt; the southern allocation is 73,939 mt.

Classification

These proposed specifications are issued under the authority of, and are in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and 50 CFR part 660 subpart I (the regulations implementing the FMP).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The harvest guideline is lower than those of recent years; however, the harvest guideline has not been achieved in recent years. From 1999 through 2001, landings were 60,000 mt, 72,000 mt, and 77,000 mt respectively. Landings are likely to reach 86,000 mt in 2002. Based on the landings estimate of approximately 86,000 mt for 2002 and the 2002 harvest guideline of 118,442, approximately 32,000 mt is likely to remain unharvested by the end of 2002. Accordingly, vessels and processors will not be economically impacted because there is sufficient resource available to satisfy all available markets. Although markets have expanded for this resource, from 1999 through 2001, 17,000 mt, 50,000 mt, and 59,000 mt has gone unharvested. Real ex-vessel revenue per ton has increased as well as total ex-vessel revenue, which suggests a growing diversity in markets.

Hence, implementation of these specifications would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this rule has been prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–29894 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 227

Monday, November 25, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Clarification of Language in the 1994 Record of Decision for the Northwest Forest Plan; National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl; Western Oregon and Washington, and Northwestern California

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM) (collectively the Agencies) will prepare and consider a supplemental environmental impact statement (SEIS) on a proposal to amend the Record of Decision for the Northwest Forest Plan, which was signed on April 13, 1994. Specifically, this proposed action will make the Aquatic Conservation Strategy (ACS) in the Record of Decision consistent with the original intent of the report prepared by the Forest Ecosystem Management Assessment Team, entitled "Forest Ecosystem Management: An Ecological, Economic, and Social Assessment Report of the Forest Ecosystem Management Assessment Team (FEMAT Report)." The proposed action would amend land and resource management plans for National Forests and BLM Districts within the range of the northern spotted owl (generally western Oregon and Washington, and northwestern California).

The Forest Service and BLM will be joint lead agencies for this proposal. The two Agencies will consult as appropriate with the U.S. Fish and Wildlife Service and National Oceanographic and Atmospheric Administration Fisheries (NOAA Fisheries), pursuant to the Endangered Species Act (ESA). Other Federal agencies may also be involved, including the Forest Service's Pacific Northwest and Pacific Southwest Research Stations, Bureau of Indian Affairs, National Park Service, Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, Natural Resources Conservation Service, the U.S. Geological Survey Biological Resources Division, EPA Research Laboratory, and Tribal, local, and state governments. Although the two Agencies have no plans to hold public scoping meetings regarding this proposed action, public comments are invited.

DATES: Comments concerning the scope of the analysis should be received in writing by December 26, 2002.

ADDRESSES: Send written comments concerning this proposal to: Comments, SEIS for Aquatic Conservation Strategy, P.O. Box 2965, Portland, Oregon 97208. Copies of the Record of Decision and Attachment A to the Record of Decision can be obtained electronically at *http://www.reo.gov/library/reports/newsandga.pdf*. Hard copies can be obtained from the Office of Strategic Planning; P.O. Box 3623, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Joyce Casey, SEIS Team Leader, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: The Agencies propose to amend the Aquatic Conservation Strategy (ACS) in Attachment A of the Record of Decision, entitled, "Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl." The ACS was designed to operate over multiple spatial scales, with a focus on the broader scales (watershed and landscape). In recent litigation involving claims under the Endangered Species Act, the Ninth Circuit interpreted the ACS provisions of the Northwest Forest Plan.

In *Pacific Coast Federation of Fishermen's Associations* v. *National Marine Fisheries Service*, 265 F.3d 1028 (9th Cir. 2001) the Ninth Circuit interpreted the ACS provisions as requiring that each project be consistent with the overall ACS at the site-specific scale, rather than simply satisfying the Standards and Guidelines set forth in the Northwest Forest Plan's Record of Decision Attachment A, sections C and D. This interpretation is not what was intended by the Agencies, and makes it nearly impossible to implement any management actions that could have any effect on riparian areas.

The proposed action would replace portions of text in the Record of Decision at pages i, A–6, B–10, and C–1 of Attachment A with text that clearly reflects the Agencies' original intent. The SEIS will disclose the anticipated effects of the proposed action, as well as of the interpretation as stated in the Ninth Circuit's decision. The SEIS will also consider relevant new science since 1994 and Northwest Forest Plan implementation monitoring results.

Adoption of the proposed action would affect National Forest System (NFS) lands and public lands administered by the BLM within the range of the northern spotted owl, generally in western Oregon and Washington, and in northwestern California.

The Record of Decision for this SEIS will amend, for the Forest Service, the following National Forest Land and Resource Management Plans: Gifford Pinchot, Mt. Baker-Snoqualmie, Olympic, Wenatchee and Okanogan National Forests in Washington; Deschutes, Mt. Hood, Rogue River, Siuslaw, Siskiyou, Umpqua, Willamette, and Winema National Forests in Oregon; and Six Rivers, Klamath, Lassen, Mendocino, Modoc, and Shasta-Trinity National Forests in California. The responsible official for NFS lands will be the Secretary of Agriculture.

The Record of Decision for this SEIS will amend, for the Bureau of Land Management, the following Resource Management Plans: Salem, Eugene, Roseburg, Medford, and Coos Bay Districts in Oregon; the Klamath Falls Resource Area of the Lakeview District, also in Oregon; the Arcata, Redding, and Ukiah field offices in California, and also the King Range National Conservation Area Management Plan in the Arcata Resource Area in California. This decision would not apply to the Headwaters area in California, for which a separate management plan is being written. The responsible official for public lands administered by BLM will be the Secretary of the Interior.

Preliminary issues expected to be addressed in the SEIS include: ensuring that the proposed minor changes in

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language do not slow the momentum of the Agencies' substantial investment in watershed restoration and aquatic habitat improvement; and whether the proposed action meets all applicable laws and regulations including the Oregon and California Lands Act, the Federal Land Policy and Management Act, the National Forest Management Act, and the Endangered Species Act, and those statutes' implementing regulations.

Although scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)), the Agencies are inviting scoping comments at this time. Comments are sought (1) to help the Agencies identify issues to be addressed in the SEIS; (2) to identify significant issues related to the proposed action; refine the proposed action; (3) to identify reasonable alternatives to the proposed action; and (4) to identify interested and affected persons. For comments to be most useful in this analysis, they should be submitted in writing by the date identified above. To assist the Agencies in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

The Agencies have no plans to conduct public scoping meetings. However, a scoping letter will be prepared and circulated to affected Federal, State, and local agencies, affected tribes, and individuals and organizations previously expressing an interest in the ACS.

The draft SEIS is expected to be filed with the EPA in February 2003 and will be available for public review. The comment period on the draft SEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**. It is helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the draft SEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Agencies believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft SEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft SEIS stage, but that are not raised until after completion of the final SEIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Agencies at a time when the Agencies can meaningfully consider them and respond to them in the final SEIS.

It is expected that the final SEIS will be filed with the EPA approximately July 2003. The Agencies anticipate there will be a Record of Decision signed in August 2003.

Dated: November 20, 2002.

David P. Tenny,

Deputy Under Secretary, Natural Resource and Environment.

[FR Doc. 02–29951 Filed 11–21–02; 10:33 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Accounting Rules and Guidelines for Forest and Agriculture Greenhouse Gas Offsets

AGENCY: Office of the Chief Economist, Global Change Program Office.

ACTION: Notice of registration for meetings.

SUMMARY: The Department of Agriculture will hold two meetings to solicit input on the accounting rules and guidelines for forest and agriculture greenhouse gas offsets that will be used in the Department of Energy's 1605(b) greenhouse gas reporting system. These meetings will address technical methodological issues associated with preparing estimates of greenhouse gas offsets from agriculture and forestry activities and reporting them under DOE's 1605(b) program.

DATES: The Department will hold the meetings on the following dates:

1. Agriculture Accounting Rules and Guidelines, January 14–15, 2003, 8:30 a.m. to 5 p.m., Riverdale, MD.

2. Forest Accounting Rules and Guidelines, January 23, 2003, 8:30 a.m. to 5 p.m., Riverdale, MD.

ADDRESSES: The workshops will be held at the Department of Agriculture Center located at 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: *Registration Information:* Persons interested in registering for the meetings or in obtaining more information about USDA's efforts to develop accounting rules and guidelines for forest and agriculture greenhouse gas offsets should visit the following web site: *http://www.usda.gov/agency/oce/gcpo/greenhousegasreporting.htm.*

The website will also be used to make available draft and final meeting agendas, information on lodging, and any background papers or other information made available before the meetings.

Technical Information: William Holhenstein, Director, Global Change Program Office, U.S. Department of Agriculture, Room 112–A, Whitten Federal Building, 1400 Independence Avenue, SW., Washington, DC 20250–3810.

(**Note:** due to precautionary screening of mail to Federal offices, some delays should be expected.)

Logistical Information: Inquiries regarding the logistics for these meetings may be e-mailed to *sharon_barcellos@grad.usda.go.*

SUPPLEMENTARY INFORMATION: On February 14, 2002, the President directed the Secretary of Agriculture, in consultation with the Department of Energy and the Environmental Protection Agency, to develop accounting rules and guidelines for crediting sequestration projects, taking into account emerging domestic and international approaches. Given the interactions between carbon sequestration and other greenhouse gas fluxes from land uses, USDA intends to develop accounting rules and guidelines for carbon and other greenhouse gas fluxes from land use practices (crops, animal agriculture, range and pasture, and forests).

On February 14, 2002, the President also directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency to proposed improvements to the current voluntary emission reduction registration program under section 1605(b) of the 1992 Energy Policy Act within 120 days. These improvements will enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.

To achieve these objectives it will be necessary to supplement or supplant the existing guidelines with new, more rigorous reporting requirements. On July 8, 2002, the Secretaries of Energy, Agriculture, and Commerce, and the Administrator of the Environmental Protection Agency wrote to be the President stating that the improvements to the existing Voluntary Greenhouse Gas Reporting Programs should:

1. Develop fair, objective, and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.

2. Standardize widely accepted, transparent accounting methods.

3. Support independent verification of registry reports.

4. Encourage reporters to report greenhouse gas intensity (emissions per unit of output) as well as emissions or emissions reductions.

5. Encourage corporate or entity-wide reporting.

6. Provide credits for actions to remove carbon dioxide from the atmosphere as well as for actions to reduce emissions.

7. Develop a process for evaluating the extent to which past reductions may qualify for credit.

8. Assure the voluntary reporting program is an effective tool for reaching the 18 percent greenhouse gas intensity goal by 2012.

9. Factor in international strategies as well as State-level efforts.

10. Minimize transactions costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

The meetings are intended to assist the Department in assessing the technical and methodological issues associated with developing new forest and agriculture accounting rules and guidelines. The meetings will provide an opportunity for open dialogue among farmers, forest land owners, farm groups and associations, businesses, industry associations, conservation organizations, environmental groups, institutions, individuals, and others affected interests. We intend to invite comments to ensure the full range of views and opinions are expressed. We also intend to provide an opportunity for those present to address the meeting. We also will accept and give full consideration to written views submitted including written responses to background materials prepared for the meetings. Written comments should be submitted to *ghgcomments@oce.usda.gov.*

Full agendas and various other materials will be made available prior to the workshop at: *http://www.usda.gov/agency/oce/gcpo/greenhousegasreporting.htm.*

Dated: November 15, 2002.

Keith Collins,

Chief Economist.

[FR Doc. 02–29881 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–36–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Horse Breeder Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency is seeking comments from all interested individuals and organizations on the extension of currently approved information collection that supports the Horse Breeder Loan program. This program is to provide loans to the horse breeders who have suffered economic losses resulting from Mare Reproductive Loss Syndrome (MLRS).

DATES: Comments must be received in writing on or before January 24, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Farm Service Agency, USDA, Attn: Cathy Quayle, Senior Loan Officer, Loan Making Division, Mail Stop 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522.

Comments also may be submitted via facsimile to (202) 720–6797 or by e-mail to: *cathy_quayle@wdc.usda.gov.*

The public may inspect comments received at 1280 Maryland Avenue, SW., Washington, DC 20024 in Suite 240 during normal business hours. Visitors are encouraged to call ahead to (202) 690–4018 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Cathy Qualye, Loan Making Division, (202) 690–4018 and *cathy_quayle@wdc.usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Horse Breeder Loan Program.

OMB Number: 0560–0221.

Expiration Date of Approval: December 31, 2002.

Type of Request: Extension with no revision.

Abstract: This information collection is necessary to support the FSA Horse Breeder Loan program, which is authorized under the Agriculture, Rural Development, Food and Drug Administration and Related Appropriation Act, 2002. The respondents are the horse breeders who suffered losses resulting from MLRS. Horse breeders must submit the forms and other information to FSA loan officials to verify the evidence of losses before making eligibility and financial determinations on their loan request. If the information is not collected from each horse breeder, FSA loan official will not able to make eligibility and feasibility decisions.

Estimate of Annual Burden: 1.572 hours per responses.

Estimated Annual Number of Respondents: 800.

Estimated Annual Number of Responses per Respondent: 2.50.

Estimated Total Annual Burden on Respondents: 1258 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Dated: November 13, 2002.

Teresa C. Lasseter,

Acting Administrator, Farm Service Agency.

[FR Doc. 02–29820 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–05–P

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DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) The Lolo National Forest's Mineral County Resource Advisory Committee will meet on December 12, 2002 and January 9, 2003 from 6 p.m. until 8 p.m. in Superior, Montana for their next two business meetings. The meetings are open to the public.

DATES: December 12, 2002 and January 9, 2003.

ADDRESSES: The meetings will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper. Designated Federal Official (DFO), District Ranger, Superior District, Lolo National Forest at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for the December 12 meeting include discussion and possible funding of projects as authorized under Title II of Pub. L. 106–393. Agenda topics for the January 9, 2003 meeting will be a continuation of project funding, and a representative from another western Montana Resource Advisory Committee to discuss their progress, projects and how they are organized . If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent and the Missoulian.

Dated: November 18, 2002.

Deborah L.R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 02–29835 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California, Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report, (5) Status of Project Proposals, (6) Update on Approved Projects, (7) Follow Up Presentation/Sunflower CRMP (8) General Discussion, (9) House Committee Report.

DATES: The meeting will be held on December 12, 2002, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by December 10, 2002 will have the opportunity to address the committee at those sessions.

Dated: November 19, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–29839 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–850, A–583–826]

Collated Roofing Nails from the People's Republic of China and Taiwan: Final Results of Five Year Sunset Reviews and Revocation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Five Year Sunset Reviews and Revocation of Antidumping Duty Orders on Collated Roofing Nails from People's Republic of China and Taiwan.

SUMMARY: On October 1, 2002, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on collated roofing nails from the People's Republic of China ("PRC") and Taiwan (67 FR 61577). The Department is revoking the antidumping duty orders on collated roofing nails from the PRC and Taiwan because no domestic party responded to the sunset review notice of initiation by the applicable deadline.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351(2002).

Background:

On November 19, 1997, the Department issued antidumping duty orders on collated roofing nails from the PRC (62 FR 61729) and Taiwan (62 FR 61730). Pursuant to section 751 (c) of the Act, on October 1, 2002, the Department initiated sunset reviews of these orders by publishing notice of the initiations in the **Federal Register** (67 FR 61577). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of the sunset reviews on these orders. However, no domestic interested party in the sunset reviews on these orders responded to the notice of initiation by the October 16, 2002 deadline (see section 19 CFR 351.218(d)(1)(i) of *Procedures for Conducting Five Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998)).

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party responds to the notice of initiation, the Department will issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party in the sunset reviews of collated roofing nails from the PRC and Taiwan responded to the notice of initiation by the applicable deadline, we are revoking these antidumping duty orders.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(d)(2) of the Act, and 19 CFR 351.222(i)(2)(i), the Department will instruct the Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after November 19, 2002. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: November 19, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29915 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–851

Notice of Initiation of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Anya Naschak or Helen Kramer at (202) 482–6375 or (202) 482–0405, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (2002).

The Petition

On October 30, 2002, the Department received a petition filed in proper form by Anvil International, Inc., and Ward Manufacturing Inc. (collectively, the petitioners). The Department received information supplementing the petition on November 7, 2002, November 12, 2002, and November 15, 2002.

In accordance with section 732(b) of the Act, the petitioners allege that imports of malleable iron pipe fittings (malleable pipe fittings) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See* the Determination of Industry Support for the Petition section below.

Scope of Investigation

For purposes of this investigation, the products covered are shipments of certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law. *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, the petitioners do not offer a definition of domestic like product distinct from the scope of these investigations. Thus, based on our analysis of the information presented to the Department by the petitioners, and the information obtained and received independently by the Department, we have determined that there is a single domestic like product, which is defined in the Scope of Investigation section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act states that the administering authority shall determine that a petition has been filed by or on behalf of the industry if: (1) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like

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product; and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Information contained in the petition demonstrates that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. *See* Petition for Imposition of Antidumping Duties: Malleable Iron Pipe Fittings from the People's Republic of China (Pipe Fittings Petition), dated October 30, 2002, at pages 2–3 and Exhibits 1 and 2. *See also* Amendment to the Petition dated November 15, 2002, at Exhibit 1. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, as required by section 732(c)(4)(A)(i). *See* Import Administration AD Investigation Checklist, dated November 19, 2002 (Initiation Checklist) (public version on file in the Central Records Unit of the Department of Commerce, 1401 Constitution Ave., NW, Room B-099).

Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See* Initiation Checklist. Thus, the requirements of section 732(c)(4)(A)(ii) are met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production (FOP) are detailed in the Initiation Checklist.

The anticipated period of investigation (POI) for the PRC, a non-market economy (NME) country, is April 1, 2002, through September 30, 2002. Regarding an investigation involving a NME country, the Department presumes, based on the extent of central government control in a NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994). In the course of the investigation of malleable pipe fittings from the PRC, all parties will have the opportunity to provide relevant information related to the issue of the PRC's status and the granting of separate rates to individual exporters.

Export Price

The petitioners identified the following seven companies as producers and/or exporters of malleable pipe fittings from the PRC: Jinan Meide Casting Co., Ltd., National Steel Products Co., Ltd., Shandong Flying Casting & Forging Co., Ltd., Dalian Zhong Sheng Metal Products Co., Ltd., Hebei Great Wall Import & Export Corporation, Tianjin Foreign Trade Group, and Xiamen Jia Da Quan Valves & Fittings Co., Ltd. To calculate export price (EP), petitioners used publicly available price quotes for Chinese products from a U.S. distributer. From these price quotes, petitioners deducted a 10 percent rebate from the listed warehouse price, 5 percent of the net price for commission to the importer/wholesale distributor's sales representative, and 20 percent of the net price as the importer/distributor's mark-up to arrive at the importer price. Petitioners reasonably based these deductions on affidavits by a senior Anvil International official attesting that this price structure is representative of prices charged throughout the United States. *See* Initiation Checklist. We will further examine the nature of these deductions during the investigation.

Petitioners further deducted U.S. customs duty of 6.2 percent to arrive at a price net of customs duty. Petitioners calculated net U.S. price by deducting ocean freight and foreign inland freight from the price net of customs duty. *See* Exhibits 22 and 24 of the Petition. Petitioners estimated ocean freight by subtracting the average unit free alongside ship (FAS) value of subject imports from the average unit cost, insurance and freight (CIF) value using the Bureau of the Census IM145 import statistics. *See* Initiation Checklist.

Normal Value

The petitioners assert that the PRC is a NME country and that no determination to the contrary has yet been made by the Department. In all of its previous investigations, the Department has treated the PRC as a NME. *See, e.g., Notice of Final Determination Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115 (November 20, 2001), and *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 29, 2002). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Because the PRC's status as a NME remains in effect, pursuant to section 771(18)(C)(i) of the Act, the petitioners determined the dumping margin using a FOP analysis.

For normal value (NV), the petitioners based the FOP, with the exception of labor, as defined by section 773(c)(3) of the Act, on the quantities of inputs of one U.S. malleable pipe fittings producer, Ward Manufacturing, Inc. The petitioners based the FOP for labor, as defined by section 773(c)(3) of the Act, on the quantities of inputs from the public ranged data of labor hours in the production of non-malleable pipe fittings,[1] reduced by 10 percent. The petitioners assert that information regarding the Chinese producers' consumption rates is not reasonably available, and have therefore assumed, for purposes of the petition, that producers in the PRC use the same inputs in the same quantities as the petitioners use. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) a market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita gross national income (GNI). The Department's regulations state that it will place primary emphasis on per capita GNI in determining whether a given market economy is at a level of economic development comparable to the NME country (*see* 19 CFR 351.408(b)). In recent antidumping cases involving the PRC, the Department identified a group of countries at a level of economic development comparable to the PRC based primarily on per capita GNI. This group includes India, Indonesia, Sri Lanka, the Philippines, and Pakistan. With the exception of India, none of these countries is a significant producer of malleable pipe fittings. The petitioners assert that India is the most appropriate surrogate. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

[1] Submitted as a Section D Questionnaire Response by Jinan Meide Casting Company in the investigation of Non-Malleable Cast Iron Pipe Fittings from China, A-570-875 (June 17, 2002)

In accordance with section 773(c)(4) of the Act, petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Materials were valued based on Indian import values, as published by *Monthly Statistics of the Foreign Trade of India (Indian Import Statistics)*. Petitioners applied an inflation adjustment factor using the Indian Wholesale Price Index for September 2002. Petitioners divided the index for the period available by the index derived from the period in which the input price was located, and multiplied the input price by the resulting ratio. Petitioners calculated the surrogate value of steel scrap using the mill heavy average prices reported by the Indian newspaper, *The Economic Times*, which yields more contemporaneous publicly available prices. *See* Initiation Checklist.

Labor was valued using the Department's regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). *See* Initiation Checklist.

Electricity was valued using Indian electricity prices for industrial consumers taken from the second quarter 2002 issue of *Energy Prices and Taxes* published by the OECD's International Energy Agency. The electricity prices for industry for India are reported in U.S. dollars and for the year of 2000. In order to arrive at September 2002 prices, petitioners multiplied the computed amount by a U.S. inflation factor because it was denominated in U.S. dollars. *See* Initiation Checklist.

Petitioners derived the surrogate value for natural gas from a price in India found in the 1999 financial report of EOG Resources Inc., expressed in U.S. dollars per MCF. To inflate the price to September 2002 levels, petitioners multiplied the amount by a U.S. inflation factor because it was denominated in U.S. dollars. *See* Initiation Checklist.

For overhead, selling, depreciation, and general and administrative (SG&A) expenses, petitioners calculated the financial ratios based on the Indian financial data used in the Preliminary Determination of Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China. *See* Memo to Holly A. Kuga dated September 19, 2002. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiating this investigation. *See* Initiation Checklist.

Based upon the comparison of EP to NV, the estimated dumping margins are between 34.69 and 148.08 percent. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we will re-examine the information and may revise the margin calculation, if appropriate.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of malleable pipe fittings from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise sold at less than NV. The volume of imports from the PRC, using the latest available data, exceeded the statutory threshold of seven percent for a negligibility exclusion. *See* section 771(24)(A)(ii) of the Act. The petitioners contend that the industry's injured condition is evidenced in the declining trends in profitability, shipments, production, capacity utilization, employment, decreased U.S. market share, and increasing Chinese imports. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, domestic consumption, and domestic production information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist.

Initiation of the Antidumping Investigation

Based on our examination of the petition on malleable pipe fittings, and the petitioners' response to our supplemental questionnaires clarifying the petition, and additional independent data, we find that the petition meets the requirements of section 732 of the Act. *See* Initiation Checklist. Therefore, we are initiating the antidumping duty investigation to determine whether imports of malleable pipe fittings from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than December 16, 2002 whether there is a reasonable indication that imports of malleable pipe fittings from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 19, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29914 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration, North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On November 19, 2002, the binational panel issued its decision in the review of the final scope ruling made by the International Trade Administration, respecting Circular Welded Non-Alloy Steel Pipe from Mexico, NAFTA Secretariat File Number USA–MEX–98–1904–05. The

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majority remanded the determination to the investigating authority with the following instructions: (1) Re-evaluate whether the Order applies to Galvak's mechanical tubing, giving appropriate weight to the fact that the language of the order on its face excludes all mechanical tubing, (2) if necessary, explain adequately why the line pipe determination's conclusion that the exclusionary clause is based on industry classification and not actual end use should not be employed in the instant scope determination, and (3) take such other action as may be appropriate, not inconsistent with this decision. The panel required DOC to provide the determination on remand within 60 calendar days (January 6, 2003). Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a request for panel review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these rules.

Panel Decision: The panel remanded the final scope determination of the International Trade Administration respecting Circular Welded Non-Alloy Steel Pipe from Mexico with instructions as listed above. The determination on remand is due on January 20, 2003.

Dated: November 19, 2002.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 02–29811 Filed 11–25–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111402B]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fisheries; Notice that Vendor Will Provide Year 2003 Cage Tags

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of vendor to provide fishing year 2003 cage tags.

SUMMARY: NMFS informs surf clam and ocean quahog allocation owners that they are required to purchase their year 2003 cage tags from a vendor. The intent of this notice is to comply with regulations for the surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

ADDRESSES: Written inquiries may be sent to Douglas W. Christel at: National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–3799.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Management Specialist, (978) 281–9141; fax 978–281–9135; e-mail *Douglas.Christel@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surf clam and ocean quahog fisheries regulations at 50 CFR 648.75(b) authorize the Regional Administrator, Northeast Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan, shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, KY, is the authorized vendor of cage tags required for the fishing year 2003 Federal surf clam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to allocation owners in these fisheries within the next several weeks.

Authority: 16 U.S.C. 1801 et. seq.

Dated: November 20, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29896 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 020621203–2203–01]

Call for Proposals for Research in Satellite Data Assimilation for Numerical and Climate Prediction Models—Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), National Environmental Satellite, Data, and Information Service (NESDIS).

ACTION: Notice.

SUMMARY: The National Environmental Satellite, Data, and Information Service (NESDIS) publishes this notice to amend a notice entitled Call for Proposals for Research in Satellite Data Assimilation for Numerical and Climate Prediction Models.

ADDRESSES: All submissions should be directed to: NOAA/NASA Joint Center for Satellite Data Assimilation, Attn: Kathy LeFevre, 5200 Auth Road, Room 701, Camp Springs, MD 20746–4304.

FOR FURTHER INFORMATION CONTACT: Kathy LeFevre, (301) 763–8127, *Kathy.LeFevre@noaa.gov*.

SUPPLEMENTARY INFORMATION: The National Environmental Satellite, Data, and Information Service (NESDIS) published a notice of availability of financial assistance in the **Federal Register** of September 20, 2002, (67 FR 59264, entitled "Call for Proposals for Research in Satellite Data Assimilation for Numerical and Climate Prediction Models.") The following pages of the **Federal Register** notice of September 20, 2002 are amended as follows:

On Page 59265: First column, under the heading **DATES**, sixth line, "November 15, 2002" should read "December 9, 2002. If you have already submitted an application we are accepting revisions."

First column, under the sub-heading Funding Availability, the second sentence should read: "Individual annual awards in the form of grants and cooperative agreements are expected to range from $50,000 to $150,000, although greater amounts may be awarded."

Second column, under the sub-heading Eligibility, the first sentence should read: "Eligible applicants are institutions of higher education, other non profits, commercial organizations, state, local and Indian tribal governments and Federal agencies (NOAA and non-NOAA)."

On pages 59266 and 59267: Under the sub-heading, Program Description, Project Priorities Areas of Investigation, the paragraphs entitled "Atmospheric Soundings" and "Clouds and Precipitation" should read as follows:

Atmospheric Soundings

1. Improvements and/or enhancement to radiative transfer models for advanced sounding instruments, incorporating cloud and aerosol effects, with the aim of working toward (a) assimilation of cloudy data, (b) aerosol correction of retrieved quantities, and (c) improved surface emissivity for use of data over land and ice (see Radiative Transfer Models, above).

3. Observation System Simulation Experiments (OSSEs) for high-resolution infrared sounders (*e.g.*, AIRSA, CrIS, IASI) aimed at examining the trade-off between the size of the instrument field of view and the noise characteristics."

Clouds and Precipitation

Second paragraph should read: "The incorporation of cloud and precipitation data will require development of many components of the data assimilation system. These developments may include not only appropriate forward models, errors statistics, bias correction and quality control, but also development of appropriate moist balances, new techniques for handling non-linearities in the balance equations or forward models, and modification of the model's parameterizations to increase compatibility with the observations and to eliminate inappropriate discontinuities."

On Page 59267: Column one, paragraph entitled "Oceans", the following sentence is deleted: "Successful proposals will require close coordination with NOAA/NCEP and/or NASA/NSIPP."

On Page 59267: Under the sub-heading Application Procedures, the following sentence is added:

"The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation."

The following sentences are removed: "The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917; DOCID:fr01oc01–39) are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. *See* Building and Construction Trades *Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202."

On page 59268: Under the sub-heading Selection Criteria (With Weights), criteria numbers one and three should read as follows:

"1. Importance and relevance of research to the assimilation of satellite data in NWP models (25 points). Will the proposed work advance the science of assimilating satellite data in NWP models? Will the proposed project make a significant contribution to the high priority research and technical areas listed above?"

"3. Applicability and Effectiveness (25 points). Does the proposed work have the potential to significantly advance the use of satellite observations in numerical weather and short-term climate prediction models? Does the proposed work have the potential for long-term (lasting) value and widespread applicability? Does the proposed work include an effective mechanism by which the project's progress can be evaluated?"

Dated: November 18, 2002.

Mary M. Glackin,

Deputy Assistant Administrator for Satellite and Information Services.

[FR Doc. 02–29838 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110602A]

Endangered Species; File No. 1405

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Elizabeth Wenner, South Carolina Department of Natural Resources, Charleston, SC 29422–2559, has applied in due form for a permit to take loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 26, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to capture up to 45 loggerhead, 10 Kemp's ridley, 5 green, 5 leatherback, and 5 hawksbill sea turtles annually during shallow water trawl surveys intended to provide fishery-independent data on seasonal abundance and biomass of all species that are accessible by high rise trawls. The turtles would be measured, flipper and PIT tagged, and released near the site of capture, unless it is determined they are in need of veterinary assistance to survive. Sea turtles held for veterinary care would be transferred to an appropriate treatment facility. The applicant also requests authorization for a combined total of three incidental mortalities of loggerhead and Kemp's ridley sea turtles and a single incidental mortality for each of the other three species. The applicant proposes to conduct these captures along the South Atlantic Bight from Cape Hatteras, NC to Cape Canaveral, FL. The permit is requested for a period of 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to

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prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: November 18, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29890 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Office of Admissions, Headquarters United States Air Force Academy, Department of the Air Force, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary of Defense announced the proposed reinstatement of a public collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical unity; (b) the accuracy of the agency's estimate of the burden of proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments by January 24, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Office of Admissions, 2304 Cadet Drive, Suite 236, USAF Academy, CO 80840. Point of contact is Ms. Shawn Hordemann, 719–333–3226.

FOR FURTHER INFORMATION CONTACT: To request additional information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address.

Title, Associated Form, and OMB Number: United States Air Force Academy Writing Sample, United States Air Force Academy Form O–878, OMB Number 0701–0147.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4100.

Number of Respondents: 4100.

Responses per Respondent: 1.

Average Burden for Respondent: 60 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–29836 Filed 11–22–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice and Request for Review/Comment of Changes to ICD–GPS–200C

AGENCY: Department of the Air Force, DoD.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) proposes to revise ICD–GPS–200, Navstar GPS Space Segmen/Navigation User Interfaces, to include the description of the proposed L2C signal, to be transmitted at the L2 frequency (1227.6 MHz). These proposed changes are described in a Proposed Interface Revision Notice (PIRN): PIRN–200C–007 revision B. This revision B is an update from the last proposed revision A of the PIRN. The PIRN can be reviewed at the following web site: *http://gps.losangeles.af.mil.* Select "Configuration Management" and then "Public Data for Review." Hyperlinks are provided to "PIRN–200C–007B (PDF)" and to review instructions. Reviewers should save the PIRN to a local memory location prior to opening and performing the review.

ADDRESSES: Submit comments to SMC/CZERC, 2420 Vela Way, Suite 1467, El Segundo, CA 90245–4659. A comment matrix is provided for your convenience at the web site and is the preferred method of comment submittal. Comments may be submitted to the following Internet address: *smc.czerc@losangeles.af.mil.* Comments may also be sent by fax to 1–310–363–6387.

DATES: The suspense date for comment submittal is December 9, 2002.

FOR FURTHER INFORMATION CONTACT: CZERC at 1–310–363–6329, GPSs JPO System Engineering Division, or write to the address above.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation, and time information.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–29834 Filed 11–22–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

(a) The members of the Performance Review Board for the U.S. Army Research Laboratory are:

1. Dr. N. Radhakrishnan, Director, Computational and Information Sciences Directorate, U.S. Army Research Laboratory.

2. Ms. Barbara Leiby, Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command.

3. Dr. Thomas H. Killion, Director, Personnel Technologies Directorate, Office of the Deputy Chief of Staff, G–1, Headquarters Department of the Army.

(b) Alternate members for the U.S. Army Research Laboratory are:

1. Ms. Kathy A. Kurke, Chief Counsel, NASA-Langley Research Center.

2. Mr. Richard E. McClelland, Director, Tank-Automotive Research, Development and Engineering Center.

3. Dr. C.I. Change, Director, Army Research Office and Deputy Director for Basic Science, U.S. Army Research Laboratory.

(c) The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General Hans Van Winkle, Deputy Chief of Engineers/Deputy Commanding General.

2. Major General Robert Griffin, Director of Civil Works.

3. Brigadier General Steven Hawkins, Commanding General, U.S. Army Engineer Division, Great Lakes and Ohio River.

4. Brigadier General David Fastabend, Commanding General U.S. Army Engineer Division, Northwestern.

5. Dr. Michael O'Connor, Director of Research and Development, Headquarters.

6. Mr. William Brown, Principal Assistance for Military Program, Headquarters.

7. Ms. Linda Garvin, Director of Real Estate, Headquarters.

8. Mr. Steve Browning, Military and Technical Director, South Pacific Division.

9. Mr. Donald Basham, Civil Works and Management Director, Mississippi Valley Division.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–29882 Filed 11–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Indian River Lagoon-North Feasibility Study Located in Portions of Volusia, Brevard, Indian River, St. Lucie, and Okeechobee Counties, FL

AGENCY: Department of the Army, Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, intends to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Indian River Lagoon-North Feasibility Study. Encompassing the lagoon's northern watershed, the study area begins in Volusia County near the Ponce de Leon Inlet, extends southward through Brevard and Indian River counties, and ends near the Fort Pierce Inlet in St. Lucie County and northeast Okeechobee County, Florida. The objective of this study is to perform a comprehensive review of restoration alternatives for the lagoon.

FOR FURTHER INFORMATION CONTACT: Mr. Paul E. Stodola, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019, by email *Paul.E.Stodola@saj02.usace.army.mil* or by telephone at 904–232–3271.

SUPPLEMENTARY INFORMATION:

a. Proposed Action. The proposed Draft Supplemental Environmental Impact Statement (DSEIS) for the Indian River Lagoon-North Feasibility Study would supplement the Central and South Florida Programmatic Environmental Impact Statement completed in July 1999. A DSEIS for the Indian River Lagoon-South Feasibility Study, completed in October 2001, identified and assessed restoration alternatives for the lagoon's southern watershed. Authority and funds for the proposed action are provided by Section 528 of the Water Resources and Development Act of 1996 (Pub. L. 104–303). A reconnaissance report has been completed and resulted in a recommendation to continue the study into the feasibility phase.

The Indian River Lagoon-North estuarine ecosystem consists of three major water bodies: The Indian River, the Banana River, and the Mosquito Lagoon. This estuary is comprised of shallow interconnected linear-lagoons interspersed with various types of habitats including seagrass, mangroves, and salt marsh. Tropical climatic influences converging with these habitat types have resulted in a unique and diverse assemblage of fauna and flora that occur nowhere else. Development and pollution have significantly degraded the water quality and reduced the biological productivity of the lagoon. The objective of this study is to identify and assess alternatives that would restore the lagoon's water quality and ecological conditions.

b. Alternatives. Specific proposed restoration alternatives include the following:

1. Goal I: Improve Ecological Values; Reduce excessive freshwater inflows and pollutant loadings to the Indian River Lagoon; Improve water quality in the Lagoon; Improve habitat for Lagoon biota, with emphasis on seagrass; Increase spatial extent and functional quality of submerged aquatic vegetation and watershed wetlands; Increase functional quality of native upland habitat; Maintain or improve diversity and abundance of native plant and animal species, including Federal, state, and local listed species.

2. Goal II: Improve Economic Values and Social Well Being; Maintain or improve water supply; Maintain or improve flood protection; Improve opportunities for tourism, recreation, and environmental education; Improve commercial and recreational fisheries and associated industries.

3. A No-Action Alternative is also being considered.

c. Scoping Process. The scoping process as outlined by the Council on Environmental Quality would be utilized to involve Federal, State, and local agencies, affected Indian tribes, and other interested persons and organizations. A scoping letter would be sent to the appropriate parties requesting comments and concerns regarding issues to consider during the study.

Significant issues to be analyzed in the DSEIS would include effects on Federally listed threatened and endangered species, Essential Fish Habitat, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, socioeconomic resources, and other issues identified through scoping and public involvement.

The proposed action would be coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act, with the NMFS concerning Essential Fish Habitat, and with the State Historic Preservation Officer.

The proposed action would also involve evaluation for compliance with

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guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

The Corps and the non-Federal sponsor, St. Johns River Water Management District, would provide extensive information and assistance on the resources to be impacted and alternatives.

d. Scoping Meetings. Public scoping meetings would be held. Exact dates, times, and locations would be published in local papers.

e. DSEIS Availability. The DSEIS would be available on or about May 2006.

Dated: November 12, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–29883 Filed 11–22–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF ENERGY

[DE–PS03–03SF22698]

Solicitation for Proposals: Nuclear Explosion Monitoring Research and Engineering

AGENCY: National Nuclear Security Administration (NNSA), Department of Energy (DOE) and Air Force Research Laboratory (AFRL).

ACTION: Notice of intent to release solicitation for financial assistance and acquisition proposals.

SUMMARY: The DOE/NNSA and AFRL, through the NNSA Oakland Operations Office, intends to seek proposals to advance the state-of-the-art in nuclear explosion monitoring in the field of seismic methods. This will be achieved through basic and applied research that enhances understanding of the underlying phenomena, proposes new methods of tackling monitoring problems, or develops new data for use in nuclear explosion monitoring. It is anticipated this solicitation will be released on or about November 30, 2002.

ADDRESSES: The formal solicitation document, Joint Solicitation for Proposals: Nuclear Explosion Monitoring Research and Engineering (DE-PS03–03SF22698), will be available through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov*, (reference Notice of Intent for Nuclear Explosion Monitoring, published November 5, 2002). IIPS provides the medium for disseminating solicitations, receiving proposals and evaluating proposals in a paperless environment. Proposals are required to be submitted via IIPS. Individuals who have the authority to enter into a financial assistance agreement or contract on behalf of their institution and intend to submit a proposal via the IIPS system must register with IIPS and receive confirmation that they are registered prior to being able to submit a proposal. An IIPS "User Guide for Contractor" can be obtained by going to the IIPS Homepage at the following URL: *http://e-center.doe.gov* and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPSHelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Gloria Abdullah-Lewis, Contract Specialist, U.S. Department of Energy, National Nuclear Security Administration, 1301 Clay Street (Room 700N), Oakland, CA 94612–5208; email *gloria.abdullah-lewis@oak.doe.gov*.

SUPPLEMENTARY INFORMATION: Research products under this solicitation shall support Air Force requirements in improving the nation's capabilities to monitor nuclear explosion monitoring. Information about the NNSA Nuclear Explosion Monitoring Research & Engineering Program integration of research products into operational form for the Air Force can be found online at *http://www.nemre.nn.doe.gov* under Knowledge Base. The solicitation document will contain all the information related to this action for prospective proposers. The North American Industry Classification System (NAICS) number for this program is 541710.

Issued in Oakland, CA on November 18, 2002.

Ernest Rios,

Division Director, Financial Assistance Center, Oakland Operations Office.

[FR Doc. 02–29864 Filed 11–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, December 11, 2002 6 p.m.–9:30 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- The meeting presentation will focus on the DOE Comprehensive Waste Disposition Plan, which provides the scope, waste generation forecast, plans for disposal, and issues associated with disposition of Environmental Management Program wastes.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on November 19, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–29863 Filed 11–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–60–001]

CenterPoint Energy Gas Transmission Company; Notice of Changes to Tariff Filing

November 19, 2002.

Take notice that on November 15, 2002, CenterPoint Energy Gas Transmission Company (CEGT) filed to cancel a tariff sheet, Original Sheet No. 132A, that had been erroneously included in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29859 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–113–000]

El Paso Electric Company, Enron Power Marketing, Inc., Enron Capital and Trade Resources Corporation; Notice Establishing Comment Date

November 18, 2002.

On August 13, 2002, the Commission issued an order initiating investigation, and establishing hearing procedures and refund effective date (Order) in the above-docketed proceeding. By this notice, the date for the filing of motions to intervene, comments, and protests is November 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29830 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–75–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 19, 2002.

Take notice that on November 14, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective as indicated below:

2nd Revised Ninth Revised Sheet No. 5 (Effective 1–1–03)
1st Rev Tenth Revised Sheet No. 5 (Effective 5–1–03)
Fifth Revised Sheet No. 5–A (Effective 1–1–03)
1st Revised Seventh Revised Sheet No. 6 (Effective 1–1–03)
1st Rev Eighth Revised Sheet No. 6 (Effective 5–1–03)

Kern River states that the purpose of this filing is to revise its tariff to incorporate the Gas Research Institute (GRI) surcharges approved by the Commission for 2003.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29861 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–547–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 19, 2002.

Take notice that on November 15, 2002 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in its filing.

National Fuel states that this filing is being made in compliance with the Commission's Order issued on October 16, 2002, in the above-referenced docket. The October 16 Order directed National Fuel to file revised tariff sheets to clarify certain provisions found in Section 10.8 of its General Terms and Conditions which provides National Fuel with the authority to terminate capacity release awards upon termination of the releasing shipper's contract or award and defines

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replacement shippers' rights in this situation.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29858 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–331–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

November 19, 2002.

Take notice that on November 15, 2002, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing proposed and alternate tariff sheets to comply with the Commission's October 31, 2002 Order On Compliance Filing in Docket Nos. RP02–331–000 and RP02–331–001. This proceeding primarily addresses issues related to the design of incremental fuel rates associated with GTN's 2002 Pipeline Expansion Project. GTN requests that the proposed tariff sheets be made effective November 1, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29857 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–397–006]

Questar Pipeline Company; Notice of Compliance Filing

November 19, 2002.

Take notice that on November 15, 2002, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective as indicated on each tariff sheet:

Substitute Eighth Revised Sheet No. 1, Effective October 1, 2002
Substitute Twenty-Fifth Revised Sheet No. 5, Effective October 1, 2002
Substitute Seventh Revised Sheet No. 56, Effective December 1, 2002

Questar states that tariff language that was approved in the referenced four separate proceedings is consolidated into the above tariff sheets.

Questar further states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29856 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–73–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 19, 2002.

Take notice that on November 13, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing revised tariff sheets as part of its FERC Gas Tariff, Fifth Revised Volume No. 1: Twenty-Second Revised Sheet No. 26A; Seventh Revised Sheet No. 180; and Fourth Revised Sheet No. 220A, with an effective date of December 13, 2002.

Tennessee states that this filing is to update Rate Schedule NET and Rate Schedule NET–284 to reflect the conversion of five shippers to service under Rate Schedule FT–A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29860 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–17–000, QF87–365–005; QF90–43–004 and QF91–59–005]

Investigation of Certain Enron-Affiliated QFs, Zond Windsystems Holding Company, Victory Garden Phase IV Partnership, Sky River Partnership; Notice Establishing Comment Date

November 14, 2002.

On October 24, 2002, the Commission issued an order initiating investigation and hearing (Order) in the above-docketed proceedings. By this notice, the date for the filing of motions to intervene, comments, and protests is December 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29829 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–001]

AES Ocean Express, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Ocean Express Pipeline Project, Request for Comments on Environmental Issues, and Notice of a Public Scoping Meeting and Site Visit

November 19, 2002.

On February 21, 2002, AES Ocean Express, L.L.C. (Ocean Express) filed its Application for Certificates of Public Convenience and Necessity for authorization to own, construct, operate and maintain a new 24-inch diameter, approximately 54.3-mile interstate natural gas pipeline extending from a receipt point on the Exclusive Economic Zone ("EEZ") boundary between the United States and the Bahamas to delivery points in Broward County, Florida, together with certain ancillary facilities. Shortly after Ocean Express filed that application, on March 26, 2002, the Naval Surface Warfare Center, Carderock Division ("NSWCCD") filed a motion to intervene in which it expressed concerns regarding the routing of the project and its potential impacts on NSWCCD operations. Since that time, Ocean Express and NSWCCD have met and reached an agreement in principle on measures to resolve NSWCCD's technical and operational concerns regarding construction, operation, and maintenance of the proposed Ocean Express Pipeline. On October 18, 2002, Ocean Express filed an Amendment to the Application proposing a new route variation and design changes for the nearshore portion of Ocean Express' offshore pipeline in the vicinity of the Navy Restricted Area.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the Minerals Management Service (MMS) will prepare an Environmental Impact Statement (EIS) that will analyze the environmental impacts of the proposed Ocean Express Pipeline Project.[1] The proposed pipeline originates in the Bahamas and would come ashore east of Dania, Florida. These facilities would consist of about 54.3 miles of 24-inch diameter pipeline (about 48.0 miles offshore and 6.3 miles onshore), two aboveground metering facilities, a pig launching/receiving station, one aboveground shutoff valve, and one belowground valve. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The MMS will have primary responsibility for offshore analysis in U.S. waters and will coordinate with the U.S. Army Corps of Engineers regarding Florida state waters review.

The application, amended application, and other supplemental filings in this docket are available for viewing on the FERC Internet website (*http://www.ferc.gov*). Click on the "FERRIS" link, select "General Search" from the FERRIS Menu, and follow the instructions, being sure to input the correct docket number (CP02–90). General information about the MMS and detailed information regarding Florida state and Federal waters can be accessed at the MMS Internet website (*http://www.mms.gov*).

The FERC is the lead agency and the MMS is a Federal cooperating agency for this project because the MMS has jurisdiction by law as well as special expertise regarding the potential environmental impacts associated with that portion of the proposed pipeline that would be installed on the Outer Continental Shelf.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice that Ocean Express provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain

[1] Ocean Express' application was filed with the Commission on February 21, 2002, under Section 7) of the Natural Gas Act as amended, and Parts 157 and 284 of the Commission's regulations.

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and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

Summary of the Proposed Project

Florida is experiencing a substantial increase in demand for electric power as a result of population growth in the state. The Ocean Express project would transport into Florida up to 842 million standard cubic feet of natural gas per day. The project would deliver the gas to an interconnect with the Florida Gas Transmission Company (FGT) system and an interconnect with the Florida Power & Light Company (FPL) gas line that services the FPL Fort Lauderdale Power Plant.

The Ocean Express Pipeline Project would be located onshore in Broward County, Florida and offshore in the Atlantic Ocean. The project would receive gas at the U.S./Bahamian EEZ at a subsea connection to a 24-inch pipeline, referred to as the Bahamian Pipeline. The Bahamian Pipeline would transport natural gas from a proposed liquefied natural gas (LNG) receiving, storage, and regasification facility on Ocean Cay, a manmade industrial island in Bimini, Commonwealth of the Bahamas.

The LNG facility and the Bahamian Pipeline are non-jurisdictional facilities and would be constructed and operated by AES Ocean LNG, Ltd., a Bahamian affiliate. The LNG facility would receive LNG tankers arriving from international LNG supply locations. The LNG would be offloaded from the tankers and stored in specially designed storage tanks. From there, the LNG would be revaporized in heat exchangers on the terminal site and the resulting natural gas would be fed into the 24-inch-diameter offshore pipeline.

The FERC and MMS authorizations for this project would not extend eastward of the EEZ. The Government of the Bahamas regulates matters pertaining to the environment and safety and traditionally requires an environmental impact assessment as a condition to approving a project such as the LNG terminal and Bahamian Pipeline. The Government of the Bahamas is in the process of reviewing the environmental impact assessment for these facilities.

The LNG facility and the Bahamian Pipeline are not part of the facilities proposed in the Ocean Express application to the FERC. In its application, Ocean Express seeks authority to construct and operate the following:

—Offshore Pipeline Segment

The proposed offshore pipeline segment would be located in the Atlantic Ocean, off the southeast Florida coastline, and would consist of approximately 48 miles of 24-inch-diameter pipeline (Offshore Pipeline). The Offshore Pipeline would traverse the Atlantic Ocean, starting at the U.S./Bahamian EEZ, passing through Federal and state waters, and end at a shoreline entry east of Dania, Florida to connect with the proposed onshore pipeline segment.

—Nearshore Pipeline Segment

The Florida shore approach would be installed utilizing horizontal directional drilling (HDD) techniques to minimize impacts to three near-shore reef trends. The pipeline would be directionally drilled out from the Dania Beach Boulevard (Route A1A) traffic circle to a point 6,170 feet from shore to a previously disturbed, former sand borrow pit located in a gap between two reef systems. A second 2,372-foot-long HDD segment (offshore HDD) would extend from the former sand borrow pit to a point east of the outermost reef system.

The remaining sections of the offshore segment would be installed by direct pipe lay on the sea floor using a laybarge. AES is evaluating the feasibility of using various methods to either bury the pipeline or cover it with protective concrete mats along the segment between the two HDD segments and from the second HDD to water depths of approximately 200 feet. Where water depths exceed 200 feet, the offshore pipeline would also be laid directly on the sea floor, with no covering proposed.

—Onshore Pipeline Segment

The proposed onshore pipeline would consist of approximately 6.3 miles of 24-inch-diameter pipeline (Onshore Pipeline). The Onshore Pipeline would start at the terminus of the proposed Offshore Pipeline (the shoreline entry) and end at the proposed interconnections with the FGT and FPL systems.

The proposed facilities are summarized in tables 1 and 2 below. The general locations of the project facilities are shown in Appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 3.

TABLE 1.—PROPOSED PIPELINE FACILITIES FOR THE OCEAN EXPRESS PIPELINE PROJECT

Location	Length (miles)
U.S. Federal Waters	43.0
Florida State Waters	5.0
Broward County (Onshore)	6.3
Total New Pipeline Length	[1] 54.3

[1] Does not include 40.4 miles of non-jurisdictional waters between the Bahamas and the EEZ.

TABLE 2.—SUMMARY OF ANCILLARY FACILITIES FOR THE OCEAN EXPRESS PIPELINE PROJECT

Facility	Approximate milepost	Description
Shutoff Valve belowground).	46.1	Dania Beach Boulevard Circle.
Shutoff Valve and Pig Launching/Receiving Station (aboveground).	52.4	Located prior to interconnections with FGT and FPL.
2 Meter Stations and Pressure Regulation Stations.	52.4	Meter Station connections to FGT and FPL located on a 0.25-acre site.

Land Requirements for Construction

Construction of the onshore portion of the Ocean Express Pipeline Project would affect a total of about 34 acres of land including: 19 acres for pipeline construction; 9.4 acres for extra workspace; 6.2 acres for a contractor yard; and 0.25 acre for aboveground facilities. Total land requirements for the permanent right-of-way would be about 11.3 acres. The remaining 23 acres of land affected by construction would be restored and allowed to revert to its former use.

Approximately 1.6 miles (25 percent) of the Onshore Pipeline would be directionally drilled or bored underground. Of the remaining 4.7 miles of the route, approximately 3.8 miles (60 percent) would be installed parallel to existing roadway, pipeline, and utility rights-of-way which are within commercial/industrial areas and 0.9 mile (15 percent) would cross open land. Ocean Express would typically use a 45-foot-wide construction right-of-way. Additional extra temporary work areas may be necessary for waterbody, highway, and railroad crossings; additional topsoil storages; and pipe storage and equipment yards.

Following construction and restoration of the right-of-way and temporary extra work spaces, Ocean Express would typically retain a new 20-foot-wide permanent easement for the 24-inch-diameter pipeline. The remaining portion of the construction right-of-way would be returned to landowners for their use without restrictions after appropriate reclamation efforts are successful.

Constructing the offshore portion of the Ocean Express Pipeline Project would affect about 1,840 acres. Installation of the project in State of Florida waters includes two HDD segments totaling 1.62 miles and direct lay on the sea floor for 3.38 miles in depths of less than 200 feet.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This is called "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

—Geology
—Water resources
—Vegetation
—Cultural resources
—Socioeconomics
—Reliability and safety
—Air quality and noise
—Soils and sedments
—Wetlands, barrier beaches, and submerged aquatic vegetation
—Fish and wildlife
—Endangered and threatened species
—Land use, recreation, and visual resources

—Alternatives

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the . The will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the. We will consider all comments on the and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our responses to comments received and will be used by the Commission in its decision-making process to determine whether to approve the project. To ensure your comments are considered, please carefully follow the instructions in the Public Participation and Scoping Meeting section.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Ocean Express, and early input from intervenors. Some of these issues are listed below. This list is preliminary and may be changed based on your comments and our analysis. Currently identified environmental issues for the Ocean Express Pipeline Project include:

—Construction and operational effects on seagrasses, coral reefs, hard and soft bottom communities, mangroves, and aquatic organisms;
—Extent and effects of turbidity and sedimentation that may result from pipeline trenching and directional drilling in shallow waters;
—Potential failure of the two HDD procedures;
—Effects on wildlife and fisheries including essential fish habitat and fisheries of special concern, other commercial and recreational fisheries, or other species listed at the Federal, state, or local level;
—Potential fuel spills from the pipelay barges and associated vessel traffic;
—Potential effects on West Lake Park and the Airport Buffer Strip Park;
—Potential effect on future land use;
—Potential effect on Broward County tree resources and on rare plants;
—Effect of construction on groundwater and surface water supplies;
—Potential introduction and control of non-native plant species;
—Effects on federally endangered and threatened species including the wood stork, Johnson's seagrass, Garber's spurge, West Indian manatee, loggerhead sea turtle, green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle;
—Potential effects on offshore submerged cultural resources;
—Noise generated as a result of pipeline construction;
—Temporary disruption of local roadways, bikeways, and fitness trails during construction;
—Offshore crossings of the U.S. Naval Surface Warfare training facilities and existing utility cables;
—Potential impacts on 0.7 acre of forested wetlands;
—Potential effect of the project on designated airport runway clearance zones;
—Cumulative effects of the proposed project with other projects, including other natural gas pipelines, which have been or may be proposed in the same region and similar time frames; and
—Safety of the proposed pipeline.

Public Participation and Scoping Meeting

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

—Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
—Label one copy of the comments for the attention of Branch.
—Reference Docket No.
—Mail your comments so that they will be received in Washington, DC on or before December 20, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result,

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

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we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request . If you do not return the Information Request, you will be taken off the mailing list.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting the FERC will conduct in the project area. The location and time for this meeting is listed below.

SCHEDULE FOR THE OCEAN EXPRESS PIPELINE PROJECT ENVIRONMENTAL IMPACT STATEMENT PUBLIC SCOPING MEETING

Date and time	Location	Phone
December 3, 2002 at 7 p.m	I.T. Parker Community Center, 901 N.E. Third Street, Dania Beach, FL 33004.	(916) 973–4703

The public meeting is designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Prior to the start of the meeting, company representatives will be available to informally discuss the project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the morning of December 4th, the staff will be visiting some project areas. At this time, we are still coordinating the logistical arrangements for the site visit. Anyone interested in participating in a site visit may contact the Commission's Office of External Affairs (866–208–FERC) for more details. Individuals must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).4 Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in , to express their interest in becoming cooperating agencies for the preparation of the .

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC, or on the FERC Internet website (*http://www.ferc.gov*)using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29854 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–2–000]

Energy West Development, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Shoshone Pipeline Conversion Project and Request for Comments on Environmental Issues

November 19, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of a proposal by Energy West Development, Inc. (EWD) to convert a 30-mile-long segment of an existing pipeline to natural gas service.[1] This pipeline, referred to as the "Shoshone Pipeline," is 6 inches in diameter and extends between a point north of Cody, Parker County, Wyoming, and a point northwest of Warren, Carbon County, Montana.[2] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice EWD provided to affected landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

[1] EWD's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The pipeline was constructed in 1960 to transport liquid petroleum products. It was previously owned by Montana Power Company, and has not been in use for at least the last 7 years.

Summary of the Proposed Project

EWD wants to convert about 30 miles of an existing pipeline in northern Wyoming and southern Montana to natural gas service. The conversion would enable EWD to transport about 13,500 million Btus of natural gas per day between an interconnection with Energy West Wyoming at the north city gate of Cody, Wyoming, and an interconnection with a pipeline owned by Montana Power Company northwest of Warren, Montana. The general location of the project facilities is shown in appendix 1.[3] EWD states that it already owns and possesses all necessary rights-of-way for operation of the Shoshone Pipeline.

The only construction associated with the conversion project would be the installation of a metering facility at the northern terminus of the pipeline. The metering facilities would be located in an area measuring about 30 feet wide by 80 feet long on EWD's existing right-of-way in section 17, township 8 south, range 25 east in Carbon County, Montana. The facilities would consist of a meter, related aboveground equipment, and an aboveground skid-mounted building to house electronics. The meter itself would be installed between two existing flanged risers. The area would be fenced and gravel applied to the ground surface. No excavations would be required.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1, PJ–11.1.
- Reference Docket No. CP03–2–000.
- Mail your comments so that they will be received in Washington, DC on or before December 20, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the

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[5] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

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Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–29855 Filed 11–22–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7413–4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for the ENGAGE Plant Modification, Dow Chemical Company Plaquemine, Iberville Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: This notice announces that the EPA Administrator has denied the petition to object to a state operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) for the ENGAGE plant modification at Dow Chemical Company in Plaquemine, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of this petition response in the United States Court of Appeals for the Fifth Circuit. Any petition must be filed within 60 days of the date this notice appears in the **Federal Register**, pursuant to section 307(d) of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm.*

FOR FURTHER INFORMATION CONTACT: Bonnie Braganza, Air Permitting Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340, or e-mail at *braganza.bonnie@epa.gov.*

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Suzanne Dickey and Eric Rochkind submitted a petition on behalf of the Louisiana Environmental Action Network (LEAN or Petitioner), requesting that the Administrator object to a modified title V operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) to Dow Chemical Company (Dow), for the construction of a new production train—the Engage train—at Dow's existing facilities in Plaquemine, Iberville Parish, Louisiana.

The petition requests that the Administrator object to the Dow permit based on the following grounds: (1) The offset credits required by the Nonattainment New Source Review regulations are invalid because the baseline used to calculate the credits was flawed; (2) The offset credits were not valid because the reductions were not surplus to legally required reductions at the time of proposed use, as required by Section 173(c)(2) of the Act; (3) The offset credits were based on reductions previously used or relied upon by the State of Louisiana to meet the 15% Rate of Progress requirements under Section 182(b)(1) of the Act; (4) The offset credits were not identified with sufficient specificity to inform the public of the basis of the credits; (5) The offset credits are invalid because the Louisiana emission reduction credit bank has not required emissions to be surplus at the time of use and has not maintained an accurate accounting of credit balances; (6) LDEQ should confiscate the Louisiana emission reduction credit bank in implementing approved contingency measures pursuant to Sections 172(c)(9) and 182(c)(8) of the Act; (7) The Dow emission reduction credit application is invalid because it fails to meet the requirements of the Louisiana emission reduction banking rules; (8) A new facility in the Baton Rouge nonattainment area will hinder reasonable further progress toward achieving the ozone standard in violation of Sections 172, 173, and 182 of the Act; and (9) The Dow permit fails to satisfy the alternative sites analysis required by Section 173(a)(5)of the Act and state law.

On October 30, 2002, the Administrator issued an order denying the petition. The order explains the reasons for the Administrator's decision.

Dated: November 13, 2002.

Gregg A. Cooke,
Regional Administrator, Region 6.

[FR Doc. 02–29887 Filed 11–22–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7413–2]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grants Funding Guidance for State and Tribal Response Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept proposals on November 25, 2002, for grants to supplement State and Tribal Response Programs cleanup capacity. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with State and tribal officials in developing this guidance.

Since 1997, the EPA Brownfields program has been funding state and tribal response programs including Superfund Core funding for state and tribal voluntary cleanup programs and pre-remedial site assessment funding for state- and tribal-conducted Targeted Brownfields Assessments (TBA). Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that build capacity for state and tribal response programs as well as authority to grant funds to states and Indian tribes to capitalize revolving loan funds and support insurance mechanisms. One goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions conducted or overseen, by a state or tribal response program.

This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their cleanup capacity.

For fiscal year 2003, EPA will consider funding requests up to a maximum of $1.5 million per state or Indian tribe. EPA will target funding of at least $1 million per year for tribal response programs to ensure adequate funding for tribal response programs.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to states and Indian tribes as they apply for and carry out these grants.

DATES: This action is effective as of November 25, 2002. EPA expects to make non-competitive grant awards to states and Indian tribes which apply during fiscal year 2003.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided at *http://www.epa.gov/brownfields.*

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a). Section 128(a) authorizes a $50 million grant program [1] to establish and enhance state [2] and tribal [3] response programs. Generally, these response programs address the assessment, cleanup and redevelopment of brownfields sites and other contaminated sites. Section 128(a) grants will be awarded and administered by U.S. Environmental Protection Agency (EPA) regional offices. This document provides guidance that will enable states and tribes to apply for and use section 128(a) funds in Fiscal Year 2003.

State and tribal response programs oversee cleanup at the majority of brownfield sites across the country. Many states have programs that also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a), Congress recognized the accomplishments of state response programs in cleaning up and redeveloping brownfield sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with states and Indian tribes.

Since 1997, the EPA Brownfields program has been funding state and tribal response programs including Superfund Core funding for state and tribal voluntary cleanup programs and pre-remedial site assessment funding for state- and tribal-conducted Targeted Brownfields Assessments (TBA). Both activities were financed with Superfund appropriations and funded under CERCLA section 104(d) cooperative agreement authority. Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that build capacity for state and tribal response programs as well as authority to grant funds to states and Indian tribes to capitalize revolving loan funds and support insurance mechanisms. One goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions conducted or overseen, by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their cleanup capacity.

As partners in implementing SBLRBRA, state and tribal officials have been working closely with EPA since the law's passage in developing this guidance. It reflects comments made by state and tribal officials during legislation implementation meetings, including ongoing State and Tribal Funding Workgroup conference calls, a panel at the National Tribal Conference on Environmental Management on June 5, 2002, and EPA listening sessions. In addition, EPA received letters dated February 21, 2002, from the Association of State and Territorial Solid Waste Management Officials CERCLA Research Center and another dated May 6, 2002, from the Executive Director of the Tribal Association on Solid Waste and Emergency Response. These comments were taken into account when preparing the guidance.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to states and Indian tribes as they apply for and carry out section 128(a) grants.

Eligibility for Funding

To be eligible to receive funding under CERCLA section 128(a), a state or Indian tribe must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements of a response program, described below. Congress also recognized the effectiveness and efficiencies of Memoranda of Agreement (MOAs) by making states or Indian tribes that are parties to voluntary response program MOAs [4] automatically eligible for section 128(a) funding. Additionally, states and Indian tribes, including those with MOAs, must maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year in order to qualify for section 128(a) funding.

With the exception of the section 128(a) funds a state or Indian tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA 104(k)(3), states and Indian tribes are not required to provide matching funds for grants awarded under section 128(a).

Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements and to meet the public record requirement.

The Four Elements—Section 128(a)

a. *Timely survey and inventory of brownfield sites in the state or in the tribal land.* States and Indian tribes must include, or be taking reasonable steps to include, in their response programs a system or process to identify the universe of brownfield sites in their state or tribal land. EPA's goal in funding activities under this element is to enable the state or Indian tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfields in their jurisdictions. Given funding limitations, EPA will negotiate work plans with states and Indian tribes to achieve this goal efficiently, effectively and within a realistic time frame. For example, many of EPA's Brownfields Assessment grantees conduct

[1] EPA is in the process of developing a Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Programs grant program.

[2] "The term "state" is defined in this document as defined in CERCLA section 101(27).

[3] The term "Indian tribe" is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** notice at 67 FR 67181, are also eligible for funding under CERCLA 128(a).

[4] The legislative history of SBLRBRA indicates that Congress intended to encourage states and Indian tribes to enter into MOAs for their voluntary response programs. Currently the following states have MOAs for their voluntary response programs: Arkansas, Colorado, Delaware, Florida, Illinois, Indiana, Kansas, Maryland, Michigan, Minnesota, Missouri, New Mexico, Ohio, Oklahoma, Rhode Island, Texas, Virginia, Wisconsin, and Wyoming.

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inventories of brownfield sites in their communities or jurisdictions. States and Indian tribes are encouraged to work with these grantees to obtain the information that they have gathered and include it in their survey and inventory.

b. *Oversight and enforcement authorities or other mechanisms and resources.* States and Indian tribes must include, or be taking reasonable steps to include, in their response programs oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that a response action will protect human health and the environment and be conducted in accordance with applicable federal and state law. In addition, states and Indian tribes must include, or be taking reasonable steps to include, in their response programs oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that the necessary response activities are completed if the person conducting the response activities, including operation and maintenance or long-term monitoring activities, fails to complete the activity (such as enforcement, funding, or other programmatic resources, including staff).

c. *Mechanisms and resources to provide meaningful opportunities for public participation.*[5] States and Indian tribes must include, or be taking reasonable steps to include, in their response programs mechanisms and resources for public participation, including, as a minimum:

- Public access to documents and related materials that a state, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
- Prior notice and opportunity for public comment on cleanup plans and site activity; and
- A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

d. *Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete.* States and Indian tribes must include, or be taking reasonable steps to include, in their response programs mechanisms to approve cleanup plans. In addition states and Indian tribes must include, or be taking reasonable steps to include, in their response programs a requirement for verification by and certification or similar documentation from the state, the Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response action is complete.

Public Record Requirement

States and Indian tribes (including states with MOAs) that receive funding under section 128(a) must establish a public record system during the grant funding period unless a public record system that meets the following requirements is already established. Specifically, under section 128(b)(1)(C), states and Indian tribes must:

- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;
- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and
- Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets these requirements.

It is important to note that the public record requirement differs from the "timely survey and inventory" element described above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the "timely survey and inventory" element described above, refers to a general approach to identifying brownfield sites.

EPA's goal is to enable states and Indian tribes to make the public record easily accessible. For this reason, EPA will allow states and Indian tribes to use section 128(a) funding to make information on sites in their response programs available to the public on the Internet or other means that ensures that the information is readily accessible to the public. For example, the Agency will fund state and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.[6] EPA encourages states and Indian tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record in their work plans.[7]

Use of Funding

General Uses

Section 128(a)(1)(B) describes the eligible uses of grants funding by states and Indian tribes. In general, a state or Indian tribe may use a grant to "establish or enhance" their response programs, including elements of the response program that include activities related to responses at brownfield sites with petroleum contamination. States and Indian tribes may use Section 128(a) funding to develop legislation, regulations, procedures, guidance, *etc.* that would establish or enhance the administrative and legal structure of their response programs. In addition, states and Indian tribes may use grant funding to:

Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and grant terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20% match on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA grant funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply.

Purchasing environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

In addition, a state or Indian tribe may use section 128(a) funding to establish and maintain the required public record described in section B above. EPA considers activities related to maintaining and monitoring

[5] States and Indian tribes establishing this element may find useful information on public participation on EPA's community involvement web site at *http://www.epa.gov/superfund/action/community/index.htm.*

[6] For further information on latitude and longitude information, please see EPA's data standards web site available at *http://oaspub.epa.gov/edr/epastd$.startup.*

[7] States and Indian tribes may find useful information on institutional controls on EPA's institutional controls web site at *http://www.epa.gov/superfund/action/ic/index.htm.*

institutional controls to be eligible costs under section 128(a).

Uses Related to Establishing a State or Tribal Response Program

Under CERCLA section 128(a), "establish" includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For more developed state or tribal response programs, establish may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

Uses Related to Enhancing a State or Tribal Response Program

Under CERCLA section 128(a), "enhance" is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program. The legislative history of the provision also makes this clear:

> The vast majority of contaminated sites across the nation will not be cleaned up by the Superfund program. Instead, most sites will be cleaned up under State authority. * * * In recognition of this fact, and the need to create and improve State cleanup capacity, new [section 128(a)] provides financial assistance to States and Indian tribes to establish or enhance voluntary response programs.
>
> Senate Report 107–2, March 12, 2001, p. 15.

The exact "enhancement" uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or Indian tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. Other "enhancement" uses may be allowable as well.

Uses Related to Site-Specific Activities

States and Indian tribes may use section 128(a) funds for activities that improve state or tribal capacity to increase the number of sites at which response actions are conducted under the state or tribal response program. Eligible uses of funds include site-specific related activities such as conducting assessments at selected brownfields sites. Section 128(a) funds cannot be used for assessments at sites that do not meet the definition of brownfields site at CERCLA 101(39).

Costs incurred for oversight of cleanups at other than brownfields sites may be eligible and allowable costs if such activities are included in the state's or Indian tribe's work plan. For example, auditing of completed site cleanups in states or tribes that use licensed site professionals to verify that sites have been properly cleaned up may be an eligible cost under section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the state's or Indian tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the state or Indian tribe.

Uses Related to Petroleum Response Programs and Site-Specific Activities at Petroleum Sites

Many state response programs do not distinguish between sites contaminated with hazardous substances, contaminants or pollutants and sites contaminated with petroleum. Therefore, states and Indian tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of conducting site assessments at petroleum contaminated brownfield sites, as defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or Indian tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

Grant Mechanism and Process for Awarding Funding

Funding authorized under CERCLA section 128(a) will be awarded through a cooperative agreement [8] with a state or Indian tribe. The program will be administered under the general EPA grant and cooperative agreement regulations for states, Indian tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the grantee for section 128(a) grant program is:

> the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
>
> 40 CFR 31.3 Grantee.

Subject to the availability of funds, EPA regional offices will negotiate and enter into new section 128(a) cooperative agreements with eligible and interested states or Indian tribes. EPA will accept only one application, and negotiate only one work plan, with each eligible state or Indian tribe. States and tribes must define the "section 128(a) response program," and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's grants policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

As part of the annual work plan negotiation process, states or Indian tribes that do not have MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described above. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, or on EPA's review of the state or tribal response program.

Prior to funding a state's or Indian tribe's annual work plan, EPA regional offices will verify that a public record as described above exists, and is being maintained.

Allocation System for Distribution of Funding

EPA regional offices will work with interested states and Indian tribes to develop their annual work plans and funding requests. For Fiscal Year 2003, EPA will consider funding requests up to a maximum of $1.5 million per state or Indian tribe. This limit may be changed in future years based on appropriation amounts and demand for funding. The EPA regional offices will forward each of the funding request

[8] A cooperative agreement is a grant to a state or Indian tribe that includes substantial involvement of EPA during performance of activities described in cooperative agreement work plan. Examples of this involvement include technical assistance and collaboration on program development and site-specific activities.

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amounts and a short summary of the work plan activities to EPA Headquarters. EPA Headquarters will compile the requested amounts and develop the annual allocation based on state and tribal response program needs described in the work plan summaries.

When EPA Regions negotiate individual state and tribal work plans, it is anticipated that funding will be prioritized as follows.

1. Funding for program development activities to establish or enhance the four elements of a state or tribal response program and to enable states and Indian tribes to comply with the public record requirement, including activities related to institutional controls. States with MOA's will not be prejudiced in funding distributions if their work plan does not include tasks related to establishing or enhancing the four elements. Similarly, states and Indian tribes that have established one or more of the four elements will not be prejudiced in funding distributions if their work plan includes activities that enhance the four elements.

2. Funding for other program development activities to enhance the cleanup capacity of a state or tribal response program.

3. Funding for site-specific activities that enhance the cleanup capacity of a state or tribal response program, including targeted brownfields site assessments.

4. Funding for environmental insurance mechanisms.

5. Funding to capitalize brownfields cleanup revolving loan funds.

States and Indian tribes must break their work plans down into these prioritization categories.

EPA will target funding of at least $1 million per year for tribal response programs. If this funding is not used, it will be carried over and added to at least $1 million in the next fiscal year. It is expected that the funding demand from Indian tribes will increase through the life of this grant program (authorized by Congress through FY2006), and this funding allocation system should ensure that adequate funding for tribal response programs is available in future years.

Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities.

States and Indian tribes will provide progress reports under 40 CFR 31.40, in accordance with terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) grant. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or Indian tribe's accomplishments with section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information relating to establishing and maintaining the public record.

Depending upon the activities included in the state's or Indian tribe's work plan, an EPA regional office may request that a progress report include:

A list of sites at which response actions have been completed including:

- Date the response action was completed.
- Site name.
- Location of the site (street address and latitude and longitude).
- Size of the site in acres.
- An indication if the site is suitable for unrestricted use or if institutional controls were relied on in the remedy.
- Nature of the contamination at the site.

A list of sites currently being addressed by the state or tribal response program including:

- Site name.
- Location of the site (street address and latitude and longitude).
- Size of the site in acres.
- Date site assessment was completed.
- Nature of contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc. * * *).

If the state or Indian tribe is using section 128(a) funding to perform other site-specific related activities (*e.g.*, oversight audits of licensed site professional certified cleanups, etc. * * *), they must include a description of the site-specific activities and the number of sites at which the activity was conducted.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and Indian tribes.

Dated: November 18, 2002.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 02–29886 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7412–8]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

DATES: The meeting will be held on Thursday, December 12, 2002, from 8 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 315 Julia Street, New Orleans, LA 70130 (504–525–1993).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: November 18, 2002.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program

Policy Review Board Meeting

Embassy Suites Hotel, Bayou Jean Lafitte Rooms, 6th Floor, New Orleans, Louisiana, Thursday, December 12, 2002.

Agenda

7:30—Continental Breakfast (in meeting room).

8:30—Welcome and Introductions, Jimmy Palmer, EPA Regional Administrator, Region 4, Atlanta Hall Bohlinger, Acting Secretary, LA Department of Env. Quality.

8:40—Overview of Meeting Agenda & Objectives, Status Review of Follow-up Action Items, Bryon Griffith, Gulf of Mexico Program Office.

9:00—Harmful Algal Blooms Observing System Pilot Project Status, Dr. Bill Benson, Director, EPA ORD's Gulf Ecology Division Laboratory.
Purpose: To receive an update on the progress of the Hazardous Algal Blooms Observing System (HABSOS) pilot.

9:45—Bacterial Source Tracking Research, Dr. R.D. Ellender, Assistant Dean for Research & Development, College of Science & Technology, University of Southern Mississippi.
Purpose: To receive an overview of the current state of the research in this topic area and to solicit broad Gulf State involvement in a collaborative EPA Region 4 and University of Southern Mississippi initiative to provide Gulf State coordination and support for applied Bacterial Source Tracking research.

10:30—Break.

10:45—GMP Mercury Project Update—re: Gulf State Marine Fish Advisory Consistency Dr. Fred Kopfler, Gulf of Mexico Program Office.
Purpose: To receive an update on the status of the GMP initiative to achieve consistent marine fish advisories re: Mercury in Gulf Seafood.

11:15—President's Interagency Work Group on Mercury Presentation, Gene Whitney, Policy Analyst, Office of Science & Technology Policy, Executive Office of the President.
Purpose: To receive an Executive Briefing on the development and status of President's Interagency Workgroup on Mercury and their future plans relative to the Gulf of Mexico region.

12:00—Catered Lunch—2002 Gulf Guardian Awards Video Presentation.

12:45—Presidential Executive Order Recommendations—Final Review, Bryon Griffith, Gulf of Mexico Program Office.
Purpose: (1) To conduct the final review of the Management Committee's recommendations regarding the proposed Presidential Executive Order establishing the Gulf of Mexico Program; (2) To discuss and finalize a supporting implementation strategy and schedule for submitting the Executive proposal to the EPA Administrator.

1:30—GMP's Assistance Role in the Advancing Development and Deployment of NASA's Space-based Earth Sciences Support, Dr. David Powe, Director, Earth Science Applications Directorate, NASA, Stennis Space Center, Mississippi.
Purpose: To explore stronger partnership opportunities through NASA's Space-based Earth Science Applications Development Program.

2:00—Hypoxia Action Plan Status: Lower Mississippi River Sub-basin Team Development Report (Agricultural Sector)—Lower Mississippi Valley Initiative's (LMVI) Watershed Approach, Invited speaker.
Purpose: To receive an update on the status of the Lower Mississippi River Sub-basin Team's development re: Agriculture's organization (*e.g.*, LMVI) and process (*i.e.*, Watershed Approach) approach to addressing many of the sub-basin's industry led solutions.

2:30—Wrap-up and next steps, Jimmy Palmer and Hall Bohlinger.

2:35—Adjourn .

[FR Doc. 02–29885 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress,

TIME AND PLACE: Tuesday, December 10, 2002, at 10 am to 1 pm. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW. Washington, DC 20571.

AGENDA: Agenda items include reports and discussion on proposed revisions to Ex-Im Bank's Economic Impact Procedures, discussion on the Advisory Committee's Sub-Committees, and the presentation of the Advisory Committee's recommendations to Ex-Im Bank.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 3, 2002, Nichole Westin, Room 1257, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further incormation, contact Nichole Westin, Room 1257, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3542.

Peter Saba,

General Counsel.

[FR Doc. 02–29878 Filed 11–22–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL ELECTION COMMISSION

[Notice 2002–23]

Filing Dates for the Hawaii Special Election in the 2nd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Hawaii has scheduled a special election on January 4, 2003, to fill the U.S. House of Representatives seat in the Second Congressional District to which the late Representative Patsy T. Mink was reelected on November 5, 2002.

Committees participating in the Hawaii special election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the Hawaii Special General shall file a 12-day Pre-General Report on December 23, 2002; and a 30-day Post-General Report on February 3, 2003. (*See* chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political Committees that file on a quarterly basis in 2002 are subject to special election reporting if they make previously undisclosed contributions or

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expenditures in connection with the Hawaii Special General Election by the close of books for the applicable report(s). (*See* chart below for the closing date for each report).

Since disclosing financial activity from two different calendar years on one report would conflict with the calendar year aggregation requirements stated in the Commission's disclosure rules, unauthorized committees that trigger the filing of the Post-General Report will be required to file this report on two separate forms. One form to cover 2002 activity, labeled as the Year-End Report; and the other form to cover only 2003 activity, labeled as the Post-General Report. Both forms must be filed by February 3, 2003.

Committees filing monthly that support candidates in the Hawaii Special General should continue to file according to the monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR HAWAII SPECIAL ELECTION

Report	Close of Books [1]	Reg./cert. mailing date [2]	Filing date
Committees Involved In The Special General (01/04/03) Must File:			
Pre-General	12/15/02	12/20/02	12/23/02
Year-End	[3]	[3]	[3]
Post-General	01/24/03	02/03/03	02/03/03

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] Waived.

Dated: November 19, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–29880 Filed 11–22–02; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1440–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1440–DR), dated November 8, 2002, and related determinations.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 8, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from an earthquake on November 3, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will be also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Fairbanks North Star Borough, Denali Borough, Matanuska-Susitna Borough, the Regional Education Attendance Areas of Delta Greely, Alaska Gateway, Copper River and Yukon-Koyukuk, and the cities of Tetlin, Mentasta Lake, Northway, Dot Lake, Chistochina, Tanacross and the unincorporated communities of Slana and Tok for emergency protective measures (Category A) and debris removal (Category B) under the Public Assistance program.

All areas within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29868 Filed 11–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Liberty and Montgomery Counties for Individual Assistance.

[The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.]

Joe M. Allbaugh,

Director.

[FR Doc. 02–29869 Filed 11–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: December 5, 2002.

Place: Building J, Room 107, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Time: 10:30 a.m. General Meeting, 1:30 p.m. Counter-terrorism Subcommittee, 2:30 p.m. Ambulance Design Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; Counter-terrorism Subcommittee report; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, December 3, 2002, via mail at NATEK Incorporated, 4200–G Technology Court, Chantilly, Virginia 20151, or by telephone at (703) 818–7070, or via facsimile at (703) 818–0165, or via e-mail at *proman@natekinc.com*. This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10:30 a.m. until 4:00 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is "11." If you plan to call in, you should just enter the number "11"—no need to hit any other buttons, such as the star or pound keys. The same dial in phone number and conference code can be used for the 1:30 p.m. Counter-terrorism Subcommittee and 2:30 p.m. Ambulance Design Subcommittee meetings.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 6, 2003. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the March 6, 2003 FICEMS Committee Meeting.

Dated: November 14, 2002.

R. David Paulison,

U.S. Fire Administrator, United States Fire Administration.

[FR Doc. 02–29870 Filed 11–22–02; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: A Community-based Intervention Model to Promote Neighborhood Participation in the Reduction of *Aedes aegypti* Larval Indices in Puerto Rico—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). The *Aedes aegypti* mosquito transmits dengue, a mosquito-borne viral disease of the tropics. The symptoms of dengue disease include fever, headache, rash, retro-orbital pain, myalgias, arthralgias, nausea or vomiting, abdominal pain, and hemorrhagic manifestations.

Since there is no vaccine available to prevent dengue, prevention efforts are directed to control the vector mosquito. The limited efficacy of insecticides in preventing disease transmission has prompted the search for new approaches involving community participation.

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Research in Puerto Rico, where dengue is endemic and intermittently epidemic, has shown that levels of awareness about dengue are very high in the population and that the next step should be the translation of this knowledge into practice (behavior change). To achieve this goal a model of community participation to prevent and control dengue should be developed. This model of community participation must be an effectively implemented prevention project.

The objective of the dengue prevention project is to develop and evaluate a community-based participation intervention model that will reduce *Aedes aegypti* infestation in a community in Puerto Rico. To accomplish this two comparable communities in the San Juan, Puerto Rico area will be selected for this study. One community will be a "control community" and the second community will be an "intervened community." Entomologic surveys and person-to-person interviews to assess knowledge, attitudes, and practices (KAP) will be conducted during the project in both communities. The entomologic surveys and person-to-person interviews will be conducted 3 times during the project: the beginning of the project, the end of the first year of the project, and 18 months after the beginning of the project.

An additional interview will also be conducted in the intervened community to assess the function and significance of artificial containers that hold water. An ethnographic assessment will be performed to determine the resources and needs of the intervened community. The specific dengue prevention activities that the intervened community will perform will be based on results of the initial entomologic survey, KAP, function and significance of artificial containers, and the ethnographic assessment of the community. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Intervened Community	100	4	45/60	300
Control Community	100	3	45/60	225
Total				525

Dated: November 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–29803 Filed 11–22–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03017]

Systems-Based Diabetes Prevention and Control Programs (DPCPs); Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number (CFDA)

This program is authorized under section 301(a) and 317(k)(2)of the Public Health Service Act, (42 U.S.C. section 241(a) and 247b(k)(2), as amended). The Catalog of Federal Domestic Assistance number is 93.988.

B. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Systems-Based Diabetes Prevention and Control Programs (DPCPs). This program addresses the "Healthy People 2010" focus areas of Diabetes, Immunization, Access to Quality Health Services, Chronic Kidney Disease, Heart Disease and Stroke, Vision and Hearing, Nutrition and Overweight, Physical Activity and Fitness, and Public Health Infrastructure.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Increase the capacity of state diabetes control programs to address the prevention of diabetes and its complications at the community level.

The Program will continue to emphasize prevention of complications and premature mortality among people with diabetes (*i.e.* secondary and tertiary prevention). Further, the Program will continue to incorporate a model of influence by linking new programs and existing programs that support social and environmental policies for the promotion of wellness in both people with diabetes, and those at risk for diabetes. In the future, CDC plans (pending available resources) to turn increasing attention to the identification and dissemination of lifestyle interventions proven to be effective in preventing or delaying Type 2 diabetes among people with impaired fasting glucose or impaired glucose tolerance.

For additional background information please see attachment II of this announcement as posted on the CDC web site at: *www.cdc.gov.*

C. Eligible Applicants

Assistance will be provided only to the health departments of states or their *bona fide* agents, and Territories, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Competition is limited to health departments or their *bona fide* agents because they are uniquely positioned to perform, oversee and coordinate diabetes prevention and control activities in public health settings and as part of a larger public health system. All States and Territories are currently receiving funding for diabetes programs under prior CDC announcements 97064, 98034, and/or 99078.

(**Note:** Throughout this document the use of the term "State" or "statewide" also refers to the Territories described above.)

For the first year, states currently receiving CDC funds for Comprehensive Programs (funded under program announcements 97064, 98034, and 99078) are entitled to apply for Comprehensive Program funding only.

States currently receiving CDC funds for Core Programs (funded under program announcement 99078) are eligible to apply for either Core or Comprehensive Program funding. Applicants will receive only a Core or Comprehensive award.

Current Core programs applying for Core funding will undergo a technical review of their application and will be funded pending receipt and approval of a technically acceptable application.

Current Comprehensive Programs and Core Programs applying for Comprehensive funding must submit an application which will undergo a competitive review process by an independent objective review panel. As a contingency, currently funded Core programs applying for Comprehensive awards should submit two separate work plans, with budget line items and budget justifications, one for a Core Program and one for a Comprehensive Program.

All applications received from current grant recipients under Program Announcements 97064, 98034, and 99078 will be funded for either a Core or a Comprehensive Program.

After the first year, Tier 2 DPCPs (see explanation of Tier 2 in section "E. Program Requirements") will be eligible to compete for Special Projects of National Significance based on availability of funds in years two through four. Eligibility will be limited to high performing Tier 2 DPCPs that demonstrate multi-system integration of public health services and partnerships into a comprehensive, highly functioning, and accountable program. A number of key innovative strategies, implemented by these DPCPs, have been sustained or institutionalized, documented in public health reports or scientific literature and disseminated to other programs as appropriate.

Note: Public Law 104–65 states that an organization described in section 501(c) (4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, loan or any form.

D. Funding

Availability of Funds

Approximately $23 million is available in FY 2003 to fund 59 awards. It is estimated that approximately $10 million will be available to fund approximately 41 Core awards. It is expected that the average federal contribution to the Core award will be $244,000, ranging from $50,000 to $400,000. Approximately $13 million will be available to fund approximately 18 Comprehensive awards. It is expected that the average federal contribution to the Comprehensive award will be $725,000 ranging from $400,000 to $900,000.

It is expected that the awards will begin on or about March 30, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary depending on availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory demonstration of accomplishment of proposed activities, performance improvement plans and results, and the availability of funds.

Direct Assistance

You may request Federal personnel as direct assistance, in lieu of a portion of financial assistance.

Use of Funds

Resources available under this program announcement may not be used to: (1) Support direct patient care services, screening services, individual health services, or the treatment of diabetes; (2) duplicate existing efforts the federal system has established for outpatient diabetes education reimbursement for the Medicare population through the Diabetes Education Program Recognition administered by the Centers for Medicaid and Medicare Services (CMS); or (3) supplant existing State or Federal funding including the Preventive Health and Health Service block grant or other sources.

Programs that have adequately addressed the program key components (*see* attachment IV of this announcement as posted on the CDC web site) and are high performing comprehensive (or Tier 2 in years 2–5) programs may dedicate a portion of the resources available under this program announcement to conduct research projects. Funded research projects involving human subjects will be governed by 45 Code of Federal Regulations, part 46.

Applicants are encouraged to identify and leverage opportunities which will enhance their work with other State health department programs that address related chronic diseases or risk factors. This may include cost sharing to support shared staff positions, such as a chronic disease epidemiologist, program evaluator, health communication specialist, etc. Other cost sharing activities that cut across chronic disease programs and are directly related to recipient program activities may also be appropriate.

Recipient Financial Participation

Matching funds are required for this program. Matching funds are required from non-Federal sources in an amount not less than $1 for each $5 of Federal funds awarded to Core programs and; $1 for each $4 for Comprehensive programs. The matching funds may be cash or its equivalent in-kind or donated services, fairly evaluated. The contribution may be made directly or through donations from public or private entities. Match requirements may change for Tier levels in years two through five. Matching funds must be consistent with the work plan activities that are submitted and approved.

Matching funds may not be met through: (1) The payment of treatment services or the donation of treatment, or direct patient diabetes education services; (2) services assisted or subsidized by the Federal Government; or (3) the indirect or overhead of an organization.

Funding Preference

Due to resource limitations, preference in funding Comprehensive Programs will be given to states with:

1. A larger burden of diabetes and related complications.
2. A larger proportion of residents experiencing racial and ethnic disparities in diabetes prevalence and diabetes related complications.
3. Varied geographic representation across the United States.
4. Varied distribution of population density among funded programs.

E. Program Requirements

In conducting activities to achieve the purpose of this program, both Core and Comprehensive DPCPs will be responsible for the activities under 1. Recipient Activities (except where otherwise noted), and CDC will be responsible for the activities under 2. CDC Activities. It is expected that Comprehensive Programs will demonstrate a more intensive level of effort in each category of recipient activities.

1. Recipient Activities

a. Define the burden of diabetes in a manner that informs and influences public health decision making: Maintain a state specific diabetes surveillance system. This should be accomplished through previously established surveillance systems and ensuring that the Behavioral Risk Factor Surveillance System (BRFSS), Diabetes Module (or other appropriate surveillance system for the Territories), is conducted yearly. Yearly administration of the Diabetes Module is a requirement. The surveillance system should support and inform public health decision making. At a minimum, this data should be used to generate performance-based outcome measures specific to recommended foot and eye exams, immunizations, and

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annual Hemoglobin A1C (A1C) tests. It should also be used to guide program activities. Systems should monitor trends, disseminate data and information, and support evaluation efforts. Comprehensive Programs are expected to implement special surveillance strategies (*e.g.*, over-sampling, special surveys, sentinel surveillance systems) that address unmet surveillance needs.

b. Establish and maintain a presence for diabetes prevention and control within the State Health Department. Implement the following critical functions of fiscal management, performance management, program assessment, and strategic planning to carry out the program by working through the respective State and Territorial Health Department infrastructure.

(1). *Fiscal Management:* Develop a Fiscal Management system that supports the program. This system should have the following capacity: accurate and timely tracking of expenditures and sources of match support; accurate projection of categorical balances; and the prevention of excessive unobligated balances by having the flexibility to reallocate funds into appropriate budget categories if priorities change or if staffing patterns change. DPCPs need to establish linkages with appropriate state fiscal management staff, and develop a process for regularly assessing program needs and monitoring expenditures.

(2). *Performance Management:* The DPCP should engage health department leadership to develop a performance management system that incorporates capacity improvement processes and strategic accountability measures. For Comprehensive Programs, a written plan of this performance management system should be in place. This should assist health department officials to create accountability processes within state programs. This will enable them to introduce rewards for good performance and consequences for poor performance. The performance management system should also be linked to the evaluation system and the budget process.

(3). *Program Assessment:* DPCPs are expected to conduct reflective, partner-included assessments to identify strengths and needs in the DPCP's public health infrastructure. Efforts to strengthen identified essential public health services, deemed particularly important in achieving the program's goals, should follow the assessments by developing a performance improvement plan based on identified services that need strengthening. DPCPs will assess and continuously improve public health services so that policies and legislation related to issues such as access to quality care and environmental conditions encourage positive health outcomes. Further, DPCPs will support participatory community efforts promoting systems and community-based approaches aimed at increasing years of healthy life and eliminating the disproportionate burden of diabetes borne by particular racial and ethnic populations. The Ten Essential Public Health Services (*see* attachment III of this announcement as posted on the CDC web site) will provide the basis for assessment. More extensive involvement of partners state-wide is expected of Comprehensive Programs. State public health agencies may or may not be the lead agency for several specific essential public health services. In these cases, identifying the role of the state public health agency with a support role by the DPCP, will help in prioritizing the essential public health services most relevant to achieving the goals of the diabetes program. Performance improvement plans will be implemented in year two and beyond. DPCPs will be expected to demonstrate measurable results linked to performance improvement plans annually.

(4). *Strategic Planning:* Develop or update a State Diabetes Strategic Plan for diabetes prevention and control with the goal of advancing the prevention and control of diabetes and its complications, improving access to and the quality of diabetes services and care, and eliminating disparities between population groups. The DPCP and its partners should be involved in the development and implementation of the State Diabetes Strategic Plan. The State Diabetes Strategic Plan should also inform and guide the activities of the DPCP and its partners. As they become available, the results of the Assessment should guide the periodic update and improvement of the State Diabetes Strategic Plan. For Comprehensive Programs, the plan should be comprehensive in nature and reflective of the strategies and activities of the diabetes health system in the state.

c. *Program Design Enhancement:* Expand the current DPCP program model of influence. DPCPs should serve as a catalyst for change positively impacting people with diabetes, their families, and their communities. The DPCP should engage the State Diabetes Health System (SDHS) which includes the DPCP, the state health agencies and other health partners that contribute to diabetes services and programs at the state level, in this effort. Activities include the current population-based approaches for secondary and tertiary prevention for people with diabetes. All activities described must be relevant, complementary to, and consistent with ongoing national efforts such as the National Diabetes Education Program (NDEP), and with national priorities for eliminating racial and ethnic health disparities for diabetes. Core Program activities aligned with the ten essential public health services can include small scale pilots in selected geographic areas or statewide interventions. Comprehensive Programs are expected to have a wider scope of activities in all areas of influence. Comprehensive Programs must also develop public health activities that reach the entire State or implement an existing multifaceted intensive program in a limited geographical area within a defined target population. Allowable program activities that emerge from evolving science will be addressed in future guidance documents which will accompany each request for continuing application.

d. *Establish and Maintain Effective Partnerships:* Create a culture of shared responsibility with the SDHS and other nontraditional partners. The DPCP and partners should collectively plan, implement, and evaluate goals and objectives and align resources to priorities. The DPCP should engage the SDHS to measure the quality and effectiveness of collective efforts and the DPCP's ability to establish and maintain effective partnerships. The goal should be inclusiveness rather than exclusiveness to achieve synergistic results. Within the State Health Department, the DPCP should collaborate and coordinate with partners such as nutrition, physical activity, tobacco, cardiovascular health, maternal and child health, health promotion, PHHS block grant, State Minority Health Program, Office of Women's Health, Office On Aging, public information officer, as well as data partners such as vital statistics and the State's BRFSS. Comprehensive Programs must demonstrate a more extensive partnership base and more significant level of engagement with those partners.

e. *Evaluation:* Conduct ongoing monitoring and evaluation of diabetes prevention and control activities and strategies, including process and impact evaluation. State evaluation efforts should complement and be consistent with national program evaluation goals. Comprehensive Programs are expected to submit an evaluation methodology designed to demonstrate more in-depth, purposeful evaluation of program activities.

f. *Management Information System (MIS):* The MIS will be used for post award administration, program monitoring, technical assistance, and programmatic decision making. Programs are expected to ensure that information is entered into the MIS in a timely manner. Office of Management and Budget (OMB) clearance for the data collection initiated under this cooperative agreement has been approved. (OMB No. 0920–0479. Expiration date 7/31/2003.)

g. *Protection of Human Subjects:* Ensure that program activities follow all applicable federal regulations concerning the protection of human subjects and the confidentiality of personally identifiable data.

Year One

DPCPs will be awarded as either Core or Comprehensive Programs for the first year.

1. Core programs are expected to establish and maintain a presence in the health department for diabetes prevention and control; define the burden of diabetes in the state and communicate it in a manner that informs and influences public health decision making; establish and maintain effective partnerships; develop a State Diabetes Strategic Plan; and engage in small scale pilots in accordance with program guidance.

2. Comprehensive programs are expected to meet all of the requirements of a Core program and implement statewide interventions or implement multifaceted intensive strategies in geographically defined targeted populations to reduce or eliminate the burden of diabetes.

Years Two Through Five

In subsequent years (years two through five), DPCPs will be placed in one of two Tier levels based on their performance as documented in the interim progress reports, and on the availability of funds. The award strategy is designed to support documented performance results from quality intervention and performance improvement plans. Awards will also be based on budget justification, alignment with CDC strategies, and the ability of a state to continuously execute performance improvement and intervention plans.

Tier 1

This Tier level is intended to support capacity-building programs by establishing a performance management system; a state team with multiple skill sets; an epidemiology-based State Diabetes Strategic Plan to achieve program goals; highly functioning, accountable partnerships; and program strategies and activities to reduce documented burden of diabetes. In this Tier, culturally relevant small-scale interventions at community and/or systems levels, with specific priority audiences in particular communities or geographic areas, are expected.

The performance expectations of this Tier include

1. Meeting minimum requirements outlined in the DPCP Key Components document (*see* attachment IV of this announcement as posted on the CDC web site).

2. Developing a performance improvement plan reflecting priority areas identified in the diabetes public health assessment which is based on the ten essential public health services.

3. Developing a work plan that meets program criteria (logic-modeled) with budget justification.

4. Providing evidence of results based on proximal performance measures which are anticipated to lead to the achievement of the CDC, Division of Diabetes Translation's (DDT's) National Objectives.

Tier 2

DPCPs in this Tier level have a broader-based program capacity supported by the elements of Tier 1, but with increasingly integrated and highly functional partnerships and measurable effects. Programs in this Tier systematically implement priority strategies and interventions in priority communities throughout the state, consistent with their State Diabetes Strategic Plan. They must have evidence of improvement in the diabetes public health infrastructure. Program impacts and results must be evident and measurable through the DPCP performance management system. They have also demonstrated national leadership, sharing lessons learned among local, state, and national partners.

The performance expectations of this Tier include:

1. Demonstrating quality activities linked to the Ten Essential Public Health Services with activities in each of the four indicators.

2. Demonstrating results in the implementation of improvement plans.

3. Meeting the expectations of Tier 1.

4. Developing a work plan that meets Tier 2 criteria (logic-modeled) with budget justification based on Tier 2 funding levels.

5. Demonstrating readiness in terms of capacity to take on a larger scope of program activities (staffing, management support, technological resources, partnerships, *etc.*).

6. Providing evidence of results based on proximal performance measures which are anticipated to lead to the achievement of the CDC, DDT's National Objectives.

Special Projects of National Significance

High performing Tier 2 programs will be eligible to request additional funding to support projects of national significance. Tier 2 DPCPs who are awarded funds to carry out these Special Projects have demonstrated multi-system integration of public health services and partnerships into a comprehensive, highly functioning, and accountable program. A number of key innovative strategies, implemented by these DPCPs, have been sustained or institutionalized, documented in public health reports or scientific literature and disseminated to other programs as appropriate. It is anticipated that Special Projects will be funded for a specified period of time and may include one or more of the following: (1) Spreading successful population-based interventions accomplished in earlier phases of the program to reach populations still unserved; (2) Conducting projects which provide national leadership in sharing and promoting processes and results. Helping CDC to influence national policies based on emerging needs and discovery of effective practices and policies; and (3) Developing and conducting research projects of national significance, which appropriately contribute to the emerging diabetes public health science base.

The performance expectations of the Special Projects will be specific to the nature of the Project, with the expectation that the Tier 2 programs that are conducting the Special Projects will:

1. Demonstrate quality activities linked to the Ten Essential Public Health Services with activities in each of the four indicators.

2. Demonstrate results in the implementation of improvement plans.

3. Meet the expectations of Tier 2.

4. Develop a work plan that meets criteria for Tier 2 programs and Special Projects with appropriate budget justification based on the nature of the Project.

5. Demonstrate readiness in terms of capacity to take on a larger scope of program activities required to implement Special Projects (staffing, management support, technological resources, partnerships, *etc.*).

6. Provide evidence of results based on proximal performance measures which are anticipated to lead to the

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accomplishment of the CDC, DDT's National Objectives.

2. CDC Activities.

a. Provide ongoing guidance, training, consultation, and technical assistance in all aspects of diabetes prevention and control, as described under Recipient Activities.

b. Provide up-to-date information that describes proven interventions and current research in appropriate areas of diabetes prevention and control.

c. Provide resources, tools, and technical assistance to improve and enhance program evaluation efforts.

d. Provide resources and technical assistance to improve monitoring and surveillance systems. Provide technical assistance in the coordination of surveillance and other data systems to measure and characterize the burden of diabetes.

e. Collaborate with the DPCPs and other appropriate partners to develop and disseminate programmatic guidance and other resources for specific interventions, health communication campaigns, and other national initiatives.

f. Facilitate the adoption and adaptation of effective practices through workshops, trainings, conferences, and electronic and verbal communication among recipients of cooperative agreement awards under this program announcement, and other diabetes prevention and control partners.

g. Support the development and maintenance of a system for DPCP input into planning and sharing of information.

h. Assist in and support the development and maintenance of partnerships and networks with Federal and non-Federal, public and private sector organizations to help implement diabetes prevention and control programs, thereby maintaining a national infrastructure to complement the infrastructure in the states and territories and their local jurisdictions.

i. Facilitate effective communication and integration between NDEP and state DPCPs. This includes, but is not limited to, NDEP training, media, and other program products and tools.

j. Provide up-to-date information on the responsible conduct of research and technical assistance for program activities involving human subjects.

F. Content

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Recipient Activities, Evaluation Criteria, and Other Requirements sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The applications (excluding forms and attachments) should be no more than 50 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12 point font. Necessary supporting information (tables, organizational charts, position descriptions, *etc.*) may be provided as attachments. A signed original and two copies of the application must be mailed to the CDC Grants Office.

Applicants are strongly encouraged to utilize the MIS. The format of DDT's MIS complements the application content specified in this announcement. Therefore, to avoid duplication of effort, the application content may be entered into the DDT MIS. Hard copies will be generated from the MIS for formal submission to the CDC Procurement and Grants Office with the required signed forms. OMB clearance for the data collection initiated under this cooperative agreement has been approved. (OMB No. 0920–0479. Expiration date 7/31/2003.)

Applicants for comprehensive level funding must demonstrate optimal core capacity as evidenced by the following: Established surveillance systems; sound infrastructure and management (including fiscal management, performance management, program assessment, and strategic planning); proven experience with results in the implementation of well designed small-scale pilot projects; effective partnerships; and sound monitoring and evaluation of diabetes prevention and control activities including process and impact evaluation. In addition, Comprehensive Program applications must include a plan to develop public health activities that reach the entire State, or to implement an existing multifaceted intensive program in a limited geographical area within a defined target population.

Both Core and Comprehensive Program applicants should respond to items one through seven below. However, applicants should note that in some areas different information is requested of applicants. Current Core grantees applying for a Comprehensive award should provide two separate applications, one Core application and one Comprehensive application, and address the comprehensive component by describing their planned or proposed comprehensive activities.

1. Background and Need:

a. Provide an estimate of the burden of diabetes and its complications, and its geographic and demographic distribution within the State. Reference the data sources that support these estimates. Describe the challenges to diminishing the morbidity and mortality from diabetes in your State.

b. Include a description of the populations that are at high risk for diabetes in your State. If possible, describe the social, ecological, or economic conditions that contribute to the disproportionate burden of diabetes in the population, as well as knowledge, attitudes, and beliefs that impact the health practices of the population. If available, attach references for any studies or sources from which this information was obtained.

c. Provide an analysis of the barriers to addressing the burden of diabetes in the State.

2. Program Accomplishments and Proven Capacity:

a. Describe efforts to develop and incorporate diabetes surveillance systems, including BRFSS, in monitoring and tracking diabetes-related health status in the State. Include information on how data is used in diabetes program planning and decision making.

b. Describe unique or significant advances toward achieving program objectives and the CDC, DDT's National Objectives.

c. Provide findings, conclusions, or status of pilot projects and/or statewide activities. Where appropriate, provide success stories of program activities or other methods of determining success.

d. Provide examples of successful efforts to influence the widespread application of accepted standards, policies, and protocols. Describe the methodology for determining the success of these efforts.

e. Describe specific program activities and accomplishments in addressing the needs of underserved populations, or populations at high risk for diabetes in the State.

f. Describe how the DPCP engages partners, including their diabetes advisory groups or coalitions, other Chronic Disease Programs, and non-traditional partners, in program planning, implementation, coordinating efforts and evaluation in support of the DPCP work plan objectives.

g. Describe how the DPCP has managed its fiscal and human resources in the past five years (including history of unobligated balances, how match requirements have been met, turnover in key staff positions, professional development of DPCP staff, supportive leadership, *etc.*).

h. Provide letters of support that reflect the involvement of diverse (traditional and non-traditional) organizations in planning the response

to this program announcement. Include specific roles and responsibilities of the partner providing the letter in the State Diabetes Strategic Plan or activity/intervention that is pertinent.

i. If available, provide a state diabetes strategic plan, diabetes advisory group or coalition by-laws, action plans, and any other substantive work products from these partnerships that demonstrate quality and effectiveness.

3. Program Work Plan:

Provide a clear work plan that addresses the items listed below. Some objectives may reflect the process by which the program or activity is developed, while others will reflect the actual public health impact, output or outcome that results.

Each DPCP should state their measurable and time-phased objectives for the project period that will help achieve the goal(s) of the program. A "logic model" or causal relationship should be evident among the long term objectives, process objectives, and activities.

a. Provide measurable and time-phased long term objectives for the five-year project period that should mirror the following CDC, DDT's National Objectives:

(1). By 2008, DPCPs should have demonstrated success in achieving an increase in persons with diabetes who receive recommended foot exams, eye exams, flu and pneumococcal immunizations, and A1C tests.

(2). By 2008, DPCPs should have demonstrated progress in establishing linkages for the promotion of wellness and physical activity for persons with diabetes.

(3). By 2008, all DPCPs should have demonstrated progress in eliminating health disparities for high risk populations with respect to diabetes prevention and control.

(4). Each DPCP should establish measurement procedures and surveillance systems, including baseline and target measurements of the percent of persons with diabetes receiving recommended foot exams, eye exams, flu and pneumococcal immunizations and recommended A1C tests, as a means of assessing program success. b. Provide measurable, specific and time-phased one year budget period objectives that will help achieve the stated time-phased long term objectives. c. Describe in detail a plan for systems-based activities, and methods for achieving each of the proposed one year budget period objectives.

4. Evaluation Plan:

Describe how progress, the achievement of program objectives and the effectiveness of program activities will be monitored and evaluated. Describe how data will be collected, analyzed, and used to improve the program. Specify the person(s) responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings. DPCPs should incorporate the six steps of the "CDC Framework for Program Evaluation" when creating the DPCP evaluation plan. The six connected steps assist in the planning and evaluation of a variety of interventions. The CDC Evaluation Framework steps are:

Step 1: Engage stakeholders: Include individuals and organizations that are involved in program operations, served or affected by the program, and the primary users of evaluation.

Step 2: Describe the program: Descriptions should be sufficiently detailed to ensure understanding of program objectives and strategies. Include a logic model that links program objectives and activities to eventual outcomes/effects.

Step 3: Focus the evaluation design: Specify the questions to be answered through the evaluation activities proposed. These questions should guide the evaluation process and be directly linked to the objectives stated above. Specify the methods for quantitative and qualitative data collection, such as the use of questionnaires, surveys, other data collection instruments, interviews, and focus groups, *etc.* (Assure that appropriate Human Subjects Research procedures and OMB requirements have been followed and documented.)

Step 4: Gather credible evidence: Specify the information (data) that will be collected to answer the evaluation questions stated above. Specify the sources of information (data) to be collected. Since this evaluation is designed to measure change as a result of the intervention, specify the baseline against which the change is being measured.

Step 5: Justify conclusions: Specify the process to be used to analyze, synthesize, and report the data.

Step 6: Ensure use and share lessons learned: Explain how the data resulting from the evaluation will be used to improve or expand the program. Discuss how the results of the evaluation will be reported and who will receive the results.

More information about the six steps can be found at: *http://www.cdc.gov/eval/framework.htm.*

Note: Include samples of data collection tools in the attachments, if available.

In addition, the evaluation plan should document and describe program successes, unmet needs, barriers, and problems encountered in planning, implementing, or in coordinating activities.

5. Program Infrastructure and Management Plan: Describe how the program will be effectively managed including:

a. Staffing: Minimal key staffing for the program should include a full-time DPCP coordinator, a designated evaluation lead, and a designated epidemiology/surveillance lead.

b. Staffing Responsibilities: Responsibilities of key staff should include: a DPCP coordinator responsible for the overall program operation and coordination; a designated evaluation lead responsible for ensuring that the program and its projects are evaluated regularly for process and impact measures and that results are appropriately disseminated; and a designated epidemiology/surveillance lead who will ensure the integrity of surveillance systems and other DPCP epidemiological activities and facilitate intra and inter health department exchange of epidemiological information. In addition, the DPCP should designate a staff member to facilitate and oversee a process for integrating other program components such as NDEP messages and tools into program planning and implementation activities.

c. Management Plan and Organization Operations: Provide a copy of the organizational chart that indicates the placement of the proposed program. A description of clear and direct lines of authority within the program staff and to the next two higher levels of supervisory authority should be provided. Fiscal controls and their relationship to program staff and management should be included. Discuss strategies for ensuring timely and appropriate communication among staff on the status of program implementation and related issues. The DPCP should receive guidance and support from the State Chronic Disease Director or the equivalent. The priority DPCP goals and objectives should be part of, or incorporated in, the overall State Health Department strategic plan.

d. Qualifications: Describe the qualifications of the designated or proposed staff. Provide abbreviated (one-to-two page) resumes and brief job descriptions for designated staff, and brief job descriptions for the proposed staff.

e. Responsibility: Identify key staff positions responsible for the implementation of each program activity, especially the required full

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time coordinator, the evaluation lead and the epidemiology/surveillance lead.

f. Contingency plans: Describe plans for ongoing management and operation of the project if there are unexpected vacancies, hiring restrictions, or difficulty recruiting in key positions.

6. Financial Participation: Matching funds are required from non-Federal sources in the amount of not less than $1 for each $5 of Federal funds awarded to Core Programs under this program announcement. Comprehensive Programs are required to match $1 for each $4 of Federal funds awarded under this announcement. Match requirements may change in years two through five. The applicant should identify and describe:

a. Sources of allowable matching funds for the program and the estimated amounts from each.

b. Procedures for documenting and tracking the receipt and value of noncash matching funds.

7. Budget and Narrative Justification:

a. Financial Assistance

Provide a detailed line-item budget and narrative justification for all operating expenses consistent with and clearly related to the proposed objectives and planned activities. Be precise about the program purpose of each budget item and itemize calculations when appropriate.

Applicants are required to attend the DDT Annual Conference and the DPCP Project Directors' Meeting and should budget appropriately. DPCPs are also encouraged to attend and participate in non-conference training such as Diabetes Today and the Diabetes Collaborative, as appropriate. Other travel which may be of relevance to the DPCP goals and activities include the annual meetings of the following organizations: National Diabetes Education Program Partnership Network, ASTCDD (Chronic Disease Conference), American Diabetes Association (ADA), American Association for Diabetes Educators (AADE), National Association of Community Health Centers (NACHC), American Association of Health Plans (AAHP) and American Public Health Association (APHA). Travel budget should support other recipient activities as considered necessary.

b. Direct Assistance

To request a Federal assignee, applicants must provide the following information:

1). Number of assignees requested

2). Description of the position and proposed duties

3). Ability or inability to hire locally with financial assistance

4). Justification for request

5). Organizational chart and name of intended point of contact to assignee

6). Opportunities for training, education, and work experiences for assignees

7). Description of assignees' access to computer equipment for communication with CDC (*e.g.*, personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

G. Application Submission and Deadline

Application Forms

Submit the signed original and two copies of CDC Form 0.1246(E). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm* If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

Applications must be received by 4 p.m. Eastern Time January 9, 2003. Submit the application to: Technical Information Management—PA#03017, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An Objective Review Panel appointed by CDC will evaluate the scientific and technical merit of Comprehensive Program applications and their responsiveness to the information requested in the "Application Content" sections above. Core Program applications will receive a technical review for acceptability. Each application will be reviewed and evaluated against the following criteria:

Core Program Evaluation Criteria (100 Points Total)

1. Program Work Plan (75 points Total)

The extent to which the work plan addresses the following information:

a. Long Term and Process Objectives (10 points)

Measurable, specific, time-phased five-year project period long term objectives, and measurable, time-phased one-year budget period process objectives that will help achieve the goals and objectives of the program. The applicant used the State's latest data as baseline.

b. Program Work Plan Methodology (25 points)

The Program Work plan provides a detailed description of system-based activities and methods for achieving each of the proposed one year budget period objectives that appears reasonable and likely to be successful.

c. Evaluation Plan (20 points)

The plan for evaluating progress, the effectiveness of activities and attainment of each of the proposed objectives, to include a clear description of the evaluation methodology and frequency of reporting, appears adequate. The six steps of the CDC Framework for Program Evaluations are used as a framework for the plan. (*See* section E. 4. Evaluation Plan under Application Content section). Logic models that link program objectives and activities to eventual outcomes/effects should be included.

d. Program Infrastructure and Management Plan (20 points)

DPCP staffing pattern adequately supports the work plan proposed to include the number and type of staff and their qualifications and experience. The Management Plan describes a methodology for effective management, to include a sound management structure, *i.e.* a full time DPCP coordinator and designated evaluation and epidemiology/surveillance leads; clear and direct lines of authority, supervisory and fiscal controls; contingency plans for ongoing management in case of unexpected staff disruption shall be included. Include a copy of the organizational chart that indicates the placement of the DPCP, resumes for designated staff, and job descriptions for the proposed staff. Strategies for ensuring timely and appropriate communication among staff on the status of program implementation and related issues are included in the plan. Describe how the DPCP and its partners will collaborate to collectively complete a diabetes specific assessment based on the ten essential public health services. The results of the assessment will assist in identifying specific areas of strength and areas for improvement in developing an optimal public health diabetes program in subsequent years.

2. Accomplishments and Proven Capacity of the Core Program (15 points)

Core program accomplishments and activities that make it appear likely that the applicant will successfully carry out proposed activities, to include:

a. Existing state-based diabetes surveillance system, including annual administration of the Diabetes Module of the BRFSS.

b. Advances toward achieving the CDC, DDT's National Objectives (provide data as evidence of progress).

c. Findings, conclusions, or status of pilot projects in health systems, health communications, and community interventions.

d. Examples of successful efforts to influence the widespread application of accepted standards, policies, and protocols, which support diabetes prevention and control.

e. Accomplishments of any diabetes advisory groups or coalitions in providing guidance to the DPCP in program planning, implementation, coordinating efforts and evaluation (may include a copy of the by-laws).

f. Activities and accomplishments in addressing the needs of underserved populations and/or populations with a disparate burden of diabetes and its related complications are included.

g. DPCP's management of its fiscal and human resources in the past five years (including history of unobligated balances, how match requirements have been met, turnover in key staff positions, professional development of DPCP staff, supportive leadership, *etc.*) are addressed.

3. Background and Need (10 points)

The extent to which the DPCP demonstrates the need for support. Narrative should include:

a. Estimated prevalence of diabetes and its complications, and its geographic and demographic distribution within the State.

b. Description of the high risk populations, including racial/ethnic minorities, the elderly, and the indigent/disenfranchised population. Description of the characteristics of the targeted population relative to the social, ecological, or economic conditions that contribute to the disproportionate burden of diabetes in the population, as well as their knowledge, attitudes, beliefs, and health practices relative to diabetes.

c. Analysis of the findings of (b) above in relation to known or anticipated barriers to diabetes education, self management, preventive community services and health care.

4. Budget and Justification (Reviewed but Not Scored)

The extent to which the line item budget justification is reasonable and consistent with the purpose and program goal(s) and objectives of the cooperative agreement. This includes both requests for financial assistance and how the DPCP proposes to meet the match requirement.

5. If any resources available under this program announcement will be used to conduct research projects involving human subjects, the application must adequately address Title 45 CFR Part 46. (Reviewed but Not Scored, however an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

6. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (Reviewed but Not Scored)

Comprehensive Program Evaluation Criteria (100 points total)

1. Program Work Plan (60 points total)

The Program Work plan provides a detailed description of system-based activities and methods for achieving each of the proposed objectives that appears reasonable and likely to be successful.

a. Long Term and Process Objectives (10 points) Measurable, specific, time-phased five-year project period long term objectives, and measurable, specific, time-phased one year budget period process objectives, that will help achieve the time-phased long term objectives of the program, are provided. The DPCP used the state's latest data as baseline.

b. Program Work Plan Methodology (20 points) The Work Plan provides a detailed description of systems-based activities and methods for achieving each of the proposed one year budget period objectives that appears reasonable and likely to be successful. Existing comprehensive activities are described, including plans for maintaining or modifying them. New Comprehensive program activities are adequately described and justified.

c. Evaluation Plan (15 points) The plan for evaluating progress, the effectiveness of activities and attainment of each of the proposed objectives, to include a clear description of the evaluation methodology and frequency of reporting, appears adequate. The plan should incorporate the six steps of the CDC Framework for Program Evaluation. (*See* section E. 4. Evaluation Plan under Application Content section). Logic models that link program objectives and activities to eventual outcomes/effects should be included.

d. Program Infrastructure and Management Plan (15 points)

DPCP staffing pattern adequately supports the work plan proposed to include the number and type of staff and their qualifications and experience. The Management Plan describes a methodology for effective management,

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to include a sound management structure, *i.e.* a full time DPCP coordinator and designated evaluation and epidemiology/surveillance leads; clear and direct lines of authority, supervisory and fiscal controls; contingency plans for ongoing management in case of unexpected staff disruption shall be included. A copy of the organizational chart that indicates the placement of the DPCP, resumes for designated staff and job descriptions for the proposed staff. Strategies for ensuring timely and appropriate communication among staff on the status of program implementation and related issues are included in the plan. The management plan should demonstrate how the DPCP will address increased program responsibility and fiscal and human resources. Describe how the DPCP and its partners will collaborate to collectively complete a diabetes specific assessment based on the ten essential public health services. The results of the assessment will assist in identifying specific areas of strength and areas for improvement in developing an optimal public health diabetes program in subsequent years.

2. Program Accomplishments and Proven Capacity To Serve as a Comprehensive Program (35 points)

Program accomplishments and activities that make it appear likely that the applicant will successfully carry out proposed comprehensive activities to include:

a. Advanced and enhanced state-based diabetes surveillance system, minimally including annual administration of the diabetes module of the BRFSS.

b. Status and impact of statewide and other comprehensive program activities in health systems, health communications, and community interventions that have advanced the program toward achieving improvements in the CDC, DDT's National Objectives. Data should be provided to support program impact and as evidence of progress.

c. Description of evaluation activities and examples of efforts to disseminate program activities and lessons learned to the broader diabetes community.

d. Evidence of internal and external policy changes resulting from comprehensive program efforts, including accomplishments of any diabetes advisory groups or coalitions (may include a copy of the by-laws).

e. Examples of successful efforts to influence the widespread application of accepted standards, policies, and protocols which support diabetes prevention and control.

f. Accomplishments in addressing the needs of underserved populations and/or reducing health disparities in populations with a disparate burden of diabetes and its related complications.

g. DPCP's management of its fiscal and human resources in the past five years (including history of unobligated balances, how match requirements have been met, turnover in key staff positions, professional development of DPCP staff, supportive leadership, *etc.*) are addressed.

3. Background and Need (5 points)

The extent to which the DPCP demonstrates the need for support. Narrative should include:

a. Estimated prevalence of diabetes and its complications, and its geographic and demographic distribution within the State.

b. Description of the high risk populations, including racial/ethnic minorities, the elderly, and the indigent/disenfranchised population. Description of the characteristics of the targeted population relative to the social, ecological, or economic conditions that contribute to the disproportionate burden of diabetes in the population, as well as their knowledge, attitudes, beliefs, and health practices relative to diabetes.

c. Analysis of the findings of b. above in relation to known, or anticipated, barriers to diabetes education, self management, preventive community services and health care.

4. Budget and Justification (reviewed but not scored)

The extent to which the line-item budget justification is reasonable and consistent with the purpose and program goals and objectives of the cooperative agreement. This includes both requests for financial assistance and how the DPCP proposes to meet the match requirement.

5. If any resources available under this program announcement will be used to conduct research projects involving human subjects, the application must adequately address title 45 CFR part 46. (Reviewed but Not Scored, however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

6. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (Reviewed but Not Scored)

I. Other Requirements

Technical Reporting Requirements

Provide CDC with a signed original and two copies of:

1. Interim progress reports, no less than 90 days before the end of the budget periods. The format of the Division of Diabetes Translation's (DDT) Management Information System (MIS) is aligned with the interim progress report content. Therefore, to avoid duplication of effort, the interim progress report content may be entered into the DDT MIS and hard copies generated from MIS for formal submission to the CDC Procurement and Grants Office. The content of the interim progress report must be entered into the DDT MIS, by the grantee, within one month of the due date of the interim progress report. The interim progress report will serve as your non-competing continuation application, and must contain the following broad elements (subject to change as the program evolves): progress and performance for the first eight months of the current budget period objectives/activities, the proposed objectives/activities for the new year's budget period related to Surveillance, Work Plan, Program Coordination, Program Infrastructure, and Financial information (including a detailed line-item budget and justification). Progress in implementing improvement plans starting in year two, must be reported as part of the required interim progress reports.

2. Financial status report, no more than 90 days after the end of each budget period.

3. Final financial and performance reports no more than 90 days after the end of the five year project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirement for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone (770) 488–2700.

For business management and budget assistance in the States, contact: Angela Webb, Grants Management Specialist, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone (770) 488–2784. Email address: *AQW6@cdc.gov*.

For business management and budget assistance in the Territories, contact: Terri Brown, Grants Management Specialist, International & Territories Acquisition and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146. Telephone (770) 488–2638. Email address: *aie9@cdc.gov*.

For program technical assistance, contact: Patricia L. Mitchell, MPH, Health Comm. Section Chief, Program Development Branch, DDT, NCCDPHP, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, MS K10, Atlanta, GA 30341–3717. Telephone (770) 488–5634. Email address: *plm3@cdc.gov*.

Dated: November 12, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–29837 Filed 11–22–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5556]

Agency Information Collection Activities; Announcement of OMB Approval; Food Contact Substances Notification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Contact Substances Notification System" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2002 (67 FR 35724), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0495. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: November 14, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29807 Filed 11–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 13, 14, and 15, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, e-mail: *somersk@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 13, 2003, the committee will discuss the safety and efficacy of biologic licensing application BL 103979, FABRAZYME (agalsidase beta, Genzyme Corp.) for the treatment of Fabry's disease. On January 14, 2003, the committee will discuss the safety and efficacy of biologic licensing application BL 103977, REPLAGAL (agalsidase alfa, Transkaryotic Therapies, Inc.) for the treatment of Fabry's disease. On January 15, 2003, the committee will discuss the safety and efficacy of biologic licensing application BL 125058, ALDURAZYME (laronidase, BioMarin Pharmaceutical, Inc.) for the treatment of mucopolysaccharidosis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 6, 2003. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 6, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

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FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen M. Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 15, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–29808 Filed 11–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Women's Health Demonstration Program for American Indians and Alaska Natives

AGENCY: Indian Health Service, HHS.

ACTION: Extension of deadlines for competitive applications for the Indian Women's Health Demonstration Program for American Indians and Alaska Natives.

The Notice of funding availability for competitive grants for Indian Women's Health Demonstration Program for American Indians and Alaska Natives was published at 67 FR 66410 on October 31, 2002.

The Indian Health Service announces the extension of dates for the following:

1. *Application Receipt Date:* January 3, 2003.
2. *Application Review:* January 23–24, 2003.
3. *Applicants Notified of Results (approved, approved unfunded, or disapproved):* February 13, 2003.
4. *Anticipated Start of Grant Cycle:* March 1, 2003.

Applicants are notified in writing on or about February 13, 2003.

This extension provides applicants approximately four additional weeks to prepare and submit competitive applications.

All other information contained in **Federal Register** announcement remains unchanged.

Dated: November 18, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 02–29865 Filed 11–22–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health (NIH).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: Advisory Committee to the Director, NIH.

Date: December 5, 2002.

Open: 8 a.m. to 12 p.m.

Agenda: Among the topics proposed for discussion are: (1) Current issues (2) advice on priority areas for the NIH Director and (3) a summary of future action items and follow up items.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: Review and evaluate confidential budgetary items.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Contact Person: Ruth L. Kirschstein, M.D., Deputy Director, NIH, National Institutes of Health, 1 Center Drive MSC 0148, Building 1, Room 126, Bethesda, MD 20892–0148, 301–496–2433, *rk25n@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29840 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, December 4, 2002, 8:45 a.m. to December 5, 2002, 12 p.m., which was published in the **Federal Register** on November 8, 2002, 67 FR 68148.

The meeting time has been changed to start at 8:30 a.m. on Wednesday, December 4, 2002. The Subcommittee on Planning and Budget meeting which was scheduled on Wednesday, December 4, 2002 has been cancelled. The meeting is partially closed to the public.

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29842 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Cooperative Clinical Trial for Pediatric Transplantation.

Date: December 17, 2002.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Priti Mehrotra, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29841 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, November 17, 2002, 7:30 p.m. to November 20, 2002, 5 p.m., which was published in the **Federal Register** on September 27, 2002, 67 FR 61144.

The meeting will be held on January 15–17, 2003 beginning at 8 a.m., instead of on November 17, 2002, as previously advertised. The meeting is closed to the public.

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29843 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. Support Contract for the NTP Interagency Center for Evaluation of Alternative. Toxicological Methods (RFP NIH–ES–02–08).

Date: December 13, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29844 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Innate Immunity in Vertebrates and Insects.

Date: December 12, 2002.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–2550. *gm145a@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: December 13, 2002.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 6700B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, Bethesda, MD 20892–7616. 301–496–2550. *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29845 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice

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is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Arming the Immune System Against Pathogens.

Date: December 17, 2002.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Nancy B. Saunders, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. (301) 496–2550. *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29846 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immunopathogenesis of Acute HIV–1 Infection.

Date: December 6, 2002.

Time: 10 am to 3 pm,

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Room 1205, Bethesda, MD 20892. (Telephone Conference Call.).

Contact Person: Vassill St. Georgiev, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 10892–7610, 301–496–2250.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29847 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Correction of Meeting Notice

Public notice was given in the **Federal Register** on October 21, 2002, Volume 67, Number 203, page 64655–64656, that the Substance Abuse and Mental Health Services Administration (SAMHSA) Special Emphasis Panels I meetings, Recovery Community Services Program and Strengthening Communities/Youth on November 18th–22nd, 2002, would be closed from 11 a.m. November 20th to Adjournment. The notice should have read these meetings will be closed in their entirety from 8:30 a.m. on November 18th, 2002, to Adjournment on November 22nd, 2002. Notice was given that SAMHSA Special Emphasis Panels I, Center for Mental Health Services Jail Diversion meetings on December 2nd–6th, 2002, would be closed from 11 a.m. December 4th to Adjournment. The closed session is now from 8:30 a.m. on December 2nd to Adjournment on December 6th, 2002.

Notice was given that SAMHSA Special Emphasis Panels I, Center for Substance Abuse Treatment, American Indian/Alaskan Native and Rural Community Planning Program meeting on December 9th–13th, 2002, would be closed from 11 a.m. December 11th to adjournment. The closed session is now from 8:30 a.m. on December 9th to Adjournment on December 13th, 2002.

Coral Sweeney,

Review Specialist, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–29809 Filed 11–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–70]

Notice of Submission of Proposed Information Collection to OMB: Application Submission Requirements—Section 811 Supportive Housing for Persons With Disabilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 26, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0462) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202)395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar wiht the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application Submission Requirements—Section 811 Supportive Housing for Persons with Disabilities.

OMB Approval Number: 2502–0462.

Form Numbers: HUD–92016–CA, SF 424, HUD 50070, HUD 50071, SF LLL, HUD 2880, HUD 2992, HUD 2991, HUD 92041, HUD 92043.

Description of the Need for the Information and its Proposed Use: To apply for capital advances for HUD's Section 811 program, prospective private nonprofit organizations submit completed Section 811 Supportive Housing for Persons with Disabilities Application Kits.

Respondents: Not-for profit institutions, Business or other for-profit, State, Local or Tribal Governments.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	260		1		40.3		10,481

Total Estimated Burden Hours: 10,481.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 19, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–29801 Filed 11–22–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–03]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2002–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2002–2). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder Information Package (BIP) was available to qualified bidders on October 31, 2002. Bids for the loans must be submitted on the bid date that currently is scheduled for December 5, 2002. HUD anticipates that awards will be made on or before December 9, 2002. Closings are scheduled to take place between December 9, 2002 and December 20, 2002.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement that are acceptable to HUD. Both documents are available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm.* The executed documents must be mailed and faxed to Cushman & Wakefield at 1801 K Street, NW., Suite 100–L, Washington, DC 20006, Attention: MHLS 2002–2 Sale Coordinator, Fax: (202) 293–9049.

The MHLS 2002–2 due diligence facility is located at 1500 K Street, NW., Suite 625, Washington, DC 20005. The facility will be open from October 28, 2002 through December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Room 6286, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625, extension 3369 or Erin E. Moore, Legal Honors Intern, Office of Insured Housing, Multifamily Division, Room 9230; telephone (202) 708–0614, extension 5763. These are not toll-free numbers. Hearing or speech-impaired individuals may call (800) 877–8339 (TTY).

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2002–2 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing and nonperforming mortgage loans. A listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and, except for one Mortgage Loan, with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans have been stratified for bidding purposes into 7 mortgage loan pools. Each pool contains Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

The Bidding Process

The BIP describes in detail the procedure for bidding in MHLS 2002–2. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan. As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. HUD anticipates that the awards will be made on or before December 9, 2002 (Award Date). Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between December 9, 2002 and December 20, 2002. These are the essential terms of sale. The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding

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process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Facility

From October 28, 2002 through December 4, 2002, the due diligence facility for MHLS 2002–2 will be open at 1500 K Street, NW., Suite 625, Washington, DC. Qualified bidders will be able to access loan information at the due diligence facility through computer workstations connected to the due diligence system or remotely via a high speed Internet connection. Qualified bidders may make appointments to visit the facility or obtain user IDs and passwords for remote access by contacting Owusu & Company, HUD's due diligence contractor, at (202) 638–8390.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2002–2 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This notice is to ensure compliance with the Multifamily Mortgage Sale Regulations, 24 CFR 290.30. These regulations were promulgated in consideration of the settlement that HUD entered into in *Walker* v. *Kemp*, No. C 87 2628 RFP (N.D. Cal.). In settling that matter, HUD agreed that prior to the sale of specific HUD held mortgage loans that may have been receiving some form of subsidy at that time, HUD would consider the effects of the sale upon several issues. These issues include, but are not limited to, the availability of assisted housing for tenants in those projects, the legal protections afforded to those tenants and their rights, HUD's ability to monitor compliance of the properties and the community need for low and moderate income housing. By following the Multifamily Mortgage Sale Regulations, HUD is in compliance with the terms of the settlement.

This is a sale of unsubsidized mortgage loans. Therefore, HUD has determined that, pursuant to the Multifamily Mortgage Sale Regulations, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, HUD-held multifamily mortgage loans must be sold on a competitive basis (24 CFR 290.30). This method of sale optimizes HUD's return on the sale of the Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2002–2:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, part 24;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf, of HUD in connection with MHLS 2002–2;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2002–2;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2002–2;

(7) Any mortgagor that failed to submit to HUD the 1999, 2000 and 2001 audited financial statements for a project securing a Mortgage Loan on or before November 8, 2002; and

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) that is a mortgagor in any of HUD's multifamily housing programs that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation was cured on or before November 15, 2002.

In addition, any entity or individual that served as a loan servicer or performed other services for or on behalf of HUD at any time during the 2-year period prior to October 1, 2002 with respect to any Mortgage Loan is ineligible to bid on such Mortgage Loan. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan. Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2002–2.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2002–2, including, but not limited to, the identity of any bidder and their bid price or bid percentage, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2002–2, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2002–2, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: November 18, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–29800 Filed 11–22–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–02–5101–ER–F331; N–75463, N–75471, N–75472, N–75474, N–75475, N–75476, N–75477]

Notice of Availability to Announce the 60-Day Public Review and Comment Period for the Draft Environmental Impact Statement for the Ivanpah Energy Center

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability (NOA) to announce the 60-day public review period for the Ivanpah Energy Center (Ivanpah) Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to Section 102.(2)(C) of the National Environmental Policy Act (NEPA) of 1969, a DEIS has been prepared by the Bureau of Land Management (BLM), Las Vegas Field Office for the Ivanpah Energy Center. The DEIS was prepared to analyze the impacts of issuing rights-of-way for a gas-fired electric power plant and ancillary facilities (consisting of electric transmission lines, electric substations, water pipeline, access road, and telephone line). Western Area Power Administration is a cooperating agency.

ADDRESSES: Written comments on the DEIS must be postmarked or otherwise delivered by 4:30 p.m., 60 days following the date the Environmental Protection Agency (EPA) publishes the NOA and filing of the DEIS in the **Federal Register**. Written comments on the document should be addressed to Jerry Crockford, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV 89130–2301. Oral and/or written comments may also be presented at public meetings. Public reading copies of the DEIS will be available for reading at public libraries located at the following addresses:

- 650 West Quartz Avenue, Sandy Valley, NV
- 365 West San Pedro, Goodsprings, NV
- 4280 South Jones Blvd:, Las Vegas, NV

A limited number of copies of the document will be available at the following BLM offices:

- X BLM, Nevada State Office, 1340 Financial Blvd., Reno, NV
- X BLM, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV

DATES: Three scheduled public meetings commencing at 7 p.m. and continuing until all those present have an opportunity to speak but closing no later than 9 p.m. will be held at the following dates and locations:

Tuesday, December 10, 2002—BLM, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada

Wednesday, December 11, 2002—Community Center, West Quartz Avenue, Sandy Valley, Nevada

Thursday, December 12, 2002—Community Center, 375 West San Pedro Avenue, Goodsprings, Nevada

Individuals making written comments at public meetings may request confidentiality. If they wish to withhold their name or street address from public review or disclosure under the Freedom of Information Act, this must be definitively stated at the beginning of written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and for individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety.

Copies of the DEIS will be mailed to individuals, agencies, or companies who previously requested copies.

FOR FURTHER INFORMATION CONTACT: Jerry Crockford, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301 or Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401; telephone (505) 599–6333, cellular telephone (505) 486–4255.

SUPPLEMENTARY INFORMATION: The DEIS addresses the proposed action and two alternatives. The proposed action can be summarized as follows: constructing, operating, and maintaining a 500 megawatt gas-turbine combined-cycle power plant in the Ivanpah Valley, approximately 20 miles south of Las Vegas, Nevada. Except for a related electric transmission line, the proposed generating facility and most ancillary facilities are located on 36-acres of public land administered by the BLM, in the MDBM, T. 25 S., R. 58 E., sec. 1, and T. 25 S., R. 59 E., sec. 6. The facility would use a refrigerated air system to reduce cooling water requirements normally associated with combined-cycle power plants. Power generated from Ivanpah would enter the southern Nevada power grid through Western Area Power Administration's Mead Substation, in Eldorado Valley. The proposed plant site is located 2.5-miles southeast of the town of Goodsprings, Nevada. The proposed action includes the following ancillary facilities: a 12-inch diameter gas pipeline interconnection to the adjacent Kern River Gas Transmission gas pipeline; a four-inch diameter water pipeline originating from the Southern Nevada Correctional Center (SNCC) in Jean, Nevada, to supply water processed through a planned water treatment facility for air emissions control; a telecommunications line; a 230 kilovolt (kV) substation; the following 230 kV transmission lines: (1) Two 230 kV lines from the proposed Ivanpah Substation to the Pahrump-Mead 230 kV line corridor; (2) a 43-mile 230 kV line from the Ivanpah Substation to the Western Area Power Administration Mead Substation, in Eldorado Valley, Nevada; and (3) two 230 kV lines from the Ivanpah Substation to the Table Mountain Substation and Valley Electric Association's Pahrump-Mead Transmission Line; and the following fiber optic lines: (1) An optical-fiber ground wire (OPGW) shield wire as an integral part of the Ivanpah-Mead #2 transmission line; and (2) an OPGW as an integral part of the Table Mountain-Ivanpah #1 transmission line. Access to Ivanpah would be via an existing, unimproved road connected to State Highway 161.

An alternative plant site, located in Primm, Nevada, would be co-located with the Reliant Bighorn Power Plant, on a 30-acre parcel on private property. Ancillary facilities to the alternative plant site include a 10 to 11-mile long water supply pipeline from SNCC to the power plant; a 40-mile long transmission line to interconnect the plant to the Mead Substation; approximately 30-miles of transmission lines to interconnect the facility to the proposed Table Mountain Substation and the Valley Electric Association's Pahrump-Mead transmission line; a 3.2-mile natural gas pipeline connecting to Kern River Gas Transmission Company natural gas pipeline; use of existing access roads; and telecommunications facilities.

The plant will require approximately 22 months for construction. The plant will be built to operate continuously, except for semi-annual maintenance shutdowns, with a projected 40-year life. Power will be sold into the commercial power markets of Nevada, California, and Arizona.

Under the No Action Alternative, BLM would not issue right-of-way grants for Ivanpah and ancillary facilities. The project including the power plant, transmission lines, water pipeline, gas pipeline, access road, telecommunication facilities, and temporary use areas would not be constructed. The areas proposed for Ivanpah would remain undeveloped. An

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energy need would not be met by the proposed plant's generated power. Public participation is encouraged throughout processing of this project. Comments presented throughout the process will be considered.

Dated: August 15, 2002.

Angie C. Lara,

Acting Field Manager.

[FR Doc. 02–29866 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–066–1430–ES]

Notice of Termination of Recreation and Public Purposes Act Classification and Opening Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of Recreation and Public Purposes Act Classification and opening order; Idaho.

SUMMARY: This notice terminates a portion of a Recreation and Public Purposes Act Classification on 40.55 acres, as this classification is no longer needed.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Scott Forssell, BLM Coeur d'Alene Field Office, 1808 N. Third St., Coeur d'Alene, ID, 83814 or call (208) 769–5044.

SUPPLEMENTARY INFORMATION: On April 7, 1978, 57.15 acres were classified as suitable for entry under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869). The legal description of this parcel is: Lots 3–5, section 10, T.48N., R.3E., Boise Meridian, Idaho. The classification and segregation for lot 5, section 10, T.48N., R.3E., Boise Meridian, Idaho, remains unaffected by this notice.

Both the classification and the segregation for the following described 40.55 acres is hereby terminated: lots 3 and 4, section 10, T.48N., R.3E., Boise Meridian, Idaho.

A local non-profit organization holds a Recreation and Public Purposes Act lease on public land. They have relinquished a portion of that lease. Federal regulations require that the classification on the lands formerly leased be terminated and that the lands be once again opened to the public land laws.

These lands will be opened to operation of the public land laws generally, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law upon publication of this notice in the **Federal Register**.

Dated: October 8, 2002.

Jenifer Arnold,

Acting District Manager.

[FR Doc. 02–29823 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–35639]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Conveyance of Public Lands near Beatty, NV

AGENCY: Bureau of Land Management.

ACTION: Classification of public land for conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public land in Nye County, Nevada has been examined and classified as suitable for conveyance, in accordance with Section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910. Patent will be issued to Nye County under provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*) for the purposes of operating a municipal solid waste transfer station.

Mount Diablo Meridian, Nevada

T. 12 S., R. 46 E.,
sec 13, S½NW¼NW¼, N½SW¼NW¼NW¼.
Containing 40.00 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with BLM land use planning and would be in the public interest. Patent, when issued, will be subject to the provisions of the Recreation and Public purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

Patent will contain the following provisions:

1. Nye County a political subdivision of the State of Nevada, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of actions, expense, and liability (hereinafter referred to in this clause as claims), resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentees employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 12 S., R. 46 E., sec. 13, S½NW¼NW¼NW¼, N½SW¼NW¼NW¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure or negligence of the United States;

2. The above described land was used as a solid waste disposal site, and will continue to be used as solid waste transfer station. Upon closure, the site may contain small quantities of commercial and household wastes as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner of final cover of the site unless excavation is conducted subject to applicable State and Federal requirements;

3. No portion of the land shall under any circumstances revert to the United States if any portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, storage, or release of any hazardous substance; and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada. The subject lands were previously classified and segregated for the purposes of a lease authorizing a sanitary landfill pursuant to the Recreation and Public Purposes Act. Further segregation will not be required.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Assistant Field Station Manager, Tonopah Field Station, P.O. Box 911, Tonopah, NV, 89049.

Classification Comments: Interested parties may submit comments involving the suitability of the land for use as a municipal solid waste transfer station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the uses described.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication of this Notice in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: October 3, 2002.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 02–29824 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N 061122]

Notice of Realty Action; Termination of Recreation and Public Purposes Act Classification; Lyon County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purposes (R&PP) Classification N 061122 in its entirety. The land will be opened to the public land laws, including the mining laws.

EFFECTIVE DATE: The land will be open to entry effective 10 a.m. on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, 775–885–6000.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, R&PP Classification N 061122 is hereby terminated in its entirety on the following described public land:

Mount Diablo Meridian, Nevada

T. 13 N., R. 25 E.,
Sec. 25, S½NW¼NE¼, SW¼NE¼.
Containing 60.00 acres, more or less.

Classification N 061122 made pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. The land was previously leased to Lyon County for a sanitary landfill. The lease has terminated and the classification no longer serves any purpose.

At 10 a.m. on December 26, 2002, the land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 26, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on December 26, 2002, the land will also be open to location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: October 21, 2002.

Charles P. Pope,

Assistant Manager, Non-Renewable Resources, Carson City Field Office.

[FR Doc. 02–29825 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1420–ES; N–74685]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: The following described public land in the Las Vegas Valley, Clark County, Nevada, has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et eq.). Clark County proposes to use the land for a multi-use service center.

Mount Diablo Meridian, Nevada,

T. 22 S., R. 60 E.,
Section 26: SW¼NE¼, N½SE¼NE¼, SW¼SE¼NE¼, N½SE¼SE¼NE¼, SW¼SE¼SE¼NE¼.
Approximately 77.5 acres.

The service center would be located in the southern end of the Las Vegas Valley, west of Jones Blvd., east of Torrey Pines Drive, south of Le Baron Ave., and north of Pyle Ave. The location is adjacent to an industrial area on the north and immediately east of the Union Pacific Railroad tracks. The land is not required for any Federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and each will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the secretary of the Interior may prescribe and will be subject to:

1. All valid and existing rights, which are identified and shown in the case file.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (P.L. 105–263).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV, or by calling (702) 515–5164. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposed Act, leasing under the mineral leasing laws

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and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Clark County service center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a multi-use service center. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: October 16, 2002.

Ken Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 02–29826 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ET, CARI 04221 01]

Notice of Proposed Modification of Withdrawal, and Transfer of Administrative Jurisdiction, and Opportunity for Public Meeting; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy has filed an application to modify Public Land Order 3457, which withdrew 1,078.81 acres of public lands on behalf of the Department of Navy for use as a Microwave Space Relay Station. The Department of the Navy has requested that the withdrawal be changed to allow the land to be used as a mountain warfare training site. The Department of the Navy also requested that the administrative jurisdiction for the land be permanently transferred to them. Public Land Order 3457 was published in the **Federal Register** on October 7, 1964 (29 FR 13815). The land has been and will remain withdrawn from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by February 24, 2003.

ADDRESSES: Comments and meeting requests should be sent to Howard K. Stark, Chief, Branch of Lands Management (CA–930), Bureau of Land Management, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, 916–978–4675.

SUPPLEMENTARY INFORMATION:

1. The Department of the Navy has filed an application to modify Public Land Order 3457, which withdrew the following described public land from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, subject to valid existing rights for military purposes:

San Bernardino Meridian

T. 17 S., R. 5 E.,
Sec. 23, lot 2, E½SW¼ and SE¼;
Sec. 24, lots 20 and 22, and SW¼;
Sec. 25, W½;
Sec. 26, lots 1 and 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼.

The area described contains 1,078.81 acres in San Diego County.

2. The Department of the Navy has requested that the administrative jurisdiction of the land described above in paragraph 1 be permanently transferred to the Department of the Navy, so that the land can be managed for use as a mountain warfare training site and shall thereafter be subject to all laws and regulations applicable thereto, subject to valid existing rights.

3. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, objections, or requests for public meetings in connection with the proposed actions described in this notice, may present their views in writing to the Chief, Branch of Lands Management, California State Office, Bureau of Land Management, at the address listed above. If the authorized officer determines that a public meeting should be held, it will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). A notice of the time and place would be published in the **Federal Register** at least 30 days before the scheduled date of the public meeting.

4. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

5. The subject land is currently withdrawn for the Department of the Navy for military purposes and therefore is segregated from settlement, sale, location, or entry under the general land laws, location and entry under the United States mining laws, and the operation of the mineral leasing laws. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the land, as determined by the Bureau of Land Management and the Department of the Navy.

Dated: September 19, 2002.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 02–29822 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Antitrust Division

Responses to Public Comments on Proposed Final Judgment in United States v. The Manitowoc Co., Inc., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States hereby publishes the two public comments on the proposed Final Judgment in *United Statesv. The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.*, Civil No. 1:02 CV 01509 (RL), filed in the United States District Court for the District of Columbia, together with the government's responses to the comments.

On July 31, 2002, the United States filed a Complaint that alleged that The Manitowoc Company Inc.'s proposed acquisition of Grove Investors, Inc. (and its subsidiary, National Crane Corp.) would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in production and sale of medium- and heavy-lift boom trucks in North America. The proposed Final Judgment, requires the defendants to divest either Manitowoc's or Grove's boom truck business to a purchaser acceptable to the United States.

Public comment was invited within the statutory 60-day comment period. The public comments and the United State's responses thereto are hereby published in the **Federal Register**, and shortly thereafter these documents will be attached to a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act and filed with the Court, together with a motion urging the Court to enter the proposed Judgment. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. (The United State's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act will be made available at the same locations shortly after they are filed with the Court.) Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

U.S. Department of Justice, Antitrust Division

November 11, 2002.

Mr. Richard M. Beine,
President, Busey Truck Equipment, Inc., 1840 S. Farmington Road, Jackson, M0 63755.

Re: Comment on Proposed Final Judgment in *United States* v. *The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.*, No. 1:02CV01509 (D.C.C., filed July 31, 2002).

Dear Mr. Beine: This letter responds to your September 25th letter, commenting on the proposed Final Judgment submitted for entry in the above case. The government's Complaint in the case charged that a combination of Manitowoc and Grove would substantially reduce competition in production and sale of medium- and heavy-lift boom truck in North America. The proposed Judgment would resolve these competitive concerns by requiring defendants promptly to divest either Manitowoc's Grove's boom truck business.

In your comment, you observed that defendant Manitowoc has consistently failed to provide support for its line of unloader and tailgator products. In February 2002, long before the government filed its proposed Judgment in this case, you offered to purchase this line of products from Manitowoc. Manitowoc, however, has failed to respond to your offer.

The gravamen of Busey Truck's complaint is Manitowoc's apparent unwillingness to sell its unloader and tailgator product lines. However, we can find no competitive justification for requiring a divestiture of Manitowoc's unloader and tailgator product lines. Unloaders and tailagors are small material handling vehicles similar to forklifts that are primarily used for loading and unloading delivery trucks and in warehouse stocking operatings. The United States is unaware of any evidence that suggests a combination of Manitowoc and Grove would adversely affect competition in the production and sale of unloader and tailgator products. Unloaders and tailgators are, at best, minor complements to, not competitive alternatives for, medium- and heavy-lift boom trucks. Divestitures of unloader and tailgator product lines unloader and tailgator product lines is not required either to cure an alleged violation or to ensure the viability of the divested boom truck assets. The Judgment, as currently written, fully addressed the competitive issues raised by Manitowoc's acquisition of Grove's boom truck business.

Thank you for bringing your concern to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,
Chief, Litigation II Section.

Busey Truck Equip., Inc.

J. Robert Kramer II,
Chief, Litigation II Section, Antitrust Division, US Department of Justice, 1401 H Street NW Suite 3000, Washington DC 20530.

September 25, 2002.

Re: The Manitowoc Co., Inc.

Dear Sir: In February 2002, we had our attorney prepare a letter of intent to the Manitowoc Co to express our interest in purchasing the Trolley Boom Line (Unloaders, tailgators) of products. They have never responded to our letter of intent. May 1, 2002 FEMCO a subsidiary of the Manitowoc Co informed us they would be taking over management of this line of products.

Our primary interest in acquiring the Trolley Boom Line (unloaders, tailgators) of products is because Manitowoc has continuously failed to provide the product support needed for this product as it is such a small part of their conglomeration. Sir, these trolley booms are our business' lifeblood.

When we tried to purchase this line in February we had the support of all of the dealers that already sell this line. They believe we can continue on the great USTC name of these trolley booms.

We are still interested in the purchase of the Trolley Boom Line of products. We have the expertise and experience needed to support this product line. However we have no interest in the purchasing of the Boom Truck Line ran out of Georgetown TX.

We trust these comments are relevant to your inquiry of the Manitowoc Co Inc. Please contact us if you need any other information.

Thank you,

Richard M. Beine,
President,
rbeine@atprs.net.

U.S. Department of Justice, Antitrust Division

November 11, 2002.

Mr. S.M. Oliva,
President, Citizens for Voluntary Trade, 2000 F Street, NW, Suite 315, Washington, DC 20006.

Re: Comment on Proposed Final Judgment in *United States* v. *The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.*, No. 1:02CV01509 (D.D.C., filed July 31, 2002).

Dear Mr. Oliva: This letter responds to the comment on the proposed Final Judgment ("Judgment"), which you submitted on behalf of Citizens for Voluntary Trade ("CVT"), a nonprofit association that purportedly provides supporters of capitalism and individual rights an opportunity to participate in public policy discussions related to antitrust and government regulation of business. The Complaint in this case charged that a combination of Manitowoc and Grove would substantially reduce competition in medium- and heavy-lift boom trucks. The proposed Judgment would resolve the serious competitive concerns by requiring defendants to divest either Manitowoc's or Grove's boom truck business.

In its comment, CVT asserted that the Court should not require defendants to divest either Manitowoc's or Grove's boom truck business until after the United States demonstrates that defendants' combination actually will result in higher prices charged to purchasers of medium- and heavy-lift boom trucks. Even then, CVT contends, the Court should not order a divestiture since consumers can simply decide not to purchase boom trucks. In essence, CVT's argument is that the antitrust laws are an unnecessary (and perhaps unconstitutional) government infringement on defendants' contracting freedom, and in that context, the boom truck business divestiture ordered by the proposed Judgment is an unauthorized government "taking" of defendants' private property.

In determining whether to enter the proposed Judgment, the Court must decide whether entry of the Judgment would be in the "public interest." To make that determination the Court, inter alia, must carefully review the relationship between the relief that has been ordered in the proposed Judgment and the allegations of the government's Complaint. Applying that standard in this case, the Court's entry of the proposed Judgment surely would be "within the reaches" of the public interest (*United States* v. *Bechtel Corp., Inc.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)), for it would alleviate the serious competitive concerns regarding the proposal to combine two of the nation's three major boom truck producers by requiring defendants promptly to divest one of their boom truck businesses. To require the government to prove the allegations of its Complaint before the Court rules on the appropriateness of the parties' agreed-upon

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relief would effectively turn every government antitrust case into a full-blown trial on the merits of the parties' claims, and thereby seriously undermine the effectiveness of antitrust enforcement by use of consent decrees. And in any event, the government is not required to demonstrate, as CVT asserts, an actual post-merger price increase in order to establish that an acquisition will prove anticompetitive. "Section 7 is, after all, concerned with probabilities, not certainties." *F.T.C.* v. *H.J. Heinz Co.*, 246 F.3d 708, 719 (D.C. Cir. 2001) (emphasis original, citations omitted).

As to CVT's suggestion that the antitrust laws constitute an unconstitutional infringement upon freedom to contract, the Supreme Court has consistently held, in a line of cases stretching as far back as Standard Oil, that is it not the antitrust laws that impair individual freedom to contract, but private agreements or acts that unduly diminish competition and tend to raise prices to consumers. By purging our nation's economy of such private restraints on competition, the antitrust laws protect and enhance, not undermine, individual freedoms, and these laws do not otherwise contravene the Constitution. *See also United States* v. *Standard Oil Co.*, 221 U.S. 1, 52–70, esp. 58, 68–70 (1911). *See also United States* v. *E.I. duPont de Nemours & Co.*, 366 U.S. 316, 327 (1961) ("If the Court concludes that other measures will not be effective to redress a violation, and that complete divestiture is a necessary element of a effective relief, the Government cannot be denied the latter remedy because economic hardship, however severe, may result. * * * This proposition is not novel; it is deeply rooted in antitrust law and has never been successfully challenged.")

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,
Chief, Litigation II Section.

United States of America, Plaintiff, v. The Manitowoc Company, Inc., Grove Investors, Inc., and National Crane Corp., Defendants; Comments of Citizens for Voluntary Trade to the Proposed Final Judgment

[Case No. 02CV0159]
Judge: Royce Lamberth

Pursuant to 15 U.S.C. 16(b)–(h) and the **Federal Register** notice filed by the United States on August 22, 2002, Citizens for Voluntary Trade respectfully submits the following comments to the proposed final judgment filed by the parties on July 31, 2002.

Introductory Statement

Citizens for Voluntary Trade ("CVT") is a District of Columbia nonprofit association organized in 2002. CVT's mission is to provide supporters of capitalism and individual rights with opportunities to participate in public policy discussions related to antitrust and government regulation of business. CVT performs this function, in part, by filing comments in antitrust cases brought by the Department of Justice, the Federal Trade Commission, and other federal and state regulatory agencies.

Neither CVT nor its members have a financial interest in the outcome of this case. CVT has no pre-existing relationship with the defendants, and has not received any financial support from the defendants or any outside corporation in connection with this case.

Comments

The government employs a simple premise in this case: Combining the first and third largest boom truck crane manufacturers will harm consumers by increasing prices and reducing innovation. As with most pre-merger prosecutions, the government can produce no evidence to prove their allegations; instead, the public is forced to accept speculation as to what might happen in the future. Relieved of any burden to present facts, the government can easily demonstrate the possibility of consumer harm, and thus justify its preemptive acts against the defendant companies.

CVT believes, however, that ignoring facts is dangerous. It's one thing to draw inferences from limited facts; it's quite another to predict outcomes without any factual basis. The latter is a function best left to gypsies and psychics. The Department of Justice's track record shows they are poor predictors of events that may never take place. Traditionally, governments limit themselves to prosecuting defendants after the alleged crime has taken place. With the exception of antitrust, there is no other area of law where the government grants itself the power to act before any crime (or victim) is established.

The government claims, in rebuttal, that the defendants committed a crime just by agreeing to merge. This, they say, is evidence of anticompetitive actions that violate the Clayton Act.[1] But if this is a crime, then where's the victim? The government says consumers are the victim, because the merger will "increase the likelihood" of price increases.[2] This begs two questions. First, will the merger actually increase prices, or does it just raise the mathematical probability of such an act? And second, assuming prices are raised post-merger, does this constitute an actual harm to consumers? We believe the answer to both questions is no.

The government relies on market concentration to judge the "likelihood" of price increases. They claim that the defendants, left to merge without government interference, would control 60% of the relevant market. Furthermore, the merged defendants and the remaining principal competitor would control 90% of the market.[3] The government concludes the reduction of large competitors from three to two raises the "likelihood" of price increases. That's hardly a given. While the combined Manitowoc-National Crane company would have a 60% market share, the number-two firm would still have 30%. While it is likely that Manitowoc could increase prices due to its higher market share, it's just as likely the remaining competitor could lower their own prices in an effort to attract new customers. This could, conceivably, increase the competitor's market share and reduce Manitowoc's dominance. In any case, both scenarios are "likely," and the government offers no conclusive evidence to favor its own scenario has a greater probability of prevailing. Since the government won't allow the merger to occur, we'll never know.

Even if a price increase did occur post-merger, it would not, by itself, constitute a harm to consumers. Certainly it wouldn't injure any legal rights of consumers. Nothing in federal law or the United States Constitution guarantees individuals the right to affordable medium- and heavy-lift boom trucks. The survival of the human race does not depend on the continued availability of such trucks. Nor does a price increase for such trucks deny any general constitutional right enjoyed by consumers, such as the right to free speech or due process of law. Indeed, "consumers" are not a group recognized by the Constitution; that document only addresses the rights of individuals. To the extent the Constitution recognizes groups at all, it is in the context of general citizenship (separating U.S. citizens from "Indians not taxed," for example[4] or to remedy historical wrongs against a particular group, as was the case with the Reconstruction amendments.[5] In all other contexts, the Constitution frowns upon arbitrary classification of citizens.[6]

Consumers are not a historically oppressed class. Quite the contrary, American consumers enjoy an unprecedented level of power to dictate economic outcomes. Unlike the traditionally centrally planned economies of Europe, the American marketplace is principally governed by consumer demand. If customers don't want a product, they don't buy it, and the product's producer will fail to make a profit. Producers are typically in the business of satisfying customer demands. At the same time, however, it is understood that the producers own their businesses. A firm can produce as much or as little of their product as they choose, and may charge whatever price they want; the customer has the right to reject the producer's price. But in a market economy, the consumer cannot demand a producer turn over his goods to them. Capitalism requires the voluntary trade of goods and services; that is, trade according to mutually agreeable terms.

The government wants none of that. Instead, under the facade of "antitrust" laws, the Department of Justice seeks to award consumers the ability to demand goods and services free of the constraints of voluntary trade. If producers want to raise the prices they ask of consumers, the government smears that behavior as "anticompetitive." Antitrust theory itself holds that just above any price increase initiated by producers is presumptively bad. This despite the fact that increased prices lead to increased profits, which in turn allow producers to increase their capacity, develop new and improved products, and focus on improving overall customer service. No firm could provide superior products to customers at a sustained loss.

The government understands this, though they're loathe to admit it. In paragraph 17 of the complaint in this case, the Department of Justice describes some of the reasons for the dominance of just three firms in the boom truck market: "superior production capacity and capability, strong dealer networks, broad product lines and strong reputation for safety and reliability." The government notes, correctly, that it would be difficult for any new competitor to quickly enter the market because they would need to "establish a strong reputation" in order to effectively compete with the dominant firms.[7] But this is not a weakness of the market, but a strength. Every factor the government lists above is the result of honest, ethical activity. Manitowoc's superior production capacity is not the result of coercion. National Crane's strong reputation is not derived from violent acts against competitors. This, essentially, is the difference between "market power" derived from free trade, and "political power" derived from the use of force. The government's case fails to make this crucial distinction.

The remedy in the proposed final judgment replaces market power with political power. The defendants are forced to divest one of their crane businesses to a yet-to-be-determined third party. The government says this will protect competition. It does no such thing. "Competition" only exists in a capitalist economy; a forced divestiture is hardly capitalist, since it's neither voluntary nor based on respect for property rights. In a capitalist system, the marketplace decides economic outcomes. In the Department of Justice's system, however, economic outcomes are decided by government mandates. Such is the case here. The government dislikes the potential post-merger structure of the boom truck market, so they brought this case to rearrange things to their liking. If the government did not have a monopoly on the use of political force, it would not be able to obtain this result.

And far from "protecting" consumers, the government's remedy here denies consumers the fundamental right to act for themselves. The government assumes consumers won't pay any price increase that may result from the merger. But there's no proof of this hypothesis in the record. Consumers often pay higher prices if they feel the product is worth it, or it they believe that the product will improve in the future. Consumers are certainly a far better judge of these things than attorneys at the Department of Justice. The final judgment's remedy wrecks all that, however. By employing its political power, the government has stripped consumers of their economic power.

Finally, there is an obvious contradiction in the government recognizing the factors behind Manitowoc's dominance on the one hand, but ignoring these same factors in fashioning the final judgment's remedy. The government says a new firm is unlikely to enter the market because of the need to "establish a strong reputation," among other things. So how does creating a new competitor by force accomplish this? Does the government believe that a reputation can be established simply by handing a corporation assets and customers they didn't actually earn? If that's the case, why doesn't the Department of Justice simply allocate resources and market shares in all sectors of American industry? They obviously consider their judgment superior to consumers.

Conclusion

The government claims to serve the "public interest" in presenting this proposed final judgment. But it's unclear what those interests are. It's certainly not legal interests, since no constitutional or statutory right of consumers was violated by the defendants. And it's not economic interests, since a capitalist economy is built on voluntary actions free of government interference. "Free competition enforced by law is a grotesque contradiction in terms,"[8] not to mention a highly unstable way to govern an economy. The companies prosecuted in this case did compete and are competing. The government just doesn't like the outcome of that competition, so they've come to court seeking to overrule the judgment of consumers and producers. The result of the government's actions is to introduce fear and uncertainty into a market that previously functioned well. It's hard to see how that serves any identifiable "public interest."

Since it is unlikely the Department of Justice will see the error of its ways, CVT respectfully asks the Court to consider our comments and take appropriate action. We believe the only just action here is to reject entry of the proposed final judgment, and to dismiss the government's complaint with prejudice.

Dated: October 18, 2002.

Respectfully Submitted,

Citizens for Voluntary Trade
S.M. Oliva,
President, 2000 F Street, N.W., Suite 315, Washington, DC 20006; Telephone: (202) 223–0071; Facsimile: (760) 418–9010; E-mail: *info@voluntarytrade.org*.

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[1] Complaint at 3.
[2] Id. at 2.
[3] Id. at 7.
[4] U.S. Const. art. I, § 2, cl. 3.
[5] U.S. Const. amends. XIII, XIV, & XV.
[6] See, e.g., U.S. Const. art. IV, § 2, cl. 1.
[7] Complaint at 7.
[8] Ayn Rand, Antitrust: The Rule of Unreason, in The Voice of Reason 255 (Leonard Peikoff, ed., 1990).

PENSION AND WELFARE BENEFITS ADMINISTRATION

[Prohibited Transaction Exemption 2002–51; Application No. D–10933]

Class Exemption to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). The exemption was proposed in conjunction with the Department's Voluntary Fiduciary Correction (VFC) Program, the final version of which was published in the March 28, 2002, issue of the **Federal Register**. The VFC Program allows certain persons to avoid potential civil actions under the Employee Retirement Income Security Act of 1974 (ERISA) initiated by the Department and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. The exemption will affect plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

EFFECTIVE DATE: The exemption is effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8540 (not a toll free number) or Cynthia Weglicki, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–5600 (not a toll free number).

SUPPLEMENTARY INFORMATION: On March 28, 2002, the Department published a notice in the **Federal Register** (67 FR 15083) of the pendency of a proposed class exemption from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The Department proposed the class exemption on its own motion pursuant to section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. Two (2) public comments were received by the Department. Upon consideration of the comments received, the Department has determined to grant the proposed class exemption subject to certain modifications. These

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

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modifications and the comments are discussed below.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it was determined that this action is "significant" under Section 3(f)(4) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520)(PRA 95), the Department submitted the information collection request (ICR) included in the Proposed Class Exemption to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of the Proposed Class Exemption was published in the **Federal Register** (March 28, 2002, 67 FR 15083). OMB approved the Notice under OMB control number 1210–0118. The approval will expire on November 30, 2003.

The Department solicited comments concerning the ICR in connection with the Notice of Proposed Class Exemption. The Department received no comments addressing its burden estimates and no substantive changes have been made in the final exemption that would affect the Department's earlier burden estimates.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210–0118.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 700.

Frequency of Response: On occasion.

Responses: 700.

Estimated Total Burden Hours: 5,710 hours.

Total Burden Cost (Operating and Maintenance): $272,928.

Discussion of Comments Received

The Department received two comments regarding the proposed class exemption. The commenters requested specific modifications to the proposal in the following areas:

1. Notice to Interested Persons

Both commenters addressed Section IV of the proposed exemption which required applicants to provide notice to interested persons of the transaction and the method of correction. It was noted that, in many cases, applicants who may be subject to the excise taxes under section 4975 of the Code will not be the employer whose employees are covered by the plan, and may be unrelated to the employer.

In this regard, one of the commenters stated that, without the cooperation of the employer, applicants might find it difficult to provide notice to participants and beneficiaries because they would not have access to the participants' and beneficiaries' names and addresses. The commenter further noted that employers might not be willing to provide access to such information due to privacy concerns or concerns that receipt of the notice might cause confusion among the participants and beneficiaries.

In the commenter's view, relief under the exemption should not be conditioned on the cooperation of an employer or other person that is unrelated to the applicant, particularly since the underlying prohibited transaction will have been corrected pursuant to the VFC Program. The commenter proposed that, in the case of an applicant unrelated to the employer whose employees are covered by the plan, the exemption permit notice to be provided to the employer or other plan fiduciary unrelated to the applicant who was not involved in the transaction that is the subject of the VFC Program application, rather than each participant and beneficiary. The commenter noted that the unrelated fiduciary could then determine whether plan participants and beneficiaries should be notified of the underlying transaction and its correction under the VFC Program.

The other commenter stated generally that the notice requirement was unnecessary and burdensome, but subsequently clarified that it had the same concerns as the first commenter.

The Department concurs with the commenters' views on the notice issue. In this regard, the Department notes that the proposed exemption does not contain a definition of interested persons to whom notice must be provided. It is the view of the Department that, where an applicant is unaffiliated with, and unrelated to, the employer whose employees are covered by the plan, the notice requirement will be deemed satisfied if the applicant provides notice to a fiduciary of the plan who is unrelated to the applicant and all other parties involved in the prohibited transaction. In many cases, this may be the employer or an administrative committee composed of officers and employees of the employer. However, the Department cautions that the notice requirement will not be considered satisfied if notice is given to an employer who is not unrelated to all parties involved in the prohibited transaction. Under no circumstances should plan assets be used to pay for the notice.

2. Three Year Rule

One of the commenters also was concerned about Section II.F. of the proposed exemption, which provided that an applicant seeking relief under the exemption could not have taken advantage of the relief provided under the VFC Program and this exemption for a similar type of transaction identified in the current application during the period which is three years prior to the submission of the current application. The commenter argued that applicants that are service providers, as opposed to plan officials, should be permitted to take advantage of the VFC Program as often as necessary without regard to the three year rule.

The commenter stated that subjecting service providers to the three year rule would not, in all cases, further the rule's purpose of ensuring that relief is not provided to fiduciaries who repeatedly make the same legal mistake. In contrast to plan sponsors, for example, service providers such as broker-dealers, banks and insurance companies may engage in numerous transactions with plans each day which could be prohibited except for the availability of a statutory or administrative exemption. The commenter noted that, if the plan fiduciary directing the transaction is relying on an exemption to deal with a party in interest, and that fiduciary is factually incorrect on an element of the exemption, the broker-dealer may

engage in many transactions that would need relief under this exemption.

As an example, the commenter explained that a service provider could enter into a transaction that otherwise would be prohibited based on a fiduciary's representation that the QPAM class exemption (PTE 84–14) (49 FR 9494, March 13, 1984) applied. The QPAM class exemption requires, among other things, that neither the QPAM, an affiliate, nor any owner of a 5% or more interest in the QPAM, have been convicted or released from imprisonment as a result of certain crimes within the ten years immediately preceding the transaction. Information regarding past crimes of affiliates and 5% owners of the QPAM is not likely to be within the knowledge of the service provider, and the service provider must rely on the QPAM for assurance that the condition is satisfied.

The commenter suggested that Section II.F. be modified to provide an exception from the three year rule for applicants that are banks, broker-dealers or insurance companies (or affiliates thereof) which did not exercise discretionary authority or control to cause the plan to enter into the transaction. The commenter proposed that the exception be limited to applicants that were parties in interest (including fiduciaries) solely by reason of providing services to the plan (or solely by reason of a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) and the corresponding provisions of the Code), and that "did not believe that an exemption was unavailable" with respect to the transaction. The commenter suggested that the applicant must have established written policies and procedures reasonably designed to ensure compliance with the prohibited transaction rules, and have engaged in periodic monitoring for compliance, at the time of the transaction.

The Department agrees that, in the narrow circumstances described above, such service providers should not be excluded from obtaining relief under the exemption by the three year rule. Accordingly, the Department has modified Section II.F. to clarify that the exemption will continue to be available notwithstanding the applicant's inability to satisfy the three year rule, provided that:

- The applicant was a broker-dealer registered under the Securities Exchange Act of 1934, a bank supervised by the United States or a State thereof, a broker-dealer or bank subject to foreign government regulation, an insurance company qualified to do business in a State, or any affiliate thereof;
- The applicant was a party in interest (including a fiduciary) solely by reason of providing services to the plan or solely by reason of a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) (and/or the corresponding provisions of section 4975 of the Code);
- Neither the applicant nor any affiliate (i) was a fiduciary (within the meaning of section 3(21)(A) of ERISA) with respect to the assets of the plan involved in the transaction, and (ii) used its discretion to cause the plan to engage in the transaction;
- The individuals acting on behalf of the applicant in connection with the transaction had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and
- Prior to the transaction, the applicant established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and the applicant engaged in periodic monitoring for compliance.

3. Participant Loan Repayments

The Department has made one additional modification to the final exemption. As discussed more fully below, the exemption provides relief for certain transactions described in the VFC Program, including the failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR 2510.3–102. Subsequent to the publication of the final VFC Program, the Department issued guidance stating that applicants may correct the failure to forward participant loan repayments to a plan in a timely fashion under the VFC Program in the same manner.[2] Accordingly, the Department revised the language of Section I.A. of the exemption to explicitly cover the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

[2] See Frequently Asked Questions on the VFC Program, at *http://www.dol.gov/pwba/faqs/faq_vfcp2.html*. For the Department's views on the time frames for repayment of participant loans to pension plans, see the preamble to the final participant contribution regulation, 29 CFR section 2510.3–102, published at 61 FR 41220, 41226 (August 7, 1996). See also DOL Advisory Opinion No. 2002–02A (May 17, 2002).

Description of the Exemption

1. Scope

The exemption provides relief from the sanctions imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for certain eligible transactions identified in the VFC Program. The exemption does not provide relief for any transactions identified in the VFC Program that are not specifically described as eligible transactions under Section I of the exemption.

The four eligible transactions described in the exemption are as follows:

(A) The failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR section 2510.3–102 and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

(B) The making of a loan by a plan at a fair market interest rate to a party in interest with respect to the plan.

(C) The purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value.

(D) The sale of real property to a plan by the employer and the leaseback of such property to the employer, at fair market value and fair market rental value, respectively.

The eligible transactions may be illustrated by the following examples:

Example (1): Corporation A sponsors a pension plan for its employees. Corporation A borrowed $100,000 from the plan. The loan was made at an interest rate no less than that available for a loan with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) obtainable in an arm's-length transaction between unrelated parties. Example (2): Corporation B sponsors a pension plan for its employees. The plan sold a parcel of real property to Corporation B. The price Corporation B paid to the plan was the fair market value of the property as determined by a qualified independent appraiser as of the date of the transaction and reflected in a qualified appraisal report. (If there is a generally recognized market for the property, such as the New York Stock Exchange, the fair market value of the property is the value objectively determined by reference to the price on such market on the date of the transaction, and a determination by a qualified independent appraiser is not required.)

Example (3): Corporation C sponsors a pension plan for its employees. Corporation C sold a parcel of real property to the plan which was simultaneously leased back to Corporation C. The price paid by the plan for the property was its fair market value, and

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the rent paid by Corporation C to the plan is the fair market rental value, as determined by a qualified independent appraiser and reflected in a qualified appraisal report. The terms of the lease (for example, rent, duration and allocation of expenses) are not less favorable to the plan than those obtainable in an arm's-length transaction between unrelated parties.

2. General Conditions

Section II of the exemption contains general conditions, as discussed below, which the Department views as necessary to ensure that any transaction covered by the exemption would be in the interests of plan participants and beneficiaries, and to support a finding that the exemption met the statutory requirements of section 4975(c)(2) of the Code.

With respect to a transaction involving delinquent transmittal of participant contributions and/or participant loan repayments to a pension plan, the exemption requires that the contributions or repayments be transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amount otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

Second, the exemption requires that, with respect to the transactions described in Sections I.B., I.C. and I.D., the amount of plan assets involved in the transaction did not exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction. For purposes of this requirement, the 10 percent limitation would apply after aggregating the value of a series of related transactions.

Third, under the exemption, the fair market value of any plan asset involved in a transaction described in Sections I.C. or I.D. must have been determined in accordance with section 5 of the VFC Program. Section 5 of the VFC Program requires that the valuation meet the following conditions: (1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price); and (2) if there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified independent appraiser and reflected in a written appraisal report signed by the appraiser. For purposes of these requirements under the VFC Program, an appraiser is considered qualified if the appraiser has met the education, experience and licensing requirements that are generally recognized for appraisal of the type of asset being appraised. An appraiser is "independent" if the appraiser is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following: (i) The prior owner of the asset, if the asset was purchased by the plan; (ii) the purchaser of the asset, if the asset was or is now being sold by the plan; (iii) any other owner of the asset, if the plan is not the sole owner; (iv) a fiduciary of the plan; (v) a party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or (vi) the VFC Program applicant.

Fourth, under the exemption, the terms of a transaction described in Sections I.B., I.C., or I.D., must have been at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

Fifth, with respect to all of the eligible transactions, the transaction may not have been part of an agreement, arrangement or understanding designed to benefit a party in interest. The Department notes that the intent of this condition is not to deny a direct benefit to the party in interest but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement or understanding designed to benefit parties in interest.

Sixth, with respect to all of the eligible transactions, the applicant may not have taken advantage of the relief provided by the VFC Program and the exemption for a similar type of transaction identified in the application during the three-year period prior to the submission of the application. As modified, however, the final exemption contains a limited exception from this condition for service providers. Pursuant to the amended Section II.F., a broker-dealer, bank or insurance company that is a service provider to a plan would not be subject to this condition if it engaged in a prohibited transaction described in Section I, provided that: it was not a fiduciary that used its discretion to cause the plan to engage in the transaction; individuals acting on its behalf in connection with the transaction had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and, prior to the transaction, it established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and it engaged in periodic monitoring for compliance.

3. Compliance with VFC Program

In addition to compliance with the general conditions set forth above, Section III of the exemption requires that the applicant meet the requirements set forth in the VFC Program that are applicable to the particular transaction. The exemption also requires that the applicant have received a no action letter issued by PWBA with respect to such transaction, which must be an eligible transaction otherwise described in Section I of the exemption. However, the fact that an applicant receives a no action letter issued by PWBA should not be viewed as a determination by PWBA that the applicant has satisfied all of the conditions of the exemption. Each applicant must determine whether the pertinent conditions of the exemption have been met.

4. Notice

Notice under the exemption must be given to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program to the Department. Plan assets may not be used to pay for the notice. The exemption does not specify the format or specific content of the notice. However, the notice must include an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average plan participant or beneficiary. The notice also must provide for a period of 30 calendar days, beginning on the date the notice is distributed, for interested persons to provide comments to the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration. The notice must include the address and telephone number of such Regional Office.

A copy of the notice to interested persons, along with an indication of the date on which it was distributed, must be provided to the appropriate Regional Office within the same 60-day period following the date of the submission of the application. Accordingly, applicants under the VFC Program who intend to take advantage of the relief provided under this exemption would indicate on the checklist submitted as part of the VFC Program application that they will, within 60 calendar days following the date of the submission of the application, provide the Department's Regional Office with a copy of the notice to interested persons.

Notice may be given in any manner that is reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply, the requirement that all assets of an employee benefit plan be held in trust by one or more trustees, and the general fiduciary responsibility provisions of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) In accordance with section 4975(c)(2) of the Code, the Department finds that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans.

(4) The exemption is supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The exemption is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Exemption

Accordingly, the following exemption is granted under the authority of section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I: Eligible Transactions

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following eligible transactions described in section 7 of the Voluntary Fiduciary Correction (VFC) Program (67 FR 15061, March 28, 2002), provided that the applicable conditions set forth in Sections II, III and IV are met:

A. Failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulation at 29 CFR section 2510.3–102, (*see* VFC Program, section 7.A.1.), and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

B. Loan at a fair market interest rate to a party in interest with respect to a plan. (*See* VFC Program, section 7.B.1.).

C. Purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value. (*See* VFC Program, sections 7.C.1. and 7.C.2.).

D. Sale of real property to a plan by the employer and the leaseback of the property to the employer, at fair market value and fair market rental value, respectively. (*See* VFC Program, section 7.C.3.).

Section II: Conditions

A. With respect to a transaction involving participant contributions or loan repayments to pension plans described in Section I.A., the contributions or repayments were transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amounts otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

B. With respect to the transactions described in Sections I.B., I.C., or I.D., the plan assets involved in the transaction, or series of related transactions, did not, in the aggregate, exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction.

C. The fair market value of any plan asset involved in a transaction described in Sections I.C. or I.D. was determined in accordance with section 5 of the VFC Program.

D. The terms of a transaction described in Sections I.B., I.C., or I.D. were at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

E. With respect to any transaction described in Section I, the transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

F. (1) With respect to any transaction described in Section I, the applicant has not taken advantage of the relief provided by the VFC Program and this exemption for a similar type of transaction(s) identified in the current application during the period which is three years prior to submission of the current application.

(2) Notwithstanding the foregoing, Section II.F.(1) shall not apply to an applicant provided that:

(a) The applicant was a broker-dealer registered under the Securities Exchange Act of 1934, a bank supervised by the United States or a State thereof, a broker-dealer or bank subject to foreign government regulation, an insurance company qualified to do business in a State, or an affiliate thereof;

(b) The applicant was a party in interest (including a fiduciary) solely by reason of providing services to the plan or solely by reason of a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) (and/or the corresponding provisions of section 4975 of the Code);

(c) Neither the applicant nor any affiliate (i) was a fiduciary (within the meaning of section 3(21)(A) of ERISA) with respect to the assets of the plan involved in the transaction and (ii) used its discretion to cause the plan to engage in the transaction;

(d) Individuals acting on behalf of the applicant had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and

(e) Prior to the transaction, the applicant established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and the applicant engaged in periodic monitoring for compliance.

Section III: Compliance with VFC Program

A. The applicant has met all of the applicable requirements of the VFC Program.

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B. PWBA has issued a no action letter to the applicant pursuant to the VFC Program with respect to a transaction described in Section I.

Section IV: Notice

A. Written notice of the transaction(s) for which the applicant is seeking relief pursuant to the VFC Program and this exemption, and the method of correcting the transaction, was provided to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program. A copy of the notice was provided to the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration within the same 60-day period, and the applicant indicated the date upon which notice was distributed to interested persons. Plan assets were not used to pay for the notice. The notice included an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average plan participant or beneficiary. The notice provided for a period of 30 calendar days, beginning on the date the notice was distributed, for interested persons to provide comments to the appropriate Regional Office. The notice included the address and telephone number of such Regional Office.

B. Notice was given in a manner that was reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof. The notice informed interested persons of the applicant's participation in the VFC Program and intention of availing itself of relief under the exemption.

Signed at Washington, DC, this 11th day of November, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–29799 Filed 11–22–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL LABOR RELATIONS BOARD

Order Delegating Authority to the General Counsel; Before Members Wilma B. Liebman, William B. Cowen, and Michael J. Bartlett

November 19, 2002.

The Board is faced with the prospect that it may for a temporary period have fewer than three Members of its statutorily prescribed full complement of five Members. The Board recognizes that it has a continuing responsibility to fulfill its statutory obligations in the most effective and efficient manner possible. To assure that the Agency will be able to meet its obligations, the Board has decided to temporarily delegate to the General Counsel full authority to certify the results of any secret ballot election conducted under the National Emergency provisions of the Labor Management Relations Act, sections 206–210, 29 U.S.C. 176–180.[1] This delegation shall be effective during any time when the Board has fewer than three Members and is made under the authority granted to the Board under sections 3, 4, 6, and 10 of the National Labor Relations Act.

Accordingly, the Board delegates to the General Counsel full and final authority and responsibility on behalf of the Board to certify to the Attorney General the results of any secret ballot elections held among employees on the question of whether they wish to accept the final offer of settlement made by their employer pursuant to section 209(b) of the Labor Management Relations Act, 29 U.S.C. 179(b). This delegation shall cease to be effective whenever the Board has at least three Members.

This delegation relates to the internal management of the National Labor Relations Board and is therefore, pursuant to 5 U.S.C. 553, exempt from the notice and comment requirements of the Administrative Procedure Act. Further, public notice and comment is impractical because of the immediate need for Board action. The public interest requires that this delegation take effect immediately.

All existing delegations of authority to the General Counsel and to staff in effect prior to the date of this order remain in full force and effect, including the December 14, 2001, delegation regarding court litigation authority and the April 1, 1955, delegation by the Board to the General Counsel of the authority and responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act, 29 U.S.C. 179(b). For the reasons stated above, the Board finds good cause to make this order effective immediately in accordance with 5 U.S.C. 553(d).

By direction of the Board.

[1] On December 14, 2001, the Board previously delegated to the General Counsel, on the same basis, full authority on all court litigation matters that would otherwise require Board authorization, effective during any time when the Board has fewer than three Members. *See* 66 FR 65996 (December 21, 2001).

Dated in Washington, DC, November 19, 2002.

Lester A. Heltzer,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 02–29917 Filed 11–22–02; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 11, 2002, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. Permits were issued on November 19, 2002 to: Arthur L. DeVries, Permit No. 2003–013; Joan Myers, Permit No. 2003–2003–015.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 02–29875 Filed 11–22–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated March 11, 2002, and supplements dated March 21, 22, and 27, 2002 (the Petition), submitted by Mr. David A. Lochbaum, a Nuclear Safety Engineer in the Washington, DC Office of the Union of Concerned Scientists (UCS), and the co-petitioners identified in the petition supplements dated March 21 and March 22, 2002 (the Petitioners). The Petitioners have requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) take action with regard to the nuclear power facilities listed in Attachment 1 to the Petition (multiple nuclear power facilities). The Petitioners request that the NRC immediately issue Orders to the owners of all operating nuclear power plants to take measures that will reduce the risk from sabotage of irradiated fuel. Specifically, those measures are:

(1) The NRC should "impose a 72-hour limit for operation when the number of operable onsite alternating current power sources (*i.e.*, emergency diesel generators) is one less than the number in the Technical Specification limiting condition for operation. This 72-hour limit would be applicable when the nuclear plant is in any mode of operation other than hot shutdown, cold shutdown, refueling, or defueled." Oconee Nuclear Station does not rely on emergency diesel generators, but "equivalent protection for its emergency power supply" should be provided. The NRC should also "cease and desist issuing NOEDs [Notices of Enforcement Discretion] that allow nuclear reactors to operate for longer periods of time with broken emergency diesel generators." This requested action would apply to the facilities listed in Attachment 1 to the Petition.

(2) The NRC should "impose a minimum 24-hour time-to-boil for the spent fuel pool water. This limit would be applicable at all times." This requested action would apply to the facilities listed in Attachment 1 to the Petition.

The Petition also requested that the NRC hold a public meeting to precede "the Petition Review Board (PRB) non-public meeting regarding this petition" and assign "someone other than the Director of NRR [Office of Nuclear Reactor Regulation] to be responsible for our petition. The Deputy Executive Director for Reactor Programs or the Deputy Director of NRR would be acceptable to UCS."

As the basis for the Petition, the Petitioners cite the need to reduce the risk from sabotage of irradiated fuel.

On March 26, 2002, in lieu of a public meeting, the Petitioners accepted and participated in a telephone conference (teleconference) with the NRC's PRB to discuss the Petition. The transcript of the teleconference was considered as a supplement to the Petition. After the teleconference, the PRB discussed the Petition. The PRB considered the contributions of the Petitioners to the teleconference in deciding on the requests for immediate action and in setting the schedule for the review of the Petition. The PRB concluded that the Petition satisfied the criteria for review under title 10 of the Code of Federal Regulations (10 CFR) Subsection 2.206.

By letter dated May 8, 2002, the NRC staff acknowledged receiving the Petition, informed the Petitioners that the Petition met the requirements for review under 10 CFR 2.206, and the Petition had been referred to the Director of NRR for action and would be acted upon within a reasonable time. The petitioners were also informed in that letter that the NRC staff declined to grant the Petitioners' request for immediate action.

The NRC sent a copy of the proposed Director's Decision to the Petitioners for comment by letter dated September 4, 2002. The Petitioners responded with comments by letter dated September 23, 2002. The Petitioners' comments and the NRC staff responses to the comments are addressed in Enclosure No. 2 and No. 3 to the November 15, 2002, letter to Mr. David A. Lochbaum, Union of Concerned Scientists.

The Director, NRR, concluded that the information contained in the Petition does not warrant NRC staff action to: "Impose a 72-hour limit for operation when the number of operable onsite alternating current power sources (*i.e.*, emergency diesel generators) is one less than the number in the Technical Specification limiting condition for operation" during plant operation. In addition, the Director, NRR, concluded that the information contained in the Petition does not warrant NRC staff action to "cease and desist issuing NOEDs that allow nuclear reactors to operate for longer periods of time with broken emergency diesel generators." These requests are denied.

With regard to the Petitioners' second request, that the NRC "impose a minimum 24-hour time-to-boil for the spent fuel pool water. This limit would be applicable at all times," the Director, NRR, has concluded that this request is partially granted by staff actions already taken. However, for the reasons discussed in the Director's Decision, the NRC staff concludes that the actions specifically requested by the Petitioners are not necessary. The reasons for these decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–02–07), the complete text of which is available in the Agencywide Documents Access and Management System (ADAMS) for inspection in the Commission's Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically accessible in ADAMS through the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm.html* (ADAMS Accession No. ML022800647). Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr@nrc.gov*.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 15th day of November, 2002.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29873 Filed 11–21–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between October 01, 2002 and October 31, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Broadcasting Board of Governors

Special Assistant to the Director, International Broadcasting Bureau. Effective October 11, 2002.

Special Assistant to the Director, International Broadcasting Bureau of America. Effective October 23, 2002.

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Consumer Product Safety Commission

Director, Office of Congressional Relations to the Chairman. Effective October 4, 2002.

Executive Assistant to the Chairman. Effective October 31, 2002.

Department of Agriculture

Special Assistant to the Administrator, Risk Management Agency. Effective October 18, 2002.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective October 24, 2002.

Department of Commerce

Confidential Assistant to the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office. Effective October 2, 2002.

Senior Advisor to the Under Secretary for Export Administration. Effective October 4, 2002.

Special Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration. Effective October 9, 2002.

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Planning. Effective October 9, 2002.

Special Assistant to the Director, Advocacy Center. Effective October 17, 2002.

Director of Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 22, 2002.

Department of Defense

Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller), Deputy Under Secretary of Defense (Management Reform). Effective October 10, 2002.

Defense Fellow to the Special Assistant Secretary of Defense (White House Liaison). Effective October 30, 2002.

Department of Education

Special Assistant to the Senior Advisor to the Secretary. Effective October 2, 2002.

Special Assistant to the Director, Faith-Based and Community Initiative Center. Effective October 3, 2002.

Special Assistant to the Director, White House Initiative on Tribal Colleges and Universities. Effective October 15, 2002.

Deputy Assistant Secretary for Policy to the Assistant Secretary for Elementary and Secondary Education. Effective October 22, 2002.

Special Assistant to the Chief Financial Officer. Effective October 23, 2002.

Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective October 28, 2002.

Confidential Assistant to the Special Assistant. Effective October 28, 2002.

Department of Energy

Special Assistant to the Director, Office of Economic Impact Diversity. Effective October 1, 2002.

Department of Health and Human Services

Special Assistant to the Commissioner, Food and Drug Administration. Effective October 31, 2002.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective October 31, 2002.

Department of Housing and Urban Development

Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective October 3, 2002.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective October 3, 2002.

Deputy Assistant Secretary for Legislation Affairs to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective October 4, 2002.

Special Counsel to the General Counsel. Effective October 31, 2002.

Department of Justice

Special Assistant to the Assistant Attorney General, Civil Rights Division. Effective October 11, 2002.

Department of Labor

Special Assistant to the Assistant Secretary for Disability Employment. Effective October 2, 2002.

Special Assistant to the Director, 21st Century Workforce. Effective October 16, 2002.

Special Assistant to the Administrator for Employment Standards. Effective October 16, 2002.

Department of the Navy (DOD)

Confidential Assistant to the Assistant Secretary of the Navy (Installations and Environment). Effective October 4, 2002.

Department of State

Public Affairs Specialist to the Assistant Secretary for Western Hemisphere Affairs. Effective October 11, 2002.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 11, 2002.

Senior Advisor to the Assistant Secretary, Western Hemisphere Affairs. Effective October 11, 2002.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 21, 2002.

Staff Assistant to the Deputy Assistant Secretary, Bureau of European and Eurasian Affairs. Effective October 21, 2002.

Department of Transportation

Chief of Staff to the Federal Aviation Administrator. Effective October 18, 2002.

Associate Director to the Assistant Secretary for Governmental Affairs. Effective October 21, 2002.

Deputy Assistant Secretary to the Assistant Secretary for Aviation and International Affairs. Effective October 21, 2002.

Special Assistant to the Director of Scheduling and Advance. Effective October 30, 2002.

Department of the Treasury

Special Assistant to the Chief of Staff. Effective October 8, 2002.

Director of Legislative and Intergovernmental Affairs to the Director of the U.S. Mint. Effective October 17, 2002.

Special Assistant to the Deputy Assistant Secretary for Management and Budget. Effective October 28, 2002.

Deputy Assistant Secretary (Policy Coordination) to the Assistant Secretary for Economic Policy. Effective October 31, 2002.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective October 28, 2002.

Environmental Protection Agency

Senior Advisor to the Assistant Administrator, Office of Solid Waste and Emergency Response. Effective October 25, 2002.

Congressional Liaison Specialist to the Associate Administrator for Congressional and Intergovernmental Relations. Effective October 28, 2002.

Federal Maritime Commission

Counsel to the Commissioner to the Commissioner. Effective October 28, 2002.

General Services Administration

Senior Advisor to the Regional Administrator, National Capital Regional. Effective October 4, 2002.

National Mediation Board

Confidential Assistant to the Chairman/Board Member. Effective October 25, 2002.

Occupational Safety and Health Review Commission

Confidential Assistant to the Member (Commissioner), Occupational Safety and Health Review Commission. Effective October 28, 2002.

Counsel to the Member (Commissioner). Effective October 28, 2002.

Office of Management and Budget

Confidential Assistant to the Associate Director for Administration. Effective October 31, 2002.

Office of Science and Technology Policy

Confidential Assistant to the Associate Director for Science. Effective October 3, 2002.

Office of the United States Trade Representative

Confidential Assistant to the Deputy, United States Trade Representative. Effective October 7, 2002.

Confidential Assistant to the Chief of Staff. Effective October 17, 2002.

Overseas Private Investment Corporation

Investment Development Associate to the Vice President for Investment Development and Economic Growth. Effective October 24, 2002.

President's Commission on White House Fellowships

Public Relations Coordinator to the Associate Director, President's Commission on White House Fellowships. Effective October 11, 2002.

Securities and Exchange Commission

Confidential Assistant to the General Counsel. Effective October 1, 2002.

Senior Advisor to the Chairman. Effective October 11, 2002.

Small Business Administration

Senior Advisor to the Assistant Administrator for Congressional Affairs. Effective October 11, 2002.

Social Security Administration

Special Assistant to the Deputy Commissioner for Disability and Income Security Programs. Effective October 11, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–29849 Filed 11–22–02; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 69577, November 18, 2002].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, November 20, 2002, at 10 a.m.

CHANGE IN THE MEETING: Time Change/Additional Item.

The Closed Meeting scheduled for Wednesday, November 20, 2002 at 10 a.m. was changed to Wednesday, November 20, 2002 at 10:45 a.m.

The following item was added to the Closed Meeting scheduled for Wednesday, November 20, 2002: amicus consideration.

Commissioner Campos, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 20, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–30033 Filed 11–21–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46844; File No. SR–Phlx–2002–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Date for Deployment of the ROT Access System

November 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b-4[2] thereunder, notice is hereby given that on November 8, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to set forth the date of deployment of its system [3] designed to enable Registered Options Traders ("ROTs") to place limit orders directly onto the limit order book through electronic interface with AUTOM.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to state that the Exchange will deploy its system to enable Registered Options Traders ("ROTs") and specialists on the Exchange's options floor to place limit orders directly onto the limit order book through electronic

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 66898 (November 13, 2002) (Order approving SR–Phlx–2002–04).

[4] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

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interface with AUTOM ("ROT Access System") on November 11, 2002.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act[5] in general, and with section 6(b)(5) of the Act[6] in particular, in that it is designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposal effects a change in an existing order-entry or trading system of the Exchange that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and subparagraph (f)(5) of rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–74 and should be submitted by December 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29871 Filed 11–22–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(5)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46841; File No. SR–Phlx–2001–104]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to Clerks on the Exchange's Options Floor

November 15, 2002.

On December 18, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposal to adopt Phlx Rule 1090, Clerks, to define and set forth permitted and prohibited activities of Clerks on the Exchange's Options Floor. On June 27, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On October 25, 2002, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On September 25, 2002, notice of the proposed rule change and Amendment No. 1 was published thereto in the **Federal Register**.[5] The Commission received no comments on the proposal. This order approves the proposed rule change and Amendment No. 1, accelerates approval of Amendment No. 2, and solicits comment from interested persons on Amendment No. 2.

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[7] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should provide guidance as to the roles and responsibilities of Clerks on the Exchange's Options Floor and should clarify the types of activities in which Clerks may and may not engage. As a result, the Commission believes that the proposed rule change should assist the Exchange in its surveillance for potential violation of Exchange rules.

The Commission finds good cause for approving Amendment No. 2 prior to the 30th day after publication of notice of filing. The Commission notes that Amendment No. 2 makes only a clarification to the proposed rule text.[8] Accordingly, the Commission believes that there is good cause consistent with Section 19(b)(2) of the Act[9] to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission,

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 26, 2002 ("Amendment No. 1").

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Frank Genco, Division, Commission, dated October 25, 2002 ("Amendment No. 2"). In Amendment No. 2, Phlx replaces the word "person" with the word "Clerk" in proposed Commentaries .01 and .02 to proposed Phlx Rule 1090.

[5] *See* Securities Exchange Act Release No. 46505 (September 17, 2002), 67 FR 60273.

[6] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 4.

[9] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR–Phlx–2001–104 and should be submitted by December 16, 2002.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change, as amended, (SR–Phlx–2001–104) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29872 Filed 11–22–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 26, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Secondary Market Assignment and Disclosure Form.

No.: 1088.

Frequency: On occasion.

Description of Respondents: Secondary market participants.

Responses: 5,000.

Annual Burden: 7,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–29851 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 26, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Officer for Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Prime Contracts Program Quarterly Report Part A and B.

No's: 843A & 843B.

Frequency: On occasion.

Description of Respondents: Procurement center representatives.

Responses: 63.

Annual Burden: 1020.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–29852 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3467]

State of Ohio

As a result of the President's major disaster declaration on November 18, 2002, I find that Hancock, Ottawa, Paulding, Putnam, Seneca and Van Wert Counties in the State of Ohio constitute a disaster area due to damages caused by severe storms and tornadoes occurring on November 10, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 17, 2003 and for economic injury until the close of business on August 18, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allen, Auglaize, Crawford, Defiance, Hardin, Henry, Huron, Lucas, Mercer, Sandusky, Wood and Wyandot in the State of Ohio; and Adams and Allen counties in the State of Indiana.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.675
Homeowners Without Credit Available Elsewhere	2.837
Businesses With Credit Available Elsewhere	6.646
Businesses and Non-profit Organizations Without Credit Available Elsewhere	3.324
Others (Including Non-profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.324

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The number assigned to this disaster for physical damage is 346712. For economic injury the number is 9S6300 for Ohio; and 9S6400 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 19, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–29913 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas

Amendment #2

In accordance with notices received from the Federal Emergency Management Agency, dated November 15, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on October 24, 2002 and continuing through November 15, 2002. This declaration is also amended to include Liberty and Montgomery Counties in the State of Texas as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing through November 15, 2002.

In addition, applications for economic injury loans from small businesses located in Grimes, San Jacinto and Walker Counties in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 19, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–29911 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3465]

State of West Virginia

Jackson County and the contiguous counties of Kanawha, Mason, Putnam, Roane, Wirt and Wood in the State of West Virginia; and Meigs County in the State of Ohio constitute a disaster area as a result of a series of strong storms that occurred on November 10, 2002. Applications for loans for physical damage may be filed until the close of business on January 17, 2003, and for economic injury until the close of business on August 18, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.875
Homeowners Without Credit Available Elsewhere:	2.937
Businesses With Credit Available Elsewhere:	6.648
Businesses and Non-profit Organizations Without Credit Available Elsewhere:	3.324
Others (Including Non-profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere:	3.324

The number assigned to this disaster for physical damage is 346511for West Virginia and 346611 for Ohio. The number assigned to this disaster for economic injury is 9S6100 for West Virginia and 9S6200 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 18, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–29912 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–C–00–MSP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 26, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffrey W. Hamiel, Executive Director of the Metropolitan Airports Commission at the following address: Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Airports Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158). On October 28, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Airports Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 25, 2003.

The following is a brief overview of the application.

Proposed charge effective date: April 1, 2003.

Proposed charge expiration date: October 1, 2017.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $94,832,543.

Brief description of proposed projects: (Impose and Use Projects) Runway 12R/30L temporary extension; runway 4/22 property acquisition; airside bituminous construction—2001; pavement rehabilitation—apron/taxiway; miscellaneous airfield construction; taxiway A/H reconstruction; Green/Gold connector bag belt; Green/Gold connector ticket counter/bag check; security fence/gate replacements; maintenance facility addition.

(Impose Only Project) Concourse F expansion.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $1,121,378,685.

Brief description of proposed projects: (Impose and Use Projects) Runway 12L deicing pad; runway 12R deicing pad; buildings demolition; taxiway B construction; runway 17/35 site preparation and utility installation (including wetland mitigation, concrete paving, storm sewer and storm water pond construction); runway 17/35 site demolition (on and off airport); runway 17/35 runways, taxiways, taxilanes, and connectors (including runway 17 deicing pad); runway 17/35 airfield service road; runways 17/35 and 4/22 tunnels; taxiway W–Y/Y–3 tunnels; tenant lease extinguishment; deicing agent processing facility; airfield material and equipment storage facilities; property acquisition (for runway 17/35); program planning/management costs; residential noise insulation; Green concourse (Concourse C) expansion (Phases 1 and 2); Green Concourse apron expansion (including runway 30R deicing pad); Green/Gold connector; Green Concourse automated people mover; Humphrey terminal hydrant fueling system.

(Impose Only Project) fire/rescue replacement facility. Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Airports Commission.

Issued in Des Plaines, Illinois, on November 1, 2002.

Robert Benko,

Acting Manager, Airports Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–29901 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–868–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–868–89–89 (TD 8353), Information With Respect to Certain Foreign-Owned Corporations (§§ 1.6038A–2 and 1.6038A–3).

DATES: Written comments should be received on or before January 24, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information With Respect to Certain Foreign-Owned Corporations.

OMB Number: 1545–1191.

Regulation Project Number: INTL–868–89 (Final).

Abstract: The regulation requires record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS international examiners to better audit the tax returns of corporations engaged in crossborder transactions with a related party.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 63,000.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 630,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 19, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–29918 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the

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overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. A summary of the agenda along with the planned discussion topics is listed below.

Summarized Agenda

9 a.m. Meeting Opens
11:30 Break for Lunch
1:30 Meeting Adjourns

The planned discussion topics are as follows:

(1) Electronic Tax Administration and E-Z Tax-Filing Overview
(2) Plans for the 2003 Filing Season
(3) Path to 2007
(4) Tax Exempt and Government Entities Operating Division Update

Note: Last minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Wednesday, December 4, 2002. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis.

ADDRESSES: The meeting will be held in the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you or to receive general information about ETAAC contact Ms. Candice Cromling at (202) 283–0462 by November 29, 2002. Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Cromling in a voice-mail message please spell out all names.

A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Cromling on or after Wednesday, November 27 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service's (IRS's) strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns.

ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: November 20, 2002.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 02–29919 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted via teleconference.

DATES: The meeting will be held Thursday, December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227 or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held, Thursday, December 12, 2002, from 3 p.m. to 5 p.m. eastern time via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227, or 414–297–1604 for dial-in information.

The agenda will include the following: outreach planning and discussion of E-file use by small businesses.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 13, 2002.

Cathy Vanhorn,

Director, Communication & Liasion.

[FR Doc. 02–29920 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Ad Hoc Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Ad Hoc Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Ad Hoc Committee will be held Thursday, December 5, 2002, from 1 pm p.s.t. to 3 pm p.s.t. via a telephone conference call. The public is invited to make written comments. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174, or e-mail *cap_4@mindspring.com*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095, or e-mail *cap_4@mindspring.com*.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 13, 2002.

Cathy Vanhorn,

Director, Communication and Liaison.

[FR Doc. 02–29921 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming)

ACTION: Notice.

SUMMARY: An open meeting of Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel will be held Monday, November 18, 2002, from 2 p.m. to 4 p.m. as a teleconference.

The public is invited to send written comments. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, 915 2nd Ave, MS W406, Seattle, WA 98174. Due to limited conference time, notification of intent to attend the meeting must be made with Anne Gruber or Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: committee business, welcome to new members, and discussion of various ideas on hold from the summer.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 30, 2002.

John J. Mannion,

Director, Program Planning & Quality.

[FR Doc. 02–29922 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–14: OTS Nos. H–2029; H–3798 and 04195]

Wayne Savings Bankshares, MHC, Wooster, OH, and Wayne Savings Community Bank, Wooster, OH; Approval of Conversion Application

Notice is hereby given that on November 14, 2002, the Director, Supervision Policy, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of Wayne Savings Bankshares, MHC, Wooster, Ohio (MHC), to convert to the stock form of organization. The MHC is the parent mutual holding company of Wayne Savings Community Bank, Wooster, Ohio (Savings Association). Following the proposed conversion, the Savings Association will be a wholly owned stock subsidiary of Wayne Savings Bancshares, Inc., Wooster, Ohio (Holding Company). Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 19, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–29802 Filed 11–22–02; 8:45 am]

BILLING CODE 6720–01–M

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Corrections

Federal Register
Vol. 67, No. 227
Monday, November 25, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12388-000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 8, 2002.

Correction

In notice document 02-29142 beginning on page 69523 in the issue of Monday, November 18, 2002, make the following correction:

On page 69523, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C2-29142 Filed 11-22-02; 8:45 am]
BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AH05

List of Approved Spent Fuel Storage Casks: VSC-24 Revision

Correction

In rule document 02-29485 beginning on page 69987 in the issue of Wednesday, November 20, 2002 make the following correction:

On page 69987, in the first column, under **DATES**, in the second line "February 3, 2002" should read, "February 3, 2003".

[FR Doc. C2-29485 Filed 11-22-02; 8:45 am]
BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NE-31-AD; Amendment 39-12950; AD 2002-23-06]

RIN 2120-AA64

Airworthiness Directive; Textron Lycoming AEIO-540, IO-540, LTIO-540, O-540, and TIO-540 Series Reciprocating Engines

Correction

In rule document 02-29003 beginning on page 68932 in the issue of Thursday, November 14, 2002, make the following correction:

§39.13 [Corrected]

On page 68933, in the third column, in § 39.13, after amendatory instruction 2., the item directly beneath should appear as follows: "**• 2002-23-06 Textron Lycoming:**".

[FR Doc. C2-29003 Filed 11-22-02; 8:45 am]
BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No: 02-ACE-11]

Amendment to Class E Airspace; Ulysses, KS

Correction

In rule document 02-28831 beginning on page 68757 in the issue of Wednesday, November 13, 2002, make the following correction:

§71.1 [Corrected]

On page 68758, in the second column, in §71.1, under the heading **ACE KS E5 Ulysses, KS [Revised]**, in the first paragraph, in the first line, "upward toward" should read, "upward".

[FR Doc. C2-28831 Filed 11-22-02; 8:45 am]
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Federal Register

Monday,
November 25, 2002

Part II

Environmental Protection Agency

40 CFR Part 62

Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–7408–1]

RIN 2060–AJ28

Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 1, 2000, EPA adopted emission guidelines for existing commercial and industrial solid waste incineration (CISWI) units. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing CISWI units subject to the emission guidelines to submit plans to EPA that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. State plans are due from States with CISWI units subject to the emission guidelines on December 1, 2001. If a State or Tribe with existing CISWI units does not submit an approvable plan, sections 111(d) and 129 of the CAA require EPA to develop, implement, and enforce a Federal plan for CISWI units located in that State or Tribal area within 2 years after promulgation of the emission guidelines (December 1, 2002). This action proposes a Federal plan to implement emission guidelines for CISWI units located in States and Indian country without effective State or Tribal plans. On the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to CISWI units covered by the State or Tribal plan.

DATES: *Comments.* Comments on the proposed CISWI Federal plan must be received on or before January 24, 2003.

Public hearing. The EPA will hold a public hearing if requests to speak are received by December 10, 2002. For additional information on the public hearing and requesting to speak, see the Supplementary Information section of this preamble. If requested, the hearing would take place on December 30, 2002 and would begin at 10 a.m.

ADDRESSES: *Comments.* Submit written comments (in duplicate, if possible) to the following address: Air and Radiation Docket and Information Center (MC–6102T) , U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, Attention Docket No. A–2000–52. The EPA requests that a separate copy also be sent to the contact person listed below. For additional information on the docket and electronic availability, see Supplementary Information.

Public hearing. If timely requests to speak at a public hearing are received, a public hearing will be held at EPA's New RTP Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC. Were one to be held, a hearing would be held in the auditorium of the main facility.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this proposal, contact Mr. David Painter at (919) 541–5515, Program Implementation and Review Group, Information Transfer and Program Integration Division (E143–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, email: painter.david@epa.gov. For technical information, contact Mr. Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (C439–01), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, email: porter.fred@epa.gov. For information regarding implementation of this proposed rule, contact the appropriate Regional Office (table 1) as shown in Supplementary Information.

SUPPLEMENTARY INFORMATION: *Comment Information.* Comments may be submitted electronically via electronic mail (e-mail) or on disk. Electronic comments on this proposed rule may be filed via e-mail at most Federal Depository Libraries. E-mail submittals should be sent to: "*A-and-R-Docket@epa.gov*". Electronic comments must be submitted as an American Standard Code for Information Interchange (ASCII) file avoiding the use of special characters or encryption. Comments and data will also be accepted on disks or as an e-mail attachment in WordPerfect or Corel "wpd" file format, Microsoft Word format, or ASCII file format. All comments and data for this proposed rule, whether in paper form or electronic forms such as through e-mail or on diskette, must be identified by docket number A–2000–52.

Persons wishing to submit proprietary information for consideration must clearly distinguish such information from other comments by clearly labeling it "Confidential Business Information" (CBI). To ensure that proprietary information is not inadvertently placed in the docket, submit CBI directly to the following address, and not the public docket: Mr. Roberto Morales, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality is made with the submission, the submission may be made available to the public without further notice. No confidential business information should be submitted through e-mail.

Public hearing information. Persons wishing to speak at a public hearing should notify Ms. Christine Adams at (919) 541–5590. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

Related information. Electronic versions of this notice, the proposed regulatory text, and other background information are available at the World Wide Web site that EPA has established for CISWI units. The address is *http://www.epa.gov/ttn/atw/129/ciwi/ciwipg.html*. The CISWI website references other websites for closely related rules, such as large and small municipal waste combustors (MWC), hazardous waste, and hospital/medical/infectious waste incinerators (HMIWI). The large MWC and HMIWI sites contain the respective State plan guidance documents.

Docket. Docket numbers A–2000–52 and A–94–63 contain the supporting information for this proposed rule and the supporting information for EPA's promulgation of emission guidelines for existing CISWI units, respectively. Docket A–2000–52 incorporates all of the information in Docket A–94–63. The dockets are organized and complete files of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The dockets are available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, at the OAR Docket in the EPA Docket Center (EPA/DC), 1301 Constitution Avenue, NW., Washington, DC 20460, or by calling (202) 566–1744. The docket is located in Room B102, (basement of EPA West Building). The fax number for the Center is (202) 566–1749 and the E-mail address is *http://www.epa.gov/edocket*. A reasonable fee may be charged for copying.

Regulated entities. The proposed Federal plan would affect the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes:

Category	NAICS Code	SIC Code	Examples of potentially regulated entities
Any industry using a solid waste incinerator as defined in the regulations.	325	28	Manufacturers of chemicals and allied products.
	325	34	Manufacturers of electronic equipment.
	421	36	Manufacturers of wholesale trade, durable goods.
	321, 337	24, 25	Manufacturers of lumber and wood furniture.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA expects to be regulated by this proposed rule. This table lists examples of the types of entities that could be affected by this proposed rule. Other types of entities not listed could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, carefully examine the applicability criteria in 40 CFR 62.14510 through 62.14530 of subpart III. If you have any questions regarding the applicability of this action to your solid waste incineration unit, refer to the **FOR FURTHER INFORMATION CONTACT** section.

EPA Regional Office Contacts. Table 1 lists EPA Regional Offices that can answer questions regarding implementation of this proposed rule.

TABLE 1.—EPA REGIONAL CONTACTS FOR CISWI

Region	Contact	Phone/Fax	States and Protectorates
I	EPA New England Director, Air Compliance Program, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023.	617–918–1650, 617–918–1505 (fax).	CT, ME, MA, NH, RI, VT
II	U.S. EPA—Region 2, Air Compliance Branch, 290 Broadway, New York, New York 10007.	212–637–4080, 212–637–3998 (fax).	NJ, NY, Puerto Rico, Virgin Islands
III	U.S. EPA—Region 3, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029.	215–814–3438, 215–814–2134 (fax).	DE, DC, MD, PA, VA, WV
IV	U.S. EPA—Region 4, Air and Radiation, Technology Branch, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303–3104.	404–562–9105, 404–562–9095 (fax).	AL, FL, GA, KY, MS, NC, SC, TN
V	U.S. EPA—Region 5, Air Enforcement and Compliance Assurance Branch, (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604–3590.	312–353–2211, 312–886–8289 (fax).	IL, IN, MN, OH, WI
VI	U.S. EPA—Region 6, Chief, Toxics Enforcement, Section (6EN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733.	214–665–7224, 214–665–7446 (fax).	AR, LA, NM, OK, TX
VII	U.S. EPA—Region 7, 901 N. 5th Street, Kansas City, KS 66101	913–551–7020, 913–551–7844 (fax).	IA, KS, MO, NE
VIII	U.S. EPA—Region 8, Air Program Technical Unit, (Mail Code 8P–AR), 999 18th Street Suite 500, Denver, CO 80202.	303–312–6007, 303–312–6064 (fax).	CO, MT, ND, SD, UT, WY
IX	U.S. EPA—Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	415–744–1219, 415–744–1076 (fax).	AZ, CA, HI, NV, American Samoa, Guam
X	U.S. EPA—Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	(206) 553–4273, (206) 553–0110 (fax).	

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background Information
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C. Mechanisms for Transferring Authority
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VII. Title V Operating Permits
VIII. Administrative Requirements
A. Docket
B. Public Hearing
C. Executive Order 12866: Regulatory Planning and Review
D. Executive Order 13132: Federalism
E. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
G. Executive Order 13211: Energy Effects
H. Unfunded Mandates Reform Act

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I. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA)
J. Paperwork Reduction Act
K. National Technology Transfer and Advancement Act

I. Background Information

A. What Is the Regulatory Development Background for This Proposed Rule?

Section 129 of the CAA requires EPA to develop emission guidelines for existing "solid waste incineration units combusting commercial or industrial waste." The EPA refers to these units as "commercial and industrial solid waste incineration" (CISWI) units. The EPA proposed emission guidelines for CISWI units on November 30, 1999 and promulgated them on December 1, 2000 (65 FR 75338) (to be codified at 40 CFR part 60, subpart DDDD). In writing Section 129 of the Clean Air Act, Congress looked first to the States as the preferred implementers of emission guidelines for existing CISWI units. To make these emission guidelines enforceable, States with existing CISWI units must have submitted to EPA within one year following promulgation of the emission guidelines (by December 1, 2001) State plans that implement and enforce the emission guidelines. For States or Tribes that do not have an EPA-approved and effective plan, EPA must develop and implement a Federal plan within two years following promulgation of the emission guidelines (by December 1, 2002). The EPA sees the Federal plan as an interim measure to ensure that Congressionally mandated emission standards are implemented until States assume their role as the preferred implementers of the emissions guidelines. Thus, the EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plans or to simply take delegation to directly implement and enforce the guidelines. States without any existing CISWI units are required to submit to the Administrator a letter of negative declaration certifying that there are no CISWI units in the State. No plan is required for States that do not have any CISWI units.

As discussed in section VI.E of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover CISWI units in Indian country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no CISWI units are located in the Tribal area. No plan is required for Tribes that do not have any CISWI units. CISWI units located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to the Federal plan until a State or Tribal plan has been approved and becomes effective covering those CISWI units.

Today's action proposes a Federal plan for CISWI units that are not covered by an approved State or Tribal plan as of December 1, 2002. Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan to cover existing CISWI units located in States that do not have an approved plan within two years after promulgation of the emission guidelines (by December 1, 2002 for CISWI units). The EPA is proposing this Federal plan now so that a promulgated Federal plan will be in place at the earliest possible date, thus ensuring timely implementation and enforcement of the CISWI emission guidelines. In addition, EPA's timing allows a State or Tribe the opportunity to take delegation of the Federal plan in lieu of writing a State plan.

B. What Impact Does the U.S. Appeals Court Remand and EPA's Granting of a Request for Reconsideration Have on This Federal Plan?

Subsequent to EPA's promulgation of the final rule establishing the NSPS and EG for CISWI units, two events occurred that potentially could result in substantive changes to these standards. First, in August 2001 EPA granted a request for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, submitted on behalf of the National Wildlife Federation and the Louisiana Environmental Action Network, related to the definition of "commercial and industrial solid waste incineration unit" in EPA's CISWI rulemaking. In granting this petition for reconsideration, EPA agreed to undertake further notice and comment proceedings related to this definition. Second, on January 30, 2001, the Sierra Club filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging EPA's final CISWI rule. On Sept. 6, 2001, the Court entered an order granting EPA's motion for a voluntary remand of the CISWI rule without vacature. EPA's request for a voluntary remand of the final CISWI rule was intended to allow the Agency to address concerns related to the Agency's procedures for establishing MACT floors for CISWI units in light of the D.C. Circuit Court's decision in *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d 855 (D.C. Cir. 2001).

Neither EPA's granting of the petition for reconsideration, nor the Court's order granting a voluntary remand, stay, vacate or otherwise influence the effectiveness of the currently existing CISWI regulations. Specifically, section 307(d)(7)(B) of the Act provides that "reconsideration shall not postpone the effectiveness of the rule," except that "[t]he effectiveness of the rule may be stayed during such reconsideration * * * by the Administrator or the court for a period not to exceed three months." In this case, neither EPA nor the court stayed the effectiveness of the final CISWI regulations in connection with the reconsideration petition. Likewise, the D.C. Circuit granted EPA's motion for a remand without vacature, therefore, the Court's remand order had no impact on the effectiveness of the current CISWI regulations. Because the existing CISWI regulations remain in full effect, EPA's obligation under section 129(b)(3) of the Act to promulgate a Federal Plan (to implement those regulations for existing units that are not covered by an approved and effective State plan) remains unchanged.[1] Therefore, EPA is complying with its statutory obligations by issuing today's proposed Federal Plan for CISWI units.

To the extent that EPA might take action in the future that results in changes in the underlying CISWI rule—in response to the petition for reconsideration or in response to the voluntary remand—EPA will simultaneously amend this Federal Plan to reflect any such changes. If such changes become necessary, interested parties, including States and sources, will have the opportunity to provide comments, and EPA will reasonably accommodate the concerns of commenters as appropriate.

II. Affected Facilities

A. What Is a CISWI Unit?

A CISWI unit means any combustion device that combusts commercial and industrial waste, as defined in proposed 40 CFR part 62, subpart III. Commercial and industrial waste, as defined in proposed subpart III, is solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility. Fifteen types of combustion units, which are listed in § 62.14525 of subpart III are

[1] Similarly, the obligations of States and sources are unaffected by the reconsideration petition and the remand.

conditionally exempt from the Federal plan.

B. Does the Federal Plan Apply to Me?

The proposed Federal plan will apply to you if you are the owner or operator of a combustion device that combusts commercial and industrial waste (as defined in subpart III) and the device is not covered by an approved and effective State or Tribal plan as of December 1, 2002. The proposed Federal plan covers your CISWI unit until EPA approves a State or Tribal plan that covers your CISWI unit and that plan becomes effective.

If you began the construction of your CISWI unit on or before November 30, 1999, it is considered an existing CISWI unit and could be subject to the Federal plan. If you began the construction of your CISWI unit after November 30, 1999, it is considered a new CISWI unit and is subject to the NSPS. If you began reconstruction or modification of your CISWI unit prior to June 1, 2001, it is considered an existing CISWI unit and could be subject to the Federal plan. Likewise, if you began reconstruction or modification of your CISWI unit on or after June 1, 2001, it is considered a new CISWI unit and is subject to the NSPS.

Your CISWI unit would be subject to this Federal plan if on the effective date of the Federal plan, EPA has not approved a State or Tribal Plan that covers your unit, or the EPA-approved State or Tribal plan has not become effective. The specific applicability of this plan is described in §§ 62.14510 through 62.14530 of subpart III.

Once an approved State or Tribal plan is in effect, the Federal plan will no longer apply to a CISWI unit covered by such plan. An approved State or Tribal plan is a plan developed by a State or Tribe that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart DDDD. The State or Tribal plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval of the plan.

The EPA's promulgation of a CISWI Federal plan will not preclude States or Tribes from submitting a plan. If a State or Tribe submits a plan after promulgation of the CISWI Federal plan final rule, EPA will review and approve or disapprove the State or Tribal plan. If EPA approves a plan, then the Federal plan would no longer apply to CISWI units covered by the State or Tribal plan as of the effective date of the State or Tribal plan. (See the discussion in "State or Tribe Submits A Plan After CISWI Units Located in the Area Are Subject to the Federal Plan" in section VI.C of this preamble.) If a CISWI unit were overlooked by a State or Tribe and the State or Tribe submitted a negative declaration letter, or if an individual CISWI unit were not covered by an approved and effective State or Tribal plan, the CISWI unit would be subject to this Federal plan.

C. How Do I Determine If My CISWI Unit Is Covered by an Approved and Effective State or Tribal Plan?

Part 62 of Title 40 of the Code of Federal Regulations identifies the approval and promulgation of section 111(d) and section 129 State or Tribal plans for designated facilities in each State or area of Indian Country. However, part 62 is updated only once per year. Thus, if part 62 does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office (Table 1) to determine if approval occurred since publication of the most recent version of part 62.

III. Elements of the CISWI Federal Plan

Because EPA is proposing a Federal plan to cover CISWI units located in States and areas of Indian Country where plans are not in effect, EPA has elected to include in this proposal the same elements as are required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of CISWI units, (3) emissions inventory, (4) emission limitations, (5) compliance schedules, (6) waste management plan, (7) testing, monitoring, inspection, reporting, and recordkeeping, (8) operator training and qualification, (9) public hearing, and (10) progress reporting. *See* 40 CFR part 60 subparts B and C and sections 111 and 129 of the CAA. Each plan element is described below as it relates to this proposed CISWI Federal plan. Table 2 lists each element and identifies where it is located or codified.

TABLE 2.—ELEMENTS OF THE CISWI FEDERAL PLAN

Element of the CISWI Federal plan	Location
Legal authority and enforcement mechanism.	Sections 129(b)(3) 111(d), 301(a), and 301(d)(4) of the CAA
Inventory of Affected MWC Units.	Docket A–2000–52
Inventory of Emissions.	Docket A–2000–52
Emission Limits.	40 CFR 62.14630–62.14645
Compliance Schedules.	40 CFR 62.14535–62.14575
Operator Training and Qualification.	40 CFR 62.14595–62.14625
Waste Management Plan.	40 CFR 62.14580–62.14590
Record of Public Hearings.	Docket A–2000–52
Testing, Monitoring, Recordkeeping, and Reporting.	40 CFR 62.14670–62.14760
Progress Reports.	Section III.J of this preamble

A. Legal Authority and Enforcement Mechanism

1. EPA's Legal Authority in States

Section 301(a) of the CAA provides EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct EPA to develop a Federal plan for States that do not submit approvable State plans. Sections 111 and 129 of the CAA provide EPA with the authority to implement and enforce the Federal plan in cases where the State fails to submit a satisfactory State plan. Section 129(b)(3) requires EPA to develop, implement, and enforce a Federal plan within 2 years after the date the relevant emission guidelines are promulgated (by December 1, 2002 for CISWI units). Compliance with the emission guidelines cannot be later than 5 years after the relevant emission guidelines are promulgated (by December 1, 2005 for CISWI units).

2. EPA's Legal Authority in Indian Country

Section 301 provides EPA with the authority to administer Federal programs in Indian country. *See* sections 301 (a) and (d). Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or administratively not feasible. See section VI.E of this preamble for a more detailed discussion of EPA's authority to administer the CISWI Federal plan in Indian country.

The EPA is proposing this Federal regulation under the legal authority of

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the CAA to implement the emission guidelines in those States and areas of Indian country not covered by an approved plan. As discussed in section VI of this document, implementation and enforcement of the Federal plan may be delegated to eligible Tribal, State, or local agencies when requested by a State, eligible Tribal, or local agency, and when EPA determines that such delegation is appropriate.

B. Inventory of Affected CISWI Units

The proposed Federal plan includes an inventory of CISWI units affected by the emission guidelines. (See 40 CFR 60.25(a).) Docket number A–2000–52 contains an inventory of the CISWI units that may potentially be covered by this proposed Federal plan in the absence of State or Tribal plans. This inventory contains 99 CISWI units in 30 States and one protectorate. It is based on information collected from State and Federal databases, information collection request survey responses, and stakeholder meetings during the development of the CISWI emission guidelines. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this Federal plan may include, but are not limited to, the CISWI units listed in the inventory memorandum in docket number A–2000–52. Any CISWI unit that meets the applicability criteria in the Federal plan rule is subject to the Federal plan, regardless of whether it is listed in the inventory. States, Tribes, or individuals are invited to identify additional sources for inclusion to the list during the comment period for this proposal.

C. Inventory of Emissions

The proposed Federal plan includes an emissions estimate for CISWI units subject to the emission guidelines. (See 40 CFR 60.25(a).) The pollutants to be inventoried are dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), oxides of nitrogen (NO_X), carbon monoxide (CO), and sulfur dioxide (SO_2). For this proposal, EPA has estimated the emissions from each known CISWI unit that potentially may be covered by the Federal plan for the nine pollutants regulated by the Federal plan.

The emissions inventory is based on available information about the CISWI units, emission factors, and typical emission rates developed for calculating nationwide air impacts of the CISWI emission guidelines and the Federal plan. Refer to the inventory memorandum in docket number A–2000–52 for the complete emissions inventory and details on the emissions calculations.

D. Emission Limitations

The proposed Federal plan includes emission limitations. (See 40 CFR 60.24(a).) Section 129(b)(2) of the CAA requires these emission limitations to be "at least as protective as" those in the emission guidelines. The emission limitations in this proposed CISWI Federal plan are the same as those contained in the emission guidelines. (See table 2 of subpart III.) Section IV of this preamble discusses the emission limitations and operating limits. Table 3 of subpart III contains operating limits for wet scrubbers.

E. Compliance Schedules

Increments of progress are required for CISWI units that need more than 1 year from State plan approval to comply, or in the case of the Federal plan, more than 1 year after promulgation of the final Federal plan. (See 40 CFR 60.24(e)(1).) Increments of progress are included to ensure that each CISWI unit needing more time to comply is making progress toward meeting the emission limits.

For CISWI units that need more than 1 year to comply, the proposed CISWI Federal plan includes in its compliance schedule two increments of progress from 40 CFR 60.21(h), as allowed by 40 CFR 60.24(e)(1) and required by 40 CFR part 60, subpart DDDD (§ 60.2575). The Federal plan includes defined and enforceable dates for completion of each increment. These increments of progress are (1) submit final control plan, and (2) achieve final compliance. The proposed increments of progress are described in section IV.E of this preamble.

F. Waste Management Plan Requirements

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. The waste management plan must be submitted no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**. Sections 62.14580 through 62.14590 of subpart III contain the waste management plan requirements.

G. Testing, Monitoring, Recordkeeping, and Reporting

The proposed Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. (See 40 CFR 60.25.) Testing, monitoring, recordkeeping, and reporting requirements are consistent with subpart DDDD, and assure initial and ongoing compliance.

H. Operator Training and Qualification Requirements

The owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. Sections 62.14595 through 62.14625 of the proposed subpart III contain the operator training and qualification requirements.

I. Record of Public Hearings

The proposed Federal plan provides opportunity for public participation in adopting the plan. (See 40 CFR 60.23(c).) If requested to do so, EPA will hold a public hearing in Research Triangle Park, NC. A record of the public hearing, if any, will appear in Docket A–2000–52. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information submitted during the public comment period will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

J. Progress Reports

Under the Federal plan, the EPA Regional Offices will prepare annual progress reports to show progress of CISWI units in the Region toward implementation of the emission guidelines. (See 40 CFR 60.25(e).) States or Tribes that have been delegated the authority to implement and enforce this Federal plan would also be required to submit annual progress reports to the appropriate EPA Regional Office.

Appendix D of 40 CFR part 60 requires reporting of emissions data to the Aerometric Emissions Information Retrieval System (AIRS)/AIRS Facility Subsystem(AFS). These reports can be combined with the State implementation plan report required by 40 CFR 51.321 in order to avoid double reporting. Under the proposed Federal plan, EPA Regional Offices would report AIRS emissions data. If a State or Tribe has been delegated the authority to implement and enforce the Federal plan, the State or Tribe would report emissions data to AIRS.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emission information; and (6) copies of technical reports on any performance testing and monitoring.

IV. Summary of CISWI Federal Plan

A. What Emission Limitations Must I Meet?

As the owner or operator of an existing CISWI unit, you will be required to meet the emission limitations specified in Table 1. See section IV.E of this preamble for a discussion of the compliance schedule.

TABLE 1.—EMISSION LIMITATIONS FOR EXISTING CISWI UNITS

For these pollutants	You must meet these emission limitations [a]	And determine compliance using these methods [b]
Cadmium	0.004 mg/dscm	EPA Method 29
Carbon Monoxide	157 ppm	EPA Methods 10, 10A, or 10B
Dioxins/Furans, toxic equivalent (TEQ) basis.	0.41 ng/dscm	EPA Method 23
Hydrogen Chloride	62 ppm by dry volume	EPA Method 26A
Lead	0.04 mg/dscm	EPA Method 29
Mercury	0.47 mg/dscm	EPA Method 29
Opacity	10 percent	EPA Method 9
Oxides of Nitrogen	388 ppm by dry volume	EPA Method 7, 7A, 7C, 7D, or 7E
Particulate Matter	70 mg/dscm	EPA Method 5 or 29
Sulfur Dioxide	20 ppm by dry volume	EPA Method 6 or 6c

[a] All emission limitations (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] These methods are in 40 CFR part 60, appendix A.

B. What Operating Limits Must I Meet?

If you are using a wet scrubber to comply with the emission limitations, you will be required to establish the maximum and minimum site-specific operating limits indicated in Table 2. You will be required to operate the CISWI unit and wet scrubber so that the operating parameters do not deviate from the established operating limits.

TABLE 2.—OPERATING LIMITS FOR EXISTING CISWI UNITS USING WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor continuously using these recording times
Charge rate	Maximum charge rate	Every hour
Pressure drop across the wet scrubber, or amperage to the wet scrubber.	Minimum pressure drop or amperage	Every 15 minutes
Scrubber liquor flow rate	Minimum flow rate	Every 15 minutes
For these operating parameters.	You must establish these operating limits.	And monitor continuously using these recording times
Scrubber liquor pH	Minimum pH	Every 15 minutes

NOTE: Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a daily basis.

If you are using an air pollution control device other than a wet scrubber to comply with the emission limitations, you will be required to petition the Administrator for other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The required components of the petition are described in § 62.14640 of subpart III.

If you are using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, you must operate the fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

C. What Are the Requirements for Air Curtain Incinerators?

The Federal plan will establish opacity limitations for air curtain CISWI units burning 100 percent wood wastes and/or clean lumber. This opacity limitation will be 10 percent, except 35 percent opacity will be allowed during start-up periods that are within the first 30 minutes of operation.

D. What Are the Testing, Monitoring, Inspection, Recordkeeping, and Reporting Requirements?

The owner or operator of a CISWI unit subject to the CISWI Federal plan will be required to conduct initial performance tests for cadmium, dioxins/furans, hydrogen chloride, lead, mercury, opacity, particulate matter, and sulfur dioxide and establish operating limits (i.e., maximum or minimum values for operating parameters). The initial performance test must be conducted within 180 days after the date the facility is required to achieve final compliance.

The owner or operator will be required to conduct annual performance tests for particulate matter, hydrogen chloride, and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limitations for 3 consecutive years.)

To assure ongoing achievement of the Federal plan's provisions, an owner or operator using a wet scrubber to comply with the emission limitations will continuously monitor the following

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operating parameters: charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH. If something other than a wet scrubber is used to comply with the emission limitations, the owner or operator will be required to monitor other operating parameters, as approved by the Administrator.

If the owner or operator is using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, the owner or operator must install and continuously operate a bag leak detection system. The owner or operator must keep records of periods when the alarm sounds and calculate whether these periods are more than 5 percent of the operating time for each 6-month period. The owner or operator will be required to submit information documenting compliance with these requirements as part of an annual report; and report deviations semi-annually.

In addition, the Federal plan will require CISWI unit owners and operators to maintain for 5 years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, and operator training and qualification. The owner or operator will submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters in annual reports.

E. What Is the Compliance Schedule?

Each CISWI unit will be required to either: (1) Reach final compliance by the date 1 year after publication of the final rule in the **Federal Register**, or (2) meet increments of progress and reach final compliance by the date 2 years after publication of the final rule in the **Federal Register**. In addition, the owner or operator must comply with the operator training and qualification requirements and inspection requirements by the date 1 year after publication of the final rule in the **Federal Register**, regardless of when the CISWI unit reaches final compliance.

Each owner or operator that takes more than 1 year to reach final compliance must submit a final control plan (increment 1) by the date 6 months after publication of the final rule for this Federal plan in the **Federal Register** and reach final compliance (increment 2) by the date 2 years after publication of the final rule in the **Federal Register**. To ensure timely progress towards implementation of the Federal plan, the proposed rules include a requirement for owners or operators of CISWI units seeking to take an additional year to reach final compliance to submit a request to the Administrator that documents the need for an extension.

To meet the increment 1 requirement, the owner or operator of each CISWI unit must submit a final control plan that includes five items: (1) A description of the air pollution control devices and/or process changes that will be employed so that each CISWI unit complies with the emission limits and other requirements, (2) a list of the types of waste burned, (3) the maximum design waste burning capacity, (4) the anticipated maximum charge rate, and, (5) if applicable, the petition for site-specific operating limits. A final control plan is not required for units that will be shut down, but those units must close by 1 year after the final rule is published or must submit a closure agreement by 6 months after the final rule is published, close no later than 2 years after the rule is published, and meet other requirements as described in section V.A. of this preamble.

To meet the second increment of progress, the owner or operator of each CISWI unit must incorporate all process changes or complete retrofit construction in accordance with the final control plan. The owner or operator must connect the air pollution control equipment or process changes such that when the CISWI unit is brought on line all necessary process changes or air pollution control equipment will operate as designed.

F. How Did EPA Determine the Compliance Schedule?

The EPA determined the compliance schedule based on the requirements of 40 CFR part 60, subpart B and the feasibility of owners or operators to retrofit combustion units with air pollution control devices. CISWI units must comply within 1 year after publication of the final Federal plan or meet increments of progress. The requirement to reach final compliance within 1 year is consistent with 40 CFR 60.24(c) of subpart B. Subpart B requires final compliance to be "as expeditiously as practicable* * *" and requires increments of progress if the compliance schedule is longer than 1 year.

The EPA believes that many CISWI units can reach final compliance within 1 year after promulgation of the Federal plan based on their similarity to HMIWI units. In addition to the 1 year after promulgation of the Federal plan, units could use the time between this proposed rule and promulgation of the final Federal plan to plan and begin retrofits.

The proposed compliance schedule for CISWI units is similar to the compliance schedule for HMIWI units. Most CISWI units are similar in size to HMIWI units. In addition, CISWI units would require similar controls to meet the CISWI Federal plan emission limits as HMIWI units would need to meet the HMIWI Federal plan emission limits. To determine the compliance schedule for HMIWI units, EPA conducted case studies of eight HMIWI units that completed retrofits of the types of controls needed to meet the HMIWI Federal plan (64 FR 36430, July 6, 1999). Based on these case studies (Docket No. A–98–24, II–A–1), EPA found that many HMIWI units can meet the requirements of the Federal plan within 1 year. Similarly, many CISWI units could meet a 1-year schedule.

We expect that some CISWI units could need more than 1 year to comply, as did some HMIWI units, due to site-specific circumstances. For units that cannot comply within 1 year, the proposed Federal plan establishes increments of progress, as required by subpart B. The proposed date for the first increment of progress, submittal of a final control plan, is 6 months after publication of the final Federal plan in the **Federal Register**. The proposed date for the second increment of progress, final compliance, is 2 years after publication of the final Federal plan in the **Federal Register**. These increments are derived from the findings of the case studies performed to characterize the retrofit of control systems for hospital medical and infectious waste (HMIWI) incinerators (Docket A–98–24, Item II–A–1). The size and design of CISWI are similar to the smaller HMIWI that were the subjects of the case studies. In particular, most units are small and controls will be ordered "off-the-shelf" as assembled packages. Thus, the Agency did not see a need for increments to address details of on-site construction and installation of control systems. Also, CISWI sites are not thought to have the problems with space and access that were concerns for HMIWI retrofits. In addition, CISWI units have the time between publication of this proposed rule and publication of the final rule in the **Federal Register** to begin developing the final control plan and to initiate retrofit activities.

The proposed rules do not include increments of progress for air curtain incinerators (ACI). Air curtain incinerators must comply with the requirements of the Federal plan one year after the date of promulgation of the final rule. Delaying implementation for ACI would not be appropriate because there will be little or no need for the installation of control equipment on these units(Primarily because control equipment is typically infeasible for ACI). Compliance with the opacity limits applicable to this class of units would primarily be achieved by good operation and maintenance practices. This approach is consistent with the proposed requirement for completion of CISWI operator training by the date one year after promulgation of the final rule.

V. CISWI That Have or Will Shut Down

A. Units That Plan To Close Rather Than Comply

If you plan to permanently close your currently operating CISWI unit, you must do one of the following: (a) close by the date 1 year after publication of the final rule for this Federal plan in the **Federal Register**, or (b) submit a legally binding closure agreement, including the date of closure, to the Administrator by the date 6 months after publication of the final rule in the **Federal Register**. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than the final compliance date of the CISWI Federal plan (2 years after publication of the final rule in the **Federal Register**). If you close your CISWI unit after the date 1 year after publication of the final rule in the **Federal Register**, but before the date 2 years after publication of the final rule in the **Federal Register**, then you must comply with the operator training and qualification requirements by the date 1 year after publication of the final rule in the **Federal Register**. In addition, while still in operation, you are subject to the same requirements for title V operating permits that apply to units that will not shut down.

B. Inoperable Units

In cases where a CISWI unit has already shut down, has been rendered inoperable, and does not intend to restart, the CISWI unit may be left off the source inventory in a State, Tribal, or this Federal plan. A CISWI unit that has been rendered inoperable would not be covered by the Federal plan. The CISWI owner or operator may do the following to render a CISWI unit inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

C. CISWI Units That Have Shut Down

CISWI units that are known to have already shut down (but are not known to be inoperable) will be included in the source inventory and identified in any State or Tribal plan submitted to EPA.

1. Restarting Before The Final Compliance Date

If the owner or operator of an inactive CISWI unit plans to restart before the final compliance date, the owner or operator must submit a control plan for the CISWI unit and meet the applicable compliance schedule. Final compliance is required for all pollutants and all CISWI units no later than the final compliance date. (See section IV.E for the discussion on compliance schedules and increments of progress.)

2. Restarting After The Final Compliance Date

Under this proposed Federal plan, a control plan would not be needed for inactive CISWI units that restart after the final compliance date. However, before restarting, such CISWI units would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications. Performance testing to demonstrate compliance would be required within 180 days after restarting. There would be no need to show that the increments of progress have been met since these steps would have occurred before restart while the CISWI unit was shut down and not generating emissions. A CISWI unit that operates out of compliance after the final compliance date would be in violation of the Federal plan and subject to enforcement action.

VI. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates CISWI units in a State or Tribal area that does not have an EPA-approved plan currently in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. *See* section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and Tribes may submit approvable plans after promulgation of the CISWI Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

The EPA also believes that Indian Tribes should be the primary parties responsible for regulating air quality within Indian country, if they desire to do so. See EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 2001 memorandum ("EPA Indian Policy," signed by Christine Todd Whitman, Administrator of EPA, dated July 11,2001).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. *See generally* "Good Practices Manual for Delegation of NSPS and NESHAP" (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State (see section IV.E.1 of this preamble). The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement

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between the State or Tribe and EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, EPA will retain and will not transfer authority to a State or Tribe to approve the following items:

(1) Alternative site-specific operating parameters established by facilities using CISWI controls other than a wet scrubber (§ 62.14640 of subpart III),

(2) Alternative methods of demonstrating compliance,

(3) Alternative requirements that could change the stringency of the underlying standard, which are likely to be nationally significant, or which may require a national rulemaking and subsequent **Federal Register** notice. The following authorities may not be delegated to the State, Tribal or local agencies: Approval of alternative non-opacity emission standards, approval of alternative opacity standard, approval of major alternatives to test methods, approval of major alternatives to monitoring, and waiver of recordkeeping and reporting; and

(4) Petitions to the Administrator to add a chemical recovery unit to § 62.14525(n) of subpart III.

CISWI owners or operators who wish to establish alternative operating parameters or alternative methods of demonstrating compliance should submit a request to the Regional Office Administrator with a copy to the appropriate State or Tribe.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

1. Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan

After CISWI units in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or Tribal plan is as protective as the emission guidelines, EPA will approve the State or Tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the CISWI units covered in the State or Tribal plan would remain subject to the Federal plan until a State or Tribal plan covering those CISWI units is approved and effective.

Upon the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to CISWI units covered by such a plan, and the State or Tribal agency would implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State or Tribe Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or eligible Tribal agencies the authority to implement this Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on EPA's behalf, the administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. If a State requests delegation, EPA will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, CISWI inspections, and preparation of draft notices of violation.

The EPA also believes that it is the best use of resources for Tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule issued on February 12, 1998 (63 FR 7254) provides Tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to Tribal governments, it leaves to the discretion of the Tribe whether to develop these programs and which elements of the program they will adopt. Consistent with the approach of the Tribal Authority Rule, EPA may choose to delegate a partial Federal plan (i.e., to delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where consistent with Tribal law.

Both States and Tribal agencies, that have taken delegation, as well as EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions. However, EPA recognizes that Tribes have limited criminal enforcement authority, and EPA will address in the delegation agreement with the Tribe how criminal enforcement issues are referred to EPA.

D. Implementing Authority

The EPA will delegate authority within the Agency to the EPA Regional Administrators to implement the CISWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator. Table 1 under Supplementary Information lists the names and addresses of the EPA Regional Office contacts and the States that they cover.

E. CISWI Federal Plan and Indian Country

The term "Indian country," as used in this preamble, means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The CISWI Federal plan would apply throughout Indian country to ensure that there is not a regulatory gap for existing CISWI units in Indian country. However, eligible Indian tribes now have the authority under the CAA to develop Tribal plans in the same manner that States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the CAA for which it is appropriate to treat Tribes in the same manner as States. See 63 FR 7254 (Final Rule for Indian Tribes: Air Quality Planning and Management, (Tribal Authority Rule)) (codified at 40 CFR part 49). As of March 16, 1998, the effective date of the Tribal Authority Rule, EPA has had authority under the CAA to approve Tribal programs such as Tribal plans to implement and enforce the CISWI emission guidelines.

1. Tribal Implementation

Section 301(d) of the CAA authorizes the Administrator to treat an Indian tribe as a State under certain circumstances. The Tribal Authority Rule, which implements section 301(d) of the CAA, identifies provisions of the CAA for which it is appropriate to treat a Tribe as a State. (See 40 CFR 49.3 and 49.4.) Under the Tribal Authority Rule, a Tribe may be treated as a State for purposes of this Federal plan. If a Tribe meets the criteria below, EPA can delegate to an Indian tribe authority to implement the Federal plan in the same way it can delegate authority to a State:

(1) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(2) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(4) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations. (*See* 40 CFR 49.6.)

2. EPA Implementation

The CAA also provides EPA with the authority to administer Federal programs in Indian country. This authority is based in part on the general purpose of the CAA, which is national in scope. Section 301(a) of the CAA provides EPA broad authority to issue regulations that are necessary to carry out the functions of the CAA. Congress intended for EPA to have the authority to operate a Federal program when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the CAA.

Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA to achieve the appropriate purpose where Tribal implementation is not appropriate or administratively not feasible. The EPA's interpretation of its authority to directly implement Clean Air Act programs in Indian country is discussed in more detail in the Tribal Authority Rule. *See* 63 FR at 7262–7263. As mentioned previously, Tribes may, but are not required to, submit a CISWI plan under section 111(d) of the CAA.

3. Applicability in Indian Country

The Federal plan would apply throughout Indian country except where an EPA-approved plan already covers an area of Indian country. This approach is consistent with EPA's implementation of the Federal Operating Permits program in Indian country (*see* 64 FR 8247 (February 19, 1999)).

VII. Title V Operating Permits

Except for the sources specified in section 62.14830 of this proposed rule, sources subject to this CISWI Federal plan must obtain title V operating permits. These title V operating permits must assure compliance with all applicable requirements for these sources, including all applicable requirements of this Federal plan. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Owners or operators of section 129 sources (including CISWI units) subject to standards or regulations under sections 111 and 129 must operate pursuant to a title V permit not later than 36 months after promulgation of emission guidelines under sections 111 and 129 or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located, whichever is later. The EPA has interpreted section 129(e) to be consistent with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). (See, *e.g.*, the final Federal Plan for Hospital/Medical/Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49878)). Section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete permit application, even if the source has not yet received a final title V operating permit from the permitting authority.[2] As a result, EPA interprets the dates in section 129(e) to be the dates by which complete title V applications need to be submitted. In the absence of such an interpretation, a section 129 source may be required to prepare and submit a complete title V application and the permitting authority would have to issue a permit to this source in a very short period of time.[3]

As a result of EPA's interpretation, existing CISWI units must submit complete title V applications by the later of the following dates: Not later than 36 months after the promulgation of 40 CFR part 60, subpart DDDD or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located. As of today's proposal, all areas of the country are covered by effective title V programs. As a result, the relevant section 129(e) date for existing CISWI units is 36 months following promulgation of 40 CFR part 60, subpart DDDD, i.e., December 1, 2003. Therefore, December 1, 2003 is the latest possible date by which complete applications for existing CISWI units can be submitted and still be considered timely. This date applies regardless of when the CISWI Federal plan becomes effective or when an EPA approved section 111(d)/129 plan for existing CISWI units becomes effective. If, however, an earlier application deadline applies to an existing CISWI unit, then this deadline must be met in order for the unit to be in compliance with section 502(a) of the CAA. To determine when an application is due for an existing CISWI unit, section 129(e) of the CAA must be read in conjunction with section 503(c) of the CAA.

As stated in section 503(c), a source has up to 12 months to apply for a title V permit once it becomes subject to a title V permitting program.[4] For example, if an existing CISWI unit

[2] A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* 40 CFR 62.14835(b) and 40 CFR 70.5(a)(2) and 71.5(a)(2).

[3] For example, in the absence of such an interpretation, if a final Federal plan were to become effective more than 24 months after the promulgation of emission guidelines promulgated under sections 111 and 129, a source, if subject to the Federal plan, would have less than 12 months to prepare and submit a complete title V permit application and to have the permit issued. EPA's interpretation allows section 129(e) to be read consistently with section 503(d) of the Act and 40 CFR 70.7(b) and 71.7(b). EPA's interpretation is also consistent with section 503(c) of the Act which requires sources to submit title V applications not later than 12 months after becoming subject to a title V permits programs. If a permit as opposed to a title V application were required by the later of the two deadlines specified in section 129(e), some section 129 sources would be required to have been *issued final title V permits* in potentially much less time than allotted for non-section 129 sources to *submit their title V applications*.

[4] If a source is subject to title V for more than one reason, the 12-month time frame for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. As provided in section 503(c) of the CAA, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

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becomes subject to a title V permitting program for the first time on the effective date of this Federal plan, then the source must apply for a title V permit within 12 months of the effective date of this Federal plan in order to operate after this date in compliance with Federal law.

An application deadline earlier than either of the two dates noted above, *i.e.*, December 1, 2003 or not later than 12 months after the effective date of this Federal plan, may apply to an existing CISWI unit if it is subject to title V for more than one reason. For example, an existing CISWI unit may already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the CAA. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and 40 CFR 70.2 and 71.2 (defining major source for purposes of title V). *See also* 40 CFR 70.3(a) and (b) and 71.3(a) and (b) for a list of the applicability criteria which trigger the requirement to apply for a title V permit.

If an owner or operator is already subject to title V by virtue of some requirement other than this Federal plan and has submitted a timely and complete permit application, but the draft title V permit has not yet been released by the permitting authority, then the owner or operator must supplement his title V application by including the applicable requirements of this Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b). If an existing CISWI unit is a major source or is part of a major source, is subject to this Federal plan, and is already covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan, then the owner or operator will receive from his permitting authority a notice of intent to reopen his source's title V permit to include the requirements of this Federal plan. Reopenings required for such CISWI units must be completed not later than 18 months after the effective date of this Federal plan in accordance with the procedures established in 40 CFR 70.7(f)(1)(i) or 71.7(f)(1)(i). If an existing CISWI unit subject to this Federal plan does not meet the above criteria, *e.g.*, the unit is part of a nonmajor source or is covered by a permit which has a remaining term of less than 3 years on the effective date of this Federal plan, then the permitting authority does not need to reopen the source's permit, as a matter of Federal law, to include the requirements of this Federal plan.[5] However, the owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

The EPA has recently become aware that there has been some confusion regarding the Title V obligations of section 129 sources that are subject to standards or regulations under sections 111 and 129. We are therefore including the following chart to help clarify when CISWI units (even those not subject to this Federal plan) must apply for a title V permit. While the following chart provides specific information relative to CISWI units, the same title V obligations apply to all section 129 sources subject to standards or regulations under sections 111 and 129. Of course, specific deadlines will vary for other section 129 sources depending on when the relevant NSPS is promulgated, when the relevant State or Tribal section 111(d)/129 plan is approved by EPA and becomes effective, etc. Lastly, the following table takes into account that as of the promulgation date, *i.e.*, December 1, 2000, for the NSPS (subpart CCCC of part 60) and emission guidelines (subpart DDDD of part 60) for CISWI units, every area of the country was covered by a title V permits program under 40 CFR part 70 or part 71. This point is relevant because a section 111/129 standard cannot trigger the requirement for a source to apply for a title V permit unless a title V permits program is in effect in the area in which the source is located.

Title V Permit Application Deadlines

If a CISWI unit is a major source or is part of a major source, and had commenced operation as of the effective date of the relevant title V permits program,	Then a complete title V application which covers the entire source[6] is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the relevant title V permits program. *See* CAA section 503(c) and 40 CFR 70.4(b)(11)(i), 71.4(i)(1), 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a major source or is part of a major source, but did not commence operation until after the relevant title V permits program became effective,	Then a complete title V application which covers the entire source is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).

[5] *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). Owners or operators of CISWI units, which have been permitted and are subject to this Federal plan, may wish to consult their operating permits program regulations or permitting authorities to determine whether their permits must be reopened to incorporate the requirements of this Federal plan.

If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and had commenced operation as of December 1, 2000,	Then a complete title V application[7] is due not later than 12 months after subpart CCCC was promulgated, *i.e.*, December 1, 2001 (or earlier if required by the title V permitting authority). *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but did not commence operation until after December 1, 2000,	Then a complete title V application[7] is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan,	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the EPA approved State or Tribal section 111(d)/129 plan.[8] *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.
If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to the CISWI Federal plan (subpart III of 40 CFR part 62),	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of 40 CFR part 62, subpart III. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.
If a CISWI unit is required to obtain a title V permit due to triggering more than one of the applicability criteria listed above or in 40 CFR 70.3(a) or 71.3(a),	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the unit triggers the criterion which first caused the unit to be subject to title V. *See* CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b) and 71.5(a)(1). In no event, however, can an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.

Reopening Title V Permits

If a CISWI unit is a major source or is part of a major source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and is covered by a title V permit with a remaining permit term of 3 or more years on December 1, 2000,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of 40 CFR part 60, subpart CCCC not later than June 1, 2002. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
If a CISWI unit is a major source or is part of a major source, is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, and is covered by a title V permit with a remaining term of 3 or more years on the effective date of the EPA approved section 111(d)/129 plan,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of this EPA approved and effective section 111(d)/129 plan not later than 18 months after the effective date of this plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
If a CISWI unit is a major source or is part of a major source, is subject to the CISWI Federal plan (supbart III of 40 CFR part 62), and is covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of subpart III of 40 CFR part 62 not later than 18 months after the effective date of the CISWI Federal plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).

Updating Existing Title V Permit Applications

If a CISWI unit is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but first became subject to title V permitting prior to the promulgation of this NSPS, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,	Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 60, subpart CCCC in accordance with 40 CFR 70.5(b) or 71.5(b).
If a CISWI unit is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, but first became subject to title V permitting prior to the effective date of the section 111(d)/129 plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,	Then the owner or operator must supplement the title V application by including the applicable requirements of the approved and effective section 111(d)/129 plan in accordance with 40 CFR 70.5(b) or 71.5(b).

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If a CISWI unit is subject to the CISWI Federal plan (subpart III of 40 CFR part 62), but first became subject to title V permitting prior to the effective date of this Federal plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,	Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 62, subpart III in accordance with 40 CFR 70.5(b) or 71.5(b).

[6] A title V application from a major source must address all emissions units at the title V source, not just the section 129 emissions unit. *See* 40 CFR 70.3(c)(1) and 71.3(c)(1). (For information on aggregating emissions units to determine what is a source under title V, see the definition of *major source* in 40 CFR 70.2, 71.2, and 63.2.)

[7] Consistent with 40 CFR 70.3(c)(2) and 71.3(c)(2), a permit application from a nonmajor title V source is only required to address the emissions units which caused the source to be subject to title V. The requirements which trigger the need for the owner or operator of a nonmajor source to apply for a title V permit are found in 40 CFR 70.3(a) and (b) and 71.3(a) and (b). Permits issued to these nonmajor sources must include *all* of the applicable requirements that apply to the triggering units, *e.g.*, State Implementation Plan requirements, not just the requirements which caused the source to be subject to title V. *See* footnote #2 in *Change to Definition of Major Source* rule, November 27, 2001 (66 FR 59161, 59163).

[8] If a CISWI unit becomes subject to an approved and effective State or Tribal section 111(d)/129 plan after being subject to an effective Federal plan, the CISWI unit is still required to file a complete title V application consistent with the application deadlines for units subject to the CISWI Federal plan.

Title V and Delegation of a Federal Plan

During the development of the Federal plan for Hospital/Medical/Infectious Waste Incinerators (HMIWI), a State agency raised the question of whether a title V operating permits program could be used as a mechanism for transferring the authority to implement and enforce section 111/129 requirements from EPA to State and local agencies. *See* "Transfer of Authority" section of final Federal plan for HMIWI, August 15, 2000 (65 FR 49868, 49873). The State agency noted that the proposal for that rulemaking described two mechanisms for transferring authority to State and local agencies following promulgation of the Federal plan. Those two mechanisms were: (1) The approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement and enforce the HMIWI Federal plan. The State asked EPA to recognize the Title V operating permits program as a third mechanism for transferring authority to State and local agencies. The commenter said that State and local agencies implement Title V programs and that Title V permits must include the requirements of the Federal plan. The commenter concluded that Title V permitting authorities already have implementation responsibility for the Federal plan through their Title V permits programs, regardless of whether the authority to implement the Federal plan is delegated to the State or local agency.

In its response to the State, the EPA explained why the issuance of a Title V permit is not equivalent to the approval of a State plan or delegation of a Federal plan by focusing on situations in which a Title V permitting authority without delegation of a Federal plan could not implement and enforce section 111/129 requirements. This situation would arise any time a Title V permit was not in effect for a source subject to the section 111/129 Federal plan or where the permit did not contain the applicable section 111/129 requirements. For example, a title V source may be allowed to operate without a title V permit for a number of years in some cases between the time the source first triggers the requirement to apply for a permit and the issuance of the permit. The preamble to the final HMIWI Federal plan also noted that a source with a Title V permit with a permit term less than 3 years is not required by part 70 to have its permit reopened by a State or Tribe to include new applicable requirements such as the HMIWI standard.[9] *See* 40 CFR 70.7(f)(1)(i).

In addition to the explanation provided in the preamble to the final HMIWI Federal plan, there are additional State implementation and enforcement gaps which would not be addressed by implementing and enforcing the section 111/129 standard through a Title V permit. The following is an example of such a gap: Title V permits are not permanent. With two exceptions, all permits must be renewed at least every 5 years [10]. Although 40 CFR 70.4(b)(10) requires States to provide that a permit or the terms and conditions of a permit may not expire until the permit is renewed, this requirement only applies if a timely and complete application for a renewal permit has been submitted by the source, creating a potential gap. In contrast to the example, the two mechanisms that EPA has identified for transferring authority ensure that a State or Tribe can implement and enforce the section 111/129 standards at all times.

Legally, delegation of a standard or requirement results in a delegated State or Tribe standing in for EPA as a matter of Federal law. This means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a State (except for functions that the EPA retains for itself) upon delegation.[11] Although a State or Tribe may have the authority to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in these permits without first taking delegation of the section 111/129 Federal plan, the State or Tribe is not standing in for EPA as a matter of Federal law in this situation. Where a State or Tribe does not take delegation of a section 111/129 Federal plan, obligations that a source has to EPA under the Federal plan continue after a title V permit is issued to the source. As a result, the EPA continues to maintain that an approved part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the Federal plan from the EPA to a State or Tribe.

As mentioned above, a State or Tribe may have the authority under State or Tribal law to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in that context without first taking delegation of the section 111/129 Federal plan.[12] Some States or Tribes, however, may not be able to implement and enforce a section 111/129 standard in a title V permit until the section 111/129 standard has been delegated. In these situations, a State or Tribe should not issue a part 70 permit to a source subject to a Federal plan before taking delegation of the section 111/129 Federal plan.

If a State or Tribe can provide an Attorney General's (AG's) opinion delineating its authority to incorporate section 111/129 requirements into its Title V permits, and then implement and enforce these requirements through its Title V permits without first taking delegation of the requirements, then a State or Tribe does not need to take delegation of the section 111/129 requirements for purposes of title V permitting.[13] In practical terms, without approval of a State or Tribal plan, delegation of a Federal plan, or an adequate AG's opinion, States and Tribes with approved part 70 permitting programs open themselves up to potential questions regarding their authority to issue permits containing section 111/129 requirements, and to assure compliance with these requirements. Such questions could lead to the issuance of a notice of deficiency for a State's or Tribe's part 70 program. As a result, prior to a State or Tribal permitting authority drafting a part 70 permit for a source subject to a section 111/129 Federal plan, the State or Tribe, EPA Regional Office, and source in question are advised to ensure that delegation of the relevant Federal plan has taken place or that the permitting authority has provided to the EPA Regional Office an adequate AG's opinion.

In addition, if a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, a section 111/129 source subject to the Federal plan in that State must simultaneously submit to both EPA and the State or Tribe all reports required by the standard to be submitted to the EPA. Given that these reports are necessary to implement and enforce the section 111/129 requirements when they have been included in title V permits, the permitting authority needs to receive these reports at the same time as the EPA.

In the situation where a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, EPA Regional Offices will be responsible for implementing and enforcing section 111/129 requirements outside of any title V permits. Moreover, in this situation, EPA Regional Offices will continue to be responsible for developing progress reports, entering emissions data into the Aerometric Information Retrieval System (AIRS)/AIRS Facility Subsystem (AFS), and conducting any other administrative functions required under this Federal plan or any other section 111/129 Federal plan. See Section III.J. of this preamble titled "Progress Reports'; section II.J. of the proposed Federal plan for HMIWI, July 6, 1999 (64 FR 36426, 36431); 40 CFR 60.25(e), and Appendix D of 40 CFR part 60.

It is important to note that the EPA is not using its authority under 40 CFR 70.4(i)(3) to request that all States and Tribes which do not take delegation of this Federal plan submit supplemental AG's opinions at this time. However, the EPA Regional Offices shall request, and permitting authorities shall provide, such opinions when the EPA questions a State's or Tribe's authority to incorporate section 111/129 requirements into a title V permit, and implement and enforce these requirements in that context without delegation.

Lastly, the EPA would like to correct and clarify the following sentences from the "Transfer of Authority" section of the preamble to the final HMIWI Federal plan (65 FR 49868, 49873): "Prior to delegation, only the EPA will have enforcement authority. In neither instance does the title V permit status of a source affect the enforcement responsibility of EPA and the State or Tribal permitting authorities." In situations where a State or Tribe is subject to a section 111/129 Federal plan and does not take delegation of the Federal plan, the following applies: Prior to delegation, only EPA can implement and enforce section 111/129 requirements outside of a title V permit. Whenever there is a title V permit in effect which includes section 111/129 requirements, however, EPA and the State or Tribe have dual authority to implement and enforce the section 111/129 requirements in the title V permit. When a State or Tribe has not taken delegation of a section 111/129 Federal plan, the previous sentence is relevant only in situations where a State or Tribe has the authority to incorporate section 111/129 requirements into title V permits, and to implement and enforce these requirements in title V permits without delegation.

VIII. Administrative Requirements

This section addresses the following administrative requirements: Docket, Public Hearing, Executive Orders 12866, 13132, 13175, 13045, and 13211, Unfunded Mandates Reform Act, Regulatory Flexibility Act, Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act, Paperwork Reduction Act, and the National Technology Transfer and Advancement Act. Since today's rule simply proposes to implement the CISWI emission guidelines (40 CFR part 60, subpart DDDD) as promulgated on December 1, 2000, and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements as discussed in the preamble to the rule promulgating the emission guidelines (65 FR 75338, December 1, 2000).

A. Docket

The docket is intended to be an organized and complete file of the administrative records compiled by EPA. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with proposed and promulgated standards and their preambles, the contents of the docket (with limited exceptions) will serve as the record in the case of judicial review. See section 307(d)(7)(A) of the CAA.

As discussed above, a docket has been prepared for this action pursuant to the procedural requirements of section 307(d) of the CAA, 42 U.S.C. 7607(d). Supporting information is included in Docket A–2000–52. Docket number A–94–63 contains the technical support for the final emission guidelines, 40 CFR part 60, subpart DDDD. Docket A–2000–52 incorporates all of the information in Docket A–94–63.

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations on the proposed standards should contact EPA (*see* **ADDRESSES**). If a public hearing is requested and held, EPA will ask clarifying questions during the oral

[9] An owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

[10] Under 40 CFR 70.4(b)(3)(iv), permitting authorities are allowed to issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years, provided that the permits are reviewed at least every 5 years. Permits with acid rain provisions must be issued for a fixed term of five years; shorter terms for such permits are not allowed.

[11] If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, *e.g.*, alternative methods of demonstrating compliance.

[12] The EPA interprets the phrase "assure compliance" in section 502(b)(5)(A) to mean that permitting authorities will implement and enforce each applicable standard, regulation, or requirement which must be included in the title V permits the permitting authorities issue. *See* definition of "applicable requirement" in 40 CFR 70.2. *See also* 40 CFR 70.4(b)(3)(i) and 70.6(a)(1).

[13] It is important to note that an AG's opinion submitted at the time of initial title V program approval is sufficient if it demonstrates that a State or Tribe has adequate authority to incorporate section 111/129 requirements into its title V permits, and to implement and enforce these requirements through its title V permits without delegation.

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presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement on or before January 24, 2003. Written statements should be addressed to the Air and Radiation Docket and Information Center (*see* **ADDRESSES**), and refer to Docket No. A–2000–52. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center (*see* **ADDRESSES**).

C. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA considered the 2000 emission guidelines to be significant and the rules were reviewed by OMB in 2000. *See* 65 FR 75338, December 1, 2000. The Federal plan promulgated today would simply implement the 2000 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 2000 emission guidelines. Therefore, this regulatory action is considered "not significant" under Executive Order 12866.

D. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule establishes emission limits and other requirements for solid waste incineration units that are not covered by an EPA-approved and effective State or Tribal plan. The EPA is required by section 129 of the CAA, 42 U.S.C. 7429, to establish the standards for such units. This regulation primarily affects private industry and does not impose significant economic costs on State or local governments. The standards established by this rule apply to facilities that operate commercial or industrial solid waste incineration units located in States that do not have EPA-approved plans covering such units by the effective date of the promulgated Federal plan (and the owners or operators of such facilities). The regulation does not include an express provision preempting State or local regulations. However, once this Federal plan is in effect, covered facilities would be subject to the standards established by this rule, regardless of any less protective State or local regulations that contain emission limitations for the pollutants addressed by this rule. To the extent that this might preempt State or local regulations, it does not significantly affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule; and EPA has complied with the requirements of section 4(e), to the extent that they may be applicable to the regulations, by providing notice to potentially affected State and local officials through publication of this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the CISWI emission guidelines. This consultation took place during the Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Act committee meetings, where members representing State and local governments participated in developing recommendations for our combustion-related rulemakings, including the CISWI emission guidelines. Additionally, EPA sponsored the Small Communities Outreach Project, which involved meetings with elected officials and other government representative to provide them with information about the CISWI emission guidelines and to solicit their comments. The concerns raised by representative of State and local governments were considered during the development of the CISWI emission guidelines.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

The EPA knows of no CISWI units presently owned by Indian tribal governments. However, if any exist now or in the future, the rule would not have tribal implications on these tribal governments as defined by the Executive Order. This Federal plan simply implements the 2000 emission guidelines. It does not result in any additional control requirements nor imposes any additional costs above those previously considered during promulgation of the 2000 emission guidelines. Thus, the requirements of Executive Order 13175 do not apply.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, (2) concerns an environmental health or safety risk that EPA has reason to believe may disproportionately affect children. If the regulatory action meets these criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, this proposed rule is not economically significant as defined by Executive Order 12866.

G. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 F.R. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, thereby enabling officials of affected small governments to have meaningful and timely input in the development of the regulatory proposal with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The environmental impact analysis for the emission guidelines estimates the total national annualized cost impact of this regulatory action at $11.6 million per year (Docket A–94–63). This proposed Federal plan will apply to only a subset of the units considered in the environmental impacts analysis for the emission guidelines. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. Additionally, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because commercial and industrial units are not likely to be owned by small governments.

I. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires Federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has less than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The SBA guidelines define a small business based on number of employees or annual revenues and the size standards vary from industry to industry. Generally, businesses covered by the North American Industrial Classification System (NAICS) codes affected by this rule are considered small if they have less than 500 employees or less than $5 million in annual sales.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

During the 2000 CISWI emission guidelines rulemaking, EPA determined that based on the low number of affected small entities in each individual market, the alternative method of waste disposal available, and the relatively low control cost, the CISWI emission guidelines should not generate a significant small business impact on a substantial number of small entities in the commercial and industrial sectors. The EPA determined that it was not necessary to prepare a regulatory flexibility analysis in connection with the final emission guidelines. The EPA has also determined that the final emission guidelines would not have a significant economic impact on a substantial number of small entities (65 FR 75348). This Federal plan would not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA has determined that this proposed Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

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J. Paperwork Reduction Act

The information collection requirements have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared for the emission guidelines (ICR No. 1927.02 for subpart DDDD) and copies may be obtained from Susan Auby by mail at U.S. Environmental Protection Agency, Office of Environmental Information; Collection Strategies Division (2822T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. Copies may also be downloaded from the internet at *http://www.epa.gov/icr*.

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on December 1, 2000. The burden estimate includes the burden associated with State or Tribal plans as well as the burden associated with the proposed Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by EPA, a State or Tribal plan becomes Federally enforceable. Therefore, it is important to estimate the full burden associated with the State or Tribal plans and the Federal plan. As State or Tribal plans are approved, the Federal plan burden will decrease, but the overall burden of the State or Tribal plans and the Federal plan will remain the same.

The Federal plan contains monitoring, reporting, and recordkeeping requirements. The information will be used to ensure that the Federal plan requirements are met on a continuous basis. Records and reports will be necessary to enable us to identify waste incineration units that may not be in compliance with the Federal plan requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected. The records that owners and operators of existing CISWI units maintain will indicate to EPA whether personnel are operating and maintaining control equipment property.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Total hours	Labor costs	Capital costs	O&M costs	Total costs
Industry	9,145	$407,067	0	0	$407,067
Implementing agency	1,817	$48,386	0	0	$48,386

The EPA expects the Federal plan to affect a maximum of 116 units over the first 3 years. (Note: This assumes that no State plans are in effect.) The EPA assumes that 6 existing units will be replaced by 6 new units each year. There are no capital, start-up, or operation and maintenance costs for existing units during the first 3 years. The implementing agency would not incur any capital or start-up costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this proposed rule and for the emissions guidelines which it implements is 2060–0451. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272) directs EPA to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed Federal plan involves technical standards. The EPA proposes in this plan to use EPA Methods 1, 3A, 3B, 5, 6, 6C, 7, 7A, 7C, 7D, 7E, 9, 10, 10A, 10B, 23, 26A, and 29. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 7A, 7D, 9, and 10B. The search and review results have been documented and are placed in the Docket No. A–2000–52 for this proposed plan.

This search for emission measurement procedures identified 24 voluntary consensus standards. The EPA determined that 20 of these 24 standards were impractical alternatives to EPA test methods for the purposes of this proposed Federal plan. Therefore, EPA does not propose to adopt these standards today. The reasons for this determination for the 20 methods are discussed below.

The standard, ASTM D3162 (1994) "Standard Test Method for Carbon Monoxide in the Atmosphere (Continuous Measurement by Nondispersive Infrared Spectrometry)," is impractical as an alternative to EPA Method 10 in this proposed Federal plan because this ASTM standard, which is stated to be applicable in the range of 0.5–100 ppm CO, does not cover the potential range in the plan (up to 157 ppm). Whereas EPA Method 10 has a range from 20–1000 ppm CO. Also, ASTM D3162 does not provide a procedure to remove carbon dioxide interference. Therefore, this ASTM standard is not appropriate for combustion source conditions. In terms of NDIR instrument performance specifications, ASTM D3162 has much higher maximum allowable rise and fall times (5 minutes) than EPA Method 10 (which has 30 seconds). However, it should be noted that ASTM D3162 has more quality control requirements than EPA Method 10 in terms of instrument calibration procedures, span gas cylinder validation procedures, and operational checks.

The standard ASTM E1979–98 (1998), "Standard Practice for Ultrasonic Extraction of Paint, Dust, Soil, and Air Samples for Subsequent Determination of Lead," is impractical as an alternative to EPA Method 29 in this proposed Federal plan. This ASTM standard does not require the use of hydrogen fluoride (HF) as in EPA Method 29 and, therefore, it cannot be used for the preparation, digestion, and analysis of Method 29 samples. Additionally, Method 29 requires the use of a glass fiber filter, whereas this ASTM standard requires cellulose filters and other probable nonglass fiber media which cannot be considered equivalent to EPA Method 29.

The European standard EN 1911–1,2,3 (1998), "Stationary Source Emissions—Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text," is impractical as an alternative to EPA Method 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Method 26A uses an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

The following ten methods are impractical alternatives to EPA test methods for the purposes of this plan because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–91 (1995), "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1 and 3B; ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration," for EPA Method 3A; ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Method 3A; CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Method 3A; ASME C00031 or PTC 19–10–1981—Part 10, "Flue and Exhaust Gas Analyses," for EPA Methods 6 and 7; ASTM D1608–98, "Test Method for Oxides of Nitrogen in Gaseous Combustion Products (Phenol-Disulfonic Acid Procedures)," for EPA Method 7; ISO 7934:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Hydrogen Peroxide/Barium Perchlorate/Thorin Method," for EPA Method 6; ISO 11564:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Nitrogen Oxides—NEDA (naphthylethylenediamine)/Photometric Method," for EPA Methods 7 and 7C; CAN/CSA Z223.21–M1978, "Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry," for EPA Methods 10 and 10A; and European Committee for Standardization (CEN) EN 1948–3 (1997), "Determination of the Mass Concentration of PCDD'S/PCDF'S—Part 3: Identification and Quantification," for EPA Method 23.

The following seven methods are impractical alternatives to EPA test methods for the purposes of this Federal plan because they lacked sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASME PTC–38–80 R85 or C00049, "Determination of the Concentration of Particulate Matter in Gas Streams," for EPA Method 5; ASTM D3685/D3685M–98, "Test Methods for Sampling and Determination of Particulate Matter in Stack Gases," for EPA Method 5; ISO 9096:1992, "Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method," for EPA Method 5; CAN/CSA Z223.1–M1977, "Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams," for EPA Method 5; ISO 11632:1998, "Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Ion Chromatography," for EPA Method 6; CAN/CSA Z223.24–M1983, "Method for the Measurement of Nitric Oxide and Nitrogen Dioxide in Air," for EPA Method 7; and CAN/CSA Z223.26–M1987, "Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method," for EPA Method 29.

The following four of the 24 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed plan because they are under development by a voluntary consensus body: ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; ASTM Z6449Z, "Standard Method for the Determination of Sulfur Dioxide in Stationary Sources," for EPA Method 6; ASTM Z6590Z, "Manual Method for Both Speciated and Elemental Mercury," for EPA Method 29 (portion for mercury only); prEN 13211 (1998), "Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury," for EPA Method 29 (portion for mercury only). While EPA is not proposing to include these four voluntary consensus standards in today's proposed plan, the EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements proposed in this Federal plan and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this plan should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

Table 1 of proposed Subpart III lists the EPA testing methods included in the emission Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators. Under 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal.

Dated: November 6, 2002.

Christine Todd Whitman,

Administrator.

40 CFR part 62 is proposed to be amended as follows:

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PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Amend § 62.13 by adding paragraph (d) to read as follows:

§ 62.13 Federal plans.

* * * * *

(d) The substantive requirements of the Commercial and industrial solid waste incineration units Federal plan are contained in subpart III of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

3. Amend part 62 by adding subpart III to read as follows:

Subpart III—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction on or Before November 30, 1999

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62.14505 What are the principal components of this subpart?

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Introduction

§ 62.14500 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units that are not covered by an EPA approved and currently effective State or Tribal plan. The pollutants addressed by these emission requirements are listed in Table 1 of this subpart. These emission requirements are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, *you* means the owner or operator of a CISWI unit.

§ 62.14505 What are the principal components of this subpart?

This subpart contains the eleven major components listed in paragraphs (a) through (k) of this section.

(a) Increments of progress toward compliance.
(b) Waste management plan.
(c) Operator training and qualification.
(d) Emission limitations and operating limits.
(e) Performance testing.
(f) Initial compliance requirements.
(g) Continuous compliance requirements.
(h) Monitoring.
(i) Recordkeeping and reporting.
(j) Definitions.
(k) Tables.

Applicability

§ 62.14510 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a commercial and industrial solid waste incinerator (CISWI) unit as defined in § 62.14840 and the CISWI unit meets the criteria described in paragraphs (a)(1) through (a)(3) of this section.

(1) Construction of your CISWI unit commenced on or before November 30, 1999.

(2) Your CISWI unit is not exempt under § 62.14525.

(3) Your CISWI unit is not regulated by an EPA approved and currently effective State or Tribal plan, or your CISWI unit is located in any State whose approved State or Tribal plan is subsequently vacated in whole or in part.

(b) If you made changes after June 1, 2001 that meet the definition of modification or reconstruction after promulgation of the final 40 CFR part 60, subpart CCCC (New Source Performance Standards for Commercial and Industrial Solid Waste Incineration Units), your CISWI unit is subject to subpart CCCC of 40 CFR part 60 and this subpart no longer applies to that unit.

(c) If you make physical or operational changes to your existing CISWI unit primarily to comply with this subpart, then such changes do not qualify as modifications or reconstructions under subpart CCCC of 40 CFR part 60.

§ 62.14515 Can my CISWI unit be covered by both a State plan and this subpart?

(a) If your CISWI unit is located in a State that does not have an EPA-approved State plan or your State's plan has not become effective, this subpart applies to your CISWI unit until EPA approves a State plan that covers your CISWI unit and that State plan becomes effective. However, a State may enforce the requirements of a State regulation while your CISWI unit is still subject to this subpart.

(b) After the EPA approves a State plan covering your CISWI unit, and after that State plan becomes effective, you will no longer be subject to this subpart and will only be subject to the approved and effective State plan.

§ 62.14520 How do I determine if my CISWI unit is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of State and Tribal areas with approved Clean Air Act section 111(d) and section 129 plans along with the effective dates for such plans. The list is published annually. If this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if EPA has approved a State plan covering your unit since publication of the most recent version of this subpart.

§ 62.14521 If my CISWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart are not limited to the inventory of sources listed in Docket A–2000–52 for the Federal plan. If your CISWI units meets the applicability criteria in § 62.14510, this subpart applies to you whether or not your unit is listed in the Federal plan inventory in the docket.

§ 62.14525 Can my combustion unit be exempt from this subpart?

This subpart exempts fifteen types of units described in paragraphs (a) through (o) of this section except for the requirements specified in this section and in § 62.14531.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(c) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in paragraphs (c)(1) or (2) of this section.

(1) Units that are regulated under subpart Ea of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors); subpart Eb of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994); subpart Cb of 40 CFR part 60 (Emission Guidelines and Compliance Times for Large Municipal Waste Combustors Constructed on or Before September 20, 1994); subpart AAAA of 40 CFR part 60 (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units); or subpart BBBB of 40 CFR part 60 (Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units).

(2) Units that burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR part 60 subpart Ea, subpart Eb, subpart AAAA, and subpart BBBB, and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements

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in paragraphs (c)(2)(i) and (ii) of this section.

(i) Notify the Administrator that the unit meets these criteria.

(ii) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(d) *Medical waste incineration units.* Incineration units regulated under subpart Ec of 40 CFR part 60 (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996); 40 CFR part 60 subpart Ce (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators); and 40 CFR part 62 subpart HHH (Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996).

(e) *Small power production facilities.* Units that meet the three requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit meets all of these criteria.

(f) *Cogeneration facilities.* Units that meet the three requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit meets all of these criteria.

(g) *Hazardous waste combustion units.* Units regulated under subpart EEE of part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(h) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(i) *Air curtain incinerators.* Air curtain incinerators that burn 100 percent wood waste and clean lumber are only required to meet the requirements under "Air Curtain Incinerators That Burn 100 Percent Wood Wastes and Clean Lumber" (§§ 62.14765 through 62.14825) and the title V operating permit requirements (§§ 62.14830 and 62.14835).

(j) *Cyclonic barrel burners.*

(k) *Rack, part, and drum reclamation units.*

(l) *Cement kilns.*

(m) *Sewage sludge incinerators.* Incineration units regulated under subpart O of 40 CFR part 60 (Standards of Performance for Sewage Treatment Plants).

(n) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in paragraphs (n)(1) through (7) of this section are considered chemical recovery units.

(1) Units burning only pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

(o) *Laboratory units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

§ 62.14530 What if I have a chemical recovery unit that is not listed in § 62.14525(n)?

(a) If you have a recovery unit that is not listed in § 62.14525(n), you can petition the Administrator to add the unit to the list. The petition must contain the six items in paragraphs (a)(1) through (6) of this section.

(1) A description of the source of the materials being burned.

(2) A description of the composition of the materials being burned, highlighting the chemical constituents in these materials that are recovered.

(3) A description (including a process flow diagram) of the process in which the materials are burned, highlighting the type, design, and operation of the equipment used in this process.

(4) A description (including a process flow diagram) of the chemical constituent recovery process, highlighting the type, design, and operation of the equipment used in this process.

(5) A description of the commercial markets for the recovered chemical constituents and their use.

(6) The composition of the recovered chemical constituents and the composition of these chemical constituents as they are bought and sold in commercial markets.

(b) Until the Administrator approves the petition, the incineration unit is covered by this subpart.

(c) If a petition is approved, the Administrator will amend § 62.14525(n) to add the unit to the list of chemical recovery units.

§ 62.14531 When must I submit any records required pursuant to an exemption allowed under § 62.14525?

Owners or operators of sources that qualify for the exemptions in § 62.14525(a) through (o) must submit any records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in § 62.14525(a) through (o) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Any records required under § 62.14525(a) through (o) must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under § 62.14525(a) through (o) of this section must be maintained by the EPA or delegated enforcement authority for a period of at least 5 years. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

Compliance Schedule and Increments of Progress

§ 62.14535 When must I comply with this subpart if I plan to continue operation of my CISWI unit?

If you plan to continue operation of your CISWI unit, then you must follow the requirements in paragraph (a) or (b) of this section depending on when you plan to come into compliance with the requirements of this subpart.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements of paragraphs (a)(1) through (a)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must achieve final compliance by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. To achieve final compliance, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (a)(3) of this section.

(5) You must submit an initial report including the results of the initial performance test no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, but before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, you must petition for and be granted an extension of the final compliance date specified § 62.14535(a)(3) by meeting the requirements of § 62.14536 and you must meet the requirements for increments of progress specified in § 62.14540 through § 62.14565. To achieve the final compliance increment of progress, you must complete the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must achieve final compliance by the date two years after promulgation of the CISWI Federal plan in the **Federal Register**. For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (b)(3) of this section.

(5) You must submit an initial report including the result of the initial performance no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

§ 62.14536 What steps are required to request an extension of the initial compliance date if I plan to continue operation of my CISWI unit?

If you plan to continue operation and want to come into compliance with the requirements of this subpart after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, but before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, then you must petition to the Administrator to grant you an extension by following the procedures outlined in paragraphs (a) and (b) of this section.

(a) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) on or before the date two months after promulgation of the CISWI Federal plan in the **Federal Register**.

(b) Your request must include documentation of the analyses undertaken to support your need for an extension, including an explanation of why you are unable to meet the final compliance date specified in § 62.14535(a)(3) and why your requested extension date is needed to provide sufficient time for you to design, fabricate, and install the emissions control systems necessary to meet the requirements of this subpart. A request based upon the avoidance of costs of meeting provisions of this Subpart is not acceptable and will be denied.

§ 62.14540 When must I complete each increment of progress?

If you plan to come into compliance after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section.

(a) *Increment 1.* Submit a final control plan by the date 6 months after promulgation of the CISWI Federal plan in the **Federal Register**.

(b) *Increment 2.* Reach final compliance by the date 2 years after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14545 What must I include in each notification of achievement of an increment of progress?

Your notification of achievement of an increment of progress must include the four items specified in paragraphs (a) through (d) of this section.

(a) Notification of the date that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress.

(c) Signature of the owner or operator of the CISWI unit.

(d) The date you were required to complete the increment of progress.

§ 62.14550 When must I submit a notification of achievement of the first increment of progress?

Your notification for achieving the first increment of progress must be postmarked no later the date ten days after the date that is six months from the date of promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14555 What if I do not meet an increment of progress?

Failure to meet an increment of progress is a violation of the standards under this subpart. If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the due date for that increment of progress. You must inform the Administrator that you did not meet the increment, and you must continue to

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submit reports each subsequent calendar month until the increment of progress is met.

§ 62.14560 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section.

(a) Submit the final control plan that includes the six items described in paragraphs (a)(1) through (6) of this section.

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limitations and other requirements of this subpart.

(2) The type(s) of waste to be burned.

(3) The maximum design waste burning capacity.

(4) The anticipated maximum charge rate.

(5) If applicable, the petition for site-specific operating limits under § 62.14640.

(6) A schedule that includes the date by which you will award the contracts to procure emission control equipment or related materials, initiate on-site construction, initiate on-site installation of emission control equipment, and/or incorporate process changes, and the date by which you will initiate on-site construction.

(b) Maintain an onsite copy of the final control plan.

§ 62.14565 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

§ 62.14570 What must I do if I plan to permanently close my CISWI unit?

If you plan to permanently close your CISWI unit, then you must follow the requirements in either paragraph (a) or (b) of this section depending on when you plan to shut down.

(a) If you plan to shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, rather that come into compliance with the complete set of requirements in this subpart, then you must shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

(b) If you plan to shut down rather than come into compliance with the complete set of requirements of this subpart, but are unable to shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, then you must petition EPA for and be granted an extension by following the procedures outlined in paragraphs (b)(1) through (5) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by the date two months after promulgation of the CISWI Federal plan in the **Federal Register**. Your request must include:

(i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shut down while the date one year after promulgation of the CISWI Federal plan in the **Federal Register** does not provide sufficient time for shut down. A request based upon the avoidance of costs of meeting provisions of this Subpart is not acceptable and will be denied. Your documentation must include an evaluation of the option to transport your waste offsite to a commercial or municipal waste treatment and/or disposal facility on a temporary or permanent basis; and

(ii) Documentation of incremental steps of progress, including dates for completing the increments of progress, that you will take towards shutting down. Some suggested incremental steps of progress towards shut down are provided as follows:

If you . . .	then your increments of progress could be . . .
(A) Need an extension so you can install on onsite alternative waste treatment technology before you shut down your CISWI.	(*1*) Date when you will enter into a contract with an alternative treatment technology vendor, (*2*) Date for initiating onsite construction or installation of the alternative technology, (*3*) Date for completing onsite construction or installation of the alternative technology, and (*4*) Date for shutting down the CISWI.
(B) Need an extension so you can acquire the services of a commercial waste disposal company before you shut down your CISWI.	(*1*) Date when price quotes will be obtained from commercial disposal companies, (*2*) Date when you will enter into a contract with a commercial disposal company, and (*3*) Date for shutting down the CISWI.

(2) You must shut down no later than by the date two years after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(4) You must submit a legally binding closure agreement to the Administrator by the date six months after promulgation of the CISWI Federal plan in the **Federal Register**. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than the date 2 years after promulgation of the CISWI Federal plan in the **Federal Register**.

(5) You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

§ 62.14575 What must I do if I close my CISWI unit and then restart it?

If you temporarily close your CISWI unit and restart the unit for the purpose of continuing operation of your CISWI unit, then you must follow the requirements in paragraphs (a), (b), or (c) of this section depending on when you plan to come into compliance with the requirements of this subpart. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 at the time you restart your CISWI unit.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by the by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements of § 62.14535(a).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart on or before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements § 62.14535(b). You must have first requested and been granted an extension from the initial compliance date by following the requirements of § 62.14536.

(c) If you restart your CISWI unit after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** and resume operation, but have not previously requested an extension by meeting all of the requirements of § 62.14536, you must meet all of the requirements of § 62.14535(a)(1) through (a)(5) at the time you restart your CISWI unit. Upon restarting your CISWI unit, you must have incorporated all process changes and completed retrofit construction of control devices so that when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

Waste Management Plan

§ 62.14580 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 62.14585 When must I submit my waste management plan?

You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14590 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place; the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 62.14595 What are the operator training and qualification requirements?

(a) You must have a fully trained and qualified CISWI unit operator accessible at all times when the unit is in operation, either at your facility or able to be at your facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, you must follow the procedures in § 62.14625.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the thirteen subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (where applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to correct malfunctions or conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

(xii) Recordkeeping requirements.

(xiii) Methods to continuously monitor CISWI unit and air pollution control device operating parameters and monitoring equipment calibration procedures (where applicable).

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as reference material following completion of the course.

§ 62.14600 When must the operator training course be completed?

(a) The operator training course must be completed by the later of the two dates specified in paragraphs (a)(1) and (2) of this section.

(1) The date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

(b) You must follow the requirements in § 63.14625 if all qualified operators are temporarily not accessible.

§ 62.14605 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 62.14595(b) or (c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 62.14595(c)(2).

§ 62.14610 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course of at least 4 hours covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 62.14615 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 62.14610.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 62.14605(a).

§ 62.14620 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI unit operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You

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must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 62.14580 through 62.14590.

(9) Procedures for handling ash.

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each employee who operates your incinerator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the later of the two dates specified in paragraphs (b)(1)(i) through (ii) of this section.

(i) The date 1 year after publication of this final rule in the **Federal Register**.

(ii) Two months after being assigned to operate the CISWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted no later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of all plant personnel who operate your CISWI unit who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of all plant personnel who operate your CISWI unit who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 62.14625 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in § 62.14620(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 62.14730.

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 62.14595(a).

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

Emission Limitations and Operating Limits

§ 62.14630 What emission limitations must I meet and by when?

You must meet the emission limitations specified in Table 1 of this subpart by the applicable final compliance date for your CISWI unit.

§ 62.14635 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii), as appropriate.

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as 90 percent of the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90 percent of the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitation.

(b) You must meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier).

(c) If you use a fabric filter to comply with the emission limitations, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

§ 62.14640 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, or limit emissions in some other manner, to comply with the emission limitations under § 62.14630, you must petition the Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as additional operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 62.14645 What happens during periods of startup, shutdown, and malfunction?

(a) The emission limitations and operating limits apply at all times except during periods of CISWI unit startup, shutdown, or malfunction as defined in § 62.14840.

(b) Each malfunction must last no longer than three hours.

Performance Testing

§ 62.14650 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 62.14700(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of 40 CFR part 60, Appendix A must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of 40 CFR part 60, Appendix A must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of 40 CFR part 60, Appendix A must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{adj} = C_{meas}(20.9-7)/(20.9-\%O_2) \qquad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

(20.9–7) = 20.9 percent oxygen −7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (3) of this section.

(1) Measure the concentration of each dioxin/furan tetra- through octa-congener emitted using EPA Method 23.

(2) For each dioxin/furan congener measured in accordance with paragraph (g)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 of this subpart.

(3) Sum the products calculated in accordance with paragraph (g)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

§ 62.14655 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

Initial Compliance Requirements

§ 62.14660 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under 40 CFR 60.8, to determine compliance with the emission limitations in Table 1 of this subpart and to establish operating limits using the procedure in § 62.14635 or § 62.14640. The initial performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 62.14650.

§ 62.14665 By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 90 days after your final compliance date.

Continuous Compliance Requirements

§ 62.14670 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each CISWI unit as required under 40 CFR 60.8 to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 62.14650.

(b) You must continuously monitor the operating parameters specified in § 62.14635 or established under § 62.14640. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the

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established operating limits. Three-hour rolling average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 62.14640. Operating limits do not apply during performance tests.

(c) You must only burn the same types of waste used to establish operating limits during the performance test.

§ 62.14675 By what date must I conduct the annual performance test?

You must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 62.14680 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all performance tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no later than 36 months following the previous performance test.

(b) If your CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, you must conduct annual performance tests for that pollutant until all performance tests over a 3-year period show compliance.

§ 62.14685 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

Monitoring

§ 62.14690 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 62.14630, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 2 of this subpart at all times except as specified in § 62.14695(a).

(b) If you use a fabric filter to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using something other than a wet scrubber to comply with the emission limitations under § 62.14630, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 62.14640.

§ 62.14695 Is there a minimum amount of monitoring data I must obtain?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the CISWI unit is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Recordkeeping and Reporting

§ 62.14700 What records must I keep?

You must maintain the 13 items (as applicable) as specified in paragraphs (a) through (m) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (6) of this section:

(1) The CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 62.14640, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 62.14635(c).

(c) Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 2 of this subpart or a deviation from other operating limits established under § 62.14640 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI unit operators who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(i) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(j) Records of calibration of any monitoring devices as required under § 62.14690.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(l) The information listed in § 62.14620(a).

(m) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

§ 62.14705 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 62.14710 What reports must I submit?

See Table 4 of this subpart for a summary of the reporting requirements.

§ 62.14715 When must I submit my waste management plan?

You must submit the waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14720 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 62.14660, as applicable.

(b) The values for the site-specific operating limits established in § 62.14635 or § 62.14640.

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 62.14690(b).

§ 62.14725 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 62.14720. You must submit subsequent reports no more than 12 months following the previous report. As with all other requirements in this subpart, the requirement to submit an annual report does not modify or replace the operating permit requirements of 40 CFR parts 70 and 71.

§ 62.14730 What information must I include in my annual report?

The annual report required under § 62.14725 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 62.14735, 62.14740, and 62.14745.

(a) Company name and address.

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 62.14635 or § 62.14640.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 62.14700(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 62.14680(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 62.14680(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

§ 62.14735 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for any 6-month reporting period, or if a performance test was conducted that deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 62.14740 What must I include in the deviation report?

In each report required under § 62.14735, for any pollutant or

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parameter that deviated from the emission limitations or operating limits specified in this subpart, include the six items described in paragraphs (a) through (f) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Duration and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitoring downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

§ 62.14745 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for two weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Within ten days of each deviation, you must submit a notification that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the Administrator to continue operation of the CISWI unit.

(b) If your unit was shut down by the Administrator, under the provisions of § 62.14625(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

§ 62.14750 Are there any other notifications or reports that I must submit?

Yes. You must submit notifications as provided by 40 CFR 60.7.

§ 62.14755 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 62.14760 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See 40 CFR 60.19(c) for procedures to seek approval to change your reporting date.

Air Curtain Incinerators that Burn 100 Percent Wood Wastes and Clean Lumber

§ 62.14765 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

§ 62.14770 When must I achieve final compliance?

If you plan to continue operating, then you must achieve final compliance by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. It is unlawful for your air curtain incinerator to operate after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** if you have not achieved final compliance. An air curtain incinerator that continues to operate after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** without being in compliance is subject to penalties.

§ 62.14795 How do I achieve final compliance?

For the final compliance, you must complete all equipment changes and retrofit installation control devices so that, when the affected air curtain incinerator is placed into service, all necessary equipment and air pollution control devices operate as designed and meet the opacity limits of § 62.14815.

§ 62.14805 What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in this subpart, you must achieve final compliance by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(b) If you close your incinerator but will restart it after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, you must have completed any needed emission control retrofits and meet the opacity limits of § 62.14815 on the date your incinerator restarts operation.

(c) You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 at the time you restart your air curtain incinerator.

§ 62.14810 What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to permanently close your incinerator rather than comply with this subpart, you must submit a closure notification, including the date of closure, to the Administrator by the date by the 180 days after promulgation of the CISWI Federal plan in the **Federal Register**. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

§ 62.14815 What are the emission limitations for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) After the date the initial test for opacity is required or completed (whichever is earlier), you must meet the limitations in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 62.14820 How must I monitor opacity for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Use Method 9 of 40 CFR part 60, Appendix A to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 no later than 90 days after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 62.14825 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(b) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in paragraphs (c)(1) and (2) of this section.

(1) The types of materials you plan to combust in your air curtain incinerator.

(2) The results (each 6-minute average) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of 5 years.

Title V Requirements

§ 62.14830 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?

Yes. If you are subject to this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements specified in 40 CFR 62.14525(a)–(h) and (j)–(o) and all of the requirements specified in 40 CFR 62.14531.

§ 62.14835 When must I submit a title V permit application for my existing CISWI unit?

(a) If your existing CISWI unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted not later than the date 36 months after promulgation of 40 CFR part 60, subpart DDDD (December 1, 2003), or by the effective date of the applicable State, Tribal, or Federal operating permits program, whichever is later. For any existing CISWI unit not subject to an earlier application deadline, this final application deadline applies regardless of when this Federal plan is effective, or when the relevant State or Tribal section 111(d)/129 plan is approved by EPA and becomes effective. *See* sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act.

(b) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. *See* sections 503(d) and 502(a) of the Clean Air Act; 40 CFR 70.7(b) and 71.7(b).

Definitions

§ 62.14840 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act, subparts A and B of part 60 and subpart A of this part 62.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (*e.g.*, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.*, baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Commercial and industrial waste, for the purposes of this subpart, means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

Contained gaseous material means gases that are in a container when that container is combusted.

Cyclonic barrel burner means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or

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operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Discard means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

Drum reclamation unit means a unit that burns residues out of drums (*e.g.*, 55 gallon drums) so that the drums can be reused.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Modification or *modified CISWI unit* means a CISWI unit you have changed later than promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Particulate matter means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of 40 CFR part 60, Appendix A.

Parts reclamation unit means a unit that burns coatings off parts (*e.g.*, tools, equipment) so that the parts can be reconditioned and reused.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Rack reclamation unit means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

Reconstruction means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins on or after promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). For purposes of this subpart and 40 CFR part 60, subpart DDDD, only, solid waste does not include the waste burned in the fifteen types of units described in 40 CFR 60.2555 of subpart DDDD and § 62.14525 of this subpart.

Standard conditions, when referring to units of measure, means a temperature of 68°F (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the unit.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart DDDD.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

TABLE 1 OF SUBPART III OF PART 62.—EMISSION LIMITATIONS

For the air pollutant	You must meet this emission limitation[a]	Using this averaging time	And determining compliance using this method
Cadmium	0.004 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Carbon monoxide	157 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10, 10A, or 10B, of appendix A of part 60)
Dioxins/furans (toxic equivalency basis)	0.41 nanograms per dry standard cubic meter.	3-run average (4 hour minimum sample time per run).	Performance test (Method 23 of appendix A of part 60)
Hydrogen chloride	62 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 26A of appendix A of part 60)
Lead	0.04 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Opacity	10 percent	6-minute averages	Performance test (Method 9 of appendix A of part 60)
Oxides of nitrogen	388 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Methods average 7, 7A, 7C, 7D, or 7E of appendix A of part 60)
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 5 or 29 of appendix A of part 60)
Sulfur dioxide	20 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c of appendix A of part volume 60)

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 2 OF SUBPART III OF PART 62.—OPERATING LIMITS FOR WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate	Continuous	Every hour	1. Daily (batch units). 2. 3-hour rolling (continuous and intermittent units).[a]
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes.	3-hour rolling.[a]
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes.	3-hour rolling.[a]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes.	3-hour rolling[a]

[a] Calculated each hour as the average of the previous 3 operating hours.

TABLE 3 OF SUBPART III OF PART 62.—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
A. 2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
B. 12,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
C. 1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
D. 1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
E. 12,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.01
F. 1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.001
G. Octachlorinated dibenzo-p-dioxin	0.1
H. 2,3,7,8-tetrachlorinated dibenzofuran	0.5
I. 2,3,4,7,8-pentachlorinated dibenzofuran	0.05
J.1,2,3,7,8-pentachlorinated dibenzofuran	0.1
K. 1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
L. 1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
M. 1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
N. 2,3,4,6,7,8-hexachlorinated dibenzofuran	0.01
O. 1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
P. 1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.001
Q. Octachlorinated dibenzofuran	

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TABLE 4 OF SUBPART III OF PART 62.—SUMMARY OF REPORTING REQUIREMENTS

Report	Due Date	Contents	Reference
A. Waste Management Plan.	No later than the date 6 months after publication of the final rule the Federal Register.	Waste management plan	§62.14715.
B. Initial Test Report	No later than 60 days following the performance test.	1. Complete test report for the initial performance test. 2. The values for the site-specific operating limits 3. Installation of bag leak detection systems for fabric filters.	§62.14720.
C. Annual Report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	1. Name and address 2. Statement and signature by responsible official 3. Date of report 4. Values for the operating limits 5. If no deviations or malfunctions were reported, a statement that no deviations occurred during reporting period. 6. Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported. 7. Information for deviations or malfunctions recorded under §62.14700(b)(6) and (c) through (e). 8. If a performance test was conducted during the reporting period, the results of the test. 9. If a performance test was not conducted during the reporting period, a statement that the requirements of §62.14680(a) or (b) were met. 10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks.	§§62.14725 and 62.14730 Subsequent reports are to be submmitted no moer than 12 months following the previous report.
D. Emission Limitation or Operating Limit Deviation Report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	1. Dates and times of deviations 2. Averaged and recorded data for these dates ... 3. Duration and causes for each deviation and the corrective actions taken. 4. Copy of operating limit monitoring data and any test reports. 5. Dates, times, and causes for monitor downtime incidents. 6. Whether each deviation occurred during a period of startup, shutdown, or malfunction.	§§62.14735 and 62.14740.
E. Qualified Operator Deviation Notification.	Within 10 days of deviation.	1. Statement of cause of deviation 2. Description of efforts to have an accessible qualified operator. 3. The date a qualified operator will be accessible.	§62.14745(a)(1).
F. Qualified Operator Deviation Status Report.	Every 4 weeks following deviation.	1. Description of efforts to have an accessible qualified operator. 2. The date a qualified operator will be accessible. 3. Request for approval to continue operation	§62.14745(a)(2).
G. Qualified Operator Deviation Notification of Resumed Operation.	Prior to resuming operation.	Notification that you are resuming operation	§62.14745(b).

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 1210/P.L. 107–292
Native American Housing Assistance and Self-Determination Reauthorization Act of 2002 (Nov. 13, 2002; 116 Stat. 2053)

S. 2690/P.L. 107–293
To reaffirm the reference to one Nation under God in the Pledge of Allegiance. (Nov. 13, 2002; 116 Stat. 2057)

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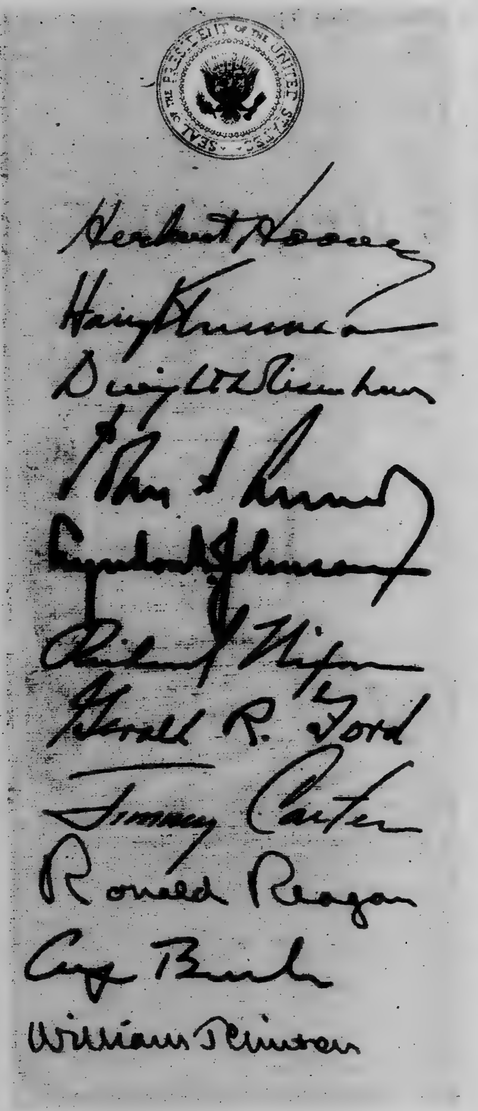
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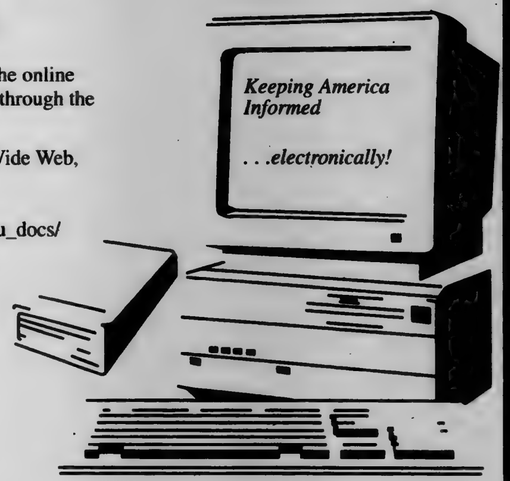
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Rules and Regulations

Federal Register
Vol. 67, No. 228
Tuesday, November 26, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[Docket No. 02–077–1]

Subpoenas Issued Under the Animal Health Protection Act

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: We are amending the administrative regulations of the Office of the Secretary of Agriculture to reflect the subpoena provisions of the Animal Health Protection Act. Under the Animal Health Protection Act, the Secretary of Agriculture can subpoena witnesses and documents relating to the administration or enforcement of the Animal Health Protection Act or any matter being investigated in connection with the Animal Health Protection Act. This final rule is necessary to establish regulations governing the issuance of subpoenas under this authority. We are also amending the administrative regulations, where necessary, by including references to the Animal Health Protection Act, the Plant Protection Act, and Title V of the Agricultural Risk Protection Act of 2000, and removing references to statutes repealed by the Plant Protection Act.

EFFECTIVE DATE: November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Alan R. Christian, Director, Investigative and Enforcement Services, APHIS, 4700 River Road Unit 85, Riverdale, MD 20737–1231; (301) 734–8684.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), through its Veterinary Services (VS) program, regulates animals, animal products, and other articles to prevent the introduction or spread of animal diseases and pests. When it appears that VS regulations have been violated, APHIS conducts an investigation. In conducting the investigation, it may be necessary to issue a subpoena for testimony or for documents and other records.

Title X, subtitle E, of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, 7 U.S.C. 8301–8317), known as the Animal Health Protection Act (AHPA), updates and consolidates a number of animal health statutes. Under section 10415 of the AHPA (7 U.S.C. 8314), the Secretary of Agriculture has the authority to issue subpoenas for testimony and for documents and other records relating to administration or enforcement of the AHPA. The authority for signing subpoenas has been delegated from the Secretary to the Under Secretary of Marketing and Regulatory Programs, and from the Under Secretary of Marketing and Regulatory Programs to the Administrator, APHIS (7 CFR 2.22 and 2.80).

The AHPA requires that we publish procedures for issuing subpoenas. According to § 10415(a)(2)(E) of the AHPA (7 U.S.C. 8314), the procedures must include a requirement that subpoenas be reviewed for legal sufficiency and signed by the Secretary. The Act further requires that "if the authority to sign a subpoena is delegated to an agency other than the Office of Administrative Law Judges, the agency receiving the delegation shall seek review of the subpoena for legal sufficiency outside that agency."

To comply with these requirements, we are amending 7 CFR 1.29 and 1.131. Section 1.29 governs the issuance of subpoenas relating to investigations under statutes administered by the Secretary. Paragraph (3) states that the Office of the General Counsel, USDA, will review subpoenas for legal sufficiency that are issued under certain statutes. We are amending paragraph (3) to state that the Office of the General Counsel will also review for legal sufficiency subpoenas that are issued under the AHPA.

Section 1.131 comes under subpart H of part 1. Subpart H contains rules of practice for formal adjudicatory proceedings instituted by the Secretary under various statutes. We are amending § 1.131 to add the AHPA to the list of covered statutes. We are also updating § 1.131 by removing references to statutes that were repealed by the Plant Protection Act (PPA, 7 U.S.C. 7701–7772).

We are also updating § 1.183, which comes under subpart J of part 1. Subpart J contains procedures relating to awards under the Equal Access to Justice Act in proceedings before the Department. We are amending § 1.183 by adding the AHPA and Title V of the Agricultural Risk Protection Act of 2000, section 501(a) (7 U.S.C. 2279e) to the list of covered statutes and by revising the citations provided in the entry for the PPA.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collections or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

Accordingly, we are amending 7 CFR part 1 as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

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Subpart B—Departmental Proceedings

§ 1.29 [Amended]

2. In § 1.29, paragraph (a)(3) is amended by adding the words "Animal Health Protection Act (7 U.S.C. 8301–8317)," before the word "Plant", and by adding a comma before the word "or".

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

3. The authority citation for Subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2279e, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6808, 7107, 7734, 8313; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

4. In § 1.131, paragraph (a) is amended by adding, in alphabetical order, "Animal Health Protection Act, section 10414 (7 U.S.C. 8313).", and by removing "Act of August 20, 1912, commonly known as the Plant Quarantine Act, section 10, as amended (7 U.S.C. 163, 164).", "Act of January 31, 1942, as amended (7 U.S.C. 149).", and "Federal Plant Pest Act, section 108, as amended (7 U.S.C. 150gg).".

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

5. The authority citation for Subpart J continues to read as follows:

Authority: 5 U.S.C. 504(c)(1).

§ 1.183 . [Amended]

6. In § 1.183, paragraph (a)(2) is amended by adding, in alphabetical order, "Animal Health Protection Act, sections 10414 and 10415 (7 U.S.C. 8313 and 8314)" and "Title V of the Agricultural Risk Protection Act of 2000, section 501(a) (7 U.S.C. 2279e)"; and in the entry for the Plant Protection Act, by removing the citations "7 U.S.C. 2279e, 7734(b), 7736" and adding the citations "7 U.S.C. 7734, 7735, and 7736" in their place.

Dated: November 20, 2002.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 02–29985 Filed 11–25–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–1]

Exotic Newcastle Disease; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by quarantining Los Angeles County, CA, and portions of Riverside and San Bernardino Counties, CA, and restricting the interstate movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. This action is necessary on an emergency basis to prevent the interstate spread of exotic Newcastle disease from the quarantined area.

DATES: This interim rule was effective November 21, 2002. We will consider all comments that we receive on or before January 27, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The END regulations, contained in 9 CFR 82.1 through 82.15 (referred to below as the regulations), were established to prevent the spread of END in the United States in the event of an outbreak. Section 82.3, paragraph (a), provides that any area where birds or poultry infected with END are located will be designated as a quarantined area. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as the regulations. The regulations restrict the interstate movement of birds, poultry, products, and materials that could spread END from quarantined areas. Prior to this rule, no areas were listed as quarantined in § 82.3(c) because of END.

On October 1, 2002, END was confirmed in the State of California. The disease has been diagnosed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. At this time, commercial poultry are not involved in the disease occurrence.

The State of California and the Animal and Plant Health Inspection Service have begun an intensive END eradication program in the quarantined area in Los Angeles, Riverside, and San Bernardino Counties. Also, California has taken action to restrict the intrastate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

Accordingly, to prevent the spread of END into other States, we are amending § 82.3(c) by designating Los Angeles County and portions of Riverside and San Bernardino Counties, CA, as a quarantined area for END. The quarantined area is described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent END from spreading to other States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the END regulations by adding Los Angeles County and portions of Riverside and San Bernardino Counties, CA, to the list of quarantined areas. The regulations restrict the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

1. The authority citation for part 82 is revised to read as follows:

Authority: 7 U.S.C. 8304–8306, 8308, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. In § 82.3, paragraph (c) is revised to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) The following areas are quarantined because of END:

California

Los Angeles, Riverside, and San Bernardino Counties. All of Los Angeles County. That portion of San Bernardino County south of State Highway 58 and bounded by an imaginary line beginning at the intersection of the Kern County line and State Highway 58; then southeast along State Highway 58 to Interstate Highway 15; then south along Interstate Highway 15 to State Highway 247; then southeast along State Highway 247 to State Highway 62; then south along State Highway 62 to the Riverside County line. That portion of Riverside County south of the Riverside County line and bounded by an imaginary line beginning at the intersection of State Highway 62 and the Riverside County line; then south along State Highway 62 to Interstate Highway 10; then southeast along Interstate Highway 10 to State Highway 111 (Golf Center Parkway); then south along State Highway 111 to State Highway 86; then southeast along State Highway 86 to the Imperial County line.

Done in Washington, DC, this 21st day of November, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29987 Filed 11–25–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

RIN 1904–AB11

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Extension of Time for Electric Motor Manufacturers To Certify Compliance With Energy Efficiency Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This procedural rule amends the compliance certification regulations by revising the deadline date for all electric motor manufacturers to certify compliance to the Department of Energy that their motors meet the applicable energy efficiency standards.

DATES: This rule is effective November 26, 2002.

FOR FURTHER INFORMATION CONTACT: James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, telephone (202) 586–8654, telefax (202) 586–4617, or: *jim.raba@ee.doe.gov*.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432, telefax (202) 586–4116, or: *francine.pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 345(c) of the Energy Policy and Conservation Act of 1975 (EPCA) requires "manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable [nominal full load efficiency standard]" (42 U.S.C. 6316(c)). The Department of Energy (DOE) construes the statutory language to provide manufacturers with two equivalent ways to fulfill the certification requirement: (1) A

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manufacturer may certify, through an independent testing program nationally recognized in the United States, that a covered motor meets the standard; or (2) a manufacturer may certify, through an independent certification program nationally recognized in the United States, that a covered motor meets the standard. DOE is of the view that section 345(c) does not require preference for one program over the other.

The procedures by which a manufacturer may certify the energy efficiency of the manufacturer's electric motors, through either a certification program or an accredited laboratory, are set forth in 10 CFR 431.24(a)(5). Section 431.123(a) in 10 CFR part 431 currently provides that, beginning on June 7, 2002, no electric motor "subject to an energy efficiency standard set forth in subpart C of this part" may be distributed in commerce unless it is covered by a Compliance Certification that the manufacturer has submitted to DOE.

II. Background

On November 9, 2001, DOE published a notice of final rulemaking in the **Federal Register** that amended 10 CFR 431.123(a) to change the deadline for submission of compliance certifications from November 5, 2001, to June 7, 2002 (66 FR 56604). That action was taken because there was insufficient independent testing laboratory capacity for testing the thousands of basic models of electric motors covered by EPCA's efficiency standards. The notice of final rulemaking reported that a number of motor manufacturers had elected to base the certification of their motors' energy efficiency on testing conducted in a National Voluntary Laboratory Accreditation Program (NVLAP) accredited laboratory. However, about half of the motor manufacturers had elected to base their compliance on a certification program that DOE classifies as nationally recognized. Many of those manufacturers have committed resources in anticipation of certification programs being recognized by DOE. As of the November 9, 2001 date of publication of the notice of final rulemaking, there were no certification programs nationally recognized for the purposes of section 345(c) of EPCA. Therefore, it was impossible for manufacturers electing to use a nationally recognized certification program, as allowed by EPCA, to test and certify their motors for energy efficiency before November 5, 2001.

At that time, DOE believed that the extension of the certification deadline to June 7, 2002, would provide sufficient time for all manufacturers to come into compliance with EPCA's requirements. The new deadline was based on DOE's belief that it would be able to promptly complete action on the petitions for certification program recognition that had been submitted by CSA International and Underwriters Laboratories, Inc., and that such action could be completed in a timeframe that would allow manufacturers, if they so chose, to use an approved certification program and submit required certifications to DOE by the June 7, 2002 deadline. DOE had published for public comment the petition of CSA International on April 26, 2000 (65 FR 24429), and the petition of Underwriters Laboratories, Inc. on October 3, 2001 (66 FR 50355).

III. Discussion of Rule Amendment

DOE was not able to complete action on these two petitions for certification program recognition by June 7, 2002. DOE published its interim determinations to approve the CSA International and Underwriters Laboratories, Inc., petitions for certification program recognition on July 5, 2002. 67 FR 45018 and 45028. Under the certification program recognition process set forth in 10 CFR 431.28(a)–(f), after the period for public comment for the interim determinations closes, DOE will review any comments and information submitted, as well as any responsive statements of the petitioners. DOE then will publish a final determination on the petitions. In the meantime, however, the situation remains the same as it was in November 2001 when DOE granted the previous extension of the deadline in 10 CFR 431.123(a). That is, a number of motor manufacturers have elected to base the certification of their motors' energy efficiency on a certification program that DOE classifies as nationally recognized; many of those manufacturers have committed resources in anticipation of certification programs being recognized by DOE; there are no certification programs nationally recognized for the purposes of section 345(c) of EPCA; it is impossible for manufacturers electing to use a nationally recognized certification program, as allowed by EPCA, to test and certify their motors for energy efficiency before June 7, 2002; and there is insufficient independent testing laboratory capacity for testing the thousands of basic models of electric motors covered by EPCA's efficiency standards. Therefore, DOE is amending section 431.123(a) to further extend the deadline for motor manufacturers to certify compliance with EPCA.

In view of the foregoing, DOE today amends 10 CFR 431.123 to replace "June 7, 2002" with a phrase cross-referencing a new paragraph (g), which establishes a new compliance date. New paragraph (g) of 10 CFR 431.123 provides that the new compliance date is April 30, 2003, or the date that is 120 days after the date on which DOE publishes its final determinations for the CSA International and Underwriters Laboratories, Inc. petitions, whichever is earlier. The rule further provides that if DOE publishes the final determinations for the CSA International and Underwriters Laboratories, Inc. petitions on different dates, the compliance certification date is the date that is 120 days after the date of publication of the earlier final determination. DOE believes this approach will result in certifications by manufacturers using certification programs at the earliest possible time. While establishing April 30, 2003 as the outside limit on the extension, DOE expects to issue final determinations on the two petitions in time to allow manufacturers to come into compliance before that date.

The Secretary of Energy has approved issuance of this final rule.

IV. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act

DOE reviewed today's rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and DOE's regulations on compliance with NEPA, 10 CFR part 1021. DOE has determined that today's rule is covered by the Categorical Exclusion found at paragraph A6 of appendix A to subpart D of DOE's NEPA regulations, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement has been prepared.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs in the Office of Management and Budget.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires that a federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of proposed rulemaking. Today's rule is a rule of agency procedure that is exempt from the Administrative Procedure Act's notice and comment requirements. Therefore, a regulatory flexibility analysis has not been prepared.

D. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism" (64 FR 43255) requires federal agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by the Executive Order.

E. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

DOE has determined that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

No new collection of information will be imposed by this rulemaking. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3 of Executive Order 12988, "Civil Justice Reform" (61 FR 4729) imposes on Executive agencies the general duty to eliminate drafting errors and ambiguity; write regulations to minimize litigation; provide a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under Section 32 of the Federal Energy Administration Act

Today's final rule does not incorporate commercial standards by reference. Therefore, section 32 of the Federal Energy Administration Act does not apply to today's final rule.

I. Review Under the Unfunded Mandates Reform Act

DOE has determined that today's final rule does not include a federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) do not apply.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) requires federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposed action be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's final rule would not have any adverse effects on the supply, distribution, or use of energy.

L. Review Under the Administrative Procedure Act

Today's final rule is not subject to requirements for prior notice and opportunity for public comment because it is procedural in nature. However, to the extent that 5 U.S.C. 553(b) may apply to this rulemaking, DOE finds that is impracticable and contrary to the public interest to publish prior notice because it is impossible for manufacturers who elected to use a nationally recognized certification program, as allowed by EPCA, to comply with the certification requirement by the June 7, 2002 deadline, and because regulated manufacturers should be relieved as promptly as possible of the threat of potential enforcement of the June 7, 2002 deadline, with which it was impossible for them to comply. This situation also warrants DOE making this final rule effective upon publication in the **Federal Register**.

M. Review Under the Small Business Regulatory Enforcement Fairness Act

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation,

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Reporting and recordkeeping requirements.

Issued in Washington, DC, on November 18, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 431 of chapter II of title 10, Code of Federal Regulations, is amended as follows:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

2. Section 431.123 is amended in paragraph (a), in the first sentence, by removing the phrase "Beginning June 7, 2002" and adding in its place the phrase "Beginning on the compliance date specified in paragraph (g) of this section", and by adding a new paragraph (g) to read as follows:

§ 431.123 Compliance certification.

* * * * *

(g) *Compliance date.* The compliance date for purposes of this section is February 28, 2003, or the date that is 120 days after the date of publication in the Federal Register of DOE's final determinations on petitions for certification program recognition submitted by CSA International and Underwriters Laboratories, Inc., whichever is earlier. If DOE publishes the final determinations on different dates, the compliance certification date for purposes of this section shall be the date that is 120 days after the date of publication of the earlier final determination.

[FR Doc. 02–29969 Filed 11–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–406–AD; Amendment 39–12962; AD 2002–23–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes Equipped with Collins LRA–900 Radio Altimeters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes equipped with certain Collins LRA–900 radio altimeters, that currently requires a revision to the Airplane Flight Manual to prohibit autopilot coupled autoland operations in certain conditions; or, for certain airplanes, replacement of certain Collins LRA–900 radio altimeters with Collins LRA–700 radio altimeters. This amendment also requires a one-time inspection to determine whether a Collins LRA–900 radio altimeter receiver/transmitter with a certain part number is installed, and modification of such a radio altimeter. This amendment is prompted by reports indicating that a fault in Collins LRA–900 radio altimeters having a certain part number could result in an incorrect and unbounded output of radio altitude to other airplanes. The actions specified by this AD are intended to prevent an undetected anomalous radio altitude signal that is passed along to the flare control law of the flight control computer, which could cause the airplane to flare too high or too low during landing, and consequently result in a hard landing. This action is intended to address the identified unsafe condition.

DATES: Effective December 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–24–51, amendment 39–10929 (63 FR 66422, December 2, 1998), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes equipped with certain Collins LRA–900 radio altimeters having certain part numbers, was published in the Federal Register on May 15, 2002 (67 FR 34637). The action proposed to continue to require a revision to the Airplane Flight Manual to prohibit autopilot coupled autoland operations in certain conditions; or, for certain airplanes, replacement of certain Collins LRA–900 radio altimeters with Collins LRA–700 radio altimeters. The action also proposed to require a one-time inspection to determine whether a Collins LRA–900 radio altimeter receiver/transmitter with a certain part number is installed, and modification of such a radio altimeter.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Change Applicability

The commenter suggests that the applicability in the proposed AD be changed from "McDonnell Douglas Model MD–11 and –11F Airplanes Equipped with Collins LRA–900 Radio Altimeters," to "McDonnell Douglas Model MD–11 and –11F Airplanes Equipped with Collins LRA–900, Part Number (P/N) 822–0334–220, Radio Altimeters." The commenter states that this would prevent operators of MD–11 airplanes with Collins radio altimeters having other P/Ns from performing an unnecessary inspection to comply with the proposed AD.

The FAA acknowledges, but does not agree with, the commenter's suggestion. The inspection to determine if airplanes have the radio altimeter with the P/N specified above is required by paragraph (b) of this AD, and the affected P/N is specified in paragraph (b)(1) of this AD. Operators can ascertain what the affected P/N is, and if the radio altimeters do not have the affected P/N, no further action is required by this AD. Therefore, no change to the applicability in this final rule is necessary.

Explanation of Change Made to Proposed AD

The FAA has clarified the inspection requirement contained in the proposed AD. Whereas the proposed AD specified a visual inspection, the FAA has revised this final rule to clarify that its intent is to require a general visual inspection. Additionally, a note has been added to the final rule to define that inspection.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 64 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 98–24–51 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,840, or $60 per airplane.

The new actions that are required in this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $3,840, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10929 (63 FR 66422, December 2, 1998), and by adding a new airworthiness directive (AD), amendment 39–12962, to read as follows:

2002–23–18 Boeing: Amendment 39–12962. Docket 2000–NM–406–AD. Supersedes AD 98–24–51, Amendment 39–10929.

Applicability: Model MD–11 and –11F airplanes equipped with certain Rockwell Collins LRA–900 radio altimeters; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an undetected anomalous radio altitude signal that is passed along to the flare control law of the flight control computer, which could cause the airplane to flare too high or too low during landing, and consequently result in a hard landing, accomplish the following:

Restatement of Certain Requirements of AD 98–24–51

(a) Within 24 hours after December 7, 1998 (the effective date of AD 98–24–51, amendment 39–10929): accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual to include the following statement: "Autopilot coupled autoland operations below 100 feet above ground level (AGL) are prohibited."

(2) For airplanes on which the LRA–700 radio altimeter installation has been approved in accordance with Type Certificate or Supplemental Type Certificate procedures: Replace both Collins LRA–900 radio altimeters having part number (P/N) 822–0334–220, with Collins LRA–700 radio altimeters having P/N 622–4542–221.

New Requirements of This AD

(b) Within 90 days after the effective date of this AD: Perform a general visual inspection to determine the P/N of the radio altimeter receiver/transmitters, in accordance with McDonnell Douglas Service Bulletin MD11–34–091, dated August 19, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If the airplane is equipped with Collins LRA–900 radio altimeter receiver/transmitters having P/N 822–0334–220: Prior to further flight, modify the radio altimeter receiver/transmitter in accordance with McDonnell Douglas Service Bulletin MD11–34–091, dated August 19, 1999.

(2) If the airplane is not equipped with Collins LRA–900 radio altimeter receiver/transmitters having P/N 822–0334–220: No further action is required by this paragraph.

Note 3: Upon completion of the actions required by paragraph (b) of this AD, the revised limitations in the AFM, as required by paragraph (a)(1) of this AD, may be removed.

Note 4: McDonnell Douglas Service Bulletin MD11–34–091, dated August 19, 1999, refers to Rockwell Avionics Service Bulletin LRA–900–34–D, Revision 1, dated May 26, 1999, as an additional source of service information.

(c) As of the effective date of this AD, no person shall install on any airplane a Collins

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LRA–900 radio altimeter having P/N 822–0334–220.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–24–51, amendment 39–10929, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The inspection and modification shall be done in accordance with McDonnell Douglas Service Bulletin MD11–34–091, dated August 19, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the FEDERAL REGISTER, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 31, 2002.

Issued in Renton, Washington, on November 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29674 Filed 11–25–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–270–AD; Amendment 39–12959; AD 2002–23–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, –200C, –200F, –300, –400, –400F, and 747SR Series Airplanes, Equipped with a Main Deck Side Cargo Door (MDSCD) Manufactured by Boeing

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200B, –200C, –200F, –300, –400, –400F, and 747SR series airplanes equipped with a MCSCD manufactured by Boeing. This action requires repetitive inspections for cracking of the lower lobe panel of the fuselage skin of the aft cargo bay, and repair if necessary. This action is necessary to find and fix cracking of the skin, which could lead to reduced structural integrity of the side cargo door cutout of the main deck, and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 11, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–270–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2131; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA recently received a report of cracking of the lower lobe panel of the fuselage skin of the aft cargo bay, between Station (STA) 1720 and 1740, on a Model 747–200F series airplane. The crack was 11.6 inches long and was located below the stringer 34L lap joint and the upper fastener row of the external reinforcing doubler of the cargo door cutout of the main deck. The airplane had accumulated 18,688 total flight cycles and 81,902 total flight hours. Subsequent examination and analysis of the cracked skin revealed that the crack originated from scratches in the skin exterior surface at multiple locations. Such cracking, if not found and fixed, could lead to reduced structural integrity of the side cargo door cutout of the main deck, and result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2487, Revision 1, dated October 31, 2002, which describes procedures for repetitive internal detailed or eddy current inspections for cracking of the lower lobe panel of the fuselage skin of the aft cargo bay at section 46, below stringer 34L, from STA 1640 through 1740 inclusive. If any cracking is found, the service bulletin specifies contacting the manufacturer for repair information. The service bulletin also recommends that operators submit inspection findings to Boeing following each inspection. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD requires

accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between AD and Service Bulletin

The service bulletin specifies that the manufacturer may be contacted for disposition of repairs; however, this AD requires all repairs to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Although the service bulletin recommends that operators report findings to the manufacturer after each inspection, this AD does not include such a reporting requirement.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–270–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–23–15 Boeing: Amendment 39–12959. Docket 2002–NM–270–AD.

Applicability: Model 747–100, –200B, –200C, –200F, –300, –400, –400F, and 747SR series airplanes; equipped with a main deck side cargo door manufactured by Boeing; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the lower lobe panel of the fuselage skin of the aft cargo bay, which could lead to reduced structural integrity of the side cargo door cutout of the main deck, and result in rapid depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Do either an internal detailed or eddy current inspection to find cracking of the lower lobe panel of the fuselage skin of the aft cargo bay, below stringer 34L, from Station (STA) 1640 through 1740 inclusive, per Boeing Alert Service Bulletin 747–53A2487, Revision 1, dated October 31, 2002. Do the initial inspection at the time shown in paragraph (a)(1) or (a)(2) of this AD, as applicable. If the initial inspection was a detailed inspection, repeat that inspection at least every 50 flight cycles; if the initial inspection was an eddy current inspection, repeat that inspection at least every 250 flight cycles; as applicable. Although the service bulletin references a reporting requirement in paragraph 1.D., such reporting is not required by this AD.

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Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes on which the main deck side cargo door (MDSCD) was installed after the date of manufacture of the airplane: Do the inspection within 10,000 flight cycles after installation of the MDSCD, or within 90 days after the effective date of this AD, whichever is later.

(2) For airplanes on which the MDSCD was installed before the date of manufacture of the airplane: Do the inspection prior to the accumulation of 15,000 total flight cycles on the airplane, or within 90 days after the effective date of this AD, whichever is later.

(b) Inspections done before the effective date of this AD per Boeing Alert Service Bulletin 747–53A2487, dated October 24, 2000; are considered acceptable for compliance with paragraph (a) of this AD.

Repair

(c) If any crack is found during any inspection required by paragraph (a) of this AD: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise provided by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2487, Revision 1, dated October 31, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 11, 2002.

Issued in Renton, Washington, on November 14, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29675 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–375–AD; Amendment 39–12960; AD 2002–23–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This action requires replacement of the Captain's and First Officer's chart holder assemblies on the cockpit control columns with new, improved assemblies. This action is necessary to prevent interference between the cockpit control wheels and the chart holder assembly, which could result in restricted movement of the control wheel travel when rotating the right- and left-wing-down, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 11, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–375–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–375–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received information from an MD–90 flight simulator manufacturer of an interference problem between the cockpit control wheels and the Captain's and First Officer's chart holder assemblies on the cockpit control columns. Investigation revealed that when the control wheels are rotated both right-wing-down and left-wing-down, the grips/horns strike the left and right edge of the existing chart holders. Such interference restricts movement to a maximum of 107 to 109 degrees. The roll control tab stops are set at 116 degrees (no air load), and the travel-to-wheel stops are identified as 135 degrees. Such interference, if not corrected, could result in restricted movement of the control wheel travel when rotating the right- and left-wing-down, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin MD90–25A070, excluding Evaluation Form, Revision 01, dated February 28, 2002, which describes procedures for replacement of the Captain's and First Officer's chart holder assemblies located on the cockpit control columns, with new, improved assemblies. The service bulletin also references the airplane maintenance manual which describes procedures for a functional test after doing the replacement. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, the actions are required to be accomplished in accordance with the service bulletin described previously, except that the AD does not require completing the Evaluation Form.

Cost Impact

None of the Model MD–90–30 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required replacement, at an average labor rate of $60 per work hour. Parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the replacement required by this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–375–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–23–16 McDonnell Douglas: Amendment 39–12960. Docket 2001–NM–375–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–25A070, Revision 01, dated February 26, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference between the cockpit control wheels and the chart holder assembly, which could result in restricted movement of the control wheel travel when rotating the right- and left-wing-down, and

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consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the Captain's and First Officer's chart holder assemblies on the cockpit control columns with new assemblies (including a functional test after replacement), per Boeing Alert Service Bulletin MD90–25A070, excluding Evaluation Form, Revision 01, dated February 26, 2002.

Replacement Accomplished Per Previous Issue of Service Bulletin

(b) Accomplishment of the replacement before the effective date of this AD per Boeing Alert Service Bulletin MD90–25A070, dated November 8, 2001, is considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done per Boeing Alert Service Bulletin MD90–25A070, excluding Evaluation Form, Revision 01, dated February 26, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 11, 2002.

Issued in Renton, Washington, on November 14, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29804 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–84–AD; Amendment 39–12961; AD 2002–23–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–90–30 airplanes, that requires one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane; and corrective actions, if necessary. The actions specified by this AD are intended to prevent electrical arcing and/or heat-damaged wiring due to improper wire installations or maintenance practices, which could result in fire and smoke in various areas of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on June 12, 2002 (67 FR 40249). That action proposed to require one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Minor Changes to the Proposed AD

Because the language in Notes 4, 5, 6, 7, 8, 9, and 10 of the proposed AD is regulatory in nature, those notes have been redesignated (and consolidated) as new paragraph (c) of this final rule. The remaining lettered paragraphs and Notes have been reidentified accordingly.

The identity of each service bulletin in the proposed AD has been changed in this final rule from "* * * including Appendix A" to "* * * excluding Appendix and Evaluation Form." The Appendix and Evaluation Form normally attached to the service bulletins are excluded because they do not contain information necessary to accomplish the requirements of this AD. Further, the Appendix was misidentified in the proposed AD as "Appendix A."

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 115 airplanes of the affected design in the worldwide fleet. The FAA estimates that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 49 work hours per airplane to accomplish all of the inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $73,500, or $2,940 per airplane. Warranty remedies may be available from the airplane manufacturer for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–23–17 McDonnell Douglas: Amendment 39–12961. Docket 2001–NM–84–AD.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: The FAA recommends that the actions required by this AD be accomplished after the replacement of the metallized polyethyleneteraphthalate (MPET) insulation blankets required by AD 2000–11–01, amendment 39–11749.

To prevent electrical arcing and/or heat-damaged wiring due to improper wire installations or maintenance practices, which could result in fire and smoke in various areas of the airplane, accomplish the following:

One-Time Detailed Inspections

(a) Within 5 years after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) of this AD.

(1) Do a one-time detailed inspection of all electrical wiring installations in the flight compartment and forward drop ceiling area, according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–066, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Do a one-time detailed inspection of all electrical wiring installations in the electronic/electrical (E/E) compartment according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–067, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(3) Do a one-time detailed inspection of all electrical wiring installations in the forward passenger compartment from stations Y=260.000 to Y=902.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–068, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(4) Do a one-time detailed inspection of all electrical wiring installations in the aft passenger compartment from stations Y=902.000 to Y=1395.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–069, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(5) Do a one-time detailed inspection of all electrical wiring installations in the forward and mid cargo compartments from stations Y=218.000 to Y=845.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–070, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(6) Do a one-time detailed inspection of all electrical wiring installations in the aft cargo compartment from stations Y=1064.000 to Y=1369.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–071, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(7) Do a one-time detailed inspection of all electrical wiring installations in the forward accessory compartment from stations Y=41.000 to Y=70.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–072, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

Corrective Action

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD: Before further flight, accomplish the applicable corrective action(s) according to the Accomplishment Instructions of the applicable service bulletins listed in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this AD. Corrective actions that may be necessary include repairing cracked, split, or torn wiring insulation; re-attaching nylon (caterpillar) grommets; installing smaller-sized clamps; adjusting, replacing, or tightening sta-straps; repositioning certain wiring or clamps; tightening or securing clamps, terminals, or wire bundles; re-torquing screw terminals of the flag lug bus bar; repairing or replacing certain wiring, terminals, splices, or connectors; installing protective sleeving over wiring; and installing a silicone glass cloth over conduit ends.

(1) Boeing Service Bulletin MD90–24–066, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

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(2) Boeing Service Bulletin MD90–24–067, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(3) Boeing Service Bulletin MD90–24–068, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(4) Boeing Service Bulletin MD90–24–069, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(5) Boeing Service Bulletin MD90–24–070, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(6) Boeing Service Bulletin MD90–24–071, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

(7) Boeing Service Bulletin MD90–24–072, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001.

Note 4: The Appendix of the service bulletins referenced in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this AD contains a form to report inspection findings. This AD does NOT require such reports to be submitted to the FAA.

Credit for Previous Accomplishment per Earlier Service Bulletin Version

(c) Inspections and corrective actions done before the effective date of this AD according to the Accomplishment Instructions of the applicable service bulletins listed in the following table are acceptable for compliance with the applicable paragraphs of this AD:

McDonnell Douglas service bulletin	Applicable paragraphs of this AD
MD90–24–066, excluding Appendix and Evaluation Form, dated July 28, 2000	(a)(1) and (b)(1)
MD90–24–067, excluding Appendix and Evaluation form, dated July 28, 2000	(a)(2) and (b)(2)
MD90–24–068, excluding Appendix and Evaluation Form, dated July 28, 2000	(a)(3) and (b)(3)
MD90–24–069, excluding Appendix and Evaluation Form, dated July 28, 2000	(a)(4) and (b)(4)
MD90–24–070, excluding Appendix and Evaluation Form, dated July 28, 2000	(a)(5) and (b)(5)
MD90–24–071, excluding Appendix and Evaluation Form, dated July 28, 2000	(a)(6) and (b)(6)
MD90–24–072, excluding Appendix and Evaluation Form, dated July 28, 2000	(a)(7) and (b)(7)

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin MD90–24–066, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001; Boeing Service Bulletin MD90–24–067, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001; Boeing Service Bulletin MD90–24–068, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001; Boeing Service Bulletin MD90–24–069, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001; Boeing Service Bulletin MD90–24–070, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001; Boeing Service Bulletin MD90–24–071, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001; and Boeing Service Bulletin MD90–24–072, excluding Appendix and Evaluation Form, Revision 01, dated February 8, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 31, 2002.

Issued in Renton, Washington, on November 14, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29805 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–30–AD; Amendment 39–12958; AD 2002–23–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines. This amendment requires initial and repetitive visual inspections, fluorescent magnetic particle inspections (FMPI), and fretting wear inspections of high pressure compressor (HPC) front hubs that have operated with PWA–110 coating in the interface between the hub and the stage 8–9 spacer. This amendment is prompted by the discovery of cracked tierod holes found during routine engine overhauls. The actions specified by this AD are intended to prevent a rupture of the HPC front hub that could result in an uncontained engine failure and damage to the airplane.

DATES: Effective December 31, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to PW JT8D–200 series turbofan engines was published in the **Federal Register** on September 19, 2002 (67 FR 59027). That action proposed to require initial and repetitive visual inspections, FMPI, and fretting wear inspections of HPC front hubs that have operated with PWA–110 coating in the interface between the hub and the stage 8–9 spacer in accordance with PWAlert Service Bulletin (ASB) JT8D A6430, dated September 5, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Credit for Inspections

Two commenters request that the AD be changed to allow credit for inspections occurring before 9,000 cycles in service (CIS). One commenter requests that the second inspection occur within 6,500 cycles of the initial inspection, while the other commenter requests that the second inspection occur as late as 18,000 cycles.

The FAA partially agrees. The FAA agrees that some credit should be given for inspections occurring before 9,000. We do not agree, however, that the second inspection should be delayed until 18,000 CIS. A 15,500 CIS limit is more appropriate. Further, the shop visit requirement will be relaxed to an accessibility requirement for HPC front hubs inspected before accumulating 9,000 CIS. Accordingly, the inspection interval for HPC front hubs has been modified for hubs with less than 17,000 CIS to account for hubs inspected before 9,000 CIS. These hubs can be reinspected at the first accessibility of the HPC front hub after accumulating 9,000 CIS but not to exceed 15,500 CIS.

Effective Date To include Sufficient Time for Alternative Methods of Compliance (AMOC) Request

One commenter requests that the effective date be chosen to allow sufficient time for an AMOC request.

The FAA agrees. The FAA provides a 35-day time frame from the date of publication to the effective date of the AD which should provide sufficient time to request an AMOC, if necessary.

Exclude Engine Buildup Shop From the Shop Visit Requirements

One commenter requests that an LPT module replacement performed at an engine buildup shop be excluded from the shop visit requirements of this AD. The commenter feels that there are a small number of engines affected annually for this particular operator.

The FAA does not agree. The variability of every operator's maintenance program makes it difficult to define a shop visit that meets all operator's needs. The FAA believes the current definition is best suited for all operators. If an individual operator believes some engines should be exempt from the shop visit definition of the AD because of some unique features of their maintenance program, then they should seek approval for that provision in accordance with paragraph (f) of this AD.

Understated Financial Impact

One commenter states that the FAA underestimates the economic impact of the AD by failing to include ancilliary costs of the AD.

The FAA does not agree. The indirect costs associated with this AD are not directly related to this rule, and, therefore, are not addressed in the economic analysis for this rule. A full cost analysis for each AD, including such indirect costs, is not necessary since the FAA has already performed a cost benefit analysis when adopting the airworthiness requirements to which these engines were originally certificated. A finding that an AD is warranted means that the original design no longer achieves the level of safety specified by those airworthiness requirements, and that other required actions are necessary. Because the original level of safety was already determined to be cost beneficial, these additional requirements needed to return the engine to that level of safety do not add any additional regulatory burden, and, therefore, a full cost analysis would be redundant and unnecessary.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 2,648 PW JT8D–200 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 2,352 engines installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 6 work hours per engine to perform the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the initial inspection to U.S. operators is estimated to be $846,720.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–23–14 Pratt & Whitney: Amendment 39–12958. Docket No. 2001–NE–30–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines that have high pressure compressor (HPC) front hubs installed that have operated with PWA–110 coating in the interface between the HPC front hub and the stage 8–9 spacer (PWA–110

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coating applied to either the spacer or the hub) and were manufactured after June 1, 1988. These engines are installed on, but not limited to McDonnell Douglas MD–80 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done. To prevent a rupture of the HPC front hub, that could result in an uncontained engine failure and damage to the airplane, do the following:

Inspect hubs

(a) Strip the protective costing, visually inspect for fretting wear, fluorescent magnetic particle inspect (FMPI), reidentify and replate HPC front hubs and the stage 8–9 spacers, and replace if necessary in accordance with the accomplishment instructions of Pratt & Whitney Alert Service Bulletin (ASB) JT8D A6430, dated September 5, 2002, as follows:

(1) For HPC front hubs with fewer than 17,000 total cycles-in-service (CIS) on the effective date of this AD, inspect as follows:

(i) For HPC front hubs not inspected in accordance with ASB JT8D A6430, dated September 5, 2002, before accumulating 9,000 total CIS, inspect at the first shop visit after accumulating 9,000 total CIS not to exceed 18,000 total CIS.

(ii) For HPC front hubs inspected in accordance with ASB JT8D A6430, dated September 5, 2002, before accumulating 9,000 total CIS, inspect at the next accessibility of the HPC front hub after accumulating 9,000 total CIS not to exceed 15,500 total CIS.

(2) For HPC front hubs with greater than or equal to 17,000 total CIS but less than 19,000 total CIS on the effective date of this AD, inspect at the next shop visit, not to exceed 1,000 CIS from the effective date of this AD or 19,500 total CIS, whichever occurs first.

(3) For HPC front hubs with greater than or equal to 19,000 total CIS on the effective date of this AD, inspect within 500 CIS from the effective date of this AD.

Repetitive Inspections

(b) Thereafter, strip the protective coating, visually inspect for fretting wear, FMPI and replate HPC front hubs, and replace if necessary in accordance with the accomplishment instructions of Pratt & Whitney Alert Service Bulletin (ASB) JT8D A6430, dated September 5, 2002, at intervals not to exceed 6,500 CIS since the last inspection.

Optional Terminating Action

(c) Installation of a Nickel-Cadmium plated HPC front hub that has never operated with PWA–110 coating in the interface between the HPC front hub and the stage 8–9 spacer and a Nickel-Cadmium or Electroless Nickel plated spacer is an optional terminating action for the inspections of paragraphs (a) and (b) of this AD.

Definitions

(d) For the purposes of this AD, a shop visit is defined as an engine removal, where engine maintenance entails separation of pairs of major engine flanges or the removal of a disk, hub, or spool at a maintenance facility, regardless of other planned maintenance, except as follows:

(1) Engine removal for the purpose of performing field maintenance type activities at a maintenance facility in lieu of performing them on-wing is not a "shop visit".

(2) Separation of flanges of the Combustion Chamber and Turbine Fan Duct Assembly (split flanges) for the purpose of accessing non-rotating accessory hardware is not a "shop visit".

(3) Separation of flanges for the purpose of shipment without subsequent internal maintenance is not a "shop visit".

(e) For the purposes of this AD accessibility of the HPC front hub is removal of the hub from the engine and deblading of that hub.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(h) The inspections must be done in accordance with Pratt & Whitney Alert Service Bulletin (ASB) JT8D A6430, dated September 5, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on December 31, 2002.

Issued in Burlington, Massachusetts, on November 15, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29670 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–44–AD; Amendment 39–12957; AD 2002–23–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PT6A Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Pratt & Whitney Canada PT6A series turboprop engines that have certain turbine exhaust ducts that were modified by a number of different companies. This amendment requires inspections for low-quality welds and cracks of a large population of turbine exhaust ducts. This amendment is prompted by reports of cracks along the weld seams of certain turbine exhaust ducts. The actions specified by this AD are intended to prevent failure of the turbine exhaust duct due to cracking that could result in possible separation of the reduction gearbox and propeller from the engine, and possible loss of control of the airplane.

DATES: Effective December 31, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A supplemental proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Pratt & Whitney Canada PT6A series turboprop engines was published in the **Federal Register** on June 10, 2002 (67 FR 39640). That action proposed to require inspections for low-quality welds and cracks of a large population of turbine exhaust ducts that were modified by a number of companies, all using a similar unapproved gas tungsten arc welding (GTAW) process instead of the resistance (seam or stitch) weld process. Since the issuance of that supplemental proposal, Pratt & Whitney Canada issued a revised SB P&WC SB No. PT6A–72–1610, Revision 2, dated October 1, 2002, which deletes models PT6A–114 and PT6A–114A from the applicability.

Bilateral Agreement Information

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada (TC) has kept the FAA informed of the situation described above. The FAA has examined the findings of TC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Remove SAL Reference

One commenter requests removal of any reference to Standard Aero Limited (SAL) of Winnipeg, Canada, from the AD. Since the first issue of the NPRM, the FAA has found that several other companies have incorrectly used the GTAW weld process. Therefore, any references to SAL can and will cause confusion for the operators.

The FAA agrees. All references to SAL are removed from the final rule.

Misinterpretation of Unsafe Condition

The same commenter points out that the SNPRM incorrectly notes that TC AD CF–98–14 says "that condition if not corrected could result in possible separation of the reduction gearbox and propeller from the engine and possible loss of control of the airplane," and that the TC AD actually states that compliance is required "to minimize the possibility of an in-flight shutdown due to a cracked exhaust duct."

The FAA does not agree. The FAA feels that the commenter has misinterpreted the unsafe condition statement in the proposal's preamble, incorrectly attributing it to the TC AD. Based on the structure of the preamble, the FAA understands how the statement could be attributed to the TC AD. However, the FAA has determined "that condition if not corrected could result in possible separation of the reduction gearbox and propeller from the engine and possible loss of control of the airplane," is the correct unsafe condition. Since the questionable section does not appear in the preamble of the final rule, no change needs to be made to the final rule.

Incorrect Total of Cracked Ducts

The same commenter remarks that the SNPRM incorrectly states that a total of 116 exhaust ducts have been discovered with cracks along the affected weld seam, when in fact, to date the actual number of cracked ducts found with cracks is 18.

The FAA agrees. However, since the questionable statement does not appear in the preamble of a final rule, no change needs to be made to the final rule.

Request to Exclude Single Port Exhaust Duct

One commenter requests that the single port exhaust duct, P/N 3112171–01 and subsequently any reference to the PT6A–114 and PT61–114A engine models be excluded from the AD. For conversion of single port exhaust ducts, part number (P/N) 3112171–01, welding is done in a much different fashion. The original inner cone remains in place and the majority of it is untouched. Only a small portion of its free end is removed for the attachment of a cover. No welding is performed anywhere on or near the load bearing outer skin. The original junction between the outer skin and the inner cone is entirely undisturbed so adhesion between the propeller reduction gearbox flange and the outer skin is entirely unaffected and the load path is uncompromised.

The FAA agrees. The FAA has consulted with P&WC and has confirmed that the commenter is correct. The inner skin replacement is performed differently on a single port duct than on the dual duct. No welding is done in the "A" flange area for the –114 series. It was the welding at the "A" flange that triggered the original TC AD. There have been no reports of cracks or poor welds on the–114 models. P&WC has revised the–114 manuals to clearly state that the "A" flange is to be examined in detail at aircraft minor (150 hours) inspections and at hot section inspection. The PT6A–114 and PT6A–114A engines have been incorrectly included in the proposal. Therefore, models–114 and –114A, and exhaust duct P/N 3112171–01 are removed from the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 22,000 Pratt & Whitney Canada PT6A series turboprop engines of the affected design in the worldwide fleet. The FAA estimates that 7,000 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to perform the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $840,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

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Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–23–13 Pratt & Whitney Canada: Amendment 39–12957. Docket No. 99–NE–44–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney Canada (P&WC) PT6A series turboprop engines, with turbine exhaust ducts part number (P/N) 3012290, P/N 3031988, P/N 3032117, P/N 3035784, P/N 3035786, P/N 3105890–01, P/N 3112167–01, and P/N 3111780–01. These engines are installed on, but not limited to, Beechcraft King Air–90 and–100 series, Bombardier DHC–6 series, Empresa Brasileira de Aeronautica, S.A. (Embraer) EMB–110 series, Pilatus PC–6 series, and Piper PA–42 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent failure of the turbine exhaust duct due to cracking that could result in possible separation of the reduction gearbox and propeller from the engine, and possible loss of control of the airplane, do the following:

Inspection of Turbine Exhaust Ducts for Low-Quality Welds

(a) If the engine has not yet been overhauled, and if the turbine exhaust duct has not yet been subject to a shop visit for repair, no further action is required.

(b) Otherwise, at the next shop visit or within 150 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, do the following:

(1) Inspect for low-quality welds created during repair, on the turbine exhaust duct near flange "A", in accordance with paragraphs 3B through 3E of P&WC service bulletin (SB) No. PT6A–72–1610, Revision 2, dated October 1, 2002, for models PT6A–6, –6A, –6B, –20, –20A, –20B, –21, –25, –25A, –25C, –27, –28, –34, –34AG, –34B, –36, –135, and –135A engines, and SB No. PT6A–72–12173, dated January 24, 2002, for models PT6A–11, –11AG, –15AG, –110, and –112 engines.

(2) If it is determined that the welds meet the acceptable criteria specified in SB No. PT6A–72–1610, Revision 2, dated October 1, 2002; or SB No. PT6A–72–12173, dated January 24, 2002, continue using the duct until the next scheduled overhaul. Inspect duct per the engine overhaul manual before reinstallation.

(3) If it is determined that the welds do not meet the acceptable criteria specified in SB No. PT6A–72–1610, Revision 2, dated October 1, 2002; or SB No. PT6A–72–12173, dated January 24, 2002, replace the duct with a serviceable part, or perform the initial and repetitive inspections in the following paragraphs.

Initial Visual Inspection of Welds That Do Not Meet SB Acceptable Criteria

(c) Use 5X magnification to visually inspect the circumference of the forward area of the exhaust duct from the propeller reduction gearbox mounting flange to 2 inches aft of the flange for any crack indications. Mark and record cracks and return the duct to service, or replace with a serviceable part as follows:

(1) If no cracks are found, the duct may be returned to service; or

(2) If three or less cracks are found, and the total cumulative length of the cracks exceeds 2.0 inches, replace the duct with a serviceable part; or

(3) If any one crack exceeds 1.0 inch in length, replace the duct with a serviceable part; or

(4) If any two cracks are separated by less than six times the length of the longest crack (6L) or 3.0 inches or less, whichever is the closest separation, replace the duct with a serviceable part; or

(5) If more than three cracks are found, replace the duct with a serviceable part; and

(6) Mark all allowable cracks, on the duct, with suitable metal marking material; and

Note 2: Marking materials that are suitable for use on the exhaust duct may be found in the P&WC Engine Manual.

(7) Record the length of the crack, location, number of duct hours, and time-since-overhaul (TSO).

Repetitive Visual Inspection of Welds That Do Not Meet SB Acceptable Criteria

(d) Repeat the inspection specified in paragraph (c) of this AD as follows:

(1) For ducts that did not exhibit any cracking at the last inspection, repeat the inspection within 150 hours TIS since the last inspection. Return the duct to service or replace with a serviceable part as specified in paragraph (c)(1) through paragraph (c)(5) of this AD.

(2) For ducts that exhibited cracking at the last inspection, repeat the inspection within 25 hours TIS since the last inspection. Return the duct to service or replace with a serviceable part as follows:

(i) Inspect for new cracks, and cracks that were recorded as specified in paragraph (c) of this AD. Return the duct to service or replace with a serviceable part as specified in paragraph (c)(1) through paragraph (c)(5) of this AD.

(ii) In addition, if the growth rate of an existing crack exceeds 0.015 inch per hour TIS since the last inspection, replace the duct with a serviceable part.

Optional Terminating Action

(e) Replacing an affected exhaust duct with a serviceable exhaust duct constitutes terminating action for the repetitive inspection requirements of this AD.

Definition of a Serviceable Exhaust Duct

(f) For the purposes of this AD, a serviceable duct is defined as a duct that meets the acceptability limits of this AD.

Alternative Method of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(h) Special flight permits are not allowed.

Documents That Have Been Incorporated By Reference

(i) The inspections must be done in accordance with the following Pratt & Whitney Canada (P&WC) service bulletins:

Document No.	Pages	Revision	Date
PT6A–72–1610	All	2	October 1, 2002.
Total Pages: 10			
PT6A–72–12173	All	Original	January 24, 2002.
Total pages: 9			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in AD CF–98–41 in order to assure the airworthiness of these P&WC PT6A series turboprop engines in Canada.

Effective Date

(j) This amendment becomes effective on December 31, 2002.

Issued in Burlington, Massachusetts, on November 15, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29671 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N–0056]

RIN 0910–AA74

Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition; Amendment; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is further delaying until January 26, 2004, the effective date of a final rule published in the **Federal Register** of January 26, 2000 (65 FR 4103) (aluminum final rule), and originally scheduled to become effective on January 26, 2001. In the **Federal Register** of January 26, 2001 (66 FR 7864), the agency delayed the effective date of the aluminum final rule until January 26, 2003. The aluminum final rule imposes certain requirements for aluminum-containing large volume parenterals (LVPs), small volume parenterals (SVPs), and pharmacy bulk packages (PBPs) used in total parenteral nutrition (TPN). FDA is delaying the effective date of the aluminum final rule to allow time for the agency to finalize an amendment to the aluminum final rule. The agency is also amending the aluminum final rule to change to January 26, 2004, the date that limits the use of historical levels to determine the maximum level of aluminum in SVPs and PBPs; this date corresponds to the effective date of the aluminum final rule, which is delayed until January 26, 2004, by this document.

DATES: This final rule is effective December 26, 2002. The effective date for § 201.323 (21 CFR 201.323), added at 65 FR 4103, January 26, 2000, is delayed until January 26, 2004.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: On January 26, 2000, FDA published final regulations at § 201.323 imposing certain requirements for aluminum-containing LVPs, SVPs, and PBPs used in TPN (65 FR 4103). The aluminum final rule was originally scheduled to become effective on January 26, 2001. In the **Federal Register** of January 26, 2001 (66 FR 7864), the agency published a notice delaying the effective date until January 26, 2003.

In the **Federal Register** of August 12, 2002 (67 FR 52429), FDA published a proposed rule to amend § 201.323. The proposed rule would permit SVPs and PBPs containing 25 micrograms per liter (µg/L) or less of aluminum to be labeled with the statement "Contains no more than 25 µg/L of aluminum", instead of stating the exact amount of aluminum they contain. Because there is insufficient time to finalize this proposed amendment before January 26, 2003, when § 201.323 is scheduled to become effective, the agency is delaying the effective date of § 201.323 until January 26, 2004.

The agency is also amending § 201.323(c)(3) of the aluminum final rule to reflect the fact that the effective date is now being extended to January 26, 2004. Section 201.323(c)(3) provides that a manufacturer may state the maximum level of aluminum in terms of historical levels, but only until completion of production of the first five batches after January 26, 2001, the date by which manufacturers were to have submitted supplements describing the validated assay method used to determine aluminum content. Because manufacturers now have until January 26, 2004, to submit supplements, this final rule is changing the date in § 201.323(c)(3) to reflect the fact that the effective date of the aluminum final rule has been extended to January 26, 2004.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. The agency is delaying the effective date of § 201.323 because the agency has proposed to amend § 201.323. Given the imminence of the effective date of current § 201.323, seeking prior public comment on this delay is impracticable, as well as contrary to the public interest in the orderly issuance and implementation of regulations. Notice and comment procedures in this instance would create uncertainty, confusion, and undue financial hardship because, during the time that the agency would be proposing to extend the effective date for § 201.323, those companies affected would have to be preparing to relabel to comply with the January 26, 2003, effective date. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on which this delay should be modified or revoked.

FDA has examined the impacts of this delay of effective date under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory

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alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this action is consistent with the regulatory philosophy and principles identified in the Executive order. This action will ease the burden on industry of compliance with § 201.323 by giving manufacturers more time to relabel affected products. Thus, this action is not a significant action as defined by the Executive order.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.323(c)(3) is amended by removing the date "2001" and adding in its place the date "2004".

Dated: November 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29924 Filed 11–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences under the United States and District of Columbia Codes

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending procedures governing parole proceedings for federal and District of Columbia offenders, and transfer treaty prisoners. Almost all the amendments are corrections and clarifications of the instructions for calculating the salient factor score, a component of the Commission's paroling policy guidelines. The Commission is also correcting a reference to the U.S. Sentencing Guidelines in a regulation regarding the imposition of release conditions for a transfer treaty prisoner released to a term of supervised release.

EFFECTIVE DATE: These rule amendments are effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION:

The salient factor score is an actuarial device used by the Commission to evaluate the risk of parole violation by a prisoner if released to supervision. The score is a component of the Commission's paroling policy guidelines for making parole release decisions for U.S. Code offenders (28 CFR 2.20), and is also employed in the guidelines for DC Code offenders (28 CFR 2.80). The score comprises six criminal history items, including items such as number of prior convictions and commitments, and age at the time of current offense. The total score ranges from 0–10, with the higher score indicating that the prisoner is a better parole risk.

The Commission is now updating the instructions in the salient factor scoring manual to give better guidance in the scoring of the individual items. Some of the changes are corrections of text that should have been amended in earlier revisions of the score, or editorial improvements to make the instructions easier to read. Other changes reflect the application of the score in determining terms of imprisonment for DC Code supervised release violators. Finally, several new instructions implement advice the Commission's Office of General Counsel has provided to Commissioners and staff in the use of DC juvenile consent decrees and juvenile commitments to the DC Department of Human Services for salient factor scoring.

Aside from the amendments to the salient factor scoring manual, the Commission is also correcting a reference to the U.S. Sentencing Guidelines in its regulation at 28 CFR 2.68(l) on the imposition of conditions of supervised release for a transfer treaty prisoner who is released to a term of supervised release.

Implementation

These amendments will be applied in any hearing or record review conducted after the effective date of the amendments.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866. The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Subpart A—United States Code Prisoners and Parolees

2. Section 2.20 is amended as follows:

a. In the table entitled "Guidelines For Decisionmaking" remove "salient factor score 1981" and substitute "salient factor score 1998";

b. Revise the Salient Factor Scoring Manual, Item A, paragraphs A.1, A.5, and add paragraph A.14;

c. Revise the Salient Factor Scoring Manual, Item B, paragraphs B.3(b)–(c), and add paragraph B.3(d);

d. Revise the Salient Factor Scoring Manual, Item C, paragraphs C.1–C.4, redesignate paragraph C.5 as C.10, and add paragraphs C.6–C.9;

e. Revise the Salient Factor Scoring Manual, Item E, paragraphs E.3(b)–(c);

f. Revise the Salient Factor Scoring Manual, Item F;

g. Revise the Salient Factor Scoring Manual, Special Instructions—Federal Probation Violators, by revising the title and the paragraphs for scoring Items A and E, remove the paragraph for scoring Item F, and redesignate the paragraph for scoring Item G as Item F;

h. Revise the Salient Factor Scoring Manual, Special Instructions—Federal Parole Violators, by revising the title and the paragraphs for scoring Items A–D, and F, and remove the paragraph for scoring Item G;

i. Revise the Salient Factor Scoring Manual, Special Instructions—Federal Confinement/Escape Status Violators With New Criminal Behavior In The Community, by revising the title, remove the paragraph for scoring Item F, and redesignate the paragraph for scoring Item G as Item F and revise Item F.

The revised and added text reads as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

* * * * *

Salient Factor Scoring Manual

* * * * *

Item A. * * *

A.1 In General.

(a) Count all convictions/adjudications (adult or juvenile) for criminal offenses (other than the current offense) that were committed prior to the present period of confinement, except as specifically noted.

(b) Convictions for prior offenses that are not separated from each other by an intervening arrest (*e.g.*, two burglaries followed by an arrest for both offenses) are counted as a single prior conviction. Prior offenses that are separated by an intervening arrest are counted separately (*e.g.*, three convictions for larceny and a conviction for an additional larceny committed after the arrest for the first three larcenies would be counted as two prior convictions, even if all the four offenses were adjudicated together).

(c) Do not count the current federal offense or state/local convictions resulting from the current federal offense ((*i.e.*, offenses that are considered in assessing the severity of the current offense). Exception: Where the first and last overt acts of the current offense behavior are separated by an intervening federal conviction (*e.g.*, after conviction for the current federal offense, the offender commits another federal offense while on appeal bond), both offenses are counted in assessing offense severity; the earlier offense is also counted as a prior conviction in the salient factor score.

* * * * *

A.5 Diversion.

Conduct resulting in diversion from the judicial process without a finding of guilt (*e.g.*, deferred prosecution, probation without plea, or a District of Columbia juvenile consent decree) is not to be counted in scoring this item. However, an instance of criminal behavior resulting in a judicial determination of guilt before a judicial body shall be counted as a conviction even if a conviction is not formally entered.

* * * * *

A.14 Juvenile Consent Decree (District of Columbia). A juvenile consent decree in the District of Columbia is a diversionary disposition not requiring an admission or finding of guilt. Therefore, it is not to be used in scoring this item.

Item B. * * *

B.3 Definitions.

* * *

(b) This item includes confinement in adult or juvenile institutions, community corrections centers, and other residential treatment centers (*e.g.*, halfway houses and community treatment centers). It does not include foster home placement. Count confinement in a community corrections center (CCC) or other residential treatment center only when it is part of a committed sentence. Do not count confinement in a community corrections center or other residential treatment center when imposed as a condition of probation or parole. Do not count self-commitment for drug or alcohol treatment.

(c) If a committed sentence of more than 30 days is imposed prior to the current offense but the offender avoids or delays service of the sentence (*e.g.*, by absconding, escaping, bail pending appeal), count as a prior commitment. **Note:** Where the subject unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items D and E. Example: An offender is sentenced to a three-year prison term, released on appeal bond, and commits the current offense. Count as a previous commitment under Item B, but not under Items D and E. To be considered under Items D and E, the avoidance of sentence must have been unlawful (*e.g.*, escape or failure to report for service of sentence). Example: An offender is sentenced to a three-year prison term, escapes, and commits the current offense. Count as a previous commitment under Items B, D, and E.

(d) District of Columbia Juvenile Commitment to Department of Human Services. In the District of Columbia, juvenile offenders may be committed to the Department of Human Services for placement ranging from a foster home to a secure juvenile facility. Such a commitment is counted only if it can be established that the juvenile was actually committed for more than 30 days to a secure juvenile institution or residential treatment center rather than a foster home.

Item C. * * *

C.1 Score 3 if the subject was 26 years of age or more at the commencement of the current offense and has three or fewer prior commitments.

C.2 Score 2 if the subject was 26 years of age or more at the commencement of the current offense and has four prior commitments.

C.3 Score 1 if the subject was 26 years of age or more at the commencement of the current offense and has five or more prior commitments.

C.4 Score 2 if the subject was 22–25 years of age at the commencement of the current offense and has three or fewer prior commitments.

C.5 Score 1 if the subject was 22–25 years of age at the commencement of the current offense and has four prior commitments.

C.6 Score 0 if the subject was 22–25 years of age at the commencement of the current offense and has five or more prior commitments.

C.7 Score 1 if the subject was 20–21 years of age at the commencement of the current offense and has three or fewer prior commitments.

C.8 Score 0 if the subject was 20–21 years of age at the commencement of the current offense and has four prior commitments.

C.9 Score 0 if the subject was 19 years of age or less at the commencement of the current offense with any number of prior commitments.

Item E. * * *

E.3 Definitions. * * *

(b) The term "parole" includes parole, mandatory parole, supervised release, conditional release, or mandatory release supervision (*i.e.*, any form of supervised release).

(c) The term "confinement/escape status" includes institutional custody, work or study release, pass or furlough, community corrections center or other residential treatment center confinement (when such confinement is counted as a commitment under Item B), or escape from any of the above.

Item F. Older Offenders.

F.1 Score 1 if the offender was 41 years of age or more at the commencement of the current offense and the total score from Items A–E is 9 or less.

F.2 Score 0 if the offender was less than 41 years of age at the commencement of the current offense or if the total score from Items A–E is 10.

Special Instructions—Probation Violator This Time

Item A Count the original conviction that led to the sentence of probation as a prior conviction. Do not count the probation revocation as a prior conviction.

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Item E By definition, no point is credited for this item. Exception: A person placed on unsupervised probation (other than for deportation) would not lose credit for this item.

* * * * *

Special Instructions—Parole or Supervised Release Violator This Time

Item A The conviction from which paroled or placed on supervised release counts as a prior conviction.

Item B The commitment from which paroled or released to supervised release (including a prison term ordered for a prior supervised release revocation), counts as a prior commitment.

Item C Use the age at commencement of the violation behavior (including new criminal behavior).

Item D Count backwards three years from the commencement of the violation behavior (including new criminal behavior).

* * *

Item F Use the age at commencement of the violation behavior (including new criminal behavior).

Special Instructions—Confinement/ Escape Status Violator With New Criminal Behavior in the Community This Time

* * *

Item F Use the age at commencement of the confinement/escape status violation.

* * * * *

Subpart B—Transfer Treaty Prisoners and Parolees

§ 2.68 [Amended]

3. Section 2.68 is amended at paragraph (l) by removing "5B1.4(a)" and adding "5D1.3(a) and (c)" in its place.

Dated: November 18, 2002.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 02–29952 Filed 11–25–02; 8:45 am]

BILLING CODE 4410–31–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Governing Filing of Documents With the National Labor Relations Board; Provision for Filing Utilizing Forms on the Agency's Web Site

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending its regulations governing filing documents with the Board to permit certain documents to be filed utilizing forms that are now, or are expected to be made available in the future, on the Board's Web site (*http://www.nlrb.gov*).

DATES: Effective: November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Acting Executive Secretary, (202) 273–1067.

SUPPLEMENTARY INFORMATION: Pursuant to OMB Memorandum M–00–10, "OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act," the National Labor Relations Board has been developing forms to be placed on the Board's Web site (*http://www.nlrb.gov*) to permit electronic filings with the Board. In fiscal year 2000, the Board placed on its Web site a form which individuals can use to file electronic requests under the Freedom of Information Act with the Board's Headquarters offices. In the near future, and over the course of the next several years, the Board will be expanding this program to permit electronic filings of other documents, including requests for extensions of time to be filed with the General Counsel's Office of Appeals or with the Executive Secretary's Office.

The Board's present filing and service rules do not address such electronic filings. Indeed, the current rules could, in some respects, be read to prohibit some of the very filings that we are planning to permit. Consequently, we have decided to promulgate an omnibus provision giving blanket authority to members of the public to utilize new electronic forms as soon as they are placed on the Web site. As new forms are developed and implemented, they will be accompanied on the Web site by instructions describing how they are to be used. Documents filed in accordance with these instructions will be accepted even if there is some provision elsewhere in the Board's rules that prohibits, or seems to prohibit, such filings.

In the case of documents that are required to be served on other parties to a Board proceeding, some provision for expedited service must be made, consistent with Section 102.114(a). That paragraph provides that "service on all parties shall be made in the same manner as that utilized in filing the paper with the Board, or in a more expeditions manner." In the case of filings made using forms on the Board's Web site, service by the "same" manner is not possible. Instead, we are substituting a requirement, drawn from our experience with our rules for filing by facsimile (Section 102.114(h)), that other parties be notified by phone and then either served personally, by overnight delivery service, or by facsimile transmission.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely permit persons, in certain circumstances, to file documents with the Board electronically.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as "significant rules" under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the preamble, the National Labor Relations Board is amending 29 CFR Chapter I, Part 102, as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 442a(j) and (k) of the Privacy Act (5 U.S.C. 55a(j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

2. § 102.114 is amended by revising the heading and by adding a new paragraph (i), following the existing paragraph (h), to read as follows:

§ 102.114 Filing and service of papers by parties; form of papers; manner and proof of filing or service; electronic filings.

* * * * *

(i) The Agency's Web site (http://www.nlrb.gov) contains certain forms that parties or other persons are permitted to file with the Agency electronically. Parties or other persons choosing to utilize those forms to file documents electronically are permitted do so by following the instructions described on the Web site, notwithstanding any contrary provisions elsewhere in these rules. In the event the document being filed electronically is required to be served on another party to a proceeding, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

Dated, Washington, DC, November 14, 2002.

By direction of the Board.

Lester A. Heltzer,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 02–29740 Filed 11–25–02; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Covering Late Filings of Certain Documents in NLRB Representation Cases

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is revising its rules that govern the time for filing certain papers with the Board. The revisions are being adopted in order to permit certain documents in NLRB representation cases, required to be filed by a certain date, to be filed late where the reason for the late filing constitutes "excusable neglect" and provided that no undue prejudice would result from the late filing. The intended effect of the revisions is to avoid the inequities that would result from rejecting all late-filed documents without regard to the reason why the party missed the filing deadline.

DATES: Effective: November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Acting Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. Telephone: (202) 273–1067.

SUPPLEMENTARY INFORMATION: At present, the rules of the National Labor Relations Board provide for circumstances in which certain documents in unfair labor practice cases may be filed late but make no similar provision for late filing of documents in NLRB representation cases. The Board has concluded that it would be appropriate to provide a formal basis for accepting certain late-filed documents in representation cases.

The representation documents permitted to be filed late under the new rule are exceptions, requests for review, motions, briefs, and any document filed in response to any of the foregoing documents.

Subsections (a) and (b) of Section 102.111 are retained without modification. Subsection (c) of Section 102.111 is modified to provide that certain documents in representation cases may be filed late where the reason for filing constitutes "excusable neglect," provided that no undue prejudice would result from the late filing. This is the same standard presently found in this section for late filings in unfair labor practice cases, and a standard that was borrowed from Fed. R. Civ. P. 60 (b). No attempt is made to define the myriad situations to which the rule might apply. Rather, this is a matter that is to be left to determination on a case-by-case basis. The rule continues to provide that a party seeking to file a document late must file, along with the document, a motion stating the grounds relied upon for requesting permission to file late, along with affidavits sworn to by individuals with personal knowledge of the specific facts relied upon in support of the request. Finally, the rule continues to stay the time for responding to any untimely filed document until the date a ruling issues accepting the untimely document.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as "significant rules" under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely set forth procedures to be followed by the

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Agency in determining when to accept late-filed documents.

Paperwork Reduction Act

These rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

Small Business Regulatory Enforcement Fairness Act

Because these rules relate to Agency procedure and practice and merely modify the agency's filing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

To avoid the injustices that could result if the Board had no flexibility in deciding to accept late-filed documents in representation cases, the Board amends 29 CFR part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.111(c) is revised to read as follows:

§ 102.111 Time computation.

(c) The following documents may be filed within a reasonable time after the time prescribed by these rules only upon good cause shown based on excusable neglect and when no undue prejudice would result:

(1) In unfair labor practice proceedings, motions, exceptions, answers to a complaint or a backpay specification, and briefs; and

(2) In representation proceedings, exceptions, requests for review, motions, briefs, and any responses to any of these documents. A party seeking to file such documents beyond the time prescribed by these rules shall file, along with the document, a motion that states the grounds relied on for requesting permission to file untimely. The specific facts relied on to support the motion shall be set forth in affidavit form and sworn to by individuals with personal knowledge of the facts. The time for filing any document responding to the untimely document shall not commence until the date a ruling issues accepting the untimely document. In addition, cross-exceptions shall be due within 14 days, or such further period as the Board may allow, from the date a ruling issues accepting the untimely filed documents.

Dated: November 14, 2002.

By Direction of the Board.

Lester A. Heltzer,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 02–29741 Filed 11–25–02; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–095]

RIN 2115–AA97

Safety Zone; Cove Point, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will resume enforcement of the safety zone at the Cove Point liquefied natural gas (LNG) facility's offshore terminal on the Chesapeake Bay. The Coast Guard has not enforced the safety zone since the facility discontinued LNG operations in 1980. Due to construction activity at the terminal, the Coast Guard will resume enforcement of the safety zone.

DATES: This notice of enforcement is effective on November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The liquefied natural gas (LNG) facility at Cove Point, Maryland is in the process of updating its terminal equipment in anticipation of transfer operations beginning in the spring of 2003. Although the Captain of the Port (COTP) Baltimore has not yet issued a Letter of Recommendation under 33 Code of Federal Regulations (CFR) part 127.009, enforcement of the safety zone established in 33 CFR 165.502 will now resume.

The Cove Point facility originally started terminal operations in 1978 and conducted transfers of LNG from vessels until 1980. During this period a safety zone was established and actively enforced. Safety zone enforcement ceased when LNG transfer operations were stopped. The facility's terminal is located approximately one mile from shore and has developed into a fishing area since the terminal ceased transfer operations. Numerous commercial and recreational boats frequent this area during fishing seasons and at other times throughout the year.

The Coast Guard will resume continual enforcement of the safety zone during the construction process at the terminal, when heavy equipment will be in operation in the area. The enforcement of the safety zone will prevent unauthorized vessels from entering the work zone and creating safety hazards.

Dated: November 8, 2002.

R.B. Peoples,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 02–29972 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Docket No. FEMA–P–7618

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Illinois: Lake and Cook (Case No. 02–05–2130P).	Village of Deerfield.	September 19, 2002, September 23, 2002, *Deerfield Review.*	The Honorable Steven B. Harris, Mayor, Village of Deerfield, Village Hall, 850 Waukegan Road, Deerfield, IL 60015.	September 6, 2002	170361
Indiana: Hamilton (Case No. 02–05–2995P).	Town of Westfield.	October 22, 2002, October 29, 2002, *The Noblesville Ledger.*	Mr. Michael McDonald, Town Council President, Town of Westfield, 130 Penn Street, Westfield, IN 46074.	September 24, 2002	180083
Kansas: Johnson (Case No. 02–07–1010P.	City of Lenexa.	October 22, 2002, October 29, 2002, *The Legal Record.*	The Honorable Joan Bowman, Mayor, City of Lenexa, 12350 W. 87th Street Parkway, Lenexa, KS 66215.	September 19, 2002	200168
Kansas: Harvey (Case No. 02–07–1008P).	City of Newton.	September 20, 2002, September 27, 2002, *The Newton Kansan.*	The Honorable Marjorie Roberson, Mayor, City of Newton, 201 E. 6th Street, Newton, KS 67114.	September 10, 2002	200133
Kansas: Johnson (Case No. 02–07–1010P).	City of Shawnee.	October 24, 2002, October 31, 2002, *The Journal Herald.*	The Honorable Jim Allen, Mayor, City of Shawnee, 11110 Johnson Drive, Shawnee, KS 66203.	September 19, 2002	200177
Michigan; Wayne (Case No. 01–05–3983P).	Charter Township of Brownstown.	September 11, 2002, September 18, 2002, *The News-Herald.*	Mr. W. Curt Boller, Supervisor, Brownstown Township, 21313 Telegraph Road, Brownstown Township, MI 48183.	December 11, 2002	260218
Minnesota: Dakota (Case No. 02–05–1843P).	City of Burnsville.	October 24, 2002, October 31, 2002, *Dakota County Tribune.*	The Honorable Elizabeth Kautz, Mayor, City of Burnsville, 100 Civic Center Parkway, Burnsville, MN 55337.	September 30, 2002	270102
Missouri: Greene (Case No. 00–07–676P).	Unincorporated Areas.	October 9, 2002, October 16, 2002, *Springfield News-Leader.*	The Honorable David L. Coonrod, Presiding Commissioner, County of Greene, 940 Boonville Avenue, Springfield, MO 65802.	January 15, 2003 ...	290782

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Missouri: Jasper and Newton (Case No. 01–07–831P).	City of Joplin.	October 4, 2002, October 11, 2002, *The Joplin Globe.*	The Honorable Richard H. Russell, Mayor, City of Joplin, 1710 East 32nd Street, Joplin, MO 64804.	January 10, 2003 ...	290183
Texas: Bexar (Case No. 02–06–1263P).	Unincorporated Areas.	September 23, 2002, September 30, 2002, *San Antonio Express News.*	The Honorable Cyndi Taylor Krier, Judge, Bexar County, 100 Dolorosa, Suite 101, San Antonio, TX 78205.	October 14, 2002 ...	480035
Texas: Dallas (Case No. 01–06–1163P).	City of Dallas.	September 13, 2002, September 20, 2002, *Dallas Morning News.*	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, City Hall, Dallas, TX 75201.	December 20, 2002	480171
Texas: Fort Bend (Case No. 02–06–266P).	Unincorporated Areas.	September 4, 2002, September 11, 2002, *Fort Bend Star.*	The Honorable James C. Adolpus, Judge, Fort Bend County, 301 Jackson Street, Suite 719, Richmond, TX 77469.	August 22, 2002	480228
Texas: Tarrant (Case No. 02–06–064P).	City of Fort Worth.	September 13, 2002, September 20, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Forth Worth, TX 76102.	August 30, 2002	480596
Texas: Tarrant (Case No. 02–06–1073P).	City of Fort Worth.	September 26, 2002, October 3, 2002, *Forth Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Forth Worth, TX 76102.	January 2, 2003	480596
Texas: Dallas (Case No. 02–06–1091P).	City of Irving.	September 5, 2002, September 12, 2002, *The Irving Morning News.*	The Honorable Joe Putnam, Mayor, City of Irving, P.O. Box 152288, Irving, TX 75015.	August 19, 2002	480180
Texas: Dallas (Case No. 02–06–384P).	City of Irving.	September, 12, 2002, September 19, 2002, The Irving Morning News.	The Honorable Joe Putnam, Mayor, City of Irving, P.O. Box 15228, Irving, TX 75015.	December 19, 2002	480180
Texas: Dallas (Case No. 01–06–1088P).	City of Lancaster.	October 24, 2002, October 31, 2002, *Lancaster Today.*	The Honorable Joe Tillotson, Mayor, City of Lancaster, P.O. Box 940, Lancaster, TX 75146.	January 27, 2003 ...	480182
Texas: Denton (Case No. 02–06–731P).	City of Lewisville.	September 25, 2002, October 2, 2002, Denton County Morning News.	The Honorable Gene Carey, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	September 12, 2002	480195
Texas: Montgomery (Case No. 01–06–1444P).	City of Magnolia.	September 11, 2002, September 18, 2002, Magnolia Potpourri.	The Honorable Frank M. Parker III, Mayor, City of Magnolia, P.O. Box 996, Magnolia, TX 77355.	August 30, 2002	481261
Texas: Fort Bend (Case No. 02–06–266P).	City of Missouri City.	September 5, 2002, September 12, 2002, Fort Bend Mirror.	The Honorable Allen Owen, Mayor, City of Missouri City, P.O. Box 666, Missouri City, TX 77459.	August 22, 2002	480304
Texas: Montgomery (Case No. 01–06–1444P).	Unincorporated Areas.	September 11, 2002, September 18, 2002, The Courier.	The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	August 30, 2002	480483
Texas: Bexar (Case No. 02–06–1263P).	City of San Antonio.	September 23, 2002, September 30, 2002, San Antonio Express News.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	September 13, 2002	480045
Texas: Bexar (Case No. 02–06–2309P).	City of San Antonio.	October 15, 2002, October 22, 2002, San Antonio Express News.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	January 21, 2003 ...	480045
Texas: Bexar (Case No. 02–06–1679P).	City of San Antonio.	October 23, 2002, October 30, 2002, San Antonio Express News.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	January 29, 2003 ...	480045
Texas: Bexar (Case No. 02–06–2309).	City of Shavano Park.	October 15, 2002, October 22, 2002, San Antonio Express News.	The Honorable Tommy Peyton, Mayor, City of Shavano Park, City Hall, 99 Saddletree Road, San Antonio, TX 78231.	January 21, 2003 ...	480047
Texas: Tarrant (Case No. 02–06–1098P).	City of Southlake.	September 12, 2002, September 19, 2002, Fort Worth Star Telegram.	The Honorable Rick Stacy, Mayor, City of Southlake, 1400 Main Street, Southlake, TX 76092.	December 19, 2002	480612
Texas: Fort Bend (Case No. 02–06–266P).	City of Sugar Land.	September 4, 2002, September 11, 2002, Fort Bend Star.	The Honorable David G. Wallace, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487–0110.	August 22, 2002	480234

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 13, 2002.

Anthony S. Lowe,

Administrator, , Federal Insurance and Mitigation Administration.

[FR Doc. 02–29864 Filed 11–25–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *michael.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEse were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of 90 days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
East Marley Creek:		
Approximately 800 feet downstream of Wolf Road	*679	FEMA Docket No. 7611, Mokena (Village) and Will County (Unincorporated Areas).
Just downstream of 104th Street	*686	
Maps are available for inspection at the Village Hall, 11004 Carpenter Street, Mokena, Illinois.		
Maps are available for inspection at the Land Use Department, Subdivision Engineering Division, 58 E. Clinton Street, Joliet, Illinois.		
Elkhorn River:		
Approximately 4,800 ft. downstream of 558th Avenue	*1498	FEMA Docket No. 7611, Madison County, City of Tilden, Village of Meadow Grove, City of Norfolk, Village of Battle Creek.
Approximately 300 ft. upstream of Center Street/534th Avenue.	*1657	
Union Creek:		
Approximately 1.9 miles upstream of 3rd Street	*1589	Madison County.
Approximately 1.7 miles upstream of 3rd Street	*1588	

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Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Maps are available for inspection at Zoning Administration, 1112 Bonita Drive, Norfolk, Nebraska.		
Maps are available for inspection at the City Clerk, 202 South Center, Tilden, Nebraska.		
Maps are available for inspection at 102 South Second Street, Battle Creek, Nebraska.		
Maps are available for inspection at 208 Main Street, Meadow Grove, Nebraska.		
Maps are available for inspection at 701 Koeningstein Avenue, Norfolk, Nebraska.		
Indian Creek:		
Just upstream of Three Locks Road	*610	FEMA Docket NO. 7611, Ross County (Unincorporated Areas).
Just downstream of confluence of Rozelle Creek	*668	
Little Salt Creek:		
Approximately 1,000 feet upstream of its confluence with Salt Creek.	*602	
Little Salt Creek:		
Approximately 800 feet downstream of the Ross/Jackson county boundary.	*602	FEMA Docket No. 7611, Ross County (Unincorporated Areas).
Middle Fork Salt Creek:		
Just upstream of the confluence with Salt Creek	*600	FEMA Docket No. 7611, Ross County (Unincorporated Areas).
Approximately 1,000 feet upstream of the confluence of Little Salt Creek.	*602	
Paint Creek:		
Approximately 1,900 feet upstream of State Route 104	*612	FEMA Docket No. 7611 Ross County (Unincorporated Areas) City of Chillicothe, Village of Bainbridge.
Just downstream of Jones Levee Road	*683	
Rozelle Creek:		
Just upstream of the confluence with Indian Creek	*668	FEMA Docket No. 7611, Ross County (Unincorporated Areas).
Approximately 1,700 feet above the confluence with Indian Creek.	*684	
Salt Creek:		
Just upstream of CSX Railroad	*590	FEMA Docket No. 7611, Ross County (Unincorporated Areas).
Just downstream of the confluence with Middle Fork Salt Creek.	*600	
Scioto River:		
Approximately 0.1 mile upstream of Main Street	*619	FEMA Docket No. 7611, Ross County (Unincorporated Areas) City of Chillicothe.
Approximately 3.2 miles upstream of U.S. Highway 35	*631	
Maps are available for inspection at the Ross County Engineering Building, 755 Fairgrounds Road, Chillicothe, Ohio.		
Maps are available for inspection at the Village of Bainbridge, City Office, 118 East Main Street, Bainbridge, Ohio.		
Maps are available for inspection at the City of Chillicothe, Administration Building, 35 South Paint Street, Chillicothe, Ohio.		

*National Geodetic Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 13, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–29963 Filed 11–25–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *michael.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEse were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified ♦Elevation in feet (NAVD) Modified
Arizona	Saline County (Unincorporated Areas) (FEMA Docket No. 7609).	Clear Creek	Approximately 4,800 feet downstream of U.S. Route 167.	*252
			Approximately 350 feet upstream of U.S Route 167.	*270
		Duck Creek	Approximately 6,000 feet downstream of S. Springlake Road.	*253
			Approximately 300 feet upstream of U.S. Route 167.	*275
		Hopt Branch	Approximately 1,500 feet downstream of Honeysuckle Drive.	*268
			Approximately 4,250 feet upstream of Honeysuckle Drive.	*285
		Maple Creek	Approximately 6,200 feet downstream of US Route 65.	*237
			Just upstream of Springlake Road	*287
		Maple Creek Tributary	Approximately 4,500 feet downstream of US Route 167.	*247
			Approximately 100 feet upstream of US Route 167.	*255
		McCright Branch	Approximately 2,000 feet downstream of Pear Orchard Drive.	*285
			Approximately 150 feet upstream of Dena Drive.	*310
		Owen Creek	Approximately 5,200 feet downstream of Midland Road.	*323
			Approximately 2,000 feet upstream of Hilldale Road.	*413
Maps are available for inspection at the Saline County Assessor's Office, Real Estate Department, 215 Main Suite 5, Benton, Arkansas.				
Kansas	Wamego (City) (Pottawatomie County) (FEMA Docket No. 7609).	East Unnamed Creek	Approximately 1000 feet upstream of Pizza Hut Road.	*1019

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified ♦Elevation in feet (NAVD) Modified
			Approximately 900 feet upstream of Missile Base Road.	*1041
		East Unnamed Creek Tributary.	Approximately 700 feet upstreasm of the mouth.	*1003
			Approximately 850 feet upstream of Graves Road.	*1012
		North Unnamed Tributary	Just upstream of US Highway 24	*967
			Approximately 100 feet upstream of Spencer Road.	*991
Maps are available for inspection at the City of Wamego, 430 Lincoln Avenue, Wamego, Kansas.				
Minnesota	Northfield (City) (Dakota and Rice Counties) (FEMA Docket No. 7609).	Cannon River	At downstream corporate limits	*890
			Approximately 1,200 feet upstream of the corporate limits (Limit of flooding affecting community).	*913
Maps are available for inspection at 801 Washington Street, Northfield, Minnesota.				
Minnesota	St. Paul (City) (Ramsey County) (FEMA Docket No. 7609).	Mississippi River	Approximately 120 feet upstream of the corporate limits.	*705
			Just downstream of Lock and Dam No. 1	*716
Maps are available for inspections at the St. Paul Planning & Economic Development, 1300 City Hall Annex, 25 West 4th Street, St. Paul, Minnesota.				
Missouri	Dalton (Village) (Chariton County) (FEMA Docket No. 7609).	Missouri River		*642–643
Maps are available for inspection at the Village of Dalton Chairperson's home, 109 N. Sycamore Street, Dalton, Missouri.				

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 13, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–29962 Filed 11–25–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72; FCC 97–420]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulation part 54, which was published in the **Federal Register** on Tuesday January 13, 1998, (63 FR 2094). This document will correct one word in section 54.303(b)(4) of the Commission rules. The regulation relates to the calculation of Long Term Support by the Administrator contained in section 54.303(b)(4).

DATES: Effective November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Katie King, Attorney, Wireline Competition Bureau (formerly, Common Carrier Bureau), Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION:

Background

Part 54 rules are issued pursuant to the Communications Act of 1934, as amended. The purpose of the part 54 rules is to implement section 254 of the Communications Act of 1934, as amended, 47 U.S.C. 254. The final regulation that is subject to the correction deals with § 54.303 and how the Administrator calculates long term support.

Need for Correction

As published, the final regulation contains an error which needs to be corrected.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Accordingly, 47 CFR part 54 is corrected by making the following correcting amendments:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Revise paragraph (b)(4) of § 54.303 to read as follows:

§ 54.303 Long term support.

* * * * *

(b) * * *

(4) Beginning January 1, 2000, the Administrator shall calculate Long Term Support annually by adjusting the previous year's level of support to reflect the annual percentage change in the Department of Commerce's Gross Domestic Product-Chained Price Index (GDP–CPI).

* * * * *

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–29967 Filed 11–25–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 02–307]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission asks the Federal-State Joint Board on Universal Service to review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.

DATES: Effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Kathy Tofigh, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 released on November 8, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

1. In this Order, we ask the Federal-State Joint Board on Universal Service (Joint Board) to review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled. In particular, we request the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing service, as well as the Commission's rules regarding support for second lines. We request that the Joint Board provide recommendations to the Commission regarding if and how those rules should be modified. We anticipate that the Joint Board will seek public comment on whether these rules continue to fulfill their intended purposes, and whether modifications are warranted in light of developments in the telecommunications marketplace. We also ask the Joint Board to examine the process for designating ETCs.

2. In light of developments in the telecommunications marketplace since 1997, we believe that it is appropriate to request the Joint Board to review the Commission's rules relating to support in competitive study areas and support for second lines. We also ask the Joint Board to examine the process for designating ETCs. The Joint Board should address how its recommendations regarding the issues set forth below further the universal service goals outlined in section 254 of the Act, including the principle of competitive neutrality. In addition, the Joint Board should consider how its analysis relates to the five-year time frame for high-cost support adopted in the *Rural Task Force Order*.

3. We ask the Joint Board to review the methodology for calculating support for ETCs in competitive study areas. In the *First Report and Order*, 62 FR 32862, June 17, 1997, the Commission determined that it was appropriate to calculate per-line portable universal service support for all ETCs based on the support that the incumbent LEC would receive for the same line. The Commission reasoned that calculating support based on the incumbent LEC's costs would aid the emergence of competition and would be the least burdensome way to administer the support mechanisms. In addition, the Commission explained that although a competitive ETC may have different costs than the incumbent LEC, a competitive ETC must also comply with section 254(e) of the Act, and that section 214(e) requirements would prevent competitive ETCs from profiting by limiting service to low cost areas. Some groups have argued that this methodology provides a windfall and creates an unfair advantage for competitive ETCs with lower costs, whereas others argue that the current rules are necessary for competitive neutrality and are the least administratively burdensome way to administer support. We ask the Joint Board to review the methodology for calculating support for ETCs in competitive study areas, taking into consideration the universal service principles outlined in section 254 of the Act and the principle of competitive neutrality. We also ask the Joint Board to examine the rules governing calculation of high-cost support for competitive ETCs utilizing UNEs.

4. Support for competitive ETCs currently is not capped under the Commission's rules. On the other hand, the Commission's rules limit the overall amount of rural high-cost loop support available to incumbent LECs. When the Commission adopted these rules in 2001, it concluded that the modified embedded cost mechanism would provide rural carriers with specific, predictable and sufficient support over the next five years. The Joint Board should address the potential benefits and costs of modifying these rules for stability, predictability, and sufficiency of the fund, as well as their potential effects on competition and competitive neutrality. In addition, the Joint Board should address the specific concerns raised in the *Rural Task Force Order* regarding excessive growth in the fund if incumbent rural carriers lose a significant number of lines to competitive ETCs. The Joint Board should also consider the methodology for determining the location of a line served by a mobile wireless service provider, and whether modifications are warranted.

5. The Joint Board should also consider the extent to which the Commission's current rules relating to support for second lines may impact the size of the universal service fund, and provide recommendations on whether the Commission should adopt modifications in this area. Under our current rules, all residential and business connections provided by ETCs are eligible for high-cost support. In adopting these rules in 1997, the Commission recognized that "overly expansive universal service mechanisms potentially could harm all consumers by increasing the cost of telecommunications services for all." At that time, the Commission indicated it would continue to evaluate the issue. We now ask the Joint Board to consider whether the goals of section 254 would be served if support were limited to a single connection to the end-user—whether provided by the incumbent or a competitive ETC. We also ask the Joint Board to consider whether such a rule would be competitively neutral and how it would impact competition.

6. Finally, the Joint Board should address the system for resolving requests for ETC designations under section 214(e)(2) of the Act. Some parties have argued that shortcomings in the current system hamper the emergence of competition in rural areas, whereas others have expressed concerns that universal service goals will be undermined if state commissions do not impose similar universal service obligations on incumbent LECs and competitive ETCs. Taking into consideration these concerns, we ask the Joint Board to consider whether it is advisable to establish federal processing guidelines for ETC applications, and if so, what should be included in such guidelines. Furthermore, in the *Rural Task Force Order*, the Commission determined that the level of disaggregation of support should be

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considered in determining whether to certify new ETCs for a service area other than a rural carrier's entire study area. We ask the Joint Board to consider whether the Commission should provide additional guidance regarding the manner in which the level of disaggregation of support should be considered, and if so, what guidance the Commission should provide.

7. Pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, this Order is adopted.

8. Pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, the Federal-State Joint Board on Universal Service is requested to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier is providing service and support for second lines and provide recommendations to the Commission.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–29966 Filed 11–25–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 01–67; RM–9796; FCC 02–232]

Amendment of the Commission's Rules To Revise the Authorized Duty Cycle on 173.075 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission revised the duty cycle specifications for stolen vehicle recovery system operations on 173.075 MHz by adding a new duty cycle option of 1800 milliseconds every 300 seconds, with a maximum of six messages in any thirty-minute period. This action was taken to enable the enhancement of police performance in the recovery of stolen vehicles and apprehension of suspects. This rule change will facilitate: more efficient law enforcement, a decrease in the time between when a vehicle is discovered stolen and when the theft is reported to the police, greater stolen vehicle recovery rates, and a greater rate of apprehension of criminals.

DATES: Effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0627, TTY (202) 418–7233, or via e-mail at *fthyden@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order*, FCC 02–232, adopted on August 9, 2002, and released on September 5, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

In this *Report and Order*, we address the proposal set forth in the *Notice of Proposed Rulemaking (NPRM)*, 66 FR 31598, June 12, 2001, in WT Docket No. 01–97. In the *NPRM*, the Commission sought comment on whether to revise the duty cycle specifications for stolen vehicle recovery system (SVRS) operations on 173.075 MHz. The *NPRM* also invited comment on whether the public interest continues to be served by specification of duty cycles for the SVRS operations on 173.075 MHz. For the reasons explained below, we are revising § 90.20(e)(6) of the Commission's rules to add a new duty cycle option of 1800 milliseconds every 300 seconds with a maximum of six messages in any thirty-minute period. We believe that this new duty cycle option will enable the enhancement of police performance in the recovery of stolen vehicles and apprehension of suspects, while ensuring that harmful interference does not occur to television reception. It is our view that the specification of SVRS duty cycles continues to serve the public interest by also encouraging a competitive marketplace for provision of SVRS operations.

I. Procedural Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA) of 1980, the Commission has prepared a Final Regulatory Flexibility Analysis of the possible impact of the rule changes contained in this *Report and Order* on small entities. The Final Regulatory Flexibility Act analysis is set forth in Appendix A of the *Report and Order*. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Analysis

2. This *Report and Order* does not contain any new or modified information collection. Therefore, it is not subject to the requirements for a paperwork reduction analysis, and the Commission has not performed one.

II. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix A of the *Notice of Proposed Rulemaking (NPRM)* issued in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* in WT Docket No. 97–82 conforms to the RFA. I. Need for, and Objectives of, the *Report and Order*

3. In the *Report and Order*, we modify the duty cycle for mobile specifications for SVRS operations, contained in 47 CFR § 90.20(e)(6), to 1800 milliseconds every 300 seconds to permit use of new technology. This modification is in the public interest because it enhances the efficient use of spectrum and permits greater efficiency in use of police resources to track and recover stolen vehicles and apprehend more individuals involved in such activities.

A. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. No comments were filed in direct response to the IRFA.

B. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. A small business concern is one that: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."

6. The rule change adopted in this *Report and Order* will provide marketing opportunities for radio manufacturers, some of which may be small businesses. Beyond this we are unable to quantify the potential effects on small entities.

C. Description of Reporting, Recordkeeping, and Other Compliance Requirements

7. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions taken in this rulemaking proceeding.

D. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

8. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

9. As an alternative, the Commission considered eliminating specified duty cycles for SVRS mobile and base transmitters. However, the Commission determined that the public interest continues to be served by retention of these duty cycles. The mobile duty cycle ensures that harmful interference to TV Channel 7 reception will not occur, while the base station duty cycle permits the growth of a competitive SVRS marketplace. The rule change adopted will accommodate the use of an early warning detector and, thus, enhance police performance in the recovery of stolen vehicles and apprehension of individuals suspected of committing these thefts.

10. Amendment of the duty cycle rule does not impose any new reporting or compliance requirements, however, it does permit an additional use of SVRS technology. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

E. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

11. None

Report to Congress: The Commission will send a copy of this *Report and Order*, including the FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this *Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b).

III. Ordering Clauses

12. Authority for issuance of this *Report and Order* is contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

13. Pursuant to the authority of sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), § 90.20(e)(6) of the Commission's Rules, 47 CFR 90.20(e)(6), *is amended* as set forth in the rule changes.

14. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

15. This proceeding *is terminated*.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble the Federal Communications Commission proposes to amend 47 CFR parts 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(c)(7).

2. Section 90.20 is amended by revising paragraph (e)(6) introductory text to read as follows:

§ 90.20 Public safety pool.

* * * * *

(e) * * *

(6) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with the Federal Government. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited to 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized 20 kHz bandwidth. Transmissions from mobiles shall be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively transmissions may be 200 milliseconds every second. Alternatively, transmissions from mobiles shall be limited to 1800 milliseconds every 300 seconds with a maximum of six such messages in any 30 minute period. Transmissions from base stations shall be limited to a total time of one second every minute. Applications for base stations operating on this frequency shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV Channel 7 transmitter of potential interference to TV Channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant:

* * * * *

[FR Doc. 02–29923 Filed 11–25–02; 8:45 am]

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VOL
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Proposed Rules

Federal Register
Vol. 67, No. 228
Tuesday, November 26, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Chapter I

Public Meetings: Development of Regulations Regarding Mandatory Advanced Electronic Cargo Information

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: This document announces that Customs will hold a series of public meetings in accordance with section 343(a) of the Trade Act of 2002 to assist in the development of proposed regulations to provide for the mandatory collection by Customs of electronic cargo information prior to importation into or exportation from the United States. Separate meetings will be held to address specific importation/exportation issues pertaining to air, sea, truck and rail cargo. The meetings are open to interested members of the trade community.

DATES: The meetings to discuss mandatory advanced collection of electronic information pertaining to cargo are scheduled for the following dates:

- Air cargo: January 14, 2003;
- Truck cargo: January 16, 2003;
- Rail cargo: January 21, 2003; and
- Sea cargo: January 23, 2003.

ADDRESSES: All meetings will be held from 10 a.m. to 3 p.m. in room B1.5–10 of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, NW., Washington, DC. Interested parties must provide Customs with notice of intent to attend a particular meeting at least five business days prior to the scheduled date for that meeting. Notice may be provided to Robyn Day at (202) 927–1440 or via e-mail at *traderelations@customs.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Robyn Day, U.S. Customs Service, Office of Trade Relations, at (202) 927–1440 or via e-mail at *traderelations@customs.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002 (the Act), Public Law 107–210, was signed into law on August 6, 2002. Section 343(a) directs the Secretary of the Treasury to promulgate regulations, within one year of enactment of the Act, to provide for the mandatory collection by Customs of electronic cargo information prior to importation into or exportation from the United States. In the course of developing such regulations, section 343(a) directs the Secretary to solicit comments from and consult with a broad range of parties likely to be affected by the regulations, including importers, exporters, carriers, customs brokers, and freight forwarders.

Section 343(a) requires that the electronic cargo information required under the regulations be reasonably necessary to ensure aviation, maritime and surface transportation safety and security pursuant to those laws enforced and administered by Customs. The requirements to provide particular information generally is to be imposed on the party (*e.g.* exporter, importer, carrier, broker) most likely to have direct knowledge of the cargo information. Additionally, the statute requires the Secretary to take specific factors into consideration in the development and promulgation of the regulations, including:

- The existence of competitive relationships among parties upon which the information collection requirements will be imposed;
- Differences among cargo carriers that arise from varying modes of transportation, different commercial practices and operational characteristics, and the technological capacity to collect and transmit information;
- The need for interim requirements to reflect the technology that is available at the time of promulgation of the regulations for purposes of transmitting/receiving/analyzing electronic information; and
- The need for transition periods and differences in transition times among modes of transportation.

This notice announces that Customs will hold a series of public meetings to assist in the development of proposed regulations pertaining to the mandatory advanced collection of electronic cargo information, with particular emphasis on the specific issues addressed above. Separate meetings will be held to address specific importation/exportation issues pertaining to air, sea, truck and rail cargo. The meetings are open to interested members of the trade community, however space is limited. The meetings are scheduled for the following dates:

- Air cargo: January 14, 2003;
- Truck cargo: January 16, 2003;
- Rail cargo: January 21, 2003; and
- Sea cargo: January 23, 2003.

All meetings will be held from 10 a.m. to 3 p.m. in room B1.5–10 of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, NW., Washington, DC. Interested parties must provide Customs with notice of their intent to attend a particular meeting at least five business days prior to the scheduled date for that meeting. Notice may be provided to Robyn Day at (202) 927–1440 or via e-mail at *traderelations@customs.treas.gov*. It is suggested that interested parties provide advance notice of intent to attend a particular meeting, as space is limited and attendance may be restricted accordingly.

It is noted that proposed legislation is currently pending (S. 1214, the Maritime Transportation Security Act) which may amend section 343 of the Trade Act of 2002. Any updates pertaining to either the substance or logistics of the scheduled meetings will be available on the Customs Internet Web site at *http://www.customs.treas.gov/rlf*.

Dated: November 20, 2002.

Michael Schmitz,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–29931 Filed 11–25–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 02N–0273]

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an advance notice of proposed rulemaking that appeared in the **Federal Register** of November 6, 2002 (67 FR 67572). The document solicited information and views on some potential changes to its current regulation prohibiting the use of certain proteins in ruminant animal feed.

EFFECTIVE DATE: November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Huntington, Executive Secretariat, Office of the Commissioner (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4443.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–28373, appearing on page 67572 in the **Federal Register** of Wednesday, November 6, 2002, the following correction is made:

1. On page 67573, in the second column, in the sixth line, the phone number "301–594–1755" is corrected to read "301–827–3800".

Dated: November 20, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29926 Filed 11–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106879–00]

RIN 1545–AY27

Dual Consolidated Loss Recapture Events; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 1503(d) regarding the events that require the recapture of dual consolidated losses.

DATES: The public hearing originally scheduled for December 3, 2002, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking and notice or public hearing that appeared in the **Federal Register** on Thursday, August 1, 2002, (67 FR 49892), announced that a public hearing was scheduled for December 3, 2002 at 10 a.m., in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1503(d) of the Internal Revenue Code. The public comment period for these proposed regulations expired on November 12, 2002. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, November 19, 2002, no one has requested to speak. Therefore, the public hearing scheduled for December 3, 2002, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–29994 Filed 11–25–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H005C]

RIN 1218–AB75

Occupational Exposure to Beryllium; Request for Information

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for information.

SUMMARY: OSHA requests information and comment on issues related to occupational exposure to beryllium, including current employee exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; employee training; medical surveillance for adverse health effects related to beryllium exposure; and other pertinent subjects. The information received in response to this document will assist the Agency in determining an appropriate course of action regarding occupational beryllium exposure.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or sent) by February 24, 2003.

Facsimile and electronic transmission: Your comments must be sent by February 24, 2003.

(Please see the **SUPPLEMENTARY INFORMATION** section for additional information on submitting comments.)

ADDRESSES: Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. H005C, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. H005C, in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/*.

(Please see the **SUPPLEMENTARY INFORMATION** section for additional information on submitting comments.)

FOR FURTHER INFORMATION CONTACT: General Information and press inquiries—Bonnie Friedman, Director, OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–1999. Technical Information—Amanda Edens, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2093. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's webpage at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

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I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA webpage. Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web site will be available at *http://www.osha.gov*. OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA web page and for assistance in using the web page to locate docket submissions.

II. Background

Properties and uses. Beryllium has unique characteristics that make it a superior material for certain specialized applications. Compared to other metals, beryllium is very light, has a high melting point, low electrical conductivity, superior strength and stiffness, high thermal conductivity, and high resistance to corrosion. In addition, it is also transparent to X-rays, absorbs neutrons, and is non-magnetic. Beryllium is used in several forms: as a pure metal, as beryllium oxide, and as an alloy with copper, aluminum, magnesium, or nickel.

Until recently, the primary demand for beryllium came from the Department of Defense and the Department of Energy, where the metal was important in the development of nuclear weapons and in applications for the nuclear power industry. However, the use of beryllium has become more widespread in general industry, both in the manufacture of products containing beryllium and the salvage of materials containing beryllium.

For example, because of its lightness and strength, beryllium and beryllium alloy are used by the aerospace industry in the manufacture of high performance military aircraft, satellites, rocketry and the space shuttle. Beryllium and beryllium alloy are also used in X-ray machines and high-speed computers. Beryllium alloy is used by manufacturers of electrical components to make springs, switches, and other parts that are used in automotive, computer, telecommunication, and other industries. Additional alloy applications include tubing for oil and gas drilling; tool and die making and other mold-making; jewelry; golf clubs; and non-sparking tools. Beryllium oxide is used as a substrate for circuits in computer manufacture and in industries that produce lasers or traveling-wave tubes, automotive ignition systems, radar, microwave systems, and in other electronic and opto-electronic markets. Processes that create employee exposure in these industries typically involve machine shop, metalworking, and finishing processes, such as machining, sanding, stamping, grinding, crushing, lapping, and sintering.

Beryllium is also present in other industries that do not intentionally produce or process the metal. Examples of such activities include abrasive blasting operations, where coal or copper slag is used as a substitute for sand; spot or seam welding of specialized beryllium-copper electrodes; welding processes, where beryllium is in the electrode, in the flux or rod, or in the substrate alloy being fabricated; and recycling metals and other materials from computers and electrical products.

Health Risks Associated With Occupational Exposure to Beryllium and Its Compounds

Some workers exposed to beryllium or beryllium compounds may develop beryllium sensitization, chronic beryllium disease (CBD, also sometimes known as berylliosis), lung cancer, or skin disease (Ex. 4–1). Acute beryllium disease, a pneumonitis resulting from high beryllium exposure, is now considered rare (Ex. 4–9).

Inhalation appears to be the primary route of exposure to beryllium. However, dermal contact can result in a beryllium-related skin disease characterized by a rash, or wart-like bumps (Ex. 4–15). Questions have been raised regarding the contribution of dermal exposure, ingestion, and genetic factors to the risk of sensitization and CBD. (*e.g.*, Exs. 4–2 and 4–14).

Chronic Beryllium Disease

CBD primarily affects the lungs. Inhalation of beryllium dust appears to be the primary route of exposure in CBD. Research indicates that beryllium exposure causes some workers to become sensitized, which may result in the formation of granulomas (inflammatory cells surrounding beryllium particles) in the lung that reduce oxygen exchange (Ex. 4–15). Proliferation of granulomas leads to additional symptoms of CBD, such as dry cough, chest pain, weakness, fatigue and progressive shortness of breath (Ex. 4–9). Progression of the disease may lead to weight loss, acrocyanosis (blueness or pallor of the extremities usually associated with pain and numbness), and eventually, heart failure. The clinical course of CBD is considered highly variable; because the disease may develop slowly over time, workers may have the disease for years without knowing it. With progression, CBD is sometimes fatal. (Ex. 4–10).

The amount or length of exposure to beryllium necessary to cause a specific individual to develop CBD is not known, but recent information suggests that even short exposures to levels of beryllium below OSHA's Permissible Exposure Limit (PEL) of 2 $\mu g/m^3$ averaged over an 8-hour day may lead to CBD in some workers (Exs. 4–5, 4–7, and 4–8). CBD may develop within months after initial exposure to beryllium or may have a very slow onset and not develop for 25 years or more and may even develop after exposure has ceased (Ex. 4–9). The prevalence of CBD among beryllium exposed workers has been reported to range from an average of about 2% to a high of approximately 15% for workers involved in machining operations in the manufacture of beryllium products (Exs. 4–5, 4–6, and 4–8).

Measurement of exposure to total airborne beryllium dust may not be the best predictor of CBD. Particle size, surface area, number of particles, solubility, and the chemical form of beryllium involved may all be relevant to the development of disease. It has been suggested that development of disease may be more closely correlated with the mass or number of particles deposited in the alveolar regions of the lung than with total dust exposure (Exs. 4–4 and 4–11).

Only workers who have developed sensitization to beryllium are believed to develop CBD. Following sensitization, CBD can develop with or without additional exposure (Ex. 4–13). Lang (Ex. 4–10) estimates that the probability of developing CBD following

sensitization is approximately 10% per year and that about half of those sensitized will go on to develop pulmonary granulomas within three to four years. Similarly, Newman (Ex. 4–13) reported that almost 50% of a beryllium-sensitized follow-up group of 44 subjects developed CBD within 4 years of becoming sensitized.

The Beryllium Lymphocyte Proliferation Test (BeLPT) can identify employees who are sensitized to beryllium. Sensitized individuals are typically further evaluated by biopsy, high resolution computerized tomography, or other means, such as the exercise tolerance test or bronchoalveolar lavage, to determine if they have CBD. Diagnosis of CBD depends on demonstration of pathologic changes such as granulomas in the lungs, along with evidence that these changes are the result of hypersensitivity to beryllium (*e.g.*, positive BeLPT results) (Exs. 4–15 and 4–19).

Lung Cancer

The International Agency for Research on Cancer classifies beryllium and beryllium compounds as carcinogenic to humans (Ex. 4–3). The National Institute for Occupational Safety and Health classifies beryllium and beryllium compounds as a "potential occupational carcinogen" (Ex. 4–12). The Environmental Protection Agency classifies beryllium and beryllium compounds as a "probable human carcinogen" (Ex. 4–18). Recent epidemiological studies have reported excess lung cancer deaths among beryllium-exposed employees (Exs. 4–16 and 4–17). A variety of beryllium metal alloys, compounds, and ores have also been shown to cause lung cancer in rats and monkeys in inhalation and intratracheal instillation studies (Exs. 4–3 and 4–18).

Occupational health regulation of beryllium exposure. The first occupational exposure limit for beryllium was set in 1949 by the Atomic Energy Commission (AEC). The AEC required that beryllium exposure in the workplaces under its jurisdiction be limited to 2 $\mu g/m^3$ as an 8-hour time-weighted-average (TWA) and 25 $\mu g/m^3$ as a peak exposure, never to be exceeded.

In 1971, OSHA adopted, under Section 6(a) of the Occupational Safety and Health Act of 1970, and made applicable to general industry, a national consensus standard (ANSI Z37.29–1970) for beryllium and beryllium compounds. The standard sets a PEL for beryllium and beryllium compounds at 2 $\mu g/m^3$ as an 8-hour TWA; 5 $\mu g/m^3$ as an acceptable ceiling concentration; and 25 $\mu g/m^3$ as an acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift. (29 CFR Part 1910.1000; Table Z–2).

In 1975, OSHA proposed a new beryllium standard for all industries based on information that beryllium caused cancer in animal experiments (40 FR 48814 (10/17/75)). Adoption of this proposal would have lowered the 8-hour TWA exposure limit from 2 $\mu g/m^3$ to 1 $\mu g/m^3$. In addition, the proposal included provisions for exposure monitoring, hygiene facilities, medical surveillance, and training related to the health hazards from beryllium exposure. This rulemaking was never completed.

Based upon information showing that OSHA's current PEL of 2 $\mu g/m^3$ may not be adequate to protect workers from developing CBD, OSHA placed beryllium on its Regulatory Agenda in 1998. In 1999, the Department of Energy issued a Chronic Beryllium Disease Prevention Program Final Rule for employees exposed to beryllium in its facilities, setting an action level of 0.2 $\mu g/m^3$. This action level triggers workplace precautions and control measures. (DOE, 10 CFR part 850)

In 1999, OSHA was petitioned by the Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE) (Ex. 1–1) and by Dr. Lee Newman and Ms. Margaret Mroz, from the National Jewish Medical Research Center (Ex. 1–2), to promulgate an Emergency Temporary Standard (ETS) for beryllium in the workplace. In 2001, OSHA was petitioned for an ETS by Public Citizen Health Research Group and again by PACE (Ex. 1–10). OSHA denied the petitions.

III. Key Issues On Which Comment Is Requested

The control of occupational exposures to beryllium and its compounds presents a number of complex issues. OSHA is seeking information, data, and comment that the Agency can use to address these issues. OSHA has included these questions to provide a basis for response to this general request for information. When answering specific numbered questions below, key your responses to the number of the question, explain the reasons supporting your views, and identify and provide relevant information on which you rely, including, but not limited to, data, studies and articles. However, respondents are encouraged to address any aspect of occupational exposure to beryllium that they feel is pertinent. OSHA intends to use the information it obtains to decide on a course of action regarding occupational exposures to beryllium.

A. Employee Exposure

(1) Where and how is beryllium currently used? Please provide any workplace or industry-specific data you have indicating the amount of beryllium used, its form, and the processes and products in which it is used. OSHA is particularly interested in identifying industries and operations whose use of beryllium is not noted here, and in identifying uses of beryllium that involve small businesses.

(2) What are the job categories in which employees are potentially exposed to beryllium in your company or industry? For each job category, please provide a description of how the exposure takes place within that job category.

(3) How many employees are exposed to beryllium, or have the potential for exposure, in each job category in your company or industry?

(4) What are the frequency, duration and levels of employee exposures to beryllium in each job category in your company or industry? Please include the analytical method and type of samples used for determining exposure levels. OSHA requests that, if possible, exposure data be personal samples with clear descriptions of the length of the sample. If this is not possible, the exposure data should indicate the form and length of the exposure.

B. Health Effects

OSHA is aware of a number of studies showing an association between adverse health effects and exposure to beryllium. The Agency is seeking the most recent and important studies that can be used to identify significant adverse health effects related to occupational beryllium exposure.

(5) Which studies should OSHA consider in assessing the potential health risks of CBD and lung cancer associated with exposure to beryllium? Please explain your rationale for recommending these studies, including potential strengths and weaknesses, such as size of the population studied, characterization of exposure, and confounding factors.

(6) Which recent studies examine the effects from dermal exposure and absorption of beryllium?

(7) Describe any studies showing adverse health effects resulting from routes of occupational beryllium exposure other than dermal contact and inhalation.

(8) Describe any studies that address the mechanisms of action of beryllium

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in the development of CBD, sensitization, or lung cancer.

(9) Which studies or other information should OSHA take into account in examining the role of genetic factors in the development of beryllium-related disease?

(10) Describe characteristics of beryllium aerosols (*e.g.*, particle size, surface area, particle number) that are related to the development of disease.

(11) To what extent do different forms of beryllium have specific properties (*e.g.*, solubility) that should be taken into consideration when assessing health risks?

C. Risk Assessment

OSHA is interested in data that will assist it in developing quantitative estimates of the occupational risk of sensitization, CBD, or lung cancer based on the level, timing, and duration of exposure to beryllium. Case reports and epidemiological and animal studies on these measures, along with associated exposure data characterizing total or respirable mass, particle number, particle surface area, and dermal exposure are desired.

(12) Which studies should be used for a quantitative risk assessment for CBD and lung cancer?

(13) Which approaches (*i.e.*, methods, models, data) should OSHA use for estimating risk from exposure to beryllium?

(14) Which mathematical models are most appropriate to quantify the risk of cancer or other adverse health effects from exposure to beryllium or beryllium compounds? Describe the strengths and weaknesses of these models.

(15) Which mathematical lung deposition models are appropriate to characterize beryllium lung uptake?

(16) Describe studies the Agency should consider that relate to the dose-response behavior of beryllium, including cellular, mechanistic, and dosimetric considerations. For instance, are any adverse health effects of beryllium dependent on the time period over which exposure occurs rather than dependent on the total cumulative dose received, or are there data that suggest beryllium exhibits a threshold effect?

(17) Do short-term peak exposures play a role in causing adverse health effects, especially sensitization? If so, provide any information that addresses this role.

(18) Are there studies or other evidence on the combined effects of inhalation and dermal exposure?

(19) The U.S. Environmental Protection Agency (USEPA) has prepared a quantitative risk assessment addressing the risks for sensitization and lung cancer related to beryllium exposure in the ambient environment (Ex. 4–18). In addition, the California EPA (CalEPA) published a quantitative risk assessment addressing risks for sensitization and CBD in the ambient environment (Ex. 4–20). Should OSHA rely on these assessments to characterize the risk of sensitization, CBD, or lung cancer from occupational exposure to beryllium? Are there other assessments that the Agency should consult? For Beryllium sensitization, the two assessments relied on the same key study of beryllium ceramics plant workers by Kreiss *et al.* (Ex. 4–6), but used some different uncertainty/modifying factors. Should OSHA, in characterizing the risk of beryllium sensitization, rely on (a) the same key study, (b) the same methodology, and (c) the uncertainty/modifying factors used by USEPA and the CalEPA?

D. Exposure Assessment and Monitoring Methods

(20) Is initial sampling, objective data, or some other measure used to estimate beryllium exposures in your facility? Describe any programs that have been implemented for initial assessment of exposure to beryllium.

(21) Describe any follow-up or periodic exposure assessments that you conduct. How often do you conduct such follow-up or periodic exposure assessments?

(22) What type of exposure monitoring methods are available for measuring beryllium in the workplace? Provide information on any sampling and analytical methods available for determining exposure based on total or respirable mass, particle size, particle number, particle surface area, or dermal contact. Information on the precision and accuracy of the sampling method, the range and limits of detection, the method of validation of sampling and analysis, and any potential sources of chemical interference is desired.

E. Control Measures and Technological Feasibility

(23) What types of engineering controls or work practices are used by your facility to reduce exposure to beryllium? Describe the effectiveness of these controls in reducing worker exposure and indicate any operations or processes in your facility for which engineering controls are not available, are ineffective, or are too costly to use. Give specific examples where engineering controls or work practices have been applied or evaluated or where engineering control programs have been implemented to ensure reliable operation of control systems.

(24) Are there other materials available that can be substituted for beryllium in your processes? Describe any technical, economic or other barriers or hindrances to substitution.

(25) Describe housekeeping practices used in your facility to control employee exposure to beryllium, including cleaning methods used (*e.g.*, wet vacuuming, vacuums with HEPA filters, tack cloths), the frequency of these activities, and any prohibited housekeeping practices (*e.g.*, dry sweeping or use of compressed air).

(26) Are clean rooms, change rooms, shower areas, or separate lunchrooms used in your facility for hygiene and housekeeping in the control of beryllium exposure? Indicate the effectiveness of these measures in reducing employee exposure to beryllium, and describe the procedures followed or methods used to ensure that these areas are free from beryllium contamination.

(27) Are respirators or other types of personal protective equipment (*e.g.*, gloves, overalls or other clothing, goggles, face shields) provided to employees in your facility to protect them against exposure to beryllium? If so, describe your program and identify the type of equipment used, the basis for selection, and any difficulties encountered in implementing your program (*e.g.*, problems with cleaning inner surfaces of respirators contaminated with beryllium).

(28) Describe the conditions under which respirators and other personal protective equipment are used, including any criteria (*e.g.*, regulated area, exposure level, type of operation, duration of exposure) used to trigger requirements for use of such equipment.

(29) Are there processes or areas where it is impracticable to use respirators or other protective equipment to protect against exposure to beryllium? Describe those situations and explain what measures are taken to protect employees.

(30) Other than reducing employee exposure to beryllium, has adoption of control measures resulted in any additional benefits? Provide specific details of the benefits.

(31) Have any technological changes within your industry influenced the frequency, duration, or magnitude of exposure to beryllium or the means by which employers attempt to control exposures? The Agency requests that commenters describe in detail any technological changes within industries that have altered methods of control. Information linking control technologies and data on exposure levels associated with the application of controls is desired.

(32) Is the Department of Energy Beryllium Disease Prevention Program (10 CFR part 850) a viable program for non-DOE beryllium users?

F. Economic Impacts

(33) What are the potential economic impacts of reducing occupational exposures to beryllium in terms of costs of controls, costs for training, benefits from reduction in the number or severity of illnesses, effects on revenue and profit, changes in worker productivity, or any other impact measure that you can to identify? Provide, if possible, explicit examples of costs that could be incurred (*e.g.*, dollar estimates for controls) or benefits that could be achieved (*e.g.*, dollar estimates for medical savings from a reduction in the number or severity of beryllium-related illnesses).

(34) What changes in market conditions would result from reducing employees' exposures to beryllium? Please include in your response any changes in market structure or concentration, or effects on domestic or international shipments of beryllium-related products or services that would be expected to result from reducing occupational exposures to beryllium.

G. Employee Training

(35) What information and training is provided to your employees to reduce risks associated with occupational exposure to beryllium? OSHA seeks comment on the information and training provided or recommended for workers exposed to beryllium, including job categories included in your training program, criteria for determining which employees receive information and training, program structure, content, methods, frequency, and any procedures used to address language barriers.

(36) How do you determine the effectiveness of training? Describe methods used and any factors taken into account in examining the effectiveness of training programs.

(37) Describe any ways in which beryllium-related training could be improved.

H. Medical Surveillance

(38) Which criteria are used, or should be used, to determine when occupational medical screening or surveillance should be provided? Describe the job categories, duties, exposure levels, or any other basis used for determining when health screening should be provided to employees.

(39) Which screening tests or procedures are used, or should be used, for early identification of adverse health effects related to beryllium exposure? Explain the basis for your position.

(40) If the BeLPT is part of your screening and surveillance program, describe its role in the program (*e.g.*, factors used to determine eligibility for receiving the test, how the results are used to make decisions about further actions for the employee and the facility).

(41) If the BeLPT is part of your screening and surveillance program, what confirmation protocols are used for determining a worker's sensitivity (*e.g.*, single specimen followed by split-specimen, split specimen followed by split specimen)?

(42) If the BeLPT is part of your screening and surveillance program, describe your experience with the test, including information regarding the sensitivity, specificity, false positive rate, false negative rate, and positive predictive value of the test, and any difficulties found with the interpretation of test results.

(43) How often should beryllium-related health screening be performed?

(44) What happens after an employee in your facility is identified as sensitized or diagnosed with beryllium-related disease? Describe the policies and procedures that are followed, including any provisions for removal from exposure and return to work.

(45) Has health screening and surveillance had any effect on the number or severity of adverse health effects associated with beryllium exposure?

I. Environmental Effects

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) regulations (40 CFR part 1500), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR part 11), require that OSHA give appropriate consideration to environmental issues and the impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that could occur outside of the workplace (*e.g.*, exposure to the community through contaminated air/water, contaminated waste sites, etc.) if the Agency were to issue guidance or revise the existing standard for occupational exposure to beryllium. Such information should include both negative and positive environmental effects that could be expected to result from guidance or a revised standard. Specifically, OSHA requests comments and information on the following:

(46) What is the potential direct or indirect environmental impact (for example, the effect on air and water quality, energy usage, solid waste disposal, and land use) from a reduction in employee exposure to beryllium or the use of substitutes for beryllium?

(47) Are there any situations in which reducing beryllium exposures to employees would be inconsistent with meeting environmental regulations?

J. Impact on Small Business Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), OSHA is required to assess the impact of proposed and final rules on small entities. OSHA requests that members of the small business community, or other parties familiar with regulation of small business, address any special circumstances facing small firms in controlling occupational exposure to beryllium.

(48) How many and what kinds of small businesses or other small entities in your industry could be affected by amending OSHA's beryllium standard? Describe any such effects.

(49) Are there special issues that make control of beryllium exposures more difficult or more costly in small firms?

(50) Are there any reasons that the benefits of reducing occupational exposure to beryllium might be less in small firms than in larger firms? With regard to potential impacts on small firms, describe specific concerns that should be addressed, and any alternatives that might serve to minimize these impacts while meeting the requirements of the OSH Act.

K. Duplication/Overlapping/Conflicting Rules

(51) Are there any federal regulations that might duplicate, overlap or conflict with guidance or a revised standard concerning beryllium? If so, identify which ones and explain how they would duplicate, overlap or conflict.

(52) Are there any federal programs in areas such as defense or energy that might be impacted by guidance or a revised standard concerning beryllium? If so, identify which ones and explain how they would be impacted.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655,

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657), Secretary's Order 3–2000, and 29 CFR part 1911.

Signed at Washington, DC, this 21st day of November, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–29984 Filed 11–25–02; 8:45 am]

BILLING CODE 4510–26–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule clarifies and strengthens requirements for postage meter manufacturers to control what a postage meter allows the licensed user to print.

DATES: The Postal Service must receive your comments on or before December 26, 2002.

ADDRESSES: Mail or deliver written comments to the manager, Postage Technology Management, 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6370. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager of Postage Technology Management, at 703–292–3782, or by fax at 703–292–4073.

SUPPLEMENTARY INFORMATION: Some postage meters and postage evidencing systems can print written or graphic matter in addition to a U.S. Postal Service-approved indicium-evidencing payment of United States postage. Written or graphic matter, other than Postal Service-approved indicia, printed by a meter or postage evidencing system, could convey a false impression that the Postal Service had approved the content of both the indicia and any additional printed matter. For this reason, the Domestic Mail Manual provides in P030.9.8 that such "printed matter may not be obscene, defamatory of any person or group, or deceptive, and it must not advocate any unlawful action." When 39 CFR 501.23(d) was adopted, meter stamps and other printed matter were printed with printing plates engraved for customers by the approved postage meter manufacturers. Accordingly, the responsibility for complying with the regulation clearly rested upon the approved meter manufacturer, and failure to comply with a postal meter regulation could result, under 39 CFR 501.5, in the suspension or revocation of a manufacturer's approval to distribute postage meters. Manufacturers are now distributing Postal Service-approved postage meters and postage evidencing systems that employ digital printing technology. The proposed rule seeks to make clear that the approved manufacturers continue to be responsible for controlling the printing capabilities of their products in order to meet the requirements of the *Domestic Mail Manual*.

We will review any public comments and will issue a final rule amending the regulations. When this proposed rule is issued as a final rule, we will revise the *Domestic Mail Manual* to notify users of meters and postage evidencing systems that the meter manufacturers and providers are responsible for controlling what the user is allowed to print using the postage meter or postage evidencing system.

Notice and Comment

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the *Code of Federal Regulations*.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service is proposing to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Public Law 95–452, as amended); 5 U.S.C. App. 3.

2. § 501.23(d) is revised to read as follows:

§ 501.23 Distribution controls.

Each authorized postage meter manufacturer must do the following:

* * * * *

(d) Control all print capabilities of the postage meter or postage evidencing system, including printing of indicia and all other matter printed by the system, by supplying only meter slogans, ad plates, or other print capabilities that meet all Postal Service requirements, including those for suitable quality and content.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–29939 Filed 11–25–02; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7617]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 or (e-mail) *michael.grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Scioto River:			
Approximately 260 feet upstream of Trabue Road	*744	*743	(1)
Approximately 870 feet downstream of Frank Road/Highway 104	*713	*714	
Barnes Ditch:			
At the confluence of Scioto River and Barnes Ditch	*737	735	
Approximately 800 feet upstream of McKinley Avenue	*737	*736	
Dry Run:			
At confluence of Scioto River and Dry Run	*731	*729	
Just downstream of culvert at Conrail crossing	*731	*729	

Franklin County

Maps are available for inspection at 280 East Broad Street, 2nd Floor, Columbus, Ohio 43215.

Send comments to Mr. Dewey R. Stokes, President, Franklin County Board of Commissioners, 373 High Street, 26th Floor, Columbus, Ohio 43215.

City of Columbus

Send comments to the Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, Room 247, Columbus, Ohio 43215–9015.

Village of Marble Cliffs

Send comments to The Honorable Frank G. Monaco, Mayor, Village of Marble Cliff, 1600 Fernwood Avenue, Columbus, Ohio 43212.

City of Upper Arlington

Maps are available for inspection at 3600 Tremont Road, Upper Arlington, Ohio 43221.

Send comments to Mr. Richard King, City Manager, City of Upper Arlington, 3600 Tremont Road, Upper Arlington, Ohio 43221.

City of Grandview Heights

Send comments to The Honorable N. Colleen Sexton, Mayor, City of Grandview Heights, 1016 Grandview Avenue, Grandview Heights, Ohio 43212.

* National Geodetic Vertical Datum.

[1] Franklin County, OH (Unincorporated Areas), City of Columbus, OH, Village of Marble Cliff, OH, City of Upper Arlington, OH, City of Grandview Heights, OH, City of Columbus, OH.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 13, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–29961 Filed 11–25–02; 8:45 am]

BILLING CODE 6718–04–P

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Notices

Federal Register
Vol. 67, No. 228
Tuesday, November 26, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–103–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for suggested agenda topics.

SUMMARY: We are issuing this notice to inform producers and users of veterinary biological products, and other interested individuals, that we will be holding our 12th public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. We are planning the meeting agenda and are requesting suggestions for topics of general interest to producers and other interested individuals.

DATES: The public meeting will be held from Monday, March 31, through Wednesday, April 2, 2003, from 1 p.m. to approximately 5 p.m. on Monday, 8 a.m. to approximately 5 p.m. on Tuesday, and from 8:30 a.m. to approximately noon on Wednesday.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics, contact Dr. Richard E. Hill, Jr., Director, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail *CVB@aphis.usda.gov*. For registration information, contact Ms. Kathy Clark at the same address and fax number; phone (515) 232–5785 extension 128; or e-mail *Kathryn.K.Clark@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: Since 1989, the Animal and Plant Health Inspection Service (APHIS) has held 11 public meetings in Ames, IA, on veterinary biologics. The meetings provide an opportunity for the exchange of information between APHIS representatives, producers and users of veterinary biological products, and other interested individuals. APHIS is in the process of planning the agenda for the 12th such meeting, which will be held March 31 through April 2, 2003.

The agenda for the meeting is not yet complete. Topics may include, but will not be limited to: (1) Emerging diseases; (2) vaccine development; (3) current CVB activities, (4) 2002 Farm Bill; (5) animal care; and (6) international harmonization. Before finalizing the agenda, APHIS is seeking suggestions for additional meeting topics from the interested public.

We would also like to invite interested individuals to use this meeting to present their ideas and suggestions concerning the licensing, manufacturing, testing, and distribution of veterinary biologics.

Please submit suggested meeting topics and proposed presentation titles to either of the persons listed under **FOR FURTHER INFORMATION CONTACT** on or before December 20, 2002. For proposed presentations, please include the name(s) of the presenter(s) and the approximate amount of time that will be needed for each presentation.

After the agenda is finalized, APHIS will announce the agenda topics in the **Federal Register**.

Done in Washington, DC, this 21st day of November, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29986 Filed 11–25–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is an extension of a collection currently approved for the Child and Adult Care Food Program.

DATES: Comments on this notice must be received by January 27, 2003 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Alan Rich, Program Reports, Analysis, and Monitoring Branch, Budget Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alan Rich, (703) 305–2113.

SUPPLEMENTARY INFORMATION:

Title: Report of the Child and Adult Care Food Program.

OMB Number: 0584–0078.

Expiration Date: December 31, 2002.

Type of Request: Extension of a currently approved collection.

Abstract: The Child and Adult Care Food Program is mandated by Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. § 1766). Program implementing regulations are contained in 7 CFR Part 226. In accordance with Section 226.7(d), State agencies must submit a monthly report of program activity in order to receive Federal reimbursement for meals served to eligible participants.

Respondents: State agencies that administer the Child and Adult Care Food Program.

Number of Respondents: 53.

Estimated Number of Responses per Respondent: The number of responses includes initial, revised, and final reports submitted each month. The overall average is three submissions per State agency per reporting month for a total of 36 per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average three hours per respondent for each submission.

Estimated Total Annual Burden on Respondents: 5,724 hours.

Dated: November 20, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–30046 Filed 11–25–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of School Program Operations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment notice of a proposed information collection. The proposed collection is an extension of a collection currently approved for the National School Lunch Program, the School Breakfast Program, the Commodity Schools Program, and the Special Milk Program.

DATES: Comments on this notice must be received by January 27, 2003 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Alan Rich, Program Reports, Analysis, and Monitoring Branch, Budget Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alan Rich, (703) 305–2113.

SUPPLEMENTARY INFORMATION:

Title: Report of School Program Operations.

OMB Number: 0584–0002.

Expiration Date: January 31, 2003.

Type of Request: Extension of a currently approved collection.

Abstract: The National School Lunch Program, the School Breakfast Program, the Commodity Schools Program, and the Special Milk Program are authorized by the National School Lunch Act, 42 U.S.C. 1751, *et seq.*, and the Child Nutrition Act of 1966, 42 U.S.C. 1771, *et seq.* Program implementing regulations are contained in 7 CFR parts 210, 215, and 220. In accordance with 7 CFR 210.5(d)(1), 215.11(c)(2), and 220.13(b)(2), State agencies must submit to FNS a monthly report of program activity in order to receive Federal reimbursement for meals served to eligible participants.

Respondents: State agencies that administer the National School Lunch Program, the School Breakfast Program, the Commodity Schools Program, or the Special Milk Program.

Number of Respondents: 62.

Estimated Number of Responses per Respondent: The number of responses includes initial, revised, and final reports submitted each month. The overall average is four submissions per State agency per reporting month for a total of 48 per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 32 hours per respondent.

Estimated Total Annual Burden on Respondents: 95,232 hours.

Dated: November 20, 2002.

Roberto Salazar,

Administrator, , Food and Nutrition Service.

[FR Doc. 02–30047 Filed 11–25–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Middle Fork of the Popo Agie Watershed, Fremont County, WY

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for The Middle Fork of the Popo Agie Watershed, Fremont County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Lincoln E. Burton, State Conservationist, Natural Resources Conservation Service, 100 East B Street, Room 3124, Casper, Wyoming 82601, telephone: 307–261–6453.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Lincoln E. Burton, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns flood prevention and stream channel restoration of the Middle Fork of the Popo Agie through Lander, Wyoming to the confluence of the North Fork of the Popo Agie.

Alternatives under consideration:

1. Diversion through or around town with channel restoration.
2. Flood wall and channel restoration.
3. Upstream Storage and channel restoration.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meeting will be held in Lander, Wyoming on Wednesday, January 8, 2003 at Inn at Lander Best Western, 260 Grand Avenue from 7 p.m. until 9 p.m. To determine the scope of the

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evaluation of the proposed action. Further information on the proposed action or the scoping meeting may be obtained from Lincoln E. Burton, State Conservationist, at the above address or telephone.

Dated: November 12, 2002.

Lincoln E. Burton,

State Conservationist.

[FR Doc. 02–30049 Filed 11–25–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351–826]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Anya Naschak or Helen Kramer at (202) 482–6375 or (202) 482–0405, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUMMARY: On September 25, 2002, in response to a request made by V&M do Brasil S.A. (V&M), the Department of Commerce (the Department) published in the **Federal Register** (67 FR 60210) a notice announcing the initiation of an administrative review of the antidumping duty order on seamless line and pressure pipe from Brazil. The review period is August 1, 2001, to July 31, 2002. This review has now been rescinded because V&M has withdrawn its request for review.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (2002).

Scope of the Review

The scope of this review includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A-335, ASTM A-106, ASTM A-53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification, except glass-lined seamless pressure pipe described below.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross- section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to this review is currently classifiable under subheadings

7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this review, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A-106 may be used in temperatures of up to 1,000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A-335 must be used if temperatures and stress levels exceed those allowed for A-106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A- 106, ASTM A-53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A-106 specification necessarily meet the API 5L and ASTM A-53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A-53 specification. However, pipes meeting the A-53 or API 5L specifications do not necessarily meet the A-106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A-106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the A-335, A-106, A-53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A-106 applications. These specifications generally include A- 162, A-192, A-210, A-333, and A-524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from the scope of this review are: (1) boiler tubing and mechanical tubing, if such products are not produced to A-335, A-106, A-53 or API 5L specifications and are not used in standard, line or pressure applications; (2) finished and unfinished OCTG, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications; (3) redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube; and (4) glass-lined pressure pipes meeting the following specifications: seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness or manufacturing process (hot-finished or cold-drawn) that (1) has been cut into lengths of six to 120 inches, (2) has had the inside bore ground to a smooth surface, (3) has had multiple layers of specially formulated corrosion resistant glass permanently baked on at temperatures of 1,440 to 1,700 degrees Fahrenheit in thicknesses from 0.032 to 0.085 inch (40 to 80 mils), and (4) has flanges or other forged stub ends welded on both ends of the pipe. The special corrosion resistant glass referred to in this definition may be glass containing by weight (1) 70 to 80 percent of an oxide of silicone, zirconium, titanium or cerium (Oxide Group RO sub2), (2) 10 to 15 percent of an oxide of sodium, potassium, or lithium (Oxide Group RO), (3) from a trace amount to 5 percent of an oxide of either aluminum, cobalt, iron, vanadium, or boron (Oxide Group R sub2 O sub3, or (4) from a trace amount to 5 percent of a fluorine compound in which fluorine replaces the oxygen in any one of the previously listed oxide groups. These glass-lined pressure pipes are commonly manufactured for use in glass-lined equipment systems for processing corrosive or reactive chemicals, including acrylates, alkanolamines, herbicides, pesticides, pharmaceuticals and solvents.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Background:

On August 30, 2002, V&M (a producer and exporter of subject merchandise) requested an administrative review of the antidumping duty order on seamless pipe from Brazil published in the Federal Register on August 3, 1995 (60 FR 39707). On September 25, 2002, the Department published in the **Federal Register** (67 FR 60210) a notice of AInitiation of Antidumping and Countervailing Duty Administrative Reviews@ initiating the administrative review. On October 30, 2002, V&M withdrew its request for review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Given that V&M was the only party to request the administrative review, and the withdrawal request is timely, we are rescinding this review of the antidumping duty order on seamless pipe from Brazil covering the period August 1, 2001, to July 31, 2002.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 19, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29991 Filed 11–25–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Stainless Steel Plate in Coils from the Republic of Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On June 25, 2002, the Department of Commerce ("the Department's") initiated an administrative review of the antidumping duty order on stainless steel plate in coils from the Republic of Korea. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 67 FR 42753 (June 25, 2002). The review covers one manufacturer/exporter, Pohang Iron & Steel Co., Ltd. ("POSCO"). The period of review is May 1, 2001 through April 30, 2002. The Department is rescinding this review because it found no entries of subject merchandise by POSCO into the United States during the period of review, in accordance with 19 CFR 351.213(d)(3) of its regulations. The Department is now publishing its determination to rescind this review.

EFFECTIVE DATE: November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0182 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On May 6, 2002, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel plate in coils ("SSPC") from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 67 FR 30356 (May 6, 2002). On May 31, 2002, the petitioners in this proceeding, Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), Butler-Armco Independent Union,

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Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC, submitted a request for an administrative review of sales by POSCO, a manufacturer/exporter of SSPC, for the period May 1, 2001 through April 30, 2002. The Department initiated an administrative review on June 25, 2002.

On June 19, 2002, POSCO submitted a letter to the Department stating that it did not export the subject merchandise to the United States during the period of review ("POR"). On July 1, 2002, the Department issued POSCO its standard antidumping duty questionnaire. In response to the Department's questionnaire, POSCO again stated that neither it, nor any of its affiliates, had exports or sales in the United States of subject merchandise manufactured or produced by POSCO during the POR.

On August 21, 2002, the Department sent a no-shipment inquiry concerning SSPC from Korea and POSCO to the U.S. Customs Service ("Customs"). The purpose of this inquiry was to determine whether Customs suspended liquidation of entry summaries of SSPC from Korea manufactured and/or exported by POSCO during the POR. The Customs Service did not identify any suspended entry summaries of SSPC manufactured and/or exported by POSCO during the POR. Therefore, we have determined that there were no entries of subject merchandise produced or exported by POSCO into the customs territory of the United States during the POR.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department will rescind an administrative review, in whole, or only with respect to a particular exporter or producer, if the Department concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. In light of the fact that we have determined that the only company covered by the review did not have entries for consumption into the territory of the United States during the POR in question, we find that rescinding this review is appropriate. On October 25, 2002, we asked petitioners to submit any evidence that POSCO had entries, exports, or sales or subject merchandise during the POR. *See Memorandum to the File from Brandon Farlander through Robert Bolling*, dated October 25, 2002. We did not receive any evidence from petitioners. Therefore, we are rescinding this administrative review for the period May 1, 2001 through April 30, 2002, and will issue appropriate assessment instructions to the U.S. Customs Service. The cash-deposit rate for POSCO will remain at 1.19 percent, the rate established in the most recently completed segment of this proceeding (66 FR 64107, December 11, 2001).

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of APO is a sanctionable violation.

This notice is in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 19, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29992 Filed 11–25–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of renewal.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Manufacturing Extension Partnership National Advisory Board is in the public interest in connection with the performance of the duties imposed on the Department by law.

The Committee was first established in October 1996 to advise MEP regarding their programs, plans, and policies. In renewing the Board, the Secretary has established it for an additional two years. During the next two years, the Board plans to address center service mix standardization, eBusiness, moving toward high performance centers, training and education of field staff, MEP University, national awareness of the MEP program, international services, and others.

The Board will consist of nine members to be appointed by the Director of the National Institute of Standards and Technology to assure a balanced membership that will represent the views and needs of customers, providers, and others involved in industrial extension throughout the United States.

The Board will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Copies of the Board's revised charter will be filed with the appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be directed to Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Stop 4800, Gaithersburg, Maryland 20899–4800; telephone: 301–975–5020.

Dated: November 18, 2002.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 02–29936 Filed 11–25–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned in whole by the U.S. Government, as represented by the Department of Commerce. The invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, ATTN: Mary Clague; Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov;* or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: [01–029US].

Title: Simplified Method For Electrokinetic Focusing Of Samples In Microfluidic Devices.

Abstract: Methods are described for the focusing of ionic species in microfluidic systems using electric field gradients that are generated without external electrical connections.

In the first example, the electric field within a microchannel is effected by putting a highly or partially conductive material inside portions of the channel. The conductive material can consist, for example, of a metal film on the channel walls. The presence of conductive material will alter the total conductivity of the microchannel, and thereby alter the electric field in the microchannel. Regions of different electric field can be created by applying different films (or no films) to different regions of the microchannel. The electric field gradients at the borders between these different regions can then be used to focus and concentrate ionic species by balancing their electrophoretic velocities with an applied bulk fluid velocity.

In the second example, the electric field gradient which is used for electrokinetic focusing is created by application of a temperature gradient. In order for this to work, the conductivity of the buffer within the microchannels must depend on temperature in a way that differs from the typical inverse proportionality with the buffer viscosity. For example, it must have an ionic strength that is temperature dependent.

Also discussed is the possibilty that any apparatus/system which can be used for electrokinetic focusing can also be used to produce streams of either concentrated or diluted analytes.

Dated: November 18, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–29935 Filed 11–25–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111202G]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on December 10–12, 2002. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Hyatt Dorado Beach Hotel, Carr. 693, Dorado, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will convene on Tuesday, December 10, 2002, from 9 a.m. to 4 p.m., and the Administrative Committee will meet from 4:15 p.m. to 5:30 p.m. The Council will reconvene on Wednesday, December 11, 2002, from 9 a.m. to 5 p.m., and Thursday, December 12, 2002, from 9 a.m. to 5 p.m., approximately.

The Council will hold its 110th regular public meeting to discuss the items contained in the following agenda:

December 10, 2002, 9 a.m.–4 p.m.

Call to Order
Adoption of Agenda
Consideration of 109th Council Meeting Verbatim Transcription
Executive Director's Report
Essential Fish Habitat (EFH)-Draft Environmental Impact Statement
Progress Report
–EFH Designation of Species
–Habitat Areas of Particular Concern (HAPC)
–Impact on Habitat
–Mitigating Measures
–Decision Making Process
–Exclusive Economic Zone (EEZ)
–Recommendations to States
4:15 p.m.–5:30 p.m.
Administrative Committee Meeting
–Advisory Panel/Scientific Statistical Committee/Habitat Advisory Panel Membership
–Budget Projection
–Personnel Retirement Issues
–Other Business
December 11, 2002, 9 a.m.–5 p.m.
Sustainable Fisheries Act
–Status Criteria of Species
–Recovery Plan Queen Conch
–Recovery Plan Nassau Grouper
–Recovery Plan Goliath
–Bycatch
–Management Alternatives
December 12, 2002, 9 a.m. to 5 p.m.
Enforcement
–Fishing in St. Croix–Mr. Farchetti
–Federal Government
–Puerto Rico
–U.S. Virgin Islands
–U.S. Coast Guard
Administrative Committee Meeting Recommendations
Meetings Attended by Council Members and Staff

Other Business

–Recognition to Caribbean Fishery Management Council by Hyperbaric Chamber Group
Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 20, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29971 Filed 11–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112002A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

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Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 8:30 a.m. on Wednesday, December 11, 2002, and will conclude at 4 p.m. on Friday, December 13, 2002.

ADDRESSES: The meeting will be held at the Hilton Tampa Airport Westshore, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–8688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The SEP will meet to review available social and economic information on red grouper and yellowedge grouper stocks and to determine the social and economic implications of the levels of acceptable biological catch (ABC) recommended by the Council's Reef Fish Stock Assessment Panel (RFSAP). The SEP may recommend to the Council total allowable catch (TAC) levels for the 2003 fishing year and certain management measures associated with achieving the TACs.

In addition, the SEP will hear presentations on bioeconomic modeling. Dr. Wade Griffin of Texas A&M University will discuss the details of his bioeconomic model and results of a bioeconomic modeling evaluation of the Texas shrimp closure. Dr. John Ward of the National Marine Fisheries Service will present his research on multi-species bioeconomic models. Dr. Lee Anderson (with Mr. Dohoon Kim) of the University of Delaware will present his bioeconomic model for red grouper and yellowedge grouper.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813-228-2815. Although other non-emergency issues not on the agenda may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) by December 4, 2002.

Dated: November 21, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29970 Filed 11–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice extension of comment period.

SUMMARY: On October 8, 2002, the Department of Education published a 30-day public comment period notice in the **Federal Register** (67 FR 62701) for the information collection, "National College Alcohol, Drug and Violence Survey." Because of a network connectivity error the contents of *http://edicsweb.ed.gov* were not updated to reflect the materials submitted to OMB. The Leader, Regulatory Management, Office of the Chief Information Officer, sincerely apologies for any inconveniences caused by this error and hereby re-opens and extends the public comment period through December 26, 2002.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at *Katrina.ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Katrina Ingalls at her e-mail address *Katrina.ingalls@ed.gov*

Dated: November 20, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–29940 Filed 11–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CDFA Nos: 84.116A and 84.116B]

Office of Postsecondary Education, Fund for the Improvement of Postsecondary Education (FIPSE); Notice Announcing Technical Assistance Workshops on Fiscal Year (FY) 2003 Comprehensive Program

SUMMARY: This notice provides information about a workshop to assist individuals interested in learning more about the FY 2003 programs of the Fund for the Improvement of Postsecondary Education (FIPSE). Program staff will present program information and answer questions about FIPSE's programs. The workshop will focus primarily on the Comprehensive Program, which provides grants for innovative reform projects that hold promise as models for the resolution of important issues and problems in postsecondary education. Additional information about FIPSE's programs can be found on the Internet at the following site: *http://www.ed.gov/FIPSE*.

Although the Department has not yet announced in the **Federal Register** a closing date for its FY 2003 FIPSE grant competitions, the Department is holding this workshop to give potential applicants relevant background information on FIPSE programs for which grant competitions are expected to be held in FY 2003. Specific requirements for grant competitions will be announced in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The technical assistance workshop will be held as follows:

Ontario/Los Angeles, California:

Monday, December 2, 1–4 p.m.

- Hilton Ontario Airport, 700 North Haven Avenue, Ontario, CA 91764.

Registration: Space at the workshop is limited. Interested individuals are invited to register by sending an e-mail message with the subject "Workshop 2002" to: *Levenia.ishmell@ed.gov*. You will receive an e-mail reply confirming the status of your registration along with exact information on the workshop location. All confirmed registrants are asked to bring their printed e-mail confirmation to the workshop.

Assistance to Individuals With Disabilities Attending the Technical Assistance Workshops

The technical assistance workshop site is accessible to individuals with disabilities. If you will need an 1 auxiliary aid or service to participate in the workshop (*e.g.*, interpreting service, assistive listening device, or materials in an alternative format) notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled workshop date. Although we will attempt to meet a request received after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

FOR FURTHER INFORMATION CONTACT: Levenia Ishmell, U.S. Department of Education, 1990 K Street NW., room 8031, Washington, DC 20006–8544. Telephone: (202) 502–7668 or by e-mail: *levenia.ishmell@ed.gov*. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at either site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1138–1138d.

Dated: November 21, 2002.

Jeffrey E. Andrade,

Deputy Assistant Secretary for Policy, Planning, and Innovation.

[FR Doc. 02–29977 Filed 11–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension of the OMB expiration date for Forms: NWPA–830C 'Appendix C—Delivery Commitment Schedule', NWPA–830G 'Appendix G—Standard Remittance Advice for Payment of Fees (including Annex A).'

DATES: Comments must be filed by January 27, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Jim Finucane. To ensure receipt of the comments by the due date, submission by FAX (202–287–1934) or e-mail *jim.finucane@eia.doe.gov* is recommended. The mailing address is Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650. Alternatively, Mr. Finucane may be reached by telephone at 202–287–1966.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Mr. Finucane at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95–91), 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

Appendix C, Form NWPA–830C, 'Delivery Commitment Schedule, (DCS)' is designed to allow companies purchasing nuclear waste disposal services from the DOE to identify the number of assemblies, including their initial uranium loading, the range of discharge dates, and the mode of transportation, along with the year that the purchaser proposes that the DOE take delivery. This information is required at a point in time at least 63 months before expected transfer to the DOE. The DCS provides purchasers with the opportunity to inform DOE of their plans for utilizing their allocations of projected Federal Waste Management System capacity.

NWPA–830G 'Appendix G—Standard Remittance Advice for Payment of Fees', and 'Annex A to Appendix G—Standard Remittance Advice for Payment of Fees' are designed to serve as the source document for entries into DOE accounting records to transmit data from Purchasers to the DOE concerning payment of their fees for spent nuclear fuel and high-level waste disposal into the Nuclear Waste Fund. The Remittance Advice (RA) must be submitted by Purchasers who signed the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the DOE.

II. Current Actions

The current proposed action is a three-year extension of two existing data collections. This is a request for comments on EIA's proposal to request this three-year extension of approval to continue collecting information with Forms NWPA–830C, the Appendix C—'Delivery Commitment Schedule,' and

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the NWPA–830G 'Appendix G—Standard Remittance Advice for Payment of Fees' with no change to the existing collections.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Are the proposed collections of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden to complete Form NWPA–830C, the estimated burden per response is 2 hours. To complete Form NWPA–830G the average time per response is five and one half hours. The data for the Form NWPA–830G is collected quarterly. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential Data User of the Information to be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Sections 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, November 20, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–29968 Filed 11–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–78–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 20, 2002.

Take notice that on November 15, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2003:

Twenty-Second Revised Sheet No. 10
Thirty-Sixth Revised Sheet No. 11

CIG states that these tariff sheets revise the Gas Research Institute surcharges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30008 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–46–000]

Enbridge Pipelines (UTOS) L.L.C.; Errata Notice

November 20, 2002.

Notice of Filing of Offer of Settlement

November 1, 2002.

In the above referenced proceeding, "Docket No. RP03–44–000" has been changed to "Docket No. RP03–46–000".

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30004 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2004–074]

Holyoke Gas & Electric Department; Notice of Technical Conference

November 20, 2002.

On September 16, 2002, the city of Holyoke Gas & Electric Department (HG&E) filed, with the Commission, a request that the Commission schedule a technical conference to discuss outstanding issues related to the relicensing of the Holyoke Hydroelectric Project No. 2004. Commission staff will hold a technical conference with HG&E, state and federal agencies, and other interested parties in the proceeding. The conference will be held on December 5, 2002, from 10 a.m. to 4 p.m., at the Holiday Inn in Holyoke, 245 Whiting Farms Road, Holyoke, Massachusetts.

The purposes of the conference are to learn more about the post-licensing issues that have been the subject of on-going discussions since license issuance in 1999, as well as discuss any related procedural matters and steps. All local, state, and federal agencies, Indian Tribes, and interested parties are invited to attend the conference.

For further information, please contact Allan Creamer at (202) 502–8365, or via e-mail at *allan.creamer@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29998 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–411–003 and RP01–44–005]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

November 20, 2002.

Take notice that on November 15, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing Third Revised Sheet No. 36; Third Revised Sheet No. 50A; Second Revised Sheet No. 50B; and Sixth Revised Sheet No. 57A, proposed to become effective November 1, 2002.

Iroquois states that these sheets were submitted in compliance with the Commission's October 31, 2002, Order on Compliance Filing issued in Docket No. RP00–411–000, et al. The tariff sheets included herewith reflect changes required by the Commission.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30001 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–7–000]

Natural Gas Pipeline Company of America; Notice of Technical Conference

November 20, 2002.

In the Commission's order issued on October 30, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, December 12, 2002, at 10:30 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30005 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Natural Gas Pipeline Company of America, 101 FERC ¶ 61,095 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–74–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 20, 2002.

Take notice that on November 15, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Twentieth Revised Sheet No. 22, with an effective date of December 1, 2002.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the nineteenth limited rate filing under section 4 of the Natural Gas Act and the Rules and Regulations of the Commission promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under section 21 are not reflected in this filing.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages

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electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30006 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–483–002]

Sabine Pipe Line LLC; Notice of Compliance Filing

November 20, 2002.

Take notice that on November 15, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective May 3, 2002:

Substitute First Revised Sheet No. 237

Sabine states that this tariff sheet is being filed to comply with the directive of the Federal Energy Regulatory Commission's letter order pursuant to 375.307(f)(1) and (f)(3), issued September 26, 2002, in Docket No. RP00–483–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30002 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–76–000]

Southern Natural Gas Company; Notice of Tariff Filing

November 20, 2002.

Take notice that on November 15, 2002, Southern Natural Gas Company (Southern), tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Seventh Revised Sheet No. 37; and Fourth Revised Sheet No. 48, with an effective date of December 16, 2002.

Southern states that the purpose of the filing is to clarify that Southern's existing overrun charge in Section 2(d) of Southern's Rate Schedule FT and FT-NN applies to volumes from receipt points which are outside of the zone for which a shipper is paying demand charges.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30007 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–69–007]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 20, 2002.

Take notice that on November 15, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No.1, which sheets are enumerated in Appendix A attached to the filing. The proposed effective dates of such tariff sheets are indicated on Appendix A.

Transco states that the purpose of the instant filing is to comply with a letter order issued by the Commission on November 1, 2002 which directed Transco to file revised tariff sheets to modify certain footnotes on its gathering tariff sheet and to add a list of gathering points to Transco's FERC Gas Tariff.

Transco states that copies of the filing are being mailed to each of its affected customers, interested State Commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *Comment Date:* December 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29997 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–51–000]

Westar Energy, Inc.; Notice of Filing

November 20, 2002.

Take notice that on November 15, 2002, Westar Energy, Inc. tendered a filing in response to a data request issued on November 1, 2002, by the Director of the Division of Tariffs and Market Development-Central, in the above-referenced docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. *Comment Date:* December 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30003 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–79–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

November 20, 2002.

Take notice that on November 15, 2002, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 4C, to become effective January 1, 2003.

WIC states that this tariff sheet revises the Gas Research Institute surcharges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30009 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF03–2101–000, et al.]

United States Department of Energy, et al.; Electric Rate and Corporate Filings

November 18, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. United States Department of Energy, Bonneville Power Administration—Pacific; Northwest Coordination Agreement

[Docket No. EF03–2101–000]

Take notice that on November 1, 2002, the Bonneville Power Administration (BPA) tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed rate adjustment to its Interchange Energy Imbalances Rate under the Pacific Northwest Coordination Agreement, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). BPA seeks interim approval of its proposed rate adjustment effective January 1, 2002, pursuant to Commission regulation 300.20, 18 CFR 300.20. Pursuant to Commission regulation 300.21, 18 CFR 300.21, BPA also seeks final confirmation and approval of the proposed rate.

BPA requests approval effective January 1, 2003, until such time as the rate is subsequently revised and approved. The proposed Interchange Energy Imbalances Rate is a market-indexed rate based on the Dow Jones Mid-Columbia Firm index. This rate is used to keep track of energy exchanges between BPA and the parties to the Pacific Northwest Coordination Agreement and is intended to cover BPA's cost of providing the interchange.

Comment Date: December 2, 2002.

2. Termoelectrica de Mexicali, S. de R.L. de C.V.

[Docket No. EG03–17–000]

Take notice that on, November 13, 2002, Termoelectrica de Mexicali, S. de R.L. de C.V. (Applicant), located at Calle Mission de San Javier No. 10661–305;

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Col. Zona Rio, C.P. 22320; Tijuana, Baja California, Mexico, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant will operate and directly own a natural gas-fired and steam-powered generating facility located west of Mexicali in Baja California, Mexico.

Comment Date: December 9, 2002.

3. Virginia Electric and Power Company

[Docket No. ER03–106–001]

Take notice that on November 13, 2002, Virginia Electric and Power Company (the Dominion Virginia Power or Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amended filing in this proceeding. Dominion Virginia Power requests an effective date of January 1, 2003.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and all customers under the wholesale cost based tariff.

Comment Date: December 4, 2002.

4. Virginia Electric and Power Company

[Docket No. ER03–159–001]

Take notice that on November 13, 2002, Virginia Electric and Power Company 2 tendered for filing with the Federal Energy Regulatory Commission (Commission) a modification to the filing made in the above reference docket on November 5, 2002. The filing replaces one page of the Master Power Purchase and Sale Agreement that contains an incorrect reference to a tariff.

Copies of the filing were served upon the public utility's jurisdictional customers and the Virginia State Corporation Commission.

Comment Date: December 4, 2002.

5. New York Independent System Operator, Inc.

[Docket No. ER03–180–000]

Take notice that on November 13, 2002, the New York Independent System Operator, Inc. (NYISO) filed a new Attachment U of its Open Access Transmission Tariff (OATT) to deal with "Bad Debt Losses." The NYISO has requested an effective date of January 12, 2003 for the filing.

The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Services Tariff and upon the New York State Public Service Commission.

Comment Date: December 4, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson,

Jr., Deputy Secretary.

[FR Doc. 02–29933 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–19–000, et al.]

FPL Energy New Mexico Wind, L.L.C., et al.; Electric Rate and Corporate Filings

November 19, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Energy New Mexico Wind, L.L.C.

[Docket No. EG03–19–000]

Take notice that on November 14, 2002, FPL Energy New Mexico Wind, L.L.C. (the Applicant), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an up to 204 MW wind-powered generation facility located in Quay and DeBaca Counties, New Mexico. Electric energy produced by the facility will be sold at wholesale.

Comment Date: December 10, 2002.

2. Duke Energy Fayette, L.L.C.

[Docket No. EG03–20–000]

Take notice that on November 15, 2002, Duke Energy Fayette, L.L.C. (Duke Fayette) filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Fayette is a Delaware limited liability company that states it will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Fayette County, Pennsylvania. The eligible facilities will consist of an approximately 620 MW natural gas-fired, combined cycle electric generation plant and related facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: December 10, 2002.

3. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER98–1438–012 and ER02–111–004]

Take notice that on November 15, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, and Agreement of the Transmission Facilities Owners To Organize The Midwest Independent Transmission System Operator, Inc., First Revised Rate Schedule FERC No. 1 (Midwest ISO Agreement) in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 101 FERC 61,113. The Midwest ISO has requested waiver of the Commission's 60-day notice provision of section 205 of the Federal Power Act in order to accommodate an effective date of the original date of filing in Docket No. ER98–1438–010.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: December 6, 2002.

4. Phoenix Energy Associates, L.L.C.

[Docket No. ER03–182–000]

Take notice that on November 14, 2002, Phoenix Energy Associates, L.L.C. (Phoenix Energy), tendered for filing their Rate Schedule FERC No. 1, under which Phoenix Energy will engage in wholesale electric power and energy transactions as a marketer.

Comment Date: December 5, 2002.

5. PPL Electric Utilities Corporation

[Docket No. ER03–183–000]

Take notice that on November 14, 2002, PPL Electric Utilities Corporation (PPL Electric) and PPL Susquehanna, L.L.C. (PPL Susquehanna) filed with the Commission a notice of cancellation of an Interconnection Agreement to which they are parties designated as FERC Electric Rate Schedule No. 171 and filed on December 7, 1999, and tendered a replacement Interconnection Agreement designated as PJM Service Agreement No. 816.

The Interconnection Agreement is being cancelled, and contemporaneously refiled, in order to implement a revision to Exhibit A and to comport with the Commission's current policy whereby Interconnection Agreements are filed as service agreements under the Open Access Transmission Tariff of the relevant Independent System Operator, here PJM Interconnection, L.L.C. PPL Electric and PPL Susquehanna request the same effective date for cancellation of the Interconnection Agreement and for the amended Interconnection Agreement and request waivers as necessary to permit effective dates for both as of the date of filing.

Comment Date: December 5, 2002.

6. Geysers Power Company, L.L.C.

[Docket No. ER03–184–000]

Take notice that on November 14, 2002, Geysers Power Company, L.L.C., tendered for filing updated rate schedule sheets for calendar year 2003 for its Reliability Must-Run service agreements with the California Independent System Operator (ISO), designated as Rate Schedules FERC Nos. 4 and 5. Copies of the filing have been served upon the ISO and Pacific Gas and Electric Company.

Comment Date: December 5, 2002.

7. Duke Energy Fayette, L.L.C.

[Docket No. ER03–185–000]

Take notice that on November 15, 2002, Duke Energy Fayette, L.L.C. (Duke Fayette) tendered for filing pursuant to section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Fayette seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Fayette also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Fayette seeks an effective date 60 days from the date of filing of its proposed rate tariff.

Comment Date: December 6, 2002.

8. PacifiCorp

[Docket No. ER03–186–000]

Take notice that on November 15, 2002, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's rules and regulations, notice of cancellation of Rate Schedule No. 428 between PUD No. 1 of Clark County, WA and PacifiCorp.

Copies of this filing were supplied to PUD No. 1 of Clark County, WA, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: December 6, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29934 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2146–000,82–019, and 618–104—Alabama]

Alabama Power Company Coosa River Project, Mitchell Project, and Jordan Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

November 20, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. [1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alabama and Georgia State Historic Preservation Officer

[1] 18 CFR Section 385.2010.

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(hereinafter, SHPOs) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project Nos. 2146, 82, and 618.

The programmatic agreement, when executed by the Commission, the SHPOs, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the licenses until the licenses expire or are terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the above projects would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Orders issuing licenses.

Alabama Power Company, as licensee for Project Nos. 2146, 82, and 618, and the Mississippi Band of Choctaw Indians, Jena Band of Choctaw Indians, Chickasaw Nation, Poarch Band of Creek Indians, and the U.S. Bureau of Indian Affairs have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned projects as follows: Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Amanda McBride, Alabama Historical Commission, 1500 Tower Building, 323 Center Street, Little Rock, AR 72201.

David Crass, Georgia Historic Preservation Division, 156 Trinity Avenue SW. Suite 101, Atlanta, GA 30303–1040.

Christine Norris, Tribal Historic Preservation Officer, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.

William Day, Tribal Historic Preservation Officer, Poarch Band of Creek Indians, 128 Olive St., Pineville, LA 71360.

Rena Duncan, Tribal Historic Preservation Officer, Chickasaw Nation, P.O. Box 1548, Ada, OK 74820.

Ken Carleton, Tribal Historic Preservation Officer, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.

Dr. James Kardatzke, Bureau of Indian Affairs, Eastern Region Office, 711 Stewarts Ferry Pike, Nashville, TN 37214.

Kelly Schaeffer, 6225 Brandon Avenue, Suite 110, Springfield, VA 22150.

Barry Lovett, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291.

John Harrington, Esq., Office of Solicitor, Southeast Regional Office, 75 Spring St., SW., Suite 304, Atlanta, GA 30303.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about Historic Properties, including Traditional Cultural Properties. If Historic Properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie R. Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29999 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–015—Alabama]

Alabama Power Company, Black Warrior River Project; Notice of Proposed Revised Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

November 20, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. [1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alabama State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 2165-015.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the Black Warrior River Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with Alabama Power Company, the licensee for Project No. 2165; the Mississippi Band of Choctaw Indians; the Jena Band of Choctaw Indians; the Chickasaw Nation, the Poarch Band of Creek Indians; the U. S. Forest Service; the U.S. Army Corp of Engineers; and the U.S. Bureau of Indian Affairs. The executed programmatic agreement would be incorporated into any Order issuing a license.

For purposes of commenting on the programmatic agreement, we propose to add the following person to the restricted service list for the aforementioned project to represent the interests of the U.S. Army Corp of Engineers: Ernie Seckinger, CESAM-PD-EI, U.S. Army Corps of Engineers, Mobile District, P.O. Box 2288, Mobile, AL 36628–0001.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about Historic Properties, including Traditional Cultural Properties. If Historic Properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie R. Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30000 Filed 11–25–02; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR Section 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7413–8]

Meeting of the Drinking Water Contaminant Candidate List Classification Process Work Group of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming meeting of the Drinking Water Contaminant Candidate List (CCL) Classification Process Work Group of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*).

DATES: The next two meetings of the NDWAC CCL Work Group will be held on the following dates: December 16–17, 2002 (9 a.m.–5 p.m. EDT on December 16, and 8 a.m.–3:30 p.m. EDT on December 17); and February 5–6, 2003 (9 a.m.–5 p.m. EDT on February 5, and 8 a.m.–3:30 p.m. EDT on February 6).

ADDRESSES: The December meeting of the NDWAC CCL Work Group will be held at the National League of Cities, 1301 Pennsylvania Avenue, NW., Washington, DC. The February meeting of the CCL Work Group will be held at RESOLVE Inc., 1255 23rd Street, NW., Suite 275, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For more information on the location and times of these meetings, or general background information please contact the Safe Drinking Water Hotline (phone: 800–426–4791 or (703) 285–1093; e-mail: *hotline-sdwa@epa.gov*). Members of the public are requested to contact RESOLVE if they plan on attending, at (202) 944–2300. Any person needing special accommodations at either of these meetings, including wheelchair access, should contact RESOLVE (contact information previously noted), at least five business days before the meeting so that appropriate arrangements can be made. For technical information contact Dr. Jitendra Saxena, Designated Federal Officer, CCL Classification Process Work Group, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4607M), 1200 Pennsylvania Avenue, NW, Washington, DC 20460 (e-mail: *saxena.jitendra@epa.gov*; Tel. 202–564–5243).

SUPPLEMENTARY INFORMATION: The CCL serves as the primary source of priority contaminants for research and regulatory evaluations for the Agency's drinking water program. The list is comprised of both chemical and microbial contaminants that are known or anticipated to occur in public water systems, and may have adverse health effects, and which at the time of publication are not subject to any proposed or promulgated National Primary Drinking Water Regulations. EPA has formed a CCL Classification Process Work Group of the National Drinking Water Advisory Council (NDWAC) to help the Agency in developing a new risk based priority setting process based upon the recommendations made by the National Research Council (NRC) in its 2001 report.

The work group is comprised of 21 recognized technical experts representing an array of backgrounds and perspectives who are as impartial and objective as possible. The work group is charged with discussing, evaluating, and providing advice on methodologies, activities, and analysis needed to implement the NRC recommendations on an expanded approach for the CCL listing process. This may include advice on developing and identifying: (1) Overall implementation strategy, (2) prototype classification methodology, classification attributes and criteria that should to be used, (3) pilot projects to validate new classification approaches, (4) demonstration studies that explore the feasibility of the VFAR (Virulance-Factor Activity Relationships) approach, (5) risk communication issues, and (6) additional issues not addressed in the NRC report.

The first meeting of the work group was held on September 18–19, 2002. The meeting objectives were to: gain understanding of the NRC recommendations from the invited members of the NRC panel; identify questions, issues and technical expertise needed to fulfill its charge; and plan next steps. At the conclusion of the first meeting, the work group identified four activity areas for small group discussions and formed committees to address each area (4–6 members/committee). The four committees are: committee on characterization of the universe of contaminants, committee on classification systems, committee on VFAR, and committee on developing guiding principles for the work group. Each committee is expected to hold several conference calls for group discussions in between the plenary meetings. EPA will provide technical materials and RESOLVE will arrange a conference call for each committee.

The meetings are open to the public for observation purposes only. Statements from the public will be taken at the close of each meeting. EPA is not soliciting written comments and is not planning to formally respond to comments.

Dated: November 20, 2002.

Nanci Gelb,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–29975 Filed 11–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7413–7]

EPA Science Advisory Board Staff Office Invitation To Solicit Public Input Concerning Prospective EPA Science Advisory Board Reorganization and Structural Changes

Summary: The Environmental Protection Agency's (EPA or Agency) Science Advisory Board (SAB or Board) is inviting members of the public to register and attend a public session wherein the Board will solicit public input on the SAB's prospective reorganization and structural changes; or, for persons unable to attend, to contribute information on this topic via

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e-mail. Although the SAB is subject to the procedural requirements of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), for its advisory committee meetings, the purpose of this session is to obtain information from individual attendees and not from the participants as a whole; therefore, the provisions of FACA do not apply to this session.

The session will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia, 22202, on Wednesday, December 4, 2002, from 9:30 am to 12 pm. The Sheraton Crystal City Hotel main telephone number is: (703) 486–1111. The session is open to members of the public. However, due to limited space, participation will be on a first-come basis. Therefore, members of the public are requested to register in advance. Members of the public who cannot attend in person are encouraged to submit written comments. For further information concerning this session, including procedures both for registration and submitting written comments to the EPA Science Advisory Board Staff Office, please see below.

Purpose: The Reorganization Sub-Committee of the SAB Executive Committee is soliciting public input concerning prospective EPA Science Advisory Board reorganization and structural changes. The Sub-Committee will consider the comments and input received in this public process, as well as written comments received in response to this notice, as it develops and evaluates possible options to enhance the ability of the SAB to carry out its critical mission even more effectively and efficiently. *Please note that this effort is not focused on "operational" SAB issues such as the revised panel formation process and the updating of the Board's policies and procedures, both of which are being carried out in parallel.*

Background: The SAB was established by the Congress in 1978 by the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA) (42 U.S.C. 4365). Composed of non-Federal government experts, the Board provides independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. The Board's independently-chartered Clean Air Scientific Advisory Committee (CASAC) and Advisory Committee on Clean Air Compliance Analysis (COUNCIL) also provide independent scientific and technical advice as required by the Clean Air Act Amendments of 1977 and the Clean Air Act Amendments of 1990, respectively. While the Board reports to the Administrator, it may also be requested to provide advice to U. S. Senate Committees and Subcommittees and U.S. House Committees and Subcommittees, as appropriate.

Since being established in 1978, the SAB has doubled in size (from five to ten standing committees) and in membership (from some 50 members to more than 110 members and 380 expert consultants). To supplement its standing and chartered committees, the Board forms numerous *ad hoc* panels that look into areas of special interest, all of which provide continuity to areas of scientific study that are relevant to the Agency. These changes in size and organization have come about in response to legislation and the needs of the EPA Administrator, and also as a result of the expanding mission of the Board.

Although the mission of the Board and its overall size have increased substantially in the last 25 years, both the structure of the Board and the procedures by which the SAB conducts reviews have remained essentially the same. Accordingly, there is a crucial need to evaluate the current structure, organization and composition of the Board to ascertain whether improvements in these areas can enhance the Board's ability to carry out its critical mission even more effectively and efficiently. The SAB's Executive Committee, under the leadership of its Chair, Dr. William Glaze, has recently established the Reorganization Sub-Committee for this purpose.

Specific Format and Topics for the December 4, 2002 Session: A draft agenda for the session will be posted on or about December 2, 2002 on the EPA Science Advisory Board Web site at: *http://www.epa.gov/sab.* The session will be specifically designed to solicit public input on the following two broad questions pertaining to the *organization and structure* of the SAB:

1. Overall, how well has EPA's Science Advisory Board fulfilled its mission—and what are some ways in which it could improve?

2. What type of SAB structure and substructures are needed to fulfill the SAB roles and be flexible enough to meet future needs of EPA?

Other public input relevant to the matters of SAB reorganization and structural changes will also be discussed, and accepted at, this December 4, 2002, session. *Input on operational or procedural aspects of the Board are not being solicited at this session.*

Registration for the December 4, 2002 Session: Persons wishing to attend this public session should register by Friday, November 29, 2002, by contacting Ms. Sandra Vincze at telephone (703) 534–1629 or via e-mail at *svincze@mgtech-world.com.* Please include the following information: name, title, organization, telephone number, fax number, and e-mail address.

Provision of Written Comments by Individuals Unable to Attend the December 4, 2002 Session: Persons unable to attend the public session who wish to provide written comments on the specific topics identified above may send those comments to Mr. Fred Butterfield of the Science Advisory Board Staff via email at butterfield.fred@epa.gov. Written comments received prior to 12 noon Eastern time on December 3, 2002, will be included in the discussion at this public session.

Session Access: Individuals requiring special accommodation at this session, including wheelchair access to the conference room, should contact Ms. Sandra Vincze at telephone (703) 534–1629 or via e-mail at *svincze@mgtech-world.com* at least two business days prior to the session (*i.e.*, by 5:00 p.m. on Friday, November 29, 2002) so that appropriate arrangements can be made.

General and Additional Information: Members of the public desiring additional information about the session on December 4, 2002, should contact Mr. Fred Butterfield, Designated Federal Officer, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail (202) 564–4561; fax (202) 501–0323; or e-mail *butterfield.fred@epa.gov.* Additional information on session logistics can be obtained by contacting Ms. Sandra Vincze at telephone (703) 534–1629 or via e-mail at *svincze@mgtech-world.com.*

Further information concerning the EPA Science Advisory Board, including its structure, function, and composition, may be found on the EPA SAB Web site at: *http://www.epa.gov/sab;* and in the EPA Science Advisory Board FY2001 Annual Staff Report, which is available from the EPA SAB Publications Staff at phone (202) 564–4533; via fax at: (202) 501–0256; or on the SAB Web site at *http://www.epa.gov/sab/annreport01.pdf.*

Dated: November 19, 2002.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–29976 Filed 11–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–13]

Notice of Public Hearing on Federal Home Loan Bank Views Concerning Registration of Federal Home Loan Bank Stock Under the Securities Exchange Act of 1934

AGENCY: Federal Housing Finance Board.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) will hold the following public hearing:

Time and Date of Hearing: 2 p.m., Monday, December 2, 2002.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Agenda: The Finance Board has scheduled a public hearing to consider Federal Home Loan Bank views concerning registration of Federal Home Loan Bank Stock under the Securities Exchange Act of 1934.

Only directors and executives of Federal Home Loan Banks may present testimony in person. Other parties will be permitted to submit written testimony only.

Those seeking to testify in person must submit written statements in electronic form no later than 2:00 p.m. EST, Friday, November 29, 2002. In addition, fifty (50) copies of your statement must be delivered to the Finance Board office prior to the hearing.

Banks and others submitting only written views must submit them in electronic form no later than 2:00 p.m. EST Monday, December 2, 2002 and must also deliver fifty (50) copies to the hearing location before the start of the hearing.

Status: This hearing will be open to the public.

ADDRESSES: Send testimony to Elaine L. Baker, Secretary to the Board, by electronic mail to *bakere@fhfb.gov.* Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Thomas D. Casey, Chief Counsel to the Chairman, 202–408–2957 or Elaine L. Baker, Secretary to the Board, 202–408–2837.

Dated: November 22, 2002.

Arnold Intrater,

General Counsel.

[FR Doc. 02–30078 Filed 11–25–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P3–02]

Petition of the Association of Bi-State Motor Carriers, Inc. to Investigate Truck Detention Practices of the New York Terminal Conference at the New York/New Jersey Port District; Notice of Filing and Request for Comments

Notice is hereby given that on November 18, 2002, the Association of Bi-State Motor Carriers, Inc. ("Petitioner") filed a Petition seeking an investigation under section 11(c) of the Shipping Act of 1984 ("Shipping Act") of certain activities in the New York/New Jersey Port District.

The Petitioner asks the Commission to determine whether the truck detention practices and tariff regulations of the marine terminal operator ("MTO") members of the New York Terminal Conference ("NYTC")[1] constitute unjust and unreasonable practices and regulations in violation of Section 10(d)(1) of the Shipping Act. In support of its request, Petitioner asserts that NYTC and its members are causing port congestion and delay by manipulating entry through the terminal gate or point of processing. Petitioner claims that this manipulation causes congestion and adds to the delay in picking up and delivering containers. Petitioner claims further that NYTC and its members' practices contribute to excessive "queue waiting time" outside of the terminal gate and that NYTC and its members are not compensating Petitioner's members for the cost associated with this delay and the delays occurring within the terminal. Moreover, Petitioner claims that the NYTC and its members have established excessive free time provisions in their tariff to avoid paying detention penalties to Petitioner's members. In this regard, Petitioner points out that the terminals require trucks to use offsite chassis depots or other offsite facilities, spending time that is excluded from the truck detention calculus. Finally, Petitioner claims that the NYTC members retaliated against its members after a successful arbitration by modifying their tariff in such a way as to prevent reasonable detention penalties from being paid.

Petitioner asserts that the foregoing results in its members being responsible for the excessive cost of doing business at the Port, both in terms of lost time and financial losses. In this regard, Petitioner states that the excessive delay caused to trucks awaiting access to containers and equipment causes inordinate delay in the delivery of cargo and that these costs are passed along to the shipping public or absorbed by trucking companies.

Petitioner asks the Commission to investigate these practices under section 11(c) of the Shipping Act. If violations are found, Petitioner asks the Commission to order NYTC to modify its tariff to: include a reasonable calculation that captures "queue waiting time;" and remove the excessive free time provisions and establish reasonable provisions that address the specific concerns set forth in the Petition such as, roadability issues and exclusions that exempt time spent due to lack of equipment or maintenance and repair. Petitioner also seeks an order directing NYTC to cease and desist from its practices of tendering defective equipment.

The Petition was filed under Rule 69 of the Commission's rules of practice and procedure, 46 CFR 502.69, and states that it was served on the parties named therein. The parties named in the Petition are entitled to file a reply pursuant 46 CFR 502.69 and 502.74. In order for the Commission to make a thorough evaluation of the Petition, the Commission is also inviting interested persons to submit their comments on the Petition. *Replies to the Petition and any comments are due no later than December 20, 2002.* Comments shall consist of an original and 15 copies, or, if e-mailed, as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications; be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 (e-mail to: *Secretary@fmc.gov* and include a reference to the docket number in the subject field); and be served on Petitioner's counsel: Carlos Rodriguez and Usbaldo Angel, Rodriguez O'Donnell Ross Fuerst Gonzalez & Williams, 1211 Connecticut Avenue, NW., Suite 812, Washington, DC 20036.

Copies of the Petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046, by telephone request at 202–523–5725, or through e-mail request directed to *Secretary@fmc.gov.*

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide

[1] American Stevedoring, Inc.; Port Newark Container Terminal; and Universal Maritime Service Corp.

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an e-mail address where service can be made.

Bryant L. VanBrakle,
Secretary.
[FR Doc. 02–29981 Filed 11–25–02; 8:45 am]
BILLING CODE 6720–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 11, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Thomas Taylor Nicholson and Black Creek Limited Partnership, both of Boise, Idaho; to increase their ownership of Silver State Bancorp, and thereby indirectly acquire voting shares of Silver State Bank, both of Henderson, Nevada.

2. Ronald Carl Yanke, Bryan Scott Norby, and Daniel Ronald Yanke, all of Boise, Idaho; to increase their ownership of Silver State Bancorp, and thereby indirectly acquire voting shares of Silver State Bank, both of Henderson, Nevada.

Board of Governors of the Federal Reserve System, November 21, 2002.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–30030 Filed 11–25–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Gold Country Financial Services, Inc., Marysville, California; to become a bank holding company by acquiring 100 percent of the voting shares of Gold Country Bank, N.A., Marysville, California.

2. New CCB, Inc., Sandy, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of CCB Financial Corporation, Sandy, Oregon, and thereby indirectly acquire voting shares of Clackamas County Bank, Sandy, Oregon.

Board of Governors of the Federal Reserve System, November 20, 2002.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–29950 Filed 11–25–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire an additional 50 percent, for a total ownership of 100 percent, of the voting shares of P.N.B. Financial Corp., Chicago, Illinois, and thereby indirectly acquire additional voting shares of Park National Bank and Trust of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, November 21, 2002.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–30029 Filed 11–25–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston–Salem, North Carolina; to acquire up to 19.9 percent of the voting shares of Equitable Bank, Wheaton, Maryland, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 2002.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc.02–29949 Filed 11–25–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Vision Bancshares, Inc., Gulf Shores, Alabama; to engage *de novo* through its subsidiary, Vision Bank, FSB (in organization), Panama City, Florida, in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 21, 2002.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc.02–30031 Filed 11–25–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in four regulations enforced by the Commission. The FTC is seeking public comments on the proposal to extend through December 31, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on December 31, 2002.

DATES: Comments must be filed by December 26, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission (comments in electronic form should be sent to *oira_docket@omb.eop.gov*), and to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to *RegsBEMZpprwork@ftc.gov*). All comments should be captioned "Regs BEMZ: Paperwork Comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Carole Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3230.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On August 20, 2002, the FTC sought comment on the information collection requirements associated with the regulations discussed below. See 67 FR 53936.

The Commission received one comment pertaining to certain aspects of regulatory burden affecting Regulations B, E, and Z that the commenter believed understated applicable burden.[1] These

[1] The comment was submitted on behalf of Visa U.S.A. ("Visa"), a membership organization comprised of certain domestic financial institutions licensed to offer Visa cards. Visa's comment is centered on open-end credit and EFT services. Furthermore, the focus of Visa's comment generally concerns banks and other depository institutions. For these regulations, however, except for nonfederally insured and noninsured credit unions (less than five thousand entities) and a limited number of securities-type entities engaged in financial activities covered by these regulations, the Commission, generally, lacks jurisdiction over

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issues are discussed more specifically below under the applicable regulations. In summary, much of the comment's analysis of the PRA mistakenly includes as a measure of burden procedural activities (e.g., individual credit decisions, investigating account errors) that are inherent in an entity's business, as opposed to disclosures and recordkeeping that are required by these regulations. Moreover, the comment overlooks the fact that the systems entities establish and maintain are commonly used for purposes extending well beyond the disclosure or recordkeeping requirements that these regulations entail.[2] Nonetheless, staff has revised its burden estimates in several areas to address the issues raised in the comment. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, Wordperfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *RegsBEMZpprwork@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii)).

The four regulations covered by this notice are:

(1) Regulations promulgated under The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. ("ECOA") ("Regulation B") (Control Number: 3084–0087);

(2) Regulations promulgated under The Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq. ("EFTA") ("Regulation E") (Control Number: 3084–0085);

(3) Regulations promulgated under The Consumer Leasing Act, 15 U.S.C. 1667 et seq., ("CLA"); ("Regulation M"), Control Number: 3084–0086);

(4) Regulations promulgated under The Truth-In-Lending Act, 15 U.S.C. 1601 et seq. ("TILA") ("Regulation Z") (Control Number: 3084–0088).

Each of these four rules impose certain PRA recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. All of these rules require covered entities to keep certain records. Staff believes that these entities would likely retain these records in the normal course of business even absent the recordkeeping requirement in the rules. There is, however, some burden associated with ensuring that covered entities do not prematurely dispose of relevant records during the period of time required by the applicable rule.

Disclosure requirements involve both set-up and monitoring costs as well as certain transaction-specific costs. "Set-up" burden, incurred by new entrants only, includes identifying the applicable disclosure requirements, determining compliance obligations, and designing and developing compliance systems and procedures. "Monitoring" burden, incurred by all covered entities, includes reviewing revisions to regulatory requirements, revising compliance systems and procedures as necessary, and monitoring the ongoing operation of systems and procedures to ensure continued compliance. "Transaction-related" burden refers to the effort associated with providing the various required disclosures in individual transactions. While this burden varies with the number of transactions, the figures shown for transaction-related burden in the tables that follow are estimated averages.

The actual range of compliance burden experienced by covered entities, and reflected in those averages, varies widely. Depending on the extent to which covered entities have developed computer-based systems and procedures for providing the required disclosures (and/or the extent which such entities utilize electronic transactions, communications, and/or electronic recordkeeping), and the efficacy of those systems and procedures, some entities may have little burden, while others may incur a higher burden.[3]

Calculating the burden associated with the four regulations' disclosure requirements is very difficult because of the highly diverse group of affected entities. The "respondents" included in the following burden calculations consist of credit and lease advertisers, creditors, financial institutions, service providers, certain government agencies and others involved in delivering electronic fund transfers (EFTs) of government benefits, and lessors. The burden estimates represent staff's best assessment, based on its knowledge and expertise relating to the financial services industry. To derive these estimates, staff considered the wide variations in covered entities': (1) Size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) types of EFTs used; (4) types and occurrences of adverse actions; (5) types of appraisal reports utilized; and (6) computer systems and electronic features of compliance operations.

In some instances, where covered entities may make certain required disclosures in the ordinary course of business, the Regulation imposes no PRA burden. In addition, as noted above, some entities use computer-based and/or electronic means of providing the required disclosures, while others rely on methods requiring more manual effort.

The estimated PRA burden associated with these rules, attributable to the Commission, is somewhat less today than in the past. Staff believes that as computer-based and/or electronic procedures rise, and as quality control procedures are increasingly integrated into business operating systems, financial services entities also increase compliance efficiency.

The cost estimates shown below relate solely to labor costs. The applicable PRA requirements impose minimal capital or other non-labor costs, as affected entities generally have the necessary equipment for other business purposes. Similarly, staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business. The burden estimates shown below include the time necessary to train staff to be in compliance with the regulations.[4]

depository institutions. And, most entities under the FTC's jurisdiction that offer open-end credit and EFT services are specialized regarding their plans and terms. Disclosures and recordkeeping for them would yield different, and lesser, burden than, for example, banks. Finally, regarding Regulation Z in particular, some entities no longer offer open-end credit directly (with banks now offering it instead).

[2] PRA "burden" does not include effort expended in the ordinary course of business, regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[3] For example, large retailers may use computer-based and/or electronic means to provide required disclosures, including issuing some disclosures en masse, e.g., notices of changes in terms. Smaller retailers or other creditors may have less automated compliance systems but may nonetheless rely on electronic mechanisms for disclosures and recordkeeping. Regardless of size, some entities may utilize compliance systems that are fully integrated into their general business operational system; as such, they may have minimal additional burden. Other entities may have incorporated fewer of these approaches into their systems and may have a higher burden.

[4] Employee training for these regulations may and often does address far more than the particular notices and recordkeeping required by these regulations. Regulatory compliance is just one subset of employee business training, and the regulatory compliance facet, for that matter, commonly encompasses a wide variety of issues and topics extending widely beyond those posed by Regulations B, E, M, and Z (*e.g.*, privacy and security, tax, and contract issues). They also address state and local requirements, not merely those imposed or enforced by federal agencies. Moreover, this training commonly incorporates internal business issues as well (*e.g.*, accounting concerns and secondary market or other investors issues).

The following paragraphs discuss each of these rules, their particular PRA requirements, and staff's best estimates of the related hour and cost burdens.

1. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B, 12 CFR 202, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers in understanding their rights under the ECOA and to assist in detecting unlawful discrimination. The FTC enforces the ECOA as to all creditors except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 3,146,000 hours, rounded to the nearest thousand (1,153,500 recordkeeping hours + 1,992,832 disclosure hours).[5]

Recordkeeping: FTC staff estimates that Regulation B's general recordkeeping requirements affect 1,000,000 credit firms subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours. Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each[6] for approximately nine million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 150,000 hours. Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 2,500 firms, with an average annual burden of one hour per firm, for a total of 2,500 hours, and that recordkeeping of any corrective action for self-testing would affect 250 firms in a given year, with an average annual burden of four hours per firm, for a total of 1,000 hours. The total estimated recordkeeping burden is 1,153,500 hours.

Disclosure: Regulation B requires that creditors (*i.e.*, entities that regularly participate in the decision whether to extend credit under Regulation B) provide notices whenever they take adverse action. It also requires entities that extend various types of mortgage credit to provide a copy of the appraisal report to applicants or to notify them of their right to a copy of the report (and thereafter provide a copy of the report, upon the applicant's request). Finally, Regulation B also requires that for accounts which spouses may use or for which they are contractually liable, creditors who report credit history must do so in a manner reflecting both spouses' participation.

Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, Internet businesses, and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.[7]

Disclosure	Respondents	Setup/monitoring [1]		Total Setup/ Monitoring burden (hours)	Transaction-related [2]			
		Average burden per respondent (hours)			Number of transactions	Average burden per transaction (minutes)	Total Transaction burden (hours)	Total burden (hours)
Credit history reporting	250,000	.25		62,500	125,000,000	.25	520,833	583,333
Adverse action notices	1,000,000	.5		500,00	200,000,000	.25	833,333	1,333,333
Appraisal notices	22,000	.5		11,000	6,500,000	.25	27,083	38,083
Appraisal reports	22,000	.5		11,000	6,500,000	.25	27,083	38,083
Total								1,992,832

[1] With respect to appraisal notices and appraisal reports, the above figures assume that approximately half of applicable mortgage entities (.5 × 44,000, or 22,000 businesses) would not otherwise provide this information and thus would be affected. The figures also assume that all applicable entities would provide notices first and thereafter provide the reports upon request.

[2] The above figures assume that half of applicable mortgage transactions (.5 × 13,000,000 or 6,500,000) would not otherwise provide the appraisal notices and reports and thus would be affected.

Estimated annual cost burden: $59,905,000, rounded to the nearest thousand. Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: Staff estimates that the general recordkeeping responsibility of one hour per creditor would involve approximately 90 percent clerical time and 10 percent skilled technical time. Keeping records of race/national origin, sex, age, and marital status requires an estimated on minute of skilled technical time. Keeping records of the self-test responsibility and of any corrective actions requires an estimated one hour and four hours, respectively, of skilled

entities subject to the Commission's jurisdiction are performing these tests, as defined by the Regulation. Unlike banks, for example, entities under FTC jurisdiction are not subject to regular audits for financial regulatory compliance with Regulations B, E, M, and Z. Rather they may be subject to investigations and enforcement actions that are fact- and issue-focused, rather than conducted in regular, periodic manner as are audits. This difference may account for relatively higher levels in self-testing, as defined under Regulation B, for depository entities under the jurisdiction of other federal agencies. As discussed further below, staff has retained certain other burden estimates.

[5] Visa stated that burden estimates had not been included for credit history reporting; staff has now factored that into its burden estimates for disclosures. Visa also noted the absence of staff estimates for self-testing Staff has increased its burden estimates by including recordkeeping for self-testing. However, it is unclear to what extent

[6] Regulation B contains model forms that creditors may use to gather and retain the required information.

[7] Visa asserted that burden estimates for adverse action were understated. However, staff believes that its adverse action notice estimates are a reasonable projection for those entities under the Commission's jurisdiction. Again, only incremental time and costs, beyond what would be incurred by an entity in its ordinary course of business apart from these FTC-enforced rules, are factored into staff's PRA burden estimates. Also, where multiple entities are involved in the adverse action decision (some within, and some outside, of Commission jurisdiction), it is only those entities under Commission jurisdiction—and only to the extent they are involved—that staff has attempted to account for in its PRA burden estimates.

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technical time. As shown below, the total recordkeeping cost is $14,070,000.

Disclosure: For each notice or information item listed, staff estimates that the burden hours consist of 10 percent managerial time and 90 percent skilled technical time. As shown below, the total disclosure cost is $45,835,100.

Required Task	Managerial		Skilled Technical		Clerical		Total Cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
General recordkeeping	0	$0	100,000	$2,000,000	900,000	$9,000,000	$11,000,000
Other recordkeeping	0	0	150,000	3,000,000	0	0	3,000,000
Recordkeeping of test	0	0	2,500	50,000	0	0	50,000
Recordkeeping of corrective action	0	0	1,000	20,000	0	0	20,000
Total Recordkeeping							14,070,000
Credit history reporting	58,333	2,916,650	525,000	10,500,000	0	0	13,416,650
Adverse action notices	133,333	6,666,650	1,200,000	24,000,000	0	0	30,666,650
Appraisal notices	3,808	190,400	34,275	685,500	0	0	875,900
Appraisal reports	3,808	190,400	34,275	685,500	0	0	875,900
Total Disclosure							45,835,100
Total Recordkeeping and Disclosure							59,905,100

2. Regulation E

The EFTA requires accurate disclosure of the ocsts, terms, and rights relating to EFT services to consumers. Regulation E, 12 CFR 205, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements applicable to entities providing EFT services to consumers. The FTC enforces the EFTA as to all entities providing EFT services except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 3,580,000 hours (500,000 recordkeeping hours + approximately 3,080,000 disclosure hours).

Recordkeeping: Staff estimates that Regulation E's recordkeeping requirements affect 500,000 firms offering EFT services to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 500,000 hours.

Disclosure: Regulation E applies to financial institutions (including certain retailers and electronic commerce entities), service providers, various federal and state agencies offering EFTs, and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.[8]

Disclosure	Respondents	Setup/monitoring		Transaction-related			
		average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Initial terms	100,000	.5	50,000	1,000,000	.02	333	50,333
Change in terms	25,000	.5	12,500	33,000,000	.02	11,000	23,500
Periodic statements	100,000	.5	50,000	1,200,000,000	.02	400,000	450,000

[8] Visa believes that staff's burden estimates were understated for the initial terms and periodic statements disclosures and for error resolution. Generally, however, under Regulation E, the Commission lacks jurisdiction over traditional depository-type entities, other than nonfederally-insured or noninsured credit unions and certain securities-type entities that may offer EFT services to consumers. While staff's analysis does not overlook the depository-type entities under the Commission's jurisdiction, their relative weighting is more than counterbalanced by the fact that many other entities under Commission jurisdiction subject to these requirements engage in limited types of EFTs, with more specialized terms and charges. The nature of entities subject to this jurisdiction impacts, among other things, initial and periodic disclosures. Moreover, regarding error resolution, staff notes that the procedural aspects that may be associated with investigation and account adjustments are not, per se PRA collected[s] of information." See note 2. Staff has retained its projected estimates in view of these considerations.

Disclosure	Respondents	Setup/monitoring		Transaction-related			
		average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Error resolution	100,000	.5	50,000	1,000,000	5	83,333	133,333
Transaction receipts	100,000	.5	50,000	5,000,000	.02	1,666,667	1,716,667
Preauthorized transfers	500,000	.5	250,000	1,000,000	.25	4,167	254,167
Service provider notices	100,000	.25	25,000	1,000,000	.25	4,167	29,167
Govt. benefit notices	10,000	.5	5,000	100,000,000	.25	416,667	421,667
ATM notices[1]	500	.25	125	250,000	.25	1,041	1,166
Total							3,080,000

[1] Starting in 2001, ATM operators were required to provide certain notices to consumers regarding ATM fees. Generally, these notices must be provided on or at ATM machines and/or on paper before the consumer is committed to paying a fee.

Estimated annual cost burden: $76,240,000, rounded to the nearest thousand.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 500,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $5,500,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $70,740,000.

Required Task	Managerial		Skilled technical		Clerical		Total Cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Recordkeeping	0	$0	50,000	$1,000,000	450,000	$4,500,000	$5,500,000
Disclosure:							
Initial terms	5,033	251,650	45,300	906,000	0	0	1,157,650
Change in terms	2,350	117,500	21,150	423,000	0	0	540,500
Periodic statements	45,000	2,250,000	405,000	8,100,000	0	0	10,350,000
Error resolution	13,333	666,650	120,000	2,400,000	0	0	3,066,650
Transaction receipts	171,667	8,583,350	1,540,000	30,800,000	0	0	39,383,350
Preauthorized transers	25,417	1,270,850	228,750	4,575,000	0	0	5,845,850
Service provider notices	2,917	145,850	26,250	525,000	0	0	670,850
Govt. benefit notices	42,167	2,108,350	379,500	7,590,000	0	0	9,698,350
ATM Notices	116	5,800	1,050	21,000	0	0	26,800
Total Disclosure							70,740,000
Total Recordkeeping and Disclosures							76,240,000

3. Regulation M

The CLA requires accurate disclosure of the costs and terms of leases to consumers. Regulation M, 12 CFR 213, promulgated by the Board of Governors of the Federal Reserve System, establishes disclosure requirements that assist consumers in comparison shopping and in understanding the terms of leases and recordkeeping requirements that assist enforcement of the CLA. The FTC enforces the CLA as to all lessors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 279,000 hours, rounded to the nearest thousand (150,000 recordkeeping hours + 129,167 disclosure hours).

Recordkeeping: Staff estimates that Regulation M's recordkeeping requirements affect approximately 150,000 firms leasing products to consumers and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 150,000 hours.

Disclosure: Regulation M applies to automobile lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, and diverse types of lease advertisers, and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.

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Disclosure	Setup/monitoring			Transaction-related			
	Respondents	Average Burden per Respondent (hours)	Total Setup/ Monitoring Burden (hours)	Number of Transactions	Average Burden per Transaction (minutes)	Total Transaction Burden (hours)	Total Burden (hours)
Auto Leases[1]	50,000	.75	37,500	2,500,000	.50	20,833	58,333
Other Leases[2]	100,000	.50	50,000	1,000,000	.25	4,167	54,167
Advertising	25,000	.50	12,500	1,000,000	.25	4,167	16,667
Total							129,167

[1] This category focuses on consumer vehicle leases. Vehicle leasing has decreased in the past two years. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR § 213.2(e)(1).

[2] This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumers leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 213.2(e)(1).

Estimated annual cost burden: $4,621,000, rounded to the nearest thousand.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 150,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $1,650,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $2,970,850.

Required Task	Managerial		Skilled Technical		Clerical		Total Cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Recordkeeping	0	$0	15,000	$300,000	135,000	$1,350,000	$1,650,000
Disclosures:							
Auto Leases	5,833	291,650	52,500	1,050,000	0	0	1,341,650
Other Leases	5,417	270,850	48,750	975,000	0	0	1,245,850
Advertising	1,667	83,350	15,000	300,000	0	0	383,350
Total Disclosures							2,970,850
Total Recordkeeping and Disclosures							$4,620,850

4. Regulation Z

The TILA was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Regulation Z, 12 CFR 226, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers and the enforcement of the TILA. The FTC enforces the TILA as to all creditors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

Estimated annual hours burden: 20,179,000 hours, rounded to the nearest thousand (1,000,000 recordkeeping hours + 19,178,749 disclosure hours).

Recordkeeping: FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 1,000,000 firms offering credit and subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours.

Disclosure: Regulation Z disclosure requirements pertain to open-end and closed-end credit. The Regulation applies to retailers (such as department stores, appliance stores, discount retailers, medical-dental service providers, home improvement sellers, and electronic commerce retail operators); mortgage companies; finance companies; credit advertisers; auto dealerships; student loan companies; home fuel or power services (for furnaces, stoves, microwaves, and other heating, cooling or residential power equipment); credit advertisers; and others. Below is staff's best estimate of burden applicable to this highly broad spectrum of covered entities.[9]

[9] Visa asserted that the burden estimates were understated for the initial terms and periodic statements disclosures and for billing error resolution. As noted above regarding these regulations, generally, the Commission lacks jurisdiction over traditional depository-type entities (including banks), other than nonfederally-insured or noninsured credit unions and certain securities-type entities that offer credit services to consumers. The Commission has jurisdiction over certain nondepository financial services entities that offer open-end credit, as well as certain health care providers, and other retailers that still issue credit under their own names. Staff has accounted for these entities in its estimates. However, although some entities under the Commission's jurisdiction offer varying forms of and terms within open-ended credit to consumers, many have a more limited offering, including some retailers, health care providers, and others. Moreover, some entities no longer offer open-end credit directly (with banks offering it instead), including, for example, many oil companies, department stores, and other retailers. The nature of entities subject to this jurisdiction impacts initial and periodic disclosures. In addition, regarding billing error resolution, staff notes that the time associated with investigation and account adjustments is not burden imposed by these regulations and is thus not covered by the PRA. Staff has retained its projected estimates in view of these considerations.

Disclosure[1]	Setup/Monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Open-end credit:							
Initial terms	100,000	.5	50,000	50,000,000	.25	208,333	258,333
Rescission notices	10,000	.5	5,000	100,000	.25	417	5,417
Change in terms	25,000	.5	12,500	136,000,000	.125	283,333	295,833
Periodic statements	100,000	.5	50,000	4,800,000,000	.0625	5,000,000	5,050,000
Error resolution	100,000	.5	50,000	10,000,000	5	833,333	883,333
Credit and charge card accounts	100,000	.5	50,000	50,000,000	.25	208,333	258,333
Home equity lines of credit	10,000	.5	5,000	5,000,000	.25	20,833	25,833
Advertising	250,000	.25	62,500	700,000	.5	5,833	68,333
Closed-end credit:							
Credit disclosures	800,000	.50	400,000	330,000,000	2	11,000,000	11,400,000
Rescission notices	100,000	.50	50,000	34,000,000	1	566,667	616,667
Variable rate mortgages	75,000	.50	37,500	1,800,000	2	60,000	97,500
High rate/high-fee mortgages	50,000	.50	25,000	750,000	2	25,000	50,000
Reserve mortgages	50,000	.50	25,000	150,000	1	2,500	27,500
Advertising	500,000	.25	125,000	1,000,000	1	16,667	141,667
Total open-end credit							6,845,415
Total closed-end credit							12,333,334
Total credit							19,178,749

[1] In some areas, e.g., home equity lines of credit, companies have merged, changed their business focus, and/or have shifted that focus into areas not under the FTC's jurisdiction. Accordingly, staff's estimates account for a reduced number of respondents in these areas. For high-rate, high-fee loans, some respondents in this area have merged and/or changed their business focus. However, revisions to these rules by the FRB became effective 10/1/02; as a result, certain additional mortgages may be covered by these rules.

Estimated annual cost burden: $452,111,000 rounded to the nearest thousand.

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($50 for managerial or professional time, $20 for skilled technical time, and $10 for clerical time) are averages.

Recordkeeping: For the 1,000,000 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $11,000,000.

Disclosure: For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $441,111,200.

Required Task	Managerial		Skilled Technical		Clerical		Total Cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Recordkeeping	0	$0	100,000	$2,000,000	900,000	$9,000,000	$11,000,000
Open-end Disclosure:							
Initial terms	25,833	1,291,650	232,500	4,650,000	0	0	5,941,650
Rescission notices	542	27,100	4,875	97,500	0	0	124,600
Change in terms	29,583	1,479,150	266,250	5,325,000	0	0	6,804,150
Periodic statements	505,000	25,250,000	4,545,000	90,900,000	0	0	116,150,000
Error resolution	88,333	4,416,650	795,000	15,900,000	0	0	20,316,650
Credit and charge card accounts	25,833	1,291,650	232,500	4,650,000	0	0	5,941,650
Home equity lines of credit	2,583	129,150	23,250	465,000	0	0	594,150
Advertising	6,833	341,650	61,500	1,230,000	0	0	1,571,650
Total open-end credit							157,444,500
Closed-end credit Disclosures:							
Credit disclosures	1,140,000	57,000,000	10,260,000	205,200,000	0	0	262,200,000
Rescission notices	61,667	3,083,350	555,000	11,100,000	0	0	14,183,350

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Required Task	Managerial		Skilled Technical		Clerical		Total Cost ($)
	Time (hours)	Cost ($50/hr.)	Time (hours)	Cost ($20/hr.)	Time (hours)	Cost ($10/hr.)	
Variable rate mortgages	9,750	487,500	87,750	1,755,000	0	0	2,242,500
High-rate/high-fee mortgages	5,000	250,000	45,000	900,000	0	0	1,150,000
Reverse mortgages	2,750	137,500	24,750	495,000	0	0	632,500
Advertising	14,167	708,350	127,500	2,550,000	0	0	3,258,350
Total closed-end credit							283,666,700
Total Disclosures							441,111,200
Total Record-keeping and disclosures:							452,111,200

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–29980 Filed 11–25–02; 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Notice of Awards Consistent With Fiscal Year 2002 Appropriations Act Reports

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of awards made by the Administration on Aging in Fiscal Year 2002 consistent with Fiscal Year 2002 Appropriations Act reports.

SUMMARY: The Administration on Aging announces that it made twenty-nine (29) awards in FY 2002 consistent with the terms of Senate Report 107–84 and House Report 107–116 that accompany the Consolidated Appropriations Act for FY 2002 (Pub. L. 107–116), as follows: Adult Day Care of Northern Shenandoah Valley (VA), $148,050, September 1, 2002, to August 31, 2003; Allegheny County Homestead Apartments LIFE Center (PA), $296,100, September 30, 2002, to September 29, 2003; Alzheimer's Family Day Center (VA), $246,750, August 1, 2002, to December 31, 2003; Area Agency on Aging of Southeast Arkansas Inc. (AR) $493,500, September 1, 2002, to January 31, 2004; Area Agency on Aging of Southwest Arkansas (AR), $227,997, September 1, 2002, to August 31, 2003; Charlotte-Mecklenburg Department of Social Services (NC), $927,973, September 30, 2002, to February 28, 2004; Civic Ventures (CA), $789,600, September 1, 2002, to January 31, 2004; Coalition of Wisconsin Aging Groups (WI), $134,232, September 1, 2002, to August 31, 2003; Comprehensive Housing Assistance, Inc. (MD), $987,000, August 1, 2002, to July 31, 2003; Council of Senior Centers and Services NYC (NY), $74,025, July 1, 2002, to June 30, 2003; County of Wayne (MI), $781,229, September 1, 2002, to September 2003; DuPage County Human Services Department (IL), $98,700, September 1, 2002, to January 31, 2004; Garrett County Area Agency on Aging (MD), $24,675, August 1, 2002, to July 31, 2003; Guadelupe Community Center (CA), $434,119, September 30, 2002, to September 29, 2003; Institute for Music and Neurologic Function (NY), $493,500, August 1, 2002, to July 31, 2003; INTEGRIS (OK), $98,700, September 30, 2002, to September 29, 2003; Iowa Department of Elder Affairs (IA), $1,480,500, September 1, 2002, to August 31, 2003; Iowa State University, (IA), $197,400, September 30, 2002, to September 29, 2003; Jewish Association on Aging, (PA), $197,400, August 1, 2002, to July 31, 2003; Jewish Federation of Great Philadelphia (PA), $196,300, August 1, 2002, to July 31, 2003; Jewish Federation of St. Louis (MO), $1,263,360; August 1, 2002, to July 31, 2003; La Crosse Area Hmong Mutual Assistance Association, Inc. (WI), $125,349, September 30, 2002, to September 29, 2003; Promoting the National Family Caregiver Support Program (VA), $99,750, February 1, 2002, to January 31, 2003; Senior Community Centers of San Diego (CA), $88,830; September 30, 2002, to September 29, 2003; Senior Specialists Agency on Aging of West Central Arkansas (AR), $449,085; September 1, 2002, to August 31, 2003; The Jewish Community Federation of Cleveland (OH), $987,000; August 1, 2002, to July 31, 2003; The Motion Picture and Television Fund (CA), $98,700; September 1, 2002, to August 31, 2003; Tri-County Community Action Program (NH), $49,350; September 30, 2002, to September 29, 2003; Westchester County Department of Senior Programs and Services (NY), $19,740, August 1, 2002, to July 31, 2003.

Dated: November 21, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–29957 Filed 11–25–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03016]

Notice of Availability of Funds; Cooperative Agreement for a National Information Center on Physical Activity for Persons With Disabilities

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 301(a) and 317(C) of the Public Health Service Act, [42 U.S.C. Section 241 and 247b-4, as amended]. The Catalog of Federal Domestic Assistance number is 93.184.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for operation of a National Information and Resource Center on Physical Activity for Persons with Disabilities. This program addresses the "Healthy People 2010" focus areas of Disability and Secondary Conditions and Physical Activity and Fitness.

The purpose of this program is to provide information, technical assistance, and consultation on physical activity, exercise, and health promotion practices targeting persons with disabilities across all segments of the population. It includes addressing the prevention of secondary conditions in persons who have a disability by promoting and assessing the benefits of physical activity and exercise, reducing the risk for associated adverse health, promoting environmental access to physical activity and recreational facilities and services, and participation outcomes among persons who have a disabling condition.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): monitor, characterize, and improve the health status of Americans with disabilities.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; this includes, but is not limited to, universities, colleges, technical schools, research institutions, hospitals, community-based organizations, faith-based organizations, and State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $750,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about April 1, 2003, and will be made for a 12 month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Grant funds may be used to support personnel services, supplies, equipment, travel, subcontracts, and other services consistent with the approved scope of work.

Project funds may not be used to supplant other available applicant or collaborating agency funds, for construction, for purchase of facilities or space, or for patient care. Project funds may not be used for group, program, or individualized support such as wheelchairs, sport/ recreational and fitness equipment, assistive technology, and medical appliances unless specifically approved by the funding agency.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Collect and compile information regarding physical activity and exercise for persons with disabilities on a national, regional, and state/local basis. Provide this information to a broad range of requesters, including: Individuals, media, researchers, disability service organizations, community groups, service providers, legislative and governing bodies, and the public.

b. Serve as a leading national organization that sustains a capacity and competency to serve a nationwide constituency on physical activity, exercise, and fitness for persons with a wide range of disabilities and their support networks, including caregivers.

c. Identify, enumerate, and characterize the nature of requests and inquiries from persons with disabilities, caregivers, providers, and organizations seeking information on physical activity and exercise.

d. Provide guidance for initiating and maintaining physical activity among persons with disabilities. Impart information regarding the benefits and recommended amounts of physical activity to individuals and to those populations served by requesting organizations.

e. Provide technical assistance and consultation in the design, conduct, and evaluation of health promotion and community-directed physical activity and exercise programs in targeted populations of persons with disabilities.

f. Organize and conduct symposia and conferences to publicize and promote the benefits of physical activity and fitness for national organizations and constituent groups.

g. Provide information regarding innovative and acceptable physical activity facilities (*e.g.* buildings, parks, trails, equipment, new technology), best practices, and model programs that are fully accessible and available to persons with disabilities with attention to geographical proximity and cost issues.

h. Provide information regarding innovative and acceptable policies that promote physical activity among people with disabilities through accessible and suitable dissemination formats and instruments.

2. CDC Activities

a. Provide technical consultation on current available and emerging research, literature, epidemiological, and physical activity information in the United States.

b. Serve as a conduit for accessing other data sets and for referrals to information resources that would be of value to the information gathering/ dissemination and technical assistance activities of the recipient.

c. Assist in the planning and organizing of conferences and workshops related to project activities regarding physical activity, exercise, and fitness for persons with disabilities.

d. Assist in the development and dissemination of physical activity materials and information to other CDC grantees to maximize use among those populations served.

e. Assist in the transfer of information and methods already developed in the project to other disability-related entities and programs, including environmental measures that can serve to facilitate access to physical activity programs in the community setting.

f. Assist with the identification of physical activity policies, best practices, and model programs for people with disabilities.

F. Content

Letter of Intent

A letter of intent (LOI) is requested for this program. The LOI should identify the program announcement number and the proposed project director. It should describe the scope of the proposed project and denote those activities and collaborations already in place to fully meet the requirements of the announcement. The LOI will be used to determine the level of interest in the announcement, and to assist CDC in planning the application review process.

Applications

The Program Announcement title and number must appear in the application.

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Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages, double spaced, printed on one side, with one inch margins and unreduced 12-point font. Attachments are permitted, but should be consistent and compatible with the scope of the tasks described and descriptive of those operational systems that are to be the foundation for the project.

The narrative should consist of, at a minimum, a Plan, Objectives, Evaluation, and Budget.

Applicants must submit a separate typed abstract of their proposal consisting of no more than two single-spaced pages. Applicants should also include a table of contents for the project narrative and related attachments.

G. Submission and Deadline

LOI

On or before December 23, 2002, submit the LOI to the Senior Project Officer identified in Section "J. Where to Obtain Additional Information" of this announcement.

Application Forms

Submit the original and two copies of PHS–5161–1 (OMB Number 0920–0428). Forms can be found at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at 770–488–2700. Application forms can be mailed to you.

Application Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, January 16, 2003. Submit the application to: Technical Information Management Section—PA 03016, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, MS–E13, Atlanta, Georgia 30341–4146.

Forms may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications will be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be returned. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement.

Measures of effectiveness must relate to the performance goal stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. It is suggested that applications be organized to be compatible with the evaluation scoring criteria, as that is the process by which the review committee will assess the quality of the applications.

1. Operational Approach (30 Points). This includes:

a. The methods to be employed to sustain an effective information resources system and communications network.

b. The approach to: continue to gather information on the determinants (facilitators and barriers) to physical activity and exercise; assess the perceptions and experiences of persons with disabilities and their families regarding physical activity; formulate a strategy to enable and motivate persons with disabilities to engage in physical activity, exercise, and recreational programs; and continue to promote and publish guidelines and recommendations for sustaining such activities over the long-term.

c. The methods by which the applicant has and will further develop and disseminate educational materials on facts, benefits, programs, policies, and motivational tools based on their value for promoting physical activity in persons with disabilities across the nation in all age ranges and literacy levels during medical treatment, rehabilitation, and in the home and community settings.

d. The approach in place and proposed to expand the construction of a centralized listing of programs, events, and service providers to be disseminated to requesters for personal, organizational, and constituency use.

e. The accounts of the expansion of resource development and communications capacity for employing information technology to reach key targeted groups including impairment-specific populations; children; adolescents; older citizens; women; minorities; lower socio-economic strata; professionals/clinicians, fitness/allied health providers and educators/trainers; persons with varying fitness levels; and changing levels (persons with improving or regressing physical conditioning) in order to best translate information into physical activity and exercise programs and protocols for persons with disabilities.

f. The description of how the applicant has and will continue to develop and implement appropriate readability levels, cultural sensitivity, and fully accessible formats in all communication and program activities.

g. The methods by which the applicant has and will provide technical assistance, information, and consultation to participants and supporting organizations across the nation regarding the design, conduct, and evaluation of programs to introduce and sustain physical activity and exercise in persons with disabilities.

h. The degree to which the applicant presents evidence of work to date in addressing issues related to the barriers and facilitators (*i.e.*, architectural, attitudinal, policies) to physical activity programs and facilities (*e.g.*, trails, parks, fitness facilities, buildings, recreational camps), and with key entities (*e.g.* parks and recreation officials, health care providers, fitness professionals, municipal/city planners, construction managers, school, and citizens groups).

i. The extent to which the applicant adequately addresses the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in

proposed research (as appropriate). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Capacity to Expand and Operate the Center (25 Points). This includes:

a. Documentation that the organizational mission includes providing resources and best practices in physical activity and health promotion to prevent secondary conditions to persons with disabilities, advocacy and disability service organizations, and entities providing physical activity programs in the community. This should be demonstrated by evidence of established and effective partnerships and information bases that complement this mission through constituencies across demographic groups of people with a wide range of disabling conditions.

b. Documentation that the applicant entity has in place recreational and physical activity or exercise modules that allow individuals with disabilities and practitioners to customize programs according to the individual's own disabling condition and unique needs. This should be demonstrated through presentation of evidence of the existence of such modules.

3. Project Goals and Objectives (20 Points). This includes:

a. The extent to which the management work plan for conducting the project is effective including the process (approach and methods) by which the applicant will meet established goals and objectives.

b. The quality of the presentation of specific goals, objectives and timelines, and how they will be accomplished (with detailed performance expectations for the first year by calendar month or quarter, and a work plan outline for the second and third years of the proposed five year project period).

c. The extent to which the applicant provides a clear vision and description of the achievements and technical innovations it will implement over time that will mark its resource capacity, national outreach, and impact by the close of the project period.

d. The description of the major tasks and responsibilities for key positions including the applicant organization and identified contractual/consultant personnel (include an organization chart and denote the relationship of this project within the applicant organization).

e. The methods by which the applicant has and will seek out, utilize, and benefit from input by persons with disabilities and their families, and from organizations representing the disability and physical activity communities in planning for project.

f. The description of remaining unmet needs and gaps (barriers and constraints) as they relate to advancing a coordinated and comprehensive information system on physical activity and exercise among persons with disabilities, and how this project would move toward elimination of those barriers through the proposed work plan.

4. Organizational Capacity (15 Points). This includes:

a. The capability of the applicant to conduct the project, taking into account its institutional experience, evidence of leadership, and current activities in the field for those activities required.

b. The ability of the applicant to ensure sustained timely access to necessary data and educational materials related to physical activity, denoting the sources for such data and materials.

c. The capacity of the applicant to document evidence of effective ongoing collaborations and linkages with the disability and physical activity fields, professional groups, service providers, fitness facilities, governmental agencies, and community organizations to meet all requirements of the project, including documented letters of support and commitment from those collaborating entities. These organizations include, but are not limited to: major disability advocacy and voluntary entities; organizations promoting use of parks, trails, and outdoor recreation; rehabilitation, fitness, and sports facilities and organizations; and other national information and resource centers such as the Christopher and Dana Reeve Paralysis Resource Center, the National Limb Loss Information Center, the Attention Deficit Hyperactivity Disorder Center, and the American Association on Health and Disability.

d. The capacity of the applicant to gather and assess necessary demographic and functional outcome information regarding sub-group patterns for engaging in physical activity and the benefits to be derived, including the kinds and sources of information to be accessed, analyzed, and publicized, the staff/organizations charged with its control, and how that data would be used.

5. Evaluation (10 points). The extent to which the applicant fully and adequately describes how it will demonstrate its effectiveness in meeting all objectives in the evaluation of its work plan; including staff performance, organizational outreach and collaborations; and all informational, referral, communications, and technical assistance activities.

6. Budget Justification—Not Scored. This criteria includes the adequacy of the budget justification and its relationship to program operations, collaborations, and services. Each line item of the budget must be justified in a narrative with special attention given to contractual requests including the responsibilities of consultants, percentage time equivalents, hourly or daily rates, etc. This section will also be evaluated on the adequacy of facilities to conduct the project. The budget narrative does not count against the maximum page limit for the full application.

7. Human Subjects—Not Scored.

This includes the extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. If the proposed project involves research on human participants, assurance and evidence must be provided that the project will be subject to initial and continuous reviews by an appropriate institutional review board. Does the applicant adequately address the requirements of 45 CFR 46 for the protection of human subjects?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress reports, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application and must include the following elements:

a. Current budget period activities and objectives

b. Current budget period financial progress

c. New budget period proposed activities and objectives

d. Detailed line-item budget and justification

e. Report on estimated unobligated funds

f. Additional requested information

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2. Financial status report, no more than 90 days after the end of the budget period

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section "J. Where to Obtain Additional Information" of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see attachment I of the announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Sheryl Heard, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia, 30341–4146, Telephone (770) 488–272, E-mail address: *slh3@cdc.gov*.

For program technical assistance, contact: Joseph B. Smith, Senior Project Officer, National Center on Birth Defects and Developmental, Disabilities, Disability and Health Team, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway (Mailstop F–35), Atlanta, Georgia 30341, Telephone (770)488–7082, E-mail address: *jos4@cdc.gov*.

Dated: November 20, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–29953 Filed 11–25–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93581–2003]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance for improving the capability of Indian Tribal governments to regulate environmental quality.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 2003 funds for Environmental Regulatory Enhancement projects. Financial assistance provided by ANA is designed to assist applicants in planning, developing and implementing projects which will improve the capability of eligible applicants to regulate environmental quality pursuant to Federal and Tribal environmental laws.

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete. Copies of this program announcement and many of the required forms may be obtained by calling the toll free ANA Applicant Help Desk at 1–877–922–9262 or electronically at the ANA World Wide Web address, *http://www.acf.hhs.gov/programs/ana/*.

CLOSING DATE: The closing date for this announcement is February 28, 2003.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

This notice announces the anticipated availability of the fiscal year 2003 funds for the Environmental Regulatory Enhancement Program, authorized under Section 803(d) of the Native American Programs Act of 1974 (Act), 42 U.S.C. 2991b.

The availability of funds for this competitive area is contingent upon sufficient final Congressional appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented in this announcement.

Information regarding ANA's policy, goals, application requirements, review criteria and closing date for this competitive area are included in this announcement.

This program announcement consists of three parts.

Part I—ANA Policy and Goals

Provides general information about ANA's policies and goals for this competitive area. This section contains information pertaining to all applicants.

Part II—ANA Competitive Area

Describes the competitive area, Environmental Regulatory Enhancement, under which ANA is requesting applications. The following sections provide information to be used to develop an application:

A. Purpose and Availability of Funds
B. Background
C. Proposed Projects To Be Funded
D. Eligible Applicants
E. Grantee Share of the Project
F. Review Criteria
G. Application Due Date(s)
H. Program Information Contact

Part III—General Application Information and Guidance

Provides important information and guidance that applies to this competitive area and must be taken into account in developing an application.

A. Definitions
B. Activities That Cannot Be Funded
C. Project and Budget Periods
D. Intergovernmental Review of Federal Programs
E. The Application Process
F. The Review Process
G. General Guidance to Applicants
H. Paperwork Reduction Act of 1995
I. Postmarked by Deadline
J. Standard Forms, Certifications and Assurances

Part I—ANA Policy and Goals

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

Environmental regulatory enhancement includes but is not limited to: the planning, development, and application of laws; training; monitoring and enforcement procedures; and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would also include but is not limited to: the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, environmental assessments, development and use of environmental laboratories and other facilities; and the development of tribal court systems and programs to conduct compliance and enforcement functions.

ANA supports these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture. Applicants must comply with the following administrative policies:

- A current Indian Environmental Regulatory Enhancement grantee whose grant project period extends beyond September 30, 2003 or which has requested an extension of the grant project beyond that date, will not be funded under this announcement.
- Applicants must describe a locally determined strategy to carry out a proposed project with fundable objectives and activities.
- Local long-range planning must consider the maximum use of all available resources, describe how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (*e.g.*, a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved project period, should the application be funded.
- ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.
- Non-Profit Status: Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the Federally recognized Tribe or State in which the corporation or association is domiciled.
- If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska Natives, or both, it must provide assurance that the majority of its duly elected or appointed board of directors is representative of the community to be served.
- Matching/Cost Sharing: Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements though cash contributions. Therefore, a project requesting $100,000 in Federal fund (based on an award of $100,000 per budget period) must provide a match of at least $25,000 (20% total approved project cost). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match. An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in the application.
- A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Part II—Competitive Area: Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

This competitive area funds environmental regulatory enhancement projects. Approximately $3 million in financial assistance is anticipated to be available for these projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000. An applicant may propose project periods of between 12 and 36 months.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, the lack of resources has resulted in a delay in action on the part of the tribes.

In 1990, Congress added Section 803(d) to the Native American Programs Act of 1974 to address critical issues identified by tribes before congressional committees, some of which included: The need for assistance to train professional staff to monitor and enforce tribal environmental programs; the lack of adequate data for tribes to develop environmental statutes and establish quality environmental standards; and the lack of resources to conduct studies to identify sources of pollution and determine the impact on existing environmental quality.

The Native American Program's Act of 1974 was amended to strengthen tribal governments through building capacity in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects To Be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate

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and enforce environmental activities on Indian lands pursuant to Federal and Indian law;

- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure that tribal court system enforcement requirements are developed in concert with and in support of the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes;
- Incorporated non-federally and State recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects;
- Other tribal or village organizations or consortia of Indian tribes; and
- Tribal governing bodies (IRA or traditional Councils) as recognized by the Bureau of Indian Affairs.

The following organizations are not eligible to apply under Section 803(d) of the Native Americans Programs Act of 1974 and the ANA regulations at 45 CFR 1336.33(a)(4). These organizations have been excluded from eligibility because they are neither Tribes nor Tribal organizations, which customarily act on the behalf of tribes in environmental matters.

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, and the Commonwealth of Northern Mariana Islands;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is defined as the sum of the Federal request and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, a project requesting $100,000 in Federal funds must provide a non-federal share match of at least $25,000 (20 percent of the total approved project cost or 25 percent of the Federal request).

Failure to provide the non-federal share amount stated in the proposal will result in disallowance of an equivalent portion of the funds awarded to the grantee.

As per 45 CFR Part 74.2, in-kind contributions are defined as the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.(See 45 CFR Part 92)

In addition, an applicant may provide matching funds from other Federal funding sources where legislation authorizes use of funds for match and provided the source relates to the ANA project. Under 45 CFR 74.23(a)(5) use of funds under another Federal Program for non-Federal match must be authorized by statute.

F. Review Criteria

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources (20 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The applicant's specific environmental regulatory needs; and
- A clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

Description and documentation of the long-term goals and strategy may by met in several ways.

- The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project.
- The type of community you serve and nature of the proposal will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.
- Similarly, a tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization.
- Other examples of documentation include: Community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Supporting documentation, including letters of support, if available, or other specific testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project.

In discussing the goals, strategy, and needs being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community.

- These other available resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.
- Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. A commitment from another Federal agency or foundation pledging $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment.
- Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.
- In the proposal, the applicant should describe any specific financial circumstances that may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not using these resources for the project.

(2) Organizational Capabilities and Qualifications (15 Points)

(a) Organizational capabilities are described in the application.

- The management structure of the applicant is explained.
- Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement, but the proposed staff and consultants should have the required qualifications and experience.
- The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.
- The administrative structure of the applicant is explained. Where the proposed ANA project will fit within the current organization is described.
- A project-staffing pattern is presented.

(b) Position descriptions and/or resumes of project personnel, including those of consultants, are presented.

- The position descriptions and/or resumes relate specifically to the staff proposed in the Project Approach and in the proposed Budget of the application.
- Position descriptions very clearly describe each position, and the duties that clearly relate to the personnel staffing pattern required to achieve the project objectives.
- Resumes indicate that the proposed staff is qualified to carry out the project activities. Resumes must be included if individuals have been identified for positions in the application.

Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Approach: Objectives, Activities and Outcomes (50 Points)

The application provides a narrative describing the overall approach and operation of the proposed project throughout entire project period.

(a) Objective and Activities: The application proposes specific project Objective Work Plans (OWPs) with activities that relate to each specific objective. The OWP includes project objectives and activities for each budget period proposed.

The OWP demonstrates that each of the project objectives and its activities:

- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period. All projects funded by ANA must be completed, self-sustaining, or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's; and is measurable and/or quantifiable in terms of outcomes.

The OWP should be of sufficient detail to become a monthly staff guide for project responsibilities. Applicants are encouraged to follow the recommended ANA application kit format; however, it is not a requirement. The relevant information included in an Objective Work Plan should indicate what is to be achieved, how, by whom, when and with indicators of evaluation.

(b) Completion of the proposed objectives will result in specific, measurable outcomes.

- The application shows how the expected outcomes will help the community meet its long-range environmental goals.
- The specific information provided in the narrative and Objective Work Plans on expected outcomes for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(4) Budget (15 Points)

Detailed Federal and non-federal share line item budgets and detailed budget justifications are provided for each budget period requested. The budget narrative provides information that:

- Aligns with the budget categories in Section B of the Budget Information on the Standard Form 424–A.
- Cites the source of the applicant's non-Federal share.
- Explains the coordination and organized delivery of any non-ANA resources proposed for the project.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.
- Requests funds that are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified period.
- Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is encouraged to provide a retirement plan fringe benefit of up to five (5) percent of grant funded employees-salaries. ANA supports a retirement plan as a necessary, reasonable and allowable cost in accordance with OMB rules. Recommended features for an acceptable retirement fringe benefit plan are:
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

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• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

Other retirement proposals may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, *etc.*

• If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

G. Application Due Date

The closing date for submission of applications under this competitive area is February 28, 2003.

H. Program Information Contact

ANA Applicant Help Desk, Administration for Children and Families, Administration for Native Americans, Aerospace Center—901 D Street SW., Washington, DC 20447, (877) 922–9262 (toll free).

Part III—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

• Multi-purpose Community-based Native American Organization: Is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, daycare, counseling, education, and training.

• Multi-year Project: Is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

• Budget Period: Is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

• Environmental Regulatory Enhancement: Includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

• Real Property: Means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

• Construction: Is the term, which specifies a project, supported through a discretionary grant or a cooperative agreement, to support the initial building of a facility.

• Core Administration: Is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered core administration and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

• Equipment: Is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

• Renovation or Alteration: May not exceed the lesser of $150,000 or 25% of the total direct costs approved for the entire budget period. The work required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it may be more effectively used for the project. Alteration and renovation may include work referred to as improvements, conversion rehabilitation, remodeling or modernization, but is distinguished from construction and large-scale permanent improvements.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

• Projects that operate indefinitely or require ANA funding on a recurring basis.

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA (third party T/TA). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3.

• ANA will not fund the purchase of real property.

• ANA will not fund construction.

• Objectives or activities for the support of core administration of an organization.

• Costs of fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

• Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section G, General Guidance to Applicants, below.

C. Project and Budget Periods

This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

D. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR part 100.

E. The Application Process

1. Application Submission

Applicants are strongly encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing. ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

Number of Copies: Each application should include one signed original and two additional copies of the grant application, including all attachments.

(a) By Mail. Applications must be mailed on or before the specific closing date of this ANA competitive area to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace Center—8th Floor West, Washington, DC 20447–0002, Attention: Lois B. Hodge, ANA No. 93581–2003.

(b) By Hand Delivery. Applications may be hand delivered. Applications are accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. They are either received on or before the deadline date or postmarked on or before the established closing date at: Administration for Children and Families, Office of Grants Management, ACF Mail Room, Second Floor, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois B. Hodge, ANA No. 93581–2003.

2. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement. The Commissioner's funding decision is based on a review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having grant performance related information, and other parties. The commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds. The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.

(a) Incomplete applications and applications that do not conform to this announcement will not be accepted for review. ANA will notify applicants in writing of any such determination. An incomplete application is one that is:

• Missing the Application for Federal Assistance form (SF 424).

• Does not have an authorized signature on the SF 424. The application's SF 424 must be signed by a representative authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

• Does not include proof of non-profit status, if applicable.

(b) Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and environmental issues, as appropriate, evaluate each application using the published criteria in each funding competitive area. As a result of the review, a normalized numerical score will be assigned to each application. A normalized score reflects the average score from the reviewers, adjusted to reflect the average score from the panels.

Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

The Administration for Native Americans will accept only one application per competitive area from any one applicant. If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

F. The Review Process

1. Initial Application Review

Eligible applications submitted by the closing date and verified by the postmark will undergo a pre-review screening to determine that:

• The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and

• The application is signed and submitted by the deadline explained in section G, Application Due Date.

• The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applicants whose applications are subjected to the pre-review described above and which are found ineligible for funding under the program will be notified of their appeal right under Section 810 of the Native American Programs Act of 1974, as amended. ANA will inform applicants whose applications are not submitted by the required date, unsigned, or in some other way incomplete that their applications are being rejected as incomplete or late.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

Applications will not be ranked based on general financial need.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant has proposed activities are ineligible for funding consideration. The regulations governing the appeals process can be

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found at 45 CFR 1336.33–35 or the **Federal Register** of August 19, 1996 (61 FR 42817).

G. General Guidance to Applicants

Application Kit (OMB# 0980–0204, expires April 30, 2003). The application kit contains the necessary forms and instructions to apply for a grant under this program announcement. Application kits may be obtained from ANA training and technical assistance providers. We strongly encourage that applicants follow the review criterion order and the Objective Work Plan format as outlined in the ANA application kit to develop an application. The Kit provides required forms, practical information and helpful suggestions and is an aid to help applicants prepare an ANA application.

Training and Technical Assistance (T/TA): ANA employs contractors to provide short-term training and technical assistance to eligible applicants. T/TA is available under these contracts for a wide range of needs; however, the contractors are not authorized to write applications. The T/TA is provided at no cost. To obtain an application kit and/or, training and technical assistance, applicants are encouraged to contact the appropriate T/TA provider within the appropriate service area. To locate the T/TA provider currently serving the region you are located in, you may call the ANA Applicant Help Desk at 1–877–922–9262 or visit the ANA website at: *http://www.acf.hhs.gov/programs/ana/*.

The following information is provided to assist applicants in developing a competitive application.

- Applications, which were not funded under a previous closing date and revised for resubmission, should make reference to the changes, or reasons for not making changes, in their current application.
- An application with an original signature and two additional copies are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The applicant should specify the entire project period length on the first page of the SF424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the SF 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period.
- Line 15a of the Standard Form 424 must specify the Federal funds requested for the first Budget Period only, not the entire project period.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If other Federal funding sources could support a project, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.
- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future financial participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (*See* 45 CFR part 74 and part 92.)
- Applicants for multi-year projects must justify the entire timeframe of the project (*i.e.*, why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. During negotiation, ANA may delete such expenditures from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project.
- Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of a timely mailing.
- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents is provided. Simple tabbing of the sections of the application is also helpful.
- Applicants may propose a 17-month budget and project period. However, the budget period for the first year of a multi-year project may only be 12 months.

Projects or activities that generally will not meet the purposes of this announcement:

- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.
- Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions.
- Project goals, which are not responsive to this competitive area.
- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.
- Proposals from consortia of tribes should have individual objectives, which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortium member, but within the context of a common goal for the consortium. ANA will not fund duplicate activities proposed by a consortium and its member tribes.
- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.
- ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.
- Renovation or alteration of project facilities, unless it is essential for the project.
- Projects originated and designed by consultants whom provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB approval number 0980–0204.

I. Postmarked by Deadline

The closing date for submission of applications is February 28, 2003. Mailed applications postmarked after the closing date will be classified as late.

1. Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., Mail Stop: Aerospace Center 8th Floor West, Washington, DC 20447–0002, Attention: Lois B. Hodge.

Applicants must ensure that a legibly dated U.S. Postal Services postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as a proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applicants handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, ACF Mail Room, Second Floor, Aerospace Center, 901 D Street SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Lois B. Hodge, Grants Officer". (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time receipt. Applications and related materials postmarked after the closing date will be classified as late. No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late Applications: Applications, which do not meet the Deadline criteria above, are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines: The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer. J. Standard Language Concerning the Certifications, Assurances, and Disclosure Required for Non-Construction Programs.

Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs". Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

(Catalog of Federal Domestic Assistance Program Numbers: 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality)

Dated: October 15, 2002.

Sharon G. McCully,

Acting Deputy Commissioner, Administration for Native Americans.

[FR Doc. 02–29932 Filed 11–25–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0159]

Agency Information Collection Activities; Announcement of OMB Approval; Focus Groups as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that the proposed collection of information entitled "Focus Groups as Used by the Food and Drug Administration" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 30, 2002 (67 FR 55854), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to,

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a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0497. The approval expires on May 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: November 20, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–29927 Filed 11–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 12, 2002, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 12, 2002, the following committee updates are tentatively scheduled: (1) Summary of West Nile Virus workshop, November 4 and 5, 2002; (2) Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), and (3) human immunodeficiency virus (HIV) rapid tests. In the morning, the committee will hear presentations, and discuss and provide recommendations on the topic of bacterial contamination. In the afternoon, the committee will hear presentations on human parvovirus B19 nucleic acid testing for whole blood and source plasma, and discuss and provide recommendations.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 22, 2002. Oral presentations from the public will be scheduled between approximately 11:15 a.m. and 12:15 p.m. and 4:30 p.m. and 5 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 22, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda A. Smallwood or Pearline K. Muckelvene at 301–827–1281 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 20, 2002.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 02–29928 Filed 11–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0147]

Guidance for Industry: Studies to Evaluate the Utility of Anti-*Salmonella* Chemical Food Additives in Feeds; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#80) entitled "Guidance for Industry: Studies to Evaluate the Utility of Anti-*Salmonella* Chemical Food Additives in Feeds." The guidance explains the standards upon which studies to establish the utility of anti-*Salmonella* chemical food additives for maintaining feeds *Salmonella*-negative should be based. The intended effect of this guidance is to provide advice on study standards for the establishment of anti-*Salmonella* food additives that will maintain feeds *Salmonella*-negative.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the final guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the final guidance document.

FOR FURTHER INFORMATION CONTACT: Henry E. Ekperigin, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0174, e-mail: hekperig@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In April 1991, FDA publicly discussed its intention to adopt a policy requiring feeds and feed ingredients to be *Salmonella*-free (meeting of FDA's Veterinary Medicine Advisory Committee, April 11, 1991, Bethesda, MD). The agency later adopted a policy requiring feeds and feed ingredients to be *Salmonella*-negative (see 59 FR 33975, July 1, 1994). This reflected concerns that *Salmonella* infections cause a significant portion of foodborne illnesses, and that animal feeds are a significant source of *Salmonella* infections in food animals and thus in humans. After the issuance of the *Salmonella*-negative policy, development began on several products designed to achieve and maintain *Salmonella*-negative levels in animal feeds. Sponsors of these products may file food additive petitions to establish the safety and utility of the additives. Because sponsors have used a variety of research methods to support their petitions, FDA has found it difficult to evaluate the petitions in a uniform manner.

In an effort to achieve more consistency, FDA developed a draft guidance entitled "Utility Studies for Anti-*Salmonella* Chemical Food Additives in Animal Feeds." The availability of this draft guidance was announced in the **Federal Register** of June 23, 1994 (59 FR 32442). A public workshop on this topic was held on August 8, 1994, in conjunction with the annual meeting of the Poultry Science Association in Starkville, MS. Comments at the public workshop and the written comments received on the draft guidance led FDA to revise the draft document. The agency clarified several statements that had caused confusion or had raised questions among the respondents. Further, following suggestions from the respondents, the agency made several changes in the testing methods.

The purpose of this final guidance is to support consistent evaluation of anti-*Salmonella* food additives and their ability to maintain a *Salmonella*-negative level in previously "clean" animal feeds through repeated exposure to various *Salmonella* serotypes. This guidance should help ensure that sponsors conduct appropriate studies to evaluate the utility of anti-*Salmonella* food additives, and that FDA accomplish uniform review and decisionmaking. In turn, this should facilitate the approval process for such food additives.

This final guidance explains the recommended experimental process in detail and references other FDA documents that pertain to general experimental practices and procedures recommended by FDA. The guidance provides details concerning recommended testing methods.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The final guidance represents the agency's current thinking on anti-*Salmonella* food additives for keeping feeds *Salmonella*-negative. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

There are nine or fewer respondents to the information collection described in this guidance and therefore no burden analysis is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Title: Guidance for Industry: Studies to Evaluate the Utility of Anti-*Salmonella* Chemical Food Additives in Feeds.

Description: In 1990, FDA announced its goal of *Salmonella*-negative animal feed and feed ingredients (see 59 FR 33975, July 1, 1994). The policy responds to concerns that *Salmonella* infections cause a significant portion of foodborne illnesses, and that animal feeds serve as a significant source of *Salmonella* infections in food animals and consequently in humans. In response, sponsors have developed several products designed to achieve and maintain *Salmonella*-negative levels in animals feeds. The sponsors also have filed the requisite food additive petitions that prove both the safety and utility of the additive products. However, up to this point, it has been difficult for FDA to evaluate the petitions in a consistent manner, as the research methods supporting the petitions have varied to a significant degree.

This final guidance document describes standards upon which studies to establish the utility of anti-*Salmonella* chemical food additives for maintaining feeds *Salmonella*-negative should be based. Certain types of information should be collected in these studies, as described in the final guidance.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this final guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public inspection in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cvm.*

Dated: November 15, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29925 Filed 11–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Community Collaborations to Prevent Youth Violence and Promote Youth Development (short title: Youth Violence Prevention Grants).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Request for Applications (RFA), including part I, Community Collaborations to Prevent Youth Violence and Promote Youth Development (SM 03–005) (short title: Youth Violence Prevention Grants), and part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. number of awards	Project period (years)
Community Collaborations to Prevent Youth Violence and Promote Youth Development.	Jan. 22, 2002	$4,000,000	24	2

The actual amount available for the award may vary depending on unanticipated program requirements and actual SAMHSA appropriations. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of Community Collaborations to Prevent Youth Violence and Promote Youth

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Development grants. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund the grants. This program is authorized under section 520A of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes standard form 424 (face page), and other documentation and forms. Application kits may be obtained from: SAMHSA's Mental Health Information Center, (800) 789–2647.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov* (click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center Mental Health Services (CMHS) is accepting applications for a fiscal year (FY) 2003 grants to implement Youth Violence Prevention projects in three categories:

- *Group I:* Grants to organizations proposing youth violence prevention projects targeting geographically or socially defined youth populations;
- *Group II:* Grants that address violence towards, or by, females; and
- *Group III:* Grants to support mental health services for youth with justice system involvement.

Eligibility: Eligible applicants are domestic public and private non-profit entities such as public or private mental health systems, institutions, and agencies; State or local departments of juvenile/criminal justice; mental health courts; juvenile/criminal court systems; district attorney's offices; or public defender's offices; public or private educational systems, institutions, and agencies; tribal governments and tribal organizations; community-based and faith-based organizations, such as community-based advocacy, health, substance abuse, mental health, social service, consumer and family organizations; and service organizations serving ethnic, cultural, or social minority groups; or other public agencies or nonprofit organizations that can perform the requirements of this program.

Availability of Funds: It is expected that approximately $4 million will be available to award grants in the following categories:

- *Group I:* Approximately eight awards will be made;
- *Group II:* Approximately eight awards will be made; and
- *Group III:* Approximately eight awards will be made.

Grants in groups I and II will be funded at a maximum of $150,000 per year in total costs (direct and indirect) for 2 years; grants in group III will be funded at a maximum of $200,000 per year in total costs (direct and indirect) for 2 years. Applications with proposed budgets that request a level of SAMHSA funding support in excess of the amounts listed above will not be reviewed.

Period of Support: Awards may be requested for up to 2 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on substantive issues regarding the program, eligibility, and funding of reviewed applications, contact: Pat Shea, M.S.W., M.A., Special Programs Development Branch, CMHS/SAMHSA, Parklawn Building, Room 17C–26, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–3655. E-mail: *pshea@samhsa.gov*.

For questions on budget, completion of items on forms, and administrative issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9666. E-Mail: *shudak@samhsa.gov*.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857. The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: November 20, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–29960 Filed 11–25–02; 8:45 am]

BILLING CODE 4163–35–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–48]

Notice of Proposed Information Collection: Comment Request Personal Financial and Credit Statement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments for members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Personal Financial and Credit Statement.

OMB Control Number, if applicable: 2502–0001.

Description of the need for the information and proposed use: Form HUD–92417, Personal Financial and Credit Statement, is used by HUD personnel and FHA approved lenders to determine if the sponsor, mortgagor, or the principals of the mortgagor have the financial capability to develop, build, and complete a multifamily project. Form HUD–92417 is a part of the credit investigation during the Site Appraisal and Marketing Analysis (SAMA)/ feasibility and commitment stages of the mortgage insurance application. The financial capability, reputation, experience, and the ability of the project sponsor is analyzed to determine whether the sponsor will be able to develop a successful project, and have the financial resources to complete and maintain the property.

Agency form numbers, if applicable: HUD–92417.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total annual hours required to prepare the information collection is 64,000; the number of respondents is 8,000 generating 8,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 8 hours. This form is submitted during the SAMA/ feasibility or commitment stages of the mortgage insurance application.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: November 20, 2002.

John C. Weicher,

Assistant Secretary of Housing-Federal Housing Commissioner.

[FR Doc. 02–29965 Filed 11–25–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–71]

Notice of Submission of Proposed Information Collection to OMB: Master Appraisal Report (MAR) for Proposed Construction

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 26, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0493) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number

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(202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Master Appraisal Report (MAR) for proposed construction.

OMB Approval Number: 2502–0493.

Form Numbers: HUD–91322, HUD–91322.1, HUD–91322.2, and HUD–91322.3.

Description of the Need for the Information and its Proposed Use: The Master Appraiser Reports, Forms HUD–93122 series, permits the listing of models covering types of individual homes proposed for construction. This eliminates the need for appraisal reports from each individual property in a development. The series also set forth the general and specific conditions, which must be met before a property can be endorsed.

Respondents: Business or other for-profits

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	35,000		3,500		2.25		7,875

Total Estimated Burden Hours: 7,875.

Status: Reinstatement of a previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 20, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–29937 Filed 11–25–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–27]

Revocation and Redelegation of Authority to the Deputy Assistant Secretary for Finance and Budget

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner advise the public that they have redelegated authority to the Deputy Assistant Secretary for Finance and Budget all responsibilities related to the sale of Secretary-held single family and multifamily mortgages.

EFFECTIVE DATE: August 20, 2002.

FOR FURTHER INFORMATION CONTACT: Sandy Allison, Associate Deputy Assistant Secretary for Finance and Budget, Office of Housing, Department of Housing and Urban Development, Room 9110, Washington, DC 20410, phone (202) 708–2601. Persons with hearing or speech impairments may call HUD's TTY number at (202) 708–1455 or the Federal Information Relay Service's TTY number at (800) 877–8339. Other than the "800" number, the telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: In the past, the Assistant Secretary for Housing has redelegated asset sale related authority to Office of Housing Deputy Assistant Secretaries in several offices. Prior to August 20, 2002, authority to sell single-family housing mortgages was redelegated to the Deputy Assistant Secretary for Single Family Housing programs, and authority to sell Secretary-held multifamily mortgages was redelegated to the Office of Housing-FHA Comptroller.

Note: Authority to sell Secretary-held mortgages is distinguishable from authority to sell HUD-owned properties and does not include authority to execute mortgage workouts.

Recently, the Office of Finance and Budget (FAB) was established within the Office of Housing, and the Office of the Housing-FHA Comptroller was made a component office under FAB. FAB is charged with overseeing and administering all financial and budget programs for the Office of Housing. Accordingly, on August 20, 2002 the Assistant Secretary for Housing-Federal Housing Commissioner determined that responsibilities related to sales of Secretary-held mortgages appropriately belong within FAB and signed this redelegation to permit FAB to carry out this responsibility. All prior redelegations, to other offices, were revoked.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner redelegate and revoke authority as follows:

Section A.: Authority Redelegated: The Deputy Assistant Secretary for the Office of Finance and Budget is redelegated all authority necessary to sell Secretary-held mortgages. This authority includes, but is not limited to, determining the terms of and process for conducting any sale; executing all agreements necessary, on behalf of the Secretary, pursuant to which mortgages may be sold; and taking any actions necessary to consummate mortgage sales.

Section B.: Authority to Further Delegate: The Deputy Assistant Secretary for Finance and Budget may further redelegate the authority

redelegated in Section A. Any redelegation must be in writing, and a copy of the redelegation will be submitted to the Assistant Secretary for Housing-Federal Housing Commissioner.

Section C.: Limitation: The authority redelegated in Section A. does not include authority to waive regulations.

Section D.: Authority Revoked: All prior redelegations from the Assistant Secretary for Housing-Federal Housing Commissioner to sell Secretary-held mortgages, including the redelegations to sell Secretary-held mortgages at 47 FR 30653, July 14, 1982 (single family mortgages), and 62 FR 766, January 6, 1997 (multifamily mortgages), are hereby revoked.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 20, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–29938 Filed 11–25–02; 8:45 am]

BILLING CODE 4210–27–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting

TIME AND DATE: December 2, 2002–11–15, 9 a.m.–12 noon.

PLACE: The Hotel Princess Zona Rosa Av. las Magnolias y Blvd del Hipodromo, San Salvador, El Salvador, Tel: (503) 298–4545.

STATUS: Open session.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the June 3, 2002 Meeting of the Board of Directors and Advisory Council.
- President's Report.
- Presentation on Corporate Foundation Network.
- Advisory Council.
- Board Nominations and Confirmations.

CONTACT PERSON FOR MORE INFORMATION: Carolyn Karr, Senior Vice President and General Counsel, (703) 306–4350.

Dated: November 15, 2002.

Carolyn Karr,

Senior Vice President and General Counsel.

[FR Doc. 02–30115 Filed 11–22–02; 3:10 pm]

BILLING CODE 7025–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–986 and 987 (Final)]

Ferrovanadium From China and South Africa; Notice of Commission Determination Not To Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Commission determination not to close any part of the hearing to the public.

SUMMARY: The Commission has determined to deny the request of respondents Glencore Ltd. and Xstrata South Africa (Proprietary) Limited ("G&X") to conduct a portion of its hearing in the above-captioned investigation scheduled for November 22, 2002, *in camera.* See Commission rules 201.13 and 201.36(b)(4) (19 CFR 201.13 and 201.36(b)(4)).

FOR FURTHER INFORMATION CONTACT: Irene H. Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3112. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes it should conduct its business in public in all but the most unusual circumstances. The Commission has determined that, in light of the nature of this investigation, it will be able to assess adequately all arguments raised by G&X without resorting to the extraordinary measure of an in camera hearing. Accordingly, the Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. See 19 CFR 201.36(c)(1).

Authority: This notice is provided pursuant to Commission Rule 201.35(b) (19 CFR 201.35(b)).

By order of the Commission.

Issued: November 20, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–29956 Filed 11–25–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–131–23 and TA–2104–3]

U.S.-Southern African Customs Union Free Trade Agreement: Advice Concerning the Probable Economic Effect

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 20, 2002.

SUMMARY: Following receipt of a request on November 7, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–2 and TA–2104–3, U.S-Southern African Customs Union Free Trade Agreement: Advice Concerning the Probable Economic Effect, under section 131 of the Tariff Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Joanna Bonarriva, Co-Project Leader (202–205–3312; *jbonarriva@usitc.gov*), Jonathan Coleman, Co-Project Leader (202–205–3465; *jcoleman@usitc.gov*), or Cathy Jabara, Chief, Agriculture & Forest Products Division (202–205–3309; *cjabara@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

As requested by the USTR pursuant to section 131 of the Trade Act of 1974, in its report the Commission will provide advice of the probable economic effect of providing duty-free treatment for imports of products of SACU countries on (i) industries in the United States producing like or directly competitive products, and (ii) consumers. The import analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2002 Harmonized Tariff System nomenclature and 2001 trade data. The advice with respect to the removal of U.S. duties on imports from

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SACU countries will assume that any known U.S. non-tariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. non-tariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

In addition, pursuant to section 2104(b)(2) of the Trade Act of 2002, the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of SACU countries (a list of products was provided by USTR) on (i) industries in the United States producing like or directly competitive products and (ii) the U.S. economy as a whole.

The Commission expects to provide its report to USTR by April 7, 2003.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on January 28, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., January 14, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., January 16, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., February 4, 2003. In the event that, as of the close of business on January 14, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after January 14, 2003, for information concerning whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on February 4, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

SACU, Africa, tariffs and imports.

Issued: November 21, 2002.
By order of the Commission.
Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 02–29989 Filed 11–25–02; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–036]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.
TIME AND DATE: December 13, 2002, at 2 p.m.
PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:
1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. No. 731–TA–1021 (Preliminary)(Malleable Cast Iron Pipe Fittings from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before December 16, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 23, 2002.)
5. Inv. No. 701–TA–431 (Preliminary)(DRAMs and DRAM Modules from Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before December 16, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 23, 2002.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 21, 2002.
By order of the Commission.
Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 02–30087 Filed 11–22–02; 10:49 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 60-day notice of information collection under review: extension of a currently approved collection; Denial of Federal Benefits for Drug Offenders.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until January 27, 2003.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruments or additional information, please contact Robert Watkins, (202) 514–3447, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the pubic and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Denial of Federal Benefits for Drug Offenders.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number if OJP Form 3500/2, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well left brief abstract:* Primary: State, Local, and Tribal Government. Other: None. Denial of Federal Benefits for Drug Offenders. Pub. L. 100–690, contains collection of information requirements to ensure that convicted drug offenders do not receive Federal benefits that have been denied by court action.

(5) *An estimate of the total number of respondents and the amount of times estimated for an average respondent to respond/reply:* It estimated that 252 respondents per year will take approximately 5 minutes to complete the denial of benefits from.

(6) *An estimate of the total public burden (in hours) associated with the collection.* There are an estimated 21 total hour burdens associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dryer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC. 20530, or via facsimile at (202) 514–1590.

Dated: November 20, 2002.
Brenda E. Dyer.
Department Deputy Clearance Office, Department of Justice.
[FR Doc. 02–29955 Filed 11–25–02; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30–day notice of information collection under review: extension of a currently approved collection; Equal Employment Opportunity Plan Certification and Short Form.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 156, page 52747 on August 13, 2002, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Equal Employment Opportunity Plan Certification and Short Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP Form 7120/1. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. Other: For-profit institutions. This form will be completed by applicants that are newly-formed firms or established forms with no previous grants awarded by the Office of Justice Programs. It is used as an aide to determine those applicants/grantees that may require special attention in matters relating to the accountability of Federal funds. This information is required for assessing the financial risk of a potential recipient in administrating federal funds in accordance with OMB Circular A–110 and 28 CFR part 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents in 8,250. It is estimated that 1,250 respondents receiving a grant of $500,000 or more will complete a 1-hour Equal Employment Opportunity Plan Short Form and submit it to the Office of Justice Programs. In addition, an estimated 7000 respondents seeking grants ranging from $25,000 up to $500,000 will be required to complete the ¼ hour certification stating that they are maintaining a current Equal Employment Opportunity Plan on file and submit the certification to the Office of Justice Programs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the Equal Employment Opportunity Plan Short Form is 1250

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hours. The total hour burden to complete the EEOP certification is 1750. The total annual burden hours is 3000.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 20, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–29954 Filed 11–25–02; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for the Business and Operations Advisory Committee (#9556) have determined that renewing this group for another year is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

For more information contact Susanne Bolton at (703) 292–7488.

Dated: November 21, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–29974 Filed 11–25–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 AND 50–389]

Florida Power and Light Company, et al. St. Lucie, Units 1 and 2; Exemption

1.0 Background

The Florida Power and Light Company, *et al.* (FPL, the applicant) is the holder of Facility Operating License Nos. DPR–67 and No. NPF–16, which authorize operation of St. Lucie, Units 1 and 2, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in St. Lucie County, Florida.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 54 addresses the various requirements for renewal of operating licenses for nuclear power plants. Section 54.21(b) of 10 CFR specifies:

> Each year following submittal of the license renewal application and at least 3 months before scheduled completion of the NRC review, an amendment to the renewal application must be submitted that identifies any change to the CLB [current licensing basis] of the facility that materially affects the contents of the license renewal application, including the FSAR [final safety analysis report] supplement.

In accordance with 10 CFR 54.15, which references 10 CFR 50.12, the NRC staff, upon its own initiative, developed an exemption to 10 CFR 54.21(b) for St. Lucie, Units 1 and 2. At the time that 10 CFR part 54 was issued, the staff expected that its review of a license renewal application (LRA) could take three or more years. The NRC staff completed its reviews of recent LRAs in less than 20 months. The exemption would allow FPL to submit one LRA amendment during the staff's review of the application, instead of two amendments.

The NRC staff anticipates completing its review of the St. Lucie, Units 1 and 2, LRA and issuing a safety evaluation report (SER) by July 3, 2003. This exemption would permit FPL to forgo submitting an annual LRA amendment provided it submits a single LRA amendment for St. Lucie, Units 1 and 2, at least three months before this scheduled completion date.

3.0 Discussion

Pursuant to 10 CFR 54.15, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 54, in accordance with the provisions of 10 CFR 50.12, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The requirements for exemption are discussed below:

The Commission's basis for requiring applicants to submit amendments to LRAs is contained in section 54.21(b) and is discussed in the 1991 Statements of Consideration for part 54 (56 FR 64954). The Commission established the requirement to ensure that the effects of changes to the renewal applicant's CLB is evaluated during the review of its renewal application. The exemption is consistent with the Commission's intent for the NRC staff, during its review of the application, to evaluate changes to the CLB of the facility that materially affects the contents of the LRA, including the FSAR supplement.

The exemption seeks only schedular relief regarding the timing and number of amendment submittals, and not substantive relief from the requirements of parts 50, 51, or 54. FPL must still submit an LRA amendment for St. Lucie, Units 1 and 2, as required by 10 CFR part 54. Therefore, the NRC staff finds that granting this schedular exemption will not represent an undue risk to public health and safety and is consistent with the common defense and security.

3.1 Special Circumstances Supporting Issuance of the Exemption

An exemption will not be granted unless special circumstances are present as defined in 10 CFR 50.12(a)(2). Specifically, section 50.12(a)(2)(ii) states that a special circumstance exists when "Application of the regulation in the particular circumstances * * * is not necessary to achieve the underlying purpose of the rule * * *" In initially promulgating section 54.21(b) in 1991, the Commission stated that the purpose of submitting LRA amendments is "To ensure that the effect of changes to a license renewal applicant's existing licensing basis is evaluated during the review of a renewal application, renewal applicants will be required to update the renewal application (including the integrated plant assessment) annually;" (56 FR 64954). The Commission indicated that the changes to the CLB that could affect the results of the license renewal processes, such as, scoping, screening, and aging management reviews should be evaluated during the NRC review of the LRA. As set forth below, the applicant's submittal of a single LRA amendment would allow the NRC staff to review and document the licensing changes in its safety evaluation report (SER) for St. Lucie, Units 1 and 2. Accordingly, under the exemption, the NRC staff will have the opportunity to review the recent changes to the CLB that could affect the results of license renewal processes.

The applicant submitted its LRA for St. Lucie, Units 1 and 2, to the NRC on November 29, 2001. The NRC staff is scheduled to complete its review and the SER by July 3, 2003. In accordance with the requirements of 10 CFR 54.21(b), an applicant must submit a yearly LRA amendment by November 29, 2002, and a second amendment before April 3, 2003, which is three months before the NRC staff is scheduled to complete its review and issue an SER. Consequently, the licensee is required to submit two amendments within four months.

The SER with open items, which is scheduled to be issued by February 7, 2003, will identify proposed licensee commitments that change the CLB and are acceptable to the NRC. The applicant will be able to include these changes in an amendment that is submitted after the SER with open items is issued. The NRC staff can then review these changes and revise the SER, accordingly. Hence, submittal of a single amendment after the SER with open items is issued would be beneficial to the NRC staff and the licensee.

Therefore, submittal of two LRA amendments to satisfy the intent of section 54.21(b) and the application of the regulation, in this case, is not necessary to achieve the underlying purpose of the rule. The NRC staff finds that the exemption meets the requirement in Section 50.12(a)(2)(ii) that special circumstances exist to grant the exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 54.15 and 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The exemption allows the applicant to forgo submitting the annual LRA amendment provided it submits an LRA amendment at least three months before the scheduled completion of the NRC's review. Therefore, the Commission hereby grants FPL the proposed exemption from the requirements of 10 CFR 54.21(b) for St. Lucie, Units 1 and 2, based on the circumstances described herein.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 69254).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of November, 2002.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29983 Filed 11–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Request for Candidates

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission seeks qualified candidates for the Advisory Committee on Nuclear Waste. Submit resumeès to: Ms. Sherry Meador, Administrative Assistant, ACRS/ACNW, Mail Stop T2E–26, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or e-mail address *SAM@NRC.gov.*

SUPPLEMENTARY INFORMATION: The Commission established the Advisory Committee on Nuclear Waste (ACNW) to provide independent technical review of and advice on matters related to the management of nuclear waste, including all aspects of nuclear waste disposal facilities, as directed by the Commission. The ACNW undertakes independent studies and reviews related to disposal, storage, and transportation of both high- and low-level radioactive waste including interim storage of spent nuclear fuel; materials safety; and facilities decommissioning. This encompasses activities related to rulemakings, associated regulatory guides, and technical positions developed to support and clarify NRC's nuclear materials and radioactive waste regulations. Committee members are selected from a variety of engineering and scientific disciplines, such as risk assessment, chemistry, mechanical engineering, civil engineering, materials sciences, and the earth sciences. At this time, candidates are being sought who have 15–20 years of experience, including graduate level education, in the management and disposal of radioactive waste. Committee members serve a 4-year term with the possibility of reappointment for a total service of 8 years.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear waste management matters, and the ability to solve complex technical problems. The Commission, in selecting its Committee members, considers the need for a specific expertise to accomplish the work expected to be before the ACNW. For this position, the expertise must be directly related to the area of radioactive waste disposal, site remediation and closure activities, nuclear fuel reprocessing, chemistry, chemical exchange processes, and nuclear fuel cycle. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse backgrounds, so that the membership on the Committee will be fairly balanced in terms of the points of view represented and functions to be performed by the Committee.

Candidates for ACNW appointments may be involved in or have financial interests related to NRC-regulated aspects of the nuclear industry. Because conflict-of-interest considerations may restrict the participation of a candidate in ACNW activities, the degree and nature of any such restriction on an individual's activities as a member will be considered in the selection process. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities or discontinuance of certain contracts or grants. Information regarding these restrictions will be provided upon request.

A resumé describing the educational and professional background of the candidate, including any special accomplishments and professional references should be provided. Candidates should provide their current address, telephone number, and e-mail address. All candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 70–100 days per year to Committee business. Applications will be accepted until January 17, 2003.

Dated: November 20, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–29982 Filed 11–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of November 25, December 2, 9, 16, 23, 30, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 25, 2002

Tuesday, November 26, 2002

9:30 a.m.—Discussion of Security Issues (Closed—Ex.1)

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Week of December 2, 2002—Tentative

Wednesday, December 4, 2002

10 a.m.—Briefing on Decommissioning Bankruptcy Issues (Closed—Ex. 4 & 9)

Week of December 9, 2002—Tentative

There are no meetings scheduled for the Week of December 9, 2002.

Week of December 16, 2002—Tentative

Tuesday, December 17, 2002

9:30 a.m.—Briefing on policy options and recommendations for revising the NRC's process for handling discrimination issues (public meeting) (Contact: Ho Nieh, 301–415–1721)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, December 18, 2002

9:30 a.m.—Meeting with advisory committee on nuclear waste (ACNW) (public meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 23, 2002—Tentative

There are no meetings scheduled for the Week of December 23, 2002.

Week of December 30, 2002—Tentative

There are no meetings scheduled for the Week of December 30, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

Additional Information: By a vote of 5–0 on November 20, 2002, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that "Affirmation of (a) Final Rule on Decommissioning Trust Provisions, (b) Final Rule: Material Control and Accounting Amendments, (c) Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49), and (d) Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); Petition to Suspend Proceeding Pending Comprehensive Review of Adequacy of Design and Operation Measures to Protect Against Terrorist Attack and Other Acts of Malice or Insanity" be held on November 21, 2002, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 21, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–30099 Filed 11–22–02; 12:06 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 1, 2002, through November 14, 2002. The last biweekly notice was published on November 12, 2002 (67 FR 68727).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 26, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to

the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of amendment request: September 26, 2002, as supplemented by letter dated October 23, 2002.

[1] The most recent version of Title 10 of the code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

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Description of amendment request: The amendment would revise Technical Specification (TS) 5.5.9, "Steam Generator (SG) Tube Surveillance Program," to clearly delineate the scope of the tube inspection required in the SG tubesheet region. TS 5.5.9 is in section 5, "Administration Controls," of the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Arizona Public Service Company (APS) proposes to modify Palo Verde Nuclear Generating Station (PVNGS) Technical Specifications for Unit 1 to define the SG tube inspection scope. The PVNGS Unit 1 specific analysis takes into account the reinforcing effect the tubesheet has on the external surface of an expanded SG tube. Tube-bundle integrity will not be adversely affected by the implementation of the revised tube inspection scope. SG tube burst or collapse cannot occur within the confines of the tubesheet; therefore, the tube burst and collapse criteria of NRC Regulatory Guide (RG) 1.121 (Bases for Plugging Degraded PWR Steam Generator Tubes) are inherently met. Any degradation below the TEA (Tube Engagement Area) length is shown by analyses and test results to be acceptable, thereby precluding an event with consequences similar to a postulated tube rupture event.

Tube burst is precluded for cracks within the tubesheet by the constraint provided by the tubesheet. Thus, structural integrity is maintained by the tubesheet constraint. However, a 360-degree circumferential crack or many axially oriented cracks could permit severing of the tube and tube pullout from the tubesheet under the axial forces on the tube from primary to secondary pressure differentials. Testing was performed to define the length of non-degraded tubing that is sufficient to compensate for the axial forces on the tube and thus prevent pullout. This proposed amendment would encompass that length of non-degraded tubing for inspection.

In conclusion, incorporation of the revised inspection scope into PVNGS Unit 1 Technical Specifications maintains existing design limits and therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Tube-bundle integrity is expected to be maintained during all plant conditions upon implementation of the proposed tube inspection scope. Use of this scope does not introduce a new mechanism that would result in a different kind of accident from those previously analyzed. Even with the limiting circumstances of a complete circumferential separation of a tube occurring below the TEA length, SG tube pullout is precluded and leakage is predicted to be maintained within the Updated Final Safety Analysis Report limits during all plant conditions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Upon implementation of the revised inspection scope, operation with potential cracking below the Inspection Extent length in the explansion region of the SG tubing meets the margin of safety as defined by RG 1.121 and RG 1.83 (Inservice Inspection of Pressurized Water Reactor Steam Generator Tubes) and the requirements of General Design Criteria 14, 15, 31, and 32 of 10 CFR (part) 50. Accordingly, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above evaluation, APS concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves no significant hazards consideration.

The above amendment was previously noticed in the **Federal Register** on October 3, 2002 (67 FR 62079), as an exigent circumstances TS amendment, based on the preliminary determination that the TS amendment was needed on or about October 25, 2002, to allow Unit 1 to restart from its refueling outage. On further consideration, it has been determined that the proposed TS amendment does not have to be issued before the restart of Unit 1. This notice supersedes and replaces the exigent circumstances TS amendment notice of October 3, 2002.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 26, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.9.1, "Refueling Equipment Interlocks," to allow fuel movement to continue if the refueling interlocks become inoperable, and add two new alternative Required Actions for the condition when the refueling equipment interlocks are inoperable. Specifically, the proposed amendment would add Required Actions 3.9.1.A.2.1 to immediately block control rod withdrawal and 3.9.1.A.2.2 to perform a verification that all of the control rods are fully inserted. The proposed changes are similar to the proposed generic change that was provided in Technical Specifications Task Force (TSTF) Traveler, TSTF–225, revision 1, "Fuel Movement With Inoperable Refueling Equipment Interlocks," dated November 22, 2000, for the NRC staff's review.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to the Technical Specifications does not result in the alteration of the design, material, or construction standards that were applicable prior to the change. The same Refueling Interlocks instrumentation is used, and the control rod removal error and fuel assembly insertion error assumptions in the Updated Final Safety Analysis Report (UFSAR) chapter 15 analysis remain unchanged. The proposed additional Required Actions provide an equivalent level of assurance that fuel will not be loaded into a core cell with a control rod withdrawn as does the current TS Required Action. The proposed change will not result in the modification of any system interface that would increase the likelihood of an accident since these events are independent of the proposed change. The proposed amendment will not change, degrade, or prevent actions, or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR. Therefore, the proposed amendment does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change in the TS requirements does not alter the performance of the Refueling Equipment Interlocks. The change does not involve a change in plant design or to the analyzed condition of the reactor core during refueling. The proposed new Required Actions will ensure that control rods are not withdrawn and cannot be inappropriately withdrawn because a block to control rod withdrawal is in place. Implementation of the proposed amendment does not create the possibility of a new of different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

As discussed in the Bases for the affected TS requirements, inadvertent criticality is prevented during the loading of fuel provided all control rods are fully inserted. The refueling interlocks function to support the refueling procedures by preventing control rod withdrawal during fuel movement, and the inadvertent loading of fuel when a control rod is withdrawn. The proposed change will allow the refueling interlocks to be inoperable and fuel movement to continue, only if a control rod withdrawal block is in effect and all control rods are verified to be fully inserted. These proposed Required Actions provide an equivalent level of protection as the refueling interlocks by preventing a configuration which could lead to an inadvertent criticality event. The refueling procedures will continue to be supported by the proposed Required Actions because control rods cannot be withdrawn and as a result, fuel cannot be inadvertently loaded when a control rod is withdrawn. Plant and system response to an initiating event will remain in compliance within the assumptions of the safety analyses, and therefore, the margin of safety is not affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 26, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 3.7.3.6 associated with the verification of the control room emergency filtration (CREF) system duct work unfiltered in-leakage. Specifically, the proposed amendment would add a note to SR 3.7.3.6 to allow crediting the performance of an integrated tracer gas test of the control room envelope while in the recirculation mode to satisfy the requirements of the surveillance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment proposes an alternative test for performing the CREF system surveillance associated with measuring the Control Room Envelope (CRE) unfiltered inleakage. The CREF system provides a configuration for mitigating radiological consequences of accidents; however, it does not involve the initiation of any previously analyzed accident. Therefore, the proposed change cannot increase the probability of any previously evaluated accident.

The CREF system provides a radiologically controlled environment from which the plant can be safely operated following a radiological accident. Design basis accident analyses conclude that radiological consequences are within the regulatory acceptance criteria. The current Technical Specifications (TS) surveillance (SR 3.7.3.6) measures inleakage from four sections of CREF system duct work outside the CRE that are at negative pressure during accident conditions. The proposed Tracer Gas test provides a measurement of CRE inleakage from all potential sources including the four sections of duct work. The use of Tracer Gas testing in accordance with the methods described in American Society of Testing and Materials (ASTM) standard E741 has been accepted by both the NRC and the industry. Measuring the CRE inleakage using Tracer Gas testing has no effect on the CREF system function. The results of Tracer Gas testing will be assessed in accordance with regulatory guidance and industry guidance and compliance with 10 CFR [part] 50, Appendix A, General Design Criterion (GDC)–19 will be demonstrated. Therefore, the proposed change does not significantly increase the radiological consequences of any previously evaluated accident. Based on the above, the proposed change does not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the design function or operation of the system involved. The CREF system will still provide protection to control room occupants in case of a significant radioactive release. The revised TS surveillance requirements provide an alternative test method that has been widely accepted for the measurement of CRE unfiltered inleakage. The proposed change does not introduce any new modes of plant or CREF system operation and does not involve physical modifications to the plant. Therefore, the proposed change does not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The (proposed) change does not involve a significant reduction in the margin of safety.

The proposed change to the Fermi 2 TS surveillance requirements does not affect the radiological release from a design basis accident nor the postulated dose to the control room occupants as a result of the accident. The alternate surveillance test requirements provide an acceptable approach for the measurement of CRE inleakage. Safety margins and analytical conservatisms are included in the analyses to ensure that all postulated event scenarios are bounded. The proposed TS requirements continue to ensure that the radiological consequences at the control room are below the corresponding regulatory guidelines and that compliance with GDC–19 is not affected. Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Duke Energy Corporation, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of amendment request: October 10, 2002.

Description of amendment request: The amendment would allow Duke Energy Corporation to continue using the reactor coolant system cold leg elbow tap flow coefficient that was approved by Nuclear Regulatory Commission on an interim basis for Cycle 12 at Catawba Nuclear Station, Unit 2. No changes in Technical Specifications are necessary for this Amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

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1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The revised cold leg elbow tap flow coefficients will not change the probability of actuation of any Engineered Safeguards Feature or other device. The actual Unit 2 RCS [reactor coolant system] flow rate will not change. Therefore, the consequences of previously analyzed accidents will not change as a result of the revised flow coefficients.

Second Standard

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No component modification or system realignment will occur which could create the possibility of a new event not previously considered. No change to any methods of plant operation will be required. The elbow taps are already in place, and are presently being used to monitor flow for Reactor Protection System purposes. They will not initiate any new events.

Third Standard

The proposed amendment will not involve a significant reduction in a margin of safety. The removal of some of the excess flow margin, which was introduced by the hot leg streaming flow penalties in later calorimetrics, will allow additional operating margin between the indicated flow and the Technical Specification minimum measured flow limit. The proposed changes in the cold leg elbow tap flow coefficients will continue to be conservative with respect to the analytical model flow predictions, since the proposed coefficients will continue to contain some hot leg streaming penalties from the calorimetric determined coefficients used in the average.

An increase in the RCS flow indication of approximately 1.0% will increase the margin to a reactor trip on low flow but will not adversely affect the plant response to low flow transients. Current UFSAR [updated final safety analysis report] chapter 15 transients that would be expected to cause a reactor trip on the RCS low flow trip setpoint are Partial Loss of Reactor Coolant Flow, Reactor Coolant Pump Shaft Seizure and [RCP] Reactor Coolant Pump Shaft break transients. Three reactor trip functions provide protection for these transients, RCS low flow reactor trip, RCP undervoltage reactor trip and RCP underfrequency reactor trip. The transient analyses of these events assume the reactor is tripped on the low flow reactor trip setpoint. This is conservative and produces a more severe transient response since a reactor trip on undervoltage or underfrequency would normally be expected to trip the reactor sooner and therefore reduce the severity of these transients.

The RCS low flow reactor trip is currently set at 91% of the Technical Specification minimum measured flow of 390,000 gpm. The setpoint will not be revised as a result of this change, which means the transients relying on this function will behave in the same manner with the reactor trips occurring at essentially the same conditions as previously analyzed. Therefore, any small increase in the reactor trip margin gained by the small increase in the indicated RCS flow will not adversely affect the plant response during these low flow events.

Based upon the preceding discussion, Duke Energy has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

FPL Energy Seabrook, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 11, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.9.4, Containment Building Penetrations, to permit the equipment hatch to be open during core alterations and/or during movement of irradiated fuel assemblies within containment. The appropriate TS Bases would also be changed to reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Seabrook Station Technical Specifications (TS) 3.9.4.a, and TS 3.9.4.b do not involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes will modify the conditions of containment closure during core alterations or during the movement of irradiated fuel within the containment. Specifically, the proposed changes will permit the new containment outage door to stay open during core alterations or during the movement of irradiated fuel within the containment.

Postulated accidents that could result in a release of radioactive material through the open hatch include a fuel handling accident that results in breaching of the fuel rod cladding, and a loss of residual heat removal (RHR) cooling event that leads to core boiling. The radiological consequences of a design basis fuel handling accident in containment have been evaluated assuming that the containment is open to the outside atmosphere. The calculated offsite and control room doses resulting from a fuel handling accident are less than the criteria specified in USNRC [U.S. Nuclear Regulatory Commission] NUREG–0800, "Standard Review Plan," section 15.7.4 "Radiological Consequence of Fuel Handling Accident," and 10 CFR 50, Appendix A, "General Design Criteria for Nuclear Power Plants," GDC [General Design Criteria]-19, "Control Room."

The consequence of a loss of Residual Heat Removal (RHR) is the potential for release of radioactivity outside of containment. Closing containment penetrations is the mitigating action for that consequence. TS 3.9.8.1 and 3.9.8.2 require that corrective actions be taken immediately to restore the RHR cooling as soon as possible if RHR loop requirements are not met (by having one RHR loop operable and in operation). In addition, plant operators are required by the TS to close all containment penetrations providing direct access from the containment atmosphere to the outside environment within 4 hours. Since the most limiting time to boil in this condition (during core alterations or movement of irradiated fuel with at least 23 feet of water above the vessel flange) is approximately 8.3 hours, the risk associated with the potential for the coolant to boil and subsequently cause a release of radioactive gas to the containment atmosphere (if RHR cooling was not restored) is minimal.

The proposed changes to TS 3.9.4.b will add a note pertaining to the personnel hatch airlock within the equipment hatch. The purpose of this note is to provide clarification that the requirements of TS 3.9.4.b do not apply to the subject personnel hatch airlock when the outage equipment hatch is installed.

Therefore, it is concluded that these proposed [changes] to TS 3.9.4.a and TS 3.9.4.b do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Seabrook Station Technical Specifications (TS) 3.9.4.a and 3.9.4.b do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes will permit the equipment hatch to be open during core alterations and movement of irradiated fuel within the containment building when the containment outage door is installed. The installation of the door does involve a minor change in the present method used to isolate containment penetrations for containment closure. However, the present fuel handling analysis, which is the most limiting event, assumes that the containment is open to the outside atmosphere and the entire airborne radioactivity is instantaneously released to the outside environment. This analysis results in [offsite] doses that are within the guideline values specified in USNRC NUREG–0800, "Standard Review Plan," section 15.7.4 "Radiological Consequence of Fuel Handling Accident," and 10 CFR 50, Appendix A, "General Design Criteria for Nuclear Power Plants," GDC–19, "Control Room." Therefore, the proposed changes to the TS do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in [a] margin of safety.

The proposed changes do not involve a significant reduction in [a] margin of safety. The proposed change to TS 3.9.4.a will permit the equipment hatch to be open during core alterations and/or during the movement of irradiated fuel assemblies within containment when the containment outage door is installed and closed or capable of being closed. During movement of irradiated fuel assemblies within containment, the most severe radiological consequences result from a fuel handling accident. The calculated offsite and control room operator calculated doses are within the acceptance criteria of USNRC NUREG–0800, "Standard Review Plan," section 15.7.4 "Radiological Consequence of Fuel Handling Accident," and 10 CFR 50, Appendix A, "General Design Criteria for Nuclear Power Plants," GDC–19, "Control Room." Therefore, the proposed changes to TS 3.9.4 do not result in a reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. S. Ross, Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief (Acting): James W. Andersen.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 11, 2002.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3/4.9.3, "Refueling Operations—Decay Time," to revise the time associated with the movement of irradiated fuel in the reactor vessel from 100 hours to 80 hours. The proposed change is based on reanalysis of the radiological consequences of a limiting design basis fuel handling accident using an 80-hour decay time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 3/4.9.3 does not result in a condition where the design, material, and construction standards that were applicable prior to the proposed change are altered. The probability of occurrence of an accident previously evaluated for Seabrook Station is not altered by the proposed amendment to the technical specifications (TSs). The accidents remain the same as currently analyzed in the Updated Final Safety Analysis Report (UFSAR) as a result of the proposed change to the decay time. The accidents impacted by the new decay time have been reanalyzed and the applicable design limits have not been exceeded. The control room and offsite dose consequences for fuel handling accidents have been reevaluated and continue to meet acceptance limits.

Therefore based on the above discussion, it is concluded that the proposed revision to TS 3/4.9.3 does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to the decay time will not create a new accident scenario. The analyses impacted by the revised decay time have been evaluated. The new analysis of the fuel handling accident and spent fuel pool cooling system performance demonstrates that the applicable acceptance criteria continues to be met. The proposed change will not alter the way any structure, system or component functions, and will not significantly alter the manner in which the plant is operated. There will be no significant adverse effect on plant operation or accident mitigation equipment.

Since no new failure modes are created by the proposed revision to TS 3/4.9.3 the proposed change does not create the possibility of a new or different kind of accident from any that was previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The fuel handling accident in the fuel building and containment has been reanalyzed for a decay time of 80 hours. The spent fuel pool cooling performance has also been evaluated for the revised decay time. These analyses demonstrate that acceptance criteria are still met for the revised decay time as described herein. The results of the revised analysis show that the resulting offsite doses (based on a decay time period of 80 hours are comparable to the original doses (100-hour decay time period) and well within (< 25%) the limiting values of 10 CFR part 100. Control room doses are also well within the limit of General Design Criteria 19 to 10 CFR part 50, Appendix A. Therefore it is concluded that the proposed decay time still provides sufficient margin to dose consequences from fuel handling and to spent fuel pool temperature limits.

Thus, it is concluded that the proposed revision to TS 3/4.9.3 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief (Acting): James W. Andersen.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 11, 2002.

Description of amendment request: The proposed amendment would eliminate the Power Range Neutron Flux High Negative Rate Reactor Trip function from Technical Specification (TS) 3/4.3.1, "Reactor Trip System Instrumentation," TS 2.2.1, "Reactor Trip System Instrumentation Setpoints," and their associated Bases. The proposed changes associated with elimination of the Power Range Neutron Flux High Negative Rate Trip function are based on the NRC-approved analysis provided in Westinghouse WCAP–11394–P–A, "Methodology for the Analysis of the Dropped Rod Event." The proposed amendment would also change TS 3/4.10.3, "Physics Tests," TS

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3/4.10.4, "Reactor Coolant Loops," and TS Table 4.3–1, "Reactor Trip System Instrumentation Surveillance Requirements," that are associated with certain testing activities required during STARTUP operations. The proposed changes to TS 3/4.10.3 are to clarify that only the reactor trip Low Setpoint associated with OPERABLE Power Range Neutron Flux instrumentation channels is required to be set at 25% of RATED THERMAL POWER and to reword the time interval for the Analog Channel Operational Test (ACOT) in surveillance requirement (SR) 4.10.3.2 from "within 12 hours" to the referenced time interval specified in TS Table 4.3–1, Functional Unit 2.b. In correlation with the proposed change to extend the ACOT interval in SR 4.10.3.2, Table 4.3–1 Note 1, would be changed from "if not performed in previous 31 days" to "if not performed in previous 92 days." The proposed change would also extend the ACOT interval for those Functional Units that reference TS Table 4.3–1 Note 1. The proposed change to TS 3/4.10.4 will delete TS 3/4.10.4 in its entirety since the condition allowed by TS 3/4.10.4 (*i.e.*, natural circulation/low flow conditions) was to support the initial startup test program prior to commercial operation. Additionally, as a result of deleting TS 3/4.10.4, the footnote which references TS 3/4.10.4 in TS 3/4.4.1.1 is deleted as well.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes (1) to eliminate the Power Range Neutron Flux High Negative Rate Trip Function, (2) not lowering the Power Range Neutron Flux High Setpoint to the same setpoints as that of the Power Range Neutron Flux Low Setpoint and Intermediate Range reactor trip setpoint prior to conducting Physics Testing, (3) extension of the surveillance interval for performing the ACOT and TADOT [Trip Actuating Device Operational Test] for the above described Reactor Trip System (RTS) Functional Units, (4) elimination of the Special Test Exception allowing performance of Physics Testing under no flow conditions, and (5) the other editorial and Bases changes to support the aforementioned changes do not increase the probability or consequences of reactor core damage accidents resulting from events previously analyzed. The safety functions of other safety related systems and components, which are related to mitigation of these events, have not been altered. All other RTS and Engineered Safety Features Actuation Systems (ESFAS) protection functions are not affected by the proposed changes. Favorable plant-specific historical data as well as industry practice support the proposed change to extend the surveillance intervals for performance of the applicable ACOT or TADOT on the aforementioned instrumentation channels. The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility, or the manner in which it is operated. The proposed changes do not adversely alter or prevent the ability of structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Seabrook Station Updated Final Safety Analysis Report (UFSAR).

Removal of the negative rate trip does not change the probability of a rod drop accident since it does not alter the physical function or characteristic of the rod control system. Changing surveillance intervals for calibrations does not change the probability of an initiating event since historical performance demonstrates that the instrumentation settings will be within the assumed tolerance at the longer interval. Since the effects of the negative rate trip are not considered in the rod drop accident analysis, therefore removal of the trip will not result in an increase in the consequences of the rod drop accident. Changes in surveillance frequencies do not change the essential character of accident progression, thus there is no increase in the consequences.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [The proposed changes do not] create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not adversely alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated. No credit is taken in Seabrook Station's safety analyses that is reliant on the Power Range Neutron Flux High Negative Rate Trip Function. Extending the aforementioned surveillance intervals and not lowering the Power Range Neutron Flux High Setpoint prior to physics testing do not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no changes to the source term or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. The proposed changes have no adverse impact on component or system interactions. The proposed changes will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the UFSAR. The proposed changes do not change the level of programmatic and procedural details of assuring operation of the facility in a safe manner. Since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. [The proposed changes do not] involve a significant reduction in a margin of safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. Elimination of the Power Range Neutron Flux High Negative Rate Trip Function will not cause DNB [Departure from Nucleate Boiling] limits to be exceeded since this function is not credited in Seabrook Station's safety analysis. Eliminating the practice of lowering the Power Range Neutron Flux High Setpoint prior to physics testing does not involve a significant reduction in the margin of safety since there is adequate redundancy of nuclear instrumentation channels to prevent core damage from a positive reactivity excursion. The proposed changes to extend certain surveillance intervals do not reduce the reliability of the aforementioned trip functions to operate as designed nor reduce the level of programmatic or procedural controls associated with the aforementioned surveillance requirements. The negative rate trip function could, and has, caused an inadvertent reactor trip. Removal of this function will not reduce any perceived "defense-in-depth" since the design of the core limits rod worth such that DNB is acceptable during a rod drop event. Additionally, since WCAP–11394–P–A has demonstrated that the negative rate trip is not considered in the safety analysis margin, removal of the NFRT is not considered a "significant reduction in margin[.] " The other changes are editorial/administrative in nature which support the key changes as mentioned above and by their nature do not involve a significant reduction in a margin of safety.

Therefore, the proposed changes as described in this License Amendment Request do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief (Acting): James W. Andersen.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: September 24, 2002.

Description of amendment request: The proposed change will revise Technical Specification (TS) Surveillance Requirement (SR) 4.0.3, to incorporate the approved Consolidated Line Item Improvement Program change associated with the TS Task Force traveler TSTF–358, revision 6, SR 3.0.3, "Missed Surveillance Requirements." Additionally, a change to the Administrative Controls Section, section 6.8, is included in this request to include a new TS requirement for a Bases Control Program, consistent with the Bases Control Program presented in chapter 5, "Administrative Controls," section 5.5, "Programs and Manuals," of the Improved Technical Specifications (ITS) for Westinghouse plants, NUREG 1431, revision 2. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination in its application dated September 24, 2002, with the exception of the addition of the incorporation of a Bases Control Program in chapter 5, "Administrative Control," section 5.5, "Programs and Manuals," of the ITS for Westinghouse plants, NUREG 1431, revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration for the changes associated with extending the delay period for a missed surveillance is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the proposed administrative changes, which is presented below:

SCE&G has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP [Consolidated Line Item Improvement]. SCE&G has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to VCSNS with one exception. The proposed NSHCD is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

The exception is that the published NSHCD does not specifically address the incorporation of a Bases Control Program, as one is already incorporated into the ITS NUREGs. Therefore, a NSHCD is presented for the proposed inclusion of a Bases Control Program into the VCSNS TS.

In accordance with the criteria set forth in 10 CFR 50.92, SCE&G has evaluated these proposed Technical Specification changes and determined they do not represent a significant hazards consideration. The following is provided to support this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides an addition to the Administrative Section of TS to comply with the requirements of the **Federal Register** published notice of availability for TSTF–358, revision 6. This change adds a Bases Control Program to section 6.8 that is consistent with the Bases Control Program in NUREG 1431, revision 2.

A bases control program will not provide for a significant increase in probability or consequences of an accident previously evaluated as there are no changes in hardware or software for the plant and no changes in any operating procedure. The incorporation of a Bases control program into the Administrative Section of TS will help to assure that all assumptions in the plant accident analysis for initial conditions, redundancy, and independence are maintained. This change will assure that any and all future revisions to the Bases section of TS will be consistently controlled in a manner acceptable to both the industry and the NRC.

Therefore, this change provides for no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change has no impact on the operation of the plant or changes to plant configuration. Only the manner in which VCSNS processes and distributes a TS Bases change will be revised and the controls will be similar to the majority of the industry. The NRC has approved the methodology used in the Bases control program, located in section 5.5 of the Westinghouse Standardized Technical Specifications, NUREG 1431, revision 2.

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Therefore, there is no possibility of this change creating a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

This change provided for a standardized methodology, acceptable to the NRC, to assure consistent guidance for Bases changes is provided and the process is controlled under a TS administrative program. No impact to any plant hardware or safety analysis will occur from this proposed change. Therefore, there is no significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: November 6, 2002.

Description of amendment request: The proposed amendment would revise the Browns Ferry Nuclear Plant (BFN), Units 2 and 3, Reactor Pressure Vessel (RPV) material surveillance program required by 10 CFR 50, Appendix H. This program incorporates the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP) into the BFN Units 2 and 3 licensing basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change implements a [an] integrated surveillance program that has been evaluated by the NRC staff as meeting the requirements of paragraph III.C of Appendix H to 10 CFR 50. Consequently, the change does not significantly increase the probability of any accident previously evaluated. The change provides the same assurance of RPV integrity. The change will not cause the reactor pressure vessel or interfacing systems to be operated outside their design or testing limits. Also, the change will not alter any assumptions previously made in evaluating the radiological consequences of accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the BFN Units 2 and 3 licensing basis to reflect participation in the BWRVIP ISP. The proposed change does not involve a modification of the design of plant structures, systems, or components. The change will not impact the manner in which the plant is operated as plant operating and testing procedures will not be affected by the change. The change will not degrade the reliability of structures, systems, or components important to safety as equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, supporting system performance will not be increased, and increased or more severe testing of equipment will not be imposed. No new accident types or failure modes will be introduced as a result of this proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from that previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change has been evaluated as providing an acceptable alternative to the plant specific RPV material surveillance program and meets the requirements of 10 CFR 50 Appendix H for RPV material surveillance.

Appendix G to 10 CFR 50 describes the conditions that require pressure temperature (P/T) limits and provides the general bases for these limits. Until the results from the Integrated Surveillance Program become available, RG [Regulatory Guide] 1.99, revision 2 will be used to predict the amount of neutron irradiation damage. The use of operating limits based on these criteria, as defined by applicable regulations, codes, and standards, provide reasonable assurance that nonductile or rapidly propagating failure will not occur. The P/T limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor coolant pressure boundary (RCPB). Since the P/T limits are not derived from any DBA, there are no acceptance limits related to the P/T limits. Rather, the P/T limits are acceptance limits themselves since they preclude operation in an unanalyzed condition.

The proposed change will not affect any safety limits, limiting safety system settings, or limiting conditions of operation. The proposed change does not represent a change in initial conditions, or in a system response time, or in any other parameter affecting the course of an accident analysis supporting the Bases of any Technical Specification. Further, the proposed change does not involve a revision to P/T limits but rather a revision to the surveillance capsule withdrawal schedule for the second surveillance capsule. The current P/T limits were established based on adjusted reference temperatures for RPV beltline materials calculated in accordance with RG 1.99, revision 2. P/T limits will continue to be revised, as necessary, for changes in adjusted reference temperature due to changes in fluence when two or more credible surveillance data sets become available. When two or more credible surveillance data sets become available, P/T limits will be revised as prescribed by RG 1.99, revision 2 or other NRC approved guidance. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: October 3, 2002.

Description of amendment request: The amendment would revise Tables 3.3.1–1 (Reactor Trip System (RTS) Instrumentation) and 3.3.2–1 (Engineered Safety Feature Actuation System (ESFAS) Instrumentation) of Limiting Conditions for Operation (LCO) 3.3.1, "RTS Instrumentation," and 3.3.2, "ESFAS Instrumentation," of the Technical Specifications. The proposed changes are to the steam generator (SG) water level low-low (adverse and normal containment environment) functions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance [for the proposed changes] will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The design of the SG water level sensing equipment and the coincidence logic in the Solid State Protection System will be unaffected. The only physical change to the RTS and ESFAS instrumentation is the increased actuation setpoints in the NAL bistable comparator cards in the 7300 Process Protection System. These changes have already been implemented in the field and are in the conservative direction, *i.e.*, a trip actuation signal will be generated sooner for an event that challenges the ability of the steam generators to provide a heat sink. In all other regards, the design of the RTS and ESFAS instrumentation will be unaffected. These protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to this amendment request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Callaway Final Safety Analysis Report] are not adversely affected because the changes to the RTS and ESFAS trip setpoints assure the conservative response of the affected trip functions, consistent with the safety analysis and licensing basis.

The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes, other than increased bistable setpoints in the adjustable bistable comparator cards that have already been implemented, nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating parameters. The LCO Applicability exception for the SG Water Level Low-Low (Normal Containment Environment) channels recognizes the functional design of the system that enables the SG Water Level Low-Low (Adverse Containment Environment) channels with a higher water level trip setpoint whenever the Containment Pressure—Environmental Allowance Modifier channels in the same protection sets are tripped. No performance requirements or response time limits will be affected.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes do not eliminate any RTS surveillance or alter the frequency of surveillances required by the Technical Specifications. The nominal Trip Setpoints specified in the Technical Specification Bases have already been increased in the conservative direction. The safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis are changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: October 3, 2002.

Description of amendment request: The amendment would add a phrase to Limiting Condition for Operation (LCO) 3.1.8, "Physics Tests Exceptions—Mode 2," of the Technical Specifications. The phrase to be added is that the number of required channels for certain functions in Table 3.3.1–1 of LCO 3.3.1, "RTS Instrumentation," may be reduced from four to three required channels. LCO 3.1.8 applies to reactor Mode 2 during physics tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance [for the proposed change] will remain within the bounds of the previously performed accident analyses since there are no permanent hardware changes. The design of the RTS [reactor trip system] instrumentation will be unaffected; only the manner in which the system is connected for short duration physics testing is being changed to allow the temporary bypass of one power range channel. The reactor protection system will continue to function in a manner consistent with the plant design basis since a sufficient number of power range channels will remain OPERABLE to assure the capability of protective functions, even with a postulated single failure. [The number of required channels for certain functions in Table 3.3.1–1 is only being reduced from 4 to 3 channels.] All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change will allow the temporary bypass of one power range neutron flux channel during the performance of low power physics testing in MODE 2. This results in a temporary change to the coincidence logic from one-out-of-three under the current TS (with a trip imposed on the channel used for physics testing) to two-out-of-three under the proposed TS (the channel used for physics testing would be in a bypassed state). However, this two-out-of-three coincidence logic still supports [the] required protection and control system applications, while reducing plant susceptibility to a spurious reactor trip.

The proposed change will not affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR [Callaway Final Safety Analysis Report].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no permanent hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of power operation or change any operating parameters. No performance requirements will be affected.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

The proposed amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear

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Instrumentation System (other than as discussed above), or Solid State Protection System used in the plant protection systems. [The number of the required channels is not an initiator of an accident.]

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The proposed change does not eliminate any RTS surveillance or alter the Frequency of surveillances required by the Technical Specifications. The nominal RTS and Engineered Safety Features Actuation System (ESFAS) trip setpoints (TS Bases Tables B 3.3.1–1 and B 3.3.2–1), RTS and ESFAS allowable values (TS Tables 3.3.1–1 and 3.3.2–1), and the safety analysis limits assumed in the transient and accident analyses [(FSAR Table 15.0–4)] are unchanged. None of the acceptance criteria for any accident analysis is changed. The potential reduction in the frequency of spurious reactor trips would effectively increase the margin of safety or, at a minium, be risk-neutral.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: October 3, 2002.

Brief description of amendment request: The proposed amendment would revise the definition of steam generator (SG) tube inspection in Technical Specification 5.5.9, "Steam Generator Tube Surveillance Program." The amendment would add a requirement for using the rotating pancake coil (RPC) to the H* depth in the tubesheet. The proposed amendment is based on the Westinghouse Topical Report WCAP–15932–P, "Improved Justification of Partial-Length RPC Inspection of Tube Joints of Model F Steam Generators of Ameren-UE Callaway Plant," revision 0, dated September 2002.

Date of publication of individual notice in ***Federal Register:*** October 18, 2002 (67 FR 64422).

Expiration date of individual notice: November 18, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of consideration of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina

Date of application for amendment: May 6, 2002, as supplemented July 25, August 12, September 6, October 15, and October 31, 2002.

Brief description of amendment: This amendment increases the HBRSEP2 maximum steady-state core power level from 2300 megawatts thermal (MWt) to 2339 MWt, an increase of approximately 1.7 percent.

Date of issuance: November 5, 2002.

Effective date: November 5, 2002.

Amendment No.: 196.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56319). The July 25, August 12, September 6, October 15, and October 31, 2002, supplements contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 14, 2002, as supplemented by letter dated September 9, 2002.

Brief description of amendment: The amendment revised Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period was extended from the current limit of "* * * up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours" to "* * * up to 24 hours or up to the limit of the specified interval, whichever is greater." In addition, the following requirement was added to SR 4.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed." Also, a Bases Control Program was added as Technical Specification 6.5.14, clarifications were made to SR 4.0.1, and other minor changes were made to SR 4.0.3, consistent with NUREG–1432, revision 2, "Standard Technical Specifications, Combustion Engineering Plants."

Date of issuance: November 1, 2002.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 246.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 23, 2002 (67 FR 48216). The application was renoticed on October 1, 2002 (67 FR 61680).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 9, 2002.

Brief description of amendment: The amendment revised Technical Specification Sections 3.10.4, "Rod Insertion Limits," 3.10.5, "Rod Misalignment Limitations," and 3.10.6, "Inoperable Rod Position Indicator Channels," to remove the cycle-specific allowances on (1) rod insertion limits during individual rod position indicator channel calibrations and (2) rod position indicator channel accuracy for operation at or below 50 percent power. The amendment also revises the control rod indicated misalignment limits.

Date of issuance: November 7, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 234.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 7, 2002 (67 FR 62500).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: July 8, 2002.

Brief description of amendments: The proposed amendments would change Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change adds two footnotes to TS Table 3.3.8.1–1, "Loss of Power Instrumentation," Functions 1.e and 2.e, "Degraded Voltage—Time Delay, LOCA," and makes an editorial change to the heading of TS Table 3.3.8.1–1. The Degraded Voltage—Time Delay, LOCA, function is currently required to be OPERABLE during plant configurations when the ECCS instrumentation that generates the Loss of Coolant Accident (LOCA) signal is not required to be OPERABLE. The proposed changes correct this inconsistency by adding two new footnotes to TS Table 3.3.8.1-i that modify the required OPERABILITY of the Degraded Voltage—Time Delay, LOCA, function.

Date of issuance: November 12, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 155 & 141.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53986).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 12, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 1, 2002, as supplemented October 23, 2002.

Brief description of amendments: The amendments revise the licensing basis as described in the Updated Final Safety Analysis Report to allow lifting heavier loads with the reactor building crane during the Unit 1 refueling outage beginning in November 2002.

Date of issuance: November 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 209 & 204.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the UFSAR.

Date of initial notice in ***Federal Register:*** October 4, 2002 (67 FR 62270)

The supplement dated October 23, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: May 30, 2002, as supplemented August 15 and October 18, 2002.

Brief description of amendment: The amendment revises the safety limit minimum critical power ratio for two-loop and single-loop operation for Unit 1 for Cycle 18.

Date of issuance: November 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 210.

Facility Operating License No. DPR–29: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45569).

The supplements dated August 15 and October 18, 2002, provided additional information that clarified the application, did not change the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards

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consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: November 21, 2001, as supplemented January 25, 2002, and August 15, 2002.

Brief description of amendments: The amendments revised the Technical Specifications (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from "* * * up to 24 hours to permit completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours' to "* * * up to 24 hours or up to the limit of the specified frequency, whichever is greater." In addition, the following requirement was added to SR 4.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed." Lastly, an editorial change moved two sentences dealing with operability requirements from SR 4.0.3 to SR 4.0.1 to make the revised TS consistent with the Standard TS for Combustion Engineering plants.

Date of Issuance: November 4, 2002.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 186 and 129.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58645).

The January 25, 2002, and August 15, 2002, Supplements did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the ***Federal Register***.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of application for amendment: June 28, 2002.

Brief description of amendment: The amendment revised the Technical Specifications. Specifically, it revised item 9, Shutdown Cooling System Isolation High Area Temperature, of Table 4.6.2b, "Instrumentation that Initiates Primary Coolant System or Containment Isolation," changing the frequency of instrument channel test and instrument channel calibration from "once during each major refueling outage" to "once per operating cycle."

Date of issuance: November 13, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 177.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50956).

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 2002.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 17, 2002, as supplemented on June 28, July 1, August 29, and October 11, 2002.

Description of amendment request: The amendment revises the license to reflect changes related to the transfer of the license for Seabrook Station, Unit No. 1, previously held by North Atlantic Energy Service Corporation (NAESCO), as the licensed operator of the facility, and certain co-owners of the facility, on whose behalf NAESCO is also acting, to FPL Energy Seabrook, LLC.

Date of issuance: November 1, 2002.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 86.

Facility Operating License No. NPF–86: Amendment revised the License.

Date of initial notice in ***Federal Register:*** June 14, 2002 (67 FR 40972).

The letters dated June 28, July 1, July 24, August 29, and October 11, 2002, provided clarifying information and did not expand the application beyond the scope of the notice or affect the applicability of the Commission's generic no significant hazards consideration determination pursuant to 10 CFR 2.1315.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 12, 2002.

Brief description of amendment: The amendment revised the Kewaunee Nuclear Power Plant Technical Specification (TS) 3.1.a.3, "Pressurizer Safety Valves" to make it consistent with the Improved Standard TS to improve clarity. The amendment allows both pressurizer safety valves to be inoperable or removed while the reactor vessel head is on, provided the reactor coolant system (RCS) cold legs temperature is below 200 degrees F, which is in MODE 5 configuration. During MODE 5 configuration, the low temperature over pressure protection system is available and operable to protect the RCS from overpressure.

Date of issuance: November 7, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 164.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50957).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 27, 2001, as supplemented by letter dated August 12, 2002.

Brief description of amendments: The amendments delete Section 6.8.4.e, "Post-Accident Sampling," from the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Technical Specifications, and License Condition 2.C.25, "Post-Accident Sampling," for Unit 2, thereby eliminating the requirements to have and maintain the post-accident sampling program.

Date of issuance: November 5, 2002.

Effective date: As the date of issuance, and shall be implemented within 90 days.

Amendment Nos.: 254 and 235.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55022).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 5, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 8, 2002.

Brief description of amendment: This amendment changes TS 3.7.6 to exclude the control room normal and emergency air handling system from having to include TS 3.0.4 requirements when applying the action requirements of Limiting Condition for Operation 3.7.6 in Modes 5 and 6. Specifically, the change will allow operation in a manner that is already permitted by TS 3.7.6.

Date of issuance: November 7, 2002.

Effective date: November 7, 2002.

Amendment No.: 161.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42829).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 2002.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 25, 2002, as supplemented by letter dated August 30, 2002.

Brief description of amendment: The amendment revises paragraphs in Section 5.0, "Administrative Controls," of the Technical Specifications to allow the use of generic personnel titles in place of plant-specific personnel titles.

Date of issuance: November 6, 2002.

Effective date: November 6, 2002, and shall be implemented within 30 days of the date of issuance including the approval of the Updated Safety Analysis Report (USAR) change request that incorporates the relationships between the titles in ANSI/ANS–3.1–1978 and the plant-specific personnel titles in the USAR, as described in the licensee's letters of July 25 and August 30, 2002.

Amendment No.: 149.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53993).

The August 30, 2002, supplemental letter provided additional information that clarified the application, did not change the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 2002.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 18th day of November 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29737 Filed 11–25–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Notice of Failure To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under Part 4043 of its regulations relating to Notice of Failure to Make Required Contributions (OMB control number 1212–0041; expires January 31, 2003). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 26, 2002.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension (including the collection of information) may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulations, forms, and instructions relating to the notice of failure to make required contributions may be accessed on the PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 302(f) of the Employee Retirement Income Security Act of 1974 ("ERISA") and section 412(n) of the Internal Revenue Code of 1986 ("Code") impose a lien in favor of an underfunded single-employer plan that is covered by the termination insurance program if (1) any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds $1 million. (For this purpose, a plan is underfunded if its funded current liability percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons who are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only the PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. Therefore, ERISA and the Code require persons committing payment failures to notify the PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions, implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR § 4043.81.

The collection of information under the regulation has been approved through January 31, 2003, by OMB under control number 1212–0041. The PBGC is requesting that OMB extend approval for another three years. An agency may not conduct or sponsor, and

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a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive 30 Form 200 filings per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 64.5 hours and $12,900.

Issued in Washington, DC, this 20th day of November, 2002.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 02–29959 Filed 11–25–02; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Department of Agriculture; Alternative Personnel System; Demonstration Project

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of amendment of the Department of Agriculture demonstration project plan.

SUMMARY: The Department of Agriculture, with the approval of OPM, is requesting to modify its demonstration project coverage. This action provides for changes in the final project plan published March 9, 1990, to include temporary appointments along with its current coverage of permanent and term appointments. By amending the project plan to include temporary appointments, the need to have two separate examining systems will be eliminated, thus avoiding administrative inefficiencies and ineffectiveness as well as meeting the President's Management Agenda of being more citizen-centered by reducing confusion among applicants.

EFFECTIVE DATE: This modification is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT:
Agriculture: Mary Ann Jenkins, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, (202–720–0515); *OPM:* Rhonda L. Taylor, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–1526.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1990, the Office of Personnel Management published a notice to demonstrate an alternative personnel management system at the Department of Agriculture. The project was originally conceived to test an alternative to the traditional recruiting and hiring system in an anticipated tight labor market. On March 8, 1996, a **Federal Register** notice was published to modify the list of experimental sites to include comparison sites. On September 18, 1996, a **Federal Register** notice was published to expand the demonstration project coverage to include term appointments. On October 21, 1998, the Department of Agriculture demonstration project was made permanent through Public Law 105–277. The proposed modification will not be a part of the permanent demonstration project authority, since it was not part of the demonstration project that Congress continued indefinitely. Rather this modification adheres to the regulations under 5 CFR part 470 and will have a time limit of 5 years.

One of the project innovations is to test a candidate assessment method which uses categorical groupings instead of numeric scores. The demonstration authority replaces the traditional system of examining applicants and ranking candidates. Instead, the candidates will be assigned to one of two groups—quality or eligible—based on job-related evaluation criteria. To be placed in the quality group, a candidate's background must show: Above average educational achievement; or, quality experience which is defined as experience clearly above and beyond the qualification standard requirements, and which is directly related to the work of the position to be filled; or, evidence of having ability to do the work of the position. Candidates who do not meet the quality group criteria but who meet basic qualification requirements will be assigned to the eligible group. Within each group, preference eligibles will be listed ahead of nonpreference eligibles. In addition, for positions other than scientific and professional at GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic eligibility requirements will be listed at the top of the quality group.

Selection will be made from among candidates in the quality group. When there is an inadequate number of candidates in the quality group all qualified candidates will be listed as a single group.

Office of Personnel Management.

Kay Coles James,

Director.

Project Plan Modification

This project plan which appeared in the **Federal Register** on March 9, 1990 (55 FR 9062) is hereby modified to include using the candidate assessment method for temporary appointments for the Agricultural Research Service and Forest Service.

[FR Doc. 02–29929 Filed 11–25–02; 8:45 am]

BILLING CODE 6325–43–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Times and Dates: 12:30 p.m., Monday, December 9, 2002; 8:30 a.m., Tuesday, December 10, 2002.

Place: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

Status: December 9–12:30 p.m. (Closed); December 10–8:30 a.m. (Open)

Matters to be Considered:

Monday, December 9–12:30 p.m. (Closed)

1. Audit and Finance Committee Report and Review of Year-End Financial Statements.
2. Financial Performance.
3. Proposed Filing with Postal Rate Commission for Parcel Return Service.
4. Capital Investment for Ventilation and Filtration System for Mail Processing Equipment.
5. Strategic Planning.
6. Personnel Matters and Compensation Issues.

Tuesday, December 10–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 4–5, 2002.
2. Remarks of the Postmaster General and CEO.
3. Fiscal Year 2002 Audited Financial Statements.
4. Postal Service Fiscal Year 2002 Annual Report.
5. Final Fiscal Year 2004 Appropriation Request.
6. Capital Investments.
   a. Flats Recognition Improvement Program.
   b. Flats Feeder Enhancement Program.
   c. Rockefeller Center Station, New York, Lease Renewal.
7. Click-N-Ship.
8. Tentative Agenda for the January 6–7, 2003, meeting in Washington, DC.

FOR FURTHER INFORMATION CONTACT:
William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–30168 Filed 11–22–02; 3:43 pm]

BILLING CODE 2210–12–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–28635]

Application and Opportunity for Hearing: Algoma Steel Inc.

November 20, 2002.

The Securities and Exchange Commission gives notice that Algoma Steel Inc. has filed an application under Section 304(d) of the Trust Indenture Act of 1939. Algoma Steel asks the Commission to exempt from the certificate or opinion delivery requirements of Section 314(d) of the 1939 Act certain provisions of an indenture dated January 29, 2002, as supplemented by indentures dated January 29, 2002 and September 9, 2002, between Algoma Steel and Wilmington Trust Company. The indentures relate to 11% Secured Notes due 2009 and 1% Convertible Secured Notes due 2030.

Section 304(d) of the 1939 Act, in part, authorizes the Commission to exempt conditionally or unconditionally any indenture from one or more provisions of the 1939 Act. The Commission may provide an exemption under section 304(d) if it finds that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the 1939 Act.

Section 314(d) requires the obligor to furnish to the indenture trustee certificates or opinions of fair value upon any release of collateral from the lien of the indenture. The application requests an exemption from section 314(d) for specified dispositions of collateral that are made in Algoma Steel's ordinary course of business.

In its application, Algoma Steel alleges that:

1. The indenture permits Algoma Steel to dispose of collateral in the ordinary course of its business;
2. Algoma Steel will deliver to the trustee annual audited financial statements; and
3. Algoma Steel will deliver to the trustee a semi-annual certificate stating that all dispositions of collateral during the relevant six-month period occurred in Algoma Steel's ordinary course of business and that all the proceeds were used as permitted by the indenture.

Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File Number 22–28638, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request in writing that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than December 19, 2002. Interested persons must include the following in their request for a hearing on this matter:

—The nature of that person's interest;
—The reasons for the request; and
—The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. At any time after December 19, 2002, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29979 Filed 11–25–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27605]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 19, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 13, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 13, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–9343)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, NU's wholly-owned nonutility subsidiary, NU Enterprises, Inc. ("NUEI"), and Northeast Utilities Service Company, both located at 107 Selden Street, Berlin, Connecticut 06037, (collectively, the "Applicants") have filed a post effective amendment to their application-declaration under section 12(b) and rules 45 and 54 under the Act.

By order dated November 12, 1998 (HCAR No. 26939) ("Prior Order"), the Commission authorized NU and NUEI to, among other things, issue guarantees or provide similar forms of credit support or enhancements (collectively, "Guarantees") to, or for the benefit of NUEI, NUEI's nonutility subsidiaries, or NU's other to-be-formed direct or indirect energy-related companies, as defined in rule 58 of the Act. The Commission, through subsequent orders in this file, authorized an increase in this Guarantee authority to $500 million and the extension of the date through which Guarantees may be provided through December 31, 2002, under the terms and conditions of the Prior Order. Applicants request in this filing to maintain the Guarantee authority at $500 million and to extend the date through which the Guarantees may be provided through September 30, 2003, under the terms and conditions of the Prior Order.

American Electric Power Company, et al. (70–10088)

American Electric Power Company Inc. ("AEP"), Central and South West Corporation ("CSW"), both registered holding companies under the Act, 1

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Riverside Plaza, Columbus, Ohio 43215, and the following direct and indirect subsidiaries of AEP (collectively "Subsidiaries" and with AEP and CSW "Applicants"), which include:

(a) *Public utility subsidiaries:* AEP Generating Company ("Generating"), Appalachian Power Company ("Appalachian"), Central Power and Light Company ("CPL"), Columbus Southern Power Company ("Columbus"), Indiana Michigan Power Company ("Indiana"), Kentucky Power Company ("Kentucky"), Kingsport Power Company ("Kingsport"), Ohio Power Company ("Ohio"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO"), West Texas Utilities Company ("West Texas"), and Wheeling Power Company ("Wheeling"), all located at 1 Riverside Plaza, Columbus, Ohio 43215 (collectively, "Utility Subsidiaries");

(b) *Nonutility subsidiaries that participate in the AEP utility money pool:* Cedar Coal Company, Central Appalachian Coal Company, Central Coal Company, Colomet Inc., Simco Inc., Southern Appalachian Coal Company, Blackhawk Coal Company, Conesville Coal Preparation Company, Franklin Real Estate Company, Indiana Franklin Realty Company, all located at 1 Riverside Plaza, Columbus, Ohio 43215 (collectively "Nonutility Participants In The Utility Money Pool"); and

(c) *Nonutility subsidiaries that wish to participate in the AEP nonutility money pool:* Universal Supercapacitators LLC, AEP Coal Inc., AEP Power Marketing Inc., AEP Pro Serv Inc., AEP Retail Energy LLC, AEP T&D Services LLC, AEP Credit Inc., Industry and Energy Associates LLC, AEP C&I Company LLC, AEP Gas Power System GP LLC, AEP Gas Power GP LLC, AEP Retail Energy, AEP Texas Commercial & Industrial Retail CP LLC, AEP Communications Inc., AEP Communications LLC, C3 Networks GP LLC, C3 Networks Limited Partnership, C3 Networks & Comm LP, AEP Fiber Venture LLC, C3 Communications Inc., AEP Energy Services Inc., AEP EmTech LLC, AEP Investments Inc., Ventures Lease Co. LLC, AEP Resource Services LLC, AEP Resources Inc., AEP Delaware Investment Company, AEP MEMCO LLC, AEP Elmwood LLC, United Sciences Testing Inc., AEP Energy Services Gas Holding Company, Mid-Texas Pipeline Company, Jefferson Island Storage & Hub LLC, AEP Acquisition LLC, AEP Energy Services Investments Inc., LIG Inc., LIG Pipeline Company, Tuscaloosa Pipeline Company, LIG Liquids Company LLC, Louisiana Intrastate Gas Company LLC, LIG Chemical Company, Houston Pipe Line Company, AEP Gas Marketing LP, HPL Holdings Inc., AEP Resources International Limited, AEP Resources Project Management Company Ltd., AEP Pushan Power LDC, CSW International Inc., AEP Delaware Investment Company II, AEP Delaware Investment Company III, AEP Holdings I, AEP Holdings II, AEP Energy Services UK Gen Ltd., AEP Energy Services Limited, CSW Energy Inc., CSW Power Marketing Inc., CSWE/Ft. Lupton Inc., Newgulf Power Venture, CSW Development I Inc., Eastex Cogeneration LP, CSW Eastex LP I Inc., CSW Energy Services Inc., EnerShop Inc., Mutual Energy SWEPCO LP, REP Holdco Inc., Mutual Energy CPL LP, REP General Partner LLC, Mutual Energy WTU LP, Mutual Energy Service Company LLC, AEP Ohio Commercial & Industrial Retail Company LLC, AEP Ohio Retail Energy LLC, Mutual Energy LLC, AEP Texas Retail GP LLC, POLR Power LP, Dolet Hills Lignite Company LLC, AEP Desert Sky GP LLC, AEP Desert Sky LP LLC, all located at 1 Riverside Plaza, Columbus, Ohio (collectively, "Nonutility Money Pool Participants") have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 43, 45, 46 and 54 under the Act.

Subsidiaries may also include direct or indirect subsidiaries that AEP may form under sections 32, 33 or 34 of the Act or rule 58 under the Act. All of AEP's direct and indirect Subsidiaries, other than Public Utility Subsidiaries, are referred to as nonutility subsidiaries ("Nonutility Subsidiaries"). All subsidiaries and AEP and CSW are sometimes referred to collectively as the "Companies."

The Application seeks authority for various financing transactions ("Financing Plan") as described below. In summary, the Application seeks the following authorizations and approvals of the Commission for the period ending March 31, 2006 ("Authorization Period"):

(i) SWEPCO and Wheeling request authorization to issue long-term debt in amounts not to exceed $350 million and $40 million, respectively;

(ii) AEP and its Public Utility Subsidiaries request aggregate short-term financing in the amount of $7.2 billion outstanding;

(iii) CPL, Columbus, Ohio and West Texas seek interim authority until restructuring is implemented to issue short- and long-term debt in an amount not to exceed $3.9 billion;

(iv) Subsidiaries seek authorization to organize financing entities for certain types of financings described more fully below;

(v) Applicants seek authority to make tender offers for their securities and to repurchase their own securities from affiliates;

(vi) AEP and certain Subsidiaries that are participants in the system utility money pool request the continuation of the money pool through the Authorization Period;

(vii) AEP and certain Nonutility Subsidiaries request authority to form and continue a nonutility money pool on substantially the same terms and conditions as the utility money pool;

(viii) AEP and its Subsidiaries request authority to issue guarantees and other forms of credit support in an aggregate amount not to exceed $900 million outstanding at any one time as more fully described below; and

(ix) AEP and its Nonutility Subsidiaries request authorization for the Nonutility Subsidiaries to pay dividends out of capital or unearned surplus to the fullest extent allowed by law.

By order dated December 30, 1997 (HCAR No. 35–26811), CSW and its electric public utility subsidiary companies, CPL, PSO, SWEPCO, WTU and Central and South West Services Inc., were authorized to engage in various financing and related transactions through December 31, 2002. By order dated June 14, 2000 (HCAR No. 35–27186), AEP was authorized to acquire by merger all of the outstanding common stock of CSW; and AEP, its operating subsidiaries and certain other subsidiaries were added to the CSW money pool. By order dated October 26, 2001 (HCAR No. 35–27457), the money pool authority was extended to December 31, 2002, and certain sublimits related to restructuring of the AEP system were established.

AEP, American Electric Power Services Company ("AEPSC"), CSW, CPL, Columbus, Ohio, SWEPCO and West Texas have pending before this Commission an application ("Restructuring Application"), for which the Commission issued a notice on June 14, 2002 (HCAR No. 27450). The application seeks authority to restructure their operations to comply with deregulation statutes in Texas and Ohio that will result in the separation of the generation and energy delivery functions of CPL, Columbus, Ohio, and West Texas. The authority sought in the Restructuring Application includes the issuance of short- and long-term debt by the new generation, distribution and transmission entities and guarantees relating to these new entities. It is possible that an order in this matter will not be issued until after December 31, 2002. Interim financing authority for these companies is requested pending issuance of the restructuring order.

The Applicants request authority to engage in financing transactions without further Commission approval for which the specific terms and conditions are not currently known but will engage in these transactions subject to the following conditions concerning the financial condition of the Applicants: (a) The effective cost of money on long-term debt borrowings issued will not exceed the greater of (i) 450 basis points over comparable term U.S. Treasury securities or (ii) a gross spread over U.S. Treasury securities which is consistent with similar securities of comparable credit quality and maturities issued by other companies, (b) the maturity of indebtedness will not exceed 50 years, (c) the underwriting fees, commissions, or other similar expenses paid in connection with the issue, sale or distribution of a security will not exceed 5% of the principal or total amount of the financing, (d) all debt issued by AEP will be unsecured, (e) except in accordance with a further order of the Commission, the Applicants will not publicly issue any long-term debt unless the securities are rated at the time of issuance at the investment grade level as established by at least one "nationally recognized statistical rating organization," as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934.

AEP states that it will maintain during the authorization period for itself and for all Public Utility Subsidiaries common equity of 30% of consolidated capital (including short-term debt); however, CPL requests that it be permitted to maintain a common equity ratio of 25% for so long as securitization bonds are outstanding.

The proceeds from the sale of securities in external financing transactions by the Applicants will be added to their respective treasuries and subsequently used principally for general corporate purposes including: (i) The financing, in part, of capital expenditures; (ii) the financing of working capital requirements; (iii) the acquisition, retirement or redemption of securities previously issued by AEP or its Subsidiaries without the need for prior Commission approval; and (iv) other lawful purposes, including direct or indirect investment in energy related companies as defined in rule 58 ("Rule 58 Companies"), other subsidiaries approved by the Commission, exempt wholesale generators ("EWGs"), and foreign utility companies ("FUCOs").

Applicants request approval for the following aggregate amounts of outstanding external financing during the Authorization Period (not including refinancing of outstanding securities):

(i) Long-term debt limits: SWEPCO, $350,000,000; Wheeling, $40,000,000.

(ii) Short-term borrowing limits through the Money Pool or external borrowings, or borrowings from AEP, as follows: Appalachian, $600,000,000; Indiana, $500,000,000; Kentucky, $200,000,000; Generating, $125,000,000; Kingsport, $40,000,000; PSO, $300,000,000; SWEPCO, $350,000,000; Wheeling, $40,000,000. In addition, AEP requests authority for short-term borrowings sufficient to fund the Utility Money Pool and the Nonutility Money Pool as well as its own requirements in an amount not to exceed $7,200,000,000.

(iii) Interim limits: If the Restructuring Order referred to above is not obtained by December 31, 2002, the companies affected by restructuring will need interim authority to issue debt, including both long and short-term debt, both on the external market or from the Utility Money Pool, until restructuring is implemented as described in SEC File 70–9785. The companies involved in the restructuring request the following authority to issue debt if the Restructuring Order is not issued by the end of 2002: CPL, $1,400,000,000; Columbus, $800,000,000; Ohio, $1,200,000,000; West Texas, $500,000,000.

External Financing

All external financing will be at rates or prices and under conditions based upon, or otherwise determined, by competitive capital markets. The Applicants request authority to sell securities covered by this Application in any of the following ways: (i) Through underwriters or dealers; (ii) directly to a limited number of purchasers or to a single purchaser, or (iii) through agents or dealers. If underwriters are used in the sale of the securities, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by managing underwriters) or directly by one or more underwriters acting alone. The securities may be sold directly by AEP or a Subsidiary or through agents designated from time to time. If dealers are used in the sale of any securities, the securities will be sold to the dealers as principal. Any dealer may then resell such securities to the public at varying prices to be determined by the dealer at the time of resale.

If debt securities are being sold, they may be sold in connection with "delayed delivery contracts" which permit the underwriters to locate buyers who will agree to buy the debt at the same price but at a later date than the date of the closing of the sale to the underwriters. Debt securities may also be sold through the use of medium-term notes and similar programs, including transactions covered by rule 144A under the Securities Act of 1933. Pollution control revenue bonds may be sold either currently or in forward refundings where the price of the securities is established currently for delivery at a future date.

Long-Term Debt: Under current law, the public utility commissions in the states of Indiana, Virginia, Tennessee, Ohio, Oklahoma and Kentucky approve the issuance of long-term securities by public utility companies. Therefore, rule 52(a) under the Act provides an exemption from the Commission for the issuances of long term debt securities by all of AEP's Public Utility Subsidiaries except CPL, SWEPCO, West Texas and Wheeling. Financing authorization is being sought for CPL and West Texas in the Restructuring Application and in the request for interim limits above. SWEPCO and Wheeling seek long-term debt authority in amounts not to exceed $350 million and $40 million, respectively. Any long-term debt or other security would have such designations, aggregate principal amount, maturity, interest rate(s) or methods of determining these amounts, maturities or rates, interest payment terms, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions as the Applicants may determine at the time of issuance.

Short-Term Debt: The Public Utility Subsidiaries are members of the AEP utility money pool ("Money Pool") and make short-term borrowings from the Money Pool. The Money Pool is funded by AEP currently through a commercial paper program. No participant in the Money Pool ("Participants") may borrow from the Money Pool if the borrowing company could borrow more cheaply directly from banks or through the issuance of its own commercial paper. In the event funds are not available from the Money Pool, AEP and the Public Utility Subsidiaries seek authorization for the issuance of short-term debt in the form of bank loans,

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commercial paper programs and other products in the amount set forth in above, as well as direct issuance from AEP. Commercial paper would be sold in established domestic or European commercial paper markets. Short-term borrowings will have maturities of less than one year from the date of issuance. The Public Utility Subsidiaries may engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

AEP requests flexibility in the types of short-term debt by which it borrows externally to take advantage of new products being offered in the market for short-term securities, including but not limited to, the extendible commercial notes program currently being offered by certain commercial paper dealers and new products to provide alternate backup liquidity for commercial paper and short-term notes.

Credit Enhancements: Applicants seek authority to obtain credit enhancement for securities to be offered as proposed in this Application. Credit enhancements could include insurance, a letter of credit or a liquidity facility. Applicants anticipate that even though they would be required to pay a premium or fee to obtain the credit enhancement, they would realize a net benefit through a reduced interest rate on new securities. Applicants would obtain credit enhancement only if it is economically beneficial to do so.

Financing Entities: The Subsidiaries seek authority to organize new corporations, trusts, partnerships or other entities that would facilitate certain types of financings, such as the issuance of tax advantaged preferred securities. Request is also made for these financing entities to issue these types of securities to third parties. Additionally, request is made for authorization with respect to (i) the issuance of debentures or other evidences of indebtedness by the Subsidiaries to a financing entity in return for the proceeds of the financing and (ii) the acquisition by a Subsidiary of voting interests or equity securities issued by the financing entity to establish the Subsidiary's ownership of the financing entity (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, such as shares of stock or partnership interests, involving an amount usually ranging from one to twenty-five percent of the capitalization of the financing entity). The Subsidiaries also request authorization to enter into expense agreements with their respective financing entities through which they would agree to pay all expenses of a financing entity. The Subsidiaries may also guarantee (i) payment of interest, dividends or distributions on the securities issued by their subsidiary financing entities if and to the extent such financing entities declare dividends or distributions or pay interest out of funds legally available for that purpose; (ii) payments to the holders of the securities issued by financing entities of amounts due upon liquidation of these entities or redemption of the securities of these entities; and (iii) certain additional amounts that may be payable in respect of these securities.

Tender Offers and Repurchase of Securities: AEP and the Subsidiaries may determine to acquire outstanding securities ("Outstanding Securities") through tender offers to the holders of Outstanding Securities. Tender offers may be conditioned upon receipt of a certain percentage of the Outstanding Securities. The tender offer price would be based on a number of factors, including the coupon rate of the Outstanding Securities, the date of expiration of the refunding protection of the Outstanding Securities, the redemption price on such expiration date and the then current market rates for similar securities, all of which are relevant to the decision of an informed holder as to whether to hold or sell Outstanding Securities. Holders of Outstanding Securities may be offered a fixed price for their Outstanding Securities, or the tender offer may be a "fixed spread" offer pursuant to which the Applicants will offer a price based upon a fixed spread over comparable U.S. Treasury securities. Any tender offer will be conducted in accordance with standard market practice, *i.e.*, the length of time the offer will be held open, the method of solicitation, etc., at the time of the tender offer.

AEP and the Subsidiaries would, in connection with any tender offer, retain one or more investment banking firms experienced in such matters to act as tender agent and dealer-manager. The dealer-manager will act as the agent in disseminating the tender offer and receiving responses to it. As a dealer-manager, the investment banking firm will not itself become obligated to purchase or sell any of the Outstanding Securities. The dealer-manager's fee will be determined following negotiation and investigation of fees in similar transactions and will include reasonable out-of-pocket expenses and attorney's fees. It is expected that the Applicants will be required, as is customary, to indemnify the dealer-manager for certain liabilities. The Applicants may also retain a depositary to hold the tendered Outstanding Securities pending the purchase of them or an information agent to assist in the tender offer. AEP and the Public Utility Subsidiaries also seek authority to repurchase their own securities issued to affiliates.

Hedging Transactions

Interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, would be entered into in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or whose parent companies' senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service or Fitch Investor Service. Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Applicants will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Interest rate hedging transactions with respect to anticipated debt offerings (the "Anticipatory Hedges") and subject to certain limitations and restrictions would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"); (ii) the purchase of put options on U.S. Treasury obligations (a "Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a "Zero Cost Collar"); (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Each Applicant will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Applicants may decide to lock in interest rates and/or limit its exposure to interest rate increases. Applicants represent that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. Applicants will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

Extension of Authority for Utility Money Pool

By order dated December 30, 1976 (HCAR No. 19829), and in subsequent orders (HCAR No. 26697 (March 28, 1997), HCAR No. 24855 (April 5, 1989), HCAR No. 26254 (March 21, 1995), and HCAR No. 26854 (April 3, 1998)), the Commission authorized Central and South West Corporation ("CSW"), a Delaware corporation and a registered holding company under the Act and a wholly owned subsidiary of AEP, to establish and utilize a system Money Pool to coordinate short-term borrowings for CSW, its electric subsidiary companies and Central and South West Services Inc. By order dated June 14, 2000 (HCAR No. 27186), the Commission authorized AEP to continue the Money Pool and to add its Utility Subsidiaries as well as Nonutility Participants in the Utility Money Pool as Participants in the AEP System Money Pool and established borrowing limits for all Participants. By Order dated October 26, 2001 (HCAR No. 35–27457), AEP was authorized to increase its external borrowing from $5 billion to $6.910 billion through December 31, 2002, through the issuance and sale of short-term notes and commercial paper.

All short-term borrowing needs of the Participants may be met by funds in the Money Pool to the extent funds are available. Each Participant shall have the right to borrow from the Money Pool from time to time, subject to the availability of funds and the limitations and conditions set forth in orders of this Commission; provided, however, that the aggregate amount of all loans requested by any Participant shall not exceed the applicable borrowing limits set forth in orders of the Commission and other regulatory authorities and agreements binding upon a Participant. No Participant shall be obligated to borrow from the Money Pool if lower cost funds can be obtained from its own external borrowing. AEP will not borrow funds from the Money Pool or any Participant.

AEPSC, a subsidiary service company, acts as administrative agent of the Money Pool. Each Participant and AEP determine the amount of funds it has available for contribution to the Money Pool. The determination of whether a Participant or AEP at any time has surplus funds, or shall lend surplus funds to the Money Pool, will be made by a Participant's treasurer or by a designee of the Participant in his or her sole discretion on the basis of cash flow projections and other relevant factors. Each Participant may withdraw any of its funds at any time upon notice to AEPSC. Each Participant may borrow from the Money Pool to the extent of its Borrowing Limits for short-term debt.

The Money Pool is composed from time to time of funds from the following sources: (i) Surplus funds of AEP; (ii) surplus funds of any of the Participants; or (iii) short-term borrowings by AEP. AEPSC administers the Money Pool by matching up, to the extent possible, short-term cash surpluses and loan requirements of AEP and the various Participants. Participants' requests for short-term loans are met first from surplus funds of other Participants which are available to the Money Pool and then from AEP corporate funds to the extent available. To the extent that Participant contributions of surplus funds to the Money Pool are insufficient to meet Participant requests for short-term loans, borrowings are made from outside the system. Funds which are loaned from Participants into the Money Pool which are not required to satisfy borrowing needs of other Participants will be invested by AEP on behalf of the lending Participants in one or more short-term instruments.

The Money Pool makes funds available to Participants for the interim financing of their capital expenditure programs and their other working capital needs, to AEP to loan and to make capital contributions to any of the Participants, and in both instances to repay previous borrowings incurred. External borrowings by AEP will not be made unless there are no surplus funds in the treasuries of the Participants sufficient to meet borrowing needs. However, no loan will be made by AEP or any Participant if the borrowing company could borrow more cheaply directly from banks or through the sale of its own commercial paper. When more than one Participant is borrowing, each borrowing Participant will borrow *pro rata* from each fund source in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Money Pool.

The interest rate applicable on any day to then outstanding loans through the Money Pool will be the composite weighted average daily effective cost incurred by AEP for short-term borrowings from external sources. If there are no borrowings outstanding then the rate would be the certificate of deposit yield equivalent of the 30-day Federal Reserve "A2/P2" Non Financial Commercial Paper Composite Rate ("Composite"), or if no composite is established for that day then the applicable rate will be the Composite for the next preceding day for which the Composite is established. If the Composite shall cease to exist, then the rate would be the composite which then most closely resembles the Composite and/or most closely mirrors the pricing AEP would expect if it had external borrowings.

Interest income related to external investments will be calculated daily and allocated back to lending parties on the basis of their relative contribution to the investment pool funds on that date. Each Participant receiving a loan shall repay the principal amount of the loan, together with all accrued interest, on demand and in any event not later than the expiration date of the Commission's authorization for the operation of the Money Pool. All loans made through the Money Pool may be prepaid by the borrower without premium or penalty.

Nonutility Money Pool

AEP and the Nonutility Money Pool Participants propose to form and participate in a separate system of inter-corporate borrowings ("Nonutility Money Pool"). The Nonutility Money Pool would be established and administered in the same manner and

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subject to the same conditions as the Utility Money Pool described above.

Applicants state that participation by a Nonutility Money Pool Participant in the Nonutility Money Pool would permit their available cash and/or short-term borrowing requirements to be matched on a daily basis with other Nonutility Money Pool Participants to minimize the need of the AEP system for external short-term borrowing. If the Nonutility Money Pool Participants are authorized to participate in the Nonutility Money Pool, funds will be loaned from the Nonutility Money Pool in the form of open account advances under the same terms and limitations as currently authorized for the Utility Money Pool. Participants in the Nonutility Money Pool will not engage in lending and borrowing transactions with Participants in the Utility Money Pool.

Guarantee of Indebtedness and Obligations

AEP requests authorization to enter into guarantees, obtain letters of credit, enter into support or expense agreements or otherwise provide credit support from time to time through March 31, 2006, on behalf of any of its direct or indirect Subsidiaries in amounts up to $900,000,000. AEP also requests authority to guarantee the obligations of its direct or indirect Subsidiaries as may be appropriate or necessary to enable the subsidiaries to carry on the ordinary course of their businesses. Each of the Public Utility Subsidiaries seeks authorization to enter into guarantees and other credit support with respect to obligations of each of its subsidiaries. Nonutility Subsidiaries also request authority for each Nonutility Subsidiary to provide guarantees and other forms of credit support to other Nonutility Subsidiaries. Certain of the guarantees referred to above may be in support of the obligations of Subsidiaries that are not capable of exact quantification. In such cases, AEP will determine the exposure of the instrument for purposes of measuring compliance with the total guarantee limit. The aggregate amount of the guarantees will not exceed $900 million (excluding obligations exempt under rule 45 and authorized under other Commission orders).

Payments of Dividends Out of Capital or Unearned Surplus

Section 12(c) of the Act and rule 46 under the Act generally prohibit the payment of dividends out of capital or unearned surplus, except according to an order of the Commission. AEP and the Nonutility Subsidiaries hereby request authority for the direct and indirect Nonutility Subsidiaries to pay dividends out of capital or unearned surplus to the fullest extent of the law.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29943 Filed 11–25–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25806; 812–12982]

Alternative Investment Partners, LLC and Trust Advisors, LLC; Notice of Application

November 20, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a securities-related preliminary injunction entered on November 13, 2002, until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

APPLICANTS: Alternative Investment Partners, LLC ("AIP") and Trust Advisors, LLC ("TA").

FILING DATE: The application was filed on November 19, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 17, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: AIP, 142 Hardscrabble Lake Drive, Chappaqua, NY 10514; TA, 1375 Kings Highway East, Ste. 400, Fairfield, CT 07663.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. AIP is a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). AIP serves as the investment adviser to Alpha Strategies I Fund ("Fund"), which is a series of AIP Alternative Strategies Funds, an open-end management investment company registered under the Act. TA, a Delaware limited liability company, is registered as an investment adviser under the Advisers Act and serves as a research consultant to AIP and the Fund with respect to the selection and ongoing review of subadvisers for the Fund. Because the services provided by TA may be characterized as investment advisory services, applicants state that TA may be considered an investment adviser to the Fund under section 2(a)(20) of the Act. Asset Alliance Corporation ("AAC"), a Delaware corporation, states that it is a holding company primarily engaged in the business of owning significant interests in investment managers. AAC directly owns 50% of AIP and indirectly owns 50% of TA. AAC also indirectly owns 50% of Beacon Hill Asset Management LLC ("BHAM").

2. On November 13, 2002, the U.S. District Court for the Southern District of New York entered an order of Preliminary Injunction and Other Relief Against BHAM ("Preliminary Injunction") in a matter brought by the Commission (the "Action").[1] The transactions that are the subject of the Action involved the alleged improper valuations of certain unregistered investment funds managed by BHAM, resulting in BHAM's alleged violation of section 206(2) of the Advisers Act. The Preliminary Injunction enjoined BHAM, directly or through its officers, directors, agents and employees, from violating section 206(2).

[1] *Securities and Exchange Commission* v. *Beacon Hill Asset Management, LLC*, Stipulation of Order Granting Preliminary Injunction and Other Relief Against Beacon Hill Asset Management, Case No. 02cv8855 (S.D.N.Y., Nov. 13, 2002).

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that BHAM is an affiliated person of the applicants because BHAM and the applicants are under the common control of AAC. Applicants state that, as a result of the Preliminary Injunction, applicants may be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act seeking temporary and permanent orders exempting them from the provisions of section 9(a) of the Act that might otherwise be operative with respect to their provision of investment advisory services to the Fund as a result of the Preliminary Injunction.

3. Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants state that none of the current or former officers or employees of either of the applicants participated in or had any knowledge of the conduct alleged to have constituted the violations that resulted in the Action. In addition, neither applicant has been the subject of any federal or state enforcement or other administrative or judicial disciplinary proceeding, nor has either been named as a defendant in any other action relating to the securities laws. Applicants state that neither has ever previously applied for an exemption pursuant to section 9(c) of the Act.

4. Applicants state that their inability to continue providing advisory services to the Fund would result in the Fund and its shareholders facing potentially severe hardships. Additionally, applicants assert that if they were barred from providing investment advisory services to the Fund, the effect on their businesses and employees would be severe.

5. AIP and TA will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors of the Fund regarding the Action and the reasons they believe relief pursuant to section 9(c) is appropriate. AIP and TA will provide the Fund with all information concerning the Action and the exemptive application necessary for the Fund to fulfill its disclosure and other obligations under the federal securities laws.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants or their affiliated persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, *it is hereby ordered*, pursuant to section 9(c) of the Act, on the basis of the representations contained in the application, that applicants be and hereby are temporarily exempted from the provisions of section 9(a) of the Act with respect to their investment advisory services to the Fund to the extent the provisions are operative solely as a result of the Preliminary Injunction, subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29944 Filed 11–25–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25805 /812–12562]

AB Funds Trust and SBC Financial Services, Inc.; Notice of Application

November 19, 2002.

AGENCY: Securities and Exchange Commission (the "Commission")

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

APPLICANTS: AB Funds Trust (the "Trust") and SBC Financial Services, Inc. (the "Adviser").

SUMMARY OF APPLICATION: Applicants request an order that would permit applicants to enter into and materially amend sub-advisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

FILING DATES: The application was filed on June 22, 2001, and amended on November, 8, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 16, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Rodney R. Miller, Esq.,

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AB Funds Trust, 2401 Cedar Springs Road, Dallas, Texas 75201–1407.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and has thirteen series (each a "Fund" and collectively, the "Funds"). Each Fund has its own investment objective, policies and restrictions. Four of the Funds will operate as funds of funds pursuant to section 12(d)(1)(G) under the Act (the "Blended Funds") and will allocate their investments among the nine other series of the Trust (the "Select Funds"). Investors may also purchase shares of the Select Funds directly. The Adviser, a Texas non-profit, non-stock corporation, serves as investment adviser to the Trust, and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").[1]

2. The Trust, on behalf of each Fund, has entered into an investment advisory agreement with the Adviser ("Advisory Agreement"). The Advisory Agreement has been approved by the Trust's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust ("Disinterested Trustees"), as well as by each Fund's initial shareholder. Under the terms of the Advisory Agreement, the Adviser manages the investment of assets of each Fund and, subject to oversight by the Board, may delegate its investment advisory responsibilities to one or more subadvisers ("Subadvisers"). The Trust and the Adviser have entered into investment subadvisory agreements ("Subadvisory Agreements") with Subadvisers for all but two of the Select Funds. Under the Subadvisory Agreements, each Subadviser has discretionary authority to invest a portion of a Select Fund's assets subject to supervision by the Adviser, the Fund's investment objectives, policies and restrictions, and instructions of the Board. Each of the Subadvisers is, or will be, an investment adviser registered or exempt from registration under the Advisers Act. The Trust pays the Adviser a fee computed separately for each Select Fund based on the Fund's net asset value.

3. The Adviser monitors the Funds and the Subadvisers and makes recommendations to the Board regarding allocation of assets between Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors listed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. Each Subadviser will be paid by the Select Fund at a rate that has been negotiated with each Subadviser by the Adviser and approved by the Board.

4. Applicants request an order to permit the Adviser, subject to the oversight of the Board, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds ("Affiliated Subadviser").

5. Applicants also request an exemption from the various disclosure provisions described below that may require each Fund to disclose fees paid to the Subadvisers. The Trust will disclose for each Fund (both as a dollar amount and as a percentage of a Select Fund's net assets): (i) The aggregate fees paid to the Adviser and Affiliated Subadvisers; and (ii) aggregate fees paid to Subadvisers other than Affiliated Subadvisers ("Aggregate Fee Disclosure"). For any Fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders will rely on the Adviser's expertise to select one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Select Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain fully subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Subadvisers use a "posted" rate schedule to set their fees. Applicants state that the Adviser may not be able to negotiate below the "posted" fee rates with Subadvisers if each Subadviser's fees are required to be disclosed. Applicants submit that the nondisclosure of the individual Subadvisers' fees is in the best interest of the Select Funds and their shareholders, where the disclosure of such fees would increase costs to shareholders without an offsetting benefit to the Select Funds and their shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before any Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering shares of the Fund to the public.

2. The Trust will disclose in its prospectus(es) the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and to recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Disinterested Trustees, and the nomination of new or additional Disinterested Trustees will be at the discretion of the then existing Disinterested Trustees.

4. The Adviser and the Funds will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Disinterested Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be contained in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Subadviser. The Trust or the Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Subadviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified to permit Aggregate Fee Disclosure.

7. The Adviser will provide general investment advisory services to the Funds, including overall supervisory responsibility for the general management and investment of each Funds' assets, and, subject to review and approval by the Board, will: (i) Set each Fund's overall investment strategies, (ii) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets, (iii) when appropriate, allocate and reallocate each Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of the Subadvisers, and (v) ensure that the Subadvisers comply with each Fund's investment objectives, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No Trustee or officer of the Trust, or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. The Trust will include in its registration statement the Aggregate Fee Disclosure.

10. Independent counsel knowledgable about the Act and the duties of Disinterested Trustees will be engaged to represent the Disinterested Trustees of the Trust. The selection of such counsel will remain within the discretion of the Disinterested Trustees.

11. Shareholders of a Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Fund that have been approved by the shareholders of the Fund.

12. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

13. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29948 Filed 11–25–02; 8:45 am]

BILLING CODE 8010–01–P

[1] The Applicants request that any relief granted pursuant to the application also apply to any future series of the Trust and any other registered open-end management investment companies and their series that: (1) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (ii) use the multi-manager structure described in the application, and (iii) comply with the terms and conditions in the application (together "Future Funds," included in the term "Funds"). The Trust is the only existing investment company that currently intends to rely on the order. The Blended Funds do not currently intend to rely on the requested relief. If the name of any Fund should, at any time, contain the name of a Subadviser, it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25807; File No. 812–12788]

Kemper Investors Life Insurance Company, et al.; Notice of Application

November 20, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 ("1940 Act") approving certain substitutions of securities.

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SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute securities issued by the Scudder Variable Series II's Scudder Growth Portfolio and Scudder Blue Chip Portfolio (the "Scudder Portfolios') for securities issued by the Janus Aspen Series' Janus Growth Portfolio and Janus Growth and Income Portfolio, respectively (the "Janus Portfolios"), currently held by those unit investment trusts.

APPLICANTS: Kemper Investors Life Insurance Company ("KILICO") and KILICO Variable Annuity Separate Account (the "KILICO Separate Account"). KILICO is referred to as the "Insurance Company." The KILICO Separate Account is referred to as the "Separate Account."

FILING DATE: The Application was filed on February 27, 2002 and an amended Application was filed on November 13, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 20, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Applicants: c/o Debra P. Rezabek, Esq., Zurich Life, 1600 McConnor Parkway, Schaumburg, Illinois 60196. Copies to: Joseph R. Fleming, Esq., Dechert, Ten Post Office Square, South, Boston, Massachusetts 02109–4603 and Joan E. Boros, Esq., Jorden Burt LLP, Suite 400 East, 1025 Thomas Jefferson St. NW, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. KILICO is an Illinois stock life insurance company. KILICO is the depositor and sponsor of the KILICO Separate Account, a separate investment account established under Illinois law.

2. KILICO is a wholly-owned subsidiary of Kemper Corporation, a non-operating holding company. Kemper Corporation is a wholly-owned subsidiary of Zurich Group Holding, which is a wholly-owned subsidiary of Zurich Financial Services.

3. The KILICO Separate Account is registered with the Commission under the 1940 Act as a unit investment trust. The assets of the KILICO Separate Account support certain variable annuity contracts (collectively, "Contracts"). The variable annuity contracts issued by KILICO consist of flexible premium deferred variable annuity contracts and certificates. Two sub-accounts of the KILICO Separate Account each invests exclusively in shares representing an interest in a separate corresponding portfolio (each, a "Portfolio") of Janus Aspen Series (the "Janus Trust").

4. The variable annuity contracts issued by the Insurance Company are collectively referred to as the "Contracts." All of the Contracts expressly reserve the right of the Insurance Company, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account. The prospectuses describing the Contracts contain appropriate disclosure of this right.

5. Applicants propose to substitute Shares of each Scudder Portfolio for Shares of the corresponding Janus Portfolio (the "Substitution"). Applicants assert that the Substitution will benefit Contract owners by: (a) Consolidating the assets attributable to the Scudder Portfolio and the Janus Portfolio in a single portfolio, which may simplify the Contracts and allow the Insurance Company to more efficiently oversee the functioning of the underlying Portfolios; and (b) providing Contract owners who have their Contract values currently allocated to the Janus Portfolios with a similar Portfolio that has a lower total expense ratio than the Janus Portfolio. The Insurance Company ceased offering the Janus Portfolios as investment options for the Contracts issued after April 30, 2000.

6. As demonstrated in the chart below, each Scudder Portfolio has, and will continue to have, investment objectives, investment strategies and anticipated risks that are similar in all material respects to those of the corresponding Janus Portfolio:

Current portfolio	Investment objective	New portfolio	Investment objective
Janus Growth Portfolio	Seeks long-term growth of capital in a manner consistent with the preservation of capital.	Scudder Growth Portfolio	Seeks maximum appreciation of capital.
Janus Growth and Income Portfolio.	Seeks long-term capital growth and current income.	Scudder Blue Chip Portfolio	Seeks growth of capital and of income.

7. As demonstrated in the chart below, it is also expected that: (a) The investment management fees with respect to each Scudder Portfolio will be equal to or less than the investment management fees with respect to the each corresponding Janus Portfolio; and (b) the total expense ratio of each Scudder Portfolio will be less than the total expense ratio of the corresponding Janus Portfolio. The first chart below shows the investment management fees and total expenses of Shares of each Janus Portfolio and the corresponding Scudder Portfolio, on an audited basis, as of December 31, 2001. The second chart below shows the investment management fees and total expenses of Shares of each Janus Portfolio and the corresponding Scudder Portfolio, on an unaudited basis, as of June 30, 2002.

Portfolio	Advisory fees (as percentage of average daily net assets)	Other expenses (in percent)	Total expenses (as percentage of average daily net assets)
Janus Growth Portfolio	0.65	0.01	0.66
Scudder Growth Portfolio	0.60	0.03	0.63
Janus Growth and Income Portfolio	0.65	0.05	0.70
Scudder Blue Chip Portfolio	0.65	0.04	0.69

Portfolio	Advisory fees (as percentage of average daily net assets)	Other expenses (in percent)	Total expenses (as percentage of average daily net assets)
Janus Growth Portfolio	0.65	0.02	0.67
Scudder Growth Portfolio	0.60	0.05	0.65
Janus Growth and Income Portfolio	0.65	0.09	0.74
Scudder Blue Chip Portfolio	0.65	0.04	0.69

8. On or about the date of the initial filing of the Application, a supplement to the prospectus for each of the Contracts was filed with the Commission. The supplement describes the Substitution and the proposed timeframe for its completion as well as advises the Contract holders that they may transfer assets from each Janus Portfolio to another investment option available under their Contract without the imposition of any fee, charge, or other penalty that might otherwise be imposed through a date at least thirty (30) days following the date the Substitution is effected (the "Substitution Date"). The supplement was forwarded to those Contract owners who became such prior to May 1, 2000 and have either allocated Contract values to a Janus Portfolio or who maintain the ability to do so (the "Affected Contract Owners"). On or about the time the Commission approves of the amended Application, Affected Contract Owners will be sent a supplement to the relevant Contract prospectus that discloses to such Contract owners that the amended Application has been approved. Together with this disclosure, such Affected Contract Owners who have not previously received a prospectus for the Scudder Portfolios will be sent a prospectus for such Portfolios.

9. Affected Contract Owners will be sent a notice of the Substitution in the form of a Contract prospectus supplement. Confirmation of the Substitution will be mailed to Affected Contract Owners within five (5) days after the Substitution Date.

10. The significant terms of the Substitution described above include:

a. Each Scudder Portfolio will have investment objectives, investment strategies, and anticipated risks that are similar in all material respects to those of the corresponding Janus Portfolio.

b. The total expenses of each Scudder Portfolio will be the same as or less than those of the corresponding Janus Portfolio, assuming that the assets of each Scudder Portfolio do not decrease significantly from its present asset level.

c. Contract owners may transfer assets from each Scudder Portfolio or Janus Portfolio to another investment option available under their Contract without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date the initial prospectus supplement relating to the Substitution is filed with the Commission through a date at least thirty (30) days following the Substitution Date.

d. The Substitution will be effected at the net asset value of the respective shares of each Janus Portfolio and the corresponding Scudder Portfolio in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by Applicants, and with no change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in such Contract.

e. Contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or KILICO's obligations under the Contracts be altered in any way. KILICO will pay or cause to be paid all costs incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution.

f. Because the Contract owners will, before and after the Substitution transaction, still be invested in the same Separate Account, the Substitution will not be counted as a new investment selection or free transfer in determining the limit, if any, on the total number of Portfolios that Contract owners can select or transfer into during the life of a Contract.

g. The Substitution will not alter in any way the annuity or life benefits, tax benefits or any contractual obligations of Applicants under the Contracts.

h. The Substitution will not result in any tax liability for Contract owners.

i. KILICO will not receive, for three years from the date of the Substitution, any direct or indirect benefits from the Scudder Portfolios, their adviser or underwriter, or from affiliates of the Scudder Portfolios, their adviser or underwriter, in connection with assets attributable to the Contracts affected by the Substitution, at a higher rate than it received from the Janus Portfolios, their adviser or underwriter, or from affiliates of the Janus Portfolios, their adviser or underwriter, including without limitation Rule 12b–1 fees, shareholder service or administrative or other service fees, revenue-sharing or other arrangements. KILICO represents that the Substitution it carries out and its selection of the Scudder Portfolios were not motivated by any financial consideration paid or to be paid to it or to any of its affiliates by either of the Scudder Portfolios, their adviser or underwriter, or by the affiliates of the Scudder Portfolios, their adviser or underwriter.

j. Contract owners may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any

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applicable withdrawal or surrender charge.

k. Contract owners affected by the Substitution will be sent written confirmation of the Substitution that identify the substitutions made on behalf of that Contract owner within five (5) days following the Substitution Date.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(c) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to Section 26(c) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protections for which Section 26(c) was designed. Applicants believe the Substitution will benefit Contract owners by: (1) Providing an underlying investment option for subaccounts invested in a Janus Portfolio that is substantially similar in all material aspects to that Janus Portfolio; and (2) providing such Contract owners with and investment option with the same or lower investment management fee and a lower expense ratio than the current investment option.

3. Contract owners who do not want their assets allocated to the Scudder Portfolios would be able to transfer assets to any one of the other sub-accounts available under their Contract without charge until thirty days after the Substitution have elapsed.

4. The Insurance Company, on behalf of itself and its Separate Account, represent that the Substitution will not result in any change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in such Contract, or the annuity or life benefits, tax benefits or any contractual obligation of the Applicants under the Contracts. Contract owners will not incur any fees, expenses or charges as a result of the proposed transactions. Furthermore, the proposed transactions will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

5. Applicants will not complete the Substitution as described in the amended Application unless all of the following conditions are met:

a. The Commission will have issued an order approving the Substitution under Section 26(c) of the 1940 Act.

b. Each Affected Contract Owner will have been mailed initial disclosure of the Substitution following the initial filing of this Application (in the form of a supplement to the applicable Contract prospectus) that will describe the terms of the Substitution Contract owners' rights in connection with them and will have been mailed a prospectus with respect to the Scudder Portfolios.

c. Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of Portfolios as described in this amended Application, and that the transactions can be consummated as described herein under applicable insurance laws and under the various Contracts.

d. Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

Conclusion

Applicants assert that, for the reasons summarized above, the requested approval meets the standards set out in Section 26(c) and, therefore, the requested order approving the Substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29978 Filed 11–25–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Concentrax, Inc.; Order of Suspension of Trading

November 22, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Concentrax, Inc. ("Concentrax"), because of questions regarding: the accuracy and adequacy of assertions in press releases by Concentrax, concerning, among other things, the existence, status, and description of agreements announced by Concentrax in its press releases of October 9, 2002, October 23, 2002, and October 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, on Friday, November 22, 2002 through 11:59 p.m. EST, on Friday, December 6, 2002.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–30097 Filed 11–22–02; 12:50 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46849; File No. SR-Amex-2001–85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC, Relating to the Amex's Front-Running Rule

November 19, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.[3] The Commission is publishing this notice to solicit comments on the proposed rule, as amended, change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 4, 2002, the Amex filed Amendment No. 1 to the proposal. Amendment No. 1 clarifies the proposal by indicating that the proposal does not change either paragraph (d) of Commentary .03 to Amex Rule 111, "Restrictions on Registered Traders," or Commentary .05 to Amex Rule 950(d). On November 7, 2002, the Amex filed Amendment No. 2 to the proposal. Amendment No. 2 includes an Amex Notice that provides examples and interpretations of the operation of the proposed rule.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rules 24, "Block Transactions," 111, "Restrictions on Registered Traders," 175, "Specialist Prohibitions," and 950, "Rules of General Applicability," to develop a single comprehensive rule with respect to front-running. The Amex has submitted a Notice ("Amex Notice"), attached hereto as Exhibit A, that provides examples and interpretations of the operation of the proposed rule.

The text of the proposed rule change appears below. Proposed new language is in italics; proposed deletions are in brackets.

Block Transactions

Rule 24. *Rescinded* [(a) After learning in any way about any trade in any security executed or about to be executed on the Floor of the Exchange involving 10,000 shares or more, no member or employee of a member or member organization may initiate or transmit or cause to be transmitted to the Floor, for a period of two minutes following the print of such trade on the ticker tape, an order in the same security for an account in which any member or member organization or employee thereof has an interest. This does not preclude the supplying from the Floor of quotations and size of the market in a particular security or securities when such information has been requested, or when such information is furnished in the normal course of business in servicing public customers. The period during which the order may not be entered or transmitted to the Floor will be measured from the time of learning of the trade or proposed trade until the expiration of two minutes following the print of such trade on the tape, or until the expiration of two minutes following the print of the first of any series of transactions of 10,000 shares or more at the same price as the initial block.

(b) The restrictions of paragraph (a) shall not apply to:

(i) An order entered for the purpose of participating in the purchase or sale of the particular block about which the member or employee has learned;

(ii) A situation where a Floor Official expressly invites a member to participate in a difficult market situation;

(iii) An order to reduce or liquidate a position acquired pursuant to subparagraph (i) or (ii);

(iv) A bona fide arbitrage transaction or a transaction which is part of a purchase and sale or sale and purchase of securities of companies involved in a publicly announced merger, acquisition, tender offer, etc.;

(v) A transaction to offset a transaction made in error.]

* * * * *

Restrictions on Registered Traders

Rule 111(a) through (h) No change.

* * * Commentary

.01 and .02 No change.

.03(a) and (b) No change.

(c) [No member or member organization shall execute or cause to be executed, on the Exchange, any order for any account in which such member, member organization, or any member, allied member, or approved person in such organization or officer or employee thereof, is interested or for any discretionary account serviced by the member or member organization, in contravention of any Exchange policy against front-running of transactions that the Exchange may from time to time adopt and make known to its members.] *Front-Running Policy. If a member or person associated with a member or member organization executes or causes to be executed for an account in which such member, member organization or person has a direct or indirect interest or for an account with respect to which such member or person exercises investment discretion, any transaction to take advantage of material, non-public information which can reasonably be expected to have an immediate, material and favorable impact in relation to any such transaction, such member, member organization or person may be in violation of just and equitable principles of trade (Article V, Section 4(h)). Such transactions include, but are not limited to:*

(i) A transaction in the same security when such member or person has acquired knowledge of the imminent execution of an order expected to have an immediate, material and favorable impact in relation to the member's or person's transaction;

(ii) A transaction in any security-future product or option on a stock or stock index when such member or person has acquired knowledge of the imminent execution of a stock or stock program transaction expected to have an immediate, material and favorable impact in relation to the member's or person's transaction;

(iii) A transaction in any option on a stock or stock index or in a stock or stock program, when such member or person has acquired knowledge of the imminent execution of a transaction in any futures, stock index futures, or security-futures product expected to have an immediate, material and favorable impact in relation to the member's or person's transaction;

(iv) A transaction in any security-future product or in a stock or stock program, when such member or person has acquired knowledge of the imminent execution of a transaction in any option on a stock, index, or futures expected to have an immediate, material and favorable impact in relation to the member's or person's transaction.

Notwithstanding the foregoing, a member, member organization or person associated with a member organization who implements a proprietary market strategy involving, for example, a stock program and a related stock index options transaction by executing the stock index options trade(s) prior to the execution of the stock program will not be deemed to be in violation of this policy. The Front-Running Policy, however, does not create a "safe harbor" with respect to other possible violations of the Exchange's rules or federal securities laws. For example, if the member, member organization or person executes or causes to be executed a transaction in one market to take advantage of such member's, member organization's or person's imminent transaction in a related market, that member, member organization or person may be engaging in manipulative activity in violation of Exchange rules and federal securities laws.

In determining whether a member, member organization or person has taken advantage of material, non-public information, it is not necessary for the Exchange to demonstrate that another person has been disadvantaged. Further, such member, member organization or person may be in violation of just and equitable principles of trade regardless of whether any person who may have been disadvantaged has given permission for such trading. The information, however, will only be considered non-public until either (i) all the information and any changes thereto of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the information can no longer reasonably be expected to have an immediate, material and favorable impact in view of the passage of time since the information was received.

For the purposes of this Rule, a person may be deemed to have caused a trade to be executed on the basis of material non-public information if such person transmits information regarding trade negotiation on the Floor so that a

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transaction may be effected in another market center to take advantage of the immediate, material and favorable impact reasonably expected to result from such trade negotiation. Further, this could be the case even if the trade negotiations do not result in a transaction.

This Rule shall apply to any agency or proprietary transaction effected on the Exchange. This is the case if: (i) such transaction ("Exchange transaction") is part of a group of related transactions that together have the effects prohibited by the Rule regardless of whether one or more of the other related transactions were effected on other market centers; or (ii) the Exchange transaction by itself had such effects. Further, a member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.

(d) No change.

.04 through end. No change.

* * * * *

Specialist Prohibitions

Rule 175. (a) through (c) No change.

Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175 (a) through (f) No change.

(g) Prohibition Against Front-Running of Blocks

[In Information Circulars No. 82–37, No. 85–115 and No. 99–147 (dated July 6, 1982, November 29, 1985 and September 14, 1990 respectively), the Exchange advised members and member organizations that they should not trade in options or in underlying securities by taking advantage of their possession of material, non-public information concerning block transactions in these securities. The Exchange noted that it would be improper for a member or person associated with a member who has knowledge of a block transaction in any security underlying an option or of a block transaction in the option covering that security, before information concerning the block transaction has been made publicly available, to take advantage of the non-public information in his possession and execute or cause to be executed an order (1) to buy or sell an option, while in possession of non-public information concerning a block transaction in the underlying stock, or (2) to buy or sell an underlying security, while in possession of non-public information concerning a block transaction in an option covering that security, for an account in which such member or associated person has an interest or for an account with respect to which such member or associated person exercises investment discretion.] The prohibitions against front-running stated in [such Information Circulars] *Rule 111, Comm. .03(c)* shall take precedence over any requirements stated in these Guidelines. Thus, a specialist may not establish an offsetting option position in a specialty stock if he is in possession of material, non-public information *in any way* concerning [a block transaction in] such stock.

(h) through (l) No change.

* * * * *

Rules of General Applicability

Rule 950 (a) through (c) No change.

(d) No change.

* * * Commentary

.01 through .03 No change.

.04 *Rescinded* [It may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (i) an originating order and a solicited order, (ii) an order being facilitated, or (iii) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (i) all the terms of the originating order and any changes in the terms and conditions of the order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Commentary .04, an order to buy or sell a "related instrument," means, in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.]

.05 No change.

(e) through end. No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In the past, the Amex has adopted three rules and one guideline and issued no fewer than five Information Circulars expressing the prohibition against using non-public market information ("front-running").

With some exceptions, Amex Rule 24 prohibits proprietary trades on the Amex floor in equities for two minutes after the tape print of a 10,000-share block on the Amex floor in the same equity. When the Amex adopted Amex Rule 24 in 1971, the Amex only traded equities, and Amex Rule 5, "Over-the-Counter Execution of Equity Securities Transactions," (limiting off-Board trades) was in place. Accordingly, Amex Rule 24 is limited to trades in equity securities occurring on the Amex.

Subsequently, the Amex adopted Amex Rule 111, Commentary .03(c), which prohibits proprietary or discretionary transactions in violation of the Exchange's policies against front-running. The Exchange issued five Information Circulars to express the policy against front-running.[4]

Paragraph (g) of the "Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175" applies the front-running prohibitions to equities specialists in connection with their option trades.

In June 2000, the Amex adopted Rule 950(d), Commentary .04, which prohibits proprietary front-running of solicited, facilitated, and/or crossed options transactions with an order to buy or sell an option of the same class, an order to buy or sell the underlying security of such class, or an order to buy or sell any related instrument.

According to the Amex, these rules and policies developed over time in response to specific needs and are not comprehensive in that they only address certain types of information, specified markets, and/or particular products. For example, Amex Rule 24 prohibits only an equity trade on the Amex that is effected with knowledge of an impending equity block trade also effected on the Amex.

In the course of preparing proposed rules to accommodate the introduction of single stock futures, the Amex realized that its current rules relating to front-running did not cover this new product, and that this served as an occasion to review more generally the Amex's rules governing front-running and related activity. As a result of this review, the Exchange determined that the Amex, its members, and the public would be better served by a front-running rule that was more comprehensive and broader conceptually than the several separate rules and interpretations that the Exchange had adopted and issued over the years.

Accordingly, the proposal has been drafted to clarify that front-running in any "securities" product in any transaction by Amex members or member organizations involving the Amex's market in any way is prohibited. The Exchange also has prepared an "Amex Notice," attached as Exhibit A, that the Amex intends to issue to members and member organizations following Commission approval of the proposed rule change.

(2) *Basis*

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2001–85 and should be submitted by December 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

Exhibit A

Member Firm Regulation

Amex Notice

Date:

To: Members and Member Organizations

From:

Subject: Revised Front-Running Rule

The Exchange recently received SEC approval to consolidate and update our front-running rules and policies. The text of the revised rule, Rule 111, Commentary .03(c), is attached. The revised rule (the "Rule") is designed to cover all types of front-running. Accordingly, Rules 24 and 950(d), Commentary .04, which also dealt with front-running, have been rescinded. The Rule prohibits any front-running involving a trade executed or attempted on the Amex or executed or attempted in any other market based on market information obtained on the Amex or advanced knowledge of other material non-public information. The foundation of the Exchange's front-running prohibition is that it is a violation of just and equitable principles of trade for a person with material non-public information of the pending release of news or an imminent transaction in a security to take advantage of that information by effecting trades in that security or related securities. In the past, it has been most common to think of front-running in terms of options trades executed in front of a block trade in the underlying stock. And we expect questions about front-running will continue to arise most often in that context. However, the revised Rule encompasses the possibility that any imminent, significant transaction in a security (*e.g.*, common stock, options, security futures product, or stock index product) or in stock index futures could have an impact on the price of that security and related securities. Front-running occurs when a person takes advantage of non-public information about such a transaction. Front-running can also arise when a person takes advantage of advanced knowledge of research reports, corporate news or other material non-public information. The purpose of this notice is to provide interpretations and examples to clarify these and other aspects of the Rule.

Terms

Any Transaction

Typically, only a block (*e.g.*, 10,000 shares or more) or equivalent-sized transaction in an equity, option or security futures product will trigger application of the Rule. A sequence of transactions that aggregate to block size for the same or related accounts can also trigger the Rule. The trades that take advantage of the triggering transaction need not be of block size. Front-running can also arise from advanced knowledge of research

[4] Specifically, Information Circular 79–12 prohibited proprietary options transactions front-running block transactions in the underlying security. Information Circular 80–36 prohibited proprietary and agency options transactions front-running block transactions in the underlying security as well as equity transactions front-running option blocks. Information Circular 82–37 alerted the membership to disciplinary action taken for options transactions front-running block facilitations in the underlying securities. Information Circular 85–115 prohibited transactions in index options front-running block transactions in the underlying component securities. Information Circular 90–147 prohibited transactions in index warrants front-running block transactions in the underlying component securities.

[5] 17 CFR 200.30–3(a)(12).

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reports, corporate news or other material non-public information.

Transactions that take advantage of such information must be "purposeful". For example, in the case of research reports, trading activity establishing, increasing, decreasing, or liquidating a position in a security in anticipation of the issuance of a research report in that security is inconsistent with just and equitable principles of trade to the extent that the trading is for the purpose of profiting (or avoiding losses) from the report's anticipated impact on the market. Trading activity is "purposeful" if it is undertaken with the intent of altering a firm's position in a security to take advantage of the investor interest that is anticipated on publication of the research report. Hence, trading activity generally would not violate the Rule if it was conducted while effective information barriers (*i.e.*, "Chinese Walls") were in place between trading and research, it was done in response to unsolicited customer orders or the trading was based on research done solely for in-house use and was not in any way intended for external publication. (This interpretation is derived from language in NASD IM–2110–4.)

Non-Public Information

Market information will be considered non-public until either (i) the information and any changes thereto are disclosed to the trading crowd or (ii) the information can no longer reasonably be expected to have an immediate, material and favorable impact in view of the passage of time since the information was received. Corporate information and research reports will be considered non-public until either (i) the information and any changes thereto have been disclosed to the public (via a news service or similarly widespread method of information dissemination) and a reasonable period of time has elapsed for the information to be comprehended or (ii) the information can no longer reasonably be expected to have an immediate, material and favorable impact in view of the passage of time since the information was received.

Immediate, Material and Favorable Impact

Immediate impact means that, as soon as it is released, the information (corporate news, research report, order to be executed, etc.) itself would, upon release, be expected by a reasonable market professional to have an impact on the price of any security in which a front-running transaction was effected.

Material means that the information would be considered important by a reasonable market professional in relation to the security in which a front-running transaction was effected.

Favorable means that the information will cause a price movement in the direction needed to profit from (or avoid a loss through) the front-running transaction.

Acquired Knowledge

For purposes of this Rule, "acquired knowledge" means both obtaining information and understanding its importance. Violation of the Rule requires the purposeful use of the information obtained by the member or associated person for personal gain, to benefit a firm account, or to "tip" another person. A member or associated person will not be presumed to have acquired knowledge of non-public information if the information is possessed by an affiliate on the other side of an effective information barrier (*i.e.*, "Chinese Wall").

"Related" Security

The following are examples of groups of securities which are related to each other:

1. The underlying stock(s)
   Listed options on that stock
   Single-stock future on that stock
   Any index in which the stock comprises 10% or more of the index value
   Any equity-linked term notes (derivative products based on performance of the underlying stocks) such as STRIDES℠ or SPARQS℠
   Any index-linked notes (such as MITTS®) in which the underlying stock comprises 10% or more of the index value
2. An Exchange Traded Fund ("ETF": *e.g.*, Portfolio Depositary Receipts and Index Fund Shares) or a similar equity-traded derivative or Trust Issued Receipts ("TIR": *e.g.*, a HOLDRS℠ or similar product)
   Component stocks comprising, at least, 10% of the NAV of the ETF or TIR
   Listed option on the ETF or TIR
   Listed option on component stock(s) comprising, at least, 10% of the NAV of the ETF or TIR
   Futures contracts on the ETF or TIR, or single stock futures on component stock(s) comprising, at least, 10% of the NAV of the ETF or TIR
   Any related index, ETF or TIR (which share, to any degree, underlying component stocks) plus all securities related to that related index, ETF or TIR

A Proprietary Market Strategy (so-called "self Front-Running")

Example: Believing a stock to be undervalued, a trading desk buys the stock, its call options, and its single stock futures. The trader on the desk knows that purchases in one market can be expected to raise the price in the related products. Regardless of the timing or sequence of transactions in these various products, these purchases, to take advantage of the perceived under-valuation of the security, could constitute an acceptable market strategy. The presence of other factors, however, might cause this conduct to be violative activity.

Does Not Create a "Safe Harbor"

Even though "self front-running" is not a violation of the front-running Rule, that doesn't mean trades done in anticipation of additional activity in a stock or related security may not constitute manipulation or other violative activity.

Example: A trading desk determines to buy 100,000 shares of a stock, knowing that the purchase can be expected to raise the stock's price. Accordingly, and immediately before buying the stock, the desk buys 500 calls and sells 500 puts. After the stock purchase causes the stock price to rise, the desk liquidates the options positions at a profit. While this activity would not violate the front-running prohibition, it would raise manipulation concerns.

Customer May Not Give Permission

Example: An institutional customer asks its broker where it can buy 100,000 shares of XYZ. The brokerage house says it can supply the stock up $1 from the last sale, but, if the customer allows the house to buy calls or sell puts first, it can supply the stock to the customer up only 50¢. The customer agrees, and the house buys 1,000 calls or sells 1,000 puts on the Amex before crossing 100,000 shares up 50 ¢. This is prohibited front-running. Customer permission does not excuse the violation.

Transactions

In the Same Security

After learning in any way about an imminent trade in a security about to take place on the Amex Floor that is expected to have an immediate, material and favorable impact, no member or employee of a member or member organization ("member") may initiate or transmit or cause to be transmitted to the Floor or to any other market place an order in the same security for an account in which any member or member organization or employee thereof has a direct or indirect interest or for an account with respect to which such member or person exercises investment discretion (collectively, a "member account") until such time as the information concerning the trade is no longer non-public. Similarly, after learning in any way about such an imminent trade in another market, no member may initiate or transmit or cause to be transmitted to the Amex Floor an order in the same security for a member account until information concerning the trade is no longer non-public. This would not, of course, preclude a legitimate, proprietary market activity (such as block facilitation) or a legitimate, proprietary market strategy.

Example: An Amex floor broker overhears a second floor broker at an adjacent booth accept an order to execute a facilitation of 100,000 shares of an inactive stock up $2 from the current offer. Before the facilitation trade is executed, the first floor broker places orders to buy the stock at the current offer price on two ECNs and one regional exchange. These orders are prohibited front-running.

In any Security Future Product or Option on a Stock or Stock Index Related to the Imminent Execution of a Stock or Stock Program Transaction

Same concept as that described above in the section titled "In the Same Security" except this section deals with a combination of related securities.

Example: After receiving an institutional order to buy a basket of the components of an index expected to have an immediate, material and favorable impact on the prices of the component stocks, but before executing the program order, a brokerage house buys an equivalent amount of the calls or sells an equivalent amount of puts overlying that index on the Amex. This is prohibited front-running.

A Transaction in any Option on a Stock or Stock Index or in a Stock or Stock Program Related to the Imminent Execution of a Transaction in any Futures, Stock Index Futures, or Security Futures Product (Including Single Stock Futures)

Same concept as that described above in the section titled "In the Same Security" except this section deals with a combination of related securities.

Example: After receiving an institutional order to sell 1,000 futures contracts on a stock expected to have an immediate, material and "favorable" impact on the price of the futures and related securities, but before representing the order in the pit, a brokerage house buys put or sells call options on the stock on the Amex. This is prohibited front-running.

A Transaction in any Security Futures Product or in a Stock or Stock Program Related to the Imminent Execution of a Transaction in any Option on a Stock, Index, or Futures

Same concept as that described above in the section titled "In the Same Security" except this section deals with a combination of related securities.

Example: After being solicited to participate as seller in a 1,000-contract transaction in near-term, at-the-money calls of XYZ expected to have an immediate, material and "favorable" impact on the price of XYZ stock, but before the options trade is presented to the Amex crowd, the solicited broker/dealer buys an equivalent number of XYZ single-stock futures and/or XYZ shares in the "cash" market. (This is sometimes known as "run fronting" and violates our rules.)

Example: After being solicited to participate as buyer in a 5,000-contract transaction in puts of ZYX expected to have an immediate, material and "favorable" impact on the price of ZYX stock, but before the options trade is presented to the CBOE crowd, the solicited broker/dealer sells an equivalent number of ZYX shares on the Amex. (This is also known as "run fronting" and violates our rules.)

Example: A member executes a 2,500 contract futures transaction on XYZ stock on a futures market at a price $1 above the current market. Before that trade is printed, the member takes an offer to buy non-fungible futures on XYZ traded on the Amex. This is prohibited front-running.

Transactions Covered But Not Expressly Enumerated in the Rule

Example: After receiving an institutional order to buy on the Amex 100,000 shares of a HOLDRS, which order is expected to have an immediate, material and favorable impact on the price of the HOLDRS and related securities, but before representing the order in the crowd, a brokerage house buys on the offers on another exchange shares in (10) component stocks which comprise 50% of the HOLDRS. This is prohibited front-running.

[FR Doc. 02–29947 Filed 11–25–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46848; File No. SR–CSE–2002–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Cincinnati Stock Exchange, Inc., To Establish a Pilot Liquidity Provider Fee and Rebate for Intra-CSE Trading in Nasdaq Securities

November 19, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2002, The Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 13, 2002 the CSE amended the proposed rule change.[3] The Exchange filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its schedule of transaction fees to establish an incentive for providing liquidity on the CSE. The text of the proposed rule change is below. Proposed additions are in italics. Proposed deletions are in brackets.

Chapter XI

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)–(f) No change to text

(g) Proprietary (principal) Transactions

(1)*(A)* All Designated Dealers *in securities other than Nasdaq securities,* except those acting as Preferencing Dealers or Contributing Dealers, will be charged $0.0025 per share ($0.25/100 shares) for principal transactions [including ITS transactions].

(1)(B) For a pilot period commencing October 1, 2002 and lasting until March 31, 2003, CSE members that execute orders in Nasdaq securities against previously displayed quotes/orders of other CSE members shall pay $0.004 per share for such execution. The Exchange shall pass on to the CSE member displaying the quote/order executed against $0.003 per share and the Exchange shall retain $0.001 per share.

(2)–(4) No change to text

(h)–(r) No change to text

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CSE proposes to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-CSE execution in Nasdaq securities. By "intra-CSE execution" the CSE means any transaction that is executed on the CSE for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction. The CSE believes that the proposed rule accomplishes two strategic objectives: (1) It resolves the issue of member-to-member access fees; and (2) it provides an incentive for members to display orders in the CSE, thereby increasing the liquidity available to investors.

The CSE currently does not permit members to charge other members for intra-CSE trades executed through CSE systems. Unlike the Nasdaq

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See November 12, 2002 letter from Jennifer M. Lamie, Esquire, CSE, to Katherine England, Assistant Director, Divison of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the CSE changed the expiration date of the pilot program from October 31, 2003 to March 31, 2003. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 13, 2002, the date the CSE filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

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environment, the CSE does not permit some members to charge for access to their liquidity while restricting others from doing so. Recognizing, however, that new CSE members may wish to continue being compensated for providing liquidity, *i.e.*, displaying orders on the CSE, the CSE proposes a mechanism whereby all CSE members active in the trading of Nasdaq securities, whether alternative trading systems or traditional market makers, will benefit by displaying orders on the CSE. In this manner, the CSE will provide equal regulation of its members, while promoting the growth of liquidity on the CSE.

Specifically, the CSE proposes to amend CSE Rule 11.10(g)(1) to establish a Liquidity Provider Fee for intra-CSE executions of Nasdaq securities. Currently, CSE Rule 11.10(g)(1) provides that Designated Dealers, except those acting as Preferencing Dealers or Contributing Dealers, will be charged $0.0025 per share for principal transactions, including Intermarket Trading System transactions. The $0.0025 per share charge is applied to both sides of the Dealer-to-Dealer transaction, thereby generating $0.005 per share for the CSE. The Exchange is amending this provision by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing through CSE systems against a previously displayed quote/order, $0.004 per share. The Exchange will then pass on to the liquidity provider, *i.e.*, the party providing the displayed quote/order, $0.003 per share with the Exchange retaining $0.001 per share.

By adding CSE Rule 11.10(g)(1)(B), the Exchange is limiting the Liquidity Provider Fee to Nasdaq securities traded on the CSE, *i.e.*, Tape C securities, as defined under CSE Rules. While the Liquidity Provider Fee represents a reduction in the revenues received by the Exchange per intra-CSE transaction in Nasdaq securities, the CSE believes that the fee will provide an incentive for CSE members to provide liquidity, and therefore, will generate increased volume for the CSE. The pilot program commenced on October 1, 2002, and will expire on March 31, 2003, if not renewed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5)[7] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The CSE believes the proposed rule change is also consistent with Section 6(b)(4) of the Act,[8] in that it is designed to provide for the equitable allocation of reasonable, dues, fees, and other charges among CSE members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it involves a member due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2002–16 and should be submitted by December 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29946 Filed 11–25–02; 8:45 am]

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[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(5).
[8] 15 U.S.C. 78f(b)(6).
[9] 15 U.S.C. 78s(b)(3)(A)(ii).
[10] 17 C.F.R. 240.19b–4(f)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46851; File No. SR–NASD–2002–159]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., to Extend a Pilot Amendment to NASD Rule 4120 Regarding Nasdaq's Authority To Initiate and Continue Trading Halts

November 19, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).
[5] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).
[11] 17 CFR 200.30–3(a)(12).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a pilot amendment to NASD Rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The purpose of this filing is to extend the pilot until May 15, 2003. Accordingly, there is no new proposed rule language. Nasdaq will implement the proposed rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.[6] On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis expiring on October 27, 2001.[7] Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1[8] after finding that the proposed rule change was consistent with the requirements of the Act, including Section 15A of the Act.[9] Since that time, the pilot period for the rule has been extended on several occasions.[10]

According to Nasdaq, as a result of the decentralized and electronic nature of the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes that the rule should remain in effect on an uninterrupted basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[11] including Section 15A(b)(6) of the Act,[12] which requires, among other things, that a registered national securities association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In a letter dated July 27, 2001, Instinet Corporation ("Instinet") commented on the proposed rule change as originally proposed and currently in effect. Nasdaq has filed a proposed rule change—SR–NASD–2001–75—to modify the rule in certain respects and to make the rule permanent.[13] Nasdaq believes that the amendments to the rule proposed in SR–NASD–2001–75 respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. On October 2, 2002, the American Stock Exchange ("Amex") submitted a letter commenting on SR–NASD–2001–75. Nasdaq plans to file an amendment to SR–NASD–2001–75 that will respond to Amex's comments. Pending the filing of this amendment and final Commission action on SR–NASD–2001–75, however, Nasdaq believes that the pilot period of the current rule should be extended to allow the rule to remain in effect on an uninterrupted basis.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

Nasdaq has requested that the Commission waive the pre-filing notice requirement of at least five business

[6] Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001) (SR–NASD–2001–37).
[7] Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission (July 27, 2001).
[8] Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (August 3, 2001) (SR–NASD–2001–37).
[9] 15 U.S.C. 78o–3.
[10] Securities Exchange Act Release No. 44870 (September 28, 2001), 66 FR 50701 (October 4, 2001) (SR–NASD–2001–60); Securities Exchange Act Release No. 45344 (January 28, 2002), 67 FR 5022 (February 3, 2002) (SR–NASD–2002–14); Securities Exchange Act Release No. 45851 (April 30, 2002), 67 FR 31858 (May 10, 2002) (SR–NASD–2002–57); Securities Exchange Act Release No. 46559 (September 26, 2002), 67 FR 63003 (October 9, 2002) (SR–NASD–2002–125).
[11] 15 U.S.C. 78o–3.
[12] 15 U.S.C. 78o–3(b)(6).
[13] Securities Exchange Act Release No. 45355 (January 29, 2002), 67 FR 5351 (February 5, 2002) (SR–NASD–2001–75).
[14] 15 U.S.C. 78s(b)(3)(A).
[15] 17 CFR 240.19b–4(f)(6).
[16] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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days and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii).[17] The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate continuously through May 15, 2003, while the Commission considers Nasdaq's request for permanent approval. For these reasons, the Commission waives both the five-day pre-filing requirement and the 30-day operative waiting period.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–159 and should be submitted by December 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29941 Filed 11–25–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46852; File No. SR–NYSE–2002–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Proposed Amendment to Exchange Rule 123D: Openings and Halts in Trading

November 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 29, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to NYSE Rule 123D[3] with respect to openings, reopenings and halts in trading for stocks traded on the Exchange. Specific changes to shorten the minimum time period between tape indications and reopenings in stocks that are subject to a trading halt during the trading day are proposed to be made.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 123D: Openings and Halts in Trading

(1) Delayed Openings/Halts in Trading—It is the responsibility of each specialist to ensure that registered stocks open as close to the opening bell as possible, while at the same time not unduly hasty, particularly when at a price disparity from the prior close. Openings and reopenings should be timely, as well as fair and orderly, reflecting a professional assessment of market conditions at the time, and appropriate consideration of the balance of supply and demand as reflected by orders represented in the market.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See SR-NYSE–2002–31 (August 12, 2002) (codifying the Exchange's policy on trading halts and delayed openings in NYSE Rule 123D).

Specialists should, to the best of their ability, provide timely and impartial information at all phases of the opening process. Specialists should ensure adequate personnel are assigned and call upon additional clerical and relief specialist resources to assist in order management and Crowd communication, when appropriate. It is also incumbent upon specialists to seek the advice of Floor Officials when openings are delayed or when a halt in trading may be appropriate due to unusual market conditions.

Brokers should recognize the difficulty in providing accurate information in a constantly changing situation, and that significant changes are often occasioned by single orders or substantial interests delivered via DOT. Brokers should make every effort to ascertain the client's interest as early as possible and to inform the specialist so that such interest can be factored into the opening process. Brokers should communicate to clients the problems caused by delaying their interest until the last minute. Brokers should expect to have time to communicate the essential facts to their clients and to react to the changing picture. They should not expect, however, to be able to delay the opening for every last fragment of this change, and should recognize their obligation to a timely opening. Once a relatively narrow range of opening possibilities is given, the broker and his or her client should have sufficient information to enter a final order. In this regard, brokers should advise their clients against limits which are not firm, or are based solely on where the opening looked at the time the information was given. Brokers should not expect to be given endless opportunities to adjust those limits. Whenever possible the broker should have discretion within a range of the client's interest, and have the power to react to last minute changes without having to go back to the phone. This is particularly true for orders in amounts that represent a small fraction of the total opening volume, but applies to all orders. Brokers must recognize that orders or cancellations merely dropped on the counter can be lost or misplaced, and should hand the order directly to the specialist or his or her assistant and orally state the terms. Failure to do so could result in a monetary error to the broker as well as the specialist.

Floor Officials participate in the regulatory process by providing an impartial professional assessment of unusual situations, as well as advice with respect to pricing when a significant disparity in supply and demand exists. The specialist, however, has ultimate responsibility in this regard, and while a Floor Official's approval may be a mitigating factor, it will not exonerate a specialist when performance has been deemed not satisfactory.

A specialist should consider the following areas of specialist performance when involved in an unusual market situation:

- An opening price change that is not in proportion to the size of an imbalance;
- Absence of an indication before a large opening price change;
- Inadequate support after a large opening price change, *i.e.*, lack of sufficient continuity and depth in the aftermarket;
- Absence of trading without good cause or Floor Official approval (or an unjustified or unreasonably delayed opening or halt in trading);
- Not obtaining appropriate Floor Official approvals for opening delays, trading halts, and wide price variations.

In addition, a Floor Official should be consulted as soon as it becomes apparent that an unusual situation exists, and a Floor Governor should be consulted if it is anticipated that the opening price may be at a significant disparity from the prior close. If an unusual situation exists, such as a large order imbalance, tape indications should be disseminated, including multiple indications if appropriate with the supervision of a Floor Official. A second Floor Official's opinion in a delayed opening is required if there is difficulty in arriving at a decision; if the size of the price change from the previous NYSE close is three points or more or represents a 10% change in price; or if the stock has not opened within 50 minutes after the opening of business or 20 minutes after an extended delayed opening time frame. All tape indications require Floor Official approval. (See Appendix—Floor Official Approval Form #3)

Exchange policy requires the dissemination of an indication in connection with any delayed opening—involving any stock which has not opened (or been quoted) by 10 a.m. In addition, the dissemination of an indication is mandatory for an opening which will result in a significant price change from the previous close:

Previous NYSE closing price.*	Price change (equal or greater than)
Under $10	1 point.
$10–$99.99	The lesser of 10% or 3 points.
$100 and over	5 points

*The above guidelines are applicable to Initial Public Officerings based on the offering price.

All indications require the supervision and approval of a Floor Official. If it involves a bank or brokerage stock, a Floor Director's approval is required. If a Floor Director is unavailable, a Floor Governor's or Senior Floor Official's approval must be obtained. In addition to the mandatory criteria, specialists should use their judgment as to when it is appropriate to seek Floor Official approval for disseminating a price indication.

Mandatory indication policy applies to a foreign-listed security only if the opening price will be at a significant price change (see chart above) from its closing price in the foreign market or the current price in the foreign market.

Mandatory indications for convertible preferred stocks are only required if an indication was disseminated in the underlying common stock.

In this regard the following procedures should be followed for delayed opening and trading halt indications:

- The length of time for the dissemination of indications should be in proportion to the anticipated disparity of the opening or reopening price from the prior sale.
- The number of indications should increase in proportion to the anticipated disparity in the opening or reopening price, with increasingly definitive, "telescoped" indications when an initial narrow indication spread is impractical.
- An indication should be published immediately when trading is halted for a non-regulatory order imbalance. Such indications should be broad enough to allow flexibility, but narrow enough to convey as accurate a picture of supply and demand as possible at the time. In most cases, a final indication with a one point spread would be appropriate. Further telescoping to one-half point could result in unnecessary delay due to a change in the terms of a pivotal order. Even if an indication is not disseminated, specialists should endeavor to provide brokers with an approximate range within which they believe a stock will open.
- Tape indications before the opening should be disseminated at 9:15 a.m., if possible, but any tape indications disseminated prior to 9:30 a.m. require the approval of a Floor Director or Floor Governor, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day.

ITS Pre-Opening Applications must be followed when necessary based upon the anticipated opening price. For example, a Pre-Opening Notification must be issued if a stock is going to open more than .10 of a point from a composite last sale under $15 or more than .25 of a point from a composite last sale of $15 or higher. The spread in the Pre-Opening Application may not exceed .50 of a point if the consolidated close is under $50 or one point if the consolidated close is $50 or higher with limited exception. If a Pre-Opening Application is required on an opening or any reopening and a tape indication is also issued, the indication satisfies the Pre-Opening Application requirement if it is also sent to the ITS participants by the specialist in the form of Pre-Opening Notification. In that case, the maximum ITS spread would not apply. Three minutes must elapse from the time a Pre-Opening Application is issued, and an additional one minute if subsequent notifications are required, before a stock should open.

As with other openings, tape indications are discretionary for IPO's with the approval of a Floor Director or Floor Governor except that it is mandatory if the opening price change as measured from the offering price meets the requirements for a mandatory indication.

If an indication is disseminated after the opening bell, it must be considered a delayed opening. In addition, any stock that is not opened with a trade or reasonable quotation within 30 minutes after the opening of business must be considered a delayed opening (except for IPO's) and requires Floor Official supervision, as well as an indication. That 30-minute time frame may only be extended by a Floor Director on a Floor-wide basis.

More than one indication should be disseminated if an opening will be outside the first indication or if the first indication had a wide spread, especially if the time frame for delayed openings has been extended by the Floor Director. A reduction in time between indications can be used when multiple indications are disseminated. Generally, a minimum of 10 minutes must elapse between the first indication and a stock's opening as measured by the time the indication appears on the PDU. However, when more than one indication is disseminated, a stock may open five minutes after the last indication provided that at least 10 minutes must have elapsed from the dissemination of the first indication.

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With respect to a post-opening trading halt, a minimum of five minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open three minutes after the last indication, provided that at least five minutes must have elapsed from the dissemination of the first indication.

Tape indications must be disseminated with the approval of a Floor Official prior to the opening or reopening in a stock subject to a regulatory or nonregulatory halt in trading or a delayed opening. A Floor Governor should be consulted if a significant price change is anticipated.

A Floor Director or Floor Governor should be consulted in any case where there is not complete agreement among the Floor Officials participating in the discussion.

Floor Governors should keep apprised of developments when consulted, and should seek the assistance of Floor Directors, when appropriate, as soon as possible. Floor Governors should be prepared to balance the opportunity for brokers to participate in the opening with the need for timeliness, and should assist in identifying opportunities for opening the security, based upon the shifting supply and demand in conjunction with appropriate specialist participation.

Specialists should make every effort to balance timeliness with the opportunity for customer reaction and participation. Although the correct price based on information available at the time is always the goal, specialists and supervising Floor Governors should recognize customers' desires for a timely opening. When the specialist and Floor Governor agree that all participants have had a reasonable opportunity to participate, the specialist should open the stock.

Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials. A Floor Director, or in their absence a Senior Floor Governor, should be consulted if it is felt that trading should be halted in a bank or brokerage stock due to a potential misperception regarding the company's financial viability.

Sometimes the Client Service Division is notified by a listed company in advance of publication concerning news which might have a substantial market impact. That Division will immediately notify the Floor Operations Division, which will advise a Floor Director or Floor Governor, or in their absence a Floor Official.

If Client Service Division makes a recommendation that trading should be halted in a stock pending a public announcement by the company and the Floor Director or Floor Governor disagrees, he or she should seek the opinion of another Floor Director or Floor Governor. If the Floor Directors or Floor Governors are in agreement that trading should not be halted, trading should continue. If one of the two is in agreement with the recommendation to halt trading, then trading should be halted. While the time period may vary from case-to-case as a result of the particular circumstances involved, normally if the announcement is not made within approximately 30 minutes after the delay or halt is implemented, the Exchange may commence the opening or reopening of trading in the stock. Special care is taken to ensure that material non-public information is not disclosed, even inadvertently, as a result of someone overhearing details relating to trading halts or delayed opening situations.

Stopped stock prior to a halt should be printed as "sold" with the specialist as contra and adjusted if the reopening is at a more advantageous price.

It is important that all appropriate Floor Official forms are completed.

(2) Equipment Changeover—The Exchange has established a non-regulatory trading halt condition designated as "Equipment Changeover".

This condition may be used when trading in a particular security is temporarily inhibited due to a systems, equipment or communications facility problem or for other technical reasons.

In making a determination on whether to halt trading in a security because of an "Equipment Changeover" condition, it is important to keep in mind that once halted, trading cannot be resumed for at least 5 minutes even though, in many cases, the systems or equipment problem may be corrected in a much shorter period of time. Further, if, during the "Equipment Changeover" trading halt, a significant order imbalance (one which would result in a price change from the last sale of one point or more for stocks under $10, the lesser of 10% or three points for $10–$99.99 and five points if $100 or more—unless a Floor Governor deems circumstances warrant a lower parameter) develops or a regulatory condition occurs, the nature of the halt will be changed, notice must be disseminated and trading cannot resume until 10 minutes after the first indication after the new halt condition. This factor should be taken into consideration along with market condition factors in making a determination on whether to declare an official trading halt.

As with any other halt, an "Equipment Changeover" trading halt requires the approval of a Floor Governor or two Floor Officials. All other policies relating to non-regulatory halts would apply including price indications.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current policy on reopening trading after a stock has been halted during the trading day requires a minimum of 10 minutes to elapse between the first price indication and the reopening of a stock, and a minimum of 5 minutes to elapse after the last indication, when it does not overlap the prior indication, or a minimum of 5 minutes to elapse after the last indication when it overlaps the prior indication, provided in all cases that the minimum 10 minutes has elapsed since the first indication. It is proposed that these minimum time periods before reopening a stock be compressed from 10 to 5 minutes after the first indication, and to 3 minutes after the last indication, provided that the minimum 5 minutes has elapsed since the first price indication.

Over the years, in developing procedures for openings and reopenings, the Exchange has focused on providing a balance between timeliness and appropriateness of price discovery, *i.e.*, achieving a price that reflects market conditions at the time. As the speed of communications has increased, the Exchange believes it is desirable to provide the flexibility to react more quickly if circumstances are such so as to permit a reopening of trading in a shorter period of time. The Exchange believes that the revised procedures for reopening after a trading halt strike an appropriate balance between preserving the price discovery process while providing timely opportunities for investors to participate in the market. It should be noted, however, that it is not mandatory that a stock reopen at the end of the new, shorter time period. If at the end of the 5 minute period, an equilibrium has been established, there would be no purpose served by extending the halt for a longer period. It may be however, that more time will be needed to bring supply and demand into balance. Trading halts are overseen by Floor Officials who will use their judgment to see that the stock reopens at an appropriate time.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of section 11A(a)(1)[5] of the Act in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–39 and should be submitted by December 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority[6].

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29942 Filed 11–25–02; 8:45 am]

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[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1(a)(1).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46847; File No. SR–NYSE–2002–61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Establishing Fees for the NYSE Broker Volume Service

November 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE Broker Volume service ("Service"), a new information service that the Exchange plans to make available. The text of the proposed rule change is available at the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE proposes to establish fees for the Service, which provides access to the NYSE Broker Volume Database ("Database"), and permits vendors to provide subscribers with NYSE Broker Volume Reports. The Database is an electronic database of share volume information relating to trades that each participating Exchange member has entered into on the Exchange in each

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The NYSE provided the Commission with at least five business days' written notice of its intention to file this proposed rule change.

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Exchange traded issue.[5] The Database will be updated on both a daily and monthly basis. The Database will have information only from Exchange members who have specifically agreed that their trades may be included in the Database, and members may elect whether to have their information included on a daily only basis, a monthly only basis, or on a both daily and monthly basis. Users of the Database will be able to sort and recall information either based on the traded security or based on the participating Exchange member.

NYSE Broker Volume Reports will consist of the controlled displays of data reports that a vendor will create from the information contained in the Database. While these Reports will be provided by various vendors and will be subject to each vendor's display preferences or styles, the NYSE anticipates that these Reports would provide a ranking of executed NYSE volume by participating Exchange member for each NYSE-traded issue, with total volume per issue indicated for each participating member. Of course, in these Reports, vendors will be free to also present the NYSE Broker Volume data in such manner as they may consider useful to their subscribers, such as sortable by industry, sector, *etc.*

The Exchange proposes to charge $3,000 per month for access to the Database. The fee will entitle a recipient to use the information included in the database in any manner within its organization. It will also entitle a recipient to create NYSE Broker Volume Reports for distribution to subscribers. The Exchange will require each Database recipient to enter into an appropriate database-access agreement with the NYSE. That agreement will specify that a recipient that creates NYSE Broker Volume Reports for distribution to subscribers must identify distributed NYSE Broker Volume Reports as being based entirely on NYSE information. Note that there will be no restrictions on a vendor's separately displaying other markets' broker volume activity. A report that combines broker volume information from a variety of sources will also be permitted as long as the NYSE Broker Volume that is a component thereof is separately identified as such in the same display.

The Exchange proposes to charge vendors $100 per month for each subscriber device to which the vendor provides NYSE Broker Volume Reports. The Exchange will require each subscriber to execute a suitable subscriber agreement with the Exchange. The Exchange proposes to cap that monthly device charge at a maximum monthly amount of $2,500 per subscriber.

The Exchange notes that the Service directly responds to requests from professional NYSE market participants to increase the availability of NYSE broker volume information. Sell-side representatives use currently available share volume information to display their trading activity in specific Exchange-listed issues, while buy-side representatives use the data to determine which sell-side representative to select for execution of their orders. The Service will supplement existing services with a secure, controlled mechanism that will enhance the ability of these representatives to use such data and to demonstrate or observe trading patterns.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the provisions of section 6(b)(4) of the Act,[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change.

The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–61 and should be submitted by December 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29945 Filed 11–25–02; 8:45 am]

BILLING CODE 8010–01–P

[5] Note that the database will not contain information on bonds traded through the NYSE Automated Bond System.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 26, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Economic Impact Survey.

No's: 2214.

Frequency: On occasion.

Description of Respondents: Small business clients owners & employees, prospective entrepreneurs.

Responses: 1,700.

Annual Burden: 284.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–29930 Filed 11–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3468]

State of Indiana

Blackford County and the contiguous counties of Delaware, Grant, Jay and Wells in the State of Indiana constitute a disaster area due to damages caused by severe thunderstorms, high straight-line winds and tornadoes that occurred on November 10, 2002. Applications for loans for physical damage may be filed until the close of business on January 21, 2003 and for economic injury until the close of business on August 20, 2003 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 346811 and for economic injury is 9S8500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 20, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–29995 Filed 11–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region IV Regulatory Fairness Board

The Small Business Administration Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Tuesday, December 3, 2002 at 9 a.m. at the Miami-Dade Community College, Wolfson Campus, ETCOTA Auditorium, Room 7128 (1st Floor), 500 NE 2nd Avenue, Miami, FL 33132, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Maritza Perez in writing or by fax, in order to be put on the agenda. Maritza Perez, U.S. Small Business Administration, South Florida District Office, 100 South Biscayne Blvd. 7th Floor, Miami, FL 33131, phone (305) 536–5521 x103, fax (305) 536–5058, e-mail *maritza.perez@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: November 19, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–29996 Filed 11–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4210]

Culturally Significant Objects Imported for Exhibition Determinations: "The First Europeans: Treasures From the Hills of Atapuerca"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The First Europeans: Treasures from the Hills of Atapuerca," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at American Museum of Natural History, New York, NY, from on or about January 11, 2003, to on or about April 13, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 20, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–29988 Filed 11–25–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 194 meeting.

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SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation.

DATES: The meeting will be held December 10–12, 2002, starting at 12 p.m. on December 10, and at 1 p.m. on December 12.

ADDRESSES: This meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 194 meeting. The agenda will include:

- December 10:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve Minutes of Previous Meeting, Working Group Reports)
  - Review and Update revised Controller-Pilot Data Link Communication (CPDLC) Program
  - Approve required changes to the SC–194 Terms of Reference
  - Consider and approve the WG–1, Plans and Principles document for final review and comment (FRAC)
  - Determine near and mid-term SC–194 activities
  - Other Business
- December 11:
  - Working Group Meetings as scheduled by WG Leaders
- December 12:
  - Working Group Meetings Continued
  - Closing Plenary Session (Review Agenda, Working Group Reports, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 19, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–30053 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA announces that 534 individuals were denied exemptions from the Federal vision standard applicable to interstate truck drivers and the reasons for their denials.

FOR FURTHER INFORMATION CONTACT: Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (MC-PSD), 202–366–2987, Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption. (49 CFR 391.41(b)(10))

Accordingly, FMCSA evaluated 534 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria established to demonstrate that granting an exemption is likely to achieve an equal or greater level of safety that exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reason for denials.

The following 213 applicants lacked sufficient recent driving experience over three years:

Adair, Merle
Anaya, John
Angell, Michael
Babcock, Joel
Banks, Prentice
Beaton, Gary
Beebe, Morris
Bell, Demitra
Bender, Fred
Bickers, Harvie
Black, Paul
Blackwelder, Rickey
Bodiford, Jr., Cecil
Boger, Ronnie
Bonney, Stephen
Boone, Travis
Boyles, Richard
Brandano, Anthony
Brigstock, Jon
Brooks, William
Brown, John
Brown, Rodney
Browning, Paul
Burkett, Joshua
Burrell, Donald
Butts, Kenneth
Camp, Michael
Cannon, Dwayne
Carlin, Robert
Cassatt, Darryl
Casteel, William
Catillo, Jr., Ramon
Chestnut, Kevin
Chopp, Alvin
Clayton, Andrew
Cleary, Dennis
Cope, Daniel
Cornell, Chaney
Crook, Greg
Cutright, Orin
Dahmer, Jr., Herman
Davis, Stanley
Davison, Tommy
DeGross, Kevin
Denson, Leroy
Diehl, Paul
Dowell, Danny
Dreager, Donald
Durham, James
Edmonds, Michael
Edwards, Clint
Ellington, John
Ervin, Vernon
Estes, Tomie
Eubanks, Mack
Forgey, Richard
Franklin, Michael
Freeman, David
Freeman, Gina
Fuson, Patrick
Goodrum III, Horace
Gordy, James
Gorman, Michael
Green, Lorenzo
Grijalba, William
Gutierrez, Ramon
Hall, Joe
Hamaker, Mark
Hamrick, Donald
Hanson, Larry
Hardy, Roger
Harris, Melvin
Heller, Dennis
Henderson, Charles
Higgs, Cynthia
Hill, Clifford
Hill, Roderic
Hinshaw, Howard
Hogue, Larry

Holmes, Earl
Holmes, Gary
Hudson, David
Hustead, Dennis
Inge, Jr., William
Inman, David
Jackson, William
James, Larry
Janus, Frederick
Jessop, Charles
Johnson, Donald
Johnson, Jimmy
Judd, Jr., Paul
Johnson, Michael
Jones, Terry
Keenum, Gary
Kilduff, James
King, Colon
King, John
Klimek, Chuck
Knerr, Donald
Kolberg, Perry
Koonce, Jackie
Kuhn, Gregory
Lajoie, Mark
Lapha, David
Larivee, Sr., Robert
Lindsay, Stuart
Lowrey, Patrick
Maggard, John
March, Steven
Marshall, Barry
Martin, Frankie
Martin, John
Mayrose, Craig
McClure, Eric
McClure, Jr., Robert
McCurdy, Mark
McDaniel II, Otis
McEntyre, William
McIntosh, Nathan
Meeks, Jerry
Miles, Harry
Miles, Larry
Miller, Mark
Miller, Paul
Minton, Scotty
Miranda, Jr., Joseph
Moore, Edward
Moos, Douglas
Mueller, Louis
Murdoff, Elroy
Myre, John
Newlin, Ronald
Oathout, Kirby
O'Rourke, Scott
Paarlberg, Ralph
Parra, Saul
Pawlak, Robert
Payne, Kenneth
Peltier, Walter
Pepper, Martin
Pete, Freddy
Petre, James
Phillis, Kenneth
Phipps, Roy
Pieplow, Larry
Piersall, Woodrow
Pool, Justin
Prewitt, Jr., James
Prezzia, Ronald
Pribanic, John
Pullins, David
Purvis, James
Quenzer, Steve
Rains Jeffrey
Ray, Billy
Reilley, James
Reinsberg, David
Reszynski, Edward
Rhodes, Jr., John
Riley, Jr., James
Ritchie, James
Robel, Robert
Rodriguez, Amando
Rogers, Doyle
Rotondo, Mark
Royer, Raymond
Rubio, Hall
Ruffin, William
Russ II, John
St. John, Gary
Schaaf, James
Scott, Michael
Shepherd, Bruce
Shoemaker, Timothy
Shrewsbury, William
Simonye, Carl
Slagowski, Stanley
Slee, Donald
Snider, Delbert
Spaich, Timothy
Sparks, Wayne
Stewart, Troy
Stoddard, Paul
Summers, Donald
Sutter, John
Swartz, Jr., Arthur
Taylor, Richard B.
Taylor, Richard E.
Taylor, William
Tetreault, Dennis
Thomas, Jefferson
Tyler, Keith
Victoriano, Sr., Dennis
Wade, Wayne
Ward, Larry
Warfield, Richard
Weber, Kevin
Weekly, Wesley
Weller, Craig
West, Frank
West, Harvey
Whatley, Timothy
Wilgis, Foard
Wilkerson, Chad
Wilkinson, Charley
Williams, Edward
Wimberly, Hillard
Witt, Kenneth
Wood, Michael
Wurtele, Jon

The following 57 applicants had no experience operating a commercial motor vehicle (CMV) and therefore presented no evidence from which FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption:

Abrams, James
Baker, Joseph
Barber, Loyd
Barrett, Jr., Gregory
Biega, Mark
Blumle, James
Bonilla, William
Burr, Danny
Burr, Michael
Butero, Paula
Callahan, Sean
Collins, Eric
Conner, Glenn
Critchley, Jr., Philip
Currier, Thomas
Daniel, Jerry
Dean, Joseph
DeMario, Frank
DiPasqua III, Louis
Fry, Derwin
Gay, Gerald
Hamilton, Don
Hayes, Scott
Hopkins, John
Johnson, Larry
Jones, Abram
Martin, Jerome
Martinez, Jorge
Mays, Jerry
Miniex, Charles
Mitchell, Alex
Natola, Eric
Neely, Larry
Norton, Edwin
Paul, James
Quick, Robert
Rama, Alfred
Richards, Randall
Richardson, Valerie
Roberts, William
Romary, Frances
Simpkins, Raymond
Sylte, Monte
Talbert, Jeffrey
Tilley, Charles
Van Blaricom, Abelardo
Vieth, Kenneth
Vines, Michael
Vujicic, Steven
Waldron, Scott
Warren, Richard
Watkins, Kenneth
West, Brandon
Willis, Elva
Wilson, Kenneth
Withrow, Jr., Edgar
Yarbrough, Karry

The following 101 applicants do not have 3 years of experience driving a CMV on public highways with the vision deficiency:

Adams, Paul
Anderson, Peter
Armstrong, Lewis
Arsenault, Paul

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Bents, Ronnie
Borton, Duane
Braun, Douglas
Bryant, Emmit
Burton, Joseph
Clegg, Jr., Henry
Courtney, Mark
Holloway, Shawn
Kelly, Timothy
Kilian, Mark
Kling, James
Land, Reginald
Light, Jason
Lovelace, Rafe
Lucero, Michael
Maestas, Jacob
Mallette, Joseph
Martin, Lloyd
Mason, Daniel
McFadden, Thomas
McGrath, Daniel
McGuire, Dennis
McKnight, Tommy
Melchert, Richard
Melssen, Jeffrey
Milan, Jesus
Milner, Robert
Mirles, Eulogio
Monti, Joseph
Morphey, Gerald
Cranford, Kelvin
Campbell, Charles
Caylor, Dwight
Davis, Audley
Daming, Paul
Dean, Joseph
Derner, Raymond
Devonshire, Joseph
Dooley, Jr., Rex
Doster, Calvin
Dreyer, John
Morrical, Jade
Moseley, Susan
Murphy, Jr., Patrick
Myhre, Dexter
Naroznik, Marian
Nielsen, James
O'Brien, William
Owen, Charles
Patrick, John
Pedroza, Joaquin
Pegg, Rodney
Quick, Robert
Rapp, Kevin
Reyna, Leodan
Rhodes, Charles
Robinson II, Chester
Roberts, James
Rogers, Michael
Rohloff, Ryan
Runde, Faber
Salmon, Danny
Sandruck, Nathan
Schmidt, Brendon
Enamorado, Gilberto
Fore, Kenneth
Geer, Steven
Gentry, Steven
Gilbert, Kevin
Glisson, William
Hale, Bobby
Henderson, Antonio
Herendeen, Vern
Hickman, Richard
Hollins, Daniel
Schmitz, Cletus
Selix, Daniel
Shaull, Bruce
Skinner, Orville
Smith, Loran
Spicer, Manuel
Steepleton, Calvin
Stewart, Debbie
Stewart, Keith
Storm, Stacey
Trice, Demetris
Turman, Marvin
Turner, Emerson
Tyrpien, Janusz
Uchytil, Lori
Van Horn, Joseph
Warriner, Jonathon
Werner, Jeremy
Wesley, Loyal
West, Jr., Lewis
Wilson, Danny
Yachetta, Charles

The following 40 applicants do not have 3 years recent experience driving a CMV with the vision deficiency:

Azlin, Danny
Baxter, N. Keith
Bazzell, Claude
Bennett, Greggory
Berry, Patrick
Breakiron, Benjamin
Britt, Jr., William
Burnett, Jr., Walter
Buttacavoli, Philip
Clason, Lee
Clayton, Jr., Arthur
Cooper, Timothy
Dambroukas, Michael
Dishman, Bradley
Fryar, Sheldon
Hicks, Larry
Kibler, Gary
Kleinschmit, Francis
Kuykendall, Roscoe
Langford, Robert
Mack, Furnice
May, Charles
McFarlane, Sr., Larry
Metcalf, Jeffrey
Meyers, Mona
Miller, Mark
Newell, John
Pounds, Jerry
Safford, Winston
Salter, Johnny
Scace, Wayne
Shadley, Marcy
Sittler, Karl
Springler, Wolfgang
Stidams, Brad
Sundberg, Terry
Taylor, Jessie
Thompson, Larry
Tichota, Jeffrey
Townson, Grady

The following 3 applicants, Guy Manning, Percy Martin, and Christopher Watson, do not need the exemption because they already meet the vision standard at 49 CFR 391.41(b)(10).

The following 13 applicants do not qualify because they were charged with moving violation(s) in conjunction with CMV accident(s), which is a disqualifying offense under the exemption criteria:

Anders, Rodger
Borum, Frankie
Brooks, Arthur
Clark, Sandy
Engstad, John
Martinez, Jose
Miller, Abe
Moises, Pastrana
Patten, Charles
Schlabach, John
Schnell, Charles
Webster, Jr., Howard
White, Winston

The following 3 applicants, Clarence Downing, Clifford Foster, and Steven Marshall, had more than two CMV moving violations during a 3-year period or while the applications were pending. Each applicant is only allowed two moving citations.

One applicant, Mr. Charles Grant, does not have sufficient peripheral vision in the better eye to qualify for an exemption.

One applicant, Mr. Kent Richards, does not qualify for the exemption because he had other medical conditions making him otherwise unqualified under the Federal Motor Carrier Safety Regulations (FMCSRs).

The following 25 applicants' licenses were suspended during the 3-year period because of a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period.

Abraham, James
Adkins, Jesse
Baxley, Thomas
Blanchard, Stephen
Brooks, Jay
Brown, Pearlie
Closson, Jr., John
Conn, John
Craig, David
Esmay, Jr., Eldon
Evans, Frank
Fretz, Richard
Froy, Jr., Kenneth
Huebner, Lonny
Kennedy, Don
Leader, Randy
Leonard, Richard
Palmer, Derek

Pugh, Timothy
Rieck, James
Shell, Juan
Tolle II, Donald
Walters, Stephen
Weng, Yu
Westbrook, John

The following 6 applicants do not have verifiable proof of commercial driving experience during a 3-year period under normal highway operating conditions that would serve as an adequate predictor of future safety performance:

Adams, Paul
Ferguson, Dennie
Hamilton, Franklin
Mcalhaney, Leland
Todd, George
Wilson, Tracy

The following 30 applicants were involved in CMV accidents in which they contributed to the accident:

Abernathy, Kevin
Adams, Gene
Barenberg, Stanley
Bedford, Benjamin
Brockman, Jr., Thomas
Clark, Sandy
Cook, Freddy
Cotton, Erick
Cummins, William
Davis, John
Embry, Roger
Finger, Ronald
Freeman, Bobby
Good, Leslie
Gowens, Eddie
Green, Eugene
Holden, John
Jennings, Allen
Jones, Harold
Keller, Clarence
Mullins, Norman
Paschal, Eddie
Petersen, Lester
Sheets, Earl
Snitzer, Jeffrey
Stockton, Phinous
Swann, Jr., Clarence
Tomlinson, Calvin
Wagenmann, Dean
Wood, Bernard

The following 8 applicants do not demonstrate the level of safety required for interstate driving based on information received on state-issued driving reports due to excessive moving/non-moving violations during the 3-year period:

Andersen, Gary
Askin, James
Daniels, Randall
Grundy, Warren
Hahn, George
Hallman, Jerry
Hickenbottom, Walter
Kallhoff, Chad

The following 7 applicants do not hold licenses which allow operation of a CMV over 10,000 pounds gross vehicle weight rating (GVWR) for all or part of the 3-year period:

Berry, Jimmy
Cain III, Fitzhugh
Conn, John
Hartzog, Jay
Martin, Frankie
Mears, Ronnie
Thacker, Emory

The following 14 applicants were placed in the "other" category for having multiple reasons for denial:

Benedict, James
Berglund, Todd
Bosanek, Theodore
Craft, Gilbert
Hills, Jacob
Kowalsky, Richard
Lopez, Jose
O'Dell, George
Peebles, David
Peterson, James
Roseman, Dwight
Pryor, Sam
Smith, Terry
Woodruff, Bill

One applicant, Mr. Sheldon Fryar, does not qualify for an exemption because he submitted unverifiable documentation during the application process.

The following 5 applicants were disqualified because their vision had not been stable within the three-year period:

Baldwin, Sr., James
Coates, James
Malley, Albert
Wadley, Jimmie
Wren, Robert

One applicant, Mr. Roy Via, was disqualified because he held two CDLs simultaneously. Mr. Via was reported to the Department of Motor Vehicles in the two States where he obtained the CDLs. Mr. Via no longer holds two CDLs.

One applicant, Mr. William Hicks, Jr., was not qualified because he did not meet the vision standard in the better eye.

Finally, 4 Canadian drivers applied for an exemption. The reciprocity agreement between the United States and Canada does not permit Canadian drivers who do not meet the medical provisions in the National Safety Code of Canada but may have a waiver issued by one of the Canadian provinces or territories to drive CMVs in the United States.

Anderson, Wayne
Letkeman, Issac
Nott, Chad
Townson, David

Issued on: November 19, 2002.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 02–29973 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9663]

Notice of Public Workshop

AGENCY: National Highway Traffic Safety Administration, Transportation.

ACTION: Notice of public workshop.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will conduct a public workshop to allow interested parties to learn details about NHTSA's current techniques for data acquisition in dynamic rollover and handling testing. Information will be provided about instrumentation, outriggers, and other procedures. Two fully instrumented vehicles will be made available for inspection.

DATE AND TIME: The public workshop will be held on December 3, 2002, from 10 a.m. to 2 p.m.

ADDRESSES: The public workshop will be held at NHTSA's Vehicle Research and Test Center, Building 60, Transportation Research Center, 10820 State Route 347, East Liberty, Ohio 43319.

SUPPLEMENTARY INFORMATION: This meeting will not discuss NHTSA's October 7, 2002, proposal to establish a dynamic rollover test procedure and to incorporate information obtained from that testing in consumer information on rollover (67 FR 62528). Any comments on that notice should be submitted to Docket No. NHTSA–2001–9663; Notice 2, by November 21, 2002. This meeting is intended to be a technical meeting to allow interested parties to observe in person and hear details about NHTSA's current techniques for data acquisition in dynamic rollover and handling testing. Information will be provided about instrumentation, outriggers, and other procedures. Two fully instrumented vehicles will be made available for inspection. No information will be provided about the status, projected timetable or NHTSA's tentative conclusions for the final rule on dynamic rollover testing and the presentation of rollover information to the public in the New Car Assessment Program (NCAP).

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For security reasons, attendees must register in advance. To register, obtain directions to the Vehicle Research and Test Center, or request additional information, contact Jan Cooper at telephone (937) 666–4511 extension 208. If Ms. Cooper is not available, you may register by contacting Fred Seeberg at telephone (937) 666–4511 or Susan Weiser at telephone (937) 666–4511 extension 209.

The handouts and other information presented at the workshop will be available for public inspection in the DOT Docket in Washington, DC, within two weeks after the meeting. Copies of the materials will be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The material may also be accessed electronically at *http://dms.dot.gov*, at Docket No. NHTSA–2001–9663.

The handouts and other information presented at the workshop will also be available on NHTSA's Web site at URL *http://www-nrd.nhtsa.dot.gov/departments/nrd-01/presentations/presentations.html*.

Should it be necessary to cancel the meeting due to inclement weather or any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site at URL *http://www.nhtsa.dot.gov/nhtsa.announce/meetings/*. If you do not have access to the Web site, you may call for information at the contacts listed below and leave your telephone or telefax number. You will be contacted only if the meeting is postponed or canceled.

FOR FURTHER INFORMATION CONTACT: Jan Cooper at telephone (937) 666–4511 extension 208. If Ms. Cooper is not available, you may contact Fred Seeberg at telephone (937) 666–4511 or Susan Weiser at telephone (937) 666–4511 extension 209.

Issued on: November 20, 2002.

Joseph N. Kanianthra,

Associate Administrator for Applied Research.

[FR Doc. 02–30054 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Notification of the Susceptibility To Premature Brittle-Like Cracking of Older Plastic Pipe

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA is issuing this follow-up advisory bulletin to owners and operators of natural gas distribution systems to inform them of the susceptibility to premature brittle-like cracking of older plastic pipe and the voluntary efforts to collect and analyze data on plastic pipe performance. A Special Investigation Report issued by the National Transportation Safety Board (NTSB) described how plastic pipe installed in natural gas distribution systems from the 1960s through the early 1980s may be vulnerable to brittle-like cracking resulting in gas leakage and potential hazards to the public and property. On March 11, 1999, RSPA issued two advisory bulletins on this issue. The first bulletin reminded natural gas distribution system operators of the potential poor resistance to brittle-like cracking of certain polyethylene pipe manufactured by Century Utility Products, Inc. The second bulletin advised natural gas distribution system operators of the potential vulnerability of older plastic pipe to brittle-like cracking.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: *http://ops.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri, (202) 366–4503, or by e-mail at *gopala.vinjamuri@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 23, 1998, NTSB issued a Special Investigation Report (NTSB/SIR–98/01), *Brittle-like Cracking in Plastic Pipe for Gas Service*, that describes how plastic pipe installed in natural gas distribution systems from the 1960s through the early 1980s may be vulnerable to brittle-like cracking resulting in gas leakage and potential hazards to the public and property. An NTSB survey of the accident history of plastic pipe suggested that the material may be susceptible to premature brittle-like cracking under conditions of local stress intensification because of improper joining or installation procedures. Hundreds of thousands of miles of plastic pipe have been installed, with a significant amount installed prior to the early-1980s. NTSB believes any vulnerability of this material to premature cracking could represent a potentially serious hazard to public safety. Copies of this report may be obtained by calling NTSB's Public Inquiry Office at 202–314–6551.

RSPA has already issued two advisory bulletins on this issue. The first advisory bulletin, ADB–99–01, which was published in the **Federal Register** on March 11, 1999 (47 FR 12211), reminded natural gas distribution system operators of the potential poor resistance to brittle-like cracking of certain polyethylene pipe manufactured by Century Utility Products, Inc. The second advisory bulletin, ADB–99–02, also published in the **Federal Register** on March 11, 1999 (47 FR 12212), advised natural gas distribution system operators of the potential brittle-like cracking vulnerability of plastic pipe installed between the 1960s and early 1980s.

The phenomenon of brittle-like cracking in plastic pipe as described in the NTSB report and generally understood within the plastic pipeline industry relates to a part-through crack initiation in the pipe wall followed by stable crack growth at stress levels much lower than the stress required for yielding, resulting in a very tight slit-like openings and gas leaks. Although significant cracking may occur at points of stress concentration and near improperly designed or installed fittings, small brittle-like cracks may be difficult to detect until a significant amount of gas leaks out of the pipe, and potentially migrates into an enclosed space such as a basement. Premature brittle-like cracking requires relatively high localized stress intensification that may be a result from geometrical discontinuities, excessive bending, improper installation of fittings, and dents and gouges. Because this failure mode exhibits no evidence of gross yielding at the failure location, the term brittle-like cracking is used. This phenomenon is different from brittle fracture, in which the pipe failure causes fragmentation of the pipe.

The NTSB report suggests that the combination of more durable plastic pipe materials and more realistic strength testing has improved the reliability of estimates of the long-term hydrostatic strength of modern plastic pipe and fittings. The report also documents that older polyethylene pipe, manufactured from the 1960s through the early 1980s, may fail at lower stresses and after less time than was originally projected. NTSB alleges that

past standards used to rate the long-term strength of plastic pipe may have overrated the strength and resistance to brittle-like cracking of much of the plastic pipe manufactured and used for gas service from the 1960s through the early 1980s.

In 1998, NTSB made several recommendations to trade organizations and to RSPA on the need for a better understanding of the susceptibility of plastic pipe to brittle-like cracking. This advisory bulletin responds to one of the NTSB recommendations. It is that RSPA "[d]etermine the extent of the susceptibility to premature brittle-like cracking of older plastic piping (beyond that marketed by Century Utilities Products Inc.) that remains in use for gas service nationwide. Inform gas system operators of the findings and require them to closely monitor the performance of the older plastic piping and to identify and replace, in a timely manner, any of the piping that indicates poor performance based on such evaluation factors as installation, operating, and environmental conditions; piping failure characteristics; and leak history."

In order to obtain the most complete information on the extent of the susceptibility to premature brittle-like cracking of older plastic pipe, a meeting was convened in May 1999 with all the stakeholders to determine how information on older plastic pipe could be assembled. The meeting included representatives of the American Gas Association (AGA), the American Public Gas Association (APGA), the Gas Research Institute (GRI) (now the Gas Technology Institute), the Midwest Energy Association (MEA), and the Plastic Pipe Institute (PPI).

As a result of the May 1999 meeting, the Joint Government-Industry Plastic Pipe Study Committee was formed to address the recommendations of the NTSB Special Investigation Report. The committee held three separate meetings to prepare a draft response to the NTSB recommendations and a draft industry notification of brittle-like cracking problems, the subject of this advisory bulletin. The committee membership consisted of a representative from OPS, a gas distribution operator from AGA, and the Transportation Safety Institute. Meetings were facilitated by General Physics Corporation, Columbia, MD. One of the committee findings was that there is a lack of data available from the industry to completely identify older plastic pipe that is still in service and may be susceptible to brittle-like cracking.

This finding led to the formation of the Plastic Pipe Database Committee (PPDC) to develop a process for gathering data on future plastic pipe failures with involvement from the states, which have assumed the authority from OPS over gas distribution systems, where most of the plastic pipe is installed. The PPDC is comprised of representatives from Federal and State regulatory agencies and from the natural gas and plastic pipe industries. Members include AGA, APGA, PPI, the National Association of Regulatory Utility Commissioners (NARUC), the National Association of Pipeline Safety Representatives (NAPSR), and OPS.

The PPDC database is expected to improve the knowledge base of gas utility operators and regulators and is intended to help reveal any failure trends associated with older plastic piping materials. The PPDC's mission is "to develop and maintain a voluntary data collection process that supports the analysis of the frequency and causes of in-service plastic piping material failures." It provides an opportunity for government and industry to work together to evaluate the extent of plastic pipe performance problems and to mitigate any risks to safety. The PPDC started gathering data in January 2001 from OPS and State pipeline safety agencies. For more information on the PPDC, go to the AGA Web page (*http://www.aga.org*), and enter "PPDC" in the keyword search.

II. Advisory Bulletin (ADB–02–7)

To: Owners and Operators of Natural Gas Distribution Pipeline Systems.

Subject: Notification of the Susceptibility to Premature Brittle-like Cracking of Older Plastic Pipe.

Advisory: In recent years, brittle-like cracking has been observed in some polyethylene pipes installed in gas service through the early 1980s. This brittle-like cracking (also known as slow crack growth) can substantially reduce the service life of polyethylene piping systems.

The susceptibility of some polyethylene pipes to brittle-like cracking is dependent on the resin, pipe processing, and service conditions. A number of studies have been conducted on older polyethylene pipe. These studies have shown that some of these older polyethylene pipes are more susceptible to brittle-like cracking than current materials. These older polyethylene pipe materials include the following:

- Century Utility Products, Inc. products.
- Low-ductile inner wall "Aldyl A" piping manufactured by Dupont Company before 1973.
- Polyethylene gas pipe designated PE 3306. (As a result of poor performance this designation was removed from ASTM D–2513.)

The environmental, installation, and service conditions under which the piping is used are factors that could lead to premature brittle-like cracking of these older materials. These conditions include, but are not limited to:

- Inadequate support and backfill during installation.
- Rock impingement.
- Shear/bending stresses due to differential settlement resulting from factors such as:

—Excavation in close proximity to polyethylene piping
—Directional drilling in close proximity to polyethylene piping
—Frost heave

- Bending stresses due to pipe installations with bends exceeding recommended practices.
- Damaging squeeze-off practices.

Service temperatures and service pressures also influence the service life of polyethylene piping. Piping installed in areas with higher ground temperatures or operated under higher operating pressures will have a shorter life.

Gas system operators may experience an increase in failure rates with a susceptible material. A susceptible material may have leak-free performance for a number of years before brittle-like cracks occur. An increase in the occurrence of leaks will typically be the first indication of a brittle-like cracking problem. It is the responsibility of each pipeline operator to monitor the performance of their gas system. RSPA issues the following recommendations to aid operators in identifying and managing brittle-like cracking problems in polyethylene piping involving taking appropriate action, including replacement, to mitigate any risks to public safety.

Because systems without known susceptible materials may also experience brittle-like cracking problems, RSPA recommends that all operators implement the following practices for all polyethylene piping systems:

1. Review system records to determine if any known susceptible materials have been installed in the system. Both engineering and purchasing records should be reviewed. Based on the available records, identify the location of the susceptible materials. More frequent inspection and leak surveys should be performed on systems that have exhibited brittle-like cracking failures of known susceptible materials.

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2. Establish a process to identify brittle-like cracking failures. Identification of failure types and site installation conditions can yield valuable information that can be used in predicting the performance of the system.

3. Use a consistent record format to collect data on system failures. The AGA Plastic Failure Report form (Appendix F of the AGA Plastic Pipe Manual) provides an example of a report for the collection of failure data.

4. Collect failure samples of polyethylene piping exhibiting brittle-like cracking. Evidence of brittle-like cracking may warrant laboratory testing. Although every failure may not warrant testing, collecting samples at the time of failure would provide the opportunity to conduct future testing should it be deemed necessary.

5. Whenever possible record the print line from any piping that has been involved in a failure. The print line information can be used to identify the resin, manufacturer and year of manufacture for plastic piping.

6. For systems where there is no record of the piping material, consider recording print line data when piping is excavated for other reasons. Recording the print line data can aid in establishing the type and extent of polyethylene piping used in the system.

(49 U.S.C. chapter 601; 49 CFR 1.53)

Issued in Washington, DC, on November 21, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–30055 Filed 11–25–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34276]

Massachusetts Port Authority-Acquisition Exemption-Certain Assets of Boston and Maine Corporation

The Massachusetts Port Authority (Massport), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire from the Boston and Maine Corporation (B&M) certain railroad rights-of-way and related improvements, totaling approximately 1.45 miles, in Charlestown, Suffolk County, MA. Massport proposes to acquire B&M's right, title and interest in the rail line, known as the Mystic Wharf Branch line, between milepost 0.00 and milepost 1.45.[1]

Massport indicates that it does not intend to conduct rail operations over the line, but is acquiring it to preserve the rail right-of-way and availability of rail service to the Port. Massport further indicates that it may develop an adjacent haul road on the property at a later date. According to Massport, B&M will retain an exclusive permanent easement on the line for rail operations, and its affiliate Springfield Terminal Railway Company will continue to be responsible for providing rail operations over the line. Massport will not obtain the right or obligation to provide rail freight service on the line. Massport certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

The parties reported that they intended to consummate the transaction on November 13, 2002.

If the notice contains false or misleading information, the exemption is void *ab initio*.[2] Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34276, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Keith G. O'Brien, REA, CROSS & AUCHINCLOSS, 1707 L Street NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 19, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29876 Filed 11–25–02; 8:45 am]

BILLING CODE 4915–00–P

[1] B&M received Board authorization to abandon the above-described line pursuant to a decision in *Boston and Maine Corporation-Abandonment-in Suffolk County, MA*, STB Docket No. AB–32 (Sub-No. 92) (STB served Dec. 21, 2001).

[2] Massport simultaneously filed a motion to dismiss this proceeding, maintaining that the Board should not exercise jurisdiction over this transaction. The motion will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 15, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 26, 2002 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0019.

Form Number: FinCEN Form 101.

Type of Review: Revision.

Title: Suspicious Activity Report by the Securities and Futures Industry.

Description: Treasury is requiring certain securities broker-dealers to file suspicious activity Reports.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 8,300.

Estimated Burden Hours Per Respondent/Recordkeeper: 4 hours, 40 minutes.

Estimated recordkeeping/filing per response: 4 hours.

Estimated record (SAR) completion time: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 9,334 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–29990 Filed 11–25–02; 8:45 am]

BILLING CODE 4810–02–P

Corrections

Federal Register
Vol. 67, No. 228
Tuesday, November 26, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 010521133–1307–02; I.D. No. 050101B]

Endangered and Threatened Species; Final Rule Governing Take of Four Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids

Correction

In the issue of Tuesday, November 12, 2002, on page 68725, in the second column, in the correction of rule document 02–440, in the first line, the heading **"Appendix A to §227.203 [Corrected]"** should read, **"Appendix A to §223.203 [Corrected]"**,

[FR Doc. C2–440 Filed 11–25–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–1999–6411; Amendment No. 21–82]

2120–AH65

Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88)

Correction

In rule document 02–22622 beginning on page 57490 in the issue of Tuesday, September 10, 2002, make the following corrections:

1. On page 57490, in the first column, under the **ADDRESSES** heading, in the second paragraph, in the first line, "must" should read, "may".

2. On the same page, in the third column, under the **Background** heading, the subheading *"Amendment 25–102 and SRAF 88"* should read, *"Amendment 25–102 and SFAR 88"*.

3. On page 57491, in the second column, in the first paragraph, in the last line "require" should read, "required".

4. On page 57492, in the first column, in the second line, after "must" should read, "must be".

5. On the same page, in the third column, under the **Unfunded Mandates Assessment** heading, in the tenth line, "as" should read, "a".

6. On page 57493, in the first column, under the **Energy Impact** heading, in the seventh line, "under" should read, "under the".

PART 21—CORRECTED

7. On the same page, in the third column, in paragraph (d), in the seventh line, "of" should read, "if".

8. On the same page, in the same column, in the same paragraph, in the eighth line, "compiled" should read, "complied".

[FR Doc. C2–22622 Filed 11–25–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219, 225, and 240

[Docket No. FRA–2002–13221, Notice No. 1]

RIN 2130–AB51

Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments

Correction

In proposed rule document 02–24393 beginning on page 63022 in the issue of Wednesday, October 9, 2002, make the following corrections:

1. On page 63023, in the first column, in the first paragraph, in the 16th line, "at Appendix A of this NRPM." should read, "at *http://safetydata.fra.dot.gov/OSHA-materials*.".

2. On the same page, in the same column, in the **note** following the second paragraph, in the sixth line, "104" should read, "1904".

3. On page 63037, in the third column, in the last paragraph, in the eighth line from the bottom, "(a trend)" should read, "(a ~ trend)".

4. On the same page, in the same column, in the same paragraph, in the seventh line from the bottom, "(there was the" should read, "(there was ~ the".

[FR Doc. C2–24393 Filed 11–25–02; 8:45 am]

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Federal Register

Tuesday,
November 26, 2002

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 25, and 97
1-g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, and 97

[Docket No. 28404; Amendment Nos. 1–49, 25–108, 97–1333]

RIN 2120–AD40

1-g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airworthiness standards for transport category airplanes to redefine the reference stall speed for transport category airplanes as a speed not less than the 1-g stall speed instead of the minimum speed obtained in a stalling maneuver. The FAA is taking this action to provide for a consistent, repeatable reference stall speed; ensure consistent and dependable maneuvering margins; provide for adjusted multiplying factors to maintain approximately the current requirements in areas where use of the minimum speed in the stalling maneuver has proven adequate; and harmonize the applicable regulations with those currently adopted in Change 15 to the European Joint Aviation Requirements-25 (JAR–25). These changes will provide a higher level of safety for those cases in which the current methods result in artificially low operating speeds.

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Don Stimson, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1129; facsimile (425) 227–1320, e-mail *Don.Stimson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the Federal Register's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC, 20591, or by calling (202) 257–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov*.

Background

These amendments are based on notice of proposed rulemaking (NPRM) Notice No. 95–17, which was published in the Federal Register on January 18, 1996 (61 FR 1260). In that notice, the FAA proposed amendments to 14 CFR parts 1, 25, 36, and 97 to redefine the reference stall speed (V_{SR}) for transport category airplanes as the 1-g stall speed instead of the minimum speed obtained in the stalling maneuver. The FAA received nearly 40 comments from 12 different commenters on the proposals contained in Notice No. 95–17. As a result of these comments, this final rule differs in some aspects from the original proposals.

As explained in Notice No. 95–17, the stalling speed (V_S) is defined as the minimum speed demonstrated in the performance stall maneuver described in § 25.103 of 14 CFR part 25 (part 25). V_S has historically served as a reference speed for determining the minimum operating speeds required under part 25 for transport category airplanes. Examples of minimum operating speeds that are based on V_S include the takeoff safety speed (V_2), the final takeoff climb speed, and the landing approach speed. For example, under part 25, V_2 must be at least 1.2 times V_S, the final takeoff climb speed must be at least 1.25 times V_S, and the landing approach speed must be at least 1.3 times V_S.

The speed margin, or difference in speed, between V_S and each minimum operating speed provides a safety "cushion" to ensure that normal operating speeds are sufficiently higher than the speed at which the airplane stalls. Using multiplying factors applied to V_S to provide this speed margin, however, assumes that V_S provides a proper reference stall speed. Since V_S is the minimum speed obtained in the stalling maneuver, it can be less than the lowest speed at which the airplane's weight is still supported entirely by aerodynamic lift. If V_S is significantly less than this speed, applying multiplying factors to V_S to determine the minimum operating speeds may not provide as large a speed margin as intended.

A proper reference stall speed should provide a reasonably consistent approximation of the wing's maximum usable lift. Maximum usable lift occurs at the minimum speed for which the lift provided by the wing is capable of supporting the weight of the airplane. This speed is known as the 1-g stall speed because the load factor (the ratio of airplane lift to weight) at this speed is equal to 1.0 "g" (where "g" is the acceleration caused by the force of gravity) in the direction perpendicular to the flight path of the airplane. Speeds lower than the 1-g stall speed during the stalling maneuver represent a transient flight condition that, if used as a reference for the deriving minimum operating speeds, may not provide the desired speed margin to protect against inadvertently stalling the airplane.

For transport category airplanes, the minimum speed obtained in the stall maneuver of § 25.103 usually occurs near the point in the maneuver where the airplane spontaneously pitches nose-down or where the pilot initiates recovery after reaching a deterrent level of buffet, *i.e.*, a vibration of a magnitude and severity that is a strong and effective deterrent to further speed reduction. Early generation transport category airplanes, which had fairly straight wings and non-advanced airfoils, typically pitched nose-down near the 1-g stall speed. The minimum speed in the maneuver was easy to note and record, and served as an adequate approximation of the speed for maximum lift.

For the recent generation of high speed transport category airplanes with swept wings and highly advanced airfoils, however, the minimum speed

obtained in the stalling maneuver can be substantially lower than the speed for maximum lift. Furthermore, the point at which the airplane pitches nose down or exhibits a deterrent level of buffet is more difficult to distinguish and can vary with piloting technique. As a result, the minimum speed in the stalling maneuver has become an inappropriate reference for most modern high speed transport category airplanes for establishing minimum operating speeds since it may: (1) Be inconsistently determined, and (2) represent a flight condition in which the load factor perpendicular to the flight path is substantially less than 1.0 g.

In recent years, advanced technology transport category airplanes have been developed that employ novel flight control systems. These flight control systems incorporate unique protection features that are intended to prevent the airplane from stalling. They also prevent the airplane from maintaining speeds that are slower than a small percentage above the 1-g stall speed. Because of their unique design features, the traditional method of establishing V_S as the minimum speed obtained in the stalling maneuver was inappropriate for these airplanes. The FAA issued special conditions for these airplanes to define the reference stall speed as not less than the 1-g stall speed for the flight requirements contained in subpart B of part 25.

In these special conditions, the multiplying factors used to determine the minimum operating speeds were reduced in order to maintain equivalency with acceptable operating speeds used by previous transport category airplanes. Since the 1-g stall speed is generally higher than the minimum speed obtained in the stalling maneuver, retaining the current multiplying factors would have resulted in higher minimum operating speeds for airplanes using the 1-g stall speed as a basis for the reference stall speed. However, increasing the minimum operating speeds could impose costs on operators because payloads might have to be reduced to comply with the regulations at the higher operating speeds under some performance-limited conditions. Based on the service experience of the current fleet of transport category airplanes, the costs imposed would not be offset by a commensurate increase in safety.

Several airplane types with conventional flight control systems have also been certificated using the 1-g stall speed as a lower limit to the reference stall speed. Because of the potential deficiencies in using the minimum speed demonstrated in the stalling maneuver, the FAA has been encouraging applicants to use the 1-g stall speed methodology in lieu of the minimum speed obtained in the stalling maneuver. Applicants generally desire to use 1-g stall speeds because the 1-g stall speeds are less dependent on pilot technique and other subjective evaluations. Hence, 1-g stall speeds are easier to predict and provide a higher level of confidence for developing predictions of overall airplane performance. Again, reduced multiplying factors are applied to the 1-g stall speeds to obtain minimum operating speeds equivalent to the speeds that have been found acceptable in operational service. Using 1-g stall speeds ensures that the airplane's minimum operating speeds will not be unreasonably low.

Discussion of the Proposals

In Notice No. 95–17, the FAA proposed to define the reference stall speed in § 25.103 as a speed not less than the 1-g stall speed, rather than the minimum speed obtained in the stalling maneuver. This proposal was made to provide a consistent basis for use in all type design certification requirements for transport category airplanes. The FAA proposed to introduce the symbol V_{SR} to represent this speed and to indicate that it is different than the minimum speed obtained in the stalling maneuver, V_S.

In addition, the FAA proposed to reduce the multiplying factors that are used in combination with the reference stall speed to determine the minimum operating speeds by approximately 6 percent. This change would result in minimum operating speeds equivalent to those for most current transport category airplanes since the 1-g stall speed for these airplanes is approximately 6 percent higher than the minimum speed obtained in the stalling maneuver. Demonstrating a minimum stalling speed more than 6 percent slower than the 1-g stall speed, which is possible under the current standards, would provide an unacceptable basis for determining the minimum operating speeds. The proposed standards would prevent this situation from occurring. In this respect, the proposed standards would provide a higher level of safety than the existing standards.

However, the proposed reduced factors would allow lower minimum operating speeds to be established for those airplanes that have a minimum speed in the stalling maneuver approximately equal to the 1-g stall speed. One particular class of airplanes for which this applies is airplanes equipped with devices that abruptly push the nose down (*e.g.*, stick pushers) near the angle of attack for maximum lift. These devices are typically installed on airplanes with unacceptable natural stalling characteristics. The abrupt nose down push provides an artificial stall indication and acceptable stall characteristics, and prevents the airplane from reaching a potentially hazardous natural aerodynamic stall. Typically, the minimum speed obtained in this maneuver is approximately equal to the 1-g stall speed.

Traditionally, the existing multiplying factors have been applied to these airplanes. The proposal to define the reference stall speed as the 1-g stall speed would generally have no impact for these airplanes, but reducing the multiplying factors would allow lower minimum operating speeds to be established. Therefore, this proposal would allow these airplanes to be operated at speeds and angles of attack closer to the pusher activation point than has been experienced in operational service.

The FAA considered this reduction in operating speeds for pusher-equipped airplanes to be acceptable, provided the pusher reliably performs its intended function and that unwanted operation is minimized. The FAA has addressed the majority of these concerns in a revision to Advisory Circular (AC) 25–7, the "Flight Test Guide for Certification of Transport Category Airplanes." This revision, AC 25–7A, dated March 31, 1998, provides criteria for the design and function of stall indication systems, including arming and disarming, indicating and warning devices, system reliability and safety, and system functional requirements. The FAA plans to address other concerns, such as system design and manufacturing tolerances, and system design features like filtering and phase advancing, in a future revision to AC 25–7A.

In addition to proposing to define the reference stall speed as a speed not less than the 1-g stall speed and to reduce the multiplying factors for establishing the minimum operating speeds, the FAA also proposed to require applicants to demonstrate adequate maneuvering capability during the takeoff climb, en route climb, and landing approach phases of flight. During a banked turn, a portion of the lift generated by the wing provides a force to help turn the airplane. To remain at the same altitude, the airplane must produce additional lift. Therefore, banking the airplane (at a constant speed and altitude) reduces the stall margin, which is the difference between the lift required for the maneuver and the maximum lift capability of the wing. As the bank

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angle increases, the stall margin is reduced proportionately. This bank angle effect on the stall margin can be determined analytically, and the multiplying factors applied to V_{SR} to determine the minimum operating speeds are intended to ensure that an adequate stall margin is maintained.

In addition to the basic effect of bank angle, however, modern wing designs also typically exhibit a significant reduction in maximum lift capability with increasing Mach number. The magnitude of this Mach number effect depends on the design characteristics of the particular wing. For wing designs with a large Mach number effect, the maximum bank angle that can be achieved while retaining an acceptable stall margin can be significantly reduced. Because the effect of Mach number can be significant, and because it can also vary greatly for different wing designs, the multiplying factors applied toV_{SR} are insufficient to ensure that adequate maneuvering capability exists at the minimum operating speeds.

To address this issue, the FAA proposed to require a minimum bank angle capability in a coordinated turn without encountering stall warning or any other characteristic that might interfere with normal maneuvering. This requirement would be added to § 25.143 as a new paragraph (g). The proposed minimum bank angles were derived by adding a 15 degree allowance for wind gusts and inadvertent overshoot to a maneuvering capability the FAA considers necessary for the specific cases identified in the proposed new paragraph. These proposed maneuver margin requirements would increase the level of safety in maneuvering flight.

Consistent with the proposed maneuver margin requirements, the FAA proposed adding §§ 25.107(c)(3), 25.107(g)(2), and 25.125(a)(2)(iii) to reference § 25.143(g) in the list of constraints applicants must consider when selecting the minimum takeoff safety speed, final takeoff speed, and reference landing speeds, respectively. The normal all-engines-operating takeoff climb speed selected by the applicant would also have to provide the minimum bank angle capability specified in the proposed § 25.143(g).

Section 25.145(a) requires that there be adequate longitudinal control available to promptly pitch the airplane's nose down from at or near the stall in order to return to the original trim speed. The intent of this requirement is to ensure sufficient pitch control for a prompt recovery if the airplane is inadvertently slowed to the point of stall. The FAA proposed to change the wording of this requirement to replace "V_S" with "the stall," "§ 25.103(b)(1)" with "§ 25.103(a)(6)," and "at any speed" with "at any point." These changes would be consistent with the proposed change to the definition of the reference stall speed and the proposed reformatting of § 25.103.

Although compliance with § 25.145(a) must be demonstrated both with power off and with maximum continuous power, there is no intention to require flight test demonstrations of full stalls at engine powers above that specified in § 25.201(a)(2). Instead of performing a full stall at maximum continuous power, compliance will be assessed by demonstrating sufficient static longitudinal stability and nose down control margin when the deceleration is ended at least one second past stall warning during a one knot per second deceleration. The static longitudinal stability during the maneuver and the nose down control power remaining at the end of the maneuver must be sufficient to assure compliance with the requirement.

Section 25.207 requires that a warning of an impending stall must be provided in order to prevent the pilot from inadvertently stalling the airplane. The warning must occur at a speed sufficiently higher than the stall speed to allow the pilot time to take action to avoid a stall. The speed difference between the stall speed and the speed at which the stall warning occurs is known as the stall warning margin. The FAA proposed amending the size of the stall warning margin required by § 25.207(c) because of the change in definition of the reference stall speed.

Currently, the stall warning must begin at a speed exceeding V_S by seven knots, or a lesser margin if the stall warning has enough clarity, duration, distinctiveness, or other similar properties. Requiring the same seven knot warning margin to be provided relative to V_{SR} would result in an increase to the minimum operating speeds. This increase in the minimum operating speeds would be necessary to meet the maneuvering margin requirements proposed in § 25.143(g), which are defined relative to the stall warning speed. However, as discussed previously, requiring an increase to the minimum operating speeds would impose costs to airplane operators that cannot be justified by service experience.

On the other hand, if the stall warning margin were reduced to retain approximately the same stall warning speed, the warning would occur only one or two knots prior to reaching the 1-g stall speed. Although reaching the 1-g stall speed is not likely to be a catastrophic occurrence, the FAA considers such a small stall warning margin to be unacceptable. The FAA proposed requiring a stall warning margin of at least 3 knots or 3 percent, whichever is greater, relative to V_{SR}. The FAA's proposal was made on the basis that this margin represents a reasonable balance between providing the pilot with enough warning to avert an impending stall, and providing adequate maneuvering capability at the minimum operating speeds. This proposal would retain the existing level of safety.

The FAA proposed to require a larger stall warning margin for airplanes equipped with devices that abruptly push the nose down at a selected angle of attack (*e.g.*, stick pushers). Inadvertent operation of such a device, especially close to the ground, can have more serious consequences than a comparable situation in which the pilot of an airplane without the device inadvertently slows to V_{SR}. Therefore, the FAA proposed adding § 25.207(d) to require the stall warning, for airplanes equipped with one of these devices, to occur at least 5 knots or 5 percent, whichever is greater, above the speed at which the device activates. This proposal was made on the basis of retaining the existing level of safety for airplanes equipped with such devices.

The FAA proposed to add a new paragraph, § 25.207(e), to require that, in a slow-down turn with load factors up to 1.5 g and deceleration rates up to 3 knots per second, sufficient stall warning must exist to prevent stalling when recovery is initiated not less than one second after stall warning occurs. The FAA considered this proposed requirement necessary to provide adequate stall warning during a dynamic maneuver, such as a collision avoidance maneuver. In addition, this new paragraph would provide a quantitative requirement with which to assess whether "sufficient margin to prevent inadvertent stalling * * * in turning flight" has been provided as required by § 25.207(a). This proposal would increase the level of safety during maneuvering flight.

The FAA proposed to add a new paragraph, § 25.207(f), to require that stall warning be provided for abnormal airplane configurations likely to be used following system failures. This proposal would add a requirement currently contained in JAR–25 and is consistent with current transport category airplane designs. There would be no impact on the existing level of safety.

On modern transport category airplanes, the natural buffet or vibration

caused by the airflow separating and reattaching itself to the wing as the airplane approaches the stall speed is usually not strong enough by itself to provide an effective stall warning. Therefore, stall warning on modern transport category airplanes is usually provided through an artificial means, such as a stick shaker that shakes the pilot's control column. Production tolerances associated with these systems can result in variations in the size of the stall warning margin for different airplanes manufactured under the same approved type design.

The FAA considers the stall warning margins proposed in §§ 25.207(c) and (d) to be the minimum acceptable warning margins, and that these margins should not be reduced by production tolerances associated with a system added to the airplane to provide an artificial stall warning. The FAA intends for the proposed stall warning margins to be available at the most critical tolerance expected in production. Applicants would be expected to demonstrate compliance with the proposed stall warning margin either by flight testing with the stall warning system set to its critical tolerance setting, or by adjusting flight test data obtained at some other setting.

The tolerances associated with the stall warning system must also be considered in relation to the proposed minimum maneuvering requirements of § 25.143(g). As proposed, § 25.143(g) would require that the airplane be capable of reaching a minimum bank angle during a coordinated turn without encountering stall warning. Because the proposed requirements already provide the capability to overshoot the intended bank angle by 15 degrees, the small differences in the speed at which the stall warning system operates due to system tolerances are not as critical. Therefore, the FAA intends for the minimum bank angles in the proposed § 25.143(g) to apply at the designed nominal setting of the stall warning system. To ensure that large production tolerances do not adversely impact the airplane's maneuvering capability free of stall warning, the bank angle capability specified in the proposed § 25.143(g) should not be reduced by more than two degrees with the stall warning system operating at its most critical tolerance. Applicants would be expected to demonstrate this capability either by flight test with the system set to its critical tolerance, or by analytically adjusting flight test data obtained at some other setting.

To be consistent with the proposed revision of the definition of the reference stall speed, the FAA proposed to incorporate reduced multiplying factors throughout part 25, where appropriate, in requirements that use speeds based on a multiple of the reference stall speed. The FAA also proposed numerous minor wording and structural changes to various sections to improve editorial clarity and to harmonize with the wording and structure proposed for JAR–25. Note that the proposed change to the term "1.3 V_{SO}" in § 25.175(d) reflects not only the change in multiplying factor, but also corrects a typographical error. ("1.3 V_{SO}" should have been "1.8 V_{SO}.")

The FAA proposed to add the nomenclature "final takeoff speed" and "reference landing speed" and the abbreviations "V_{FTO}" and "V_{REF}" to denote these speeds, respectively, to part 1 of the FAR. These terms and abbreviations, which are commonly used in the aviation industry, would be referenced throughout the proposed amendments to part 25. The reference landing speed would be defined as the speed of the airplane, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the landing distance for manual landings. The term "landing screen height" refers to the height of the airplane at the beginning of the defined landing distance. This height is normally 50 feet above the landing surface (see § 25.125(a)), but approvals have been granted for steep approaches that use a landing screen height of 35 feet. The final takeoff speed would be defined as the speed of the airplane that exists at the end of the takeoff path in the en route configuration with one engine inoperative.

The FAA also proposed to add the abbreviations V_{SR}, V_{SRO}, and V_{SRI} to part 1, and use them in part 25 to denote the reference stall speed corresponding to different airplane configurations. In addition, the FAA proposed adding the abbreviation V_{SW} to part 1 to refer to the speed at which the onset of stall warning occurs.

The FAA proposed to amend § C36.9(e)(1) of Appendix C to part 36 by replacing "1.3 V_S + 10 knots" with "V_{REF} + 10 knots" and by removing the words "or the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, whichever speed is greatest." The words proposed for deletion would no longer be necessary because V_{REF} would denote the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane. Also, V_{REF} would refer to the speed at the landing screen height, regardless of whether that speed for a particular airplane is 1.3 V_S, 1.23 V_{SR}, or some higher speed.

In the same manner, the FAA proposed to amend § 97.3(b) by replacing "1.3 V_{SO}" with "V_{REF}." As noted above, V_{REF} would refer to the speed at the landing screen height used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, regardless of whether that speed for a particular airplane is 1.3 V_S, 1.23 V_{SR}, or some higher speed.

These proposals were discussed extensively with the European Joint Aviation Authorities (JAA) with the intent of harmonizing the certification requirements related to stall speed for transport category airplanes. The Joint Aviation Requirements (JAR) 25 prescribes the airworthiness standards for transport category airplanes that are accepted by the aviation regulatory authorities of a number of European states. The JAA introduced an equivalent proposal to the FAA's NPRM 95–17, called Notice of Proposed Amendment (NPA) 25B–215, to amend JAR–25 accordingly. The JAA's final 1-g stall requirements, which are equivalent to those adopted by the FAA in this rulemaking, were adopted by the JAA as part of Change 15 to JAR–25, dated October 1, 2000.

Discussion of the Comments

The FAA received nearly 40 comments from 12 different commenters on the proposals contained in Notice No. 95–17. The commenters include airplane pilots, manufacturers, operators, and the associations representing them, foreign airworthiness authorities, an organization specializing in flight testing, and private citizens. In general, the proposal to redefine the reference stall speed for transport category airplanes as the 1-g stall speed instead of the minimum speed obtained in a stalling maneuver was supported, although there were comments critical of specific details, and some commenters were supportive only if the current minimum speed method would be retained as an option that would be available for the certification of small transport category airplanes.

Those commenters who recommend retaining the minimum stall speed methodology for small transport category airplanes—small airplane manufacturers and the association representing them—believe that the proposed changes introduce additional cost and complexity into applicants'

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type certification programs with no increase in safety for this class of airplanes.

One manufacturer of small transport category airplanes notes that when 1-g stall speeds were determined for one of their airplanes, the resulting operating speeds were virtually the same as those determined using the current requirements. This commenter also states that variation in piloting technique remains an issue even if the stall speeds are defined as a 1-g condition, and a more expensive flight test data system is needed to determine where the 1-g stall break occurs. The commenter points out that straight (*i.e.*, non-swept) winged airplanes, for which the discussion in Notice No. 95–17 implied the current minimum speed method is adequate, will continue to be designed and produced in the future. On airplanes with swept wings, due to different stiffness characteristics between large and small airplanes, which result in different responses to aerodynamic influences, the minimum speed in the stalling maneuver is not difficult to obtain on small transport category airplanes. The commenter concludes that the current methods should be retained for airplanes weighing less than 75,000 pounds because of the costs involved in changing to the 1-g stall speed methodology for no apparent increase in safety. (100,000 pounds is suggested as an appropriate cutoff by another commenter.)

The FAA disagrees that the proposed rule changes significantly increases cost and does not increase safety. Cost data supplied by one commenter substantially overstates the incremental cost of the test instrumentation and other items needed to support a 1-g stall speed evaluation. This commenter allocates the entire cost of a new data collection system, including purchase, installation, and calibration, to the proposed rule change, stating that this new system would be needed to determine the "g-break" denoting the 1-g stall speed.

The only additional instrumentation the FAA considers necessary to determine the 1-g stall speed instead of the minimum speed in the stalling maneuver would be accelerometers capable of resolving the load factor normal to the flight path. At the minimum, one accelerometer aligned along the expected 1-g stall pitch angle may provide acceptable data. Determining the point at which the 1-g stall condition is reached is most readily accomplished by a continuous calculation of the load factor-corrected lift coefficient and noting the point at which this parameter is first a maximum. Experience to date with applicants voluntarily complying with the proposed requirements has not highlighted any significant difficulties in determining the 1-g stall speed using typically existing data recording equipment. These applicants have included manufacturers of both large and small transport category airplanes.

The FAA is not surprised that for one of the commenter's airplane types, the current requirements and the 1-g stall proposal yielded virtually the same minimum operating speeds. As noted in Notice No. 95–17 and repeated in the background discussion above, the proposed change to the multiplying factors that are applied to the reference stall speed to obtain the minimum operating speeds was intentionally chosen to yield equivalent operating speeds, on average, for current transport category airplanes. However, the proposed standards would prevent the reference stall speed from being more than six percent slower than the 1-g stall speed, which the current standards do not prohibit. In this respect, the proposed standards would provide a higher level of safety than the existing standards by ensuring that unreasonably low minimum operating speeds will not be obtained.

The FAA agrees that the use of a 1-g stall speed may not entirely remove the effect of pilot technique from being a factor during the flight tests to determine the reference stall speed. However, the use of a 1-g stall speed would significantly mitigate this effect. Subjective assessments of airplane behavior for identifying the stalled condition (using the criteria specified in § 25.201(d)) would no longer be used to determine the reference stall speed. (These criteria will continue to be used, however, for evaluating the airplane handling characteristics during the stalling maneuver.) Test pilot techniques that take advantage of these subjective assessments and allow unreasonably low load factors, and hence unreasonably low stall speeds, to be achieved would no longer be permitted.

In addition, it is usually much easier to measure airspeed accurately at the 1-g stall condition than at the minimum speed reached in the stalling maneuver. Based on the experience gained from the many type certification programs that have already used the 1-g stall speed methodology, the FAA has determined that this methodology provides a more consistent, repeatable reference stall speed than the existing method.

One commenter notes that the International Civil Aviation Organization's (ICAO) Airworthiness Technical Manual (Document 9051, 1987) uses the abbreviation V_{S1g} to denote the 1-g stall speed, which is the reference speed for determining the minimum operating speeds for transport category airplanes with a certified takeoff mass of over 5,700 kg. The commenter suggests that the FAA could further international standardization by adopting ICAO's V_{S1g} abbreviation to denote the reference stall speed as a part of the rulemaking to redefine the reference stall speed as a 1-g stall speed.

The FAA actively promotes international standardization and has been working closely with the regulatory authorities of Europe and Canada during this rulemaking. The FAA considered using the abbreviation V_{S1g} to denote the reference stall speed; however, the reference stall speed may not always be equal to the 1-g stall speed. It is only required to be no less than the 1-g stall speed. Other design constraints may dictate using a reference stall speed that is higher than the 1-g stall speed. Since the reference stall speed may be different than the 1-g stall speed, the abbreviation V_{SR} was proposed and has been adopted in § 1.2 to denote the reference stall speed. This abbreviation has also been adopted by the JAA of Europe and is expected to be adopted by the Canadian regulatory authority. There were no comments on the other proposed abbreviations nor on the proposed definitions for final takeoff speed and reference landing speed. Therefore, these abbreviations and definitions are adopted as proposed.

One commenter questions the reason for the new wording in § 25.103(a)(1) to describe the option of idle or zero thrust. The commenter does not see the new wording as an improvement in clarity. The current rule states that zero thrust must be used in determining the stalling speed, except that idle thrust may be used when it does not appreciably affect the stalling speed. Stated in this manner, the rule permits the use of zero thrust when idle thrust causes an increase in the stalling speed. On some turboprop airplanes, where flight idle thrust may be negative, a lower stall speed may be demonstrated using zero thrust than would occur with idle thrust.

The FAA considers such a loss of stall speed margin in a normal flight condition to be unacceptable. In Notice No. 95–17, the FAA proposed a change such that the reference stall speed must be determined with idle thrust, except in cases where that thrust level causes an appreciable decrease in the stall speed. For such cases, not more than zero thrust must be used. There were no comments regarding the substance of the proposed change; therefore, this section is adopted as proposed.

One commenter notes that while the proposal to the reference stall speed in terms of a 1-g stall speed would reduce the amount of scatter in the flight test data used to determine the stall speed, a significant amount of scatter would remain. To further limit the amount of experimental error inherent in the data analysis process, the commenter suggests defining the reference stall speed in terms of the maximum normal force coefficient instead of the maximum lift coefficient. Using the normal force coefficient would yield slightly higher reference stall speeds, which could penalize an airplane's load carrying capability due to the resulting increase in minimum takeoff and landing speeds, but certification costs might be reduced because the data reduction process would be simplified.

The FAA agrees that defining the reference stall speed in terms of the maximum normal force coefficient instead of the maximum lift coefficient may further reduce flight test data scatter and simplify data acquisition and analysis. However, these slight benefits are outweighed by the potentially significant economic penalties associated with the resulting higher reference stall speed. Many recent airplane types have been certified using 1-g stall criteria similar to those contained in Notice No. 95–17 and this experience does not indicate any significant problems in data quality or in the acquisition and analysis process. Data scatter using the proposed 1-g stall criteria is inconsequential compared to the data uncertainty inherent in the current stall speed definition. Therefore, the commenter's suggested change is not being adopted. However, the FAA would find it acceptable if an applicant proposed using the higher reference stall speeds derived from the maximum normal coefficient in order to simplify the data acquisition and analysis process. The proposed amendment need not be changed to allow this option.

A commenter suggests that it is technically more accurate in § 25.103(c) to refer to the lift coefficient in the definition of V_{CLMAX} as the load factor-corrected lift coefficient. The commenter also considers the proposed definition of V_{CLMAX} to be ambiguous and lacking in guidance material that would provide clarification. Other commenters made various editorial and formatting suggestions to further improve the clarity of § 25.103. The FAA agrees with these suggestions and has modified the proposal accordingly. In addition, the FAA proposes to revise Advisory Circular (AC) 25–7A, "Flight Test Guide for Certification of Transport Category Airplanes," to add clarifying guidance material. A notice of proposed advisory circular revisions was published in the **Federal Register** on November 21, 2002.

Detailed comments were received from one commenter regarding the effect of the proposed rules on airplanes equipped with devices that abruptly push the nose down (*e.g.*, stick pushers) to define the point of stall. As noted in Notice No. 95–17, this proposal would allow airplanes equipped with such devices that have a trigger point set close to or before $C_{L_{MAX}}$ to achieve lower minimum operating speeds than under the existing requirements, and hence, operate at speeds and angles-of-attack closer to the device activation point than has been experienced in operational service. The FAA considered this aspect of the proposal to be acceptable provided the device performs its intended function and unwanted operation is minimized.

The commenter points out that ensuring operation when desired and preventing unwanted operation are contradictory goals that result in design tradeoffs. Regardless of the design choice, however, allowing operation closer to the device activation point increases both the probability of reaching the activation point, where the device may fail to operate, and the probability of unwanted operation. Considering these aspects, the commenter contends that the proposed standards would reduce the level of safety relative to the current standards.

The commenter suggests adding the stipulation, for airplanes equipped with a device that abruptly pushes the nose down at a selected angle-of-attack, that V_{SR} must not be less than the greater of 2 knots or 2 percent above the speed at which the device activates. The commenter further suggests that this additional requirement need not apply to turbopropeller powered airplanes that demonstrate a significant reduction in stall speed in the one-engine-inoperative power-on condition. The commenter points out that this additional requirement is very similar in scope and intent to the Notice No. 95–17 proposed requirements for stall warning, where, in addition to the requirement applying to all transport category airplanes that stall warning be 3 knots or 3 percent above V_{SR}, the stall warning for airplanes equipped with devices that abruptly push the nose down at a selected angle-of-attack would be 5 knots or 5 percent above the speed at which the device operates. The commenter believes that the proposed stall warning requirements represent an acknowledgment that the class of airplanes cannot be treated the same as conventionally stalling airplanes with respect to minimum operating speeds and associated margins.

The FAA agrees with the commenter's analysis and fundamental principle that in terms of the protection from stall provided by such a device, the characteristics resulting from its operation, and its reliability and safety, there are significant differences from a conventionally stalling airplane. Also, the difference between the 1-g stall speed and the minimum speed obtained in the stalling maneuver for this class of airplanes is closer to 0 to 3 percent, rather than the 6 percent average for conventionally stalling airplanes upon which the reduction in operating speed factors was based. Permitting a reduction in the operating speeds for this class of airplanes could potentially result in a reduction in safety that is not justified by existing operational experience.

The commenter's suggested additional constraint on V_{SR} represents a reasonable means to retain approximately equivalent safety without penalizing airplanes for which the device trigger point is at an angle-of-attack well beyond $C_{L_{MAX}}$. Therefore, § 25.103(d) is revised accordingly to require, for airplanes equipped with a device that abruptly pushes the nose down at a selected angle-of-attack, that V_{SR} not be less than 2 percent or 2 knots, whichever is greater, above the speed at which the device operates. The suggested exception for turbopropeller powered airplanes that demonstrate a significant reduction in stall speed in the one-engine-inoperative power-on condition is not included, however, because the applicable minimum operating speeds already allow for a significant effect of power on stall speeds.

The effect of this provision is to increase the minimum operating speeds, relative to the Notice No. 95–17 proposals, for airplanes equipped with devices that abruptly push the nose down at a selected angle-of-attack, but only if the device activates at a speed higher than $V_{CL_{MAX}}$ (at a load factor of one) minus 2 knots or 2 percent. This requirement for a supplementary speed margin, in combination with criteria added to AC 25–7A, dated March 31, 1998, for system arming and disarming, indicating and warning devices, system reliability and safety, and system functional requirements are intended to provide an equivalent level of safety to the requirements existing prior to the adoption of this amendment. Other

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considerations, such as the effect of system design and manufacturing tolerances, and system design features like filtering and phase advancing are also relevant, and should be considered when showing compliance with the applicable requirements. The FAA is currently trying to harmonize its policy in these areas with those of Transport Canada and the JAA, and intends to add guidance in these areas in a future revision to AC 25–7A.

The FAA received several comments regarding the proposed addition of specific maneuvering requirements as a new § 25.143(g). One commenter suggests that the FAA should perform a rigorous study before including a specific gust margin in airplane maneuvering requirements. The commenter points out that the same atmospheric gust would have different effects at different airspeeds, and that using the same gust margin throughout causes the proposed after takeoff maneuvering requirement at V_2 speed to be unduly restrictive. Similarly, another commenter states that the need for a 15-degree overshoot capability should first be justified by the FAA. This commenter suggests that a 5-degree overshoot, as specified as an objective for accomplishing steep turns in the "Airplane Transport Pilot and Type Rating Practical Test Standards," would be more reasonable.

Several commenters claim that the proposed maneuvering requirements, particularly the one associated with the final takeoff speed (V_{FTO}), are excessive and would be difficult to meet without increasing the operating speeds. One commenter notes that for an airplane equipped with a stick pusher that activates near $C_{L\text{-}MAX}$, due to design tolerances for the stick pusher and stall warning systems, V_2 and V_{FTO} would most likely be set by the proposed maneuvering requirements rather than the 1.13 and 1.18 factors applied to V_{SR}, respectively. Another commenter notes that the maneuvering requirement associated with V_{FTO} relates to a one-engine-inoperative condition of short duration, after which the airplane is accelerated to the en route climb speed. This commenter suggests that a maneuvering bank angle of 30 degrees, the same as specified for the takeoff safety speed (V_2) one-engine-inoperative condition, would be more appropriate for this condition.

This commenter further states that for many existing large transport category airplanes, an early onset of natural stall warning results in a larger stall warning margin than the minimum margin required by the regulations. At V_{FTO}, these airplanes would have a maneuvering capability to stall warning of less than the proposed 40 degrees of bank, possibly as low as 27 degrees. Requiring 40 degrees of bank capability would necessitate an increase in V_{FTO}, which could affect the net takeoff flight path used for clearance of distant obstacles. Either a different departure path may be necessary in the event of an engine failure, or takeoff weight may have to be reduced. The commenter considers the existing rule to be adequate, and the potential penalties associated with the FAA's proposal to be unjustifiable.

This commenter also questions whether the proposed 40 degree bank angle requirement at V_{FTO} was based on a 25 degree bank angle limit used by many current flight guidance systems. If so, this commenter considers such reasoning to be flawed in that not all flight guidance systems use 25 degrees as their bank angle limit. In some cases, flight guidance systems are limited to a 15 degree bank angle at the final takeoff speed.

As a final comment on this section, this commenter suggests that if the FAA believes that increased bank angles are appropriate for the en route flight paths, which are of longer time duration, this need should be addressed separately from the takeoff flight path requirements. However, the commenter does not consider it necessary to do so as this commenter is unaware of any associated safety issues.

The FAA disagrees that the maneuvering requirements specified in the proposed § 25.143(g) are excessive, including the proposed 40 degree bank angle requirement at V_{FTO}. These maneuvering requirements are comparable to the maneuvering capability implied by the current regulations assuming the stall warning margin is near the regulatory minimum. Safety records and operating practices indicate that low speed maneuvering capability is a genuine concern. Some airports necessitate close-in maneuvering on a regular or contingency basis. Accidents and incidents have occurred due to windshear, icing, and high-lift device anomalies. The ability to tolerate such operational conditions can depend on the maneuvering capability at the designated minimum operating speeds.

The proposed maneuvering requirements consist of the minimum bank angle capability the FAA deems adequate for the specified regimes of flight combined with a further 15 degrees of bank angle to provide a safety margin for various operational factors. These operational factors include both potential environmental conditions (*e.g.*, turbulence, wind gusts) and an allowance for piloting imprecision (*e.g.*, inadvertent overshoots). Because this safety margin does not represent either a specific gust margin or expected piloting precision alone, the FAA does not consider it necessary to either perform a rigorous study of the effect of atmospheric gusts nor to restrict the size of the margin to a piloting test standards objective as suggested by the commenters. The allowance and magnitude of the proposed bank angle margin is also consistent with typical industry practice.

The maneuvering requirement at V_2 speed with one engine inoperative is derived from the 15 degree bank angle allowed under § 121.189(f) after takeoff plus the specified 15 degree safety margin. At the higher speed of V_{FTO}, after the airplane has transitioned to the en route configuration and is farther along in the flight path, it is reasonable to require additional maneuvering capability appropriate to that phase of flight. The FAA considers an additional 10 degrees of maneuvering capability to be a reasonable expectation for a minimum capability after transitioning to the en route configuration and accelerating to the final takeoff climb speed. This same level of maneuvering capability exists on most transport category airplanes currently in service, and the FAA has determined that there is not a compelling reason to set a lower minimum standard. The FAA considers this same maneuvering capability (25 degrees of bank plus a 15 degree safety margin) to also be appropriate for the normal all-engines-operating takeoff case as well as for the landing approach.

For those airplane types for which the proposed maneuvering requirements would lead to an increase in V_{FTO}, any resulting penalty is expected to be small. An increase in V_{FTO} would only cause a penalty (in terms of a reduced payload capability) when the takeoff weight is restricted due to an obstacle that must be cleared in the final takeoff climb segment and cannot be avoided by turning or using an alternative flight path procedure (*e.g.*, retracting the flaps at the maximum level-off height or extending the second segment to the takeoff thrust time limit). Recent FAA acceptance of proposals to increase the time limit for using takeoff thrust from five minutes to ten minutes should further reduce the potential for economic penalties resulting from an increase in V_{FTO}.

In addition to receiving comments on the minimum bank angles proposed for the new § 25.143(g), the FAA received comments on the footnotes accompanying the table of conditions to

be demonstrated. A commenter notes that because the trigger point of an artificial stall warning device may vary with thrust or power setting, the proposed wording of footnote 1 may not cover the most critical condition for determining the airplane's maneuver margin. This commenter suggests adding the phrase "or any greater thrust or power if more critical" to the thrust/power setting references in footnotes 1 and 3 to the table in § 25.143(g).

Although the FAA agrees with the intent of this comment, the FAA believes that the comment may stem from a misinterpretation of the proposed requirement. The condition specified in the proposed footnote 1 to § 25.143(g) represents the highest thrust or power setting for the applicable conditions of weight, altitude, and temperature. If system design features or other relevant characteristics result in any condition of weight, altitude, or temperature being more critical than another, compliance with this requirement must be demonstrated for the most critical condition of weight, altitude, and temperature. This point is addressed further in guidance material being proposed for inclusion into AC 25–7A (a notice of proposed advisory circular revisions will be published in the **Federal Register** shortly after publication of this final rule).

The commenter further suggests simplifying the text of footnote 3 by replacing the FAA proposed text with, "The critical thrust or power for all engines operating should be that which in the event of an engine failure would result in the minimum climb gradient specified in § 25.121, or any greater thrust or power if more critical." Although the FAA agrees with the intent of simplifying this footnote, the wording proposed in Notice No. 95–17 is needed to address all-engines-operating climb procedures, such as those used for noise abatement, that may use a thrust or power setting less than that used during the takeoff. Therefore, the FAA does not concur with the commenter's suggestion.

Section 25.143(g) is adopted as proposed.

One commenter suggests that the Notice No. 95–17 proposal to replace "V_S" with "the stall" in § 25.145(a) is misleading and inaccurate relative to the Notice No. 95–17 supporting discussion. The commenter believes that changing "V_S" to "the stall" is unsatisfactory for two reasons: (1) "The stall" is a vague terminology that might generally be defined by § 25.201(d), but without defining the configuration (*i.e.*, flaps, center-of-gravity position, power, *etc.*); and (2) The Notice No. 95–17 preamble discussion states that the demonstration should only have to be conducted down to stall warning speed plus one second, which is less demanding than the proposed new § 25.145(a). Therefore, the commenter suggests adding the words "In a deceleration" at the beginning of § 25.145(a) and replacing the proposed reference to "the stall" with "one second after stall warning." Guidance could then be provided in AC 25–7 to clarify that there must be sufficient longitudinal control in this maneuver to provide confidence that pushout from an actual stall could still be accomplished.

The FAA does not intend for the change in the reference stall speed to alter the basic requirement of § 25.145(a), namely that the capability exists on transport category airplanes, at the specified configurations and power settings, to pitch the nose down from any point in the stalling maneuver and regain the trim speed. The commenter's suggested change would reduce the stringency of the regulatory requirement, while depending on non-regulatory guidance material to provided assurances that equivalent capability is retained.

Because the FAA cannot rely on non-regulatory material to establish a capability required of the airplane, the FAA has not adopted the commenter's suggested change. However, to improve clarity, the words "the stall," proposed in Notice No. 95–17, have been replaced by "stall identification (as defined in § 25.201(d))" in the adopted § 25.145(a). In addition, techniques to show compliance with this requirement without performing a stall at maximum continuous power/thrust were included in the recent issuance of AC 25–7A. Consistent with the preamble discussion of Notice No. 95–17, compliance at maximum continuous power may be assessed by demonstrating sufficient static longitudinal stability and nose down control margin when the deceleration is ended at least one second past stall warning during a one knot per second deceleration. The static longitudinal stability during the maneuver and the nose down control power remaining at the end of the maneuver must be sufficient to assure compliance with the requirement.

Two comments were received regarding the flight test demonstrations to show compliance with § 25.177. Both comments were relative to the safety aspects of conducting full rudder sideslips at low airspeeds, as required by the current rule, although both commenters also noted that this situation may be exacerbated by the lower speeds that can result from the proposed change. The proposed changes were not intended to result in overall lower speeds. Because these comments raise issues with not only speed, but also rudder deflection, they are considered beyond the scope of the Notice No. 95–17 proposals, and § 25.177 has been adopted as proposed. These comments will be retained for consideration of potential future rulemaking to address the concerns expressed by the commenters.

There were many comments on the proposed changes to the stall warning requirements of § 25.207. One commenter requests explicit criteria to address whether or not a stick shaker is required to provide stall warning, or if a visual or aural warning is sufficient. This same commenter also asked whether production tolerances affecting the stall warning margin will be addressed in AC 25–7.

The issue of what constitutes an acceptable artificial stall warning is beyond the scope of this rulemaking. However, as stated in the current § 25.207(b) (and unchanged by this rulemaking), "a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself." The FAA is considering future rulemaking to further address the issue of what constitutes an acceptable stall warning. Regarding stall warning tolerances, the FAA has proposed the inclusion of material addressing stall warning system tolerances into a proposed revision to AC 25–7A (a notice of proposed advisory circular revisions will be published in the **Federal Register** shortly after publication of this final rule). This material is consistent with the FAA positions expressed in the preamble of Notice No. 95–17.

Several commenters took issue with the proposed three percent or three knots stall warning margin of § 25.207(c). One commenter believes that the proposal represents an unjustified increase in the severity of this requirement relative to the current rules. This commenter notes that a requirement for stall warning to begin one percent above the 1-g stall speed would be equivalent to the current requirement of a seven percent margin from the minimum speed obtained in the stalling maneuver. As a compromise, this commenter suggests a two percent or two knot stall warning margin relative to the redefined reference stall speed. Another commenter has a concern over possible difficulties in showing compliance with the proposed arbitrary numerical margin for airplanes with a gradual loss of lift

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as the angle-of-attack for maximum lift is exceeded. Both of these commenters request that any increase in the severity of this requirement: (1) Be tempered such that inappropriate design changes are not imposed for small shortfalls in meeting the strict numerical criteria; and (2) be taken into account in the Aviation Rulemaking Advisory Committee (ARAC) discussions of stall warning margin when operating in icing conditions.

Another commenter has concerns that the change in stall warning margin requirements will reduce the margin that is currently required and therefore would not retain the existing level of safety. This commenter believes that the proposed margin would not represent a reasonable balance between providing the pilot with enough warning to avert an impending stall and providing adequate maneuvering capability at the minimum operating speeds. This commenter suggests retaining the current seven knot stall warning margin from the reference stall speed, even though the reference stall speed would be redefined as the 1-g stall speed, in order to retain the existing level of safety.

Another commenter considers the proposed § 25.207(c) to represent an unjustified increase in the currently required minimum stall warning margin that would inhibit use of part of the airplane flight envelope within which the airplane is controllable without risk of structural damage. The commenter remarks that in windshear avoidance maneuvers, the likelihood of escape is maximized by flying at the minimum controllable airspeed. The commenter also disagrees with the statement made in Notice No. 95–17 that a speed lower than the 1-g stall speed represents a transient flight condition. The commenter notes that in steady climbing flight, the lift force needed to sustain steady flight is less than the airplane weight, and for larger climb angles, steady flight is sustainable at speeds lower than the 1-g stall speed. This commenter suggests revising the proposed § 25.207(c) to require the stall warning to begin at the greater of: (1) A speed higher than either one knot or one percent higher than the reference stall speed; or (2) seven knots or seven percent higher than the speed at the occurrence of a stall (as defined in § 25.201(d)).

Other comments were received on the proposed § 25.207(c) relative to the engine thrust or power setting associated with the proposed three percent or three knot stall warning margin. Two commenters support removing the reference to "engines idling and throttles closed" so that the same stall warning margin would apply to all power and thrust settings. One commenter suggests that to be consistent with the proposed § 25.103(a)(1) it is unnecessary to refer to throttles. This commenter also questions why the proposal states that "§ 25.103(a)(5) does not apply" when defining the reference stall speed to be used in connection with this requirement.

In combination with adopting the 1-g stall speed as the appropriate benchmark for the low speed end of an airplane's limit flight envelope, the FAA considers a warning three knots or three percent prior to reaching this speed to be the minimum margin needed to prevent the crew from inadvertently slowing beyond this speed. A categorical statement regarding the severity of this requirement relative to the current requirement cannot be made since the effect of the change in the reference stall speed will vary with airplane type (and with the high lift device configuration on a given type). It would, however, be inappropriate to couple the existing seven percent margin requirement relative to the minimum speed reached in the stalling maneuver with the redefined reference stall speed as one commenter suggests.

The FAA does not consider the proposed stall warning margin to unduly restrict access to useable parts of the airplane flight envelope. Relative to windshear escape, the dynamic nature of windshear warrants, if anything, a larger speed margin to the stalled condition. Using current windshear escape procedures, frequent and irregular penetrations of the stall warning margin are more likely to occur. This type of trained maneuver was not envisioned when the current stall warning requirements were promulgated. Regarding the comment that for climbing flight the lift force will be less than the airplane's weight, this condition is irrelevant for establishing the reference stall speed or defining a reasonable stall warning margin. The FAA has determined that the intent of the proposal is sufficiently clear in this respect.

The FAA agrees that the stall warning margin for other than idle thrust or power settings should be addressed. The FAA did not intend to restrict consideration of the adequacy of the stall warning margin to only the idle thrust or power condition. The general requirement for a stall warning with sufficient margin to prevent inadvertently stalling prescribed by § 25.207(a) applies to all normal configurations and flight conditions. The three knot or three percent warning margin reference in the proposed § 25.207(c) would specifically quantify this requirement for the conditions under which V_{SR} is determined. At other conditions, the FAA would have expected an equivalent margin to that prescribed by § 25.207(c). However, there is an inherent difficulty in either specifying an appropriate warning margin or determining an equivalent warning margin to that specified in the proposed § 25.207(c) for conditions other than idle thrust or power, straight flight, and the center-of-gravity position defined in the proposed § 25.103(a)(5), because VSR is undefined for those other conditions.

In response to the comments, and to clarify the situation regarding the acceptable stall warning margin for conditions other than those under which VSR is defined, the FAA has revised the proposed § 25.207(c) by specifying that stall warning must begin at least five knots or five percent, whichever is greater, prior to the speed at which the airplane is considered stalled (as defined in § 25.201(d)). This is also the stall warning margin required by JAR–25 prior to the adoption of Change 15, and is considered to neither increase nor decrease the current level of safety. By referencing the speed at which the stall is identified for determining the adequacy of the stall warning margin, and not limiting this requirement to specific conditions of thrust or power, bank angle, or center-of-gravity position, the adopted rule requires that the five knot or five percent margin must be available at all thrust/power settings, bank angles, and center-of-gravity positions.

The FAA expects this stall warning margin to be demonstrated for the conditions of bank angle, power, and center-of-gravity position prescribed for the stall demonstration tests by § 25.201(a). If, however, the stall warning margin may be affected by the system design (*e.g.*, a stall warning or stall identification system that modifies the stall warning or stall identification system as a function of thrust, bank angle, angle-of-attack rate, etc.), compliance with the adopted § 25.207(c) should be demonstrated at the most critical conditions in terms of stall warning margin.

The proposed three knot or three percent (whichever is greater) stall warning margin requirement relative to V_{SR} is retained in § 25.207(d) as an additional criterion applicable to that specific flight condition. The reference to throttles has been removed, as has the statement that the proposed § 25.103(a)(5) should not apply when defining the reference stall speed to be used in connection with this requirement. In response to the commenter's question, the reference to § 25.103(a)(5) had been proposed because the proposed definition of the reference stall speed would have required that the center-of-gravity position for determining the reference stall speed would be that which results in the highest value of the reference stall speed. Since the center-of-gravity position at which the proposed three knot or three percent stall warning requirement would apply was not specified, it presumably would apply to all center-of-gravity positions. Therefore, without the proposed statement, a literal interpretation of the proposed requirement would have required the stall warning speed at any center-of-gravity position to be three knots or three percent above the stall speed evaluated at the most adverse center-of-gravity position. This was not the intention. Any evaluation of the effect of center-of-gravity position on the stall warning margin should be based on the same center-of-gravity position for both the stall speed and the stall warning speed.

The proposed wording, along with additional explanatory material that would have been proposed for addition to AC 25–7A, was intended to clarify that for center-of-gravity positions other than that specified in the proposed § 25.103(a)(5), the same center-of-gravity position should be used for both the stall speed and the stall warning speed. However, due to the potential for confusion over the proposed wording, and because the explicit stall warning speed margin prescribed by the proposed § 25.207(c) only applies to the conditions under which VSR is determined, the proposed wording regarding center-of-gravity position has been removed. Instead, the center-of-gravity position specified in § 25.103(b)(5) (re-numbered from the proposed § 25.103(a)(5)) has been included in the list of conditions for which the specific three knot or three percent stall warning margin of the adopted § 25.207(d) applies. For other center-of-gravity positions, the acceptable stall warning margin is now addressed in the adopted § 25.207(c).

Because of the differences between naturally stalling airplanes and those that employ a device to abruptly push the nose down at a selected angle of attack to identify the stall, the FAA proposed that the stall warning margin for airplanes that employ these devices would be required to be five knots or five percent prior to the speed at which the device activates. The application of § 25.207(d), as adopted, in combination with the adopted new requirement of § 25.103(d) will ensure that there must be a 5 knot or 5 percent stall warning margin relative to VSR for these airplanes. Therefore, the proposed § 25.207(d) is removed.

The stall speed margins required by the adopted §§ 25.207(c) and (d) must be available in terms of calibrated airspeed. Normally, test demonstrations at the conditions specified in § 25.201 (Stall demonstration) will be sufficient to show compliance with these requirements. However, if the stall warning margin for a particular airplane type varies significantly with power or thrust, center-of-gravity position, bank angle, of some other characteristic, additional test conditions may be necessary.

As with other part 25 requirements, shortfalls in demonstrating compliance with the literal terms of the stall warning margin requirements would necessitate either a design change, an exemption (per § 11.25), or features that would provide equivalent safety using an alternate means of compliance (per § 21.21(b)(1)). Other rulemaking projects in which the stall warning margin is an issue (*e.g.*, discussions of flight in icing conditions by the ARAC) will be considered on their own merits.

Several commenters object to the accelerated stall warning margin requirement proposed as a new § 25.207(e). Some of the commenters claim that, in some cases, attempts to demonstrate compliance with this proposed requirement during flight testing resulted in maneuvers that the commenters consider inappropriate for a transport category airplane. These commenters provide several examples of the maneuvers they described as inappropriate. Other commenters note that the phrase "to prevent stalling" needs further clarification. One commenter questions the lack of a bank angle stipulation in the proposed requirement and provided an analysis indicating that bank angles of about 45 degrees have the greatest effect on aerodynamics. This commenter also claims that a prescribed load factor and deceleration rate are not simultaneously achievable at C_{LMAX}. The commenter suggests revising the proposed § 25.207(e) to specify 30 degree banked turns (for consistency with the turning flight stall characteristics demonstration required by § 25.201(a)) with accelerated rates of entry into the stall, up to the greater of 1.5g load factor and 3 knots per second speed reduction. This suggestion was made by other commenters as well.

The FAA concurs that detailed guidance material may be helpful to ensure an appropriate and consistent demonstration of compliance with the proposed accelerated stall warning requirement. This material will be presented in the proposed revisions to AC 25–7A, which will be published in the **Federal Register** shortly after publication of this final rule.

The purpose of the proposed requirement is to ensure that adequate stall warning exists to prevent an inadvertent stall under the most demanding conditions likely to occur in normal flight. The proposed conditions of 1.5g and a three knots per second entry rate (*i.e.*, airspeed deceleration rate) correspond to the steep turn maneuver prescribed in part 121, Appendices E and F for pilot initial and proficiency training, respectively, plus some margin for error (three degrees more bank and a decreasing airspeed). The elevated load factor will emphasize any adverse stall characteristics, such as wing drop or asymmetric wing flow breakdown, while also investigating Mach and potential aeroelastic effects on available lift. The proposed three knots per second deceleration rate is intended to result in a reasonable penetration beyond the onset of stall warning. A 30-degree banked turn maneuver, as proposed by several of the commenters, produces a load factor of only 1.15g, which the FAA does not consider high enough to evaluate the effect of elevated load factor on the capability to prevent an inadvertent stall.

As noted by one of the commenters, the bank angle used during the maneuver to demonstrate compliance with this proposed requirement may affect the airplane's stall characteristics. However, this aspect is considered secondary to the primary effect of an elevated load factor on the stall warning margin. For this reason, § 25.207(e) is revised from the version published in the NPRM to prescribe a load factor rather than a bank angle. An acceptable means of producing this load factor would be a 48-degree banked turn in level flight.

As adopted, § 25.207(e) requires an airspeed deceleration rate of greater than two knots per second instead of rates up to three knots per second. This change clarifies the intent of achieving a reasonable deceleration rate rather than one specific value, and will result in the intended penetration beyond the onset of stall warning. The FAA anticipates that with typical test techniques, requiring a deceleration rate of greater than two knots per second will result in deceleration rates close to

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three knots per second. The power and trim conditions are now specified in the rule in order to ensure consistent application of this requirement.

To clarify the meaning of the phrase "to prevent stalling," the parenthetical expression, "(as defined in § 25.201(d))," has been added in the adopted § 25.207(e). Therefore, any of the acceptable indications of a stall applicable to stall demonstration testing is also considered an indication that the airplane has stalled during the accelerated stall warning demonstration. If any of these indications of a stall occur during the accelerated stall warning demonstration, compliance with § 25.207(e) will not have been demonstrated.

Two commenters offered comments relative to subpart C (Structure) of part 25. One of these commenters suggests that the interpretation of the stall speed used in subpart C be undertaken urgently as part of the Harmonization Work Program. The other commenter suggests that either subpart C should be reworked to reflect the introduction of V_{SR} or § 25.103 should introduce definitions of V_{S0} and V_{S1} in terms of V_{SR}.

These comments regarding subpart C of part 25 are beyond the scope of this rulemaking, which is confined to the definition of the stall speed used for airplane performance determination and handling characteristics. This amendment does not affect the stall speeds used in subpart C for structural analysis.

Further consideration by the FAA regarding the proposed revisions to §§ 1.1 (Definition of reference landing speed) and 97.3(b) (Definition of aircraft approach category) has resulted in minor changes in the adopted rule relative to the original proposals. The proposed definition of reference landing speed had used the term "landing screen height" to identify the point in the approach at which the reference landing speed is determined. Although this term is defined in the preamble discussion of the rule proposal, it is not defined or used elsewhere within the regulations. The landing distance requirements of § 25.125 specify this height as the 50 foot height, and the adopted definition of reference landing speed in § 1.1 has been changed to be consistent with this requirement.

The preamble discussion references approvals of steep approach operations that use a "landing screen height" of less than the 50 foot height prescribed by the § 25.125 landing distance requirements. These types of approvals are not the norm, however, and should be processed as equivalent safety findings, special conditions, or exemptions, whichever is appropriate for the specific case.

In addition to replacing "landing screen height" with "50 foot height," the words "for manual landings" have been removed from the definition of "reference landing speed" since the applicable § 25.125 landing distance requirements make no such distinction. Approval of automatic landing systems, including consideration of associated landing speeds and distances, is addressed in FAA ACs 20–57A, 120–28D, and 120–29.

Further review of the proposed change to § 97.3(b) indicated a potential for confusion with respect to its application to aircraft certificated using V_S, the minimum speed in the stalling maneuver, rather than V_{SR}. There is some concern that the proposed replacement of 1.3 V_{S0} with V_{REF} may introduce terminology which is not well understood by all potential users of the airspace system, and that information provided in some Airplane Flight Manuals may not be consistent with the new terminology. Therefore, as adopted, § 97.3(b) will continue to reference 1.3 V_{S0} for use in those cases where V_{REF} is not specified.

One adverse comment was received on the proposed change to § C36.9(e)(1) of Appendix C to part 36. The commenter notes that the proposed change could result in increasing the speed used to show compliance with the approach noise requirements for those cases where V_{REF} is greater than 1.23 V_{SR0} (or 1.3 V_S for airplanes certificated under the existing stall speed requirements). The commenter states that this increased speed can result in higher certificated noise levels. The commenter objects to the increased stringency and believes it to be an inappropriate consequence of changing to the 1-g stall speed reference. The commenter also notes the importance of arriving at harmonized criteria with the JAA for the approach speed used for noise certifications.

The FAA disagrees with the commenter. The proposed amendment would have replaced the words "1.3 V_S + 10 knots" with "V_{REF} + 10 knots" and removed the words "or the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, whichever speed is greatest." The effect of the proposal would have been to require a steady approach speed of V_{REF} + 10 knots over the approach noise measuring point during the flight test measurement of approach noise levels.

The reference to 1.3 V_S in the current § C36.9(e)(1) had been derived from the § 25.125 landing requirements, *i.e.*, 1.3 V_S was interpreted to be the speed at the 50 foot height. Further away from the runway, at the point at which the approach noise is measured (6,562 feet from the runway threshold), the airplane is likely to be at a somewhat higher speed. Higher speeds are used during the approach to provide greater stall and controllability margins, especially in the presence of winds and gusts, with the additional speed being bled off by the time the airplane is at the 50 foot height. As stated in the preamble to the amendment that added part 36 to the FAR, "The intent of this proposal was to require an airspeed that is highly typical of normal approach airspeeds, so that a realistic approach speed is generated. The speed 1.3 V_S + 10 knots is such an airspeed and is therefore specified * * *" The ten knot increment applied to 1.3 V_S represents the typical approach speed at the approach noise measuring point.

In a later amendment to part 36 (Amendment 36–5), the FAA recognized that, for various reasons, a speed higher than 1.3 V_S may be used in establishing the landing distance under § 25.125. Amendment 36–5 added the words "or the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, whichever speed is greatest" to the "1.3 V_S + 10 knots" speed requirement over the approach noise measuring point.

The additional 10 knot speed increment added to 1.3 V_S was not added to "the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane." The FAA has since determined, however, that the ten knot speed increment should be applied to the speed used to determine the landing distance under § 25.125, regardless of whether that speed is 1.3 V_S or some higher speed. The flightcrew does not know whether the approach speed provided in their manuals is based on 1.3 V_S or some higher speed and will use the same procedures and speed increments in either case.

The FAA's proposal would have set the speed over the approach noise measuring point at V_{REF} +10 knots. Since V_{REF} is the speed used to determine the landing distance, a consistent speed increment would be applied to the speed applicable to the 50 foot height, regardless of whether V_{REF} is determined by stall speed,

controllability requirements, or some other parameter.

Subsequent to the publication of Notice 95–17, Working Group 1 (WG1) of the International Civil Aviation Organization (ICAO) Committee on Aviation Environmental Protection (CAEP) recommended to the ICAO CAEP that the noise certification approach reference speed contained in Volume I of Annex 16 to the Convention on International Civil Aviation (the ICAO International Standard and Recommended Practice for Aircraft Noise Certification) be changed to V_{REF} + 10 knots. The WG1 was established by the CAEP to provide technical guidance regarding revisions to Annex 16, Volume 1. The United States is a member of both the ICAO CAEP and WG1. The WG1 did not view the adoption of V_{REF} + 10 knots as having a significant effect on stringency. At its 5th meeting, which was held in January 2001, the ICAO CAEP accepted the WG1 recommendation regarding adoption of V_{REF} + 10 knots. This recommendation was subsequently included in Amendment 7 of Annex 16, Volume 1, which was adopted by the ICAO Council on June 29, 2001.

As a member of the ICAO Council, CAEP and WG1, the FAA supported the conclusion to use V_{REF} + 10 knots. The commenter has provided no support for the expressed effect on stringency. The concern expressed by the commenter regarding the use of harmonized criteria between the FAA and JAA would be eliminated by FAA adoption of the Annex 16, Amendment 7 requirement, considering that Annex 16 is the basis for the JAA noise certification requirements. Accordingly, the FAA adopted the Annex 16, Amendment 7 requirement as part of Amendment 24 to part 36, which was published in the **Federal Register** on July 8, 2002 (67 FR 45193).

Other than the changes noted above, the proposed changes to part 25 are adopted as proposed in Notice No. 95–17.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practical. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and the Joint Aviation Authorities regulations, where they exist, and has identified no differences in these amendments and the foreign regulations.

Regulatory Evaluation Summary

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation.)

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that do justify its costs; (2) is not a "significant rulemaking" either as defined in the Executive Order or in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will lessen restraints on international trade; and (5) will not contain a significant intergovernmental or private sector mandate.

These analyses, available in the docket, are summarized as follows.

Economic Evaluation

The Benefits Estimate

This rule supports the existing level of safety because type certification for part 25 airplanes based on 1-g criteria is common practice, the FAA having accepted 1-g stall criteria since the mid-80s for most part 25 type certifications, in many cases through the Issue Paper process. This rule establishes the codification of this practice, and thus adds the safety benefit of preventing deviation from this practice. The FAA has not attempted to quantify this benefit.

The FAA also expects this rule will result in added benefits in the form of cost savings to those affected manufacturers that carry out type certification to both FAR and JAR requirements. Historically, U.S. manufacturers that certificate part 25 airplanes to both FAA and JAA requirements using 1-g stall speed criteria have done so by working out separate arrangements with both authorities. The FAA expects compliance with a single harmonized FAA/JAA regulatory standard will be simpler and more direct than compliance through separate arrangements, and that cost savings will result. The FAA has not attempted to quantify this benefit.

The Estimate of Costs and Its Evolution

As noted, the FAA has accepted 1-g stall speed criteria for most part 25 type certification projects since the mid-1980s. The FAA expects this rule will not change the substance of accepted certification practices. Thus, no more than minimal additional certification costs will be associated with this new rule.

However, as certification practices and aviation technology have evolved since the mid-1980s, the costs of certification at 1-g have changed. As these costs have changed, manufacturers' estimates of comparative certification costs have changed; and FAA's estimates of the costs associated with this rule have changed.

This final rule evaluation was begun in 1999. It completes the regulatory evaluation process that began with research pursuant to a 1996 NPRM. Comments to the docket in response to that NPRM were received in 1996. Pursuant to this final rule evaluation, providers of previously received information were asked to review, clarify and update their information as necessary. Their clarifications and updates, together with the previous research and analysis are the basis for the conclusions developed in this final rule evaluation.

While the costs provided in the 1996 comments were much higher than those of the 1996 NPRM, the 1999 clarifications and updates brought the costs developed in this final rule evaluation more into line with those of the NPRM. Cost estimates for typical

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type certification projects that use 1-g stall speed as the reference datum have evolved as follow:

• In 1996, the NPRM concluded that the costs of 1-g compliance differed depending upon the size of the airplane certified. In then-current dollars, the NPRM estimated compliance costs of $195,000 for a type certification for large part 25 airplanes. For small part 25 airplanes, the NPRM estimate included a one-time cost of $70,000 for each manufacturer and subsequent type certification costs of $250,000. This final rule evaluation concludes that neither regulatory nor practical distinctions between small and large airplanes allow the unambiguous grouping by size category needed to support the level of economic analysis characteristic of final rules.

• In 1996, comments received in response to the NPRM gave additional compliance costs per type certification in then-current dollars that ranged from $331,412 for instrumentation costs plus $35,029 for testing and analysis, to an undifferentiated $1,000,000 per type certification project.

• For this final rule evaluation, the baseline for cost comparisons is the estimate of the current cost of type certification using minimum stall speed as the reference datum for a typical part 25 airplane. Building on the NPRM, the comments to the Docket, and the clarifications and updates, this final rule evaluation estimates typical additional compliance costs of about $130,000 for a type certification program conducted at 1-g for a part 25 airplane, expressed in 1999 dollars.

• During the time the FAA has been accepting certification at 1-g, additional costs of instrumentation have become small to negligible. Falling instrumentation costs and rising instrumentation capability have resulted in acceptable test data being achieved by adding as little additional instrumentation as one accelerometer to the test equipment required for certification at minimum stall speed. (The estimated uninstalled cost of an accelerometer appropriate to this use is the minimal cost of $500 to $2,000, in 1999 dollars. Further, accelerometer and gyroscopic components already present in the inertial navigation systems incorporated on modern transport category airplanes are the fundamental starting point for instrumentation sufficient to measure a 1-g stall speed.)

In summary, for a typical part 25 airplane, the current industry practice of type certification using 1-g stall as the reference datum adds a minor cost ($130,000) for flight-testing and analysis to the costs of the baseline alternative of type certification using minimum speed stall. This practice also is expected to add very minor or no cost for additional instrumentation beyond that required for the type certification baseline.

This final evaluation notes the possibility, also raised in the NPRM and in the 1999 clarifications and updates, that codification of this ongoing practice, and its consequent extension to all U.S. manufacturers and to all part 25 airplanes they will certificate in the future, could have an adverse impact on marketing efforts by manufacturers. (In general, this rule reduces the multiplying factors used to convert reference speed to minimum operational speeds by about 6 percent. When the reduced multiplying factors are applied to the 1-g stall speed, which is generally about 6 percent higher than minimum speed stall, the resulting minimum operating speeds generally will result in the same values produced by using minimum stall speed as the reference datum. However, variation is possible. This possible variation is at the heart of assertions of marketing impact. No such impact is considered in this evaluation, for the reasons that follow:

—The possible differences in operational speeds between type certification using 1-g stall speed and type certification using minimum stall speed are in the low single digits when expressed as speeds

—The very large number of possible combinations of airplane types, operational conditions, operators' services and airport characteristics forestalls practical quantitative consideration of the possible small consequences noted above

—Any operational consequence of certification at 1-g already results from ongoing industry practice and cannot also be considered to result from this rule

—The possible differences in operational speeds between type certification using 1-g stall speed and type certification using minimum stall speed are in the low single digits when expressed as speeds

Benefits/Costs Comparison

The FAA finds that this rule improves the codification of current industry practices that have evolved over a period of about 15 years. These practices already result in the benefits of the current level of safety. With one exception, this rule will add little or nothing to these benefits. The exception is the elimination of the possibility that a future part 25 airplane might not be certificated based on 1-g stall speed criteria. Removing this possibility ensures that the benefits being received cannot be reduced, thus diminishing the current level of safety. The agency has not attempted to quantify either this added benefit or the benefits already being received.

Another additional benefit of improved codification is that type certification to both FAR and JAR requirements will be simpler, more direct and consequently less costly. The agency has not attempted to quantify this harmonization benefit.

Because it is an improvement of the codification of voluntary industry practices, the FAA concludes that this rule will add little or no cost to the industry. The agency estimates that affected manufacturers already voluntarily incur costs of about $130,000 (in 1999 dollars) for each type certification project they base on 1-g stall speed criteria, beyond the costs they would incur in type certification based on minimum stall speed criteria.

The FAA concludes that while this final rule will add little or nothing to the safety benefits and the certification costs that already result from voluntary industry practices, it does add safety and harmonization benefits. Thus, the FAA believes this rule is cost effective.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. For aircraft manufacturers, a small entity is one with 1,500 or fewer employees.

Evaluation of this final rule in terms of this standard shows that no current manufacturer of transport category airplanes is a small manufacturer. Although the future entry of a small manufacturer into the business of manufacturing transport category airplanes is possible, such an unusual single entrant could not be construed to equate to a "substantial number."

Finally, no regulatory flexibility analysis is required for this rule because it adds little or nothing to the costs that otherwise would be required for type certification of a transport category airplane by a manufacturer of any size. Therefore the impact of this rule would not be significant whether it fell on a large or on a small manufacturer.

In light of these arguments, the FAA certifies that the rule change will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

Because this rule is a part of a harmonization process that will result in a single FAA/JAA regulatory standard, it reduces a barrier to international trade. Thus, in accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will support the Act.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This final rule does not contain such a mandate. Therefore, the assessment requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the State, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect interstate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from presentation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this amendment has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 97

Air traffic control, Airports, Navigation (air), Weather.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends Chapter I of Title 14 Code of Federal Regulations (CFR) parts 1, 25, and 97 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Section 1.1 is amended by adding new definitions in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Final takeoff speed means the speed of the airplane that exists at the end of the takeoff path in the en route configuration with one engine inoperative.

* * * * *

Reference landing speed means the speed of the airplane, in a specified landing configuration, at the point where it descends through the 50 foot height in the determination of the landing distance.

* * * * *

3. Section 1.2 is amended by adding new abbreviations in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

V_{FTO} means final takeoff speed.

* * * * *

V_{REF} means reference landing speed.

* * * * *

V_{SR} means reference stall speed.

V_{SRO} means reference stall speed in the landing configuration.

V_{SRI} means reference stall speed in a specific configuration.

V_{SW} means speed at which onset of natural or artificial stall warning occurs.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

4. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

5. Section 25.103 is revised to read as follows:

§ 25.103 Stall speed.

(a) The reference stall speed, V_{SR}, is a calibrated airspeed defined by the

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applicant. V_{SR} may not be less than a 1-g stall speed. V_{SR} is expressed as:

$$V_{SR} \geq \frac{V_{CL_{MAX}}}{\sqrt{n_{ZW}}}$$

where:

$V_{CL_{MAX}}$ = Calibrated airspeed obtained when the load factor-corrected lift coefficient

$$\left(\frac{n_{ZW}W}{qS}\right)$$

is first a maximum during the maneuver prescribed in paragraph (c) of this section. In addition, when the maneuver is limited by a device that abruptly pushes the nose down at a selected angle of attack (*e.g.*, a stick pusher), $V_{CL_{MAX}}$ may not be less than the speed existing at the instant the device operates;

n_{ZW} = Load factor normal to the flight path at $V_{CL_{MAX}}$

W = Airplane gross weight;

S = Aerodynamic reference wing area; and

q = Dynamic pressure.

(b) V_{CLMAX} is determined with:

(1) Engines idling, or, if that resultant thrust causes an appreciable decrease in stall speed, not more than zero thrust at the stall speed;

(2) Propeller pitch controls (if applicable) in the takeoff position;

(3) The airplane in other respects (such as flaps and landing gear) in the condition existing in the test or performance standard in which V_{SR} is being used;

(4) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard;

(5) The center of gravity position that results in the highest value of reference stall speed; and

(6) The airplane trimmed for straight flight at a speed selected by the applicant, but not less than $1.13V_{SR}$ and not greater than $1.3V_{SR}$.

(c) Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that the speed reduction does not exceed one knot per second.

(d) In addition to the requirements of paragraph (a) of this section, when a device that abruptly pushes the nose down at a selected angle of attack (*e.g.*, a stick pusher) is installed, the reference stall speed, V_{SR}, may not be less than 2 knots or 2 percent, whichever is greater, above the speed at which the device operates.

6. Section 25.107 is amended by revising paragraphs (b)(1) introductory text, b(1)(ii), (b)(2) introductory text, b(2)(ii), (c)(1) and (c)(2), and by adding new paragraphs (c)(3) and (g) to read as follows:

§ 25.107 Takeoff speeds.

* * * * *

(b) * * *

(1) $1.13V_{SR}$ for—

* * * * *

(ii) Turbojet powered airplanes without provisions for obtaining a significant reduction in the one-engine-inoperative power-on stall speed;

(2) $1.08V_{SR}$ for—

* * * * *

(ii) Turbojet powered airplanes with provisions for obtaining a significant reduction in the one-engine-inoperative power-on stall speed; and

* * * * *

(c)* * *

(1) V_{2MIN};

(2) V_R plus the speed increment attained (in accordance with § 25.111(c)(2)) before reaching a height of 35 feet above the takeoff surface; and

(3) A speed that provides the maneuvering capability specified in § 25.143(g).

* * * * *

(g) V_{FTO}, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(c), but may not be less than—

(1) 1.18 V_{SR}; and

(2) A speed that provides the maneuvering capability specified in § 25.143(g).

7. Section 25.111 is amended by revising paragraph (a) introductory text to read as follows:

§ 25.111 Takeoff path.

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the en route configuration is completed and V_{FTO} is reached, whichever point is higher. In addition—

* * * * *

8. Section 25.119 is amended by revising paragraph (b) to read as follows:

§ 25.119 Landing climb: All-engines-operating.

* * * * *

(b) A climb speed of not more than V_{REF}.

9. Section 25.121 is amended by revising paragraphs (c) introductory text, (d) introductory text, (d)(2) and (d)(3), and by adding paragraph (d)(4) to read as follows:

§ 25.121 Climb: One-engine-inoperative.

* * * * *

(c) *Final takeoff.* In the en route configuration at the end of the takeoff path determined in accordance with § 25.111, the steady gradient of climb may not be less than 1.2 percent for two-engine airplanes, 1.5 percent for three-engine airplanes and 1.7 percent for four-engine airplanes, at V_{FTO} and with

* * * * *

(d) *Approach.* In a configuration corresponding to the normal all-engines-operating procedure in which V_{SR} for this configuration does not exceed 110 percent of the V_{SR} for the related all-engines-operating landing configuration, the steady gradient of climb may not be less than 2.1 percent for two-engine airplanes, 2.4 percent for three-engine airplanes, and 2.7 percent for four engine airplanes, with

* * * * *

(2) The maximum landing weight;

(3) A climb speed established in connection with normal landing procedures, but not more than 1.4 V_{SR}; and

(4) Landing gear retracted.

10. Section 25.125 is amended by revising paragraph (a)(2) to read as follows:

§ 25.125 Landing.

(a) * * *

(2) A stabilized approach, with a calibrated airspeed of V_{REF}, must be maintained down to the 50 foot height. V_{REF} may not be less than

(i) 1.23 V_{SR0};

(ii) V_{MCL} established under § 25.149(f); and

(iii) A speed that provides the maneuvering capability specified in § 25.143(g).

* * * * *

11. Section 25.143 is amended by adding a new paragraph (g) to read as follows:

§ 25.143 General.

* * * * *

(g) The maneuvering capabilities in a constant speed coordinated turn at forward center of gravity, as specified in the following table, must be free of stall warning or other characteristics that might interfere with normal maneuvering:

Configuration	Speed	Maneuvering bank angle in a coordinated turn	Thrust power setting
Takeoff	V_2	30°	Asymmetric WAT-Limited.[1]
Takeoff	[2]V_2 + XX	40°	All-engines-operating climb.[3]
En route	V_{FTO}	40°	Asymmetric WAT-Limited.[1]
Landing	V_{REF}	40°	Symmetric for −3° flight path angle.

[1] A combination of weight, altitude, and temperature (WAT) such that the thrust or power setting produces the minimum climb gradient specified in § 25.121 for the flight condition.

[2] Airspeed approved for all-engines-operating initial climb.

[3] That thrust or power setting which, in the event of failure of the critical engine and without any crew action to adjust the thrust or power of the remaining engines, would result in the thrust or power specified for the takeoff condition at V_2, or any lesser thrust or power setting that is used for all-engines-operating initial climb procedures.

12. Section 25.145 is amended by revising paragraphs (a) introductory text, (a)(1), (b)(1), (b)(4), (b)(6), and (c) introductory text to read as follows:

§ 25.145 Longitudinal control.

(a) It must be possible, at any point between the trim speed prescribed in § 25.103(b)(6) and stall identification (as defined in § 25.201(d)), to pitch the nose downward so that the acceleration to this selected trim speed is prompt with

(1) The airplane trimmed at the trim speed prescribed in § 25.103(b)(6);

* * * * *

(b) * * *

(1) With power off, flaps retracted, and the airplane trimmed at 1.3 V_{SR1}, extend the flaps as rapidly as possible while maintaining the airspeed at approximately 30 percent above the reference stall speed existing at each instant throughout the maneuver.

* * * * *

(4) With power off, flaps retracted, and the airplane trimmed at 1.3 V_{SR1}, rapidly set go-around power or thrust while maintaining the same airspeed.

* * * * *

(6) With power off, flaps extended, and the airplane trimmed at 1.3 V_{SR1}, obtain and maintain airspeeds between V_{SW} and either 1.6 V_{SR1} or V_{FE}, whichever is lower.

(c) It must be possible, without exceptional piloting skill, to prevent loss of altitude when complete retraction of the high lift devices from any position is begun during steady, straight, level flight at 1.08 V_{SR1} for propeller powered airplanes, or 1.13 V_{SR1} for turbojet powered airplanes, with—

* * * * *

§ 25.147 [Amended]

13. Section 25.147 is amended in paragraphs (a) introductory text, (a)(2), (c) introductory text, and (d) by revising the expression "1.4 V_{S1}" to read "1.3 V_{SR1}."

§ 25.149 [Amended]

14. Section 25.149 is amended in paragraph (c) introductory text by revising the expression "1.2 V_S" to read "1.13 V_{SR}."

§ 25.161 [Amended]

15. Section 25.161 is amended in paragraphs (b), (c)(1), (c)(2), (c)(3) and (d) introductory text by revising the expression "1.4 V_{S1}" to read "1.3 V_{SR1}"; and in paragraph (e)(3) by revising the expression "0.013 V_{S0}^2" to read "0.013 V_{SR0}^2."

§ 25.175 [Amended]

16. Section 25.175 is amended: a. In paragraphs (a)(2), (b)(1) introductory text, (b)(2) introductory text, (b)(3) introductory text and (c)(4) by revising the expression "1.4 V_{S1}" to read "1.3 V_{SR1}";

b. In paragraph (b)(2)(ii) by revising the expression "V_{MO} + 1.4 V_{S1}/2" to read "(V_{MO} + 1.3 V_{SR1})/2";

c. In paragraph (c) introductory text by revising the expressions "1.1 V_{S1}" to read "V_{SW}" and "1.8 V_{S1}" to read "1.7 V_{SR1}";

d. In paragraph (d) introductory text by revising the expressions "1.1 V_{SO}" to read "V_{SW}" and "1.3 V_{S0}" to read "1.7 V_{SR0}"; and

e. In paragraph (d)(5) by revising the expression "1.4 V_{S0}" to read "1.3 V_{SR0}."

§ 25.177 [Amended]

17. Section 25.177 is amended in paragraph (c) by revising the expression "1.2 V_{S1}" to read "1.13 V_{SR1}."

§ 25.181 [Amended]

18. Section 25.181 is amended in paragraphs (a) introductory text and (b) by revising the reference to "1.2 V_S" to read "1.13 V_{SR}."

19. Section 25.201 is amended by revising paragraphs (a)(2) and (b)(4) to read as follows:

§ 25.201 Stall demonstration.

(a) * * *

(2) The power necessary to maintain level flight at 1.5 V_{SR1} (where V_{SR1} corresponds to the reference stall speed at maximum landing weight with flaps in the approach position and the landing gear retracted).

(b) * * *

(4) The airplane trimmed for straight flight at the speed prescribed in § 25.103(b)(6).

* * * * *

20. Section 25.207 is amended by revising paragraphs (b) and (c), and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 25.207 Stall warning.

* * * * *

(b) The warning must be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in paragraph (a) of this section at the speed prescribed in paragraphs (c) and (d) of this section.

(c) When the speed is reduced at rates not exceeding one knot per second, stall warning must begin, in each normal configuration, at a speed, V_{SW}, exceeding the speed at which the stall is identified in accordance with § 25.201(d) by not less than five knots or five percent CAS, whichever is greater. Once initiated, stall warning must continue until the angle of attack is reduced to approximately that at which stall warning began.

(d) In addition to the requirement of paragraph (c) of this section, when the speed is reduced at rates not exceeding one knot per second, in straight flight with engines idling and at the center-of-gravity position specified in § 25.103(b)(5), V_{SW}, in each normal configuration, must exceed V_{SR} by not less than three knots or three percent CAS, whichever is greater.

(e) The stall warning margin must be sufficient to allow the pilot to prevent

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stalling (as defined in § 25.201(d)) when recovery is initiated not less than one second after the onset of stall warning in slow-down turns with at least 1.5g load factor normal to the flight path and airspeed deceleration rates of at least 2 knots per second, with the flaps and landing gear in any normal position, with the airplane trimmed for straight flight at a speed of 1.3 V_{SR}, and with the power or thrust necessary to maintain level flight at 1.3 V_{SR}.

(f) Stall warning must also be provided in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures (including all configurations covered by Airplane Flight Manual procedures).

§ 25.231 [Amended]

21. Section 25.231 is amended in paragraph (a)(2) by revising the word "altitude" to read "attitude" and by revising the expression "80 percent of V_{S1}" to read "75 percent of V_{SR1}."

§ 25.233 [Amended]

22. Section 25.233 is amended in paragraph (a) by revising the reference "0.2 V_{S0}" to read "0.2 V_{SR0}."

§ 25.237 [Amended]

23. Section 25.237 is amended in paragraphs (a), (b)(1), and (b)(2) by revising the reference "0.2 V_{S0}" to read "0.2 V_{SR0}."

24. Section 25.735 is amended by revising paragraphs (f)(2) and (g) to read as follows:

§ 25.735 Brakes and braking systems.

* * * * *

(f) * * *

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel-brake assembly may be derived from the following formula, which must be modified in cases of designed unequal braking distributions.

$$KE = \frac{0.0443WV^2}{N}$$

where—

KE = Kinetic energy per wheel (ft.-lb.);
W = Design landing weight (lb.);
V = $V_{REF}/1.3$
VREF = Airplane steady landing approach speed, in knots, at the maximum design landing weight and in the landing configuration at sea level; and
N = Number of main wheels with brakes.

* * * * *

(g) In the landing case, the minimum speed rating of each main wheel-brake assembly (that is, the initial speed used in the dynamometer tests) may not be more than the V used in the determination of kinetic energy in accordance with paragraph (f) of this section, assuming that the test procedures for wheel-brake assemblies involve a specified rate of deceleration, and, therefore, for the same amount of kinetic energy, the rate of energy absorption (the power absorbing ability of the brake) varies inversely with the initial speed.

* * * * *

§ 25.773 [Amended]

25. Section 25.773 is amended in paragraph (b)(1)(i) by revising the expression "1.6 V_{S1}" to read "1.5 V_{SR1}."

§ 25.1001 [Amended]

26. Section 25.1001 is amended in paragraphs (c)(1) and (c)(3) by revising the expression "1.4 V_{S1}" to read "1.3 V_{SR1}."

§ 25.1323 [Amended]

27. Section 25.1323 is amended in paragraph (c)(1) by revising the expression "1.3 V_{S1}" to read "1.23 V_{SR1}" and in paragraph (c)(2) by revising the expression "1.3 V_{S0}" to read "1.23 V_{SR0}."

§ 25.1325 [Amended]

28. Section 25.1325 is amended in paragraph (e) by revising the expressions "1.3 V_{S0}" and "1.8 V_{S1}" to read "1.23 V_{SR0}" and "1.7 V_{SR1}," respectively.

§ 25.1587 [Amended]

29. Section 25.1587 is amended by in paragraph (b)(2) by revising the expression "V_S" to read "V_{SR}."

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

30. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

31. Section 97.3 is amended by revising the first two sentences of paragraph (b) introductory text to read as follows:

§ 97.3 Symbols and terms used in procedures.

* * * * *

(b) Aircraft approach category means a grouping of aircraft based on a speed of V_{REF}, if specified, or if V_{REF} is not specified, 1.3 V_{S0} at the maximum certificated landing weight. V_{REF}, V_{S0}, and the maximum certificated landing weight are those values as established for the aircraft by the certification authority of the country of registry.

* * *

* * * * *

Issued in Washington, DC on November 14, 2002.

Marion C. Blakey,

Administrator.

[FR Doc. 02–29667 Filed 11–25–02; 8:45 am]

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Federal Register

Tuesday,
November 26, 2002

Part III

The President

Proclamation 7628—Thanksgiving Day, 2002

Proclamation 7629—National Farm-City Week, 2002

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7628 of November 21, 2002

Thanksgiving Day, 2002

By the President of the United States of America

A Proclamation

In celebration of Thanksgiving Day 1902, President Theodore Roosevelt wrote, "Rarely has any people enjoyed greater prosperity than we are now enjoying. For this we render heartfelt and solemn thanks to the Giver of Good; and we seek to praise Him—not by words only—but by deeds, by the way in which we do our duty to ourselves and to our fellow men." President Roosevelt's words gracefully remind us that, as citizens of this great Nation, we have much for which to be thankful; and his timeless call inspires us to meet our responsibilities to help those in need and to promote greater understanding at home and abroad.

As the Pilgrims did almost four centuries ago, we gratefully give thanks this year for the beauty, abundance, and opportunity this great land offers. We also thank God for the blessings of freedom and prosperity; and, with gratitude and humility, we acknowledge the importance of faith in our lives.

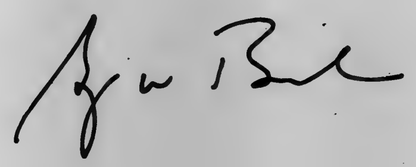
Throughout the Thanksgiving holiday, let us renew our commitment to make our country and our world better. As we welcome new opportunities and face new challenges, we are thankful for the resolve and generosity of so many of our people who are touching countless hearts and souls through thoughtful acts of kindness. By answering the call to serve others, Americans are building a culture of service that strengthens our Nation. We also honor and salute the selfless sacrifice of the brave men and women of our Armed Forces who are defending our lives and liberty at home and abroad with skill, honor, and dedication.

This Thanksgiving, we recognize the ties of friendship and respect that bind us together. And we renew our pledge to uphold the timeless principles of freedom, equality, and opportunity that have made our country into a great Nation. By working together, we will continue to build mutual trust, peace, and hope for all across this land and around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 28, 2002, as a National Day of Thanksgiving. I encourage Americans to gather in their homes, places of worship, and community centers to share the spirit of understanding and unity, and of prayer, as we express our thanks for the many blessings we enjoy. I also encourage Americans to reach out in friendship to the larger family of humankind.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–30202
Filed 11–25–02; 8:47 am]
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Presidential Documents

Proclamation 7629 of November 22, 2002

National Farm-City Week, 2002

By the President of the United States of America

A Proclamation

Agriculture has always been a cornerstone of our Nation's way of life. As wise stewards and innovative entrepreneurs, our dedicated farmers and ranchers improve our well-being by working to ensure a healthy and abundant agricultural supply. To succeed in this important enterprise, our farmers rely on essential partnerships with urban communities to supply, sell, and deliver finished products across the country and around the world. During National Farm-City Week, we recognize the importance of this cooperative network to the success of America's agricultural industry.

Farming was America's first industry. Today, this industry provides us with many of the necessities of life, such as food, clothing, and,increasingly, fuel for our energy needs. Agriculture employs more than 24 million workers including farmers, shippers, processors, marketers, grocers, truck drivers, inspectors, and others who annually contribute more than $1.3 trillion to our gross domestic product. In the international market, our farmers export more than $50 billion in products that help feed people in countries around the world. As we welcome new opportunities for trade, the hard work and successful cooperation between farmers and city workers will continue to play a vital role in our Nation's success and will continue to be a critical resource for countless people here at home and around the globe.

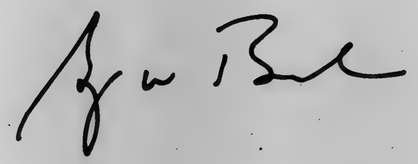
My Administration remains committed to helping the millions of Americans who work in the agricultural industry. Earlier this year, I signed the Farm Security and Rural Investment Act of 2002 to support these important workers and to strengthen the farm economy. This Act will help our farmers and ranchers by providing financial assistance that encourages sound conservation and environmental practices, and promotes open trade. And to expand opportunities for our farmers to compete in the inter national marketplace and encourage further economic growth, my Administration is committed to opening international markets and reducing tariffs and other barriers to food distribution throughout the world.

Farm-city collaborations help maintain and improve our Nation's food supply and contribute to a better quality of life for countless citizens. With this Farm-City Week observance, we commend the many Americans whose hard work and ingenuity reflect the true spirit of America and help ensure a prosperous future for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 22 through November 28, 2002, as National Farm-City Week. I call upon all Americans, in rural and urban communities, to join in recognizing the accomplishments of all those who work together to produce and promote America's agricultural abundance. I also encourage citizens to strengthen our understanding of the American farm-city partnership by participating in appropriate community events and celebrations.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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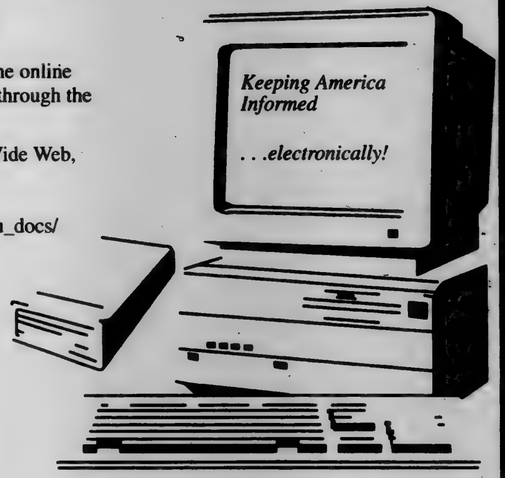
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RIN 3150–AH01

NRC Public Document Room Address Change and Corrections to Information Collection Provisions; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a document appearing in the **Federal Register** on November 4, 2002 (67 FR 67096) (FR Doc. 02–27865). This action is necessary to correct an erroneous amendatory instruction and typographical errors.

DATES: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, Washington, DC 20555–0001, telephone 301–415–7163, e-mail *mtl@nrc.gov*.

SUPPLEMENTARY INFORMATION:

§ 1.5 [Corrected]

1. On page 67097, right column, paragraph (3), second line, "Il." is corrected to read "IL".

§ 7.2 [Corrected]

2. On page 67098, in the center column, amendatory instruction 11 is corrected to read as follows:

"11. Section 7.2 is amended as follows:

a. In § 7.2, the paragraph designations are removed.

In the definition of "Advisory committee", paragraph (1), last sentence, the phrase "(c)(3) of this section" is revised to read "(3) of this definition."; in paragraph (2), first sentence, the phrase "(c)(1) of this section" is revised to read "(1) of this definition"; in paragraph (3), last sentence, the phrase "(c)(1) of this section:" is revised to read "(1) of this definition:".

b. The definition for NRC Public Document Room is revised to read as follows:

§ 110.2 [Corrected]

3. On page 67101, right column, second paragraph, fourth line, insert a comma between "Rockville" and "Maryland".

4. On page 67101, right column, second paragraph, 29th line, the telephone number "301–315–4737" is corrected to read "301–415–4737".

Dated at Rockville, Maryland, this 19th day of November, 2002.

For the Nuclear Regulatory Commission.

Alzonia W. Shepard,

Acting Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–29874 Filed 11–26–02; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") announces amendments to Rule 7(c) of the Rules and Regulations Under the Textile Fiber Products Identification Act ("Textile Rules") to establish a new generic fiber subclass name and definition for a subclass of polyester fibers manufactured by E. I. du Pont de Nemours and Company ("DuPont"), of Wilmington, Delaware. The amendments to Rule 7(c) establish the subclass name "elasterell-p" as an alternative to the generic name "polyester" for a specific subclass of inherently elastic, multicomponent textile fibers defined in the amendments, and previously referred to by DuPont as "T400."

EFFECTIVE DATE: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C., 20580; (202) 326–3038.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Framework

Section 4(b)(1) of the Textile Fiber Products Identification Act ("Act") declares that a textile product will be misbranded unless it is labeled to show, among other elements, the percentages, by weight, of the constituent fibers in the product, designated by their generic names and in order of predominance by weight. 15 U.S.C. 70b(b)(1). Section 4(c) of the Act provides that the same information required by section 4(b)(1) (except the percentages) must appear in written advertisements if any disclosure or implication of fiber content is made regarding a covered textile product. 15 U.S.C. 70b(c). Section 7(c) directs the Commission to promulgate such rules, including the establishment of generic names of manufactured fibers, as are necessary to enforce the Act's directives. 15 U.S.C. 70e(c).

Rule 6 of the Textile Rules (16 CFR 303.6) requires manufacturers to use the generic names of the fibers contained in their textile products in making required fiber content disclosures on labels. Rule 7 of the Textile Rules (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8 (16 CFR 303.8) describes the procedures for establishing new generic names.

B. Procedural History

DuPont applied to the Commission on February 5, 2001, for a new polyester fiber subclass name and definition, and supplemented its application with additional information and test data on March 18, 2001, and August 23, 2001.[1]

[1] DuPont's petition and supplements thereto are on the rulemaking record of this proceeding. This material, as well as the comments that were filed in this proceeding, are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules of practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC. The comments that were filed are found under the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR part 303, Matter No. P948404, "DuPont Generic Fiber Petition

Continued

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stated that the T400 fiber is an inherently elastic, manufactured textile fiber consisting of two substantially different forms of polyester fibers. DuPont maintained further that T400 is distinguished from commercially available fibers by a significant and long-lived stretch and recovery characteristic fitting between conventional textured polyesters and spandex.

Contending that the unique structure and characteristics of fibers made from T400 are inadequately described under existing generic names listed in the Textile Rules, DuPont petitioned the Commission to establish a new generic subclass name and definition. After an initial analysis with the assistance of a textile expert, the Commission determined that DuPont's proposed new fiber technically falls within Rule 7(c)'s definition of "polyester."[2] The Commission further determined, however, that DuPont's application for a new subclass name and definition merited further consideration. Accordingly, on May 21, 2001, the Commission announced that it had issued DuPont the designation "DP 0002" for temporary use in identifying T400 fiber pending a final determination on the merits of the application for a new generic fiber subclass name and definition. The Commission staff further analyzed the application, and on February 15, 2002 (67 FR 7104), the Commission published a Notice of Proposed Rulemaking ("NPR") detailing the technical aspects of DuPont's fiber, and requesting public comment on DuPont's application. On April 19, 2002, the comment period closed.

II. Description of the Fiber and Solicitation of Comments in the NPR

A. The Commission's Criteria for Granting a New Generic Fiber Subclass Name and Definition, and Related Issues

In the NPR, the Commission solicited comment on whether DuPont's application meets the Commission's criteria for granting applications for new generic fiber subclass names.

The Commission articulated standards for establishing a new generic fiber "subclass" in the proceeding to allow use of the name "lyocell" as an alternative generic description for a specifically defined subcategory of "rayon" fiber, pursuant to 16 CFR 303.7(d). There, the Commission noted that:

> Where appropriate, in considering applications for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, the Commission may allow such fiber to be designated in required information disclosures by either its generic name or, alternatively, by its "subclass" name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.[3]

Thus, a new generic fiber subclass may be appropriate in cases where the proposed subclass fiber: (1) Has the same general chemical composition as an established generic fiber category; (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure; and (3) the distinctive feature(s) make the fiber suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.[4]

Within the established 24 generic names for manufactured fibers, there are three cases where such generic name alternatives may be used: (1) Pursuant to Rule 7(d), 16 CFR 303.7(d), within the generic category "rayon," the term "lyocell" may be used as an alternative generic description for a specifically defined subcategory of rayon fiber; (2) pursuant to Rule 7(e), 16 CFR 303.7(e), within the generic category "acetate," the term "triacetate" may be used as an alternative generic description for a specifically defined subcategory of acetate fiber; and (3) pursuant to Rule 7(j), 16 CFR 303.7(j), within the generic category "rubber," the term "lastrile" may be used as an alternative generic description for a specifically defined subcategory of rubber fiber.

Although the Commission's NPR announced that DuPont's fiber technically falls within Rule 7(c)'s definition of polyester, it noted that DuPont's application may meet the Commission's standard for a subclass name. Alternatively, the Commission stated that T400 may fit within the current definition of polyester in Rule 7(c), with or without need for clarification. Therefore, the Commission requested public comment on whether to: (1) Broaden Rule 7(c)'s definition of polyester to better describe the allegedly unique molecular structure and physical characteristics of T400 and any similar fibers (without creating a new subclass for T400); (2) amend Rule 7(c)'s definition of polyester by creating a separate subclass name and definition for T400 and other similar qualifying fibers within the polyester category; or (3) deny DuPont's application because T400 fiber fits within Rule 7(c)'s definition of polyester without need for any change.

B. The NPR

1. Fiber Description and Proposed Subclass Name and Definition

The NPR provided a detailed description, taken from DuPont's application, of T400's chemical composition and physical and chemical properties.[5] As a result of T400's fiber structure, DuPont maintained that T400 has the following distinctive properties that would be significant to consumers: (1) Stretch and recovery power that is far superior to that of any textured fiber, including textured polyesters; (2) the superior stretch and recovery property does not degrade or "sag" over time with normal use and washings,

Rulemaking." The comments also may be viewed on the Commission's Web site at *http://www.ftc.gov*.

[2] Rule 7(c) defines "polyester" as "[a] manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of an ester of a substituted aromatic carboxylic acid, including but not restricted to substituted terephthalate units, [formula omitted] and para substituted hydroxy-benzoate units, [formula omitted]." 16 CFR 303.7(c).

[3] 60 FR 62352, 62353 (Dec. 6, 1995).

[4] The criteria for establishing a new generic subcategory are different from the criteria to establish a new generic category. The Commission's criteria for granting applications for new generic names are as follows: (1) The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public; (2) the fiber must be in active commercial use or such use must be immediately foreseen; and (3) the granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies. The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of these criteria in consideration of any future applications for generic names, and in a systematic review of any generic names previously granted that no longer meet these criteria. The Commission announced these criteria on Dec. 11, 1973, at 38 FR 34112, and later clarified and reaffirmed them on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, on Jan. 6, 1998, 63 FR 447 and 63 FR 449, and on Nov. 17, 2000, 65 FR 69486, on Feb. 15, 2002, 67 FR 7104, and on May 24, 2002, 67 FR 36551.

[5] 67 FR 7104, at 7105–7109 (Feb. 15, 2002). For brevity's sake, the Commission is providing a simplified description of the fiber in this notice, and refers those who wish to see detailed technical information about the fiber to the earlier description in the NPR.

compared to textured fibers, including polyesters; and (3) a softer "silkier" feel or "hand" than textured polyester fibers. DuPont asserted that T400 will fill a growing and unmet consumer demand for stretch garments with fibers that can yield quality stretch and recovery without degrading over time like textured polyester fibers. DuPont further contended that it would be confusing to consumers if T400 is called simply "polyester."

DuPont, therefore, petitioned the Commission to establish the generic name "elasterell-p" as an alternative to, and a subclass of, "polyester." In addition, DuPont proposed that the Commission add the following sentence to the current definition of polyester in Rule 7(c) to define T400 and similar fibers as a subclass of polyester:

> Where the fiber is a multicomponent and exhibits inherent (not mechanically induced) recoverable stretch of at least 35% upon loading with 185 mg/dtex and unloading to 5.4 mg/dtex when tested in accordance with ASTM test D6720, the term "elasterell-p" may be used as a generic description of the fiber.

The effect of DuPont's proposed amendment would be to allow use of the name "elasterell-p" as an alternative to the generic name "polyester" for the subcategory of polyester fibers meeting the further criteria contained in the sentence added by the proposed amendment.

2. The Parallel European Proceeding

During this proceeding, but after the comment period closed, the Commission staff was informed that in May 2002, the International Bureau for the Standardization of Man-Made Fibres ("BISFA")[6] determined that as a result of T400's distinguishing attributes, and the technology utilized to manufacture it, DuPont's fiber merited a new generic name and definition. Accordingly, BISFA has established the following generic name and definition for DuPont's T400 fiber:

> "multelastester:" fibre formed by interaction of 2 or more chemically distinct macromolecules (of which none exceeds 85% by mass) which contains ester groups as dominant functional unit (at least 66%) and which, if stretched at least 100%, durably and rapidly reverts substantially to its unstretched length when the tension is removed.

In accordance with BISFA's policies and procedures, the BISFA-approved name, "multelastester," and its definition have been communicated to the International Organization for Standardization ("ISO") for introduction into ISO Standard 2076, which includes man-made textile fiber generic names and definitions. BISFA representatives expect the ISO proceeding to conclude in 2003.

The Commission has taken notice of this proceeding because the Textile Rules incorporated by reference the generic fiber names and definitions for manufactured fibers that existed in ISO Standard 2076 in 1989. The Commission also amended the Rules once to incorporate a revised version of that Standard.[7]

3. Discussion of the Public Comments

The Commission received comments from the American Fiber Manufacturers Association, Inc. ("AFMA"), and Nan Ya Plastics Corporation, America ("Nan Ya"), a U.S. manufacturer of polyester for the packaging and textile industries. AFMA does not object to amending Rule 7(c) of the Textile Rules by creating a separate subclass name and definition for T400 and other similar qualifying fibers within the polyester category. AFMA, however, recommended that the Commission take account of the parallel European proceeding, and suggested that the Commission use compatible nomenclature in establishing the new generic subclass to avoid confusion in the marketplace.

Nan Ya, although a member of AFMA, opposed creating a separate subclass name and definition for T400. Specifically, Nan Ya commented that DuPont's fiber is not sufficiently unique to merit a separate generic subclass. Nan Ya stated that what may be unique about DuPont's fiber is the composition of the particular polyester polymers selected for the components, perhaps coupled with specific spinning and heat treatment conditions, to produce a polyester bicomponent fiber that exhibits properties especially suitable for use in stretch garments. Nan Ya stated, however, that these conditions, which may be patentable, result in a polyester bicomponent fiber with some properties that differ only in degree from the properties of other polyester bicomponent fibers, and not in a fiber worthy of being designated by a new generic subclass. Nan Ya stated that bicomponent yarns in which both components are polyester currently are manufactured by several companies.

Nan Ya commented further that creating a subclass for T400 could result in giving DuPont an unfair competitive advantage in the marketplace. For example, Nan Ya suggested that DuPont's patent protection for its T400 fiber and manufacturing process could prevent other manufacturers from making or selling any fiber falling within the new subclass. Further, Nan Ya stated that creating a new subclass would cause consumer confusion because manufacturers producing polyester bicomponent fibers with characteristics only slightly outside the parameters proposed by DuPont, whether to achieve other desired properties or to avoid patent infringement, would be required to call their product polyester, and would not be permitted to use the new subclass name. The result would be that polyester bicomponent fibers with similar characteristics, but different generic names, would be sold to consumers.[8]

4. Discussion of the Three Criteria for Granting New Generic Subclass Names

a. T400 Fiber's Chemical Composition

The materials DuPont submitted show that while T400 has the same general chemical composition as other polyester fibers, it also has a molecular and fiber structure that differs from chemically homogeneous polyesters. Although each of the two components of T400 is from the same polymer class, DuPont has combined the two chemically different polyesters in a side-by-side arrangement. A helical crimp resulting from the differential shrinkage of the two different polyesters in T400 results in a level of increased inherent stretch and recovery uncharacteristic of chemically homogeneous polyesters. The stretch and recovery is not physically induced like texturizing, but is inherent in the helical fiber structure, and the stretch recovery power is sustained and superior over time. Thus, DuPont's application meets the first criterion for granting a new generic fiber subclass name.

[6] BISFA, founded in 1928, and located in Brussels, Belgium is the international association of man-made fiber producers. BISFA establishes generic names and definitions for man-made fibers and procedures and test methods for different categories of man-made fibers. It also sets general rules for the settling of disputes between sellers and buyers of man-made fibers. BISFA provides an international voice for the man-made fiber industry in these matters and promotes the adoption of its methods and terminology by other standard-setting organizations.

[7] *See* 65 FR 75154 (Dec. 1, 2000), as well as the first paragraph of 16 CFR 303.7, incorporating by reference ISO generic names and definitions.

[8] Nan Ya also proposed expansion of 16 CFR 303.10(c) to include bicomponent fibers in which the two components are of the same fiber. Such a proposal, however, does not adequately address DuPont's petition, would require an additional public comment period and, therefore, is beyond the scope of this proceeding.

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b. T400's Distinctive Properties as a Result of a New Method of Manufacture or Substantially Differentiated Physical Characteristics, Such as Fiber Structure

The materials submitted by DuPont also show that the most notable characteristic (and of greatest importance to consumers) of T400 is its stretch and recovery power, which is superior to that of chemically homogeneous polyesters. This property is a direct result of the fiber structure of T400. DuPont compared the stretch and recovery of several false twist textured fibers to T400. The range of recoverable stretch values for T400, which is well above 35%, reflects the fact that DuPont can vary the stretch and recovery of the fiber by adjusting the spinner conditions. The recoverable stretch values for the polyester fibers DuPont described as 2GT, 3GT, and 4GT are below 35%. An additional distinctive property of T400 is that its superior stretch and recovery does not degrade over time as compared to some textured fibers, including polyesters. The uniqueness of T400 is derived from the natural helical coil imparted by the differential shrinkage of the two polymer components. T400's differentiated physical characteristics, therefore, satisfy this second criterion.

c. T400's Distinctive Features Make the Fiber Suitable for Uses for Which Other Polyester Fibers Would Not Be Suited, or Would Be Significantly Less Well Suited

The evidence submitted by DuPont supports the Commission's conclusion that textured polyesters are not suitable, or not as suitable, for imparting the significant stretch to certain garments, such as sports apparel, that consumers may expect or desire, and that T400 is a suitable stretch component. Thus, DuPont's application has satisfied the Commission that T400 is suitable for uses for which other polyester fibers are not suited, or not as well suited. Accordingly, the Commission agrees with DuPont that the granting of a generic subclass name to describe T400 is of importance to the general public, and not just a few knowledgeable professionals. A new generic subclass name will enable consumers to identify textile fiber products, such as sports apparel, containing T400 (and other inherently elastic multicomponent polyester fibers) that exhibit significant inherent stretch and recovery power that does not degrade over time.

5. Conclusion

Based on its review of the comments and the BISFA proceeding, and in consultation with its expert, the Commission has concluded that T400: (1) Has the same general chemical composition as an established generic fiber category (polyester); (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure (*e.g.*, inherent elasticity); and (3) that its distinctive feature(s) make the fiber suitable for uses for which other fibers under the established polyester generic name would not be suited, or would be significantly less well suited. Specifically, the side-by-side molecular structure of the multicomponent polyester fiber, T400, differs distinctly from chemically homogenous polyester fibers by possessing intrinsic elastic properties. The dissimilarities are due to the physical interaction of the two chemically distinct polyesters present, which result not only in inherent elasticity/recovery properties, but also in a changed structure. As a multicomponent polyester fiber, T400 has a uniform helical crimp that is not present in a chemically homogeneous polyester, even after texturing.

Accordingly, although T400 arguably is comparable to other multicomponent polyester fibers (as Nan Ya pointed out) there are sufficient differences to merit a new subclass designation. Therefore, the Commission is amending Rule 7(c) to adopt and define the generic subclass name "elasterell-p," and to allow use of the name "elasterell-p" as an alternative to the generic name "polyester" for that subclass of fiber. However, because T400 also is arguably comparable to other multicomponent polyester fibers, other companies that manufacture fibers satisfying the definition may use the subclass name in making required fiber content disclosures on labels.

Although BISFA has adopted and reported a different name to ISO for inclusion in ISO Standard 2076 to define T400 and a broad class of multicomponent fibers, BISFA's definition does not work under the Commission's regulatory scheme. BISFA's definition includes fibers that may not in all cases satisfy the definition of "polyester" in Rule 7(c).[9] Thus, BISFA's precise definition is somewhat too broad to be permissible as a "polyester" generic fiber subclass definition within Rule 7(c).[10]

To minimize conflict with BISFA's proposal, however, the Commission is revising the definition proposed in the NPR. The new definition of elasterell-p defines it generically in terms of its chemical composition and focuses less on its physical recoverable stretch characteristic.[11] This definition is consistent with the definition of "polyester" in Rule 7(c) and it is consistent with, but a bit narrower than, the definition of multelastester adopted by BISFA.[12] Further, because it is written in terms of the chemical structure of the fiber, it is consistent with the other generic fiber definitions in Rule 7. It also does not unnecessarily exclude any multicomponent polyester fiber from the subclass, which should address Nan Ya's primary concern.

Accordingly, for the reasons discussed above, the Commission amends Rule 7(c) of the Textile Rules by adding the following sentence at the end:

> Where the fiber is formed by the interaction of two or more chemically distinct polymers (of which none exceeds 85% by weight), and contains ester groups as the dominant functional unit (at least 85% by weight of the total polymer content of the fiber), and which, if stretched at least 100%, durably and rapidly reverts substantially to its unstretched length when the tension is removed, the term *elasterell-p* may be used as a generic description of the fiber.

III. Effective Date

The Commission is making the amendments effective today, November 27, 2002, as permitted by 5 U.S.C. 553(d), because the amendments do not create new obligations under the Rule; rather, they merely create a fiber name and definition that the public may use to comply with the Rule.

IV. Regulatory Flexibility Act

In the NPR, the Commission tentatively concluded that the provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis, 5 U.S.C. 603–604, did not apply to the proposal because the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission believed that the proposed amendments would impose no additional obligations, penalties, or costs. The amendments simply would allow covered companies to use a new generic name as an alternative to an existing generic name for that defined subclass of fiber, and would impose no additional labeling requirements. To ensure, however, that no substantial economic impact was overlooked, the Commission solicited public comment in the NPR on the effects of the proposed amendments on costs, profits, competitiveness of, and employment in small entities. 67 FR 7104, at 7109 (Feb. 15, 2002).

No comments were received on this issue. Accordingly, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the amendments promulgated today will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

These amendments do not constitute "collection[s] of information" under the Paperwork Reduction Act of 1995, Pub. L. 104–13, 109 Stat. 163, 44 U.S.C. chapter 35 (as amended), and its implementing regulations, 5 CFR 1320 *et seq.* Those procedures for establishing generic names that do constitute collections of information, 16 CFR 303.8, have been submitted to OMB, which has approved them and assigned them control number 3084–0101.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade Practices.

VI. Text of Amendments

For reasons set forth in the preamble, 16 CFR part 303 is amended as follows:

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

2. In § 303.7, paragraph (c) is amended by adding a sentence at the end, to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

* * * * *

(c) * * *

Where the fiber is formed by the interaction of two or more chemically distinct polymers (of which none exceeds 85% by weight), and contains ester groups as the dominant functional unit (at least 85% by weight of the total polymer content of the fiber), and which, if stretched at least 100%, durably and rapidly reverts substantially to its unstretched length when the tension is removed, the term *elasterell-p* may be used as a generic description of the fiber.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–30085 Filed 11–26–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4185]

Documentation of Immigrants—Visa Classification Symbols; Correction

AGENCY: Department of State.

ACTION: Correction of final rule.

SUMMARY: This document makes corrections to the final rule published on August 29, 2002 (67 FR 55319). The regulation made changes to the Department's table of immigrant visa classification symbols.

EFFECTIVE DATE: This rule is effective November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, 202–663–1206.

SUPPLEMENTARY INFORMATION: The Department of State published a final rule (Public Notice 4092) in the **Federal Register** of August 9, 2002, (67 FR 55319) amending § 42.11 by inadvertently substituting the word "child" for "orphan." in the definition of the IR4 category on the visa classification table. This correction removes that amendment published on August 9, 2002, and revises the AM1 category under the heading "Section of law" to read "584(b)(1)(C)," not "584(b)(2)(C)."

In rule FR Doc. 02–20090 published on August 29, 2002 (67 FR 55319), make the following correction. On page 55320, in the table to § 42.11:

a. In the entry for IR4, remove "Child" and add "Orphan" in its place; and

b. In the entry for AM1, remove "584(b)(2)(C)" and add "584(b)(1)(C)" in its place.

Dated: November 19, 2002.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 02–29763 Filed 11–26–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 4209]

RIN AB–60

Amendment to the International Traffic in Arms Regulations, United States Munitions List

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is revising Category V—Explosives, Propellants, Incendiary Agents, and Their Constituents and Category XIV—Toxicological Agents and Equipment and Radiological Equipment, of the U.S. Munitions List (USML). Amendments are made to the titles of both categories to better reflect the items included in the category and to move the texts of the definitional and interpretive provisions to the appropriate category. Also, to assist exporters, Category V and XIV are reformatted to identify the items by their predominant use. Exporters are also being provided Chemical Abstract Service (CAS) numbers and Chemical Weapons Convention (CWC) references. In addition to reformatting and changes in the language for clarification, Category XIV and Category V are revised to move from the USML to the jurisdiction of the Department of Commerce several items that have been identified as having predominantly commercial application and no significant military applicability. The items so transferred in Category XIV are fluorine, liquid pepper and chloropicrin. The items so transferred in Category V are nitroguanidine (NG), guanidine nitrate, compounds composed of fluorine and one or more of the following: Other halogens, oxygen, nitrogen, and propyleneimide 2-methylaziridine, unless the articles are compounded or mixed with any item controlled by the USML.

EFFECTIVE DATE: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen J. Tomchik, Office of Defense Trade Controls, Department of State, Telephone (202) 663–2799 or FAX (202)

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[9] The BISFA definition requires that the fiber-forming polymer be composed of at least 66% by weight of an ester, while Rule 7(c)'s definition of polyester requires at least 85% by weight of an ester.

[10] At the same time, when approved by ISO, the term "multelastester," and its somewhat broader definition, could be recognized by the Commission by amending Rule 7 to incorporate a newly recognized ISO name, as we have done previously. That process does not create the problems that are inherent in amending the Commission's Rules to use the BISFA definition, which conflicts with the FTC's long-established definition of polyester.

[11] Accordingly, the revised definition no longer includes an American Society for Testing and Materials ("ASTM") test procedure, as proposed in the NPR. This test procedure related to the fiber's physical characteristics and is not needed under the revised, chemical-based definition.

[12] The proposed definition varies from the BISFA definition slightly so that a fiber satisfying the elasterell-p subclass definition can be designated in required information disclosures by either its generic name, "polyester," or, alternatively, by its subclass name. In addition, the Commission uses the terms "polymers" and "weight" in Rule 7's generic fiber name definitions, rather than the synonymous ISO terms "macromolecules" and "mass."

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261–8199. ATTN: Regulatory Change, USML Part 121, Category V and XIV.

SUPPLEMENTARY INFORMATION: This notice of rulemaking provides the results of a review, by the Department of State in consultation with the Departments of Defense and Commerce, of Category V and XIV of the U.S. Munitions List. To better reflect the items included in each category, the titles are amended. To assist the exporter, the definitional and interpretive provisions from § 121.12 and § 121.13 are moved to Category V, those from § 121.7 to Category XIV, and the numbered sections are captioned "Reserved". Also to assist the exporter, Chemical Abstract Service (CAS) numbers and Chemical Weapons Convention (CWC) references are being provided. Exporters are advised that the CAS numbers do not cover all the substances and mixtures controlled by the categories and CWC numbers are provided only when deemed appropriate.

In addition to amending the title and adding CAS numbers, the coverage of Category V, paragraph (c) is amended to add (c)(4) to cover, in addition to fuels for category VIII, fuels for the items in Category IV and VI. The fuels for category IV and VI articles are currently controlled by the components, parts and accessories paragraph in each of the categories. A new paragraph (c)(7) has been added to category V to clarify control of pyrotechnics that currently are covered by Category (V), paragraph (d). The language in section 121.13 is removed and the section "reserved", and the language in section 121.13 is now in Category V, paragraphs (c)(4) and (c)(9). The fuel thickeners currently in Category V, paragraph (b) are moved to paragraph (c) resulting in propellants in paragraph (c) being moved to paragraph (b). The compounds currently in Category V, paragraph (e) are moved to the relevant paragraph in the category in which the article is covered (*e.g.*, binders, additives, etc.) and the technical data and services currently in paragraph (f) are moved to a new paragraph (h).

The amendments in Category XIV, in addition to changing the title and adding CAS numbers and CWC references, include the transfer to Category XVI of nuclear radiation detection and measuring devices currently in paragraph (d) of Category XIV. The inclusion of this coverage in Category XVI will be published in the results of the review of the entire category XVI. Paragraph (d) now controls tear gases and riot control agents. The equipment in paragraph (c) for the dissemination, detection, identification and defense of the articles in this category is moved to paragraph (f) and paragraph (k). Paragraph (c) now covers chemical agent binary precursors and key precursors. Paragraph (f), currently covering technical data, is revised re-designate paragraph (f) as Significant Military Equipment (SME) and to cover items currently in Category X(c) of the USML. Category XIV, paragraph (f) now includes equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment (*e.g.*, the dissemination, dispersion, testing, detection, identification, warning, monitoring, sample collection and processing; and individual protection of the chemical and biological agents listed in paragraphs (a) and (b) of the category). This includes military protective clothing and masks, but not those items designed for domestic preparedness (*e.g.*, civil defense), collective protection, and decontamination or remediation. These movements resulted in the technical data currently in paragraph (f) being moved to a new paragraph (l). The components, parts, accessories, attachments and associated equipment for the items in category XIV, currently in paragraph (e), are moved to a new paragraph (k), and paragraph (e) now covers defoliants. The coverage of defoliants is expanded to include Agent Orange.

The remaining new paragraphs (*e.g.* (d), (g), (h), (i), (j), (k), and (m)) added to Category XIV are for clarification, specific identification and movement of the articles currently covered in the category, and for transfer of the language in section 121.7.

In addition to the above amendments, four explosives and three chemicals were identified as having predominant civil use warranting their removal from the USML and transfer to the Commerce Control List. In Category V, the items and examples of their commercial use are: Nitroguanidine (NG) (*e.g.*, used in pet insecticides), guanidine nitrate (*e.g.*, used in disinfectants and photographic chemicals), propyleneimide 2-methulaziridine (*e.g.*, used by paint and pharmaceutical manufacturers), and compounds composed of fluorine and one or more of the following: Other halogens, oxygen, nitrogen (*e.g.*, used in freon). In Category XIV, the items and examples of their commercial use are: Fluorine (*e.g.*, used in production of metallic and other fluoride and fluorocarbons, and as an active constituent of fluoridating compounds used in water and toothpaste), liquid pepper (*e.g.*, derived from cayenne pepper and used by both for law enforcement and in commercially available sprays for personal protection), and chloropicrin (*e.g.*, used in commercial fumigants and soil insecticides, and as a disinfectant for cereals and grains). In accordance with the requirements of Section 38(f) of the Arms Export Control Act (AECA), this removal has been notified to the Congress, and the Commerce Control List (CCL) controls identified are: (1) For propyleneimide 2-methulaziridine and compounds composed of fluorine and one or more of the following: Other halogens, oxygen, and nitrogen—ECCN 1C018; (2) nitroguanidine (NG) and guanidine nitrate—ECCN 1C011, (3) for chloropicrin—ECCN 1C355, (4) for liquid pepper—ECCN 1A984, and for fluorine—ECCN EAR99.

Finally, Category X, Protective Personnel Equipment, is amended to delete the current paragraph (c) and renumber the paragraphs since protective apparel and equipment specifically designed or modified for use with toxicological agents and equipment is now covered by paragraph (f) of Category XIV.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders Nos. 12372 and 13123. However, affected U.S. persons are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Stephen Tomchik, Regulatory Change, USML Categories V and XIV, 12th Floor, SA–1, Washington, DC 20522–0112.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 121 is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for Part 121 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2278, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

2. In § 121.1, Category V—Explosives, Propellants, Incendiary Agents, and Their Constituents, paragraphs (c) and (d) of Category X—Protective Personnel Equipment, and Category XIV—Toxicological Agents and Equipment and Radiological Equipment are revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

*(a) Explosives, and mixtures thereof:
(1) ADNBF (aminodinitrobenzofuroxan or 7-Amino 4,6-dinitrobenzofurazanr-1-oxide) (CAS 97096–78–1);
(2) BNCP (cis-bis (5-nitrotetrazolato) tetra amine-cobalt (III) perchlorate);
(3) CL–14 (diamino dinitrobenzofuroxan or 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide) (CAS 117907–74–1);
(4) CL–20 (HNIW or Hexanitrohexaazaisowurtzitane); (CAS 135285–90–4); chlathrates of CL–20 (see paragraphs (g)(3) and (4) of this category);
(5) CP (2-(5-cyanotetrozolato) penta aminecobalt (III) perchlorate); (CAS 70247–32–4);
(6) DADE (1,1-diamino-2,2-dinitroethylene, FOX7);
(7) DDFP (1,4-dinitrodifurazanopiperazine);
(8) DDPO (2,6-diamino-3,5-dinitropyrazine-1-oxide, PZO); (CAS 194486–77–6);
(9) DIPAM (3,3′-Diamino-2,2′,4,4′,6,6′-hexanitrobiphenyl or dipicrimide) (CAS 17215–44–0);
(10) DNGU (DINGU or dinitroglycoluril) (CAS 55510–04–8);
(11) Furazans, as follows:
(i) DAAOF (diaminoazoxyfurazan);
(ii) DAAzF (diaminoazofurazan) (CAS 78644–90–3);
(12) HMX and derivatives (see paragraph (g)(5) of this category):
(i) HMX (Cyclotetramethylenetetranitramine; octahydro-1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane; octogen, octogene) (CAS 2691–41–0);
(ii) Diflouroaminated analogs of HMX;
(iii) K–55 (2,4,6,8-tetranitro-2,4,6,8-tetraazabicyclo [3,3,0]-octanone-3, tetranitrosemiglycouril, or keto-bicyclic HMX) (CAS 130256-72–3);
(13) HNAD (hexanitroadamantane) (CAS 143850–71–9);
(14) HNS (hexanitrostilbene) (CAS 20062–22–0);
(15) Imidazoles, as follows:
(i) BNNI (Octohydro-2,5-bis(nitroimino) imidazo [4,5-d]imidazole);
(ii) DNI (2,4-dinitroimidazole) (CAS 5213–49–0);
(iii) FDIA (1-fluoro-2,4-dinitroimidazole);
(iv) NTDNIA (N-(2-nitrotriazolo)-2,4-dinitro-imidazole);
(v) PTIA (1-picryl-2,4,5-trinitroimidazole);
(16) NTNMH (1-(2-nitrotriazolo)-2-dinitromethylene hydrazine);
(17) NTO (ONTA or 3-nitro-1,2,4-triazol-5-one) (CAS 932–64–9);
(18) Polynitrocubanes with more than four nitro groups;
(19) PYX (2,6-Bis(picrylamino)-3,5-dinitropyridine) (CAS 38082–89–2);
(20) RDX and derivatives:
(i) RDX (cyclotrimethylentrinitramine), cyclonite, T4, hexahydro-1,3,5-trinitro-1,3,5-triazine, 1,3,5-trinitro-1,3,5-triaza-cyclohexane, hexogen, or hexogene) (CAS 121–84–4);
(ii) Keto-RDX (K–6 or 2,4,6-trinitro-2,4,6-triazacyclohexanone (CAS 115029–35–1);
(21) TAGN (Triaminoguanidinenitrate) (CAS 4000–16–2);
(22) TATB (Triaminotrinitrobenzene) (CAS 3058–38–6) (see paragraph (g)(7) of this category);
(23) TEDDZ (3,3,7,7-tetrabis(difluoroamine) octahydro-1,5-dinitro-1,5-diazocine;
(24) Tetrazoles, as follows:
(i) NTAT (nitrotriazol aminotetrazole);
(ii) NTNT (1-N-(2-nitrotriazolo)-4-nitrotrazole);
(25) Tetryl (trinitrophenylmethylnitramine) (CAS 479–45–8);
(26) TNAD (1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin) (CAS 135877-16–6)(see paragraph (g)(6) of this category);
(27) TNAZ (1,1,3-trinitroazetidine) (CAS 97645–24–4) (see paragraph (g)(2) of this category);
(28) TNGU (SORGUYL or tetranitroglycoluril) (CAS 55510–03–7);
(29) TNP (1,4,5,8-tetranitropyridazine (CAS 229176–04–9);
(30) Triazines, as follows:
(i) DNAM (2-oxy-4,6-dinitroamino-s-triazine) (CAS 19899–80–0);
(ii) NNHT (2-nitroimino-5-nitro-hexahydro-1,3,5 triazine) (CAS 130400–13–4);
(31) Triazoles, as follows:
(i) 5-azido-2-nitratriazole;
(ii) ADHTDN (4-amino-3,5-hihydrazino-1,2,4-triazole dinitramide) (CAS 1614–08–0);
(iii) ADNT (1-amino-3,5-dinitro-1,2,4-triazole);
(iv) BDTNTA ([Bis-dinitrotriazole]amine);
(v) DBT (3,3′-dinitro-5,5-bi-1,2,4-triazole) (CAS 30003–46–4);
(vi) DNBT (dinitrobistriazole) (CAS 70890–46–9);
(vii) NTDNA (2-nitrotriazole 5-dinitramide);
(viii) NTDNT (1-N-(2-nitrotriazolo) 3,5-dinitro-triazole);
(ix) PDNT (1-picryl-3,5-dinitrotriazole);
(x) TACOT (tetranitrobenzotriazolobenzotriazole) (CAS 25243–36–1);
(32) Any explosive not listed elsewhere in paragraph (a) of this category with a detonation velocity exceeding 8,700m/s at maximum density or a detonation pressure exceeding 34 Gpa (340 kbar).
(33) Other organic explosives not listed elsewhere in paragraph (a) of this category yielding detonation pressures of 25 Gpa (250 kbar) or more that will remain stable at temperatures of 523K (250oC) or higher for periods of 5 minutes or longer;
(34) Diaminotrinitrobenzene (DATB);
(35) Any other explosive not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.* formulated) for military application.

* (b) Propellants:
(1) Any United Nations (UN) Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) of more than 250 seconds for non-metallized, or 270 seconds for metallized compositions;
(2) Any UN Class 1.3 solid propellant with a theoretical specific impulse (under standard conditions) of more than 230 seconds for non-halogenized, or 250 seconds for non-metallized compositions;
(3) Propellants having a force constant of more than 1,200 kJ/Kg;
(4) Propellants that can sustain a steady-state burning rate more than 38mm/s under standard conditions (as measured in the form of an inhibited single strand) of 6.89 Mpa (68.9 bar) pressure and 294K (210 C);
(5) Elastomer modified cast double based propellants with extensibility at

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maximum stress greater than 5% at 233 K (−40C);

(6) Any propellant containing substances listed in Category V;

(7) Any other propellant not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

(c) Pyrotechnics, fuels and related substances, and mixtures thereof:

(1) Alane (aluminum hydride)(CAS 7784–21–6);

(2) Carboranes; decaborane (CAS 17702–41–9); pentaborane and derivatives thereof;

(3) Hydrazine and derivatives:

(i) Hydrazine (CAS 302–01–2) in concentrations of 70% or more (not hydrazine mixtures specially formulated for corrosion control);

(ii) Monomethyl hydrazine (CAS 60–34–4);

(iii) Symmetrical dimethyl hydrazine (CAS 540–73–8);

(iv) Unsymmetrical dimethyl hydrazine (CAS 57–14–7);

(4) Liquid fuels specifically formulated for use by articles covered by Categories IV, VI, and VIII;

(5) Spherical aluminum powder (CAS 7429–90–5) in particle sizes of 60 micrometers or less manufactured from material with an aluminum content of 99% or more;

(6) Metal fuels in particle form whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of any of the following:

(i) Metals and mixtures thereof:

(A) Beryllium (CAS 7440–41–7) in particle sizes of less than 60 micrometers;

(B) Iron powder (CAS 7439–89–6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen;

(ii) Mixtures, which contain any of the following:

(A) Boron (CAS 7440–42–8) or boron carbide (CAS 12069–32–8) fuels of 85% purity or higher and particle sizes of less than 60 micrometers;

(B) Zirconium (CAS 7440–67–7), magnesium (CAS 7439–95–4) or alloys of these in particle sizes of less than 60 micrometers;

(iii) Explosives and fuels containing the metals or alloys listed in paragraphs (c)(6)(i) and (c)(6)(ii) of this category whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium, or beryllium;

(7) Pyrotechnics and pyrophoric materials specifically formulated for military purposes to enhance or control the production of radiated energy in any part of the IR spectrum.

(8) Titanium subhydride (TiH_n) of stoichiometry equivalent to n = 0.65–1.68;

(9) Military materials containing thickeners for hydrocarbon fuels specially formulated for use in flame throwers or incendiary munitions; metal stearates or palmates (also known s octol); and M1, M2 and M3 thickeners;

(10) Any other pyrotechnic, fuel and related substance and mixture thereof not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

(d) Oxidizers, to include:

(1) ADN (ammonium dinitramide or SR–12) (CAS 140456–78–6);

(2) AP (ammonium perchlorate) (CAS 7790–98–9);

(3) BDNPN (bis,2,2-dinitropropylnitrate) (CAS 28464–24–6);

(4) DNAD (1,3-dinitro-1,3-diazetidine) (CAS 78246–06–7);

(5) HAN (Hydroxylammonium nitrate) (CAS 13465–08–2);

(6) HAP (hydroxylammonium perchlorate) (CAS 15588–62–2);

(7) HNF (Hydrazinium nitroformate) (CAS 20773–28–8);

(8) Hydrazine nitrate (CAS 37836–27–4);

(9) Hydrazine perchlorate (CAS 27978–54–7);

(10) Liquid oxidizers comprised of or containing inhibited red fuming nitric acid (IRFNA) (CAS 8007–58–7) or oxygen difluoride;

(11) Perchlorates, chlorates, and chromates composited with powdered metal or other high energy fuel components controlled by this category;

(12) Any other oxidizer not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

* (e) Binders, and mixtures thereof:

(1) AMMO (azidomethylmethyloxetane and its polymers) (CAS 90683–29–7) (see paragraph (g)(1) of this category);

(2) BAMO (bisazidomethyloxetane and its polymers) (CAS 17607–204) (see paragraph (g)(1) of this category);

(3) BTTN (butanetrioltrinitrate) (CAS 6659–60–5) (see paragraph (g)(8) of this category);

(4) FAMAO (3-difluoroaminomethyl-3-azidomethyl oxetane) and its polymers;

(5) FEFO (bis-(2-fluoro-2,2-dinitroethyl)formal) (CAS 17003–79–1);

(6) GAP (glycidylazide polymer) (CAS 143178–24–9) and its derivatives;

(7) HTPB (hydroxyl terminated polybutadiene) with a hydroxyl functionality equal to or greater than 2.2 and less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30° C of less than 47 poise (CAS 69102–90–5);

(8) NENAS (nitratoethylnitramine compounds) (CAS 17096–47–8, 85068–73–1 and 82486–82–6);

(9) Poly-NIMMO (nitratomethylmethyloxetane (poly [3-nitratomethyl, 3-methyl oxetane] or (NMMO)) (CAS 84051–81–0);

(10) Energetic monomers, plasticizers and polymers containing nitro, azido nitrate, nitraza or difluoromaino groups specially formulated for military use;

(11) TVOPA 1,2,3-Tris [1,2-bis(difluoroamino) ethoxy]propane; tris vinoxy propane adduct;

(12) Polynitrorthocarbonates;

(13) FPF–1 poly-2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal;

(14) FPF–3 poly-2,4,4,5,5,6,6-heptafluoro-2-trifluoromethyl-3-oxaheptane-1,7-dioformal;

(15) PGN (Polyglycidylnitrate or poly(nitratomethyl oxirane); poly-GLYN);

(16) N-methyl-p-nitroaniline;

(17) Low (less than 10,000) molecular weight, alcohol-functionalized, poly(epichlorohydrin); poly(epichlorohydrindiol); and triol;

(18) Bis(2,2-dinitropropyl) formal and acetal;

(19) Any other binder and mixture thereof not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.* formulated) for military application.

(f) Additives:

(1) Basic copper salicylate (CAS 62320–94–9);

(2) BHEGA (Bis-(2-hydroxyethyl)glycolamide) (CAS 17409–41–5);

(3) Ferrocene Derivatives:

(i) Butacene (CAS 125856–62–4);

(ii) Catocene (2,2-Bis-ethylferrocenyl propane) (CAS 37206–42–1);

(iii) Ferrocene carboxylic acids;

(iv) n-butyl-ferrocene (CAS 319904–29–7);

(4) Lead beta-resorcylate (CAS 20936–32–7);

(5) Lead citrate (CAS 14450–60–3);

(6) Lead-copper chelates of beta-resorcylate or salicylates (CAS 68411–07–4);

(7) Lead maleate (CAS 19136–34–6);

(8) Lead salicylate (CAS 15748–73–9);

(9) Lead stannate (CAS 12036–31–6);

(10) MAPO (tris-1-(2-methyl)aziridinyl phosphine oxide) (CAS 57–39–6); BOBBA–8 (bis(2-methyl aziridinyl) 2-(2-hydroxypropanoxy) propylamino phosphine oxide); and other MAPO derivatives;

(11) Methyl BAPO (Bis(2-methyl aziridinyl) methylamino phosphine oxide) (CAS 85068–72–0);

(12) 3-Nitraza-1,5 pentane diisocyanate (CAS 7406–61–9);

(13) Organo-metallic coupling agents, specifically:

(i) Neopentyl[diallyl]oxy, tri [dioctyl] phosphatotitanate (CAS 103850–22–2); also known as titanium IV, 2,2[bis 2-propenolato-methyl, butanolato, tris (dioctyl) phosphato] (CAS 110438–25–0), or LICA 12 (CAS 103850–22–2);

(ii) Titanium IV, [(2-propenolato-1) methyl, n-propanolatomethyl] butanolato-1, tris(dioctyl)pyrophosphate, or KR3538;

(iii) Titanium IV, [2-propenolato-1)methyl, propanolatomethyl] butanolato-1, tris(dioctyl) phosphate;

(14) Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine trimesamide), isoyanuric, or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring and its polymers;

(15) Superfine iron oxide (Fe_2O_3 hematite) with a specific surface area more than 250 m 2/g and an average particle size of 0.003 μm or less (CAS 1309–37–1);

(16) TEPAN (tetraethylenepentaamineacrylonitrile) (CAS 68412–45–3); cyanoethylated polyamines and their salts;

(17) TEPANOL (Tetraethylene pentamineacrylonitrileglycidol) (CAS 110445–33–5); cyanoethylated polyamines adducted with glycidol and their salts;

(18) TPB (triphenyl bismuth) (CAS 603–33–8);

(19) PCDE (Polycyanodifluoro aminoethyleneoxide);

(20) BNO (Butadienenitrileoxide);

(21) Any other additive not elsewhere identified in this category specifically designed, modified, adapted, or configured (*e.g.*, formulated) for military application.

(g) Precursors, as follows:

(1) BCMO (bischloromethyloxetane) (CAS 142173–26–0) (see paragraphs (e)(1) and (2) of this category);

(2) Dinitroazetidine-t-butyl salt (CAS 125735–38–8) (see paragraph (a)(28) of this category);

(3) HBIW (hexabenzylhexaazaisowurtzitane) (CAS 124782–15–6) (see paragraph (a)(4) of this category);

(4) TAIW (tetraacetyldibenzylhexa-azaisowurtzitane) (see paragraph (a)(4) of this category);

(5) TAT (1,3,5,7-tetraacetyl-1,3,5,7-tetraaza-cyclooctane) (CAS 41378–98–7) (see paragraph (a)(13) of this category);

(6) Tetraazadecalin (CAS 5409–42–7) (see paragraph (a)(27) of this category);

(7) 1,3,5-trichorobenzene (CAS 108–70–3) (see paragraph (a)(23) of this category);

(8) 1,2,4-trihydroxybutane (1,2,4-butanetriol) (CAS 3068–00–6) (see paragraph (e)(5) of this category);

(h) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles numerated in paragraphs (a) through (g) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

(i) The following interpretations explain and amplify the terms used in this category and elsewhere in this subchapter.

(1) Category V contains explosives, energetic materials, propellants and pyrotechnics and specially formulated fuels for aircraft, missile and naval applications. Explosives are solid, liquid or gaseous substances or mixtures of substances, which, in their primary, booster or main charges in warheads, demolition or other military applications, are required to detonate.

(2) Paragraph (c)(6)(ii)(A) of this category does not control boron and boron carbide enriched with boron-10 (20% or more of total boron-10 content.

(3) The resulting product of the combination of any controlled or non-controlled substance compounded or mixed with any item controlled by this subchapter is also subject to the controls of this category.

Note 1: To assist the exporter, an item has been categorized by the most common use. Also, a reference has been provided to the related controlled precursors (*e.g.*, see paragraph (a)(12) of this category). Regardless of where the item has been placed in the category, all exports are subject to the controls of this subchapter.

Note 2: Chemical Abstract Service (CAS) registry numbers do not cover all the substances and mixtures controlled by this category. The numbers are provided as examples to assist the government agencies in the license review process and the exporter when completing their license application and export documentation.

* * * * *

Category X—Protective Personnel Equipment

* * * * *

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the articles in paragraphs (a) and (b) of this category.

(d) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category.

* * * * *

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

* (a) Chemical agents, to include:

(1) Nerve agents:

(i) O-Alkyl (equal to or less than C_{10}, including cycloalkyl) alkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphonofluoridates, such as: Sarin (GB): O-Isopropyl methylphosphonofluoridate (CAS 107–44–8) (CWC Schedule 1A); and Soman (GD): O-Pinacolyl methylphosphonofluoridate (CAS 96–64–0) (CWC Schedule 1A);

(ii) O-Alkyl (equal to or less than C_{10}, including cycloalkyl) N,N-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphoramidocyanidates, such as: Tabun (GA): O-Ethyl N, N-dimethylphosphoramidocyanidate (CAS 77–81–6) (CWC Schedule 1A);

(iii) O-Alkyl (H or equal to or less than C_{10}, including cycloalkyl) S–2-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl)aminoethyl alkyl (Methyl, Ethyl, n-Propyl or Isopropyl)phosphonothiolates and corresponding alkylated and protonated salts, such as: VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate (CAS 50782–69–9) (CWC Schedule 1A);

(2) Amiton: O,O-Diethyl S-[2(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (CAS 78–53–5) (CWC Schedule 2A);

(3) Vesicant agents:

(i) Sulfur mustards, such as: 2-Chloroethylchloromethylsulfide (CAS 2625–76–5) (CWC Schedule 1A); Bis(2-chloroethyl)sulfide (CAS 505–60–2) (CWC Schedule 1A); Bis(2-ch1oroethylthio)methane (CAS 63839–13–6) (CWC Schedule 1A); 1,2-bis (2-chloroethylthio)ethane (CAS 3563–36–8) (CWC Schedule 1A); 1,3-bis (2-ch1oroethylthio)-n-propane (CAS 63905–10–2) (CWC Schedule 1A); 1,4-bis (2-chloroethylthio)-n-butane (CWC Schedule 1A); 1,5-bis (2-chloroethylthio)-n-pentane (CWC Schedule 1A); Bis (2-chloroethylthiomethyl)ether (CWC Schedule 1A); Bis (2-chloroethylthioethyl)ether (CAS 63918–89–8) (CWC Schedule 1A);

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(ii) Lewisites, such as: 2-chlorovinyldichloroarsine (CAS 541–25–3) (CWC Schedule 1A); Tris (2-chlorovinyl) arsine (CAS 40334–70–1) (CWC Schedule 1A); Bis (2-chlorovinyl) chloroarsine (CAS 40334–69–8) (CWC Schedule 1A);

(iii) Nitrogen mustards, such as: HN1: bis (2-chloroethyl) ethylamine (CAS 538–07–8) (CWC Schedule 1A); HN2: bis (2-chloroethyl) methylamine (CAS 51–75–2) (CWC Schedule 1A); HN3: tris (2-chloroethyl)amine (CAS 555–77–1) (CWC Schedule 1A);

(iv) Ethyldichloroarsine (ED);

(v) Methyldichloroarsine (MD);

(4) Incapacitating agents, such as:

(i) 3-Quinuclindinyl benzilate (BZ) (CAS 6581–06–2) (CWC Schedule 2A);

(ii) Diphenylchloroarsine (DA) (CAS 712–48–1);

(iii) Diphenylcyanoarsine (DC);

* (b) Biological agents and biologically derived substances specifically developed, configured, adapted, or modified for the purpose of increasing their capability to produce casualties in humans or livestock, degrade equipment or damage crops.

* (c) Chemical agent binary precursors and key precursors, as follows:

(1) Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonyl diflourides, such as: DF: Methyl Phosphonyldifluoride (CAS 676–99–3) (CWC Schedule 1B); Methylphosphinyldifloride;

(2) O-Alkyl (H or equal to or less than C_{10}, including cycloalkyl) O–2-dialkyl (methyl, ethyl, n-Propyl or isopropyl)aminoethyl alkyl (methyl, ethyl, N-propyl or isopropyl)phosphonite and corresponding alkylated and protonated salts, such as: QL: O-Ethyl-2-di-isopropylaminoethyl methylphosphonite (CAS 57856–11–8) (CWC Schedule 1B);

(3) Chlorosarin: O-Isopropyl methylphosphonochloridate (CAS 1445–76–7) (CWC Schedule 1B);

(4) Chlorosoman: O-Pinakolyl methylphosphonochloridate (CAS 7040–57–5) (CWC Schedule 1B);

(5) DC: Methlyphosphonyl dichloride (CAS 676–97–1) (CWC Schedule 2B); Methylphosphinyldichloride;

(d) Tear gases and riot control agents including:

(1) Adamsite (Diphenylamine chloroarsine or DM) (CAS 578–94–9);

(2) CA (Bromobenzyl cyanide) (CAS 5798–79–8);

(3) CN (Phenylacyl chloride or w-Chloroacetophenone) (CAS 532–27–4);

(4) CR (Dibenz-(b,f)-1,4-oxazephine) (CAS 257–07–8);

(5) CS (o-Chlorobenzylidenemalononitrile or o-Chlorobenzalmalononitrile) (CAS 2698–41–1);

(6) Dibromodimethyl ether (CAS 4497–29–4);

(7) Dichlorodimethyl ether (ClCi) (CAS 542–88–1);

(8) Ethyldibromoarsine (CAS 683–43–2);

(9) Bromo acetone;

(10) Bromo methylethylketone;

(11) Iodo acetone;

(12) Phenylcarbylamine chloride;

(13) Ethyl iodoacetate;

(e) Defoliants, as follows:

(1) Agent Orange (2,4,5–Trichlorophenoxyacetic acid mixed with 2,4-dichlorophenoxyacetic acid);

(2) LNF (Butyl 2-chloro-4-fluorophenoxyacetate)

*(f) Equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment as follows:

(1) The dissemination, dispersion or testing of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(2) The detection, identification, warning or monitoring of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(3) Sample collection and processing of the chemical agents and biological agents listed in paragraph (a) and (b) of this category;

(4) Individual protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

This includes military protective clothing and masks, but not those items designed for domestic preparedness (*e.g.*, civil defense);

(5) Collective protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

(6) Decontamination or remediation of the chemical agents and biological agents listed in paragraph (a) and (b) of this category.

(g) Antibodies, polynucleoides, biopolymers or biocatalysts specifically designed or modified for use with articles controlled in paragraph (f) of this category.

(h) Medical countermeasures, to include pre- and post-treatments, vaccines, antidotes and medical diagnostics, specifically designed or modified for use with the chemical agents listed in paragraph (a) of this category and vaccines with the sole purpose of protecting against biological agents identified in paragraph (b) of this category. Examples include: barrier creams specifically designed to be applied to skin and personal equipment to protect against vesicant agents controlled in paragraph (a) of this category; atropine auto injectors specifically designed to counter nerve agent poisoning.

(i) Modeling or simulation tools specifically designed or modified for chemical or biological weapons design, development or employment. The concept of modeling and simulation includes software covered by paragraph (m) of this category specifically designed to reveal susceptibility or vulnerability to biological agents or materials listed in paragraph (b) of this category.

(j) Test facilities specifically designed or modified for the certification and qualification of articles controlled in paragraph (f) of this category.

(k) Equipment, components, parts, accessories, and attachments, exclusive of incinerators (including those which have specially designed waste supply systems and special handling facilities), specifically designed or modified for destruction of the chemical agents in paragraph (a) or the biological agents in paragraph (b) of this category. This destruction equipment includes facilities specifically designed or modified for destruction operations.

(l) Tooling and equipment specifically designed or modified for the production of articles controlled by paragraph (f) of this category.

(m) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) related to the defense artic1es enumerated in paragraphs (a) through (l) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this Category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(n) The following interpretations explain and amplify the terms used in this category and elsewhere in this subchapter.

(1) A chemical agent in category XIV(a) is a substance having military application, which by its ordinary and direct chemical action, produces a powerful physiological effect.

(2) The biological agents or biologically derived substances in paragraph (b) of this category are those agents and substances capable of producing casualties in humans or livestock, degrading equipment or damaging crops and which have been modified for the specific purpose of increasing such effects. Examples of such modifications include increasing resistance to UV radiation or improving dissemination characteristics. This does not include modifications made only for civil applications (*e.g.* medical or environmental use).

(3) The destruction equipment controlled by this category related to biological agents in paragraph (b) is that equipment specifically designed to destroy only the agents identified in paragraph (b) of this category.

(4) Technical data and defense services in paragraph (l) include libraries, databases and algorithms specifically designed or modified for use with articles controlled in paragraph (f) of this category.

(5) The tooling and equipment covered by paragraph (l) of this category includes molds used to produce protective masks, over-boots, and gloves controlled by paragraph (f) and leak detection equipment specifically designed to test filters controlled by paragraph (f) of this category.

(6) The resulting product of the combination of any controlled or non-controlled substance compounded or mixed with any item controlled by this subchapter is also subject to the controls of this category.

Note 1: This Category does not control formulations containing 1% or less CN or CS or individually packaged tear gases or riot control agents for personal self-defense purposes.

Note 2: Categories XIV(a) and (d) do not include the following:

(1) Cyanogen chloride;
(2) Hydrocyanic acid;
(3) Chlorine;
(4) Carbonyl chloride (Phosgene);
(5) Ethyl bromoacetate;
(6) Xylyl bromide;
(7) Benzyl bromide;
(8) Benzyl iodide;
(9) Chloro acetone;
(10) Chloropicrin (trichloronitromethane);
(11) Fluorine;
(12) Liquid pepper.

Note 3: Chemical Abstract Service (CAS) registry numbers do not cover all the substances and mixtures controlled by this category. The numbers are provided as examples to assist the government agencies in the license review process and the exporter when completing their license application and export documentation.

Note 4: With respect to U.S. obligations under the Chemical Weapons Convention (CWC), refer to Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710 through 722). As appropriate, the CWC schedule is provided to assist the exporter.

* * * * *

§§ 121.7, 121.12 and 121.13 [Removed and Reserved]

3. Sections 121.7, 121.12 and 121.13 are removed and reserved.

Dated: August 22, 2002.

John R. Bolton,

Under Secretary Arms Control and International Security, Department of State.

[FR Doc. 02–29595 Filed 11–26–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9016]

RIN 1545–AY71

Obligations of States and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Monday, September 23, 2002 (67 FR 59756) relating to the definition of private activity bonds applicable to tax-exempt bonds issued by state and local governments for output facilities.

DATES: This correction is effective November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections is under section 141 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 9016), that were the subject of FR Doc. 02–24137, is corrected as follows:

1. On page 59758, column 2, in the preamble under the paragraph heading "Explanation of Provisions", first line, the language "through 821(c) (or by a state authority" is corrected to read "through 825r (or by a state authority".

§ 1.141–7 [Corrected]

2. On page 59761, column 2, § 1.141–7(g)(1)(ii)(B), line 5, the language "Act (16 U.S.C. 791a through 821c) (or by" is corrected to read "Act (16 U.S.C. 791a through 825r) (or by".

3. On page 59761, column 3, § 1.141–7(g)(3), fifth line from the top of the column, the language "U.S.C. 791a through 821(c) (does not" is corrected to read "U.S.C. 791a through 825r) (or by a state regulatory authority under comparable provisions of state law) does not".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–30140 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 46

[TD 9024]

RIN 1545–AY93

Liability For Insurance Premium Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 4374 relating to liability for the insurance premium excise tax. This document affects persons who make, sign, issue, or sell a policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer.

DATES: *Effective Date:* These regulations are effective November 27, 2002.

Applicability Date: These regulations are applicable to premiums paid on or after November 27, 2002.

FOR FURTHER INFORMATION CONTACT: David Lundy at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2002, the IRS and Treasury published a notice of proposed rulemaking (REG–125450–01), 2002–5 IRB 457) in the **Federal Register** (67 FR 707) under section 4374 relating to the insurance premium excise tax imposed by section 4371 on certain policies issued by foreign insurance and reinsurance companies. One comment letter responding to the notice of proposed rulemaking was received. After consideration of these comments, the proposed regulations are adopted as final regulations as revised by this Treasury decision.

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Explanation of Provisions

These final section 4374 regulations clarify the persons who are liable for payment of the insurance premium excise tax and conform the regulations to the amendments made to section 4374 by the Tax Reform Act of 1976 (90 Stat. 1525). In particular, these regulations clarify that liability for the excise tax is incurred by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold.

One commentator suggested that the final regulation restrict application of the section 7270 penalty to a failure to pay the excise tax by the person who remitted the tax to the foreign insurer or reinsurer. Section 46.4374–1(d) of the regulation only is a cross-reference to section 7270, which section imposes a penalty of double the amount of tax when an underpayment results from an intention to evade the tax. Substantive guidance on the application of section 7270 is beyond the scope of this regulation, and accordingly, no change to the regulation was made as a result of this suggestion.

The same commentator suggested that the final regulation clarify whether the insured person under an insurance policy may be liable for the excise tax if all or a portion of the risks from such policy are reinsured with a foreign reinsurer on the basis that the insured may be treated as a person for whose benefit the reinsurance policy was made, signed, issued or sold. In response to the commentator's suggestion, § 46.4374–1(a) of these regulations has been revised to provide that in the case of a reinsurance policy other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy was made, signed, issued or sold. In these cases, when an insurer or reinsurer reinsures a risk with a foreign reinsurer, the insurer or reinsurer generally is the person for whose use or benefit the reinsurance policy is issued or sold for purposes of section 4374.

Effective Date

The final regulations are effective for premiums paid on or after November 27, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is David Lundy of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 46

Excise taxes, Insurance, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 46 is amended as follows:

PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

Paragraph 1. The authority citation for part 46 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 46.4374–1 is revised to read as follows:

§ 46.4374–1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371. For purposes of this section, in the case of a reinsurance policy that is subject to the tax imposed by section 4371(3), other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy is made, signed, issued, or sold.

(b) *When liability for tax attaches.* The liability for the tax imposed by section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (*See* section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after November 27, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 13, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–30139 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–133]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. Under this deviation the bridge may remain closed to vessel traffic for four hours a day from 12 midnight to 4 a.m., from November 18, 2002 through November 21, 2002. In addition, the bridge may remain closed to vessel traffic for two weekends from 9 p.m. on Saturday through 9 a.m. on Sunday, from December 7, 2002 through December 8, 2002, and from December 14, 2002 through December 15, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from November 18, 2002 through December 15, 2002.

FOR FURTHER INFORMATION CONTACT: Joeseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Portal Bridge has a vertical clearance in the closed position of 23 feet at mean high water and 28 feet at mean low water. The existing drawbridge operation regulations are at 33 CFR 117.723.

The bridge owner, National Passenger Railroad Corporation (Amtrak), requested a temporary deviation from the drawbridge operation regulations to facilitate necessary maintenance, the replacement of the cable lift system, at the bridge. The bridge must remain in the closed position to navigation to perform these repairs. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

Under this temporary deviation the Amtrak Portal Bridge may remain closed to vessel traffic for four days from 12 midnight to 4 a.m., November 18, 2002 through November 21, 2002. In addition, the bridge may remain closed to vessel traffic for two weekends from 9 p.m. on Saturday through 9 a.m. on Sunday, from December 7, 2002 through December 8, 2002 and from December 14, 2002 through December 15, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 18, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–30104 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 2003–C–004]

RIN 0651–AB51

Revision of Patent and Trademark Fees for Fiscal Year 2003

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (referred to as "we", "us", or "our" in this notice) is adjusting certain patent fee amounts and a trademark fee amount to reflect fluctuations in the Consumer Price Index (CPI). Also, we are adjusting, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business. In addition, we are amending several patent and trademark document supply fees to streamline operations and to benefit our customers.

Legislation has also been introduced in the Congress that would alter our fees. If enacted, this legislation would supersede many of the fees identified in this final rule.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at *matthew.lee@uspto.gov*, by telephone at (703) 305–8051, or by fax at (703) 305–8007.

SUPPLEMENTARY INFORMATION: This final rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Public Law 106–113), and section 1113 of title 15, United States Code. This final rule also adjusts, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

In addition, this final rule amends several patent and trademark document supply fees. The wider availability of patent and trademark image stores to retrieve and make copies has allowed us to process and fill customer orders for issued patents, registered trademarks, and both patent and trademark applications-as-filed more predictably and in shorter total turnaround times, regardless of whether a copy was ordered for regular or expedited delivery service. Therefore, we are eliminating the previous 37 CFR 1.19(a)(1)(ii), (a)(1)(iii), (b)(1)(i), 2.6(b)(1)(ii), (b)(1)(iii), and (b)(2)(i) fees and reducing the previous 37 CFR 1.19(b)(1)(ii) and 2.6(b)(2)(ii) fees. The cost benefit from streamlining our operations will be passed on to our customers. "At cost" services are still available for urgent (*e.g.*, same day) service.

Legislation has been introduced in the Congress that would alter our fees. Customers should be aware that legislative changes to our fees would supersede this final rule. When such changes occur, we will make corresponding rule changes by publication in the **Federal Register**. Customers may wish to refer to the official USPTO Web site (*www.uspto.gov*) for the most current fee amounts. Official notices of any fee changes will appear in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office*.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Section 1113 of title 15, United States Code, authorizes the Director to establish fees for the filing and processing of an application for the registration of a trademark or other

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mark, and for all other services and materials relating to trademarks and other marks.

Section 1113(a) of title 15, United States Code, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding twelve months in the CPI.

Section 1113(a) allows new trademark fee amounts to take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office.*

Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) will be adjusted on January 1, 2003, to reflect fluctuations occurring during the twelve-month period from October 1, 2001, through September 30, 2002, in the Consumer Price Index for All Urban Consumers (CPI–U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI–U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's actual CPI–U for the twelve-month period ending September 30, 2002, which is 1.5 percent. Based on this actual CPI–U, patent statutory fees will be adjusted by 1.5 percent.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

A trademark processing fee established under 15 U.S.C. 1113 will be adjusted to reflect fluctuations in the CPI.

Several patent and trademark document supply fees established under 35 U.S.C. 41(d) and 15 U.S.C. 1113(a) will be amended to streamline operations and benefit our customers.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of $100 or more were rounded to the nearest $10. Fees of less than $100 were rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures

Any fee amount that is paid on or after the effective date of the fee adjustment will be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. Certain trademark documents sent by the "Express Mail Post Office to Addressee" service are deemed filed on the date of receipt in our office. See 37 CFR 1.10(a)(1)(ii).

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

Section 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (g), and (h), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (e), (m), and (r) through (t), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.19 Document Supply Fees

Section 1.19, paragraphs (a)(1) and (b)(1), are amended to streamline operations and to benefit our customers.

Section 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), and (a)(5), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 2.6 Trademark Service Fees

Section 2.6, paragraph (a)(1), is revised to adjust the fee established therein to reflect fluctuations in the CPI.

Section 2.6, paragraphs (b)(1) and (b)(2), are amended to streamline operations and to benefit our customers.

Response to Comments

We received several comments in response to the notice of proposed rulemaking published at 67 FR 30634 on May 7, 2002. The comments and our responses to the comments follow:

Comment: One comment stated that we should not increase the trademark application fee for fiscal year 2003, since millions of dollars are being diverted to fund other Federal Government operations and are not being used to improve our performance or services.

Response: Our budget for fiscal year 2003 is comprised of the expected fiscal year 2003 fee revenue (less a designated carryover amount) added to carryover amounts from prior fiscal years. If fees are not adjusted by CPI, the anticipated fee revenue for fiscal year 2003 would be lower; this in turn would reduce the available funding and have a negative impact on our operations. Therefore, adjusting our fees by CPI is critical to ensure adequate funding is available.

Comment: One comment stated that the publication fee under 37 CFR 1.18(d) should be reduced by fifty-percent for independent inventors, small business concerns, and nonprofit organizations.

Response: The Director does not have the authority to provide for a fifty-percent reduction.

Comment: One comment stated that the Director does not have the authority to adjust patent fees by a projected CPI.

Response: Due to the timing of this year's fee adjustment, we have used the actual CPI.

Other Considerations

This final rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The final rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h)(1), which provides small entities with a fifty-percent reduction in the major patent fees. We received roughly 98,000 patent applications (approximately 30 percent of total patent applications) last year from small entities. Since the average small entity fee will increase by less than $7.00, with a minimum increase of $5.00 and a maximum increase of $25.00, there will not be a significant economic impact on a substantial number of small entities due to this final rule change.

Lists of Subjects

37 CFR Part 1

Administrative practice and procedure, Patents.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons set forth in the preamble, we are amending title 37 of the Code of Federal Regulations, parts 1 and 2, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a), (g), and (h) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

* * * * *

(g) Basic fee for filing each plant application, except provisional applications:
By a small entity (§ 1.27(a))—$260.00
By other than a small entity—$520.00

(h) Basic fee for filing each reissue application:
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

* * * * *

3. Section 1.17 is amended by revising paragraphs (a)(2) through (a)(5), (e), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) * * *
(1) * * *
(2) For reply within second month:
By a small entity (§ 1.27(a))—$205.00
By other than a small entity—$410.00
(3) For reply within third month:
By a small entity (§ 1.27(a))—$465.00
By other than a small entity—$930.00
(4) For reply within fourth month:
By a small entity (§ 1.27(a))—$725.00
By other than a small entity—$1,450.00
(5) For reply within fifth month:
By a small entity (§ 1.27(a))—$985.00
By other than a small entity—$1,970.00

* * * * *

(e) To request continued examination pursuant to § 1.114:
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

* * * * *

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):
By a small entity (§ 1.27(a))—$650.00
By other than a small entity—$1,300.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

(s) For each additional invention requested to be examined under § 1.129(b):
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78)—$1,300.00

4. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity (§ 1.27(a))—$650.00
By other than a small entity—$1,300.00

(b) Issue fee for issuing a design patent:
By a small entity (§ 1.27(a))—$235.00
By other than a small entity—$470.00

(c) Issue fee for issuing a plant patent:
By a small entity (§ 1.27(a))—$315.00
By other than a small entity—$630.00

* * * * *

5. Section 1.19 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(a) * * *

(1) Printed copy of the paper portion of a patent application publication or patent, including a design patent, statutory invention registration, or defensive publication document. Service includes preparation of copies by the Office within two to three business days and delivery by United States Postal Service; and preparation of copies by the Office within one business day of receipt and delivery to an Office Box or by electronic means (*e.g.*, facsimile, electronic mail)—$3.00

* * * * *

(b) * * *

(1) Certified or uncertified copy of the paper portion of patent application as filed processed within seven calendar days—$20.00

* * * * *

6. Section 1.20 is amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:
By a small entity (§ 1.27(a))—$445.00
By other than a small entity—$890.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:
By a small entity (§ 1.27(a))—$1,025.00
By other than a small entity—$2,050.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:
By a small entity (§ 1.27(a))—$1,575.00
By other than a small entity—$3,150.00

* * * * *

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7. Section 1.492 is amended by revising paragraphs (a)(1) through (a)(3), and (a)(5) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:
By a small entity (§ 1.27(a))—$360.00
By other than a small entity—$720.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:
By a small entity (§ 1.27(a))—$375.00
By other than a small entity—$750.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:
By a small entity (§ 1.27(a))—$530.00
By other than a small entity—$1,060.00

(4) * * *

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:
By a small entity (§ 1.27(a))—$450.00
By other than a small entity—$900.00

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 35 U.S.C. 2, unless otherwise noted.

2. Section 2.6 is amended by revising paragraphs (a)(1), (b)(1) and (b)(2) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) * * *

(1) For filing an application, per class—$335.00

* * * * *

(b) * * *

(1) For printed copy of registered mark, copy only. Service includes preparation of copies by the Office within two to three business days and delivery by United States Postal Service; and preparation of copies by the Office within one business day of receipt and delivery to an Office Box or by electronic means (*e.g.*, facsimile, electronic mail)—$3.00

(2) Certified or uncertified copy of trademark application as filed processed within seven calendar days—$15.00

* * * * *

Dated: November 21, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–30086 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN144–2; FRL7414–2]

Approval and Promulgation of Implementation Plans; Indiana; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, the EPA is withdrawing the direct final rule revising particulate matter (PM) control requirements for certain natural gas combustion sources in Indiana. In the direct final rule published on October 11, 2002 (67 FR 63268), we stated that if we receive adverse comment by November 12, 2002, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comments received in a subsequent final action based upon the proposed action also published on October 11, 2002 (67 FR 63353). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The direct final rule is withdrawn as of November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: November 19, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Accordingly, the addition of 40 CFR 52.770(c)(152) is withdrawn as of November 27, 2002.

[FR Doc. 02–30118 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–7413–9]

RIN 2040–AD06

National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule, Consumer Confidence Report Rule and Primacy Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing changes to the health effects language for di(2-ethylhexyl) adipate (DEHA) and di(2-ethylhexyl) phthalate (DEHP) in the Public Notification (PN) Rule and the Consumer Confidence Report (CCR) Rule under the Safe Drinking Water Act (SDWA). Today's rule also makes minor corrections to Appendix A of the CCR Rule. These changes include: correcting drinking water source information listed for copper, changing the placement of regulatory and health effects information for disinfection by-products (*i.e.*, bromate, chloramines, chlorite, chlorine, and chlorine dioxide), and correcting the reference "chloride dioxide" to "chlorine dioxide." The Agency is also amending the listing for three contaminants (*i.e.*, bromate, chlorite, and total trihalomethanes) to correct source information given in Appendix A. The appendix listed "by-product of chlorination," a specific method of disinfection, as the major source for these contaminants in drinking water. The source information in Appendix A is being amended to include the more general term "by-product of drinking water disinfection" for these contaminants. In addition, the Agency is revising the Primacy Rule to remove regulations pertaining to the Administrator's authority to waive national primary drinking water regulations (NPDWRs) for Federally owned or operated public water systems. This authority was removed by Congress in the 1996 amendments to the Safe Drinking Water Act.

DATES: This regulation is effective December 27, 2002. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Time on November 27, 2002.

ADDRESSES: Applicable **Federal Register** notices, public comments received, the response to comments document, and other major supporting documents for this rulemaking are available for review at EPA's Water Docket, in the EPA Docket Center (EPA/DC), EPA West, Rm B102, 1301 Constitution Avenue, NW, Washington, DC. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets, at *http://www.epa.gov/edocket/*.

FOR FURTHER INFORMATION CONTACT: Khanna Johnston at 1200 Pennsylvania Avenue, NW, (MC–4606M), Washington, DC 20460; by phone, 202–564–3842; or by e-mail: *johnston.khanna@epa.gov*. For general information, you may contact the Safe Drinking Water Hotline at 1–800–425–4791. The Safe Drinking Water Hotline is open from 9:00 a.m. to 5:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

TABLE OF REGULATED ENTITIES

Category	Examples of regulated entities
State/Local/Tribal governments	Publicly-owned Public Water Systems (PWSs), such as municipalities; county governments, water districts, water and sewer authorities, state governments, and other publicly-owned entities that deliver drinking water as an adjunct to their primary business (*e.g.*, schools, State parks, roadside rest stops).
Industry	Privately-owned PWSs, such as private utilities, homeowner associations, and other privately-owned entities that deliver drinking water as an adjunct to their primary business (*e.g.*, trailer parks, factories, retirement homes, day-care centers).
Federal government	Federally-owned PWSs, such as water systems on military bases.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.151 and 141.201 of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to your particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How Can I Get Copies of This Document and Other Related Information?

EPA has established an official public docket for this action under Docket ID No. W–01–07. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Water Docket, in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the previous paragraph or under the **ADDRESSES** section.

Acronyms Used in This Rule

CCR Consumer Confidence Report
CFR Code of Federal Regulations
CWS Community Water System
DBP Disinfection Byproduct
DEHA Di(2-ethylhexyl)adipate
DEHP Di(2-ethylhexyl)phthalate
EPA Environmental Protection Agency
FR Federal Register
MCL Maximum Contaminant Level
MCLG Maximum Contaminant Level Goal
NPDWR National Primary Drinking Water Regulation
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PN Public Notification
PPM Parts Per Million
PWS Public Water System
RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SDWA Safe Drinking Water Act
TTHM Total Trihalomethanes
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

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I. Statutory Authority

The purpose of this rulemaking is to finalize the EPA's proposed modifications to Minor Revisions of the

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Public Notification Rule and Consumer Confidence Report Rule and to revise the Primacy Rule to remove an outdated authority. The Safe Drinking Water Act (SDWA) (section 1414(c)), as amended in 1996, mandated that EPA revise its existing regulations governing public notification. When a violation occurs, public water systems must provide information to their consumers on the potential health effects from exposure to the contaminant in question.

This public notification is an integral part of public health protection and consumer right-to-know provisions of the SDWA (section 1414), as amended in 1996. EPA issued revised public notification regulations in May 2000, that set requirements for public water systems to follow with respect to the form, manner, frequency, and content of a public notice. The revised Public Notification (PN) Rule (40 CFR part 141, subpart Q) provides specific health effects statements for each regulated contaminant that a public water system must provide its consumers in the event of a public notice.

SDWA (section 1414) requires community water systems to issue an annual water quality report to their customers. The report provides a snapshot of local drinking water quality, a list of contaminants found in the water, potential health effects of any contaminants found above Federal health standards, and measures being undertaken by the water system to protect the drinking water supply. As part of the Consumer Confidence Report (CCR) Rule (40 CFR part 141, subpart O), CWSs must provide a statement concerning the health effects of contaminants found at levels that violate the Federal health standard. SDWA also requires States to meet set regulations for implementation and enforcement authority of national primary drinking water regulations as specified in section 1413 and the Primacy Rule (40 CFR part 142).

II. Background

On May 14, 1999, EPA published proposed revisions to the PN Rule for public comment. In this rulemaking EPA proposed to use the same brief health effects language for the PN Rule as EPA had recently adopted in the Consumer Confidence Report (CCR) Rule (63 FR 44511, August 19, 1998). This language is now codified at 40 CFR part 141, subpart O, appendix A. As a result, the PN proposal contained the CCR health effects language for di(2-ethylhexyl)adipate (DEHA) and di(2-ethylhexyl)phthalate (DEHP). During the public comment period on the proposed PN Rule, the Chemical Manufacturers Association (now known as the American Chemistry Council) submitted comments questioning several aspects of the health effects language for DEHA and DEHP. This included references to "general toxic effects" for DEHA and the basis for characterizing DEHP as a human carcinogen.

EPA published the final PN Rule (65 FR 25981, May 4, 2000) in May 2000. The American Chemistry Council (ACC) filed a petition in the DC Court of Appeals for review of the PN Rule, based on the DEHA and DEHP health effects language. In reexamining the ACC comments on the PN rule, EPA determined that changes to the health effects language for these contaminants in both the PN and CCR Rules would be appropriate. In a settlement agreement with ACC, EPA agreed to propose, and subsequently did propose, changes to the health effects language for these two contaminants. EPA accepted comment on the health effects language specific only to DEHA and DEHP. EPA also used the proposed modifications as an opportunity to make and seek comment on other minor corrections to appendix A of the CCR Rule (66 FR 46930, September 7, 2001). The comments received were generally favorable, supporting the proposed changes. A copy of these comments and the response to comments document are available for review in the public docket. In view of the comments received and for the reasons set forth in the preamble to the September 7, 2001 proposal, today's rule amends 40 CFR part 141 to reflect the health effects language changes for DEHA and DEHP proposed on September 7, 2001.

EPA is also making several corrections to language in appendix A of the CCR Rule. These are as follows: "Leaching from wood preservatives" was incorrectly listed as a major source of copper in drinking water. This rule deletes "leaching from wood preservatives" from drinking water source information for copper. Regulatory and health effects information for the disinfection byproducts bromate, chloramines, chlorite, chlorine, and chlorine dioxide was incorrectly placed in the volatile organic contaminants section of appendix A. Today's action moves entries for these disinfection byproducts from their existing locations and places them in the inorganic contaminants section of appendix A. In addition, the entry for chlorine dioxide was inadvertently listed as "chloride dioxide." This rule corrects this reference to read "chlorine dioxide."

This rule also amends information listed for three contaminants (*i.e.*, bromate, chlorite, and total trihalomethanes) to reference the more general term, "by-product of drinking water disinfection," rather than "chlorination," which is one specific method of disinfection. Finally, this rule deletes a provision in EPA's primacy regulations at 40 CFR 142.3(b)(3). This section pertains to the Administrator's former authority to waive national primary drinking water regulations (NPDWRs) for Federally owned or operated public water systems. This authority was removed by Congress in the 1996 amendments to the Safe Drinking Water Act (SDWA), and is no longer applicable. EPA determined for the latter two corrections in today's final rule that there is "good cause" for making these minor changes final without prior proposal and opportunity for comment, because these changes have no substantive impact and merely correct CFR text.

III. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that:

(1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This Rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This rule makes minor changes to the Public Notification Rule, Consumer Confidence Report Rule, and Primacy Rule that do not change the regulatory burden.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. This plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This rule does not change the costs to State, local, or Tribal governments as estimated in the final Public Notification Rule (65 FR 25981, May 4, 2000) and the final Consumer Confidence Report Rule (63 FR 44511, August 19, 1998), and does not change either the frequency of reports or the regulatory burden of public notification. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule makes minor changes to the Public Notification Rule, the Consumer Confidence Report Rule, and the Primacy Rule and does not change the frequency of reporting or the regulatory burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C 601 et. seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirement under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities for the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. secs. 601(3)—(5)). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the Safe Drinking Water Act Amendments of 1996 for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration, finalized this definition for the final CCR regulation, and expressed its intention to use the alternative definition for all future drinking water regulations (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition is applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule makes minor changes to the Public Notification Rule, the Consumer Confidence Report Rule, and the Primacy Rule and imposes no additional enforceable duty on any State, local or Tribal governments or the private sector. It does not change either the frequency

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of reports or the regulatory burden of public notification.

F. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898—Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating Environmental Justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Today's rule makes minor changes to the Consumer Confidence Report Regulation, the Public Notification Regulation, and the Primacy Rule and does not alter the basic regulatory standards in those regulations. The Agency considered Environmental Justice related issues concerning the potential impacts of Public Notification (PN) during development of the Public Notification Rule and Consumer Confidence Report (CCR) Rule. In the May 4, 2000, PN Rule (65 FR 25981), EPA concluded that the PN requirements would be beneficial to low-income and minority communities. In the CCR Rule (63 FR 44511, August 19, 1998), EPA determined that provisions in that regulation would be beneficial to low-income and minority communities, particularly the provision requiring a good faith effort to reach non-bill-paying customers.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule makes minor changes to the Consumer Confidence Report Rule, the Public Notification Rule, and the Primacy Rule. Thus, Executive Order 13132 does not apply to this rule.

Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. We did not receive any comments on Executive Order 13132.

I. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule makes minor changes to the Consumer Confidence Report Rule, the Public Notification Rule, and the Primacy Rule. Thus, Executive Order 13175 does not apply to this rule.

Nevertheless, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials. We did not receive any comments on Executive Order 13175.

J. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on December 27, 2002.

L. Plain Language Directive

Executive Order 12866 encourages agencies to write their rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble and both the PN and CCR Rules in a clear and concise manner.

M. Administrative Procedure Act

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. EPA is publishing a number of minor corrections to appendix A of the CCR Rule, 40 CFR part 141, subpart O, two of which were not originally included in the September 7, 2001 proposal. Appendix A lists "major sources in drinking water" of regulated contaminants. EPA incorrectly listed "by-product of drinking water chlorination," a specific method of disinfection (63 FR 69410, December 16, 1998), for two of these contaminants, rather than using the more general term "by-product of drinking water disinfection." As a result, today's rule amends the table (Appendix A) to correct the "major sources" information for bromate, chlorite, and total trihalomethanes (TTHMs). This will make the listed "major sources" of these contaminants the same as haloacetic acids (HAA) in the table. Today's rule also deletes § 142.3(b)(3). This section pertains to the Administrator's former authority to waive national primary drinking water regulations (NPDWRs) for Federally owned or operated public water systems. This authority was removed in the 1996 amendments to the Safe Drinking Water Act (SDWA), and is no longer applicable. EPA has determined that for these corrections there is "good cause" for making these rule changes final without prior proposal and opportunity for comment because these rule changes have no substantive impact and merely correct informational CFR text or remove outdated text. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes "good cause" under 5 U.S.C. 553(b)(B).

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: November 20, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 141 and 142 are amended as follows:

PART 141—[AMENDED]

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart O—[Amended]

2. Appendix A to Subpart O is amended

a. Under the heading "Inorganic contaminants" by adding in alphabetical order entries for: "Bromate (ppb)", "Chloramines (ppm)", "Chlorine (ppm)", "Chlorine dioxide (ppb)", and "Chlorite (ppm)".

b. Under the heading "Inorganic contaminants" by revising the entry for "Copper (ppm)".

c. Under the heading "Synthetic organic contaminants including pesticides and herbicides" by revising entries for "Di(2-ethylhexyl) adipate (ppb)' and "Di(2-ethylhexyl) phthalate (ppb)".

d. Under the heading "Volatile organic contaminants" by removing entries for: "Bromate (ppb)", "Chloramines (ppm)", "Chlorine (ppm)", "Chlorite (ppm)", and "Chloride dioxide (ppb)".

e. Under the heading "Volatile organic contaminants" by revising the entry for "TTHMs [Total trihalomethanes] (ppb)".

The revisions and additions read as follows:

Appendix A to Subpart O of Part 141—Regulated Contaminants

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
•	•	•	•	•	•	•
Inorganic contaminants:						
•	•	•	•	•	•	•
Bromate (ppb)	.010	1000	10	0	By-product of drinkig water disinfection.	Some people who drink water of containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
•	•	•	•	•	•	•
Chloramines (ppm).	MRDL=4		MRDL=4	MRDLG=4	Water additive used to control microbes.	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

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Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Chlorine (ppm)	MRDL=4		MRDL=4	MRDLG=4	Water additive used to control microbes.	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorine dioxide (ppb).	MRDL=.8	1000	MRDL=800	MRDLG=800	Water additive used to control micorbes.	Some infants and young children who drink water chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
Chlorite (ppm)	1		1	0.8	By-product of drinking water disinfection.	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Copper (ppm)	AL=1.3		AL=1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits.	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's disease should consult their personal doctor.

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Synthetic organic contaminants including pesticides and herbicides:						
Di(2-ethylhexyl) adipate (ppb).	.4	1000	400	400	Discharge from chemical factories.	Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb).	.006	1000	6	0	Discharge from rubber and chemical factories.	Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Volatile organic contaminants:						
TTHMs [Total trihalomethanes] (ppb).	0.10/.080	1000	100/80	N/A	By-product of drinking water disinfection.	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

Subpart Q—[Amended]

3. Appendix B to Subpart Q of Part 141 is amended under E. by revising entries 33 for "Di(2-ethylhexyl) adipate" and 34 for "Di(2-ethylhexyl) phthalate" to read as follows:

Appendix B to Subpart Q of Part 141—Standard Health Effects Language for Public Notification

Contaminant (units)	MCLG [1] (mg/l)	MCL [2] (mg/l)	Standard health effects language for public notification
E. Synthetic Organic Chemicals (SOCs)			

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Contaminant (units)	MCLG[1] (mg/l)	MCL[2] (mg/l)	Standard health effects language for public notification
33. Di(2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di(2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.
34. Di(2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di(2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

* * * * *

Appendix B—Endnotes

1. MCLG—Maximum contaminant level goal.
2. MCL—Maximum contaminant level.

* * * * *

PART 142—[AMENDED]

4. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j9, and 300j–11.

§ 142.3 [Amended]

5. Section 142.3 is amended by removing paragraph (b)(3).

[FR Doc. 02–30117 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 112202C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 23, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *Mary.Furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 15,164 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,564 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30130 Filed 11–22–02; 2:51 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020522128–2267–02; I.D. 050602B]

RIN 0648–AP79

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Non-pelagic Trawl Gear in Cook Inlet in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 60 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Area (FMP). This amendment prohibits the use of non-pelagic trawl gear in Cook Inlet. This action is necessary to address bycatch avoidance objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is intended to further the goals and objectives of the FMP.

DATES: Effective December 27, 2002.

ADDRESSES: Copies of Amendment 60, the Environmental Assessment, Regulatory Impact Review and Initial Regulatory Flexibility Analysis, and Final Regulatory Flexibility Analysis (FRFA) prepared for this final rule may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228 or email at *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act. Regulations implementing the FMP and governing the groundfish fisheries of the GOA appear at 50 CFR, parts 600 and 679.

Background and Need for Action

This final rule complies with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures shall minimize bycatch, to the extent practicable, and shall minimize mortality of bycatch where bycatch cannot be avoided (section 301(a)(9)).

More specific authority for this action is provided by section 303(b)(2) of the Magnuson-Stevens Act. It states: "Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may...designate zones where, and periods when, fishing...shall be permitted only... with specified types and quantities of fishing gear."

This final rule implements Amendment 60 to the FMP which prohibits the use of non-pelagic trawl gear in the exclusive economic zone (EEZ) of Cook Inlet in an area north of a line from Cape Douglas (58°51.10′ N. lat.) to Point Adam (59°15.27′ N. lat.). Amendment 60 was adopted by the Council in September 2000 with the specific goal of reducing potential bycatch of crab in the EEZ of Cook Inlet in the GOA groundfish fishery.

A notice of availability of Amendment 60 was published May 14, 2002 (67 FR 34424), which invited public comment on the amendment until July 15, 2002. No comments were received on this document. NMFS approved Amendment 60 on August 13, 2002. Meanwhile, NMFS published a proposed rule that would implement Amendment 60 if it were approved. The proposed rule was published June 13, 2002 (67 FR 40680), and invited public comments until July 29, 2002. No public comments were received.

A detailed discussion of the status of crab and groundfish resources in Cook Inlet and the effect of this final rule may be found in the preamble to the proposed rule, published June 13, 2002 (67 FR 40680).

Status of Crab Resources in Cook Inlet

Historically, Cook Inlet supported significant Tanner crab (*Chionoecetes bairdi*) and red king crab (*Paralithodes camtschaticus*) fisheries. These crab fisheries occurred in State of Alaska (State) and Federal waters, and a number of the most productive fishing grounds were within the Federal waters of Lower Cook Inlet. In 1982, the State closed the red king crab fishery and it has remained closed. The commercial Tanner crab fishery of Lower Cook Inlet peaked in the early 1970s then declined gradually until the fishery closed in 1995. These harvest patterns are similar to other Tanner and red king crab fisheries in the GOA.

In response to concerns by fishermen and Alaska Department of Fish and Game (ADF&G) biologists about the potential impacts of non-pelagic trawl gear on crab bycatch and habitat, the Alaska Board of Fisheries prohibited the use of non-pelagic trawl gear in State waters encompassing primary crab habitat in 1990, and extended this prohibition to all of the State waters of Cook Inlet in 1996. Recent surveys in Cook Inlet in 1999 and 2001 indicate that Tanner crab stocks may be improving. However, these indications are highly uncertain at this time.

The State manages crab fisheries in the GOA EEZ in the absence of Federal regulations. However, the Secretary retains management authority for groundfish fisheries in this area. In June 1998, the ADF&G submitted a proposal to the Council to prohibit the use of non-pelagic gear in the EEZ of Cook Inlet. The Council adopted this proposal as Amendment 60 to the FMP in September 2000.

Effects of Non-Pelagic Trawl Gear on Crab Resources

Non-pelagic trawl gear may catch crab incidental to its target groundfish species. The amount of crab caught and discarded by non-pelagic trawl gear varies depending on the abundance of crab stocks, the type of trawl gear used, the type of substrate on which the gear is fishing, and the target species of the trawl gear. Non-pelagic trawl gear can cause direct mortality of crab through bycatch. Although numerous studies have been conducted on the impact of non-pelagic trawl gear on crab, the level of bycatch mortality varies. NMFS has restricted the use of non-pelagic trawl gear in several areas of the GOA that have historically supported crab fisheries where crab bycatch is relatively high compared to other areas.

Additionally, non-pelagic trawl gear may alter the benthic substrate so that it is less favorable to crab survival. Generally, studies on the potential impact of trawl gear on benthic habitats indicate that non-pelagic trawl gear can damage sedentary megafauna (e.g., sponges, corals), reduce the overall diversity of sedentary organisms, smooth the surface of the ocean floor, and resuspend sediment near the ocean floor. No study has specifically assessed the impacts of non-pelagic trawl gear on crab habitat and crab populations in Alaska. The potential impact of mortality due to gear interactions or habitat modification on Tanner and red king crab populations in Cook Inlet is unknown. Amendment 60 will eliminate the potential adverse effects of non-pelagic trawl gear on the benthic habitat of Cook Inlet.

Groundfish Fisheries in Cook Inlet

Historically, non-pelagic trawl gear has been little used in Cook Inlet.

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According to ADF&G data, from 1987–2000, only two vessels have used non-pelagic trawl gear in Cook Inlet–one vessel in 1990, and another vessel in 1995. Both of these vessels harvested a small amount of groundfish. No non-pelagic trawling has occurred in Cook Inlet since 1995.

Effect of This Action

This final rule prevents potential adverse effects of non-pelagic trawl crab bycatch on the population of Tanner and red king crab stocks in Cook Inlet. Although no crab fisheries currently exist in Cook Inlet and no recent non-pelagic trawling has occurred, this action will prevent the development of a non-pelagic trawl fishery in an area that historically has supported a productive crab fishery.

Although non-pelagic trawling may have an adverse effect on some sedentary megafauna and certain types of substrate, the potential impacts of non-pelagic trawl gear on crab habitat and populations in Alaska are unknown.

This action is a proactive measure to limit potential crab bycatch from non-pelagic fisheries that may develop in the future. This final rule reduces the potential bycatch of crab resources, which currently are at relatively low abundance, mirrors existing regulations in State waters of Cook Inlet, and minimizes potential adverse effects of non-pelagic trawl gear on the benthic habitat for crab and other groundfish stocks. This final rule implements these benefits without adversely affecting any existing non-pelagic trawl fisheries.

Changes from the Proposed Rule

This final rule makes no changes from the proposed rule. NMFS invited public comment on the proposed rule implementing Amendment 60 from June 13, 2002, through July 29, 2002 (67 FR 40680). No public comments were received.

Classification

The Administrator, Alaska Region, NMFS, determined that the FMP amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an FRFA that describes the impact that this final rule would have on small entities. The overall impact of this amendment on small entities is minimal. Based on historic trends in participation, few if any small entities, would be adversely affected by this action. One vessel used non-pelagic trawl gear in the EEZ of Cook Inlet in 1990, and another vessel in 1995, both of which presumably qualify as small entities. This action would not have any adverse impact on existing fishing vessels, given the negligible use of non-pelagic gear in Cook Inlet currently, the availability of other more productive non-pelagic trawl fisheries in other areas of the GOA, pot and jig gear fisheries for Pacific cod in the State waters of Cook Inlet, and a pot and longline gear fishery for Pacific cod in the EEZ of Cook Inlet. Numerous fishing opportunities exist for vessels using other legal types of fishing gear within Cook Inlet, or outside of Cook Inlet if non-pelagic trawl gear is used. Nearby fishery dependent communities and recreational fishermen would not be affected by this non-pelagic trawl ban.

Likewise, this action is not expected to have any economic benefit for small entities. This action may improve the prospects for rebuilding crab stocks. However, no Tanner or red king crab fishery exists currently in Cook Inlet. Therefore, potential economic benefits of this possibility are not now foreseeable.

At present NMFS does not have the full data necessary to determine the extent to which this action may impact small entities.

No new reporting or recordkeeping requirements are imposed by this final rule. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 21, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq, 1801 *et seq.*, 3631 *et seq.*, Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.22, paragraph (b)(7) is added to read as follows:

§ 679.22 Closures.

(b) * * *

(7) *Cook Inlet.* No person may use a non-pelagic trawl in waters of the EEZ of Cook Inlet north of a line from Cape Douglas (58°51.10′ N. lat.) to Point Adam (59°15.27′ N. lat.).

[FR Doc. 02–30133 Filed 11–26–02; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 229
Wednesday, November 27, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

RIN 0584–AC75

Food Stamp Program: Civil Rights Data Collection

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) is proposing to revise Food Stamp Program (FSP) regulations that cover the collection and reporting of racial/ethnic data by State agencies on persons receiving benefits from the FSP. The proposed changes are to comply with new racial/ethnic data collection standards issued by the Office of Management and Budget (OMB) while also providing regulatory flexibility and reform for this area of the program regulations.

DATES: Comments on this proposed rulemaking must be received by January 27, 2003, to be assured of consideration.

ADDRESSES: Comments should be submitted to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Only written comments will be accepted. All written comments will be open for public inspection during regular business hours (8:30 am to 5 pm, Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 820.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Ms. Hallman at the above address or by telephone at (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The FSP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), the FSP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule may have minimal impact on some small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this proposed rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local and tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

(1) Prior Consultation With State Officials

Prior to drafting this proposed rule, we consulted with State and local agencies at various times. Because the FSP is a State-administered, Federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other Food Stamp rules. Further, we first requested comments on the proposed data collection for the revised standards in our November 30, 1999 **Federal Register** notice. Since then, State agency comments have helped us make the rule responsive to concerns presented by State agencies.

(2) Nature of Concerns and the Need To Issue This Rule

State agencies generally were concerned that the classification by caseworkers of an applicant's multiple race heritage via visual observation of people who chose not to self-identify may not always be accurate. They were also concerned about the cost involved and time that will be allowed for States to make system changes to collect and compile the data, to train workers, and

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to convert the current caseload. The standardization of the data collection addresses another major State concern, the need to have the data collected in the same way across other means-tested Federal programs. Specific comments and policy questions submitted by State agencies helped us identify issues that needed to be clarified in the proposed rule. Implementing the revised racial classification standards will allow data standardization across the Federal Government.

(3) Extent to Which We Meet Those Concerns

FNS has considered the impact of the proposed rule on State and local agencies. This rule makes changes that conform to the revised OMB standards for the collection and reporting of racial ethnic data. Although the rule implementing the revised data collection standards will require eligibility workers to collect both race and ethnicity on participating households, the information will standardize racial ethnic data collection by States for the Federal Government and will permit more accurate data collection on individuals who classify themselves as being of more than one race. It will show the increasing diversity of our Nation over time. FNS intends to allow States to obtain one race per person when visual observation is used because the applicant chooses not to self-identify. While State agencies will have to change their application form and information system to collect, compile, and report data, train workers, and convert the caseload, this is a one-time change. The 50 percent Federal reimbursement by FNS helps defray half the State's cost to make the change for the FSP and to collect, compile and report the data. The proposed rule provides States ample time to implement the revised data collection standards and convert the existing caseload to the revised data requirements. In the proposed rule, we have addressed every concern submitted by State agencies regarding this provision. States will have the opportunity to comment on the implementation timeframe in the proposed rule. FNS is not aware of any case where the provisions of the rule would preempt State law.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the proposed information collection requirements contained in this rule are being made available for public comment in a Notice published elsewhere in this issue of the **Federal Register**. Readers who would like more information on the information collection aspects of the rule, or would like to comment on the revised information collection burden, should refer to that notice for more information.

It is important to note that, as discussed in the following preamble, OMB has received public comment on the revised data collection standards addressed in the Notice published in today's **Federal Register**. Thus, in the Notice, FNS is offering the public to comment only on its proposal for implementing the new OMB standards, not on the standards themselves. The Notice addresses implementation of the revised OMB standards for the FSP, the Commodity Supplemental Food Program (CSFP), and the Food Distribution Program on Indian Reservations (FDPIR). These three programs have historically been approved under the same OMB approval package.

The revised data collection requirements will be submitted to OMB for approval after comments are received during the 60-day comment period. Until the OMB approves FNS' revised data collection requirements, State agencies would continue to use current forms (FNS 101 and FNS 191) approved under OMB Approval No. 0584–0025.

FNS is proposing this regulation separate from the Notice because the regulations governing the FSP contain provisions that must be amended to implement the revised standards, since they specifically identify the old racial/ethnic classifications. The CSFP and FDPIR do not require similar regulatory changes.

Background

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. The Department of Justice (DOJ) regulations, at Title 28 of the Code of Federal Regulations (CFR), Section 42.406(a), require all Federal agencies to provide for the collection of racial and ethnic information from applicants for and beneficiaries of Federal assistance sufficient to permit effective enforcement of Title VI. Section 272.6(g) and (h) of the current program rules require States to collect data on households by racial/ethnic data and to report the summary data to FNS.

FNS collects this data in order to comply with the statutory mandates of the Civil Rights Act of 1964, DOJ regulations, and USDA regulations on nondiscrimination. The data are provided to the Department's Office of Minority Affairs to satisfy the regulatory requirement for annual participation data. The Department includes this data in an annual USDA Equal Opportunity Report. FNS compares the data to Census data and uses the data to identify any minority participation trends or disparities that need follow-up. FNS also reviews the data prior to conducting State or local agency compliance reviews as well as in selecting areas for review.

Section 272.6(g) of the FSP rules specifies the racial/ethnic categories as American Indian or Alaskan Native, Asian or Pacific Islander, black (not of Hispanic origin), Hispanic, and white (not of Hispanic origin). These current racial and ethnic categories, which have been in place for more than 20 years, conformed to classification standards set by OMB in Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

On October 30, 1997, OMB issued revised standards for the classification of Federal data on race and ethnicity in a notice in the **Federal Register** (62 FR 58782 *et al.*). They replace and supersede Statistical Policy Directive No. 15. All Federal agencies are required to comply with the revised OMB standards. The OMB standards revise the racial and ethnic categories and require that respondents be offered the option of selecting one or more racial designations. Only the FSP regulations specify the old racial ethnic data classifications that are being replaced. We are now proposing to amend the FSP regulations to comply with OMB policy.

Data Collection by State Agencies

Under the revised standards, there are new categories for race and ethnicity. There are now five categories for race and two categories for ethnicity. The new racial categories are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White. Under the revised standards, the former "Asian or Pacific Islander" category has been separated into two categories, "Asian" and "Native Hawaiian or Other Pacific Islander." The revised standards allow individuals to choose more than one race to describe themselves. The revised categories on ethnicity are: "Hispanic or Latino", and "Not Hispanic or Latino." The State agency must include these racial and ethnic categories on the State agency's application or data input screen.

To ensure data quality, the State agency's application or data input screen must use separate questions for collecting ethnicity and race, with ethnicity requested first. Applicants must be allowed to identify themselves as being of more than one race by choosing multiple racial categories. Instructions on the application should instruct applicants to "Mark one or more * * *" or "Select one or more * * *." The State agency must develop alternative means of collecting racial and ethnic data on households, such as by observation during the interview when the information is not provided voluntarily by the household on the application form.

The changes in the standards deal with the way in which State agencies collect racial/ethnic data and the racial/ethnic classifications. However, we wish to point out that some things have not changed. The current policy that the racial categories are not to be used for determining the eligibility of population groups for participation in the program would continue. The application form would continue to indicate that (1) the racial and ethnic information is voluntary, (2) that it will not affect eligibility or the level of benefits, and (3) that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin.

Currently, § 272.6(g) lists the old racial/ethnic categories, specifies the method of data collection, and specifies related requirements for application forms. We do not believe it is appropriate to continue to list in the regulations the specific individual racial and ethnic categories. Instead the proposed regulations specify that State agencies shall collect the data "as specified by FNS". Racial designations and the manner of racial/ethnic data collection are based on Federal policy which is issued by OMB and which all Federal agencies must follow. Since the Federal policy was based on public comment, it would involve a duplication of effort for Federal agencies, in turn, to codify and implement the revised standards by further rulemaking with more public comment on the same issue. The intent is to pass along revisions to the State agencies on a more timely basis. As part of this streamlining, FNS will collect comments in the future through comments to proposed notices on the data collection and reporting. FNS guidance will be issued to provide clarification as necessary appropriate to the program in order to comply with the Federal policy.

By being less detailed in program regulations, we are streamlining the Federal policy process, while maintaining flexibility for any future changes in the Federal policy and FNS data collection and reporting procedures. Further, since the Paperwork Reduction Act requires the publication of a **Federal Register** notice for comment if a Federal reporting form change is proposed, comments on any future changes in racial designations for data reporting would be obtained and considered in conjunction with any proposed form changes. Accordingly, the Department proposes to revise § 272.6(g) to drop the specific racial category references and to replace that text with a more general requirement in the regulations that will be automatically linked to the Federal policy. However, the gist of the policy has been briefly explained in this preamble. FNS will issue supplementary guidance in the form of an implementing memorandum to State agencies once the final rule is published that will conform to the revised standards. To capture data under the new standards, State information systems will need to be changed.

Reporting to FNS

The current regulations at § 272.6(h) specify that the State agency shall report the racial/ethnic data on participating households on forms provided by FNS. The above changes will necessitate a form revision. Although the Department is not specifically describing the form changes in the regulatory text of § 272.6(h), the revision of the FNS reporting form will impact the way State agencies must compile data in order to report it to us. FNS has discussed the changes in a **Federal Register** notice dated November 30, 1999, in October 2000 and 2001 supplementary guidance issued to State agencies, and again in this proposed rule.

To comply with the new standards, State information systems will need to be changed. We are proposing to require State agencies to report the number of household contacts who selected (or were observed to be under) only one racial category, separately for each of the five racial categories, and to provide a count of household contacts who selected more than one race for various multiple-race categories. The State agencies must report the number of household contacts who identified themselves as being Hispanic or Latino by racial category. Confidential or identifying information, such as names of participants, are not being reported to us under this reporting mechanism.

We would continue to use the summary data to evaluate conformance with the Civil Rights Act and to provide the data to other Federal agencies upon request for their missions related to the Civil Rights Act. The data on the number of household contacts of more than one race will help us track changes in our Nation's diversity over time in the program. The more detailed data on the Hispanic data by race would allow us to monitor changes in racial/ethnic response patterns over time. We are very interested in State agency comment on the proposed data collection and reporting and on the reporting burden estimate per State agency. We are also interested in any cost estimates from State agencies for making the change to their information systems to comply with the new proposed reporting.

We are proposing to revise § 272.6(h) to provide that State agencies must report the racial/ethnic data on forms *or formats* provided by FNS. This change is intended to speed the movement from paper reporting forms to electronic reporting format. It also complies with the intent to move to electronic reporting of this information as soon as our system modifications will allow.

Implementation

As explained previously in this preamble, until comment is received on these proposed regulations and approval for the revised forms are approved by OMB, State agencies would continue with the current data collection requirements for the fiscal year 2003 reporting period. FNS anticipates the publication of the final rule early in 2003. In the interim, FNS would accept comments on this rule and on the new reporting requirements through the Notice published elsewhere in this issue of the **Federal Register**. FNS recognizes that State and local agencies will need time to modify their application forms, data input screens, and information systems in order to begin capturing and tabulating data. It is crucial for FNS' information system that all State agencies implement the revised reporting format at the same time.

The Forms FNS 101 and 191 currently in use would remain in effect for the fiscal year 2003 reporting period. State agencies would be required to implement the revised FNS 191 for the report month of April 2004. For the FNS 101, State agencies would be required to implement for the report month of July 2004.

List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, reporting and recordkeeping requirements.

Accordingly, 7 CFR part 272 is proposed to be amended as follows:

1. The authority citation for part 272 continues to read as follows:

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Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.6, paragraphs (g) and (h) are revised to read as follows:

§ 272.6 Nondiscrimination compliance.

* * * * *

(g) *Data collection.* The State agency must obtain racial and ethnic data on participating households in the manner specified by FNS. The application form must clearly indicate that the information is voluntary, that it will not affect the eligibility or the level of benefits, and that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin. The State agency must develop alternative means of collecting the ethnic and racial data on households, such as by observation during the interview, when the information is not provided voluntarily by the household on the application form.

(h) *Reports.* As required by FNS, the State agency must report the racial and ethnic data on participating household contacts on forms or formats provided by FNS.

Dated: November 22, 2002.

Roberto Salazar,

Administrator.

[FR Doc. 02–30112 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 99–017–1]

RIN 0579–AB13

Blood and Tissue Collection at Slaughtering Establishments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm animals) and poultry at slaughtering establishments when it is necessary for disease surveillance. We also propose that any person who moves or causes the movement of livestock or poultry interstate for slaughter may only move the animals to a slaughtering establishment that has been listed by the Administrator. The Administrator would list a slaughtering establishment after determining that the establishment provides the type of space and facilities specified by the regulations to safely collect blood and tissue samples for disease testing. The actual testing of samples could occur either at the establishment or at another location, as determined by the Administrator. Alternatively, the Administrator could list a slaughtering establishment that does not supply such space and facilities if the Administrator determines that it is not necessary to conduct testing of animals slaughtered at the establishment because the data collected through such testing would not significantly assist APHIS disease surveillance programs.

This collection of blood and tissue samples would enable us to identify animals at slaughter that are affected by various communicable diseases of concern. This change would affect persons moving livestock or poultry interstate for slaughter, slaughtering plants that receive animals in interstate commerce, and, in cases where test-positive animals are successfully traced back to their herd or flock of origin, the owners of such herds or flocks. The long-term effects of this change would be to improve surveillance programs for animal diseases and to contribute to the eventual control or eradication of such diseases.

DATES: We will consider all comments that we receive on or before January 27, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 99–017–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1231. Please state that your comment refers to Docket No. 99–017–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 99–017–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4363.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), has many programs to protect the health of livestock and poultry in the United States. These include programs to prevent endemic diseases and pests from spreading within the United States and programs to prevent the introduction of foreign animal diseases, as well as programs to control or eradicate certain animal diseases from the United States.

Regulations governing the interstate movement of animals for the purpose of preventing the dissemination of animal diseases within the United States are contained in 9 CFR, subchapter C—"Interstate Transportation of Animals (Including Poultry) and Animal Products."

The legal authority for USDA to conduct testing was recently restated in the Animal Health Protection Act of 2002 (Subtitle E of the Farm Security and Rural Investment Act of 2002, Public Law 107–171). Section 10409 states that the Secretary of Agriculture "may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals), including animals at a slaughterhouse, stockyard, or other point of concentration."

Proposed Changes to the Regulations

We are proposing to amend the regulations in subchapter C, part 71, "General Provisions," to provide for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals) and poultry at slaughter. We propose to require that persons moving livestock and poultry interstate for slaughter may only move the animals to slaughtering establishments that have been listed by the Administrator of APHIS. We do not propose to collect samples from all livestock or poultry at slaughter, but to collect samples whenever we believe it is necessary for effective surveillance. Some establishments slaughter relatively few animals, or process animals that are not susceptible to testing (*e.g.*, sheep and goats that are too young to test for scrapie), or receive animals from sources for which we already have sufficient epidemiological data, and it would not substantially aid our surveillance to require testing at these establishments. Therefore, the Administrator would list some establishments to receive livestock or poultry without conducting testing at those establishments. For establishments where it is necessary to conduct testing, the Administrator would list the establishment only if it allows APHIS, FSIS, or APHIS contractors to collect blood and tissue samples from animals at the establishment. To be listed, a slaughtering establishment where testing is required would have to grant access to the personnel conducting the tests and provide certain space and equipment necessary to collect and process test samples. Slaughtering establishments that are not listed could not receive livestock moving in interstate commerce.

In conjunction with this rulemaking, APHIS will develop a list of slaughtering establishments. Establishments will not have to actively contact APHIS in order to be placed on the list; APHIS will contact the plants where we intend to collect samples, and work with them to meet the requirements for listing. APHIS will list all plants that meet the qualifications, and will also list those plants at which APHIS has determined sample collection is not needed. There are 1,341 meat packing firms included in the North American Industry Classification System (NAICS) code of 311611, of which 1,260 are small businesses. Many of these small businesses are local operations that do not receive animals moving interstate, and thus do not need to be listed. We expect to conduct sampling at roughly 50 to 100 of the 1341 meat packing firms included in NAICS 311611. Since some of these firms have multiple plants, testing could occur at several hundred plants. In almost all cases, some testing already occurs at these plants; this rule would allow us to increase the level of testing as needed. While we will focus primarily on testing at the plants of large business firms, we will also test at some small plants, as necessary to ensure a valid representative sample for disease surveillance.

We are particularly seeking comments on the standards APHIS should apply in identifying the plants where APHIS should conduct sampling. Our goal is to collect samples at a representative number of plants in each region, so that sample testing will provide a statistically valid nationwide profile of diseased animals sent to slaughter plants. Because sample collection imposes some financial and operational burden on plants, we wish to keep the number of plants sampled down to the minimum number required to provide the data we need. Therefore, we urge commenters to address how APHIS should select plants for sampling; *e.g.*, their size, fraction of the regional market, proximity to other sampled plants, source of animals, and other characteristics.

The provisions regarding the collection of blood and tissue samples would be set out in a new § 71.21, "Tissue and blood testing at slaughter."

In § 71.1, we would amend the definition of livestock so that it includes horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals. (We would not include non-captive cervids in the definition because most such animals that go to slaughter plants are brought there by hunters, to a local slaughter plant, and do not thereafter move interstate in commerce. Also, the hunters generally gut and clean the animals in the field, reducing the opportunity to collect useful samples.)

We would also define *recognized slaughtering establishment* to be "Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act. A list of recognized slaughtering establishments in any State may be obtained from an APHIS representative, the State animal health official, or a State representative." This definition is consistent with other APHIS and FSIS regulations addressing slaughtering plants. We need this defined term as part of the explanation in § 71.21 of what types of establishments must be listed by the Administrator for interstate movement. Listing applies to both recognized slaughtering establishments, which are under mandatory inspection under the Federal Meat Inspection Act, and other specialty plants (*e.g.*, for cervids and bison) that undergo voluntary inspection under the provisions of the Agricultural Marketing Act (12 U.S.C. 1141 *et seq.*)).

We would also add a definition of *move (moved)* to § 71.1, to make it clear that the requirements of the rule would apply to both persons transporting livestock and poultry and persons who cause the livestock or poultry to be moved. This definition, which is identical to one used in part 78 of our regulations, would read "Shipped, transported, delivered, or otherwise aided, induced, or caused to be moved."

We propose that the Administrator may list slaughtering establishments either when sample collection and testing is not needed at them to meet APHIS epidemiological surveillance needs, or when testing is needed and the establishment meets the following standards with regard to sample collection activities. The slaughtering plant would have to allow APHIS, FSIS, or APHIS contractors to collect and record any individual animal identification on animals, retain any identification devices on or in the animals (backtags, electronic implants, etc.), and take tissue and blood samples from animals at the facility. Slaughtering plants must allow samples to be collected at no cost to the United States; that is, they would not be able to charge the government for access to collect samples, or for the value of the samples collected. These are the basic tasks that need to be performed to test the animals for disease and collect the information that may be needed to trace back the animals.

In terms of the specific space for sample collection activities, the slaughtering plant would have to space where samples could be safely and efficiently collected. The plant would have to provide office and sample collection space, including necessary furnishings, light, heat, and janitor service, rent free, for use by APHIS, FSIS, or APHIS contractors collecting samples for blood and tissue testing. At the discretion of the Administrator, small plants would not have to furnish facilities if adequate facilities exist in a nearby convenient location. The space provided by the slaughtering establishment would be subject to the approval of the Administrator. In many cases the facilities that establishments already provide for use by FSIS will also suffice for additional sample collection conducted under this proposed rule.

When approving the space provided by a slaughtering plant in which testing is required, the Administrator would consider whether the space:

1. Is conveniently located, properly ventilated, and provided with lockers suitable for the protection and storage of supplies;

2. Has sufficient light to be adequate for proper conduct of sample collection and processing;

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3. Includes racks, receptacles, or other suitable devices for retaining such parts as the head, glands, and viscera, and all parts and blood to be collected, until after the post-mortem examination is completed;

4. Includes tables, benches, and other equipment on which sample collection and processing are to be performed, of such design, material, and construction as to enable sample collection and processing in a ready, efficient, and clean manner;

5. Has adequate arrangements, including liquid soap and cleansers, for cleansing and disinfecting hands, dissection tools, floors, and other articles and places that may be contaminated by diseased carcasses or otherwise; and

6. Has adequate facilities, including denaturing materials, for the proper disposal of tissue, blood, and other waste generated during test sample collection.

We believe the space provided by the slaughtering plant should have these characteristics in order to allow APHIS, FSIS, or APHIS contractor personnel to collect and process test samples in an accurate, efficient, and safe manner.

We also propose that the Administrator or his or her designee would give the owner of a slaughtering establishment notice as to when we would be collecting test samples at the plant. The Administrator would give the operator of the slaughtering establishment as much advance notice as possible. However, the actual amount of notice would depend on the specific situation.

We also propose to include language allowing the Administrator to deny or withdraw listing of a slaughtering establishment if the establishment does not comply with the requirements of the regulations. This language is essentially the same as existing language in § 71.20 concerning denial and withdrawal of approval of livestock facilities.

Effects on Slaughter Plants Where APHIS Conducts Sampling

Under our proposal, sample collection would be done on the premises of the slaughtering plant. Full testing of samples might sometimes occur on the premises, although APHIS often will elect to send the samples offsite for testing. APHIS employees, FSIS employees, or a contractor hired by APHIS would collect the samples. There would be no personnel cost to slaughtering plants, although they would incur some expenses in providing the space and equipment used by APHIS, FSIS, or contractors. In some cases, the slaughtering plant itself may be the contractor employed by APHIS to collect samples.

The difficulty and expense of collecting the samples would depend on the type of testing. The most difficult sampling involves the collection of tissue from sheep to test for scrapie. We may wish to test any slaughtered sheep or goat after we determine that it has sufficient animal identification to trace it back to its flock of origin. Collecting the sample involves removing the brainstem from an animal through the spinal opening and sending it to a laboratory for histopathological procedures, and may involve collecting other tissue or blood samples as well, depending on the tests in use at the time.

Collecting samples to test for tuberculosis is also difficult, involving necropsy to collect multiple tissue samples. Collecting samples to test for brucellosis and pseudorabies is a relatively simple matter of collecting blood samples.

We realize that collection of tissue and blood samples at slaughter may affect slaughtering plant operations by disrupting or slowing down the work. While many samples can be collected without slowing down production lines, there would be occasional slowdowns. We also realize that plants would have to set aside, or make available, adequate and suitable space for us to work. This could be inconvenient and involve additional expense. APHIS intends to be as flexible as possible in adapting the proposed requirements to the needs of individual slaughtering plants. When it is possible, we would share space and facilities at the plant that are already devoted to other Federal or State inspection activities, and when this is not possible, we would work with slaughtering plant management to minimize their expenses. The proposed rule would also allow sample processing to occur outside the slaughtering plant in some cases; *e.g.*, at some small sheep plants, it may be possible for APHIS to simply collect the heads of animals to be tested and take them to a nearby laboratory or other facility for processing.

Also, we are not proposing to test all slaughtered livestock all the time. We believe our more limited proposal—to test when we believe it is necessary and to test only those animals we believe are necessary, based on epidemiological information—is justified because it would substantially enhance the control of livestock diseases, particularly brucellosis, tuberculosis, scrapie, and pseudorabies, in the United States. We anticipate that the sampling of sheep would occur only at plants that kill sheep old enough to test for scrapie, so operations at plants that slaughter only lambs would not be significantly affected. Also, APHIS would be able to modify its sampling to some degree to accommodate special needs at individual plants, *e.g.*, to avoid damaging the heads of sheep when there is a contract to sell the heads as meat, or to suspend sampling when plant renovations are underway.

Background on the Scope and Purpose of Sample Collection in APHIS Programs

As described in the preceding section, the essential changes proposed by this rule are a requirement that persons moving livestock and poultry interstate for slaughter may only move the animals to slaughtering establishments that have been listed by the Administrator of APHIS, and a requirement that slaughtering establishments where we choose to collect samples must grant access to the personnel conducting the tests and provide certain space and equipment necessary to collect and process test samples. This rule would therefore chiefly affect slaughtering establishments that must allow us to collect samples.

This section provides additional background to help interested persons understand the role of sampling and testing in various APHIS animal disease programs, and the difficulties and costs involved in different types of sample collection and testing.

Testing animals' blood or tissue for diseases is an important component of APHIS regulations. Although the regulations in subchapter C do not require testing for most animals moving interstate, testing with negative results is often one of several options for qualifying an animal for interstate movement. In some programs (*e.g.*, brucellosis), APHIS regulations also require that certain animals and herds be tested, including at slaughter, in order for a State or area to achieve or maintain a particular disease status. At other times, voluntary testing allows the owners of animals to achieve a market advantage by certifying their animals free of particular diseases.

In support of both mandatory and voluntary testing programs, APHIS cooperates with State and local governments, as well as individuals and businesses. In some situations, APHIS personnel collect blood or tissue samples to be tested immediately or sent to laboratories for testing. In other situations, accredited veterinarians, State or local veterinary officials, or other individuals may collect the samples.

APHIS uses epidemiological data from many mandatory and voluntary tests to assess the prevalence of disease and to identify sources of diseases. When testing is coupled with animal identification, we can trace a positive animal's movements and identify other animals it may have been in contact with that were exposed to the disease. We call this process "traceback." We can then test source herds or flocks and exposed animals and take other measures to ensure that the disease does not spread.

Testing at slaughter is extremely important. Not only is it the last point in normal channels for animal movement when we can test an animal, but for some diseases for which there is no validated live-animal test, like bovine spongiform encephalopathy or chronic wasting disease, it is the only time we can conduct routine diagnostic testing. For other diseases, such as tuberculosis in cattle and bison, brucellosis in cattle, bison, and swine, and exotic Newcastle disease in poultry, testing at slaughter provides a cost-effective means of monitoring the extent of the diseases and detecting areas where the diseases are highly prevalent. APHIS has not been able to use voluntary cooperation by slaughter plants to obtain all the samples it needs for optimal disease surveillance. For instance, APHIS has been allowed to collect some samples in 45 of the 50 major swine processing plants, but we need samples from all 50 plants to construct a valid model of swine disease incidence. Also, when APHIS collectors have gone into plants to replace voluntary collection by the slaughtering plants, the number of samples collected has increased two fold, indicating that voluntary collection has not been effective.

APHIS has held substantial discussions with animal industry groups to explore options for collecting all the samples we need for optimal disease surveillance. Most recently, we participated in a National Dialogue on Animal Disease Surveillance on March 12, 2002, that was sponsored by the National Institute for Animal Agriculture in Arlington, VA. We also participated in a follow-up conference call for interested industry members on April 9, 2002. The approach of this proposed rule has taken those discussions and the concerns of industry members into account.

The reasons why slaughter testing is important in the control of various diseases are discussed below. This discussion does not attempt to identify every disease for which APHIS may want to test animals at slaughter, but is intended to identify the benefits of such testing with regard to certain diseases of major concern, and to identify where testing might help us determine whether other diseases have a greater effect than is currently understood.

There is no simple answer to the question "How much slaughter testing is needed for proper surveillance of a disease?" If the animals continually passing through slaughter plants constituted a true random sample of animal populations in the United States, it would be possible to identify a statistically valid number of animals to test, in order to detect animal diseases in U.S. animal populations at whatever prevalence we choose, with whatever confidence we choose. However, the animals passing through a slaughter plant at any given time do not constitute a random sample of the national population. The desirable level of testing at slaughter is also affected by the amount of data already available from non-slaughter testing (*e.g.*, federal and State herd and flock testing, and voluntary testing by animal owners). Finally, the amount of slaughter testing required for proper surveillance will vary with increasing or decreasing national animal inventories each year.

For informational purposes, this document projects certain levels of sample collection at slaughter that we currently believe are required for optimal surveillance of various animal diseases. These estimates of the number of samples required take into account the factors mentioned above—biases in the composition of animals at slaughter plants that make them non-random samples; availability of test data from non-slaughter testing for various diseases; and varying animal populations.

To illustrate the requirements of APHIS sample collection programs, the following discussion examines programs for several major animal diseases: tuberculosis, brucellosis, pseudorabies, and scrapie.

Tuberculosis

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of this century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined.

While cooperation with USDA's Food Safety and Inspection Service (FSIS) and slaughtering plants already allows us to perform a large amount of tuberculosis testing, this proposal would allow us to perform additional testing of animals at slaughtering plants if and when we determine such testing is necessary to improve our knowledge of the distribution of tuberculosis. The data gained through additional testing would improve our ability to administer national tuberculosis programs and to design effective program improvements. Because the activities of FSIS inspectors address primarily human food safety risks rather than animal disease risks, APHIS has never been able to rely completely on sample collection by FSIS inspectors to provide all the samples needed for a statistically valid evaluation of the animal disease profile of animals passing through a slaughter plant. Testing by APHIS rather than FSIS will become increasingly important as FSIS continues to implement its Hazard Analysis Critical Control Point (HACCP) approach to food safety at slaughter plants. The critical control points implemented by slaughter plants to ensure food safety and verified by FSIS do not necessarily provide the sample collection and testing APHIS needs for animal disease surveillance purposes. Therefore, APHIS needs the proposed authority to design and perform its own testing at slaughter plants.

Brucellosis

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus Brucella. In its principal animal hosts, brucellosis is characterized by abortion and impaired fertility. The brucellosis regulations, contained in 9 CFR part 78, prescribe conditions for the interstate movement of cattle, bison, and swine, and provide a system for classifying States or portions of States (areas) according to the rate of *Brucella abortus* infection present and the general effectiveness of the brucellosis control and eradication program conducted in the State or area.

This proposal would allow us to perform additional testing of animals for brucellosis at slaughtering plants if and when we determine such testing is necessary to improve our knowledge of the distribution of brucellosis. The data gained through additional testing would improve our ability to properly classify herds and States, to administer national brucellosis programs, and to design effective program improvements.

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Under existing programs to detect brucellosis, two primary surveillance procedures are used to locate infection without having to test each animal in every herd. Milk from dairy herds is checked two to four times a year by testing a small sample obtained from creameries or farm milk tanks for evidence of brucellosis, and some animals from bison herds and cattle herds that do not produce milk for sale are tested for brucellosis at livestock markets or at slaughter. While these surveillance programs are valuable in monitoring brucellosis, the availability of slaughter testing under this proposal is critical to provide complete coverage in the data provided by current surveillance efforts.

Pseudorabies

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease is caused by a herpes virus. Our regulations in 9 CFR part 85 govern the interstate movement of swine and other livestock in order to help prevent the spread of pseudorabies.

A great many feeder pigs and butcher hogs move to slaughter each year, and such swine are not currently required to be tested for pseudorabies. This proposal would allow APHIS to test such swine at slaughter if we find it necessary to do so to improve our knowledge of the prevalence and distribution of pseudorabies. Such testing could also help us assess the success of the recent indemnification program to reduce the incidence of pseudorabies by destroying affected animals.

Scrapie

Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. Currently, to definitively test for scrapie, the brainstem of an animal must be removed through the spinal opening and sent to a laboratory for histopathological procedures. In the near future, testing may involve collecting other tissue or blood samples as well, depending on the tests in use at the time.

APHIS is attempting to improve the effectiveness of its scrapie control program. On August 21, 2001, we published a final rule (Docket No. 97–093–5, 66 FR 43963) in the **Federal Register** that encourages improvement of State quarantine programs for scrapie, reinstituted a Federal indemnity program for scrapie, and made other changes to strengthen scrapie control. Slaughter testing for scrapie would dramatically improve surveillance for scrapie and is an important and necessary part of the broader efforts to improve scrapie control.

Currently, slaughter testing is not required for sheep and goats. There is a small amount of voluntary testing of sheep and goats at slaughter, where we have made special arrangements with slaughtering establishments. However, this is not sufficient because so few sheep are tested at slaughter. Although we do not believe it is necessary to test all sheep and goats at slaughter, we believe that additional animals must be tested at slaughter if we are to have an effective surveillance program and, in turn, control and eventually eradicate the disease.

Other Diseases

There are many other animal diseases that APHIS may test for at slaughter to gain better data about their extent and their effects on productivity. For example, The National Poultry Improvement Plan (NPIP), described in 9 CFR parts 145 and 147, is a cooperative Federal-State-industry mechanism that includes slaughter testing to control certain poultry diseases, particularly those caused by various species of *Salmonella, Mycoplasma gallisepticum, M. synoviae, M. meleagridis,* and avian influenza viruses.

Equine infectious anemia (EIA), also known as swamp fever, is a viral disease of equines that is characterized by sudden fever, swelling of the legs and lower parts of the body, severe weight loss, and anemia. Approximately 1 million live horses are tested for EIA each year, and approximately 0.2 percent of these test positive. However, no comprehensive testing for EIA is currently done at slaughter.

Johne's disease, also known as paratuberculosis, is a disease caused by *Mycobacterium paratuberculosis.* This disease primarily affects cattle, sheep, goats, elk, and other domestic, exotic, and wild ruminants. Improved testing at slaughter for Johne's disease would improve our baseline knowledge of the distribution and extent of Johne's disease and would allow us to better calculate the true cost of this disease to animal industries.

Slaughter testing can also yield valuable information about reservoirs of bluetongue, can help distinguish the prevalence of different strains of this virus, and can also distinguish bluetongue from epizootic hemorrhagic disease. Slaughter testing could also help us better understand the significance of diseases such as porcine reproductive and respiratory syndrome, chronic wasting disease, and other diseases of emerging importance. In addition, if bovine spongiform encephalopathy (BSE) or other transmissible spongiform encephalopathies (TSE's) ever become established in the United States, slaughter testing would be essential for their control. It should be noted that extensive testing for TSE's, should it ever be needed, would raise the overall cost of our testing program considerably, since these tests require necropsy and tissue collection rather than a simple blood sample.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The economic analysis prepared for this proposed rule is set out below. It includes both a cost-benefit analysis as required by Executive Order 12866 and an analysis of the economic effects on small entities as required by the Regulatory Flexibility Act.

APHIS is proposing to require persons moving horses, cattle, bison, sheep, swine, cervids, or poultry interstate to slaughter to move them only to slaughtering establishments that have been listed by the Administrator. The Administrator would list an establishment after determining that it is not necessary to conduct testing there, or determining that testing is necessary and that the establishment provides access and facilities for the collection of tissue and blood samples from the animals slaughtered. We are proposing this action to increase the effectiveness of our surveillance for livestock diseases. Collection of samples currently occurs on a small, voluntary scale, but it needs to be expanded and to include both large and small slaughtering plants. Samples are currently collected by personnel employed by APHIS, FSIS, or the slaughtering plants themselves.

According to NASS and FSIS statistics for slaughtering establishments that may receive animals in interstate movement, there are approximately 795 plants slaughtering cattle, 757 plants slaughtering swine, and 350 plants slaughtering poultry. Fourteen of the cattle plants and 11 of the swine plants are very large operations that account for 50 percent of the cattle and swine slaughtered each year. Several dozen of the plants are of moderate size; the rest are small businesses. Some of these plants slaughter both cattle and swine, and some slaughter other animals as well (sheep, horses, cervids, etc.). Some degree of sample collection already occurs at virtually all of the cattle plants, *e.g.,* to collect the 12 million blood samples required each year under Part 78 for States to maintain their brucellosis classifications. Sample collection also occurs at virtually all of the poultry plants in accordance with the National Poultry Improvement Plan. Some sample collection already occurs at about 20–25 of the largest swine plants to collect blood samples for pseudorabies testing.

This proposed rule would allow us to collect samples at plants where sampling does not now occur, but where sampling is needed to fill information gaps in our animal disease programs. We expect to initiate testing at several large plants, primarily swine plants, where testing has not occurred before, and at approximately 20 small businesses.

As noted above, many slaughtering plants already voluntarily cooperate with APHIS to allow us to collect samples for testing. Because of the relatively small number of additional animals that would be tested and the relatively small number of cases of disease expected to be identified, we do not expect that this rule would have a significant economic effect on any affected entities. Based on discussions with livestock industry groups and slaughter industry groups, and the fact that most slaughtering plants accepting animals in interstate commerce already cooperate with voluntary testing programs, we expect there will be minimal effects on most slaughtering plants in complying with the proposed standards. While this proposal may increase costs slightly for some slaughtering plants, prices for agricultural products vary for many reasons, and it is unlikely that additional testing for this disease would have any measurable effect on costs for producers or consumers.

The primary economic effects of this proposal would be direct costs to those slaughter plants that would have to provide us with access, workspace, and equipment to collect samples. We do not have reliable data to document these costs, but we estimate that they would average no more than a few thousand dollars a year per plant, for 20 to 30 plants that have not already been providing access under voluntary sampling programs. We particularly invite small businesses that may be affected by this proposed rule to comment on its economic impacts. We are seeking additional data on whether small businesses that must provide space and access for sample collection will incur additional expenses for rents, facility costs, or salaries. We are also seeking data on costs that slaughter plants might incur if it is necessary to slow the production line to collect some types of samples (*e.g.,* tissue samples).

In the following sections we discuss potential economic effects on the various categories of slaughtering plants, based on the types of animals each processes. First, we present two tables summarizing the per-unit costs and the total industry costs estimated to result from the blood and tissue sampling requirements in this proposed rule for cattle, swine, and sheep. Bear in mind that the major costs of sample collection are borne by the Federal government, and that the costs to slaughter plants are limited to costs associated with providing access for sample collection.

TABLE 1.—PER-UNIT COST OF BLOOD AND TISSUE SAMPLING—ANNUAL BASIS

Animal	Number slaughtered (millions)	Disease	Samples currently collected	Samples needed	Cost of collection (per unit)	Cost of testing (per unit)
Cattle	35.5	Brucellosis	12 million	12 million	[1] $0.50–1	$0.10–0.50
Cattle	35.5	Tuberculosis	1,200	4,000	[2] 11–14	20
Swine	101.1	Pseudorabies	750,000	1.2 million	0.45–0.90	1–1.50
Swine	101.1	Brucellosis	750,000	1.2 million	([3])	1–1.50
Sheep	4.0	Scrapie	12,000	75,000	[4] 5–10	30

[1] Contracts for collecting brucellosis samples are negotiated individually, prices vary widely.

[2] To collect a sample for tuberculosis testing takes a veterinarian about a half-hour. An approximate hourly wage rate for a veterinarian employed in a slaughtering facility would range from $22 to $28 per hour. (Veterinarians in this type of job would typically be at a GS–12 level). Additionally, the plant incurs a cost because the speed at which the processing line moves is slowed or stopped for a sample to be taken. Also, the carcass must be held by the plant while the testing is done, which typically takes 3 days. If the test is negative, the carcass is released. If the test is positive, the carcass cannot be sold and steps are taken to trace the disease back to its source.

[3] No cost because the same blood sample is used to test for pseudorabies and brucellosis.

[4] Animal health technicians normally collect scrapie test samples. An animal health technician can collect approximately 10 samples for scrapie testing per hour. Adjusting for time spent bagging samples for shipment, collecting identification devices, other administrative duties, and varying levels of efficiency at different facilities based on their layout and slaughter volume, the actual average collection rate would probably be 2 to 3 samples per hour. An approximate hourly wage rate for a technician employed in a slaughtering facility would range from $16 per hour to $21 per hour, based on the GS–7 pay scale plus benefits. Additionally, the plant would incur a cost because the processing line may be slowed or stopped for a sample to be taken.

TABLE 2.—TOTAL COST OF BLOOD AND TISSUE SAMPLING—ANNUAL BASIS

Animal disease	Samples needed	Per-unit cost of collection	Per-unit cost of testing	Estimated total cost (millions)—lower bound	Estimated total cost (millions)—upper bound
Cattle brucellosis	12 million	$0.50–1	$0.10–0.50	$7.2	$18
Cattle tuberculosis	4,000	11–14	20	0.124	0.136
Swine pseudorabies	1.2 million	0.45–0.90	1–1.50	1.74	2.88
Swine brucellosis	1.2 million		1–1.50	1.2	1.8
Sheep scrapie	75,000	5–10	30	2.625	3
Totals				12.889	25.816

Note: Only approximately 25% of these costs come from increases in sampling resulting from the proposed rule; the remainder represent sampling already occurring under previous authorizations.

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Profile of Cattle and Swine Slaughtering Plants

APHIS is trying to increase surveillance for brucellosis, pseudorabies, and tuberculosis at these plants. Collection of samples needs to be expanded to include both large and small slaughtering plants. Under this proposed rule, samples would be collected by APHIS or FSIS personnel, contractors, or the slaughtering plants themselves.

The meat packing industry is included in the North American Industry Classification System code of 311611. The Small Business Administration (SBA) definition of small business for NAICS 311611 is a firm with less than 500 employees.

In 1996, 91 percent (1,260) of the total number of firms (1,341) in the meat packing business qualified as small businesses. Only firms with more than $100 million in sales average more than 500 employees. Eighty-one firms had sales of more than $100 million in 1996. (SBA Office of Advocacy, *http://www.sba.gov/advo/stats/int_data.html.*)

There are 795 federally inspected plants that slaughtered at least one head of cattle in 1998. Fourteen plants account for over 50 percent of the total cattle killed. (Agricultural Statistics Board, National Agricultural Statistics Service (NASS), Livestock Slaughter 1998 Summary, March 1999.) There are 757 plants that slaughter hogs. Eleven plants account for 48 percent of the total hogs killed.

Cost of Testing Additional Tissue Samples for Tuberculosis

Currently, FSIS collects about 1,200 tissue samples from slaughter cattle each year to be tested for tuberculosis. There are approximately 100 positive test results per year. It is estimated that .0002 percent of all U.S. cattle may be infected with tuberculosis. There were 98.5 million head of cattle in the United States as of January 1, 1999. Therefore, it is estimated that fewer than 200 head of cattle are infected with tuberculosis at any one time.

Under this proposed rule, the direct costs of collecting a tissue sample and testing it for tuberculosis would be borne by APHIS, in either salary or contractor costs. It takes a veterinarian about a half-hour to collect a sample for tuberculosis testing. An approximate hourly wage rate for a Federal or contractor veterinarian to do these duties would be $22 to $28 per hour. The cost of laboratory analysis to test for tuberculosis is about $20.00.

A slaughtering plant may incur a cost if the speed at which the processing line moves is slowed or stopped for a sample to be taken. Usually, samples can be collected without slowing the line. Also, the carcass must be held by the plant while the testing is done, which typically takes 3 days. Currently about 0.003 percent (1,200) of cattle slaughtered are tested for tuberculosis, and this rule proposes to initially increase testing to 4,000 head annually. Because of the small number of additional tests for tuberculosis, this aspect of the proposed rule would not have a material effect on small business entities.

If a tuberculosis test is negative, the carcass is released. If the test is positive, the carcass cannot be sold and steps are taken to trace the disease back to its source. If this traceback is successful, the herd has to be quarantined while it is tested and may be depopulated if found positive. However, economic effects related to herd quarantine and depopulation are not reasonably linked to this proposal, since herds are already quarantined and depopulated under other APHIS regulations.

Cost of Testing Additional Blood Samples for Cattle Brucellosis

This proposed rule would not change the number of brucellosis test samples collected from cattle or the way in which they are processed. This proposed rule would have no significant economic effect with regard to cattle tested for brucellosis.

Currently there are approximately 12 million blood samples collected each year to test for brucellosis. Under part 78, States must collect these samples in order to maintain their brucellosis status.

There are 795 federally inspected plants that slaughtered at least one head of cattle in 1998. Fourteen plants account for over 50 percent of the total cattle killed. (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999.) All slaughtering plants that ship product across State lines are subject to Federal inspection.

In 1998, there were 35.5 million head of cattle slaughtered; 98.1 percent were subject to Federal inspection. Only cattle that are 2 years old or older are tested for brucellosis.

Most of the blood sample collection is done by plant personnel or by FSIS. APHIS personnel collect only a small percentage of the total samples, approximately 50,000 samples per year, or 0.4 percent of the total.

Testing of the samples for brucellosis costs between $0.10 and $0.50 per sample. The high range of costs would cover follow-up tests from a positive result.

Cost of Testing Additional Blood Samples for Swine Pseudorabies

Currently there are about 750,000 samples collected per year. An estimated 1.2 million samples are needed for more complete testing. We estimate that less than 1 percent of swine herds are infected with pseudorabies.

At a large plant, two people would be needed to do the collection of blood samples on a full-time basis, at a cost to the government of $25,000 to $30,000 per year.

At smaller plants, where not enough swine are slaughtered to warrant having an employee collect blood samples full time, APHIS pays for each sample collected. Rates range from $.45 to $.90 cents per sample.

The sample is sent to a lab for testing. It costs approximately $1.00 per sample for testing. APHIS has some contracts and cooperative agreements with universities to do some testing. The cost is negotiated with each lab separately. The rate can be up to $1.50 per sample.

One reason for some firms' reluctance to participate in collecting blood samples is concern about liability. Collection is often done in potentially hazardous conditions; for example, the floors may be wet, the quarters may be cramped, and there are sharp knives and equipment present.

It is difficult to estimate the average cost incurred because of liability issues. The relevant issue here is the marginal increase in liability costs due to this regulation. Slaughtering plants are already involved in a potentially hazardous activity. Adding the requirement to collect blood and tissue samples would not add significantly to the liability incurred by a plant; but a small increase in liability costs may be expected.

There are 757 plants that slaughter swine. Eleven plants account for 48 percent of the total swine killed. In 1998, 101.1 million swine were slaughtered; 98.3 percent of all swine slaughtered are slaughtered under federal inspection. (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999.) All slaughtering plants that ship products across State lines are subject to Federal inspection. Some 96 percent of the Federally inspected swine at slaughter was barrows and gilts (younger pigs, with less fat, that are used for higher quality cuts of pork). There were about 4 million sows and boars slaughtered in 1998. For testing for pseudorabies, these are the swine

that we are concerned about. There is about a 40 percent turnover in sows per year.

If a herd tests positive, it is then quarantined. The swine can be sold for slaughter but cannot be sold for breeding stock. Swine sold for breeding stock are typically twice as expensive as swine sold for slaughter.

Costs of Testing for Scrapie at Sheep Slaughtering Plants

The slaughtering plant industry is included in NAICS code 311611. The SBA's definition of small business for NAICS 311611 is a firm with less than 500 employees. Only firms with more than $100 million in sales average more than 500 employees. Two slaughtering plants that process sheep had sales of more than $100 million in 1998. (SBA Office of Advocacy, *http://www.sba.gov/advo/stats/int_data.html.*)

There are 556 federally inspected plants that slaughtered at least one sheep in 1998. Two plants account for over 40 percent of the total sheep slaughtered (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999). In 1998, 4.429 million sheep were slaughtered, of which 94.8 percent were subject to Federal inspection. Only about 212,000 of these were mature sheep suitable for scrapie testing.

It is estimated that roughly 1.2 percent of all U.S. sheep flocks are infected with scrapie. In 1998, there were only 63 cases of scrapie reported. Given this incidence, approximately 15,000 animals should be sampled at slaughter each year for optimal monitoring for scrapie. Five distinct tissue samples are collected from each animal's head, resulting in about 75,000 samples to be collected. This level of sampling will detect the incidence and distribution of scrapie with a confidence of over 95 percent.

This proposed rule would not have a significant adverse economic effect on small businesses. Blood and tissue samples would be collected either by APHIS, FSIS, or a contractor paid for by USDA. Firms could incur secondary costs for collecting tissue samples for testing as a result of production lines that may have to be slowed down or stopped temporarily. Firms would also incur costs for providing the space, furnishings, and equipment required for the personnel collecting samples, although we believe many firms will be able to minimize these costs by utilizing some of the space and equipment already provided for Federal and State inspectors and firms' quality assurance personnel.

The primary direct costs would be the cost of collecting samples and the cost of testing samples, both of which would be borne by USDA. Over the long term, samples will cost about $5 to $10 each to collect and $30 each to test. Additionally, the plant could incur a cost because the speed at which the processing line moves may be slowed or stopped for a sample to be taken, similar to the effects already caused by FSIS inspections. The sheep or goat carcass would not have to be held by the plant while the testing is done, so it would continue along on the processing line, and the processor would not incur the cost of having to hold the carcass.

Additional testing for scrapie would provide a better record of diseases and enhance our ability to limit the infection of additional flocks with scrapie. While the costs of additional testing are visible, the benefits often are not. The true economic benefit of additional testing is that it will contribute to control and eventual eradication of scrapie, resulting in better overall flock productivity, a reduction in flocks depopulated due to scrapie, and expanded market opportunities for animals that can be marketed as scrapie-free. Production of agricultural commodities varies for many reasons, and it would be difficult to determine the change in production due to additional testing. Because the percentage of animals currently infected with scrapie is small, we expect that slaughter testing will result in the identification and quarantine of very few additional infected flocks. Quarantining the animals in these flocks is not likely to have a statistically significant effect on current or future production.

TABLE 3.—PER-UNIT COST OF COLLECTING AND TESTING SHEEP AND GOAT SAMPLES FOR SCRAPIE

Animals slaughtered (1998)	Samples to be collected (2000)	Samples needed	Cost of collection[1] (per unit)	Cost of testing (per sample)
4.03 million	12,000	75,000	$5–10	$30

[1] See footnote 4 to table 1.

TABLE 4.—TOTAL ANNUAL COST OF COLLECTING AND TESTING SHEEP AND GOAT SAMPLES FOR SCRAPIE

Samples needed	Cost of collection (per sample)	Cost of testing (per sample)	Total cost (millions)
75,000	$5–10	$30	$2.625–3

Costs of Testing Captive Cervids at Slaughter

Captive cervids might be tested at slaughter for tuberculosis and for chronic wasting disease (CWD). The cost per animal of testing cervids for tuberculosis is similar to the cost per animal of testing cattle for this disease. The cost per animal of testing cervids for CWD is similar to the cost per animal of testing sheep for scrapie.

The number of cervids farmed is small compared to cattle, swine, or sheep. Because it is a small industry, NASS does not collect data about cervid production or slaughter. According to the North American Elk Breeders Association, there are 150,000 to 160,000 elk being raised on farms in North America. This number includes elk raised in Canada and Mexico. The number of deer raised on farms is uncertain, but it is also a very small industry compared to cattle, swine, or sheep.

As stated earlier, the meat packing industry is included in NAICS code 311611. The SBA's definition of small business for NAICS 311611 is a firm with less than 500 employees.

In 1996, 91 percent (1,260) of the total number of firms (1,341) in the meat packing business qualified as small businesses. Only firms with more than $100 million in sales average more than

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500 employees. Eighty-one firms had sales of more than $100 million in 1996. (SBA Office of Advocacy, *http://www.sba.gov/advo/stats/int_data.html.*)

Plants that slaughter captive cervids would qualify as small businesses. It seems that, currently, there are not enough cervids slaughtered per year to motivate large meat packing businesses to devote production lines to the slaughter of cervids.

This proposed rule would not have an adverse effect on small businesses that slaughter cervids. Blood samples would be collected either by APHIS, by FSIS, by contractors, or by the firms themselves. Firms would be compensated on a per unit basis for collecting the samples. The costs of testing captive cervids would be similar to the costs of testing cattle. Because of the small number of tests that are expected to be done, this proposed rule would not have a material effect on small business entities.

Costs of Testing Poultry at Slaughter

In 1997, there were 315 poultry processing firms (NAICS 311615) according to SBA statistics. To qualify as a small business, firms engaged in meat processing must have less than $500,000 in annual receipts. Even the smallest classification of poultry processing firms, those with less than 20 employees, averaged over $1 million in annual receipts in 1999. While this does not exclude the possibility that there may be poultry processing firms that qualify as small businesses, we have been unable to locate any such firms. This proposed rule would not have a significant adverse effect on small businesses.

It is estimated that this proposed rule, if adopted, could result in the collection of a maximum of 300 samples per quarter, collected from about 100 different poultry plants, to conduct adequate testing for exotic Newcastle disease, avian influenza, or other diseases that APHIS may wish to monitor. Blood samples would be collected either by APHIS, by FSIS, by contractors, or by the firms themselves. Firms would be compensated on a per unit basis for collecting the samples.

Additional testing that would be conducted under this proposed rule would be an insignificant amount compared to the testing and inspection already performed at poultry plants. The NASS Agricultural Statistics Board report entitled "Poultry Slaughter," dated February 4, 2000, gives representative figures for the amount of poultry that is inspected or tested at processing plants, and the fraction that is condemned for failing inspection. In December 1999, the preliminary total live weight of poultry inspected was 3.95 billion pounds, up fractionally from the previous year. Ante-mortem condemnations during December 1999 totaled 15.3 million pounds. Condemnations were 0.39 percent of the live weight inspected. Post-mortem condemnations, at 62 million pounds (N.Y. dressed weight), were 1.75 percent of quantities inspected.

In contrast, even if APHIS tested poultry plants at the maximum level envisioned under this proposed rule, and if such testing always resulted in destruction of the poultry tested rather than just collection of a test sample, the total effects would be collection of under 120,000 samples per year, and the loss of under 600,000 pounds of poultry per year.

Benefits of Additional Testing

Additional testing would provide a better record of diseases and enhance our ability to prevent potential outbreaks of diseases. While the costs of additional testing are visible, the benefits often are not. The true economic benefit of additional testing would be the amount by which production is increased or the amount by which production is not lost due to herds being depopulated because of disease. The benefits of this program include better animal disease control, greater productivity in flocks and herds, fewer animals lost to disease, and greater opportunity to develop export markets for animals and products that can have their disease status backed up by an effective slaughter testing program. Increased testing of slaughter samples will allow us to more quickly identify and isolate herds or flocks affected by disease, reducing the number of animals lost to disease control. Production of agricultural commodities varies for many reasons, and it would be difficult to determine the change in production due to additional testing. Because the percentages of animals currently infected with diseases such as pseudorabies and tuberculosis are very small, additional testing for these diseases resulting in the quarantine of some additional herds may not have a statistically significant effect on current or future swine and cattle production, but effective surveillance for these diseases can dramatically increase export markets, increasing the value of herds. Another benefit of additional testing would be that it would contribute to lowering the overall costs of animal disease control programs by generating epidemiological data to make these programs more effective. APHIS alone has spent hundreds of millions of dollars in the past decade on these programs, and more hundreds of millions of dollars on indemnity programs to buy and destroy diseased animals. Over time, a more effective slaughter testing program could reduce these costs. However, in the short-term, a more effective slaughter testing program may detect a higher incidence of diseases, and so may generate greater costs. Gains would accrue in the long-term from improved herd and flock health, reduced disease costs, reduced prophylactic costs, and expanded export opportunities.

Cattle Industry Benefits

This proposed rule would not affect the amount of samples from cattle collected to test for brucellosis or the way in which the testing is conducted. There would be no economic effect due to this proposed rule with respect to collecting blood samples for cattle brucellosis. With regard to cattle tuberculosis, on average one herd per year has to be eradicated because of a positive tuberculosis test. The value of the average size herd in 1996 and 1997 ranged from $46,200 to $52,976. The value of a herd that has to be eradicated can vary widely depending on the size of the herd and market prices. If one cow is found to be tuberculosis positive, the entire herd is quarantined and may be depopulated. Eliminating the cost of depopulating a herd would represent only a small part of the benefit of additional testing. One benefit of this proposed rule would be the value of the herds that do not have to be depopulated. As discussed above, another benefit to both the cattle industry and the general public would result from improved disease control and resultant increased productivity.

Swine Industry Benefits

Elimination of pseudorabies directly impacts producer income. Producers who are able to eliminate this disease from their herds are able to earn up to $4 more per hog. In addition, pseudorabies kills numerous young piglets and causes reproductive problems in sows. Historically, each year pseudorabies has cost several billion dollars in lost producer revenues and the cost of control measures. To the extent that collecting blood samples and testing contributes to faster elimination of pseudorabies, this rule will have a positive economic impact on producer incomes. APHIS hopes to eliminate pseudorabies within the next year. Additional slaughter testing should allow pseudorabies to be eliminated from U.S. swine herds, or reduced to an insignificant level, several months earlier than would otherwise be possible. The additional slaughter testing that would be allowed if this proposal is adopted would also help establish baseline data that could be used to develop disease control programs to reduce the impact on industry of other swine diseases such as porcine reproductive and respiratory syndrome.

Sheep Industry Benefits

Improved surveillance would aid eradication of scrapie, which would directly affect producer income. Producers who are able to eliminate this disease from their flocks lose fewer animals to disease and can, therefore, maintain more animals at a lower production cost per animal. They can also sell their animals at a higher price and with fewer regulatory costs and may be able to sell to additional foreign markets. To the extent that collecting samples and testing contributes to elimination of scrapie, this proposed rule would have a positive economic effect on producer incomes. The additional slaughter testing that would be conducted if this proposal is adopted would also help establish baseline data that could be used to develop disease control programs to reduce the economic effect on industry of other sheep diseases.

Poultry Industry Benefits

As noted above, the additional testing that would be conducted under this proposed rule would serve as a minor but valuable supplement to the poultry testing already conducted in accordance with the National Poultry Improvement Plan.

The poultry industry, like other animal industries, would benefit in the form of increased productivity and possible expansion of overseas markets. More effective disease surveillance is particularly important in the poultry industry because outbreaks of severe avian disease frequently must be controlled by destroying a number of poultry houses in a flock or the entire flock. This often means the loss of tens of thousands of poultry to control a single outbreak.

Cervid Industry Benefits

In addition to the benefits cited above for other industries, the cervid industry at present faces the possibility that its major export markets will be cut off unless there is an effective slaughter testing surveillance program for chronic wasting disease (CWD). The Republic of Korea recently banned importation of elk antlers from the United States due to concerns about this disease, and other countries may follow. The elk industry depends on foreign markets for a large part of its revenue, and these markets have indicated that they may not import U.S. elk products unless there is a reasonably effective testing program to ensure the products are not from CWD-positive elk.

Overall Summary

The total direct cost of the testing this proposed rule envisions for cattle, swine, and sheep is between $12.889 million and $25.816 million, borne by APHIS. However, as noted above, APHIS already conducts some of this testing on a voluntary basis, although we collect only a fraction of the samples we believe are needed for an effective testing program. If we subtract the cost of testing APHIS is already conducting, the new total direct costs are between about $4 million and $12 million. In addition to these direct costs for cattle, swine, and sheep, there will be direct testing costs for slaughter testing of horses, cervids and poultry. The extent of testing to be done in this area is still uncertain, but it will be much smaller than the program for cattle, sheep, and swine, and should not amount to more than a few million dollars in annual direct costs. In addition to direct testing costs borne by APHIS, slaughtering plants will bear certain direct costs related to providing space and access for sample collection, and possible losses if production lines must be slowed for sample collection. We are requesting comments providing data on costs that slaughter plants might incur if it is necessary to slow the production line to collect some types of sample.

The benefits of this program include better animal disease control, greater productivity in flocks and herds, fewer animals lost to disease, and greater opportunity to develop export markets for animals and products that can have their disease status backed up by an effective slaughter testing program.

The overall costs of this program that are borne by industry are expected to be relatively minor, though further information is needed to assess costs for those plants that need to make adjustments to their operations to comply. In most cases, small businesses will have to do little more than to allow sample collectors to have access to their production lines.

In the following table, costs are compared for the level of slaughter sampling and testing APHIS currently conducts and the increase in such activities we expect would result if this proposed rule is adopted. This table does not include the benefits achieved by current and proposed sampling activity levels, because data are not available to quantify the benefits. As discussed above, the benefits result from avoiding animal disease outbreaks, and there are too many possible outbreak scenarios to allow a meaningful calculation of a benefits range. The expected benefits result from the expectation that sampling and testing helps APHIS avoid some additional animal disease outbreaks, thereby avoiding: (1) The direct cost of dealing with an outbreak (cleaning and disinfection, compensation to producers, quarantine enforcement, etc.); (2) production losses; (3) induced price changes, and (4) the effect of the outbreak on other sectors of the economy. In view of the fact that the economic output of U.S. livestock industries exceeds $100 billion, an avoided impact of even a fraction of 1 percent on this sector would substantially exceed the total sampling costs estimated in Table 5.

TABLE 5—COSTS OF SAMPLING FOR CATTLE BRUCELLOSIS AND TUBERCULOSIS, SWINE PSEUDORABIES AND BRUCELLOSIS, AND SHEEP SCRAPIE

	Low Range	High Range
Current sampling costs	$9,494,700	$21,224,800
Additional sampling costs	3,394,300	4,591,200

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

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under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 99–017–1. Please send a copy of your comments to: (1) Docket No. 99–017–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is responsible for preventing the dissemination of any contagious or communicable disease of animals or live poultry from one State to another. Disease surveillance plays an important role in the APHIS mission of protecting the health of the U.S. livestock and poultry populations, and testing animals for disease is an important surveillance tool. We can use epidemiological data from tests to assess the prevalence of disease and to identify sources of disease. When testing is coupled with animal identification, we can trace a positive animal's movements and identify other animals with which it may have come into contact.

To enhance our surveillance capabilities, we are publishing this proposed rule to provide for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals) and poultry at slaughter. We would not collect samples from all livestock and poultry at slaughter; we would collect samples whenever we believe it is necessary for effective surveillance.

Implementing a test-at-slaughter program will necessitate the use of a specimen submission form. We are asking OMB to approve, for 3 years, our use of this information collection activity in connection with our efforts to perform testing at slaughter and thus prevent the spread of animal diseases within the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.3333 hours per response.

Respondents: Slaughtering plant personnel assigned to collect blood and tissue samples.

Estimated number of respondents: 100.

Estimated number of responses per respondent: 120.

Estimated annual number of responses: 12,000.

Estimated total annual burden on respondents: 4,000 hours.

(Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 71 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would be revised to read as follows:

Authority: 7 U.S.C. 8304–8306, 8308, 8310, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. In § 71.1, the definition of *livestock* would be revised and three new definitions would be added in alphabetical order to read as follows:

§ 71.1 Definitions.

* * * * *

Food Safety and Inspection Service (FSIS). The Food Safety and Inspection Service, United States Department of Agriculture.

* * * * *

Livestock. Horses, cattle, bison, captive cervids, sheep and goats, swine, and other farmed animals.

* * * * *

Move (moved). Shipped, transported, delivered, or otherwise aided, induced, or caused to be moved.

* * * * *

Recognized slaughtering establishment. Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act. A list of recognized slaughtering establishments in any State may be obtained from an APHIS representative, the State animal health official, or a State representative.

* * * * *

3. A new § 71.21 would be added to read as follows:

§ 71.21 Tissue and blood testing at slaughter.

(a) Any person moving livestock or poultry interstate for slaughter may only move the animals to a slaughtering establishment that has been listed by the Administrator[1] for the purposes of this part. A slaughtering establishment may receive livestock or poultry in interstate commerce only if the slaughtering establishment has been listed by the Administrator. The Administrator may list a slaughtering establishment after determining that collecting samples for testing from the establishment is not necessary for the purposes of APHIS disease surveillance programs. Otherwise, the Administrator will list a slaughtering establishment after determining that it is a recognized slaughtering establishment or a slaughtering establishment that undergoes voluntary inspection under the provisions of the Agricultural Marketing Act (12 U.S.C. 1141 *et seq.*), and that it:

(1) Provides space and equipment in accordance with paragraph (b) of this section within their facility for blood and tissue sample collection;

(2) Allows APHIS, FSIS, or APHIS contractors to take blood and tissue samples from all livestock or poultry at the facility without cost to the United States, and specifically allows these personnel access to the processing line to collect samples; and

(3) Allows APHIS, FSIS, or APHIS contractors to record the identification of individual animals and retain any external or internal identification devices.

(b) The slaughtering establishment must provide office and sample collection space, including necessary furnishings, light, heat, and janitor service, rent free, for the use by APHIS, FSIS, or APHIS contractors collecting samples for blood and tissue testing under this section. The Administrator will inform each slaughtering establishment of the exact amount and type of space required, taking into account whether APHIS will be conducting complete tests at the facility, or only collecting samples and sending them elsewhere for testing. At the discretion of the Administrator, small plants need not furnish facilities as prescribed in this section if adequate facilities exist in a nearby convenient location. In granting or denying listing of a slaughtering establishment, the Administrator will consider whether the space at the facility:

(1) Is conveniently located, properly ventilated, and provided with lockers suitable for the protection and storage of supplies;

(2) Has sufficient light to be adequate for proper conduct of sample collection and processing;

(3) Includes racks, receptacles, or other suitable devices for retaining such parts as the head, glands, and viscera, and all parts and blood to be collected, until after the post-mortem examination is completed;

(4) Includes tables, benches, and other equipment on which sample collection and processing are to be performed, of such design, material, and construction as to enable sample collection and processing in a safe, ready, efficient, and clean manner;

(5) Has adequate arrangements, including liquid soap and cleansers, for cleansing and disinfecting hands, dissection tools, floors, and other articles and places that may be contaminated by diseased carcasses or otherwise; and

(6) Has adequate facilities, including denaturing materials, for the proper disposal of tissue, blood, and other waste generated during test sample collection.

(c) The Administrator will give the operator of the slaughtering establishment actual notice that APHIS, FSIS, or an APHIS contractor will be taking blood and/or tissue samples at the establishment. The Administrator may give the operator of the slaughtering establishment notice in any form or by any means that the Administrator reasonably believes will reach the operator of the establishment prior to the start of sample collection.

(1) The notice will include the anticipated date and time sample collection will begin. The notice will also include the anticipated ending date and time.

(2) The Administrator will give the operator of the slaughtering establishment as much advance notice as possible. However, the actual amount of notice will depend on the specific situation.

(d) *Denial and withdrawal of listing.* The Administrator may deny or withdraw the listing of a slaughtering establishment upon a determination that the establishment is not in compliance with the requirements of this section.

(1) In the case of a denial, the operator of the slaughtering establishment will be informed of the reasons for the denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the slaughtering establishment was wrongfully denied listing. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(2) In the case of withdrawal, before such action is taken, the operator of the slaughtering establishment will be informed of the reasons for the proposed withdrawal. The operator of the slaughtering establishment may appeal the proposed withdrawal in writing to the Administrator within 10 days after being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal of the listing. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the slaughtering establishment. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

[1] A list of these slaughtering establishments may be obtained by writing to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

Done in Washington, DC, this 21st day of November, 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–30093 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–23–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B and –200F Series Airplanes Powered by Pratt & Whitney JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200B and –200F series airplanes powered by Pratt & Whitney JT9D–70 series engines. This proposal would require repetitive detailed inspections of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat damage (discoloration), wrinkling, and cracking; and corrective action, if necessary. This action is necessary to find and fix such damage, which could result in cracking

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or fracture of the nacelle struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 13, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–23–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–23–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from three operators who found heat damage (discoloration) and cracking adjacent to and aft of the precooler exhaust vent on the nacelle struts of three Boeing Model 747 series airplanes powered by Pratt & Whitney JT9D–70 series engines. Investigation revealed that high temperature exhaust air from the precooler vent caused the heat damage. Such damage to the structure could result in cracking or fracture of the nacelle struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001, which describes procedures for repetitive detailed inspections of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat discoloration, wrinkling, and cracking; and corrective action, if necessary. The corrective action includes the following:

- If heat discoloration but no wrinkling is found, do a conductivity test of the damaged area(s). If the conductivity test is within specified limits, do a penetrant or high frequency eddy current (HFEC) inspection of the heat discolored areas for cracking. If no cracking is found, repeat the detailed inspection.
- If wrinkling is found, do a penetrant inspection for cracking of the wrinkled area(s). An optional HFEC inspection can also be done for such damage. The service bulletin specifies contacting the manufacturer for additional instructions if wrinkling is found.
- If cracking is found, or the conductivity readings are not within the limits specified in the service bulletin, the service bulletin specifies contacting the manufacturer for additional instructions.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 7 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,880, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–23–AD.

Applicability: Model 747–200B and –200F series airplanes powered by Pratt & Whitney JT9D–70 series engines, certificated in any category; as listed in Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix heat damage of the pylon skin and internal structure of the nacelle struts, which could result in cracking or fracture of the struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane; accomplish the following:

Repetitive Inspections/Corrective Action

(a) Within 6 months after the effective date of this AD: Do a detailed inspection of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat discoloration, wrinkling, and cracking, per the Work Instructions of Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001. Repeat the inspection at least every 18 months.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any sign of heat discoloration is found, but there is no wrinkling: Before further flight, do a conductivity test of the discolored area(s) per the service bulletin. If the conductivity test is within the limits specified in Figures 3 and 4, as applicable, of the Work Instructions of the service bulletin, and no cracking is found, before further flight, do a penetrant or high frequency eddy current (HFEC) inspection for cracking.

(2) If any sign of wrinkling is found: Before further flight, do a penetrant or HFEC inspection of the wrinkled area(s) for cracking, per the service bulletin.

(3) If any sign of cracking is found, before further flight, do the corrective action required by paragraph (b) of this AD.

(b) If, during any inspection or test done by this AD, any wrinkling or cracking is found, or the conductivity limits exceed the limits specified in Figures 3 and 4, as applicable, of the Work Instructions of the service bulletin: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30027 Filed 11–26–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA–2002–13918; Notice No. 02–19]

RIN 2120–AH43

Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FAA proposes to amend the passenger facility charge (PFC) regulation by changing the amount and unit of collection that a carrier may retain for collecting and handling (including remitting) PFC revenue. FAA proposes to allow carriers to keep $0.10 of each PFC they collect in calendar years 2002 through 2004. From 2005 forward, the amount will increase to $0.11 for each PFC collected. This action is necessary to implement the statutory requirement that the Secretary of Transportation (whose authority has been delegated to the Administrator of FAA) establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs.

DATES: Send comments by January 13, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13918 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also file comments through the Internet at *http://dms.dot.gov*. You may review the public docket containing comments to this proposed rule in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You will find the Docket Office in Room Plaza 401 of the Nassif Building at the U.S. Department of Transportation at the address listed above. You may also review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph Hebert, Passenger Facility Charge Branch, APP–530, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3845; facsimile (202) 267–5302.

SUPPLEMENTARY INFORMATION:

Comments Invited

FAA invites interested people to take part in this proposed action by presenting written data, views, or arguments. We also invite comments about the environmental, energy, federalism, or economic impact that might result from adopting the proposals. Commenters should provide cost estimates for substantive comments. Commenters should send two copies of their remarks to the DOT Docket Office address mentioned above. Comments must identify the regulatory docket or notice number.

We will file all comments, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking, in the docket. The docket is available for public inspection before and after the comment closing date.

FAA will consider all comments received by the closing date before acting on this proposed rulemaking. We will consider comments filed late if possible without incurring expense or delay. FAA may change the proposals in this document because of the comments received.

Commenters wishing to receive confirmation that FAA received their comments must include a self-addressed, stamped postcard stating: "Comments to Docket No. FAA–2002–13918." We will date stamp and mail the postcard to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy of this notice using the Internet by taking the following steps:

(1) Select the search button on the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a letter to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and may send electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov*.

Background

Statement of the Problem

The Aviation Safety and Capacity Expansion Act of 1990 (ASCE Act), codified at 49 U.S.C. 40117, authorized the passenger facility charge (PFC) program. On May 29, 1991, the Department of Transportation adopted regulations to establish the PFC program. The regulations are codified at 14 CFR part 158. The Secretary of Transportation (Secretary), by regulations codified at 49 CFR 1.48(r), delegated authority to the FAA Administrator to allow a public agency (as defined in 14 CFR 158.3) to impose a PFC of $1, $2, or $3 for each enplaned passenger at a commercial service airport the public agency controls. Public agencies may use the money from such PFC collections only to finance FAA-approved, eligible airport-related projects, as defined at 49 U.S.C. 40117(a)(3). To approve a project, FAA must determine that the project (1) preserves or enhances safety, security, or capacity of the national air transportation system; (2) reduces noise from an airport that is part of such system; or (3) provides opportunities for increased competition between or among carriers.

The ASCE Act directed the Secretary to issue regulations requiring air carriers, foreign air carriers, and their agents, collectively referred to as "carriers," to collect PFCs and pay them promptly to public agencies. The regulations were also to establish a uniform amount, reflecting the average reasonable and necessary expenses of collecting and handling the PFC, that carriers could retain from PFCs collected. This amount, referred to in 14 CFR part 158 as "carrier compensation," as discussed below, is to be determined by the Secretary net of interest earned on PFC revenue between the time of collection and payment.

FAA carried out this requirement in section 158.53 of the regulations, entitled "collection compensation." Section 158.53 allowed carriers initially to keep "[a]s compensation for collecting, handling and remitting the PFC revenues" $0.12 of each PFC remitted, in part to recover the expenses of setting up their systems to process and record charges under the PFC program. On June 28, 1994, under the terms of § 158.53, compensation dropped from $0.12 to $0.08 for each PFC collected, reflecting completion of a recoupment period from program start-up costs. Currently, carriers may keep $0.08 of each PFC remitted. For convenience, we refer to this amount as the "handling fee" or "PFC handling fee," as well as "carrier compensation," in the remainder of this discussion. Section 158.53 (b) also authorizes carriers to keep any interest or other investment return earned on PFC revenue between the time the carrier collects and remits it to the airport public agency.

On May 27, 1994, the Air Transport Association of America (ATA) petitioned FAA to amend § 158.53 by extending the handling fee of $0.12 for three more years. ATA proposed to file comments after the three-year extension, showing whether the airline industry had fully recovered the cost necessary to run the PFC collection program. Further, ATA requested that FAA amend § 158.53(a) to allow carriers to keep the handling fee for each refunded PFC, as well as each PFC remitted. FAA published in the **Federal Register** a summary of ATA's petition on June 24, 1994 (59 FR 32668). Recognizing that the standard for setting the level of the handling fee was "average necessary and reasonable expenses," FAA asked carriers and public agencies to send specific data to enable the agency to determine this amount. FAA received twelve comments in response to the notice, but determined the comments did not contain enough information to enable FAA to decide on a rate of compensation that met this standard.

On April 16, 1996, FAA issued an advance notice of proposed rulemaking (ANPRM) (61 FR 16678). In that notice, FAA provided guidance on the quantity and quality of information needed to decide ATA's petition. FAA requested detailed data from carriers that, in total, represented at least 75 percent of the enplanements at PFC-collecting airport locations. FAA needed enough information on current industry costs to decide if the authorized handling fee of $0.08 continued to reflect average necessary and reasonable expenses for collecting and handling and remitting PFCs. FAA determined that a smaller sample, if it included a disproportionate representation from carriers with higher PFC handling costs, would not provide an accurate average handling cost calculation for the industry. In the ANPRM, FAA also invited comments on other issues about PFC revenues and changes in part 158 to address new legislation and industry practices. FAA withdrew this ANPRM on April 10, 2000 (65 FR 18932), because carrier responses fell below the 75 percent minimum response requested by FAA.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) (Pub. L. 106–181), signed into law on April 5, 2000, changed the PFC program. Public agencies may now collect PFCs of $4 or $4.50. On May 30, 2000, FAA issued a final rule that amended part 158. The amendment incorporated administrative and statutory changes in the procedures to set up PFCs based on AIR–21 and other recent acts by Congress and records of decision by FAA. The rule became effective on June 29, 2000.

The issue of carrier compensation arose again during the congressional deliberations leading up to the passage of AIR–21. In report language (House Report 106–513) which accompanied AIR–21, Congress noted that several carriers communicated to the conferees their views that carrier compensation at $.08 for each PFC remitted is too low. While the conferees did not evaluate the correctness of these claims, they noted that FAA should give carriers the opportunity to prove their correctness in a rulemaking action. The report, HR 106–513 encouraged FAA to make its final decision within 189 days from the time carriers present the evidence necessary for evaluation of their claims.

On April 27, 2000, the Office of the Inspector General (OIG) of the Department of Transportation issued a memorandum to FAA. In that memorandum, OIG provided recommendations on the conduct of the proposed rulemaking on PFC collection costs. To ensure that FAA receives the information necessary for evaluation, OIG suggested that cost data be—

- "[L]imited only to those incremental costs that are directly associated with PFC collection, handling, remittance, reporting, recordkeeping, or auditing. Though incremental cost compensation does not include an allocation for indirect costs such as utilities, officer salaries, and other administrative expense, it will compensate air carriers for the additional costs of handling and remitting PFC's;" and
- "[A]ccompanied by an independent audit opinion stating the costs are supportable, presented in accordance with generally accepted accounting principles, and in compliance with the requirement of the proposed rulemaking."

A copy of this memorandum is included in the docket for this proceeding.

Request for Cost Data

FAA adopted the OIG's recommendations in this rulemaking. Specifically, FAA determined that consideration of incremental costs would best implement the statutory standard that the handling fee reflect "necessary costs." FAA also determined an independent audit opinion would ensure that the calculation of average expenses was based on reliable carrier cost data.

Beginning in April 2000, FAA consulted with the carrier industry through ATA to identify cost categories compatible with carrier cost accounting practices that would meet the specifications of OIG. FAA gathered this information before starting this rulemaking to avoid the data collection problems experienced in its previous rulemaking effort. In addition, FAA consulted with independent accountants familiar with the accounting methods of carriers. FAA examined the extent to which independent accountants could determine if costs reported by carriers are justifiable. Based on these contacts, FAA was able to assemble cost categories and formats, as well as recommended accounting procedures, to ensure the data evaluated in this NPRM are comparable across carriers and conforms to OIG's recommendation.

On October 19, 2000, FAA sent letters to the largest domestic ATA-member carriers. FAA asked the carriers to voluntarily send their 1999 PFC collection and handling cost data to FAA. These carriers account for most of the PFCs collected nationally. At the same time, FAA asked regional and foreign carriers through their trade associations (Regional Air Carriers Association and International Air Transport Association, respectively) if they would voluntarily send their cost data. None of the regional or foreign carriers provided data. The reporting

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ATA carriers, however, included costs of their subsidiary regional carriers.

The FAA's letter to the carriers suggested the cost categories and instructions for collecting incremental costs associated with PFC collection, handling, remittance, reporting, recordkeeping, or auditing. The cost categories were: Credit card fees; audit fees; PFC disclosure; reservations; passenger services; revenue accounting, data entry, accounts payable, tax and legal; corporate property department; training reservations, ticket agents, and other departments; carrier ongoing information systems; computer reservation system ongoing; PFC absorption; Airline Tariff Publishing Corporation; and Airline Reporting Corporation. The FAA letter also suggested categories for implementation costs, including carrier one-time information systems and one-time computer reservation costs. In addition, FAA requested data on interest income on unremitted PFC funds. An example of the letter is included in the docket of this proceeding.

In its letter to the carriers, FAA emphasized that carriers will not receive compensation from PFC revenue for an item just because the item appeared on the list of cost definitions. FAA included some items because at least one carrier proposed the item as a collection or handling cost. FAA noted that not all interested parties will agree with the items included in cost definitions. FAA requested data on all cost items listed above, however, to avoid collecting more data later if FAA finds that each cost item qualifies as a "necessary and reasonable expense of collecting, handling and remitting PFCs."

In the letter, FAA also said that it was not seeking cost data for years before 1999. FAA stated that if a carrier found evidence of additional costs exceeding the amount authorized for retention in years before 1999, the carrier could petition FAA for a separate rulemaking to address possible under compensation in those years.

Initially, FAA considered asking carriers to have cost data audited before submission to insure its accuracy. Consultation with the independent accountants for the carrier industry, however, found the cost of getting an audit on such cost items would prohibit carriers from conducting such an audit. After consulting with OIG and the airline independent accountants, FAA decided the data could be used if carriers and their independent auditors followed certain procedures (referred to as "agreed-upon procedures"). Therefore, the letter told each carrier to give its cost data to its independent accountant. In turn, the accountant would use the approved procedures to prepare a report similar to the agreed-upon procedures report in the docket of this proceeding.

To ensure that carriers send data in a consistent format, FAA provided a sample spreadsheet that included cost categories. FAA asked carriers to estimate what 1999 costs would have been for items such as "credit card fees" and "interest revenue on float" if the carrier had collected $4.50 PFCs at all airports that year. FAA also offered the carriers the opportunity to send out-year projections of costs. Carrier independent accountants could not, however, apply the agreed-upon procedures to out-year projections that would be cost estimates.

FAA invites comments on the categories and agreed-upon procedures. In addition, any carrier who has not already submitted data may submit their own data (that conforms to the agreed-upon procedures included in the docket of this proceeding) during the comment period. Any data submitted will be considered to the extent possible.

Receipt and Initial Processing of Cost Data

Nine carriers provided cost data to FAA by the end of January 2001 under the categories, formats, and procedures suggested by FAA. These carriers were Alaska Airlines, American Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, Southwest Airlines, TransWorld Airlines, United Airlines, and U.S. Airways. Each of these airlines sent its data to its independent accountant, who then provided its report using the agreed-upon procedures. The independent accountants sent these reports with the carrier data submissions to FAA. The nine responding carriers reported that in 1999 they remitted 436,659,521 PFCs to airports, representing 84 percent of the calculated total of 518,731,500 PFCs sent nationally in 1999. Thus, the cost data sent by the nine carriers significantly exceed the 75 percent threshold requested in the previous ANPRM data collection effort undertaken by FAA. FAA has no reason to believe that those collecting carriers not presenting data (including international and regional carriers) would have collection and remittance costs significantly different than those of the reporting carriers.

People interested in reviewing the individual carrier data submissions and the procedures reports may inspect them at the U.S. Department of Transportation Dockets, Docket No. FAA–2002–13918, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. In addition, individuals may access electronic copies through the Docket Management System Internet Web page located at *http//dms.got.gov.*

FAA reviewed the carrier's cost data for consistent data categories and formats. Then, FAA consolidated all the information into a single summary table (Table 1). This table summarizes the raw actual cost data for 1999, with estimated costs of imposing the new $4.50 PFC level.

TABLE 1.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS

PFC collection cost categories	1999 actual costs [1]		1999 pro-forma [2]		Implementation [3]	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Credit Card Fees	24,311,612	43.7	33,390,598	52.8		
Audit Fees (External)	423,502	0.8	296,166	0.5	85,182	2.5
Disclosure Costs	6,218,343	11.2	6,191,343	9.8		
Reservations	9,751,032	17.5	9,317,814	14.7		
Passenger Services	5,226,254	9.4	5,092,650	8.1		
Data Entry:						
Internal	43,609	0.1	29,605	0.0		
Other		0.0		0.0		
Revenue Accounting	857,925	1.5	728,507	1.2	6,875	0.2
Accounts Payable	109,905	0.2	71,390	0.1		
Tax & Legal	77,359	0.1	75,859	0.1		
Corporate Property Department	323,570	0.6	282,195	0.4		

TABLE 1.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS—Continued

PFC collection cost categories	1999 actual costs [1]		1999 pro-forma [2]		Implementation [3]	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Training:						
Reservations	99,154	0.2	99,158	0.2	49,675	1.4
Other	413	0.0	413	0.0		
Ticket Agents	782,336	1.4	445,625	0.7	55,424	1.6
Internal On-Going IT	552,695	1.0	488,602	0.8		
CRS On-Going fees	5,823,761	10.5	5,732,145	9.1		
ATPCO	5,407	0.0	4,643	0.0	135	0.0
ARC + BSP	986,694	1.8	946,262	1.5	77,712	2.2
Internal One-Time IT update		0.0		0.0	3,020,947	87.2
CRS One-Time update		0.0		0.0	168,870	4.9
Interest Revenue on Float	(7,070,099)	n/a	(9,969,952)	n/a		
Total costs	55,595,572	100	63,192,975	100	3,464,820	100
Total costs less interest	48,525,473	n/a	53,223,024	n/a	3,464,820	n/a
Number of PFCs Remitted	436,659,521		406,526,509		448,929,355	
Number of PFCs Collected	485,238,737		452,173,384		505,223,269	
Percentage of PFCs Refunded	10.0%		10.1%		11.1%	
Range of Refunded Rates	5.4% to 20.2%		5.4% to 20.2%		5.4% to 20.2%	
Cost Less Interest Per PFC Remitted	$0.1111		$0.1309		$0.0077	
Cost Less Interest Per PFC Collected	0.1000		0.1177		0.0069	
PFC Absorption	30,495,212					
Cost Per PFC Remitted	0.0698					
Cost Per PFC Collected	0.0628					

[1] Actual costs incurred. Agreed-upon procedures have been applied by the independent accountant to actual 1999 costs. Enplanement data are for 1999.
[2] Assumes the same volume as 1999, but with 100 of PFCs Collected at $4.50 for each PFC—this only impacts Credit Card Fees and Interest Revenue. One carrier did not submit data.
[3] Costs associated with the implementation of the new $4.50 PFC rate in years 2000 and 2001. This column is not year specific. One carrier did not submit data. Enplanement data are for 2000.

The same data, presented in terms of the average cost for each PFC collected and remitted, are presented in Tables 2 and 3.

TABLE 2.—AVERAGE 1999 PFC HANDLING COSTS

PFC collection cost categories	1999 actual costs—average cost per collected PFC				Average cost per remitted PFC
	Average	Standard deviation	Highest reported	Lowest reported	
Credit Card Fees	$0.0501	$0.0039	$0.0588	$0.0448	$0.0557
Audit Fees (External)	0.0009	0.0012	0.0039	0.0002	0.0010
Disclosure Costs	0.0128	0.0286	0.0874	0.0002	0.0142
Reservations	0.0201	0.0131	0.0381	0.0000	0.0223
Passenger Services	0.0108	0.0101	0.0292	0.0000	0.0120
Data Entry:					
Internal	0.0001	0.0002	0.0004	0.0000	0.0001
Other	0.0000	0.0000	0.0000	0.0000	0.0000
Revenue Accounting	0.0018	0.0015	0.0041	0.0002	0.0020
Accounts Payable	0.0002	0.0007	0.0020	0.0000	0.0003
Tax & Legal	0.0002	0.0002	0.0005	0.0000	0.0002
Corporate Property Department	0.0007	0.0005	0.0014	0.0000	0.0007
Training:					
Reservations	0.0002	0.0004	0.0012	0.0000	0.0002
Other	0.0000	0.0000	0.0000	0.0000	0.0000
Ticket Agents	0.0016	0.0033	0.0102	0.0000	0.0018
Internal On-Going IT	0.0011	0.0015	0.0042	0.0000	0.0013
CRS On-Going fees	0.0120	0.0073	0.0189	0.0000	0.0133
ATPCO	0.0000	0.0000	0.0000	0.0000	0.0000
ARC + BSP	0.0020	0.0018	0.0057	0.0000	0.0023
Internal One-Time IT update.					
CRS One-Time update.					
Interest Revenue on Float	(0.0146)	0.0029	(0.0089)	(0.0185)	(0.0162)

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TABLE 2.—AVERAGE 1999 PFC HANDLING COSTS—Continued

PFC collection cost categories	1999 actual costs—average cost per collected PFC				Average cost per remitted PFC
	Average	Standard deviation	Highest reported	Lowest reported	
Total Average Costs	0.1146	0.0237	0.1594	0.0837	0.1273
Total Average Costs Less Interest	0.1000	0.0228	0.1439	0.0705	0.1111
Number of PFCs Remitted	436,659,521				
Number of PFCs Collected	485,238,737				
% of PFCs Refunded	10.0%				
Range of Refunded Rates	5.4% to 20.2%				
PFC Absorption	0.0628	0.1825	0.4457	0.0000	0.0698

Values shown as $0.0000 on this table were either reported as zero, not reported (assumed to be zero for calculation purposes), or are a calculated figure determined to be statistically insignificant (*i.e.* less than $0.0001).

TABLE 3.—1999 $4.50 PFC PRO-FORMA AND IMPLEMENTATION COSTS

All Airlines—PFC Collection Cost Categories	1999 Pro-Forma [1]		Implementation costs	
	Average cost per collected PFC	Average cost per remitted PFC	Average cost per collected PFC	Average cost per remitted PFC
Credit Card Fees/Bad Debt	$0.0738	$0.0821	N/A	N/A
Audit Fees (External)	N/A	N/A	$0.0002	$0.0002
Disclosure Costs	N/A	N/A	N/A	N/A
Reservations	N/A	N/A	N/A	N/A
Passenger Services	N/A	N/A	N/A	N/A
Data Entry:				
Internal	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A
Revenue Accounting	N/A	N/A	0.0000	0.0000
Accounts Payable	N/A	N/A	N/A	N/A
Tax & Legal	N/A	N/A	N/A	N/A
Corporate Property Department	N/A	N/A	N/A	N/A
Training:				
Reservations	N/A	N/A	0.0001	0.0000
Other	N/A	N/A	N/A	N/A
Ticket Agents	N/A	N/A	0.0001	0.0001
Internal On-Going IT	N/A	N/A	0.0000	0.0001
CRS On-Going fees	N/A	N/A	N/A	N/A
ATPCO	N/A	N/A	0.0000	0.0000
ARC + BSP	N/A	N/A	0.0002	0.0000
Internal One-Time IT update	N/A	N/A	0.0060	0.0065
CRS One-Time update	N/A	N/A	0.0003	0.0006
Interest Revenue on Float	(0.0220)	(0.0245)	NA	NA
Total Average Costs [1]	0.1383	0.1537	0.0069	0.0077
Total Average Costs Less Interest	0.1163	0.1292	0.0069	0.0077
Number of PFCs Remitted	406,526,509		448,929,355	
Number of PFCs Collected	452,173,384		505,223,269	
% of PFCs Refunded	10.1%		11.1%	
Range of Refunded Rates	5.4% to 20.2%		5.4% to 20.2%	

Values shown as $0.0000 on this table are calculated figures determined to be statistically insignificant (*i.e.* less than $0.0001).
[1] Includes actual 1999 costs for carriers reporting pro-forma data incurred for all categories except credit card fees and interest revenue. Agreed-upon procedures have been applied by the independent accountant to actual 1999 costs, but not to pro-forma $4.50 estimates.

Analysis of 1999 Cost Data

The carriers gave data according to the formats requested. FAA examined the presented data and proposes to accept all cost categories suggested (either in whole or in part), except for the PFC absorption category, as valid incremental costs associated with PFC collection and handling, and thus valid average necessary and reasonable expenses of PFC collection and handling.

Some carriers reported that, in some air service markets, they must "absorb" the PFC from other carrier revenues because the markets are too price sensitive for the carrier to pass the PFC along to consumers. In this case, the carriers wish to treat such absorbed costs as administrative expenses associated with PFC collection and handling.

FAA allowed carriers to present estimates of "absorbed" PFC costs as part of this data collection effort, but noted that FAA may discount such data. In particular, it is unclear why the PFC should bear the burden of price sensitivity in a market. FAA asked carriers to show why "absorption" is an incremental cost of collecting, handling, remitting, reporting, recordkeeping, and/or auditing the PFC. FAA also requested that carriers send detailed explanations of their method for determining markets where absorption occurs and for calculating absorption.

Four carriers sent information on PFC absorption expenses. One of these carriers accounted for 63 percent of the $30.5 million of such charges identified. On average, for all carriers, these charges would add $0.063 to the cost of each PFC collected nationally. For the one carrier accounting for most of the absorption cost, the cost would amount $0.42 for each PFC collected by that carrier.

The carriers presenting PFC absorption cost data did not provide information on how the absorption cost is related to the cost of collecting and handling the PFC. One carrier imputed an $0.08 charge for each PFC it refunded to passengers as an absorbed cost, in that it did not received the $0.08 handling fee for these collections. However, FAA notes that this imputed charge is not an actual cost of collecting and handling PFCs. Air carriers also have not shown why absorption costs should not be associated with some other cost center of the carrier. Further, the carriers did not explain their methods for determining markets where absorption occurs and or their methods for calculating absorption. FAA has determined there is no reason to classify the charge of a ticket price adjustment as an expense associated with PFC collection and handling (including remitting, reporting, recordkeeping, and/or auditing.) FAA finds it more suitable to classify such a charge as one associated with providing air service, such as company overhead, fuel, labor expense, or airport rates and charges.

Based on the foregoing, FAA proposes to exclude PFC absorption from the calculation of average, reasonable, and necessary expenses of PFC collection and handling.

FAA reviewed the non-absorption 1999 data reported by carriers and found that five cost categories account for 92.3 percent of PFC collection and handling expenses. These categories include credit card fees, disclosure costs, reservations, passenger services, and CRS fees.

The credit card fee was the largest single cost item that FAA proposes to accept, accounting on average for 43.7 percent of PFC collection and handling costs. That amount equals just over $0.05 for each PFC collected or $.056 for each $3 PFC remitted to airport public agencies. FAA found a high degree of uniformity in the cost amounts the nine carriers allocated to this item.

The next largest cost item is reservation services, at 17.5 percent of PFC collection and handling costs, accounting on average for $.02 for each PFC collected and $0.022 for each PFC remitted. Reservations charges include the cost of increased telephone "talk time" with airline customers explaining PFCs to customers when they make airline reservations by telephone. Air carriers considered, in some degree, the following items: Total reservation calls handled; PFC calls handled; seconds for each normal call; difficult calls handled; seconds for each difficult call; call hours; and average wage rate per hour. FAA found significant variability among carriers in estimates of this cost item, ranging from $0.00 to $0.038 with a standard deviation of $.013 around the average.

The third largest cost item in the raw data is disclosure costs, at 11.2 percent of PFC collection and handling costs. That amount equals, on average, $.013 for each PFC collected and $0.014 for each PFC remitted. Disclosure costs are attributable to FAA requirement that carriers provide notice to the passenger that PFC fees may be applicable to the passenger. One carrier (Southwest Airlines) accounted for 91 percent of the total reported disclosure costs, but only 13 percent of the total PFCs reported collected by the nine carriers.

FAA notes that Southwest's independent accountant, using the agreed-upon procedures, accepted the carrier's claim of disproportionately high disclosure costs. Moreover, the reason provided for the high disclosure cost, that Southwest Airlines relies disproportionately on television fare advertising as causing the higher cost, is not implausible. Consequently, FAA proposes, on a preliminary basis, to set disclosure costs for this carrier at a level equal to the disclosure costs for all other carriers combined to calculate the handling fee. We have therefore reduced the estimate for total cost of disclosure for all nine carriers to $0.0024 for each PFC collected. That amount is equal to twice the combined $.0012 for each PFC collected charge for all carriers except Southwest Airlines. FAA's eventual acceptance of a significantly higher disclosure cost, as identified by Southwest Airlines, depends, in part, on that carrier's or other carriers' submission of data supporting this claim.

The fourth largest cost item is the on-going CRS (Computer Reservation Systems) expense, at 10.5 percent of PFC collection and handling costs. This amount accounts, on average, for $.012 of each PFC collected and $0.013 of each PFC remitted. Air carriers incur on-going CRS costs, in the form of booking fees, for using the CRS. These costs do not include the one-time charges associated with reprogramming the CRS software to allow a $4.50 PFC or other changes associated with AIR–21.

The fifth and last major cost item is passenger services. This item represents 9.4 percent of PFC collection and handling costs, accounting on average for $.011 of each PFC collected and $0.012 of each PFC remitted. Passenger service costs are attributable to increased face-to-face time with airline customers. FAA found significant variability in estimates of this cost item, ranging from $0.00 to $0.029 with a standard deviation of $.010 around the average.

FAA notes that several carriers may have allocated cost items to the passenger services category that other carriers allocated to the reservations category. Combined, the reservations and passenger services categories vary less than they do independently among the nine carriers. The combined average cost has a standard deviation of $0.014 compared to a mean of $0.025.

The remaining 13 cost categories collectively account for less than 8 percent of total cost of collecting and handling PFCs. No one category exceeds 2 percent.

Table 4 shows FAA's proposed adjustments to Table 1, reflecting the exclusion of claimed "PFC absorption" expenses and the proposed reduction of PFC disclosure costs.

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TABLE 4.—1999 TOTAL COSTS OF PFC HANDLING, ALL REPORTING AIR CARRIERS

PFC collection cost categories	1999 actual costs		1999 Pro-Forma		Implementation	
	Total cost ($)	% total	Total cost ($)	% total	Total cost ($)	% total
Credit Card Fees/Bad Debt Exp.	24,311,612	48.1	33,390,598	57.5	.....	.....
Audit Fees (External)	423,502	0.8	296,166	0.5	85,182	2.5
Disclosure Costs[1]	1,159,495	2.3	1,105,495	1.9	.....	.....
Reservations	9,751,032	19.3	9,317,814	16.0	.....	.....
Passenger Services	5,226,254	10.3	5,092,650	8.8	.....	.....
Data Entry:						
Internal	43,609	0.1	29,605	0.1	.....	.....
Other	.....	0.0	.....	0.0	.....	.....
Revenue Accounting	857,925	1.7	728,507	1.3	6,875	0.2
Accounts Payable	109,905	0.2	71,390	0.1	.....	.....
Tax & Legal	77,359	0.2	75,859	0.1	.....	.....
Corporate Property Department	323,570	0.6	282,195	0.5	.....	.....
Training:						
Reservations	99,154	0.2	99,158	0.2	49,675	1.4
Other	413	0.0	413	0.0	.....	.....
Ticket Agents	782,336	1.5	445,625	0.8	55,424	1.6
Internal On-Going IT	552,695	1.1	488,802	0.8	.....	.....
CRS On-Going fees	5,823,761	11.5	5,732,145	9.9	.....	.....
ATPCO	5,407	0.0	4,643	0.0	135	0.0
ARC + BSP	988,694	2.0	946,262	1.6	77,712	2.2
Internal One-Time IT update	.....	0.0	.....	0.0	3,020,947	87.2
CRS One-Time update	.....	0.0	.....	0.0	168,870	4.9
Interest Revenue on Float	(7,070,099)	n/a	(9,969,952)	n/a	.....	.....
Total Costs[2]	50,536,723	100	58,107,127	100	3,464,820	100
Total Costs Less Interest	43,466,624	n/a	48,137,175	n/a	3,464,820	n/a
Number of PFCs Remitted	436,659,521	.....	406,526,509	.....	448,929,355	.....
Number of PFCs Collected	485,238,737	.....	452,173,384	.....	505,223,269	.....
Percentage of PFCs Refunded	10.0	.....	10.1	.....	11.1	.....
Range of Refunded Rates	5.4 to 20.2	.....	5.4 to 20.2	.....	5.4 to 20.2	.....
Cost Less Interest Per PFC Remitted	$0.0995	.....	$0.1184	.....	$0.0077	.....
Cost Less Interest Per PFC Collected	0.0896	.....	0.1065	.....	0.0069	.....

[1] Disclosure costs adjusted to equal two times the reported disclosure costs of all reporting carriers except for Southwest Airlines. See discussion on disclosure costs.

[2] Total costs do not include PFC absorption costs reported by some carriers. See discussion on PFC absorption costs.

Analysis of 1999 Interest Income

Interest earned on the PFC revenue collected by the carrier but not yet remitted to the airport public agencies forms a portion of the collection compensation carriers are entitled to under section 158.53. As part of the analysis of the total collection compensation for the carriers, FAA also requested information on the amount of interest earned by the carriers on unremitted PFC revenue. FAA determined that this interest amounted to $0.0146 for each $3 PFC in 1999. This amount is roughly equivalent to what FAA had estimated based on an assumed retention period of 45 to 50 days and a 4 percent annual interest rate. The variability around this average is low. The highest reported interest is $0.0185 at a 5 percent interest rate. The lowest reported interest rate was $0.0089 at a 2.5 percent interest rate.

Total adjusted average cost for each PFC collected, minus interest earned on the PFC while held by the carrier, was $0.0896 for each PFC collected and $0.0995 for each PFC remitted in 1999. We base this amount on the adjusted values in Table 4. This amount compares to the $0.08 for each PFC remitted currently allowed under the PFC regulation for each PFC remitted. This information provided a reference point for the next step in FAA's process.

Analysis of "Pro Forma" $4.50 Costs and Interest Income

FAA sought information on projected or "pro forma" costs that would be associated with handling $4.50 PFC levels. FAA specifically asked about the effect of the $4.50 level on credit card fees and interest earned on higher PFC balances. We expected that all other costs would not vary significantly between PFC levels.

To simplify presentation of the "pro forma" costs, the carriers included their estimates for credit card fees and interest income with actual 1999 data for the other cost items. One of the nine carriers reporting 1999 actual data did not report the pro forma estimate for the $4.50 PFC level. FAA found that, if it excluded the data from the non-reporting carrier, all data other than credit card fees and interest income are identical between 1999 actual and the $4.50 pro forma data for the remaining eight carriers.

The credit card fee expense becomes a significantly larger item in PFC handling costs at the $4.50 PFC level allowed by AIR–21. This is because the fee paid by the carriers to the credit card company is a percentage of the amount charged. The credit card and bad debt expense items for the $4.50 PFC level would cost carriers, on average, just over $0.074 for each PFC collected or $0.082 for each PFC remitted. We have based these amounts on the pro forma estimates provided by eight of the nine reporting carriers. FAA notes the independent accountants did not evaluate these amounts. These amounts compare to an average credit card fee of $0.0501 for each PFC collected and $0.0557 for each PFC remitted at the $3 PFC level. The estimates at the two PFC levels appear consistent. The actual fee

in 1999 equates to about 1.67 percent of the $3 PFC, whereas the estimated pro forma fee equates to 1.64 percent of the $4.50 PFC. The slight difference compared to the $3 PFC amount may be attributable to the one carrier not reporting. It is significant to note that at the $4.50 level, the credit card fee alone would exceed the $0.08 compensation for each PFC remitted currently allowed under § 158.53.

FAA estimated interest earned on the PFC revenue collected by the carrier but not yet remitted to the airport public agencies to be, on average, $0.0220 for each collected $4.50 PFC and $0.0245 for each remitted $4.50 PFC. This amount is about 52 percent more than estimated for a $3 PFC level. FAA notes that one carrier did not report a pro forma estimate of interest.

In summary, collection and handling costs minus interest income for a $4.50 PFC level would yield a cost of $0.1065 for each PFC collected and $0.1184 for each PFC remitted.

Analysis of $4.50 Implementation Costs

FAA requested data from the carriers on the total cost of setting up the $4.50 PFC allowed by AIR–21. Specifically, FAA asked how much it cost the carriers to change their computer systems and other systems such as the CRS providers, the Airline Tariff Publishing Company (ATPCO), and the Airline Reporting Corporation (ARC). Air carriers and other data providers had to change programming codes and terminal screen formats to allow for four data columns. Previously, the systems only needed a single column for the $1, $2, and $3 PFC levels. Now, computer systems need columns for three numbers and a decimal point for the $4.50 PFC charge. Air carriers and other data providers completed reprogramming by April 1, 2001; however, carriers presented their handling cost data to FAA in December 2000 and January 2001 while efforts were still underway. FAA, therefore, did not require the independent accountants to apply the agreed-upon procedures to these cost items.

Cost items claimed by the carriers for setting up the increased PFC levels included charges for revenue accounting, training of reservations and ticket agents, fees to ATPCO, ARC, and CRS vendors, one-time information technology updates, and audit fees. One of these cost items, one-time information technology updates, accounted for 87 percent of the set-up costs. After analyzing the carrier data, FAA found the total set up cost for carriers was only $.0077 for each PFC collected. That means that carriers could recover the total cost of implementation with a one-year handling fee surcharge of less than one cent.

Although the independent accountants did not review the set up costs, the low cost claimed, particularly for reimbursement of computer service providers, was below FAA's expectations given the size of the reprogramming effort.

Analysis of Ticket Refund Rates

The data we received from the carriers reveals an overall average ticket refund rate of 10 percent. Because a carrier must handle refunded tickets twice, a higher volume of refunded tickets means higher costs for the carrier. The data format specified by FAA did not specifically ask the carriers to send data on the costs associated with refunded tickets because gathering the data would burden the carriers. Rather, the carriers included the costs associated with refunds in their overall cost data.

FAA notes that compensating carriers for each PFC collected compared to compensating them for each PFC remitted are equally valid means of compensation. Suppose total industry costs, minus interest earned, for handling PFCs were $50 million where carriers collected 500 million PFCs and remitted 416 million PFCs. In this example, carriers refunded 84 million PFCs after collections. The carriers collectively would receive the same compensation, $50 million, from collecting airports if the handling fee were set at $0.10 for each PFC collected or $0.12 for each PFC remitted. If all carriers had equivalent refund rates, all would receive equal compensation for the expenses associated with PFC refunds under either method.

FAA notes that selection of a standard fee for each PFC collected or for each PFC remitted may yield different amounts of compensation to individual carriers. In particular, a compensation standard for each PFC remitted, calculated from total industry handling costs and PFC remittances, assumes all carriers have the same PFC refund rates. Air carriers with higher ticket refund rates and higher PFC refund-related handling costs would receive less overall compensation relative to their actual costs than would carriers with low refund rates if compensated for each PFC remitted. This assumes everything else is equal. The data received from the carriers show that refund rates vary significantly among carriers. One large carrier reported a refund rate of only 5.4 percent, whereas another large carrier had a refund rate of 20.2 percent.

Section 40117 of title 49 of the U.S. Code requires FAA to set up a compensation fee that is uniform and reflects the average necessary and reasonable expenses incurred in collecting and handling the PFC, minus interest accrued before remittance. Therefore, FAA cannot set two or more compensation rates based on the different needs of each carrier. FAA does, however, have the choice of setting one fee to compensate carriers either for each PFC collected or each PFC remitted. If FAA elects to compensate carriers for each PFC collected, carriers with high refund rates would not be penalized, and carriers with low refund rates would not receive a windfall.

Calculation of PFC Handling Fee

The average PFC handling fee reported by the carriers was $0.0896 for each $3 PFC collected in 1999 and $0.0995 for each $3 PFC remitted in 1999. (*See* the 1999 actual costs at the bottom of Table 4). We propose to subtract interest earned on collected PFCs from this amount and excluded "PFC absorption" expenses. The amount also includes a downward adjustment for disclosure costs. Had a $4.50 PFC been in place that year at all airports where PFCs are collected, the carriers estimate the increase in their costs, minus interest, would have raised their overall cost to $0.1065 for each $4.50 PFC collected and $0.1184 for each $4.50 PFC remitted. (See the 1999 pro forma costs at the bottom of Table 4). A surcharge would be necessary to compensate carriers for the one-time cost of setting up the $4.50 PFC level.

Selecting the right compensation level clearly depends on the assumption made about what mix of $4.50 and $3 PFCs carriers will collect. FAA estimates that nearly 50 percent of all collected PFCs will be at $4.50 in 2002, 75 percent will be at $4.50 in 2003, and 90 percent will be at the $4.50 level in 2004, and almost 100 percent thereafter. Therefore, FAA proposes to phase in a new collection fee based on the estimated mix of $3 and $4.50 collections over the next several years. Table 5 summarizes FAA's proposal for compensating carriers for each PFC collected or each PFC remitted.

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TABLE 5.—ACTUAL COSTS AND PROPOSED FEES

	Year 2002[1]	Year 2003[2]	Year 2004[3]	Year 2005[4]
Compensation Based on PFCs Collected:				
1999 Cost Per PFC Collected at $3 (Actual)	$0.0896	$0.0896	$0.0896	$0.0896
1999 Cost Per PFC Collected at $4.50 (Pro-Forma)	0.1065	0.1065	0.1065	0.1065
Weighted Cost Per PFC Collected (Actual)	0.0981	0.1023	0.1048	0.1065
Proposed Fee Per PFC Collected	0.1000	0.1000	0.1000	0.1100
Over/Under Collection Per PFC	00019	(0.0023)	(0.0048)	0.0035
Compensation Based on PFCs Remitted:				
1999 Cost Per PFC Remitted at $3 (Actual)	0.0995	0.0995	0.0995	0.0995
1999 Cost Per PFC Remitted at $4.50 (Pro-Forma)	01184	01.184	0.1184	0.1184
Weighted Cost Per PFC Remitted (Actual)	0.1090	0.1137	0.1165	01184
Proposed Fee Per PFC Remitted	0.1100	0.1100	0.1200	0.1200
Over/Under Collection Per PFC	0.0010	(0.0037)	0.0035	0.0016

[1] (Assumes 50% at $3 and 50% at $4.50)
[2] (Assumes 25% at $3 and 75% at $4.50)
[3] (Assumes 10% at $3 and 90% at $4.50)
[4] (Assumes 0% at $3 and 100% at $4.50).

FAA considered using fees involving fractional cents but opted to use whole cent units for ease of explanation and to prevent possible reprogramming expenses for carriers and airports. Table 5 shows that if carriers receive compensation for each PFC collected, the proposed rate would be $0.10 for each PFC collected, through calendar year (CY) 2004. In CY 2005 and beyond, the rate would increase to $0.11 and remain at that level. If carriers received compensation for each PFC remitted, the proposal would set the fee at $0.11 for each PFC remitted through CY 2003. Then, the rate would go to $0.12 for each PFC remitted in CY 2004 and beyond.

Based on data reported by the nine carriers for 1999, Table 6 shows that either method yields about the same compensation over a ten year period, measured by net present value using a 7 percent discount rate. FAA finds the discounted compensation over a 10-year period exceeds ongoing PFC handling expenses by roughly the amount needed to recover the one-time set up costs (adjusted to 2002 present value) for the $4.50 PFC. Excess compensation would be less than half of one percent of estimated carrier costs over the 10-year period. Air carriers would receive more compensation if the rate is set for each PFC collected instead of each PFC remitted, but the difference between the two methods is not significant.

TABLE 6.—COMPARISON OF COMPENSATION STREAMS, COLLECTED VS. REMITTED

	Per collected PFC		
	Weighted actual handling cost	Proposed compensation	Difference
PFCs Collected by Carriers Reporting Data—485,238,737			
Calendar Year:			
2002	$47,577,658	$48,523,874	$946,216
2003	49,627,792	48,523,874	(1,103,918)
2004	50,857,872	48,523,874	(2,333,998)
2005	51,677,925	53,376,261	1,698,336
2006	51,677,925	53,376,261	1,698,336
2007	51,677,925	53,376,261	1,698,336
2008	51,677,925	53,376,261	1,698,336
2009	51,677,925	53,376,261	1,698,336
2010	51,677,925	53,376,261	1,698,336
2011	51,677,925	53,376,261	1,698,336
Present Value 2002–11 (2002)	356,672,024	362,158,324	5,486,300
Present Value of One-Time $4.50 PFC Implementation Costs (2002)			3,707,357
Present Value of Net Compensation (Difference Less Implementation)			1,778,943
Percent Net Compensation of Total Weighted Actual Handling Costs			0.5%

	Per remitted PFC		
	Weighted actual handling cost[1]	Proposed compensation	Difference
PFCs Remitted by Carriers Reporting Data—436,659,521			
Calendar Year:			
2002	$47,574,055	$48,032,547	$458,492
2003	49,637,271	48,032,547	(1,604,724)

	Per remitted PFC		
	Weighted actual handling cost[1]	Proposed compensation	Difference
2004	50,875,201	52,399,143	1,523,942
2005	51,700,487	52,399,143	698,655
2006	51,700,487	52,399,143	698,655
2007	51,700,487	52,399,143	698,655
2008	51,700,487	52,399,143	698,655
2009	51,700,487	52,399,143	698,655
2010	51,700,487	52,399,143	698,655
2011	51,700,487	52,399,143	698,655
Present Value 2002–11 (2002)	356,790,337	360,134,767	3,344,430
Present Value of One-Time $4.50 PFC Implementation Costs (2002)			3,707,357
Present Value of Net Compensation (Difference Less Implementation)			(362,927)
Percent Net Compensation of Total Weighted Actual Handling Costs			(0.1%)

[1] Weighted actual costs for total remitted PFCs vary slightly from these shown for total collected PFCs (by 0.03) due to slightly different refund rates between the actual and pro-forma cost estimates.

Table 7 shows the proposed rates of compensation compared with the existing $0.08 rate of compensation for each PFC remitted over a ten-year period, from 2002 to 2011. Table 7 is calculated based on compensation for each remitted PFC because that is the method for the current $0.08 compensation level. However, the amount of increase in total compensation to carriers shown in Table 7 for the remitted PFC methodology is comparable to what would result from the collected PFC methodology. Under the proposed rates of compensation, the reporting carriers would receive $13 million more in compensation each year through 2003 than they would under the $0.08 rate of compensation. Then, they would receive more than $17 million in added compensation in 2004 and beyond.

FAA notes the data presented by the nine carriers represented 84 percent of the estimated total PFCs collected in 1999. When we estimated the total impact on the entire PFC program, including all PFC collections and remittances, we found that air carries would receive $16 million more in compensation in 2002 and 2003, and $21 million more in the years after. These estimates are based on 1999 enplanement levels.

By 2005, this added compensation would constitute less than 1 percent (0.89 percent) of the total PFC collection stream realized by the airports. The total compensation amount, including the $0.08 level existing, would constitute 2.67 percent of collections. Over a ten-year period, increased collection as measured in present value terms would be 0.87 percent of total PFCs collected.

TABLE 7—COMPENSATION COMPARISON: PROPOSED FEE VS. $0.08 HANDLING FEE

	Proposed fee per remitted PFC	$0.08 fee per remitted PFC	Difference	Value of PFCs collected
PFCs Remitted by Carriers Reporting Data—436,659,521				
Calendar Year:				
2002	$48,032,547	$34,932,762	($13,099,786)	$1,637,473,204
2003	48,032,547	34,932,762	(13,099,786)	1,801,220,524
2004	52,399,143	34,932,762	(17,466,381)	1,899,468,916
2005	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2006	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2007	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2008	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2009	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2010	52,399,143	34,932,762	(17,466,381)	1,964,967,845
2011	52,399,143	34,932,762	(17,466,381)	1,964,967,845
Present Value (2002)	360,134,767	245,353,100	(114,781,667)	13,298,552,236
Increase as Percent of PV of PFCs Collected				0.8631%
Undiscounted Value	515,258,235	349,327,617	(165,930,618)	19,092,937,556
Increase as Percent of PFCs Collected				0.8691%

Note: This table does not compare fees based on PFC collections because the existing compensation fee ($0.08) is paid per remitted PFC. However, the two proposed compensation methodologies yield approximately the same level of new compensation.

Treatment of Inflation

Most of the nine carriers reporting handling costs also asserted that inflation affects costs. FAA has found, however, that the use of an inflation factor for handling fees is problematic for several reasons. First, the largest cost item, the credit card transaction fee, is not necessarily linked to inflation in the economy. Second, the long-term link between prevailing rates of wage compensation for reservations agents and other airline personnel, and productivity, such as the ability to handle ticket transactions more efficiently through e-ticketing from internet sites, is difficult to forecast. Should handling fees for each PFC rise significantly because of inflation, FAA notes that airlines should document this

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increase and provide the information to FAA in a petition to amend part 158.

Conclusion

Currently, FAA bases PFC handling fees on remitted PFCs rather than collected PFCs. However, as noted above, data show that refund rates vary significantly among carriers. Therefore, FAA proposes to compensate carriers for PFCs collected. Specifically, FAA proposes that carriers receive $0.10 for each PFC collected through CY 2004. From CY 2005 and beyond carriers will receive $0.11 for each PFC collected. FAA reminds all parties the current requirements of § 158.53 remain in effect unless FAA issues a final rule changing the PFC rule. Until changed through a final rule, carriers remain entitled to receive $0.08 for each PFC remitted. New fees, if any, set up in a final rule will not be retroactive from the date of that final rule, nor will a change in the basis for compensation be retroactive.

Paperwork Reduction Act

Information collection requirements in the amendment to part 158 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0557. Note that nine carriers voluntarily presented data to FAA for analysis before FAA began this rulemaking action.

International Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA determined there are no ICAO Standards and Recommended Practices that correspond to these proposed compensation adjustments.

Economic Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits which do justify its costs, is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are available in the docket.

Benefit—Cost Analysis

This proposed rule will amend part 158 to bring compensation for PFC collection and handling to levels necessary to meet cost increases resulting in part from the new statutory rules set up under AIR–21. AIR–21 allows airport authorities to increase the PFC level to $4 or $4.50 to collect more funds. Airport authorities will use these funds to (1) enhance the safety, security and capacity of their facilities; (3) reduce noise in nearby communities; and (3) enhance airline competition to the benefit of air travelers. The PFC statute requires that the Secretary of Transportation (whose authority has been delegated to FAA) establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs. This amount, referred to in 14 CFR part 158 as "carrier compensation," is to be determined net of interest earned on PFC revenue between the time of collection and payment. The current compensation amount allowed by § 158.53 is $0.08 for each PFC remitted. However, the increase in the PFC level to $4 or $4.50 from the earlier $3 cap introduced new costs to carriers for which carriers do not receive compensation under the prevailing rate of $0.08 for each PFC remitted. In addition, some carriers and their trade organizations have argued that the $0.08 compensation amount is not enough even at the $3 for each PFC remitted level. FAA proposes a new amount of compensation at $0.10 for each PFC collected through calendar year 2004. In 2005 and beyond carriers would receive $0.11 for each PFC collected. Based on 1999 PFC collections, FAA estimates the change would increase carrier compensation by $21 million yearly in PFC funds. Otherwise, airports would have received this added compensation instead of the carriers. Once airports widely adopt the $4.50 PFC, this higher compensation amount would be less than one percent of estimated airport PFC receipts. This proposed amount would not erode airport authorized PFC collection amounts. Rather, airports would be able to recover this slightly higher compensation amount by minimal extensions of PFC collection periods. In addition, any impact on airport revenue streams caused by the higher compensation amount is an unavoidable result of providing a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs, as required by the PFC statute. Air travelers will not incur an increase in the cost of their tickets because of this adjustment. Air carriers may incur some minor costs (if any) of setting up the change of compensation amounts in their accounting programs, but the benefits of the higher compensation amounts would outweigh this cost.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

If an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The change to the compensation amount is necessary to conform with the PFC statute, which requires the Secretary to establish by regulation a uniform amount that carriers may retain that reflects the average necessary and reasonable expenses for collecting and handling PFCs (net of interest accruing to the carrier and agent after PFC collection and before remittance of the PFC to the airport public agency). Moreover, all costs to the small entity are fully recoverable through the PFC, if approved. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), FAA certifies this rule will not have a significant impact on a substantial number of small entities.

International Trade

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, FAA has assessed the potential effect of this proposed rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified at 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Executive Order 13132, Federalism

FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined this notice of proposed rulemaking would not have federalism implications.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

Environmental Analysis

FAA concludes that issuance of this proposed rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The potential environmental effects of any project funded with PFC revenues are already addressed under § 158.29(b)(1)(iv), which requires all applicable requirements pertaining to the National Environmental Policy Act of 1969 (NEPA) to be satisfied before the Administrator may approve the project to use PFC funds. A copy of this assessment has been placed in the docket.

Energy Impact

We have assessed the energy impact of the proposed notice in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. We have determined the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 158

Air carriers, Airports.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 158 of title 14 of the Code of Federal Regulations as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC'S)

1. The authority citation for part 158 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40116–40117, 47106, 47111, 47114–47116, 47524, 47526.

2. Amend § 158.53 by revising the introductory text and paragraph (a) to read as follows:

§ 158.53 Collection compensation.

As compensation for collecting, handling, and remitting the PFC revenue, the collecting carrier is entitled to:

(a) Retain $0.10 of each PFC collected on or after (the effective date of the final rule) and before January 1, 2005, after which carriers are entitled to $0.11 of each PFC collected;

* * * * *

Issued in Washington, DC, on November 20, 2002.

Benito DeLeon,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 02–30103 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–13–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

November 20, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference.

SUMMARY: Commission staff will convene a technical conference on December 6, 2002 to discuss the cyber-security provisions described in Section M and Appendix G of the Notice of Proposed Rulemaking issued in this docket on July 31, 2002. *See* 67 FR 55,452 (Aug. 29, 2002). There will be an opportunity for interested persons to make very brief public statements at the conference, following the presentations.

DATES: Requests to speak are due November 27, 2002. The conference will take place on December 6, 2002.

ADDRESSES: Send requests to speak to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The conference will take place at: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

Notice of Technical Conference

1. Take notice that a technical conference will be held on December 6, 2002, from approximately 9:30 a.m. until 3 p.m., in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The goal of the conference is to discuss and analyze proposed rules for cyber-security.

2. Conference panelists will discuss the security provisions described in Section M and Appendix G of the Notice of Proposed Rulemaking (NOPR) published in this docket on July 31, 2002. They will also address the updated proposal that the North American Electricity Reliability Council (NERC) filed in this docket on November 15, 2002. There will be a discussion of the public comments filed in response to the system security provisions described in the NOPR, and an opportunity to make additional public comments, as described below.

3. Copies of the NOPR security proposal may be obtained from: *http://www.ferc.fed.us/Electric/RTO/Mrkt-Strct-comments/discussion_paper.htm.* Copies of the NERC security proposal are available in Appendix A at: *ftp://www.nerc.com/pub/sys/all_updl/docs/ferc/RM01–12–000–SMD.pdf.*

4. Commission staff has asked selected individuals to speak at this conference, and is not entertaining requests to make presentations. However, interested persons will be permitted to make very brief public statements. Such statements should not be repetitive of materials that speakers have already filed in the public record of this docket. Persons interested in making brief statements should file a request to speak on or before November 27, 2002, in Docket No. RM01–12–000. If possible, interested speakers should also send a copy of their request to speak by e-mail to *customer@ferc.gov.* The request should clearly specify the name of the speaker; his or her title; the person or entity the speaker represents; the speaker's mailing address, telephone number, facsimile number and e-mail address; and a brief description of the issues the speaker wishes to address. As the number of potential speakers may exceed the time allotted for the conference, interested speakers are encouraged to coordinate their efforts with others who may have similar interests.

5. All interested persons may attend the technical conference, and registration is not required. Further details of the conference, and the conference agenda, will be provided in a subsequent notice.

6. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

7. For more information about the conferences, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30032 Filed 11–26–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 101, 154, 201, 346, and 352

[Docket No. RM02–7–000]

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations

November 21, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a comment date in the Commission's proposed rule published in the **Federal Register** of November 19, 2002, regarding accounting, financial reporting and rate filing requirements for asset retirement obligations. This correction clarifies the Public Comment Procedures to note that comments are due on or before January 3, 2002.

DATES: Comments on the proposed rulemaking are due on or before January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Raymond Reid (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6125. Julia A. Lake (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8370.

SUPPLEMENTARY INFORMATION:

Notice of Correction

The Federal Energy Regulatory Commission published in the **Federal Register** of November 19, 2002, a Notice of Proposed Rulemaking proposing to amend its regulations to update its accounting and financial reporting requirements under its Uniform Systems of Accounts. The specific date by which the public should submit comments was not inserted in the Public Comment Procedures section of the preamble. In the **Federal Register** Document 02–28294 published on November 19, 2002 (67 FR 69816) make the following correction.

On page 69826, in the third column, in number 97, correct the sentence "Comments are due within 45 days from publication in the **Federal Register**" to read as follows:

"Comments on the proposed rulemaking are due on or before January 3, 2003."

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30034 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142599–02]

RIN 1545–BB23

Guidance Regarding Mixed Use Output Facilities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to an advance notice of proposed rulemaking.

SUMMARY: This document contains a correction to an advance notice of proposed rulemaking that was published in the **Federal Register** on Monday, September 23, 2002 (65 FR 59767), relating to the issuance of tax-exempt bonds for the government use portion of an output facility that is used for both a government use and a private business use.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The advance notice of proposed rulemaking that is the subject of this correction is under sections 103 and 141 of the Internal Revenue Code.

Need for Correction

As published, the advance notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–142599–02), that was the subject of FR Doc. 02–24138, is corrected as follows:

On page 59767, column 2, in the preamble under the paragraph heading "Background", fifth paragraph, line 4, the language "690 (1986), 1986–3 (Vol. 4) C.B. 686 (the" is corrected to read "690 (1986), 1986–3 (Vol. 4) C.B. 690 (the".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–30141 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143321–02]

RIN 1545–BB60

Information Reporting Relating to Taxable Stock Transactions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date for public hearing on proposed rulemaking.

SUMMARY: This document changes the date of a public hearing on proposed regulations relating to information reporting relating to taxable stock transactions.

DATES: The public hearing originally scheduled for Wednesday, March 5, 2003, at 10 a.m., in room 4718, is rescheduled for Tuesday, March 25, 2003, at 10 a.m., in room 4718. Written or electronic outlines of oral comments must be received by Tuesday, March 4, 2003.

ADDRESSES: The public hearing is being held in room 4718 of the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter Main entrance, located at Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:ITA:RU (REG–143321–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–143321–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG–143321–02), that was published in the **Federal Register** on Monday, November 18, 2002 (67 FR 69496), announced that a public hearing on proposed regulations relating to information reporting relating to taxable stock transactions under sections 6043(c) and 6045 of the Internal Revenue Service Code would be held on Wednesday, March 5, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The date of the public hearing has changed. The hearing is scheduled for Tuesday, March 25, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. We must receive outlines of oral comments by Tuesday, March 4, 2003.

Because of the controlled access restrictions, attendees are not admitted beyond the lobby on the Internal Revenue Service Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–30142 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124667–02]

RIN 1545–BA78

Disclosure of Relative Values of Optional Forms of Benefit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Monday, October 7, 2002 (67 FR 62417) that would consolidate the content requirements applicable to

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explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans.

FOR FURTHER INFORMATION CONTACT: Sara P. Shepherd at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of these corrections is under section 417 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–124677–02), that was the subject of FR Doc. 00–25338, is corrected as follows:

1. On page 62421, column 2, in the preamble under the caption "Comments and Public Hearing", second full paragraph, line 2, the language "for January 14, 2002, at 10 a.m. in room" is corrected to read "for January 14, 2003, at 10 a.m. in room".

2. On page 62421, column 2, in the preamble under the caption "Comments and Public Hearing", third full paragraph, line 8, the language "January 2, 2002. A period of 10 minutes" is corrected to read "January 2, 2003. A period of 10 minutes".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–30143 Filed 11–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 79

[CIV 101H; AG Order 2632–2002]

RIN 1105–AA75

Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Expansion of Coverage to Uranium Millers and Ore Transporters; Expansion of Coverage for Uranium Miners; Representation and Fees

AGENCY: Civil Division, Department of Justice.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On August 7, 2002, the United States Department of Justice published a proposed rule to implement the Radiation Exposure Compensation Act Amendment of 2000. The original 60-day comment period expired on October 7, 2002. The Department is reopening the comment period for an addition 60-day period.

DATES: Comments must be received on or before January 27, 2003.

ADDRESSES: Comments may be mailed to Gerard W. Fischer, Assistant Director, U.S. Department of Justice, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

FOR FURTHER INFORMATION CONTACT: Gerard W. Fischer (Assistant Director), (202) 616–4090, and Dianne S. Spellberg (Senior Counsel), (202) 616–4129.

SUPPLEMENTARY INFORMATION: On August 7, 2002, the Department of Justice (Department) published a rule that proposed amendments to the regulations governing radiation exposure compensation claims. The principal reason for the amendments was implement the provisions of the Radiation Exposure Compensation Act (Act) Amendments of 2000 that expanded coverage under the Act to uranium mill workers and individuals employed in the transport of uranium ore or vanadium-uranium ore, and that expanded the population of eligible uranium mine workers by lowering the radiation exposure threshold for miners, by enlarging the number of uranium mining states with respect to which miners may be eligible for compensation, and by including "above ground" miners within the scope of the regulations. See 67 FR 51440.

The Navajo RECA Reform Working Group, a coalition of six organizations within the Navajo Nation, has requested an additional 60-day period in which to provide comment on the proposed rule. This additional period of time would allow the coalition to translate the proposed rule into the Navajo language, thereby allowing the Navajo elders to participate in the regulation review process. Granting this request ensures that this community, as well as other entities and individuals, have ample opportunity to fully review and comment on the proposed rule.

Accordingly, the Department is reopening the comment period and will accept public comments for an additional 60 days after publication of this notice.

Dated: November 22, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–30129 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–132]

RIN 2115–AA97

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent safety and security zones around the Indian Point Nuclear Power Station (IPNPS), all commercial waterfront facilities, Liquefied Hazardous Gas (LHG) Facilities on the Arthur Kill; moored or anchored U.S. Coast Guard vessels; Coast Guard Stations New York, Sandy Hook, and Kings Point and Aids to Navigation Team New York; Ellis and Liberty Islands; all bridge piers and abutments, and overhead power cable towers, piers and abutments; tunnel ventilators; the New York City Passenger Ship Terminal; a moving safety and security zone around "Designated Vessels" (DVs) deemed by the Captain of the Port to require special protection on account of their hazardous cargo or passenger carrying capacity; and revise the current regulations that establish moving safety zones around Liquefied Petroleum Gas vessels. This action is necessary to safeguard facilities, vessels, public, and the surrounding areas from sabotage, subversive acts, or other threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

DATES: Comments and related material must reach the Coast Guard on or before December 27, 2002.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–02–132), Coast Guard Activities New York, 212 Coast Guard Drive, Room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents

indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–132), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Activities New York Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001, terrorist attacks. *See, Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13,273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States*, 67 FR 56215 (September 3, 2002).

Immediately following the September 11th attacks, we published a temporary final rule (66 FR 51558) that established a temporary regulated navigation area, and safety and security zones in the New York Marine Inspection and Captain of the Port New York Zones. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. That temporary final rule was subsequently revised (67 FR 16016; 67 FR 53310) to extend its effective period through December 31, 2002.

The Coast Guard proposes to establish permanent safety and security zones throughout the New York Marine Inspection and Captain of the Port Zones as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. Due to continued heightened security concerns, the proposed permanent safety and security zones are necessary to provide for the safety of the port and ensure that vessels, facilities, bridges, overhead power cables, or tunnel ventilators, are not used as targets of, or platforms for terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones. We anticipate that the final rule developed as a result of this rulemaking will be effective no later than January 1, 2003.

Discussion of Proposed Rule

This proposed rule would establish the following safety and security zones:

Indian Point Nuclear Power Station (IPNPS)

The Coast Guard proposes to establish a permanent safety and security zone in all waters of the Hudson River within a 300-yard radius of the IPNPS pier in approximate position 41°16′12.4″ N, 073°57′16.2″ W. The zone is necessary to protect the IPNPS, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the facility that could potentially cause serious negative impact to vessels, the port, or the environment. Commercial vessels would still be able to transit through the 540 yards between the western boundary of the safety and security zone and Hudson River Lighted Buoy 27 (LLNR 37930), and recreational vessels would still be able to transit through the western 1,115 yards of the 1,415-yard wide Hudson River. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Liquefied Hazardous Gas Vessels (LHG), LHG Facilities, and Designated Vessel (DV) Transits

The Coast Guard proposes to revise the Liquid Petroleum Gas (LPG) vessel safety zone at 33 CFR 165.160. That regulation establishes a 100-yard moving safety zone around any LPG vessel while it transits between Scotland Lighted Horn Buoy S (LLNR 35085) and the Arthur Kill. The proposed revision would establish a safety and security zone to include all waters within the New York Marine Inspection and Captain of the Port Zones within a 200-yard radius of any Liquefied Hazardous Gas (LHG) vessel or LHG facility. We also propose to establish a moving safety and security zone to include all waters within a 100-yard radius of any "Designated Vessel" (DVs) transiting the New York Marine Inspection and Captain of the Port Zones. DVs include: Vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State, or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo.

These proposed safety and security zones are necessary to protect the LHG vessels, LHG facilities, DVs, their crews and/or passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack against a vessel or a facility that could potentially cause serious negative impact to human life, the vessels, facilities, the port, or the environment. Safety and security zones are necessary to protect passenger vessels due to their potential as a target of subversive or terrorist attack, which could result in significant casualties. Vessels may transit through any portion of the proposed LHG facility safety and security zones that extend into the navigable channel for the sole purpose of transiting through the safety and

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security zones so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the safety and security zones.

The Captain of the Port will notify the maritime community of the periods during which the proposed safety and security zones will be enforced by the methods identified in 33 CFR 165.7 including electronic mail broadcasts identifying "Designated Vessel" transit.

U.S. Coast Guard Cutters and Shore Facilities

The Coast Guard proposes to establish permanent safety and security zones within 100 yards of each moored, or anchored, Coast Guard Cutter operating within the New York Marine Inspection and Captain of the Port Zones. We also propose to establish a safety and security zone within 100 yards of Coast Guard Station New York, Staten Island, NY, Coast Guard Station Sandy Hook, NJ, Coast Guard Station Kings Point, NY, and Coast Guard Aids to Navigation Team New York, Bayonne, NJ.

The proposed safety and security zones would protect Coast Guard assets, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the Coast Guard that could cause serious damage to vessels, the port or the environment or adversely impact the Coast Guard's ability to conduct its assigned missions. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to any cutter or shoreside facility. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Commercial Waterfront Facilities

The Coast Guard proposes to establish a permanent safety and security zone within 25 yards of each commercial waterfront facility located within the New York Marine Inspection and Captain of the Port Zones that is capable of accepting barge, ship, or ferry vessels. A "commercial waterfront facility" means all piers, wharves, docks and similar structures to which commercial vessels may be secured; areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings. During transfer operations at a commercial waterfront facility, the 25-yard zone would be measured from the outboard side of the commercial vessel instead of the pierhead. These zones prohibit the entry of vessels that are not actively engaged in legitimate, scheduled transfer operations at the individual facilities. Vessels may transit through any portion of the proposed zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the zone.

The proposed safety and security zones are necessary to protect each facility, commercial vessels moored at the facility, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the facility that could potentially cause serious negative impact to commercial vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Liberty and Ellis Islands

The Coast Guard proposes to establish a permanent safety and security zone encompassing all waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island.

The proposed safety and security zones are necessary to protect each Island, the bridge between Liberty State Park and Ellis Island, authorized sight-seeing vessels operating at each island, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the islands that could potentially cause serious negative impact to vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each Island. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Bridge Piers and Abutments, Overhead Power Cable Towers, Piers, and Tunnel Ventilators

The Coast Guard proposes to establish a permanent safety and security zone within 25 yards of each bridge pier and abutment, overhead power cable tower, pier, and tunnel ventilator, located within the waters of the New York Marine Inspection and Captain of the Port New York Zones, south of the Troy, NY Locks.

The proposed safety and security zones are necessary to protect each bridge, overhead power cable, pier, abutment, tunnel ventilator, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the protected structures that could potentially cause serious negative impact to commercial ground shipments by vehicle or railroad, private vehicle traffic, vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each bridge, overhead power cable, and tunnel ventilator. Vessels may transit through any portion of the proposed zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the protected structure and do not stop or loiter within the zone. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

New York City Passenger Ship Terminal, Hudson River, NY

The Coast Guard proposes to establish a permanent safety and security zone that would be enforced whenever passenger vessels are pierside at Pier 88, 90, or 92, or whenever the passenger ship terminal or the adjacent Intrepid Sea, Air and Space Museum, Manhattan are being used as an Emergency Operations Center. The Coast Guard will provide notification and termination of a particular safety or security zone by way of methods identified in 33 CFR 165.7.

This proposed safety and security zone includes all waters of the Hudson River bound by the following points: from the northeast corner of Pier 96 where it intersects the seawall, thence west to approximate position 40°46′23.1″ N, 073°59′59.0″ W, thence south to approximate position 40°45′55.3″ N, 074°00′20.2″ W (NAD 1983), thence east to the southeast corner of Pier 84 where it intersects the seawall, thence north along the shoreline to the point of origin. Marine traffic will still be able to transit through the western 660 yards of the 900-yard wide Hudson River during the activation of the zone. Vessels moored at piers within the safety and security zone, however, will not be allowed to transit from their moorings without permission from the Captain of the Port, New York, during the effective periods of the proposed safety and security zone. The only vessels that would be affected by the safety or security zones would be other passenger vessels at the Passenger Terminal or visiting vessels at the Intrepid Sea, Air and Space Museum. The Captain of the Port may authorize these vessels to transit through these zones. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety and security zone.

The safety and security zones are necessary to protect the passenger vessels, their crews and passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack that could cause serious negative impact to vessels, the port, or the environment, and result in numerous casualties.

The Captain of the Port will notify the maritime community of periods during which this safety and security zone will be enforced in accordance with methods identified in 33 CFR 165.7.

Any violation of any safety or security zone proposed herein, is punishable by, among others, civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that vessels will be able to transit around the safety and security zones at the Indian Point Nuclear Power Station, the Coast Guard Stations and Cutters, Commercial Waterfront Facilities, Liberty Island, Ellis Island, Bridge Piers and Abutments, Overhead Power Cable Towers and Abutments, Tunnel Ventilators, the New York City Passenger Ship Terminal, and the DVs, vessels can still transit through the harbor before, during, or after these vessels' transits, the expected short duration of these zones' activation, the expected infrequency of the activation of the safety and security zones around LHG vessels and LHG facilities, and advance notifications will be made by methods in accordance with 33 CFR 165.7.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the New York Marine Inspection and Captain of the Port Zones in which entry would be prohibited by safety or security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: vessels will be able to transit around the safety and security zones at the Indian Point Nuclear Power Station, the Coast Guard Stations and Cutters, Commercial Waterfront Facilities, Liberty Island, Ellis Island, Bridge Piers and Abutments, Overhead Power Cable Towers and Abutments, Tunnel Ventilators, the New York City Passenger Ship Terminal, and the DVs, vessels can still transit through the harbor before, during, or after these vessels' transits, the expected short duration of these zones' activation, the expected infrequency of the activation of the safety and security zones around LHG vessels and LHG facilities, and the advance notifications that will be provided by the methods described above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Morton, Waterways Oversight Branch, Activities New York, at 718–354–4012.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes safety and security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.160 to read as follows:

§ 165.160 Safety and Security Zones: Liquefied Hazardous Gas Vessel, Liquefied Hazardous Gas Facility and Designated Vessel Transits, New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following areas are safety and security zones:

(1) All waters of the New York Marine Inspection Zone and Captain of the Port Zone within a 200-yard radius of any Liquefied Hazardous Gas (LHG) vessel or LHG facility.

(2) All waters of the New York Marine Inspection Zone and Captain of the Port Zone within a 100-yard radius of any Designated Vessels.

(b) *Designated Vessels (DVs).* For the purposes of this section, DVs are: Vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U. S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) The Captain of the Port will notify the maritime community of periods during which these zones will be enforced by methods in accordance with 33 CFR 165.7 and will identify DV vessel transits by way of electronic mail broadcast.

3. Add § 165.169 to read as follows:

§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and security zones.* The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are safety and security zones:

(1) *Indian Point Nuclear Power Station (IPNPS).* All waters of the Hudson River within a 300-yard radius of the IPNPS pier in approximate position 41°16′12.4″ N, 073°57′16.2″ W (NAD 83).

(2) *U.S. Coast Guard Cutters and Shore Facilities.* All waters within 100 yards of: Each moored, or anchored, Coast Guard Cutter; Coast Guard Station New York, Staten Island, NY; Coast Guard Station Sandy Hook, NJ; Coast Guard Station Kings Point, NY; and Coast Guard Aids to Navigation Team New York, Bayonne, NJ.

(3) *Commercial Waterfront Facilities.* All waters within 25 yards of each commercial waterfront facility that is capable of accepting barge, ferry or other commercial vessels. For purposes of this section, "commercial waterfront facility" means all piers, wharves, docks and similar structures to which barge, ferry or other commercial vessels may be secured; areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings.

(i) When a barge, ferry or other commercial vessel is conducting transfer operations at a commercial waterfront facility, the 25-yard zone is measured from the outboard side of the commercial vessel.

(ii) Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the commercial waterfront facility and do not stop or loiter within the zone.

(4) *Liberty and Ellis Islands.* All waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island.

(5) *Bridge Piers and Abutments, Overhead Power Cable Towers, Piers and Tunnel Ventilators.* All waters within 25 yards of any bridge pier or abutment, overhead power cable tower, pier or tunnel ventilators south of the Troy, NY Locks. Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the zone.

(6) *New York City Passenger Ship Terminal, Hudson River, NY.*—(i) *Location.* All waters of the Hudson River bound by the following points: from the northeast corner of Pier 96 where it intersects the seawall, thence west to approximate position 40°46′23.1″ N, 073°59′59.0″ W, thence south to approximate position 40°45′55.3″ N, 074°00′20.2″ W (NAD 1983), thence east to the southeast corner of Pier 84 where it intersects the seawall, thence north along the shoreline to the point of origin.

(ii) *Enforcement period.* This zone will be enforced whenever passenger vessels are pierside at Pier 88, 90 or 92 or whenever the passenger ship terminal or the adjacent Intrepid Sea, Air and Space Museum, Manhattan are being used as an Emergency Operations Center. The activation and termination of a particular zone will be announced in accordance with 33 CFR 165.7.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) Vessels not actively engaged in legitimate transfer operations shall not stop or loiter within that part of a commercial waterfront facility safety and security zone extending into the navigable channel, described in paragraph (a)(3) of this section, without the express permission of the Coast Guard Captain of the Port or the designated on-scene patrol personnel.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U. S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: November 1, 2002.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 02–30105 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–13696]

RIN 2135–AA15

Seaway Regulations and Rules: Automatic Identification System

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before January 27, 2003.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Written comments may also be submitted electronically at *http://dmses.dot.gov/submit/BlankDSS.asp*. All comments received will be available for examination between 9 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

Background and Purpose

Since the opening of the Saint Lawrence Seaway in 1959, the Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Management Corporation Vessel Traffic Services (VTS) system has been responsible for monitoring the progress of commercial traffic to ensure the safe and expeditious passage of vessels operating in Seaway sectors under their control. Procedures in use today include limits on vessel speed and requirements for all commercial traffic to report by voice on marine VHF radio to the Vessel Control (VTC) centers. These reports are made at designated "call-in-points" along the river. Traffic managers at VTC centers use the vessel reports to monitor traffic patterns, including one-way vessel traffic restricted areas and project the estimated times of arrival (ETA) of vessels at locks in the Seaway.

SLSDC and SLSMC sponsored successful prototype demonstrations and evaluations of a Global Positioning System based VTS system in the fall of 1994 and during the 1995 shipping season. The demonstrations established that a VTS using AIS technology was both feasible and cost effective and can improve the efficiency and safety of operations. In the 1999 shipping season, SLSDC and SLSMC deployed a modernized vessel Traffic Management System (TMS). Now, for the first time, all vessel control centers in the Saint Lawrence Seaway share a common vessel information database. Presently, vessel positions, derived from simulations based on transit histories of vessels, are entered manually into the TMS system by traffic controllers and then updated by voice reports from the vessels during actual transits.

AIS is a broadcast system, operating in the VHF maritime mobile band. It is capable of sending and receiving ship information such as identification,

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position, course, speed and more, to and from other ships and to and from shore. The Seaway TMS will send pertinent navigation information such as local wind speed and direction, water levels, ice conditions, availability of next lockage, and safety-related messages to vessels.

With the capabilities of ship-to-ship, ship-to-shore and shore-to-ship communications, AIS will greatly enhance the safety, improve the efficiency of the traffic management and increase the vessel security and emergency response capabilities. Specifically, the potential benefits of AIS for the Seaway entities include providing a more efficient vessel traffic management as a result of knowing accurate location and speed of the vessels, monitoring vessel speeds especially for hazardous cargo and deeper draft vessels and faster response time to vessels in case of security concerns and vessel accidents or incidents. The potential benefits to the carrier users include the reduction of overall transit time as a result of better scheduling of lockages and other services timely dispatching of pilots. It also provides real-time position, speed, heading and other pertinent information of the vessel, which will allow master or pilot to better coordinate on the meeting or overtaking in critical reaches of the Seaway.

Proposed Rule

The SLSDC and the SLSMC are proposing a new § 401.20 that would require mandatory use of AIS in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003. All vessels that require pre-clearance and have a 300 gross tonnage or greater, have an Length Over All (LOA) over 20 meters, or carry more than 50 passengers for hire, would have to use an AIS transponder to transit the Saint Lawrence Seaway. Dredges and floating plants and towing vessels over 8 meters in length would also be required to use AIS, except only each lead unit of combined and multiple units (tugs and tows) would have to use it. Each vessel would have to meet the following international recommendations, standards, and guidelines:

1. International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

2. International Telecommunication Union, ITU–R Recommendation M.1371–1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

3. International Electrotechnical Commission, IEC 61993–2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS —Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

4. International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 2 April 2002, as amended, and for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

5. Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services.

6. The use of portable AIS is permissible.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et reg.) because it is not a major federal action significantly affecting the quality of human environment. All nine AIS shore base stations (three in U.S. and six in Canada) are co-located with the existing Seaway VHF radio or private telephone towers.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. Part 401 would be amended by adding a new § 401.20 to read as follows:

§ 401.20 Automated Identification System.

(a) Each of the following vessels must use an Automatic Identification System (AIS) transponder to transit the Seaway:

(1) each vessel that requires pre-clearance in accordance with § 401.22 and has a 300 gross tonnage or greater, has a Length Over All (LOA) over 20 meters, or carries more than 50 passengers for hire; and

(2) each dredge, floating plant or towing vessel over 8 meters in length, except only each lead unit of combined and multiple units (tugs and tows).

(b) Each vessel listed in paragraph (a) of this section must meet the following requirements to transit the Seaway:

(1) International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

(2) International Telecommunication Union, ITU–R Recommendation M.1371–1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

(3) International Electrotechnical Commission, IEC 61993–2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS —Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

(4) International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 2 April 2002, as amended, and, for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

(5) Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services; or

(6) The use of portable AIS is permissible.

Issued at Washington, DC, on November 22, 2002.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 02–30095 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 52

RIN 1024–AC85

Commercial Use Authorizations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish National Park Service (NPS) regulations concerning the issuance and administration of commercial use authorizations. Commercial use authorizations are a form of NPS written authorization under which persons are allowed to provide certain commercial services to visitors of areas of the national park system. The issuance of commercial use authorizations is authorized by Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105–391. The proposed commercial use authorization program will replace the current NPS "incidental business permit" program when adopted.

DATES: Written comments on the rulemaking must be received on or before January 27, 2003. Written comments on the information collection must be received by Office of Management and Budget on or before December 27, 2002.

ADDRESSES: Written comments for the rulemaking should be sent to Cynthia Orlando, Concessions Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. Fax: (202) 371–2090. Email: *WASO_Regulations@nps.gov*. Written comments for the information collection should be sent to Attention Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. Fax: (202) 371–2090.

SUPPLEMENTARY INFORMATION:

Background

Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105–391 authorizes NPS to issue commercial use authorizations to persons to provide commercial services to visitors of areas of the national park system. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations. The types of commercial activities that may be authorized under commercial use authorizations are similar in many respects to the type of activities that are authorized by concession contracts issued under 36 CFR part 51, as amended. Generally, however, commercial use authorizations, unlike concession contracts, do not authorize the construction of improvements in a park area by a holder, and, except in limited circumstances, require that the services provided by the holder begin and end outside of a park area. The proposed regulations when finalized will assure that all NPS commercial use authorizations are issued or solicited and awarded consistently and that the private sector will be aware of NPS authorizing procedures. The proposed commercial use authorization program will replace the current NPS "incidental business permit" program when adopted.

Section 52.1 Authority and Purposes generally describes the authorities for and purposes of the proposed rule. The basic authority is 16 U.S.C. 1 *et seq.*, the National Park Service Organic Act. This is supplemented by section 418 of the National Parks Omnibus Management Act of 1998, 16 U.S.C. 5966. Commercial use authorizations may authorize commercial services in park areas that are similar to or the same as some types of services authorized by concession contracts issued by the Director under 36 CFR Part 51. Concession contracts may be issued to authorize the provision of services to visitors rather than a commercial use authorization even though the proposed services may be suitable to authorization under a commercial use authorization. The Director may only issue commercial use authorizations under the terms and conditions of this part.

Drafting Information

The primary authors of this rule are the members of a team of NPS officials that manage commercial activities in units of the National Park System.

Compliance with Other Laws

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget makes the final determination as to the significance of this regulatory action and it has determined that this document is a significant rule and is subject to review.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

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(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act as it is not required to be published for comment before adoption by 5 U.S.C. 553 or other law. (5 U.S.C. 553 does not apply to regulations regarding contracts or public lands.) NPS is soliciting public comment on this proposed rule as a matter of policy.

However, NPS considers that, even if the proposed regulations were subject to the Regulatory Flexibility Act, they would not have a significant effect on a substantial number of small businesses within the meaning of the Act. This is because the proposed regulations generally only codify, in response to Section 418 of Public Law 105–391, NPS's current requirements regarding incidental business permits. After the proposed regulations are finalized, incidental business permits will be replaced by commercial use authorizations with no anticipated significant changes to the program as currently implemented. In addition, although the large majority of the some 4,000 businesses now holding incidental business permits are "small businesses" within the meaning of the Regulatory Flexibility Act, these businesses (firewood sales, trail guiding, tow truck operators, etc.) represent only a minuscule fraction of the total number of such businesses operating in the United States. In this connection, NPS also notes that the proposed regulations do not in fact "regulate" small businesses in the usual sense of the word. This is because no business is subject to the proposed regulations unless its owner seeks to conduct commercial activities on federal land. The regulations have no applicability to the activities of any business that is not conducted on federal lands.

Small Business Regulatory Enforcement Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Fairness Enforcement Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual entities, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to establish policies and procedures for the issuance of commercial use authorizations for areas of the National Park System.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12360, this rule does not have significant takings implications as this rule does not apply to private property. A takings assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than NPS.

Civil Justice Reform (Executive Order 12998)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB form 83-I has been reviewed by the Department and sent to the Office of Management and Budget (OMB) for approval. OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days. Therefore, in order to assure maximum consideration, written comments, suggestions or objections should be submitted on or before December 27, 2002 to Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Also, provide a copy of any written comments on this information collection submitted to OMB by mail to: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. E-mail: *Cindy_Orlando@nps.gov*.

The information collection contained in this proposed regulation is entitled Commercial Use Authorization, Issuance and Reporting Requirements. This collection is based on the requirement for persons interested in conducting business within national parks to provide information regarding their business (documented in the CUA form submitted for approval), provide a non-refundable application fee when filing, and annually report gross receipts from business conducted within national parks. The initial request and the CUA form allows the holder to apply for and conduct business in national parks and the NPS to retain a written record of the holder's business information. The application fee is used to recover the administrative costs associated with issuing the CUA permit. The reporting requirement enables the NPS to verify that the holder has received less than $25,000 in gross receipts for business conducted within national parks and determines eligibility for the CUA.

The NPS expects to receive/award about 3,500 applicants annually. Holders will be required to report gross receipts once a year to the NPS. We expect the annual hours burden to the public to be 14,000 hours—3,500 hours for the initial request, 3,500 hours for the application and 7,000 hours for the reporting requirement. Additionally, we expect to have an annual monetary burden of $525,000 resulting from the application fee [$150 × 3,500 applicants]. The application fee total burden is based on an average fee of $150 per applicant (from a range of $50–$250 per application) and 3,500 applicants.

Regarding this information collection, the NPS specifically requests comments on whether the collection of information is necessary or the proper for the performance of the functions of the bureau, including whether the information will have practical utility; the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

National Environmental Policy Act

This rule does not constitute a major federal action affecting the quality of the human environment. A detailed statement under the National Environment Policy Act is not required. The rule will not increase public use of park areas, introduce non-compatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects on the tribes.

Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (groupings and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? (6) What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Public Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Cindy Orlando, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. You may also comment via the Internet to *WASO_Regulations@nps.gov*. Please also include "Attn: RIN 1024–AC85" in the subject line and your name and return address in your Internet message. You may fax your comments to (202) 371–2090. Finally, you may hand-deliver comments to Cindy Orlando, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

List of Subjects in 36 CFR Part 52

Concessions, National parks, Small businesses.

Accordingly, we propose to add 36 CFR Part 52 to read as follows:

PART 52—COMMERCIAL USE AUTHORIZATIONS

Subpart A—Authority Purpose and Definitions

Sec.
52.1 What does this part cover?
52.2 Are commercial bus tour permits covered by this part?
52.3 How are certain terms defined in this part?

Subpart B—Issuance of Commercial Use Authorizations

52.4 What general conditions apply to the issuance of commercial use authorizations?
52.5 What are examples of an incidental activity commercial use authorization?
52.6 What are examples of an in-park commercial use authorization?
52.7 Is a non-profit organization required to obtain a commercial use authorization in order to provide services to visitors in a park area?
52.8 When must the Director limit the number of Special Park Use Permits to be issued to a park area?

Subpart C—Issuance of Commercial Use Authorizations

52.9 Who may be issued a commercial use authorization?
52.10 How does a person request the issuance of a commercial use authorization?
52.11 What happens after a written request for issuance of a commercial use authorization is made?
52.12 When must the Director limit the number of commercial use authorizations to be issued?
52.13 What happens if the Director determines to limit the number of commercial use authorizations or Special Park Use Permits to be issued?
52.14 When will the Director establish visitor use limits.
52.15 What special responsibilities does the Director have if only a limited number of commercial use authorizations are issued or if the Director establishes visitor use limits?
52.16 What fees must the Director charge in connection with a commercial use authorization?
52.17 How will the Director expend fees received from holders?

Subpart D—Terms and Conditions of Commercial Use Authorizations

52.18 What is the term of a commercial use authorization?
52.19 May a commercial use authorization be transferred?
52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?
52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?
52.22 May the Director terminate a commercial use authorization?
52.23 What reporting requirements must a commercial use authorization contain?
52.24 May incumbent holders obtain rights or a perference to the issuance of subsequent commercial use authorizations or to particular visitor use allocations?
52.25 What records must a holder maintain and what access does the Director have to these records?
52.26 What other terms and conditions may or must a commercial use authorization contain?

Authority: 16 U.S.C. 1 *et seq.*; Sec. 418, Pub. L. 105–391, 112 Stat. 3497 (16 U.S.C. 5966).

Subpart A—Authority, Purpose and Definitions

§ 52.1 What does this part cover?

This part covers the issuance and administration of commercial use authorizations. A commercial use authorization authorizes the holder to provide specific commercial services to visitors to a park area in certain circumstances and under specified terms and conditions. Commercial use authorizations may authorize commercial services in park areas that are similar to or the same as some types of services authorized by concession contracts issued by the Director under 36 CFR part 51. The Director at any time may choose to issue a concession contract in accordance with 36 CFR part 51 to authorize the conduct of commercial services even though the proposed services may be subject to authorization under a commercial use authorization. The Director may only

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issue commercial use authorizations under the terms and conditions of this part. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations.

§ 52.2 Are commercial bus tour permits covered by this part?

No. The Director administers commercial bus tour permits under separate regulations and guidelines.

§ 52.3 How are certain terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part.

Commercial bus tour means a type of commercial service provided to park area visitors where passengers are conveyed into and/or out of a park area by motor vehicle for a direct or indirect fee or charge and no other services (except for on-board interpretation) are provided.

Commercial bus tour permit means a form of written authorization issued for the conduct of commercial bus tours in park areas.

Commercial use authorization means a form of written authorization issued by the Director to a person. The authorization authorizes the holder to provide specific commercial services to park area visitors in certain circumstances and under specified terms and conditions. Except as otherwise indicated the term "commercial use authorization" as used in this part collectively refers to incidental activity commercial use authorizations and in-park commercial use authorizations.

Gross receipts means the total amount of revenue received by a holder, in cash, credit, or barter or any other form of compensation, from persons patronizing a holder's services.

Holder means a person to whom a commercial use authorization has been issued.

Incidental activity commercial use authorization means a commercial use authorization that authorizes the holder to provide specified commercial services to visitors to a park area when the services originate and terminate outside of park area boundaries.

In-park commercial use authorization means a commercial use authorization (issued only if projected annual gross receipts under the authorization are less than $25,000) that authorizes the holder to provide specified commercial services to visitors of a park area that originate and are provided solely within the boundaries of a park area.

Non-profit organization means an entity that has been determined by the Internal Revenue Service to be exempt from federal income taxation as a non-profit or not-for-profit organization under the terms of the Internal Revenue Code.

Taxable income means income that is subject to federal income tax under the terms of the Internal Revenue Code.

Use limits means limits the Director may impose on a holder's access to park area lands or limits on a holder's park area entries and/visitor levels.

Visitor use allocations means allocations of a specified portion of a park area entrance, user days, or similar visitor use allowances that are required in order to implement park area visitor use limitations.

Subpart B—Issuance of Commercial Use Authorizations.

§ 52.4 What general conditions apply to the issuance of commercial use authorizations?

Both types of commercial use authorizations (incidental activity commercial use authorizations and in-park commercial use authorizations) may be issued only to authorize the provision of commercial services to park area visitors that the Director determines are appropriate to the applicable park area. In addition, a commercial use authorization may be issued only if the Director determines that the authorization and the services authorized by the authorization: (1) Will have minimal impact on the park area's resources and values; (2) are consistent with the purposes for which the park area was established; (3) are consistent with all applicable park area management plans, policies and regulations; and (4) meet all other requirements of this part. The Director must require that provision of services under a commercial use authorization are accomplished in a manner that is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the applicable park area.

§ 52.5 What are examples of an incidental activity commercial use authorization?

An incidental activity commercial use authorization authorizes the holder to enter a park area to provide commercial services to visitors if those services originate and terminate outside of the park area's boundaries. The authorization does not authorize solicitation of customers, sales, payment or other direct commercial activity within a park area. An example of the type of services authorized by an incidental activity commercial use authorization is a guided horseback trail ride operation based outside of a park area that guides visitors into and out of a park area on a trail ride. In this example, all solicitation of customers, sales, and payment for the services must occur outside of park area boundaries. Incidental activity commercial use authorizations must contain appropriate provisions limiting the conduct of services by the holder in a manner consistent with the limitations set forth in this part. The Director may issue a single incidental activity commercial use authorization allowing commercial services to visitors in more than one area of the park if all other applicable requirements of this part are met.

§ 52.6 What are examples of an in-park commercial use authorization?

An in-park commercial use authorization authorizes the holder to provide specified commercial services to visitors (issued only if projected gross receipts under the authorization are less than $25,000) that originate and are provided solely within the boundaries of the park area. For example, the Director may issue an in-park commercial use authorization to a firewood sales operator who enters a park area campground to sell firewood to visitors. For another example, the Director may issue an in-park commercial use authorization to a person selling crafts in a park area on a one time or occasional basis. In both examples, the authorization may not be issued unless the Director projects that the holder's annual gross receipts from the services is less than $25,000. If the Director projects that the annual gross receipts are expected to exceed $25,000, an in-park commercial use authorization may not authorize the services. In that instance a concessions contract or other applicable authorization must be issued. In-park commercial use authorizations must contain appropriate provisions limiting the holder's provision of services in a manner consistent with the limitations of this part.

§ 52.7 Is a non-profit organization required to obtain a commercial use authorization in order to provide services to visitors in a park area?

Unless a non-profit organization holds a concession contract or is otherwise authorized to conduct visitor-related commercial activities in a park area, a non-profit organization is required to obtain a commercial use authorization in order to conduct visitor-related commercial activities in a park area if the non-profit organization derives taxable income from the conduct of the activities. If a non-profit organization demonstrates to the satisfaction of the Director that it derives no taxable income from the provision of the services or if all income derived is exempt from taxation under the terms of the Internal Revenue Code, the non-profit organization will not be required to obtain a commercial use authorization in order to conduct the activity. However, the activities of a non-profit organization in a park area are subject to similar oversight and control through a Special Park Use Permit and issued according to the provisions of Director's Order 53 and Reference Manual 53 (DO–53/RM–53). The Special Park Use Permit shall include appropriate terms, conditions, and requirements, including without limitation insurance requirements and fees adopted by the Director under separate legal authority.

§ 52.8 When must the Director limit the number of Special Park Use Permits to be issued for a park area?

The Director must limit the number of Special Park Use Permits issued for a park area, including those issued to non-profit organizations, if the Director determines that issuing an unlimited number of such permits is inconsistent with the preservation and proper management of the resources and values of the park area or is inconsistent with the provisions of DO–53/RM–53.

Subpart C—Issuance of Commercial Use Authorizations.

§ 52.9 Who may be issued a commercial use authorization?

Any person may request the Director to issue a commercial use authorization in accordance with this part and if the Director issues a commercial use authorization, the Director upon request must issue a similar commercial use authorization to all qualified persons, subject to section 51.12 of this part. No one is entitled to issuance of a commercial use authorization. Issuance of a commercial use authorization is in the discretion of the Director.

§ 52.10 How does a person request the issuance of a commercial use authorization?

To request issuance of a commercial use authorization, a person must submit a written request. The written request must be mailed or delivered to the Director (to the attention of the Superintendent of the applicable park).

§ 52.11 What happens after a written request for issuance of a commercial use authorization is made?

If the Director determines, in accordance with section 52.4 of this part, that it is not appropriate to issue a commercial use authorization for the specified commercial services, the Director will so advise the requester in writing. If the Director determines, in accordance with section 52.4 of this part, that it appears to be appropriate to issue a commercial use authorization for the specified services under this part, and the Director considers under this part that there is no need to limit the number of commercial use authorizations for the specified services, the Director will seek additional information to support completing the CUA form. The Director will then send the requester a proposed commercial use authorization with conditions. A signed copy of the proposed commercial use authorization, and, where required, a non-refundable application fee payment, must be submitted to the applicable park area. Upon receipt of this submission, the Director will make a final decision as to whether to issue a commercial use authorization for the specified commercial services in accordance with this part and as to whether the applicant is qualified to provide the services.

§ 52.12 When must the Director limit the number of commercial use authorizations to be issued?

The Director must limit the number of commercial use authorizations issued for a particular type of commercial services if the Director determines that issuing an unlimited number of such commercial use authorizations is inconsistent with the preservation and proper management of the resources and values of the park area. The Director must also limit the number of commercial use authorizations issued for a park area if the Director determines in accordance with section 52.14 of this part to establish visitor use limits and that continuation of issuance of an unlimited number of commercial use authorizations makes infeasible a fair and equitable distribution of visitor use allocations.

§ 52.13 What happens if the Director determines to limit the number of commercial use authorizations or Special Park Use Permits to be issued?

If the Director determines to limit the number of commercial use authorizations to be issued for a particular type of commercial services, the issuance of the available commercial use authorizations must be accomplished by the Director by random selection under which all qualified applicants have an equal opportunity to obtain an authorization. Special Park Use Permit applicants, including non-profit organization applicants, would have similar limitations placed on the number of permits issued based on criteria outlined in DO–53/RM–53. An incumbent holder will have no right or any form of preference to issuance of a subsequent commercial use authorization or Special Park Use Permit.

§ 52.14 When will the Director establish visitor use limits?

The Director will establish visitor use limits if the Director determines that the limits are appropriate to protect park area visitors or resources. If visitor use limits are established, authorized visitor use will be allocated by the Director among all holders of commercial use authorizations and Special Park Use Permits in a fair and equitable manner. Incumbent holders have no right of preference for visitor use allocations. If it is not feasible to fairly and equitably allocate limited visitor use among all holders, the Director must limit the number of commercial use authorizations to be issued in accordance with this part.

§ 52.15 What special responsibilities does the Director have if only a limited number of commercial use authorizations are issued or if the Director establishes visitor use limits?

If the Director limits the number of commercial use authorizations issued for a park area with respect to a particular type of commercial services, and/or, if the Director establishes visitor use limits under this part, the Director must take appropriate measures to assure that all holders provide quality services to visitors at rates and charges that are reasonable and appropriate. Unless otherwise provided in the contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant to the Director: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and type of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services after taking into account the factors referred to in the preceding sentence.

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§ 52.16 What fees must the Director charge in connection with a commercial use authorization?

The Director must charge a reasonable fee for a commercial use authorization, in addition to any application fee. The fee must at least be sufficient to recover the Director's costs associated with management and administration of the holder's activities under the authorization. The fee may also include the costs for the maintenance and repair of park area resources impacted by the holder's activities. If a holder is assigned the use of improvements within a park area, the fee must also include the fair value of the use of the assigned improvements.

§ 52.17 How will the Director expend fees received from holders?

All fees paid to the Director pursuant to commercial use authorizations shall be expended in the park area where collected to pay for management and administrative costs associated with commercial use authorizations and for other park area activities.

Subpart D—Terms and Conditions of Commercial Use Authorizations

§ 52.18 What is the term of a commercial use authorization?

A commercial use authorization must have a term of two years or less.

§ 52.19 May a commercial use authorization be transferred?

No. A commercial use authorization is not transferable. All commercial use authorizations must contain provisions prohibiting their sale or transfer.

§ 52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?

No. Commercial use authorizations may only authorize a non-exclusive right to provide commercial services in a park area.

§ 52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?

No. A commercial use authorization may not authorize the construction of structures, fixtures or improvements on lands located within the boundaries of a park area. A commercial use authorization may assign a holder use of existing structures, fixtures or improvements when necessary to assist in providing services to visitors. An incumbent holder shall have no right or any form of preference to the continuing utilization of assigned structures, fixtures or improvements under the terms of a subsequent commercial use authorization.

§ 52.22 May the Director terminate a commercial use authorization?

Yes. A commercial use authorization must contain appropriate provisions allowing the Director to terminate the authorization without liability at any time at the discretion of the Director.

§ 52.23 What reporting requirements must a commercial use authorization contain?

Commercial use authorizations must contain appropriate provisions requiring the permittee to provide the Director annually a statement of its gross receipts for the prior year's activities and any specific information related to the commercial use that the Director may request, including but not limited to, visitor use statistics and resource impact assessments. If a commercial use authorization authorizes the conduct of commercial services in more than one park area, gross receipts and other requested information and reports must be provided on an individual park area basis.

§ 52.24 May incumbent holders obtain rights or a preference to the issuance of subsequent visitor use authorizations or to particular visitor use allocations?

No. A commercial use authorization will not grant the holder a right or preferences of any form to the issuance of subsequent commercial use authorizations or to particular visitor use allocations.

§ 52.25 What records must a holder maintain and what access does the Director have to these records?

A commercial use authorization must contain appropriate provisions requiring the holder to maintain normal accounting books and records and granting the Director and the General Accounting Office access to such books and records at any time for the purpose of determining compliance with the terms of a commercial use service authorization and this part.

§ 52.26 What other terms and conditions may or must a commercial use authorization contain?

Commercial use authorizations must contain such provisions as are otherwise required by law and must contain such provisions as the Director determines are necessary and appropriate (1) to protect park area visitors; (2) to assure that holders provide appropriate services to visitors; and (3) to protect and properly manage the resources and values of the park area. Commercial use authorizations must also contain appropriate provisions strictly limiting the holder's conduct of services to the services specified in the authorization issued.

Dated: November 13, 2002.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02–29783 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.; I.D. 110602A]

RIN 0648–AQ30

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2003 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2003 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. NMFS requests comment on proposed management measures for the 2003 summer flounder, scup, and black sea bass fisheries. The intent of this action is to establish allowed 2003 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the FMP.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on December 12, 2002.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is also accessible via the Internet at *http:/www.nero.nmfs.gov*.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul at the same address. Mark on the outside of the envelope, "Comments—2003 Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9104, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (Paralichthys dentatus) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The regulations outline the process for specifying annually the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F rate or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

As required by the FMP, a Monitoring Committee (MC) for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review annually the best available scientific information and to recommend catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the MC's recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their annual recommendations at a joint meeting held August 6–8, 2002.

Explanation of Research Set-Asides

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the Total Allowable Landings (TAL) for each of the species to be set aside each year for scientific research purposes. For the 2003 fishing year, a Request for Proposals was published in March 2002 to solicit research proposals based upon the research priorities that were identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission of proposals was May 13, 2002. Five applicants were notified in August 2002 that their research proposals had received favorable preliminary review. For informational purposes, this proposed rule includes a statement indicating the amount of quota that has been preliminarily set aside for research purposes. The quota set-asides may be adjusted in the final rule establishing the annual specifications for the summer flounder, scup, and black sea bass fisheries or, if the total amount of the quota set-aside is not awarded, NMFS will publish a notice in the **Federal Register** to restore the unused research set-aside amount to the applicable TAL.

Explanation of Quota Adjustments Due to Quota Overages

In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). The FMP previously required that any landings in excess of a commercial quota allocation for a state or period in one year must be deducted from that state's or period's annual quota allocation for the following year. However, complete landings data for the year were not available until after the beginning of the subsequent fishing year. As a result, it was impossible to compile complete landings data for one fishing year, establish overages, and finalize adjustments for the following year prior to the start of the next fishing year on January 1. It was often necessary for NMFS to publish several quota adjustments over the course of the fishing year as additional landings data from the previous year became available. These frequent adjustments complicated the resource management efforts of state marine fisheries agencies and hampered efficient planning by commercial fishers.

NMFS established a cut-off date of October 31 for landings data to be used in calculating quota overages and making the resultant adjustments to the quotas for the following fishing year. Any additional overages due to landings occurring after October 31, or landings reported late, will be deducted from a state's (or period's) quota allocation the next year (i.e., 2 years later). This proposed rule calculates commercial quotas based on the proposed TALs and TACs and the formulas for allocation contained in the FMP. If NMFS approves a different TAL or TAC at the final rule stage, the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**. NMFS anticipates that the information necessary to determine whether overage deductions are necessary will be available by time of publication of the final rule to implement these specifications. The commercial quotas contained in this proposed rule for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final rule, however, will contain quotas that have been adjusted consistent with the procedures described above and contained in the regulatory amendment. Accordingly, landings information will be based upon: (1) Landings reported for the period January 1–October 31, 2002; (2) landings from the period November 1–December 31, 2001; and (3) late reported landings for the period January 1–October 31, 2001.

Summer Flounder

The FMP specifies a target F for 2003 of F_{max}, that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that F_{max} is currently equal to

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0.26 (equal to an exploitation rate of about 22 percent from fishing). The TAL associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP.

The status of the summer flounder stock is re-evaluated annually. The most recent assessment, updated by the Northeast Fisheries Science Center (NEFSC) Southern Demersal Working Group in June 2002, indicated that the summer flounder stock is overfished and overfishing is occurring, according to the definitions in the FMP. This conclusion was derived from the fact that, in 2001, the estimated total stock biomass of 94.6 million lb (42,900 metric tons (mt)) was below the biomass threshold of 117.3 million lb (53,200 mt) under which the stock is considered overfished (B_{msy}), and the estimated F of 0.27 was marginally above the FMP overfishing definition of 0.26 (F_{max}).

However, the F of 0.27 estimated for 2001 represents a significant decline since 1994, when F was estimated to be 1.32. Also, total stock biomass has increased substantially from below 39.7 million lb (18,008 mt) in 1989 to 94.6 million lb (42,900 mt) in 2001. Likewise, spawning stock biomass (SSB) has increased steadily from 20.51 million lb (9,303 mt) in 1993 to 84.21 million lb (38,192 mt) in 2001, the highest value in the time series. Projections based on assumptions about future landings, discards, and recruitment to the stock indicate that, if the 2002 TAL and projected discard level are not exceeded, total stock biomass will exceed, by December 31, 2002, the biomass threshold of 117.3 million lb (53,200 mt), below which the stock would be considered overfished. When the total stock biomass is above this biomass threshold, the stock will no longer be considered overfished, although it will still be below the 234.6 million lb (106,400 mt) necessary to produce maximum sustainable yield (B_{msy}). Because the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that stocks be rebuilt to the level that produces maximum sustainable yield (MSY), additional rebuilding of the stock will still be required.

The Summer Flounder MC reviewed the stock status and the projections based upon these data and made a TAL recommendation to achieve the target F. The Summer Flounder MC recommended a TAL of 23.3 million lb (10,569 mt), which would be allocated 13.98 million lb (6,341 mt) to the commercial sector and 9.32 million lb (4,227 mt) to the recreational sector. This TAL was determined by the MC to have a 50–percent probability of achieving the F target (0.26) that is specified in the FMP, if the 2002 TAL and assumed discard levels are not exceeded. Biomass estimates for 2002 are lower than had previously been estimated, due to a combination of: recreational landings that have consistently exceeded the harvest targets, lower recruitment in recent years, and to a possible underestimation of discards in stock forecasts. Therefore, because the biomass estimate is smaller than previously estimated, the maximum TAL that has at least a 50–percent probability of achieving the target F is lower. It is important to emphasize that the recommended TAL for 2003 is still considerably larger than the average TAL from 1995–2001 of 18.5 million lb.

The Council and Board reviewed the Summer Flounder MC's recommendation and adopted it. The Council and Board also agreed to set aside 91,163 lb (41.4 mt) of the summer flounder TAL for research activities. After deducting the research set-aside, the TAL would be divided into a commercial quota of 13.92 million lb (6,314 mt) and a recreational harvest limit of 9.28 million lb (4,209 mt).

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in any tables in this document, because NMFS does not have authority to establish such subcategories.

NMFS proposes to implement the 23.3–million lb (10,569–mt) TAL with a 91,163–lb (41.4–mt) research set-aside, as recommended by the Council and Board. The 9.28–million lb (4,209–mt) recreational harvest limit is allocated on a coastwide basis. The commercial quota is allocated to the states as shown in Table 1. Table 1 presents the allocations by state, with and without the commercial portion of the 91,163–lb (41.4–mt) research set-aside deduction. These state quota allocations are preliminary and are subject to a reduction if there are overages of a state's 2002 quota (using the landings information and procedures described earlier). Any commercial quota adjustments will be published in the **Federal Register** in the final rule implementing these specifications.

TABLE 1. 2003 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent Share	Commercial Quota		Commercial Quota with Research Set-Aside	
		lb	kg[1]	lb	kg[1]
ME	0.04756	6649	3,016	6,623	3,004
NH	0.00046	64	29	64	29
MA	6.82046	953,502	432,501	949,772	430,809
RI	15.68298	2,192,485	994,494	2,183,907	990,603
CT	2.25708	315,540	143,127	314,306	142,567
NY	7.64699	1,069,051	484,914	1,064,869	483,016
NJ	16.72499	2,338,158	1,060,571	2,329,010	1,056,421
DE	0.01779	2,487	1,128	2,477	1,124
MD	2.03910	285,067	129,304	283,951	128,798
VA	21.31678	2,980,089	1,351,746	2,968,429	1,346,457
NC	27.44584	3,836,936	1,740,405	3,821,924	1,733,596
Total	100.00	13,980,029	6,341,235	13,925,332	6,316,424

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Scup

Scup was most recently assessed at the 35th Northeast Regional Stock Assessment Review Committee (SARC 35) in June 2002. SARC 35 concluded that scup are no longer overfished, but stock status with respect to overfishing cannot currently be evaluated. Scup SSB is increasing. The NEFSC spring survey 3–year average (2000 through 2002) for scup SSB was 3.20 kg/tow, which is about 15 percent higher than the threshold that defines the stock as overfished (2.77 kg/tow of SSB). SARC 35 noted that the change in stock status (from overfished to not overfished) was the result of an extremely high survey observation in 2002 (8.94 kg/tow of SSB) and its contribution to the calculation of the 3–year moving average. However, SARC 35 also cautioned that the spring survey index for 2002 is highly uncertain because the abundance of all age groups in the survey increased substantially as compared with the 2001 results.

SARC 35 indicated that relative exploitation rates on scup have declined in recent years, although the absolute value of F cannot be determined because of a lack of reliable discard estimates and information regarding the length composition of scup landings and discards. Overall, most recent scup survey observations indicate strong recruitment and some rebuilding of age structure. SARC 35 noted that the stock can likely sustain modest increases in catch, but that such increases should be taken with due consideration of the uncertainties associated with the stock status determination.

The target exploitation rate for scup in 2003 is 21 percent. The total allowable catch (TAC) associated with a given exploitation rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector by the FMP. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector (TAC less discards = TAL). The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January-April)–45.11 percent; Summer (May-October)–38.95 percent; and Winter II (November-December)–15.94 percent.

The proposed scup specifications for 2003 are based on an exploitation rate in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Act, the Council prepared Amendment 12, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8. On April 28, 1999, NMFS disapproved that rebuilding plan for scup because the rebuilding schedule did not appear to be sufficiently risk-averse. NMFS advised the Council that the exploitation rate reflects the overfishing definition (converted to an F rate) which is conceptually sound and supported by NMFS. Therefore, for the short term, the proposed scup specifications for 2003 are based on an exploitation rate of 21 percent which was found to be conceptually sound. NMFS believes that the long-term risks associated with the disapproved rebuilding plan are not applicable to the proposed specifications since they apply only for 1 fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. The scup stock has shown signs of significant rebuilding and is no longer overfished. It is, therefore, not necessary for 2003 to deviate from the specified exploitation rate. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements.

The Scup MC reviewed the available data in making its recommendation to the Council. Given the uncertainty associated with the spring survey, the Scup MC used a new approach to develop a TAC recommendation. The stock is just above the overfished threshold and this indicates that it is at approximately B_{msy}. Although MSY has not been calculated for scup, long-term potential catch (LTPC) has been used as a proxy. The NEFSC has indicated that the LTPC ranges from 22–33 million lb (9,979–14,969 mt), based upon historical catches. These results were corroborated with yield per recruit analysis indicating that the long-term average yield would be approximately 31 million lb (14,061 mt). If these MSY proxies are accurate, then yields at B_{msy} could range from approximately 11–16.5 million lb (4,990–7,484 mt). SARC 35 indicated that the scup stock "can likely sustain modest increases in catches, but managers should do so with consideration of high uncertainty in stock status determination." Given this advice, the Scup MC recommended that the TAL for 2003 be 13.5 million lb (6,123 mt), a value that is 25 percent above the 2002 TAL, yet within the range of yields that could be expected at B_{msy}, as discussed above. Assuming the same level of discards in 2003 as used in 2002 (2.15 million lb (975 mt)), the Scup MC recommended a TAC of 15.65 million lb (7,099 mt).

Using the sector allocation specified in the FMP (commercial 78 percent; recreational—22 percent), the MC's recommendation would result in a commercial TAC of 10.08 million lb (4,572 mt) and a recreational TAC of 2.84 million lb (1,288 mt). Using the same commercial and recreational discard estimates used for the 2001 specifications (i.e., 2.08 million lb (943 mt) for the commercial sector, and 0.07 million lb (32 mt) for the recreational sector), the Scup MC recommendation would result in a commercial TAL of 8.0 million lb (3,629 mt) and a recreational harvest limit of 2.77 million lb (1,256 mt).

The Council and Board reviewed the Scup MC's recommendation, but did not adopt it. Instead, the Council and Board adopted an 18.65–million lb (8,459–mt) TAC and a 16.5–million lb (7,484–mt) TAL. This recommendation is 53 percent higher than the 2002 TAL. The Council and Board justified their recommendation by stating that, if scup biomass is approximately equal to B_{msy}, then a 16.5–million lb (7,484–mt) TAL corresponds to 50 percent of the upper estimate of the scup LTPC, which is estimated to be 33 million lb (14,969 mt). This TAL recommendation is the upper limit of the range of yields that would be expected at B_{msy}, the level at which the fishery is no longer considered overfished. The Council and Board also agreed to set aside 66,650 lb (30.2 mt) of the scup TAL for research activities. The TAL, after deducting the 66,650–lb (30.2–mt) research set-aside, would result in a commercial quota of 12.42 million lb (5,634 mt) and a recreational harvest limit of 4.01 million lb (1,819 mt).

NMFS is proposing to implement the Council's and Board's TAC and TAL recommendation because it is within the range of yields that could be expected at B_{msy}. Given the lack of information regarding the status of the stock (i.e., status based solely upon the survey indices), this method of determining the TAC/TAL is reasonable. Traditional methods would have resulted in a much higher TAC/TAL. If scup abundance is increasing, as preliminarily signals indicate, the Council's TAC/TAL recommendation is likely to achieve the 21–percent exploitation rate that is required by the FMP.

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Disapproval of Recommended Scup Winter I Possession Limit

To achieve the commercial quotas, the Council and Board recommended a 15,000–lb (6.8- mt) per week (Sunday through Saturday) landing limit for the scup Winter I quota period (January-April). NMFS is disapproving the Council's recommendation to implement a 15,000–lb (6.8–mt) per week landing limit for the Winter I quota period. NMFS' Office of Law Enforcement has indicated that a weekly landing limit would complicate, and possibly compromise, effective dockside monitoring and enforcement. With a weekly landing limit, multiple landings would have to be monitored for each vessel on a weekly basis. This would be an inefficient use of limited law enforcement resources and could jeopardize the effectiveness of the limit by eliminating the ability to assess dockside violations at the time of landing. The current possession limit provision is effective primarily because enforcement officers need only be present for one landing to assess a violation.

For the Winter I period, NMFS is proposing to retain the current 10,000–lb (4.5–mt) possession limit, with a reduction to 1,000 lb (454 kg) when 80 percent of the period's quota is projected to be harvested. Public comments are requested on this proposed measure.

For the Winter II quota period (November-December), the Council and Board recommended a 1,500–lb (680–kg) possession limit. NMFS is proposing to implement the recommended 1,500–lb (680–kg) Winter II possession limit.

The Council and Board did not recommend any other changes to the existing commercial minimum mesh size, minimum mesh threshold possession limit, or the commercial minimum fish size. Therefore, these management measures are proposed to remain unchanged.

The 2003 commercial allocation recommended by the Council is shown, by period, in Table 2. Table 2 presents the allocations with, and without, the 66,650–lb (30.2–mt) research set-aside deduction. These 2003 allocations are preliminary and may be subject to downward adjustment due to 2002 overages in the final rule implementing these specifications, using the procedures for calculating overages described earlier.

TABLE 2. 2003 PROPOSED INITIAL COMMERCIAL SCUP QUOTA AND POSSESSION LIMITS

Period	Percent	TAC[1]	Discards[2]	Commerical Quota		Possession Limits	
				W/O Research Set-Aside	With Research Set-Aside	Lb	Kg
Winter I	45.11	6,562,152 (2,976,542)	936,935 (424,987)	5,625,217 (2,551,555)	5,601,766 (2,540,918)	10,000[3]	4,536
Summer	38.95	5,666,056 (2,570,080)	809,991 (366,952)	4,857,065 (2,203,128)	4,836,816 (2,193,943)	na*	na*
Winter II	15.94	2,318,792 (1,051,786)	331,074 (150,173)	1,987,718 (901,614)	1,979,431 (897,855)	1,500	680
Total[4]	100.00	14,547,000 (6,598,408)	2,077,000 (942,111)	12,470,000 (5,656,297)	12,418,013 (5,632,716)		

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.
[4] Totals subject to rounding error.
* n/a-Not applicable.

Scup Gear Restricted Areas (GRAs)—Request for Comments

In 2000, the 31st Stock Assessment Review Committee (SARC 31) emphasized the need to reduce scup mortality resulting from discards in the scup fishery and in other fisheries. In response to that recommendation, GRAs were established during the 2000 fishing year (65 FR 33486, May 24, 2000, and 65 FR 81761, Dec. 27, 2000) and modified for the 2001 fishing year (66 FR 12902, March 1, 2001). The GRAs prohibit trawl vessels from fishing for, or possessing, certain non-exempt species (*Loligo* squid, black sea bass and silver hake (whiting)) when fishing with mesh smaller than that required to fish for scup.

In the proposed rule for the 2002 fishing year specifications (66 FR 58097, November 20, 2001), NMFS disapproved a Council recommendation that would have allowed small-mesh vessels to fish for non-exempt species in the GRAs, if they used specially modified trawl nets (possessing an escapement extension of 45 meshes of 5.5–inch (13.97–cm) square mesh between the body of the net and the codend). NMFS disapproved the recommendation because the supporting research regarding the effectiveness of the modified trawl gear was not complete.

For the 2003 fishing year, the Council has again recommended allowing vessels to fish for non-exempt species with small mesh in the GRAs, provided they use specially modified trawl nets. In addition, however, the Council has recommended requiring vessels to carry observers, consistent with Atlantic Coastal Cooperative Statistics Program (ACCSP) observer standards.

NMFS has previously indicated that gear modifications are a potential solution to the scup bycatch problem, but that additional work is needed to obtain more information regarding the effectiveness of the modifications. Observed trips on vessels using modified trawl gear could provide such information. The ACCSP observer standards specify a certain level of observer coverage, generally less than 100 percent. To implement such a program, NMFS would likely need to require: (1) Pre-enrollment of all vessels intending to make trips into the GRAs; (2) declaration of the intended number of trips into the GRAs by each vessel; (3) notification from the vessels owner 5 days prior to the start of a trip; (4) issuance of waivers for trips not requiring an observer; and, possibly, (5) vessel monitoring systems (VMS) on board all participating vessels. These administrative and enforcement requirements preclude further consideration of this alternative at this time. Rather, NMFS proposes to implement an alternative requiring 100–percent observer coverage for all vessels fishing with small mesh for non-exempt species in the GRAs, using the modified gear. This proposed alternative would impose significantly fewer administrative and enforcement complexities, and provide more data to evaluate the effectiveness of the gear modifications.

Specifically, NMFS is seeking comment through this proposed rule on an alternative whereby vessels fishing for non-exempt species (*Loligo* squid, black sea bass, and silver hake (whiting)) with mesh less than the minimum mesh size required to fish for scup (specified at § 648.123) in the GRAs (described at § 648.122) for any portion of a trip would be required to use modified trawl gear (possessing an escapement extension of 45 meshes of 5.5–inch (13.97–cm) square mesh between the body of the net and the codend), and would also be required to carry a NMFS-certified observer. An initial enrollment would be required through a phone call, and NMFS would issue a Letter of Authorization to each participating vessel. Obtaining and paying for the observer would be the responsibility of the participating vessel.

Implementation of the proposed alternative is contingent upon the availability of NMFS-trained and certified observers. Therefore, NMFS is currently working to ensure that a sufficient number of observers will be trained, certified, and available prior to the start of the GRAs on January 1, 2003. However, it is possible that all of the necessary components to implement successfully the proposed observer program may not be in place prior to the start of 2003. If implemented, NMFS intends to commence with the proposed Scup GRA Access Program as soon as practicable.

Black Sea Bass

Black sea bass was last assessed by the 27th Northeast Regional Stock Assessment Review Committee (SARC 27), with results published in December 1998. SARC 27 indicated that black sea bass are overfished and at a low level of abundance. However, relative exploitation rates, based on the total commercial and recreational landings and the moving average of the log-transformed spring survey index (an index based on scientific sampling of the distribution and relative abundance), indicate a significant reduction in mortality from 1998 through 2001 relative to 1996 and 1997 levels.

Results of the spring trawl surveys conducted by the NEFSC indicate that the black sea bass stock size has increased in recent years. The 3–year moving average of exploitable biomass recorded by the NEFSC spring trawl survey for 2000 through 2002 (0.59 kg/tow) is 64 percent higher than the value recorded for 1999 through 2001 (0.36 kg/tow). The stock is currently at approximately 2/3 the level of abundance that defines an overfished stock (1977–1979 average of 0.9 kg/tow of exploitable biomass). In addition, black sea bass recruitment indices (fish <eqt;14 cm) indicate that the stock size is likely to continue growing due to several large year classes that have been produced in recent years. The 2000 recruitment index (2.782 fish/tow) remains, by far, the highest in the time series. The 1999 and 2002 indices (0.700 fish/tow and 0.718 fish/tow, respectively) are more than twice as large as the average for the period 1968 through 1998, and are the fifth and sixth largest values in the time series. The 2001 year class was the only below average year class within the past 4 years, according to the NEFSC spring survey recruitment index.

Amendment 9 to the FMP, which was approved in 1996, established a recovery schedule to reduce overfishing on black sea bass over an 8–year timeframe. In 2003, the target exploitation rate is scheduled to drop from 37 percent to 25 percent, which is the exploitation rate associated with Fax (0.32).

The 2003 TAL recommendation is contingent upon assumptions regarding the black sea bass stock size in 2003. If the 2003 NEFSC spring survey biomass index is at least equal to 0.52 kg/tow (the estimate derived for 2003 using a regression through the 1999–2001 survey points), and if an exploitation rate of 48 percent is assumed for 1998, then the TAL associated with a 25–percent exploitation rate would be 7.2 million lb (3,266 mt). Alternatively, if the 2003 spring survey equals 0.44 (the average of the 2001 and 2002 survey points) and if an exploitation rate of 48 percent is assumed for 1998, the TAL associated with a 25–percent exploitation rate would be 6.0 million lb (2,722 mt). The Black Sea Bass MC indicated that the stock size was likely to continue to increase, and determined that the 2003 TAL could remain the same as the 2002 TAL (6.8 million lb (3,084 mt)) and achieve a 25–percent exploitation rate, as required by the FMP for 2003. The Black Sea Bass MC also recommended that all other management measures remain unchanged for 2003.

At their August 2002 meeting, the Council and Board adopted the MC's recommendation for a status-quo 6.8 million-lb (3,084–mt) TAL for the 2003 fishing year, with a research set-aside of 67,676 lb (30.7 mt) for 2003. Additionally, the Council voted to retain a 7,000–lb (3.2- mt) possession limit for Quarter 1, and to increase the Quarters 2–4 possession limits from 2,000 lb (907 kg) to 5,000 lb (2.3 mt). Until Amendment 13 is implemented, a quarterly system will remain in effect for Federal waters; the states, through ASMFC, would manage the resource using a state-by-state quota system. Therefore, the Council recommended the higher possession limits for Quarters 2–4 so as not to constrain Federal permit holders from landing black sea bass in states with different landing limits.

This rule proposes to implement the Council's recommended TAL of 6.8 million lb (3,084 mt), with a 67,676–lb (30.7–mt) research set-aside, and possession limits of 7,000 lb (3.2 mt) for Quarter 1 and 5,000 lb (2.3 mt) for Quarters 2 - 4.

The proposed initial 2003 black sea bass commercial quota and corresponding possession limits are shown in Table 3. Table 3 presents the quarterly quota allocations with, and without, the 67,676–lb (30.7–mt) research set-aside deduction. These 2003 allocations are preliminary and may be subject to downward adjustment, as required by the FMP, in the final rule implementing these specifications, according to the procedures for calculating overages described earlier.

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TABLE 3. 2003 PROPOSED INITIAL BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND POSSESSION LIMITS

Quarter	Percent	W/O Research Set-Aside[1]	With Research Set-Aside[1]	Possession Limits	
				Lb	Kg
1 (Jan—Mar)	38.64	1,287,485 (583,993)	1,274,671 (578,181)	7,000	3,175
2 (Apr—Jun)	29.26	974,943 (442,227)	965,240 (437,826)	5,000	2,268
3 (Jul—Sep)	12.33	410,836 (186,352)	406,747 (184,497)	5,000	2,268
4 (Oct—Dec)	19.77	658,736 (298,798)	652,180 (295,824)	5,000	2,268
Total	100.00	3,332,000 (1,511,370)	3,298,838 (1,496,328)		

[1] Commercial Quotas in pounds (kilograms in parentheses).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**) or via the Internet at http:/www.nero.nmfs.gov. A summary of the analysis follows.

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative is defined as follows: (1) no proposed specifications for the 2003 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum sizes, bag limits, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2003; and (4) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quota). Because implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act, would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources, the no action alternative is not considered to be a reasonable alternative to the preferred action and is not analyzed in the EA/RIR/IRFA.

Alternative 1 consists of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2003, it would also likely exceed the biological targets specified in the FMP.

First, a preliminary adjusted quota was calculated by deducting the research set-aside from the TAL. Then, the preliminary commercial quota overages for the 2002 fishing year were deducted from the initial 2003 quota alternatives. The quota overages were calculated according to the procedures described earlier, using available data as of September 2002. The resulting preliminary adjusted commercial quotas alternatives presented in Table 4 are provisional and may be further adjusted in the final rule implementing the 2003 specifications.

TABLE 4. COMPARISON (IN MILLION LB) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED ("FLK" IS SUMMER FLOUNDER)

	2003 Initial TAL	2003 Research Set-Aside	2002 Commercial Quota Overage	2003 Preliminary Adjusted CommercialQuota*	2003 Preliminary Recreational Harvest Limit
Quota Alternative 1 (Preferred)					
FLK Preferred Alternative	23.30	0.09	0.06	13.87	9.28
Scup Preferred Alternative	16.50	0.07	0.00	12.42	4.01
Black Sea Bass Preferred Alternative (Status quo)	6.80	0.07	0.17	3.13	3.43
Quota Alternative 2 (More Restrictive)					
FLK Preferred Alternative 2	21.50	0.09	0.06	12.79	8.56
Scup Alternative 2 (Status Quo)	10.77	0.07	0.00	7.95	2.75
Black Sea Bass Alternative 2	4.60	0.07	0.17	2.05	2.31
Quota Alternative 3 (Least Restrictive)					
FLK Preferred Alternative 3 (Status Quo)	24.30	0.09	0.06	14.47	9.68
Scup Alternative 3	22.00	0.07	0.00	16.71	5.22

TABLE 4. COMPARISON (IN MILLION LB) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED ("FLK" IS SUMMER FLOUNDER)—Continued

	2003 Initial TAL	2003 Research Set-Aside	2002 Commercial Quota Overage	2003 Preliminary Adjusted CommercialQuota*	2003 Preliminary Recreational Harvest Limit
Quota Alternative 3 (Least Restrictive)					
Black Sea Bass Alternative 3	7.20	0.07	0.17	3.32	3.64

*Note that preliminary quotas are provisional and may change to account for overages of the 2002 quotas.

Table 5 presents the percent change associated with each of commercial quota alternatives (adjusted for overages and research set-aside) compared to the final adjusted quotas for 2002.

TABLE 5. PERCENT CHANGE ASSOCIATED WITH ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2002 ADJUSTED QUOTA

	Total Changes Including Overages and RSA		
	Quota Alternative 1 (Preferred)	Quota Alternative 2 (Most Restrictive)	Quota Alternative 3 (Least Restrictive)
Summer Flounder			
Aggregate Change	-4.48%	-11.92%	-0.34%*
Scup			
Aggregate Change	+71.22%	+9.61%	+130.36%
Black Sea Bass			
Aggregate Change	-0.10%	-34.51%	+6.16%

*Denotes status quo management measures. The status quo or "no action" measure for summer flounder, scup, and black sea bass refers to what most likely will occur in the absence of implementing the proposed regulation.

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the proposed 2003 quotas could affect 1,830 vessels with a Federal summer flounder, scup, and/or black sea bass permit, as of July 15, 2002. However, the more immediate impact of this rule will likely be felt by the 1,073 vessels that actively participated (i.e., landed these species) in these fisheries in 2001, including vessels holding only state permits.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2001 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2002 to 2003. For example, if 90 percent of a vessel's 2001 revenue was derived from summer flounder, then a small decrease in the summer flounder quota from 2002 to 2003 would be expected to have a large proportional reduction in the revenue of that vessel. Conversely, because that vessel did not derive a large percent of its revenue from scup in 2001, a large increase in the scup quota from 2002 to 2003 would not be expected to produce a large proportional increase in the revenue of that vessel. Generally, the percent of a vessel's revenue reduction depends upon the permits it holds and the species it lands. Diversity in landings helps to balance losses in one fishery with revenue generated from other fisheries. The Council's analysis of the harvest limits in Alternative 1 (Preferred Alternative) indicated that these harvest levels would produce a revenue increase for 321 commercial vessels that are expected to be impacted by this rule. The remaining 752 vessels were projected to incur small revenue losses (i.e., <5 percent) under Alternative 1. The small revenue losses were attributed to a decrease in the summer flounder quota and a decrease in the adjusted black sea bass quota.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2001 ex-vessel prices (summer flounder -- $1.62/lb; scup -- $0.84/lb; and black sea bass -- $1.55/lb), the 2003 quotas in Preferred Alternative 1 (after overages have been applied) would decrease total summer flounder revenues by approximately $1.1 million, increase total scup revenues by $4.3 million, and decrease total black sea bass ex-vessel revenues by less than $5,000 relative to 2002 revenues.

If the decrease in summer flounder total ex-vessel gross revenue associated with the Preferred Alternative is distributed equally between the 795 vessels that landed summer flounder in 2001, the average decrease in gross revenue associated with the summer flounder quota in the Preferred Alternative would be $1,324 per vessel. If the increase in scup total gross revenue associated with the Preferred Alternative is distributed equally

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between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in the Preferred Alternative would be $8,984 per vessel and, similarly, if the decrease in black sea bass total gross revenue associated with the Preferred Alternative is distributed equally between the 740 vessels that landed black sea bass in 2001, the average decrease in gross revenue associated with the black sea bass quota in the Preferred Alternative would $7 per vessel.

The overall increase in gross revenue associated with the three species combined in 2003 compared to 2002 is approximately $3.3 million (assuming 2001 ex-vessel prices) under the Preferred Alternative. If this is distributed among the 1,073 vessels that landed summer flounder, scup, and/or black sea bass in 2001, the average increase in revenue would be $3,058 per vessel.

The Councils analysis of Alternative 2 (i.e., most restrictive harvest limits) indicated that these harvest limits would produce a revenue loss for most of the 1,073 commercial vessels expected to be impacted by this rule. Only 64 commercial vessels expected to be impacted by this rule would experience a revenue increase under Alternative 2, primarily because a large proportion of their revenues were derived from scup.

An analysis of changes in total gross revenue associated with Alternative 2 indicated that the 2003 quotas would decrease summer flounder ex-vessel revenues by $2.8 million, increase scup ex-vessel revenues by $0.6 million, and decrease black sea bass ex-vessel revenues by approximately $1.7 million, relative to 2002 revenues.

If the decrease in total gross revenue associated with the summer flounder quota in Alternative 2 is distributed equally between the 795 vessels that landed summer flounder in 2001, the average decrease in gross revenue associated with the summer flounder quota in Alternative 2 would be $3,525 per vessel. If the increase in total gross revenue associated with the scup quota in Alternative 2 is distributed equally between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in Alternative 2 would be $1,212 per vessel and, similarly, if the decrease in black sea bass total gross revenue associated with Alternative 2 is distributed equally between the 740 vessels that landed black sea bass in 2001, the average decrease in gross revenue associated with the black sea bass quota in Alternative 2 would be $2,264 per vessel.

Under Alternative 2, the overall decrease in gross revenue associated with the three species combined in 2003 compared to 2002 is approximately $3.9 million (assuming 2001 ex-vessel prices). If this is distributed among the 1,073 vessels that landed summer flounder, scup, and black sea bass in 2001, the average decrease in revenue would be $3,635 per vessel.

The Council's analysis of Alternative 3 (least restrictive harvest limits) indicated that these harvest levels would produce a revenue increase for any of the 1,073 commercial vessels expected to be impacted by this rule.

An analysis of changes in total gross revenue associated with Alternative 3 indicated that the 2003 quotas (after overages have been applied) would decrease summer flounder ex-vessel revenues by $81,000, and increase scup and black sea bass ex-vessel revenues by approximately $7.9 million, and $0.3 million, respectively, relative to 2002 revenues.

If the decrease in summer flounder total gross revenue associated with Alternative 3 is distributed equally between the 795 vessels that landed summer flounder in 2001, the average decrease in gross revenue associated with the summer flounder quota in Alternative 3 would be $101 per vessel. If the increase in scup total gross revenue is distributed equally between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in Alternative 3 would be $16,444 per vessel. Similarly, if the increase in total gross revenue associated with the black sea bass quota in Alternative 3 is distributed equally between the 740 vessels that landed black sea bass in 2001, the average increase in gross revenue associated with the black sea bass quota in Alternative 3 would be $402 per vessel.

The overall change in gross revenue associated with the three species combined in 2003 compared to 2002 would be approximately $8.2 million (assuming 2001 ex-vessel prices) under Alternative 3. If this is distributed among the 1,073 vessels that landed summer flounder, scup, and/or black sea bass in 2001, the average increase in revenue would be $7,642 per vessel.

The Council also prepared an analysis of the alternative recreational harvest limits. The 2003 recreational harvest limits were compared with previous years through 2001, the most recent year with complete recreational data.

Landing statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from a 5–percent overage in 1993 to a 122–percent overage in 2000. In 2001, summer flounder recreational landings were 11.64 million lb (5,280 mt), exceeding the harvest limit of 7.16 million lb (3,248 mt) by 63 percent.

For summer flounder, the adjusted 2003 preferred recreational harvest limit of 9.28 million lb (4,209 mt) in Alternative 1 is greater than the recreational harvest limits for the years 1995 through 2001. However, it is approximately 5 percent lower than the 2002 recreational harvest limit, and it would be a decrease of approximately 20 percent from 2001 recreational summer flounder landings. The adjusted summer flounder Alternative 2 recreational harvest limit of 8.56 million lb (3,882 mt) in 2003 would be a 12–percent decrease from the 2002 recreational harvest limit, and a 26–percent decrease from 2001 recreational summer flounder landings. The adjusted Alternative 3 recreational harvest limit is 9.68 million lb (4,391 mt). This is the status quo alternative. It is less than 1 percent lower than the 2002 recreational harvest limit, and represents a 17–percent decrease from 2001 recreational landings. If either Alternative 1, 2, or 3 is chosen, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2003 recreational harvest limit, depending upon the effectiveness of the 2002 recreational management measures. More restrictive regulations could affect demand for party/charter boat trips. However, party/charter activity in the 1990s has remained relatively stable, so the effects may be minimal. The effect of greater recreational restrictions is not known at this time. The Council intends to recommend specific measures to attain the 2003 summer flounder recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations in early 2003.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 500 percent from 1998 to 2000. In 2001, recreational landings were 4.26 million lb (1,932 mt). Under Preferred Alternative 1, the adjusted scup recreational harvest limit for 2003 would be 4.01 million lb (1,819 mt). This is a 6–percent decrease from 2001 recreational landings. However, it is approximately 48 percent higher than the scup recreational harvest limit in 2002. The Alternative 2 scup recreational harvest limit of 2.75 million lb (1,247 mt) in 2003 would be the same recreational harvest level that was implemented in 2002. It is a decrease of 1.51 million lb (685 mt), or 35 percent, from 2001 estimated recreational landings. The Alternative 3 scup recreational harvest limit of 5.22 million lb (2,368 mt) in 2003 is 2.47 million lb (1,120 mt) higher than the 2002 recreational harvest limit, and 0.96 million lb (435 mt) above 2001 recreational landings. With Alternative 2, and possibly Alternative 1, more restrictive management measures might be required to prevent anglers from exceeding the 2003 recreational harvest limit, depending largely upon the effectiveness of the 2002 recreational management measures. The effect of greater restrictions on scup party/charter boats is unknown at this time. The Council intends to recommend specific measures to attain the 2003 scup recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations early in 2003.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2001, recreational landings were 3.42 million lb (1,551 mt). For the recreational fishery, the adjusted 2003 harvest limit under Alternative 1 is 3.43 million lb (1,558 mt). This is nearly identical to the 2001 recreational landings estimate and the 2002 recreational harvest limit. Therefore, it is not expected to result in negative economic impacts on the recreational fishery. Under Alternative 2, the 2003 recreational harvest limit would be 2.32 million lb (1,052 mt). This level would represent a 32 percent decrease from 2001 recreational landings and from the 2002 recreational harvest limit. As such, this alternative could cause some negative economic impacts, depending upon the effectiveness of the 2002 recreational black sea bass measures. The 2003 recreational harvest limit under Alternative 3 would be 3.64 million lb (1,651 mt). This is 6 percent higher than the 2001 recreational landings estimate and the 2002 recreational harvest limit. Alternative 3 would likely result in positive economic impacts on the recreational fishery. The Council intends to recommend specific measures to attain the 2003 black sea bass recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations early in 2003.

The effects of the existing GRAs are fully described in the proposed rule (65 FR 71046, November 28, 2000) and the final rule (66 FR 12910, March 1, 2001) implementing the 2001 specifications. Those impacts are not repeated here. The impacts of the GRAs are expected to remain unchanged in 2003. However, the Council's recommendation to allow vessels carrying observers (consistent with ACCSP protocol) and using small-mesh to fish for non-exempt species in the GRAs if they utilize a 5.5–inch (13.97–cm) square mesh extension between the body and codend of the trawl net will also have economic impacts. Similarly, the NMFS proposal to require 100–percent observer coverage for vessels participating in the Scup GRA Access Program will have economic impacts.

The Scup GRA Access Program would not be mandatory. If a vessel owner chooses to participate in the program, it is likely that the additional costs of carrying an observer and using the modified gear would be offset by increased landings of non-exempt species (*Loligo* squid, silver hake (whiting), and black sea bass). As such, an increase in *Loligo* landings relative to 2002 would have positive economic impacts on the *Loligo* fishery, relative to the status quo. However, it is not possible to assess the exact monetary value associated with the additional harvest because quantitative data on these nets are limited.

The actual net modifications are inexpensive and can be incorporated into existing nets with minimal labor. For vessels operating in the inshore fishery, compliance costs are estimated to be approximately $775 per vessel, and for vessels operating in the offshore fishery, costs are estimated at approximately $1,354 per vessel.

The cost of one at-sea observer day is approximately $1,150, which would be paid by the vessel owner intending to fish in the GRAs. Fishing trips to the Southern GRA are expected to last approximately 4 days, and trips to the Northern GRA are expected to last approximately 3 days. Therefore, the total observer costs are estimated to be $4,600 and $3,450 for trips in the Southern and Northern GRAs, respectively. The observer costs would be in addition to operating costs. A survey of small Northeast fishing vessels (<65 ft (19.8 m) in length) whose primary gear was otter trawl and who reported landings in New England indicated that average total operating cost per trip for small trawlers in 1996 was $267. A survey of large Northeast fishing vessels (>65 ft (19.8 m) in length) whose primary gear was otter trawl and who reported landings in New England in 1997 indicated that the average total operating cost per trip for large trawlers in 1997 was $2,608. The average ex-vessel value (1996–1999) of *Loligo* in directed trips in the Southern GRA is $24,013 and in the Northern GRA was $4,456. These values are based on the average landings of *Loligo* from 1996–1999 in the GRAs, and the average ex-vessel value (1996–1999) of *Loligo*, adjusted to 2001 dollars. Therefore, the requirement to carry at-sea observers would increase vessel operating costs. However, larger vessels fishing in the southern area would be most likely to recoup any increased operating costs. The observer requirement is anticipated to impose a larger negative impact on the profits of vessels fishing in the northern area. Individual vessels would need to assess changes in costs and revenues upon their operations before participating in the non-mandatory Scup GRA Access Program.

An analysis of Vessel Trip Report (VTR) data (1996–1999) indicates that, on average, 72 vessels had directed *Loligo* trips (>50% of the total landings were *Loligo*) in the GRAs, for a total of 209 trips. Assuming that all of these vessels choose to fish the same number of trips in the GRAs, a 5–percent observer requirement (Council recommendation) would mean that approximately 11 trips would have to carry observers in the GRAs. A 100–percent observer requirement (NMFS proposal) would mean that approximately 209 trips would be required to carry observers in the GRAs. The actual total number of trips required to carry an observer would vary, depending upon the individual decisions of vessel owners regarding the potentially increased profitability of fishing in the GRAs versus additional observer costs.

In 2002, the black sea bass possession limits were 7,000 lb (3.2 mt) for Quarter 1, and 2,000 lb (907 kg) for Quarters 2 through 4. For 2003, the Commission adopted state-specific allocations for 2003. If Amendment 13 to the FMP is approved by January 1, 2003, a Federal coastwide quota will go into effect to facilitate the state quotas and there would be no Federal possession limits. Until Amendment 13 is implemented, a quarterly system will remain in effect for Federal permit holders. Because state-by-state measures were approved by the Board, and there is the possibility that Federal implementation will not occur by January 1, 2003, the Council adopted liberal possession limits of 5,000 lb (2.3 mt) for Quarters 2–4, so as not to constrain Federal permit holders from landing in states with different landings limits. The possession limits in Quarters 2–4 are not expected to result in an overharvest of the black sea bass

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commercial quota, since states' management measures will control landings. Because of the states' ability to tailor management measures to the needs of their fisheries, the more liberal possession limits in Quarters 2–4 are expected to result in positive social and economic impacts relative to the status quo.

The current regulations for scup specify a 10,000–lb (4,536–kg) possession limit for Winter I and a 2,000–lb (907–kg) possession limit for Winter II. For 2003, the alternative adopted by the Council and Board includes a limit of 15,000 lb/week (6.8 mt/week) for Winter I and a possession limit of 1,500 lb (680 kg) for Winter II. The reduced possession limits are expected to constrain commercial landings to the commercial TAL and to distribute landings equitably throughout the periods to avoid derby-style fishing effort and associated market gluts. The Council and Board are recommending weekly possession limits for Winter I to allow fishermen to determine the best time for them to fish and to help avoid market gluts and unsafe fishing practices. These possession limits were chosen as an appropriate balance between the economic concerns of the industry (e.g., landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over the period. As such, the possession limits would be expected to result in positive social and economic impacts. However, due to serious enforcement concerns, NMFS is proposing to disapprove the recommendation for weekly possession limits and to retain the status-quo 10,000–lb (4,536 kg) possession limit for Winter I. This possession limit was successful at keeping the fishery open for the duration of the 2002 Winter I quota period, while nearly achieving the entire quota.

The impacts of the summer flounder research set-aside in the Preferred Alternative are expected to be as follows. The set-aside could be worth as much as $147,684 dockside, based on a 2001 ex-vessel price of $1.62 per pound. Assuming an equal reduction among all active vessels (i.e., 795 vessels that landed summer flounder in 2001), this could mean a reduction of about $186 per individual vessel. Changes in the summer flounder recreational harvest limit as a result of the 91,163–lb (43,619–kg) research set-aside are not expected to be significant. The research set-aside would reduce the recreational harvest limit from 9.32 million lb (4,227 mt) to 9.28 million lb (4,209 mt). It is unlikely that the recreational possession, size, or seasonal limits would change as the result of the research set-aside. Overall, long-term benefits are expected as a result of the research set-aside due to improved summer flounder data.

The impacts of the scup research set-aside in the Preferred Alternative are expected to be as follows. The set-aside could be worth as much as $55,986 dockside, based on a 2001 ex-vessel price of $0.84 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 483 vessels that landed scup in 2001), this could mean a reduction of about $116 per vessel. Changes in the scup recreational harvest limit would be insignificant. The 66,650–lb (30,232–kg) research set-aside would reduce the scup recreational harvest limit from 4.03 million lb (1,828 mt) to 4.01 million lb (1,819 mt). It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the research set-aside. Overall, long-term benefits are expected as a result of the research set-aside due to improved scup data.

The impacts of the black sea bass research set-aside are expected to be as follows. The set-aside could be worth as much as $104,898 dockside, based on a 2001 ex-vessel price of $1.55 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 740 vessels that caught black sea bass in 2001), this could mean a reduction of about $142 per vessel. Changes in the black sea bass recreational harvest limit would be minimal. The research set-aside would reduce the black sea bass recreational harvest limit from 3.46 million lb (1.57 million kg) to 3.43 million lb (1.55 million kg). It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this research set-aside. Overall, long-term benefits are expected as a result of the research set-aside due to improved black sea bass data.

If the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL.

In summary, the 2003 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in small decreases in summer flounder and black sea bass landings and substantially higher scup landings, relative to 2002. The proposed specifications contained in the Preferred Alternative were chosen because they allow for the maximum level of landings, yet still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The proposed possession limits for scup and black sea bass were chosen because they are enforceable and are intended to provide for economically viable fishing trips that will be equitably distributed over the entire quota period.

The economic effects of the existing GRAs will not change as a result of this proposed rule. The alternative to allow small-mesh vessels to voluntarily fish for non-exempt species in the GRAs if they deploy modified trawl gear and carry a NMFS-certified observer is being proposed to give vessels an opportunity to fish with small-mesh trawl gear in the GRAs while providing much-needed data on the selectivity of the modified trawl gear. Although the Scup GRA Access Program does impose additional voluntary compliance and operating costs, this alternative is expected to minimize both the reporting burden on small entities and the administrative support required of NMFS to oversee the program. The Scup GRA Access Program will keep intact the scup conservation benefits associated with the GRAs, but provide important selectivity information that can be evaluated in future management decisions regarding the GRAs.

Finally, the revenue decreases associated with the research set-asides are expected to be minimal, and are expected to yield important long-term benefits associated with improved data. It should also be noted that fish harvested under the research set-asides would be sold. As such, total gross revenue to the industry would not decrease if the research set-asides are utilized.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average approximately 2 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Patricia A. Kurkul (see ADDRESSES), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 22, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (a)(122) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b), or unless the vessel is in compliance with the Gear Restricted Area Access Program requirements specified at § 648.122(d).

3. In § 648.122, paragraphs (a)(1) and (b)(1) are revised, and paragraph (d)(1) is added to read as follows:

§ 648.122 Season and area restrictions.

(a) * * *

(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, except for vessels participating in the Gear Restricted Area Access Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1	39°20′	72°50′
SGA2	39°20′	72°50′
SGA3	38°00′	73°55′
SGA4	37°00′	74°40′
SGA5	36°30′	74°40′
SGA6	36°30′	75°00′
SGA7	37°00′	75°00′
SGA8	38°00′	74°20′
SGA1	39°20′	72°50′

(b) * * *

(1) *Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, except for vessels participating in the Gear Restricted Area Access Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA 1

Point	N. Lat.	W. Long.
NGA1	41°00′	71°00′
NGA2	41°00′	71°30′
NGA3	40°00′	72°40′
NGA4	40°00′	72°05′
NGA1	41°00′	71°00′

* * * * *

(d) *Gear Restricted Area Access Program*–Vessels that are subject to the provisions of the Southern and Northern Gear Restricted Areas, as specified in paragraphs (a) and (b) of this section, respectively, may fish for, or possess, non-exempt species using trawl nets having a minimum mesh size less than that specified in paragraphs (a) and (b) of this section, provided that:

(1) The vessel possesses on board all required Federal fishery permits and a Scup GRA Access Program Exemption Authorization issued by the Regional Administrator, Northeast Region, and is in compliance with all conditions and restrictions specified in the Scup GRA Access Program Exemption Authorization;

(2) The vessel must carry a NMFS-approved observer on board if any portion of the trip will be, or is, in a GRA; and,

(3) While fishing in a GRA, the vessel must fish only with a specially modified trawl net that has an escapement extension consisting of 45 meshes of 5.5–inch (13.97–cm) square mesh that is positioned behind the body of the net and in front of the codend.

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Notices

Federal Register
Vol. 67, No. 229
Wednesday, November 27, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Food Stamp Program: Title VI Civil Rights Collection Reports

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision of a collection currently approved under OMB No. 0584–0025, Civil Rights Title VI Collection Reports—Forms FNS–191 and FNS–101, for the Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Food Stamp Program.

DATES: Comments on this notice must be received by January 27, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Ms. Hallman.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Civil Rights Title VI Collection Reports—FNS–191 and FNS–101.

OMB Number: 0584–0025.

Expiration Date: December 2002.

Type of Request: Revision of a currently approved collection.

Abstract: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d–7, prohibits discrimination on the basis of race, color, and national origin in programs receiving Federal financial assistance. Department of Justice (DOJ) regulations, 28 CFR 42.406, require all Federal agencies to provide for the collection of racial/ethnic data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI.

For purposes of the Information Collection Notice only, the Food and Nutrition Service (FNS) employs program terminology in place of the standard Title VI terminology adopted by the U.S. Department of Agriculture (USDA) and codified at 7 CFR 15.2. Thus, "State agencies," "local agencies," and/or "operators" are the program entities responsible for fulfilling the data collection requirements associated with "primary recipients" and/or "recipients" as defined by Title VI. Moreover, the program terms "respondents," "applicants," and/or "participants" refer to the "potential beneficiaries," "applicant beneficiaries," and/or "actual beneficiaries" of Federal financial assistance as defined by Title VI.

In order to conform with the statutory mandates of Title VI of the Civil Rights Act of 1964, DOJ regulations, and USDA regulations on nondiscrimination in Federally assisted programs, the USDA's Food and Nutrition Service (FNS) requires State agencies to submit data on the racial/ethnic categories of persons receiving benefits from FNS food assistance programs.

In all three programs, State and local agencies collect racial/ethnic information on the benefits application form that applicants may complete and file manually or electronically. The application form must clearly indicate three points: (1) The information is voluntary, (2) the race and ethnic information will not affect an applicant's eligibility or level of benefits, and (3) the reason for the collection of the information is to assure that program benefits are distributed without regard to race, color or national origin. All three programs allow the individual to self-identify his or her racial/ethnic status on the application. Visual observation by a program representative is used to collect the data when the individual does not self-identify. In either case the information is recorded on the application form and entered into the agency's information system. The Federal reporting forms do not identify individual participants.

Local agencies use the two forms referenced above (*i.e.*, the FNS–191 and FNS–101) to report data on the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), and the Food Stamp Program (FSP) to FNS as explained below. FNS' data collection requirement for operators is found in the regulations for the CSFP at 7 CFR part 247.13(d), and for the FSP at 7 CFR part 272.6(g); the requirement for the FDPIR is found in FNS Handbook 501.

All State or local agencies must submit the appropriate form in order to receive benefits and comply with applicable legislation. If a State or local agency does not comply voluntarily, the State or local agency is subject to fund termination, suspension, or denial; or judicial action.

CSFP local agencies complete the FNS–191 for the CSFP. FNS requires local agencies to provide annually the actual number and racial/ethnic designations of women, infants, children and elderly who receive CSFP benefits during the month of April.

FSP and FDPIR State or local agencies complete the FNS–101. FNS requires State or local agencies to report annually the actual number and racial/ethnic designation of households who receive FDPIR and/or FSP benefits during the month of July.

FNS is proposing substantial changes in the collection and reporting of racial/ethnic data. These changes are discussed below.

The New Categories and Reporting Forms

Background

Currently, State agencies collect data on five racial and ethnic categories: American Indian or Alaska Native, Asian or Pacific Islander, Black (not of Hispanic origin), Hispanic, and White (not of Hispanic origin). The current racial and ethnic categories, which have been in place for over 20 years, conform to standards set by the Office of Management and Budget (OMB) in Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting. On October 30, 1997, OMB issued a revision of Statistical Policy Directive No. 15 in a notice in the **Federal Register** (62 FR 58781 (Oct. 30, 1997)). The 1997 standards revise the categories and manner of reporting. Under the revised standards, the Asian or Pacific Islander category is now separated into two categories—"Asian" and "Native Hawaiian or Other Pacific Islander." In addition, Hispanic now becomes an ethnic category separate from the racial categories. The ethnic categories are "Hispanic or Latino" and "Not Hispanic or Latino." Applicants will now be allowed to choose more than one race. All Federal and State agencies are to comply with the new standards.

In order to comply with the revised OMB policy directive, on November 30, 1999, FNS issued a notice in the **Federal Register** proposing new reporting forms for FNS–191 and FNS–101. The proposed forms included the single race blocks and a category for the count of the number of people who chose more than one race. Since that notice was published, OMB, on March 9, 2000, issued OMB Bulletin No. 00–02, which provided new guidance to Federal agencies on the collection of aggregate data from non-Federal entities and the compiling of the data for Federal purposes. That guidance directed Federal agencies to collect data for the four double race combinations most commonly reported in studies and for any other racial combinations that exceed one percent of the State population or other population of interest. The four double race categories are American Indian or Alaska Native and White; Asian and White; Black or African American and White; and American Indian or Alaska Native and Black or African American. Accordingly, FNS has revised the forms for this notice based on the additional guidance.

State Collection of Data

For all three programs, the new five racial categories for State agency data collection are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. The two revised ethnic categories are: "Hispanic or Latino" and "Not Hispanic or Latino." These categories are to be included on the application or data input screen.

State agencies must use separate questions on the application form or data input screen for collecting data on race and ethnicity, collecting ethnicity data first, then race. Applicants may choose only one response to the ethnicity question, either "Hispanic or Latino" or "Not Hispanic or Latino." For all three programs, State and local agencies must offer applicants the option of selecting one or more racial designations from the above categories, distinct from a selection for the ethnic category. State agencies may not offer respondents (applicants) a "multiracial" category. Instructions on race reporting on the application form should ask the respondent to "Mark one or more * * *" or "Select one or more. * * *" If racial and ethnic information are not provided voluntarily by the applicant, the State agency is to obtain the information based on visual observation. When visual observation is used, only a single race need be collected, along with the ethnicity. The new multiple race data collection and reporting are intended to capture information on the number of people reporting that they are of more than one race. State agencies will need to modify their application forms, computer input screens and information systems to capture and retrieve data in the revised categories.

For the CSFP, State agencies currently collect this data by participant. CSFP State agencies will continue to collect the data by participant, but must use the revised racial and ethnic categories and provide for multiple race reporting.

For FDPIR and FSP, State agencies currently collect the data by "household" with each household unit being counted under only one race. In actuality, most State agencies collect racial/ethnic data for one person in the household, normally the person who completes the application or is interviewed. This is done because the reporting of racial information by an applicant is voluntary and not all household members are required to be present for the eligibility interview. FDPIR and FSP State agencies may continue to collect the data for one person per household but must use the revised racial and ethnic categories and provide for multiple race reporting.

Reporting of Data

FNS is proposing drafts of the revised forms for comment at this time in order to begin to comply with the revised racial and ethnic categories and to inform State agencies of the reporting changes to come. The proposed forms FNS–101 and FNS–191 are included in this notice for review and comment.

For both the FNS–191 and the FNS–101 forms, FNS is proposing to have State agencies report the total number of people (*i.e.*, participants for the FNS–191 and household contacts for the FNS–101 as explained below) in the revised racial and ethnic categories for each single race, and for the following combinations:

(1) American Indian or Alaska Native and White.

(2) Asian and White.

(3) Black or African American and White.

(4) American Indian or Alaska Native and Black or African American.

(5) Any other racial combinations with a population in the State that exceeds 1 percent of the total population for the State.

(6) The balance of respondents reporting more than one race.

State agencies would need to review Census 2000 data to determine which other racial combinations have a population that exceeds the one percent population threshold in their State. Each such combination would be reported as a separate line item. Census 2000 summary data shows 2.4 percent of the Nation's population chose more than one race and in four States more than four percent of the State's population chose more than one race. Census 2000 data on the poverty population by combination is expected to become available in 2003. In addition, State agencies must report in a separate break out column the number of persons in each single or multiple race category line item who are Hispanic or Latino. Detailed reporting instructions will be issued by FNS when the revised forms are approved by OMB and finalized. State agencies should note that the additional one percent combination categories they must report

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are subject to change with the next U.S. Census.

The FNS–191 and FNS–101 are being revised to include the revised racial/ethnic categories described above. Additionally, other changes are being made to the forms. For the FNS–191, respondents will simply report the total number of participants in each category, without a breakout by women, infants, children and elderly participants. For the FNS–101, respondents will continue to report the data by household, but we have changed the designation on the form to "household contact", which is a more appropriate term.

In addition, there are certain other changes for the FNS–101 that apply only to the FSP. Currently, FSP State and local agencies report the racial ethnic data by project area for approximately 2,800 projects. The increase in data elements (from the current 5 to the proposed 26) will have a significant impact on a State's reporting burden if we were to retain the project area reporting. To ease the impact on State reporting, we propose to have State agencies report this data in a single Statewide report to FNS for the FSP, which would eliminate project area reporting to FNS. Most State agencies have Statewide information systems which can provide State totals and we encourage State agencies to automate all their data compilations. Although we are proposing Statewide reporting on the FNS–101 for the FSP, the State agency will need to maintain the data by project area for FNS review. The data must be kept in an easily retrievable form and be made available to FNS upon request. FNS also intends to provide for electronic reporting of the new Statewide form through our State Cooperative Data Exchange (SCDEX) process for the FSP in the near future.

Currently, Hawaii, Guam, and the Virgin Islands are exempt from reporting racial/ethnic data on the current FNS–101 for the FSP. This exemption, which FNS granted in 1972 and reaffirmed in 1983, was due to the significant multiracial composition in Hawaii that did not fall neatly into the single race blocks on the form and the essentially homogeneous racial/ethnic population in Guam and the Virgin Islands. Our review of the latest available Census Bureau racial statistics for all three of these areas showed a diverse population. In view of this diversity, and since the revised form will allow multiple race reporting, we propose to terminate the current exemption for the above entities and will require that the above-mentioned State agencies to begin to report racial statistics to FNS on the revised FNS–101 along with all other FSP State agencies.

The more detailed data for all three programs will allow FNS to more accurately capture the increasing diversity of participants and household contacts in its programs. The one percent categories are intended to minimize the reporting burden on State agencies while providing FNS with line item data on program participation by additional multiple race combinations which exceed the threshold percentage in that State. Finally, the data will be used for civil rights monitoring and enforcement.

We estimate a State agency will need to report on average 24 data elements on the proposed form based on the available Census data. State agencies in a very small number of States may have to report an additional category or two for additional combinations that exceed one percent of the State's population. However, State agencies will be responsible for maintaining the aggregate data by each single race and by every possible racial combination category for State agency monitoring and for Federal review purposes. Thus, the State agency's information system will need to compile and maintain the data for a total of 62 racial and ethnic categories, 10 categories for those who report exactly one race (5 categories for all household contacts by race and 5 categories for Hispanic contacts only by race) and 52 categories for those who report more than one race (26 categories for all household contacts and the remaining 26 for Hispanic contacts only).

Implementation

FNS recognizes that State and local agencies will need time to modify their application forms, data input screens, and information systems in order to begin capturing and tabulating the revised data for all three programs. It is crucial for FNS' information system that all State agencies for a given program implement the revised reporting format at the same time. Lastly, published elsewhere in this issue of the **Federal Register**, a proposed rule addressing the implementation of collection and reporting of racial ethnic data for the Food Stamp Program is available for public comment. As explained in the preamble to the proposed rule, until comment is received on this notice and the proposed rule, and approval for the revised forms are approved by OMB, State agencies would continue with the current data collection requirements for the fiscal year 2003 reporting period. FNS anticipates the publication of the final rule early in 2003.

FNS proposes that CSFP, FDPIR, and FSP State and local agencies begin collecting the racial/ethnic data for the revised reporting with new applications filed beginning no later than October 1, 2003 and in any event that caseload conversion be completed prior to the FY 2004 report month. The revised reporting to FNS would be effective for the report month of April 2004 for the FNS–191 and the report month of July 2004 for the FNS–101.

FNS is requesting comments on the proposed reporting forms, FNS' estimate of the burden hours, and the proposed implementation date. We invite State agencies to include in their comments any estimates of significant cost increases that the proposed reporting changes may entail. We ask that State agencies be as specific as possible as to which data elements might increase costs most significantly. We also ask commenters to identify the program involved in their comments. After considering the comments, FNS will finalize the revised forms and include them in the burden package for OMB approval. FNS will formally announce the effective date(s) for each of the affected programs through implementing memoranda as appropriate and will provide copies of the revised forms at that time. The two revised forms follow this notice.

Burden Estimate

Respondents: Local agencies that administer the CSFP, FDPIR, and FSP.

Number of Respondents: 265 (101 for CSFP, 111 for FDPIR, and 53 for FSP).

Estimated Number of Responses per Respondent:

Form FNS–191: 101 local CSFP agencies once a year.

Form FNS–101: 111 local FDPIR agencies and 53 State FSP agencies once a year.

Estimate of Burden:

Form FNS–191: The local CSFP agencies submit Form FNS–191 at an estimate of 1.75 hours per respondent, or 176.75 total hours. There is an additional recordkeeping burden of .25 hours per respondent for maintaining the responses, or 25.25 hours. Total burden is 202 hours.

Form FNS–101: The local FDPIR and State FSP agencies submit Form FNS–101 at an estimate of 1.75 hours per respondent, or 287 total hours. There is an additional burden of .25 hours per respondent for maintaining the responses, or 41 hours. The lower burden per respondent reflects the increased use of automation to complete the report. Total burden is 328 hours.

Estimated Total Annual Burden on Respondents: The revised annual reporting and recordkeeping burden for OMB No. 0584–0025 is estimated to be 530 hours, a reduction of 6,065 hours. The burden reduction is due primarily to the decrease in the number of agencies that will complete a report.

Dated: November 21, 2002.

Roberto Salazar,

Administrator.

BILLING CODE 3410–30–P

PARTICIPATION IN FOOD PROGRAMS - BY RACE

1. STATE/ITO: _____ 2. PROGRAM: ☐ FOOD STAMP ☐ FDPIR 3A. NAME OF PROJECT AREA: _____ 3B. PROJECT AREA CODE: _____

4. NAME & ADDRESS OF REPORTING AGENCY: _____

5. REPORTING YEAR: JULY _____

		NUMBER OF HOUSEHOLD CONTACTS BY RACE	NUMBER OF HISPANIC OR LATINO HOUSEHOLD CONTACTS BY RACE
INDIVIDUALS WHO MARKED ONLY ONE RACE	6. AMERICAN INDIAN OR ALASKA NATIVE		
	7. ASIAN		
	8. BLACK OR AFRICAN AMERICAN		
	9. NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		
	10. WHITE		
INDIVIDUALS WHO MARKED TWO RACES	11. AMERICAN INDIAN OR ALASKA NATIVE AND WHITE		
	12. ASIAN AND WHITE		
	13. BLACK OR AFRICAN AMERICAN AND WHITE		
	14. AMERICAN INDIAN OR ALASKA NATIVE AND BLACK OR AFRICAN AMERICAN		
OTHER COMBINATIONS >1% (SPECIFY)	15.		
	16.		
	17. BALANCE REPORTING MORE THAN ONE RACE		
	18. TOTAL (ADD LINES 6 THRU 17)		

19. REMARKS:

DATE: _____ TITLE: _____ SIGNATURE: _____

FORM FNS-101 (0-2004) Previous Editions Are Obsolete PAGE 1
Electronic Form Version Designed in JetForm 5.01 version

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INSTRUCTIONS

This report will be prepared annually covering the month of July.

REPORTING UNITS - Send the original and one copy to reach the State agency as soon as possible, but no later than the 20th of August.

STATE AGENCIES AND INDIAN TRIBAL ORGANIZATIONS (ITOs) - Shall determine that reports have been received from all reporting units. The original copy shall be forwarded to the appropriate FNS Regional Office to reach that office as soon as possible, but no later than the 19th of September.

REGIONAL OFFICES - Shall determine that reports have been received from all State agencies, Indian Tribal Organizations, and reporting units. *The regional office shall enter all local agency information into FSPIIS and SNPIIS databases by the 20th of November.*

Items 1 through 5 and 19 - self explanatory.

For items 6 through 18, a household contact is the person who completes the application or is interviewed. Report for only one household contact per participating household. Report for each racial group the number of household contacts that participated (received program benefits or commodities) during July. For purposes of this form, "Hispanic or Latino" is an ethnic group, not a race. Report in the first column the total household contacts (including individuals of Hispanic or Latino origin) by race and in the second column only Hispanic or Latino household contacts by race. The form is requesting separate counts for individuals who chose only one race and those who chose more than one race.

For items 15 and 16, if applicable, report for any other specific racial combinations that are greater than 1 percent of the population for the jurisdiction. Specify the racial combination and the FNS system code for that combination in the appropriate space.

For item 17, report the total number of household contacts who chose racial combinations not included in items 11 through 16.

RACIAL/ETHNIC GROUP PARTICIPATION COMMODITY SUPPLEMENTAL FOOD PROGRAM

1. STATE:_____ 2. STATE#_____ L/A#_____ NO. OF CLINICS_____

3. REPORTING: LOCAL AGENCY NAME _____
ADDRESS _____
CITY _____
STATE_____ZIP CODE_____ TELEPHONE NUMBER _____

4. REPORTING YEAR: APRIL _____

NUMBER OF PARTICIPANTS BY RACE/ETHNIC GROUP IN APRIL

		NO. OF PARTIC-IPANTS BY RACE	NO. OF HISPANIC OR LATINO PARTIC-IPANTS BY RACE
INDIVIDUALS WHO MARKED ONLY ONE RACE	5. AMERICAN INDIAN/ALASKA NATIVE		
	6. ASIAN		
	7. BLACK OR AFRICAN AMERICAN		
	8. NATIVE HAWAIIAN/PAC. ISLANDER		
	9. WHITE		
INDIVIDUALS WHO MARKED TWO RACES	10. AMERICAN INDIAN/ALASKA NATIVE AND WHITE		
	11. ASIAN AND WHITE		
	12. BLACK OR AFRICAN AMERICAN AND WHITE		
	13. AMERICAN INDIAN/ALASKA NATIVE AND BLACK OR AFRICAN AMERICAN		
OTHER COMBINATIONS >1% (SPECIFY)	14.		
	15.		
	16. BALANCE MORE THAN ONE RACE		
	17. TOTAL (Add lines 5 thru 16)		

DATE:_____ TITLE:_____ SIGNATURE:_____

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INSTRUCTIONS

This report will be prepared annually covering the month of April.

LOCAL AGENCIES - Shall forward the original and one copy to the State agency by the 7th day of July, retaining the second copy.

STATE AGENCIES - Shall determine that reports have been received from all local agencies and review all information prior to forwarding the original copy to the appropriate FNS regional office in time to reach that office no later than the 31st of July. The duplicate copy form shall be retained and used for analysis in monitoring local agencies and State agency compliance with civil rights requirements.

FNS REGIONAL OFFICES - Shall determine that all local agency reports have been received from the State agencies and reviewed for completeness. The regional office shall enter all local agency information into the SNPIIS database by the 19th of September.

Item 1. Self-explanatory.

Item 2. For State agency, enter the four-digit Letter of Credit number. For local agency, enter the 3-digit identificat number used in previous years that was assigned by FNS. New local agencies shall obtain the identification numbe from the State agency. The new local agency 3-digit number should be the next unused consecutive identification number. Enter the number (001 or more) of clinics under each local agency's supervision.

Items 3 and 4 Self-explanatory.

Items 5 - 17. Report for each racial group the number of participants who received commodities in April. For purposes of this form, "Hispanic or Latino" is an ethnic group, not a race. Report in the first column the total numb of participants (including those of Hispanic or Latino origin) by race and in the second column only Hispanic or Latin participants by race. The form is requesting separate counts for individuals who chose only one race and those wh chose more than one race.

For Items 14 and 15, if applicable, report the total number of participants for any specific racial combinations that are greater than 1 percent of the population for the State. Specify the racial combination and the FNS system code for that combination in the appropriate space.

For item 16, report the total number of participants who chose racial combinations not included in items 10 through 15.

[FR Doc. 02–30113 Filed 11–26–02; 8:45 am]
BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Baseline and Trend Information on Wilderness Use and Users

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of an existing information collection that has, since 1990, collected data about wilderness recreation users in the United States. The information is necessary to help the Forest Service and other Federal wilderness management agencies meet the needs and expectations of visitors, who look to the National Wilderness Preservation System for recreational experiences that are dependent upon natural wilderness conditions away from human development and devoid of crowds. Respondents will be visitors, or potential visitors, to the National Wilderness Preservation System.

DATES: Comments must be received in writing on or before January 27, 2003.

ADDRESSES: Written comments concerning this notice should be addressed to Forest Service, USDA, Attn: Alan Watson, Aldo Leopold Wilderness Research Institute, P.O. Box 8089, Missoula, Montana 59807. Comments may also be sent via e-mail to *awatson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Alan Watson, Aldo Leopold Wilderness Research Institute, (406) 542–4197.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking an extension of an existing information collection authorized under Office of Management and Budget Control Number 0596–0108. This information collection approval allows the Forest Service to collect information from visitors, or potential visitors, to the lands of the National Wilderness Preservation System.

The Wilderness Act of 1964 directs that the National Wilderness Preservation System be managed to protect natural wilderness conditions and to provide outstanding opportunities for the public to find solitude or primitive and unconfined types of recreational experiences.

To meet the requirements of the Wilderness Act of 1964 and to help the Forest Service enhance visitors' recreational experiences, the agency monitors trends of visitor recreational activities. Forest Service personnel also want to ensure that visitors' recreational activities do not harm the natural resources of the National Wilderness Preservation System. The agency is expanding the scope of the survey to include wilderness areas about which the agency has little information in regard to visitor recreational trends.

The Forest Service will use information from this collection to: (1) Establish visitor recreational use baselines; (2) monitor visitor recreational use trends; (3) gain an understanding of how the agency's management of the National Wilderness Preservation System influences a visitor's wilderness experience; and (4) help understand how to educate visitors, so that they may enjoy their wilderness experience without leaving permanent reminders of their visits, such as damaged vegetation, litter, and polluted streams. The information also will be used for planning management direction for various wilderness areas managed by the agencies in the Departments of Agriculture and Interior.

Data from this information collection are not available from other sources and will be maintained at the interagency (Agriculture and Interior) Aldo Leopold Wilderness Research Institute in Missoula, Montana.

Description of Information Collection

The following describes the information collection to be extended:

Title: Baseline and Trend Information on Wilderness Use and Users.

OMB Number: 0596–0108.

Expiration Date of Approval: January 31, 2003.

Type of request: Extension of a currently approved information collection.

Abstract: Respondents will be visitors, or potential visitors, to the National Wilderness Preservation System (System). Forest Service personnel will conduct face-to-face, on-site interviews with visitors as they enter the System or will send mailback survey forms to visitors at their homes using addresses that visitors provide when visiting the System. Forest Service personnel will contact visitors at nonwilderness sites to ask if they have plans to visit the System. When unable to conduct face-to-face interviews with potential visitors, the agency will send mailback survey forms to the homes of those who visited nonwilderness areas, using addresses provided by them as they entered the nonwilderness sites. In some cases, the agency forms will be made available on a self-service basis to visitors in trailhead displays.

Respondents will be asked questions that include how many times they visit, when they plan their next visit, or if they plan to visit at all. Respondents will be asked, when visiting, if they come in groups and, if so, the size of those groups. Respondents will be asked how long they stay when visiting. Do they use equipment, such as stoves, or use wood for fires while visiting? Do they have preferences for social conditions? For example, do they like or will they accept crowded conditions, such as crowded camping areas and areas designed to limit the negative effects of visitor use on natural resources, such as soil compaction, damage to tree roots, and negative impacts to water quality? Do respondents support various wilderness management strategies (such as limiting visitor use of wilderness areas) to lessen negative effects to the wilderness environment? Do they support separating uses (such as designating some campsites for use only by groups with pack animals) to avoid conflict?

Estimate of Annual Burden: 15 minutes.

Types of Respondents: Visitors or potential visitors to the National Wilderness Preservation System.

Estimated Annual Number of Respondents: 3,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 750 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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Use of Comments

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: November 20, 2002.

Robert Lewis, Jr.,

Deputy Chief, Research and Development.

[FR Doc. 02–30017 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–c]

Cancellation of Mississippi's Delegation

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides for state agency delegations at export port locations within a state. The Mississippi Department of Agriculture and Commerce (Mississippi), is delegated to provide official export inspection and weighing services. However, there are no longer any bulk grain export port facilities in the State of Mississippi. Accordingly, GIPSA is announcing that Mississippi's delegation is being canceled effective December 1, 2002. This does not affect Mississippi's current designation to provide official domestic grain inspection and weighing services, effective January 1, 2001, through September 30, 2003.

DATES: December 1, 2002.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, room 1647–S, 1400 Independence Ave. SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(e)(2) of the Act authorizes GIPSA's Administrator to delegate authority to a qualified State agency to perform all or specified functions involved in official inspection at export port locations within the state. GIPSA originally delegated Mississippi, main office in Jackson, Mississippi, under the Act on April 18, 1978. The sole grain export port facility in Pascagoula, Mississippi, has been razed. Therefore, Mississippi's delegation is cancelled. If any grain export port facility were to open in the future within the State of Mississippi, Mississippi would have the opportunity to become delegated again.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 14, 2002.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–30048 Filed 11–26–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Benchmark Survey of Foreign Direct Investment in the United States—2002.

Form Number(s): BE–12(LF) (long form), BE–12 (SF) (short form), BE–12 Bank (bank form), and BE–12X (Claim for Not Filing a BE–12(LF), BE–12(SF), or BE–12 Bank).

Agency Approval Number: 0608–0042.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 199,500 hours.

Number of Respondents: 17,700.

Avg Hours Per Response: 11.3 hours.

Needs and Uses: The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

Affected Public: U.S. businesses or other for-profit institutions.

Frequency: Quinquennial.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6086, 14th Street and Constitution Avenue, NW, Washington, DC 20230, or via internet at *dHynek@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 21, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30080 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent (Form BE–605) and Transactions of U.S. Banking Affiliate with Foreign Parent (Form BE–605 Bank).

Form Number(s): BE–605 and BE–605 Bank.

Agency Approval Number: 0608–0009.

Type of Request: Revision of a currently approved collection.

Burden: 19,750 hours.

Number of Respondents: 3,950 per quarter; 15,800 annually.

Avg Hours Per Response: 1¼ hours.

Needs and Uses: The U.S. Government requires data from the BE–605 (quarterly) survey for compiling the international transactions accounts, input-output accounts, and national income and product accounts of the United States. The data are also needed to measure the amount of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

Also, the data from the BE–605 survey complement data from BEA's other ongoing surveys of foreign direct investment in the United States, namely the BE–13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate, and the BE–12 (benchmark) and BE–15 (annual) surveys, which provide data on the overall operations of U.S. affiliates.

Affected Public: U.S. businesses or other for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *dHynek@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 21, 2002.

Madeleine Clayton,

Management Analyst.

[FR Doc. 02–30081 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Firearms Convention.

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0114.

Type of Request: Renewal of an existing collection of information.

Burden: 374.

Average Time Per Response: 40 minutes per response (electronic copy), 45 minutes (hard copy).

Number of Respondents: 1,100 respondents.

Needs and Uses: This collection is required by Section 5(h) of the Export Administration Act of 1979, as amended (EAA), and authorized under Section 15(b) of the EAA. U.S. firms as a matter of practice already obtained the Import Certificate in order to do business in OAS countries. The United States now requires them to obtain it, provide the information to BIS, and retain the certificate in company records. The Import Certificate is essential to the prevention of the spread of illicit firearms. The USG can use it to prosecute illegal transactions, and it is useful in other enforcement activities.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: November 22, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30082 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Statement by Ultimate Consignee and Purchaser.

Agency Form Number: BXA–711.

OMB Approval Number: 0694–0021.

Type of Request: Extension of a currently approved collection of information.

Burden: 959 hours.

Average Time Per Response: 16 minutes per response.

Number of Respondents: 3,594 respondents.

Needs and Uses: The Form BIS–711 or letter puts the importer on notice of the special nature of the goods and receive a commitment against illegal disposition. In order to effectively control commodities, BIS must have sufficient information regarding the end-use and end-user of the U.S. origin commodities to be exported. The information will assist the licensing officer in making the proper decision on whether to approve or reject the application for the license.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: November 22, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30083 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–33–P

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 021104286–2286–01]

Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving "Schedule 1" Chemicals Through Calendar Year 2002

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention has had on commercial activities involving "Schedule 1" chemicals through calendar year 2002. This notice of inquiry is part of an effort to collect information to assist in the preparation of the annual Presidential certification required under condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

DATES: Comments are due December 18, 2002.

ADDRESSES: Written comments (four copies) should be submitted to Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. In order to meet the due date for comments, single copies may be faxed to (202) 482–3355, provided that you follow up by submitting the appropriate number (four copies) of written comments.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for "Schedule 1" chemicals, contact Larry Denyer, Treaty Compliance Division, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (703) 605–4400. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

In its resolution to advise and consent to the ratification of the Chemical Weapons Convention (S. Res. 75, April 24, 1997), the Senate included several conditions. Condition 9 of Senate Resolution 75, titled "Protection of Advanced Biotechnology," provides that the President shall certify to the Congress on an annual basis that "* * * the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1 * * *". The Bureau of Industry and Security is collecting data to assist in determining the impact, if any, that the implementation of the Convention's requirements have had on commercial "Schedule 1" activities through calendar year 2002.

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC), is an international treaty that establishes the Organization for the Prohibition of Chemical Weapons (OPCW) to implement the verification provisions of the treaty. The CWC imposes a number of obligations on countries that have ratified the Convention (States Parties), including enactment of legislation to prohibit the production, storage, and use of chemical weapons, and establishment of a National Authority for liaison with the OPCW and other States Parties. The CWC also requires States Parties to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of States Parties are not engaged in activities prohibited under the CWC.

"Schedule 1" chemicals are those toxic chemicals and precursors identified in the Convention as posing a high risk to the object and purpose of the Convention. The "Schedule 1" chemicals are set forth in the Convention's "Annex on Chemicals," as well as in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (15 CFR 712).

The "Schedule 1" provisions of the Convention that affect commercial activities are implemented through part 712 of the Chemical Weapons Convention Regulations and parts 742 and 745 of the Export Administration Regulations, both administered by the Bureau of Industry and Security. These regulations:

(1) Prohibit the import of "Schedule 1" chemicals from States not Party to the Convention (15 CFR 712.2);

(2) Require annual declarations by certain facilities engaged in the production of "Schedule 1" chemicals in excess of 100 grams aggregate per calendar year (*i.e.*, declared "Schedule 1" facilities) for purposes not prohibited by the Convention (15 CFR 712.3(a) and (b));

(3) Require government approval of "declared Schedule 1" facilities (15 CFR 712.3(e));

(4) Provide that "declared Schedule 1" facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.3(d);

(5) Require 200 days advance notification of establishment of new "Schedule 1" production facilities producing greater than 100 grams aggregate of "Schedule 1" chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of "Schedule 1" chemicals to, or from, other States Parties to the Convention (15 CFR 712.5, 742.18 and 745); and

(7) Prohibit the export of "Schedule 1" chemicals to States not Party to the Convention (15 CFR 742.18 and 745.2).

Discussion and Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are being significantly harmed by the limitations of the Convention on access to, and production of, "Schedule 1" chemicals, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention has had on commercial activities involving "Schedule 1" chemicals.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 18, 2002. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration, at (202) 482–0637, for assistance.

Dated: November 20, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–30011 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

EFFECTIVE DATE: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Ryan Langan at (202) 482–0176 or (202) 482–2613, respectively; AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUMMARY: The Department of Commerce is initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of dynamic random access memory from the Republic of Korea have received countervailable subsidies.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the "Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the "Department") regulations are references to the provisions codified at 19 CFR Part 351 (April 2002).

The Petition

On November 1, 2002, the Department received a petition filed in proper form by Micron Technology, Inc. (the "petitioner"). The Department received supplemental information to support the petition on November 13 and 19, 2002.

In accordance with section 702(b)(1) of the Act, the petitioner alleges that manufacturers, producers, or exporters of the subject merchandise from the Republic of Korea ("Korea") receive countervailable subsidies within the meaning of section 701 of the Act, and that imports of the subject merchandise are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support. See "Determination of Industry Support for the Petition" section, below.

Scope of Investigation

The products covered by this investigation are Dynamic Random Access Memory semiconductors ("DRAMs") from Korea, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers fabricated in Korea, but assembled into finished semiconductors outside Korea are also included in the scope. Processed wafers fabricated outside Korea and assembled into finished semiconductors in Korea are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMs from Korea. A memory module is a collection of DRAMs, the sole function of which is memory. Memory modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), dual in-line memory modules ("DIMMs"), small outline dual in-line memory modules ("SODIMMs"), Rambus in-line memory modules ("RIMMs"), and memory cards or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope. This investigation also covers future DRAM module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory ("VRAM"), and synchronous graphics RAM ("SGRAM"), as well as various types of DRAMs, including fast page-mode ("FPM"), extended data-out ("EDO"), burst extended data-out ("BEDO"), synchronous dynamic RAM ("SDRAM"), Rambus DRAM ("RDRAM") and Double Data Rate DRAM, ("DDR SDRAM"). The scope also includes any future density, packaging, or assembling of DRAMs. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit ("CPU"), unless the importer of the motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMs or memory modules that are re-imported for repair or replacement.

The DRAMs subject to this investigation are currently classifiable under subheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMs from Korea, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

Scope Issue

The scope language as proposed by the petitioner included "[p]rocessed wafers fabricated outside Korea, and assembled into finished semiconductors in Korea." As discussed below, the Department has determined not to include this language in the scope of this investigation. In past semiconductor cases, the Department has determined that country of fabrication confers country of origin and in fact has specifically excluded wafers produced in a third country that are

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assembled and packaged in Korea. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan*, 64 FR 56308, 56309 (October 19, 1999) and *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 58 FR 15467 (March 23, 1993).

The petitioner states that it considers DRAMs to originate in Korea if the DRAMs are fabricated and/or assembled in Korea, asserting that this position takes into account the country of origin rule used for U.S. Customs purposes, which is based on the country of assembly. The petitioner further asserts that the subsidies that are being provided by the Government of the Republic of Korea ("GOK") provide a significant benefit to all facets of the semiconductor production process in Korea, including the assembly and testing phases. The petitioner notes that the past cases before the Department have been antidumping cases and asserts that the scope from earlier antidumping cases should not be imported into a countervailing duty case based on the fundamental differences between the two types of proceedings. According to the petitioner, unlike an antidumping case where the Department is concerned with unfair pricing between private parties, a countervailing duty case involves the examination of government subsidies that benefit an entire production process. The petitioner claims that any DRAM assembled in Korea must be included in the scope because all DRAMs have benefitted from the subsidies. According to the petitioner, while the limitation of scope to the country of fabrication may be reasonable in an antidumping case, such a finding in this case would address only a part of the overall DRAM production process in Korea and would permit a continuation of the material injury the law is designed to prevent.

The petitioner further argues that the increasing cost and sophistication of the assembly and testing operations in recent years separately justifies including DRAMs assembled in Korea in the scope of this investigation. In addition, the petitioner asserts that to include assembly in the scope resolves an inconsistency in the earlier semiconductor cases where the Department based the scope on country of fabrication but the International Trade Commission's definition of the domestic industry included fabricators and assemblers. Finally, the petitioner states that the Department typically defers to the petitioner when framing the scope of the merchandise being investigated.

At consultations and in its later filings, the GOK has argued that the Department should not expand the scope from prior determinations to include merchandise fabricated outside Korea but assembled and tested in Korea. The GOK contends that the expanded scope is contrary to Department practice and that the facts do not support a change in practice. The GOK asserts that the wafers are the defining component of the DRAM or memory module and that the value added for final assembly is much smaller than the wafer fabrication, accounting for less than 15 percent of the total cost of the DRAM. In support of its position, the GOK cites *Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value* ("*EPROMs*"), 51 FR 39680 (October 30, 1986), where the Department found that EPROM wafers and dice originated in the country of fabrication, not in the country where assembly and testing occurred. In *EPROMs*, the Department found that third country assembly and testing did not constitute a "substantial transformation" that changed the country of origin from the country of fabrication. Concerning the petitioner's assertion that the language in past cases is not applicable because those cases were antidumping cases, the GOK notes that the Department based its analysis in *EPROMS* on its interpretation of the "class or kind of foreign merchandise" as defined in the antidumping statute, and that the subsidy statute uses almost the identical language.

Concerning the petitioner's argument regarding Customs' rulings, the GOK points out that the Department has not felt bound by Customs' country of origin rulings because these rulings serve different purposes.

We have considered this issue carefully and, as stated in the "scope of investigation" section above, have determined that processed wafers fabricated outside Korea and assembled into finished semiconductors in Korea are not included in the scope. The principal reason for this determination is that in numerous past proceedings on DRAMs and similar products such as EPROMs, the Department has consistently maintained that the country of origin is the country where wafer fabrication occurs. Given those precedents, we are unwilling to adopt different criteria for determining origin absent compelling information that new criteria are appropriate. The information presented by the petitioner does not meet that threshold.

First, section 701(a)(1) of the Act provides for the investigation of whether a countervailable subsidy is being provided to "a class or kind of merchandise." A single definable class or kind of merchandise is linked inextricably to its country of origin, which is in turn determined, for purposes of both antidumping and countervailing duty proceedings, by the substantial transformation test. (*EPROMs, supra*, at General Comment 28.) Accordingly, the Department finds that it would not be appropriate or feasible to have a class or kind of merchandise subject to investigation that would require two different and potentially conflicting country-of-origin tests. Thus, the Department cannot accept the alternative test implicated by petitioner's proposed scope language, i.e., that the assembly and testing operations should also set country-of-origin.

The Department has independent authority to determine the scope of its investigations. See *Diversified Products Corp. v. United States*, 572 F. Supp. 883, 887 (CIT 1983). The Department's authority to make its own country of origin determinations is inherent in its independent authority to determine the scope of AD/CVD investigations. Moreover, the Department's country-of-origin determinations, which have not always been identical with Customs's country-of-origin determinations, reflect concerns specific to enforcement of the AD/CVD laws, such as the potential for the circumvention of orders. *See, e.g., EPROMS from Japan*, 51 FR 39680 (October 30, 1986); *DRAMS of 256 Kilobits and Above from Japan*, 51 FR 28396 (August 7, 1986); *Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 58 FR 37062 (July 9, 1993).

Given this authority, the Department has determined that it is appropriate to continue to base origin on wafer fabrication. While the petitioner may be correct that testing and assembly may be more costly than in the past, there does not seem to be any dispute that wafer fabrication is still the more important stage of the production process. Indeed, the petitioner contends, and we agree as in past determinations, that wafers fabricated in Korea and assembled and tested in third countries are within the scope of this proceeding. Consequently, we have not adopted the petitioner's proposed scope.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the GOK for consultations with respect to the petition filed. On November 12, 2002, the Department held consultations with the GOK. The points raised in the consultations are described in a memorandum to the file entitled "CVD Consultations with Officials from the Government of the Republic of Korea," dated November 13, 2002. This memorandum is on file in the Department's Central Records Unit, Room B–099 of the main Department of Commerce building. The GOK filed submissions with the Department on November 18 and 19, 2002.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. As discussed in the scope section of this notice, we have modified the scope from the scope presented in the petition. For purposes of calculating industry support, we have used a domestic like product definition that is consistent with our revised scope language. The petition covers DRAMs as defined in the "Scope of the Investigation" section, above, a single class or kind of merchandise.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Finally, section 702(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A); or (ii) determine industry support using any statistically valid sampling method to poll the industry.

The Department has determined, pursuant to section 702(c)(4)(D), that there is support for the petition as required by subparagraph (A). Specifically, the Department made the following determinations. The domestic producers or workers who support the petition established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 702(c)(4)(A)(ii) are also met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* the Initiation Checklist dated November 21, 2002 ("*Initiation Checklist*").

Injury Test

Because Korea is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, an industry in the United States.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the subsidization of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is evident in the declining trends in domestic prices, operating income and profitability, market share, budgeting for research and development, capital expenditures, inventory valuations,[2] production capacity,[3] as well as lost sales and revenue due to subject imports. The petitioner further alleges threat of injury due to increased import volumes, inventory levels in Korea, unused and increasing production capacity, and price depression. The petitioner asserts that because of the negative trends discussed above, several domestic producers have either ceased operations or consolidated operations with other domestic producers, and there have been no new entrants in the domestic industry. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, the financial statements of Micron and Infineon Technologies, lost sales and revenue data, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

[2] Specifically, the petitioner alleges that the industry has recently experienced large write-downs of inventory valuation due to historically low selling prices.

[3] The petitioner states that wafer capacity has not increased over the last three years. Rather, capacity has been reduced due to industry consolidation and plant closures, and it has been retooled for production of other types of semiconductors or upgraded with new equipment to accommodate new densities, die shrinks, or address technologies.

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under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Period of Investigation

The petitioner has identified numerous instances of alleged government support for Hynix Semiconductor Inc. ("Hynix")[4] in 2001. The petitioner has argued that much of this assistance should be addressed under the Department's grant methodology because although the assistance was ostensibly in the form of loans, there were non-viable contingencies on repayment. Alternatively, the petitioner has argued that the assistance should be treated as long-term loans with special characteristics such that the benefit would be recognized at the time the funds were disbursed to Hynix in accordance with the methodology described in 19 CFR 351.505(b) and 351.505(c)(3). If the Department rejects these methodologies, then its regulations indicate that the benefit would accrue at the time that interest would be paid on a comparable commercial loan, according to the petitioner. However, based on information reasonably available to it, the petitioner has not been able to determine the terms of the allegedly subsidized assistance and, consequently, has not been able to calculate the interest that would have been paid in 2001 or whether, in fact, interest obligations even began before 2002.

To address these unique circumstances, the petitioner requests that the Department expand the period of investigation ("POI") to include not only 2001, but also the first six months of 2002. The petitioner claims this is necessary because a POI limited to 2001 may permit the subsidies to Hynix to escape scrutiny. If the Department finds that the assistance to Hynix should be addressed under a methodology that assigns the benefits to 2001, the petitioner states that there may be no need to extend the POI.

In consultations, the GOK argued that Hynix, Samsung Electronics Company ("Samsung"), and the GOK have calendar fiscal years and, as such, the Department's standard practice is to use only the calendar year 2001 as the POI. The GOK claims that no basis for expanding the POI exists because 1) any benefits received in 2002 would be captured in a review; 2) expanding the POI would unnecessarily complicate the case; 3) completed and audited financial statements or completed and submitted tax returns would not be available, placing an unnecessary burden on the U.S. government, the GOK, and the respondents; and 4) no rationale was provided to expand the POI, nor has the petitioner cited any cases in which the Department departed from its practice of using a single calendar year POI.

Under 19 CFR 351.204(b)(2), the Department normally relies on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question. That same regulation also states, however, that we may rely on information for any additional or alternative period that we conclude is appropriate. In this proceeding, because the petition was filed in November 2002, the normal POI would be 2001.

Recognizing that adoption of an 18–month period of investigation would be a departure from our normal practice, we have carefully considered the merits of the petitioner's claims and the concerns raise by the GOK. Given the lateness of the filing in 2002, we considered collecting data for two separate 12–month periods, 2001 and 2002, and then deciding which data set to use once the relevant facts were discovered through the investigation process. However, such an approach has the obvious drawback that the Department would have to select between the two periods in making its final determination of subsidies, and the period picked could have a significant effect on the outcome of the proceeding.

Instead, we have determined from the outset of this proceeding that we will use the 18–month period of investigation urged by the petitioner. We agree that the terms of various alleged subsidies are not reasonably available to the petitioner and that the methodology, including the point in time that the benefits would be deemed to have accrued, will only be known after an investigation and analysis of the parties' comments. In these circumstances, we do not believe that we should limit this investigation to the normal POI because doing so may be tantamount to telling the petitioner that it has to bring a case simply to learn that the petition should have been filed at a later time (despite that fact that allegedly injurious imports have been occurring all along). Our regulations at 19 CFR 351.204(b)(2) accord us the flexibility to address these unusual circumstances by expanding the POI.

Moreover, we do not intend to scale back the 18–month period of investigation if, as the petitioner suggests, we find it unnecessary. By setting out an 18–month POI at the outset, we avoid the situation of having parties seek to shape the period of investigation to achieve a particular outcome.

Regarding the concerns raised by the GOK, the issue is not whether the subsidies will be captured in the investigation or a possible administrative review. Instead, the petitioner has provided information available to it indicating that the subject merchandise is subsidized. The lack of perfect information, or questions about the timing of the benefits under the Department's various methodological approaches, should not preclude the petitioner from seeking meaningful relief. Second, we do not see that an expanded POI would complicate the investigation beyond the collection of additional data. Third, although completed and audited 2002 financial statements might not be initially available, the Department routinely relies on draft financial statements. Finally, although the petitioner has not cited any cases in which the Department departed from its practice of using a single calendar year as the POI, as noted above, the Department has the discretion to do so.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on DRAMs from Korea and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of DRAMs from Korea receive countervailable subsidies.

I. Creditworthiness and Equityworthiness

The petitioner alleges that Hynix was uncreditworthy in 2000 and 2001 and continues to be uncreditworthy in 2002. The petitioner claims that at the end of 1999, HEI was at a cash crisis point, with 495 billion Won in short-term debt and 2,502 billion Won in long-term debt, and approximately one trillion Won in interest payments due in 2000. HEI had only 808 billion Won in operating profits in 1999 so it was clear that HEI would be unable to pay off the loans and meet its interest obligations. Specifically, the petitioner claims that Hynix has not received any new lending on commercial terms since the beginning of 2001. With one exception, all loans received by Hynix in 2002 were from government agencies or creditors entrusted or directed by the government to extend credit to Hynix. The petitioner states that Hynix received one "relatively insignificant" loan from Citibank. However, the petitioner notes that the Department's practice is to examine the circumstances surrounding commercial bank loans that are part of financing packages that involve the government to determine whether there are any special features of the package that would lead the commercial lender to offer lower, more favorable terms than would be offered absent the government/ commercial bank package (citing to the Preamble to the *Countervailing Duties: Final Rule*, 63 FR 65348, 65363–64 (November 25, 1998). The petitioner claims that the loan from Citibank, for several reasons, could not be viewed as being comparable to the GOK's loans.

The petitioner further alleges that throughout the period 2000 and 2001, Hynix had a significant amount of debt coming due and the company would not be able to pay off this debt using its internal free cash flow. Therefore, Hynix needed help from the government. To support this, the petitioner points to comments made by investment banks in their reports during 2000 and 2001. For example, the reports stated: "[w]e believe it would be difficult for [Hynix] to secure sufficient funds to repay its debt...;" "[Hynix has a] fundamental problem of excessive debt which was around 87 percent of 2001 sales;" "[Hynix is] not profitable and is not paying off debt at a sufficiently fast rate from internal cash flow or asset disposals;" "we believe Hynix's balance sheet risk remains high." According to the petitioner, the investment community's analyses at the time reveals that it was known that Hynix did not have the cash flow to repay debts and would not be able to obtain funding from normal commercial sources.

Since the two bailouts in 2001, the petitioner claims that Hynix's financial situation has continued to worsen, with Hynix reporting a loss of more than 410 billion Won for the first half of 2002. Meanwhile, the petitioner notes, Hynix still has 5,982 billion Won in debt, a large portion of which is coming due in the next few years. With DRAM prices at historical lows, the petitioner argues that there is no reasonable expectation, under normal commercial considerations, that Hynix's debt will ever be repaid without GOK assistance. Without GOK intervention, the petitioner claims, banks would not continue to provide new money to Hynix, at any interest rate.

The petitioner additionally examines Hynix's financial condition during the time relying on various financial indicators: total liabilities to net worth; fixed assets to net worth; current liabilities to net worth; the current ratio; and the quick ratio. According to the petitioner, the current ratio indicates that even if Hynix were to liquidate its current assets at full book value, it would be unable to pay off its current liabilities in full. Regarding the quick ratio, the petitioner notes that Hynix could cover only 8 percent of its current liabilities with current assets other than inventories. The petitioner also claims that Hynix's debt was increasing. The company's debt-to-equity ratio was 186 percent in 2000 and rose to 193 percent in 2001. Finally, the petitioner notes that for the period 1998 to 2001, Hynix had current liabilities which exceeded its net worth for three of the years. According to the petitioner, only after the bailout in 2001, did this ratio drop below one. In examining a company's creditworthiness we attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. 19 CFR 351.505(a)(4). We find that the financial information submitted by the petitioner provides a reasonable basis to believe or suspect that Hynix was uncreditworthy in 2000 - 2002. Therefore, if we find that Hynix received any non-recurring grants, loans, or loan guarantees in those years, we will determine whether the company was creditworthy in those years.

The petitioner also alleges that Hynix was unequityworthy in 2001, the year in which Hynix recorded convertible bonds as capital adjustments (*i.e.*, swapped debt for equity). Specifically, according to the petitioner: 1) Hynix posted net losses since 1998; 2) the lead underwriter of Hynix's 2001 issuance of global depository receipts ("GDR") did not foresee positive free cash flow for the company through the fourth quarter of 2003; 3) without free positive cash flow, Hynix could not service its debt, forcing it into bankruptcy and eliminating any claims by the shareholders on the company's proceeds; 4) Hynix's return on equity was negative for the period 1998 through 2000 (negative 35.5 in 2000), and was projected to range from negative 54.1 percent to negative 89.1 percent through 2003; and 5) although Hynix had a GDR equity offering to private investors in June 2001, because the 72 percent drop in the prices of these GDRs showed that Hynix's financial position had degenerated, this offering does not indicate that Hynix was equityworthy at the time of the debt-equity swap in October 2001. The petitioner claims that the convertible bonds should be treated as equity, not debt, because the bondholders were obligated to convert the bonds and Hynix treated these bonds as capital adjustments. In the case of a government equity infusion, the Department measures the benefit by examining the investment decision against the usual investment practice of a private investor. 19 CFR 351.507(a)(1). Specifically, the Department compares the purchase price paid by the government to prices paid for new shares by private investors, if such prices exist. 19 CFR 351.507(a)(2). If actual private investor prices are unavailable, the Department will determine the equityworthiness of a company at the time of the equity infusion. 19 CFR 351.507(a)(3).

In this case, although Hynix did issue GDR's in the first half of 2001, we find that the petitioner provides a reasonable basis to believe or suspect that, at the time of the October 2001 bailout, Hynix was not equityworthy. If we determine that Hynix received an equity infusion in 2001, we will make a determination regarding Hynix's equityworthiness at the time of the infusion.

II. Programs

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Korea. The bases for our determination to investigate these programs are set forth in the *Initiation Checklist*.

For several of the programs listed below, the petitioner alleges that the GOK 1) directs credit in Korea, and 2) this credit was directed specifically to the semiconductor industry. For the reasons stated in the *Initiation Checklist*, we are investigating whether the GOK directs credit in Korea and whether the semiconductor industry receives a disproportionate share of the directed credit.

A. Bailout Subsidies to Hynix

1. Syndicated Bank Loan of 800 Billion Won
2. 22.7 Billion Won Citibank Loan
3. KDB Fast Track Program
4. May 2001 Bailout
a. Creditor Purchase of 994.1 Billion Won of Convertible Bonds
b. 6 Billion Won Grant
c. 5.9 Billion Won Loan
d. Extension of Maturities of 58 Billion Won of Short-Term Loans
e. Extension of Maturities of Long-Term Loans
f. Committed Availability of Short-Term Financing

[4] Hynix was known as Hyundai Electronics Industries Co. Ltd. ("HEI") until March 29, 2001.

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5. 680 Billion Won Bond Guarantee
6. October 2001 Bailout
a. Equity Infusion
b. Extension of Debt Maturities and Reduction or Elimination of Interest Obligations
c. Debt Forgiveness
d. Conversion of Short-Term Financing to Long-Term Loans
e. Fresh Loans
7. D/A Financing
B. Other Subsidies
1. Preferential Loan Programs
a. Fund for Industrial Technology Development
b. Fund for Promotion of Science and Technology
c. Fund for Rental Housing
d. Fund for Promotion of Defense Industry
e. Long-Term Usance Loans
f. Export Industry Facility Loans ("EIFLs")
g. Short-term Export Financing
h. Export Credit Financing From Export-Import Bank of Korea
i. Loans From the Energy Savings Fund
j. Fund for Machinery Made in Korea
k. Fund for Promotion of Informatization
2. R&D Support
3. Tax Programs
a. Reserve for Overseas Market Development - (Former) Article 17 of TERCL
b. Technological Development Reserve Funds - (Former) Article 8 of TERCL
c. Reserve for Export Loss - (Former) Article 16 of TERCL
d. Tax Credit for Investment in Facilities for Productivity Enhancement under Article 24 of RSTA
e. Miscellaneous Investment Tax Credits - Article 10, 18, 25, 26, and 71 of RSTA
f. Foreign Investment Promotion Act (Formerly Foreign Capital Inducement Law ("FCIL"))
4. Other Benefits
a. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates
b. Export Insurance
c. Electricity Discounts Under the Requested Load Adjustment Program
d. Targeted Assistance Programs
i. Operation G&/HAN Program and 21st Century Frontier R&D Program
ii. Korean Semiconductor Research Project

We are not investigating the following alleged subsidy programs: Tax Credit for Investment in Equipment to Develop Technology and Manpower - Article 11 of RSTA (formerly Article 9 of TERCL) and Special Taxation Provisions Relating to Corporate Restructuring.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a public version of the petition has been provided to the GOK. We will attempt to provide a public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than December 16, 2002, whether there is a reasonable indication that imports of DRAMs from Korea are causing material injury, or threatening to cause material injury, to an industry in the United States. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30138 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Open Town Meeting for Information Gathering on Exploring the Development of a Textile "Marker" System

November 22, 2002.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of an open meeting.

SUMMARY: The International Trade Administration (ITA) will hold a public meeting on technologies under investigation for a textile "marker" system.

DATES: The meeting is scheduled for December 10, 2002, from 10:00am to 12:00pm.

ADDRESSES: The meeting will be held at the North Carolina Center for Applied Textile Technology (NCCATT), 7220 Wilkinson Boulevard, Belmont, NC. Telephone, (704) 825-3737.

FOR FURTHER INFORMATION CONTACT: Don Niewiaroski, Jr. at (202) 482-4058, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Directions to the NCCATT are as follows: Take Exit 27 off of I-85 South. Go left at the top of the exit ramp on Highway 273 for approximately 1/3 of a mile. Go left on Highway 74 for approximately 2/3 of a mile until you reach the NCCATT campus on your right. Proceed to the auditorium in the "new building" at 7230 Wilkinson Boulevard. From Charlotte airport follow signs to I-85 South and the directions are the same as above. For further information please contact the North Carolina Center for Applied Textile Technology at (704) 825-3737.

The meeting will be co-chaired by James C. Leonard III, Commerce Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries and Dr. Glenn O. Allgood, Principal Investigator, Oak Ridge National Laboratory. During the meeting the following agenda item will be discussed.

Department of Commerce (DOC)/ Department of Energy (DOE) Project to Explore the Development of a Special Textile "Marker" System

DOE will make a presentation on the technologies under investigation for a textile "marker" system. DOE and DOC officials will discuss this project at the meeting, and will encourage participants to provide individual comments and information on these technologies with particular reference to: cost effectiveness; compatibility with U.S. manufacturing processes; the ability to survive foreign fabrication techniques; and compatibility with U.S. Customs processes and procedures. Discussion will include possibilities of and opportunities for plant visits by DOE personnel and other pertinent issues.

Background

On October 29, 2002 the Department of Commerce entered into an agreement with the Department of Energy's Oak Ridge Operations Office to explore the development of a special "marker" system to track the presence of U.S.-made yarns and fabrics in U.S. apparel imports.

Certain provisions of U.S. apparel import preference programs and free trade area agreements require the use of U.S. textile inputs. However, the origin of such inputs is difficult to determine and the development of a textile marker system is intended to ensure the use of U.S. fabrics and yarns in products receiving preferences.

Dated: November 22, 2002.

James C. Leonard III,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc.02–30098 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, December 10, 2002, from 8:25 a.m. to 5:30 p.m. and Wednesday, December 11, 2002, from 8 a.m. to Noon. The Visiting Committee on Advanced Technology is composed of twelve members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST Update; an Update on Near-Term Strategic Environment; NIST 2010 Implementation—Cross-cutting Themes from OU Operational Plan Reviews and Results of Initial Planning Review Sessions on Nanotechnology and Homeland Security and a tour of the Advanced Measurement Laboratory. Discussions scheduled to begin at 2:45 p.m. and to end at 5:30 p.m. on December 10, 2002, and to begin at 8 a.m. and to end at Noon on December 11, 2002, on the NIST budget, personnel issues, planning information and feedback sessions will be closed. Agenda may change to accommodate Committee business. Final agenda will be posted on website. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Thursday, December 5, 2002, and she will provide you with instructions for admittance. Mrs. Peter's email address is carolyn.peters@nist.gov and her phone number is (301) 975–5607.

DATES: The meeting will convene December 10, 2002 at 8:25 a.m. and will adjourn at Noon on December 11, 2002.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under SUMMARY paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 16, 2002, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 20, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–30137 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

Amendments to the Area To Be Avoided Off The Olympic Coast National Marine Sanctuary

AGENCY: National Ocean Service (NOS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic Atmospheric Administration (NOAA) is notifying the public of its implementation of amendments to the existing Area to be Avoided (ATBA) off the Washington Coast to include all vessels of 1,600 gross tons and above solely in transit in accordance with the International Maritime Organization's (IMO) adoption of MSC 75/24, para 6.7.4 on May 29, 2002.

DATES: The effective date of the amended ATBA is December 1, 2002.

FOR FURTHER INFORMATION CONTACT: George Galasso, Assistant Manager, Olympic Coast National Marine Sanctuary, phone (360) 457–6622, email: *george.galasso@noaa.gov*.

SUPPLEMENTARY INFORMATION: An ATBA is defined by the IMO as an area that all ships or certain classes of ships should avoid because navigation is particularly hazardous or it is exceptionally important to avoid casualties within the area. On December 7, 1994, the Maritime Safety Committee of the IMO adopted an ATBA proposed by the U.S. government off the Olympic Coast National Marine Sanctuary (OCNMS). Since implementation in June 1995, the United States has been monitoring compliance through the use of Canadian Coast Guard radar data from the Tofino Marine Communications and Traffic System. Compliance with the ATBA is estimated to be between 90–95%, due to the excellent cooperation by the maritime community, vigorous education and outreach efforts by the OCNMS staff and the U.S. Coast Guard, and the sending of educational letters to those ships found to be in non-compliance.

The U.S. Coast Guard has recently conducted a Port Access Route Study (PARS) to critically review all aspects of vessel movements in the area. The conclusions of the PARS resulted in three vessel routing proposals, which were approved by the Sub-Committee on Safety of Navigation and forwarded to the Maritime Safety Committee for adoption. The three proposals were: (1) A proposal to amend the IMO-adopted ATBA "Off the Washington Coast" to increase its size and extend its applicability to commercial ships of 1,600 gross tons and above; (2) A proposal for recommended routes in the United States waters of the Strait of Juan de Fuca for smaller, slower moving vessels that normally do not use the traffic separation scheme; and (3) A proposal amending the existing traffic separation schemes (TSSs) "In the Strait of Juan de Fuca and Its Approaches,"

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and "In Puget Sound and Its Approaches," and adding TSSs and other routing measures "In Haro Strait, Boundary Pass, and in the Strait of Georgia." These proposals were adopted by the IMO's Maritime Safety Committee on May 29, 2002. MCS 75/24.

NOAA's amendment of the existing ATBA off the OCNMS has two elements. First, it increases the size of the ATBA to the north and west, to take into account the amendment of the TSS. This increased size will enhance maritime safety because it provides a greater margin of safety around the navigational hazards of Duntze and Duncan Rocks and Tatoosh Island.

Second, NOAA has expanded the class of ships to which the ATBA applies to include ships of 1,600 gross tons and above. These ships carry substantial amounts of bunker fuel, which, if spilled, would have a devastating impact on the unique, valuable, and sensitive resources of OCNMS.

The OCNMS and surrounding waters contain economically important fishery resources, including a variety of baitfish, shellfish, and salmon. The resources in this area are also critical to the cultural activities and subsistence living of Native American Indian tribes. Important archeological sites of these peoples are found on the shoreline and which could probably be affected by an oil spill from a ship.

In addition, the area has been designated as a UNESCO Biosphere Reserve and World Heritage Site and overlaps with the Washington Islands National Wildlife Refuge and Olympic National Park. The coastal rocks and islands provide important breeding, nesting, and roosting areas for marine birds. Marbled murrelets, abundant in this area, are listed by the United States as a threatened species and are of special concern due to their high vulnerability to oil spills. Bald eagles, listed as a threatened species, are also important to the marine ecosystem in the region. There are also resident and transient killer whale (orca) pods and several dolphin species which frequent the area.

When viewed in conjunction with the U.S. Coast Guard amendment of the TSS, the expansion of the scope of the ATBA is necessary for protection of natural resources from maritime casualty and for general maritime safety. Moving the northern border of the ATBA to a consistent 4,000 yards south of the southernmost edge of the TSS will provide an improved safety buffer for those smaller, slower moving vessels that choose to transit south of the TSS. Continuing this buffer area parallel to the TSS to a point at 124° 52.8′ W will allow sufficient room for this slower moving traffic to transit without conflicting with the inbound traffic steering for the southern approach to the TSS. It also provides a greater margin of safety around the hazards of Duntze and Duncan Rocks, and Tatoosh Island which is known for its strong tides.

NOAA is also applying the ATBA to commercial ships of 1,600 gross tons and above because these ships carry a substantial amount of bunker fuel. Concerns regarding spills of bunker fuel were heightened on the U.S. west coast after the 1999 incident involving the *New Carissa* which spilled approximately 70,000 gallons of bunker fuel. Requiring commercial ships of 1,600 gross tons and above to transit outside the ATBA would move these ships farther offshore, thus increasing the time available to respond to a propulsion or steering casualty and decreasing the potential for a drift or powered grounding. If there were to be a discharge of bunker fuel, the increased distance offshore would diminish the impact on the shoreline and provide more time to mobilize a response. NOAA analyzed various ship sizes to which the ATBA should be made applicable. Commercial ships of 1,600 gross tons (versus those of only 300 gross tons) are considered large enough to be able to maneuver safely while avoiding the ATBA, in most weather conditions. NOAA has determined there will be minimal adverse impacts on shipping by expanding the applicability of the ATBA to commercial ships of 1,600 gross tons and above. It will not affect those ships bound for the Strait of Juan de Fuca from the north or west. Most ships coming from destinations well to the south of the ATBA will have to alter their course to enter the TSS and thus the expanded applicability of the ATBA will have limited, if any, adverse affect.

The area is bounded by a line connecting the following geographical positions:

Point 1. 48° 23.30′ N, 124° 38.20′ W.
Point 2. 48° 24.17′ N, 124° 38.20′ W.
Point 3. 48° 26.15′ N, 124° 44.65′ W.
Point 4. 48° 26.15′ N, 124° 52.80′ W.
Point 5. 48° 24.67′ N, 124° 55.71′ W.
Point 6. 48° 51.70′ N, 124° 15.50′ W.
Point 7. 48° 07.70′ N, 124° 47.50′ W.
Point 8. 48° 07.70′ N, 124° 11.00′ W.

The Olympic Coast National Marine Sanctuary Advisory Council and North Puget Sound Risk Management Panel have discussed the extension of the provisions of the ATBA to vessels not currently included. Both of these federal advisory bodies supported the extension of the ATBA applicability. The Olympic Coast National Marine Sanctuary has analyzed the population of vessels transiting the ATBA for the risk they pose to Sanctuary resources. The Sanctuary's analysis and further information on NOAA's proposal, including charts and reports, can be viewed at *http://www.ocnms.nos.noaa.gov/pubdocs/pars.html.*

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–30146 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110502A]

Endangered Species; File No. 1397

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Jeanette Wyneken, Florida Atlantic University, Department of Biological Sciences, 777 Glades Rd., Boca Raton, FL 33431, has applied in due form for a permit to take green sea turtles (*Chelonia mydas*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 27, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a 2–year permit to capture, sample, and release green sea turtles on shallow reefs in Palm Beach County, FL. The research is designed to examine the seasonal habitat utilization, abundance, and movements of green sea turtles in this region. Forty sea turtles will be captured by hand at night and transported to land for sampling. All turtles will be weighed, measured, photographed, and have stomach lavage performed. Captures will be limited to twice a month to minimize the affects of possible recapturing. Ten of the 40 turtles captured will also have a VHF transmitter attached to the carapace and a unique identification number painted on the carapace with white epoxy paint. Turtles will be released within 12 hours of capture and will be returned to site of capture. At the completion of the study, tagged turtles will be located, recaptured, the tag removed, and released.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: November 21, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–30134 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Weakfish Fishery; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to issue EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, NMFS (Director) has received EFP applications from the State of North Carolina to conduct experimental fishing operations otherwise restricted by regulations prohibiting the use of flynets to fish for weakfish in a closed area of the exclusive economic zone (EEZ) south of Cape Hatteras. The Director has made a preliminary determination that the EFP applications contain all the required information; that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Atlantic weakfish fishery under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act); and that the applications warrant further consideration.

A draft environmental assessment (EA) that addresses the impacts of the proposed study associated with the EFP applications has been prepared. This document requests public input in the form of written comments to NMFS relative to the issuance of EFPs to the State of North Carolina. If granted, these EFPs would authorize a flynet characterization study to be conducted by the North Carolina Division of Marine Fisheries in a closed area south of Cape Hatteras. Two participating flynet vessels, each with its own EFP and observer aboard, would conduct up to a total of 18 trips over each of two seasons, from 15 January through 1 April, in 2003 and 2004, south of Cape Hatteras, for a maximum of 36 trips. A third vessel would be deployed in the closed area for up to three (3) trips at the beginning of the study to test three proto-type turtle excluder devices (TEDs) developed by NMFS. An additional flynet vessel would test the proto-type TEDs in the area north of Cape Hatteras, where flynets are permitted to operate. This vessel would not require an EFP.

DATES: Written comments on the applications must be received on or before December 12, 2002.

ADDRESSES: Send comments to John H. Dunnigan, Director, Office of Sustainable Fisheries (F/SF), NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. The applications, related documents, including the draft EA, and copies of the regulations under which EFPs are issued may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Anne Lange 301–713–2334; FAX: 301–713–0596.

SUPPLEMENTARY INFORMATION: These EFPs are requested under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, and regulations at 50 CFR 697.22 concerning the conduct of activities that are otherwise prohibited by the regulations in this part. Since regulations under the Atlantic Coastal Act must be consistent with the national standards set forth in section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, EFPs requested under the Atlantic Coastal Act need to be addressed in the same manner as EFPs requested under the Magnuson-Stevens Act, and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

Currently, weakfish regulations at 50 CFR 697.7(a)(5) prohibit any person from fishing with a flynet in the Exclusive Economic Zone (EEZ) off North Carolina in a closed area south of Cape Hatteras, as defined by this regulation. This area was closed to flynetters in order to reduce the harvest of the recovering weakfish stock, especially the harvest of juvenile weakfish known to congregate in the closed area. In addition, 50 CFR 697.7(a)(1) and (2) prohibited fishing for, harvesting, possessing, or retaining weakfish less than 12 inches (30.5 cm), in the EEZ. Further, 50 CFR 697.7(a)(3) prohibited fishing for weakfish coastwide in the EEZ with a minimum mesh size less than 3 1/4–inch (8.3 cm) square stretched mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5 cm) diamond stretched mesh for trawls.

The North Carolina Division of Marine Fisheries (NCDMF) proposes to conduct a flynet characterization study, in cooperation with NMFS, with two flynet vessels using mesh at least as large as defined in the Atlantic States Marine Fisheries Commission's

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(Commission) Weakfish Fishery Management Plan Amendment 3 (Amendment 3), and at 50 CFR 697.7(a)(3), to collect information on the size and species composition of finfish caught in modified flynets in the closed area. The NCDMF and NMFS would assess the effects, including the species and size composition of the catch, of using larger mesh size nets in the North Carolina flynet fishery if it were to be allowed to resume operations south of Cape Hatteras. The mesh size used in the flynet fishery, prior to the 1997 closure of this area, was significantly smaller than is currently required. This information would permit NCDMF, the Commission, and NMFS to properly assess the potential impacts of reopening the closed area to flynets with larger minimum-mesh sizes after management goals have been met and the stock is declared to be restored.

In addition, this study would address concerns about the take of endangered sea turtles by flynet gear. A 1997 NMFS Biological Opinion (BO) determined that the flynet fishery may adversely affect, but is not likely to jeopardize the continued existence of endangered sea turtles. An informal Endangered Species Act (ESA) section 7 consultation on this proposal determined that the study would be in compliance with the 1997 BO, and that the study should include testing of TEDs previously developed by NMFS as part of the reasonable and prudent measures of the 1997 BO. A third flynet vessel would operate in the closed area, at the beginning of the study, and would carry NMFS gear technology experts who would test several proto-type TEDs, developed by NMFS, to determine feasibility and effectiveness of these devices in flynets. An additional vessel would also test the proto-type TEDs in the area north of Cape Hatteras.

The two vessels that test the TEDs would follow protocols determined by the NMFS gear experts deployed for that portion of the study. If an effective TED is found, the two vessels in the flynet characterization study would be equipped with a TED of the proper design. If NMFS determined that TEDs can not effectively be deployed in flynets, other measures (e.g., reduced tow time) would be used for the remainder of the study to reduce impacts on turtles and may be considered for implementation by all vessels using flynets. In any case, the study would be terminated if takes (lethal or non-lethal) of loggerhead or Kemp's ridley sea turtles exceeded one half of the numbers (20 and 2) allowed in the Incidental Take Statement of the 1997 BO (that is, 10 or 1, in any one year).

Additional terms of the study proposal relate to sample design or address concerns raised by the Commission's Weakfish Fishery Management Board and its Technical Committee. The study would be terminated if any cumulative, monthly sample yields juvenile or undersized fish in excess of 10 percent of the total catch for that month. If an annual cap of 175,000 lbs (79,380 kg) on landings of weakfish taken south of Cape Hatteras is reached, the study would end for that year.

The EFP application states that catches made by the vessel that tests TEDs south of Cape Hatteras would be counted towards this cap. However, based on a request by NCDMF, NMFS is reconsidering this condition of the EFP. The TED work is separate from the flynet characterization study and NCDMF does not want to compromise the continuation and completion of that study, if during development and testing, the TEDs result in large amounts of bycatch. Multiple tows made on a single trip would be spatially separated by at least one (1) nautical mile to insure maximum geographic coverage and prevent directing effort on one specific school of fish. The entire contents of each tow on an individual trip would be kept separate and processed separately at the dock. NMFS observers would be required on each trip to monitor fishing activity and to record global positioning system (GPS) coordinates for each tow, interactions with any threatened or endangered species, tow time, depth, water temperature, air temperature, date, and time. NMFS observers would also record net dimensions and design specifications to document successful designs, if a net is found to effectively avoid catches of undersized fish.

In order to determine the ability of these flynets to minimize bycatch of undersized fish, unculled catches would be sorted by tow for species composition and weight by market category, and sub-samples would be measured for length frequency. Regulatory discards, including sub-legal weakfish, and non-marketable species, would be sorted, weighed and a sub-sample would be taken for length frequency. These fish would be properly disposed of, and would not be sold. ESA and other protected species would be handled as required by law; observers would record and report all discarded red drum and striped bass.

Analysis of the study data would be coordinated by NCDMF and NMFS staff and the Commission would be briefed through annual and final reports that would provide maps of the sample areas overlaid with the location of each tow, species encountered, total weights, numbers, and length frequency distributions of selected species. The final report would also summarize the findings from each year and attempt to relate variability in catches and species composition with environmental variables. The report would also summarize all interactions with sea turtles and include a discussion on the use of TEDs in the flynet fishery.

The EFPs would exempt up to three vessels from the requirements of the Atlantic weakfish regulations according to the provisions at 50 CFR 600.745 and 697.22, as follows: (1) Prohibiting of the use of flynets in the closed area of the EEZ off North Carolina as defined at § 697.7(a)(5); and (2) fishing for, harvesting, possession or retention of any weakfish less than 12 inches (30.5 cm) in total length from the EEZ as specified at § 697.7(a)(1) and (2) for data collection purposes.

The draft EA prepared for the proposed flynet characterization study found that no significant environmental impacts would result from the proposed action.

Dated: November 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30131 Filed 11–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Notice of Wetlands Involvement for the Transfer of Land at the Miamisburg Closure Project

AGENCY: Department of Energy (DOE), Ohio Field Office, Miamisburg Closure Project (MCP).

ACTION: Notice of wetlands involvement.

SUMMARY: This is to give notice of DOE's proposal to transfer ownership of approximately 57 acres of property of the MCP site, located approximately ten (10) miles southwest of Dayton, Ohio. The ownership of the subject property would be transferred to a non-Federal entity. A small portion (approximately 0.03 acre) of the property is classified as wetlands (*i.e.*, those areas that are inundated by surface or groundwater with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction). In accordance with 10 CFR 1022.5(d), DOE would identify those uses of a wetland resource that are restricted under Federal, state and local wetlands regulations, and would make the future property owner aware of those restricted uses.

DATES: Written comments on the proposed action must be received by the DOE at the following address on or before December 12, 2002.

ADDRESSES: For further information on the proposed action, including a site map and/or a copy of the Wetlands Assessment, contact: Ms. Sue Smiley, U.S. Department of Energy, Miamisburg Closure Project, P.O. Box 66, Miamisburg, OH 45343–0066, Phone: 937–865–3984.

FURTHER INFORMATION: For further information on general DOE wetland and floodplain environmental review requirements, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Phone: 202–586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed action would support ultimate disposition of the MCP site. The MCP site has been determined to be excess to DOE's long-term needs. This decision is supported by the Nonnuclear Consolidation Environmental Assessment (DOE/EA–0792) and associated Finding of No Significant Impact (FONSI) dated September 14, 1993, and the Memorandum of Understanding (MOU) between the DOE Defense Programs, Environmental Management, and Nuclear Energy Programs dated August 1, 1995. In order to meet the programmatic need to disposition land determined to be excess to DOE's needs, ownership of the MCP site will be transferred to a non-Federal entity. The MCP property will be transferred in phases, since certain parcels of land are still in use by DOE or are not yet suitable for transfer. This notice addresses that portion of the "Phase I" parcel of land at the MCP site which is classified as wetlands. The subject wetland covers approximately 0.03 acre of the Phase I parcel, and it is an isolated wetland contained entirely within the boundaries of the Phase I parcel.

Issued in Miamisburg, Ohio, on November 19, 2002.

Jack R. Craig,

Acting Manager, Ohio, Field Office.

[FR Doc. 02–30094 Filed 11–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–61–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 21, 2002.

Take notice that on November 19, 2002, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets listed in Appendix A to the filing, proposed an effective date of November 1, 2002.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS, respectively. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30214 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–12–000]

Egan Hub Partners, L.P.; Notice of Application

November 21, 2002.

Take notice that on November 5, 2002, Egan Hub Partners, L.P. (Egan Hub), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket an application, pursuant to Section 7(c) of the Natural Gas Act (NGA) and the Commission's regulations thereunder, for a certificate of public convenience and necessity authorizing the expansion of its existing storage facility at the Jennings Salt Dome in Acadia Parish, Louisiana (Egan Storage Facility Expansion). This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Currently, Egan Hub has three salt caverns at its storage facility. Egan Hub seeks authorization to expand its existing salt dome storage facility working gas capacity from 16.0 Bcf to 24.0 Bcf and its maximum aggregate operating capacity from 21.0 Bcf to 31.5 Bcf. No new surface facilities are proposed. In addition, Egan Hub states that the proposed increase in operating capacity will not affect Egan Hub's existing maximum deliverability capability of 1,500 MMcfd, nor will it change the existing maximum injection capability of 800 MMcfd.

Egan Hub also proposes to continue charging market-based rates. As a result, Egan Hub requests waivers of certain of the Commission's regulations that are

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required when an applicant seeks cost-based rate authority.

Egan Hub states that it requests approval of its application on or before January 22, 2003, in order to meet the anticipated future market needs of its customers.

Any questions regarding this application should be directed to Steven E. Tillman, General Manager—Regulatory Affairs, Egan Hub Partners, L.P., P.O. Box 1642, Houston, Texas 77251–1642 at (713) 627–5113 or by fax at (713) 627–5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 11, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30205 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–2–000]

Enogex Inc.; Notice of Petition for Rate Approval

November 21, 2002.

Take notice that on November 15, 2002, Enogex Inc. (Enogex) submitted for filing a revised fuel factor for its Enogex System for Fuel Year 2003 as calculated under the terms of Enogex's filed fuel tracker. Enogex seeks an effective date of January 1, 2003.

Enogex states that it is serving notice of the filing and the revised fuel percentage on all current shippers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed with the Secretary of the Commission on or before December 6, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call FERC Online Support at *FERCOnLine@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30208 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–3–000]

Enogex Inc.; Notice of Petition for Rate Approval

November 21, 2002.

Take notice that on November 15, 2002, Enogex Inc. (Enogex) submitted for filing a revised fuel factor for its Palo Duro System for Fuel Year 2003 as calculated under the terms of Enogex's filed fuel tracker.

Enogex seeks an effective date of January 1, 2003. Enogex states that it is serving notice of the filing and the revised fuel percentage on all current shippers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of Enogex petition, Enogex proposed maximum rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed with the Secretary of the Commission on or before December 6, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call FERC Online Support at *FERCOnLine@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30209 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–80–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 21, 2002.

Take notice that on November 19, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective December 1, 2002:

Fifty-Fifth Revised Sheet No. 8A
Forty-Seventh Revised Sheet No. 8A.01
Forty-Seventh Revised Sheet No. 8A.02
Fifth Revised Sheet No. 8A.04
Fiftieth Revised Sheet No. 8B
Forty-Third Revised Sheet No. 8B.01
First Revised Sheet No. 8B.02

FGT states that in Docket No. RP02–513–000 filed on August 29, 2002, FGT filed to establish a Base Fuel Reimbursement Charge Percentage ("Base FRCP") of 3.01 % to become effective for the six-month Winter Period beginning October 1, 2002. In the instant filing, FGT is filing a flex adjustment of (0.26%) to be effective December 1, 2002, which, when combined with the Base FRCP of 3.01% results in an Effective Fuel Reimbursement Charge Percentage of 2.75%. FGT states that this filing is necessary because FGT is currently experiencing lower fuel usage than is being recovered in the currently effective FRCP of 3.01%. Decreasing the Effective FRCP will reduce FGT's overrecovery of fuel and reduce the Unit Fuel Surcharge in the next Winter Period.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. FGT states that the instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30213 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–4–000]

Lee 8 Storage Partnership; Notice of Petition for Rate Approval

November 21, 2002.

Take notice that on November 15, 2002, Lee 8 Storage Partnership (Lee 8) pursuant to Section 284.123(b)(2) of the Commission's Regulations, filed a petition requesting that the Commission approve its rates pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978. Lee 8 proposes system-wide maximum rates of $4.8636 per Dt of

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deliverability and $0.0486 per Dt of capacity. In addition, Lee 8 states that it will charge 0.59% of the injected volumes and 0.59% of the withdrawal volumes as an allowance for compressor fuel and lost-and-unaccounted-for gas on Lee 8's system.

Lee 8's petition states that Lee 8 is a Hinshaw pipeline exempt from Commission regulation under Section 1(c) of the NGA, with facilities located wholly within the state of Michigan.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of Lee 8's potition, Lee 8's proposed maximum rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before December 6, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistant, please call FERC Online Support at *FERCOnLine@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30210 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–25–000]

NSTAR Electric & Gas Corporation, et al. v. *New England Power Pool;* Notice of Complaint

November 21, 2002.

Take notice that on November 19, 2002, NSTAR Electric & Gas Corporation, Central Vermont Public Service Corporation, PPL EnergyPlus, LLC, The United Illuminating Company, UNITIL Power Corp., and Fitchburg Gas and Electric Light Company filed a Complaint against the New England Power Pool. The complaint alleges that the NEPOOL Participants Committee failed to restore credits relating to the capability on the Hydro Quebec Interconnection consistent with prior Commission Orders.

Copies of said filing have been served upon NEPOOL Participants and the ISO New England, Inc.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30206 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–32–001]

Stingray Pipeline Company, L.L.C.; Notice of Tariff Filing

November 21, 2002.

Take notice that on November 14, 2002, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective on December 1, 2002.

Substitute First Revised Sheet No. 186

Stingray states that this filing is being made to address the subject of an out-of-time protest filed by the Indicated Shippers in this proceeding on November 12, 2002.

Stingray states that a copy of this filing has been served upon its customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30212 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–004]

Viking Gas Transmission Company; Notice of Compliance Filing

November 21, 2002.

Take notice that on November 18, 2002 Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to become effective July 1, 2002 and the tariff sheets listed on Appendix B to the filing to become effective October 1, 2002 subject to the conditions set forth in Viking's filing.

Viking states that the purpose of this filing is to comply with the November 8, 2002 Letter Order issued in Docket No. RP02–132–000.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30211 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–18–000, et al.]

Athens Generating Company, L.P., et al.; Electric Rate and Corporate Filings

November 20, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Athens Generating Company, L.P.; Covert Generating Company, LLC; Harquahala Generating Company, LLC; Millennium Power Partners, L.P.

[Docket No. EC03–18–000]

Take notice that on November 15, 2002, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC, and Millennium Power Partners, L.P., each of which is an indirect, wholly-owned subsidiary of PG&E National Energy Group, Inc. (PG&E NEG) (and which may be referred to hereafter individually as Applicant or jointly as Applicants) tendered for filing, pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b (2000), and part 33 of the Commission's regulations, 18 CFR part 33 (2002), an application for authorization to dispose of jurisdictional facilities. More specifically, PG&E NEG seeks approval to effectuate an internal corporate reorganization with respect to some or all of the Applicants and then transfer all of its ownership interests in the Applicants to one or more existing or to-be-formed companies that are direct or indirect wholly-owned subsidiaries of the lenders to the Applicants and/or to their upstream owners.

Comment Date: December 6, 2002.

2. Hermiston Generating Company, L.P.

[Docket No. ER01–2159–003]

Take notice that on November 18, 2002, Hermiston Generating Company, LP (Applicant), an indirect, wholly-owned subsidiary of PG&E National Energy Group, Inc. (PG&E NEG) tendered for filing, information that reflects a departure from the characteristics relied upon by the Commission in approving market-based pricing. Specifically, Applicant has submitted information concerning a potential sale of a portion of the direct or indirect upstream ownership of PG&E NEG to a direct or indirect wholly-owned subsidiary of Sumitomo Corporation.

Comment Date: December 9, 2002.

3. The Empire District Electric Company

[Docket No. ER03–167–000]

Take notice that on November 18, 2002, The Empire District Electric Company (Empire) submitted a revised attachment C to its proposal to cancel parts of its Open Access Transmission Tariff (OATT) and to substitute an Ancillary Services Form of Agreement, which was filed on November 6, 2002. The revised attachment C contains a list of entities to be served with the proposal and should replace the version of attachment C that was initially filed on November 6, 2002. As Empire no longer provides transmission under its existing OATT, its proposed termination of the Empire OATT will not impact any customers. Empire requests waiver to allow its proposal to take effect on January 6, 2003, as initially requested.

Comment Date: December 9, 2002.

4. California Independent System Operator Corporation

[Docket No. ER03–187–000]

Take notice that on November 18, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement between the ISO and Termoeleéctrica de Mexicali S. de R.L. de C.V. (TDM) for acceptance by the Commission.

The ISO states that this filing has been served on TDM and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective November 14, 2002.

Comment Date: December 9, 2002.

5. Aquila, Inc.

[Docket No. ER03–188–000]

Take notice that on November 18, 2002, Aquila, Inc. (Aquila), filed a notice of termination of the June 5, 2001, Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Aquila and El Paso Merchant Energy. Aquila requests that the termination be made effective on September 30, 2002.

Comment Date: December 9, 2002.

6. Aquila, Inc.

[Docket No. ER03–189–000]

Take notice that on November 18, 2002, Aquila, Inc. (Aquila), filed a notice of termination of the April 17, 2000, Transmission Service Agreement for Short-Term Firm Point-to-Point Transmission Service between Aquila and El Paso Merchant Energy. Aquila requests that the termination be made effective on October 19, 2002.

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Comment Date: December 9, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30079 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 477–024]

Notice of Applications for Amendment of License and Surrender of License and Settlement Agreement and Decommissioning Plan and Soliciting Comments, Motions to Intervene, and Protests

November 24, 2002.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a: *Application Type:* Amendment of License, Surrender of License, Settlement Agreement and Decommissioning Plan.

b: *Project No.:* 477–024.

c: *Date Filed:* November 12, 2002.

d: *Applicant:* Portland General Electric Company (PGE).

e: *Name of Project:* Bull Run Hydroelectric Project.

f: *Location:* On the Sandy, Little Sandy, and Bull Run Rivers, near the Town of Sandy, Clackamas County, Oregon. The project is located on lands administered by the Forest Service (Mt. Hood National Forest) and the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r); Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h: *Applicant Contact:* Julie A. Keil, Director, Hydro Licensing and Water Rights, PGE, 121 SW Salmon Street, Portland, Oregon 97204, 503–464–8864.

i. *FERC Contact:* Alan Mitchnick, 202–502–6074; *alan.mitchnick@ferc.gov.*

j. *Cooperating agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies wishing to request cooperating status should follow the instructions for filing documents described in item k below.

k. *Deadline for filing comments, motions to intervene, and protests and requests for cooperating agency status:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, motions to intervene, and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site*http://www.ferc.gov*under the "e-Filing" link.

l. *Amendment Application:* PGE proposes to: (i) Extend the term of the license from November 16, 2004, to November 16, 2017; (ii) continue generation until removal of the Little Sandy dam in 2008; (iii) implement a program of geomorphological and water quality monitoring continuing until Marmot dam removal; (iv) continue operation of the fish ladder and sorting facility at Marmot dam until Marmot dam removal; and (v) modify the operation of the diversion canal at Marmot dam to provide protection of threatened fish species from November 2004 until November 2007.

Surrender Application: The Project works include: Marmot dam, located at River Mile (RM) 30 on the Sandy River; a 3.1-mile-long series of canals and tunnels leading from Marmot dam to the Little Sandy River just upstream of the Little Sandy diversion dam; the Little Sandy diversion dam, located at RM 1.7 on the Little Sandy River; a 2.8-mile-long box flume leading from the Little Sandy diversion dam to the manmade forebay, Roslyn Lake; two 1,200 foot penstocks; and a powerhouse containing four generators with a total capacity of 22 megawatts. The powerhouse discharges to the Bull Run River 1.5 miles above its confluence with the Sandy River at RM 18.4.

PGE proposes the complete removal of both Marmot and the Little Sandy diversion dams, starting in 2007, along with the dismantling of their associated water conveyance structures. In addition, Roslyn Lake would be drained, the powerhouse generating equipment would be disabled, and the powerhouse structure would be demolished. All PGE-owned lands within the existing project boundary would be conveyed to the Western Rivers Conservancy once the license is surrendered and the project is removed, and used to protect and conserve fish and wildlife habitat, public access, and recreation opportunities in the Sandy River Basin. Project water rights would be relinquished and would revert to instream use.

Settlement Agreement and Decommissioning Plan: PGE filed a settlement agreement concerning the removal of the project. The signatories include PGE, 10 federal, state, and local agencies, and 12 non-governmental organizations. The agreement includes a decommissioning plan consistent with the applications for amendment of license and surrender.

m. Copies of the applications and settlement agreement are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30207 Filed 11–26–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–3]

Interagency Project To Clean Up Open Dumps on Tribal Lands: Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Tribal Solid Waste Interagency Workgroup (Workgroup) is soliciting proposals for its fifth year of the Tribal Open Dump Cleanup Project (Cleanup Project). Since FY99, the Workgroup has funded approximately $8.8 million in projects. In FY02, the Interagency Workgroup made approximately $2.2 million available to fully or partially fund 27 selected projects, for an average of approximately $80,000 a proposal. A similar amount of funding is being projected for FY03. Each of these projects will result in the closure or upgrade of one or more open dumps located on tribal lands. The Cleanup Project is part of a federal effort to help tribes comprehensively address their solid waste needs. The purpose of the Cleanup Project is to assist with closing or upgrading tribal high-threat waste disposal sites and providing alternative disposal and integrated solid waste management. The Workgroup was established in April 1998 to coordinate federal assistance to tribes in bringing their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR part 258). Current Workgroup members include representatives from the U.S. Environmental Protection Agency (EPA); the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); the Bureau of Land Management; the departments of Agriculture, Defense, and Housing and Urban Development.

Criteria: Eligible recipients of assistance under The Cleanup Project include federally recognized tribes and intertribal consortiums. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals for this project may be found in the Request for Proposals package.

DATES: For consideration, proposals must be received by close of business on January 31, 2003. Proposals postmarked on or before but not received by the closing date will not be considered. Please do not rely solely on overnight mail to meet the deadlines.

FOR FURTHER INFORMATION CONTACT: Copies of the Request for Proposals package may be downloaded from the Internet at <www.epa.gov/tribalmsw> by clicking on "Recent Additions." Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Charles Bearfighter Reddoor 703–308–8245, Christopher Dege, 703–308–2392, or Tonya Hawkins, 703–308–8276.

IHS—Steve Aoyama, 301–443–1046.

BIA—Debbie McBride, 202–208–3606.

Dated: November 4, 2002.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 02–30116 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0317; FRL–7281–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0317, must be received on or before December 27, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Geri McCann, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0716; e-mail address; mccann.geri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

Pesticide Manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether

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you or your business may be affected by this action, you should carefully examine the applicability provisions in Section II of this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0317. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legalholidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets: You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public comments, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0317. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0317. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0317.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0317. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Products

File symbol: 56228–GU. *Applicant*: United States Department of Agriculture, Animal Plant and Health Inspection Service, 4700 River Road, Unit 152, Riverdale, MD 20737. *Product name*: Acetaminophen For Brown Treesnake Control. *Product type*: Pesticide. *Active ingredient*: Contains 72.7% of the new active ingredient acetaminophen. *Proposed classification/Use*: For control and reduction of brown treesnake abundance on Guam and the Northern Mariana Islands and to protect against brown treesnakes being exported to Hawaii or the Continental United States as hitchhikers in cargo.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 18, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–30122 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0310; FRL–7280–5]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Bromuconazole Technical containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0310. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m.,

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Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number andspecify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of bromuconazole, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of bromuconazole when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of May 10, 1994 (59 FR 24151) (FRL–4770–4), which announced that Rhone-Poulenc Ag Company had submitted an application to register the pesticide product Bromuconazole Technical (EPA File Symbol 264–LUT), containing bromuconazole at 97.0%, an active ingredient not included in any previously registered product.

The application was approved on September 30, 2002, as Bromuconazole Technical, a manufacturing use product for manufacturing, formulating and repackaging use (EPA Registration Number 264–547).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–30124 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0313; FRL–7280–9]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period July 1, 2002 until September 30, 2002 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0313. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. "Quarantine" and "public health" exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

Arizona
Department of Agriculture
Specific: EPA authorized the use of metolachlor on spinach to control broadleaf weeds; September 6, 2002 to May 15, 2003. Contact: (Andrew Ertman)

Arkansas
State Plant Board
Specific: EPA authorized the use of emamectin benzoate on cotton to control beet armyworms and tobacco budworms; July 12, 2002 to September 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of spinosad on pastureland and rangeland to control fall armyworms and true armyworms; July 15, 2002 to December 31, 2002. Contact: (Andrew Ertman)

California
Environmental Protection Agency, Department of Pesticide Regulation
Specific: EPA authorized the use of fenhexamid on Bosc and Asian pears to control gray mold; July 16, 2002 to October 1, 2002. Contact: (Barbara Madden)
EPA authorized the use of imidacloprid on commercial stone fruit, almonds, and blueberries to control the glassy-winged sharpshooter; June 22, 2002 to June 22, 2003. Contact: (Andrew Ertman)
EPA authorized the use of carbofuran on cotton to control aphids; August 2, 2002 to October 30, 2002. Contact: (Dan Rosenblatt)
EPA authorized the use of zinc phosphide on alfalfa to control California and montane voles; September 9, 2002 to May 31, 2003. Contact: (Libby Pemberton)

Colorado
Department of Agriculture
Crisis: On June 4, 2002, for the use of sulfentrazone on potatoes to control broadleaf weeds. This program ended on July 1, 2002. Contact: (Andrew Ertman)
On June 20, 2002, for the use of metsulfuron-methyl on sorghum to control triazine-resistant broadleaf weeds. This program ended on August 25, 2002. Contact: (Andrew Ertman)
On June 6, 2002, for the use of permethrin on turnip greens to control flea beetles. This program ended on October 15, 2002. Contact: (Andrea Conrath)

Georgia
Department of Agriculture
Denial: On July 18, 2002, EPA denied the use of tebuconazole on cucurbits to control gummy stem blight disease. This request was denied because of the Agency's inability at this time to reach a "reasonable certainty of no harm" finding regarding health effects which may result if this use were to occur. Contact: (Barbara Madden).
Specific: EPA authorized the use of diuron on catfish ponds to control blue-green algae; September 10, 2002 to September 10, 2003. Contact: (Libby Pemberton)

Idaho
Department of Agriculture
Crisis: On June 21, 2002, for the use of azoxystrobin on chickpeas to control *Ascochyta* blight. This program ended on September 30, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to September 30, 2002. Contact: (Libby Pemberton)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on wheat to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on barley to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)

Kansas
Department of Agriculture
Crisis: On July 8, 2002, for the use of fluroxypur on grain sorghum to control kochia. This program ended on July 23, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of bifenthrin on sorghum grown for seed to control banks grass mite; August 16, 2002 to September 30, 2002. Contact: (Andrea Conrath)

Louisiana
Department of Agriculture and Forestry
Crisis: On May 3, 2002, for the use of bifenthrin on sweet potatoes to control soil beetles and sweet potato weevils. This program is expected to end on November 30, 2002. Contact: (Andrea Conrath)
On May 6, 2002, for the use of sulfentrazone on sugarcane to control morning glories. This program is expected to end on December 31, 2002. Contact: (Andrew Ertman)
On May 31, 2002, for the use of methoxyfenozide on field corn to control Southwestern corn borer and Sugarcane borer. This program ended on August 15, 2002. Contact: (Barbara Madden)
Denial: On July 18, 2002, EPA denied the use of flumioxazin on cotton to control weeds. This request was denied because it did not meet the criteria of an urgent, non-routine situation based on

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the availability of registered alternatives. Contact: (Libby Pemberton).
Specific: EPA authorized the use of sulfentrazone on sugarcane to control morning glories; May 6, 2002 to December 31, 2002. Contact: (Andrew Ertman)
EPA authorized the use of carbofuran on rice to control rice weeil; June 19, 2002 to July 31, 2002. This request was originally granted due to reported failures of the registered alternative in controlling rice weevils. However, on July 24, 2002 this specific emergency exemption was revoked after additional information submitted to the Agency indicated the registered alternative had not failed. Additionally, EPA received compelling feedback from the public in response to the solicitation of comments about this program from the public in a June 27, 2002, **Federal Register** notice. The public, governmental organizations, and non- governmental organizations, overwhelmingly expressed their opposition to any ongoing use of granular carbofuran under this section 18. Contact: (Daniel Rosenblatt).
EPA authorized the use of methoxyfenozide on field corn to control Southwestern corn borer and Sugarcane-borer; July 5, 2002 to August 15, 2002. Contact: (Barbara Madden)
EPA authorized the use of lambda-cyhalothrin on sugarcane to control sugarcane borers; July 12, 2002 to September 15, 2002. Contact: (Andrew Ertman)
EPA authorized the use of bifenthrin on sweet potatoes to control soil beetles and sweet potato weevils; July 19, 2002 to November 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of tebufenozide on sweet potatoes to control beet armyworms; July 25, 2002 to October 31, 2002. Contact: (Andrew Ertman)

Maryland
Department of Agriculture
Crisis: On August 6, 2002, for the use of diquat on private ponds to control weeds associated with the invasive snakehead fish. This program ended on October 31, 2002. Contact: (Andrea Conrath)
Specific: EPA authorized the use of metolachlor on spinach to control broadleaf weeds; September 6, 2002 to April 30, 2003. Contact: (Andrew Ertman)

Massachusetts
Massachusetts Department of Food and Agriculture
Crisis: On June 7, 2002, for the use of indoxacarb on cranberry to control weevils. This program ended on October 1, 2002. Contact: (Andrea Conrath)
Specific: EPA authorized the use of imidacloprid on blueberries to control oriental beetles; June 24, 2002 to August 15, 2002. Contact: (Andrew Ertman)
EPA authorized the use of imidacloprid on strawberries to control white grubs; July 1, 2002 to August 7, 2002. Contact: (Andrew Ertman)

Michigan
Michigan Department of Agriculture
Specific: EPA authorized the use of imidacloprid on blueberries to control Japanese beetle grubs and adults; June 11, 2002 to September 30, 2002. Contact: (Andrew Ertman)

Minnesota
Department of Agriculture
Specific: EPA authorized the use of lambda-cyhalothrin on wild rice to control rice worms; July 25, 2002 to September 10, 2002. Contact: (Andrew Ertman)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)

Mississippi
Department of Agriculture and Commerce
Denial: On July 18, 2002 EPA denied the use of flumioxazin on cotton to control weeds. This request was denied because it did not meet the criteria of an urgent, non-routine situation based on the availability of registered alternatives. Contact: (Libby Pemberton).
Specific: EPA authorized the use of emamectin benzoate on cotton to control beet armyworms and tobacco budworms; July 12, 2002 to September 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of bifenthrin on sweet potatoes to control soil beetles; July 19, 2002 to September 30, 2002. Contact: (Andrea Conrath)
EPA authorized the use of tebufenozide on sweet potatoes to control beet armyworms; August 29, 2002 to October 15, 2002. Contact: (Andrew Ertman)

Montana
Department of Agriculture
Crisis: On June 26, 2002, for the use of azoxystrobin on chickpeas to control *Ascochyta* blight. This program ended on August 15, 2002. Contact: (Libby Pemberton)
On July 8, 2002, for the use of azoxystrobin on safflower to control *Alternaria* leaf spot. This program ended on August 15, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of lambda-cyhalothrin on barley to control the Russian wheat aphid and the cereal leaf beetle; June 24, 2002 to July 30, 2002. Contact: (Andrew Ertman)
EPA authorize the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to August 31, 2002. Contact: (Libby Pemberton)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on wheat to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on barley to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)

Nebraska
Department of Agriculture
Crisis: On May 21, 2002, for the use of sulfentrazone on potatoes to control broadleaf weeds. This program ended on July 1, 2002. Contact: (Andrew Ertman)
On July 19, 2002, for the use of azoxystrobin on chickpeas to control *Ascochyta* blight. This program ended on August 2, 2002. Contact: (Libby Pemberton)

Nevada
Department of Agriculture
Specific: EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; September 10, 2002 to August 31, 2003. Contact: (Andrew Ertman)

New Jersey
Department of Environmental Protection
Crisis: On June 3, 2002, for the use of propyzamide on cranberries to control dodder. This program is expected to end on December 15, 2002. Contact: (Andrew Ertman)
Specific: EPA authorized the use of metolachlor on spinach to control broadleaf weeds; June 3, 2002 to May 1, 2003. Contact: (Andrew Ertman)
EPA authorized the use of halosulfuron-methyl on asparagus to control yellow nutsedge; July 5, 2002 to December 1, 2002. Contact: (Barbara Madden)
EPA authorized the use of propyzamide on cranberries to control dodder; July 18, 2002 to December 15, 2002. Contact: (Andrew Ertman)

North Carolina
Department of Agriculture
Crisis: On August 12, 2002, for the use of tebufenozide on sweet potatoes to control beet armyworms. This program is expected to end on November 15, 2002. Contact: (Andrew Ertman)
Specific: EPA authorized the use of diuron on catfish ponds to control blue-green algae; July 12, 2002 to November 30, 2002. Contact: (Libby Pemberton)
EPA authorized the use of tebufenozide on sweet potatoes to control beet armyworms; August 12, 2002 to November 15, 2003. Contact: (Andrew Ertman)

North Dakota
Department of Agriculture
Crisis: On July 10, 2002, for the use of azoxystrobin on safflower to control *Alternaria* leaf spot. This program ended on August 15, 2002. Contact: (Libby Pemberton)
On July 30, 2002, for the use of zeta-cypermethrin on flax to control grasshoppers. This program ended on September 15, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to August 31, 2002. Contact: (Libby Pemberton)

Oregon
Department of Agriculture
Specific: EPA authorized the use of fludioxonil on peaches to control brown rot, gray mold, and *Rhizopus* rot; July 2, 2002 to September 30, 2002. Contact: (Andrew Ertman)
EPA authorized the use of fludioxonil on cherries to control brown rot, gray mold, and *Rhizopus* rot; July 2, 2002 to August 15, 2002. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on wheat to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on barley to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of ethoprop on baby mint to control garden symphylan; August 19, 2002 to September 15, 2002. Contact: (Dan Rosenblatt)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)

Pennsylvania
Department of Agriculture
Specific: EPA authorized the use of sulfentrazone on strawberries to control common groundsel; June 26, 2002 to December 15, 2002. Contact: (Andrew Ertman)

South Dakota
Department of Agriculture
Specific: EPA authorized the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to August 31, 2002. Contact: (Libby Pemberton)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on stored grains to control the lesser grain borer; July 24, 2002 to July 17, 2003. Contact: (Andrew Ertman)

Tennessee
Department of Agriculture
Specific: EPA authorized the use of carbofuran on cotton to control aphids; August 2, 2002 to October 30, 2002. Contact: (Dan Rosenblatt)

Texas
Department of Agriculture
Specific: EPA authorized the use of fenbuconazole on grapefruit to control greasy spot disease; August 9, 2002 to August 9, 2003. Contact: (Andrea Conrath)
EPA authorized the use of bifenthrin on sorghum grown for seed to control banks grass mite; August 16, 2002 to August 16, 2003. Contact: (Andrea Conrath)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of diuron on catfish ponds to control blue-green algae; September 10, 2002 to September 10, 2003. Contact: (Libby Pemberton)

Utah
Department of Agriculture
Crisis: On May 14, 2002, for the use of diflubenzuron on alfalfa to control grasshoppers and crickets. This program ended on October 31, 2002. Contact: (Andrea Conrath)
Specific: EPA authorized the use of diflubenzuron on alfalfa to control grasshoppers and crickets; September 13, 2002 to October 31, 2002. Contact: (Andrea Conrath)

Virginia
Department of Agriculture and Consumer Services
Specific: EPA authorized the use of tebufenozide on grapes to control Grape berry moth; July 5, 2002 to October 1, 2002. Contact: (Barbara Madden)

Washington
Department of Agriculture
Crisis: On June 21, 2002, for the use of azoxystrobin on chickpeas to control *Ascochyta* blight. This program ended on September 30, 2002. Contact: (Libby Pemberton)
Specific: EPA authorized the use of azoxystrobin on chickpeas to control *Ascochyta* blight; July 1, 2002 to September 30, 2002. Contact: (Libby Pemberton)
EPA authorized the use of zinc phosphide on timothy and timothy legume mixtures to control vole complex; July 25, 2002 to May 1, 2003. Contact: (Libby Pemberton)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on wheat to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of cyfluthrin and chlorpyrifos-methyl on barley to control the lesser grain borer; August 1, 2002 to July 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; August 31, 2002 to August 31, 2003. Contact: (Andrew Ertman)

B. Federal Departments and Agencies

Agriculture Department
Animal and Plant Health Inspector Service
Quarantine: EPA authorized the use of acetominophen in Guam and the Commonwealth of Northern Mariana Islands to control the invasive brown tree snake; July 17, 2002, to July 17, 2005. Contact: (Andrea Conrath)

Defense Department
Quarantine: EPA authorized the use of paraformaldehyde on United States Army, Medical Research Institute of Infectious Diseases (USAMRIID) facility to control infectious microorganisms from containment areas; July 24, 2002, to July 24, 2005. Contact: (Libby Pemberton)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

FR Doc. 02–30123 Filed 11–26–02; 8:45 am
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–1]

The QTRACER2 Program for Tracer-Breakthrough Curve Analysis for Tracer Tests in Karst Aquifers and Other Hydrologic Systems; and A Lexicon of Cave and Karst Terminology With Special Reference to Environmental Karst Hydrology

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of two final reports and CD–ROMs.

SUMMARY: This notice announces the availability of two final reports, The QTRACER2 Program for Tracer-Breakthrough Curve Analysis for Tracer Tests in Karst Aquifers and Other Hydrologic Systems (EPA/600/R–02/001, May 2002, which supercedes EPA/600/R–98/156a and 156b, February 1999), and A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology (EPA/600/R–02/003, February 2002, which supercedes EPA/600/R–99/006). These reports were prepared by the U.S.

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Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

The QTRACER2 Program for Tracer-Breakthrough Curve Analysis for Tracer Tests in Karstic Aquifers and Other Hydrologic Systems is a detailed users manual with a CD–ROM. QTRACER2 takes basic input data obtained at the start and finish of a hydrologic tracer test and performs the basic calculations (*e.g.*, numerical integrations necessary for extracting critical hydraulic and geometric information about the flow system under investigation). The executable code, source code, additional related programs, and several example data files are all contained on a CD–ROM. QTRACER2 is an update of the previously released QTRACER to run under Windows with considerable mouse support, including some minor bug fixes and expanded analysis capabilities. For example, short- and long-term pulse tracer releases and continuous tracer releases can now be adequately addressed by QTRACER2.

A Lexicon of Cave and Karst Terminology with Special Reference to Environmental Karst Hydrology is a substantial listing and cross-referencing of major and minor karst-related terminology. This updated version contains some corrections to the previous version and includes numerous biological and ecological terms that were not included in the original release. It includes numerous foreign terms because so much of the literature is developed in other countries and often published in somewhat unknown journals.

DATES: These documents will be available November 27, 2002.

ADDRESSES: These documents are available electronically through the NCEA Web site at (www.epa.gov/ncea). A limited number of paper copies and CDs will be available from the EPA's National Service Center for Environmental Publications (NSCEP), PO Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695; or via the Internet at *http://www.epa.gov/NCEPIhome/orderpub.html*). Please provide your name, mailing address, the title, and EPA number of the requested publication when ordering from NSCEP. Copies may also be purchased from the National Technical Information Service (NTIS) in Springfield, Virginia; telephone: 1–800–553–NTIS[6847] or 703–605–6000; facsimile: 703–321–8547. When ordering from NTIS please provide the following numbers: PB2002–107662 (for QTRACER2) and PB2002–107663 (Lexicon).

FOR FURTHER INFORMATION CONTACT: For further information, please contact Malcolm Field (202–564–3279) mailing address: National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; facsimile: 202–565–0079; e-mail: *field.malcolm@epa.gov*.

Dated: November 17, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–30119 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7392–9]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of CSS International Corporation ("Settling Party") for response costs incurred and to be incurred at the Malvern TCE Superfund Site, East Whiteland and Charlestown Townships, Chester County, Pennsylvania, relating to the Malvern TCE Superfund Site ("Site").

DATES: Comments must be provided by December 27, 2002.

ADDRESSES: Comments should be addressed to Suzanne Canning, Docket Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and should refer to the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Joan A. Johnson (3RC41), 215/814–2619, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

SUPPLEMENTARY INFORMATION: Notice of *de minimis* Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Malvern TCE Superfund Site, in East Whiteland Chester County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice.

The Settling Party has agreed to pay $100 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. This amount to be paid by the Settling Party was based upon EPA's review of financial information relating to the Settling Party and a determination by EPA that the Settling Party has a limited ability to pay monies to settle EPA's claims. Monies collected from the Settling Party will be applied towards past and future response costs incurred by EPA or PRPs performing work at or in connection with the Site.

EPA is entering into this agreement under the authority of sections 107 and 122(g) of CERCLA, 42 U.S.C. 9607 and 9622(g). Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with Settling Party in connection with the Site, based upon a determination that Settling Party is responsible for 0.75 percent or less of the volume of hazardous substance sent to the Site.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from Joan A. Johnson (3RC41), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, or by contacting Joan A. Johnson at (215) 814–2619.

Dated: September 23, 2002.

James W. Newsom,

Acting Regional Administrator, Environmental Protection Agency Region III.

[FR Doc. 02–30120 Filed 11–26–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the December 12, 2002 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Friday, December 20, 2002. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: November 25, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–30339 Filed 11–25–02; 3:04 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011527–007.

Title: Independent Carriers Alliance.

Parties: CMA CGM, S.A., Hanjin Shipping Co., Ltd., Montemar Maritima S.A., Zim Israel Navigation Company Ltd.

Synopsis: The subject modifications provide for the resignation of Senator Lines and the assumption of its rights and obligations under the Agreement by Hanjin Shipping Co., Ltd.

Agreement No.: 011695–005.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A., Norasia Container Lines Ltd.

Synopsis: The proposed amendment reduces the number of vessels to be deployed under the agreement from 12 to 5 and revises the slot allocations accordingly, includes a reference to available space under another agreement, extends the earliest date for notice of withdrawal, and revises the notice period for and the earliest termination date of the agreement The parties request expedited review.

Agreement No.: 011712–003.

Title: CMA CGM/CSG Slot Exchange, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A., China Shipping Container Lines Co., Ltd.

Synopsis: The proposed amendment reduces the number of vessels to be deployed under the agreement from 22 to 10. The parties request expedited review.

Agreement No.: 011737–009.

Title: The MCA Agreement.

Parties: Atlantic Container Line AB; Alianca Navegacao e Logistica LTDA; A.P. Moller-Maersk Sealand; Antillean Marine Shipping Corporation; CMA CGM, S.A.; Companhia Libra De Navegacao; Compania Sud Americana De Vapores S.A.; CP Ships (UK) Limited, d/b/a ANZDL and d/b/a Contship Containerlines; Crowley Liner Services, Inc.; Hamburg-Sud; Dole Ocean Cargo Express, Inc.; Great White Fleet (US) Ltd.; Hapag-Lloyd Container Linie GmbH; King Ocean Central America S.A.; King Ocean Service De Colombia S.A.; King Ocean Service De Venezuela S.A.; Lykes Lines Limited, LLC; Montemar Maritima S.A.; Network Shipping Ltd.; Nippon Yusen Kaisha; Norasia Container Line Limited; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; TMM Lines Limited, LLC; Tropical Shipping & Construction Co., Ltd.; and Wallenius Wilhelmsen Lines AS.

Synopsis: The subject modifications adds Great White Fleet and Network Shipping as members and deletes Tecmarine as a member. It also adds a provision for the payment of annual dues.

Agreement No.: 011833.

Title: Contship/WWL Space Charter Agreement.

Parties: Contship Containerlines, Wallenius Wilhelmsen Lines AS.

Synopsis: The agreement authorizes Contship to charter space to WWL on vessels utilized by Contship in the trade from United States Atlantic and Gulf Coasts to Australia and New Zealand.

By Order of the Federal Maritime Commission.

Dated: November 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–30150 Filed 11–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Safe Ocean Line, Inc., 8555 NW. 20 Street, Miami, FL 33122. Officers: Gloria Gil, President (Qualifying Individual), Manuel Taracon, Export Manager.

Zircon (USA) Logistics, Inc., 504 Royal Palm Beach Blvd., Royal Palm Beach, FL 33411. Officers: Warren Jeffery, President (Qualifying Individual), David Thorpe, Vice President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Sea Air Systems, Inc., Foreign Trade Zone #61, Rd. 165, Km 2.4, Bldg. 1 Warehouse 10, Pueblo Viejo, Guaynabo, PR 00965. Officers: Jose F. Blazquez, Managing (Qualifying Individual).

Landstar Logistics, Inc., 13410 Sutton Park Drive, South, Jacksonville, FL 32224. Officers: Jim Handoush, Vice President (Qualifying Individual), James R. Hertwig, President.

Africa 2000 Inc., 57–52 W. Little York, Houston, TX 77091. Officers: Ndiaga Lo, President (Qualifying Individual), Name Bity Seye, Assistant Director.

FYT, Inc., 17588 E. Rowland St., Suite A216, City of Industry, CA 91748. Officer: Hong Jian Yao, Owner (Qualifying Individual).

OEC Freight Companies, 18900 8th Avenue, South #900, Seatac, WA 98148. Officers: Peter M. Ku, Station Manager (Qualifying Individual), Steven Fong, President.

PMJ International Inc., 516 Mountainview Drive, North Plainfield, NJ 07063. Officer: Pelham Hicks, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

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Honor Truck & Transfer, Inc., 1100 DeForest Avenue, Long Beach, CA 90813. Officers: Ali Behruz Nikkhoo, President (Qualifying Individual), Robert J. Livingston, Vice President.

JVL International Corporation, 2200 Broening Highway, Suite 277, Baltimore, MD 21224. Officer: Jorge Luiz Vieira Lima, Managing Director (Qualifying Individual).

Lukini Shipping Inc., Cargo Building 80, Rm. 203, JFK International Airport, Jamaica, NY 11430. Officer: Miriam Y. Chen, Gen. Manager/Director (Qualifying Individual).

Dated: November 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–30151 Filed 11–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. George H. and Mary Ethel Eicher, Homestead, Florida, and George P. Eicher, Monticello, Kentucky; to retain voting shares of Community Bank of South Florida, Inc., Homestead, Florida, and thereby indirectly retain voting shares of Community Bank of Florida, Homestead, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. The Magers Family Control Group consisting of William G. Magers, Springfield, Missouri; William Bryan Magers, Springfield, Missouri; Randall Wood Magers, Springfield, Missouri; Magers Enterprises II, LLLP ("Partnership"), W. Bryan and Randall W. Magers, General Partners, Springfield, Missouri; Magers Family Irrevocable Trust ("Trust"); W. Bryan and Randall W. Magers, Trustees, Springfield, Missouri, to gain control of Marshfield Investment Company, Springfield, Missouri ("Company"), and thereby acquire voting shares of Bank of Kimberling City, Kimberling City, Missouri; First National Bank, LaMar, Missouri; and Metropolitan National Bank, Springfield, Missouri. In connection with this application, William Bryan Magers and Randall Wood Magers, both of Springfield, Missouri, individually and as general partners of Partnership and Trustees of Trust, will increase their aggregate voting control of Company's voting stock.

Board of Governors of the Federal Reserve System, November 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30147 Filed 11–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First Merchants Corporation, Muncie, Indiana; to acquire 100 percent of the voting shares of CNBC Bancorp, Columbus, Ohio, and thereby indirectly acquire voting shares of Commerce National Bank, Columbus, Ohio.

Board of Governors of the Federal Reserve System, November 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30148 Filed 11–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 021 0090]

Wal-Mart Stores, Inc. and Supermercados Amigo, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 20, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Barbara Anthony or Michael Bloom, FTC Northeast Regional Office, One Bowling Green, Suite 318, New York, NY 10004. (212) 607–2828 or (212) 607–2801.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 21, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/11/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of the Complaint and Proposed Decision and Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from Wal-Mart Stores, Inc. ("Wal-Mart") and Supermercados Amigo, Inc. ("Amigo") (collectively, "the Proposed Respondents") an Agreement Containing Consent Orders ("the proposed consent order"). The Proposed Respondents have also reviewed the complaint issued by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from Wal-Mart's proposed acquisition of all of the outstanding voting stock of Amigo.

II. Description of the Parties and the Proposed Acquisition

Wal-Mart is a global food and general merchandise retailer headquartered in Arkansas. The company operates or services approximately 4,200 stores in the United States, Europe, Latin America, and Asia and had sales of over $191 billion in 2001. In the Commonwealth of Puerto Rico, Wal-Mart, through its subsidiary Wal-Mart Puerto Rico, Inc., operates nine traditional Wal-Mart Stores, one Wal-Mart Supercenter, and eight SAM's Clubs.

Amigo, headquartered in San Juan, Puerto Rico, is the largest supermarket chain in Puerto Rico in terms of dollar sales. With annual sales in 2001 of approximately $542 million, Amigo operates 36 supermarkets under the Amigo trade name in Puerto Rico.

On February 5, 2002, Wal-Mart and Amigo signed an agreement whereby Wal-Mart will purchase all of the outstanding voting securities of Amigo through the merger of W–M Puerto Rico Acquisition Corp., an indirect wholly owned subsidiary of Wal-Mart, with and into Amigo. Amigo will continue as the surviving corporation. As a result of the merger, Wal-Mart will hold 100% of the voting securities of Amigo.

III. The Complaint

The complaint alleges that the relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition is the retail sale of food and grocery products in stores that carry a wide selection and deep inventory of food and grocery products in a variety of brands and sizes, enabling consumers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit. Thus, stores in the relevant line of commerce have substantial offerings in each of the following product categories: bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

Unlike prior supermarket investigations by the Commission, this investigation involves geographic markets in Puerto Rico. The evidence obtained in our investigation indicated that the markets at issue here have characteristics that support a broader relevant product market than those identified in past supermarket investigations by the Commission. There are approximately 250 supermarkets across Puerto Rico, with the majority located in the San Juan metropolitan area. There are numerous small and mid-sized supermarket chains throughout the island, and in general, competition appears robust. In Puerto Rico, full-service supermarkets, "supercenters" (which are co-located full-service supermarkets and mass merchandise outlets), and "club stores" (which are stores that offer a wide selection and deep inventory of food and grocery products and general merchandise-often in large-sized packages or in packages of two or more conventional-sized items—to businesses and individuals that have purchased club memberships) offer a distinct set of products and services that enables them to compete in the relevant line of commerce described above. Information provided by several club store and supermarket operators in Puerto Rico indicates that many Puerto Rico consumers regard club stores as apt substitutes for supermarkets. A substantial portion of retail purchasers in Puerto Rico regard full-service supermarkets, supercenters, and club stores as reasonably interchangeable for the purpose of purchasing substantially all of their weekly food and grocery shopping requirements in a single shopping visit.

In Puerto Rico, full-service supermarkets, supercenters, and club stores compete primarily with each other. Supermarkets in Puerto Rico compete with club stores in a variety of ways. Operators of Puerto Rico full-service supermarkets, supercenters, and club stores often price-check and modify the prices of their food and grocery products based on the prices of food and grocery products at nearby full-service supermarkets, supercenters, and club stores. They do not often price-check and modify the prices of food and grocery products based on the prices at other types of stores, such as limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), military commissaries, and mass merchandise outlets (including those with pantries not offering a wide selection and deep inventory of food and grocery products). In Puerto Rico, most consumers shopping for food and grocery products at full-service supermarkets,

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supercenters, and club stores are not likely to shop at other types of stores in response to a small price increase by full-service supermarkets, supercenters, and club stores.

Many supermarket operators lose substantial sales when club stores open near to their own stores, and some engage in aggressive promotions in the weeks before and following the opening of a club store to blunt that sales loss. Some have remodeled stores in advance of their plans so as to ward off defections to club stores. Some have reacted to competition from club stores by adding additional multi-packs to their product offering and enhancing customer service. At the same time, club stores in Puerto Rico have introduced increased numbers of conventional package configurations. Ordinary-course-of-business documents of supermarket operators often refer to club stores as substantial competitors.

Studies also provide support for the inclusion of club stores in the relevant product market. For example, a 2001 study, based on "extensive in-home interviews among female heads of household * * * throughout the island," found that 37% of the subjects spontaneously mentioned SAM's Club when asked to identify a supermarket or food retailer that operates in Puerto Rico. The "brand awareness" of the four leading supermarket operators (and especially Amigo (with 72%) and Pueblo (with 58%)), was substantially greater than that of SAM's Club (with 37%), but the smaller Puerto Rico supermarket chains such as Ralph's (with 6%), Supermercado Del Este (5%), and Plaza Gigante (5%) had significantly less brand awareness among Puerto Rico consumers. That same study found that 5% of interviewees reported that SAM's Club was their "regular store" for their "large grocery shopping of the month." That is comparable to or greater than the numbers reported for Mr. Special (6%), Supermercado Del Este (3%), and Ralph's (4%). These findings are consistent with those of a recurring consumer survey conducted by the Puerto Rico food retailing trade association. The 2001 study found that 13% of consumers identified club stores as the place where they make their main food purchases.

In Puerto Rico, retail stores other than full-service supermarkets, supercenters, and club stores; such as limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), military commissaries, and mass merchandise outlets (including those with pantries not offering a wide selection and deep inventory of food and grocery products), do not effectively constrain prices in the relevant line of commerce as described above. In Puerto Rico, none of these stores offers a full-service supermarket's, supercenter's, or club store's distinct set of products and services that enables a retail customer to engage in one-stop shopping for food and grocery products.

Ample testimonial and documentary evidence indicates that a significant portion of Puerto Rico consumers use full-service supermarkets and club stores interchangeably. Accordingly, the relevant product market within which to assess the effects in Puerto Rico of the proposed transaction is a market consisting of full-service supermarkets, supercenters, and retail sales of supermarket-type items at club stores, or in general, stores that carry and offer at retail a wide selection and deep inventory of food and grocery products in a variety of brands and sizes, enabling consumers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit. The determination that club stores are included in the relevant product market in this proceeding does not, of course, determine what the relevant product market will be in future supermarket investigations by the Commission.

The complaint alleges that the relevant sections of the United States (*i.e.*, the geographic markets) in which there are competitive problems related to the acquisition are the areas of Puerto Rico in and near Cayey and Cidra (the "Cayey" market), Ponce and Juana Diaz (the "Ponce" market), and Barceloneta, Manati, and Vega Baja (the "Manati" market). The Cayey, Ponce, and Manati markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as the "HHI") or by two-firm and four-firm concentration ratios.[1] The post-acquisition HHI in the Cayey market would increase 1,056 points, from 2,500 to 3,556; in the Ponce market it would increase 603 points, from 1,912 to 2,515; and in the Manati market, taking into account a Wal-Mart supercenter that will open shortly, it would increase 1,782 points, from 2,173 to 3,955. In the Cayey market, Wal-Mart and Amigo would have a combined market share greater than 47%; in the Ponce market, the parties' combined market share would exceed 38%; and in the Manati market, the combined market share would be greater than 59%.

The complaint further alleges that entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

The complaint also alleges that Wal-Mart's acquisition of all of the outstanding voting securities of Amigo, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supercenters and club stores owned or controlled by Wal-Mart and supermarkets owned and controlled by Amigo; by increasing the likelihood that Wal-Mart will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction, each of which increases the likelihood that the prices of food, groceries, or services will increase, and that the quality and selection of food, groceries or services will decrease, in the relevant geographic markets of Puerto Rico.

IV. The Terms of the Agreement Containing Consent Orders

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Proposed Respondents must divest four Amigo supermarkets, in Cidra, Ponce, Manati, and Vega Baja, Puerto Rico. In each region, Wal-Mart owns or plans to open at least one supercenter or club store. The divestitures are to an up-front newly-formed entity founded by experienced supermarket owners which would be a new entrant in the relevant geographic markets and which the Commission has evaluated for competitive and financial viability. The Commission's evaluation process consisted of analyzing the financial condition of the proposed acquirer to determine that it is well qualified to operate the divested stores.

Proposed Respondents will sell the four Amigo stores to Supermercados Maximo, Inc. ("Purchaser"), which is headquartered in Hato Rey, Puerto Rico. Purchaser includes as its founders and management two former long-time members of Amigo's board of directors. All of the managers at the four stores are expected to remain in place (and each store is headed by management teams that have worked together for over three years).

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

The proposed consent order requires that the divestitures occur no later than ten business days after the acquisition is consummated. However, if Proposed Respondents consummate the divestitures to Purchaser during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Proposed Respondents that Purchaser is not an acceptable acquirer or that the asset purchase agreement with Purchaser is not an acceptable manner of divestiture, then Proposed Respondents must immediately rescind the transaction in question and divest those assets to another buyer within three months of the date the order becomes final. At that time, Proposed Respondents must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or sites identified in the order that Proposed Respondents have not divested to satisfy the requirements of the order. In addition, the order enables the Commission to seek civil penalties against Proposed Respondents for non-compliance with the order.

The proposed consent order further requires Proposed Respondents to maintain the viability of the supermarkets identified for divestitures. Among other requirements related to maintaining operations at these supermarkets, the proposed consent order specifically requires Proposed Respondents to: (1) Maintain the viability, competitiveness, and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair the supermarkets' marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve the supermarkets' existing relationships with suppliers, customers, and employees; and (6) keep the supermarkets open for business and maintain the inventory at levels consistent with past practices.

The proposed consent order prohibits Proposed Respondents from acquiring, without providing the Commission with prior notice, any supermarket, supercenter, or club store, or any interest in any supermarket, supercenter, or club store located in the municipalities that include Cayey, Cidra, Ponce, Juana Diaz, Barceloneta, Manati, and Vega Baja for ten years. These are the areas from which the supermarkets to be divested draw customers. The provisions regarding prior notice are consistent with the terms used in prior Orders. The proposed consent order does not restrict the Proposed Respondents from constructing new supermarkets, supercenters, or club stores in the above areas; nor does it restrict the Proposed Respondents from leasing facilities not operated as supermarkets, supercenters, or club stores within the previous six months.

The proposed consent order further prohibits Proposed Respondents, for a period of ten years, from entering into or enforcing any agreement that restricts the ability of any person acquiring any location or interest in any location used as a supermarket, supercenter, or club store in Puerto Rico, to operate a supermarket, supercenter, or club store at that site, if that site is or was formerly owned or operated by Proposed Respondents in any of the above areas.

The Proposed Respondents are required to file compliance reports with the Commission, the first of which is due within thirty days of the date on which Proposed Respondents signed the proposed consent order, and every thirty days thereafter until the divestitures are completed, and annually for ten years.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of the supermarkets to Purchaser, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission, Commissioner Anthony recused.

Donald S. Clark,

Secretary.

[FR Doc. 02–30084 Filed 11–26–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on December 12–13, 2002

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its eighth meeting, at which it will discuss, among other things, current and future prospects for genetic enhancements (presentation by Dr. Francis Collins of the National Human Genome Research Institute [NHGRI]). Other topics will include: Technologies to increase the human lifespan (presentations by Dr. Steven Austad, University of Idaho, and Dr. S. Jay Olshansky, University of Chicago), and the possibility of overmedicating children with stimulants such as Ritalin (presentation by Dr. Lawrence H. Diller, University of California-San Francisco). The Council may also touch on issues relating to organ donation and procurement. Subjects discussed by the Council at past meetings include: Human cloning; embryonic stem cells; the patentability of human organisms; enhancements of human mood, memory, and muscles; choosing the sex of children; and international models of biotech regulation.

DATES: The meeting will take place Thursday, December 12, 2002, from 9 am to 5:15 pm ET; and Friday, December 13, 2002, from 8:30 am to 1 pm ET.

ADDRESSES: Hotel Monaco, 700 F Street, NW., Washington, DC 20004.

PUBLIC COMMENTS: The meeting agenda will be posted at *http://www.bioethics.gov*. Members of the public may submit written statements for the Council's records. Please submit statements to Ms. Diane Gianelli, Director of Communications (tel. 202/296–4669 or e-mail *info@bioethics.gov*). The public may also express comments during the time set aside for this purpose, beginning at noon ET, on Friday, December 13, 2002. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone

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number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit *http://www.bioethics.gov*.

Dated: November 20, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–30045 Filed 11–26–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Minority Health

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice.

The Advisory Committee on Minority Health will meet on Thursday, December 12, 2002 from 9 a.m. to 5 p.m., and Friday, December 13, 2002 from 8:30 a.m.–12 Noon. The meeting will be held at the Hyatt Regency Bethesda, Lalique Room, One Bethesda Metro Center (Wisconsin Avenue at Old Georgetown Road), Washington, DC, 20814.

The Advisory Committee will discuss racial and ethnic disparities in health, as well as, other related issues.

The meeting is open to the public. There will be an opportunity for public comment, which will be limited to five minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least two business days prior to the meeting.

For further information, please contact Ms. Sheila P. Merriweather, Rockwall II Building, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852. Phone: 301–443–9923; Fax: 301–443–8280.

Dated: November 15, 2002.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 02–30149 Filed 11–26–02; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–18]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

An Evaluation of Targeted Health Communication Message: Folic Acid and Neural Tube Defects (OMB No. 0920–0461)—Extension—The National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background

The Division of Birth Defects and Developmental Disabilities, within NCBDDD launched a national education campaign in January 1999 to increase women's knowledge about neural tube birth defects (NTDs) and the beneficial role folic acid, a B vitamin, plays in the prevention of NTDs. Studies show that a 50 to 70 percent reduction in the risk of neural tube birth defects is possible if all women capable of becoming pregnant consume 400 micrograms of folic acid daily both prior to and during early pregnancy. Studies also indicate that Hispanic women have a greater risk for NTD-affected pregnancies than women in the general population. Specific, culturally sensitive, targeted media messages need to be directed at this population.

CDC and the March of Dimes Birth Defects Foundation developed health communication media messages and educational materials targeted to health care providers and English and Spanish-speaking women. These media messages and educational materials consist of television and radio public service announcements (PSA), brochures and resource manuals. The Spanish-language folic acid communication evaluation survey examines the impact of Spanish-language media messages on the levels of awareness, knowledge, and vitamin use among Hispanic women of childbearing age.

Hispanic women's exposure to Spanish-language media messages and educational materials on folic acid information will be collected and measured to determine whether these exposures influenced the women's knowledge and usage of folic acid. The number and frequency of women's exposures to the media messages such as television and radio PSAs will be collected from media channels and compared to information collected from survey data, National Council on Folic Acid organizations and the National Clearinghouse on Folic Acid activities. The cost to participants will be $0.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Telephone Interview	1,000	1	20/60	333

Dated: November 22, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–30218 Filed 11–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–19]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project:

Exposure to Aerosolized Brevetoxins During Red Tide Events (OMB No. 0920–0494)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Gymnodinium breve is the marine dinoflagellate responsible for extensive blooms (called "red tides") that form in the gulf of Mexico. G. breve produces potent toxins, called brevetoxins, that have been responsible for killing millions of fish and other marine organisms. The biochemical activity of brevetoxins is not completely understood and there is very little information regarding human health effects from environmental exposures, such as inhaling brevetoxin that has been aerosolized and swept onto the coast by offshore winds. The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC) is planning to recruit 100 people who work along the coast of Florida and who potentially will be occupationally exposed to aerosolized red tide toxins some time during the year following recruitment. We plan to administer a base-line respiratory health questionnaire and conduct pre- and post-shift pulmonary function tests during a time when there is no red tide reported near the area. When a red tide develops, we plan to administer a symptom survey and conduct pulmonary function testing (PFT) on a group of study participants who are working in the area where the red tide is near shore and on a control group of study participants who are not working in an area where the red tide is near shore (*i.e.*, are not exposed to the red tide). We will then compare (1) symptom reports before and during the red tide and (2) the changes in baseline PFT values during the work shift (differences between pre- and post-shift PFT results without exposure to red tide) with the changes in PFT values during the work shift when individuals are exposed to red tide.

In addition, we plan to assist in collecting biological specimens (inflammatory cells from nose and throat swabs) to assess whether they can be used to verify exposure and to demonstrate a biological effect (*i.e.*, inflammatory response) from exposure to red tide. We have collected part of the data, but, because we are dealing with natural phenomena and are subject literally to the tides, we must extend our data collection time for an additional two years. There is no cost to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Pulmonary History Questionnaire	100	1	20/60	33
Symptoms Questionnaire	100	20	5/60	167
Nasal and Throat Swabs	100	20	5/60	167
Pulmonary Function Tests	100	20	20/60	667
Total				1,034

Dated: November 22, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–30219 Filed 11–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

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whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. CDC is requesting an emergency clearance from OMB to conduct this data collection. Written comments should be received within 14 days of this notice. Send written comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, Georgia 30333. OMB is expected to act on this request within 7 days of the close of the comment period.

Proposed Project: Work-Related Assaults Treated in Hospital Emergency Departments—New—National Institute of Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Workplace violence, both fatal and nonfatal, is recognized as an important occupational safety and health issue. Various data systems have provided fairly detailed information on fatal workplace violence, but much less is known about the circumstances and risk factors for nonfatal workplace violence. As well, a number of strategies have been suggested for reducing the incidence and severity of workplace violence in various settings (e.g., taxicabs, health care, law enforcement, social services), but again, little empirical knowledge exists about what has been implemented and what impact such strategies may have. The report, Workplace Violence: A Report to the Nation, published by the University of Iowa based on recommendations from a workshop of experts, states, "* * * research focused on a much broader understanding of the scope and impact of workplace violence is urgently needed to reduce the human and financial burden of this significant public health problem." In 2000, there were 677 workplace homicides in the U.S. From 1993–1999, there were an estimated 1.7 million nonfatal victimizations "while at work or on duty" every year, accounting for 18% of all violent crime during the 7-year period. In December 2001, Congress directed NIOSH to develop an intramural and extramural prevention research program that will target all aspects of workplace violence.

The Consumer Product Safety Commission (CPSC) maintains a database of injuries treated in a nationally representative sample of U.S. hospital emergency departments (Eds) called the National Electronic Injury Surveillance System (NEISS). Data routinely collected through NEISS include a brief narrative description of the injury event and basic demographic information such as intent and mechanism of injury, work-relatedness, principal diagnosis, part of the body affected, location where the injury occurred, involvement of consumer products, and disposition at ED discharge. For assaults, summary data are also being collected in the relationship of the perpetrator to the injured person and the context (i.e., altercation, robbery, sexual assault, etc.). For work-related cases, occupation and industry information is collected. The data system does not include any information on issues such as the specific workplace circumstances and risk factors for workplace violence; security measures in the workplace and whether they were utilized/used appropriately; training-in-workplace violence risk factors and prevention strategies; previous incidents of workplace violence; return-to-work after assault; and, other specific workplace violence information.

For the last 10 years, NIOSH has been collaborating with CPSC to collect surveillance data on work-related injuries treated in the NEISS Eds. In addition, NIOSH has utilized the capacity of NEISS to incorporate follow-back surveys. Follow-back surveys allow collection of first-hand, detailed knowledge that does not exist in administrative or other records. CPSC routinely uses this mechanism to collect information of various types of injuries (e.g., fireworks-related injuries, injuries to children in baby walkers, etc.). NIOSH has used this mechanism to collect information on the circumstances of the injury, training, protective equipment (if appropriate), and other issues important to more fully understand the risk factors for work-related injuries and to make appropriate recommendations for preventing other such injuries in the future.

The current proposed study will consist of a telephone interview survey of workers treated in NEISS hospital Eds for injuries sustained during a work-related assault. The data collection will occur over a one year period. CPSC will hire a contractor to conduct the actual telephone interviews. NIOSH will review potential cases to identify those cases that should be forwarded to the contractor for interview. The survey includes an extended narrative description of the injury incident as well as items regarding general workplace organization; personal characteristics of the worker; work tasks at the time of the assault; training on workplace violence risk factors and prevention strategies; security measures in place and how they impacted the outcome of the incident; and return to work after the assault. This study will provide critical information for understanding the nature and impact of nonfatal assault among U.S. workers. In combination with data collected from other sources, this information will ultimately contribute to the prevention of violence in the workplace. The only cost to respondents is their time to participate in the data collection.

Survey	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (hours)
Work-related assaults treated in hospital Eds	1,600	1	20/60	533
Total				533

Dated: November 20, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–30220 Filed 11–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Vital Statistics Report Forms (OMB No. 0920–0213)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background

The National Vital Statistics Report Forms (0920–0213) is an approved collection of the compilation of national vital statistics. This collection dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events.

Respondents for the Monthly Vital Statistics Report Form (CDC 64.146) are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this Form. The data are routinely available in each reporting office as a by-product of ongoing activities. This form is designed to collect counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces immediately following the month of occurrence. There are no costs to respondents.

Respondents to the form: Monthly Vital Statistics Report (CDC 64.146)	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
State and Territory registration officials	57	12	12/60	137
New Mexico County officials	60	12	6/60	72
Total				209

The Annual Marriage and Divorce Statistical Report Form (CDC 64.147) collects final annual counts of marriages and divorces by month for the United States and for each State. The statistical counts requested on this form differ from provisional estimates obtained on the Monthly Vital Statistics Report Form in that they represent complete and final counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution.

Respondents for the Annual Marriage and Divorce Statistical Report Form are registration officials in each State, the District of Columbia, New York City, Guam, Puerto Rico, Virgin Islands, Northern Marianas, and American Samoa. In addition, counts of marriages will be collected from individual counties in New Mexico, and counts of divorces will be collected from individual counties in California, Colorado, Indiana, Louisiana, New Mexico, and the boroughs of New York City due to a lack of centralized complete collections in these registration areas. The data are routinely available in each reporting office as a by-product of ongoing activities.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
State/Territory/City registration officials	56	1	30/60	28
County/Borough officials	348	1	30/60	174
Total				202

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Dated: November 20, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–30221 Filed 11–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–10]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability and Application Kit for the Community Outreach Partnership Center (COPC) Program

AGENCY: Office of the Assistant Secretary for Public Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment Due Date January 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability and Application Kit for the Community Outreach Partnership Center Program. *OMB Control Number:* 2528–0180 (exp. 02/28/03).

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: HUD–424–M, HUD–424–B, HUD–424D, HUD–424–CB, HUD–2880, HUD–2990, HUD–2991, HUD–2992, HUD2993, HUD–2994, HUD–3001, HUD–3002, HUD–30011, HUD–30012, HUD–50070, HUD–50071.

Members of the Affected Public: Community colleges, four-year colleges, and universities.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	135	135	40	5400
Semi-Annual Reports	25	50	6	300
Final Reports	25	25	8	200
Recordkeeping	25	25	5	125
Total			59	6025

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended..

Dated: November 14, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–30014 Filed 11–26–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–72]

Notice of Submission of Proposed Information Collection to OMB: Mortgagee's Request for Extension of Time

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2502–0436) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov,* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension of Time.

OMB Approval Number: 2502–0436.

Form Numbers: HUD–50012.

Description of the Need for the Information and its Proposed Use: Information is used as a "turnaround" document by mortgage lenders to request an extension of time and for HUD to provide a response. Mortgagee's maintain copies of the information collection with related claim documents to verify that HUD has authorized extensions of time on specific cases.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	2,000	6		0.25		3,000

Total Estimated Burden Hours: 3,000.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 21, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–30013 Filed 11–26–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 27, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–053987

Applicant: The Phoenix Zoo, Phoenix, AZ

The applicant requests a permit to export one ocelot (*Leopardus pardalis mitis*) to the Granby Zoo, Granby, Quebec, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

PRT–064861

Applicant: Donald D. Gasaway, Marion, IL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–045002

Applicant: Harry M. Morley, Rockledge, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: November 15, 2002.

Lisa J. Lierheimer,

Permits Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–30125 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

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SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 27, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

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SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–064033

Applicant: Charles D. Lein, Lafayette, LA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–063767 Through 063773

Applicant: Feld Entertainment, Vienna, VA

The applicant requests permits to export, re-export, and re-import Asian elephants (*Elephas maximus*) to and from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period. The elephants are: Bonnie—063767, Juliette—063768, Kelly Ann—063769, Angelica—063770, Doc—063771, Nichole—063772, Osgood—063773. Some of these elephants were previously authorized under PRT–007873.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: October 25, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–30128 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 27, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–064354

Applicant: John L. Wathen, Leonardtown, MD

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–064887

Applicant: John W. Salevurakis, Mountainaire, AZ

The applicant requests a permit to import the sport-hunted trophy of one male wood bison (*Bison bison athabascae*) taken from the Yukon (Nisling river) population, Yukon territory, Canada, for the purpose of enhancement of the survival of the species through support of the Canadian recovery program.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–063596

Applicant: William J. Schagel, Prescott, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

PRT–063898

Applicant: Larry Seiler, Guilford, IN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

PRT–064723

Applicant: David M. McNeil, Buhl, AL

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: November 8, 2002.

Lisa J. Lierheimer,

Permits Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–30126 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On September 10, 2002, a notice was published in the **Federal Register** (67 FR 57445), that an application had been filed with the Fish and Wildlife Service by Hobson Reynolds for a permit (PRT–061098) to import one polar bear (*Ursus maritimus*) taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on November 6, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On August 20, 2002, a notice was published in the **Federal Register** (67 FR 53960), that an application had been filed with the Fish and Wildlife Service by Lawrence P. Rudolph for a permit (PRT–058229) to import one polar bear (*Ursus maritimus*) taken from the Viscount Melville Sound polar bear population, Canada, for personal use.

Notice is hereby given that on November 4, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: November 8, 2002.

Lisa J. Lierheimer,

Permits Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–30127 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Northeast Regional Panel will meet from 12 p.m. to 5:30 p.m. on Monday, December 16, 2002, and 8:30 a.m. to 3 p.m., Tuesday, December 17, 2002.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Northeast Regional Office of the U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589. Phone 413–253–8404.

FOR FURTHER INFORMATION CONTACT: Susan Snow-Cotter, 617–626–1202 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Northeast Regional Panel was established on July 25, 2001, to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States. Geographically, the Northeast region is defined to include the jurisdictions of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at this meeting including: Updates from provinces and states; review of reports from subcommittees on Communication, Education, and Outreach, Policy and Legislation, and Science Technology; discussion on the development of a rapid response system, a ballast water regional management plan, and data management; updates from the Aquatic Nuisance Species Task Force and National Invasive Species Council on national issues, reauthorization of the National Aquatic Invasive Species Act; updates on the development of State ANS Management Plans; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: November 15, 2002.

William E. Knapp,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Deputy Assistant Director-Fisheries & Habitat Conservation.

[FR Doc. 02–30010 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, the Department of the Interior is seeking extension of an Information Collection Request (ICR) for grantees participating in the Public Law 102–477 program, OMB Control No. 1076–0135. The Department invites public comments on the subject proposal described below.

DATES: Submit written comments regarding this proposal on or before January 27, 2003.

ADDRESSES: Mail comments to George Gover, Director, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4640–MIB, Washington, DC 20240.

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FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instructions should be directed to Lynn Forcia, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4640–MIB, Washington, DC 20240, at (202)–219–5270 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to document satisfactory compliance with statutory requirements of the various integrated programs. Public Law 102–477 authorizes tribal governments to integrate federally funded employment, training and related services programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of the Interior, Department of Labor and the Department of Health and Human Services. The Bureau of Indian Affairs is statutorily required to serve as the lead agency. Section 11 of this Act requires that the Secretary of the Interior make available a single universal report format which shall be used by a tribal government to report on integrated activities and expenditures undertaken. The Bureau of Indian Affairs shares the information collected from these reports with the Department of Labor and Department of Health and Human Services.

II. Method of Collection

Public Law 102–477 grantees are required to complete a single universal report format including the annual submission of two single page, one-sided report forms and one narrative report, using five pages of instructions. This reporting format was initially developed in 1993 and replaced 166 pages of instructions and forms representing three different agencies with related employment, training, education and welfare reform programs.

Federal partners have now further reduced their reporting requirements for the separate programs and now require approximately 142 pages of instructions and forms total each year. The Public Law 102–477 initiative requires five pages per year of forms and instructions. All tribes must also review instructions and complete annually approximately 62 pages of Department of Health and Human Services, Temporary Assistance to Needy Families (TANF), program forms and instructions. We have not been able to successfully integrate TANF reporting with Public Law 102–477 reporting. In addition, four pages of reports and instructions must be completed by tribes annually for the Bureau of Indian Affairs General Assistance program for determination of allocation of funds. Therefore, tribes participating in Public Law 102–477 currently experience a 50 percent reduction in reporting forms and instructions than if they implemented all programs separately. This reduction is consistent with the Paperwork Reduction Act and goals of the National Performance Review.

The statistical report and narrative report will be used to demonstrate how well a plan was executed in comparison to its proposed goals. This one page, universal report plus narrative satisfies requirements of the Department of Health and Human Services, Department of Labor and the Department of the Interior.

The financial status report will be used to track cash flow, and will allow an analysis of activities versus expenditures and expenditures to approved budget. It is a slightly modified SF–269–A (short form).

These two report forms and the narrative satisfy requirements of the Department of Health and Human Services, Department of Labor and the Department of the Interior. The revised forms reduce the burden on tribal governments by consolidating data collection for employment, training, education, child care and related service programs. The reports are due annually. These forms, developed within a partnership between participating tribes and representatives of all three Federal agencies, standardize terms and definitions, eliminate duplication and reduce frequency of collection.

III. Data

Title: A Reporting System for Public Law 102–477 Demonstration Project.

OMB Control Number: 1076–0135.

Respondents: Tribes participating in Public Law 102–477 will report annually. As of October 1, 2002, we anticipate there will be 48 grantees representing approximately 220 federally-recognized tribes participating in the program.

Burden: We estimate that completion of the reporting requirements will require 16 hours per year to complete for each grantee. The total hour burden will be 768 hours.

IV. Request for Comments

The existing reporting procedure was initially developed in 1993 with the active participation from Department of Labor, Department of Health and Human Services and tribal representatives. Since that time, the forms were modified once to accommodate the Department of Labor's Welfare-to-Work program.

Comments may include:

(a) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(b) The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) The quality, utility, and clarity of the information to be collected; and

(d) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Lynn Forcia, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–4660–MIB, Washington, DC 20240. Tribal consultation will be also be sought in January at the next regularly scheduled Public Law 102–477 Tribal Work Group meeting to be held in Washington, DC.

All written comments, names and addresses of commentators will be available for public inspection in Room 4644 of the Main Interior Building, 1849 C Street, NW., Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. If you want us to withhold your name and address you must state that prominently at the beginning of your comment. We will honor your request to the extent allowable by law. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request that does not have a currently valid expiration date.

Dated: November 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–30019 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–MS–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Self-Governance Program Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Agency Information Collection Activities; Comment Request.

SUMMARY: The Bureau of Indian Affairs is seeking comments from the public on an extension of an information collection from potential Self-Governance Tribes, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number, 1076–0143, will be used to establish requirements for entry into the pool of qualified applicants for self-governance, to provide information for awarding grants, and to meet reporting requirements of the Self-Governance Act.

DATES: Submit comments on or before January 27, 2003.

ADDRESSES: Written comments can be sent to William Sinclair, Office of Self-Governance, 1849 C Street, NW., Mail Stop 2548 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: William Sinclair, (202) 219–0244.

SUPPLEMENTARY INFORMATION: You are advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For example, this collection is listed by OMB as 1076–0143, and it expires 03/31/2003. The response is voluntary to obtain or retain a benefit.

We are requesting comments about the proposed collection to evaluate:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made,

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility,

(c) The quality, utility, and clarity of the information to be collected,

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

Please submit your comments to the person listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, are open for public review during (regular business hours). If you wish your name and address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

Type of review: Renewal.

Title: Tribal Self-Governance Program, 25 CFR 1000.

Affected Entities: Tribes and tribal consortiums wishing to enter into a self-governance compact.

Size of Respondent Pool: 257.

Number of Annual Responses 257.

Hours per response: 42.

Total Annual Hours: 10,766.

Dated: November 20, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–30092 Filed 11–26–02; 8:45 am]

BILLING CODE 4310–WB–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: New Methamphetamine Project Status Update Report (SUR).

The Department of Justice (DOJ), Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** Volume 67, Number 177, page 57851 on September 12, 2002, allowing for a 60 day comment period

The purpose of this notice is to allow for an additional 30 days for public comment until December 27, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Office, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Types of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Methamphetamine Project Status Update Report (SUR).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law Enforcement Agencies. Other: Universities and Private Non-Profit Agencies. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 responses for grantees. The estimated amount of time required for the average respondent to respond is 3.0 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 325 hours associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 21, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–30152 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–AT–M

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DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new methamphetamine project, final update report (FUR).

The Department of Justice (DOJ), Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 191, page 61922 on October 12, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 27, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*,, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Methamphetamine Project, Final Update Report (FUR).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law Enforcement Agency. Other: Universities and Private Non-Profit Agencies. *Abstract:* The information collection will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 responses from grantees. The estimated amount of time required for the average respondent to respond is 3.0 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 21, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–30153 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *James R. Chaplin, et al.*, C.A. No. 5:00–CV–118, were lodged on November 8, 2002, with the United States District Court for the Northern District of West Virginia.

The consent decrees resolve the United States' claims against James R. Chaplin and other defendants named in the complaint, pursuant to sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d). At the time the complaint was filed, the defendants owned and operated five apartment complexes and previously constructed two single family housing subdivisions, all located in the northern part of West Virginia. Defendants operated a wastewater treatment and disposal facility ("facility" or "facilities") at each apartment complex and subdivision.

One consent decree with the defendants resolves the United States' claims that the defendants (a) discharged wastewater containing pollutants above limitations in applicable permits, (a) failed to properly operate and maintain the facilities, and (c) discharged pollutants from one facility without a proper permit. Under this consent decree, the defendants will pay a civil penalty of $175,000 and obtain a permit for the facility without a permit. Defendants will also implement injunctive relief, which includes having each facility inspected by a qualified contractor, making necessary repairs to each facility which the defendants continue to own and operate, and maintaining service contracts on the facilities.

In July 2000, Belmont Properties, Inc. ("Belmont") purchased four of the apartment complexes and became managing and controlling partner of four defendant partnerships, through which defendants James R. Chaplin and Anna Chaplin owned and operated these four complexes. Under a second consent decree, Belmont has agreed to implement the same injunctive relief measures described above for the facilities at the complexes it now owns.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *James R. Chaplin, et al.* and DOJ Reference No. 90–5–1–06425.

The proposed consent decrees may be examined at the Office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the proposed decrees may be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting copies of the two consent decrees exclusive of exhibits, please enclose a check in the amount of $18.00 (.25 cents per page production costs), payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30155 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 31, 2002, a proposed amendment to a consent decree entered on April 28, 1992 in *United States and State of Arizona* v. *Motorola, Inc., Siemens Corporation, Salt River Valley Water Users' Association and GlaxoSmithKline*, Civil Action No. CV–91–1835–PHX–WPC, was lodged with the United States District Court for the District of Arizona.

In this action the United States sought the performance of response actions and the recovery of response costs incurred and to be incurred by the United States with respect to releases of hazardous substances at the Indian Bend Wash, North, Superfund Site in Scottsdale, Arizona ("Site"). The consent decree entered by the Court on April 28, 1992 required the performance of certain work by the Defendants Motorola, Inc., Siemens Corporation, the Salt River Valley Water Users' Association and GlaxoSmithKline (collectively "Defendants"), with participation by the City of Scottsdale pursuant to Rule 19 of the Federal Rules of Civil Procedure.

One provision of the April 28, 1992 consent decree specified that, if EPA determined that additional work was necessary to remediate contamination at the Site, the parties would negotiate informally to incorporate a requirement for the performance of that work into the April 28, 1992 consent decree. The Amended Consent Decree would incorporate certain additional work to be performed at the Site by the Defendants and the City that EPA has deemed necessary. This work includes, but is not limited to, the continued operation and maintenance of three groundwater treatment facilities and related extraction and monitoring well systems.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Arizona* v. *Motorola, Inc., Siemens Corporation, Salt River Valley Water Users' Association and GlaxoSmithKline*, D.J. Ref. 90–11–2–413.

Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003 (d) of RCRA, 42 U.S.C. 6973(d).

The Amended Consent Decree may be examined at the Office of the United States Attorney, Two Renaissance Square, 40 N. Central Avenue, Suite 1200, Phoenix, Arizona 85004–4408, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $69.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $23.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30154 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 298–2002]

Privacy Act of 1974: System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of Professional Responsibility (OPR), proposes to modify the following system of records previously published in full text in the **Federal Register** on December 10, 1998 (63 FR 68299 (1998)): Office of Professional Responsibility Record Index, JUSTICE/OPR–001.

OPR is adding three new routine uses to this system of records. The first routine use allows the disclosure of information to contractors and others working on behalf of OPR when necessary to accomplish an OPR function related to this system of records. The second routine use allows the disclosure of information to former employees of the Department for the purpose of responding to official inquiries by government entities or professional licensing authorities in accordance with applicable Department regulations. This routine use also allows disclosure to former employees where the Department requires information and consultation assistance from the former employee that is necessary for personnel-related or other official purposes. The third routine use will allow the disclosure of information to members of the judicial branch of the Federal government in response to a written request where disclosures are relevant to the authorized function of the recipient judicial office or court system.

Title 5 U.S.C. 552a(e)(4)(11) provides that the public be given a 30-day period in which to comment on the proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires a 40-day period in which to conclude its review of any proposal to add new routine use disclosures or make other major modifications.

You may submit any comments by December 27, 2002. The public, OMB and the Congress are invited to send comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Room 1400 National Place Building, Washington, DC 20530. If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed new routine uses.

Dated: November 15, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/OPR–001

SYSTEM NAME:

Office of Professional Responsibility Record Index.

* * * * *

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

* * * (10) information may be furnished to professional organizations or associations with which individuals covered by this system of records may be affiliated, such as state bar disciplinary authorities, to meet their responsibilities in connection with the administration and maintenance of standards of conduct and discipline.

[Following this sentence insert the three paragraphs below.]

(11) Relevant information contained in this system of records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(12) Relevant and necessary information may be disclosed to former employees of the Department of Justice for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(13) Relevant information contained in this system of records may be disclosed to a member of the judicial branch of Federal Government in response to a written request where disclosures are relevant to the authorized function of the recipient judicial office or court system.

* * * * *

[FR Doc. 02–29879 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James F. Graves, M.D.; Revocation of Registration

On April 8, 2002, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause, Immediate Suspension of Registration, to James F. Graves, M.D. (Dr. Graves) of Milton, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AG3101235 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Graves is not currently authorized to handle controlled substances in Florida, the state in which he practices, and had been convicted of a felony involving controlled substances. The order also notified Dr. Graves that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

By letter dated April 16, 2002, Dr. Graves requested an administrative hearing. On May 7, 2002, DEA filed Government's Motion for Summary Disposition and Request for Stay of the Filings of Prehearing Statement. The Motion was based upon the argument that no facts were at issue: DEA cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts business. Dr. Graves did not respond to the Motion. On July 10, 2002, Administrative Law Judge Mary Ellen Bittner certified and transmitted the record in the matter to the Deputy Administrator along with her Opinion and Recommended Decision. In her Decision, the Administrative Law Judge granted DEA's Motion for Summary Disposition and recommended that Dr. Graves' DEA registration be revoked.

The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final order as prescribed by 1301.46, based upon the following findings and conclusions. The Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law. The Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Graves possesses DEA Certificate of Registration AG3101235. On January 29, 2002, the Florida Department of Health ordered an emergency suspension of Dr. Graves' medical license. Loss of state authority to engage in the practice of medicine is an independent ground to revoke a practioner's registration under 21 U.S.C. 824(a)(3). This agency has consistently held that a person may not maintain a DEA registration if he is without appropriate authority under the laws of the State in which he does business. *See* Anne Lazar Thorn, M.D., 62 FR 12847 (DEA 1997); Bobby Watts, M.D., 53 FR 11919 (DEA 1988).

Dr. Graves has not denied that he is currently not licensed to practice medicine in Florida, the jurisdiction in which he is registered. Accordingly, he is not entitled to a DEA registration. As the Administrative Law Judge stated, it is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceedings is not required. *See* Jesus R. Juarez, M.D., 62 FR 14945 (DEA 1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him be 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, grants the agency's Motion for Summary Disposition and hereby orders that DEA Certificate of Registration AG3101235 issued to James F. Graves, M.D. be, and hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 27, 2002.

Dated: November 4, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30022 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

K.V.M. Enterprises; Denial of Registration

On February 25, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to K.V.M. Enterprises (KVM) of Detroit, Michigan, notifying it of an opportunity to show cause as to why DEA should not deny its application for DEA registration as a distributor of list 1 chemicals. As a basis for the denial, the Order to Show Cause alleged that KVM's registration would not be in the public interest. The order also notified KVM that should not a request for a hearing be filed within 30 days, its hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to KVM to the address included on the application for registration. DEA received a signed receipt indicating that the Order to Show Cause was received on KVM's behalf on March 4, 2002. DEA has not received a request for hearing or any other reply from KVM or anyone purporting to represent it in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that KVM is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on January 23, 2001, KVM submitted an application for DEA registration as a distributor of the list I chemical ephedrine (DEA chemical code number 8113). The application was submitted by Kwana McBurrows (Ms. McBurrows), owner of KVM.

Ephedrine is a legitimately imported and distributed product used in the production of bronchial dilators and asthma relief medication. Ephedrine is also a precursor chemical used in the illicit manufacture of methamphetamine. DEA has developed information which demonstrates a recent increase in the use of ephedrine in the illicit manufacture of methamphetamine: in 1998, DEA was directly involved in the seizure of 1,626 clandestine methamphetamine laboratories. Of these laboratories, there were 135 instances where ephedrine was positively identified as a precursor chemical for methamphetamine (8.3 percent of total clandestine laboratory seizures). In 1999, DEA was directly involved in the seizure of 2,025 clandestine methamphetamine laboratories. Of these laboratory seizures, there were 269 instances where ephedrine was positively identified as a precursor chemical for methamphetamine (13.3 percent of total clandestine laboratory seizures). In 2000, the number of total DEA clandestine seizures dropped to 1,815, however, those involving ephedrine products (249) remained consistent.

During a March 16, 2001, pre-registration investigation, DEA learned that KVM is a distributor of products containing Ginseng. DEA also learned that prior to submitting an application for DEA registration, Ms. McBurrows worked as a beauty consultant, and sold "Mary Kay" health and beauty products. DEA's investigation further revealed that Ms. McBurrows had no prior experience in handling list I chemicals.

DEA's investigation also revealed that KVM does not presently have any customers, but proposes to sell its products exclusively to gas stations. DEA has developed information that certain list I chemicals such as pseudoephedrine and ephedrine are often purchased in large quantities by non-traditional retail outlets such as gas station retailers who are not typically engaged in the sale of these products. These establishments in turn have sold these listed chemicals to individuals engaged in the illicit manufacture of methamphetamine.

DEA also requested information regarding proposed suppliers of list I chemicals to KVM. Ms. McBurrows informed DEA that the Hammer Corporation (Hammer) of Atlanta, Georgia is one of its potential suppliers. Hammer has been the recipient of 16 Warning Letters from DEA between October 1997 and January 2001. These letters notified Hammer that list I chemicals distributed by the firm have been associated with the illicit manufacture of methamphetamine.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that KVM's application for DEA registration be denied, on the ground that registration of KVM would not be in the public interest. 21 U.S.C. 824(a)(4). This order is effective December 27, 2002.

Dated: November 4, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30021 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; application for certificate of citizenship in behalf of an adopted child.

The Department of Justice, Immigration and Naturalization Service (NS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by November 30, 2002. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Karen Lee, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Lee at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until January 27, 2003. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

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(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–643. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection allows United States citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 11,159 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,159 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 21, 2002

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–30020 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility; To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,420; Cawood Manufacturing Co., Inc.

TA–W–42,165; Wirtz Manufacturing Co., Port Huron, MI

TA–W–41,495; Arkwright, Inc., OCE USA Holding Co., Fiskville, RI

TA–W–41,655; BTA–Perfex, Butler, WI

TA–W–41,982; Kato Engineering, Inc., North Mankato, MN

TA–W–42,013; Baker Enterprises, Inc., Alpena, MI

TA–W–42,102; Northern Engraving Corp., Lansing Div., Lansing, IA

TA–W–42,189; Baker Electrical Products, Memphis, MI

TA–W–42,205; Sutherland Sheet Metal and Welding Co., Woonsocket, RI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,292; MacNeill Worldwide, a Subsidiary of MacNeill Engineering Co., Laconia, NH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–42,238; Eichleay Engineers and Constructors, Inc., Pittsburgh, PA

TA–W–42,175; Hilti, Inc., New Castle, PA

TA–W–42,183; IKA Logistics, Inc., Packaging Div., a Subsidiary of Inabata America Corp., El Paso, TX

The investigation revealed that criteria (1) has not been met. A Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–42,273; General Mills, Bakeries and Food Service, Hillside, MI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,070; Athens Products, Athens, TN: August 9, 2001.

TA–W–42,248; Kasper Machine Co., Inc., Madison Heights, MI: September 18, 2001.

TA–W–42,302; Trends Clothing Corp., a/k/a/ Trends International, Miami, FL: October 9, 2001.

TA–W–42,305; Unison Industries, a Subsidiary of G.E. Fort Worth, TX: October 8, 2001

TA–W–42,329; International Hosiery Network, LLC, Hickory, NC: October 21, 2001.

TA–W–50,020; DMI–Arkansas, Inc., d/b/a/ Arkansas General Industries, Bald Knob, AR: November 5, 2001.

TA–W–42,280; Covington Industries, Inc., High Point, NC: October 9, 2001.

TA–W–42,061; Metropolitan Steel Industries, Inc., d/b/a Steelco, Sinking Springs, PA: August 20, 2001.

TA–W–50,024; Hudson Respiratory Care, Inc., Argyle, NY: November 4, 2001.

TA–W–42,257; Arnold Engineering Co., Marengo, IL: October 1, 2001.

TA–W–42,240; RBX Industries, Inc., Colt, AR: October 1, 2001.

TA–W–42,168; Gulfstream Aerospace Technologies, Bethany, OK: September 6, 2001.

TA–W–42,153; Wells Lamont Corp., Packing and Sewing Department, Waynesboro, MS: September 4, 2001.

TA–W–42,150 &A; Wyman-Gordon Forgings, a Div. of Precision Castparts Corp., North Graft, MA, Worcester, MA: September 4, 2001.

TA–W–42,139; Fabry Industries, Green Bay, WI: August 27, 2001.

TA–W–42,045; Regal Manufacturing, Inc., New York, NY: August 21, 2001.

TA–W–42,022; Molded Container Corp., Portland, OR: August 8, 2001.

TA–W–41,144; Dawson Furniture Co., Webb City, MO: February 20, 2001.

TA–W–40,505; Tee Tease, LLC., Commerce, CA: October 31, 2000.

TA–W–42,744; Angelica Image Apparel, St. Louis, MO: June 12, 2001.

TA–W–41,623; Decrane Aircraft Seating Co., Inc., E.R.D.A. Medical Div., Marinette, WI: May 24, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182)

concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05901; Dawson Furniture Co., Webb City, MO

NAFTA–TAA–06220; BTA–Perfex, Div. of Thermal Engineering International, Butler, WI

NAFTA–TAA–06342; Louisiana-Pacific Corp., Plywood Div., Bon Wier, TX

NAFTA–TAA–06463; Baker Enterprises, Inc., Alpena, MI

NAFTA–TAA–06510; Northern Engraving Corp., Lansing Div., Lansing, IA

NAFTA–TAA–07565; Baker Electrical Products, Inc., Memphis, MI

NAFTA–TAA–07644; Fedder's Appliances, Effingham, IL

NAFTA–TAA–06471; Wisconsin Pattern Co., Racine, WI

NAFTA–TAA–07607; RBX Industries, Inc., Colt, AR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07581; IKA Logistics, Inc., Packaging Div., A Subsidiary of Inabata America Corp., El Paso, TX

NAFTA–TAA–06378; Willamette Industries, a Weyerhaueser Co., Albany BMG Div., Albany, OR

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–07526; State of Alaska Commercial Fisheries Entry Commission Permit #65826E, Togiak, AK

NAFTA–TAA–07315; State of Alaska Commercial Fisheries Entry Commission Permit #64750K, Manokotak, AK

NAFTA–TAA–07102; State of Alaska Commercial Fisheries Entry Commission Permit #64914G, Dillingham, AK

NAFTA–TAA–07059; State of Alaska Commercial Fisheries Entry Commission Permit #60161A, Togiak, AK

NAFTA–TAA–07046; State of Alaska Commercial Fisheries Entry Commission Permit #57876J, Togiak, AK

NAFTA–TAA–07041; State of Alaska Commercial Fisheries Entry Commission Permit #58078X, Anchorage, AK

NAFTA–TAA–07042; Permit #61508S, Anchorage, AK

NAFTA–TAA–06937; State of Alaska Commercial Fisheries Entry Commission Permit #56498G, New Stuyahok, AK

NAFTA–TAA–06875; State of Alaska Commercial Fisheries Entry Commission Permit #57767U, Naknek, AK

NAFTA–TAA–06803; State of Alaska Commercial Fisheries Entry Commission Permit #64822I, Koliganek, AK

NAFTA–TAA–07546; Permit #60018B, Ugashik, AK

NAFTA–TAA–07205; Permit #59859P, Dillingham, AK

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

NAFTA–TAA–07394; Permit #65838L, Naknek, AK

NAFTA–TAA–07393; Permit #57957Q, Naknek, AK

NAFTA–TAA–07064; State of Alaska Commercial Fisheries Entry Commission Permit #57453B, Togiak, AK

NAFTA–TAA–06995; State of Alaska Commercial Fisheries Entry Commission, Permit #61962L, South Naknek, AK

NAFTA–TAA–06735; State of Alaska Commercial Fisheries Entry Commission Permit #55224K, Egegik, AK

NAFTA–TAA–06619; State of Alaska Commercial Fisheries Entry Commission Permit #59338H, Dillingham, AK

NAFTA–TAA–06578; State of Alaska Commercial Fisheries Entry Commission Permit #64128B, Dillingham, AK

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05848; Tee Tease, LLC, Commerce, CA: October 31, 2000.

NAFTA–TAA–06517; Metropolitan Steel Industries, Inc., d/b/a Steelco, Sinking Springs, PA: August 22, 2001.

NAFTA–TAA–06600; State of Alaska Commercial Fisheries Entry Commission Permit #58874X, Dillingham, AK: September 5, 2001.

NAFTA–TAA–06923; Permit #64808Q, New Stuyahok, AK: September 5, 2001.

NAFTA–TAA–07291; State of Alaska Commercial Fisheries Entry Permit #606910, Manokotak, AK:

NAFTA–TAA–07301; State of Alaska Commercial Fisheries Entry Commission Permit #65405G, Manokotak, AK: September 5, 2001.

NAFTA–TAA–07511; State of Alaska Commercial Fisheries Entry Commission Permit #64734J, Togiak, AK: September 5, 2001.

NAFTA–TAA–07611; Unison Industries, A Subsidiary of G.E., Fort Worth, TX: October 10, 2001.

NAFTA–TAA–07612; SMTC Manufacturing Corp., Austin, TX: August 16, 2001.

NAFTA–TAA–06228; Decrane Aircraft Seating Co., Inc., E.R.D.A. Medical Div., Marinette, WI: May 28, 2001.

NAFTA–TAA–07286; State of Alaska Commercial Fisheries Entry

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Commission Permit #65874I, Monokotak, AK: September 5, 2001.
NAFTA–TAA–06298; Angelica Image Apparel, St. Louis, MO: June 21, 2001.
NAFTA–TAA–06771; State of Alaska Commercial Fisheries Entry Commission Permit #68181M, Iliamna, AK: September 5, 2001.
NAFTA–TAA–06808; State of Alaska Commercial Fisheries Entry Commission Permit #56834J, Koliganek, AK: September 5, 2001.
NAFTA–TAA–06826; State of Alaska Commercial Fisheries Entry Commission Permit #60843A, Levelock, AK: September 5, 2001.
NAFTA–TAA–07079; State of Alaska Commercial Fisheries Entry Commission Permit #67875V, Twin Hills, AK: September 5, 2001.
NAFTA–TAA–07280; Permit #64911E, Manokotak, AK: September 3, 2001.
NAFTA–TAA–07568; Molded Container Corp., Portland, OR: August 8, 2001.

I hereby certify that the aforementioned determinations were issued during the months of November, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.
[FR Doc. 02–30068 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40, 687 & NAFTA–05749]

Goodyear Dunlop Tires, N.A. Ltd, Huntsville, AL; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determinations in *United Steel Workers of America, Local 915L, District 9, AFL–CIO* v. *Elaine L. Chao, U.S. Secretary of Labor* (Court No. 02–00457).

The Department's initial denial of the Trade Adjustment Assistance (TAA) petition for employees of Goodyear Dunlop, N.A. LTD, Huntsville (TA–W–40, 687), was issued on May 3, 2002 and published in the **Federal Register** on May 17, 2002 (67 FR 35140). The denial was based on the fact that criterion (3) of the Group Eligibility Requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Increased imports did not contribute importantly to worker separations at the subject firm.

The Department's initial denial of the NAFTA-Transitional Adjustment Assistance (NAFTA) petition for employees of Goodyear Dunlop, N.A. LTD, Huntsville, Alabama (NAFTA–05749) was issued on May 3, 2002 and published in the **Federal Register** on May 17, 2002 (67 FR 35142). The denial was based on the fact that criteria (3) and (4) of the Group Eligibility Requirements of Section 250 of the Trade Act of 1974 were not met. Imports from Canada or Mexico did not contribute importantly to worker separations nor was there a shift in production from the subject firm to Canada or Mexico during the relevant period.

On remand, the Department requested additional information from the company. Based on the data supplied by the company the Department made a decision to survey the major declining customers of the subject firm regarding their purchases of passenger and light truck radial tires during 1999, 2000 and 2001. The survey revealed that a major declining customer increased their imports (primarily from Mexico and/or Canada) of passenger and light truck radial tires, while decreasing their purchases of passenger and light truck radial tires from the subject firm during the relevant period

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports (primarily from Canada or Mexico) of articles like or directly competitive with those produced by the subject firm that contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Goodyear Dunlop, N.A. LTD, Huntsville, Alabama (TA–W–40, 687) who became totally or partially separated from employment on or after November 28, 2000, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974; and

All workers of Goodyear Dunlop, N.A. LTD, Huntsville, Alabama (NAFTA–05749) who became totally or partially separated from employment on or after December 11, 2000, through two years from the issuance of this revised determination, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 5th day of November 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.
[FR Doc. 02–30063 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,200]

Acterna Corporation Indianapolis, Indiana; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 21, 2002 in response to petition filed by the company on behalf of workers at Acterna Corporation, Indianapolis, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–30072 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,160]

Altadis U.S.A. Inc. McAdoo, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 23, 2002, in response to a worker petition which was filed by the Teamsters Local Union No. 401 on behalf of workers at Altadis U.S.A., Inc., McAdoo, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–30069 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,253]

Fleming Lumber Company, Inc., Milligan, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 21, 2002, in response to a worker petition filed on the same date by a company official on behalf of workers at Fleming Lumber Company, Inc., Milligan, FL.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 14th day of November 2002

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–30070 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,356]

Hynix Semiconductor America, Inc., San Jose, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to petition filed by the company on behalf of workers at Hynix Semiconductor America, Inc., San Jose, California.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–30074 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,338]

Kane Handle Company, a Division of Ames True Temper, Kane, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to a petition filed by the United Steelworkers of America on behalf of workers at Kane Handle Company, a Division of Ames True Temper, Kane, Pennsylvania.

A negative determination applicable to the petitioning group of workers was issued on October 8, 2002 (TA–W–42,093). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 19th day of November, 2002.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–30065 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,279]

LaGrange Foundry, LaGrange, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 2002, in response to a petition filed on behalf of workers at LaGrange Foundry, LaGrange, Missouri.

The investigation revealed that there is an existing petition (TA–42,245) for the subject firm workers which was instituted on October 15, 2002.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of November 2002.

Elliott S. Kushner,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–30064 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 21st day of October, 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

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APPENDIX

[Petitions Instituted on 10/21/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,252	Leslie Fay Marketing, Inc (UNITE)	New York, NY	10/11/2002	dresses.
42,253	Fleming Lumber Co., Inc. (Comp)	Milligan, FL	10/09/2002	kiln dried lumber.
42,254	American Fibers and Yarns (Wkrs)	Rocky Mount, NC	09/30/2002	yarn, upholstery material, rayon.
42,255	Waltec Forgings, Inc. (Comp)	Port Huron, MI	09/30/2002	non-ferrous forgings, valve.
42,256	Jackson Sewing Center (Wkrs)	Madisonville, TN	10/02/2002	sewed upholstery fabric.
42,257	Arnold Engineering Co. (IAM)	Marengo, IL	10/01/2002	toroidal cores.
42,258	Joan Fabrics Corporation (Wkrs)	Hickory, NC	09/18/2002	textiles for furniture manufacturers.
42,259	Colabria Fashions, Inc. (UNITE)	New Rochelle, NY	10/11/2002	ladies' apparel.
42,260	Miss Dorby (UNITE)	New York, NY	10/09/2002	women's dresses.
42,261	Eybl Cartex, Inc. (Comp)	Fountain Inn, SC	10/02/2002	knitted velour fabric.
42,262	Pollak (Comp)	Boston, MA	10/02/2002	door lock actuators.
42,263	Arkansas Metal Castings (Comp)	Ft. Smith, AR	10/04/2002	grey and ductile iron castings.
42,264	ASCG Inspection, Inc. (Comp)	Anchorage, AK	10/02/2002	testing inspection services.
42,265	Streamline Fashions (Comp)	Philipsburg, PA	10/02/2002	men's suit jackets.
42,266	Presto Manufacturing Co. (IBEW)	Jackson, MS	10/03/2002	non-commercial small kitchen appliances.
42,267	Simula Automotive Safety (Comp)	Tempe, AZ	09/20/2002	side impact head airbag.
42,268	Frazer and Jones Co. (LWAIUE)	Syracuse, NY	10/02/2002	mine anchors, contract castings.
42,269	Acterna (Comp)	Indianapolis, IN	10/04/2002	test equipment for telecommunications.
42,270	Dixon Ticonderoga Co. (Comp)	Sandusky, OH	10/07/2002	crayons.
42,271	Uniek Inc. (Comp)	Greenwood, MS	09/30/2002	wooden picture frames.
42,272	Mountain Fir Chip Co (Comp)	The Dalles, OR	10/01/2002	wood chips.
42,273	General Mills Bakeries (Comp)	Hillsdale, MI	09/30/2002	prepared bakery mixes.
42,274	Angelica Image Apparel (Wrks)	Alamo, TN	10/04/2002	garment distribution.
42,275	ESAB Group (The) (Wkrs)	Niagara Falls, NY	10/02/2002	bonded and flux for welding products.
42,276	Koei America, Inc (Wkrs)	Hillsboro, OR	10/02/2002	electronic components for semiconductors.

[FR Doc. 02–30058 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitioners filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 1st day of November, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 11/01/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Products(s)
42,314	NCS Pearson (Comp)	Mesa, AZ	10/21/2002	software development.
42,315	Alcatel USA, Inc. (Wkrs)	Plano, TX	10/18/2002	wireless telephone switches.
42,316	Augusta Mills (Comp)	Elkton, VA	10/15/2002	bed sheets and pillow cases.
42,317	Boise Cascade (PACE)	Jackson, AL	10/15/2002	pine lumber.
42,318	Eagle Clothing Co. (Wkrs)	Los Angeles, CA	10/15/2002	clothing.
42,319	Spicer Driveshaft Manufacturing, Inc. (Wkrs).	Atkins, VA	10/17/2002	automotive drivetrain components.
42,320	Apache Corporation (Wkrs)	Houston, TX	10/14/2002	oil and gas.
42,321	Boxboard Packaging Co. (Wkrs)	Norwalk, OH	09/30/2002	printed folding cartons.
42,322	Kelly Services, Inc (Wkrs)	San Diego, CA	10/17/2002	stuffing services..
42,323	Armstone Div., PermaGrain Products (Comp).	Newtown Square, PA	10/15/2002	artificial marble (tile).

APPENDIX—Continued

[Petitions Instituted on 11/01/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Products(s)
42,324	United Plastics Group (Comp)	Bensenville, IL	10/16/2002	plastic molded parts.
42,325	U.S. Repeating Arms Co. (IAM)	New Haven, CT	10/17/2002	rifles and shotguns.
42,326	Micro C Technologies, Inc (Comp)	Grand Rapids, MI	10/22/2002	semiconductor capitol equipment.
42,327	Aspen International (Wkrs)	Salem, OR	10/15/2002	cable TV maps.
42,328	Stratex Networks, Inc. (Comp)	San Jose, CA	10/09/2002	telecommunications equipment.
42,329	International Hosiery Network, LLC (Wkrs)	Hickory, NC	10/21/2002	cotton socks—men and women.
42,330	Alcoa Inc. (UAW)	Cleveland, OH	11/01/2002	aluminum wheels.
42,331	PHB Die Casting (USWA)	Fairview, PA	10/15/2002	die casting parts.
42,332	Parker Hannifin Corp. (Wkrs)	Andover, OH	10/22/2002	gas turbine engine fuel nozzles.
42,333	Dunbrooke Sportswear (Wkrs)	El Dorado Spgs, MO	10/21/2002	jackets.
42,334	Pine State Knitwear Co. (Wkrs)	Mount Airy, NC	10/21/2002	yarn.
42,335	Trans World Connections, Ltd (Comp)	Lynchburg, VA	10/21/2002	cable harnesses.
42,336	Power-One (Wkrs)	Andover, MA	10/15/2002	DE power converters.
42,337	Corning Cable Systems (Wkrs)	Hickory, NC	10/21/2002	connectorized cables.
42,338	Kane Handle Co. (USWA)	Kane, PA	10/14/2002	wood handles for garden tools.
42,339	Doyle Shirt Manufacturing (Wkrs)	Doyle, TN	10/24/2002	career uniforms.
42,340	Titan Wheel Corp. of Va (Comp)	Saltville, VA	10/25/2002	wheel and tire assemblies, mining wheels.
42,341	Pomona Paper Company (AWPPW)	Pomona, CA	10/24/2002	linerboard.
42,342	Auburn Hosiery Mills, Inc. (Comp)	Auburn, KY	10/17/2002	athletic socks.
42,343	Frolic Footwear (Wkrs)	Monette, AR	10/23/2002	shoes.
42,344	Hitachi High Technologies America, Inc. (Comp).	San Jose, CA	09/27/2002	uv spectrophotometers, blood analyzers.
42,345	General Electric Industrial Systems (Comp)	Plainville, CT	10/07/2002	fabrication load centers and switches.
42,346	Haemer-Wright Tool and Die, Inc. (Wkrs)	Saegertown, PA	07/22/2002	dies and molds.
42,347	Shur-Line (Comp)	Johnson City, TN	10/08/2002	paint brushes.
42,348	Lexington Home Brands (Comp)	Mocksville, NC	10/30/2002	furniture.
42,349	Peak Storage Solutions (Wkrs)	Louisville, CO	10/23/2002	data storage.
42,350	Partex Apparel Mfg., Inc (Comp)	Medley, FL	10/24/2002	private label, sports apparel.
42,351	Johnstown Corporation (USWA)	Johnstown, PA	10/31/2002	steel castings.
42,352	Pacific Electricord (Wkrs)	Gardana, CA	10/10/2002	cord sets, extension cords.
42,353	Cerf Brothers Bag Company (Wkrs)	New London, MO	10/29/2002	nylon duffle bags, canvas duffle bags.
42,354	Kalmar Industries Corp. (Wkrs)	White Oak, TX	10/25/2002	terminal tractors.
42,355	Ferro Corporation (GMPPAW)	East Liverpool, OH	10/23/2002	ceramic grinding media.
42,356	Hynix Semiconductor America, Inc. (Comp)	San Jose, Ca	10/08/2002	flash memory products.
42,357	ConsolEnergy (Wkrs)	Sesser, IL	10/28/2002	coal.
42,358	Pratt and Whitney (Comp)	Claremore, Ok	10/30/2001	jet engine, components.
42,359	Allegheny Ludlum Washington Plate (USWA).	Washington, PA	11/01/2002	steel plate, products.

[FR Doc. 02–30062 Filed 11–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 15th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

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APPENDIX—PETITIONS INSTITUTED ON OCTOBER 15, 2002

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,228	Pent Products, Inc. (Comp)	Ashley, AL	09/23/2002	Electrical harnesses.
42,229	Dana Corp. (UAW)	Syracuse, IN	09/25/2002	Machining of cases and carriers.
42,230	Flowserve US, Inc. (Wkrs)	Williamsport, PA	09/27/2002	Nuclear valves.
42,231	Doe Run Resources Corp. (Comp)	Viburnum, MO	09/25/2002	Zinc and lead concentrates.
42,232	Nilfisk—Advance, Inc. (Wkrs)	Plymouth, MN	09/26/2002	Parts for vacuums, industrial sweepers.
42,233	M J Soffe (Wkrs)	Wallace, NC	08/21/2002	Military T-shirts.
42,234	Joy Mining Machinery (Wkrs)	Mt. Vernon, IL	09/23/2002	Frame gathering heads and traction.
42,235	Cattiva, Inc. (Comp)	New York, NY	10/02/2002	Women's dresses.
42,236	Consolidated Freightways (Wkrs)	York, PA	09/26/2002	Trucking services.
42,237	Penn American Coal Co. (Wkrs)	Black Lick, PA	09/24/2002	Coal.
42,238	Eichleay Engineers (Comp)	Pittsburgh, PA	09/30/2002	Construction and engineering service.
42,239	Aerovox, Inc. (Comp)	Huntsville, AL	09/26/2002	Aluminum foil.
42,240	RBX Industries, Inc. (Comp)	Colt, AR	10/01/2002	Cell foam rubber insulation.
42,241	Siemens Medical Solutions (Comp)	Issaquah, WA	09/16/2002	Arrays and transducers.
42,242	Super Shrimp, Inc. (Wkrs)	Yuma, AZ	09/19/2002	Pack and distribute shrimp.
42,243	Consolidated Freight Ways (Wkrs)	El Paso, TX	09/23/2002	Transporting of products.
42,244	X-Cell Tool and Mold, Inc (Comp)	Erie, PA	09/23//2002	Plastic injection molds and components.
42,245	La Grange Foundry (GMP)	La Grange, MO	09/18/2002	Gray iron and ductile casings.
42,246	Radial/Larsen Antenna (Comp)	Vancouver, WA	09/23/2002	Base station antennas.
42,247	Tecmotiv Corporation (Comp)	Tonawanda, NY	08/30/2002	Automobile steering gear boxes.
42,248	Kasper Machine Company (Comp)	Madison Heights, MI	09/18/2002	Precision turning and boring machines.
42,249	Enviro Systems Furniture (Comp)	Grand Rapids, MI	09/23/2002	Office furniture.
42,250	E.J. Snyder and Co., Inc. (Comp)	Albermarle, NC	09/04/2002	Dye and finish cotton knit cloth.
42,251	Southwestern Glass Co. (Comp)	Van Buren, AR	10/01/2002	Hand glass.

[FR Doc. 02–30059 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment, and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 7th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON OCTOBER 7, 2002

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,210	Presto Products (Wrks)	Alamogordo, NM	09/19/2002	Small appliances.
42,211	Motorola—SPS–BMC (Wrks)	Mesa, AZ	09/04/2002	Pressure sensor.
42,212	Deluxe Craft Photo Albums (Wrks)	Chicago, IL	09/17/2002	Photo albums.
42,213	John Boyle and Assoc., LLC (Comp)	Easton, PA	09/16/2002	Bearing housing, castings and machining.
42,214	SPX Valves and Controls (IAM)	Sartell, MN	09/16/2002	Valves and controls.
42,215	Agilent Technologies, FSC (Wrks)	Colorado Spring, Co	09/03/2002	Financial service.
42,216	Alba-Waldensian, Inc. (Comp)	Valdese, NC	08/23/2002	Knitted apparel—undergarments, hosiery.
42,217	Microelectronic Module (Wrks)	New Berlin, WI	09/23/2002	Circuit boards.
42,218	Kent Inc. (Comp)	Ft. Kent, ME	09/27/2002	Infant sleepwear.
42,219	Celestica Corporation (Comp)	Foothill Ranch, CA	09/12/2002	Computer and server products.
42,220	Bo-Jan Garment, Inc. (Comp)	Schuylkill Have, PA	09/19/2002	Men and women sportswear, t-shirts, pant.
42,221	Marconi Communications (Wrks)	Lorain, OH	09/03/2002	Power supplies—transformers, pc boards.
42,222	WicorAmerica/EHV-Weidmann (Comp)	St. Johnsbury, VT	09/07/2002	Insulation for electrical transformers.
42,223	Nash Garment Co. (UNITE)	Bailey, NC	07/11/2002	Girls' dresses.
42,224	Radio Frequency Systems (Wrks)	Corvallis, OR	09/16/2002	Amplifiers, duplexers and multicouplers.

APPENDIX—PETITIONS INSTITUTED ON OCTOBER 7, 2002—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,225	Ametek Aerospace Products (IUE)	Wilmington, MA	09/20/2002	Aircraft cables, thermocouples, machine.
42,226	RLA Investments, LC (Wrks)	Hialeah, FL	08/29/2002	Micro-chips for computer systems.
42,227	Jabil Circuit, Inc. (Wrks)	Meridian, ID	09/23/2002	Circuit board assemblies.

[FR Doc. 02–30060 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations begin or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 8th day of November, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED BETWEEN NOVEMBER 4, 2002 AND NOVEMBER 8, 2002

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,001	Reliant Bolt, Inc (USS)	Bedford Park, IL	11/04/2002	11/04/2002
50,002	Longview Fibre Leavenworth Wood Products (CIW).	Leavenworth, WA	11/04/2002	11/04/2002
50,003	Weyerhaeuser Longview Lumber (IAM)	Longview, WA	11/04/2002	11/04/2002
50,004	Spang and Company (IBEW)	East Butler, PA	11/04/2002	11/04/2002
50,005	Bottoms Group, Inc. (Comp)	Auburn, ME	11/05/2002	11/04/2002
50,006	Sherman Lumber Company (Wkrs)	Sherman Station, ME	11/05/2002	11/04/2002
50,007	Newell Rubbermaid (Wkrs)	Freeport, IL	11/05/2002	11/04/2002
50,008	Storage Technology Corp. (Wkrs)	Brooklyn Park, MN	11/05/2002	11/04/2002
50,009	Dodger Industries, Inc. (Comp)	Eagle Grove, IA	11/05/2002	11/04/2002
50,010	Vulcan Chemicals (Wkrs)	Wichita, KS	11/05/2002	11/04/2002
50,011	Cooper Power Systems (Comp)	E. Stroudsburg, PA	11/05/2002	11/04/2002
50,012	PD Wire and Cable (Comp)	Laurinburg, NC	11/06/2002	11/05/2002
50,013	Georgia Pacific Corp., OSB Plant (PACE)	Baileyville, ME	11/06/2002	11/04/2002
50,014	KWIKSET, Subsidiary of Black and Decker (Comp).	Waynesboro, GA	11/06/2002	11/05/2002
50,015	Houlton International Corp. (Comp)	Houlton, ME	11/06/2002	11/05/2002
50,016	Laird Technologies (Wkrs)	Del. Watergap, PA	11/06/2002	11/05/2002
50,017	Blue bird Midwest (Wkrs)	Mt. Pleasant, IA	11/06/2002	11/05/2002
50,018	Value Finishing Company (Comp)	Mentor, OH	11/06/2002	11/05/2002
50,019	Domtar AW, WI Operations (PACE)	Port Edwards, WI	11/06/2002	11/05/2002
50,020	DMI-Arkansas, Inc. (Wkrs)	Bald Knob, AR	11/06/2002	11/05/2002
50,021	Buehler Motor, Inc. (Comp)	Kinston, NC	11/06/2002	11/05/2002
50,022	Andrew Corporation (Comp)	Richardson, TX	11/06/2002	11/04/2002
50,023	Andrew Corporation (Comp)	Burlington, IA	11/06/2002	11/04/2002
50,024	Hudson Respitory Care, Inc. (Comp)	Argyle, NY	11/06/2002	11/04/2002
50,025	Andrew Corporation (Comp)	Orland Park, IL	11/07/2002	11/04/2002
50,026	Andrew Corporation (Comp)	Addison, IL	11/07/2002	11/04/2002
50,027	Stimson Lumber Company (Comp)	Libby, MT	11/07/2002	11/06/2002
50,028	Tyco Electronics (Comp)	Winston-Salem, NC	11/07/2002	11/05/2002
50,029	Half Moon Bay Fisheries (Comp)	Kodiak, AK	11/07/2002	11/05/2002
50,030	Fishing Vessel Kiavak (Comp)	Kodiak, AK	11/07/2002	11/05/2002
50,031	Saunders Brothers, Inc. (Wkrs)	Westbrook, ME	11/07/2002	11/07/2002
50,032	Kent, Inc. (Comp)	Fort Kent, ME	11/07/2002	11/05/2002
50,033	Carolina Circuits, a/k/a CMAC of America (Comp)	Greenville, SC	11/07/2002	11/06/2002
50,034	Plastic Products Co. (Comp)	Moline, IL	11/08/2002	11/05/2002
50,035	Strong Wood Products, Inc. (Comp)	Strong, ME	11/08/2002	11/04/2002

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APPENDIX—PETITIONS INSTITUTED BETWEEN NOVEMBER 4, 2002 AND NOVEMBER 8, 2002—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,036	Nortel Network (Wkrs)	RTP, NC	11/08/2002	11/05/2002
50,037	Hubbard Company (The) (Comp)	Breman GA	11/08/2002	11/06/2002
50,038	Hi Specialty America (Wkrs)	Irwin, PA	11/08/2002	11/05/2002
50,039	Vista Wood Products (Comp)	Lafayette, TN	11/08/2002	11/07/2002
50,040	Vista Wood Products (Comp)	Greensburg, KY	11/08/2002	11/07/2002
50,041	Woods Industries (Comp)	Carmel, IN	11/08/2002	11/06/2002
50,042	Chamco Equipment (Comp)	Vancouver, WA	11/08/2002	11/05/2002
50,043	Dynagear, Inc. (Comp)	York, PA	11/08/2002	11/05/2002

[FR Doc. 02–30061 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,241]

Siemens Medical Solutions, Inc., Ultrasound Division Issaquah, WA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 2002 in response to petition filed by the company on behalf of workers at Siemens Medical Solutions, Inc., Ultrasound Division, Issaquah, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30071 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,325]

U.S. Repeating Arms Co. New Haven, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002, in response to a petition filed by the International Association of Machinists and Aerospace Workers Union (IAMAW), District Lodge 26 on behalf of workers at U.S. Repeating Arms Company, New Haven, Connecticut.

The union official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 14th day of November 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30073 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6788]

State of Alaska Commercial Fisheries Entries Commision Permit # 56319H, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #56319H, King Salmon, Alaska.

The workers stopped fishing in July of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30066 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6568]

State of Alaska Commercial Fisheries Entries Commission Permit #503T85655K King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #503T85655K, King Salmon, Alaska.

The workers stopped fishing in July of 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30075 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6532]

State of Alaska Commercial Fisheries Entries Commission Permit # 61155V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #61155V, Dillingham, Alaska.

The workers stopped fishing in July 10, 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30076 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6687]

State of Alaska Commercial Fisheries Entries Commission Permit #50216C, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #61155V, Dillingham, Alaska.

The workers stopped fishing in August of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30077 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6282]

Glen Oaks Industries, Inc., Dallas, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 21, 2002, applicable to workers of Glen Oaks Industries, Marietta Sportswear Manufacturing Company, Inc., Dallas, Texas. The certification was amended on September 25, 2002, to include workers formerly employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma. The notice will soon be published in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company official shows that wages for the six workers engaged in the production of men's slacks at the Dallas, Texas, location were reported to the Unemployment Insurance (UI) tax account for Glen Oaks Industries in Oklahoma. The company official also reports that Marietta Sportswear Manufacturing Co., Inc., is no longer an entity of Glen Oaks Industries, and thus, not applicable to this worker group.

Also, the Department has learned from the State that all six workers have been separated from employment and there is no need to have the certification in effect for two years from the date of issuance.

Based on this new information, the Department is again amending the certification to limit coverage to workers producing men's slacks at Marietta Sportswear Manufacturing Co., Inc., Dallas, Texas, whose wages were reported to the State of Oklahoma under the UI tax account for Glen Oaks Industries. Furthermore, the certification will expire October 4, 2002.

The amended notice applicable to NAFTA–6282 is hereby issued as follows:

Workers producing men's slacks at Glen Oaks Industries, Dallas, Texas, whose wages were reported to Glen Oaks Industries in Marietta, Oklahoma, who became totally or partially separated from employment on or after June 13, 2001 through October 4, 2002, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 4th day of October 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30067 Filed 11–26–02; 8:45 am]
BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 02–144]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). The information obtained in this collection will assist NASA in assessing the effectiveness of aviation safety programs.

DATES: All comments should be submitted on or before December 27, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA;

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Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: National Aviation Operations Monitoring Service: General Aviation Pilots.

OMB Number: 2700–0102.

Type of review: Extension.

Need and Uses: The information collected will be analyzed and used by NASA Aviation Safety Program managers to evaluate their progress in improving aviation over the next decade.

Affected Public: Individuals or households.

Number of Respondents: 10,000.

Responses Per Respondent: 1.

Annual Responses: 10,000.

Hours Per Request: Approx. ½ hour.

Annual Burden Hours: 6,280.

Frequency of Report: Quarterly; Annually.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–30135 Filed 11–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 9, 2002, from 10 a.m. to 11 a.m.

ADDRESSES: Whittall Pavilion, Library of Congress, Thomas Jefferson Building, Ground Floor.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Overview of Committee's activities.
House services to departing Members concerning the disposition of their papers.
Summary of NIST report on irradiated records.
Legislative records outside of official custody.
Follow-up discussion.
Activities report of the Center for Legislative Archives.
Other current issues and new business.

The meeting is open to the public.

Dated: November 21, 2002.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 02–30012 Filed 11–26–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01176]

Environmental Assessment and Finding of No Significant Impact; Materials License No. 49–09955–10, University of Wyoming, Laramie, WY

The U.S. Nuclear Regulatory Commission (NRC) is considering the approval of the University of Wyoming's revised decommissioning plan for two former burial sites located near Laramie, Wyoming, and amending NRC Materials License 49–09955–10 to remove the two sites from the license.

Environmental Assessment

Background

The University of Wyoming (licensee) submitted a decommissioning plan to the NRC by letter dated October 21, 1998. The licensee subsequently submitted a revised decommissioning plan to the NRC by letter dated May 30, 2001. The licensee requested that two former radioactive material burial sites located near Laramie, Wyoming, be released for unrestricted use. The NRC is considering the issuance of an amendment to Materials License 49–09955–10 to release these two burial sites for unrestricted use. The purpose of this Environmental Assessment (EA) is to assess the environmental consequences of this license amendment request.

Proposed Action

The proposed action is to amend NRC Materials License 49–09955–10 to release for unrestricted use the two former burial sites located near Laramie, Wyoming. The licensee would not be required to remediate the two sites if the NRC approves the license amendment request.

Purpose and Need for Proposed Action

NRC regulation 10 CFR 30.36 (the Timeliness Rule) requires licensees to decommission their facilities when licensed activities cease, and to request termination of their radioactive materials licenses. The purpose of the Timeliness Rule is to reduce the potential risk to the public and environment that may result from delayed decommissioning of inactive facilities and sites. The purpose of the proposed action is to remove the two former burial sites from the University of Wyoming's radioactive materials license because the licensee no longer uses the two burial sites. The licensee would continue to possess radioactive material under its NRC license at other locations specifically listed in the license. If removed from the license, the two burial sites would no longer be subject to NRC regulatory oversight, and the licensee would be in compliance with Timeliness Rule requirements.

History/Facility Description

The University of Wyoming has used radioactive material since about 1950. The licensee disposed of radioactive waste material at two separate burials sites from about 1952 until 1985. The licensee was authorized to dispose of radioactive material by burial in accordance with 10 CFR 20.304 between 1959–1981. Prior to 1959, burial of radioactive material was not authorized by § 20.304 but may have been conducted under a specific U.S. Atomic Energy Commission authorization or license condition at that time. During 1981, § 20.304 was rescinded by the NRC. The licensee then conducted burials in accordance with § 20.302 until 1985. During 1985, the NRC rejected the licensee's request to continue to dispose of radioactive material by burial in accordance with § 20.302. As a result, burial of radioactive material was permanently discontinued during March 1985.

The first burial site was known as the Quarry site. This disposal site was a dry borehole located at a University-owned sandstone quarry. The quarry is situated approximately 7.5 miles (12 kilometers) to the northeast of Laramie. The University believes that the Quarry site was used during 1952–1957. The licensee cannot pinpoint the exact location of the 100-foot (30.48 meters) borehole but is aware of the general location of the borehole.

The airport site is located on University-owned land situated approximately 2 miles (3.2 kilometers) west of Laramie. This site is located near the Laramie Municipal Airport and consists of approximately 40,000 square feet (3716 square meters) of land. This second site was used from 1959 until 1985.

Radiological Status

Based on a records review, the licensee determined that it most likely disposed of only microcurie or millicurie quantities of short-lived radioisotopes in the Quarry site borehole, including phosphorus-32, sulfur-35, iron-59, zinc-65, and iodine-131. Carbon-14, a long-lived beta-emitting radionuclide, apparently was also buried at this site. The licensee's request to release the two former burial sites for unrestricted use is based on dose modeling calculations using the NRC-approved DandD computer code. The licensee chose the drinking water scenario from DandD Version 1.0 for the Quarry site because this site cannot be farmed. The licensee calculated a resident dose of up to 2.74 millirems per year using DandD, a value well below the 25-millirem limit specified in 10 CFR 20.1402.

The licensee disposed of a number of radionuclides at the airport site. The radionuclides of concern at the airport site are hydrogen-3 and carbon-14. At this site, the licensee chose the resident farmer scenario using DandD Version 2.1.0. Using several NRC-approved variations to the DandD default parameters (the default parameters that were adjusted for the airport site were the diet-fruit, number of unsaturated layers, unsaturated zone thickness, and crop yield parameters), the licensee calculated that the resident farmer dose would be less than or equal to 22.5 millirems per year. This calculated value is also below the 25-millirem limit specified in 10 CFR 20.1402.

Alternatives

The licensee asks that the NRC approve the license amendment request as submitted. The alternatives available to the NRC to the proposed action are:

1. Deny the amendment request by taking no action; or
2. Approve the license amendment request but require the licensee to take some additional action not specified in the revised decommissioning plan such as remediation of the two sites.

The Timeliness Rule requirements do not allow the NRC to implement the no action alternative; therefore, Alternative 1 is not a viable option and will be eliminated from further study and consideration in this EA.

Affected Environment

The Quarry site is situated approximately 8 miles (13 kilometers) to the northeast of Laramie. The exact location of the borehole is not known by the licensee. According to the documentation provided by the licensee, the Quarry site is unoccupied and is occasionally used for livestock grazing. There are no ponds on the property. The area is sparsely covered by vegetation that consists mostly of prairie grasses with some interspersed shrubs and sagebrush. The site is roughly 750 square feet (70 square meters) in size and is located in NW¼ of NW¼ of Section 5, Range 72 West, Township 16 North. The licensee installed a monitoring well down-gradient of the borehole during 1994 in order to obtain groundwater samples for analyses. During well installation, a continuous flow of groundwater was established at about 236 feet (72 meters) below the surface. Previously licensed radioactive material was not detected in the water samples that were collected during late-1994.

The airport site consists of approximately 40,000 square feet (3716 square meters) of land. This burial site is located in an 861-acre (348 hectares) tract of University-owned land bounded by Highway 130 to the north, near Highway 230 to the south, the airport to the west, and West Laramie to the east. This site is located in NE¼ of NW¼ of Section 35, Range 74 West, Township 16 North. The site is in a "steppe" climate zone, typical of semi-arid grassland prairies. The vegetation is well suited for livestock grazing and consists of grasses, sedges, some forbs, and a few scattered shrubs. According to information provided by the licensee, the nearest aquifer is located at least 700 feet (213 meters) below the surface. Further, the shallow groundwater is unfit for human and livestock consumption. As such, city water is the predominate water source and is piped to residents and businesses near the airport.

Environmental Impacts of the Proposed Action on Occupational and Public Health

The licensee's request to release the two burial sites for unrestricted use is based, in part, on dose modeling calculations conducted using the NRC-approved DandD computer code. The licensee concluded that the annual dose to members of the public for the Quarry site would be no more than 2.74 millirems per year, while the annual dose for the airport site would be no more than 22.5 millirems per year. Both calculated doses are below the 25 millirem per year dose limit specified in 10 CFR 20.1402.

The NRC conducted a technical review of the licensee's DandD calculations. This review is documented in an internal NRC Memorandum dated December 31, 2001. In summary, the staff concluded that the doses from exposure to residual radioactive material currently situated at both locations are sufficiently low to allow for the unrestricted release of the sites in accordance with 10 CFR 20.1402.

Environmental Impacts of Alternative 2 on Occupational and Public Health

If the licensee were required to remediate the two burial sites, the individuals conducting reclamation would be subjected to exposure to radioactive material. The radionuclides of concern are hydrogen-3 and carbon-14. Both of these radionuclides emit low energy beta particles. From an occupational health and safety standpoint, the worst case scenario is the intentional exhumation of the buried wastes without any radiological controls in place. This scenario is unlikely because the licensee would be expected to have a radiation protection program in place during remediation. Even without any radiological controls, it is highly unlikely that any worker would receive a dose during reclamation that would exceed the occupational dose limits specified in 10 CFR 20.1201 because of the quantities and types of radionuclides present in the waste material. Therefore, if reclamation were to occur, it is probable that occupational exposures would be within the dose limits specified in the NRC's regulations.

If remediation were to occur, the potential harm to the public from exposure to radioactive material would be bounded by the DandD calculations. The DandD scenario used by the licensee assumed that the waste material volume was evenly distributed in the top 6 inches (15 centimeters) of soil. Therefore, the remediation of the two sites would most likely have a minimal radiological impact on members of the public.

Remediation of the sites may have short-term health and safety consequences caused by the excavation, packaging, and shipping of the residual radioactive material. These non-radiological impacts would include the normal risks of exhuming the wastes with earth-moving equipment and transportation of the material to an out-of-state disposal facility. The risks include death or injury from a construction or transportation accident.

There would be minimal risk to members of the public from exposure to radioactive wastes during transport because the radionuclides of concern are low energy beta emitters. The beta particles would not be able to penetrate the walls of the shipping container. The only radiological risks associated with

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the transport of the wastes would involve the cleanup of any spilled material. In the unlikely event that a spill were to occur during transport, radiological controls would most likely be implemented during the cleanup of the spilled waste material. Therefore, the risks associated with the transport of the waste material is minimal.

If remediated, the material would be transported to an out-of-state disposal facility.

Environmental Impacts of Proposed Action on Effluent Releases, Environmental Monitoring, Water Resources, Noise, Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources, and Visual/Scenic Quality

The NRC staff considered the potential impacts of the leaching of radioactive and non-radioactive material into the groundwater. The shallow surface groundwater in the vicinity of the two sites is not used as a drinking water supply and is unfit for human consumption. Local members of the public obtain water from the city. The impacts that potentially contaminated groundwater would have on members of the public was considered as part of the DandD modeling scenarios. In summary, the NRC believes that, if left undisturbed, the two sites would have a minimal impact on the environs of the sites, including groundwater.

The NRC contacted both the U.S. Fish and Wildlife Service and the Wyoming State Historic Preservation Office for their respective assessments. The Fish and Wildlife Service concluded that it was unlikely that the Proposed Action would adversely affect any threatened or endangered species. The Wyoming State Historic Preservation Officer determined that no historic properties would be affected by the Proposed Action.

Environmental Impacts of Alternative 2 on Effluent Releases, Environmental Monitoring, Water Resources, Noise, Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources, and Visual/Scenic Quality

The remediation of the two former burial sites would cause some environmental harm. The waste material would have to be excavated, packaged, and transported to an out-of-state disposal facility. The excavation process would be accomplished by heavy equipment and trucks that would disturb the general area. The prevailing winds will most likely disperse some of the excavated material offsite. The resulting surface void would have to be refilled with clean soil and contoured or fenced to prevent inadvertent intrusion. Vegetation in the vicinity of the reclaimed site would be temporarily disturbed.

Mitigation measures that could reduce the adverse impacts or enhance beneficial impacts were considered by the NRC. The licensee conducted an As Low As Reasonably Achievable (ALARA) analysis to compare the benefit from averted dose achieved by remediation with the costs of cleanup and waste disposal. The licensee calculated the benefit from the collective averted dose using the guidance provided in (draft) Regulatory Guide DG–4006, *Demonstrating Compliance with the Radiological Criteria for License Termination*, dated August 1998. The licensee calculated a total benefit of $8398 from the averted dose for the airport burial site, assuming a monetary value of $2,000 per rem.

The licensee also calculated the remediation costs for decommissioning the airport burial site. The estimated cost of excavating, transporting and disposing of the material at an offsite low-level waste disposal facility was about $7.6 million. The majority of the cost involves waste disposal at an offsite location. The licensee also points out that the public would be economically harmed since the University is a publicly funded school and the $7.6 million would have to come from the state general fund or diverted from the University's budget.

In summary, the NRC agrees that the cost of remediation would exceed the financial benefit from the averted dose that would be saved if the airport site were to be remediated.

The licensee did not conduct an ALARA analysis of the Quarry site, in part, because the exact location of the former borehole is not known.

The NRC has found no other activities in the areas that could result in cumulative impacts.

Agencies and Persons Contacted

The NRC contacted both the U.S. Department of Interior, Fish and Wildlife Service, and the Wyoming State Historic Preservation Office during the development of this EA. The Fish and Wildlife Services concluded that it was unlikely that the Proposed Action would adversely affect any threatened or endangered species. Also, according to the Wyoming State Historic Preservation Office, the Proposed Action would not affect any historic properties. The Wyoming Emergency Management Agency has reviewed the proposed action and had no additional comments.

Conclusion

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are not significant; and therefore, do not warrant denial of the license amendment request. The NRC staff believes that the proposed action will result in minimal environmental impacts. The staff has determined that the proposed action, approval of the license amendment request to release the two former burial sites for unrestricted use, is the appropriate alternative for selection.

List of Preparers

This EA was prepared by Robert Evans, Senior Health Physicist, Fuel Cycle & Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, and reviewed by Dr. D. Blair Spitzberg, Chief, Fuel Cycle & Decommissioning Branch.

List of References

Documents pertaining to this EA are available for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). ADAMS accession numbers are located in parentheses following the reference.

1. NRC Inspection Report 030–01176/95–01 dated May 9, 1995 (not available in ADAMS).

2. University of Wyoming letter to NRC dated October 21, 1998 (not available in ADAMS).

3. University of Wyoming letter to NRC dated May 30, 2001 (ML011580440).

4. NRC Memorandum, "Review of Dose Modeling Supporting the Revised Decommissioning Plan for the Quarry and Airport Burial Sites," dated December 31, 2001 (ML013540074).

5. NRC Letter to U.S. Fish and Wildlife Service dated April 24, 2002 (ML021140673).

6. NRC Letter to Wyoming State Historic Preservation Office dated April 24, 2002 (ML021140684).

7. U.S. Fish and Wildlife Service letter to NRC dated May 20, 2002 (ML021500264).

8. Wyoming State Historic Preservation Office letter to NRC dated June 17, 2002 (ML 021830731).

9. Wyoming Emergency Management Agency letter to NRC dated September 10, 2002 (ML022690527).

Finding of No Significant Impact

Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR part 51, the Commission has determined that there will not be a significant effect on the quality of the environment resulting from the approval of the revised decommissioning plan and release of the two former burial sites for unrestricted use. Accordingly, the preparation of an Environmental Impact Statement is not required for the proposed amendment to Materials License 49–09955–10, which will remove the Quarry and airport sites from the license. This determination is based on the foregoing EA performed in accordance with the procedures and criteria in 10 CFR part 51.

This EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room in NRC's One White Flint North Headquarters building, located at 11555 Rockville Pike (first floor), Rockville, Maryland. The documents may also be viewed in the Agency-wide Documents Access and Management System (ADAMS) Public Electronic Reading Room at Web address *http://www.nrc.gov/reading-rm/adams.html.*

Dated in Arlington, Texas, this 19th day of November, 2002.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 02–30098 Filed 11–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised

The agenda for the 498th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on December 5–7, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, has been revised to Close the following session on Thursday, December 5, 2002.

1:30 P.M.—2:15 P.M.: Meeting with Mr. Lawrence Williams, Her Majesty's Chief Inspector, Nuclear Installations Inspectorate (NII), United Kingdom (U.K.) (Closed)—The Committee will hold discussions with Mr. Williams, NII, U.K., regarding several items of mutual interest, including pre-decisional plans to expand the nuclear program in U.K. [**Note:** This session will be closed to protect information provided in confidence by a foreign source pursuant to 5 U.S.C. 552b(c)(4).]

The agenda for December 6 and 7, 2002, remains the same as previously published in the **Federal Register** on Wednesday, November 20, 2002 (67 FR 70094).

For further information, contact: Dr. Sher Bahadur, Associate Director for Technical Support, ACRS, (Telephone: 301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

Dated: November 21, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–30100 Filed 11–26–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25828; File No. 812–12899]

AIG Life Insurance Company, et al.

November 20, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

APPLICANTS: AIG Life Insurance Company ("AIG Life") and its Variable Account I (the "Variable Account"), American International Life Insurance Company of New York ("AIL"), AIG SunAmerica Life Assurance Company ("AIG SunAmerica") and its separate account Variable Annuity Account Nine ("Variable Account Nine"), First SunAmerica Life Insurance Company ("FSLIC") and its separate account FS Variable Separate Account ("FS Separate Account"), The Variable Annuity Life Insurance Company ("VALIC") and its separate account VALIC Separate Account ("VALIC Separate Account"), and AIG Equity Sales Corp. ("AIGESC") (collectively, the "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to amend an existing order (Investment Company Act Release No. 24748, dated November 22, 2000, File No. 812–11982) ("Existing Order") to:

a. Extend the Existing Order to AIG SunAmerica, Variable Account Nine, FSLIC, FS Separate Account, VALIC and VALIC Separate Account (collectively "Additional Applicants") (AIG SunAmerica, FSLIC and VALIC are collectively referred to herein as "Additional Life Company Applicants") (Variable Account Nine, FS Separate Account and VALIC Separate Account are collectively referred to herein as "Accounts");

b. Permit, under specific circumstances, the recapture of certain credits applied to premium payments made under the flexible premium deferred variable annuity contracts ("Contracts") to be issued by Additional Applicants;

c. Extend the relief granted by the Existing Order to any National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, any Additional Life Company Applicant, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered by Additional Applicants (collectively "Affiliated Broker-Dealers");

d. Expand the definition of "Future Contracts" to include contracts to be issued by any Additional Life Company Applicants that are substantially similar in all material respects to the deferred variable annuity contracts covered by the Existing Order; and

e. Expand the definition of "Other Accounts" to include any existing or future separate accounts of Additional Life Company Applicants.

FILING DATE: The application was filed on October 28, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 16, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a Certificate of Service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549–0609. Applicants: Christine A. Nixon, Esq., AIG SunAmerica Life Assurance Company, 1 SunAmerica Center, Los Angeles, California 90067–6002.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Zandra Y. Bailes, Branch Chief, Office of Insurance

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Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. On November 22, 2000, the Commission issued the Existing Order exempting certain transactions of AIG Life, AIL, Variable Account, AIGESC ("Original Applicants") and certain future accounts of AIG Life and AIL from the provisions of Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit AIG Life and AIL to recapture under specified circumstances, certain credits ("Credits") applied to premium payments made under a flexible deferred variable annuity contract that AIG Life issues through the Variable Account (the "AIG Contract") as well as other contracts that AIG Life or AIL may issue in the future through their existing or future separate accounts that are substantially similar in all material respects to the AIG Contract described in the application for the Existing Order ("Initial Application").

2. AIG SunAmerica was formerly known as Anchor National Life Insurance Company and is in the process of changing its name to AIG SunAmerica Life Assurance Company. Like AIG Life and AIL, AIG SunAmerica is an indirect, wholly owned subsidiary of American International Group, Inc. ("AIG"), a Delaware corporation. AIG SunAmerica is the depositor for Variable Account Nine, which was established pursuant to Arizona law on February 4, 2002. AIG SunAmerica may establish one or more additional Other Accounts for which it will serve as depositor.

3. Variable Account Nine is a segregated asset account of AIG SunAmerica. Variable Account Nine is registered with the Commission under the Act as a unit investment trust. Variable Account Nine will fund the variable benefits available under the AIG SunAmerica contracts. Units of interest of Variable Account Nine under the AIG SunAmerica Contracts will be registered under the Securities Act of 1933 ("1933 Act"). AIG SunAmerica may issue Future Contracts through Variable Account Nine.

4. FSLIC is a stock life insurance company organized under the laws of the state of New York on December 5, 1928. FSLIC conducts a life insurance and annuity business in the state of New York. It is an indirect, wholly owned subsidiary of AIG. FSLIC may establish one or more additional Other Accounts for which it will serve as depositor.

5. FS Variable Separate Account is a segregated asset account of FSLIC. FS Variable Separate Account is registered with the Commission under the Act as a unit investment trust. FS Variable Separate Account will fund the variable benefits available under the AIG SunAmerica contract. Units of interest of Variable Account Nine under the AIG SunAmerica Contracts will be registered under the 1933 Act. FSLIC may issue Future Contracts through FS Variable Separate Account.

6. VALIC is a stock life insurance company originally organized as The Variable Annuity Life Insurance Company of America, located in Washington, DC, and reorganized under the laws of the state of Texas on August 20, 1968. It is also an indirect, wholly owned subsidiary of AIG. VALIC may establish one or more additional Other Accounts for which it will serve as depositor.

7. VALIC Separate Account is a segregated asset account of VALIC. VALIC Separate Account will fund the variable benefits available under the VALIC contracts. Units of interest of VALIC Separate Account under the VALIC contracts will be registered under the 1933 Act. VALIC may issue Future Contracts through VALIC Separate Account.

8. That portion of the assets of Variable Account Nine, FS Variable Separate Account and VALIC Separate Account ("Additional Separate Account Applicants") that are equal to the reserves and other contract liabilities with respect to the respective separate accounts are not chargeable with liabilities arising out of any other business of the respective life insurance company. Any income, gains or losses, realized or unrealized, from assets allocated to the respective separate accounts are, in accordance with the contract, credited to or charged against the separate account without regard to other income, gains or losses of the life insurance company. The same will be true for any other Future Account of any Additional Life Company Applicant.

9. Each of the Additional Separate Account Applicants and any Other Accounts established by the Additional Life Company Applicants will be registered with the Commission under the Act as a unit investment trust. Units of interest in the separate accounts they fund will be registered under the 1933 Act. That portion of the assets of each of the respective Accounts that is equal to the reserves and other contract liabilities with respect to the Account is not chargeable with liabilities arising out of any other business of the life insurance company. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are, in accordance with the contract, credited to or charged against the Account, without regard to other income, gains or losses of the life company. The same will be true for any Other Account.

10. But for the depositor and issuing separate account, the Contracts to be issued by Additional Life Company Applicants are substantially similar in all material respects to the AIG Contract described in the Initial Application. Future Contracts will be substantially similar in all material respects to the contracts covered in the Existing Order.

11. Additional Applicants will recapture Credits under the Contracts under the same circumstances covered by the Existing Order. The Existing Order grants exemptions from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the recapture of Credits in the following instances:

(i) When an owner exercises the contract's free look provision;

(ii) when a death benefit is payable within twenty-four months after receipt of a Credit; and

(iii) when a surrender is requested within twenty-four months after receipt of a Credit. If the surrender is a partial surrender during the twenty-four month period following receipt of a Credit, except as part of the contract's systematic withdrawal program, Additional Life Company Applicants will reduce the Credit in the same proportion as the partial surrender bears to the value of the contract, less the Credit, and deduct it from the value of the contract.

Regardless of whether or not the Credit is vested, all gains or losses attributable to such Credit are part of the owner's contract value and are vested immediately. Applicants represent that the Credit and the applicable provisions relating to the Credit are substantially similar in all material respects as for Original Applicants.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provision of the Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant exemptions summarized above with respect to Additional Applicants and any Other Accounts that the Additional Life Company Applicants have established or may establish in the future, in connection with the issuance of contracts that are substantially similar in all material respects to the AIG Contract described in the Initial Application. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants submit that the recapture of the Credits by Additional Applicants will not raise concerns under Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder for the same reasons given in support of the Existing Order. The Credits will be recapturable under the same circumstances and on the same basis as described in the Initial Application.

Based on the grounds summarized above, Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30037 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (67 FR 70470, November 22, 2002).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Monday, November 25, 2002, at 2:30 p.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the closed meeting scheduled for Monday, November 25, 2002, at 2:30 p.m.: Formal order of investigation.

Commissioner Campos, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30250 Filed 11–25–02; 11:53 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Global Vision Holdings, Inc.; Order of Suspension of Trading

November 25, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Vision Holdings, Inc. ("GVHI") because of questions regarding the accuracy and adequacy of information concerning the business background of an officer of GVHI, the business prospects of GVHI, and the market for the securities of GVHI.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, on Monday, November 25, 2002 through 11:59 p.m. EST, on Monday, December 9, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30251 Filed 11–25–02; 12:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46850; File No. SR–Amex–2002–90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Transaction Charges for Exchange-Traded Funds

November 19, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 4, 2002, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to add Treasury 10 FITR ETF, Treasury 5 FITR ETF, Treasury 2 FITR ETF, and Treasury 1 FITR ETF to the list of Exchange-Traded Funds ("ETFs") for which the Exchange pays non-reimbursed fees to third parties (included in Note 4 to the Amex Equity Fee Schedule). The Exchange is also amending Item 9 and Note 4 to the Equity Fee Schedule to add reference to Portfolio Depositary Receipts.

The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has included in Note 4 to the Amex Equity Fee Schedule a list of ETFs that are subject to transaction charges set forth in Item 9 to the Equity Fee Schedule relating to ETFs for which the Exchange pays unreimbursed fees to a third party.[3] The Exchange is adding to this list Treasury 10 FITR ETF, Treasury 5 FITR ETF, Treasury 2 FITR ETF, and Treasury 1 FITR ETF.

The Exchange is also amending Item 9 and Note 4 to the Equity Fee Schedule, as filed in SR–Amex–2002–81, to add reference to Portfolio Depositary Receipts, which was inadvertently omitted from Item 9 and Note 4. As noted in SR–Amex–2002–81, the fees that are the subject of that filing include ETFs, Portfolio Depositary Receipts and Index Fund Shares, for which Amex pays a non-reimbursed fee.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of November 4, 2002, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2002–90 and should be submitted by December 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30039 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[3] See Exchange Act Release No. 46764 (November 1, 2002), 67 FR 66704 (November 12, 2002) (SR–Amex–2002–81).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] See 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46861; File No. SR–CHX–2002–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Establish an OTC Access and Connection Charge for CHX OTC Specialist Firms

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule ("Schedule") to incorporate an "OTC Access and Connection Charge" that will apportion among CHX over-the-counter ("OTC") specialist firms the incremental technology costs associated with accessing OTC market participants. The text of the proposed rule change is below. Proposed new language is in italics.

Membership Dues and Fees

* * * * *

H. Equipment, Information Services and Technology Charges

* * * * *

OTC Access and Connection Charges

Each specialist firm shall be billed, on a monthly basis, for actual access charges and other amounts that become due in accordance with the Exchange's contractual arrangements to access OTC market participants.

Amounts billed to the specialist firm will be based on the number of OTC/UTP co-specialists at each firm using products licensed or otherwise procured by the Exchange, adjusted on a monthly basis to reflect changes in the firm's number of OTC/UTP co-specialists; provided, however, that (i) the minimum monthly amount that will be billed to a specialist firm will be based on the firm's number of OTC/UTP co-specialists as of the date an agreement is executed; and (ii) if the firm elects to deregister from all OTC/UTP issues, the firm must continue to pay the minimum monthly amount referenced above, for the remaining initial term of the Exchange's contractual commitment.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule by incorporating an OTC Access and Connection Charge that will apportion among CHX OTC specialist firms the incremental technology costs associated with accessing OTC market participants.

As the OTC market prepares for full implementation of Nasdaq's SuperMontage system and the NASD's Alternative Display Facility (which will not be accessible by CHX specialists), many CHX OTC specialists consider it imperative that the CHX enter into access arrangements with various OTC market participants and procure certain proprietary technological enhancements that will permit CHX OTC specialists to obtain ready access to various pools of liquidity in the OTC market. Given the substantial technology costs that the CHX has incurred and continues to incur relating to the transitions in the OTC market, including development costs associated with the independent securities information processor that will be operational next year, the CHX believes it is appropriate for CHX OTC specialists to bear a proportionate share of the technology costs associated with accessing the OTC market.

Accordingly, the CHX Finance Committee and Board of Governors approved institution of the proposed OTC Access and Connection Charge, as what the CHX believes is a reasonable means of allocating such technology costs among the CHX OTC specialist firms that benefit from such CHX expenditures. The Exchange believes that its OTC specialist firms are in agreement with this proposal.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act[4] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of rule 19b–4 thereunder,[6] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–2002–35, and should be submitted by December 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30044 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46855; File No. SR–GSCC–2002–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Government Securities Clearing Corporation Relating to the Schedule of Timeframes for Submitting Repo Collateral Substitution Notifications

November 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on October 22, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to amend its schedule of timeframes to extend its repo collateral substitution deadline by one hour on days that GSCC determines to be high volume days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC's Schedule of Timeframes ("Schedule") contains two deadlines that are applicable to requests for repo collateral substitutions: (i) A deadline of noon (12:00 p.m.) after which a member that initiated the substitution will be subject to a late fee of five hundred dollars ($500.00) per substitution imposed and (ii) an absolute deadline of 12:30 p.m. after which GSCC will reject the substitution request.[2] The Schedule provides that GSCC may extend these deadlines by one hour on days that The Bond Market Association ("BMA") announces in advance will be "high volume days."[3]

Given the unpredictable occurrence of days on which a large number of collateral substitution requests occur, the BMA recently supplemented its guidelines to provide a process for the same-day designation of high volume days and extension of repo collateral substitution deadlines.[4] Specifically, the BMA has recommended that prior to 10:05 a.m. on each day on which the markets are open for trading, GSCC's inter-dealer broker netting members should notify GSCC of the number of collateral substitution requests they have received for that trading day. If the number of such collateral substitution requests exceeds 150 in the aggregate, GSCC will extend its repo collateral substitution deadlines by one hour and will notify the BMA which will issue a notice to market participants.[5] In effect, under the new trading practice guidelines, it will be GSCC that determines when a trading day is a high volume day.

The Schedule currently permits GSCC to extend its repo collateral substitution deadlines only after the BMA has designated a high volume day. The proposed rule change would permit GSCC to determine when a trading day is a high volume day and therefore to institute a same-day extension of its deadlines without having the BMA designation.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will provide members with additional time to submit their repo collateral notification requests on days that develop into high volume days.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comment received by GSCC.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposal, which allows GSCC to react in a timely manner to volume increases by extending submission deadlines for repo collateral substitution requests by GSCC members, is consistent with Section 17A(b)(3)(F) because it should help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Allowing GSCC to designate high volume days independently of the BMA will enable GSCC to better serve its members because GSCC will be able to respond in real-time to market conditions affecting its clearance and settlement of repos.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because approval prior to the thirtieth day of publication will give GSCC the ability to immediately handle any high volume day that might occur.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2002–12 and should be submitted by December 18, 2002.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30038 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[2] All times in GSCC's rules are New York time. GSCC's repo substitution notification deadlines were based upon guidelines issued by The Bond Market Association ("BMA") that provide that on each business day market participants should notify their inter-dealer broker of any collateral substitutions by 9:55 a.m. and should provide such brokers with the description of the substituted collateral by 11:00 a.m. GSCC provides members with an additional hour in which to send the request to GSCC.

[3] Pursuant to BMA's trading practices guidelines, high volume days are the first and last business day of each calendar quarter on which markets are open for trading and such other days as the BMA may announce no later than 24 hours prior to the occurrence of such day.

[4] The BMA issued this supplement on an interim basis pending the approval of this rule change.

[5] GSCC, the BMA, and industry representatives have established 150 as the number of requests that will trigger GSCC's determination that a trading day is a high volume day. This will be incorporated into the BMA's trading practice guidelines. Should this change, GSCC will file a proposed rule change under Section 19(b)(3)(A) with the Commission.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46860; File No. SR–ISE–2001–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC, Relating to a Pilot Program for Quotation Spreads

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Supplementary Material .01 to ISE Rule 803, "Obligations of Market Makers," to establish a six-month pilot program in which the allowable quotation spread for options on up to 50 underlying securities will be $5, regardless of the price of the bid.

The text of the proposed rule change is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to establish a six-month pilot program to substantially relax the quotation spread requirements on the ISE in options on up to 50 underlying securities. Currently, the ISE's rules contain maximum quotation spread requirements that vary from $.25 to $1, depending on the price of the option. Each ISE market maker independently is subject to these requirements. According to the ISE, although the primary purpose of the spread requirements is to help to maintain narrow spreads, the spread requirements also result in individual market makers sometimes quoting at prices that they believe are unnecessarily narrow, potentially exposing them to greater risk if markets move quickly. The ISE believes that, due to its unique electronic competitive market making system, the quotation spread requirements may not be necessary to ensure tight and competitive quotations on the ISE.

In this regard, the ISE states that its market structure creates strong incentives for competing market makers and other market participants to disseminate competitive prices. In the ISE's trading system, each market maker quotes independently and customers and professional traders can enter limit orders on the ISE's book. The ISE automatically collects this trading interest, calculates an ISE best bid and offer ("BBO"), and disseminates the BBO to the investing public. Furthermore, the ISE allocates trading interest based upon the price and size of trading interest. Under the ISE's trading algorithm, the ISE allocates volume to trading interest at the best price. The larger the size of a person's quote or order at the best price, the more trading interest that person receives. The ISE believes that this provides strong incentives for market makers and other market participants to enter quotes and orders that improve the price and depth of the market. The ISE believes that in this model, market forces provide sufficient discipline to maintain narrow and competitive quotation spreads.

Accordingly, the ISE proposes to expand the allowable spread in a pilot group of up to 50 options (up to five per each of the ISE's ten groups of options) to $5.[3] The ISE states that it will monitor the quotation quality of the selected options for a six-month pilot period and, based on the results, recommend either relaxing the spread requirements for all options, ending the pilot, or adjusting the spread requirements.

(2) Basis

The ISE believes that the proposed rule change is consistent with the requirement under section 6(b)(5)[4] of the Act that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The ISE has not solicited, and does not intend to solicit, comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to file number SR–ISE–2001–15 and should be submitted by December 18, 2002.

[3] At this point, the ISE does not propose to eliminate the spread requirements entirely to avoid perception issues about extremely wide spreads.

[4] 15 U.S.C. 78f(b)(5).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30042 Filed 11–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46859; File No. SR–NASD–2002–162]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Supervisory Control Amendments

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 4, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to adopt new NASD Rule 3012 and amend other rules regarding the supervisory and supervisory control procedures of member firms. Specifically, new NASD Rule 3012 would require members to develop general and specific supervisory control procedures that independently test and verify and modify, where necessary, the members' supervisory procedures. In addition, proposed amendments to (1) NASD Rule 3010(c) would require that office inspections be conducted by independent persons and include, at a minimum, the testing and verification of certain supervisory procedures; (2) NASD Rule 3110 would expand upon a member's supervisory and recordkeeping requirements with respect to changes in customer account name or designation in connection with order executions; (3) NASD IM–3110 would provide guidance as to when a member may hold mail for a customer who will be absent for a period of time; (4) NASD Rule 2510(d) would clarify the time limit on time-and-price discretionary authority; and (5) NASD Rule 9610 would incorporate into NASD Procedural Rules the ability of members to request an exemption from amended NASD Rule 3010(c). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2510. Discretionary Accounts

(a) through (c) No Change.

(d) Exceptions

This Rule shall not apply to:

(1) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified shall be executed, *except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written, contrary indication signed and dated by the customer;*

(2) No Change.

Any exercise of time and price discretion must be reflected on the customer order ticket.

* * * * *

3010. Supervision

(a) through (b) No Change.

(c) Internal Inspections

(*1*) Each member shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with *applicable NASD* rules [the Rules of this Association]. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and at least an annual inspection of each office of supervisory jurisdiction. Each branch office of the member shall be inspected according to a cycle which shall be set forth in the firm's written supervisory and inspection procedures. In establishing such cycle, the firm shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location. Each member shall retain a written record of the dates upon which each review and inspection is conducted.

(2) Office inspections by members pursuant to paragraph (c)(1) must be conducted by a person who is independent from the activities being performed at the office and those persons providing supervision to that office. The independence requirements in connection with office inspections may be satisfied by reasonable means based on the size and resources of the firm and the scope and nature of its activities. Written reports of these inspections are to be kept on file by the member for a minimum of three years.

An office inspection and review must include, but is not limited to, testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas:

(A) Safeguarding of customer funds and securities;

(B) Maintaining books and records;

(C) Supervision of customer accounts serviced by branch office managers;

(D) Transmittal of funds between customers and registered representatives and between customers and third parties;

(E) Validation of customer address changes; and

(F) Validation of changes in customer account information.

(3) Pursuant to the Rule 9600 Series, NASD may exempt any member unconditionally or on specified terms and conditions from the independence requirement in the inspection of a member's offices as set forth in paragraph (c)(2) upon a satisfactory showing that complying with the requirements would be unduly burdensome on the member and that the member's internal inspection procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and applicable NASD rules.

* * * * *

3012. Supervisory Controls

(a) General Requirements

(1) Each member shall establish and maintain a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The member's supervisory controls must be performed by persons who are independent from those activities being tested and verified and the persons who directly supervise those activities. The independence requirements in connection with testing and verification may be satisfied by reasonable means based on the size and resources of the firm and the scope and nature of its activities. A report detailing each member's systems of supervisory controls, including a summary of the test results and significant identified exceptions, must be submitted no less than annually to the member's senior management.

(2) The independence requirement in the verification and testing of the member's supervisory procedures shall not apply to members that do not conduct a public business, or that have a capital requirement of $5,000 or less, or that employ 10 or fewer registered representatives.

(b) Managers' Activities

Each member shall establish, maintain, and enforce written policies and procedures to administer the supervisory controls established pursuant to paragraph (a) reasonably designed to independently review and monitor the servicing of customer accounts by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.

(c) Customers' Activities

Each member shall establish, maintain, and enforce written policies and procedures to administer the supervisory controls established pursuant to paragraph (a), specifically with respect to the following activities:

(1) Transmittals of funds (e.g., wires or checks, etc.) or securities:

(A) from customer accounts to third party accounts (i.e., a transmittal that would result in a change of beneficial ownership);

(B) from customer accounts to outside entities (e.g., banks, investment companies, etc.);

(C) from customer accounts to locations other than a customer's primary residence (e.g., post office, "in care of" accounts, alternate address, etc.); and

(D) between customers and registered representatives, including the hand-delivery of checks.

(2) Customer changes of address.

(3) Customer changes of investment objectives.

The policies and procedures established pursuant to paragraph (c) must include a means or method of customer confirmation, notification, or follow-up that can be documented.

(d) Dual Member

Any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. shall be deemed to be in compliance with the provisions of this Rule.

* * * * *

3110. Books and Records

(a) through (c) No change.

(d) Changes in Account Name or Designation.

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and maintained in a central location.

For purposes of this paragraph (d), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.

* * * * *

IM–3110. Customer Account Information

(a) through (h) No Change.

(i) Holding of Customer Mail

Upon the written instructions of a customer, a member may hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but (A) not to exceed two months if the member is advised that such customer will be on vacation or traveling or (B) not to exceed three months if the customer is going abroad.

* * * * *

9610. Application

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), *3010(c)*, 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of *NASD* [the Association] and provide a copy of the application to the Office of General Counsel of NASD [Regulation], *Regulatory Policy and Oversight.*

(b) through (c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Adequate supervisory systems play an important role in assuring investor protection and the integrity of the markets. Operational and sales practice abuses can stem from ineffective supervisory and supervisory control procedures. The recent Gruttadauria case, which involved the misappropriation of customer funds, has brought tremendous attention to the ongoing problem of operational and sales practice abuses at firms and the importance of ensuring that firms effectively monitor the activities of their employees.

NASD rules contain extensive supervisory requirements. NASD Rule 3010 generally requires each member to establish and maintain a supervisory system, including the development of written procedures. Beyond this broad general requirement, NASD Rule 2110 requires members to observe high standards of commercial honor and just and equitable principles of trade, and NASD Rule 3110 sets forth extensive books and records obligations. In addition, the NASD recently established comprehensive examination procedures for supervisory controls. The examination procedures focus on supervisory controls as they relate to several areas of a firm, including senior

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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management, internal audit and trading risk controls.

In light of the concerns raised by the Guttadauria case with respect to inadequate supervisory systems, the NASD is proposing a new rule and amendments to existing rules to enhance the NASD's current rules and examination efforts by specifically requiring members to establish adequate supervisory control systems. In general, proposed new NASD Rule 3012 sets forth general and specific supervisory control requirements while amendments to certain other rules complement NASD's efforts with new NASD Rule 3012. The New York Stock Exchange, Inc. ("NYSE") also recently filed with the SEC a series of amendments aimed at improving a firm's supervisory and internal (or supervisory) control systems.[3] The NASD states that its proposed rule change is substantially similar to the NYSE's proposed amendments:

The obligation to establish supervisory and supervisory control procedures is not a "one-size-fits-all" requirement. The NASD recognizes that there is no single set of procedures that will be appropriate for all firms and each firm must tailor such procedures to fit its business. In developing appropriate supervisory and supervisory control procedures, each firm must consider factors such as its size, location, and nature of business activities.

Supervisory Controls—General Requirement

Under NASD Rule 3010, a member's supervisory system is required to encompass the activities in which the member engages as well as the activities of the member's registered representatives and associated persons in order to achieve compliance with applicable securities laws and regulations and NASD rules. Not only must supervisory procedures be established, but such procedures must also be independently tested and verified through a system of supervisory control procedures to ensure appropriate application and effectiveness. The proposed rule change would require firms to develop and maintain a system of adequate supervisory control procedures that (1) test and verify that the member's supervisory procedures are reasonably designed, with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with the applicable securities laws and regulations, and with the applicable NASD rules and (2) create additional or amend supervisory procedures where the need is identified by such testing and verification.

The proposed rule change would require that a member's control procedures be performed by persons who are independent of the activities being tested and verified and the persons who directly supervise those activities. The independence requirement may be achieved by reasonable means in light of the member firm's size and resources and nature and scope of its activities. In practice, the NASD would expect that, unless a member could establish it was impractical, the system of supervisory controls will be deployed by persons who (1) are not connected in function to, or receive direct remuneration from, the activities which are the subject of the supervisory control procedures and (2) do not report to persons who supervise those activities. In the situation where the size and resources of the firm and the scope and nature of its activities make it impracticable for the firm to achieve independence in this fashion, the firm may satisfy the independence requirement by alternative means such as establishing additional policies and procedures to create a sufficient level of separation. Members would be required to report the testing and verification results to the firm's senior management annually.

Recognizing that the independence requirement in connection with testing and verification may not be practical for smaller members, the proposed rule change would allow an exemption from this independence requirement for firms that do not conduct a public business, or have a capital requirement of $5,000 or less, or employ 10 or fewer registered representatives.

Supervisory Controls—Customers' Activities

The NASD believes that certain customer activities, such as the transmittal of customer funds or changes in customer address or investment objectives, require additional monitoring to help prevent fraud and theft of customer funds. Changes in customer investor objectives would require additional protections because of the importance of maintaining accurate books and records in the course of the member's business and potential for sales practice abuse in connection with the recording of inaccurate investment objectives for customers. The monitoring of customer address changes would guard against the improper delivery of customer-related documentation. As such, the proposed rule change would require firms to establish written supervisory control procedures specifically with respect to the transmittal of customer funds and changes in customer address and investment objectives. Members would be required to follow-up with customers after the occurrence of any of these activities and to document the method of follow-up.

Supervisory Controls—Sales Managers' Activities

The proposed amendments would require firms to develop and implement written policies to independently review and monitor the servicing of customer accounts by branch office managers, sales managers, regional/district sales managers, and other supervisory personnel. The NASD expects that all sales-related activities will be reviewed. The NASD believes that the sales activities of branch managers and other sales managers should be subject to independent oversight to ensure that supervisors do not perform the final review of their own sales activity.

Dual Members

Proposed NASD Rule 3012 provides that a member that is in compliance with substantially similar requirements of the NYSE shall be deemed to be in compliance with the supervisory control requirements set forth in NASD Rule 3012.

Office Inspection

NASD Rule 3010(c) requires members to inspect and review the activities of each office.[4] To ensure that the inspections are objective and not subject to conflicts of interests, the proposed rule change would require that office inspections be conducted, by a person who is independent from the activities being performed at the office and the persons providing supervision to the office. Similar to the general supervisory controls amendments discussed earlier, the independence requirements may be satisfied by reasonable means based on the size and resources of the firm and the scope and nature of its activities. Office inspection programs would be required to include, at a minimum, testing and verification of a member's policies and procedures with respect to: (1) Safeguarding of customer funds and securities; (2) maintaining books and records; (3) supervision of customer accounts serviced by branch office managers; (4) transmittal of customer funds; (5) validation of customer address changes; and (6) validation of changes in customer account information.

The NASD recognizes that it may not be practical for members with small offices to conduct an independent inspection. In this regard, the proposed rule change would allow the NASD to exempt members pursuant to the NASD Rule 9600 Series from the independence requirement in the inspection of a member's office.

Discretionary Authority

NASD Rule 2510(d)(1) allows members to exercise time-and-price discretion on orders for the purchase or sale of a definite amount of a specified security without prior written authorization from the customer or prior written approval by the member, but does not specify the duration of such discretionary authority. The proposed rule change would clarify that a firm's authority to exercise time and price discretion terminates at the end of the business day on which the customer granted such discretion, unless a signed authorization from the customer shows otherwise. The proposed rule change would further require any exercise of time or price discretion to be reflected on the order ticket.

Changes in Customer Account Name or Designation

Because changes in account names or designations in connection with order executions can be subject to abuse, the NASD believes that such changes should be approved by a qualified person and the basis for the change should be adequately documented. The proposed rule change would specify that no changes to the account name(s) or designation(s), including related accounts or error accounts may be made unless previously authorized by the person designated to approve such changes. Such designated person would be required to pass a qualifying principal examination appropriate to the business of the firm, such as the General Securities Sales Supervisor (Series 9/10) or General Securities Principal (Series 24). The designated person must document the essential facts relied upon in approving the changes and maintain the record in a central location.

Customer Mail

To prevent improper mail delivery if a customer is away from his or her regular address for an extended period of time, the proposed rule change would allow members to hold mail for a customer upon receiving written instructions from the customer, not to exceed two months if the customer is on vacation or traveling or three months if the customer is going abroad.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is designed to accomplish these ends by requiring members to establish more extensive supervisory and supervisory control procedures to monitor customer account activities of its employees and thereby reduce the potential for customer fraud and theft.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2002–162 and should be submitted by December 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30041 Filed 11–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46862; File No. SR–NASD–2002–129]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Security Futures Risk Disclosure Statement

November 20, 2002.

On September 25, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change relating to the Security Futures Risk Disclosure Statement. The proposed rule change was published for comment in the **Federal Register** on October 17, 2002.[3]

[3] *See* Securities Exchange Act Release No. 46858 (November 20, 2002) (SR–NYSE–2002–36).

[4] NASD Rule 3010(c) requires an inspection at least annually of each office of supervisory jurisdiction and cycle examinations of branch offices. Although the rule does not specify the frequency of inspections for unregistered offices, NASD, Notice to Members 98–38 (May 1998) states that in order to fulfill the general obligation to supervise, such inspections should be conducted according to a regular schedule.

[5] 15 U.S.C. 78*o*–1(b)(6).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46614 (October 7, 2002), 67 FR 64162.

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Commission received no comments on the proposal.

In addition, on September 25, 2002, NASD submitted a separate proposed rule change relating to the Security Futures Risk Disclosure Statement (File No. SR–NASD–2001–28). At NASD's request, the Commission put that proposed rule change into effect summarily pursuant to section 19(b)(3) of the Act,[4] so that the Security Futures Risk Disclosure Statement would be in effect prior to the start of trading in security futures.[5] Section 19(b)(3) of the Act [6] requires that any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with the provisions of section 19(b)(1) of the Act.[7] Accordingly, NASD filed this proposed rule change to gain final approval of the Security Futures Risk Disclosure Statement.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Under NASD's rules, the Security Futures Risk Disclosure Statement must be provided to customers at or prior to the time the customer's account is approved for trading security futures. Among other things, the statement describes the risks of security futures, how they trade, margin, effects of leverage, settlement procedures, customer account protections, and the tax consequences of trading security futures. Accordingly, the Commission believes that the Security Futures Risk Disclosure Statement should inform customers that trade security futures of the characteristics of security futures and the risks associated with trading them.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [10], that the proposed rule change (File No. SR–NASD–2002–129) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30043 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3).

[5] See Securities Exchange Act Release No. 46612 (October 7, 2002), 67 FR 64151.

[6] 15 U.S.C. 78s(b)(3).

[7] 15 U.S.C. 78(s)(b)(1).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46858; File No. SR–NYSE–2002–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, Rule 401 ("Business Conduct"), Rule 408 ("Discretionary Power in Customers' Accounts"), and Rule 410 ("Records of Orders")

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization.[3] On November 20, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[4]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is intended to address several issues involving the establishment, maintenance, and testing of Internal Controls as well as several supervisory issues. Included are amendments to Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, 401 ("Business Conduct"), 408 ("Discretionary Power in Customers' Accounts"), and 410 ("Records of Orders"). Additions are in *italics*; deletions are in brackets.

* * * * *

Offices—Approval, Supervision and Control

Rule 342. (a) Each office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility.

The person in charge of a group of employees shall reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer and compliance with securities laws and regulations.

(b) The general partners or directors of each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal executive officer to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities' laws and regulations. This person shall:

(1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control.

(2) establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised.

(c) The prior consent of the Exchange shall be obtained for each office established by a member or member organization, other than a main office.

(d) Qualified persons acceptable to the Exchange shall be in charge of:

(1) any office of a member or member organization,

(2) any regional or other group of offices,

(3) any sales department or activity.

(e) The amounts and types of credit extended by a member organization shall be supervised by members or allied members qualified by experience for such control in the types of business in which the member organization extends credit.

Supplementary Material:

.10 through .18 unchanged.

.19 Supervision of Managers.—Members and member organizations whose Branch Office Managers, Sales Managers, Regional/District Sales Managers, or any person performing a similar supervisory function, service customer accounts must develop and implement written policies and procedures reasonably designed to independently supervise each such person's customer account activity.

.20 through .22 unchanged.

.23 Internal Controls—Pursuant to paragraphs (a) and (b) of this Rule, members and member organizations must develop and maintain adequate controls over each of its business activities. Such controls must provide for the establishment of procedures for independent verification and testing of those business activities separate and apart from the day-to-day supervision of such functions. A review of each member's or member organization's efforts with respect to internal controls, including a summary of tests conducted and significant exceptions identified, must be included in the Annual Report required by .30 of this Rule. The independent verification and testing procedures shall not apply to members and member organizations that do not conduct a public business, or that have a capital requirement of $5,000 or less, or that employ 10 or fewer registered representatives.

(See also Rule 401(b))

.30 Annual Report.—By April 1 of each year, each member not associated with a member organization and each member organization shall prepare, and each member organization shall submit to its chief executive officer or managing partner, a report on the member's or member organization's supervision and compliance effort during the preceding year. The report shall include:

(a) A tabulation of the reports pertaining to customer complaints and internal investigations made to the Exchange during the preceding year pursuant to Rules 351(d) and (e)(ii),

(b) Identification and analysis of significant compliance problems, plans for future systems or procedures to prevent and detect violations and problems, and an assessment of the preceding year's efforts of this nature, and

(c) Discussion of the preceding year's compliance efforts, new procedures, educational programs, etc. in each of the following areas:

(i) Antifraud and trading practices,

(ii) Investment banking activities,

(iii) Sales practices,

(iv) Books and records,

(v) Finance and operations, [and]

(vi) Supervision[.], *and*

(vii) Internal Controls.

If any of these areas do not apply to the member or member organization, the report should so state.

Business Conduct

Rule 401. *(a)* Every member, allied member and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs.

(b) *Each member and member organization shall maintain written policies and procedures, administered pursuant to the internal control requirements prescribed under Rule 342.23, specifically with respect to the following activities:*

(1) Transmittals of funds (e.g., wires, checks, etc.) or securities:

(i) *from customer accounts to third party accounts (i.e., a transmittal that would result in a change of beneficial ownership.);*

(ii) *from customer accounts to outside entities (e.g., banks, investment companies, etc.);*

(iii) *from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.); and*

(iv) *between customers and registered representatives (including the hand-delivery of checks).*

(2) Customer changes of address.

(3) Customer changes of investment objectives. The policies and procedures required under (b)(1) and (b)(2) above must include a means/method of customer confirmation, notification, or follow-up that can be documented.

Discretionary Power in Customers' Accounts

Rule 408 (a) No member, allied member or employee of a member organization shall exercise any discretionary power in any customer's account or accept orders for an account from a person other than the customer without first obtaining written authorization of the customer.

(b) No member, allied member or employee of a member organization shall exercise any discretionary power in any customer's account, without first notifying and obtaining the approval of another person delegated under Rule 342(b)(1) with authority to approve the handling of such accounts. Every order entered on a discretionary basis by a member, allied member or employee of a member organization must be identified as discretionary on the order at the time of entry. Such discretionary accounts shall receive frequent appropriate supervisory review by a person delegated such responsibility under Rule 342(b)(1), who is not exercising the discretionary authority. A written statement of the supervisory procedures governing such accounts must be maintained.

(c) No member or allied member or employee of a member organization exercising discretionary power in any customer's account shall (and no member organization shall permit any member, allied member, or employee thereof exercising discretionary power in any customer's account to) effect purchases or sales of securities which are excessive in size or frequency in view of the financial resources of such customer.

(d) The provisions of this rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed. *The authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written, contrary indication signed and dated by the customer. Any exercise of time and price discretion must be reflected on the order ticket.*

Records of Orders

Rule 410. (a) Every member or [his] *member* organization *must* [shall] preserve for at least three years the first two years in an easily accessible place, a record of:

[Transmitted to Floor

(1) Every order transmitted directly or indirectly by such member or organization to the Floor, which record shall include the name and amount of the security, the terms of the order, the time when it was so transmitted, and the time at which a report of execution was received. Carried to the Floor]

[(2)] *(1)* every order received by such member *or member organization*, either orally or in writing, [and carried by such member to the Floor,] which record *must* [shall] include the name and amount of the security, the terms of the order, the time when it was so received and the time *at* [as] which a report of execution was received.

[Entered Off Hours]

[(3)] *(2)* every order entered by such member or *member* organization into the Off-Hours Trading Facility (as Rule 900 (Off-Hours Trading: Applicability and Definitions) defines that term), which record *must* [shall] include the name and amount of the security, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NASD submitted a proposed rule change addressing internal controls and supervisory issues (SR–NASD–2002–162), which the Commission is publishing in the **Federal Register** for public comment simultaneously with the instant proposed rule change. See Securities Exchange Act Release No. 46859 (November 20, 2002).

[4] See letter to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, from Darla Stuckey, Corporate Secretary, NYSE, dated November 18, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange added "customer changes of investment objectives" to the list of enumerated activities with regard to which Exchange members must maintain written policies and procedures.

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terms of the order, the time when it was so entered, and the time at which a report of execution was received.
[Cancellation]

[(4)] *(3)* the time of the entry of every cancellation of an order covered by (1)[,] *and* (2) [and (3)] above.
[By Accounts] Changes In Account Name or Designation

Before any order covered by (1)[,] *or* (2) [or (3)] above is executed, there *must* [shall] be placed upon the order slip or other *similar* record of the member[,] or [his] *member* organization the name or designation of the account for which such order is to be executed. No change in such account name *(including related accounts)* or designation *(including error accounts)* shall be made unless the change has been authorized by [the] *a* member, [or another member,] allied member, or a person or persons designated under the provisions of Rule 342(b)(1). [in his organization who shall,] *Such person must,* prior to giving his *or her* approval of [such] *the account designation* change, be personally informed of the essential facts relative thereto and [shall] indicate his *or her* approval of such change in writing on the order *or other similar record of the member or member organization. The essential facts relied upon by the person approving the change must be documented in writing and maintained in a central location.*

Exceptions

Under exceptional circumstances, the Exchange may upon written request waive the requirements contained in (1), (2) and (3) above.

(b) Every order *in any manner transmitted or carried to the Floor and* [covered by (1) or (2) above to be] executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder *must* [shall] be identified in a manner that will enable the executing member to disclose to other members that the order is subject to those provisions.

(See also Rules 112A.10 and 123A.45.)

.10 For purposes of this Rule, a person designated under the provisions of Rule 342(b)(1) to approve account name or designation changes must pass an examination acceptable to the Exchange.

INTERPRETATION

Rule 342 .OFFICES—APPROVAL, SUPERVISION AND CONTROL

(a)(b)

.03 Annual Branch Office Inspection

[At least annual b]*B*ranch office inspections by *members and* member organizations are expected *to be conducted at least annually* pursuant to this Rule, unless *it has been* demonstrated to the satisfaction of the Exchange that because of proximity, special reporting or supervisory *practice, other* arrangements[,] *may satisfy the Rule's requirements.* [certain offices may not warrant an annual inspection.] *All required inspections must be conducted by a person who is independent of the ongoing supervision, control, or performance evaluation of the branch office (i.e., not the Branch Office Manager, Sales Manager, District/Regional Manager assigned to the office, or any other person performing a similar supervisory function).* Written reports of these inspections, *or the written authorization of an alternative arrangement,* are to be kept on file by the organization for a minimum period of three years.

An annual branch office inspection program must include, but is not limited to, testing and independent verification of internal controls related to the following areas:

(1) *Safeguarding of customer funds and securities,*

(2) *Maintaining books and records,*

(3) *Supervision of customer accounts serviced by Branch Office Managers,*

(4) *Transmittal of funds between customers and registered representatives and between customers and third parties,*

(5) *Validation of customer address changes, and*

(6) *Validation of changes in customer account information.*

For purposes of this interpretation, "annual" means once in a calendar year.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

Cases involving misappropriation of funds and securities have highlighted the need to re-examine issues related to both supervision and internal controls, including the appropriate application of such controls and the independent testing of their efficiency. In the course of reviewing the issues raised by these cases, Exchange staff has met with management of several member organizations, undertaken special sales practice examinations of potential problem areas, and conducted surveys of members' and member organizations' existing policies and procedures. As a result, the Exchange is proposing a number of initiatives intended to generally bolster the overall internal controls and procedures of members and member organizations and to specifically require such controls and procedures in certain areas that have been identified as particularly problematic. It is expected that the proposed amendments will help to focus and reinforce members' and member organizations' internal control policies. The proposals include the addition of paragraph .23 to NYSE Rule 342 ("Offices—Approval, Supervision and Control") which addresses internal control requirements generally, as well as amendments to Rule 401 ("Business Conduct") which identify and require specific internal control safeguards related to the transmission of customer funds and securities, and changes of customer address.

The proposals also address related supervision and/or control issues that were encompassed in the Exchange's review including amendments to: NYSE Rule 342 ("Offices—Approval, Supervision and Control") that would require systems and procedures to independently supervise sales managers who handle customer accounts; NYSE Rule 408 ("Discretionary Power in Customers' Accounts") that would clarify time limits on time-and-price discretionary authority; NYSE Rule 410 ("Records of Orders") that would expand the Rule's application and clarify its supervisory and recordkeeping provisions; and to the Interpretation of NYSE Rule 342 that would require persons who conduct branch office inspections to be independent of such office's ongoing supervision, control, or performance evaluation.

Supervision and Control

NYSE Rule 342 prescribes the general requirement that "[e]ach office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member organization establishing it and of the personnel

delegated such authority and responsibility." In this context, "supervision" refers to the ongoing, day-to-day review of each business activity to ensure overall compliance with applicable rules and regulations. A member organization's supervisory structure is reflected in its policy and the manner in which personnel implement the systems and procedures designed to enforce that policy.

"Control," on the other hand, refers to the development of these systems and procedures and to the independent oversight and testing of them in order to measure and maintain their effectiveness. Such internal controls typically involve random sampling of supervisory functions to identify shortcomings, gaps, or other inefficiencies. Internal controls also involve ongoing reassessment of these functions to determine whether they are serving their intended purpose (*i.e.*, have they been updated to address new or modified means of doing business?). Internal controls should, therefore, be considered a means by which the process of supervision is analyzed, tested, and refined. The following sets forth proposed internal control requirements, both general and specific, designed to highlight the importance of such controls, identify those areas where they can be most effectively implemented, and provide minimum standards for their application.

Internal Controls—General Requirement

Proposed paragraph .23 of NYSE Rule 342 elaborates upon the general requirement that members and member organizations develop and maintain adequate controls over each of their business activities. Paragraph .23 further requires that such controls must provide for the establishment of procedures for independent verification and testing of those business activities separate and apart from the day-to-day supervision of such functions. A summary of these actions is required to be included in the required Annual Report to a member organization's chief executive officer or managing partner per NYSE Rule 342.30.

In recognition of the fact that the "independent verification and testing" requirement may not be practical or reasonable for certain business models, an exemption from this requirement is available to members or member organizations that do not conduct a public business, or have a capital requirement of $5,000 or less, or employ 10 or fewer registered representatives. This exemption does not, however, provide relief from the general requirement that internal controls be developed, established, and effectively maintained.

Internal Controls—Specific Requirements

The following proposed amendments require that internal control policies and procedures be adopted that address specific areas identified to be particularly susceptible to potential abuse. These include the transmission of customer funds and securities and changes of customer address.

The Exchange states that it is recognized that no single approach to internal controls can be appropriate for all business models given differences in organizational size, supervisory structure, scope of business activities, products offered, location of branch offices, etc. Therefore, the controls established and implemented should reasonably conform to the nature of the business conducted.

Business Conduct: Transmission of Customers' Funds and Securities/ Customer Changes of Address

Proposed NYSE Rule 401(b)(1) clarifies that, consistent with their duty to adhere to principles of good business practice, members and member organizations must maintain written policies, procedures, and controls over the transmission of customer funds and securities. The proposed amendments specify certain types of transmission based on their potential for abuse. These include transmission of funds (*e.g.*, wires, checks, etc.) or securities:

- From customer accounts to third party accounts (*i.e.*, a transmittal that would result in a change of beneficial ownership);
- From customer accounts to outside entities (*e.g.*, banks, investment companies, etc.);
- From customer accounts to locations other than a customer's primary residence (*e.g.*, post office box, "in care of" account, alternate address, etc.); and
- Between customers and registered representatives (including the hand delivery of checks).

Proposed NYSE Rule 401(b)(2) requires written policies and controls to monitor customer changes of address, including a reasonable method of customer notification that can be documented. The purpose of this amendment is to prevent the delivery of confirmations, statements, and other account-related documentation to other than the beneficial owner of the account or their duly authorized agent. Proposed NYSE Rule 401(b)(3) requires written policies and controls to monitor customer changes of investment objectives.

Additional Amendments

The following proposed amendments address additional specific supervision and/or control issues identified by Exchange staff during the course of their review:

Supervision of Sales Managers

Proposed NYSE Rule 342.19 requires the development and implementation of written policies and procedures to independently supervise sales managers and other supervisory personnel who handle customer accounts. This requirement applies to Branch Office Managers, Regional/District Sales Managers, or any person performing a similar supervisory function. Such policies and procedures are expected to encompass all sales-related activities to include, at a minimum, new account approval, the monitoring of customer account activity (for suitability, unauthorized transactions, etc.), and prior approval of account designation changes (both "cancel and re-bills" and "order errors") pursuant to NYSE Rule 410. This provision is intended to ensure all sales activity is monitored for compliance with applicable regulatory requirements by persons who do not have a personal interest in such activity and to remove doubt with respect to whether managers may "self-approve" their sales-related activities.

Time-and-Price Discretionary Power in Customers' Accounts

Proposed Amendment to NYSE Rule 408(d) limits the authority of registered representatives to exercise time-and-price discretion [5] over customer orders, absent a signed authorization from the customer, to the end of the business day on which the customer granted such discretion. NYSE Rule 408(d) currently allows the exercise of time-and-price discretion, without written authorization, on orders for the purchase or sale of a definite amount of a specified security, but is silent on such authority's length of effectiveness. The absence of clear guidance on this point has been the source of interpretive uncertainty. The proposed amendment's establishment of a specific time limitation will eliminate uncertainty in this regard.

[5] Time-and-price discretion is authority granted (usually informally) by a customer to a registered representative that allows the representative to exercise judgment, based on prevailing market conditions, as to when and at what price to execute a customer order.

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Records of Orders: Record Preservation/Account Designation Changes

NYSE Rule 410, as currently written, applies only to orders transmitted or carried to the Floor of the Exchange. It requires members and member organizations to preserve a record of certain specified terms of each order, and it prescribes procedures for administering changes in account name or designation on previously executed orders. The proposed amendments would:

• Expand the application of the Rule to all orders (sent to any market-place), not just those carried or transmitted to the Floor. The Exchange states that the expansion of the Rule to include all orders sent to any marketplace is necessary for effective regulatory oversight and enforcement proceedings. The Exchange also states that the information requested is not duplicative of existing NASD recordkeeping requirements.[6]

• Require that a person designated to approve account name or designation changes be qualified by passing an examination acceptable to the Exchange. Currently, the Rule reads that such changes shall be approved by a person or persons designated under the provisions of NYSE Rule 342(b)(1). While this provision requires that the designated person be "qualified," it does not specifically prescribe an examination requirement. Given that account name and designation changes can be indicative of serious sales practice violations such as unauthorized or unsuitable trading, the Exchange has long held that this exceptionally important and sensitive area be subject to heightened supervisory scrutiny. Accordingly, proposed paragraph .10 would specify that, for purposes of NYSE Rule 410, a person designated under the provisions of NYSE Rule 342(b)(1) would be required to pass a qualifying examination such as the General Securities Sales Supervisor Qualification Examination ("Series 9/10"), the Compliance Official Examination ("Series 14"), or other sales supervisory examination acceptable to the Exchange.

• Clarify that the Rule applies to all account name and designation changes, including related accounts and order errors. Some have read the current Rule to apply only to "Cancel-and-Rebills" in which a trade is moved from one customer account to another unrelated account. The proposed amendments make clear that the provisions of the Rule also apply to designation changes to related accounts (*e.g.*, "Smith Trading Account" to "Smith IRA") and to orders cancelled and moved into an error account.

• Require documentation of the essential facts relied upon when approving such account name or designation changes in order to maintain a record, available for review, of the basis for the change.

Annual Branch Office Inspection

The proposed amendments also include changes to the written Interpretation of NYSE Rule 342, clarifying that persons who conduct a member organization's annual branch office inspection must be independent of any ongoing supervision, control, or performance evaluation in connection with the particular office. This clarification recognizes that, with regard to such persons, an objective perspective is best maintained by having no interest in a branch's "bottom line" and by being outside of the branch's supervisory structure. In addition, the Interpretation requires that annual branch office inspection programs include, at minimum, testing and verification of specified internal controls including:

• Safeguarding of customer funds and securities,

• Maintaining books and records,

• Supervision of customer accounts serviced by Branch Office Managers,

• Transmittal of funds between customers and registered representatives and between customers and third parties,

• Validation of customer address changes, and

• Validation of changes in customer account designation.

2. Statutory Basis

The basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is intended to foster the strengthening of NYSE members' and member organizations' internal controls and supervisory systems.

[6] Telephone call with Donald Van Weezel, Vice President, Regulatory Affairs, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, October 25, 2002.

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change filed with the Commission and all written communications relating to the proposed rule changes that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–36 and should be submitted by December 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30040 Filed 11–26–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed temporary, emergency amendments to sentencing guidelines, policy statements, and commentary. Notice of intent to repromulgate temporary, emergency amendments as permanent, non-emergency amendments. Request for public comment.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, and section 314 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. Issues for comment follow each proposed amendment.

DATES: Written public comment on these proposed emergency amendments should be received by the Commission not later than December 18, 2002, in anticipation of a vote to promulgate these emergency amendments at the Commission's January 2003 public meeting. Thereafter, written public comment on whether to repromulgate the emergency amendments as permanent, non-emergency amendments should be received by the Commission not later than February 18, 2003.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. § 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *http://www.ussc.gov*.

Authority: 28 U.S.C. § 994(a), (o), (p), (x); sections 805, 905, and 1104 of Pub. L. 107–204; section 314 of Pub. L. 107–155; USSC Rules of Practice and Procedure, Rule 4.4.

Diana E. Murphy,

Chair.

1. Corporate Fraud

Synopsis of Proposed Amendment: This proposed amendment implements the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (the "Act"). The Act requires the Commission to promulgate guideline amendments under emergency amendment authority not later than January 25, 2003. In addition to several general directives regarding fraud and obstruction of justice offenses, the Act also sets forth specific directives that require the Commission to promulgate amendments addressing, among other things, officers and directors of publicly traded companies who commit fraud and related offenses, offenses that endanger the solvency or financial security of a substantial number of victims, fraud offenses that involve significantly greater than 50 victims, and obstruction of justice offenses that involve the destruction of evidence.

First, the proposed amendment sets forth two options for amending § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) to address the directive contained in section 1104 of the Act pertaining to fraud offenses involving significantly greater than 50 victims. Option One expands the victims table in § 2B1.1(b)(2). Currently, subsection (b)(2) provides a two level enhancement if the offense involved more than 10, but less than 50, victims or was committed through mass-marketing, or a four level enhancement if the offense involved 50 or more victims. Option One provides an additional two levels, for a total of six levels, if the offense involved 250 victims or more. Alternatively, Option Two provides an encouraged upward departure provision if the offense involved substantially more than 50 victims.

Second, the proposed amendment modifies subsection § 2B1.1(b)(12)(B) to address directives contained in sections 805 and 1104 of the Act pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. Subsection (b)(12)(B) curreptly provides a four level enhancement and a minimum offense level of 24 if the offense substantially jeopardized the safety and soundness of a financial institution. The proposed amendment expands the scope of this enhancement to apply to offenses that substantially endanger the solvency or financial security of a publicly traded company. The enhancement does not require the court to determine whether the offense endangered the solvency or financial security of each individual victim. Such a determination likely would unduly complicate the sentencing process. Instead the enhancement is based on a presumption that if the offense conduct endangered the solvency or financial security of a publicly traded company, the offense similarly affected a substantial number of individual victims. The proposed amendment also

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contains options for extending the scope of the enhancement to include other organizations with a substantial number of employees. This extension might be appropriate because offenses that endanger other large organizations may, like offenses that endanger publicly traded companies, affect the solvency or financial security of a substantial number of victims.

The corresponding application note to the new enhancement sets forth situations in which an offense shall be considered to have endangered the solvency or financial security of a publicly traded company. The note, which is modeled after an analogous note for the financial institutions prong of the enhancement, includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce among the list of situations that would trigger application of the new enhancement.

An issue for comment follows the proposed amendment regarding whether the list of situations should be a non-exhaustive list that the court may consider in determining whether to apply the enhancement.

Third, the proposed amendment addresses the directive contained in section 1104 of the Act pertaining to fraud offenses committed by officers or directors of publicly traded corporations by providing a new two level enhancement at § 2B1.1(b)(13). This enhancement would apply if the offense involved a violation of any provision of securities law and, at the time of the offense, the defendant was an officer or director of a publicly traded company. This enhancement would apply regardless of whether the defendant was convicted under a specific securities fraud statute (*e.g.*, 18 U.S.C. § 1348, a new offense created by the Act specifically prohibiting securities fraud) or under a general fraud statute (*e.g.*, 18 U.S.C. § 1341, prohibiting wire fraud), provided that the offense involved a violation of securities law. The corresponding application note provides that in cases in which the new enhancement applies, the current enhancement for abuse of position of trust at § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) does not apply. Although the directive only specifically addresses officers and directors of publicly traded companies, the proposed amendment provides an option to include registered brokers or dealers because they also are subject to certain requirements under securities law and as such may be considered to hold a heightened position of trust to investors.

Pursuant to the corresponding application note, "securities law" (i) means 18 U.S.C. §§ 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in section 3(a)(47).

The proposed amendment also includes an issue for comment regarding whether, in addition to the two level enhancement, a minimum offense level should be provided for such offenses committed by officers and directors of publicly traded companies. The issue for comment also requests comment regarding whether the scope of the enhancement should be broadened to apply to an officer or director of other large organizations.

Additional issues for comment are included regarding whether other enhancements, possibly to apply cumulatively, should be added to § 2B1.1 in response to the Act, as well as whether further guidance should be provided regarding the calculation of loss in complex white collar offenses.

Fourth, the proposed amendment provides an option for expanding the loss table at § 2B1.1(b)(1). Currently, the loss table provides sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded $100,000,000. The proposed amendment provides two additional levels to the table; an increase of 28 levels for offenses in which the loss exceeded $200,000,000, and an increase of 30 levels for offenses in which the loss exceeded $400,000,000. This proposed addition to the loss table would address congressional concern expressed in the Act regarding particularly extensive and serious fraud offenses and would more fully effectuate increases in statutory maximum penalties, for example, the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years (section 903 of the Act). An issue for comment follows the proposed amendment regarding whether more extensive modifications to the loss table should be made in response to the Act, particularly for offenses involving significantly lower loss amounts.

Fifth, the proposed amendment implements the directives pertaining to obstruction of justice offenses contained in sections 805 and 1104 of the Act. The proposed amendment adds a new two level enhancement to § 2J1.2 (Obstruction of Justice) that applies if the offense (i) involved the destruction, alteration, or fabrication of a substantial amount of evidence; (ii) involved the selection of especially probative or essential evidence to destroy or alter; or (iii) was otherwise extensive in scope, planning, or preparation. An issue for comment follows the proposed amendment regarding whether the base offense level in § 2J1.2 should be increased and whether an enhancement for the use of sophisticated means should be included in § 2J1.2. There is an additional issue for comment regarding whether modifications also should be made to the guideline covering perjury offenses, § 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness) in light of the proposed amendment to the obstruction of justice guideline, in order to maintain sentencing proportionality between the two types of offenses.

Finally, the proposed amendment addresses new offenses created by the Act. Section 1520 of title 18, United States Code, is referenced to § 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act). This offense provides a statutory maximum of 10 years' imprisonment if the defendant certifies the publicly traded company's periodic financial report knowing that the statement does not comply with all requirements of the Securities and Exchange Commission (and 20 years' imprisonment if that certification is done willfully). The proposed amendment also expands the current cross reference in § 2E5.3(a)(2) specifically to cover fraud and obstruction of justice offenses. Accordingly, if a defendant who is convicted under 18 U.S.C. § 1520 certified the financial report of a publicly traded company in order to facilitate a fraud, the proposed change to the cross reference provision would require the court to apply § 2B1.1 instead of § 2E5.3. Other new offenses are proposed to be included in Appendix A (Statutory Index) as well as the statutory provisions of the relevant guidelines.

Proposed Amendment

Section 2B1.1(b)(1) is amended by striking the period and inserting a semi-colon; and by adding at the end the following:

"(O) More than $200,000,000 add 28
(P) More than $400,000,000 add 30.".

[Option 1 for Substantial Number of Victims:

Section 2B1.1 is amended by striking subsection (b)(2) and inserting the following:

"(2) (Apply the greatest) If the offense—

(A) (i) involved more than 10, but less than 50, victims; or (ii) was committed through mass-marketing, increase by 2 levels;

(B) involved at least 50, but less than 250, victims, increase by 4 levels; or

(C) involved 250 or more victims, increase by 6 levels.".]

Section 2B1.1(b)(12) is amended by striking subdivision (B) and inserting the following:

"(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; or (ii) substantially endangered the solvency or financial security of an organization that, at the time of the offense [(I)] was a publicly traded company[; or (II) had [200][1,000][5,000] or more employees], increase by 4 levels.".

Section 2B1.1(b) is amended by adding at the end the following:

"(13) If the offense involved a violation of securities law and, at the time of the offense, the defendant was [(i)] an officer or a director of a publicly traded company[; or (ii) a registered broker or dealer], increase by 2 levels.".

The Commentary to § 2B1.1 caption "Statutory Provisions" is amended by inserting "1348, 1350," after "1341–1344,".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by inserting after "Secretary of the Interior." the following new paragraph:

"'Publicly traded company' means an issuer (A) with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l); or (B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)). 'Issuer' has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by redesignating Notes 11 through 15 as Notes 12 through 16, respectively.

The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking Note 10 and inserting the following:

"10. Application of Subsection (b)(12)(B).—

(A) Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution under Subsection (b)(12)(B)(i).—For purposes of subsection (b)(12)(B)(i), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution, if, as a consequence of the offense, the institution (i) became insolvent; (ii) substantially reduced benefits to pensioners or insureds; (iii) was unable on demand to refund fully any deposit, payment, or investment; (iv) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (v)was placed in substantial jeopardy of any of subdivisions (i) through (iv) of this note.

(B) Enhancement for Endangering the Solvency or Financial Security of a Publicly Held Company [or An Organization with more than [200][1000][5000] Employees] under Subsection (b)(12)(B)(ii).—

(i) Definitions.—For purposes of this subsection, 'organization' has the meaning given that term in Application Note 1 of § 8A1.1 (Applicability of Chapter Eight).

(ii) Application.—An offense shall be considered to have substantially endangered the solvency or financial security of an organization that was a publicly traded company[or that had more than [200][1000][5000] employees] if, as a consequence of the offense, the organization (I) became insolvent; (II) filed for bankruptcy under Chapters 7, 11, or 13 of the Bankruptcy Code (title 11 of the United States Code); (III) suffered a substantial reduction in the value of [its equity securities][a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l)] or the value of its employee retirement accounts; (IV) substantially reduced its workforce; (V) substantially reduced its employee pension benefits; (VI) was so depleted of its assets as to be forced to merge with another company in order to continue active operations; or (VII) was placed in substantial endangerment of any of subdivisions (I) through (VI) of this note. ['Equity securities' has the meaning given that term in section 3 of Securities Exchange Act of 1934 (15 U.S.C. § 78c).]

11. Application of Subsection (b)(13).—

(A) Definitions.—For purposes of this subsection:

'Registered broker or dealer' has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).

'Securities law' (i) means 18 U.S.C. §§ 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in section 3(a)(47).

(B) In General.—A conviction under securities law is not required in order for subsection (b)(13) to apply. This subsection would apply in the case of a defendant convicted under a general fraud statute if the defendant's conduct violated securities law. For example, this subsection would apply if an officer of a publicly traded company violated regulations issued by the Securities and Exchange Commission by fraudulently influencing an independent audit of the company's financial statements for the purposes of rendering such financial statements materially misleading, even if the officer is convicted only of wire fraud.

(C) Nonapplicability of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).—If subsection (b)(13) applies, do not apply § 3B1.3.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 16, as redesignated by this amendment, in subdivision (A) by striking subdivision (v).

[Option 2 for Substantial Number of Victims:

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 16, as redesignated by this amendment, in subdivision (A) by inserting the following:

"(v) The offense involved substantially more than 50 victims.".]

Section 2E5.3 is amended in the heading by adding at the end "; Destruction and Failure to Maintain Corporate Audit Records".

Section 2E5.3 is amended by striking subsection (a)(2) and inserting the following:

"(2) If the offense was committed to facilitate or conceal (A) an offense involving theft, fraud, or embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply § 2B1.1 (Theft, Fraud and Property Destruction), § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), or § 2J1.2 (Perjury or Subornation of Perjury; Bribery of a Witness), as appropriate.".

The Commentary to § 2E5.3 captioned "Statutory Provisions" is amended by inserting "§" before "1027"; and by inserting ", 1520" after "1027".

Section 2J1.2(b) is amended by adding at the end the following:

"(3) If the offense (A) involved the destruction, alteration, or fabrication of

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a substantial amount of evidence; (B) involved the selection of especially probative or essential evidence to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by [2] levels.".

The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1519" after "1516".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. § 1347" the following new lines:

"18 U.S.C. § 1348 2B1.1
18 U.S.C. § 1349 2X1.1
18 U.S.C. § 1350 2B1.1".

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. § 1512(c) by striking "(c)" and inserting "(d)".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 1512(b) the following new line:

"18 U.S.C. § 1512(c) 2J1.2".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 1518 the following lines:

"18 U.S.C. § 1519 2J1.2
18 U.S.C. § 1520 2E5.3".

Issues for Comment

1. The Sarbanes-Oxley Act of 2002 requires the Commission to consider providing an enhancement for officers or directors of publicly traded companies who commit fraud and related offenses. The Act also requires the Commission to ensure that the enhancements relating to obstruction of justice are adequate in cases in which the offense involved an abuse of position of trust or use of a special skill. In response to these directives, the proposed amendment provides an enhancement in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) specifically targeting officers and directors who violate securities law, including violations of the rules and regulations issues by the Securities and Exchange Commission. The Commission requests comment regarding whether it also should provide a minimum offense level for this proposed enhancement, and if so, what an appropriate offense level would be. Additionally, should this proposed enhancement apply to cases in which an officer or director of a large, non-public organization violates any provision of security law? Such a case may cause similar harm to the organization, its shareholders, and employees even though the organization is not a publicly traded company and the offense typically would not undermine public confidence in the securities market. The Commission further requests comment regarding whether, as an alternative to the proposed enhancement, it should provide a series of enhancements, possibly to apply cumulatively, to address separate aspects of these directives. Specifically, should the Commission provide enhancements in § 2B1.1 that would apply if (A) the defendant used his or her position as officer or director of a publicly traded company in furtherance of a fraud or some other corporate crime; (B) the officer or director of a publicly traded company worked to defeat or compromise internal corporate controls, independent audits, or the oversight by a corporate governing board; or (C) an officer or director derived more than $1,000,000 in personal gain from unlawful activity? If so, should the Commission also provide minimum offense levels for any such enhancements? What would be an appropriate minimum offense level for such enhancements?

2. The proposed amendment expands the scope of § 2B1.1(b)(12)(B) to apply to offenses that substantially endanger the solvency or financial security of a publicly traded company. This proposed enhancement is in response to directives pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. The proposed corresponding application note sets forth instances of when an offense shall be considered to have endangered the solvency or financial security of a publicly traded company. The note includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce, any one of which would require application of the new enhancement upon a finding of its presence. The Commission requests comment regarding whether the note alternatively should provide that the references are a non-exhaustive list that the court may consider in determining whether to apply § 2B1.1(b)(12)(B). The Commission also requests comment regarding whether additional factors should be included in the list of instances that could trigger application of the enhancement.

3. The Commission requests comment regarding whether the loss definition in § 2B1.1 should be amended to provide further guidance as to how to calculate loss in complex white collar crime cases. For example, should loss in such cases be based on a change in the market capitalization of a corporation, a change in the value of corporate assets, or some other economic effect?

4. The current loss table in § 2B1.1 provides sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded $100,000,000. The proposed amendment provides two additional increases to the table: an enhancement of 28 levels for offenses in which the loss exceeded $200,000,000, and an enhancement of 30 levels for offenses in which the loss exceeded $400,000,000. This proposed addition to the loss table would address congressional concern expressed in sections 805, 905, and 1104 of the Sarbanes-Oxley Act regarding particularly extensive and serious fraud offenses and would more fully effectuate increases in statutory maximum penalties, for example, the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years (section 903 of the Act). Should the Commission modify the loss table more extensively to provide increased offenses levels at lower loss amounts? Commission data indicate that approximately one-third of fraud offenses involve loss amounts less than $20,000, approximately one-third involve loss amounts between $20,000 and $120,000, and approximately one-third involve loss amounts greater than $120,000. For instance, should the Commission modify the loss table to result in a Zone D offense level (assuming a two level reduction for acceptance of responsibility) for offenses involving more than $50,000? Similarly, should the Commission modify the loss table to restrict Zone A offense levels (which provide sentences of straight probation) to offenses involving loss amounts of $10,000 or less (assuming a two level reduction for acceptance of responsibility)? If any changes are made to the loss table in § 2B1.1, should the Commission also make similar changes to the tax loss table in § 2T4.1 (Tax Table) in order to maintain the long standing relationship between the two loss tables? In addition, the Commission requests comment regarding whether the base offense level in § 2B1.1 should be increased from level 6.

5. In response to the directives in the Sarbanes-Oxley Act pertaining to obstruction of justice offenses, the proposed amendment sets forth a new two level enhancement in § 2J1.2 (Obstruction of Justice) that applies if the offense (A) involved the destruction, alteration, or fabrication of a substantial amount of evidence; (B) involved the selection of especially probative or essential evidence to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation. The Commission requests comment regarding whether, in addition to this enhancement, it should provide an enhancement that is based on the number of participants recruited to commit the obstruction of justice offense. Additionally, should the Commission provide an enhancement for obstruction of justice offenses committed through the use of sophisticated means, perhaps in lieu of the proposed subdivision (C) prong, and if so, what characteristics would be common to such an offense? Finally, given congressional concern with obstruction of justice offenses, should the Commission increase the base offense level in § 2J1.2 from level 12 to level 14?

6. Part Three of the proposed amendment addresses the emergency amendment directives in the Sarbanes-Oxley Act pertaining to the Chapter Two guidelines for obstruction of justice offenses. Specifically, the proposed amendment would provide a new enhancement in § 2J1.2 addressing the directive relating to the destruction of evidence and offenses that are otherwise extensive in scope, planning, or preparation. Currently, defendants sentenced under § 2J1.2 or § 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness) are sentenced proportionately because these guidelines have the same base offense level and provide substantially parallel enhancements. The Commission requests comment regarding whether, in light of the proposed changes to § 2J1.2, modifications also should be made to § 2J1.3 in order to maintain proportionate sentencing between these two guidelines. For example, should the Commission increase the base offense level in § 2J1.3 or increase the magnitude of the enhancement of the current specific offense characteristics? Any such amendment to § 2J1.3 would be made when the Commission re-promulgates as a permanent amendment any emergency amendment made to § 2J1.2.

2. Campaign Finance

Synopsis of Proposed Amendment: This proposed amendment responds to the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155 (the "Act"). The most pertinent provision of the Act, for the Commission, is section 314, which gives the Commission emergency authority to promulgate amendments to implement the Act not later than February 3, 2003. Specifically, section 314(a) and (b) state:

"(a) IN GENERAL.—The United States Sentencing Commission shall—

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Campaign Act of 1971 and related election laws.

(b) CONSIDERATIONS.—The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violations involves—

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Government.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.".

Section 309(d)(1) of the FECA sets forth the Act's criminal penalty provisions as follows:

(1) Violations of the FECA as Penalized under Section 309(d)(1)(A)

Section 309(d)(1)(A) is the main penalty provision of the FECA (2 U.S.C. § 437g(d)(1)(A)). As amended by section 312 of the Act, it states that "[a]ny person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure (i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or (ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, imprisoned for not more than 1 year, or both.". (Before amendment by the Act, section 309(d)(1)(A) of the FECA provided for a maximum term of imprisonment of one year, or a fine, or both.)

The major violations of the FECA to which section 309(d)(1)(A) applies are:

(A) The Ban on Soft Money

Section 323 of the FECA (2 U.S.C. § 441i) prohibits national political party committees (including senatorial and congressional campaign committees) from accepting soft money from any person (including an individual) after November 6, 2002.

(B) Restrictions on Hard Money Contributions

The FECA limits the amount of hard money that may be contributed to a Federal campaign. The FECA limits the amount of hard money that persons other than multicandidate political committees may contribute as follows:

(i) The contribution to a candidate for Federal office may not exceed $2,000 per election. (The limit used to be $1,000; see section 315(a)(1)(A) of the FECA, as amended by section 307(a)(1) of the Act.)

(ii) The contribution to a national party committee may not exceed $25,000 per calendar year. (The limit used to be $20,000; see section 315(a)(1)(B) of the FECA, as amended by section 307(a)(2) of the Act.)

(iii) The contribution to any other political committee, including a political action committee (PAC), may not exceed $5,000 per calendar year. (No change in the former law; see section 315(a)(1)(C) of the FECA.)

(iv) The contribution to a State or local political party may not exceed $10,000 per calendar year. (The limit used to be $5,000; see section 315(a)(1)(D) of the FECA, as amended by section 102(3) of the Act.)

The FECA limits the amount of hard money that multicandidate political committees other than individuals may contribute as follows:

(i) The contribution to a candidate for Federal office may not exceed $5,000 per election. (See section 315(a)(2)(A) of the FECA.)

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(ii) The contribution to a national party committee may not exceed $15,000 per calendar year. (See section 315(a)(2)(B) of the FECA.)

(iii) The contribution to any other political committee, including a political action committee (PAC), may not exceed $5,000 per calendar year. (No change in the former law; see section 315(a)(2)(C) of the FECA.)

(iv) The contribution to a State or local political party may not exceed $5,000 per calendar year. (See section 315(a)(2)(C) of the FECA.)

(C) The Ban on Contributions and Donations by Foreign Nationals

Section 319 of the FECA (2 U.S.C. § 441e) makes it "unlawful for (1) a foreign national, directly or indirectly, to make (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election; (B) a contribution or donation to a committee of a political party; or (C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or (2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.".

"Foreign national" is broadly defined to mean (1) a foreign principal, as defined in the Foreign Agent Registration Act of 1938 (22 U.S.C. § 611(b)) or (2) an individual who is not a citizen or national of the United States or who is not lawfully admitted for permanent residence.

(D) Restrictions on Electioneering Communications

Section 304(f) of the FECA, as added by section 201 of the Act, requires any person who makes a disbursement for the direct costs of producing and airing electioneering communications exceeding $10,000 in a calendar year to file a disclosure statement to the Federal Election Commission.

Section 316 of the FECA (2 U.S.C. § 441b) makes it unlawful for any national bank, any corporation organized by authority of any Federal law, or any labor union to make a contribution or expenditure in connection with any federal election to any federal political office, or a disbursement, using non-PAC money, for an "electioneering communication".

An electioneering communication is any broadcast, cable, or satellite communication which (A) refers to a clearly identified candidate for Federal office; (B) is made within 60 days before a general election or 30 days before a primary election. The Communication must be targeted to the pertinent electorate. (*See* 2 U.S.C. § 434(f)(3)(c).)

(2) Violations of Section 316(b)

Section 309(d)(1)(B) of the FECA states that "[i]n the case of a knowing and willful violation of section 316(b)(3), the penalties set forth in this subsection shall apply to a violation involving an amount aggregating $250 or more during a calendar year. Such violation of section 316(b)(3) may incorporate a violation of section 317(b), 320, or 321.

Section 316(b)(3) of the FECA (2 U.S.C. § 441b(b)(3)) makes it unlawful for a national bank, any corporation organized by authority of any law of Congress, or any labor union (A) to use a political fund to make a political contribution or expenditure from money or anything of value that was secured by physical force, job discrimination, financial reprisals (or the threat thereof), or from dues, fees, or other money required as a condition of membership in the labor organization or as a condition of employment; (B) who solicits an employee for contribution to a political fund to fail to inform the employee of the purposes of the fund at the time of the solicitation; and (B) who solicits an employee for contribution to a political fund to fail to inform the employee of his right to refuse to contribute without reprisal.

The sections which may incorporate violations of section 316(b)(3) of the FECA are section 317(b), which prohibits government contractors from making contributions of currency in excess of $100 for any candidate for Federal office, section 320 which prohibits a person from making a contribution in the name of another or accepting a contribution so made, and section 321, which prohibits any person from making contributions of currency in excess of $100 for any candidate for Federal office.

(3) Fraudulent Misrepresentations Under Section 322

Section 309(d)(1)(C) of the FECA states that "[i]n the case of a knowing and willful violation of section 322, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of $1,000 or more is involved."

Section 322(a) of the FECA (2 U.S.C. 441h) states that "[n]o person who is a candidate for Federal office or an employee or agent of such a candidate shall (1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1)."

Section 322(b) states that "[n]o person shall (1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1)."

(4) Conduit Contributions under Section 320

Section 309(d)(1)(D) of the FECA states that "[a]ny person who knowingly and willfully commits a violation of section 320 involving an amount aggregating more than $10,000 during a calendar year shall be (i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more); (ii) fined not less than 300 percent of the amount of the violation and not more than the greater of (I) $50,000; or (II) 1,000 percent of the amount involved in the violation; or (iii) both imprisoned under clause (i) and fined under clause (ii)."

Section 320 of the FECA (2 U.S.C. § 441f) states that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person."

In addition to changes made to the FECA, section 302 of the Act amended section 607 of title 18, United States Code, to make it "unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other things of

value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person." The penalty is a fine of not more than $5,000, not more than 3 years or imprisonment, or both.

In order to implement the directive in the Act, this proposed amendment expands the scope of Chapter Two, Part C (Offenses Involving Public Officials) by providing within that Part a new guideline for offenses under the FECA and related offenses. A new guideline, rather than amendment of an existing guideline, seems most appropriate to implement the directive. Currently there exists no guideline which already incorporates the elements of the FECA and related offenses, although the fraud guideline in particular (§ 2B1.1) and the public corruption guidelines to a lesser degree (Chapter Two, Part C) provide some overlap in the elements of the offense and aggravating conduct. In addition, the enhancements required to be added by the directive in the Act would fit nicely into a guideline devoted solely to campaign finance offenses but could prove unwieldy if added to the fraud or public corruption guidelines, which cover so many other non-campaign finance offenses.

The proposed amendment provides for a base offense level of level [6–10]. The statutorily authorized maximum term of imprisonment for the conduct covered by the proposed guideline was raised by the Act from one year for all such offenses to two years for some offenses and five years for others. The base offense level is set at level [6–10] in recognition of the relative similarity of these offenses to fraud offenses covered by § 2B1.1 and public corruption offenses covered by Chapter Two, Part C. A base offense level of level [6–10] both insures proportionality with relatively similar offenses and permits various sentencing enhancements directed to be added by the Act to operate well.

The proposed amendment also creates a number of specific offense characteristics in response to the directive in section 314(b) of the Act. First, the directive requires the Commission to provide an enhancement if the offense involved a large aggregate amount of illegal contributions, donations, or expenditures and to provide an enhancement for a large number of illegal transactions. These two directives are fundamentally interrelated because the amount of the illegal contributions necessarily tends to increase as the number of illegal transactions increases. Because of the interrelatedness of these two directives, one option is to address these two considerations by providing a specific offense characteristic, at subsection (b)(1), that uses the fraud loss table in § 2B1.1 to incrementally increase the offense level according to the dollar amount of the illegal transactions. This approach would foster proportionality with related guidelines, notably the fraud guideline and the public corruption guidelines (which also reference the fraud loss table), and would provide incremental, rather than a flat, punishment according to the dollar amount involved in the offense.

The proposed amendment provides commentary to explain that "illegal transactions" include only those amounts that exceed the amount a person may legitimately contribute, solicit, or expend. The proposed amendment also provides references in the definition to the FECA's definitions of "contribution" and "expenditure".

Another option, provided in the proposed amendment, is to provide enhancements for both the number of illegal transactions and the dollar amount of the transactions. A separate enhancement for the number of illegal transactions takes into account the aspect of sophistication and planning attendant to multiple violations.

Second, the proposed amendment provides an enhancement if the offense involved a contribution, donation, or expenditure from a foreign source. In implementing this enhancement, the proposed amendment adopts the expansive definition of "foreign national" provided in section 319 of the FECA, and provides for a greater enhancement if the defendant knew that the source of the funds was a foreign government.

Third, the proposed amendment provides an enhancement if the offense involved a donation, contribution, or expenditure of governmental funds. The proposed amendment defines "governmental funds" to mean any Federal, State, or local funds. It is anticipated that this enhancement will apply in situations such as using governmental funds awarded in a contract to make a donation or contribution. The FECA itself addresses this type of situation but in very few places. For example, section 317 of the FECA, 2 U.S.C. § 441c, prohibits any person who enters into a contract with the United States for the rendition of services, the provision of materials, supplies, or equipment, or the selling of any land or property to the United States, if the payment from the United States is to be made in whole or in part from funds appropriated from Congress and before completion of or negotiation for the contract, to make or solicit a contribution of money or anything of value to a political party, committee, or candidate for public office or to any person for a political purpose. (This provision does not prohibit, however, the establishment of a segregated account to be used for political purposes.) The concern behind this provision of the FECA, therefore, is to prevent the use of Federal funds for political purposes. The same concern pertains to State and local funds as well.

Fourth, the proposed amendment provides a number of options for responding to the directive to provide an enhancement for cases involving an intent to achieve a benefit from the Federal government. One option is to incorporate this factor into the base offense level. Examination of available Commission data reveals that this factor is present in the majority of illegal campaign finance cases and thus lies within the heartland of these cases. Another option presented in the proposed amendment defines this factor as the intent to influence a Federal public official to perform an official act in return for the contribution, donation, or expenditure. A third option is also presented that limits the intent to achieve a Federal benefit to the intent to achieve a financial benefit.

The amendment also proposes to add an enhancement if the contribution, donation, or expenditure was obtained through intimidation, threat of harm, including pecuniary harm, or coercion.

The proposed amendment also amends the guideline on fines for individual defendants, § 5E1.2, to set forth the fine provisions unique to FECA and to provide two upward departure provisions related to certain FECA fines. This part of the amendment also provides that the defendant's participation in a conciliation agreement with the Federal Election Commission pursuant to section 309 of the FECA may be a potentially legitimate factor for the court to consider in evaluating where to sentence an offender within the presumptive fine guideline range. An issue for comment is provided regarding whether, in the alternative, a downward adjustment should apply in cases involving conciliation agreements, or alternatively, whether the Commission should discourage downward departures in such cases.

The proposed amendment provides commentary that counts under this proposed guideline are groupable under subsection (d) of § 3D1.2 (Groups of Closely Related Counts). Finally, the

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Statutory Index is amended to incorporate these offenses.

Proposed Amendment

Chapter Two, Part C is amended in the heading by adding at the end "AND VIOLATIONS OF FEDERAL ELECTION CAMPAIGN LAWS".

Chapter Two, Part C is amended by striking the introductory commentary in its entirety.

Chapter Two, Part C is amended by adding at the end the following new guideline and accompanying commentary:

"§ 2C1.8. Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property

(a) Base Offense Level: [6][7][8][9][10]

(b) Specific Offense Characteristics

(1) If the value of the illegal transactions (i) exceeded $2,000 but did not exceed $5,000, increase by 1 level; or (ii) exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (Apply the greater) If the offense involved a contribution, donation, or expenditure, or an express or implied promise to make a contribution, donation, or expenditure—

(A) by a foreign national, increase by [2][4] levels; or

(B) by a foreign government, and the defendant knew that the source of the contribution, donation, or expenditure was a foreign government, increase by [4][8] levels.

(3) If the offense involved a contribution, donation, or expenditure of governmental funds, increase by [2][4] levels.

(4) If the offense involved an intent [Option One: to influence a Federal public official to perform an official act][Option Two: to obtain a financial Federal benefit] in return for the contribution, donation, or expenditure, increase by [2][4] levels.

[(5) If the offense involved more than five illegal transactions in a 12-month period, increase as follows:

Number of illegal transactions	Increase in level
(A) 6–15	add [1]
(B) 16–30	add [2]
(C) 31 or more	add [3].]

(6) If the offense involved a donation or contribution obtained through intimidation, threat of pecuniary or other harm, or coercion, increase by [2] [4] levels.

(c) Cross Reference

(1) If the offense involved the fraudulent misrepresentation of authority to speak or otherwise act for a candidate, political party, or employee or agent thereof for the purpose of soliciting a donation or contribution, apply § 2B1.1 (Theft, Fraud, and Property Destruction), if the resulting offense level is greater than the offense level determined under this guideline.

Commentary

Statutory Provisions: 2 U.S.C. §§ 437g(d)(1), 439a, 441a, 441a–1, 441b, 441c, 441d, 441e, 441f, 441g, 441h(a), 441i, 441k; 18 U.S.C. § 607. For additional provision(s), see Statutory Index (Appendix A).

Application Notes

1. Definitions.—For purposes of this guideline:

"Foreign government" means the government of a foreign country, regardless of whether the United States formally has recognized that country.

"Foreign national" has the meaning given that term in section 319(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 441e(b)).

"Governmental funds" means money, assets, or property of a Federal, State, or local government[, including a governmental branch, subdivision, department, agency, or other component.]

"Illegal transaction" means (A) any contribution, donation, solicitation, or expenditure of money or anything of value made in excess of the amount of such contribution, solicitation, or expenditure that may be made under the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 *et seq*; and (B) in the case of a violation of 18 U.S.C. § 607, any solicitation or receipt of money or anything of value under that section. The terms 'contribution' and 'expenditure' have the meaning given those terms in section 301(8) and (9) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 431(8) and (9)), respectively.

2. Application of Abuse of Position of Trust Adjustment.—If the defendant is an elected official, a candidate for elected office, or acting on behalf of, or employed by, an elected official or candidate for elected office, an adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.]

3. Multiple Counts.—For purposes of Chapter Three, Part D (Multiple Counts), multiple counts involving offenses covered by this guideline are grouped together under subsection (d) of § 3D1.2 (Groups of Closely Related Counts).

4. Departure Provisions.—In a case in which the value of the illegal transactions does not adequately reflect the seriousness of the offense, an upward departure may be warranted. For example, a relatively small contribution in violation of the Federal Election Campaign Act of 1971 may be made in exchange for favorable consideration in the award of a substantial Federal government contract. Depending on the facts of such a case, an upward departure may be warranted.

In a case in which the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted.

Background: This guideline covers violations of the Federal Election Campaign Act of 1971 and related federal election laws, such as 18 U.S.C. § 607.".

Section 3D1.2(d) is amended by inserting ", 2C1.8" after "2C1.7".

The Commentary to § 5E1.2 captioned "Application Notes" is amended in Note 4 by adding at the end the following:

"[If the count of conviction involves a violation of the Federal Election Campaign Act under 2 U.S.C. § 437g(d)(1)(A), an upward departure to the maximum fine permitted under 18 U.S.C. § 3571 may be warranted. If the count of conviction involves a violation of the Federal Election Campaign Act under 2 U.S.C. § 441f punishable under 2 U.S.C. § 437g(d)(1)(D), an upward departure to the maximum fine permitted under that subsection may be warranted.]".

The Commentary to § 5E1.2 captioned "Application Notes" is amended in the second sentence of Note 5 by striking "and" after "Control Act;" and by inserting before the period at the end the following:

"and 2 U.S.C. § 437g(d)(1)(D), which authorizes, for violations of the Federal Election Campaign Act under 2 U.S.C. § 441f, a fine up to the greater of $50,000 or 1,000 percent of the amount of the violation, and which requires, in the case of such a violation, a minimum fine of not less than 300 percent of the amount of the violation.

There may be cases in which the defendant has entered into a conciliation agreement with the Federal Election Commission under section 309 of the Federal Election Campaign Act of 1971 in order to correct or prevent a violation of such Act by the defendant. The existence of a conciliation agreement between the defendant and Federal Election Commission may be an appropriate factor in determining at what point within the applicable fine guideline range to sentence the defendant.".

Appendix A (Statutory Index) is amended by inserting before the line referenced to 7 U.S.C. § 6 the following new lines:

"2 U.S.C. § 437g(d)(1) 2C1.8
2 U.S.C. § 439a 2C1.8
2 U.S.C. § 441a 2C1.8
2 U.S.C. § 441a–1 2C1.8
2 U.S.C. § 441b 2C1.8
2 U.S.C. § 441c 2C1.8
2 U.S.C. § 441d 2C1.8
2 U.S.C. § 441e 2C1.8
2 U.S.C. § 441f 2C1.8
2 U.S.C. § 441g 2C1.8
2 U.S.C. § 441h(a) 2C1.8
2 U.S.C. § 441i 2C1.8
2 U.S.C. § 441k 2C1.8".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 597 the following new lines:

"18 U.S.C. § 607 2C1.8".

Issues for Comment: There may be cases in which the defendant has entered into a conciliation agreement with the Federal Election Commission under section 309 of the Federal Election Campaign Act of 1971 in order to correct or prevent a violation of such Act by the defendant. For such cases, the proposed amendment provides that such an agreement may be an appropriate factor in determining the amount of fine that might be imposed. The Commission requests comment regarding whether the existence of such a conciliation agreement between the defendant and Federal Election Commission should be the basis for a downward adjustment under the proposed guideline (and if so, what should the extent of the adjustment be), or, alternatively, should the Commission discourage downward departures in cases involving conciliation agreements so as to limit the effect such an agreement might have on the criminal penalties imposed?

The Commission also requests comment regarding whether, in contrast to proposed Application Note 2, application of the abuse of position of trust adjustment in § 3B1.3 should be precluded for cases under the proposed guideline.

[FR Doc. 02–30088 Filed 11–26–02; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF STATE

[Public Notice 4193]

Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Thursday, December 12, 2002, in Room 600, 301 4th St., SW., Washington, DC from 8:30 a.m. to 11 a.m.

The Commission, reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will have an organizational meeting as well as discuss potential areas of examination for the remainder of the Commissioners' terms of office.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Penne Percy Korth of Washington, DC and Maria Elena Torano of Florida.

For more information, please contact Matt Lauer at (202) 619–4457.

Dated: November 20, 2002.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 02–30114 Filed 11–26–02; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Cancellation of Meeting of the Industry Sector Advisory Committee on Textiles and Apparel (ISAC–15)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting cancellation.

SUMMARY: A notice was published in the **Federal Register** dated November 21, 2002, Volume number 67, Notice 225, page 70289, announcing a meeting of the Industry Sector Advisory Committee on Textiles and Apparel (ISAC–15), scheduled for December 10, 2002, from 10 a.m. to 12 p.m. The meeting was to be open to the public from 10 a.m. to 12 p.m. However, the meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Maria E'Andrear, of the Department of Commerce, (202) 482–4792.

Christopher A. Padilla,

Assistant U.S. Trade Representative, for Intergovernmental Affairs and Public Liaison.

[FR Doc. 02–30056 Filed 11–26–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Proposed Measure and Opportunity for Public Comment Pursuant to Section 421 of the Trade Act of 1974: Pedestal Actuators From the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed measure; request for comments.

SUMMARY: The United States International Trade Commission (ITC) has determined, pursuant to section 421(b)(1) of the Trade Act of 1974, as amended (the Trade Act)(19 U.S.C. 2451(b)(1)), that pedestal actuators [1] from the People's Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. Pursuant to section 421(h)(1) of the Trade Act, the United States Trade Representative (USTR) is publishing notice of proposed restrictions with respect to imports of pedestal actuators from China. USTR invites domestic producers, importers, exporters, and other interested parties to submit their views and evidence on the

[1] For purposes of the ITC investigation, pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The product includes any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearings or bearing surfaces, and rigidly support the load and provide anti-rotation. Pedestal actuators are provided for in subheadings 8483.40.50 and 8483.40.80 and in heading 8501 of the Harmonized Tariff System of the United States. They are primarily used in mobility scooters and electric wheelchairs.

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appropriateness of the proposed restrictions and whether they would be in the public interest. USTR also invites interested parties to participate in a public hearing (if requested).

DATES: Requests for USTR to hold a public hearing are due by December 9, 2002. Written comments and requests to testify at any public hearing are due by December 11, 2002. If a request for USTR to hold a public hearing is received, the hearing will be held on December 18, 2002.

ADDRESSES: *Submissions by electronic mail: FR0055@ustr.gov.*

Submissions by facsimile: Sandy McKinzy, USTR, at (202) 395–9672.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and holding of a public hearing, contact Sandy McKinzy, USTR, telephone (202) 395–9483, facsimile (202) 395–9672. Other questions should be addressed to Terrence J. McCartin, Office of North Asian Affairs, USTR, telephone (202) 395–3900, or David L. Weller, Office of General Counsel, USTR, telephone (202) 395–3581.

SUPPLEMENTARY INFORMATION:

1. The ITC Investigation and Section 421

Following receipt of a petition filed on August 19, 2002, on behalf of Motion Systems Corporation, the ITC instituted investigation No. TA–421–1, Pedestal Actuators From China, under section 421 of the Trade Act (19 U.S.C. 2451) to determine whether pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The ITC made an affirmative determination on October 18, 2002, and transmitted a report on its determination, as well as its remedy proposals, to USTR on November 7, 2002. The views of the ITC, including its remedy proposals, are available on the ITC's Web site (*http://www.usitc.gov/7ops/chinasafeguard.htm*) and are contained in USITC Publication 3557 (November 2002), entitled "Pedestal Actuators from China: Investigation No. TA–421–1". A copy of that publication, which also includes the ITC staff report, can be obtained from the ITC by faxing a request to (202) 205–2104 or calling (202) 205–1809.

Following an affirmative determination by the ITC, and pursuant to Section 421(h) of the Trade Act, USTR is required to make a recommendation to the President concerning what action, if any, to take to remedy the market disruption. Within 15 days after receipt of USTR's recommendation, the President is required to provide import relief unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States. (Section 421(k)) Prior to making a recommendation, USTR is required to publish notice of any proposed measures and of the opportunity to comment.

2. Proposed Measure and Opportunity for Comment

The ITC recommended that the President impose a quantitative restriction for a three-year period on imports of pedestal actuators from China, in the amount of 5,626 units in the first year; 6,470 units in the second year; and 7,440 units in the third year. (67 FR 69557) USTR proposes this remedy for further consideration by domestic producers, importers, exporters, and other interested parties, and invites any of these parties to submit their views and evidence on the appropriateness of the proposed remedy and whether it would be in the public interest. In addition, USTR invites comments on other possible actions, including: imposition of a quota on imports of pedestal actuators from China, with a quantity and/or duration different from the ITC recommendation; imposition of a tariff-rate quota on imports of pedestal actuators from China; increased duties on imports of pedestal actuators from China; an import monitoring mechanism; or no import relief (pursuant to a determination under Section 421(k) of the Trade Act regarding the national economic interest or national security). In commenting on possible actions, interested parties are requested to address: (i) The short- and long-term effects that implementation of the proposed action is likely to have on the domestic pedestal actuator industry, on other domestic industries (including the mobility scooter industry), and on downstream consumers, and (ii) the short- and long-term effects that not taking the proposed action is likely to have on the domestic pedestal actuator industry, its workers, and on other domestic industries or communities.

An interested party may request that USTR hold a public hearing, which request must be received by December 9, 2002. Written comments, as well as requests to testify at any public hearing, must be received by December 11, 2002, and should be submitted in accordance with the instructions below. Parties that have submitted comments and/or requested to testify at any public hearing will be informed if a hearing is to be held. In addition, information on any public hearing may be obtained by contacting Sandy McKinzy at (202) 395–9483. If a public hearing is requested, it will be held on December 18, 2002, at 10 a.m. in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "Pedestal Actuators" followed by (as appropriate) "Written Comments", "Request for Public Hearing", or "Request to Testify". Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

Wendy S. Cutler,

Assistant United States Trade Representative, Office of North Asian Affairs.

[FR Doc. 02–30307 Filed 11–25–02; 2:46 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Agreements Filed

Aviation Proceedings, Agreements filed during the week ending November 15, 2002. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13821.
Date Filed: November 13, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0595 dated 12 November 2002, Mail Vote 251—Resolution 010g, TC3 between Japan/Korea and South East Asia, Special Passenger Amending Resolution between Korea, (Rep. of) and China, (excluding Hong Kong SAR and Macao SAR), Intended effective date: 26 December 2002.

Docket Number: OST–2002–13822.
Date Filed: November 13, 2002.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 246, PTC23 ME–TC3 0155 dated 8 October 2002, TC23/TC123 Middle East-South East Asia Resolutions r1–r16, PTC23 ME–TC3 0159 dated 5 November 2002 (Affirmative), Minutes—PTC23 ME–TC3 0157 dated 15 October 2001, Tables—PTC23 ME–TC3 Fares 0064 dated 5 November 2002, Intended effective date: 1 April 2003.

Docket Number: OST–2002–13826.
Date Filed: November 13, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SWP 0071 dated 5 November 2002, TC23/TC123 Europe-South West Pacific Resolutions r1–r17, Minutes—PTC23 EUR–SWP 0072 dated 5 November 2002, Tables—PTC23 EUR–SWP FARES 0036 dated 5 November 2002, Intended effective date: 1 April 2003.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–30106 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending November 15, 2002. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–3419.
Date Filed: November 13, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 2002.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. sections 41102 and 41108 and subpart B, requesting renewal of its certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property, and mail between the terminal point Atlanta, Georgia and the terminal point Tokyo, Japan.

Docket Number: OST–1998–3419.
Date Filed: November 13, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 2002.
Description: Application of Continental, Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting renewal of its Route 753 certificate authorizing Continental to provide scheduled air transportation of persons, property, and mail between certain points in the United States and Tokyo and Osaka, Japan, as well as beyond Japan to Seoul, Korea, Singapore and Bangkok, Thailand.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–30107 Filed 11–26–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 196X)]

Union Pacific Railroad Company—Abandonment Exemption—In Los Angeles County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon the Lakewood Industrial Lead, a 0.85-mile rail line extending from milepost 16.50 near Cover Street, in Lakewood, to milepost 17.35 at the end of the line, south of Wardlow Street, in Long Beach, in Los Angeles County, CA. The line traverses United States Postal Service Zip Codes 90712 and 90807.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line has not been used as an overhead route for the past 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 28, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve

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environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 9, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 17, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 3, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 27, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *"www.stb.dot.gov."*

Decided: November 19, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29877 Filed 11–26–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Proposed Collection of Information: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning forms "Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement."

DATES: Written comments should be received on or before January 27, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Karol Forsberg, Director, Electronic Banking Services Division, 401 14th Street, SW., Washington, DC 20227, (202) 874–6952.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(20(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement.

OMB Number: 1510–0067

Form Number: FMS 5902; FMS 5903.

Abstract: These forms are used to give authority to financial institutions to become a depositary of the Federal Government. The also execute an agreement from the financial institutions that are authorized to pledge collateral to secure public funds with Federal Reserve Banks or their designees.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 15 (2 forms each).

Estimated Time Per Respondent: 30 minutes (15 minutes each form).

Estimated Total Annual Burden Hours: 7.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility,and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Bettsy Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 02–30016 Filed 11–26–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Research and Strategic Planning for Limited English Proficient (LEP) Hispanic Taxpayers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Research and Strategic Planning For Limited English Proficient (LEP) Hispanic Taxpayers.

DATES: Written comments should be received on or before January 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the survey should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Research and Strategic Planning For Limited English Proficient (LEP) Hispanic Taxpayers.

OMB Number: To be assigned later.

Abstract: Executive Order 13166 requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access consistent with the fundamental mission of the agency. In addition, the IRS Restructuring and Reform Act of 1998 requires the IRS to report to Congress annually on its progress in eliminating barriers to e-filing. The purpose of these focus groups, ethnographies, one-on-one interviews, and segmentation study is to understand the cultural nuances and perceptions of taxes and the IRS and needs among Hispanics so that the IRS can provide better services and outreach to this growing segment of the U.S. population. These studies will not only help identify barriers to e-filing, but will also provide the IRS with information to be used in marketing and communication efforts related to reaching Hispanic in a way that is more impactful and relevant. The efforts resulting from the studies will help the IRS build a more trusting relationship while educating LEP Hispanics on how to properly fill out their tax forms encourage electronic filing.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, and the Federal Government.

Estimated Number of Respondents: 1,712.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 1,440.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 22, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–30144 Filed 11–26–02; 8:45 am]

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Federal Register

Wednesday,
November 27, 2002

Part II

Department of Defense

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Sandy Hook Bay, Naval Weapons Station EARLE, New Jersey; Proposed Rule

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Sandy Hook Bay, Naval Weapons Station EARLE, New Jersey

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend regulations to establish a restricted area in the vicinity of Naval Weapons Station EARLE (EARLE) Piers and Terminal Channel, Sandy Hook Bay, New Jersey. These regulations will enable the U.S. Navy to enhance safety and security around active military vessels moored at the facility and partly restrict travel in the area. These regulations are necessary to safeguard military vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

DATES: Written comments must be submitted on or before December 27, 2002.

ADDRESSES: Send comments to U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Richard L. Tomer, U.S. Army Corps of Engineers, New York District, Regulatory Branch, at (212) 264–3996.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 by establishing a restricted area at § 334.102. The public currently has restricted access near the facility and units assigned there due to the existence of a "Security Zone" previously established by the U.S. Coast Guard which is identified at 33 CFR 165.130. It should be noted that the restricted area represents an expansion of the Security Zone by an additional 295 yards to the west. This expansion would allow the maintenance of a 750-yard wide perimeter around the pier complex. To better protect authorized vessels transiting the Terminal Channel and mooring at the EARLE Piers from acts of terrorism, sabotage, or other subversive acts and incidences of a similar nature during explosives loading and unloading, the Commander, Naval Weapons Station EARLE, has requested that the U.S. Army Corps of Engineers establish a Restricted Area to be enforced at all times. This will enable the U.S. Navy to restrict vessel traffic in a portion of Sandy Hook Bay.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the United States and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354; 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The U.S. Army Corps of Engineers expects that the establishment of this restricted area would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, it is certified that this proposal if adopted, will not have a significant economic impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act

An Environmental Assessment (EA) has been prepared for this action. The U.S. Army Corps of Engineers has concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not be a major federal action having a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at **FOR FURTHER INFORMATION CONTACT** above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104.4, 109 Statute 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small Governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.102 is added to read as follows:

§ 334.102 Sandy Hook Bay, Naval Weapons Station EARLE (EARLE) Piers and Terminal Channel, Middletown, New Jersey; Restricted Area.

(a) *The area:* An area bounded by the following points, beginning at: latitude 40° 25′55.6″N, longitude 074° 04′31.4″W; thence to latitude 40° 26′54.0″N, longitude 074° 03′53.0″W; thence to latitude 40° 26′58.0″N, longitude 074° 04′03.0″W; thence to latitude 40° 27′56.0″N, longitude 074° 03′24.0″W; thence to latitude 40° 27′41.7″N, longitude 074° 02′45.0″W; thence to latitude 40° 27′23.5″N, longitude 074° 02′16.6″W; thence to latitude 40° 28′21.2″N, longitude 074° 01′56.0″W; thence to latitude 40° 28′07.9″N, longitude 074° 02′18.6″W; thence to latitude 40° 27′39.3″N, longitude 074° 02′38.3″W; thence to latitude 40° 27′28.5″N, longitude 074° 02′10.4″W; thence to latitude 40° 26′29.5″N, longitude 074° 02′51.2″W; thence to latitude 40° 26′31.4″N, longitude 074° 02′55.4″W; thence to latitude 40° 25′27.1″N, longitude 074° 03′39.7″W longitude; thence along the shoreline to the point of origin (NAD 83).

(b) *The regulation.* (1) Except as set forth in paragraph (b)(2) of this section, all persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and other state law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer, Naval Weapons Station EARLE, USN, New Jersey, or his/her authorized representative; and (2) Vessels are authorized to cross the Terminal Channel provided that there are no naval vessels then transiting the channel (bounded by latitude 40° 27′41.7″N, longitude 074° 02′45.0″W; thence to latitude 40° 27′23.5″N, longitude 074° 02′16.6″W; thence to latitude 40° 28′21.2″N, longitude 074° 01′56.0″W; thence to latitude 40° 28′07.9″N, longitude 074° 02′18.6″W; thence to latitude 40° 27′39.3″N, longitude 074° 02′38.3″W).

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Naval Weapons Station EARLE, New Jersey and/or other persons or agencies as he/she may designate, or any other person authorized by the District Engineer, New York District, U.S. Army Corps of Engineers.

Dated: October 31, 2002.

Michael G. Ensch,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–30028 Filed 11–26–02; 8:45 am]

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Wednesday,
November 27, 2002

Part III

Securities and Exchange Commission

17 CFR Part 210
Retention of Records Relevant to Audits and Reviews; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33–8151; 34–46869; IC–25830; File No. S7–46–02]

RIN 3235–AI74

Retention of Records Relevant to Audits and Reviews

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: As directed by section 802 of the Sarbanes-Oxley Act of 2002, we are proposing rules requiring accounting firms to retain for five years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained would include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.

DATES: Comments should be received on or before December 27, 2002.

ADDRESSES: You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You also may submit your comments electronically to the following address: *rule-comments@sec.gov*. Please use only one method of delivery. All comment letters should refer to File No. S7–46–02; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. We will post electronically-submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Samuel L. Burke, Associate Chief Accountant, Robert E. Burns, Chief Counsel, or D. Douglas Alkema, Professional Accounting Fellow, at (202) 942–4400, Office of the Chief Accountant, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: We are proposing to add rule 2–06 to Regulation S–X.

I. Executive Summary

As mandated by section 802 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act" or "the Act"),[1] we are proposing to amend Regulation S–X to require accountants who audit or review an issuer's financial statements to retain certain records relevant to that audit or review for a period of five years from the end of the fiscal year in which an audit or review was concluded. These records would include workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the proposed rules would be retained whether the conclusions, opinions, analyses, or financial data in the records would support or cast doubt on the final conclusions reached by the auditor.

II. Discussion of Proposed Rule

Section 802 of the Sarbanes-Oxley Act[2] is intended to address the destruction or fabrication of evidence and the preservation of "financial and audit records."[3] We are directed under that section to promulgate rules related to the retention of records relevant to the audits and reviews of financial statements that issuers file with the Commission.

Section 802 states that the record retention requirements should apply to audits of issuers of securities to which section 10A(a) of the Securities Exchange Act of 1934 ("Exchange Act") applies. The term "issuer" in this context is defined in section 10A(f) of the Exchange Act to include certain entities filing reports under that Act and entities that have filed and not withdrawn registration statements to sell securities under the Securities Act of 1933.[4] We also are proposing that the record retention requirements apply to any audit or review of the financial statements of any registered investment company.[5] We believe that it is important for these record retention requirements, like our other record retention requirements, to apply consistently with respect to all registered investment companies, regardless of whether they fall within the periodic reporting requirements of the Exchange Act.[6]

Documents To Be Retained and Time of Retention

Paragraph (a) of proposed rule 2–06 would identify the documents that must be retained and the time period for retaining those documents.[7] In both instances, we have followed the guidance in section 802.

The proposed rule would require that the auditor[8] retain workpapers and other documents that form the basis of the audit or review of an issuer's financial statements, and memoranda, correspondence, communications, other documents, and records (including electronic records) that meet two criteria. The two criteria are that the materials (1) are created, sent or received in connection with the audit or review, and (2) contain conclusions, opinions, analyses, or financial data related to the audit or review. The proposed rule, therefore, would require an auditor to retain any materials satisfying both criteria. Non-substantive materials that are not part of the workpapers, however, such as administrative records, and other documents that do not contain relevant financial data or the auditor's conclusions, opinions or analyses would not meet the second of these criteria and would not have to be retained.[9]

The period for retention of these materials is five years after the end of the fiscal period in which an accountant audits or reviews an issuer's financial statements,[10] which is the period prescribed by section 802.[11]

Section 103 of the Sarbanes-Oxley Act directs the Public Company Accounting Oversight Board ("the Board") to require auditors to retain for seven years audit workpapers and other materials that support the auditor's conclusions in any audit report.[12] There may be fewer documents retained pursuant to section 103, which focuses more on workpapers that support the auditor's conclusions, than under section 802, which includes not only workpapers but also other documents that meet the criteria noted in this release. Many documents, however, may be covered by both retention requirements.

Workpapers Defined

Section 802 is intended to require the retention of more than what traditionally has been thought of as an auditor's "workpapers."[13] To clarify the distinction between workpapers and other materials that would be retained, paragraph (b) of the proposed rules would define the term "workpapers." The legislative history to this section states that the term is to be used as it is "widely understood" by the Commission and by the accounting profession.[14] We believe that the term is understood to refer to the documents required to be retained by generally accepted auditing standards ("GAAS").

GAAS does not use the specific term "workpapers"[15] but Statement on Auditing Standards No. 96, "Audit Documentation," states, in part:

> The auditor should prepare and maintain audit documentation, the content of which should be designed to meet the circumstances of the particular audit engagement. Audit documentation is the principal record of the auditing procedures applied, evidence obtained, and conclusions reached by the auditor in the engagement.[16]

We have placed the body of this provision into paragraph (b) and stated that "workpapers" means "documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the Commission or by the Public Company Accounting Oversight Board."[17] The proposed rule, therefore, recognizes that the Board, subject to Commission oversight, has the ability to review and change the nature and scope of the required documentation of procedures, evidence, and conclusions related to audits and reviews of financial statements.[18]

Differences of Opinion

SAS 96 states that audit documentation serves mainly to provide the principal support for the auditor's report and to aid the auditor in the conduct and supervision of the audit.[19] In order to ensure that the purposes of the Act are fulfilled, we have included in paragraph (c) of the proposed rules the specific requirement that the materials retained under paragraph (a) would include not only those that support an auditor's conclusions about the financial statements but also those materials that may "cast doubt" on .

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[1] Pub. L. 107–204, 116 Stat. 745 (2002).

[2] Section 802 of the Sarbanes-Oxley Act, among other things, adds sections 1519 and 1520 to Chapter 73 of Title 18 of the United States Code. Section 1519 states, among other things, that anyone who knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence an investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under the bankruptcy code, or in relation to or contemplation of any such matter or case, may be fined, imprisoned for not more than 20 years, or both.

Section 1520(a)(1) specifies that: "Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded." Section 1520(a)(2) directs the Commission to promulgate, by January 26, 2003:

> "* * * such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by an accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section."

Section 1520 also provides that any person who knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), may be fined, imprisoned for not more than 10 years, or both. It further provides that nothing in section 1520 shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

[3] Floor statement by Senator Leahy, 148 Cong. Rec. S7418 (July 26, 2002).

[4] Section 802 states that the record retention requirement applies to "an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies." Section 10A(a) of the Securities Exchange Act of 1934 ("Exchange Act") states, "Each audit required pursuant to this title of the financial statements of an issuer by an independent public accountant shall include" designated procedures. Section 10A(f), which has been added to the Exchange Act by section 205(d) of the Sarbanes-Oxley Act, states: "As used in this section the term 'issuer' means an issuer (as defined in section 3 [of the Exchange Act]), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn." Section 3(a)(8) of the Exchange Act, 15 U.S.C. 78c(a)(8), states that, with certain exceptions, an "issuer" is "any person who issues or proposes to issue any security* * *."

Neither section 802 nor the proposed rules exempt auditors of foreign issuers' financial statements. Accordingly, the retention requirements would apply to domestic and foreign accounting firms conducting audits or reviews of foreign issuers' financial statements.

Because investment advisers and broker-dealers are not necessarily issuers, audits of their financial statements required for regulatory purposes would not be subject to the proposed rules. In other words, only the audits of the financial statements of investment advisers and broker-dealers meeting the definition of "issuer" in section 10A(f), or that are registered investment companies, would be subject to the retention requirements in the proposed rules.

[5] *See* section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8.

[6] *Cf.* rules 31a–1 and 31a–2 under the Investment Company Act of 1940, 17 CFR 270.31a–1 and 31a–2 (record-keeping and record-retention requirements for registered investment companies).

[7] The Commission's proposals are not intended to pre-empt or supersede any other federal or state record retention requirements.

[8] Proposed rule 2–06 uses the term "accountant," which is defined in rule 2–01(f)(1) of the Commission's auditor independence rules, 17 CFR 210.2–01(f)(1), to mean "a certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public or public accountant is affiliated." In a comparison release, the Commission is proposing to amend this definition to include the term "registered public accounting firm." We would apply the definition in rule 2–01(f)(1) to proposed rule 2–06. Because the definition would continue to reference certified public accountants and public accountants, the Commission could make the proposed rules effective before accounting firms register with the Public Company Accounting Oversight Board.

[9] Senator Leahy stated on the Senate floor, "Non-substantive materials, however, which are not relevant to the conclusions or opinions expressed (or not expressed), need not be included in such retention regulations." 148 Cong. Rec. S7419 (July 26, 2002).

[10] The retention period is not based on the fiscal period covered by the financial statements being audited or reviewed, but when the audit or review occurs. For example, if a company has a calendar year-end fiscal year, for an audit of year 2002 financial statements that concludes in February or March 2003, the records would be required to be retained until January 1, 2009.

[11] *See* Statement of Senator Leahy on the Senate floor: "[I]t is intended that the SEC promulgate rules and regulations that require the retention of such substantive material * * * for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statute of limitations." 148 Cong. Rec. S7419 (July 26, 2002).

[12] The Board is required under section 103(a)(2)(A)(i) of the Sarbanes-Oxley Act to adopt an auditing standard that requires accounting firms registered with the Board to "* * * maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report."

[13] Senator Leahy stated on the Senate floor that section 802 "requires the SEC to promulgate reasonable and necessary regulations * * * regarding the retention of categories of electronic and non-electronic audit records, which contain opinions, conclusions, analysis or financial data, in addition to the actual work papers." 148 Cong. Rec. S7418 (July 26, 2002).

[14] Statement by Senator Leahy on the Senate floor, 148 Cong. Rec. S7418 (July 26, 2002).

[15] American Institute of Certified Public Accountants ("AICPA"), Statement on Auditing Standards No. ("SAS") 96, "Audit Documentation," at footnote 1, however, acknowledges that: "*Audit Documentation* also may be referred to as *working papers*"; Codification of Statements on Auditing Standards ("AU") § 339.

[16] SAS 96, at ¶ 1; AU § 339.01. This paragraph also states: "The quality, type, and content of audit documentation are matters of the auditor's professional judgment." The proposed rule does not include this sentence, but instead notes that the Commission or the Board may reexamine these requirements in the auditing standards.

[17] Prior to the estblishment or adoption of auditing standards by the Board, "workpapers" would continue to mean the documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement as required by GAAS.

[18] *See* section 103(a) of the Sarbanes-Oxley Act.

[19] SAS 96, at ¶ 3; AU § 339.03

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those conclusions.[20] Paragraph (c) is intended to ensure the preservation of those records that reflect differing professional judgments and views (both within the accounting firm and between the firm and the issuer) and how those differences were resolved. To better communicate what we intend by "cast doubt" on the auditor's conclusions, we have included in the proposed rule the example of documentation of differences of opinion concerning accounting and auditing issues.

The auditor in a variety of contexts may create materials related to differences of opinion. For example, SAS No. 22, "Planning and Supervision," states in part:

> The auditor with final responsibility for the audit and assistants should be aware of the procedures to be followed when differences of opinion concerning accounting and auditing issues exist among firm personnel involved in the audit. Such procedures should enable an assistant to document his disagreement with the conclusions reached if, after appropriate consultation, he believes it necessary to disassociate himself from the resolution of the matter. In this situation, the basis for the final resolution should also be documented.[21]

An interpretation of this section issued by the AICPA's Auditing Standards Board emphasizes the professional obligation on each person involved in an audit engagement to bring his or her concerns to the attention of others in the firm and, as appropriate, to document those concerns. This interpretation states:

> Accordingly, each assistant has a professional responsibility to bring to the attention of appropriate individuals in the firm, disagreements or concerns the assistant might have with respect to accounting and auditing issues that he believes are of significance to the financial statements or auditor's report, however those disagreements or concerns may have arisen. In addition, each assistant should have a right to document his disagreement if he believes it is necessary to disassociate himself from the resolution of the matter.[22]

In addition, SAS 96 states that the documentation for an audit should include the findings or issues that in the auditor's judgment are significant, the actions taken to address them (including any additional evidence obtained), and the basis for the final conclusions reached.[23] For example, if a memorandum is prepared by a member of a large accounting firm's national office that is critical of the accounting used by an audit client, or of a position taken by the partner in charge of the audit of those financial statements, that memorandum should be retained.[24] Another example would be documentation related to an auditor's communications with an issuer's audit committee about alternative disclosures and accounting methods used by the issuer that are not the disclosures or accounting preferred by the auditor.[25]

We believe that retaining the materials created under SAS 22 and SAS 96, as well as other materials that might cast doubt on the conclusions reflected in the auditor's report, would be consistent with the letter and spirit of the Sarbanes-Oxley Act.

Request for Comment

- Are the "workpapers" and other documents that would be required to be retained under this proposed rule sufficiently described? If not, what changes should be made to provide for greater clarity? Are there alternative definitions that would better implement section 802?
- Would auditors have to implement significant changes to their retention policies or internal control processes and procedures, as well as system upgrades, to ensure compliance with the proposed rule? If so, what types of changes most likely would be required? How can we minimize any required changes consistent with section 802?
- Would auditors circumvent the proposed record retention requirements by, for example, replacing written communications with oral communications? If so, what additional measures should be taken?
- Section 103 of the Sarbanes-Oxley Act directs the Public Company Accounting Oversight Board to adopt an auditing standard that requires each registered public accounting firm to retain for a period of not less than seven years audit workpapers and other information that support the conclusions in the auditor's report. Should the retention period in the proposed rules be extended to seven years to coincide with the retention period in section 103? Why?
- Should the retention period be for some other appropriate period based on consideration of other factors, such as the utility of the records to investors, regulators or litigants, the cost of retaining the records, or the size of the accounting firm?
- Audits of the financial statements of many investment advisers and broker-dealers would not be subject to the proposed rules because they are not "issuers" of securities. Should the proposals be amended to apply the retention period to audits of the financial statements of these entities? Why?
- The proposed rules would incorporate the definition of "issuer" in new section 10A(f) of the Exchange Act? Should "issuer" be defined more broadly to include any issuer of securities with respect to which a registration statement or report is filed with the Commission? Why?
- Should there be a document retention requirement for issuers as well as auditors? If yes, what would be the scope and nature of that requirement? For example, should issuers be required to retain records that the auditor reviewed but did not include in the audit workpapers? Should issuers be required to keep copies of all correspondence with the auditors and copies of documents provided to the auditors?
- Section 32(c) of the Investment Company Act of 1940 authorizes the Commission to adopt rules to require accountants and auditors to keep reports, work sheets, and other documents and papers relating to registered investment companies for such periods as the Commission may prescribe, and to make these documents and papers available for inspection by the Commission and its staff. Should we use our authority under this section to extend proposed rule 2–06 by requiring that audit workpapers and other documents required to be retained with respect to the audit or review of investment company financial statements be made available for inspection by the Commission and its staff?
- The proposed rules would apply to foreign auditors. Are there statutes, rules or standards in foreign jurisdictions that govern the retention of records by foreign auditors that are different from and potentially conflict with the requirements of the proposed rules? If so, how is the foreign law incompatible with the specific provisions of the proposed rules?
- Does the "cast doubt on the final conclusions reached by the auditor" provision in the proposed rules adequately capture the scope of the retention requirements under the Sarbanes-Oxley Act? Should the scope be narrower or broader? Would a different test be more appropriate, such as "significant differences in professional judgment," or "differences of opinion on issues that are material to the issuer's financial statements or to the auditor's final conclusions regarding any audit or review"?
- Should the rules include other examples of materials that "cast doubt" on auditors' conclusions? If so, what examples should be included?

III. General Request for Comments

We invite any interested person wishing to submit written comments on the proposed rules to do so. We specifically request comments from investors, accounting firms and issuers. We solicit comment on each component of the proposal.

IV. Paperwork Reduction Act

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the proposed requirements would be mandatory. The proposed rules would require that accounting firms retain certain records for five years. Retained information would be kept confidential unless or until made public during an enforcement, disciplinary or other legal or administrative proceeding.

The title for the collection of information is "Regulation S–X—Record Retention." We are applying for a new OMB Control Number for this collection.

As mandated by section 802 of the Sarbanes-Oxley Act of 2002, we are proposing to amend Regulation S–X to require accountants who audit or review an issuer's financial statements to retain certain records relevant to that audit or review for a period of five years from the end of the fiscal year in which an audit or review was concluded. The proposed rules do not require accounting firms to create any new records.

The records to be retained would include workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the proposed rules would be retained whether the conclusions, opinions, analyses, or financial data in the records would support or cast doubt on the final conclusions reached by the auditor. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted and litigation brought under the securities laws.

We estimate that approximately 850 accounting firms audit and review the financial statements of approximately 20,000 public companies and registered investment companies filing financial statements with the Commission.[26] Each firm currently is required to perform its audits and reviews in accordance with generally accepted auditing standards ("GAAS"), which require auditors to retain certain documentation of their work.[27] Accounting firms, therefore, currently make decisions about the retention of each record created during the audit or review. GAAS, however, currently does not require explicitly that auditors retain documents that may "cast doubt" on their opinions and GAAS does not set definite retention periods. As a result, the proposed rule might result in the retention of more records than currently required under GAAS, and might result in some accounting firms keeping those records for a longer period of time.

The Commission, through its experience in matters pertaining to accounting firms, believes that many accounting firms retain records of audits and reviews of the financial statements of current clients for five or more years. Once an issuer is no longer a client, some firms currently may dispose of those records before the expiration of the five-year period. It is important to note, however, that the proposed rules do not require the creation of any record, they require only that existing records be maintained for the prescribed time period. It also is important to note that decisions about the retention of records currently are made as a part of each audit or review.

We do not anticipate any significant increase in burden hours for accounting firms or issuers because the proposed rules do not require the creation of records, would not significantly increase procedures related to the review of documents, and minimal, if any, work would be associated with the retention of these records. The disposal of those records, which would occur in any event, merely would be delayed. In addition, because an already large and ever-increasing portion of the records required to be retained are kept electronically, we do not anticipate that the incremental increase in storage costs for documents would be significant for any firm or for any single audit client. To cover all increases in burden hours,

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[20] Senator Leahy stated on the Senate floor: In light of the apparent massive document destruction by Andersen, and the company's apparently misleading document retention policy, even in light of its prior SEC violations, it is intended that the SEC promulgate rules and regulations that require the retention of such substantive material, including material that casts doubt on the views expressed in the audit or review, for such a period as is reasonable and necessary for effective enforcement of the securities laws and the criminal laws, most of which have a five-year statue of limitations.

148 Cong. Rec. S7419 (July 26, 2002).

[21] SAS 22, ¶ 22 (as amended by SAS 47, 48 and 77); AU § 311.22. "Assistants," in the context of the first sentence of the quoted paragraph, should be defined broadly and include other partners who are on the audit engagement team.

[22] "Planning and Supervision: Auditing Interpretations of Section 311," AU § 9311.37. "Assistants," in the context of this interpretation, should be defined broadly and include other partners who are on the audit engagement team.

[23] SAS 96, ¶ 9; AU § 339.09, which states: In addition, the auditor should document findings or issues that in his or her judgment are significant, actions taken to address them (including any additional evidence obtained), and the basis for the final conclusions reached.

See also, SAS 96, ¶ 6; AU § 339.06, which states: Audit documentation should be sufficient to (a) enable members of the engagement team with supervision and review responsibilities to understand the nature, timing, extent, and results of auditing procedures performed, and the evidence obtained; (b) indicate the engagement team member(s) who performed and reviewed the work; and (c) show that the accounting records agree or reconcile with the financial statements or other information being reported on.

[24] Such a memorandum might be prepared in connection with the consultation process that is part of an accounting firm's quality controls. *See, e.g.*, Section 103(a)(2)(B)(ii) of the Sarbanes-Oxley Act. Superseded drafts or auditor review notes that do not reflect a difference of opinion, however, would not have to be retained.

[25] Section 204 of the Sarbanes-Oxley Act adds section 10A(k) to the Exchange Act and requires auditors to report certain matters to audit committees, including: "(a) all critical accounting policies and practices to be used, (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and (3) other material written communications between the registered public accounting firm and the management of the issuer, such as the management letter or schedule of unadjusted differences."

[26] These estimates are based on information in Commission databases. The number of public companies includes those filing annual reports and those filing registration statements to conduct initial public offerings. The same auditors also audit the financial statements of approximately 5,587 investment companies.

[27] *See* American Institute of Certified Public Accountants ("AICPA"), Statement on Auditing Standards No. ("SAS") 96, "Audit Documentation"; Codification of Statements on Auditing Standards ("AU") 339. GAAS does not specify a required retention period. The documents to be retained under SAS 96 include those indicating the auditing procedures applied, the evidence obtained during the audit, and the conclusions reached by the auditor in the engagement.

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we estimate that, on average, the incremental burden on firms would be no more than one hour for each public company audit client, or approximately 15,000 hours.[28]

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–46–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–46–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost—Benefit Analysis

The record retention requirements that we propose would implement a congressional mandate. We recognize that any implementation of the Sarbanes-Oxley Act likely will result in costs as well as benefits and will have an effect on the economy.

We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of these proposals. We request comments on all aspects of this cost-benefit analysis, including the identification of any additional costs or benefits. We encourage commenters to identify and supply relevant data concerning the costs or benefits of the proposed rules.

A. Background

Under section 802 of the Sarbanes-Oxley Act, accountants who audit or review an issuer's financial statements must retain certain records relevant to that audit or review for a period of five years from the end of the fiscal year in which an audit or review was concluded. The proposed rules would implement this provision and indicate the records to be retained, but they do not require accounting firms to create any new records.

The records to be retained would include workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the proposed rules would be retained whether the conclusions, opinions, analyses, or financial data in the records would support or cast doubt on the final conclusions reached by the auditor. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted under the securities laws.

B. Potential Benefits of the Proposed Rules

The proposed rules would require that certain records relevant to the audit and review of an issuer's financial statements be retained for five years. To the extent that the proposals increase the availability of documents beyond current professional practices, the proposed rules may benefit investigations and litigation conducted by the Commission and others. Increased retention of these records may provide important evidence of financial reporting improprieties or deficiencies in the audit process.

One of the most important factors in the successful operation of our securities markets is the trust that investors have in the reliability of the information used to make voting and investment decisions. In addition to providing materials for investigations, the availability of the documents subject to the proposed rules might facilitate greater oversight of audits and improved audit quality, which, in turn, ultimately could increase investor confidence in the reliability of reported financial information.

C. Potential Costs of the Proposal

We estimate that approximately 850 accounting firms audit and review the financial statements of approximately 20,000 public companies and registered investment companies filing financial statements with the Commission.[29] Each firm currently is required to perform its audits and reviews in accordance with generally accepted auditing standards ("GAAS"), which require auditors to retain certain documentation of their work.[30] Accounting firms, therefore, currently make decisions about the retention of each record created during the audit or review. GAAS, however, does not require explicitly that auditors retain documents that may "cast doubt" on their opinions and GAAS does not set definite retention periods. As a result, the proposed rule might result in the retention of more records than currently required under GAAS, and might result in some accounting firms keeping those records for a longer period of time.

The Commission, through its experience in matters pertaining to accounting firms, believes that many accounting firms retain records of audits and reviews of the financial statements of current clients for five or more years. Once an issuer is no longer a client, some firms currently may dispose of those records before the expiration of the proposed five-year period. It is important to note, however, that the proposed rules do not require the creation of any record; they require only that existing records be maintained for the prescribed time period. It also is important to note that decisions about the retention of records currently are made as a part of each audit or review.

We do not anticipate any significant increase in costs for accounting firms or issuers because the proposed rules do not require the creation of records, would not significantly increase procedures related to the review of documents, and minimal, if any, work would be associated with the retention of these records. The disposal of those records, which would occur in any event, merely would be delayed. In addition, because an already large and ever-increasing portion of the records required to be retained are kept electronically, we do not anticipate that the incremental increase in storage costs for documents would be significant for any firm or for any single audit client.

For purposes of the Paperwork Reduction Act, we estimated the total burden to be 15,000 burden hours. Assuming an accounting firm's average cost of in-house staff is $110 per hour,[31] the total cost would be $1,650,000.

D. Request for Comments

As noted above, we request comments on all aspects of this cost-benefit analysis, including the identification of any additional costs or benefits. We encourage commenters to identify and supply relevant data concerning the costs or benefits of the proposed amendments. We request comments, including supporting data, on the magnitude of the costs and benefits mentioned in this section.

- Are there any other costs or benefits that we have not identified? For example, would the cost of audits increase? Please describe any such costs and provide relevant data.
- Are there additional costs related to the proposed rules? If there are, please identify them and provide supporting data.
- Are there measures that the Commission should take, such as encouraging accounting firms to keep more records electronically, to lower storage costs?
- We request comments on the reasonableness of the burden hours, cost estimates, and underlying assumptions related to the proposed disclosures.

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[32] the Commission is requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commentators should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act[33] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. In addition, Section 2(b) of the Securities Act of 1933,[34] Section 3(f) of the Exchange Act,[35] and Section 2(c) of the Investment Company Act[36] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

We believe that the proposed rules would not have an adverse impact on competition. To the extent the proposed rules would increase the quality of audits and the efficiency of enforcement and disciplinary proceedings, there might be an increase in investor confidence in the efficacy of the audit process and the efficiency of the securities markets.

We request comment on the anti-competitive effects of the proposals.

The possible effects of our rule proposals on efficiency, competition, and capital formation are difficult to quantify. We request comment on these matters in connection with our proposed rules.

VII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Regulation S–X. The proposals would require the retention of certain audit and review documentation.

A. Reasons for the Proposed Action

The proposed rules generally carry out a congressional mandate. The proposed rules, in general, would prohibit destruction for five years of certain records related to the audit or review of an issuer's financial statements.[37] The proposed rules would not require accounting firms to create any new records.

B. Objectives

Our objectives are to implement section 802 of the Sarbanes-Oxley Act in order to increase investor confidence in the audit process and in the reliability of reported financial information. This would be accomplished by defining the records to be retained related to an audit or review of an issuer's financial statements. Having these records available should enhance oversight of corporate reporting and of the performance of auditors and facilitate the enforcement of the securities laws.

C. Legal Basis

We are proposing amendments to Regulation S–X under the authority set forth in sections 3(a) and 802 of the Sarbanes-Oxley Act, and Schedule A and Sections 7, 8, 10, 19 and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, Sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, and Sections 8, 30, 31, 32(c) and 38 of the Investment Company Act of 1940.

D. Small Entities Subject to the Proposed Rules

Our rules do not define "small business" or "small organization" for purposes of accounting firms. The Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[38] We have only limited data indicating revenues for accounting firms, and we cannot estimate the number of firms with less than $6 million in revenues that practice before the Commission. We request comment on the number of accounting firms with revenue under $6 million that audit issuers' financial statements.

E. Reporting, Recordkeeping and Other Compliance Requirements

Under the proposed rules,[39] accountants who audit or review an issuer's financial statements must retain certain records relevant to that audit or review for a period of five years from the end of the fiscal year in which an audit or review was concluded. These records would include workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other

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[28] This burden accounts for incidental reading and implementation of the proposed rule. Fifteen thousand burden hours should be sufficient to cover the audits and reviews of not only public companies but also registered investment companies. Because of the nature and scope of the audits of investment companies, there would be an even smaller and insignificant incremental burden imposed on those audits than on the audits of public companies.

[29] These estimates are based on information in Commission databases. The number of public companies includes those filing annual reports and those filing to conduct an initial public offering. The same auditors also audit the financial statements of approximately 5,587 investment companies.

[30] *See* American Institute of Certified Public Accountants ("AICPA"), Statement on Auditing Standards No. ("SAS") 98, "Audit Documentation"; Codification of Statements on Auditing Standards ("AU") 339.

[31] We estimate that associates would perform three-fourths of the required work, with a partner performing about one-fourth of the work. We also estimate that, on average, an associate's annual salary would be approximately $125,000 and a partner's annual compensation would be approximately $500,000. Based on these amounts, the in-house cost of an associate's time would be approximately $65 per hour, and the in-house cost of a partner's time would be approximately $250 per hour. The average hourly rate, therefore, would be about $110 per hour [[(3 × $65) + $250] / 4).

[32] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

[33] 15 U.S.C. 78w(a)(2).

[34] 15 U.S.C. 77b(b).

[35] 15 U.S.C. 78c(f).

[36] 15 U.S.C. 80a–2(c).

[37] *See* section 802 of the Sarbanes-Oxley Act.

[38] 13 CFR 121.201.

[39] *See* section 802 of the Sarbanes-Oxley Act of 2002.

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documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the proposed rules would be retained whether the conclusions, opinions, analyses, or financial data in the records would support or cast doubt on the final conclusions reached by the auditor. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted under the securities laws.

The Commission, through its experience in matters pertaining to accounting firms, believes that many accounting firms retain records of audits and reviews of the financial statements of current clients for longer periods of time than for former clients.

We do not anticipate any significant increase in costs for small accounting firms or small issuers because the proposed rules do not require the creation of records, would not significantly increase procedures related to the review of documents, and minimal, if any, work would be associated with the retention of these records. The disposal of those records, which would occur in any event, merely would be delayed. In addition, because an already large and ever-increasing portion of the records required to be retained are kept electronically, we do not anticipate that the incremental increase in storage costs for documents would be significant for any firm or for any single audit client.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission is not aware of any current rules that duplicate, overlap, or conflict with the proposed rules. The proposed rules contemplate that the Board will define "workpapers," as required in section 103 of the Sarbanes-Oxley Act. Our proposal is designed to not conflict with the Board's rule.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities;

3. The use of performance rather than design standards; and

4. An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Sarbanes-Oxley Act provides the basis for the requirements and timetables for the proposed record retention rules. The proposed rules are designed to require the retention of those records necessary for oversight of the audit process, to enhance the reliability and credibility of financial statements for all public companies, and to facilitate enforcement of the securities laws.

We considered not applying the proposals to small accounting firms. We believe, however, that investors would benefit if accountants subject to the proposed record retention rules, regardless of their size, audit all companies.

Currently, we do not believe that it is feasible to further clarify, consolidate, or simplify the proposed rules for small entities. We invite comments, however, on whether the requirements could be simplified or clarified for small accounting firms.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Specifically, we request comments regarding the number of small entities that may be affected by the proposed rules, and the existence or nature of the potential impact on those small entities. We also seek comments on how to quantify the number of small accounting firms that would be affected by the proposals, how to quantify the impact of the proposed rules on those firms, and how to lower the cost of record retention for small accounting firms.

Commenters are requested to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

VIII. Codification Update

The Commission proposes to amend the "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982):

By amending section 602 to add a new discussion at the end of that section under the Financial Reporting Release Number (FR–XX) assigned to the adopting release and including the text in the adopting release that discusses the final rules, which, if the proposals are adopted, would be substantially similar to Section II of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

IX. Statutory Bases and Text of Proposed Amendments

We are proposing amendments to Regulation S–X under the authority set forth in sections 3(a) and 802 of the Sarbanes-Oxley Act, and Schedule A and Sections 7, 8, 10, 19 and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, Sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, Sections 8, 30, 31, 32 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 210

Accountants, Accounting.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), unless otherwise noted.

2. By adding § 210.2–06 to read as follows:

§ 210.2–06 Retention of audit and review records.

(a) For a period of five years after the end of the fiscal period in which an accountant concludes an audit or review of an issuer's financial statements to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, or of the financial statements of any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), the accountant shall retain workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which:

(1) Are created, sent or received in connection with the audit or review, and

(2) Contain conclusions, opinions, analyses, or financial data related to the audit or review.

(b) For the purposes of paragraph (a) of this section, "workpapers" means documentation of auditing or review procedures applied, evidence obtained, and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the Commission or by the Public Company Accounting Oversight Board.

(c) Materials described in paragraph (a) of this section shall be retained whether the conclusions, opinions, analyses, or financial data in the materials support or cast doubt on the final conclusions reached by the auditor. For example, such materials shall include documentation of differences of opinion concerning accounting and auditing issues.

(d) For the purposes of paragraph (a) of this section, the term "issuer" means an issuer as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f)).

Dated: November 21, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30036 Filed 11–26–02; 8:45 am]

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Federal Register

Wednesday,
November 27, 2002

Part IV

Department of Agriculture

Forest Service

Extension of Currently Approved Information Collection for Special Use Administration; Notice

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DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Currently Approved Information Collection for Special Use Administration

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection for the administration of special uses on National Forest System lands. The information helps the Forest Service ensure that the authorized use of Federal land is in the public interest and compatible with the mission of the agency. Respondents will include individuals, groups, organizations, businesses, corporations, and Federal, State, and local governments.

DATES: Comments must be received in writing on or before January 27, 2003. Comments received after that date will be considered to the extent practical.

ADDRESSES: All comments should be addressed to: Director, Lands Staff (Mail Stop 1124), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1124 or e-mail *mhearst@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Melissa Hearst, Lands Staff, at (202) 205–1196.

SUPPLEMENTARY INFORMATION:

Background

The forms described in this request for extension of an information collection are used by the agency to issue and administer special use permits to use or occupy National Forest System lands. The data collected will be evaluated by the Forest Service to ensure that the authorized use of Federal land is in the public interest and is compatible with the mission of the agency. The data will help identify environmental and social impacts of special uses and will ascertain whether the agency is receiving a fair market rental fee for the use of National Forest System lands. The data will be collected through application forms and stipulations in operating plans and special use authorizations. There are four general categories of information requests: (1) Initial and amended application process; (2) annual financial information; (3) preparing and updating operation and maintenance plans; and (4) compliance reports and information updates.

Description of Information Collection

1. Application Process

The following describes the information collections required for the application process:

a. *Title:* Form SF–299, Application for Transportation and Utility Systems and Facilities on Federal Lands.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to evaluate the applicant's technical and financial capability, nature of the proposed operations, and anticipated environmental impacts and proposed mitigation of those impacts. This form is used for the majority of nonrecreational requests to use National Forest System lands.
Estimate of Burden: 8 hours.
Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.
Estimated number of respondents: 1,500.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 12,000 hours.

b. *Title:* Form FS–27003a, Request for Termination of and Application for Special Use Permit.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to facilitate issuance of a new authorization when the private improvements authorized on National Forest System lands change ownership.
Estimate of Burden: 0.5 hours.
Type of respondents: Individuals, businesses, and corporations.
Estimated number of respondents: 1,000.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 500 hours.

c. *Title:* Form FS–27003b, Special Use Application and Permit for Noncommercial Group Use.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to evaluate requests, such as noncommercial group gatherings, to use National Forest System lands. These requests usually involve First Amendment rights that require a short, specific time frame (48 hours) for the agency to approve or deny the request.
Estimate of Burden: 1 hour.
Type of respondents: Individuals, groups, organizations.
Estimated number of respondents: 2,400.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 2,400 hours.

d. *Title:* Form FS–27003c, Special Use Application and Permit for Recreation Events.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to evaluate requests to use National Forest System lands for recreation events.
Estimate of Burden: 1 hour.
Type of respondents: Individuals, groups, organizations.
Estimated number of respondents: 2,000.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 2,000 hours.

e. *Title:* Form FS–2700–3e, Special Use Application and Permit for Government-Owned Buildings.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to evaluate requests to utilize, through a special use permit, Government-owned buildings and facilities.
Estimate of Burden: 0.25 hours.
Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.
Estimated number of respondents: 3,200.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 800 hours.

f. Title: Form FS–2700–10, Technical Data for Communications Uses.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to evaluate the compatibility of communications equipment at a communications site to minimize frequency interference and other compatibility problems.
Estimate of Burden: 0.5 hours.
Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.
Estimated number of respondents: 500.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 250 hours.

g. Title: Form FS–6500–24, Financial Statement.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to evaluate the financial capability of an applicant to undertake the requested use and to comply with the terms and conditions of an authorization if issued. This form is used primarily for requests to operate Government-owned campgrounds, or requests for ski or resort area use on National Forest System lands.
Estimate of Burden: 8 hours.
Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.
Estimated number of respondents: 100.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 800 hours.

h. Title: Form FS–6500–25, Request for Verification.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to evaluate the financial capability of an applicant to undertake the requested use and to comply with the terms and conditions of an authorization if issued. This form is used primarily for requests to operate Government-owned campgrounds, or requests for ski area or resort area use on National Forest System lands.
Estimate of Burden: 0.5 hours.
Type of respondents: Individuals, businesses, corporations, and Federal, State, and local governments.
Estimated number of respondents: 100.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 50 hours.

2. Annual Financial Information

Title V of the Federal Land Policy and Management Act of 1976, the Independent Offices Appropriation Act of 1952, and the Office of Management and Budget Circular A–25 require the Forest Service to collect rental fees that reflect fair market value for the use of National Forest System lands. Special use authorizations may contain specific terms and conditions requiring the holder to provide the authorized officer with the information necessary to calculate fair market value rental fees. Procedures for how the information is provided and when it is required are contained in the authorization terms and conditions. Information requests for financial information are provided to the authorized officer in a variety of ways. Several examples include gross revenues, value of capital improvements, number of trips and/or customers served, or a listing of occupants in a communications site building.

The following describes the information collections required to obtain financial information:

a. Title: Form FS–2700–7, Reconciliation of Sales for Fee Calculation.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to determine the annual rental fee due the Federal Government for the use of National Forest System lands.
Estimate of Burden: 1 hour.
Type of respondents: Individuals, businesses, corporations, groups, and organizations.
Estimated number of respondents: 275.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 275 hours.

b. Title: Form FS–2700–8, Reconciliation of Gross Fixed Assets (GFA) to Booked Amounts.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to determine the annual rental fee due the Federal Government for the use of National Forest System lands based on gross fixed assets of the entity holding the permit.
Estimate of Burden: 1 hour.
Type of respondents: Individuals, businesses, corporations, groups, and organizations.
Estimated number of respondents: 275.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 275 hours.

c. Title: Form FS–2700–10a, Telecomfiunications Facility Inventory.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to determine the annual rental for a communications facility based on the number of tenants in that facility. This form provides the authorized officer with that information.
Estimate of Burden: 1 hour.
Type of respondents: Individuals, businesses, corporations, and State, and local governments.
Estimated number of respondents: 3,000.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 3,000 hours.

d. Title: Form FS–2700–19, Fee Calculation for Concession Permits.
OMB Number: 0596–0082.
Expiration Date of Approval: November 30, 2002.
Type of Request: Extension of previously approved information collection.
Abstract: The information provided on this form is used by the authorized officer to determine the annual rental fee due the Federal Government for concession permits.
Estimate of Burden: 1 hour.
Type of respondents: Individuals, businesses, corporations, groups, and organizations.
Estimated number of respondents: 275.
Estimated number of responses per respondent: 1.
Estimated total annual burden on respondents: 275 hours.

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e. Title: Form FS–2700–19a, USDA Forest Service Fee Calculation For Ski Area Permits.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information provided on this form is used by the authorized officer to determine the annual rental fee due the Federal Government for ski area permits.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 100.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 100 hours.

f. *Title:* Business Practices (no specific agency form for this information request).

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: The information is provided by the authorization holder to the agency when requested by the authorized officer or as a term and condition of the authorization. There is no specific form involved. The holder-provided information is usually maintained in a form that is customary for the type of business.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations.

Estimated number of respondents: 1,675.

Estimated number of responses per respondent: 1.5.

Estimated total annual burden on respondents: 2,513 hours.

3. Preparing and Updating Operation and Maintenance Plans

The following describes the information collection required to prepare and update an operation and maintenance plan:

Title: There is no specific agency form for this information request.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: Special use authorizations may contain a clause requiring the holder of a special use authorization to prepare or update an operation and maintenance plan, when the authorized officer determines that the day-to-day operations of the use authorized need to be specified. This information is useful to the holder of the special use authorization and the Forest Service because it outlines procedures and policies used while the holder conducts operations or business on National Forest System lands. Typically, operation and maintenance plans contain daily operating guidelines, fire abatement and control procedures, monitoring guidelines, maintenance standards, safety and emergency plans, inspection standards and frequencies, and so forth. Operation and maintenance plans are not required for all special use authorizations, but are usually necessary for complex operations, commercial uses, and situations involving sensitive environmental areas.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations, Federal, State, and local governments.

Estimated number of respondents: 35,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 35,000 hours.

4. Compliance Reports and Information Updates

The following describes the information collection required to obtain compliance reports and information updates:

Title: There is no specific agency form for this information collection.

OMB Number: 0596–0082.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of previously approved information collection.

Abstract: Special use authorizations may contain specific terms and conditions requiring the holder to provide the authorized officer with compliance reports, information reports, and other information required by Federal law or required to properly manage National Forest System lands to ensure adequate protection of forest resources and public health and safety. Examples of compliance and information requests include dam maintenance inspection reports and logs required by the Reclamation Safety of Dams Act of 1978, the Federal Dam Safety Inspection Act of 1979, and the Dam Safety Act of 1983; documentation that authorized facilities passed safety inspections; documentation showing that the United States is covered in an insurance policy; notifications involving changes in corporation or partnership status; and documentation of compliance with nondiscrimination in Federally assisted programs as required by title VI and VII of the Civil Rights Act of 1964.

Estimate of Burden: 1 hour.

Type of respondents: Individuals, businesses, corporations, groups, and organizations, Federal, State, and local governments.

Estimated number of respondents: 13,500.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 13,500 hours.

Comments Are Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. In submitting this proposal to the Office of Management and Budget for approval, the Forest Service will summarize and respond to comments received.

Dated: November 21, 2002.

Abigal R. Kimbell,

Associate Deputy Chief, National Forest System.

[FR Doc. 02–30018 Filed 11–26–02; 8:45 am]

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Federal Register

Wednesday,
November 27, 2002

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*); Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ46

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl). Information on the biological needs of the pygmy-owl that would help us define areas essential to its conservation is limited. However, we must respond to a court order issued on September 21, 2001, vacating critical habitat established for the pygmy-owl and remanding the previous designation of critical habitat for preparation of a new analysis of the economic and other effects of the designation (*National Association of Home Builders et al.* v. *Norton*, Civ.–00–903–PHX–SRB). This proposed designation, totaling approximately 488,863 hectares (ha) (1,208,001 acres (ac)), includes portions of Pima and Pinal Counties, Arizona, and includes approximately 9 percent of the recognized historical range of the pygmy-owl in Arizona. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. As required by section 4 of the Act, we will consider economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat. We also announce the availability of the draft economic analysis conducted on the proposed designation of critical habitat for the pygmy-owl. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period. We expect to publish a notice making the draft pygmy-owl recovery plan available for public comment in November 2002.

DATES: We will accept comments until February 25, 2003. We will hold one public hearing on this proposed rule; we have scheduled the hearing for January 23, 2003, from 6:30 p.m. to 9:00 p.m. in the Leo Rich Theatre at the Tucson Convention Center in Tucson, AZ.

ADDRESSES: Send comments and information to the Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. Written comments may also be sent by facsimile to 602/242–2513 or by electronic mail (email) to *cfpo_habitat@fws.gov*. Copies of the draft economic analysis are available on the Internet at *http://ifw2irm2.irml.r2.fws.gov/*, by writing the Field Supervisor at the above address, or by calling 602/242–0210 to have a copy mailed to you or that you may pick up at the address above. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearing will be held in the Leo Rich Theatre at the Tucson Convention Center at 206 South Church Avenue, Tucson, AZ, 85701.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor (see ADDRESSES) (telephone 602/242–0210; facsimile 602/242–2513).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) is in the order Strigiformes and the family Strigidae. It is a small bird, approximately 17 centimeters (cm) (6.75 inches (in)) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. Color may vary, with some individuals being more grayish brown. The crown is lightly streaked, and a pair of black/dark brown spots outlined in white occur on the nape suggesting "eyes." This species lacks ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish brown with darker brown bars. The pygmy-owl is primarily diurnal (active during daylight) with crepuscular (active at dawn and dusk) tendencies. They can be heard making a long, monotonous series of short, repetitive notes, mostly during the breeding season.

The pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of the pygmy-owl is listed as an endangered species (62 FR 10730; March 10, 1997).

The total number of pygmy-owls and their distribution in Arizona are unknown. Survey and monitoring work in Arizona resulted in documenting 41 adult pygmy-owls in 1999, 34 in 2000, 36 in 2001, and, most recently, 18 in 2002. A cumulative total of 85 occupied sites (includes both single or paired birds) were recorded during these 4 years (Abbate *et al.* 1999, 2000, AGFD unpubl. data). Most of these pygmy-owls were distributed in four general areas: northwest Tucson, southern Pinal County, Organ Pipe Cactus National Monument, and the Altar Valley. We believe that more pygmy-owls exist in Arizona, but systematic surveys have not been conducted in all areas of potential habitat.

In addition, recent survey information has shown pygmy-owls to be more numerous adjacent to and near the Arizona border in Mexico (Flesch and Steidl 2000). There also exists considerable unsurveyed habitat on the Tohono O'odham Nation, and, although we have no means of quantifying this habitat, the distribution of recent sightings on non-Tribal areas east, west, and south of the U.S. portion of the Tohono O'odham Nation lead us to reasonably conclude that these Tribal lands may support meaningful numbers of pygmy-owls. Consequently, we believe that it is highly likely that the overall pygmy-owl population in Arizona is maintained by the movement and dispersal of owls among groups of pygmy-owls in southern Arizona and northern Mexico resulting from the connectivity of suitable habitat. The extent to which pygmy-owls disperse across the U.S./Mexico border is unknown. Therefore, addressing habitat connectivity and the movements of pygmy-owls within Arizona is the primary consideration of this proposal due to the importance of maintaining dispersal and movement among pygmy-owl groups.

Given recent data, it is probable that conservation of the pygmy-owl in Arizona requires both sufficient numbers and productivity of pygmy-owls north of the border and immigration of pygmy-owls from Mexico into Arizona, although we do not know at this time to what extent immigration does or needs to occur.

The patchy, dispersed nature of the pygmy-owl population in Arizona suggests that the overall population may function as a metapopulation. A metapopulation is a set of

subpopulations within an area, where movement and exchange of individuals among population segments is possible, but not routine. A metapopulation's persistence depends on the combined dynamics of the productivity of subpopulations, the maintenance of genetic diversity, the availability of suitable habitat for maintenance and expansion of subpopulations, and the "rescue" of subpopulations that have experienced local extinctions by the subsequent recolonization of these areas by dispersal from adjacent population segments (Hanski 1999, Hanski and Gilpin 1991, 1997). The local groups of pygmy-owls within Arizona may function as subpopulations within the context of metapopulation theory. However, more information is needed regarding the population dynamics of pygmy-owls in Arizona.

Historically, pygmy-owls were recorded in association with riparian woodlands in central and southern Arizona (Bendire 1892, Gilman 1909, Johnson *et al.* 1987). Plants present in these riparian communities included cottonwood (*Populus fremontii*), willow (*Salix* spp.), ash (*Fraxinus velutina*), and hackberry (*Celtis* spp.). However, recent records have documented pygmy-owls in a variety of vegetation communities such as riparian woodlands, mesquite (*Prosopis velutina*, and *P. glandulosa*) bosques (Spanish for woodlands), Sonoran desertscrub, semidesert grassland, and Sonoran savanna grassland communities (see Brown 1994 for a description of these vegetation communities). While native and nonnative plant species composition differs among these communities, there are certain unifying characteristics such as the presence of vegetation in fairly dense thickets or woodlands, the presence of trees, saguaros (*Carnegiea giganteus*), or organ pipe cactus (*Stenocereus thurberi*) large enough to support cavities for nesting, and elevations below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914, Karalus and Eckert 1974, Monson and Phillips 1981, Johnsgard 1988, Enriquez-Rocha *et al.* 1993, Proudfoot and Johnson 2000). Large trees provide canopy cover and cavities used for nesting, while the density of mid- and lower-story vegetation provides foraging habitat and protection from predators, and it contributes to the occurrence of prey items (Wilcox *et al.* 2000).

The density of trees and the amount of canopy cover preferred by pygmy-owls in Arizona has not been fully defined. However, preliminary results from a habitat selection study indicate that nest sites tend to have a higher degree of canopy cover and higher vegetation diversity than random sites (Wilcox *et al.* 2000). Overall vegetation density may not be as important as patches of dense vegetation with a developed canopy layer interspersed with open areas. Vegetation structure may be more important than species composition (Wilcox *et al.* 1999, Cartron *et al.* 2000). This is related to the fact that canopy cover and layers of vegetation provide hunting perches, thermal cover, and promote predator avoidance regardless of species. Larger trees with greater canopy also have a greater potential to support cavities needed for nesting. Flesch (1999) indicated that areas with large trees and canopy coverage are likely important areas for pygmy-owls in the Altar Valley. Riparian and xeroriparian (dry washes) areas, which are often used by pygmy-owls, are generally characterized by increased vegetation layers, higher plant diversity and larger tree sizes because of increased moisture availability.

Background information on the ecology and life history of pygmy-owls relied on many of the documents reviewed during the proposed listing (59 FR 63975; December 12, 1994) and final listing (62 FR 10730; March 10, 1997) and our previous designation of critical habitat (64 FR 37419; July 12, 1999). We have also reviewed biological data from pygmy-owl studies made available since the previous designation (Abbate *et al.* 1999, 2000, Cartron and Finch 2000, Proudfoot and Johnson 2000, Wilcox, *et al.* 2000). Since the previous designation of critical habitat, there were very few new references that provided additional information on characteristics of pygmy-owl habitat. None of the new biological data contradicted previous studies on the ecology of the subspecies; however, these studies have refined our understanding of the pygmy-owl's ecology. The information above summarizes the key elements of the pygmy-owl's habitat that are pertinent to the designation of critical habitat. Additional information on the biology of the pygmy-owl is contained in the "Primary Constituent Elements" section of this rule.

Previous Federal Actions

We included the pygmy-owl in our Animal Notice of Review as a category 2 candidate species throughout its range on January 6, 1989 (54 FR 554). Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. After soliciting and reviewing additional information, we elevated the pygmy-owl to category 1 status throughout its range in our November 21, 1991, Notice of Review (56 FR 58804). Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal Notice of Review of February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates, and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On May 26, 1992, a coalition of conservation organizations (Galvin *et al.* 1992) petitioned us to list the pygmy-owl as an endangered species under the Act. In accordance with section 4(b)(3)(A) of the Act, on March 9, 1993, we published a finding that the petition presented substantial scientific or commercial information indicating that listing of the pygmy-owl may be warranted and commenced a status review of the subspecies (58 FR 13045). As a result of information collected and evaluated during the status review, including information collected during a public comment period, we proposed to list the pygmy-owl as endangered with critical habitat in Arizona and threatened in Texas (59 FR 63975; December 12, 1994). After a review of all comments received in response to the proposed rule, we published a final rule listing the pygmy-owl as endangered in Arizona (62 FR 10730; March 10, 1997). In that final rule we determined that listing in Texas was not warranted and that critical habitat designation for the Arizona population was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Secretary of the Department of the Interior for failure to designate critical habitat for the pygmy-owl and a plant, *Lilaeopsis schaffneriana var. recurva*, (Huachuca water umbel) (*Southwest Center for Biological Diversity* v. *Babbitt*, CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order that, along with subsequent clarification from the Court, required proposal of critical habitat by December 25, 1998, followed by a final determination 6 months later.

In September 1998, we appointed the Cactus Ferruginous Pygmy-owl Recovery Team (Recovery Team),

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comprised of biologists (pygmy-owl experts and raptor ecologists) and representatives from affected and interested parties (*i.e.*, Federal and State agencies, local governments, the Tohono O'odham Nation, and private groups).

On December 30, 1998, we proposed to designate critical habitat in Arizona for the pygmy-owl (63 FR 71820). On April 15, 1999, we released the draft economic analysis on proposed critical habitat and reopened the public comment period for 30 days (64 FR 18598). On July 12, 1999, we published our final critical habitat determination (64 FR 37419), essentially designating the same areas as were proposed.

On January 9, 2001, a coalition of plaintiffs filed a lawsuit with the District Court of Arizona challenging the validity of the Service's listing of the Arizona population of the pygmy-owl as an endangered species and the designation of its critical habitat. On September 21, 2001, the Court upheld the listing of the pygmy-owl in Arizona but, at our request, and without otherwise ruling on the critical habitat issues, remanded the designation of critical habitat for preparation of a new analysis of the economic and other effects of the designation (*National Association of Home Builders et al.* v. *Norton*, Civ.–00–0903–PHX–SRB). The Court also vacated the critical habitat designation during the remand. Subsequently the court ordered that we submit the proposed rule to the Federal Register on or before November 15, 2002, and that we must issue a final rule by July 31, 2003. The plaintiff's appeal of the listing decision is still pending.

Draft Recovery Plan

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our Endangered Species Program. To help guide the recovery effort, we prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. A final recovery plan formalizes the recovery strategy for a species, but is not a regulatory document (*i.e.*, recovery plans are advisory documents because there are no specific protections, prohibitions, or requirements afforded to a species based solely on a recovery plan).

In September 2002, the Recovery Team developed a proposal for the current draft of the recovery plan which outlines a recommended recovery strategy for the pygmy-owl. We reviewed and considered the pertinent information contained in the current draft recovery plan in developing this proposed critical habitat designation because it represents the best scientific data available to us. We are required to base listing and critical habitat decisions on the best scientific and commercial data available at the time (16 U.S.C. § 1533(b)(1)(A)). We may not delay making our determinations until more information is available, nor can we be required to gather more information before making our determination (*Southwest Center for Biological Diversity* v. *Babbitt*, 215 F. 3d 58 (D.C. Cir. 2000)). This proposal relies upon the best scientific and commercial data available to us including the biological and habitat information described in the draft recovery plan, and recognized principles of conservation biology. However, the proposed designation does not include all areas which are identified in the draft recovery plan. Instead this proposed critical habitat designation includes only those areas that we consider essential to the conservation of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. Regulations at 50 CFR 424.12(e) further state that areas outside the geographical area presently occupied by the species will only be designated if presently occupied areas are insufficient to ensure the conservation of the species. The term "conservation," as defined in section 3(3) of the Act and in 50 CFR 424.02(c), means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (*i.e.*, the species is recovered and removed from the list of endangered and threatened species).

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species.

Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Where Federal agency action is involved, such as in permitting or funding, critical habitat designation can affect private landowners, State, or Tribal activities. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Areas outside the critical habitat designation have been, and will continue to be, subject to conservation actions that may be implemented under section 7(a)(1), the species' regulatory protections afforded by the section 7(a)(2) jeopardy standard (see "Effects of Critical Habitat Designation" section below), and the section 9 take prohibition. Federally funded, permitted or implemented projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs) under section 10 of the Act, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential for the conservation of the pygmy-owl in Arizona, we used the best scientific information available. This information includes habitat descriptions and pygmy-owl life history information including: Abbate *et al.* 1999, 2000, Cartron and Finch 2000, Proudfoot and Johnson 2000, Wilcox, *et al.* 2000. Additional information to identify and define specific habitat needs of pygmy-owls in Arizona has been gathered since our initial critical habitat designation in 1999, including surveys and research by

the Arizona Game and Fish Department (AGFD). Data from project clearance surveys conducted by private consultants were also used to help in our understanding of pygmy-owl distribution. We also considered preliminary habitat assessment work which has been initiated in limited areas of the State, primarily on Bureau of Land Management (BLM) and U.S. Forest Service (FS) lands, and initial micro-habitat research studies have been conducted by the AGFD. Unpublished data gathered by the AGFD with regard to dispersal, numbers, and distribution of pygmy-owls were also considered.

The number of known pygmy-owls in the State remains relatively few, and the information base regarding the needs of this species is still small. This necessitated our reliance on limited information as we developed this critical habitat proposal. Recent survey data indicate that the majority of known pygmy-owls in Arizona are found in the southern portion of its historical range in the State (Abbate *et al.* 1996, 1999, 2000, AGFD unpubl. data). Specifically, surveys that have been conducted have produced no recent (since 1997) records of pygmy-owls in the northern and eastern periphery of the historical range, such as the riparian habitats along the Gila, San Pedro, and Salt Rivers, although the survey effort in these areas has not been extensive nor systematic in nature. Most surveys are conducted for project-related purposes; therefore, the vast majority of surveys have occurred in the NW Tucson area where the greatest amount of development is occurring within the current range of the pygmy-owl.

We reviewed survey information from Arizona and have emphasized those areas that contain recent (since 1997), verified (per AGFD recommended criteria) records of pygmy-owls in Arizona. Thus, when we refer generally to verified sites within the text of this rule, we are referring to sites documented since 1997. We determined that using sites documented since 1997 would ensure that this proposed designation of critical habitat is based on the most recent data that most closely represents the current status of the pygmy-owl. Survey effort has been the most consistent and extensive since the listing of the pygmy-owl in 1997. As noted below, a priority action within the draft Recovery Plan is to provide protection for all verified sites of pygmy-owls in Arizona since 1993. Our emphasis in protecting recent (since 1997) verified sites of pygmy-owls is, nonetheless, consistent with the draft Recovery Plan in that the areas we have proposed for designation also include those sites where pygmy-owls were documented between 1993 and 1997. In order to maintain genetic and demographic interchange that will help maintain the viability of what may be a regional metapopulation of pygmy-owls, we included habitat linkages that allow movement and dispersal among the areas supporting pygmy-owls. Dispersal is the straight line distance a juvenile pygmy-owl travels from its nest to the site where it becomes resident. Finally, we recognize that maintenance of a viable pygmy-owl population in Arizona is likely dependent upon immigration from the population in Sonora, Mexico, and that maintaining habitat through which pygmy-owls can move between Mexico and the northern portion of the Arizona range is essential to the Arizona population's conservation.

This critical habitat proposal includes four of the five areas recommended by the Recovery Team as Special Management Areas (SMAs). The fifth SMA was not included based on the lack of recent verified pygmy-owl locations in that area, our inability to determine if the SMA included the primary constituent elements described in this rule, and the Recovery Team's description of this area as needing further investigation to confirm its role in recovery. SMAs are those portions of certain Recovery Areas (Recovery Areas 1, 2, and 3) that the Recovery Team recommended, and we concur, as needing special management based primarily on imminent and significant threats, but also on occupancy by owls and habitat function (nesting, dispersal, *etc.*). The defining characteristics of the SMAs, *i.e.*, they provide some necessary function for pygmy-owls and are under imminent and significant threats, indicate that regulation may play an important role in the conservation of these areas. Any portion of an SMA that is included in this proposal, but does not contain the primary constituent elements, is excluded from critical habitat by definition.

Generally, the proposed system of critical habitat was developed based on recent, verified owl sites, the presence of areas that are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation (see discussion below), the average straight-line dispersal distance (8 km (5 mi)) from nest sites (AGFD unpubl. data), and the SMAs described above. The average dispersal distance was used to define the area that is likely to be necessary for the maintenance of existing breeding locations through mate replacement and reoccupation of sites through dispersal. The average dispersal distance is a measure of central tendency which increases the likelihood that the area will actually be used by dispersing juvenile pygmy-owls, unlike the maximum or minimum distances which are extremes and more likely to be chance events. In addition, most (10 out of 16) measured dispersal distances were below the average, indicating that using the average dispersal distance accounts for the distance documented as typically being used by dispersing pygmy-owls (AGFD unpubl. data). Areas proposed for connectivity that fall outside the average dispersal distance are still essential for pygmy-owls and could potentially be used for dispersal as all proposed areas of critical habitat also fall within the maximum dispersal distance 34.8 km (21.8 mi) from recent, verified owl locations and are considered occupied as described below.

We have proposed an interconnected system of habitat linkages. All proposed Critical Habitat Units (CHUs) support nesting and dispersal habitat or are within documented pygmy-owl dispersal distances, and thus are likely to be used by dispersing pygmy-owls during certain seasons or years. Because the areas included in this proposal are likely to be used by pygmy-owls for breeding, feeding, sheltering, or dispersing, we considered them to be within the geographic area occupied by the species. As with other raptor species (Call 1979), pygmy-owl nest sites and occupied territories can vary from year to year over the landscape, as well as within a pygmy-owl's home range (Abbate 1999, 2000, AGFD unpubl. data). Information on raptors indicates that it is not uncommon for sites to be occupied, become vacant, and then be reoccupied over time (Woodbridge and Detrich 1994, Reynolds *et al.* 1994). Therefore, although a specific site may be unoccupied at one point in time, it may be occupied at a different point in time, particularly given that all the areas proposed as critical habitat are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation, except for the few locations without primary constituent elements that we were unable to exclude explicitly due to mapping constraints.

Habitat linkages within the historical range of the pygmy-owl in Arizona can play a pivotal role in maintaining this potential Arizona metapopulation, especially since the pygmy-owl is capable of dispersal up to 34.8 km (21.8 mi) (AGFD unpubl. data). We believe that habitat linkages will provide connections for the movement of

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dispersing pygmy-owls among local groups of pygmy-owls on the Tohono O'odham Nation, in the Altar Valley, on Organ Pipe Cactus National Monument, in northwest Tucson, and in Pinal County. We also believe that this interconnected matrix will allow the potential immigration of pygmy-owls from Mexico to help maintain the Arizona population. Although habitat that allows for dispersal may be marginal for nesting, we believe it can provide roosting, perching, foraging, and predator avoidance habitat and maintains an important linkage function among blocks of nesting habitat both within local groups of pygmy-owls and throughout the overall range of the pygmy-owl in Arizona.

Without habitat linkages, the overall population of pygmy-owls in Arizona has is likely to become fragmented to the extent that individuals may be unable to disperse and find mates and suitable blocks of nesting habitat. Additionally, adequate habitat must be available to allow survival of juvenile pygmy-owls and their recruitment as breeding adults. We believe this is essential for maintaining the current population and hope that this approach will facilitate expansion of local populations. In particular, enlargement of small, local groups of pygmy-owls by expansion onto adjacent lands would not only increase the chances of their long-term survival, but would also improve connectivity among local populations by enhancing their value as "stepping stones" within the distribution of the overall population. Low population numbers and fragmented habitat reduce the probability that local groups of pygmy-owls will recolonize naturally in order to offset population fluctuations and local population losses, resulting in the extirpation of this distinct population segment.

As discussed above, the need to connect known pygmy-owl sites and local populations with each other is necessary to the maintenance of the overall pygmy-owl population in Arizona. All known recent pygmy-owl sites and recommended SMAs are included in our proposed critical habitat designation. We selected connections for these areas based on our knowledge of the existing habitat and on aerial photography. Some areas proposed for connectivity fall outside of the 5-mile average dispersal distance around known pygmy-owl locations. However, these areas are still likely to be occupied because all areas proposed also fall within the maximum dispersal distance documented for pygmy-owls in Arizona (34.8 km (21.8 mi)) (AGFD unpubl. data), substantiating their potential use by dispersing young from known pygmy-owl sites.

This proposed designation does not include all lands identified as Recovery Areas in the draft Recovery Plan, nor does it include all areas previously designated as critical habitat (64 FR 37419; July 12, 1999). Some areas have been added based on pygmy-owl locations documented since the previous designation. Areas not being proposed for designation that are identified within the draft recovery plan or that were included in the previous designation have been excluded based on the lack of survey and research information sufficient to allow our determination that they are essential to the conservation of the species in Arizona. Changes reflected in this proposal as compared to the previous designation resulted from a refinement of our understanding of the current numbers and distribution of pygmy-owls. We are not proposing to include all draft recovery areas nor all areas from the previous designation because (1) they do not include any recent, verified locations of pygmy-owls; (2) they do not fall within the average dispersal distance (8 km (5 mi)) from recent, verified pygmy-owl locations; (3) the draft recovery plan indicates that some of these areas are in need of further research (*i.e.*, surveys, habitat assessment, *etc.*) and may be used for possible augmentation activities, not to protect known pygmy-owl sites; (4) they do not provide connectivity proximate to known pygmy-owl sites or SMAs; and (5) some of these areas have not been evaluated with regard to current habitat suitability (*i.e.*, they are not known to contain the primary constituent elements). This does not mean that these areas are not possibly beneficial to the species, simply that we could not yet determine, based on the best available scientific data, that they are essential for the conservation of the species or in need of special management and protection. We intend to promote conservation and recovery of the pygmy-owl in these areas through the use of other tools which may include the reestablishment of pygmy-owls through a section 10(j) experimental population rule, HCPs, Safe Harbor agreements, and section 7 consultations under the jeopardy standard, if applicable.

In developing this critical habitat proposal we made an effort to avoid developed areas such as towns, agricultural lands, and other areas unlikely to contribute to pygmy-owl conservation. However, limitations on spatial data (*e.g.*, vegetative and other land-cover information), plus the difficulty in legally describing particular patterns of vegetation, precluded us from mapping critical habitat in sufficient detail to exclude all such areas. Therefore, the 1,208,001 acres within the boundaries does not represent critical habitat acreage; only areas within the geographic boundaries that are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation are actually critical habitat. Thus, lands without the primary constituent elements are excluded from proposed critical habitat by definition. However, these lands account for a very small proportion of the total proposed designated area. We request that peer reviewers who are familiar with this species review the proposed rule (see "Peer Review" section below) in order to ensure that we have identified those areas that are essential for the conservation of the pygmy-owl, and avoided designating unsuitable habitat inappropriately.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR § 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and, within areas currently occupied by the species, that may require special management considerations or protection. These generally include, but are not limited to, the following: space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The specific primary constituent elements required for pygmy-owl habitat are derived from the biological needs of the pygmy-owl as described below.

Space for Individual and Population Growth and Normal Behavior

As described previously, pygmy-owls were recorded in association with riparian woodlands in central and southern Arizona (Bendire 1892, Gilman 1909, Johnson *et al.* 1987) and are currently found in a variety of vegetation communities such as riparian woodlands, mesquite bosques, Sonoran desertscrub, semidesert grassland, mesquite grasslands and Sonoran savanna grassland communities (see Brown 1994 for vegetation community descriptions).

During the 1990s, nesting pygmy-owls were recorded in the Arizona upland subdivision of the Sonoran desert, particularly Sonoran desertscrub, and semidesert grasslands (Brown 1994), primarily below 1,220 m (4,000 ft.) elevation (Wilcox *et al.* 2000). While pygmy-owls will use the upland areas, xeroriparian areas (dry washes) within these vegetative communities appear to be especially important (Wilcox *et al.* 2000). Sonoran desertscrub communities are characterized by the presence of a variety of cacti, large trees, shrubs, and a diversity of plant species and vegetation layers. This community includes, but is not limited to, palo verde (*Cercidium* spp.), ironwood *(Olneya tesota)*, mesquite, acacia (*Acacia* spp.), bursage (*Ambrosia* spp.), desert hackberry *(Celtis pallida)*, gray thorn *(Zizyphus obtusifolia)*, and columnar cacti such as saguaro and organ pipe (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Davis and Russell 1984, Johnson and Haight 1985, Johnson-Duncan *et al.* 1988, Johnsgard 1988, Millsap and Johnson 1988).

Certain areas within the Altar Valley were historically Sonoran savanna grassland; however, with the invasion of mesquite, these areas are now more properly classified as Sonoran desertscrub (Brown 1994). The Altar Valley has also been described as semidesert grassland and/or a mesquite grassland biotic community with Sonoran desertscrub in the foothill areas (Abbate *et al.* 1999, Wilcox *et al.* 2000). We, therefore, include all three of these grassland communities in our description of pygmy-owl habitat because they now contain the apparent habitat requirements needed by pygmy-owls.

Xeroriparian areas are utilized by pygmy-owls in desertscrub and grassland vegetation communities. Pygmy-owls have been documented using xeroriparian drainages for nesting and dispersal (Wilcox *et al.* 2000). Drainages throughout these areas concentrate available moisture influencing the diversity and structure of the vegetation. Grasslands have experienced the invasion of velvet mesquite in the uplands, and there are linear woodlands of various tree species (ash, hackberry, mesquite, *etc.*) along lowland areas and washes. In desertscrub communities, xeroriparian sites are characterized by species found in the uplands (palo verde, mesquite, acacia, ironwood, *etc.*) but typically grow bigger and occur in higher densities within the drainages.

Pygmy-owls are considered non-migratory throughout their range. There are winter (November through January) pygmy-owl location records in Organ Pipe Cactus National Monument (R. Johnson unpubl. data 1976, 1980; Tibbitts, pers. comm. 1997). Major Bendire collected pygmy-owls along Rillito Creek near Camp Lowell at present-day Tucson on January 24, 1872. The University of Arizona Bird Collection contains a female pygmy-owl collected in the Tucson area on January 8, 1953 (University of Arizona 1995). Similarly, records exist from Sabino Canyon on December 3, 1941, and December 25, 1950 (U.S. Forest Service, unpubl. data). Research and monitoring conducted by AGFD has documented year-round occupancy of known home ranges (the area used by pygmy-owls throughout the year) (Abbate *et al.* 1999, 2000). These winter records demonstrate that pygmy-owls are found within Arizona throughout the year and do not appear to migrate southward to warmer climates during the winter months. Therefore, it is important that pygmy-owls have home ranges of adequate size to provide for their life history requirements throughout the entire year.

Pygmy-owl dispersal patterns are just beginning to be documented. One banded juvenile in Arizona was observed in 1998 approximately 3.9 km (2.4 mi) from its nest site following dispersal. Five young monitored with radio telemetry during 1998 were recorded dispersing from 3.5 km (2.17 mi) to 10.4 km (6.5 mi) for an average of 5.9 km (3.6 mi) (Abbate *et al.* 1999). In 1999, 6 juveniles in Arizona dispersed from 2.3 km (1.4 mi) to 20.7 km (12.9 mi) for an average of 10 km (6.2 mi) (Abbate *et al.* 2000). In Arizona, the maximum documented dispersal distance is 34.8 km (21.8 mi) (AGFD unpubl. data). Juveniles typically disperse from natal areas in July and August and do not appear to defend a territory until September. They appear to fly from tree to tree instead of long flights and may move up to 1.6 km (1 mi) or more in a night (Abbate *et al.* 1999). Trees of appropriate size and spacing appear to be necessary for successful dispersal, but specific data describing this pattern are currently unavailable. Once dispersing male pygmy-owls settle in a territory (the area defended by a pygmy-owl), they rarely make additional movements outside of their home range. For example, spring surveys have found male juveniles in the same general location as observed the preceding autumn (Abbate *et al.* 2000). However, unpaired female dispersers may make additional movements into the subsequent breeding season (AGFD unpubl. data).

Pygmy-owls typically make short, rapid flights. Observations indicate that pygmy-owls rarely fly longer distances than what is needed to travel from one tree to an adjacent tree (Abbate *et al.* 1999, 2000, AGFD unpubl. data). Pygmy-owls will avoid flying across large open areas such as golf courses (Abbate *et al.* 1999, 2000). Pygmy-owls have rarely been observed using areas of high human activity, such as high-density (4–5 houses/ac) housing, for normal day-to-day activities within a home range, nor during dispersal (AGFD unpubl. data). Successful dispersal is dependant on habitats in an appropriate configuration that are protected from disturbance.

Sufficient space must occur within pygmy-owl home ranges to provide vegetation of appropriate size and cover for roosting, sheltering, and foraging. The area must be adequate to provide for the needs of the pygmy-owl on a year-round basis. Population growth can only occur if there is adequate habitat in an appropriate configuration to allow for the dispersal of pygmy-owls across the landscape. Dispersal habitat should provide sufficient cover in an appropriate configuration to facilitate movement and reduce mortality factors (predators, prey availability, human-related factors, *etc.*).

Food

Pygmy-owls typically hunt from perches in trees with dense foliage using a perch-and-wait strategy; therefore, sufficient cover must be present within their home range for them to successfully hunt and survive. Pygmy-owls also hunt by inspecting tree and saguaro cavities for other nesting birds, and possibly bats. Their diverse diet includes birds, lizards, insects, and small mammals (Bendire 1888, Sutton 1951, Sprunt 1955, Earhart and Johnson 1970, Oberholser 1974, Proudfoot 1996, Abbate *et al.* 1996,1999). Observations in Arizona from 1996 through 1998 indicate that reptiles, birds, mammals, and insects were 44, 23, 6, and 3 percent, respectively, of pygmy-owl prey deliveries recorded; 24 percent were unidentified (Abbate *et al.* 1999). It is likely that use of insects was underestimated in these observations because of the speed at which they are consumed and the difficulty in observing such small prey items. The density of annual plants and grasses, as well as shrubs, may be important to enhancing the pygmy-owl's prey base.

Vegetation communities which provide a diversity of structural layers

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and plant species likely contribute to the availability of prey for pygmy-owls (Wilcox *et al.* 2000). Pygmy-owls also utilize different groups of prey species on a seasonal basis. For example, lizards, small mammals, and insects are utilized as available during the spring and summer during periods of warm temperatures (Abbate *et al.* 1999). However, during winter months, when low temperatures reduce the activity by these prey groups, pygmy-owls likely turn to birds as their primary source of food and appear to expand their use area in response to reduced prey availability (Proudfoot 1996). Therefore, conservation of the pygmy-owl should include consideration of the habitat needs of prey species, including structural and species diversity and seasonal availability. Pygmy-owl habitat must provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nest and roost sites.

Water

Free-standing water does not appear to be necessary for the survival of pygmy-owls. During many hours of research monitoring, pygmy-owls have never been observed directly drinking water (Abbate *et al.* 1999, AGFD unpubl. data). It is likely that pygmy-owls meet much of their biological water requirements through the prey they consume. However, the presence of water may provide related benefits to pygmy-owls. The availability of water may contribute to improved vegetation structure and diversity which improves cover availability. The presence of water also likely attracts potential prey species improving prey availability.

Reproduction and Rearing of Offspring

Male pygmy-owls establish territories using territorial-advertisement calls to repel neighboring males and attract females. Usually, pygmy-owls nest as yearlings (Abbate *et al.* 1999, Gryimek 1972), and both sexes breed annually thereafter. Territories normally contain several potential nest-roost cavities from which responding females select a nest. Hence, cavities/acre may be a fundamental criteria for habitat selection. Historically, pygmy-owls in Arizona used cavities in cottonwood, mesquite, ash trees, and saguaro cacti for nest sites (Millsap and Johnson 1988). Recent information from Arizona indicates nests were located in cavities in saguaro cacti for all but two of the known nests documented from 1996 to 2002 (Abbate *et al.* 1996, 1999, 2000, AGFD unpubl. data). One nest in an ash tree and one in a eucalyptus tree were the only non-saguaro nest sites (Abbate *et al.* 2000).

Pygmy-owls exhibit a high degree of site fidelity once territories (the area defended) and home ranges (the area used throughout the year) have been established (AGFD unpubl. data). Therefore, it is important that habitat characteristics within territories and home ranges be maintained over time in order for them to remain suitable. This is important for established owl sites, as well as new sites established by dispersing pygmy-owls.

Shrubs and large trees also provide protection against predators for juvenile and adult pygmy-owls and cover from which they may capture prey (Wilcox *et al.* 2000). Little is known about the rate or causes of mortality in pygmy-owls; however, they are susceptible to predation from a wide variety of species. Documented and suspected pygmy-owl predators include great horned owls *(Bubo virginianus)*, Harris' hawks *(Parabuteo unicinctus)*, Cooper's hawks *(Accipiter cooperii)*, screech-owls *(Otus kennicottii)*, and domestic cats *(Felis catus)* (Abbate *et al.* 2000, AGFD unpubl. data). Pygmy-owls may be particularly vulnerable to predation and other threats during and shortly after fledging (Abbate *et al.* 1999). Arizona Game and Fish Department (AGFD) telemetry monitoring in 2002 indicated at least three of the nine young were killed by predators prior to dispersal during a year when tree species failed to leaf out due to drought conditions (AGFD unpubl. data). Therefore, cover near nest sites may be important for young to fledge successfully (Wilcox *et al.* 1999, Wilcox *et al.* 2000). A number of fledgling pygmy-owls have perished after being impaled on cholla cactus, probably due to undeveloped flight skills (Abbate *et al.* 1999). Conditions which promote the proliferation of cholla (overgrazing, vegetation disturbance, *etc.*) may contribute to this mortality factor. Habitat that provides for successful reproduction and rearing of young provides trees and cacti that are of adequate size to provide cavities in proximity to foraging, roosting, sheltering and dispersal habitats, in addition to adequate cover for protection from climatic elements and predators in an appropriate configuration in relation to the nest site.

The primary constituent elements determined necessary for the conservation of the pygmy-owl include: (1) Elevations below 1,200 m (4,000 ft) within the biotic communities of Sonoran riparian deciduous woodlands; Sonoran riparian scrubland; mesquite bosques; xeroriparian communities; tree-lined drainages in semidesert, Sonoran savanna, and mesquite grasslands; and the Arizona Upland and Lower Colorado River subdivisions of Sonoran desertscrub (see Brown 1994 for a description of vegetation communities); (2) nesting cavities located in trees including, but not limited to cottonwood, willow, ash, mesquite, palo verde, ironwood, and hackberry with a trunk diameter of 15 cm (6 in) or greater measured 1.4 m (4.5 ft) from the ground, or large columnar cactus such as saguaro or organ pipe greater than 2.4 m (8 ft); (3) multilayered vegetation (presence of canopy, mid-story, and ground cover) provided by trees and cacti in association with shrubs such as acacia, prickly pear, desert hackberry, graythorn, *etc.*, and ground cover such as triangle-leaf bursage, burro weed, grasses, or annual plants. By way of description, preliminary data gathered by AGFD indicates 35 percent ground cover at perch sites and 48 percent ground cover at nest sites; mid-story cover of 65 percent at perch sites and 65 percent at nest sites; and 73 percent canopy cover at perch sites and 87 percent canopy cover at nest sites (Wilcox *et al.* 1999) (This AGFD information is based on a limited study area, a small sample size, and methods used to describe microhabitat characteristics and may have only limited applicability in project evaluation); (4) vegetation providing mid-story and canopy level cover (this is provided primarily by trees greater than 2 m (6 ft) in height) in a configuration and density compatible with pygmy-owl flight and dispersal behaviors. Within 15-m radius plots centered on nests and perch sites, AGFD has documented the mean number of trees and average height of trees for Sonoran desertscrub and semidesert grassland areas. The mean number of trees per plot in Sonoran desertscrub plots was 12.5 with a mean height of 3.95 m. The mean number of trees in semidesert grassland was 28.5 with a mean height of 8.1 m (Wilcox *et al.* 2000) (This AGFD information is based on a small sample size using a method designed to describe microhabitat characteristics. These numbers may have only limited applicability in project evaluations); and (5) habitat elements configured and human activity levels minimized so that unimpeded use, based on pygmy-owl behavioral patterns (typical flight distances, activity level tolerance, *etc.*), can occur during dispersal and within home ranges (the total area used on an annual basis).

We determined that these proposed primary constituent elements of critical habitat provide for the physiological, behavioral, and ecological requirements of the pygmy-owl. The first primary constituent element provides the general biotic communities which are known to support pygmy-owl habitat in Arizona. We conclude that this element is essential to the conservation of the pygmy-owl because the species is not known to occur outside of these biotic communities.

The second primary constituent element provides the components necessary for nesting, such as cavity availability and cover. The third primary constituent element describes the structural makeup of habitat necessary to meet the biological needs of the pygmy-owl such as breeding, nesting, roosting, perching, foraging, predator avoidance, and thermal cover, and also promotes prey diversity and availability.

The fourth primary constituent element describes the structural makeup of vegetation necessary to meet the biological needs of the pygmy-owl related to movements and dispersal. This includes small-scale movements for foraging, defense, predator avoidance, pair formation, nest site selection, *etc.*, as well as landscape level movements needed to promote genetic diversity and expansion of the population.

The fifth constituent element describes landscape conditions which may affect pygmy-owl behavioral patterns and relates to the need to protect habitats from various disturbances. Pygmy-owl behavior is not typically affected by low levels of human activity or activities which are predictable (Abbate et al. 1999, 2000, AGFD unpubl. data). Low-density (< 3 houses per acre) residential areas and roads with low traffic volumes are examples of this type of activity. However, high levels of human activities, high-intensity activities, or activities which cannot be predicted may affect the areas pygmy-owls will use for nesting, foraging and dispersal (AGFD unpubl. data). High-density (> 3 houses per acre) residential, commercial areas with lights and constant high levels of activity or unpredictable activities of any level, ball fields, and roads with high traffic volumes are some examples of activity levels that could potentially affect pygmy-owl behavior and habitat use. Habitat elements should be configured, and human activities should be minimized, so dispersal and pygmy-owl activities within its home range are not impeded.

We did not map critical habitat in sufficient detail to exclude all developed areas and other lands unlikely to contain primary constituent elements essential for pygmy-owl conservation. Within the proposed critical habitat boundaries, only lands containing some or all of the primary constituent elements (defined above) are proposed as critical habitat. Existing features and structures within proposed critical habitat, such as buildings; roads; residential landscaping (*e.g.*, mowed nonnative ornamental grasses); residential, commercial, and industrial developments; and lands above 1,200 m (4,000 ft) do not contain some or all of the primary constituent elements. Therefore, these areas are not considered critical habitat and are specifically excluded by definition.

Facilitating the movement of juvenile pygmy-owls to establish breeding sites, as well as movements among currently known local populations of pygmy-owls, is important for dispersal and gene flow, and providing such connectivity is a widely accepted principle of conservation biology. Thus, portions of CHUs may function primarily to provide such connectivity within and among CHUs and may contain only the primary constituent elements required for dispersal, but we recognize the essential nature of such connectivity to the persistence of pygmy-owls in Arizona.

We are soliciting public comments, information, or data which will help us evaluate whether the areas we have proposed are essential for the conservation of the pygmy-owl. We seek public comment on all areas within the pygmy-owl's current and historical range in Arizona, including whether any of these or other areas should be included or excluded from the final designation. As stated previously, if new information indicates that proposed CHUs are inappropriate or that there are additional areas that are essential for the conservation of the species in Arizona, we could revise the designation of critical habitat as appropriate (50 CFR 424.12(g)). The addition of any new areas to the current proposal will require us to start the proposal process again by publishing a new proposed rule and obtaining public comment before making a final determination.

Proposed Critical Habitat

The proposed CHUs encompass all of the verified, recent sites occupied by pygmy-owls in Arizona, with the exception of pygmy-owls located on the Tohono O'odham Nation (see "Exclusions Under Section 4(b)(2)" section of this rule). Each CHU contains recent documented occurrences of pygmy-owls. The CHUs were configured by evaluating topography, vegetation, and our current understanding of pygmy-owl habitat suitability and dispersal capabilities to select areas that form an interconnected system of habitat supported by the principles of conservation biology. New pygmy-owls continue to be found each year within the proposed CHUs. Consequently, we believe that continued surveys will detect additional sites occupied by pygmy-owls within these proposed CHUs.

Table 1 presents a comparison of the 1999 designation of pygmy-owl critical habitat and our current proposal. A brief summary of changes to the initial designation are included. Table 2 shows the approximate acreage of proposed critical habitat by land ownership and county. Areas in Pima and Pinal Counties, Arizona, that are proposed as critical habitat have been divided into CHUs (see maps in the "Rule Promulgation" section). Critical habitat for the pygmy-owl includes habitat within the CHUs which contain areas that are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation, as described above. A brief description of each CHU and our reasons for proposing those areas as critical habitat are presented below.

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TABLE 1.—COMPARISON OF THE 1999 CRITICAL HABITAT DESIGNATION WITH THE CURRENT PROPOSAL

Former designation (64 FR 37419)			Current proposal		
Unit	Acres	Description	Unit	Acres	Description
1	159,811	Extended from the Mexican border northward between the Buenos Aires National Wildlife Refuge (NWR) and the Tohono O'odham Nation, but did not include the Buenos Aires NWR.	1	435,464	Extends eastward to include the Buenos Aires NWR and recent owl locations; northward to include recent owl sites and habitat for dispersal
2, 3	47,678	Strip of potential habitat that connected the Tohono O'odham Nation to Saguaro National Park-West and Tucson Mountain County Park. Unit 3 was a very small unit designed to provide connectivity across I–10.	2	179,805	Includes the former Unit 3 and extends northward to provide for enhanced connectivity facilitating movement between southern Pinal Co., the Tucson area, and occupied areas to the south and west. Saguaro National Park-West was added.
4	87,352	Unit 4 included occupied habitat in the Tucson area, which was then the most dense pygmy-owl concentration known in the State.	3	73,958	This unit is based on recent owl locations, average dispersal distance, and the Northwest Tucson and Tortolita Fan SMAs proposed in the draft Recovery Plan.
5a, 5b	211,354	Designated to provide connectivity to the riparian habitat of the Gila and San Pedro Rivers north and northeast of Tucson.	4	76,161	Much of this unit is not being proposed. The remaining portions are designated around recent pygmy-owl locations to provide for the expansion of this subpopulation (see "Methods" section).
6	133,351	Encompassed the riparian habitats of the Gila and San Pedro Rivers.	None		This unit is not being proposed for designation based on the lack of recent, verified locations and our inability to determine the presence of the primary constituent elements (see "Methods" section).
7	99,542	Connected from unit 5a northward to and including the riparian habitat of the Salt River.	None		This unit is not being proposed for designation based on the lack of recent, verified locations and our inability to determine the presence of the primary constituent elements (see "Methods" section).
None		This unit was not previously designated.	5	442,612	This unit includes habitat recently found to be occupied in Organ Pipe Cactus NM, on Cabeza Prieta NWR, and on largely BLM land around the Ajo area.
Total	739,088			1,208,001	

TABLE 2.—APPROXIMATE CRITICAL HABITAT ACREAGE BY COUNTY AND LAND OWNERSHIP [1]

Unit	County	FWS	BLM	NPS	State trust	Private	Other [2]	Total
1	Pima	114,490	22,908	0	233,467	63,310	1,289	435,464
2	Pima	0	58,189	22,022	25,782	34,967	18,091	159,051
2	Pinal	0	1,494	0	12,730	6,530	0	20,754
	Total	0	59,683	22,022	38,512	41,497	18,091	179,805
3	Pima	0	0	0	12,072	21,292	60	33,424
3	Pinal	0	4,295	0	22,391	13,197	651	40,534
	Total	0	4,295	0	34,463	34,489	711	73,958
4	Pinal	0	29,594	0	41,491	5,076	0	76,161
5	Pima	99,446	84,267	255,509	2,638	752	0	442,612
	Total	213,936	200,747	277,531	350,572	145,124	20,091	1,208,001

[1] Note: acreage estimates are derived from Arizona Land Resource Information System data based on the cited legal descriptions.
[2] Includes other Federal (BOR, Barry M. Goldwater Range), Military (AZ National Guard), State (AZGFD) and County lands.

CHU Descriptions

The following includes general descriptions of each proposed CHU, including general land ownership, geographical extent, dominant vegetation, general land-use information, and the reason(s) why the areas were determined to be essential to pygmy-owl conservation in Arizona. Much of the detail in the following CHU descriptions was taken from Recovery Team documents. Legal descriptions, a general location map, and maps of individual CHUs are in the "Regulation Promulgation" section of this rule.

CHU 1

CHU 1 extends from the Mexican border northward approximately 80 km (50 mi) through the Altar Valley along the eastern edge of the Tohono O'odham Nation. This CHU includes the Buenos Aires National Wildlife Refuge, as well as BLM, State Trust and private lands to the north. Numerous washes descend from the Baboquivari Mountains on the west and the Sierrita and San Luis Mountains to the east. The Altar and Brawley Washes are important valley wash systems. Vegetation is dominated by semidesert grassland (also described as Sonoran savanna or mesquite grassland (Brown 1994)), but also supports Arizona upland Sonoran desertscrub vegetation, particularly in the northern part of this unit. Tree species such as mesquite, ash, and hackberry are found in the drainages of this unit, while grasses, scattered mesquite, and isolated saguaros are found in the upland areas. Documented pygmy-owl use in this unit includes both breeding and dispersal. Management issues primarily relate to grazing and controlled burning, while secondary issues involve residential and commercial development. Illegal border crossings and management also impact vegetation and other resources in this unit.

We determine that this area is essential to pygmy-owl conservation in Arizona because it contains recent documentation of breeding pygmy-owl locations and a number of pygmy-owls with unknown breeding status. Since 1999, this unit has accounted for approximately 43 percent of the known pygmy-owls in Arizona (Harris Environmental Group 1998, Flesch 1999, Abbate *et al.* 2000, AGFD unpubl. data). In addition, the CHU is contiguous with the Tohono O'odham Nation, which provides important connectivity to the west and south and may support breeding pygmy-owls. Finally, the area provides connectivity between the pygmy-owls in Mexico and the Tohono O'odham Nation with those in the Tucson area (CHU 2 and 3). CHU 1 contains all of the described primary constituent elements, and its primary functions are to provide nesting opportunities and connectivity for dispersal.

CHU 2

This CHU is connected to the northern portion of CHU 1 and the Tohono O'odham Nation, providing connectivity and dispersal corridors between populations of pygmy-owls in CHUs 1 and 3. This CHU includes the western unit of Saguaro National Park and Pima County's Tucson Mountain Park and extends westward to the Tohono O'odham Nation, then northward and eastward to Interstate 10 to join CHU 3 at points north and south. Part of this CHU is within the newly designated Ironwood Forest National Monument, which is predominantly composed of BLM land but also includes some State Trust and private lands. Vegetation is dominated by Arizona upland Sonoran desertscrub and lower Colorado River Sonoran desertscrub. This unit also includes some lands on which native trees are returning and provide the described conditions for connectivity and dispersal (primary constituent element 4). These lands were previously used for agricultural purposes and have been retired. Much of CHU 2 is under Federal administration (BLM, Ironwood National Monument, Saguaro National Park), but there is some State Trust and private lands, particularly in the northern part of the unit. No single land use dominates this CHU; mining, agriculture, grazing, development, and recreation are present. Impacts to pygmy-owl habitat are also occurring from the constant movement of individuals and groups crossing the border illegally through this unit.

An important purpose of this CHU is to allow for dispersal and other movements of pygmy-owls among CHU 1, CHU 3, CHU 4 and the Tohono O'odham Nation. Movement among these areas is necessary for the maintenance and expansion of pygmy-owl subpopulations found within these CHUs. There is a known pygmy-owl site located in the southeastern portion of this CHU; however, in general there has been a lack of survey effort in this unit.

We determine that this CHU is essential to pygmy-owl conservation in Arizona because it provides connectivity between occupied CHUs 1, 3, 4, and the Tohono O'odham Nation. This CHU provides breeding, roosting, perching, and foraging habitat (constituent elements 1, 2, and 3) and maintains an important linkage function among blocks of nesting habitat both locally and over the pygmy-owl's range (constituent element 4) that is essential to the pygmy-owl's conservation (see discussion above). Human activities and development are dispersed, and this unit also contains park lands resulting in conditions associated with primary constituent element 5. The primary function of this unit is for connectivity, but may become more important with regard to nesting as the overall pygmy-owl's population expands.

CHU 3

This CHU lies primarily northeast of Interstate 10 and extends from northwest Tucson into southern Pinal County. The boundaries of this unit are based on the recommended Northwest Tucson and Tortolita Fan SMAs found in the draft pygmy-owl recovery plan. The dominant vegetation is Arizona upland Sonoran desertscrub, and the area contains stands of trees including ironwood, mesquite, palo verde, and other species important for pygmy-owl roosting, perching, foraging and predator avoidance (primary constituent elements 1, 3 and 4). Saguaros occur in relatively high densities and are used for nesting (primary constituent element 2). Based on our current understanding, this CHU includes the most contiguous and highest-quality pygmy-owl habitat in Arizona (Wilcox *et al.* 1999, Wilcox *et al.* 2000). The southern portion of this CHU is mostly privately owned, the central portion is primarily State Trust, while the rest of the CHU is a mixture of private, State, and BLM lands.

This CHU contains a high density of active pygmy-owl nesting territories and dispersal pathways threatened by existing and on-going land uses, affecting primary constituent element 5. It has one of the highest known densities of pygmy-owls in Arizona, and is one of only four areas in the State with documented breeding pygmy-owls. Since 1999, CHU 3 has accounted for 35 percent of the known pygmy-owls in Arizona and 40 percent of the known nests (Abbate *et al.* 1999, 2000, AGFD unpubl. data). Therefore, the primary purpose of this CHU is to provide and protect adequate breeding habitat for the maintenance and expansion of this local population. Dispersal pathways within the southern portion of this CHU are limited, and so this CHU also protects remaining areas of connectivity for movement within this CHU and among adjacent CHUs. Some of the private land within this CHU has been developed and would not be considered critical habitat if it does not contain the primary constituent elements. Development pressure continues to be the main activity affecting conservation of the species in this CHU. We determine that this CHU remains an essential component of pygmy-owl conservation because it supports one of the highest densities of breeding pygmy-owls in Arizona, contributes to recruitment in the population, contains a significant amount of high-quality habitat, and provides all of the primary constituent elements.

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CHU 4

This CHU occurs in Pinal County and encompasses the northernmost extent of this critical habitat proposal, running from the north edge of CHU 3 northward to an area approximately 14.4 km (9 mi) north of Park Link Drive. The northern terminus of this CHU was defined by the average distance juvenile pygmy-owls could disperse from the most northern of recent pygmy-owl sites (see discussion in "Methods" section). Vegetation is almost entirely Arizona upland Sonoran desertscrub. Grazing, development, and mining exploration have been identified as management issues affecting the species in this area. Fires have also contributed to the current vegetation condition (increases in exotic grasses and reduction of tree canopy) and will likely remain an issue in this unit into the future. These burned areas still contain one or more primary constituent elements, but could benefit from enhancement or special management. CHU 4 is primarily State Trust and BLM lands, with some scattered private holdings.

This CHU has documented pygmy-owl occupancy (3 sites since 1999 (Abbate *et al.* 1999, 2000, AGFD unpubl. data.)), primarily within the southern portions. However, much of the unit has not been surveyed, and the surveys that have occurred have not been systematic nor regular. CHU 4 does contain breeding habitat, and we expect an increased survey effort would reveal more pygmy-owl sites. The primary purposes of this unit are to maintain and protect occupied sites, provide expanded opportunities for breeding, and provide connectivity for dispersal within the unit and to CHU 3. We determine that this area is essential to the pygmy-owl's conservation in Arizona, as it contains several known pygmy-owl locations and provides habitat for breeding as well as for pygmy-owls dispersing within this unit and from the breeding areas around Tucson. Pygmy-owls have been documented moving between CHUs 3 and 4 over the past few years (Abbate *et al.* 1999). We determine that this CHU remains an essential component of pygmy-owl conservation because it supports breeding pygmy-owls, contributes to recruitment in the population, contains a significant amount of high-quality habitat, and provides all of the primary constituent elements.

CHU 5

This CHU runs from the Mexican border northward along the western edge of the Tohono O'odham Nation. The CHU is almost entirely under Federal ownership, including portions of Cabeza Prieta National Wildlife Refuge, Organ Pipe Cactus National Monument, and contiguous BLM land in the vicinity of the town of Ajo. This unit also contains a small amount of State Trust land. The area consists of Arizona upland Sonoran desertscrub and lower Colorado River Sonoran desertscrub. Recreation-related activities, undocumented alien traffic and management, and grazing on BLM lands are the primary management issues in this unit.

This CHU contains numerous pygmy-owl locations, including breeding sites. Since 1999, this CHU has accounted for approximately 21 percent of the known pygmy-owls in Arizona (Abbate *et al.* 1999, 2000, AGFD unpubl. data). We determine that this CHU is essential to pygmy-owl conservation, as it provides breeding habitat contiguous with known pygmy-owls in Mexico and on the Tohono O'odham Nation. The purpose of this CHU is to protect and maintain known breeding areas, provide connectivity to Mexico and the Tohono O'odham Nation, and allow for expansion of this subpopulation through dispersal. Recruitment and resulting expansion of the population in this area are necessary for the conservation of the species. CHU 5 contains all of the primary constituent elements.

Managed Lands

As part of our process of developing this critical habitat proposal, we evaluated existing management plans to determine whether they provide sufficient protection and management for the pygmy-owl and its habitat such that there is no need for additional special management considerations or protection of areas that otherwise would qualify as critical habitat. Section 3(5)(i) of the Act defines critical habitat as areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. Adequate special management or protection is provided by a legally operative plan that addresses essential habitat and that provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule, and/or adequate funding for the management plan); and (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area provides physical and biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria, then such an area does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

It is possible that some of the areas proposed (*e.g.*, national parks/monuments) are already under a management plan that will provide for the long-term conservation of the pygmy-owl. We encourage landowners to develop and submit management plans and actions that are consistent with pygmy-owl conservation that we can evaluate and that may remove the necessity of critical habitat regulation. If any management plans are submitted during the open comment period, we will consider whether these plans provide adequate special management or protection for the species. We will use this information in determining which, if any, areas should not be included in the final designation of critical habitat for the pygmy-owl.

Exclusions Under Section 4(b)(2) for Tribal Lands

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from a critical habitat designation when the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

As discussed in this rule, we know that pygmy-owls occupy the Tohono O'odham Nation, but we have no specific information on the numbers or distribution. There is a considerable amount of unsurveyed habitat on the Nation and, although we have no means of quantifying this habitat, the distribution of recent sightings on non-Tribal areas east, west, and south of the U.S. portion of the Nation lead one to reasonably conclude that these Tribal lands may support meaningful numbers of pygmy-owls. Thus, we believe that Nation lands are important to the conservation of the pygmy-owl; however, it would be difficult to determine which areas on the Nation meet the definition of critical habitat due to our lack of information on pygmy-owl numbers and distribution. Based on our analysis below we find that the benefits of excluding the Nation from the proposed designation of critical habitat outweigh the benefits of including them. Therefore, we are not proposing to include the lands of the Nation as critical habitat.

(1) Benefits of Inclusion

We do not believe that designating critical habitat within the Nation would provide significant additional benefits for the pygmy-owl. Projects on Nation lands with a Federal nexus (*e.g.*, funded, approved or carried out by Federal agencies, such as the Bureau of Indian Affairs, Indian Health Services, or Federal Highways Administration) will trigger section 7 consultation with us if the projects affect pygmy-owls, regardless of critical habitat. Most projects of a scale large enough to impact pygmy-owls will have a Federal nexus. In addition, we have received from the Tohono O'odham Nation a document entitled *A Conservation Strategy for the Federally Endangered Cactus Ferruginous pygmy-owl on the Tohono O'odham Nation* (Edward D. Manuel, Tohono O'odham Nation, *in litt.* 2002) which outlines the general process by which the Nation and Federal agencies will coordinate to evaluate and address potential impacts to pygmy-owls related to various activities on the Nation. While this document is not sufficient to remove the need for special management (see "Section 3(5)(A) Definition" section above), it does indicate the progress that is being made through our efforts to coordinate conservation actions on the Nation and the intent of the Nation to conserve the pygmy-owl.

Because of the extent of the lands within the Nation (approximately 1.2 million ha (3 million ac)) and the low number of people residing in this area, the scope and types of projects being implemented have had minimal impacts on the landscape, disturbing less than 300 acres since September 1999 (E. Manuel, Tohono O'odham Nation, *in litt.* 2002). We will continue Government-to-Government consultations with the Tohono O'odham Nation to address the conservation needs of the pygmy-owl on Tribal lands.

In summary, because any potential impacts to the pygmy-owl from future projects will be addressed through the Nation's Conservation Strategy or through a section 7 consultation with us under the jeopardy standard, we do not believe a designation of critical habitat would provide significant additional benefits to the pygmy-owl.

(2) Benefits of Exclusion

Pursuant to Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, we recognize that we must carry out our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to Tribes and Tribal sovereignty while striving to ensure that Indian Tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation.

In accordance with the Presidential Memorandum of April 29, 1994, we believe that, to the maximum extent possible, Indian Pueblos and Tribes should be the governmental entities to manage their lands and Tribal trust resources. The designation of critical habitat would be expected to adversely impact our working relationship with the Nation, and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into Tribal natural resource programs and may harm our working relationship with the Nation which has been beneficial in implementing natural resource programs of mutual interest. For example, on April 28, 1999, the Chairman of the Nation accepted an invitation to partner with Pima County in developing the Sonoran Desert Conservation Plan. Representatives from the Nation have participated in the Sonoran Desert Conservation Plan planning process, including expert committees and education sessions. Moreover, during 1999, the Service's Region 2 Native American Liaison met with representatives of the Nation to discuss their relationship with Cabeza Prieta National Wildlife Refuge and to further discuss a possible joint venture to survey and manage the pygmy-owl on Nation lands. Representatives from the Nation are members of both the Implementation and Technical Groups of the Cactus Ferruginous Pygmy-Owl Recovery Team. We are now meeting with the Nation on a regular basis to develop a statement of relations and to pursue the development of a management plan for the natural resources on the Nation, which would include the pygmy-owl.

Pursuant to Secretarial Order 3206, the Service acknowledges our unique and distinctive Federal Tribal trust responsibility and obligation toward the Nation with respect to lands owned and managed by the Nation, Tribal trust resources, and the exercise of Tribal rights. Consequently, we are sensitive to the fact that the Tohono O'odham culture, religion, and spirituality may involve or relate to animals, including the pygmy-owl. We acknowledge the cultural sensitivity of the Nation with regard to owls.

We believe the designation of critical habitat on the Tohono O'odham Nation would adversely impact our working relationship with the Nation, which has been and is currently beneficial for the conservation of the pygmy-owl and other natural resource management programs. We believe, as stated in section 4(b)(2) of the Act, that the benefits to excluding the Tohono O'odham Nation outweigh the benefits of specifying this area as critical habitat. We also do not believe this exclusion will result in extinction of the pygmy-owl because of the limited threats to pygmy-owls and their habitats, and the initiation of a conservation program.

Lands Covered Under Existing Habitat Conservation Plans (HCPs)

Section 10(a)(1)(B) of the Act authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan, and specifies the content of such a plan. The purpose of such a habitat conservation plan, or HCP, is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated and that the action does not appreciably reduce the survival and recovery of the species.

Within the range of the pygmy-owl, the Service has approved an HCP involving the Lazy K Bar Ranch. We evaluated this HCP to determine whether it: (1) Provides a conservation benefit to the species; (2) provides assurances that the management plan will be implemented; and (3) provides assurances the plan will be effective. Approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, the areas we ordinarily would designate as critical habitat for the

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covered species will be protected through the terms of the HCPs and their implementation agreements.

The issuance of a permit (under Section 10(a) of the Act) in association with an HCP application is subject to consultation under Section 7(a)(2) of the Act. While these consultations on permit issuance have not specifically addressed the issue of destruction or adverse modification of critical habitat for the pygmy-owl, they have addressed the very similar concept of jeopardy to pygmy-owls in the plan area. Since this HCP addresses land use within the plan boundaries, habitat issues within the plan boundaries have been thoroughly addressed in the HCP and the consultation on the permit associated with the HCP. Our experience is that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Common to both approaches is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Therefore, additional measures to protect the habitat from adverse modification are not likely to be required.

We have reviewed the Lazy K Bar Ranch HCP. A summary of our assessment is as follows:

(1) *A current plan or agreement must be complete and provide sufficient conservation benefit to the species:* A habitat conservation plan was submitted and approved in November 1998 which provides for continued conservation of the species through the minimization of habitat destruction (a maximum of 17 percent disturbance), revegetation (approximately 21 ac), and seasonal restrictions to avoid potential noise disturbance. These efforts will maintain habitat for breeding and dispersal, as well as reduce the potential for disturbance during sensitive seasons of the year.

(2) *The plan or agreement must provide assurances that the conservation management strategies will be implemented:* The coverage provided under this HCP and related 10(a)(1)(B) permit is conditional upon the implementation of the included terms and conditions. The terms and conditions are nondiscretionary. Annual reporting is required showing the results of surveys and cavity inspections, as well as amount of area graded, plat proposals, and the extent of revegetation completed.

(3) *The plan or agreement must provide assurances that the conservation management strategies will be effective:* Monitoring is a key component of this habitat conservation plan. Surveys to detect pygmy-owl presence or absence will be conducted on an annual basis. Cavity inspections will occur to document the status and occupancy of potential nesting cavities. The plan provides for the funding and completion of telemetry studies on any pygmy-owls detected so that the effects of the project on pygmy-owl habitat use and behavior can be determined. The success of vegetation salvage and revegetation efforts will be monitored. Photo documentation will be used to track the effects to habitat from both development activities and revegetation.

On the basis of this assessment, we have determined that the area addressed by the Lazy K Bar Ranch HCP does not require additional special management considerations to conserve the pygmy-owl. Therefore, the area covered by the existing, legally operative incidental take permit issued for pygmy-owls under section 10(a)(1)(B) of the Act is, by definition under Section 3(5)(A) of the Act, not included in this proposed designation of critical habitat.

Lands within HCPs are subject to disposal (*e.g.*, through sale or exchange), subject to various sideboards included in each HCP. Proposed critical habitat does not include non-Federal lands covered by an incidental take permit for pygmy-owls issued under section 10(a)(1)(B) of the Act for these HCPs as long as such permit, or a conservation easement providing comparable conservation benefits, remains legally operative on such lands.

We also considered exclusion of HCPs under subsection 4(b)(2) of the Act, which allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. We believe this is the case in relation to the Lazy K Bar Ranch HCP that addresses pygmy-owls.

The benefits of including HCP lands in critical habitat are normally nonexistent. The principal benefit of any designated critical habitat is that activities in such habitat that may affect it require consultation under section 7 of the Act if such actions involve a Federal nexus (*i.e.*, an action authorized, funded, or carried out by a Federal agency). Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat. Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for commercial activity. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat normally has little benefit in areas covered by HCPs.

The benefits of excluding HCPs from being designated as critical habitat include relieving landowners, communities and counties of any additional regulatory review that results from such a designation. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs.

A related benefit of excluding HCP areas is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from

critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, we believe the benefits of critical habitat designation to be insignificant in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to evaluate their actions both with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR § 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Section 7(a)(4) of the Act and regulations at 50 CFR § 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat.

Activities on Federal lands that may affect pygmy-owl critical habitat will require section 7 consultation. Activities on private or State lands that are funded, permitted or carried out by a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency (EPA), will be subject to the section 7 consultation process if those actions may affect critical habitat or a listed species through modification of suitable habitat. Through this consultation, we would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise not affecting pygmy-owls, and actions on non-Federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.

We will conduct our analyses regarding the destruction or adverse modification of critical habitat over the entire critical habitat designation and on a unit basis, as dictated by conditions within the unit. A consultation focuses on the entire critical habitat area designated, unless the critical habitat rule identifies another basis for analysis, such as discrete units and/or groups of units necessary for different life-cycle phases, units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographic distribution requirements. In the case of the pygmy-owl, certain CHUs (*e.g.*, CHU 1 and CHU 3) contain habitat for breeding and dispersal constrained by existing land uses. In addition, the small population size and dispersed distribution of the pygmy-owl make local populations within specific CHUs and the ability to maintain connectivity among them geographically significant for the maintenance of the overall Arizona population of pygmy-owls.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.2 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us for actions for which formal consultation has been completed, if those actions may affect proposed or designated critical habitat.

Section 4(b)(8) of the Act requires that we describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of the species is appreciably diminished. We note that such activities may include, but are not limited to:

(1) Activities such as clearing of vegetation that appreciably reduce the value of the critical habitat for breeding;

(2) Activities such as clearing vegetation, road-building, or recreation that appreciably reduce the value of the critical habitat for connectivity;

(3) Activities such as clearing of vegetation, water diversion or impoundment, or high-impact recreation that appreciably reduce the value of the critical habitat for feeding by pygmy-owls;

(4) Activities that appreciably reduce the value of the critical habitat for other biological purposes (*e.g.*, roosting, rearing, or other normal behavior patterns).

The following federally funded programs and actions that may be affected by the proposed designation of critical habitat include, but are not limited to:

(1) Funding or approval of road development, realignment, widening, or maintenance by the Federal Highway Administration resulting in the significant loss or degradation of the primary constituent elements;

(2) Funding of housing development by the Federal Housing Administration, Veteran's Administration, Small Business Administration or Department of Housing and Urban Development resulting in the significant loss or degradation of the primary constituent elements;

(3) Approval of structures and distribution for energy, communication, and other utilities by the Federal Energy Regulatory Commission or the Federal Communications Commission resulting in the loss or degradation of the primary constituent elements;

(4) Approval of actions related to grazing, mining, recreation, and land planning by the Bureau of Land Management, U.S. Forest Service, and National Park Service that result in a significant loss or degradation of the primary constituent elements;

(5) Approval of structures or actions by the Bureau of Reclamation related to the management of waterways or

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floodways that result in a significant loss or degradation of the primary constituent elements; and

(6) Approval of permits or actions related to the Clean Water Act by the Environmental Protection Agency or Corps that result in the significant loss or degradation of the primary constituent elements.

The Act and 50 CFR 17.22 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, NM 87103 (telephone 505/248–6920, facsimile 505/248–6922).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 3(5)(A) of the Act defines critical habitat, in part, as those areas requiring special management considerations or protection. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. The purpose of the HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species.

We began working with Pima County in 1998 to develop the Sonoran Desert Conservation Plan which identifies and provides for the regional or area-wide protection and perpetuation of plants, animals, and their habitats, while allowing compatible land-use and economic activity. This regional HCP will address the effects of urban growth and propose conservation for 55 vulnerable species in Pima County, including the pygmy-owl. The Town of Marana is also pursuing an incidental take permit for actions within their jurisdiction that will address the pygmy-owl and other species. There is one currently operative HCP (Lazy K Bar Ranch) that specifically addresses the pygmy-owl and its habitat. Based on our evaluation of this HCP we have concluded, pursuant to section 3(5)(A) of the Act, that areas within this HCP do not require additional special management considerations or protection, and consequently we have not included areas within it as proposed critical habitat. (See the Managed Lands section, above, for a discussion of the factors considered).

In the event that future HCPs covering the pygmy-owl are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the pygmy-owl.

The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by pygmy-owls. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat areas.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the conservation of the pygmy-owl and appropriate management for those lands. The take minimization and compensation measures provided under these HCPs are expected to protect critical habitat. Furthermore, we will complete intra-Service consultation on our issuances of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. If an HCP that addresses the pygmy-owl as a covered species is ultimately approved, we may reassess the critical habitat boundaries in light of the HCP.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when such an exclusion will result in the extinction of the species. We have conducted a robust economic analysis that complies with the ruling by the Tenth Circuit Court of Appeals in *New Mexico Cattle Growers Association, et. al.* v. *U.S. Fish and Wildlife Service* on the effects of the proposed critical habitat designation. We are announcing the availability of the draft economic analysis with this proposed rule.

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Whether all areas proposed for designation are essential to the conservation of the species;

(2) Whether any lands within the Tohono O'odham Nation should be included in the designation;

(3) Whether the benefits of excluding specific areas will outweigh the benefits of including those areas as critical habitat;

(4) Whether any areas included in the proposed designation have adequate special management and protection in place such that they do not meet the definition of critical habitat;

(5) Whether we have looked at the right biological factors and other relevant data concerning the number and distribution of pygmy-owls in Arizona, quantity and quality of available pygmy-owl habitat, and what habitat is essential to the conservation of the species and why. Is there additional information we have not considered?;

(6) Whether the methodology utilized to delineate the proposed critical habitat boundaries is appropriate for determining areas that are essential to the conservation of the pygmy-owl (*e.g.*, range of the owl, specific sites, and the need for habitat connectivity);

(7) If the rule accurately reflects the land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(8) Whether there are any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, including any impacts on small entities or families that are not considered in the draft economic analysis (specifically estimated number of small businesses affected by the designation);

(9) Whether economic and other values associated with designating critical habitat for the pygmy-owl such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs) were included appropriately;

(10) Whether we properly assessed the available literature regarding pygmy-owls;

(11) If the use of the preliminary SMAs described in the draft Recovery Plan is appropriate in delineating critical habitat areas;

(12) If the areas proposed for designation are essential to the conservation of the species;

(13) Whether we have sufficient information to support designation of each of the proposed units;

(14) What should the relationship be between the recovery plan and the critical habitat designations; and

(15) Have we adequately addressed uncertainty and scientific disagreement with respect to all aspects of the proposed designation?

Prior to making a final determination on this proposed rule, we will take into consideration all relevant comments and additional information received during the comment period.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to promote listing decisions that are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts and specialists. We will send these peer reviewers copies of this proposed rule immediately following its publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 90-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal. Depending on public comments, information, or data received, we will evaluate and make a final determination on the areas that are essential to the conservation of pygmy-owl, and critical habitat could be revised as appropriate.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We are scheduling one public hearing on this proposal. We will hold this public hearing in the Leo Rich Theater at the Tucson Convention Center in Tucson, AZ, on January 23, 2002, from 6:30 p.m. to 9 p.m. For more information on this hearing, contact the Field Supervisor of the Arizona Ecological Services Field office (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov*.

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by Federal law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by Federal law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Required Determinations

Regulatory Planning and Review

For the purposes of Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB). A separate consideration of the economic and other relevant impacts will be conducted under section 4(b)(2) of the Act.

We have prepared a draft economic analysis to assist us in compliance with section 4(b)(2) as well as Executive Order 12866 and other regulatory requirements. Concerning Executive Order 12866, the draft analysis indicates that this rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions related to critical habitat on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency.

As discussed above, Federal agencies would be required to ensure that their actions do not destroy or adversely modify designated critical habitat of the pygmy-owl. Because of the potential for impacts on other Federal agencies' activities, we will review this proposed action for any inconsistencies with other Federal agency actions.

If this rule is finalized we will determine whether it materially affects entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, except those involving Federal agencies which would be required to ensure that their activities do not destroy or adversely modify designated critical habitat. As discussed above, we have conducted an economic analysis and determined that this rule will not have an annual economic effect of $100 million or more.

OMB has determined that the critical habitat portion of this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review. The proposed rule follows the requirements for proposing critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal

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agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. Based on the information available to us at this time, we are certifying that the rule will not have a significant effect on a substantial number of small entities. However, we intend to consider the information from the addendum to the economic analysis prior to our final designation. The following discussion explains our rationale and is based upon the information contained in the draft Economic Analysis that we are providing for comment concurrently with this proposed rule.

This analysis first determines whether critical habitat potentially affects a "substantial number" of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry.[1]

Estimated Number of Small Businesses Affected: The "Substantial Number" Test

To be conservative, (*i.e.*, more likely to overstate impacts than understate them), this analysis assumes that a unique entity will undertake each of the projected consultations in a given year, and so the number of businesses affected is equal to the total annual number of consultations (both formal and informal).[2]

First, the number of small businesses affected is estimated;[3]

- Estimate the number of businesses within the study area affected by section 7 implementation annually (assumed to be equal to the number of annual consultations);
- Calculate the percent of businesses in the affected industry that are likely to be small;
- Calculate the number of affected small businesses in the affected industry;
- Calculate the percent of small businesses likely to be affected by critical habitat.

This calculation reflects conservative assumptions and nonetheless yields an estimate that is still far less than the 20 percent threshold that would be considered "substantial." As a result, this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl. Nevertheless, an estimate of the number of small businesses that will experience effects at a significant level is provided below.

Small businesses in the construction and development industry could potentially be affected by the designation of critical habitat for the pygmy-owl if the designation leads to significant project modifications or delays associated with development. To be conservative, this analysis assumes that a unique company will undertake each of the projected consultations in a single year and that each of these companies will be a small business. Thus, this analysis assumes that 27 unique companies will consult with the Service on development projects over ten years, or approximately 2.7 businesses per year. There are approximately 161 residential development companies in the counties in which critical habitat units are located.[4] Thus, approximately 1.7 percent of small residential development companies in Pima and Pinal Counties may be affected by the designation of critical habitat for the pygmy-owl annually. Because 1.7 percent reflects conservative assumptions and is far less than the 20 percent threshold that would be considered "substantial", this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl.

To the extent that the designation of critical habitat for the pygmy-owl may lead to an increase in the number of formal consultations and project modifications, some mining operations, particularly the smaller operators in Pinal County, may be affected by the designation. The Service estimates that approximately six consultations are likely to occur within pygmy-owl critical habitat areas in the next ten years, or approximately 0.6 per year. There are approximately 66 mining companies in the counties in which critical habitat units are located.[5] Therefore approximately 0.9 percent of small mining companies in Pima and Pinal Counties may be affected by the designation of critical habitat for the pygmy-owl annually. Because 0.9 percent reflects conservative assumptions and is still less than the 20 percent threshold that would be considered "substantial," this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl.

Estimated Effects on Small Businesses: The "Significant Effect" Test

Costs of critical habitat designation to small businesses consist primarily of the cost of participating in section 7 consultations and the cost of project modifications. To calculate the likelihood that a small business will experience a significant effect from critical habitat designation for the pygmy-owl, the following calculations were made:

- Calculate the per-business cost. This consists of the unit cost to a third party of participating in a section 7 consultation (formal or informal) and the unit cost of associated project modifications. To be conservative, this analysis uses the high-end estimate for each cost.
- Determine the amount of annual sales that a company would need to have for this per-business cost to constitute a "significant effect." This is calculated by dividing the per-business cost by the three percent "significance" threshold value.
- Estimate the likelihood that small businesses in the study area will have annual sales equal to or less than the threshold amount calculated above. This is estimated using national statistics on the distribution of sales within industries.[6]
- Based on the probability that a single business may experience significant effects, calculate the expected value of the number of businesses likely to experience a significant effect.
- Calculate the percent of businesses in the study area within the affected industry that are likely to be affected significantly.

Small businesses in the construction and development industries per-business cost could potentially be $4.3 million. The annual sales that a company would need to have for this per-business cost to constitute a "significant effect" would be $120 million. Based on national statistics 11 percent of small businesses in Pima and Pinal Counties will have sales in this range. Thus, the expected number of small businesses likely to experience a significant effect is 89 percent of 2.7, or 2.4 businesses annually. This number represents approximately 1.4 percent of construction and development companies in Pima and Pinal Counties. Because 1.4 percent reflects conservative assumptions and is still less than the 20 percent threshold that would be considered "significant," this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl.

The mining industry's per-business cost could potentially be $45,700. The annual sales that a company would need to have for this per-business cost to constitute a "significant effect" would be $1.5 million. Based on national statistics 22 percent of small businesses in Pima and Pinal Counties will have sales in this range. The expected number of small businesses likely to experience a significant effect is 88 percent of 0.6, or 0.5 businesses annually. This number represents approximately or 0.9 percent of mining companies in Pima and Pinal Counties. Because 0.9 percent reflects conservative assumptions and is still less than the 20 percent threshold that would be considered "significant," this analysis concludes that a significant economic impact on a substantial number of small entities will not result from the designation of critical habitat for the pygmy-owl.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We have a very good consultation history for the pygmy-owl; thus, we can describe the kinds of actions that have undergone consultations. Within the areas proposed as critical habitat units, the BLM, Department of Energy (DOE), and the Federal Energy Regulatory Commission (FERC) are likely to undergo section 7 consultation for actions relating to energy supply, distribution, or use.

Since the species was listed in 1997, the BLM has consulted on the Safford Resource Management Plan (RMP) and the Phoenix RMP, which address utility corridors. There are several other proposed energy distribution lines (*e.g.*, the Sonora-Arizona Interconnection Project) in the planning phases that involve Federal agencies, including DOE, FERC, BLM and the Forest Service, depending on the alternative selected and the lands that will be affected. These distribution lines are likely to require section 7 consultation for one or several listed species that occur along their routes. Measures, including adjustments to routes, should be available to minimize and mitigate adverse effects.

While this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), based upon the information available to us through the draft Economic Analysis and as described in the "Regulatory Flexibility Act" section above:

(1) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat.

(2) This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630, we have considered whether this rule has significant takings implications.

I. Summary of the Action

We are proposing to designate approximately 1.2 million acres of critical habitat for the pygmy-owl. On September 21, 2001, the United States District Court for the District of Arizona, in *National Association of Home Builders et al.* v. *Norton*, Civ.–00–0903–PHX–SRB vacated the previous designation of critical habitat for the pygmy-owl and ordered us to issue a new proposed rule designating critical habitat for the pygmy-owl. This proposed rule is being issued pursuant to that order.

II. Assessment of Takings Implications

The mere promulgation of a regulation, like the enactment of a statute, is rarely sufficient to establish that private property has been taken unless the regulation on its face denies the property owners economically viable use of their land (*Agins* v. *City of Tiburon*, 447 U.S. 255, 260–263 (1980); *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264, 195 (1981)). The designation of critical habitat alone does not deny anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. This is not the very rare case such as that found in *Whitney Benefits, Inc.* v. *United States*, 926 F.2nd 1169 (Fed. Cir. 1991), in which a statute explicitly prohibits the only economically useful activity possible on certain lands and a court is able to discern without administrative action that no permit could possibly be granted.

Recognizing that governmental regulation involves adjustment of rights for the public good, the court has found that a regulation which curtails the most profitable use of property, resulting in a reduction in value or limitations on use, likewise does not necessarily result in a taking (*Andrus* v. *Allard*, 444 U.S. 51, 66 (1979); *Agins*, 447 U.S. at 262; *Hodel*, 452 U.S. at 296). Where a regulation denies property owners all economically viable use of their property, then a taking will likely occur (*Agins*, 447 U.S. at 260). However, where regulation does not categorically

[1] See U.S. Small Business Administration, The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies, 1998. Accessed at: *www.sba.gov/advo/laws/rfaguide.pdf* on December 3, 2001.

[2] While it is possible that the same business could consult with the Service more than once, it is unlikely to do so during the one-year timeframe addressed in this analysis. However, should such multiple consultations occur, they would concentrate effects of the designation on fewer entities. In such a case, the approach outlined here likely would overstate the number of affected businesses.

[3] Note that because these values represent the probability that small businesses will be effected during a one-year time period, calculations may result in fractions of businesses. This is an acceptable result, as these values represent the probability that small businesses will be affected by section 7 implementation of the Act.

[4] Census Bureau, County Business Patterns, Accessed at: *http://www.census.gov/epcd/ cbp/view/cbpview.html* on August 26, 2002.

[5] Census Bureau, County Business Patterns, Accessed at: *http://www.census.gov/epcd/cbp/view/cbpview.html* on August 26, 2002.

[6] This probability is calculated based on national industry statistics obtained from the Robert Morris Associated Annual Statement of Studies: 2001–2002 and from comparison with the SBA definitions of small businesses.

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prohibit use but merely regulates the conditions under which such use may occur, and does not regulate alternative uses, then no taking occurs (*Hodel*, 452 U.S. at 298). With the designation of critical habitat, property owners are not denied the economically viable use of their land. Use of land is not categorically prohibited but rather certain restrictions are imposed upon Federal agency actions which may result in the destruction or adverse modification of critical habitat. As such, it is not likely that taking occurs.

Even beyond the above, however, a property owner must establish that a "concrete controversy" exists before the court may even reach the merits of a takings claim (*Hodel*, 452 U.S. at 294; *Agins*, 447 U.S. at 260). The property owner must show a specific and real impact to specific properties before judicial resolution of a takings claim is made (*MacDonald, Sommer, and Frates* v. *Yolo County*, 447 U.S. 340, 348–349; *Agins*, 447 U.S. at 260). The issue is not yet ripe for judicial resolution until administrative action is pursued to a final determination (*Hodel*, 452 U.S. at 297; *MacDonald*, 447 U.S. at 348–349). It is likely that, prior to judicial intervention, a solution will be reached at the administrative level (*Hodel*, 452 U.S. at 297). The Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land, and the conservation of the species, including avoiding the destruction or adverse modification of designated critical habitat. Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

We believe that the takings implications associated with this critical habitat designation will be insignificant, even though private, State, and Federal lands are included. Impacts of critical habitat designation may occur on private lands where there is Federal involvement (*e.g.*, Federal funding or permitting) subject to section 7 of the Act. Impacts on private entities may also result if the decision on a proposed action on Federally owned critical habitat could affect economic activity on adjoining non-Federal land. Each action would be evaluated by the involved Federal agency, in consultation with us, in relation to its impact on the pygmy-owl and its designated critical habitat. In the unexpected event that extensive modifications would be required to a project on private property, it is not likely that the economic impacts to the property owner would be of sufficient magnitude to support a takings action. We do not anticipates that property values will be affected by critical habitat designation, but this will be analyzed in our economic analysis. Therefore, we anticipate that this critical habitat designation will result in insignificant takings implications on these lands.

III. Alternatives to Designating Critical Habitat

Under the Act, there is no alternative to designation of critical habitat. Critical habitat must be designated unless we determine that it is not prudent or determinable to do so (16 U.S.C. 1533(b)(6)(C)). As described above, we are under court order to complete a rulemaking to designate critical habitat for the pygmy-owl. We will further consider the economic and other relevant impacts of the designation in deciding whether to exclude areas for the designation in the final rule.

IV. Financial Exposure

The designation of critical habitat for the pygmy-owl will not on its face cause a taking of private property. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few, if any, conflicts between critical habitat and private property rights should result. No approximation of the financial exposure of the Federal government is possible, but it is expected to be insignificant.

Based on the above assessment, we find that this proposed rule designating critical habitat for the pygmy-owl does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with appropriate resource agencies in Arizona. We will continue to coordinate any future designation of critical habitat for the pygmy-owl with the appropriate agencies.

We do not anticipate that this regulation will intrude on State policy or administration, change the role of the Federal or State government, or affect fiscal capacity. For example, we have conducted many formal consultations with the Corps and EPA over actions related to their issuance of permits pursuant to sections 404 and 402, respectively, under the Clean Water Act. Because these consultations were conducted prior to the original designation of critical habitat, while critical habitat was in place, and after critical habitat designation for the pygmy-owl was vacated pursuant to court order, we do not believe that this designation of critical habitat will have significant Federalism effects. If this critical habitat designation is finalized, Federal agencies also must ensure, through section 7 consultation with us, that their activities do not destroy or adversely modify designated critical habitat. Nevertheless, we do not anticipate that the types of measures, provided by past consultations (*e.g.*, those issued from 1997 through 2002), will increase because an area is designated as critical habitat. This rule also will not change the private property rights within the area proposed to be designated as critical habitat. For these reasons, we do not anticipate that the designation of critical habitat will change State policy or administration, change the role of the Federal or State government, or affect fiscal capacity.

Within some areas the designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any action that lacked Federal involvement would not be affected by the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the majority of such projects can be successfully implemented with modifications that avoid significant economic impacts to project proponents.

The designation may have some benefit to these governments in that the areas essential to the conservation of the species would be clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species would be identified. While this definition and identification do not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the pygmy-owl.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the Ninth Circuit *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), *cert. denied*, 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Indian Pueblos and Tribes

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of the Interior's requirement at 512 DM 2, we understand that recognized Federal Indian Pueblos and Tribes must be related to on a Government-to-Government basis. Therefore, we are soliciting information from the Indian Pueblos and Tribes and will arrange meetings with them during the comment period on potential effects to them or their resources that may result from critical habitat designation.

We have met with representatives of the Tohono O'odham Nation and, based on the Section 4(b)(2) of the Act, we have determined that the benefits of designating the Nation as critical habitat do not outweigh the benefits of excluding them. We also believe that this exclusion will not result in the extinction of the pygmy-owl because of the limited threats to pygmy-owls and their habitat within the Nation and the Nation's initiation of a conservation program. In addition, the Recovery Team has not recommended inclusion of the Tohono O'odham Nation as a Recovery Area. Consequently, we are not proposing critical habitat on the Tohono O'odham Nation.

Pygmy-owls were recently located on a grazing allotment held by the Pascua Yaqui Tribe. These grazing leases include State Trust and Federal lands, but are adjacent to lands held in title by the Tribe. It will be important to coordinate conservation efforts for the pygmy-owl in this area with the Pascua Yaqui Tribe.

We will continue to work with the Tohono O'odham Nation and the Pascua Yaqui Tribe regarding the development of management and conservation plans, conservation agreements, grants, and other cooperative projects that could contribute to the recovery of pygmy-owls in Arizona.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arizona Ecological Services Field Office (see "Addresses" section).

Author

The primary authors of this notice are the staff at the Arizona Ecological Services Field Office (see "Addresses" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend Part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.95(b) by revising critical habitat for the Pygmy-owl, cactus ferruginous *(Glaucidium brasilianum cactorum)*, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.* * * *

CACTUS FERRUGINOUS PYGMY-OWL *(Glaucidium brasilianum cactorum)*

(1) Critical habitat units are depicted for Pima and Pinal Counties, Arizona, on the maps below. These maps are a graphical representation of the geographic boundaries that encompass the proposed pygmy-owl critical habitat and are provided for illustrative purposes only. The map and GIS files used to create these maps are not the definitive source for determining critical habitat boundaries. While we make every effort to represent the proposed critical habitat shown on these maps as completely and accurately as possible (given existing time, resource, data, and display constraints), the maps are for reference only; the areas that geographically contain the proposed critical habitat are legally described below.

(2) Within these areas, the primary constituent elements for the pygmy-owl are those habitat components that are essential for the primary biological needs of foraging (provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nest and roost sites), nesting (trees and cacti of adequate size to support cavities in proximity to foraging, roosting, sheltering and dispersal habitats), rearing of young (adequate cover for protection from climatic elements and predators in an appropriate configuration in relation to the nest site), roosting (provides substrates of adequate size and cover), sheltering (provides substrates of adequate size and cover), and dispersal (provides adequate cover and configuration to facilitate movement and reduce mortality factors, *i.e.*, predators, prey availability, human-related factors, *etc.*). Only areas within these geographic boundaries that are below 1,200 m (4,000 ft) and include one or more of the primary constituent elements related to vegetation are proposed as critical habitat.

(3) The primary constituent elements include:

(i) Elevations below 1,200 m (4,000 ft) within the biotic communities of Sonoran riparian deciduous woodlands;

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Sonoran riparian scrubland; mesquite bosques; xeroriparian communities; tree-lined drainages in semidesert, Sonoran savanna, and mesquite grasslands; and the Arizona Upland and Lower Colorado River subdivisions of Sonoran desertscrub (see Brown 1994 for a description of these vegetation communities);

(ii) Nesting cavities located in trees including, but not limited to, cottonwood, willow, ash, mesquite, palo verde, ironwood, and hackberry with a trunk diameter of 15 cm (6 in) or greater measured 1.4 m (4.5 ft) from the ground, or large columnar cactus such as saguaro or organ pipe greater than 2.4 m (8 ft);

(iii) Multilayered vegetation (presence of canopy, mid-story, and ground cover) provided by trees and cacti in association with shrubs such as acacia, prickly pear, desert hackberry, graythorn, *etc.*, and ground cover such as triangle-leaf bursage, burro weed, grasses, or annual plants. By way of description, preliminary data gathered by the Arizona Game and Fish Department (AGFD) indicates 35 percent ground cover at perch sites and 48 percent ground cover at nest sites; mid-story cover of 65 percent at perch sites and 65 percent at nest sites; and 73 percent canopy cover at perch sites and 87 percent canopy cover at nest sites (Wilcox *et al.* 1999). This AGFD information is based on a limited study area, a small sample size, and methods used to describe microhabitat characteristics and may have only limited applicability in project evaluation;

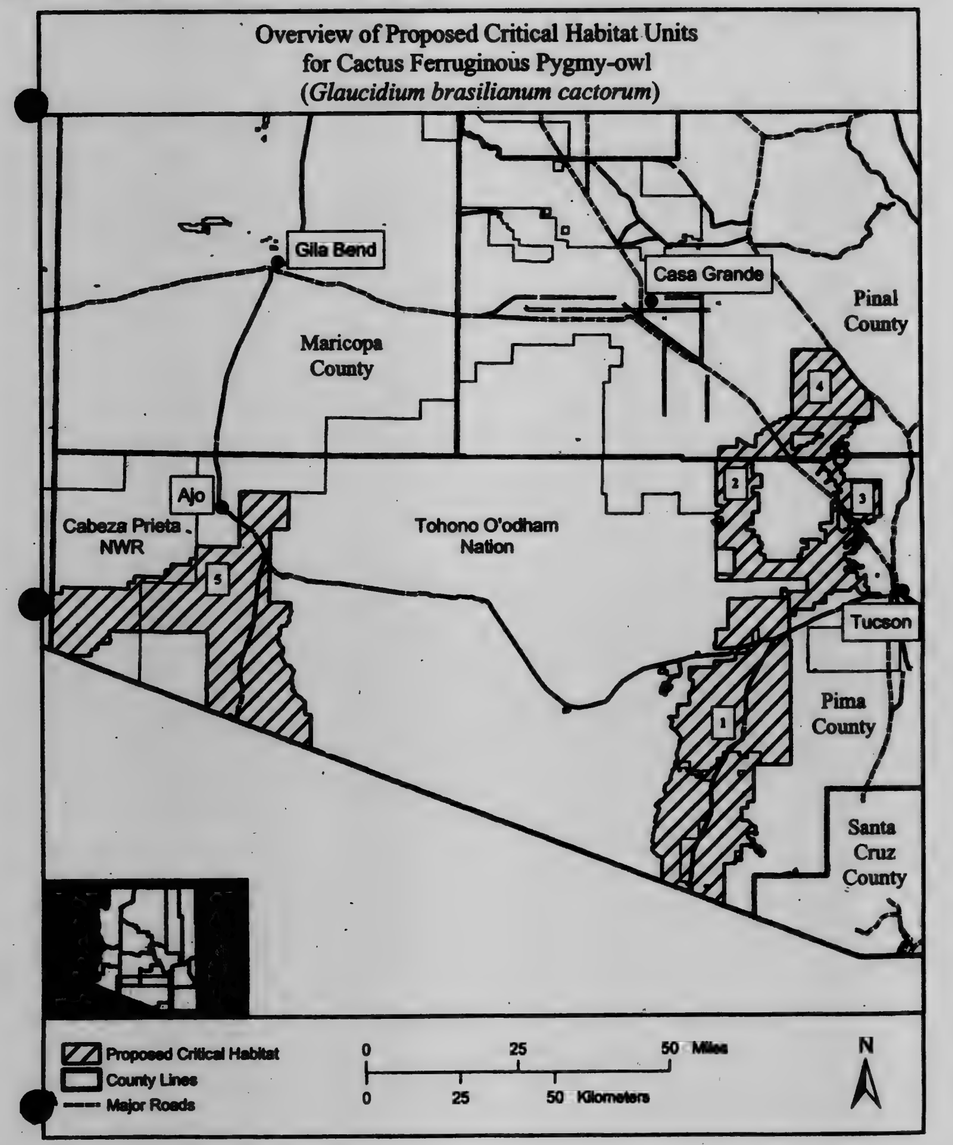
(iv) Vegetation providing mid-story and canopy level cover (this is provided primarily by trees greater than 2 m (6 ft) in height) in a configuration and density compatible with pygmy-owl flight and dispersal behaviors. Within 15-m radius plots centered on nests and perch sites, AGFD has documented the mean number of trees and average height of trees for Sonoran desertscrub and semidesert grassland areas. The mean number of trees per plot in Sonoran desertscrub plots was 12.5 with a mean height of 3.95 m. The mean number of trees in semidesert grassland was 28.5 with a mean height of 8.1 m (Wilcox *et al.* 2000). This AGFD information is based on a small sample size using a method designed to describe microhabitat characteristics. These numbers may have only limited applicability in project evaluations; and

(v) Habitat elements configured and human activity levels minimized so that unimpeded use, based on pygmy-owl behavioral patterns (typical flight distances, activity level tolerance, *etc.*), can occur during dispersal and within home ranges (the total area used on an annual basis).

(4) Critical habitat does not include non-Federal lands covered under the existing legally operative incidental take permit (Lazy K Bar Ranch) for the pygmy-owl issued under section 10(a) of the Act.

(5) Areas above 1,200 m (4,000 ft) and existing features and structures within proposed critical habitat, such as buildings; roads; cultivated agricultural land; residential landscaping (*e.g.*, mowed nonnative ornamental grasses); residential, commercial, and industrial developments; and other features, do not contain the primary constituent elements. Therefore, these areas are not considered critical habitat and are specifically excluded by definition.

(6) **Note:** Index map follows:



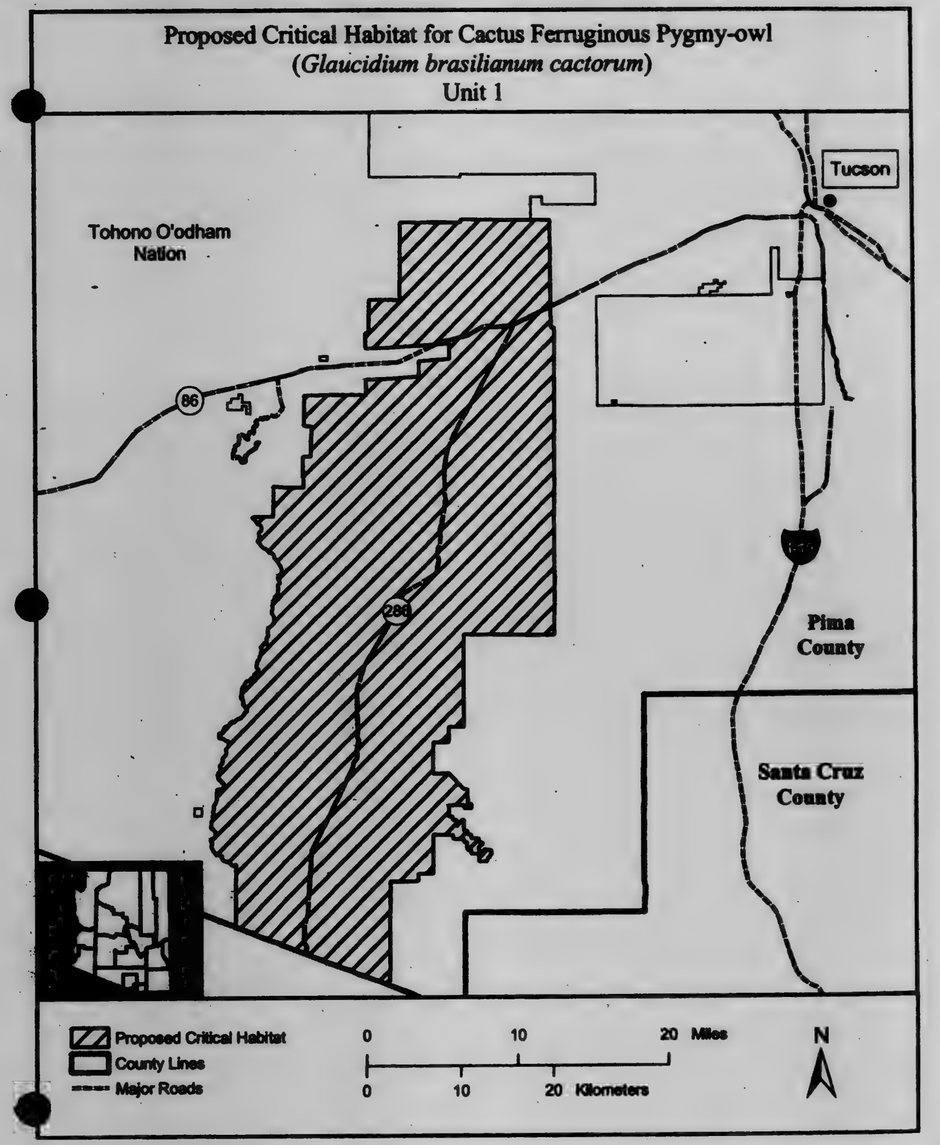
(7) Unit 1. Pima County, Arizona. From USGS Sells, Ariz. 1979; Atascosa Mts., Ariz. 1979.; and Silver Bell Mtns., 1994.

(i) Unit 1: Gila and Salt Principal Meridian, Arizona: T. 14 S., R. 9 E.,

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secs. 33 to 36; T. 14 S., R. 10 E., secs. 31 to 36; T. 15 S., R. 9 E., secs. 1 to 4, 9 to 16, 21 to 36; T. 15 S., R. 10 E., secs. 1 to 36; T. 16 S., R. 8 E., secs. 25 to 28 and 33 to 36; T. 16 S., R. 9 E., secs. 1 to 6, 12 to 15 and 19 to 36; T. 16 S., R. 10 E., secs. 1 to 36; T. 17 S., R. 8 E., secs. 1 to 3, 10 to 16, 21 to 36, and E. ½ of secs. 4 and 9; T. 17 S., R. 9 E., secs. 1 to 36; T. 17 S., R. 10 E., secs. 1 to 36; T. 18 S., R. 7 E., secs. 1, 12, and those portions of 2, 11, 13 to 14, 24, 25 and 36 east of the Tohono O'odham Nation boundary; T. 18 S., R. 8 E., secs. 1 to 18, 20 to 36, and those portions of sec. 19 east of the Tohono O'odham Nation boundary; T. 18 S., R. 9 E., secs. 1 to 36; T. 18 S., R. 10 E., secs. 1 to 36; T. 19 S., R. 7 E., secs. 24, 25, 35, 36, and those portions of secs. 1, 12, 14, 23, 26, 33 and 34 east of the Tohono O'odham Nation boundary; T. 19 S., R. 8 E., secs. 1 to 36; T. 19 S., R. 9 E., secs. 1 to 36; T. 19 S., R. 10 E., secs. 1 to 12; T. 20 S., R. 7 E., secs. 1 to 2, 11 to 15, 22 to 27, 34 to 36, and those portions of secs. 3, 9 to 10, 16 to 17, 21, 28 to 29, 32 to 33 east of the Tohono O'odham Nation; T. 20 S., R. 8 E., secs. 1 to 36; T. 20 S., R. 9 E., secs. 1 to 12, 14 to 22, 27 to 34 and those portions of 13, 23 to 26, 36 within the boundary of the Buenos Aires N.W.R.; T. 21 S., R. 7 E., secs. 1 to 4, 9 to 16, 21 to 27, 34 to 36 and those portions of secs. 5, 8, 17, 20, 28, 29 east of the Tohono O'odham Nation boundary and the portion of sec. 33 north of the Tohono O'odham Nation boundary; T. 21 S., R. 8 E., secs. 1 to 36; T. 21 S., R. 9 E., secs. 1 to 11, 14 to 22, 27 to 33, N ½ of sec. 34, and those portions of 12, 13, and 24 within the boundary of the Buenos Aires N.W.R.; T. 21 S., R. 10 E., those portions of secs. 6, 7, 18 to 20, 29, 30 within the boundary of the Buenos Aires N.W.R.; T. 22 S., R. 7 E., secs. 1 to 3, 10 to 15, and those portions of secs. 22 to 24 north of Mexico; T. 22 S., R. 8 E., secs. 1 to 27 and those portions of secs. 28 to 30, 33 to 36 north of Mexico; T. 22 S., R. 9 E., secs. 6 to 7, 18 to 19, 30 to 31; T. 23 S., R. 8 E., the portion of sec. 1 north of Mexico; T. 23 S., R. 9 E., the portion of sec. 6 north of Mexico and within the boundary of the Buenos Aires N.W.R.

(ii) **Note:** Map of Unit 1 follows:



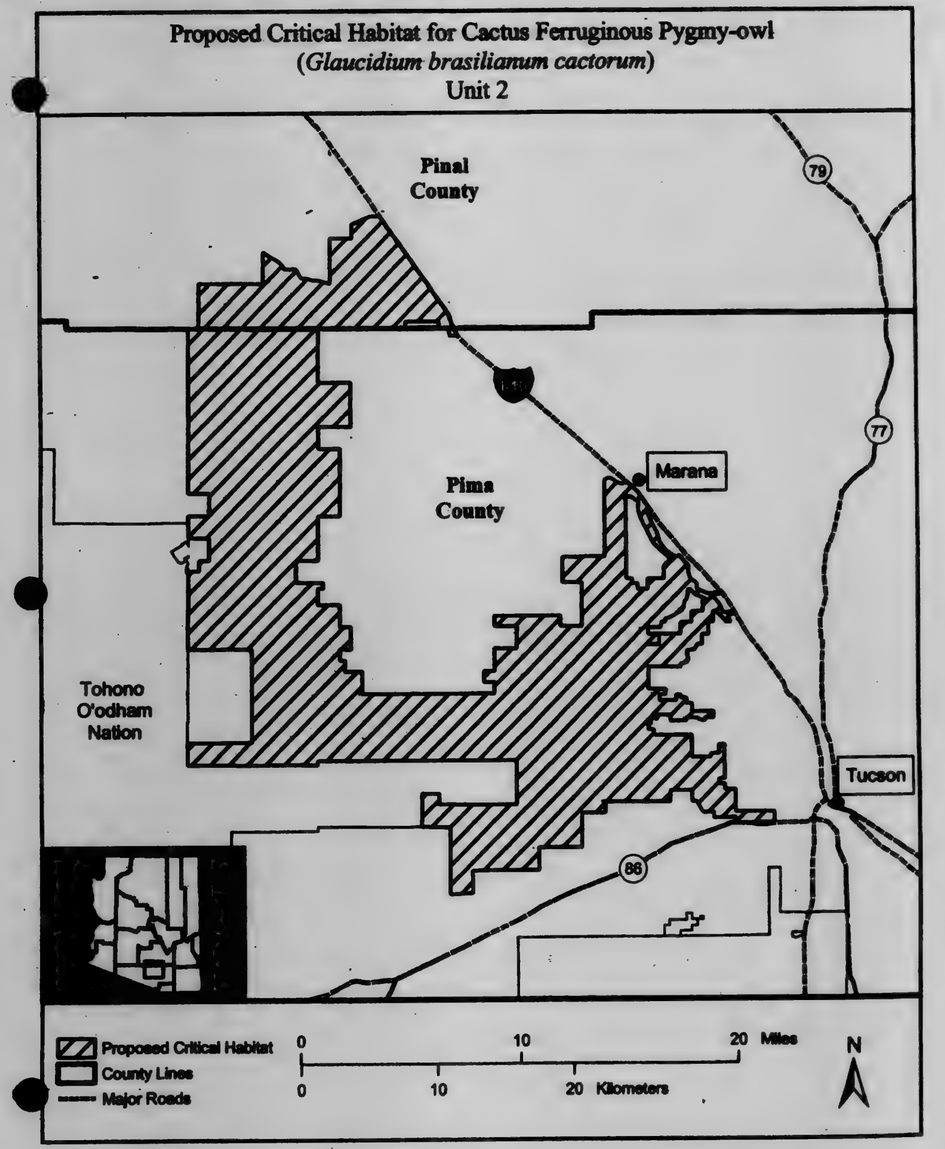
(8) Unit 2. Pima and Pinal counties, Arizona. From USGS Casa Grande, Ariz., 1994 and Silver Bell Mountains, Ariz., 1994 maps.

(i) Unit 2: Gila and Salt Principal Meridian, Arizona: T. 10 S., R. 9 E.,

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secs. 25 to 36 and those portions of secs. 15 and 22 to 24 south and west of the Santa Cruz River's east channel and associated diversion; T. 10 S., R. 10 E., secs. 17 to 21, 27 to 33, the portions of sec. 8 south of Sasco Road, those portions of secs. 34 and 35 north of Pinal Air Park Road, and those portions of secs. 9, 15, 16, 22, 23, 25, 26, 36 west of west edge of pavement of I–10; T. 11 S., R. 9 E., secs. 1 to 36; T. 11 S., R. 10 E., secs 19 and 30, W. ½ of sec. 20, and W. ½ of sec. 29; T. 11 S., R. 11 E. that portion of sec. 6 west of west edge of pavement of I–10; T. 12 S., R. 9 E., secs. 1 to 17, 19 to 29, 32 to 35, and W ½ and SW¼ of sec 32; T. 12 S., R. 10 E., secs. 6 to 7 and 18; T. 12 S., R. 11 E., sec. 36; T. 12 S., R. 12 E., sec. 17, 20, 29, 31 to 32, and those portions of sec. 8 south of the edge of pavement of Avra Valley Road, that portion of sec. 9 west of edge of pavement of I–10 and south of the edge of pavement of Avra Valley Road, that portion of sec 15 east of the edge of pavement of Interstate 10, those portions of sec. 16 east of the west levee/bank of the Santa Cruz River, those portions of secs. 21 and 22 within the east and west levies of the Santa Cruz River, the portions of secs. 26 and 27 within the levees of the Santa Cruz River, E ½ of the SE ¼ of sec 34 and that portion of sec. 34 south and east of the south edge of pavement of Cortaro Road and the portion of sec. 34 within the levees of the Santa Cruz River, that portion of sec. 35 west of the east levee of the Santa Cruz River, and the portion of sec. 36 within the levees of the Santa Cruz River; T.13 S., R. 9 E., secs. 1 to 18, 22 to 27, and 34 to 36; T. 13 S., R.10 E., secs. 7, 18 to 19, 29 to 36, and NW ¼ of NW ¼ of sec. 6, W. ½ of sec. 17, W. ½ of the SW ¼ of sec. 20; T. 13 S., R. 11 E., secs. 13 to 15, 21 to 28, 31 to 36, S. ½ of sec. 9, S. ½ of sec. 10, and S. ½ of sec. 11, and N.E.¼ of sec. 29; T. 13 S., R. 12 E., sec.1 north of the edge of pavement of Silverbell Road and west of the east levee of the Santa Cruz River, sec. 2 except that portion south and east of Abington Road., sec. 3, SE ¼ of sec. 4 and the portions of sec. 4 within Saguaro N.P., secs. 5 to 9, those portions of secs. 10 to 11 north and west of Abington Road, NE ¼ and S ½ of sec. 12, W ½ of the NE ¼ and W ½ of sec. 13, E ½ and SW ¼ of sec. 14, N ½ of the NW ¼ and NW ¼ of the NE ¼ and S ½ of sec. 15, secs. 16 to 22, W ½ of sec. 23 and that portion of sec. 23 north and west of W. Paseo de las Estrallas to N. Calle del Risco to W. Placita del Risco to N. Paseo del Barranco to W. Calle de la Busca, and the portion of sec 24 north and west of W. Calle de la Busca and Tortolita Road, secs. 28 to 33, and that portion of secs. 34 and 35 within saguaro N.P. administrative boundary; T. 13 S., R. 13 E., sec. 6 within the channel of the Santa Cruz River and Canada del Oro and sec. 7 within the channel of the Santa Cruz River and the Rillito River; T. 14 S., R. 9 E., secs. 1 to 3 and 6 to 12; T. 14 S., R. 10 E., secs. 1 to 12, 25, and those portions of secs. 23, 24 and 26 outside the boundary of Tohono O'odham Nation; T. 14 S., R. 11 E., secs. 1 to 15, 22 to 36; T. 14 S., R. 12 E., secs. 4 to 11, 13 to 22, 24, N. ½ of 23, N. ½ of 30, and those portions of secs. 1 to 3, 12, and 25 within Tucson Mountain County Park; T. 14 S., R. 13 E., those portions of secs. 7, 18, 19, and 28 to 30 within Tucson Mountain County Park; T. 15 S., R. 11 E., sec. 3 to 7.

(ii) **Note:** Map of Unit 2 follows:



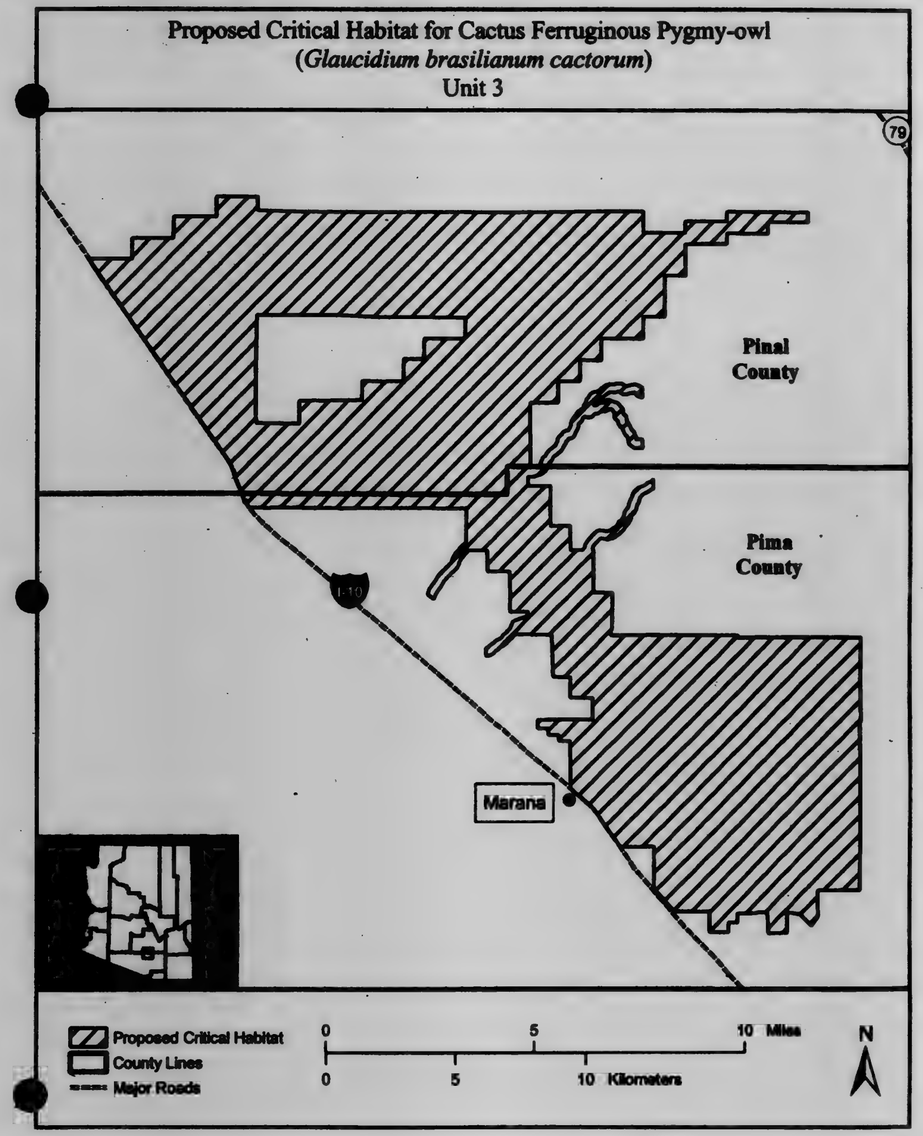
(9) Unit 3. Pima and Pinal counties, Arizona. From USGS Silverbell Mountains, Ariz., 1994; Casa Grande, Ariz., 1994 maps.

(i) Unit 3: Gila and Salt Principal Meridian, Arizona: T. 9 S., R. 10 E., sec.

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36 and S ½ of sec. 35; T. 10 S., R. 10 E., secs. 1 to 3, 10 to 14, 24, those portions of secs. 9, 15, 22, 23, 25, 26, 36 east of east edge of pavement of I–10, and S ½ of sec. 4 east of the east edge of pavement of I–10; T.10 S., R.11 E., secs. 1 to 13, 23 to 27, 31 to 36, N ½ of sec. 14, N ½ of sec 15., N ½ of sec. 16, N ½ of sec. 17, N ½ of sec. 18, SE ¼ of sec. 22, S ½ and NE ¼ of sec. 28, and S¼ of sec. 29; T.10 S., R.12 E., Sec. 4 to 9, 16 to 19, N ½ of sec. 1, S ½ of N ½ of sec. 2 and the N ½ of S ½ of sec. 2, S ½ of sec. 3, N ½ and SW ¼ of sec 10, NW ¼ of sec. 15, N ½ and SW ¼ of sec 20, N ½ and SW ¼ of sec 30, W ½ of sec 31, and those portions of secs. 28, 29, 31, 32, and 33 within 150 m (495 ft.) of the center of Cottonwood Wash and its southern branch; T.11 S., R.11 E., secs. 1 to 5, the portion of sec. 6 east of the eastern edge of pavement of I–10, E ½ of sec. 12, and those portions of secs. 12, 13, 14 and 23 that are east of the Central Arizona Project Canal property and within 150 m (495 ft.) of the center of Cottonwood Wash; T.11 S., R.12 E., secs. 6, 7, 17, 20, 21, 25 to 28, 34 to 36, SW ¼ of sec. 5, W ½ and SE ¼ of sec. 8, W ½ of sec 16, E ½ and NW ¼ of sec. 18, NE ¼ of sec. 19, E ½ of Sec 29, E ½ and NW ¼ of sec. 33, that portion of sec. 5 within 150 m (495 ft.) of the center of Cottonwood Wash, and those portions of secs. 3, 9, 10, 19, and 30 within 150 m (495 ft) of the center of Cochie Wash; T.11 S., R.13 E., secs. 28 to 33; T.12 S., R.12 E., secs. 1 to 4, 10 to 14, 24, the E ½ of NE ¼ and the SE ¼ of the NE ¼ and the NE ¼ of the NW ¼ of sec 5, those portions of secs. 9, 15 to 16, 23 east of the east edge of pavement of I–10, N ½ of sec. 25 and the E 3/4 of the S ½ of sec 25 excluding the SE ¼ of the SE ¼, and the portions of sec. 26 north of the north edge of pavement of Cortaro Farms Road and east of the east edge of pavement of I–10; T12S, R13E, secs. 4 to 9, 16 to 21, N ½ and E ½ of the SE ¼ of sec 30, W ½ of the SW ¼ of sec. 29 and that portion of sec 29 north of Cortaro Farm Road and west of Shannon Road.

(ii) **Note:** Map of Unit 3 follows:

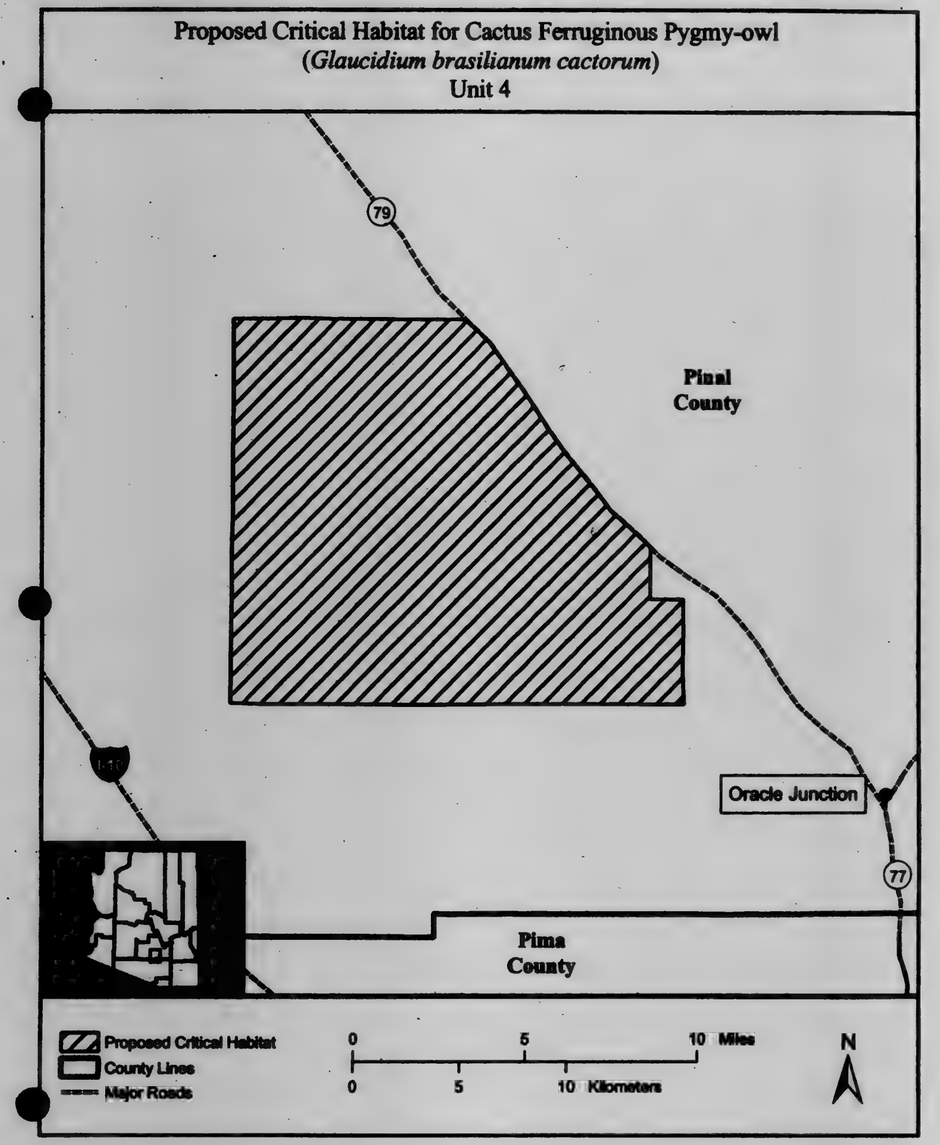


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(10) Unit 4. Pinal County, Arizona. From USGS Casa Grande, Ariz., 1994 and Mammoth, Ariz., 1986 maps.

(i) Unit 4: Gila and Salt Principal Meridian, Arizona: T. 8 S., R. 11 E., secs. 7 to 36; T. 8 S., R. 12 E., secs. 18 to 20, 29 to 33, and those portions of secs. 7, 8, 16,17, 21, 22, 27, 28, 34 and 35 west of edge of pavement of State Route 79; T. 9 S., R. 11 E., secs. 1 to 36; T. 9 S., R. 12 E., secs. 3 to 11, 13 to 36, and those portions of secs. 1, 2, and 12 west of edge of pavement of State Route 79; T. 9 S., R. 13 E., secs. 19, 32 and 33.

(ii) **Note:** Map of Unit 4 follows:



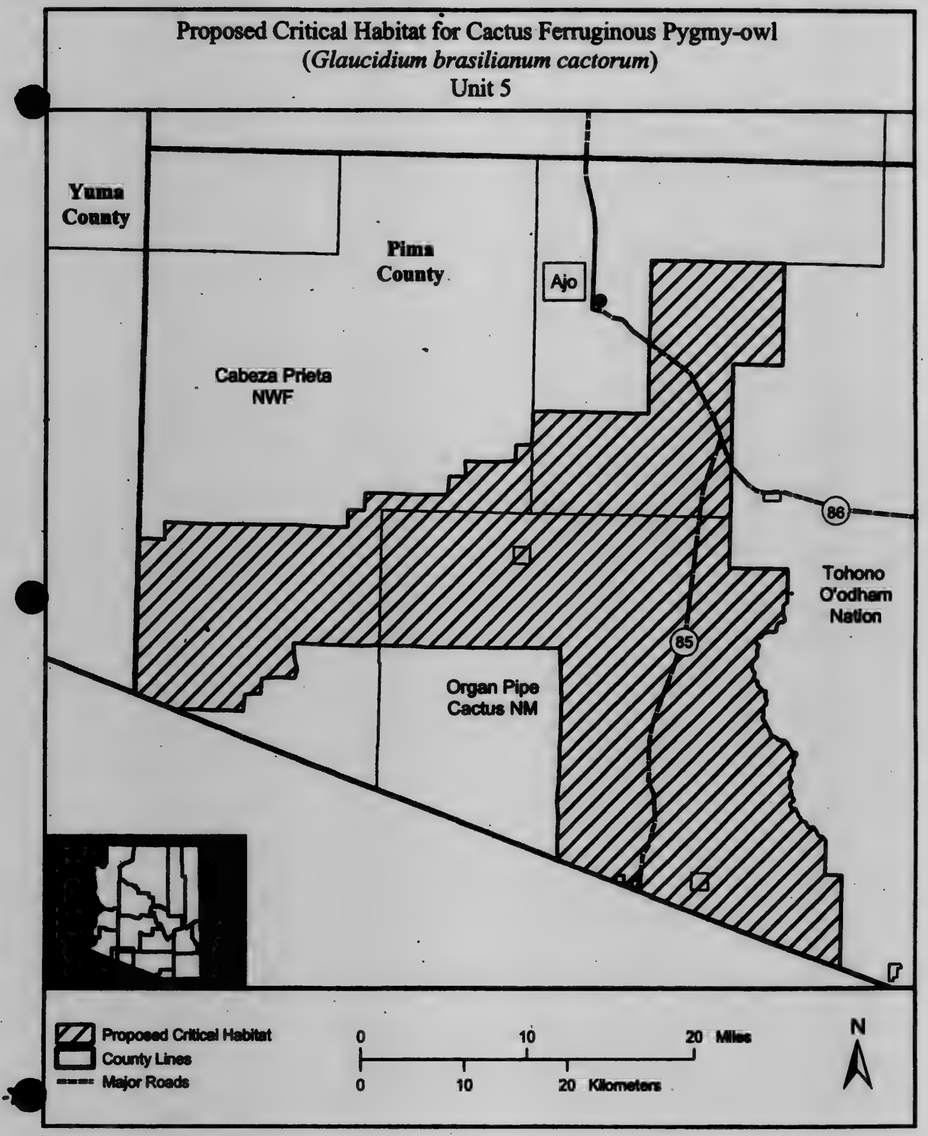
(11) Unit 5. Pima County, Arizona. From BLM Gila Bend, Ariz., 1981; Ajo, Ariz., 1980; Dateland, Ariz., 1980; Cabeza Prieta Mountains, Ariz., 1980; and USGS Lukeville, Ariz.—Sonona,

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1994 and Quitobaquito Hills, Ariz.—Sonora, 1994 maps.

(i) Unit 5: Gila and Salt Principal Meridian, Arizona: T. 12 S., R. 5 W., secs. 1 to 5, 8 to 17, 20 to 29, 32 to 36; T. 12 S., R. 4 W., secs. 4 to 9, 16 to 21, 28 to 33; T. 13 S. R. 7 W. sec. 36; T. 13 S., R. 6 W., secs. 19 to 36; T. 13 S., R. 5 W., secs. 1 to 5, 8 to 17, and 19 to 36; T. 14 S., R. 10 W., secs. 25 to 28, 32 to 36, and the portions of sec. 31 within Pima County, Arizona; T. 14 S., R. 9 W., secs. 25 to 36; T. 14 S., R. 8 W., secs. 13 to 16 and 20 to 36; T. 14 S., R. 7 W., secs. 1 to 4, and 8 to 36; T. 14 S., R. 6 W., secs. 1 to 36; T. 14 S., R. 5 W., secs. 1 to 36; T. 15 S., R. 10 W., secs. 1 to 5, 8 to 17, 20 to 29, 32 to 36, and those portions of secs. 6, 7, 18, 19, 30, and 31 within Pima County, Arizona; T. 15 S., R. 9 W., secs. 1 to 34; T. 15 S., R. 8 W., secs. 1 to 30; T. 15 S., R. 7 W., secs. 1 to 30; T. 15 S., R. 6 W., secs. 1 to 30 and 33 to 36; T. 15 S., R. 5 W., secs. 1 to 36; T. 15 S., R. 4 W., secs. 4 to 9, 16 to 19, 30 to 31 and those portions of 3, 10, 15, 20 to 22, 29, 32 west of the Tohono O'odham Nation boundary; T. 16 S., R. 10 W., secs. 1 to 5, 8 to 14, those portions of 15 to 18 north of Mexico, and those portions of secs. 6, 7 and 18 within Pima County, Arizona; T. 16 S., R. 9 W., secs. 3 to 8, and sec. 18; T. 16 S., R. 6 W., secs. 1 to 4, 9 to 16, 21 to 28, and 33 to 36; T. 16 S., R. 5 W., secs. 1 to 36; T. 16 S., R. 4 W., secs. 6 to 7, 17 to 20, 29 to 33, and those portions of 5, 8 to 9, 16, 21, 26 to 28, 34, 35 west of Tohono O'odham Nation boundary; T. 17 S., R. 6 W., secs. 1 to 4, 9 to 16, 21 to 28, and 35, 36, these portions of secs. 33 and 34 north of Mexico.; T. 17 S., R. 5 W., secs. 1 to 36; T. 17 S., R. 4 W., secs. 4 to 9, 16 to 22, 25 to 36, and those portions of secs. 3, 10, 11, 14, 15, 23, 24 west of Tohono O'odham Nation; T. 18 S., R. 6 W., those portions of secs. 1 to 3 within Organ Pipe Cactus N.P. and north of Mexico; T. 18 S., R. 5 W., secs, 1 to 5, 11, 12 and those portions of 6 to 10, 13 to 15 within Organ Pipe Cactus N.P. and north of Mexico; T. 18 S., R. 4 W., secs, 1 to 17, 23, 24 and those portions of secs. 18 to 22, and 25 to 28 north of Mexico; T. 18 S., R. 3 W., secs. 6, 7, 18, 19, and 30, and the portions of sec. 31 north of Mexico.

(ii) **Note:** Map of Unit 5 follows:



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Dated: November 15, 2002.

Paul Hoffman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29617 Filed 11–26–02; 8:45 am]

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Federal Register

Wednesday,
November 27, 2002

Part VI

The President

Proclamation 7630—National Family Week, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7360 of November 22, 2002

National Family Week, 2002

By the President of the United States of America

A Proclamation

Families provide a loving environment where children can flourish; and they help ensure that cultural traditions and timeless values are passed on to future generations. During National Family Week, we reaffirm the importance of families as a vital source of strength, confidence, and compassion for all of our citizens.

Strong families play a critical role in developing the character of our Nation. They teach children important standards of conduct such as accepting responsibility, respecting others, and distinguishing the difference between right and wrong. By helping America's youth to grow into mature, thoughtful, and caring citizens, families help make our communities and our Nation safer and more civilized.

Raising a child requires sacrifice, commitment, and time; and we must expand our efforts to strengthen and empower families so that they can prepare children more effectively for the challenges of adulthood. We know that by helping couples to build and sustain strong, two-parent families, we will contribute to the well-being of our children and the strength of our society. Many single parents, grandparents, and others also raise their children in difficult circumstances, and these dedicated individuals deserve our respect and support.

My Administration is firmly committed to helping our Nation's youth reach their full potential; and one of the most important ways to do this is by strengthening America's families. Earlier this year, I signed bipartisan legislation to expand the Promoting Safe and Stable Families Program, which provides States with vital resources to help families stay together and to promote adoption. The Program seeks to prevent child abuse and neglect, avoid removing children from their homes, support family reunification services, and help those children who are unable to return home by providing crucial adoption and post-adoptive services. These important resources benefit families across our Nation and hold the promise of a bright future for countless young people.

My welfare reform agenda also will strengthen families. We plan on continuing to provide historically high levels of support for childcare and child support enforcement. And we will continue to encourage strong marriages and two-parent married families as a worthy policy goal.

No marriage or family is perfect. But through education and counseling programs that our faith-based, charitable, and government communities can provide, we will support couples as they work to build and sustain healthy marriages and strive to provide a better quality of life for their children. By promoting responsible child-rearing and strong families, my Administration will work towards the goal that every child has the opportunity to grow up in a safe and loving home.

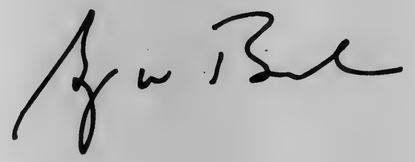
As families come together to celebrate this Thanksgiving, I encourage every member of a family in America to recognize the important role every other family member plays in making their lives whole and more complete. And as we give thanks for the love, commitment, and encouragement our families

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provide, we must recommit ourselves to strengthen our Nation by strengthening our families in ways that government never can.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 24 through November 30, 2002, as National Family Week. I invite the States, communities, and people of the United States to join together in observing this day with appropriate ceremonies and activities to honor our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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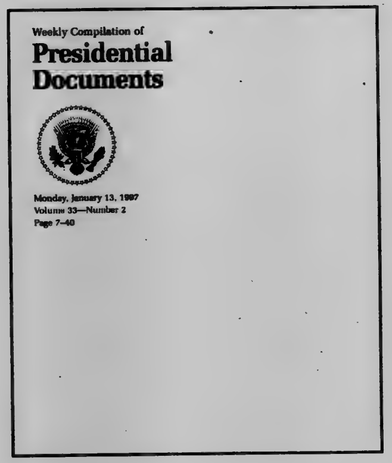
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Rules and Regulations

Federal Register
Vol. 67, No. 230
Friday, November 29, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3201

12 CFR Parts 308, 309, 310, 311, and 337

RIN 3206–AA15 and 3064–AC56

Agency Reorganization; Nomenclature Changes

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This rule addresses nomenclature changes effected by a Federal Deposit Insurance Corporation ("FDIC") internal reorganization order dated June 30, 2002. The reorganization resulted in the merger of several divisions and offices, the redesignation of two "regional" offices as "area" offices, and the abolishment of two positions in the former Office of the Executive Secretary ("OES"). The rule also addresses nomenclature changes resulting from the merger of two divisions by an internal reorganization order dated December 8, 1996. Consistent with these actions, this rule makes appropriate conforming changes in several of the FDIC's regulations in Title 12 and, with the concurrence of the Office of Government Ethics ("OGE"), in the FDIC's supplemental standards of ethical conduct regulation in Title 5. The rule also sets forth a Savings Provision in **SUPPLEMENTARY INFORMATION** that preserves, under their new names, all actions taken under the name of the former "Office of the Executive Secretary" and the former "Freedom of Information Act/Privacy Act ("FOIA/PA") Unit" of OES.

DATES: This rule is effective November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Keener, Ethics Program Manager, (202) 898–8660, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429 (Supplemental Standards of Ethical Conduct); Frederick L. Fisch, Senior Attorney, FOIA/PA Group, (202)736–0526, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429 (FOIA and Privacy Act Program); and Robert E. Feldman, Executive Secretary, (202) 898–3811, Leneta G. Gregorie, Counsel and Special Assistant to the Executive Secretary, (202) 898–3719, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429 (all other matters).

SUPPLEMENTARY INFORMATION:

Background

This rule implements the decision by the FDIC, through an internal reorganization order dated June 30, 2002, to merge OES into the Legal Division, thereby creating an Executive Secretary Section within the Supervision and Legislation Branch of the Legal Division; abolishing the positions of Deputy Executive Secretary and Assistant Executive Secretary (Ethics); and transferring program responsibility for the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a, from the FOIA/PA Unit of OES to the FOIA/PA Group of the Litigation Branch of the Legal Division. This rule, consistent with the organizational changes, makes a number of nomenclature changes in parts 308, 309, 310, 311, and 337 of title 12 of the Code of Federal Regulations. Specifically, reference to the eliminated position of Deputy Executive Secretary is deleted, and all references to the "Office of the Executive Secretary," wherever they appear in the parts 308, 311 and 337, are changed to "Executive Secretary" or "offices of the Executive Secretary," as appropriate. Similarly, references to the "Office of the Executive Secretary" and the OES "FOIA/PA Unit" in parts 309 and 310 are changed to the "FOIA/PA Group" within the Legal Division. Conforming changes also are made to: the addresses to which FOIA and Privacy Act requests and administrative appeals of responses to FOIA and Privacy Act requests are to be submitted; the identities of the persons to whom such requests and appeals are to be directed; and the telephone numbers (voice and facsimile) of the FOIA/PA Group.

This rule, with the concurrence of OGE, also makes a number of appropriate nomenclature changes to references in the FDIC's supplemental standards of conduct regulation, as codified in 5 CFR part 3201, to reflect the June 30, 2002, mergers of certain other divisions of the FDIC and, as a result, to change the names of the "Division of Supervision" and the "Division of Compliance and Consumer Affairs" to the "Division of Supervision and Consumer Protection" and the "Division of Insurance" and the "Division of Research" to the "Division of Insurance and Research". These new names more accurately reflect the breadth of the divisions' activities as a result of the reorganization.

Moreover, this rule implements those aspects of the June 30, 2002, reorganization which converted the Boston and Memphis regional offices to area offices. Consistent with the division name changes, the conversion of two regional offices to area offices, and the aforementioned abolishment of the position of Assistant Executive Secretary (Ethics), this rule makes a number of changes in part 3201 by changing all references to "Division of Supervision" and "Division of Compliance and Consumer Protection" to "Division of Supervision and Consumer Protection" and "Division of Insurance" and "Division of Research" to "Division of Insurance and Research" wherever they appear; enlarging references to "regional office" to "regional or area office" wherever it appears; designating the "Ethics Program Manager" as the FDIC's Alternate Ethics Counselor in the place of the "Assistant Executive Secretary (Ethics)"; and clarifying the credit restrictions for field office supervisors and supervisory examiners in light of their expanded areas of responsibility as the result of the reorganization. Finally, the rule implements a previous FDIC reorganization which, on December 8, 1996, merged the "Division of Depositor and Asset Services" with the "Division of Resolutions". As a result, "Division of Depositor and Asset Services" is changed to "Division of Resolutions and Receiverships" wherever it appears in part 3201.

Savings Provision

This rule shall constitute notice that all references to the Office of the

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Executive Secretary or OES in any documents, statements, or other communications, in any form or media, and whether made before or, with the exception of documents, statements, or other communications pertaining to the FOIA/PA Program, on or after the effective date of this rule, shall be deemed to be references to the Executive Secretary Section of the Legal Division. Moreover, any actions undertaken in the name of or on behalf of the Office of the Executive Secretary or OES, whether taken before or, except for actions related to the FOIA/PA Program, on or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Executive Secretary Section. This rule shall constitute further notice that, with respect to documents, statements or other communications relating to the FOIA and Privacy Act program, in any form or media, and whether made before, on or after the effective date of this rule, all references to the FOIA/PA Unit within OES shall be deemed to be references to the FOIA/PA Group within the Legal Division. Moreover, any actions undertaken in the name of or on behalf of the FOIA/PA Unit within OES, whether taken before, on or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the FOIA/PA Group within the Legal Division.

Rulemaking Requirements

1. This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

2. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under 5 U.S.C. or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable. Accordingly, this rule is issued in final form. Although there is no formal comment period, public comments on this rule are welcome on a continuing basis. Comments should be submitted to Thomas E. Nixon, FDIC Clearance Officer, Legal Division, 550 17th Street, NW., Washington, DC 20429, (202) 898–8766. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. [Fax number (202) 898–3838; Internet address *COMMENTS@FDIC.GOV*].

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics, is amending 5 CFR part 3201, and the Federal Deposit Insurance Corporation is also amending 12 CFR parts 308, 309, 310, 311, and 337, as set forth below:

5 CFR Chapter XXII

PART 3201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

1. The authority citation for part 3201 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a), 1822; 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502, and 2635.803.

§ 3201.101 [Amended]

2. In § 3201.101(b), remove the words "Assistant Executive Secretary (Ethics)" and add in their place the words "Ethics Program Manager".

§ 3201.102 [Amended]

3. Amend § 3201.102 as follows:

a. In paragraph (b)(2)(ii), remove the words "Division of Supervision and the Division of Compliance and Consumer Affairs" and add in their place the words "Division of Supervision and Consumer Protection".

b. In the heading of paragraph (c), remove the words "employees assigned to the Division of Supervision and employees assigned to the Division of Compliance and Consumer Affairs" and add in their place the words "employees assigned to the Division of Supervision and Consumer Protection".

c. In paragraph (c)(1)(ii), remove the words "regional office" and "employee's region" and add in their place the words "regional or area office" and "employee's region or area", respectively, and remove the word "and" at the end of the paragraph.

d. In paragraph (c)(1)(iii), remove the period at the end and add in its place a semicolon followed by the word "and".

e. Add a new paragraph (c)(1)(iv) to read as follows:

§ 3201.102 Extensions of credit from FDIC-insured depository institutions.

* * * * *

(c) * * *

(1) * * *

(iv) For a field office supervisor and supervisory examiner, credit extended by an FDIC-insured State nonmember bank headquartered outside the field office supervisor's and supervisory examiner's respective official territories of assignment through the use of a credit card on the same terms and conditions as are offered to the general public.

* * * * *

f. In paragraph (c)(2), remove the words "Division of Supervision, the Director of the Division of Compliance and Consumer Affairs", "Division of Supervision, or the Director of the Division of Compliance and Consumer Affairs", and "Division of Supervision and the Division of Compliance and Consumer Affairs" and add in their place the words "Division of Supervision and Consumer Protection", in each instance.

g. In paragraph (d)(2), remove the words "Division of Insurance" and add in their place the words "Division of Insurance and Research".

h. In the heading of paragraph (e) and in paragraph (e)(2), remove the words "Division of Depositor and Asset Services" and add in their place the words "Division of Resolutions and Receiverships".

§ 3201.109 [Amended]

4. In § 3201.109(a), remove the words "Division of Supervision or Division of Compliance and Consumer Affairs" and add in their place the words "Division of Supervision and Consumer Protection".

12 CFR Chapter III

PART 308—RULES OF PRACTICE AND PROCEDURE

5. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831o, 1831p-1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3 and 78w; 6801(b), 6805(b)(1), 28 U.S.C. 2641 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

§ 308.102 [Amended]

6. In § 308.102(b)(2), remove the words "Executive Secretary, Deputy Executive Secretary or the Assistant Executive Secretary (Operations)" and add in their place the words "Executive Secretary and Assistant Executive Secretary".

PART 309—DISCLOSURE OF INFORMATION

7. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819 "Seventh" and "Tenth".

§ 309.5 [Amended]

8. Amend § 309.5 as follows:

a. In paragraph (b)(1), remove the words "Office of the Executive Secretary" and add in their place the words "Freedom of Information Act/Privacy Act Group ("FOIA/PA Group"), Legal Division".

b. In paragraph (b)(1)(ii), remove the words "to (202) 898–8778" and add in their place the words "to the FOIA/PA Group: (202) 736–0547".

c. In paragraph (b)(1)(iii), remove the words "By sending a letter to the Office of the Executive Secretary, ATTN: FOIA/PA Unit," and add in their place the words "By sending a letter to: Legal Division, FDIC, ATTN: FOIA/PA Group,".

d. In paragraph (d)(1), remove the words "FOIA/PA Unit, Office of the Executive Secretary, shall" in the first sentence and add in their place the words "FOIA/PA Group, Legal Division shall"; and, in the last sentence, remove the words "Office of the Executive Secretary" and add in their place the words "FOIA/PA Group".

e. In paragraph (d)(2)(i), remove the words "Office of the Executive Secretary" and add in their place the words "FOIA/PA Group,".

f. In paragraph (d)(2)(ii), remove the words "FOIA/PA Unit" and add in their place the words "FOIA/PA Group".

g. In paragraph (f)(1)(x), remove the words "Executive Secretary" and add in their place the words "FOIA/PA Group, Legal Division".

h. In paragraph (f)(4)(ii), remove the words "Office of the Executive Secretary, FOIA/PA Unit" and add in their place the words "FOIA/PA Group, Legal Division".

i. In paragraph (h)(1), remove the words "Office of the Executive Secretary" and add in their place the words "FOIA/PA Group, Legal Division".

§ 309.6 [Amended]

9. In § 309.6(b), remove the words "Office of the Executive Secretary" wherever they appear and add in their place the words "FOIA/PA Group".

§ 309.7 [Amended]

10. Amend § 309.7 as follows:

a. In paragraph (a), remove the words "Office of the Executive Secretary" and "Office of Corporate Communications" and add in their place the words "Executive Secretary" and "Office of Public Affairs", respectively.

b. In paragraph (b), remove the words "Office of the Corporation's General Counsel" and add in their place the words "General Counsel".

PART 310—PRIVACY ACT REGULATIONS

11. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

§ 310.3 [Amended]

12. In § 310.3(b), remove the words "Office of the Executive Secretary, FOIA/PA Unit, Federal Deposit Insurance Corporation, Washington, D.C. 20429." in the first sentence and add in their place the words "Freedom of Information Act/Privacy Act Group, Legal Division ("FOIA/PA Group"), Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429."; and, in the last sentence, remove the words "FOIA/PA Unit, Office of the Executive Secretary" and add in their place the words "FOIA/PA Group".

§ 310.4 [Amended]

13. In § 310.4(a), remove the words "Office of the Executive Secretary, Records Unit" and add in their place the words "FOIA/PA Group, Legal Division".

§ 310.5 [Amended]

14. Amend § 310.5 as follows:

a. In paragraph (b), remove the words "Executive Secretary" and add in their place the words "FOIA/PA Group" in each instance.

b. In paragraph (c), remove the words "The Executive Secretary will give written notification of a reasonable period within which individuals may inspect disclosable records pertaining to themselves at the Office of the Executive Secretary" and add in their place the words "The FOIA/PA Group will give written notification of a reasonable period within which individuals may inspect disclosable records pertaining to themselves at the offices of the FOIA/PA Group".

§ 310.7 [Amended]

15. In § 310.7, remove the words "Office of the Executive Secretary, Records Unit, Federal Deposit Insurance Corporation, Washington, D.C. 20429" and add in their place the words "FOIA/PA Group, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429".

§ 310.8 [Amended]

16. In § 310.8(a), remove the words "Executive Secretary of the Corporation" in the first sentence and the words "Executive Secretary" in the second sentence and add in their place the words "Senior Attorney, FOIA/PA Group" in both instances.

§ 310.9 [Amended]

17. In § 310.9(a), remove the words "Office of the Executive Secretary," and add in their place the words "FOIA/PA Group, Legal Division,".

PART 311—RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

18. The authority citation for part 311 continues to read as follows:

Authority: 5 U.S.C. 552b and 12 U.S.C. 1819.

§§ 311.4, 311.5 and 311.8 [Amended]

19. In §§ 311.4(e), 311.5(b)(2), and 311.8(d)(2), remove the words "Office of the Executive Secretary" and add in their place the words "Executive Secretary".

20. In § 311.8(d)(1), remove the words "Office of the Executive Secretary" and add in their place the words "offices of the Executive Secretary".

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

21. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821f, 1828(j)(2), 1831, 1831f–1.

§ 337.10 [Amended]

22. In § 337.10, remove the words "Office of the Executive Secretary" and add in their place the words "Executive Secretary".

Dated: November 12, 2002.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

Approved: November 20, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–30101 Filed 11–27–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–2 IFR]

Raisins Produced From Grapes Grown in California; Temporary Suspension of a Provision, and Extension of Certain Deadlines Under the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule temporarily suspends the deadline for announcing a 2003 raisin diversion program (RDP) as specified under the Federal marketing order for California raisins (order). This rule also extends certain deadlines within the 2002–2003 crop year concerning the RDP specified in the order's regulations. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). Changes beginning with a possible 2003 RDP have been recommended by the RAC. Currently, there is a November 30 deadline for the RAC to announce a 2003 RDP. This action is needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action will also allow necessary review and evaluation of proposed provisions for such a program. The December 15 deadline for redemption of diversion certificates for the 2002 RDP also is extended, given the lack of sales of those certificates.

DATES: Effective: December 2, 2002. Comments received by January 28, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule temporarily suspends an order provision concerning the November 30 deadline by which the RAC must announce a RDP, and extends related deadlines specified under the order's regulations concerning the 2003 diversion program. Changes beginning with a possible 2003 RDP recently have been recommended by the RAC. This action is needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action will also allow necessary review and evaluation of proposed provisions for such a program. This rule also extends the December 15 redemption deadline for diversion certificates for the 2002 Natural (sun-dried) Seedless (NS) RDP, given the lack of sales of those certificates.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of a RDP. Accordingly, additional procedures and deadlines are specified in § 989.156.

These sections currently require the RAC to meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. The RAC conducts a lottery if the tonnage applied for exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC, and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Extension of Deadlines for 2003 Diversion Program

The California raisin and grape industries continue to be plagued by burdensome supplies and severe economic conditions. Industry members have been reviewing various options to help address some of these concerns. The RAC has also been reviewing options to help the industry address these issues through the marketing order.

At its October 15, 2002, meeting, the RAC recommended modifications to the RDP that are intended to significantly reduce the industry's oversupply and improve producer returns. Some revisions were proposed by the RAC's Executive Committee at follow-up meetings on October 24 and November 4, 2002. The RAC would like its recommended changes in effect for the 2003 diversion program. Given the November 30 deadline in the order for the RAC to announce a 2003 RDP and other deadlines in the regulations, this action is needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action will also allow necessary review and evaluation of provisions for such a program.

Specifically, the words "On or before November 30 of" in § 989.56(a) must be suspended until July 31, 2003, which is the end of the 2002–03 crop year. The November 30 date also is specified in § 989.156(a) of the order's regulations. A proviso should be added to § 989.156(a) to allow the RAC to extend this date for the 2003 diversion program to a later date during the 2002–03 crop year. Similar provisos are added to allow the RAC to extend the following dates in § 989.156 for the 2003 diversion program: the December 20 date specified in paragraph (b) whereby producers must submit applications to the RAC to participate in a RDP; the January 12 date specified in paragraph (c) whereby producers must submit corrected applications to the RAC; and the January 15 date specified in paragraph (a) whereby the RAC can allocate additional tonnage to a RDP. Section 989.56(a) and § 989.156 are modified accordingly.

Extension of Redemption Deadline for 2002 Diversion Program

Section 989.156(k) of the order's regulations specifies that handlers must redeem diversion certificates by December 15 of the crop year for which they were issued. The value of the free tonnage represented on NS raisin diversion certificates has historically been based on a free tonnage field price negotiated by the Raisin Bargaining Association (RBA) and industry handlers. A RBA field price has not yet been established, and most certificates have not been sold by producers. Therefore, § 989.156(k) is modified to specify that, for the 2002 NS RDP, the December 15 redemption deadline may be extended by the RAC to a later date within the 2002–03 crop year.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule temporarily suspends a provision specified in § 989.56(a) of the order regarding the November 30 deadline by which the RAC must announce a 2003 RDP, and extends related deadlines in § 989.156 applicable to the 2003 diversion program. This rule also extends the December 15 redemption deadline for 2002 RDP certificates. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. Authority for these changes to the regulations is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, the suspension of the November 30 meeting date and related extensions applicable to the 2003 diversion program are needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also will allow necessary review and evaluation of proposed provisions for such a program. Changes beginning with a possible 2003 RDP recently have been recommended by the RAC.

Extending the December 15 deadline for the redemption of 2002 NS RDP certificates is necessary, given the lack of sale of such certificates. Producers will have more time to sell their certificates to handlers, and for handlers to redeem the certificates with the RAC. Equity holders in the 2002 NS reserve pool would all benefit from the extension. Once a field price is established, more transactions regarding the RDP certificates can be completed. Producers can earn income when they

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sell the certificates to handlers. Handlers can redeem the certificates for reserve raisins. Finally, equity holders in the 2002 NS reserve pool would earn some return for the raisins allotted to the RDP.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the RDP application) has been approved previously by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

USDA is initiating this action to facilitate administration of the order and help the raisin industry through this difficult time. All interested persons are invited to submit information on the regulatory and informational impact of this action on small businesses. Additionally, a small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this rule. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, and other available information, it is hereby found that the order provision temporarily suspended does not tend to effectuate the declared policy of the Act. It is further found that the extension of the deadlines specified in this interim final rule tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in place as soon as possible because the order currently requires the RAC to meet on or before November 30, 2002, and this action would suspend this date for the remainder of the 2002–03 crop year; (2) this rule relaxes certain deadlines currently specified in the order and implementing regulations; and (3) a 60-day comment period is provided and all comments received will be considered in finalizing this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 989.56 [Suspended in part]

2. In § 989.56, paragraph (a) the words, "On or before November 30 of," are suspended effective December 2, 2002 through July 31, 2003.

3. In § 989.156, paragraph (a)(1), the first sentence in paragraph (b), the last sentence in paragraph (c), paragraph (k), and paragraph (s) are revised to read as follows:

§ 989.156 Raisin diversion program.

(a)(1) *Quantity to be diverted.* On or before November 30 of each crop year, the Committee shall announce the quantity of raisins eligible for a raisin diversion program: *Provided,* That, for the 2003 diversion program, this date may be extended by the Committee to a later date within the 2002–03 crop year. On or before January 15 of each crop year, the Committee may announce an increase in the tonnage eligible for a raisin diversion program: *Provided,* That, for the 2002 Natural (sun-dried) Seedless raisin diversion program, the Committee may announce an increase in the quantity of tonnage eligible for the program later than January 15: *And provided further,* That, for the 2003 raisin diversion program, this date may be extended by the Committee to a later date within the 2002–03 crop year. The quantity eligible for diversion may be announced for any of the following varietal types of raisins: Natural (sun-dried) Seedless, Muscat (including other raisins with seeds), Sultana, Zante Currant, Monukka, and Other Seedless raisins. At the same time the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. The factors to be reviewed by the Committee in determining allowable harvest costs shall include but not be limited to: Costs for picking, turning, rolling, boxing, paper trays, vineyard terracing, hauling to the handler, and crop insurance.

* * * * *

(b) *Application for diversion certificates.* Any producer desiring to participate in a raisin diversion program shall file with the Committee, by certified mail, prior to December 20 of the crop year, an application on Form RAC–1000, "Application for a Raisin Diversion Program" together with a copy of any two of the following four documents: Plot Map from the County Hall of Records; irrigation tax bill; county property tax bill; or any other document containing an Assessors Parcel Number: *Provided,* That, for the 2003 diversion program, this date may be extended by the Committee to a later date within the 2002–03 crop year.

* * *

(c) * * * However, such correction must be received by the Committee on or before January 12: *Provided,* That, for the 2003 diversion program, this date may be extended by the Committee to a later date within the 2002–03 crop year.

* * * * *

(k) *Redemption of certificates.* Any handler holding certificates may redeem such certificates for reserve pool raisins from the Committee. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the established harvest costs plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting raisins as specified in § 989.401 for the entire tonnage shown on the certificate. Handlers who acquire diversion certificates from producers shall report acquisitions of such certificates and submit them for redemption in a manner and for the reporting periods provided in § 989.173(b) for the acquisition of raisins acquired from producers. The Committee shall issue a reserve release entitling the handler to an amount of reserve pool raisins equal to the entire amount of tonnage shown on the certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled. Diversion certificates will only be valid and honored if presented to the Committee for redemption on or before December 15 of the crop year for which they were issued: *Provided,* That, for the 2002 diversion program for Natural (sun-dried) Seedless raisins, this date may be extended by the Committee to a later date within the 2002–03 crop year.

* * * * *

(s) *Additional opportunity for vine removal.*

The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a production unit may file an application to participate in a raisin diversion program.

(1) For the 2002 Natural (sun-dried) Seedless raisin diversion program, additional opportunity for vine removal shall be provided in accordance with paragraph (u) of this section.

(2) For raisin diversion programs applicable to the 2003 and subsequent crop years, the following provisions apply.

(i) The announced date shall be not later than May 1. The diversion certificates will be issued only for the production units from which vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion: *Provided,* That, for the 2003 diversion program, this date may be extended by the Committee to a later date within the 2002–03 crop year. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20: *Provided,* That, for the 2003 diversion program, this date may be extended by the Committee to a later date within the 2002–03 crop year. The vines shall be removed from the production units for which such applications are approved not later than June 1.

(ii) Producers who agree to remove the vines pursuant to this paragraph shall notify the Committee in advance of the date when such vines will be removed in order to allow a representative of the Committee to observe and verify such vine removal.

* * * * *

Dated: November 25, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–30355 Filed 11–26–02; 11:02 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 106, and 300

[NOTICE 2002–24]

FEC Policy Statement: Interim Reporting Procedures

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: During the transition period following the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), the Commission intends to exercise its discretion by not pursuing the political committees and other persons and entities addressed below for possible violations of the reporting statutes and regulations covered by the instructions set out in this policy statement if they fully adhere to those instructions and timely file the described reports. The limitations on the scope and duration of the policy are discussed in detail below.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel, Mr. Jonathan M. Levin, Senior Attorney, Mr. Gregory Scott, Assistant Staff Director for Information, and Ms. Debbie Chacona, Reports Analysis Division Chief of Party/Non-Party Branch, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Congress established a 90-day period during which the Commission was required to promulgate regulations implementing Title I of BCRA regarding certain national, state, and local party committee activities, including reporting of Federal election activity and certain allocable expenses. This period ended on June 25, 2002. Congress also required the Commission to complete the remaining BCRA rulemakings, including those regarding other reporting requirements, in 270 days, which is December 22, 2002. The Commission adopted final rules implementing Title I on June 25, 2002. *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule,* 67 FR 49,064 (July 29, 2002) ("Soft Money Final Rules"). The Commission has also completed four other rulemakings to implement BCRA: (1) Final Rules on Electioneering Communications, 67 FR 65190 (October 23, 2002); (2) Interim Final Rules Regarding FCC Database on Electioneering Communications, 67 FR 65212 (October 23, 2002); (3) Final Rules on Reorganization of Regulations on Contributions and Expenditures, 67 FR 50582 (August 5, 2002); and (4) Final Rules on Contribution Limitations and Prohibitions, 67 FR 69928 (November 19, 2002). The Commission notes that other BCRA-related reporting rules (*e.g.*, electioneering communications, independent expenditures) are not yet finalized, but are expected to be before December 22, 2002, including the Consolidated Reporting Rulemaking, which the Commission is scheduled to complete on December 12, 2002. Issuance of new and revised reporting forms, software and instructions is dependent upon the finalization of all the reporting rules. However, BCRA's reporting requirements became effective on November 6, 2002. The Commission is in the process of updating its reporting forms, software, and instructions to incorporate all the new regulations, and will need a period of time after December 22, 2002, to complete this process. In the interim, filers will continue to use existing disclosure forms and software for their December 5th Post General Election Report, January 31st Year End Report and, for monthly filers only, the February Monthly Report, which covers January 2003.

BCRA introduced new reporting responsibilities for political party committees and other reporting entities and significantly changed certain existing requirements. Among the significant changes introduced by BCRA are the reporting by State, district, and local party committees of Federal election activities ("FEA"), including the allocation of some of those activities between Federal funds and "Levin" funds, and revisions in those committees' allocations of payments between Federal and non-Federal funds. *See* 11 CFR 300.2(i), 300.36, 106.7, and 104.17. In addition, BCRA introduced provisions for Federal candidates and their committees with respect to candidate funding of his or her own campaign in the form of the "millionaires provision" and provisions for reporting by individuals and entities making electioneering communications. *See* 2 U.S.C. 434(a)(6)(B), 434(f), and 441a–1(b).

As new forms are now being developed to meet the new requirements, the Commission concludes that a period of transition and adjustment with respect to reporting is needed, including allowance for the continued use of the ballot composition formula in the Post-General and Year End Reports. To assist filers during this transition period, the Commission has developed the interim disclosure

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procedures set forth below.[1] These procedures address BCRA-related transactions not contemplated by the existing reporting forms and filing software. Questions concerning these procedures may be directed to the FEC's Information Division, Reports Analysis Division or Electronic Filing Office, as appropriate.

Hence, the Commission intends to exercise its discretion by not pursuing the committees and other persons and entities addressed below for possible violations of the reporting statutes and regulations covered by the instructions set out in this policy statement if the filers fully adhere to those instructions and timely file the reports.

Interim Reporting Procedures

Interim Disclosure Procedures for State, District and Local Party Committees

1. Reporting Allocable Administrative and Generic Voter Drive Expenses (that are not Federal Election Activity (FEA)) for November and December 2002

For the December 5th Post General Election report and the January 31st Year End report *only*, state, district and local party committees may continue to allocate administrative and generic voter drive expenses according to the ballot composition ratio for the 2001–2002 election cycle. Committees should report this activity just as they always have: payments should be disclosed on Schedule H4, and transfers from the nonfederal account should appear on Schedule H1. Committees need not submit a new Schedule H1.

2. Reporting Allocable Exempt Activities (that are not FEA) for November and December 2002

For the December 5th Post General Election report and the January 31st Year End report *only*, state, district and local party committees may continue to allocate payments for exempt activities based on the time or space devoted to federal candidates, as compared to the time or space of the entire communication. Committees should report this activity just as they always have: payments should be disclosed on Schedule H4, and transfers from the nonfederal account should appear on Schedule H3.

[1] These procedures also apply to filers involved in special elections held during this period, including the November 30 and January 4 special elections in Hawaii. Those filers should pay special attention to the instructions for disclosing "Federal Election Activity" (defined in 11 CFR 100.24) and "Electioneering Communications" (defined in 11 CFR 100.29), since both are triggered by proximity to an election. *See* 11 CFR 300.33, 300.36, and proposed 104.20.

3. Reporting Receipts of "Levin Funds"

- Paper Filers:

—Using a separate Schedule A, itemize each receipt (regardless of amount) as a memo entry. Do not include these receipts in totals or on the Detailed Summary Page.
—IMPORTANT: Label the Schedule A "Levin funds."
—Disclose total "Levin fund" receipts as a lump sum in a cover memo attached to the report.

- E-Filers:

—On a Schedule A, itemize each receipt (regardless of amount) as a memo entry. These receipts will not be included in totals or on the Detailed Summary Page.
—IMPORTANT: Use the text entry description field to label the receipt as "Levin funds"
—Disclose total "Levin fund" receipts as a lump sum using a text record.

Note: During the transition period, the Commission will allow committees to amend reports to disclose as Levin funds receipts that were not initially disclosed as such. The Commission plans to address this issue more broadly when it finalizes the reporting and filing procedures for BCRA in 2003.

4. Reporting Disbursements for Non-Allocable (100% federal) "Federal Election Activities" (i.e., Public Communications and Certain Salary Payments)

- Paper Filers:

—Use a separate Schedule B labeled "FEA—100% Federal" to disclose each disbursement, regardless of amount.
—Adjust the totals on the completed Detailed Summary Page by adding the total "FEA—100% Federal" to line 31 "Total Federal Disbursements."

- E-Filers:

—Using Schedule B as a model, submit a Form 99 (miscellaneous text submission) labeled "FEA—100% Federal" disclosing for each disbursement, regardless of amount:
  - The name of the committee;
  - The name, mailing address, city, state and zip code for each payee;
  - The date and amount; and
  - The purpose of the disbursement.
—To account for these disbursements on your regular report (*e.g.*, 2002 Year End Report), adjust the cash on hand figure on line 8 of the Summary Page.
—Examples of these transactions in FECFile are available on the Commission's BCRA web page at *http://www.fec.gov/pages/bcra/bcra_update.htm.*

5. Reporting the Allocation Formula for Paying Allocable "Federal Election Activities," if any, Conducted in 2002

Use the table below to determine the appropriate formula for allocating "Federal Election Activities," if any, conducted between November 6, 2002, and December 31, 2002.

2002 Races on general election ballot	Federal percentage
A Senate candidate was on the ballot in my state in the 2002 General election.	21% Federal
A Senate candidate was not on the ballot in my state in the 2002 General election.	15% Federal

- Paper Filers

—Attach a cover letter, labeled "H1–FEA," to disclose the applicable federal percentage for allocable "federal election activity."

- E-Filers

—Add a text record, labeled "H1–FEA," to disclose the applicable federal percentage for allocable "federal election activity."

6. Reporting the Allocation Formula Used for Paying Allocable "Federal Election Activities" and for Administrative Expenses and the Cost of Generic Voter Drives, as of January 1, 2003

Use the table below to determine the appropriate allocation formula to use on or after January 1, 2003.

2004 Races on general election ballot	Federal percentage
Presidential and Senate candidates will *both* be on the ballot in my state in the next regular federal general election.	36% Federal
Presidential candidate, but not a Senate candidate, will be on the ballot in my state in the next regular federal general election.	28% Federal

On the first report disclosing 2003 activity (*e.g.*, February 20th Monthly Report):

- Paper Filers

—Attach a cover letter, labeled "H1–FEA," to disclose the applicable federal percentage for allocable "federal election activity."
—Do *not* use the current version of Schedule H–1.

- E-Filers

—Add a text record, labeled "H1–FEA," to disclose the applicable federal percentage for allocable "federal election activity."

7. Reporting Disbursements for "Federal Election Activities" Allocated Between Federal Funds and "Levin Funds"

- Paper Filers

—Using Schedule H4 as a model, submit a cover letter labeled "H6–Shared FEA," disclosing:
  - The name of the committee;
  - The name, mailing address, city, state and zip code for each payee;
  - The date of each transaction;
  - The category of federal election activity (*e.g.*, voter registration);
  - The year-to-date total for the activity;
  - The purpose of disbursement;
  - The federal share of each expense;
  - The "Levin fund" share of each expense; and
  - The combined federal/Levin total for each entry.
—As on Schedule H4, multiple entries may appear on each page, and should be subtotaled by page and totaled on the last page.
—Adjust the totals on the *completed* Detailed Summary Page by:
  - Adding the combined federal and Levin fund total from the last page to the total for line 30 "Total Disbursements;" and
  - Adding the total federal share from the last page to the total for line 31 "Total Federal Disbursements."

- E-Filers

—Using Schedule H4 as a model, submit a Form 99 (miscellaneous text submission) labeled "H6–Shared FEA," disclosing:
  - The name of the committee;
  - The report to which the activity relates (*e.g.*, 2002 Year End Report);
  - The name, mailing address, city, state and zip code for each payee;
  - The date of each transaction;
  - The category of federal election activity (*e.g.*, voter registration);
  - The year-to-date total for the activity;
  - The purpose of disbursement;
  - The federal share of each expense;
  - The "Levin fund" share of each expense; and
  - The combined federal/Levin total for each entry.
—As on Schedule H4, multiple entries may appear on each page of the H6, and should be subtotaled by page and totaled on the last page.
—To account for these disbursements on your regular report (*e.g.*, 2002 Year End Report), adjust the cash on hand figure on line 8 of the Summary Page.
—Examples of these transactions in FECFile are available on the Commission's BCRA Web page at *http://www.fec.gov/pages/bcra/bcra_update.htm.*

8. Reporting Transfers of "Levin Funds" Into the Federal Account for Shared "Federal Election Activity"

- Paper Filers:

—Using Schedule H3 as a model, submit a cover letter labeled "H5–Transfers of Levin Funds for Shared FEA," disclosing:
  - The name of the committee;
  - The name of the account (*i.e.*, "Levin");
  - The date of the transfer; and
  - The categorical breakdown of the transfer received on that date (*e.g.*, total voter registration, total GOTV, etc.).
—As on Schedule H3, transfers must be segregated by date on the H5. It is permissible, however, to include transfers occurring on multiple dates on each page, as long as they are segregated by date.
—Aggregate transfers by category should appear at the bottom of the last page of H5.
—Adjust the totals on the *completed* Detailed Summary Page by adding the combined Levin fund transfers to the total for line 19 "Total Receipts."
—Do *not* adjust the total for line 20 "Total Federal Receipts."

- E-Filers

—Using Schedule H3 as a model, submit a Form 99 (miscellaneous text submission) labeled "H5–Transfers of Levin Funds for Shared FEA," disclosing:
  - The name of the committee;
  - The name of the account (*i.e.*, "Levin");
  - The report to which the activity relates (*e.g.*, 2002 Year End Report);
  - The date of the transfer; and
  - The categorical breakdown of the transfer received on that date (*e.g.*, total voter registration, total GOTV, etc.).
—As on Schedule H3, transfers must be grouped by date on the H5. However, unlike H3, it is permissible to include transfers occurring on multiple dates on a single page, so long as the transfers remain grouped by date.
—Total Levin fund transfers by category should appear at the bottom of the last page of H5.
—To account for these receipts on your regular report (*e.g.*, 2002 Year End Report), adjust the cash on hand figure on line 8 of the Summary Page.
—Examples of these transactions in FECFile are available on the Commission's BCRA web page at *http://www.fec.gov/pages/bcra/bcra_update.htm.*

Interim Disclosure Procedures for Federal Candidates and Campaign Committees

1. Additional Registration Information Pursuant to the "Millionaires Provision"

All candidates seeking election to federal office on/after January 1, 2003, must provide an e-mail address, a fax number and a declaration of intent to expend personal funds.

- Paper Filers:

—Attach a cover memo to FEC Form 2, Statement of Candidacy, disclosing an e-mail address, a fax number and a declaration of intent to expend personal funds.
- The declaration should read: "With respect to this election, I intend to expend personal funds totaling [*fill in amount*]."

- E-Filers:

—Include with Form 2, Statement of Candidacy, a text record disclosing an e-mail address, a fax number and a declaration of intent to expend personal funds.
- The declaration should read: "With respect to this election, I intend to expend personal funds totaling [*fill in amount*]."

Interim Disclosure Procedures for Other Types of Filers

1. 24-Hour Notice of "Electioneering Communications"

E-mail or fax a report to the FEC disclosing:
- Name, address, occupation and name of employer or principal place of business of the individual or person making the communication;
- Name, address, occupation and name of employer or principal place of business of any person sharing or exercising control over the person making the communication;
- Name, address, occupation and name of employer or principal place of business of the custodian of the books and accounts from which the disbursements for the communication was made;
- If the person making the communication pays for it exclusively from a segregated bank account, the name and address of persons who donate $1,000 or more to that account, including the date and amount of those donations;
- If the person making the communication does not pay for it exclusively from a segregated bank account, the name and address of persons who donate $1,000 or more to the person making the communication (regardless of whether those funds are

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used to finance the communication), including the date and amount of those donations;

- Disbursements of more than $200, including the name and address of the payee, date, amount and purpose of the disbursement, the name of the federal candidate, and the election identified in the communication;
- Total donations received and disbursements made in this report;
- Aggregate disbursements year-to-date;
- The disclosure date (*i.e.*, the date when the communication was first publicly distributed); and
- The following statement: "Under penalty of perjury, I certify that this report is true, correct and complete." followed by the name/signature of the person making that statement and the date.[2]

Dated: November 22, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–30265 Filed 11–27–02; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702, 741 and 747

Prompt Corrective Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Pursuant to Congressional mandate, the National Credit Union Administration (NCUA) adopted a comprehensive system of prompt corrective action consisting of minimum capital standards and corresponding remedies to restore the net worth of federally-insured credit unions. After six quarters of implementation, the NCUA Board issued a proposed rule consisting of revisions and adjustments intended to improve and simplify the system of prompt corrective action. As revised to reflect public comments, the NCUA Board now issues a final rule incorporating these improvements.

DATES: Effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: *Legal:* Steven W. Widerman, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke St., Alexandria, VA 22314. Telephone: 703/518–6557; *Technical:* Jon Flagg, Loss/Risk Analysis Officer, Office of Examination and Insurance, at the address above. Telephone: 703/518–6378.

[2] Submission of false, erroneous or incomplete information may subject the person signing this report to the penalties of 2 U.S.C. 437g.

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The following acronyms are used throughout:

CUMAA Credit Union Membership Access Act
DSA Discretionary Supervisory Action
MBL Member Business Loan
MSA Mandatory Supervisory Action
NWRP Net Worth Restoration Plan
OCA Other Corrective Action
PCA Prompt Corrective Action
RBNW Risk-Based Net Worth
RBP Revised Business Plan
RMC Risk Mitigation Credit

Throughout the Supplementary Information section, citations to part 702 refer to the current version of 12 CFR 702 *et seq.* (2002) and are abbreviated to the section number only.

A. Background

1. Development of Part 702

In 1998, Congress enacted the Credit Union Membership Access Act ("CUMAA"), Pub. L. 105–219, 112 Stat. 913 (1998). CUMAA amended the Federal Credit Union Act ("the Act") to require NCUA to adopt by regulation a system of "prompt corrective action" ("PCA") consisting of minimum capital standards and corresponding remedies to improve the net worth of federally-insured "natural person" credit unions. 12 U.S.C. 1790d *et seq.* In February 2000, the NCUA Board adopted part 702 and subpart L of part 747, establishing a comprehensive system of PCA that combines mandatory supervisory actions prescribed by statute with discretionary supervisory actions developed by NCUA, all indexed to five statutory net worth categories. 65 FR 8560 (Feb. 18, 2000).

Subpart A of part 702 consists of standards for calculating a credit union's net worth and classifying it among five statutory net worth categories. 12 CFR 702.101–108. Also included in subpart A is a separate risk-based net worth ("RBNW") component that applies to non-"new" credit unions, § 702.102(a)(1)–(2), that satisfy minimum RBNW and asset size requirements, § 702.103, and whose portfolios of assets and liabilities carry above average risk exposure. § 702.104; 65 FR 44950 (July 20, 2000). Subpart B combines mandatory and discretionary supervisory actions indexed to the five categories, as well as PCA-based conservatorship and liquidation. §§ 702.201–206. Subpart C consists of a system of PCA for "new" credit unions. §§ 702.301–307. Subpart D prescribes reserve accounts, requirements for full and fair disclosure of financial condition, and prerequisites for paying dividends consistent with the earnings retention requirement in subpart B. §§ 702.401–403. In addition to these substantive provisions, subpart L of part 747 established an independent review process allowing affected credit unions and officials to challenge PCA decisions. 12 CFR 747.2001 *et seq.* (2000).

Part 702 and subpart L of part 747 were effective August 7, 2000, and first applied to activity in the fourth quarter of 2000 as reflected in the Call Report for that period. The RBNW component of part 702 was effective January 1, 2001, and first applied (for quarterly Call Report filers) to activity in the first quarter of 2001 as reflected in the Call Report for that period.[1]

At the conclusion of the initial PCA rulemaking process, the NCUA Board directed the "PCA Oversight Task Force" (a working group consisting of NCUA staff and State regulators) to review at least a full year of PCA implementation and recommend necessary modifications. 65 FR at 44964. This final rule is the result of those recommendations, as modified to reflect public comments. The final rule takes effect January 1, 2003, and first applies to activity in the first quarter of 2003 as reflected in the Call Report for that period.

[1] Part 702 has since been amended twice—once to incorporate limited technical corrections, 65 FR 55439 (Sept. 14, 2000), and once to delete sections made obsolete by the adoption of a uniform quarterly schedule for filing Call Reports regardless of asset size. 67 FR 12459 (March 19, 2002).

2. Where Credit Unions Stand Today

a. *Net worth classification.* As of June 30, 2002, federally-insured credit unions are classified as follows within the PCA net worth categories:

TABLE A – NET WORTH CLASSIFICATION OF NON-"NEW" FICUS

Statutory net worth category	*Net worth ratio*	*# of non-"new" FICUs*	*Percent of all non-"new" FICUs*
"Well Capitalized"	7% or greater	9382	96.49%
"Adequately Capitalized"	6% to 6.99%	231	2.38%
"Undercapitalized"	4% to 5.99%	83	0.85%
"Significantly Undercapitalized"	2% to 3.99%	17	0.17%
"Critically Undercapitalized"	Less than 2%	10	0.10%

TABLE B – NET WORTH CLASSIFICATION OF "NEW" FICUS

"New" net worth category	*Net worth ratio*	*# of "new" FICUs*	*Percent of all "new" FICUs*
"Well Capitalized"	7% or greater	45	49.45%
"Adequately Capitalized"	6% to 6.99%	12	13.19%
"Moderately Capitalized"	3.5% to 5.99%	20	21.98%
"Marginally Capitalized"	2% to 3.49%	8	5.49%
"Minimally Capitalized"	0% to1.99%	7	7.69%
"Uncapitalized"	Less than 0%	2	2.20%

b. *RBNW requirement.* As of June 30, 2002, 448 federally-insured credit unions—4 percent of the total—were required to meet an RBNW requirement. Of these, 446 met the requirement using the "standard calculation." § 702.106. The two that failed under the "standard calculation" succeeded in meeting their RBNW requirements using the "alternative components." § 702.107. To date, no credit union has completely failed its RBNW requirement, and no credit union has applied for a "risk mitigation credit." § 702.108.

3. Comments on Proposed Rule

On June 4, 2002, NCUA issued a proposed rule consisting of revisions and adjustments intended to improve and simplify the system of PCA. 67 FR 38431 (June 4, 2002). By the close of the comment period for the proposed rule, August 5, 2002, NCUA received 26 comment letters. Comments were received from seven federal credit unions, four state credit unions, eight state credit union leagues, two credit union industry trade associations, an association of state credit union supervisors, two banking industry trade associations, and a Federal Home Loan Bank. Nearly all of the comments supported the series of proposed revisions and adjustments to part 702.

This rulemaking will not address the few comments that suggested modifications to part 702 that exceed the scope of NCUA's statutory authority or that are completely unsupported. Comments on the concept of "safe harbor" approval of a net worth restoration plan are addressed in a separate proposed rule found elsewhere in this volume of the **Federal Register**. All other comments are analyzed generally in section B. below.

B. Section-by-Section Analysis of Final Rule

Part 702—Prompt Corrective Action

1. Section 702.2—Definitions

a. *Dividend.* Subpart D of part 702 sets various restrictions and requirements regarding the payment of dividends to members. §§ 702.403, 702.401(d), 702.402(d)(5). To extend these restrictions and requirements to interest that many State-chartered credit unions pay on shares and deposits, the proposed rule introduced a definition of "dividend" that included "a payment of interest on a deposit by a State-chartered credit union." 67 FR at 38433. While one commenter supported the definition as proposed, two others pointed out that State-chartered credit unions pay interest on non-share deposits pursuant to a contractual obligation, and that restricting the payment of interest would cause a credit union to breach its deposit contract with the member. By comparison, dividends paid on shares entail no such contractual obligation. NCUA concurs with the commenters' point. Accordingly, the final rule omits the proposed definition of "dividends" and, further, eliminates the reference to "interest" in the discretionary supervisory action ("DSA") restricting the payment of dividends. §§ 702.202(b)(3), 702.203(b)(3), 702.204(b)(3). As a result, the term "dividends" as used in part 702 excludes only those payments on shares and deposits that meet a statutory or other legal definition of contractual interest, regardless of the label a credit union gives to such payments.

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b. *Senior executive officer.* Part 702 neglected to define who is a "senior executive officer" for purposes of the DSAs that authorize dismissing "a director or senior executive officer," §§ 702.202(b)(7), 702.203(b)(8), 702.204(b)(8); hiring of a "qualified senior executive officer," §§ 702.202(b)(8), 702.203(b)(9), 702.204(b)(9); and limiting compensation paid to a "senior executive officer," §§ 702.203(b)(10), 702.204(b)(10). *See also* 12 CFR 747.2004(a) (review of dismissal of senior executive officer). To correct this oversight, NCUA proposed incorporating by reference the definition of a "senior executive officer" in 12 CFR 701.14(b)(2). 67 FR at 38433. Apart from a misquotation in the preamble to the proposed rule, the sole commenter supported the proposed definition. Accordingly, the final rule adds a new subsection (i) to § 702.2 that incorporates by reference the definition of "senior executive officer" in 12 CFR 701.14(b)(2).

c. *Total assets.* The "average quarterly balance" definition of "total assets" was ambiguous as to whether the phrase "[t]he average of quarter-end balances of the four most recent calendar quarters," § 702.2(j)(1)(i), refers to the four consecutive quarters *preceding* the then-current quarter, or to the then-current quarter *plus* the preceding three consecutive quarters. The proposed rule revised the definition to adopt the latter meaning. 67 FR at 38433. Apart from a misquotation in the preamble to the proposed rule, the two comments on the definition favored the latter meaning. Accordingly, the final rule redefines the "average quarterly balance" as the average of quarter-end balances of "the current and three preceding calendar quarters." In addition, the final rule deletes the reference to semiannual first and third quarter Call Reports from the "quarter end balance" definition of "total assets," § 702.2(l)(1)(iv), to reflect the adoption of a uniform quarterly schedule for filing Call Reports. 67 FR 12457 (March 19, 2002).

2. Section 702.101—Measures and Effective Date of Net Worth Classification

For nearly all credit unions, the effective date of net worth classification is the "quarter-end effective date"—"the last day of the calendar month following the end of the calendar quarter." § 702.101(b)(1). Occasionally, however, an interim effective date between quarter-ends applies instead because "the credit union's net worth ratio is recalculated by or as a result of its most recent final report of examination." § 702.101(b)(2). This typically results when an NCUA examination that takes place after the quarter-end effective date discloses that the credit union erred in calculating its net worth ratio and the corrected ratio puts it in a different net worth category. In that case, the date the credit union receives the final examination report becomes the new effective date of classification to the proper net worth category.

Several flaws have made it difficult to implement subsection (b)(2). First, it extended to instances where there was no error or misstatement in calculating net worth, but rather, data or conditions simply had changed since the date of the Call Report (which would be reflected in the next quarter's Call Report). Second, notice to the credit union to correct its net worth ratio had to await the "most recent report of final examination" even when an earlier supervision contact disclosed a calculating error or misstatement. Third, postponing such notice may deprive the credit union of the opportunity to take corrective action sooner. To rectify these flaws, the proposed rule revised subsection (b)(2) to define the effective date of classification to a "corrected net worth category" as "the date the credit union receives subsequent written notice . . . of a decline in net worth category due to correction of an error or misstatement in the credit union's most recent Call Report." 67 FR 38434. NCUA received three comments on this section, all favoring these revisions. Therefore, the final rule adopts them as proposed.

3. Section 702.106—Standard Calculation of RBNW Requirement

The proposed rule suggested no modifications to the standard component for "member business loans outstanding" ("MBLs"). § 702.106(b). However, one commenter contended that the 12.25 percent risk-weighting threshhold in that component was arbitrarily based on CUMAA's restriction on member business lending, 12 U.S.C. 1757a(a)(2), and proposed that the threshhold be increased to 25 percent. After considering this suggestion, the NCUA Board has determined that the existing 12.25 percent threshold warrants reconsideration in connection with its review of the current MBL regulation, 12 CFR 723. Pending reconsideration, a credit union has two alternatives if it finds that the 12.25 percent threshhold distinguishes risk weightings among MBLs imprecisely. First, to resort to the corresponding alternative component for MBLs, § 702.107(b), which measures finer increments of risk among fixed- and variable rate MBLs. And second, to seek a risk mitigation credit, § 702.108, to moderate the impact of the standard risk-weightings. Accordingly, the existing 12.25 percent threshold is retained at this time.

4. Section 702.107—Alternative Components for Standard Calculation

a. *Alternative component for long-term real estate loans callable in 5 years or less.* For long-term real estate loans, part 702 features both a "standard component" and an "alternative component" for the RBNW calculation. §§ 702.106(a), 702.107(a). The longer the maturity of the loan, the greater the interest rate risk and credit risk exposure, justifying a correspondingly greater risk-weighting. *See* 65 FR at 44960–44961. Both components scheduled loans by contractual maturity date regardless whether there is a "call" feature permitting the lender to redeem the loan before the maturity date. The NCUA Board declined to propose scheduling "callable" loans by "call" date, rather than by maturity date, for reasons explained in the proposed rule. 67 FR at 38435. Instead, the NCUA Board suggested than an offsetting risk mitigation credit under § 702.108 was well suited to recognize when a credit union's program and history of efficiently exercising "call" options truly mitigates risk.

Six commenters objected that the NCUA Board's position denies them a reduced risk-weighting even though a "call" feature gives them the flexibility to shorten the term of real estate loans, thereby mitigating interest rate risk, and credit risk due to deterioration of the borrower's ability to repay or the collateral's value. One commended the "call" feature as a risk management tool. Another advocated allowing use of the "call" date, in lieu of the maturity date, on a credit union-by-credit union basis. And finally, a commenter recommended categorizing "callable" and non-"callable" loans separately and assigning lower risk weightings to the "callable" category to reflect its reduced interest rate risk. In light of these comments, the NCUA Board has reconsidered its position and now recognizes that a "call" feature, when exercised in good faith, provides some measure of risk mitigation for real estate loans.[2]

[2] The alternative component for MBLs continues to categorize MBLs by fixed- and variable-rate and then schedules the loans in each category for risk-weighting by remaining maturity. § 702.107(b). The NCUA Board is not scheduling MBLs by "call" date at this time out of concern for credit risk upon exercise of the "call" feature. However, this issue also may receive further consideration in connection with NCUA's review of the current MBL regulation, 12 CFR.

Accordingly, the final rule expands the existing alternative component for "long-term real estate loans" to add a separate schedule for loans that are "callable" within a maximum period of 5 years. § 702.107(a)(2). The schedule consists of three maturity buckets that correspond to the buckets in the non-"callable" schedule. *See* new Table 5(a) and new Appendixes C in rule text below. A loan that is "callable" within 5 years, and that has remaining maturity of less than 5 years, receives the same six percent risk-weighting that the existing alternative component gives to a non-"callable" loan with a remaining maturity of less than 5 years. A loan that is "callable" within 5 years, and that has a remaining maturity of more than 5 years, receives a risk weighting that is two percentage points lower than the weighting for the corresponding non-"callable" maturity bucket. To qualify for the "callable" schedule, the "call" feature must be contractually specified in the loan documents and the credit union must maintain records documenting the breakdown of "callable" loans by maturity bucket.

b. *Alternative component for loans sold with recourse.* The standard component for loans sold with recourse assigns a uniform risk-weighting of 6 percent to the entire balance, § 702.106(f), regardless whether it includes loans sold with only *partial* recourse against the seller. Since part 702 was adopted, recourse loan activity among credit unions has nearly doubled, and loan programs have emerged that contractually limit the extent of the purchaser's recourse to the seller.[3] Thus, credit unions have gained the ability to cap their credit risk exposure from the sale of recourse loans.

In view of these developments, the proposed rule added a fourth alternative component to § 702.107 that would allow variable risk-weighting according to the actual credit risk exposure of loans sold with a contractual recourse obligation of less than 6 percent. 67 FR at 38434. The proposed alternative component is the sum of two risk-weighting buckets. The first bucket consists of the balance of loans sold with contractual recourse obligations of six percent or greater; it is risk-weighted at a uniform six percent. § 702.107(d)(1). The second bucket consists of the balance of loans sold with contractual recourse obligations of less than six percent; it is risk-weighted according to the weighted average recourse percent of its contents, as computed by the credit union.[4] § 702.107(d)(2); *see* new Table 5(d) and new Appendixes F and G in rule text below. Eight comments addressed the proposed "alternative component" for loans sold with recourse, all supporting it. Therefore, the final rule adopts the new alternative component in § 702.107(d) as proposed.

c. *Alternative component for short-term government obligations.* Although the proposed rule did not reference government obligations, a single commenter proposed an alternative component for government obligations with maturity of one year or less. Under the proposal, these obligations, up to a total equivalent to 25 percent of a credit union's total assets, would receive a zero risk weighting. The NCUA Board is unsympathetic to this proposal because the existing standard component for "investments" gives a risk-weighting of three 3 percent-half the six percent risk weighting assigned to average risk assets—to government obligations with a maturity of one year or less. § 702.106(c)(1). Government obligations are not completely risk free, as a zero risk-weighting suggests. On the contrary, they carry interest rate risk and transaction risk that justify a three percent risk weighting. Accordingly, the commenter's proposal is not adopted.

5. Section 702.108—Risk Mitigation Credit

Part 702 permits a credit union that fails an applicable RBNW requirement under both the "standard calculation" and the "alternative components" to apply for a "risk mitigation credit" ("RMC"). § 702.108(a). If granted, an RMC will reduce the RBNW requirement that must be met.[5] But NCUA will not consider an application for this relief until after the effective date that a credit union fails its RBNW requirement. *Submission Guidelines* § I.3. This forces a failing credit union to remain classified "undercapitalized" while its RMC application is pending, *id.* §§ I.4, I.8, even when it reasonably expects to fail because it either failed or barely passed in a preceding quarter.

To spare credit unions that are genuinely in danger of failing an RBNW requirement from the "fail first" prerequisite, the proposed rule allowed them to apply for an RMC preemptively—that is, to apply in advance of the quarter-end so that the credit union receives any RMC for which it qualifies *before* the approaching effective date when it would fail its RBNW requirement. 67 FR at 38434. As revised, § 702.108 would allow a credit union to apply for an RMC at any time before the next quarter-end effective date if on any of the current or three preceding effective dates of classification it has either failed an applicable RBNW requirement, or met it by less than 100 basis points. An RMC granted preemptively would allow a credit union genuinely at risk of failing an RBNW requirement to seamlessly maintain its initial classification as either "adequately capitalized" or "well capitalized." The nine commenters who addressed this endorsed the proposed relaxation of the RMC application prerequisites. Therefore, the final rule adopts the revisions to § 702.108 as proposed.

6. Section 702.201—PCA for "Adequately Capitalized" Credit Unions

a. *Earnings retention.* The proposed rule identified two flaws in the operation of the quarterly earnings retention requirement that applies to credit unions classified "adequately capitalized" or lower. First, that subsection (a) failed to specify that it is the dollar amount of net worth that must increase by the equivalent of 0.1 percent of assets per quarter, not the net worth ratio itself. (Changes in the net worth ratio will not match changes in the dollar amount of net worth unless net worth and total assets were to increase or decrease by exactly the same percentage.) Second, that subsection (a) technically does not allow credit unions to meet the statutory annual minimum transfer of the equivalent of 0.4 percent of total assets *on an average basis* over four quarters. As originally written, that subsection requires that the equivalent of 0.1 percent of assets be set aside in each and every quarter of the year, regardless whether the credit union has set aside more than the quarterly minimum in prior quarters.

To address both flaws, the proposed rule revised subsection (a) to specify that it is the "the dollar amount" of net

[3] For example, documentation for the loan sale transaction may provide for recourse in the form of a contractually-specified recourse obligation measured either by a designated dollar amount that is fixed for the life of the loan, or by a designated percentage of the unpaid balance of a pool of loans.

[4] To caluate the "weighted average recourse percent" of the bucket of loans sold with recourse <6%, multiply each percentage of contractual recourse obligation by the corresponding balance of loans sold with that recourse to derive the total dollars of recourse. Divide the total dollars of recourse by the total dollar balance of loans sold with <6% recourse to derive the alternative risk weighting. *See* Appendix G in rule text below.

[5] To aid credit unions seeking a "Risk Mitigation Credit," NCUA has released two publications: *Guidelines for Submission of an Application for PCA "Risk Mitigation Credit"* (NCUA form 8507) *("Submission Guidelines")* and *Guidelines for Evaluation of an Application for PCA "Risk Mitigation Credit"* (NCUA for 8508). The *Submission Guidelines* will be modified to reflect the revisions to § 702.108 adopted in this final rule.

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worth that must be increased, not the net worth ratio itself, and to permit the minimum increase to be made "either in the current quarter, or on average over the current and three preceding quarters." None of the commenters addressed these revisions. Therefore, the final rule adopts them as proposed.

b. *Decrease in retention.* Subsection (b) authorized NCUA, on a case-by-case basis, to permit a credit union to increase net worth by an amount that is less than the quarterly minimum (equivalent of 0.1 percent of assets) when necessary to avoid a significant redemption of shares and to further the purpose of PCA. § 702.201(b); 12 U.S.C. 1790d(e)(2). Since the adoption of part 702, however, some credit unions have decreased their quarterly earnings retention, either without seeking NCUA's permission at all, or prior to seeking NCUA's permission, in order to pay dividends as they deem necessary. To prevent unilateral decreases in earnings retention, the proposed rule revised subsection (b) to add the requirement that a request to decrease earnings retention must be submitted in writing no later than 14 days before the quarter end. NCUA would be under no obligation to grant applications submitted after the 14-day deadline expires or after the quarter-end. Further, NCUA would be entitled to take supervisory or other enforcement action against credit unions that either decrease their earnings retention without permission, or persist in failing to timely apply for permission.

Two commenters advocated a more flexible approach—making the application period negotiable, and accepting verbal applications after the deadline, both on a case-by-case basis. The NCUA Board continues to believe that a documented request submitted within a "bright line" time frame is necessary for two reasons. First, to give credit unions clear notice of when they must apply for a decrease. Second, to facilitate uniform discipline of credit unions that unilaterally pay dividends without advance permission to decrease their earnings retention. A third commenter objected that a request to decrease earnings retention should not be required when a credit union is operating under an approved net worth restoration plan ("NWRP") that projects quarterly earnings retention that is less than the minimum. *See* § 702.206(c)(1)(ii). In fact, a separate request for a decrease is not required under these circumstances because, as explained below, earnings retention is effectively subject to quarterly evaluation as a function of the NWRP. For these reasons, the final rule adopts the revisions to subsection (b) as proposed.

c. *Decrease by FISCU.* The requirement to "consult and seek to work cooperatively" with State officials when deciding whether a State-chartered credit union may decrease its earnings retention was originally located in § 702.205(c), where it was misidentified as a DSA. Because § 702.205(c) applies only to DSAs, the final rule relocates the "consult and work cooperatively" requirement to a new subsection (c) of § 702.201.

d. *Periodic review.* Part 702 provides that a decision permitting a decrease in earnings retention is "subject to review and revocation no less frequently than quarterly." § 702.201(b); 12 U.S.C. 1790d(e)(2)(B). In practice, the "no less frequently than quarterly" timetable is too vague to indicate when such a review must take place. To coincide with the quarterly Call Reporting schedule that drives part 702, the proposed rule added a new subsection (d) to require uniform "quarterly review and revocation," except when a credit union classified "undercapitalized" or lower is operating under an approved NWRP. NCUA received no comments on this modification.

For "adequately capitalized" credit unions (for whom earnings retention is the only MSA), quarterly review is implicit because a request to decrease earnings retention already must be renewed on a quarter-by-quarter basis. However, for credit unions classified "undercapitalized" or lower, separate quarterly review would be redundant when an approved NWRP is in place. To be approved, an NWRP must, in addition to prescribing quarterly net worth targets, § 702.206(c)(1)(i), project the amount of earnings retention, decreased as permitted by NCUA, for each quarter of the term of the NWRP. § 702.206(c)(1)(ii). Typically, approved NWRPs permit decreases in earnings retention extending for successive quarters over the term of the plan. These decreases are effectively subject to quarterly review and revocation as a function of the NWRP. A credit union that falls to a lower net worth category because it failed to implement the steps or to meet the quarterly net worth targets in its NWRP may be required to file a new NWRP, § 702.206(a)(3), thereby revoking the then-current NWRP approving future decreases in earnings retention. *See also* 12 CFR 747.2005(b)(3) (civil money penalty for failure to implement NWRP). In contrast, when a credit union *is* implementing the prescribed steps and meeting its net worth targets, there likely would be no reason to discontinue the decreased earnings retention approved in its NWRP.

Because quarterly review is effectively built-in to the NWRP, proposed new subsection (d) exempted credit unions operating under an NWRP from the quarterly review that § 702.201 imposes on "adequately capitalized" credit unions. NCUA received no comments on this exemption. Accordingly, the final rule adopts new subsection (d) as proposed.

7. Section 702.204—PCA for "Critically Undercapitalized" Credit Unions

a. *"Other corrective action".* When a credit union becomes "critically undercapitalized" (net worth ratio <2%), part 702 gives the NCUA Board 90 days in which to either place the credit union into conservatorship, liquidate it, or impose "other corrective action * * * to better achieve the purpose of [PCA]." 12 U.S.C. 1790d(i)(1); § 702.204(c)(1). NCUA so far has interpreted the option to impose "other corrective action" ("OCA") as requiring some further action in addition to complying with the steps prescribed in an approved NWRP for meeting quarterly net worth targets. Some further action would seem appropriate when a credit union either is not complying with its approved NWRP, or is implementing the prescribed action steps but still failing to achieve its quarterly net worth targets. But when a credit union has been both implementing the steps in its NWRP and timely achieving its net worth targets, demanding further action is superfluous; if not punitive. NCUA has found it difficult to fashion OCA that is more than a makeweight in these circumstances.

Congress left it entirely to the NCUA Board to "take such other action" in lieu of conservatorship and liquidation "as the Board determines would better achieve the purpose of [PCA], after documenting why the action would better achieve that purpose." 12 U.S.C. 1790d(i)(1)(b). *See also* S. Rep. No. 193, 105th Cong., 2d Sess. 15 (1998). The NCUA Board has determined that the purpose of PCA—building net worth to minimize share insurance losses—is not undermined by declining to impose OCA when it is documented that a credit union already is achieving the purpose of PCA by complying with an approved NWRP and achieving its prescribed net worth targets. In other words, there would be no reason to demand more than complete success from a credit union that, so far, is completely successful in building net worth.

To implement a more flexible approach to imposing OCA in lieu of conservatorship and liquidation, the proposed rule revised subsection (c)(1)(iii) to provide that "[OCA] may consist, in whole or in part, of complying with the timetable of quarterly steps and meeting quarterly net worth targets prescribed in an approved [NWRP]." § 702.204 (c)(1)(iii). This would permit, but not require, NCUA to limit OCA to directing a credit union that already is in compliance with its approved NWRP to simply continue to comply, without undertaking any further action beyond what the NWRP already requires. NCUA received two comments; both supported this shift in approach to implementing OCA. Accordingly, the final rule adopts revised subsection (c)(1)(iii) as proposed.

b. *10-day appeal period.* The NCUA Board's authority to decide whether to conserve a "critically undercapitalized" credit union, liquidate it, or allow OCA may be delegated only in the case of credit unions having assets of less than $5 million. 12 U.S.C. 1790d(i)(4); § 702.204(c)(4). In such cases, the credit union has a statutory "right of direct appeal to the NCUA Board of any decision made by delegated authority." *Id.* However, neither the Act nor part 741 sets a deadline by which a credit union must appeal a delegated decision to the NCUA Board. The lack of a deadline for exercising the right to appeal delegated decisions to the NCUA Board gives "critically undercapitalized" credit unions at least the appearance of an unlimited opportunity to challenge a Regional Director's decision.

To impose similar finality upon the unfolding timetable of decisions that starts when a credit union becomes "critically undercapitalized," the proposed rule revised subsection (c)(4) to set a deadline of ten calendar days in which to appeal a delegated decision. Objecting that 10 days is too few for small credit unions with unsophisticated management, the one commenter who addressed this section advocated a 30-day appeal period instead. However, the final rule adopts the proposed 10-day appeal period for two reasons. First, it parallels the 10-day window that the Act provides for seeking judicial review of any statutory conservatorship or liquidation. 12 U.S.C. 1786(h)(3), 1787(a)(1)(B). Second, a longer appeal period would unreasonably delay the payout of shares to members that must promptly follow a liquidation.

c. *Insolvent FCU.* The NCUA Board generally must liquidate a credit union eventually if it remains "critically undercapitalized." § 702.204(c). Independently of PCA, however, the Act directs that "[u]pon its finding that a Federal credit union * * * is insolvent, the Board shall close such credit union for liquidation." 12 U.S.C. 1787(a)(1)(A). Therefore, in the case of a "critically undercapitalized" *federal* credit union that is insolvent (*i.e.*, has a net worth ratio of less than zero), NCUA has the option of an insolvency-based liquidation. To clarify that this option is available, new subsection (d) to § 702.204 provides that "a 'critically undercapitalized' federal credit union that has a net worth ratio of less than zero percent (0%) may be placed into liquidation on grounds of insolvency pursuant to [§ 1787(a)(1)(A)]."

8. Section 702.205—Consultation With State Officials on Proposed PCA

As explained above in reference to new subsection (c) of § 702.201, a cross-reference in § 702.205(c) misidentified the decision whether to permit a decrease in a FISCU's quarterly earnings retention as a DSA. To correct this error, the final rule deletes the erroneous cross-reference and relocates the "consult and seek to work cooperatively" requirement in § 702.201(c).

9. Section 702.206—Net Worth Restoration Plans

a. *Contents of NWRP.* Section 702.206 prescribes the contents of an NWRP that must be submitted for approval by credit unions classified "undercapitalized" or lower.[6] Among the items an NWRP must address is how the credit union will comply with MSAs and DSAs. § 702.206(c)(1)(iii). Some credit unions that were *not* subject to a DSA interpreted that requirement as a demand either to consent to a DSA, or to explain prospectively how the credit union *would* comply with DSAs if the NCUA Board were to impose any. The proposed rule revised subsection (c)(1)(iii) to clarify that an NWRP need only address whatever DSAs, if any, the NCUA Board *already* has imposed on the credit union. The one commenter who addressed this revision supported it. The final rule adopts revised subsection (c)(1)(iii) as proposed.

b. *Publication of NWRP.* Publication of an NWRP is not a prerequisite to enforcing its provisions as authorized in 12 CFR 747.2005, but this fact is not expressly stated in § 702.206 itself. The omission has led some to assume that an NWRP, like a "Letter of Understanding and Agreement," must be published in order to subsequently be enforceable. The Act mandates that a "written agreement or other written statement" must be published in order for a violation to be enforceable "unless the Board, in its discretion, determines that publication would be contrary to the public interest." 12 U.S.C. 1786(s)(1)(A). To the extent an NWRP qualifies as a "written agreement or other written statement" under § 1786(s)(1)(A), the NCUA Board does not intend to publish NWRPs because it has determined that publication would expose the credit union to reputation risk that would be contrary to the public interest. Therefore, the proposed rule added new subsection (i) to § 702.206, clarifying that "An NWRP need not be published to be enforceable because publication would be contrary to the public interest." NCUA received two comments on the clarification and both supported it. Therefore, the final rule adopts new subsection (i) as proposed.

c. *Alternative capital.* The proposed rule did not reference subsection (e), which permits consideration of any "regulatory capital" a credit union may have in evaluating an NWRP. Nonetheless, NCUA received three comments urging the adoption of some form of alternative capital not only to be considered in evaluating an NWRP, but also to offset an applicable RBNW requirement. A fourth commenter opposed alternative capital in any form. The final rule does not address these comments because this rulemaking was not intended by the NCUA Board to be a forum for exploring or introducing alternative forms of capital.

10. Section 702.303—PCA for "Adequately Capitalized" New Credit Unions

Under the original alternative system of PCA for new credit unions, a credit union that managed to become "adequately capitalized" while still new was subject to the same minimum earnings retention that applies to non-new credit unions that are "adequately capitalized."[7] § 702.201(a). In contrast, "new" credit unions that stayed classified below "adequately capitalized" were not subject to minimum earnings retention; they had to increase net worth only "by an amount reflected in the credit union's

[6] As noted earlier in this preamble, the comments on the concept of "safe harbor" approval of an NWRP are addressed in a separate proposed rule found elsewhere in this volume of the **Federal Register**.

[7] The final rule corrects the wording of § 702.303, which inadvertently extended that section to "new" credit unions classified lower than "adequately capitalized." Sections 702.304 and 702.305 continue to prescribe PCA for new credit unions in those net worth categories.

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approved initial or revised business plan." § 702.304(a)(1). This created a disincentive for a "new" credit union to become "adequately capitalized" because the reward for keeping its net worth ratio below 6 percent is that it is relieved from complying with a minimum earnings retention amount.

To eliminate the disincentive, the proposed rule put all new credit unions having a net worth lower than 7 percent in parity for purposes of earnings retention. 67 FR at 38437. An "adequately capitalized" new credit union would no longer be subject to the same minimum earnings retention as a non-new counterpart. Instead, like new credit unions in lower categories, it would be required to increase net worth quarterly by "an amount reflected in its approved initial or revised business plan" until it becomes "well capitalized." In the absence of such a plan, however, the credit union would remain subject to the same quarterly minimum earnings retention as non-"new" credit unions.

Two commenters supported parity among new credit unions for earnings retention purposes. Advocating a far less flexible approach, a third commenter (a banking industry trade association) objected that exempting any new credit unions from the statutory minimum earnings retention is not in accordance with CUMAA. That commenter overlooks the fact that CUMAA applies a minimum earnings retention requirement to non-new credit unions; it prescribed no earnings retention requirement at all for new credit unions. 12 U.S.C. 1790d(e)(1). Instead, CUMAA gave NCUA discretion in developing an alternative system of PCA, provided that it recognized that new credit unions initially have no net worth; need reasonable time to accumulate net worth; and need incentives to become "adequately capitalized" by the time they no longer qualify as "new." 12 U.S.C. 1790d(b)(2)(B). *See* 64 FR 27090, 27098 (May 18, 1999) (justification for flexible approach). It is entirely consistent with this last statutory criterion to eliminate any disincentive—such as *minimum* earnings retention—for a new credit union to reach "adequately capitalized" while it is still "new."

11. *Section 702.304—PCA for "Moderately Capitalized," "Marginally Capitalized" and "Minimally Capitalized" New Credit Unions*

As explained above, the final rule modifies § 702.201(a) to specify that earnings retention must increase the "the dollar amount" of net worth, not simply the net worth ratio itself. To conform to that modification, § 702.304(a)(1) is revised accordingly.

12. Section 702.305—PCA for "Uncapitalized" New Credit Unions

a. *Member business loan restriction.* Part 702 originally gave an "uncapitalized" new credit union full relief from all MSAs while it was operating within the period allowed by its initial business plan to have no net worth. § 702.305(a). An unintended consequence of this forbearance was that "uncapitalized" credit unions were free of the MSA restricting MBLs; that restriction applied only when a credit union managed to attain *some* net worth and rise to the "minimally capitalized" net worth category.[8] Yet a "minimally capitalized" credit union arguably is better suited to expand its MBL portfolio than one that remains "uncapitalized." Further, making PCA *more* demanding as a credit union's net worth and category classification improve, rather than relaxing it, is contrary to the purpose of PCA. To rectify this unintended consequence, the proposed rule extended subsection (a) to include an "uncapitalized" new credit union that is operating with no net worth as permitted by an initial business plan. 67 FR at 38437. As a result, "uncapitalized" new credit unions are all subjected to the MBL restriction, § 702.305(a)(3), regardless whether they are operating with no net worth under an initial business plan, or have declined to "uncapitalized" after reaching a higher net worth category. NCUA received no comments on this section. Accordingly, the final rule adopts revised subsection (a) as proposed.

b. *Filing of revised business plan.* Subsection (a)(2) generally required an "uncapitalized" new credit union to submit a revised business plan ("RBP") within 90 days following either of two events—expiration of the period that the credit union's initial business plan allows it to operate with no net worth, or the effective date that it declined to "uncapitalized" from a higher net worth category. This contrasts with the 30-day period that "moderately capitalized," "marginally capitalized" and "minimally capitalized" credit unions are given to file an RBP. § 702.306(a)(1). Ninety days is an unduly long filing period given that an "uncapitalized" credit union faces mandatory conservatorship or liquidation if it fails to increase net worth to at least two percent. Furthermore, it is counterintuitive to give a credit union that *has* a net worth deficit three times as long to devise a plan for generating positive earnings than is given to credit unions that already have net worth.

The proposed rule put all new credit unions that must file an RBP in parity. First, it deleted the 90-day filing window for "uncapitalized" credit unions, thereby limiting them to the general 30-day window, once they are required to file an RBP. 67 FR at 38438. Second, it reorganized subsection (a)(2) to parallel the conditions that trigger other less than "adequately capitalized" new credit unions to revise their business plans, § 702.304(a)(2), even though only "uncapitalized" credit unions are initially allowed to operate with no net worth. To that end, the proposed rule required an "uncapitalized" credit union to submit an RBP if it either: fails to increase net worth (*i.e.*, reduce its earnings deficit) as its existing business plan provides; has no approved business plan; or has violated the MSA restricting MBLs.

The sole commenter on this topic supported the 30-day window for filing an RBP, while also urging NCUA to relieve the burden on new credit unions by providing assistance in preparing RBPs. *See* § 702.307(a) (assistance in preparing RBPs). For the reasons set forth above in this section, the revisions to subsection (a)(2) are adopted as proposed.

c. *Liquidation or conservatorship if "uncapitalized" after 120 days.* Subsection (c)(2) generally required the NCUA Board to conserve or liquidate an "uncapitalized" new credit union that remains "uncapitalized" 90 days after its RBP is approved. It was silent, however, regarding conservatorship or liquidation of a credit union whose RBP is rejected. To correct this oversight, the proposed rule mandated conservatorship or liquidation of an "uncapitalized" new credit union after a 120-day period regardless whether an RBP has been approved or rejected. 67 FR at 38438. This period combines the 30-day window for submitting an RBP, § 702.306(a)(1), and the original 90-day period allowed for the credit union to develop sufficient positive earnings to avoid conservatorship and liquidation. The 120-day period runs from the later of either the effective date of classification as "uncapitalized" or, if a credit union is operating with no net worth in the period prescribed by its initial business plan, the last day of the calendar month after expiration of that period. Because the period for operating with no net worth typically runs on a quarterly basis, the last day of the calendar month after it expires parallels the calendar month that separates the quarter-end and the effective date of classification as "undercapitalized."

NCUA received no comments on the revisions to subsection (c)(2) and, therefore, they are adopted as proposed. In addition, the final rule relocates to a new subsection (c)(3) the existing exception to mandatory conservatorship or liquidation for a credit union that is able to demonstrate that it is viable and has a reasonable prospect of becoming "adequately capitalized."

d. *"Uncapitalized" new FCU.* As explained above in reference to new subsection (d) of § 702.204, there are two options for liquidating a federal credit union that has no net worth—a PCA-based liquidation, 12 U.S.C. 1787(a)(3)(A)(ii), or an insolvency-based liquidation. 12 U.S.C. 1787(a)(1)(A). Both are available when a new *federal* credit union either fails to timely submit an RBP, § 702.305(c)(1), or remains "uncapitalized" 120 days after the effective date of classification, § 702.305(c)(2). To clarify that this option is available, the final rule adds new subsection (d) to § 702.305, providing that "an 'uncapitalized' federal credit union may be placed into liquidation on grounds of insolvency pursuant to [§ 1787(a)(1)(A)]."

13. Section 702.306—Revised Business Plans for New Credit Unions

a. *Filing schedule.* Subsection (a)(1) required "moderately capitalized," "marginally capitalized" and "minimally capitalized" credit unions to file an RBP within 30 days after failing to meet a quarterly net worth target prescribed in an existing business plan. As discussed above, the final rule eliminates the 90-day filing window for "uncapitalized" credit unions. § 702.305(a)(2). To conform to that modification, the final rule also modifies subsection (a)(1) to apply the 30-day filing window uniformly to all new credit unions classified less than "adequately capitalized" or that have violated the MSA restricting MBLs. §§ 702.304(a)(3), 702.305(a)(3).

The original rule's 30-day filing period ran from "the effective date (per § 702.101(b)) of the credit union's failure to meet a quarterly net worth target prescribed in its then-present business plan." § 702.306(a)(1). Even as revised, however, § 702.101(b), which addresses the effective date of classification among the net worth categories, says nothing to determine when a quarterly net worth target is met. The subtlety of this distinction may confuse credit unions that have no then-present approved business plan or have violated the MSA restricting MBLs. Therefore, the proposed rule further revised subsection (a)(1) to effectively give new credit unions that fail to meet a quarterly target 60 days following the quarter-end to file an RBP. § 702.306(a)(1)(i). The 60-day period combines the calendar month that separates the quarter-end from the effective date of classification, with the uniform 30-day filing period that commences on the effective date. Finally, the proposed rule revised subsection (a)(1) still further to clarify that, for new credit unions that either have no approved business plan or that have violated the MBL restriction, the effective date of classification as less than "adequately capitalized" triggers the 30-day window for filing an RBP. § 702.306(a)(1)(ii)–(iii). NCUA received no comments on the revisions to the filing schedule for RBPs. Accordingly, revised subsection (a)(1) is adopted as proposed.

b. *Timetable of net worth targets.* Subsection (b)(2) prescribed the contents of an RBP, which must include a timetable of quarterly net worth targets extending for the term of the plan "so that the credit union becomes 'adequately capitalized' and remains so for four consecutive quarters." It also warned that a "complex" new credit union that is subject to an RBNW requirement may need to attain a net worth ratio higher than 6 percent to become "adequately capitalized." The proposed rule rectified two flaws in this section. First, in contrast to an NWRP, the objective of an RBP is to build net worth so that a new credit union becomes "adequately capitalized" by the time it no longer is "new,"[9] rather than by the end of the term of the plan. 65 FR at 8578; 64 FR 27090, 27099 (May 18, 1999) (chart). The proposed rule revised subsection (b)(2) so that an RBP's net worth targets ensure the new credit union will become "adequately capitalized" by the time it no longer qualifies as "new." 67 FR at 38438. Second, under part 702 new credit unions cannot be "complex" or subject to an RBNW requirement because, by definition, they do not meet the $10 million asset minimum. § 702.103(a)(1). Therefore, the proposed rule deleted the warning to new credit unions that are "complex." NCUA received no comments on either of these revisions. Accordingly, revised subsection (b)(2) is adopted as proposed.

c. *Publication of RBP.* As explained above, the final rule adds a new subsection (i) to § 702.206, to clarify that publication of an NWRP is not a prerequisite to enforcing its provisions as authorized in 12 CFR 747.2005. The same is true of an RBP, but this fact was similarly omitted from § 702.306. To the extent an RBP qualifies as a "written agreement or other written statement" under 12 U.S.C. 1786(s)(1)(A), the NCUA Board does not intend to publish RBPs because it has determined that publication would expose the credit union to reputation risk that would be contrary to the public interest. Therefore, the final rule adds new subsection (h) to § 702.306, clarifying that "An RBP need not be published to be enforceable because publication would be contrary to the public interest."

13. Section 702.401—Charges to Regular Reserve

a. *Regular reserve.* Although the proposed rule did not reference subsection (b), which requires credit unions "to establish and maintain a regular reserve account," four commenters criticized it as obsolete. The NCUA Board prefers to retain the regular reserve at this time primarily for two reasons. First, it facilitates the statutory earnings retention requirement, 12 U.S.C. 1790d(e), by holding the earnings that credit unions classified "adequately capitalized" or lower are required to "set aside." § 702.201. And second, it continues to function as an early warning signal of safety and soundness problems because, as explained below, regulatory review and approval is required before a credit union can take certain actions—charging losses to, and paying dividends from, the regular reserve—that would cause its net worth to decline below 6 percent.

b. *Minimum net worth to charge losses without approval.* Subsection (c)(1) originally allowed the board of directors of a federally-insured credit union that had depleted the balance of its undivided earnings and other reserves to charge losses to the regular reserve account without regulatory approval so long as the charge did not reduce the credit union's net worth classification below "well capitalized" (*i.e.*, net worth ratio of 7 percent or greater). § 702.401(c)(1). That net worth category was established as the minimum for charging losses without regulatory approval because the categories below "well capitalized" trigger MSAs. However, the proposed rule lowered the minimum category to "adequately capitalized" (*i.e.*, 6 percent net worth ratio) in order to give credit unions the flexibility to decide for

[8] The earnings retention requirement, § 702.305(a)(1), is ineffective against an "uncapitalized" credit union because a credit union that *has* an undivided earnings deficit has no net worth to retain.

[9] A credit union remains "new" as long as it is in operation less than 10 years and has assets of $10 million or less. 12 U.S.C. 1790d(o)(4); § 702.301(b).

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themselves whether charging losses is worth triggering the single MSA that applies to that category—the quarterly earnings retention. § 702.201(a); 67 FR at 38439. In addition, the proposed rule expressly reminded credit unions that they must deplete their undivided earnings balance before making any charge to the regular reserve. All seven of the commenters who addressed these proposed revisions supported them. Thus, revised subsection (c)(1) is adopted as proposed.

c. *Dual approval to charge losses.* Subsection (c)(2) originally required the prior approval of the "appropriate State official," but not the approval of the "appropriate Regional Director," when a State-chartered credit union seeks to charge losses that would cause it to decline below the minimum category. Omitting the approval of NCUA Regional Directors was inconsistent with the protocol applied elsewhere in part 702 requiring joint State and Federal approval of PCA decisions affecting State-chartered credit unions. *E.g.*, §§ 702.206(a)(1), 702.306(a)(1). To correct this inconsistency, the proposed rule modified § 702.401(c)(2) to require the concurrence of both the "appropriate State official" *and* "the appropriate Regional Director" to permit a State-chartered credit union to charge losses to the regular reserve. In addition, the proposed rule clarified that written approval may consist of an approved NWRP that allows such charges.

The sole commenter on the revisions proposed for subsection (c)(2) objected that the dual approval requirement would unnecessarily overburden NCUA with the oversight of State officials. On the contrary, the NCUA Board does not consider its approval to be a function of overseeing State officials. Rather, its approval for a State-chartered credit union to charge losses to the regular reserve is integral to PCA because of NCUA's independent role as insurer of the shares and deposits of federally-insured State-chartered credit unions. Accordingly, revised subsection (c)(2) is adopted as proposed.

15. Section 702.403—Payment of Dividends

a. *Minimum net worth to pay dividends without approval.* Subsection (b)(1) originally allowed the board of directors of a federally-insured credit union that had depleted the balance of undivided earnings to pay dividends out of the regular reserve account without regulatory approval so long as it did not cause the credit union to decline below "well capitalized." § 702.403(b)(1). As explained above in regard to § 702.401(c)(1), the proposed rule similarly lowered to "adequately capitalized" the minimum net worth category in which credit unions may pay dividends out of the regular reserve without regulatory approval. This would give credit unions that have depleted undivided earnings the flexibility to decide for themselves whether drawing down the regular reserve to pay dividends is worth triggering the quarterly earnings retention requirement that applies to "adequately capitalized" credit unions. § 702.201(a).

b. *Dual approval to pay dividends.* As with § 702.401(c)(2) discussed above, subsection (b)(2) originally required the prior approval of the "appropriate State official," but not the approval of the "appropriate Regional Director," when paying dividends out of the regular reserve would cause a State-chartered credit union to decline below the minimum net worth category. In addition, omitting Regional Director approval may suggest, incorrectly, that a State official's approval to pay dividends from the regular reserve under § 702.401(b) makes it unnecessary to independently obtain both the State official's and the Regional Director's approval under § 702.201(b) for a State-chartered credit union to decrease its earnings retention in order to pay dividends. For this reason and the reason explained in the preceding section, the proposed rule corrected this omission by revising subsection (b)(2) to require the concurrence of both the "appropriate State official" *and* "the appropriate Regional Director" for a State-chartered credit union to pay dividends out of its regular reserve. In addition, the proposed rule clarified that written approval may consist of an approved NWRP that allows such dividend payments. The two commenters who addressed the revisions proposed for subsections (b)(1) and (b)(2) supported them. Accordingly, they are adopted as proposed.

Subpart A of Part 741—Requirements for Insurance

16. Section 741.3—Adequacy of Reserves

Subsection (a)(2) originally allowed State-chartered credit unions to charge losses other than loan losses to the regular reserve in accordance with State law or procedures, but without regulatory approval, provided that the charges did not cause the credit union to decline below "well capitalized." 12 CFR 741.3(a)(2). The preceding subsection (a)(1) incorporates by reference all of part 702 as a prerequisite for insurability of State-chartered credit unions. As discussed above, § 702.401(c) already imposes on State-chartered credit unions the same conditions for regulatory approval that subsection (a)(2) prescribes for an insured credit union seeking to charge losses to the regular reserve. Because this makes subsection (a)(2) redundant, the final rule eliminates it from § 741.3.

The final rule's removal of subsection (a)(2) does not mean that § 702.401(c) preempts "either state law or procedures established by the appropriate State official" that restrict a State-chartered credit union's ability to charge losses to the regular reserve. On the contrary, such charges would independently remain subject to applicable State laws and procedures. Further, an appropriate State official would retain complete discretion to withhold approval of such charges, under § 702.401(c)(2), on grounds that they would violate State law or procedures.

Subpart L of Part 747—Issuance, Review and Enforcement of Orders Imposing PCA

17. Section 747.2005—Enforcement of Orders

The NCUA Board is authorized to "assess a civil money penalty against a credit union which fails to implement a net worth restoration plan * * * or a revised business plan under * * * part 702." 12 CFR 747.2005(b)(2). As explained above, the NCUA Board has determined that it is not in the public interest to require publication of an NWRP or an RBP in order for either to be enforceable and §§ 702.206 and 702.306 are modified accordingly. The final rule makes a conforming modification to § 747.2005(b)(2) to provide that a civil money penalty may be assessed for failure to implement a plan "regardless whether the plan was published."

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed rule improves and simplifies the existing system of PCA mandated by Congress. 12 U.S.C. 1790d. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions and, therefore, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The reporting requirements in this final rule have been submitted to the Office of Management and Budget. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB number. Control number 3133–0161 has been issued for part 702 and will be displayed in the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This final rule will apply to all federally-insured credit unions, including State-chartered credit unions. Accordingly, it may have a direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This impact is an unavoidable consequence of carrying out the statutory mandate to adopt a system of prompt corrective action to apply to all federally-insured credit unions. NCUA staff has consulted with a committee of representative State regulators regarding the impact of the proposed revisions on State-chartered credit unions. Their comments and suggestions are reflected in the proposed rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act, 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule.

List of Subjects

12 CFR Parts 702 and 741

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 747

Administrative practices and procedures, Credit unions.

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, 12 CFR parts 702, 741 and 747 are amended as follows:

PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

2. Amend § 702.2 as follows:

a. Redesignate current paragraphs (i) through (k) as new paragraphs (j) through (l) respectively.

b. Add new paragraph (i) to read as set forth below;

c. Revise newly designated paragraph (k)(1)(i) to read as set forth below;

d. Revise newly designated paragraph (k)(1)(iv) to read as set forth below; and

e. Remove from newly designated paragraph (k)(2) the cross-reference to "paragraph (j)(1)" and add in its place a cross-reference to "paragraph (k)(1)".

§ 702.2 Definitions.

* * * * *

(i) *Senior executive officer* means a senior executive officer as defined by 12 CFR 701.14(b)(2).

* * * * *

(k) *Total assets.* (1) * * *

(i) *Average quarterly balance.* The average of quarter-end balances of the current and three preceding calendar quarters; or

* * *

(iv) *Quarter-end balance.* The quarter-end balance of the calendar quarter as reported on the credit union's Call Report.

* * * * *

3. Amend § 702.101 as follows:

a. Add a heading to paragraph (b)(1) to read as set forth below;

b. Revise paragraph (b)(2) to read as set forth below;

c. Add a heading to paragraph (b)(3) to read as set forth below; and

d. Revise the heading of paragraph (c), and paragraph (c)(1), to read as follows:

§ 702.101 Measures and effective date of net worth classification.

* * * * *

(b) * * *

(1) *Quarter-end effective date.* * * *

(2) *Corrected net worth category.* The date the credit union received subsequent written notice from NCUA or, if State-chartered, from the appropriate State official, of a decline in net worth category due to correction of an error or misstatement in the credit union's most recent Call Report; or

(3) *Reclassification to lower category.* * * *

(c) *Notice to NCUA by filing Call Report.* (1) Other than by filing a Call Report, a federally-insured credit union need not notify the NCUA Board of a change in its net worth ratio that places the credit union in a lower net worth category;

* * * * *

4. Amend § 702.102 by revising Table 1 immediately preceding paragraph (b) to read as follows:

§ 702.102 Statutory net worth categories.

* * * * *

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TABLE 1 – STATUTORY NET WORTH CATEGORY CLASSIFICATION

A credit union's net worth category is . . .	*if its net worth ratio is . . .*	*and subject to the following condition(s) . . .*
"Well Capitalized"	7% or above	Meets applicable risk-based net worth (RBNW) requirement
"Adequately Capitalized"	6% to 6.99%	Meets applicable RBNW requirement
"Undercapitalized"	4% to 5.99%	Or fails applicable RBNW requirement
"Significantly Undercapitalized"	2% to 3.99%	Or if "undercapitalized" at <5% net worth ratio and fails to timely submit or materially implement Net Worth Restoration Plan
"Critically Undercapitalized"	Less than 2%	None

* * * * *

§ 702.103 [Amended]

5. Amend § 702.103 as follows:
a. Remove the heading from paragraph (a);
b. Remove paragraph (b); and
c. Redesignate current paragraph (a) as the sectional introductory text, and paragraphs (a)(1) and (a)(2) as paragraphs (a) and (b), respectively.

§ 702.104 [Amended]

6. Amend § 702.104 as follows:
a. Remove the number "1" from the parenthetical "(Table 1)" in the introductory text and add in its place the number "2"; and
b. Redesignate Table 1 immediately following paragraph (h) as Table 2.

§ 702.105 [Amended]

7. Amend § 702.105 as follows:
a. Remove the number "2" from the parenthetical "(Table 2)" in the introductory text and add in its place the number "3";
b. Remove the citation "§ 702.2(k)" in the introductory text and add in its place the citation "§ 702.2(m)"; and
c. Redesignate Table 2 immediately following paragraph (b) as Table 3.

§ 702.106 [Amended]

8. Amend § 702.106 as follows:
a. Remove the number "3" from the parenthetical "(Table 3)" in the introductory text and add in its place the number "4"; and
b. Redesignate Table 3 immediately following paragraph (h) as Table 4.

9. Amend § 702.107 as follows:
a. Remove the number "4" from the parenthetical "(Table 4)" in the introductory text and adding in its place the number "5";
b. Revise paragraph (a) to read as set forth below;
c. Add new paragraph (d) immediately after paragraph (c)(6) to read as set forth below;
d. Redesignate Table 4 immediately following new paragraph (d) as Table 5;
e. Revise section (a) to Table 5 to read as set forth below; and
f. Add new section (d) to Table 5 as follows:

§ 702.107 Alternative components for standard calculation.

* * * * *

(a) *Long-term real estate loans.* The sum of:

(1) *Non-callable.* Non-callable long-term real estate loans as follows:

(i) Eight percent (8%) of the amount of such loans with a remaining maturity of greater than 5 years, but less than or equal to 12 years;

(ii) Twelve percent (12%) of the amount of such loans with a remaining maturity of greater than 12 years, but less than or equal to 20 years; and

(iii) Fourteen percent (14%) of the amount of such loans with a remaining maturity greater than 20 years;

(2) *Callable.* Long-term real estate loans callable in 5 years or less as follows:

(i) Six percent (6%) of the amount of such loans with a documented call provision of 5 years or less and with a remaining maturity of greater than 5 years, but less than or equal to 12 years;

(ii) Ten percent (10%) of the amount of such loans with a documented call provision of 5 years or less and with a remaining maturity of greater than 12 years, but less than or equal to 20 years; and

(iii) Twelve percent (12%) of the amount of such loans with a documented call provision of 5 years or less and with a remaining maturity of greater than 20 years;

* * * * *

(d) *Loans sold with recourse.* The alternative component is the sum of:

(1) Six percent (6%) of the amount of loans sold with contractual recourse obligations of six percent (6%) or greater; and

(2) The weighted average recourse percent of the amount of loans sold with contractual recourse obligations of less than six percent (6%), as computed by the credit union.

(a) LONG-TERM REAL ESTATE LOANS

Amount of long-term real estate loans by remaining maturity	*Alternative risk weighting*
Non-callable long-term real estate loans	
Remaining maturity:	
> 5 years to 12 years	.08
> 12 years to 20 years	.12
> 20 years	.14
Long-term real estate loans callable in 5 years or less	
Remaining maturity:	
> 5 years to 12 years	.06
> 12 years to 20 years	.10
> 20 years	.12
The "alternative component" is the sum of each amount of the "long-term real estate loans" risk portfolio by non-"callable" and "callable" characteristic and by remaining maturity (as a percent of quarter-end total assets) times its alternative factor. Substitute for corresponding standard component if smaller.	

* * * * * * *

(d) LOANS SOLD WITH RECOURSE

Amount of loans by recourse	*Alternative risk weighting*
Recourse 6% or greater	.06
Recourse <6%	Weighted average recourse percent
The "alternative component" is the sum of each amount of the "loans sold with recourse" risk portfolio by level of recourse (as a percent of quarter-end total assets) times its alternative factor. The alternative factor for loans sold with recourse of less than 6% is equal to the weighted average recourse percent on such loans. A credit union must compute the weighted average recourse percent for its loans sold with recourse of less than six percent (6%). Substitute for corresponding standard component if smaller.	

10. Amend § 702.108 as follows:
a. Revise the section heading to read as set forth below;
b. Redesignate current paragraphs (a) and (b) as paragraphs (b) and (c), respectively;
c. Add a new paragraph (a) as set forth below; and
d. Revise newly designated paragraph (b) to read as set forth below.

§ 702.108 Risk mitigation credit.

(a) *Who may apply.* A credit union may apply for a risk mitigation credit if on any of the current or three preceding effective dates of classification it either failed an applicable RBNW requirement or met it by less than 100 basis points.

(b) *Application for credit.* Upon application pursuant to guidelines duly adopted by the NCUA Board, the NCUA Board may in its discretion grant a credit to reduce a risk-based net worth requirement under §§ 702.106 and 702.107 upon proof of mitigation of:

(1) Credit risk; or

(2) Interest rate risk as demonstrated by economic value exposure measures.

* * * * *

11. Revise the heading of Appendixes A–F to Subpart A of Part 702 to read as follows:

Appendixes A–H to Subpart A of Part 702

12. Revise Appendix C to Subpart A to read as follows:

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APPENDIX C – EXAMPLE LONG-TERM REAL ESTATE LOANS ALTERNATIVE COMPONENT, §702.107(a)
(EXAMPLE CALCUATION IN BOLD)

Remaining maturity	**Dollar balance of Long-term real estate loans by remaining maturity**	**Percent of total assets by remaining maturity**	Alternative risk weighting	**Alternative component**
Non-callable long-term real estate loans				
> 5 years to 12 years	15,000,000	7.5000 %	.08	0.6000 %
> 12 years to 20 years	2,500,000	1.2500 %	.12	0.1500 %
> 20 years	2,500,000	1.2500 %	.14	0.1750 %
Long-term real estate loans callable in 5 years or less				
> 5 years to 12 years	35,000,000	17.5000 %	.06	1.0500 %
> 12 years to 20 years	5,000,000	2.5000 %	.10	0.2500 %
> 20 years	0	0.000 %	.12	0.000 %
Sum of above equals Alternative Component*				2.23 %

*Substitute for standard component if lower.

13. Redesignate Appendix F to Subpart A as Appendix H.

14. Add new Appendixes F and G to Subpart A to read as follows:

APPENDIX F – EXAMPLE LOANS SOLD WITH RECOURSE ALTERNATIVE COMPONENT, §702.107(d)
(EXAMPLE CALCULATION IN BOLD)

Percent of contractual recourse obligation	***Dollar balance of Loans sold with recourse***	***Percent of total assets***	***Alternative risk weighting***	***Alternative component***
Recourse 6 % or greater	5,000,000	2.5000 %	.06	0.1500 %
Recourse < 6 %	35,000,000	17.5000 %	.0500 **	0.8750 %
Sum of above equals Alternative component*				1.03 %

* Substitute for corresponding standard component if lower.

** The credit union must calculate this alternative risk weighting for loans sold with recourse of less than 6 %. For an example computation, see worksheet in Appendix G below.

APPENDIX G –WORKSHEET FOR ALTERNATIVE RISK WEIGHTING OF LOANS SOLD WITH CONTRACTUAL RECOURSE OBLIGATIONS OF LESS THAN 6 %
(EXAMPLE CALCULATION IN BOLD)

Percent of contractual recourse obligation less than 6%	***Dollar balance of loans sold with recourse***	***Dollars of recourse***	***Alternative risk weighting***
5.50 %	5,000,000	275,000	
5.00 %	25,000,000	1,250,000	
4.50 %	5,000,000	225,000	
Sum of above equals	35,000,000	1,750,000	
Dollar of recourse divided by dollar balance equals (expressed as %)			5.00 %

15. Revise newly designated Appendix H to Subpart A to read as follows:

APPENDIX H – EXAMPLE RBNW REQUIREMENT USING ALTERNATIVE COMPONENTS
(EXAMPLE CALCULATION IN BOLD)

Risk portfolio	***Standard component***	***Alternative component***	***Lower of standard or alternative component***
(a) Long-term real estate loans	2.20 %	2.85 %	2.20 %
(b) MBLs outstanding	0.77 %	0.95 %	0.77 %
(c) Investments	1.51 %	1.37 %	1.37 %
(f) Loans sold with recourse	1.20%	1.03%	1.03%
			Standard component
(d) Low-risk assets			0 %
(e) Average-risk assets			1.83 %
(g) Unused MBL commitments			0.15 %
(h) Allowance			(1.02) %
RBNW requirement* Compare to Net Worth Ratio			5.33 %

* A credit union is "undercapitalized" if its net worth ratio is less than its applicable RBNW requirement.

16. Revise § 702.201 to read as follows:

§ 702.201 Prompt corrective action for "adequately capitalized" credit unions.

(a) *Earnings retention.* Beginning the effective date of classification as "adequately capitalized" or lower, a federally-insured credit union must increase the dollar amount of its net worth quarterly either in the current quarter, or on average over the current and three preceding quarters, by an amount equivalent to at least 1/10th percent (0.1%) of its total assets, and must quarterly transfer that amount (or more by choice) from undivided earnings to its regular reserve account until it is "well capitalized."

(b) *Decrease in retention.* Upon written application received no later than 14 days before the quarter end, the NCUA Board, on a case-by-case basis, may permit a credit union to increase the dollar amount of its net worth and quarterly transfer an amount that is less than the amount required under paragraph (a) of this section, to the extent the NCUA Board determines that such lesser amount—

(1) Is necessary to avoid a significant redemption of shares; and

(2) Would further the purpose of this part.

(c) *Decrease by FISCU.* The NCUA Board shall consult and seek to work cooperatively with the appropriate State official before permitting a federally-insured State-chartered credit union to decrease its earnings retention under paragraph (b) of this section.

(d) *Periodic review.* A decision under paragraph (b) of this section to permit a credit union to decrease its earnings retention is subject to quarterly review and revocation except when the credit union is operating under an approved net worth restoration plan that provides for decreasing its earnings retention as provided under paragraph (b).

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§ 702.202 [Amended]

17. Amend § 702.202 as follows:

a. Remove the word "transfer" from the heading of paragraph (a)(1) and add in its place the word "retention."

b. Remove the words "or interest" from the heading and from the text of paragraph (b)(3).

§ 702.203 [Amended]

18. Amend § 702.203 as follows:

a. Remove the word "transfer" from the heading of paragraph (a)(1) and add in its place the word "retention."

b. Remove the words "or interest" from the heading and from the text of paragraph (b)(3).

19. Amend § 702.204 as follows:

a. Revise the heading of paragraph (a)(1) to read as set forth below;

b. Revise paragraph (b)(3) to read as set forth below;

c. Revise paragraph (c)(1)(iii) to read as set forth below;

d. Revise paragraph (c)(4) to read as set forth below; and

e. Add new paragraph (d) to read as follows:

§ 702.204 Prompt corrective action for "critically undercapitalized" credit unions.

(a) * * *

(1) *Earnings retention.* * * *

* * * * *

(b) * * *

(3) *Restricting dividends paid.* Restrict the dividend rates that the credit union pays on shares as provided in § 702.202(b)(3).

* * * * *

(c) * * *

(1) * * *

(iii) *Other corrective action.* Take other corrective action, in lieu of conservatorship or liquidation, to better achieve the purpose of this part, provided that the NCUA Board documents why such action in lieu of conservatorship or liquidation would do so, *provided however,* that other corrective action may consist, in whole or in part, of complying with the quarterly timetable of steps and meeting the quarterly net worth targets prescribed in an approved net worth restoration plan.

* * *

(4) *Nondelegation.* The NCUA Board may not delegate its authority under paragraph (c) of this section, unless the credit union has less than $5,000,000 in total assets. A credit union shall have a right of direct appeal to the NCUA Board of any decision made by delegated authority under this section within ten (10) calendar days of the date of that decision.

(d) *Mandatory liquidation of insolvent federal credit union.* In lieu of paragraph (c) of this section, a "critically undercapitalized" federal credit union that has a net worth ratio of less than zero percent (0%) may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

§ 702.205 [Amended]

20. Amend § 702.205 as follows:

a. Remove from paragraph (a)(1) the words "place the credit union into conservatorship or liquidation" and add in their place the words "take the proposed action"; and

b. Remove from paragraph (c) the citation "702.201(b)".

21. Amend § 702.206 as follows:

a. Revise paragraph (c)(1)(ii) to read as set forth below;

b. Revise paragraph (c)(1)(iii) to read as set forth below; and

c. Add new paragraph (i) to read as follows:

§ 702.206 Net worth restoration plans.

* * * * *

(c) * * *

(1) * * *

(ii) The projected amount of earnings to be transferred to the regular reserve account in each quarter of the term of the NWRP as required under § 702.201(a), or as permitted under § 702.201(b);

(iii) How the credit union will comply with the mandatory and any discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

* * * * *

(i) *Publication.* An NWRP need not be published to be enforceable because publication would be contrary to the public interest.

22. Amend § 702.302 as follows:

a. Remove the number "2" from the parenthetical "(Table 2)" in the introductory text of paragraph (c) and add in its place the number "6";

b. Revise the table immediately preceding paragraph (d) to read as set forth below; and

c. Revise paragraph (d) to read as follows:

§ 702.302 Networth categories for new credit unions.

* * * * *

TABLE 6 – NET WORTH CATEGORY CLASSIFICATION FOR "NEW" CREDIT UNIONS

A "new" credit union's net worth category is . . .	*if its net worth ratio is . . .*
"Well Capitalized"	7% or above
"Adequately Capitalized"	6% to 6.99%
"Moderately Capitalized"	3.5% to 5.99%
"Marginally Capitalized"	2% to 3.49%
"Minimally Capitalized"	0% to 1.99%
"Uncapitalized"	Less than 0%

(d) *Reclassification based on supervisory criteria other than net worth.* Subject to § 702.102(b) and (c), the NCUA Board may reclassify a "well capitalized," "adequately capitalized" or "moderately capitalized" new credit union to the next lower net worth category (each of such actions is hereinafter referred to generally as "reclassification") in either of the circumstances prescribed in § 702.102(b).

* * * * *

23. Revise § 702.303 to read as follows:

§ 702.303 Prompt corrective action for "adequately capitalized" new credit unions.

Beginning on the effective date of classification, an "adequately capitalized" new credit union must increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan in accordance with § 702.304(a)(2), or in the absence of such a plan, in accordance with § 702.201, and quarterly transfer that amount from undivided earnings to its regular reserve account, until it is "well capitalized."

24. Amend § 702.304 by revising paragraph (a) to read as follows:

§ 702.304 Prompt corrective action for "moderately capitalized," "marginally capitalized" and "minimally capitalized" new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the date of classification as "moderately capitalized," "marginally capitalized" or minimally capitalized" (including by reclassification under § 702.302(d)), a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan and quarterly transfer that amount from undivided earnings to its regular reserve account;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.306 if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as of the preceding quarter-end unless it is granted an exception under 12 U.S.C. 1757a(b).

* * * * *

25. Amend § 702.305 as follows:

a. Revise paragraph (a) as set forth below;

b. Revise paragraph (c)(2) as set forth below; and

c. Add new paragraphs (c)(3) and (d) as follows:

§ 702.305 Prompt corrective action for "uncapitalized" credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the effective date of classification as "uncapitalized," a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in the credit union's approved initial or revised business plan;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.306, providing for alternative means of funding the credit union's earnings deficit, if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans as provided in § 702.304(a)(3).

* * * * *

(c) * * *

(2) *Plan rejected, approved, implemented.* Except as provided in paragraph (c)(3) of this section, must place into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), or conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), an "uncapitalized" new credit union that remains "uncapitalized" one hundred twenty (120) calendar days after the later of:

(i) The effective date of classification as "uncapitalized"; or

(ii) The last day of the calendar month following expiration of the time period provided in the credit union's initial business plan (approved at the time its charter was granted) to remain "uncapitalized," regardless whether a revised business plan was rejected, approved or implemented.

(3) *Exception.* The NCUA Board may decline to place a new credit union into liquidation or conservatorship as provided in paragraph (c)(2) of this section if the credit union documents to the NCUA Board why it is viable and has a reasonable prospect of becoming "adequately capitalized."

(d) *Mandatory liquidation of "uncapitalized" federal credit union.* In lieu of paragraph (c) of this section, an "uncapitalized" federal credit union may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

26. Amend § 702.306 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Revise paragraph (b)(2) to read as set forth below; and

c. Add new paragraph (h) to read as follows:

§ 702.306 Revised business plans for new credit unions.

(a) *Schedule for filing.* (1) *Generally.* Except as provided in paragraph (a)(2) of this section, a new credit union classified "moderately capitalized" or lower must file a written revised business plan (RBP) with the appropriate Regional Director and, if State-chartered, with the appropriate State official, within 30 calendar days of either:

(i) The last of the calendar month following the end of the calendar quarter that the credit union's net worth ratio has not increased consistent with its the-present approved business plan;

(ii) The effective date of classification as less than "adequately capitalized" if the credit union has no then-present approved business plan; or

(iii) The effective date of classification as less than "adequately capitalized" if the credit union has increased the total amount of member business loans in violation of § 702.304(a)(3).

(2) *Exception.* The NCUA Board may notify the credit union in writing that its RBP is to be filed within a different period or that it is not necessary to file an RBP.

(3) *Failure to timely file plan.* When a new credit union fails to file an RBP as provided under paragraphs (a)(1) or (a)(2) of this section, the NCUA Board shall promptly notify the credit union that it has failed to file an RBP and that it has 15 calendar days from receipt of that notice within which to do so.

(b) * * *

(2) Establish a timetable of quarterly targets for net worth during each year in which the RBP is in effect so that the credit union becomes "adequately capitalized" by the time it no longer qualifies as "new" per § 702.301(b);

* * * * *

(h) *Publication.* An RBP need not be published to be enforceable because publication would be contrary to the public interest.

27. Amend § 702.401 by revising paragraph (c) to read as follows:

§ 702.401 Reserves.

* * * * *

(c) *Charges to regular reserve after depleting undivided earnings.* The board of directors of a federally-insured credit union may authorize losses to be charged to the regular reserve after first depleting the balance of the undivided earnings account and other reserves, provided that the authorization states the amount and provides an explanation of the need for the charge, and either—

(1) The charge will not cause the credit union's net worth classification to fall below "adequately capitalized" under subparts B or C of this part; or

(2) If the charge will cause the net worth classification to fall below "adequately capitalized," the appropriate Regional Director and, if State-chartered, the appropriate State official, have given written approval (in an NWRP or otherwise) for the charge.

* * * * *

28. Amend § 702.403 by revising paragraph (b) to read as follows:

§ 702.403 Payment of dividends.

* * * * *

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(b) *Payment of dividends if undivided earnings depleted.* The board of directors of a "well capitalized" federally-insured credit union that has depleted the balance of its undivided earnings account may authorize a transfer of funds from the credit union's regular reserve account to undivided earnings to pay dividends, provided that either—

(1) The payment of dividends will not cause the credit union's net worth classification to fall below "adequately capitalized" under subpart B or C of this part; or

(2) If the payment of dividends will cause the net worth classification to fall below "adequately capitalized," the appropriate Regional Director and, if State-chartered, the appropriate State official, have given prior written approval (in an NWRP or otherwise) to pay a dividend.

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d. Section 741.4 is also authorized by 31 U.S.C. 3717.

§ 741.3. [Amended]

2. Amend § 741.3 as follows:

a. Remove from the heading of paragraph (a) the words "Adequacy of".

b. Remove paragraph (a)(2); and

c. Redesignate current paragraph (a)(3) as paragraph (a)(2).

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1786, 1784, 1787, 1790d and 4806(a); and 42 U.S.C. 4012a.

2. Amend § 747.2005 of subpart L by revising paragraph (b)(2) to read as follows:

§ 747.2005 Enforcement of orders.

* * * * *

(b) * * *

(2) *Failure to implement plan.* Pursuant to 12 U.S.C. 1786(k)(2)(A), the NCUA Board may assess a civil money penalty against a credit union which fails to implement a net worth restoration plan under subpart B of part 702 of this chapter or a revised business plan under subpart C of part 702, regardless whether the plan was published.

* * * * *

[FR Doc. 02–30091 Filed 11–27–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–16–AD; Amendment 39–12952; AD 2002–23–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211–535 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with certain part number (P/N) low pressure (LP) turbine stage 2 discs installed. This action requires establishing new reduced LP turbine stage 2 disc cyclic limits. This action also requires removing from service affected discs that already exceed the new reduced cyclic limit, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule. The actions specified in this AD are intended to prevent LP turbine stage 2 disc failure, which could result in uncontained engine failure and possible loss of the airplane.

DATES: Effective December 30, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 30, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–16–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines. The CAA advises that a reassessment of the safe cyclic limits of LP turbine stage 2 discs, P/N's UL11508, UL17141, UL18947, UL29029, and UL37352 has been performed by the manufacturer. The cyclic limits of these discs are reduced based on more recent thermal and stress data obtained from operational experience. This condition, if not corrected, could result in uncontained engine failure and possible loss of the airplane.

Manufacturer's Service Information

Rolls-Royce plc. has issued mandatory service bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002, that specifies a drawdown schedule for removing from service affected LP turbine stage 2 discs, using new Time Limits Manual (TLM) cyclic limits. This MSB provides a scheduled reduction, by engine and flight plan, of LP turbine stage 2 disc lives until the full life-cycle reduction on December 31, 2005. This MSB also provides instructions for performing a one-time on-wing eddy current inspection for cracks of affected LP turbine stage 2 discs to allow a disc to remain in service for an additional 3,000 cycles, if it does not exceed the new, lower TLM cyclic limit. The CAA has classified this service bulletin as mandatory and issued AD 006–05–2001 in order to assure the airworthiness of these Rolls-Royce plc. turbofan engines in the U.K.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines of the same type design, this AD is being issued to prevent LP stage 2 turbine disc failure, which could result in uncontained engine failure and possible loss of the airplane. This AD requires:

- Reducing the LP turbine stage 2 disc life-cyclic limits; and
- Removing from service affected discs that already exceed the new reduced cyclic limits; and
- Removing other affected discs before exceeding their cyclic limits, using a drawdown schedule.

The actions must be done in accordance with the MSB described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–16–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–23–08 Rolls-Royce plc.: Amendment 39–12952.Docket No. 2002–NE–16–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with low pressure (LP) turbine stage 2 discs part numbers (P/N's) UL11508, UL17141, UL18947, UL29029, and UL37352 installed. These engines are installed on, but not limited to, Boeing 757 and Tupolev Tu204 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent LP turbine stage 2 disc failure, which could result in an uncontained engine failure and possible loss of the airplane, do the following:

Cyclic Limits

(a) Change the RR Time Limits Manual cyclic limits for LP turbine stage 2 discs as specified in the following Table 1:

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TABLE 1.—TIME LIMITS MANUAL (TLM) CYCLIC LIMITS

Date of reduced life limit	Life limits for RB211–535E4 engines operating in flight plan A, and RB211–535E4–B engines	Life limits for RB211–535E4 engines operating in flight plan B
(1) December 31, 2001	22,500 cycles-since-new (CSN)	19,700 CSN.
(2) December 31, 2002	22,500 cycles-since-new (CSN)	19,000 CSN.
(3) December 31, 2003	21,500 CSN	18,000 CSN.
(4) December 31, 2004	20,000 CSN	16,500 CSN.
(5) December 31, 2005	18,100 CSN	14,600 CSN.

RB211–535E4 Engines Operating to Flight Plan A, and RB211–535E4–B Engines

(b)(1) For RB211–535E4 engines operating to flight plan A, and RB211–535E4–B engines, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 2.

TABLE 2.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN A, AND RB211–535E4–B ENGINES

Disc CSN on the effective date of this AD	Action	Replace Disc	
		Without Eddy current inspection	With Eddy current inspection
(i) 20,001 CSN or greater	Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD.	Within 21 days after the effective date of this AD.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(ii) 18,100 to 20,000 CSN	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 21,000 CSN or by December 31, 2002, whichever occurs first.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(iii) Fewer than 18,100 CSN	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 20,500 CSN or by December 31, 2004, whichever occurs first.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.

(2) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of Mandatory Service Bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

(3) The optional on-wing eddy current disc inspection noted in Table 2 of this AD must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

RB211–535E4 Engines Operating to Flight Plan B

(c)(1) For RB211–535E4 engines operating to flight plan B, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 3.

TABLE 3.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN B

Disc CSN on the effective date of this AD	Action	Replace Disc	
		Without Eddy current inspection	With Eddy current inspection
(i) 16,501 CSN or greater	Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD.	Within 21 days after the effective date of this AD.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(ii) 14,600 to 16,500 CSN	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 17,500 CSN or by December 31, 2002, whichever occurs first.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(iii) Fewer than 14,600 CSN	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 17,000 CSN or by December 31, 2004, whichever occurs first.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.

(2) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

(3) The optional on-wing eddy current disc inspection must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(f) The disc removals and inspections must be done in accordance with Roll-Royce MSB RB.211–72–D181, Revision 3, dated August 16, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax 011–44–1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 006–05–2001.

Effective Date

(g) This amendment becomes effective on December 16, 2002.

Issued in Burlington, Massachusetts, on November 8, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29001 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–34–AD; Amendment 39–12948; AD 2002–23–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires inspecting the 9-degree frame (frame) for the correct edge distance of the two attachment holes for the reinforced latch support and for a crack and repairing the frame if necessary. This amendment is prompted by the detection of a fatigue crack on the left-hand (LH) side of the frame during maintenance. The actions specified by this AD are intended to prevent failure of the frame due to a crack at the latch support, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

DATES: Effective January 3, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for ECF Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters was published in the **Federal Register** on August 14, 2002 (67 FR 52896). That action proposed to require inspecting the frame for the correct edge distance of the two attachment holes for the reinforced latch support and for a crack and repairing the frame if necessary.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters incorporating MOD 0753B31. The DGAC advises of the discovery of a crack on the left-hand side of the frame.

ECF has issued AS 365 Alert Service Bulletin No. 53.00.42, dated January 31, 2001 (ASB). The ASB specifies measuring the edge distance of the attachment holes for the reinforced latch support of the frame, inspecting for a crack, installing a repair on the frame or stop-drilling the crack, and monitoring the crack for continued growth. The DGAC classified this ASB as mandatory and issued AD No. 2001–060–052(A), dated February 21, 2001, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial changes. These changes will neither increase the economic burden on operators nor increase the scope of the AD.

The FAA estimates that this AD will:

- Affect 45 helicopters of U.S. registry,
- Require 3 work hours per helicopter to visually inspect all helicopters,
- Require 8 work hours to repair an estimated 10 helicopters to correct edge distance only, and
- Require 12 work hours to repair edge distance and cracks for approximately five helicopters.

The average labor rate is $60 per work hour. Required parts will cost approximately $200, assuming a repair is necessary for 15 helicopters. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,500.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–23–04 Eurocopter France: Amendment 39–12948. Docket No. 2001–SW–34–AD.

Applicability: Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, with MOD 0753B31 installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the 9-degree frame (frame) due to a crack at the latch support, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service, inspect each frame by measuring the edge distance at the two 5.2 mm (0.205 inch) diameter attachment holes for the latch support for the passenger door in accordance with the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter France AS 365 Alert Service Bulletin 53.00.42, dated January 31, 2001 (ASB). Inspect the area around the attachment holes for a crack.

(1) If the edge distance of both attachment holes is equal to or more than 8 mm (0.315 inch) and no crack is present, no action is required by this AD.

(2) If the edge distance is less than 8 mm and no crack is present, before further flight, install a reinforcing plate in accordance with the Accomplishment Instructions paragraph 2.B.2. of the ASB. Accomplishing the requirements of paragraph 2.B.2. of the ASB constitutes terminating action for the requirements of this AD.

(3) If there is a crack, before further flight, stop-drill the crack with a 3-millimeter diameter hole and repair the frame in accordance with the Accomplishment Instructions, paragraph 2.B.3., of the ASB. Accomplishing the requirements of paragraph 2.B.3. of the ASB constitutes terminating action for the requirements of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspection and repair shall be done in accordance with the Accomplishment Instructions of Eurocopter France AS 365 Alert Service Bulletin 53.00.42, dated January 31, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on January 3, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2001–060–052(A), dated February 21, 2001.

Issued in Fort Worth, Texas, on November 6, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–29155 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–418–AD; Amendment 39–12984; AD 2002–23–20]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 900EX and Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Falcon 900EX and Mystere Falcon 900 series airplanes, that requires repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary; repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and repetitive measurement of the screw/nut play of the jackscrews on the inboard and outboard flaps to detect discrepancies, and corrective action, if necessary. This amendment also requires revision of the Airplane Flight Manual. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent jamming of the flap jackscrews during the approach to landing, which could result in inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane.

DATES: Effective January 3, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 900EX and Mystere Falcon 900 series airplanes was published in the **Federal Register** on February 15, 2002 (67 FR 7097). That action proposed to continue to require the following actions, which are currently required by AD 99–14–07, amendment 39–11218 (64 FR 36561, July 7, 1999), for certain Model Falcon 900EX and Mystere Falcon 900 series airplanes:

- Repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary;
- Repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and
- Repetitive measurement of the screw/nut play of the jackscrews on the inboard and outboard flaps to detect discrepancies, and corrective action, if necessary.

The action also proposed to require revision of the Airplane Flight Manual (AFM).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Add Part Numbers

One commenter requests adding "Amdt A" to the jackscrew part numbers (P/Ns) that are already specified by the proposed AD (*i.e.*, P/Ns 5318–1, 1–5319–1, and 2–5319–1). We concur with the commenter's request, noting that the designation of "Amdt A" simply indicates a reconditioned jackscrew that has been reidentified. As such, we have determined that this change further clarifies, but does not change, the requirements of this AD. In light of this, we have added P/Ns 5318–1 Amdt A, 1–5319–1 Amdt A, and 2–5319–1 Amdt A, as appropriate, for those P/Ns that have been reconditioned and reidentified. We have revised the applicable P/Ns in paragraphs (b) through (h) of the final rule accordingly.

Request To Revise Airplane Maintenance Manual References

The same commenter requests that the final rule reference only Chapter 5–40 of the Airplane Maintenance Manual (AMM) for the operational testing, inspections, and replacement action. The commenter adds that operators are managing the jackscrew life limits and inspections, and have planned the spares and maintenance inspections based on the actions required by AD 99–14–07. The commenter considers that the corrective action can be accomplished only per Chapter 5–40 of the AMM.

We do not concur with the commenter's request that only Chapter 5–40 of the AMM should be cited in the final rule as the appropriate source of service information for the actions required by the proposed AD. In order to accomplish the requirements of the proposed AD, it is necessary to cite all of the service information references included in the proposed AD, which include various AMMs and Temporary Revisions. No change to the final rule is necessary in this regard.

Explanation of Changes to the Final Rule

We have made the following changes to the final rule:

- In the Summary section of the final rule, we have clarified the requirements for the repetitive replacement action. Although the Summary section of the proposed AD specifies repetitive replacement of the inboard flap jackscrews "on the inboard," we have deleted the term "on the inboard" in that section of the final rule because the replacement action is also required for the inboard flap jackscrews located in the outboard position. The exact location of the affected jackscrews is specified in paragraphs (b) through (h) of the final rule.
- Although paragraphs (c) and (e) of the proposed AD specify a reconditioned jackscrew having P/N 5318–1, we have revised those paragraphs in the final rule to clarify that the correct P/N of a reconditioned jackscrew is P/N 5318–1 Amdt A.
- Although paragraphs (c)(1), (e)(1), and NOTE 2 of the proposed AD did not include the date of the referenced service bulletin, we have added the date (September 16, 1999) in those paragraphs in the final rule.
- In the proposed AD, paragraph (c)(2) specifies that the jackscrew is located on the inboard flap in the "inboard" position, and paragraph (e)(2) specifies the location of the jackscrew in the "outboard" position. However, because the jackscrew could be located in either the inboard or outboard position, we have determined that the requirements in those paragraphs are unnecessary and should be deleted. In light of this, we have revised the final rule and renumbered the subparagraphs accordingly.
- In paragraph (d) of the final rule, we have clarified the location of the middle jackscrew by specifying that the jackscrew is located on the inboard flap and in the outboard position. We have also clarified the location of the jackscrew in paragraph (e) of the final rule.
- Paragraph (i) of the proposed AD incorrectly specifies revising the "Limitations" Section of the FAA-approved AFM. However, we have revised the final rule to specify revising the "Abnormal Procedures" Section of the AFM, as cited in French airworthiness directive 1999–082–024(B) R2, dated September 20, 2000.
- We have determined that NOTE 3 in the proposed AD, which specifies a change to the general revisions of the AFM, is no longer necessary. We have revised the final rule and renumbered the notes accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 28 airplanes of U.S. registry that will be affected by this AD.

The costs of performing actions required by AD 99–14–07 and retained in this AD for Model Falcon 900EX and Mystere Falcon 900 series airplanes are described below.

The repetitive operational test of the flap asymmetry detection system takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive operational test on U.S. operators is estimated to be $1,680, or $60 per airplane, per test cycle.

The measurement of the screw/nut play in the flap jackscrews takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the measurement on U.S. operators is

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estimated to be $13,400, or $480 per airplane, per measurement cycle.

The repetitive replacement of jackscrews takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. New jackscrews cost approximately $21,200 per airplane. However, the AD permits a one-time reconditioning and re-use of jackscrews, which could reduce the cost of parts by 50%. Based on these figures, the cost impact of replacement of jackscrews on U.S. operators is estimated to be between $310,240 and $607,040, or between $11,080 and $21,680 per airplane, per replacement cycle.

The revision of the AFM takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators is $1,680, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–23–20 Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)): Amendment 39–12964. Docket 2000-NM–418–AD.

Applicability: Model Falcon 900EX, serial numbers 04 and up, and Mystere Falcon 900 series airplanes, serial numbers 161 and up; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the flap jackscrews during the approach to landing, which could result in the inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Operational Test

(a) Within 5 flight cycles after August 11, 1999 (the effective date of AD 99–14–07, amendment 39–11218): Perform an operational test of the flap asymmetry detection system to ensure that the system is functioning correctly, in accordance with the procedures specified in Dassault Falcon 900 Airplane Maintenance Manual (AMM) 27–502, dated January 1995; or Dassault Falcon 900EX AMM 27–502, dated September 1996; as applicable. Prior to further flight, repair any discrepancy detected, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (or its delegated agent). Repeat the operational test thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Repetitive Replacement

(b) Replace each jackscrew having part number (P/N) 5318–1 or 5318–1 Amdt A, which is located on the inboard flap in the inboard position, in accordance with the procedures specified in Dassault Falcon 900 AMM 27–521, dated December 1998; or Dassault Falcon 900EX AMM 27–510, dated September 1996; as applicable. The replacement jackscrew may be new or may have been reconditioned in accordance with paragraph (c) of this AD. Do the initial replacement at the earlier of the times specified in paragraphs (b)(1) and (b)(2) of this AD. Repeat the replacement of a jackscrew having P/N 5318–1 or 5318–1 Amdt A thereafter at intervals not to exceed 750 flight cycles on the jackscrew located on the inboard flap in the inboard position.

(1) Prior to the accumulation of 1,000 total flight cycles on the inboard jackscrew located on the inboard flap in the inboard position, or within 25 flight cycles after August 11, 1999, whichever occurs later.

(2) Prior to the accumulation of 750 total flight cycles on the inboard jackscrew located on the inboard flap in the inboard position, or within 25 flight cycles after the effective date of this AD, whichever occurs later.

(c) A jackscrew having P/N 5318–1 and located on the inboard flap in the inboard position may be replaced by a reconditioned jackscrew having P/N 5318–1 Amdt A, provided that all of the conditions specified in paragraphs (c)(1) and (c)(2) of this AD are met.

(1) The jackscrew has been reconditioned and reidentified as P/N 5318–1 Amdt A, in accordance with Dassault Service Bulletin AVIAC 5318–27–01, dated September 16, 1999.

(2) The jackscrew has been reconditioned only one time.

(d) Prior to the accumulation of 2,200 total flight cycles on the middle jackscrew located on the inboard flap and in the outboard position, or within 25 flight cycles after August 11, 1999, whichever occurs later: Replace each jackscrew having P/N 5318–1 or 5318–1 Amdt A on the inboard flap and in the outboard position, in accordance with the procedures specified in Dassault Falcon 900 AMM 27–521, dated December 1998; or Dassault Falcon 900EX AMM 27–510, dated September 1996; as applicable. The replacement jackscrew may be new or may have been reconditioned in accordance with paragraph (e) of this AD. Repeat the replacement of a jackscrew having P/N 5318–1 or 5318–1 Amdt A thereafter at intervals not to exceed 2,200 flight cycles on the jackscrew located on the inboard flap and in the outboard position.

(e) A jackscrew having P/N 5318–1 and located on the inboard flap and in the outboard position may be replaced by a reconditioned jackscrew having P/N 5318–1 Amdt A, provided that all of the conditions specified in paragraphs (e)(1) and (e)(2) of this AD are met.

(1) The jackscrew has been reconditioned and reidentified as P/N 5818–1 Amdt A, in accordance with Dassault Service Bulletin AVIAC 5318–27–01, dated September 16, 1999.

(2) The jackscrew has been reconditioned only one time.

Repetitive Measurements

(f) Prior to the accumulation of 1,000 total flight cycles on the outboard jackscrews located on the outboard flaps, or within 25 flight cycles after August 11, 1999, whichever occurs later: Measure the screw/nut play of the jackscrews having P/N 1–5319–1 or 1–5319–1 Amdt A (on the left wing) and P/N 2–5319–1 or 2–5319–1 Amdt A (on the right wing) on the outboard flaps, in accordance with the procedures specified in Dassault Falcon 900 AMM Temporary Revision (TR) 27–514, dated February 1999; or Dassault Falcon 900EX AMM TR 27–514, dated February 1999; as applicable.

Note 2: Jackscrews having P/N 1–5319–1 or 2–5319–1 may be reconditioned in accordance with Dassault Service Bulletin AVIAC 5319–27–01, dated September 16, 1999. These jackscrews may be reconditioned and reused more than one time.

(1) If the initial measurement is equal to or less than 0.014 inch: Repeat the measurement thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first. If any repetitive measurement detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraph (f)(2) of this AD.

(2) If the initial measurement is greater than 0.014 inch: Perform the actions required by paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Prior to further flight, replace the jackscrew with a new or reconditioned jackscrew, in accordance with Dassault Falcon 900 AMM 27–521, dated December 1998; or Dassault Falcon 900EX AMM 27–510, dated September 1996; as applicable.

(ii) Prior to the accumulation of 1,000 total flight cycles on the new or reconditioned jackscrew, perform a follow-on measurement of the screw/nut play, in accordance with the procedures specified in Dassault Falcon 900 AMM TR 27–514, dated February 1999; or Dassault Falcon 900EX AMM TR 27–514, dated February 1999; as applicable.

(iii) If any follow-on measurement required by paragraph (f)(2)(ii) of this AD detects a nut/screw play equal to or less than 0.014 inch, perform the actions required by paragraph (f)(1) of this AD. If any follow-on measurement required by (f)(2)(ii) of this AD detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(g) Prior to the accumulation of 600 total flight cycles on the jackscrew located on the inboard flap in the inboard position, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the jackscrew having P/N 5318–1 or 5318–1 Amdt A, which is located on the inboard flap in the inboard position to detect discrepancies, in accordance with the procedures specified in Dassault Falcon 900 AMM TR 27–514, dated February 1999; or Dassault Falcon 900EX AMM TR 27–514, dated February 1999; as applicable. If the measurement is greater than 0.014 inch, prior to further flight, replace the discrepant jackscrew with a new or reconditioned jackscrew, in accordance with the applicable maintenance manual.

(h) Prior to the accumulation of 1,000 total flight cycles on the jackscrew located on the inboard flap in the outboard position, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the jackscrew having P/N 5318–1 or 5318–1 Amdt A, which is located on the inboard flap in the outboard position, in accordance with the procedures specified in Dassault Falcon 900 AMM TR 27–514, dated February 1999; or Dassault Falcon 900EX AMM TR 27–514, dated February 1999; as applicable.

(1) If the initial measurement is equal to or less than 0.014 inch: Repeat the measurements thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first. If any repetitive measurement detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraph (h)(2) of this AD.

(2) If the initial measurement is greater than 0.014 inch: Perform the actions required by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Prior to further flight, replace the discrepant jackscrew with a new or reconditioned jackscrew, in accordance with Dassault Falcon 900 AMM 27–521, dated December 1998; or Dassault Falcon 900EX AMM 27–510, dated September 1996; as applicable.

(ii) Prior to the accumulation of 1,000 total flight cycles on the new or reconditioned jackscrew perform a follow-on measurement of the screw/nut play, in accordance with the procedures specified in Dassault Falcon 900 AMM TR 27–514, dated February 1999; or Dassault Falcon 900EX AMM TR 27–514, dated February 1999; as applicable.

(iii) If any follow-on measurement required by paragraph (h)(2)(ii) of this AD detects a nut/screw play equal to or less than 0.014 inch, perform the actions required by paragraph (h)(1) of this AD. If any follow-on measurement required by paragraph (h)(2)(ii) of this AD detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

Airplane Flight Manual Revision

(i) Within 7 days after the effective date of this AD: Revise the Abnormal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement (this may be accomplished by inserting a copy of this AD in the AFM):

"In case of discrepancy between the control position and flap position indicator, do not change flap position control handle. Apply flight manual abnormal procedure 'Flight controls—system jamming or asymmetry' for approach speed and landing distance."

Alternative Methods of Compliance

(j)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–14–07, amendment 39–11218, are not considered to be approved as alternative methods of compliance with this AD.

Special Flight Permits

(k) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(l) Unless otherwise specified in this AD, the actions shall be done in accordance with Dassault Falcon 900 Airplane Maintenance Manual Temporary Revision 27–514, dated February 1999; or Dassault Falcon 900EX Airplane Maintenance Manual Temporary Revision 27–514, dated February 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–082–024(B) R2, dated September 20, 2000.

Effective Date

(m) This amendment becomes effective on January 3, 2003.

Issued in Renton, Washington, on November 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30024 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–36–AD; Amendment 39–12966; AD 2002–24–01]

RIN 2120–AA64

Airworthiness Directives; Britten Norman (Bembridge) Limited BN2A Mk. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

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SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Britten Norman (Bembridge) Limited (Britten Norman) BN2A Mk. III series airplanes. This AD requires you to repetitively inspect the rear engine-mounting frame for cracks and replace the frame if cracks are found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct cracks in the rear engine-mounting frame, which could lead to engine mount failure. Such failure could result in separation of the engine from the airplane.

DATES: This AD becomes effective on January 21, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 21, 2003.

ADDRESSES: You may get the service information referenced in this AD from Britten Norman (Bembridge) Limited Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–36–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Britten Norman BN2A Mk. III series airplanes. The CAA reports that the manufacturer has reported three occurrences of cracks in the rear engine-mounting frame detected by operators during routine inspections.

What Is the Potential Impact If FAA Took No Action?

These cracks could lead to engine mount failure with consequent separation of the engine from the airplane.

Has FAA Taken Any Action To This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Britten Norman BN2A Mk. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 17, 2002 (67 FR 58546). The NPRM proposed to require you to repetitively inspect the rear engine-mounting frame for cracks and replace the frame if cracks are found.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 7 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240.	No cost for parts	$240	7 × $240 = $1,680.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
30 workhours × $60 per hour = $1,800	$10,000	$11,800

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–24–01 Britten Norman (Bembridge) Limited: Amendment 39–12966; Docket No. 2002–CE–36–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the rear engine-mounting frame, which could lead to engine mount failure with consequent separation of the engine from the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the rear engine-mounting frame, part number (P/N) NB51–H–1021, or FAA-approved equivalent part number, for cracks.	Initially upon accumulating 1,000 hours time-in-service (TIS) on the engine mounting frame or within the next 50 hours TIS after January 21, 2003 (the effective date of this AD), whichever occurs later. If no cracks are found on the initial inspection, repetitively inspect every 200 hours TIS.	In accordance with Britten-Norman Service Bulletin No. SB 281, Issue 1, dated May 1, 2002.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD, replace the mounting frame with a new frame, P/N NB51–H–1021, or FAA-approved equivalent part number.	Prior to further flight after the inspection in which any crack and/or damage is found. After installing the new frame, inspect as required in paragraph (d)(1) of this AD.	In accordance with Britten-Norman Service Bulletin No. SB 281, Issue 1, dated May 1, 2002.

Note 1: When you replace the engine-mounting frame, this AD requires you to inspect per paragraph (d)(1) of this AD upon accumulating 1,000 hours TIS.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Britten-Norman Service Bulletin No. SB 281, Issue 1, dated May 1, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Britten Norman (Bembridge) Limited Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British AD 001–05–2002, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on January 21, 2003.

Issued in Kansas City, Missouri, on November 19, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30023 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 020725180–2263–02]

RIN 0691–AA43

International Services Surveys: BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The BE–22 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, in years the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons is not conducted.

This rule revises the regulations to create a new reporting requirement for medical services, receipts only. Additionally, BEA announces that it is revising the BE–22 to create new reporting categories for trade-related services, auxiliary insurance services, and waste treatment and depollution

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services; add coverage of transcription services; and amend several other service categories.

EFFECTIVE DATE: This final rule will be effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the August 26, 2002, **Federal Register**, volume 67, No. 165, 67 FR 54748–54749, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

This final rule amends 15 CFR part 801 by revising § 801.9(b)(6)(ii) to set forth revised reporting requirements for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that the President shall, to the extent he deems necessary and feasible— * * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *". In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–22 is an annual survey of selected services transactions with unaffiliated foreign persons. The data are needed to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. trade policy initiatives; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

This document describes changes to the BE–22 survey and sets forth changes to the regulation governing the BE–22. The survey incorporates new reporting categories for trade-related services, auxiliary insurance services, and waste treatment and depollution services; adds coverage of transcription services; and amends several other services categories. These changes mirror changes introduced in the 2001 BE–20 benchmark survey. Additionally, a new reporting requirement for medical services, receipts only, is created. The final rule revises a list of items set forth in the "covered services" section of the existing rule, to reflect this new category in the survey. These changes to the survey and regulations will close statistical gaps in the coverage of cross-border services transactions and bring the survey into better alignment with international standards for compilation of statistics on trade in services.

Executive Order 12866

This final rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0060) has been displayed.

The survey is expected to result in the filing of reports from approximately 1,600 respondents. The respondent reporting burden for this collection of information is estimated to vary from less than four hours to 500 hours, with an overall average burden of 11.5 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden of the survey is estimated at about 18,400 hours (1,600 times 11.5 hours average burden).

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0060, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. While the survey does not collect data on total sales or other measures of the overall size of businesses that respond to the survey, historically the respondent universe has been comprised mainly of major U.S. corporations. With the exemption level for the survey being $1 million in covered receipts or payments, few small businesses can be expected to be subject to reporting. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction, often with a single partner country; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 806

Economic statistics, International transactions, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: October 28, 2002.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 860 as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.9(b)(6)(ii) is revised to read as follows:

* * * * *

(b) * * *

(6) * * *

(ii) *Covered services.* With the exceptions given in this paragraph, the services covered by this survey are the same as those covered by the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—2001, as listed in § 801.10(c) of this part. The exceptions are the addition of coverage of medical services, receipts only, and the elimination of coverage of four small types of services-

agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services.

* * * * *

[FR Doc. 02–30136 Filed 11–27–02; 8:45 am]

BILLING CODE 3510–06–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 2002–4 CARP NCBRA]

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress announces a cost of living adjustment of 2.0% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions in the BMI and ASCAP repertories. The cost of living adjustment is based on the change in the Consumer Price Index from October, 2001, to October, 2002.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. 17 U.S.C. 118(c). The most recent proceeding to adjust the terms and rates for the section 118 license began in April of this year. 67 FR 15414 (April 1, 2002).

On October 30, 2002, the Copyright Office announced proposed regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works, including a provision to adjust § 253.10 which provides for an annual cost of living adjustment of the rates for the public performance of musical compositions in the ASCAP and BMI repertories by public broadcasting entities licensed to colleges and universities set forth in § 253.5 for the new license period, 2003–2007. 67 FR 66090 (October 30, 2002). Under the proposed rules, the § 253.5 rate for the public performance of musical compositions in the SESAC repertory will be $80 for 2003, subject to an annual cost of living adjustment in each subsequent year thereafter during the licensing period.

Section 253.10(b) requires that the Librarian publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. Accordingly, the Copyright Office of the Library of Congress is hereby announcing the change in the Consumer Price Index and performing the proposed annual cost of living adjustment to the rates set out in § 253.5(a) for the public performance of musical compositions in the BMI and ASCAP repertories in accordance with the October 30 proposed regulations.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 2001, to the most recent Index published before December 1, 2002, is 2% (2001's figure was 177.7; the figure for 2001 is 181.3, based on 1982–1984=100 as a reference base). Rounding off to the nearest dollar, the royalty rate for the use of musical compositions in the repertory of ASCAP is $249 and the use of the musical compositions in the repertory of BMI is the same, $249.

If no comments are received regarding the proposed amendments to §§ 253.5 and 253.10 announced in the October 30 **Federal Register** notice and the final rules are published before January 1, 2003, the cost of living adjustments announced in this notice shall become effective on January 1, 2003.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

Final Regulation

For the reasons set forth in the preamble, part 253 of title 37 of the Code of Federal Regulations is amended as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.5 is amended by revising paragraphs (c)(1) through (c)(2) as follows:

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * *

(1) For all such compositions in the repertory of ASCAP, $249 annually.

(2) For all such compositions in the repertory of BMI, $249 annually.

* * * * *

Dated: November 21, 2002.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 02–30145 Filed 11–27–02; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0314; FRL–7281–2]

Pyriproxyfen; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of pyriproxyfen in or on strawberry. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on strawberry. This regulation establishes a maximum permissible level for residues of pyriproxyfen in or on this food commodity. The tolerance will expire and is revoked on December 31, 2004.

DATES: This regulation is effective November 29, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0314, must be received on or before January 28, 2003.

ADDRESSES: Written objections and hearing requests may be submitted

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electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop producers (NAICS 111)
- Animal producers (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0314. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the insecticide pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy) ethoxypyridine], in or on strawberry at 0.30 part per million (ppm). This tolerance will expire and is revoked on December 31, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA) of 1996. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Pyriproxyfen on Strawberry and FFDCA Tolerances

The California Department of Pesticide Regulation has indicated that populations of the silverleaf whitefly in the State are at levels which could result in significant damage to the State's strawberry crop. This pest is relatively newly-introduced into the U.S., and the registered alternatives have not provided adequate control thus far. Without adequate control, this pest was expected to result in significant crop damage and yield losses for strawberry growers, leading to significant economic losses. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on strawberry for control of the silverleaf whitefly in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of pyriproxyfen in or on strawberry. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this tolerance will expire and is revoked on December 31, 2004, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberry after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether pyriproxyfen meets EPA's registration requirements for use on strawberry or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of pyriproxyfen by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for pyriproxyfen, contact the Agency's Registration Division at the address provided under FOR FURTHER INFORMATION CONTACT.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of pyriproxyfen and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a time-limited tolerance for residues of pyriproxyfen in or on strawberry at 0.30 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyriproxyfen, a summary of the toxicological dose and endpoints for pyriproxyfen for use in this human risk assessment, and the most recent estimated aggregate risks resulting from registered uses are discussed in the **Federal Register** for August 28, 2002 (67 FR 55150) (FRL–7195–7) Final Rule establishing tolerances for residues of pyriproxyfen in/on acerola, bushberry subgroup, feijoa, guava, jaboticaba, juneberry, lingonberry, longan, lychee, passionfruit, pulasan, rambutan, salal, Spanish lime, starfruit, stone fruit group, and wax jambu.

Refer to the August 28, 2002 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment, including this use on strawberry.

B. Exposure Assessment

EPA assessed risk scenarios for pyriproxyfen under chronic and intermediate and short-term (residential) scenarios. Because there were no acute endpoints identified, an acute risk assessment was not conducted. Nor was a cancer aggregate risk assessment conducted, because pyriproxyfen is classified as "not likely" to be a human carcinogen.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the Department of Agricultural (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the chronic exposure assessments: Published and proposed tolerance level residues and 100% crop treated were assumed for all commodities, and the default processing factors were applied.

Using these exposure assumptions, EPA concluded that pyriproxyfen chronic exposures from food consumption are below levels of concern (< 100% of the chronic Population Adjusted Dose (cPAD)) for the general U.S. population and all population subgroups. The cPAD utilized for the most highly exposed subgroup (children 1–6 years old) is 2.7%. Chronic risk from dietary exposure for infants (< 1 year old) and children (7–12 years old) utilizes 2.0% and 1.6% of the cPAD, respectively. Chronic dietary risk for the general U.S. population is 1.0% of the cPAD, and the estimated chronic risk for all other population subgroups is below this level. In addition, despite the potential for chronic dietary exposure to pyriproxyfen in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model EECs of pyriproxyfen in surface and ground waters, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following table:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC EXPOSURE TO PYRIPROXYFEN

Population Subgroup	cPAD (mg/kg)	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
General U.S. population	0.35	1.0	0.4	0.006	12,000
Children (1–6 years old)	0.35	2.7	0.4	0.006	3,100
Children (7–12 years old)	0.35	1.6	0.4	0.006	3,200

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TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC EXPOSURE TO PYRIPROXYFEN—Continued

Population Subgroup	cPAD (mg/kg)	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Infants (< 1 year old)	0.35	2.0	0.4	0.006	3,200

Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, flea and tick control on pets).

Pyriproxyfen is currently registered for various residential non-dietary sites, and is used for flea and tick control (home environment and pet treatments) as well as products for ant and roach control. Pet owners could potentially be exposed to pyriproxyfen during applications to pets; however, since no short-term dermal or inhalation endpoints were identified, only a post-application residential assessment was conducted. Both adults and toddlers could potentially be exposed to pyriproxyfen residues on treated carpets, floors, upholstery, and pets, but it is anticipated that toddlers will have higher exposures than adults due to behavior patterns. Therefore, the residential risk assessment addressed post-application exposures of toddlers, which is considered to be a worst-case scenario. Short-term, intermediate-term, and long-term toddler hand-to-mouth exposures (consisting of petting treated animals and touching treated carpets/flooring) were assessed; long-term dermal exposures were also assessed for products with anticipated efficacy of more than 6 months (carpet powders and pet collars). Toddler exposures to combined treatment scenarios, where a pet owner treats the home environment and the pet in the same period were also assessed.

The Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate-term exposures for pyriproxyfen. Using the exposure assumptions described above for short-term and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs as shown in the following table:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM AND INTERMEDIATE-TERM EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Target MOE	Short-Term Aggregate MOE (Food + Residential)	Intermediate-Term Aggregate MOE (Food + Residential)	Surface, Ground Water EECs (ppb)	Short-Term DWLOCs (ppb)	Intermidate-Term DWLOCs (ppb)
U.S. population	100	29,000	10,000	0.4, 0.006	35,000	12,000
Infants (< 1 year old)	100	1,800	650	0.4, 0.006	9,400	3,000
Children (1–6 years)	100	1,700	620	0.4, 0.006	9,400	2,900
Children (7–12 years)	100	1,900	670	0.4, 0.006	9,500	3,000

These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. For surface and ground water, the EECs for pyriproxyfen are significantly less than the DWLOCs as a contribution to intermediate-term and short-term aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of pyriproxyfen in drinking water do not contribute significantly to the intermediate-term or short-term aggregate human health risk at the present time.

Pyriproxyfen is classified as not likely to be a human carcinogen, so the Agency did not conduct a cancer aggregate risk assessment.

Based upon these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to pyriproxyfen residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas liquid chromatography with nitrogen-phosphorus (GLC/NP) detector) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits for residues of pyriproxyfen in/on strawberry, so international harmonization is not an issue.

C. Conditions

A maximum of two applications may be made, at a maximum rate of 30 grams active ingredient (a.i.), using ground application equipment only. No more than 60 grams a.i. may be applied per acre per season.

VI. Conclusion

Therefore, the tolerance is established for residues of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy) ethoxypyridine], in or on strawberry at 0.30 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178.

Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0314 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 28, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2002–0314, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect

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on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 8, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.510 is amended by alphabetically adding "strawberry" to the table in paragraph (b) to read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Strawberry	0.30	12/31/04
* * * * *		

[FR Doc. 02–30260 Filed 11–27–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 27, 87, 90 and 95

[WT Docket No. 02–08; FCC 02–152]

License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published a document in the Federal Register on June 20, 2002, (67 FR 41847), revising the Quiet Zone procedures for operation near GOES stations. The publication incorrectly indicated that the GOES procedures were contained in § 1.924(f) and, therefore, inadvertently removed the Quiet Zone procedures for operation in the 420–450 MHz band. This document corrects the Quiet Zone procedures by re-inserting the procedures for operation in 420–450 MHz band into § 1.924(f) and lists the updated procedures for operation near GOES stations into § 1.924(g).

DATES: Effective November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Fickner regarding legal matters, and/or Brian Marenco or Tim Maguire regarding engineering matters via phone at (202) 418–0680, via TTY (202) 418–7233, or via e-mail at *kfickner@fcc.gov*, *bmarenco@fcc.gov* or *tmaguire@fcc.gov*, respectively, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: In the FR Doc. 02–15373 published in the **Federal Register** on June 20, 2002, (67 FR 41847) the Commission updated the Quiet Zone procedures for operation near GOES stations. The document incorrectly indicated that the GOES procedures were contained in § 1.924(f). The GOES procedures are supposed to be listed in § 1.924(g). The Quiet Zone procedures listed in § 1.924(f) are intended for operation in the 420–450 MHz band. Therefore, the **Federal Register** publication inadvertently deleted the Quiet Zone procedures for operation in the 420–450 MHz band. The Quiet Zone procedures for operations near GOES stations are intended to apply only to operation in the 1670–1675 MHz band.

Therefore, the Quiet Zone procedures for operation in the 420–450 MHz band should be re-inserted into § 1.924(f) and the updated GOES procedures should be listed in § 1.924(g).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission corrects 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURES

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.924 is amended by correctly designating paragraph (f) as paragraph (g) and by reinstating the former text of paragraph (f) to read as follows:

§ 1.924 Quiet zones.

* * * * *

(f) *420–450 MHz band.* (1) In the band 420–450 MHz, applicants should not expect to be accommodated if their area of service is within 160 kilometers (100 miles) of the following locations:

(i) 45°45′00.2″ N., 70°31′58.3″ W.,

(ii) 64°17′00.0″ N., 149°10′00.0″ W.,

Note to: Paragraph(f)(ii) is referenced to NAD27.

(iii) 48°43′00.0″ N., 97°54′01.4″ W.;

(2) Within 200 kilometers (124 miles) of the following locations:

(i) 32°38′00.5″ N., 83°34′59.7″ W.,

(ii) 31°25′00.6″ N., 100°24′01.3″ W.;

(3) Within 240 kilometers (150 miles) of the following location:

(i) 39°07′59.6″ N., 121°26′03.9″ W.;

(ii) [Reserved]

(4) Within 320 kilometers (200 miles) of the following locations:

(i) 28°21′01.0″ N., 80°42′59.2″ W.,

(ii) 30°30′00.7″ N., 86°29′59.8″ W.,

(iii) 43°08′59.6″ N., 119°11′03.8″ W.;

(5) Or in the following locations:

(i) The state of Arizona,

(ii) The state of Florida,

(iii) Portions of California and Nevada south of 37°10′ N.,

(iv) And portions of Texas and New Mexico bounded by 31°45′ N., 34°30′ N., 104°00′ W., and 107°30′ W

* * * * *

[FR Doc. 02–29810 Filed 11–27–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.011005245–2012–02; I.D. 112202A]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of directed fishery for Management Area 1A.

SUMMARY: NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1A (Area 1A) for fishing year 2002 has been harvested. Therefore, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring harvested from Area 1A per trip or calendar day until January 1, 2003, when the 2003 TAC becomes available. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that 95 percent of the Atlantic herring TAC allocated to Area 1A has been harvested, and no TAC is available for the directed fishery for Atlantic herring harvested from Area 1A.

DATES: Effective 0001 hrs local time, December 1, 2002, through 2400 hrs local time, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, at (978) 281–9221.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2002 TAC allocated to Area 1A for the fishing year is 60,000 mt (132,277,357 lb). The TAC is further allocated into a period 1 TAC of 6,000 mt (13,227,735 lb), a period 2 TAC of 54,000 mt (119,049,621 lb), with period 1 spanning January 1 - May 31; and period 2, June 1 - December 31. (67 FR 3442, January 24, 2002)

The regulations at 50 CFR 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan for the Atlantic Herring Fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of herring per trip or calendar day from the specified management area for the remainder of the fishing year.

The Regional Administrator determined that 95 percent of the Period 1 TAC allocated to Area 1A was harvested on April 26, 2002, and the directed fishery was closed for the remainder of the quota period 1 (67 FR 20056, April 24, 2002).

The Regional Administrator has determined, based upon dealer reports and other available information, that 95 percent of the total Atlantic herring TAC allocated to Area 1A for fishing year 2002 has been harvested. Therefore, effective 0001 hrs local time, December 1, 2002, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring harvested from Area 1A per trip or calendar day until the Period 1 TAC becomes available at 0001 hrs, January 1, 2003. Vessels may transit an area that is limited to the 2,000–lb (907.2–kg) limit with more than 2,000 lb (907.2 kg) of herring on board, provided all fishing gear is stowed and not available for immediate use, as required by § 648.23(b). A vessel may land herring in an area that is limited to the 2,000–lb (907.2–kg) limit specified in § 648.202(a) with more than 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit and provided all fishing gear is stowed and not available for immediate use as required by § 648.23(b). Effective December 1, 2002, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 1A through January 1, 2003, 0001 hrs local time.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

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Dated: November 22, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30228 Filed 11–25–02; 4:34 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 111302E]

Fisheries of the Exclusive Economic Zone Off Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Technical correction.

SUMMARY: NMFS is correcting typographic errors in Federal regulations. The intended effect of this action is regulatory accuracy, and it will have no effect on any person fishing in the EEZ for any species.

DATES: Effective November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: This action corrects typographical errors in regulations codified at 50 CFR part 679. In § 679.2, the definition heading for "KIFQ actual ex-vessel value" is corrected by removing "KIFQ" and adding in its place "IFQ". Paragraph 679.7(f)(8)(ii)(B)(*2*) is corrected by removing "Pacific code" and adding in its place "Pacific cod". This action will not have any substantive regulatory effect.

Classification

This action corrects typographic errors, a non-discretionary technical change with no substantive effects. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), as such procedure would be unnecessary. Because prior notice and opportunity for comment is not required for this action by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are not applicable.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 21, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679–FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: Authority: 16 U.S.C 773 *et seq.*; 1801 *et seq.* 3631 *et seq.*; Title II Division C, Pub. L. 105277; Sec. 3027, Pub. L. 10631; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106554. *et seq.*

2. In § 679.2, the heading for the definition of "KIFQ actual ex-vessel value" is revised to read as follows, and the definition is placed in an alphabetical order:

§ 679.2 Definitions.

* * * * *

IFQ actual ex-vessel value. * * *

* * * * *

3. In § 679.7, paragraph (f)(8)(ii)(B)(*2*) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(8) * * *

(ii)

(B) * * *

If the vessel operator ...	Then ...
* * * * * * *	
(*2*) does not have an LLP groundfish license with a Pacific cod endorsement that meets the requirements of § 679.4(k)(9).	Pacific cod must not be discarded up to the retainable amount specified in Table 11 of this part unless Pacific cod are required to be discarded under subpart B of this part, or Pacific cod are not authorized to be retained under subpart A of this part.

[FR Doc. 02–30132 Filed 11–27–02; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register
Vol. 67, No. 230
Friday, November 29, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Reopening of comment period.

SUMMARY: On September 25, 2002, NCUA published for public comment a proposed rule amending § 701.19. 67 FR 60184 (September 25, 2002). The revisions to §701.19 clarify the scope of the rule and the investments FCUs may use to fund employee benefits. The comment period for this proposed rule was due to have expired on November 25, 2002. Two interested parties have requested an extension of the comment period to respond. In view of this request and NCUA's desire to foster public participation in the rulemaking process, the NCUA Board is reopening the comment period to December 26, 2002.

DATES: Comments must be received on or before December 26, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or email comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–30162 Filed 11–27–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

Prompt Corrective Action; Net Worth Restoration Plans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Pursuant to Congressional mandate, the National Credit Union Administration (NCUA) established a system of prompt corrective action consisting of statutory minimum capital standards for federally-insured credit unions and corresponding remedies to restore net worth. Among the remedies mandated by statute is the requirement to submit a net worth restoration plan for approval by NCUA. NCUA requests public comment on a proposal to allow approval of an abbreviated net worth restoration plan for qualifying credit unions whose net worth ratio has declined marginally below 6 percent because growth in assets outpaces growth in net worth.

DATES: Comments must be received on or before January 28, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. *You are encouraged to fax comments to (703) 518-6319 or e-mail comments to regcomments@ncua.gov* instead of hand-delivering them. Whichever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: *Legal:* Steven W. Widerman, Trial Attorney, Office of General Counsel, at the above address or by telephone: 703/518-6557. *Technical:* Jon Flagg, Loss/Risk Analysis Officer, Office of Examination and Insurance, at the above address or by telephone: 703/518–6378.

SUPPLEMENTARY INFORMATION: Except where noted, citations to part 702 in this rule refer to 12 CFR 702 *et seq.*, as amended by the NCUA Board in a final rule found elsewhere in this volume of the **Federal Register**. Citations to part 702 are abbreviated to the section number only.

A. Background

1. Development of Part 702

In 1998, the Credit Union Membership Access Act ("CUMAA"), Pub. L. No. 105–219, 112 Stat. 913 (1998), amended the Federal Credit Union Act to require NCUA to adopt by regulation a system of "prompt corrective action" ("PCA") consisting of minimum capital standards and corresponding remedies to improve the net worth of federally-insured "natural person" credit unions. 12 U.S.C. 1790d *et seq.*

In 2000, the NCUA Board adopted part 702 and subpart L of part 747, establishing a comprehensive system of PCA. 12 CFR 702 *et seq.* Part 702 combines mandatory supervisory actions prescribed by statute with discretionary supervisory actions developed by NCUA, all indexed to five statutory net worth categories. 65 FR 8560 (Feb. 18, 2000). A risk-based net worth ("RBNW") component was subsequently integrated into part 702. 65 FR 44950 (July 20, 2000). Subpart L of part 747 established an independent review process allowing affected credit unions and officials to challenge PCA decisions. 12 CFR 747.2001 *et seq.* (2000). Part 702 and subpart L of part 747 took effect August 7, 2000, and first applied to activity in the fourth quarter of 2000. The RBNW component took effect January 1, 2001, and first applied (for quarterly Call Report filers) to activity in the first quarter of 2001.

Since it was first adopted, part 702 has been amended three times. First, to incorporate limited technical corrections. 65 FR 55439 (Sept. 14, 2000). Second, to delete sections made obsolete by adoption of a uniform quarterly schedule for filing Call Reports. 67 FR 12459 (March 19, 2002). And finally, in a final rule adopted today, to incorporate a series of revisions and adjustments designed to improve and simplify the implementation of PCA. That final rule appears elsewhere in this volume of the **Federal Register** and is effective January 1, 2003.

2. Request for Comments

The concept of an abbreviated net worth restoration plan ("NWRP") was first raised in the proposed rule that preceded the final rule that the NCUA Board has adopted today. 67 FR 38431 (June 4, 2002). While no specific

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proposal was introduced, the NCUA Board invited public comment on the concept of what was then referred to as "safe harbor" approval of an NWRP to benefit credit unions that fall marginally short of "adequately capitalized" primarily because asset growth outstrips income growth. *Id.* at 38437. The proposed rule described the concept in broad terms as "notice of certain criteria established by regulation that, when met, will assure approval."

NCUA received sixteen public comments on the "safe harbor" concept. Fourteen commenters generally supported the concept, suggesting various criteria for eligibility and for plan contents. Regarding eligibility, six commenters suggested a minimum net worth ratio for a "safe harbor" NWRP: one suggested "just under" 6 percent; two suggested 5.5 percent; two suggested 5 percent; one suggested 3 percent. In contrast, one commenter insisted there should be no minimum net worth ratio required for eligibility. Two commenters urged that a credit union should be eligible only if asset growth was not induced by above market rates on shares and deposits, or only in extraordinary circumstances. A banking industry trade association believed the concept was at odds with CUMAA. Finally, two commenters suggested that a "safe harbor" NWRP should not be subject to automatic revocation if its goals are not met.

Regarding the contents of a "safe harbor" NWRP, a commenter suggested requiring net worth to improve within two quarters. Another suggested setting a required return on average assets that would restore net worth within 3 years. One commenter advocated an earnings retention requirement of 80 to 180 basis points per year, depending on how far below six percent the credit union's net worth ratio had fallen.

Another urged that a plan should be accepted if a credit union's earnings are positive, but its net worth ratio remained flat in some quarters due to continued asset growth not induced by above market rates.

Some commenters seemed to equate the concept of "safe harbor" approval with the notion of automatic approval of any form of NWRP that the NCUA Board might adopt as an alternative to the standard NWRP that part 702 now requires. However, as the prior proposed rule confirmed, *id.* at 38437, CUMAA requires NCUA to ensure, as a prerequisite for approval, that an NWRP of any kind "is based on realistic assumptions and is likely to succeed in restoring * * * net worth." 12 U.S.C. 1790d(f)(5). "Safe harbor" approval was a misnomer to the extent that it implied, incorrectly, that NCUA would abdicate this statutory responsibility. Through this notice, the NCUA Board invites public comment on a specific proposal—styled a "1st tier net worth restoration plan"—to permit qualifying "undercapitalized" credit unions to submit for approval an abbreviated NWRP.

To facilitate consideration of the public's views, we ask commenters to address only the proposal for a "1st tier net worth restoration plan." Also, we urge commenters to recognize that, while given substantial discretion in certain areas of PCA, NCUA lacks the authority to override or expand by regulation the requirements, limitations and definitions that CUMAA expressly prescribed. *See* 12 U.S.C. 1790d(n). For example, NCUA lacks the discretion to abandon the statutory "realistic assumptions" criterion for approving an NWRP. 12 U.S.C. 1790d(f)(5). This rulemaking will not address proposals that would require NCUA to exceed the scope of its statutory authority.

B. Proposal for "1st Tier Net Worth Restoration Plan"

The proposed rule permits an "eligible" federally-insured credit union to submit for NCUA approval a "1st tier net worth restoration plan" ("1st tier NWRP") if the credit union falls marginally below "adequately capitalized" because asset growth, driven primarily by share and deposit growth, outpaces growth in net worth.[1]

1. Eligible Credit Unions

To be eligible to file a 1st tier NWRP, the proposed rule establishes historical net worth, performance, and growth criteria. The three eligibility criteria are designed to qualify only those credit unions that historically are profitable and have become marginally "undercapitalized" primarily because of uninduced share growth.

To be eligible, a credit union must meet two net worth criteria. First, a credit union must have a minimum net worth ratio of 5.50% as measured using the quarter-end balance of total assets per § 702.2(k)(1)(iv). New § 702.206(c)(1)(A)(i).[2] As in the case of an RBNW requirement, § 702.2(k)(2), when measuring current quarter net worth for eligibility purposes, there is no choice among the four methods otherwise available to calculate the total assets denominator of the net worth ratio. 702.2(k)(1). If there is an applicable RBNW requirement, the credit union's net worth ratio may not be more than 50 basis points (0.50 percent) below the RBNW requirement. New § 702.206(c)(1)(A)(ii).

Second, for each of the three prior quarters, a credit union must have achieved a net worth ratio of at least 6 percent. New § 702.206(c)(1)(B)(i). In contrast to measuring current quarter net worth by quarter-end total assets, for each of the three prior quarters a credit union may elect among any of the four methods of calculating the total assets denominator of the net worth ratio. If that credit union is subject to a RBNW requirement, it also must have met that requirement in each of the three prior quarters. New § 702.206(c)(1)(B)(ii).

A credit union also must meet a performance criterion: for the current and each of the three preceding quarters, a credit union must have increased the dollar amount of its net worth by 60 basis points (0.60 percent) annual return on average assets ("ROAA"). New § 702.206(c)(1)(C)(i). The ROAA is derived from a credit union's ROAA "key ratio" in its most recent Financial Performance Report, unless a more recently filed Call Report corrects earlier data. *See* NCUA, *User's Guide for NCUA's Financial Performance Report* at 3, 8 (form 8006, 2002 ed.). The 60 basis point ROAA reflects the approximate mean of individual credit unions' ROAA as of June 2002.

Finally, a credit union must meet a growth criterion: for the period combining the current and three preceding quarters, ending total asset growth may not exceed 110% of the growth in net worth plus shares and deposits.[3] New § 702.206(c)(1)(C)(ii). The 110% ceiling is based on growth in net worth, shares and deposits—and excludes growth in borrowings—to narrowly restrict the amount of growth supported by borrowings of a credit union with a net worth ratio below 6 percent. A credit union that grows through substantial borrowings will be required to file a standard NWRP.

Together, these eligibility criteria would allow 57.25% annualized asset growth for one quarter, causing a credit union's net worth ratio to fall from 6 percent to 5.50 percent, provided that its ROAA is 60 basis points.[4] An annual rate of asset growth greater than 57.25% would reduce a credit union's net worth ratio from 6 percent to below 5.50 percent, necessitating the further supervisory oversight that a longer term, standard NWRP provides.

A credit union that meets the three eligibility criteria must file its 1st tier NWRP within the same 45-day period that § 702.206(a) prescribes for filing a standard NWRP. New § 702.206(c). And as explained below, an eligible credit union receives a single opportunity to seek NCUA approval of a 1st tier NWRP. New § 702.206(c)(4)(A).

2. Contents of 1st Tier NWRP

The proposed rule has two content requirements for a 1st tier NWRP. First, a plan must include a realistic pro forma projection of growth in total assets, shares, ROAA and net worth ratio over the next four quarters, that will result in a net worth ratio of at least 6 percent and meet any applicable RBNW requirement. New § 702.206(c)(2)(A). The duration of a 1st tier NWRP is four quarters. Second, a plan must include a statement describing how the credit union will control exposure to market and institution risks arising from any new activities that it plans to undertake over the next four quarters. New § 702.206(c)(2)(B). The following table illustrates the ROAA a credit union would need to achieve to restore net worth from 5.50 to 6 percent over four quarters while offsetting given annual growth rates:

TABLE A.—ROAA REQUIRED TO RESTORE NET WORTH TO 6% WHILE OFFSETTING ANNUALIZED ASSET GROWTH

Return on average assets (in basis points)	60	70	80	90	100
Annual rate of asset growth	1.72%	3.45%	5.21%	7.35%	8.78%

As suggested above, a more detailed standard NWRP typically would be appropriate when the annual rate of asset growth is projected to exceed the capacity of the offsetting ROAA to restore net worth to 6 percent and to meet an applicable RBNW requirement over four quarters.

There are three principal differences between the content requirements of a standard NWRP and those of a 1st tier NWRP. First, a standard plan must include complete pro forma financial statements covering a minimum of two years, whereas a 1st tier plan requires four quarters of pro forma projections of total assets, shares and deposits, return on average assets and net worth. Second, a standard plan requires the credit union to specify what steps it will take to meet its schedule of quarterly net worth targets. In contrast, a 1st tier NWRP does not address what steps the credit union will take to become "adequately capitalized" at the end of the term of the plan. Finally, a standard NWRP requires those steps to extend beyond the term of the plan to ensure that the credit union remains at least "adequately capitalized" thereafter for four consecutive calendar quarters. *Id.* In contrast, a 1st tier plan does not address the credit union's net worth after the end of the term of the plan.

3. Criteria for Approval

For an NWRP to be approved, CUMAA requires NCUA to determine that it "is based on realistic assumptions and is likely to succeed in restoring the net worth of the credit union." 12 U.S.C. 1790d(f)(5). To avoid any suggestion that a 1st tier NWRP will be exempt from this statutory mandate, the proposed rule clarifies that approval is subject to NCUA's case-by-case determination that the growth rate and ROAA projected for the credit union rest on realistic assumptions that are likely to succeed in restoring its net worth ratio to 6 percent and satisfying any applicable RBNW requirement at the end of the term of the plan. New §§ 702.206(c)(3), 702.206(c)(2)(A).

Under the proposed rule, a 1st tier NWRP would be evaluated under the existing approval criteria that apply to a standard NWRP. § 702.206(d). First, NCUA would determine whether an NWRP satisfied the content requirements of the proposed rule. Second, NCUA would review the plan's growth and ROAA projections to ensure that they are supported by "realistic assumptions." To that end, the projections will be compared to historical growth and performance measures. Third, absent evidence to the contrary, NCUA would presume that a 1st tier NWRP would not unreasonably increase the credit union's exposure to risk. As part of the three-step evaluation, NCUA may consider the risk presented by any new activities the credit union plans to undertake and by other supervisory information. New § 702.206(c)(2)(B). This would include, for example, information from examination reports or insurance reviews, as well as CAMEL codes (*e.g.*, no composite "4"s or "5"s).

Once the evaluation is completed, NCUA would follow the same schedule for decision and notification that applies to standard NWRPs. § 702.206(f). Absent safety and soundness concerns, a 1st tier NWRP that meets the content requirements discussed above and that is determined by NCUA to be based on "realistic assumptions" should receive prompt approval.[5]

4. Requirement To File Standard NWRP

There are three circumstances in which a credit union that is eligible to file a 1st tier NWRP will be required to file a standard NWRP instead. First, unlike a credit union that files a standard NWRP, the proposed rule gives an eligible credit union a single opportunity to submit a 1st tier NWRP for approval. If that plan is not approved, the credit union will then be required to file a standard NWRP under § 702.206(b), within the time period provided in § 702.206(g). New § 702.206(c)(3)(A).

Second, a continuing decline in net worth ratio while operating under an approved 1st tier NWRP will trigger the requirement to file a standard NWRP. The proposed rule requires a credit union to file a standard NWRP if, during the term of an approved 1st tier NWRP, its net worth ratio declines below 5.5% or declines more than 50 basis points below an applicable RBNW requirement. New § 702.206(c)(4)(B). A more detailed, standard NWRP will enable NCUA to assess the adequacy of a credit union's plans to address the

[1] Citations to proposed new subsection (c) of § 702.206 are preceded by the word "New" and refer to the rule text below. If proposed subsection (c) is adopted, the final rule will redesignate current subsections (c) through (i) as new subsections (d) through (j), respectively.

[2] A credit union whose net worth ratio is between 5.50 and 5.99% based on the quarter-end balance of total assets may find that calculating its net worth ratio using a daily, monthly or quarterly average of total assets, § 702.2(k)(1)(i)–(iii), will yield a net worth ratio of 6 percent or better. In that event, the credit union will not be "undercapitalized"—at least temporarily—and thus will not be required to file *any* NWRP.

[3] For example, assume the four quarters in question cover the calendar year 2002. Compare the difference between 12/31/01 and 12/31/02 quarter-end total assets with the difference between 12/31/01 and 12/31/02 quarter-end net worth plus shares and deposits. To be eligible, the difference in total assets cannot exceed the difference in net worth plus shares and deposits by more than 10 percent.

[4] A 57.25% annualized rate of growth represents growth of approximately 12%, compounded, per quarter.

[5] Like a standard NWRP, once a 1st tier NWRP is approved, the credit union will no longer be subject to the statutory restriction on asset growth, 12 U.S.C. 1790d(g)(1)(A), but will still be required to comply with CUMAA's two other mandatory supervisory actions—the earnings retention requirement, *id.* § 170d(e), and the restriction on MBLs, *id.* § 1790d(g)(2).

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causes of a decline in net worth ratio below 5.5%, and to assess more thoroughly the increase in risk to the National Credit Union Share Insurance Fund.

Finally, the proposed rule requires a credit union to file a standard NWRP under § 702.206(b) if, at the end of the term of its 1st tier NWRP (*i.e.*, at the fourth quarter-end), it has failed to restore its net worth ratio to 6 percent and to meet any applicable RBNW requirement. New § 702.206(c)(4)(C). Once that credit union triggers the requirement to file a standard NWRP, it will not be eligible to file another 1st tier NWRP until it is no longer operating under a standard plan.[6]

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed rule expedites implementation of the existing system of PCA mandated by Congress. 12 U.S.C. 1790d. The NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. Control number 3133–0161 has been issued for part 702 and will be displayed in the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This proposed rule would apply to all federally-insured credit unions, including State-chartered credit unions. Accordingly, it may have a direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This impact is an unavoidable consequence of carrying out the statutory mandate to adopt a system of prompt corrective action to apply to all federally-insured credit unions. NCUA staff has consulted with a committee of representative State regulators regarding the impact of the proposed rule on State-chartered credit unions. Their comments and suggestions are reflected in the proposed rule.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. A purpose of the proposed rule is to improve and simplify the existing system of PCA. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, 12 CFR part 702 is proposed to be amended as follows:

PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

2. Amend § 702.206 as follows:

a. Redesignate current paragraphs (c) through (i) as new paragraphs (d) through (j) respectively,

b. Add new paragraph (c) to read as follows:

§ 702.206 Net worth restoration plans.

* * * * *

(c) *1st tier net worth restoration plan.* In lieu of subparagraph (b) of this section, an eligible federally-insured credit union may elect to file a 1st tier NWRP within the time provided in paragraph (a) of this section, as follows:

(1) *Eligibility.* A federally-insured credit union is eligible to file a 1st tier NWRP if—

(i) For the current quarter—

(A) Its net worth ratio is not less than five and one-half percent (5.50%) as measured using the quarter-end balance of total assets per § 702.2(k)(1)(iv); or

(B) It fails to meet any applicable risk-based net worth requirement by not more than 50 basis points (0.50%); and

(ii) For each of the three prior quarters—

(A) It had a net worth ratio of at least 6 percent (6.0%) as measured using any method of measuring total assets available under § 702.2(k)(1); or

(B) It met any applicable RBNW requirement; and

(iii) For the current and three preceding quarters—

(A) The dollar amount of its net worth increased, on average, by at least the equivalent of 60 basis points (0.60%) return on average assets as reflected in the credit union's Financial Performance Report; and

(B) Growth in ending total assets for the four-quarter period did not exceed one hundred ten percent (110%) of growth in the sum of net worth, shares and deposits for that period.

(2) *Contents.* A 1st tier NWRP must—

(i) Include pro forma projections of total assets, shares and deposits, return on average assets and net worth, covering the next four quarters and resulting in a net worth ratio that restores the credit union to at least "adequately capitalized" at the end of the fourth quarter; and

(ii) Describe how the credit union will control exposure to risk from any new activities over the next four quarters.

(3) *Approval.* A 1st tier NWRP will not be approved unless it meets the content requirements set forth in paragraph (c)(2) of this section and satisfies the approval criteria prescribed in paragraphs (d)(2) and (d)(3) of this section.

(4) *Filing of standard plan.* An eligible federally-insured credit union must file a standard NWRP as provided by paragraph (b) of this section, within the period provided in paragraph (a) of this section, if either—

(i) *Plan not approved.* The 1st tier NWRP that the credit union initially submits is not approved;

(ii) *Declining net worth.* The credit union's net worth ratio, while it is operating within the term of an approved 1st tier NWRP, declines either—

(A) Below five and one-half percent (5.50%) as measured using the quarter-end balance of total assets per § 702.2(k)(1)(iv); or

(B) More than 50 basis points (0.50%) below an applicable risk-based net worth requirement; or

(iii) *Net worth not restored.* The credit union is not classified at least "adequately capitalized" at the end of the term of its 1st tier NWRP.

* * * * *

[FR Doc. 02–30089 Filed 11–27–02; 8:45 am]

BILLING CODE 7535–01–P

[6] In contrast, a credit union that succeeds in restoring its net worth in the second quarter of a 1st tier NWRP, and that stays "adequately capitalized" for the third and fourth quarters of the plan, will become eligible, in the first quarter after that plan ends, to file another 1st tier NWRP if it declines below "adequately capitalized." By the quarter after the original 1st tier NWRP ends, that credit union will have been "adequately capitalized" in each of the three preceding quarters. New § 702.206(c)(1)(B).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ANM–07]

Proposed Establishment of Class E Airspace, Afton, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Afton, WY. Newly developed Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Afton Municipal Airport has made this proposal necessary. The establishment of Class E airspace is required to contain aircraft executing instrument flight rule (IFR) operations at Afton Municipal Airport within controlled airspace. The intended effect of this action is to provide an increased level of safety for aircraft executing IFR operations between the terminal and the en route phase of flight at Afton Municipal Airport, Afton, WY.

DATES: Comments must be received on or before January 13, 2003.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 02–ANM–07, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, ANM–520.8, Federal Aviation Administration, Docket No. 02–ANM–07, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ANM–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Afton, WY. Two newly developed RNAV SIAP's, RNAV (GPS) RWY34 and RNAV (GPS) RWY 16, at Afton Municipal Airport, has made this proposal necessary. Establishing Class E airspace, 700-feet controlled airspace above the surface of the earth, is required to contain IFR operations at Afton Municipal Airport, Afton, WY. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route phase of flight environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

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§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM UT E5 Afton, WY [New]

Afton Municipal Airport, WY
(Lat. 42°42′41″ N, long. 110°56′32″ W)
That airspace extending upward from 700-feet above the surface within a 6.5 mile radius of the Afton Municipal Airport, and within 2 miles either side of the 355° bearing from the airport extending from the 6.5 mile radius to 7.5 miles north of the airport, and within 2 miles either side of the 185° bearing from the airport extending from the 6.5 mile radius to 19.3 miles south of the airport.

* * * * *

Issued in Seattle, Washington, on October 24, 2002.

Raul C. Trevino,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–29660 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense is proposing to exempt two existing systems of records in its inventory of systems of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

During the course of a FOIA and/Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in these systems. To the extent that copies of exempt records from those "other" systems of records are entered into the FOIA and/or Privacy Act case records, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary systems of records which they are a part. Therefore, OSD is proposing to add exemptions to the existing systems of records.

DATES: Comments must be received on or before January 28, 2003, to be considered by this agency.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4728.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended to read as follows:

PART 311—OSD PRIVACY PROGRAM

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 311.8, is amended by adding paragraphs (c)(12) and (13) to read as follows:

§ 311.8 Procedures for Exemptions.

* * * * *

(c) *Specific exemptions.* * * *

(12) *System identifier and name:* DFOISR 05, Freedom of Information Act Case Files.

(i) *Exemption:* During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the Office of the Secretary of Defense claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(13) *System identifier and name:* DFOISR 10, Privacy Act Case Files.

(i) *Exemption:* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those other' systems that are entered into this system, as claimed for the original primary system of which they are a part:

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reason:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: November 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–29816 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense is proposing to add an exemption rule to an existing system of records. The exemption will protect the privacy of individuals identified in the system of records.

DATES: Comments must be received on or before January 28, 2003, to be considered by this agency.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Directives and Records Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4728.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended to read as follows:

PART 311—OSD PRIVACY PROGRAM

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 311.8 is amended by adding paragraph (c)(14) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) Specific exemptions. * * *

(14) *System identifier and name:* DHRA 02, PERSEREC Research Files.

(i) *Exemptions:* Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal

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the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the Department of Defense or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. The Office of the Secretary of Defense will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, OSD will grant access to nonexempt material in the records being maintained. Disclosure will be governed by OSD Administrative Instruction #81, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–29814 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to add an exemption rule for the system of records F031 DoD A, entitled 'Joint Personnel Adjudication System'. The Joint Personnel Adjudication System is used for personnel security management within DoD, and provides a common, comprehensive medium to record and document personnel security actions within the DoD.

DATES: Comments must be received on or before January 28, 2003, to be considered by this agency.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is amended to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to part 806b, is amended by adding paragraph (b)(23) to read as follows:

Appendix C to part 806b—General and specific exemptions.

* * * * *

(b) *Specific exemptions.* * * *

(23) *System identifier and name:* F031 DoD A, Joint Personnel Adjudication System.

(i) *Exemption:* (1) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(2) Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the AF will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Air Force Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–29812 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; DA 02–2976]

Comment Sought on Recommended Decision Issued by Federal-State Joint Board on Universal Service Regarding the Non-Rural High-Cost Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; solicitation of comments.

SUMMARY: In a document released on November 5, 2002, the Wireline Competition Bureau sought comment on the Recommended Decision of the Federal-State Joint Board on Universal Service addressing issues from the *Ninth Report and Order* that were remanded by the United States Court of Appeals for the Tenth Circuit.

DATES: Submit comments on or before December 20, 2002, and reply comments on or before January 3, 2003.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Katie King, Jennifer Schneider, or Narda Jones, Attorneys, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau's Public Notice in CC Docket No. 96–45 released on November 5, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

The Wireline Competition Bureau (Bureau) seeks comment on the Recommended Decision of the Federal-

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State Joint Board on Universal Service (Joint Board), released on October 16, 2002, addressing issues from the *Ninth Report and Order*, (64 FR 67416, December 1, 1999), that were remanded by the United States Court of Appeals for the Tenth Circuit. The *Ninth Report and Order* established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. The court remanded the *Ninth Report and Order* to the Commission for further explanation of its decision. On February 15, 2002, the Commission issued a *Notice of Proposed Rulemaking*, 67 FR 1087, March 11, 2002, seeking comment on issues remanded by the court and referring the record collected in the proceeding to the Joint Board for a recommended decision.

Comment is sought on the Joint Board's recommendations. Specifically, in its *Recommended Decision*, the Joint Board recommended continued use of statewide average costs and a national benchmark of 135 percent to determine non-rural high-cost support, but recommended that the Commission modify the non-rural high-cost support mechanism by adopting additional measures to induce states to ensure reasonable comparability of urban and rural rates. In particular, the Joint Board recommended that the Commission implement a supplementary rate review, through an expanded annual certification process under section 254(e) of the Act, as a check on whether non-rural high-cost support continues to provide sufficient support to enable the states to maintain reasonably comparable rural and urban rates. The Joint Board recommended that states be required to certify that the basic service rates in their high-cost areas are reasonably comparable to a national urban rate benchmark or explain why they are not. States would have the opportunity to demonstrate that further federal action is needed because current federal support and state actions together are insufficient to yield reasonably comparable rates.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments December 20, 2002, and reply comments January 3, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other then U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will continue to be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Attachment

I. Introduction

1. In this Recommended Decision, the Federal-State Joint Board on Universal Service (Joint Board) provides its recommendations on issues from the *Ninth Report and Order*, (64 FR 67416, December 1, 1999), that were remanded to the Commission by the United States Court of Appeals for the Tenth Circuit. The *Ninth Report and Order* established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. Consistent with the court's decision, the Joint Board recommends that the Commission modify the non-rural high-cost support mechanism implemented in the *Ninth Report and Order* by adopting additional measures to induce states to ensure reasonable comparability of urban and rural rates. We also recommend that the Commission implement a supplementary rate review as a check on whether non-rural high-cost support continues to provide sufficient support to enable the states to maintain reasonably comparable rural and urban rates. In addition, we recommend continued use of statewide average costs to determine non-rural high-cost support. We believe that these recommendations will enable the Commission to satisfy the court's remand and continue to fulfill Congress's directive in the Telecommunications Act of 1996 to preserve and advance universal service.

II. Discussion

2. Based on examination of the record in this proceeding, the Joint Board recommends that the Commission modify the non-rural high-cost support mechanism implemented in the *Ninth Report and Order* by adopting additional measures that will establish specific inducements for states to ensure that rates in all regions of the nation are reasonably comparable to rates in urban areas. We also recommend that the Commission implement a supplementary rate review to assess whether non-rural high-cost support continues to provide sufficient support to enable the states to maintain reasonably comparable rates. Consistent with the court's decision, our recommendations with regard to these additional measures will support and complement the Commission's initial decision in the *Ninth Report and Order*. Specifically, we recommend a process that includes the following: (1) Continuing use of a national average cost benchmark based on 135% of the national average cost; (2) funding 76% of state average costs exceeding the national benchmark; (3) establishing a national rate benchmark based on a percentage of the national average urban rate; (4) implementing state review and certification of rate comparability; and (5) providing states the opportunity to demonstrate that further federal action is needed because current federal support and state actions together are insufficient to yield reasonably comparable rates.

3. The Joint Board's recommendations comprise an integrated approach to the complex and interrelated issues referred by

the Commission. We believe that these recommendations will enable the Commission to satisfy the court's remand and continue to fulfill Congress's directive to preserve and advance universal service. We note that this mechanism calculates support only for non-rural carriers. Certain assumptions in this Recommended Decision may not make sense for rural carriers. For example, as discussed below, while statewide averaging is appropriate in the non-rural mechanism, it may not be appropriate for the high-cost mechanism providing support to rural carriers.

A. Sufficiency

4. The Joint Board recommends that, for purposes of non-rural high-cost support, sufficiency should be principally defined as enough support to enable states to achieve reasonable comparability of rates. Sufficiency should be defined based on the relevant statutory goals under section 254(b). Thus, the definition of the term may vary depending on the underlying purpose of the universal service program in question. The principal purpose of the non-rural high-cost support mechanism is to provide enough federal support to enable states to achieve reasonable comparability of rural and urban rates, the principle found in section 254(b)(3). As discussed in more detail below, non-rural high-cost support is designed to provide high-cost states enough support so that their net average costs are reasonably comparable to the national average cost. With reasonably comparable net costs, these high-cost states should then have the resources to ensure that rural and urban rates within their borders are reasonably comparable. The Joint Board recommends below that the Commission require states to certify that their rates are reasonably comparable or explain why they are not, and provide states the opportunity to demonstrate that further federal action is needed because current federal support and state action together are insufficient to achieve reasonably comparable rates. Accordingly, for purposes of non-rural high-cost support, the Joint Board recommends that sufficiency be defined as enough support to enable states to achieve reasonably comparable rates.

5. The Joint Board also reaffirms that the statutory principle of sufficiency means that non-rural high-cost support should be only as large as necessary to achieve its statutory goal. Correct fund size is essential to ensure that all consumers benefit from universal service.

A. Use of Costs Rather Than Rates To Determine Non-Rural High-Cost Support

6. We explain more fully here why costs rather than rates should continue to be the principal basis for determining federal support flows among states. Congress adopted section 254 to ensure that, as competition develops, there would be explicit support mechanisms in place to preserve the fundamental communications policy goal of providing universal telephone service in all regions of the nation at reasonably comparable rates. Section 254(b)(3) requires reasonably comparable rates. This would be a relatively easy undertaking if the cost of providing telephone service were comparable in urban and rural areas. But costs are not comparable. The cost of providing telephone service is largely a function of population density and distance. Sparsely populated, rural areas have longer telephone loops, the most expensive portion of the telephone network, and fewer customers to spread the costs among. In some rural areas the cost of providing telephone service may be one hundred times greater than costs in urban areas.

7. Although rates generally are related to costs, states may base rates on numerous considerations in addition to cost. For example, local rates may vary from state to state depending upon each state's local rate design policies; whether or not a carrier's rates are set based on a price cap approach; the degree to which implicit subsidies may remain within local rates; whether a state universal service fund exists; and other factors. Attempting to develop cost support levels based principally on rates would therefore likely be difficult to implement considering the lack of uniformity in local rate design practices and could lead to inequitable treatment between states with substantially similar costs but different local rate policies.

8. For these reasons, the use of costs rather than rates to determine federal support was central to the Commission's decision adopting the non-rural high-cost support mechanism in the *Ninth Report and Order*. We agree with the Commission's past decision that cost analysis offers advantages over rate analysis for purposes of determining Federal support levels. Cost analysis enables accurate comparison of states for purposes of determining federal support levels. The Commission has stated that "[a] state facing costs substantially in excess of the national average may be unable through any reasonable combination of local rate design policy choices to achieve rates reasonably comparable to those that prevail nationwide." Examining the underlying costs enables the Commission to "evaluate the cost levels that must be supported in each state in order to develop reasonably comparable rates."

9. While the inducements to state action on rates and supplemental rate review contained in this recommendation recognize that the ultimate test of rate comparability will be the rates customers actually pay for service, the use of costs for determining the areas of greatest need establishes a firm foundation for the states to fulfill the goals of section 254 of the Act. We recommend that the Commission continue to use a cost-based approach as the principal means of achieving the statutory goal of rate comparability.

B. Use of Statewide Averaging To Reflect Appropriate Federal and State Roles in Achieving Rate Comparability

10. The Joint Board recommends that the Commission continue to determine high-cost support for non-rural companies by using statewide average costs. We believe that this reflects an appropriate division of federal and state responsibility for achieving rate comparability for non-rural companies. Because the states, not the Commission, set intrastate rates, the states have primary responsibility for ensuring reasonably comparable rural and urban rates. States tend to rely on either implicit or explicit mechanisms to transfer support from low-cost lines to high-cost lines within a state.

11. Despite implicit or explicit state support mechanisms, the low-cost areas of some states cannot balance their high-cost areas. Although such states could, through their own efforts, achieve reasonably comparable rates within their own boundaries, those rates would still be high relative to the national average because of the states' high average costs. The Commission's primary role is to identify those states that do not have the resources within their borders to support all of their high-cost lines. The non-rural high-cost support mechanism achieves this through the comparison of statewide average cost to a national cost benchmark. The averaging process provides a logical means to assess the relative extent to which states can support their high-cost areas by using resources from low-cost areas. By shifting funds to states with average costs above the national benchmark, the Commission provides federal support that is intended to enable high-cost states to set rates that are reasonably comparable to all rates across the nation.

12. The Commission explained in the *Ninth Report and Order* that the non-rural high-cost support mechanism "has the effect of shifting money from relatively low-cost states to relatively high-cost states." The Commission believed that its non-rural support mechanism ensured that no state with costs greater than the national benchmark would be forced to keep rates reasonably comparable without the benefit of federal support. Statewide averaging assigns to the states the primary responsibility for ensuring reasonable comparability of rates within their borders and permits states to use their resources to achieve the goal of reasonable comparability within states. We continue to support these policies.

13. We disagree with the contention of the Rural Utilities Service that high-cost customers are being hidden by statewide averaging. The Rural Utilities Service was concerned about the circumstance in which some customers have high costs but the state average is not high enough to qualify for support. The use of statewide average costs reflects what we believe to be an appropriate policy decision that in such cases the state has the primary responsibility and demonstrated ability to ensure rate comparability. Federal support is needed when the state, because of its high average cost, cannot solve such a problem without imposing an undue burden on its own ratepayers.

14. While statewide averaging is appropriate in the non-rural mechanism, it may not be appropriate for the high-cost mechanism providing support to rural carriers. Many rural carriers lack the economies of scale and scope of the generally larger non-rural carriers, as the Rural Task Force established in documenting differences that exist between rural and non-rural companies. The Commission has stated that

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it intends to ask the Joint Board to conduct a comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole to ensure that both mechanisms function efficiently and in a coordinated fashion. Accordingly, the Joint Board does not address the complex issues surrounding high-cost support for rural telephone companies in this Recommended Decision. The Joint Board emphasizes that the current recommendation is not intended to apply to rural companies. Now that the Joint Board has concluded its recommended decision on the issues in the court's remand, we look forward to a Commission referral of a comprehensive review of the rural and non-rural high-cost support mechanisms.

C. Benchmark

15. Based on examination of the record, the Joint Board continues to support the 135% benchmark. The court appeared to consider the ability to produce reasonably comparable urban and rural rates as a key factor in supporting an appropriate cost benchmark. As the court observed, although non-rural high-cost support is distributed based on a comparison of national and statewide average costs, the benchmark must be ultimately based on attainment of the statutory principle of reasonable comparability of urban and rural rates. We have noted that the Joint Board and Commission have found in prior rulings that current rates are affordable and reasonably comparable. These findings are supported by a recent General Accounting Office (GAO Report). Based on data contained in the GAO Report, it appears that six years after passage of the Act the national averages of rural, suburban and urban rates for residential customers diverge by less than two percent. We believe that the comparability of average rural and urban rates supports continued use of the 135% cost benchmark. In addition, the Joint Board finds that the current benchmark is empirically supported by a cluster analysis and a standard deviation analysis. Both of these methods indicate that the 135% benchmark targets support to states with substantially higher average costs than other states, consistent with the purpose of non-rural high-cost support.

16. Verizon argues that the 135% benchmark is consistent with Congressional intent that federal support be sufficient to maintain the range of rates existing at the time the 1996 Act was adopted. We agree with Verizon that one of the goals of the 1996 Act was to ensure that rates remain reasonably comparable as competition develops. Congress was concerned that competition would erode implicit support and adopted section 254 to preserve and advance universal service. Verizon argues further that rates have not changed substantially since 1996, so the range of existing rates, as reflected in the GAO Report, should be used to determine what is reasonably comparable. Because 95% of rates fall within two standard deviations of the mean, Verizon argues that rural rates within two standard deviations of urban rates should be considered reasonably comparable. Verizon points out that an analysis of the Commission's cost model shows that two standard deviations translates approximately to a 135% cost benchmark. Thus, Verizon argues that rural rates within two standard deviations of urban rates should be considered reasonably comparable and that the cost benchmark level of 135% is justified because it is nearly equivalent to two standard deviations. As discussed below, we agree.

17. The current benchmark is supported by a standard deviation analysis. Standard deviation is a commonly used statistical analysis that measures dispersion of data points from the mean of those data points. In a normal distribution, data points within two standard deviations of the mean will comprise approximately 95% of all data points. In other words, use of two standard deviations will identify data points that are truly outliers within the sample studied. Verizon points out that both the Commission and state commissions have adopted this statistical approach as a standard for determining parity or comparability. As applied to the cost of non-rural lines, the measurement of two standard deviations from the national average cost results in approximately 132% of the national average cost. Based on this information, the Joint Board concludes that the 135% benchmark is a reasonable dividing line separating high-cost states from the remainder of average and low-cost states.

18. The Joint Board used a cluster analysis to determine that the states receiving non-rural high-cost support under the current 135% benchmark are states that have substantially higher average costs than other states. Cluster analysis is an analytical technique that organizes information around variables so that relatively homogeneous groups, or clusters, can be identified. The Joint Board used cluster analysis to identify groups of states that had similar cost characteristics, thereby warranting different treatment regarding universal service support. Specifically, states were sorted from lowest- to highest-cost based on statewide average cost per loop. Clusters were identified in this ranking if the difference in average costs between states was greater than "cluster split differences" ranging from 2.5 to 0.5. Under this analysis, Mississippi was the first to break out into a separate cluster, and the second was the District of Columbia. The first group of states to break out into a separate rural, high-cost cluster included Kentucky, Maine, Alabama, Vermont, Montana, West Virginia and Wyoming. The remaining states, ranging from New Jersey to Nebraska, formed a separate urban, low-cost cluster. When Mississippi and the District of Columbia, the respective high- and low-cost "outliers," were combined into the two larger clusters, "cluster stability" was achieved for a wide range of numerical values from 2.5 to 0.85. "Cluster stability" means that the same clusters are maintained even as the numerical values are varied, indicating a strong similarity among members of the cluster groups. Because cluster analysis identifies a high-cost, rural cluster of states that matches the group of states currently receiving support under the non-rural high-cost support mechanism, the Joint Board finds that the cluster analysis empirically supports the current 135% benchmark.

19. Because the standard deviation analysis and the cluster analysis both support 135% as a reasonable benchmark, the joint Board recommends continued use of the 135% benchmark. The court recognized that the use of any benchmark may be somewhat arbitrary; however, choice of a specific, percentage-based benchmark (as opposed to a mathematically calculated benchmark based on two standard deviations which may result in a different percentage each year) provides certainty to the funding process that carriers and states desire. Accordingly, the Joint Board recommends continued use of a 135% benchmark. The supplemental rate comparability review which we recommend will allow the Commission to assess how successfully the non-rural high-cost support ensures reasonable comparability of rates.

20. Some commenters suggest that, in light of the court's decision, it would be more appropriate to use a benchmark based on average urban cost, rather than nationwide average cost. The Joint Board recommends that the Commission continue to use a nationwide cost benchmark. The national benchmark is intended to ensure that each state has a relatively equal ability to achieve reasonable comparability of urban and rural rates. We do not agree that an urban cost benchmark would better satisfy the statutory comparison of urban and rural rates. Like the current mechanism, the urban benchmark substitutes costs for rates. In addition, rather than comparing rural and urban costs, it compares statewide average costs to nationwide urban costs.

21. The urban benchmark proposal would require more funding or a higher benchmark level because urban average costs are lower than national average costs. For example, an urban benchmark of 165% would yield roughly the same support amounts as the current 135% national benchmark. An urban benchmark of less than 165% would require more federal support. The *GAO Report* suggests that more federal support is not necessary because urban and rural rates are similar. Proponents of the urban benchmark have not explained how additional funding produced by an urban benchmark would produce reasonably comparable rates, nor have they provided a rational justification for setting the benchmark at any particular level.

22. The urban benchmark proposal is premised in part on the argument that the current 135% national benchmark cannot enable rate comparability because it is equivalent to about 165% of urban average cost, near the 70–80% range of variability that the court doubted was reasonably comparable. As explained, however, rates do not necessarily equate to costs, so setting a 135% national benchmark (or 165% urban benchmark) does not mean intrastate rates will vary to the same degree. For the same reason, establishing cost support based on an urban benchmark will not ensure that urban and rural rates will be reasonably comparable. Because the urban benchmark proposal does not improve the operation of the high-cost support mechanism, nor address the rate comparability concerns of the court, the Joint Board recommends that the current national benchmark be retained, supplemented by rate review to ensure comparability of urban and rural rates.

23. As discussed, a "step function" provides gradually more support for costs that exceed certain thresholds or "steps" above the national average. BellSouth supports the 135% benchmark, but proposes an additional, lower benchmark to provide some support to carriers in states with average costs between 100 and 135% of the national average cost. BellSouth proposes a step function as a means of distributing support more widely among states and, thereby, inducing states to ensure reasonable comparability of urban and rural rates. As discussed, the purpose of non-rural high-cost support is to provide sufficient support to enable high-cost states to develop reasonably comparable rates. Providing additional support merely to induce states to ensure rate comparability without determining that additional support is necessary may conflict with the principle that support should be only as large as necessary. Nevertheless, a step function could promote predictability by preventing a total loss of federal support if small cost changes cause a state's average cost per line to fall below the dollar amount of the 135% benchmark in a given year. We believe that use of a step function may have benefits and warrants further consideration; however, the Joint Board does not recommend that the Commission add a step function to the non-rural high-cost support mechanism at this time. In light of the need to respond expeditiously to the court's remand, the Joint Board expects to address the issue of a step function in its comprehensive review of the rural and non-rural support mechanisms.

D. Reasonable Comparability and State Inducements

24. The Joint Board recommends that the Commission implement a procedure that will induce states to achieve reasonably comparable rates and enable the Commission to take additional action, if necessary, to achieve comparable rates. Specifically, the Joint Board recommends the Commission expand the current annual certification process under section 254(e) of the Act to require states to certify that the basic service rates in high-cost areas served by eligible telecommunications carriers (ETCs) within the state are reasonably comparable to a national rate benchmark. For purposes of this state certification process, the Joint Board recommends that high-cost areas be defined as all wire centers with a line density less than 540 lines per square mile. As part of the certification process, all states should be required to compare basic service rates based on a standard template. The Commission should also establish a "safe harbor" whereby a state whose rates are at or below a certain rate benchmark may certify that their basic service rates in high-cost areas are reasonably comparable without the necessity of submitting rate information. However, states would have the option of submitting additional data to demonstrate that other factors affect the comparability of their rates. If a state's rates are more than the rate benchmark, the state could request further federal action based on a showing that federal support and state actions together were not sufficient to yield reasonably comparable basic service rates statewide. Further federal actions could include, but are not limited to, additional targeted federal support, or actions to modify calling scopes or improve quality of service where state commissions have limited jurisdiction. A state requesting further federal action must show that it has already taken all actions reasonably possible and used all available state and federal resources to make basic service rates reasonably comparable, but that rates nevertheless fall above the benchmark. A state whose basic service rates exceed the rate benchmark and that requests further federal action should be required to submit rate data in support of its certification, based on a basic service rate template. The Joint Board recognizes that it may be appropriate to use 135% for the safe harbor rate benchmark, but recommends that the Commission further develop the record to establish the appropriate rate benchmark for the safe harbor.

25. The Joint Board believes that this expanded certification process meets the court requirement to induce state action to achieve rate comparability. With any support mechanism, the proof of success must be evaluated not only on whether the mechanism as a whole generally achieves rate comparability, but also upon the degree and nature of any exceptions. The court criticized the Commission for failing to adequately reconcile its conclusion that rates were generally comparable in light of instances where state rates were reportedly high. Together with federal non-rural high-cost support, the expanded certification process will ensure that rates "* * * in all regions of the Nation * * * are reasonably comparable * * *" as set forth in section 254(b)(3). The expanded certification process encourages states to scrutinize their rates using the basic service rate template, to determine whether they are reasonably comparable, and if not, to take actions to make them reasonably comparable. When state basic service rates are at or below the rate benchmark level, then there should be a presumption that rates in that state are reasonably comparable to national urban rates. This recommended approach affords the states maximum flexibility to determine basic service rates. The Commission should accord substantial deference to these state certifications.

i. Rate Benchmark

26. As an initial matter, the Joint Board recommends that the Commission base the rate benchmark on the most recent average urban residential rate as shown in the Bureau's *Reference Book*, as modified to reflect the most recent changes in subscriber line charges (SLC). The average urban rate can be adjusted annually based on data from the Bureau's annual rate survey. The Joint Board recognizes that it may be appropriate to use 135% for the safe harbor benchmark. Use of a 135% rate benchmark is consistent with the national average cost benchmark of 135%. The Joint Board believes that, since cost-based support is provided to ensure statewide average costs do not exceed 135% of the national average, most states should be able to maintain average rates below 135% of the national average urban rate. Based on the current national average urban rate, as adjusted, a 135% rate benchmark would be $30.16 per line per month. The Joint Board recommends that the Commission further develop the record to establish the appropriate rate benchmark for the safe harbor.

27. The Joint Board emphasizes that any rate benchmark established is meant simply as a "safe harbor" for the purposes of determining rate comparability. The Joint Board does not suggest through this Recommended Decision that it is appropriate that any rates be increased to that level. The Joint Board recognizes and supports the role of state commissions in setting rates within each state. The Joint Board recommends requiring that states review only residential rate information at this time. The Joint Board suggests that it may be appropriate to solicit comment as to whether only residential or residential and business rates eventually should be reviewed by the states.

ii. Basic Service Rate Template

28. The Joint Board recommends that the Commission establish a basic service rate template for states to use to compare rates. We suggest that the basic service rate template should include the items contained in the annual rate survey by the Bureau. The Joint Board recommends that the template include the following factors: the rate for a line with access to the public switched network, federal subscriber line charge, state subscriber line charge (if any), federal universal fund charge, state universal fund charge (if any), local number portability charge, telecommunications relay service charge, 911 charges, federal universal service credits (if any), state universal service credits (if any) and the federal excise tax.

iii. Expanded Rate Certification Process

29. The expanded state certification process would augment the existing state certification under section 254(e) of the Act. The existing procedure requires states to certify that all ETCs that receive federal universal service funding are using the funds to achieve the goals of the Act. The new procedure would expand reporting requirements to include a discussion of rate comparability. In the expanded certification process, states typically would report in one of four ways:

a. Rates within the state fall below the benchmark and are considered by the state to be reasonably comparable. No further showing should be required.

b. Rates are not below the benchmark, but may nevertheless be considered reasonably comparable. A state could show that due to other factors—for example, additional services included in the basic service rate or the method in which the state has targeted existing universal service support—the rates above the benchmark actually should be presumed reasonably comparable. In the alternative, the state could report on actions it intends to take to achieve reasonable comparability.

c. Rates are below the benchmark, but are not reasonably comparable. A state may show that even though actual rates are within the safe harbor, the price paid for service received results in rates and services that are

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not reasonably comparable. In this case, a state could show that existing basic service is lacking in some way. For example, the state could show that the local calling area size is too small to be considered comparable service, and that toll or extended area service charges should be included to produce a reasonably comparable rate. In addition to explaining why rates within the safe harbor should not be considered reasonably comparable, the state must also show the actions it has taken or is going to take to remedy the discrepancy, prior to requesting additional federal actions to achieve reasonably comparable rates.

d. Rates are above the benchmark and are not reasonably comparable. A state could request federal action based on a showing that current combined federal and state actions are insufficient to produce reasonably comparable rates. If the state asserts that existing federal support and state resources are not sufficient for the state to attain reasonably comparable rates, the state should be required to show that it has already taken all available steps to remedy the situation, but that rates remain above the benchmark. If the state can make this showing, the Commission would consider taking further action to meet the needs of the state in achieving reasonably comparable rates.

30. The Joint Board recommends that states certifying that their rates fall at or below the national rate benchmark and are reasonably comparable should not be required to submit any additional rate information. Any states requesting additional federal action should be afforded great flexibility in making their presentations, but should be required to fully explain the basis for their request. Factors that should be addressed by any such state would include, but not be limited to: Rate analysis and a demonstration why the state contends that rates are not reasonably comparable; any other factors that should be considered in evaluating rates; and a demonstration that the state has taken all reasonably possible steps to develop maximum support from within the state. The requesting state should fully explain how it has used any federal support currently received to help achieve comparable rates and whether the state has implemented a state universal service fund to support rates in high-cost areas of that state. The Joint Board recommends the Commission develop exact procedures to be used in filing and processing requests for further federal actions. In particular, the Joint Board recommends that the Commission establish a time limit for consideration of such state requests, to ensure that requests will be processed and decided expeditiously.

III. Recommending Clause

31. This Federal-State Joint Board pursuant to section 254(a)(1) and section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 254(a)(1) and 410(c), recommends that the Commission adopt the proposals described relating to issues from the *Ninth Report and Order* that were remanded to the Commission by the United States Court of Appeals for the Tenth Circuit.

Federal Communications Commission.

William Scher,

Assistant Division Chief, Telecommunications Access Policy Division.

[FR Doc. 02–30164 Filed 11–27–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; DA 02–3210]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On September 18, 2002, the Commission released a document (67 FR 62667, Oct. 8, 2002) seeking comment on whether it should change its rules restricting telemarketing calls and facsimile advertisements. This document grants, in part, and denies, in part, the motion of the American Teleservices Association (ATA) to extend the time to file comments in our TCPA proceeding in CG Docket No. 02–278.

DATES: Comments are due in this proceeding on December 9, 2002, and reply comments are due January 8, 2003.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies with the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *http://www.fcc.gov/e-file/ecfs.html*.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: On November 13, 2002, the American Teleservices Association (ATA) filed a motion for extension of time to file comments in CG Docket No. 02–278. It is not Commission policy to routinely grant extensions of time. However, we find that a brief extension of time to file comments in this proceeding is in the public interest. We therefore grant, in part, and deny, in part, ATA's request to extend the comment period in this proceeding. In so doing, we note that many parties seeking to file comments in this proceeding are consumers who may lack familiarity with the Commission's process for filing comments. We believe an extension of time will help to ensure that these parties have ample opportunity to participate. In addition, because the Consumer & Governmental Affairs Bureau (Bureau) responded to ATA's FOIA request on November 14, 2002 by giving ATA 250 redacted complaints, the additional time will afford ATA ample opportunity to review those complaints. Finally, we extend the reply comment period to 30 days following the comment deadline to allow parties a sufficient opportunity to respond to the large number of comments already filed in this proceeding. As of November 19, 2002, over 4,100 comments have been filed in response to the Notice of Proposed Rulemaking (Notice).

We decline, however, to extend the comment period to the full extent requested by ATA. We do not believe that it would be in the public interest to delay this entire proceeding by several months based on the rationale provided in ATA's motion. In particular, we disagree with ATA's contention that ATA must obtain the approximately 11,000 TCPA-related complaints and 1,500 inquiries filed from 2000–2001 prior to commenting on the issues presented in the Notice. The Notice presents, in detail, the specific issues and rules that are under consideration for review in this proceeding. We believe this information allows parties a full and complete opportunity to respond to these issues. In addition, as noted above, the Commission has provided 250 such complaints to ATA in response to its FOIA request. ATA will have an opportunity to analyze those complaints prior to submitting its comments. The Commission intends to work diligently to provide a complete response to ATA's FOIA request. To the extent necessary, ATA will have additional opportunities to supplement its comments through *ex parte* filings.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–30252 Filed 11–27–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 396

[Docket No. FMCSA–98–3656]

RIN 2126–AA38

General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent to consider negotiated rulemaking process.

SUMMARY: The FMCSA announces it is exploring the feasibility of conducting a negotiated rulemaking (Reg Neg) concerning maintenance of intermodal container chassis and trailers. The FMCSA has hired a convenor to speak to interested parties about the idea of a Reg Neg. The FMCSA anticipates that these interested parties may include driver organizations, motor carriers, ocean carriers, rail carriers, port authorities, chassis owners, safety advocacy groups, enforcement officials, and insurers.

DATES: Please submit your comments no later than January 13, 2003.

ADDRESSES: Please mail or hand deliver comments about this notice to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; fax to the Docket Management Facility at 202–493–2251; or submit electronically at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document in your comments. You can copy or examine all comments received at the above street address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays and online at *http://dms.dot.gov*. If you want notification of receipt of comments please include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division (MC–PSV), Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On February 17, 1999, the FMCSA published an advance notice of proposed rulemaking (ANPRM) to ensure that it would consider all the pertinent issues that could impact any potential rulemaking changes for the maintenance of intermodal container chassis and trailers (64 FR 7849). The FMCSA took comments on the ANPRM and held three public meetings in 1999. The meetings were held in the States of Washington, Illinois, and New York. Docket FMCSA–98–3656 has 100 comments and 3 meeting transcripts in response to the ANPRM and public meetings.

The Regulatory Identification Number (RIN) for this action had been 2125–AE40 in February 1999 and is now 2126–AA38.

The FMCSA is now studying the feasibility of using the Reg Neg process for this proceeding. In a Reg Neg, an agency invites representatives of interested parties that are likely to be affected by a regulation to work with each other and the agency on a negotiating committee to develop a consensus draft of a proposed rule. The agency would then publish the proposal for public comment under customary regulatory procedures. The FMCSA believes cooperative problem solving should be given serious consideration. An agency must determine whether an appropriate advisory committee can be assembled that would fairly represent all affected interests and negotiate in good faith. The FMCSA has, therefore, retained a neutral convenor (Charles Pou, Jr.) to undertake the initial stage in the Reg Neg process. Mr. Pou's curriculum vitae has been placed in docket FMCSA–98–3656 for the public's convenience.

The neutral convenor will interview affected interests, including but not limited to, driver organizations, motor carriers, ocean carriers, rail carriers, port authorities, chassis owners, safety advocacy groups, enforcement officials, insurers, and others. The convenor will determine whether additional categories of interested parties may be necessary. The convenor will, among other things, examine the potential for adequate and balanced representation of these varied interests on an advisory committee that would be convened to negotiate the regulation. The convenor will then submit a written report of findings and recommendations to the agency. The convenor's report will provide a basis for the FMCSA to decide whether to proceed with Reg Neg, and, if so, to determine the scope of the issues the committee would be charged with addressing. In the alternative, the FMCSA may decide to proceed with traditional notice-and-comment rulemaking, or to discontinue the rulemaking.

All interested parties should know that the confidentiality provisions of the Administrative Dispute Resolution Act, 5 U.S.C. Section 574, will apply to the convenor's activities. The Federal Government will make no claim to the convenor's notes, memoranda, or recollections or to documents provided to the convenor in confidence in the course of the convening process.

The convenor will not interpret FMCSA or DOT policy on behalf of the FMCSA or DOT nor make decisions on items of policy, regulation, or statute. The convenor will not take a stand on the merits of substantive items under discussion.

The FMCSA will provide any comments it receives in reaction to this notice to the convenor and will file the comments in docket FMCSA–98–3656. If you want to submit comments to this notice directly to the docket, use the addresses above under the heading **ADDRESSES.**

Should the FMCSA decide to proceed with a Reg Neg process, the agency will follow the procedures set forth in the Negotiated Rulemaking Act of 1996, 5 U.S.C. 561 *et seq*. This would include the establishment of a negotiating committee under the Federal Advisory Committee Act (5 U.S.C. Appendix 2), and a **Federal Register** notice setting forth full particulars about the process and public participation.

Issued on: November 22, 2002.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 02–30102 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH86

Florida Manatees; Incidental Take During Specified Activities; Proposed Rule; Notice of Public Hearings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: We, the Fish and Wildlife Service, give notice that we are holding an additional public hearing on the proposed rule to allow incidental take of Florida manatees under the Marine Mammal Protection Act. We invite all interested parties to submit comments on this proposal.

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DATES: We will hold an additional public hearing from 6 to 9 p.m. on Thursday, December 12, 2002, in Fort Lauderdale, Florida (see item 7. under **ADDRESSES**). Previously announced hearings will be held from 6 to 9 p.m. on Monday December 2, 2002, in Fort Myers, Florida; Tuesday December 3, 2002, in Tampa, Florida; Wednesday December 4, 2002, in Melbourne, Florida; Thursday December 5, 2002, in Daytona Beach, Florida; Monday December 9, 2002, in Palatka, Florida; and Tuesday December 10, 2002, in Gainesville, Florida. The comment period will close on January 13, 2003. We will consider any comments received by the closing date in the final decision on this proposal.

ADDRESSES: We will hold the public hearings at the following locations:

1. Harborside Convention Hall, 13675 Monroe St., Ft. Myers, Florida
2. Holiday Inn, 4732 N. Dale Mabry Hwy., Tampa, Florida
3. Radisson Hotel & Conference Center, 3101 N. Highway A1A, Melbourne, Florida
4. Daytona Beach Resort & Conference Center, 2700 N. Atlantic Ave., Daytona Beach, Florida
5. Holiday Inn Conference Center, 201 North 1st St., Palatka, Florida
6. Doubletree University Florida Hotel & Conference Center, 1714 SW 34th St., Gainesville, Florida
7. Renaissance Hotel, 1617 SE 17th St (SR A1A), Fort Lauderdale, Florida

You may submit written comments and materials concerning the proposal at the hearings or send them directly to the Field Supervisor, U.S. Fish and Wildlife Service, North Florida Field Office, ATTN: Proposed MMPA Rule, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. You may also hand-deliver written comments to our North Florida Field Office, at the above address, or fax your comments to 904/232–2404. Additionally, you may send comments by electronic mail (e-mail) to *manatee@fws.gov*.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8:00 a.m. to 4:30 p.m., at the above address. You may obtain copies of the proposed rule and draft environmental impact statement from the above address or by calling 904/232–2580, or from our Web site at *http://northflorida.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Benjamin (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov*.

SUPPLEMENTARY INFORMATION: We published proposed regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees *(Trichechus manatus latirostris)* resulting from government activities related to watercraft and watercraft access facilities within three regions of Florida in the **Federal Register** on November 14, 2002 (67 FR 69078).

Under the provisions of the Marine Mammal Protection Act (MMPA), the Secretary of the Department of the Interior may authorize the incidental taking of small numbers of marine mammals in a specified geographic area if the Secretary finds, based on the best scientific evidence available, that the total taking for the authorized period will have no more than a negligible impact on the species or stock. If this finding is made, specific regulations will be established for the activities that describe permissible methods of taking; means of effecting the least practicable adverse impact on the species and its habitat; and requirements for monitoring and reporting. If the Secretary cannot make a finding that the total taking will have a negligible impact on the species or stock, the Secretary must publish the negative finding in the **Federal Register** along with the basis for such determination.

We have defined the specified geographic area for the proposed rule to be the species' range within the State of Florida. Long-term studies suggest four regional populations of manatees in Florida—Northwest, Upper St. Johns River (from Palatka south), Atlantic (including the St. Johns River north of Palatka), and Southwest. Through this rule, we have defined these populations as stocks. We proposed a finding that the total expected takings of Florida manatee resulting from government activities related to watercraft and watercraft access facilities would have a negligible impact in the Upper St. Johns River and Northwest stocks and a negligible impact with the implementation of additional mitigating measures on the Atlantic Stock. For the Southwest Stock, the best available information indicates that these activities would have more than a negligible impact on the Stock and, therefore, we did not propose to authorize incidental take for this Stock (*i.e.*, a negative finding). We also announced the availability of a draft environmental impact statement for this action.

We announced the date, time and location of the public hearings in Fort Myers, Tampa, Melbourne, Daytona Beach, Palatka and Gainesville, FL with the notice of the proposed rule. We stated that additional public hearings would be held at dates, times, and sites to be determined. This notice provides information regarding the additional hearing in Fort Lauderdale, FL.

Public hearings are designed to gather relevant information that the public may have that we should consider in our rule-making. During the hearing, we will present information about the proposed action. We invite the public to submit information and comments either at the hearings or in writing.

We may limit the time allotted for oral statements, if the number of people who wish to comment necessitates such a limitation. We encourage persons wishing to comment at the hearings to provide a written copy of their statement at the start of the hearing. There is no limit on the length of written comments. Persons may also send written comments to our office in the **ADDRESSES** section at any time during the open comment period, which closes on January 13, 2002. We will give equal consideration to oral and written comments. We are publishing legal notices announcing the date, time, and location of the hearings in newspapers, concurrently with this **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Chuck Underwood of the North Florida Field Office (*see* **ADDRESSES** section) as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing.

Author

The primary author of this notice is Pete Benjamin (*see* **ADDRESSES** section).

Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407).

Dated: November 25, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–30374 Filed 11–27–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 230
Friday, November 29, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–087–1]

Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control of Pacific mealybug, *Planococcus minor* (Homoptera: Pseudococcidae). The environmental assessment considers the effects of, and alternatives to, the release of nonindigenous organisms into the environment for use as biological control agents to reduce the severity of Pacific mealybug infestations. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 30, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–087–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–087–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–087–1" on the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Dale Meyerdirk, Agriculturalist, National Biological Control Institute, PPQ, APHIS, 4700 River Road Unit 135, Riverdale, MD 20737–1236; (301) 734–5220.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), is proposing to release nonindigenous species of parasitic wasps and predators in the continental United States and U.S. territories in the Caribbean to control Pacific mealybug, *Planococcus minor* (Homoptera: Pseudococcidae). The following organisms are being considered for release:

- Encyrtid wasps in the genera *Aenasius, Anagyrus, Gyranusoidea, Leptomastix,* and *Pseudaphycus*;
- A pteromalid wasp, *Patiana coccorum*;
- Platygastrid wasps in the genus *Allotropa*;
- A lycaenid, *Spalgis epius*; and
- A coccinellid, *Cryptolaemus affinus.*

Pacific mealybug is a foreign plant pest that attacks over 240 different species of plants, including both agricultural and ornamental plants. It has invaded areas in American Samoa, the U.S. Virgin Islands, and Mexico. This pest could enter the eastern United States from Mexico or from the Carribean or enter California from Mexico or from the Pacific. The purpose of the proposed release of biological control agents is to suppress Pacific mealybug infestations.

The preferred alternative, biological control, is proposed because it is the best alternative to resolve the problems imposed by Pacific mealybug on various hosts. APHIS will import these biological control agents from different locations around the world into USDA-certified insect quarantine facilities, where species identifications will be confirmed by USDA and State taxonomists and undesirable organisms such as hyperparasites will be screened out and properly eliminated. Laboratory colonies reared on Pacific mealybug will be established by USDA, State, and U.S. territory cooperators in areas invaded by the Pacific mealybug.

It is expected that the biological control agents will be introduced into areas where the Pacific mealybug occurs and reproduce naturally without further human intervention, and that the stingless wasps and predators will become established throughout the eventual geographical distribution of Pacific mealybug in the United States. The biological characteristics of the organisms under consideration preclude any possibility of harmful effects on human health.

APHIS' review and analysis of the potential environmental impacts associated with releasing nonindigenous organisms into the environment are documented in detail in an environmental assessment entitled "Control of Pacific Mealybug, *Planococcus minor* (Homoptera: Pseudococcidae)" (July 11, 2002). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive by the date listed under the heading **DATES** at the beginning of this notice.

You may request copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act

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of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 22nd day of November 2002.

Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–30224 Filed 11–27–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Child Nutrition Labeling Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Food and Nutrition Service to request Office of Management and Budget review of information collection activities related to the Child Nutrition Labeling Program.

DATES: Comments on this notice must be received by January 28, 2003 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval and will become a matter of public record. Comments may be sent to: William Wagoner, Team Leader, Technical Assistance Section, Nutrition Promotion and Training Branch, Child Nutrition Division, room 632, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instruction should be directed to William Wagoner at (703) 305–2609.

SUPPLEMENTARY INFORMATION:

Title: Child Nutrition Labeling Program.

OMB Number: 0584–0320.

Expiration Date: 2/20/03.

Type of Request: Revision of currently approved collection.

Abstract: The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program to aid schools and institutions participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) in determining the contribution a commercial product makes toward the food-based meal pattern requirements of these programs. (*See* Appendix C to 7 CFR Parts 210, 220, 225 and 226 for more information on this program). There is no Federal requirement that commercial products must have a CN label statement.

To participate in the Child Nutrition Labeling Program, industry submits product labels and formulations to the Food and Nutrition Service (FNS) that are in conformance with the Food Safety and Inspection Service (FSIS) label approval program for meat and poultry, or United States Department of Commerce (USDC) label approval program for seafood products. FNS reviews a manufacturer's product formulation to determine the contribution a serving of the product makes toward the food-based meal pattern requirements. The application form submitted to FNS is the same application that companies submit to FSIS or USDC to receive label approval. A CN label application is also reviewed by FNS for accuracy.

Estimate of Burden: Based on our most recent interviews with manufacturers it is estimated that it takes a manufacturer forty-five minutes to complete the required calculations and to formulate the CN label application.

Respondents: Participation in the CN labeling Program is voluntary. Only manufacturers who wish to place CN labels on their products must comply with program requirements. Last year 946 establishments sent in 2584 CN label applications.

Estimated Number of Respondents: 946.

Estimated Number of Responses Per Respondent: 2.7.

Estimated Total Annual Responses: 2554.

Estimated Time Per Response: 0.75 Hours.

Estimated Total Annual Burden: 1915 Hours.

Dated: November 21, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–30192 Filed 11–27–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Scott Peak Project Area Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber, to enhance recreational opportunities, to perform watershed restoration work, and to develop a road management plan for the Scott Peak Project Area on northeastern Kupreanof Island, on the Petersburg Ranger District, Tongass National Forest. The proposed action for timber harvest provides for multiple timber sale opportunities resulting in the production of approximately 16 million board feet (mmbf) of timber from approximately 680 acres of forested land. Since this project is within the Mitkof/Kupreanof Biogeographic province, all timber harvest silvicultural prescriptions will meet marten standards and guidelines as described in the Tongass Land and Resource Management Plan (Forest Plan). Approximately 3 miles of temporary road would be necessary for timber harvest; no classified road would be constructed. A range of alternatives responsive to significant issues is being developed and will include a no-action alternative. Currently the preliminary action alternatives propose timber harvest ranging from 3mmbf to 16 mmbf, with 0 to 3 miles of temporary road construction. The Record of Decision will disclose whether and where the Forest Supervisor has decided to provide timber harvest units, roads, associated timber harvesting facilities, dispersed recreation sites, and watershed improvements.

DATES: A public mailing that outlines the project timeline and public involvement opportunities is planned for distribution in Fall 2002. Individuals who want to receive this malign should contact us within 30 days of the publication of this NOI. To be most useful, comments concerning the scope of this project should be received by December 23, 2002. The draft Environmental Impact Statement is projected to be filed with the Environmental Protection Agency (EPA) in the winter of 2003 and will begin a 45-day public comment period. The Final Environmental Impact Statement and Record of Decision are anticipated to be published in the summer of 2003.

ADDRESSES: Please send written comments to the Petersburg Ranger District, Tongass National Forest, Attn: Scott Peak Project Area EIS, PO Box 1328, Petersburg, AK 99833. The FAX number is (907) 772–3871 or Cynthia Sever, Interdisciplinary Team Leader, Petersburg Ranger District, PO Box 1328, Petersburg, AK 99833; telephone (907) 772–3871.

SUPPLEMENTARY INFORMATION:

Background: The 24,110 acre Scott Peak Project Area is located within value Comparison Unit 444 on Kuprean of Island, Alaska on the Petersburg Ranger District of the Tongass National Forest, Portions of two Inventoried Roadless Areas, Missionary #212 and Five Mile #213, as identified by the Forest plan, are located within the project area. None of the proposed timber wharves units or temporary roads are within these or any other roadless area as defined by the U.S. District Court (District of Alaska in Sierra Club v. Rey (J00–0009 CV (JKS)). The project area includes one small old-growth habitat reserve as designated in the Forest Plan. A Forest plan amendment would be required if a decision is made to modify the old-growth habitat reserve boundary associated with this project.

The purpose and need for the Scott Peak Project is: (1) To implement the direction contained in the 1997 Tongass Land Management Plan and the 1997 ROD, including goals, objectives, management prescriptions, and standards and guidelines; (2) to maintain wood production from suitable timber lands, providing a continuous supply of wood to meet society's needs; (3) to help provide a stable supply of timber from the Tongass National Forest which meets existing and potential market demand and is consistent with sound multiple use and sustained yield objectives; and (4) to help meet the desired future condition of the landscape as described by the 1997 Tongass Land and Resource Management Plan.

Public Participation: Public participation has been an integral component of the study process and will continue to be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Tribal Governments, Federal, State, and local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. Written scoping comments have been solicited through an informal scoping package that was sent to the project mailing list and was available at open houses in Petersburg, AK and Kate, AK. The scoping process includes: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Tentative issues identified for analysis in the EIS include the potential effects of the project on, and the relationship of the project to, the old-growth habitat reserve system and timber sale economics.

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no-action" alternative will be developed for the Draft Environmental Impact Statement. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), will be provided, if necessary, during the comment period on the Draft Environmental Impact Statement.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the Draft Environmental Impact Statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and address of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Permits required for implementation include the following:

1. U.S. Army Corps of Engineers

—Approval of discharge of dredged or fill material into the water of the United States under Section 404 of the Clean Water Act;

—Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency

—National Pollutant Discharge Elimination System (402) Permit;

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—Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources

—Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation

—Solid Waste Disposal Permit;
—Certification of Compliance with Alaska Water Quality Standards (401 Certification) Chapter 20.

Responsible Official: Thomas Puchlerz, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, AL 99901, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and state the rationale in the Record of Decision.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: November 19, 2002.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 02–30169 Filed 11–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Opal Creek Scenic Recreation Area Advisory Council is scheduled to meet on Saturday, December 7, 2002 for a field visit to the Opal Creek Scenic Recreation Area. The objectives of the field visit are to:

- Orient council members to different areas within the high and low intensity zones;
- Discuss monitoring planning and identify key resource indicators that need to be assessed for the monitoring plan;
- Provide an overview of transportation system maintenance levels, current condition, reasons for access, and management options to the lay groundwork for developing the transportation plan as required by law;
- Discuss law enforcement issues and implementing no shooting corridors.

The tour is scheduled to begin at 8:30 a.m., and will conclude at approximately 3:30 p.m. The tour will begin at the Oregon Department of Forestry Office at 22965 North Fork Road in Mehama, Oregon and make several stops throughout the Opal Creek SRA. The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for SRA, and consults on a periodic and regular basis on the management of the area.

The public comment period will begin at 3:15 p.m. when the council reconvenes at the Oregon Department of Forestry Office. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the December 7 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below. The public is welcome to attend the tour, however individuals must provide their own transportation throughout the tour and bring a lunch. Four-wheel drive is recommended.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Gina Owens; Willamette National Forest, Detroit Ranger District, HC 73 Box, 320, Mill City, OR 97360; (503) 854–3366.

Dated: November 22, 2002.

Dallas J. Emch,

Forest Supervisor.

Disclaimer: This meeting notice is being published less than 15 days prior to the meeting since this is a reschedule of the field tour that was cancelled on November 17, 2002 (**Federal Register** Notice Vol. 67, No. 216, November 7, 2002, pages 67819 for lack of confirmed attendance. The field tour is being rescheduled in a timely manner to prompt winter conditions closing the area, and so that planning can be accomplished within the timeframes that are set. This late notice is authorized under 41 CFR 1016.1015(b)(2).

[FR Doc. 02–30217 Filed 11–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, December 16, 2002. The Madera Resource Advisory Committee will meet at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA. The purpose of the meeting is update RAC committee outreach and RAC Proposal presentations.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, December 16, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Update RAC committee outreach, and (2) RAC Proposal presentations. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: November 21, 2002.

David W. Martin,

District Ranger.

[FR Doc. 02–30216 Filed 11–27–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed collection; comment request.

Title: Nonprofit Agency Responsibilities, 3037–0005.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled has submitted an Information Collection Request to the Office of Management and Budget (OMB) for review and clearance under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This notice solicits comments on requirement relating to the record keeping requirements of nonprofit agencies serving people who are blind or severely disabled.

DATES: Submit comments on or before December 30, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen F. Lee, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or be electronically e-mailed to *Karen_F._Lee@omb.eop.gov.* Requests for copies of documents pertaining to the collection should be addressed to Committee for Purchase From People Who Are Blind or Severely Disabled, Attention: Janet Yandik, Information Management Specialist, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259 or e-mailed to *jyandik@jwod.gov.*

SUPPLEMENTARY INFORMATION: The Committee imposes certain requirements on nonprofit agencies that participate in the Javits-Wagner-O'Day (JWOD) Program. The requirements being proposed are recordkeeping for specific product families and services sold under the JWOD Act. This is a change in current requirements that only require records be kept and reported in the aggregate, rather than by specific JWOD product family or service. If approved, recordkeeping shall reflect dollar sales of each product and service sold under the authority of JWOD Act, direct labor hours performed by all workers on each product and service sold under the JWOD Act, and files which document the disability and competitive employability of each worker counted toward the nonprofit agencies' ratio of disabled direct labor. Such records and files are required to ensure the effective administration of the JWOD Program and to ensure that nonprofit agencies seeking to participate in the Committee's program meet the requirements of 41 U.S.C. 46–48(c).

G. John Heyer,

General Counsel.

[FR Doc. 02–30310 Filed 11–27–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 29, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Marker, Dry Erase, Premium, 7520–00–NIB–1428.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Rough and Ready Mop
7920–00–NIB–0409 (Medium)
7920–00–NIB–0410 (Large)
NPA: New York City Industries for the Blind, Brooklyn, New York
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for deletion from the Procurement List.

The following product and service are proposed for deletion from the Procurement List:

Product

Product/NSN: Aerosol Paint, Lacquer, 8010–00–958–8147

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NPA: The Lighthouse for the Blind, Inc., St. Louis, Missouri
Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri

Service

Service Type/Location: Base Supply Center, New Orleans Naval Support Activity, New Orleans, Louisiana
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina
Contract Activity: Naval Support Activity, New Orleans, Louisiana.

G. John Heyer,
General Counsel.
[FR Doc. 02–30308 Filed 11–27–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 29, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 6, and October 4, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 56981, and 62224) of proposed additions to the Procurement List.

The following comments pertain to Pest Control, Naval Base Ventura County, California.

Comments were received from the current contractor for this pest control service. The contractor indicated that loss of the contract would have a severe adverse impact on the company. The contractor also questioned whether pest control is suitable work for people with severe disabilities, and whether the designated nonprofit agency would be able to meet health and safety requirements for proper performance of the service.

In making its claim of severe adverse impact, the contractor provided figures showing that this contract represents a sizeable minority of the total sales of the company branch office which performs this work. The Committee, however, looks to total sales of the entire company when assessing the severity of impact on a contractor. The percentage of the company's total sales which this pest control service represents is far below the level which the Committee normally considers to constitute severe adverse impact on a contractor.

The contractor noted that there are numerous Federal and State rules applicable to this pest control service, and that the pests at the service location require a number of specialized tasks to control. The contractor stated that all of these tasks are currently being performed by licensed pest control technicians. The contractor also noted that nonprofit agencies performing grounds maintenance services under the Committee's program normally subcontract pest control to licensed and certified pest control firms.

Unlike the nonprofit agencies performing grounds maintenance services which the contractor noted, the nonprofit agency designated to perform this service has done pest control in its grounds maintenance services. This nonprofit agency will be licensed and certified to perform the pest control work needed in the pest control service now being added to the Procurement List. The nonprofit agency will meet all applicable certified staffing and other State and Federal requirements for pest control when it provides this service, as well as the requirements set forth in the Statement of Work for the pest control contract. The nonprofit agency already employs people with severe disabilities who are licensed to perform pest control work. Accordingly, the Committee does not agree with the contractor's contention that pest control work is not suitable for people with severe disabilities.

The following material pertains to all of the items being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Facility Services, Retirement Operations Center, Boyers, Pennsylvania
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, Pennsylvania.
Contract Activity: Office of Personnel Management, Washington, DC.
Service Type/Location: Grounds and Landscape Maintenance Services, Fort Point Reservation Area, Galveston, Texas, San Jacinto Disposal Area, Galveston, TX.
NPA: Training, Rehabilitation & Development Institute, Inc., San Antonio, Texas.
Contract Activity: U.S. Army Engineer District, Galveston, Texas.
Service Type/Location: Pest Control, Naval Base Ventura County, Ventura , California.
NPA: PRIDE Industries, Roseville, California.
Contract Activity: ROICC/Naval Base Ventura County, Point Mugu, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,
General Counsel.
[FR Doc. 02–30309 Filed 11–27–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Submission for OMB Review; Comment Request; Requirements for Approved Construction Investments

ACTION: Extension of a currently approved collection, comment request.

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).
Title: Requirements for Approved Construction Investments.
Agency Form Number: Not Applicable.
OMB Approval Number: 0610–0096.
Type of Request: Extension of a currently approved collection.
Burden: 23,200 hours.
Average Hours Per Response: 20 burden hours.
Number of Respondents: Approximately 1,160 respondents.
Needs and Uses: The Economic Development Administration (EDA) provides investments that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and higher skill, higher wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives.

The *Requirements for Approved Construction Investments* is needed to monitor construction projects for compliance with Federal and other program and administrative requirements as set forth in EDA's authorizing legislation (Pub. L. 105–393) and EDA's implementing regulations at 13 CFR parts 305 and 308, and the Common Rule as set forth at 15 CFR parts 14 and 24. The information collected from grant recipients is used by EDA to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds accomplishing the purpose for which they were granted. Additionally, the information is used to monitor project progress in order to detect delays and to offer assistance to resolve delays when appropriate. EDA uses information gathered to analyze and report on program performance for over 600 projects which at any one time are still in design or construction.

Affected Public: State, local or Tribal Government and not-for profit organizations.
Frequency: On Occasion, Quarterly and Semiannually.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, U.S. Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *dhynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: November 25, 2002.

Madeleine Clayton,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. 02–30299 Filed 11–27–02; 8:45 am]
BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below:

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD OCTOBER 19, 2002—NOVEMBER 22, 2002

Firm name	Address	Date petition accepted	Product
Mutual Tool & Die, Inc	725 Lilac Avenue, Dayton, OH 45427	10/31/02	Jigs, fixtures and tools for metal working.
Wenger Manufacturing, Inc	714 Main Street, Sebetha, KS 66534	11/06/02	Extrusion parts and machinery for the food products industry.
Pharr Brand Name Apparel, LLC	1300 Maco Drive, Pharr, TX 78577	11/06/02	Leather Jackets.
Wamke Tool Industries, Inc	3287 Metamora Road, Oxford, MI 48371	11/14/02	Jigs, fixtures and tools for metal working.
Max Hats Ltd., dba West Penn Hat & Cap Corporation.	100 Treadway Lane, Creighton, PA 15030.	11/18/02	Hats and caps.
C W Industries	130 James Way, Southampton, PA 18966.	11/20/02	Electrical connectors used in the appliance industry.
Lima Plastics, Inc	1130 W. Elizabeth Ave., Linden, NJ 07036.	11/20/02	Lipstick cases, small talc containers and powder boxes, nail polish caps, and misc. cosmetic containers, boxes, and cases.
Modern Alpha Plastics, Inc	1026 South Powell Road, Independence, MO 64056.	11/20/02	Plastic fittings for the automotive industry.
Burgess Manufacturing, Inc	3443 North Topeka Street, Wichita, KS 67219.	11/20/02	Wooden boxes, cases and crates.
Great Western Nav. E. & L. Company	P.O. Box 74, Chignik, AK 99564	11/20/02	Salmon.
Lady Launi, Inc	2120 41st Street, Anacortes, WA 98221	11/20/02	Salmon.
All In One, Inc	P.O. Box 22 Hilltop Dr., Chignik, AK 99564.	11/20/02	Salmon.
Alpha Products, Inc	5570 West 70th Place, Chicago, IL 60638.	11/22/02	Stamped metal loudspeaker components.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

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Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 22, 2002.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 02–30215 Filed 11–27–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–815]

Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the Republic of South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Crystal Crittenden or Mark Manning at (202) 482–0989 or (202) 482–5253, respectively; AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Final Determination

We determine that ferrovanadium from the Republic of South Africa (South Africa) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation* section of this notice.

Background

On June 25, 2002, the Department preliminarily determined that imports of ferrovanadium from South Africa are being, or are likely to be, sold in the United States at LTFV, as provided in section 733 of the Act. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the Republic of South Africa*, 67 FR 45083 (July 8, 2002) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

On July 9, 2002, one of the respondents, Xstrata South Africa (Proprietary) Limited (Xstrata), timely filed an allegation that the Department made several ministerial errors in its preliminary determination. In addition, during July 2002, Xstrata and Highveld Steel and Vanadium Corporation, Ltd. (Highveld), the other respondent in this investigation, separately submitted letters refusing to allow the Department to verify their responses. On September 12, 2002, the Department found that the preliminary determination contained certain ministerial errors. *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value; Ferrovanadium from the Republic of South Africa*, 67 FR 59050 (September 19, 2002). The petitioners[1] filed their case brief on September 26, 2002. The respondents did not file case or rebuttal briefs.

Scope of The Investigation

The scope of this investigation covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. It specifically excludes vanadium additives other than ferrovanadium, such as nitride vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this proceeding remains dispositive.

Period of Investigation (POI)

The POI is October 1, 2000, through September 30, 2001.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Bernard T. Carreau to Faryar Shirzad, Issues and Decision Memorandum for the Antidumping Duty Investigation of Ferrovanadium from the Republic of South Africa, (*Decision Memorandum*), dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this proceeding and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B-099, of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Use of Total Adverse Facts Available

We have assigned Highveld and Xstrata a margin based upon total adverse facts available because they refused to allow the Department to verify their responses. We are using as total adverse facts available the initiation rate of 116.00 percent, which is based on information contained in the petition. For a discussion of our application of total adverse facts available, see the *Decision Memorandum* which is on file in the CRU. In addition, see the Memorandum from Mark Manning to Holly A. Kuga regarding corroboration of secondary information used as total adverse facts available, dated concurrently with this notice.

[1] The petitioners in this case are The Ferroalloys Association Vanadium Committee (TFA Vanadium Committee) and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC.

Changes Since the Preliminary Determination

The Department was unable to verify the information placed on the record of this investigation by the respondents because they did not allow the Department to conduct sales and cost verifications. Therefore, rather than using the reported information which we could not verify to calculate margins for the respondents, as was done in the preliminary determination, we are basing the dumping margin for Highveld and Xstrata upon total adverse facts available.

All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that the Department may weight-average margins other than the zero, *de minimis*, or facts available margins to establish the "all others" rate. When the data do not permit weight-averaging such other margins, the Statement of Administrative Action (SAA) provides that the Department may use any other reasonable methods. *See* the SAA accompanying the URAA, H.R. Rep. No. 103–316 at 873 (1994). Because the petition contained only one estimated dumping margin, there are no additional estimated margins available with which to create the "all others" rate. Therefore, we are using the initiation margin of 116 percent as the "all others" rate.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all entries of ferrovanadium from South Africa that are entered, or withdrawn from warehouse, for consumption on or after July 8, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average percentage margins exist for the period October 1, 2000, through September 30, 2001:

Manufacturer/exporter	Margin (percent)
Highveld Steel and Vanadium Corporation, Ltd.	116.00
Xstrata South Africa (Proprietary) Limited	116.00
All Others	116.00

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: November 20, 2002.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

1. Application of Total Adverse Facts Available new file.

[FR Doc. 02–30305 Filed 11–27–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–873]

Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4081, and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Final Determination

We determine that ferrovanadium from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation section of this notice.*

Background

On July 8, 2002, the Department of Commerce (the Department) published the preliminary determination of sales at less-than-fair-value in the antidumping duty investigation of ferrovanadium from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the People's Republic of China*, 67 FR 45088 (July 8, 2002) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

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On July 17, 2002, the respondent, Pangang Group International Economic and Trading Corporation (Pangang), reported for the first time that one of its affiliates for which it had not reported factors of production information had produced ferrovanadium during the period of investigation (POI). However, in its July 17 submission, Pangang noted that none of the ferrovanadium produced by this company was sold or exported to the United States during the POI. In response to Pangang's July 17 submission, on July 19, 2002, the Department issued a memorandum to the file noting that we require Pangang to report factors of production only from the factory or factories which produced ferrovanadium that was sold to customers in the United States during the POI.

During July 2002, the Department conducted a verification of Pangang's sales and factors of production information. *See* Memorandum from Timothy P. Finn and Karine Gziryan to the File, "Verification of Sales and Factors of Production Information Reported By Pangang Group International Economic & Trading Corporation," dated September 24, 2002. On July 15, 2002, Pangang filed a request for a public hearing in this investigation. However, no hearing was held in this investigation because Pangang withdrew its request for a hearing on September 30, 2002. Both the petitioners and Pangang filed surrogate value information and data on August 26, 2002.[1] On September 5, 2002, Pangang filed information purportedly rebutting petitioners' August 26 factor value submission. On September 24, 2002, the Department rejected Pangang's September 5 rebuttal submission as untimely filed factual information.

Parties filed case and rebuttal briefs on October 1 and October 7, 2002, respectively. Pursuant to the Department's instructions, the petitioners removed certain untimely filed factual information from their rebuttal brief and resubmitted it on November 12, 2002.

Scope of the Investigation

The scope of this investigation covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. It specifically excludes vanadium additives other than ferrovanadium, such as nitride vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

Period of Investigation

The POI is April 1, 2001, through September 30, 2001.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Holly A. Kuga to Bernard T. Carreau, "Issues and Decision Memorandum for the Antidumping Duty Investigation of Ferrovanadium from the People's Republic of China," dated concurrently with this notice (*Decision Memorandum*), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Non-Market Economy

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115 (November 20, 2001). A designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. The respondent in this investigation has not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as a NME in this investigation. For further details, *see* the *Preliminary Determination*.

Separate Rates

In our Preliminary Determination, we found that the only responding company, Pangang, met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the preliminary determination which would warrant reconsideration of our separates rates determination with respect to this company. For a complete discussion of the Department's determination that the respondent is entitled to a separate rate, *see* the *Preliminary Determination*.

The PRC-Wide Rate

In the *Preliminary Determination*, we found that the use of adverse facts available for the PRC-wide rate was appropriate for other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Pangang.

When analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margin and determined that the margin in the petition was appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margin for purposes of using it as adverse facts available, we examined the price and cost information provided in the petition in the context of our preliminary determination. For further details, *see* Memorandum from Mark Manning to Holly A. Kuga, "Corroboration of Secondary Information," dated June 25, 2002. We received no comments on this decision and continue to find in this final determination that the rate contained in the petition, as recalculated, has probative value. Since we have received no comments regarding our decision to apply, as adverse facts available, the PRC-wide rate to all entries of the merchandise under investigation except for entries from Pangang, we have continued to apply this rate in the final determination. For further discussion, *see Preliminary Determination*.

Since the preliminary determination, we have obtained new information regarding several surrogate values. In order to take into account the more recent information, we recalculated the petition margin using, where possible, revised surrogate values to value the petitioners' consumption rates. As a result of this recalculation, the PRC-wide rate is, for the final determination, 66.71 percent. *See* Memorandum from Mark Manning to the File, "Corroboration of Secondary Information," dated November 20, 2002.

Surrogate Country

For purposes of the final determination, we continue to find that South Africa remains the appropriate surrogate country for the PRC. We received comments from the petitioners in their brief, which are discussed in the accompanying *Decision Memorandum* at Comment 6. For further discussion and analysis regarding the surrogate country selection for the PRC, *see* the *Preliminary Determination*.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the Preliminary Determination as a result of verification, *see* the *Changes Since the Preliminary Determination* section below.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the preliminary determination. These adjustments are listed below and discussed in detail in the (1) Decision Memorandum, (2) Memorandum from the Team to the File, "Final Factors of Production Valuation Memorandum," dated November 20, 2002, and (3) Memorandum from the Team to the File, "Calculation Memorandum for the Final Determination," dated November 20, 2002.

1. We accepted all changes identified by Pangang in its July 19, 2002, submission and all minor corrections presented at verification. For our final calculations, we used the updated consumption rates and factors of production that incorporate the changes identified in the documents listed above, submitted by Pangang on August 26, 2002.
2. We reviewed the import data used in the preliminary determination to calculate surrogate values and removed from our calculations (1) data from NME countries, (2) data from countries with export subsidies (*i.e.*, Indonesia, South Korea, and Thailand), (3) data with aberrational per-unit values, and (4) data attributed to South Africa from the South African import statistics. Furthermore, where possible, we based our surrogate values on data from the months covering the POI.
3. We included in our calculation of normal value certain auxiliary materials found during verification.
4. We calculated the surrogate value for vanadium slag from South African export data contemporaneous with the POI obtained from the World Trade Atlas (WTA), rather than the South African import data reported by the United Nations which was used for the preliminary determination.
5. We recalculated the per-unit amount of vanadium slag consumed in the production process based on the actual chemical content of the material, rather than the theoretical content as was done in the preliminary determination.
6. We removed the "soda" factor from the production of FeV50 and FeV80 because we verified that soda was actually consumed in the production of the intermediate products V_2O_3 and V_2O_5.
7. We renamed the "lime" factor consumed in the production of V_2O_3 and V_2O_5 to "soda" and valued this factor with a surrogate value derived from South African import statistics contemporaneous with the POI obtained from the WTA for the HTSUS category for disodium carbonate.
8. We granted Pangang an offset for its sales of V_2O_3 slag and V_2O_5 slag and valued these by-products with the same surrogate value used to value vanadium slag. We adjusted the surrogate value to account for the difference in the vanadium content.
9. We granted Pangang an offset for its sales of aluminum oxide slag and valued this by-product with the same surrogate value used to value vanadium slag. We adjusted the surrogate value to account for the difference in the vanadium content.
10. We valued iron drums with South African import statistics contemporaneous with the POI obtained from the WTA, rather than with South African import data for 2000 reported by the United Nations, which was used in the preliminary determination.
11. We calculated separate surrogate values for wooden boxes and wooden pallets from the South African import statistics contemporaneous with the POI obtained from the WTA. We identified separate HTSUS categories for wooden boxes and wooden pallets rather than relying solely on the HTSUS category for wooden pallets as the surrogate value for both factors as was done in the preliminary determination.
12. We revised our calculation of the surrogate value for natural gas and used gas prices obtained from the International Energy Agency that are contemporaneous with the POI rather than prices from a period before the POI as was done in the preliminary determination.
13. We inflated surrogate values from periods before the POI with inflator factors derived from producer price index data from South Africa.
14. We revised the surrogate value for labor and are using the 2000 wage rate for China rather than the 1999 wage rate as was done in the preliminary determination.
15. We calculated the surrogate value for sulfuric acid from South African export data contemporaneous with the POI obtained from the WTA rather than South African import data which was used for the preliminary determination.
16. We revised our calculation of freight costs for the factors of production to include the revised distances identified during verification.
17. We revised our calculation of the net U.S. price to deduct marine insurance where appropriate.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Customs Service to continue suspension liquidation of entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after July 8, 2002 (the date of publication of the Preliminary Determination in the **Federal Register**). We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average percentage margins exist for the period April 1, 2001, through September 30, 2001:

[1] The petitioners in this case are the Ferroalloys Association Vanadium Committee (TFA Vanadium Committee) and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC.

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Manufacturer/exporter	Weighted-average margin (percent)
Pangang Group International Economic & Trading Corporation	13.03
PRC-Wide Rate	66.71

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Pangang.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act

Dated: November 20, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Comment 1: Whether Pangang Group International Economic & Trading Corporation (Pangang) Should Have Reported Factors of Production for All of its Production Facilities
Comment 2: Unreported Factors of Production
Comment 3: Whether Pangang Incorrectly Reported the Consumption Quantity of a Major Input
Comment 4: Whether the Department Should Continue to Use South Africa as the Surrogate Market Economy Country
Comment 5: Whether the Department Should Calculate the Surrogate Value for Vanadium Slag Using World Trade Atlas (WTA) Data or United Nations Commodity Trade Statistics (UNCTS) Data
Comment 6: Whether the Department Should Value Vanadium Slag Using Actual or Theoretical Consumption Quantities
Comment 7: Whether the Department Should Continue to Add Soda Consumption Quantities to the Reported Factors of Production
Comment 8: Whether the Department Should Value Soda as Sodium Hydroxide or Sodium Carbonate
Comment 9: Whether the Department Should Make a Concentration Adjustment to its Surrogate Value for Ammonium Sulphate
Comment 10: Whether the Department Should Allow an Offset for Aluminum Oxide Slag
Comment 11: Whether the Department Should Use Petitioners' Suggested Methodology to Value Pangang's Vanadium Slag Offset
Comment 12: Whether the Department Should Value the Consumption of Iron Drums Using WTA Data
Comment 13: Whether the Department Should Revise the Surrogate Value for Wooden Pallets and Wooden Boxes
Comment 14: Whether the Department Should Continue to Value Natural Gas Using IEA Data
Comment 15: Whether the Department Made a Ministerial Error in Calculating the Surrogate Value for Water
Comment 16: Whether the Department Should Use the Wholesale Price Index (WPI) or Producer Price Index (PPI) to Inflate Factor Values
Comment 17: Whether the Department Should Revise its Profit Ratio Calculation
Comment 18: Whether the Department Should Revise its Labor Rate Calculation
Comment 19: Whether the Surrogate Value for Sulfuric Acid is Based On Aberrational Data
Comment 20: Whether the Department Should Include in Normal Value the Value of the Factors of Production for Grinding Raw Vanadium Slag
Comment 21: Whether to Correct Certain Information Relating to Inland Freight
Comment 22: Whether to Deduct Marine Insurance in Calculating the Net Price for One U.S. Sale

[FR Doc. 02–30306 Filed 11–27–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; SURF Program Student Applicant Information

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3504(c)(2)(A)).

DATES: Written comments must be submitted on or before January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Terrell Vanderah, NIST, 100 Bureau Drive, Stop 8520, Gaithersburg, MD 20899, tel. (301) 975 5785, or *terrell.vanderah@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this collection is to gather information needed for the SURF (Summer Undergraduate Research Fellowship) Program. The information will be provided by student applicants and will be described in the Proposal Review Process and Evaluation Criteria sections of the **Federal Register** Notice for the SURF Program. The information will be used by the Program Directors and technical evaluators to determine eligible students, select students for the program using the Evaluation Criteria described in the **Federal Register** Notice, and place selected students in appropriate research projects that match their needs, interests, and academic preparation. The information includes: student name, host institution, e-mail address, home address, class standing, first- and second-choice NIST laboratories they wish to apply to, academic major and minor, current overall Grade Point Average, gender (for housing purposes only), availability dates, resume, personal statement of commitment and research interests, two letters of recommendation, academic transcripts, verification of U.S. citizenship or permanent legal residency, and verification of health coverage.

II. Method of Collection

The Student Applicant Information Form is in paper form.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 25, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30298 Filed 11–27–02; 8:45 am]
BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty-and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries from Regional and Third-Country Fabric

November 25, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the Third 12-Month Cap on Duty-and Quota-Free Benefits.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000, Section 3108 of the Trade Act of 2002; Presidential Proclamation 7350 of October 4, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002, 67 FR 69459).

Title I of the Trade and Development Act of 2000 (TDA 2000) provides for duty-and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty-and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the United States or one or more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles. This special rule for lesser developed countries applies through September 30, 2004. TDA 2000 imposed a quantitative limitation on imports eligible for preferential treatment under these two provisions.

The Trade Act of 2002 amended TDA 2000 to extend preferential treatment to apparel assembled in a beneficiary sub-Saharan African country from components knit-to-shape in a beneficiary country from U.S. or beneficiary country yarns and to apparel formed on seamless knitting machines in a beneficiary country from U.S. or beneficiary country yarns, subject to the quantitative limitation. The Trade Act of 2002 also increased the quantitative limitation but provided that this increase would not apply to apparel imported under the special rule for lesser developed countries. The Trade Act of 2002 provides that the quantitative limitation for the year beginning October 1, 2002 will be an amount not to exceed 4.2414 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. Of this overall amount, apparel imported under the special rule for lesser developed countries is limited to an amount not to exceed 2.0714 percent of apparel imported into the United States in the preceding 12-month period. For the purpose of this notice, the most recent 12-month period for which data are available is the 12-month period ending July 31, 2002.

Presidential Proclamation 7350 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the Federal Register. Presidential Proclamation 7626, published on November 18, 2002, modified the aggregate quantity of imports allowed during each 12-month period.

For the one-year period, beginning on October 1, 2002, and extending through September 30, 2003, the aggregate quantity of imports eligible for preferential treatment under these provisions is 735,905,928 square meter equivalents. Of this amount, 359,399,147 square meter equivalents is available to apparel imported under the special rule for lesser developed countries. These quantities will be recalculated for each subsequent year. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–30412 Filed 11–26–02; 11:58 am]
BILLING CODE 3510–DR–S

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms., Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–6929, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

The Corporation seeks public comment on the forms, the instructions and forms, and the instructions for the narrative portion of the following application instructions.

Part I

Type of Review: Revised collection.
Agency: Corporation for National and Community Service.
Title: AmeriCorps*VISTA Project Application Instructions.
OMB Number: 3045–0038.
Agency Number: None.
Affected Public: Eligible public, private, and faith-based nonprofit organizations.
Total Respondents: 1,200.
Frequency: Once per year.
Average Time Per Response: Fifteen (15) hours.
Estimated Total Burden Hours: 20,000 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: These application instructions will be used by eligible nonprofit organizations and public agencies requesting assistance in establishing VISTA community service programs.

Part II

Type of Review: Reinstatement, with change.
Agency:
Corporation for National and Community Service.
Title: National Senior Service Corps Application Instructions.
OMB Number: 3045–0035.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 1,513.
Frequency: Annually.
Average Time Per Response: 13.2 hours.
Estimated Total Burden Hours: 20,027 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): $6,500.
Description: These application instructions will be used by eligible organizations requesting assistance through Senior Corps programs including Retired and Senior Volunteer Programs (RSVP), Senior Companion Programs (SCP) and Foster Grandparents (FGP).

Part III

Type of Review: Revised collection.
Agency: Corporation for National and Community Service.
Title: AmeriCorps*National, State, Indian Tribes and U.S. Territories Application Instructions.
OMB Number: 3045–0047.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 2,000.
Frequency: Once per year.
Average Time Per Response: Ten (10) hours.
Estimated Total Burden Hours: 20,000 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: These application instructions will be used by eligible nonprofit organizations and public agencies requesting assistance in establishing AmeriCorps community service programs.

Part IV

Type of Review: Revised collection.
Agency: Corporation for National and Community Service.
Title: AmeriCorps Education Awards Program Application Instructions.
OMB Number: 3045–0065.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 200.
Frequency: Annually.
Average Time Per Response: Eight (8) hours.
Estimated Total Burden Hours: 1,600 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: These application instructions will be used by eligible nonprofit organizations and public agencies requesting assistance in establishing AmeriCorps Education Awards Programs community service programs.

Part VI

Type of Review: New collection.
Agency: Corporation for National and Community Service.
Title: Innovative and Demonstration Application Instructions.
OMB Number: None.
Agency Number: None.
Affected Public: Eligible applicants to the Corporation for funding.
Total Respondents: 400.
Frequency: Annually.
Average Time Per Response: Twenty (20) hours.
Estimated Total Burden Hours: 4,000 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: These application instructions will be used by eligible nonprofit organizations and public agencies requesting assistance in establishing community service, innovative or demonstration programs.

Dated: November 25, 2002.

Nancy Talbot,

Director, Program Planning and Development.

[FR Doc. 02–30373 Filed 11–27–02; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense.

ACTION: Notice.

In compliance with section 35006(c)(2)(A) of the Paperwork Reduction Act of 1995, the Under Secretary of Defense for Acquisition, Technology, and Logistics announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of DoD's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or forms of information technology.

DATES: Consideration will be given to all comments received by January 28, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Standardization Program Office (DSPO), Defense Logistics Agency, J–307, Attention: Ms. Karen Bond, 8725 John J. Kingman Road, STOP 6233, Fort Belvoir, VA 22060–6221; telephone: (703) 767–6871.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact the Defense Standardization Program Office (DSPO) at (703) 767–6871.

Title, Associated Forms, and OMB Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); Numerous Forms; 0704–0188.

Needs and Uses: The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense (DoD) contracts. The information collected will be used by DoD personnel and other DoD contractors to support the design, test, manufacture, training, operation, and maintenance of procured items, including weapons systems critical to the national defense.

Notice: The Acquisition Management Systems and Data Requirements Control List (AMSDL) will be canceled once reference to it has been removed from the Defense Federal Acquisition Regulation. The data item descriptions listed in the AMSDL will be listed in the Department of Defense Index of Specifications and Standards (DoDISS). The extension of this information collection will be revised when the AMSDL has been canceled.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.
Annual Burden Hours: 52,628,400.
Number of Respondents: 886.
Responses per Respondent: 540.
Average Burden per Response: 110 hours.
Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense contracts. Information collection requests are contained in DoD contract actions for supplies, services, hardware, and software. This information is collected and used by DoD and its component Military Departments and Agencies to support the design, test, manufacture, training, operation, maintenance, and logistical support of procured items, including weapons systems. The collection of such data is essential to accomplishing the assigned mission of the Department of Defense. Failure to collect this information would have a detrimental effect on the DoD acquisition programs and the National Security.

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–30276 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on DoD Roles and Missions in Homeland Security will meet in closed session on January 7–;8, 2003; February 19–20, 2003, March 29–20, 2003; April 22–23, 2003; May 28–29, 2003; June 24–25, 2003; and July 16–17, 2003, at Strategic Analysis Inc., 3601 Wilson boulevard, Arlington, VA. The Task Force will review the Department of Defense (DoD) roles and missions in Homeland Security.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will address: the definition of "Homeland Security" and the specific roles and missions DoD will be responsible for accomplishing; the prioritized goals for these DoD roles and missions in a national security emergency; the DoD strategy and plans for the employment of National Guard and Reserve forces capabilities to participate in Homeland Security and also respond to warfighting demands overseas; the other primary Federal agencies and the evolving new Department of Homeland Security with which DoD must develop an integrated security strategy, planning function and operational capabilities and inter-agency processes that need to be put in place; the known and many unknown vulnerabilities to DoD force projection and how projections issues and responsibilities will be addressed in the larger context of Homeland Security; and the classes of technologies and systems that DoD should have the lead in developing and fielding which have applications for homeland security as well.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

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Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–30272 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Unexploded Ordnance (UXO) will meet in closed session on January 22–23, 2003, February 12–13, 2003, and March 12–13, 2003, at SAIC Inc., 4001 N. Fairfax Street, Arlington, VA. This Task Force will review modern technology that can be exploited or developed to reduce the extremely high cost of UXO clean up.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate the Department's ability to exploit modern technology to reduce the extremely high cost of UXO clean up and improve its effectiveness for both contaminated land and water ranges and help accomplish the job in a reasonable time; and science and technologies that can be developed to support and sustain continued live fire training and testing of munitions at ranges across the United States with an acceptable environmental impact.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–30273 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Experimentation will meet in closed session on December 2–3, 2002, and December 18, 2002, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will examine joint experimentation programs and activities and will recommend ways to enhance the contributions of joint experimentation to transformation.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review the Joint Forces Command's program of joint experimentation and recommend steps to enhance its value by examining the goals, process and substance of the experimentation program, to include: creating an environment that fosters innovation and learning; collecting, analyzing, interpreting, vetting and disseminating data; engaging the Services, other Commands, key U.S. government agencies and allies; and developing and using models, simulations and other tools. In addition, the Task Force will review the recently completed Millennium Challenge 02 to identify insights and opportunities that may not have been focused on by those closer to the activity.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to critical mission requirements and the short timeframe to accomplish this review, there is insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to the first meeting of the Task Force on Joint Experimentation.

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–30274 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting Date Change.

SUMMARY: On Friday, October 11, 2002 (67 FR 63388), the Department of Defense announced a closed meeting of the Defense Science Board Task Force on Discriminant Use of Force. The meeting previously scheduled for December 3–4, 2002, has been rescheduled, to December 11, 2002. The meeting will be held at SAIC, 4001 N. Fairfax Drive, Arlington, VA.

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–30275 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to provide training to the incoming FY 2003 Committee members. The meetings is open to the public, subject to the availability of space, except for a small portion that is for administrative purposes only and is therefore not open to the public.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than noon, December 2, 2002. Oral presentations by members of the public will be permitted only on Thursday, December 5, 2002, from 4:15 p.m. to 4:30 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by noon, December 2, 2002 and bring 50 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement only just submit one (1) copy of the statement to the DACOWITS staff by the close of the meeting on December 6, 2002.

DATES: December 3, 2002, 8:30 a.m.–10 a.m., and 2 p.m.–5:05 p.m.; December 4, 2002, 8:30 a.m.–5 p.m.; December 5, 2002, 8:30 a.m.–4:35 p.m.; December 6, 2002, 8:30 a.m.–4:30 p.m.

ADDRESSES: Courtyard Marriott, 2899 Jefferson Davis Hwy, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Lieutentant Commander Shannon Thaeler, USN, DACOWITS, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000. Telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: Meeting agenda:

Tuesday, December 3, 2002

Open to Public 8:30 a.m. to 10 a.m.

8:30 a.m. Welcome
Presentation of Pins and Appointment Certificates
9 a.m. DOD's Vision for the Committee
9:15 a.m. Welcome by DACOWITS Chair
9:30 a.m. Committee's Mission and Process
9:45 a.m. Break

Not Open to Public 10 a.m. to 2 p.m. (Administration and Lunch)

Open to Public 2 p.m. to 5 p.m.

2 p.m. Military Personnel Management
3:45 p.m. Break
4 p.m. Social Compact
5 p.m. End of Day Wrap-up

Wednesday, December 4, 2002

Open to Public All Day

8:30 a.m. Focus Group Training
12:00 p.m. Break for Lunch
1:15 p.m. Focus Group Training (cont)
4:50 p.m. End of Day Wrap-Up

Thursday, December 5, 2002

Open to Public All Day

8:30 a.m. Focus Group Training (cont)
11:30 a.m. Installation Letters
11:45 a.m. Break for Lunch
1:00 p.m. Military Department Panel
1:00 p.m. Introduction—DoD Transformation
1:20 p.m. Army
1:40 p.m. Navy
2:00 p.m. Air Force
2:20 p.m. Question & Answer Period
3:00 p.m. Break
3:15 p.m. Defense Manpower Data Center Brief
4:15 p.m. Open Public Forum
4:30 p.m. End of Day Wrap-Up

Friday, December 6, 2002

Open to Public All Day

8:30 a.m. Committee Organization
11:00 a.m. Question & Answer Period
11:30 a.m. Committee Organization
12:00 p.m. Break for Lunch
1:15 p.m. Committee Organization
4:00 p.m. Wrap-Up

Dated: November 18, 2002

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–30271 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter and delete a system of records.

SUMMARY: The Defense Security Service (DSS) is transferring a system of records to the Defense Human Resources Activity, Office of the Secretary of Defense (OSD). The system of records is identified as V5–06, entitled 'Security Research Center Research Files'.

Before being transferred, the system of records is being altered to add a new purpose (conducting personnel security pilot test projects); a new category of records (security clearance and adjudication action information, personnel security continuing evaluation measures; background investigation reports); and adds a (k)(5) exemption to protect the identity of confidential sources. The system of records will be known as DHRA 02, entitled 'PERSEREC Research Files'.

DATES: The changes will be effective on December 30, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Directives and Records Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4728.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 13, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

V5–06

SYSTEM NAME:

Security Research Center Research Files (June 1, 1999, 64 FR 29281).

REASON:

The responsibility for this system of records is being transferred to the Defense Human Resources Activity (DHRA), Office of the Secretary of Defense. The system of records will be known as DHRA 02, entitled 'PERSEREC Research Files'.

Alteration

DHRA 02

SYSTEM NAME:

PERSEREC Research Files.

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'security clearance and adjudication action information; personnel security continuing evaluation measures; background investigation reports'.

* * * * *

PURPOSE(S):

Add to entry '; and (6) conducting personnel security pilot test projects.'

* * * * *

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EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 311. For additional information contact the system manager.'

* * * * *

DHRA 02

SYSTEM NAME:

PERSEREC Research Files.

SYSTEM LOCATION:

Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481; Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955–6771; and Data Center, Naval Postgraduate School, Monterey, CA 93943.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Department of Defense (DoD) civilian employees, military members, and DoD contractor employees who have had or applied for security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of cleared individuals and their security clearance and adjudication action information; data derived from: DD Forms 1879, 398 and 398–2; Standard Forms 85 and 86; and credit, criminal history and other database and sources checked during the course of background investigations and/or personnel security continuing evaluation measures; background investigation reports; and responses from personnel security-related interviews and questionnaires.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12968, Access to Classified Information; 50 U.S.C. 781–887, Internal Security Act of 1950; E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12958, Classified National Security Information; 5 U.S.C. 9101, Access to Criminal History Information for National Security and Other Purposes; and 5 U.S.C. 301, Departmental Regulations, which authorizes DoD Directive 5200.2–R, DoD Personnel Security Program Regulation.

PURPOSE(S):

To perform research, development, and analyses for (1) evaluating and improving DoD personnel security procedures, programs, and policies; (2) assisting in providing training, instruction, and advice on personnel security subjects for DoD Components; (3) encouraging cooperative research within and among DoD Components on projects having DoD-wide implications in order to avoid duplication; (4) addressing items of special interest to personnel security officials within DoD Components; and (5) identifying areas in the personnel security field that warrant more intense scrutiny; and (6) conducting personnel security pilot test projects.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local government agencies, if necessary, to obtain information from them, which will assist PERSEREC in identifying areas in the personnel security field that may warrant more training, instruction, research, or intense scrutiny. This would typically involve obtaining nationwide statistical data or relevant information at the unit or individual level on a specific security issue (*i.e.* financial, criminal, alcohol, etc.) or set of issues that could be used to assist an investigator or adjudicator in evaluating an individual's conduct.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVABILITY:

Records may be retrieved by name or Social Security Number.

SAFEGUARDS:

Records are stored under lock and key, in secure containers, or on electronic media with intrusion safeguards.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The individual should provide sufficient proof of identity such as full name, Social Security Number, date and place of birth, military, contractor, or civilian status while associated with the Department of Defense, places and dates of DoD or contractor employment, and other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of record should address written inquires to the Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The individual should provide sufficient proof of identity such as full name, Social Security Number, date and place of birth, military, contractor, or civilian status while associated with the Department of Defense, places and dates of DoD or contractor employment, and other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the Defense Clearance and Investigative Index, military records, DoD civilian employment and military personnel records, Defense Security Service records, records of the Departments of Justice and Treasury, other commercial and government sources providing personnel security-relevant information, and interviews with and questionnaires completed by record subjects.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 02–29815 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Alter Systems of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding exemptions to two existing systems of records.

DATES: The changes will be effective on December 30, 2002 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4728.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on November 13, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPA DFOLA 05

SYSTEM NAME:

Freedom of Information Program Case Files (February 22, 1993, 58 FR 10227).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'DFOISR 05'.

SYSTEM NAME:

Delete entry and replace with 'Freedom of Information Act Case Files'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Directorate, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who submit Freedom of Information Act (FOIA) requests and administrative appeals to the Office of the Secretary of Defense, the Joint Staff, and other activities receiving administrative FOIA support from Washington Headquarters Services (WHS); individuals whose FOIA requests and/or records have been referred by other Federal agencies to the WHS for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the WHS personnel assigned to handle such requests and appeals.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records created or compiled in response to FOIA requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information is being collected and maintained for the purpose of processing FOIA requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the Department of Defense in carrying out any other responsibilities under the FOIA.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name, subject matter, date of document, and request number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Paper records that are granted are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, do not state a willingness to pay fees, and records which are appealed or litigated are destroyed 6 years after final action. Electronic records are deleted when no longer needed to support Directorate business needs.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, Washington Headquarters Services hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.'

* * * * *

DFOISR 05

SYSTEM NAME:

Freedom of Information Act Case Files.

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SYSTEM LOCATION:

Directorate, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who submit Freedom of Information Act (FOIA) requests and administrative appeals to the Office of the Secretary of Defense, the Joint Staff, and other activities receiving administrative FOIA support from Washington Headquarters Services (WHS); individuals whose FOIA requests and/or records have been referred by other Federal agencies to the WHS for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and/or the WHS personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 5 U.S.C. 552, The Freedom of Information Act, as amended; and DoD 5400.7–R, DoD Freedom of Information Act Program.

PURPOSE(S):

Information is being collected and maintained for the purpose of processing FOIA requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the Department of Defense in carrying out any other responsibilities under the FOIA.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic disks, computer database, optical disk, and paper records in file folders.

RETRIEVABILITY:

Retrieved by name, subject matter, date of document, and request number.

SAFEGUARDS:

Paper records are maintained in security containers with access only to officials whose access is based on requirements of assigned duties. Computer databases are password protected and accessed by individuals who have a need-to-know.

RETENTION AND DISPOSAL:

Paper records that are granted are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no records responses, responses to requesters who do not adequately describe records being sought, or do not state a willingness to pay fees, and records which are appealed or litigated are destroyed 6 years after final action. Electronic records are deleted when no longer needed to support Directorate business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should include the full name of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should include the full name of the individual.

For personal visits to examine records, the individual should provide a form of picture identification, *i.e.*, a driver's license.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests and administrative appeals pursuant to the FOIA, the agency records searched in the process of responding to such requests and appeals; Department of Defense personnel assigned to handle such requests and appeals; other agencies or entities that have referred to the Department of Defense requests concerning Department of Defense records, or that have consulted with the Department of Defense regarding the handling of particular requests; and submitters of records or information that have provided assistance to the Department of Defense in making FOIA access determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, Washington Headquarters Services hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) published in 32 CFR part 311. For additional information contact the system manager.'

DPA DXA.D 10

SYSTEM NAME:

Privacy Act Request for Access Files (February 22, 1993, 58 FR 10227).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'DFOISR 10'.

SYSTEM NAME:

Delete 'Request for Access' and replace with 'Case'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who submit Privacy Act requests and administrative appeals to the Washington Headquarters Services (WHS), the Joint Staff, and other activities receiving administrative support from WHS; individuals whose requests and/or records have been referred by other Federal agencies to WHS for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and WHS personnel assigned to handle such requests and appeals.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records created or compiled in response to Privacy Act requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.'

PURPOSE(S):

Delete entry and replace with 'Information is being collected and maintained for the purpose of processing Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the Department of Defense in carrying out any other responsibilities under the Privacy Act of 1974.'

* * * * *

STORAGE:

Delete current entry and replace with 'Computer database, optical disk and paper records in file folders.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name and/or request number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Paper records that are granted are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no record responses, responses to requesters who do not adequately describe records being sought and records that are appealed or litigated are destroyed 6 years after final action. Electronic records are deleted when no longer needed to support Directorate business needs.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'During the course of a Privacy Act (PA) action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, Washington Headquarters Services hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.'

DFOISR 10

SYSTEM NAME:

Privacy Act Case Files.

SYSTEM LOCATION:

Directorate for Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who submit Privacy Act requests and administrative appeals to the Washington Headquarters Services (WHS), the Joint Staff, and other activities receiving administrative support from WHS; individuals whose requests and/or records have been referred by other Federal agencies to WHS for release to the requester; attorneys representing individuals submitting such requests and appeals, individuals who are the subjects of such requests and appeals, and WHS personnel assigned to handle such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to Privacy Act requests and administrative appeals, *i.e.*, original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and copies of requested records and records under administrative appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, The Privacy Act of 1974, as amended; Administrative Instruction 81, Privacy Program; DoD 5400.11–R, Department of Defense Privacy Program; and E.O. 9397 (SSN).

PURPOSE(S):

Information is being collected and maintained for the purpose of processing Privacy Act requests and administrative appeals; for participating in litigation regarding agency action on such requests and appeals; and for assisting the Department of Defense in carrying out any other responsibilities under the Privacy Act of 1974

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer database, optical disk and paper records in file folders.

RETRIEVABILITY:

Filed chronologically by request number and retrieved by name and/or request number.

SAFEGUARDS:

Records are maintained in security containers with access only to officials whose access is based on requirements of assigned duties. Computer databases are password protected and accessed by individuals who have a need-to-know.

RETENTION AND DISPOSAL:

Paper records that are granted are destroyed 2 years after the date of reply. Paper records that are denied in whole or part, no record responses, responses to requesters who do not adequately describe records being sought and records that are appealed or litigated are destroyed 6 years after final action. Electronic records are deleted when no longer needed to support Directorate business needs.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should include the full name of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system of records should address written inquiries to Director, Freedom of Information and Security Review, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests for information should include the full name of the individual.

For personal visits to examine records, the individual should provide a form of picture identification, *i.e.*, a driver's license.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests and administrative appeals pursuant to the Privacy Act; the agency records searched in the process of responding to such requests and appeals; Department of Defense personnel assigned to handle such requests and appeals; other agencies or entities that have referred to the Department of Defense requests concerning Department of Defense records, or that have consulted with the Department of Defense regarding the handling of particular requests; and submitters or subjects of records or information that have provided assistance to the Department of Defense in making access or amendment determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, Washington Headquarters Services hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 02–29817 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice of New Systems of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 30, 2002 unless comments are received that would result in a contrary determination.

ADDRESSES: FOIA/PA Program Manager, Office of General Counsel, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–7514.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service records system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on November 13, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7330

SYSTEM NAME:

DFAS Payroll Locator File System (PLFS).

SYSTEM LOCATION:

Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, PO Box 998002, Cleveland, OH 44199–8002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is paid by the Defense Finance and Accounting Service is in this payroll locator file.

CATEGORIES OF RECORDS IN THE SYSTEM:

The locator file contains the individual's name, Social Security Number, and payroll office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Financial Management Regulation 7000.14–R, Volumes 7A, 7B, 7C, 8, and 13; and E.O. 9397 (SSN).

PURPOSE(S):

This system of records is being established for the purpose of providing the Department of Defense with a single locator file that identifies those individuals paid by the Defense Finance and Accounting Service, the individual's employment status, and their payroll office location.

All records in this system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Treasury for the purpose of effecting salary offset procedures under the provisions of 5 U.S.C. 5514, against a person who owes a debt to the U.S. Government.

The DoD "Blanket Routine Uses" published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the records and others who are authorized by the DFAS systems administrator at DFAS Cleveland, to use the record system in performance of their official duties. records are stored in secured office buildings protected by guards and controlled by screening of personnel and the registration of visitors.

RETENTION AND DISPOSAL:

Disposition pending (until National Archives and Records Administration has approved the retention and disposal schedule, treat records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Garnishment Operations, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, PO Box 998002, Cleveland, OH 44199–8002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–8006.

Individuals should provide their full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to Privacy Act Officer, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–8006.

Individuals should provide their full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORDS SOURCE CATEGORIES:

Defense Finance and Accounting Service payroll systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–29818 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Inspector General

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to add and delete systems of records.

SUMMARY: The Office of the Inspector General, DoD is adding a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, and deleting a system of records.

DATES: This proposed action will be effective without further notice on December 30, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Dressel at (703) 604–8920.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 13, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

CIG–07

SYSTEM NAME:

Decision Support System (DSS)—OAIG–AUD (February 22, 1993, 58 FR 10213).

REASON:

The records are being consolidated into the Inspector General system of records CIG 20, entitled "Defense Audit Management Information System (DAMIS)."

Addition

CIG–20

SYSTEM NAME:

Defense Audit Management Information System (DAMIS).

SYSTEM LOCATION:

Soza and Company, Ltd., 8550 Arlington Boulevard, Fairfax, VA 22031–4634.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active personnel employed by the Office of the Assistant Inspector General for Auditing, the Naval Audit Service, the Army Audit Agency, and the Air Force Audit Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, current employment status, training courses scheduled and received, pay grade, handicap code, duty address, security clearance, audit project position, education, number of training days, entered on duty date, date of release, and employee status code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5106.1, Inspector General of the Department of Defense; and DoD Directive 8320.1, DoD Data Administration.

PURPOSE(S):

Information is used to maximize staff resources and to provide audit cost summary data; to track staff hours allocated towards audit preparation and active audit projects which will allow for more effective scheduling of unassigned personnel and to categorize indirect time expended for end-of-year reporting; to plan workloads, to schedule travel, and to control travel costs on assigned audit projects; to assist in providing time and attendance

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to the centralized payroll system; and to schedule and track training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of the OIG compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on electronic storage media/magnetic tape.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Access to DAMIS is protected through the use of assigned user/ID's and passwords for entry to the different subsystem applications. Once entry is acknowledged by the system, individual(s) are only allowed to perform predefined transactions/processes on files according to their access levels and functionality.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved a retention and disposal schedule for these records, treat the records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Technical Director, Analysis, Planning, and Quality Assurance Division, Office of the Assistant Inspector General for Auditing, Office of the Inspector General, DoD, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, signature and work organization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, signature and work organization.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the subject individual and activity supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–29819 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add/delete a system of records.

SUMMARY: The Department of the Air Force is proposing to delete one system of records and add another system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 30, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 13, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

F031 11 SPS B

SYSTEM NAME:

Personnel Security Clearance and Investigation Records (June 11, 1997, 62 FR 31793).

REASON:

Records are being incorporated into the Department of the Air Force system of records notice F031 DoD A, entitled, "Joint Personnel Adjudication System."

Addition

F031 DoD A

SYSTEM NAME:

Joint Personnel Adjudication System (JPAS).

SYSTEM LOCATION:

Primary location: Department of the Air Force, Air Force Central Adjudication Facility, DoD Joint Personnel Adjudication System Program Office, 229 Brookley Avenue, Bolling Air Force Base, Washington, DC 20332–7040.

Secondary locations: The Department of Defense eight central adjudication facilities are located as follows:

Department of the Army, Central Personnel Security Clearance Facility, Fort George G. Meade, MD 20755–5250;

Department of the Navy, Naval Criminal Investigative Service, Central Adjudication Facility, 716 Sicard Street, SE., Washington Navy Yard, DC 20388–5329;

Office of the Secretary of Defense, Washington Headquarters Service, Consolidated Adjudication Facility, 1777 North Kent Street, Suite 12047, Arlington, VA 22209–2164;

Defense Intelligence Agency, 3100 Clarendon Boulevard, Arlington, VA 22201–5320;

Defense Office of Hearing Appeals, 4015 Wilson Boulevard, Arlington, VA 22203–0656;

National Security Agency, Fort George G. Meade, MD 20755–6000;

Joint Chiefs of Staff, Directorate for Information Management, Joint Staff Security Office, 9300 Joint Staff, Room 1B738, Washington, DC, 20301–9300; and

Defense Security Service, Defense Industrial Security Office, 2780 Airport Drive, Suite 400, Columbus, OH 43219–2268.

Security offices of all DoD activities, to include those located in the continental United States (CONUS); overseas military locations and units deployed on DoD missions; all centralized and non-centralized DoD special security offices, and appropriately cleared DoD contractor facilities. Additionally, duplicate portions of records are contained in DoD automated personnel information systems, and the Defense Central Index of Investigations (DCII). A record of all registered locations is available from the DoD Joint Personnel Adjudication System Program Office, 229 Brookley Avenue, Bolling Air Force Base, Washington, DC 20332–7040.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of Defense active and reserve military personnel; civilian employees and applicants; DoD contractor employees and applicants; National Guard personnel; U.S. Coast Guard military and civilian personnel and applicants requiring access to National Security and/or Sensitive Compartmented Information; "affiliated" personnel (such as Non-Appropriated Fund employees, Red Cross volunteers and staff; USO personnel, and congressional staff members); and foreign nationals whose duties require access to National Security Information (NSI) and/or assignment to a sensitive position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records documenting the personnel security adjudicative and management process, to include an individual's Social Security Number; name (both, current, former and alternate names); date of birth; state of birth; country of citizenship; type of DoD affiliation; employing activity; current employment status; position sensitivity; personnel security investigative basis; status of current adjudicative action; security clearance eligibility and access status; exceptions (if the eligibility determination was based on a condition, deviation from prescribed investigative standards or waiver of adjudication guidelines; reports of security-related incidents, to include issue files; suspension of eligibility and/or access; denial or revocation of eligibility and/or access; eligibility recommendations or decisions made by an appellate authority; non-disclosure execution dates; indoctrination date(s); level(s) of access granted; debriefing date(s); and reasons for debriefing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 5 U.S.C. 301, Departmental Regulations; 50 U.S.C. 401, Congressional declaration of purpose; 50 U.S.C. 435, Purposes; 36 CFR part 1234, Electronic Records Management; DoD 5200.2R, Department of Defense Personnel Security Program Regulation; DoD 5105.21–M–1, Sensitive Compartment Information Administrative Security Manual; E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12829, National Industrial Security Program; and E.O. 12968, Access to Classified Information.

PURPOSE(S):

The Joint Personnel Adjudication System (JPAS) is the automated system used for personnel security management within DoD, providing a common, comprehensive medium to record and document personnel security actions within the Department. JPAS also compiles statistical data for use in analyses and studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as follows to:

To the White House to obtain approval of the President of the United States regarding certain military personnel office actions as provided for in DoD Instruction 1320.4; "Military Officer Actions Requiring Approval of the Secretary of Defense or the President, or Confirmation by the Senate."

To the Immigration and Naturalization Service for use in alien admission and naturalization inquiries.

To the Federal Bureau of Investigation; the National Aeronautics and Space Administration; the Central Intelligence Agency; the Office of Personnel Management; the Department of State, the Department of Treasury; the Internal Revenue Service; the U.S. Postal Service; the U.S. Secret Service; the Bureau of Alcohol, Tobacco and Firearms; the U.S. Customs Service; and any other related Federal agencies for the purpose of determining access to National Security information (NSI) pursuant to E.O. 12968.

The DoD "Blanket Routine Uses" set forth at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records contained in the system are stored on electronic media (such as CD–ROM disks, optical digital data disks, computers, and computer output products).

RETRIEVABILITY:

Information is retrieved by full name, Social Security Number, date of birth, state and country of birth.

SAFEGUARDS:

Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access. Records are accessible only to authorized persons with a valid need-to-know, who are appropriately screened, investigated and determined eligible for access. During non-duty hours, alarms systems and/or security or military police guards secure all locations. Only authorized personnel with a valid need-to-know are allowed access to JPAS. Additionally, JPAS users are subject to limitations within the system, based on their specific functions and security eligibility and access level.

RETENTION AND DISPOSAL:

Automated records are actively retained during the entire period an individual maintains DoD affiliation. When either (1) the affiliation ends or (2) an applicant is not accepted for DoD affiliation, the automated records are actively retained for two years. At the end of the two-year period, the automated record is moved to an electronic archive with retrieval capability. Destruction of automated records is by erasure and/or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Programs and Resources, AFCAF and JPAS Program Manager, Department of the Air Force, Air Force Central Adjudication Facility, DoD Joint Personnel Adjudication System Program Office, 229 Brookley Avenue, Bolling Air Force Base, Washington, DC 20332–7040.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should

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address written inquiries to the Department of the Air Force, Air Force Central Adjudication Facility, DoD Joint Personnel Adjudication System Program Office, 229 Brookley Avenue, Bolling Air Force Base, Washington, DC 20332–7040.

Individual should provide their full name (and any alias and/or alternate names used), Social Security Number, and date and place of birth.

RECORDS ACCESS PROCEDURES:

Individual seeking information about themselves contained in this system should address written inquiries to the Department of the Air Force, Air Force Central Adjudication Facility, DoD Joint Personnel Adjudication System Program Office, 229 Brookley Avenue, Bolling Air Force Base, Washington, DC 20332–7040.

Individual should provide their full name (and any alias and/or alternate names used), Social Security Number, and date and place of birth.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Information contained in this system is derived from the appropriate DOD personnel systems; records maintained by the DOD adjudicative agencies; and records maintained by security managers, special security officers, or other officials requesting and/or sponsoring the security eligibility determination for the individual. Additional information may be obtained from other sources (such as personnel security investigations, personal financial records, military service records, medical records and unsolicited sources.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5.U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 02–29813 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Friday, December 13, 2002, from 8 a.m. to 11:15 a.m. The closed Executive Session will be from 11:15 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, Maryland in the Bo Coppedge dining room of Alumni Hall.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(c)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: November 22, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–30382 Filed 11–27–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Planning and Steering Advisory Committee (PSAC)

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The purpose of this meeting is to discuss topics relevant to SSBN security.

DATES: The meeting will be held on Wednesday, December 11, 2002, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Center for Naval Analyses, 4825 Mark Center, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James Latsko, CNO (N775C2), 2000 Navy Pentagon, NC–1, Washington, DC 20350–2000, (703) 604–7392.

SUPPLEMENTARY INFORMATION: This notice of closed meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

Dated: November 22, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–30383 Filed 11–27–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 30, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 22, 2002.

John D. Tressler Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program.

Frequency: Annually.

Affected Public:

State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 66;

Burden Hours: 1,056.

Abstract: This data collection will be conducted annually to obtain program and performance information from the AIVRS grantees on their project activities. The information collected will assist federal Rehabilitation Services Administration (RSA) staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an Internet form.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the Browse Pending Collections link and by clicking on link number 2121. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30191 Filed 11–27–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Secretary of Education's Commission on Opportunity in Athletics

AGENCY: Secretary of Education's Commission on Opportunity in Athletics; Department of Education.

ACTION: Notice of open meeting; correction.

SUMMARY: On November 22, 2002 (67 FR 70416) a notice of the schedule and proposed agenda of a forthcoming public meeting of the Secretary of Education's Commission on Opportunity in Athletics (the Commission) was published in the **Federal Register**. This notice corrects the earlier notice to add an additional date, time, and location to the notice of meeting as follows:

DATES: December 3–4, 2002.

Location: Philadelphia Marriott. 1201 Market Street, Philadelphia, PA.

Times: December 3: 1 p.m.–8 p.m.; December 4: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m.

Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

All other information in the November 22nd notice remains the same.

ADDRESSES: The Secretary of Education's Commission on Opportunity in Athletics, 400 Maryland Avenue, SW., ROB–3 Room 3060, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: See the Commission address under the **ADDRESSES** section of this notice. View the Commission's Web site at: *http://www.ed.gov/inits/commissionsboards/athletics.* The Commission office number is 202–708–7417.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

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Dated: November 25, 2002.
Rod Paige,
Secretary of Education.
[FR Doc. 02–30375 Filed 11–27–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–30–001]

Algonquin LNG, LP; Notice of Compliance Filing

November 22, 2002.

Take notice that on November 20, 2002, Algonquin LNG, LP (ALNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 1;First Revised Sheet No. 84; and First Revised Sheet No. 85, proposed to be effective on October 17, 2002.

ALNG states that the purpose of this filing is to incorporate modifications reflected in certain tariff sheets that were accepted by the Commission in an order issued subsequent to ALNG's filing of its corporate name change on October 17, 2002, which was approved by letter order dated November 4, 2002, in Docket No. RP03–30–000.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30284 Filed 11–27–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–87–000]

Algonquin LNG, LP; Notice of Tariff Filing

November 22, 2002.

Take notice that on November 20, 2002, Algonquin LNG, LP (ALNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective December 21, 2002.

ALNG states that the purpose of this filing is to modify the ALNG Tariff to reflect (i) the reinstatement of the price ceiling for short-term capacity release transactions, and, (ii) the removal of references to the Telephone Bulletin Board since ALNG posts on its Internet Web site the information that ALNG is required to make publicly available.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30290 Filed 11–27–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–062]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 22, 2002.

Take notice that on November 19, 2002, ANR Pipeline Company (ANR), tendered for filing an amendment to a Firm Storage Service Agreement and a description of the essential conditions involved in agreeing to an amended Negotiated Rate Arrangement. ANR requests that the Commission approve the amended Negotiated Rate Arrangement to be effective on November 19, 2002.

ANR states that the filed Negotiated Rate Arrangement reflects that the negotiated rate between ANR and Dynegy Marketing and Trade and all underlying service will be terminated on April 1, 2003 instead of June 30, 2007.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30281 Filed 11–27–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–20–000, EL02–104–000, ER02–2234–000, ER02–2234–001 and ER03–139–000]

California Power Exchange Corporation; Notice of Filing for Approval of Funding and Governance as Provided in Confirmed Chapter 11 Plan

November 22, 2002.

Take notice that on November 20, 2002, the Official Committee of Participant Creditors (Committee) of the California Power Exchange Corporation (CalPX) tendered for filing a request for approval of funding and governance, in accordance with the Commission's Order on Complaint and Order Granting Petition for Declaratory Order, issued on July 30, 2002, in Docket No. EL02–104–000, 100 FERC ¶ 61,124, and the "Official Committee of Participant Creditors" Fifth Amended Chapter 11 Plan, As Modified (Revised October 1, 2002)" confirmed by the United States Bankruptcy Court for the Central District of California by an Order entered on November 1, 2002 . (Confirmed Plan). The Committee requests that the Commission approve, on an expedited basis: (1) The establishment of reserves and accounts by CalPX for specified purposes, and (2) the governance structure for reorganized CalPX, as set forth in the Confirmed Plan.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. *Comment Date:* December 6, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30278 Filed 11–27–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–29–001]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

November 22, 2002.

Take notice that on November 20, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective on November 17, 2002:

Second Revised Sheet No. 430
Original Sheet No. 430A

CEGT states that it also proposes to withdraw First Revised Sheet No. 461 filed in this docket on October 17, 2002. CEGT states that the purpose of this filing is to comply with the Commission's order issued November 14, 2002 in Docket No. RP03–29–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30283 Filed 11–27–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–63–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 22, 2002.

Take notice that on November 21, 2002, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixteenth Revised Sheet No. 31 and Nineteenth Revised Sheet No. 32, with an effective date of January 1, 2003.

DTI states that the purpose of this filing is to adopt the 2003 Gas Research Institute (GRI) surcharges approved by the Commission in Docket No. RP02–354–000.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI 's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

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protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30286 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–74–000; Docket No. RT01–67–000; and Docket No. EL02–101–000]

GridSouth Transco, LLC, Carolina Power & Light Company, Duke Energy Corporation, South Carolina Electric & Gas Company; GridFlorida, LLC, Florida Power & Light Company, Florida Power Corporation, Tampa Electric Company; Cleco Power LLC; Dalton Utilities (acting as agent for the City of Dalton, Georgia); Entergy Services, Inc. (acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.); Georgia Transmission Corporation; JEA (formerly Jacksonville Electric Authority); MEAG Power; Sam Rayburn G & T Electric Cooperative Inc.; South Carolina Public Service Authority; Southern Company Services, Inc. (Acting as Agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company); and the City of Tallahassee, Florida; Notice of FERC Staff Briefing

November 22, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on December 5, 2002, members of its staff will attend a briefing given by J. Stephen Henderson of Charles River Associates to discuss a cost-benefit study that was recently released by the Southeastern Association of Regulatory Utility Commissioners. The staff's attendance is part of the Commission's ongoing outreach efforts to develop regional transmission organizations in the Southeastern United States.

The meeting will be held on Thursday, December 5, 2002, at 2 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This meeting is open to the public.

The meeting may discuss matters at issue in Carolina Power & Light Company, *et al.*, Docket No. RT01–74; GridFlorida LLC, *et al.*, Docket No. RT01–67; and Cleco Power LLC; *et al.*, Docket No. EL02–101.

For more information, contact Charles Whitmore, Special Assistant, in the Office of Market Oversight and Investigation at (202) 502–6256 or e-mail at *charles.whitmore@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30293 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–82–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 22, 2002.

Take notice that on November 20, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 31, 2002.

First Revised Sheet No. 212
Second Revised Sheet No. 533
Third Revised Sheet No. 632
Second Revised Sheet No. 733
Second Revised Sheet No. 812

Kern River states that the purpose of this filing is to revise Kern River's tariff to remove the term matching cap that currently applies to a shipper that elects to exercise a right of first refusal for an expiring or terminating service agreement.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30285 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–543–001]

Northern Border Pipeline Company; Notice of Compliance Filing

November 22, 2002.

Take notice that on November 19, 2002, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 267; and Original Sheet No. 267.01, to become effective November 1, 2002.

Northern Border states that the purpose of this filing is to comply with the Commission's order at Docket No. RP02–543–000 dated October 30, 2002,1 wherein the Commission directed Northern Border to revise Northern Border's FERC Gas Tariff to comply with Section 154.109(b) of the Commission's regulations, stating when Northern Border will pay or contribute to the construction cost of lateral lines, and when the customer should bear those burdens.

Northern Border states that it has served a copy of this compliance filing upon the parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30282 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–85–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 22, 2002.

Take notice that on November 20, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 278–C, to be effective December 21, 2002.

Northwest states that the purpose of this filing is to revise its tariff by removing from the right of first refusal provisions the five-year term matching cap, consistent with the Order on Remand issued by the Commission on October 31, 2002 in Docket No. RM98–10–011.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30288 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–86–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 22, 2002.

Take notice that on November 20, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective January 1, 2003:

Third Revised Volume No. 1
Twenty-Third Revised Sheet No. 5
Tenth Revised Sheet No. 6
Original Volume No. 2
Twenty-Ninth Revised Sheet No. 2.2

Northwest states that the purpose of this filing is to revise its tariff to incorporate the Gas Research Institute (GRI) surcharges approved by the Commission for 2003.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in

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determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30289 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–89–000

Northwest Pipeline Corporation; Notice of Tariff Filing

November 22, 2002.

Take notice that on November 20, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 25, to be effective December 21, 2002.

Northwest states that the purpose of this filing is to revise the tariff to expressly state that it permits nominations of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time for segmented capacity, pursuant to the Order on Remand issued by the Commission on October 31, 2002 in Docket No. RM98–10–011.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30292 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–1–003]

Southern Natural Gas Company; Notice of Amendment

November 22, 2002.

Take notice that on November 18, 2002, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in the above referenced docket, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, to amend its Order Issuing Certificate and Approving Abandonment (Certificate Order) issued in this proceeding on September 20, 2002 (Southern Natural Gas Company, 100 FERC § 61,281 (2002)). Southern seeks approval of a change in the construction schedule of certain of the expansion facilities to accommodate the restructuring of the transportation services of one of the shippers participating in the expansion project and of a change in ownership of certain measurement facilities authorized by the Certificate Order. This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *fercolinesupport@ferc.gov* or call toll free (866) 208–3676 or for TTY, (202) 502–8659.

Southern states that one of the shippers participating in the South System Expansion II Project, Southern Company Services, Inc. (SCS), has advised Southern that it will not need to have its Transportation Demand available until November 1, 2003, and has requested to amend its Firm Transportation Service Agreement to revise the initial target date for service to commence thereunder. Accordingly, Southern proposes to shift the construction of certain of the Phase 1 facilities from the 2002–2003 winter spring construction season to the 2003 summer construction season. In addition, Southern and SCG Pipeline, Inc. (SCG) have agreed to the terms and conditions under which they will share ownership of the proposed Port Wentworth Meter Station. Therefore, Southern is requesting an amendment to the Certificate Order to reflect that it will have a thirty-eight and nine-tenths percent (38.9%) ownership interest in that facility.

Southern states further that the proposed changes will not materially modify the nature, scope, or impact of the project. Southern assures that the amount of capacity to be added to Southern's pipeline system and the shippers subscribing to that capacity remain the same. Southern also states that the environmental impact of the project will remain essentially the same, and that due to summer construction rather than the winter-spring construction, may reduce the effects of construction on the environment and should facilitate the construction process. Additionally, Southern states that it does not anticipate that the change in the construction schedule will result in a change in the total cost of the project, and consequently the project will still provide a substantial financial benefit to its system.

Any questions regarding this application should be directed to R. David Hendrickson, Associate General Counsel, at (205) 325–7114, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 13, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30277 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–88–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 22, 2002.

Take notice that on November 18, 2002, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with effective date as indicated:

First Revised Second Substitute First Revised Sheet No. 23F; effective December 1, 2001
First Revised Substitute Second Revised Sheet No. 23; effective July 1, 2002
Fourth Revised Sheet No. 23F; effective July 1, 2002

Tennessee states that the purpose of this filing is to refile Sheet Nos. 23F to correctly include a line for Fuel and Losses for the Stagecoach Lateral under Rate schedule FT-IL that has been inadvertently omitted from three (3) prior filings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30291 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–197–045]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 22, 2002.

Take notice that on November 19, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, with a proposed effective date of January 1, 2003.

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Transco states that the purpose of this filing is to comply with the Commission's Order Rejecting Compliance Filing issued on November 4, 2002, in the referenced dockets, in which the Commission directed Transco to refile, within 15 days, revised tariff sheets to unbundle its Rate Schedule SS–1 service.

Transco states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30280 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–54–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 22, 2002.

Take notice that on November 20, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revise tariff sheets listed on Appendix A attached to the filing, with a proposed effective date of January 1, 2003.

Transco states that the purpose of this filing is to offer the existing Rate Schedule SS–1 customers the option to elect service provided pursuant to Transco's blanket transportation certificate and part 284 of the Commission's regulations under Transco's existing Rate Schedule FT and under a new "Rate Schedule SS–1 Open Access Storage Service."

Transco states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30287 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–26–000, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 22, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket No. EL03–26–000] Take notice that on November 8, 2002, New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) a letter enclosing the arbitration decision in American Arbitration Association (AAA) proceeding number 13 198 00247 02, dated October 28, 2002, involving certain claims brought by Dynegy Power Marketing, Inc. (Dynegy) against the NYISO (Arbitration Decision). The Arbitration Decision involves the amount of certain payments to be made to a market participant in connection with the operation of the NYISO's automated mitigation procedure (AMP), as approved by the Commission. New York System Independent System Operator, Inc., 95 FERC §thnsp;61,471 (2001). The Arbitration Decision is being filed pursuant to Section 11.3 of the NYISO Market Administration and Control Area Services Tariff (Services Tariff), which provides that: "All arbitration decisions that affect matters subject to the jurisdiction of the Commission shall be filed with the Commission."

The NYISO states that its filing has been served upon Dynegy and the Arbitrator through his designated representative at the AAA.

The NYISO also states that Section 11.3 of the Services Tariff provides that a party may request the Commission to vacate, modify or take such other action as may be appropriate with respect to any arbitration decision. The NYISO states that Section 11.3 of the Services Tariff also provides that parties have one year to seek Commission action.

Comment Date: October 28, 2003.

2. Athens Generating Company, L.P.; Covert Generating Company, LLC; Harquahala Generating Company, LLC; Millennium Power Partners, L.P.

[Docket Nos. ER99–4282–003; ER01–520–003; ER02–748–003; and ER98–830–007]

Take notice that on November 18, 2002, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC, and Millennium Power Partners, L.P. (collectively the Companies), each of which is an indirect, wholly-owned subsidiary of PG&E National Energy Group, Inc. (PG&E NEG) tendered for filing, information that reflects a departure from the characteristics relied upon by the Commission in approving market-based pricing. Specifically, the Companies have submitted information concerning a potential change in their direct or indirect upstream ownership from PG&E NEG to certain lenders (or direct or indirect subsidiaries of those lenders) to the Companies (or the Companies' direct or indirect upstream owners).

Comment Date: December 4, 2002.

3. Sithe Edgar LLC; Sithe Framingham LLC; Sithe Mystic LLC; Sithe New Boston LLC; Sithe West Medway LLC; Sithe Wyman LLC; AG-Energy, L.P.; Power City Partners, L.P.; Seneca Power Partners, L.P.; Sterling Power Partners, L.P.

[Docket No. ER01–513–003]

Take notice that on November 19, 2002, Sithe Edgar LLC, Sithe Framingham LLC, Sithe Mystic LLC, Sithe New Boston LLC, Sithe West Medway LLC, Sithe Wyman LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., and Sterling PowerPartners, L.P. (the "Sithe Project Companies") submitted revised tariff sheets in compliance with the Commission's January 24, 2001 order in the above-captioned proceeding directing the Sithe Project Companies to conform the rate schedule designations with the requirements of Order No. 614. These tariff sheets replace those submitted by the Sithe Project Companies in the above-captioned docket on November 30, 2001.

Comment Date: December 10, 2002.

4. California Independent System Operator Corporation

[Docket No. ER02–2489–001]

Take notice that on November 20, 2002, the California Independent System Operator Corporation (ISO) tendered for filing a compliance filing made in compliance with the Commission's October 21, 2002 Order Accepting Contract Revision, Subject to Modification. The compliance filing revises Appendix A to the Responsible Participating Transmission Owner Agreement (RPTO Agreement) between the ISO and Pacific Gas and Electric Company (PG&E), in accordance with the October 21 Order.

The ISO states that this filing has been served on all entities that are on the official service list for this docket.

Comment Date: December 11, 2002.

5. New England Power Company

[Docket No. ER03–199–000]

Take notice that on November 20, 2002, New England Power Company (NEP) filed with the Commission notice of the cancellation of Rate Schedule FERC No. 421 (Rate Schedule 421). Rate Schedule 421 is an Interconnection Agreement between NEP and Public Service Company of New Hampshire (PSNH). NEP requests that the cancellation be made effective on July 1, 2002. NEP has served the filing upon PSNH and the persons listed on the service list for Docket No. ER93–255–000.

Comment Date: December 11, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas, Secretary.

[FR Doc. 02–30378 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2652–007]

Notice of settlement Agreement and Soliciting Comments

November 22, 2002.

Take notice that the following Settlement Agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 2652–007.

c. *Date filed:* November 12, 2002.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Bigfork Hydroelectric Project.

f. *Location:* On the Swan River, in the Town of Bigfork, Flathead County, Montana. The project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Dave Leonhardt, Project Manager, PacifiCorp, 825 NE. Multnomah, Suite 1500, Portland, OR 97232; (503) 813–6658.

i. *FERC Contact:* Steve Hocking, (202) 502–8753, *steve.hocking@ferc.gov*

j. *Deadline for filing comments:* December 12, 2002. Reply comments due December 23, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2652–007 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site*http://www.ferc.gov* under the "e-Filing" link.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Filing:* PacifiCorp filed the Settlement Agreement on behalf of itself and the National Park Service; Montana Department of Fish, Wildlife and Parks; Bigfork Area

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Chamber of Commerce; American Whitewater; Bigfork Whitewater Festival Organization; Bigfork Development Company; Flathead Lakers; and Flathead Whitewater Association. The purpose of the Settlement Agreement is to resolve among the signatories all recreation issues associated with relicensing the Bigfork Project. The signatories ask the Commission to accept and incorporate without modification the recreation measures set forth in Section 3 of the Settlement Agreement except for those measures not required for operation of the project or other project purposes.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30279 Filed 11–27–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–7]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566–1672, or e-mail at *Auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1054.08; Standards of Performance for Petroleum Refineries in 40 CFR part 60, subpart J, was approved 11/01/2002; OMB No. 2060–0022; expires 11/30/2005.

EPA ICR No. 2067.02; Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium Under the Safe Drinking Water Act; was approved 10/23/02; OMB No. 2040–0246; expires 10/31/2005.

EPA ICR No. 1189.11; Identification Listing and Rulemaking Petitions (Zinc Fertilizers Final Rule); in 40 CFR 261.4(a)(20)(ii)(A) & (D), 261.4(a)(20)(iii)(B), 261.4(a)(21)(iii)(D), 261.4(a)(21)(ii), 261.4(a)(21)(iii); was approved 10/23/2002; OMB No. 2050–0053; expires 11/30/2004.

EPA ICR No. 0277.13; Application for New and Amended Pesticide Registration; in 40 CFR parts 152, 156 and 158; was approved 10/22/2002; OMB No. 2070–0060; expires 10/31/2005.

EPA ICR No.1057.09; NSPS for Sulfuric Acid Plants in 40 CFR part 60, subpart H; was approved 10/22/2002; OMB No. 2060–0041; expires 10/31/2005.

EPA ICR No.1801.03; NESHAP for the Portland Cement Manufacturing Industry in 40 CFR part 63, subpart LLL; was approved 10/22/2002; OMB No. 2060–0416; expires 10/31/2005.

EPA ICR No. 1069.07; NSPS for Iron and Steel Plants: Basic Oxygen Process Furnaces in 40 CFR part 60, subparts N and Na; was approved 10/22/2002; OMB No. 2060–0029; expires 10/31/2005.

EPA ICR No. 1775.03; Hazardous Remediation Waste Management Requirements (HWIR-Media); in 40 CFR 264.1, 40 CFR part 270, subpart H, 40 CFR 264.554, 40 CFR 264.256(a), 40 CFR 265.258(a); was approved 9/10/2002; OMB No. 2050–0161; expires 09/30/2005.

EPA ICR No. 1601.05; Air Pollution Regulations for Outer Continental Shelf Activities; in 40 CFR part 55; was approved 10/17/2002; OMB No. 2060–0249; expires 10/31/2005.

EPA ICR No. 1887.02; Personal Exposure of High-Risk Subpopulations to Particles; was approved 10/31/2002; OMB No. 2080–0058; expires 10/31/2005.

Comments Filed

EPA ICR No. 2062.01; NESHAP: Site Remediation; in 40 CFR part 63, subpart GGGGG; on 10/30/2002 OMB filed a comment.

EPA ICR No. 2071.01; National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles; in 40 CFR part 63, subpart OOOO; on 10/23/2002 OMB filed a comment.

Short Term Extensions

EPA ICR No. 0234.07; Performance Evaluation Studies on Water and Wastewater Laboratories; OMB No. 2080–0021; on 10/16/2002 OMB extended the expiration date through 01/31/2003.

EPA ICR No. 0575.08; Health and Safety Data Reporting: Submission of Lists and Copies of Health and Safety Studies; in 40 CFR part 716; OMB No. 2070–0004; on 10/30/2002 OMB extended the expiration date through 01/31/2003.

Dated: November 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–30259 Filed 11–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed November 18, 2002, through November 22, 2002, pursuant to 40 CFR 1506.9.

EIS No. 020477, Draft Supplement, AFS, UT, Griffin Springs Resource Management Project, New Information Contained in the Life History and Analysis of Endangered, Threatened, Candidate, Sensitive, and Management Indicator Species of Dixie National Forest, Escalante Range District, Garfield County, UT, Comment Period Ends: January 13, 2003, Contact: Kevin Schulkoski (435) 826–5400.

EIS No. 020478, Draft EIS, AFS, WI, Northwest Howell Project, Proposing to Harvest Timber; Maintain Wildlife Openings; Regenerate Aspen and Jack Pine Types; Implementation, Eagle River-Florence Ranger District, Chequamegon-Nicolet National Forest, Forest and Florence County, WI, Comment Period Ends: January 13, 2003. Contact: Shirley Frank (715) 528–4464.

EIS No. 020479, Final EIS, AFS, NV, Cave Rock Management Direction, Implementation, Lake Tahoe Basin Management Unit, Douglas Count, NV, Wait Period Ends: December 30, 2002. Contact: John Maher (530) 573–2600.

EIS No. 020480, DRAFT SUPPLEMENT, FAA, FL, Fort Lauderdale-Hollywood International Airport, Revised to the 2008 and 2015 Runway Use Assumption for the Proposed Project Alternative; Revisions to the Predicted Number of Residents Impacted by Noise for all Alternatives using 2000 Census Block Data or Field Inspection, Broward County, FL, Comment Period Ends: January 13, 2003, Contact: Virginia Lane (407) 812–6331 Ext 27.

EIS No. 020481, Final EIS, BLM, AK, Renewal of Federal Grant for the Trans-Alaska Pipeline System, Right-of-Way, Approval, AK, Wait Period Ends: December 30, 2002, Contact: Rob McWhorter (907) 257–1355. This document is available on the Internet at: *http://www.tapsrenewal.jpo.doi.gov.*

EIS No. 020482, Draft EIS, MMS, AL, MS, TX, FL, LA, Eastern Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales 189 (proposed for 2003) and 197 (proposed for 2005) Leasing Program: 2002–2007; Eastern Planning Area, Offshore Marine Environmental, Coastal Counties and Parishes of Texas, LA, MS, AL, and Northwestern FL, Comment Period Ends: January 24, 2003. Contact: Archie Melancon (703) 787–1547.

EIS No. 020483, Final EIS, AFS, MO, Rams Horn Project to Accomplish the Direction and Desired Conditions Identified in the Mark Twain National Forest, Land and Resource Management Plan, Houston/Rolla/Creek Ranger District, Phelps and Pulaski Counties, MO, Wait Period Ends: December 30, 2002. Contact: Mark Hamel (417) 967–4194. This document is available on the Internet at: *http://www.fs.fed.us/r9/marktwain/publications.*

EIS No. 220484, Final EIS, AFS, ID, The West Gold Creek Project, Forest Management Activities Plan, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID, Wait Period Ends: December 30, 2002. Contact: Judy York (208) 265–6665. This document is available on the Internet at: *http://www.fs.fed.us/ipnf/eco/manage/nepa/index.html.*

Dated: November 25, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–30258 Filed 11–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–8]

Draft Strategy for National Clean Water Industrial Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft Strategy for National Clean Water Industrial Regulations.

SUMMARY: Under the Clean Water Act, EPA establishes national technology-based regulations, termed "effluent guidelines," to reduce pollutant discharges from industrial facilities to surface waters and publicly owned treatment works. Today, EPA is announcing the availability of its draft Strategy for National Clean Water Industrial Regulations. The draft Strategy describes a process to identify existing effluent guidelines that EPA should consider revising, and to identify any industrial categories for which the Agency should consider developing new effluent guidelines. EPA proposes to use this process to develop future Effluent Guidelines Program Plans, which EPA is required to publish under section 304(m) of the Clean Water Act every two years. The Agency welcomes comments on the draft Strategy and recommendations on industrial categories to be considered. In addition, EPA is announcing an Industrial Wastewater and Best Available Treatment Technologies Conference that it is co-sponsoring with Vanderbilt University.

DATES: Submit comments on the draft Strategy by February 27, 2003. A public meeting will be held on Wednesday, January 15, 2003. In addition, the Industrial Wastewater and Best Available Treatment Technology Conference will be held February 26–28, 2003.

ADDRESSES: Send comments to Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0020. Comments may also be submitted electronically or through hand delivery/courier. Follow the detailed instruction as provided in B.

An informational meeting for interested stakeholders will be held in the EPA East Building, Room 1153, 1201 Constitution Avenue, NW., Washington, DC.

The Industrial Wastewater and Best Available Treatment Technologies Conference will be held at the Nashville Marriott at Vanderbilt University, at 2555 West End Avenue, Nashville, TN, 37203.

FOR FURTHER INFORMATION CONTACT: Patricia Harrigan at (202) 566–1666 or *harrigan.patricia@epa.gov,* or Jan Matuszko at (202) 566–1035 or *matuszko.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0020. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, N.W., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To schedule an appointment to see docket materials, please call (202) 566–2426. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in docket identification number, OW–2002–0020.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in

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printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW–2002–0020. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *OW-docket@epa.gov,* Attention Docket ID No. OW–2002–0020. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copes of your comments and enclosures (including references) to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0020.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2002–0020. Such deliveries are only accepted during the Docket's normal hours of operation as identified in A.1.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Outline of This Notice

I. Regulated Entities
II. Legal Authority
III. Background of the Effluent Guidelines Program
IV. A Strategy for National Clean Water Industrial Regulations
V. Solicitation of Stakeholder Recommendations
VI. Public Meeting
VII. Industrial Wastewater and Best Available Treatment Technologies Conference

I. Regulated Entities

Today's draft Strategy for National Clean Water Industrial Regulations does not contain regulatory requirements. It presents a proposed process that identifies industrial categories for possible development or revision of effluent limitations guidelines and standards ("effluent guidelines"). A list of the 55 currently regulated industries is provided in the draft Strategy at appendix 1, which can be found on EPA's Web site at *http://www.epa.gov/guide/strategy.*

II. Legal Authority

Today's document is published under the authority of section 301(d), 304(b), 304(g), 304(m), 306(b), 307(b) and 307(c) of the Clean Water Act (CWA), 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316(b), 1317(b) & 1317(c).

III. Background of the Effluent Guidelines Program

The CWA directs EPA to promulgate effluent limitations guidelines and standards for categories or subcategories of industrial point sources that, for most pollutants, reflect the level of pollutant control attained by the best available technologies economically achievable. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the Nation's waters (*i.e.*, direct dischargers), the limitations promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to publicly owned treatment works (POTWs) (*i.e.*, indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs, which are backed by State and Federal authorities. See CWA sections 307(b) and (c). EPA has issued effluent guidelines for more than 50 industrial categories.

Section 304(m) of the CWA requires EPA to publish a plan every two years that consists of three elements. First, under section 304(m)(1)(A), EPA is required to establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). Section 304(b) specifies factors EPA must consider when promulgating effluent limitations guidelines for direct dischargers and directs EPA to revise such regulations as appropriate. Second, under section 304(m)(1)(B), EPA must identify categories of sources discharging toxic or nonconventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. Finally, under section 304(m)(1)(C), EPA must establish a schedule for the promulgation of effluent limitations guidelines under section 304(b)(2) and NSPS for the categories identified under the second element (*i.e.* subparagraph (B)) not later than three years after being identified in the section 304(m) plan. Section 304(m) does not apply to pretreatment standards for indirect dischargers, which EPA promulgates pursuant to sections 307(b) and 307(c) of the CWA.

On October 30, 1989, Natural Resources Defense Council, Inc., and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that EPA had failed to comply with CWA section 304(m). The Plaintiffs and EPA agreed to a settlement of that action in a Consent Decree entered on January 31, 1992. The Consent Decree, as modified, established a schedule by which EPA would propose and take final action for eleven point source categories identified by name in the Decree, and for eight other point source categories identified only as new or revised rules, numbered 5 through 12. See Consent Decree pars. 2(a), 4(a), and 5(a). The Decree also established deadlines for EPA to complete studies of eleven point source categories. See Consent Decree, par. 3(a). The Consent Decree provides that the foregoing requirements shall be set forth in EPA's section 304(m) plans. *See* Consent Decree, pars. 3(a), 4(a), 5(a). The Consent Decree also provides that section 304(m) plans issued under the Decree that are consistent with its terms shall satisfy EPA's obligations under section 304(m) with respect to the publication of such plans. See Consent Decree, par. 7(b). The last date for EPA action under the Decree, as modified, is June 2004. EPA is currently on track to meet this last obligation, which will lead to the termination of the Consent Decree.

IV. A Strategy for National Clean Water Industrial Regulations

The prospective end of the Consent Decree in 2004 offers EPA and interested stakeholders an excellent opportunity to evaluate the effluent guidelines program and to consider how national industrial regulations can best achieve the Nation's clean water goals and the requirements of the Clean Water Act in the years ahead. The draft Strategy outlines a process for developing a biennial plan that is designed to meet both the statutory requirements in section 304(m) of the Clean Water Act and the water quality challenges of the 21st century. The draft Strategy aims to reduce risk to human health and the environment, using the most effective tools available. It is intended to ensure that EPA's process for setting priorities in its effluent guidelines program is transparent. EPA is looking for ways that its Strategy can help spur the development of innovative technologies, promote multi-media pollution prevention, and expand the use of market-based incentives to improve the quality of our nation's waters. The draft Strategy is posted for review on EPA's web site at *http://www.epa.gov/guide/plan.html.* Section V of this notice solicits stakeholder comment on several key features of the strategy as well as the role of effluent guidelines in the national clean water program.

The draft Strategy was initially discussed in the notice for the Effluent Guidelines Program Plan for 2002/2003. *See* 67 FR 55012, 55013–14 (Aug. 27, 2002) (final plan); and 67 FR 41418–9, (June 18, 2002) (proposed plan). Several commenters supported EPA's goal to develop a strategy for future planning of the effluent guidelines program, and encouraged EPA to engage a broad range of stakeholders in the planning process.

V. Solicitation of Stakeholder Recommendations

EPA requests comments about several specific issues discussed in the Strategy.

Key Factors for Evaluating Existing Effluent Guidelines: EPA identified four major factors, derived from sections 301(b)(2) and 304(b) of the CWA, that could lead EPA to conclude that a revision of an existing effluent guideline would be appropriate: (1) The extent to which the industry category is discharging pollutants that pose a risk to human health or the environment; (2) the identification of an applicable and demonstrated technology, process change, or pollution prevention approach that would substantially reduce the remaining risk; (3) the cost, performance, and affordability of the technology, process change, or pollution prevention approach that would substantially reduce that risk; and (4) implementation and efficiency considerations, such as whether revising a guideline is the most effective approach for reducing the risk. In addition, section 304(b) authorizes EPA to consider other factors as the Administrator deems appropriate. EPA requests comments on its proposed use of these factors, and invites the public to suggest additional or different factors.

The Agency is also interested to receive comments on whether each of the four factors identified above should be ranked, and if so, whether different weights should be applied to each. EPA also requests suggestions as to the information the Agency should use to prioritize industrial categories that pass both the primary and secondary screening reviews described in the draft Strategy.

Key Factors for Developing New Effluent Guidelines: EPA identified four major factors that could lead EPA to conclude that new national effluent guidelines regulations would be necessary and appropriate for industrial categories. These factors are identical to the factors discussed above with respect to the revision of existing effluent guidelines, and are derived from the same statutory bases. (The main difference is than an industry category with no existing guideline in place may

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have greater variation in current discharges and pollutant reduction technologies in place. This depends on what technology-based limits permit writers have established using best professional judgment and what limits they have established to protect water quality.) These factors reflect Congress' expectation that EPA will address "significant amounts" of toxic pollutant discharges through national technology-based regulations. S. Rep. No. 50, 99th Cong., 1st Sess. 24–25 (1985). EPA requests comments on its proposed use of these factors and invites the public to identify other or different factors for EPA's consideration.

The Agency is also interested to receive comments on whether each of these factors should be ranked, and if so, whether different weights should be applied to each. EPA also requests suggestions as to the information the Agency should use to prioritize industrial categories that pass both the primary and secondary screening reviews described in the draft Strategy.

Sources of Water Quality Impairments: An impaired water is one that does not achieve the water quality standards adopted by a State, Tribe, or EPA under CWA section 303(c). Building on ongoing work by EPA, States, Tribes, and others, the Agency is working to identify links between industrial sources of pollutants with pollutants identified as the causes of impairments in impaired waters. This effort links the categories of facilities discharging pollutants as identified in Agency's Permit Compliance System (PCS) database with types of impairments of water bodies identified using the U.S. Geological Survey's National Hydrography Dataset (NHD) and State and Tribal reported data from the reports generated under CWA sections 303(d) and 305(b). (Section 303(d) requires States to develop lists of waterbodies for which technology-based limitations and other requirements are not sufficient to ensure attainment of water quality standards. Section 305(b) requires States to report to EPA every other year on the quality of their waters.) EPA requests suggestions on other sources of relevant information, particularly data relating to facilities that discharge to publicly owned treatment works (POTWs).

Voluntary Loading Reductions: EPA is considering incentives for industrial categories to reduce pollutant loadings through voluntary programs. For example, EPA might determine to not develop new or revised effluent guidelines for source categories that demonstrate continual or substantial reduction of pollutants through voluntary effluent reductions. Voluntary efforts should be encouraged and rewarded, so EPA is considering whether source categories that have accomplished voluntary pollutant discharge reductions should be given a lower priority for new or revised effluent guidelines.

EPA is also considering whether to indicate a quantitative voluntary reduction goal that source categories seeking a deferral of consideration for new or revised guidelines should try to achieve. EPA is considering a goal, suggested by a stakeholder, of a 10 percent reduction in total load, or in toxic-equivalent load over a five-year period (the standard permit term). EPA emphasizes that the goal would not be binding on either the Agency or the industry; EPA would retain the discretion to decide whether to develop an effluent guideline. EPA would consider voluntary load reductions on an industry-by-industry basis in making its planning decisions (and may make decisions irrespective of the general, non-binding goal). The Agency requests comment on this entire issue. EPA also invites comment on whether a different general goal, such as a 25 percent reduction in total or toxic-equivalent load, would be more appropriate.

EPA proposes to use information in the PCS system to identify categories for which loadings have decreased over the past 5 years, but requests suggestions on alternative sources of this information. EPA also invites comment on how it might assess voluntary pollutant reductions in industrial categories with increased production over five years. Finally, EPA invites comment on ways to evaluate claims of decreases in water loadings of toxicity relative to possible increases in release of these emissions to other environmental media, for example volatilization to air or land disposal of sludge.

Technology Innovation, Market-based Incentives, and Multi-media Pollutant Reduction: In addition to the above discussion of voluntary loading reductions, EPA seeks comment on others ways the Agency might structure the effluent guidelines program to encourage and reward technology innovation. EPA invites stakeholders to suggest industry categories for which development or revision of an effluent guideline may provide an opportunity for multi-media pollutant reduction. EPA also seeks comment on the role of market-based incentives, including pollutant trading, in the effluent guidelines program.

In addition, EPA encourages comments on the extent to which the Agency should consider multi-media pollutant reduction opportunities in deciding which guidelines to develop or revise. For example, should the Agency assign greater weight to revising a guideline that has the opportunity to reduce the loading of 100 million pounds of nutrients into surface waters impaired by nutrient pollution, or one that might reduce nutrient loading by 80 million pounds but also reduce noxious odors and emissions of greenhouse gases?

Level of Effort Devoted to Effluent Guidelines: Since Congress passed the 1972 Clean Water Act, EPA has promulgated effluent guidelines that address over 50 industry categories. These regulations apply to between 35,000 and 45,000 facilities that discharge directly to the nation's waters, as well as another 12,000 facilities that discharge into publicly owned treatment works. These regulations are responsible for preventing the discharge of almost 700 billion pounds of pollutants each year.

In addition to the technology-based effluent guidelines program, EPA and the States implement a wide range of water-quality based programs also designed to protect and restore the Nation's waters. For example, the water quality standards adopted by all States, Territories and 20 authorized Tribes are the regulatory and scientific foundation for the Nation's water quality-based programs. Water quality standards are used to assess impairments in U.S. waters, to establish targets and load reductions needed in impaired waters through total maximum daily loads (TMDLs), and to set limits on pollutants through enforceable NPDES permits where technology-based limits are insufficient to protect water quality.

Under EPA and State permit programs, industrial discharge restrictions—in the form of technology-based and water-quality based effluent limitations—have controlled over 48,000 individual industrial facilities through the issuance of individual NPDES permits, and controlled thousands more through general permits. Fish are coming back, habitats are recovering, and many miles of formerly contaminated beaches are now safe for swimmers. However, we have not achieved water quality objectives in many water bodies. Many of the remaining pollutants come from sources that are not related to industrial discharges, such as non-point source runoff from agricultural lands, stormwater flows from cities, seepage into ground water from nonpoint sources, and loss of critical habitats such as wetlands.

One facet of EPA's overall approach to resolving the remaining water quality problems is the continued implementation of the national effluent guidelines program to address water quality problems associated with industrial dischargers. As EPA moves forward to address the remaining water quality problems, EPA invites comment on whether it should devote the same, less, or greater resources to the effluent guidelines program as it has in the past.

VI. Public Meeting

An important first step in the planning process is to consult with authorized States and Tribes, pretreatment control authorities, and professional associations to obtain their recommendations on revising existing effluent guidelines and identifying industries for new guidelines. These stakeholders can help identify water quality concerns related to industrial categories as well as changes in industries which affect the administration and effectiveness of existing regulations. EPA recognizes that there are other stakeholders who also may have concerns or data indicating the need for new or revised regulations, or revisions to EPA's draft Strategy.

Therefore, the Agency will hold a public meeting on Wednesday, January 15 from 9 a.m. to noon, to discuss the goals and the elements of the draft Strategy. This informational meeting will be held in the EPA East Building, Room 1153, 1201 Constitution Avenue, NW., Washington, DC. No registration is required for this meeting. If you need special accommodations at this meeting, please contact Pat Harrigan at (202) 566–1666 or *harrigan.patricia@epa.gov* at least five business days before the meeting so that appropriate arrangements can be made.

For security reasons, we request that you bring photo identification with you to the meeting. Also, if you let us know in advance of your plans to attend, it will expedite the process of signing in. Seating will be provided on a first-come, first-served basis. Please note that parking is very limited in downtown Washington, and use of public transit is recommended. The EPA Headquarters complex is located near the Federal Triangle Metro station. Upon exiting the Metro station, walk east to 12th Street. On 12th Street, walk south to Constitution Avenue. At the corner, turn right onto Constitution Avenue and proceed to the EPA East Building entrance.

During the meeting, EPA will present an overview of the draft Strategy, including the factors the Agency expects to consider and the cycle of steps involved in its application. EPA will also allow time for questions and answers during these sessions. The Agency also encourages participants to identify and provide supporting data and/or rationales on existing effluent guidelines that EPA should consider revising, or on any industrial categories for which the Agency should consider developing new effluent guidelines. This meeting is not a public hearing for the purpose of obtaining comment on the draft Strategy. EPA will not generate a transcript of the meeting. The public may submit written comments as described in the "How to Submit Comments" section above.

VII. Industrial Wastewater and Best Available Treatment Technologies Conference

EPA has established effluent limitation guidelines and pretreatment standards for more than 50 industries. (A list of the currently regulated industries is provided in the draft Strategy at appendix 1, which can be found on EPA's Web site at *http://www.epa.gov/guide/strategy.*) Over the last 30 years, these industries have accumulated much expertise and experience in wastewater treatment process design and operation to comply with these regulations. Vanderbilt University and the U.S. EPA are co-sponsoring a technical conference to provide a forum to share experiences with process design and regulatory compliance.

Representatives of academia, government, and industry are invited to convene to examine and discuss industry trends and technology advances as they affect regulatory compliance and sustainable growth. Participants will have the opportunity to both provide and obtain information on state of the art techniques for addressing their water pollution control activities. These may include improvements to traditional wastewater treatment processes as well as process changes and best management practices that lead to reductions in pollutant generation.

The BAT conference will be held from February 26 through February 28, 2003 at the Nashville Marriott at Vanderbilt University, located at 2555 West End Avenue, Nashville, Tennessee, 37203. Registration is required. More information, including registration and specific topics, is available at *http://frontweb.vuse.vanderbilt.edu/bat/*, or contact Jan Matuszko at (202) 566–1035 or e-mail her at *matuszko.jan@epa.gov.*

Dated: November 22, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–30262 Filed 11–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–4]

Draft Guidance For Evaluating The Vapor Intrusion to Indoor Air Pathway From Groundwater And Soils (Subsurface Vapor Intrusion Guidance)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a draft guidance addressing the evaluation of the "vapor intrusion pathway." The draft guidance is intended to provide a tool to help the user conduct a screening evaluation as to whether or not the vapor intrusion exposure pathway is complete and, if so, whether it poses an unacceptable risk to human health. It is not intended to provide recommendations for delineating extent of risk or eliminating risk.

DATES: Send your comments to reach us on or before February 27, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Send an original and two copies of your comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305–G, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. RCRA–2002–0033. Follow the detailed instructions as provided in section I.B.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 412–9810; or, for hearing impaired, call TDD (800) 553–7672 or TDD (703) 412–3323. For more information on specific aspects of this guidance, contact Henry Schuver, Office of Solid Waste (5303W), U. S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, (703) 308–8656, e-mail address: *schuver.henry@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. How Can I Get Copies Of This Document And Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA–2002–0033. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for OSWER Docket is 202–566–0207. To view docket materials, you should call in advance and make an appointment. You may copy a maximum of 100 pages from any regulatory docket at no charge (unless the documents require copyright permission). Additional copies cost $0.15 per page.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments, but will make every effort to do so if time and resources permit. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2002–0033. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail

Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epamail.epa.gov*, Attention Docket ID No. RCRA–2002–0033. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2, below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send an original and two copies of your comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305-G, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. RCRA–2002–0033.

3. By Hand Delivery or Courier

Deliver your comments to: OSWER Docket, EPA West Building, Room B102, 1301 Constitution Avenue, NW, Washington DC, 20004, Attention Docket ID No. RCRA–2002–0033. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

4. By Facsimile

Fax your comments to (703) 603–9234, Attention Docket ID No. RCRA–2002–0033.

C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste, Environmental Protection Agency, Mailcode 5305–W, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. RCRA–2002–0033. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Summary

The draft guidance (Evaluating the Vapor Intrusion to Indoor Air Pathway From Groundwater and Soils) examines a single exposure pathway—the "vapor intrusion pathway." It is intended to be a screening tool to aid users in determining whether a vapor intrusion pathway is complete and, if so, whether the completed pathway poses an unacceptable risk to human health. A complete pathway means that humans are exposed to vapors originating from site contamination. The draft guidance begins with simple and generally reasonable conservative screening approaches and gradually progresses toward a more complex assessment involving increasingly greater use of site-specific data. For those sites determined to have an incomplete vapor intrusion pathway, further consideration of the current site situation generally should not be needed. For those sites determined to have a complete pathway, guidance is provided to evaluate whether the pathway does or does not pose a potential significant risk to human health.

This draft guidance is not intended to provide recommendations to delineate the extent of risk or eliminate the risk. Its sole purpose is to determine if there is a potential for an unacceptable risk. EPA generally recommends reevaluation of those sites that are screened-out if site conditions or land use changes in a way that might alter a decision to screen-out, or other new information suggests greater conservatism is appropriate in assessing the vapor intrusion pathway.

Because this is a draft guidance document, not a regulation, it is not subject to the notice and comment requirements of the Administrative Procedure Act. Nonetheless, EPA is choosing, in its discretion, to solicit comments on the document in the interest of developing the most accurate, useful guidance document.

III. At What Sites Are We Currently Suggesting You Use This Guidance?

EPA suggests that you use this draft guidance at RCRA Corrective Action, CERCLA (National Priorities List and Superfund Alternative Sites), and Brownfields sites, but, at this time, we do not recommended it for use at Subtitle I Underground Storage Tank (UST) sites.

We recommend that State and Regional UST corrective action programs continue to use a risk-based decision making approach as described in OSWER Directive 9610.17: Use of Risk-Based Decision Making in UST Corrective Action Program to address this pathway at UST sites.

IV. Data Evaluation

Vapor intrusion is a rapidly developing field of science and policy and this draft guidance is intended to aid in evaluating the potential for human exposure from this pathway given the state-of-the-science at this time. EPA will continue to explore this area in efforts to improve the state-of-the-science of this complex exposure pathway. A workgroup of EPA and State representatives is currently being organized to evaluate this pathway over the next several years. As the state-of-the-science improves, this guidance will be revised as appropriate. EPA and State site managers are encouraged to contact EPA's Office of Solid Waste (OSW) to join the workgroup and/or provide the workgroup with relevant site information that can be added to the Office of Solid Waste and Emergency Response (OSWER) database to facilitate these efforts.

V. Will This Draft Guidance Supersede Existing Guidance?

This draft guidance supersedes the draft RCRA EI Supplemental Guidance for Evaluating the Vapor Intrusion to

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Indoor Air Pathway (December 2001). It does not supersede State guidance. However, EPA believes that States will find this guidance useful and anticipates that States will consider this draft guidance when evaluating the vapor intrusion pathway. Additionally, the lead regulatory authority for a site may determine that criteria other than those recommended in this draft guidance are more appropriate for the specific site or area. For example, site-specific indoor air criteria may differ from the generic indoor air criteria generally recommended in this guidance and, consequently, the corresponding soil gas or groundwater screening levels may differ. Also, the site-specific relationship between indoor air concentrations and subsurface soil gas or groundwater concentrations may differ from that assumed in developing this guidance. Therefore, we suggest that the first step generally should be to consult with the lead regulatory authority to identify the most appropriate approach for evaluation of any potential vapor intrusion to indoor air pathway.

VI. When Do We Recommend You Start Using This Draft Guidance?

EPA recommends that you consider the use of this draft guidance now.

Although the document is still in draft and EPA is requesting comment on it, it has gone through extensive internal and inter-agency review, and we believe it is a technically sound product. While we hope to receive useful comments that will result in improvements when the draft is finalized, we believe the document in its current state provides the best guidance and information currently available on these issues.

Please recognize that this is a guidance document, not a regulation. This document presents current technical and policy recommendations of the Office of Solid Waste and Emergency Response, based EPA's current understanding of the subsurface vapor intrusion. EPA personnel (and of course, states) are free to use and accept other technically sound approaches, either on their own initiative, or at the suggestion of responsible parties or other interested parties. In addition, personnel who use this guidance document are free to modify the approach recommended in this guidance. This guidance document does not impose any requirements or obligations on EPA, states, or the regulated community. Rather, the sources of authority and requirements for addressing subsurface vapor intrusion are the relevant statutes and regulations (*e.g.*, RCRA, CERCLA and the NCP).

Dated: November 22, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–30261 Filed 11–27–02; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Notice of Submission for OMB Review Employer Information Report (EEO–1).

SUMMARY: In accordance with the Paperwork Reduction act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it is submitting to the Office of Management and Budget (OMB) a request for a one-year extension of the existing collection as described below. A notice that the EEOC would be submitting this request was published in the **Federal Register** on September 9, 2002, allowing for a 60-day public comment period. Four comments were received.

DATES: Written comments on this notice must be submitted on or before December 30, 2002.

ADDRESSES: Comments should be submitted to Karen Lee, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, or e-mail at *KFLEE@OMB.EOP.GOV*. Comments may also be sent to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507: (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Four comments were received from associations of employers and human resources organizations in response to the September 9, 2002 notice. The comments supported the EEOC's request for a one-year extension of the current information collection.

Overview of This Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: OMB Number 3046–0007.

Frequency of Report: Annual

Type of Respondent: Private employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private industry employers and businesses, private institutions, organizations and farms.

Reporting Hours: 402,700.

Federal Cost: $1.3 million.

Number of Forms: 1.

Abstract: Section 709(c) of the Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations set forth in Title 29, Chapter XIV, Subpart B, § 1602.7. Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential.

EEO–1 data are used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information and the employment status of minorities and women. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other federal agencies. Pursuant to Section 709(d) of title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 reports survey is 45,000 private employers. The estimated number of responses per respondent is between 3 and 4 EEO–1 reports. The annual number of responses is approximately 170,000 and the total annual burden is 402,700 hours. In order to help reduce survey burden, respondents are encouraged to report data on such electronic media as interactive diskettes or magnetic tapes.

Dated: November 21, 2002.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 02–30171 Filed 11–27–02; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 20, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 28, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Potential Reporting Requirements on ILECs to Assist Expeditious Implementation of Wireless E911 Service.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 6.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement, one to four times annually, third party disclosure requirement.

Total Annual Burden: 48–195 hours.

Total Annual Cost: N/A.

Needs and Uses: If adopted, the Commission would approach possibly six of the nation's Incumbent Local Exchange Carriers (ILECs) for information regarding the status of their efforts in connection with wireless enhanced 911 deployment. The six parties could be asked to file information between once and four times annually. The information would be used by the Commission to track 911 deployment progress and to assist all affected parties involved in the implementation process, including Commercial Mobile Radio Service licensees, Public Safety Answering Points (PSAPs), and third party vendors. The Commission will publish in the **Federal Register** a summary of any decision made entailing this PRA burden.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–30165 Filed 11–27–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 15, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by January 28, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

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time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0242.
Title: Section 74.604, Interference Avoidance.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for profit.
Number of Respondents: 1.
Estimated Time Per Response: 2 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 2 hours.
Annual Reporting and Recordkeeping Cost Burden: $1,000.
Needs and Uses: Section 74.604 requires that the Commission be notified if a mutual agreement to avoid interference cannot be reached by licensees assigned a common channel for TV pickup, TV studio transmitter link or TV relay purposes in the same area. Data used by FCC staff to take such action as may be necessary to assure equitable distribution of available frequencies.

OMB Control No.: 3060–0347.
Title: Section 97.311, Spread Spectrum (SS) Emission Types.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals or households.
Number of Respondents: 10.
Estimated Time Per Response: .017 hours (1 minute).
Frequency of Response: Recordkeeping requirement.
Total Annual Burden: 1 hour.
Annual Reporting and Recordkeeping Cost Burden: N/A.
Needs and Uses: The recordkeeping requirement contained in § 97.311 is necessary to document all spread spectrum (ss) transmissions by amateur radio operators. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended. The information is used by FCC staff during inspection and investigations to ensure compliance with applicable rules, statutes and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to the solution of cases of harmful interference would be severely hampered and needlessly prolonged due to the inability to quickly obtain vital information used to demodulate spread spectrum transmissions.

OMB Control No.: 3060–0648.
Title: Section 21.902, Frequency Interference.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for profit.
Number of Respondents: 1,824.
Estimated Time Per Response: .25–1.5 hours.
Frequency of Response: On occasion reporting requirement, third party disclosure requirement.
Total Annual Burden: 456 hours.
Annual Reporting and Recordkeeping Cost Burden: $491,000.
Needs and Uses: Section 21.902(b)(5) requires that respondents engineer the Multipoint Distribution Service (MDS) station to limit the calculated free space power flux density at the boundary of the protected service area (PSA). As an alternative, the respondent may obtain the written consent of the entity authorized for the adjoining area when the calculated free space power flux density exceeds the standards. Section 21.902(g)(2) requires applicants with 35 miles PSA to notify in writing the holders of authorizations for adjoining basic trading areas (BTAs) or PSAs of application filings for modified station licenses, provided the proposed facility would produce an unobstructed signal path to any location within the adjoining BTA or PSA. This service must include a copy of the application and occur on or before the date the application is filed with the Commission. Section 21.902(i) requires each applicant for a new station or modified MDS station, or amendment thereof, to provide notice of its application to co-channel and adjacent-channel authorized ITFS stations within 50 miles. The ITFS study must be prepared and served on the affected ITFS station, but is not required to be filed as part of the MDS application. Each applicant is required to file a written notice with the Commission before the 30th day after the applicant or amendment is initially filed with the Commission. This notice must contain the items specified in § 21.902(i)(4). Section 21.902(i)(6) requires that a petition to deny filed by an ITFS licensee contain specific information.

The data are used to ensure that no harmful interference is caused to other authorized stations.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

[FR Doc. 02–30166 Filed 11–27–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 18, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 28, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0241.
Title: Temporary Authorizations.
Form No.: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.
Number of Respondents: 145.
Estimated Time Per Response: 1.25–2 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 157 hours.
Total Annual Cost: $63,000.
Needs and Uses: The Commission is revising this collection to incorporate three other "temporary authorizations" which currently have OMB approval into one collection. They are OMB Control Numbers 3060–0245, 3060–0251, and 3060–0254. Otherwise there is no change or revision to any of these information collections. Upon OMB approval of 3060–0241, the Commission will cancel the other collections. Temporary authorizations are used by the Commission to ensure that interference will not be caused to other established stations and to ensure compliance with current FCC rules and regulations.

OMB Control No.: 3060–0240.
Title: Equipment Changes.
Form No.: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.
Number of Respondents: 36.
Estimated Time Per Response: .50–1 hour(s).
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 24 hours.
Total Annual Cost: $1,000.
Needs and Uses: The Commission is revising this collection to incorporate two other "equipment changes" which currently have OMB approval into one collection. They are OMB Control Numbers 3060–0243 and 3060–0246. Otherwise there is no change or revision to any of these information collections. Upon OMB approval of 3060–0240, the Commission will cancel the other collections. Equipment changes are used by the Commission to maintain complete technical records regarding the licensee's facilities and to ensure compliance with current FCC rules and regulations.

OMB Control No.: 3060–0690.
Title: Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands.
Form No.: FCC Form 415 and 415–T.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 5,000.
Estimated Time Per Response: .50–20 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 75,625 hours.
Total Annual Cost: $5,000,000.
Needs and Uses: The collection of information is necessary because of the requirements regarding the above-referenced frequency bands. The information is used by the Commission staff to provide adequate point-to-point microwave spectrum, which will facilitate provision of communications infrastructure for commercial and private mobile radio operations and competitive wireless local telephone service. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

[FR Doc. 02–30167 Filed 11–27–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Date and Time: Tuesday, December 5, 2002 at 10 a.m.
Place: 999 E Street, NW., Washington, DC.
Status: This meeting will be closed to the public.
Items to be Discussed:
Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
* * * * *
Date and Time: Thursday, December 7, 2002 at 10 a.m.
Place: 999 E Street, NW., Washington, DC (Ninth Floor).
Status: This meeting will be closed to the public.
Items to be Discussed:
Correction and approval of minutes.
A plan for implementing the 2002 Voting System Standards.
Final Audit: Buchanan Foster, Inc.
Final Audit: Gore 2000, Inc. (Primary).
Final Audit: Gore/Lieberman, Inc. and Gore/Lieberman General Election Legal and Accounting Compliance Fund (General).
Draft Advisory Opinion 2002–12: American Medical Security, Inc. by counsel, Brady C. Williamson and Mike B. Wittenwyler.
Final rules and explanation and justification on Coordinated and Independent Expenditures.
Administrative matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.

[FR Doc. 02–30497 Filed 11–26–02; 3:04 pm]
BILLING CODE 6715–01–M

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. WA–RP–00035]

Notice of Opportunity To Submit Amicus Curiae Briefs in a Representation Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority is determining whether certain employees who perform security work should be excluded from a bargaining unit on the ground that this work "directly affects national security" within the meaning of 5 U.S.C. 7112(b)(6).

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on a significant issue in a case pending before the Authority. The Authority is considering the case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (the Statute) and its regulations, 5 CFR part 2422. The issue concerns the bargaining unit eligibility of employees performing security work.

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Case Control Office by 5 p.m. on December 30, 2002. Placing submissions in the mail by this deadline

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will not be sufficient. Extensions of time to submit briefs will not granted.

Format: All briefs shall be captioned "*Social Security Administration, Baltimore, Maryland*, Case No. WA–RP–90035." Parties must submit five copies, one of which must contain an original signature, of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27(a) and (c).

The designated representatives in *Social Security Administration, Baltimore, Maryland*, Case No. WA–RP–90035 are Cathy Six, Agency Representative, Office of Labor-Management and Employee Relations, Social Security Administration, 6401 Security Boulevard, Room G–F–10, WHR, Baltimore, MD 21235–6401; Michael J. Snider, Union Representative, AFGE, Local 1923. Room 1–J–21, Operations Building 6401 Security Boulevard, Baltimore, MD 21235; Barbara S. Liggett, Acting Regional Director, Federal Labor Relations Authority, 800 K Street, NW., Suite 910, Washington, DC 20001.

ADDRESSES: Mail or deliver briefs to Gail D. Reinhart, Director, Case Control Office, Federal Labor Relations Authority, 607 14th St. NW., Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Gail D. Reinhart, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: On November 1, 2002, in 58 FLRA No. 42, the Authority granted, in part, an application for review of the Acting Regional Director's Decision and Order in *Social Security Administration, Baltimore, Maryland*. A summary of the case follows. Copies of the Authority's complete decision may be obtained by telephoning Gail D. Reinhart at the number listed above.

A. Background

American Federation of Government Employees, AFL–CIO (Union), filed a petition seeking to clarify the bargaining unit to include certain employees of the Social Security Administration, Baltimore, MD (the Agency) who work as Physical Security Specialists and Electronics Technicians. During the processing of this petition, the Agency asserted that the employees should be excluded from the bargaining unit under section 7112(b)(6) of the Statute. The employees develop and implement security operation procedures for the Agency's facilities. Section 7112(b)(6) provides, as relevant here, that a bargaining unit is not appropriate if it includes any employee engaged in "security work which directly affects national security[.]"

B. The Acting Regional Director's Decision

The Acting Regional Director determined that the disputed positions were not excluded from the proposed unit under section 7112(b)(6) of the Statute because, although the employees were engaged in "security work" within the meaning of section 7112(b)(6) of the Statute, the security work performed by them does not "directly affect[] national security" within the meaning of section 7112(b)(6) of the Statute. Therefore, she concluded that the employees in the disputed positions were not excluded from the bargaining unit.

C. The Application for Review

The Agency filed the application for review, contending that review of the Acting Regional Director's decision is warranted under 5 CFR 2422.31(c), because the decision raises an issue for which there is an absence of precedent.

D. Question on Which Briefs Are Solicited

In *Social Security Administration, Baltimore, Maryland*, the Authority granted the application for review under 5 CFR 2422.31(c) and directed the parties to file briefs addressing whether, and how, the security work performed by the incumbents of the (1) Physical Security Specialist, GS–080–11 (Position Description #8B349); (2) Physical Security Specialist, GS–080–11 (Position Description #8B356); and (3) Electronics Technician, GS–856–11 positions "directly affects national security" as that phrase is defined in *Dep't of Energy, Oak Ridge Operations, Oak Ridge, Tenn.*, 4 FLRA 644, 655–56 (1980). (To better comport with the terms of the Statute, this question is slightly modified from the questions asked in the original decision.)

Because this issue is likely to be of concern to the federal sector labor-management relations community in general, the Authority finds it appropriate to provide for the filing of amicus briefs addressing this question.

Dated: November 25, 2002.

For the Authority.

Gail D. Reinhart,

Director, Case Control Office.

[FR Doc. 02–30313 Filed 11–27–02; 8:45 am]

BILLING CODE 6227–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–15]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Data collection on Attention Deficit Hyperactivity Disorder (ADHD)—New—National Center for Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC). This project will collect data from proxy respondents on children ages 4 to 10 with and without ADHD. This program addresses the Healthy People 2010 focus area of Mental Health and Mental Disorders, and describes the prevalence, treated prevalence, select co-morbid conditions, secondary conditions, and health risk behavior of ADHD.

Background

The purpose of this program is to support research in ADHD and the exploration of other health conditions and health risk behaviors to children with the disorder. The main objectives of the project are to determine the prevalence or treated prevalence of children with ADHD in a defined community; to identify rates of select co-morbid or secondary conditions in children with ADHD in a defined community; to identify types and rates of health risk behaviors in children with ADHD; and to describe current and previous receipt of treatment in children with ADHD. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Backpack Survey	22,000	1	15/60	5,500
Teacher Survey	734	1	8/60	98
Parent Phone Interview	2324	1	105/60	4,067
Case Validity	100	1	3	300
Health Risk Behavior	2324	1	30/60	1,162
Total				11,127

Dated: November 18, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Preven:

[FR Doc. 02–30200 Filed 11–27–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the National Vaccine Advisory Committee, Department of Health and Human Services

The Public Health Service (PHS) is soliciting nominations for possible membership on the National Vaccine Advisory Committee (NVAC). This committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States; recommends research priorities and other measures the Director of the National Vaccine Program should take to enhance the safety and efficacy of vaccines; advises the Director of the Program in the implementation of sections 2102, 2103, and 2104, of the PHS Act; and identifies annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104, of the PHS Act.

Nominations are being sought for individuals engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies, or public health organizations. Federal employees will not be considered for membership. Members may be invited to serve a four-year term.

Close attention will be given to minority and female representation; therefore nominations from these groups are encouraged.

The following information is requested: Name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by December 31, 2002, to: Gloria Sagar, Committee Management Specialist, NVAC, National Vaccine Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, M/S K–77, Chamblee, Georgia 30341. Telephone and facsimile submission cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 21, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–30159 Filed 11–27–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Medicare and Medicaid Services

[Document Identifier: CMS–10076]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

The Administration identified that Medicare program authority to assist beneficiaries could be linked to emerging opportunities in the private sector to make prescription drugs more affordable to consumers. Through educating Medicare beneficiaries about

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these opportunities and assisting them in identifying prescription discount card programs that are reputable and offer quality customer service, these beneficiaries can reduce their out-of-pocket expenditures for drugs substantially. Further, we believe under this initiative that beneficiaries will be more compliant with prescription drug treatment plans and consequently will make more optimal use of their Medicare-covered services. This initiative is consistent not only with the Secretary's duty under the Medicare program to educate beneficiaries, but is also consistent with the Secretary's duties under the Social Security Act to effectuate the purposes of the Medicare program.

This collection of information is structured on the requirements already articulated in the final rule entitled, "Medicare-Endorsed Prescription Drug Card Assistance Initiative", published on September 4, 2002 (67 FR 56618).

CMS is requesting OMB review and approval of this collection by January 7, 2003, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by December 13, 2002. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection.

Title of Information Collection: Medicare-Endorsed Prescription Drug Card Assistance Initiative.

Form No.: CMS–10076 (OMB# 0938–NEW).

Use: CMS is soliciting applications from prescription discount card programs so that it may endorse qualifying programs for Medicare beneficiaries. CMS, on its website, and the endorsed programs, on request, will make information available for Medicare beneficiaries to use to compare the programs for possible enrollment in one of them.

Frequency: Annually, bi-annually, monthly.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 15.

Total Annual Responses: 15.

Total Annual Hours: 5,444.

Background

The Centers for Medicare and Medicaid Services (CMS) is seeking applications from qualified entities interested in entering into a Medicare endorsement agreement for their prescription discount card program. The general purpose of this Medicare endorsement agreement will be to publicize information that allows Medicare beneficiaries to compare prescription drug discount cards, assist Medicare beneficiaries in understanding and accessing private market methods for securing discounts on the purchase of prescription drugs, and raise beneficiary awareness of prescription drug discount card programs available in the commercial market. Approximately 9 million Medicare beneficiaries are without drug coverage at any point in a year. We expect this initiative will help beneficiaries, particularly those who lack prescription drug coverage, understand how drug discount card programs can lower beneficiary out-of-pocket prescription drug expenses. Further, we believe under this initiative that beneficiaries will be more compliant with prescription drug treatment plans and consequently will make more optimal use of their Medicare-covered services. This effort is not, in any way, an offer of a Medicare-reimbursed drug benefit.

Readers can find the application for this initiative on the Web site listed below. It is the final version subject to OMB approval.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designees referenced below, by December 13, 2002:

OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503, Fax: 202–395–6974,

And,

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Julie Brown, Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Fax: 410–786–3064.

Dated: November 20, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30367 Filed 11–27–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0296]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 29, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HPA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Filing Objections and Requests for a Hearing on a Regulation or Order (OMB Control Number 0910–0184)—Extension

The provision in 21 CFR 12.22, issued under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), sets forth the instructions for

filing objections and requests for a hearing on a regulation or order under § 12.20(d) (21 CFR 12.20(d)). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection, for which a hearing has been requested, must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis to determine whether a hearing request is justified. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under 21 CFR 12.24 and do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

In the **Federal Register** of July 8, 2002 (67 FR 45125), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.22	10	1	10	20	200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on past filings. Agency personnel responsible for processing the filing of objections and requests for a public hearing on a specific regulation or order, estimate approximately 10 requests are received by the agency annually, with each requiring approximately 20 hours of preparation time.

Dated: November 21, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30157 Filed 11–27–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Radiological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Radiological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 10, 2002, from 8:30 a.m. to 5 p.m.

Location: Gaithersburg Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Robert J. Doyle, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12526. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a device that produces a computerized thermal image of the breast of women recommended for biopsy.

Background information, including the agenda and questions for the committee, will be available to the public one business day before the meeting, on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material will be posted on December 9, 2002.

Procedure: On December 10, 2002, from 8:30 a.m. to 12:30 p.m., and from 1 p.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 3, 2002. On December 10, 2002, oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m., and for an additional 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 10, 2002, from 12:30 p.m. to 1 p.m., the meeting will be closed to the public to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending and future agency issues.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 21, 2002.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 02–30158 Filed 11–27–02; 8:45 am]

BILLING CODE 4160–01–S

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D-0467]

"Guidance for Industry: Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection" dated October 2002. The guidance document provides recommendations for assessing donor suitability and product safety for donors diagnosed with West Nile Virus (WNV) infections or with illnesses potentially caused by WNV. The guidance applies to Whole Blood and blood components intended for use in transfusion and blood components including recovered plasma, Source Leukocytes, and Source Plasma intended for use in further manufacturing into injectable or non-injectable products. These recommendations are intended to reduce the risk of transfusion transmitted WNV, particularly in areas where human cases are occurring.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection" dated October 2002. To address the possible risk of transmission of WNV by blood transfusion, we are providing recommendations for donor deferral, and for product quarantine and retrieval related to reports of post-donation illnesses in the donor, or WNV infection in recipients of blood. We are continuing to consult with experts on WNV at the Centers for Disease Control and Prevention (CDC) and elsewhere to ensure the greatest possible safety of the blood supply. In addition, epidemiologic and laboratory investigations are rapidly evolving. We will evaluate promptly any new data or experiences related to this issue and provide further updates as appropriate. FDA developed the recommendations in the guidance with other Public Health Service agencies of the Department of Health and Human Services.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The agency is soliciting public comment, but is implementing this guidance immediately because of public health concerns related to the possible risk of transfusion transmitted WNV. Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (*see* **ADDRESSES**) regarding this guidance document. Two copies of any mailed comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: November 15, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30156 Filed 11–27–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Backbone-Substituted Bifunctional DOTA Ligands, Complexes and Compositions Thereof, and Methods of Using the Same

Martin Brechbiel, Hyun-soon Chung (NCI), DHHS Reference No. E–035–2002 filed 06 Sep 2002, Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@od.nih.gov.*

The subject technology is directed to three backbone-substituted 1,4,7,10-tetraazacyclododecane (DOTA) compounds. These compounds can be chelated with radionuclides and used as imaging or therapeutic agents. In particular, the compounds can be complexed with a paramagnetic element (*e.g.* Gd (III)) and used as contrast agents in magnetic resonance imaging (MRI) applications.

The DOTA derivatives of the invention are such that the macrocyclic backbone was pre-arranged or pre-organized in order to lower the energy barrier to complex formation, thereby potentially increasing the rate of complex formation. The pre-organization and macrocyclic effect of the DOTA sub-structure accelerates complexation with metal ions and isotopes (*e.g.* Y (III), Gd (III); etc.), while maintaining a high level of stability of the complexes.

Alleviating Symptoms of Th2-Like Cytokine Mediated Disorders by Reducing IL–13 Receptor-Expressing Cells in the Respiratory Tract

Raj K. Puri *et al.* (FDA), PCT application PCT/US02/00616, which claims priority to U.S. Provisional Patent Application 60/337,179 (E–296–01/0) filed December 4, 2001, Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov.*

This invention relates to the alleviation of symptoms of Th2-like cytokine mediated disorders, such as allergy, asthma, and to hyperinflammatory responses in the respiratory tract to infectious diseases and parasitic infections, including tuberculosis, schistosomiasis, leishmania, and filiarsis.

This invention claims a variety of methods and uses of a chimeric molecule comprising a toxic moiety and a targeting moiety that specifically binds to a cell surface receptor for IL–13, to alleviate symptoms of a variety of respiratory disorders. This method has been proven successful in various mouse models in vivo.

Use of Mx GTPases in the Prognosis and Treatment of Cancer

J. Frederic Mushinski, Jane B. Trepel, Michel Andre Horisberger, PhuongMai Nguyen, Chand Khanna (NCI), DHHS Reference No. E–292–01/0 filed 18 Oct 2001, Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@od.nih.gov.*

The present invention describes novel approaches in the diagnosis, reduction of progression and treatment of cancer using Mx GTPases (Mxs) and Mx-encoding nucleic acids. The diagnostic benefits of this invention include methods of assessing the metastatic potential of cancer cells by determining the level of an Mx or Mx-encoding nucleic acid present in the cells. This invention also provides a method for administration of an Mx or expression of a nucleic acid encoding an Mx at, in, or near cancer cells, as well as a method for systemic induction of an Mx protein to reduce cancer progression in both solid tumors and hematologic malignancies.

Use of a Promoter of T-Cell Expansion and an Inducer of CD40 Stimulation in the Treatment or Prevention of a Pathologic State

William J. Murphy, Robert Wiltrout, Bruce Blazar, Susan E. Wilson (NCI), DHHS Reference Nos. E–150–01/0 filed 23 Aug 2001 and E–150–01/1 filed 23 Aug 2002, Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@od.nih.gov.*

The present invention provides a method for the prevention and treatment of pathologic states in mammals by administering a promoter of T-cell expansion with an inducer of CD40 stimulation in synergistically effective amounts. The disclosed invention could provide treatments for cancers, viral infections, HIV, bacterial infections, fungal infections, and allergic conditions. A method for assessing the treatment administered is also described.

Dated: November 19, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–30227 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Child Development Review SEP.

Date: December 5–6, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific ReviewNational Institute of child Health, and Human Development, 6100 building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30231 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health National Institute of Child Health And Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 5–6, 2002.

Time: December 5, 2002, 8:45 a.m. to 5 p.m.

Agenda: The agenda will include reports by the Director, NICHD and Director, NCMRR, update on NCMRR training activities, discussion of the future of medical rehabilitation, and other business of the Board.

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Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Time: December 6, 2002, 8:45 a.m. to Adjournment.
Agenda: The agenda will include reports by the Director, NICHD and Director, NCMRR, update on NCMRR training activities, discussion of the future of medical rehabilitation, and other business of the Board.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, room 2A03, Bethesda, MD 20892, (301) 402–4206.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.
Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/ncmrr.htm*, where an agenda and any additional information for the meeting will be posed when available.
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 21, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–30232 Filed 11–27–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Data Coordinating Centers.
Date: December 3, 2002.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH/NICHD/DSR, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Rersearch; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 21, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–30233 Filed 11–27–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Assembly and Working Group Meetings. The parent committee for this workgroup is the National Children's Study of Environmental Effects on Health Advisory Committee.
The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Logistics Coordinator at the e-mail or phone number listed below in advance of the meeting. To register for the meetings, visit the conference Web site at: *http://www.circlesolutions.com/ncs,* send an e-mail to *ncs@circlesolutions.com,* or call 703–902–1339.
Name of Committee: National Children's Study Assembly and Working Groups.
Date: December 16–18, 2002.
Time:
Registration: December 15, 2002, 4 p.m. to 7 p.m.; December 16, 2002, 7:30 a.m. to 5 p.m.; December 17, 2002, 7:30 a.m. to 7 p.m.; December 18, 2002, 7:30 a.m. to 5 p.m.
Study Assembly; December 17, 2002, 8:30 a.m. to 12 p.m.
Working Groups: December 17, 2002, 1 p.m. to 5 p.m.; December 18, 2002, 8:30 a.m. to 4 p.m.
Agenda: To discuss the status of planning this longitudinal study of environmental effects on the well-being of children. Content of the meeting will include a status report on development of planning for the study thus far, and reports on specific issues including for example, proposed hypotheses for the Study, study design issues, and the timeline for the remainder of the planning phase. The Study Assembly is made up of all stakeholders interested in the Study. Its purpose is to disseminate information to members and to serve as a conduit for bringing information and views from individuals and various organizations to the Study organization. The Study Assembly is open to anyone who indicates an interest in the Study, and includes representatives of all stakeholders, both inside and outside of government, advocacy groups, industry, academic institutions, state and local governments, and community groups. To become a member of the Study Assembly, interested persons should send an e-mail to: *NCS@mail.nib.gov.* Study Assembly members are welcome as observers during the other open meetings of this series. The National Children's Study of Environmental Effects on Health Advisory Committee will be held at the same location on December 17–18, 2002, 8 a.m. to 5 p.m.
Place: Baltimore Marriott Waterfront Hotel, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Peter M. Scheidt, M.D., Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5C01, Bethesda, MD 20892, (301) 451–6421, *NCS@mail.nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, (HHS))

Dated: November 21, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–30234 Filed 11–27–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Children's Study of Environmental Effects on Health Advisory Committee.
The meetings which are being co-sponsored by the Environmental Protection Agency, the National Institute of Environmental Health Sciences, and the Centers for Disease Control and Prevention, will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. To register for the meetings, visit the conference Web site at: *http://www.circlesolutions.com/ncs,* send an e-mail to *ncs@circlesolutions.com,* or call 703–902–1339. The National Children's Study Advisory Committee Meeting is open to anyone who indicates an interest and includes representatives of all stakeholders, both inside and outside of government, advocacy groups, industry, academic institutions, state and local governments, and community groups.
Name of Committee: National Children's Study of Environmental Effects of Health Advisory Committee.
Date: December 17–18, 2002.
Time: 1 p.m. to 5 pm.
Registration: December 15, 2002, 4 p.m. to 7 p.m.; December 16, 2002, 7:30 a.m. to 5 p.m., December 17, 2002, 7:30 a.m. to 7 p.m.; December 18, 2002, 7:30 a.m. to 5 p.m.
Agenda: To review activities since the last meeting held in September 2002. Primary objectives are to discuss and review sampling strategies, recruitment prior to conception, life-course timeline proposed by the Health Services and Social Environment Working Groups, prioritization of pilot studies, ethics issues issues in thematic areas and community outreach and communication issues in thematic areas.
Place: Baltimore Marriott Waterfront Hotel, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Peter M. Scheidt, M.D., Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 5C01, Bethesda, MD 20892, (301) 451-6421. *NCS@mail.nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 21, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–30235 Filed 11–27–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Biology of Neuroendocrine Peptides.
Date: December 17, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michele L. Barnard, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–6600, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Dialysis Clinical Trials.
Date: December 17, 2002.
Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John Connaughton, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, K08 Review.
Date: January 9, 2003.
Time: 2 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Dan E. Matsumoto, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–6600, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 21, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–30237 Filed 11–27–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.
The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposal and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
Name of Committee: National Institute on Aging Special Emphasis Panel, Structural and Functional Brain Changes.
Date: December 6, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue.

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Room 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Louise L. Hsu, PhD., The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30238 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Innovative Approaches for Combating Antimicrobial Resistance.

Date: December 16–18, 2002.

Time: 8:30 am to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, National Institute of Allergy and Infectious Diseases, 6700 B Rockledge Drive, MSC 7616, Room 2223, Bethesda, MD 20892–7616, 301–435–1614, *ar266w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30239 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, HLA Typing and Epitope Mapping Relative to HIV Vaccine Design.

Date: December 11, 2002.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIAID, DEA, SRP, 6700B Rockledge Drive, Rm. 2148A, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, National Institutes of Allergy and Infectious Diseases, Room 3119, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30240 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Agents of Bioterrorism: Pathogensis and Host Defense.

Date: December 17, 2002.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, NIAID, 6700–B Rockledge Dr., Room 2220, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive, MSC–7616, Rockville, MD 20892, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30241 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, November 26, 2002, 2 p.m. to November 26, 2002, 3 p.m., which was published in the **Federal Register** on November 1, 2002, 67 FR 66648–66649.

The date is the only change from 11/26/2002 to 12/12/2002. The meeting is closed to the public.

Dated: November 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30245 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: December 20, 2002.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Dr., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC–7610, Rockville, MD 20892–7610, 301–496–2550, *vg8q@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30246 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense & Emerging Infectious Diseases Research Opportunities.

Date: December 20, 2002.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ar15o@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense & Emerging Infectious Diseases Research Opportunities.

Date: December 20, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550 *ar15o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30247 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 25, 2002, 12:30 p.m. to November 25, 2002, 2 p.m., which was published in the **Federal Register** on November 15, 2002, 67 FR 69228–69229.

The meeting will be held December 4, 2002, from 3:30 p.m. to 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30236 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC PO1 Ribozyme Folding Study Section.

Date: December 2, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zakir Bengali, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

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This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MSD Conflicts.

Date: December 4, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MSD Conflicts.

Date: December 9, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: December 10, 2002.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MSD Conflicts.

Date: December 11, 2002.

Time: 2 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human Embryonic Stem Cell Training.

Date: December 16, 2002.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, MSD Conflicts.

Date: December 16, 2002.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dopamine Receptors.

Date: December 17, 2002.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHA (03): Vascular Sympathetic Neurons in Hypertension.

Date: December 17, 2002.

Time: 1:15 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MSD Conflicts.

Date: December 20, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.333–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30242 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships Cancer Research.

Date: November 26, 2002.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6201, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30243 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synaptic Function.

Date: December 9, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2 (12)–Protein Prenylation.

Date: December 10, 2002.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropharmacology.

Date: December 11, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–4(06) Auditory Impairments Study Section.

Date: December 18, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 1FCN–4 (07) Mechanisms of Drug Abuse Study Section.

Date: December 18, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.399–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: November 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30248 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the a meeting of the The Board of Scientific Counselors of the Warren Magnuson Clinical Center.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

Date: January 6–7, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigations.

Place: National Institutes of health, Building 10, 10 Center Drive, Clinical Ctr Medical Brd Rm, 2C116, Bethesda, MD 20892.

Contact Person: David K Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/402–0244.

Dated: November 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30244 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Conjugate Vaccines To Prevent Diseases Caused by Nontypeable Haemophilus Influenzae and Moraxella Catarrhalis, Particularly Otitis Media

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR

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404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license concerning the inventions embodied in: U.S. Patent Application Serial Number 08/842,409 (now USPN 6,207,157) entitled "Conjugate vaccine for Nontypeable *H. influenzae*", its divisional application U. S. Patent Application Serial Number 09/789,017, and U.S. Patent Application Serial Number 60/071,483 (now U.S. Patent Application Serial Number 09/610,034 and PCT/US99/00590, National Staged in Australia, Brazil, Canada, China, Europe, Korea, Mexico, and Japan), entitled "Lipooligosaccharide-Based Vaccine for Prevention of *Moraxella (Branhamella) catarrhalis* Infections in Humans", to Apovia, Inc., a company of San Diego, California. The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to the development of vaccines for the prevention or treatment of diseases in humans caused by infection with nontypeable *H. influenzae* and *M. catarrhalis*.

This notice is a modification to two previous **Federal Register** Notices related to the technology published on March 5, 1999 (64 FR 10671) and on July 30, 1999 (64 FR 41452).

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before January 28, 2003 will be considered.

ADDRESSES: Requests for a copy of the patents, inquiries or comments relating to the contemplated license should be directed to: Uri Reichman, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4616, Facsimile: (301) 402–0220; E-mail: *reichmau@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The inventions included in the prospective license describe conjugates of detoxified lipooligosaccharide (dLOS), isolated from the cellular membrane of either nontypeable *H. Influenzae* or *M. catarrhalis* and a carrier. These conjugates have been shown to raise bactericidal antibodies against the bacterial strain from which the dLOS was isolated and are also cross-reactive with different strains.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 19, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–30230 Filed 11–27–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–48]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers

interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, 441 G Street, Washington, DC 20314–1000; (202) 761–7425; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C. Street, NW., Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: November 21, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/29/02

Suitable/Available Properties

Buildings (by State)

Iowa

Former Navy Housing
Waverly Co: Bremer IA
Landholding Agency: Interior
Property Number: 61200240001
Status: Unutilized
Comment: 23 single family homes/lift station house, sq. ft. varies, needs rehab, presence of asbestos/lead paint, no sanitary facilities.

Mississippi

Post Office/Courthouse
820 Crawford Street
Vicksburg Co: Warren MS 39180–
Landholding Agency: GSA
Property Number: 54200240013
Status: Surplus
Comment: 14,000 sq. ft., needs rehab, presence of asbestos, historic preservation covenant required, portion occupied by Federal tenants
GSA Number: 4–G–MS–0559.

South Dakota

Residence
Tract 109
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240002
Status: Excess
Comment: 960 sq. ft., off-site use only.

Residence
Tract 118
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240003
Status: Excess
Comment: 912 sq. ft., off-site use only.

Residence
Tract 131
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240004
Status: Excess
Comment: 912 sq. ft., off-site use only.

Residence
Tract 141
Pierre Co: Hughes SD
Landholding Agency: COE
Property Number: 31200240005
Status: Excess
Comment: 936 sq. ft., off-site use only.

Residence
Tract 514
Ft. Pierre Co: Stanley SD
Landholding Agency: COE
Property Number: 31200240006
Status: Excess
Comment: 1426 sq. ft., off-site use only.

Residence
Tract 516
Ft. Pierre Co: Stanley SD
Landholding Agency: COE
Property Number: 31200240007
Status: Excess
Comment: 2264 sq. ft., off-site use only.

Land (by State)

Kentucky

Tract No. F–610
Buckhorn Lake Project
Buckhorn Co: KY 41721–
Landholding Agency: COE
Property Number: 31200240001
Status: Unutilized
Comment: 0.64 acres, encroachments, most recent use—flood control purposes.

Pennsylvania

Bldg. 201
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240014
Status: Excess
Comment: 310 sq. ft., most recent use—storage.

Bldg. 203
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240015
Status: Excess
Comment: 4163 sq. ft., most recent use—vehicle maint. shop.

Bldg. 208
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240016
Status: Excess
Comment: 144 sq. ft., most recent use—storage.

Bldg. 210
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240017
Status: Excess
Comment: 263 sq. ft., most recent use—storage.

Bldg. 211
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240018
Status: Excess
Comment: 1731 sq. ft., most recent use—office.

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 8354
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200240001
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 11827
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200240002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

California

Bldg. 394
Space & Naval Warfare
Systems Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200240041
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 428
Space & Navel Warfare
Systems Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200240042
Status: Unutilized
Reason: Extensive deterioration.

Florida

Bldg. C–26
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200240043
Status: Unutilized

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Reason: Extensive deterioration.

Bldg. F–44
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200240044
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Bldg. T47
Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–5350
Landholding Agency: Navy
Property Number: 77200240045
Status: Unutilized
Reason: Extensive deterioration.

Idaho

Bldg. 1326
Mountain Home AFB
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18200240003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Minnesota

Parcel B
Twin Cities Army Ammunition Plant
Arden Hills Co: MN 55112–3938
Landholding Agency: GSA
Property Number: 54200240015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–MN–0578B.

Montana

Bldg. 547
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 19200240004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 769
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 1084
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 2025
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240007
Status: Unutilized
Reason: Secured Area.

Oklahoma

Comfort Station
LeFlore Landing PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: COE
Property Number: 31200240008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Comfort Station
Braden Bend PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: COE
Property Number: 31200240009
Status: Excess
Reason: Extensive deterioration.

Water Treatment Plant
Salt Creek Cove
Sawyer Co: Choctaw OK 74756–0099
Landholding Agency: COE
Property Number: 31200240010
Status: Excess
Reason: Extensive deterioration.

Water Treatment Plant
Wilson Point
Sawyer Co: Choctaw OK 74756–0099
Landholding Agency: COE
Property Number: 31200240011
Status: Excess
Reason: Extensive deterioration.

2 Comfort Stations
Landing PUA/Juniper Point
PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240012
Status: Excess
Reason: Extensive deterioration.

Filter Plant/Pumphouse
South PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240013
Status: Excess
Reason: Extensive deterioration.

Filter Plant/Pumphouse
North PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240014
Status: Excess
Reason: Extensive deterioration.

Filter Plant/Pumphouse
Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240015
Status: Excess
Reason: Extensive deterioration.

Comfort Station
Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240016
Status: Excess
Reason: Extensive deterioration.

Comfort Station
Brooken Cove PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240017
Status: Excess
Reason: Extensive deterioration.

Pennsylvania

Bldg. 220009
Naval Support Activity
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77200240046
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Rhode Island

Facility 6
Quonset State Airport
N. Kingstown Co: RI 02852–7545
Landholding Agency: Air Force
Property Number: 1820024008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Facility 16
Quonset State Airport
N. Kingstown Co: RI 02852–7545
Landholding Agency: Air Force
Property Number: 18200240009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

6 Bldgs.
Ellington Field
1277, 1381, 1385, 1386,
1388, 1249
Houston Co: Harris TX 77034–5586
Landholding Agency: Air Force
Property Number: 18200240010
Status: Excess
Reason: Extensive deterioration.

Comfort Station
Overlook PUA
Powderly Co: Lamar TX 75473–9801
Landholding Agency: COE
Property Number: 31200240018
Status: Excess
Reason: Extensive deterioration.

Bldg. 1082
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240047
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1078
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240048
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1080
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240049
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1241
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240050
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1828
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240051
Status: Unutilized
Reason: Extensive deterioration.

Reason: Extensive deterioration.

Bldg. 3340
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240052
Status: Unutilized
Reason: Extensive deterioration.

Virginia

Bldg. 417
Camp Pendleton
Virginia Beach Co: VA 23451–
Landholding Agency: Air Force
Property Number: 18200240011
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bayview Tower
Langley AFB
Langley AFB Co: VA 23665–
Landholding Agency: Air Force
Property Number: 18200240012
Status: Unutilized
Reason: Floodway.

Pier R–1
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200240053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 709
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200240054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. M–15
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200240055
Status: Excess
Reason: Extensive deterioration.

Bldg. NM–79
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200240056
Status: Excess
Reason: Extensive deterioration.

Bldg. Z–216
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200240057
Status: Excess
Reason: Extensive deterioration.

Washington

Rec Storage Bldg.
Richland Parks
Richland Co: Benton WA 93352–
Landholding Agency: COE
Property Number: 31200240019
Status: Unutilized
Reason: Extensive deterioration.

Wyoming

Bldg. 360
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18200240013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Land (by State)

Minnesota

Parcel A
Twin Cities Army Ammunition Plant
Arden Hills Co: MN 55112–3938
Landholding Agency: GSA
Property Number: 54200240014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–MN–0578A.

Washington

2.8 acres
Tract P–1003
Kennewick Co: Benton WA 99336–
Landholding Agency: COE
Property Number: 31200240020
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

[FR Doc. 02–30015 Filed 11–27–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Receipt of applications for recovery permits.

SUMMARY: The following applicants have applied for permits to conduct scientific research and/or enhancement under the Endangered Species Act of 1973 (ESA). The Fish and Wildlife Service has received applications for recovery permits from Mr. Joeseph E. Duchamp, West Lafayette, Indiana; U.S. Army Corps of Engineers, Memphis, Tennessee; and Missouri Department of Conservation, Jackson, Missouri.

DATES: Submit comments on or before December 30, 2002.

ADDRESSES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender at (612) 713–5343, or by Fax at (612) 713–5292, e-mail: *peter_fasbender@fws.gov.*

SUPPLEMENTARY INFORMATION:

Permit Number TE060840

Applicant: Joeseph E. Duchamp, West Lafayette, Indiana, requests a permit to take (capture, handle and release) the Indiana bat (*Myotis sodalis*) throughout the Upper Wabash River basin in Indiana. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE060841

Applicant: U.S. Army Corps of Engineers, Memphis, Tennessee, requests a permit to take (capture, handle and release) Curtis' pearlymussel (*Epioblasma florentina curtisi*), pink mucket pearlymussel (*Lampsilis abrupta*), fat pocketbook mussel (*Potamilus capax*) and orange-footed pearlymussel (*Plethobasus cooperianus*) throughout Illinois and Missouri. The scientific research is requested for project impact assessment.

Permit Number TE060998

Applicant: Missouri Department of Conservation, Jackson, Missouri, requests a permit to take (capture, mark, and release) pallid sturgeon (*Scaphirhynchus albus*) in the Middle Mississippi River between the confluences of the Missouri and Ohio Rivers, Missouri. The scientific research is aimed at enhancement of survival of the species in the wild.

Documents and other information submitted with these applications are available for review by any party who requests a copy of such documents from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov*, telephone (612) 713–5343, or Fax (612) 713–5292.

Authority: This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*); 50 CFR 17.22.

Dated: November 12, 2002.

TJ Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–30160 Filed 11–27–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

SUMMARY: The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section

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10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Submit comments on or before December 30, 2002.

ADDRESSES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments must be received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender at (612) 713–5343, or by Fax at (612) 713–5292, e-mail: *peter_fasbender@fws.gov*.

SUPPLEMENTARY INFORMATION:

Permit Number PRT–697830

Applicant: Assistant Regional Director, Ecological Services, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

The applicant requests an amendment to his permit for scientific take activities of listed species in Region 3 to add the following species for scientific purposes and the enhancement of propagation or survival of the species in the wild, in accordance with listing, recovery outlines, recovery plans and/or other Service work for the species: Canada lynx (*Lynx canadensis*), Whooping crane (*Grus americana*), Lake Erie water snake (*Nerodia sipedon insularum*), Tumbling Creek cavesnail (*Antrobia culveri*), Scaleshell (*Leptodea leptodon*), Short's goldenrod (*Solidago shortii*), and Virginia sneezeweed (*Helenium virginicum*).

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Mr. Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612) 713–5343; Fax: (612) 713–5292; e-mail: *peter_fasbender@fws.gov*.

Dated: November 12, 2002.

TJ Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–30161 Filed 11–27–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants: Notice of Receipt of an Application for an Incidental Take Permit and Availability and Opening of Comment Period for an Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the West Virginia Northern Flying Squirrel in Association With Camp Wilderness Development Project at Snowshoe Mountain Resort, Pocahontas County, WV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Intrawest Resorts, Inc. (IRI) and Snowshoe Mountain, Inc. (SMI), an affiliate of IRI have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The application has been assigned permit number TE–065121. The proposed permit would authorize the incidental take of a federally endangered species, the West Virginia northern flying squirrel (WVNFS) (*Glaucomys sabrinus fuscus*), known to occur on property owned by the Applicants at Snowshoe Mountain Resort, Pocahontas County, West Virginia. The proposed taking is incidental to the planned construction of approximately 55 buildings, access road, shuttle terminal, ski trail and associated infrastructure of Camp Wilderness Development on approximately 51 acres owned by IRI. The permit would be in effect for up to 24 years depending on completion of final build out.

The Service announces the receipt of the IRI/SMI ITP application and the availability of the proposed Camp Wilderness Development HCP which accompanies the ITP application, for public comment. In addition, the Service also announces the availability of a draft EA for the proposed issuance of the ITP. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act of 1969 (NEPA) regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the WVNFS. The final NEPA and permit determinations will not be completed until after the end of the 60-day comment period and will fully consider all public comments received during the comment period.

DATES: Written comments on the permit application, HCP, and EA should be sent to the West Virginia Field Office (see **ADDRESSES**) and should be received on or before January 28, 2003.

ADDRESSES: Persons wishing to review the permit application, HCP, and draft EA may obtain a copy by writing the Service's West Virginia Field Office, 694 Beverly Pike, Elkins, West Virginia 26241. Requests for the documentation must be in writing to be processed. Written data or comments concerning the permit application, draft EA, and/or HCP should also be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, West Virginia Field Office, Elkins, West Virginia. Please refer to permit TE–0651212 when submitting comments. Documents will also be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30).

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Towner or Shane Jones, West Virginia Field Office (see **ADDRESSES** above), 304–636–6586.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibits the "taking" of a species listed as endangered or threatened. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to "incidentally take" listed species, if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

IRI/SMI have applied to the Service for an incidental take permit pursuant to section 10(a) of the Act. The Applicants propose to implement an HCP for the WVNFS that will allow development construction and subsequent occupancy activities in WVNFS habitat. The Applicant's proposed development may result in take, as defined in the Act and its implementing regulations, of listed species. Authorized take would only affect WVNFS; take of other federally listed species is specifically excluded from the proposed action. This permit would authorize the incidental take of WVNFS at Camp Wilderness Development through otherwise lawful activities, specifically the construction of the planned development, occurring in WVNFS habitat. The HCP and permit would be in effect for a maximum of 24 years upon issuance.

The Applicant proposes the construction and subsequent occupancy of Camp Wilderness at Snowshoe Mountain. The proposed development consists of approximately 55 buildings containing privately owned residential units, a community building, other community facilities, a shuttle terminal, and a ski trail. Associated amenities (*e.g.*, playground, a man-made pond and artificial stream, recreational trails) and infrastructure (*e.g.*, streets and parking lots) are also planned. The proposed construction boundaries of Camp Wilderness encompass approximately 51 acres and are adjacent to and north of several existing condominium developments, and are located about 400 feet north of the Snowshoe Mountain ski slopes.

The anticipated incidental take will be limited to harm through habitat loss as the result of the permanent loss of habitat on 22.5 acres, and temporary loss of habitat on 17.3 acres. Other impacts to the WVNFS associated with the Camp Wilderness development do not rise to the level of take. IRI/SMI propose to implement measures to minimize, mitigate and monitor impacts to the WVNFS and include seasonal clearing restrictions, minimizing indirect effects on WVNFS by occupants of Camp Wilderness, minimizing the Camp Wilderness construction footprint, allowing natural forest regeneration in the Temporary Construction Zone, and establishing a permanent conservation area to provide refuge for the WVNFS.

The draft EA considers the environmental consequences of five alternatives, including a no-action alternative, the proposed action, a high density alternative, a reduced impact alternative and an off-site development alternative.

The Service provides this notice pursuant to section 10(c) of the Act. The Service will evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the evaluation of the permit application, the HCP, EA and comments submitted thereon, will be used in the final analysis to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to IRI/SMI for the incidental take of WVNFS during the proposed construction of Camp Wilderness. We will make the final permit decision no sooner than 60 days from the date of this notice.

Authority: The authority for this section is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: November 18, 2002.

Richard O. Bennett,

Acting Regional Director, Region 5.

[FR Doc. 02–30170 Filed 11–27–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Environmental Impact Statement and Final Roosevelt Habitat Conservation Plan for Incidental Take by the Salt River Project

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The Salt River Project (SRP) has submitted an application for an incidental take permit (ITP) for the following federally listed and candidate species: southwestern willow flycatcher (*Empidonax traillii extimus*, flycatcher), Yuma clapper rail (*Rallus longirostris yumanensis*, clapper rail), bald eagle (*Haliaeetus leucocephalus*), and the yellow-billed cuckoo (*Coccyzus americanus*, cuckoo). The proposed take would occur in Gila and Maricopa counties, Arizona, as a result of management actions allowing Roosevelt Lake to fill, causing inundation of occupied habitat. The U.S. Fish and Wildlife Service (Service) has issued a final Environmental Impact Statement (EIS) that evaluates the impacts of and alternatives for the possible issuance of an incidental take permit (ITP). SRP completed the final Roosevelt Habitat Conservation Plan (RHCP) as part of the application package submitted to the Service as required by the Endangered Species Act of 1973, as amended (Act) for consideration of issuance of an ITP. The RHCP provides measures to minimize and mitigate the effects of the proposed taking of listed and candidate species and the habitats upon which they depend.

The final EIS includes (in attached volume 3) all comments received on the draft EIS, and responses to those comments. No decision will be made on the proposed action until at least 30 days after publication of this notice of availability of the final EIS in the **Federal Register**. After the 30-day waiting period, the U.S. Fish and Wildlife Service will complete a Record of Decision (ROD) that states whether the action will be implemented and discusses all factors leading to the decision.

ADDRESSES: Persons wishing to review the final EIS and RHCP may obtain a copy by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.

FOR FURTHER INFORMATION CONTACT: On the EIS, Contact: Ms. Sherry Barrett, Assistant Field Supervisor, Tucson Suboffice, U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701 at 520/670–4617, or Mr. Jim Rorabaugh, Arizona State Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021 at 602/242–0210. For further information on the RHCP, Contact: Mr. John Keane, Executive Environmental Policy Analyst, Salt River Project, P.O. Box 52025, PAB355, Phoenix, AZ 85072–2025 at 602/236–5087, or Mr. Craig Sommers, President, ERO Resources Corporation, 1842 Clarkson Street, Denver, CO 80218 at 303/830–1188.

Read-only downloadable copies of the final EIS and Application documents are available on the Internet at http://arizonaes.fws.gov. A printed or CD copy of the documents is available upon request to Virginia Kasper, Salt River Project, P.O. Box 52025, Phoenix, AZ 85072–2025; (602) 236–3416; *vckasper@srpnet.com*. Copies of the final EIS and final RHCP are also available for public inspection and review at the locations listed below under **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the Service has gathered the information necessary to (1) determine impacts and formulate alternatives for the EIS, related to the potential issuance of an ITP to SRP; and (2) develop and implement the RHCP, which provides measures to minimize and mitigate the effects of the incidental take of federally listed species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Act.

Section 9 of the Act prohibits the "taking" of threatened and endangered species. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing

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permits for endangered species are at 50 CFR parts 13 and 17.

Copies of the final EIS and RHCP are available for public inspection and review at the following locations (by appointment at government offices):

- Department of the Interior, Natural Resources Library, 1849 C St. NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701
- U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021
- Salt River Project, 1521 Project Drive, Tempe, AZ 85281
- Globe Public Library, 339 S. Broad St., Globe, AZ 85501
- Government Document Service, Arizona State University, Tempe, AZ 85287
- Payson Public Library, 510 W. Main, Payson, AZ 85541
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix, AZ 85004
- Tonto Basin Library, 1 School St., Tonto Basin (Punkin Center), AZ 85553

Background

Roosevelt Dam and Reservoir (Roosevelt) is operated by SRP in conjunction with three other reservoirs on the Salt River and two reservoirs on the Verde River as integral features of the Salt River Reclamation Project, authorized by the Reclamation Act of 1902, and pursuant to a 1917 contract with the United States. Since completion in 1911, Roosevelt has provided water for power generation, irrigation, municipal, and other uses. Currently, SRP reservoirs supply water to more than 1.6 million people in the cities of Phoenix, Mesa, Chandler, Tempe, Glendale, Gilbert, Scottsdale, Tolleson, and Avondale. In addition, water is provided to irrigate agricultural lands within SRP and for other uses. Also, water is delivered to the Salt River Pima-Maricopa Indian Community, Fort McDowell Yavapai Nation, Gila River Indian Community, Buckeye Irrigation Company, Roosevelt Irrigation District, Roosevelt Water Conservation District, and others. Roosevelt and the other SRP reservoirs also provide a variety of recreational uses and environmental benefits in central Arizona. Due to dry conditions in central Arizona for the past six years, the water level at Roosevelt has been below normal. As a result, riparian vegetation has invaded and flourished in the portion of Roosevelt historically used by SRP to store water for use in the Phoenix metropolitan area. Animals that use riparian habitat have followed the vegetation growth and now occupy areas within the reservoir. In particular, a population of flycatchers now occupies habitat within the storage space at Roosevelt. Thus, periodic refilling of the reservoir may adversely affect habitat used by the flycatcher, clapper rail, bald eagle, and cuckoo.

Proposed Action

The proposed action is the issuance of an ITP for flycatchers, clapper rails, bald eagles, and cuckoos for SRP's operation of Roosevelt, pursuant to section 10(a)(1)(B) of the Act. The activity that would be covered by the permit is the continued operation of Roosevelt by SRP. The area covered by the permit includes Roosevelt up to an elevation of 2,151 feet, the highest point in the reservoir at which water is stored. The requested term of the permit is for a period of 50 years. To meet the requirements of a Section 10(a)(1)(B) permit, SRP has developed and will implement the RHCP, which provides measures to minimize and mitigate incidental take of flycatchers, clapper rails, and bald eagles to the maximum extent practicable, and which ensures that the incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild. The RHCP also addresses potential impacts on a candidate species, the yellow-billed cuckoo.

Alternatives

Two other alternatives that were considered by the Service include the following:

1. *No Permit*—No issuance of an ITP by the Service. This alternative would require SRP to do everything within its control to avoid any take of federally listed species associated with its continued operation of Roosevelt.

2. *Re-operation Alternative*—Issuance of an ITP by the Service authorizing the modified operation of Roosevelt to reduce the short-term impact of reservoir operations on listed and candidate species. This alternative includes measures to minimize and mitigate the potential take of federally listed species.

Geoffrey L. Haskett,

Acting Regional Director, Southwest Region.

[FR Doc. 02–30386 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet to select North American Wetlands Conservation Act (NAWCA) proposals for recommendation to the Migratory Bird Conservation Commission.

The meeting is open to the public.

DATES: The meeting will be held on December 3, 2002, at 4 p.m.

ADDRESSES: The meeting will be held in the Mexican State of Quintana Roo. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MBSP–4075, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov*.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Migratory Bird Conservation Commission. Proposals require a minimum of 50 percent non-Federal matching funds. The public is welcome to attend the meeting scheduled for December 3, 2002.

Dated: November 20, 2002.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–30296 Filed 11–27–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–990–03–5101–ER–L016]

Final Environmental Impact Statement, Trans-Alaska Pipeline System Right-of-Way Renewal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (FEIS) for renewal of the Trans-Alaska Pipeline System (TAPS) Right-of-Way Grant. The original grant, issued January 23, 1974, will expire January 22, 2004. The renewal application was filed on May 2, 2001. Three alternatives are considered in the FEIS: The Proposed Action, renew the federal grant for 30 Years, until January 22, 2034; the Time-Dependent Alternative, renew the federal grant for less than 30 years; and the No-Action Alternative, do not renew the federal grant.

DATES: The FEIS will be available on November 26, 2002.

ADDRESSES: The FEIS and its Executive Summary will be available as a downloadable and searchable Portable Document File (pdf) at the TAPS Renewal EIS Web site, *http://tapseis.anl.gov*. CDs can be ordered from the same site.

Hard copies of the six volume FEIS can be requested in writing from Dr. John Krummel, Argonne National Laboratory EAD/900; 9700 South Cass Avenue; Argonne, Illinois 60439.

Hard copies and CDs of the FEIS are available for review at the following public reading rooms.

Anchorage:
- Alaska Resources Library and Information Services; 3150 C Street, Suite 100.
- Z.J. Loussac Library; 3600 Denali Street.
- Bureau of Land Management Public Room; 222 West 7th Avenue.
- State of Alaska, Department of Natural Resources Public Information Center; 550 West 7th Avenue, Suite 1260.

Barrow: Tuzzy Consortium Library; 5421 North Star Street.

Cordova: Cordova Public Library; 622 1st Street.

Fairbanks:
- Fairbanks North Star Borough Public Library; 1215 Cowles Street.
- Bureau of Land Management Public Room; 1150 University Avenue.
- State of Alaska, Department of Natural Resources Public Information Center; 3700 Airport Way.

Glennallen:
- Bureau of Land Management; Glennallen Field Office, Milepost 186.5, Glenn Highway.

Juneau:
- Alaska State Library; 333 Willoughby, 8th Floor.

Valdez:
- Valdez Public Library; 212 Fairbanks Street.

Washington, DC: Department of the Interior Library; 1849 C Street, NW.

SUPPLEMENTARY INFORMATION: The FEIS was prepared under authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321), as amended; the Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended, including Title II, the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651). Argonne National Laboratory, Argonne, Illinois, prepared the FEIS under BLM's supervision and direction.

FOR FURTHER INFORMATION CONTACT: Rob McWhorter at the Federal/State Joint Pipeline Office, 411 West 4th Avenue, Suite 2, Anchorage, Alaska 99501, phone (907) 257–1355, or visit the TAPS Renewal EIS Web site, *http://tapseis.anl.gov*.

Henri Bisson,

State Director.

[FR Doc. 02–30222 Filed 11–27–02; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1022 (Preliminary)]

Refined Brown Aluminum Oxide From China

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1022 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of refined brown aluminum oxide,[1] provided for in subheading 2818.10.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by January 6, 2003. The Commission's views are due at Commerce within five business days thereafter, or by January 13, 2003.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on November 20, 2002, by Washington Mills Co., Inc., North Grafton, MA.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO)

[1] The product covered by this investigation is ground, pulverized, or refined brown aluminum oxide. Crude aluminum oxide is excluded from the scope of the petition.

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and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on December 11, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than December 9, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 16, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 22, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30225 Filed 11–27–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Horst G. Blume, M.D.; Revocation of Registration

On July 26, 2002, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause by certified mail to Horst G. Blume, M.D. (Dr. Blume), notifying him of an opportunity to show cause as to why the DEA should not revoke his DEA Certificate of Registration, AB4035146, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration, pursuant to 21 U.S.C. 823(f), on the ground that, effective August 1, 2001, Dr. Blume voluntarily surrendered his medical license to the Iowa Board of Medical Examiners. The Order also notified Dr. Blume that if a request for hearing is not filed within 30 days of receipt, his right to a hearing would be deemed waived.

The Order to Show Cause was sent to Dr. Blume at his DEA registered premises in Sioux City, Iowa. DEA received a signed receipt indicating that the Order to Show Cause was received on behalf of Dr. Blume at that location. since that time, DEA has not received a request for hearing or any other reply form Dr. Blume or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing has been received concludes that Dr. Blume is deemed to have waived his right to a hearing. Following a complete review of the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.4 (d) and (e), and 1301.46.

The Deputy Administrator finds that Dr. Blume currently possesses DEA Certificate of Registration AB4035146, issued to him in Iowa. On July 11, 2001, Dr. Blume submitted a letter to the Iowa Board of Medical Examiners in which he voluntarily surrendered his Iowa medical license and agreed to no longer practice medicine in Iowa, effective August 1, 2001. The letter also stated that Dr. Blume understood that he was not eligible to reapply for medical license in the State of Iowa. The license surrender by Dr. Blume resolved the disciplinary action initiated by the Iowa Board of Medical Examiners. The investigative file contains no evidence that Dr. Blume's medical license has been reinstated in Iowa.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he or she practices. See 21 U.S.C. 823(f) and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Willard W. Leiske, M.D., 67 FR 35,588 (2002); Graham Travers Schuler, M.D., 65 FR 50,570 (2000); Romeo J. Perez, M.D., 62 FR 16, 193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993).

In the instant case, the Deputy Administrator finds that there is evidence demonstrating that Dr. Blume is not authorized to practice medicine in Iowa, and therefore, the Deputy Administrator infers that Dr. Blume is also not authorized to handle controlled substances in Iowa, the state in which he holds his DEA Certificate of Registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the DEA Certificate of Registration AB40335146, previously issued to Horst G. Blume, M.D., be, and is hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective December 30, 2002.

Dated: November 20, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30257 Filed 11–26–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Christopher E. Castle, M.D., Revocation of Registration

On March 14, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause, Immediate Suspension of Registration, to Christopher E. Castle, M.D. (Dr. Castle) of Seymour, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC1157076 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. The order also notified Dr. Castle that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Castle at his registered location in Seymour, Tennessee. It was also delivered by DEA Investigators to Dr. Castle and his legal counsel on March 19, 2002, at the Blount County Jail in Maryville, Tennessee, where Dr. Castle was incarcerated.

DEA has not received a request for hearing or any other reply from Dr. Castle or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Castle is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

On November 4, 1987, Dr. Castle obtained DEA Certificate of Registration Number BC1157076, as a practitioner in Schedules II through V. That registration remained valid until August 31, 2002. Pursuant to 21 CFR 1301.36(i), the Deputy Administrator will extend the registration for purposes of this revocation proceeding. On June 3, 2001, the Sevierville (Tennessee) Sheriff's Department arrested an individual referred herein as "RS," and charged him with various offenses related to the possession of controlled substances with intent to distribute. At the time of his arrest, "RS" was in possession of controlled substances from prescriptions that were issued by Dr. Castle. During a subsequent interview of "RS" by the Sevierville Sheriff's Department he informed law enforcement authorities that during his association with Dr. Castle, and in exchange for controlled substance prescriptions, he along with his spouse provided personal services to Dr. Castle, including installation of cabinets and repair of a garage door. "RS" further informed law enforcement authorities that on numerous occasions, he and his spouse were able to obtain from Dr. Castle prescriptions for any controlled substance they desired, in exchange for cash. Included among the drugs that Dr. Castle authorized for the couple in exchange for cash were Adderall and OxyContin, both highly abused Schedule II controlled substances. A subsequent investigation by DEA revealed that "RS" sold controlled substances to other individuals from prescriptions issued by Dr. Castle.

"RS" also informed law enforcement authorities that while visiting Dr. Castle's home on a prior occasion, he observed several of Dr. Castle's blank prescription pads unsecured in various parts of Dr. Castle's home, as well as prescriptions vials for controlled substances in the names of other individuals. "RS" also recounted one instance where Dr. Castle provided to him OxyContin tablets for his personal use, and for controlled substances in the names of other individuals. "RS"also recounted one instance where Dr. Castle provided to him OxyContin tablets for his personal use, and for no legitimate medical purpose. "RS" further informed law enforcement authorities that he informed Dr. Castle of his June 3, 2001 arrest on drug possession charges. Nevertheless, a subsequent review by DEA of prescription information regarding "RS" revealed that between January and August 2001, Dr. Castle issued prescriptions totaling 900 dosage units of OxyContin 40mg., and 90 dosage units of OxyContin 80mg. Dr. Castle continued issuing controlled substance prescriptions for "RS" up until October 3, 2001, despite Dr. Castle's knowledge of his drug arrest.

In response to the above information, in August 2001, the Tennessee Bureau of Investigation (TBI), the United States Department of Health and Human Services (HHS), and the Sevierville Sheriff's Department initiated investigation of Dr. Castle's medical practice. During a surveillance of Dr. Castle's office, law enforcement agents observed a high volume of persons entering in, and exiting the office for the purpose of obtaining prescriptions. These office visits typically lasted five minutes or less, and some of these individuals had been identified by local law enforcement agents as having prior drug related convictions and/or under investigation for illegal drug violations.

On October 3, 2001, the State of Tennessee, Department of Health (Department of Health) issued to Dr. Castle a Notice of Charges and Memorandum of Assessment of Civil Penalty. In the Notice of Charges, the Department of Health alleged, among other things, that with respect to its review of Dr. Castle's treatment of eleven patients, Dr. Castle issued prescriptions for controlled substances months before actually examining a patient, and that Dr. Castle dispensed, prescribed, or otherwise distributed controlled substances outside of Dr. Castle's professional practice, and not in good faith to relieve pain or suffering. Specifically, the Department of Health alleged Dr. Castle's improper prescribing with respect to patients referred herein as "DE" and his spouse "JE."

The Notice of Charges further proposed that Dr. Castle pay civil penalties in the amount of $16,500, and that the State Board of Medicine make a determination as to whether Dr. Castle's medical license be suspended, revoked or otherwise disciplined. That matter is currently pending resolution.

On October 19, 2001, a search warrant was executed at Dr. Castle's office by agents from TBI, HHS, the Tennessee Valley Authority, and the Sevierville County Drug Task Force. During the execution of the warrant, agents seized several patient files, and interviewed an employee of Dr. Castle's office. Dr. Castle's employee confirmed that several of Dr. Castle's patients obtained controlled substance prescriptions in exchange for cash.

On October 19, 2001, Special Agents from HHS, as well as TBI and DEA investigators interviewed a former medical assistant/laboratory technician employed by Dr. Castle's office. The individual informed law enforcement personnel that one occasion, when Dr. Castle was absent from his office in August 2001, Dr. Castle authorized his staff to fill in names, dates, and quantities of controlled substances prescribed on pre-signed prescriptions. These prescriptions were not dated on, or signed on the day when issued as required by 21 CFR 1306.05.

On November 14, 2001, Special Agents from HHS, TBI and the Tennessee Office of Inspector General interviewed another individual herein referred to as "CLF," a former patient as well as a personal acquaintance of Dr. Castle. "CLF" informed law enforcement personnel that over a period of several months, Dr. Castle routinely prescribed Adderall in "CLF's" name, and had her return portions of the filled prescription to Dr. Castle for his personal use. "CLF" further informed that Dr. Castle never performed a physical examination before writing prescriptions in her name, and that Dr. Castle frequently

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issued prescriptions while dining with her in a local restaurant.

In December 2001, Dr. Castle was named as a defendant in a $2,500,000 civil lawsuit filed in Sevier County Circuit Court by a former employee of Dr. Castle's medical practice. The suit alleged in part that Dr. Castle provided pain medications to his former employee when she was sixteen years old, prescribed pain medications while she was pregnant, and contributed to her addiction until the time she left Dr. Castle's employ at the age of twenty-one. The suit further alleges that Dr. Castle's actions contributed to the December 6, 2000, overdose on pain medications by the employee, which eventually led her to seek detoxification the following week. That matter is also pending resolution.

On January 10, 2002, DEA investigators conducted surveys of three pharmacies where several of Dr. Castle's patients had prescriptions filled: the pharmacies were Jabo's Pharmacy located in Newport, Tennessee; Murphy's Sav-Mor Pharmacy located in Jefferson City, Tennessee; and Mugford's Pharmacy located in Knoxville, Tennessee. The surveys revealed, that following the issuance to Dr. Castle of the Notice of Charges, as well as the execution of a search warrant at Dr. Castle's office, Dr. Castle continued to issue numerous Schedule II through IV controlled substance prescriptions for "DE" and "JE." As noted above in paragraph six, the Department of Health alleged Dr. Castle's improper prescribing with respect to patients "DE" and his spouse "JE." DEA's investigation revealed that between October 15, 2001 to January 12, 2002, these individuals had their prescriptions filled at different pharmacies including each of the above pharmacies.

DEA's review of prescriptions authorized by Dr. Castle, and obtained from Murphy's Sav-Mor Pharmacy revealed a Dandridge, Tennessee home address for "DE" and "JE." Yet, a review of written prescriptions filled by "DE" and "JE" at Mugford's Pharmacy revealed a Knoxville, Tennessee home address for the couple. These addresses were not included on the prescriptions that were issued by Dr. Castle, and were added to the prescriptions by someone other than Dr. Castle. A subsequent investigation by DEA revealed that Dr. Castle failed to list addresses on prescriptions issued to "DE" and "JE," as well as numerous prescriptions issued to other patients, as required by 21 CFR 1306.05(a).

On February 11, 2002, Special Agents from HHS, TBI and the Tennessee Office of Inspector General interviewed an individual herein referred to as "JS." "JS" informed law enforcement officials that he had a long-term history of narcotic abuse and had purchased OxyContin from "RS" (referenced in paragraphs two through four above). "JS" further informed that Dr. Castle wrote prescriptions for OxyContin and Adderall for him in the name of the wife of "JS." "JS" further informed law enforcement personnel that his wife had never been to Dr. Castle's office, and was not aware that Dr. Castle issued prescriptions in her name for "JS." "JS" also informed that Dr. Castle created fictitious patient information in the name of his wife. Law enforcement personnel from the above agencies later conducted an interview of the wife of "JS" and she confirmed that she had never received any controlled substance prescriptions from Dr. Castle, nor had she ever visited Dr. Castle's office.

The investigation of Dr. Castle's practice also revealed that on or around September 6, 2001, "JS" requested that Dr. Castle send to him a prescription for OxyContin in his wife's name. Several days later, "JS" found the requested prescription in his mail box in his wife's name, which had been mailed from Dr. Castle's office and signed by Dr. Castle. DEA's investigation further revealed that between November and December 2001, Dr. Castle issued several Schedule II controlled substance prescriptions for "JS" in his wife's name.

On February 21, 2002, the Sevier County Street Crimes Unit executed a search warrant at Dr. Castle's medical practice. During the execution of the warrant, law enforcement officers recovered from Dr. Castle's person several syringes, including some that had been used. The syringes contained Adderall.

In November 2001, Dr. Castle was indicted in the United States District Court, Eastern District of Tennessee, on one count of possession of child pornography. However, after posting a $50,000 bond, Dr. Castle was granted pretrial release on November 7, 2001. As a condition of Dr. Castle's release, Dr. Castle was ordered not to download child pornography from Dr. Castle's personal computer, carry a firearm, or engage in the personal use of drugs. Nevertheless, an investigation by the Tennessee Office of Inspector General revealed that Dr. Castle continued to download child pornography in violation of a condition set by Dr. Castle's pretrial release. As a result, on February 26, 2002, the court ordered the revocation of Dr. Castle's bond, and further ordered Dr. Castle detained until Dr. Castle's May 7, 2002, trial on a charge of possession of child pornography.

In view of the foregoing, and pursuant to 21 U.S.C. 824(d), I find that Christopher E. Castle, M.D. has been responsible for the diversion of large quantities of controlled substances into other than legitimate medical channels. It is my conclusion that Dr. Castle has committed such acts as would render his continued registration inconsistent with the public interest. 21 U.S.C. 824(a)(4). Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BC1157076, issued to Christopher E. Castle, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modifications of such registration be, and they hereby are, denied. This order is effective December 30, 2002.

Dated: November 12, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30255 Filed 11–27–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joseph H. Talley, M.D.; Revocation of Registration

On January 28, 2002, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Notice of Immediate suspension of Registration to Joseph H. Talley, M.D. (Respondent) of Grover, North Carolina. The Respondent was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AT2853706, as a practitioner, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f) and 824(a) for reason that his continued registration would be inconsistent with the public interest. The order further notified the Respondent that his DEA registration was immediately suspended as an imminent danger to the public health and safety pursuant to 21 U.S.C. 824(d).

The order to Show Cause and Notice of Immediate Suspension alleged the following:

1. (The Respondent) is registered with DEA as a practitioner under DEA Registration No. AT2853706 for Schedules II, II–N, III, III–N, IV and V. The DEA registration was last renewed on November 13, 2000. The registered location is PO Box 45, 318 Laurel Avenue, Grover, NC 28073.

2. (The Respondent) regularly engaged in the practice of prescribing excessive amounts of controlled substances, including combinations of Schedule II and III controlled substances such as OxyContin (II), Methodone (II) and Hydrocodone (III), along with a benzodiazepine such as Alprazolam (IV), to patients for no legitimate medical reason. (The Respondent's) patients have been associated with drug trafficking and drug abuse, and numerous patients have died due to drug overdose. The North Carolina Medical Board has filed charges alleging, in part, that (the Respondent's) practice of dispensing controlled substances falls below acceptable standards of care. Finally, (the Respondent has) circumvented DEA regulations by, in effect, post-dating Schedule II controlled substance prescriptions and maintaining at (his) registered location controlled substances that allegedly were returned to (the Respondent) by (his) patients.

3. During an interview with North Carolina investigators on March 13, 2001, (the Respondent) stated that (his) normal prescribing practice is to use at least two (2) opiates along with antidepressants, and that (he uses) Xanax and Klonopin because Xanax is short acting and Klonopin lasts longer. (The Respondent) also said that modern pain management calls for maintaining a level of drugs in the patient's system all the time, and at least 50 percent pain-related patients also suffer from anxiety and depression.

4. (The Respondent's) patients routinely received minimal or no medical examinations prior to receiving controlled substance prescriptions. Some of these patients were out-of-state patients who were treated after telephone consultations. (The Respondent has) numerous patients who are out-of-state patients from states including Tennessee, South Carolina, Georgia, Oklahoma, California, Wisconsin, Missouri, Rhode Island, New Jersey, New York, Louisiana, Florida and Alabama. Most of these patients were interviewed over the telephone rather than seen in person. The patients describe their symptoms during a telephone call every three months and receive prescriptions for controlled substances.

5. DEA obtained the prescription profiles of mail order customers of Medi Fare Drug Center, 100 Laurel Avenue, PO Box 309, Grover, NC 28073. The profiles revealed that approximately 60 customers were (the Respondent's) patients who lived in north central South Carolina, an hour or so distance from Grover, NC. Many of these patients received excessive amounts, in combination, of the following controlled substances: Morphine Sulfate (Schedule II), Methadone (Schedule II), Oxycodone (Schedule II), Hydromorphone (Schedule II), Hydrocodone (Schedule (III), Hydromorphone (Schedule II), Hydrocodone (Schedule III), Alprazolam (Schedule IV), Diazepam (Schedule IV), and/or Ambien (Schedule IV).

6. For instance, the prescription profiles of the following mail order customers revealed that:

A. Patient Sally B. received prescriptions for, among other things:

Date and Medication

3/13/00
#248 Hydrocodone/APAP 10–650
#93 Alprazolam 2 mg
#90 Methylphenidate 20 mg [Ritalin]
3/28/00
#250 OxyContin 80 mg
#360 Percocet 10/650
4/14/00
#248 Hydrocodone/APAP 10–500
#93 Alprazolam 2 mg
4/26/00
#248 OxyContin 80 mg
#93 Alprazolam 2 mg
5/24/00
#279 OxyContin 80 mg
#93 Alprazolam 2 mg
#90 Methylphenidate 20 mg
6/20/00
#279 OxyContin 80 mg
#93 Alprazolam 2 mg
#360 Percocet 10–650
#93 Lipitor 40 mg
7/19/00
#279 OxyContin 80 mg
#93 Alprazolam 2 mg
7/21/00
#90 Prozac 20 mg
#31 Furosemide 40 mg

B. Patient Debra M. received prescriptions for, among other things:

Date and Medication

5/1/00
#155 OxyContin 80 mg
#100 Oxycodone 5–500
#93 Alprazolam 2 mg
#30 Diazepam 10 mg
6/1/00
#155 OxyContin 80 mg
#100 Ocycodone 5–500
#93 Alprazolam 2 mg
#30 Diazepam 10 mg

C. Patient George N. received prescriptions for, among other things:

Date and Medication

5/10/00
#186 Hydrocodone/APAP 10–500
#136 Alprazolam 2 mg
#120 carisoprodol 350 mg
#62 Prozac 20 mg
6/5/00
#186 Hydrocodone/APAP 10–500
#136 Alprazolam 2 mg
#120 carisoprodol 350 mg
#62 Prozac 20 mg
#47 Remeron 30 mg
7/5/00
#186 Hydrocodone/APAP 10–500
#136 Alprazolam 2 mg
#120 carisoprodol 350 mg

D. Patient James W. received prescriptions for, among other things:

Date and Medication

4/18/00
#186 OxyContin 80 mg
#124 Hydromorphone 4 mg
#60 Promethazine 50 mg
5/17/00
#186 OxyContin 80 mg
#124 Hydromorphone 4 mg
#60 Promethazine 50 mg

E. Patient Debra C. received prescriptions for, among other things:

Date and Medication

6/7/00
#124 Hydrocodone/APAP 10–500
#124 Alprazolam 2 mg
#31 Trazodone 100 mg
#124 Carisoprodol 350 mg
6/8/00
#36 Dilaudid 3 mg
#124 MS CP 60 mg
7/7/00
#124 Hydrocodone/APAP 10–500
#124 Alprazolam 2 mg
#31 Trazodone 100 mg
#124 Carisoprodol 350 mg
#36 Dilaudid 3 mg
#124 MS S.R. CP 60 mg

F. Patient Charles K. received prescriptions for, among other things:

Date and Medication

4/3/00
#248 Hydrocodone/APAP 10–500
#93 Methadose 40 mg
#62 Alprazolam 2 mg
5/3/00
#248 Hydrocodone/APAP 10–500
#93 Metadose 40 mg
#62 Alprazolam 2 mg
6/2/00
#248 Hydrocodone/APAP 10–500
#93 Methadone 40 mg
#62 Alprazolam 2 mg
6/30/00
#248 Hydrocodone/APAP 10–500
#93 Methadone 40 mg
#62 Alprazolam 2 mg (RX 313579)
#62 Alprazolam 2 mg (RX 313574)

7. (The Respondent's) patients have been observed in (his) office discussing what prescriptions they would obtain from (him) and what they planned to do with the medication after obtaining it.

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Patients also have been observed selling controlled substances in the parking lot outside of (the Respondent's) medical office.

8. (The Respondent's) patients have been implicated in drug dealing activities. For instance, (the Respondent) prescribed OxyContin for (his) patient, Debra M, who was known to trade her OxyContin for Methadone tablets. She also sold OxyContin for the following prices:

OxyContin 160 mg—$40/tab OxyContin 40 mg—$10/tab
OxyContin 80 mg—$20/tab OxyContin 20 mg—$5/tab

9. (The Respondent has) two patients who are husband and wife, Jerry C. and Carol C., both of whom are engaged in the abuse of Methadone. (The Respondent) continued to prescribe Methadone to them even though (he) knew or had reason to know that Jerry C. and Carol C. were abusing Methadone. When she rolled up her sleeves, Carol C.'s arms were covered with sores and her veins displayed huge knots consistent with drug abuse. Despite being informed that Jerry C. and Carol C. both admitted to drug abuse, (The Respondent) continued to write controlled substance prescriptions for them.

10. (The Respondent has) written controlled substance prescriptions for pregnant women and told them that taking narcotics would not harm their newborn babies. The newborn baby of one of (the Respondent's) former patients, Alice P., was born addicted to Methadone.

11. On May 14, 1999, (the Respondent) contacted the Spartanburg County, SC, Coroner's Office and spoke to (a representative from that office) regarding the death of Darrell S. During that conversation, (the Respondent) stated that the Spartanburg Co. Coroner's Office would be seeing (the Respondent's) name and the name of (his) clinic more often because doctors in Spartanburg would not give "these people" the medications that they needed, and sometimes (the Respondent) lose(s) some.

12. At least 23 of (the Respondent's) former patients have died, in part, due to drug overdoses.

13. On June 6, 2001, patient Teresa B., died of a drug overdose. (The Respondent) saw her as a patient on or about the day of her death and (he) issued her a prescription for controlled substances, including but not limited to Methadone. Teresa B. was known to receive a prescription for more than 100 Methadone tablets per month. During the evening hours of the date in which Teresa B. died, another one of (the Respondent's) patients, Debra M., visited the residence of Teresa B., for the purpose of exchanging Debra M.'s OxyContin for Teresa B.'s Methadone.

14. Debra M. traded her OxyContin that she received, based upon (the Respondent's) prescriptions, with Teresa B. as well as other drug abusers. Debra M. would exchange one (1) OxyContin 80 mg tablets for two (2) Methadone 40 mg tablets and had, over a period of time, exchanged hundreds of OxyContin tablets with Teresa B. Debra M. also engaged in sales of large quantities of OxyContin tablets.

15. On March 17, 2001, Kimberly (P.), age 24, died. She and her husband were (Respondent's) patients and both were drug abusers. A prescription profile from Fallston Pharmacy, Fallston, NC, indicated that Kimberly (P.) received prescriptions from the Respondent for the following:

Date and Medication

11/28/00
#124 Alprazolam 2 mg
#50 OxycodoneAPAP 5–325
12/27/00
#124 Alprazolam 2 mg
1/19/01
#3 Stadol 10 mg/ml
1/25/01
#124 Alprazolam 2 mg
2/26/01
#124 Alprazolam 2 mg

16. During the months of February and March 2001, Kimberly (P.'s) husband, Timothy (P.) received prescriptions from (the Respondent) that were filled at Fallston Pharmacy for the following medications:

Date and Medication

2/14/01
#75 Alprazolam 2 mg
#93 Hydrocodone 10–600
3/14/01
#120 Hydrocone 10–600
#140 Methadone 10 mg
#31 Clonazepam 2 mg

17. A prescription profile for Kimberly (P.) for the same time period from Medi Fare Drug Center, Grove, NC, indicated that she received prescriptions from (the Respondent) for the following:

Date and Medication

2/26/01
#120 Roxicet TA, 5–325
#20 Dilaudid 3 mg
#30 Prozac 20 mg
3/14/01
#14 Prozac 20 mg
#30 Prozac 20 mg

18. During the months bf February and March 2001, Kimberly (P.'s) husband, Timothy (P.), received prescriptions from (the Respondent) that were filled at Medi Fare Drug Center, Grover, NC, for the following:

Date and Medication

1/12/01
#90 Hydrocodone 10–650
#75 Alprazolam 2 mg
#124 Oramorph 15 mg
2/9/01
#9 Hydrocodone 10–650
#4 Clonazepam 1 mg
3/14/01
#78 Alprazolam 2 mg

19. On or about April 12, 2001, Roger H., 50 years old, died at his home. Numerous pills were found on and around his body. The decedent was (the Respondent's) former patient and had completed rehabilitation for opiate abuse during December 2000. (The Respondent's) office was advised in January 2001 that Roger H. had recently undergone drug rehabilitation treatment. The cause of death was overdose of Oxycodone. The blood level of Oxycodone was .55 mg/L, which was well above the therapeutic level of .05 mg/L, and even above the potentially lethal level of .4 mg/L. The Respondent prescribed to the decendent #120 OxyContin, #63 Percocet and an unknown quantity of Roxicodone per month.

20. On March 26, 2001, DEA became aware of five (5) recent deaths of individuals residing in Union County, SC. Each of these individuals were former patients of (the Respondent). These individuals included: Terry J., Marshall S., George N., Debra G., and Tracey C. The cause of death for each of the patients, with the exception of Tracey C., was drug overdose. Although Tracey C's death was ruled to be due to cardiac arrhythmia, he had a history of drug abuse and his blood contained metabolites of controlled substances. Tracey C. and Terry J. were known to have obtained OxyContin from Debra M., and Debra M. was one of (the Respondent's) patients.

a. Terry J. died of respiratory insufficiency secondary to synergistic drug overdose.

b. Marshall S. died of respiratory arrest secondary to drug overdose.

c. George N died of respiratory insufficiency secondary to synergistic drug overdose.

d. Debra G. died of respiratory arrest from cardiomyopathy, but multiple drug ingestion was a contributing factor.

21. On December 4, 2001, DEA received from the North Carolina Office of the Chief Medical Examiner, among other things, copies of six (6) autopsy reports of former patients of (the Respondent) who died of causes related to Oxycodone ingestion. The decedents lived in Gaston, Cleveland and Rutherford Counties in North Carolina and included the above mentioned Roger H., as well as the following individuals (approximate date of death listed after the name):

a. David M., 3/27/01.
b. Pamela Jean B., 1/5/00.
c. Clifford Ray G., 4.13/00.
d. David B., 8/16/00.
e. Adenna S., 12/3/00.

22. On October 10, 2001, the North Carolina Medical Board (Medical Board) issued a Notice of Charges and Allegations against (the Respondent). The complaint alleged that (the Respondent) self-prescribed, diverted and stockpiled the weight-loss drug Pondimin (Fenfluramine) for personal consumption without conferring with or receiving a prescription from (his) personal physician. In addition, the Medical Board alleged that (the Respondent) deviated from acceptable standards of medical care in a manner directly related to (his) dispensation and prescription of controlled substances. Specifically, the Medical Board alleged, with regard to (his) treatment of patients, (the Respondent):

a. Failed to perform adequate physical or objective examinations in order to properly evaluate or diagnose the etiology of patients' complaints;

b. Failed to perform follow-up physician examinations of patients including appropriate laboratory studies to rule out or confirm the causes of pain prior to instituting opioid therapy;

c. Failed to inquire during each patient visit as to whether patients received medications from other physicians or sources even though (the Respondent) knew or had reason to believe that many patients had a history of inappropriately obtaining drugs or engaging in substance abuse;

d. Failed to monitor patient compliance with (the Respondent's) prescribed therapeutic regime through appropriate laboratory studies and fluid screens even though (he) knew or had reason to believe that many patients had a history of inappropriately obtaining drugs or engaging in substance abuse.

e. Failed to insist that all prescriptions for each patient be filled at a single pharmacy in order to adequately monitor patient care even though (the Respondent) knew or had reason to know that many patients had a history of inappropriately obtaining drugs or engaging in substance abuse;

f. Failed to measure the degree and variations of pain symptoms in order to properly evaluate the effectiveness of therapy; and

g. Failed to vary treatment or attempt non-opioid therapy, even though (the Respondent) knew or had reason to believe that many patients had a history of inappropriately obtaining drugs or engaging in substance abuse.

22. On or about June 11, 2001, (the Respondent was) informed by DEA investigative personnel that (he was) not permitted to possess controlled substances that had been dispensed to (his) patients by virtue of prescriptions written by (the Respondent). (The Respondent) told DEA investigative personnel that (he) had been collecting and storing patients' controlled substances. These patients reportedly could no longer take their medications, sometimes due to allergic reactions. (The Respondent) said that (he) would write the patient a new prescription for a different medication and take possession of the old, discontinued controlled substance. DEA personnel informed (the Respondent) that the patients' controlled substances belonged to them and that (the Respondent) could not possess them.

23. On October 3, 2001, DEA and state investigative personnel conducted an audit of the controlled substances at (the Respondent's) registered location. In a closet, they located a cabinet full of controlled substances that (the Respondent) took from (his) patients when (he) changed their medications. Investigators told (the Respondent), as they had on June 11, 2001, that once the controlled substance has been dispensed to the patient, (the Respondent) could not possess it. DEA completed its audit of (the Respondent's) registered premises on October 4, 2001, and then destroyed hundreds of dosage units of controlled substances, including, but not limited to Methadone, OxyContin, Oramorph, Methylphenidate and Hydromorphone.

24. (The Respondent) circumvented DEA regulations by issuing multiple prescriptions for a 30-day supply of controlled substances, including those in Schedule II, to patients including but not limited to patient Teresa B. The prescriptions included the phrase "do not fill until (insert date, either 30 or 60 days from the date on the prescription)." The patients would then return to the Medi Fare Drug Center on a monthly basis, either 30 or 60 days after their visit to (the Respondent's) office, to fill their prescription(s). This had the effect of circumventing DEA regulations by, in effect, permitting (the Respondent's) patients to obtain refills of Schedule II prescriptions. Under DEA regulations, prescriptions are to be dated as of the date of issue. *See* 21 CFR 1306.05(a)("All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued * * *") Prescriptions for Schedule II controlled substances are not refillable. *See* 21 CFR 1306.12 ("The refilling of a prescription for a Schedule II controlled substances listed in Schedule II is prohibited").

By letter dated February 26, 2002, the Respondent requested a hearing in this matter. After the parties filed respective prehearing submissions, on June 26, 2002, the Government filed a Request for Stay of Proceedings and Motion for Summary Disposition. In support of its motion, the Government asserted that on June 20, 2002, the Medical Board issued Findings of Fact, Conclusions of Law and Order of Discipline in a disciplinary proceeding against the Respondent. The Medical Board's action resulted in the indefinite suspension of the Respondent's medical license, effective April 18, 2002.

On March 28, 2002, Administrative Law Judge Gail A. Randall (Judge Randall) issued her opinion, Order, and Recommended Ruling of the Administrative Law Judge (Opinion and Recommended Ruling). In her Opinion and Recommended Ruling, Judge Randall granted the Government's motion for summary disposition, and found that the Respondent lacks authorization to handle controlled substances in the State of North Carolina, and that the Respondent's medical license is unlikely to be reinstated in the near future.

In granting the Government's motion, Judge Randall also recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. Neither party filed exceptions to her Opinion and Recommended Ruling, and on August 21, 2002, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge.

The Deputy Administrator finds that in its June 20, 2002 Order, the Medical Board reached findings that were alleged in its October 10, 2001 Notice of Charges. Those findings included *inter alia*, that the Respondent routinely failed to inquire as to whether a patient received medications from other physicians or sources when he knew or had reason to believe the patient was

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abusing drugs. The Medical Board also found that the Respondent diverted and stockpiled the weight-loss drug Pondimin (Fenfluramine) (a Schedule IV controlled substance) for his personal use by asking the patients to return their supplies of the drug to him. Consistent with its findings and conclusions, the Medical Board ordered the indefinite suspension of the Respondent's North Carolina medical license. In addition, the Medical Board ordered that the Respondent may petition for reinstatement of his medical license "no sooner than April 18, 2003."

There is no evidence before the Deputy Administrator to rebut findings that effective April 18, 2002, the Respondent's license to practice medicine in the State of North Carolina was indefinitely suspended and that he is not eligible to petition for reinstatement of that license until April 18, 2003. Therefore, the Deputy Administrator finds that since the Respondent is not currently authorized to practice medicine in North Carolina, it is reasonable to infer that he is not authorized to handled controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handled controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

The parties do not dispute the fact that Respondent is currently without authorization to handle controlled substances in North Carolina. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977). This standard also applies in matters involving the immediate suspension of a DEA Certificate of Registration under 21 U.S.C. 824(d). Chemical Dependence Associates of Houston, 58 FR 3705 (July 12, 1993).

Here, it is clear that the Respondent is not licensed to handle controlled substances in North Carolina. Since Respondent lacks such authority, he is not entitled to a DEA registration in that state. In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition.

Because the Respondent is not entitled to a DEA registration in North Carolina Due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether the Respondent's registration should be revoked based upon the other grounds asserted in the Order to Show Cause and Notice of Immediate Suspension of Registration. *See* Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AT2853706, issued to Joseph H. Talley, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 20, 2002.

Dated: November 20, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30256 Filed 11–27–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Clark G. Triftshauser, M.D., Revocation of Registration

On May 13, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Clark G. Triftshauser, M.D. (Dr. Triftshauser) of Albion, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BT5294866, under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Triftshauser is not currently authorized to handle controlled substances in New York, the state in which he practices. The OTSC also alleged that Dr. Triftshauser had been convicted of a felony related to controlled substances and had otherwise committed acts that would render his registration inconsistent with the public interest. The order notified Dr. Triftshauser that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Triftshauser at his registered location in Albion, New York and to the new York State Groveland Correctional Facility in Sonyea, New York, where Dr. Triftshauser is presently incarcerated. DEA received a signed receipt indicating that the Order to Show Cause was received on Dr. Triftshauser's behalf at the correctional facility on May 20, 2002. DEA has not received a request for hearing or any other reply from Dr. Triftshauser or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Triftshauser is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on October 28, 1987, Dr. Triftshauser was issued DEA Certificate of Registration, AT6847240, in Schedules II through V. In 1987, Dr. Triftshauser's medical license was suspended after it was discovered that he had obtained Dexedrine, a Schedule II controlled substance, for his personal use. On March 21, 1991, Dr. Triftshauser surrendered his New York state medical license after it was discovered that over a thirty-two month period, he had obtained hydrocodone syrup (a Schedule III controlled substance) for his personal use. As a result, on December 14, 1991, Dr. Triftshauser surrendered DEA Certificate of Registration, AT6847240.

On June 30, 1994, Dr. Triftshauser's medical license was restored and he was placed on a five-year period of probation. As part of his probation, he agreed to refrain from the personal use of controlled substances and submit to random urinalysis for detection of any misuse of drugs. These urine screens were to be administered by the Committee for Physicians' Health of the State of New York Medical Society ("CPH").

In May 1995, Dr. Triftshauser submitted a new application for DEA Certificate of Registration. He materially falsified that application by failing to disclose the 1987 suspension of his New York medical license, as well as his March 1991 surrender of that license. In lieu of further proceedings to deny his application for DEA registration, on April 1, 1997, Dr. Triftshauser entered into a Memorandum of Agreement with DEA, in which he agreed to several terms and conditions. Among the terms agreed upon by the parties was the limiting of Dr. Triftshauser's registration to Schedules IV and V. Accordingly, on April 17, 1997, Dr. Triftshauser was issued DEA Certificate of Registration, BT5294866, as a practitioner, authorized to handle controlled substances in Schedules IV and V. That registration remains valid through November 30, 2002.

In November 1998, Dr. Triftshauser underwent a random urine screen. The screen came back positive for Librium (chlordiazepoxide), a Schedule IV controlled substance. As a result of your positive drug screen, Dr. Triftshauser was referred by CPH for evaluation of further drug treatment and increased urine monitoring.

Following Dr. Triftshauser's second stint of drug evaluation and treatment, he was referred to a Medina, New York, physician, who agreed to employ him in his practice and act as his program monitor. In or around 2001, an investigation by the New York State Department of health, state Board of Professional Medical Conduct, (the Board) revealed that between September 2000 and February 2001, Dr. Triftshauser falsified seven prescriptions for Lortab, a Schedule III controlled substance, and later presented them to be filled at several pharmacies. Specifically, Dr. Triftshauser falsely represented that the above prescriptions were issued to him by his employing physician.

On February 21, 2001, Dr. Triftshauser was arrested in Genesee County, New York, and charged with criminal possession of a forged instrument (prescription). Following his pre-trial release from prison, he was arrested on March 29, 2001, by the Medina New York Police Department and charged with forgery of a controlled substance. He was subsequently indicted on two counts of criminal possession of a forged instrument, two counts of criminal possession of a controlled substance, and two counts of falsifying business records. On February 8, 2002, in the Orleans County District Court State of New York, Dr. Triftshauser entered a guilty plea to one count of criminal possession of a forged instrument. He was sentenced to imprisonment of between two and seven years and assessed a fine of $5,000. Therefore, he has been convicted of a felony related to controlled substances. 21 U.S.C. 824(a)(2).

On July 20, 2001, the Board issued a Final Order revoking Dr. Triftshauser's license to practice medicine. His medical license has not been reinstated. Therefore, he is not currently authorized to handle controlled substances in the State of New York. 21 U.S.C. 824(a)(3).

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Muttaiya Darmarajeh, M.D., 66 FR 52936 (2001); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Triftshauser is not licensed to handle controlled substances in the State of New York, where he is registered with DEA. Therefore, he is not entitled a DEA registration in that state. Moreover, Dr. Triftshauser has been convicted of a felony relating to controlled substances and has otherwise committed such acts as would render his registration inconsistent with the public interest.

Accordingly, the Deputy Administration of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BT5294866, issued to Clark G. Triftshauser, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 30, 2002.

Dated: November 12, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30253 Filed 11–27–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Johnnie Melvin Turner, M.D.; Revocation of Registration

On June 18, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Johnnie Melvin Turner, M.D. (Dr. Turner) of Chicago Illinois, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BT5794866 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Turner is subject to a ten year exclusion from participation in Medicare. The order also notified Dr. Turner that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Turner at his work address in Chicago, Illinois. The letter was returned unclaimed. A second Order to Show Cause was sent on October 17, 2001, by certified mail, to another address where Dr. Turner was purportedly working. Again, the letter was again returned unclaimed, and DEA has been unable to determine Dr. Turner's current whereabouts. DEA has not received a request for hearing or any other reply from Dr. Turner or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Turner is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Turner currently possesses DEA Certificate of Registration BT5794866. That registration expired on November 2000, but the Deputy Administrator hereby extends the registration for purposes of this revocation proceeding. 21 CFR 1301.37(i). The Deputy Administrator further finds that from January 6, 1992 to April 1994, Dr. Turner, along with two other individuals, submitted numerous fraudulent claims in excess of $100,000 to the Illinois Medicare-Part B Program, by billing for services that were not rendered, and as a result, Dr. Turner obtained fees that he was not entitled to.

As a result of Dr. Turner's fraudulent activity, in September 1998, he was indicted in the United States District Court, Northern District of Illinois (Eastern Division) on eleven felony counts related to his improper billing practices. On October 20, 1998, he entered a guilty plea to one felony count of mail fraud. On May 11, 1999, he was sentenced five years probation and ordered to pay restitution of $106,132 to the United States Department of Health and Human Services.

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As a result of Dr. Turner's conviction, on August 31, 1999, he was notified by the Department of Health and Human Services of his ten-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). Effective September 17, 1999, the Illinois Department of Public Aid terminated him from that State's Medical Assistance Program. Exclusion from Medicare is an independent ground for revoking a DEA registration. 21 U.S.C. 824(a)(5).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BT5794866, issued to Johnnie Melvin Turner, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 30, 2002.

Dated: November 12, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–30254 Filed 11–27–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Project Speak Out! Biographical Information/Program Eligibility Questionnaire and Project Speak Out! Initial Interview Form; Forms I–908 and I–909.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 28, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Information Collection.

(2) *Title of the Form/Collection:* Biographical Information/Program Eligibility Questionnaire and Practitioner Fraud Pilot Program Initial Interview Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–908 and I-909. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection will be used by the INS to identify unscrupulous immigration practitioners who intentionally defraud undocumented alien victims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 and burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 22, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–30264 Filed 11–27–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2240—02]

Immigration and Naturalization Service Airport and Seaport Inspections User Fee Advisory Committee Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service Airport and Seaport Inspections User Fee Federal Advisory Committee.

Date and time: Wednesday, February 12, 2003, at 1 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street NW, Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

Status: Open. Twenty-fifth meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service (INS) pursuant to section 286(k) of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act, 5 U.S.C. app. 2. The responsibility of this standing Advisory Committee is to advise the INS Commissioner on issues related to the performance of Airport and Seaport Immigration Inspection Services. This advice should include, but need not be limited to, the time period which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the INA, as amended, 8 U.S.C. 1356(d). The Advisory Committee focuses its attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street NW., Washington, DC 20536; telephone: (202) 616–7498; fax: (202) 514–8345; or e-mail: *charles.d.montgomery@usdoj.gov.*

Dated: November 18, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–30263 Filed 11–27–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6746]

State of Alaska Commercial Fisheries Entries Commission Permit # 60501X, Egegik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #60501X, Egegik, Alaska.

The workers stopped fishing on July 20, 1999, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30173 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5825]

State of Alaska Commercial Fisheries Entries Commision Permit # 5623OM, Levelock, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #5623OM, Levelock, AL.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30174 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6940]

State of Alaska Commercial Fisheries Entries Commission Permit # 56217N, New Stuyahok, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #56217N, New Stuyahok, Alaska.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30175 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6950]

State of Alaska Commercial Fisheries Entries Commission Permit #61359I, Nondalton, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the

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Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #61359I, Nondalton, Alaska.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30176 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7228]

State of Alaska Commercial Fisheries Entries Commission Permit #58934R, Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #58934R, Iliamna, Alaska.

The workers did not fish from 2000 through September 2002, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30177 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7277]

State of Alaska Commercial Fisheries Entries Commission Permit #65876R, Levelock, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #65876R, Levelock, AL.

The workers have not fished since July of 1999, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 13th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30178 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7382]

State of Alaska Commercial Fisheries Entries Commission Permit #60849H, Naknek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #60849H, Naknek, Alaska.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 13th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30179 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7414]

State of Alaska Commercial Fisheries Entries Commission Permit #65030C, Nondalton, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #65030C, Nondalton, Alaska.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30180 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6610]

State of Alaska Commercial Fisheries Entries Commision Permit #57286F, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter d, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #57286F, Dillingham, Alaska.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30182 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6854]

State of Alaska Commercial Fisheries Entries Commision Permit #55470W, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #55470W, Monokotak, Alaska.

The workers stopped fishing in July of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30183 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6887]

Permit #65007E, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit #58071B, Naknek, Alaska.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30184 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7023]

State of Alaska Commercial Fisheries Entries Commission Permit #58071B, Togiak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #58071B, Togiak, Alaska.

The workers stopped fishing in July of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30185 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7151]

Permit #65823B, Dillingham, AK; Notice Of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit #65823B, Dillingham, Alaska.

The workers did not fish after 2000, more than one year from the September 5, 2002, petition date. Section 223(b) (1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30186 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7226]

State of Alaska Commercial Fisheries Entries Commission Permit #64412C, Egegik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #64412C, Egegik, Alaska.

The workers did not fish from 2000 through September 2002, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30187 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6556]

Permit #57331M, Clarks Point, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, permit #57331M, Clarks Point, AL.

The workers did not fish during the relevant period, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30188 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6851]

State of Alaska Commercial Fisheries Entries Commission Permit #55104G, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #55104G, Monokotak, Alaska.

The workers stopped fishing in 2000, more than one year prior to the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30190 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–07609]

GE Transportation Systems, Global Signaling LLC, Warrensburg, MO; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 7, 2002, in response to a petition filed by a company official on behalf of workers at GE Transportation Systems Global Signaling LLC, Warrensburg, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 15th day of November, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30181 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6185 and NAFTA–6185A]

Pillowtex Corporation, Columbus, Georgia; Pillowtex Corporation, Phenix City Facility Finishing and Weave and Columbus Towel Greige, Phenix City, AL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on May 10, 2002, in response to a worker petition filed by a company official on behalf of workers at Pillowtex Corporation, located in twin plants at Columbus, Georgia and Phenix, Alabama. The workers produced bath products, primarily terrycloth bath towels, hand towels, and washcloths.

An investigation revealed that the subject firm's workers are already subject to recently issued negative NAFTA determinations.

Workers at Pillowtex Corporation, Phenix City Finishing and Weave, and Columbus Towel Greige, Phenix City, Alabama, were denied eligibility to apply for NAFTA Transitional Adjustment on July 3, 2002 (NAFTA–6219). Workers in the same worker group were certified eligible for Trade Adjustment assistance on October 31, 2002 (TA–W–41,512)

Workers at Pillowtex Corporation, Fieldcrest Cannon—Eagle & Phenix, Columbus, Georgia, were denied eligibility to apply for NAFTA Transitional Adjustment on August 14, 2001 (NAFTA–4948C). Workers in the same worker group were certified eligible for Trade Adjustment assistance on November 13, 2001 (TA–W–39,416C).

No new information or change in circumstances is evident which would result in a reversal of the Department's previous NAFTA determinations. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of November 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30172 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–07639]

Trans World Connections, LTD, Lynchburg, VA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 23, 2002, in response to a petition filed by a company official on behalf of workers at Trans World Connections, Ltd., Lynchburg, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 13th day of November 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–30189 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time by enacted containing provisions for the payment of wages determined to be prevailed by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related

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Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, and N.W., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. VA020054 dated March 1, 2002. See VA020015.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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NV020009 (Mar. 01, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 21st day of November, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–30057 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0200 (2003)]

Standard on Process Safety Management of Highly Hazardous Chemicals (PSM); Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA request comment concerning its proposed extension of the information-collection requirements specified by its Standard on Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119). The Clean Air Act Amendments (CAAA) OF 1990 required the Occupational Safety and Health Administration (OSHA) to develop a standard on Process Safety Management of Highly Hazardous Chemicals (PSM) (*i.e.*, "the Standard ") containing certain minimum standards to prevent accidental releases of chemicals which could pose a threat to employees. The Standard, rather than setting specific engineering requirements, emphasizes the application of documented management controls. Using the controls, companies address the risk associated with handling or working near highly hazardous chemicals. Compliance with the standard is accomplished, therefore, by requiring the employer to do a number of things such a developing a written, comprehensive management program which integrates technologies, procedures and management practices, to update operating procedures and safe work practices, to evaluate safety history and policies of contractors, to conduct periodic evaluations, and to document employee training.

DATES: Submit written comments on or before January 28, 2003.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0200(2003), OSHA, U.S. Department of Labor, Room N–2625, Constitution Avenue, NW., Washington, DC 20210; telephone; (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the collections of information collection specified by the Standard on Process Safety Management of Highly Hazardous Chemicals (PSM) is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* and select *"Information Collection Requests."*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The collections of information in the standard are necessary for implementation of the requirements of the standard. The information is used by employers to assure that process using highly hazardous chemicals with the potential of a catastrophic release are operated as safely as possible. The employer must consider all facets of a process, as well as the involvement of employees in that process. Processes are analyzed by employers so that they identify and control problems that could lead to a major release, fire or explosion. The failure of employers to collect the information will significantly impact OSHA's effort to control and reduce injuries and fatalities in workplaces that have the potential for highly hazardous chemical catastrophes.

The Standard specifies several paperwork requirements. The following sections describe the information collection requirements and who will use the information.

(A) *Employee Participation (paragraph (c)).* Paragraph 1910.119(c)(1) requires employers to develop a written plan describing the employee participation required by this paragraph. Paragraph (c)(3) requires that employers must provide employee access to process hazard analyses.

(B) *Process Safety Information (paragraph (d)).* Paragraph (d) requires employers to complete a compilation of written process safety information prior to conducting a process hazard analyses. The compilation of written process safety information, which includes the hazards of chemicals, the technology of the process and the equipment, is to enable the employer and employees involved in operating the process to identify and understand the hazards posed by processes involving highly hazardous chemicals.

(C) *Process Hazard Analysis (paragraph (e)(1)).* Paragraph (c)(1) requires the employer to perform an initial process hazard analysis on processes covered by the standard. The evaluation must be appropriate to the complexity of the process and must identify, evaluate, and control the hazards involved in the process.

(D) *Resolution of Hazards (paragraphs (e)(4) and (e)(5)).* Paragraph (e)(4) requires hazard analyses to be performed by a team with expertise in engineering and process operations and at least one employee and one member knowledgeable in the specific management process. Paragraph (e)(5) requires the employer to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner; develop a written schedule of when these actions are to be completed; document the resolution; and communicate the actions to affected operating, maintenance and other employees whose work assignments are in the process.

(E) *Updating, Revalidating, and Retaining the Process Hazard Analysis (paragraphs (e)(6) and (e)(7)).* Paragraph (e)(6) requires the employer to update and revalidate the process hazard analyses at least every five years. Paragraph (e)(7) requires the employer to retain process hazard analysis for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e)(5).

(F) *Operating Procedures (paragraph (f)(1)).* This provision requires the employer to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process.

(G) *Training (Initial, Refresher, and Documentation) (paragraphs (g)(1), (g)(2), and (g)(3)).* Paragraph (g)(1) requires employers to train employees operating dangerous process. Paragraph (g)(2) requires that the employer provide refresher training at least every three years. Paragraph (g)(3) requires the employer to prepare a record that contains the name of employee, the date of training, and the means used to verify that the employee understood the training.

(H) *Contractors (paragraphs (h)(2)(ii), (iv), (vi) and (h)(3)(iii)).* Paragraph (h)(2)(ii), requires employers, when selecting a contractor, to obtain and evaluate information regarding the contract employer's safety performance and programs. Paragraph (h)(2)(iv) requires the employer to periodically evaluate the performance of contract employers in fulfilling their obligations as specified in paragraph (h)(3) of this section. Paragraph (h)(2)(vi) requires the employer to maintain a contract employee injury and illness log related to the contractor's work in process areas. Paragraph (h)(3)(iii) requires the contract employer to document contract employees have been trained to perform covered activities safely.

(I) *Pre-startup Safety Review (paragraph (i)).* Paragraph (i) requires the employer to perform a pre-start-up safety review for new facilities and for modified facilities when the modification is significant enough to require a change in the process safety information.

(J) *Written Procedures, Inspections and Testing (paragraphs (j)(2) and (j)(4)).* Paragraph (j)(2) requires the employer to establish written procedures to maintain the on-going integrity of process equipment. Paragraph (j)(4) requires that employers perform inspections and tests on process equipment and that each inspection and test be documented

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(under (j)(4)(iv)). The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(K) *Hot Work Permit (paragraph (k)).* Paragraph (k) requires the employer to issue a hot work permit for hot work operations conducted on or near a covered process. The permit shall indicate the date(s) authorized for hot work and identify the object on which hot work is to be performed. The permit must be kept on file until completion of the hot work operations.

(L) *Management of Change (paragraph (l)).* Paragraph (l) requires the employer to establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and for changes to facilities that affect a covered process.

(M) *Incident Investigation (paragraph (m)).* Paragraph (m) requires the employer to investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of highly hazardous chemical in the workplace. An accident investigation is to be initiated as promptly as possible, but not later than 48 hours following the incident. Paragraph (m)(4) requires that the report be prepared at the conclusion of the investigation which includes, at a minimum, the date of the incident; the date the investigation began; a description of the incident; the factors that contributed to the incident; and any recommendations resulting from the investigation. Resolutions and corrective measures are required to be documented. Paragraph (m)(7) requires that incident investigation reports be retained for five years.

(N) *Emergency Planning and Response (paragraph (n)).* Paragraph (n) requires the employer to establish and implement an emergency action plan in accordance with the provisions of 29 CFR 1910.38(a). In addition, the emergency action plan shall include procedures for handling small releases. Employers covered under this standard may also be subject to the hazardous waste and emergency response provisions contained in 29 CFR 1910.120(a), (p), and (q).

(O) *Compliance Audits (paragraph (o)).* Under paragraph (o)(1), employers are required to certify that they have evaluated compliance with the provisions of this section at least every three years to verify that the procedures and practices developed under the standard are adequate and are being followed. Paragraph (o)(3) requires that a report of the findings of the audit be developed and paragraph (o)(5) requires that the last two reports be retained.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by the Standard on Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119).

OMB Number: 1218–0200.

Affected Public: Business or other for-profit; Federal government.

Number of Respondents: 212,422.

Frequency of Recordkeeping: Varies depending upon the collection of information contained in the Standard.

Average Time per Response: Varies from five minutes (.08 hour) to generate, maintain and disclose training documentation to 2,454.4 hours to establish and implement a management of change program.

Total Annual Hours Requested: 51,298,797.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC., on November 25, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–30301 Filed 11–27–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 28, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the: NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following website: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0053.

Form Number: NCUA 4501.

Type of Review: Revision to a currently approved collection.

Title: Report of Officials.

Description: 12 U.S.C. 1761—This statutory provision requires that a record of the names and addresses of the executive officers, members of the supervisory committee, credit committee, and loan officers shall be filed with the administration within 10 days of their election/appointment.

Respondents: All Federally Insured Credit Unions.

Estimated No. of Respondents/Record keepers: 9,900.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 9,900.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–30163 Filed 11–27–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: 60-day notice of information collection under review: New Collection: Identification of Education and Training for Pre-/Paraprofessional Library Staff.

The Institute of Museum and Library Services (IMLS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public. Comments are encouraged and will be accepted for "sixty days" until January 28, 2003. If you have any additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mamie Bittner, Director, Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Written comments and suggestions from the public concerning the proposed collection of information should address one or more of the following:

(1) Evaluate whether the proposed collection of information is an appropriate function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* IMLS Survey of Education Opportunities Available for Library Support/Paraprofessional Staff in the U.S.

(3) *The agency form, if any, and the applicable component of the Department sponsoring the collection:* No form number. Institute of Museum and Library Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public includes all providers of education and training degree programs, certification, and individual courses appropriate for the support/paraprofessional-level worker in all types of libraries (*e.g.* public; academic, government; "special" in terms of subject or organization, such as not-for-profit association or corporate entity, school). This collection will gather information related to the content of the programs/courses, instructional modes or resources available to both instructors and students; student demographics, demographics concerning instructors; and existing methods for program evaluation. The data will then be used to advise the Institute of Museum and Library Services as to the availability of educational and training programs targeted to this level of library worker throughout the United States and significant gaps in terms of delivery of specific types of course work within regions of the country. Programs incorporating elements identified as contributing to success will be highlighted in a summary report.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 200 respondents will each complete a Web-based survey in 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to conduct this survey is 75 hours.

If additional information is required, contact: Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or e-mail at *mbittner@imls.gov.*

Dated: November 25, 2002.

Mamie Bittner,

Director Public and Legislative Affairs, Institute of Museum and Library Services.

[FR Doc. 02–30249 Filed 11–27–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions".

2. *Current OMB approval number:* 3150–0021.

3. *How often the collection is required:* On occasion. Upon submittal of an application for a construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning or termination review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.

4. *Who is required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70 and 72.

5. *The number of annual respondents:* 18.

6. *The number of hours needed annually to complete the requirement or request:* 78,765 (an average of 4297 hours per response).

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7. *Abstract:* 10 CFR part 51 of the NRC's regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public law of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended. Submit, by January 28, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of November 2002.

For the Nuclear Regulatory Commission,

Beth St. Mary,

Acting Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–30266 Filed 11–27–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric Co., et al., Trojan Nuclear Plant, Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on November 12, 2002 (67 FR 68748), regarding issuance of an amendment to Facility Operating License No. NPR–1, issued to Portland General Electric Company, *et al.* This action is necessary to correct omission of the Amendment Number.

FOR FURTHER INFORMATION CONTACT: John Minns, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3166, e-mail: *jlm3@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 68748, in the third column, after the paragraph beginning with Effective Date, a separate paragraph should read: "Amendment No.: 208."

Dated in Rockville, Maryland, this 22nd day of November, 2002.

For the U.S. Nuclear Regulatory Commission.

John L. Minns,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–30267 Filed 11–27–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25831]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 22, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November, 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 17, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Mercury Mid Cap Growth Fund, Inc. [File No. 811–10129]

Summary: Applicant, a feeder fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. By February 11, 2002, all of applicant's shareholders had redeemed their shares at net asset value. Expenses of $13,000 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on September 17, 2002, and amended on October 25, 2002, and November 19, 2002.

Applicant's Address: Fund Asset Management, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Mercury Premier Growth Fund, Inc. [File No. 811–9823]

Summary: Applicant, a feeder fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On October 29, 2001, applicant's sole shareholder, Fund Asset Management, L.P., redeemed its shares at net asset value. Expenses of $14,500 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on September 17, 2002, and amended on October 25, 2002, and November 19, 2002.

Applicant's Address: Fund Asset Management, L.P., 800 Scudders Mill Rd., Plainsboro, NJ

Mercury Focus Twenty Fund, Inc. [File No. 811–9825]

Summary: Applicant, a feeder fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On March 25, 2002, applicant's sole shareholder, Fund Asset Management, L.P., redeemed its shares at net asset value. Expenses of approximately $11,491 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on March 28, 2002, and amended on October 30, 2002, and November 29, 2002.

Applicant's Address: Mercury Advisors, 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Prudential High Yield Total Return Fund, Inc. [File No. 811–8101]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 20, 2002, applicant transferred its assets to Prudential High Yield Fund, Inc., based on net asset value. Expenses of $129,179 incurred in connection with the reorganization were paid pro rata by applicant and the acquiring fund.

Filing Dates: The application was filed on August 19, 2002, and amended on November 14, 2002.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102.

Prudential Mortgage Income Fund, Inc. [File No. 811–3397]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 22, 1999, applicant transferred its assets to Prudential Government Income Fund Inc., based on net asset value. Expenses of $152,000 incurred in connection with the reorganization were paid pro rata by applicant and the acquiring fund.

Filing Dates: The application was filed on August 19, 2002, and amended on November 14, 2002.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102.

Managed Municipals Portfolio II Inc. [File No. 811–7046]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 29, 2002, applicant transferred its assets to Managed Municipals Portfolio Inc., based on net asset value. Expenses of $131,000 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on October 28, 2002.

Applicant's Address: 125 Broad St., New York, NY 10004.

SSBCiti Funds Inc. [File No. 811–9513]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 1, 2002, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $39,646 incurred in connection with the liquidation were paid by applicant's investment adviser, Salomon Brothers Asset Management Inc.

Filing Date: The application was filed on October 11, 2002.

Applicant's Address: 125 Broad St., New York, NY 10004.

Century Shares Trust [File No. 811–19]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 31, 2001, applicant transferred its assets to Century Capital Management Trust, based on net asset value. Expenses of $114,207 incurred in connection with the reorganization were paid by applicant and Century Capital Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on October 11, 2002.

Applicant's Address: Steven Alfano, c/o Century Capital Management, Inc., One Liberty Sq., Boston, MA 02109.

Nations Fund Trust [File No. 811–4305]; Nations Fund, Inc. [File No. 811–4614]; The Capitol Mutual Funds d/b/a Nations Reserves [File No. 811–8030]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On May 10, 2002, and May 17, 2002, each applicant transferred its assets to corresponding series of Nations Funds Trust, based on net asset value. Expenses of $2,018,171, $296,867 and $1,763,782, respectively, incurred in connection with the reorganizations were paid by each applicant and Banc of America Advisors, LLC, applicants' investment adviser.

Filing Date: The applications were filed on October 18, 2002.

Applicants' Address: 111 Center St., Suite 300, Little Rock, AR 72201.

Bailard, Biehl & Kaiser Fund Group [File No. 811–4828]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 26, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant has retained $52,073 to cover accrued but unpaid liabilities. Bailard, Biehl & Kaiser, Inc., applicant's investment adviser, paid all expenses incurred in connection with the liquidation.

Filing Date: The application was filed on October 9, 2002.

Applicant's Address: 950 Tower Ln., Suite 1900, Foster City, CA 94404.

Georgia Daily Municipal Income Fund, Inc. [File No. 811–8425]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 8, 2002, applicant made a liquidating distribution to its sole shareholder, based on net asset value. Expenses of $4,000 incurred in connection with the liquidation were paid by Reich & Tang Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on October 11, 2002.

Applicant's Address: 600 Fifth Ave., New York, NY 10020.

LaSalle Master Trust [File No. 811–8597]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 10, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $15,000 incurred in connection with the liquidation were paid by LaSalle Investment Management (Securities), L.P., applicant's investment adviser.

Filing Date: The application was filed on November 1, 2002.

Applicant's Address: 100 East Pratt Street, Baltimore, MD 21202.

Merrill Lynch KECALP L.P. 1987 [File No. 811–4979]; Merrill Lynch KECALP L.P. 1989 [File No. 811–5714]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 31, 2000, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $60,254 and $58,458, respectively, incurred in connection with the liquidations were paid by each applicant and KECALP Inc., investment adviser to the applicants.

Filing Date: The applications were filed on November 5, 2002.

Applicants' Address: 4 World Financial Center, 23rd Floor, New York, NY 10080.

Franklin Asset Allocation Fund [File No. 811–730]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 8, 2001, each class of applicant transferred its assets to a corresponding class of Franklin Growth and Income Fund, based on net asset value. Expenses of $35,010 incurred in connection with the reorganization were paid by applicant,

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the acquiring fund and Franklin Advisers, Inc., investment adviser to applicant and the acquiring fund.

Filing Dates: The application was filed on August 22, 2002, and amended on October 29, 2002.

Applicant's Address: One Franklin Parkway, San Mateo, CA 94403–1906.

North Carolina Daily Municipal Income Fund, Inc. [File No. 811–6344]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 9, 2002, applicant made a liquidating distribution to its sole shareholder based on net asset value. Expenses of $4,000 incurred in connection with the liquidation were paid by Reich & Tang Asset Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on October 9, 2002.

Applicant's Address: 600 Fifth Ave., New York, NY 10020.

Alliance International Fund [File No. 811–3130]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 23, 2002, applicant transferred its assets to AllianceBernstein International Value Fund of AllianceBernstein Trust, based on net asset value. Expenses of $324,020 incurred in connection with the reorganization were paid by applicant and Alliance Capital Management, L.P., applicant's investment adviser.

Filing Date: The application was filed on October 9, 2002.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30195 Filed 11–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46883; File No. SR–Amex–2002–88]

Self-Regulatory Organizations; the American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Notes Linked to the Performance of the Dow Jones Industrial Average ("DJIA")

November 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under section 107A of the Amex Company Guide ("Company Guide"), notes linked to the performance of the Dow Jones Industrial Average (the "DJIA" or the "Market Recovery Notes" or "Notes").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Exchange proposes to list for trading under section 107A of the Company Guide notes, the performance which is linked to the DJIA (the "Market Recovery Notes" or "Notes").[4] The DJIA is determined, calculated and maintained solely by Dow Jones.[5] The Notes will provide for a multiplier of any positive performance of the DJIA during such term subject to a maximum payment amount or ceiling.

The Notes will initially conform to the listing guidelines under section 107A[6] and continued listing guidelines under sections 1001–1003[7] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch. The Notes will have a term of not less than one, nor more, than 10 years. Merrill Lynch will issue the Notes in denominations of whole units (a "Unit"), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the DJIA. At maturity, if the value of the DJIA has increased over the term of the Notes, a beneficial owner will be entitled to receive a payment on the Notes equal to three times the amount of that percentage increase, not to exceed a maximum payment (the "Capped Value") to be determined at the time of issuance of the Notes. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. The Notes are also not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the "Redemption Amount") depends entirely on the relation of the average of the values of the DJIA at the close of the market on five business days shortly before the maturity of the Notes (the "Ending Value") and the closing value of the DJIA on the date the Notes are priced for initial sale to the public (the "Starting Value").

If the Ending Value is greater than the Starting Value, the Redemption Amount per Unit will equal:

$$\$10+\left(\$30\times\left(\frac{\text{Ending Value}-\text{Starting Value}}{\text{Starting Value}}\right)\right)\text{not to exceed the Capped}$$

If the Ending Value is less than or equal to the Starting Value, the Redemption Amount per Unit will equal:

$$\$10\times\left(\frac{\text{Ending Value}}{\text{Starting Value}}\right)$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the DJIA. The Notes are designed for investors who want to participate or gain exposure to the DJIA, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The SEC has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the DJIA.[8]

As of October 29, 2002, the market capitalization of the securities included in the DJIA ranged from a high of $279.3 billion to a low of $10 billion. The average daily trading volume for these same securities for the last six months, as of the same date, ranged from a high of 57.3 million shares to a low of 2 million shares.

Because the Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[9] Second, the Notes will be subject to the equity margin rules of the Exchange.[10] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Merrill Lynch will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, [11] in general, and furthers the objectives of section 6(b)(5),[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Merrill Lynch & Co., Inc. ("Merrill Lynch") and Dow Jones & Co., Inc. ("Dow Jones") have entered into a non-exclusive license agreement providing for the use of the DJIA by Merrill Lynch and certain affiliates and subsidiaries in connection with certain securities including these Notes. Dow Jones is not responsible and will not participate in the issuance and creation of the Notes.

[5] The DJIA is a price-weighted index comprised of 30 common stocks chosen by the editors of the Wall Street Journal ("WSJ") as representative of the broad market of U.S. industry. A price-weighted index refers to an index that assigns weights to component stocks based on the price per share rather than total market capitalization of such component stock. The corporations represented in the DJIA tend to be leaders within their respective industries and their stocks are typically widely held by individuals and institutional investors. Changes in the composition of the DJIA are made solely by the editors of the WSJ. In addition, changes to the common stocks included in the DJIA tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. However, over time, changes are made to more accurately represent the broad market of U.S. industry. In choosing a new corporation for the DJIA, the editors of the WSJ focus on the leading industrial companies with a successful history of growth and wide interest among investors. Dow Jones, publisher of the WSJ, is not affiliated with Merrill Lynch and has not participated in any way in the creation of the Notes. The number of common stocks in the DJIA has remained at 30 since 1928, and, in an effort to maintain continuity, the constituent corporations represented in the DJIA have been changed on a relatively infrequent basis.

[6] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely in part, on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] *See* Securities Exchange Act Release Nos. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (approving the listing and trading of options on the DJIA); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (approving the listing and trading of DIAMONDS℠ Trust Units, portfolio depositary receipts based on the DJIA).

[9] Amex rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[10] *See* Amex rule 462 and section 107B of the Company Guide.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-Amex-2002 88 and should be submitted by December 20, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[13] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[14] Accordingly, the Commission finds that the listing and trading of the Notes based on the DJIA is consistent with the Act and will promote just and equity principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[15]

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the percentage change of the DJIA. Specifically, at maturity, the holder of a Note will be entitled to receive a payment equal to three times the amount of that percentage increase, not to exceed a certain maximum payment, if the value of the DJIA has increased over the term of such Note. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the DJIA, subject to a cap.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial sales of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of material, non-public information by its employees.

In approving the product, the Commission recognizes that the DJIA is a price-weighted index comprised of 30 component common stocks, representing a broad market of the U.S. industry, with each stock affecting the DJIA in proportion to its market price. The Commission notes that the changes in the composition of the DJIA are made solely by the editors of the WSJ. The changes to these common stocks tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. Further, the Commission notes that the DJIA has remained at 30 since 1928. As of October 29, 2002, the 30 stocks in the DJIA ranged in capitalization from a high of $279.3 billion to a low of $10 billion. In addition, the average daily trading volume for the component stocks over the six-month period from May 2002 to October 2002 ranged from a high of 57.3 million shares to a low of 2 million shares. Given the compositions of the stocks underlying the DJIA, the Commission believes that the listing and trading of the Notes that are linked to the DJIA, should not unduly impact the market for the underlying securities comprising the DJIA or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the DJIA are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the DJIA, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.[16] In any event, financial information regarding Merrill Lynch, in addition to the information on the 30 common stocks comprising the DJIA, will be publicly available.[17]

The Commission also has a systemic concern, however, that a broker-dealer such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[18] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Finally, the Commission notes that the value of the DJIA will be disseminated at least once every 15 seconds throughout the trading day. The Commission believes that providing access to the value of the DJIA at least once every 15 seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[19] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act[20] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR-Amex-2002-88), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-30198 Filed 11-27-02; 8:45 am]

BILLING CODE 8010-01-P

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release Nos. 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select European 50 Index); 45639 (March 25, 2002), 67 FR 15258 (March 29, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Oil and Natural Gas Index); 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected exchangeable notes linked to the Biotech-Pharmaceutical Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Balanced Strategy Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Industrial 15 Index); and 44342 (May 23, 2001); 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index).

[15] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Company Guide section 107A.

[17] The SEC notes that the 30 component stocks that comprise the DJIA are reporting companies under the Act, and the Notes will be registered under section 12 of the Act.

[18] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

[19] *See supra* note 14.

[20] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46882; File No. SR-Amex-2002-76]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Based on the Select Fifty Index

November 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 20, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading notes, the return on which is based upon the performance of an equal-dollar weighted portfolio of securities representing the fifty stocks with the largest market capitalization in the S&P 500 Composite Stock Price Index (the "S&P 500 Index" or "Underlying Index"), as reduced by an adjustment factor as described below (the "Select Fifty Index" or "Index").[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Select Fifty Index. The Select Fifty Index will be determined, calculated and maintained solely by the Amex.[5]

The Notes will initially conform to the listing guidelines under Section 107A[6] and continued listing guidelines under Sections 1001-1003[7] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch"). The Notes will have a term of not less than one, nor more than ten years. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] As of September 3, 2002 the portfolio of securities comprising the Select Fifty Index consists of: Abbott Laboratories; American Express Company; American International Group, Inc.; Amgen Inc.; Anheuser-Busch Companies, Inc.; AOL Time Warner Inc.; AT&T Corp.; Bank of America Corporation; Bank One Corporation; Bellsouth Corporation; Bristol-Meyers Squibb Company; ChevronTexaco Corporation; Cisco Systems, Inc.; Citigroup Inc.; The Coca-Cola Company; Dell Computer Corporation; E.I. du Pont de Nemours and Company; Eli Lilly and Company; Exxon Mobil Corporation; Federal Home Loan Mortgage Corporation; Federal National Mortgage Association; Fifth Third Bancorp; General Electric Company; The Goldman Sachs Group, Inc.; Hewlett-Packard Company; The Home Depot, Inc.; International Business Machines Corporation; Intel Corporation; J.P. Morgan Chase & Co.; Johnson & Johnson; Medtronic, Inc.; Merck & Co., Inc.; Microsoft Corporation; Minnesota Mining and Manufacturing Company; Morgan Stanley, Dean Witter, Discover & Co.; Oracle Corporation; PepsiCo, Inc.; Pfizer Inc.; Pharmacia Corporation; Philip Morris Companies Inc.; The Procter & Gamble Company; SBC Communications Inc.; Texas Instruments Incorporated; U.S. Bancorp; Verizon Communications Inc.; Viacom Inc.; Wachovia Corporation; Wal-Mart Stores, Inc.; Wells Fargo & Company; and Wyeth.

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990). 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

[5] Subject to the criteria in the prospectus regarding the construction of the Index, the Exchange has sole discretion regarding changes to the Index due to annual reconstitutions and adjustments to the Index and the multipliers of the individual components.

[6] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

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Amount"). The "Starting Index Value" is the value of the Select Fifty Index on the date the issuer prices the Notes for the initial sale to the public. The "Ending Index Value" is the value of the Select Fifty Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During an approximately two-week period in the designated month each year, the investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Select Fifty Index at such repurchase date. The Notes are not callable by the issuer.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio of securities comprising the Select Fifty Index. The Notes are designed for investors who want to participate or gain exposure to a broad section of large capitalization companies and who are willing to forego market interest payments on the Notes during such term.

The Select Fifty Index will consist of a portfolio of stocks (excluding Merrill Lynch and its affiliates) of the fifty companies with the largest market capitalization in the S&P 500 Index[8] at the time of initial composition or any reconstitution of the Select Fifty Index. The Securities and Exchange Commission ("Commission" or "SEC") has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the S&P 500 Index.[9] In addition, the Commission in 1994 granted approval to the listing and trading of options on an index comprised of the fifty largest U.S. stocks as measured by market capitalization.[10]

Components of the Select Fifty Index approved pursuant to this filing will also meet the following criteria: (1) A minimum market value of at least $75 million, except that up to 10% of the component securities in the Select Fifty Index may have a minimum market value of $50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Select Fifty Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Select Fifty Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (4) all component stocks will either be listed on the Amex, the New York Stock Exchange, Inc. ("NYSE") or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ") and reported National Market System securities.

If calculated as of September 16, 2002, the market capitalization of the securities that would represent the Select Fifty Index would range from a high of $269.1 billion to a low of $35.2 billion. The average monthly trading volume of those same securities for the last six months, as of the same date, ranged from a high of 463.5 million shares to a low of 87.9 million shares. Moreover, as of September 16, 2002, all of the securities that would comprise the Select Fifty Index were eligible for standardized options trading pursuant to Amex Rule 915.

At the outset, each of the securities in the Select Fifty Index will represent approximately an equal percentage of the Starting Index Value. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents approximately an equal percentage of the value of the entire portfolio underlying the Select Fifty Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, initially each of the fifty companies included in the Select Fifty Index will represent approximately 2.00% of the total portfolio at the time of issuance. The Select Fifty Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day the Notes are priced for initial sale to the public.

The value of the Select Fifty Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Select Fifty Index and the applicable share multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[11] Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by the issuer on one share of stock underlying the Select Fifty Index during the current calendar quarter multiplied by the share multiplier applicable to such stock on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each then outstanding component of the Select Fifty Index. The amount of the current quarter dividends allocated to each stock will equal the percentage of the value of such stock contained in the portfolio of securities comprising the Select Fifty Index relative to the value of the entire portfolio based on the closing market price of such stock on the last day in the immediately preceding calendar quarter. The share multiplier of each stock will be increased to reflect the number of shares, or portion of a share, that the amount of the current quarter dividend allocated to each stock can purchase of each stock based on the closing market price on the last day in the immediately preceding calendar quarter.

[8] The S&P 500 Index is a broad-based stock index which provides an indication of the performance of the U.S. equity market. The S&P 500 Index is a capitalization-weighted index reflecting the total market value of 500 widely-held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. ("NYSE") or traded through NASDAQ. The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

[9] *See* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500 Index)(SPDR); and 45160 (December 17, 2001) 66 FR 66485 (December 26, 2001) (approving the listing and trading of notes based on the Balanced Strategy Index).

[10] *See* Securities Exchange Act Release No. 33973 (April 28, 1994), 59 FR 23245 (May 5, 1994) (approving the listing and trading of options on the Big Cap Index).

[11] At the end of each day, the Select Fifty Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.*, 1.5%/365 days = 0.0041% daily). This reduction to the value of the Select Fifty Index will reduce the total return to investors upon exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

As of the close of business on each anniversary date (anniversary of the day the Notes are priced for initial sale to the public) through the applicable anniversary date in the year preceding the maturity of the Notes, the portfolio of securities comprising the Select Fifty Index will be reconstituted by the Amex so as to include the fifty stocks (excluding Merrill Lynch and its affiliates) having the largest market capitalization in the S&P 500 Index on the second scheduled index business day prior to such anniversary date. The Exchange will announce such changes to investors at least one day prior to the anniversary date.[12]

The portfolio will be reconstituted and rebalanced on the anniversary date so that each stock in the Select Fifty Index will represent approximately 2.00% of the value of the Select Fifty Index. To effectuate this, the share multiplier for each new stock will be determined by the Amex and will indicate the number of shares or fractional portion thereof of each new stock, given the closing market price of such new stock on the anniversary date, so that each new stock represents an equal percentage of the Select Fifty Index value at the close of business on such anniversary date. For example, if the Select Fifty Index value at the close of business on an anniversary date was 150, then each of the fifty new stocks comprising the Select Fifty Index would be allocated a portion of the value of the Select Fifty Index equal to 3, and if the closing market price of one such new stock on the anniversary date was 20, the applicable share multiplier would be 0.15. Conversely, if the Select Fifty Index value was 50, then each of the fifteen new stocks comprising the Select Fifty Index would be allocated a portion of the value of the Select Fifty Index equal to 1 and if the closing market price of one such new stock on the anniversary date was 20, the applicable share multiplier would be 0.05. The last anniversary date on which such reconstitution will occur will be the anniversary date in the year preceding the maturity of the Notes. As noted above, investors will receive information on the new portfolio of securities comprising the Select Fifty Index at least one day prior to each anniversary date.

The multiplier of each component stock in the Select Fifty Index will remain fixed until adjusted for quarterly dividend adjustments, annual reconstitutions or certain corporate events, such as payment of a dividend other than an ordinary cash dividend, a distribution of stock of another issuer to its shareholders,[13] stock split, reverse stock split, and reorganization.

The multiplier of each component stock may be adjusted, if necessary, in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders. If the issuer of a stock included in the Select Fifty Index were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, a value equal to the stock's final value will be assigned to the stock for the purpose of calculating the Select Fifty Index value prior to the subsequent anniversary date. For example, if a company included in the Select Fifty Index were acquired by another company, a value will be assigned to the company's stock equal to the value per share at the time the acquisition occurred. If the issuer of stock included in the Select Fifty Index is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Select Fifty Index so long as a market price for such security is available or until the subsequent anniversary date. If a market price is no longer available for a Select Fifty Index stock due to circumstances including but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Select Fifty Index for so long as no market price exists for that security or until the subsequent anniversary date. If the stock remains in the Select Fifty Index, the multiplier of that security may be adjusted to maintain the component's relative weight in the Select Fifty Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Select Fifty Index continuity.

The Exchange will calculate the Select Fifty Index and, similar to other stock index values published by the Exchange, the value of the Select Fifty Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[14] Second, the Notes will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

[12] The Exchange will publish a notice to advise investors of changes to the securities underlying the Index if any such changes are made following an annual reconstitution.

[13] If the issuer of a component security in the Select Fifty Index issues to all of its shareholders publicly traded stock of another issuer, such new securities will be added to the portfolio comprising the Select Fifty Index until the subsequent anniversary date. The multiplier for the new component will equal the product of the original issuer's multiplier and the number of shares of the new component issued with respect to one share of the original issuer.

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[15] *See* Amex Rule 462 and Section 107B of the Company Guide.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

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facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–76 and should be submitted by December 20, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of Section 6 of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.[19] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act.[20] The Commission believes that the availability of the Notes will provide an instrument for investors to achieve desired investment objectives through the purchase of an exchange-traded debt product linked to the Select Fifty Index. These objectives include participating in or gaining exposure to the Index while limiting somewhat downside risk. However, the Commission notes that the Notes are index-linked debt securities whose value in whole or in part will be based upon the performance of the S&P 500 Index. In addition, the Notes are non-principal protected: they do not have a minimum principal amount that will be repaid, and payments on the Notes at maturity may be less than their original issue price. For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to the Notes are consistent with the Act.

The Notes are non-convertible and will conform initially to the Amex listing guidelines under Section 107A of the Company Guide and continued listing guidelines under Sections 1001–1003 of the Company Guide. The specific maturity date will not be established until the time of the offering, but will be not less than one, nor more than ten years from the date of issue. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the Starting Index Value (the value of the Index on the date the issuer prices the Notes for the initial sale to the public) and the Ending Index Value (the value of the Index over a period shortly prior to the expiration of the Notes). The Ending Index Value will be used in calculating the amount investors will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to, or at maturity, may be less than the original issue price of the Notes. During a two-week period in the designated month each year, investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Index at such repurchase date. The Notes are cash-settled in U.S. dollars and may not be called by the issuer. The Select Fifty Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public.

The Notes are not-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Select Fifty Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the Notes.[21] Thus, if the Select Fifty Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the Underlying Index, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The circular should include, among other things, a discussion of the risks that may be associated with the Notes in addition to details on the composition of the Index and how the rates of return will be computed. Further, pursuant to Exchange Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with Section 6(b)(5) of the Act.[22] The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition,

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *Id.*

[21] The Commission recognizes that during a two-week period in the designated month investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Select Fifty Index at such repurchase date.

[22] 15 U.S.C. 78f(b)(5).

the Exchange's "Other Securities" listing standards further require that the Notes have at least $4 million in market value.[23] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Index, will be publicly available.[24]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[25] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Index or raise manipulative concerns. The Commission notes that the Exchange maintains the Select Fifty Index and states that it has sole discretion in determining, calculating, and maintaining the Index. However, the prospectus provides that guidelines under which the Exchange will perform such functions. The Commission also notes that the Index is equal-dollar weighted but is only rebalanced on an annual basis; however, the Commission notes that the S&P 500 Index is broad-based and composed of stocks with significant market capitalization and average daily trading volume. The Commission further notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer, and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction.

In addition, the Amex equity margin rules and debt trading rules will apply to the Notes. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential for manipulation of the Notes is minimal, thereby protecting investors and the public interest. The Commission further notes that the underlying Index on which the Select Fifty Index is based (the S&P 500 Index), is broad-based and independent of both the Exchange and the Issuer, factors that the Commission believes should act to minimize the possibility of manipulation.

The Commission notes that the Select Fifty Index is equal-dollar weighted index and that the portfolio of securities underlying the Index will be rebalanced annually—rather than quarterly—by the Amex so as to include the fifty stocks (excluding Merrill Lynch and its affiliates) having the largest market capitalization in the S&P 500 Index on the second scheduled index business day prior to the anniversary date. Although quarterly rebalancing is generally required with respect to options and futures linked to an equal-dollar weighted index,[26] Amex maintains, and the Commission believes, that there are relevant distinctions between the Notes and index options and futures. Specifically, unlike options and futures, debt products, such as the Notes, do not provide a leveraged "play" on the value of the index and are not generally actively traded, but instead are a "buy and hold" investment.[27] Although the Commission has significant concerns about the frequency of rebalancing in the cases of options and futures linked to an equal-dollar weighted index (because of their leveraged nature and active trading), the Commission believes that the Amex's proposal to rebalance the Select Fifty Index on an annual basis is consistent with the Act.

Amex has requested that the Commission find good cause for approving the proposed rule change, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the underlying Index on which the Select Fifty Index is based (the S&P 500) is a broad-based index providing an indication of the performance of the U.S. equity market. The Commission further notes that it has previously approved the listing of options on, and securities the performance of which have been linked to or based on the S&P 500 Index. Additionally, the Notes will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change, (SR–Amex–2002–76) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30199 Filed 11–27–02; 8:45 am]

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[23] *See* Company Guide Section 107A.

[24] The companies that comprise the Oil and Natural Gas Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[25] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[26] *See, e.g.*, Amex Rule 901C, Commentary .02.

[27] Telephone conference among Jeffrey Burns, Assistant General Counsel, Amex, Florence Harmon, Senior Special Counsel, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission, on November 19, 2002.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46861; File No. SR–PCX–2002–71]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. To Require Industry Parties in Arbitration To Waive Application of Contested California Arbitrator Disclosure Standards, Upon the Request of Customers and Associated Persons With Claims of Statutory Employment Discrimination, for a Six-Month Pilot Period

November 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX and PCX Equities, Inc. ("PCXE") are proposing a rule change to amend their rules to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards upon the request of customers or, in industry cases, upon the request of associated persons with claims of statutory employment discrimination, for a six-month pilot period from November 21, 2002 to May 22, 2003.[3] Below is the text of the proposed rule change. Proposed new language is *italicized*, deleted text is in [brackets].

* * * * *

Rules of the Board of Governors of the Pacific Exchange, Inc.

Rule 12 Arbitration

Matters Subject to Arbitration

Rule 12.1(a)–(g)—No change.

Commentary:

.01—No change.

.02—It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a member organization or a person associated with a member or member organization to fail to submit to arbitration on demand under the provisions of this Rule[,]; *or to fail to waive the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case;* or to fail to appear or to provide any document in his or its possession or control as directed pursuant to the provisions of this Rule; or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

.03—No change.

* * * * *

PCX Equities, Inc.

Rule 12 Arbitration

Matters Subject to Arbitration

Rule 12.1—No change.

Rule 12.2 (a)–(g)—No change.

(h) It may be deemed conduct inconsistent with just and equitable principles of trade for an ETP Holder or a person associated with an ETP Holder to fail to submit to arbitration on demand under the provisions of this Rule[,]; *or to fail to waive the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case;* or to fail to appear or to provide any document in his or her or its possession or control as directed pursuant to the provisions of this Rule or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

(i)–(j)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.[4] The text of these statements may be examined at the places specified in Item III below. PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that it makes every effort to provide investors who bring their claims to PCX with a fair, efficient, and economical arbitration forum. In July 2002, the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards of Neutral Arbitrations in Contractual Arbitration" (the "California Standards") became effective (further described below). Prior to the enactment of the California Standards, the Exchange states that it, along with the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange ("NYSE", and collectively with PCX and NASD, the "Exchanges"), made several efforts to raise their concerns about the California Standards with the California Judicial Council and Legislative staff. The Exchange states that these attempts did not meet with any success, and the California Standards became effective without addressing the Exchanges' concerns. Since then, PCX has been attempting to develop an appropriate process by which it can appoint arbitrators in California.

NASD and NYSE filed a joint complaint in federal court for declaratory relief (the "Complaint") in which they contend that the California Standards cannot lawfully be applied to NASD and NYSE, because the California Standards are preempted by federal law and are inapplicable to self-regulatory organizations ("SROs") under state law.[5] On September 18, 2002, the Commission moved to appear in the case as a friend of the court and submitted a brief in which it contended that the California Standards conflict with and thus are preempted by the Commission's regulation of SRO arbitration under the Act and by the Federal Arbitration Act.[6] On November 12, 2002, the district court dismissed the case on the ground that the defendants were immune from suit under the Eleventh Amendment of the Constitution.

While waiting for the court's guidance on this issue, NASD and NYSE announced that they were temporarily postponing the appointment of arbitrators for new arbitrations in California. While PCX has not joined in the Complaint to date, PCX concurs with NASD's and NYSE's position in this matter, as well as the Commission's as set forth in its friend of the court brief, and believes that the court's decision could be applicable to PCX also. PCX has therefore been reluctant to appoint arbitrators pending the court's decision.

On September 5, 2002, Harvey L. Pitt, Chairman of the Commission, sent a letter to NASD and NYSE requesting them to explore ways to expedite processing of arbitration claims involving California parties.[7] In response, NASD proposed the implementation of a six-month amendment to its rules, requiring all parties that are member firms or associated persons to waive the California Standards if all the parties in the case who are customers or associated persons with a statutory employment discrimination claim have waived the California Standards in that case. This Rule Filing was published in the **Federal Register** on October 3, 2002, and the Commission granted accelerated approval.[8] In the interest of continuing to provide investors with an arbitral forum in California, and of being responsive to the Commission's desire that the Exchanges offer some alternatives to parties pending resolution of the applicability of the California Standards to the Exchanges, PCX proposes an amendment to its Rules substantially similar to NASD's.

Background Regarding the California Standards

The California Standards became effective July 1, 2002. They are intended to address potential conflicts of interest that could exist in private arbitration forums. The Exchanges' arbitration forums, however, are part of a federal regulatory system overseen on a uniform basis by the Commission. The conflicts that the California Standards are designed to address do not exist in the Exchanges' arbitration forums, which are highly regulated dispute resolution programs. The Commission Staff sent a letter on July 1, 2002, requesting that the arbitration programs administered by the SROs be exempted from the California Standards.

The California Standards place excessive and unnecessary disclosure burdens on persons who would serve on PCX arbitration panels and who already must meet PCX's stringent disclosure requirements. The extensive record-keeping requirements, and the potential liability for even inadvertent violations of the California Standards, led PCX to conclude that if PCX were required to implement the California Standards, PCX arbitrations would be more time consuming, more costly, and there would be less arbitrators willing to be members of PCX's arbitrator pool. The California Standards would permit a party to require the removal of an arbitrator for disclosing even an immaterial relationship. An arbitrator's inadvertent failure to disclose even an immaterial relationship could also result in the removal of the arbitrator, or the vacatur of an award. The alternative dispute resolution administrator would no longer have the power to decide contested challenges to arbitrators under the California Standards. Instead, the parties would have unilateral authority to require removal of arbitrators based on disclosures under the California Standards, whether the disclosures were material or not.

NASD and NYSE filed extensive comments when the California Standards were proposed in February 2002, and followed up with meetings with the Judicial Council and Legislative staff, some of which PCX also attended. PCX also filed a letter with the Judicial Council concurring with the positions taken by NASD and NYSE and objecting to the application of the California Standards to PCX's arbitration program. Despite this, the California Standards were implemented without addressing the basic concerns of the Exchanges. NYSE and NASD formally announced in July 2002, that they were postponing appointment of arbitrators in California until this matter was resolved. PCX has been attempting to determine how it can panel arbitrations in this environment. PCX is concerned that any attempt to seat arbitrators pursuant to the California Standards would result in: (a) the potential for limitless objections to arbitrators based on potentially immaterial disclosures required under the California Standards, (b) unacceptable risk of liability to arbitrators and PCX, (c) the likelihood that PCX's arbitrator pool would decrease dramatically due to the costs associated with the required record-keeping and the risk of liability, and (d) an overall increase in the cost of arbitrations to the parties due to all of these factors.

Proposed Rule Change

PCX states that it has a strong desire to accommodate parties to arbitration in California in this uncertain environment. PCX reviewed NASD's proposed rule change that would require industry parties to waive the California Standards in all cases in which all the parties in the case who are customers (or in industry cases, who are associated persons with claims of statutory employment discrimination) agree to waive the application of the California Standards. PCX states that implementation of a similar rule change would be an acceptable temporary way to allow PCX to continue to provide arbitration, pending a more permanent solution. Pursuant to the waiver permitted by this Rule change, the matter would proceed under the existing PCX Arbitration Rules, which already contain extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.

Once the proposed rule filing is effective, PCX will notify investors and associated persons with claims of statutory employment discrimination, giving them the option of waiving the California Standards and providing them with waiver forms. PCX staff will also speak with investors and other

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between Betsy James, Assistant General Counsel, PCX, and Andrew Shipe, Special Counsel, Division of Market Regulation, SEC, November 21, 2002.

[4] The discussion in this section represents the Exchange's views on the situation in California and does not in any way represent a Commission position on this issue.

[5] *See* Motion for Declaratory Judgment, NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc., v. Judicial Council of California, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at: *www.nasdadr.com/pdf-text/072202_ca_complaint.pdf*.

[6] *See* Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc., v. Judicial Council of California. The brief is available on the Commission Web site at: *www.sec.gov/litigation/briefs/nasddispute.pdf*.

[7] *See* letter from Chairman Pitt to Robert R. Glauber, Chairman and CEO of NASD, and Richard Grasso, Chairman and CEO of NYSE, dated September 5, 2002.

[8] *See* Securities Exchange Act Release No. 34–46562 (September 26, 2002), 67 FR 62085 (SR–NASD–2002–126).

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parties to explain this process, and will endeavor to provide additional information on its website.

At the same time, PCX will notify industry parties in all pending California cases that they must waive the California Standards if the investor agrees to a waiver (or associated person, in the circumstances described above). Industry parties in such cases will be required to execute waiver agreements. However, their failure to do so will not stop the cases from moving forward.[9] An industry party's failure to sign the waiver as required by the proposed rule change will be referred for disciplinary action.

If all parties waive the California Standards as permitted by the proposed Rule change, PCX will immediately commence the arbitrator appointment process using the PCX Rules regarding arbitrator disclosures, and not the California Standards.

PCX requests that this Rule change become effective immediately, for a six-month pilot period. If the outcome of NASD's and NYSE's lawsuit is that the California Standards do not apply to SROs, the waivers will no longer be necessary. Cases that had already been empanelled pursuant to a waiver would continue to conclusion with the existing panel. If the lawsuit has not concluded by the expiration of the initial six-month period, PCX may request an extension.

2. Statutory Basis

PCX believes that this proposal is consistent with section 6(b)[10] of the Act, in general, and furthers the objectives of section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest. PCX believes that expediting the appointment of arbitrators under the proposed waiver, at the request of customers and associated persons with claims of statutory employment discrimination, will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion and uncertainty caused by the California Standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–71 and should be submitted by December 20, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[12] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[13] The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is necessary to protect investors in that the rules are designed to help address the backlog of cases created by the confusion over the new California Standards, are designed to provide them with a mechanism to help resolve their disputes with broker-dealers in a more expedited manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the proposed rule change will become effective as a pilot program for six months, from November 21, 2002 to May 22, 2003, during which time the Commission and the Exchange will monitor the status of the previously discussed litigation.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PCX–2002–71) is hereby approved on an accelerated basis through May 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30197 Filed 11–27–02; 8:45 am]

BILLING CODE 8010–01–P

[9] In these situations, PCX will treat the industry parties as having waived the California standards. Telephone conversation between Peter Bloom, Director of Policy Development, PCX, and Andrew Shipe, Division of Market Regulation, SEC, November 21, 2002.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46874; File No. SR–Phlx–2002–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Change the Exchange's Calculation of Transaction Charges From a Value-Based System to a Share-Based System

November 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to change its current equity value transaction charge from a transaction value-based method to a share-based method. Equity transaction charges will be assessed on a sliding scale in relation to how many shares are traded per transaction, as opposed to the total value of the transaction. The proposed equity per share transaction charge will continue to exclude specialist trades and PACE trades, and will continue to be subject to a $50 maximum fee per trade side.[4] The Exchange intends to implement the equity per share transaction charge for transactions settling on or after November 1, 2002.[5]

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

EQUITY TRANSACTION VALUE CHARGE I

[Based on total value of monthly transactions with the exception of specialist trades and PACE trades.]

[Monthly transaction value	Rate per $1,000]
[0—25mm	$0.14]
[25mm—100mm	0.12]
[100mm—250mm	0.10]
[250mm—500mm	0.05]
[500mm and over	0.015]

Based on total shares per transaction with the exception of specialist trades and PACE trades.

Transaction fee	*Rate per share*
First 500 shares	*$0.00*
Next 2,000 shares	*0.0075*
Next 7,500 shares	*0.005*
Remaining shares	*0.004*
$50 maximum fee per trade side.	

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the Phlx's calculation of transaction charges from a value-based system to a share-based system in order to simplify the Phlx's transaction fee schedule. The Exchange believes a share-based system is easier for a member organization or a member to calculate current, and predict future, costs associated with these transactions. In addition, other exchanges use a share-based system.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2002–64, and should be submitted by December 20, 2002.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] PACE is the acronym for the Phlx's Automated Communication and Execution System. It is the Phlx's order routing, delivery, execution and reporting system for its equity trading floor. *See* Phlx Rule 229.

[5] This fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001)(SR–Phlx–2002–32).

[6] *See* Securities Exchange Act Release Nos. 36753 (January 22, 1996), 61 FR 2851 (January 29, 1996)(SR–CHX–95–30); and 43664 (December 4, 2000), 65 FR 77952 (December 13, 2000)(SR–NYSE–2000–50).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30196 Filed 11–27–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

User Input to the Procurement Executive Council Socio-Economic Subcommittee

AGENCY: Small Business Administration, Interagency Committee on Subcontract Reporting.

ACTION: Notice of public meeting.

SUMMARY: The Subcontract Reporting Subcommittee of the Socio-Economic Committee of the Procurement Executive Council will hold an Industry Forum on December 16, 2002, at 10 a.m. to 1 p.m. hosted by the Small Business Administration at 409 Third Street, SW., Washington, DC 20416 in the Eisenhower Conference Room. The purpose of the forum is to demonstrate an existing government-owned internet-based electronic reporting system, describe anticipated enhancements necessary to implement government-wide electronic subcontract reporting, and obtain comments from potential industry users. Potential users are other than small businesses required to submit subcontract reports pursuant to Federal Acquisition Regulation 52.219–9. Space is limited so seating is on a first-come basis. Those planning to attend should register at: *SpecialMeeting@sba.gov.*

DETAILS: December 16, 2002; Small Business Administration, 10 a.m. to 1 p.m. in the Eisenhower Conference Room. The objective of this meeting is to provide an opportunity for industry users to provide input on plans for implementing a government-wide electronic subcontract reporting system.

DATES: The meeting will be held at 10 a.m. to 1 p.m. on December 16, 2002.

ADDRESSES: The meeting will be held in the Eisenhower Conference Room at the headquarters of the Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

TO REGISTER SEND E-MAIL TO: *SpecialMeeting@sba.gov.* For further information contact: Ms. Sylvia Boulware, Small Business Administration, 409 Third Street, SW., Washington, DC 20416; telephone number (202) 619–0477 or Fax: (202) 481–5735; or Ms. Janas Jackson, same address, telephone number (202) 205–7493; Fax: (202) 481–2390.

SUPPLEMENTARY INFORMATION:

History

In 2002, the Procurement Executive Council's Socio-Economic Committee established the Subcontract Reporting Subcommittee to explore government-wide electronic subcontract reporting as part of the E-Government initiative. The Subcommittee is chaired by the Deputy Director of the Department of Navy's Office of Small and Disadvantaged Business Utilization and includes stakeholders from the Small Business Administration, Department of Defense, Department of Energy (DOE), Department of Health and Human Services, Department of State, and General Services Administration.

The DOE demonstrated its internet-based electronic subcontract reporting system to the Subcommittee. The Subcommittee is considering recommending adoption of the Department of Energy's system with enhancements for government-wide use to satisfy mandatory subcontract reporting requirements by other than small businesses.

This meeting is the industry forum intended to observe a demonstration of the current electronic reporting system, receive a description of planned enhancements, and provide comments regarding the merit and feasibility of adopting such a system for government-wide subcontract reporting.

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the Subcontract Reporting Subcommittee.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate.

(c) DOE personnel present will conduct a demonstration of the current system. Any person will be allowed to ask questions during the demonstration and DOE personnel will clarify any capability of the current system that is not clear.

(d) Other Subcommittee personnel will present a briefing on the specific system enhancements desired. Any person will be allowed to ask questions during the presentation and Subcommittee personnel will clarify any part of the presentation that is not clear.

(e) Any person present may give feedback on the merit and feasibility of the desired enhancements presented. Feedback on the proposed product will be captured through discussion between Subcommittee personnel and any persons attending the meeting. The meeting will not be formally recorded. However, informal tape recordings may be made of the presentations to ensure that each respondent's comments are noted accurately.

(f) An official verbatim transcript or minutes of the informal meeting will not be made. However, a list of the attendees and a digest of discussions during the meeting will be produced. Any person attending may receive a copy of the written information upon request to the information contact, above.

(g) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback may also be submitted to Subcommittee personnel for up to 14 days after the close of the meeting.

Agenda

(a) Opening Remarks and Discussion of Meeting Procedures.
(b) Demonstration of DOE Subcontract Reporting System.
(c) Briefing on Desired System Enhancements.
(d) Request for User Input.
(e) Closing Comments.

Linda G. Williams,

Associate Administrator for Government Contracting, Small Business Administration.

[FR Doc. 02–30302 Filed 11–27–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 4212]

Extension of the Restriction on the Use of United States Passports for Travel to, in, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73 (a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area "* * * where there is imminent danger to the public health or physical safety of United States travellers" within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at midnight November 24, 2003, unless extended or sooner revoked by Public Notice.

Dated: November 22, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–30450 Filed 11–26–02; 8:45 pm]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance With Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment and reply comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) ("section 1377"), the Office of the United States Trade Representative ("USTR") is reviewing, and requests comments on: The operation and effectiveness of and the implementation of and compliance with the World Trade Organization ("WTO") Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the telecommunications provisions of the North American Free Trade Agreement ("NAFTA"); and, other telecommunications trade agreements with the Asia Pacific Economic Cooperation ("APEC") members, the European Union ("EU"), the Inter-American Telecommunications Commission ("CITEL"), Japan, Korea, Mexico and Taiwan. The USTR will conclude the review on March 31, 2003.

DATES: Comments are due by noon on January 3, 2003, and Reply Comments are due by noon on January 24, 2003.

ADDRESSES: Comments should be submitted to Rhonda Schnare, Office of General Counsel, Attn: Section 1377 Comments, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. As explained below, in order to ensure the most timely and expeditious receipt and consideration of comments and reply comments, USTR has arranged to accept submissions in electronic format (e-mail). Comments should be submitted electronically to *fr0056@ustr.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Schagrin, Office of Industry and Telecommunications (202) 395–5663; or Rhonda Schnare, Office of the General Counsel (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services of the United States that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into a telecommunications trade agreement with the United States is inconsistent with the terms of such agreement, or otherwise denies to U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its commitments under the WTO Basic Telecommunications Agreement or with other WTO obligations, *e.g.*, the WTO General Agreement on Trade in Services ("GATS"), including the Annex on Telecommunications and the Reference Paper on Pro-Competitive Regulatory Principles, that affect market opportunities for U.S. telecommunications products and services;

(2) Whether Canada or Mexico has failed to comply with their telecommunications commitments under NAFTA;

(3) Whether APEC or CITEL members, the EU, Japan, Korea, Mexico or Taiwan have failed to comply with their commitments under additional telecommunications agreements with the United States.[1]

(4) Whether there remains outstanding issues from previous Section 1377 reviews on those countries or issues previously cited. Last year's review concluded that it would focus attention on the following practices as a matter of priority: (1) Mobile wireless termination rates in the European Union (EU) Member States and Japan, (2) provisioning and pricing of leased telecom lines in EU Member States and Switzerland, and (3) interconnection and other competitive concerns in Mexico. USTR continues to closely monitor other telecommunications trade practices identified in the following countries: Australia, Brazil, China, Colombia, India, Japan, Peru, and South Africa.

See 63 FR 1140 (January 8, 1998) for further information concerning the agreements listed below and USTR Press Release 02–XX available at *http://www.ustr.gov*, for the results of the 2001–2002 section 1377 review concerning these agreements.

Public Comment and Reply Comment: Requirements for Submissions

USTR requests comments on: The operation and effectiveness of—including implementation of and compliance with—the WTO Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the NAFTA; and other telecommunications trade agreements with APEC members, CITEL members, with Japan, including a series of agreements on: International value-added network services (IVANS) (1990–91); open government procurement of all satellites, except for government research and development satellites (1990); network channel terminating equipment (NCTE) (1990); and cellular and third-party radio systems (1989) and cellular radio systems (1994).

Korea: Agreements regarding protection of intellectual property rights ("IPR") (1996), type approval of telecommunications equipment (1992/1996), transparent standard-setting processes, (1992/1997) and non-discriminatory access to Korea Telecommunications' procurement of telecommunications products (1992/1996).

Mexico: The 1997 understanding regarding test data acceptance agreements between product safety testing laboratories.

Mutual Recognition Agreements For Conformity Assessment of Telecommunications Equipment: Mutual Recognition Agreements ("MRAs") regarding telecommunications equipment trade with the European Union (1997), APEC countries (1998), and CITEL countries (1999).

Taiwan: The February 1998 agreement on interconnection pricing for provision of wireless services in Taiwan; and, the July 1996 agreement on the licensing and provision of wireless services through the establishment of a competitive, transparent and fair wireless market in Taiwan. USTR also seeks comments on telecommunications commitments made by Taiwan to the United States in October 1999 and February 1998 as part of its accession to the WTO.

[11] 17 CFR 200.30–3(a)(12).

[1] Japan: The 1999 Nippon Telegraph and Telephone (NTT) agreement; the 1994 U.S.-Japan Public Sector Procurement Agreement on Telecommunications Products and Services; and, additional telecommunications trade agreements

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the EU, Japan, Korea, Mexico and Taiwan. All comments must be in English, identify on the first page of the comments the telecommunications trade agreement(s) discussed therein, be addressed to Gloria Blue, Executive Secretary, TPSC, Attn: Section 1377 Comments, Office of the U.S. Trade Representative, and be submitted in 15 copies by noon on January 3, 2003. Reply Comments will also require 15 copies by noon on January 24, 2003.

In order to ensure the most timely and expeditious receipt and consideration of comments and reply comments, USTR has arranged to accept submissions in electronic format (e-mail). Comments should be submitted electronically to *fr0056@ustr.gov*. An automatic reply confirming receipt of e-mail submission will be sent. E-mail submissions in Microsoft Word or Corel WordPerfect are preferred. If a word processing application other than those two is used, please include in your submission the specific application used. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC", and the file name of the public version should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments or reply comments. Interested persons who make submissions electronically should not provide separate cover letters; rather, information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

We strongly urge people to avail themselves of the electronic filing, if at all possible. If an e-mail submission is impossible, 15 copies may be submitted in accordance with the procedures listed below, and if not filed electronically must be delivered via private commercial courier, and arrangements must be made with Ms. Blue prior to delivery for their receipt. Ms. Blue should be contacted at (202) 395–3475.

All non-confidential comments and reply comments will be placed on the USTR website, *http://www.ustr.gov* and in the USTR Reading Room for inspection shortly after the filing deadline, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential information submitted in accordance with 15 CFR 2003.6, must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 15 copies, and must be accompanied by 15 copies of a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the USTR Public Reading Room. Since comments and reply comments will be posted on USTR's website, those persons not availing themselves of electronic filing must submit their 15 copies with a diskette. USTR will post the non-confidential version of the filing, therefore the non-confidential version must be clearly marked on the diskette.

An appointment to review the comments may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 3 of 1724 F Street, NW.

Dated: November 25, 2002.

Peter B. Davidson,

General Counsel.

[FR Doc. 02–30311 Filed 11–27–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Rutland County, Vermont

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed relocation of the Rutland rail switching yard and related improvements.

FOR FURTHER INFORMATION CONTACT: Rob Sikora, Environmental Program Manager, Federal Highway Administration, P.O. Box 568, Montpelier, Vermont 05601. Telephone: 802–828–4433.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Vermont Agency of Transportation (VTrans) and the Rutland Redevelopment Authority (RRA), will prepared an Environmental Impact Statement (EIS) for the proposed relocation of the Rutland rail switching yard and related improvements in Rutland, Vermont. Relocation of the existing rail yard is considered necessary due to changes to both the City of Rutland and the railroad. The existing rail yard site is in downtown Rutland. Industry in Rutland has changed and the rail yard results in frequent noise, traffic delay and congestion, safety hazards to pedestrians and vehicles, and occupies land that could be redeveloped.

Other improvements related to the proposed rail yard relocation are the construction of a new access road from Route 4 to downtown Rutland paralleling the rail line corridor, a connector track at Howe Center between the Green Mountain Railroad Corporation (GMRC) and the switching yard and a connector track in Center Rutland, Town of Rutland, between the Clarendon and Pittsford Railroad (CLP) and Vermont Railway (VTR).

Alternatives under consideration include (1) taking no action; (2) improvement to the existing rail yard; and (3) alternative relocation sites with associated connector tracks and downtown access roads.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Rutland. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 20, 2002.

Kenneth R. Sikora, Jr.,

Environmental Program Manager, Montpelier, Vermont.

[FR Doc. 02–30201 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: South Kohala, HI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in South Kohala, Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. Abraham Wong, Hawaii Division Administrator, Federal Highway Administration, Office Address: 300 Ala Moana Blvd., Room 3–306, Honolulu, Hawaii 96813, Mailing Address: Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the State of Hawaii, Department of Transportation, Highways Division, will prepare an Environmental Impact Statement (EIS) for a new highway from Waimea Town to Kawaihae Harbor. The project will provide improved highway, approximately 14 miles in length, which will facilitate the movement of goods and people between Central and West Hawaii. The new highway would also be supportive of anticipated heavier traffic demands and special needs, including the movement of military and commercial truck traffic.

In addition to several highway alignments, the project will analyze various other alternatives, including: (1) no action and (2) transportation system management strategies.

A letter describing the proposed action and soliciting comments has been sent to appropriate Federal, State and local agencies, and to private organizations and individuals, who have expressed an interest in this project. Several interagency and public scoping meetings will soon be scheduled. A public hearing will be held after publication of the project's draft EIS; public notice will be given of the time and place of the hearing. In addition, the draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the above address.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 12, 2002.

Abraham Wong,

Division Administrator, Hawaii:

[FR Doc. 02–30270 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Office of Research and Technology Forum

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of meeting/forum.

SUMMARY: This notice invites interested persons to participate in a forum sponsored by the FMCSA Office of Research and Technology for the purpose of: Sharing information regarding the FMSCA new research approach; Learning how to establish partnerships with the agency's Office of Research and Technology on future projects; and Providing information on the accomplishments of the Research and Technology Office since last year's Transportation Research Board (TRB) Annual Meeting.

Where: Marriott Wardman Park Hotel, in the Delaware Room, 2660 Woodley Road, NW., Washington, DC 20008.

When: Sunday, January 12, 2003, from 7:30 a.m. to 12:30 p.m.

Registration: To register for the forum and obtain more detailed information, you may visit the FMCSA R&T Forum Web site at: *http://www.fmcsa.dot.gov/rtforum;* or call (202) 493–0442.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Alvarez, Office of Research and Technology (MC–RTR), Federal Motor Carrier Safety Administration, 400 Virginia Avenue, SW., Washington, DC 20024; telephone (202) 358–5684 or e-mail *albert.alvarez@fhwa.dot.gov*. Office hours are from 8 a.m. to 4:30 p.m., E.S.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Forum attendees will receive a Continental Breakfast and a Information Packet. The forum is open to the public, but will be limited to the space available. If you are planning to attend this forum, you *must* register online at: *http://www.fmcsa.dot.gov/rtforum*, or call (202) 493–0442 by *December 20, 2002*. Individuals needing special accommodations (sign, reader, etc.), please call Joanice Cole at (202) 334–2287, or e-mail *jcole@nas.edu* by *December 20, 2002*.

Note: If you are planning to attend the TRB Annual Meeting, you must register separately for it at: *http://www4.trb.org/trb/annual.nsf*.

Issued on: November 25, 2002.

Brian M. McLaughlin,

Associate Administer for Policy and Program Development.

[FR Doc. 02–30312 Filed 11–27–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission

Notice of Establishment

As required by section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Capital Asset Realignment for Enhanced Services (CARES) Commission. The Secretary of Veterans Affairs has determined that establishing the Commission is both necessary and in the public interest.

The Commission will conduct a nationwide review to determine VA's capability to support the delivery of veterans health care services through the next 20 years and will make specific recommendations to the Secretary regarding the realignment and allocation of capital assets necessary to provide such services. In making its recommendations, the Commission with focus on the accessibility and cost effectiveness of care to be provided, while ensuring that the integrity of VA's health care and related missions is maintained, and any adverse impact on VA staff and affected communities is minimized.

The Commission will consider recommendations submitted by the VA Under Secretary for Health and will also consider other views and concerns submitted in writing during a 60-day period following the Under Secretary's recommendations. The Commission will also hold public hearings to receive and consider the views and recommendations of veterans service organizations, Congress, medical school affiliates, VA employees, local government entities, affected community groups and other interested parties.

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The Commission shall consist of members appointed by the Secretary. Those members shall serve as objective advisors to the Secretary. The Commission shall submit its recommendations to the Secretary not later than September 30, 2003, unless that date is extended by the Secretary.

Dated: November 22, 2002.

By Direction of the Secretary.

Ronald R. Aument,

Deputy Chief of Staff.

[FR Doc. 02–30300 Filed 11–27–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Safety Harbor Resort, 105 North Bay Shore Drive, Safety Harbor, Tampa, FL 34695, from January 22–24, 2003. The Nursing Research Initiative (NRI) review will convene on January 22, 2003, from 8 a.m.–1 p.m. The Investigator Initiated Research (IIR) review will convene from 1 p.m. until 5 p.m. and 7 p.m. until 9 p.m. on January 22, 2003, from 8 a.m. until 5 p.m. on January 23, 2003, and from 8 a.m. until 5 p.m. on January 24, 2003.

The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

The Investigator Initiated Research review meeting will be open to the public on January 22 for approximately one half-hour from 7 p.m. until 7:30 p.m. to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly the implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Assistant Director, Scientific Review (124F), Health Services Research and Development Service, Department of Veterans Affairs, 1400 Eye Street, NW., Suite 780, Washington, DC, at least five days before the meeting. For further information, call (202) 408–3661.

Dated: November 19, 2002.

By Director of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–30194 Filed 11–27–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) hereby gives notice of the weighted average poverty threshold established for 2001 for one person (unrelated individual) as established by the Bureau of the Census. The amount is $9,039.

DATES: For VA determinations, the 2001 poverty threshold is effective September 24, 2002, the date on which it was established by the Bureau of the Census.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: We published a final rule amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, 55 FR 31,579. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. The provisions of 38 CFR 4.16(a) use the poverty threshold as a standard in defining marginal employment when considering total disability ratings for compensation based on unemployability of an individual. We stated we would publish subsequent poverty threshold figures as notices in the **Federal Register**.

The Bureau of the Census recently published the weighted average poverty thresholds for 2001. The threshold for one person (unrelated individual) is $9,039.

Dated: November 20, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–30193 Filed 11–27–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 230

Friday, November 29, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 145–MAN, Guide for Developing and Evaluating Repair Station and Quality Control Manuals

Correction

In notice document 02–29666 appearing on page 70291 in the issue of Thursday, November 21, 2002, make the following correction:

On page 70291, in the first column, under the **DATES** heading, in the third line, "February 5, 2002" should read, "February 5, 2003".

[FR Doc. C2–29666 Filed 11–27–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Friday,
November 29, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Klamath River and Columbia River Distinct Population Segments of Bull Trout and Notice of Availability of the Draft Recovery Plan; Proposed Rule and Notice

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI52

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Klamath River and Columbia River Distinct Population Segments of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Klamath River and Columbia River distinct population segments of bull trout (*Salvelinus confluentus*) pursuant to the Endangered Species Act of 1973, as amended (Act). For the Klamath River distinct population segment (DPS), the proposed critical habitat designation includes approximately 476 kilometers (km) (296 miles (mi)) of streams and 13,735 hectares (ha) (33,939 acres (ac)) of lakes and marshes in Oregon. For the Columbia River DPS, the proposed critical habitat designation totals approximately 29,251 km (18,175 mi) of streams and 201,850 ha (498,782 ac) of lakes and reservoirs, which includes: approximately 14,416 km (8,958 mi) of streams and 83,219 ha (205,639 ac) of lakes and reservoirs in the State of Idaho; 5,341 km (3,319 mi) of streams and 88,051 ha (217,577 ac) of lakes and reservoirs in the State of Montana; 5,460 km (3,391 mi) of streams and 18,077 ha (44,670 ac) of lakes and reservoirs in the State of Oregon; and 4,034 km (2,507 mi) of streams and 12,503 ha (30,897 ac) of lakes and reservoirs in the State of Washington.

If this proposal is made final, Federal agencies will be required to meet the requirements of section 7(a)(2) of the Act with regard to critical habitat. Specifically, Federal agencies shall, in consultation with us, ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The term "destruction or adverse modification" means direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of a listed species (50 CFR 402.02). Section 4(b)(2) of the Act requires our designation of critical habitat to be made on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to address new information received during the comment period.

DATES: We will consider all comments on this proposed rule received until the close of business on January 28, 2003. We will hold public hearings from 6 p.m. to 8 p.m. at the following locations on the dates specified: Wenatchee, WA, on January 7, 2003; Polson, MT, on January 7, 2003; Salmon, ID, on January 7, 2003; Spokane, WA, on January 9, 2003; Lewiston, ID, on January 9, 2003; Boise, ID, on January 14, 2003; Eugene, OR, on January 14, 2003; Pendleton, OR, on January 16, 2003; and Klamath Falls, OR, on January 22, 2003. (See the Public Hearings section for additional information, including specific addresses for each location.)

ADDRESSES: If you wish to comment, you may submit your comments and materials by any of several methods:

You may submit written comments and information to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–6131; facsimile 503/231–6243).

You may hand-deliver written comments to our office during normal business hours at the address given above.

You may also send comments by electronic mail (e-mail) to: *R1BullTroutCH@r1.fws.gov*.

See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Young, at the above address, (telephone 503/231–6131; facsimile 503/231–6243).

SUPPLEMENTARY INFORMATION:

Background

Bull trout (*Salvelinus confluentus*) are members of the char subgroup of the family Salmonidae and are native to waters of western North America. The historic range of bull trout includes major river basins in the Pacific Northwest from about 41° N to 60° N latitude, extending south to the McCloud River in northern California and the Jarbidge River in Nevada, and north to the headwaters of the Yukon River in Northwest Territories, Canada (Cavender 1978; Bond 1992). To the west, bull trout range includes Puget Sound, various coastal rivers of British Columbia, Canada, and southeast Alaska (Bond 1992). Bull trout are relatively dispersed in the Columbia River and Snake River basins, extending east to headwater streams in Montana and Idaho, and into Canada. Bull trout also occur in the Klamath River basin of south-central Oregon. East of the Continental Divide in Canada, bull trout are found in the headwaters of the Saskatchewan River in Alberta and the MacKenzie River system in Alberta and British Columbia (Cavender 1978; Brewin and Brewin 1997).

Bull trout were first described as *Salmo spectabilis* by Girard in 1856, and subsequently described under various names, such as *Salmo confluentus* and *Salvelinus malma* (Cavender 1978). Bull trout and Dolly Varden (*Salvelinus malma*) previously were considered a single species (Cavender 1978; Bond 1992). However, in 1980, the American Fisheries Society formally recognized bull trout and Dolly Varden as separate species based on various specific physical differences and distributional information (Cavender 1978; Robins *et al.* 1980). Bull trout have an elongated body and large mouth, with the maxilla (jaw) extending beyond the eye and with well-developed teeth on both jaws and head of the vomer (a bone in teleost fishes that forms the front part of the roof of the mouth and often bears teeth). Bull trout have 11 dorsal fin rays, 9 anal fin rays, and the caudal fin is slightly forked. Although they are often olive green to brown with paler sides, color is variable with locality and habitat.

Bull trout exhibit a number of life-history strategies. Stream-resident bull trout complete their entire life cycle in the tributary streams where they spawn and rear. Some bull trout are migratory, spawning in tributary streams where juvenile fish usually rear from 1 to 4 years before migrating to either a larger river (fluvial) or lake (adfluvial) where they spend their adult life, returning to the tributary stream to spawn (Fraley and Shepard 1989). These migratory forms occur in areas where conditions allow for movement from upper watershed spawning streams to larger downstream waters that contain greater foraging opportunities (Dunham and Rieman 1999). Resident and migratory forms may be found together, and either form can produce resident or migratory offspring (Rieman and McIntyre 1993). Bull trout in the Coastal-Puget Sound area are believed to include an anadromous form which migrates to saltwater to mature, returning to streams to spawn (64 FR 58912).

The size of bull trout is variable depending on life-history strategy. Resident bull trout tend to be small, averaging 200 millimeters (mm) (8 inches (in)) in length and rarely exceeding 305 mm (12 in). Adults that migrate to larger downstream rivers average about 405 mm (16 in), and often exceed 610 mm (24 in) (Goetz 1989). Maximum sizes are reached in large lakes and reservoirs where adults grow over 685 mm (27 in) in length and 10 kilograms (kg) (22 pounds (lbs)) in weight (McPhail and Baxter 1996). The largest recorded bull trout was taken in Lake Pend Oreille, Idaho, in 1949; it was almost 1 meter (m) (39 in) long and weighed 14.6 kg (32 lbs) (Simpson and Wallace 1982).

Under appropriate conditions, bull trout regularly live to 10 years, and under exceptional circumstances, reach ages in excess of 20 years (Fraley and Shepard 1989; McPhail and Baxter 1996). They normally reach sexual maturity in 4 to 7 years.

Bull trout are opportunistic feeders, with food habits that primarily are a function of size and life history strategy. Resident and juvenile migratory bull trout prey on terrestrial and aquatic insects, macro-zooplankton, and small fish (Donald and Alger 1993; McPhail and Baxter 1996). Adult migratory bull trout feed almost exclusively on other fish (Rieman and McIntyre 1993).

Bull trout have more specific habitat requirements than most other salmonids (Rieman and McIntyre 1993). Habitat components that particularly influence their distribution and abundance include water temperature, cover, channel form and stability, spawning and rearing substrate conditions, and migratory corridors (Fraley and Shepard 1989; Goetz 1989; Watson and Hillman 1997).

Relatively cold water temperatures are characteristic of bull trout habitat. Water temperatures above 15 °Celsius (C) (59 °Fahrenheit (F)) are believed to limit their distribution (Fraley and Shepard 1989; Rieman and McIntyre 1996). Although adults have been observed in large rivers throughout the Columbia River basin in water temperatures up to 20 °C (68 °F), Gamett (1999) documented steady and substantial declines in abundance in stream reaches where water temperature ranged from 15 to 20 °C (59 to 68 °F). Thus, water temperature may partially explain the generally patchy distribution of bull trout in a watershed. In large rivers, bull trout are often observed "dipping" into the lower reaches of tributary streams, and it is suspected that cooler waters in these tributary mouths may provide important thermal refugia, allowing them to forage, migrate, and overwinter in waters that would otherwise be, at least seasonally, too warm. Spawning areas often are associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman *et al.* 1997).

Throughout their lives, bull trout require complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Fraley and Shepard 1989; Watson and Hillman 1997). Juveniles and adults frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). McPhail and Baxter (1996) reported that newly emerged fry are secretive and hide in gravel along stream edges and in side channels. They also reported that juveniles are found mainly in pools but also in riffles and runs that they maintain focal sites near the bottom, and that they are strongly associated with instream cover, particularly overhead cover. Bull trout have been observed overwintering in deep beaver ponds or pools containing large woody debris (Jakober 1995). Adult bull trout migrating to spawning areas have been recorded as staying two to four weeks at the mouths of spawning tributaries in deeper holes or near log or cover debris (Fraley and Shepard (1989)).

The stability of stream channels and stream flows are important habitat characteristics for bull trout populations (Rieman and McIntyre 1993). The side channels, stream margins, and pools with suitable cover for bull trout are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Watson and Hillman (1997) concluded that watersheds must have specific physical characteristics to provide the necessary habitat requirements for bull trout spawning and rearing, and that the characteristics are not necessarily ubiquitous throughout the watersheds in which bull trout occur. The preferred spawning habitat of bull trout consists of low-gradient stream reaches with loose, clean gravel (Fraley and Shepard 1989). Bull trout typically spawn from August to November during periods of decreasing water temperatures (Swanberg 1997). However, migratory forms are known to begin spawning migrations as early as April, and to move upstream as much as 250 km (155 mi) to spawning areas (Fraley and Shepard 1989; Swanberg 1997). Fraley and Shepard (1989) reported that initiation of spawning by bull trout in the Flathead River system appeared to be related largely to water temperature, with spawning initiated when water temperatures dropped below 9–10 °C (48 to 50 °F). Goetz (1989) reported a temperature range from 4 to 10 °C (39 to 50 °F) (Goetz 1989). Such areas often are associated with cold-water springs or groundwater upwelling (Rieman *et al.* 1997; Baxter *et al.* 1999). Fraley and Shepard (1989) also found that groundwater influence and proximity to cover are important factors influencing spawning site selection. They reported that the combination of relatively specific requirements resulted in a restricted spawning distribution in relation to available stream habitat.

Depending on water temperature, egg incubation is normally 100 to 145 days (Pratt 1992). Water temperatures of 1.2 to 5.4 °C (34.2 to 41.7 °F) have been reported for incubation, with an optimum (best embryo survivorship) temperature reported to be from 2 to 4 °C (36 to 39 °F) (Fraley and Shepard 1989; McPhail and Baxter 1996). Juveniles remain in the substrate after hatching, such that the time from egg deposition to emergence of fry can exceed 200 days. During the relatively long incubation period in the gravel, bull trout eggs are especially vulnerable to fine sediments and water quality degradation (Fraley and Shepard 1989). Increases in fine sediment appear to reduce egg survival and emergence (Pratt 1992). Juveniles are likely similarly affected. High juvenile densities have been reported in areas characterized by a diverse cobble substrate and a low percent of fine sediments (Shepard *et al.* 1984).

The ability to migrate is important to the persistence of local bull trout subpopulations (Rieman and McIntyre 1993; Gilpin 1997; Rieman and Clayton 1997; Rieman *et al.* 1997). Bull trout rely on migratory corridors to move from spawning and rearing habitats to foraging and overwintering habitats and back. Migratory bull trout become much larger than resident fish in the more productive waters of larger streams and lakes, leading to increased reproductive potential (McPhail and Baxter 1996). The use of migratory corridors by bull trout also results in increased dispersion, facilitating gene flow among local populations when individuals

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from different local populations interbreed, stray, or return to nonnatal streams. Also, local populations that have been extirpated by catastrophic events may become reestablished as a result of movements by bull trout through migratory corridors (Rieman and McIntyre 1993, Montana Bull Trout Scientific Group (MBTSG) 1998).

While stream habitats have received more attention, lakes and reservoirs also figure prominently in meeting the life cycle requirements of bull trout. For adfluvial bull trout populations, lakes and reservoirs provide an important component of the core foraging, migrating, and overwintering habitat, and are integral to maintaining the adfluvial life history strategy that is commonly exhibited by bull trout. When juvenile bull trout emigrate downstream to a lake or reservoir from the spawning and rearing streams in the headwaters, they enter a more productive lentic environment that allows them to achieve rapid growth and energy storage. Typically, juvenile bull trout are at least two years old and 100 mm (4 inches) or longer upon entry to the lake environment. For the next 2–4 years they grow rapidly. At a typical age of five years or older, when total length normally exceeds 400 mm (16 inches), they reach sexual maturity. The lake environment provides the necessary attributes of food, space, and shelter for the subadult fish to prepare for the rigors of migratory passage upstream to the natal spawning area, a migration that may last as long as six months and cover distances as much as 250 km (155 mi) upriver.

When adfluvial bull trout reach adulthood and complete the spawning migration, mating in the fall in the stream where they originated, they usually return downstream to the lake very rapidly. Adult adfluvial bull trout may live as long as 20 years and can complete multiple migrations between the lake and the spawning stream. In many populations, alternate year spawning is the normal pattern, and adult fish may require as much as 20 months in the lake or reservoir habitat to facilitate adequate energy storage and gamete development before they return to spawn again.

In comparison to streams, lake and reservoir environments are relatively more secure from catastrophic natural events. They provide a sanctuary for bull trout, allowing them to quickly rebound from temporary adverse conditions in the spawning and rearing habitat. For example, if a major wildfire burns a drainage and eliminates most or all aquatic life (a rare occurrence), bull trout subadults and adults that survive in the lake may return the following year to repopulate the system. In this way, lakes and reservoirs provide an important adaptive element of the adfluvial life history strategy.

The construction of reservoirs may have had adverse effects to bull trout, but some reservoirs also have provided unintended benefits. For example, the basin of Hungry Horse Reservoir has functioned adequately for fifty years as a surrogate home for stranded Flathead Lake bull trout trapped upstream of the dam when it was completed. While this is an artificial impoundment, the habitat the reservoir provides and the presence of an enhanced prey base of native minnows, suckers, and whitefish within the reservoir sustain a large adfluvial bull trout population. Additionally, while barriers to migration are often viewed as a negative consequence of dams, the connectivity barrier at Hungry Horse Dam has also served an important, albeit unintended, function in restricting the proliferation of nonnative *Salvelinus* species (brook trout and lake trout) from downstream areas upstream above the dam.

In addition to considering various habitat features and other factors that relate to individuals and populations of bull trout in relatively localized areas, attention also is being given to broader scale considerations of the distribution and abundance of bull trout, based on applying the theories and principles of conservation biology and metapopulation dynamics (Rieman and McIntyre 1993; Kanda 1998). Conservation biology is a scientific discipline that has emerged from a basis in several other sciences (*e.g.*, population genetics, demography, biogeography, and community ecology) and addresses applied problems in conservation, especially diversity, scarcity, and extinction (Noss and Cooperrider 1994). A metapopulation is an interacting network of local subpopulations, in which individual demographics units are connected through dispersal and migration with varying frequencies of gene flow among them (Meefe and Carroll 1994). Metapopulation models are used in conservation biology to describe the structure and dynamics of populations that occur in different locations across a landscape and to identify subpopulations, habitat patches, and links between habitat patches that are of crucial importance to maintaining the overall metapopulation. Under conditions where metapopulation dynamics are functioning, providing an appropriate amount and spatial distribution of habitat to support metapopulations can be crucial to reducing the risk of extinction of a species or population because even though local subpopulations may become extinct, they can be replaced (reestablished) by individuals from other local subpopulations or populations.

One of the key factors influencing the distribution and abundance of bull trout is the extent to which habitat patches in sufficient number and proximity provide for the natural reestablishment of local subpopulations. The rate at which reestablishment might occur is another key factor. Because bull trout exhibit strong homing fidelity when spawning and their rate of straying appears to be low, natural reestablishment of extinct local subpopulations may take a very long time even if habitat connectivity is retained.

Genetic diversity in bull trout is another issue of concern, and is related to the distribution and abundance of bull trout habitat and populations. Habitat alteration, primarily through construction of impoundments, dams, and water diversions, has substantially increased habitat fragmentation, eliminated migratory corridors, and isolated bull trout, often in the headwaters of tributaries (Rieman *et al.* 1997). In their review of the status of bull trout populations in Oregon, Ratliff and Howell (1992) described various factors that have resulted in bull trout populations becoming largely fragmented and isolated in the upper reaches of drainages, with most of the remaining populations being the resident form of bull trout, rather than the migratory forms that would have used the lower stream reaches that now have been altered by various types of developments or by cumulative impacts from upstream areas. Ratliff and Howell specifically noted that habitat fragmentation and the resulting isolation of populations can exacerbate problems facing declining populations, including reduced genetic variability that can lead to inbreeding depression, further lowering productivity and increasing the risk of extinction. They described the loss of fluvial and adfluvial life histories as a major concern for bull trout conservation, noting that these larger fish have greater reproductive potential because of their increased fecundity and also are less likely to hybridize with the smaller brook trout that often co-occur in spawning areas.

Genetic diversity enhances long-term survival of a species by increasing the likelihood that the species is able to survive changing environmental conditions. For instance, a local

population of bull trout may contain individuals with genes that enhance their ability to survive in the prevailing local environmental conditions (Leary *et al.* 1993; Spruell *et al.* 1999; Hard 1995). Individuals with a different genetic complement may persist in the local population in much lower abundance than those with locally adapted genes. However, if environmental conditions change due to natural processes or human activities, the survival of individuals adapted to previous conditions may no longer be enhanced. Individuals with the alternative genetic complement may increase in relative abundance if their survival is enhanced in the altered environmental conditions. Moreover, considerable genetic diversity may be distributed among local populations so that changing environmental conditions could lead to extirpation of a local population of bull trout, but the area could be repopulated by individuals from another local population that possess genes whose survival is enhanced under the new conditions. If the overall genetic diversity distributed across local populations of bull trout is reduced by the loss of local populations, the ability of the species to respond to changing conditions is likewise reduced, leading to a higher likelihood of extinction (Rieman and McIntyre 1993; Leary *et al.* 1993; Spruell *et al.* 1999; Hard 1995; Rieman and Allendorf 2001).

Bull trout populations contain low levels of genetic variability within them compared to relatively high levels of divergence and variability exhibited among populations (Leary *et al.* 1993; Leary and Allendorf 1997; Spruell *et al.* 1999; Taylor *et al.* 1999). For example, Leary *et al.* (1993) state that "* * * a relatively high amount (40%) of the total genetic variation within the Columbia River drainage is * * * due to genetic differences among samples. This is in striking contrast to the results * * * with rainbow trout and * * * with chinook salmon * * * where only 10% of the total genetic variation was due to genetic differences among populations sampled from a geographical area similar to that of our samples of bull trout." This type of genetic structuring indicates limited gene flow among bull trout populations, which may encourage local adaption within individual populations (Spruell *et al.* 1999; Healey and Prince 1995; Hard 1995; Rieman and McIntyre 1993).

Current information on the distribution of genetic diversity within and among bull trout populations is based on molecular characteristics of individual genes. While such analyses are extremely useful, they are not likely to detect variability in adaptive traits that are dependent on both the genotype (molecular genetic characteristics) and phenotype (observable expression, which may be influenced by genotype, the environment, and interactions of both) of an organism (Hard 1995). We may not be able to directly detect or measure the relations among genetic diversity, phenotypes, and adaptive traits of a population. Although the loss of a few populations may have little effect on overall genetic diversity, without conserving suites of populations and their habitats (*i.e.*, core areas and, on a larger scale, recovery units), the loss of phenotypic diversity may be substantial, with negative consequences to the viability of the species (Healey and Prince 1995; Hard 1995; Rieman and McIntyre 1993; Nelson *et al.* 2002; MBTSG 1998; Taylor *et al.* 1999). Therefore, the maintenance of phenotypic variability and plasticity for adaptive traits (*e.g.*, variability in body size and form, foraging efficiency, and timing of migrations, spawning, and maturation) is achieved by conserving populations, their habitats, and opportunities for the species to take advantage of habitat diversity (Healey and Prince 1995; Hard 1995).

Studies to understand the relations among genotypic, phenotypic, and environmental variability relative to bull trout have been conducted. For example, Spruell *et al.* (1999) found that bull trout at five different spawning sites within a tributary drainage of Lake Pend Oreille, Idaho, were differentiated based on genetic analyses (microsatellite DNA), indicating fidelity to spawning sites and relatively low rates of gene flow among sites. Genetic isolation of bull trout and environmental variability of tributary streams in the Lake Pend Oreille system implies that bull trout may be uniquely adapted within and among spawning tributaries in the system. Because bull trout in the coterminous United States are distributed over a wide geographic area consisting of various environmental conditions, and because they exhibit considerable genetic differentiation among populations, the occurrence of local adaptation is expected to be extensive. Some readily observable examples of differentiation between populations include external morphology and behavior (*e.g.*, size and coloration of individuals; timing of spawning and migratory forays). Thus, conserving many populations across the range of the species is crucial to adequately protect genetic and phenotypic diversity of bull trout (Hard 1995; Healey and Prince 1995; Taylor *et al.*1999; Rieman and McIntyre 1993; Spruell *et al.* 1999; Leary *et al.* 1993; Rieman and Allendorf 2001). Changes in habitats and prevailing environmental conditions are increasingly likely to result in extinction of bull trout if genetic and phenotypic diversity is lost.

Scientific evidence also supports the position that maintaining multiple bull trout populations distributed and interconnected throughout their current range will provide a mechanism for reducing the risk of extinction from stochastic events (Rieman and McIntyre 1993; Rieman and Allendorf 2001; Spruell *et al.* 1999; Healey and Prince 1995; Hard 1995). Bull trout have a broad distribution and are relatively secure in some parts of their range. However, declines and local extinctions have occurred. Current patterns in the distribution and other empirical evidence, when interpreted in view of emerging conservation theory, indicate that further declines and local extinctions are likely (Rieman *et al.* 1997; Spruell *et al.* 2002; Rieman and Allendorf 2001; Dunham and Rieman 1999).

The range of the bull trout has decreased in comparison to the known and estimated historic range in the conterminous United States. Bull trout are now extinct in northern California. Elsewhere, populations have been much reduced, fragmented, or eliminated from the main stems of many large river systems.

Historical records for the Klamath River basin suggest that bull trout in this distinct population segment were once widely distributed and exhibited diverse life-history traits in that part of their range (Ziller 1992). Currently, however, bull trout in this basin are almost entirely nonmigratory, resident fish that are confined to headwater streams (Goetz 1989). There currently are nine naturally occurring, nonmigratory populations, and one remnant fluvial population, that still occur in the Upper Klamath Lake, Sprague River, and Sycan Marsh watersheds in Oregon. They represent an estimated 21 percent of the estimated historic range of bull trout in the Klamath River basin (Quigley and Arbelbide 1997). These known remaining local populations are considered to be quite low in abundance; they are highly isolated from one another as a result of natural and human-caused conditions and are at substantial risk of extirpation due to natural disturbance cycles, random events, and other risk factors (Light *et al.* 1996).

The Columbia River population segment includes bull trout residing in

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portions of Oregon, Washington, Idaho, and Montana. Bull trout are estimated to have once occupied about 60 percent of the Columbia River basin; they presently are known or predicted to occur in less than half (approximately 45 percent) of watersheds in the historical range (Quigley and Arbelbide 1997), which amounts to approximately 27 percent of the basin. The principal river systems and lakes/reservoirs in the Columbia River basin where bull trout currently are known to occur are as follows: The Willamette River system (in upper tributaries only), Lewis River, Klickitat River; Hood River, Deschutes River, Metolius River, Lake Billy Chinook, Odell Lake, John Day River, Sycan River, Sprague River, Umatilla River, Walla Walla River, Yakima River, Columbia River, Snake River, Tucannon River, Grande Ronde River, Clearwater River, Asotin Creek, Imnaha River, Salmon River, Little Lost River, Malheur River, Powder River, Payette River, Boise River, Weiser River, Wenatchee River, Entiat River, Methow River, Rimrock Lake, Spokane River, Pend Oreille River, Flathead River, Swan River, Clark Fork River, Kootenai River, Bitterroot River, Blackfoot River, Hungry Horse Reservoir, Swan Lake, and Flathead Lake (Bull Trout Draft Recovery Plan (Draft Recovery Plan), USFWS 2002).

Although still relatively widely distributed in the Columbia River basin, bull trout occur in low numbers in many areas, and populations are considered depressed or declining across much of their range (Ratliff and Howell 1992; Schill 1992; Thomas 1992; Buchanan *et al.* 1997; Rieman *et al.* 1997, Quigley and Arbelbide 1997). Another evaluation of the distribution and status of bull trout within the Columbia River and Klamath River basins indicates bull trout are present in about 36 percent of the subwatersheds in their potential range and are estimated to have strong populations in only 6 to 12 percent of the potential range, with most populations considered to be depressed in numbers (Rieman *et al.*1997).

The range of the bull trout is likely to have contracted and expanded over time in relation to natural climate changes; the distribution of the species probably was likely patchy even in pristine environments. However, regardless of uncertainty about the exact historical range, the number and size of historical populations, and the role of natural factors in the status of the species, there is widespread agreement in scientific literature that many factors related to human activities have impacted bull trout and continue to pose significant risks of further extirpations of local populations. Among the many factors that contributed to the decline of bull trout in the Columbia River and Klamath River basins, those which appear to be particularly significant are as follows: (1) Fragmentation and isolation of local populations due to the proliferation of dams and water diversions that have eliminated habitat, altered water flow and temperature regimes, and impeded migratory movements (Rieman and McIntyre 1993; Dunham and Rieman 1999); (2) degradation of spawning and rearing habitat in upper watershed areas, particularly alterations in sedimentation rates and water temperature, resulting from past forest and rangeland management practices and intensive development of roads (Fraley and Shepard 1989; Montana Bull Trout Scientific Group (MBTSG) 1998); and (3) the introduction and spread of nonnative species, particularly brook trout (*Salvelinus fontinalis*) and lake trout (*Salvelinus namaycush*), which compete with bull trout for limited resources and, in the case of brook trout, hybridize with bull trout (Ratliff and Howell 1992; Leary *et al.* 1993).

The ramifications and effects of isolation and habitat fragmentation on various aspects of the life cycle of bull trout are highlighted in much of the scientific literature on this species. Isolation of populations and habitat fragmentation resulting from barriers to migration have negatively impacted affected bull trout in several ways that have important implications for the conservation of the species. These include: (1) Reducing geographical distribution (Rieman and McIntyre 1993, MBTSG 1998); (2) increasing the probability of losing individual local populations (Rieman and McIntyre 1993, Rieman *et al.* 1995, MBTSG 1998, Dunham and Rieman 1999, Nelson *et al.* 2002); (3) increasing the probability of hybridization with introduced brook trout (Rieman and McIntyre 1993); (4) reducing the potential for movements that are necessary to meet developmental, foraging, and seasonal habitat requirements (Rieman and McIntyre 1993, MBTSG 1998); and (5) reducing reproductive capability by eliminating the larger, more fecund migratory form of bull trout from many subpopulations (Rieman and McIntyre 1993, MBTSG 1998).

Introduced brook trout threaten bull trout through competition, hybridization, and possibly predation (Leary *et al.* 1993). Brook trout appear to be better adapted to degraded habitat than bull trout, and brook trout are more tolerant of high water temperatures. Hybridization between brook trout and bull trout has been reported in Montana, Oregon, Washington, and Idaho. In addition, brook trout mature at an earlier age and have a higher reproductive rate than bull trout. This difference appears to favor brook trout over bull trout when they occur together, often leading to the decline or extirpation of bull trout (Leary *et al.* 1993; MBTSG 1998). Nonnative lake trout also negatively affect bull trout. A study of 34 lakes in Montana, Alberta, and British Columbia found that lake trout reduce the distribution and abundance of migratory bull trout in mountain lakes and concluded that lacustrine populations of bull trout usually cannot be maintained if lake trout are introduced (Donald and Alger 1993).

Previous Federal Action

On September 18, 1985, we published an animal Notice of Review in the **Federal Register** (50 FR 37958) designating the bull trout as a category 2 candidate for listing in the coterminous United States. Under the definitions we used at that time, category 2 taxa were those for which we had information indicating that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not currently available to support a proposed rule. We published updated Notices of Review on January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), reconfirming the bull trout category 2 status. On November 15, 1994 (59 FR 58982), we elevated bull trout in the coterminous United States to a category 1 candidate for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

On June 13, 1997, we published in the **Federal Register** (62 FR 32268) a proposed rule to list the Klamath River population segment of bull trout as an endangered species, and the Columbia River population segment of bull trout as a threatened species. On June 10, 1998, we published a final rule in the **Federal Register** (63 FR 31647) determining the Klamath River and Columbia River population segments of bull trout to have threatened status under the Act. At the time of listing, we made the finding that critical habitat was not determinable for these populations because their habitat needs were not sufficiently well known (63 FR 31647). (For a further summary of previous Federal action, see 64 FR 58916.)

On January 26, 2001, the Alliance for the Wild Rockies, Inc. and Friends of the Wild Swan, Inc. filed a lawsuit in the U.S. District Court of Oregon challenging our failure to designate critical habitat for bull trout. We entered into a settlement agreement on January 14, 2002, which stipulated that we would make critical habitat determinations for the five population segments of bull trout (Civil Case No: CV 01–127–JO). For the Klamath River and Columbia River populations, we agreed to submit for publication in the **Federal Register** a proposed rule for critical habitat designation by October 1, 2002, and a final rule by October 1, 2003. A subsequent agreement resulted in extending the date for the publication of the proposed rule to November 12, 2002.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or a threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.

Critical habitat receives protection under section 7(a)(2) of the Act through the requirement that Federal agencies shall, in consultation with us, ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Section 7(a)(4) requires Federal agencies to confer with us on any agency action which is likely to result in the destruction or adverse modification of proposed critical habitat. The term "destruction or adverse modification" is defined at 50 CFR 402.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because the consultation requirements under section 7 of the Act do not apply to activities on private or other non-Federal lands unless those activities involve a Federal nexus, critical habitat designation on such lands would not afford any additional protections under the Act.

Critical habitat also provides nonregulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery, and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people to avoid causing accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, and using the best scientific data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary consituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act specifies that except in those circumstances determined by the Secretary of the Interior (Secretary), critical habitat shall not include the entire geographical areas which can be occupied by the listed species. Regulations at 50 CFR 424.12(e) also state that, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of such exclusion outweigh the benefits of including the areas within critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. We recognize that habitat is often dynamic, undergoing naturally-occurring changes that can alter its importance to, and use by, a listed species. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and to the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat concurrently with listing a species. In our final listing rule (63 FR 31647), we concluded that the designation of critical habitat for the bull trout was not determinable at that time, explaining that the biological needs of bull trout in the Klamath River and Columbia River population segments were not sufficiently well known to permit identification of areas as critical habitat. Further, the extent of habitat required and specific management measures needed for recovery of these fish had not been identified.

Shortly after the species was listed in 1998, we initiated development of a recovery plan for bull trout and convened 27 individual Recovery Unit Teams throughout five States to begin gathering information on the status and conservation needs of the species. These

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teams were composed of experts from the fields of biology, other scientific disciplines such as hydrology and forestry, resource users, and other stakeholders with interest in and knowledge of bull trout and the habitats they depend on for survival. The recovery planning process in general, and the individual Recovery Unit Teams in particular, generated a considerable body of new information on the biological needs of bull trout, the extent of habitat required, and specific management needs. There also have been new scientific publications, and additional information has become available from various State and Federal agencies since the 1998 listing action. As a result, we now find that sufficient information exists to determine critical habitat for the Klamath River and Columbia River bull trout population segments.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that the decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinions.

Methods

As required by the Act and regulations at 50 CFR 424.12, we used the best scientific data available to determine critical habitat, giving consideration to those physical and biological features that are essential to the conservation of the bull trout. As described at 50 CFR 424.12(b), such requirements include, but are not limited to, the following: (1) Space for individual and population growth and for normal behavior; (2) Food, water, or other nutritional or physiological requirements; (3) Cover or shelter; (4) Sites for breeding, reproduction, rearing of offspring; and generally; (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

In proposing critical habitat, we reviewed the overall approaches to the conservation of the species undertaken by local, State, and Federal agencies; Tribal governments; and private individuals and organizations since the species was listed in 1998. We relied heavily on information developed by the bull trout Recovery Unit Teams, which were comprised of Federal, State, Tribal, and private biologists, as well as experts from other scientific disciplines such as hydrology and forestry, resource users, and other stakeholders with an interest in bull trout and the habitats they depend on for survival. We reviewed available information concerning bull trout habitat use and preferences, habitat conditions, threats, limiting factors, population demographics, and the known locations, distribution and abundances of bull trout.

During our evaluation of information, we also took into account the relatively low probability of detection of bull trout in traditional fish sampling and survey efforts, as well as the limited extent of such efforts across the range of bull trout. Because of their varied life history strategies, nocturnal habits, and low population densities in many areas, the detectability of bull trout in a given area is highly variable (Rieman and McIntyre 1993). Furthermore, much of the current information on bull trout presence is the product of informal surveys or sampling conducted for other species or other purposes. The primary limitations of informal surveys are that they provide no estimate of certainty (*i.e.*, a measure of the probability of detection), and that they may be inadequate for determining parameters such as the densities and distribution of the population. (The need for a statistically sound bull trout survey protocol has been addressed only recently through the development, by the American Fisheries Society, of a peer-reviewed protocol for determining presence/absence, and potential habitat suitability for juvenile and resident bull trout (Peterson *et al.* 2002).) Consequently, with some exceptions (*e.g.*, areas of Montana where bull trout surveys have been consistently conducted for a decade or more), a lack of bull trout detections does not provide definitive evidence of their absence in a particular stream, lake, or river. Accordingly, we used information gathered during the bull trout recovery planning process, as supplemented by even more recent information developed by State agencies, Tribes, the U.S. Forest Service (USFS), and other entities, in the development of our critical habitat designation proposal. Data concerning habitat conditions or status of primary constituent elements were used when available. To address areas where data gaps exist, we solicited expert opinions from knowledgeable fisheries biologists in the local area.

Important considerations in selecting areas for critical habitat designation include factors specific to each river system, such as size (*e.g.*, stream order), gradient, channel morphology, connectivity to other aquatic habitats, and habitat complexity and diversity, as well as range-wide recovery considerations. This effort was especially assisted by the recovery strategy described in the Draft Recovery Plan (USFWS 2002). We took into account that preferred habitat for bull trout ranges from small headwater streams that are used largely for spawning and rearing, to downstream, mainstem portions of river networks that are used for rearing, foraging, overwintering, and migration.

Our method included consideration of information regarding habitat essential to maintaining the migratory life history forms of bull trout, in light of the repeated emphasis about the importance of such habitat in the scientific literature (Rieman and McIntryre 1993; Hard 1995; Healey and Prince 1995; Rieman *et al.* 1995; MBTSG 1998; Dunham and Rieman 1999; Nelson *et al.* 2002). As explained above (see the Background section), habitat for movement upstream and downstream is important for all life history forms for spawning, foraging, growth, access to rearing and overwintering areas, or thermal refugia (*e.g.*, spring-fed streams in late summer), avoidance of extreme environmental conditions, and other normal behavior. Successful migration requires biologically, physically, and chemically unobstructed routes for movement of individuals. Therefore, our method included considering information regarding habitat that is essential for movement into and out of larger rivers, because of the importance of such areas to the fluvial form of bull trout. We similarly identified habitat that is essential for movement between streams and lakes by adfluvial forms.

Migratory corridors also are important for movement between populations (*e.g.* Fraley and Sehapard 1989; Rieman and McIntyre 1993, Rieman *et al.* 1995, Dunham and Rieman 1999). Thus, in addition to considering areas important for migration within populations, our method also included considering information regarding migration corridors necessary to allow for genetic exchange between local populations. Corridors that provide for such movements can support eventual recolonization of unoccupied areas or otherwise play a significant role in maintaining genetic diversity and metapopulation viability. (*See* Background section, above, for details.) Because these factors are important in identifying areas that are essential to the conservation of bull trout, our method included consideration of the various roles that migratory corridors have for bull trout.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base our proposal on the best scientific data available, and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These physical and biological features include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. All areas proposed as critical habitat for bull trout are within the historic geographic range of the species and contain one or more of these physical or biological features essential to the conservation of the species. The regulations also require that we include a list of known primary constituent elements with the critical habitat description. As described in the regulations, the primary constituent elements may include, but are not limited to, features such as spawning sites, feeding sites, and water quality or quantity. Following is a brief summary of information we considered in our identification of primary constituent elements. Additional and more detailed information is available in the administrative record for the proposed rule.

We determined the primary constituent elements for bull trout from studies of their habitat requirements, life-history characteristics, and population biology, as outlined above. These primary constituent elements are:

(1) Permanent water having low levels of contaminants such that normal reproduction, growth and survival are not inhibited;

(2) Water temperatures ranging from 2 to 15 °C (36 to 59 °F), with adequate thermal refugia available for temperatures at the upper end of this range. Specific temperatures within this range will vary depending on bull trout life history stage and form, geography, elevation, diurnal and seasonal variation, shade, such as that provided by riparian habitat, and local groundwater influence;

(3) Complex stream channels with features such as woody debris, side channels, pools, and undercut banks to provide a variety of depths, velocities, and instream structures;

(4) Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount of fine substrate less than 0.63 cm (0.25 in) in diameter and minimal substrate embeddedness are characteristic of these conditions;

(5) A natural hydrograph, including peak, high, low, and base flows within historic ranges or, if regulated, a hydrograph that demonstrates the ability to support bull trout populations;

(6) Springs, seeps, groundwater sources, and subsurface water connectivity to contribute to water quality and quantity;

(7) Migratory corridors with minimal physical, biological, or chemical barriers between spawning, rearing, overwintering, and foraging habitats, including intermittent or seasonal barriers induced by high water temperatures or low flows;

(8) An abundant food base including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish; and

(9) Few or no predatory, interbreeding, or competitive nonnative species present.

The areas proposed as critical habitat for the Klamath River and Columbia River Basin DPSs of bull trout are designed to incorporate what is essential for their conservation. An area need not include all nine of the primary constitutent elements to qualify for designation as critical habitat.

Criteria Used To Identify Critical Habitat

The Draft Recovery Plan (USFWS 2002) identifies the specific recovery needs of the species and provides guidance for identifying areas that warrant critical habitat designation. As described below, this Draft Recovery Plan was used as the principal basis for identifying the critical habitat in this proposed designation. Use of the Draft Recovery Plan for this purpose raises significant issues about the scope and impact of this proposed designation. In particular, areas included in this proposal may not meet the statutory definition of critical habitat insofar as they may not be essential to the conservation of bull trout. We will re-evaluate the proposed rule based on public comment, peer review of the proposed rule and the Draft Recovery Plan, the economic analysis of the proposed rule and the public comments on that analysis, and other available information, to ensure that the designation accurately reflects habitat that is essential to the conservation of the species.

The draft recovery strategy focuses primarily on the maintenance (and, where needed, expansion) of existing local populations by: (1) Protecting sufficient amounts of spawning and rearing habitat in upper watershed areas; (2) providing suitable habitat conditions in downstream rivers and lakes to provide foraging and overwintering habitat for fluvial and adfluvial fish; and (3) sustaining (and in some cases reestablishing) movement corridors to maintain migratory routes and the potential for gene flow between local populations by maintaining habitat conditions that allow for fish passage.

Critical habitat units are patterned after recovery units identified in the Draft Recovery Plan (USFWS 2002) for the Klamath River and Columbia River population segments. Using the guidance from that plan, we identified habitat areas needed for the survival and recovery of bull trout. To be included as critical habitat, an area had to provide one or more of the following three functions: (1) Spawning, rearing, foraging, or overwintering habitat to support existing bull trout local populations; (2) movement corridors necessary for maintaining migratory life-history forms; and/or (3) suitable and historically occupied habitat that is essential for recovering existing local populations that have declined, or that is needed to reestablish local populations required for recovery.

Our proposal includes approximately 4,074 km (2,531 mi) of stream reaches and 12,176 ha (30,075 ac) of lake and reservoir surface area habitat determined to be essential to the conservation of the bull trout, but currently not known to be occupied. Although these specific areas are not known to be occupied, they are within the geographical area occupied by bull trout occupy. Areas with low levels of bull trout occupancy or where presence of the species is undetermined were included when they provided connectivity between areas of high-quality habitat, served as important migration corridors for fluvial or adfluvial fish, or were identified in the

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Draft Recovery Plan (USFWS 2002) as necessary for local population expansion or reestablishment in order to achieve recovery, so that delisting can occur. Restoration of reproducing bull trout populations to additional portions of their historical range would significantly reduce the likelihood of extinction due to natural or human-caused factors that might otherwise further reduce population size and distribution. Thus, an integral component of the Draft Recovery Plan (USFWS 2002) is the selective reestablishment of secure, self-sustaining populations in certain areas where the species has apparently, but not necessarily conclusively, been extirpated. In this regard, we also note that some habitat areas that would not be considered essential if they were geographically isolated are, in fact, essential to the conservation of the species when situated in locations where they facilitate movement between local populations or otherwise play a significant role in maintaining metapopulation viability (*e.g.*, by providing sources of immigrants to recolonize adjacent habitat patches following periodic extirpation events) (Dunham and Rieman 1999). In addition, populations on the periphery of the species' range, or in atypical environments, are important for maintaining the genetic diversity of the species and could prove essential to the ability of the species to adapt to rapidly changing climatic and environmental conditions (Leary *et al.* 1993; Hard 1995).

A brief discussion of each area proposed for designation is provided in the critical habitat unit descriptions (below). Additional detailed documentation concerning the essential nature of these areas is contained in our administrative record.

Proposed critical habitat for bull trout was delineated using multiple sources including: The StreamNet GIS (Geographic Information System) database for Idaho, Oregon, Washington, and Montana; and State databases of bull trout distribution.

Managed Lands

As part of our process of developing this critical habitat proposal, we evaluated existing management plans to determine whether they provide sufficient protection and management for the bull trout and its habitat such that there is no need for additional special management considerations or protection of areas that otherwise would qualify as critical habitat. Section 3(5)(A)(i) of the Act defines critical habitat as areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of essential habitat elements and that provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule, and/or adequate funding for the management plan); and (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area provides physical and biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria, then such an area does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

Federal Public Lands (USFS and Bureau of Land Management)

Within the range of bull trout, the USFS and Bureau of Land Management (BLM) prepare land management plans which generally guide activities on the National Forests and BLM Districts. These plans provide some level of conservation benefit to species and the habitat they are known to occupy. However, current management goals are not sufficient to address areas of unknown occupancy which are proposed as critical habitat because we believe they are essential to conservation of the species.

Federal land management agencies routinely engage in land exchanges with non-Federal entities. These exchanges are often advantageous to both parties by providing, for example, harvestable timber for a private timber company and a consolidation of land holdings that will contribute to efficient future management by the Federal agency. Such exchanges complicate potential critical habitat exclusions based on existing management plans.

USFS Land and Resource Management Plans (LRMPs) and BLM Resource Management Plans (RMPs), as amended by the Interim Strategy for Managing Fish-Producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana, and Portions of Nevada (INFISH), and the Interim Strategy for Managing Anadromous Fish-Producing Watersheds in Western Oregon and Washington, Idaho, and Portions of California (PACFISH), are fluid documents that may change, or not change as anticipated, as management emphasis and direction changes. For example: (1) PACFISH and INFISH were considered interim for a period of 2 years when they were created in 1998, yet they still are in place in 2002; (2) three National Forests in Idaho are currently engaged in informal consultation with the Service on revisions to their LRMPs with the vision of dropping or modifying PACFISH/INFISH requirements. We are unsure at this point as to the degree of aquatic protections that will be provided under the new plans; and (3) the Aquatic Conservation Strategy and other components of the Northwest Forest Plan (NWFP) contain aspects which are not always fully agreed upon by Federal agencies charged with implementation of the plan. For this reason, as well as to incorporate new information, the NWFP is managed adaptively to respond to new information and, as such, we are unsure as to the specific details of future management direction. Further, LRMPs and RMPs (including the NWFP) are general and programmatic in nature. All of the Federal agencies understand that more specific consultation at the site-specific level is required to determine project effects and meet the requirements of section 7(a)(2) of the Act. Therefore, the current existence and substance of these Federal land management plans do not provide assurances of their future implementation, or that specific project implementation in the future will reflect a comparable level of conservation benefits to bull trout.

Because of these circumstances, we cannot, at this time, find that management on these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. Therefore, we have included areas within these Federal jurisdictions as part of the critical habitat proposal, and are seeking further information, through the public comment process, as to whether these areas should be retained or excluded from designation in the final rule (see Public Comments Solicited section).

Congressionally Designated Wilderness

Wilderness areas exist because of a Congressional mandate that began with passage of the Wilderness Act in 1964. In partnership with the public, wilderness managers have a responsibility to preserve an enduring resource of wilderness, where natural processes are allowed to operate freely. Non-commercial hunting, fishing, and trapping are allowed in most Bureau of Land Management, Fish and Wildlife Service, and Forest Service wilderness areas, but not those managed by the National Park Service. States are responsible for management of wildlife and fish, working together with the Federal agency land managers. Wildlife species may be introduced and fish species stocked in order to perpetuate or recover a threatened or endangered species, or to restore a native species that has been eliminated or reduced by human influence. Exotic species may not be stocked. Habitat may be manipulated only when it is necessary to correct conditions resulting from human influence or to protect threatened or endangered species. Research and management surveys are permitted if done in a manner compatible with the preservation of the wilderness resource.

Where previously established, livestock grazing is permitted to continue in wilderness, subject to grazing and other resource management requirements. Permittees are required to maintain range improvements necessary to the livestock operation or the protection of the range, such as fences and watering facilities. The use of motorized equipment is permitted where it occurred prior to the establishment of wilderness. Range improvements such as fences and watering holes may be made, when necessary to protect wilderness values and manage the range resource. Prescribed burning, noxious weed control, seeding, irrigation, fertilization, and liming are allowed where each activity was practiced prior to wilderness designation, when absolutely necessary for the livestock grazing operation, and where there would be no serious adverse impacts on wilderness values. Horses and packstock used by commercial outfitters and guides and private individuals are grazed under permit. Feed must be packed in when forage is inadequate, and each wilderness may set regulations on tethering of horses, party size limits, and use of native feed and pellets. Wild horses and burros are considered part of the natural system, where established at the time of designation.

Effective January 1, 1984, the Wilderness Act withdrew minerals within lands designated as wilderness from appropriation under the mining and mineral leasing laws, subject to valid existing rights. Holders of valid mineral leases retain the rights granted by the terms and conditions of the specific leases. Holders of valid mining claims are allowed to conduct operations necessary for the development, production, and processing of the mineral resource. Mechanized equipment, motorized access, and utility corridors may be used. However, these activities and the reclamation of all disturbed lands must minimize the impact on the surrounding wilderness character. Prior to designation as wilderness, mining claims may be made on public lands administered by the Bureau of Land Management. Mining operations may continue after designation, subject to strict regulation to protect wilderness characteristics.

Dams and water development structures in wilderness, other than those necessary for range and wildlife, can only be authorized by the President. However, existing reservoirs, ditches, water catchments, and related facilities for the control or use of water can be maintained or reconstructed if they meet a public need or are part of a valid existing right. Motorized equipment and mechanical transportation for maintenance of water development structure is not allowed unless practiced before the area was designated wilderness. Watershed restoration is permitted only where human activities have caused soil deterioration or other loss of wilderness values, where watershed conditions could cause unacceptable environmental impacts or threaten life or property outside the wilderness, and where natural revegetation is insufficient.

Although wilderness areas generally provide for management complementary with the conservation needs of bull trout, the provisions for mining, water development, and grazing relative to pre-existing claims and usage, and their effects on future site-specific actions that may occur, is not well understood. Because of this uncertainty, we cannot, at this time, determine the effectiveness of wilderness management on bull trout. Therefore, we have included areas within wilderness as part of the critical habitat proposal. We are seeking further information, through the public comment process, as to whether these areas should be retained or excluded from designation in the final rule (see Public Comments Solicited section).

Lands Covered Under Existing Habitat Conservation Plans (HCPs)

Section 10(a)(1)(B) of the Act authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan, and specifies the content of such a plan. The purpose of such a habitat conservation plan, or HCP, is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated and that the action does not appreciably reduce the survival and recovery of the species.

Within the area covered by Klamath River DPS, there are no HCPs involving bull trout. Within the range of the Columbia River population segment of bull trout, the Service has approved HCPs involving the Plum Creek Timber Company and the Washington Department of Natural Resources (WDNR). The Plum Creek Native Fish, Plum Creek I–90, and the WDNR HCPs have been developed, in part, to provide for the conservation needs of bull trout while also allowing for otherwise lawful timber management activities. The duration of the permits associated with the Plum Creek and WDNR HCPs ranges from 30 to 100 years. The permittees have the option, however, of terminating at any time if they so choose, with a sixty-day notice to the Service. Moreover, the permittees may retain their permits but sell some of their lands covered by an HCP. All of these HCPs contain provisions that allow buyers of lands covered by the HCP to assume the permit if they so desire.

The Plum Creek I–90 HCP includes provisions that: (1) Generally allow for the sale or exchange of lands with the U.S. Forest Service, with some specific limitations relative to implementation of the Northwest Forest Plan; (2) allow for the sale of any lands provided appropriate covenants or assurances are given by the acquiring party that such lands will be managed consistent with the goals and objectives of the HCP; and (3) allow for the sale of parcels not in excess of 640 acres to any private party as long as the cumulative total of all such transactions does not exceed 5

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percent of the acreage covered by the permit and the cumulative total of all such transactions in any one township does not exceed 1,920 acres. The Plum Creek Native Fish HCP applies a proportionality ratio to land dispositions relative to three categories of dispositions: Positive, neutral, and negative in terms of conservation benefits to covered species. Plum Creek has committed to manage its land dispositions so that the cumulative total of dispositions stays within a predetermined range of proportionality. If, at the end of the term of the HCP, the proportionality balance is below the predetermined range limits, positive land disposition commitments must be applied to sufficient acreage within the project area to restore the balance.

The WDNR lands are maintained primarily for the purpose of growing and selling timber to finance State government, and the management of these lands also can include purchases, sales, and land exchanges. The WDNR HCP does not include incentives for placing conservation easements on some of the land that WDNR sells. The HCP allows WDNR to dispose of Permit lands at its sole discretion. However, if the cumulative impact of disposed lands would have a significant adverse effect on the covered species, the parties to the HCP are required to mutually amend the HCP to provide replacement mitigation.

We evaluated lands covered by these existing Habitat Conservation Plans to determine whether they are (1) occupied and essential to the conservation of the species; (2) in need of additional special management considerations; and (3) currently not known to be occupied but essential to the conservation of the species. We evaluated each HCP to determine whether it: (1) Provides a conservation benefit to the species; (2) provides assurances that the management plan will be implemented; and (3) provides assurances the plan will be effective. Approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, the areas we ordinarily would designate as critical habitat for the covered species will normally be protected through the terms of the HCPs and their implementation agreements. These HCPs and implementation agreements include management measures and protections that are crafted to protect, restore, and enhance their value as habitat for covered species.

The issuance of a permit (under Section 10(a) of the Act) in association with an HCP application is subject to consultation under Section 7(a)(2) of the Act. While these consultations on permit issuance have not specifically addressed the issue of destruction or adverse modification of critical habitat for bull trout, they have addressed the very similar concept of jeopardy to bull trout in the plan area. Since these large regional HCPs address land use within the plan boundaries, habitat issues within the plan boundaries have been thoroughly addressed in the HCP and the consultation on the permit associated with the HCP. Our experience is that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Common to both approaches is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Therefore, additional measures to protect the habitat from adverse modification are not likely to be required.

The Plum Creek I–90 and WDNR HCPs occur mostly in Western Washington, with minimal overlap (*i.e.*, lands adjacent to less than 50 stream miles for each Plan) with proposed critical habitat for the Columbia River DPS. The Plum Creek Native Fish HCP covers approximately 1.6 million acres, all within the range of the Columbia River DPS. Lands within this HCP occur adjacent to less than approximately 500 miles of streams reaches that we identified as proposed critical habitat.

We have reviewed the three HCPs within the Columbia River basin DPS of bull trout and we have determined that they do not require additional special management considerations to conserve bull trout. Therefore, these areas covered by an existing, legally operative incidental take permit issued for bull trout under section 10(a)(1)(B) of the Act are, by definition under Section 3(5)(A) of the Act, not included in this proposed designation of critical habitat.

As noted above, lands within these HCPs are subject to disposal (*e.g.*, through sale or exchange), subject to various sideboards included in each HCP. Proposed critical habitat does not include non-Federal lands covered by an incidental take permit for bull trout issued under section 10(a)(1)(B) of the Act for these HCPs as long as such permit, or a conservation easement providing comparable conservation benefits, remains legally operative on such lands.

We also considered exclusion of HCPs under subsection 4(b)(2) of the Act, which allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. We believe this is the case in relation to the three HCPs that address bull trout within the Columbia River DPS.

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that activities in such habitat that may affect it require consultation under section 7 of the Act if such actions involve a Federal nexus (*i.e.*, an action authorized, funded, or carried out by a Federal agency). Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat. Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for commercial activity. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat normally has little benefit in areas covered by HCPs.

The benefits of excluding HCPs from being designated as critical habitat include relieving landowners, communities and counties of any additional regulatory review that result from such a designation. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs.

A related benefit of excluding HCP areas is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Tribal Lands

Please see the section "Government-to-Government Relationship With Tribes" for a discussion of proposed critical habitat in relation to Tribal lands.

Proposed Critical Habitat Designation

Within the geographical areas presently known to be occupied by the Klamath River and Columbia River Basin DPSs, we are proposing for designation only areas currently known to be essential to the conservation of bull trout. These areas already contain features and habitat characteristics that are necessary to sustain the species. We are only proposing designation of areas that currently have one or more of the primary constituent elements that provide essential life-cycle requisites of the species, as defined at 50 CFR 424.12(b). Moreover, certain areas with known occurrences of bull trout have not been proposed for designation as critical habitat. We did not propose critical habitat for some small scattered occurrences or habitats that are in highly fragmented areas or no longer have hydrologic conditions that are sufficient to maintain bull trout habitat, as we do not believe, based on the best available scientific information, that these areas are essential to the conservation of the species.

The proposed critical habitat areas described below constitute our best assessment at this time of the stream reaches, lakes, and reservoirs that are essential to the conservation of the Klamath River and Columbia River bull trout population segments. We are proposing designation of approximately 476 km (296 mi) of streams and 13,735 ha (33,939 ac) of lakes for the Klamath River DPS, and 29,251 km (18,175 mi) of streams and 201,850 ha (498,782 ac) of lakes and reservoirs for the Columbia River DPS. Our proposal includes approximately 4,074 km (2,531 mi) of stream reaches and 12,176 ha (30,075 ac) of lake and reservoir surface area habitat determined to be essential to the conservation of the bull trout, but that are not currently known to be occupied.

The lateral extent of critical habitat, for each proposed stream reach, is the width of the stream channel as defined by its bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain (Rosgen 1996) and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series (Leopold *et al.* 1992). Critical habitat extends from the bankfull elevation on one side of the stream channel to the bankfull elevation on the opposite side. If bankfull elevation is not evident on either bank, the ordinary high-water line as defined by the U.S. Army Corps of Engineers (Corps) in 33 CFR 329.11 shall be used to determine the lateral extent of critical habitat. Adjacent floodplains are not proposed as critical habitat. However, it should be recognized that the quality of aquatic habitat within stream channels is intrinsically related to the character of the floodplains and associated riparian zones, and human activities that occur outside the river channels can have demonstrable effects on physical and biological features of the aquatic environment. The lateral extent of proposed lakes and reservoirs is defined by the perimeter of the water body as mapped on standard 1:24,000 scale maps (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map).

The approximate amount of proposed critical habitat in the Klamath River Basin DPS, by State and adjacent landownership, is shown in Table 1.

TABLE 1.—APPROXIMATE LINEAR QUANTITY OF PROPOSED CRITICAL HABITAT (IN STREAM KILOMETERS (KM) AND MILES (MI)) AND SURFACE AREA OF LAKES (IN HECTARES (HA) AND ACRES(AC)), AND ADJACENT LANDOWNERSHIP PERCENTAGES FOR THE KLAMATH RIVER DPS

State	Streams (km)	Lakes (ha)	Federal (percent)	Tribal	Local/state	Private (percent)
OR	476 km (296 mi)	13,735 ha (33,939 ac)	55	n/a	n/a	45

The approximate amount of proposed critical habitat in the Columbia River Basin DPS, by State and adjacent landownership, is shown in Table 2.

TABLE 2.—APPROXIMATE LINEAR QUANTITY OF PROPOSED CRITICAL HABITAT (IN STREAM KLOMETERS (KM) AND MILES (MI)) AND SURFACE AREA OF LAKES AND RESERVOIRS (IN HECTARES (HA) AND ACRES(AC)) BY STATE, AND ADJACENT LANDOWNERSHIP PERCENTAGES FOR THE COLUMBIA RIVER DPS

State	Streams (km)	Lakes and reservoirs (ha)	Federal (percent)	Tribal (percent)	Local/State (percent)	Private (percent)
ID	14,416 km (8,958 mi)	83,219 ha (205,639 ac)	82	1	5	12

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TABLE 2.—APPROXIMATE LINEAR QUANTITY OF PROPOSED CRITICAL HABITAT (IN STREAM KLOMETERS (KM) AND MILES (MI)) AND SURFACE AREA OF LAKES AND RESERVOIRS (IN HECTARES (HA) AND ACRES(AC)) BY STATE, AND ADJACENT LANDOWNERSHIP PERCENTAGES FOR THE COLUMBIA RIVER DPS—Continued

State	Streams (km)	Lakes and reservoirs (ha)	Federal (percent)	Tribal (percent)	Local/State (percent)	Private (percent)
MT	5,341 km (3,319 mi)	88,051 ha (217,577 ac)	60	1	5	34
OR	5,460 km (3,391 mi)	18,077 ha (44,670 ac)	49	4	1	46
WA	4,034 km (2,507 mi)	12,503 ha (30,896 ac)	39	3	4	54
Total	29,251 km (18,175 mi)	201,850 ha (498,782 ac).	58	2	4	36

Critical habitat includes bull trout habitat across the species' range in Idaho, Montana, Oregon, and Washington. Lands adjacent to proposed critical habitat are under private, State, Tribal, and Federal ownership, with Federal lands including lands managed by the USFS and BLM. Twenty-five critical habitat units have been delineated. The areas we are proposing as critical habitat, described below, constitute our best assessment of areas essential to the conservation of the Klamath and Columbia River distinct population segments of bull trout.

We are proposing critical habitat in 25 units that correspond to recovery units identified in the Draft Recovery Plan (USFWS 2002). Proposed critical habitat for the Klamath River DPS is entirely within Unit 1. Proposed critical habitat for the Columbia River DPS is in Units 2 though 25. Brief descriptions of each unit and the critical habitat subunits (CHSUs) within them, and the specific areas proposed for designation as critical habitat, are presented below. For ease of reference, the paragraph designations in parentheses at the beginning of each unit correspond with paragraph designations in the amendatory language at the end of this rule, which provide the legal descriptions (latitude and longitude coordinates) for each area proposed for designation (see Proposed Regulation Promulgation section).

The streams, lakes and reservoirs indicated below are generally described from the bottom to the top of a watershed within a proposed critical habitat unit or subunit. For example, river or stream "A" would be described from its mouth up to the first major tributary (stream "B") that is also being proposed as critical habitat. At that point, tributary stream "B" and any of its associated tributaries that are also being proposed would be described, again from the mouth of stream "B" upstream to either the next tributary being proposed or to the limit of proposed critical habitat within stream "B". Once this description is complete, the text again reverts to river/stream A and continues upstream, either to the next tributary being proposed (*e.g.* stream C) or to the upstream limit of proposed critical habitat in Stream A. This provides a "roadmap" that enables the reader to appreciate the extent of the proposal in a particular watershed or stream system, as well as to have the ability to work their way up from a landmark more likely to be familiar (*e.g.*, the mouth of the Tucannon River at its confluence with the Snake River) to locate a particular, generally more obscure tributary in the upper watershed. Together with the maps included with this proposed rule, readers should be able to easily locate where a stream of interest that is being proposed as bull trout critical habitat occurs on the landscape.

The legal descriptions provided in the regulatory portion of this proposed rule (see Proposed Regulation Promulgation) correspond to the critical habitat units and subunits described below. However, the legal descriptions of individual streams and lakes/reservoirs within each subunit paragraph are arranged in alphabetical order by stream or lake/reservoir name within a paragraph, whereas the descriptions within a paragraph in this preamble section are arranged as if one was working their way up from the bottom to the top of a watershed within a proposed stream network.

(5) Unit 1: Klamath River Basin

The Klamath River Basin is located in south-central Oregon and includes three critical habitat subunits: (1) Upper Klamath Lake CHSU in Klamath County; (2) Sycan Marsh CHSU in Klamath County; and (3) Upper Sprague River CHSU in Klamath and Lake counties. Total proposed critical habitat includes 475 km (295 mi) of streams representing 9.4 percent of the total stream lengths in the unit. Proposed critical habitat includes: 224.6 km (139.6 mi) of stream in 13 reaches, and 3,775 ha (9,327 ac) of lake in the Upper Klamath CHSU; 103.8 km (64.5 mi) of stream in 6 reaches, and 9,965 ha (24,625 ac) of marsh in the Sycan Marsh CHSU; and 146 km (91 mi) of stream in 10 reaches in the Upper Sprague CHSU.

(i) Upper Klamath Lake CHSU

Encompassing 170,289 ha (420,792 ac), the Upper Klamath Lake CHSU comprises of Upper Klamath Lake, Agency Lake, and their immediate major and minor tributaries. Landownership comprises: 84 percent Federal lands; 6 percent State or local government land; and 10 percent privately owned lands.

The Upper Klamath Lake CHSU currently supports three local populations of bull trout, with two considered essential to the conservation of the species—Threemile Creek and Sun Creek (USFWS 2002). The third population, Lost Creek in Crater Lake National Park, was established with transplanted fish to provide temporary refuge during restoration actions in the Park. To fully achieve recovery of bull trout in the Klamath Basin, the Draft Recovery Plan (USFWS 2002) requires five to seven local populations in the Upper Klamath Lake CHSU. The following stream segments are included in this critical habitat unit:

(A) Upper Klamath Lake Corridor, comprised of the streams and canals between Agency Straight at the north end of Upper Klamath Lake west to the Westside Road, north to the lower end of the Sevenmile Creek canyon, southeast along Sevenmile Creek and Sevenmile Canal to Agency Lake; and the circumference and body of Agency Lake. This includes the Sevenmile Canal from its confluence with Agency Lake upstream to its confluence with the West Canal and Sevenmile Creek (11.6 km (7.2 mi)); 11.7 km (7.3 mi) of Sevenmile Creek from its confluence with Sevenmile Canal and West Canal upstream to the beginning of the Sevenmile Creek canyon above the beaver ponds; the West Canal from its confluence with Agency Lake to its confluence with Sevenmile Canal (15.0 km (9.3 mi)); Crane Creek from its confluence with Fourmile Creek to its source springs at river kilometer (rkm) 6.1 (river mile (rmi) 3.8); Fourmile Creek from its confluence with the West Canal to source springs at rkm 4.3 (rmi 2.7); Fourmile Slough from its confluence with the West Canal to its head near Crystal Springs at (3.5 km (2.2 mi)); Crystal Creek from its confluence with Upper Klamath Lake to its source springs at rkm 5.0 (rmi 3.1); Recreation Creek from its confluence with Upper Klamath Lake to its confluence with Crystal Creek at rkm 3.7 (rmi 2.3); and the entire 3,775 ha (9,327 ac) Agency Lake. These areas are essential to restoring migratory forms of bull trout in the Upper Klamath Lake core area and reestablishing connectivity among populations of bull trout in Rock, Cherry, Threemile, and Sevenmile Creeks on the west side of the upper Klamath Basin, and populations of bull trout in the Wood River drainage and Crater Lake National Park.

(B) Rock Creek from the lower limit of permanent water at Penn Creek upstream to its origin at Heavenly Twin Lake (9.2 km (5.7 mi)); and Cherry Creek from its confluence with Fourmile Creek to the upper limit of perennial water (15.5 km (9.6 mi)). This area, which is the focus of restoration and reestablishment efforts under the Draft Recovery Plan, is a key watershed for reintroduction of a bull trout population that is essential to the conservation of the species (USFWS 2002).

(C) Threemile Creek from its confluence with Crane Creek to the upper limit of permanent water (6.9 km (4.3 mi)). This spawning and rearing habitat supports an essential local population and is a source for bull trout colonization of other watersheds (USFWS 2002).

(D) The entire 30.3 km (20.7 mi) length of the Wood River; 12.0 km (7.5 mi) of rooked Creek from its confluence with Agency Lake to its source at rkm 14.5 (rmi 9.0); 5.0 km (3.1 mi) of Fort Creek from its confluence with Wood River upstream to the upper limit of permanent water; Annie Creek from its confluence with Wood River upstream 24.5 km (15.2 mi); and Middle Fork of Annie Creek from its confluence with the mainstem Annie Creek to the headwater springs (6.1 km (3.8 mi)). These are areas of spawning and rearing, and foraging, migratory and overwintering habitat. These areas supported bull trout historically (Buchanan 1997).

(E) Sun Creek from its confluence with Annie Creek at rkm 2.0 (rmi 1.2) to the upper limit of bull trout distribution in Sun Meadow at rkm 21.5 (rmi 13.4) (Ratliff and Howell 1992; Bokenica 1997). This spawning and rearing habitat supports an essential local population and is a source for bull trout colonization of other watersheds (USFWS 2002).

(ii) Sycan Marsh CHSU

Encompassing 81,818 ha (202,175 ac), the Sycan Marsh CHSU comprises the Sycan Marsh, its tributaries, and the Sycan River and its tributaries. Landownership comprises: 56 percent Federal lands and 44 percent privately owned lands.

The Sycan Marsh CHSU currently supports two local populations of bull trout considered essential to the conservation of the species—Long Creek and Coyote Creek (USFWS 2002). To achieve recovery of bull trout in the Klamath Basin, the Draft Recovery Plan (USFWS 2002) requires five to seven local populations in the Sycan Marsh CHSU.

(A) Sycan Marsh and Sycan River includes over 23,944 ha (59,166 ac) of the Sycan Marsh, and 31.0 km (19.3 mi) of the Sycan River from its confluence with the Sycan Marsh to the confluence with Rock Creek at rkm 103.2 (rmi 64.1). Portions of this area are currently occupied and other parts were historically inhabited by bull trout. This area is essential for reestablishing migratory forms of bull trout in the Sycan Marsh core area and reestablishing connectivity among populations in Long Creek, Coyote Creek, Rifle Creek, and Boulder Creek. The Sycan River from the confluence with Rock Creek at rkm 103.2 (rmi 64.1) upstream to its origins (11.7 km (7.3 mi)) supported bull trout historically (Ratliff and Howell 1992; Light *et al.* 1996), and is the focus of efforts to establish additional spawning populations of bull trout that are essential to the conservation of the species.

(B) Long Creek from the confluence with Sycan Marsh upstream to its source at rkm 19.6 (rmi 12.2); and 11.3 km (7.0 mi) of spawning and rearing habitat in Calahan Creek from its confluence with Long Creek at rkm 7.7 (rmi 4.8) to its source at Blue Buck Springs. This area is currently occupied by bull trout (Ratliff and Howell 1992; Light *et al.* 1996). This area is essential for maintaining one of the strongest bull trout populations remaining in the Klamath Basin. The area is the focus of restoration and reestablishment efforts as described in the Draft Recovery Plan, and as a relative "stronghold," this area is a potential source of bull trout for colonization that is essential to restoring populations of other watersheds (USFWS 2002).

(C) Coyote Creek from the confluence with the Sycan Marsh 2.4 km (1.5 mi) below the crossing of USFS Road 27 upstream to the upper limit of permanent water at rkm 11.2 (rmi 7.0). The area supports one of only 10 extant populations of bull trout in the Klamath Basin and one of only two in this CHSU. It is the focus of restoration and reestablishment efforts to achieve recovery for this species (USFWS 2002) and is essential to the conservation of the species.

(D) Rifle Creek from the confluence with the Sycan River at rkm 97.7 (rmi 60.7) upstream 4.0 km (2.5 mi) to its origins; the entire length of Boulder Creek from its confluence with the Sycan River at rkm 109.8 (rmi 68.2) upstream 2.5 km (1.5 mi); and South Fork Sycan River from its confluence with the Sycan River at rkm 108.8 (rmi 67.6) upstream 6.1 km (3.8 mi) to its origins. These areas supported bull trout historically (Ratliff and Howell 1992; Light *et al.* 1996), and are the focus of efforts to establish additional spawning populations of bull trout that are essential to the conservation of the species.

(iii) Upper Sprague River CHSU

Encompassing 83,810 ha (207,099 ac), the Upper Sprague River CHSU comprises the drainages of the North and South Forks of the Sprague River and their tributaries. Landownership comprises: 56 percent Federal lands and 44 percent privately owned lands.

The Upper Sprague River CHSU currently supports five local populations of bull trout considered essential to the conservation of the species: Boulder/Dixon Creek; Sheepy Creek; Deming Creek; Brownsworth Creek; and Leonard Creek. A remnant fluvial population exists in the North Fork of the Sprague River (USFWS 2002). To fully achieve recovery of bull trout in the Klamath Basin, the Draft Recovery Plan (USFWS 2002) calls for a total of 7 to 10 local populations in the Upper Sprague River CHSU.

(A) North Fork Sprague River from "the Elbow" 3.7 km (2.3 mi) below the confluence of Yaden Creek at rkm 18.0 (rmi 11.2) upstream to the confluence of Blue Lake Creek (31.6 km (19.6 mi)); Boulder Creek from its confluence with the North Fork Sprague River at rkm 24.1 (rmi 15.0) upstream 7.7 km (4.8 mi); Dixon Creek from its confluence with Boulder Creek at rkm 1.2 (rmi 0.7) upstream to its origin (2.2 km (1.4 mi)); and an unnamed tributary to Dixon Creek from the confluence upstream 1.2 km (0.8 mi) to its origin. Bull trout currently occupy the tributaries and at least one mainstem reach of the river (Oregon Chapter of the American Fisheries Society (OCAFS) 1993, Ratliff and Howell 1992; Light *et al.* 1996, J.

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auner, Oregon Department of Fish and Wildlife (ODFW), pers. Comm., 1999; R. Smith, ODFW, pers. Comm. 2001). The area supports one of only 10 extant populations of bull trout in the Klamath Basin and one of only five populations in this CHSU, all of which are essential to the conservation of the species. The area is the focus of restoration and reestablishment efforts as described in the Draft Recovery Plan, and as a relative "stronghold," this area is a potential source of bull trout for colonization that is essential to restoring populations of other watersheds (USFWS 2002).

(B) Sheepy Creek from its confluence with the North Fork Sprague at rkm 26.8 (rmi 16.6) to its source springs (5.3 km (3.3 mi)). The area supports one of only 10 extant populations of bull trout in the Klamath Basin and one of only five populations in this CHSU, all of which are essential to the conservation of the species. The area is the focus of restoration and reestablishment efforts as described in the Draft Recovery Plan, and as a relative "stronghold," this area is a potential source of bull trout for colonization that is essential to restoring populations of other watersheds (USFWS 2002).

(C) Gearhart Creek from its confluence with the North Fork Sprague at rkm 32.6 (rmi 20.2) upstream to Gearhart Marsh (9.0 km (5.6 mi)) (above Gearhart Marsh flows become intermittent; Hole Creek from its confluence with Gearhart Creek at rkm 1.9 (rmi 1.2) upstream to the upper limit of permanent water (3.3 km (2.0 mi)); Nottin Creek from its confluence with Gearhart Creek at rkm 1.7 (rmi 1.1) upstream to the upper limit of permanent water 5.3 km (3.3 m); and School Creek from its confluence with the North Fork Sprague River at rkm 43.4 (rmi 27.0) to its origins (7.0 km (4.3 mi)). This area is the focus of efforts to reestablish additional spawning populations of bull trout essential to the conservation of the species, as described in the Draft Recovery Plan (USFWS 2002).

(D) Dead Cow Creek from its confluence with the North Fork Sprague River at rkm 46.9 (rmi 29.1) upstream 6.6 km (4.1 mi); and Gold Creek from its confluence with Dead Cow Creek at rkm 1.5 (rmi 0.9) upstream 2.9 km (1.8 mi). The Dead Cow drainage (Dead Cow and Gold creeks) supported bull trout historically. This area is the focus of efforts to reestablish additional spawning populations of bull trout essential to the conservation of the species, as described in the Draft Recovery Plan (USFWS 2002).

(E) The entire length of Deming Creek from its confluence with Anderson Field to its headwaters at rkm 7.8 (rmi 4.8). Deming Creek is currently inhabited by bull trout and is the largest remaining local population in the Klamath Basin (Ratliff and Howell 1992; Light *et al.* 1996). The area supports the largest of only 10 populations of bull trout in the Klamath Basin and the largest of only five populations in this CHSU, all of which are essential to the conservation of the species. The area is the focus of restoration and reestablishment efforts as described in the Draft Recovery Plan, and as a relative "stronghold," this area is a potential source of bull trout for colonization that is essential to restoring populations of other watersheds (USFWS 2002).

(F) Lower South Fork Sprague River from the confluence of Brownsworth Creek at rkm 23.0 (rmi 14.3) upstream 21.7 km (13.5 mi) to the confluence of Camp Creek; Camp Creek from its confluence with the South Fork Sprague River at rkm 44.7 (rmi 27.8) to its origin (5.0 km (3.1 mi)); Corral Creek from its confluence with the South Fork Sprague River at rkm 46.3 (rmi 28.8) to its origin (4.5 km (2.8 mi)); Upper South Fork Sprague River from the confluence with Camp Creek at rkm 44.7 (rmi 27.8) upstream to its source at rkm 50.3 (rmi 31.2) (5.6 km (3.5 mi)); and the entire length of Brownsworth Creek from its confluence with the South Fork Sprague River upstream 13.3 km (8.8 mi) to the upper limit of permanent water. These areas are currently occupied by an essential local population (OCASF 1993; Light *et al.* 1996; Buchanan *et al.*1997; USFWS 2002). This area is the focus of efforts to reestablish additional spawning populations of bull trout essential to the conservation of the species, as described in the Draft Recovery Plan (USFWS 2002).

(G) Leonard Creek from its confluence with Brownsworth Creek at rkm 7.0 (rmi 4.3) upstream to its source. Leonard Creek is currently inhabited by bull trout (Ratliff and Howell 1992; Light *et al.* 1996). The area supports one of only 10 extant populations of bull trout in the Klamath Basin and one of only five populations in this CHSU, all of which are essential to the conservation of the species. The area is the focus of restoration and reestablishment efforts as described in the Draft Recovery Plan, and as a relative "stronghold," this area is a potential source of bull trout for colonization that is essential to restoring populations of other watersheds (USFWS 2002).

(6) Unit 2: Clark Fork River Basin

The Clark Fork River Basin unit includes 12 CHSUs, organized primarily on the basis of major watersheds. It includes most of western Montana and the panhandle portion of northern Idaho. The summary of landownership and extent of proposed critical habitat are presented with each CHSU description.

(i) Lake Pend Oreille CHSU

The Lake Pend Oreille CHSU incorporates all waters in the Clark Fork River drainage downstream from Cabinet Gorge Dam (near the Montana/Idaho border), including all direct tributaries to Lake Pend Oreille, the lower portion of the Priest River drainage (downstream from Priest Lake Dam), and the Pend Oreille River (the impounded downstream arm of Lake Pend Oreille) downstream to the crest of Albeni Falls Dam. The CHSU is almost entirely within the State of Idaho in Boundary, Bonner, and Kootenai counties. A total of 286 km (178 mi) of 27 streams and the 38,304 ha (94,650 ac) surface area of Lake Pend Oreille are proposed for designation as critical habitat for bull trout. Landownership along the streams is approximately 36 percent Federal, 14 percent State, and 50 percent private. Lakeshore ownership has not been quantified, but approximately half of it is private with the other half mostly on Federal (National Forest) lands. Bull trout local populations in this CHSU include Lower Priest River, Pack River, Grouse Creek, Trestle Creek, Gold Creek, North Gold Creek, Granite Creek, Johnson Creek, Lightning Creek Complex, Twin Creek, and Clark Fork River, all of which are considered essential for recovery of the species (USFWS 2002).

(A) Lake Pend Oreille totals about 38,304 ha (94,650 ac). The best available scientific information indicates that most bull trout in the Lake Pend Oreille CHSU are migratory and adfluvial, using the lake for a portion of their life cycle (Panhandle Bull Trout Technical Advisory Team (PBTTAT) 1998a).

(B) The lower Priest River from its confluence with the Pend Oreille River (the impounded downstream arm of Lake Pend Oreille) upstream 34.4 km (21.4 mi) to the confluence with the East River provides foraging, migratory, and overwintering (FMO) habitat connecting spawning areas with Lake Pend Oreille. The East River from its confluence with the Priest River upstream 4.0 km (2.5 mi), and the Middle Fork East River from its confluence with the East River upstream 15.5 km (9.6 mi) provide spawning and rearing habitat for primarily migratory forms of bull trout. Tarlac Creek from its confluence with the Middle Fork East River upstream 5.3 km (3.3 mi) to the headwaters, and Uleda Creek from its confluence with the Middle Fork East River upstream 5.9 km (3.7 mi) provide spawning and rearing habitat for bull trout that are likely resident forms.

(C) The Pack River from its confluence with Lake Pend Oreille upstream 64.1 km (39.8 mi) contains FMO habitat in the lower reaches, and spawning and spawning and rearing habitat in the upper reaches for the Pack River local population of bull trout.

(D) Grouse Creek from its confluence with the Pack River upstream 26.7 km (16.6 mi) to the headwaters contains FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches. North Fork Grouse Creek from its confluence with Grouse Creek upstream 14.8 km (9.2 mi) to the headwaters provides spawning and rearing habitat.

(E) Trestle Creek from its confluence with Lake Pend Oreille upstream 14.4 km (8.9 mi) provides the most productive spawning and rearing habitat in the Lake Pend Oreille CHSU.

(F) Gold Creek from its confluence with Lake Pend Oreille upstream 2.7 km (1.7 mi), West Gold Creek from its confluence with Gold Creek upstream 2.3 km (1.4 mi), and North Gold Creek from its confluence with Lake Pend Oreille upstream 2.0 km (1.3 mi) provide spawning and rearing habitat for the Gold Creek bull trout local population complex. Gold Creek is considered the second most important bull trout spawning stream in the Lake Pend Oreille critical habitat subunit (PBTTAT 1998a)

(G) Granite Creek from its confluence with Lake Pend Oreille upstream 10.1 km (6.3 mi), Sullivan Springs from its confluence with Granite Creek upstream 2.1 km (1.3 mi), and Dry Gulch from its confluence with Granite Creek upstream 1.7 km (1.0 mi) provide spawning and rearing habitat for the Granite Creek population complex.

(H) Johnson Creek from its confluence with the south channel of the Clark Fork River delta at the confluence with Lake Pend Oreille upstream 1.2 km (0.7 mi) provides spawning and rearing habitat for the Johnson Creek local population.

(I) The Clark Fork River from its confluence with Lake Pend Oreille upstream 14.6 km (9.1 mi) to Cabinet Gorge Dam provides FMO habitat between Lake Pend Oreille and upstream local populations in Lightning and Twin creeks.

(J) Lightning Creek from its confluence with the Clark Fork River upstream 29.5 km (18.3 mi) to a barrier falls provides FMO habitat in the lower reaches below the confluence with East Fork Creek, and spawning and rearing habitat in the upper reaches above this point. Morris Creek from its confluence with Lightning Creek upstream 3.3 km (2.1 mi), East Fork Creek from its confluence with Lightning Creek upstream 6.5 km (4.1 mi), Savage Creek from its confluence with East Fork Creek upstream 5.9 km (3.7 mi), Char Creek from its confluence with East Fork Creek upstream 3.4 km (2.1 mi), Porcupine Creek from its confluence with Lightning Creek upstream 3.0 km (1.9 mi), Wellington Creek from its confluence with Lightning Creek upstream 1.0 km (0.6 mi), and Rattle Creek from its confluence with Lightning Creek upstream 6.0 km (3.7 mi) provide spawning and rearing habitat for the Lightning Creek population complex (Lake Pend Oreille Watershed Advisory Group 1999).

(K) Dry Creek from its confluence with the Clark Fork River upstream 0.1 km (0.06 mi) to the confluence with Twin Creek provides a migratory connection between Clark Fork River and Twin Creek. Twin Creek from its confluence with Dry Creek upstream 3.9 km (2.4 mi) provides spawning and rearing habitat for the Twin Creek local population of bull trout.

(ii) Lower Clark Fork River CHSU

The Lower Clark Fork River CHSU includes the three mainstem Clark Fork River impoundments (Cabinet Gorge, Noxon Rapids, and Thompson Falls reservoirs), the Clark Fork River between reservoirs and upstream to the confluence of the Flathead River, the lower Flathead River drainage downstream from Kerr Dam, and all tributaries to these waters. With the exception of the lower boundary at Cabinet Gorge Dam (in Bonner County, Idaho), nearly all the CHSU is located in the northwestern corner of Montana (Sanders, Lake, and Missoula counties).

Major portions of this CHSU, including the entire lower Flathead River drainage, are inside the boundaries of the Flathead Indian Reservation, and fall under the jurisdiction of the Confederated Salish and Kootenai Tribes (CSKT). There are 13 local populations of bull trout in this CHSU: Rock Creek, Bull River, Prospect Creek, Graves Creek, Vermilion River, Fishtrap Creek, West Fork Thompson River, Post Creek, Mission Creek, Dry Creek, and Jocko River, all of which are essential to the conservation of the species.

A total of 503 km (312 mi) of 24 streams and 4,862 ha (12,014 ac) of lake surface area in five reservoirs (Cabinet Gorge, Noxon Rapids, Mission, McDonald, and Tabor) is proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams is approximately 31 percent Federal, 1 percent State, 13 percent CSKT Tribal, and 55 percent private. Landownership on the reservoir shoreline has not been determined, but its mostly private land along the two large reservoirs with less than 25 percent as National Forest. The three small reservoirs are completely surrounded by CSKT Tribal Lands.

(A) Cabinet Gorge Reservoir (Clark Fork River), 1,295 ha (3,200 ac) at full pool, provides FMO habitat for the Bull River and Rock Creek local populations of bull trout (Pratt and Huston 1993).

(B) The Bull River from its confluence with Cabinet Gorge Reservoir (Clark Fork River) upstream 14.3 km (8.9 mi) to the confluence with the South and East forks provides FMO habitat for upstream local populations. Copper Creek from its confluence with the Bull River upstream 7.4 km (4.6 mi) to the headwaters provides rearing habitat (MBTSG 1996a). The Bull River East Fork from its mouth upstream 12.8 km (8 mi) and the Bull River South Fork from its mouth upstream 29.8 km (18.6 mi) provide spawning and rearing habitat for the Bull River local population (MBTSG 1996a).

(C) Rock Creek from its confluence with Cabinet Gorge Reservoir (Clark Fork River) upstream 11.4 km (7.1 mi) to a natural barrier provides spawning and rearing habitat for the Rock Creek local population.

(D) Noxon Rapids Reservoir (Clark Fork River), 3,237 ha (8,000 ac) at full pool, provides FMO habitat for low abundance local populations in the reservoir tributaries (Pratt and Huston 1993; MBTSG 1996a).

(E) The Vermilion River from its confluence with Noxon Rapids Reservoir (Clark Fork River) upstream 12.3 km (7.6 mi) to a natural barrier at Vermilion Falls provides important spawning and rearing habitat for the Vermilion River local population. Graves Creek from its confluence with Noxon Rapids Reservoir upstream 5.0 km (3.1 mi) to a natural barrier, Prospect Creek from its confluence with Noxon Rapids Reservoir upstream 12.3 km (7.6 mi), Crow Creek from its confluence with Prospect Creek upstream 2.0 km (1.2 mi), and Crow Creek East Fork from its confluence with Crow Creek upstream 5.5 km (3.4 mi) all provide spawning and rearing habitat as well (Pratt and Huston 1993; MBTSG 1996a).

(F) The Clark Fork River upstream 93.3 km (58.0 mi) from the head of Noxon Rapids Reservoir to the confluence with the Flathead River provides FMO habitat for tributary

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populations of bull trout (Pratt and Huston 1993).

(G) The Thompson River from its confluence with the Clark Fork River upstream 32.3 km (20.0 mi) contains FMO habitat. West Fork Thompson River from its mouth upstream 8.0 km (5.0 mi) to the confluence of Lakes Creek; Fishtrap Creek from its confluence with the Thompson River upstream 17.0 km (10.5 mi) to the confluence with Fishtrap Creek West Fork, Beatrice Creek from its confluence with Fishtrap Creek upstream 8.5 km (5.3 mi) to its headwaters, and Fishtrap Creek West Fork from its mouth upstream 10.2 km (6.4 mi) provide spawning and rearing habitat necessary for the recovered distribution of bull trout (USFWS 2002). Bull trout in the West Fork Thompson River are categorized as being among the strongest remaining populations in the Thompson River basin (MBTSG 1996d).

(H) The Flathead River from the confluence with the Clark Fork River (about 60 km (37 mi) upstream from Thompson Falls Dam) upstream to the confluence with Mission Creek is occupied by bull trout at low abundance levels (MBTSG 1996d), and provides FMO habitat necessary for the recovered distribution of bull trout (USFWS 2002), including maintaining populations and the migratory life history form essential to the long-term conservation of bull trout.

(I) The Jocko River from its confluence with the Flathead River upstream 47.0 km (29.2 mi) to the confluence with the North Fork Jocko River provides FMO habitat. The North Fork Jocko River from its mouth upstream 9.9 km (6.1 mi) to a natural barrier, the South Fork Jocko River from its mouth upstream 15.0 km (9.3 mi) to a natural barrier, and the Middle Fork Jocko River from its mouth upstream 14.2 km (8.8 mi) are occupied, and provide spawning and rearing habitat for the Jocko River local population. Together these areas provide habitat necessary for the recovered distribution of bull trout (USFWS 2002), including maintaining populations and the migratory life history form essential to the long-term conservation of bull trout.

(J) Mission Creek from its confluence with the Flathead River upstream 34.8 km (21.7 mi) to Mission Dam, Post Creek from its confluence with Mission Creek upstream 26.1 km (16.2 mi) to a manmade barrier at McDonald Lake, and Dry Creek from its confluence with Mission Creek upstream 14.2 km (8.8 mi) to a manmade barrier at Tabor Reservoir are occupied, at a minimum, by migratory bull trout from the reservoirs and lake (MBTSG 1996d), and provide FMO habitat necessary for the recovered distribution of bull trout (USFWS 2002), including maintaining populations and the migratory life history form essential to the conservation of bull trout. These creeks also provide occupied spawning and rearing habitat above the reservoirs and lake (MBTSG 1996d). Mission Creek spawning and rearing habitat extends upstream approximately 1.6 km (1.0 mi) above Mission Reservoir to a manmade barrier. Post Creek spawning and rearing habitat extends upstream approximately 3.2 km (2 mi) above McDonald Lake to a natural barrier. Dry Creek spawning and rearing habitat extends upstream approximately 0.8 km (0.5 mi) above Tabor Reservoir to a natural barrier. McDonald Reservoir (approximately 101 ha (250 ac), when full), Mission Reservoir (approximately 117 ha (289 ac), when full), and Tabor Reservoir (St. Mary Lake) (approximately 111 ha (274 ac), when full) provide FMO habitat for the Post Creek, Mission Creek, and Dry Creek local populations, respectively (MBTSG 1996d).

(iii) Middle Clark Fork River CHSU

The Middle Clark Fork River CHSU includes the mainstem of the Clark Fork River in western Montana and all tributary watersheds, from the confluence of the Flathead River upstream to the base of Milltown Dam, except for the Bitterroot River drainage. A total of 622 km (386 mi) of 28 streams is proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams is approximately 51 percent Federal, 3 percent State, and 46 percent private, all occurring in Mineral and Missoula counties, Montana.

(A) The Clark Fork River from the confluence with the Flathead River upstream approximately 192.1 km (119.4 mi) to Milltown Dam provides historically occupied FMO habitat that is still currently occupied, but at very low abundance levels (Pratt and Huston 1993;MBTSG 1996d). This reach is important to provide for the recovered distribution of bull trout (USFWS 2002), including the maintenance of existing populations and the migratory life history form essential to the conservation of bull trout.

(B) The St. Regis River from its confluence with the Clark Fork River upstream 62.1 km (38.6 mi) to its headwaters provides FMO habitat in the lower reaches up to Twelvemile Creek, and spawning and rearing habitat in the upper reaches. Little Joe Creek from its confluence with the St. Regis River upstream 4.0 km (2.5 mi) to its forks; South Fork Little Joe Creek from its mouth upstream 16.3 km (10.1 mi) to its headwaters; North Fork Little Joe Creek from its mouth upstream 17.2 km (10.7 mi) to its headwaters; Ward Creek from its confluence with the St. Regis River upstream 12.3 km (7.6 mi) to its headwaters; Twelvemile Creek from its confluence with the St. Regis River upstream 21.6 km (13.4 mi) to its headwaters; Deer Creek from its confluence with the St. Regis River upstream 6.6 km (4.1 mi); Big Creek from its confluence with the St. Regis River upstream 5.4 km (3.4 mi) to its forks; East Fork Big Creek from its mouth upstream 9.6 km (5.9 mi) to its headwaters; Middle Fork Big Creek from its mouth upstream 8.0 km (5.0 mi); and West Fork Big Creek from its mouth upstream 9.2 km (5.7 mi) provide spawning and rearing habitat for the St Regis River local population complex of bull trout (MBTSG 1996d).

(C) Cedar Creek from its confluence with the Clark Fork River upstream 24.7 km (15.3 mi), Oregon Gulch from its confluence with Cedar Creek upstream 4.5 km (2.8 mi), and Lost Creek from its confluence with Oregon Gulch upstream 11.4 km (7.1 mi) provide spawning and rearing habitat for the Cedar Creek local population of bull trout (MBTSG 1996d), as well as to provide for the recovered distribution of bull trout (USFWS 2002).

(D) Trout Creek from its confluence with the Clark Fork River upstream 23.6 km (14.7 mi) contains spawning and rearing habitat (MBTSG 1996d) for the Trout Creek local population.

(E) Fish Creek from its confluence with the Clark Fork River upstream 14.7 km (9.1 mi) to its forks provides FMO habitat to upstream bull trout. North Fork Fish Creek from its mouth upstream 16.1 km (10.0 mi); Straight Creek from its confluence with North Fork Fish Creek upstream 13.1 km (8.1 mi) to its headwaters; West Fork Fish Creek from its confluence with Fish Creek upstream 28.2 km (17.5 mi); Indian Creek from its confluence with West Fork Fish Creek upstream 2.1 km (1.3 mi); South Fork Fish Creek from its confluence with Fish Creek upstream 25.1 km (15.6 mi) to its headwaters; Surveyors Creek from its confluence with South Fork Fish Creek upstream 6.6 km (4.1 mi) to its headwaters; Cache Creek from its confluence with South Fork Fish Creek upstream 15.8 km (9.8 mi); Montana Creek from its confluence with Cache Creek upstream 9.2 km (5.7 mi) to its headwaters; and White Creek from its confluence with Cache Creek upstream 7.3 km (4.5 mi) to its headwaters provide spawning and rearing habitat for the Fish Creek local population complex (MBTSG 1996d).

(F) Petty Creek from its confluence with the Clark Fork River upstream 18.6 km (11.6 mi) provides spawning and rearing habitat for the Petty Creek local population (MBTSG 1996d).

(G) Rattlesnake Creek from its confluence with the Clark Fork River upstream 37.5 km (23.3 mi) to the headwaters provides FMO habitat in the lower reaches (up to Mountain Water Company Dam), and spawning and rearing habitat above that point (MBTSG 1996d).

(iv) Upper Clark Fork River CHSU

The Upper Clark Fork River CHSU includes the entire Clark Fork River in western Montana upstream from Milltown Dam (near Missoula), with the exception of the Blackfoot River, Clearwater River, and Rock Creek drainages. A total of 484 km (301 mi) of 13 streams is proposed for designation as critical habitat for bull trout in this CHSU in Missoula, Granite, Powell, and Deer Lodge counties. Landownership adjacent to proposed stream segments is approximately 25 percent Federal, 3 percent State, and 72 percent private.

(A) The Clark Fork River from Milltown Dam upstream approximately 185 km (115 mi) to the headwaters at the confluence with Warm Springs Creek provides FMO habitat for the recovered distribution of bull trout (USFWS 2002). This area is important to provide for the maintenance of existing populations and the migratory life history form essential to the long-term conservation of bull trout.

(B) Harvey Creek from its confluence with the Clark Fork River upstream 25.0 km (15.6 mi) to its headwaters provides FMO habitat below a manmade barrier about 0.4 km (0.2 mi) above the confluence, and spawning and rearing habitat above that point for the resident Harvey Creek local population (MBTSG 1995e).

(C) Flint Creek from its confluence with the Clark Fork River upstream 25.9 km (16.1 mi) to its confluence with Boulder Creek is occupied at low abundance but provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches (MBTSG 1995e).

(D) Boulder Creek from its confluence with Flint Creek upstream 22.6 km (14.0 mi), and South Boulder Creek from its confluence with Flint Creek upstream 13.7 km (8.5 mi) provide spawning and rearing habitat (MBTSG 1995e).

(E) The Little Blackfoot River from its confluence with the Clark Fork River upstream 76.8 km (47.7 mi) to its headwaters provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches. This river is necessary both to provide for the recovered distribution of bull trout as well as to maintain spawning populations in the upper reaches (MBTSG 1995e; USFWS 2002).

(F) Racetrack Creek from its confluence with the Clark Fork River upstream19.9 km (12.4 mi) to a natural barrier near the junction of Granite Creek provides spawning and rearing habitat for the Racetrack Creek local population (MBTSG 1995e).

(G) Warm Springs Creek from its confluence with the Clark Fork River upstream 52.4 km (32.5 mi) provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches to support both the Warm Springs local population complex, and provide for the recovered distribution of bull trout (USFWS 2002), including maintaining existing populations and the migratory life history form essential to the long-term conservation of bull trout. Barker Creek from its confluence with Warm Springs Creek upstream 8.0 km (5.0 mi) to its headwaters at Barker Lake, Foster Creek from its confluence with Warm Springs Creek upstream 15.8 km (9.8 mi) to its headwaters, Twin Lakes Creek from its confluence with Warm Springs Creek upstream16.2 km (10.1 mi) to its headwaters, Cable Creek from its confluence with Warm Springs Creek upstream 5.0 km (3.1 mi) to its headwaters, and Storm Lake Creek from its confluence with Cable Creek upstream17.5 km (10.9 mi) provide spawning and rearing habitat to support the Warm Springs population complex, as well as provide for the recovered distribution of bull trout (MBTSG 1995e; USFWS 2002).

(v) Priest Lakes and River CHSU

The Priest Lakes and River CHSU0 includes the entire drainage of the Priest River upstream from Priest Lake Dam, including Priest and Upper Priest lakes, in Boundary and Bonner counties, Idaho. The extreme headwaters lie in British Columbia, Canada, and the headwaters of several west side drainages are in the State of Washington. A total of 267 km (430 mi) of 19 streams and 9,970 ha (24,636 ac) of lake surface area in Priest and Upper Priest lakes is proposed for designation as critical habitat for bull trout. Landownership along the streams is approximately 58 percent Federal, 33 percent State, and 9 percent private. Landownership along the lake shores has not been quantified, but Priest Lake is approximately 75 percent private land, or leased State or Federal land with cabins and home sites. The rest is undeveloped National Forest, as is the entire shoreline of Upper Priest Lake.

(A) The Upper Priest River from a waterfall approximately 1.0 km (0.6 mi) downstream of the border between Idaho and Canada upstream 31.6 km (19.6 mi) to the confluence with Upper Priest Lake; Rock Creek from the confluence with the Upper Priest River upstream 6.1 km (3.8 mi) to its headwaters; Lime Creek from the confluence with the Upper Priest River upstream 6.4 km (4.0 mi) to its headwaters; and Cedar Creek from the confluence with the Upper Priest River upstream 6.8 km (4.2 mi) to its headwaters provide spawning and rearing habitat for adfluvial bull trout inhabiting Upper Priest Lake (PBTTAT 1998b; USFWS 2002).

(B) Hughes Fork from the confluence with the Upper Priest River upstream 22.7 km (14.1 mi) to its headwaters, and Gold Creek from the confluence with Hughes Fork upstream 12.6 km (7.8 mi) to its headwaters provide spawning and rearing habitat for adfluvial bull trout inhabiting Upper Priest Lake (Hughes Fork local population) (PBTTAT 1998b; USFWS 2002).

(C) Upper Priest Lake (542 ha (1,338 ac)) provides FMO habitat supporting the Upper Priest Lake, Hughes Fork, and Trapper Creek local populations of bull trout (PBTTAT 1998b).

(D) Trapper Creek from the confluence with Upper Priest Lake upstream 12.7 km (7.9 mi) to its headwaters provides spawning and rearing habitat for the Trapper Creek local population (PBTTAT 1998b; USFWS 2002).

(E) Priest River Thorofare, a 4.3 km (2.7 mi) channel between Upper Priest and Priest Lakes provides FMO habitat connecting bull trout populations in the Priest Lakes basin. Priest Lake (9,429 ha (23,300 ac) provides FMO habitat for dwindling numbers of adfluvial bull trout that spawn and rear in the lake's tributaries (Pratt and Huston 1993).

(F) Lion Creek from the confluence with Priest Lake upstream 18.2 km (11.3 mi) to its headwaters, and South Fork Lion Creek from its confluence with Lion Creek upstream 8.0 km (5.0 mi) to its headwaters contain spawning and rearing habitat for the Lion Creek local population of bull trout (PBTTAT 1998b; USFWS 2002).

(G) Two Mouth Creek from the confluence with Priest Lake upstream 15.7 km (9.8 mi) to its headwaters provides spawning and rearing habitat for the Two Mouth Creek local population (PBTTAT 1998b; USFWS 2002).

(H) Granite Creek from the confluence with Priest Lake upstream 17.8 km (11.1 mi) to its forks, South Fork Granite Creek from the confluence with Granite

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Creek upstream 22.6 km (14.0 mi) to its headwaters, and North Fork Granite Creek from the confluence with Granite Creek upstream 18.9 km (11.8 mi) to its headwaters provide spawning and rearing habitat for the Granite Creek local population of bull trout (PBTTAT 1998b; USFWS 2002).

(I) Indian Creek from the confluence with Priest Lake upstream 5.2 km (3.2 mi) to its forks, South Fork Indian Creek from its mouth upstream 5.8 km (3.6 mi) to its headwaters, and North Fork Indian Creek from its mouth upstream 11.7 km (7.3 mi) to its headwaters provide spawning and rearing habitat for the Indian Creek local population of bull trout (PBTTAT 1998b; USFWS 2002).

(J) Kalispell Creek from the confluence with Priest Lake upstream 23.3 km (14.5 mi) to its headwaters provides spawning and rearing habitat for the Kalispell Creek local population of bull trout (PBTTAT 1998b; USFWS 2002).

(K) Soldier Creek from the confluence with Priest Lake upstream 23.3 km (14.5 mi) to its headwaters provides spawning and rearing habitat for the Soldier Creek local population of bull trout (PBTTAT 1998b; USFWS 2002).

(vi) Flathead Lake, Flathead River, and 20 Headwater Lakes CHSU

The Flathead Lake CHSU includes the entire Flathead River basin upstream from Kerr Dam (outlet of Flathead Lake), with the exception of the Swan River drainage upstream from Bigfork Dam, and the South Fork Flathead River drainage upstream from Hungry Horse Dam in Flathead and Lake counties, Montana. Flathead Lake is the largest natural freshwater lake west of the Mississippi River in the United States. Twenty other natural glaciated lakes up to 2,800 ha (6,919 ac) in size are occupied by bull trout in this CHSU. The entire south half of Flathead Lake is inside the boundaries of the Flathead Indian Reservation, and falls under the jurisdiction of the Confederated Salish and Kootenai Tribes. A total of 837 km (520 mi) of 57 streams and 56,838 ha (140,449 ac) of lake surface area in 21 lakes is proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams is approximately 68 percent Federal, 10 percent State, and 22 percent private. Substantial portions of the Federal lands are in Glacier National Park or Congressionally designated wilderness. Lakeshore ownership is mixed: Flathead Lake (49,575 ha (20,062 ac)) makes up about 87 percent of the lake surface area. The south half of Flathead Lake lies on the Flathead Indian Reservation, though most of the lakeshore is privately owned and developed. The north half of Flathead Lake is also almost entirely private and developed into homes and resorts. Fifteen of the other lakes (5,556 ha (13,729 ac) are in Glacier National Park, though road and campground development exists on most of the larger lakes, and commercial development and some private land occurs along Lake McDonald. The shoreline of 1,356 ha (3,350 ac) Whitefish Lake is almost entirely private and developed. Of the remaining four lakes, three (Upper Whitefish, Upper Stillwater, and Cyclone) are primarily surrounded by State lands that have been logged, but not developed. Only one very small lake, Frozen Lake (12 ha (30 ac)) which spans the International Border with Canada, is located on National Forest land.

(A) The entire basin of Flathead Lake, to the high water mark (49,574 ha (122,500 ac)) provides FMO habitat for tributary populations of bull trout (Fraley and Shepard 1989).

(B) The Flathead River from its confluence with Flathead Lake upstream 85.4 km (53.1 mi) to its forks; the Middle Fork Flathead River from its mouth upstream 140.3 km (87.2 mi) to its headwaters; and the North Fork Flathead River from its mouth upstream 92.9 km (57.7 mi) to the Canadian border provide FMO habitat for multiple local populations of bull trout (MBTSG 1995c; USFWS 2002).

(C) Nyack Creek from its confluence with the Middle Fork Flathead River upstream 11.4 km (7.1 mi) to a naturally de-watered reach provides spawning and rearing habitat for the Nyack Creek local population (MBTSG 1995c; USFWS 2002).

(D) Park Creek from its confluence with the Middle Fork Flathead River upstream 13.7 km (8.5 mi) to the confluence with its' tributary Elk Creek provides spawning and rearing habitat for the Park Creek local population (MBTSG 1995c; USFWS 2002).

(E) Ole Creek from its confluence with the Middle Fork Flathead River upstream 12.6 km (7.9 mi) to a naturally de-watered reach near the trail junction, just upstream of Debris Creek, provides spawning and rearing habitat for the Ole Creek local population (MBTSG 1995c; USFWS 2002).

(F) Bear Creek from its confluence with the Middle Fork Flathead River upstream 17.7 km (11.0 mi) to a barrier at the junction of Skyland Creek provides spawning and rearing habitat for the Bear Creek local population (MBTSG 1995c; USFWS 2002).

(G) Long Creek from its confluence with the Middle Fork Flathead River upstream approximately 8.0 km (5.0 mi) provides spawning and rearing habitat for the Long Creek local population (MBTSG 1995c; USFWS 2002).

(H) Granite Creek from its confluence with the Middle Fork Flathead River upstream 13.1 km (8.1 mi) to its headwaters provides spawning and rearing habitat for the Granite Creek local population (MBTSG 1995c; USFWS 2002).

(I) Morrison Creek from its confluence with the Middle Fork Flathead River upstream 19.8 km (12.3 mi) to the junction with Puzzle Creek; Puzzle Creek from its mouth upstream 4.4 km (2.7 mi) to its headwaters, Lodgepole Creek from its confluence with Morrison Creek upstream 3.1 km (1.9 mi) to its junction with Whistler Creek; and Whistler Creek from its mouth upstream 5.9 km (3.7 mi) to its headwaters provide spawning and rearing habitat for the Morrison Creek local population (MBTSG 1995c; USFWS 2002).

(J) Schafer Creek from its confluence with the Middle Fork Flathead River upstream 5.9 km (3.7 mi) to a natural barrier near the confluence of Rouge Creek, and Dolly Varden Creek from its junction with Schafer Creek upstream 12.1 km (7.5 mi) to Dolly Varden Falls near the confluence of Argosy Creek provide spawning and rearing habitat for the Schafer Creek local population (MBTSG 1995c; USFWS 2002).

(K) Clack Creek from its confluence with the Middle Fork Flathead River upstream 3.9 km (2.4 mi) to a natural barrier approximately one-third the distance up its watershed near the trail junction to Trilobite Lakes provides spawning and rearing habitat for the Clack Creek local population (MBTSG 1995c; USFWS 2002).

(L) Bowl Creek from its confluence with the Middle Fork Flathead River upstream 7.9 km (4.9 mi) to the junction with Basin Creek; Basin Creek from its mouth upstream 10.0 km (6.2 mi) to a natural barrier in its upper reaches; and Scalp Creek from its confluence with Bowl Creek upstream 4.6 km (2.8 mi) to its headwaters provide spawning and rearing habitat for the Bowl Creek local population (MBTSG 1995c; USFWS 2002).

(M) Strawberry Creek from its confluence with the Middle Fork Flathead River upstream 21.2 km (13.2 mi) to its headwaters; Trail Creek from its junction with Strawberry Creek upstream 7.3 km (4.6 mi) to the junction with Jeff Creek; Gateway Creek from its confluence Strawberry Creek upstream 9.3 km (5.8 mi) to its headwaters; and East Fork Strawberry Creek from its confluence Strawberry Creek upstream 5.7 km (3.5 mi) to its headwaters provide spawning and rearing habitat for the Strawberry Creek local population (MBTSG 1995c; USFWS 2002).

(N) Big Creek from its confluence with the North Fork Flathead River upstream 18.4 km (11.4 mi) to a natural barrier in the headwaters upstream from Nicola Creek; Skeokoleel Creek from its confluence with Big Creek upstream 8.2 km (5.1 mi) to its headwaters; Hallowat Creek from its mouth at Big Creek upstream 14.8 km (9.2 mi) to its headwaters; Werner Creek from its mouth at Hallowat Creek upstream 4.0 km (2.5 mi) to its headwaters; and Kletomus Creek from its mouth at Hallowat Creek upstream 8.2 km (5.1 mi) to its headwaters provide spawning and rearing habitat for the Big Creek local population (MBTSG 1995c; USFWS 2002).

(O) Coal Creek from its confluence with the North Fork Flathead River upstream 28.5 km (17.7 mi) to its headwaters; Cyclone Creek from its confluence with Coal Creek upstream 5.0 km (3.1 mi) to Cyclone Lake; South Fork Coal Creek from its mouth upstream10.2 km (6.4 mi) to a natural barrier; and Mathias Creek from its mouth at South Fork Coal Creek upstream 4.6 km (2.9 mi) to a natural barrier provide spawning and rearing habitat for the Coal Creek local population (MBTSG 1995c; USFWS 2002). Approximately 1.0 km (0.6 mi) of Cyclone Creek downstream from Cyclone Lake may also provide spawning and rearing habitat for the Cyclone Lake local population (MBTSG 1995c).

(P) Cyclone Lake (49 ha (121 ac)) provides FMO habitat, and Cyclone Creek from its confluence with Cyclone Lake upstream 8.6 km (5.4 mi) to its headwaters provides spawning and rearing habitat for the Cyclone Creek local population (USFWS 2002).

(Q) Red Meadow Creek from its confluence with the North Fork Flathead River upstream 22.3 km (13.9 mi) to its source at Red Meadow Lake provides spawning and rearing habitat for the Red Meadow Creek local population (MBTSG 1995c; USFWS 2002).

(R) Whale Creek from its confluence with the North Fork Flathead River upstream 23.0 km (14.3 mi) to Whale Creek Falls upstream from Shorty Creek; Shorty Creek from its confluence with Whale Creek upstream 4.4 km (2.7 mi) to the junction of South Fork Shorty Creek; and South Fork Shorty Creek upstream 1.6 km (1.0 mi) to a natural barrier near an unnamed tributary originating in Stoney Basin Lake provide spawning and rearing habitat for the Whale Creek local population (MBTSG 1995c; USFWS 2002).

(S) Trail Creek from its confluence with the North Fork Flathead River upstream 13.3 km (8.3 mi) to a natural barrier near the junction of Thoma Creek provides spawning and rearing habitat for the Trail Creek local population (MBTSG 1995c; USFWS 2002).

(T) Whitefish Lake (1,356 ha (3,351 ac)) provides FMO habitat for the depressed Whitefish Lake local population. Swift Creek from Whitefish Lake upstream 26.5 km (16.5 mi) to the junction of its East and West Forks provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches. West Fork Swift Creek from its mouth upstream 13.7 km (8.5 mi) to its headwaters provides spawning and rearing habitat for this local population (MBTSG 1995c; USFWS 2002).

(U) Upper Whitefish Lake (36 ha (89 ac)) provides FMO habitat for the Upper Whitefish Lake local population. East Fork Swift Creek from its confluence with Upper Whitefish Lake upstream 9.5 km (5.9 mi) to its headwaters provides spawning and rearing habitat.

(V) Upper Stillwater Lake (225 ha (556 ac)) provides FMO habitat for the Stillwater Lake local population. The Stillwater River from its mouth at the lake upstream 35.3 km (21.9 mi) to its' headwaters provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches. Fitzsimmons Creek from its junction with the Stillwater River upstream 9.4 km (5.9 mi) to its headwaters provides spawning and rearing habitat (MBTSG 1995c; USFWS 2002).

(W) Lake McDonald (2,761 ha (6,823 ac)) provides FMO habitat, and its tributary McDonald Creek upstream 2.6 km (1.6 mi) from the mouth to McDonald Falls provides spawning and rearing habitat for the depressed McDonald Creek local population of bull trout (MBTSG 1995c; USFWS 2002).

(X) Lincoln Lake (16 ha (40 ac)) provides FMO habitat, and Lincoln Creek from its mouth upstream 0.8 km (0.5 mi) to Beaver Chief Falls provides spawning and rearing habitat for the Lincoln Creek local population (MBTSG 1995c; USFWS 2002).

(Y) Harrison Lake (166 ha (410 ac)) provides FMO habitat, and its tributary Harrison Creek from the mouth upstream 6.9 km (4.3 mi) to its headwaters provides spawning and rearing habitat for the Harrison Creek local population (MBTSG 1995c; USFWS 2002).

(Z) Lake Isabel (17 ha (42 ac)) provides FMO habitat and its tributary Park Creek from the mouth upstream 1.4 km (0.9 mi) to its headwaters provides spawning and rearing habitat for the Park Creek local population (MBTSG 1995c; USFWS 2002).

(AA) Trout Lake (86 ha (213 ac)) and Arrow Lake (23 ha (57 ac)) provide FMO habitat, and Camas Creek between Trout and Arrow lakes (approximately 2.1 km (1.3 mi)), as well as upstream of Arrow Lake 4.1 km (1.3 mi) to Camas Lake provide spawning and rearing habitat for the Camas Creek local population (MBTSG 1995c; USFWS 2002).

(BB) Logging Lake (444 ha (1,097 ac)) provides FMO habitat, and its tributary Logging Creek from its junction with the upstream (east) end of the lake upstream 1.8 km (1.1 mi) to the outlet of Grace Lake provides spawning and rearing habitat for the Logging Creek local population (MBTSG 1995c; USFWS 2002).

(CC) Lower Quartz (67 ha (166 ac)) and the Upper Quartz Lakes Complex (Middle Quartz Lake, Quartz Lake, and Cerulean Lake; 399 ha (986 ac) combined) provide FMO habitat. Quartz Creek from the inlet of Lower Quartz Lake upstream 1.5 km (0.9 mi) to Middle Quartz Lake; Quartz Creek from the inlet of Middle Quartz Lake upstream 7.9 km (4.9 mi) to Quartz Lake; and Rainbow Creek from its confluence with Quartz Creek upstream 1.7 km (1.1 mi) to Cerulean Lake provide spawning and rearing habitat for the Quartz Creek local population (MBTSG 1995c; USFWS 2002).

(DD) Bowman Lake (690 ha (1,705 ac)) provides FMO habitat, and its tributary Bowman Creek from the inlet to Bowman Lake upstream 10.6 km (6.6 mi) to its headwaters provides spawning and rearing habitat for the Bowman Creek local population (MBTSG 1995c; USFWS 2002).

(EE) Akokala Lake (9 ha (23 ac)) provides FMO habitat, and its tributary Akokala Creek upstream 1.4 km (0.9 mi) from the lake inlet to its headwaters provides spawning and rearing habitat for the Akokala Creek local population (MBTSG 1995c; USFWS 2002).

(FF) Kintla Lake (687 ha (1,698 ac)) provides FMO habitat and Kintla Creek from its inlet to Kintla Lake upstream 2.6 km (1.6 mi) to a natural barrier provides spawning and rearing habitat for the Kintla Creek local population (MBTSG 1995c; USFWS 2002).

(GG) Upper Kintla Lake (191 ha (472 ac)) provides FMO habitat and Kintla Creek from the inlet to Upper Kintla Lake upstream 9.4 km (5.9 mi) to its headwaters provides spawning and rearing habitat for the Upper Kintla

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Creek local population (MBTSG 1995c; USFWS 2002).

(HH) Frozen Lake (12 ha (30 ac)) provides FMO habitat, and Frozen Creek from the lake inlet upstream 4.2 km (2.6 mi) to its headwaters provides spawning and rearing habitat for the Frozen Creek local population (MBTSG 1995c; USFWS 2002).

(vii) Swan CHSU

The Swan CHSU includes the entire Swan River drainage upstream from Bigfork Dam (near the Swan River's confluence with Flathead Lake) in Lake and Missoula counties, Montana. The Swan CHSU is a linear valley bounded by the Swan Range to the west and the Mission Mountains to the east. A total of 212 km (132 mi) of 17 streams and 1,543 ha (3,813 ac) of lake surface area in three lakes is proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams is approximately 36 percent Federal, 17 percent State, and 47 percent private. The Swan Lake shoreline is about half private, with extensive home and resort developments, and half surrounded by either National Forest or National Wildlife Refuge lands. Holland Lake is on National Forest land, some of which is leased and developed. Lindbergh Lake is mostly surrounded by National Forest, but a portion of the lakeshore is developed with home sites.

(A) Swan Lake (1,085 ha (2,680 ac)) provides FMO habitat for upstream tributary populations of bull trout (MBTSG 1996b). The Swan River from its upstream inlet to Swan Lake upstream approximately 87.4 km (54.3 mi) provides FMO habitat for tributary populations of bull trout to the confluence with Lindbergh Lake, and provides spawning and rearing habitat above Lindbergh Lake.

(B) Lost Creek from the confluence with the Swan River upstream 2.8 km (1.7 mi) to the junction of the North and South Forks; North Fork Lost Creek from its mouth upstream 7.6 km (4.7 mi) to a barrier falls; and South Fork Lost Creek from its mouth upstream 7.3 km (4.6 mi) to a barrier falls provide spawning and rearing habitat for the Lost Creek local population of bull trout (MBTSG 1996b; USFWS 2002).

(C) Soup Creek from the confluence with the Swan River upstream 11.1 km (6.9 mi) to a natural barrier falls provides spawning and rearing habitat for the Soup Creek local population (MBTSG 1996b; USFWS 2002).

(D) Woodward Creek from the confluence with the Swan River upstream 6.0 km (3.7 mi) to a barrier falls on the northernmost fork, and South Fork Woodward Creek from its junction with Woodward Creek upstream 4.7 km (2.9 mi) to a point where the stream makes a hard turn from its southerly direction to a westerly direction provide spawning and rearing habitat for the Woodward Creek local population (MBTSG 1996b; USFWS 2002).

(E) Goat Creek from the confluence with the Swan River upstream 11.5 km (7.2 mi) to the confluence with Bethal Creek and Squeezer Creek from its junction with Goat Creek upstream 8.6 km (5.3 mi) to a barrier falls provide spawning and rearing habitat for the Goat Creek local population (MBTSG 1996b; USFWS 2002).

(F) Lion Creek from its confluence with the Swan River upstream 11.4 km (7.1 mi) to a natural barrier falls approximately half way up the drainage provides spawning and rearing habitat for the Lion Creek local population (MBTSG 1996b; USFWS 2002).

(G) Piper Creek from its confluence with the Swan River upstream 5.9 km (3.7 mi) to the junction with Moore Creek provides spawning and rearing habitat for the Piper Creek local population (MBTSG 1996b; USFWS 2002).

(H) Jim Creek from its confluence with the Swan River upstream 11.9 km (7.4 mi) to the lowermost Jim Lake provides spawning and rearing habitat for the Jim Creek local population.

(I) Cold Creek from its confluence with the Swan River upstream 10.0 km (6.2 mi) to the junction with North Fork Cold Creek provides spawning and rearing habitat for the Cold Creek local population (MBTSG 1996b; USFWS 2002).

(J) Elk Creek from its confluence with the Swan River upstream 16.9 km (10.5 mi) to the confluence of the North and South Fork Elk Creek provides spawning and rearing habitat for the Elk Creek local population (MBTSG 1996b; USFWS 2002).

(K) Lindbergh Lake (293 ha (725 ac)) provides FMO habitat; approximately 6 km (3.8 mi) of the upper Swan River (previously described in (a), above), and Crystal Creek from its confluence with the upper Swan River upstream approximately 1 km (0.6 mi) to a natural barrier downstream from the outlet of Crystal Lake provide spawning and rearing habitat for the Upper Swan River local population (MBTSG 1996b; USFWS 2002).

(L) Holland Lake provides FMO habitat, and Holland Creek upstream 0.6 km (0.4 mi) from Holland Lake to a natural barrier falls provides spawning and rearing habitat for the Holland Creek local population (MBTSG 1996b; USFWS 2002).

(viii) Hungry Horse Reservoir CHSU

The Hungry Horse Reservoir CHSU includes the entire South Fork Flathead River drainage upstream from Hungry Horse Dam (9.0 km (5.6 mi) upstream from the South Fork's confluence with the mainstem Flathead River) in Flathead, Missoula, Powell, and Lewis and Clark counties, Montana. A total of 336 km (209 mi) of 16 streams; 9,632 ha (23,800 ac) Hungry Horse Reservoir; and two lakes (Big Salmon Lake, 324 ha (800 ac)); Doctor Lake, 32 ha (79 ac) are proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams and lake shores is entirely Federal (100 percent), lying in either National Forest or Congressionally designated wilderness.

(A) Hungry Horse Reservoir (9,632 ha (23,800 ac)) and the South Fork Flathead River upstream 93.6 km (58.2 mi) from the full pool level of Hungry Horse Reservoir to its source at the confluence of Youngs and Danaher creeks provide critical FMO habitat for tributary spawning populations of bull trout (MBTSG 1995d).

(B) Wounded Buck Creek from its mouth at Hungry Horse Reservoir upstream 6.0 km (3.7 mi) to a natural barrier falls in the upper reaches of the drainage provides spawning and rearing habitat for the Wounded Buck Creek local population of bull trout (MBTSG 1995d; USFWS 2002).

(C) Wheeler Creek from its mouth at Hungry Horse Reservoir upstream 5.9 km (3.6 mi) to a natural barrier falls just upstream of the junction of Trapper Creek provides spawning and rearing habitat for the Wheeler Creek local population of bull trout (MBTSG 1995d; USFWS 2002).

(D) Sullivan Creek from its mouth at Hungry Horse Reservoir upstream 24.0 km (14.9 mi) to its headwaters and its tributary Quintonkon Creek from its mouth upstream 5.2 km (3.3 mi) to a natural barrier falls approximately half way up the drainage provide spawning and rearing habitat for the Sullivan Creek local population of bull trout (MBTSG 1995d; USFWS 2002).

(E) The Spotted Bear River from its confluence with the South Fork Flathead River upstream 32.8 km (20.4 mi) to Dean Falls, just upstream from the confluence of Slim Creek, provides spawning and rearing habitat for the Spotted Bear River local population (MBTSG 1995d; USFWS 2002).

(F) Bunker Creek from its confluence with the South Fork Flathead River upstream 17.9 km (11.1 mi) to a barrier falls just upstream of the junction with String Creek provides spawning and rearing habitat for the Bunker Creek local population (MBTSG 1995d; USFWS 2002).

(G) Little Salmon Creek from its confluence with the South Fork Flathead River upstream 28.7 km (17.8 mi) to its source provides spawning and rearing habitat for the Little Salmon Creek local population (MBTSG 1995d; USFWS 2002).

(H) Big Salmon Lake (324 ha (800 ac)) provides FMO habitat, and Big Salmon Creek upstream 7.4 km (4.6 mi) from Big Salmon Lake to a barrier falls just upstream from the junction of Spud Creek provides spawning and rearing habitat for the Big Salmon Creek local population (MBTSG 1995d; USFWS 2002).

(I) The White River from its confluence with the South Fork Flathead River upstream 13.1 km (8.1 mi) to Needle Falls (approximately 3 km (1.9 mi) upstream from the junction of the South Fork White River) provides spawning and rearing habitat for the White River local population (MBTSG 1995d; USFWS 2002).

(J) Gordon Creek from its confluence with the South Fork Flathead River upstream 23.4 km (14.5 mi) to a barrier falls near the confluence with George Creek provides spawning and rearing habitat for the Gordon Creek local population (MBTSG 1995d; USFWS 2002).

(K) Doctor Lake 32 ha (79 ac) provides FMO habitat, and the entire length (5.2 km (3.3 mi)) of Doctor Creek occurring both upstream and downstream of Doctor Lake provides spawning and rearing habitat for the Doctor Creek local population (MBTSG 1995d; USFWS 2002).

(L) Youngs Creek from its confluence with the headwaters of the South Fork Flathead River upstream 28.7 km (17.8 mi) to the junction of Ross Creek near its headwaters, and Babcock Creek (a tributary to Youngs Creek) from its mouth upstream 7.3 km (4.5 mi) to the confluence with Otis Creek provide spawning and rearing habitat for the Youngs Creek local population (MBTSG 1995d; USFWS 2002).

(M) Danaher Creek from its confluence with the headwaters of the South Fork Flathead River upstream 33.5 km (20.8 mi) to its source, and Rapid Creek (a tributary to Danaher Creek) from its mouth upstream2.9 km (1.8 mi) to the confluence of Fiction Creek provide spawning and rearing habitat for the Danaher Creek local population (MBTSG 1995d; USFWS 2002).

(ix) Bitterroot CHSU

The Bitterroot CHSU includes the entire Bitterroot River drainage on the western border of Montana, upstream from its' confluence with the Clark Fork River in Missoula and Ravalli counties, Montana. A total of 799 km (496 mi) of 43 streams and 265 ha (655 ac) of Painted Rocks Reservoir is proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams is approximately 64 percent Federal, 1 percent State, and 35 percent private. Painted Rocks Reservoir is mostly on National Forest with some private development. In this CHSU, nearly all headwaters are on National Forest lands, and the vast majority of the Bitterroot Valley, including lower ends of tributary drainages and the entire mainstem of the Bitterroot River are privately owned and extensively developed with ranches, home sites, and businesses.

(A) The Bitterroot River from its junction with the Clark Fork River upstream 135.8 km (84.3 mi) to the confluence of its East and West Forks provides FMO habitat for tributary populations of bull trout (MBTSG 1995a; USFWS 2002).

(B) Burnt Fork Creek from its confluence with the Bitterroot River upstream 41.2 km (25.6 mi) to its headwaters; Gold Creek from its mouth at Burnt Fork Creek upstream 10.8 km (6.7 mi) to its headwaters; and Little Burnt Fork Creek from its mouth upstream 5.5 km (3.4 mi) to its source provide spawning and rearing habitat for the Burnt Fork Creek local population (MBTSG 1995a; USFWS 2002).

(C) Fred Burr Creek from its confluence with the Bitterroot River upstream 14.3 km (8.9 mi) to Fred Burr Reservoir provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches. Its tributary Mill Creek, from its mouth upstream 19.5 km (12.1 mi) to a natural barrier just upstream of the Wilderness Boundary, provides spawning and rearing habitat supporting the Fred Burr Creek local population (MBTSG 1995a; USFWS 2002).

(D) Blodgett Creek from its confluence with the Bitterroot River upstream 30.7 km (19.0 mi) to its headwaters provides spawning and rearing habitat for the Blodgett Creek local population (MBTSG 1995a; USFWS 2002).

(E) Skalkaho Creek from its confluence with the Bitterroot River upstream 40.4 km (25.1 mi) to its headwaters; Daly Creek from its confluence with Skalkaho Creek upstream 12.2 km (7.6 mi) to Skalkaho Falls; Railroad Creek from its confluence with Skalkaho Creek upstream 8.4 km (5.2 mi); and Weasel Creek from its confluence with Skalkaho Creek upstream 5.3 km (3.3 mi) to its source provide spawning and rearing habitat for the Skalkaho Creek local population (MBTSG 1995a; USFWS 2002).

(F) Sleeping Child Creek from its confluence with the Bitterroot River upstream 38.5 km (23.9 mi) to its headwaters; Two Bear Creek from its confluence with Sleeping Child Creek upstream 10.7 km (6.6 mi) to its source; Divide Creek from its confluence with Sleeping Child Creek upstream 14.8 km (9.2 mi) to its source; and Switchback Creek from its confluence with Divide Creek upstream 1.0 km (0.6 mi) to a natural barrier provide spawning and rearing habitat for the Sleeping Child Creek local population (MBTSG 1995a; USFWS 2002).

(G) The West Fork of the Bitterroot River from its confluence with the Bitterroot River upstream 35.2 km (21.9 mi) to Painted Rocks Reservoir and Painted Rocks Reservoir (265 ha (655 ac)) provide FMO habitat for tributary populations of bull trout. The West Fork of the Bitterroot River from Painted Rocks Reservoir upstream 27.9 km (17.3 mi); Slate Creek from the confluence with Painted Rocks Reservoir upstream 17.3 km (10.8 mi) to its source; Blue Joint Creek from the confluence with Painted Rocks Reservoir upstream 28.0 km (17.4 mi) to a natural barrier; Overwhich Creek from its confluence with the West Fork Bitterroot River upstream 23.2 km (14.4 mi) to a natural barrier; Straight Creek from its confluence with Overwhich Creek upstream 5.4 km (3.3 mi) to its headwaters; Hughes Creek from its confluence with the West Fork Bitterroot River upstream 28.4 km (17.6 mi) to its source; Chicken Creek from its confluence with the West Fork Bitterroot River upstream 8.2 km (5.1 mi) to its forks; Deer Creek from its confluence with the West Fork Bitterroot River upstream 20.1 km (12.5 mi) to its headwaters; Woods Creek from its confluence with the West Fork Bitterroot River upstream 11.0 km (6.8 mi) to its headwaters; Johnson Creek from its confluence with the West Fork Bitterroot River upstream 7.4 km (4.6 mi) to its source; Beaver Creek from its confluence with the West Fork Bitterroot River upstream 7.4 km (4.6 mi) to its source; and Sheep Creek from its confluence with the West Fork Bitterroot River upstream 5.0 km (3.1 mi) to its headwaters provide spawning and rearing habitat for the West Fork Bitterroot River population complex of

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bull trout (MBTSG 1995a; USFWS 2002).

(H) The East Fork Bitterroot River from its mouth upstream 59.4 km (36.9 mi) provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches. Meadow Creek from its confluence with the East Fork Bitterroot River upstream 15.6 km (9.7 mi) to its headwaters; Swift Creek from its mouth on Meadow Creek upstream 3.2 km (2.0 mi) to a natural barrier falls; Bugle Creek from its confluence with Meadow Creek upstream 6.2 km (3.9 mi) to its source; Moose Creek from its confluence with the East Fork Bitterroot River upstream 10.6 km (6.6 mi) to a natural barrier; Martin Creek from its mouth on Moose Creek upstream 18.8 mi (11.7 mi) to its headwaters; Bush Creek from its confluence with Martin Creek upstream 6.5 km (4.0 mi) to its source; Lick Creek from its junction with Moose Creek upstream 5.9 km (3.6 mi) to its headwaters; Reynolds Creek from its junction with Moose Creek upstream 6.4 km (4.0 mi) to its source; Sign Creek from its junction with Moose Creek upstream 4.2 km (2.6 mi) to its source; and Buck Creek from its confluence with the East Fork Bitterroot River upstream 1.6 km (1.0 mi) to its headwaters provide spawning and rearing habitat for the East Fork Bitterroot River population complex of bull trout (MBTSG 1995a; USFWS 2002).

(I) Warm Springs Creek from its confluence with the East Fork Bitterroot River upstream 19.3 km (12.0 mi); Fire Creek from its confluence with Warm Springs Creek upstream 2.4 km (1.5 mi); Wiles Creek from its confluence with Warm Springs Creek upstream 8.8 km (5.5 mi) to its source; Fault Creek from its mouth at Wiles Creek upstream 5.3 km (3.3 mi) to its source; Porcupine Creek from its junction with Warm Springs Creek upstream 7.2 km (4.5 mi); and Prayer Creek from its junction with Warm Springs Creek upstream 4.4 km (2.7 mi) provide spawning and rearing habitat for the Warm Springs Creek local population of bull trout (MBTSG 1995a; USFWS 2002).

(x) Blackfoot River CHSU

The Blackfoot River CHSU includes the entire Blackfoot River drainage in western Montana in Missoula, Powell, and Lewis and Clark counties, with the exception of its' tributaries in the Clearwater River CHSU. A total of 436 km (270 mi) of 12 streams is proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams proposed for designation as critical habitat is approximately 34 percent Federal, 8 percent State, and 58 percent private.

(A) The Blackfoot River from its confluence with the Clark Fork River at Milltown upstream 191.0 km (118.7 mi) to the confluence of Alice Creek provides FMO habitat for tributary populations of bull trout (MBTSG 1995b).

(B) Gold Creek from its junction with the Blackfoot River upstream 19.4 km (12.1 mi) to a barrier falls near the National Forest boundary; the West Fork of Gold Creek from its mouth upstream13.1 km (8.1 mi) to its headwaters; and Daisy Creek from its confluence with the West Fork of Gold Creek upstream 6.2 km (3.9 mi) to its source provide spawning and rearing habitat for the Gold Creek local population of bull trout (MBTSG 1995b; USFWS 2002).

(C) Belmont Creek from its junction with the Blackfoot River upstream 16.9 km (10.5 mi) to its source provides spawning and rearing habitat for the Belmont Creek local population of bull trout (MBTSG 1995b; USFWS 2002).

(D) Cottonwood Creek from its junction with the Blackfoot River upstream 23.8 km (14.8 mi) to its source at Cottonwood Lake provides spawning and rearing habitat for the Cottonwood Creek local population (MBTSG 1995b; USFWS 2002).

(E) Monture Creek from its junction with the Blackfoot River upstream 47.3 km (29.4 mi) to its headwaters; Dunham Creek from its confluence with Monture Creek upstream 23.3 km (14.4 mi) to its headwaters; and Lodgepole Creek from its junction with Dunham Creek upstream 11.7 km (7.2 mi) to its source provide spawning and rearing habitat for the Monture Creek local population (MBTSG 1995b; Pierce *et al.* 1997; USFWS 2002).

(F) The North Fork Blackfoot River from its confluence with the Blackfoot River upstream 41.0 km (25.5 mi) to a natural barrier at North Fork Falls provides spawning and rearing habitat for the North Fork Blackfoot River local population (MBTSG 1995b; Pierce *et al.* 1997; USFWS 2002).

(G) The Landers Fork from its confluence with the Blackfoot River upstream17.9 km (11.2 mi) to a barrier falls near the junction of Byrnes Creek (just downstream from the Scapegoat Wilderness), and Copper Creek from its junction with Landers Fork upstream 24.0 km (14.9 mi) to its headwaters provide spawning and rearing habitat for the Landers Fork local population (MBTSG 1995b; Pierce *et al.* 1997; USFWS 2002).

(xi) Clearwater River and Lake Chain CHSU

The Clearwater River and Lake Chain CHSU includes the Clearwater River, a tributary to the Blackfoot River, drainage in Missoula and Powell counties, Montana. A total of 157 km (97 mi) of 9 streams, and 1,460 ha (3,608 ac) of lake surface area in seven lakes is proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams is approximately 51 percent Federal, 5 percent State, and 44 percent private.

(A) Salmon Lake (263 ha (650 ac)) provides FMO habitat for tributary populations of bull trout (MBTSG 1995b).

(B) The Clearwater River from its confluence with Salmon Lake upstream 39.1 km (24.3 mi) to its headwaters at Clearwater Lake provides habitat for bull trout. FMO habitat for tributary bull trout populations occurs below the confluence with the East Fork Clearwater River. Upstream from the junction with the East Fork Clearwater River spawning and rearing habitat for the Clearwater River local population complex of bull trout occurs (MBTSG 1995b; USFWS 2002).

(C) Owl Creek from its confluence with the Clearwater River upstream 6.6 km (4.1 mi) to its origin at Placid Lake, and Placid Lake (463 ha (187 ac)) provide FMO habitat for tributary populations. Placid Creek from its junction with Placid Lake upstream17.1 km (10.7 mi) to its headwaters, and its tributary Finley Creek from its mouth upstream 8.3 km (5.2 mi) to its source provide spawning and rearing habitat for the Placid Creek local population of bull trout (MBTSG 1995b; USFWS 2002).

(D) Morrell Creek from its confluence with the Clearwater River upstream 29.4 km (18.2 mi) provides spawning and rearing habitat for the Morrell Creek local population of bull trout (MBTSG 1995b; USFWS 2002).

(E) Seeley Lake (415 ha (1,025 ac)) provides FMO habitat, and Deer Creek from its junction with Seeley Lake upstream 16.5 km (10.2 mi) to its headwater provides spawning and rearing habitat for the Deer Creek local population of bull trout (MBTSG 1995b; USFWS 2002).

(F) The West Fork Clearwater River from its confluence with the Clearwater River upstream 23.1 km (14.3 mi) to its headwaters provides FMO habitat in the lower reaches, and spawning and rearing habitat for the West Fork Clearwater River local population in the upper reaches (MBTSG 1995b; USFWS 2002).

(G) Lake Inez (119 ha (294 ac)), Lake Alva (121 ha (299 ac)), Rainy Lake (28 ha (69 ac)), and Clearwater Lake (51 ha (126 ac)) provide FMO habitat for tributary populations of bull trout (MBTSG 1995b).

(H) Colt Creek from its confluence with the Clearwater River upstream 8.8 km (5.4 mi) to its headwaters, and the East Fork Clearwater River from its confluence with the Clearwater River upstream 7.9 km (4.9 mi) provide spawning and rearing habitat for the Clearwater River local population complex (MBTSG 1995b; USFWS 2002).

(xii) Rock Creek CHSU

The Rock Creek CHSU includes the entire watershed of Rock Creek in Missoula and Granite counties, Montana, from its junction with the Clark Fork River to its headwaters. A total of 487 km (302 mi) of 28 streams are proposed for designation as critical habitat for bull trout in this CHSU. Landownership along the streams is approximately 73 percent Federal, 1 percent State, and 26 percent private.

(A) Rock Creek from its confluence with the Clark Fork River near the town of Clinton upstream 83.3 km (51.7 mi) to its forks provides FMO habitat for tributary populations of bull trout (MBTSG 1995e).

(B) Gilbert Creek from its confluence with Rock Creek upstream 13.5 km (8.4 mi) to its headwaters provides spawning and rearing habitat for the Gilbert Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(C) Brewster Creek from its confluence with Rock Creek upstream 11.4 km (7.1 mi) to its source provides spawning and rearing habitat for the Brewster Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(D) Ranch Creek from its confluence with Rock Creek upstream 16.8 km (10.4 mi) to its headwaters provides spawning and rearing habitat for the Ranch Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(E) Welcome Creek from its confluence with Rock Creek upstream 11.9 km (7.4 mi) to its source provides spawning and rearing habitat for the Welcome Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(F) Butte Cabin Creek from its confluence with Rock Creek upstream 10.2 km (6.3 mi) to its headwaters provides spawning and rearing habitat for the Butte Cabin Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(G) Wahlquist Creek from its confluence with Rock Creek upstream 7.5 km (4.7 mi) to its headwaters provides spawning and rearing habitat for the Wahlquist Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(H) Cougar Creek from its confluence with Rock Creek upstream 7.7 km (4.8 mi) to its source provides spawning and rearing habitat for the Cougar Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(I) Hogback Creek from its confluence with Rock Creek upstream 7.3 km (4.5 mi) to its headwaters provides spawning and rearing habitat for the Hogback Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(J) Wyman Creek from its confluence with Rock Creek upstream 13.7 km (8.5 mi) to its headwaters provides spawning and rearing habitat for the Wyman Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(K) Stony Creek from its confluence with Rock Creek upstream 18.1 km (11.2 mi) to its source provides spawning and rearing habitat for the Stony Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(L) Upper Willow Creek from its confluence with Rock Creek upstream 31.2 km (19.4 mi) to its headwaters, and its tributary Beaver Creek from its mouth upstream 6.3 km (3.9 mi) to its source provide spawning and rearing habitat for the Upper Willow Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(M) West Fork Rock Creek from its confluence with Rock Creek upstream 38.4 km (23.9 mi) to its headwaters; North Fork Rock Creek from its confluence with West Fork Rock Creek upstream 7.8 km (4.8 mi) to its headwaters; Sand Basin Creek from its confluence with West Fork Rock Creek upstream 10.7 km (6.7 mi) to its source; and Bowles Creek from its confluence with West Fork Rock Creek upstream 6.8 km (4.2 mi) to its headwaters provide spawning and rearing habitat for the West Fork Rock Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(N) Ross Fork Rock Creek from its confluence with West Fork Rock Creek upstream 36.7 km (22.8 mi) to its headwaters; Moose Meadow Creek from its confluence with Ross Fork Rock Creek upstream 9.4 km (5.8 mi) to its source; and South Fork Ross Fork Rock Creek from its confluence with Ross Fork Rock Creek upstream 10.0 km (6.2 mi) to its headwaters provide spawning and rearing habitat for the Ross Fork Rock Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(O) East Fork Rock Creek from its confluence with Rock Creek upstream 25.8 km (16.0 mi) to its headwaters and Meadow Creek from its confluence with East Fork Rock Creek upstream 7.9 km (4.9 mi) to a barrier cascade at the confluence of Dexter Creek provide spawning and rearing habitat for the East Fork Rock Creek local population of bull trout. East Fork Reservoir (170 ha (420 ac) at full pool) provides FMO habitat for this local population (MBTSG 1995e; USFWS 2002).

(P) Middle Fork Rock Creek from its confluence with East Fork Rock Creek upstream 38.3 km (23.8 mi) to its source; Copper Creek from its confluence with Middle Fork Rock Creek upstream 19.2 km (11.9 mi) to its headwaters; Green Canyon Creek from its confluence with Copper Creek upstream 6.1 km (3.8 mi) to its headwaters; Lutz Creek from its confluence with Copper Creek upstream 8.3 km (5.1 mi) to its headwaters; Meyers Creek from its confluence with Middle Fork Rock Creek upstream 8.2 km (5.1 mi); and Carpp Creek from its confluence with Middle Fork Rock Creek upstream 14.3 km (8.9 mi) provide spawning and rearing habitat for the Middle Fork Rock Creek local population of bull trout (MBTSG 1995e; USFWS 2002).

(7) Unit 3: Kootenai River Basin

The Kootenai unit is located upstream and downstream from Libby Dam, in Montana, on the Kootenai River. It includes the northwestern corner of Montana and the northeastern tip of the panhandle of Idaho. The Kootenai River has a unique configuration, entering the U.S. from British Columbia, Canada and then returning to British Columbia where it joins the upper Columbia River drainage. This unit includes two CHSUs: the Kootenai River and Bull Lake CHSU lies in Boundary County, Idaho and Lincoln County, Montana. The Lake Koocanusa and Sophie Lake CHSU lies in Lincoln County, Montana.

We are proposing to designate critical habitat for bull trout in portions of 27 streams, 2 lakes, and 1 reservoir in this unit. The total stream distance is about 528 km (328 mi) in Montana, and 95 km (59 mi) in Idaho, for a total of 623 km (387 mi). The lakes and reservoir have a surface coverage of about 19,418 ha (47,982 ac), about 97 percent of which is the Lake Koocanusa reservoir. Landownership associated with the proposed critical habitat designations in waterways includes approximately 53 percent Federal land, 44 percent private lands, and 3 percent State land. The Draft Recovery Plan (USFWS 2002) identified 10 local populations of bull trout in this unit as essential to recovery.

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(i) Kootenai River and Bull Lake CHSU

The Kootenai River and Bull Lake CHSU includes the entire Kootenai River drainage downstream from Libby Dam, and the Callahan Creek, O'Brien Creek, Quartz Creek, Pipe Creek, Libby Creek, Fisher River, and Keeler Creek local populations. The following stream segments are included in this CHSU.

(A) The Kootenai River from the Canadian border with Idaho upstream 184.2 km (114.4 mi) to Libby Dam provides FMO habitat.

(B) Callahan Creek from its confluence with the Kootenai River upstream 12.3 km (7.7 mi) to its headwaters provides spawning and rearing habitat. July Creek from its confluence with Callahan Creek upstream 1.6 km (1.0 mi) to its headwaters, Goat Creek from its confluence with Callahan Creek upstream 7.4 km (4.6 mi) to its headwaters, North Fork Callahan Creek from its confluence with Callahan Creek upstream 20.4 km (12.7 mi) to its headwaters, and South Fork Callahan Creek from its confluence with Callahan Creek upstream 19.6 km (12.2 mi) to its headwaters also provides spawning and rearing habitat for the Callahan Creek local population.

(C) O'Brien Creek from its confluence with the Kootenai River upstream 17.7 km (11.0 mi) to its headwaters provides spawning and rearing habitat for the O'Brien Creek local population.

(D) Quartz Creek from its confluence with the Kootenai River upstream 17.7 km (11.0 mi) to its headwaters, and West Fork Quartz Creek from its confluence with Quartz Creek upstream 10.0 km (6.2 mi) to its headwaters provide spawning and rearing habitat for the Quartz Creek local population.

(E) Pipe Creek from its confluence with the Kootenai River upstream 39.6 km (24.6 mi) to its headwaters, and East Fork Pipe Creek from its confluence with Pipe Creek upstream 13.5 km (8.4 mi) to its headwaters provide spawning and rearing habitat for the Pipe Creek local population.

(F) Libby Creek from its confluence with the Kootenai River upstream 48.1 km (29.9 mi) to its headwaters provides spawning and rearing habitat. Bear Creek from its confluence with Libby Creek upstream 13.2 km (8.2 mi) to its headwaters, Poorman Creek from its confluence with Libby Creek upstream 8.8 km (5.5 mi) to its headwaters, and Ramsey Creek from its confluence with Libby Creek upstream 9.7 km (6.0 mi) to its headwaters also provide spawning and rearing habitat for the Libby Creek local population.

(G) The Fisher River from its confluence with the Kootenai River upstream 47.3 km (29.4 mi) provides FMO habitat. West Fisher Creek from its confluence with the Fisher River upstream 21.4 km (13.3 mi) provides spawning and rearing habitat for the Fisher River local population.

(H) Bull Lake and associated tributaries contain a bull trout population that is isolated from the Kootenai River by Troy Dam, built in 1917. This population is unusual in that the adult spawners run downstream from Bull Lake, using Lake Creek as a corridor to access spawning areas in Keeler Creek. Downstream spawning migration is uncommon amongst bull trout populations. Bull Lake 506 ha (1,250 ac) and Lake Creek, a tributary to Bull Lake upstream from the confluence 13.0 km (8.1 mi), provide FMO habitat. Keeler Creek from the confluence with Lake Creek upstream 13.4 km (8.3 mi), and North Fork Keeler Creek from the confluence with Keeler Creek upstream 10.6 km (6.6 mi) provide spawning and rearing habitat for the Bull Lake local population.

(ii) Lake Koocanusa and Sophie Lake CHSU

This CHSU includes the entire Kootenai River drainage in Montana upstream from Libby Dam and includes the Grave Creek, Wigwam River, and Phillips Creek local populations. Fluvial populations of bull trout in the upper Kootenai watershed were converted to an adfluvial life history pattern by the addition of the large reservoir (Lake Koocanusa) behind Libby Dam, which backs up water some 69 km (43 mi) and into Canada.

(A) Lake Koocanusa, 18,818 ha (46,499 ac) in size of which most occurs within the United States, provides FMO habitat for the Grave Creek and Wigwam River local populations. The entire U.S. portion of the reservoir is proposed for designation as critical habitat for bull trout.

(B) The Tobacco River from its confluence with Lake Koocanusa upstream 21.7 km (13.5 mi) provides FMO habitat. Grave Creek from its confluence with the Tobacco River upstream 25.4 km (15.8 mi), Clarence Creek from its confluence with Grave Creek upstream 8.5 km (5.3 mi), and Blue Sky Creek from its confluence with Grave Creek upstream 2.1 km (1.3 mi) provide spawning and rearing habitat for the Grave Creek local population.

(C) The upper 7.1 km (4.4 mi) of the Wigwam River, which lies within the United States, provides spawning and rearing habitat for the Wigwam River local population.

(D) Sophie Lake, 94 ha (232 ac) in size, provides FMO habitat and Phillips Creek, from the confluence with Sophie Lake upstream 5.5 km (3.4 mi), provides spawning and rearing habitat for the Phillips Creek local population. This population of migratory (adfluvial) bull trout are isolated in a closed basin, with no active outlet stream (MBTSG 1996e).

(8) Unit 4: Willamette River Basin

The Willamette River Basin Unit includes 337 km (209 mi) of stream and 1,600 ha (3,954 ac) of lake habitat in the McKenzie River and Middle Fork Willamette River subbasins of western Oregon. The unit is located primarily within Lane County, but also extends into Linn County. Landownership within the CHSU is 46 percent Federal and 54 percent private. Currently, there are three known bull trout local populations in the McKenzie River subbasin, and one potential bull trout local population in the Middle Fork Willamette River subbasin. All four of these populations are identified as essential for bull trout recovery in the Draft Recovery Plan (USFWS 2002). The stream segments that make up the Willamette River Unit are described below. With the exception of the mainstem Willamette River, the lower Middle Fork Willamette River, and Lost Creek, all segments proposed as critical habitat are currently occupied by bull trout, and all segments are essential to the conservation of the species, as they are essential to supporting populations that meet recovery criteria in the Draft Recovery Plan (USFWS 2002).

(i) The Willamette River from its confluence with the McKenzie River at rkm 282.0 (rmi 175.1) upstream 19 km (11.8 mi) to its confluence with the Middle Fork Willamette River at rkm 301.0 (187.0). This segment provides for the maintenance of the migratory life history form of bull trout that is essential to the long-term conservation of the species, and is essential for providing connectivity between the McKenzie River and Middle Fork Willamette River local populations.

(ii) The McKenzie River and side channels from its confluence with the Willamette River upstream 136 km (84.5 mi) to Trail Bridge Dam, including Trail Bridge Reservoir (23 ha (57 ac) at full pool), and continuing upstream beyond the reservoir for 3.2 km (2 mi) to Tamolitch Falls. Three bull trout local populations have been identified on the McKenzie River: (1) the Trail Bridge population includes the McKenzie River and tributaries above Trail Bridge Dam; (2) the McKenzie River population includes the McKenzie River and tributaries downstream of Trail Bridge Dam; and, (3) the South Fork McKenzie River population includes the South Fork McKenzie River and tributaries above Cougar Dam. The following McKenzie River tributaries (and associated reservoirs) are included: the Blue River from its confluence with the McKenzie River upstream 2.8 km (1.7 mi) to Blue River Lake Dam; the South Fork McKenzie River from its confluence with the McKenzie River upstream 7.2 km (4.5 mi) to Cougar Reservoir, including Cougar Reservoir (560 ha (1,384 ac) at full pool), and continuing upstream beyond the reservoir for 25.6 km (15.9 mi) to the Three Sisters Wilderness Area boundary, and also extending 5 km (3.1 mi) up Roaring River; Horse Creek and West Fork Horse Creek for a total of 18.5 km (11.5 mi) from the confluence with the McKenzie River upstream to Separation Creek, including side channels, and extending 3.1 km (2 mi) up Separation Creek; Lost Creek from its confluence with the McKenzie River upstream 5.8 km (3.6 mi) to a headwater spring; Deer Creek from its confluence with the McKenzie River upstream for a distance of 4.6 km (2.9 mi); Olallie Creek from its confluence with the McKenzie River upstream 3.2 km (2 mi) to a natural barrier; Anderson Creek from its confluence with the McKenzie River upstream 2.6 km (1.6 mi) to a natural barrier; and Sweetwater Creek from its inlet to Trail Bridge Reservoir upstream 1.9 km (1.2 mi) to a natural barrier.

(iii) The Middle Fork Willamette River from its confluence with the Willamette River upstream 48 km (29.9 mi) to Hills Creek Reservoir and including Dexter Reservoir (343 ha (848 ac)), Lookout Point Reservoir (1,617 ha (3,996 ac)), and Hills Creek Reservoir (1,060 ha (2,619 ac) at full pool), and continuing upstream from Hills Creek Reservoir for 32.2 km (20 mi) to the Paddy's Valley/Chuckle Springs area. Bull trout currently occur in the upper portion of the Middle Fork Willamette River as a result of transplanted fry from Anderson Creek in the McKenzie River, and this is considered a rehabilitated local population. The following Middle Fork tributaries are included: Swift Creek from its confluence with the Middle Fork Willamette River upstream 14.7 km (9.1 mi) to its headwaters; and Bear Creek from its confluence with Swift Creek upstream 3.2 km (2 mi).

(9) Unit 5: Hood River Basin

The Hood River unit includes the mainstem Hood River and three major tributaries: the Clear Branch Hood River, West Fork Hood River, and East Fork Hood River. A total of 178.0 km (110.3 mi) of stream, representing 21 percent of the total stream lengths in this unit, is proposed for critical habitat. Although the recovery unit includes the Sandy River, which is known to be occupied based on recent sightings, there is insufficient information at present to identify local populations, or describe bull trout habitat use in the Sandy River subbasin; therefore no critical habitat is proposed for designation in this subbasin. Portions of the mainstem Columbia River utilized by Hood River bull trout are considered in the mainstem Columbia River section of this document.

The Hood River unit, located on the western slopes of the Cascades Mountains in northwest Oregon, lies entirely within Hood River County, Oregon. Landownership adjacent to stream reaches proposed for critical habitat within the Hood River unit includes: 48 percent Federal land, 1 percent State land, and 51 percent private land. Currently, there are two local populations (Clear Branch Hood River above Clear Branch Dam, and Hood River and tributaries below Clear Branch Dam) identified as essential to recovery (USFWS 2002). Also identified are two additional areas (West Fork Hood River and East Fork Hood River), where additional local populations essential for bull trout recovery are recommended to be established. Presently, bull trout in the Hood River basin are believed to be at substantial risk, numbering less than 300 adult fish, emphasizing the need to establish additional local populations (USFWS 2002).

(i) Hood River from the Columbia River upstream 23.7 km (14.7 mi) to its confluence with the east and middle forks provides FMO habitat as well as connectivity with the mainstem Columbia River.

(ii) West Fork Hood River from the Hood River confluence upstream 23.2 km (14.4 mi) to the confluence with Elk and McGee creeks provides FMO habitat. Current occupancy is confirmed from sightings at the fish ladder on Punchbowl Falls and from trap information (USFWS 2002). This habitat is essential for establishing additional reproducing local population(s) in the west fork (and east fork), which is essential to the long-term conservation of the species (USFWS 2002).

(iii) Lake Branch Hood River from the confluence with the west fork upstream 4.2 km (2.6 mi) to the confluence with Laurel Creek. Establishing additional local population(s) in the west and east fork is identified as an action necessary to achieve recovery (USFWS 2002). Lake Branch would serve as FMO habitat linking Laurel and Divers creeks, both of which were identified in U.S. Forest Service (USFS1996a) as having suitable water temperatures to provide spawning habitat. Divers Creek from the Lake Branch confluence upstream approximately 5.6 km (3.5 mi) to its headwaters is essential to provide spawning habitat to support additional local populations necessary to achieve recovery, as identified in the Draft Recovery Plan (USFWS 2002). Laurel Creek from the Lake Branch confluence upstream approximately 5.8 km (3.6 mi) to its headwaters is essential to provide potential spawning habitat for supporting additional local populations in this unit (USFWS 2002).

(iv) Red Hill Creek from the west fork confluence upstream approximately 5.5 km (3.4 mi) to its headwaters is essential to provide spawning habitat to support additional local populations, identified as essential to recovery (USFWS 2002). Elk Creek from the west fork confluence upstream 6.6 km (4.1 mi) to its headwaters also provides potential spawning habitat to support a population that is identified in the Draft Recovery Plan as essential to achieve recovery (USFWS 2002).

(v) East Fork Hood River from the Hood River confluence upstream 44.1 km (27.4 mi) to its headwaters is essential to provide FMO habitat to support additional local populations necessary to achieve long-term conservation of the species (USFWS 2002). Streams with habitat conditions for expanding bull trout spawning and rearing habitat have yet to be identified in the east fork subwatershed. Griswell Creek from the confluence with the east fork upstream 0.6 km (0.4 mi) to the Evans Creek confluence provides FMO habitat between Evans Creek, which is known to be occupied (Buchanan *et al.* 1997; USFWS 2002), and the East Fork Hood River, and potentially with spawning habitat essential to establish additional local populations necessary for recovery (USFWS 2002). Evans Creek from the confluence with Griswell Creek upstream 12.9 km (8.0 mi) to its headwaters is known to be occupied (Buchanan *et al.* 1997; USFWS 2002), and provides FMO habitat at a minimum, and possibly spawning and/or juvenile rearing habitat.

(vi) Middle Fork Hood River from the Hood River confluence upstream 15.4 km (9.6 mi) to the confluence with Coe Branch provides spawning and rearing habitat for the Hood River local population. Bear Creek from the Middle Fork Hood River confluence upstream 1.3 km (0.8 mi) to the confluence with an unnamed tributary is occupied and provides spawning and rearing habitat for the Hood River local population. Elliot Creek from the Middle Fork Hood

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River confluence upstream 1.3 km (0.8 mi) to the confluence with Elliot Ditch is occupied and provides spawning and rearing habitat for the Hood River local population. Coe Branch from the Middle Fork Hood River confluence upstream 3.9 km (2.4 mi) to the confluence with Compass Creek is currently occupied, provides FMO habitat for the Hood River local population, and provides connectivity between spawning and rearing habitat in Compass Creek and the Middle Fork Hood River. Compass Creek from the confluence with Coe Branch upstream 4.3 km (2.7 mi) to the headwaters provides spawning and rearing habitat for the Hood River local population.

(vii) Clear Branch from the confluence with the Middle Fork Hood River upstream 1.4 km (0.9 mi) to Clear Branch Dam provides FMO habitat. Clear Branch above Laurance Lake upstream 5.0 km (3.1 mi) to the confluence with two unnamed tributaries is occupied habitat providing spawning and rearing habitat for the Clear Branch local population. Laurance Lake, with an area of 37 ha (91 ac) provides rearing habitat for the Clear Branch local population. Pinnacle Creek from the confluence with Laurance Lake upstream 3.25 km (2.02 mi) to a gradient barrier is occupied and provides spawning and rearing habitat for the Clear Branch local population.

(10) Unit 6: Deschutes River Basin

Two CHSUs, the lower Deschutes and the upper Deschutes, separated by Big Falls, an impassible barrier on the Deschutes River at rkm 211.4 (rmi 131.4) (Stuart *et al.* 1997), comprise this unit.

(i) Lower Deschutes CHSU

The Lower Deschutes CHSU is in Wasco, Sherman, Jefferson, Deschutes, and Crook Counties in central Oregon. Approximately 576 km (358 mi) of stream in the lower Deschutes River basin is proposed for critical habitat designation. Approximately 23 percent of the proposed streams are located on Federal lands, 44 percent on private lands, 32 percent on Confederated Tribes of Warm Springs Reservation of Oregon lands, and 1 percent on State lands. There are five known local populations in the lower Deschutes basin; all are identified as essential to the long-term conservation of the species (USFWS 2002). Local populations of bull trout that occupy this area include the Warm Springs, Shitike Creek, Whitewater River, Jefferson/Candle/Abbot complex, and Canyon/Jack/Heising/mainstem Metolious complex. The following stream segments are included in this CHSU.

(A) The Deschutes River from its mouth at the Columbia River at rkm 329.8 (rmi 204.8) upstream 211.6 km (131.5 mi) provides FMO habitat for bull trout (Buchanan *et al.* 1997). The Deschutes River is important migration habitat connecting the local populations in the lower portion of the river, as well as providing rearing and foraging habitat. Pelton Reservoir (70 ha (174 ac)), Lake Simtustus (84.65 ha (236.6 ac)), and Lake Billy Chinook (1,543 ha (3,813 ac)) are created reservoirs on the Deschutes River, and are included as FMO habitat. Currently, there is no operating fish passage through the dams. Creation of a fish passage mechanism is being planned for future operation of the dams. Lake Billy Chinook provides important foraging and overwintering habitat for an adfluvial population which spawns in the Metolius River.

(B) Warm Springs River from its confluence with the Deschutes River at rkm 134.2 upstream 45.4 km (28.2 mi) contains FMO habitat. From rkm 45.5 upstream 28.0 km (17.4 mi) to its confluence with Dry Creek at rkm 73.6 spawning and rearing habitat occurs. This reach is interspersed with reaches on the Warm Springs Indian Reservation that are not included as proposed critical habitat due to their management as "Conditional Use Areas," such that special management considerations or protections are not necessary. Bunchgrass Creek provides spawning and rearing habitat from its confluence with the Warm Spring River at rkm 62.8 upstream 10 km (6.2 mi) to its source at Cold Spring (Buchanan *et al.* 1997).

(C) Shitike Creek from its confluence with the Deschutes River at rkm 155.0 upstream 14.6 km (9.1 mi) provides FMO habitat. From rkm 14.6 upstream 36.8 km (22.9 mi) is spawning and rearing habitat (Buchanan *et al.* 1997).

(D) Crooked River from its confluence with Lake Billy Chinook at rkm 189.9 upstream 1 km (0.62 mi) to Opal Springs Dam contains FMO habitat known to be occupied. From Opal Springs dam upstream 62.5 km (38.8 mi) to the city of Prineville, FMO habitat of unknown occupancy exists. A few records of bull trout have been made (Buchanan *et al.* 1997) and at least in part due to cold water springs along the length of Crooked River Gorge, the habitat is currently adequate for bull trout. Fish passage was not provided when the dam was enlarged in 1983, so there has been no record of bull trout above the dam since that time (Buchanan *et al.* 1997). However, habitat connectivity and habitat for migration in the Crooked River, which can be established by creating fish passage through Opal Springs Dam, is essential for the long-term conservation of the species (USFWS 2002).

(E) Metolius River from its confluence with Lake Billy Chinook at rkm 195.3 upstream 37.2 km (23.1 mi) to the confluence with Jack Creek contains FMO habitat (Buchanan *et al.* 1997).

(F) Whitewater River from its confluence with the Metolius River at rkm 9.2 (rmi 5.7) upstream 17 km (10.6 mi) to its source provides spawning and rearing habitat (Buchanan *et al.* 1997).

(G) Jefferson Creek from its confluence with the Metolius River at rkm 25.5 (rmi 15.8) upstream 14.5 km (9 mi) to an impassable waterfall (Buchanan *et al.* 1997); an unnamed tributary to Jefferson Creek at rkm 10.4 (rmi 6.5) upstream 0.8 km (0.5 mi) to its source; Parker Creek from its confluence with Jefferson Creek at rkm 12.3 (rmi 7.6) upstream 0.6 km (0.4 mi); Candle Creek from its confluence with the Metolius River at rkm 25.7 (rmi 16.0) upstream 6.1 km (3.8 mi) to Cabot – Creek; and Abbot Creek from its confluence with the Metolius River at rkm 26.3 (rmi 16.3) upstream 5.3 km (3.3 mi) to its source spring on the south east side of Abbot Butte contain spawning and rearing habitat (ODFW 2002).

(H) Metolius River from its confluence with Jack Creek upstream 7.2 km (4.5 mi) to the two springs at its source; Canyon Creek from its confluence with the Metolius River at rkm 36.1 (rmi 22.4) upstream 8.8 km (5.5 mi) to USFS road 1235; an unnamed tributary to Canyon Creek which is east of, and parallel to, Brush Creek upstream 3.4 km (2.1 mi); Brush Creek from its confluence with Canyon Creek at rkm 1.5 (rmi 0.9) upstream 6.1 km (3.8 mi) to USFS road 1230; Roaring Creek from its confluence with Canyon Creek at rkm 3.9 (rmi 2.4) upstream 2.9 km (1.8 mi) to two forks; up the north fork to the source springs and up the west fork to the intersection of USFS roads 1260 and 1230; Jack Creek from its confluence with the Metolius River at rkm 37.3 (rmi 23.2) upstream 7.4 km (4.6 mi) to its source springs (Buchanan *et al.* 1997); and Heising Spring from its confluence with the Metolius River near the mouth of Jack Creek upstream 0.2 km (0.12 mi) to its source (ODFW 2002) contain spawning and rearing habitat.

(I) The Lake Creek stream system is composed of a reverse dendritic (branching like a tree) pattern: As Lake Creek flows downstream, it splits into the North Fork, Middle Fork, and South Fork; the North Fork flows directly into the Metolius River; the South Fork and Middle Fork flow back together again before entering the Metolius River. Lake Creek, including North Fork Lake Creek from its confluence with the Metolius River at rkm 41.8 (rmi 26.0) upstream 5.6 km (3.5 mi) to its confluence with Lake Creek; Middle Fork Lake Creek from its confluence with the Metolius River at rkm 42.3 (rmi 26.3) upstream 5.6 km (3.5 mi) to Lake Creek; South Fork Lake Creek from its confluence with Middle Fork Lake Creek at rkm 2.5 (rmi 15.5) upstream 4 km (2.5 mi) to Lake Creek; Lake Creek form its confluence with North, Middle, and South Fork Lake Creek upstream 2.4 km (1.5 mi) to Suttle Lake; and Suttle Lake (105 ha (259 ac)) contain FMO habitat of unknown occupancy. Link Creek from Suttle Lake upstream 1 km (0.6 mi) to Blue Lake is suitable spawning and rearing habitat of unknown occupancy; Blue Lake (22 ha (55 ac)) is FMO habitat of unknown occupancy. Together, these streams and lakes are identified as habitat essential to supporting an additional bull trout population necesssary to provide for the recovered distribution of bull trout (USFWS 2002).

(J) Squaw Creek from its confluence with the Deschutes River at rkm 195.8 (rmi 121.6) upstream 2.4 km (1.5 mi) to Alder Spring provides FMO habitat (Buchanan *et al.* 1997). Restoring connectivity is an essential element for the long-term conservation of the species (USFWS 2002).

(ii) Upper Deschutes CHSU

The upper Deschutes River CHSU is located in Deschutes, Crook, and Klamath counties in central Oregon. Approximately 225.4 km (140.1 mi) of stream in the upper Deschutes River basin is proposed for critical habitat designation. Approximately 64 percent of the proposed streams are located on Federal lands, 35 percent on private lands, and 1 percent are on State lands. Bull trout are not currently known to occur in this area. Preliminary investigations and historic information indicate that habitat for bull trout is currently present (Riehle and Nolte 1992). The Draft Recovery Plan (USFWS 2002) identifies the historic habitat in the upper Deschutes basin as core habitat (*i.e.*, habitat that contains the essential physical elements for bull trout to persist and that is deemed critical to recovery), and as a priority one recovery need, but does not identify the number of local populations needed for recovery. The plan calls for a study to determine the feasibility of re-introduction of bull trout in the upper Deschutes River basin. The following stream segments are included in the proposed critical habitat designation because a designation limited to the areas currently occupied would be inadequate to ensure the conservation of the species (50 CFR 242.12(e).

(A) The Deschutes River from Wickiup Reservoir upstream 12.4 km (7.7 mi) to its source at Lava Lake; Little Deschutes River from its confluence with Crescent Creek at rkm 59.6 (rmi 37.0) upstream 31.5 km (19.6 mi) to the intersection with Highway 58, and from there upstream 23.7 km (14.7 mi) to its source at rkm 114.9 (rmi 71.4); ; Crescent Creek from its confluence with the Little Deschutes River upstream 25.4 km (15.8 mi) to the intersection with USFS road 61; Big Marsh Creek from its confluence with Crescent Creek at rkm 31.9 (rmi 19.8) upstream 12.9 km (8 mi) through the marsh at rkm 9.4 (rmi 5.8), and from the marsh upstream 10 km (6.2 mi) to its source at rkm 22.8 (rmi 14.2); ; Crescent Lake (1,488 ha (3,676 ac)); Wickiup Reservoir (4,103 ha (10,139 ac)); Crane Prairie Reservoir (1,675 ha (4,139 ac)); Little Lava Lake (53 ha (130 ac)); and Lava Lake (139 ha (344 ac)) contain FMO habitat not currently known to be occupied (Buchanan *et al.* 1997) but deemed essential to the long-term conservation of the species (USFWS 2002;).

(B) Crescent Creek from the intersection with USFS road 61 at rkm 25.5 (rmi 15.8) upstream 15.8 km (9.8 mi) to Crescent Lake; Cold Creek from its confluence with Crescent Creek upstream 3.9 km (2.4 mi) to its spring source near the railroad tracks; Whitefish Creek from its confluence with Crescent Lake upstream 8.2 km (5.1 mi) to a water fall; and Refrigerator Creek from its confluence with Big Marsh Creek upstream 6.1 km (3.8 mi) to its source contain spawning and rearing habitat not currently known to be occupied but deemed essential to the long-term conservation of the species (USFWS 2002).

(C) Hemlock Creek from its confluence with the Little Deschutes River upstream 8.9 km (5.5 mi) to its source; Spruce Creek from its confluence with Hemlock Creek upstream 6.3 km (3.9 mi) to its source; and Fall River from its confluence with the Little Deschutes River upstream 14.2 km (8.8 mi) to its source contains spawning and rearing habitat not currently known to be occupied but deemed essential to the long-term conservation of the species (USFWS 2002).

(D) North Davis Creek from its confluence with Wickiup Reservoir upstream 1 km (0.6 mi) to its source; Browns Creek from its confluence with Wickiup Reservoir upstream 19.8 km (12.3 mi) to its spring source; Quin River from its confluence with Crane Prairie Reservoir upstream 0.3 km (0.2 mi) to its spring source; Cultus River from its confluence with Crane Prairie Reservoir upstream 13.5 km (8.4 mi) to its spring source; and Snow Creek from its confluence with the Deschutes River at rkm 375.4 (rmi 233.1) upstream 7.4 km (4.6 mi) to its spring source contain spawning and rearing habitat not currently known to be occupied but deemed essential to the long-term conservation of the species (USFWS 2002).

(11) Unit 7: Odell Lake

The Odell Lake Unit lies entirely within the Deschutes National Forest in Deschutes and Klamath counties. Total proposed critical habitat in this unit includes approximately 2,675 ha (6,611 ac) of lakes and 18.1 km (11.3 mi) of streams. The following lake area and stream segments are included in this critical habitat unit:

(i) Odell Lake, approximately 1,457 ha (3,600 ac) in surface area within the lake shoreline as depicted on a 1:24,000 scale map. Odell Lake is the primary FMO habitat for this adfluvial bull trout population.

(ii) Trapper Creek from its mouth at the confluence with Odell Lake to rkm 4.0 (rmi 2.5) at the confluence of two spring-fed tributaries which form its headwaters. Trapper Creek is the only tributary to Odell Lake where bull trout spawning and rearing is currently known to occur.

(iii) Crystal Creek from its mouth at the confluence with Odell Lake to its headwater springs at approximately rkm 2.4 (rmi 1.5). Crystal Creek historically supported bull trout spawning and maintains many of the habitat elements essential to the conservation of bull trout. Establishment of an appropriate additional spawning population in the area at Crystal Creek is essential to the long-term conservation of the species (USFWS 2002).

(iv) Odell Creek from its confluence with Odell Lake downstream 11.7 km (7.3 mi) to its confluence with Davis Lake. This area is included in this proposal because it currently is foraging habitat for the population that spawns in Trapper Creek that is essential to the long-term conservation of the species, and also because it provides additional spawning habitat that is essential to the long-term conservation of the species (USFWS 2002).

(v) Davis Lake (1,218 ha; 3,011 ac) is historical habitat that may currently provide FMO habitat for bull trout, and is essential to supporting a larger, more resilient bull trout population that is essential to the conservation of the

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species (T. Wise, ODFW, pers. Comm., 2002; N. Dachtler, USFS, pers. Comm., 2002).

(12) Unit 8: John Day River Basin

The John Day River unit in the John Day River Basin in eastern Oregon includes portions of the mainstem John Day River, the North Fork John Day River, the Middle Fork John Day River and their tributary streams in Wheeler, Grant, and Umatilla counties, Oregon. A total of 1,080 km (671 mi) of stream is proposed for critical habitat. Landownership along the stream reaches proposed for critical habitat within the John Day River critical habitat unit includes approximately 54 percent Federal land, less than 1 percent State land, and 46 percent privately owned land.

Currently, there are three subpopulations recognized in the basin (Buchanan *et al.* 1997): the upper John Day basin including tributary streams; the North Fork John Day River including tributary streams; and the Middle Fork John Day and its tributary. The three subpopulation areas all flow together with no physical barriers between them, except for barriers as a seasonal consequence of low flow and high stream temperatures during summer that may limit the seasonal distribution of individuals. All proposed critical habitat designations are essential to the long-term conservation of the species (USFWS 2002). The following stream segments are included in this unit.

(i) Upper John Day River from its confluence with the North Fork John Day River at rkm 290.9 (rmi 180.6) to its confluence with Reynolds Creek at rkm 424.7 (rmi 263.7) provides FMO habitat. From Reynolds Creek upstream 20.4 km (12.7 mi) to its source there is occupied spawning and rearing habitat (Buchanan *et al.*1997; Hemmingsen *et al.* 2001a,b,c,d). Canyon Creek from its confluence with the John Day River at rkm 389.8 (rmi 242.1) upstream 43.8 km (27.2 mi) to its source, and Pine Creek from its confluence with the John Day River at rkm 401.9 (rmi 249.6) upstream 16.7 km (10.4 mi) to its source, are habitat areas that provide for expansion of bull trout populations in the upper sub-basin, which is essential for long-term conservation of the species (USFWS 2002). Indian Creek from its confluence with the John Day River at rkm 404.2 (rmi 251.0) upstream 19.2 km (11.9 mi) to its source contains spawning and rearing habitat. Bull trout are known to occur in Indian Creek (Claire and Gray, unpublished 1993; Buchanan *et al.* 1997), but a large fire in the Indian Creek watershed in 1996 may have negatively impacted the bull trout population. Reestablishing this population is essential to the long-term conservation of the species (USFWS 2002). Strawberry Creek from its confluence with the John Day River at rkm 413.1 (rmi 256.5) upstream 13.7 km (8.5 mi) to the USFS boundary contains suitable FMO habitat, and from the USFS boundary upstream 7.6 km (4.7 mi) to its source contains suitable spawning and rearing habitat. Strawberry Creek is identified as stream habitat to allow for expansion of bull trout populations in the upper watershed, an action deemed essential to the long-term conservation of the species (USFWS 2002). Reynolds Creek from its confluence with the John Day River at rkm 424.7 (rmi 263.7) upstream 14.8 km (9.2 mi) to its source, and North Fork Reynolds Creek from its confluence with Reynolds Creek at rkm 6.4 (4.0 mi) upstream 11.9 km (7.4 mi) to its source contain occupied spawning and rearing habitat (Buchanan *et al.* 1997). Deardorff Creek from its confluence with the John Day River at rkm 426.8 (rmi 265.0) upstream 15.4 km (9.6 mi) to its source (Buchanan *et al.* 1997; Hemmingsen *et al.* 2001a,b,c,d), Rail Creek from its confluence with the John Day River at rkm 432.1 (rmi 268.3) upstream 11.4 km (7.1 mi) to its source (Buchanan *et al.* 1997), Roberts Creek from its confluence with the John Day River at rkm 432.2 (rmi 268.4) upstream 8.8 km (5.5 mi) to its source (Buchanan *et al.* 1997; Hemmingsen *et al.* 2001a,b,c,d), and Call Creek from its confluence with the John Day River at rkm 436.2 (rmi 270.9) upstream 5.9 km (3.7 mi) to its source (Buchanan *et al.* 1997; Hemmingsen *et al.* 2001a,b,c,d) contain occupied spawning and rearing habitat.

(ii) North Fork John Day River from the confluence with the John Day River at rkm 290.9 (rmi 180.6) upstream 137 km (85 mi) to Granite Creek contains occupied FMO habitat. From Granite Creek upstream 38.5 km (23.9 mi) to its source contains occupied spawning and rearing habitat. West Fork Meadow Brook Creek from its confluence with North Fork John Day River at rkm 93.8 (rmi 58.2) upstream 4.5 km (2.8 mi) to East Fork Meadow Brook Creek contains occupied FMO habitat. East Fork Meadow Brook Creek from its confluence with the West Fork Meadow Brook Creek upstream 18 km (11.2 mi) to its source is occupied spawning and rearing habitat (ODFW 1996; Buchanan *et al.* 1997). Desolation Creek from its confluence with North Fork John Day River at rkm 94.5 (rmi 58.7) upstream 8.7 km (5.4 mi) is known FMO habitat. From this point upstream 24.6 km (15.3 mi) to its source contains occupied spawning and rearing habitat (ODFW 1996; Buchanan *et al.* 1997). North Fork Desolation Creek from its confluence with Desolation Creek at rkm 33.3 (rmi 20.7) upstream 10.5 km (6.5 mi) to its source is historic spawning and rearing habitat from which bull trout have probably been extirpated (Buchanan *et al.* 1997; ODFW 2001). This reach is identified as habitat essential for the long-term conservation of bull trout (USFWS 2002). South Fork Desolation Creek from its confluence with Desolation Creek at rkm 33.3 (rmi 20.7) upstream 14.0 km (8.7 mi) to its source contains occupied spawning and rearing habitat (Buchanan *et al.* 1997). Big Creek from its confluence with the North Fork John Day River at rkm 119.3 (rmi 74.1) upstream 2.1 km (1.3 mi) to its confluence with Winom Creek provides occupied spawning and rearing habitat (ODFW 1996). Winom Creek from its confluence with Big Creek at rkm 2.0 (rmi 1.2) upstream 12.0 km (7.4 mi) to its source contains occupied spawning and rearing habitat (ODFW 1996). Granite Creek from its confluence with North Fork John Day River at rkm 136.7 (rmi 84.9) upstream 25.4 km (15.8 mi) to its source is known historic spawning and rearing habitat (Buchanan *et al.* 1997) identified as essential for the long-term conservation of bull trout (USFWS 2002). Clear Creek from its confluence with the Granite Creek at rkm 12.0 (rmi 7.5) upstream 33.0 km (20.5 mi) to its source, and Lightning Creek from its confluence with Clear Creek upstream 4.8 km (3.0 mi) to its source contain spawning and rearing habitat (ODFW 1996). West Fork Clear Creek from its confluence with Lightning Creek at rkm 2.7 (rmi 1.7) upstream 7.2 km (4.5 mi) to its source, and Salmon Creek from its confluence with Lightning Creek at rkm 4.9 (rmi 3.0) upstream 3.2 km (2.0 mi) contain spawning and rearing habitat (ODFW 1996; Buchanan *et al.* 1997). Bull Run Creek from its confluence with Granite Creek at rkm 14.9 (rmi 9.3) upstream 20.6 km (12.8 mi) to its source provides occupied FMO habitat (ODFW 1996; ODFW 2001). Boundary Creek from its confluence with Bull Run Creek at rkm 16.4 (rmi 10.2) upstream 4.0 km (2.5 mi) to its source, and Deep Creek from its confluence with Bull Run Creek at rkm 7.2 (rmi 4.5) upstream 5.6 km (3.5 mi) to its source contain spawning and rearing habitat (ODFW 1996; ODFW 2001). Boulder Creek from its confluence with Granite Creek at rkm 16.4 (rmi 10.2) upstream 8.2 km (5.1 mi) to its source provides spawning and rearing habitat (Buchanan *et al.* 1997; ODFW 2001). Crane Creek from its confluence with North Fork John Day River at rkm 147.7 (rmi 91.7) upstream 20.9 km (13.0 mi) provides FMO habitat. From this point upstream 12.7 km (7.9 mi) to its source, there is spawning and rearing habitat (ODFW 1996; Buchanan *et al.* 1997; ODFW 2001). Trail Creek from its confluence with the North Fork John Day River at rkm 156.9 (rmi 97.4) upstream 2.9 km (1.8 mi) to its confluence with North Trail Creek, and South Trail Creek contains FMO habitat (ODFW 1996; Buchanan *et al.* 1997), with bull trout presence documented both above and below this reach. South Trail Creek from its confluence with Trail Creek at rkm 2.9 (rmi 1.8) upstream 10.5 km (6.5 mi) to its source provides spawning and rearing habitat (ODFW 1996; Buchanan *et al.* 1997; ODFW 2001). Onion Creek from its confluence with the North Fork John Day River at rkm 157.5 (rmi 97.8) upstream to its source contains spawning and rearing habitat (ODFW 1996; Buchanan *et al.* 1997). Baldy Creek from its confluence with the North Fork John Day River at rkm 164.8 (rmi 102.3) upstream 7.9 km (4.9 mi), including a fork to the east and to its spring source, contains spawning and rearing habitat. Crawfish Creek from its confluence with North Fork John Day River at rkm 166.6 (rmi 103.5) upstream 8.4 km (5.2 mi) to its source provides spawning and rearing habitat (ODFW 1996; Buchanan *et al.* 1997; ODFW 2001). Cunningham Creek from its confluence with North Fork John Day River at rkm 169.7 (rmi 105.4) upstream 2.9 km (1.8 mi) to its source contains spawning and rearing habitat (ODFW 1996; Buchanan *et al.* 1997).

(iii) Middle Fork John Day River from its confluence with the North Fork John Day River at rkm 50.4 (rmi 31.3) to its source is known FMO habitat (Buchanan *et al.* 1997). Indian Creek from its confluence with the Middle Fork John Day River at rkm 54.8 (rmi 34.0) upstream 21.7 km (13.5 mi) to its source is known historic spawning and rearing habitat, but is suspected to be currently unoccupied (Buchanan *et al.* 1997). This reach is necessary to provide for the recovered distribution of bull trout (USFWS 2002). Big Creek from its confluence with the Middle Fork John Day River at rkm 60.4 (rmi 37.5) upstream 20.6 km (12.8 mi) to its source, and Deadwood Creek from its confluence with Big Creek at rkm 7.4 (rmi 4.6) upstream approximately 7.1 km (4.4 mi) contain occupied spawning and rearing habitat (Buchanan *et al.* 1997). Big Boulder Creek from its confluence with the Middle Fork John Day River at rkm 83.8 (rmi 52.0) upstream 10.3 km (6.4 mi) to its source is known historic spawning and rearing habitat, suspected to be currently unoccupied (Buchanan *et al.* 1997), and necessary to provide for the recovered distribution of bull trout (USFWS 2002). Granite Boulder Creek from its confluence with the Middle Fork John Day River at rkm 89.4 (rmi 55.5) upstream 13 km (8.1 mi) to a barrier falls is occupied spawning and rearing habitat (Buchanan *et al.* 1997). Butte Creek from its confluence with the Middle Fork John Day River at rkm 90.4 (rmi 56.1) upstream 7.7 km (4.8 mi) to its source is historic spawning and rearing habitat and is identified as essential habitat for the long-term conservation of bull trout (USFWS 2002). Davis Creek from its confluence with the Middle Fork John Day River at rkm 101.3 (rmi 62.9) upstream 10.8 km (6.7 mi) also contains spawning and rearing habitat essential for the long-term conservation of bull trout (USFWS 2002). Vinegar Creek from its confluence with the Middle Fork John Day River at rkm 102.5 (rmi 63.7) upstream to its source is occupied spawning and rearing habitat ((Seals, unpublished 2000), and also is identified as habitat essential for the long-term conservation of bull trout (USFWS 2002). Clear Creek from its confluence with the Middle Fork John Day River at rkm 104.8 (rmi 65.1) upstream 20.1 km (12.5 mi) to its source is occupied spawning and rearing habitat (Buchanan *et al.* 1997).

(iv) Dry Creek from its confluence with Pine Creek at rkm 9.59 (rmi 5.96) upstream 8.7 km (5.4 mi) to its source is spawning and rearing habitat for an isolated resident group of bull trout (ODFW 1996).

(v) Hideaway Creek from its confluence with Camas Creek at rkm 32.7 (rmi 20.3) upstream to its source is historic habitat (Buchanan *et al.* 1997) that is identified as essential to provide for the recovered distribution of bull trout (USFWS 2002). Cable Creek from its confluence with Camas Creek at rkm 28.3 (rmi 17.6) upstream 11.3 km (7.0 mi) to its source is habitat essential for the recovered distribution of bull trout (USFWS 2002).

(13) Unit 9: Umatilla-Walla Walla River Basins

The Umatilla and Walla Walla Rivers Unit is located in northeastern Oregon and southeastern Washington. The unit includes 636 km (395 mi) of stream extending across portions of Umatilla, Union, and Wallowa counties in Oregon, and Walla Walla and Columbia counties in Washington. Currently, there are four known bull trout local populations in this unit, three in the Walla Walla River Basin, and one in the Umatilla River Basin. The Draft Recovery Plan (USFWS 2002) indicates the need to maintain these four local populations to provide for the recovered distribution of bull trout. Landownership patterns are discussed in the individual CHSU descriptions.

(i) Umatilla CHSU

Approximately 284 km (176.4 mi) of stream has been proposed as critical habitat for bull trout in the Umatilla basin. Landownership within the CHSU is 37 percent Federal, 44 percent private, and 19 percent Tribal. Approximately 55 km (34 mi) of stream within the Umatilla Indian Reservation are proposed as critical habitat. The stream segments that make up the Umatilla CHSU are described below.

(A) The Umatilla River from its confluence with the Columbia River upstream 141.3 km (87.8 mi) to the confluence with the North and South Forks of the Umatilla, and extending 5.8 km (3.6 mi) up Squaw Creek, and 3.2 km (2.0 mi) up Ryan Creek. The lower 120 km (75 mi) of the Umatilla River below Squaw Creek provides important habitat for foraging, overwintering, and seasonal subadult rearing for an existing bull trout local population that spawn in upper portions of the Umatilla and Meacham Creek drainages. It also serves as a corridor for movement to the Columbia River. Subadult rearing, and potentially spawning, occurs in Squaw Creek, Ryan Creek, and the Umatilla River above Squaw Creek.

(B) Meacham Creek from its confluence with the Umatilla River upstream 34.5 km (21.4 mi) and extending up the following tributaries: North Fork Meacham Creek for a distance of 16 km (10 mi), including 4.8 km (3.0 mi) of Pot Creek, and East Fork Meacham Creek for a distance of 3.8 km (2.4 mi). Lower portions of Meacham and North Fork Meacham Creeks provide foraging and overwintering habitat, as well as a migratory corridor to the Umatilla River. Spawning and rearing has been documented in upper portions of North Fork Meacham Creek, and in the identified reach of Pot Creek. Suitable spawning and rearing habitat exists in the upper portion of Meacham Creek and in East Fork Meacham Creek, but bull trout have not been observed there in recent years (Germond *et al.* 1996).

(C) The North Fork Umatilla River from its confluence with the South Fork upstream 16.6 km (10.3 mi) to its headwaters and extending 1.6 km (1.0 mi) up Coyote Creek and 1.6 km (1.0 mi)

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up Woodward Creek. This area supports the highest concentrations of spawning bull trout in the Umatilla Basin (Germond *et al.* 1996; Buchanan *et al.* 1997).

(D) The South Fork Umatilla River from its confluence with the North Fork upstream 17.4 km (10.8 mi) to its headwaters and extending 11.1 km (6.9 mi) up Buck Creek, 8.8 km (5.5 mi) up Thomas Creek, 8.2 km (5.1 mi) up Spring Creek, and 9.2 km (5.7 mi) up Shimmiehorn Creek. These drainages are used by rearing and resident bull trout and spawning was observed in the South Fork Umatilla in the early 1990s (Germond *et al.* 1996).

(ii) Walla Walla CHSU

Approximately 351.6 km (218.5 mi) of stream has been proposed as critical habitat to support the three bull trout local populations in the Walla Walla basin. Landownership within the CHSU is approximately 28 percent Federal, 69 percent private, and 3 percent State. The stream segments that make up the Walla Walla CHSU are described below.

(A) The Walla Walla River from its confluence with Mill Creek upstream 27.3 km (17.0 mi) to the confluence with the North and South Forks of the Walla Walla. Lower sections provide foraging and overwintering habitat, and a migratory connection to Mill Creek, and spawning and rearing habitat is present from above the town of Milton-Freewater to the forks.

(B) The North Fork Walla Walla River from its confluence with the South Fork upstream 29.7 km (18.4 mi) to its headwaters. This reach provides suitable spawning and rearing habitat, and evidence of bull trout spawning was observed there in 2000 (T. Bailey, ODFW, pers. comm., 2002).

(C) The South Fork Walla Walla River from its confluence with the North Fork upstream 42.7 km (26.5 mi) to its headwaters and extending 2.6 km (1.6 mi) up Skiphorton Creek, 3.6 km (2.2 mi) up Reser Creek, 2.2 km (1.4 mi) up Husky Spring Creek, and 1.8 km (1.1 mi) up an unnamed tributary that forks off the South Fork Walla Walla River at rkm 117.9 (rmi 73.2). These stream reaches contain occupied spawning and rearing habitat that supports the upper Walla Walla local population.

(D) Mill Creek from its confluence with the Walla Walla River upstream 54.7 km (32.0 mi) to its headwaters; Yellowhawk Creek from its confluence with Mill Creek upstream 13.6 km (8.4 mi); Garrison Creek from its confluence with Mill Creek upstream 15.4 km (9.6 mi); Low Creek from its confluence with Mill Creek upstream 3.2 km (2.0 mi); Paradise Creek from its confluence with Mill Creek upstream for a distance of 2.2 km (1.4 mi); North Fork Mill Creek from its confluence with Mill Creek upstream 0.8 km (0.5 mi); Deadman Creek from its confluence with North Fork Mill Creek upstream for a distance of 0.5 km (0.3 mi); Burnt Fork Creek from its confluence with North Fork Mill Creek upstream for a distance of 1.6 km (1.0 mi); Green Fork Creek from its confluence with North Fork Mill Creek upstream for a distance of 0.8 km (0.5 mi); and Bull Creek from its confluence with North Fork Mill Creek upstream for a distance of 0.7 km (0.4 mi). The lower 44 km (27 mi) of Mill Creek, Yellowhawk Creek, and Garrison Creek provide foraging and overwintering habitat for adult bull trout, as well as providing connectivity to the Walla Walla River. Upper Mill Creek and the other tributaries named above are occupied spawning and rearing areas.

(E) The Touchet River from its confluence with Coppei Creek at rkm 69.2 (rmi 43.0) upstream 21.1 km (13.1 mi) to the confluence with the North and South Forks of the Touchet. This reach provides foraging and overwintering habitat for fluvial bull trout that spawn upstream.

(F) North Fork Touchet River from its confluence with the South Fork upstream 31.7 km (19.7 mi) to its headwaters; Wolf Fork Touchet River from its confluence with the North Fork Touchet River upstream 25.3 km (15.7 mi) and extending up into Robinson Creek for a distance of 17.3 km (10.7 mi); Lewis Creek from its confluence with the North Fork Touchet River upstream 7.9 km (4.9 mi); and Spangler Creek from its confluence with the North Fork Touchet River upstream 6.6 km (4.1 mi). The lower 6 km (3.7 mi) of the North Fork, the lower 12 km (7.5 mi) of the Wolf Fork, and Robinson Creek are utilized by bull trout for foraging and overwintering; they also provide connectivity to the South Fork. The North Fork above its confluence with the Wolf Fork, and portions of the Wolf Fork above Whitney Creek are documented spawning and rearing areas. Lewis and Spangler creeks also contain occupied spawning and rearing habitat.

(G) South Fork Touchet River from its confluence with the North Fork upstream 24.6 km (15.3 mi) to its headwaters; Griffin Fork from its confluence with the South Fork Touchet River upstream 6.2 km (3.9 mi) and including 3.2 km (2.0 mi) of an unnamed tributary that enters Griffin Fork from the north; and Burnt Fork from its confluence with the South Fork Touchet River upstream 4.3 km (2.7 mi). Bull trout are known to spawn in Griffin Fork and Burnt Fork and utilize the South Fork for foraging and overwintering habitat as well as passage to the North Fork Touchet River.

(14) Unit 10: Grande Ronde River Basin

The Grande Ronde Unit extends across Union, Wallowa, and Umatilla counties in northeastern Oregon, and Asotin, Columbia, and Garfield counties in southeastern Washington. Approximately 1,030 km (640 mi) of stream in the Grande Ronde River basin is proposed for critical habitat designation. The unit includes the Grande Ronde River from its headwaters to the confluence with the Snake River and a number of its tributaries, the largest being the Wallowa River. Five bull trout local populations are associated with streams that branch directly off the Grande Ronde River, and three local populations are associated with streams flowing into the Wallowa River. One local population in the upper Little Minam River is isolated by a barrier falls and is not connected to either of the main rivers. The Draft Recovery Plan (USFWS 2002) identifies all nine existing local populations as necessary for recovery, and our proposed critical habitat reflects that need. Approximately 52 percent of the stream miles in the Grande Ronde Unit are on Federal lands, less than 1 percent are on State lands, and 48 percent are on private lands. Of the 537 km (334 mi) of stream proposed for designation on Federal lands, 44 percent are within designated wilderness areas. The stream segments that make up the Grande Ronde Unit are described below.

(i) The Grande Ronde River extending from its confluence with the Snake River upstream 265 km (165 mi) to Meadow Brook Creek provides key foraging, rearing, and overwintering habitat for sub-adult and adult fluvial bull trout and is an important migratory corridor. It is the primary artery that supports and links eight local populations in the Grande Ronde River and Wallowa River basins (Baxter 2002; P. Boehne, USFS, pers. comm.; 2002). The Upper Grande Ronde River from the junction with Meadow Brook Creek upstream 19.3 km (12.0 mi) is utilized for spawning and rearing.

(ii) The Wenaha River from its confluence with the Grande Ronde River upstream 34.8 km (21.6 mi) to the junction of the North Fork and South Fork Wenaha River; Crooked Creek from its confluence with the Wenaha River upstream 12.4 km (7.7 mi) to the confluence with Third Creek, extending up First Creek 2.1 km (1.3 mi) to the confluence with Willow Creek, and up Third Creek 5.3 km (3.3 mi) to the confluence with Trout Creek; Butte Creek from its confluence with the Wenaha River upstream 11.3 km (7.0 mi) to the confluence with East Fork and West Fork Butte Creek; West Fork Butte Creek form its mouth upstream 4.8 km (3 mi) to the confluence with Rainbow Creek; Beaver Creek from its confluence with the Wenaha River upstream 2.5 km (1.5 mi); the North Fork Wenaha River from its junction with the Wenaha River upstream 18.2 km (11.3 mi); South Fork Wenaha River from its junction with the Wenaha River upstream 13.0 km (8.1 mi); and Milk Creek from its mouth at the South Fork Wenaha River upstream 5.2 km (3.2 mi). Collectively, these stream segments support the Wenaha River local population, which is the largest bull trout population in the Grande Ronde basin. The lower 16 km (10 mi) of the Wenaha River provides FMO habitat for fluvial bull trout as well as a migratory connection to the Grande Ronde River. Spawning and rearing has been documented in the upper Wenaha and all of the identified tributary streams (Buchanan *et al.* 1997; ODFW, unpublished 2000; Baxter 2002; B. Knox, ODFW, pers. comm., 2002).

(iii) Lookingglass Creek from its confluence with the Grande Ronde River upstream 24.1 km (15.0 mi) to a barrier falls and extending up Little Lookingglass Creek to the confluence with Buzzard Creek (9.3 km (5.8 mi)), up Mottet Creek for 5.7 km (3.6 mi), and up Summer Creek for 0.6 km (0.3 mi). The Lookingglass Creek system supports a local population and bull trout spawn and rear throughout the identified stream reaches (J. Zakel, ODFW, pers. comm., 2001; D. Groat, USFS, pers. comm., 2002). Lower portions of Lookingglass Creek also provide probable foraging habitat for fluvial fish and a migratory connection to the Grande Ronde River (T. Walters, ODFW, pers. comm., 2002).

(iv) Indian Creek from its confluence with the Grande Ronde River upstream for a distance of 32.6 km (20.3 mi) and extending up two tributary streams: Camp Creek for a distance of 1.2 km (0.7 mi), and East Fork Indian Creek for a distance of 3.1 km (1.9 mi). Indian Creek currently supports a bull trout local population, with spawning and rearing occurring in the upper 15.1 km (9.4 mi) portion of Indian Creek and the identified reaches of Camp Creek and East Fork Indian Creek (Buchanan *et al.* 1997; ODFW, unpublished 2000). The lower section of Indian Creek potentially provides foraging and overwintering habitat for fluvial bull trout as well as a migratory connection to the Grande Ronde River. Bull trout occupancy has not been documented in lower Indian Creek below the National Forest boundary (the lower 17.5 km (10.9 mi); Draft Recovery Plan (USFWS 2002) guidance for this area is to restore riparian zones associated with bull trout habitat below the National Forest boundary to facilitate expansion and stabilization of this bull trout local population, which is essential for the long-term conservation of the species (USFWS 2002).

(v) Catherine Creek from the confluence with the Grande Ronde River upstream for a distance of 81.6 km (50.7 mi) to the junction of North Fork and South Fork Catherine Creek; North Fork Catherine Creek from its mouth at Catherine Creek upstream a distance of 13.8 km (8.6 mi); Middle Fork Catherine Creek form its junction with North Fork Catherine Creek upstream 4.3 km (2.7 mi) to the confluence with Squaw Creek; South Fork Catherine Creek from its junction with Catherine Creek upstream 12.3 km (7.7 mi); Pole Creek from its mouth at South Fork Catherine Creek upstream 5.1 km (3.2 mi) to its headwaters; Sand Pass Creek from its mouth at South Fork Catherine Creek upstream 4.4 km (2.8 mi) to its headwaters; and Collins Creek from its junction with South Fork Catherine Creek upstream 3 km (1.9 mi) to its headwaters. Catherine Creek currently supports a bull trout local population, with spawning and rearing occurring in each of the identified tributary streams and the upper 24.7 km (15.3 mi) of Catherine Creek (Buchanan *et al.* 1997; ODFW, unpublished 2000; P. Boehne, pers. comm. , 2002; J. Zakel, pers. comm., 2002). The lower portion of Catherine Creek is utilized as FMO habitat; bull trout have been observed throughout the mainstem and migratory fluvial fish are present (Buchanan *et al.* 1997; ODFW, unpublished 2000; USFWS 2002).

(vi) Five Points Creek from its confluence with the Grande Ronde River upstream for 21.7 km (13.5 mi) and extending up Middle Fork Five Points Creek for 2.6 km (1.6 mi); Tie Creek from its confluence with Middle Fork Five Points Creek upstream 0.8 km (0.5 mi); Fiddlers Hell Creek from its junction with Middle Fork Five Points Creek upstream (0.8 mi); Mount Emily Creek from its junction with Middle Fork Five Points Creek upstream 2.1 km (1.3 mi); Fly Creek from its confluence with the Grande Ronde River upstream 13.4 km (8.3 mi) to Lookout Creek; Lookout Creek from its mouth upstream 8.5 km (5.3 mi); Sheep Creek from its confluence with the Grande Ronde River upstream 17.1 km (10.6 mi); East Fork Sheep Creek from its mouth upstream 7.4 km (4.6 mi); Chicken Creek from its confluence with Sheep Creek upstream 8.5 km (5.3 mi); Indiana Creek from its mouth at Chicken Creek upstream 3.4 km (2.1 mi); Limber Jim Creek from its confluence with the Grande Ronde River upstream 13.0 km (8.1 mi); Marion Creek form its junction with Limber Jim Creek upstream 3.4 km (2.1 mi); Clear Creek from its confluence with the Grande Ronde River upstream 11.5 km (7.1 mi); and an unnamed tributary which branches off Clear Creek at rkm 6.3 (rmi 3.9) upstream approximately 7.0 km (4.4 mi). The Grande Ronde River above Meadow Brook Creek is utilized for spawning and rearing. The lower portion of Five Points Creek provides FMO habitat. Upper sections of Five Points Creek and the identified tributary streams provide high quality spawning and rearing habitat (P. Boehne, pers. comm., 2002; J. Zakel, pers. comm., 2002) and are identified in the Draft Recovery Plan (USFWS 2002) as areas essential to the long-term conservation of the species. Fly Creek provides FMO habitat for bull trout which spawn and rear in Lookout Creek (P. Boehne, pers. comm., 2002; J. Zakel, pers. comm., 2002). Bull trout have been observed in Lookout Creek up to approximately 0.6 km (1 mi) above USFS Road 5160 (P. Boehne, pers. comm., 2002). Lower portions of Sheep Creek provide needed FMO habitat for fluvial bull trout that spawn and rear in its upper end and its identified tributaries (P. Boehne, pers. comm., 2002; J. Zakel, pers. comm., 2002). The lower portion of Limber Jim Creek provides FMO habitat up to a potentially impassable falls, and occupied spawning and rearing habitat occurs above the falls and in Marion Creek (ODFW, unpublished 2000; P. Boehne, pers. comm., 2002; J. Zakel, pers. comm., 2002). The lower portion of Clear Creek provides FMO habitat and spawning and rearing occurs in the upper portion and in the unnamed tributary (P. Boehne, pers. comm., 2002).

(vii) The Wallowa River from the confluence with the Grande Ronde River upstream for 66.6 km (41.4 mi) to the confluence of Hurricane Creek provides FMO habitat for sub-adult and adult fluvial bull trout, and is an essential migratory corridor for movement from upper watershed spawning streams to the Grande Ronde River. Fluvial fish that spawn in the Lostine, Deer, Minam, Bear, and upper Hurricane Rivers utilize the Wallowa River to move to and from foraging and overwintering habitat in the Grande Ronde and Snake Rivers (USFWS 2002).

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(viii) Minam River from the confluence with the Wallowa River upstream 72.9 km (35.3 mi) and extending up the North Minam River for a distance of 2.1 km (1.3 mi), up Elk Creek for 2.6 km (1.6 mi), and up East Fork Elk Creek for 0.5 km (0.3 mi). The Minam River currently supports a bull trout local population with spawning and rearing occurring in each of the identified tributary streams and the upper 54 km (33 mi) of the Minam River (Buchanan *et al.* 1997; ODFW, unpublished 2000). Lower sections of the Minam River are utilized as FMO habitat; bull trout have been observed throughout the mainstem and migratory fluvial fish are present (P. Sankovich, ODFW, pers. comm., 2002).

(ix) Little Minam River from its confluence with the Minam River upstream 23.8 km (14.7 mi) and extending up Boulder Creek for 0.7 km (0.4 mi) and up Dobbin Creek for a distance of 5.1 km (3 mi) (P. Sankovich, ODFW, pers. comm., 6/11/02). A barrier falls occurs at approximately rkm 8.0 (rmi 5.0) of the Little Minam River, effectively preventing upstream movement of fish beyond that point. An isolated, resident bull trout local population exists above the barrier falls in portions of the Little Minam River, Boulder Creek, and Dobbin Creek (Buchanan *et al.* 1997). This resident population does not experience immigration of bull trout from other areas. The 8.0 km (5.0 mi) stretch of the Little Minam River below the barrier falls is proposed for designation because of the presence of bull trout in this reach, high water quality, and the potential importance that emigrants from the Little Minam local population area may provide to other downstream populations (P. Sankovich, ODFW, pers. comm., 6/11/02; USFWS 2002). All of the Little Minam River and its tributaries are within the Eagle Cap Wilderness Area.

(x) Deer Creek from the confluence with the Wallowa River upstream 25.8 km (16 mi) and extending up the tributary Sage Creek for a distance of 2.7 km (1.7 mi). Bull trout currently spawn in the upper 11 km (6.9 mi) of Deer Creek and have been observed at the mouth of Sage Creek (B. Knox, pers. comm., 2002). Sage Creek above the mouth is not known to be occupied, however, it is identified in the Draft Recovery Plan (USFWS 2002) as an area that may be essential to the long-term conservation of the species. Lower Deer Creek is FMO habitat; bull trout have been observed throughout the mainstem and fluvial fish are present. Deer Creek bull trout are considered to be part of the Minam River local population (USFWS 2002).

(xi) Bear Creek from its confluence with the Wallowa River upstream 33.6 km (20.9 mi) and extending up Little Bear Creek for a distance of 10.8 km (6.8 mi) and up Goat Creek for 1.7 km (1.1 mi). Bull trout spawn and rear in upper portions of Bear Creek, Little Bear Creek, and the identified reach of Goat Creek (B. Knox, pers. comm., 2002). Foraging and overwintering habitat is present in lower portions of Bear Creek and Little Bear Creek and fluvial bull trout have been observed in these reaches (USFWS 2002). Bull trout in the Bear Creek system are considered to be part of the Lostine River local population, so movement between these two drainages, via the Wallowa River, may be important to population viability. The lower portions of both Bear Creek and Little Bear Creek are essential to the long-term conservation of the species.

(xii) The Lostine River from its confluence with the Wallowa River upstream for 40.2 km (24.9 mi) to the mouth of the East Lostine River, and extending up Silver Creek 0.5 km (0.3 mi) to Hunter Falls and up Lake Creek for a distance of 1.2 km (0.7 mi). Bull trout spawn and rear in upper portions of the Lostine River, primarily upstream of Silver Creek, and in both Silver Creek and Lake Creek (Buchanan *et al.* 1997; B. Knox, pers. comm., 2002). The Lostine River downstream of Silver Creek is utilized as FMO habitat; fluvial bull trout have been observed in the lower Lostine River and are believed to travel down into the Wallowa and Grande Ronde Rivers, and potentially all the way down to the Snake River (P. Sankovich, ODFW, pers. comm. *in* USFWS 2002).

(xiii) Hurricane Creek from its confluence with the Wallowa River upstream 20.1 km (12.5 mi) to Slick Rock Creek. Hurricane Creek supports a distinct local population; bull trout spawn and rear in the upper 8 km (5 mi) of the identified reach and utilize the lower portion as FMO habitat (P. Sankovich, ODFW, pers. comm. *in* USFWS 2002).

(15) Unit 11: Imnaha/Snake River Basins

The Imnaha/Snake Unit extends across Wallowa, Baker, and Union counties in northeastern Oregon and Adams and Idaho counties in western Idaho. The unit contains approximately 306 km (190 mi) of proposed critical habitat and consists of two CHSUs: The Imnaha River basin and the Snake River basin from the Imnaha confluence upstream to Hells Canyon Dam. Seven bull trout local populations are identified in this unit, two in the Snake River CHSU (Sheep Creek and Granite Creek), and five in the Imnaha River CHSU: (1) Mainstem Imnaha; (2) Big Sheep Creek above the Wallowa Valley Irrigation Canal (WVIC); (3) Big Sheep Creek below the WVIC; (4) Little Sheep Creek; and (5) McCully Creek. The Draft Recovery Plan (USFWS 2002) identifies all seven existing local populations as necessary for recovery, and our proposed critical habitat reflects that need. Approximately 49 percent of the unit is located on private land and 51 percent is on Federal land.

(i) Snake River CHSU

(A) Sheep Creek from its confluence with the Snake River at rkm 370.0 (rmi 292.2) upstream 9.5 km (5.0 mi) to the confluence of the West and East forks of Sheep Creek. Fluvial bull trout are known to occur in this stream reach (Idaho Department of Environmental Quality 1998).

(B) Granite Creek from its confluence with the Snake River at rkm 386.6 (rmi 240.1) upstream approximately 10.9 km (6.8 mi) provides FMO habitat (Idaho Department of Environmental Quality 1998).

(ii) Imnaha River CHSU

(A) The Imnaha River from its confluence with the Snake River at rkm 309 (rmi 191.9) upstream approximately 115.3 km (71.6 mi) to the confluence of the North Fork Imnaha and South Fork Imnaha Rivers. Bull trout occur year-round upstream of approximately rkm 64.5 (rmi 40). In fall, winter, and spring fluvial bull trout utilize the Imnaha River below this approximate location for feeding, migration, and overwintering (Buchanan *et al.* 1997). The North Fork Imnaha River from the confluence of the North Fork and South Fork Imnaha upstream approximately 9.7 km (6 mi). This reach is used for spawning and rearing by resident bull trout. The Middle Fork Imnaha from the confluence of the Middle Fork with the North Fork upstream approximately 1.3 km (0.8 mi) to a barrier falls provides spawning and rearing habitat for resident bull trout. The South Fork Imnaha River from the confluence of the South Fork with the North Fork upstream approximately 9.2 km (5.7 mi). This reach is used for spawning and rearing by resident bull trout. Soldier Creek from the confluence with the South Fork Imnaha upstream approximately 0.4 km (0.3 mi). This reach is utilized for spawning, rearing, and foraging (Buchanan *et al.* 1997). Bear Creek from the confluence with the South Fork Imnaha upstream approximately 0.4 km (0.3 mi). This reach is utilized for spawning, rearing, and foraging (Buchanan *et al.* 1997). Blue Creek from the confluence with the South Fork Imnaha upstream approximately 0.4 km (0.3 mi). This reach is utilized for spawning, rearing, and foraging (Buchanan *et al.* 1997). Cliff Creek from the confluence with the South Fork Imnaha upstream to the headwaters approximately 6.7 km (4.2 mi). This reach is also utilized for spawning, rearing, and foraging (Buchanan *et al.* 1997; Sausen *et al.* 2001).

(B) Big Sheep Creek from the confluence with the Imnaha River upstream approximately 62 km (38.4 mi) to the confluence with North Fork Big Sheep Creek and Middle Fork Big Sheep Creek; and Middle Fork big Sheep Creek form the confluence with Big Sheep Creek upstream 3.5 km (2.2 mi) to the headwaters near Bonny Lakes. Bull trout occur year-round from Owl Creek at approximately rkm 46.1 (rmi 28.6) and upstream. In fall, winter, and spring fluvial bull trout are present below this approximate location utilizing FMO habitat down to the confluence with the Imnaha River (Buchanan *et al.* 1997). Lick Creek from the confluence with Big Sheep Creek upstream approximately 15.1 km (9.4 mi) to the headwaters. This reach provides spawning, rearing, and foraging habitat (Buchanan *et al.* 1997; Sausen *et al.* 2001). Salt Creek from the confluence with Big Sheep Creek upstream approximately 1.9 km (1.2 mi) to the point where the stream goes sub-surface (downslope from the WVIC), and then continuing approximately 0.5 km (0.3 mi) above the intersection with the WVIC. These reaches provide spawning, rearing, and foraging habitat (Buchanan *et al.* 1997; Sausen *et al.* 2001).

(C) Little Sheep Creek from the confluence with Big Sheep Creek upstream approximately 41.7 km (25.9 mi) to where Little Sheep Creek is intercepted by the WVIC, and extending upstream from the WVIC approximately 0.9 km (0.6 mi). The reach of Little Sheep Creek below the WVIC is used as FMO habitat by fluvial bull trout during fall, winter, and spring. Spawning, rearing, and foraging occur upstream of the WVIC (Buchanan *et al.* 1997). Redmont Creek upstream 1.8 km (1.1 mi) from the confluence with Little Sheep Creek to approximately 0.5 km (0.3 mi) above the WVIC. These reaches are used for spawning, rearing, and foraging (Buchanan *et al.* 1997). Cabin Creek from the confluence with Little Sheep Creek upstream 0.4 km (0.25 mi). This reach is used for spawning and/or rearing (Buchanan *et al.* 1997).

(D) McCully Creek upstream from the WVIC approximately 10.8 km (6.7 mi) to the headwaters. This reach is used as spawning and rearing habitat (Buchanan *et al.* 1997).

(16) Unit 12: Hells Canyon Complex

The Hells Canyon Complex Unit encompasses basins in Idaho and Oregon draining into the Snake River and its associated reservoirs, from Hells Canyon Dam upstream to the confluence of the Weiser River. It includes the Indian Creek and Wildhorse River basins in west-central Idaho and the Pine Creek, Powder River, and Burnt River basins in northeastern Oregon.

The Hells Canyon Complex unit includes a total of approximately 1,000 km (621 mi) of stream proposed as critical habitat and contains two CHSUs: the Pine-Indian-Wildhorse CHSU and the Powder River CHSU. The Pine-Indian-Wildhorse CHSU is located within Adams and Washington counties in western Idaho, and Baker and Wallowa counties in northeastern Oregon. A total of 390 km (242 mi) of streams within this CHSU are proposed for critical habitat designation. This CHSU contains seven known local populations of bull trout and two potential local populations. Approximate percentages of landownership associated with the streams proposed for designation are 65 percent Federal, 35 percent private, and less than 1 percent State of Idaho. The Powder River CHSU is located within Baker, Union, and Wallowa counties in northeastern Oregon. A total of approximately 610 km (379 mi) of streams within the Powder River CHSU are proposed for critical habitat designation. This CHSU contains 10 known local populations of bull trout and one potential local population. Approximate percentages of landownership associated with the streams proposed for designation are 64 percent private, 36 percent Federal, and less than 1 percent State of Oregon. The stream segments that make up the Hells Canyon Complex Unit are described below.

(i) Pine-Indian-Wildhorse CHSU

(A) Pine Creek from the confluence with the west bank of Hells Canyon Reservoir on the Snake River (rkm 434 (rmi 269.5)) upstream approximately 52.7 km (32.7 mi) to the joint confluence of West Fork Pine Creek and Middle Fork Pine Creek. Pine Creek provides FMO habitat in the lower reaches, as well as spawning and rearing habitat in the headwaters. North Pine Creek from the confluence with Pine Creek upstream approximately 22.3 km (13.8 mi) to the Baker and Wallowa counties boundary. North Pine Creek is currently occupied FMO habitat from the confluence with Pine Creek upstream to the confluence with Elk Creek. East Fork Pine Creek from the confluence with Pine Creek upstream approximately 7.2 km (4.5 mi) to the perennial headwaters. West Fork Pine Creek from the confluence with Pine Creek upstream approximately 3.8 km (2.4 mi) to the perennial headwaters. Middle Fork Pine Creek from the confluence with Pine Creek upstream approximately 3.7 km (2.3 mi) to the perennial headwaters. These creeks are essential for maintaining the upper Pine Creek local population, maintaining connectivity among all local populations within the Pine Creek Basin, and also maintaining connectivity to Hells Canyon Reservoir on the Snake River (USFWS 2002). The upper reach of North Pine Creek is also FMO habitat to provide connectivity essential to the long-term conservation of bull trout. (USFWS 2002).

(B) Elk Creek from the confluence with North Pine Creek upstream approximately 15.2 km (9.4 mi) to the perennial headwaters. Elk Creek provides spawning and rearing habitat for the Elk Creek local population, as well as FMO habitat for migratory bull trout from Hells Canyon Reservoir and the Indian Creek (Idaho) local population. Little Elk Creek from the confluence with North Pine Creek upstream approximately 9.9 km (6.2 mi) to the perennial headwaters. Fall Creek from the confluence with North Pine Creek upstream approximately 7.1 km (4.4 mi) to the perennial headwaters. These tributaries provide spawning, rearing, and/or foraging habitat for expansion of existing (Elk Creek) and potential (Lake Fork and Duck Creek) local populations associated with North Pine Creek. Habitat for expansion of distribution within existing local populations and establishment of potential local populations is essential for the long-term conservation of bull trout (USFWS 2002). Aspen Creek from the confluence with Elk Creek upstream approximately 2.5 km (1.6 mi) to the perennial headwaters. Cabin Creek from the confluence with Elk Creek upstream approximately 2 km (1.2 mi) to the perennial headwaters. Big Elk Creek from the confluence with Elk Creek upstream approximately 3.3 km (2.1 mi) to the perennial headwaters. Cabin, Big Elk, and Aspen creeks provide spawning and rearing habitat for the Elk Creek local population.

(C) Lake Fork Creek (also termed Lake Fork of Elk Creek or Lake Creek) from

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the confluence with Elk Creek upstream approximately 16.7 km (10.4 mi) to the perennial headwaters. Lake Fork Creek is habitat for establishing a local population of bull trout that is essential for the long-term conservation of the species (USFWS 2002).

(D) Duck Creek from the confluence with North Pine Creek upstream approximately 9.7 km (6 mi) to the perennial headwaters. Duck Creek is habitat for establishing a local population of bull trout essential for the long-term conservation of the species (USFWS 2002). Fish Creek from the confluence with Pine Creek upstream approximately 20.5 km (12.8 mi) to the perennial headwaters. This stream is historical habitat for bull trout and may provide spawning, rearing, and/or foraging habitat for expansion of existing (Elk Creek) and potential (Lake Fork and Duck Creek) local populations associated with North Pine Creek. Expansion of distribution within local populations is essential for the long-term conservation of bull trout.(USFWS 2002)

(E) East Pine Creek from the confluence with Pine Creek upstream approximately 30.1 km (18.7 mi) to the perennial headwaters. Lower East Pine Creek provides FMO habitat necessary to maintain connectivity among local populations within the Pine Creek Basin. Spawning and rearing habitat for the East Pine Creek local population occurs in the headwaters. Okanogan Creek from the confluence with East Pine Creek upstream approximately 4 km (2.5 mi) to the perennial headwaters. Trinity Creek from the confluence with East Pine Creek upstream approximately 4.8 km (3 mi) to the perennial headwaters. These creeks are historical habitat for bull trout and provide spawning and rearing habitat for expansion of existing local populations. Habitat for expansion of distribution within local populations is essential for the long-term conservation of bull trout (USFWS 2002). An unnamed western tributary to East Pine Creek (located between Trinity Creek and East Fork of East Pine Creek) from the confluence with East Pine Creek upstream approximately 2.5 km (1.6 mi) to the perennial headwaters. East Fork of East Pine Creek from the confluence with East Pine Creek upstream approximately 2.5 km (1.6 mi) to the perennial headwaters. The unnamed tributary and the East Fork of East Pine Creek provide spawning and rearing habitat for the East Pine Creek local population.

(F) Clear Creek from the confluence with Pine Creek upstream approximately 26.1 km (16.2 mi) to the perennial headwaters. Meadow Creek from the confluence with Clear Creek upstream approximately 5.3 km (3.3 mi) to the perennial headwaters. Trail Creek from the confluence with Clear Creek upstream approximately 6.8 km (4.2 mi) to the perennial headwaters. These creeks provide spawning and rearing habitat for the Clear Creek local population. Lower Clear Creek also provides FMO habitat necessary to maintain connectivity among local populations within the Pine Creek Basin.

(G) Indian Creek from the confluence with the east bank of the Snake River within the Oxbow Bypass (rkm 436.0 (rmi 270.8)) upstream approximately 29.6 km (18.4 mi) to the perennial headwaters. Camp Creek from the confluence with Indian Creek upstream approximately 3.7 km (2.3 mi) to the perennial headwaters. Indian Creek supports both resident and migratory bull trout. Lower Indian Creek provides FMO habitat to maintain connectivity with Hells Canyon Reservoir; spawning and rearing habitat is present in the headwaters of Indian Creek and Camp Creek for the Indian Creek (Idaho) local population.

(H) Bear Creek from the confluence with the Crooked River at the head of the Wildhorse River upstream approximately 30 km (18.6 mi) to the perennial headwaters. Bear Creek provides spawning and rearing habitat for the Bear Creek local population, one of only two local populations of bull trout in the Wildhorse River Basin. Lick Creek from the confluence with Bear Creek upstream approximately 21.8 km (13.6 mi) to the perennial headwaters. Current occupancy is unknown, but Lick Creek provides habitat for expansion of distribution of the Bear Creek local population; such expansion is essential for the long-term conservation of the species (USFWS 2002). Wildhorse River from the confluence with the east bank of Oxbow Reservoir on the Snake River (rkm 455 (rmi 282.6)) upstream approximately 22.4 km (13.9 mi) to the joint confluence of Bear Creek and the Crooked River. The extent of current occupancy is unknown, but bull trout have recently used the Wildhorse River as migratory habitat. The Wildhorse River provides FMO habitat and connectivity between two local populations (Bear Creek and Crooked River), which is essential to the long-term conservation of the species (USFWS 2002).

(I) Crooked River from the confluence with Bear Creek at the head of the Wildhorse River upstream approximately 23.7 km (14.7 mi) to the perennial headwaters. The Crooked River is habitat for one of only two local populations of bull trout in the Wildhorse River Basin and is essential for the long-term conservation of the species.

(ii) Powder River CHSU

(A) The Powder River from confluence with the west bank of Brownlee Reservoir on the Snake River upstream approximately 235 km (146 mi) to the joint confluence of the McCully Fork and Cracker Creek. There are historical (1960s) observations of bull trout in the Powder River downstream of Baker City, Oregon, and upstream of Mason Dam (Buchanan *et al.* 1997) but the extent of current occupancy is unknown. Bull trout can utilize Phillips Reservoir above Mason Dam for FMO habitat in the fall, winter, and spring. The mainstem Powder River will provide FMO habitat when two-way fish passage at Thief Valley and Mason dams is restored, and habitat for connectivity among local populations in the upper Powder and North Powder rivers and Eagle Creek is essential for the long-term conservation of the species (USFWS 2002).

(B) Eagle Creek from the confluence with the Powder River Arm of Brownlee Reservoir on the Snake River upstream approximately 61 km (37.9 mi) to the perennial headwaters. East Fork Eagle Creek from the confluence with Eagle Creek upstream approximately 24.2 km (15 mi) to the perennial headwaters. West Eagle Creek from the confluence with Eagle Creek upstream approximately 15.1 km (9.4 mi) to the perennial headwaters. These creeks are historical habitat for bull trout, but the extent of current occupancy is unknown. Reestablishing a local population in the Eagle Creek watershed is essential for the conservation of bull trout (USFWS 2002).

(C) Wolf Creek from the confluence with the Powder River upstream approximately 31.6 km (19.6 mi) to the perennial headwaters. Wolf Creek provides spawning and rearing habitat for the Wolf Creek local population. When two-way fish passage at Wolf Creek Dam is restored, lower Wolf Creek will provide FMO habitat and connectivity with other local populations in the Powder River Basin, and habitat for such connectivity is essential for the conservation of bull trout (USFWS 2002).

(D) North Powder River from the confluence with the Powder River upstream approximately 75.0 km (46.6 mi) to the perennial headwaters. The North Powder River provides spawning and rearing habitat for the North Powder River local population. The lower North Powder River downstream of the confluence with Anthony Creek likely provides FMO habitat and is essential for connectivity among local populations in the Powder River Basin (USFWS 2002).

(E) Anthony Creek from the confluence with the North Powder River upstream approximately 25.8 km (16 mi) to a barrier waterfall located approximately 10 km (6.2 mi) upstream from the confluence with Indian Creek (Oregon). Anthony Creek provides spawning and/or rearing habitat for the Anthony Creek local population, identified as essential for recovery (USFWS 2002). North Fork Anthony Creek from the confluence with Anthony Creek upstream approximately 8.5 km (5.3 mi) to the perennial headwaters. North Fork Anthony Creek provides spawning and/or rearing habitat for the Anthony Creek local population.

(F) Indian Creek from the confluence with Anthony Creek upstream approximately 8.4 km (5.2 mi) to the perennial headwaters. Indian Creek provides rearing habitat for the Indian Creek local population identified as essential for recovery (USFWS 2002).

(G) Big Muddy Creek from the confluence with the Powder River upstream approximately 17.3 km (10.7 mi) to the perennial headwaters. Big Muddy Creek provides spawning and rearing habitat for the Big Muddy Creek local population of bull trout, which is essential for recovery (USFWS 2002).

(H) Rock Creek from the confluence with the Powder River upstream approximately 20.2 km (12.6 mi) to the perennial headwaters. Rock Creek provides spawning and rearing habitat for the Rock Creek local population (USFWS 2002).

(I) Salmon Creek from the confluence with the Powder River upstream approximately 19.6 km (2.2 mi) to the perennial headwaters. Salmon Creek provides spawning and rearing habitat for the essential Salmon Creek local population.

(J) Pine Creek from the confluence with Salmon Creek upstream approximately 16.9 km (10.5 mi) to Pine Creek Dam. Pine Creek provides spawning and rearing habitat for the Pine Creek local population, which is essential for recovery (USFWS 2002).

(K) Lake Creek from the confluence with Deer Creek upstream to the perennial headwaters. Lake Creek provides spawning and rearing habitat for the Lake Creek local population, which is essential for recovery (USFWS 2002). Deer Creek from the confluence with the north bank of Phillips Reservoir on the Powder River upstream approximately 9.2 km (5.7 mi) to the confluence with Lake Creek. Current occupancy is unknown, but Deer Creek is essential to provide FMO habitat for the Lake Creek local population and connectivity with other bull trout populations in the Powder River Basin (USFWS 2002).

(L) Cracker Creek from the confluence with the McCully Fork at the head of the Powder River upstream approximately 13.6 km (8.4 mi) to the perennial headwaters. Cracker Creek provides connectivity for bull trout in two tributaries (Silver and Little Cracker creeks) within the upper Powder River local population, and with other local populations within the Powder River Basin via lower Cracker Creek. Silver Creek from the confluence with Cracker Creek upstream approximately 9.8 km (6.1 mi) to the perennial headwaters. Silver Creek provides spawning and rearing habitat for the upper Powder River local population. Fruit Creek from the confluence with Silver Creek upstream approximately 7.3 km (4.5 mi) to the perennial headwaters. Fruit Creek is historical bull trout habitat, but current occupancy is unknown. Passage barriers in Fruit Creek are identified as recovery tasks in the Draft Recovery Plan (USFWS 2002), which will allow for potential natural expansion of distribution within the upper Powder River local population. Fruit Creek is also being considered as a site for transplanting bull trout to help provide for the long-term conservation of the species. Little Cracker Creek from the confluence with Cracker Creek upstream approximately 3.1 km (1.9 mi) to the perennial headwaters. Little Cracker Creek currently provides bull trout rearing habitat for the upper Powder River local population.

(17) Unit 13: Malheur River Basin

The Malheur Unit is in the Malheur River Basin in eastern Oregon in Grant, Baker, Harney, and Malheur counties. A total of 389 km (241 mi) of streams and two reservoirs are proposed for critical habitat. Landownership along the waterways proposed for critical habitat are approximately 63 percent Federal land, 3 percent State land, and 34 percent private land. There are two local bull trout populations (upper Malheur (a) and North Fork Malheur (b)), and four potential local populations (Bosonberg Creek, McCoy Creek, Corral Basin Creek, and the Little Malheur River) that are identified as essential to recovery in the Draft Recovery Plan (USFWS 2002).

(i) Malheur River upstream 95.6 km (59.4 mi) from Warm Springs Dam, including Warm Springs Reservoir (1,658 ha; 4,098 ac), to the confluence with Big Creek at rkm 229 in Logan Valley provides FMO habitat for bull trout which migrate downstream from spawning and rearing habitat in the Logan Valley area (USFWS 2002).

(ii) The North Fork Malheur River from Agency Valley Dam upstream 36.5 km (22.7 mi) to the headwaters, including Beulah Reservoir (712 ha; 1,759 ac), provides FMO habitat below rkm 69 and spawning and rearing habitat above that point (Burns Paiute Tribe 1998–2000). Sheep Creek from the confluence with North Fork Malheur River at rkm 83.2 upstream 6.7 km (4.2 mi) to its source provides spawning and rearing habitat (Buchanan *et al.* 1997; Perkins, unpublished 1996–2001; Burns Paiute Tribe 1998–2000). Cow Creek from the confluence with North Fork Malheur River upstream 5.7 km (3.5 mi) to its source provides rearing habitat. Swamp Creek from the confluence with North Fork Malheur River at rkm 84.4 upstream 8.1 km (5.0 mi) to its source contains spawning and rearing habitat (Buchanan *et al.* 1997; Perkins, unpublished 1996–2001; Burns Paiute Tribe 1998–2000). Flat Creek from its confluence with North Fork Malheur River at rkm 86.0 upstream to rkm 1.2 at the first tributary confluence provides FMO habitat (Buchanan *et al.* 1997). Horseshoe Creek from the confluence with the North Fork Malheur River at rkm 88.4 upstream 4.5 km (2.8 mi) to its source contains spawning and rearing habitat (Buchanan *et al.* 1997; Perkins, unpublished 1996–2001; Burns Paiute Tribe 1998–2000).

(iii) The Little Malheur River from its confluence with the North Fork Malheur River upstream 31.2 km (19.4 mi) to Camp Creek provides potential FMO habitat in the lower reaches and potential spawning and rearing habitat in the upper reaches. Crane Creek from its confluence with the North Fork Malheur River at rkm 69.5 upstream 1.8 km (1.1 mi) to the confluence with Little Crane Creek contains suitable migratory and rearing habitat (Burns Paiute Tribe 1998, 1999). Little Crane Creek from the confluence with Crane Creek upstream 15.2 km (9.4 mi) to its spring fed sources provides suitable spawning and rearing habitat (Buchanan *et al.* 1997; Perkins, unpublished 1996–2001; Burns Paiute Tribe 1998–2000). An unnamed stream at rkm 9.6 of Little Crane Creek also provides suitable spawning and rearing habitat from the confluence upstream 2.6 km (1.6 mi) to its headwaters (A. Mauer, USFWS, pers. comm., 2002). Elk Creek from the confluence with the North Fork Malheur River at rkm 79.3 upstream 1.6 km (1.0 mi) to its confluence with the North Fork and South Fork Elk Creek, South Fork Elk

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Creek from the confluence with Elk Creek upstream 5.9 km (3.7 mi) to its source, and North Fork Elk Creek from the confluence with Elk Creek upstream 7.7 km (4.8 mi) to its source provide spawning and rearing habitat (Buchanan *et al.* 1997; Perkins, unpublished 1996–2001; Burns Paiute Tribe 1998–2000). The Little Malheur River is essential to providing for the recovered distribution of bull trout (USFWS 2002).

(iv) Summit Creek from the confluence with the Malheur River at rkm 292.0 upstream 22.8 km (14.2 mi) to its source; Big Creek from the confluence with the Malheur River at rkm 299.0 upstream 19.0 km (11.8 mi) to its source; Meadow Fork Big Creek from the confluence with Big Creek at rkm 9.8 upstream 6.7 km (4.2 mi) to its source; Snowshoe Creek from the confluence with Big Creek at rkm 11.7 upstream 3.4 km (2.1 mi) to its source; Lake Creek from the confluence with the Malheur River at rkm 299.0 upstream 20.3 km (12.6 mi) to its source; and Crooked Creek from the confluence with Lake Creek at rkm 1.2 upstream 13.5 km (8.4 mi) to its source provide spawning and rearing habitat for the upper Malheur River local population (Buchanan *et al.* 1997; Perkins, unpublished 1996–2001; Burns Paiute Tribe 1998–2000).

(v) McCoy Creek from the confluence with Lake Creek at rkm 4.0 upstream 14.6 km (9.1 mi) to its source contains potential spawning and rearing habitat. McCoy Creek is identified as an area for range expansion in the Draft Recovery Plan, and is essential for the long-term conservation of the species (USFWS 2002).

(vi) Bosonberg Creek from the confluence with the Malheur River at rkm 298.0 upstream 5.8 km (3.6 mi) to its source contains potential habitat for bull trout. Restoration of the habitat in Bosonberg Creek to provide for population expansion is essential to the long-term conservation of the species (USFWS 2002).

(vii) Corral Basin Creek from the confluence with Big Creek at rkm 8.3 (rmi 5.2) upstream to its source is historic habitat necessary to provide for population expansion that is essential to the conservation of the species (USFWS 2002).

(18) Unit 14: Coeur d'Alene Lake Basin

(i) Coeur d'Alene Lake CHSU

The Coeur d'Alene Lake CHSU lies within Kootenai, Shoshone, Benewah and Bonner counties, Idaho. Landownership along stream proposed as critical habitat for bull trout include approximately 83 percent Federal, 30 percent private, and 6 percent State. The stream reaches proposed as designated critical habitat were identified by the Coeur d'Alene Lake Basin Recovery Unit Team as the best of the best remaining suitable habitats within a matrix of habitats generally considered unsuitable for support of spawning and rearing bull trout (USFS, unpublished 1994, 1998a, 1998b). The areas proposed as critical habitat all presently contain multiple primary constituent elements and reflect habitat essential to support populations of bull trout identified as necessary for the long-term conservation of bull trout (USFWS 2002). In total, there are approximately 6,903 km (4,290 mi) of streams comprising 502 named streams in the Coeur d'Alene Lake basin. Of this, 30 stream reaches or tributaries comprising 677 km (421 mi) are proposed as critical habitat. This equals approximately 6 percent of all streams and less than 10 percent of total stream length in the basin. Lakes comprising 12,727 ha (31,450 ac) of surface area are also being proposed as critical habitat.

(A) Coeur d'Alene Lake, approximately 12,727 ha (31,450 ac) in size, provides FMO habitat for the almost entirely migratory (adfluvial and fluvial) forms present in this CHSU.

(B) Coeur d'Alene River from the mouth upstream 59.4 km (36.9 mi) to the confluence of the North Fork and South Fork of the Coeur d'Alene River provides FMO habitat necessary for the conservation of the species (USFWS 2002). Any adfluvial bull trout that either currently exist, or those local populations of bull trout to be reestablished in the future in portions of the North Fork Coeur d'Alene River, would migrate through this section of river. North Fork Coeur d'Alene River, from its confluence with the South Fork Coeur d'Alene River upstream 140.2 km (87.1 mi) to the headwaters, is FMO habitat necessary for the long-term conservation of the species. (Note: we found discrepancies between USGS, STREAMNET, and other maps for this area, and specifically for the designation of the North Fork Coeur d'Alene River; we relied on the Idaho Panhandle National Forest, Fernan and Wallace Ranger District maps.)

(C) Cougar Creek from the confluence with the North Fork Coeur d'Alene River upstream 15.3 km (9.5 mi) provides spawning and rearing habitat to provide for the recovered distribution of bull trout (USFWS 2002). This portion of Cougar Creek has been identified as a priority stream for restoration and recovery activities as it has been determined to provide habitat elements necessary for long term security, or have a reasonable potential to be restored and provide elements for long-term security of bull trout in the near future. This watershed maintains good populations of westslope cutthroat trout, as well as sculpin species, indicative of potential bull trout habitat (USFS 1992, 1998a; E. Lider, USFS, pers. comm., 2002).

(D) Steamboat Creek (including the East and West Forks) from the confluence with the North Fork Coeur d'Alene River upstream 25.4 km (15.8 mi) to the headwaters provides spawning and rearing habitat essential for the conservation of the species. This portion of Steamboat Creek has been identified as a priority stream for restoration and recovery activities (USFWS 2002) as it has been determined to provide habitat elements necessary for long term security or have a reasonable potential to be restored and provide elements for long-term security of bull trout in the near future. This area maintains good populations of westslope cutthroat trout (*Oncorhynchus clarki*), as well as sculpin (*Cottus sp.*) species, indicative of potentially suitable bull trout habitat (USFS 1992, 1998a).

(E) Prichard Creek from the confluence with the North Fork Coeur d'Alene River upstream 4.7 km (2.9 mi) to the confluence with Eagle Creek contains FMO habitat. This reach is considered a priority water body for restoration and recovery activities as it is essential as a migratory corridor for adfluvial bull trout, and to maintain connectivity between all local populations within Coeur d'Alene Lake basin to provide for conservation of the species (USFWS 2002).

(F) Eagle Creek from the confluence with Prichard Creek upstream 1.6 km (1.0 mi) to the confluence with the West Fork Eagle Creek provides FMO habitat. This portion of Eagle Creek has been identified as a priority water body for restoration and recovery activities as it is essential as a migratory corridor for adfluvial bull trout, and to maintain connectivity between all local populations within Coeur d'Alene Lake basin (USFWS 2002). Any adfluvial bull trout that would utilize the West Fork Eagle Creek for spawning and rearing would have to migrate through this short section of Eagle Creek. West Fork Eagle Creek from the confluence with Eagle Creek upstream 15.0 km (9.3 mi) to the headwaters provides spawning and rearing habitat. This portion of the West Fork Eagle Creek has been identified as a priority stream for restoration and recovery activities as it has been determined to provide habitat elements necessary for long term security, or have a reasonable potential to be restored and provide elements for long-term security of bull trout in the near future (USFWS 2002). In order to meet the recovery criteria of reestablishing at least 300 spawners within the North Fork Coeur d'Alene recovery CHSU, previously occupied and currently suitable habitat in the West Fork of Eagle Creek needs to be maintained, and if possible, enhanced, to provide additional areas of spawning and rearing essential to the conservation of the species.

(G) Tepee Creek from the confluence with the North Fork Coeur d'Alene River upstream 14.2 km (8.8 mi) to the confluence with Trail Creek contains FMO habitat. This portion of Tepee Creek, and the associated tributaries discussed below, have been identified as priority water bodies for restoration activities necessary as migratory corridors for adfluvial bull trout, to maintain connectivity between all local populations within Coeur d'Alene Lake basin, and to provide spawning and rearing habitat, all of which are essential to the conservation of the species (USFWS 2002). Tepee Creek has a variety of stream habitat types (size, flow, complexity) that appear to provide fish with diverse habitat that will allow for long term persistence within the watershed. Previous habitat restoration activities have created larger and deeper pools and runs in several reaches of this stream (E. Lider, USFS, pers. comm., 2002). Independence Creek from the confluence with Tepee Creek upstream 25.0 km (15.5 mi) to the headwaters provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches. This watershed is especially valuable within the Coeur d'Alene River basin to provide refugia essential to the conservation of bull trout (USFS 1998a). Trail Creek from the confluence with Tepee Creek upstream 10.0 km (6.2 mi) to the headwaters contains spawning and rearing habitat. In order to meet the recovery criteria of reestablishing at least 300 spawners within the North Fork Coeur d'Alene CHSU essential to the conservation of the species, previously occupied and currently suitable habitat such as that in Trail Creek needs to be maintained, and if possible, enhanced to provide additional areas of spawning and rearing.

(H) Buckskin Creek from the confluence with the North Fork Coeur d'Alene River upstream 6.9 km (4.3 mi) to the headwaters provides spawning and rearing habitat. This portion of Buckskin Creek has been identified as a priority stream for restoration and recovery activities as it has been determined to provide habitat elements necessary for long term security, or have a reasonable potential to be restored and provide elements for conservation of bull trout in the near future (USFWS 2002). Forage base for bull trout is abundant as the population of westslope cutthroat trout in Buckskin Creek is very healthy, and had some of the highest densities relative to over 70 other streams that were surveyed in 1994 and 1995 throughout the Coeur d'Alene River basin (Dunnigan 1997). Stream habitat in Buckskin Creek is very good as very little management has occurred within the watershed (E. Lider, USFS, pers. comm., 2002).

(ii) St. Joe River CHSU

The St. Joe River CHSU includes an estimated 3,574 km (2,221 mi) of streams encompassing over 254 named tributaries (Streamnet 2002) in Shoshone, Benewah, and Latah counties, Idaho. The high elevation and cold water temperatures inherent to this area results in natural conditions that favor bull trout persistence (PBTTAT 1998c). In addition, the processes within the upper portion of this CHSU have been minimally altered by human management actions. Landownership adjacent to aquatic areas proposed as critical habitat for bull trout include approximately 52 percent Federal, 41 percent private, and 7 percent State lands.

The Coeur d'Alene Lake Basin Recovery Unit Team established recovery criteria of reestablishing at least eight local populations in the St. Joe River CHSU with an average of 100 spawners annually per local population. The streams identified below either currently provide habitat elements necessary for long term security, or have a reasonable potential to be restored and provide elements for long-term security of bull trout in the near future. Proposed critical habitat reflects those areas necessary to support populations of bull trout identified as necessary to provide for the long-term conservation of bull trout in the Draft Recovery Plan (USFWS 2002).

(A) The lower St. Joe River from the confluence with Coeur d'Alene Lake upstream 156.4 km (97.2 mi) to the confluence with Simmons Creek provides FMO habitat. Mainstem channel habitat conditions are essential to the long term viability of bull trout due to the over-wintering habits of these migratory fish. Adult migratory bull trout from Coeur d'Alene Lake travel upstream through these lower mainstem reaches in the spring and early summer to natal streams, where they typically spawn during the first few weeks of September (Idaho Department of Fish and Game (IDFG), unpublished 1999), and then return downstream. Upper St. Joe River from the confluence of Simmons Creek upstream 71.8 km (44.6 mi) to Rambikur Falls (just below St. Joe Lake) provides spawning, rearing, and FMO habitat. This portion of upper St. Joe River, and the associated streams described below, has been identified as a priority area for restoration and recovery activities (USFWS 2002). Bull trout are currently known to spawn and rear within this portion of the St. Joe River basin.

(B) Eagle Creek from the confluence with the St. Joe River upstream 10.6 km (6.6 mi) to the headwaters provides, at a minimum, foraging habitat. Additionally, Eagle Creek and the associated streams described below have been identified as priority streams for restoration and recovery activities (USFWS 2002) with many of the habitat characteristics that are essential to the conservation of bull trout (USFS 1998b). Mosquito Creek from the confluence with the St. Joe River upstream 2.1 km (1.3 mi) to a barrier falls provides spawning and rearing habitat. This portion of Mosquito Creek has been identified as a priority stream for restoration and recovery activities and is essential to the conservation of bull trout (USFWS 2002). Gold Creek from the confluence with the St. Joe River upstream 15.4 km (9.6 mi) to the headwaters provides spawning and rearing habitat. Simmons Creek from the confluence with the St. Joe River upstream 18.7 km (11.6) mi to the headwaters contains spawning and rearing habitat.

(C) Fly Creek from the confluence with the St. Joe River upstream 9.8 km (6.1 mi) to its headwaters at Twin Lakes contains spawning and rearing habitat. Beaver Creek from the confluence with the St. Joe River upstream 10.6 km (6.6 mi) to its headwaters contains spawning and rearing habitat. Red Ives Creek from the confluence with the St. Joe River upstream 9.2 km (5.7 mi) to the headwaters provides spawning and rearing habitat. Adult bull trout implanted with radio transmitters have been tracked into Red Ives Creek, presumably to spawn. Surveys have documented bull trout of various age classes as well as redds in this stream (USFS 1993).

(D) Timber Creek from the confluence with the St. Joe River upstream 8.5 km (5.3 mi) to the headwaters contains spawning and rearing habitat. Surveys have documented spawning and bull trout of various age classes in this stream. Ruby Creek from the confluence

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with the St. Joe River upstream 6.8 km (4.2 mi) to the headwaters contains documented spawning and rearing habitat. Bean Creek from the confluence with the St. Joe River upstream 7.2 km (4.5 mi) to the headwaters contains documented spawning and rearing habitat.

(E) Heller Creek from the confluence with the St. Joe River upstream 6.0 km (3.7 mi) to the headwaters provides documented spawning and rearing habitat. Sherlock Creek from the confluence with Heller Creek upstream 7.4 km (4.6 mi) to the headwaters provides spawning and rearing habitat. Yankee Bar Creek from the confluence with the St. Joe River upstream 3.2 km (2.0 mi) to the headwaters contains spawning and rearing habitat.

(F) California Creek from the confluence with the St. Joe River upstream 4.7 km (2.9 mi) to the headwaters contains spawning and rearing habitat. Medicine Creek from the confluence with the St. Joe River upstream 4.7 km (2.9 mi) to the headwaters provides habitat where bull trout are known to spawn. Wisdom Creek from the confluence with the St. Joe River upstream 6.1 km (3.8 mi) to the headwaters provides habitat where bull trout are currently known to spawn and rear. A steep cascade, which was believed to form a barrier to migratory fish, occurs at approximately rkm 4.0 (rmi 2.2). However, during redd surveys in 2001, multiple redds and bull trout were documented above the cascade (J. Dupont, IDFG, pers. comm., 2002).

(19) Unit 15: Clearwater River Basin

The Clearwater River Unit includes 3,063 km (1,904 mi) of streams and 6,722 ha (16,611 ac) of lakes proposed to be designated as critical habitat for bull trout within the Clearwater River basin in north-central Idaho. This large basin covers an area of approximately 2,423,691 ha (5,989,052 ac) and extends from the Snake River confluence at Lewiston on the west to headwaters in the Bitterroot Mountains along the Idaho/Montana border on the east. This unit is divided into seven CHSUs. These CHSUs include: Lower/Middle Fork Clearwater River, North Fork Clearwater River, Fish Lake (North Fork), South Fork Clearwater River, Lochsa River, Fish Lake (Lochsa), and Selway River. Habitat areas to support all local populations within this unit are essential to the conservation of bull trout (USFWS 2002).

(i) Lower/Middle Fork Clearwater River CHSU

The Lower/Middle Fork Clearwater River CHSU lies within a drainage basin of approximately 660,012 ha (1,630,919 ac) that includes the mainstem and Middle Fork of the Clearwater River, plus all watersheds tributary to these large channels except for the North Fork Clearwater above Dworshak Dam and the South Fork Clearwater, Lochsa and Selway drainages. Located within Idaho's Nez Perce, Latah, Lewis, Clearwater, and Idaho counties, the basin has a diverse mix of private (76 percent), Federal (14 percent), State (8 percent), and Nez Perce Tribal (2 percent) ownership. The Lower/Middle Fork Clearwater River CHSU includes 293.7 km (182.6 mi) of streams proposed to be designated as critical habitat.

(A) The Clearwater River from its confluence with the Snake River upstream 119.5 km (74.3 mi) to the confluence with the South Fork Clearwater River, the Middle Fork Clearwater River from the confluence with the South Fork upstream 36.8 km (22.9 mi) to its origin at the confluence of the Lochsa River and Selway River, provide FMO habitat (Clearwater Basin Bull Trout Technical Advisory Team (CBBTTAT) 1998a,b). They also provide functional migratory corridors that may allow fluvial bull trout to move between local populations within and outside this CHSU. The North Fork Clearwater River from its confluence with the Clearwater River upstream 2.6 km (1.6 mi) to the base of Dworshak Dam provides important thermal refuge during summer.

(B) Lolo Creek from its confluence with the Clearwater River upstream 72.9 km (45.3 mi) to the headwaters provides rearing and migratory habitat (CBBTTAT 1998a; USFS 1999a).

(C) Clear Creek from its confluence with the Middle Fork Clearwater River upstream 34.7 km (21.5 mi) to the headwaters is occupied habitat (CBBTTAT 1998d), Middle Fork Clear Creek from its mouth upstream 10.8 km (6.7 mi) to the headwaters, and South Fork Clear Creek from its mouth upstream 15.9 km (9.9 mi) to the headwaters are areas where occupancy is unknown. These areas are essential to maintaining the existing bull trout distribution, and to expand habitat as essential for the conservation of bull trout (USFWS 2002).

(ii) North Fork Clearwater River CHSU

The North Fork Clearwater River CHSU lies within a drainage basin of approximately 632,348 ha (1,562,561 ac) that includes the entire North Fork Clearwater River system above Dworshak Dam, excluding the small portion of the Lake Creek drainage upstream of Japanese Creek. Located within Clearwater, Idaho, and Shoshone counties, the basin landownership is a mixture of Federal (67 percent), State (12 percent), and private (21.0 percent). The areas proposed for designation as critical habitat in this CHSU include a total of 918.9 km (571.1 mi) of streams, and the full 6,656 ha (16,441 ac) pool of Dworshak Reservoir.

(A) Dworshak Reservoir (6,656 ha (16,441 ac)), the North Fork Clearwater River from the head of the reservoir upstream 164.8 km (102.4 mi) to Kelly Forks, Freeman Creek from the confluence with Dworshak Reservoir upstream 2.5 km (1.6 mi) to an unnamed tributary, Breakfast Creek from its confluence with Little North Fork Clearwater River upstream 6.1 km (3.8 mi) to the mouth of Stony Creek, and Stony Creek from its mouth upstream 5.9 km (3.7 mi) to the mouth of Glover Creek provide FMO habitat for upstream bull trout populations. Floodwood Creek from its confluence with Breakfast Creek upstream 21.8 km (13.6 mi) to an unnamed tributary provides FMO habitat (D. Schiff, IDFG, pers. comm., 2002), and West Fork Floodwood Creek from its mouth upstream 6.7 km (4.2 mi) to an unnamed tributary provides rearing habitat (CBBTTAT 1998c).

(B) The Little North Fork Clearwater River from Dworshak Reservoir upstream 72.5 km (45.1 mi) to a gradient break near the headwaters provides FMO and rearing habitat (CBBTTAT 1998c). Sawtooth Creek from its confluence with the Little North Fork Clearwater River upstream 13.4 km (8.3 mi) to an unnamed tributary is historic habitat (USFS 1935) and is adjacent to habitat known to be occupied, and provides habitat necessary for the recovered distribution of bull trout (Skille 1991; USFWS 2002). Canyon Creek from its confluence with the Little North Fork Clearwater River upstream 15.5 km (9.7 mi) to an unnamed tributary is occupied habitat (D. Schiff, IDFG, pers. comm., 2002). Montana Creek from its confluence with the Little North Fork Clearwater River upstream 5.5 km (3.4 mi) to an unnamed tributary provides spawning and rearing habitat (CBBTTAT 1998c). Butte Creek from its confluence with the Little North Fork Clearwater River upstream 3.0 km (1.8 mi) to an unnamed tributary provides spawning and rearing habitat (D. Schiff, IDFG, pers. comm., 2002). Rutledge Creek from its confluence with the Little North Fork Clearwater River upstream 5.2 km (3.2 mi) to an unnamed tributary; Jungle Creek from its confluence with the Little North Fork Clearwater River upstream 4.3 km (2.7 mi) to an unnamed tributary; Adair Creek from its confluence with the Little North Fork Clearwater River upstream 4.7 km (2.9 mi) to a break in stream gradient; Lund Creek from its confluence with the Little North Fork Clearwater River upstream 4.3 km (2.7 mi) to a break in stream gradient; and Little Lost Lake Creek from its confluence with the Little North Fork Clearwater River upstream 6.1 km (3.8 mi) to the headwaters provide spawning and rearing habitat (CBBTTAT 1998c). Lost Lake Creek from the mouth upstream 5.7 km (3.6 mi) to the headwaters is occupied (D. Schiff, IDFG pers. comm., 2002), but the habitat usage type is unknown. Another Butte Creek, this one a tributary to the North Fork Clearwater River between the confluence with the Little North Fork Clearwater River and the confluence with Isabella Creek, upstream 2.2 km (1.3 mi) from the mouth is occupied habitat of unknown usage (D. Weigel, U.S. Bureau of Reclamation (BOR), pers. comm., 2002).

(C) Isabella Creek from its confluence with the North Fork Clearwater River upstream 11.6 km (7.2 mi) to the confluence with Falls Creek is occupied rearing habitat (Platts *et al.* 1993) and above that point fish have been found (D. Weigel, pers. comm., 2002; E. Kee, Clearwater National Forest, pers. comm., 2002) of an age class that indicate spawning and rearing is likely occurring.

(D) Beaver Creek from its confluence with the North Fork Clearwater River upstream 4.2 km (2.6 mi) to Sourdough Creek is occupied habitat of unknown usage (D. Schiff, IDFG, pers. comm., 2002). Sneak Creek from its confluence with the North Fork Clearwater River upstream 0.3 km (0.2 mi) to a barrier falls provides spawning and rearing habitat (CBBTTAT 1998c).

(E) Skull Creek from its confluence with the North Fork Clearwater River upstream 24.3 km (15.1 mi) to the headwaters, and Collins Creek from its confluence with Skull Creek upstream 16.2 km (10.0 mi) to a gradient break near the headwaters provide spawning and rearing habitat (CBBTTAT 1998c; E. Kee, pers. comm., 2002). Roaring Creek from its confluence with Skull Creek upstream 4.3 km (2.7 mi) to Frost Creek is of unknown occupancy (*i.e.*, bull trout surveys have not been conducted), but appropriate habitat conditions in Skull Creek (C. Huntington, Clearwater BioStudies, Inc. (CBI), pers. comm., 2002) and the presence of rearing juvenile bull trout in nearby streams support its inclusion as proposed critical habitat necessary to provide spawning and rearing areas to support local population viability and genetic integrity. Frost Creek from its confluence with Roaring Creek upstream 2.7 km (1.7 mi) to the headwaters provides, at a minimum, rearing habitat (E. Kee, pers. comm., 2002).

(F) Quartz Creek from its confluence with the North Fork Clearwater River upstream 19.7 km (12.2 mi) to Henry Creek provides rearing and migratory habitat (CBBTTAT 1998c; D. Schiff, IDFG, pers. comm., 2002).

(G) Rock Creek from its confluence with the North Fork Clearwater River upstream 10.2 km (6.2 mi) to the abandoned road crossing at approximately rkm 10.2 (rmi 6.2), and Lightning Creek from its confluence with Rock Creek upstream 0.8 km (0.5 mi) to an unnamed tributary provide occupied habitat of unknown usage (CBBTTAT 1998c).

(H) Four streams entering the North Fork Clearwater River between Rock Creek and Weitas Creek including Larson Creek from its mouth upstream 1.0 km (0.6 mi) to an unnamed tributary; Little Washington Creek from its mouth upstream 1.7 km (1.1 mi) to Swanson Creek; Washington Creek from its mouth upstream 2.3 km (1.4 mi) to a potential migration barrier; and Orogrande Creek from its mouth upstream 1.6 km (1.0 mi) to a potential migration barrier are likely to be at least seasonally occupied (CBBTTAT 1998c) and provide habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(I) Weitas Creek from its confluence with the North Fork Clearwater River upstream 43.0 km (26.7 mi) to a gradient break near the headwaters provides FMO habitat in the lower reaches and spawning and rearing habitat in the upper reaches. Johnny Creek from its confluence with Weitas Creek upstream 7.2 km (4.5 mi) to a barrier falls provides FMO habitat (D. Weigel, pers. comm., 2002) and possibly spawning and rearing habitat in the upper reaches (E. Kee, pers. comm., 2002). Middle Creek from its confluence with Weitas Creek upstream 15.5 km (9.7 mi) to Beaver Dam Creek, and Little Weitas Creek from its confluence with Weitas Creek upstream 3.8 km (2.4 mi) to Middle Ridge Creek are likely to be at least seasonally occupied (CBBTTAT 1998c) and provide habitat necessary for the recovered distribution of bull trout (USFWS 2002). Johnagan Creek from its confluence with Weitas Creek upstream 4.4 km (2.7 mi) to an unnamed tributary (E. Kee, pers. comm., 2002), Windy Creek from its confluence with Weitas Creek upstream 13.2 km (8.2 mi) to the headwaters (D. Weigel, pers. comm., 2002; CBI 2000), and Liz Creek from its confluence with Weitas Creek upstream 6.2 km (3.8 mi) to the headwaters (D. Weigel, pers. comm., 2002) provide rearing habitat. Corral Creek from its confluence with Weitas Creek upstream 7.1 km (4.4 mi) to the headwaters, and Fro Creek from its confluence with Weitas Creek upstream 1.9 km (1.2 mi) to Bald Mountain Lake Creek are likely to be at least seasonally occupied (P. Murphy, USFS, pers. comm., 2002) and provide habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(J) Death Creek from its confluence with the North Fork Clearwater River upstream 1.0 km (0.6 mi) to a break in channel gradient, Fisher Creek from its confluence with the North Fork Clearwater River upstream 1.2 km (0.7 mi) to a break in channel gradient, and Trail Creek from its confluence with the North Fork Clearwater River upstream 1.8 km (1.1 mi) to an unnamed tributary are likely to be at least seasonally occupied (CBBTTAT 1998c), provide seasonal thermal refuge, and provide habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(K) Fourth of July Creek from its confluence with the North Fork Clearwater River upstream 21.7 km (13.5 mi) to the headwaters is occupied (Platts *et al.* 1993) with spawning and rearing habitat in the upper reaches (CBBTTAT 1998c). Shot Creek from its confluence with Fourth of July Creek upstream 8.0 km (5.0 mi) to the headwaters, and Bill Creek from its confluence with Fourth of July Creek upstream 7.5 km (4.7 mi) to the headwaters are likely to be at least seasonally occupied (P. Murphy, pers. comm., 2002) and provide habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(L) Cold Springs Creek from the confluence with the North Fork Clearwater River upstream to a break in channel gradient at km 4.7 (mi 2.9), and Cool Creek from its confluence with the North Fork Clearwater River upstream 1.2 km (0.8 mi) to an unnamed tributary provide habitat necessary to support additional populations of bull trout identified as essential to the conservation of bull trout (USFWS 2002).

(M) Kelly Creek. from the confluence with the North Fork Clearwater River upstream 41.3 km (25.6 mi) to North Fork Kelly Creek provides migratory habitat in the lower reaches (D. Schiff, IDFG, pers. comm., 2002), and spawning and rearing habitat in the upper reaches (CBBTTAT 1998c). Junction Creek from its confluence with Kelly Creek upstream to an unnamed tributary at km 2.7 (mi 1.7), and Barnard Creek from its confluence with Kelly Creek upstream 8.3 km (5.2 mi) to the headwaters are likely to be at least seasonally occupied (P. Murphy, pers. comm., 2002) and

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provide habitat necessary for the recovered distribution of bull trout (USFWS 2002). Bear Creek from its confluence with Kelly Creek upstream 6.1 km (3.8 mi) to a gradient break (D. Weigel, pers. comm., 2002), South Fork Kelly Creek from its confluence with Kelly Creek upstream 4.3 km (2.7 mi) to Williams Creek (CBBTTAT 1998c), Middle Fork Kelly Creek from its confluence with Kelly Creek upstream 5.1 km (3.2 mi) to Kid Lake Creek (P. Murphy, pers. comm., 2002), Kid Lake Creek from its confluence with Middle Fork Kelly Creek upstream to the USFS Trail 567 crossing at rkm 2.9 (rmi 1.8) (P. Murphy, pers. comm., 2002), and North Fork Kelly Creek from its confluence with Kelly Creek upstream 6.2 km (3.8 mi) to an unnamed tributary (CBBTTAT 1998c) are occupied and provide habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(N) Moose Creek from its confluence with Kelly Creek upstream 15.9 km (9.5 mi) to a gradient break near the headwaters (D. Schiff, IDFG, pers. comm., 2002; CBBTTAT 1998c) and its tributaries Ruby Creek from its mouth upstream 2.7 km (1.7 mi) to a break in channel gradient (CBI 1999), Little Moose Creek from its mouth upstream 16.2 km (10.0 mi) to a break in channel gradient near section line 25/26 (D. Schiff, IDFG, pers. comm., 2002), Osier Creek from the mouth upstream 13.0 km (8.1 mi) to the headwaters (D. Schiff, IDFG, pers. comm., 2002), and Swamp Creek from its confluence with Osier Creek upstream 8.7 km (5.4 mi) to an unnamed tributary provide migratory and spawning and rearing habitat. Sugar Creek from its confluence with Moose Creek upstream 6.4 km (4.0 mi) to the headwaters provides habitat necessary for the expansion of bull trout populations that are essential for conservation of the species (USFWS 2002). Pollock Creek from its confluence with Swamp Creek upstream to a barrier falls near rkm 2.7 (rmi 1.7) contains excellent habitat necessary to support the recovered distribution of bull trout (C. Huntington, CBI, pers. comm., 2002; USFWS 2002).

(O) Cayuse Creek from its confluence with Kelly Creek upstream 52.7 km (32.8 mi) to a break in channel gradient near the headwaters provides rearing habitat (CBBTTAT 1998c). Toboggan Creek from its confluence with Cayuse Creek upstream 13.0 km (8.0 mi) to an unnamed tributary (Platts *et al.* 1993; C. Huntington, CBI, pers. comm., 2002), and Monroe Creek from its from its confluence with Cayuse Creek upstream 2.1 km (1.3 mi) to an unnamed tributary (Platts *et al.* 1993; CBBTTAT 1998c) provide, at a minimum, migratory habitat. Gravey Creek from its confluence with Cayuse Creek upstream 14.3 km (8.9 mi) to the headwaters is historic habitat (CBBTTAT 1998c) that is targeted for restoration efforts to provide for the recovered distribution of bull trout (USFWS 2002). Mae Creek from its confluence with Gravey Creek upstream 0.7 km (0.4 mi) to the USFS Road 107A crossing, and Marten Creek from its confluence with Gravey Creek upstream 7.2 km (4.5 mi) to the headwaters area targeted for restoration efforts to provide for the recovered distribution of bull trout (USFWS 2002). Tributaries to Gravey Creek, Howard Creek from its mouth upstream 10.1 km (6.3 mi) to the headwaters, Weasel Creek from its mouth upstream to a break in channel gradient near rkm 2.9 (rmi 1.8), Mink Creek from its mouth upstream to a break in gradient near rkm 3.4 (rmi 2.1), and Silver Creek from its mouth upstream 5.4 km (3.4 mi) to a break in gradient are likely to be at least seasonally occupied, contain excellent bull trout habitat (P. Murphy, pers. comm., 2002) and provide habitat essential to the conservation of bull trout (USFWS 2002).

(P) North Fork Clearwater River from Kelly Forks at rkm 164.8 (rmi 102.4) upstream 47.8 km (29.7 mi) to the headwaters provides FMO habitat. Pete Ott Creek from its confluence with the North Fork Clearwater River upstream 0.7 km (0.5 mi) to an unnamed tributary, and Elizabeth Creek from its confluence with the North Fork Clearwater River upstream 1.2 km (0.7 mi) to an unnamed tributary provide FMO habitat (Platts *et al.* 1993; CBBTTAT 1998c). Hidden Creek from its confluence with the North Fork Clearwater River upstream 3.7 km (2.3 mi) to an unnamed tributary provides rearing habitat (CBBTTAT 1998c). Deception Gulch from its confluence with the North Fork Clearwater River upstream 8.4 km (5.2 mi) to the headwaters is suspected to be occupied (P. Murphy, pers. comm., 2002; CBBTTAT 1998c) and is targeted for restoration efforts and is essential to provide for the conservation of bull trout (USFWS 2002). Lake Creek from its confluence with the North Fork Clearwater River upstream 12.3 km (7.7 mi) to Japanese Creek; Goose Creek from its confluence with Lake Creek upstream 8.2 km (5.1 mi) to an unnamed tributary; Long Creek from its confluence with the North Fork Clearwater River upstream 11.3 km (7.0 mi) to an unnamed tributary; Short Creek from its confluence with Long Creek upstream 3.7 km (2.3 mi) to a break in channel gradient; Rawhide Creek from its confluence with Long Creek upstream 5.5 km (3.4 mi) to a break in channel gradient; Slate Creek from its confluence Long Creek upstream 4.0 km (2.5 mi) to the headwaters; an unnamed Long Creek tributary from its mouth upstream 1.5 km (0.9 mi) to an unnamed tributary; Meadow Creek from its confluence with the North Fork Clearwater River upstream 20.3 km (12.6 mi) to the headwaters; Vanderbilt Gulch from its confluence with the North Fork Clearwater River upstream 9.4 km (5.9 mi) to the headwaters; Chamberlain Creek from its confluence with the North Fork Clearwater River upstream 5.4 km (3.3 mi) to the headwaters; Placer Creek from its confluence with the North Fork Clearwater River upstream 3.6 km (2.3 mi) to the headwaters; Bostonian Creek from its confluence with the North Fork Clearwater River upstream 8.0 km (5.0 mi) to the headwaters; Niagra Gulch from its confluence with the North Fork Clearwater River upstream 1.9 km (1.2 mi) to an unnamed tributary; Boundary Creek from its confluence with the North Fork Clearwater River upstream 3.0 km (1.9 mi) to a break in channel gradient; and Graves Creek from its from its confluence with the North Fork Clearwater River upstream 3.1 km (1.9 mi) to a break in channel gradient provide FMO and spawning and rearing habitat (CBBTTAT 1998c; D. Weigel, pers. comm., 2002 ; CBI 1994; D. Schiff, IDFG, pers. comm., 2002).

(iii) Fish Lake (North Fork) CHSU

The Fish Lake (North Fork) CHSU lies within a small headwater basin of approximately 1,433 ha (3,541 ac) that is situated upstream of Japanese Creek in the Lake Creek drainage of the North Fork Clearwater River system. Located in Clearwater County and entirely within the Clearwater National Forest, the basin is dominated by Fish Lake, the largest mountain lake in north-central Idaho.

(A) Lake Creek (a tributary to the North Fork Clearwater River) from Fish Lake downstream 6.1 km (3.8 mi) to Japanese Creek provides spawning and rearing habitat (CBBTTAT 1998c; D. Weigel, pers. comm., 2002). Fish Lake (47 ha (16 ac) in size) provides FMO habitat. Four unnamed and unmapped inlets that enter Fish Lake on the eastern end of the lake, and a fifth unnamed inlet on the north side from their confluence with Fish Lake upstream to their source(s) provide spawning and rearing habitat (USFWS 2002).

(iv) South Fork Clearwater River CHSU

The South Fork Clearwater River CHSU lies within a drainage basin of approximately 304,516 ha (752,474 ac) that includes the entire stream network of the South Fork Clearwater River located within Idaho and Nez Perce counties. Landownership in the basin is a mixture of Federal (70 percent), private (30 percent), State (less than 1 percent), and Tribal (less than 1 percent), with private lands dominant in the lower portion of the area. However, streams proposed for critical habitat designation are primarily associated with Federal lands. Of 522.7 km (324.8 mi) of streams proposed for designation as critical bull trout habitat, 85 percent are on Federal land, less than 1 percent on State land, less than 1 percent on Tribal land, and 15 percent on private lands.

(A) The South Fork Clearwater River from its mouth on the mainstem Clearwater River upstream 100.3 km (62.3 mi) to its origin at the confluence of the Red River and the American River provides FMO habitat (CBBTTAT 1998d). It also provides a migratory corridor that allows fluvial bull trout to move between local populations within this CHSU and provides the opportunity for genetic exchange between local populations.

(B) Mill Creek from its confluence with the South Fork Clearwater River upstream 13.6 km (8.5 mi) to Merton Creek, and Merton Creek from its mouth upstream 1.6 km (1.0 mi) to an unnamed tributary provide rearing habitat (W. Paradis, USFS, pers. comm., 2002) as well as habitat essential to the conservation of bull trout (USFWS 2002).

(C) Johns Creek from its confluence with the South Fork Clearwater River upstream approximately 30.9 km (19.3 mi) to a gradient break near the headwaters; Gospel Creek from its confluence with Johns Creek upstream 3.1 km (2.0 mi) to Moores Lake Creek; Moores Lake Creek from its confluence with Gospel Creek upstream 3.4 km (2.1 mi) to the USFS Trail 305 crossing; Open Creek from its confluence with Johns Creek upstream 1.5 km (0.9 mi) to a break in channel gradient; Moores Creek from its confluence with Johns Creek upstream 8.2 km (5.1 mi) to a barrier; Twin Lakes Creek from its confluence with Johns Creek upstream 1.9 km (1.5 mi) to Hagen Creek; Hagen Creek from its mouth upstream to an unnamed tributary at rkm 2.3 (rmi 1.5); and Taylor Creek from its confluence with Johns Creek upstream 2.7 km (1.7 mi) to an unnamed tributary provide spawning and rearing habitat (Spangler 1997; CBBTTAT 1998d).

(D) Silver Creek from its confluence with the South Fork Clearwater River upstream 0.2 km (0.1 mi) to a barrier falls; Wing Creek from its confluence with the South Fork Clearwater River upstream 0.3 km (0.2 mi) to a barrier falls; and Twentymile Creek from its confluence with the South Fork Clearwater upstream 0.2 km (0.1 mi) to a barrier falls are positioned between bull trout strongholds in Johns Creek (see above) and Tenmile Creek (see below) and provides foraging and thermal refuge habitat (USFS 1999b).

(E) Tenmile Creek from the confluence with the South Fork Clearwater River upstream 22.6 km (14.0 mi) to a break in channel gradient above Wiseboy Creek; Sixmile Creek from its confluence with Tenmile Creek upstream 1.4 km (0.9 mi) to a barrier falls; Williams Creek from its confluence with Tenmile Creek upstream 8.4 km (5.2 mi) to the headwaters; and Wiseboy Creek from its confluence with Tenmile Creek upstream 0.9 km (0.6 mi) to an unnamed tributary provide spawning and rearing habitat (Spangler 1997; CBBTTAT 1998d; (W. Paradis, USFS, pers. comm., 2002; D. Mays, USFS, pers. comm., 2002).

(F) Buckhorn Creek from its confluence with the South Fork Clearwater River upstream 0.3 km (0.2 mi) to an unnamed tributary foraging and thermal refuge habitat (D. Mays, USFS, pers. comm., 2002).

(G) Newsome Creek from its confluence with the South Fork Clearwater River upstream 25.2 km (15.7 mi) to the headwaters; West Fork Newsome Creek from its confluence with Newsome Creek upstream 8.0 km (5.0 mi) to a migration barrier; and Bear Creek from its confluence with Newsome Creek upstream 2.7 km (1.6 mi) to an unnamed tributary provide spawning and/or rearing habitat (D. Mays, USFS, pers. comm., 2002; CBBTTAT 1998d). Beaver Creek from its confluence with Newsome Creek upstream 8.0 km (5.0 mi) to the headwaters is suspected to provide spawning and rearing habitat (CBBTTAT 1998d) and is essential to the conservation of bull trout (USFWS 2002). Pilot Creek from its confluence with Newsome Creek upstream 9.6 km (5.9 mi) to the headwaters; an unnamed Pilot Creek tributary from its mouth upstream 1.3 km (0.8 mi) to another unnamed tributary; a second unnamed Pilot Creek tributary from its mouth upstream 0.6 km (0.4 mi) to a gradient break near the headwaters; Baldy Creek from its confluence with Newsome Creek upstream 6.0 km (3.8 mi) to an unnamed tributary; and Mule Creek from its confluence with Newsome Creek upstream 0.9 km (0.6 mi) to an unnamed tributary provide spawning and rearing habitat (CBBTTAT 1998d; IDFG, unpublished 2001; D. Mays, USFS, pers. comm., 2002).

(H) Crooked River from its confluence with the South Fork Clearwater River upstream 18.8 km (11.7 mi) to the confluence of the East and West Forks; Relief Creek from its confluence with the West Fork Crooked River upstream 2.2 km (1.3 mi) to East Fork Relief Creek; West Fork Crooked River from its confluence with the East Fork Crooked River upstream approximately 5.4 km (3.4 mi) to a barrier falls; an unnamed tributary to the West Fork Crooked River from its mouth upstream approximately 1.0 km (0.6 mi) to a break in channel gradient; and East Fork Crooked River from its confluence with the West Fork upstream approximately 2.7 km (1.7 mi) to the distribution limit of bull trout provide spawning and rearing habitat (J. Brostrom, IDFG, pers. comm., 2002; D. Mays, USFS, pers. comm., 2002; CBBTTAT 1998d).

(I) Red River from its confluence with the Crooked River and American River upstream 45.9 km (28.5 mi) to the headwaters; Red Horse Creek from its confluence with the Red River upstream 9.1 km (5.6 mi) to an unnamed tributary; Siegel Creek from its confluence with the Red River upstream 2.7 km (1.7 mi) to Boyer Creek; Dawson Creek from its confluence with the Red River upstream 3.7 km (2.3 mi) to the headwaters; Little Moose Creek from its confluence with the Red River upstream 3.0 km (1.8 mi) to an unnamed tributary; Moose Butte Creek from its confluence with the Red River upstream 7.4 km (4.6 mi) to an unnamed tributary; South Fork Red River from its confluence with the Red River upstream 18.7 km (11.7 mi) to the headwaters; Trapper Creek from its confluence with the South Fork Red River upstream 10.6 km (6.6 mi) to the headwaters; West Fork of South Fork Red River from its mouth upstream 4.9 km (3.0 mi) to an unnamed tributary; Middle Fork of South Fork Red River from its mouth upstream 6.1 km (3.8 mi) to the headwaters; Ditch Creek from its confluence with the Middle Fork of South Fork Red River upstream 6.3 km (3.9 mi) to the headwaters; Soda Creek from its confluence with the Red River upstream 1.8 km (1.1 mi) to the limit of known use by bull trout; Baston Creek from its confluence with the Red River upstream 3.6 km (2.2 mi) to the headwaters; Otterson Creek from its confluence with the Red River upstream 5.6 km (3.5 mi) to the headwaters; and

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Bridge Creek from its confluence with the Red River upstream 6.4 km (4.0 mi) to the headwaters provide FMO and spawning and rearing habitat (CBBTTAT 1998d; USFS 1999b; IDFG, unpublished 2001; D. Mays, USFS, pers. comm., 2002).

(J) American River from its confluence with the Red River and the South Fork Clearwater River upstream 27.4 km (17.0 mi) to the mouth of Limber Luke Creek provides FMO habitat (CBBTTAT 1998d). Elk Creek from its confluence with the American River upstream 3.8 km (2.3 mi) to Big Elk Creek, and Big Elk Creek from its mouth upstream 15.5 km (9.6 mi) to the headwaters provide habitat that is essential to supporting the recovered distribution of bull trout (USFWS 2002). Little Elk Creek from its confluence with Elk Creek upstream 14.8 km (9.2 mi) to the headwaters is occupied (USFS 1999b) and provides habitat for the recovered distribution of bull trout (USFWS 2002). Kirks Fork of American River from its mouth upstream 2.1 km (1.3 mi) to Wigwam Creek; East Fork American River from its mouth upstream 10.5 km (6.5 mi) to the headwaters; and Flint Creek from its confluence with the East Fork American River upstream 3.0 km (1.9 mi) to an unnamed tributary are likely to be occupied (CBBTTAT 1998d; USFS 1999b) and provide habitat essential to the conservation of bull trout (USFWS 2002). West Fork American River from its mouth upstream 8.0 km (5.0 mi) to the headwaters and Lick Creek from its confluence with the American River upstream 6.0 km (3.7 mi) to the headwaters provide habitat essential to the conservation of bull trout (USFWS 2002).

(v) Lochsa River CHSU

The Lochsa River CHSU lies within a drainage basin of about 303,019 ha (748,773 ac) that includes the entire stream network of the Lochsa River system other than that portion of the Lake Creek drainage upstream of California Creek. Located within Idaho County, landownership is predominantly Federal (95 percent, all in the Clearwater National Forest), but also includes some private property (5 percent).

(A) The mainstem Lochsa River from its confluence with the Selway River upstream 110.5 km (68.7 mi) to its origin at the confluence of Crooked Fork and Colt Killed Creek provides FMO habitat (CBBTTAT 1998b), as well as a migratory corridor that provides an opportunity for bull trout to move between local populations within and outside this CHSU.

(B) Canyon Creek from its confluence with the Lochsa River upstream 1.0 km (0.6 mi) to South Fork. Canyon Creek; Deadman Creek from its confluence with the Lochsa River upstream 3.4 km (2.1 mi) to East Fork. Deadman Creek; Coolwater Creek from its confluence with the Lochsa River upstream 2.2 km (1.4 mi) to an unnamed tributary; Bimerick Creek from its confluence with the Lochsa River upstream 0.7 km (0.4 mi) to a barrier falls; and Fire Creek from its confluence with the Lochsa River upstream 1.2 km (0.8 mi) to an unnamed tributary. Bull trout have been recently noted in Deadman, Coolwater, Fire Creeks (CBI 1992; Platts *et al.* 1993; IDFG Clearwater Data Base, unpublished 2002a). These tributaries provide biologically important opportunities for foraging and thermal refuge along a section of river known for summer water temperatures stressful to salmonids.

(C) Split Creek from its confluence with the Lochsa River upstream 11.3 km (7.0 mi) to the headwaters is occupied (CBI 1992; IDFG Clearwater Data Base, unpublished 2002a) and provides habitat essential to the conservation of bull trout (USFWS 2002).

(D) Old Man Creek from its confluence with the Lochsa River upstream 11.4 km (7.1 mi) to Chimney Creek provides habitat essential to the long-term conservation of bull trout (USFWS 2002).

(E) Fish Creek from its confluence with the Lochsa River upstream 32.5 km (20.2 mi) to the headwaters, and Hungry Creek from its confluence with Fish Creek upstream 21.8 km (13.5 mi) to the headwaters are occupied (Platts *et al.* 1993; CBBTTAT 1998b) and provide habitat essential to the recovered distribution of bull trout (USFWS 2002).

(F) Boulder Creek from its confluence with the Lochsa River upstream 9.8 km (6.1 mi) to Thimble Creek, the approximate location of an apparent migration barrier, is likely occupied (Platts *et al.* 1993; CBBTTAT 1998b) and provides habitat essential to the conservation of bull trout (USFWS 2002).

(G) Bald Mountain Creek from its confluence with the Lochsa River upstream 2.3 km (1.4 mi) to an unnamed tributary, and Stanley Creek from its confluence with the Lochsa River upstream 2.0 km (1.2 mi) to an unnamed tributary are suspected to be at least seasonally occupied (CBBTTAT 1998b). It also provides subadult or adult bull trout opportunities for foraging and thermal refuge along a section of river where mid-summer water temperatures are well above those preferred by the species.

(H) Indian Grave Creek from its confluence with the Lochsa River upstream 7.7 km (4.8 mi) to the headwaters appears to be at least seasonally occupied (Platts *et al.* 1993; CBBTTAT 1998b) and provides habitat essential to the conservation of bull trout (USFWS 2002).

(I) Weir Creek from its confluence with the Lochsa River upstream 9.5 km (5.9 mi) to the headwaters is occupied (CBBTTAT 1998b) and provides habitat essential to the conservation of bull trout (USFWS 2002).

(J) Lake Creek from its mouth at the Lochsa River upstream 16.2 km (10.0 mi) to California Creek; Freezeout Creek from its confluence with Lake Creek upstream 7.3 km (4.6 mi) to the headwaters; and California Creek from its mouth upstream 3.0 km (1.9 mi) to a break in channel gradient provide habitat essential to the conservation of bull trout (USFWS 2002).

(K) Postoffice Creek from its confluence with the Lochsa River upstream 8.9 km (5.5 mi) to a break in channel gradient, and West Fork Postoffice Creek from its mouth upstream 3.6 km (2.2 mi) to an unnamed tributary provide habitat essential to the conservation of bull trout (USFWS 2002). Postoffice Creek is also known to be occupied (IDFG Clearwater Data Base, unpublished 2002a; CBBTTAT 1998b).

(L) Warm Springs Creek from its confluence with the Lochsa River upstream 5.8 km (3.6 mi) to a barrier falls, and Cooperation Creek from its confluence with Warm Springs Creek upstream 5.5 km (3.4 mi) to a break in channel gradient provide spawning and rearing habitat for the Warm Spring local population (USFWS 2002; D. Weigel, pers. comm., 2002).

(M) Fishing (Squaw) Creek from its confluence with the Lochsa River upstream 10.1 km (6.3 mi) to a seasonally dry channel segment; Doe Creek from its confluence with Fishing (Squaw) Creek upstream 8.8 km (5.5 mi) to an unnamed tributary; West Fork Fishing Creek from its mouth upstream 4.2 km (2.6 mi) to an unnamed tributary; Spring Creek from its confluence with West Fork Fishing Creek upstream 1.6 km (1.0 mi); and East Fork Fishing Creek from its mouth upstream 1.5 km (0.9 mi) to a small unnamed tributary provide spawning and rearing habitat for the Fishing (Squaw) Creek local population (USFWS 2002).

(N) Badger Creek from its confluence with the Lochsa River upstream 1.5 km (0.9 mi) to an unnamed tributary, and Wendover Creek from its mouth upstream 1.6 km (1.0 mi) to West Fork Wendover Creek have suitable habitat.

Wendover Creek is likely to be currently occupied, at least seasonally (Platts *et al.* 1993; CBBTTAT 1998b). Badger Creek is identified for high priority restoration activities (*i.e.*, barrier removal at the mouth) and is essential to the conservation of bull trout (USFWS 2002).

(O) Legendary Bear (Papoose) Creek from its confluence with the Lochsa River upstream 3.0 km (1.9 mi) to West Fork Legendary Bear Creek; Parachute Creek from its confluence with Legendary Bear (Papoose) Creek upstream 0.4 km (0.3 mi) to a potential barrier; West Fork Legendary Bear Creek from its mouth upstream 7.3 km (4.5 mi) to an unnamed tributary; and East Fork Legendary Bear Creek from its mouth upstream 4.2 km (2.6 mi) to an unnamed tributary provide spawning and rearing habitat for the Legendary Bear (Papoose) Creek local population of bull trout (CBBTTAT 1998b; USFWS 2002).

(P) Walton Creek from its mouth upstream 4.4 km (2.7 mi) to a break in channel gradient provides spawning and rearing habitat for the Walton Creek local population of bull trout (USFWS 2002).

(Q) Colt Killed Creek from its mouth upstream 33.8 km (21.0 mi) to Garnet Creek; Big Flat Creek from its confluence with Colt Killed Creek upstream 13.5 km (8.4 mi) to its headwaters; Beaver Creek from its mouth at Colt Killed Creek upstream 12.2 km (7.6 mi) to the headwaters; Storm Creek from its mouth at Colt Killed Creek upstream 17.0 km (10.6 mi) to North Fork Storm Creek; and Maud Creek from its confluence with Storm Creek upstream 10.1 km (6.3 mi) to the headwaters provide spawning and rearing habitat for the Colt Killed Creek local population of bull trout (CBI 1989; CBI 1996; P. Murphy, pers. comm., 2002; USFWS 2002).

(R) Crooked Fork from its confluence with the Lochsa River upstream 21.7 km (13.5 mi) to Boulder Creek provides FMO and rearing habitat (CBBTTAT 1998b). Haskell Creek from its confluence with Crooked Fork upstream 4.5 km (2.8 mi) to the headwaters; Rock Creek from its confluence with Crooked Fork upstream 1.8 km (1.1 mi) to a small unnamed tributary; Shotgun Creek from its confluence with Crooked Fork upstream 7.6 km (4.7 mi) to the headwaters; Boulder Creek from its confluence with Crooked Fork upstream 10.5 km (6.5 mi) to an unnamed tributary; Fox Creek from its mouth at Boulder Creek upstream 5.6 km (3.5 mi) to a gradient break near the headwaters; Williams Lake Creek from its confluence with Boulder Creek upstream 4.2 km (2.6 mi) to an unnamed tributary; Crooked Fork Creek from its confluence with Boulder Creek upstream 12.4 km (7.7 mi) to a gradient break near the headwaters; Hopeful Creek from its confluence with Crooked Fork Creek upstream 7.4 km (4.6 mi) to the headwaters; and an unnamed Hopeful Creek tributary from its mouth upstream 4.7 km (2.9 mi) to the headwaters provide spawning and rearing habitat for the Crooked Fork local population (Watson and Hillman 1997; CBI 1997; CBBTTAT 1998b; USFWS 2002).

(S) Brushy Fork Creek from the confluence with the Crooked Fork upstream 16.2 km (10.0 mi) to Spruce Creek; Twin Creek from its confluence with Brushy Fork Creek upstream 4.7 km (2.9 mi) to a barrier falls; Spruce Creek from its confluence with Brushy Fork Creek upstream 5.6 km (3.5 mi) to South Fork Spruce Creek; Shoot Creek from its confluence with Spruce Creek upstream 3.4 km (2.1 mi) to a break in channel gradient; South Fork Spruce Creek from its mouth upstream 6.4 km (4.0 mi) to a break in channel gradient; and North Fork Spruce Creek from its mouth upstream 4.0 km (2.5 mi) to an unnamed tributary provide spawning and rearing habitat for the Brushy Fork Creek local population (CBBTTAT 1998b; USFWS 2002; D. Weigel, pers. comm., 2002).

(vi) Fish Lake (Lochsa) CHSU

The Fish Lake (Lochsa) CHSU lies within a 2,131 ha (5,267 ac) glacially formed drainage basin in the headwaters of Lake Creek, a major tributary to the Lochsa River. It is in Idaho County and is situated entirely within a portion of the Selway-Bitterroot Wilderness Area administered by the Clearwater National Forest. This area supports one of only two naturally adfluvial bull trout populations within the entire Clearwater River unit.

(A) Lake Creek from California Creek upstream 5.8 km (3.6 mi) to Fish Lake, all 22 ha (54 ac) of Fish Lake, and Lake Creek from Fish Lake upstream 2.3 km (1.5 mi) to a break in channel gradient near the headwaters constitutes all habitat thought to be used by the Fish Lake Creek local population. Bull trout spawn in Lake Creek both below and above Fish Lake (P. Murphy, pers. comm., 2002), and grow to adulthood in the lake itself (USFWS 2002).

(vii) Selway River CHSU

The Selway River CHSU lies within a 520,232 ha (1,285,516 ac) drainage basin that includes the Selway River and all of its tributaries. Located in Idaho and Clearwater counties, 85 percent of this basin is within the boundaries of the Selway-Bitterroot and Frank Church-River of No Return wilderness areas (USFS 2001b). Virtually all of the Selway River CHSU is administered by three National Forests: the Nez Perce, Bitterroot, and Clearwater (USFS 1999b). A total of approximately 780.8 km (485.3 mi) of stream are proposed for critical habitat designation as part of the Selway River CHSU. The proposed designations are comprised of Federal land (nearly 100 percent) and private lands (less than 1 percent).

(A) The Selway River from its confluence with the Lochsa River upstream 146.4 km (88.5 mi) to Wilkerson Creek provides FMO habitat for fluvial bull trout (CBBTTAT 1998b), and a highly functional migratory corridor that provides an opportunity for bull trout to move between multiple local populations within and outside this CHSU. Recent field sampling indicates that above the Little Clearwater River confluence, at rkm 121.3 (rmi 75.3), the Selway River is also used as rearing habitat by juvenile bull trout (General Parr Monitoring database 2002). Goddard Creek, a tributary to the Selway River between the mouth and O'Hara Creek, from its mouth upstream 0.8 km (0.5 mi) to an unnamed tributary, is likely to be at least seasonally occupied by foraging adults (CBBTTAT 1998b) and provides habitat essential to the conservation of bull trout (USFWS 2002).

(B) O'Hara Creek from its confluence with the Selway River upstream 12.4 km (7.7 mi) to its origin at the confluence of the East and West Forks of O'Hara Creek; East Fork O'Hara Creek from its mouth upstream 8.1 km (5.0 mi) to the headwaters; and West Fork O'Hara Creek from its mouth upstream 9.3 km (5.8 mi) to the headwaters are known to be occupied in the lower reaches (IDFG General Parr Monitoring database, unpublished 2002b) and provide habitat essential to the conservation of bull trout (USFWS 2002).

(C) Four tributaries to the Selway River between O'Hara Creek and Gedney Creek, Rackliff Creek from its mouth upstream 2.2 km (1.4 mi) to an unnamed tributary; Boyd Creek from its mouth upstream 1.9 km (1.2 mi) to a break in channel gradient; Glover Creek from its mouth upstream 1.5 km (0.9 mi) to an unnamed tributary; and Falls Creek from its mouth upstream 1.4 km (0.9 mi) to a break in channel gradient are suspected to provide at least seasonal habitat for foraging bull trout (CBBTTAT 1998b), are prioritized for restoration efforts (Boyd Creek), and provide habitat essential to the conservation of bull trout (USFWS 2002).

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(D) Gedney Creek from its confluence with the Selway River upstream 12.5 km (7.8 mi) to an unnamed tributary and West Fork Gedney Creek from its mouth upstream 2.0 km (1.2 mi) to a barrier falls are occupied. Spawning and rearing is suspected (A. Byrne, IDFG, pers. comm., 2002) and this area provides habitat essential to the conservation of bull trout (USFWS 2002).

(E) Meadow Creek from its confluence with the Selway River upstream 67.9 km (42.2 mi) to an unnamed tributary; Schwar Creek from its confluence with Meadow Creek upstream 3.5 km (2.2 mi) to a barrier falls; and East Fork Meadow Creek from its mouth upstream 11.1 km (6.9 mi) to the headwaters provide spawning and rearing habitat for the Meadow Creek local population (CBBTTAT 1998b; IDFG/FIS database, unpublished 2002c).

(F) Two tributaries to the Selway River between Meadow Creek and Mink Creek, Otter Creek from its confluence with the Selway River upstream 1.0 km (0.6 mi) to a barrier falls (suspected to be occupied (CBBTTAT 1998b)), and Three Links Creek from its confluence with the Selway River upstream 6.5 km (4.0 mi) to West Fork Three Links Creek (documented as occupied (USFWS 2002)) provide habitat essential to the conservation of bull trout (USFWS 2002).

(G) Mink Creek from its confluence with the Selway River upstream 11.9 km (7.4 mi) to an unnamed tributary is suspected to be occupied (CBBTTAT 1998b) and provides habitat essential to the conservation of bull trout (USFWS 2002).

(H) Marten Creek from its confluence with the Selway River upstream 18.3 km (11.4 mi) to a break in channel gradient near the headwaters is occupied (CBBTTAT 1998b) and provides habitat essential to the conservation of bull trout (USFWS 2002).

(I) Moose Creek from its confluence with the Selway River upstream 6.1 km (3.8 mi) to the confluence of North Fork Moose Creek and East Fork Moose Creek; North Fork Moose Creek from its mouth upstream 19.4 km (12.0 mi) to an unnamed tributary; Rhoda Creek from its confluence with North Fork Moose Creek upstream 5.0 km (3.1 mi) to Wounded Doe Creek; Wounded Doe Creek from its mouth upstream 11.4 km (7.1 mi) to an unnamed tributary; East Fork Moose Creek from its mouth upstream 26.7 km (16.6 mi) to a potential barrier falls; and Cedar Creek from its mouth at East Fork Moose Creek upstream 10.1 km (6.3 mi) to an unnamed tributary provide spawning and rearing habitat (CBBTTAT 1998b; USFS 2001b; IDFG Clearwater database, unpublished 2002a).

(J) Pettibone Creek from its confluence with the Selway River upstream 5.3 km (3.3 mi) to an unnamed tributary is suspected to be occupied (CBBTTAT 1998b) and provides habitat essential to the conservation of bull trout (USFWS 2002).

(K) Bear Creek from its confluence with the Selway River upstream 33.2 km (20.7 mi) to an unnamed tributary; Cub Creek from its confluence with Bear Creek upstream 15.0 km (9.3 mi) to a barrier falls; Paradise Creek from its confluence with CubCreek upstream 20.1 km (12.5 mi) to a break in channel gradient near the headwaters; and Brushy Fork Creek from its confluence with Cub Creek upstream 11.3 km (7.0 mi) to a break in channel gradient near the headwaters are known to be used by the Bear Creek local population for foraging, as well as spawning and rearing (CBBTTAT 1998b; USFS 2001b). A small juvenile fish sampled low in the system (IDFG General Parr Monitoring database, unpublished 2002b) suggests spawning activity occurring in upper portions of the watershed.

(L) Running Creek from its confluence with the Selway River upstream 31.4 km (19.5 mi) to an unnamed tributary; Eagle Creek from its confluence with Running Creek upstream 18.9 km (11.7 mi) to a gradient break near the headwaters; Lynx Creek from its confluence with Running Creek upstream 4.1 km (2.6 mi) to an unnamed tributary; and South Fork Running Creek from its mouth upstream 3.3 km (2.0 mi) to an unnamed tributary provide spawning and rearing habitat for the Running Creek local population (CBBTTAT 1998b; USFS 2001b; IDFG General Parr Monitoring database, unpublished 2002b). Tom Creek from its confluence with Running Creek upstream 6.1 km (3.8 mi) to the headwaters provides high quality habitat to provide for the recovered distribution of the Running Creek local population, and is essential to the conservation ofbull trout (USFWS 2002).

(M) White Cap Creek from its confluence with the Selway River upstream 39.0 km (24.2 mi) to a gradient break near the headwaters and Canyon Creek from its confluence with White Cap Creek upstream 17.8 km (11.1 mi) to an unnamed tributary provide spawning and rearing habitat for the White Cap Creek local population (CBBTTAT 1998b; M. Jakober, USFS, pers. comm., 2002).

(N) Indian Creek from its confluence with the Selway River upstream 17.3 km (10.8 mi) to an unnamed tributary; Schofield Creek from its confluence with Indian Creek upstream 8.4 km (5.2 mi) to an unnamed tributary; and Burnt Strip Creek from its confluence with Schofield Creek upstream 4.3 km (2.7 mi) to the headwaters provide spawning and rearing habitat for the Indian Creek local population (CBBTTAT 1998b; M. Jakober, USFS, pers. comm., 2002).

(O) Little Clearwater River from its confluence with the Selway River upstream 19.9 km (12.3 mi) to an unnamed tributary; Flat Creek from its confluence with the Little Clearwater River upstream 8.7 km (5.4 mi) to an unnamed tributary; Salamander Creek from its confluence with the Little Clearwater River upstream 7.7 km (4.8 mi) to an unnamed tributary; and Burnt Knob Creek from its confluence with the Little Clearwater River upstream 4.7 km (2.9 mi) to an unnamed tributary provide spawning and rearing habitat for the Little Clearwater River local population (CBBTTAT 1998b; M. Jakober, USFS, pers. comm., 2002).

(P) Magruder Creek from its confluence with the Selway River upstream 2.6 km (1.7 mi) provides spawning and rearing habitat.

(Q) Deep Creek from its confluence with the Selway River upstream 21.3 km (13.3 mi) to a break in channel gradient; Cayuse Creek from its mouth upstream 10.4 km (6.5 mi) to the headwaters; Vance Creek from its mouth upstream 0.9 km (0.6 mi) to an unnamed tributary; and Slow Gulch Creek from its mouth upstream 2.2 km (1.3 mi) to Lazy Creek. Deep, Vance and Slow Gulch creeks provide spawning and rearing habitat for the Deep Creek local population (USFS 2001b; M. Jakober, USFS, pers. comm., 2002). Cayuse Creek is likely to be occupied based on habitat quality (M. Jakober, USFS, pers. comm., 2002), it provides habitat that is essential for the recovered distribution of the Deep Creek local population.

(R) Upper Selway River from Wilkerson Creek upstream 20.1 km (12.5 mi) to the headwaters; Wilkerson Creek from its confluence with the Selway River upstream 12.8 km (8.0 mi) to a break in channel gradient near the headwaters; Storm Creek from its confluence with Wilkerson Creek upstream 10.1 km (6.3 mi) to a gradient break near the headwaters; French Creek from its confluence with Wilkerson Creek upstream 3.0 km (1.9 mi) to an unnamed tributary; Swet Creek from its confluence with the Selway River upstream 13.7 km (8.5 mi) to the headwaters; Surprise Creek from its confluence with the Selway River upstream 7.6 km (4.7 mi) to the headwaters; and South Fork Surprise Creek from its mouth upstream 6.9 km (4.3 mi) to the headwaters provide spawning and rearing habitat for the Upper Selway River local population (M. Jakober, USFS, pers. comm., 2002).

(20) Unit 16: Salmon River Basin

The Salmon River basin extends across central Idaho from the Snake River to the Montana border. The critical habitat unit includes 7,688 km (4,777 mi) of stream extending across portions of Adams, Blaine, Custer, Idaho, Lemhi, Nez Perce, and Valley counties in Idaho. There are 10 CHSUs: Little-Lower Salmon River, Middle Salmon River Chamberlain, South Fork Salmon River, Middle Fork Salmon River, Middle Salmon River-Panther Creek, Opal Lake, Lemhi River, Lake Creek, Pahsimeroi River, and Upper Salmon River. Currently, there are 125 known bull trout local populations in this unit. The Draft Recovery Plan (USFWS 2002) indicates the need to maintain all known local populations and identifies the establishment of nine additional populations as necessary for bull trout recovery. The areas proposed as critical habitat within this unit are essential to maintaining the known populations and supporting the additional populations, all of which are essential to the conservation of bull trout.

(i) Little-Lower Salmon CHSU

Approximately 494 km (307 mi) of stream is proposed as critical habitat in drainages associated with the Little Salmon River and the Salmon River downstream of French Creek (rkm 166.0 (rmi 103.1)). Landownership within the CHSU is approximately 77 percent Federal, 21 percent private, and 1 percent State. This CHSU supports seven existing bull trout local populations, and locations for three additional local populations essential for bull trout recovery were identified in the Draft Recovery Plan (USFWS 2002). The stream segments proposed for designation as critical habitat in the Little-Lower Salmon CHSU are described below.

(A) The Salmon River from its confluence with the Snake River upstream 166 km (103.2 mi) to the confluence with French Creek. This stretch of the Salmon River provides foraging and overwinter habitat, and connectivity between the bull trout local populations in this area. This stretch also provides a migratory corridor for movement from upstream portions of the Salmon River to the Snake River.

(B) Slate Creek from its confluence with the Salmon River (at rkm 106.4 (rmi 66.1)) upstream 21.4 km (13.3 mi) to the confluence with Little Slate Creek and extending into Little Slate Creek for a distance of 14.4 km (9.0 mi), Van Buren Creek from the confluence with Little Slate Creek upstream 8.5 km (5.3 mi), Deadhorse Creek from its mouth upstream 9.2 km (5.7 mi); and Willow Creek from its junction with Little Slate Creek upstream 2.3 km (1.4 mi) to its headwaters.

(C) John Day Creek from its confluence with the Salmon River at rkm 116.5 (rmi 72.3) upstream 13.8 km (8.6 mi) to its headwaters and extending up East Fork John Day Creek for a distance of 6.4 km (4 mi).

(D) The Little Salmon River from its confluence with the Salmon River at rkm 139.5 (rmi 86.6) upstream 33.8 km (21.0 mi) to a barrier.

(E) Rapid River from its confluence with the Little Salmon River at rkm 6.8 (rmi 4.2) upstream 36.5 km (22.7 mi) to its headwaters and extending 16.6 km (10.3 mi) up the West Fork Rapid River, 6.9 km (4.3 mi) up the Lake Fork Rapid River, and 5 km (3.1 mi) up the Granite Fork of the Lake Fork.

(F) Boulder Creek from its confluence with the Little Salmon River at rkm 28.5 (rmi 17.7) upstream 30 km (18.7 mi) to its headwaters and extending up Yellow Jacket Creek for a distance of 2.9 km (1.8 mi).

(G) Hazard Creek from the confluence with the Little Salmon River at rkm 31.4 (rmi 19.5) upstream 17.5 km (15.8 mi) to a headwater lake and extending up Hard Creek for a distance of 7.6 km (4.7 mi) to a barrier falls. A natural bedrock falls on Hazard Creek at rkm 6.1 (rmi 3.8) is a barrier to upstream fish movement. Hard Creek enters downstream of the barrier falls and a fluvial bull trout local population has been documented in Hard and lower Hazard Creeks (CBBTTAT 1998e).

(H) Lake Creek from its confluence with the Salmon River at rkm 149.7 (rmi 93.0) upstream for 14 km (8.7 mi) to its headwaters.

(I) Partridge Creek from its confluence with the Salmon River at rkm 159.6 (rmi 99.1) upstream for 18.7 km (11.6 mi) to its headwaters.

(J) Elkhorn Creek from its confluence with the Salmon River at rkm 162.7 (rmi 101.0) upstream for 17.7 km (11 mi) to its headwaters.

(K) French Creek from its confluence with the Salmon River at rkm 166.0 (rmi 103.1) upstream for 33.6 km (20.9 mi) to its headwaters and extending up North Creek for 6.1 km (3.8 mi).

(ii) Middle Salmon-Chamberlain CHSU

Approximately 528 km (328 mi) of stream is proposed as critical habitat in drainages associated with the section of the Salmon River from French Creek (rkm 166.0 (rmi 103.1)) upstream to Chamberlain Creek (rkm 281.9 (rmi 175.1)). Landownership within the CHSU is approximately 98 percent USFS, 1 percent BLM, and 1 percent private. This CHSU supports nine existing bull trout local populations, and the Draft Recovery Plan (USFWS 2002) identifies all of them as essential for conservation of bull trout. It also identifies a drainage where the establishment of an additional population is essential to the conservation of the species. The stream segments that make up the Middle Salmon-Chamberlain CHSU are described below.

(A) The Salmon River from its confluence with French Creek upstream 111.9 km (69.5 mi) to the confluence with Chamberlain Creek. This stretch of the Salmon River provides foraging and overwintering habitat, as well as connectivity between the bull trout local populations in this area. This stretch also provides a migratory corridor for movement from upstream portions of the Salmon River to the Snake River. All other stream segments in this CHSU are tributaries of the Salmon River and primarily provide spawning and rearing habitat.

(B) Fall Creek from its confluence with the Salmon River at rkm 172.5 (rmi 107.1) upstream 14.6 km (9.1 mi) to its headwaters and extending up East Fork Fall Creek for a distance of 7.2 km (4.5 mi).

(C) Wind River from its confluence with the Salmon River at rkm 176.9 (rmi 109.9) upstream 22.5 km (14.0 mi) to the headwaters.

(D) Sheep Creek from its confluence with the Salmon River at rkm 187.6 (rmi 116.5) upstream 23.8 km (14.8 mi) to its headwaters.

(E) California Creek from its confluence with the Salmon River at rkm 189.9 (rmi 117.9) upstream 19.5 km (12.1 mi) to its headwaters.

(F) Crooked Creek from its confluence with the Salmon River at rkm 200.5 (rmi 124.5) upstream 34.3 km (21.3 mi) to the headwaters and extending up Lake Creek for a distance of 21.1 km (13.1 mi).

(G) Warren Creek from its confluence with the Salmon River at rkm 208.6 (rmi 129.5) upstream 31.1 km (19.3 mi) to the headwaters and extending up the following Warren Creek tributaries: Schissler Creek for a distance of 6.8 km (4.2 mi); Guard Creek for a distance of 3.9 km (2.4 mi); Slaughter Creek for a distance of 7.7 km (4.8 mi); Mayflower Creek for a distance of 5.6 km (3.5 mi); and Webfoot Creek for a distance of 3.5 km (2.2 mi).

(H) Rhett Creek from its confluence with the Salmon River at rkm 230.0 (rmi

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142.8) upstream 1.2 km (0.8 mi) to a barrier falls.

(I) Little Mallard Creek from its confluence with the Salmon River at rkm 244.6 (rmi 151.9) upstream 0.8 km (0.5 mi) to a falls.

(J) Big Mallard Creek from its confluence with the Salmon River at rkm 247.0 (rmi 153.4) upstream 1.1 km (0.7 mi) to Mallard Creek Falls.

(K) Bargamin Creek from its confluence with the Salmon River at rkm 255.2 (rmi 158.5) upstream 37.5 km (23.3 mi) to its headwaters.

(L) Sabe Creek from its confluence with the Salmon River at rkm 271.6 (rmi 168.7) upstream 24.5 km (15.2 mi) to its headwaters.

(M) Big Harrington Creek from its confluence with the Salmon River at rkm 278.2 (rmi 172.8) upstream 13.5 km (8.4 mi) to its headwaters.

(N) Chamberlain Creek from its confluence with the Salmon River at rkm 281.9 (rmi 175.1) upstream 43.8 km (27.2 mi) to its headwaters and extending up the following tributaries: McCalla Creek for a distance of 25.6 km (15.9 mi) from its mouth to to its headwaters; Whimstick Creek from its junction with McCalla Creek upstream 17.4 km (10.8 mi); West Fork Chamberlain Creek from its mouth upstream14.6 km (9.1 mi) to its headwaters; Game Creek from its mouth on West Fork Chamberlain Creek upstream 8.4 km (5.2 mi); Moose Creek from its mouth upstream10 km (6.2 mi) to its headwaters; South Fork Chamberlain Creek from its mouth upstream 7.2 km (4.5 mi) to its headwaters; and Rim Creek from its junction with Chamberlain Creek upstream 8.4 km (5.2 mi) to its headwaters.

(iii) South Fork Salmon River CHSU

Approximately 834 km (518 mi) of stream is proposed as critical habitat in drainages associated with the South Fork of the Salmon River. Landownership within the CHSU is 96 percent Federal land, 1 percent State land, and 3 percent private land. This CHSU supports 28 existing bull trout local populations and one potential local population, all of which are identified as essential for bull trout recovery in the Draft Recovery Plan (USFWS 2002). The stream segments proposed for critical habitat that make up the South Fork Salmon River CHSU are described below.

(A) South Fork Salmon River from its confluence with the Salmon River upstream 141.6 km (88 mi) to its headwaters. Most of this stretch provides FMO habitat, and allows for the maintenance of genetic exchange by local and potential local populations both within and between CHSUs. The upper 13.3 km (8.3 mi) is known to support bull trout spawning and/or early rearing, and is considered to be a distinct local population. All other stream segments in this CHSU are tributaries of the South Fork Salmon River and primarily provide spawning and rearing habitat.

(B) Pony Creek from its confluence with the South Fork Salmon River upstream 14.7 km (9.1 mi) to its headwaters.

(C) Elk Creek from its confluence with the South Fork Salmon River upstream 14.3 km (8.9 mi) to its headwater and extending up West Fork Elk Creek for a distance of 10.7 km (6.6 mi), and up South Fork Elk Creek for a distance of 4.4 km (2.7 mi).

(D) The Secesh River from its confluence with South Fork Salmon River upstream 45.3 km (28.1 mi) to Lake Creek. The lower 39 km (24 mi) stretch of this river is used primarily as FMO habitat (IDFG/FIS database, unpublished 2002c). The uppermost 6 km (4 mi) is known to support bull trout spawning and/or early rearing (IDFG/FIS database, unpublished 2002c; USFWS, *in litt.*, 2002b). A number of bull trout local populations are associated with tributaries of the Secesh River; each of the following streams are known to support bull trout spawning and/or early rearing (USFWS, *in litt.*, 2002b; IDFG/FIS database, unpublished 2002c): Lick Creek from its confluence with the Secesh River upstream 16.3 km (10.2 mi) and extending up Hum Creek for a distance of 3 km (1.9 mi); Loon Creek from its confluence with the Secesh River upstream for a distance of 15.8 km (9.8 mi); Victor Creek from its confluence with the Secesh River upstream 11.2 km (6.9 mi) to its headwaters and extending up Willowbasket Creek for a distance of 6.6 km (4.1 mi); Grouse Creek from its confluence with the Secesh River upstream 7.2 km (4.5 mi) and extending up Flat Creek for a distance of 6.7 km (4.1 mi) and up Sand Creek for 4.1 km (2.6 mi); Ruby Creek from its confluence with the Secesh River upstream 9.4 km (5.8 mi) to its headwaters; Summit Creek from its confluence with the Secesh River upstream 15.6 km (9.7 mi) to its headwaters and extending up Josephine Creek for a distance of 4 km (2.5 mi); Lake Creek from its confluence with the Secesh River upstream 21.7 km (13.5 mi) to its headwaters and extending up Nethker Creek for 6.1 km (3.8 mi), Threemile Creek for 5.8 km (3.6 mi), and Willow Creek for 9 km (5.6 mi).

(E) East Fork South Fork Salmon River from its confluence with South Fork Salmon River upstream 52.2 km (32.4 mi) to its headwaters. Downstream of Fiddle Creek (rkm 42.7 (rmi 26.5)), the East Fork is occupied FMO habitat; above Fiddle Creek it is occupied spawning and rearing habitat. A number of bull trout local populations extend up tributaries of the upper East Fork South Fork Salmon River; each of the following streams are known to support bull trout spawning and/or early rearing (USFWS, *in litt.*, 2002b; IDFG/FIS database, unpublished 2002c): Quartz Creek for a distance of 12.6 km (7.8 mi) to its headwaters; Profile Creek for a distance of 13.2 km (8.2 mi) to its headwater and extending up Missouri Creek for 4.8 km (3.0 mi); Tamarack Creek for a distance of 11.9 km (7.4 mi) and including 5.8 km (3.6 mi) of Burn Creek; Salt Creek for a distance of 3.8 km (2.4 mi); Sugar Creek for a distance 11.5 km (7.1 mi) and including 5.5 km (3.4 mi) of Cinnabar Creek and 4.2 km (2.6 mi) of Cane Creek; and Meadow Creek for a distance of 7.7 km (4.8 mi).

(F) Johnson Creek from its confluence with East Fork South Fork Salmon River upstream 61.8 km (38.4 mi) to its headwater. Downstream of Sand Creek (rkm 46.4 (rmi 28.8)), Johnson Creek is occupied FMO habitat; the 15.4 km (9.6 mi) above Sand Creek is potential spawning and rearing habitat containing many of the primary constituent elements. Upper Johnson Creek is identified in the Draft Recovery Plan (USFWS 2002) as a potential local population with a number of known bull trout local populations extending up tributaries of Johnson Creek. Each of the following streams and lakes are known to support bull trout: Riordan Creek for a distance of 13.9 km (8.6 mi) above and below Riordan Lake, and including the 30 ha (75 ac) lake; Trapper Creek for a distance of 14.5 km (9.0 mi) and including 4.0 km (2.5 mi) of an unnamed tributary on the south side of Trapper Creek; and Burntlog Creek for a distance of 22.7 km (14.1 mi) and including 7.3 km (4.5 mi) of Buck Creek, 10.5 km (6.5 mi) of East Fork Burntlog Creek, and an unnamed tributary to East Fork Burntlog Creek from its mouth, approximately 4.4 km (2.8 mi) upstream of the confluence of Burntlog and East Fork Burntlog creeks, upstream 3.2 km (2 mi) to its headwaters.

(G) The following tributaries of the South Fork Salmon River that enter the river upstream of the East Fork South Fork Salmon River are known to support bull trout local populations and are proposed as critical habitat: Fitsum Creek from its confluence with South Fork Salmon River upstream for a distance of 3.7 km (2.3 mi) and including 13.0 km (8.1 mi) of North Fork Fitsum Creek; Buckhorn Creek from its confluence with South Fork Salmon River upstream for a distance of 16.6 km (10.3 mi) and extending 7.7 km (4.8 mi) up Little Buckhorn Creek and 6.1 km (3.8 mi) up South Fork Buckhorn Creek; Cougar Creek from its confluence with South Fork Salmon River upstream for a distance of 13.8 km (8.6 mi); Fourmile Creek from its confluence with South Fork Salmon River upstream for a distance of 12.1 km (7.5 mi); Blackmare Creek from its confluence with South Fork Salmon River upstream for a distance of 9.1 km (5.6 mi) and extending 7.4 km (4.6 mi) up South Fork Blackmare Creek; Six Bit Creek from its confluence with South Fork Salmon River upstream for a distance of 10 km (6.2 mi); Warm Lake Creek from its confluence with South Fork Salmon River upstream for a distance of 4.5 km (2.8 mi) up to and including Warm Lake (167 ha (412 ac), and extending 6.5 km (4.1 mi) up Cabin Creek and 5.1 km (3.2 mi) up Reeves Creek; Curtis Creek from its confluence with South Fork Salmon River upstream for a distance of 12.2 km (7.6 mi), including two unnamed tributaries to Curtis Creek upstream approximately 1.7 km (1 mi) in each, and extending 7.2 km (4.5 mi) up Trail Creek, including 1.6 km (1 mi) of an unnamed tributary to Trail Creek; Bear Creek from its confluence with South Fork Salmon River upstream for a distance of 8.5 km (5.3 mi); Tyndall Creek from its confluence with South Fork Salmon River upstream for a distance of 5.8 km (3.6 mi); Rice Creek from its confluence with South Fork Salmon River upstream for a distance of 10.2 km (6.3 mi) and extending 1.4 km (0.9 mi) up an unnamed tributary; an unnamed tributary to South Fork Salmon River (just below Yellowjacket Creek) from its confluence with the South Fork upstream 2.0 km (1.3 mi); and Mormon Creek from its confluence with South Fork Salmon River upstream for a distance of 4.8 km (3.0 mi).

(iv) Middle Fork Salmon River CHSU

Approximately 1,905 km (1,184 mi) of stream is proposed as critical habitat in drainages associated with the Middle Fork of the Salmon River. Landownership within the CHSU is approximately 98 percent USFS, 2 percent private, and less than 1 percent State. This CHSU supports 28 existing bull trout local populations, all of which are identified as essential for bull trout recovery in the Draft Recovery Plan (USFWS 2002). The stream segments that comprise proposed critical habitat in this CHSU are described below.

(A) Middle Fork Salmon River from its confluence with the Salmon River upstream for a distance of 168.4 km (104.6 mi) to Bear Valley Creek. The Middle Fork provides FMO habitat, and allows for the maintenance of genetic exchange by local and potential local populations both within and between CHSU. All other stream segments in this CHSU are tributaries of the Middle Fork Salmon River and primarily provide spawning and rearing habitat (Southwest Basin Native Fish Technical Advisory Group (SBNFTG) 1998; USFWS, in *litt.*, 2002b).

(B) Big Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 74.2 km (46.1 mi) to its headwater and extending up the following tributaries: Rush Creek for a distance of 27.4 km (17 mi) and including 7.8 km (4.9 mi) of South Fork Rush Creek; Cabin Creek for a distance of 14.4 km (8.9 mi); Cave Creek for a distance of 19.4 km (12 mi); Monumental Creek for a distance of 41.1 km (25.6 mi) and including 12.8 km (7.9 mi) of Snowslide Creek, and 12.7 km (7.9 mi) of West Fork Monumental Creek; Crooked Creek for a distance of 11.1 km (6.9 mi); Big Ramey Creek for a distance of 18.8 km (11.7 mi) and including 5.8 km (3.6 mi) of East Fork Big Ramey Creek; Beaver Creek for a distance of 18.8 km (11.7 mi) and including 11.2 km (7.0 mi) of Hand Creek and 5.8 km (3.6 mi) of Boulder Creek; Smith Creek for a distance of 10 km (6.2 mi) and including 3.8 km (2.4 mi) of Middle Fork Smith Creek and 4.9 km of South Fork Smith Creek; Logan Creek for a distance of 13.4 km (8.3 mi); and Belvidere Creek for a distance of 4.7 km (2.9 mi).

(C) Wilson Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 24.2 km (15.1 mi).

(D) Soldier Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 14.4 km (8.9 mi).

(E) Brush Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 10.7 km (6.6 mi).

(F) Sheep Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 16.3 km (10.1 mi).

(G) Camas Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 51 km (31.7 mi) and extending up the following tributaries: Yellow Jacket Creek for a distance of 36.5 km (22.7 mi) and including 6.5 km (4.0 mi) of Lake Creek, 13.6 km (8.4 mi) of Hoodoo Creek, 8.4 km (5.2 mi) of Little Jacket Creek, and 5.2 km (3.2 mi) of Shovel Creek; Woodtick Creek for a distance of 9.6 km (6 mi); West Fork Camas Creek for a distance of 14.7 km (3.1 mi) and including 7.8 km (4.8 mi) of Pole Creek; Silver Creek for a distance of 29.1 km (18.1 mi) and including 7.8 km (4.8 mi) of Arrastra Creek, 6.9 km (4.3 mi) of Birdseye Creek, and 3.5 km (2.2 mi) of Blue Fork Silver Creek; Castle Creek for a distance of 15.0 km (9.3 mi); Furnace Creek for a distance of 12.9 km (8.0 mi); White Goat Creek for a distance of 7.1 km (4.4 mi); South Fork Camas Creek for a distance of 13.2 km (8.2 mi); Fly Creek for a distance of 6.2 km (3.9 mi); and J Fell Creek for a distance of 8.5 km (5.3 mi).

(H) Norton Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 12.8 km (8.0 mi).

(I) Loon Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 54.5 km (33.9 mi) and extending up into the following tributaries: Cache Creek for a distance of 11.5 km (7.1 mi); Bear Creek for a distance of 4.3 km (2.7 mi); Cold Spring Creek for a distance of 5.8 km (3.6 mi); Jack Creek for a distance of 3.1 km (1.9 mi); Indian Creek for a distance of 8.7 km (5.4 mi); Cabin Creek for a distance of 10.6 km (6.6 mi); Rock Creek for a distance of 13.0 km (8.1 mi); Warm Spring Creek for a distance of 30.1 km (18.7 mi) and extending 2.1 km (1.3 mi) up Fir Creek, 2.8 km (1.7 mi) up Cat Creek, 4.5 km (2.8 mi) up MaHoney Creek, 3.2 km (2 mi) up Parker Creek, 5.5 km (3.4 mi) up Wickiup Creek, 7.0 km (4.3 mi) up Trapper Creek, 3.8 km (2.4 mi) up McKee Creek, 3.7 km (2.3 mi) up Rush Creek, and 1.4 km (0.9 mi) up South Fork Warm Spring Creek; Cottonwood Creek for a distance of 8.9 km (5.5 mi) and extending 4.3 km (2.7 mi) up South Fork Cottonwood Creek; Shell Creek for a distance of 3.6 km (2.2 mi); Rat Creek for a distance of 2.5 km (1.6 mi); Canyon Creek for a distance of 3.3 km (2.0 mi); Mayfield Creek for a distance of 5.1 km (3.3 mi) and extending 4.9 km (3.0 mi) up Nelson Creek, 11.2 km (7.0 mi) up West Fork Mayfield Creek, and 20.2 km (12.5 mi) up East Fork Mayfield Creek; Deer Creek for a distance of 3.3 km (2.0 mi); Trail Creek for a distance of 10.1 km (6.3 mi); and Pioneer Creek for a distance of 11 km (6.8 mi).

(J) Little Loon Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 18.5 km (11.5 mi) and extending up West Fork Little Loon Creek for 6.2 km.

(K) Little Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 3.9 km (2.4 mi).

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(L) Thomas Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 1.8 km (1.1 mi), and extending 3.8 km (2.4 mi) up West Fork Thomas Creek and 4.8 km (3 mi) up East Fork Thomas Creek.

(M) Marble Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 35.9 km (22.3 mi) and extending up into the following tributaries: Trail Creek for a distance of 15.5 km (9.6 mi); Dynamite Creek for a distance of 13.2 km (8.2 mi); Buck Creek for a distance of 6.9 km (4.3 mi); Little Cottonwood Creek for a distance of 6.5 km (4.0 mi); and Big Cottonwood Creek for a distance of 12.2 km (7.6 mi).

(N) Indian Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 32.7 km (20.3 mi) and extending up into the following tributaries: Middle Fork Indian Creek for a distance of 8.7 km (5.4 mi); Cultus Creek for a distance of 4.9 km (3.0 mi); Papoose Creek for a distance of 5.9 km (3.7 mi); Little Indian Creek for a distance of 7.7 km (4.8 mi); and Big Chief Creek for a distance of 8.2 km (5.5 mi).

(O) Pistol Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 29.4 km (18.3 mi) and extending up into the following tributaries: Little Pistol Creek for a distance of 22.1 km (13.7 mi) and including 6.0 km (3.7 mi) of Springfield Creek, 5.5 km (3.4 mi) of West Fork Springfield Creek, and 5.5 km (3.4 mi) of Browning Creek; Forty-Five Creek for a distance of 9.6 km (6.0 mi); Lugar Creek for a distance of 8.8 km (5.5 mi); and Thirty-Eight Creek for a distance of 5.4 km (3.4 mi).

(P) Rapid River from its confluence with the Middle Fork Salmon River upstream for a distance of 27.7 km (17.2 mi) and extending up into the following tributaries: Sheep Creek for a distance of 16.3 km (10.1 mi) and extending 5.1 km (3.2 mi) up North Fork Sheep Creek and 7.2 km (4.5 mi) up South Fork Sheep Creek; Sulfur Creek for a distance of 7.9 km (4.9 mi); Float Creek for a distance of 11.4 km (7.1 mi); Vanity Creek for a distance of 9.6 km (6 mi) and extending 5.4 km (3.4 mi) up Seafoam Creek, and 5.9 km (3.7 mi) up Baldwin Creek; and Duffield Creek for a distance of 10.9 km (6.8 mi).

(Q) Greyhound Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 8.3 km (5.2 mi).

(R) Soldier Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 12.6 km (7.8 mi).

(S) Elkhorn Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 11.9 km (7.4 mi) and extending 7.9 km (4.9 mi) up North Fork Elkhorn Creek, and 6.8 km (4.2 mi) up Middle Fork Elkhorn Creek.

(T) Sulphur Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 29.4 km (18.3 mi) and extending 6.3 km (3.9 mi) up North Fork Sulphur Creek.

(U) Dagger Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 12.4 km (7.7 mi).

(V) Marsh Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 22 km (13.7 mi) and extending up into the following tributaries: Lola Creek for a distance of 6.3 km (3.9 mi); Beaver Creek for a distance of 27.3 km (17.0 mi) and extending 6.5 km (4.0 mi) up Bear Creek and 11.4 km (7.1 mi) up Winnemucca Creek; Cape Horn Creek for a distance of 15.1 km (9.4 mi) and extending 11.5 km (7.1 mi) up Banner Creek; and Knapp Creek for a distance of 24.8 km (15.4 mi).

(W) Bear Valley Creek from its confluence with the Middle Fork Salmon River upstream for a distance of 49.7 km (30.9 mi) and extending up into the following tributaries: Fir Creek for a distance of 11 km (6.8 mi); Cold Creek for a distance of 6.8 km (4.2 mi); Wyoming Creek for a distance of 10 km (6.2 mi); Poker Creek for a distance of 4 km (2.5 mi); an unnamed Tributary entering Bear Valley Creek from the north approximately 0.5 km (0.3 mi) upstream of Poker Creek, for a distance of 2.6 km (1.6 mi); Elk Creek for a distance of 25.5 km (15.8 mi) and extending 9.8 km (6.1 mi) up Cook Creek, 13.6 km (8.6 mi) up Bearskin Creek, 6.3 km (3.9 mi) up Little Beaver Creek, 9.9 km (6.1 mi) up Porter Creek, 5.1 km (3.2 mi) up Little East Fork Elk Creek, 6.4 km (4 mi) up West Fork Elk Creek, 5.2 km (3.2 mi) up North Fork Elk Creek, and 10.2 km (6.3 mi) up East Fork Elk Creek; Pole Creek for a distance of 3.1 km (1.9 mi); Sack Creek for a distance of 8.9 km (5.5 mi); Cache Creek for a distance of 12.3 km (7.6 mi) and extending 3.2 km (2 mi) up an unnamed tributary that enters Cache Creek from the east approximately 4.5 km (2.8 mi) upstream of Bear Valley Creek; Sheeptrail Creek for a distance of 3.6 km (2.2 mi); Cub Creek for a distance of 4.2 km (2.6 mi); and Casner Creek for a distance of 4.4 km (2.7 mi).

(v) Middle Salmon-Panther CHSU

Approximately 1,097 km (682 mi) of stream is proposed as critical habitat in drainages associated with the middle section of the Salmon River, from its confluence with the Middle Fork Salmon River upstream to its confluence with the Pahsimeroi River. Landownership within the CHSU is approximately 79 percent Federal and 11 percent private. This CHSU supports 20 existing bull trout local populations, all of which are identified as essential for bull trout recovery in the Draft Recovery Plan (USFWS 2002). The stream segments proposed for critical habitat designation in this CHSU are described below.

(A) The Salmon River from its confluence with Chamberlain Creek upstream 208 km (129 mi) to its confluence with the Pahsimeroi River. This stretch of the Salmon River provides FMO habitat and connectivity between the bull trout local populations in this area. This stretch also provides a migratory corridor for movement from upstream portions of the Salmon River to the Snake River. All other stream segments in this CHSU are tributaries of the Salmon River and primarily provide spawning and rearing habitat.

(B) Horse Creek from its confluence with the Salmon River upstream 40.9 km 25.4 mi) to its headwaters and extending 4.7 km (2.9 mi) up Cayuse Creek, and 3.9 km (2.4 mi) up Woods Fork Horse Creek.

(C) Owl Creek from its confluence with the Salmon River upstream 23.1 km (14.3 mi).

(D) Panther Creek from its confluence with the Salmon River upstream 73.1 km (45.4 mi) and extending up into the following tributaries: Clear Creek for a distance of 27.7 km (17.2 mi); Beaver Creek for a distance of 15.5 km (9.6 mi); Trail Creek for a distance of 8.8 km (5.5 mi); Napias Creek for a distance of 23.5 km (14.6 mi) and extending 10.9 km (6.8 mi) up Moccasin Creek, 11.5 km (7.1 mi) up Phelan Creek, 12.6 km (7.8 mi) up Arnett Creek, and 8.3 km (5.2 mi) up Rapps Creek; Deep Creek for a distance of 19.5 km (12.1 mi) and extending 13.6 km (8.4 mi) up Little Deep Creek, and 3.2 km (2 mi) up an unnamed tributary that enters Deep Creek from the northeast approximately 11 km (6.8 mi) upstream from Panther Creek; West Fork Blackbird Creek from upstream of the tailings pond 9.1 km (5.7 mi) to its headwaters; Woodtick Creek for a distance of 14.1 km (8.8 mi); Musgrove Creek for a distance of 17.6 km (10.9 mi); Porphyry Creek for a distance of 11.5 km (7.1 mi) and extending 3.8 km (2.4 mi) up South Fork Porphyry Creek; Fourth of July Creek for a distance of 6.0 km (3.7 mi); Opal Creek for a distance of 3.3 km (2.0 mi); Weasel Creek for a distance of 2.8 km (1.7 mi); and Otter Creek for a distance of 5.7 km (3.5 mi).

(E) Pine Creek from its confluence with the Salmon River upstream 17.6 km (10.9 mi).

(F) Boulder Creek from its confluence with the Salmon River upstream 14.5 km (9.0 mi).

(G) Spring Creek from its confluence with the Salmon River upstream 10.6 km (6.6 mi).

(H) Squaw Creek from its confluence with the Salmon River upstream 14.9 km (9.3 mi).

(I) Indian Creek from its confluence with the Salmon River upstream 18.6 km (11.4 mi) and extending 5.6 km (3.5 mi) up West Fork Indian Creek, 7.6 km (4.7 mi) up Corral Creek, and 9.2 km (5.7 mi) up McConn Creek.

(J) North Fork Salmon River from its confluence with the Salmon River upstream 39.4 km (24.5 mi) and extending up into the following tributaries: Hughes Creek for a distance of 18.2 km (11.3 mi); Sheep Creek for a distance of 10.9 km (6.8 mi) and extending 5.2 km (3.2 mi) up South Fork Sheep Creek and 9.2 km (5.7 mi) up North Fork Sheep Creek; Dahlonega Creek for a distance of 12.7 km (7.9 mi); Twin Creek for a distance of 11.9 km (7.4 mi); Vine Creek for a distance of 4.4 km (2.7 mi); Pierce Creek for a distance of 6.7 km (4.2 mi); West Fork, North Fork Salmon River Creek for a distance of 3.1 km (1.9 mi); and Moose Creek for a distance of 5.0 km (3.1 mi).

(K) Fourth of July Creek from its confluence with the Salmon River upstream 17.8 km (11.1 mi).

(L) Carmen Creek from its confluence with the Salmon River upstream 24.2 km (15.0 mi) and extending 1.5 km (0.9 mi) up Freeman Creek.

(M) Williams Creek from its confluence with the Salmon River upstream 9.9 km (6.1 mi) and extending 8.2 km (5.1 mi) up South Fork Williams Creek.

(N) Twelvemile Creek from its confluence with the Salmon River upstream 14.1 km (8.8 mi).

(O) Iron Creek from its confluence with the Salmon River upstream 20.6 km (12.8 mi) and extending 11.7 km (7.3 mi) up North Fork Iron Creek, 8.8 km (up South Fork Iron Creek, and 7.7 km (4.8 mi) up West Fork Iron Creek.

(P) McKim Creek from its confluence with the Salmon River upstream 10.1 km (6.3 mi) and extending 9.8 km (6.1 mi) up North Fork McKim Creek.

(Q) Hat Creek from its confluence with the Salmon River upstream 17.6 km (10.9 mi) and extending 6.6 km (4.1 mi) up Big Hat Creek, 6.6 km (4.4 mi) up Middle Fork Hat Creek, and 7.2 km (4.5 mi) up North Fork Hat Creek.

(R) Allison Creek from its confluence with the Salmon River upstream 10.9 km (6.8 mi).

(S) Cow Creek from its confluence with the Salmon River upstream 15 km (9.3 mi).

(vi) Lemhi River CHSU

Approximately 1,232 km (766 mi) of stream is proposed as critical habitat in drainages associated with the Lemhi River. Landownership within the CHSU is approximately 65 percent Federal, 32 percent private, and 3 percent State. This CHSU supports six existing bull trout local populations and three potential local populations, all of which are identified as essential for bull trout recovery in the Draft Recovery Plan (USFWS 2002). The stream segments proposed for critical habitat designation in this CHSU are described below.

(A) The Lemhi River from its confluence with the Salmon River upstream 93.6 km (58.2 mi) to its headwaters (the confluence of Texas Creek and Eighteen Mile Creek). This segment provides FMO habitat, and provides connectivity between the local populations in the Lemhi watershed. All other stream segments in this CHSU are tributaries of the Lemhi River and primarily provide spawning and rearing habitat.

(B) Geerston Creek from the point where an irrigation ditch turns west towards Kirtley Creek, upstream 7.7 km (4.8 mi) in the irrigation ditch to the point of diversion then upstream in Geertson Creek a total of 15.7 km (9.6 mi) to the outlet of a headwater lake for a total of 23.4 km (14.5 mi).

(C) Bohannon Creek from its confluence with the Lemhi River upstream 16.4 km (10.2 mi).

(D) Kenney Creek from its confluence with the Lemhi River upstream 15.7 km (9.7 mi) and extending 7.0 km (4.3 mi) up East Fork Kenney Creek.

(E) Pattee Creek from its confluence with the Lemhi River upstream 21.0 km (13.0 mi).

(F) Hayden Creek from its confluence with the Lemhi River upstream 31.8 km (19.7 mi) and extends up into the following tributaries: Bear Valley Creek for a distance of 14.4 km (8.9 mi) and extending 8.0 km (5.0 mi) up Kadletz Creek, 8.5 km (5.3 mi) up Wright creek, 2.9 km (1.8 mi) up Short Creek, and 12.6 km (7.8 mi) up Deer Creek; East Fork Hayden Creek for a distance of 13.8 km (8.6 mi); Cooper Creek for a distance of 6.7 km (4.2 mi); West Fork Hayden Creek from its mouth upstream 1 km (0.6 mi) and Bray Creek for a distance of 5.2 km (3.3 mi).

(G) Mill Creek from the point where it is diverted for irrigation upstream 17.9 km (11.1 mi) to where it flows from a lake.

(H) Big Springs Creek from its confluence with the Lemhi River upstream to its source and including historic portions of the stream channel now used to divert irrigation water for a total of 18.8 km (11.7 mi).

(I) Little Eight Mile Creek from its confluence with the Lemhi River upstream 13.1 km (8.1 mi).

(J) Big Eight Mile Creek from its confluence with the Lemhi River upstream 24.1 km (15.0 mi) and extending 4.1 km (2.5 mi) up Dairy Creek.

(K) Big Timber Creek from its confluence with the Lemhi River upstream 34.1 km (21.2 mi) and extending 6.7 km (4.2 mi) up Little Timber Creek and 10.2 km (6.3 mi) of Middle Fork Little Timber Creek.

(L) Canyon Creek from its confluence with the Lemhi River upstream 24.2 km (15.0 mi) and extending up the following tributaries: Cruikshank Creek for a distance of 11.3 km (7.0 mi); and unnamed segments from four springs (Hood Gulch) from where it is diverted for irrigation then upstream about 2 km (1.2 mi) in a single waterway. Then Hood Gulch is spread out in a series of four springs/channels that each flow for a few kilometers up to their spring source. The entire network of springs and channels to the point of diversion totals 19.8 km (12.3 mi).

(M) Eighteen Mile Creek from its confluence with the Lemhi River upstream 43.2 km (26.8 mi) and extending up the following tributaries: Deer Creek, a tributary to Texas Creek, for a distance of 9.3 km (5.8 mi); Hawley Creek for a distance of 14.9 km (9.3 mi) to the point where Reservoir Creek and Big Bear Creek meet, and extending up Reservoir Creek for 9.1 km (5.6 mi), up Big Bear Creek for 11.1 km (6.9 mi), and up Meadow Creek for 2.8 km (1.7 mi).

(vii) Opal Lake CHSU

Proposed critical habitat in the Opal Lake CHSU consists of 6 ha (14 ac) Opal Lake and 4 km (2.5 mi) of upper Opal Creek that feeds into the lake. The CHSU is entirely on USFS land and supports one existing bull trout local population that is identified as essential for bull trout recovery in the Draft Recovery Plan (USFWS 2002). Opal Lake has no known outlet, so this bull trout population is isolated from other populations. Good spawning habitat is located upstream of the lake in upper Opal Creek, however, positive identification of redds has been unavailable to date (B. Roberts, USFS, *in litt.*, 2000a).

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(viii) Lake Creek CHSU

Proposed critical habitat in the Lake Creek CHSU consists of 10.6 km (6.6 mi) of Lake Creek, 4.3 km (2.7 mi) of North Fork Lake Creek, and Williams Lake (72 ha (177 ac)). This unit supports one existing bull trout local population that is identified as essential for recovery in the Draft Recovery Plan (USFWS 2002). Williams Lake has no known surface outlet, so this bull trout population is isolated from other populations. Good spawning habitat is located upstream of the lake in Lake Creek, and its north fork and bull trout have been observed in these streams (T. Curet, IDFG, pers. comm., 2002). Landownership in this CHSU is approximately 86 percent Federal and 13 percent private.

(ix) Pahsimeroi River CHSU

Approximately 362 km (225 mi) of stream is proposed as critical habitat in drainages associated with the Pahsimeroi River. Landownership within the CHSU is 66 percent Federal, 31 percent private, and 3 percent State. This CHSU supports eight existing bull trout local populations, all of which are identified as essential for bull trout recovery in the Draft Recovery Plan (USFWS 2002). The stream segments proposed for critical habitat designation in this CHSU are described below.

(A) The Pahsimeroi River from its confluence with the Salmon River upstream 85 km (53.3 mi) to its headwaters. This segment provides FMO habitat, and provides connectivity between the local populations in the Pahsimeroi watershed. All other stream segments in this CHSU are tributaries of the Pahsimeroi River and are primarily spawning and rearing habitat.

(B) Morgan Creek from its confluence with the Pahsimeroi River upstream 8.7 km (5.4 mi) and extending 9.7 km (6.0 mi) up the North Fork Morgan Creek and 6.8 km (4.2 mi) up the East Fork Morgan Creek.

(C) Tater Creek from its confluence with the Pahsimeroi River upstream 13.8 km (8.6 mi) and including the irrigation ditches currently used to divert water at rkm 8.6 (rmi 5.3).

(D) Morse Creek from its confluence with the Pahsimeroi River upstream 20 km (12.4 mi).

(E) Falls Creek from its confluence with the Pahsimeroi River upstream 24.1 km (15.0 mi).

(F) Patterson Creek from its confluence with the Pahsimeroi River upstream 43.2 km (26.8 mi) and extending 5.2 km (3.2 mi) up Inyo Creek.

(G) Big Creek from its confluence with the Pahsimeroi River upstream 19.9 km (12.4 mi) to the confluence of North Fork Big Creek and South Fork Big Creek, and extending 14.2 km (8.8 mi) up the South Fork and 13.4 km (8.3 mi) up the North Fork.

(H) Goldberg Creek from its confluence with the Pahsimeroi River upstream 27.3 km (17.0 mi) to the confluence of Big Gulch and Ditch Creeks and extending 11.2 km (7.0 mi) up Big Gulch and 10.7 km (6.6 mi) up Ditch Creek.

(I) Burnt Creek from its confluence with the Pahsimeroi River upstream 17.2 km (10.7 mi) to the East Fork Burnt Creek confluence and extending 4.0 km (2.5 mi) up East Fork Burnt Creek.

(J) Mahogany Creek from its confluence with the Pahsimeroi River upstream 14.7 km (9.1 mi).

(K) West Fork Pahsimeroi River from its confluence with the Pahsimeroi River upstream 9.1 km (5.7 mi).

(L) East Fork Pahsimeroi River from its confluence with the Pahsimeroi River upstream 10.8 km (6.7 mi).

(x) Upper Salmon River CHSU

Approximately 1,220 km (758 mi) of stream is proposed as critical habitat in drainages associated with the Upper Salmon River. Landownership within the CHSU is approximately 79 percent Federal and 14 percent private. This CHSU supports 18 existing bull trout local populations, all of which are identified as essential for bull trout recovery in the Draft Recovery Plan (USFWS 2002). The stream segments proposed for critical habitat designation in this CHSU are described below.

(A) The Salmon River from its confluence with the Pahsimeroi River upstream 195 km (121 mi) to its headwaters. This stretch of the Salmon River primarily provides foraging and overwinter habitat, and connectivity between the bull trout local populations in this area, as well as a migratory corridor for movement to downstream portions of the Salmon River. The uppermost 31 km (19 mi) above the confluence with Alturas Lake Creek also supports spawning and rearing. All other stream segments in this CHSU are tributaries of the Salmon River and primarily provide spawning and rearing habitat.

(B) Morgan Creek from its confluence with the Salmon River upstream 31.7 km (19.7 mi) to its headwaters and extending up the following tributaries: West Fork Morgan Creek for a distance of 14.2 km (8.8 mi); Lick Creek for a distance of 9.4 km (5.8 mi); Van Horn Creek for a distance of 9.6 km (6.0 mi); Corral Creek for a distance of 12.7 km (7.9 mi) and extending 5.5 km (3.4 mi) up an unnamed tributary that enters Corral Creek from the east; and Alder Creek for a distance of 4.4 km (2.7 mi).

(C) Challis Creek from its confluence with the Salmon River upstream 22.6 km (14.0 mi) to its headwaters and extending up the following tributaries: Mill Creek for a distance of 23.9 km (14.8 mi); Bear Creek for a distance of 8.9 km (5.5 mi); and Lodgepole Creek for a distance of 6.4 km (4.0 mi).

(D) Garden Creek from its confluence with the Salmon River upstream 22.6 km (14.0 mi) to its headwaters.

(E) East Fork Salmon River from its confluence with the Salmon River upstream 58.2 km (36.1 mi) to its headwaters and extending up the following tributaries: Herd Creek for a distance of 14.3 km (8.9 mi) and extending 4.2 km (2.6 mi) up East Pass Creek, 10 km (6.2 mi) up East Fork Herd Creek, 9.4 km (5.8 mi) up West Fork Herd Creek and 2.8 km (1.7 mi) up Meridian Creek; Big Boulder Creek for a distance of 18.9 km (11.7 mi); Little Boulder Creek for a distance of 10.1 km (6.3 mi); Wickiup Creek for a distance of 10.8 km (6.7 mi); Germania Creek for a distance of 23.4 km (14.5 mi) and extending up Chamberlain Creek for 8.3 km (5.2 mi); Bowery Creek for a distance of 8.0 km (5 mi) and extending 6.5 km (4.0 mi) up Long Tom Creek and 3.9 km (2.4 mi) up North Fork Bowery Creek; West Pass Creek for a distance of 13.5 km (8.4 mi) and extending 4.8 km (3.0 mi) up Roaring Creek; Ibex Creek for a distance of 6.1 km (3.8 mi); West Fork East Fork Salmon River for a distance of 8.6 km (5.3 mi); and South Fork East Fork Salmon River for a distance of 10.1 km (6.3 mi).

(F) Kinnikinic Creek from its confluence with the Salmon River upstream 13.8 km (8.6 mi) to its headwaters.

(G) Squaw Creek from its confluence with the Salmon River upstream 25.7 km (16.0 mi) to its headwaters and extending 8.3 km (5.2 mi) up Martin Creek and 5.2 km (3.2 mi) up Willow Creek.

(H) Thompson Creek from its confluence with the Salmon River upstream 19.6 km (12.2 mi) to its headwaters.

(I) Slate Creek from its confluence with the Salmon River upstream 13.3 km (8.3 mi) to its headwaters and extending 8.4 km (5.2 mi) up Silver Rule Creek and 5.9 km (3.7 mi) up Livingston Creek.

(J) Warm Springs Creek from its confluence with the Salmon River upstream 34.4 km (21.4 mi) to its headwaters and extending 9.1 km (5.7 mi) up Martin Creek, and 1.2 km (0.7 mi) up Pigtail Creek.

(K) Yankee Fork Salmon River from its confluence with the Salmon River upstream 46.7 km (29.0 mi) to its headwaters and extending up the following tributaries: West Fork Yankee Fork for a distance of 21.1 km (13.1 mi) and extending 6.5 km (4.0 mi) up Deadwood Creek, 12.7 km (7.9 mi) up Lightning Creek, and 8.3 km (5.2 mi) up Cabin Creek; Jordan Creek for a distance of 12.6 km (7.8 mi); Fivemile Creek for a distance of 7.6 km (4.7 mi); Sixmile Creek for a distance of 7 km (4.3 mi); Eightmile Creek for a distance of 10.8 km (6.7 mi); Ninemile Creek for a distance of 4.5 km (2.8 mi); Tenmile Creek for a distance of 6.7 km (4.2 mi); Elevenmile Creek for a distance of 4.6 km (2.9 mi); Twelvemile Creek for a distance of 5.8 km (3.6 mi); and McKay Creek for a distance of 7.5 km (4.7 mi) and extending 4.4 km (2.7 mi) up an unnamed tributary that enters McKay Creek from the south.

(L) Basin Creek from its confluence with the Salmon River upstream 23.4 km (14.5 mi) to its headwaters and extending up the following tributaries: East Basin Creek for a distance of 10.1 km (6.3 mi) and extending 3.3 km (2.0 mi) up an unnamed tributary that enters East Basin from the northwest; Short Creek for a distance of 3 km (1.9 mi); and Sunday Creek for a distance of 5.7 km (3.5 mi).

(M) Valley Creek from its confluence with the Salmon River upstream 39.6 km (24.6 mi) to a headwater lake and extending up the following tributaries: Goat Creek for a distance of 8.3 km (5.2 mi); Iron Creek for a distance of 10.1 km (6.3 mi); Crooked Creek for a distance of 6.1 km (3.8 mi); Job Creek for a distance of 0.1 km (0.06 mi); Elk Creek for a distance of 20.2 km (12.5 mi); Meadow Creek for a distance of 4 km and extending 8.8 km (5.5 mi) up Trap Creek; East Fork Valley Creek for a distance of 7.5 km (4.7 mi); and Prospect Creek for a distance of 4.7 km (2.9 mi).

(N) Redfish Lake Creek from its confluence with the Salmon River upstream 4.2 km (2.6 mi) to Little Redfish Lake and including: Little Redfish Lake (26 ha (64 ac)); Redfish Lake (612 ha (1,512 ac)); Redfish Lake Creek for 0.2 km (0.1 mi) upstream of Redfish Lake; and Fishhook Creek for a distance of 6.6 km (4.1 mi).

(O) Fourth of July Creek from its confluence with the Salmon River upstream 19.9 km (12.4 mi) to its headwaters.

(P) Alturas Lake Creek from its confluence with the Salmon River upstream 12.5 km (7.8 mi) to Alturas Lake and including the following tributaries and lakes: Yellowbelly Creek for 3.5 km (2.2) from Alturas Lake Creek upstream to Yellowbelly Lake and for 5.4 km (3.4 mi) from Yellowbelly Lake upstream to Farley Lake outlet; Yellowbelly Lake (79 ha (195 ac)); Pettit Lake Creek for 1.9 km (1.2 mi) between Alturas Lake Creek and Pettit Lake and for 3.1 km (1.9 mi) upstream of Pettit Lake; Pettit Lake (152 ha (376 ac)); Cabin Creek for 4.0 km (2.5 mi) from Alturas Lake Creek to its headwaters; Alturas Lake (334 ha (825 ac)); Alturas Lake Creek from Alturas Lake upstream 13.4 km (8.3 mi) to its headwater; Alpine Creek for 8.6 km (5.3 mi) from Alturas Lake Creek to its headwaters; Pole Creek from its confluence with the Salmon River upstream 16.9 km (10.5 mi) to its headwaters.

(Q) Beaver Creek from its confluence with the Salmon River upstream 14.4 km (8.9 mi) to its headwaters.

(R) Smiley Creek from its confluence with the Salmon River upstream 16.9 km (10.5 mi) to its headwaters.

(S) Frenchman Creek from its confluence with the Salmon River upstream 11.5 km (7.1 mi) to its headwaters.

(21) Unit 17: Southwest Idaho River Basins

The Southwest Idaho Unit includes a total of approximately 2,792 km (1,735 mi) of stream in the Boise, Payette, and Weiser River basins (Ada, Adams, Boise, Camas, Canyon, Elmore, Gem, Payette, Valley, and Washington counties) proposed for designation as critical habitat. The Boise River basin contains the Arrowrock, Anderson Ranch, and Lucky Peak critical habitat CHSUs. The Payette River Basin contains the upper South Fork Payette River, Deadwood River, Middle Fork Payette River, North Fork Payette River and Squaw Creek CHSUs; and the Weiser River basin contains the Weiser River CHSU. All proposed critical habitat designations are associated with populations of bull trout identified as essential to recovery in the Draft Recovery Plan (USFWS 2002), and are essential to the conservation of the species.

(i) Anderson Ranch CHSU

This CHSU includes the South Fork Boise River watershed upstream of Anderson Ranch Dam. There are 15 local populations identified within this CHSU, all of which are considered essential for recovery of bull trout (USFWS 2002). Approximate landownership is as follows: 87 percent Federal, 11 percent private, 2 percent State. Proposed critical habitat in this CHSU includes the 1,865 ha (4,608 ac) Anderson Ranch Reservoir. Critical habitat within the Anderson Ranch CHSU includes the stream segments and water body described below that provide FMO habitat, and allow for the maintenance of genetic exchange by local and potential local populations both within and between CHSUs.

(A) South Fork Boise River from the Anderson Ranch CHSU boundary 8.7 km (5.4 mi) downstream of Anderson Ranch Reservoir upstream to and including the Reservoir, and upstream 77.6 km (48.2 mi) to the point 6.4 km (4.0 mi) above the confluence with Bear Creek is migratory habitat (Partridge *et al.* 2000), and the 6.4 km reach above Bear Creek is suspected to support bull trout spawning and early rearing (C. Reighn, USFWS, *in litt.*, 2002). Dog Creek from the confluence with South Fork Boise River upstream 9.0 km (5.6 mi) to the headwaters is spawning and early rearing habitat (Corley 1997; Boise National Forest (BNF), unpublished 2002).

(B) Feather River from the confluence with South Fork Boise River upstream 10.3 km (6.4 mi) to the confluence of Feather River and Elk Creek is suspected to provide bull trout FMO habitat, as well as to support bull trout spawning and early rearing (C. Reighn, USFWS, *in litt.*, 2002). The Feather River is essential to providing for the recovered distribution of bull trout (USFWS 2002).

(C) Elk Creek from the confluence with the Feather River upstream 11.4 km (7.1 mi) to the headwaters of Elk Creek is spawning and early rearing habitat (Corley 1997; BNF, unpublished 2002). East Fork Elk Creek from the confluence with Elk Creek upstream 4.7 km (2.9 mi) to the headwaters of East Fork Elk Creek is spawning and early rearing habitat (C. Reighn, USFWS, *in litt.*, 2002).

(D) Willow Creek from the confluence with the South Fork Boise River upstream 19.3 km (12.0 mi) to the headwaters of Willow Creek is spawning and early rearing habitat (Corley 1997; Partridge *et al.* 2000; BNF, unpublished 2002).

(E) Big Water Gulch from the confluence with the South Fork Boise River upstream 10.2 km (6.3 mi) to the headwaters of Big Water Gulch is spawning and early rearing habitat (Corley 1997; BNF, unpublished 2002).

(F) Deadwood Creek from the confluence with the South Fork Boise River upstream 6.9 km (4.3 mi) to the headwaters of Deadwood Creek is known to support bull trout spawning and early rearing (Corley 1997; BNF, unpublished 2002).

(G) Skeleton Creek from the confluence with South Fork Boise River upstream 15.0 km (9.3 mi) to the

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headwaters of Skeleton Creek (Corley 1997; Partridge *et al.* 2000; BNF, unpublished 2002), Burnt Log Creek from the confluence with Skeleton Creek upstream 4.0 km (2.5 mi) (Partridge *et al.* 2000), West Fork Skeleton Creek from the confluence with Skeleton Creek upstream 5.0 km (3.1 mi) to the headwaters (Corley 1997; BNF, unpublished 2002), and East Fork Skeleton Creek from the confluence with West Fork Skeleton Creek upstream 4.8 km (3.0 mi) (D. Kenney, USFS, *in litt.*, 2002) are known to support bull trout spawning and early rearing.

(H) Boardman Creek from the confluence with South Fork Boise River upstream 14.4 km (8.9 mi) to the headwaters is spawning and early rearing habitat (Corley 1997; BNF, unpublished 2002; (Partridge *et al.* 2000; D. Kenney, *in litt.*, 2002). Smoky Dome Canyon from the confluence with Boardman Creek upstream 5.3 km (3.3 mi) to the headwaters is spawning and early rearing habitat (Corley 1997; BNF, unpublished 2002; D. Kenney, *in litt.*, 2002).

(I) Big Smoky Creek from the confluence with South Fork Boise River upstream 18.1 km (11.3 mi) to the confluence of Big Smoky Creek and North Fork Big Smoky Creek is known to provide bull trout FMO habitat (Partridge *et al.* 2000). Salt Creek from the confluence with Big Smoky Creek upstream 8.4 km (5.2 mi) to the headwaters is bull trout spawning and early rearing habitat (BNF, unpublished 2002). Little Smoky Creek from the confluence with Big Smoky Creek upstream 9.5 km (5.9 mi) to the confluence of Little Smoky Creek and Five Points Creek is known to provide bull trout FMO habitat (Sawtooth National Forest, *in litt.*, 2001; D. Kenney, *in litt.*, 2002), and from this point upstream 25.4 km (15.8 mi) to the headwaters is spawning and early rearing habitat (D. Kenney, *in litt.*, 2002). Carrie Creek from the confluence with Little Smoky Creek upstream 11.4 km (7.1 mi) to the headwaters is essential to providing for the recovered distribution of bull trout (USFWS 2002), and is also recently discovered to support bull trout spawning and early rearing (D. Kenney, *in litt.*, 2002). Big Peak Creek from the confluence with Big Smoky Creek upstream 7.4 km (4.6 mi) to the headwaters is essential to providing for the recovered distribution of bull trout (USFWS 2002), and has also recently been identified as supporting bull trout spawning and early rearing (Partridge *et al.* 2000). Big Smoky Creek from the confluence with North Fork Big Smoky Creek upstream 17.3 km (10.8 mi) to the headwaters is spawning and early rearing habitat (Partridge *et al.* 2000). North Fork Big Smoky Creek from the confluence with Big Smoky Creek upstream 4.4 km (2.7 mi) to the confluence of North Fork Big Smoky Creek and Snowslide Creek is FMO habitat (Partridge *et al.* 2000; D. Kenney, *in litt.*, 2002). Snowslide Creek from the confluence with North Fork Big Smoky Creek upstream 4.2 km (2.6 mi) to the headwaters is spawning and early rearing habitat (Partridge *et al.* 2000). Bluff Creek from the confluence with Big Smoky Creek upstream 7.0 km (4.4 mi) to the headwaters of Bluff Creek is known to support bull trout spawning and early rearing (Corley 1997; BNF, unpublished 2002). West Fork Big Smoky Creek from the confluence with Big Smoky Creek upstream 10.7 km (6.7 mi) to the headwaters of West Fork Big Smoky Creek is spawning and early rearing habitat (Corley 1997; Partridge *et al.* 2000; BNF, unpublished 2002). Loggy Creek from the confluence with West Fork Big Smoky Creek upstream 4.5 km (2.8 mi) to the headwaters is spawning and early rearing habitat (Partridge *et al.* 2000; D. Kenney, *in litt.*, 2002).

(J) Bear Creek from the confluence with South Fork Boise River upstream 10.1 km (6.3 mi) to the headwaters, and Goat Creek from the confluence with Bear Creekupstream 2.8 km (1.8 mi) to the headwaters are bull trout spawning and early rearing habitat (Corley 1997; Partridge *et al.* 2000; BNF, unpublished 2002).

(K) Emma Creek from the confluence with South Fork Boise River upstream 9.5 km (5.9 mi) to the headwaters of Emma Creek is known to support bull trout spawning and early rearing (Corley 1997; Partridge *et al.* 2000; BNF, unpublished 2002; D. Kenney, *in litt.*, 2002). An unnamed creek from its confluence with Emma Creek (4.5 km (2.8 mi) upstream of the confluence of Emma Creek with South Fork Boise River) upstream 1.8 km (1.1 mi) to its headwaters is known to support bull trout spawning and early rearing (BNF, *in litt.* 2002; Corley 1997).

(L) Ross Fork Creek from the confluence with South Fork Boise River upstream 6.0 km (3.7 mi) to the headwaters, Little Bear Creek from the confluence with Ross Fork Creek upstream 5.4 km (3.3 mi) to the headwaters (Partridge *et al.* 2000; D. Kenney, *in litt.*, 2002), and Bass Creek from the confluence with Ross Fork Creek upstream 6.5 km (4.0 mi) to the headwaters are spawning and early rearing habitat (Corley 1997; Partridge *et al.* 2000; BNF, unpublished 2002). South Fork Ross Fork Creek from the confluence with Ross Fork Creek upstream 8.4 km (5.2 mi) to the headwaters (Corley 1997; BNF, unpublished 2002), and North Fork Ross Fork Creek from the confluence with Ross Fork Creek upstream 7.6 km (4.7 mi) to the headwaters are spawning and early rearing habitat (Corley 1997).

(M) Johnson Creek from the confluence with South Fork Boise River upstream 11.9 km (7.4 mi) to the headwaters, and Vienna Creek from the confluence with Johnson Creek upstream 6.1 km (3.8 mi) to the headwaters are bull trout spawning and early rearing habitat (Corley 1997; Partridge *et al.* 2000; BNF, unpublished 2002; D. Kenney, *in litt.*, 2002).

(ii) Arrowrock CHSU

The Arrowrock CHSU includes the Boise River watersheds upstream of Arrowrock Dam, including the North Fork Boise River, Middle Fork Boise River, and South Fork Boise River downstream of Anderson Ranch Dam. There are 15 local populations identified within the Arrowrock CHSU. Landownership in this CHSU is approximately as follows: 91 percent Federal (USFS, BLM, BOR), 6 percent private, and 3 percent State. Proposed critical habitat includes Arrowrock Reservoir (3,489 ha (8,617 ac).

(A) Arrowrock Reservoir provides bull trout FMO habitat (Flatter 1998; Salow 2001), as does the South Fork Boise River from Arrowrock Reservoir upstream 39.0 km (24.2 mi) to Anderson Ranch Dam (Flatter 1998).

(B) Rattlesnake Creek from the confluence of Rattlesnake Creek and South Fork Boise River upstream 26.4 km (16.4 mi) to the headwaters (Flatter 1998; BNF, unpublished 2002), and Russell Gulch from the confluence of Russell Gulch and Rattlesnake Creek upstream 4.0 km (2.5 mi) to the headwaters comprise bull trout spawning and early rearing habitat (Steed *et al.* 1998).

(C) Sheep Creek from the confluence of Sheep Creek and the Boise River upstream 6.9 km (4.3 mi) to the confluence of Sheep Creek and Devils Creek is FMO habitat (Flatter 1998). Sheep Creek from the confluence of Sheep Creek and Devils Creek upstream to the headwaters is spawning and early rearing habitat (BNF, unpublished 2002). Devils Creek from the confluence of Devils Creek and Sheep Creek upstream 5.88 km (3.8 mi) to the headwaters is known to support bull trout spawning and early rearing (Steed *et al.* 1998). East Fork Sheep Creek from the confluence of East Fork Sheep Creek and Sheep Creek upstream 5.76 km (3.6 mi) to the headwaters is spawning and early rearing habitat (Steed *et al.* 1998).

(D) Middle Fork Boise River from the confluence with the Boise River upstream 55.1 km (34.2 mi) is bull trout FMO habitat (Flatter 1998; Salow 2001). Middle Fork Boise River from the confluence of Middle Fork Boise River and Yuba River upstream 24.1 km (15.0 mi) to the headwaters. This reach contains primary constituent elements for bull trout (BNF, unpublished 2002), has recently been occupied by bull trout due to the installation of a fish ladder completed in 1999 (B. Flatter, IDFG, pers. comm., 2002), and provides for population expansion essential to conservation of the species (USFWS 2002).

(E) Roaring River from the confluence of Roaring River and Middle Fork Boise River upstream to the headwaters support bull trout spawning and early rearing (Flatter 1998; BNF, unpublished 2002). East Fork Roaring River from the confluence of East Fork Roaring River and Roaring River upstream 12.0 km (7.4 mi) to the headwaters (Flatter 1998; BNF, unpublished 2002), and Middle Fork Roaring River from the confluence of Middle Fork Roaring River and East Fork Roaring River upstream 8.6 km (5.4 mi) to the headwaters constitute spawning and early rearing habitat (Steed *et al.* 1998).

(F) Buck Creek from the confluence of Buck Creek and the Middle Fork Boise River upstream 11.6 km (7.2 mi) to the headwaters is spawning and early rearing habitat (Steed *et al.* 1998).

(G) Black Warrior Creek from the confluence of Black Warrior Creek and the Middle Fork Boise River upstream 18.8 km (11.6 mi) (BNF, unpublished 2002), and West Warrior Creek from the confluence of West Warrior Creek and Black Warrior Creek upstream 8.6 km (5.3 mi) to the headwaters (Steed *et al.* 1998) are spawning and early rearing habitats. An unnamed creek (SI–A–17) from the confluence with Black Warrior Creek (8.8 km (5.4 mi) upstream of the confluence of Black Warrior Creek with Middle Fork Boise River) upstream 3.0 km (1.9 mi) to the headwaters is spawning and early rearing habitat (BNF, unpublished 2002).

(H) Bald Mountain Creek from the confluence with the Middle Fork Boise River upstream 10.0 km (6.2 mi) to the headwaters is essential habitat for expanding distribution of bull trout (USFWS 2002), and is also recently known to support bull trout spawning and early rearing (BNF, unpublished 2002).

(I) Queens River from the confluence of Queens River and the Middle Fork Boise River upstream 23.4 km (14.6 mi) to the headwaters (Flatter 1998; Steed *et al.* 1998; BNF, unpublished 2002), Little Queens River from the confluence of Little Queens River and Queens River upstream 14.8 km (9.2 mi) to the headwaters (Flatter 1998; BNF, unpublished 2002), and Scott Creek from the confluence of Scott Creek and Little Queens River upstream 2.5 km (1.5 mi) to the headwaters (Steed *et al.* 1998), are known to support bull trout spawning and early searing. Tripod Creek from the confluence of Tripod Creek and Little Queens River upstream 3.1 km (1.9 mi) to the headwaters (Steed *et al.* 1998), and Scenic Creek from the confluence of Scenic Creek and Little Queens River upstream 4.2 km (2.6 mi) to the headwaters (BNF, unpublished 2002) support bull trout spawning and early rearing.

(J) Yuba River from the confluence of the Yuba River and Middle Fork Boise River upstream 14.0 km (8.7 mi) to the headwaters, Decker Creek from the confluence of Decker Creek and the Yuba River upstream 12 km (7.5 mi) to the headwaters, and Grouse Creek from the confluence of Grouse Creek and Decker Creek upstream 5.7 km (3.5 mi) upstream to the headwaters are known to support bull trout spawning and early rearing (BNF, unpublished 2002). Sawmill Creek from the confluence of Sawmill Creek and Grouse Creek upstream 6.5 km (4.1 mi) to the headwaters is also spawning and early rearing habitat (BNF, unpublished 2002).

(K) Trail Creek from the confluence with the Yuba River upstream 7.5 km (4.7 mi) to the headwaters is known to support bull trout spawning and early rearing (BNF, unpublished 2002).

(L) Mattingly Creek from the confluence with the Middle Fork Boise River upstream 9.7 km (6.0 mi) to the headwaters is known to contain primary constituent elements as identified for bull trout (BNF, unpublished 2002) and is essential to provide for the conservation of bull trout (USFWS 2002).

(M) North Fork Boise River from the confluence with the Middle Fork Boise River upstream 57.8 km (35.9 mi) to the confluence with Johnson Creek provides FMO habitat (Flatter 1998; BNF, unpublished 2002). Rabbit Creek from the confluence with the North Fork Boise River upstream 1.3 km (0.8 mi) to the confluence with First Creek and Hungarian Creek from the confluence with the North Fork Boise River upstream 0.8 km (0.5 mi) provide thermal refugia habitat for migratory bull trout in the North Fork Boise River (Flatter 1998; BNF, unpublished 2002).

(N) North Fork Boise River from the confluence with Johnson Creek upstream 7.0 km (4.3 mi) provides FMO and spawning and early rearing habitat (Flatter 1998; BNF, unpublished 2002); from the confluence of the North Fork Boise River and Big Silver Creek upstream to the headwaters supports spawning and early rearing (BNF, unpublished 2002). Crooked River from the confluence with the North Fork Boise River upstream 26.5 km (16.4 mi) to the confluence of Crooked River and an unnamed creek 2.5 km (1.6 mi) upstream of Willow Creek, and Ski Creek from the confluence with the Crooked River upstream 3.6 km (2.2 mi) to the headwaters provide habitat essential to provide for the recovery of bull trout (USFWS 2002), and are also recently known to provide bull trout FMO habitat, as well as to support spawning and early rearing (Salow 2001; BNF, unpublished 2002). Crooked River from the confluence with an unnamed creek 2.5 km (1.6 mi) upstream of Willow Creek upstream to the headwaters provides spawning and early rearing habitat (Salow 2001; BNF, unpublished 2002). Pikes Fork Creek from the confluence with the Crooked River upstream 14.1 km (8.8 mi) to the headwaters and Banner Creek from the confluence with Pikes Fork Creek upstream 1.9 km (1.2 mi) are recently known to support bull trout spawning and early rearing (Steed *et al.* 1998; BNF, unpublished 2002) and provide habitat essential for the conservation of bull trout (USFWS 2002).

(O) Bear River from the confluence with the North Fork Boise River upstream 6.2 km (3.8 mi) to the confluence of Bear River and Bear Creek provides both FMO and spawning and early rearing habitat (Flatter 1998). Bear River from the confluence with Bear Creek upstream 15.9 km (9.9 mi), and Louise Creek from the confluence with Bear River upstream 3.4 km (2.1 mi) to the headwaters, support bull trout spawning and early rearing (Steed *et al.* 1998; BNF, unpublished 2002). Cub Creek from the confluence with the Bear River upstream 4.8 km (3.0 mi) to the headwaters, and South Fork Cub Creek from the confluence with Cub Creek upstream 3.5 km (2.2 mi) to the headwaters, are known to support bull trout spawning and early rearing (Steed *et al.* 1998; Salow 2001; BNF, unpublished 2002). Bear Creek, from the confluence with the Bear River upstream 13.2 km (8.2 mi) to the headwaters, provides spawning and early rearing habitat (Salow 2001; BNF, unpublished 2002).

(P) Trail Creek from the confluence with the North Fork Boise River

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upstream approximately 0.8 km (0.5 mi) provides thermal refugia for migratory bull trout in the North Fork Boise River (BNF, unpublished 2002).

(Q) Lodgepole Creek from the confluence with the North Fork Boise River upstream 5.6 km (3.5 mi) to the headwaters provides spawning and early rearing habitat (Flatter 1998; Salow 2001; BNF, unpublished 2002).

(R) Johnson Creek from the confluence with the North Fork Boise River upstream 20.0 km (12.4 mi) to the headwaters provides spawning and early rearing habitat (Flatter 1998; Salow 2001; BNF, unpublished 2002).

(S) Big Silver Creek from the confluence with the North Fork Boise River upstream 7.0 km (4.3 mi) to the headwaters, and Little Silver Creek from the confluence with Big Silver Creek upstream 4.1 km (2.6 mi) to the headwaters, provide spawning and early rearing habitat (Salow 2001; BNF, unpublished 2002).

(T) Cow Creek from the confluence with the North Fork Boise River upstream 7.5 km (4.6 mi) to the headwaters is bull trout spawning and early rearing habitat (BNF, unpublished 2002).

(U) Ballentyne Creek from the confluence with the North Fork Boise River upstream 9.9 km (6.2 mi) to the headwaters of Ballentyne Creek provides spawning and early rearing habitat (Flatter 1998; Salow 2001; BNF, unpublished 2002).

(V) West Fork Creek from the confluence with the North Fork Boise River upstream 3.3 km (2.1 mi) to the headwaters supports bull trout spawning and early rearing (BNF, unpublished 2002).

(W) McLeod Creek from the confluence with the North Fork Boise River upstream 5.9 km (3.6 mi) to the headwaters provides spawning and early rearing habitat (Flatter 1998; BNF, unpublished 2002).

(X) McPhearson Creek from the confluence with the North Fork Boise River upstream 5.5 km (3.4 mi) to the headwaters provides bull trout spawning and early rearing habitat (BNF, unpublished 2002).

(iii) Lucky Peak CHSU

The Lucky Peak CHSU includes Lucky Peak Reservoir and tributaries entering it, namely the Mores Creek watershed. Migratory bull trout in Lucky Peak Reservoir are entrained from Arrowrock Dam, and some may also be produced in the Mores Creek watershed. Bull trout were located in Mores Creek in 2000 (T. Burton, BNF, *in litt.*, 2000) and this is the only known local population in this CHSU. Approximate landownership in this CHSU is as follows: 57 percent Federal, 18 percent State, and 25 percent private.

(A) Lucky Peak Reservoir (3,234 ha (7,911 ac)) and Mores Creek from its mouth in Lucky Peak Reservoir upstream approximately 55 km (34 mi) to a culvert on Highway 21 where Hayfork Creek enters the system provide FMO habitat (BOR 2000; H. Roerick, USFS, pers. comm., 2002). Mores Creek from this point upstream 7 km (4.4 mi) to the headwaters supports bull trout spawning and early rearing (BNF, unpublished 2002).

(iv) Deadwood River CHSU

This CHSU includes all watersheds in the Deadwood River drainage upstream of Deadwood Dam. There are five local and seven potential local populations identified within this CHSU. Approximate landownership is as follows: 95 percent Federal and 5 percent private.

(A) Deadwood Reservoir (1,640 ha (4,054 ac)) provides FMO habitat (Allen 1998). The Deadwood River from Deadwood Dam upstream 40 km (25 mi) to the confluence with the East Fork Deadwood River provides FMO habitat.

(B) Trail Creek from the confluence with the Deadwood River upstream 13 km (8 mi) to the headwaters and Daisy Creek from the confluence with Trail Creek upstream 4.9 km (3 mi) to the headwaters provide bull trout spawning and early rearing habitat (Allen 1998; Jimenez and Zaroban 1998; Burton 1999a; BNF, unpublished 2002).

(C) South Fork Beaver Creek from the confluence with the Deadwood River upstream 6 km (3.8 mi) to the headwaters is habitat essential to providing for the recovery of bull trout (USFWS 2002), and has recently been found to provide spawning and early rearing habitat (Allen 1998; BNF, unpublished 2002). An unnamed creek from the confluence with South Fork Beaver Creek (at approximately 2.8 km (1.7 mi) upstream of the confluence of South Fork Beaver Creek with the Deadwood River) upstream 4.4 km (2.7 mi) to the headwaters is known to contain primary constituent elements as identified for bull trout (Jimenez and Zaroban 1998; Burton 1999a) and is habitat necessary to provide for expansion of bull trout populations necessary for recovery (USFWS 2002).

(D) Beaver Creek from the confluence with the Deadwood River upstream 7.8 km (4.9 mi) to the headwaters provides spawning and early rearing habitat (Allen 1998). An unnamed creek from the confluence with Beaver Creek (2.8 km (1.7 mi) upstream of the confluence of Beaver Creek with the Deadwood River) upstream 3.5 km (2.2 mi) to the headwaters is habitat necessary to provide for expansion of bull trout populations necessary for recovery (USFWS 2002), and is known to contain primary constituent elements as identified for bull trout (Jimenez and Zaroban 1998; Burton 1999a).

(E) Habit Creek from the confluence with Beaver Creek upstream 6 km (3.7 mi) to the headwaters is habitat essential to providing for the recovery of bull trout (USFWS 2002), and has also recently been found to currently provide spawning and early rearing habitat (Allen 1998).

(F) Basin Creek from the confluence with Beaver Creek upstream 3 km (1.9 mi) to the headwaters provides spawning and rearing habitat.

(G) Wild Buck Creek from the confluence with the Deadwood River upstream 6.3 km (3.9 mi) to the headwaters provides spawning and early rearing habitat (Allen 1998; Jimenez and Zaroban 1998; Burton 1999a; BNF, unpublished 2002).

(H) Deer Creek from the confluence with the Deadwood River upstream 16.5 km (10 mi) to the headwaters contains spawning and early rearing habitat (Allen 1998; Jimenez and Zaroban 1998; Burton 1999a; BNF, unpublished 2002). An unnamed creek from the confluence with Deer Creek (3.3 km (2.0 mi) upstream of the confluence of Deer Creek with the Deadwood River) upstream 2.0 km (1.3 mi) to the headwaters provides bull trout spawning and early rearing habitat (BNF, unpublished 2002). An unnamed creek from the confluence with Deer Creek (5.8 km (3.6 mi) upstream of the confluence of Deer Creek with the Deadwood River) upstream 2.0 km (1.3 mi) to the headwaters provides spawning and rearing habitat (BNF, unpublished 2002). North Fork Deer Creek from the confluence with Deer Creek upstream 5.5 km (3.4 mi) to the headwaters contains spawning and early rearing habitat (Allen 1998; Jimenez and Zaroban 1998; Burton 1999a; BNF, unpublished 2002). An unnamed creek from the confluence with Deer Creek (7.8 km (4.8 mi) upstream of the confluence of Deer Creek with the Deadwood River) upstream 1.8 km (1.1 mi) to the headwaters supports spawning and rearing habitat (Jimenez and Zaroban 1998; Burton 1999a; BNF, unpublished 2002).

(I) Goat Creek from the confluence with the Deadwood River upstream 6.4 km (4.0 mi) to the headwaters provides spawning and early rearing habitat (BNF, unpublished 2002) and is habitat essential to the conservation of bull trout (USFWS 2002).

(J) Bitter Creek from the confluence with the Deadwood River upstream 6.0 km (3.7 mi) to the headwaters is habitat necessary to provide for expansion of bull trout populations (USFWS 2002), and is known to contain primary constituent elements for bull trout (Jimenez and Zaroban 1998; Burton 1999a).

(K) Stratton Creek from the confluence with the Deadwood River upstream 5.3 km (3.3 mi) to the headwaters provides spawning and early rearing habitat (Allen 1998) and is essential to the conservation of bull trout (USFWS 2002).

(L) East Fork Deadwood River from the confluence with the Deadwood River upstream 0.4 km (0.2 mi) to a waterfall barrier is habitat necessary to provide for expansion of bull trout populations (USFWS 2002), and is known to contain primary constituent elements for bull trout (Jimenez and Zaroban 1998; Burton 1999a).

(v) Middle Fork Payette River CHSU

This CHSU includes the watersheds upstream from the confluence with the Payette River. There are one local and five potential local populations identified within the Middle Fork Payette River CHSU. Approximate landownership in this CHSU is as follows: 90 percent Federal, 7 percent private, and 3 percent State.

(A) The Middle Fork Payette River from its confluence with the South Fork Payette River upstream 56.3 km (35.0 mi) to the confluence with Bull Creek provides FMO habitat (Jimenez and Zaroban 1998). Middle Fork Payette River from the confluence with Bull Creek upstream 6.8 km (4.2 mi) to the confluence with Ligget Creek provides FMO habitat and may provide spawning and rearing habitat (Jimenez and Zaroban 1998; USFS 2000b, 2002; J. Roy, USFWS, *in litt.*, 2002). From Ligget Creek upstream 10.8 km (6.7 mi) to the headwaters the Middle Fork Payette River provides bull trout spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 2000b, 2002; BNF, unpublished 2002; J. Roy, *in litt.*, 2002). An unnamed creek from its confluence with the Middle Fork Payette River (71.5 km (44.4 mi) upstream of the confluence of the Middle Fork Payette River and the South Fork Payette River) upstream 7.2 km (4.5 mi) to the headwaters is known to support bull trout spawning and early rearing (Jimenez and Zaroban 1998; USFS 2000b, 2002; BNF, unpublished 2002; J. Roy, *in litt.*, 2002). An unnamed creek from its confluence with the Middle Fork Payette River (72.5 km (45.0 mi) upstream of the confluence of the Middle Fork Payette River and the South Fork Payette River) upstream 3.2 km (2.0 mi) to the headwaters provides occupied spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 2000b, 2002; BNF, unpublished 2002; J. Roy, *in litt.*, 2002). An unnamed creek from its confluence with the Middle Fork Payette River (73.3 km (45.5 mi) upstream of the confluence of the Middle Fork Payette River and the South Fork Payette River) upstream 3.2 km (2.0 mi) to its headwaters provides spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 2002; BNF, *in litt.*, 2002; J. Roy, *in litt.*, 2002).

(B) Lightning Creek from the confluence with the Middle Fork Payette River upstream 21.7 km (13.4 mi) to the headwaters, and Onion Creek from the confluence with Lightning Creek upstream 7.9 km (4.9 mi) to the headwaters of Onion Creek is known to contain primary constituent elements for bull trout (Jimenez and Zaroban 1998; USFS 2000b), and is essential to habitat to provide for expansion of populations essential to the conservation of the species (USFWS 2002).

(C) Silver Creek from the confluence with the Middle Fork Payette River upstream to the headwaters; Peace Creek from the confluence with Silver Creek upstream 6.8 km (4.2 mi) to the headwaters; Valley Creek from the confluence with Peace Creek upstream 8.5 km (5.3 mi) to the headwaters; Ucon Creek from the confluence with Silver Creek upstream 5.0 km (3.1 mi) to the headwaters, and Long Fork Silver Creek from the confluence with Silver Creek upstream 8.5 km (5.3 mi), all are known to contain primary constituent elements for bull trout (Jimenez and Zaroban 1998; USFS 2000b) and are required for expanded bull trout populations that are essential to the conservation of the species (USFWS 2002).

(D) Bull Creek from the confluence with the Middle Fork Payette River upstream 19.5 km (12 mi) to the headwaters provides FMO habitat in the lower reaches and spawning and rearing habitat in the upper areas (Jimenez and Zaroban 1998; USFS 2000b, 2002; J. Roy, *in litt.*, 2002). Oxtail Creek from the confluence with Bull Creek upstream 4.5 km (2.8 mi) to the headwaters provides spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 2000b, 2002; J. Roy, *in litt.*, 2002). Sixteen-to-one Creek from the confluence with Bull Creek upstream 7.8 km (4.8 mi) to the headwaters contains spawning and early rearing habitat (J. Roy, USFWS, *in litt.*, 2002; USFS 2002b).

(vi) Weiser River CHSU

The Weiser River CHSU in Washington and Adams counties in southwestern Idaho includes all watersheds upstream of and including the Little Weiser River watershed. There are five local and seven potential local populations identified within the CHSU. Approximate landownership in the CHSU is as follows: 53 percent Federal, 39 percent private, and 8 percent State.

(A) The Weiser River from the confluence with the Little Weiser River upstream 64.5 km (40.0 mi) to the confluence of the East Fork Weiser River provides connectivity between the Upper Hornet Creek and East Fork Weiser River local populations, and the Pine Creek, Rush Creek, West Fork Weiser River, and Lost Creek potential local populations. The Little Weiser River from the confluence with the Weiser River upstream 55.6 km (34.5 mi) to the confluence with Anderson Creek provides connectivity between the Upper Little Weiser River, Anderson Creek, and Sheep Creek local populations, and the Weiser River and its associated local and potential local populations. The upper Little Weiser River from the confluence with Anderson Creek upstream 16.2 km (10.0 mi) to the headwaters support bull trout spawning and early rearing (DuPont and Kennedy 2000).

(B) Anderson Creek from the confluence with the Little Weiser River upstream 11.2 km (7.0 mi) to the headwaters provides spawning and early rearing habitat (Adams 1994; DuPont and Kennedy 2000).

(C) Sheep Creek from the confluence with Anderson Creek upstream 16.2 km (10.0 mi) to the headwaters provides spawning and early rearing habitat (Adams 1994; DuPont and Kennedy 2000).

(D) East Fork Pine Creek from the confluence with Pine Creek upstream 17.1 km (10.6 mi) to the headwaters contains primary constituent elements for bull trout (DuPont and Kennedy 2000; McGee *et al.* 2001) and is essential to the conservation of bull trout (USFWS 2002).

(E) Rush Creek from the confluence with the Weiser River upstream 30.0 km (18.6 mi) to the headwaters contains primary constituent elements for bull trout (Veach *et al.* 1998; DuPont and Kennedy 2000) and Williams and Veach (1999) identify Rush Creek as a watershed where bull trout spawning and rearing is likely to occur, although it has not yet been documented. This habitat is essential to the conservation of bull trout (USFWS).

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(F) The Middle Fork Weiser River from its confluence with the Weiser River upstream 40.9 km (25.4 mi) contains primary constituent elements for bull trout, although brook trout presence is problematic (D. Burns, USFS, pers. comm., 2002), and is essential to provide for the recovered distribution of bull trout (USFWS 2002).

(G) Hornet Creek from the confluence with the Weiser River upstream 24.7 km (15.3 mi) to the confluence with Disappointment Creek is suspected to provide FMO habitat (J. DuPont, Idaho Department of Lands, *in litt.*, 2000), and is essential to providing connectivity within the Weiser River CHSU. Hornet Creek from the confluence with Disappointment Creek upstream 7.8 km (4.8 mi) to the headwaters provides spawning and early rearing habitat (J. DuPont, *in litt.*, 2000). Olive Creek from the confluence of Olive Creek and Hornet Creek upstream 8.4 km (5.2 mi) to the headwater provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches (J. DuPont, *in litt.*, 1998). An unnamed creek from the confluence with Olive Creek (3.3 km (2.0 mi) upstream of the confluence of Olive Creek with Hornet Creek) upstream 1.8 km (1.1 mi) to the headwaters provides spawning and early rearing habitat (J. DuPont, *in litt.*, 2000). An unnamed creek from the confluence with Olive Creek (5.3 km (3.3 mi) upstream of the confluence of Olive Creek with Hornet Creek) upstream 2.6 km (1.6 mi) to the headwaters is habitat essential to provide for the recovered distribution of bull trout (USFWS 2002). It is suspected to provide bull trout FMO habitat below 1,524 m (5,000 feet (ft)) in elevation, and habitat suitable for spawning and rearing above 1,524 m (5,000 ft) in elevation (J. DuPont, *in litt.*, 2000). Placer Creek from the confluence with Hornet Creek upstream 5.1 km (3.2 mi) to the headwaters provides bull trout spawning and rearing habitat (J. DuPont, *in litt.* 2000). North Creek from the confluence with Placer Creek upstream 3.4 km (2.1 mi) to the headwaters provides spawning and rearing habitat (J. DuPont, *in litt.*, 2000). Disappointment Creek from the confluence with Hornet Creek upstream 4.2 km (2.6 mi) to the headwaters is habitat essential to provide for the recovered distribution of bull trout (USFWS 2002), and is suspected to provide bull trout FMO habitat below 1,524 m (5,000 ft) in elevation, and habitat suitable for spawning and rearing above 1,524 m (5,000 ft) (J. DuPont, *in litt.*, 2000). Grouse Creek from the confluence with Hornet Creek upstream 5.2 km (3.2 mi) to the headwaters is habitat essential to provide for the recovered distribution of bull trout (USFWS 2002), and is suspected to provide bull trout FMO habitat below 1,524 m (5,000 ft) in elevation, and habitat suitable for spawning and rearing above 1,524 m (5,000 ft) in elevation (J. DuPont, *in litt.*, 2000). Mill Creek from the confluence with Hornet Creek upstream to the confluence with West Fork Mill Creek is suspected to provide bull trout FMO habitat (J. DuPont, *in litt.*, 2000). Above that point, upstream 4.3 km (2.7 mi) is habitat essential to provide for the recovered distribution of bull trout (USFWS 2002), and is suspected to provide bull trout FMO habitat below 1,524 m (5,000 ft) in elevation, and habitat suitable for spawning and rearing above 1,524 m (5,000 ft) in elevation (J. DuPont, *in litt.*, 2000).

(H) West Fork Weiser River from the confluence with the Weiser River upstream 13.8 km (8.6 mi) to the confluence with Lost Creek is essential habitat for providing connectivity within the Weiser River CHSU (USFWS 2002). Above this point, upstream to the headwaters is habitat known to contain primary constituent elements for bull trout (DuPont and Kennedy 2000; McGee *et al.* 2001) and essential to the recovered distribution of bull trout (USFWS 2002).

(I) Lost Creek from the confluence with the West Fork Weiser River upstream 34.5 km (21.5 mi) to the headwaters is habitat essential to provide for the recovered distribution of bull trout (USFWS 2002), and is known to contain primary constituent elements as identified for bull trout (DuPont and Kennedy 2000; D. Olson, USFS, pers. comm., 2002). Lost Valley Reservoir (296 ha; 732 ac) provides connectivity between potential spawning and rearing habitats; bull trout are not known to currently occupy the reservoir.

(J) East Fork Weiser River from the confluence with the Weiser River upstream 24.6 km (15.3 mi) to the headwaters is spawning and rearing habitat (Adams 1994; DuPont and Kennedy 2000; McGee *et al.* 2001). Dewey Creek from the confluence with the East Fork Weiser River to the headwaters provides spawning and rearing habitat (Adams 1994; DuPont and Kennedy 2000; McGee *et al.* 2001).

(vii) Upper South Fork Payette River CHSU

The Upper South Fork Payette River CHSU in Boise and Valley counties in southwestern Idaho includes all watersheds upstream of Big Falls on the South Fork Payette River, including the Deadwood River drainage downstream of Deadwood Dam. There are nine local populations identified within this CHSU. Approximate landownership in the CHSU is as follows: nearly 100 percent Federal, and less than 1 percent private.

(A) The South Fork Payette River from its confluence with the Middle Fork Payette River upstream 96.8 km (60.1 mi) to the confluence with Baron Creek provides FMO habitat and connectivity between the Scott Creek, Whitehawk Creek, Clear Creek, Eightmile Creek, Wapiti Creek, Canyon Creek, Tenmile Creek, Chapman Creek, and Upper South Fork Payette River local populations, as well as a migratory connection between populations in the South Fork Payette River and Middle Fork Payette River CHSUs (Jimenez and Zaroban 1998; USFS 1999c; Stovall 2001; J. Jimenez, USFS, pers. comm., 2002). Deadwood River from the confluence with the South Fork Payette River upstream 36.6 km (22.7 mi) to Deadwood Dam provides FMO habitat and connectivity between other local populations (Jimenez and Zaroban 1998; USFS 1999c; Stovall 2001). South Fork Payette River from the confluence with Baron Creek upstream 8.5 km (5.2 mi) to the confluence of South Fork Payette River and an unnamed creek provides FMO habitat, and may also support bull trout spawning and early rearing. (Jimenez and Zaroban 1998; USFS 1999c). South Fork Payette River from point upstream 14.5 km (9.0 mi) to the confluence with Benedict Creek contains spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). Baron Creek from the confluence with the South Fork Payette River upstream 12.3 km (7.6 mi) to the confluence with an unnamed creek provides spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). North Fork Baron Creek from the confluence with Baron Creek upstream 2.7 km (1.7 mi) contains spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

(B) Scott Creek from the confluence with Deadwood River upstream 12.2 km (7.6 mi) to the headwaters provides FMO habitat in the lower reaches (USFS 1999c; Jimenez and Zaroban 1998), and spawning and early rearing habitat in the upper reaches (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). South Fork Scott Creek from the confluence with Scott Creek upstream 5.7 km (3.5 mi) to the headwaters provides spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

Smith Creek from the confluence with Scott Creek upstream 4.6 km (2.9 mi) to the headwaters contains bull trout spawning and rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

(C) Ninemile Creek from the confluence with the Deadwood River upstream 9.2 km (5.7 mi) is known to contain primary constituent elements for bull trout (Jimenez and Zaroban 1998; USFS 1999c) and is essential to provide for the recovered distribution of bull trout (USFWS 2002).

(D) An unnamed creek from its confluence with the Deadwood River (29.0 km (18.0 mi) upstream of the confluence of the Deadwood River with the South Fork Payette River) upstream 2.2 km (1.3 mi) to the headwaters, No Man Creek from the confluence with the Deadwood River upstream 4.7 km (2.9 mi) to the confluence with an unnamed creek, and another unnamed creek, from the confluence with the Deadwood River (34.0 km (21.1 mi) upstream of the confluence of the Deadwood River with the South Fork Payette River) upstream 1.8 km (1.1 mi) are known to contain primary constituent elements for bull trout (Jimenez and Zaroban 1998; USFS 1999c) and provide habitat essential to the conservation of bull trout (USFWS 2002)

(E) Whitehawk Creek from the confluence with Deadwood River to the confluence of Whitehawk Creek and an unnamed creek 8.3 km (5.2 mi) upstream from the confluence of Whitehawk Creek and Deadwood River (for 8.3 km (5.2 mi)). Whitehawk Creek lies within Valley County. Whitehawk Creek is known to contain primary constituent elements as identified for bull trout (Jimenez and Zaroban 1998; USFS 1999c). North Fork Whitehawk Creek from the confluence with Whitehawk Creek to the headwaters of North Fork Whitehawk Creek (for 5.3 km (3.3 mi)). North Fork Whitehawk Creek lies within Valley County. North Fork Whitehawk Creek is known to contain primary constituent elements as identified for bull trout (Jimenez and Zaroban 1998; USFS 1999c).

(F) Warm Springs Creek from the confluence with the Deadwood River upstream 11.4 km (7.1 mi) to the headwaters provides FMO habitat, and may also support spawning and rearing in the lower reaches, and spawning and rearing habitat in the upper reaches (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). East Fork Warm Springs Creek from the confluence with Warm Springs Creek upstream 8.8 km (5.5 mi) to the headwaters provides spawning and rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). An unnamed creek from the confluence with East Fork Warm Springs Creek (5.0 km (3.1 mi) upstream of the confluence of East Fork Warm Springs Creek with Warm Springs Creek) upstream 1.9 km (1.2 mi) to the headwaters contains spawning and rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). Middle Fork Warm Springs Creek from the confluence with Warm Springs Creek upstream 4.3 km (2.7 mi) to the supports bull trout spawning and earing (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). An unnamed creek from the confluence with Middle Fork Warm Springs Creek (1.8 km (1.1 mi) upstream of the confluence of Middle Fork Warm Springs Creek with Warm Springs Creek) upstream 4.0 km (2.5 mi) to the headwaters supports spawning and early rearing (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

(G) Wilson Creek from the confluence with Deadwood Reservoir upstream 16.9 km (10.5 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002).

(H) Clear Creek from the confluence with the South Fork Payette River upstream 12.5 km (7.8 mi) to the confluence with O'Keefe Creek provides FMO habitat (Jimenez and Zaroban 1998; USFS 1999c; Stovall 2001). Clear Creek from the confluence with O'Keefe Creek upstream 18.2 km (11.3 mi) to the confluence of Clear Creek, and an unnamed creek, support bull trout spawning and early rearing (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). Long Creek from the confluence with Clear Creek upstream 5.1 km (3.2 mi) to the confluence with an unnamed creek contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002). An unnamed creek 5.1 km (3.2 mi) upstream from the confluence with Long Creek, and Clear Creek upstream 1.7 km (1 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002). South Fork Clear Creek from the confluence with Clear Creek upstream 7.5 km (4.7 mi) to the headwaters supports bull trout spawning and early rearing (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

(I) Kettle Creek from the confluence with the South Fork Payette River upstream 5.2 km (3.3 mi) to the headwaters provides spawning and rearing habitat (BNF, unpublished 2002).

(J) Eightmile Creek from the confluence with the South Fork Payette River upstream 7.4 km (4.6 mi) to the confluence with an unnamed creek provides FMO habitat (Jimenez and Zaroban 1998; USFS 1999c); above this point upstream to the headwaters contains spawning and rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). East Fork Eightmile Creek from the confluence with Eightmile Creek upstream to the confluence with an unnamed creek 4.2 m (2.6 mi) from the confluence of East Fork Eightmile Creek with Eightmile Creek provides FMO habitat (Jimenez and Zaroban 1998; USFS 1999c). East Fork Eightmile Creek from this point upstream to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002). An unnamed creek from the confluence with Eightmile Creek (4.5 km (2.8 mi) upstream of the confluence of Eightmile Creek with the South Fork Payette River) upstream 4.8 km (3.0 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002). Another unnamed creek from its confluence with Eightmile Creek (7.3 km (4.5 mi) upstream of the confluence of Eightmile Creek with the South Fork Payette River) upstream 3.7 km (2.3 mi) to the headwaters provides spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). Another unnamed creek from the confluence with Eightmile Creek (7.5 km (4.7 mi) upstream of the confluence of Eightmile Creek with the South Fork Payette River) upstream 3.4 km (2.1 mi) to the headwaters contains spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002)

(K) Tenmile Creek from the confluence with the South Fork Payette River upstream 7.2 km (4.5 mi) to the confluence with an unnamed creek provides FMO habitat (Jimenez and Zaroban 1998; USFS 1999c), and above this point to the headwaters is a combination of FMO and spawning and rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002). An unnamed creek from the

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confluence with Tenmile Creek (9.8 km (6.1 mi) upstream of the confluence of Tenmile Creek with the South Fork Payette River) upstream 3.4 km (2.1 mi) to the headwaters is habitat essential to the recovered distribution of bull trout (USFWS 2002), and contains primary constituent elements for bull trout (Jimenez and Zaroban 1998; USFS 1999c). An unnamed creek from the confluence with Tenmile Creek (11.5 km (7.1 mi) upstream of the confluence of Tenmile Creek with the South Fork Payette River) upstream 2.5 km (1.5 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002). Another unnamed creek from the confluence with Tenmile Creek (13.3 km (8.2 mi) upstream of the confluence of Tenmile Creek with the South Fork Payette River) upstream 2.7 km (1.7 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002).

(L) Chapman Creek from the confluence with the South Fork Payette River upstream 6.1 km (3.8 mi) to the headwaters of Chapman Creek supports bull trout spawning and early rearing (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

(M) Warm Springs Creek from the confluence with the South Fork Payette River upstream 4.8 km (3 mi) to the confluence with Bush Creek provides FMO habitat. Upstream 14.3 km (8.9 mi) of this point to the confluence with Gates Creek is habitat essential to the recovered distribution of bull trout (USFWS 2002), and is known to contain primary constituent elements as identified for bull trout (Jimenez and Zaroban 1998; USFS 1999c). Gates Creek from the confluence with Warm Springs Creek upstream 6.8 km (4.3 mi) to the headwaters is habitat essential to the recovered distribution of bull trout (USFWS 2002), and has recently been found to support bull trout spawning and early rearing (BNF, unpublished 2002).

(N) Canyon Creek from the confluence with the South Fork Payette River upstream 17.1 km (10.6 mi) to the headwaters provides spawning and rearing habitat (BNF, unpublished 2002). South Fork Canyon Creek from the confluence with Canyon Creek upstream 2.4 km (1.5 mi) to the confluence of South Fork Canyon Creek and an unnamed creek supports bull trout spawning and rearing (BNF, unpublished 2002). North Fork Canyon Creek from the confluence with Canyon Creek upstream 1.9 km (1.2 mi) to the confluence with an unnamed creek provides spawning and early rearing habitat (BNF, unpublished 2002). An unnamed creek from the confluence with North Fork Canyon Creek (2 km (1.2 mi) upstream of the confluence of North Fork Canyon Creek with Canyon Creek) upstream 4.6 km (2.8 mi) contains spawning and rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

(O) Wapiti Creek from the confluence with the South Fork Payette River upstream 5.5 km (3.4 mi) to the confluence of Wapiti Creek and an unnamed creek contains spawning and early rearing habitat (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

(P) Trail Creek from the confluence with the South Fork Payette River upstream 5.8 km (3.6 mi) to the confluence with an unnamed creek supports bull trout spawning and early rearing (Jimenez and Zaroban 1998; USFS 1999c; BNF, unpublished 2002).

(viii) North Fork Payette River CHSU

The North Fork Payette River CHSU in Valley County in southwestern Idaho includes the North Fork Payette River watershed upstream of Cascade Dam. There are one local and six potential local populations identified within the North Fork Payette River CHSU, all of which are essential for recovery (USFWS 2002). The CHSU includes 229.76 km (142.77 mi) of streams that are proposed as critical habitat, which represents approximately 17.28 percent of the total stream miles in the North Fork Payette River CHSU. Approximate landownership is as follows: 47 percent Federal, 34 percent private, and 10 percent State. Critical habitat includes all stream segment units described below which provide FMO habitat, and allow for the maintenance of genetic exchange by local and potential local populations both within and between CHSUs.

(A) Gold Fork River from the confluence with Davis Creek upstream 20.2 km (12.5 mi) to the confluence with the North and South Forks Gold Fork River. This reach provides migratory habitat and connectivity between the Gold Fork local population and the Kennally Creek potential local population. South Fork Gold Fork River from the confluence with the Gold Fork River upstream 7.4 km (4.6 mi) to the headwaters provides spawning and rearing habitat (Steed 1999; USFS 2000c). North Fork Gold Fork River from the confluence with the Gold Fork River upstream 15.9 km (9.9 mi) to the headwaters provides spawning and rearing habitat (Steed 1999; USFS 2000c). Foolhen Creek from the confluence with Gold Fork River upstream 8.6 km (5.3 mi) to the headwaters, and Spruce Creek from the confluence with Gold Fork River upstream 2.8 km (1.75 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998), and is essential to provide for the recovered distribution of the species (USFWS 2002). Lodgepole Creek from the confluence with Gold Fork River upstream 5.0 km (3.1 mi) to the headwaters and an unnamed creek from the confluence with Gold Fork River (7.8 km (4.8 mi) upstream of the confluence of the North Fork Gold Fork River with Gold Fork River) upstream 3.1 km (1.9 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002). An unnamed creek from the confluence with the North Fork Gold Fork River (8.6 km (5.3 mi) upstream of the confluence of the North Fork Gold Fork River with Gold Fork River) upstream 2.9 km (1.8 mi) to the headwaters provides spawning and rearing habitat and is suspected to support bull trout spawning and early rearing (Steed 1999; Roy, *in litt.*, 2002). An unnamed creek from the confluence with the North Fork Gold Fork River (9.0 km (5.6 mi) upstream of the confluence of the North Fork Gold Fork River with Gold Fork River) upstream 3.2 km (2.0 mi) to the headwaters supports bull trout spawning and early rearing (Steed 1999; USFS 2000c). An unnamed creek from the confluence with the the North Fork Gold Fork River (9.3 km (5.7 mi) upstream of the confluence of the North Fork Gold Fork River with Gold Fork River) upstream 4.7 km (2.9 mi) to the headwaters provides spawning and early rearing habitat (Steed 1999; USFS 2000c).

(B) Kennally Creek from the confluence with the Gold Fork River upstream 21.3 km (13.2 mi) to the confluence with the North and South Forks, and Rapid Creek from the confluence with Kennally Creek upstream 17.0 km (10.6 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the conservation of the species (USFWS 2002).

(C) Cascade Reservoir (7,246 ha (17,905 ac)) will provide FMO habitat for Gold Fork River bull trout, and connectivity between the Gold Fork local population and the Lake Fork, North Fork Lake Fork, and South Fork Lake Fork potential local populations as recovery actions are implemented (J. Roy, *in litt.*, 2002; USFWS 2002). Bull trout are currently entrained through an irrigation diversion on Gold Fork River into Cascade Reservoir.

(D) North Fork Payette River from the confluence with Cascade Reservoir upstream 1.4 km (0.9 mi) to the confluence with Mud Creek. As recovery actions are implemented, the North Fork Payette River will provide FMO habitat and connectivity between the Gold Fork local population, and the Lake Fork, North Fork Lake Fork, and South Fork Lake Fork potential local populations (USFWS 2002). Lake Fork from the confluence with Mud Creek upstream 68.6 km (42.6 mi) to the confluence with Little Payette Lake. As recovery actions are implemented, this reach will provide FMO habitat and connectivity between the Gold Fork local population, and the Lake Fork, North Fork Lake Fork, and South Fork Lake Fork potential local populations (USFWS 2002). Little Payette Lake (582 ha (1,439 ac)) will provide FMO habitat for Lake Fork, North Fork Lake Fork, and South Fork Lake Fork potential local populations, and will provide connectivity between these potential local populations and the Gold Fork local population as recovery actions are implemented (USFWS 2002). Lake Fork from the confluence with Little Payette Lake upstream 16.9 km (10.5 mi) to the confluence with the North and South Forks Lake Fork provides habitat essential to the recovered distribution for bull trout (USFWS 2002) and is known to contain primary constituent elements as identified for the species (USFS 1998c; 2001c). North Fork Lake Fork from the confluence with Lake Fork upstream 16.3 km (10.1 mi) to the headwaters provides suitable habitat for bull trout spawning and rearing (USFS 1998c, 2001c). South Fork Lake Fork from the confluence with Lake Fork upstream 5.7 km (3.5 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002).

(ix) Squaw Creek CHSU

The Squaw Creek CHSU in Gem, Boise, and Valley counties in southwestern Idaho includes all watersheds in Squaw Creek upstream from its confluence with the Payette River. Bull trout in this CHSU are primarily resident fish, although they have recently been found in the lower reaches of Squaw Creek, suggesting a migratory component (Steed 1999). There are two local and three potential local populations identified within the Squaw Creek CHSU. Approximate landownership is as follows: 48 percent Federal, 47 percent private, and 5 percent State. We are proposing critical habitat designation of 192.41 km (119.56 mi) of stream, which represents approximately 28 percent of the total stream miles in the Squaw Creek CHSU. Critical habitat within the Squaw Creek CHSU includes all stream segment units described below which provide FMO habitat, and allow for the maintenance of genetic exchange by local and potential local populations both within and between CHSUs.

(A) Squaw Creek from its confluence with the Payette River upstream 75.9 km (47.2 mi) to the confluence with Cold Spring Creek provides connectivity between the Squaw Creek and Third Fork Squaw Creek local populations, and the Second Fork Squaw Creek, and Sagehen Creek potential local populations. Squaw Creek from the confluence with Cold Spring Creek upstream 19.1 km (11.9 mi) to the headwaters contains spawning and early rearing habitat (Steed 1999). Pole Creek from the confluence with Squaw Creek upstream 4.1 km (2.5 mi) to the headwaters also provides spawning and rearing habitat (Steed 1999). An unnamed creek from the confluence with Squaw Creek (83.8 km (52.0 mi) upstream of the confluence of Squaw Creek with the Payette River) upstream 2.6 km (1.6 mi) to the headwaters provides spawning and early rearing habitat (Steed 1999). Another unnamed creek from the confluence with Squaw Creek (86.0 km (53.0 mi) upstream of the confluence of Squaw Creek with the Payette River) upstream 3.6 km (2.2 mi) to the headwaters also provides spawning and rearing habitat (Burton 1999b; 1999; Steed 1999). An unnamed creek from the confluence with the previous unnamed creek (0.5 km (0.3 mi) upstream of the confluence of the previous unnamed creek with Squaw Creek) upstream to the headwaters provides habitat essential to the recovered distribution of bull trout (USFWS 2002), and is known to contain primary constituent elements as identified for bull trout (Burton 1999b; Steed 1999). Poison Creek from the confluence with Squaw Creek upstream 2.7 km (1.7 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002).

(B) Third Fork Squaw Creek from the confluence with Squaw Creek upstream 10.6 km (6.6 mi) to the confluence with an unnamed creek provides FMO habitat (Steed 1999). From this point upstream 6.6 km (4.1 mi) Third Fork Squaw Creek provides spawning and early rearing habitat (Burton 1999b; Steed 1999). An unnamed creek from the confluence with Third Fork Squaw Creek (10.8 km (6.7 mi) upstream of the confluence of Third Fork Squaw Creek with Squaw Creek) upstream 7.3 km (4.5 mi) to the headwaters provides spawning and early rearing habitat (Burton 1999b; Steed 1999). Another unnamed creek from the confluence with the previous unnamed creek (1.8 km (1.1 mi) upstream of the confluence of the previous unnamed creek with Third Fork Squaw Creek) upstream 4.0 km (2.5 mi) to the headwaters also provides spawning and rearing habitat (Burton 1999b). Another unnamed creek from the confluence with the previously described unnamed creek (2.8 km (1.7 mi) upstream of the confluence of the previous unnamed creek with Third Fork Squaw Creek) upstream 1.8 km (1.1 mi) to the headwaters contains bull trout primary constituent elements (Jimenez and Zaroban 1998; USFS 1999c), and is essential to provide for the recovered distribution of the species (USFWS 2002). An unnamed creek from the confluence with Third Fork Squaw Creek (12 km (7.5 mi) upstream of the confluence of Third Fork Squaw Creek with Squaw Creek) upstream 3.2 km (2.0 mi) to the headwaters provides spawning and rearing habitat (Burton 1999b; Steed 1999). Second Fork Squaw Creek from the confluence with Squaw Creek upstream 11.3 km (7.0 mi) to the confluence with Sage Hen Creek provides FMO habitat (Steed 1999), and from this point upstream 6.7 km (4.2 mi) to the headwaters provides habitat essential to the recovered distribution of bull trout (USFWS 2002), and is known to contain primary constituent elements for the species (Burton 1999b; Steed 1999). Renwick Creek from the confluence with Second Fork Squaw Creek upstream 6.1 km (3.8 mi) to the headwaters and Antelope Creek from the confluence with Second Fork Squaw Creek upstream 6.1 km (3.8 km) to the headwaters provides habitat essential to the recovered distribution of bull trout (USFWS 2002), and is known to contain primary constituent elements for the species (Burton 1999b; Steed 1999).

(C) Sage Hen Creek from the confluence with Second Fork Squaw Creek upstream 5.2 km (3.2 mi) to the dam on Sage Hen Reservoir provides FMO habitat (Steed 1999). Sage Hen Creek from the dam on Sage Hen Reservoir upstream 7.4 km (4.6 mi) to the headwaters provides habitat

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essential to the recovered distribution of bull trout (USFWS 2002), and is known to contain primary constituent elements for bull trout (Burton 1999b; Steed 1999). An unnamed creek from the confluence with Sage Hen Creek (5.3 km (3.3 mi) upstream of the confluence of Sage Hen Creek with Second Fork Squaw Creek) upstream 2.9 km (1.4 mi) to the headwaters provides habitat essential to the recovered distribution of bull trout (USFWS 2002), and is known to contain primary constituent elements for the species (Burton 1999b; Steed 1999). Joes Creek from the confluence with Sage Hen Creek upstream 5.3 km (3.3 mi) to the headwaters of Joes Creek provides habitat essential to the recovered distribution of bull trout (USFWS 2002), and is known to contain primary constituent elements for bull trout (Burton 1999b; Steed 1999). Sage Hen Reservoir (96 ha; 238 ac) provides suitable FMO habitat (Steed 1999; Burton 1999) to provide for the recovered distribution of bull trout (USFWS 2002).

(22) Unit 18: Little Lost River Basin

The Little Lost River Unit is within Butte, Custer, and Lemhi counties in east-central Idaho. Approximately 184.6 km (115.4 mi) of stream in the Little Lost River Basin is proposed for critical habitat designation. Approximately 76 percent of the unit is located on Federal land (BLM and USFS), 22 percent is on private land, and 2 percent is on State land. There are 10 known local populations in the Little Lost River Basin and the Draft Recovery Plan (USFWS 2002) states that the persistence of all 10 populations is needed for species' recovery. The following stream segments are proposed for designation as critical habitat in the Little Lost River unit:

(i) The Little Lost River, beginning at the flood control structure at rkm 18.4 (rmi 11.4) and continuing upstream for 84.3 km (52.4 mi) to source springs at rkm 102.7 (rmi 63.8). The river from the flood control structure to Iron Creek (at rkm 93.3 (rmi 57.9)) is an important migratory corridor, as well as a key foraging and rearing area for sub-adult and adult fluvial bull trout associated with upstream local populations (Gamett 1999). The Little Lost River headwaters above Iron Creek, including 0.8 km (0.5 mi) of the Right Fork Little Lost River and 2.1 km (1.3 mi) of Firebox Creek, are occupied spawning and rearing habitat and collectively support a local population. (Note: USGS and STREAMNET maps show the Little Lost River transforming into Sawmill Creek in its upstream reaches. However, the USFS Lost River Ranger District maps show the Little Lost River continuing under that name up to its headwaters. We have described proposed critical habitat in accordance with the latter).

(ii) Badger Creek from its confluence with the Little Lost River (at rkm 45.6 (rmi 28.3)) upstream 11.7 km (7.3 mi) to its source springs and including the Bunting Canyon Creek tributary. There is a headcut on Bunting Canyon Creek approximately 300 m (984 ft) upstream of its mouth that forms a small barrier. Badger Creek and Bunting Canyon Creek below the headcut provide spawning and rearing habitat for a known bull trout local population (Gamett 1999). The 3.1 km (1.9 mi) segment of Bunting Canyon Creek above the headcut is not currently known to be occupied, but is identified in the Draft Recovery Plan (USFWS 2002) as essential to providing for the recovered distribution of bull trout.

(iii) Williams Creek from its confluence with the Little Lost River (at rkm 54.1) upstream 5.1 km (3.2 mi) to the confluence with an unnamed tributary. The unnamed tributary from its confluence with Williams Creek upstream 1.1 km (0.7 mi) to its source springs. A local bull trout population exists in Williams Creek above an irrigation diversion at rkm 1.3 (rmi 0.8) and spawning and rearing occurs from rkm 3.4 to rkm 5.1 as well as in the entire length of the unnamed tributary (Gamett 1999). The Draft Recovery Plan (USFWS 2002) identifies the 1.3 km (0.8 mi) stream reach below the diversion as important to restoring connectivity to this local population, and providing additional habitat needed to achieve target population levels in this area.

(iv) Wet Creek from its confluence with the Little Lost River (at rkm 56.8 (rmi 35.3)) upstream for a distance of 28.8 km (18.0 mi) to a barrier falls above Hilts Creek, and including 7.0 km (4.4 mi) of the Big Creek tributary. Wet Creek currently supports a local bull trout population, with spawning and rearing occurring in the uppermost 3.2 km (2.0 mi). Although bull trout have not been recently documented in Big Creek, spawning and rearing habitat has been identified in its upper reaches (Gamett 1999).

(v) Warm Creek from its confluence with the Little Lost River (at rkm 81.9 (rmi 50.9)) upstream for 3.4 km (2.1 mi) to its source springs. This stream supports a known bull trout local population, and spawning and rearing occurs in the upper 2.7 km (1.3 mi) (Gamett 1999).

(vi) Squaw Creek from its confluence with the Little Lost River (at rkm 86.2 (rmi 53.5)) upstream for 6.6 km (4.1 mi) to its source spring and including 0.6 km (0.4 mi) of the North Fork Squaw Creek, and 3.0 km (1.9 mi) of an unnamed tributary that joins Squaw Creek at rkm 4.2 (rmi 2.6). These streams are currently occupied and collectively are considered a distinct local population (USFWS 2002); all but the lowest 0.2 km (0.1 mi) of Squaw Creek contain spawning and rearing habitat.

(vii) Mill Creek from its confluence with the Little Lost River (at rkm 89.6 (rmi 55.6)) upstream for 4.5 km (2.8 mi) to a barrier falls. This stream supports a known bull trout local population and all but the lowest 0.2 km (0.1 mi) is spawning and rearing habitat (Gamett 1999).

(viii) Iron Creek from its confluence with the Little Lost River (at rkm 93.3 (rmi 57.9)) upstream for 3.2 km (2.0 mi) and including the following tributaries: 1.0 km (0.6 mi) of Left Fork Iron Creek, 0.3 km (0.2 mi) of Right Fork Iron Creek, all 2.2 km (1.4 mi) of Jackson Creek, and all 2.2 km (1.4 mi) of Hawley Creek. These streams are currently occupied and collectively form a distinct local population (USFWS 2002); the entire area contains spawning and rearing habitat (Gamett 1999).

(ix) Timber Creek from its confluence with the Little Lost River (at rkm 95.4 (rmi 59.2)) upstream for 5.8 km (3.6 mi) to its source springs and including the following tributaries: 1.3 km (0.8 mi) of Camp Creek, 1.1 km (0.7 mi) of Redrock Creek, and 0.5 km (0.3 mi) of Slide Creek. These streams are currently occupied and collectively form a distinct local population (USFWS 2002); the entire area contains spawning and rearing habitat (Gamett 1999).

(x) Smithie Fork Creek from its confluence with the Little Lost River (at rkm 99.5 (rmi 61.8)) upstream for 5.0 km (3.1 mi) to its source springs. This stream supports a known bull trout local population. The entire area contains spawning and rearing habitat (Gamett 1999).

(23) Unit 19: Lower Columbia River Basin

The Lower Columbia Unit consists of portions of the Lewis, White Salmon, and Klickitat Rivers, and associated tributaries in southwestern and south-central Washington. The unit extends across Clark, Cowlitz, Kilickitat, Skamania, and Yakima counties. Approximately 340 km (210 mi) of stream and 3 reservoirs covering 5,054 ha (12,488 ac) are proposed for critical habitat designation. Currently, there are three bull trout local populations in the Lewis River watershed and one in the Klickitat River. The Draft Recovery Plan

(USFWS 2002) indicates it is essential to the conservation of the species to maintain those four local populations and establish four additional populations within the Lewis River watershed, and one in the White Salmon.

(i) Lewis River CHSU

Proposed critical habitat in the Lewis River CHSU covers 179 km (110 mi) of stream and 5,054 ha (12,488 ac) of lake habitat. The CHSU is approximately 64 percent private land, 29 percent Federal land, 7 percent State land. Proposed critical habitat for this CHSU is described below.

(A) The lower Lewis River from its confluence with the Columbia River upstream 31.4 km (19.5 mi) to Merwin Dam. Bull trout are occasionally observed below Merwin Dam (PacifiCorps and Cowlitz County PUD 2001), and the reach provides important foraging and overwintering habitat, and connectivity to the Columbia River once fish passage at Merwin, Yale, and Swift Dams is restored. Restoring connectivity among local populations and to the Columbia River is necessary to maintain opportunities for genetic exchange, refound local populations, and provide access to additional foraging and overwintering habitat (Rieman and McIntyre 1993; USFWS 2002).

(B) Merwin Reservoir, which when full, covers 1,620 ha (4,000 ac) along approximately 23.8 km (14.8 mi) of the Lewis River from rkm 31.4 (rmi 19.5) to rkm 55.2 (rmi 34.3), and including Speelyai Creek from its confluence with the lake upstream 5.1 km (3.2 mi) to a chute barrier. Merwin Reservoir is the lowest reservoir on the Lewis River; bull trout currently found in this lake are believed to be coming through the Yale Dam spillway and turbines (USFWS 2002). Merwin Reservoir provides foraging and overwintering habitat to allow maturation of bull trout trapped below Yale Dam until they can be transported to Cougar Creek as spawners. The lake also provides habitat to support establishment of a local population in Speelyai Creek. This creek is identified in the Draft Recovery Plan (USFWS 2002) as spawning and rearing habitat that could support an additional local population. Springs and seeps in lower Speelyai Creek, below a diversion canal to Yale Reservoir, currently supply cold water to the Speelyai Fish Hatchery. Establishing fish passage at the hatchery would allow bull trout to access suitable spawning and rearing habitat above the hatchery.

(C) Yale Reservoir, which covers 1,539 ha (3,800 ac) along approximately 21.4 km (13.3 mi) of the Lewis River from rkm 55.2 (rmi 34.3) to rkm 76.6 (rmi 47.6), and including the following stream reaches which flow into it: Cougar Creek from its confluence with the lake upstream 2.7 km (1.7 mi) to a lava tube barrier; the 4.3 km (2.3 mi) Swift Bypass reach; Ole Creek from its confluence with the Swift bypass reach upstream 1.3 km (0.8 mi) to a barrier falls and extending up Rain Creek 1.4 km (0.9 mi). Yale Reservoir is currently occupied and provides essential foraging and overwintering habitat for the local population that spawns and rears in Cougar Creek. The Swift Bypass Reach is essential as a site for establishing an additional local population, and to provide bull trout access to Rain and Ole Creeks for establishing an additional local population (Recovery Criteria 1 and 4 in the Lower Columbia Unit Chapter, USFWS 2002). Ole Creek, together with Rain Creek, is identified as suitable spawning and rearing habitat where an additional local population could be established (USFWS 2002).

(D) Swift Creek Reservoir, which when full covers 1,895 ha (4,680 ac) along approximately 18.5 km (11.5 mi) of the Lewis River from rkm 76.6 (rmi 47.6) to rkm 95.1 (rmi 59.1), and extending up 0.5 km (0.3 mi) of Swift Creek from the end of the Swift Arm segment of the reservoir to a barrier falls, and 2.0 km (1.3 mi) up an unnamed tributary (identified as S15 in PacifiCorp and Cowlitz County PUD 2000) that enters the reservoir from the south at rkm 84.5 (rmi 52.5). This area is currently occupied and provides important foraging and overwintering habitat for the two bull trout local populations that spawn in Rush and Pine Creek.

(E) Upper Lewis River from the eastern edge of Swift Creek Reservoir (rkm 95.1 (rmi 59.1)) upstream 43.6 km (27.1 mi) to Twin Falls and including the following tributaries: Pine Creek from its confluence with the Lewis River at rkm 95.8 (rmi 59.5) upstream 12.9 km (8.0 mi) to its headwaters, and extending 1.8 km (1.1 mi) up an unnamed tributary which branches off Pine Creek at rkm 4.7 (rmi 2.9) (identified as P7 in PacifiCorp and Cowlitz County PUD 2000), 6.7 km (4.2 mi) up another unnamed tributary (identified as P8 in PacifiCorp and Cowlitz County PUD 2000) which branches off Pine Creek at rkm 6.0 (rmi 3.7), and 0.4 km (0.3 mi) up another unnamed tributary (identified as P10 in PacifiCorp and Cowlitz County PUD 2000) which branches off Pine Creek at rkm 8.4 (rmi 5.2); Rush Creek from its confluence with the Lewis River at rkm 104.0 (rmi 64.6) upstream 2.7 km (1.7 mi) to a barrier falls; the upper Lewis River from the east end of Swift Creek Reservoir up to a barrier falls at rkm 116.2 (rmi 72.2) is currently occupied, providing foraging and overwintering habitat for bull trout that spawn in Pine and Rush Creeks, and providing connectivity to the reservoir. Bull trout are known to occupy the identified reaches of Pine and Rush Creeks and the "P7" unnamed tributary of Pine Creek. Current occupancy is unknown in the "P8" and "P10" Pine Creek tributaries; however they both are reported to be "very good salmonid habitat" (PacifiCorp and Cowlitz County PUD 2000) and are considered essential to provide for continued recovery of bull trout in Pine Creek, which was severely impacted by the eruption of Mount St. Helens in 1980. Current occupancy is also unknown for the 22.5 km (14.0 mi) of the Lewis River from the barrier falls at rkm 116.2 (rmi 72.2) to Twin Falls. This stretch is identified in the Draft Recovery Plan (USFWS 2002) as an area suitable for establishing an additional local population. The multiple falls reach, from rkm 116.2 (rmi 72.2) to rkm 120.4 (rmi 74.8), is included to maintain connectivity between a possible existing, or possible eventual (re)introduced, resident local population above the falls and existing bull trout populations below the falls.

(ii) White Salmon River CHSU

(A) Proposed critical habitat in this CHSU consists of 25.7 km (16.0 mi) of the White Salmon River and is approximately 98 percent private land, 2 percent Federal land, and less than 1 percent State land. The White Salmon River flows from the southwestern slope of Mount Adams to the Columbia River (Bonneville pool). Condit Dam currently forms Northwestern Lake. The scheduled removal of Condit Dam in 2006–2007 will result in removal of the reservoir and restoration of the White Salmon river to its former river channel. The White Salmon River is a historic bull trout locality, but no recent spawning has been observed in this drainage. However, suitable habitat exists and recovery criteria call for the reestablishment of a local population in this drainage (USFWS 2002). The 5.3 km (3.3 mi) reach of the White Salmon from the confluence with the Columbia River upstream to Condit Dam will provide an important corridor to the Columbia River when fish passage at Condit Dam is restored. The 2.4 km-long (1.5 mi-long) reservoir behind Condit Dam, Northwestern Lake, currently provides foraging and overwintering habitat for a remnant population of bull trout and/or to support establishment of

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a spawning population in the upper watershed. Following the removal of Condit Dam, the critical habitat designation in this stream segment will be restricted to the restored river channel of the section of the White Salmon River that is currently contained within Northwestern Lake. This restored section of the White Salmon River will provide FMO habitat for a restored bull trout population (USFWS 2002). The 18.0 km (11.2 mi) stretch of the White Salmon River from the upper edge of Northwestern Lake to BZ Falls is also suitable foraging and overwintering habitat. With the restoration of the White Salmon river in the Northwestern Lake segment, designated critical habitat will include the White Salmon river for 26 km (16 mi) from the confluence with the Columbia River to BZ falls. Given the lack of specific information on conditions in upper tributary streams, no potential spawning and rearing habitat is being proposed as critical habitat.

(iii) Klickitat River CHSU

Proposed critical habitat in the Klickitat CHSU covers 135.5 km (84.2 mi) of stream. Approximately 42 percent of the CHSU is within the Yakama Nation Reservation, 35 percent is private land, 17 percent is State land, and 6 percent is Federal land. Tribal lands need to be included as critical habitat in this area because the West Fork Klickitat River, and its tributaries within the Yakama Reservation, supports the only known bull trout local population in the Klickitat drainage.

(A) Klickitat River from its confluence with the Columbia River upstream 103.3 km (64.2 mi) to Castile Falls. This section of the Klickitat River is currently occupied foraging and overwintering habitat, and is essential for maintaining connectivity with the Columbia River. The West Fork Klickitat River from its confluence with the Klickitat River at rkm 101.5 (rmi 63.0) upstream 7.2 km (4.5 mi) to the junction of Little Muddy Creek and Fish Lake Stream. The West Fork Klickitat River below the falls at rkm 0.5 (rmi 0.3) provides foraging and overwintering habitat for bull trout in the mainstem Klickitat River. Above the falls, the West Fork Klickitat River and the identified tributaries contain occupied spawning and rearing habitat (Washington Department of Fish and Wildlife (WDFW) 1998; Byrne *et al.*, unpublished 2000). Maintaining the resident bull trout population in the West Fork Klickitat River and its tributaries is essential because it is the only known local population in the Klickitat drainage.

(B) Little Muddy Creek for a distance of 3.4 km (2.1 mi) to the confluence with Crawford Creek and extending 1.3 km (0.8 mi) up Clearwater Creek and 3.4 km (2.1 mi) up Trappers Creek.; Fish Lake Stream for a distance of 9.7 km (6.0 mi) to the confluence with Two Lakes Stream and extending 6.9 km (4.3 mi) up an unnamed tributary that meets Fish Lake Stream at rkm 8.0 (rmi 5.0) and also extending 1.3 km (0.8 mi) up Two Lakes Stream.

(24) Unit 20: Middle Columbia River Basin

The Middle Columbia River unit encompasses the entire Yakima River basin located in south central Washington, draining approximately 15,900 square km (6,155 square mi). The basin occupies most of Yakima and Kittitas counties, about half of Benton County, and a small portion of Klickitat County. Thirteen local populations of bull trout occur in this unit: the mainstem Yakima River (Keechelus to Easton Reach); Ahtanum Creek; American River; Rattlesnake Creek; Crow Creek; South Fork Tieton River; Indian Creek; Deep Creek; North Fork Teanaway River; Box Canyon Creek; Upper Kachess River; Gold Creek; and the Cle Elum River, all of which are essential to recovery. The Draft Recovery Plan (USFWS 2002) recommends the establishment of three other local populations in the North Fork Tieton River, Middle Fork Teanaway River, and Taneum Creek. Approximately 846 km (529 mi) of stream habitat and 6,066 ha (14986 ac) of lake and reservoir surface area are proposed as critical habitat within this unit. Of the stream segments proposed as critical habitat, approximately 44 percent are bordered by Federal land, 40 percent by private land, 9 percent by State land, and 7 percent by the Yakama Nation.

(i) Yakima River from the confluence of Ahtamum Creek at rkm 172.1 (rmi 106.9) upstream 155.9 km (96.9 mi) to Easton Diversion Dam is currently occupied FMO habitat (Pearson *et al.* 1998; M. Johnston, Yakama Nation, pers. comm., 2002) that is essential to maintain connectivity between all local populations within the Middle Columbia River unit. The Yakima River from the Easton Diversion Dam at rkm 326.0 (rmi 202.4) upstream 18.8 km (11.7 mi) to Keechelus Dam at rkm 345.3 (rmi 214.4) is currently occupied FMO and spawning and rearing habitat (WDFW 1998, 2002) for the Yakima River local population, as well as a migratory corridor to other local populations within the unit if passage is provided at Keechelus Dam as specified in the Draft Recovery Plan (USFWS 2002).

(ii) Ahtanum Creek from the confluence with the Yakima River upstream 37.2 km (23.1 mi) to the confluence of the North and South Forks Ahtanum Creek provides currently occupied (WDFW 1998) FMO habitat for the Ahtanum Creek local population. South Fork Ahtanum Creek from the confluence with Ahtanum Creek upstream 23.5 km (14.6 mi) to the headwaters is currently occupied (WDFW 2002), and provides spawning and rearing habitat for the Ahtanum Creek local population. North Fork Ahtanum Creek from the confluence with Ahtanum Creek upstream 33.3 km (20.7 mi) to the headwaters is currently occupied (Dunham and Chandler 2001; WDFW 2002) and provides essential spawning and rearing habitat for the Ahtanum Creek local population. Middle Fork Ahtanum Creek from the confluence with North Fork Ahtanum Creek upstream 15.1 km (9.4 mi) to the headwaters is currently occupied (Dunham and Chandler 2001; WDFW 2002) and provides essential spawning and rearing habitat for the Ahtanum Creek local population. Shellneck Creek from the confluence with North Fork Ahtanum Creek upstream 2.9 km (1.8 mi) to the headwaters is currently occupied (WDFW 2002) and provides spawning and rearing habitat for the Ahtanum Creek local population.

(iii) Naches River from the confluence with the Yakima River upstream 71.8 km (44.6 mi) to the confluence of the Little Naches and Bumping Rivers is currently occupied (WDFW 1998) and provides FMO habitat for the American River, Rattlesnake Creek, and Crow Creek local populations.

(iv) Tieton River from the confluence with the Naches River upstream 34.3 km (21.3 mi) to Tieton Dam is currently occupied (J. Thomas, USFWS, pers. comm., 2002) and provides FMO habitat for local bull trout populations in the Naches River Basin. Bull trout in this reach may be from any one of the three isolated local populations that inhabit Rimrock Reservoir. These fish are often entrained into the Tieton River as water within Rimrock Reservoir is withdrawn (James 2001). This reach will provide a migratory corridor to other local populations if passage is provided at Tieton Dam as specified in the Draft Recovery Plan (USFWS 2002).

(v) Rimrock Reservoir (987 ha (2,438 ac)) and North Fork Tieton River upstream 1.4 km (0.9 mi) to Clear Lake Dam is currently occupied (WDFW 1998), and provides FMO habitat for the South Fork Tieton River and Indian Creek local populations. This reach will also provide a migratory corridor to other local populations within the Yakima Basin if passage is provided at Tieton Dam and Clear Lake Dam as specified in the Draft Recovery Plan (USFWS 2002).

(vi) South Fork Tieton River from the confluence with Rimrock Reservoir upstream 27.0 km (16.8 mi) to a natural barrier is currently occupied (WDFW 2002) and provides spawning and rearing habitat for the South Fork Tieton River local population. Short and Dirty Creek from the confluence with the South Fork Tieton River upstream approximately 0.2 km (0.1 mi) to a natural barrier is currently occupied (WDFW 1998) rearing habitat for the South Fork Tieton River local population. Spruce Creek from the confluence with the South Fork Tieton River upstream approximately 0.8 km (0.5 mi) to a natural barrier is currently occupied and provides spawning and rearing habitat for the South Fork Tieton River local population (WDFW 1998). Grey Creek from the confluence with the South Fork Tieton River upstream approximately 0.4 km (0.2 mi) to a natural barrier is currently occupied and provides spawning and rearing habitat for the South Fork Tieton River local population (WDFW 1998). Bear Creek from the confluence with the South Fork Tieton River upstream approximately 1.8 km (1.1 mi) to a natural barrier is currently occupied and contains spawning and rearing habitat for the South Fork Tieton River local population (WDFW 2002).

(vii) Indian Creek from the confluence with Rimrock Reservoir upstream 8.1 km (5.0 mi) to a natural barrier is currently occupied and provides spawning and rearing habitat for the Indian Creek local population (WDFW 2002). Three springs which enter Indian Creek at rkm 3.5 (rmi 2.2), rkm 4.3 (rmi 2.7), and rkm 5.2 (rmi 3.2), respectively, also provide spawning and rearing habitat.

(viii) Clear Lake Reservoir (91 ha (225 ac)) may be currently occupied in very small numbers (E. Anderson, WDFW, *in litt.*, 2002) and will provide FMO habitat for the recovered distribution of bull trout (USFWS 2002). The North Fork Tieton River from the confluence with Clear Lake Reservoir upstream 19.1 km (11.9 mi) to a natural barrier is currently occupied (Craig 1997), likely in low numbers, and provides spawning and rearing habitat essential to the recovered distribution of bull trout (USFWS 2002).

(ix) Rattlesnake Creek from the confluence with the Naches River upstream 40.2 km (25.0 mi) to the headwaters is currently occupied (WDFW 2002) and provides essential FMO and spawning and rearing habitat for the Rattlesnake Creek local population of bull trout. Dog Creek from the confluence with Rattlesnake Creek upstream 1.1 km (0.7 mi) to the confluence with Lookout Creek; Hindoo Creek from the confluence with Dog Creek upstream 1.8 km (1.1 mi) to a natural barrier; and Little Wildcat Creek from the confluence with Rattlesnake Creek upstream 5.8 km (3.6 mi) to the headwaters provide currently occupied (WDFW 2002) spawning and rearing habitat for the Rattlesnake Creek local population.

(x) Little Naches River from the confluence with the Naches River upstream 5.0 km (3.1 mi) to the confluence with Crow Creek is occupied FMO habitat supporting local populations in the Naches River Basin, particularly the Crow Creek local population (WDFW 1998).

(xi) Crow Creek from the confluence with the Little Naches River upstream 15.1 km (9.4 mi) to the confluence with Falls Creek contains occupied spawning and rearing habitat for the Crow Creek local population (WDFW 2002).

(xii) Bumping River from the confluence with the Naches River upstream 24.8 km (15.4 mi) to Bumping Dam contains occupied FMO habitat (Kalin and Ackerman 2002) for the local populations within the Naches River Basin. This reach will also provide a migratory corridor to other local populations within the Yakima River Core Area if passage is provided at Bumping Dam as specified in the Draft Recovery Plan (USFWS 2002). Bumping Reservoir (532 ha (1;314 ac)) is occupied (WDFW 1998) and provides foraging and rearing habitat for the Deep Creek local population.

(xiii) Deep Creek from the confluence with Bumping Reservoir upstream 5.6 km (3.5 mi) to a natural barrier approximately 305 m (1,000 ft) upstream from USFS Road 2008 crossing provides spawning and rearing habitat for the Deep Creek local population (WDFW 2002).

(xiv) American River from the confluence with the Bumping River upstream 27.0 km (16.8 mi) to the confluence with Morris Creek provides spawning and rearing habitat for the American River local population (WDFW 2002). This reach also provides essential FMO habitat for the American River local population and other local populations within the Naches River Basin. Kettle Creek from the confluence with the American River upstream 3.2 km (2.0 mi) to a natural barrier, Union Creek from the confluence with the American River upstream 0.8 km (0.5 mi) to a natural barrier, and Timber Creek from the confluence with the American River upstream 0.8 km (0.5 mi) to a natural barrier provide spawning and rearing habitat for the American River local population (WDFW 2002).

(xv) Taneum Creek from the confluence with the Yakima River upstream 20.4 km (12.7 mi) to the confluence with the North and South Forks of Taneum Creek is not currently known to be occupied, but will provide FMO habitat for the recovered distribution of bull trout (USFWS 2002). North Fork Taneum Creek from the confluence with Taneum Creek upstream 19.0 km (11.8 mi) to the headwaters, and South Fork Taneum Creek from the confluence with Taneum Creek upstream 13.8 km (8.6 mi) to the headwaters are not currently known to be occupied, but will provide FMO habitat for the recovered distribution of bull trout (USFWS 2002).

(xvi) Teanaway River from the confluence with the Yakima River upstream 19.5 km (12.1 mi) to the confluence of the Middle and West Forks Teanaway River provides FMO habitat for the Teanaway River local populations (Pearson *et al.* 1998). North Fork Teanaway River from the confluence with the Teanaway River upstream 30.7 km (19.1 mi) to the headwaters contains essential FMO and spawning and rearing habitat for the North Fork Teanaway River local population (Pearson *et al.* 1998; WDFW 2002). Jack Creek from the confluence with the North Fork Teanaway River upstream 10.9 km (6.8 mi) to the headwaters; Jungle Creek from the confluence with the North Fork Teanaway River upstream 6.4 km (4.0 mi) to the headwaters; and DeRoux Creek from the confluence with the North Fork Teanaway River upstream 4.7 km (2.9 mi) to the headwaters provide spawning and rearing habitat for the North Fork Teanaway River local population (Pearson *et al.*1998; WDFW 1998, 2002).

(xvii) Middle Fork Teanaway River from the confluence with the Teanaway River upstream 25.5 km (15.9 mi) to the headwaters is of unknown occupancy but provides suitable FMO and spawning and rearing habitat (E. Anderson, *in litt.*, 2002) necessary for the recovered distribution of bull trout (USFWS 2002).

(xviii) Cle Elum River from the confluence with the Yakima River upstream 13.2 km (8.2 mi) to Cle Elum Dam was historically occupied by bull trout (WDFW 1998), but the extent of current occupancy is unknown. This reach may provide essential FMO habitat for the mainstem Yakima River

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population, and will provide a migratory corridor to other local populations upstream if passage is provided at Cle Elum Dam as stipulated in the Draft Recovery Plan (USFWS 2002).

(xix) Cle Elum Reservoir (1,770 ha (4,375 ac)) provides FMO habitat for the Upper Cle Elum River local population (WDFW 1998), and will provide a migratory corridor between other local populations within the Yakima Basin if passage is provided at Cle Elum Dam, as stipulated in the Draft Recovery Plan (USFWS 2002). The Cle Elum River from the confluence with the Cle Elum Reservoir upstream 34.8 km (21.6 mi) to the headwaters provides spawning and rearing habitat for the Cle Elum River local population (P. James, Central Washington University, pers. comm., 2002; WDFW 2002) and may also provide FMO habitat as well. The Cooper River from the confluence with the Cle Elum River upstream 22.7 km (14.1 mi) to the headwaters is currently of unknown occupancy, but would provide both FMO and spawning and rearing habitat for the recovered distribution of the Cle Elum River local population (USFWS 2002). The Waptus River from the confluence with the Cle Elum River upstream 21.2 km (13.2 mi) to its headwaters provides spawning, rearing, and FMO habitat for the Upper Cle Elum River local population (WDFW 1998; Hisata 1999). Fortune Creek from the confluence with the Cle Elum River upstream 7.2 km (4.5 mi) to the headwaters provides spawning and rearing habitat (T. Mayo, USFS, pers. comm., 2002).

(xx) Kachess River from the confluence with the Yakima River upstream 1.4 km (0.9 mi) to Kachess Dam is of unknown occupancy, but likely provides FMO habitat for the mainstem Yakima River local population and will provide a migratory corridor to other local populations within the Yakima Basin if passage is provided at Kachess Dam (USFWS 2002).

(xxi) Kachess Reservoir (1,734 ha (4,260 ac)) provides FMO habitat for the Box Canyon and Upper Kachess River local populations (WDFW 2002), and will provide a migratory corridor to other local populations within the Yakima River Core Area if passage is provided at Kachess Dam (USFWS 2002). Box Canyon Creek from the confluence with Kachess Reservoir upstream 2.6 km (1.6 mi) to a natural barrier provides spawning and rearing habitat for the Box Canyon Creek local population (WDFW 2002). Kachess River upstream of Kachess Reservoir from the confluence with Kachess Reservoir upstream 3.2 km (2.0 mi) to a natural barrier provides essential spawning and rearing habitat for the Upper Kachess River local population (Meyer 2002; WDFW 2002). Mineral Creek from the confluence with the Kachess River upstream 1.0 km (0.6 mi) to a natural barrier provides rearing habitat for the Upper Kachess River local population (Meyer 2002; WDFW 2002).

(xxii) Keechelus Reservoir (961 ha (2,374 ac)) provides FMO habitat for the Gold Creek local population, and will provide a migratory corridor to other local populations within the Yakima Basin, if passage is provided at Kachess Dam, as stipulated in the Draft Recovery Plan (USFWS 2002). Gold Creek from Keechelus Reservoir upstream 11.4 km (7.1 mi) to a natural barrier contains essential spawning and rearing habitat for the Gold Creek local population (WDFW 2002).

(25) Unit 21: Upper Columbia River Basin

The Upper Columbia River Basin includes three CHSUs in central and northern Washington on the east slopes of the Cascade Mountains: (1) Wenatchee River CHSU in Chelan County; (2) Entiat River CHSU in Chelan County; and (3) Methow River CHSU in Okanogan County. A total of 909.7 km (565.4 mi) of streams and 1,010 ha (2,497 ac) of lake surface area are proposed for critical habitat.

Proposed critical habitat includes 364 km (226.1 mi) of stream in 21 stream reaches and one lake (990 ha; 2,445 ac) in the Wenatchee River CHSU, 78.5 km (48.8 mi) of stream in three stream reaches in the Entiat River CHSU, and 486.3 km (302.2 mi) of stream in 26 stream reaches and three lakes that total 22.6 ha (55.9 ac) in the Methow River CHSU.

(i) Wenatchee River CHSU

This CHSU contains the largest known populations of bull trout in the Upper Columbia River Basin, and includes the mainstem Wenatchee River and tributaries from the Columbia River up to their headwaters. Landownership along the stream reaches proposed for critical habitat is 59 percent Federal land and 41 percent private land. The ownership of the shoreline of the lake proposed for critical habitat is 40 percent Federal land and 60 percent private land. Currently, there are six migratory local populations in the Wenatchee River core area: Peshastin Creek (including Ingalls Creek), Chiwaukum Creek, Chiwawa River (including Chikamin, Rock, Phelps, James, Alpine, and Buck Creeks), Nason Creek (including Mill Creek), Little Wenatchee River (below the falls), and White River (including Canyon and Panther Creeks). There is also a resident bull trout population in Icicle Creek above the barrier falls.

(A) Wenatchee River from the confluence with the Columbia River upstream 87.2 km (54.2 mi) to Lake Wenatchee provides FMO habitat (Kreiter 2001, 2002) for at least four of the six local migratory bull trout populations upstream. Lake Wenatchee (approximately 990 ha (2,445 ac) provides FMO habitat (USFWS 2002) for the Chiwawa River, Little Wenatchee River, White River, and likely the Nason Creek local populations.

(B) Peshastin Creek from the confluence with the Wenatchee River upstream 17.4 km (10.8 mi) to the confluence with Negro Creek provides FMO habitat for the Peshastin Creek local population (USFWS 1997a; 1998). Ingalls Creek from its mouth on Peshastin Creek upstream 16.3 km (10.1 mi) to a barrier falls provides essential spawning and rearing habitat for the Peshastin Creek local population (USFWS 1997a).

(C) Icicle Creek from its mouth on the Wenatchee River upstream 8.8 km (5.5 mi) to a potential barrier (complex boulder area) provides essential FMO habitat for migratory bull trout. Spawning and rearing habitat occurs from this point upstream to the falls at rkm 48.3. This area is occupied by a resident population that has been isolated since 1940 by a fish barrier at the Leavenworth National Fish Hatchery, and possibly longer if the boulder area at rkm 8.8 poses an absolute barrier. Jack Creek from its mouth on Icicle Creek at rkm 27.7 (rmi 17.2) upstream 11.4 km (7.1 mi) to a barrier falls provides essential spawning and rearing habitat for the Icicle Creek local population (USFWS 1997a). French Creek from its mouth on Icicle Creek at rkm 34.8 (rmi 21.6) upstream 8.8 km (5.5 mi) to a barrier falls also provides spawning and rearing habitat for bull trout in the Icicle Creek local population.

(D) Chiwaukum Creek from its mouth on the Wenatchee River at rkm 57.8 upstream 10.5 km (6.5 mi) to a barrier falls provides spawning and rearing habitat for bull trout in the Chiwaukum Creek population (USFWS, *in litt.*, 2002).

(E) Chiwawa River from its confluence with the Wenatchee River upstream 53.3 km (33.1 mi) to a barrier falls provides essential FMO habitat up to Grouse Creek at rkm 31.2, and spawning and rearing habitat from that point upstream to rkm 53.3 (Hillman and Miller 2002). The Chiwawa River local population is the largest population in the Wenatchee Basin. Chikamin Creek from its mouth on the Chiwawa River at rkm 22.2 upstream 13.4 km (8.4 mi) to its headwaters (Hillman and Miller 2002), Rock Creek from its mouth on the Chiwawa River at rkm 34.3 upstream 9.3 km (5.8 mi) to a barrier falls (USFS 2002a), Phelps Creek from its mouth on the Chiwawa River at rkm 48.6 upstream 1.6 km (1.0 mi) to a barrier falls, James Creek from its mouth on the Chiwawa River at rkm 50.2 upstream 0.5 km (0.3 mi) to a gradient barrier (USFWS, *in litt.*, 2001), Alpine Creek from its mouth on the Chiwawa River at rkm 51.0 upstream to a gradient barrier at rkm 0.2 (USFWS, *in litt.*, 2001), and Buck Creek from its mouth on the Chiwawa River at rkm 53.1 upstream 0.6 km (0.4 mi) to a barrier falls (USFWS, *in litt.*, 2001) provide essential spawning and rearing habitat for the Chiwawa River local population.

(F) Nason Creek from its mouth on the Wenatchee River at rkm 86.2 (rmi 53.5) upstream 34.9 km (21.7 mi) to a barrier falls provides FMO habitat in the lower reaches to the confluence with Whitepine Creek at rkm 24.8, and spawning and rearing habitat in the upper reaches (USFWS 2002). Mill Creek from its mouth on Nason Creek at rkm 33.0 (rmi 20.5) upstream to barrier falls at rkm 1.0 provides the only other known spawning and rearing habitat for the Nason Creek local population (USFWS 2002).

(G) Little Wenatchee River from its mouth at the upper end of Lake Wenatchee upstream to a barrier (falls) at rkm 12.6 contains spawning and rearing habitat for the Little Wenatchee local population (J. DeLaVergne, USFWS, pers. comm., 2001). In addition to providing spawning and rearing habitat, it appears to provide a foraging area for bull trout using Lake Wenatchee (USFWS 2002).

(H) White River from its mouth at the upper end of Lake Wenatchee upstream to a barrier falls at rkm 23.0 provides one of only two main spawning areas for the White River local population (USFWS 2002). In addition to providing spawning and rearing habitat, it appears to provide a foraging area for bull trout using Lake Wenatchee (USFWS 2002). Canyon Creek from its mouth on the White River at rkm 15.2 upstream to its headwaters at rkm 6.3 is at least seasonally occupied (J. DeLaVergne, USFWS, pers. comm., 2002), and provides potential spawning and rearing habitat for the recovered distribution of bull trout (USFWS 2002). The Napeequa River from its mouth on the White River at rkm 15.2 (rmi 9.4) upstream 3.5 km (2.2 mi) to a barrier falls is at least seasonally occupied (J. DeLaVergne, USFWS pers. comm., 2002), may provide spawning and rearing habitat (WDFW 1992), and may also provide valuable foraging habitat due to the presence of spawning sockeye salmon (Oncorhynchus nerka) and their progeny. Panther Creek from its mouth on the White River at rkm 21.1 (rmi 13.1) upstream 1.1 km (0.7 mi) to a barrier falls provides occupied spawning and rearing habitat (USFWS 2002) and is probably the main spawning area for the White River local population.

(ii) Entiat River CHSU

The Entiat River CHSU includes the Entiat River and its tributaries. The apex of the watershed is at the Cascade crest and water flows east towards the Columbia Plateau. The Entiat River drains into the Columbia River near the city of Entiat. Landownership along the stream reaches proposed for critical habitat within the Entiat River CHSU is approximately 47 percent Federal land and 53 percent private land. There are two local populations in the Entiat CHSU: Entiat River and Mad River (including Tillicum Creek).

(A) Entiat River from confluence with the Columbia River at rkm 778.3 (rmi 483.3) upstream to a barrier falls at rkm 47.0 (rmi 29.2) is occupied and provides FMO habitat (Kreiter 2001, 2002) in the lower reaches (up to about rkm 25.7 (rmi 16.0)), and spawning and rearing habitat from that point upstream to the falls (USFWS 1997b, 1999c, 2000b, 2002).

(B) Mad River from the confluence with the Entiat River upstream 31.5 km (19.6 mi) to a barrier cascades is occupied (WDFW 1992), provides essential FMO habitat in the lower reaches (Kreiter 2001, 2002), and spawning a rearing habitat from that point upstream to the barrier (USFS 2002a). The Mad River provides the majority of the known spawning and rearing habitat in the Entiat CHSU. Tillicum Creek from the confluence with the Mad River upstream 4.7 km (2.9 mi) to a barrier falls contains habitat of unknown occupancy, but that is suspected to support bull trout spawning and rearing (WDFW 1998), and that is necessary to provide for the recovered distribution of bull trout (USFWS 2002).

(iii) Methow River CHSU

The Methow River CHSU is located on the eastern slopes of the Cascade Mountains in northern Washington. The Methow River drains into the Columbia River near the town of Pateros. The CHSU includes the mainstem Methow River and tributaries from the Columbia River up to their headwaters. Landownership along the stream reaches proposed for critical habitat within this CHSU is 59 percent Federal land and 41 percent private land. The three lakes are entirely surrounded by Federal land. Currently, there are eight local populations of bull trout identified (USFWS 2002) in the Methow CHSU: Gold Creek (including Crater Creek), Twisp River (including Buttermilk, Bridge, Reynolds, and North creeks), Chewuch River (including Lake Creek), Wolf Creek, Early Winters Creek, Upper Methow River, Lost River, and Goat Creek. Adfluvial, fluvial, and resident forms of bull trout are all present.

(A) Methow River from the confluence with the Columbia River at rkm 843.0 (rmi 523.5) upstream to its confluence with the Lost River at rkm 117.5 is occupied and provides essential FMO habitat (Kreiter 2001, 2002) to facilitate bull trout migration between the Columbia River, Methow River and the eight local populations. The Methow River from the confluence with the Lost River upstream to the West Fork of the Methow River at rkm 133.2 (rmi 82.7) provides essential spawning and rearing habitat for the Upper Methow River local population. Robinson Creek from its confluence with the Methow River upstream to its headwaters, and Rattlesnake Creek from its confluence with the Methow River upstream to a barrier falls at rkm 1.9, are of unknown occupancy, but may be accessible in their lower reaches and may provide essential spawning and rearing habitat for the recovered distribution of the Upper Methow River local population (USFWS 2002). Trout Creek from its confluence with the Methow River upstream 11.6 km (7.2 mi) to its headwaters provides occupied spawning and rearing habitat for the Upper Methow River local population (WDFW 1998).

(B) Gold Creek from the confluence with the Methow River upstream 1.8 km (1.1 mi) to the confluence of the North Fork and South Fork of Gold Creek, and the North Fork of Gold Creek from the confluence of the North Fork and South Fork of Gold Creek upstream 8.4 km (5.2 mi) to the confluence with Crater Creek, are all of unknown occupancy by bull trout, but provide essential FMO habitat to connect bull trout that spawn and rear in Crater Creek with foraging habitat in the Methow River, as well as to provide habitat for the recovered distribution of bull trout (USFWS 2002). Crater Creek from the confluence with North Fork Gold Creek upstream 4.7 km (2.9 mi) to a barrier falls is currently

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occupied and provides essential spawning and rearing habitat for the Gold Creek local population.

(C) Beaver Creek from confluence with the Methow River at rkm 56.6 (rmi 35.1) upstream to the confluence with Blue Buck Creek provides historical FMO habitat (WDFW 1998) to restore connectivity of isolated resident bull trout populations in Blue Buck Creek with the Methow River and its associated bull trout populations. Addressing human-made barriers and habitat restoration are necessary to allow migratory bull trout to utilize this area to provide for the recovered distribution of bull trout (USFWS 2002). Blue Buck Creek from its confluence with Beaver Creek upstream to a barrier falls at rkm 3.5 is currently occupied by a resident population of bull trout that is thought to have historically included a migratory component (WDFW 1998).

(D) Twisp River from the confluence with the Methow River at rkm 64.7 (rmi 40.2) upstream 47.5 km (29.5 mi) to the confluence of the North Fork and South Fork provides FMO habitat (Kreiter 2001, 2002) from the mouth up to the confluence with Little Bridge Creek at rkm 15.0 and spawning and rearing habitat (USFS 2002b) from that point upstream to the confluence of the North Fork and South Fork. Little Bridge Creek from the confluence with the Twisp River upstream 15.8 km (9.8 mi) to its headwaters provides habitat necessary for the recovered distribution of bull trout (USFWS 2002). Buttermilk Creek from the confluence with the Twisp River upstream 4.0 km (2.5 mi) to the East and West Forks of Buttermilk Creek is at least seasonally occupied (Kreiter 2001, 2002) and provides FMO habitat. The East Fork of Buttermilk Creek from the confluence with Buttermilk Creek upstream 4.8 km (3.0 mi) to a series of falls that form a barrier, and the West Fork of Buttermilk Creek from the confluence with Buttermilk Creek upstream 14.5 km (9.0 mi) to its headwaters, are currently occupied and provide spawning and rearing habitat for the Twisp River local population (J. DeLaVergne, pers. comm., 2001; USFS 2002b). Reynolds Creek from the confluence with the Twisp River at rkm 33.6 upstream 1.1 km (0.7 mi) to a barrier falls, and North Creek from the confluence with the Twisp River at rkm 42.0 upstream 1.3 km (0.8 mi) to a barrier falls are currently occupied and provide essential spawning and rearing habitat for the Twisp River local population (WDFW 1998; USFS 2002b).

(E) Chewuch River from the confluence with the Methow River at rkm 80.6 upstream 52.0 km (32.3 mi) to a barrier falls provides FMO habitat up to the confluence with Lake Creek at rkm 38.1 and spawning and rearing habitat from that point up to the barrier falls (J. DeLaVergne, pers. comm., 2001). Lake Creek from its confluence with the Chewuch River upstream 12.6 km (7.8 mi) to the upper limits of Black Lake, and including Black Lake, is currently occupied FMO habitat. From Black Lake upstream to a barrier falls (15.8 km (9.8 mi)) above the confluence with the Chewuch River is where spawning and rearing habitat occurs (USFS 1994b, 1995a; 2002b).

(F) Wolf Creek from the confluence with the Methow River at rkm 85.0 (rmi 52.8) upstream 17.1 km (10.6 mi) to a barrier falls provides essential FMO habitat from its mouth up to the wilderness boundary at rkm 7.4 (rmi 4.6), and essential spawning and rearing habitat from that point up to the barrier falls (WDFW 1998; USFS 2002b).

(G) Goat Creek from its confluence with the Methow River at rkm 103.0 upstream 20.4 km (12.7 mi) to its headwaters is currently occupied by both resident and fluvial bull trout (WDFW 1998), provides FMO habitat up to Vanderpool Crossing at rkm 10.9 (rmi 6.8), and spawning and rearing habitat from there up to its headwaters (J. DeLaVergne, pers. comm., 2001; B. Kelly Ringel, USFS, pers. comm., 2002).

(H) Early Winters Creek from the confluence with the Methow River at rkm 108.3 upstream 26.5 km (16.5 mi) to its headwaters contains both FMO habitat and the primary spawning and rearing habitat for this local population. Fluvial bull trout are found downstream of a falls at rkm 12.9, and resident bull trout are found upstream of this point (WDFW 1998; USFS 2002b). Recently, some migratory sized bull trout have also been noted above the falls (J. DeLaVergne, pers. comm., 2001). Cedar Creek from its confluence with Early Winters Creek upstream 4.0 km (2.4 mi) to a barrier falls also provides spawning and rearing habitat for the Early Winters Creek local population (USFS 2002b). Huckleberry Creek from its confluence with Cedar Creek at rkm 3.5 upstream 7.1 km (4.4 mi) to its headwaters contains suitable spawning and rearing habitat necessary to provide for the recovered distribution of bull trout (USFWS 2002).

(I) The Lost River from its confluence with the Methow River upstream to the confluence with Monument Creek at rkm 12.4 provides FMO habitat. The Lost River from approximately rkm 20.4 (rmi 12.7) upstream to rkm 31.7 (rmi 19.7), about 1 km (0.6 mi) below Cougar Lake, contains the primary bull trout spawning and rearing habitat in this basin (WDFW 1998). From Cougar Lake at rkm 32.7 (rmi 20.3) upstream to Middle Hidden Lake at rkm 36.2 (rmi 22.5) contains FMO and spawning and rearing habitat as well (USFS 2000b; B. Hallock, USFWS, pers. comm., 2002). Female size at maturity has shown the Lost River bull trout population to be composed of resident fish, though there may be some exchange with the Cougar Lake adfluvial stock (WDFW 1998). Both resident populations and adfluvial bull trout from Cougar Lake spawn and rear in the Lost River (WDFW 1998; USFS 2002b). Access to spawning and rearing habitat in this drainage is naturally disrupted by rock slides across the river at rkm11.6 (rmi 7.2) and rkm19.3 (rmi 12.0) that both appear to be comparatively recent barriers. The Lost River also flows subsurface for about 6 to 8 km (4 to 5 mi) between Drake Creek (at rkm 16.8 (rmi 11.7)) and Monument Creek (at rkm 12.4 (rmi 7.7)), and for about 1.0 km (0.6 mi) below Cougar Lake (at rkm 32.7 (rmi 20.3)) (Washington State Conservation Commission (WSCC) 2000). Monument Creek from the confluence with the Lost River upstream to its headwaters provides essential spawning and rearing habitat for the Lost River local population. Cougar Lake (approximately 7.6 ha (18.7 ac)), First Hidden Lake (approximately 7.3 ha (18 ac)), and Middle Hidden Lake (approximately 7.7 ha (19.1 ac)) provide FMO and rearing habitat for adfluvial bull trout (WDFW 1998).

(J) The West Fork of the Methow River from the confluence with the Methow River upstream 14.5 km (9.0 mi) to a barrier falls provides the primary spawning and rearing habitat for the Upper Methow River local population (USFS 2002b).

(26) Unit 22: Northeast Washington River Basins

The Northeast Washington unit includes bull trout above Chief Joseph Dam on the Columbia River. Major tributaries in the unit include the Sanpoil, Spokane, Kettle, Colville, and Pend Oreille Rivers. A total of 373.1 km (231.9 mi) of streams and 1,166 ha (2,880 ac) of lake surface area are proposed as critical habitat within this unit.

(i) Pend Oreille River CHSU

The Pend Oreille River CHSU is in the northeast corner of Washington State and includes the Pend Oreille River and all tributaries from Boundary Dam upstream to Albeni Falls Dam in Idaho. Only about 4.0 km (2.5 mi) of the Pend Oreille River and tributary waters within this CHSU are located in Idaho (Bonner County), with the remainder of

the CHSU within Pend Oreille County, Washington (Northwest Power Planning Council (NPPC) 2001). The basin encompasses 279,720 ha (691,200 ac) of which approximately 58 percent is public land managed by the USFS (Colville National Forest); 4 percent is State land, 1 percent is Tribal land, and 37 percent private lands. The USFWS also manages a small parcel of land as a unit of the Little Pend Oreille National Wildlife Refuge (Cusick Unit) near Cusick, Washington. Of the approximately 3,553 km (2,208 mi) of tributary streams that occur in this CHSU, 255.5 km (158.8 mi) are proposed for bull trout critical habitat, as well as approximately 117.6 km (73.1 mi) of the Pend Oreille River from Boundary Dam to Albeni Falls Dam, for a total 373.1 km (231.9 mi) of proposed critical habitat for this CHSU.

(A) The Pend Oreille River from Boundary Dam upstream 117.6 km (73.1 mi) to Albeni Falls Dam provides FMO habitat for the recovered distribution of bull trout (USFWS 2002). This reach includes Box Canyon Reservoir with a surface area of 2,983 ha (7,371 ac). Bull trout are at least occasionally present in this reach (Bennett and Liter 1991; M. Liter, IDFG, pers. comm., 2002; C. Donnelly, WDFW, pers. comm., 2002). Boundary Reservoir, a 27.4 km (17.0 mi) impoundment with a surface area of 664 ha (1,640 ac) at full pool elevation is also included in this reach. Bull trout are present in this reach (R2 Resource Consultants, Inc. 1998, citing C. Vail, WDFW, pers. comm., 1996; R2 Resource Consultants 1998, 2000). The mouths of tributaries provided localized zones of well defined cool water refugia in Boundary Reservoir in 1996. Small areas of cold water that provide refugia for bull trout were identified at the mouths of Sullivan, Flume, Slate, and Pee Wee Creeks (R2 Resource Consultants, Inc. 1998).

(B) Slate Creek from its confluence with the Pend Oreille River upstream 16.3 km (10.1 mi) to its headwaters provides spawning and rearing habitat necessary for the recovered distribution of bull trout (USFWS 2002). Reproduction is not currently known to occur within Slate Creek, but several bull trout have been captured at or near the mouth of Slate Creek in recent years (USFS 1999d; Terrapin Environmental 2000), including two migratory-sized individuals caught by angling in the early 1990s, indicating the presence of migratory bull trout using Slate Creek (T. Shuhda, USFS, pers. comm., 2002). Habitat capable of supporting strong and significant populations of native salmonids, particularly bull trout, exists throughout the Slate Creek watershed (USFS 1999d).

(C) Sullivan Creek from its confluence with the Pend Oreille River upstream 35.3 km (22.0 mi) to its headwaters, provides FMO habitat in the lower reaches and spawning and rearing habitat in the upper reaches necessary for the recovered distribution of bull trout (USFWS 2002). Reproduction is not currently known to occur in Sullivan Creek; only one large adfluvial bull trout has been documented in these waters in recent years (USFS 1999e), and the 5.2 km (3.2 mi) reach from Mill Pond Dam down to the stream's confluence with Boundary Reservoir is believed to contain fewer than 50 adult bull trout (USFS 1999e). Outlet Creek from the confluence with Sullivan Creek upstream 19.3 km (12.0 mi) to the uppermost extent of the waters in Sullivan Lake provides FMO habitat necessary for the recovered distribution of bull trout (USFWS 2002). Establishing fish passage at both Mill Pond Dam and Sullivan Lake Dam is identified as an important bull trout recovery task (USFWS 2002). The entire area 502 ha (1,240 ac) of Sullivan Lake, which is a natural, deep, oligotrophic (deficient in plant nutrients) lake with a maximum depth of 95 m (312 ft) (T. Shuhda, pers. comm., 2002). It contains a strong forage base of kokanee salmon (*O. nerka*) and provides cold water refugia during summer months due to well developed thermal stratification. Harvey Creek from its confluence with Sullivan Lake upstream 18.3 km (11.4 mi) to its headwaters at Bunch Grass Lake provides spawning and rearing habitat necessary for the recovered distribution of bull trout (USFWS 2002). Harvey Creek has permanent water flow and provides good quality habitat for bull trout and other native salmonids (USFS 1999e). This stream has no migration barriers and is a stronghold for native westslope cutthroat trout populations in the Sullivan Creek watershed.

(D) Cedar Creek from its confluence with the Pend Oreille River upstream 16.1 km (10.0 mi) to its headwaters provides spawning and rearing habitat necessary for the recovered distribution of bull trout (USFWS 2002). Additionally, in September 1995, one bull trout measuring 460 mm (18 in) in length was observed above the Ione Municipal Dam during stream surveys conducted by the Kalispel Tribe (J. Maroney, Kalispell Tribe, pers. comm., 2002). There is no information on the origin or life history form of this fish, but the USFS suggests that this bull trout must have been a product of a spawning population above Ione Municipal Dam (USFS 1999f).

(E) Ruby Creek from its confluence with the Pend Oreille River upstream 21.1 km (13.1 mi) to its headwaters provides FMO habitat in the lower reaches and spawning and rearing habitat necessary for the recovered distribution of bull trout in the upper reaches (USFWS 2002). Bull trout are not currently known to occupy Ruby Creek.

(F) LeClerc Creek from the confluence with the Pend Oreille River upstream 1.9 km (1.2 mi) to the confluence of the West Branch of LeClerc Creek and the East Branch of LeClerc Creek is currently occupied FMO habitat (S. Toth, Plum Creek Timber Company, *in litt.*, 1993), and also provides habitat necessary for the recovered distribution of bull trout (USFWS 2002). The West Branch of LeClerc Creek from the confluence with the Pend Oreille River upstream 24.8 km (15.4 mi) to its headwaters is occupied and provides spawning and rearing habitat for the LeClerc Creek bull trout population complex (T. Shuhda, pers. comm., 2002). East Branch of LeClerc Creek from the confluence with the Pend Oreille River upstream 20.8 km (12.9 mi) to the headwaters is occupied and provides spawning and rearing habitat for the LeClerc Creek population complex. Fourth of July Creek from its confluence with the East Branch of LeClerc Creek upstream 6.1 km (3.8 mi) to the headwaters provides spawning and rearing habitat, as well as habitat necessary to provide for the recovered distribution of bull trout (USFWS 2002). Bull trout have been noted at the mouth of this creek (J. Maroney, Kalispel Tribe, pers. comm., 2001), although spawning activity has not been confirmed. Water temperatures in Fourth of July Creek are cooler than water temperatures in the East Branch of LeClerc Creek, and habitat is suitable for bull trout spawning and rearing (T. Shuhda, pers. comm., 2002).

(G) Mill Creek from its confluence with the Pend Oreille River upstream 2.1 km (1.3 mi) to a barrier falls is occupied by bull trout (J. Maroney, Kalispel Tribe pers. comm., 2001), and also provides spawning and rearing habitat necessary to provide for the recovered distribution of bull trout (USFWS 2002).

(H) Tacoma Creek from its confluence with the Pend Oreille River, the North Fork of the South Fork of Tacoma Creek from the confluence with the South Fork Tacoma Creek, and the South Fork of Tacoma Creek from the confluence with Tacoma Creek upstream a total of 61.7 km (38.3 mi) to their respective

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headwaters, provide FMO and spawning and rearing habitat necessary to provide for the recovered distribution of bull trout (USFWS 2002). These creeks are not currently known to be occupied by bull trout, but provide suitable habitat (T. Shuhda, pers. comm., 2002).

(I) Calispell Creek from its confluence with the Pend Oreille River upstream 4.2. km (2.6 mi) to the confluence with Smalle Creek is not currently known to be occupied by bull trout but provides FMO habitat necessary to provide for the recovered distribution of bull trout (USFWS 2002). Smalle Creek from its confluence with Calispell Creek upstream 10.6 km (6.6 mi) to a barrier falls, and East Fork of Smalle Creek from its confluence with Smalle Creek upstream 6.8 km (4.2 mi) to a barrier falls are not currently known to be occupied by bull trout, but provide suitable spawning and rearing habitat necessary to provide for the recovered distribution of bull trout (T. Shuhda, pers. comm., 2002; USFWS 2002).

(J) Indian Creek from its confluence with the Pend Oreille River upstream 8.5 km (5.3 mi) to the headwaters provides spawning and rearing habitat that may be currently utilized, but is also necessary to provide for the recovered distribution of bull trout (USFWS 2002). A gravid (pregnant) female bull trout has been documented in Indian Creek in recent years (J. Maroney, Kalispell Tribe, pers. comm., 2000). Indian Creek has 21.5 square meters per kilometer of suitable bull trout spawning habitat (Kalispel Natural Resource Department and WDFW 1995).

(27) Unit 23: Snake River Basin in Washington

The Snake River Washington Unit includes two critical habitat subunits (CHSU) located in southeast Washington: (1) the Tucannon River CHSU located in Columbia and Garfield counties, and (2) the Asotin Creek CHSU within Garfield and Asotin counties. A total of 326 km (203 mi) of stream reaches are proposed as critical habitat within this unit.

(i) Tucannon River CHSU

The Tucannon River CHSU encompasses the Tucannon River, Little Tucannon River, and Pataha Creek watersheds and their immediate major and minor tributaries. Landownership in the Tucannon River CHSU is comprised of 71 percent Federal lands; 23 percent State or local government lands, and 6 percent privately owned lands. The Tucannon River CHSU currently contains eight streams supporting local bull trout populations, and three streams identified in the draft Bull Trout Recovery Plan (USFWS 2002) as essential streams to meet recovery criteria population goals. Proposed critical habitat in the Tucannon River CHSU includes a total of rkm 167.5 (rmi 104.1) in 12 streams within the subunit.

(A) Tucannon River from its confluence with the Snake River upstream 91.9 km (57.1 mi) to the waterfall below Buckley Ridge (approximately 4.8 km (3.0 mi) above the confluence of Bear Creek with the Tucannon River) provides FMO habitat in the lower reaches, and spawning and rearing habitat in the upper reaches for the Tucannon River local population (USFS, unpublished 1992a, unpublished 2001a; Martin *et al.* 1992; Underwood *et al.* 1995; WDFW 1997). The lower Tucannon River is also an important migratory corridor to spawning areas upstream in the watershed (G. Mendel, WDFW, pers. comm., 2002).

(B) Cummings Creek from the confluence with the Tucannon River upstream approximately 17.1 km (10.6 mi) to the point where water from Little Bear Wallow Spring enters Cummings Creek provides spawning and rearing habitat (WDFW 1997; USFS, unpublished 1992b) necessary for the recovered distribution for bull trout (USFWS 2002).

(C) Hixon Creek from the confluence with the Tucannon River upstream approximately 4.0 km (2.5 mi) to its headwaters was historically occupied (M. Schuck, WDFW, pers. comm., 2002), and provides spawning and rearing habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(D) Little Tucannon River from its confluence with the Tucannon River upstream approximately 8.5 km (5.25 mi) to its headwaters has been documented as providing habitat for bull trout (USFS, unpublished 1992c), and provides spawning and rearing habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(E) Panjab Creek from its confluence with the Tucannon River upstream 11.3 km (7 mi) to its headwaters provides spawning and rearing habitat for the Panjab Creek local population (USFS, unpublished 1992d).

(F) Meadow Creek from its confluence with Panjab Creek upstream 10.5 km (6.5 mi) to its headwaters at Godman Spring provides spawning and rearing habitat for the Meadow Creek local population (USFS, unpublished 1992e).

(G) Turkey Creek from its confluence with Panjab Creek upstream 5.2 km (3.25 mi) to its headwaters provides spawning and rearing habitat for the Turkey Creek local population (USFS, unpublished 1992f).

(H) Little Turkey Creek from the confluence with Meadow Creek upstream 5.5 km (3.4 mi) to its headwaters provides spawning and rearing habitat for the Little Turkey Creek local population (USFS, *in litt.*, 2002).

(I) Cold Creek from the confluence with the Tucannon River upstream 3.2 km (2 mi) to a 3 m (10 ft) water fall provides spawning and rearing habitat for the Cold Creek local population (USFS, unpublished 1992h, *in litt.*, 2002).

(J) Sheep Creek from the confluence with the Tucannon River upstream 0.8 km (0.5 mi) to a 6.6 m (22 ft) waterfall provides spawning and rearing habitat for the Sheep Creek local population (USFS, unpublished 1992i, *in litt.*, 2002).

(K) Bear Creek from the confluence with the Tucannon River upstream 4.8 km (3 mi) to a 3 m (10 ft) waterfall provides spawning and rearing habitat for the Bear Creek local population (USFS, *in litt.*, 2002).

(ii) Asotin Creek CHSU

Asotin Creek is a tributary to the Snake River located in Asotin and Garfield counties, Washington. Asotin Creek drains a portion of the northern slopes of the Blue Mountains of southeastern Washington State and enters the Snake River upstream of Clarkston, Washington at rkm 233.5 (rmi 145.0). The Asotin Creek watershed landownership is approximately 31 percent Federally owned land, 8 percent State and local government owned land, and 61 percent privately owned land. Bull trout in Asotin Creek are currently known to occur in headwater locations only, and may be primarily resident fish. Historically, bull trout distribution in the Asotin Creek CHSU was thought to be much more extensive and contain both resident and migratory bull trout (WDFW 1997; USFS 1998e). The streams or stream reaches in the Asotin Creek CHSU proposed for designation as critical habitat are those identified by the Recovery Unit Team as containing bull trout populations, or those that may not be known to be currently occupied, but contain necessary constituent elements to support spawning and rearing. The Asotin Creek CHSU currently contains two streams which support local bull trout populations, and eight streams that have potential to support spawning populations and are identified in the draft Snake River Washington Bull Trout Recovery Plan as essential streams to meet recovery criteria goals (USFWS 2002).

(A) Asotin Creek from the confluence with the Snake River upstream 24.0 km (14.9 mi) to the confluence with the North Fork and the South Fork of Asotin Creek provides FMO habitat (WDFW 1997).

(B) George Creek from the confluence with Asotin Creek upstream 34.6 km (21.5 mi) to its headwaters at Seven Sisters Spring provides spawning and rearing habitat (USFS, unpublished 1993b) that may be currently occupied, and provides habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(C) Wormell Creek from the confluence with George Creek upstream 6.4 km (4.0 mi) to its headwaters provides habitat of unknown occupancy by bull trout, but is necessary for the recovered distribution of bull trout (USFWS 2002).

(D) Hefflefinger Creek from the confluence with George Creek upstream 6.0 km (3.7 mi) to its headwaters provides spawning and rearing habitat that may currently support bull trout (G. Mendel, pers. comm., 2002b), and is necessary for the recovered distribution of bull trout (USFWS 2002).

(E) Coombs Creek from the confluence with George Creek upstream 10.1 km (6.3 mi) to its headwaters at Hostetler Spring provides spawning and rearing habitat of unknown occupancy, but is essential habitat for the recovered distribution of bull trout (USFWS 2002).

(F) Charley Creek from the confluence with Asotin Creek upstream 26.6 km (16.5 mi) was recently noted to be occupied by bull trout (USFS, unpublished 1993b; D. Groat, USFS, pers. comm., 2002e), provides FMO and spawning and rearing habitat, and provides habitat essential for the recovered distribution of bull trout (USFWS 2002).

(G) North Fork of Asotin Creek from the confluence of the North Fork of Asotin Creek and the South Fork of Asotin Creek where the streams combine and form the mainstem of Asotin Creek upstream 28.3 km (17.6 mi) to the headwaters at Dodge Spring, provides spawning and rearing habitat for the North Fork Asotin Creek local population (USFS, unpublished 1992g; WDFW 1997; G. Mendel, pers. comm., 2002c).

(H) South Fork of the North Fork of Asotin Creek from the confluence with the North Fork of Asotin Creek upstream 9.3 km (5.8 mi) to the headwaters at 3 C Spring is an area recently known to be occupied by bull trout (USFS, unpublished 1993d), and provides habitat necessary for the recovered distribution of bull trout (USFWS 2002).

(I) Middle branch of the North Fork of Asotin Creek from the confluence with the North Fork Asotin Creek upstream 8.0 km (5.0 mi) to the headwaters provides occupied spawning and rearing habitat for the North Fork Asotin Creek local population (USFS, unpublished 1993d).

(J) Cougar Creek from the confluence with the North Fork of Asotin Creek upstream 5.2 km (3.2 mi) to the headwaters below USFS Road 4027–015 provides spawning and rearing habitat for the Cougar Creek local population (USFS, *in litt.*, 2002).

(28) Unit 24: Columbia River

This unit is located in the States of Oregon and Washington and includes Clatsop, Columbia, Multnomah, Hood River, Wasco, Sherman, Gilliam, Morrow, and Umatilla counties in Oregon and Pacific, Wahkiakum, Cowlitz, Clark, Skamania, Klickitat, Benton, Walla Walla, Franklin, Yakima, Grant, Kittitas, Chelan, Douglas, and Okanogan counties in Washington. Landownership adjacent to reaches of the Columbia River proposed for bull trout critical habitat designation are approximately 39 percent Federal and 61 percent non-Federal.

The north shore of the Columbia River between Chief Joseph Dam and the Okanogan River is within the Colville Indian Reservation. Lands along the south shore are owned by private parties and the State of Washington. Lands in the mid-Columbia hydroelectric project reach from Wells Dam to Wanapum Dam are a mixture of private and State-owned lands. Much of the State-owned land is within wildlife areas managed by the Washington Department of Fish and Wildlife. The western shore between Wanapum and Priest Rapids dams is within the Yakima Firing Center Military Reservation. The eastern shore is under private and State (wildlife area) ownership.

A 72.5 km (45 mi) reach of the Columbia River from a point about 6.4 km (4 mi) downstream of Priest Rapids Dam to the head of McNary Reservoir, about 3.2 km (2 mi) upstream from the Richland city limits, is within the Hanford Reach National Monument (Monument). The 78,914-ha (195,000-ac) Monument includes diverse riparian, riverine, and upland habitats, as well as cultural and historic resources. The Monument is under jurisdiction of both the Department of Energy (DOE) and the Service. The DOE administers 12,141 ha (30,000 ac) of the Monument, while the Service's Division of Wildlife Refuges administers 66,773 ha (165,000 ac). The Department of the Interior established a Federal Planning Advisory Committee (Committee) for the Monument in January, 2001. The Committee is presently working to provide advice to the DOE and the Service on a Monument management plan and Environmental Impact Statement. The management plan is expected to be completed by 2005.

Lands downstream to the mouth of the Columbia River are under a mix of private, State, and Federal ownership. National wildlife refuges are present at several locations along the river from the confluence with the Snake River to the Pacific Ocean. The Columbia Gorge National Scenic Area extends for 133.5 km (83.0 mi) from mouth of the Sandy River at about rkm 196.3 (rm 122.0) east to the confluence of the Deschutes River at about rkm 329.8 (rm 204.8). Management of this area is under jurisdiction of the USFS and Columbia Gorge Commission, a regional commission of local, State, and Federal interests. Management of the Columbia Gorge National Scenic Area is primarily directed toward upland areas adjacent to the Columbia River and not to aquatic habitat of the river itself.

(i) The Columbia River from the Pacific Ocean at rkm 0 (rmi 0) upstream to Chief Joseph Dam at rkm 877.0 (rmi 544.6) provides FMO habitat for tributary populations of bull trout. Critical habitat includes the free flowing reaches of the Columbia River and the reservoirs to the ordinary high water elevations and normal operating pool elevations, respectively.

(29) Unit 25: Snake River

The lower Snake River is located within the State of Washington from its mouth to the confluence with the Clearwater River at the cities of Clarkston, Washington and Lewiston, Idaho. The Snake River is within Franklin, Walla Walla, Columbia, Whitman, and Asotin counties in Washington State. The Snake River is the border between Washington and Idaho from Clarkston/Lewiston upstream to the Oregon border at rkm 223.7 (rm 139.0). The Snake River forms the boundary between Idaho and Oregon from that point upstream to the upper limit of this critical habitat unit. This portion of the proposed critical habitat reach of the Snake River is within Nez Perce, Idaho, Adams, and Washington counties in Idaho, and Wallowa, Baker, and Malheur counties in Oregon. Landownership adjacent to reaches of the Snake River proposed for bull trout critical habitat designation are approximately 50 percent Federal and 50 percent non-Federal.

The major features in Hells Canyon Hydroelectric Complex reach of the Snake River are Hells Canyon, Oxbow, and Brownlee dams and their reservoirs.

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These projects are owned and operated by the Idaho Power Company to produce electrical power.

Landownership in the major tributary watersheds and along the Snake River is a mixture of Federal (USFS and BLM), State (Idaho and Oregon), and private owners.

Downstream from Hells Canyon Dam to the Oregon-Washington border, the Snake River is designated Wild and Scenic. It is also within the Hells Canyon National Recreation Area (NRA) and the Hells Canyon Wilderness which are administered by the USFS. The Hells Canyon NRA includes about 264,058 ha (652,500 ac) within its boundaries. The Hells Canyon NRA was established preserve the natural beauty, and historical and archaeological values of the Hells Canyon area, and to enhance the recreational and ecologic values and public enjoyment of the area. Management of this area is not directed at protecting bull trout in the Snake River.

Almost all of the lower Snake River corridor is privately owned. The only public lands are Federal lands associated with the lower Snake River dams and reservoirs and isolated parcels owned by the State of Washington.

(i) The mainstem Snake River from the confluence with the Columbia River upstream to the head of Brownlee Reservoir at rkm 552 (rmi 343) provides FMO habitat for tributary populations of bull trout. Proposed critical habitat includes the free flowing reaches of the Snake River and the reservoirs to the ordinary high water elevations and normal operating pool elevations, respectively.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The term "destruction or adverse modification" is defined at 50 CFR 402.02 as meaning: "* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Individuals, organizations, States, local and Tribal governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands; require a Federal permit, license, or other authorization; or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is proposed or designated. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. Regulations implementing these interagency cooperation provisions of the Act are codified at 50 CFR part 402.

We may issue a formal conference opinion, if requested by a Federal agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement, or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect the bull trout or its critical habitat will require consultation under section 7 of the Act. Activities on private, State, county, or lands under local jurisdictions requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, Federal Highway Administration (FHA), Federal Aviation Administration (FAA), or Federal Emergency Management Agency (FEMA)), will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not Federally funded or permitted, do not require section 7 consultation.

To properly portray the effects of critical habitat designation, we must first compare the requirements pursuant to section 7 of the Act for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for the conservation of the bull trout. Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

A number of Federal activities have the potential to destroy or adversely modify critical habitat for the bull trout. These activities may include land and water management actions of Federal agencies (*e.g.*, Corps, BOR, USFS, BLM, Natural Resources Conservation Service, and Bureau of Indian Affairs) and related or similar actions of other Federally regulated projects (*e.g.*, road and bridge construction activities by the FHA; dredge and fill projects, sand and gravel mining, and bank stabilization activities conducted or authorized by the Corps; and, National Pollutant Discharge Elimination System permits authorized by the Environmental Protection Agency (EPA)).

Specifically, activities that may destroy or adversely modify critical habitat are those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the bull trout is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat for bull trout include, but are not limited to:

(1) Significant and detrimental altering of the minimum flow or the natural flow regime of any of the proposed stream segments. Possible actions would include groundwater pumping, impoundment, water diversion, and hydropower generation. We note that such flow alterations resulting from actions affecting tributaries of the proposed stream reaches may also destroy or adversely modify critical habitat;

(2) Alterations to the proposed stream segments that could indirectly cause significant and detrimental effects to bull trout habitat. Possible actions include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development. Riparian vegetation profoundly influences instream habitat conditions by providing shade, organic matter, root strength, bank stability, and large woody debris inputs to streams. These characteristics influence water temperature, structure and physical attributes (useable habitat space, depth, width, channel roughness, cover complexity), and food supply (Gregory *et al.* 1991; Sullivan *et al.* in Naiman *et al.* 2000). The importance of riparian vegetation and channel bank condition for providing rearing habitat for salmonids in general is well documented (*e.g.*, Bossu 1954 and Hunt 1969, cited in Beschta and Platts 1987; MBTSG 1998);

(3) Significant and detrimental altering of the channel morphology of any of the proposed stream segments. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of aquatic or riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. We note that such actions in the upper watershed (beyond the riparian area) may also destroy or adversely modify critical habitat. For example, timber harvest activities and associated road construction in upland areas can lead to changes in channel morphology by altering sediment production, debris loading, and peak flows;

(4) Significant and detrimental alterations to the water chemistry in any of the proposed stream segments. Possible actions would include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point);

(5) Activities that are likely to result in the introduction, spread, or augmentation of nonnative aquatic species in any of the proposed stream segments. Possible actions would include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers; and

(6) Activities that are likely to create significant instream barriers to bull trout movement. Possible actions would include water diversions, impoundments, and hydropower generation where effective fish passage facilities are not provided.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor of the nearest Fish and Wildlife Ecological Services Office. Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6158; facsimile 503/231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 3(5)(A) of the Act defines critical habitat, in part, as those areas requiring special management considerations or protection. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. The purpose of the HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species.

No approved HCPs include bull trout as a covered species within the range of the Klamath River population segment. Within the range of the Columbia River population segment, there are three: the Plum Creek Native Fish HCP, the Plum Creek I–90 HCP, and the WDNR HCP. Based on our evaluation of the these HCPs we have concluded, pursuant to section 3(5)(A) of the Act, that areas within these HCPs do not require additional special management considerations or protection, and consequently we have not included areas within them as proposed critical habitat. (See the Managed Lands section, above, for a discussion of the factors considered).

In the event that future HCPs covering the bull trout are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the bull trout by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP

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development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by bull trout. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat areas.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of bull trout and appropriate management for those lands. The take minimization and compensation measures provided under these HCPs are expected to protect the essential habitat lands proposed as critical habitat in this rule. Furthermore, we will complete intra-Service consultation on our issuances of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. If an HCP that addresses the bull trout as a covered species is ultimately approved, we may reassess the critical habitat boundaries in light of the HCP.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal to be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including any areas should be excluded under section 4(b)(2) of the Act;

(2) Specific information on the amount and distribution of bull trout habitat; what habitat is essential to the conservation of this species and why; and, in light of our use of the Draft Recovery Plan as the basis for identifying many of the areas we are proposing as critical habitat, whether the areas identified in the Draft Recovery Plan as necessary for the survival and recovery of bull trout are also essential to the conservation of the species, and therefore are appropriately included in our proposed designation of critical habitat.

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat, including, but not limited to, whether areas do or do not meet the definition of critical habitat in section 3(5)(A)(i) of the Act with respect to requiring special management considerations or protection;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities, families, and private landowners;

(5) Economic and other values associated with designating critical habitat for bull trout; and

(6) Whether our approach to critical habitat designation, including, but not limited to, our methods and criteria used to identify critical habitat, could be improved or modified in any way to ensure the use of the best available scientific information or to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

To further a complete understanding of this proposed rule, the draft critical habitat proposal, maps, fact sheets, photographs, and other materials relating to this proposal can be found on the USFWS Pacific Region's bull trout website at *http://species.fws.gov/bulltrout*.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods: (1) You may submit written comments and information to John Young at the address provided in the **ADDRESSES** section above; (2) You may comment via the electronic mail (e-mail) to *R1BullTroutCH@r1.fws.gov*; and (3) You may hand-deliver comments to our Regional Office (*see* **ADDRESSES** section above). Please submit e-mail comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AI52" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Regional Office at telephone number 503/872–2766.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the public comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. Given the large geographic extent covered by this proposal, we already have scheduled nine public hearings.

Public hearings will be held at:

1. Wenatchee, WA, on January 7, 2003, at the West Coast Wentachee Center Hotel, 201 North Wenatchee Avenue;
2. Polson, MT, on January 7, 2003, at the KwaTaqNuq Resort, 303 U.S. Highway 93;
3. Salmon, ID, on January 7, 2003, at the Salmon Valley Center Meeting Room, 200 Main Street;
4. Spokane, WA, on January 9, 2003, at the West Coast Grand Hotel, 303 West North River Drive;
5. Lewiston, ID, on January 9, 2003, at the Red Lion Hotel, 621 21st Street;
6. Boise, ID, on January 14, 2003, at the AmeriTel Inn/Boise Spectrum, 7499 West Overland Road;
7. Eugene, OR, on January 14, 2003, at the Hilton Eugene and Conference Center, 66 East Sixth Avenue;
8. Pendleton, OR, on January 16, 2003, at the Red Lion Hotel, 304 S.E. Nye Avenue; and
9. Klamath Falls, OR, on January 22, 2003, at the Shilo Inn, 2500 Almond Street.

All of these public hearings will be held from 6 p.m. to 8 p.m., and the Service will be available from 1 to 3 p.m. prior to each hearing to provide information and to answer questions.

Persons needing reasonable accommodations in order to attend and participate in a public hearing should contact John Young at the address or phone number provided in the **ADDRESSES** section above, as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*

Required Determinations

Section 4(b)(2) of the Act requires us to designate critical habitat "* * * on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." Following the publication of this proposed critical habitat designation, we will prepare a draft economic analysis to estimate the potential economic effect of the proposed designation. This draft analysis will be made available for public review and comments on it will be accepted. The preparation of this draft economic analysis and the comments we receive about it will assist us in further reviewing the required determinations listed below. We specifically request that the public review and provide comments on each of these required determinations. (*See* Public Comments Solicited section.)

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). As explained above, we are preparing a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also will use it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species. This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This discussion is based upon the information regarding potential economic impact that is available to us at this time. Due to legally binding dates for publication of this proposed rule, it has not been possible to conduct an economic assessment of the proposed designation of critical habitat to use as a basis for making this required evaluation under the Regulatory Flexibility Act. This assessment of economic effect is subject to modification prior to final rulemaking based upon development and review of the economic analysis being prepared pursuant to section 4(b)(2) of the Endangered Species Act and Executive Order 12866. The assessment presented here is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. Based on current information, the Service is certifying that this proposed rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

We must determine whether the proposed rulemaking will affect a substantial number of small entities. According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail

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and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000.

In determining whether this rule could "significantly affect a substantial number of small entities", we consider whether critical habitat could potentially affect a "substantial number" of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat is accompanied by legal requirements under the Act only for activities authorized, funded, or carried out by Federal agencies. We note that approximately forty-five percent of the proposed critical habitat for the Klamath River DPS, and approximately forty-two percent of the proposed critical habitat for the Columbia River DPS, is on non-Federal lands. Some activities on these non-Federal lands will not have any Federal involvement and so will not be affected by critical habitat designation. However, there may be indirect effects from the designation. If such effects are identified in the economic analysis or public comments on the proposed determination, we will revisit this conclusion.

In areas occupied by bull trout, Federal agencies funding, permitting, or implementing activities are already required, through consultation with us under section 7 of the Act, to avoid jeopardizing the continued existence of bull trout. If this critical habitat designation is finalized, section 7 further requires Federal agencies to ensure, also through consultation with us, that their activities are not likely to result in the destruction or adverse modification of designated critical habitat. However, in areas where bull trout are present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants beyond the duty to avoid jeopardizing the species, because, although adverse modification and jeopardy are two different standards, the substantive outcome of a consultation under each is commonly the same.

Where bull trout are not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. However, outside the existing developed areas, land use on the majority of the proposed critical habitat is agricultural, such as livestock grazing and farming. Should a Federally funded, permitted, or implemented project be proposed that may affect designated critical habitat that is not occupied by bull trout, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented, with at most, minor changes that avoid significant economic impacts to project proponents.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where these species are present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. The Columbia River and Klamath River populations of bull trout were Federally listed as threatened in June 1998. In fiscal years 1998 through 2002, we have conducted several hundred informal and approximately 108 formal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of the bull trout. As a result, based on the information currently available, we do not believe that the requirement to reinitiate consultation for ongoing projects with a Federal nexus, as a result of the designation of critical habitat, will not affect a substantial number of small entities. As with other aspects of this assessment, however, we will have an opportunity to confirm or, if necessary, revise this conclusion prior to the final designation of critical habitat based on the results of the economic analysis, public comments, and other information developed in response to this proposed rule.

Within the proposed critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(6) Activities funded by the EPA, U.S. Department of Energy, or any other Federal agency.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion issued as part of formal consultation under section 7, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience over many years with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would likely have resulted in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. Under the Act and its implementing regulations at 50 CFR 402.02, these measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing non-native species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this proposed critical habitat designation.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. We have preliminarily determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area proposed. The most likely Federal involvement could include Corps permits, permits we may issue under section 10(a)(1)(B) of the Act, FHA funding for road improvements, hydropower licenses issued by the Federal Energy Regulatory Commission, and regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat would cause: (a) Any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is a significant regulatory action under Executive Order 12866.

Currently available information on the potential effects of this proposal on energy supply, distribution, and use is very limited and does not provide a basis for the Service to reach a definitive conclusion regarding such effects at this time. We will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, as required under section 4(b)(2) of the Act. The economic assessment will include consideration of information relevant to effects on energy supply, distribution, and use. We will make the economic analysis available for public review and comment before completing a final designation. We also expect to obtain information on this topic as a result of public comments on the proposed rule. Should such economic analysis, public comments, or other information indicate that this rule will significantly affect energy supply, distribution, and use, we will take any actions that are appropriate.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

We will use the economic analysis to evaluate consistency with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Takings

We will use the economic analysis and comments received on the proposed rule to evaluate whether the proposed rule poses significant takings implications and to evaluate it for consistency with Executive Order 12630, ("Government Actions and Interference with Constitutionally Protected Private Property Rights"). Based on that evaluation, we will take any actions that are appropriate.

Federalism

In accordance with Executive Order 13132, we have coordinated the development of the scientific basis for the proposal of critical habitat for bull trout with the appropriate State agencies. If the economic analysis, public comments, or other information relative to the evaluation of this proposed rule indicates that there would be significant federalism effects, we will take any actions that are appropriate.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the proposal would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. The rule uses standard aquatic (stream and lake) descriptions and identifies the primary constituent elements within the designated units to assist Federal agencies and the public in understanding the habitat and conservation needs of the bull trout.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule would not impose any new requirements for collection of information that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This proposed rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. This rule references permits for HCPs which contain information collection activity. The Fish and Wildlife Service has OMB approval for that collection under OMB Control Number 1018–0094.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination on October 25, 1983 (48 FR 49244). This proposed designation does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we are coordinating with Federally recognized Tribes on a Government-to-Government basis. Further, Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to the conservation of a listed species. The

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Secretarial Order further states that in designating critical habitat, "the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

During our development of this critical habitat proposal for the Columbia River and Klamath River populations of bull trout, we evaluated Tribal lands to determine if they are essential to the conservation of the species. We have proposed critical habitat for portions of Shitike Creek, Jefferson Creek, and the Deschutes, Warm Springs, and Metolius Rivers that are within the Warm Springs Reservation; the Klickitat River and South Fork Ahtanum Creek within the Yakama Reservation; the Umatilla River, Meacham Creek, and Squaw Creek within the Umatilla Reservation; Lake Coeur d'Alene within the Coeur d'Alene Reservation; the Pend Oreille River within the Kalispell Reservation; the Clearwater River, North Fork Clearwater River, Middle Fork Clearwater River, South Fork Clearwater River, Lolo Creek, Clear Creek, and Dworshak Reservoir within the Nez Perce Reservation; portions of Flathead Lake, the lower Flathead River, and the Jocko River watershed on the Flathead Reservation; and portions of the Jocko River watershed, Mission Creek, and Post Creek on the Confederated Salish and Kootenai Tribal Lands on the Flathead Reservation. A total of approximately 1,200 km (750 mi) of stream segments and approximately 70,081 ha (178,070 ac) of lakes and reservoirs on Tribal lands is included in our proposed designation of critical habitat.

Currently, the Yakama Nation, Coeur d'Alene, Kalispell, Nez Perce, Confederated Salish and Kootenai, and Umatilla tribes do not have resource management plans that provide protection or conservation for the bull trout and its habitat. The Confederated Salish and Kootenai Tribes have a resource management plan addressing bull trout conservation that is being applied in the Jocko River watershed. However, as a result of our meetings with the tribes on September 26, 2002, we mutually agreed to include habitat within the Jocko River watershed in this proposed rule for designating critical habitat (Notes of Government-to-Government meeting, September 26, 2002, in our administrative record files).

We met with the Confederated Tribes of the Warm Springs Reservation (CTWSR) in Oregon on August 28, 2002, to discuss the extent to which the waterways of the Reservation provide bull trout habitat that is essential to the conservation of the species, and the degree to which Tribal management of those waterways and adjacent lands adequately protects those habitats (Notes of Government-to-Government meeting, August 28, 2002, in our administrative record files). As a result of that meeting, we reviewed the existing Integrated Resource Management Plans (CTWSR IRMP I and II) to determine whether the plans provide adequately for the conservation of the species. In conducting this analysis, we considered the level of certainty that the identified management would be implemented, and whether the management measures would be effective in protecting habitat essential to bull trout conservation.

Our analysis determined that management within Warm Springs Tribal "Conditional Use Areas" (CUAs) provides a sufficient level of protection and certainty of implementation such that additional special management considerations or protection is not required. Therefore, on the basis of section 3(5)(A)(i) of the Act, we did not include 63 km (39 mi) of streams within the CUAs as part of our proposed designation of critical habitat. An exception to our general finding regarding CUAs was made with respect to CUAs on the Reservation's southern and southeastern boundaries, where the boundary is defined by the Metolius and Deschutes Rivers. Here, there is uncertainty as to the ability of the Tribal management plans to adequately protect the entire waterway (*i.e.*, the rivers to the bankfull elevation on either shore), because the opposite shore is not part of the Reservation and is not managed as part of a CUA. Therefore, we have included the Metolius and Deschutes Rivers, from bank to bank along the Reservation boundary, as part of our proposed designation of critical habitat. We welcome comments on this issue (*see* below).

With regard to areas outside the CUAs, we found that management regimes for the Warm Springs Reservation lands and waterways that are essential to the conservation of bull trout do require additional special management considerations or protection, and consequently have included such areas in our proposed designation of critical habitat. We recognize that the CTWSR plans have the potential to be adequate if they are further developed to include measures specific to the conservation needs of bull trout. Of particular concern are the grazing management standards in the CTWSR Integrated Resource Management Plan II. The CTWSR IRMP II is an umbrella plan that provides general guidance. To date, only two of six grazing district plans (the more detailed and landscape-specific guidance documents under the umbrella plan) are nearing completion. The Service will work closely with the CTWSR staff to analyze the ability of any current or draft Tribal management plan to protect essential bull trout habitat. Our goal in doing so will be to limit the final designation of critical habitat for bull trout within the boundaries of the Reservation to the minimum amount of aquatic habitat that is essential to the conservation of the species. We believe this approach to be consistent with our Tribal Trust responsibilities. We welcome comments on this situation (see below).

We are committed to maintaining a positive working relationship with all of the Tribes, and will work with them on developing resource management plans for Tribal lands that include conservation measures for bull trout. We were required to prepare this critical habitat proposal based on our analysis of whether habitat within these Tribal reservation lands is essential to the conservation of the species and may require special management considerations or protection. If, prior to issuing a final determination, any Tribes complete management plans that address areas on Tribal lands that are included in this proposed designation of critical habitat, we will consider excluding those areas based on the conservation measures provided for the species.

We invite comments and additional information regarding the management of bull habitat on Tribal lands within the areas encompassed by the Klamath River and Columbia River DPSs, and our proposed designation of critical habitat in relation to such lands (see Public Comments Solicited section). This includes, but is not limited to, comments as to whether the areas on Tribal lands that we have proposed for designation should be retained in, or excluded from, the final rule designating critical habitat. We specifically seek comments regarding whether we should retain or exclude, in the final designation of critical habitat, those segments of the Metolious and Deschutes Rivers along the boundary of the CTWSR, where the shores opposite the Reservation are not part of the CTWSR, and there is uncertainty about the ability of the Tribal management plans to protect the entire waterway in those areas.

References Cited

A complete list of all references cited in this proposed rule is available on request from the U.S. Fish and Wildlife Service, Branch of Endangered Species Office, Portland, OR (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are: John Young, Regional Office, Portland, Oregon; John Stephenson, Central Oregon Office, Bend, Oregon; Mike Faler, Idaho Fishery Resource Office, Ahsahka, Idaho; Marilyn Hemker, Kendra Womack and Johnna Roy, Snake River Basin Office, Boise, Idaho; Wade Fredenberg, Creston Fish and Wildlife Center, Kalispell, Montana; Selena Werdon, Nevada State Office, Reno, Nevada; Alan Mauer, Central Oregon Office, Bend, Oregon; Kathy Barry, John Davis, and Steve Wille, Oregon State Office, Portland, Oregon; John Bowerman, Klamath Basin Office, Klamath Falls, Oregon; Ron Rhew, Columbia River Fisheries Resources Office, Vancouver, Washington; Steve Croci and Barb Kelly-Ringel, Mid-Columbia Fishery Office, Leavenworth, Washington; Scott Deeds and Bob Hallock, Upper Columbia River Basin Office, Spokane, Washington; Karolee Owens, Western Washington Office, Lacey, Washington; and Rowan Baker, Regional Office, Portland, Oregon.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Trout, bull" under "FISHES" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Trout, bull	*Salvelinus confluentus.*	U.S.A. (AK, Pacific NW into CA, ID, NV, MT), Canada (NW Territories).	U.S.A, coterminous (lower 48 states).	T	637, 639E, 659, 670	17.95(e)	17.44(w) 17.44(x)

3. Amend § 17.95(e) by adding critical habitat for the bull trout (Salvelinus confluentus) in the same alphabetical order as this species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) * * *

Bull Trout (Salvelinus confluentus)

(1) Critical habitat is depicted for Adams, Benewah, Blaine, Boise, Bonner, Boundary, Butte, Clearwater, Custer, Idaho, Kootenai, Lemhi, Latah, Lewis, Nez Perce, Pend Oreille, Shoshone, Valley, and Washington counties, Idaho; Flathead, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders counties, Montana; Baker, Columbia, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lane, Linn, Malheur, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler counties, Oregon; and Asotin, Benton, Chelan, Columbia, Clark, Cowlitz, Douglas, Garfield, Franklin, Kittitas, Klickitat, Okanogan, Pacific, Pend Oreille, Skamania, Wahkiakum, Walla Walla, Whitman, and Yakima counties, Washington, on the maps and as described below.

(2) Critical habitat includes the stream channels within the proposed stream reaches indicated on the maps below, and includes a lateral extent from the bankfull elevation on one bank to the bankfull elevation on the opposite bank. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge that generally has a recurrence interval of 1 to 2 years on the annual flood series. If bankfull elevation is not evident on either bank, the ordinary high-water line as defined by the U.S. Army Corps of Engineers (33 CFR 329.11) shall be used to determine the lateral extent of critical habitat. The lateral extent of proposed lakes and reservoirs is defined by the perimeter of the water body as mapped on standard 1:24,000 scale topographic maps.

(3) Within these areas, the primary constituent elements for the bull trout are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, dispersal, genetic exchange, or sheltering. Existing human-constructed features and structures within the critical habitat boundary, such as buildings, powerlines, roads, railroads, urban development, and other paved areas will not contain one or more of the primary constituent elements; consequently, Federal actions limited to those areas would not trigger a consultation under section 7 of the Act unless they affect the species and/or primary constituent elements in adjacent critical habitat. The primary constituent elements are:

(i) Permanent water having low levels of contaminants such that normal reproduction, growth and survival are not inhibited;

(ii) Water temperatures ranging from 2 to 15 °C (36 to 59 °F), with adequate thermal refugia available for temperatures at the upper end of this range. Specific temperatures within this range will vary depending on bull trout life-history stage and form, geography, elevation, diurnal and seasonal variation, shade, such as that provided by riparian habitat, and local groundwater influence;

(iii) Complex stream channels with features such as woody debris, side channels, pools, and undercut banks to provide a variety of depths, velocities, and instream structures;

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(iv) Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount of fine substrate less than 0.63 mm (0.25 in) in diameter and minimal substrate embeddedness are characteristic of these conditions;

(v) A natural hydrograph, including peak, high, low and base flows within historic ranges or, if regulated, a hydrograph that demonstrates the ability to support bull trout populations;

(vi) Springs, seeps, groundwater sources, and subsurface water connectivity to contribute to water quality and quantity;

(vii) Migratory corridors with minimal physical, biological or chemical barriers between spawning, rearing, overwintering, and foraging habitats, including intermittent or seasonal barriers induced by high water temperatures or low flows;

(viii) An abundant food base including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish; and

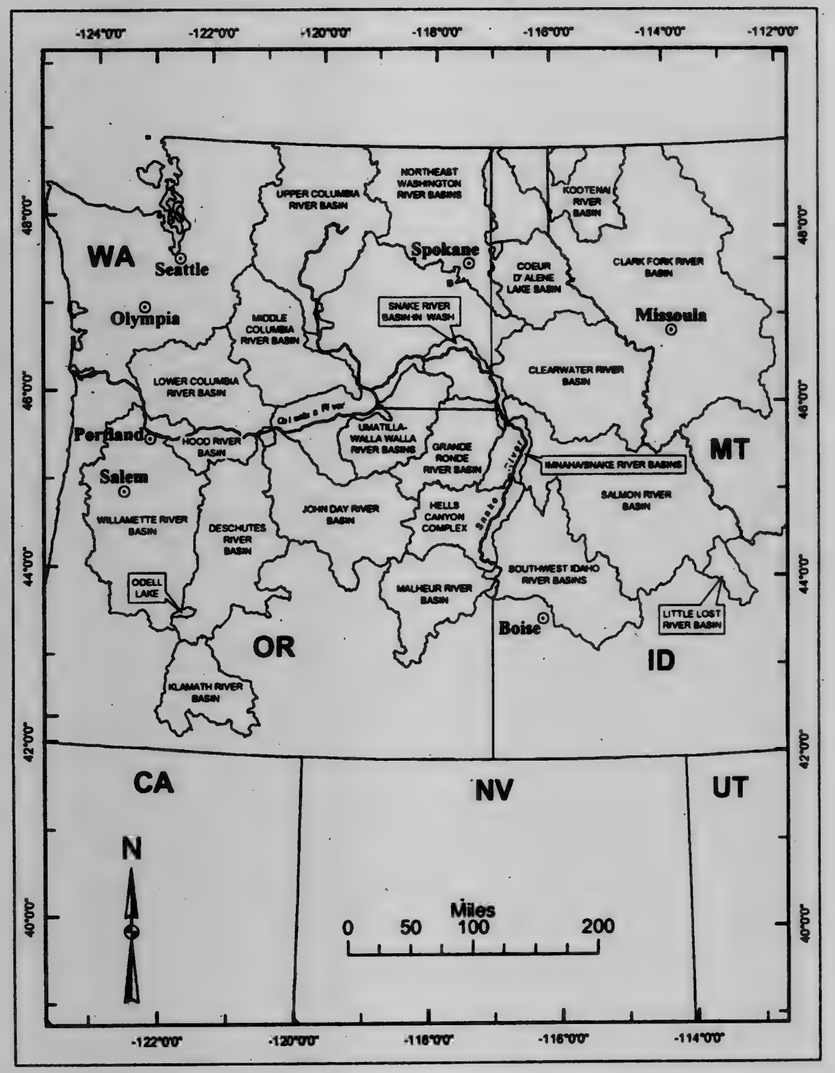
(ix) Few or no predatory, interbreeding, or competitive nonnative species present.

(4) Proposed critical habitat does not include non-Federal lands covered by an incidental take permit for the Columbia River distinct population segment of bull trout issued under section 10(a)(1)(B) of the Act on or before the date of publication of this proposed rule, as long as such permit, or a conservation easement providing comparable conservation benefits, remains legally operative on such lands.

Note: Index map follows:

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Index Map -- Units of Proposed Critical Habitat for the Klamath River and Columbia River Distinct Population Segments of Bull Trout



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(5) Unit 1—Klamath River Basin.

(i) Critical Habitat Subunit—Upper Klamath Lake.

(A) Agency Lake centered at 42.541 degrees latitude, and −121.963 degrees longitude. Crane Creek from a lower point located at 42.628 degrees latitude, and −122.068 degrees longitude to an upper point located at 42.661 degrees latitude, and −122.085 degrees longitude. Crystal Creek from a lower point located at 42.463 degrees latitude, and −122.075 degrees longitude to an upper point located at 42.575 degrees latitude, and −122.081 degrees longitude. Fourmile Creek from a lower point located at 42.539 degrees latitude, and −122.002 degrees longitude to an upper point located at 42.633 degrees latitude, and −122.076 degrees longitude. Fourmile Slough from a lower point located at 42.607 degrees latitude, and −122.046 degrees longitude to an upper point located at 42.535 degrees latitude, and −122.075 degrees longitude. Recreation Creek from a lower point located at 42.477 degrees latitude, and −122.085 degrees longitude to an upper point located at 42.506 degrees latitude, and −122.074 degrees longitude. Sevenmile Canal from a lower point located at 42.582 degrees latitude, and −121.97 degrees longitude to an upper point located at 42.646 degrees latitude, and −122.05 degrees longitude. Sevenmile Creek from a lower point located at 42.646 degrees latitude, and −122.05 degrees longitude to an upper point located at 42.69 degrees latitude, and −122.15 degrees longitude. West Canal from a lower point located at 42.531 degrees latitude, and −122.004 degrees longitude to an upper point located at 42.646 degrees latitude, and −122.05 degrees longitude.

(B) Cherry Creek from a lower point located at 42.631 degrees latitude, and −122.073 degrees longitude to an upper point located at 42.615 degrees latitude, and −122.2 degrees longitude. Rock Creek from a lower point located at 42.554 degrees latitude, and −122.079 degrees longitude to an upper point located at 42.567 degrees latitude, and −122.186 degrees longitude.

(C) Threemile Creek from a lower point located at 42.642 degrees latitude, and −122.065 degrees longitude to an upper point located at 42.64 degrees latitude, and −122.138 degrees longitude.

(D) Annie Creek from a lower point located at 42.722 degrees latitude, and −121.988 degrees longitude to an upper point located at 42.864 degrees latitude, and −122.155 degrees longitude. Crooked Creek from a lower point located at 42.599 degrees latitude, and −121.945 degrees longitude to an upper point located at 42.687 degrees latitude, and −121.964 degrees longitude. Fort Creek from a lower point located at 42.672 degrees latitude, and −121.979 degrees longitude to an upper point located at 42.695 degrees latitude, and −121.967 degrees longitude. Middle Fork Annie Creek from a lower point located at 42.838 degrees latitude, and −122.127 degrees longitude to an upper point located at 42.886 degrees latitude, and −122.123 degrees longitude. Wood River from a lower point located at 42.577 degrees latitude, and −121.94 degrees longitude to an upper point located at 42.747 degrees latitude, and −121.984 degrees longitude.

(E) Sun Creek from a lower point located at 42.735 degrees latitude, and −122.008 degrees longitude to an upper point located at 42.898 degrees latitude, and −122.096 degrees longitude.

(ii) Critical Habitat Subunit—Sycan Marsh.

(A) Sycan Marsh centered at 42.811 degrees latitude, and −121.113 degrees longitude. Sycan River from a lower point located at 42.78 degrees latitude, and −121.048 degrees longitude to an upper point located at 42.647 degrees latitude, and −120.734 degrees longitude.

(B) Calahan Creek from a lower point located at 42.838 degrees latitude, and −121.266 degrees longitude to an upper point located at 42.924 degrees latitude, and −121.291 degrees longitude. Long Creek from a lower point located at 42.826 degrees latitude, and −121.209 degrees longitude to an upper point located at 42.933 degrees latitude, and −121.338 degrees longitude.

(C) Coyote Creek from a lower point located at 42.854 degrees latitude, and −121.158 degrees longitude to an upper point located at 42.893 degrees latitude, and −121.246 degrees longitude.

(D) Boulder Creek from a lower point located at 42.66 degrees latitude, and −120.783 degrees longitude to an upper point located at 42.674 degrees latitude, and −120.761 degrees longitude. Rifle Creek from a lower point located at 42.694 degrees latitude, and −120.88 degrees longitude to an upper point located at 42.682 degrees latitude, and −120.845 degrees longitude. South Fork Sycan River from a lower point located at 42.663 degrees latitude, and −120.793 degrees longitude to an upper point located at 42.633 degrees latitude, and −120.795 degrees longitude.

(iii) Critical Habitat Subunit—Upper Sprague River.

(A) Boulder Creek from a lower point located at 42.517 degrees latitude, and −120.951 degrees longitude to an upper point located at 42.495 degrees latitude, and −120.884 degrees longitude. Dixon Creek from a lower point located at 42.518 degrees latitude, and −120.937 degrees longitude to an upper point located at 42.532 degrees latitude, and −120.923 degrees longitude. North Fork Sprague River from a lower point located at 42.497 degrees latitude, and −121.008 degrees longitude to an upper point located at 42.557 degrees latitude, and −120.839 degrees longitude. Unnamed creek—off Dixon Creek from a lower point located at 42.523 degrees latitude, and −120.93 degrees longitude to an upper point located at 42.521 degrees latitude, and −120.921 degrees longitude.

(B) Sheepy Creek from a lower point located at 42.534 degrees latitude, and −120.931 degrees longitude to an upper point located at 42.514 degrees latitude, and −120.89 degrees longitude.

(C) Gearhart Creek from a lower point located at 42.566 degrees latitude, and −120.886 degrees longitude to an upper point located at 42.51 degrees latitude, and −120.871 degrees longitude. Hole Creek from a lower point located at 42.567 degrees latitude, and −120.869 degrees longitude to an upper point located at 42.541 degrees latitude, and −120.86 degrees longitude. Nottin Creek from a lower point located at 42.57 degrees latitude, and −120.87 degrees longitude to an upper point located at 42.532 degrees latitude, and −120.85 degrees longitude. School Creek from a lower point located at 42.604 degrees latitude, and −120.846 degrees longitude to an upper point located at 42.618 degrees latitude, and −120.806 degrees longitude.

(D) Dead Cow Creek from a lower point located at 42.59 degrees latitude, and −120.835 degrees longitude to an upper point located at 42.562 degrees latitude, and −120.779 degrees longitude. Gold Creek from a lower point located at 42.59 degrees latitude, and −120.818 degrees longitude to an upper point located at 42.606 degrees latitude, and −120.794 degrees longitude.

(E) Deming Creek from a lower point located at 42.448 degrees latitude, and −120.953 degrees longitude to an upper point located at 42.486 degrees latitude, and −120.885 degrees longitude.

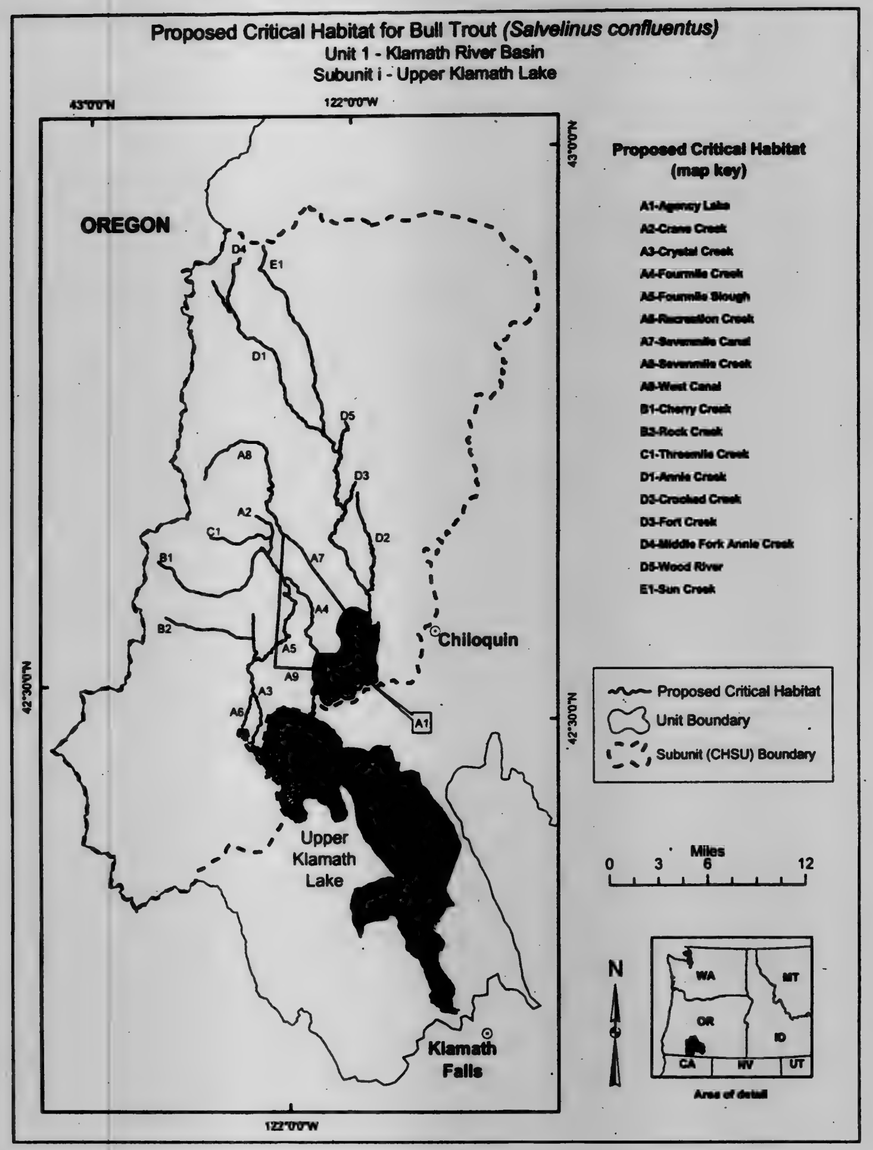
(F) Brownsworth Creek from a lower point located at 42.392 degrees latitude, and −120.913 degrees longitude to an upper point located at 42.469 degrees latitude, and −120.854 degrees longitude. Camp Creek from a lower point located at 42.445 degrees latitude, and −120.794 degrees longitude to an upper point located at 42.471 degrees latitude, and −120.837 degrees longitude. Corral Creek from a lower point located at 42.455 degrees latitude, and −120.782 degrees longitude to an upper point located at 42.481 degrees latitude, and −120.817 degrees longitude. South Fork Sprague River from a lower point located at 42.392 degrees latitude, and −120.913 degrees longitude to an upper point located at 42.481 degrees latitude, and −120.784 degrees longitude.

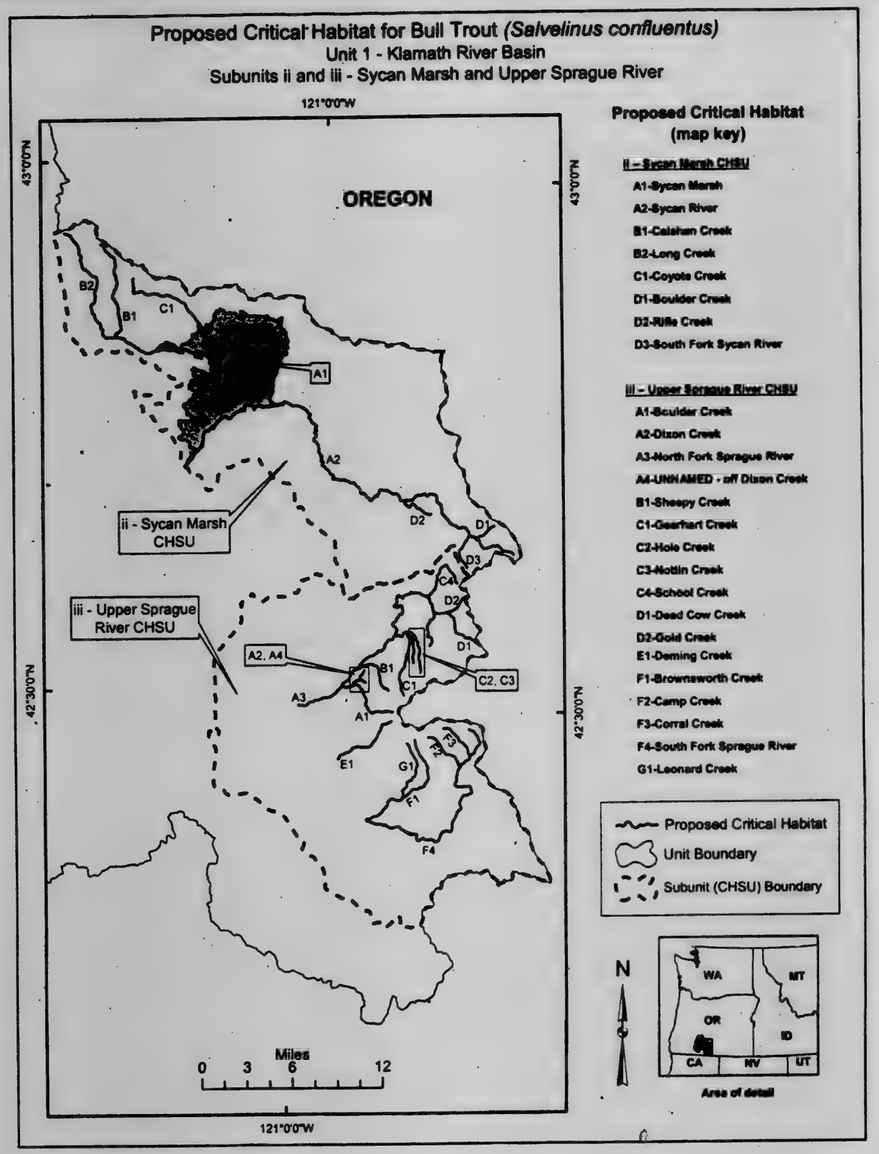
(G) Leonard Creek from a lower point located at 42.413 degrees latitude, and −120.867 degrees longitude to an upper point located at 42.465 degrees latitude, and −120.864 degrees longitude.

Note: Maps follow for Unit 1, Subunit i and Unit 1, Subunits ii and iii.

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(6) Unit 2—Clark Fork River Basin.

(i) Critical Habitat Subunit—Lake Pend Oreille.

(A) Lake Pend Oreille centered at 48.158 degrees latitude, and −116.438 degrees longitude.

(B) East River from a lower point located at 48.353 degrees latitude, and −116.852 degrees longitude to an upper point located at 48.371 degrees latitude, and −116.819 degrees longitude. Middle Fork East River from a lower point located at 48.371 degrees latitude, and −116.819 degrees longitude to an upper point located at 48.362 degrees latitude, and −116.659 degrees longitude. Priest River from a lower point located at 48.178 degrees latitude, and −116.892 degrees longitude to an upper point located at 48.353 degrees latitude, and −116.852 degrees longitude. Tarlac Creek from a lower point located at 48.393 degrees latitude, and −116.737 degrees longitude to an upper point located at 48.349 degrees latitude, and −116.717 degrees longitude. Uleda Creek from a lower point located at 48.388 degrees latitude, and −116.707 degrees longitude to an upper point located at 48.339 degrees latitude, and −116.694 degrees longitude.

(C) Pack River from a lower point located at 48.32 degrees latitude, and −116.382 degrees longitude to an upper point located at 48.613 degrees latitude, and −116.634 degrees longitude.

(D) Grouse Creek from a lower point located at 48.403 degrees latitude, and −116.477 degrees longitude to an upper point located at 48.483 degrees latitude, and −116.228 degrees longitude. North Fork Grouse Creek from a lower point located at 48.452 degrees latitude, and −116.373 degrees longitude to an upper point located at 48.502 degrees latitude, and −116.265 degrees longitude.

(E) Trestle Creek from a lower point located at 48.283 degrees latitude, and −116.352 degrees longitude to an upper point located at 48.352 degrees latitude, and −116.234 degrees longitude.

(F) Gold Creek from a lower point located at 47.971 degrees latitude, and −116.454 degrees longitude to an upper point located at 47.954 degrees latitude, and −116.451 degrees longitude. North Gold Creek from a lower point located at 47.974 degrees latitude, and −116.452 degrees longitude to an upper point located at 47.975 degrees latitude, and −116.426 degrees longitude. West Gold Creek from a lower point located at 47.954 degrees latitude, and −116.451 degrees longitude to an upper point located at 47.944 degrees latitude, and −116.477 degrees longitude.

(G) Dry Gulch from a lower point located at 48.089 degrees latitude, and −116.357 degrees longitude to an upper point located at 48.087 degrees latitude, and −116.337 degrees longitude. Granite Creek from a lower point located at 48.087 degrees latitude, and −116.427 degrees longitude to an upper point located at 48.06 degrees latitude, and −116.329 degrees longitude. Sullivan Springs from a lower point located at 48.088 degrees latitude, and −116.411 degrees longitude to an upper point located at 48.084 degrees latitude, and −116.387 degrees longitude.

(H) Johnson Creek from a lower point located at 48.139 degrees latitude, and −116.229 degrees longitude to an upper point located at 48.131 degrees latitude, and −116.225 degrees longitude.

(I) Clark Fork River from a lower point located at 48.142 degrees latitude, and −116.202 degrees longitude to an upper point located at 48.089 degrees latitude, and −116.048 degrees longitude.

(J) Char Creek from a lower point located at 48.262 degrees latitude, and −116.067 degrees longitude to an upper point located at 48.291 degrees latitude, and −116.073 degrees longitude. East Fork Creek from a lower point located at 48.241 degrees latitude, and −116.112 degrees longitude to an upper point located at 48.262 degrees latitude, and −116.039 degrees longitude. Lightning Creek from a lower point located at 48.14 degrees latitude, and −116.191 degrees longitude to an upper point located at 48.353 degrees latitude, and −116.175 degrees longitude. Morris Creek from a lower point located at 48.224 degrees latitude, and −116.117 degrees longitude to an upper point located at 48.208 degrees latitude, and −116.08 degrees longitude. Porcupine Creek from a lower point located at 48.267 degrees latitude, and −116.123 degrees longitude to an upper point located at 48.253 degrees latitude, and −116.156 degrees longitude. Rattle Creek from a lower point located at 48.326 degrees latitude, and −116.172 degrees longitude to an upper point located at 48.314 degrees latitude, and −116.1 degrees longitude. Savage Creek from a lower point located at 48.248 degrees latitude, and −116.096 degrees longitude to an upper point located at 48.226 degrees latitude, and −116.028 degrees longitude. Wellington Creek from a lower point located at 48.29 degrees latitude, and −116.162 degrees longitude to an upper point located at 48.295 degrees latitude, and −116.173 degrees longitude.

(K) Dry Creek from a lower point located at 48.094 degrees latitude, and −116.129 degrees longitude to an upper point located at 48.089 degrees latitude, and −116.122 degrees longitude. Twin Creek from a lower point located at 48.089 degrees latitude, and −116.122 degrees longitude to an upper point located at 48.063 degrees latitude, and −116.151 degrees longitude.

(ii) Critical Habitat Subunit—Lower Clark Fork River.

(A) Cabinet Gorge Reservoir centered at 48.036 degrees latitude, and −115.872 degrees longitude.

(B) Bull River from a lower point located at 48.036 degrees latitude, and −115.844 degrees longitude to an upper point located at 48.109 degrees latitude, and −115.782 degrees longitude. Copper Creek from a lower point located at 48.088 degrees latitude, and −115.773 degrees longitude to an upper point located at 48.078 degrees latitude, and −115.685 degrees longitude. East Fork Bull River from a lower point located at 48.109 degrees latitude, and −115.782 degrees longitude to an upper point located at 48.091 degrees latitude, and −115.645 degrees longitude. South Fork Bull River from a lower point located at 48.109 degrees latitude, and −115.782 degrees longitude to an upper point located at 48.152 degrees latitude, and −115.784 degrees longitude.

(C) Rock Creek from a lower point located at 47.975 degrees latitude, and −115.742 degrees longitude to an upper point located at 48.04 degrees latitude, and −115,676 degrees longitude.

(D) Noxon Rapids Reservoir centered at 47.892 degrees latitude, and −115.705 degrees longitude.

(E) Crow Creek from a lower point located at 47.539 degrees latitude, and −115.557 degrees longitude. Crow Creek, East Fork, from a lower point located at 47.525 degrees latitude, and −115.557 degrees longitude to an upper point located at 47.48 degrees latitude, and −115.542 degrees longitude. Graves Creek from a lower point located at 47.682 degrees latitude, and −115.409 degrees longitude to an upper point located at 47.718 degrees latitude, and −115.38 degrees longitude. Prospect Creek from a lower point located at 47.592 degrees latitude, and −115.358 degrees longitude to an upper point located at 47.569 degrees latitude, and −115.676 degrees longitude. Vermilion River from a lower point located at 47.833 degrees latitude, and −115.535 degrees longitude to an upper point located at 47.869 degrees latitude, and −115.409 degrees longitude.

(F) Clark Fork River from a lower point located at 47.813 degrees latitude, and −115.53 degrees longitude to an upper point located at 47.366 degrees latitude, and −114.776 degrees longitude.

(G) Beatrice Creek from a lower point located at 47.794 degrees latitude, and −115.102 degrees longitude to an upper point located at 47.765 degrees latitude, and −115.201 degrees longitude. Fishtrap Creek from a lower point located at 47.713 degrees latitude, and −115.058 degrees longitude to an upper point located at 47.817 degrees latitude, and −115.144 degrees longitude. Fishtrap Creek, West Fork from a lower point located at 47.817 degrees latitude, and −115.144 degrees longitude to an upper point located at 47.769 degrees latitude, and −115.243 degrees longitude. Thompson River from a lower point located at 47.576 degrees latitude, and −115.24 degrees longitude to an upper point located at 47.713 degrees latitude, and −115.058 degrees longitude. Thompson River, West Fork, from a lower point located at 47.65 degrees latitude, and −115.173 degrees longitude to an upper point located at 47.708 degrees latitude, and −115.208 degrees longitude.

(H) Flathead River from a lower point located at 47.366 degrees latitude, and −114.776 degrees longitude to an upper point located at 47.354 degrees latitude, and −114.285 degrees longitude.

(I) Jocko River from a lower point located at 47.322 degrees latitude, and −114.304 degrees longitude to an upper point located at 47.201 degrees latitude, and −113.924 degrees longitude. Jocko River, Middle Fork, from a lower point located at 47.201 degrees latitude, and −113.924 degrees longitude to an upper point located at 47.203 degrees latitude, and −113.761 degrees longitude. Jocko River, North Fork, from a lower point located at 47.201 degrees latitude, and −113.924 degrees longitude to an upper point located at 47.226 degrees latitude, and −113.816 degrees longitude. Jocko River, South Fork, from a lower point located at 47.195 degrees latitude, and −113.852 degrees longitude to an upper point located at 47.104 degrees latitude, and −113.766 degrees longitude.

(J) Dry Creek from a lower point located at 47.305 degrees latitude, and −114.064 degrees longitude to an upper point located at 47.259 degrees latitude, and −113.903 degrees longitude. McDonald Lake centered at 47.421 degrees latitude, and −113.977 degrees longitude. Mission Creek from a lower point located at 47.354 degrees latitude, and −114.285 degrees longitude to an upper point located at 47.32 degrees latitude, and −113.988 degrees longitude. Mission Reservoir centered at 47.319 degrees latitude, and −114.007 degrees longitude. Post Creek from a lower point located at 47.36 degrees latitude, and −114.168 degrees longitude to an upper point located at 47.41 degrees latitude, and −113.935 degrees longitude. Saint Mary's Lake

centered at 47.261 degrees latitude, and −113.922 degrees longitude.

(iii) Critical Habitat Subunit—Middle Clark Fork River.

(A) Clark Fork River from a lower point located at 47.366 degrees latitude, and −114.776 degrees longitude to an upper point located at 46.87 degrees latitude, and −113.889 degrees longitude.

(B) Big Creek from a lower point located at 47.378 degrees latitude, and −115.384 degrees longitude to an upper point located at 47.364 degrees latitude, and −115.444 degrees longitude. Big Creek, East Fork, from a lower point located at 47.362 degrees latitude, and −115.429 degrees longitude to an upper point located at 47.284 degrees latitude, and −115.455 degrees longitude. Big Creek, Middle Fork, from a lower point located at 47.364 degrees latitude, and −115.444 degrees longitude to an upper point located at 47.312 degrees latitude, and −115.492 degrees longitude. Big Creek, West Fork from a lower point located at 47.364 degrees latitude, and −115.444 degrees longitude to an upper point located at 47.35 degrees latitude, and −115.544 degrees longitude. Deer Creek from a lower point located at 47.377 degrees latitude, and −115.359 degrees longitude to an upper point located at 47.326 degrees latitude, and −115.389 degrees longitude. Little Joe Creek from a lower point located at 47.297 degrees latitude, and −115.12 degrees longitude to an upper point located at 47.27 degrees latitude, and −115.14 degrees longitude. Little Joe Creek, North Fork from a lower point located at 47.27 degrees latitude, and −115.14 degrees longitude to an upper point located at 47.186 degrees latitude, and −115.285 degrees longitude. Little Joe Creek, South Fork from a lower point located at 47.27 degrees latitude, and −115.14 degrees longitude to an upper point located at 47.154 degrees latitude, and −115.234 degrees longitude. St. Regis River from a lower point located at 47.297 degrees latitude, and −115.089 degrees longitude to an upper point located at 47.427 degrees latitude, and −115.741 degrees longitude. Twelvemile Creek from a lower point located at 47.35 degrees latitude, and −115.291 degrees longitude to an upper point located at 47.465 degrees latitude, and −115.324 degrees longitude. Ward Creek from a lower point located at 47.312 degrees latitude, and −115.233 degrees longitude to an upper point located at 47.274 degrees latitude, and −115.364 degrees longitude.

(C) Cedar Creek from a lower point located at 47.178 degrees latitude, and −114.862 degrees longitude to an upper point located at 47.049 degrees latitude, and −115.043 degrees longitude. Lost Creek from a lower point located at 47.128 degrees latitude, and −115.012 degrees longitude to an upper point located at 47.101 degrees latitude, and −115.126 degrees longitude. Oregon Gulch from a lower point located at 47.144 degrees latitude, and −114.967 degrees longitude to an upper point located at 47.128 degrees latitude, and −115.012 degrees longitude.

(D) Trout Creek from a lower point located at 47.143 degrees latitude, and −114.829 degrees longitude to an upper point located at 47.004 degrees latitude, and −114.992 degrees longitude.

(E) Cache Creek from a lower point located at 46.814 degrees latitude, and −114.639 degrees longitude to an upper point located at 46.726 degrees latitude, and −114.758 degrees longitude. Fish Creek from a lower point located at 47.004 degrees latitude, and −114.699 degrees longitude to an upper point located at 46.927 degrees latitude, and −114.696 degrees longitude. Fish Creek, North Fork, from a lower point located at 46.907 degrees latitude, and −114.805 degrees longitude to an upper point located at 46.929 degrees latitude, and −114.944 degrees longitude. Fish Creek, South Fork, from a lower point located at 46.927 degrees latitude, and −114.696 degrees longitude to an upper point located at 46.753 degrees latitude, and −114.571 degrees longitude. Fish Creek, West Fork, from a lower point located at 46.927 degrees latitude, and −114.696 degrees longitude to an upper point located at 46.812 degrees latitude, and −114.89 degrees longitude. Indian Creek from a lower point located at 46.855 degrees latitude, and −114.835 degrees longitude to an upper point located at 46.838 degrees latitude, and −114.834 degrees longitude. Montana Creek from a lower point located at 46.8 degrees latitude, and −114.654 degrees longitude to an upper point located at 46.808 degrees latitude, and −114.762 degrees longitude. Straight Creek from a lower point located at 46.91 degrees latitude, and −114.815 degrees longitude to an upper point located at 46.86 degrees latitude, and −114.937 degrees longitude. Surveyors Creek from a lower point located at 46.846 degrees latitude, and −114.683 degrees longitude to an upper point located at 46.823 degrees latitude, and −114.757 degrees longitude. White Creek from a lower point located at 46.797 degrees latitude, and −114.659 degrees longitude to an upper point located at 46.753 degrees latitude, and −114.614 degrees longitude.

(F) Petty Creek from a lower point located at 46.992 degrees latitude, and

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−114.446 degrees longitude to an upper point located at 46.85 degrees latitude, and −114.438 degrees longitude.

(G) Rattlesnake Creek from a lower point located at 46.867 degrees latitude, and −113.985 degrees longitude to an upper point located at 47.098 degrees latitude, and −113.909 degrees longitude.

(iv) Critical Habitat Subunit—Upper Clark Fork River.

(A) Clark Fork River from a lower point located at 46.87 degrees latitude, and −113.889 degrees longitude to an upper point located at 46.21 degrees latitude, and −112.767 degrees longitude.

(B) Harvey Creek from a lower point located at 46.707 degrees latitude, and −113.372 degrees longitude to an upper point located at 46.581 degrees latitude, and −113.573 degrees longitude.

(C) Flint Creek from a lower point located at 46.654 degrees latitude, and −113.145 degrees longitude to an upper point located at 46.478 degrees latitude, and −113.237 degrees longitude.

(D) Boulder Creek from a lower point located at 46.478 degrees latitude, and −113.237 degrees longitude to an upper point located at 46.343 degrees latitude, and −113.076 degrees longitude. South Boulder Creek from a lower point located at 46.441 degrees latitude, and −113.214 degrees longitude to an upper point located at 46.33 degrees latitude, and −113.219 degrees longitude.

(E) Little Blackfoot River from a lower point located at 46.515 degrees latitude, and −112.797 degrees longitude to an upper point located at 46.341 degrees latitude, and −112.465 degrees longitude.

(F) Racetrack Creek from a lower point located at 46.285 degrees latitude, and −112.729 degrees longitude to an upper point located at 46.279 degrees latitude, and −112.949 degrees longitude.

(G) Barker Creek from a lower point located at 46.163 degrees latitude, and −113.115 degrees longitude to an upper point located at 46.1 degrees latitude, and −113.115 degrees longitude. Cable Creek from a lower point located at 46.172 degrees latitude, and −113.18 degrees longitude to an upper point located at 46.196 degrees latitude, and −113.213 degrees longitude. Foster Creek from a lower point located at 46.164 degrees latitude, and −113.12 degrees longitude to an upper point located at 46.283 degrees latitude, and −113.109 degrees longitude. Storm Lake Creek from a lower point located at 46.169 degrees latitude, and −113.153 degrees longitude to an upper point located at 46.075 degrees latitude, and −113.267 degrees longitude. Twin Lakes Creek from a lower point located at 46.169 degrees latitude, and −113.152 degrees longitude to an upper point located at 46.056 degrees latitude, and −113.226 degrees longitude. Warm Springs Creek from a lower point located at 46.21 degrees latitude, and −112.767 degrees longitude to an upper point located at 46.261 degrees latitude, and −113.137 degrees longitude.

(v) Critical Habitat Subunit—Priest Lakes and River.

(A) Cedar Creek from a lower point located at 48.88 degrees latitude, and −116.959 degrees longitude to an upper point located at 48.909 degrees latitude, and −116.885 degrees longitude. Lime Creek from a lower point located at 48.894 degrees latitude, and −116.964 degrees longitude to an upper point located at 48.938 degrees latitude, and −116.929 degrees longitude. Rock Creek from a lower point located at 48.906 degrees latitude, and −116.97 degrees longitude to an upper point located at 48.954 degrees latitude, and −116.945 degrees longitude. Upper Priest River from a lower point located at 48.799 degrees latitude, and −116.911 degrees longitude to an upper point located at 49 degrees latitude, and −116.936 degrees longitude.

(B) Gold Creek from a lower point located at 48.821 degrees latitude, and −116.973 degrees longitude to an upper point located at 48.807 degrees latitude, and −117.112 degrees longitude. Hughes Fork from a lower point located at 48.805 degrees latitude, and −116.923 degrees longitude to an upper point located at 48.946 degrees latitude, and −117.023 degrees longitude.

(C) Upper Priest Lake centered at 48.785 degrees latitude, and −116.888 degrees longitude.

(D) Trapper Creek from a lower point located at 48.796 degrees latitude, and −116.896 degrees longitude to an upper point located at 48.877 degrees latitude, and −116.846 degrees longitude.

(E) Priest Lake centered at 48.588 degrees latitude, and −116.864 degrees longitude. The Thorofare from a lower point located at 48.74 degrees latitude, and −116.842 degrees longitude to an upper point located at 48.766 degrees latitude, and −116.864 degrees longitude.

(F) Lion Creek from a lower point located at 48.736 degrees latitude, and −116.831 degrees longitude to an upper point located at 48.725 degrees latitude, and −116.672 degrees longitude. South Fork Lion Creek from a lower point located at 48.743 degrees latitude, and −116.797 degrees longitude to an upper point located at 48.716 degrees latitude, and −116.718 degrees longitude.

(G) Two Mouth Creek from a lower point located at 48.688 degrees latitude, and −116.836 degrees longitude to an upper point located at 48.674 degrees latitude, and −116.676 degrees longitude.

(H) Granite Creek from a lower point located at 48.639 degrees latitude, and −116.863 degrees longitude to an upper point located at 48.7 degrees latitude, and −117.029 degrees longitude. North Fork Granite Creek from a lower point located at 48.7 degrees latitude, and −117.029 degrees longitude to an upper point located at 48.77 degrees latitude, and −117.142 degrees longitude. South Fork Granite Creek from a lower point located at 48.7 degrees latitude, and −117.029 degrees longitude to an upper point located at 48.761 degrees latitude, and −117.147 degrees longitude.

(I) Indian Creek from a lower point located at 48.61 degrees latitude, and −116.836 degrees longitude to an upper point located at 48.634 degrees latitude, and −116.789 degrees longitude. North Fork Indian Creek from a lower point located at 48.634 degrees latitude, and −116.789 degrees longitude to an upper point located at 48.627 degrees latitude, and −116.691 degrees longitude. South Fork Indian Creek from a lower point located at 48.634 degrees latitude, and −116.789 degrees longitude to an upper point located at 48.624 degrees latitude, and −116.716 degrees longitude.

(J) Kalispell Creek from a lower point located at 48.567 degrees latitude, and −116.921 degrees longitude to an upper point located at 48.626 degrees latitude, and −117.134 degrees longitude.

(K) Soldier Creek from a lower point located at 48.503 degrees latitude, and −116.838 degrees longitude to an upper point located at 48.547 degrees latitude, and −116.698 degrees longitude.

(vi) Critical Habitat Subunit—Flathead Lake, Flathead River and 20 Headwater lakes.

(A) Flathead Lake centered at 47.886 degrees latitude, and −114.133 degrees longitude.

(B) Flathead River from a lower point located at 48.061 degrees latitude, and −114.127 degrees longitude to an upper point located at 48.468 degrees latitude, and −114.069 degrees longitude. Flathead River, Middle Fork from a lower point located at 48.468 degrees latitude, and −114.069 degrees longitude to an upper point located at 47.996 degrees latitude, and −113.057 degrees longitude. Flathead River, North Fork from a lower point located at 48.468 degrees latitude, and −114.069 degrees longitude to an upper point located at 49 degrees latitude, and −114.474 degrees longitude.

(C) Nyack Creek from a lower point located at 48.452 degrees latitude, and −113.796 degrees longitude to an upper point located at 48.489 degrees latitude, and −113.7 degrees longitude.

(D) Park Creek from a lower point located at 48.31 degrees latitude, and −113.613 degrees longitude to an upper point located at 48.369 degrees latitude, and −113.49 degrees longitude.

(E) Ole Creek from a lower point located at 48.283 degrees latitude, and −113.598 degrees longitude to an upper point located at 48.315 degrees latitude, and −113.463 degrees longitude.

(F) Bear Creek from a lower point located at 48.234 degrees latitude, and −113.566 degrees longitude to an upper point located at 48.296 degrees latitude, and −113.384 degrees longitude.

(G) Long Creek from a lower point located at 48.157 degrees latitude, and −113.529 degrees longitude to an upper point located at 48.094 degrees latitude, and −113.496 degrees longitude.

(H) Granite Creek from a lower point located at 48.145 degrees latitude, and −113.376 degrees longitude to an upper point located at 48.226 degrees latitude, and −113.332 degrees longitude.

(I) Lodgepole Creek from a lower point located at 48.115 degrees latitude, and −113.264 degrees longitude to an upper point located at 48.123 degrees latitude, and −113.233 degrees longitude. Morrison Creek from a lower point located at 48.11 degrees latitude, and −113.31 degrees longitude to an upper point located at 48.22 degrees latitude, and −113.272 degrees longitude. Puzzle Creek from a lower point located at 48.22 degrees latitude, and −113.272 degrees longitude to an upper point located at 48.187 degrees latitude, and −113.247 degrees longitude. Whistler Creek from a lower point located at 48.123 degrees latitude, and −113.233 degrees longitude to an upper point located at 48.169 degrees latitude, and −113.226 degrees longitude.

(J) Dolly Varden Creek from a lower point located at 48.066 degrees latitude, and −113.244 degrees longitude to an upper point located at 47.995 degrees latitude, and −113.184 degrees longitude. Schafer Creek from a lower point located at 48.071 degrees latitude, and −113.25 degrees longitude to an upper point located at 48.038 degrees latitude, and −113.269 degrees longitude.

(K) Clack Creek from a lower point located at 48.012 degrees latitude, and −113.089 degrees longitude to an upper point located at 47.988 degrees latitude, and −113.104 degrees longitude.

(L) Basin Creek from a lower point located at 47.966 degrees latitude, and −112.995 degrees longitude to an upper point located at 47.935 degrees latitude, and −113.073 degrees longitude. Bowl Creek from a lower point located at 47.996 degrees latitude, and −113.057 degrees longitude to an upper point located at 47.966 degrees latitude, and −112.995 degrees longitude. Scalp Creek from a lower point located at 47.982 degrees latitude, and −113.041 degrees longitude to an upper point located at 47.957 degrees latitude, and −113.081 degrees longitude.

(M) Gateway Creek from a lower point located at 48.03 degrees latitude, and −113.021 degrees longitude to an upper point located at 48.046 degrees latitude, and −112.958 degrees longitude. Strawberry Creek from a lower point located at 47.996 degrees latitude, and −113.057 degrees longitude to an upper point located at 48.132 degrees latitude, and −113.033 degrees longitude. Strawberry Creek, East Fork, from a lower point located at 48.064 degrees latitude, and −113.03 degrees longitude to an upper point located at 48.089 degrees latitude, and −112.983 degrees longitude. Trail Creek from a lower point located at 48.014 degrees latitude, and −113.019 degrees longitude to an upper point located at 48.012 degrees latitude, and −112.946 degrees longitude.

(N) Big Creek from a lower point located at 48.604 degrees latitude, and −14.163 degrees longitude to an upper point located at 48.551 degrees latitude, and −114.335 degrees longitude. Hallowat Creek from a lower point located at 48.575 degrees latitude, and −114.316 degrees longitude to an upper point located at 48.615 degrees latitude, and −114.456 degrees longitude. Kletomus Creek from a lower point located at 48.602 degrees latitude, and −114.413 degrees longitude to an upper point located at 48.644 degrees latitude, and −114.413 degrees longitude. Skookoleel Creek from a lower point located at 48.571 degrees latitude, and −114.313 degrees longitude to an upper point located at 48.522 degrees latitude, and −114.295 degrees longitude. Werner Creek from a lower point located at 48.594 degrees latitude, and −114.364 degrees longitude to an upper point located at 48.585 degrees latitude, and −114.413 degrees longitude.

(O) Coal Creek from a lower point located at 48.69 degrees latitude, and −114.193 degrees longitude to an upper point located at 48.698 degrees latitude, and −114.494 degrees longitude. Coal Creek, South Fork from a lower point located at 48.68 degrees latitude, and −114.345 degrees longitude to an upper point located at 48.674 degrees latitude, and −114.471 degrees longitude. Cyclone Creek from a lower point located at 48.665 degrees latitude, and −114.238 degrees longitude to an upper point located at 48.712 degrees latitude, and −114.391 degrees longitude. Mathias Creek from a lower point located at 48.669 degrees latitude, and −114.422 degrees longitude to an upper point located at 48.647 degrees latitude, and −114.471 degrees longitude.

(P) Cyclone Lake centered at 48.705 degrees latitude, and −114.3 degrees longitude.

(Q) Red Meadow Creek from a lower point located at 48.805 degrees latitude, and −114.324 degrees longitude to an upper point located at 48.753 degrees latitude, and −114.565 degrees longitude.

(R) Shorty Creek from a lower point located at 48.851 degrees latitude, and −114.593 degrees longitude to an upper point located at 48.818 degrees latitude, and −114.613 degrees longitude. Shorty Creek, South Fork, from a lower point located at 48.818 degrees latitude, and −114.613 degrees longitude to an upper point located at 48.804 degrees latitude, and −114.613 degrees longitude. Whale Creek from a lower point located at 48.849 degrees latitude, and −114.352 degrees longitude to an upper point located at 48.851 degrees latitude, and −114.593 degrees longitude.

(S) Trail Creek from a lower point located at 48.924 degrees latitude, and −114.386 degrees longitude to an upper point located at 48.934 degrees latitude, and −114.534 degrees longitude.

(T) Swift Creek from a lower point located at 48.481 degrees latitude, and −114.424 degrees longitude to an upper point located at 48.654 degrees latitude, and −114.55 degrees longitude. Swift Creek, West Fork from a lower point located at 48.654 degrees latitude, and −114.55 degrees longitude to an upper point located at 48.723 degrees latitude, and −114.667 degrees longitude. Whitefish Lake centered at 48.451 degrees latitude, and −114.381 degrees longitude.

(U) Swift Creek, East Fork from a lower point located at 48.687 degrees latitude, and −114.582 degrees longitude to an upper point located at 48.756 degrees latitude, and −114.583 degrees longitude. Upper Whitefish Lake centered at 48.687 degrees latitude, and −114.578 degrees longitude.

(V) Fitzsimmons Creek from a lower point located at 48.735 degrees latitude, and −114.733 degrees longitude to an upper point located at 48.752 degrees latitude, and −114.618 degrees longitude. Stillwater River from a lower point located at 48.604 degrees latitude, and −114.655 degrees longitude to an upper point located at 48.789 degrees

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latitude, and −114.685 degrees longitude. Upper Stillwater Lake centered at 48.588 degrees latitude, and −114.636 degrees longitude.

(W) Lake McDonald centered at 48.584 degrees latitude, and −113.925 degrees longitude. McDonald Creek from a lower point located at 48.632 degrees latitude, and −113.868 degrees longitude to an upper point located at 48.646 degrees latitude, and −113.847 degrees longitude.

(X) Lincoln Creek from a lower point located at 48.592 degrees latitude, and −113.766 degrees longitude to an upper point located at 48.595 degrees latitude, and −113.758 degrees longitude. Lincoln Lake centered at 48.591 degrees latitude, and −113.77 degrees longitude.

(Y) Harrison Creek from a lower point located at 48.529 degrees latitude, and −113.75 degrees longitude to an upper point located at 48.574 degrees latitude, and −113.701 degrees longitude. Harrison Lake centered at 48.516 degrees latitude, and −113.77 degrees longitude.

(Z) Lake Isabel centered at 48.422 degrees latitude, and −113.493 degrees longitude. Park Creek from a lower point located at 48.422 degrees latitude, and −113.496 degrees longitude to an upper point located at 48.421 degrees latitude, and −113.505 degrees longitude.

(AA) Arrow Lake centered at 48.706 degrees latitude, and −113.884 degrees longitude. Camas Creek from a lower point located at 48.69 degrees latitude, and −113.901 degrees longitude to an upper point located at 48.738 degrees latitude, and −113.883 degrees longitude. Trout Lake centered at 48.68 degrees latitude, and −113.909 degrees longitude.

(BB) Logging Creek from a lower point located at 48.784 degrees latitude, and −114.002 degrees longitude to an upper point located at 48.776 degrees latitude, and −114.019 degrees longitude. Logging Lake centered at 48.758 degrees latitude, and −114.074 degrees longitude.

(CC) Cerulean Lake centered at 48.872 degrees latitude, and −114.056 degrees longitude. Lower Quartz Lake centered at 48.807 degrees latitude, and −114.171 degrees longitude. Middle Quartz Lake centered at 48.822 degrees latitude, and −114.141 degrees longitude. Quartz Creek from a lower point located at 48.815 degrees latitude, and −114.165 degrees longitude to an upper point located at 48.839 degrees latitude, and −114.003 degrees longitude. Quartz Lake centered at 48.828 degrees latitude, and −114.095 degrees longitude. Rainbow Creek from a lower point located at 48.855 degrees latitude, and −114.053 degrees longitude to an upper point located at 48.869 degrees latitude, and −114.052 degrees longitude.

(DD) Bowman Creek from a lower point located at 48.906 degrees latitude, and −114.117 degrees longitude to an upper point located at 48.974 degrees latitude, and −114.063 degrees longitude. Bowman Lake centered at 48.872 degrees latitude, and −114.153 degrees longitude.

(EE) Akokala Creek from a lower point located at 48.881 degrees latitude, and −114.198 degrees longitude to an upper point located at 48.892 degrees latitude, and −114.191 degrees longitude. Akokala Lake centered at 48.879 degrees latitude, and −114.198 degrees longitude.

(FF) Kintla Creek from a lower point located at 48.975 degrees latitude, and −114.25 degrees longitude to an upper point located at 48.986 degrees latitude, and −114.063 degrees longitude. Kintla Lake centered at 48.959 degrees latitude, and −114.306 degrees longitude.

(GG) Upper Kintla Lake centered at 48.976 degrees latitude, and −114.175 degrees longitude.

(HH) Frozen Creek from a lower point located at 48.999 degrees latitude, and −114.685 degrees longitude to an upper point located at 48.99 degrees latitude, and −114.737 degrees longitude. Frozen Lake centered at 48.999 degrees latitude, and −114.68 degrees longitude.

(vii) Critical Habitat Subunit—Swan.

(A) Swan Lake centered at 47.945 degrees latitude, and −113.878 degrees longitude. Swan River from a lower point located at 47.928 degrees latitude, and −113.88 degrees longitude to an upper point located at 47.295 degrees latitude, and −113.782 degrees longitude.

(B) Lost Creek from a lower point located at 47.873 degrees latitude, and −113.824 degrees longitude to an upper point located at 47.87 degrees latitude, and −113.848 degrees longitude. Lost Creek, North Fork from a lower point located at 47.873 degrees latitude, and −113.824 degrees longitude to an upper point located at 47.897 degrees latitude, and −113.737 degrees longitude. Lost Creek, South Fork from a lower point located at 47.873 degrees latitude, and −113.824 degrees longitude to an upper point located at 47.869 degrees latitude, and −113.736 degrees longitude.

(C) Soup Creek from a lower point located at 47.837 degrees latitude, and −113.843 degrees longitude to an upper point located at 47.812 degrees latitude, and −113.751 degrees longitude.

(D) Woodward Creek from a lower point located at 47.777 degrees latitude, and −113.845 degrees longitude to an upper point located at 47.767 degrees latitude, and −113.879 degrees longitude. Woodward Creek, South Fork from a lower point located at 47.754 degrees latitude, and −113.857 degrees longitude to an upper point located at 47.717 degrees latitude, and −113.857 degrees longitude.

(E) Goat Creek from a lower point located at 47.749 degrees latitude, and −113.828 degrees longitude to an upper point located at 47.773 degrees latitude, and −113.694 degrees longitude. Squeezer Creek from a lower point located at 47.75 degrees latitude, and −113.815 degrees longitude to an upper point located at 47.717 degrees latitude, and −113.727 degrees longitude.

(F) Lion Creek from a lower point located at 47.681 degrees latitude, and −113.815 degrees longitude to an upper point located at 47.67 degrees latitude, and −113.71 degrees longitude.

(G) Piper Creek from a lower point located at 47.675 degrees latitude, and −113.815 degrees longitude to an upper point located at 47.637 degrees latitude, and −113.844 degrees longitude.

(H) Jim Creek from a lower point located at 47.648 degrees latitude, and −113.792 degrees longitude to an upper point located at 47.575 degrees latitude, and −113.856 degrees longitude.

(I) Cold Creek from a lower point located at 47.584 degrees latitude, and −113.756 degrees longitude to an upper point located at 47.562 degrees latitude, and −113.81 degrees longitude.

(J) Elk Creek from a lower point located at 47.544 degrees latitude, and −113.741 degrees longitude to an upper point located at 47.48 degrees latitude, and −113.856 degrees longitude.

(K) Crystal Creek from a lower point located at 47.336 degrees latitude, and −113.767 degrees longitude to an upper point located at 47.334 degrees latitude, and −113.775 degrees longitude. Lindbergh Lake centered at 47.379 degrees latitude, and −113.739 degrees longitude.

(L) Holland Creek from a lower point located at 47.451 degrees latitude, and −113.572 degrees longitude to an upper point located at 47.451 degrees latitude, and −113.58 degrees longitude. Holland Lake centered at 47.448 degrees latitude, and −113.597 degrees longitude.

(viii) Critical Habitat Subunit—Hungry Horse Reservoir.

(A) Flathead River, South Fork from a lower point located at 47.445 degrees latitude, and −113.183 degrees longitude to an upper point located at 48.001 degrees latitude, and −113.571 degrees longitude. Hungry Horse Reservoir centered at 48.2 degrees latitude, and −113.771 degrees longitude.

(B) Wounded Buck Creek from a lower point located at 48.28 degrees latitude, and −113.935 degrees longitude to an upper point located at 48.235 degrees latitude, and −113.962 degrees longitude.

(C) Wheeler Creek from a lower point located at 48.096 degrees latitude, and −113.729 degrees longitude to an upper point located at 48.067 degrees latitude, and −113.776 degrees longitude.

(D) Quintonkon Creek from a lower point located at 48.026 degrees latitude, and −113.707 degrees longitude to an upper point located at 48.013 degrees latitude, and −113,766 degrees longitude. Sullivan Creek from a lower point located at 48.044 degrees latitude, and −113.689 degrees longitude to an upper point located at 47.879 degrees latitude, and −113.656 degrees longitude.

(E) Spotted Bear River from a lower point located at 47.924 degrees latitude, and −113.526 degrees longitude to an upper point located at 47.878 degrees latitude, and −113.212 degrees longitude.

(F) Bunker Creek from a lower point located at 47.83 degrees latitude, and −113.415 degrees longitude to an upper point located at 47.829 degrees latitude, and −113.581 degrees longitude.

(G) Little Salmon Creek from a lower point located at 47.655 degrees latitude, and −113.36 degrees longitude to an upper point located at 47.588 degrees latitude, and −113.61 degrees longitude.

(H) Big Salmon Creek from a lower point located at 47.586 degrees latitude, and −113.419 degrees longitude to an upper point located at 47.567 degrees latitude, and −113.495 degrees longitude. Big Salmon Lake centered at 47.602 degrees latitude, and −113.386 degrees longitude.

(I) White River from a lower point located at 47.588 degrees latitude, and −113.298 degrees longitude to an upper point located at 47.611 degrees latitude, and −113.203 degrees longitude.

(J) Gordon Creek from a lower point located at 47.479 degrees latitude, and −113.224 degrees longitude to an upper point located at 47.424 degrees latitude, and −113.437 degrees longitude.

(K) Doctor Creek from a lower point located at 47.388 degrees latitude, and −113.482 degrees longitude to an upper point located at 47.429 degrees latitude, and −113.458 degrees longitude. Doctor Lake centered at 47.404 degrees latitude, and −113.48 degrees longitude.

(L) Babcock Creek from a lower point located at 47.366 degrees latitude, and −113.269 degrees longitude to an upper point located at 47.359 degrees latitude, and −113.351 degrees longitude. Youngs Creek from a lower point located at 47.445 degrees latitude, and −113.183 degrees longitude to an upper point located at 47.282 degrees latitude, and −113.313 degrees longitude.

(M) Danaher Creek from a lower point located at 47.445 degrees latitude, and −113.183 degrees longitude to an upper point located at 47.275 degrees latitude, and −113.014 degrees longitude. Rapid Creek from a lower point located at 47.372 degrees latitude, and −113.054 degrees longitude to an upper point located at 47.382 degrees latitude, and −113.026 degrees longitude.

(ix) Critical Habitat Subunit—Bitterroot.

(A) Bitterroot River from a lower point located at 46.861 degrees latitude, and −114.118 degrees longitude to an upper point located at 45.944 degrees latitude, and −114.128 degrees longitude.

(B) Burnt Fork Creek from a lower point located at 46.542 degrees latitude, and −114.099 degrees longitude to an upper point located at 46.304 degrees latitude, and −113.837 degrees longitude. Gold Creek from a lower point located at 46.398 degrees latitude, and −113.903 degrees longitude to an upper point located at 46.324 degrees latitude, and −113.904 degrees longitude. Little Burnt Fork Creek from a lower point located at 46.322 degrees latitude, and −113.808 degrees longitude to an upper point located at 46.287 degrees latitude, and −113.831 degrees longitude.

(C) Fred Burr Creek from a lower point located at 46.348 degrees latitude, and −114.152 degrees longitude to an upper point located at 46.357 degrees latitude, and −114.315 degrees longitude. Mill Creek from a lower point located at 46.372 degrees latitude, and −114.127 degrees longitude to an upper point located at 46.312 degrees latitude, and −114.286 degrees longitude.

(D) Blodgett Creek from a lower point located at 46.312 degrees latitude, and −114.145 degrees longitude to an upper point located at 46.248 degrees latitude, and −114.453 degrees longitude.

(E) Daly Creek from a lower point located at 46.168 degrees latitude, and −113.911 degrees longitude to an upper point located at 46.25 degrees latitude, and −113.823 degrees longitude. Railroad Creek from a lower point located at 46.158 degrees latitude, and −113.885 degrees longitude to an upper point located at 46.188 degrees latitude, and −113.803 degrees longitude. Skalkaho Creek from a lower point located at 46.22 degrees latitude, and −114.162 degrees longitude to an upper point located at 46.057 degrees latitude, and −113.807 degrees longitude. Weasel Creek from a lower point located at 46.129 degrees latitude, and −113.854 degrees longitude to an upper point located at 46.152 degrees latitude, and −113.799 degrees longitude.

(F) Divide Creek from a lower point located at 46.064 degrees latitude, and −113.967 degrees longitude to an upper point located at 46.043 degrees latitude, and −113.818 degrees longitude. Sleeping Child Creek from a lower point located at 46.162 degrees latitude, and −114.159 degrees longitude to an upper point located at 46.033 degrees latitude, and −113.814 degrees longitude. Switchback Creek from a lower point located at 46.059 degrees latitude, and −113.933 degrees longitude to an upper point located at 46.066 degrees latitude, and −113.925 degrees longitude. Two Bear Creek from a lower point located at 46.111 degrees latitude, and −114.009 degrees longitude to an upper point located at 46.094 degrees latitude, and −113.897 degrees longitude.

(G) Beaver Creek from a lower point located at 45.528 degrees latitude, and −114.318 degrees longitude to an upper point located at 45.507 degrees latitude, and −114.393 degrees longitude. Bitterroot River, West Fork from a lower point located at 45.944 degrees latitude, and −114.128 degrees longitude to an upper point located at 45.461 degrees latitude, and −114.341 degrees longitude. Blue Joint Creek from a lower point located at 45.696 degrees latitude, and −114.314 degrees longitude to an upper point located at 45.6 degrees latitude, and −114.518 degrees longitude. Chicken Creek from a lower point located at 45.601 degrees latitude, and −114.313 degrees longitude to an upper point located at 45.621 degrees latitude, and −114.403 degrees longitude. Deer Creek from a lower point located at 45.595 degrees latitude, and −114.321 degrees longitude to an upper point located at 45.57 degrees latitude, and −114.509 degrees longitude. Hughes Creek from a lower point located at 45.621 degrees latitude, and −114.303 degrees longitude to an upper point located at 45.667 degrees latitude, and −114.021 degrees longitude. Johnson Creek from a lower point located at 45.538 degrees latitude, and −114.319 degrees longitude to an upper point located at 45.494 degrees latitude, and −114.268 degrees longitude. Overwhich Creek from a lower point located at 45.675 degrees latitude, and −114.307 degrees longitude to an upper point located at 45.717 degrees latitude, and −114.08 degrees longitude. Painted Rocks Reservoir centered at 45.701 degrees latitude, and −114.293 degrees longitude. Sheep Creek from a lower point located at 45.52 degrees latitude, and −114.319 degrees longitude to an upper point located at 45.482 degrees latitude, and

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−114.304 degrees longitude. Slate Creek from a lower point located at 45.698 degrees latitude, and −114.286 degrees longitude to an upper point located at 45.734 degrees latitude, and −114.183 degrees longitude. Straight Creek from a lower point located at 45.677 degrees latitude, and −114.099 degrees longitude to an upper point located at 45.683 degrees latitude, and −114.04 degrees longitude. Woods Creek from a lower point located at 45.564 degrees latitude, and −114.321 degrees longitude to an upper point located at 45.512 degrees latitude, and −114.402 degrees longitude.

(H) Bitterroot River, East Fork from a lower point located at 45.944 degrees latitude, and −114.128 degrees longitude to an upper point located at 45.911 degrees latitude, and −113.595 degrees longitude. Buck Creek from a lower point located at 45.903 degrees latitude, and −113.631 degrees longitude to an upper point located at 45.891 degrees latitude, and −113.633 degrees longitude. Bugle Creek from a lower point located at 45.878 degrees latitude, and −113.786 degrees longitude to an upper point located at 45.835 degrees latitude, and −113.776 degrees longitude. Bush Creek from a lower point located at 45.944 degrees latitude, and −113.733 degrees longitude to an upper point located at 46 degrees latitude, and −113.731 degrees longitude. Lick Creek from a lower point located at 45.938 degrees latitude, and −113.717 degrees longitude to an upper point located at 45.944 degrees latitude, and −113.656 degrees longitude. Martin Creek from a lower point located at 45.93 degrees latitude, and −113.723 degrees longitude to an upper point located at 46.03 degrees latitude, and −113.778 degrees longitude. Meadow Creek from a lower point located at 45.908 degrees latitude, and −113.78 degrees longitude to an upper point located at 45.798 degrees latitude, and −113.782 degrees longitude. Moose Creek from a lower point located at 45.922 degrees latitude, and −113.727 degrees longitude to an upper point located at 46.01 degrees latitude, and −113.708 degrees longitude. Reynolds Creek from a lower point located at 45.947 degrees latitude, and −113.717 degrees longitude to an upper point located at 45.957 degrees latitude, and −113.646 degrees longitude. Sign Creek from a lower point located at 45.97 degrees latitude, and −113.711 degrees longitude to an upper point located at 45.993 degrees latitude, and −113.678 degrees longitude. Swift Creek from a lower point located at 45.891 degrees latitude, and −113.776 degrees longitude to an upper point located at 45.874 degrees latitude, and −113.753 degrees longitude.

(I) Fault Creek from a lower point located at 45.76 degrees latitude, and −114.108 degrees longitude to an upper point located at 45.724 degrees latitude, and −114.081 degrees longitude. Fire Creek from a lower point located at 45.791 degrees latitude, and −114.065 degrees longitude to an upper point located at 45.788 degrees latitude, and −114.038 degrees longitude. Porcupine Creek from a lower point located at 45.756 degrees latitude, and −114.056 degrees longitude to an upper point located at 45.723 degrees latitude, and −114.003 degrees longitude. Prayer Creek from a lower point located at 45.756 degrees latitude, and −114.055 degrees longitude to an upper point located at 45.726 degrees latitude, and −114.026 degrees longitude. Warm Springs Creek from a lower point located at 45.86 degrees latitude, and −114.025 degrees longitude to an upper point located at 45.726 degrees latitude, and −114.057 degrees longitude. Wiles Creek from a lower point located at 45.766 degrees latitude, and −114.075 degrees longitude to an upper point located at 45.726 degrees latitude, and −114.142 degrees longitude.

(x) Critical Habitat Subunit—Blackfoot River.

(A) Blackfoot River from a lower point located at 46.87 degrees latitude, and −113.889 degrees longitude to an upper point located at 47.011 degrees latitude, and −112.476 degrees longitude.

(B) Daisy Creek from a lower point located at 47.02 degrees latitude, and −113.772 degrees longitude to an upper point located at 47.055 degrees latitude, and −113.822 degrees longitude. Gold Creek from a lower point located at 46.919 degrees latitude, and −113.676 degrees longitude to an upper point located at 47.058 degrees latitude, and −113.743 degrees longitude. Gold Creek, West Fork from a lower point located at 46.996 degrees latitude, and −113.685 degrees longitude to an upper point located at 47.032 degrees latitude, and −113.827 degrees longitude.

(C) Belmont Creek from a lower point located at 46.954 degrees latitude, and −113.569 degrees longitude to an upper point located at 47.061 degrees latitude, and −113.681 degrees longitude.

(D) Cottonwood Creek from a lower point located at 47.025 degrees latitude, and −113.281 degrees longitude to an upper point located at 47.161 degrees latitude, and −113.345 degrees longitude.

(E) Dunham Creek from a lower point located at 47.103 degrees latitude, and −113.155 degrees longitude to an upper point located at 47.238 degrees latitude, and −113.316 degrees longitude. Lodgepole Creek from a lower point located at 47.183 degrees latitude, and −113.202 degrees longitude to an upper point located at 47.229 degrees latitude, and −113.27 degrees longitude. Monture Creek from a lower point located at 47.02 degrees latitude, and −113.235 degrees longitude to an upper point located at 47.301 degrees latitude, and −113.249 degrees longitude.

(F) Blackfoot River, North Fork from a lower point located at 46.985 degrees latitude, and −113.129 degrees longitude to an upper point located at 47.197 degrees latitude, and −112.886 degrees longitude.

(G) Copper Creek from a lower point located at 47.007 degrees latitude, and −112.555 degrees longitude to an upper point located at 47.06 degrees latitude, and −112.752 degrees longitude. Landers Fork from a lower point located at 46.965 degrees latitude, and −112.562 degrees longitude to an upper point located at 47.099 degrees latitude, and −112.566 degrees longitude.

(xi) Critical Habitat Subunit—Clearwater River and Lake Chain.

(A) Salmon Lake centered at 47.091 degrees latitude, and −113.4 degrees longitude.

(B) Clearwater River from a lower point located at 47.107 degrees latitude, and −113.427 degrees longitude to an upper point located at 47.39 degrees latitude, and −113.561 degrees longitude.

(C) Finley Creek from a lower point located at 47.125 degrees latitude, and −113.56 degrees longitude to an upper point located at 47.12 degrees latitude, and −113.649 degrees longitude. Owl Creek from a lower point located at 47.115 degrees latitude, and −113.441 degrees longitude to an upper point located at 47.115 degrees latitude, and −113.502 degrees longitude. Placid Creek from a lower point located at 47.116 degrees latitude, and −113.541 degrees longitude to an upper point located at 47.187 degrees latitude, and −113.692 degrees longitude. Placid Lake centered at 47.119 degrees latitude, and −113.524 degrees longitude.

(D) Morrell Creek from a lower point located at 47.141 degrees latitude, and −113.46 degrees longitude to an upper point located at 47.342 degrees latitude, and −113.471 degrees longitude.

(E) Deer Creek from a lower point located at 47.208 degrees latitude, and −113.529 degrees longitude to an upper point located at 47.249 degrees latitude, and −113.688 degrees longitude. Seeley Lake centered at 47.194 degrees latitude, and −113.509 degrees longitude.

(F) Clearwater RIver, West Fork from a lower point located at 47.256 degrees latitude, and −113.55 degrees longitude to an upper point located at 47.287 degrees latitude, and −113.744 degrees longitude.

(G) Clearwater Lake centered at 47.386 degrees latitude, and −113.559 degrees longitude. Lake Alva centered at 47.314 degrees latitude, and −113.582 degrees longitude. Lake Inez centered at 47.282 degrees latitude, and −113.566 degrees longitude. Rainy Lake centered at 47.339 degrees latitude, and −113.594 degrees longitude.

(H) Clearwater River, East Fork from a lower point located at 47.352 degrees latitude, and −113.581 degrees longitude to an upper point located at 47.343 degrees latitude, and −113.495 degrees longitude. Colt Creek from a lower point located at 47.328 degrees latitude, and −113.589 degrees longitude to an upper point located at 47.361 degrees latitude, and −113.658 degrees longitude.

(xii) Critical Habitat Subunit—Rock Creek.

(A) Rock Creek from a lower point located at 46.725 degrees latitude, and −113.682 degrees longitude to an upper point located at 46.223 degrees latitude, and −113.521 degrees longitude.

(B) Gilbert Creek from a lower point located at 46.682 degrees latitude, and −113.666 degrees longitude to an upper point located at 46.648 degrees latitude, and −113.818 degrees longitude.

(C) Brewster Creek from a lower point located at 46.612 degrees latitude, and −113.653 degrees longitude to an upper point located at 46.582 degrees latitude, and −113.587 degrees longitude.

(D) Ranch Creek from a lower point located at 46.583 degrees latitude, and −113.678 degrees longitude to an upper point located at 46.468 degrees latitude, and −113.577 degrees longitude.

(E) Welcome Creek from a lower point located at 46.566 degrees latitude, and −113.7 degrees longitude to an upper point located at 46.613 degrees latitude, and −113.806 degrees longitude.

(F) Butte Cabin Creek from a lower point located at 46.52 degrees latitude, and −113.767 degrees longitude to an upper point located at 46.482 degrees latitude, and −113.684 degrees longitude.

(G) Wahlquist Creek from a lower point located at 46.501 degrees latitude, and −113.776 degrees longitude to an upper point located at 46.531 degrees latitude, and −113.843 degrees longitude.

(H) Cougar Creek from a lower point located at 46.455 degrees latitude, and −113.768 degrees longitude to an upper point located at 46.47 degrees latitude, and −113.675 degrees longitude.

(I) Hogback Creek from a lower point located at 46.41 degrees latitude, and −113.702 degrees longitude to an upper point located at 46.44 degrees latitude, and −113.625 degrees longitude.

(J) Wyman Creek from a lower point located at 46.396 degrees latitude, and −113.688 degrees longitude to an upper point located at 46.308 degrees latitude, and −113.771 degrees longitude.

(K) Stony Creek from a lower point located at 46.348 degrees latitude, and −113.603 degrees longitude to an upper point located at 46.283 degrees latitude, and −113.771 degrees longitude.

(L) Beaver Creek from a lower point located at 46.472 degrees latitude, and −113.493 degrees longitude to an upper point located at 46.468 degrees latitude, and −113.555 degrees longitude. Upper Willow Creek from a lower point located at 46.331 degrees latitude, and −113.542 degrees longitude to an upper point located at 46.566 degrees latitude, and −113.522 degrees longitude.

(M) Bowles Creek from a lower point located at 46.192 degrees latitude, and −113.747 degrees longitude to an upper point located at 46.207 degrees latitude, and −113.812 degrees longitude. Rock Creek, North Fork from a lower point located at 46.212 degrees latitude, and −113.696 degrees longitude to an upper point located at 46.244 degrees latitude, and −113.772 degrees longitude. Rock Creek, West Fork from a lower point located at 46.223 degrees latitude, and −113.521 degrees longitude to an upper point located at 46.144 degrees latitude, and −113.721 degrees longitude. Sand Basin Creek from a lower point located at 46.197 degrees latitude, and −113.703 degrees longitude to an upper point located at 46.151 degrees latitude, and −113.712 degrees longitude.

(N) Moose Meadow Creek from a lower point located at 46.139 degrees latitude, and −113,591 degrees longitude to an upper point located at 46.078 degrees latitude, and −113.635 degrees longitude. Rock Creek, Ross Fork from a lower point located at 46.224 degrees latitude, and −113.525 degrees longitude to an upper point located at 46.034 degrees latitude, and −113.779 degrees longitude. Rock Creek, Ross Fork, South Fork from a lower point located at 46.113 degrees latitude, and −113.66 degrees longitude to an upper point located at 46.038 degrees latitude, and −113.698 degrees longitude.

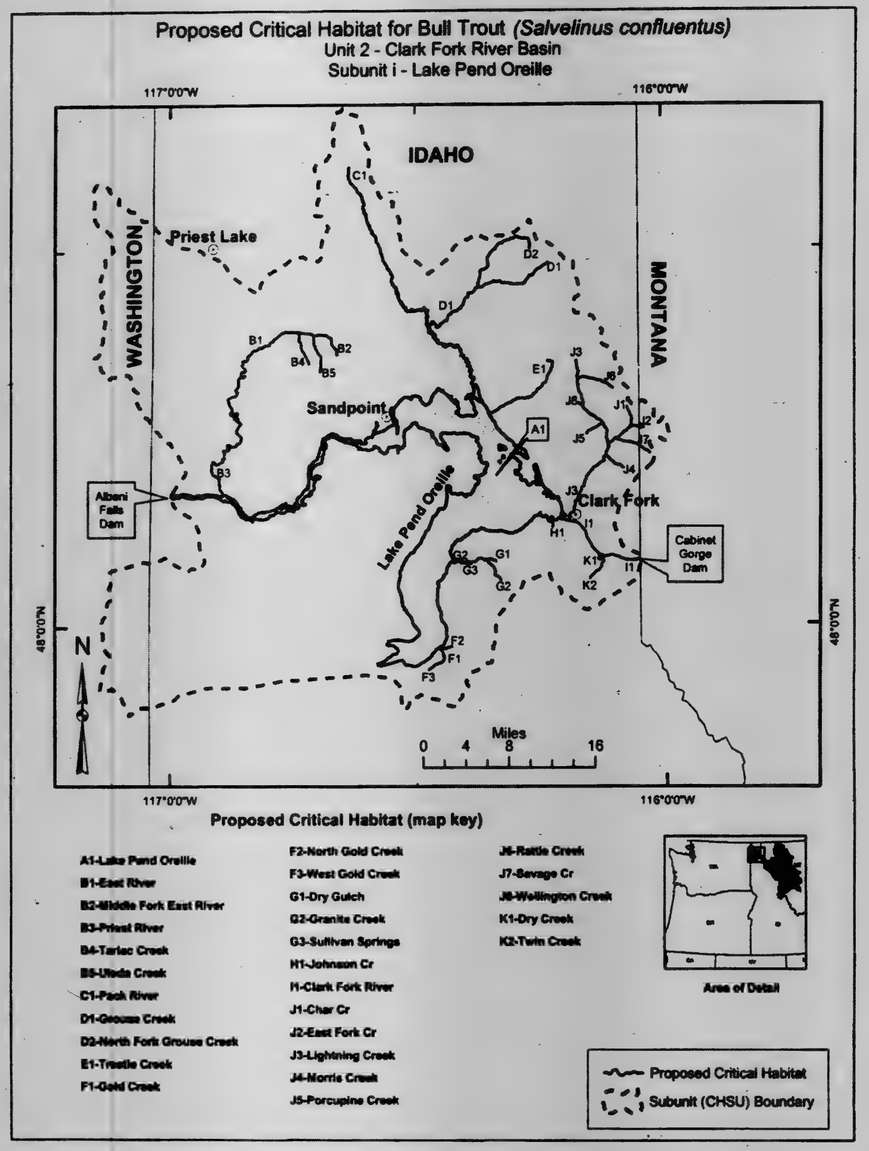
(O) East Fork Reservoir centered at 46.118 degrees latitude, and −113.374 degrees longitude. Meadow Creek from a lower point located at 46.157 degrees latitude, and −113.439 degrees longitude to an upper point located at 46.092 degrees latitude, and −113.443 degrees longitude. Rock Creek, East Fork from a lower point located at 46.2 degrees latitude, and −113.499 degrees longitude to an upper point located at 46.021 degrees latitude, and −113.319 degrees longitude.

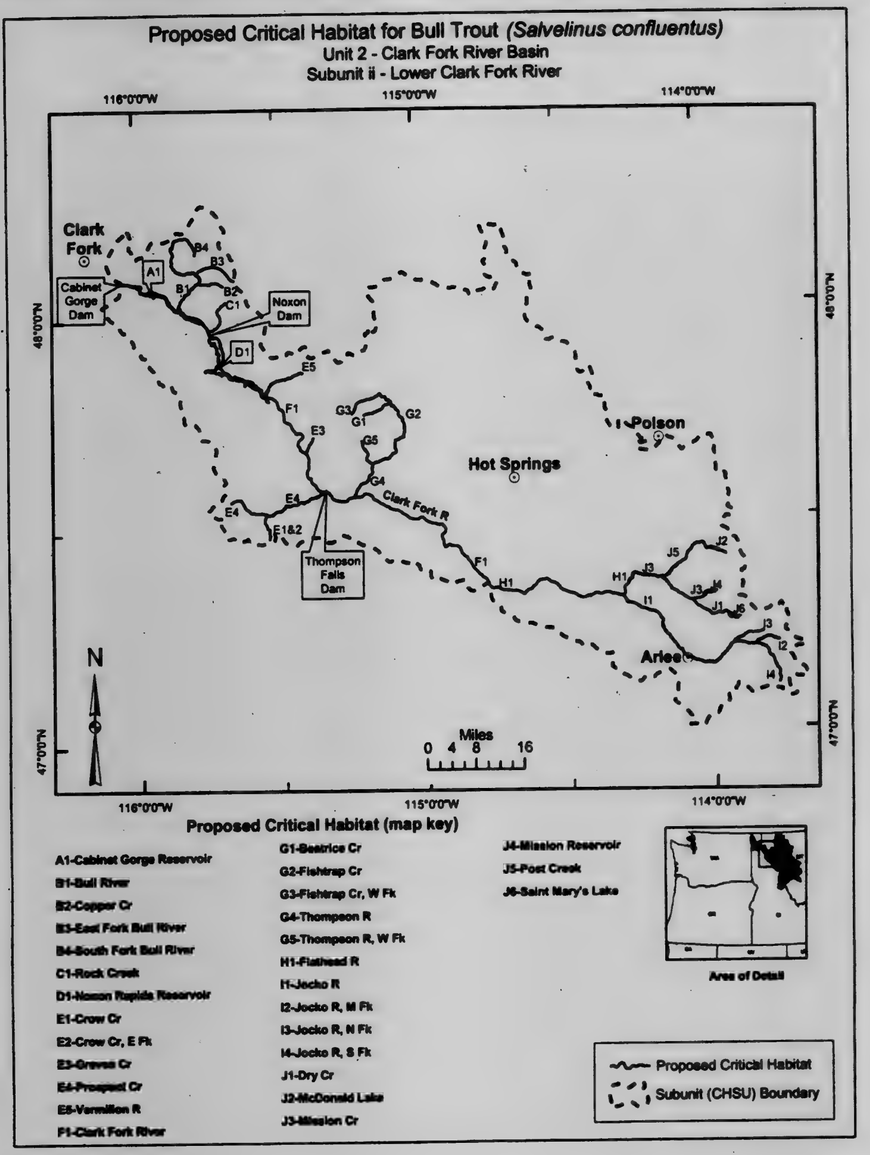
(P) Carpp Creek from a lower point located at 46.032 degrees latitude, and −113.524 degrees longitude to an upper point located at 45.985 degrees latitude, and −113.446 degrees longitude. Copper Creek from a lower point located at 46.068 degrees latitude, and −113.538 degrees longitude to an upper point located at 45.949 degrees latitude, and −113.569 degrees longitude. Green Canyon Creek from a lower point located at 46.05 degrees latitude, and −113.578 degrees longitude to an upper point located at 46.065 degrees latitude, and −113.646 degrees longitude. Lutz Creek from a lower point located at 46.031 degrees latitude, and −113.61 degrees longitude to an upper point located at 46.051 degrees latitude, and −113.655 degrees longitude. Meyers Creek from a lower point located at 46.052 degrees latitude, and −113.537 degrees longitude to an upper point located at 45.988 degrees latitude, and −113.57 degrees longitude. Rock Creek, Middle Fork from a lower point located at 46.223 degrees latitude, and −113.521 degrees longitude to an upper point located at 45.949 degrees latitude, and −113.523 degrees longitude.

Note: Maps follow for Unit 2, Subunits i–xii.

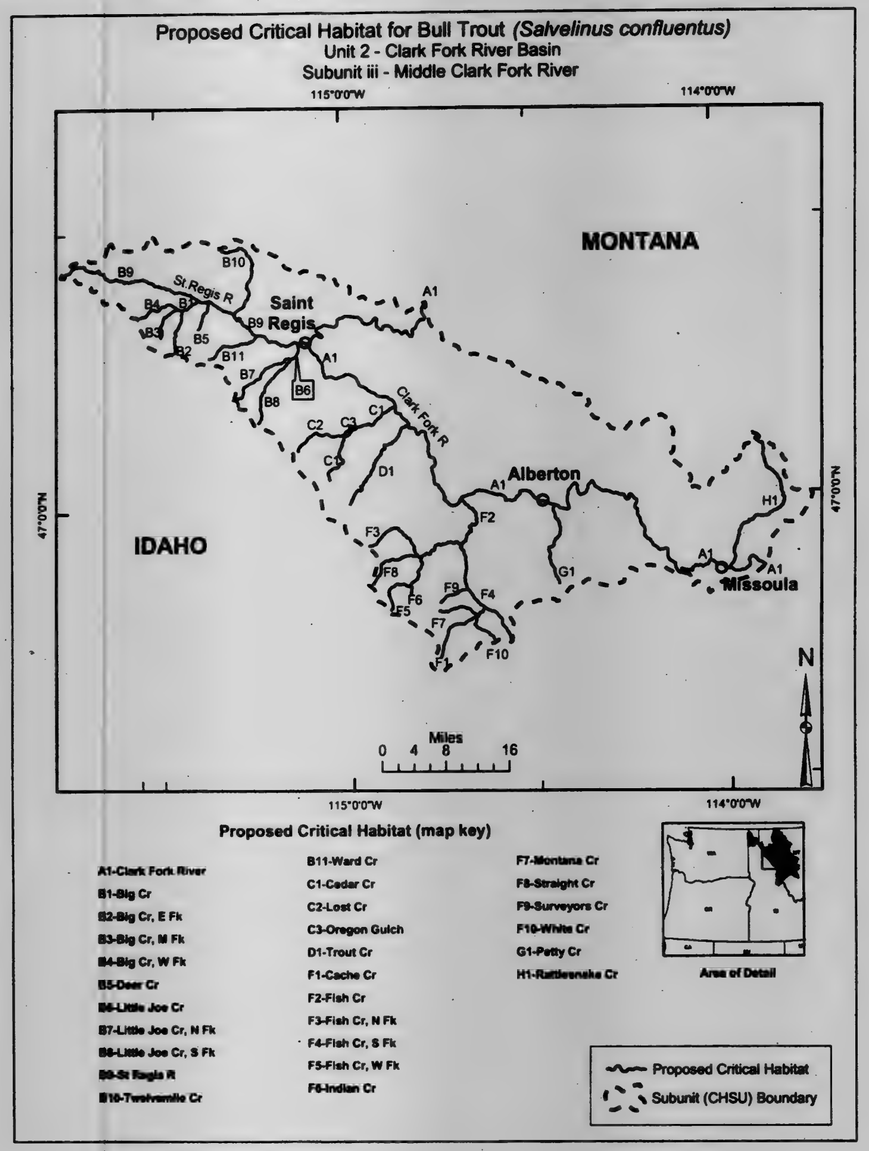
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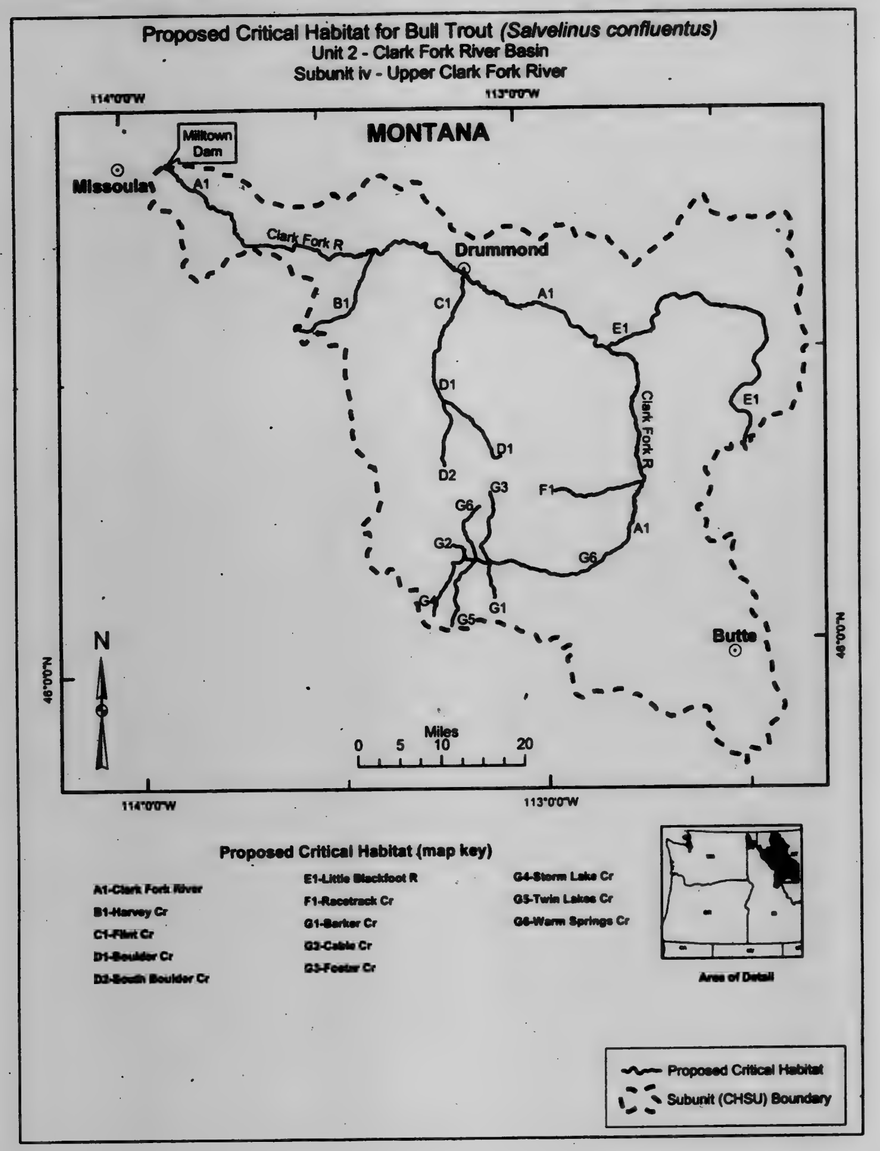
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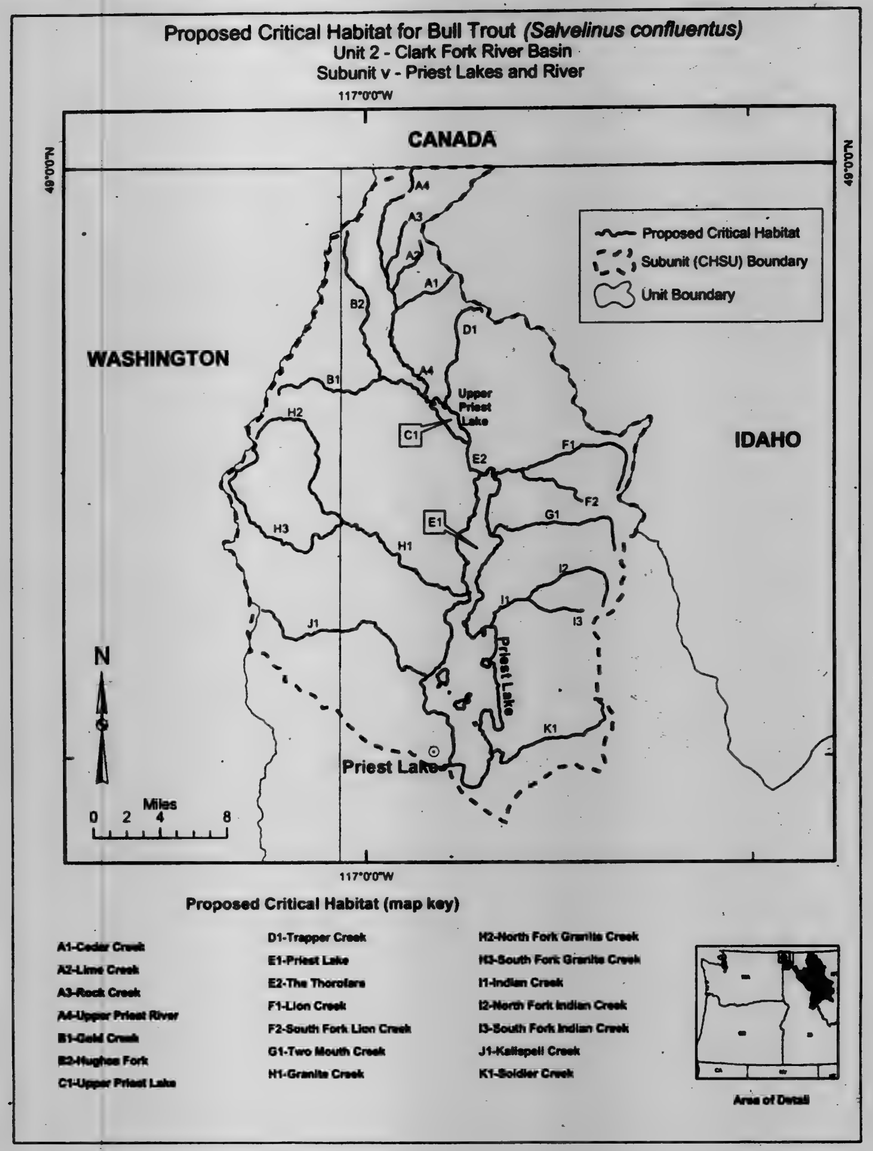


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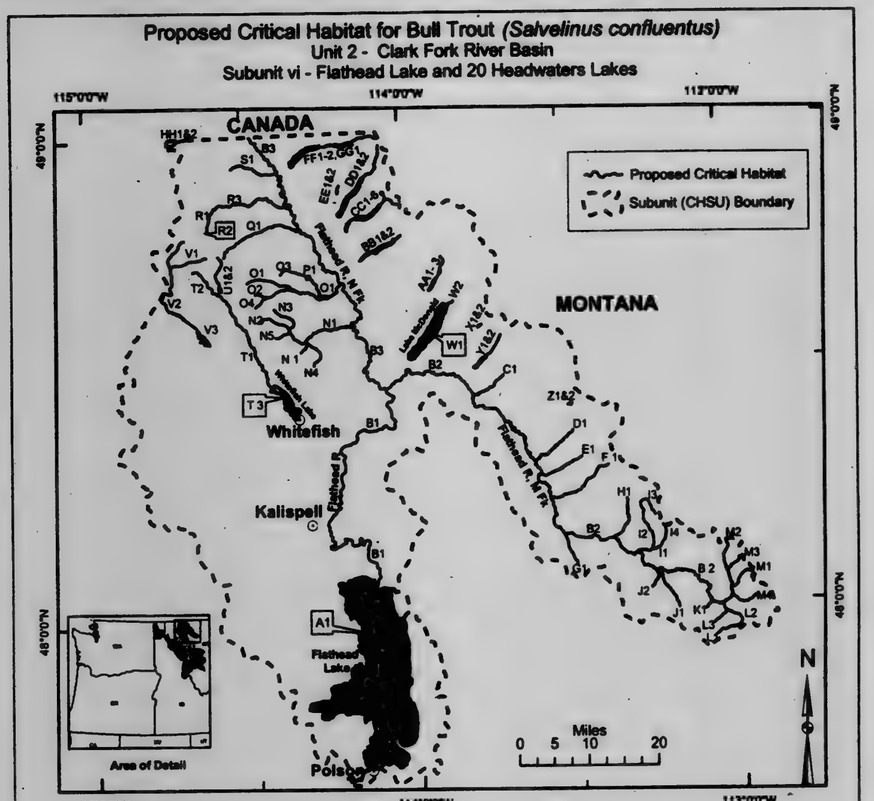


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Proposed Critical Habitat (map key)

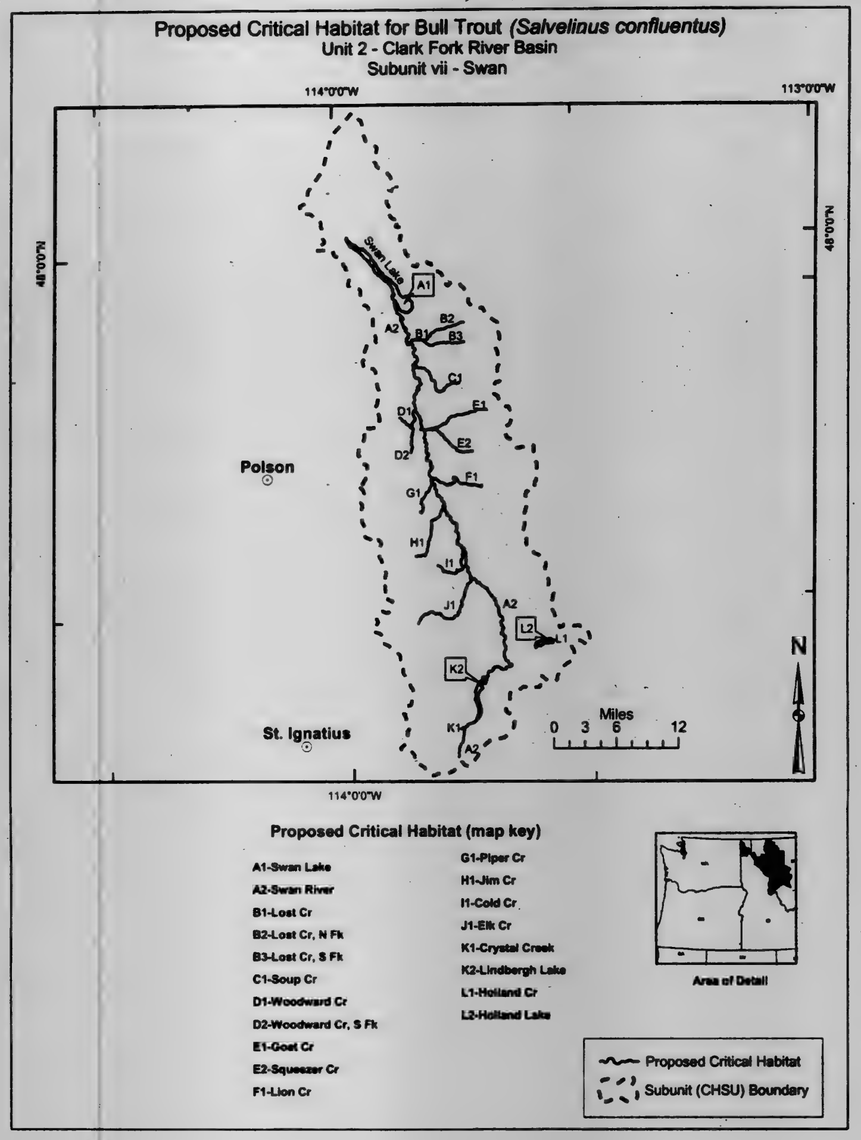
A1-Cedar Creek
A2-Lime Creek
A3-Rock Creek
A4-Upper Priest River
B1-Gold Creek
B2-Hughes Fork
C1-Upper Priest Lake
D1-Trapper Creek
E1-Priest Lake
E2-The Thorofare
F1-Lion Creek
F2-South Fork Lion Creek
G1-Two Mouth Creek
H1-Granite Creek
H2-North Fork Granite Creek
H3-South Fork Granite Creek
I1-Indian Creek
I2-North Fork Indian Creek
I3-South Fork Indian Creek
J1-Kalispell Creek
K1-Soldier Creek

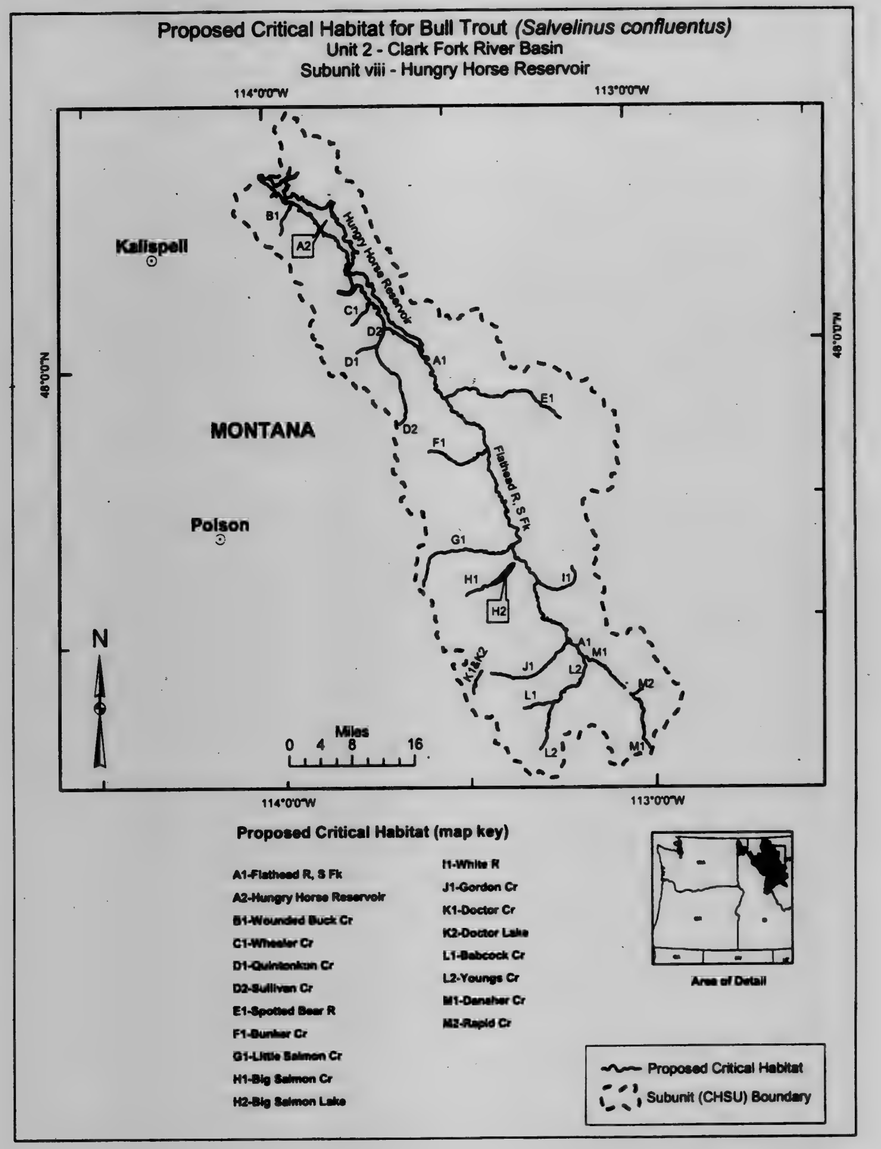


Proposed Critical Habitat (map key)

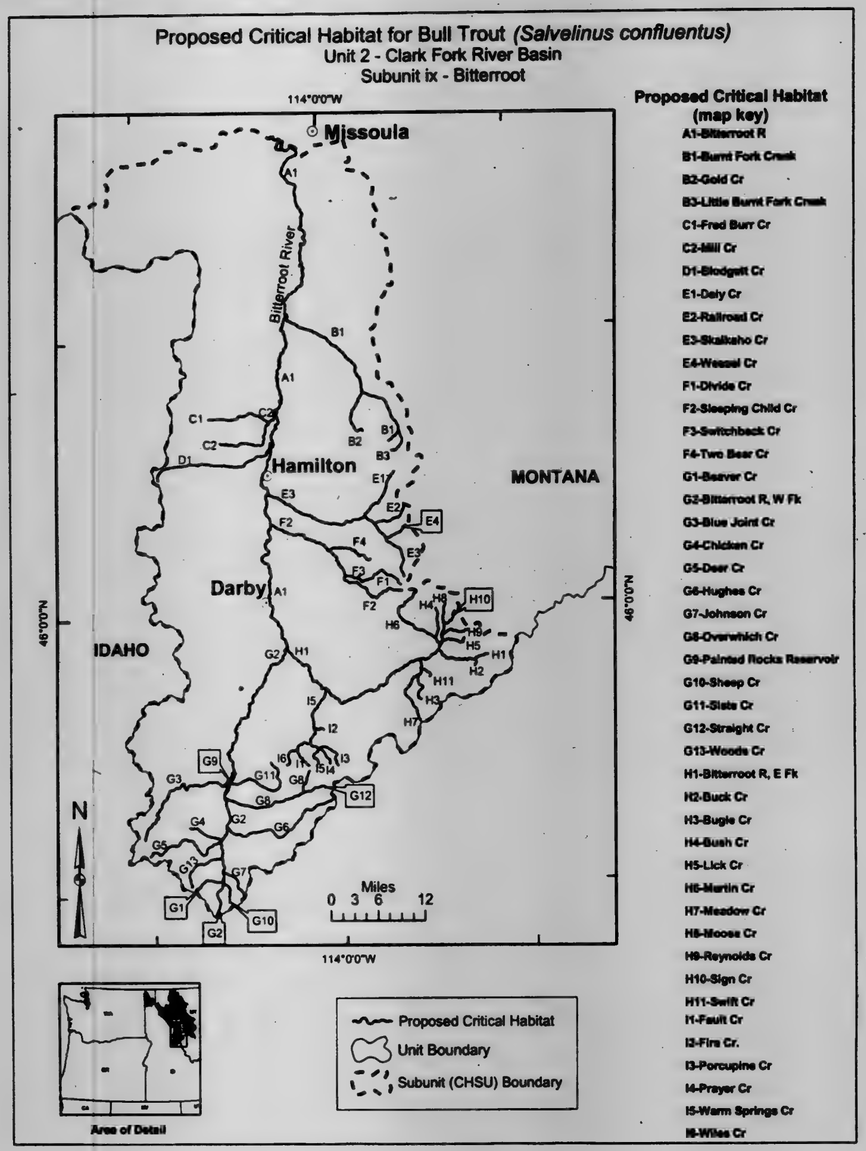
A1-Flathead Lake
B1-Flathead R
B2-Flathead R, M Fk
B3-Flathead R, N Fk
C1-Nyack Cr
D1-Park Cr
E1-Ole Cr
F1-Bear Creek
G1-Long Creek
H1-Granite Cr
I1-Lodgepole Cr
I2-Morrison Cr
I3-Puzzle Cr
I4-Whistler Cr
J1-Dolly Varden Cr
J2-Schafer Cr
K1-Cleck Cr
L1-Basin Cr
L2-Bowl Cr
L3-Scalp Cr
M1-Gateway Cr
M2-Strawberry Cr
M3-Strawberry Cr, E Fk
M4-Trail Cr
N1-Big Cr
N2-Hallowat Cr
N3-Kintomus Cr
N4-Skookolesi Cr
N5-Warner Cr
O1-Coal Cr
O2-Coal Cr, S Fk
O3-Cyclone Cr
O4-Matthias Cr
P1-Cyclone Lake
Q1-Red Meadow Cr
R1-Shorty Cr
R2-Shorty Cr, S Fk
R3-Whale Cr
S1-Trail Cr
T1-Swift Cr
T2-Swift Cr, W Fk
T3-Whitefish Lake
U1-Swift Cr, E Fk
U2-Upper Whitefish Lake
V1-Fitzsimmons Cr
V2-Stillwater R
V3-Upper Stillwater Lake
W1-Lake McDonald
W2-McDonald Cr
X1-Lincoln Cr
X3-Lincoln Lake
Y1-Harrison Cr
Y2-Harrison Lake
Z1-Lake Isabel
Z2-Park Cr
AA1-Arrow Lake
AA2-Camas Cr
AA3-Trout Lake
BB1-Logging Cr
BB2-Logging Lake
CC1-Cerulean Lake
CC2-Lower Quartz Lake
CC3-Middle Quartz Lake
CC4-Quartz Cr
CC5-Quartz Lake
CC6-Rainbow Cr
DD1-Bowman Cr
DD2-Bowman Lake
EE1-Akokala Cr
EE2-Akokala Lake
FF1-Kintla Cr
FF2-Kintla Lake
GG1-Upper Kintla Lake
HH1-Frozen Cr
HH2-Frozen Lake

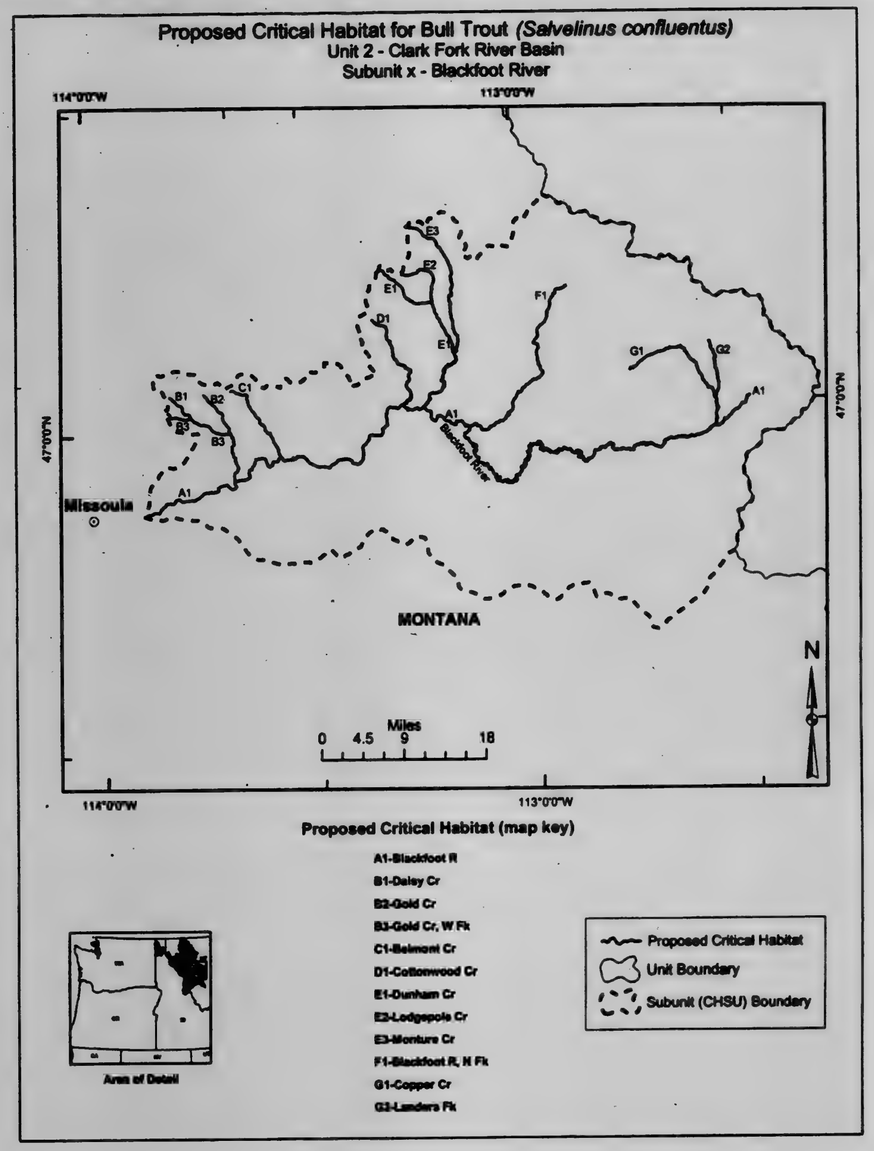
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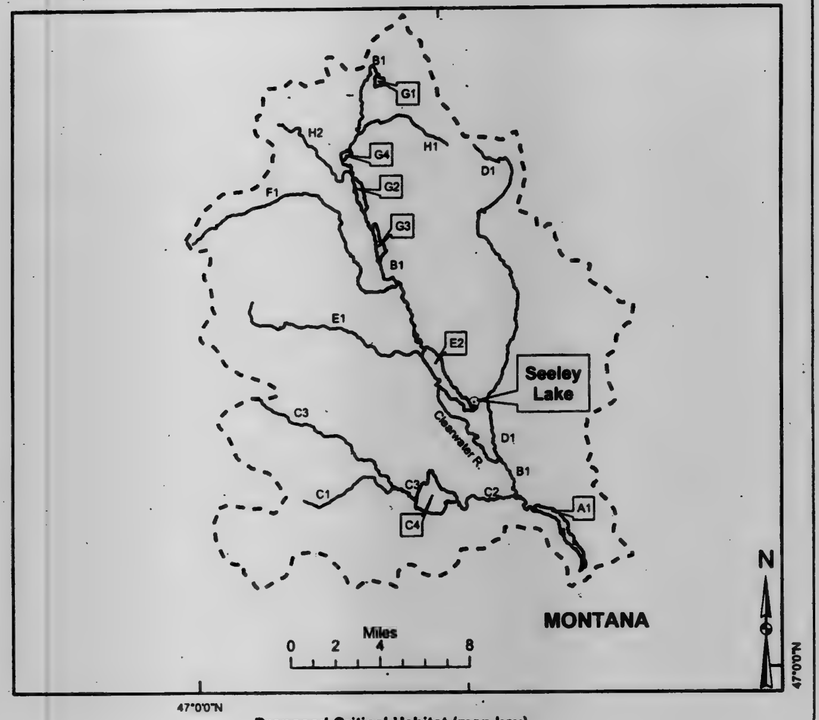
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Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 2 - Clark Fork River Basin
Subunit xi - Clearwater River and Lake Chain



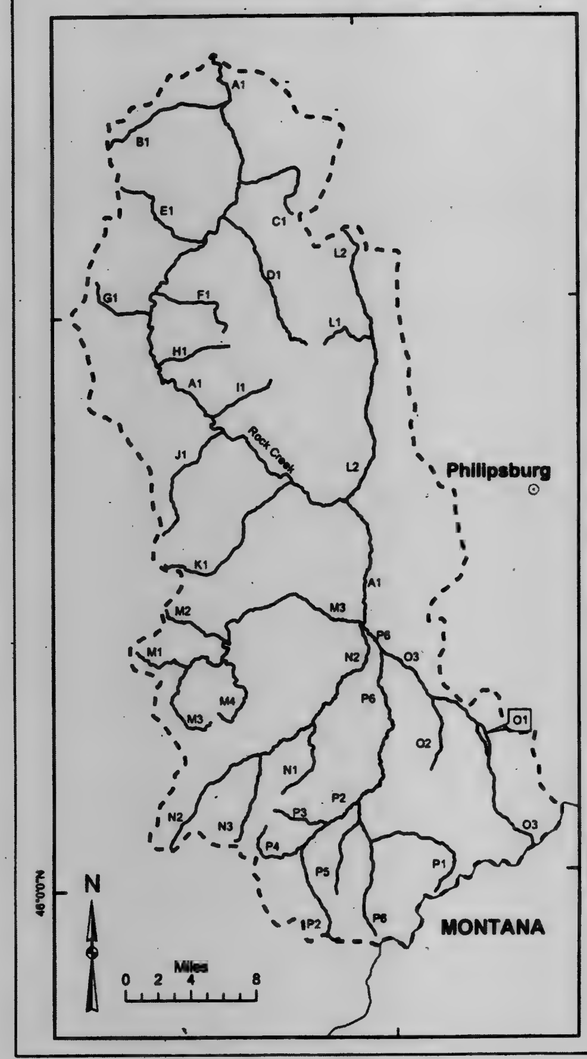
Proposed Critical Habitat (map key)

A1-Salmon Lake
B1-Clearwater R
C1-Finley Cr
C2-Owl Cr
C3-Placid Cr
C4-Placid Lake
D1-Morrell Cr
E1-Deer Cr
E2-Seeley Lake
F1-Clearwater R, W Fk
G1-Clearwater Lake
G2-Lake Alva
G3-Lake Inez
G4-Rainy Lake
H1-Clearwater R, E Fk
H2-Colt Cr


Area of Detail

Proposed Critical Habitat
Unit Boundary
Subunit (CHSU) Boundary

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 2 - Clark Fork River Basin
Subunit xii - Rock Creek



Proposed Critical Habitat (map key)

A1-Rock Creek
B1-Gilbert Cr
C1-Brewster Cr
D1-Ranch Cr
E1-Welcome Cr
F1-Butte Cabin Cr
G1-Wahlquist Cr
H1-Cougar Cr
I1-Hogback Cr
J1-Wyman Cr
K1-Stony Cr
L1-Beaver Cr
L2-Upper Willow Cr
M1-Bowles Cr
M2-Rock Cr, N Fk
M3-Rock Cr, W Fk
M4-Sand Basin Cr
N1-Moose Meadow Cr
N2-Rock Cr, Ross Fk
N3-Rock Cr, Ross Fk, S Fk
O1-East Fork Reservoir
O2-Meadow Cr
O3-Rock Cr, E Fk
P1-Carpp Cr
P2-Copper Cr
P3-Green Canyon Cr
P4-Lutz Cr
P5-Meyers Cr
P6-Rock Cr, M Fk

Proposed Critical Habitat
Unit Boundary
Subunit (CHSU) Boundary


Area of Detail

BILLING CODE 4310-55-C

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(7) Unit 3—Kootenai River Basin.

(i) Critical Habitat Subunit—Kootenai River and Bull Lake.

(A) Kootenai River from a lower point located at 49 degrees latitude, and –116.503 degrees longitude to an upper point located at 48.411 degrees latitude, and –115.314 degrees longitude.

(B) Callahan Creek from a lower point located at 48.435 degrees latitude, and –116.012 degrees longitude to an upper point located at 48.458 degrees latitude, and –115.881 degrees longitude. Callahan Creek, North Fork from a lower point located at 48.435 degrees latitude, and –116.012 degrees longitude to an upper point located at 48.506 degrees latitude, and –116.191 degrees longitude. Callahan Creek, South Fork from a lower point located at 48.435 degrees latitude, and –116.012 degrees longitude to an upper point located at 48.434 degrees latitude, and –116.168 degrees longitude. Goat Creek from a lower point located at 48.435 degrees latitude, and –116 degrees longitude to an upper point located at 48.381 degrees latitude, and –116.038 degrees longitude. July Creek from a lower point located at 48.435 degrees latitude, and –115.916 degrees longitude to an upper point located at 48.423 degrees latitude, and –115.919 degrees longitude.

(C) O'Brien Creek from a lower point located at 48.448 degrees latitude, and –115.866 degrees longitude to an upper point located at 48.557 degrees latitude, and –115.862 degrees longitude.

(D) Quartz Creek from a lower point located at 48.438 degrees latitude, and –115.638 degrees longitude to an upper point located at 48.573 degrees latitude, and –115.689 degrees longitude. Quartz Creek, West Fork from a lower point located at 48.479 degrees latitude, and –115.653 degrees longitude to an upper point located at 48.523 degrees latitude, and –115.749 degrees longitude.

(E) Pipe Creek from a lower point located at 48.424 degrees latitude, and –115.606 degrees longitude to an upper point located at 48.674 degrees latitude, and –115.647 degrees longitude. Pipe Creek, East Fork from a lower point located at 48.616 degrees latitude, and –115.618 degrees longitude to an upper point located at 48.692 degrees latitude, and –115.593 degrees longitude.

(F) Bear Creek from a lower point located at 48.184 degrees latitude, and –115.507 degrees longitude to an upper point located at 48.162 degrees latitude, and –115.653 degrees longitude. Libby Creek from a lower point located at 48.393 degrees latitude, and –115.537 degrees longitude to an upper point located at 48.112 degrees latitude, and –115.552 degrees longitude. Poorman Creek from a lower point located at 48.149 degrees latitude, and –115.526 degrees longitude to an upper point located at 48.123 degrees latitude, and –115.631 degrees longitude. Ramsey Creek from a lower point located at 48.139 degrees latitude, and –115.534 degrees longitude to an upper point located at 48.091 degrees latitude, and –115.617 degrees longitude.

(G) Fisher River from a lower point located at 48.366 degrees latitude, and –115.323 degrees longitude to an upper point located at 48.07 degrees latitude, and –115.374 degrees longitude. West Fisher Creek from a lower point located at 48.07 degrees latitude, and –115.374 degrees longitude to an upper point located at 48.05 degrees latitude, and –115.594 degrees longitude.

(H) Bull Lake centered at 48.236 degrees latitude, and –115.844 degrees longitude. Keeler Creek from a lower point located at 48.36 degrees latitude, and –115.851 degrees longitude to an upper point located at 48.331 degrees latitude, and –116.006 degrees longitude. Keeler Creek, North Fork from a lower point located at 48.342 degrees latitude, and –115.896 degrees longitude to an upper point located at 48.364 degrees latitude, and –116.015 degrees longitude. Lake Creek from a lower point located at 48.36 degrees latitude, and –115.851 degrees longitude to an upper point located at 48.283 degrees latitude, and –115.858 degrees longitude.

(ii) Critical Habitat Subunit—Lake Koocanusa and Sophie Lake.

(A) Lake Koocanusa centered at 48.593 degrees latitude, and –115.231 degrees longitude.

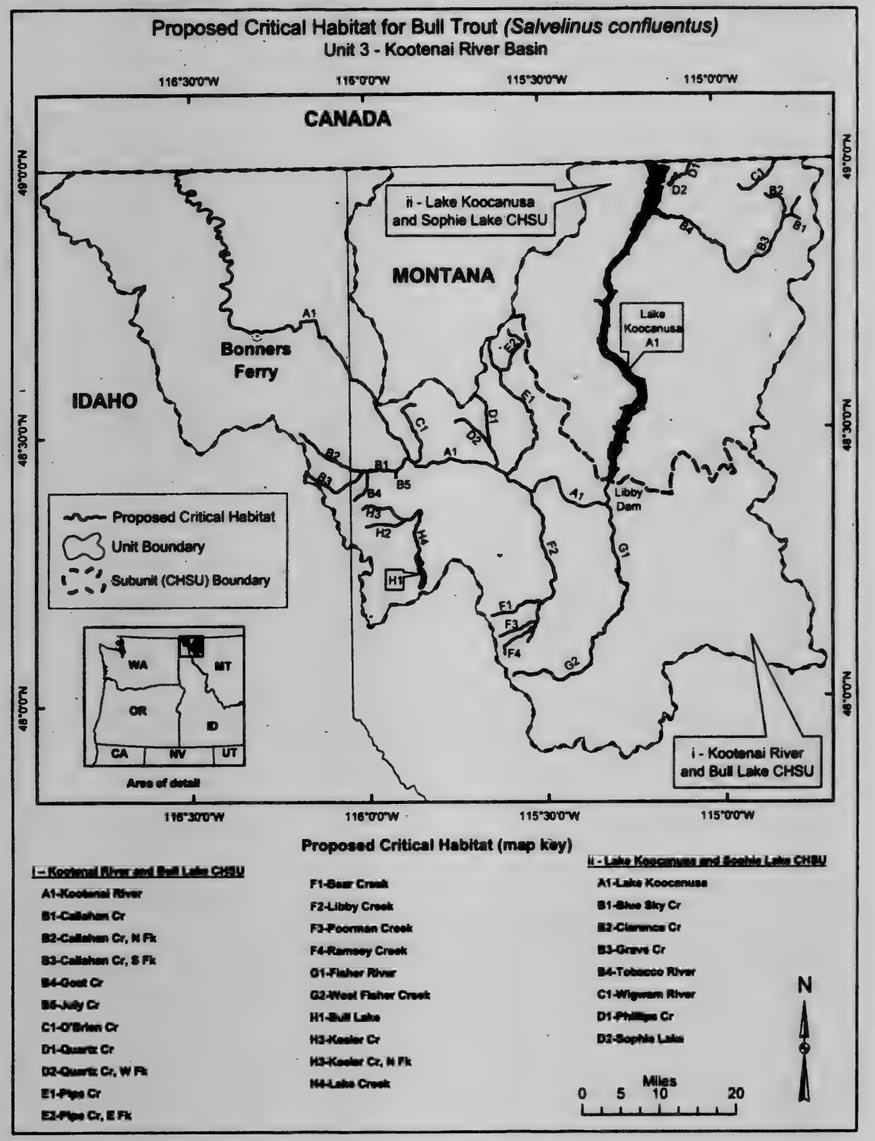
(B) Blue Sky Creek from a lower point located at 48.895 degrees latitude, and –114.775 degrees longitude to an upper point located at 48.887 degrees latitude, and –114.751 degrees longitude. Clarence Creek from a lower point located at 48.889 degrees latitude, and –114.798 degrees longitude to an upper point located at 48.936 degrees latitude, and –114.85 degrees longitude. Grave Creek from a lower point located at 48.798 degrees latitude, and –114.952 degrees longitude to an upper point located at 48.927 degrees latitude, and –114.75 degrees longitude. Tobacco River from a lower point located at 48.897 degrees latitude, and –115.126 degrees longitude to an upper point located at 48.798 degrees latitude, and –114.952 degrees longitude.

(C) Wigwam River from a lower point located at 49 degrees latitude, and –114.801 degrees longitude to an upper point located at 48.953 degrees latitude, and –114.927 degrees longitude.

(D) Phillips Creek from a lower point located at 48.971 degrees latitude, and –115.104 degrees longitude to an upper point located at 49 degrees latitude, and –115.062 degrees longitude. Sophie Lake centered at 48.964 degrees latitude, and –115.115 degrees longitude.

Note: Map follows for Unit 3.

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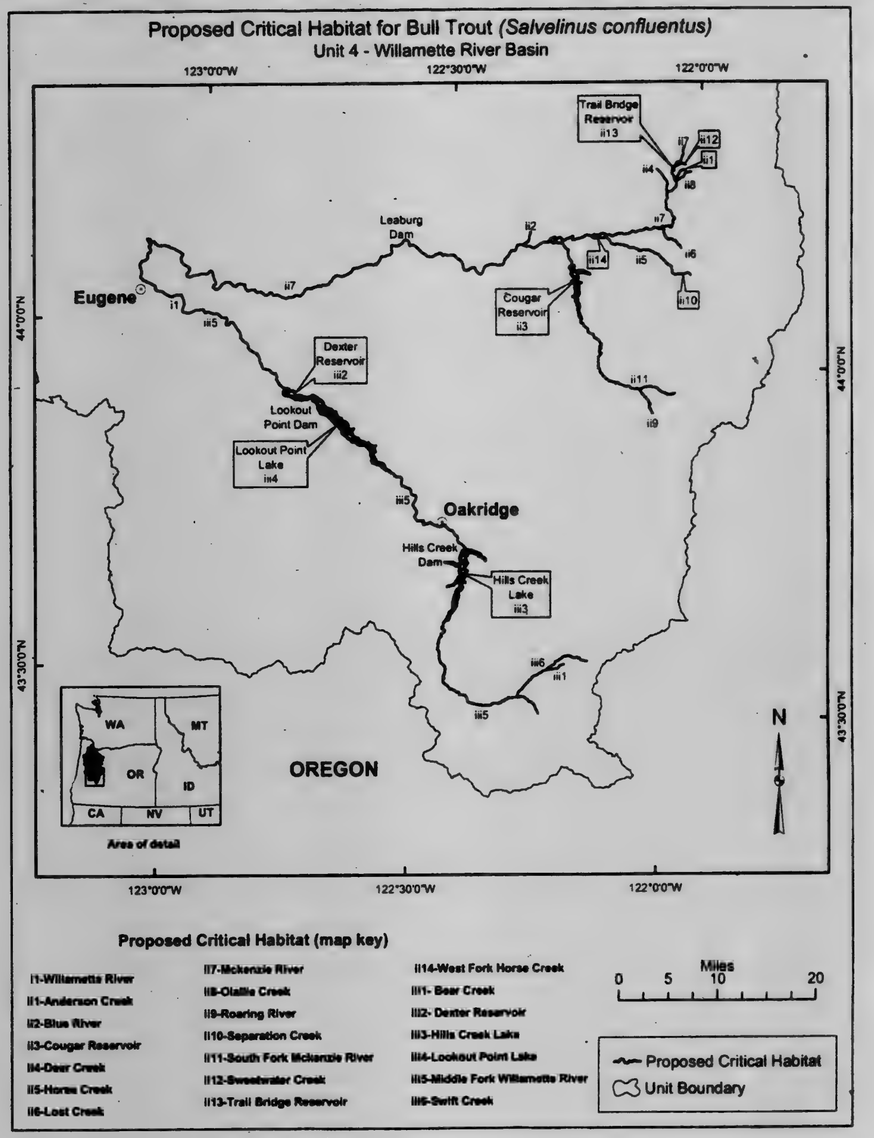
(8) Unit 4—Willamette River Basin.

(i) Willamette River from a lower point located at 44.126 degrees latitude, and –123.106 degrees longitude to an upper point located at 44.023 degrees latitude, and –123.017 degrees longitude.

(ii) Anderson Creek from a lower point located at 44.262 degrees latitude, and –122.045 degrees longitude to an upper point located at 44.276 degrees latitude, and –122.022 degrees longitude. Blue River from a lower point located at 44.153 degrees latitude, and –122.342 degrees longitude to an upper point located at 44.172 degrees latitude, and –122.328 degrees longitude. Cougar Reservoir centered at 44.101 degrees latitude, and –122.229 degrees longitude. Deer Creek from a lower point located at 44.241 degrees latitude, and –122.056 degrees longitude to an upper point located at 44.274 degrees latitude, and –122.082 degrees longitude. Horse Creek from a lower point located at 44.17 degrees latitude, and –122.174 degrees longitude to an upper point located at 44.125 degrees latitude, and –122.036 degrees longitude. Lost Creek from a lower point located at 44.19 degrees latitude, and –122.066 degrees longitude to an upper point located at 44.162 degrees latitude, and –122.022 degrees longitude. McKenzie River from a lower point located at 44.126 degrees latitude, and –123.106 degrees longitude to an upper point located at 44.309 degrees latitude, and –122.028 degrees longitude. Olallie Creek from a lower point located at 44.257 degrees latitude, and –122.041 degrees longitude to an upper point located at 44.273 degrees latitude, and –122.011 degrees longitude. Roaring River from a lower point located at 43.956 degrees latitude, and –122.09 degrees longitude to an upper point located at 43.922 degrees latitude, and –122.06 degrees longitude. Separation Creek from a lower point located at 44.125 degrees latitude, and –122.036 degrees longitude to an upper point located at 44.125 degrees latitude, and –122 degrees longitude. South Fork McKenzie River from a lower point located at 44.159 degrees latitude, and –122.295 degrees longitude to an upper point located at 43.953 degrees latitude, and –122.017 degrees longitude. Sweetwater Creek from a lower point located at 44.279 degrees latitude, and –122.044 degrees longitude to an upper point located at 44.283 degrees latitude, and –122.023 degrees longitude. Trail Bridge Reservoir centered at 44.277 degrees latitude, and –122.047 degrees longitude. West Fork Horse Creek from a lower point located at 44.172 degrees latitude, and –122.206 degrees longitude to an upper point located at 44.17 degrees latitude, and –122.174 degrees longitude.

(iii) Bear Creek from a lower point located at 43.544 degrees latitude, and –122.242 degrees longitude to an upper point located at 43.554 degrees latitude, and –122.207 degrees longitude. Dexter Reservoir centered at 43.915 degrees latitude, and –122.788 degrees longitude. Hills Creek Lake (reservoir) centered at 43.672 degrees latitude, and –122.426 degrees longitude. Lookout Point Lake (reservoir) centered at 43.872 degrees latitude, and –122.681 degrees longitude. Middle Fork Willamette River from a lower point located at 44.023 degrees latitude, and –123.017 degrees longitude to an upper point located at 43.481 degrees latitude, and –122.254 degrees longitude. Swift Creek from a lower point located at 43.502 degrees latitude, and –122.299 degrees longitude to an upper point located at 43.56 degrees latitude, and –122.162 degrees longitude.

Note: Map follows for Unit 4.



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(9) Unit 5—Hood River Basin.

(i) Hood River from a lower point located at 45.721 degrees latitude, and –121.506 degrees longitude to an upper point located at 45.575 degrees latitude, and –121.626 degrees longitude.

(ii) West Fork Hood River from a lower point located at 45.605 degrees latitude, and –121.632 degrees longitude to an upper point located at 45.456 degrees latitude, and –121.781 degrees longitude.

(iii) Divers Creek from a lower point located at 45.544 degrees latitude, and –121.736 degrees longitude to an upper point located at 45.573 degrees latitude, and –121.787 degrees longitude. Lake Branch Hood River from a lower point located at 45.549 degrees latitude, and –121.699 degrees longitude to an upper point located at 45.539 degrees latitude, and –121.742 degrees longitude. Laurel Creek from a lower point located at 45.539 degrees latitude, and –121.742 degrees longitude to an upper point located at 45.513 degrees latitude, and –121.788 degrees longitude.

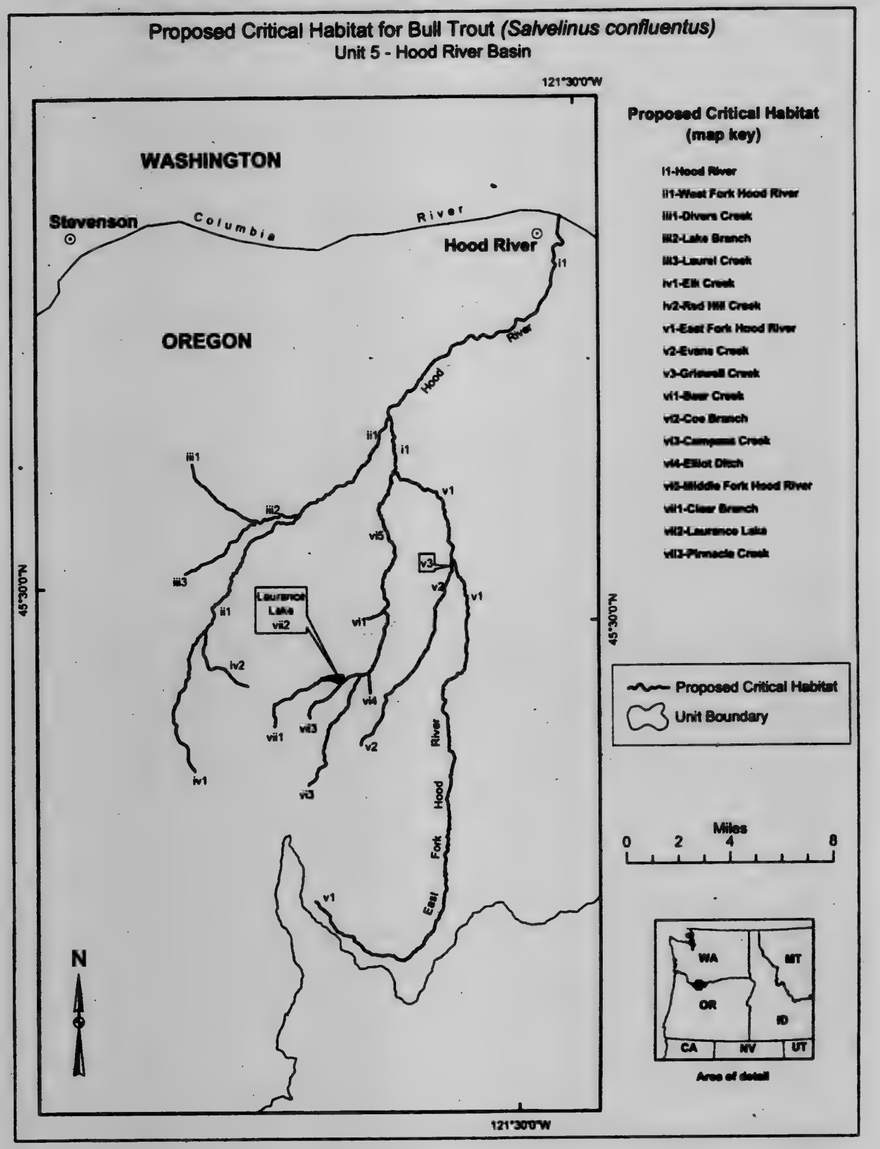
(iv) Elk Creek from a lower point located at 45.456 degrees latitude, and –121.781 degrees longitude to an upper point located at 45.405 degrees latitude, and –121.772 degrees longitude. Red Hill Creek from a lower point located at 45.483 degrees latitude, and –121.769 degrees longitude to an upper point located at 45.453 degrees latitude, and –121.734 degrees longitude.

(v) East Fork Hood River from a lower point located at 45.575 degrees latitude, and –121.626 degrees longitude to an upper point located at 45.338 degrees latitude, and –121.671 degrees longitude. Evans Creek from a lower point located at 45.522 degrees latitude, and –121.576 degrees longitude to an upper point located at 45.425 degrees latitude, and –121.642 degrees longitude. Griswell Creek from a lower point located at 45.529 degrees latitude, and –121.577 degrees longitude to an upper point located at 45.522 degrees latitude, and –121.576 degrees longitude.

(vi) Bear Creek from a lower point located at 45.499 degrees latitude, and –121.629 degrees longitude to an upper point located at 45.494 degrees latitude, and –121.642 degrees longitude. Coe Branch from a lower point located at 45.463 degrees latitude, and –121.645 degrees longitude to an upper point located at 45.434 degrees latitude, and –121.667 degrees longitude. Compass Creek from a lower point located at 45.434 degrees latitude, and –121.667 degrees longitude to an upper point located at 45.401 degrees latitude, and –121.681 degrees longitude. Elliot Creek from a lower point located at 45.464 degrees latitude, and –121.639 degrees longitude to an upper point located at 45.453 degrees latitude, and –121.637 degrees longitude. Middle Fork Hood River from a lower point located at 45.575 degrees latitude, and –121.626 degrees longitude to an upper point located at 45.463 degrees latitude, and –121.645 degrees longitude.

(vii) Clear Branch from a lower point located at 45.463 degrees latitude, and –121.645 degrees longitude to an upper point located at 45.432 degrees latitude, and –121.711 degrees longitude. Laurance Lake centered at 45.46 degrees latitude, and –121.664 degrees longitude. Pinnacle Creek from a lower point located at 45.458 degrees latitude, and –121.66 degrees longitude to an upper point located at 45.438 degrees latitude, and –121.683 degrees longitude.

Note: Map follows for Unit 5.



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(10) Unit 6—Deschutes River Basin.

(i) Critical Habitat Subunit—Lower Deschutes.

(A) Deschutes River from a lower point located at 45.639 degrees latitude, and –120.914 degrees longitude to an upper point located at 44.373 degrees latitude, and –121.291 degrees longitude. Lake Billy Chinook centered at 44.597 degrees latitude, and –121.285 degrees longitude. Lake Simtustus centered at 44.656 degrees latitude, and –121.259 degrees longitude. Pelton Reservoir centered at 44.714 degrees latitude, and –121.241 degrees longitude.

(B) Bunchgrass Creek from a lower point located at 44.982 degrees latitude, and –121.629 degrees longitude to an upper point located at 45.058 degrees latitude, and –121.673 degrees longitude. Warm Springs River 1 from a lower point located at 44.997 degrees latitude, and –121.067 degrees longitude to an upper point located at 44.942 degrees latitude, and –121.43 degrees longitude. Warm Springs River 2 from a lower point located at 44.97 degrees latitude, and –121.477 degrees longitude to an upper point located at 44.97 degrees latitude, and –121.584 degrees longitude. Warm Springs River 3 from a lower point located at 44.991 degrees latitude, and –121.667 degrees longitude to an upper point located at 44.993 degrees latitude, and –121.68 degrees longitude. Warm Springs River 4 from a lower point located at 44.997 degrees latitude, and –121.715 degrees longitude to an upper point located at 45.003 degrees latitude, and –121.74 degrees longitude.

(C) Shitike Creek from a lower point located at 44.762 degrees latitude, and −121.227 degrees longitude to an upper point located at 44.727 degrees latitude, and −121.786 degrees longitude.

(D) Crooked River from a lower point located at 44.501 degrees latitude, and −121.285 degrees longitude to an upper point located at 44.31 degrees latitude, and −120.868 degrees longitude.

(E) Metolius River from a lower point located at 44.619 degrees latitude, and −121.468 degrees longitude to an upper point located at 44.434 degrees latitude, and −121.637 degrees longitude.

(F) Whitewater River from a lower point located at 44.67 degrees latitude, and −121.545 degrees longitude to an upper point located at 44.704 degrees latitude, and −121.727 degrees longitude.

(G) Abbot Creek from a lower point located at 44.57 degrees latitude, and −121.619 degrees longitude to an upper point located at 44.544 degrees latitude, and −121.67 degrees longitude. Candle Creek from a lower point located at 44.576 degrees latitude, and −121.618 degrees longitude to an upper point located at 44.583 degrees latitude, and −121.677 degrees longitude. Jefferson Creek from a lower point located at 44.577 degrees latitude, and −121.619 degrees longitude to an upper point located at 44.64 degrees latitude, and −121.734 degrees longitude. Unnamed creek—off Jefferson Creek from a lower point located at 44.626 degrees latitude, and −121.69 degrees longitude to an upper point located at 44.634 degrees latitude, and −121.698 degrees longitude.

(H) Brush Creek from a lower point located at 44.504 degrees latitude, and −121.658 degrees longitude to an upper point located at 44.544 degrees latitude, and −121.706 degrees longitude. Canyon Creek from a lower point located at 44.501 degrees latitude, and −121.642 degrees longitude to an upper point located at 44.503 degrees latitude, and −121.741 degrees longitude. Heising Spring from a lower point located at 44.494 degrees latitude, and −121.648 degrees longitude to an upper point located at 44.491 degrees latitude, and −121.651 degrees longitude. Jack Creek from a lower point located at 44.493 degrees latitude, and −121.647 degrees longitude to an upper point located at 44.472 degrees latitude, and −121.725 degrees longitude. Roaring Creek from a lower point located at 44.508 degrees latitude, and −121.686 degrees longitude to an upper point located at 44.527 degrees latitude, and −121.708 degrees longitude. Unnamed creek off Canyon Creek from a lower point located at 44.505 degrees latitude, and −121.657 degrees longitude to an upper point located at 44.527 degrees latitude, and −121.678 degrees longitude.

(I) Blue Lake centered at 44.413 degrees latitude, and −121.768 degrees longitude. Lake Creek from a lower point located at 44.436 degrees latitude, and −121.702 degrees longitude to an upper point located at 44.426 degrees latitude, and −121.726 degrees longitude. Link Creek from a lower point located at 44.419 degrees latitude, and −121.754 degrees longitude to an upper point located at 44.415 degrees latitude, and −121.764 degrees longitude. Middle Fork Lake Creek from a lower point located at 44.453 degrees latitude, and −121.642 degrees longitude to an upper point located at 44.436 degrees latitude, and −121.702 degrees longitude. North Fork Lake Creek from a lower point located at 44.457 degrees latitude, and −121.642 degrees longitude to an upper point located at 44.436 degrees latitude, and −121.702 degrees longitude. South Fork Lake Creek from a lower point located at 44.442 degrees latitude, and −121.661 degrees longitude to an upper point located at 44.436 degrees latitude, and −121.704 degrees longitude. Suttle Lake centered at 44.422 degrees latitude, and −121.74 degrees longitude.

(J) Squaw Creek from a lower point located at 44.46 degrees latitude, and −121.335 degrees longitude to an upper point located at 44.445 degrees latitude, and −121.346 degrees longitude.

(ii) Critical Habitat Subunit—Upper Deschutes.

(A) Big Marsh Creek from a lower point located at 43.483 degrees latitude, and −121.907 degrees longitude to an upper point located at 43.318 degrees latitude, and −121.993 degrees longitude. Crane Prairie Reservoir centered at 43.786 degrees latitude, and −121.8 degrees longitude. Crescent Creek from a lower point located at 43.529 degrees latitude, and −121.651 degrees longitude to an upper point located at 43.501 degrees latitude, and −121.972 degrees longitude. Crescent Lake centered at 43.478 degrees latitude, and −121.989 degrees longitude. Deschutes River from a lower point located at 43.742 degrees latitude, and −121.779 degrees longitude to an upper point located at 43.901 degrees latitude, and −121.76 degrees longitude. Lava Lake centered at 43.921 degrees latitude, and −121.772 degrees longitude. Little Deschutes River from a lower point located at 43.529 degrees latitude, and −121.651 degrees longitude to an upper point located at 43.301 degrees latitude, and −121.994 degrees longitude. Little Lava Lake centered at 43.91 degrees latitude, and −121.757 degrees longitude. Wickiup Reservoir centered at 43.679 degrees latitude, and −121.732 degrees longitude.

(B) Cold Creek from a lower point located at 43.521 degrees latitude, and −121.951 degrees longitude to an upper point located at 43.515 degrees latitude, and −122 degrees longitude. Refrigerator Creek from a lower point located at 43.452 degrees latitude, and −121.935 degrees longitude to an upper point located at 43.419 degrees latitude, and −121.989 degrees longitude. Whitefish Creek from a lower point located at 43.468 degrees latitude, and −122.031 degrees longitude to an upper point located at 43.527 degrees latitude, and −122.07 degrees longitude.

(C) Fall River from a lower point located at 43.768 degrees latitude, and −121.632 degrees longitude to an upper point located at 43.788 degrees latitude, and −121.514 degrees longitude. Hemlock Creek from a lower point located at 43.365 degrees latitude, and −121.825 degrees longitude to an upper point located at 43.334 degrees latitude, and −121.917 degrees longitude. Spruce Creek from a lower point located at 43.352 degrees latitude, and −121.857 degrees longitude to an upper point located at 43.369 degrees latitude, and −121.922 degrees longitude.

(D) Browns Creek from a lower point located at 43.721 degrees latitude, and −121.791 degrees longitude to an upper point located at 43.727 degrees latitude, and −121.954 degrees longitude. Cultus River from a lower point located at 43.809 degrees latitude, and −121.796 degrees longitude to an upper point located at 43.899 degrees latitude, and −121.858 degrees longitude. Quinn River from a lower point located at 43.784 degrees latitude, and −121.835 degrees longitude to an upper point located at 43.782 degrees latitude, and −121.836 degrees longitude. Snow Creek from a lower point located at 43.814 degrees latitude, and −121.776 degrees longitude to an upper point located at 43.879 degrees latitude, and −121.767 degrees longitude.

(11) Unit 7—Odell Lake.

(i) Odell Lake centered at 43.572 degrees latitude, and −122 degrees longitude.

(ii) Trapper Creek from a lower point located at 43.585 degrees latitude, and −122.046 degrees longitude to an upper point located at 43.537 degrees latitude, and −122.075 degrees longitude.

(iii) Crystal Creek from a lower point located at 43.572 degrees latitude, and −122.021 degrees longitude to an upper point located at 43.566 degrees latitude, and −122.05 degrees longitude.

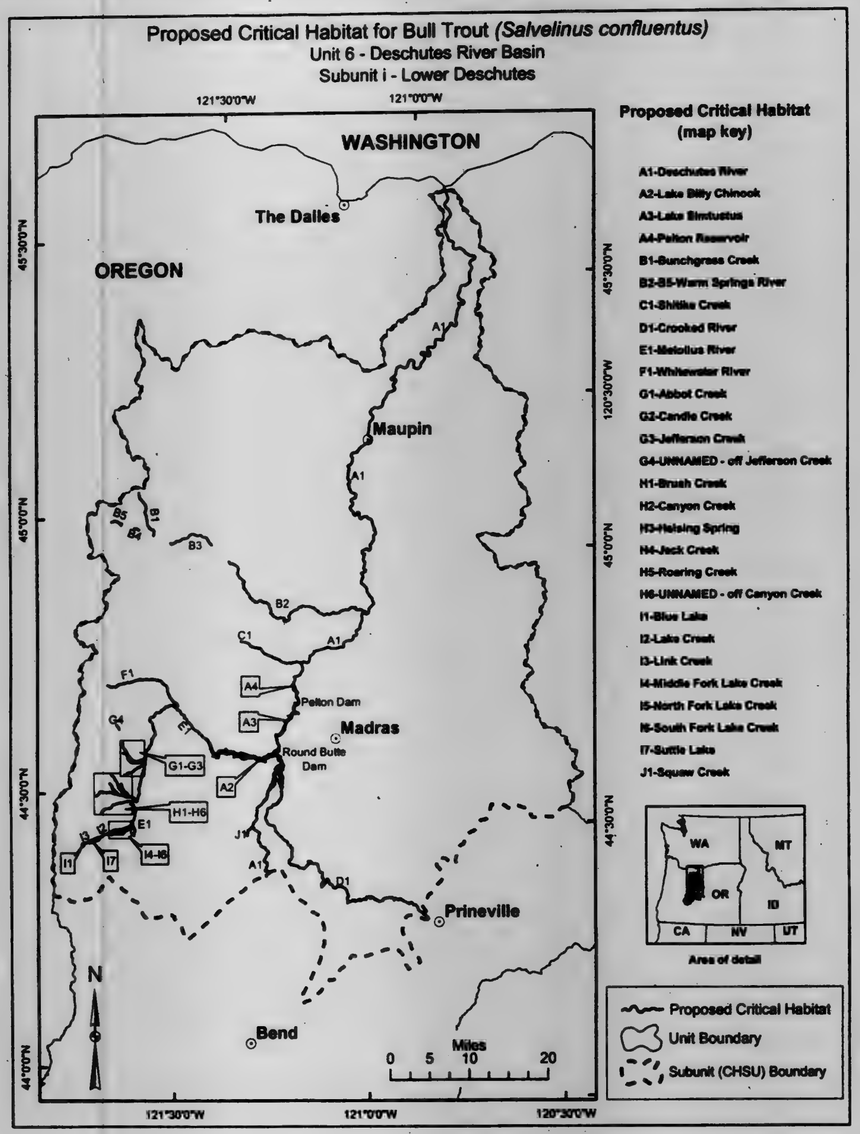
(iv) Odell Creek from a lower point located at 43.591 degrees latitude, and −121.853 degrees longitude to an upper point located at 43.55 degrees latitude, and −121.963 degrees longitude.

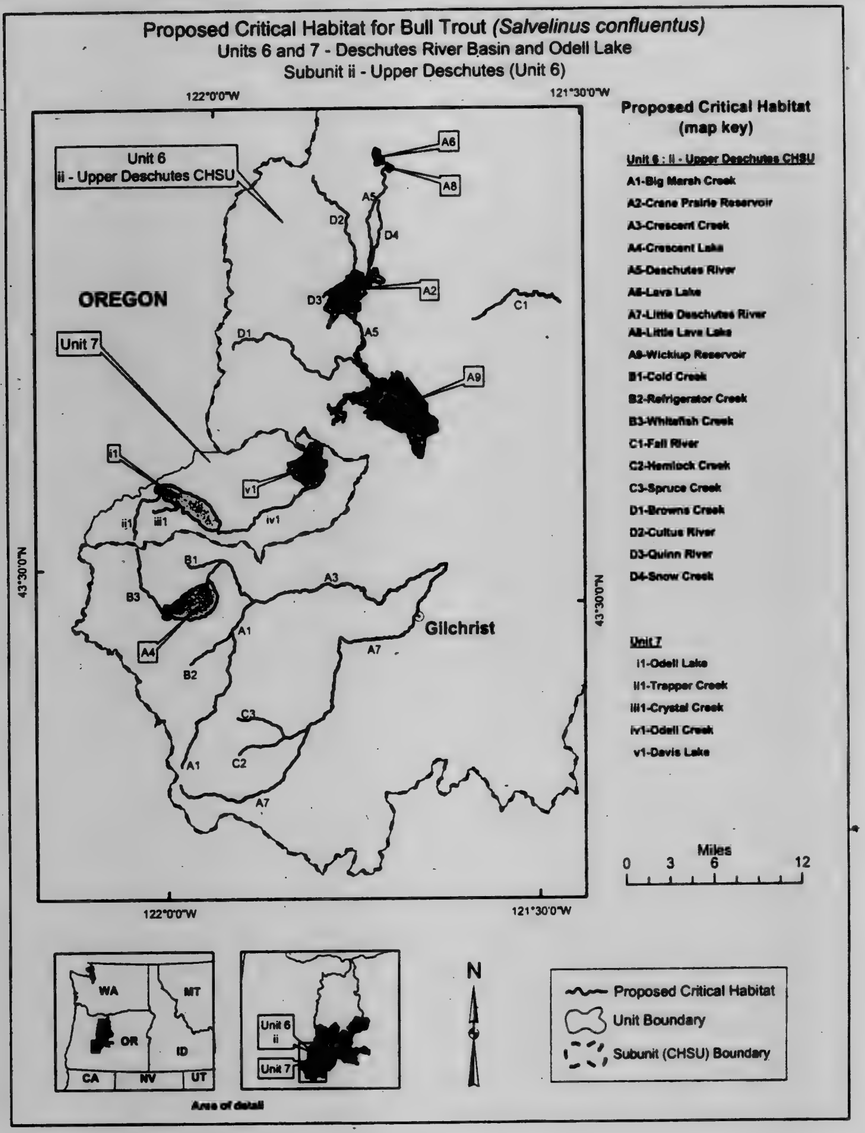
(v) Davis Lake centered at 43.616 degrees latitude, and −121.843 degrees longitude.

Note: Maps follow for Unit 6, Subunit i; and for Unit 6, Subunit ii and Unit 7.

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(12) Unit 8—John Day River Basin.

(i) Call Creek from a lower point located at 44.32 degrees latitude, and −118.556 degrees longitude to an upper point located at 44.286 degrees latitude, and −118.506 degrees longitude. Canyon Creek from a lower point located at 44.423 degrees latitude, and −118.958 degrees longitude to an upper point located at 44.27 degrees latitude, and −118.731 degrees longitude. Deardorff Creek from a lower point located at 44.395 degrees latitude, and −118.576 degrees longitude to an upper point located at 44.383 degrees latitude, and −118.422 degrees longitude. Indian Creek from a lower point located at 44.443 degrees latitude, and −118.799 degrees longitude to an upper point located at 44.295 degrees latitude, and −118.735 degrees longitude. John Day River from a lower point located at 44.755 degrees latitude, and −119.638 degrees longitude to an upper point located at 44.25 degrees latitude, and −118.526 degrees longitude. North Reynolds Creek from a lower point located at 44.423 degrees latitude, and −118.516 degrees longitude to an upper point located at 44.43 degrees latitude, and −118.424 degrees longitude. Pine Creek from a lower point located at 44.438 degrees latitude, and −118.826 degrees longitude to an upper point located at 44.315 degrees latitude, and −118.797 degrees longitude. Rail Creek from a lower point located at 44.349 degrees latitude, and −118.573 degrees longitude to an upper point located at 44.297 degrees latitude, and −118.489 degrees longitude. Reynolds Creek from a lower point located at 44.414 degrees latitude, and −118.595 degrees longitude to an upper point located at 44.405 degrees latitude, and −118.439 degrees longitude. Roberts Creek from a lower point located at 44.348 degrees latitude, and −118.574 degrees longitude to an upper point located at 44.276 degrees latitude, and −118.574 degrees longitude. Strawberry Creek from a lower point located at 44.459 degrees latitude, and −118.7 degrees longitude to an upper point located at 44.293 degrees latitude, and −118.699 degrees longitude.

(ii) Baldy Creek from a lower point located at 44.91 degrees latitude, and −118.317 degrees longitude to an upper point located at 44.85 degrees latitude, and −118.304 degrees longitude. Big Creek from a lower point located at 44.961 degrees latitude, and −118.682 degrees longitude to an upper point located at 44.977 degrees latitude, and −118.671 degrees longitude. Boulder Creek from a lower point located at 44.82 degrees latitude, and −118.414 degrees longitude to an upper point located at 44.841 degrees latitude, and −118.332 degrees longitude. Boundary Creek from a lower point located at 44.787 degrees latitude, and −118.374 degrees longitude to an upper point located at 44.811 degrees latitude, and −118.342 degrees longitude. Bull Run Creek from a lower point located at 44.808 degrees latitude, and −118.424 degrees longitude to an upper point located at 44.768 degrees latitude, and −118.29 degrees longitude. Clear Creek from a lower point located at 44.821 degrees latitude, and −118.449 degrees longitude to an upper point located at 44.758 degrees latitude, and −118.509 degrees longitude. Crane Creek from a lower point located at 44.894 degrees latitude, and −118.477 degrees longitude to an upper point located at 44.869 degrees latitude, and −118.329 degrees longitude. Crawfish Creek from a lower point located at 44.915 degrees latitude, and −118.297 degrees longitude to an upper point located at 44.931 degrees latitude, and −118.233 degrees longitude. Cunningham Creek from a lower point located at 44.911 degrees latitude, and −118.266 degrees longitude to an upper point located at 44.92 degrees latitude, and −118.234 degrees longitude. Deep Creek from a lower point located at 44.78 degrees latitude, and −118.347 degrees longitude to an upper point located at 44.815 degrees latitude, and −118.305 degrees longitude. Desolation Creek from a lower point located at 44.998 degrees latitude, and −118.935 degrees longitude to an upper point located at 44.82 degrees latitude, and −118.688 degrees longitude. East Fork Meadow Brook from a lower point located at 44.969 degrees latitude, and −118.965 degrees longitude to an upper point located at 44.863 degrees latitude, and −118.823 degrees longitude. Granite Creek from a lower point located at 44.866 degrees latitude, and −118.56 degrees longitude to an upper point located at 44.857 degrees latitude, and −118.342 degrees longitude. Lightning Creek from a lower point located at 44.765 degrees latitude, and −118.496 degrees longitude to an upper point located at 44.718 degrees latitude, and −118.493 degrees longitude. North Fork Desolation Creek from a lower point located at 44.82 degrees latitude, and −118.688 degrees longitude to an upper point located at 44.773 degrees latitude, and −118.625 degrees longitude. North Fork John Day River from a lower point located at 44.755 degrees latitude, and −119.638 degrees longitude to an upper point located at 44.867 degrees latitude, and −118.238 degrees longitude. Onion Creek from a lower point located at 44.913 degrees latitude, and −118.4 degrees longitude to an upper point located at 44.889 degrees latitude, and −118.338 degrees longitude. Salmon Creek from a lower point located at 44.725 degrees latitude, and −118.502 degrees longitude to an upper point located at 44.717 degrees latitude, and −118.541 degrees longitude. South Fork Desolation Creek from a lower point located at 44.82 degrees latitude, and −118.688 degrees longitude to an upper point located at 44.719 degrees latitude, and −118.621 degrees longitude. South Trail Creek from a lower point located at 44.937 degrees latitude, and −118.389 degrees longitude to an upper point located at 44.953 degrees latitude, and −118.272 degrees longitude. Trail Creek from a lower point located at 44.916 degrees latitude, and −118.405 degrees longitude to an upper point located at 44.937 degrees latitude, and −118.389 degrees longitude. West Fork Clear Creek from a lower point located at 44.758 degrees latitude, and −118.509 degrees longitude to an upper point located at 44.733 degrees latitude, and −118.583 degrees longitude. West Fork Meadow Brook from a lower point located at 44.969 degrees latitude, and −118.965 degrees longitude to an upper point located at 44.998 degrees latitude, and −118.944 degrees longitude. Winom Creek from a lower point located at 44.977 degrees latitude, and −118.671 degrees longitude to an upper point located at 45.05 degrees latitude, and −118.61 degrees longitude.

(iii) Big Boulder Creek from a lower point located at 44.666 degrees latitude, and −118.715 degrees longitude to an upper point located at 44.749 degrees latitude, and −118.682 degrees longitude. Big Creek from a lower point located at 44.766 degrees latitude, and −118.873 degrees longitude to an upper point located at 44.765 degrees latitude, and −118.685 degrees longitude. Butte Creek from a lower point located at 44.642 degrees latitude, and −118.651 degrees longitude to an upper point located at 44.586 degrees latitude, and −118.643 degrees longitude. Clear Creek from a lower point located at 44.594 degrees latitude, and −118.507 degrees longitude to an upper point located at 44.447 degrees latitude, and −118.43 degrees longitude. Davis Creek from a lower point located at 44.607 degrees latitude, and −118.544 degrees longitude to an upper point located at 44.57 degrees latitude, and −118.621 degrees longitude. Deadwood Creek from a lower point located at 44.768 degrees latitude, and −118.792 degrees longitude to an upper point located at 44.75 degrees latitude, and −118.718 degrees longitude. Granite Boulder Creek from a lower point located at 44.648 degrees latitude, and −118.664 degrees longitude to an upper point located at 44.726 degrees latitude, and −118.61 degrees longitude. Indian Creek from a lower point located at 44.798 degrees latitude, and −118.91 degrees longitude to an upper point located at 44.802 degrees latitude, and −118.746 degrees longitude. Middle Fork John Day River from a lower point located at 44.917 degrees latitude, and −119.3 degrees longitude to an upper point located at 44.585 degrees latitude, and −118.429 degrees longitude. Vinegar Creek from a lower point located at 44.601 degrees latitude, and −118.535 degrees longitude to an upper point located at 44.707 degrees latitude, and −118.549 degrees longitude.

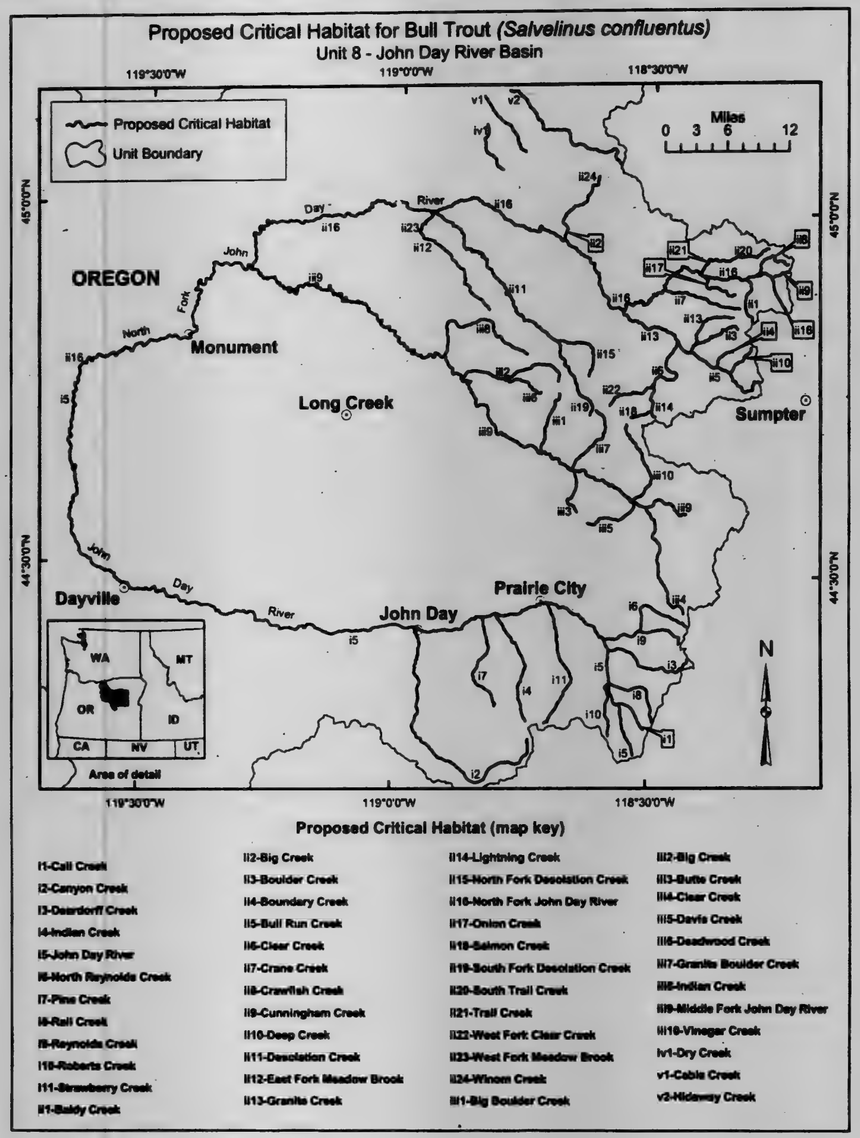
(iv) Dry Creek from a lower point located at 45.119 degrees latitude, and −118.835 degrees longitude to an upper point located at 45.057 degrees latitude, and −118.802 degrees longitude.

(v) Cable Creek from a lower point located at 45.158 degrees latitude, and −118.841 degrees longitude to an upper point located at 45.083 degrees latitude, and −118.758 degrees longitude. Hidaway Creek from a lower point located at 45.166 degrees latitude, and −118.791 degrees longitude to an upper point located at 45.067 degrees latitude, and −118.569 degrees longitude.

Note: Map follows for Unit 8.

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BILLING CODE 4310-55-C

(13) Unit 9—Umatilla-Walla Walla River Basins.

(i) Critical Habitat Subunit—Umatilla.

(A) Ryan Creek from a lower point located at 45.723 degrees latitude, and –118.314 degrees longitude to an upper point located at 45.694 degrees latitude, and –118.308 degrees longitude. Squaw Creek from a lower point located at 45.7 degrees latitude, and –118.4 degrees longitude to an upper point located at 45.655 degrees latitude, and –118.401 degrees longitude. Umatilla River from a lower point located at 45.923 degrees latitude, and –119.356 degrees longitude to an upper point located at 45.726 degrees latitude, and –118.187 degrees longitude.

(B) East Meacham Creek from a lower point located at 45.486 degrees latitude, and –118.273 degrees longitude to an upper point located at 45.479 degrees latitude, and –118.231 degrees longitude. Meacham Creek from a lower point located at 45.702 degrees latitude, and –118.359 degrees longitude to an upper point located at 45.491 degrees latitude, and –118.326 degrees longitude. North Fork Meacham Creek from a lower point located at 45.527 degrees latitude, and –118.29 degrees longitude to an upper point located at 45.571 degrees latitude, and –118.138 degrees longitude. Pot Creek from a lower point located at 45.554 degrees latitude, and –118.2 degrees longitude to an upper point located at 45.523 degrees latitude, and –118.162 degrees longitude.

(C) Coyote Creek from a lower point located at 45.732 degrees latitude, and –118.138 degrees longitude to an upper point located at 45.746 degrees latitude, and –118.136 degrees longitude. North Fork Umatilla River from a lower point located at 45.726 degrees latitude, and –118.187 degrees longitude to an upper point located at 45.705 degrees latitude, and –118.033 degrees longitude. Woodward Creek from a lower point located at 45.736 degrees latitude, and –118.079 degrees longitude to an upper point located at 45.75 degrees latitude, and –118.075 degrees longitude.

(D) Buck Creek from a lower point located at 45.719 degrees latitude, and –118.188 degrees longitude to an upper point located at 45.686 degrees latitude, and –118.087 degrees longitude. Shimmiehorn Creek from a lower point located at 45.675 degrees latitude, and –118.218 degrees longitude to an upper point located at 45.598 degrees latitude, and –118.186 degrees longitude. South Fork Umatilla River from a lower point located at 45.726 degrees latitude, and –118.187 degrees longitude to an upper point located at 45.598 degrees latitude, and –118.219 degrees longitude. Spring Creek from a lower point located at 45.665 degrees latitude, and –118.171 degrees longitude to an upper point located at 45.601 degrees latitude, and –118.139 degrees longitude. Thomas Creek from a lower point located at 45.688 degrees latitude, and –118.204 degrees longitude to an upper point located at 45.668 degrees latitude, and –118.125 degrees longitude.

(ii) Critical Habitat Subunit—Walla Walla.

(A) Walla Walla River from a lower point located at 46.039 degrees latitude, and –118.478 degrees longitude to an upper point located at 45.899 degrees latitude, and –118.307 degrees longitude.

(B) North Fork Walla Walla River from a lower point located at 45.899 degrees latitude, and –118.307 degrees longitude to an upper point located at 45.947 degrees latitude, and –117.99 degrees longitude.

(C) Husky Spring Creek from a lower point located at 45.884 degrees latitude, and –117.977 degrees longitude to an upper point located at 45.889 degrees latitude, and –117.951 degrees longitude. Reser Creek from a lower point located at 45.876 degrees latitude, and –117.985 degrees longitude to an upper point located at 45.899 degrees latitude, and –118.017 degrees longitude. Skiphorton Creek from a lower point located at 45.852 degrees latitude, and –118.024 degrees longitude to an upper point located at 45.875 degrees latitude, and –118.026 degrees longitude. South Fork Walla Walla River from a lower point located at 45.899 degrees latitude, and –118.307 degrees longitude to an upper point located at 45.966 degrees latitude, and –117.963 degrees longitude.

(D) Bull Creek from a lower point located at 46.028 degrees latitude, and –117.946 degrees longitude to an upper point located at 46.027 degrees latitude, and –117.938 degrees longitude. Burnt Fork Creek from a lower point located at 46.032 degrees latitude, and –117.952 degrees longitude to an upper point located at 46.044 degrees latitude, and –117.944 degrees longitude. Deadman Creek from a lower point located at 46.032 degrees latitude, and –117.955 degrees longitude to an upper point located at 46.036 degrees latitude, and –117.952 degrees longitude. Garrison Creek from a lower point located at 46.026 degrees latitude, and –118.433 degrees longitude to an upper point located at 46.075 degrees latitude, and –118.273 degrees longitude. Green Fork Creek from a lower point located at 46.029 degrees latitude, and –117.948 degrees longitude to an upper point located at 46.031 degrees latitude, and –117.939 degrees longitude. Low Creek from a lower point located at 45.993 degrees latitude, and –118.035 degrees longitude to an upper point located at 45.973 degrees latitude, and –118.009 degrees longitude. Mill Creek from a lower point located at 46.039 degrees latitude, and –118.478 degrees longitude to an upper point located at 46.011 degrees latitude, and –117.941 degrees longitude. North Fork Mill Creek from a lower point located at 46.022 degrees latitude, and –117.995 degrees longitude to an upper point located at 46.028 degrees latitude, and –117.995 degrees longitude. Paradise Creek from a lower point located at 46.004 degrees latitude, and –118.017 degrees longitude to an upper point located at 46.001 degrees latitude, and –117.99 degrees longitude. Yellowhawk Creek from a lower point located at 46.017 degrees latitude, and –118.4 degrees longitude to an upper point located at 46.077 degrees latitude, and –118.272 degrees longitude.

(E) Touchet River from a lower point located at 46.272 degrees latitude, and –118.174 degrees longitude to an upper point located at 46.302 degrees latitude, and –117.959 degrees longitude.

(F) Lewis Creek from a lower point located at 46.191 degrees latitude, and –117.824 degrees longitude to an upper point located at 46.156 degrees latitude, and –117.771 degrees longitude. North Fork Touchet River from a lower point located at 46.302 degrees latitude, and –117.959 degrees longitude to an upper point located at 46.093 degrees latitude, and –117.864 degrees longitude. Robinson Creek from a lower point located at 46.238 degrees latitude, and –117.895 degrees longitude to an upper point located at 46.097 degrees latitude, and –117.903 degrees longitude. Spangler Creek from a lower point located at 46.149 degrees latitude, and –117.806 degrees longitude to an upper point located at 46.099 degrees latitude, and –117.802 degrees longitude. Wolf Fork Creek from a lower point located at 46.274 degrees latitude, and –117.895 degrees longitude to an upper point located at 46.075 degrees latitude, and –117.903 degrees longitude.

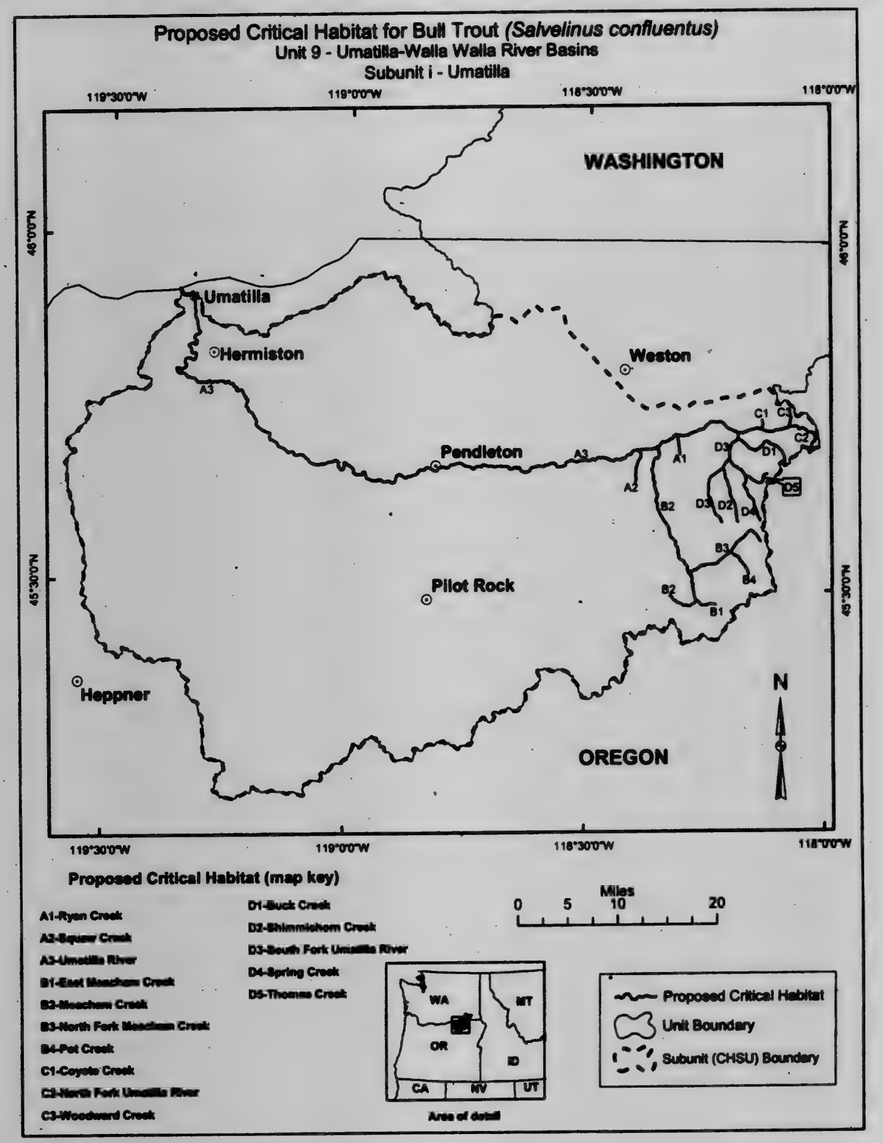
(G) Burnt Fork from a lower point located at 46.105 degrees latitude, and –117.985 degrees longitude to an upper point located at 46.087 degrees latitude, and –117.94 degrees longitude. Griffin Fork from a lower point located at 46.121 degrees latitude, and –117.973 degrees longitude to an upper point located at 46.099 degrees latitude, and –117.913 degrees longitude. South Fork Touchet River from a lower point located at 46.302 degrees latitude, and –117.959 degrees longitude to an upper point located at 46.105 degrees latitude,

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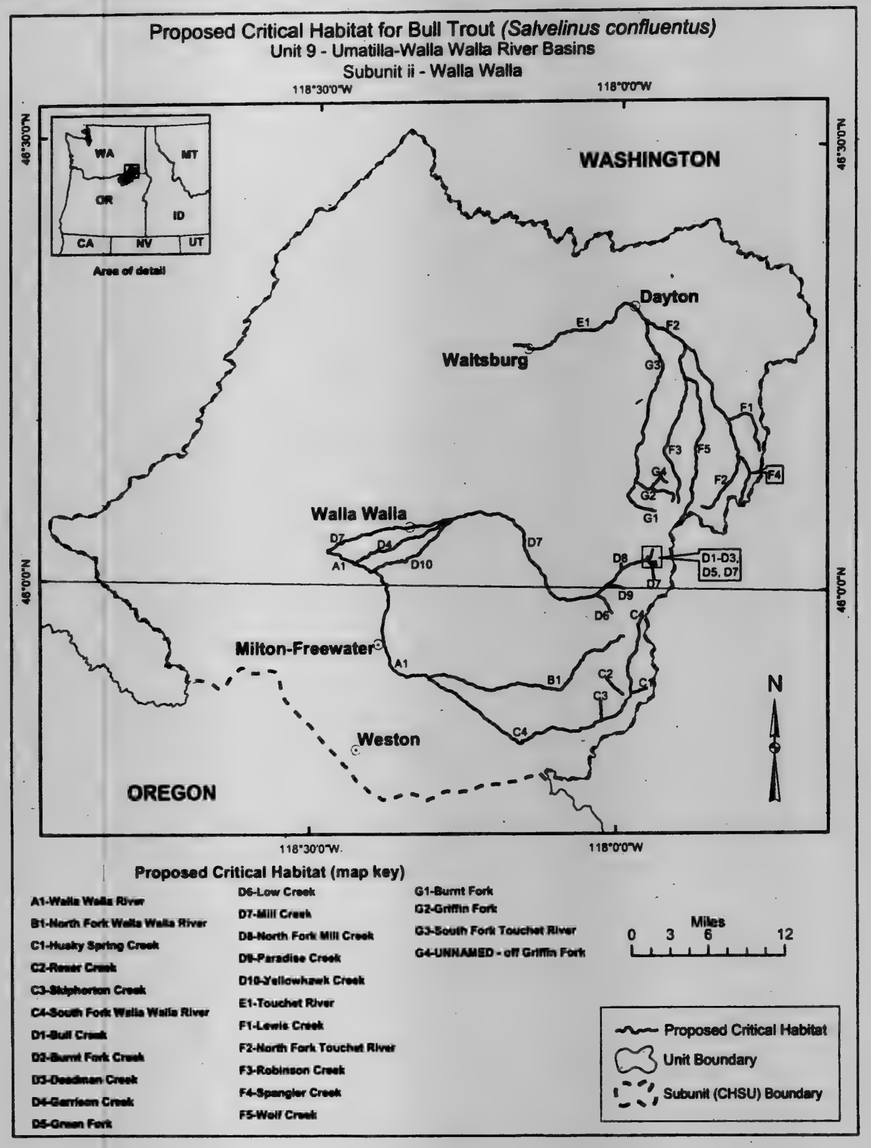
and –117.985 degrees longitude. Unnamed creek off Griffin Fork from a lower point located at 46.113 degrees latitude, and –117.948 degrees longitude to an upper point located at 46.12 degrees latitude, and –117.922 degrees longitude.

Note: Maps follow for Unit 9, Subunit i and Unit 9, Subunit ii.

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BILLING CODE 4310-55-C

(14) Unit 10—Grande Ronde River Basin.

(i) Grande Ronde River from a lower point located at 46.08 degrees latitude, and –116.978 degrees longitude to an upper point located at 44.967 degrees latitude, and –118.254 degrees longitude.

(ii) Beaver Creek from a lower point located at 45.955 degrees latitude, and –117.785 degrees longitude to an upper point located at 45.969 degrees latitude, and –117.807 degrees longitude. Butte Creek from a lower point located at 45.982 degrees latitude, and –117.678 degrees longitude to an upper point located at 46.063 degrees latitude, and –117.722 degrees longitude. Crooked Creek from a lower point located at 45.977 degrees latitude, and –117.551 degrees longitude to an upper point located at 46.046 degrees latitude, and –117.624 degrees longitude. First Creek from a lower point located at 46.035 degrees latitude, and –117.57 degrees longitude to an upper point located at 46.043 degrees latitude, and –117.546 degrees longitude. Milk Creek from a lower point located at 45.913 degrees latitude, and –117.882 degrees longitude to an upper point located at 45.948 degrees latitude, and –117.912 degrees longitude. North Fork Wenaha River from a lower point located at 45.951 degrees latitude, and –117.794 degrees longitude to an upper point located at 46.066 degrees latitude, and –117.877 degrees longitude. South Fork Wenaha River from a lower point located at 45.951 degrees latitude, and –117.794 degrees longitude to an upper point located at 45.89 degrees latitude, and –117.905 degrees longitude. Third Creek from a lower point located at 46.046 degrees latitude, and –117.624 degrees longitude to an upper point located at 46.089 degrees latitude, and –117.627 degrees longitude. Wenaha River from a lower point located at 45.946 degrees latitude, and –117.45 degrees longitude to an upper point located at 45.951 degrees latitude, and –117.794 degrees longitude. West Fork Butte Creek from a lower point located at 46.063 degrees latitude, and –117.722 degrees longitude to an upper point located at 46.065 degrees latitude, and –117.778 degrees longitude.

(iii) Little Lookingglass Creek from a lower point located at 45.75 degrees latitude, and –117.874 degrees longitude to an upper point located at 45.817 degrees latitude, and –117.901 degrees longitude. Lookingglass Creek from a lower point located at 45.707 degrees latitude, and –117.841 degrees longitude to an upper point located at 45.779 degrees latitude, and –118.078 degrees longitude. Mottet Creek from a lower point located at 45.767 degrees latitude, and –117.886 degrees longitude to an upper point located at 45.788 degrees latitude, and –117.942 degrees longitude. Summer Creek from a lower point located at 45.767 degrees latitude, and –117.982 degrees longitude to an upper point located at 45.772 degrees latitude, and –117.982 degrees longitude.

(iv) Camp Creek from a lower point located at 45.387 degrees latitude, and –117.757 degrees longitude to an upper point located at 45.387 degrees latitude, and –117.744 degrees longitude. East Fork Indian Creek from a lower point located at 45.369 degrees latitude, and –117.748 degrees longitude to an upper point located at 45.353 degrees latitude, and –117.724 degrees longitude. Indian Creek from a lower point located at 45.534 degrees latitude, and –117.919 degrees longitude to an upper point located at 45.337 degrees latitude, and –117.721 degrees longitude.

(v) Catherine Creek from a lower point located at 45.408 degrees latitude, and –117.93 degrees longitude to an upper point located at 45.12 degrees latitude, and –117.646 degrees longitude. Collins Creek from a lower point located at 45.106 degrees latitude, and –117.542 degrees longitude to an upper point located at 45.097 degrees latitude, and –117.513 degrees longitude. Middle Fork Catherine Creek from a lower point located at 45.152 degrees latitude, and –117.616 degrees longitude to an upper point located at 45.154 degrees latitude, and –117.564 degrees longitude. North Fork Catherine Creek from a lower point located at 45.12 degrees latitude, and –117.646 degrees longitude to an upper point located at 45.225 degrees latitude, and –117.604 degrees longitude. Pole Creek from a lower point located at 45.107 degrees latitude, and –117.559 degrees longitude to an upper point located at 45.138 degrees latitude, and –117.522 degrees longitude. Sand Pass Creek from a lower point located at 45.108 degrees latitude, and –117.551 degrees longitude to an upper point located at 45.129 degrees latitude, and –117.512 degrees longitude. South Fork Catherine Creek from a lower point located at 45.12 degrees latitude, and –117.646 degrees longitude to an upper point located at 45.112 degrees latitude, and –117.513 degrees longitude.

(vi) Chicken Creek from a lower point located at 45.095 degrees latitude, and –118.394 degrees longitude to an upper point located at 45.024 degrees latitude, and –118.385 degrees longitude. Clear Creek from a lower point located at 45.063 degrees latitude, and –118.309 degrees longitude to an upper point located at 44.976 degrees latitude, and –118.326 degrees longitude. East Sheep Creek from a lower point located at 45.026 degrees latitude, and –118.474 degrees longitude to an upper point located at 44.983 degrees latitude, and 118.425 degrees longitude. Fiddlers Hell Creek from a lower point located at 45.428 degrees latitude, and –118.159 degrees longitude to an upper point located at 45.431 degrees latitude, and –118.143 degrees longitude. Five Points Creek from a lower point located at 45.347 degrees latitude, and –118.221 degrees longitude to an upper point located at 45.481 degrees latitude, and –118.143 degrees longitude. Fly Creek from a lower point located at 45.21 degrees latitude, and –118.394 degrees longitude to an upper point located at 45.121 degrees latitude, and –118.465 degrees longitude. Indiana Creek from a lower point located at 45.024 degrees latitude, and –118.385 degrees longitude to an upper point located at 45 degrees latitude, and –118.361 degrees longitude. Limber Jim Creek from a lower point located at 45.089 degrees latitude, and –118.343 degrees longitude to an upper point located at 45.085 degrees latitude, and –118.229 degrees longitude. Little Fly Creek from a lower point located at 45.121 degrees latitude, and –118.465 degrees longitude to an upper point located at 45.11 degrees latitude, and –118.475 degrees longitude. Lookout Creek from a lower point located at 45.11 degrees latitude, and –118.475 degrees longitude to an upper point located at 45.078 degrees latitude, and –118.54 degrees longitude. Marion Creek from a lower point located at 45.106 degrees latitude, and –118.266 degrees longitude to an upper point located at 45.097 degrees latitude, and –118.228 degrees longitude. Middle Fork Five Points Creek from a lower point located at 45.481 degrees latitude, and –118.143 degrees longitude to an upper point located at 45.492 degrees latitude, and –118.115 degrees longitude. Mt Emily Creek from a lower point located at 45.473 degrees latitude, and –118.146 degrees longitude to an upper point located at 45.465 degrees latitude, and –118.124 degrees longitude. Sheep Creek from a lower point located at 45.095 degrees latitude, and –118.394 degrees longitude to an upper point located at 45.016 degrees latitude, and –118.507 degrees longitude. Sheep Creek from a lower point located at 45.105 degrees latitude, and –118.381 degrees longitude to an upper point located at 45.095 degrees latitude, and –118.394 degrees longitude. Tie Creek from a lower point located at 45.423 degrees latitude, and –118.158 degrees longitude to an upper

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point located at 45.421 degrees latitude, and –118.148 degrees longitude. Unnamed creek off Clear Creek from a lower point located at 45.013 degrees latitude, and –118.329 degrees longitude to an upper point located at 44.977 degrees latitude, and –118.313 degrees longitude.

(vii) Wallowa River from a lower point located at 45.726 degrees latitude, and −117.784 degrees longitude to an upper point located at 45.42 degrees latitude, and −117.301 degrees longitude.

(viii) East Fork Elk Creek from a lower point located at 45.166 degrees latitude, and −117.469 degrees longitude to an upper point located at 45.161 degrees latitude, and −117.468 degrees longitude. Elk Creek from a lower point located at 45.178 degrees latitude, and −117.459 degrees longitude to an upper point located at 45.16 degrees latitude, and −117.475 degrees longitude. Minam River from a lower point located at 45.621 degrees latitude, and −117.72 degrees longitude to an upper point located at 45.148 degrees latitude, and −117.371 degrees longitude. North Minam River from a lower point located at 45.273 degrees latitude, and −117.536 degrees longitude to an upper point located at 45.277 degrees latitude, and −117.511 degrees longitude.

(ix) Boulder Creek from a lower point located at 45.312 degrees latitude, and −117.632 degrees longitude to an upper point located at 45.31 degrees latitude, and −117.624 degrees longitude. Dobbin Creek from a lower point located at 45.259 degrees latitude, and −117.653 degrees longitude to an upper point located at 45.221 degrees latitude, and −117.639 degrees longitude. Little Minam River from a lower point located at 45.401 degrees latitude, and −117.671 degrees longitude to an upper point located at 45.246 degrees latitude, and −117.599 degrees longitude.

(x) Deer Creek from a lower point located at 45.62 degrees latitude, and −117.699 degrees longitude to an upper point located at 45.423 degrees latitude, and −117.587 degrees longitude. Sage Creek from a lower point located at 45.501 degrees latitude, and −117.606 degrees longitude to an upper point located at 45.481 degrees latitude, and −117.592 degrees longitude.

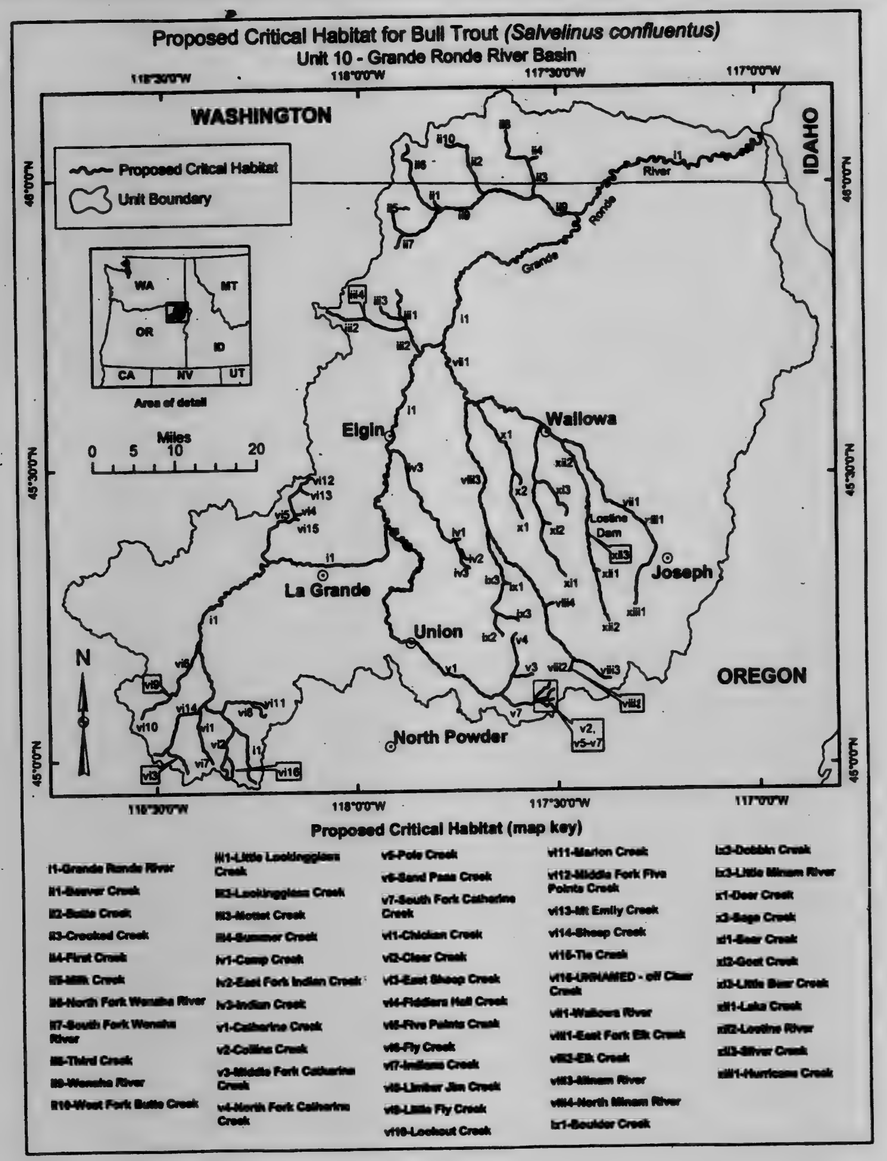
(xi) Bear Creek from a lower point located at 45.584 degrees latitude, and −117.54 degrees longitude to an upper point located at 45.323 degrees latitude, and −117.48 degrees longitude. Goat Creek from a lower point located at 45.418 degrees latitude, and −117.537 degrees longitude to an upper point located at 45.413 degrees latitude, and −117.517 degrees longitude. Little Bear Creek from a lower point located at 45.485 degrees latitude, and −117.554 degrees longitude to an upper point located at 45.428 degrees latitude, and −117.479 degrees longitude.

(xii) Lake Creek from a lower point located at 45.332 degrees latitude, and −117.409 degrees longitude to an upper point located at 45.331 degrees latitude, and −117.397 degrees longitude. Lostine River from a lower point located at 45.552 degrees latitude, and −117.489 degrees longitude to an upper point located at 45.246 degrees latitude, and −117.374 degrees longitude. Silver Creek from a lower point located at 45.396 degrees latitude, and −117.427 degrees longitude to an upper point located at 45.394 degrees latitude, and −117.421 degrees longitude.

(xiii) Hurricane Creek from a lower point located at 45.42 degrees latitude, and −117.301 degrees longitude to an upper point located at 45.274 degrees latitude, and −117.31 degrees longitude.

Note: Map follows for Unit 10.

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Proposed Critical Habitat (map key)

- i1-Grande Ronde River
- ii1-Beaver Creek
- ii2-Butte Creek
- ii3-Crooked Creek
- ii4-First Creek
- ii5-Milk Creek
- ii6-North Fork Wenaha River
- ii7-South Fork Wenaha River
- ii8-Third Creek
- ii9-Wenaha River
- ii10-West Fork Butte Creek
- iii1-Little Lookingglass Creek
- iii3-Lookingglass Creek
- iii3-Morset Creek
- iii4-Summer Creek
- iv1-Camp Creek
- iv2-East Fork Indian Creek
- iv3-Indian Creek
- v1-Catherine Creek
- v2-Collins Creek
- v3-Middle Fork Catherine Creek
- v4-North Fork Catherine Creek
- v5-Pole Creek
- v6-Sand Pass Creek
- v7-South Fork Catherine Creek
- vi1-Chicken Creek
- vi2-Clear Creek
- vi3-East Sheep Creek
- vi4-Fiddlers Hell Creek
- vi5-Five Points Creek
- vi6-Fly Creek
- vi7-Indians Creek
- vi8-Limber Jim Creek
- vi9-Little Fly Creek
- vi10-Lookout Creek
- vi11-Marion Creek
- vi12-Middle Fork Five Points Creek
- vi13-Mt Emily Creek
- vi14-Sheep Creek
- vi15-Tie Creek
- vi16-UNNAMED - off Clear Creek
- vii1-Wallows River
- viii1-East Fork Elk Creek
- viii2-Elk Creek
- viii3-Minam River
- viii4-North Minam River
- lx1-Boulder Creek
- lx3-Dobbin Creek
- lx3-Little Minam River
- x1-Deer Creek
- x3-Sage Creek
- xi1-Bear Creek
- xi2-Goat Creek
- xi3-Little Bear Creek
- xii1-Lake Creek
- xiii2-Lostine River
- xi3-Silver Creek
- xiii1-Hurricane Creek

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(15) Unit 11—Imnaha-Snake River Basins.

(i) Critical Habitat Subunit—Snake River.

(A) Sheep Creek from a lower point located at 45.468 degrees latitude, and –116.554 degrees longitude to an upper point located at 45.405 degrees latitude, and –116.523 degrees longitude.

(B) Granite Creek from a lower point located at 45.349 degrees latitude, and –116.654 degrees longitude to an upper point located at 45.263 degrees latitude, and –116.611 degrees longitude.

(ii) Critical Habitat Subunit—Imnaha River.

(A) Bear Creek from a lower point located at 45.104 degrees latitude, and –117.171 degrees longitude to an upper point located at 45.1 degrees latitude, and –117.172 degrees longitude. Blue Creek from a lower point located at 45.101 degrees latitude, and –117.194 degrees longitude to an upper point located at 45.097 degrees latitude, and –117.193 degrees longitude. Cliff Creek from a lower point located at 45.102 degrees latitude, and –117.214 degrees longitude to an upper point located at 45.063 degrees latitude, and –117.267 degrees longitude. Imnaha River from a lower point located at 45.817 degrees latitude, and –116.764 degrees longitude to an upper point located at 45.113 degrees latitude, and –117.125 degrees longitude. Middle Fork Imnaha River from a lower point located at 45.134 degrees latitude, and –117.151 degrees longitude to an upper point located at 45.139 degrees latitude, and –117.166 degrees longitude. North Fork Imnaha River from a lower point located at 45.113 degrees latitude, and –117.125 degrees longitude to an upper point located at 45.171 degrees latitude, and –117.2 degrees longitude. Soldier Creek from a lower point located at 45.109 degrees latitude, and –117.151 degrees longitude to an upper point located at 45.107 degrees latitude, and –117.154 degrees longitude. South Fork Imnaha River from a lower point located at 45.113 degrees latitude, and –117.125 degrees longitude to an upper point located at 45.111 degrees latitude, and –117.23 degrees longitude.

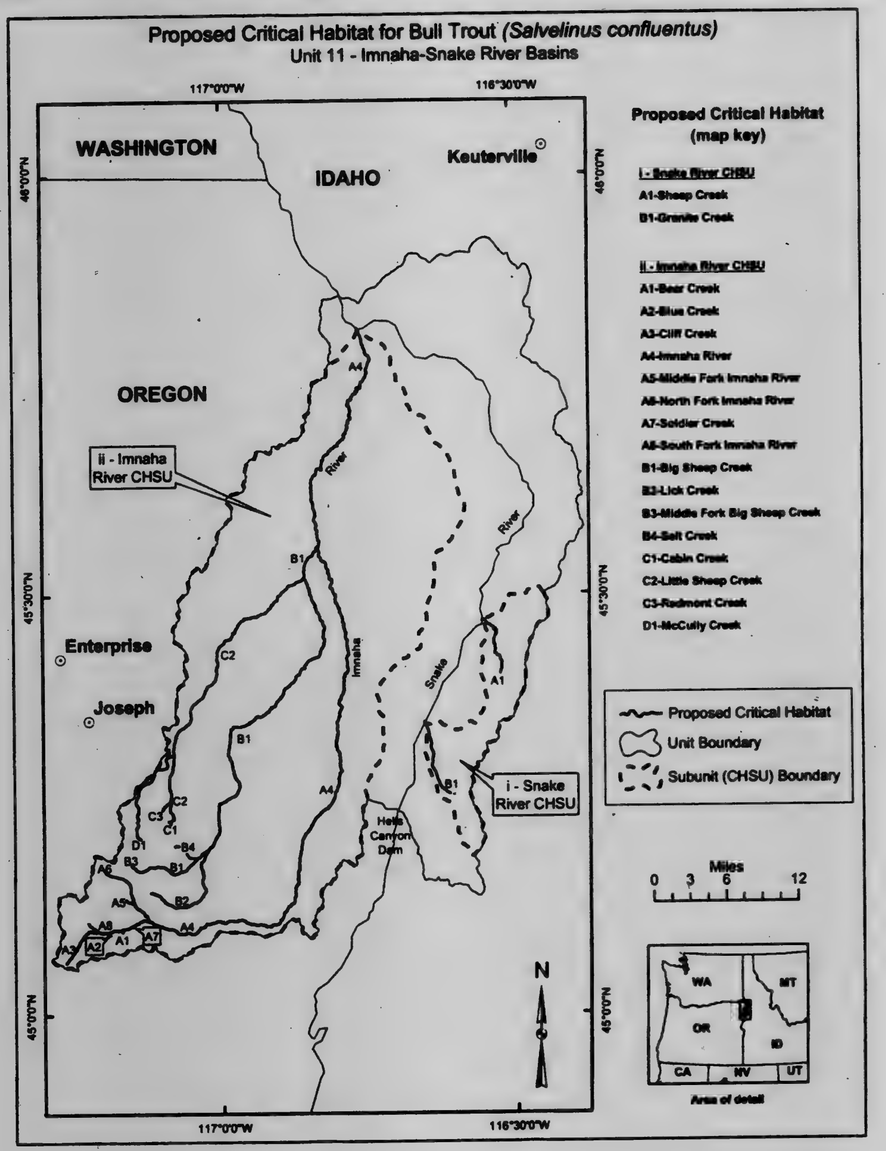
(B) Big Sheep Creek from a lower point located at 45.557 degrees latitude, and –116.834 degrees longitude to an upper point located at 45.178 degrees latitude, and –117.119 degrees longitude. Lick Creek from a lower point located at 45.198 degrees latitude, and –117.024 degrees longitude to an upper point located at 45.147 degrees latitude, and –117.123 degrees longitude. Middle Fork Big Sheep Creek from a lower point located at 45.178 degrees latitude, and –117.119 degrees longitude to an upper point located at 45.181 degrees latitude, and –117.157 degrees longitude. Salt Creek from a lower point located at 45.188 degrees latitude, and –117.043 degrees longitude to an upper point located at 45.202 degrees latitude, and –117.082 degrees longitude.

(C) Cabin Creek from a lower point located at 45.232 degrees latitude, and –117.088 degrees longitude to an upper point located at 45.229 degrees latitude, and –117.089 degrees longitude. Little Sheep Creek from a lower point located at 45.52 degrees latitude, and –116.859 degrees longitude to an upper point located at 45.232 degrees latitude, and –117.093 degrees longitude. Redmont Creek from a lower point located at 45.256 degrees latitude, and –117.088 degrees longitude to an upper point located at 45.245 degrees latitude, and –117.103 degrees longitude.

(D) McCully Creek from a lower point located at 45.311 degrees latitude, and –117.082 degrees longitude to an upper point located at 45.211 degrees latitude, and –117.14 degrees longitude.

Note: Map follows for Unit 11.

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(16) Unit 12—Hells Canyon Complex.

(i) Critical Habitat Subunit—Pine-Indian-Wildhorse.

(A) East Fork Pine Creek from a lower point located at 45.022 degrees latitude, and –117.2 degrees longitude to an upper point located at 45.072 degrees latitude, and –117.176 degrees longitude. Middle Fork Pine Creek from a lower point located at 45.039 degrees latitude, and –117.215 degrees longitude to an upper point located at 45.058 degrees latitude, and –117.237 degrees longitude. North Pine Creek from a lower point located at 44.91 degrees latitude, and –116.948 degrees longitude to an upper point located at 45.079 degrees latitude, and –116.897 degrees longitude. Pine Creek from a lower point located at 44.974 degrees latitude, and –116.853 degrees longitude to an upper point located at 45.039 degrees latitude, and –117.215 degrees longitude. West Fork Pine Creek from a lower point located at 45.039 degrees latitude, and –117.215 degrees longitude to an upper point located at 45.025 degrees latitude, and –117.246 degrees longitude.

(B) Aspen Creek from a lower point located at 45.057 degrees latitude, and –117.011 degrees longitude to an upper point located at 45.049 degrees latitude, and –117.037 degrees longitude. Big Elk Creek from a lower point located at 45.063 degrees latitude, and –117.023 degrees longitude to an upper point located at 45.061 degrees latitude, and –117.064 degrees longitude. Cabin Creek from a lower point located at 45.061 degrees latitude, and –117.02 degrees longitude to an upper point located at 45.077 degrees latitude, and –117.024 degrees longitude. Elk Creek from a lower point located at 45.009 degrees latitude, and –116.909 degrees longitude to an upper point located at 45.074 degrees latitude, and –117.045 degrees longitude. Fall Creek from a lower point located at 44.97 degrees latitude, and –116.948 degrees longitude to an upper point located at 45.012 degrees latitude, and –116.985 degrees longitude. Little Elk Creek from a lower point located at 44.955 degrees latitude, and –116.961 degrees longitude to an upper point located at 45.009 degrees latitude, and –117.028 degrees longitude.

(C) Lake Fork from a lower point located at 45.02 degrees latitude, and –116.941 degrees longitude to an upper point located at 45.067 degrees latitude, and –117.104 degrees longitude.

(D) Duck Creek from a lower point located at 45.069 degrees latitude, and –116.905 degrees longitude to an upper point located at 45.091 degrees latitude, and –117.003 degrees longitude. Fish Creek from a lower point located at 44.908 degrees latitude, and –116.952 degrees longitude to an upper point located at 45.036 degrees latitude, and –117.081 degrees longitude.

(E) East Fork of East Pine Creek from a lower point located at 45.021 degrees latitude, and –117.106 degrees longitude to an upper point located at 45.042 degrees latitude, and –117.103 degrees longitude. East Pine Creek from a lower point located at 44.872 degrees latitude, and –117.02 degrees longitude to an upper point located at 45.046 degrees latitude, and –117.119 degrees longitude. Okanogan Creek from a lower point located at 44.987 degrees latitude, and –117.064 degrees longitude to an upper point located at 45.017 degrees latitude, and –117.062 degrees longitude. Trinity Creek from a lower point located at 44.988 degrees latitude, and –117.071 degrees longitude to an upper point located at 45.026 degrees latitude, and –117.083 degrees longitude. Unnamed creek off East Pine Creek from a lower point located at 44.993 degrees latitude, and –117.101 degrees longitude to an upper point located at 45.006 degrees latitude, and –117.121 degrees longitude.

(F) Clear Creek from a lower point located at 44.866 degrees latitude, and –117.029 degrees longitude to an upper point located at 45.043 degrees latitude, and –117.143 degrees longitude. Meadow Creek from a lower point located at 44.99 degrees latitude, and –117.142 degrees longitude to an upper point located at 45.017 degrees latitude, and –117.171 degrees longitude. Trail Creek from a lower point located at 44.991 degrees latitude, and –117.142 degrees longitude to an upper point located at 45.046 degrees latitude, and –117.162 degrees longitude.

(G) Camp Creek from a lower point located at 45.132 degrees latitude, and –116.622 degrees longitude to an upper point located at 45.157 degrees latitude, and –116.62 degrees longitude. Indian Creek from a lower point located at 44.985 degrees latitude, and –116.828 degrees longitude to an upper point located at 45.15 degrees latitude, and –116.59 degrees longitude.

(H) Bear Creek from a lower point located at 44.959 degrees latitude, and –116.724 degrees longitude to an upper point located at 45.136 degrees latitude, and –116.524 degrees longitude. Lick Creek from a lower point located at 44.986 degrees latitude, and –116.679 degrees longitude to an upper point located at 45.105 degrees latitude, and –116.514 degrees longitude. Wildhorse River from a lower point located at 44.851 degrees latitude, and –116.896 degrees longitude to an upper point located at 44.959 degrees latitude, and –116.724 degrees longitude.

(I) Crooked River from a lower point located at 44.959 degrees latitude, and –116.724 degrees longitude to an upper point located at 44.817 degrees latitude, and –116.742 degrees longitude.

(ii) Critical Habitat Subunit—Powder River.

(A) Powder River from a lower point located at 44.743 degrees latitude, and –117.046 degrees longitude to an upper point located at 44.742 degrees latitude, and –118.205 degrees longitude.

(B) Eagle Creek from a lower point located at 44.746 degrees latitude, and –117.169 degrees longitude to an upper point located at 45.132 degrees latitude, and –117.338 degrees longitude. East Fork Eagle Creek from a lower point located at 44.983 degrees latitude, and –117.37 degrees longitude to an upper point located at 45.171 degrees latitude, and –117.324 degrees longitude. West Eagle Creek from a lower point located at 45.019 degrees latitude, and –117.453 degrees longitude to an upper point located at 45.121 degrees latitude, and –117.436 degrees longitude.

(C) Wolf Creek from a lower point located at 45.044 degrees latitude, and –117.893 degrees longitude to an upper point located at 45.068 degrees latitude, and –118.193 degrees longitude.

(D) North Powder River from a lower point located at 45.039 degrees latitude, and –117.895 degrees longitude to an upper point located at 44.878 degrees latitude, and –118.203 degrees longitude.

(E) Anthony Creek from a lower point located at 45.013 degrees latitude, and –118.059 degrees longitude to an upper point located at 44.953 degrees latitude, and –118.22 degrees longitude. North Fork Anthony Creek from a lower point located at 45.045 degrees latitude, and –118.13 degrees longitude to an upper point located at 45.042 degrees latitude, and –118.23 degrees longitude.

(F) Indian Creek from a lower point located at 45.019 degrees latitude, and –118.154 degrees longitude to an upper point located at 44.976 degrees latitude, and –118.204 degrees longitude.

(G) Big Muddy Creek from a lower point located at 44.94 degrees latitude, and –117.945 degrees longitude to an upper point located at 44.899 degrees latitude, and –118.131 degrees longitude.

(H) Rock Creek from a lower point located at 44.918 degrees latitude, and –117.929 degrees longitude to an upper point located at 44.856 degrees latitude, and –118.124 degrees longitude.

(I) Salmon Creek from a lower point located at 44.888 degrees latitude, and –117.902 degrees longitude to an upper point located at 44.767 degrees latitude, and –118.019 degrees longitude.

(J) Pine Creek from a lower point located at 44.849 degrees latitude, and –117.893 degrees longitude to an upper point located at 44.826 degrees latitude, and –118.078 degrees longitude.

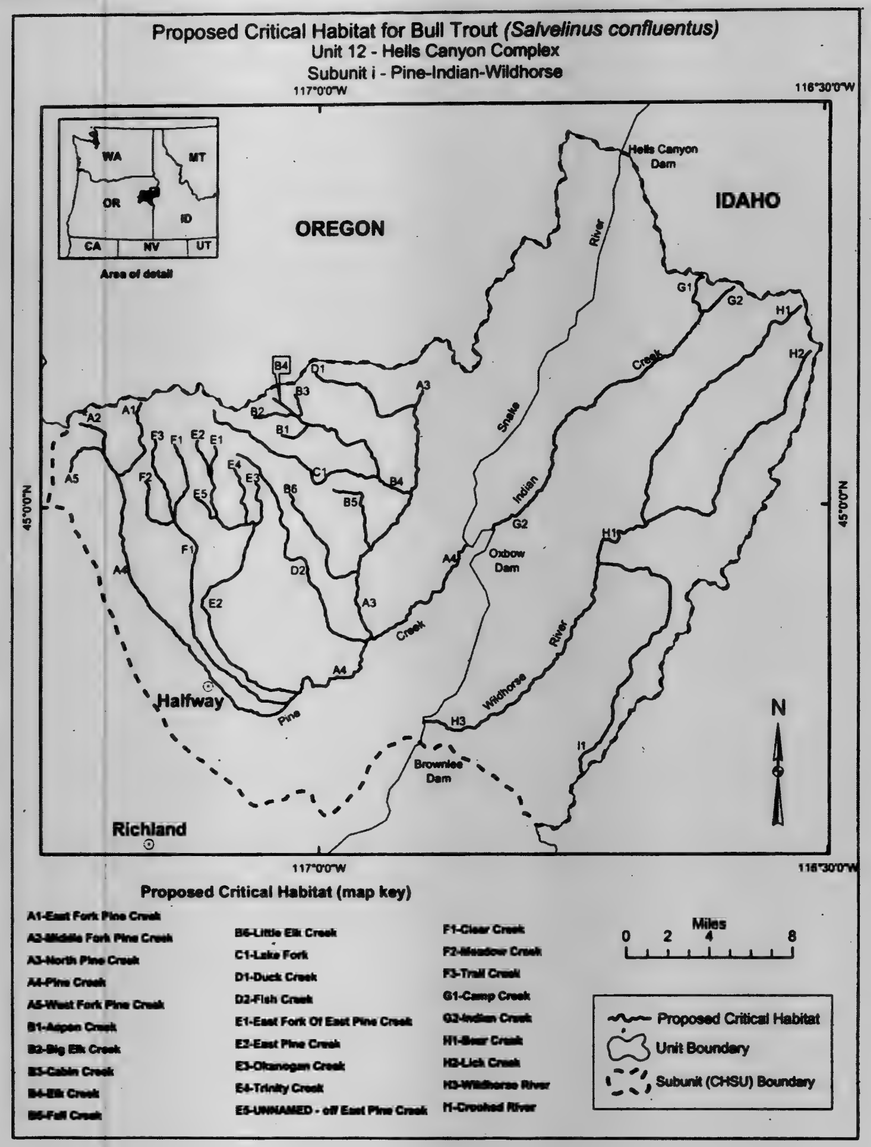
(K) Deer Creek from a lower point located at 44.684 degrees latitude, and –118.059 degrees longitude to an upper point located at 44.75 degrees latitude, and –118.107 degrees longitude. Lake Creek from a lower point located at 44.75 degrees latitude, and –118.107 degrees longitude to an upper point located at 44.81 degrees latitude, and –118.091 degrees longitude.

(L) Cracker Creek from a lower point located at 44.742 degrees latitude, and –118.205 degrees longitude to an upper point located at 44.846 degrees latitude, and –118.204 degrees longitude. Fruit Creek from a lower point located at 44.809 degrees latitude, and –118.211 degrees longitude to an upper point located at 44.859 degrees latitude, and –118.247 degrees longitude. Little Cracker Creek from a lower point located at 44.826 degrees latitude, and –118.196 degrees longitude to an upper point located at 44.84 degrees latitude, and –118.166 degrees longitude. Silver Creek from a lower point located at 44.809 degrees latitude, and –118.207 degrees longitude to an upper point located at 44.857 degrees latitude, and –118.291 degrees longitude.

Note: Maps follow for Unit 12, Subunit i and Unit 12, Subunit ii.

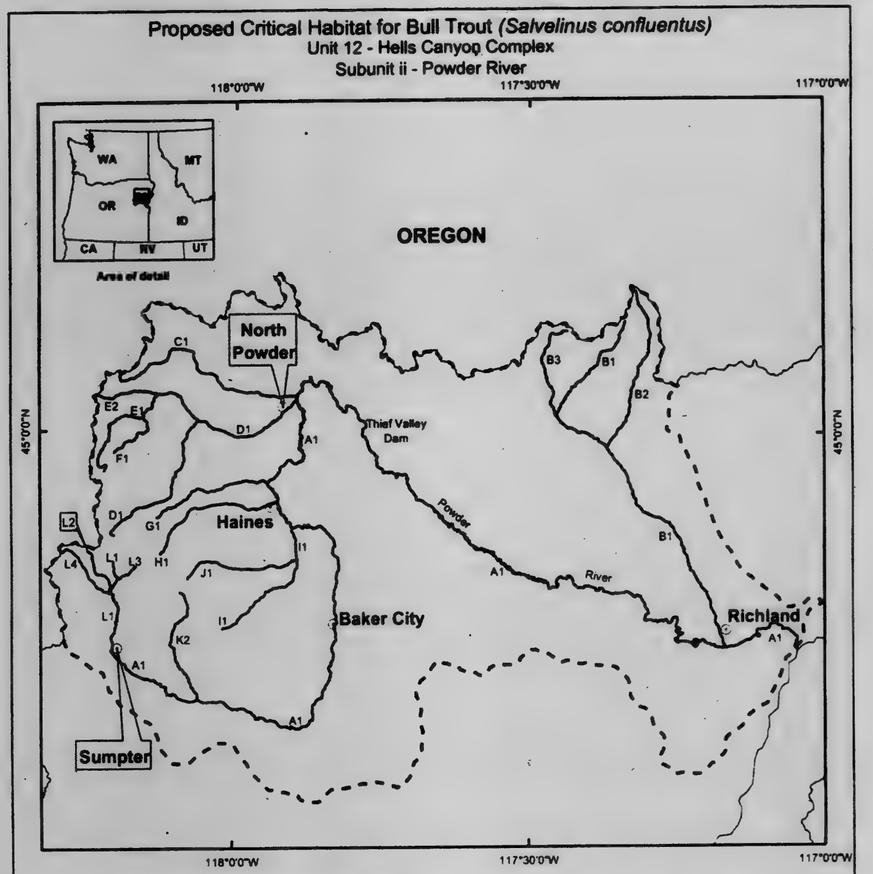
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Proposed Critical Habitat (map key)

A1-East Fork Pine Creek
A3-Middle Fork Pine Creek
A3-North Pine Creek
A4-Pine Creek
A5-West Fork Pine Creek
B1-Aspen Creek
B2-Big Elk Creek
B3-Cabin Creek
B4-Elk Creek
B5-Fall Creek
B6-Little Elk Creek
C1-Lake Fork
D1-Duck Creek
D2-Fish Creek
E1-East Fork Of East Pine Creek
E2-East Pine Creek
E3-Okanogan Creek
E4-Trinity Creek
E5-UNNAMED - off East Pine Creek
F1-Clear Creek
F2-Meadow Creek
F3-Trail Creek
G1-Camp Creek
G2-Indian Creek
H1-Bear Creek
H2-Lick Creek
H3-Wildhorse River
I1-Crooked River



Proposed Critical Habitat (map key)

A1-Powder River
B1-Eagle Creek
B2-East Fork Eagle Creek
B3-West Eagle Creek
C1-Wolf Creek
D1-North Powder River
E1-Anthony Creek
E2-North Fork Anthony Creek
F1-Indian Creek
G1-Big Muddy Creek
H1-Rock Creek
I1-Salmon Creek
J1-Pine Creek
K1-Deer Creek
K2-Lake Creek
L1-Cracker Creek
L2-Fruit Creek
L3-Little Cracker Creek
L4-Silver Creek

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(17) Unit 13—Malheur River Basin.

(i) Malheur River from a lower point located at 43.686 degrees latitude, and −118.27 degrees longitude to an upper point located at 44.145 degrees latitude, and −118.624 degrees longitude. Warm Springs Reservoir centered at 43.616 degrees latitude, and −118.237 degrees longitude.

(ii) Beulah Reservoir centered at 43.931 degrees latitude, and −118.153 degrees longitude. Cow Creek from a lower point located at 44.283 degrees latitude, and −118.396 degrees longitude to an upper point located at 44.29 degrees latitude, and −118.461 degrees longitude. Flat Creek from a lower point located at 44.305 degrees latitude, and −118.402 degrees longitude to an upper point located at 44.306 degrees latitude, and −118.389 degrees longitude. Horseshoe Creek from a lower point located at 44.323 degrees latitude, and −118.415 degrees longitude to an upper point located at 44.33 degrees latitude, and −118.463 degrees longitude. North Fork Malheur River from a lower point located at 43.945 degrees latitude, and −118.167 degrees longitude to an upper point located at 44.366 degrees latitude, and −118.404 degrees longitude. Sheep Creek from a lower point located at 44.281 degrees latitude, and −118.396 degrees longitude to an upper point located at 44.281 degrees latitude, and −118.475 degrees longitude. Swamp Creek from a lower point located at 44.291 degrees latitude, and −118.4 degrees longitude to an upper point located at 44.292 degrees latitude, and −118.483 degrees longitude.

(iii) Crane Creek from a lower point located at 44.162 degrees latitude, and −118.37 degrees longitude to an upper point located at 44.152 degrees latitude, and −118.386 degrees longitude. Elk Creek from a lower point located at 44.25 degrees latitude, and −118.391 degrees longitude to an upper point located at 44.245 degrees latitude, and −118.408 degrees longitude. Little Crane Creek from a lower point located at 44.152 degrees latitude, and −118.386 degrees longitude to an upper point located at 44.24 degrees latitude, and −118.472 degrees longitude. Little Malheur River from a lower point located at 44.019 degrees latitude, and −118.258 degrees longitude to an upper point located at 44.336 degrees latitude, and −118.351 degrees longitude. North Fork Elk Creek from a lower point located at 44.245 degrees latitude, and −118.408 degrees longitude to an upper point located at 44.274 degrees latitude, and −118.487 degrees longitude. South Fork Elk Creek from a lower point located at 44.245 degrees latitude, and −118.408 degrees longitude to an upper point located at 44.257 degrees latitude, and −118.471 degrees longitude. Unnamed creek off Little Crane Creek from a lower point located at 44.219 degrees latitude, and −118.422 degrees longitude to an upper point located at 44.214 degrees latitude, and −118.453 degrees longitude.

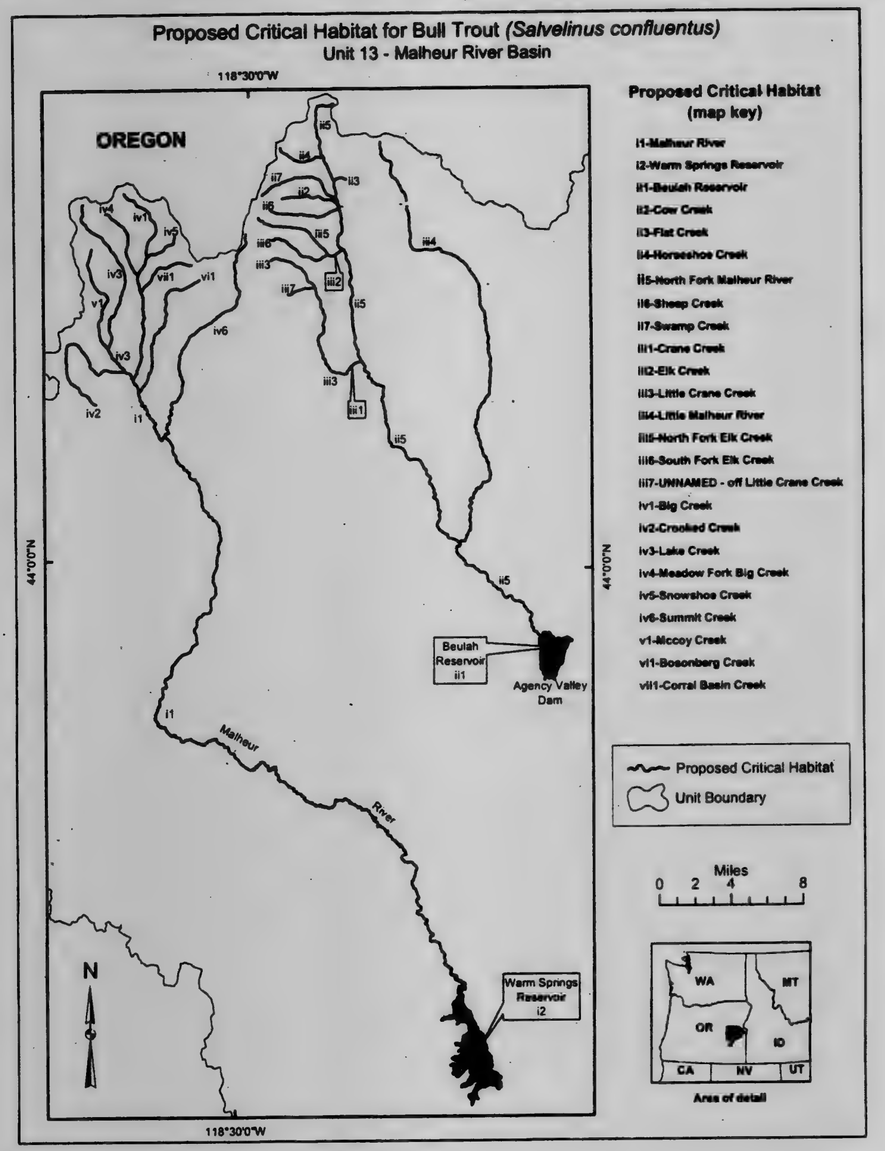
(iv) Big Creek from a lower point located at 44.145 degrees latitude, and −118.624 degrees longitude to an upper point located at 44.292 degrees latitude, and −118.638 degrees longitude. Crooked Creek from a lower point located at 44.151 degrees latitude, and −118.634 degrees longitude to an upper point located at 44.125 degrees latitude, and −118.665 degrees longitude. Lake Creek from a lower point located at 44.145 degrees latitude, and −118.624 degrees longitude to an upper point located at 44.283 degrees latitude, and −118.683 degrees longitude. Meadow Fork Big Creek from a lower point located at 44.228 degrees latitude, and −118.621 degrees longitude to an upper point located at 44.276 degrees latitude, and −118.658 degrees longitude. Snowshoe Creek from a lower point located at 44.242 degrees latitude, and −118.611 degrees longitude to an upper point located at 44.259 degrees latitude, and −118.58 degrees longitude. Summit Creek from a lower point located at 44.099 degrees latitude, and −118.587 degrees longitude to an upper point located at 44.261 degrees latitude, and −118.501 degrees longitude.

(v) Mccoy Creek from a lower point located at 44.169 degrees latitude, and −118.653 degrees longitude to an upper point located at 44.248 degrees latitude, and −118.673 degrees longitude.

(vi) Bosonberg Creek from a lower point located at 44.135 degrees latitude, and −118.618 degrees longitude to an upper point located at 44.224 degrees latitude, and −118.551 degrees longitude.

(vii) Corral Basin Creek from a lower point located at 44.214 degrees latitude, and −118.617 degrees longitude to an upper point located at 44.236 degrees latitude, and −118.561 degrees longitude.

Note: Map follows for Unit 13.



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(18) Unit 14—Coeur d'Alene Lake Basin.

(i) Critical Habitat Subunit—Coeur d'Alene Lake.

(A) Coeur d'Alene Lake centered at 47.548 degrees latitude, and −116.802 degrees longitude.

(B) Coeur d'Alene River from a lower point located at 47.46 degrees latitude, and −116.798 degrees longitude to an upper point located at 47.558 degrees latitude, and −116.257 degrees longitude. North Fork Coeur d'Alene River from a lower point located at 47.558 degrees latitude, and −116.257 degrees longitude to an upper point located at 48.006 degrees latitude, and −116.321 degrees longitude.

(C) Cougar Creek from a lower point located at 47.64 degrees latitude, and −116.191 degrees longitude to an upper point located at 47.732 degrees latitude, and −116.305 degrees longitude.

(D) East Fork Steamboat Creek from a lower point located at 47.716 degrees latitude, and −116.199 degrees longitude to an upper point located at 47.787 degrees latitude, and −116.204 degrees longitude. Steamboat Creek from a lower point located at 47.662 degrees latitude, and −116.154 degrees longitude to an upper point located at 47.716 degrees latitude, and −116.199 degrees longitude. West Fork Steamboat Creek from a lower point located at 47.716 degrees latitude, and −116.199 degrees longitude to an upper point located at 47.736 degrees latitude, and −116.277 degrees longitude.

(E) Prichard Creek from a lower point located at 47.658 degrees latitude, and −115.976 degrees longitude to an upper point located at 47.644 degrees latitude, and −115.921 degrees longitude.

(F) Eagle Creek from a lower point located at 47.644 degrees latitude, and −115.921 degrees longitude to an upper point located at 47.652 degrees latitude, and −115.903 degrees longitude. West Fork Eagle Creek from a lower point located at 47.652 degrees latitude, and −115.903 degrees longitude to an upper point located at 47.75 degrees latitude, and −115.803 degrees longitude.

(G) Independence Creek from a lower point located at 47.877 degrees latitude, and −116.208 degrees longitude to an upper point located at 47.862 degrees latitude, and −116.427 degrees longitude. Tepee Creek from a lower point located at 47.881 degrees latitude, and −116.132 degrees longitude to an upper point located at 47.846 degrees latitude, and −116.247 degrees longitude. Trail Creek from a lower point located at 47.846 degrees latitude, and −116.247 degrees longitude to an upper point located at 47.823 degrees latitude, and −116.341 degrees longitude.

(H) Buckskin Creek from a lower point located at 47.987 degrees latitude, and −116.225 degrees longitude to an upper point located at 48.034 degrees latitude, and −116.199 degrees longitude.

(ii) Critical Habitat Subunit—St. Joe River.

(A) St. Joe River from a lower point located at 47.393 degrees latitude, and −116.749 degrees longitude to an upper point located at 47.017 degrees latitude, and −115.078 degrees longitude.

(B) Eagle Creek from a lower point located at 47.211 degrees latitude, and −115.55 degrees longitude to an upper point located at 47.285 degrees latitude, and −115.495 degrees longitude. Gold Creek from a lower point located at 47.151 degrees latitude, and −115.408 degrees longitude to an upper point located at 47.257 degrees latitude, and −115.373 degrees longitude. Mosquito Creek from a lower point located at 47.156 degrees latitude, and −115.412 degrees longitude to an upper point located at 47.143 degrees latitude, and −115.429 degrees longitude. Simmons Creek from a lower point located at 47.137 degrees latitude, and −115.4 degrees longitude to an upper point located at 47.09 degrees latitude, and −115.231 degrees longitude.

(C) Beaver Creek from a lower point located at 47.083 degrees latitude, and −115.355 degrees longitude to an upper point located at 47.064 degrees latitude, and −115.48 degrees longitude. Fly Creek from a lower point located at 47.113 degrees latitude, and −115.385 degrees longitude to an upper point located at 47.081 degrees latitude, and −115.489 degrees longitude. Red Ives Creek from a lower point located at 47.056 degrees latitude, and −115.351 degrees longitude to an upper point located at 47.043 degrees latitude, and −115.278 degrees longitude.

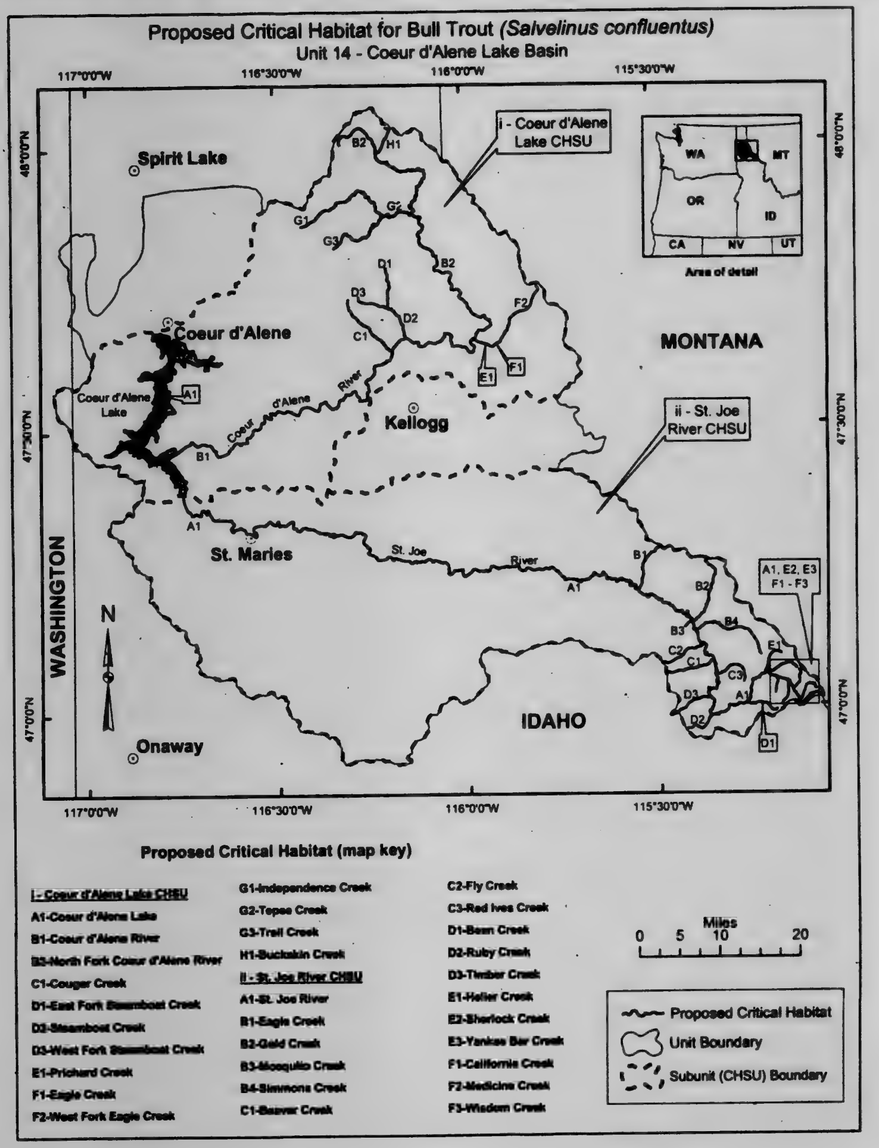
(D) Bean Creek from a lower point located at 47.005 degrees latitude, and −115.27 degrees longitude to an upper point located at 46.993 degrees latitude, and −115.192 degrees longitude. Ruby Creek from a lower point located at 46.983 degrees latitude, and −115.367 degrees longitude to an upper point located at 46.961 degrees latitude, and −115.43 degrees longitude. Timber Creek from a lower point located at 47.018 degrees latitude, and −115.368 degrees longitude to an upper point located at 46.992 degrees latitude, and −115.462 degrees longitude.

(E) Heller Creek from a lower point located at 47.061 degrees latitude, and −115.22 degrees longitude to an upper point located at 47.091 degrees latitude, and −115.176 degrees longitude. Sherlock Creek from a lower point located at 47.064 degrees latitude, and −115.218 degrees longitude to an upper point located at 47.064 degrees latitude, and −115.137 degrees longitude. Yankee Bar Creek from a lower point located at 47.049 degrees latitude, and −115.191 degrees longitude to an upper point located at 47.021 degrees latitude, and −115.194 degrees longitude.

(F) California Creek from a lower point located at 47.041 degrees latitude, and −115.159 degrees longitude to an upper point located at 47.004 degrees latitude, and −115.177 degrees longitude. Medicine Creek from a lower point located at 47.028 degrees latitude, and −115.149 degrees longitude to an upper point located at 47.06 degrees latitude, and −115.131 degrees longitude. Wisdom Creek from a lower point located at 47.009 degrees latitude, and −115.133 degrees longitude to an upper point located at 47.027 degrees latitude, and −115.087 degrees longitude.

Note: Map follows for Unit 14.

BILLING CODE 4310-55-P



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(19) Unit 15—Clearwater River Basin.

(i) Critical Habitat Subunit—Lower/Middle Fork Clearwater River.

(A) Clearwater River from a lower point located at 46.428 degrees latitude, and −117.039 degrees longitude to an upper point located at 46.146 degrees latitude, and −115.98 degrees longitude. Middle Fork Clearwater River from a lower point located at 46.146 degrees latitude, and −115.98 degrees longitude to an upper point located at 46.14 degrees latitude, and −115.599 degrees longitude. North Fork Clearwater River from a lower point located at 46.503 degrees latitude, and −116.331 degrees longitude to an upper point located at 46.514 degrees latitude, and −116.295 degrees longitude.

(B) Lolo Creek from a lower point located at 46.372 degrees latitude, and −116.17 degrees longitude to an upper point located at 46.457 degrees latitude, and −115.616 degrees longitude.

(C) Clear Creek from a lower point located at 46.135 degrees latitude, and −115.951 degrees longitude to an upper point located at 46.056 degrees latitude, and −115.659 degrees longitude. Middle Fork Clear Creek from a lower point located at 46.051 degrees latitude, and −115.781 degrees longitude to an upper point located at 46.024 degrees latitude, and −115.676 degrees longitude. South Fork Clear Creek from a lower point located at 46.043 degrees latitude, and −115.814 degrees longitude to an upper point located at 45.941 degrees latitude, and −115.769 degrees longitude.

(ii) Critical Habitat Subunit—North Fork Clearwater River.

(A) Breakfast Creek from a lower point located at 46.883 degrees latitude, and −115.939 degrees longitude to an upper point located at 46.884 degrees latitude, and −115.969 degrees longitude. Dworshak Reservoir centered at 46.626 degrees latitude, and −116.256 degrees longitude. Floodwood Creek from a lower point located at 46.888 degrees latitude, and −115.953 degrees longitude to an upper point located at 47.027 degrees latitude, and −115.955 degrees longitude. Freeman Creek from a lower point located at 46.567 degrees latitude, and −116.283 degrees longitude to an upper point located at 46.568 degrees latitude, and −116.312 degrees longitude. North Fork Clearwater River from a lower point located at 46.858 degrees latitude, and −115.68 degrees longitude to an upper point located at 46.999 degrees latitude, and −115.112 degrees longitude. Stony Creek from a lower point located at 46.884 degrees latitude, and −115.969 degrees longitude to an upper point located at 46.916 degrees latitude, and −116.012 degrees longitude. West Fork Floodwood Creek from a lower point located at 46.957 degrees latitude, and −115.927 degrees longitude to an upper point located at 46.999 degrees latitude, and −115.977 degrees longitude.

(B) Adair Creek from a lower point located at 47.083 degrees latitude, and −115.805 degrees longitude to an upper point located at 47.097 degrees latitude, and −115.852 degrees longitude. Butte Creek (Dworshak Reservoir) from a lower point located at 46.86 degrees latitude, and −115.743 degrees longitude to an upper point located at 46.843 degrees latitude, and −115.741 degrees longitude. Butte Creek (North Fork Clearwater) from a lower point located at 47.045 degrees latitude, and −115.719 degrees longitude to an upper point located at 47.031 degrees latitude, and −115.75 degrees longitude. Canyon Creek from a lower point located at 47 degrees latitude, and −115.65 degrees longitude to an upper point located at 47.017 degrees latitude, and −115.498 degrees longitude. Jungle Creek from a lower point located at 47.077 degrees latitude, and −115.803 degrees longitude to an upper point located at 47.11 degrees latitude, and −115.795 degrees longitude. Little Lost Lake Creek from a lower point located at 47.089 degrees latitude, and −115.892 degrees longitude to an upper point located at 47.066 degrees latitude, and −115.941 degrees longitude. Little North Fork Clearwater River from a lower point located at 46.887 degrees latitude, and −115.877 degrees longitude to an upper point located at 47.101 degrees latitude, and −115.962 degrees longitude. Lost Lake Creek from a lower point located at 47.096 degrees latitude, and −115.9 degrees longitude to an upper point located at 47.072 degrees latitude, and −115.957 degrees longitude. Lund Creek from a lower point located at 47.068 degrees latitude, and −115.883 degrees longitude to an upper point located at 47.05 degrees latitude, and −115.925 degrees longitude. Montana Creek from a lower point located at 47.045 degrees latitude, and −115.7 degrees longitude to an upper point located at 47.089 degrees latitude, and −115.675 degrees longitude. Rutledge Creek from a lower point located at 47.073 degrees latitude, and −115.754 degrees longitude to an upper point located at 47.108 degrees latitude, and −115.722 degrees longitude. Sawtooth Creek from a lower point located at 46.994 degrees latitude, and −115.649 degrees longitude to an upper point located at 46.973 degrees latitude, and −115.495 degrees longitude.

(C) Isabella Creek from a lower point located at 46.849 degrees latitude, and −115.63 degrees longitude to an upper point located at 46.914 degrees latitude, and −115.538 degrees longitude.

(D) Beaver Creek from a lower point located at 46.842 degrees latitude, and −115.62 degrees longitude to an upper point located at 46.815 degrees latitude, and −115.645 degrees longitude. Sneak Creek from a lower point located at 46.833 degrees latitude, and −115.543 degrees longitude to an upper point located at 46.834 degrees latitude, and −115.546 degrees longitude.

(E) Collins Creek from a lower point located at 46.862 degrees latitude, and −115.433 degrees longitude to an upper point located at 46.982 degrees latitude, and −115.452 degrees longitude. Frost Creek from a lower point located at 46.918 degrees latitude, and −115.348 degrees longitude to an upper point located at 46.926 degrees latitude, and −115.379 degrees longitude. Roaring Creek from a lower point located at 46.886 degrees latitude, and −115.355 degrees longitude to an upper point located at 46.918 degrees latitude, and −115.348 degrees longitude. Skull Creek from a lower point located at 46.827 degrees latitude, and −115.485 degrees longitude to an upper point located at 46.91 degrees latitude, and −115.255 degrees longitude.

(F) Quartz Creek from a lower point located at 46.806 degrees latitude, and −115.455 degrees longitude to an upper point located at 46.846 degrees latitude, and −115.258 degrees longitude.

(G) Lightning Creek from a lower point located at 46.782 degrees latitude, and −115.439 degrees longitude to an upper point located at 46.775 degrees latitude, and −115.44 degrees longitude. Rock Creek from a lower point located at 46.783 degrees latitude, and −115.477 degrees longitude to an upper point located at 46.746 degrees latitude, and −115.382 degrees longitude.

(H) Larson Creek from a lower point located at 46.765 degrees latitude, and −115.495 degrees longitude to an upper point located at 46.759 degrees latitude, and −115.487 degrees longitude. Little Washington Creek from a lower point located at 46.729 degrees latitude, and −115.554 degrees longitude to an upper point located at 46.741 degrees latitude, and −115.563 degrees longitude. Orogrande Creek from a lower point located at 46.631 degrees latitude, and −115.506 degrees longitude to an upper point located at 46.62 degrees latitude, and −115.508 degrees longitude. Washington Creek from a lower point located at 46.707 degrees latitude, and −115.557 degrees longitude to an upper point located at 46.698 degrees latitude, and −115.577 degrees longitude.

(I) Corral Creek from a lower point located at 46.483 degrees latitude, and −115.24 degrees longitude to an upper point located at 46.534 degrees latitude, and −115.206 degrees longitude. Fro Creek from a lower point located at 46.479 degrees latitude, and −115.221 degrees longitude to an upper point located at 46.467 degrees latitude, and −115.208 degrees longitude. Johnagan Creek from a lower point located at 46.51 degrees latitude, and −115.366 degrees longitude to an upper point located at 46.543 degrees latitude, and −115.353 degrees longitude. Johnny Creek from a lower point located at 46.613 degrees latitude, and −115.434 degrees longitude to an upper point located at 46.614 degrees latitude, and −115.371 degrees longitude. Little Weitas Creek from a lower point located at 46.506 degrees latitude, and −115.391 degrees longitude to an upper point located at 46.479 degrees latitude, and −115.388 degrees longitude. Liz Creek from a lower point located at 46.482 degrees latitude, and −115.289 degrees longitude to an upper point located at 46.436 degrees latitude, and −115.305 degrees longitude. Middle Creek from a lower point located at 46.521 degrees latitude, and −115.411 degrees longitude to an upper point located at 46.459 degrees latitude, and −115.538 degrees longitude. Weitas Creek from a lower point located at 46.636 degrees latitude, and −115.433 degrees longitude to an upper point located at 46.508 degrees latitude, and −115.173 degrees longitude. Windy Creek from a lower point located at 46.494 degrees latitude, and −115.327 degrees longitude to an upper point located at 46.57 degrees latitude, and −115.235 degrees longitude.

(J) Death Creek from a lower point located at 46.656 degrees latitude, and −115.388 degrees longitude to an upper point located at 46.662 degrees latitude, and −115.397 degrees longitude. Fisher Creek from a lower point located at 46.662 degrees latitude, and −115.38 degrees longitude to an upper point located at 46.672 degrees latitude, and −115.386 degrees longitude. Trail Creek from a lower point located at 46.685 degrees latitude, and −115.351 degrees longitude to an upper point located at 46.7 degrees latitude, and −115.358 degrees longitude.

(K) Bill Creek from a lower point located at 46.631 degrees latitude, and −115.27 degrees longitude to an upper point located at 46.637 degrees latitude, and −115.186 degrees longitude. Fourth Of July Creek from a lower point located at 46.665 degrees latitude, and −115.376 degrees longitude to an upper point located at 46.564 degrees latitude, and −115.259 degrees longitude. Shot Creek from a lower point located at 46.639 degrees latitude, and −115.28 degrees longitude to an upper point located at 46.666 degrees latitude, and −115.206 degrees longitude.

(L) Cold Springs Creek from a lower point located at 46.721 degrees latitude, and −115.297 degrees longitude to an upper point located at 46.745 degrees latitude, and −115.341 degrees longitude. Cool Creek from a lower point located at 46.741 degrees latitude, and −115.326 degrees longitude to an upper point located at 46.751 degrees latitude, and −115.323 degrees longitude.

(M) Barnard Creek from a lower point located at 46.708 degrees latitude, and −115.167 degrees longitude to an upper point located at 46.644 degrees latitude, and −115.188 degrees longitude. Bear Creek from a lower point located at 46.711 degrees latitude, and −114.962 degrees longitude to an upper point located at 46.75 degrees latitude, and −114.921 degrees longitude. Junction Creek from a lower point located at 46.718 degrees latitude, and −115.235 degrees longitude to an upper point located at 46.698 degrees latitude, and −115.239 degrees longitude. Kelly Creek from a lower point located at 46.716 degrees latitude, and −115.257 degrees longitude to an upper point located at 46.73 degrees latitude, and −114.86 degrees longitude. Kid Lake Creek from a lower point located at 46.747 degrees latitude, and −114.805 degrees longitude to an upper point located at 46.769 degrees latitude, and −114.804 degrees longitude. Middle Fork Kelly Creek from a lower point located at 46.73 degrees latitude, and −114.86 degrees longitude to an upper point located at 46.747 degrees latitude, and −114.805 degrees longitude. North Fork Kelly Creek from a lower point located at 46.73 degrees latitude, and −114.86 degrees longitude to an upper point located at 46.78 degrees latitude, and −114.869 degrees longitude. South Fork Kelly Creek from a lower point located at 46.712 degrees latitude, and −114.862 degrees longitude to an upper point located at 46.707 degrees latitude, and −114.817 degrees longitude.

(N) Little Moose Creek from a lower point located at 46.733 degrees latitude, and −115.077 degrees longitude to an upper point located at 46.783 degrees latitude, and −114.905 degrees longitude. Moose Creek from a lower point located at 46.721 degrees latitude, and −115.086 degrees longitude to an upper point located at 46.752 degrees latitude, and −115.184 degrees longitude. Osier Creek from a lower point located at 46.744 degrees latitude, and −115.073 degrees longitude to an upper point located at 46.837 degrees latitude, and −115.064 degrees longitude. Pollock Creek from a lower point located at 46.781 degrees latitude, and −115.022 degrees longitude to an upper point located at 46.78 degrees latitude, and −114.989 degrees longitude. Ruby Creek from a lower point located at 46.733 degrees latitude, and −115.078 degrees longitude to an upper point located at 46.745 degrees latitude, and −115.104 degrees longitude. Sugar Creek from a lower point located at 46.771 degrees latitude, and −115.034 degrees longitude to an upper point located at 46.82 degrees latitude, and −115.005 degrees longitude. Swamp Creek from a lower point located at 46.745 degrees latitude, and −115.067 degrees longitude to an upper point located at 46.799 degrees latitude, and −115.001 degrees longitude.

(O) Cayuse Creek from a lower point located at 46.712 degrees latitude, and −115.02 degrees longitude to an upper point located at 46.612 degrees latitude, and −114.792 degrees longitude. Gravey Creek from a lower point located at 46.6 degrees latitude, and −115.073 degrees longitude to an upper point located at 46.513 degrees latitude, and −115.152 degrees longitude. Howard Creek from a lower point located at 46.593 degrees latitude, and −115.013 degrees longitude to an upper point located at 46.531 degrees latitude, and −115.07 degrees longitude. Mae Creek from a lower point located at 46.581 degrees latitude, and −115.104 degrees longitude to an upper point located at 46.576 degrees latitude, and −115.1 degrees longitude. Marten Creek from a lower point located at 46.575 degrees latitude, and −115.105 degrees longitude to an upper point located at 46.555 degrees latitude, and −115.177 degrees longitude. Mink Creek from a lower point located at 46.601 degrees latitude, and −114.894 degrees longitude to an upper point located at 46.628 degrees latitude, and −114.893 degrees longitude. Monroe Creek from a lower point located at 46.642 degrees latitude, and −115.131 degrees longitude to an upper point located at 46.631 degrees latitude, and −115.149 degrees longitude. Silver Creek from a lower point located at 46.607 degrees latitude, and −114.83 degrees longitude to an upper point located at 46.653 degrees latitude, and −114.813 degrees longitude. Toboggan Creek from a lower point located at 46.677 degrees latitude, and −115.049 degrees longitude to an upper point located at 46.631 degrees latitude, and −114.937 degrees

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longitude. Weasel Creek from a lower point located at 46.601 degrees latitude, and −114.904 degrees longitude to an upper point located at 46.623 degrees latitude, and −114.905 degrees longitude.

(P) Bostonian Creek from a lower point located at 46.962 degrees latitude, and −115.113 degrees longitude to an upper point located at 47.002 degrees latitude, and −115.159 degrees longitude. Boundary Creek from a lower point located at 46.972 degrees latitude, and −115.107 degrees longitude to an upper point located at 46.981 degrees latitude, and −115.076 degrees longitude. Chamberlain Creek from a lower point located at 46.929 degrees latitude, and −115.142 degrees longitude to an upper point located at 46.917 degrees latitude, and −115.2 degrees longitude. Deception Gulch from a lower point located at 46.837 degrees latitude, and −115.119 degrees longitude to an upper point located at 46.819 degrees latitude, and −115.149 degrees longitude. Elizabeth Creek from a lower point located at 46.79 degrees latitude, and −115.219 degrees longitude to an upper point located at 46.799 degrees latitude, and −115.228 degrees longitude. Goose Creek from a lower point located at 46.852 degrees latitude, and −115.012 degrees longitude to an upper point located at 46.906 degrees latitude, and −114.952 degrees longitude. Graves Creek from a lower point located at 46.986 degrees latitude, and −115.1 degrees longitude to an upper point located at 47.006 degrees latitude, and −115.078 degrees longitude. Hidden Creek from a lower point located at 46.832 degrees latitude, and −115.177 degrees longitude to an upper point located at 46.846 degrees latitude, and −115.213 degrees longitude. Lake Creek from a lower point located at 46.869 degrees latitude, and −115.078 degrees longitude to an upper point located at 46.832 degrees latitude, and −114.971 degrees longitude. Long Creek from a lower point located at 46.873 degrees latitude, and −115.075 degrees longitude to an upper point located at 46.95 degrees latitude, and −115.024 degrees longitude. Meadow Creek from a lower point located at 46.905 degrees latitude, and −115.116 degrees longitude to an upper point located at 46.964 degrees latitude, and −115.22 degrees longitude. Niagra Gulch from a lower point located at 46.967 degrees latitude, and −115.136 degrees longitude to an upper point located at 46.974 degrees latitude, and −115.158 degrees longitude. Pete Ott Creek from a lower point located at 46.748 degrees latitude, and −115.236 degrees longitude to an upper point located at 46.754 degrees latitude, and −115.239 degrees longitude. Placer Creek from a lower point located at 46.938 degrees latitude, and −115.167 degrees longitude to an upper point located at 46.963 degrees latitude, and −115.19 degrees longitude. Rawhide Creek from a lower point located at 46.898 degrees latitude, and −115.047 degrees longitude to an upper point located at 46.938 degrees latitude, and −115.055 degrees longitude. Short Creek from a lower point located at 46.886 degrees latitude, and −115.057 degrees longitude to an upper point located at 46.898 degrees latitude, and −115.013 degrees longitude. Slate Creek from a lower point located at 46.927 degrees latitude, and −115.018 degrees longitude to an upper point located at 46.914 degrees latitude, and −114.979 degrees longitude. Unnamed creek off Long Creek from a lower point located at 46.939 degrees latitude, and −115.023 degrees longitude to an upper point located at 46.956 degrees latitude, and −115.056 degrees longitude. Vanderbilt Gulch from a lower point located at 46.916 degrees latitude, and −115.119 degrees longitude to an upper point located at 46.944 degrees latitude, and −115.221 degrees longitude.

(iii) Critical Habitat Subunit—Fish Lake (North Fork).

(A) Fish Lake centered at 46.818 degrees latitude, and −114.911 degrees longitude. Lake Creek from a lower point located at 46.832 degrees latitude, and −114.971 degrees longitude to an upper point located at 46.817 degrees latitude, and −114.919 degrees longitude.

(B) [Reserved]

(iv) Critical Habitat Subunit—South Fork Clearwater River.

(A) South Fork Clearwater River from a lower point located at 46.146 degrees latitude, and −115.98 degrees longitude to an upper point located at 45.808 degrees latitude, and −115.474 degrees longitude.

(B) Merton Creek from a lower point located at 45.725 degrees latitude, and −115.995 degrees longitude to an upper point located at 45.724 degrees latitude, and −115.978 degrees longitude. Mill Creek from a lower point located at 45.83 degrees latitude, and −115.931 degrees longitude to an upper point located at 45.725 degrees latitude, and −115.995 degrees longitude.

(C) Gospel Creek from a lower point located at 45.703 degrees latitude, and −115.89 degrees longitude to an upper point located at 45.677 degrees latitude, and −115.89 degrees longitude. Hagen Creek from a lower point located at 45.649 degrees latitude, and −115.817 degrees longitude to an upper point located at 45.63 degrees latitude, and −115.808 degrees longitude. Johns Creek from a lower point located at 45.824 degrees latitude, and −115.889 degrees longitude to an upper point located at 45.683 degrees latitude, and −115.754 degrees longitude. Moores Creek from a lower point located at 45.676 degrees latitude, and −115.837 degrees longitude to an upper point located at 45.615 degrees latitude, and −115.879 degrees longitude. Moores Lake Creek from a lower point located at 45.677 degrees latitude, and −115.89 degrees longitude to an upper point located at 45.659 degrees latitude, and −115.869 degrees longitude. Open Creek from a lower point located at 45.676 degrees latitude, and −115.837 degrees longitude to an upper point located at 45.683 degrees latitude, and −115.822 degrees longitude. Taylor Creek from a lower point located at 45.659 degrees latitude, and −115.782 degrees longitude to an upper point located at 45.637 degrees latitude, and −115.773 degrees longitude. Twin Lakes Creek from a lower point located at 45.664 degrees latitude, and −115.827 degrees longitude to an upper point located at 45.65 degrees latitude, and −115.817 degrees longitude.

(D) Silver Creek from a lower point located at 45.806 degrees latitude, and −115.791 degrees longitude to an upper point located at 45.807 degrees latitude, and −115.79 degrees longitude. Twentymile Creek from a lower point located at 45.795 degrees latitude, and −115.763 degrees longitude to an upper point located at 45.794 degrees latitude, and −115.764 degrees longitude. Wing Creek from a lower point located at 45.795 degrees latitude, and −115.776 degrees longitude to an upper point located at 45.792 degrees latitude, and −115.776 degrees longitude.

(E) Sixmile Creek from a lower point located at 45.764 degrees latitude, and −115.659 degrees longitude to an upper point located at 45.763 degrees latitude, and −115.645 degrees longitude. Tenmile Creek from a lower point located at 45.806 degrees latitude, and −115.683 degrees longitude to an upper point located at 45.639 degrees latitude, and −115.712 degrees longitude. Williams Creek from a lower point located at 45.731 degrees latitude, and −115.655 degrees longitude to an upper point located at 45.667 degrees latitude, and −115.657 degrees longitude. Wiseboy Creek from a lower point located at 45.642 degrees latitude, and −115.711 degrees longitude to an upper point located at 45.638 degrees latitude, and −115.703 degrees longitude.

(F) Buckhorn Creek from a lower point located at 45.81 degrees latitude, and −115.656 degrees longitude to an upper point located at 45.808 degrees latitude, and −115.656 degrees longitude.

(G) Baldy Creek from a lower point located at 45.908 degrees latitude, and −115.629 degrees longitude to an upper point located at 45.944 degrees latitude, and −115.682 degrees longitude. Bear Creek from a lower point located at 45.863 degrees latitude, and −115.617 degrees longitude to an upper point located at 45.878 degrees latitude, and −115.594 degrees longitude. Beaver Creek from a lower point located at 45.896 degrees latitude, and −115.63 degrees longitude to an upper point located at 45.943 degrees latitude, and −115.568 degrees longitude. Mule Creek from a lower point located at 45.925 degrees latitude, and −115.634 degrees longitude to an upper point located at 45.933 degrees latitude, and −115.63 degrees longitude. Newsome Creek from a lower point located at 45.828 degrees latitude, and −115.615 degrees longitude to an upper point located at 46.004 degrees latitude, and −115.678 degrees longitude. Pilot Creek from a lower point located at 45.907 degrees latitude, and −115.629 degrees longitude to an upper point located at 45.945 degrees latitude, and −115.731 degrees longitude. Unnamed creek 1 off Pilot Creek from a lower point located at 45.93 degrees latitude, and −115.676 degrees longitude to an upper point located at 45.924 degrees latitude, and −115.687 degrees longitude. Unnamed creek 2 off Pilot Creek from a lower point located at 45.939 degrees latitude, and −115.716 degrees longitude to an upper point located at 45.934 degrees latitude, and −115.72 degrees longitude. West Fork Newsome Creek from a lower point located at 45.865 degrees latitude, and −115.617 degrees longitude to an upper point located at 45.892 degrees latitude, and −115.694 degrees longitude.

(H) Crooked River from a lower point located at 45.824 degrees latitude, and −115.529 degrees longitude to an upper point located at 45.695 degrees latitude, and −115.548 degrees longitude. East Fork Crooked River from a lower point located at 45.695 degrees latitude, and −115.548 degrees longitude to an upper point located at 45.673 degrees latitude, and −115.542 degrees longitude. Relief Creek from a lower point located at 45.748 degrees latitude, and −115.519 degrees longitude to an upper point located at 45.754 degrees latitude, and −115.497 degrees longitude. Unnamed creek off West Fork Crooked River from a lower point located at 45.69 degrees latitude, and −115.563 degrees longitude to an upper point located at 45.695 degrees latitude, and −115.573 degrees longitude. West Fork Crooked River from a lower point located at 45.695 degrees latitude, and −115.548 degrees longitude to an upper point located at 45.666 degrees latitude, and −115.596 degrees longitude.

(I) Baston Creek from a lower point located at 45.76 degrees latitude, and −115.235 degrees longitude to an upper point located at 45.731 degrees latitude, and −115.223 degrees longitude. Bridge Creek from a lower point located at 45.779 degrees latitude, and −115.21 degrees longitude to an upper point located at 45.814 degrees latitude, and −115.163 degrees longitude. Dawson Creek from a lower point located at 45.73 degrees latitude, and −115.39 degrees longitude to an upper point located at 45.743 degrees latitude, and −115.425 degrees longitude. Ditch Creek from a lower point located at 45.747 degrees latitude, and −115.297 degrees longitude to an upper point located at 45.794 degrees latitude, and −115.292 degrees longitude. Little Moose Creek from a lower point located at 45.716 degrees latitude, and −115.367 degrees longitude to an upper point located at 45.709 degrees latitude, and −115.399 degrees longitude. Middle Fork. Red River from a lower point located at 45.659 degrees latitude, and −115.412 degrees longitude to an upper point located at 45.631 degrees latitude, and −115.471 degrees longitude. Moose Butte Creek from a lower point located at 45.71 degrees latitude, and −115.352 degrees longitude to an upper point located at 45.692 degrees latitude, and −115.416 degrees longitude. Otterson Creek from a lower point located at 45.776 degrees latitude, and −115.219 degrees longitude to an upper point located at 45.82 degrees latitude, and −115.233 degrees longitude. Red Horse Creek from a lower point located at 45.794 degrees latitude, and −115.4 degrees longitude to an upper point located at 45.827 degrees latitude, and −115.326 degrees longitude. Red River from a lower point located at 45.808 degrees latitude, and −115.474 degrees longitude to an upper point located at 45.803 degrees latitude, and −115.154 degrees longitude. Siegel Creek from a lower point located at 45.773 degrees latitude, and −115.387 degrees longitude to an upper point located at 45.787 degrees latitude, and −115.367 degrees longitude. Soda Creek from a lower point located at 45.756 degrees latitude, and −115.256 degrees longitude to an upper point located at 45.746 degrees latitude, and −115.251 degrees longitude. South Fork Red River from a lower point located at 45.711 degrees latitude, and −115.344 degrees longitude to an upper point located at 45.623 degrees latitude, and −115.479 degrees longitude. Trapper Creek from a lower point located at 45.674 degrees latitude, and −115.344 degrees longitude to an upper point located at 45.705 degrees latitude, and −115.247 degrees longitude. West Fork Red River from a lower point located at 45.653 degrees latitude, and −115.401 degrees longitude to an upper point located at 45.667 degrees latitude, and −115.452 degrees longitude.

(J) American River from a lower point located at 45.808 degrees latitude, and −115.474 degrees longitude to an upper point located at 45.945 degrees latitude, and −115.449 degrees longitude. Big Elk Creek from a lower point located at 45.841 degrees latitude, and −115.434 degrees longitude to an upper point located at 45.933 degrees latitude, and −115.554 degrees longitude. East Fork. American River from a lower point located at 45.864 degrees latitude, and −115.424 degrees longitude to an upper point located at 45.919 degrees latitude, and −115.362 degrees longitude. Elk Creek from a lower point located at 45.818 degrees latitude, and −115.458 degrees longitude to an upper point located at 45.841 degrees latitude, and −115.434 degrees longitude. Flint Creek from a lower point located at 45.891 degrees latitude, and −115.427 degrees longitude to an upper point located at 45.913 degrees latitude, and −115.423 degrees longitude. Kirks Fork American River from a lower point located at 45.822 degrees latitude, and −115.41 degrees longitude to an upper point located at 45.829 degrees latitude, and −115.389 degrees longitude. Lick Creek from a lower point located at 45.923 degrees latitude, and −115.468 degrees longitude to an upper point located at 45.969 degrees latitude, and −115.486 degrees longitude. Little Elk Creek from a lower point located at 45.841 degrees latitude, and −115.434 degrees longitude to an upper point located at 45.927 degrees latitude, and −115.537 degrees longitude. West Fork American River from a lower point located at 45.913 degrees latitude, and −115.465 degrees longitude to an upper point located at 45.935 degrees latitude, and −115.544 degrees longitude.

(v) Critical Habitat Subunit—Lochsa River.

(A) Lochsa River from a lower point located at 46.14 degrees latitude, and −115.599 degrees longitude to an upper point located at 46.508 degrees latitude, and −114.681 degrees longitude.

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(B) Bimerick Creek from a lower point located at 46.228 degrees latitude, and –115.444 degrees longitude to an upper point located at 46.233 degrees latitude, and –115.445 degrees longitude. Canyon Creek from a lower point located at 46.211 degrees latitude, and –115.541 degrees longitude to an upper point located at 46.211 degrees latitude, and –115.552 degrees longitude. Coolwater Creek from a lower point located at 46.229 degrees latitude, and –115.456 degrees longitude to an upper point located at 46.214 degrees latitude, and –115.466 degrees longitude. Deadman Creek from a lower point located at 46.226 degrees latitude, and –115.501 degrees longitude to an upper point located at 46.252 degrees latitude, and –115.506 degrees longitude. Fire Creek from a lower point located at 46.227 degrees latitude, and –115.432 degrees longitude to an upper point located at 46.219 degrees latitude, and –115.424 degrees longitude.

(C) Split Creek from a lower point located at 46.233 degrees latitude, and –115.407 degrees longitude to an upper point located at 46.162 degrees latitude, and –115.351 degrees longitude.

(D) Old Man Creek from a lower point located at 46.252 degrees latitude, and –115.399 degrees longitude to an upper point located at 46.231 degrees latitude, and –115.28 degrees longitude.

(E) Fish Creek from a lower point located at 46.333 degrees latitude, and –115.345 degrees longitude to an upper point located at 46.373 degrees latitude, and –115.596 degrees longitude. Hungery Creek from a lower point located at 46.356 degrees latitude, and –115.397 degrees longitude to an upper point located at 46.4 degrees latitude, and –115.568 degrees longitude.

(F) Boulder Creek from a lower point located at 46.338 degrees latitude, and –115.314 degrees longitude to an upper point located at 46.321 degrees latitude, and –115.224 degrees longitude.

(G) Bald Mountain Creek from a lower point located at 46.384 degrees latitude, and –115.231 degrees longitude to an upper point located at 46.399 degrees latitude, and –115.24 degrees longitude. Stanley Creek from a lower point located at 46.421 degrees latitude, and –115.161 degrees longitude to an upper point located at 46.406 degrees latitude, and –115.153 degrees longitude.

(H) Indian Grave Creek from a lower point located at 46.452 degrees latitude, and –115.076 degrees longitude to an upper point located at 46.49 degrees latitude, and –115.142 degrees longitude.

(I) Weir Creek from a lower point located at 46.458 degrees latitude, and –115.034 degrees longitude to an upper point located at 46.534 degrees latitude, and –115.017 degrees longitude.

(J) California Creek from a lower point located at 46.366 degrees latitude, and –114.998 degrees longitude to an upper point located at 46.344 degrees latitude, and –114.994 degrees longitude. Fish Lake Creek from a lower point located at 46.415 degrees latitude, and –115.006 degrees longitude to an upper point located at 46.366 degrees latitude, and –114.998 degrees longitude. Freezeout Creek from a lower point located at 46.404 degrees latitude, and –115 degrees longitude to an upper point located at 46.378 degrees latitude, and –114.967 degrees longitude. Lake Creek from a lower point located at 46.463 degrees latitude, and –114.996 degrees longitude to an upper point located at 46.415 degrees latitude, and –115.006 degrees longitude.

(K) Postoffice Creek from a lower point located at 46.466 degrees latitude, and –114.985 degrees longitude to an upper point located at 46.529 degrees latitude, and –114.95 degrees longitude. West Fork Postoffice Creek from a lower point located at 46.482 degrees latitude, and –114.979 degrees longitude to an upper point located at 46.514 degrees latitude, and –115.003 degrees longitude.

(L) Cooperation Creek from a lower point located at 46.452 degrees latitude, and –114.869 degrees longitude to an upper point located at 46.44 degrees latitude, and –114.816 degrees longitude. Warm Springs Creek from a lower point located at 46.473 degrees latitude, and –114.887 degrees longitude to an upper point located at 46.43 degrees latitude, and –114.864 degrees longitude.

(M) Doe Creek from a lower point located at 46.499 degrees latitude, and –114.862 degrees longitude to an upper point located at 46.554 degrees latitude, and –114.92 degrees longitude. East Fork Fishing Creek from a lower point located at 46.556 degrees latitude, and –114.854 degrees longitude to an upper point located at 46.561 degrees latitude, and –114.837 degrees longitude. Fishing Creek from a lower point located at 46.492 degrees latitude, and –114.857 degrees longitude to an upper point located at 46.571 degrees latitude, and –114.859 degrees longitude. Spring Creek from a lower point located at 46.546 degrees latitude, and –114.885 degrees longitude to an upper point located at 46.552 degrees latitude, and –114.902 degrees longitude. West Fork. Fishing Creek from a lower point located at 46.537 degrees latitude, and –114.867 degrees longitude to an upper point located at 46.567 degrees latitude, and –114.884 degrees longitude.

(N) Badger Creek from a lower point located at 46.505 degrees latitude, and −114.823 degrees longitude to an upper point located at 46.517 degrees latitude, and −114.824 degrees longitude. Wendover Creek from a lower point located at 46.509 degrees latitude, and −114.785 degrees longitude to an upper point located at 46.52 degrees latitude, and −114.788 degrees longitude.

(O) East Fork Legendary Bear Creek from a lower point located at 46.535 degrees latitude, and −114.765 degrees longitude to an upper point located at 46.562 degrees latitude, and −114.735 degrees longitude. Legendary Bear Creek from a lower point located at 46.511 degrees latitude, and −114.761 degrees longitude to an upper point located at 46.535 degrees latitude, and −114.765 degrees longitude. Parachute Creek from a lower point located at 46.529 degrees latitude, and −114.761 degrees longitude to an upper point located at 46.53 degrees latitude, and −114.756 degrees longitude. West Fork Legendary Bear Creek from a lower point located at 46.535 degrees latitude, and −114.765 degrees longitude to an upper point located at 46.58 degrees latitude, and −114.751 degrees longitude.

(P) Walton Creek from a lower point located at 46.508 degrees latitude, and −114.681 degrees longitude to an upper point located at 46.473 degrees latitude, and −114.68 degrees longitude.

(Q) Beaver Creek from a lower point located at 46.506 degrees latitude, and −114.626 degrees longitude to an upper point located at 46.553 degrees latitude, and −114.503 degrees longitude. Big Flat Creek from a lower point located at 46.402 degrees latitude, and −114.493 degrees longitude to an upper point located at 46.313 degrees latitude, and −114.44 degrees longitude. Colt Killed Creek from a lower point located at 46.508 degrees latitude, and −114.681 degrees longitude to an upper point located at 46.429 degrees latitude, and −114.414 degrees longitude. Maud Creek from a lower point located at 46.497 degrees latitude, and −114.514 degrees longitude to an upper point located at 46.474 degrees latitude, and −114.411 degrees longitude. Storm Creek from a lower point located at 46.463 degrees latitude, and −114.548 degrees longitude to an upper point located at 46.541 degrees latitude, and −114.402 degrees longitude.

(R) Boulder Creek from a lower point located at 46.615 degrees latitude, and −114.67 degrees longitude to an upper point located at 46.679 degrees latitude, and −114.748 degrees longitude. Crooked Fork from a lower point located at 46.508 degrees latitude, and −114.681 degrees longitude to an upper point located at 46.704 degrees latitude, and −114.708 degrees longitude. Fox Creek from a lower point located at 46.617 degrees latitude, and −114.719 degrees longitude to an upper point located at 46.605 degrees latitude, and −114.754 degrees longitude. Haskell Creek from a lower point located at 46.597 degrees latitude, and −114.603 degrees longitude to an upper point located at 46.632 degrees latitude, and −114.582 degrees longitude. Hopeful Creek from a lower point located at 46.671 degrees latitude, and −114.68 degrees longitude to an upper point located at 46.724 degrees latitude, and −114.653 degrees longitude. Rock Creek from a lower point located at 46.598 degrees latitude, and −114.609 degrees longitude to an upper point located at 46.612 degrees latitude, and −114.619 degrees longitude. Shotgun Creek from a lower point located at 46.601 degrees latitude, and −114.664 degrees longitude to an upper point located at 46.6 degrees latitude, and −114.737 degrees longitude. Unnamed creek off Hopeful Creek from a lower point located at 46.699 degrees latitude, and −114.668 degrees longitude to an upper point located at 46.708 degrees latitude, and −114.624 degrees longitude. Williams Lake Creek from a lower point located at 46.644 degrees latitude, and −114.716 degrees longitude to an upper point located at 46.647 degrees latitude, and −114.767 degrees longitude.

(S) Brushy Fork from a lower point located at 46.578 degrees latitude, and −114.612 degrees longitude to an upper point located at 46.616 degrees latitude, and −114.454 degrees longitude. North Fork Spruce Creek from a lower point located at 46.606 degrees latitude, and −114.392 degrees longitude to an upper point located at 46.616 degrees latitude, and −114.351 degrees longitude. South Fork Spruce Creek from a lower point located at 46.606 degrees latitude, and −114.392 degrees longitude to an upper point located at 46.565 degrees latitude, and −114.352 degrees longitude. Shoot Creek from a lower point located at 46.606 degrees latitude, and −114.414 degrees longitude to an upper point located at 46.58 degrees latitude, and −114.425 degrees longitude. Spruce Creek from a lower point located at 46.606 degrees latitude, and −114.392 degrees longitude to an upper point located at 46.616 degrees latitude, and −114.454 degrees longitude. Twin Creek from a lower point located at 46.582 degrees latitude, and −114.527 degrees longitude to an upper point located at 46.57 degrees latitude, and −114.474 degrees longitude.

(vi) Critical Habitat Subunit—Fish Lake (Lochsa).

(A) Fish Lake centered at 46.818 degrees latitude, and −114.911 degrees longitude. Fish Lake Creek from a lower point located at 46.366 degrees latitude, and −114.998 degrees longitude to an upper point located at 46.325 degrees latitude, and −115.084 degrees longitude.

(B) [Reserved]

(vii) Critical Habitat Subunit—Selway River.

(A) Goddard Cr. from a lower point located at 46.101 degrees latitude, and −115.557 degrees longitude to an upper point located at 46.095 degrees latitude, and −115.558 degrees longitude. Selway River from a lower point located at 46.14 degrees latitude, and −115.599 degrees longitude to an upper point located at 45.478 degrees latitude, and −114.676 degrees longitude.

(B) East Fork O'Hara Creek from a lower point located at 45.999 degrees latitude, and −115.523 degrees longitude to an upper point located at 45.939 degrees latitude, and −115.54 degrees longitude. O'Hara Creek from a lower point located at 46.086 degrees latitude, and −115.517 degrees longitude to an upper point located at 45.999 degrees latitude, and −115.523 degrees longitude. West Fork O'Hara Creek from a lower point located at 45.999 degrees latitude, and −115.523 degrees longitude to an upper point located at 45.949 degrees latitude, and −115.569 degrees longitude.

(C) Boyd Creek from a lower point located at 46.081 degrees latitude, and −115.442 degrees longitude to an upper point located at 46.093 degrees latitude, and −115.43 degrees longitude. Falls Creek from a lower point located at 46.061 degrees latitude, and −115.338 degrees longitude to an upper point located at 46.051 degrees latitude, and −115.348 degrees longitude. Glover Creek from a lower point located at 46.068 degrees latitude, and −115.361 degrees longitude to an upper point located at 46.081 degrees latitude, and −115.36 degrees longitude. Rackliff Creek from a lower point located at 46.084 degrees latitude, and −115.494 degrees longitude to an upper point located at 46.102 degrees latitude, and −115.495 degrees longitude.

(D) Gedney Creek from a lower point located at 46.056 degrees latitude, and −115.313 degrees longitude to an upper point located at 46.135 degrees latitude, and −115.248 degrees longitude. West Fork Gedney Creek from a lower point located at 46.094 degrees latitude, and −115.293 degrees longitude to an upper point located at 46.11 degrees latitude, and −115.294 degrees longitude.

(E) East Fork Meadow Creek from a lower point located at 45.88 degrees latitude, and −115.103 degrees longitude to an upper point located at 45.829 degrees latitude, and −115.027 degrees longitude. Meadow Creek from a lower point located at 46.046 degrees latitude, and −115.295 degrees longitude to an upper point located at 45.879 degrees latitude, and −115.212 degrees longitude. Schwar Creek from a lower point located at 45.882 degrees latitude, and −115.116 degrees longitude to an upper point located at 45.905 degrees latitude, and −115.108 degrees longitude.

(F) Otter Creek from a lower point located at 46.051 degrees latitude, and −115.22 degrees longitude to an upper point located at 46.043 degrees latitude, and −115.217 degrees longitude. Three Links Creek from a lower point located at 46.098 degrees latitude, and −115.072 degrees longitude to an upper point located at 46.142 degrees latitude, and −115.091 degrees longitude.

(G) Mink Creek from a lower point located at 46.098 degrees latitude, and −115.071 degrees longitude to an upper point located at 46.008 degrees latitude, and −115.114 degrees longitude.

(H) Marten Creek from a lower point located at 46.099 degrees latitude, and −115.052 degrees longitude to an upper point located at 45.963 degrees latitude, and −115.046 degrees longitude.

(I) Cedar Creek from a lower point located at 46.249 degrees latitude, and −114.708 degrees longitude to an upper point located at 46.33 degrees latitude, and −114.705 degrees longitude. East Fork Moose Creek from a lower point located at 46.165 degrees latitude, and −114.897 degrees longitude to an upper point located at 46.271 degrees latitude, and −114.679 degrees longitude. Moose Creek from a lower point located at 46.122 degrees latitude, and −114.935 degrees longitude to an upper point located at 46.165 degrees latitude, and −114.897 degrees longitude. North Fork Moose Creek from a lower point located at 46.165 degrees latitude, and −114.897 degrees longitude to an upper point located at 46.274 degrees latitude, and −114.923 degrees longitude. Rhoda Creek from a lower point located at 46.239 degrees latitude, and −115.008 degrees longitude to an upper point located at 46.234 degrees latitude, and −114.96 degrees longitude. Wounded Doe Creek from a lower point located at 46.239 degrees latitude, and −115.008 degrees longitude to an upper point located at 46.3 degrees latitude, and −115.079 degrees longitude.

(J) Pettibone Creek from a lower point located at 46.041 degrees latitude, and −114.84 degrees longitude to an upper

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point located at 46.064 degrees latitude, and −114.796 degrees longitude.

(K) Bear Creek from a lower point located at 46.019 degrees latitude, and −114.844 degrees longitude to an upper point located at 46.109 degrees latitude, and −114.508 degrees longitude. Brushy Fork Creek from a lower point located at 46.003 degrees latitude, and −114.698 degrees longitude to an upper point located at 45.989 degrees latitude, and −114.582 degrees longitude. Cub Creek from a lower point located at 46.034 degrees latitude, and −114.756 degrees longitude to an upper point located at 46.032 degrees latitude, and −114.617 degrees longitude. Paradise Creek from a lower point located at 46.022 degrees latitude, and −114.728 degrees longitude to an upper point located at 46.039 degrees latitude, and −114.526 degrees longitude.

(L) Eagle Creek from a lower point located at 45.908 degrees latitude, and −114.853 degrees longitude to an upper point located at 45.781 degrees latitude, and −114.899 degrees longitude. Lynx Creek from a lower point located at 45.849 degrees latitude, and −114.937 degrees longitude to an upper point located at 45.818 degrees latitude, and −114.951 degrees longitude. Running Creek from a lower point located at 45.919 degrees latitude, and −114.832 degrees longitude to an upper point located at 45.916 degrees latitude, and −115.032 degrees longitude. South Fork Running Creek from a lower point located at 45.845 degrees latitude, and −114.944 degrees longitude to an upper point located at 45.823 degrees latitude, and −114.965 degrees longitude. Tom Creek from a lower point located at 45.862 degrees latitude, and −114.986 degrees longitude to an upper point located at 45.913 degrees latitude, and −114.984 degrees longitude.

(M) Canyon Creek from a lower point located at 45.888 degrees latitude, and −114.613 degrees longitude to an upper point located at 45.882 degrees latitude, and −114.408 degrees longitude. White Cap Creek from a lower point located at 45.86 degrees latitude, and −114.744 degrees longitude to an upper point located at 45.91 degrees latitude, and −114.428 degrees longitude.

(N) Burnt Strip Creek from a lower point located at 45.817 degrees latitude, and −114.626 degrees longitude to an upper point located at 45.838 degrees latitude, and −114.588 degrees longitude. Indian Creek from a lower point located at 45.792 degrees latitude, and −114.764 degrees longitude to an upper point located at 45.785 degrees latitude, and −114.581 degrees longitude. Schofield Creek from a lower point located at 45.777 degrees latitude, and −114.645 degrees longitude to an upper point located at 45.819 degrees latitude, and −114.585 degrees longitude.

(O) Burnt Knob Creek from a lower point located at 45.715 degrees latitude, and −114.898 degrees longitude to an upper point located at 45.697 degrees latitude, and −114.945 degrees longitude. Flat Creek from a lower point located at 45.722 degrees latitude, and −114.857 degrees longitude to an upper point located at 45.651 degrees latitude, and −114.847 degrees longitude. Little Clearwater River from a lower point located at 45.754 degrees latitude, and −114.775 degrees longitude to an upper point located at 45.738 degrees latitude, and −114.945 degrees longitude. Salamander Creek from a lower point located at 45.711 degrees latitude, and −114.865 degrees longitude to an upper point located at 45.648 degrees latitude, and −114.879 degrees longitude.

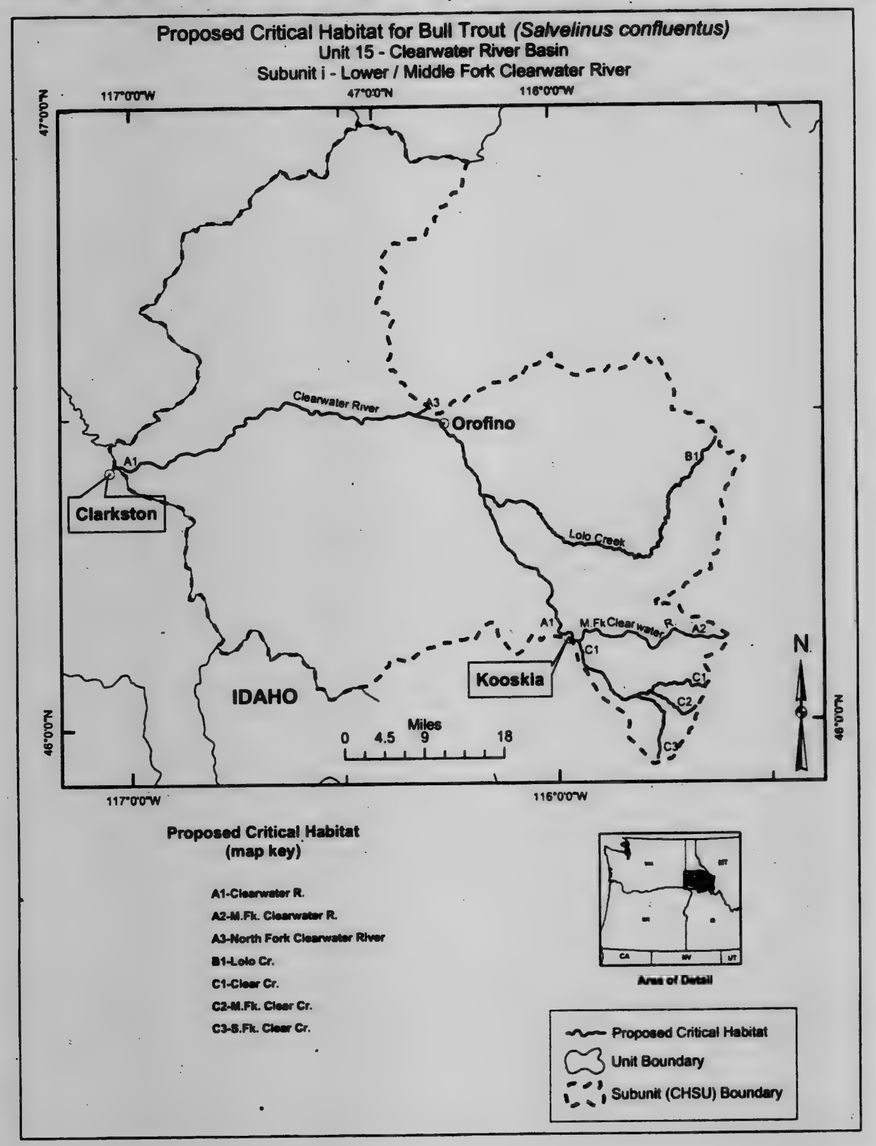
(P) Magruder Creek from a lower point located at 45.745 degrees latitude, and −114.76 degrees longitude to an upper point located at 45.726 degrees latitude, and −114.771 degrees longitude.

(Q) Cayuse Creek from a lower point located at 45.706 degrees latitude, and −114.614 degrees longitude to an upper point located at 45.761 degrees latitude, and −114.551 degrees longitude. Deep Creek from a lower point located at 45.707 degrees latitude, and −114.719 degrees longitude to an upper point located at 45.719 degrees latitude, and −114.509 degrees longitude. Slow Gulch Creek from a lower point located at 45.694 degrees latitude, and −114.56 degrees longitude to an upper point located at 45.679 degrees latitude, and −114.545 degrees longitude. Vance Creek from a lower point located at 45.703 degrees latitude, and −114.579 degrees longitude to an upper point located at 45.695 degrees latitude, and −114.581 degrees longitude.

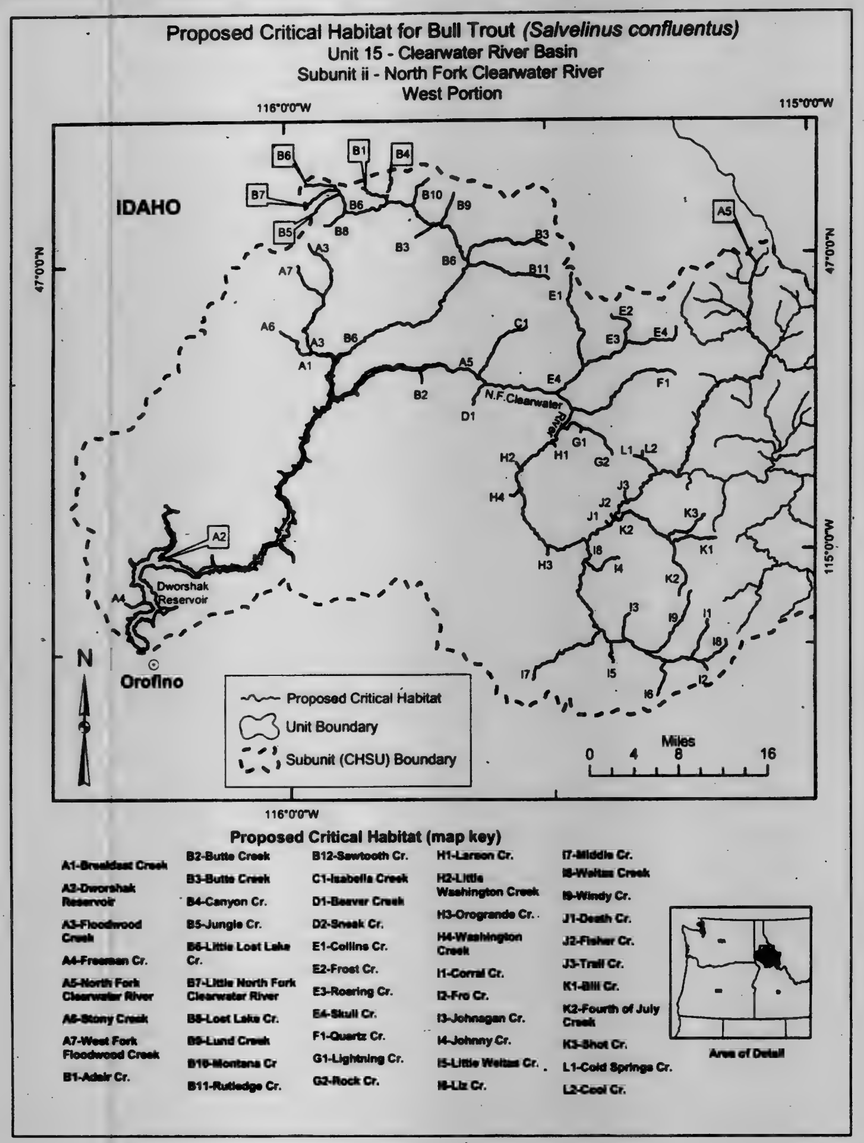
(R) French Creek from a lower point located at 45.597 degrees latitude, and −114.591 degrees longitude to an upper point located at 45.609 degrees latitude, and −114.561 degrees longitude. South Fork Surprise Creek from a lower point located at 45.527 degrees latitude, and −114.679 degrees longitude to an upper point located at 45.479 degrees latitude, and −114.664 degrees longitude. Storm Creek from a lower point located at 45.578 degrees latitude, and −114.64 degrees longitude to an upper point located at 45.636 degrees latitude, and −114.583 degrees longitude. Surprise Creek from a lower point located at 45.521 degrees latitude, and −114.701 degrees longitude to an upper point located at 45.538 degrees latitude, and −114.627 degrees longitude. Swet Creek from a lower point located at 45.58 degrees latitude, and −114.719 degrees longitude to an upper point located at 45.501 degrees latitude, and −114.801 degrees longitude. Wilkerson Creek from a lower point located at 45.612 degrees latitude, and −114.706 degrees longitude to an upper point located at 45.557 degrees latitude, and −114.585 degrees longitude.

Note: Maps follow for Unit 15, Subunit i; Subunit ii (West portion); Subunits ii (East Portion) and iii; Subunit iv; Subunits v and vi; and Subunit vii.

BILLING CODE 4310-55-P

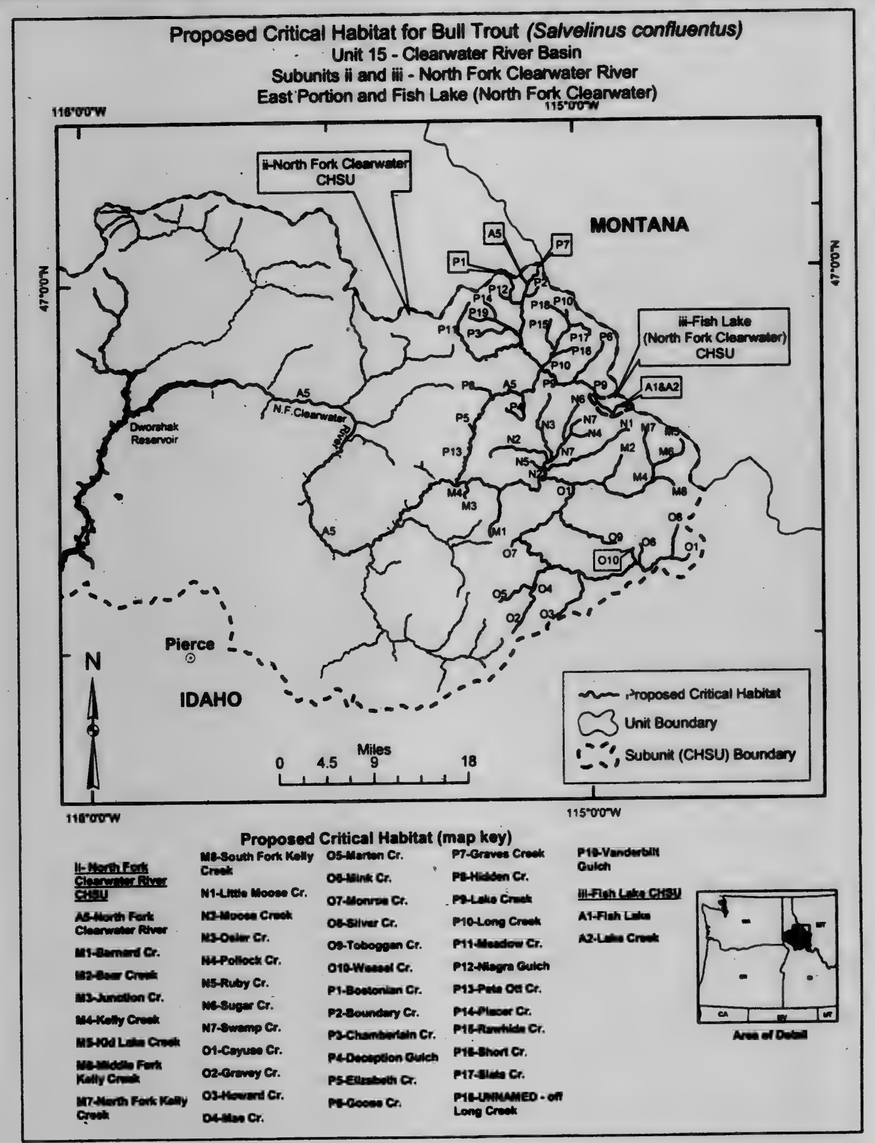


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Proposed Critical Habitat (map key)

A1-Breakfast Creek
A2-Dworshak Reservoir
A3-Floodwood Creek
A4-Freeman Cr.
A5-North Fork Clearwater River
A6-Stony Creek
A7-West Fork Floodwood Creek
B1-Adair Cr.
B2-Butte Creek
B3-Butte Creek
B4-Canyon Cr.
B5-Jungle Cr.
B6-Little Lost Lake Cr.
B7-Little North Fork Clearwater River
B8-Lost Lake Cr.
B9-Lund Creek
B10-Montana Cr
B11-Rutledge Cr.
B12-Sawtooth Cr.
C1-Isabella Creek
D1-Beaver Creek
D2-Sneak Cr.
E1-Collins Cr.
E2-Frost Cr.
E3-Roaring Cr.
E4-Skull Cr.
F1-Quartz Cr.
G1-Lightning Cr.
G2-Rock Cr.
H1-Larson Cr.
H2-Little Washington Creek
H3-Orogrande Cr.
H4-Washington Creek
I1-Corral Cr.
I2-Fro Cr.
I3-Johnsagan Cr.
I4-Johnny Cr.
I5-Little Weitas Cr.
I6-Liz Cr.
I7-Middle Cr.
I8-Weitas Creek
I9-Windy Cr.
J1-Death Cr.
J2-Fisher Cr.
J3-Trail Cr.
K1-Bill Cr.
K2-Fourth of July Creek
K3-Shot Cr.
L1-Cold Springs Cr.
L2-Cool Cr.



Proposed Critical Habitat (map key)

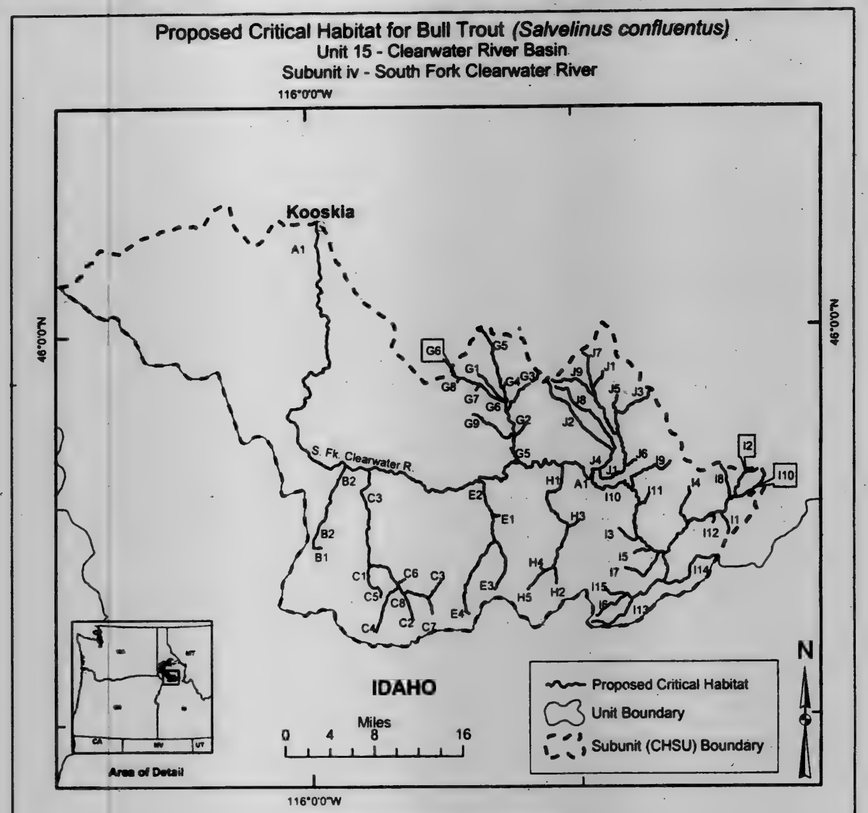
ii- North Fork Clearwater River CHSU

A5-North Fork Clearwater River
M1-Barnard Cr.
M2-Bear Creek
M3-Junction Cr.
M4-Kelly Creek
M5-Kid Lake Creek
M6-Middle Fork Kelly Creek
M7-North Fork Kelly Creek
M8-South Fork Kelly Creek
N1-Little Moose Cr.
N3-Moose Creek
N3-Osier Cr.
N4-Pollock Cr.
N5-Ruby Cr.
N6-Sugar Cr.
N7-Swamp Cr.
O1-Cayuse Cr.
O2-Gravey Cr.
O3-Howard Cr.
O4-Mae Cr.
O5-Marten Cr.
O6-Mink Cr.
O7-Monroe Cr.
O8-Silver Cr.
O9-Toboggan Cr.
O10-Weasel Cr.
P1-Bostonian Cr.
P2-Boundary Cr.
P3-Chamberlain Cr.
P4-Deception Gulch
P5-Elizabeth Cr.
P6-Goose Cr.
P7-Graves Creek
P8-Hidden Cr.
P9-Lake Creek
P10-Long Creek
P11-Meadow Cr.
P12-Niagra Gulch
P13-Pete Ott Cr.
P14-Placer Cr.
P15-Rawhide Cr.
P16-Short Cr.
P17-Slate Cr.
P18-UNNAMED - off Long Creek
P19-Vanderbilt Gulch

iii-Fish Lake CHSU

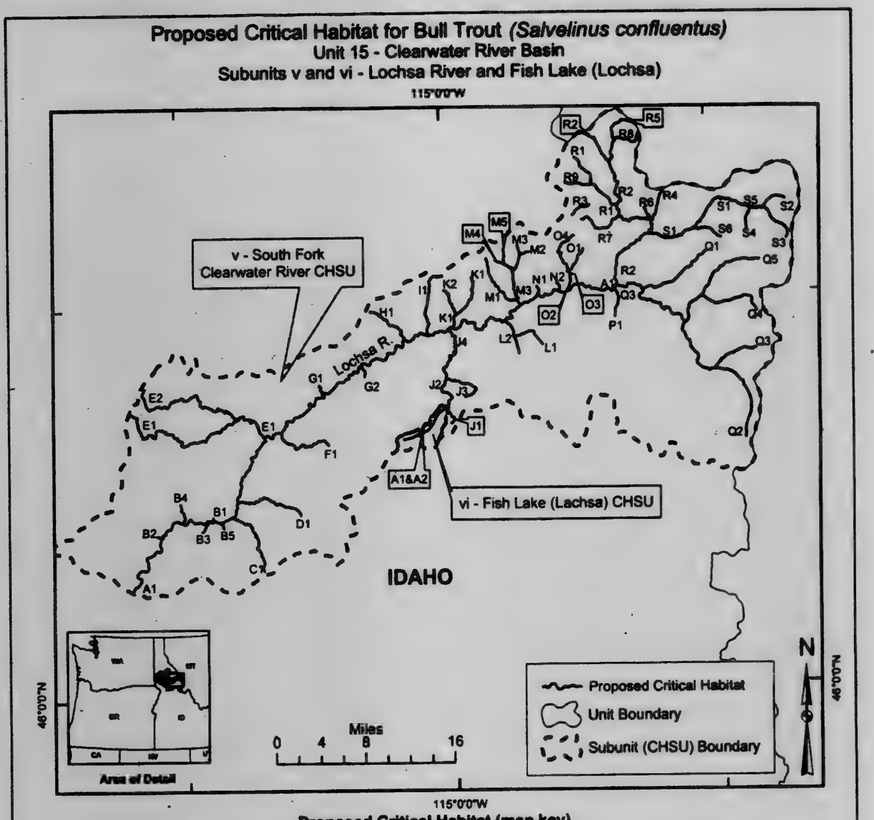
A1-Fish Lake
A2-Lake Creek

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Proposed Critical Habitat (map key)

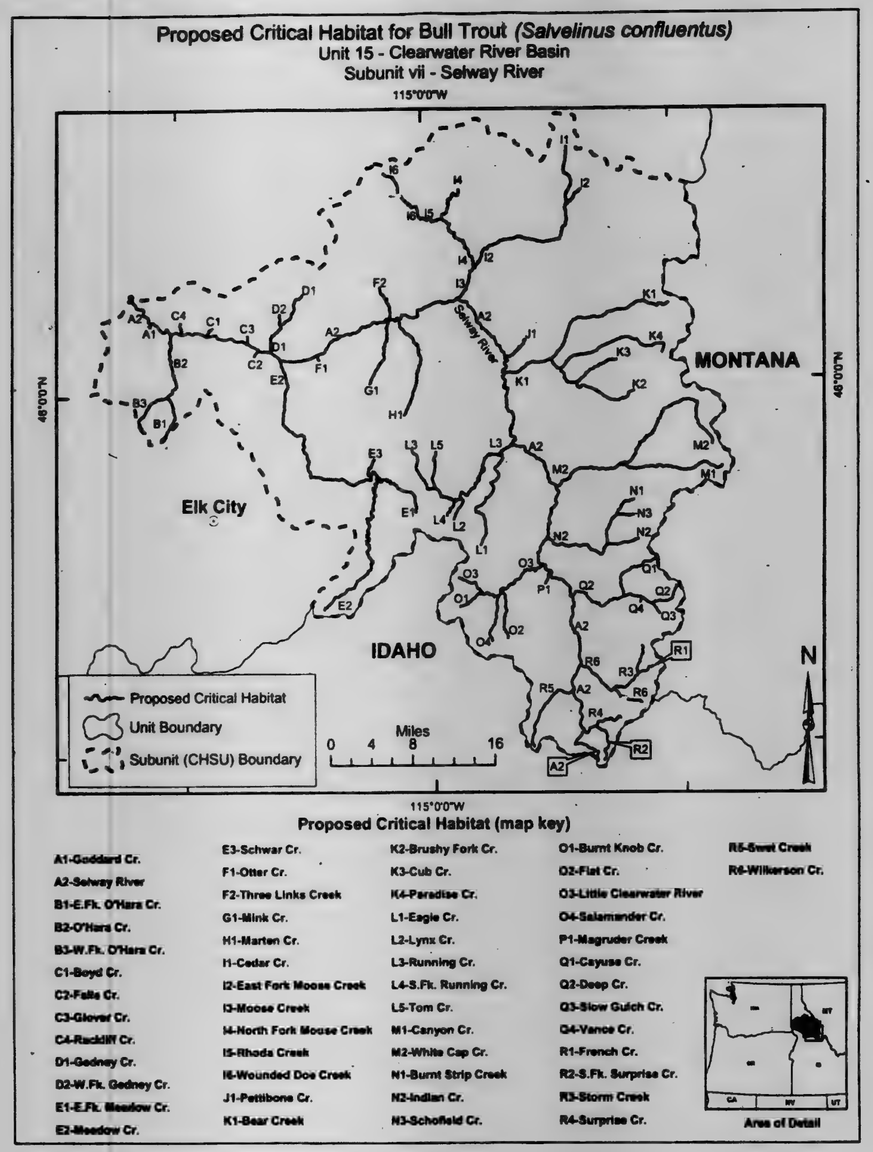
A1-South Fork Clearwater River
B1-Merton Creek
B2-Mill Creek
C1-Gospel Creek
C2-Hagen Cr.
C3-Johns Creek
C4-Moores Creek
C5-Moores Lake Creek
C6-Open Creek
C7-Taylor Cr.
C8-Twin Lakes Cr.
D1-Silver Cr.
D2-Twentymile Cr.
D3-Wing Cr.
E1-Sixmile Cr.
E2-Tenmile Cr.
E3-Williams Cr.
E4-Wiseboy Cr.
F1-Buckhorn Cr.
G1-Baldy Cr.
G2-Bear Creek
G3-Beaver Creek
G4-Mule Creek
G5-Newsome Creek
G6-Pilot Creek
G7-UNNAMED 1 - off Pilot Creek
G8-UNNAMED 2 - off Pilot Creek
G9-West Fork Newsome Creek
H1-Crooked River
H2-East Fork Crooked River
H3-Relief Cr.
H4-UNNAMED - off West Fork Crooked River
H5-West Fork Crooked River
I1-Baston Cr.
I2-Bridge Cr.
I3-Dawson Cr.
I4-Ditch Cr.
I5-Little Moose Cr.
I6-Middle Fork. Rad R.
I7-Moose Butte Cr.
I8-Ottaraon Cr.
I9-Red Horse Cr.
I10-Red River
I11-Siegel Cr.
I12-Soda Cr.
I13-South Fork Red River
I14-Trapper Cr.
I15-West Fork Red R.
J1-American R.
J2-Big Elk Cr.
J3-E.Fk. American R.
J4-Elk Cr.
J5-Flint Cr.
J6-Kirks Fk. American R.
J7-Lick Cr.
J8-Little Elk Cr.
J9-W.Fk. American R.



Proposed Critical Habitat (map key)

v - South Fork Clearwater River CHSU
A1-Lochsa River
B1-Bimerick Cr.
B2-Canyon Cr.
B3-Coolwater Cr.
B4-Deadman Cr.
B5-Fire Cr.
C1-Split Cr.
D1-Old Man Cr.
E1-Fish Creek
E2-Hungery Creek
F1-Boulder Cr.
G1-Bald Mountain Cr.
G2-Stanley Cr.
H1-Indian Grave Cr.
I1-Weir Cr.
J1-California Creek
J2-Fish Lake Creek
J3-Freezeout Cr.
J4-Lake Creek
K1-Postoffice Creek
K2-West Fork Postoffice Creek
L1-Cooperation Cr.
L2-Warm Springs Cr.
M1-Doe Cr.
M2-E.Fk. Fishing Cr.
M3-Fishing Cr.
M4-Spring Cr.
M5-W.Fk. Fishing Cr.
N1-Badger Cr.
N2-Wendover Cr.
O1-East Fork Legendary Bear Creek
O2-Legendary Bear Creek
O3-Parachute Cr.
O4-West Fork Legendary Bear Creek
P1-Walton Cr.
Q1-Beaver Creek
Q2-Big Flat Cr.
Q3-Colt Killed Creek
Q4-Maud Cr.
Q5-Storm Creek
R1-Boulder Cr.
R2-Crooked Fork
R3-Fox Cr.
R4-Haskell Cr.
R5-Hopeful Cr.
R6-Rock Cr.
R7-Shotgun Cr.
R8-UNNAMED - off Hopeful Creek
R9-Williams Lake Cr.
S1-Brushy Fork
S2-N.Fk. Spruce Cr.
S3-S.Fk. Spruce Cr.
S4-Shoot Cr.
S5-Spruce Cr.
S6-Twin Creek
vi - Lochsa River CHSU
A1-Fish Lake
A2-Fish Lake Creek

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BILLING CODE 4310-55-C

(20) Unit 16—Salmon River Basin.

(i) Critical Habitat Subunit—Little-Lower Salmon.

(A) Salmon River from a lower point located at 45.857 degrees latitude, and −116.794 degrees longitude to an upper point located at 45.425 degrees latitude, and −116.03 degrees longitude.

(B) Deadhorse Creek from a lower point located at 45.613 degrees latitude, and −116.066 degrees longitude to an upper point located at 45.575 degrees latitude, and −116.144 degrees longitude. Little Slate Creek from a lower point located at 45.62 degrees latitude, and −116.066 degrees longitude to an upper point located at 45.523 degrees latitude, and −116.092 degrees longitude. Slate Creek from a lower point located at 45.64 degrees latitude, and −116.284 degrees longitude to an upper point located at 45.625 degrees latitude, and −116.054 degrees longitude. Van Buren Creek from a lower point located at 45.533 degrees latitude, and −116.082 degrees longitude to an upper point located at 45.536 degrees latitude, and −116.168 degrees longitude. Willow Creek from a lower point located at 45.638 degrees latitude, and −116.109 degrees longitude to an upper point located at 45.65 degrees latitude, and −116.088 degrees longitude.

(C) East Fork John Day Creek from a lower point located at 45.573 degrees latitude, and −116.229 degrees longitude to an upper point located at 45.577 degrees latitude, and −116.153 degrees longitude. John Day Creek from a lower point located at 45.586 degrees latitude, and −116.295 degrees longitude to an upper point located at 45.521 degrees latitude, and −116.195 degrees longitude.

(D) Little Salmon River from a lower point located at 45.417 degrees latitude, and −116.313 degrees longitude to an upper point located at 45.138 degrees latitude, and −116.282 degrees longitude.

(E) Granite Fork Lake Fork Rapid River from a lower point located at 45.187 degrees latitude, and −116.517 degrees longitude to an upper point located at 45.151 degrees latitude, and −116.552 degrees longitude. Lake Fork Rapid River from a lower point located at 45.187 degrees latitude, and −116.482 degrees longitude to an upper point located at 45.19 degrees latitude, and −116.557 degrees longitude. Rapid River from a lower point located at 45.375 degrees latitude, and −116.355 degrees longitude to an upper point located at 45.114 degrees latitude, and −116.506 degrees longitude. West Fork Rapid River from a lower point located at 45.307 degrees latitude, and −116.419 degrees longitude to an upper point located at 45.23 degrees latitude, and −116.537 degrees longitude.

(F) Boulder Creek from a lower point located at 45.204 degrees latitude, and −116.31 degrees longitude to an upper point located at 45.129 degrees latitude, and −116.475 degrees longitude. Yellow Jacket Creek from a lower point located at 45.137 degrees latitude, and −116.412 degrees longitude to an upper point located at 45.146 degrees latitude, and −116.444 degrees longitude.

(G) Hard Creek from a lower point located at 45.183 degrees latitude, and −116.283 degrees longitude to an upper point located at 45.125 degrees latitude, and −116.239 degrees longitude. Hazard Creek from a lower point located at 45.184 degrees latitude, and −116.3 degrees longitude to an upper point located at 45.222 degrees latitude, and −116.139 degrees longitude.

(H) Lake Creek from a lower point located at 45.4 degrees latitude, and −116.212 degrees longitude to an upper point located at 45.294 degrees latitude, and −116.219 degrees longitude.

(I) Partridge Creek from a lower point located at 45.408 degrees latitude, and −116.126 degrees longitude to an upper point located at 45.288 degrees latitude, and −116.217 degrees longitude.

(J) Elkhorn Creek from a lower point located at 45.404 degrees latitude, and −116.094 degrees longitude to an upper point located at 45.27 degrees latitude, and −116.121 degrees longitude.

(K) French Creek from a lower point located at 45.425 degrees latitude, and −116.03 degrees longitude to an upper point located at 45.158 degrees latitude, and −116.084 degrees longitude. North Creek from a lower point located at 45.286 degrees latitude, and −116.044 degrees longitude to an upper point located at 45.259 degrees latitude, and −115.988 degrees longitude.

(ii) Critical Habitat Subunit—Middle Salmon—Chamberlain.

(A) Salmon River from a lower point located at 45.425 degrees latitude, and −116.03 degrees longitude to an upper point located at 45.454 degrees latitude, and −114.931 degrees longitude.

(B) East Fork Fall Creek from a lower point located at 45.415 degrees latitude, and −115.976 degrees longitude to an upper point located at 45.36 degrees latitude, and −115.963 degrees longitude. Fall Creek from a lower point located at 45.433 degrees latitude, and −115.983 degrees longitude to an upper point located at 45.331 degrees latitude, and −115.995 degrees longitude.

(C) Wind River from a lower point located at 45.455 degrees latitude, and −115.941 degrees longitude to an upper point located at 45.605 degrees latitude, and −115.917 degrees longitude.

(D) Sheep Creek from a lower point located at 45.468 degrees latitude, and −115.81 degrees longitude to an upper point located at 45.614 degrees latitude, and −115.696 degrees longitude.

(E) California Creek from a lower point located at 45.448 degrees latitude, and −115.759 degrees longitude to an upper point located at 45.341 degrees latitude, and −115.85 degrees longitude.

(F) Crooked Creek from a lower point located at 45.434 degrees latitude, and −115.666 degrees longitude to an upper point located at 45.612 degrees latitude, and −115.438 degrees longitude. Lake Creek from a lower point located at 45.514 degrees latitude, and −115.574 degrees longitude to an upper point located at 45.616 degrees latitude, and −115.686 degrees longitude.

(G) Guard Creek from a lower point located at 45.293 degrees latitude, and −115.695 degrees longitude to an upper point located at 45.309 degrees latitude, and −115.658 degrees longitude. Mayflower Creek from a lower point located at 45.248 degrees latitude, and −115.653 degrees longitude to an upper point located at 45.259 degrees latitude, and −115.601 degrees longitude. Schissler Creek from a lower point located at 45.328 degrees latitude, and −115.707 degrees longitude to an upper point located at 45.321 degrees latitude, and −115.779 degrees longitude. Slaughter Creek from a lower point located at 45.261 degrees latitude, and −115.672 degrees longitude to an upper point located at 45.297 degrees latitude, and −115.609 degrees longitude. Warren Creek from a lower point located at 45.397 degrees latitude, and −115.592 degrees longitude to an upper point located at 45.22 degrees latitude, and −115.677 degrees longitude. Webfoot Creek from a lower point located at 45.237 degrees latitude, and −115.675 degrees longitude to an upper point located at 45.217 degrees latitude, and −115.695 degrees longitude.

(H) Rhett Creek from a lower point located at 45.472 degrees latitude, and −115.393 degrees longitude to an upper point located at 45.476 degrees latitude, and −115.407 degrees longitude.

(I) Little Mallard Creek from a lower point located at 45.529 degrees latitude, and −115.303 degrees longitude to an upper point located at 45.533 degrees latitude, and −115.311 degrees longitude.

(J) Big Mallard Creek from a lower point located at 45.537 degrees latitude, and −115.269 degrees longitude to an upper point located at 45.543 degrees latitude, and −115.279 degrees longitude.

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(K) Bargamin Creek from a lower point located at 45.567 degrees latitude, and −115.191 degrees longitude to an upper point located at 45.771 degrees latitude, and −114.934 degrees longitude.

(L) Sabe Creek from a lower point located at 45.507 degrees latitude, and −115.024 degrees longitude to an upper point located at 45.681 degrees latitude, and −114.948 degrees longitude.

(M) Big Harrington Creek from a lower point located at 45.473 degrees latitude, and −114.963 degrees longitude to an upper point located at 45.518 degrees latitude, and −114.823 degrees longitude.

(N) Chamberlain Creek from a lower point located at 45.454 degrees latitude, and −114.931 degrees longitude to an upper point located at 45.336 degrees latitude, and −115.329 degrees longitude. Game Creek from a lower point located at 45.398 degrees latitude, and −115.192 degrees longitude to an upper point located at 45.404 degrees latitude, and −115.274 degrees longitude. McCalla Creek from a lower point located at 45.414 degrees latitude, and −114.981 degrees longitude to an upper point located at 45.255 degrees latitude, and −115.127 degrees longitude. Moose Creek from a lower point located at 45.356 degrees latitude, and −115.249 degrees longitude to an upper point located at 45.283 degrees latitude, and −115.292 degrees longitude. Rim Creek from a lower point located at 45.336 degrees latitude, and −115.329 degrees longitude to an upper point located at 45.281 degrees latitude, and −115.382 degrees longitude. South Fork Chamberlain Creek from a lower point located at 45.336 degrees latitude, and −115.329 degrees longitude to an upper point located at 45.282 degrees latitude, and −115.351 degrees longitude. West Fork Chamberlain Creek from a lower point located at 45.383 degrees latitude, and −115.166 degrees longitude to an upper point located at 45.463 degrees latitude, and −115.184 degrees longitude. Whimstick Creek from a lower point located at 45.378 degrees latitude, and −114.999 degrees longitude to an upper point located at 45.241 degrees latitude, and −115.053 degrees longitude.

(iii) Critical Habitat Subunit—South Fork Salmon River.

(A) South Fork Salmon River from a lower point located at 45.378 degrees latitude, and −115.512 degrees longitude to an upper point located at 44.494 degrees latitude, and −115.735 degrees longitude.

(B) Pony Creek from a lower point located at 45.187 degrees latitude, and −115.562 degrees longitude to an upper point located at 45.179 degrees latitude, and −115.703 degrees longitude.

(C) Elk Creek from a lower point located at 45.156 degrees latitude, and −115.585 degrees longitude to an upper point located at 45.157 degrees latitude, and −115.431 degrees longitude. South Fork Elk Creek from a lower point located at 45.095 degrees latitude, and −115.513 degrees longitude to an upper point located at 45.069 degrees latitude, and −115.482 degrees longitude. West Fork Elk Creek from a lower point located at 45.147 degrees latitude, and −115.511 degrees longitude to an upper point located at 45.061 degrees latitude, and −115.519 degrees longitude.

(D) Flat Creek from a lower point located at 45.271 degrees latitude, and −115.836 degrees longitude to an upper point located at 45.302 degrees latitude, and −115.879 degrees longitude. Grouse Creek from a lower point located at 45.265 degrees latitude, and −115.83 degrees longitude to an upper point located at 45.317 degrees latitude, and −115.816 degrees longitude. Hum Creek from a lower point located at 45.049 degrees latitude, and −115.897 degrees longitude to an upper point located at 45.07 degrees latitude, and −115.903 degrees longitude. Josephine Creek from a lower point located at 45.224 degrees latitude, and −115.929 degrees longitude to an upper point located at 45.225 degrees latitude, and −115.97 degrees longitude. Lake Creek from a lower point located at 45.256 degrees latitude, and −115.896 degrees longitude to an upper point located at 45.374 degrees latitude, and −115.867 degrees longitude. Lick Creek from a lower point located at 45.062 degrees latitude, and −115.761 degrees longitude to an upper point located at 45.058 degrees latitude, and −115.932 degrees longitude. Loon Creek from a lower point located at 45.17 degrees latitude, and −115.808 degrees longitude to an upper point located at 45.082 degrees latitude, and −115.916 degrees longitude. Nethker Creek from a lower point located at 45.265 degrees latitude, and −115.905 degrees longitude to an upper point located at 45.25 degrees latitude, and −115.971 degrees longitude. Ruby Creek from a lower point located at 45.258 degrees latitude, and −115.878 degrees longitude to an upper point located at 45.19 degrees latitude, and −115.914 degrees longitude. Sand Creek from a lower point located at 45.307 degrees latitude, and −115.82 degrees longitude to an upper point located at 45.327 degrees latitude, and −115.862 degrees longitude. Secesh River from a lower point located at 45.025 degrees latitude, and −115.706 degrees longitude to an upper point located at 45.256 degrees latitude, and −115.896 degrees longitude. Summit Creek from a lower point located at 45.256 degrees latitude, and −115.896 degrees longitude to an upper point located at 45.172 degrees latitude, and −115.915 degrees longitude. Threemile Creek from a lower point located at 45.299 degrees latitude, and −115.929 degrees longitude to an upper point located at 45.334 degrees latitude, and −115.891 degrees longitude. Victor Creek from a lower point located at 45.183 degrees latitude, and −115.821 degrees longitude to an upper point located at 45.147 degrees latitude, and −115.936 degrees longitude. Willow Basket Creek from a lower point located at 45.186 degrees latitude, and −115.831 degrees longitude to an upper point located at 45.192 degrees latitude, and −115.894 degrees longitude. Willow Creek from a lower point located at 45.331 degrees latitude, and −115.949 degrees longitude to an upper point located at 45.356 degrees latitude, and −115.857 degrees longitude.

(E) Bum Creek from a lower point located at 44.995 degrees latitude, and −115.318 degrees longitude to an upper point located at 45.036 degrees latitude, and −115.286 degrees longitude. Cane Creek from a lower point located at 44.953 degrees latitude, and −115.291 degrees longitude to an upper point located at 44.978 degrees latitude, and −115.261 degrees longitude. Cinnabar Creek from a lower point located at 44.952 degrees latitude, and −115.293 degrees longitude to an upper point located at 44.912 degrees latitude, and −115.266 degrees longitude. East Fork South Fork Salmon River from a lower point located at 45.015 degrees latitude, and −115.713 degrees longitude to an upper point located at 44.886 degrees latitude, and −115.256 degrees longitude. Meadow Creek from a lower point located at 44.902 degrees latitude, and −115.327 degrees longitude to an upper point located at 44.864 degrees latitude, and −115.372 degrees longitude. Missouri Creek from a lower point located at 45.007 degrees latitude, and −115.394 degrees longitude to an upper point located at 45.028 degrees latitude, and −115.351 degrees longitude. Profile Creek from a lower point located at 44.958 degrees latitude, and −115.428 degrees longitude to an upper point located at 45.053 degrees latitude, and −115.416 degrees longitude. Quartz Creek from a lower point located at 44.97 degrees latitude, and −115.477 degrees longitude to an upper point located at 45.048 degrees latitude, and −115.496 degrees

longitude. Salt Creek from a lower point located at 44.95 degrees latitude, and −115.352 degrees longitude to an upper point located at 44.973 degrees latitude, and −115.324 degrees longitude. Sugar Creek from a lower point located at 44.936 degrees latitude, and −115.336 degrees longitude to an upper point located at 44.975 degrees latitude, and −115.245 degrees longitude. Tamarack Creek from a lower point located at 44.959 degrees latitude, and −115.389 degrees longitude to an upper point located at 44.984 degrees latitude, and −115.27 degrees longitude.

(F) Buck Creek from a lower point located at 44.792 degrees latitude, and −115.518 degrees longitude to an upper point located at 44.751 degrees latitude, and −115.479 degrees longitude. Burntlog Creek from a lower point located at 44.803 degrees latitude, and −115.518 degrees longitude to an upper point located at 44.718 degrees latitude, and −115.419 degrees longitude. East Fork Burntlog Creek from a lower point located at 44.737 degrees latitude, and −115.501 degrees longitude to an upper point located at 44.73 degrees latitude, and −115.426 degrees longitude. Johnson Creek from a lower point located at 44.963 degrees latitude, and −115.501 degrees longitude to an upper point located at 44.55 degrees latitude, and −115.59 degrees longitude. Riordan Creek from a lower point located at 44.907 degrees latitude, and −115.485 degrees longitude to an upper point located at 44.808 degrees latitude, and −115.392 degrees longitude. Riordan Lake centered at 44.85 degrees latitude, and −115.438 degrees longitude. Trapper Creek from a lower point located at 44.832 degrees latitude, and −115.513 degrees longitude to an upper point located at 44.774 degrees latitude, and −115.404 degrees longitude. Unnamed creek off East Fork Burntlog Creek from a lower point located at 44.74 degrees latitude, and −115.458 degrees longitude to an upper point located at 44.764 degrees latitude, and −115.44 degrees longitude. Unnamed creek off Trapper Creek from a lower point located at 44.793 degrees latitude, and −115.464 degrees longitude to an upper point located at 44.772 degrees latitude, and −115.433 degrees longitude.

(G) Bear Creek from a lower point located at 44.623 degrees latitude, and −115.69 degrees longitude to an upper point located at 44.607 degrees latitude, and −115.6 degrees longitude. Blackmare Creek from a lower point located at 44.823 degrees latitude, and −115.703 degrees longitude to an upper point located at 44.809 degrees latitude, and −115.795 degrees longitude. Buckhorn Creek from a lower point located at 44.922 degrees latitude, and −115.736 degrees longitude to an upper point located at 44.853 degrees latitude, and −115.886 degrees longitude. Cabin Creek from a lower point located at 44.667 degrees latitude, and −115.685 degrees longitude to an upper point located at 44.703 degrees latitude, and −115.647 degrees longitude. Cougar Creek from a lower point located at 44.889 degrees latitude, and −115.716 degrees longitude to an upper point located at 44.81 degrees latitude, and −115.804 degrees longitude. Curtis Creek from a lower point located at 44.652 degrees latitude, and −115.703 degrees longitude to an upper point located at 44.562 degrees latitude, and −115.759 degrees longitude. Fitsum Creek from a lower point located at 44.999 degrees latitude, and −115.722 degrees longitude to an upper point located at 45 degrees latitude, and −115.762 degrees longitude. Fourmile Creek from a lower point located at 44.857 degrees latitude, and −115.695 degrees longitude to an upper point located at 44.798 degrees latitude, and −115.621 degrees longitude. Little Buckhorn Creek from a lower point located at 44.914 degrees latitude, and −115.75 degrees longitude to an upper point located at 44.865 degrees latitude, and −115.8 degrees longitude. Lodgepole Creek from a lower point located at 44.593 degrees latitude, and −115.686 degrees longitude to an upper point located at 44.576 degrees latitude, and −115.61 degrees longitude. Mormon Creek from a lower point located at 44.524 degrees latitude, and −115.695 degrees longitude to an upper point located at 44.499 degrees latitude, and −115.654 degrees longitude. North Fork Fitsum Creek from a lower point located at 44.999 degrees latitude, and −115.759 degrees longitude to an upper point located at 44.986 degrees latitude, and −115.883 degrees longitude. Reeves Creek from a lower point located at 44.668 degrees latitude, and −115.666 degrees longitude to an upper point located at 44.686 degrees latitude, and −115.618 degrees longitude. Rice Creek from a lower point located at 44.575 degrees latitude, and −115.685 degrees longitude to an upper point located at 44.51 degrees latitude, and −115.644 degrees longitude. Six-Bit Creek from a lower point located at 44.686 degrees latitude, and −115.706 degrees longitude to an upper point located at 44.646 degrees latitude, and −115.808 degrees longitude. South Fork Blackmare Creek from a lower point located at 44.809 degrees latitude, and −115.747 degrees longitude to an upper point located at 44.77 degrees latitude, and −115.803 degrees longitude. South Fork Buckhorn Creek from a lower point located at 44.89 degrees latitude, and −115.823 degrees longitude to an upper point located at 44.84 degrees latitude, and −115.823 degrees longitude. Trail Creek from a lower point located at 44.635 degrees latitude, and −115.717 degrees longitude to an upper point located at 44.628 degrees latitude, and −115.79 degrees longitude. Tyndall Creek from a lower point located at 44.58 degrees latitude, and −115.684 degrees longitude to an upper point located at 44.562 degrees latitude, and −115.748 degrees longitude. Unnamed creek off Rice Creek from a lower point located at 44.551 degrees latitude, and −115.655 degrees longitude to an upper point located at 44.561 degrees latitude, and −115.643 degrees longitude. Unnamed creek off South Fork Salmon River from a lower point located at 44.556 degrees latitude, and −115.682 degrees longitude to an upper point located at 44.552 degrees latitude, and −115.706 degrees longitude. Unnamed creek off Trail Creek from a lower point located at 44.626 degrees latitude, and −115.745 degrees longitude to an upper point located at 44.599 degrees latitude, and −115.802 degrees longitude. Unnamed creek 1 off Curtis Creek from a lower point located at 44.61 degrees latitude, and −115.745 degrees longitude to an upper point located at 44.586 degrees latitude, and −115.803 degrees longitude. Unnamed creek 2 off Curtis Creek from a lower point located at 44.595 degrees latitude, and −115.752 degrees longitude to an upper point located at 44.568 degrees latitude, and −115.793 degrees longitude. Warm Lake centered at 44.645 degrees latitude, and −115.669 degrees longitude. Warm Lake Creek from a lower point located at 44.666 degrees latitude, and −115.698 degrees longitude to an upper point located at 44.653 degrees latitude, and −115.661 degrees longitude.

(iv) Critical Habitat Subunit—Middle Fork Salmon River.

(A) Middle Fork Salmon River from a lower point located at 45.297 degrees latitude, and −114.591 degrees longitude to an upper point located at 44.449 degrees latitude, and −115.23 degrees longitude.

(B) Beaver Creek from a lower point located at 45.163 degrees latitude, and −115.242 degrees longitude to an upper point located at 45.242 degrees latitude, and −115.314 degrees longitude. Belvidere Creek from a lower point located at 45.07 degrees latitude, and −115.364 degrees longitude to an upper point located at 45.041 degrees latitude, and −115.386 degrees longitude. Big

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Creek from a lower point located at 45.095 degrees latitude, and –114.732 degrees longitude to an upper point located at 45.06 degrees latitude, and –115.451 degrees longitude. Big Ramey Creek from a lower point located at 45.177 degrees latitude, and –115.159 degrees longitude to an upper point located at 45.279 degrees latitude, and –115.243 degrees longitude. Boulder Creek from a lower point located at 45.242 degrees latitude, and –115.314 degrees longitude to an upper point located at 45.277 degrees latitude, and –115.34 degrees longitude. Cabin Creek from a lower point located at 45.127 degrees latitude, and –114.935 degrees longitude to an upper point located at 45.195 degrees latitude, and –114.837 degrees longitude. Cave Creek from a lower point located at 45.132 degrees latitude, and –114.955 degrees longitude to an upper point located at 45.24 degrees latitude, and –114.846 degrees longitude. Crooked Creek from a lower point located at 45.163 degrees latitude, and –115.128 degrees longitude to an upper point located at 45.195 degrees latitude, and –115.031 degrees longitude. East Fork Big Ramey Creek from a lower point located at 45.214 degrees latitude, and –115.187 degrees longitude to an upper point located at 45.245 degrees latitude, and –115.136 degrees longitude. Hand Creek from a lower point located at 45.228 degrees latitude, and –115.3 degrees longitude to an upper point located at 45.287 degrees latitude, and –115.245 degrees longitude. Logan Creek from a lower point located at 45.118 degrees latitude, and –115.319 degrees longitude to an upper point located at 45.072 degrees latitude, and –115.455 degrees longitude. Middle Fork Smith Creek from a lower point located at 45.17 degrees latitude, and –115.38 degrees longitude to an upper point located at 45.157 degrees latitude, and –115.412 degrees longitude. Monumental Creek from a lower point located at 45.16 degrees latitude, and –115.129 degrees longitude to an upper point located at 44.904 degrees latitude, and –115.262 degrees longitude. Rush Creek from a lower point located at 45.105 degrees latitude, and –114.861 degrees longitude to an upper point located at 44.933 degrees latitude, and –114.99 degrees longitude. Smith Creek from a lower point located at 45.153 degrees latitude, and –115.297 degrees longitude to an upper point located at 45.17 degrees latitude, and –115.38 degrees longitude. Snowslide Creek from a lower point located at 45.098 degrees latitude, and –115.156 degrees longitude to an upper point located at 45.045 degrees latitude, and –115.281 degrees longitude. South Fork Rush Creek from a lower point located at 45.014 degrees latitude, and –114.978 degrees longitude to an upper point located at 44.965 degrees latitude, and –114.928 degrees longitude. South Fork Smith Creek from a lower point located at 45.17 degrees latitude, and –115.38 degrees longitude to an upper point located at 45.149 degrees latitude, and –115.419 degrees longitude. West Fork Monumental Creek from a lower point located at 45.005 degrees latitude, and –115.139 degrees longitude to an upper point located at 45.034 degrees latitude, and –115.275 degrees longitude.

(C) Wilson Creek from a lower point located at 45.033 degrees latitude, and −114.723 degrees longitude to an upper point located at 45.143 degrees latitude, and −114.589 degrees longitude.

(D) Soldier Creek from a lower point located at 45.029 degrees latitude, and −114.726 degrees longitude to an upper point located at 45.007 degrees latitude, and −114.881 degrees longitude.

(E) Brush Creek from a lower point located at 44.955 degrees latitude, and −114.733 degrees longitude to an upper point located at 44.965 degrees latitude, and −114.859 degrees longitude.

(F) Sheep Creek from a lower point located at 44.943 degrees latitude, and −114.726 degrees longitude to an upper point located at 44.915 degrees latitude, and −114.903 degrees longitude.

(G) Arrastra Creek from a lower point located at 44.868 degrees latitude, and −114.425 degrees longitude to an upper point located at 44.841 degrees latitude, and −114.35 degrees longitude. Birdseye Creek from a lower point located at 44.927 degrees latitude, and −114.384 degrees longitude to an upper point located at 44.938 degrees latitude, and −114.456 degrees longitude. Blue Fork Silver Creek from a lower point located at 44.883 degrees latitude, and −114.354 degrees longitude to an upper point located at 44.854 degrees latitude, and −114.359 degrees longitude. Camas Creek from a lower point located at 44.892 degrees latitude, and −114.722 degrees longitude to an upper point located at 44.708 degrees latitude, and −114.387 degrees longitude. Castle Creek from a lower point located at 44.801 degrees latitude, and −114.471 degrees longitude to an upper point located at 44.826 degrees latitude, and −114.312 degrees longitude. Fly Creek from a lower point located at 44.705 degrees latitude, and −114.496 degrees longitude to an upper point located at 44.67 degrees latitude, and −114.55 degrees longitude. Furnace Creek from a lower point located at 44.767 degrees latitude, and −114.486 degrees longitude to an upper point located at 44.789 degrees latitude, and −114.343 degrees longitude. Hoodoo Creek from a lower point located at 44.953 degrees latitude, and −114.581 degrees longitude to an upper point located at 45.06 degrees latitude, and −114.552 degrees longitude. J Fell Creek from a lower point located at 44.684 degrees latitude, and −114.458 degrees longitude to an upper point located at 44.615 degrees latitude, and −114.461 degrees longitude. Lake Creek from a lower point located at 44.948 degrees latitude, and −114.591 degrees longitude to an upper point located at 44.981 degrees latitude, and −114.645 degrees longitude. Little Jacket Creek from a lower point located at 44.953 degrees latitude, and −114.566 degrees longitude to an upper point located at 44.926 degrees latitude, and −114.478 degrees longitude. Pole Creek from a lower point located at 44.794 degrees latitude, and −114.594 degrees longitude to an upper point located at 44.763 degrees latitude, and −114.674 degrees longitude. Shovel Creek from a lower point located at 45 degrees latitude, and −114.478 degrees longitude to an upper point located at 45.034 degrees latitude, and −114.443 degrees longitude. Silver Creek from a lower point located at 44.83 degrees latitude, and −114.501 degrees longitude to an upper point located at 44.852 degrees latitude, and −114.343 degrees longitude. South Fork Camas Creek from a lower point located at 44.721 degrees latitude, and −114.498 degrees longitude to an upper point located at 44.73 degrees latitude, and −114.64 degrees longitude. West Fork Camas Creek from a lower point located at 44.831 degrees latitude, and −114.504 degrees longitude to an upper point located at 44.819 degrees latitude, and −114.654 degrees longitude. White Goat Creek from a lower point located at 44.741 degrees latitude, and −114.488 degrees longitude to an upper point located at 44.726 degrees latitude, and −114.415 degrees longitude. Woodtick Creek from a lower point located at 44.884 degrees latitude, and −114.625 degrees longitude to an upper point located at 44.809 degrees latitude, and −114.679 degrees longitude. Yellowjacket Creek from a lower point located at 44.892 degrees latitude, and −114.644 degrees longitude to an upper point located at 45.103 degrees latitude, and −114.535 degrees longitude.

(H) Norton Creek from a lower point located at 44.827 degrees latitude, and −114.794 degrees longitude to an upper point located at 44.89 degrees latitude, and −114.901 degrees longitude.

(I) Bear Creek from a lower point located at 44.742 degrees latitude, and −114.817 degrees longitude to an upper point located at 44.735 degrees latitude, and −114.861 degrees longitude. Cabin Creek from a lower point located at 44.691 degrees latitude, and −114.753 degrees longitude to an upper point located at 44.76 degrees latitude, and −114.692 degrees longitude. Cache Creek from a lower point located at 44.801 degrees latitude, and −114.805 degrees longitude to an upper point located at 44.776 degrees latitude, and −114.687 degrees longitude. Canyon Creek from a lower point located at 44.568 degrees latitude, and −114.846 degrees longitude to an upper point located at 44.59 degrees latitude, and −114.871 degrees longitude. Cat Creek from a lower point located at 44.652 degrees latitude, and −114.628 degrees longitude to an upper point located at 44.633 degrees latitude, and −114.648 degrees longitude. Cold Spring Creek from a lower point located at 44.718 degrees latitude, and −114.799 degrees longitude to an upper point located at 44.682 degrees latitude, and −114.84 degrees longitude. Cottonwood Creek from a lower point located at 44.623 degrees latitude, and −114.76 degrees longitude to an upper point located at 44.593 degrees latitude, and −114.679 degrees longitude. Deer Creek from a lower point located at 44.548 degrees latitude, and −114.854 degrees longitude to an upper point located at 44.568 degrees latitude, and −114.881 degrees longitude. East Fork Mayfield Creek from a lower point located at 44.539 degrees latitude, and −114.797 degrees longitude to an upper point located at 44.48 degrees latitude, and −114.713 degrees longitude. Fir Creek from a lower point located at 44.656 degrees latitude, and −114.697 degrees longitude to an upper point located at 44.64 degrees latitude, and −114.685 degrees longitude. Indian Creek from a lower point located at 44.692 degrees latitude, and −114.754 degrees longitude to an upper point located at 44.672 degrees latitude, and −114.839 degrees longitude. Jack Creek from a lower point located at 44.696 degrees latitude, and −114.76 degrees longitude to an upper point located at 44.689 degrees latitude, and −114.792 degrees longitude. Loon Creek from a lower point located at 44.808 degrees latitude, and −114.811 degrees longitude to an upper point located at 44.444 degrees latitude, and −114.941 degrees longitude. Mahoney Creek from a lower point located at 44.638 degrees latitude, and −114.609 degrees longitude to an upper point located at 44.662 degrees latitude, and −114.567 degrees longitude. Mayfield Creek from a lower point located at 44.552 degrees latitude, and −114.849 degrees longitude to an upper point located at 44.539 degrees latitude, and −114.797 degrees longitude. McKee Creek from a lower point located at 44.591 degrees latitude, and −114.609 degrees longitude to an upper point located at 44.578 degrees latitude, and −114.649 degrees longitude. Nelson Creek from a lower point located at 44.54 degrees latitude, and −114.803 degrees longitude to an upper point located at 44.499 degrees latitude, and −114.804 degrees longitude. Parker Creek from a lower point located at 44.623 degrees latitude, and −114.596 degrees longitude to an upper point located at 44.637 degrees latitude, and −114.564 degrees longitude. Pioneer Creek from a lower point located at 44.522 degrees latitude, and −114.864 degrees longitude to an upper point located at 44.441 degrees latitude, and −114.894 degrees longitude. Rat Creek from a lower point located at 44.588 degrees latitude, and −114.825 degrees longitude to an upper point located at 44.577 degrees latitude, and −114.8 degrees longitude. Rock Creek from a lower point located at 44.674 degrees latitude, and −114.74 degrees longitude to an upper point located at 44.754 degrees latitude, and −114.67 degrees longitude. Rush Creek from a lower point located at 44.578 degrees latitude, and −114.613 degrees longitude to an upper point located at 44.555 degrees latitude, and −114.641 degrees longitude. Shell Creek from a lower point located at 44.613 degrees latitude, and −114.788 degrees longitude to an upper point located at 44.632 degrees latitude, and −114.813 degrees longitude. South Fork Cottonwood Creek from a lower point located at 44.621 degrees latitude, and −114.759 degrees longitude to an upper point located at 44.584 degrees latitude, and −114.765 degrees longitude. South Fork Warm Spring Creek from a lower point located at 44.578 degrees latitude, and −114.551 degrees longitude to an upper point located at 44.568 degrees latitude, and −114.542 degrees longitude. Trail Creek from a lower point located at 44.543 degrees latitude, and −114.858 degrees longitude to an upper point located at 44.506 degrees latitude, and −114.959 degrees longitude. Trapper Creek from a lower point located at 44.597 degrees latitude, and −114.602 degrees longitude to an upper point located at 44.544 degrees latitude, and −114.6 degrees longitude. Warm Spring Creek from a lower point located at 44.653 degrees latitude, and −114.736 degrees longitude to an upper point located at 44.609 degrees latitude, and −114.481 degrees longitude. West Fork Mayfield Creek from a lower point located at 44.539 degrees latitude, and −114.797 degrees longitude to an upper point located at 44.465 degrees latitude, and −114.731 degrees longitude. Wickiup Creek from a lower point located at 44.607 degrees latitude, and −114.597 degrees longitude to an upper point located at 44.598 degrees latitude, and −114.658 degrees longitude.

(J) Little Loon Creek from a lower point located at 44.731 degrees latitude, and −114.94 degrees longitude to an upper point located at 44.615 degrees latitude, and −114.963 degrees longitude. West Fork Little Loon Creek from a lower point located at 44.71 degrees latitude, and −114.934 degrees longitude to an upper point located at 44.666 degrees latitude, and −114.976 degrees longitude.

(K) Little Creek from a lower point located at 44.724 degrees latitude, and −114.997 degrees longitude to an upper point located at 44.695 degrees latitude, and −114.98 degrees longitude.

(L) East Fork Thomas Creek from a lower point located at 44.705 degrees latitude, and −115.027 degrees longitude to an upper point located at 44.668 degrees latitude, and −115.042 degrees longitude. Thomas Creek from a lower point located at 44.715 degrees latitude, and −115.011 degrees longitude to an upper point located at 44.705 degrees latitude, and −115.027 degrees longitude. West Fork Thomas Creek from a lower point located at 44.705 degrees latitude, and −115.027 degrees longitude to an upper point located at 44.682 degrees latitude, and −115.054 degrees longitude.

(M) Big Cottonwood Creek from a lower point located at 44.912 degrees latitude, and −115.082 degrees longitude to an upper point located at 44.879 degrees latitude, and −115.206 degrees longitude. Buck Creek from a lower point located at 44.896 degrees latitude, and −115.064 degrees longitude to an upper point located at 44.929 degrees latitude, and −115.002 degrees longitude. Dynamite Creek from a lower point located at 44.876 degrees latitude, and −115.057 degrees longitude to an upper point located at 44.871 degrees latitude, and −115.207 degrees longitude. Little Cottonwood Creek from a lower point located at 44.907 degrees latitude, and −115.073 degrees longitude to an upper point located at 44.942 degrees latitude, and −115.019 degrees longitude. Marble Creek from a lower point located at 44.743 degrees latitude, and −115.016 degrees longitude to an upper point

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located at 44.983 degrees latitude, and −115.079 degrees longitude. Trail Creek from a lower point located at 44.841 degrees latitude, and −115.008 degrees longitude to an upper point located at 44.952 degrees latitude, and −114.934 degrees longitude.

(N) Big Chief Creek from a lower point located at 44.838 degrees latitude, and −115.297 degrees longitude to an upper point located at 44.817 degrees latitude, and −115.368 degrees longitude. Cultus Creek from a lower point located at 44.813 degrees latitude, and −115.175 degrees longitude to an upper point located at 44.781 degrees latitude, and −115.21 degrees longitude. Indian Creek from a lower point located at 44.77 degrees latitude, and −115.089 degrees longitude to an upper point located at 44.799 degrees latitude, and −115.389 degrees longitude. Little Indian Creek from a lower point located at 44.842 degrees latitude, and −115.256 degrees longitude to an upper point located at 44.871 degrees latitude, and −115.218 degrees longitude. Middle Fork Indian Creek from a lower point located at 44.797 degrees latitude, and −115.133 degrees longitude to an upper point located at 44.856 degrees latitude, and −115.103 degrees longitude. Papoose Creek from a lower point located at 44.837 degrees latitude, and −115.245 degrees longitude to an upper point located at 44.796 degrees latitude, and −115.277 degrees longitude.

(O) Browning Creek from a lower point located at 44.759 degrees latitude, and −115.363 degrees longitude to an upper point located at 44.738 degrees latitude, and −115.406 degrees longitude. Forty-Five Creek from a lower point located at 44.718 degrees latitude, and −115.232 degrees longitude to an upper point located at 44.665 degrees latitude, and −115.308 degrees longitude. Little Pistol Creek from a lower point located at 44.721 degrees latitude, and −115.203 degrees longitude to an upper point located at 44.721 degrees latitude, and −115.404 degrees longitude. Luger Creek from a lower point located at 44.686 degrees latitude, and −115.357 degrees longitude to an upper point located at 44.618 degrees latitude, and −115.395 degrees longitude. Pistol Creek from a lower point located at 44.724 degrees latitude, and −115.149 degrees longitude to an upper point located at 44.644 degrees latitude, and −115.442 degrees longitude. Springfield Creek from a lower point located at 44.764 degrees latitude, and −115.312 degrees longitude to an upper point located at 44.789 degrees latitude, and −115.297 degrees longitude. Thirty-Eight Creek from a lower point located at 44.673 degrees latitude, and −115.395 degrees longitude to an upper point located at 44.713 degrees latitude, and −115.412 degrees longitude. West Fork Springfield Creek from a lower point located at 44.786 degrees latitude, and −115.32 degrees longitude to an upper point located at 44.78 degrees latitude, and −115.383 degrees longitude.

(P) Baldwin Creek from a lower point located at 44.541 degrees latitude, and −115.067 degrees longitude to an upper point located at 44.5 degrees latitude, and −115.105 degrees longitude. Duffield Creek from a lower point located at 44.551 degrees latitude, and −115.007 degrees longitude to an upper point located at 44.571 degrees latitude, and −114.93 degrees longitude. Float Creek from a lower point located at 44.571 degrees latitude, and −115.071 degrees longitude to an upper point located at 44.523 degrees latitude, and −115.178 degrees longitude. North Fork Sheep Creek from a lower point located at 44.649 degrees latitude, and −115.017 degrees longitude to an upper point located at 44.648 degrees latitude, and −114.963 degrees longitude. Rapid River from a lower point located at 44.68 degrees latitude, and −115.152 degrees longitude to an upper point located at 44.551 degrees latitude, and −115.007 degrees longitude. Seafoam Creek from a lower point located at 44.542 degrees latitude, and −115.064 degrees longitude to an upper point located at 44.518 degrees latitude, and −115.118 degrees longitude. Sheep Creek from a lower point located at 44.647 degrees latitude, and −115.057 degrees longitude to an upper point located at 44.649 degrees latitude, and −115.017 degrees longitude. South Fork Sheep Creek from a lower point located at 44.649 degrees latitude, and −115.017 degrees longitude to an upper point located at 44.604 degrees latitude, and −115.006 degrees longitude. Sulphur Creek from a lower point located at 44.586 degrees latitude, and −115.072 degrees longitude to an upper point located at 44.562 degrees latitude, and −115.161 degrees longitude. Vanity Creek from a lower point located at 44.553 degrees latitude, and −115.061 degrees longitude to an upper point located at 44.481 degrees latitude, and −115.076 degrees longitude.

(Q) Greyhound Creek from a lower point located at 44.648 degrees latitude, and −115.167 degrees longitude to an upper point located at 44.588 degrees latitude, and −115.154 degrees longitude.

(R) Soldier Creek from a lower point located at 44.626 degrees latitude, and −115.212 degrees longitude to an upper point located at 44.528 degrees latitude, and −115.201 degrees longitude.

(S) Elkhorn Creek from a lower point located at 44.615 degrees latitude, and −115.256 degrees longitude to an upper point located at 44.582 degrees latitude, and −115.369 degrees longitude. Middle Fork Elkhorn Creek from a lower point located at 44.62 degrees latitude, and −115.29 degrees longitude to an upper point located at 44.628 degrees latitude, and −115.368 degrees longitude. North Fork Elkhorn Creek from a lower point located at 44.625 degrees latitude, and −115.276 degrees longitude to an upper point located at 44.639 degrees latitude, and −115.362 degrees longitude.

(T) North Fork Sulphur Creek from a lower point located at 44.554 degrees latitude, and −115.439 degrees longitude to an upper point located at 44.597 degrees latitude, and −115.465 degrees longitude. Sulphur Creek from a lower point located at 44.555 degrees latitude, and −115.297 degrees longitude to an upper point located at 44.51 degrees latitude, and −115.518 degrees longitude.

(U) Dagger Creek from a lower point located at 44.523 degrees latitude, and −115.281 degrees longitude to an upper point located at 44.457 degrees latitude, and −115.373 degrees longitude.

(V) Banner Creek from a lower point located at 44.356 degrees latitude, and −115.208 degrees longitude to an upper point located at 44.291 degrees latitude, and −115.187 degrees longitude. Bear Creek from a lower point located at 44.439 degrees latitude, and −115.1 degrees longitude to an upper point located at 44.49 degrees latitude, and −115.098 degrees longitude. Beaver Creek from a lower point located at 44.406 degrees latitude, and −115.17 degrees longitude to an upper point located at 44.472 degrees latitude, and −114.953 degrees longitude. Cape Horn Creek from a lower point located at 44.395 degrees latitude, and −115.168 degrees longitude to an upper point located at 44.333 degrees latitude, and −115.287 degrees longitude. Knapp Creek from a lower point located at 44.365 degrees latitude, and −115.131 degrees longitude to an upper point located at 44.424 degrees latitude, and −114.915 degrees longitude. Lola Creek from a lower point located at 44.408 degrees latitude, and −115.174 degrees longitude to an upper point located at 44.391 degrees latitude, and −115.239 degrees longitude. Marsh Creek from a lower point located at 44.449 degrees latitude, and −115.23 degrees longitude to an upper point located at 44.329 degrees latitude, and −115.091 degrees longitude. Winnemucca Creek from a lower point located at 44.436 degrees latitude, and −115.058 degrees longitude to an upper point located at 44.486 degrees latitude, and −114.962 degrees longitude.

(W) Bear Valley Creek from a lower point located at 44.449 degrees latitude, and –115.23 degrees longitude to an upper point located at 44.236 degrees latitude, and –115.499 degrees longitude. Bearskin Creek from a lower point located at 44.415 degrees latitude, and –115.466 degrees longitude to an upper point located at 44.331 degrees latitude, and –115.528 degrees longitude. Cache Creek from a lower point located at 44.346 degrees latitude, and –115.419 degrees longitude to an upper point located at 44.263 degrees latitude, and –115.402 degrees longitude. Casner Creek from a lower point located at 44.295 degrees latitude, and –115.484 degrees longitude to an upper point located at 44.281 degrees latitude, and –115.451 degrees longitude. Cold Creek from a lower point located at 44.425 degrees latitude, and –115.311 degrees longitude to an upper point located at 44.371 degrees latitude, and –115.317 degrees longitude. Cook Creek from a lower point located at 44.409 degrees latitude, and –115.377 degrees longitude to an upper point located at 44.373 degrees latitude, and –115.444 degrees longitude. Cub Creek from a lower point located at 44.324 degrees latitude, and –115.473 degrees longitude to an upper point located at 44.32 degrees latitude, and –115.517 degrees longitude. East Fork Elk Creek from a lower point located at 44.485 degrees latitude, and –115.452 degrees longitude to an upper point located at 44.481 degrees latitude, and –115.359 degrees longitude. Elk Creek from a lower point located at 44.411 degrees latitude, and –115.372 degrees longitude to an upper point located at 44.485 degrees latitude, and –115.452 degrees longitude. Fir Creek from a lower point located at 44.428 degrees latitude, and –115.29 degrees longitude to an upper point located at 44.344 degrees latitude, and –115.298 degrees longitude. Little Beaver Creek from a lower point located at 44.41 degrees latitude, and –115.491 degrees longitude to an upper point located at 44.445 degrees latitude, and –115.527 degrees longitude. Little East Fork Elk Creek from a lower point located at 44.485 degrees latitude, and –115.445 degrees longitude to an upper point located at 44.48 degrees latitude, and –115.397 degrees longitude. North Fork Elk Creek from a lower point located at 44.485 degrees latitude, and –115.452 degrees longitude to an upper point located at 44.527 degrees latitude, and –115.458 degrees longitude. Poker Creek from a lower point located at 44.429 degrees latitude, and –115.334 degrees longitude to an upper point located at 44.446 degrees latitude, and –115.366 degrees longitude. Pole Creek from a lower point located at 44.386 degrees latitude, and –115.379 degrees longitude to an upper point located at 44.361 degrees latitude, and –115.366 degrees longitude. Porter Creek from a lower point located at 44.457 degrees latitude, and –115.45 degrees longitude to an upper point located at 44.47 degrees latitude, and –115.54 degrees longitude. Sack Creek from a lower point located at 44.359 degrees latitude, and –115.407 degrees longitude to an upper point located at 44.32 degrees latitude, and –115.351 degrees longitude. Sheep Trail Creek from a lower point located at 44.337 degrees latitude, and –115.447 degrees longitude to an upper point located at 44.36 degrees latitude, and –115.451 degrees longitude. Unnamed creek off Bear Valley Creek from a lower point located at 44.429 degrees latitude, and –115.34 degrees longitude to an upper point located at 44.443 degrees latitude, and –115.358 degrees longitude. Unnamed creek off Cache Creek from a lower point located at 44.315 degrees latitude, and –115.423 degrees longitude to an upper point located at 44.306 degrees latitude, and –115.389 degrees longitude. West Fork Elk Creek from a lower point located at 44.479 degrees latitude, and –115.457 degrees longitude to an upper point located at 44.48 degrees latitude, and –115.52 degrees longitude. Wyoming Creek from a lower point located at 44.426 degrees latitude, and –115.321 degrees longitude to an upper point located at 44.355 degrees latitude, and –115.341 degrees longitude.

(v) Critical Habitat Subunit—Middle Salmon—Panther.

(A) Salmon River from a lower point located at 45.454 degrees latitude, and –114.931 degrees longitude to an upper point located at 44.692 degrees latitude, and –114.049 degrees longitude.

(B) Cayuse Creek from a lower point located at 45.474 degrees latitude, and –114.568 degrees longitude to an upper point located at 45.5 degrees latitude, and –114.602 degrees longitude. Horse Creek from a lower point located at 45.395 degrees latitude, and –114.732 degrees longitude to an upper point located at 45.475 degrees latitude, and –114.401 degrees longitude. Woods Fork Horse Creek from a lower point located at 45.506 degrees latitude, and –114.459 degrees longitude to an upper point located at 45.535 degrees latitude, and –114.442 degrees longitude.

(C) Owl Creek from a lower point located at 45.318 degrees latitude, and –114.447 degrees longitude to an upper point located at 45.474 degrees latitude, and –114.382 degrees longitude.

(D) Arnett Creek from a lower point located at 45.205 degrees latitude, and –114.133 degrees longitude to an upper point located at 45.266 degrees latitude, and –114.2 degrees longitude. Beaver Creek from a lower point located at 45.274 degrees latitude, and –114.334 degrees longitude to an upper point located at 45.272 degrees latitude, and –114.185 degrees longitude. Clear Creek from a lower point located at 45.295 degrees latitude, and –114.351 degrees longitude to an upper point located at 45.146 degrees latitude, and –114.578 degrees longitude. Deep Creek from a lower point located at 45.126 degrees latitude, and –114.215 degrees longitude to an upper point located at 45.018 degrees latitude, and –114.097 degrees longitude. Fourth of July Creek from a lower point located at 44.986 degrees latitude, and –114.346 degrees longitude to an upper point located at 44.996 degrees latitude, and –114.408 degrees longitude. Little Deep Creek from a lower point located at 45.108 degrees latitude, and –114.179 degrees longitude to an upper point located at 45.001 degrees latitude, and –114.162 degrees longitude. Moccasin Creek from a lower point located at 45.153 degrees latitude, and –114.171 degrees longitude to an upper point located at 45.088 degrees latitude, and –114.089 degrees longitude. Musgrove Creek from a lower point located at 45.022 degrees latitude, and –114.313 degrees longitude to an upper point located at 45.097 degrees latitude, and –114.47 degrees longitude. Napias Creek from a lower point located at 45.137 degrees latitude, and –114.217 degrees longitude to an upper point located at 45.244 degrees latitude, and –114.023 degrees longitude. Opal Creek from a lower point located at 44.896 degrees latitude, and –114.314 degrees longitude to an upper point located at 44.901 degrees latitude, and –114.282 degrees longitude. Otter Creek from a lower point located at 44.861 degrees latitude, and –114.29 degrees longitude to an upper point located at 44.869 degrees latitude, and –114.248 degrees longitude. Panther Creek from a lower point located at 45.316 degrees latitude, and –114.405 degrees longitude to an upper point located at 44.829 degrees latitude, and –114.294 degrees longitude. Phelan Creek from a lower point located at 45.167 degrees latitude, and –114.16 degrees longitude to an upper point located at 45.146 degrees latitude, and –114.041 degrees

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longitude. Porphyry Creek from a lower point located at 45.004 degrees latitude, and –114.333 degrees longitude to an upper point located at 45.089 degrees latitude, and –114.433 degrees longitude. Rapps Creek from a lower point located at 45.213 degrees latitude, and –114.163 degrees longitude to an upper point located at 45.268 degrees latitude, and –114.171 degrees longitude. South Fork Porphyry Creek from a lower point located at 45.033 degrees latitude, and –114.387 degrees longitude to an upper point located at 45.038 degrees latitude, and –114.427 degrees longitude. Trail Creek from a lower point located at 45.25 degrees latitude, and –114.319 degrees longitude to an upper point located at 45.215 degrees latitude, and –114.233 degrees longitude. Unnamed creek off Deep Creek from a lower point located at 45.064 degrees latitude, and –114.121 degrees longitude to an upper point located at 45.08 degrees latitude, and –114.091 degrees longitude. Weasel Creek from a lower point located at 44.887 degrees latitude, and –114.305 degrees longitude to an upper point located at 44.888 degrees latitude, and –114.272 degrees longitude. West Fork Blackbird Creek from a lower point located at 45.093 degrees latitude, and –114.3 degrees longitude to an upper point located at 45.11 degrees latitude, and –114.399 degrees longitude. Woodtick Creek from a lower point located at 45.046 degrees latitude, and –114.282 degrees longitude to an upper point located at 44.973 degrees latitude, and –114.191 degrees longitude.

(E) Pine Creek from a lower point located at 45.364 degrees latitude, and –114.3 degrees longitude to an upper point located at 45.282 degrees latitude, and –114.167 degrees longitude.

(F) Boulder Creek from a lower point located at 45.376 degrees latitude, and –114.276 degrees longitude to an upper point located at 45.46 degrees latitude, and –114.348 degrees longitude.

(G) Spring Creek from a lower point located at 45.391 degrees latitude, and –114.255 degrees longitude to an upper point located at 45.449 degrees latitude, and –114.337 degrees longitude.

(H) Squaw Creek from a lower point located at 45.399 degrees latitude, and –114.168 degrees longitude to an upper point located at 45.504 degrees latitude, and –114.257 degrees longitude.

(I) Corral Creek from a lower point located at 45.498 degrees latitude, and –114.146 degrees longitude to an upper point located at 45.545 degrees latitude, and –114.111 degrees longitude. Indian Creek from a lower point located at 45.4 degrees latitude, and –114.167 degrees longitude to an upper point located at 45.552 degrees latitude, and –114.144 degrees longitude. McConn Creek from a lower point located at 45.504 degrees latitude, and –114.152 degrees longitude to an upper point located at 45.527 degrees latitude, and –114.242 degrees longitude. West Fork Indian Creek from a lower point located at 45.475 degrees latitude, and –114.138 degrees longitude to an upper point located at 45.489 degrees latitude, and –114.198 degrees longitude.

(J) Dahlonega Creek from a lower point located at 45.541 degrees latitude, and –113.929 degrees longitude to an upper point located at 45.524 degrees latitude, and –113.836 degrees longitude. Hughes Creek from a lower point located at 45.476 degrees latitude, and –113.988 degrees longitude to an upper point located at 45.582 degrees latitude, and –114.12 degrees longitude. Moose Creek from a lower point located at 45.654 degrees latitude, and –113.97 degrees longitude to an upper point located at 45.691 degrees latitude, and –113.944 degrees longitude. North Fork Salmon River from a lower point located at 45.405 degrees latitude, and –113.994 degrees longitude to an upper point located at 45.702 degrees latitude, and –113.989 degrees longitude. North Fork Sheep Creek from a lower point located at 45.482 degrees latitude, and –113.836 degrees longitude to an upper point located at 45.483 degrees latitude, and –113.774 degrees longitude. Pierce Creek from a lower point located at 45.621 degrees latitude, and –113.963 degrees longitude to an upper point located at 45.67 degrees latitude, and –113.932 degrees longitude. Sheep Creek from a lower point located at 45.504 degrees latitude, and –113.953 degrees longitude to an upper point located at 45.482 degrees latitude, and –113.836 degrees longitude. South Fork Sheep Creek from a lower point located at 45.482 degrees latitude, and –113.836 degrees longitude to an upper point located at 45.449 degrees latitude, and –113.8 degrees longitude. Twin Creek from a lower point located at 45.608 degrees latitude, and –113.964 degrees longitude to an upper point located at 45.591 degrees latitude, and –114.081 degrees longitude. Vine Creek from a lower point located at 45.611 degrees latitude, and –113.966 degrees longitude to an upper point located at 45.638 degrees latitude, and –114 degrees longitude. West Fork North Fork Salmon River from a lower point located at 45.654 degrees latitude, and –113.97 degrees longitude to an upper point located at 45.667 degrees latitude, and –114.002 degrees longitude.

(K) Fourth of July Creek from a lower point located at 45.364 degrees latitude, and –113.943 degrees longitude to an upper point located at 45.427 degrees latitude, and –113.773 degrees longitude.

(L) Carmen Creek from a lower point located at 45.25 degrees latitude, and –113.899 degrees longitude to an upper point located at 45.39 degrees latitude, and –113.737 degrees longitude. Freeman Creek from a lower point located at 45.279 degrees latitude, and –113.815 degrees longitude to an upper point located at 45.276 degrees latitude, and –113.686 degrees longitude.

(M) South Fork Williams Creek from a lower point located at 45.077 degrees latitude, and –114.013 degrees longitude to an upper point located at 45.038 degrees latitude, and –114.086 degrees longitude. Williams Creek from a lower point located at 45.081 degrees latitude, and –113.899 degrees longitude to an upper point located at 45.077 degrees latitude, and –114.013 degrees longitude.

(N) Twelvemile Creek from a lower point located at 45.011 degrees latitude, and –113.932 degrees longitude to an upper point located at 44.929 degrees latitude, and –113.851 degrees longitude.

(O) Iron Creek from a lower point located at 44.887 degrees latitude, and –113.968 degrees longitude to an upper point located at 44.908 degrees latitude, and –114.192 degrees longitude. North Fork Iron Creek from a lower point located at 44.921 degrees latitude, and –114.109 degrees longitude to an upper point located at 45.007 degrees latitude, and –114.096 degrees longitude. South Fork Iron Creek from a lower point located at 44.92 degrees latitude, and –114.113 degrees longitude to an upper point located at 44.906 degrees latitude, and –114.158 degrees longitude. West Fork Iron Creek from a lower point located at 44.921 degrees latitude, and –114.124 degrees longitude to an upper point located at 44.961 degrees latitude, and –114.186 degrees longitude.

(P) McKim Creek from a lower point located at 44.81 degrees latitude, and –114.009 degrees longitude to an upper point located at 44.816 degrees latitude, and –113.901 degrees longitude. North Fork McKim Creek from a lower point located at 44.81 degrees latitude, and –113.965 degrees longitude to an upper point located at 44.821 degrees latitude, and –113.871 degrees longitude.

(Q) Big Hat Creek from a lower point located at 44.821 degrees latitude, and –114.091 degrees longitude to an upper point located at 44.819 degrees latitude, and –113.813 degrees longitude. Hat Creek from a lower point located at 44.795 degrees latitude, and –114.001 degrees longitude to an upper point located at 44.869 degrees latitude, and –114.132 degrees longitude. Middle Fork Hat Creek from a lower point located at 44.869 degrees latitude, and –114.132 degrees longitude to an upper point located at 44.882 degrees latitude, and –114.201 degrees longitude. North Fork Hat Creek from a lower point located at 44.869 degrees latitude, and –114.132 degrees longitude to an upper point located at 44.894 degrees latitude, and –114.199 degrees longitude.

(R) Allison Creek from a lower point located at 44.771 degrees latitude, and –113.997 degrees longitude to an upper point located at 44.782 degrees latitude, and –113.879 degrees longitude.

(S) Cow Creek from a lower point located at 44.736 degrees latitude, and –114.003 degrees longitude to an upper point located at 44.738 degrees latitude, and –113.853 degrees longitude.

(vi) Critical Habitat Subunit—Lemhi River.

(A) Lemhi River from a lower point located at 45.188 degrees latitude, and –113.889 degrees longitude to an upper point located at 44.682 degrees latitude, and –113.355 degrees longitude.

(B) Geertson Creek from a lower point located at 45.132 degrees latitude, and –113.769 degrees longitude to an upper point located at 45.239 degrees latitude, and –113.665 degrees longitude.

(C) Bohannon Creek from a lower point located at 45.112 degrees latitude, and –113.746 degrees longitude to an upper point located at 45.229 degrees latitude, and –113.667 degrees longitude.

(D) East Fork Kenney Creek from a lower point located at 45.066 degrees latitude, and –113.573 degrees longitude to an upper point located at 45.075 degrees latitude, and –113.495 degrees longitude. Kenney Creek from a lower point located at 45.032 degrees latitude, and –113.662 degrees longitude to an upper point located at 45.11 degrees latitude, and –113.513 degrees longitude.

(E) Pattee Creek from a lower point located at 44.98 degrees latitude, and –113.643 degrees longitude to an upper point located at 45.046 degrees latitude, and –113.477 degrees longitude.

(F) Bear Valley Creek from a lower point located at 44.772 degrees latitude, and –113.707 degrees longitude to an upper point located at 44.804 degrees latitude, and –113.866 degrees longitude. Bray Creek from a lower point located at 44.706 degrees latitude, and –113.768 degrees longitude to an upper point located at 44.675 degrees latitude, and –113.813 degrees longitude. Cooper Creek from a lower point located at 44.726 degrees latitude, and –113.725 degrees longitude to an upper point located at 44.675 degrees latitude, and –113.702 degrees longitude. Deer Creek from a lower point located at 44.793 degrees latitude, and –113.777 degrees longitude to an upper point located at 44.776 degrees latitude, and –113.809 degrees longitude. East Fork Hayden Creek from a lower point located at 44.76 degrees latitude, and –113.711 degrees longitude to an upper point located at 44.664 degrees latitude, and –113.683 degrees longitude. Hayden Creek from a lower point located at 44.869 degrees latitude, and –113.626 degrees longitude to an upper point located at 44.722 degrees latitude, and –113.819 degrees longitude. Kadletz Creek from a lower point located at 44.775 degrees latitude, and –113.742 degrees longitude to an upper point located at 44.74 degrees latitude, and –113.819 degrees longitude. Short Creek from a lower point located at 44.788 degrees latitude, and –113.767 degrees longitude to an upper point located at 44.773 degrees latitude, and –113.796 degrees longitude. West Fork Hayden Creek from a lower point located at 44.705 degrees latitude, and –113.756 degrees longitude to an upper point located at 44.706 degrees latitude, and –113.766 degrees longitude. Wright Creek from a lower point located at 44.784 degrees latitude, and –113.754 degrees longitude to an upper point located at 44.746 degrees latitude, and –113.836 degrees longitude.

(G) Mill Creek from a lower point located at 44.767 degrees latitude, and –113.518 degrees longitude to an upper point located at 44.656 degrees latitude, and –113.656 degrees longitude.

(H) Big Springs Creek from a lower point located at 44.689 degrees latitude, and –113.369 degrees longitude to an upper point located at 44.758 degrees latitude, and –113.5 degrees longitude.

(I) Little Eightmile Creek from a lower point located at 44.739 degrees latitude, and –113.459 degrees longitude to an upper point located at 44.823 degrees latitude, and –113.365 degrees longitude.

(J) Big Eightmile Creek from a lower point located at 44.739 degrees latitude, and –113.459 degrees longitude to an upper point located at 44.561 degrees latitude, and –113.562 degrees longitude. Dairy Creek from a lower point located at 44.637 degrees latitude, and –113.552 degrees longitude to an upper point located at 44.62 degrees latitude, and –113.593 degrees longitude.

(K) Big Timber Creek from a lower point located at 44.7 degrees latitude, and –113.374 degrees longitude to an upper point located at 44.509 degrees latitude, and –113.538 degrees longitude. Little Timber Creek from a lower point located at 44.642 degrees latitude, and –113.383 degrees longitude to an upper point located at 44.606 degrees latitude, and –113.444 degrees longitude. Middle Fork Little Timber Creek from a lower point located at 44.606 degrees latitude, and –113.444 degrees longitude to an upper point located at 44.551 degrees latitude, and –113.53 degrees longitude.

(L) Canyon Creek from a lower point located at 44.692 degrees latitude, and –113.366 degrees longitude to an upper point located at 44.799 degrees latitude, and –113.29 degrees longitude. Cruikshank Creek from a lower point located at 44.759 degrees latitude, and –113.259 degrees longitude to an upper point located at 44.771 degrees latitude, and –113.134 degrees longitude. Hood Gulch Springs 1 from a lower point located at 44.769 degrees latitude, and –113.251 degrees longitude to an upper point located at 44.781 degrees latitude, and –113.336 degrees longitude. Hood Gulch Springs 2 from a lower point located at 44.78 degrees latitude, and –113.279 degrees longitude to an upper point located at 44.752 degrees latitude, and –113.317 degrees longitude. Hood Gulch Springs 3 from a lower point located at 44.777 degrees latitude, and –113.282 degrees longitude to an upper point located at 44.777 degrees latitude, and –113.323 degrees longitude. Hood Gulch Springs 4 from a lower point located at 44.768 degrees latitude, and –113.296 degrees longitude to an upper point located at 44.764 degrees latitude, and –113.325 degrees longitude.

(M) Big Bear Creek from a lower point located at 44.677 degrees latitude, and –113.159 degrees longitude to an upper point located at 44.642 degrees latitude, and –113.065 degrees longitude. Deer Creek from a lower point located at 44.52 degrees latitude, and –113.286 degrees longitude to an upper point located at 44.452 degrees latitude, and –113.342 degrees longitude. Eighteenmile Creek from a lower point located at 44.682 degrees latitude, and –113.355 degrees longitude to an upper point located at 44.447 degrees latitude, and –113.008 degrees longitude. Hawley Creek from a lower point located at 44.667 degrees latitude, and –113.323 degrees longitude to an upper point located at 44.677 degrees latitude, and –113.159 degrees longitude. Meadow Creek from a lower point located at 44.663 degrees latitude, and –113.104 degrees longitude to an upper point located at 44.678 degrees latitude, and –113.079 degrees longitude.

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Reservoir Creek from a lower point located at 44.677 degrees latitude, and −113.159 degrees longitude to an upper point located at 44.745 degrees latitude, and −113.126 degrees longitude.

(vii) Critical Habitat Subunit—Opal Lake.

(A) Opal Creek from a lower point located at 44.898 degrees latitude, and −114.277 degrees longitude to an upper point located at 44.876 degrees latitude, and −114.251 degrees longitude. Opal Lake centered at 44.899 degrees latitude, and −114.281 degrees longitude.

(B) [Reserved]

(viii) Critical Habitat Subunit—Lake Creek.

(A) Lake Creek from a lower point located at 45.017 degrees latitude, and −113.988 degrees longitude to an upper point located at 44.986 degrees latitude, and −114.08 degrees longitude. North Fork Lake Creek from a lower point located at 45.009 degrees latitude, and −114.016 degrees longitude to an upper point located at 45.015 degrees latitude, and −114.068 degrees longitude. Williams Lake centered at 45.016 degrees latitude, and −113.975 degrees longitude.

(B) [Reserved]

(ix) Critical Habitat Subunit—Pahsimeroi River.

(A) Pahsimeroi River from a lower point located at 44.692 degrees latitude, and −114.049 degrees longitude to an upper point located at 44.157 degrees latitude, and −113.703 degrees longitude.

(B) East Fork Morgan Creek from a lower point located at 44.675 degrees latitude, and −113.899 degrees longitude to an upper point located at 44.67 degrees latitude, and −113.828 degrees longitude. Morgan Creek from a lower point located at 44.618 degrees latitude, and −113.963 degrees longitude to an upper point located at 44.675 degrees latitude, and −113.899 degrees longitude. North Fork Morgan Creek from a lower point located at 44.675 degrees latitude, and −113.899 degrees longitude to an upper point located at 44.71 degrees latitude, and −113.829 degrees longitude.

(C) Tater Creek from a lower point located at 44.633 degrees latitude, and −113.902 degrees longitude to an upper point located at 44.661 degrees latitude, and −113.839 degrees longitude.

(D) Morse Creek from a lower point located at 44.569 degrees latitude, and −113.885 degrees longitude to an upper point located at 44.654 degrees latitude, and −113.709 degrees longitude.

(E) Falls Creek from a lower point located at 44.566 degrees latitude, and −113.878 degrees longitude to an upper point located at 44.611 degrees latitude, and −113.684 degrees longitude.

(F) Inyo Creek from a lower point located at 44.535 degrees latitude, and −113.683 degrees longitude to an upper point located at 44.532 degrees latitude, and −113.627 degrees longitude. Patterson Creek from a lower point located at 44.614 degrees latitude, and −113.966 degrees longitude to an upper point located at 44.636 degrees latitude, and −113.653 degrees longitude.

(G) Big Creek from a lower point located at 44.442 degrees latitude, and −113.6 degrees longitude to an upper point located at 44.495 degrees latitude, and −113.818 degrees longitude. North Fork Big Creek from a lower point located at 44.442 degrees latitude, and −113.6 degrees longitude to an upper point located at 44.552 degrees latitude, and −113.593 degrees longitude. South Fork Big Creek from a lower point located at 44.442 degrees latitude, and −113.6 degrees longitude to an upper point located at 44.385 degrees latitude, and −113.476 degrees longitude.

(H) Big Gulch from a lower point located at 44.354 degrees latitude, and −113.58 degrees longitude to an upper point located at 44.374 degrees latitude, and −113.483 degrees longitude. Ditch Creek from a lower point located at 44.354 degrees latitude, and −113.58 degrees longitude to an upper point located at 44.4 degrees latitude, and −113.558 degrees longitude. Goldberg Creek from a lower point located at 44.485 degrees latitude, and −113.815 degrees longitude to an upper point located at 44.354 degrees latitude, and −113.58 degrees longitude.

(I) Burnt Creek from a lower point located at 44.284 degrees latitude, and −113.652 degrees longitude to an upper point located at 44.149 degrees latitude, and −113.632 degrees longitude. East Fork Burnt Creek from a lower point located at 44.149 degrees latitude, and −113.632 degrees longitude to an upper point located at 44.12 degrees latitude, and −113.624 degrees longitude.

(J) Mahogany Creek from a lower point located at 44.208 degrees latitude, and −113.701 degrees longitude to an upper point located at 44.159 degrees latitude, and −113.767 degrees longitude.

(K) West Fork Pahsimeroi River from a lower point located at 44.157 degrees latitude, and −113.703 degrees longitude to an upper point located at 44.092 degrees latitude, and −113.749 degrees longitude.

(L) East Fork Pahsimeroi River from a lower point located at 44.157 degrees latitude, and −113.703 degrees longitude to an upper point located at 44.081 degrees latitude, and −113.72 degrees longitude.

(x) Critical Habitat Subunit—Upper Salmon River.

(A) Salmon River from a lower point located at 44.692 degrees latitude, and −114.049 degrees longitude to an upper point located at 43.797 degrees latitude, and −114.774 degrees longitude.

(B) Alder Creek from a lower point located at 44.803 degrees latitude, and −114.256 degrees longitude to an upper point located at 44.805 degrees latitude, and −114.308 degrees longitude. Corral Creek from a lower point located at 44.779 degrees latitude, and −114.248 degrees longitude to an upper point located at 44.876 degrees latitude, and −114.219 degrees longitude. Lick Creek from a lower point located at 44.722 degrees latitude, and −114.271 degrees longitude to an upper point located at 44.775 degrees latitude, and −114.347 degrees longitude. Morgan Creek from a lower point located at 44.612 degrees latitude, and −114.168 degrees longitude to an upper point located at 44.846 degrees latitude, and −114.261 degrees longitude. Unnamed creek off Corral Creek from a lower point located at 44.805 degrees latitude, and −114.224 degrees longitude to an upper point located at 44.84 degrees latitude, and −114.198 degrees longitude. Van Horn Creek from a lower point located at 44.757 degrees latitude, and −114.256 degrees longitude to an upper point located at 44.786 degrees latitude, and −114.337 degrees longitude. West Fork Morgan Creek from a lower point located at 44.681 degrees latitude, and −114.243 degrees longitude to an upper point located at 44.734 degrees latitude, and −114.393 degrees longitude.

(C) Bear Creek from a lower point located at 44.569 degrees latitude, and −114.361 degrees longitude to an upper point located at 44.597 degrees latitude, and −114.462 degrees longitude. Challis Creek from a lower point located at 44.57 degrees latitude, and −114.186 degrees longitude to an upper point located at 44.552 degrees latitude, and −114.511 degrees longitude. Lodgepole Creek from a lower point located at 44.54 degrees latitude, and −114.408 degrees longitude to an upper point located at 44.555 degrees latitude, and −114.474 degrees longitude. Mill Creek from a lower point located at 44.561 degrees latitude, and −114.274 degrees longitude to an upper point located at 44.47 degrees latitude, and −114.492 degrees longitude.

(D) Garden Creek from a lower point located at 44.509 degrees latitude, and −114.191 degrees longitude to an upper point located at 44.431 degrees latitude, and −114.427 degrees longitude.

(E) Big Boulder Creek from a lower point located at 44.118 degrees latitude, and −114.428 degrees longitude to an upper point located at 44.097 degrees latitude, and −114.612 degrees longitude. Bowery Creek from a lower point located at 44.032 degrees latitude, and −114.46 degrees longitude to an upper point located at 44.012 degrees latitude, and −114.389 degrees longitude. Chamberlain Creek from a lower point located at 44.004 degrees latitude, and −114.53 degrees longitude to an upper point located at 44.037 degrees latitude, and −114.609 degrees longitude. East Fork Herd Creek from a lower point located at 44.058 degrees latitude, and −114.233 degrees longitude to an upper point located at 43.984 degrees latitude, and −114.203 degrees longitude. East Fork Salmon River from a lower point located at 44.268 degrees latitude, and −114.326 degrees longitude to an upper point located at 43.929 degrees latitude, and −114.554 degrees longitude. East Pass Creek from a lower point located at 44.076 degrees latitude, and −114.244 degrees longitude to an upper point located at 44.05 degrees latitude, and −114.276 degrees longitude. Germania Creek from a lower point located at 44.039 degrees latitude, and −114.461 degrees longitude to an upper point located at 43.968 degrees latitude, and −114.703 degrees longitude. Herd Creek from a lower point located at 44.154 degrees latitude, and −114.3 degrees longitude to an upper point located at 44.058 degrees latitude, and −114.233 degrees longitude. Ibex Creek from a lower point located at 43.953 degrees latitude, and −114.525 degrees longitude to an upper point located at 43.908 degrees latitude, and −114.492 degrees longitude. Little Boulder Creek from a lower point located at 44.099 degrees latitude, and −114.442 degrees longitude to an upper point located at 44.065 degrees latitude, and −114.542 degrees longitude. Long Tom Creek from a lower point located at 44.027 degrees latitude, and −114.429 degrees longitude to an upper point located at 43.978 degrees latitude, and −114.401 degrees longitude. Meridian Creek from a lower point located at 44.011 degrees latitude, and −114.251 degrees longitude to an upper point located at 43.988 degrees latitude, and −114.256 degrees longitude. North Fork Bowery Creek from a lower point located at 44.032 degrees latitude, and −114.4 degrees longitude to an upper point located at 44.049 degrees latitude, and −114.365 degrees longitude. Roaring Creek from a lower point located at 43.978 degrees latitude, and −114.473 degrees longitude to an upper point located at 43.939 degrees latitude, and −114.485 degrees longitude. South Fork East Fork Salmon River from a lower point located at 43.929 degrees latitude, and −114.554 degrees longitude to an upper point located at 43.848 degrees latitude, and −114.566 degrees longitude. West Fork East Fork Salmon River from a lower point located at 43.929 degrees latitude, and −114.554 degrees longitude to an upper point located at 43.919 degrees latitude, and −114.655 degrees longitude. West Fork Herd Creek from a lower point located at 44.058 degrees latitude, and −114.233 degrees longitude to an upper point located at 43.99 degrees latitude, and −114.224 degrees longitude. West Pass Creek from a lower point located at 43.988 degrees latitude, and −114.49 degrees longitude to an upper point located at 43.893 degrees latitude, and −114.418 degrees longitude. Wickiup Creek from a lower point located at 44.072 degrees latitude, and −114.458 degrees longitude to an upper point located at 44.033 degrees latitude, and −114.565 degrees longitude.

(F) Kinnikinic Creek from a lower point located at 44.258 degrees latitude, and −114.401 degrees longitude to an upper point located at 44.367 degrees latitude, and −114.396 degrees longitude.

(G) Martin Creek from a lower point located at 44.387 degrees latitude, and −114.494 degrees longitude to an upper point located at 44.426 degrees latitude, and −114.563 degrees longitude. Squaw Creek from a lower point located at 44.249 degrees latitude, and −114.454 degrees longitude to an upper point located at 44.456 degrees latitude, and −114.503 degrees longitude. Willow Creek from a lower point located at 44.428 degrees latitude, and −114.489 degrees longitude to an upper point located at 44.447 degrees latitude, and −114.445 degrees longitude.

(H) Thompson Creek from a lower point located at 44.25 degrees latitude, and −114.516 degrees longitude to an upper point located at 44.378 degrees latitude, and −114.596 degrees longitude.

(I) Livingston Creek from a lower point located at 44.194 degrees latitude, and −114.603 degrees longitude to an upper point located at 44.144 degrees latitude, and −114.608 degrees longitude. Silver Rule Creek from a lower point located at 44.207 degrees latitude, and −114.597 degrees longitude to an upper point located at 44.146 degrees latitude, and −114.561 degrees longitude. Slate Creek from a lower point located at 44.256 degrees latitude, and −114.563 degrees longitude to an upper point located at 44.155 degrees latitude, and −114.629 degrees longitude.

(J) Martin Creek from a lower point located at 44.137 degrees latitude, and −114.724 degrees longitude to an upper point located at 44.117 degrees latitude, and −114.797 degrees longitude. Pigtail Creek from a lower point located at 44.129 degrees latitude, and −114.726 degrees longitude to an upper point located at 44.122 degrees latitude, and −114.735 degrees longitude. Warm Springs Creek from a lower point located at 44.254 degrees latitude, and −114.675 degrees longitude to an upper point located at 44.059 degrees latitude, and −114.613 degrees longitude.

(K) Cabin Creek from a lower point located at 44.397 degrees latitude, and −114.827 degrees longitude to an upper point located at 44.419 degrees latitude, and −114.901 degrees longitude. Deadwood Creek from a lower point located at 44.376 degrees latitude, and −114.776 degrees longitude to an upper point located at 44.349 degrees latitude, and −114.835 degrees longitude. Eightmile Creek from a lower point located at 44.428 degrees latitude, and −114.619 degrees longitude to an upper point located at 44.471 degrees latitude, and −114.715 degrees longitude. Elevenmile Creek from a lower point located at 44.467 degrees latitude, and −114.579 degrees longitude to an upper point located at 44.436 degrees latitude, and −114.544 degrees longitude. Elevenmile Creek from a lower point located at 44.405 degrees latitude, and −114.654 degrees longitude to an upper point located at 44.355 degrees latitude, and −114.615 degrees longitude. Jordan Creek from a lower point located at 44.379 degrees latitude, and −114.72 degrees longitude to an upper point located at 44.469 degrees latitude, and −114.77 degrees longitude. Lightning Creek from a lower point located at 44.388 degrees latitude, and −114.795 degrees longitude to an upper point located at 44.486 degrees latitude, and −114.787 degrees longitude. McKay Creek from a lower point located at 44.489 degrees latitude, and −114.55 degrees longitude to an upper point located at 44.475 degrees latitude, and −114.491 degrees longitude. Ninemile Creek from a lower point located at 44.445 degrees latitude, and −114.604 degrees longitude to an upper point located at 44.414 degrees latitude, and −114.582 degrees longitude. Sixmile Creek from a lower point located at 44.413 degrees latitude, and −114.637 degrees longitude to an upper point located at 44.385 degrees latitude, and −114.595 degrees longitude. Tenmile Creek from a lower point located at

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44.465 degrees latitude, and −114.581 degrees longitude to an upper point located at 44.484 degrees latitude, and −114.646 degrees longitude. Twelvemile Creek from a lower point located at 44.478 degrees latitude, and −114.564 degrees longitude to an upper point located at 44.497 degrees latitude, and −114.614 degrees longitude. Unnamed creek off McKay Creek from a lower point located at 44.477 degrees latitude, and −114.525 degrees longitude to an upper point located at 44.445 degrees latitude, and −114.525 degrees longitude. West Fork Yankee Fork from a lower point located at 44.351 degrees latitude, and −114.727 degrees longitude to an upper point located at 44.388 degrees latitude, and −114.932 degrees longitude. Yankee Fork from a lower point located at 44.27 degrees latitude, and −114.734 degrees longitude to an upper point located at 44.51 degrees latitude, and −114.588 degrees longitude.

(L) Basin Creek from a lower point located at 44.264 degrees latitude, and −114.817 degrees longitude to an upper point located at 44.368 degrees latitude, and −114.942 degrees longitude. East Basin Creek from a lower point located at 44.277 degrees latitude, and −114.849 degrees longitude to an upper point located at 44.343 degrees latitude, and −114.79 degrees longitude. Short Creek from a lower point located at 44.291 degrees latitude, and −114.871 degrees longitude to an upper point located at 44.313 degrees latitude, and −114.855 degrees longitude. Sunday Creek from a lower point located at 44.349 degrees latitude, and −114.905 degrees longitude to an upper point located at 44.341 degrees latitude, and −114.969 degrees longitude. Unnamed creek off East Basin Creek from a lower point located at 44.32 degrees latitude, and −114.817 degrees longitude to an upper point located at 44.344 degrees latitude, and −114.823 degrees longitude.

(M) Crooked Creek from a lower point located at 44.237 degrees latitude, and −114.994 degrees longitude to an upper point located at 44.203 degrees latitude, and −115.044 degrees longitude. East Fork Valley Creek from a lower point located at 44.358 degrees latitude, and −115.048 degrees longitude to an upper point located at 44.327 degrees latitude, and −114.987 degrees longitude. Elk Creek from a lower point located at 44.293 degrees latitude, and −115.023 degrees longitude to an upper point located at 44.196 degrees latitude, and −115.133 degrees longitude. Goat Creek from a lower point located at 44.219 degrees latitude, and −114.942 degrees longitude to an upper point located at 44.179 degrees latitude, and −115.008 degrees longitude. Iron Creek from a lower point located at 44.223 degrees latitude, and −114.947 degrees longitude to an upper point located at 44.189 degrees latitude, and −115.047 degrees longitude. Job Creek from a lower point located at 44.243 degrees latitude, and −115.001 degrees longitude to an upper point located at 44.243 degrees latitude, and −115.003 degrees longitude. Meadow Creek from a lower point located at 44.306 degrees latitude, and −115.052 degrees longitude to an upper point located at 44.316 degrees latitude, and −115.088 degrees longitude. Prospect Creek from a lower point located at 44.394 degrees latitude, and −114.985 degrees longitude to an upper point located at 44.357 degrees latitude, and −114.984 degrees longitude. Trap Creek from a lower point located at 44.316 degrees latitude, and −115.088 degrees longitude to an upper point located at 44.29 degrees latitude, and −115.162 degrees longitude. Valley Creek from a lower point located at 44.225 degrees latitude, and −114.927 degrees longitude to an upper point located at 44.377 degrees latitude, and −114.96 degrees longitude.

(N) Fishhook Creek from a lower point located at 44.143 degrees latitude, and −114.92 degrees longitude to an upper point located at 44.133 degrees latitude, and −114.981 degrees longitude. Little Redfish Lake centered at 44.161 degrees latitude, and −114.908 degrees longitude. Redfish Lake centered at 44.117 degrees latitude, and −114.931 degrees longitude. Redfish Lake Creek from a lower point located at 44.169 degrees latitude, and −114.898 degrees longitude to an upper point located at 44.1 degrees latitude, and −114.955 degrees longitude.

(O) Fourth of July Creek from a lower point located at 44.032 degrees latitude, and −114.836 degrees longitude to an upper point located at 44.044 degrees latitude, and −114.62 degrees longitude.

(P) Alpine Creek from a lower point located at 43.896 degrees latitude, and −114.907 degrees longitude to an upper point located at 43.93 degrees latitude, and −114.969 degrees longitude. Alturas Lake centered at 43.914 degrees latitude, and −114.86 degrees longitude. Alturas Lake Creek from a lower point located at 44.004 degrees latitude, and −114.836 degrees longitude to an upper point located at 43.859 degrees latitude, and −114.983 degrees longitude. Cabin Creek from a lower point located at 43.928 degrees latitude, and −114.842 degrees longitude to an upper point located at 43.929 degrees latitude, and −114.879 degrees longitude. Petit Lake centered at 43.98 degrees latitude, and −114.878 degrees longitude. Pettit Lake Creek from a lower point located at 43.988 degrees latitude, and −114.84 degrees longitude to an upper point located at 43.961 degrees latitude, and −114.916 degrees longitude. Pole Creek from a lower point located at 43.926 degrees latitude, and −114.809 degrees longitude to an upper point located at 43.964 degrees latitude, and −114.69 degrees longitude. Yellowbelly Creek from a lower point located at 43.992 degrees latitude, and −114.838 degrees longitude to an upper point located at 43.981 degrees latitude, and −114.927 degrees longitude. Yellowbelly Lake centered at 44.001 degrees latitude, and −114.875 degrees longitude.

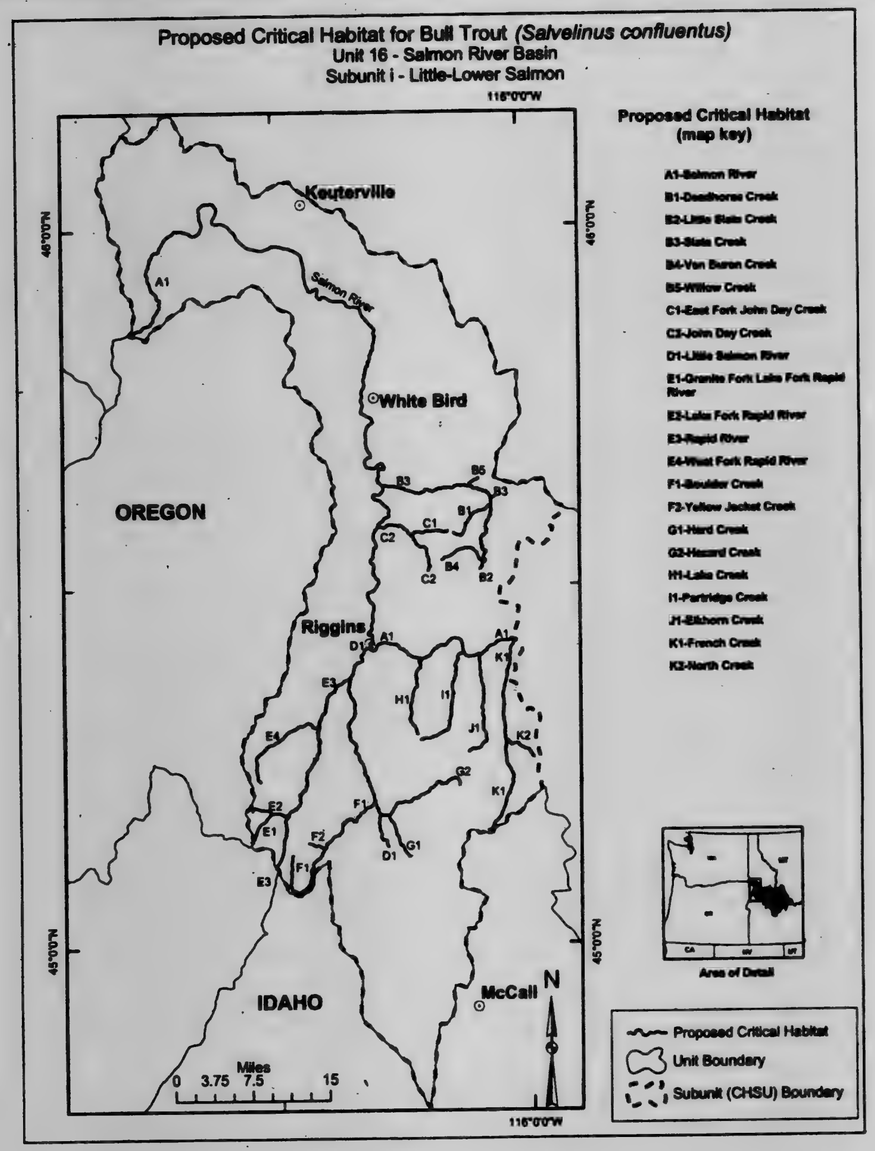
(Q) Beaver Creek from a lower point located at 43.925 degrees latitude, and −114.809 degrees longitude to an upper point located at 43.836 degrees latitude, and −114.906 degrees longitude.

(R) Smiley Creek from a lower point located at 43.915 degrees latitude, and −114.8 degrees longitude to an upper point located at 43.792 degrees latitude, and −114.824 degrees longitude.

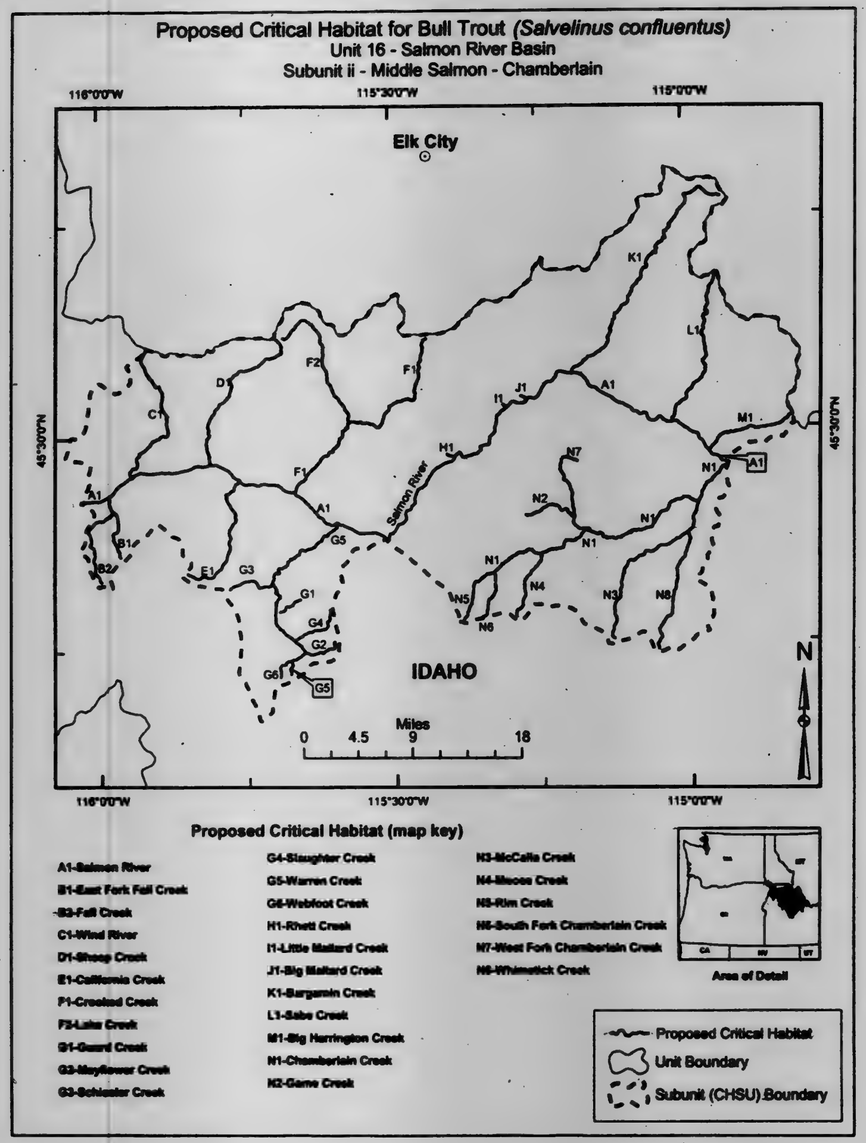
(S) Frenchman Creek from a lower point located at 43.885 degrees latitude, and −114.77 degrees longitude to an upper point located at 43.804 degrees latitude, and −114.816 degrees longitude.

Note: Maps follow for Unit 16, Subunit i; Subunit ii; Subunit iii; Subunit iv (North and East Portion); Subunit iv (South and West Portion); Subunit v; Subunit vi; Subunits vii and viii; Subunit ix; Subunit x (North Portion); and Subunit x (South Portion).

BILLING CODE 4310-55-P

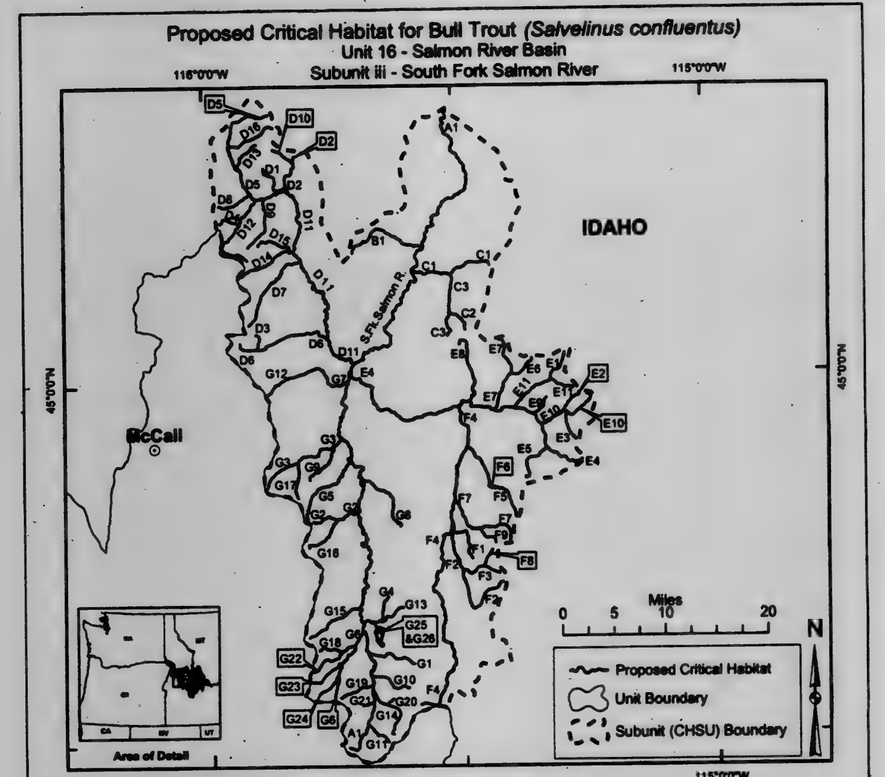


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Proposed Critical Habitat (map key)

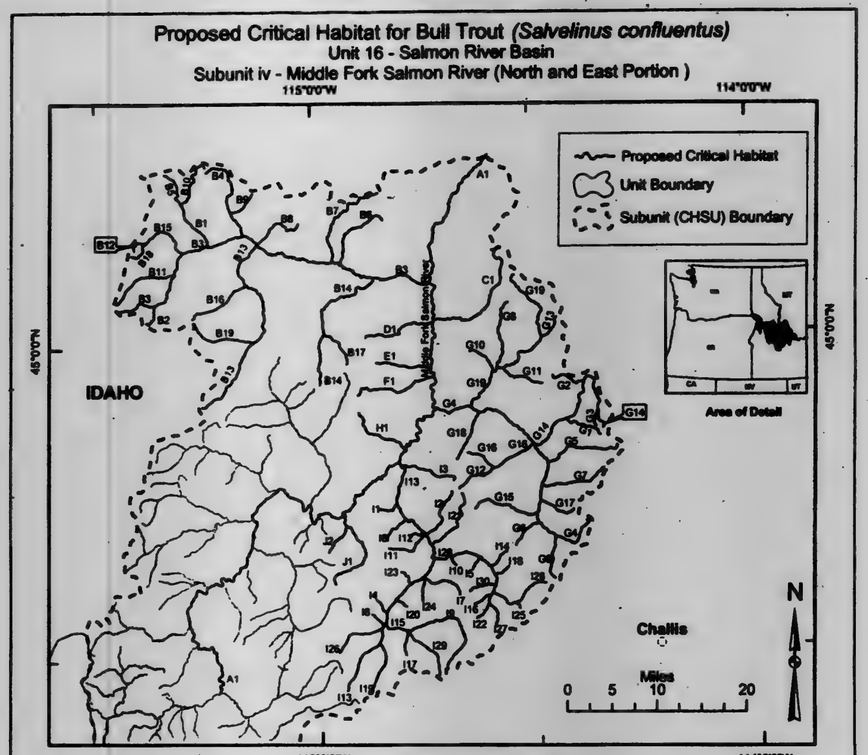
A1-Salmon River
B1-East Fork Fall Creek
B2-Fall Creek
C1-Wind River
D1-Sheep Creek
E1-California Creek
F1-Crooked Creek
F2-Lake Creek
G1-Guard Creek
G3-Mayflower Creek
G3-Schlueter Creek
G4-Slaughter Creek
G5-Warren Creek
G6-Webfoot Creek
H1-Rhett Creek
I1-Little Mallard Creek
J1-Big Mallard Creek
K1-Bargamin Creek
L1-Sabe Creek
M1-Big Harrington Creek
N1-Chamberlain Creek
N2-Game Creek
N3-McCalla Creek
N4-Bloose Creek
N5-Rim Creek
N6-South Fork Chamberlain Creek
N7-West Fork Chamberlain Creek
N8-Whitetick Creek



Proposed Critical Habitat (map key)

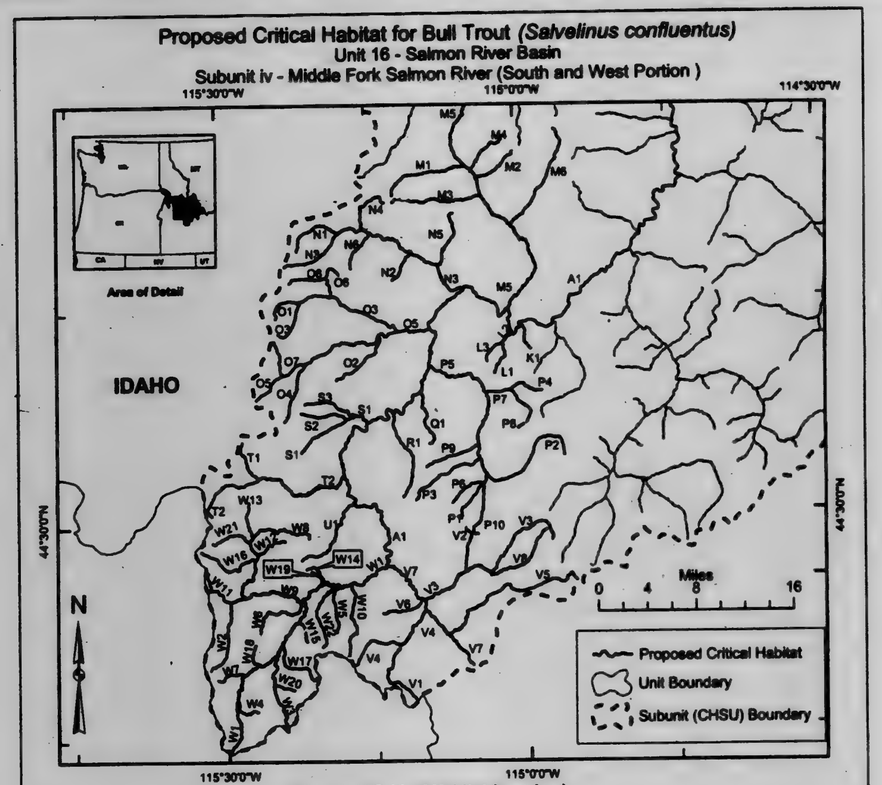
A1-South Fork Salmon River
B1-Pony Creek
C1-Elk Creek
C2-South Fork Elk Creek
C3-West Fork Elk Creek
D1-Flat Creek
D2-Grouse Creek
D3-Hum Creek
D4-Josephine Creek
D5-Lake Creek
D6-Lick Creek
D7-Loon Creek
D8-Nethker Creek
D9-Ruby Creek
D10-Sand Creek
D11-Secesh River
D12-Summit Creek
D13-Threemile Creek
D14-Victor Creek
D15-Willow Basket Creek
D16-Willow Creek
E1-Bum Creek
E2-Cane Creek
E3-Cinnabar Creek
E4-E Fk South Fork Salmon River
E5-Meadow Creek
E6-Missouri Creek
E7-Profile Creek
E8-Quartz Creek
E9-Salt Creek
E10-Sugar Creek
E11-Tamarack Creek
F1-Buck Creek
F3-Burntlog Creek
F3-East Fork Burntlog Creek
F4-Johnson Creek
F5-Riordan Creek
F6-Riordan Lake
F7-Trapper Creek
F8-UNNAMED - off East Fork Burntlog Creek
F9-UNNAMED - off Trapper Creek
G1-Bear Creek
G2-Blackmare Creek
G3-Buckhorn Creek
G4-Cabin Creek
G5-Cougar Creek
G6-Curtis Creek
G7-Fitsum Creek
G8-Fourmile Creek
G9-Little Buckhorn Creek
G10-Ladgepole Creek
G11-Mormon Creek
G12-North Fork Fitsum Creek
G13-Reeves Creek
G14-Rice Creek
G15-Six-Bit Creek
G16-S Fk Blackmare Creek
G17-S Fk Buckhorn Creek
G18-Trail Creek
G19-Tyndall Creek
G20-UNNAMED - off Rice Creek
G21-UNNAMED - off South Fork Salmon River
G23-UNNAMED - off Trail Creek
G23-UNNAMED 1 - off Curtis Creek
G24-UNNAMED 2 - off Curtis Creek
G25-Warm Lake
G26-Warm Lake Creek

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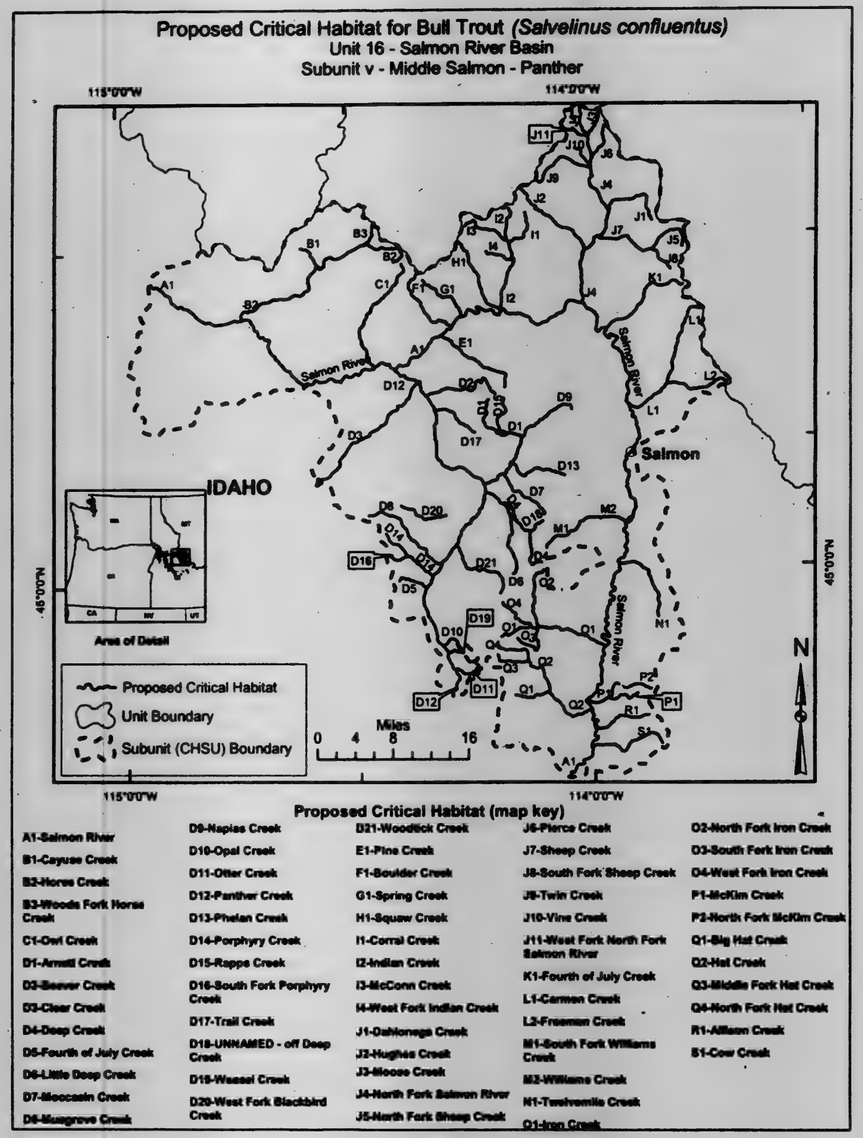
Proposed Critical Habitat (map key)

A1-Middle Fork Salmon River	B15-Smith Creek	G8-Hoodoo Creek	I3-Cache Creek-Loon	I19-Pioneer-Loon Creek
B1-Beaver-Big Creek1	B16-Snowslide Creek	G9-J Fall Creek	I4-Canyon Creek	I20-Rat Creek
B2-Belvidere Creek	B17-S Fk Rush Creek	G10-Lake-Camas Creek	I5-Cat Creek	I21-Rock Creek-Loon
B3-Big Creek	B18-S Fk Smith Creek	G11-Little Jacket Creek	I6-Cold Spring Creek-Loon	I22-Rush Creek-Warmspring
B4-Big Ramey Creek	B19-W Fk Monumental Cr	G12-Pole Creek-Camas	I7-Cottonwood Creek	I23-Shell Creek
B5-Boulder Creek	C1-Wilson Creek	G13-Shovel Creek	I8-Deer Creek-Loon	I24-S Fk Cottonwood Creek
B6-Cabin-Big Creek	D1-Soldier Creek-Lmf	G14-Silver Creek-Camas	I9-E Fk Mayfield Creek	I25-S Fk Warm Spring Creek
B7-Cove-Big Creek	E1-Brush Creek	G15-South Fork Camas Creek	I10-Fir Creek-Loon	I26-Trail Creek-Loon
B8-Crooked Creek	F1-Sheep Creek-Lmf	G16-W Fk Camas Creek	I11-Indian Creek-Loon	I27-Trapper Creek-Warmspring
B9-E Fk Big Ramey Creek	G1-Arrastra Creek	G17-White Goat Creek	I12-Jack Creek	I28-Warm Spring Creek-Loon
B10-Hand Creek	G2-Birdseye Creek	G18-Woodtick Creek	I13-Loon Creek	I29-W Fk Mayfield Creek
B11-Logan Creek	G3-Blue Fork Silver Creek	G19-Yellowjacket Creek	I14-Mahoney Creek	I30-Wickiup Creek-Loon
B12-M Fk Smith Creek	G4-Camas Creek	H1-Horton Creek	I15-Mayfield Creek	J1-Little Loon Creek
B13-Monumental Creek	G5-Castle Creek	I1-Bear Creek-Loon	I16-McKee Creek	J2-W Fk Little Loon Creek
B14-Rush-Big Creek	G6-Fly Creek	I2-Cabin Creek-Loon	I17-Nelson Creek	
	G7-Furnace Creek		I18-Parker Creek	



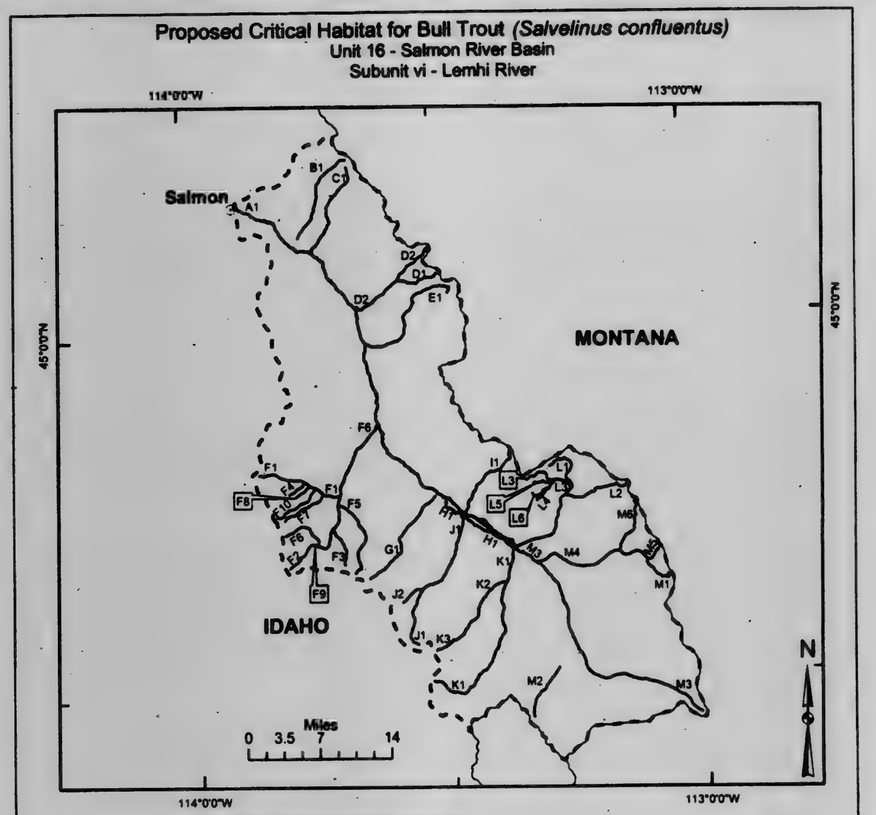
Proposed Critical Habitat (map key)

A1-M Fk Salmon River	H5-M Fk Indian Creek	P5-Rapid River	V3-Beaver Creek-Marsh	W16-Fir-Bv Creek
K1-Little Creek	H6-Papoose Creek-Indian	P6-Sealcem Creek	V4-Cape Horn Creek	W11-Little Beaver Creek
L1-E Fk Thomas Creek	O1-Browning Creek	P7-Sheep Creek	V5-Knapp Creek	W12-Little E Fk Elk Creek
L2-Thomas Creek	O2-Forty-Five Creek	P8-South Fork Sheep Creek	V6-Lola Creek	W13-North Fork Elk Creek
L3-W Fork Thomas Creek	O3-Little Pistol Creek	P9-Sulphur Creek-Rapid	V7-Marsh Creek	W14-Poker Creek
M1-Big Cottonwood Creek	O4-Lugar Creek	Q1-Greyhound Creek	V8-Winnemucca Creek	W15-Pole-Bv Creek
M2-Buck-Marble Creek	O5-Pistol Creek	R1-Soldier Creek-Umf	W1-Bear Valley Creek	W16-Porter Creek
M3-Dynamite Creek	O6-Springfield Creek	S1-Elkhorn Creek	W2-Bearskin Creek	W17-Sack Creek
M4-Little Cottonwood Creek	O7-Thirty-Eight Creek	S2-M Fk Elkhorn Creek	W3-Cache Creek	W18-Sheep Trail Creek
M5-Marble Creek	O8-W Fk Springfield Creek	S3-N Fk Elkhorn Creek	W4-Casner Creek	W19-UNNAMED - off Bear Valley Creek
M6-Trail Creek-Marble	P10-Vanity Creek	T1-North Fork Sulphur Creek	W5-Cold-Bv Creek	W20-UNNAMED - off Cache Creek
N1-Big Chief Creek	P1-Baldwin Creek	T2-Sulphur Creek	W6-Cook Creek	W21-W Fk Elk Creek
N2-Cultus Creek	P2-Duffield Creek	U1-Dagger Creek	W7-Cub Creek	W23-Wyoming Creek
N3-Indian Creek	P3-Float Creek	V1-Banner Creek	W8-East Fork Elk Creek	
N4-Little Indian Creek	P4-North Fork Sheep Creek	V2-Bear Creek-Marsh	W9-Elk Creek	



Proposed Critical Habitat (map key)

A1-Salmon River
B1-Cayuse Creek
B2-Horse Creek
B3-Woods Fork Horse Creek
C1-Owl Creek
D1-Arnett Creek
D3-Beaver Creek
D5-Clear Creek
D4-Deep Creek
D6-Fourth of July Creek
D8-Little Deep Creek
D7-Moccasin Creek
D8-Mungrove Creek
D9-Napias Creek
D10-Opal Creek
D11-Otter Creek
D12-Panther Creek
D13-Phelan Creek
D14-Porphyry Creek
D15-Rappe Creek
D16-South Fork Porphyry Creek
D17-Trail Creek
D18-UNNAMED - off Deep Creek
D19-Weasel Creek
D20-West Fork Blackbird Creek
D21-Woodtick Creek
E1-Pine Creek
F1-Boulder Creek
G1-Spring Creek
H1-Squaw Creek
I1-Corral Creek
I2-Indian Creek
I3-McConn Creek
I4-West Fork Indian Creek
J1-Dahlonega Creek
J2-Hughes Creek
J3-Moose Creek
J4-North Fork Salmon River
J5-North Fork Sheep Creek
J6-Pierce Creek
J7-Sheep Creek
J8-South Fork Sheep Creek
J9-Twin Creek
J10-Vine Creek
J11-West Fork North Fork Salmon River
K1-Fourth of July Creek
L1-Carmen Creek
L2-Freeman Creek
M1-South Fork Williams Creek
M2-Williams Creek
N1-Twelvemile Creek
O1-Iron Creek
O2-North Fork Iron Creek
O3-South Fork Iron Creek
O4-West Fork Iron Creek
P1-McKim Creek
P2-North Fork McKim Creek
Q1-Big Hat Creek
Q2-Hat Creek
Q3-Middle Fork Hat Creek
Q4-North Fork Hat Creek
R1-Allison Creek
S1-Cow Creek



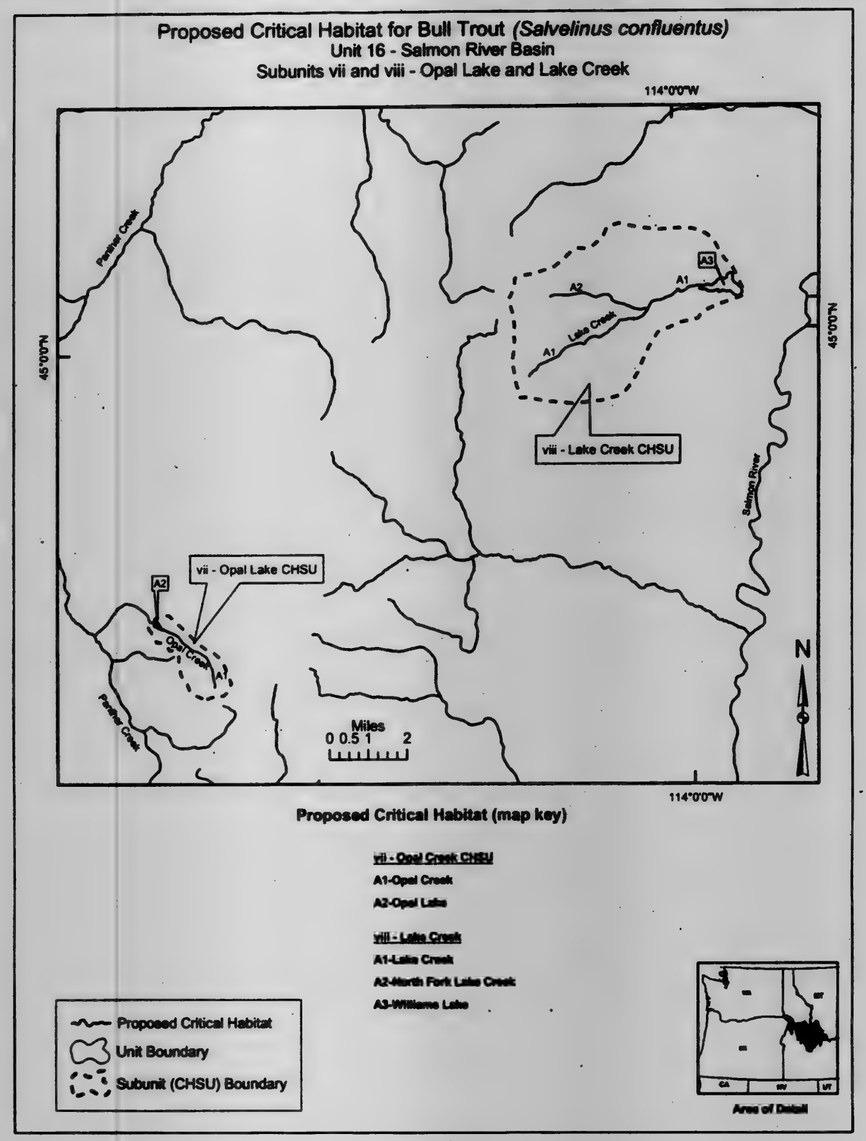
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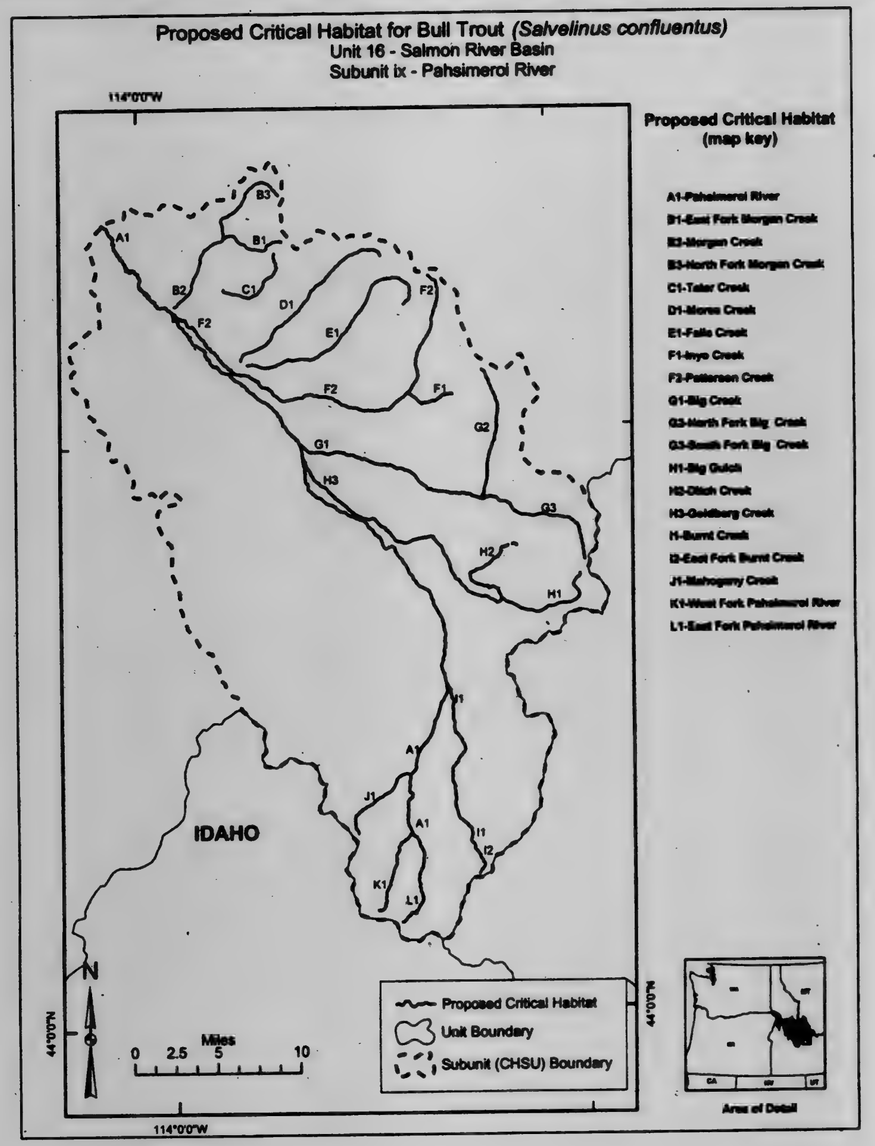
A1-Lemhi River
B1-Geertson Creek
C1-Bohannon Creek
D1-East Fork Kenney Creek
D2-Kenney Creek
E1-Patton Creek
F1-Bear Valley Creek
F2-Bray Creek
F3-Cooper Creek
F4-Deer Creek
F5-East Fork Hayden Creek
F6-Hayden Creek
F7-Kadletz Creek
F8-Short Creek
F9-West Fork Hayden Creek
F10-Wright Creek
G1-Mill Creek
H1-Big Springs Creek
I1-Little Eightmile Creek
J1-Big Eightmile Creek
J2-Dairy Creek
K1-Big Timber Creek
K2-Little Timber Creek
K3-Middle Fork Little Timber Creek
L1-Canyon Creek
L2-Cruikshank Creek
L3-Hood Gulch Springs 1
L4-Hood Gulch Springs 2
L5-Hood Gulch Springs 3
L6-Hood Gulch Springs 4
M1-Big Bear Creek
M2-Deer Creek
M3-Eighteenmile Creek
M4-Hawley Creek
M5-Meadow Creek
M6-Reservoir Creek

Area of Detail
Proposed Critical Habitat
Unit Boundary
Subunit (CHSU) Boundary

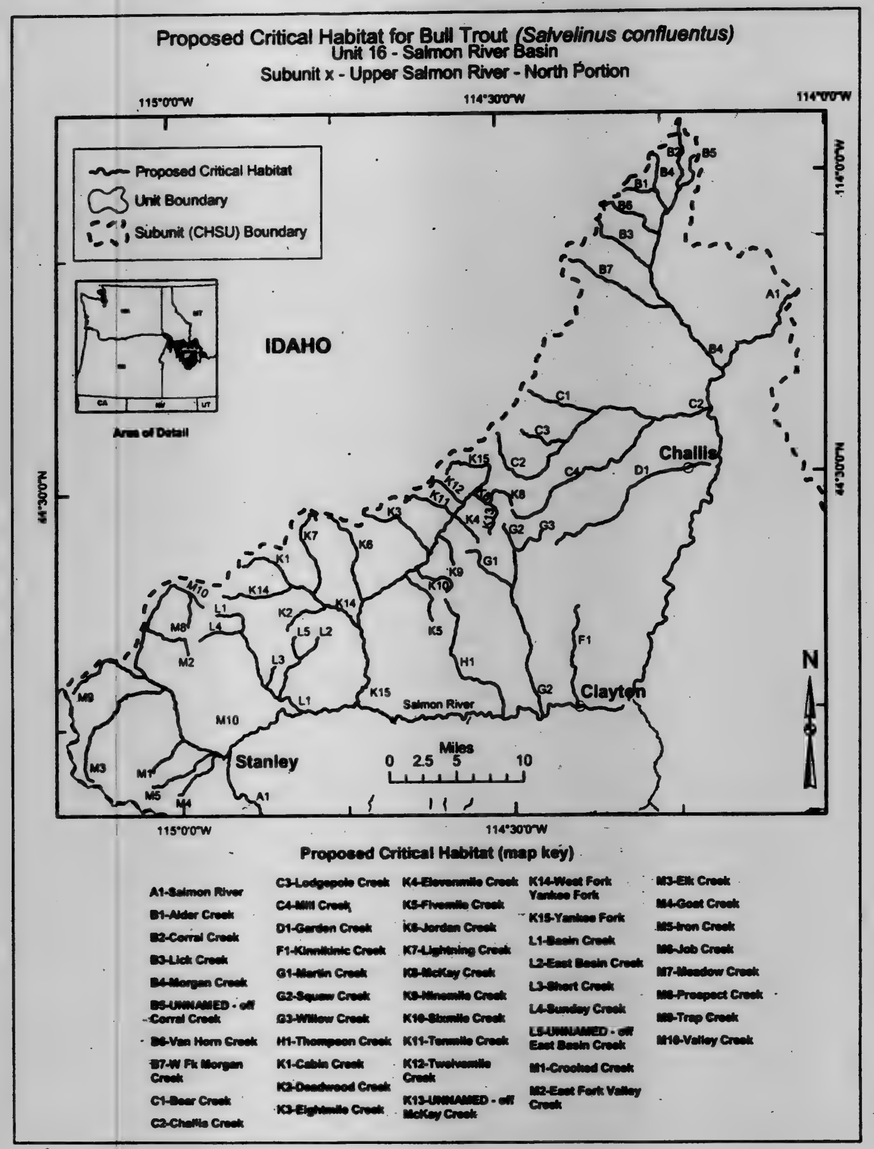
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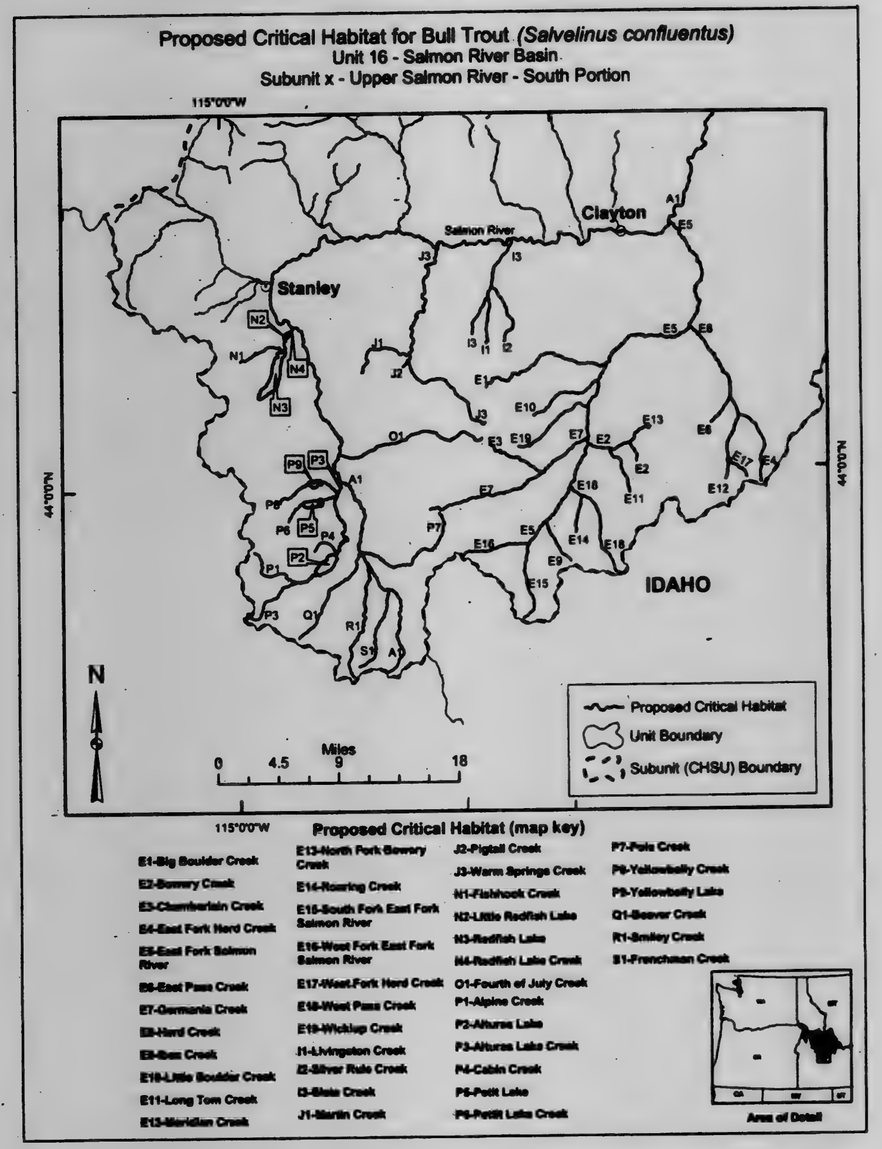


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Proposed Critical Habitat (map key)

A1-Salmon River
B1-Alder Creek
B2-Corral Creek
B3-Lick Creek
B4-Morgan Creek
B5-UNNAMED - off Corral Creek
B6-Van Horn Creek
B7-W Fk Morgan Creek
C1-Bear Creek
C2-Challis Creek
C3-Lodgepole Creek
C4-Mill Creek
D1-Garden Creek
F1-Kinnikinic Creek
G1-Martin Creek
G2-Squaw Creek
G3-Willow Creek
H1-Thompson Creek
K1-Cabin Creek
K2-Deadwood Creek
K3-Eightmile Creek
K4-Elevenmile Creek
K5-Fivemile Creek
K6-Jordan Creek
K7-Lightning Creek
K8-McKay Creek
K9-Ninemile Creek
K10-Stumlo Creek
K11-Tennile Creek
K12-Twelvemile Creek
K13-UNNAMED - off McKay Creek
K14-West Fork Yankee Fork
K15-Yankee Fork
L1-Basin Creek
L2-East Basin Creek
L3-Short Creek
L4-Sunday Creek
L5-UNNAMED - off East Basin Creek
M1-Crooked Creek
M2-East Fork Valley Creek
M3-Elk Creek
M4-Goat Creek
M5-Iron Creek
M6-Job Creek
M7-Meadow Creek
M8-Prospect Creek
M9-Trap Creek
M10-Valley Creek



Proposed Critical Habitat (map key)

E1-Big Boulder Creek
E2-Bowery Creek
E3-Chamberlain Creek
E4-East Fork Herd Creek
E5-East Fork Salmon River
E6-East Pass Creek
E7-Germania Creek
E8-Herd Creek
E9-Box Creek
E10-Little Boulder Creek
E11-Long Tom Creek
E13-Meridian Creek
E13-North Fork Bowery Creek
E14-Roaring Creek
E15-South Fork East Fork Salmon River
E16-West Fork East Fork Salmon River
E17-West Fork Herd Creek
E18-West Pass Creek
E19-Wickiup Creek
I1-Livingston Creek
I2-Silver Rule Creek
I3-Slate Creek
J1-Martin Creek
J2-Pigtail Creek
J3-Warm Springs Creek
N1-Fishhook Creek
N2-Little Redfish Lake
N3-Redfish Lake
N4-Redfish Lake Creek
O1-Fourth of July Creek
P1-Alpine Creek
P2-Alturas Lake
P3-Alturas Lake Creek
P4-Cabin Creek
P5-Petit Lake
P6-Petit Lake Creek
P7-Pole Creek
P8-Yellowbelly Creek
P9-Yellowbelly Lake
Q1-Beaver Creek
R1-Smiley Creek
S1-Frenchman Creek

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(21) Unit 17—Southwest Idaho River Basins.

(i) Critical Habitat Subunit—Anderson Ranch.

(A) Anderson Ranch Reservoir centered at 43.394 degrees latitude, and −115.39 degrees longitude. Dog Creek from a lower point located at 43.53 degrees latitude, and −115.299 degrees longitude to an upper point located at 43.564 degrees latitude, and −115.379 degrees longitude. South Fork Boise River from a lower point located at 43.335 degrees latitude, and −115.536 degrees longitude to an upper point located at 43.774 degrees latitude, and −114.928 degrees longitude.

(B) Feather River from a lower point located at 43.607 degrees latitude, and −115.262 degrees longitude to an upper point located at 43.678 degrees latitude, and −115.264 degrees longitude.

(C) East Fork Elk Creek from a lower point located at 43.709 degrees latitude, and −115.253 degrees longitude to an upper point located at 43.742 degrees latitude, and −115.231 degrees longitude. Elk Creek from a lower point located at 43.678 degrees latitude, and −115.264 degrees longitude to an upper point located at 43.751 degrees latitude, and −115.306 degrees longitude.

(D) Willow Creek from a lower point located at 43.605 degrees latitude, and −115.143 degrees longitude to an upper point located at 43.725 degrees latitude, and −115.022 degrees longitude.

(E) Big Water Gulch from a lower point located at 43.604 degrees latitude, and −115.107 degrees longitude to an upper point located at 43.665 degrees latitude, and −115.042 degrees longitude.

(F) Deadwood Creek from a lower point located at 43.586 degrees latitude, and −115.007 degrees longitude to an upper point located at 43.532 degrees latitude, and −115.015 degrees longitude.

(G) Burnt Log Creek from a lower point located at 43.643 degrees latitude, and −114.969 degrees longitude to an upper point located at 43.646 degrees latitude, and −115.016 degrees longitude. East Fork Skeleton Creek from a lower point located at 43.658 degrees latitude, and −114.998 degrees longitude to an upper point located at 43.685 degrees latitude, and −115.018 degrees longitude. Skeleton Creek from a lower point located at 43.589 degrees latitude, and −115.021 degrees longitude to an upper point located at 43.694 degrees latitude, and −114.986 degrees longitude. West Fork Skeleton Creek from a lower point located at 43.651 degrees latitude, and −114.973 degrees longitude to an upper point located at 43.672 degrees latitude, and −115.026 degrees longitude.

(H) Boardman Creek from a lower point located at 43.612 degrees latitude, and −114.939 degrees longitude to an upper point located at 43.525 degrees latitude, and −115.018 degrees longitude. Smokey Dome Canyon from a lower point located at 43.547 degrees latitude, and −114.955 degrees longitude to an upper point located at 43.503 degrees latitude, and −114.937 degrees longitude.

(I) Big Peak Creek from a lower point located at 43.658 degrees latitude, and −114.794 degrees longitude to an upper point located at 43.628 degrees latitude, and −114.729 degrees longitude. Big Smoky Creek from a lower point located at 43.604 degrees latitude, and −114.915 degrees longitude to an upper point located at 43.792 degrees latitude, and −114.755 degrees longitude. Bluff Creek from a lower point located at 43.7 degrees latitude, and −114.754 degrees longitude to an upper point located at 43.698 degrees latitude, and −114.685 degrees longitude. Carrie Creek from a lower point located at 43.552 degrees latitude, and −114.759 degrees longitude to an upper point located at 43.59 degrees latitude, and −114.69 degrees longitude. Little Smoky Creek from a lower point located at 43.608 degrees latitude, and −114.871 degrees longitude to an upper point located at 43.585 degrees latitude, and −114.679 degrees longitude. Loggy Creek from a lower point located at 43.763 degrees latitude, and −114.787 degrees longitude to an upper point located at 43.8 degrees latitude, and −114.789 degrees longitude. North Fork Big Smoky Creek from a lower point located at 43.686 degrees latitude, and −114.778 degrees longitude to an upper point located at 43.723 degrees latitude, and −114.788 degrees longitude. Salt Creek from a lower point located at 43.607 degrees latitude, and −114.871 degrees longitude to an upper point located at 43.539 degrees latitude, and −114.859 degrees longitude. Snowslide Creek from a lower point located at 43.723 degrees latitude, and −114.788 degrees longitude to an upper point located at 43.739 degrees latitude, and −114.829 degrees longitude. West Fork Big Smoky Creek from a lower point located at 43.744 degrees latitude, and −114.726 degrees longitude to an upper point located at 43.788 degrees latitude, and −114.82 degrees longitude.

(J) Bear Creek from a lower point located at 43.727 degrees latitude, and −114.901 degrees longitude to an upper point located at 43.703 degrees latitude, and −115.006 degrees longitude. Goat Creek from a lower point located at 43.715 degrees latitude, and −114.979 degrees longitude to an upper point located at 43.73 degrees latitude, and −115.006 degrees longitude.

(K) Emma Creek from a lower point located at 43.735 degrees latitude, and −114.906 degrees longitude to an upper point located at 43.791 degrees latitude, and −114.834 degrees longitude. Unnamed creek off Emma Creek from a lower point located at 43.759 degrees latitude, and −114.871 degrees longitude to an upper point located at 43.772 degrees latitude, and −114.883 degrees longitude.

(L) Bass Creek from a lower point located at 43.791 degrees latitude, and −114.975 degrees longitude to an upper point located at 43.741 degrees latitude, and −115.002 degrees longitude. Little Bear Creek from a lower point located at 43.779 degrees latitude, and −114.935 degrees longitude to an upper point located at 43.746 degrees latitude, and −114.974 degrees longitude. North Fork Ross Fork from a lower point located at 43.796 degrees latitude, and −114.988 degrees longitude to an upper point located at 43.853 degrees latitude, and −114.975 degrees longitude. Ross Fork from a lower point located at 43.774 degrees latitude, and −114.928 degrees longitude to an upper point located at 43.796 degrees latitude, and −114.988 degrees longitude. South Fork Ross Fork from a lower point located at 43.796 degrees latitude, and −114.988 degrees longitude to an upper point located at 43.735 degrees latitude, and −115.021 degrees longitude.

(M) Johnson Creek from a lower point located at 43.774 degrees latitude, and −114.928 degrees longitude to an upper point located at 43.844 degrees latitude, and −114.971 degrees longitude. Vienna Creek from a lower point located at 43.802 degrees latitude, and −114.909 degrees longitude to an upper point located at 43.791 degrees latitude, and −114.86 degrees longitude.

(ii) Critical Habitat Subunit—Arrowrock.

(A) Arrowrock Reservoir centered at 43.606 degrees latitude, and −115.833 degrees longitude. Boise River from a lower point located at 43.645 degrees latitude, and −115.748 degrees longitude to an upper point located at 43.713 degrees latitude, and −115.635 degrees longitude. South Fork Boise River from a lower point located at 43.55 degrees latitude, and −115.721 degrees longitude to an upper point located at 43.335 degrees latitude, and −115.536 degrees longitude.

(B) Rattlesnake Creek from a lower point located at 43.561 degrees latitude, and −115.739 degrees longitude to an upper point located at 43.622 degrees latitude, and −115.525 degrees longitude. Russel Gulch from a lower point located at 43.591 degrees latitude, and −115.595 degrees longitude to an upper point located at 43.577 degrees latitude, and −115.559 degrees longitude.

(C) Devils Creek from a lower point located at 43.685 degrees latitude, and −115.591 degrees longitude to an upper point located at 43.642 degrees latitude, and −115.563 degrees longitude. East Fork Sheep Creek from a lower point located at 43.684 degrees latitude, and −115.547 degrees longitude to an upper point located at 43.674 degrees latitude, and −115.485 degrees longitude. Sheep Creek from a lower point located at 43.697 degrees latitude, and −115.661 degrees longitude to an upper point located at 43.617 degrees latitude, and −115.51 degrees longitude.

(D) Middle Fork Boise River from a lower point located at 43.713 degrees latitude, and −115.635 degrees longitude to an upper point located at 43.946 degrees latitude, and −115.032 degrees longitude.

(E) East Fork Roaring River from a lower point located at 43.695 degrees latitude, and −115.464 degrees longitude to an upper point located at 43.616 degrees latitude, and −115.438 degrees longitude. Middle Fork Roaring River from a lower point located at 43.688 degrees latitude, and −115.451 degrees longitude to an upper point located at 43.624 degrees latitude, and −115.465 degrees longitude. Roaring River from a lower point located at 43.79 degrees latitude, and −115.439 degrees longitude to an upper point located at 43.647 degrees latitude, and −115.479 degrees longitude.

(F) Buck Creek from a lower point located at 43.803 degrees latitude, and −115.396 degrees longitude to an upper point located at 43.747 degrees latitude, and −115.325 degrees longitude.

(G) Black Warrior Creek from a lower point located at 43.818 degrees latitude, and −115.29 degrees longitude to an upper point located at 43.945 degrees latitude, and −115.189 degrees longitude. Unnamed creek off Black Warrior Creek from a lower point located at 43.878 degrees latitude, and −115.244 degrees longitude to an upper point located at 43.896 degrees latitude, and −115.263 degrees longitude. West Warrior Creek from a lower point located at 43.84 degrees latitude, and −115.256 degrees longitude to an upper point located at 43.882 degrees latitude, and −115.297 degrees longitude.

(H) Bald Mountain Creek from a lower point located at 43.818 degrees latitude, and −115.266 degrees longitude to an upper point located at 43.756 degrees latitude, and −115.277 degrees longitude.

(I) Little Queens River from a lower point located at 43.843 degrees latitude, and −115.184 degrees longitude to an upper point located at 43.93 degrees latitude, and −115.143 degrees longitude. Queens River from a lower point located at 43.821 degrees latitude, and −115.208 degrees longitude to an upper point located at 43.959 degrees latitude, and −115.118 degrees longitude. Scenic Creek from a lower point located at 43.921 degrees latitude, and −115.178 degrees longitude to an upper point located at 43.901 degrees latitude, and −115.145 degrees longitude. Scott Creek from a lower point located at 43.883 degrees latitude, and −115.18 degrees longitude to an upper point located at 43.891 degrees latitude, and −115.152 degrees longitude. Tripod Creek from a lower point located at 43.895 degrees latitude, and −115.188 degrees longitude to an upper point located at 43.896 degrees latitude, and −115.154 degrees longitude.

(J) Decker Creek from a lower point located at 43.769 degrees latitude, and −115.144 degrees longitude to an upper point located at 43.718 degrees latitude, and −115.046 degrees longitude. Grouse Creek from a lower point located at 43.767 degrees latitude, and −115.122 degrees longitude to an upper point located at 43.731 degrees latitude, and −115.078 degrees longitude. Sawmill Creek from a lower point located at 43.761 degrees latitude, and −115.12 degrees longitude to an upper point located at 43.709 degrees latitude, and −115.094 degrees longitude. Yuba River from a lower point located at 43.803 degrees latitude, and −115.159 degrees longitude to an upper point located at 43.708 degrees latitude, and −115.201 degrees longitude.

(K) Trail Creek from a lower point located at 43.763 degrees latitude, and −115.145 degrees longitude to an upper point located at 43.707 degrees latitude, and −115.117 degrees longitude.

(L) Mattingly Creek from a lower point located at 43.846 degrees latitude, and −115.048 degrees longitude to an upper point located at 43.865 degrees latitude, and −114.984 degrees longitude.

(M) Hungarian Creek from a lower point located at 43.818 degrees latitude, and −115.533 degrees longitude to an upper point located at 43.818 degrees latitude, and −115.539 degrees longitude. North Fork Boise River from a lower point located at 43.713 degrees latitude, and −115.635 degrees longitude to an upper point located at 44.095 degrees latitude, and −115.225 degrees longitude. Rabbit Creek from a lower point located at 43.79 degrees latitude, and −115.602 degrees longitude to an upper point located at 43.797 degrees latitude, and −115.612 degrees longitude.

(N) Banner Creek from a lower point located at 43.983 degrees latitude, and −115.547 degrees longitude to an upper point located at 43.998 degrees latitude, and −115.542 degrees longitude. Crooked River from a lower point located at 43.853 degrees latitude, and −115.536 degrees longitude to an upper point located at 44.027 degrees latitude, and −115.337 degrees longitude. Pikes Fork from a lower point located at 43.971 degrees latitude, and −115.561 degrees longitude to an upper point located at 44.048 degrees latitude, and −115.44 degrees longitude. Ski Creek from a lower point located at 43.88 degrees latitude, and −115.58 degrees longitude to an upper point located at 43.865 degrees latitude, and −115.613 degrees longitude.

(O) Bear Creek from a lower point located at 43.938 degrees latitude, and −115.456 degrees longitude to an upper point located at 44.017 degrees latitude, and −115.405 degrees longitude. Bear River from a lower point located at 43.892 degrees latitude, and −115.488 degrees longitude to an upper point located at 43.987 degrees latitude, and −115.341 degrees longitude. Cub Creek from a lower point located at 43.98 degrees latitude, and −115.401 degrees longitude to an upper point located at 43.979 degrees latitude, and −115.352 degrees longitude. Louise Creek from a lower point located at 43.968 degrees latitude, and −115.424 degrees longitude to an upper point located at 43.964 degrees latitude, and −115.391 degrees longitude. South Fork Cub Creek from a lower point located at 43.977 degrees latitude, and −115.388 degrees longitude to an upper point located at 43.968 degrees latitude, and −115.355 degrees longitude.

(P) Trail Creek from a lower point located at 43.912 degrees latitude, and −115.406 degrees longitude to an upper point located at 43.908 degrees latitude, and −115.399 degrees longitude.

(Q) Lodgepole Creek from a lower point located at 43.93 degrees latitude, and −115.314 degrees longitude to an upper point located at 43.888 degrees latitude, and −115.294 degrees longitude.

(R) Johnson Creek from a lower point located at 43.94 degrees latitude, and −115.284 degrees longitude to an upper point located at 43.947 degrees latitude, and −115.129 degrees longitude.

(S) Big Silver Creek from a lower point located at 43.99 degrees latitude,

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and −115.255 degrees longitude to an upper point located at 43.989 degrees latitude, and −115.327 degrees longitude. Little Silver Creek from a lower point located at 43.997 degrees latitude, and −115.288 degrees longitude to an upper point located at 44.001 degrees latitude, and −115.325 degrees longitude.

(T) Cow Creek from a lower point located at 43.991 degrees latitude, and −115.254 degrees longitude to an upper point located at 44.021 degrees latitude, and −115.295 degrees longitude.

(U) Ballentyne Creek from a lower point located at 44.011 degrees latitude, and −115.232 degrees longitude to an upper point located at 43.983 degrees latitude, and −115.142 degrees longitude.

(V) West Fork Creek from a lower point located at 44.056 degrees latitude, and −115.209 degrees longitude to an upper point located at 44.048 degrees latitude, and −115.246 degrees longitude.

(W) McLeod Creek from a lower point located at 44.057 degrees latitude, and −115.207 degrees longitude to an upper point located at 44.023 degrees latitude, and −115.162 degrees longitude.

(X) McPhearson Creek from a lower point located at 44.066 degrees latitude, and −115.198 degrees longitude to an upper point located at 44.038 degrees latitude, and −115.158 degrees longitude.

(iii) Critical Habitat Subunit—Lucky Peak.

(A) Lucky Peak Reservoir centered at 43.564 degrees latitude, and −115.997 degrees longitude. Mores Creek from a lower point located at 43.618 degrees latitude, and −115.999 degrees longitude to an upper point located at 43.959 degrees latitude, and −115.7 degrees longitude.

(iv) Critical Habitat Subunit—Deadwood River.

(A) Deadwood Reservoir centered at 44.309 degrees latitude, and −115.662 degrees longitude. Deadwood River from a lower point located at 44.342 degrees latitude, and −115.657 degrees longitude to an upper point located at 44.547 degrees latitude, and −115.56 degrees longitude.

(B) Daisy Creek from a lower point located at 44.26 degrees latitude, and −115.693 degrees longitude to an upper point located at 44.269 degrees latitude, and −115.747 degrees longitude. Trail Creek from a lower point located at 44.279 degrees latitude, and −115.666 degrees longitude to an upper point located at 44.239 degrees latitude, and −115.758 degrees longitude.

(C) South Fork Beaver Creek from a lower point located at 44.295 degrees latitude, and −115.685 degrees longitude to an upper point located at 44.297 degrees latitude, and −115.732 degrees longitude. Unnamed creek off South Fork Beaver Creek from a lower point located at 44.294 degrees latitude, and −115.687 degrees longitude to an upper point located at 44.283 degrees latitude, and −115.721 degrees longitude.

(D) Beaver Creek from a lower point located at 44.317 degrees latitude, and −115.684 degrees longitude to an upper point located at 44.31 degrees latitude, and −115.741 degrees longitude. Unnamed creek off Beaver Creek from a lower point located at 44.318 degrees latitude, and −115.686 degrees longitude to an upper point located at 44.336 degrees latitude, and −115.717 degrees longitude.

(E) Habit Creek from a lower point located at 44.33 degrees latitude, and −115.672 degrees longitude to an upper point located at 44.349 degrees latitude, and −115.712 degrees longitude.

(F) Basin Creek from a lower point located at 44.341 degrees latitude, and −115.658 degrees longitude to an upper point located at 44.377 degrees latitude, and −115.701 degrees longitude.

(G) Wild Buck Creek from a lower point located at 44.342 degrees latitude, and −115.657 degrees longitude to an upper point located at 44.389 degrees latitude, and −115.649 degrees longitude.

(H) Deer Creek from a lower point located at 44.396 degrees latitude, and −115.615 degrees longitude to an upper point located at 44.347 degrees latitude, and −115.548 degrees longitude. North Fork Deer Creek from a lower point located at 44.408 degrees latitude, and −115.553 degrees longitude to an upper point located at 44.452 degrees latitude, and −115.544 degrees longitude. Unnamed creek 1 off Deer Creek from a lower point located at 44.407 degrees latitude, and −115.585 degrees longitude to an upper point located at 44.425 degrees latitude, and −115.586 degrees longitude. Unnamed creek 2 off Deer Creek from a lower point located at 44.402 degrees latitude, and −115.559 degrees longitude to an upper point located at 44.388 degrees latitude, and −115.553 degrees longitude. Unnamed creek 3 off Deer Creek from a lower point located at 44.407 degrees latitude, and −115.542 degrees longitude to an upper point located at 44.422 degrees latitude, and −115.533 degrees longitude.

(I) Goat Creek from a lower point located at 44.398 degrees latitude, and −115.618 degrees longitude to an upper point located at 44.393 degrees latitude, and −115.679 degrees longitude.

(J) Bitter Creek from a lower point located at 44.406 degrees latitude, and −115.617 degrees longitude to an upper point located at 44.421 degrees latitude, and −115.677 degrees longitude.

(K) Stratton Creek from a lower point located at 44.47 degrees latitude, and −115.586 degrees longitude to an upper point located at 44.446 degrees latitude, and −115.63 degrees longitude.

(L) East Fork Deadwood River from a lower point located at 44.492 degrees latitude, and −115.574 degrees longitude to an upper point located at 44.494 degrees latitude, and −115.57 degrees longitude.

(v) Critical Habitat Subunit—Middle Fork Payette River.

(A) Middle Fork Payette River from a lower point located at 44.103 degrees latitude, and −115.999 degrees longitude to an upper point located at 44.551 degrees latitude, and −115.764 degrees longitude. Unnamed creek 1 off Middle Fork Payette River from a lower point located at 44.524 degrees latitude, and −115.774 degrees longitude to an upper point located at 44.552 degrees latitude, and −115.834 degrees longitude. Unnamed creek 2 off Middle Fork Payette River from a lower point located at 44.532 degrees latitude, and −115.772 degrees longitude to an upper point located at 44.534 degrees latitude, and −115.755 degrees longitude. Unnamed creek 3 off Middle Fork Payette River from a lower point located at 44.539 degrees latitude, and −115.77 degrees longitude to an upper point located at 44.541 degrees latitude, and −115.738 degrees longitude.

(B) Lightning Creek from a lower point located at 44.193 degrees latitude, and −115.936 degrees longitude to an upper point located at 44.233 degrees latitude, and −115.766 degrees longitude. Onion Creek from a lower point located at 44.214 degrees latitude, and −115.824 degrees longitude to an upper point located at 44.234 degrees latitude, and −115.775 degrees longitude.

(C) Long Fork Silver Creek from a lower point located at 44.382 degrees latitude, and −115.76 degrees longitude to an upper point located at 44.411 degrees latitude, and −115.679 degrees longitude. Peace Creek from a lower point located at 44.341 degrees latitude, and −115.791 degrees longitude to an upper point located at 44.356 degrees latitude, and −115.733 degrees longitude. Silver Creek from a lower point located at 44.304 degrees latitude, and −115.864 degrees longitude to an upper point located at 44.408 degrees latitude, and −115.749 degrees longitude. Ucon Creek from a lower point located at 44.371 degrees latitude, and −115.766 degrees longitude to an upper point located at 44.379 degrees latitude, and −115.72 degrees longitude. Valley Creek from a lower point located at 44.333 degrees latitude, and −115.776 degrees longitude to an upper point located at 44.28 degrees latitude, and −115.742 degrees longitude.

(D) Bull Creek from a lower point located at 44.422 degrees latitude, and −115.813 degrees longitude to an upper point located at 44.491 degrees latitude, and −115.614 degrees longitude. Oxtail Creek from a lower point located at 44.459 degrees latitude, and −115.667 degrees longitude to an upper point located at 44.439 degrees latitude, and −115.638 degrees longitude.

Sixteen−to−one Creek from a lower point located at 44.426 degrees latitude, and −115.801 degrees longitude to an upper point located at 44.467 degrees latitude, and −115.754 degrees longitude.

(vi) Critical Habitat Subunit—Weiser River.

(A) Little Weiser River from a lower point located at 44.553 degrees latitude, and −116.693 degrees longitude to an upper point located at 44.837 degrees latitude, and −116.174 degrees longitude. Weiser River from a lower point located at 44.553 degrees latitude, and −116.693 degrees longitude to an upper point located at 44.847 degrees latitude, and −116.379 degrees longitude.

(B) Anderson Creek from a lower point located at 44.527 degrees latitude, and −116.242 degrees longitude to an upper point located at 44.605 degrees latitude, and −116.186 degrees longitude.

(C) Sheep Creek from a lower point located at 44.542 degrees latitude, and −116.221 degrees longitude to an upper point located at 44.504 degrees latitude, and −116.174 degrees longitude.

(D) East Pine Creek from a lower point located at 44.652 degrees latitude, and −116.815 degrees longitude to an upper point located at 44.772 degrees latitude, and −116.769 degrees longitude.

(E) Rush Creek from a lower point located at 44.567 degrees latitude, and −116.672 degrees longitude to an upper point located at 44.789 degrees latitude, and −116.747 degrees longitude.

(F) Middle Fork Weiser River from a lower point located at 44.668 degrees latitude, and −116.483 degrees longitude to an upper point located at 44.771 degrees latitude, and −116.214 degrees longitude.

(G) Disappointment Creek from a lower point located at 44.825 degrees latitude, and −116.657 degrees longitude to an upper point located at 44.83 degrees latitude, and −116.706 degrees longitude. Grouse Creek from a lower point located at 44.826 degrees latitude, and −116.656 degrees longitude to an upper point located at 44.835 degrees latitude, and −116.707 degrees longitude. Hornet Creek from a lower point located at 44.728 degrees latitude, and −116.448 degrees longitude to an upper point located at 44.797 degrees latitude, and −116.732 degrees longitude. Mill Creek from a lower point located at 44.837 degrees latitude, and −116.619 degrees longitude to an upper point located at 44.854 degrees latitude, and −116.634 degrees longitude. North Creek from a lower point located at 44.814 degrees latitude, and −116.692 degrees longitude to an upper point located at 44.818 degrees latitude, and −116.72 degrees longitude. Olive Creek from a lower point located at 44.836 degrees latitude, and −116.627 degrees longitude to an upper point located at 44.787 degrees latitude, and −116.693 degrees longitude. Placer Creek from a lower point located at 44.808 degrees latitude, and −116.679 degrees longitude to an upper point located at 44.806 degrees latitude, and −116.737 degrees longitude. Unnamed creek 1 off Olive Creek from a lower point located at 44.812 degrees latitude, and −116.643 degrees longitude to an upper point located at 44.791 degrees latitude, and −116.648 degrees longitude. Unnamed creek 2 off Olive Creek from a lower point located at 44.801 degrees latitude, and −116.66 degrees longitude to an upper point located at 44.787 degrees latitude, and −116.665 degrees longitude. West Mill Creek from a lower point located at 44.854 degrees latitude, and −116.634 degrees longitude to an upper point located at 44.853 degrees latitude, and −116.686 degrees longitude.

(H) West Fork Weiser River from a lower point located at 44.808 degrees latitude, and −116.443 degrees longitude to an upper point located at 45.008 degrees latitude, and −116.509 degrees longitude.

(I) Lost Creek from a lower point located at 44.91 degrees latitude, and −116.495 degrees longitude to an upper point located at 45.091 degrees latitude, and −116.503 degrees longitude. Lost Valley Reservoir centered at 44.966 degrees latitude, and −116.462 degrees longitude.

(J) Dewey Creek from a lower point located at 44.807 degrees latitude, and −116.277 degrees longitude to an upper point located at 44.772 degrees latitude, and −116.275 degrees longitude. East Fork Weiser River from a lower point located at 44.847 degrees latitude, and −116.379 degrees longitude to an upper point located at 44.729 degrees latitude, and −116.278 degrees longitude.

(vii) Critical Habitat Subunit—Upper South Fork Payette River.

(A) Baron Creek from a lower point located at 44.137 degrees latitude, and −115.148 degrees longitude to an upper point located at 44.094 degrees latitude, and −115.027 degrees longitude. Deadwood River from a lower point located at 44.079 degrees latitude, and −115.657 degrees longitude to an upper point located at 44.294 degrees latitude, and −115.645 degrees longitude. North Fork Baron Creek from a lower point located at 44.131 degrees latitude, and −115.101 degrees longitude to an upper point located at 44.145 degrees latitude, and −115.077 degrees longitude. South Fork Payette River from a lower point located at 44.103 degrees latitude, and −115.999 degrees longitude to an upper point located at 43.999 degrees latitude, and −115.039 degrees longitude.

(B) Scott Creek from a lower point located at 44.223 degrees latitude, and −115.648 degrees longitude to an upper point located at 44.191 degrees latitude, and −115.761 degrees longitude. Smith Creek from a lower point located at 44.214 degrees latitude, and −115.709 degrees longitude to an upper point located at 44.2 degrees latitude, and −115.757 degrees longitude. South Fork Scott Creek from a lower point located at 44.222 degrees latitude, and −115.66 degrees longitude to an upper point located at 44.187 degrees latitude, and −115.702 degrees longitude.

(C) Ninemile Creek from a lower point located at 44.231 degrees latitude, and −115.647 degrees longitude to an upper point located at 44.232 degrees latitude, and −115.747 degrees longitude.

(D) No Man Creek from a lower point located at 44.247 degrees latitude, and −115.629 degrees longitude to an upper point located at 44.247 degrees latitude, and −115.59 degrees longitude. Unnamed creek 1 off Deadwood River from a lower point located at 44.24 degrees latitude, and −115.632 degrees longitude to an upper point located at 44.226 degrees latitutle, and −115.616 degrees longitude. Unnamed creek 2 off Deadwood River from a lower point located at 44.276 degrees latitude, and −115.635 degrees longitude to an upper point located at 44.269 degrees latitude, and −115.653 degrees longitude.

(E) North Fork Whitehawk Creek from a lower point located at 44.277 degrees latitude, and −115.584 degrees longitude to an upper point located at 44.291 degrees latitude, and −115.538 degrees longitude. Whitehawk Creek from a lower point located at 44.275 degrees latitude, and −115.635 degrees

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longitude to an upper point located at 44.261 degrees latitude, and −115.555 degrees longitude.

(F) East Fork Warm Springs Creek from a lower point located at 44.294 degrees latitude, and −115.621 degrees longitude to an upper point located at 44.317 degrees latitude, and −115.537 degrees longitude. Middle Fork Warm Springs Creek from a lower point located at 44.326 degrees latitude, and −115.598 degrees longitude to an upper point located at 44.351 degrees latitude, and −115.565 degrees longitude. Unnamed creek off East Fork Warm Springs Creek from a lower point located at 44.312 degrees latitude, and −115.577 degrees longitude to an upper point located at 44.324 degrees latitude, and −115.563 degrees longitude. Unnamed creek off Middle Fork Warm Springs Creek from a lower point located at 44.332 degrees latitude, and −115.579 degrees longitude to an upper point located at 44.324 degrees latitude, and −115.54 degrees longitude. Warm Springs Creek from a lower point located at 44.279 degrees latitude, and −115.63 degrees longitude to an upper point located at 44.367 degrees latitude, and −115.579 degrees longitude.

(G) Wilson Creek from a lower point located at 44.292 degrees latitude, and −115.641 degrees longitude to an upper point located at 44.366 degrees latitude, and −115.564 degrees longitude.

(H) Clear Creek from a lower point located at 44.082 degrees latitude, and −115.61 degrees longitude to an upper point located at 44.229 degrees latitude, and −115.408 degrees longitude. Long Creek from a lower point located at 44.129 degrees latitude, and −115.579 degrees longitude to an upper point located at 44.153 degrees latitude, and −115.532 degrees longitude. South Fork Clear Creek from a lower point located at 44.232 degrees latitude, and −115.439 degrees longitude to an upper point located at 44.183 degrees latitude, and −115.483 degrees longitude. Unnamed creek off Long Creek from a lower point located at 44.148 degrees latitude, and −115.546 degrees longitude to an upper point located at 44.137 degrees latitude, and −115.534 degrees longitude.

(I) Kettle Creek from a lower point located at 44.107 degrees latitude, and −115.443 degrees longitude to an upper point located at 44.147 degrees latitude, and −115.442 degrees longitude.

(J) East Fork Eightmile Creek from a lower point located at 44.133 degrees latitude, and −115.406 degrees longitude to an upper point located at 44.2 degrees latitude, and −115.354 degrees longitude. Eightmile Creek from a lower point located at 44.118 degrees latitude, and −115.412 degrees longitude to an upper point located at 44.251 degrees latitude, and −115.399 degrees longitude. Unnamed creek 1 off Eightmile Creek from a lower point located at 44.153 degrees latitude, and −115.414 degrees longitude to an upper point located at 44.162 degrees latitude, and −115.451 degrees longitude. Unnamed creek 2 off Eightmile Creek from a lower point located at 44.173 degrees latitude, and −115.4 degrees longitude to an upper point located at 44.195 degrees latitude, and −115.419 degrees longitude. Unnamed creek 3 off Eightmile Creek from a lower point located at 44.174 degrees latitude, and −115.397 degrees longitude to an upper point located at 44.198 degrees latitude, and −115.418 degrees longitude.

(K) Tenmile Creek from a lower point located at 44.12 degrees latitude, and −115.385 degrees longitude to an upper point located at 44.087 degrees latitude, and −115.236 degrees longitude. Unnamed creek 1 off Tenmile Creek from a lower point located at 44.062 degrees latitude, and −115.322 degrees longitude to an upper point located at 44.08 degrees latitude, and −115.303 degrees longitude. Unnamed creek 2 off Tenmile Creek from a lower point located at 44.062 degrees latitude, and −115.304 degrees longitude to an upper point located at 44.041 degrees latitude, and −115.298 degrees longitude. Unnamed creek 3 off Tenmile Creek from a lower point located at 44.069 degrees latitude, and −115.286 degrees longitude to an upper point located at 44.046 degrees latitude, and −115.287 degrees longitude.

(L) Chapman Creek from a lower point located at 44.137 degrees latitude, and −115.314 degrees longitude to an upper point located at 44.097 degrees latitude, and −115.289 degrees longitude.

(M) Gates Creek from a lower point located at 44.292 degrees latitude, and −115.305 degrees longitude to an upper point located at 44.348 degrees latitude, and −115.327 degrees longitude. Warm Spring Creek from a lower point located at 44.144 degrees latitude, and −115.303 degrees longitude to an upper point located at 44.292 degrees latitude, and −115.305 degrees longitude.

(N) Canyon Creek from a lower point located at 44.172 degrees latitude, and −115.243 degrees longitude to an upper point located at 44.303 degrees latitude, and −115.23 degrees longitude. North Fork Canyon Creek from a lower point located at 44.25 degrees latitude, and −115.214 degrees longitude to an upper point located at 44.261 degrees latitude, and −115.198 degrees longitude. South Fork Canyon Creek from a lower point located at 44.237 degrees latitude, and −115.213 degrees longitude to an upper point located at 44.226 degrees latitude, and −115.191 degrees longitude. Unnamed creek off North Fork Canyon Creek from a lower point located at 44.261 degrees latitude, and −115.198 degrees longitude to an upper point located at 44.241 degrees latitude, and −115.165 degrees longitude.

(O) Wapiti Creek from a lower point located at 44.162 degrees latitude, and −115.19 degrees longitude to an upper point located at 44.117 degrees latitude, and −115.201 degrees longitude.

(P) Trail Creek from a lower point located at 44.146 degrees latitude, and −115.153 degrees longitude to an upper point located at 44.164 degrees latitude, and −115.092 degrees longitude.

(viii) Critical Habitat Subunit—North Fork Payette River.

(A) Foolhen Creek from a lower point located at 44.687 degrees latitude, and −115.878 degrees longitude to an upper point located at 44.739 degrees latitude, and −115.842 degrees longitude. Gold Fork River from a lower point located at 44.697 degrees latitude, and −116.053 degrees longitude to an upper point located at 44.674 degrees latitude, and −115.896 degrees longitude. Lodgepole Creek from a lower point located at 44.69 degrees latitude, and −115.866 degrees longitude to an upper point located at 44.728 degrees latitude, and −115.843 degrees longitude. North Fork Gold Fork River from a lower point located at 44.674 degrees latitude, and −115.896 degrees longitude to an upper point located at 44.756 degrees latitude, and −115.8 degrees longitude. South Fork Gold Fork River from a lower point located at 44.674 degrees latitude, and −115.896 degrees longitude to an upper point located at 44.653 degrees latitude, and −115.839 degrees longitude. Spruce Creek from a lower point located at 44.689 degrees latitude, and −115.87 degrees longitude to an upper point located at 44.672 degrees latitude, and −115.848 degrees longitude. Unnamed creek 1 off North Fork Gold Fork River from a lower point located at 44.704 degrees latitude, and −115.833 degrees longitude to an upper point located at 44.726 degrees latitude, and −115.838 degrees longitude. Unnamed creek 2 off North Fork Gold Fork River from a lower point located at 44.704 degrees latitude, and −115.824 degrees longitude to an upper point located at 44.679 degrees latitude, and −115.827 degrees longitude. Unnamed creek 3 off North Fork Gold Fork River from a lower point located at 44.706 degrees latitude, and −115.819 degrees longitude to an upper point located at 44.679 degrees latitude, and −115.811 degrees longitude. Unnamed creek 4 off North Fork Gold Fork River from a lower point located at 44.706 degrees latitude, and −115.817 degrees longitude to an upper point located at 44.747 degrees latitude, and −115.811 degrees longitude.

(B) Kennally Creek from a lower point located at 44.683 degrees latitude, and −115.974 degrees longitude to an upper point located at 44.781 degrees latitude, and −115.863 degrees longitude. Rapid Creek from a lower point located at 44.749 degrees latitude, and −115.957 degrees longitude to an upper point located at 44.861 degrees latitude, and −115.904 degrees longitude.

(C) Cascade Reservoir centered at 44.599 degrees latitude, and −116.097 degrees longitude.

(D) Lake Fork from a lower point located at 44.75 degrees latitude, and −116.096 degrees longitude to an upper point located at 44.917 degrees latitude, and −115.928 degrees longitude. Little Payette Lake centered at 44.916 degrees latitude, and −116.033 degrees longitude. North Fork Lake Fork from a lower point located at 44.923 degrees latitude, and −115.945 degrees longitude to an upper point located at 44.998 degrees latitude, and −115.921 degrees longitude. South Fork Lake Fork from a lower point located at 44.917 degrees latitude, and −115.928 degrees longitude to an upper point located at 44.875 degrees latitude, and −115.902 degrees longitude.

(ix) Critical Habitat Subunit—Squaw Creek.

(A) Poison Creek from a lower point located at 44.479 degrees latitude, and −116.185 degrees longitude to an upper point located at 44.491 degrees latitude, and −116.162 degrees longitude. Pole Creek from a lower point located at 44.471 degrees latitude, and −116.218 degrees longitude to an upper point located at 44.494 degrees latitude, and −116.202 degrees longitude. Squaw Creek from a lower point located at 43.936 degrees latitude, and −116.366 degrees longitude to an upper point located at 44.436 degrees latitude, and −116.152 degrees longitude. Unnamed creek 1 off Squaw Creek from a lower point located at 44.47 degrees latitude, and −116.219 degrees longitude to an upper point located at 44.455 degrees latitude, and −116.199 degrees longitude. Unnamed creek 2 off Squaw Creek from a lower point located at 44.479 degrees latitude, and −116.193 degrees longitude to an upper point located at 44.46 degrees latitude, and −116.165 degrees longitude. Unnamed creek 3 off Squaw Creek from a lower point located at 44.476 degrees latitude, and −116.19 degrees longitude to an upper point located at 44.457 degrees latitude, and −116.174 degrees longitude.

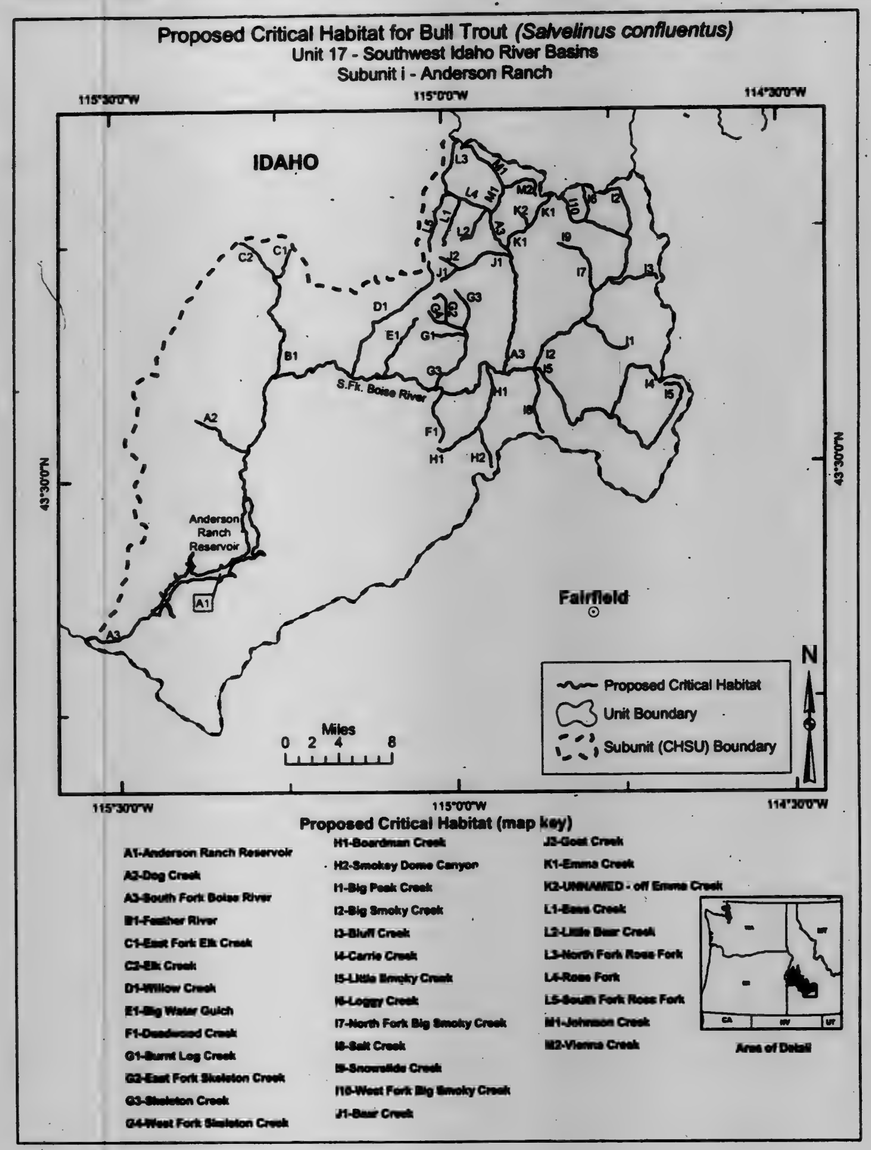
(B) Antelope Creek from a lower point located at 44.375 degrees latitude, and −116.197 degrees longitude to an upper point located at 44.4 degrees latitude, and −116.168 degrees longitude. Renwick Creek from a lower point located at 44.367 degrees latitude, and −116.195 degrees longitude to an upper point located at 44.397 degrees latitude, and −116.139 degrees longitude. Second Fork Squaw Creek from a lower point located at 44.309 degrees latitude, and −116.31 degrees longitude to an upper point located at 44.404 degrees latitude, and −116.191 degrees longitude. Third Fork Squaw Creek from a lower point located at 44.373 degrees latitude, and −116.3 degrees longitude to an upper point located at 44.453 degrees latitude, and −116.156 degrees longitude. Unnamed creek 1 off Third Fork Squaw Creek from a lower point located at 44.424 degrees latitude, and −116.21 degrees longitude to an upper point located at 44.42 degrees latitude, and −116.148 degrees longitude. Unnamed creek 2 off Third Fork Squaw Creek from a lower point located at 44.416 degrees latitude, and −116.201 degrees longitude to an upper point located at 44.426 degrees latitude, and −116.16 degrees longitude. Unnamed creek 3 off Third Fork Squaw Creek from a lower point located at 44.415 degrees latitude, and −116.19 degrees longitude to an upper point located at 44.421 degrees latitude, and −116.171 degrees longitude. Unnamed creek 4 off Third Fork Squaw Creek from a lower point located at 44.434 degrees latitude, and −116.203 degrees longitude to an upper point located at 44.433 degrees latitude, and −116.168 degrees longitude.

(C) Joes Creek from a lower point located at 44.335 degrees latitude, and −116.176 degrees longitude to an upper point located at 44.372 degrees latitude, and −116.147 degrees longitude. Sage Hen Creek from a lower point located at 44.351 degrees latitude, and −116.209 degrees longitude to an upper point located at 44.373 degrees latitude, and −116.133 degrees longitude. Sage Hen Reservoir centered at 44.329 degrees latitude, and −116.183 degrees longitude. Unnamed creek Into Sage Hen Reservoir from a lower point located at 44.332 degrees latitude, and −116.174 degrees longitude to an upper point located at 44.317 degrees latitude, and −116.161 degrees longitude.

Note: Maps follow for Unit 17, Subunit i; Subunit ii; Subunit iii; Subunit iv; Subunit v; Subunit vi; Subunit vii; Subunit viii; and Subunit ix.

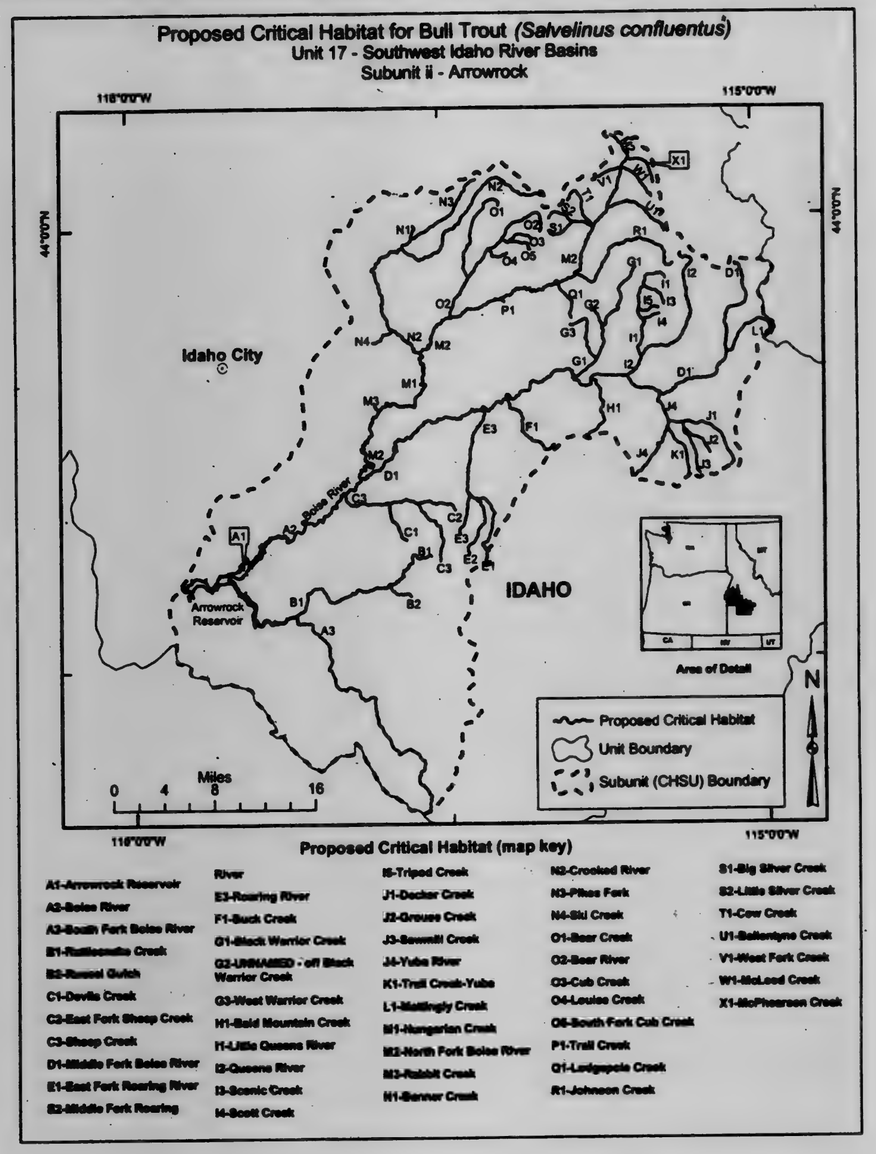
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Proposed Critical Habitat (map key)

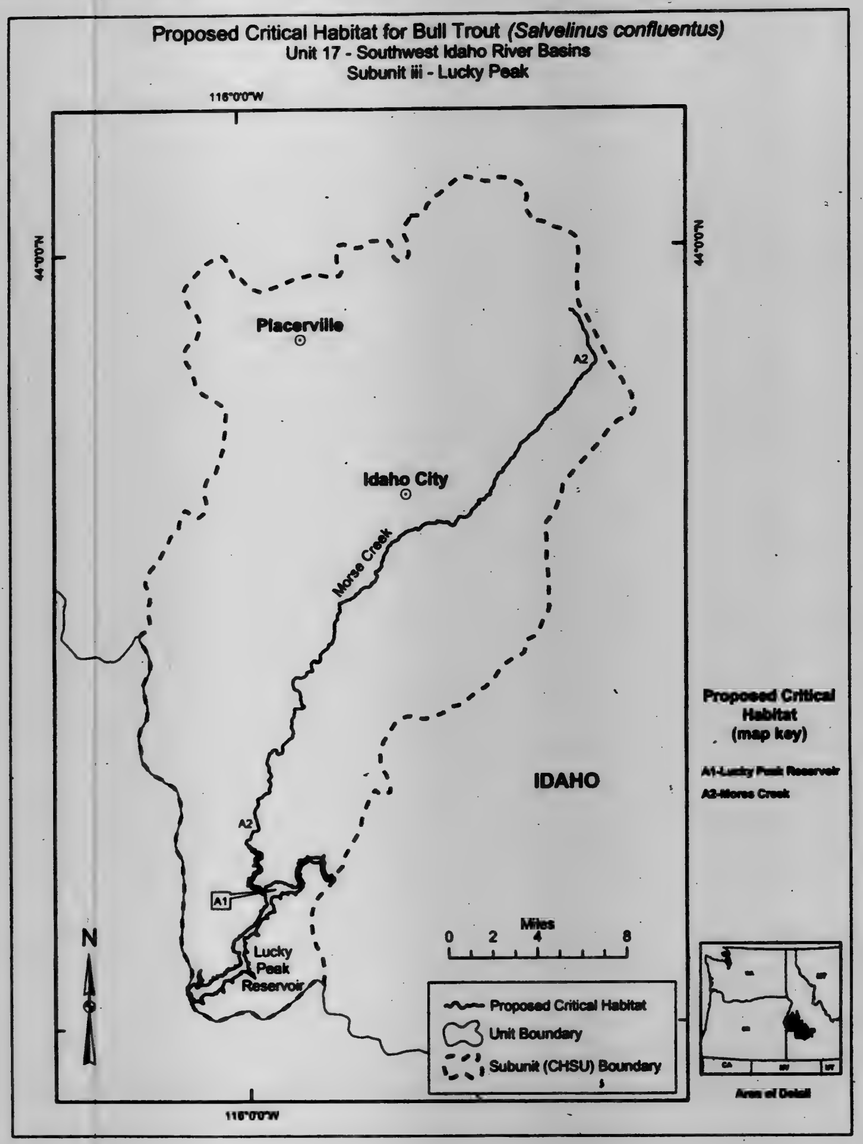
A1-Anderson Ranch Reservoir
A2-Dog Creek
A3-South Fork Boise River
B1-Feather River
C1-East Fork Elk Creek
C2-Elk Creek
D1-Willow Creek
E1-Big Water Gulch
F1-Deadwood Creek
G1-Burnt Log Creek
G2-East Fork Skeleton Creek
G3-Skeleton Creek
G4-West Fork Skeleton Creek
H1-Boardman Creek
H2-Smokey Dome Canyon
I1-Big Peak Creek
I2-Big Smoky Creek
I3-Bluff Creek
I4-Carrie Creek
I5-Little Smoky Creek
I6-Loggy Creek
I7-North Fork Big Smoky Creek
I8-Salt Creek
I9-Snowslide Creek
I10-West Fork Big Smoky Creek
J1-Bear Creek
J2-Goat Creek
K1-Emma Creek
K2-UNNAMED - off Emma Creek
L1-Bass Creek
L2-Little Bear Creek
L3-North Fork Rose Fork
L4-Rose Fork
L5-South Fork Rose Fork
M1-Johnson Creek
M2-Vienna Creek

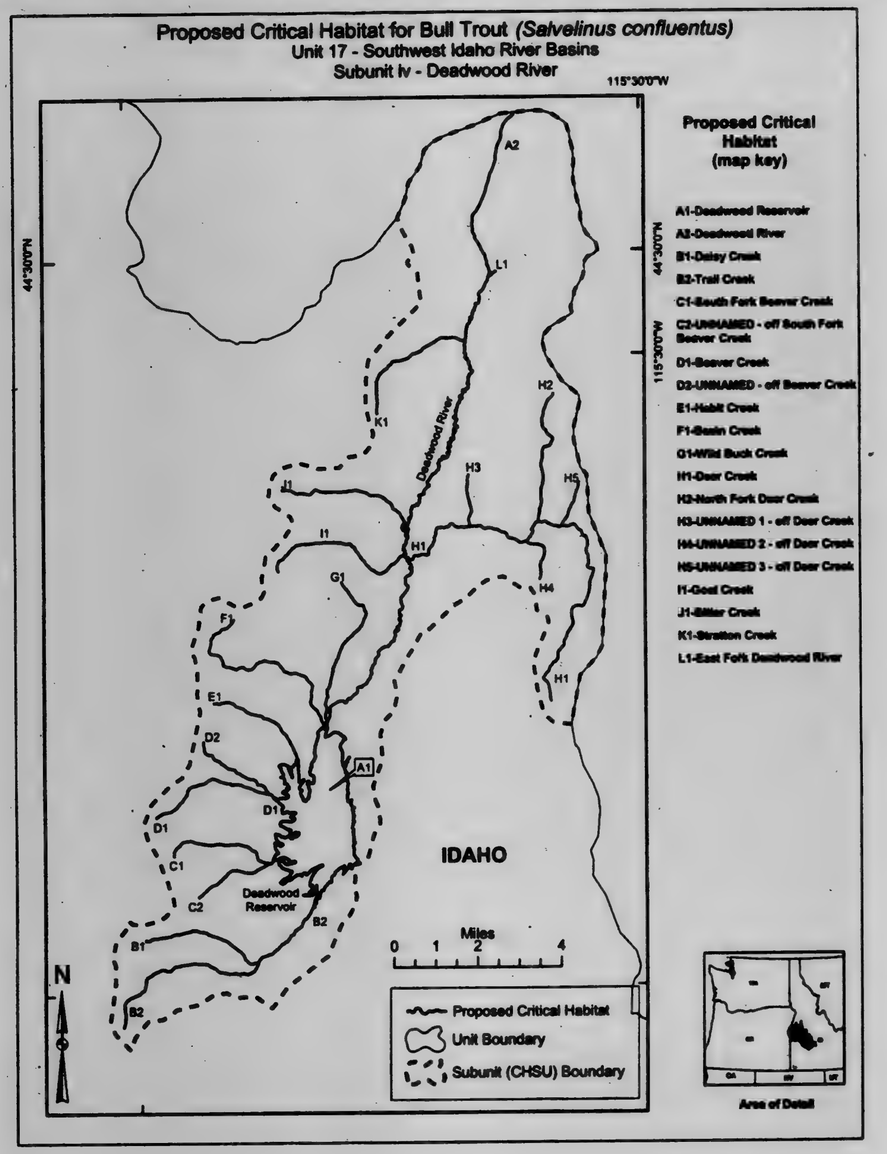


Proposed Critical Habitat (map key)

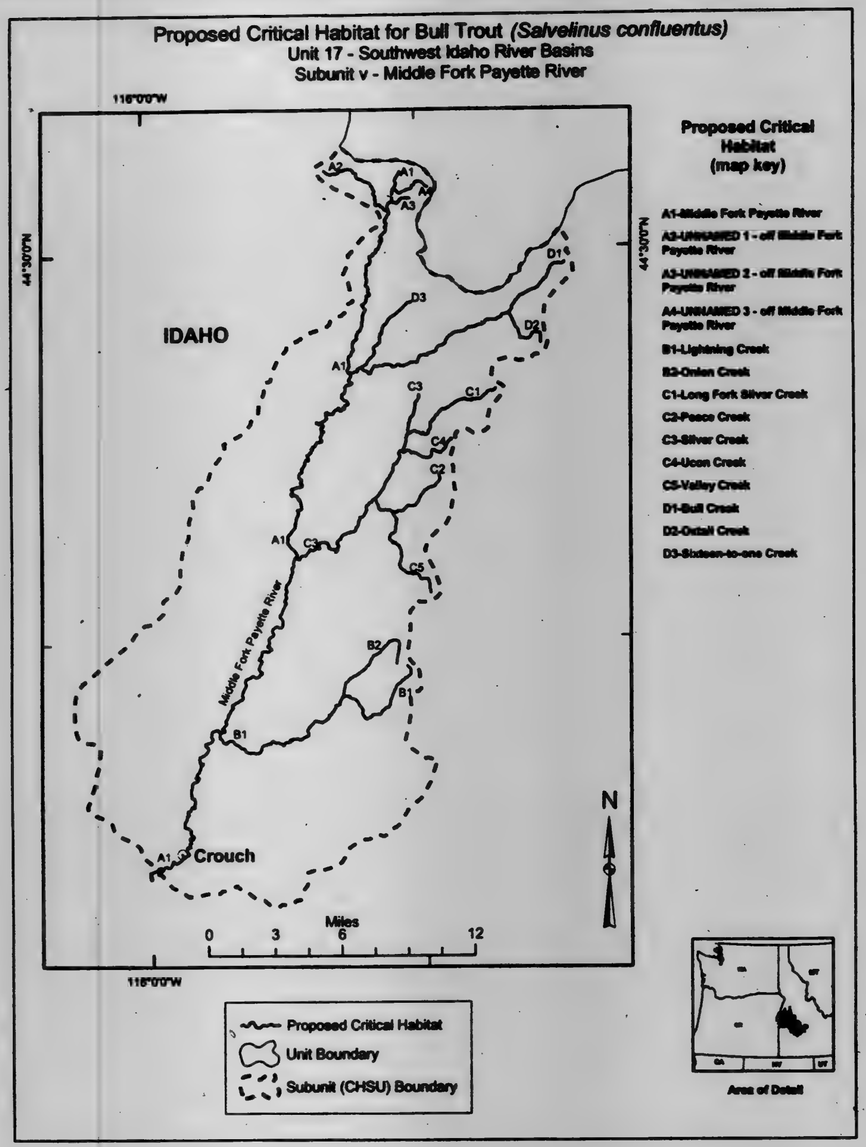
A1-Arrowrock Reservoir
A2-Boise River
A3-South Fork Boise River
B1-Rattlesnake Creek
B2-Russel Gulch
C1-Devils Creek
C2-East Fork Sheep Creek
C3-Sheep Creek
D1-Middle Fork Boise River
E1-East Fork Roaring River
E2-Middle Fork Roaring River
E3-Roaring River
F1-Buck Creek
G1-Black Warrior Creek
G2-UNNAMED - off Black Warrior Creek
G3-West Warrior Creek
H1-Bald Mountain Creek
I1-Little Queens River
I2-Queens River
I3-Scenic Creek
I4-Scott Creek
I5-Tripod Creek
J1-Decker Creek
J2-Grouse Creek
J3-Sawmill Creek
J4-Yuba River
K1-Trail Creek-Yuba
L1-Mattingly Creek
M1-Hungarian Creek
M2-North Fork Boise River
M3-Rabbit Creek
N1-Banner Creek
N2-Crooked River
N3-Pikes Fork
N4-Ski Creek
O1-Bear Creek
O2-Bear River
O3-Cub Creek
O4-Louise Creek
O5-South Fork Cub Creek
P1-Trail Creek
Q1-Ledgepole Creek
R1-Johnson Creek
S1-Big Silver Creek
S2-Little Silver Creek
T1-Cow Creek
U1-Bellenlyne Creek
V1-West Fork Creek
W1-McLeod Creek
X1-McPheerson Creek

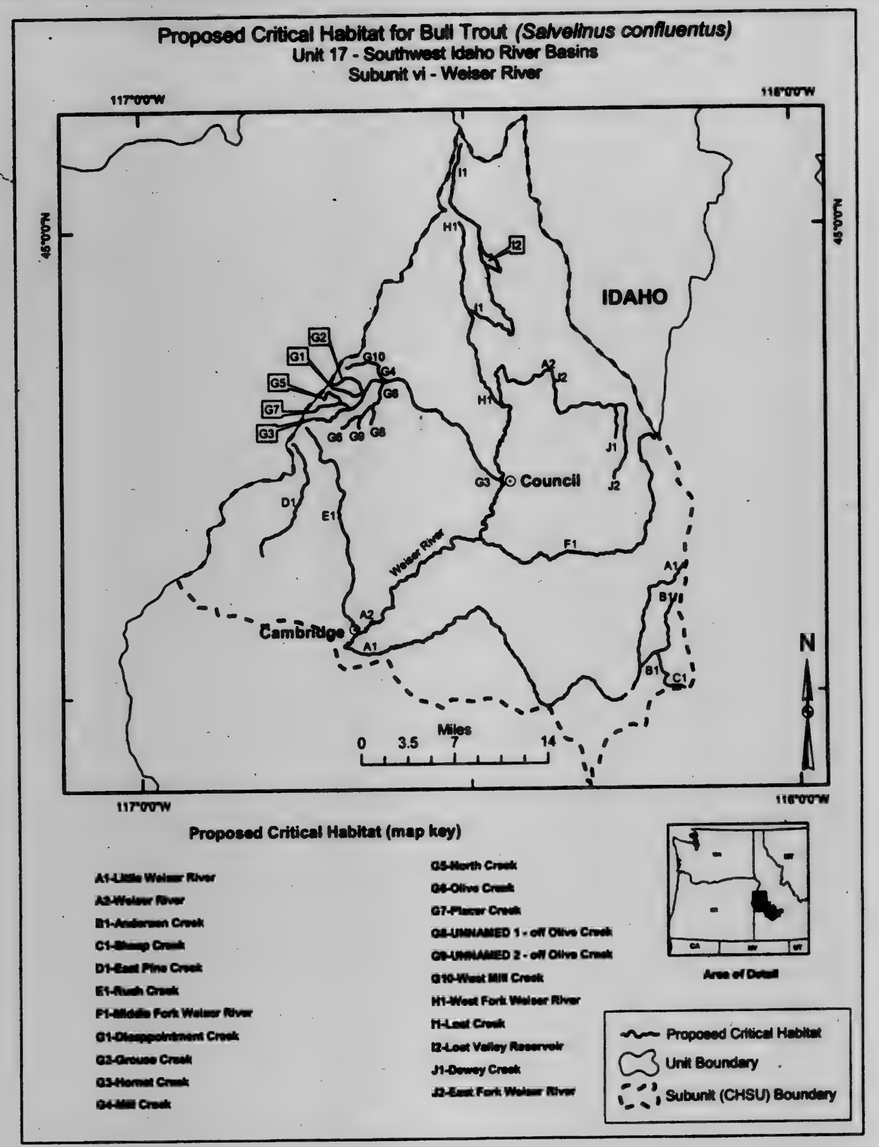
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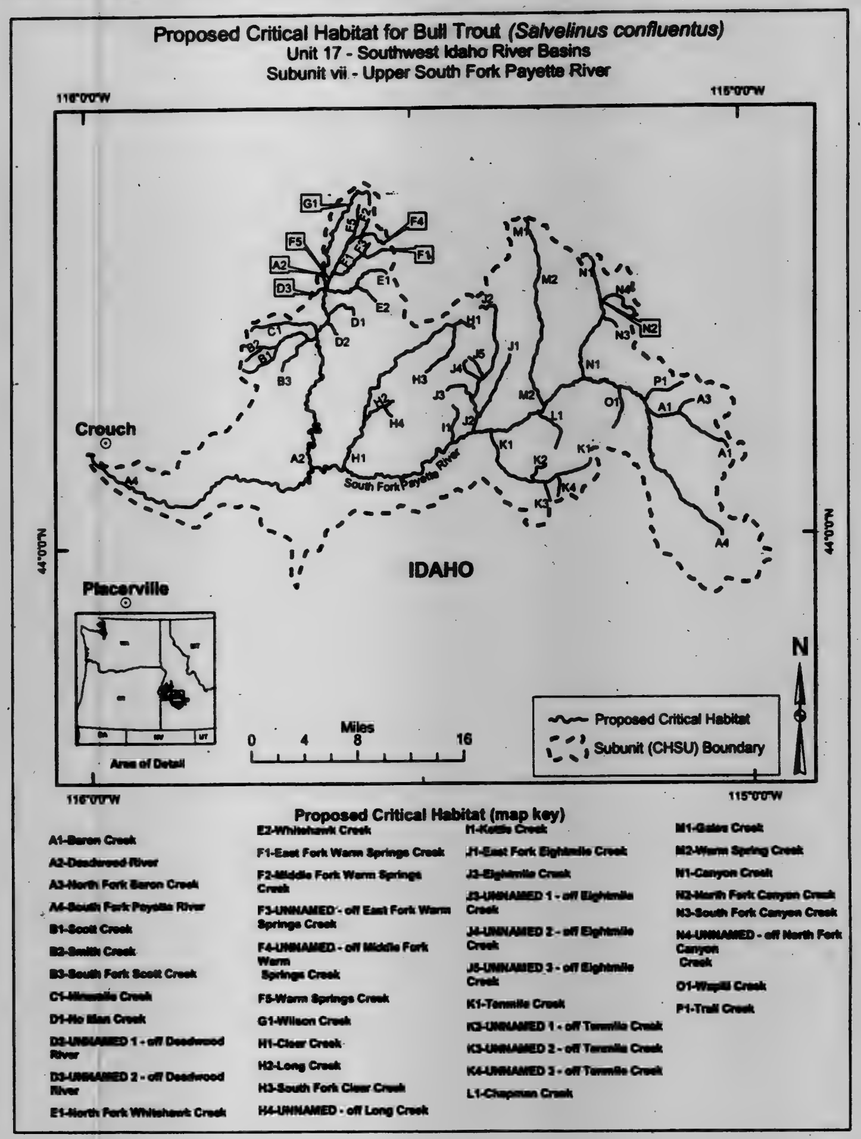


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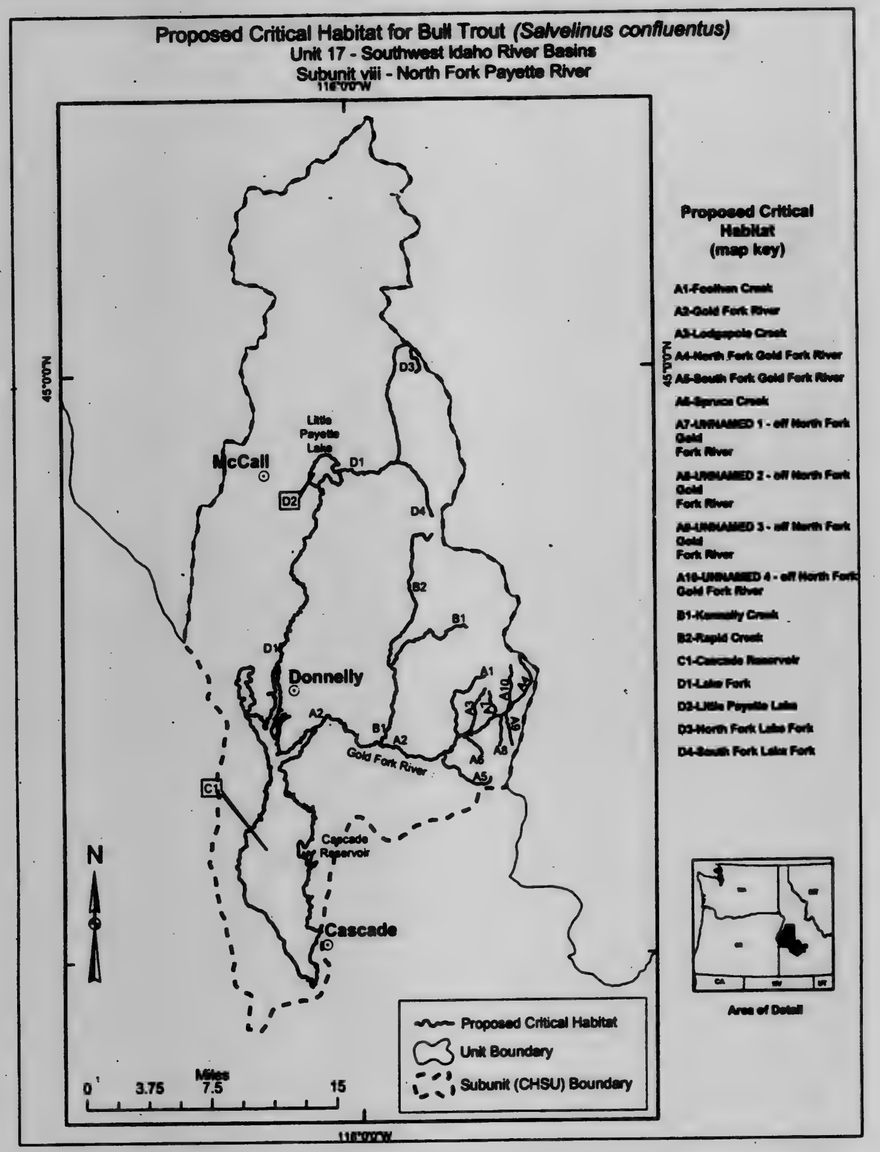


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Proposed Critical Habitat (map key)

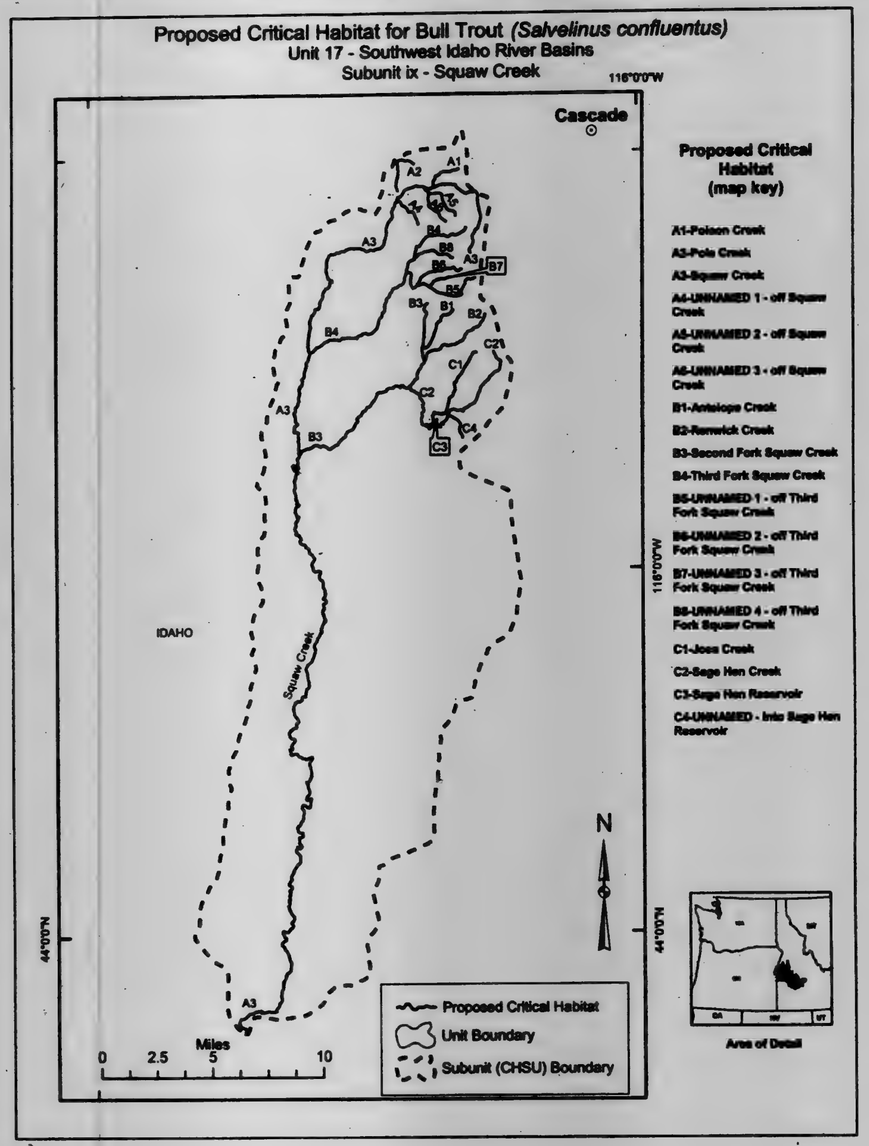
A1-Baron Creek
A2-Deadwood River
A3-North Fork Baron Creek
A4-South Fork Payette River
B1-Scott Creek
B2-Smith Creek
B3-South Fork Scott Creek
C1-Hinsdale Creek
D1-Ho Man Creek
D2-UNNAMED 1 - off Deadwood River
D3-UNNAMED 2 - off Deadwood River
E1-North Fork Whitehawk Creek
E2-Whitehawk Creek
F1-East Fork Warm Springs Creek
F2-Middle Fork Warm Springs Creek
F3-UNNAMED - off East Fork Warm Springs Creek
F4-UNNAMED - off Middle Fork Warm Springs Creek
F5-Warm Springs Creek
G1-Wilson Creek
H1-Clear Creek
H2-Long Creek
H3-South Fork Clear Creek
H4-UNNAMED - off Long Creek
I1-Kettle Creek
J1-East Fork Eightmile Creek
J2-Eightmile Creek
J3-UNNAMED 1 - off Eightmile Creek
J4-UNNAMED 2 - off Eightmile Creek
J5-UNNAMED 3 - off Eightmile Creek
K1-Tennile Creek
K3-UNNAMED 1 - off Tennile Creek
K3-UNNAMED 2 - off Tennile Creek
K4-UNNAMED 3 - off Tennile Creek
L1-Chapman Creek
M1-Gates Creek
M2-Warm Spring Creek
N1-Canyon Creek
N2-North Fork Canyon Creek
N3-South Fork Canyon Creek
N4-UNNAMED - off North Fork Canyon Creek
O1-Wapiti Creek
P1-Trail Creek



Proposed Critical Habitat (map key)

A1-Foolhen Creek
A2-Gold Fork River
A3-Lodgepole Creek
A4-North Fork Gold Fork River
A5-South Fork Gold Fork River
A6-Spruce Creek
A7-UNNAMED 1 - off North Fork Gold Fork River
A8-UNNAMED 2 - off North Fork Gold Fork River
A9-UNNAMED 3 - off North Fork Gold Fork River
A10-UNNAMED 4 - off North Fork Gold Fork River
B1-Kennally Creek
B2-Rapid Creek
C1-Cascade Reservoir
D1-Lake Fork
D2-Little Payette Lake
D3-North Fork Lake Fork
D4-South Fork Lake Fork

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(2) Unit 18—Little Lost River Basin.

(i) Firebox Creek from a lower point located at 44.443 degrees latitude, and −113.38 degrees longitude to an upper point located at 44.434 degrees latitude, and −113.362 degrees longitude. Little Lost River from a lower point located at 43.883 degrees latitude, and −113.096 degrees longitude to an upper point located at 44.452 degrees latitude, and −113.375 degrees longitude. Right Fork Little Lost River from a lower point located at 44.446 degrees latitude, and −113.378 degrees longitude to an upper point located at 44.45 degrees latitude, and −113.37 degrees longitude.

(ii) Badger Creek from a lower point located at 44.059 degrees latitude, and −113.232 degrees longitude to an upper point located at 44.118 degrees latitude, and −113.131 degrees longitude. Bunting Canyon Creek from a lower point located at 44.11 degrees latitude, and −113.137 degrees longitude to an upper point located at 44.107 degrees latitude, and −113.098 degrees longitude.

(iii) Unnamed creek—off Williams Creek from a lower point located at 44.135 degrees latitude, and −113.196 degrees longitude to an upper point located at 44.13 degrees latitude, and −113.175 degrees longitude. Williams Creek from a lower point located at 44.122 degrees latitude, and −113.237 degrees longitude to an upper point located at 44.135 degrees latitude, and −113.196 degrees longitude.

(iv) Big Creek from a lower point located at 44.063 degrees latitude, and −113.429 degrees longitude to an upper point located at 44.062 degrees latitude, and −113.503 degrees longitude. Wet Creek from a lower point located at 44.14 degrees latitude, and −113.244 degrees longitude to an upper point located at 44.027 degrees latitude, and −113.473 degrees longitude.

(v) Warm Creek from a lower point located at 44.306 degrees latitude, and −113.337 degrees longitude to an upper point located at 44.31 degrees latitude, and −113.302 degrees longitude.

(vi) North Fork Squaw Creek from a lower point located at 44.356 degrees latitude, and −113.329 degrees longitude to an upper point located at 44.38 degrees latitude, and −113.329 degrees longitude. Squaw Creek from a lower point located at 44.334 degrees latitude, and −113.356 degrees longitude to an upper point located at 44.375 degrees latitude, and −113.304 degrees longitude. Unnamed creek off Squaw Creek from a lower point located at 44.359 degrees latitude, and −113.325 degrees longitude to an upper point located at 44.36 degrees latitude, and −113.314 degrees longitude.

(vii) Mill Creek from a lower point located at 44.357 degrees latitude, and −113.374 degrees longitude to an upper point located at 44.387 degrees latitude, and −113.344 degrees longitude.

(viii) Hawley Creek from a lower point located at 44.379 degrees latitude, and −113.403 degrees longitude to an upper point located at 44.37 degrees latitude, and −113.425 degrees longitude. Iron Creek from a lower point located at 44.379 degrees latitude, and −113.4 degrees longitude to an upper point located at 44.387 degrees latitude, and −113.434 degrees longitude. Jackson Creek from a lower point located at 44.38 degrees latitude, and −113.412 degrees longitude to an upper point located at 44.376 degrees latitude, and −113.435 degrees longitude. Left Fork Iron Creek from a lower point located at 44.387 degrees latitude, and −113.434 degrees longitude to an upper point located at 44.384 degrees latitude, and −113.446 degrees longitude. Right Fork Iron Creek from a lower point located at 44.387 degrees latitude, and −113.434 degrees longitude to an upper point located at 44.389 degrees latitude, and −113.437 degrees longitude.

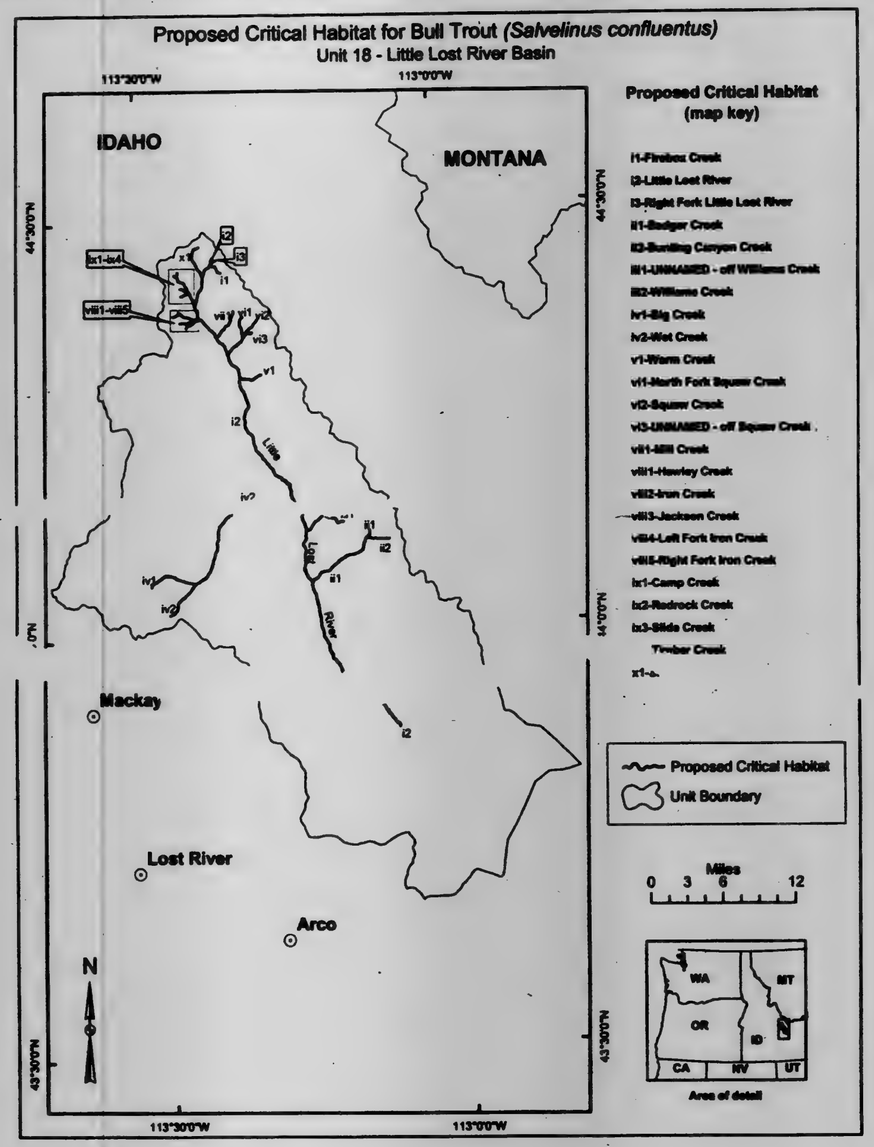
(ix) Camp Creek from a lower point located at 44.411 degrees latitude, and −113.417 degrees longitude to an upper point located at 44.408 degrees latitude, and −113.432 degrees longitude. Redrock Creek from a lower point located at 44.414 degrees latitude, and −113.419 degrees longitude to an upper point located at 44.417 degrees latitude, and −113.432 degrees longitude. Slide Creek from a lower point located at 44.432 degrees latitude, and −113.436 degrees longitude to an upper point located at 44.433 degrees latitude, and −113.441 degrees longitude. Timber Creek from a lower point located at 44.394 degrees latitude, and −113.408 degrees longitude to an upper point located at 44.437 degrees latitude, and −113.436 degrees longitude..

(x) Smithie Fork from a lower point located at 44.43 degrees latitude, and −113.393 degrees longitude to an upper point located at 44.466 degrees latitude, and −113.397 degrees longitude.

Note: Map follows for Unit 18.

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(23) Unit 19—Lower Columbia River Basin.

(i) Critical Habitat Subunit—Lewis River.

(A) Lewis River from a lower point located at 45.85 degrees latitude, and −122.782 degrees longitude to an upper point located at 46.216 degrees latitude, and −121.667 degrees longitude.

(B) Lake Merwin centered at 45.985 degrees latitude, and −122.485 degrees longitude. Speelyai Creek from a lower point located at 45.988 degrees latitude, and −122.406 degrees longitude to an upper point located at 46.008 degrees latitude, and −122.346 degrees longitude.

(C) Cougar Creek from a lower point located at 46.055 degrees latitude, and −122.292 degrees longitude to an upper point located at 46.071 degrees latitude, and −122.267 degrees longitude. Ole Creek from a lower point located at 46.055 degrees latitude, and −122.236 degrees longitude to an upper point located at 46.047 degrees latitude, and −122.237 degrees longitude. Rain Creek from a lower point located at 46.051 degrees latitude, and −122.238 degrees longitude to an upper point located at 46.053 degrees latitude, and −122.222 degrees longitude. Yale Lake centered at 46.012 degrees latitude, and −122.311 degrees longitude.

(D) Swift Creek from a lower point located at 46.083 degrees latitude, and −122.198 degrees longitude to an upper point located at 46.085 degrees latitude, and −122.202 degrees longitude. Swift Creek Reservoir centered at 46.056 degrees latitude, and −122.113 degrees longitude. Unnamed creek off Swift Creek Reservoir from a lower point located at 46.043 degrees latitude, and −122.038 degrees longitude to an upper point located at 46.03 degrees latitude, and −122.024 degrees longitude.

(E) Pine Creek from a lower point located at 46.071 degrees latitude, and −122.016 degrees longitude to an upper point located at 46.142 degrees latitude, and −122.095 degrees longitude. Rush Creek from a lower point located at 46.075 degrees latitude, and −121.936 degrees longitude to an upper point located at 46.055 degrees latitude, and −121.915 degrees longitude. Unnamed creek 1 off Pine Creek from a lower point located at 46.092 degrees latitude, and −122.058 degrees longitude to an upper point located at 46.099 degrees latitude, and −122.068 degrees longitude. Unnamed creek 2 off Pine Creek from a lower point located at 46.104 degrees latitude, and −122.062 degrees longitude to an upper point located at 46.14 degrees latitude, and −122.081 degrees longitude. Unnamed creek 3 off Pine Creek from a lower point located at 46.12 degrees latitude, and −122.076 degrees longitude to an upper point located at 46.123 degrees latitude, and −122.087 degrees longitude.

(ii) Critical Habitat Subunit—White Salmon River.

(A) Northwestern Lake centered at 45.775 degrees latitude, and −121.529 degrees longitude. White Salmon River from a lower point located at 45.723 degrees latitude, and −121.521 degrees longitude to an upper point located at 45.897 degrees latitude, and −121.503 degrees longitude.

(B) [Reserved]

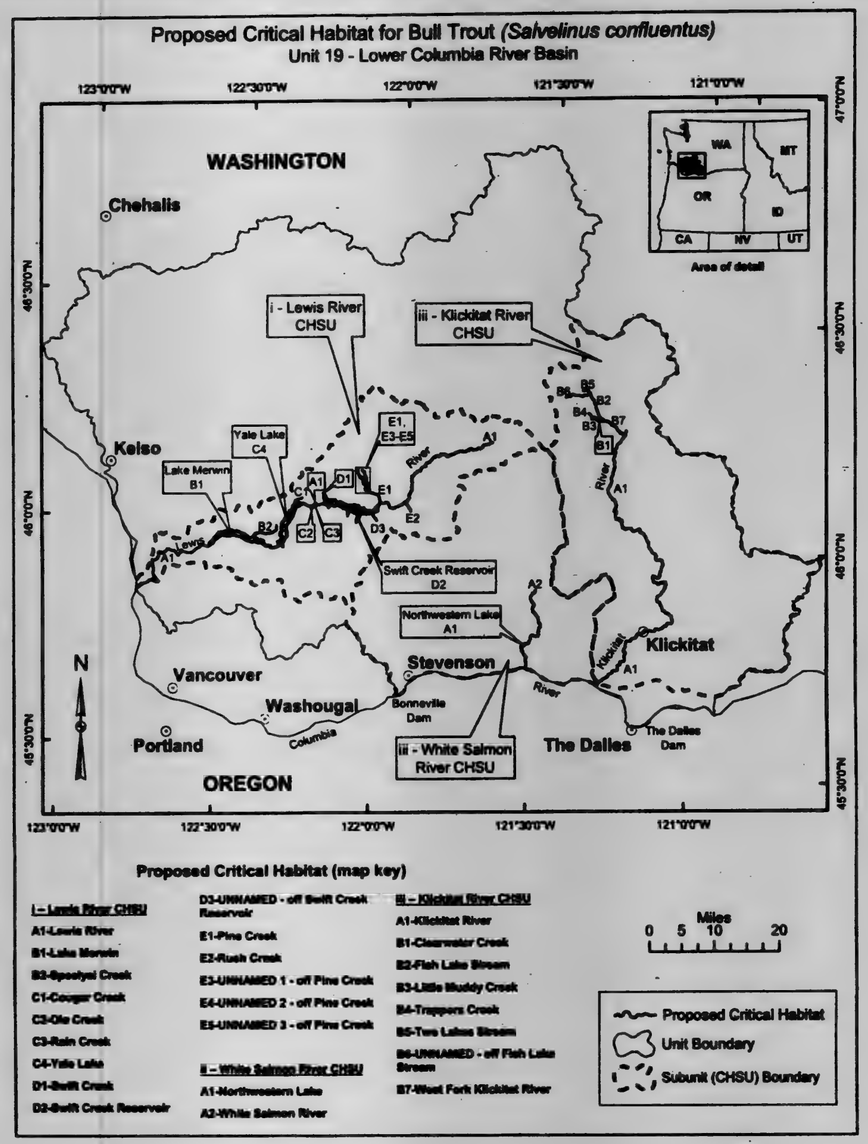
(iii) Critical Habitat Subunit—Klickitat River.

(A) Klickitat River from a lower point located at 45.691 degrees latitude, and −121.293 degrees longitude to an upper point located at 46.255 degrees latitude, and −121.239 degrees longitude.

(B) Clearwater Creek from a lower point located at 46.276 degrees latitude, and −121.327 degrees longitude to an upper point located at 46.278 degrees latitude, and −121.33 degrees longitude. Fish Lake Stream from a lower point located at 46.275 degrees latitude, and −121.312 degrees longitude to an upper point located at 46.342 degrees latitude, and −121.368 degrees longitude. Little Muddy Creek from a lower point located at 46.275 degrees latitude, and −121.312 degrees longitude to an upper point located at 46.278 degrees latitude, and −121.352 degrees longitude. Trappers Creek from a lower point located at 46.275 degrees latitude, and −121.33 degrees longitude to an upper point located at 46.29 degrees latitude, and −121.362 degrees longitude. Two Lakes Stream from a lower point located at 46.342 degrees latitude, and −121.368 degrees longitude to an upper point located at 46.34 degrees latitude, and −121.384 degrees longitude. Unnamed creek off Fish Lake Stream from a lower point located at 46.331 degrees latitude, and −121.359 degrees longitude to an upper point located at 46.323 degrees latitude, and −121.437 degrees longitude. West Fork Klickitat River from a lower point located at 46.242 degrees latitude, and −121.246 degrees longitude to an upper point located at 46.275 degrees latitude, and −121.312 degrees longitude.

Note: Map follows for Unit 19.

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(24) Unit 20—Middle Columbia River Basin.

(i) Yakima River from a lower point located at 46.529 degrees latitude, and −120.472 degrees longitude to an upper point located at 47.322 degrees latitude, and −121.339 degrees longitude.

(ii) Ahtanum Creek from a lower point located at 46.529 degrees latitude, and −120.472 degrees longitude to an upper point located at 46.523 degrees latitude, and −120.853 degrees longitude. Middle Fork Ahtanum Creek from a lower point located at 46.518 degrees latitude, and −121.014 degrees longitude to an upper point located at 46.507 degrees latitude, and −121.179 degrees longitude. North Fork Ahtanum Creek from a lower point located at 46.523 degrees latitude, and −120.853 degrees longitude to an upper point located at 46.538 degrees latitude, and −121.211 degrees longitude. Shellneck Creek from a lower point located at 46.531 degrees latitude, and −121.158 degrees longitude to an upper point located at 46.516 degrees latitude, and −121.187 degrees longitude. South Fork Ahtanum Creek from a lower point located at 46.523 degrees latitude, and −120.853 degrees longitude to an upper point located at 46.454 degrees latitude, and −121.118 degrees longitude.

(iii) Naches River from a lower point located at 46.63 degrees latitude, and −120.514 degrees longitude to an upper point located at 46.989 degrees latitude, and −121.094 degrees longitude.

(iv) Tieton River from a lower point located at 46.746 degrees latitude, and −120.786 degrees longitude to an upper point located at 46.656 degrees latitude, and −121.129 degrees longitude.

(v) North Fork Tieton River from a lower point located at 46.635 degrees latitude, and −121.261 degrees longitude to an upper point located at 46.508 degrees latitude, and −121.435 degrees longitude. Rimrock Lake centered at 46.639 degrees latitude, and −121.179 degrees longitude.

(vi) Bear Creek from a lower point located at 46.539 degrees latitude, and −121.259 degrees longitude to an upper point located at 46.54 degrees latitude, and −121.281 degrees longitude. Grey Creek from a lower point located at 46.592 degrees latitude, and −121.222 degrees longitude to an upper point located at 46.594 degrees latitude, and −121.225 degrees longitude. Short And Dirty Creek from a lower point located at 46.617 degrees latitude, and −121.149 degrees longitude to an upper point located at 46.616 degrees latitude, and −121.148 degrees longitude. South Fork Tieton River from a lower point located at 46.627 degrees latitude, and −121.132 degrees longitude to an upper point located at 46.496 degrees latitude, and −121.314 degrees longitude. Spruce Creek from a lower point located at 46.591 degrees latitude, and −121.218 degrees longitude to an upper point located at 46.586 degrees latitude, and −121.211 degrees longitude.

(vii) Indian Creek from a lower point located at 46.641 degrees latitude, and −121.248 degrees longitude to an upper point located at 46.696 degrees latitude, and −121.3 degrees longitude.

(viii) Clear Lake centered at 46.629 degrees latitude, and −121.279 degrees longitude.

(ix) Dog Creek from a lower point located at 46.787 degrees latitude, and −121.167 degrees longitude to an upper point located at 46.794 degrees latitude, and −121.177 degrees longitude. Hindoo Creek from a lower point located at 46.785 degrees latitude, and −121.163 degrees longitude to an upper point located at 46.781 degrees latitude, and −121.181 degrees longitude. Little Wildcat Creek from a lower point located at 46.731 degrees latitude, and −121.234 degrees longitude to an upper point located at 46.687 degrees latitude, and −121.266 degrees longitude. Rattlesnake Creek from a lower point located at 46.82 degrees latitude, and −120.929 degrees longitude to an upper point located at 46.76 degrees latitude, and −121.315 degrees longitude.

(x) Little Naches River from a lower point located at 46.989 degrees latitude, and −121.094 degrees longitude to an upper point located at 47.015 degrees latitude, and −121.133 degrees longitude.

(xi) Crow Creek from a lower point located at 47.015 degrees latitude, and −121.133 degrees longitude to an upper point located at 47.017 degrees latitude, and −121.317 degrees longitude.

(xii) Bumping Lake centered at 46.851 degrees latitude, and −121.326 degrees longitude. Bumping River from a lower point located at 46.989 degrees latitude, and −121.094 degrees longitude to an upper point located at 46.868 degrees latitude, and −121.298 degrees longitude,

(xiii) Deep Creek from a lower point located at 46.844 degrees latitude, and −121.316 degrees longitude to an upper point located at 46.804 degrees latitude, and −121.321 degrees longitude.

(xiv) American River from a lower point located at 46.976 degrees latitude, and −121.157 degrees longitude to an upper point located at 46.901 degrees latitude, and −121.415 degrees longitude. Kettle Creek from a lower point located at 46.942 degrees latitude, and −121.326 degrees longitude to an upper point located at 46.917 degrees latitude, and −121.341 degrees longitude. Timber Creek from a lower point located at 46.914 degrees latitude, and −121.385 degrees longitude to an upper point located at 46.907 degrees latitude, and −121.381 degrees longitude. Union Creek from a lower point located at 46.932 degrees latitude, and −121.357 degrees longitude to an upper point located at 46.937 degrees latitude, and −121.361 degrees longitude.

(xv) North Fork Taneaum Creek from a lower point located at 47.112 degrees latitude, and −120.932 degrees longitude to an upper point located at 47.109 degrees latitude, and −121.144 degrees longitude. South Fork Taneaum Creek from a lower point located at 47.112 degrees latitude, and −120.932 degrees longitude to an upper point located at 47.081 degrees latitude, and −121.083 degrees longitude. Taneaum Creek from a lower point located at 47.092 degrees latitude, and −120.708 degrees longitude to an upper point located at 47.112 degrees latitude, and −120.932 degrees longitude.

(xvi) DeRoux Creek from a lower point located at 47.419 degrees latitude, and −120.94 degrees longitude to an upper point located at 47.442 degrees latitude, and −120.979 degrees longitude. Jack Creek from a lower point located at 47.319 degrees latitude, and −120.855 degrees longitude to an upper point located at 47.334 degrees latitude, and −120.742 degrees longitude. Jungle Creek from a lower point located at 47.333 degrees latitude, and −120.855 degrees longitude to an upper point located at 47.333 degrees latitude, and −120.923 degrees longitude. North Fork Teanaway River from a lower point located at 47.251 degrees latitude, and −120.877 degrees longitude to an upper point located at 47.454 degrees latitude, and −120.965 degrees longitude. Teanaway River from a lower point located at 47.167 degrees latitude, and −120.834 degrees longitude to an upper point located at 47.257 degrees latitude, and −120.897 degrees longitude.

(xvii) Middle Fork Teanaway River from a lower point located at 47.257 degrees latitude, and −120.897 degrees longitude to an upper point located at 47.42 degrees latitude, and −120.992 degrees longitude.

(xviii) Cle Elum River from a lower point located at 47.177 degrees latitude, and −120.99 degrees longitude to an upper point located at 47.589 degrees latitude, and −121.161 degrees longitude.

(xix) Cle Elum Lake centered at 47.28 degrees latitude, and −121.105 degrees longitude. Cooper River from a lower point located at 47.391 degrees latitude, and −121.098 degrees longitude to an

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upper point located at 47.455 degrees latitude, and −121.213 degrees longitude. Fortune Creek from a lower point located at 47.478 degrees latitude, and −121.046 degrees longitude to an upper point located at 47.469 degrees latitude, and −120.964 degrees longitude. Waptus River from a lower point located at 47.419 degrees latitude, and −121.086 degrees longitude to an upper point located at 47.54 degrees latitude, and −121.24 degrees longitude.

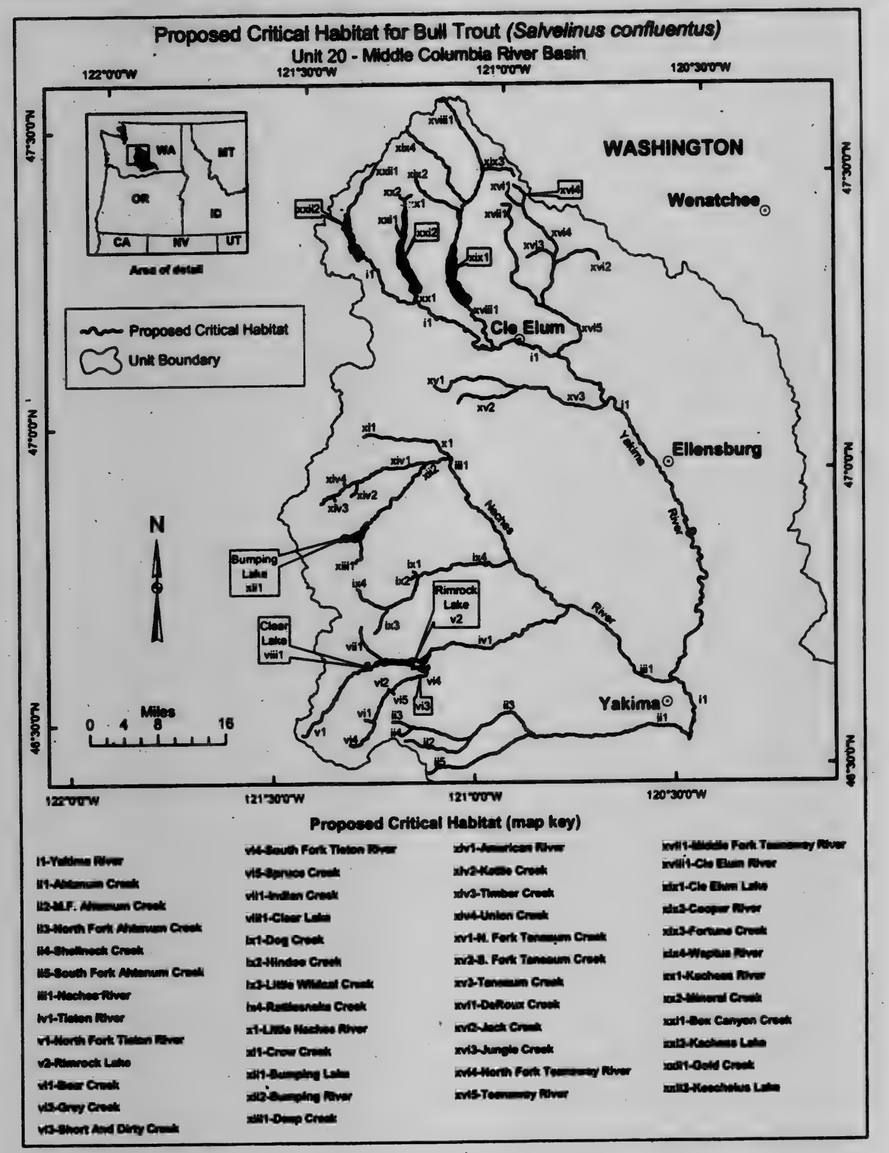
(xx) Kachess River from a lower point located at 47.251 degrees latitude, and −121.2 degrees longitude to an upper point located at 47.429 degrees latitude, and −121.222 degrees longitude. Mineral Creek from a lower point located at 47.42 degrees latitude, and −121.24 degrees longitude to an upper point located at 47.424 degrees latitude, and −121.251 degrees longitude.

(xxi) Box Canyon Creek from a lower point located at 47.361 degrees latitude, and −121.243 degrees longitude to an upper point located at 47.377 degrees latitude, and −121.257 degrees longitude. Kachess Lake centered at 47.317 degrees latitude, and −121.227 degrees longitude.

(xxii) Gold Creek from a lower point located at 47.39 degrees latitude, and −121.382 degrees longitude to an upper point located at 47.475 degrees latitude, and −121.316 degrees longitude. Keechelus Lake centered at 47.349 degrees latitude, and −121.367 degrees longitude.

Note: Map follows for Unit 20.

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BILLING CODE 4310-55-C

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(25) Unit 21—Upper Columbia River Basin.

(i) Critical Habitat Subunit—Wenatchee River.

(A) Lake Wenatchee centered at 47.823 degrees latitude, and −120.777 degrees longitude. Wenatchee River from a lower point located at 47.456 degrees latitude, and −120.316 degrees longitude to an upper point located at 47.808 degrees latitude, and −120.727 degrees longitude.

(B) Ingalls Creek from a lower point located at 47.463 degrees latitude, and −120.66 degrees longitude to an upper point located at 47.449 degrees latitude, and −120.858 degrees longitude. Peshastin Creek from a lower point located at 47.558 degrees latitude, and −120.573 degrees longitude to an upper point located at 47.443 degrees latitude, and −120.662 degrees longitude.

(C) French Creek from a lower point located at 47.628 degrees latitude, and −120.961 degrees longitude to an upper point located at 47.593 degrees latitude, and −121.041 degrees longitude. Icicle Creek from a lower point located at 47.58 degrees latitude, and −120.666 degrees longitude to an upper point located at 47.695 degrees latitude, and −121.054 degrees longitude. Jack Creek from a lower point located at 47.608 degrees latitude, and −120.898 degrees longitude to an upper point located at 47.53 degrees latitude, and −120.951 degrees longitude.

(D) Chiwaukum Creek from a lower point located at 47.679 degrees latitude, and −120.727 degrees longitude to an upper point located at 47.714 degrees latitude, and −120.834 degrees longitude.

(E) Alpine Creek from a lower point located at 48.084 degrees latitude, and −120.863 degrees longitude to an upper point located at 48.083 degrees latitude, and −120.865 degrees longitude. Buck Creek from a lower point located at 48.104 degrees latitude, and −120.877 degrees longitude to an upper point located at 48.106 degrees latitude, and −120.885 degrees longitude. Chikamin Creek from a lower point located at 47.904 degrees latitude, and −120.73 degrees longitude to an upper point located at 48.011 degrees latitude, and −120.722 degrees longitude. Chiwawa River from a lower point located at 47.788 degrees latitude, and −120.658 degrees longitude to an upper point located at 48.104 degrees latitude, and −120.877 degrees longitude. James Creek from a lower point located at 48.077 degrees latitude, and −120.856 degrees longitude to an upper point located at 48.075 degrees latitude, and −120.86 degrees longitude. Phelps Creek from a lower point located at 48.071 degrees latitude, and −120.851 degrees longitude to an upper point located at 48.081 degrees latitude, and −120.838 degrees longitude. Rock Creek from a lower point located at 47.963 degrees latitude, and −120.795 degrees longitude to an upper point located at 48.037 degrees latitude, and −120.762 degrees longitude.

(F) Mill Creek from a lower point located at 47.777 degrees latitude, and −121.01 degrees longitude to an upper point located at 47.772 degrees latitude, and −121.02 degrees longitude. Nason Creek from a lower point located at 47.81 degrees latitude, and −120.715 degrees longitude to an upper point located at 47.784 degrees latitude, and −121.027 degrees longitude.

(G) Little Wenatchee River from a lower point located at 47.827 degrees latitude, and −120.818 degrees longitude to an upper point located at 47.846 degrees latitude, and −120.932 degrees longitude.

(H) Canyon Creek from a lower point located at 47.907 degrees latitude, and −120.894 degrees longitude to an upper point located at 47.891 degrees latitude, and −120.964 degrees longitude. Napeequa River from a lower point located at 47.922 degrees latitude, and −120.896 degrees longitude to an upper point located at 47.938 degrees latitude, and −120.872 degrees longitude. Panther Creek from a lower point located at 47.941 degrees latitude, and −120.928 degrees longitude to an upper point located at 47.938 degrees latitude, and −120.941 degrees longitude. White River from a lower point located at 47.834 degrees latitude, and −120.814 degrees longitude to an upper point located at 47.953 degrees latitude, and −120.939 degrees longitude.

(ii) Critical Habitat Subunit—Entiat River.

(A) Entiat River from a lower point located at 47.661 degrees latitude, and −120.217 degrees longitude to an upper point located at 47.92 degrees latitude, and −120.506 degrees longitude.

(B) Mad River from a lower point located at 47.736 degrees latitude, and −120.362 degrees longitude to an upper point located at 47.864 degrees latitude, and −120.607 degrees longitude. Tillicum Creek from a lower point located at 47.748 degrees latitude, and −120.393 degrees longitude to an upper point located at 47.724 degrees latitude, and −120.438 degrees longitude.

(iii) Critical Habitat Subunit—Methow River.

(A) Methow River from a lower point located at 48.05 degrees latitude, and −119.893 degrees longitude to an upper point located at 48.586 degrees latitude, and −120.744 degrees longitude. Rattlesnake Creek from a lower point located at 48.649 degrees latitude, and −120.564 degrees longitude to an upper point located at 48.695 degrees latitude, and −120.635 degrees longitude. Robinson Creek from a lower point located at 48.66 degrees latitude, and −120.537 degrees longitude to an upper point located at 48.75 degrees latitude, and −120.633 degrees longitude. Trout Creek from a lower point located at 48.64 degrees latitude, and −120.598 degrees longitude to an upper point located at 48.664 degrees latitude, and −120.709 degrees longitude.

(B) Crater Creek from a lower point located at 48.214 degrees latitude, and −120.208 degrees longitude to an upper point located at 48.215 degrees latitude, and −120.268 degrees longitude. Gold Creek from a lower point located at 48.188 degrees latitude, and −120.094 degrees longitude to an upper point located at 48.185 degrees latitude, and −120.115 degrees longitude. N. Fork Gold Creek from a lower point located at 48.185 degrees latitude, and −120.115 degrees longitude to an upper point located at 48.214 degrees latitude, and −120.208 degrees longitude.

(C) Beaver Creek from a lower point located at 48.327 degrees latitude, and −120.065 degrees longitude to an upper point located at 48.486 degrees latitude, and −120.004 degrees longitude. Blue Buck Creek from a lower point located at 48.486 degrees latitude, and −120.004 degrees longitude to an upper point located at 48.553 degrees latitude, and −119.962 degrees longitude.

(D) Buttermilk Creek from a lower point located at 48.363 degrees latitude, and −120.338 degrees longitude to an upper point located at 48.34 degrees latitude, and −120.302 degrees longitude. East Fork Buttermilk Creek from a lower point located at 48.34 degrees latitude, and −120.302 degrees longitude to an upper point located at 48.299 degrees latitude, and −120.298 degrees longitude. Little Bridge Creek from a lower point located at 48.379 degrees latitude, and −120.285 degrees longitude to an upper point located at 48.449 degrees latitude, and −120.431 degrees longitude. North Creek from a lower point located at 48.454 degrees latitude, and −120.562 degrees longitude to an upper point located at 48.464 degrees latitude, and −120.557 degrees longitude. Reynolds Creek from a lower point located at 48.406 degrees latitude, and −120.478 degrees longitude to an upper point located at 48.403 degrees latitude, and −120.491 degrees longitude. Twisp River from a lower point located at 48.369 degrees latitude, and −120.118 degrees longitude to an upper point located at 48.463 degrees latitude, and −120.6 degrees longitude. West Fork Buttermilk Creek from a lower point located at 48.34 degrees latitude, and −120.302 degrees longitude to an upper point located at 48.259 degrees latitude, and −120.436 degrees longitude.

(E) Black Lake centered at 48.829 degrees latitude, and −120.207 degrees longitude. Chewuch River from a lower point located at 48.476 degrees latitude, and −120.182 degrees longitude to an upper point located at 48.815 degrees latitude, and −120.019 degrees longitude. Lake Creek from a lower point located at 48.75 degrees latitude, and −120.136 degrees longitude to an upper point located at 48.848 degrees latitude, and −120.237 degrees longitude.

(F) Wolf Creek from a lower point located at 48.491 degrees latitude, and −120.231 degrees longitude to an upper point located at 48.476 degrees latitude, and −120.439 degrees longitude.

(G) Goat Creek from a lower point located at 48.574 degrees latitude, and −120.378 degrees longitude to an upper point located at 48.73 degrees latitude, and −120.359 degrees longitude.

(H) Cedar Creek from a lower point located at 48.589 degrees latitude, and −120.47 degrees longitude to an upper point located at 48.558 degrees latitude, and −120.482 degrees longitude. Early Winters Creek from a lower point located at 48.601 degrees latitude, and −120.436 degrees longitude to an upper point located at 48.504 degrees latitude, and −120.624 degrees longitude. Huckleberry Creek from a lower point located at 48.569 degrees latitude, and −120.472 degrees longitude to an upper point located at 48.512 degrees latitude, and −120.449 degrees longitude.

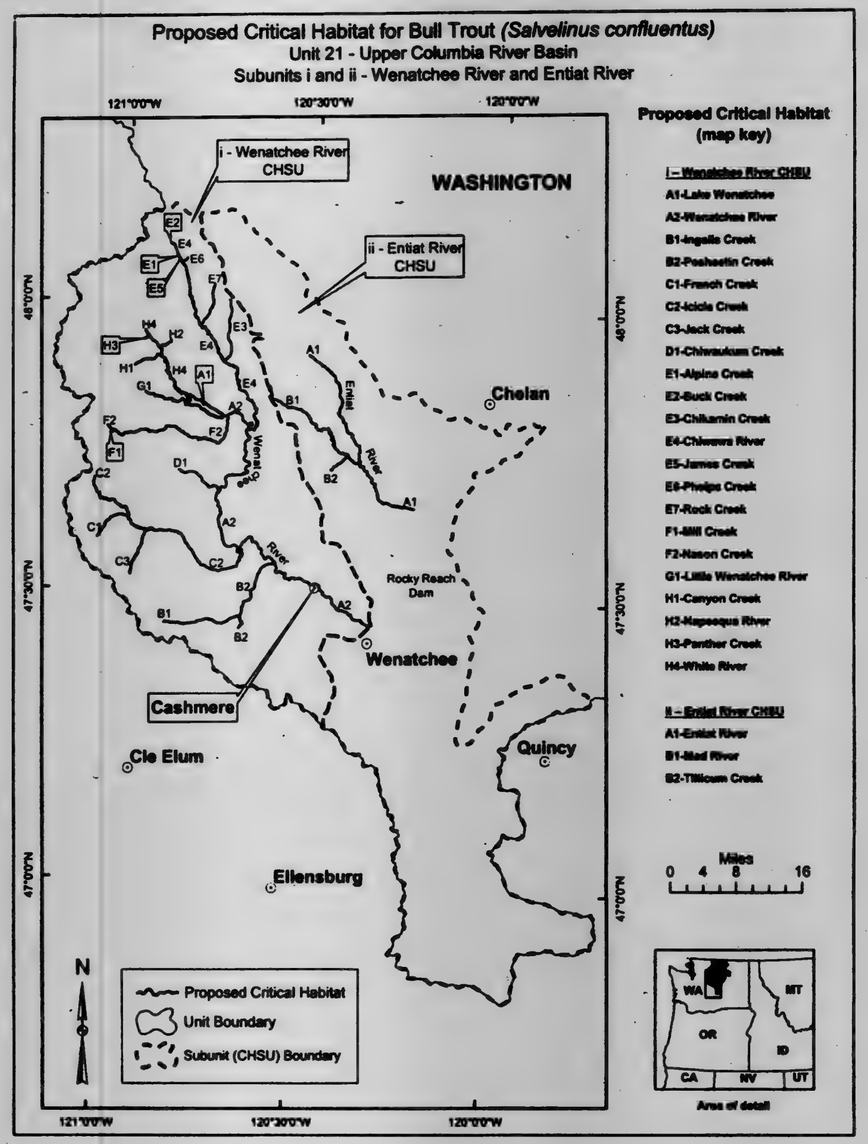
(I) Cougar Lake centered at 48.881 degrees latitude, and −120.464 degrees longitude. First Hidden Lake centered at 48.899 degrees latitude, and −120.485 degrees longitude. Lost River from a lower point located at 48.65 degrees latitude, and −120.511 degrees longitude to an upper point located at 48.905 degrees latitude, and −120.488 degrees longitude. Middle Hidden Lake centered at 48.908 degrees latitude, and −120.488 degrees longitude. Monument Creek from a lower point located at 48.733 degrees latitude, and −120.448 degrees longitude to an upper point located at 48.803 degrees latitude, and −120.493 degrees longitude.

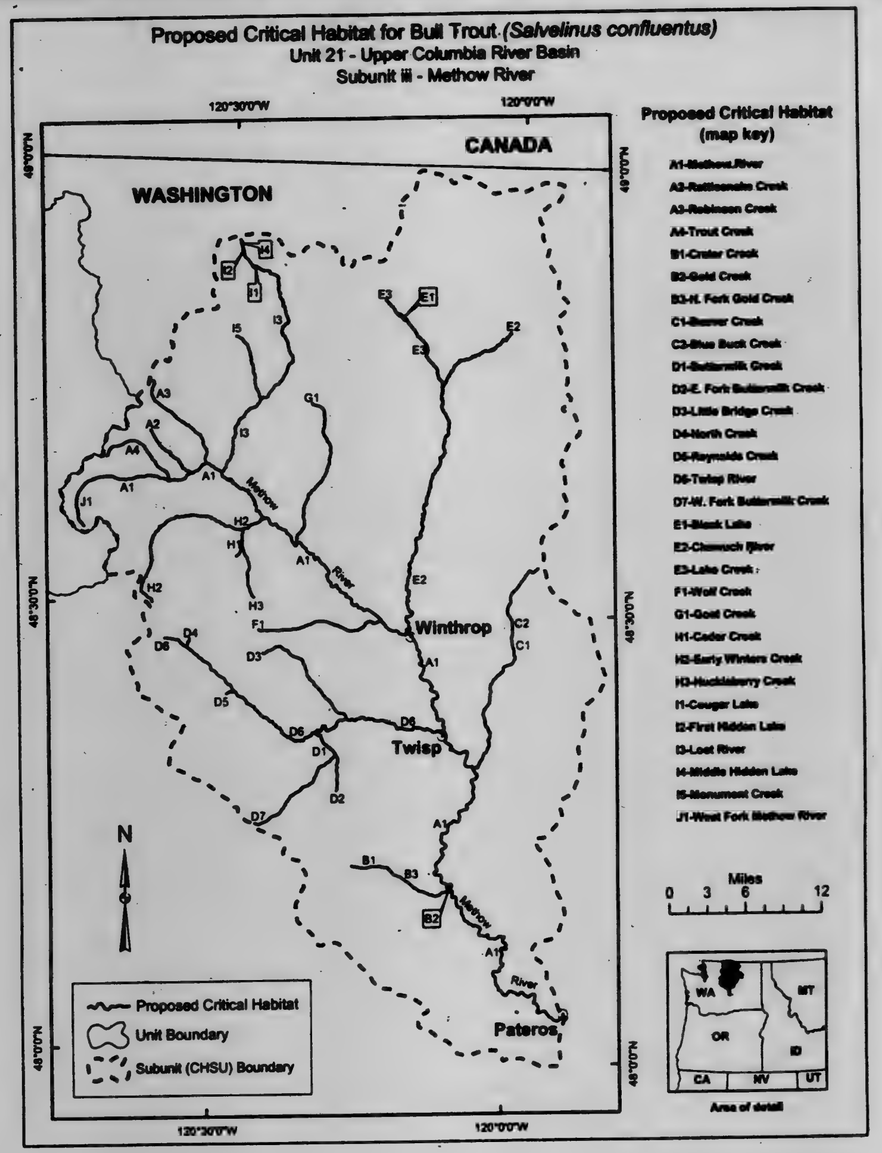
(J) West Fork Methow River from a lower point located at 48.65 degrees latitude, and −120.511 degrees longitude to an upper point located at 48.586 degrees latitude, and −120.744 degrees longitude.

Note: Maps follow for Unit 21, Subunits i and ii; and Subunit iii.

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(26) Unit 22—Northeast Washington River Basins.

(i) Critical Habitat Subunit—Pend Oreille River.

(A) Pend Oreille River from a lower point located at 48.179 degrees latitude, and −116.998 degrees longitude to an upper point located at 48.989 degrees latitude, and −117.348 degrees longitude.

(B) Slate Creek from a lower point located at 48.923 degrees latitude, and −117.332 degrees longitude to an upper point located at 48.948 degrees latitude, and −117.165 degrees longitude.

(C) Harvey Creek from a lower point located at 48.789 degrees latitude, and −117.285 degrees longitude to an upper point located at 48.691 degrees latitude, and −117.182 degrees longitude. Outlet Creek from a lower point located at 48.847 degrees latitude, and −117.288 degrees longitude to an upper point located at 48.839 degrees latitude, and −117.288 degrees longitude. Sullivan Creek from a lower point located at 48.865 degrees latitude, and −117.37 degrees longitude to an upper point located at 48.95 degrees latitude, and −117.07 degrees longitude. Sullivan Lake centered at 48.815 degrees latitude, and −117.289 degrees longitude.

(D) Cedar Creek from a lower point located at 48.742 degrees latitude, and −117.411 degrees longitude to an upper point located at 48.846 degrees latitude, and −117.521 degrees longitude.

(E) Ruby Creek from a lower point located at 48.556 degrees latitude, and −117.342 degrees longitude to an upper point located at 48.568 degrees latitude, and −117.509 degrees longitude.

(F) East Branch Leclerc Creek from a lower point located at 48.534 degrees latitude, and −117.282 degrees longitude to an upper point located at 48.673 degrees latitude, and −117.188 degrees longitude. Fourth Of july Creek from a lower point located at 48.556 degrees latitude, and −117.272 degrees longitude to an upper point located at 48.573 degrees latitude, and −117.2 degrees longitude. LeClerc Creek from a lower point located at 48.518 degrees latitude, and −117.283 degrees longitude to an upper point located at 48.534 degrees latitude, and −117.282 degrees longitude. West Branch LeClerc Creek from a lower point located at 48.534 degrees latitude, and −117.282 degrees longitude to an upper point located at 48.701 degrees latitude, and −117.211 degrees longitude.

(G) Mill Creek from a lower point located at 48.489 degrees latitude, and −117.265 degrees longitude to an upper point located at 48.493 degrees latitude, and −117.239 degrees longitude.

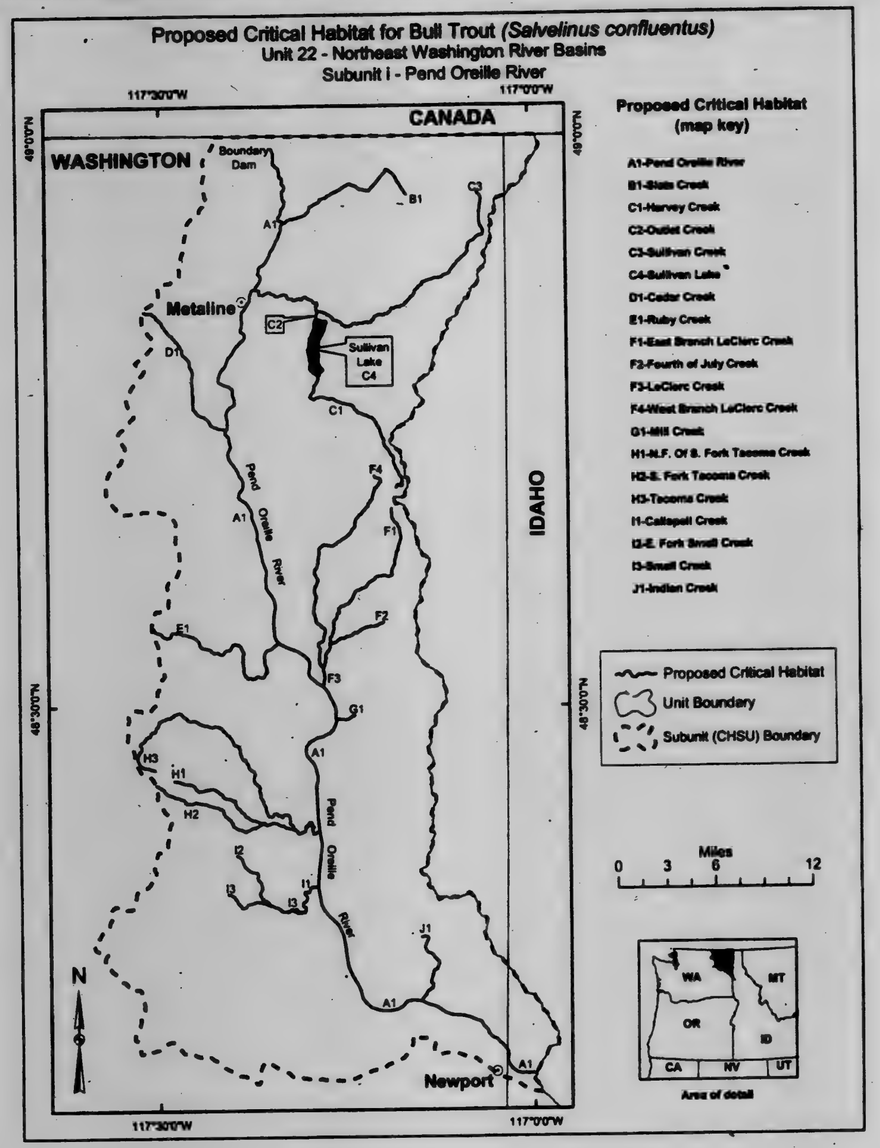
(H) North Fork of S. Fork Tacoma Creek from a lower point located at 48.399 degrees latitude, and −117.361 degrees longitude to an upper point located at 48.436 degrees latitude, and −117.482 degrees longitude. South Fork Tacoma Creek from a lower point located at 48.394 degrees latitude, and −117.323 degrees longitude to an upper point located at 48.432 degrees latitude, and −117.506 degrees longitude. Tacoma Creek from a lower point located at 48.392 degrees latitude, and −117.288 degrees longitude to an upper point located at 48.445 degrees latitude, and −117.507 degrees longitude.

(I) Calispell Creek from a lower point located at 48.344 degrees latitude, and −117.289 degrees longitude to an upper point located at 48.321 degrees latitude, and −117.307 degrees longitude. East Fork Small Creek from a lower point located at 48.328 degrees latitude, and −117.354 degrees longitude to an upper point located at 48.371 degrees latitude, and −117.398 degrees longitude. Small Creek from a lower point located at 48.321 degrees latitude, and −117.307 degrees longitude to an upper point located at 48.337 degrees latitude, and −117.409 degrees longitude.

(J) Indian Creek from a lower point located at 48.243 degrees latitude, and −117.151 degrees longitude to an upper point located at 48.299 degrees latitude, and −117.151 degrees longitude.

(ii) [Reserved]

Note: Map follows for Unit 22.



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(27) Unit 23—Snake River Basin in Washington.

(i) Critical Habitat Subunit—Tucannon River.

(A) Tucannon River from a lower point located at 46.558 degrees latitude, and −118.174 degrees longitude to an upper point located at 46.139 degrees latitude, and −117.52 degrees longitude.

(B) Cummings Creek from a lower point located at 46.333 degrees latitude, and −117.674 degrees longitude to an upper point located at 46.219 degrees latitude, and −117.595 degrees longitude.

(C) Hixon Creek from a lower point located at 46.246 degrees latitude, and −117.683 degrees longitude to an upper point located at 46.219 degrees latitude, and −117.651 degrees longitude.

(D) Little Tucannon River from a lower point located at 46.228 degrees latitude, and −117.721 degrees longitude to an upper point located at 46.181 degrees latitude, and −117.751 degrees longitude.

(E) Panjab Creek from a lower point located at 46.205 degrees latitude, and −117.705 degrees longitude to an upper point located at 46.115 degrees latitude, and −117.682 degrees longitude.

(F) Meadow Creek from a lower point located at 46.177 degrees latitude, and −117.718 degrees longitude to an upper point located at 46.102 degrees latitude, and −117.785 degrees longitude.

(G) Turkey Creek from a lower point located at 46.161 degrees latitude, and −117.702 degrees longitude to an upper point located at 46.113 degrees latitude, and −117.738 degrees longitude.

(H) Little Turkey Creek from a lower point located at 46.155 degrees latitude, and −117.736 degrees longitude to an upper point located at 46.116 degrees latitude, and −117.749 degrees longitude.

(I) Cold Creek from a lower point located at 46.191 degrees latitude, and −117.63 degrees longitude to an upper point located at 46.168 degrees latitude, and −117.644 degrees longitude.

(J) Sheep Creek from a lower point located at 46.188 degrees latitude, and −117.624 degrees longitude to an upper point located at 46.195 degrees latitude, and −117.623 degrees longitude.

(K) Bear Creek from a lower point located at 46.168 degrees latitude, and −117.559 degrees longitude to an upper point located at 46.134 degrees latitude, and −117.561 degrees longitude.

(ii) Critical Habitat Subunit—Asotin Creek.

(A) Asotin Creek from a lower point located at 46.345 degrees latitude, and −117.053 degrees longitude to an upper point located at 46.272 degrees latitude, and −117.291 degrees longitude.

(B) George Creek from a lower point located at 46.326 degrees latitude, and −117.105 degrees longitude to an upper point located at 46.118 degrees latitude, and −117.363 degrees longitude.

(C) Wormell Creek from a lower point located at 46.171 degrees latitude, and −117.206 degrees longitude to an upper point located at 46.115 degrees latitude, and −117.201 degrees longitude.

(D) Hefflefinger Creek from a lower point located at 46.169 degrees latitude, and −117.243 degrees longitude to an upper point located at 46.111 degrees latitude, and −117.248 degrees longitude.

(E) Coombs Creek from a lower point located at 46.168 degrees latitude, and −117.253 degrees longitude to an upper point located at 46.109 degrees latitude, and −117.267 degrees longitude.

(F) Charley Creek from a lower point located at 46.289 degrees latitude, and −117.278 degrees longitude to an upper point located at 46.21 degrees latitude, and −117.552 degrees longitude.

(G) N. Fork Asotin Creek from a lower point located at 46.272 degrees latitude, and −117.291 degrees longitude to an upper point located at 46.196 degrees latitude, and −117.568 degrees longitude.

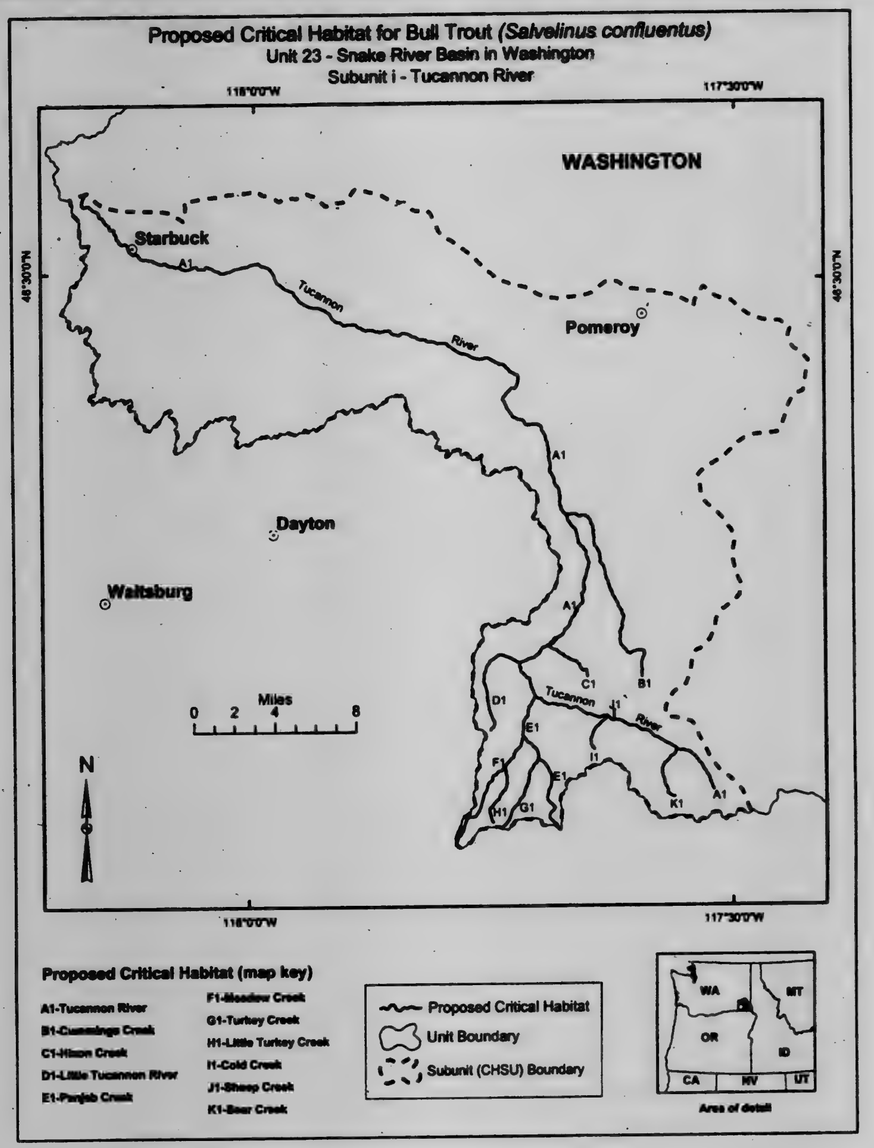
(H) South Fork of N. Fork Asotin Creek from a lower point located at 46.197 degrees latitude, and −117.426 degrees longitude to an upper point located at 46.125 degrees latitude, and −117.468 degrees longitude.

(I) Middle Branch Of N. Fork Asotin Creek from a lower point located at 46.196 degrees latitude, and −117.433 degrees longitude to an upper point located at 46.14 degrees latitude, and −117.487 degrees longitude.

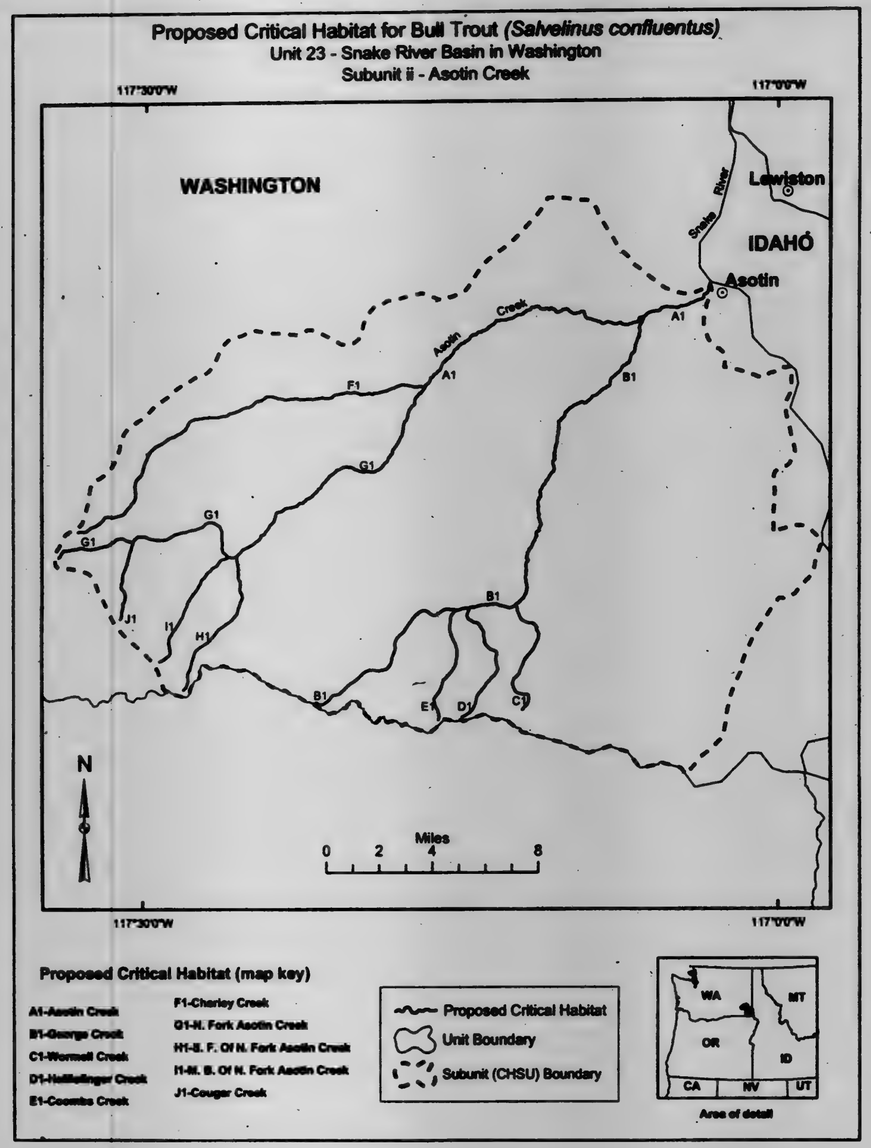
(J) Cougar Creek from a lower point located at 46.205 degrees latitude, and −117.508 degrees longitude to an upper point located at 46.163 degrees latitude, and −117.518 degrees longitude.

Note: Maps follow for Unit 23 Subunit i and for Subunit ii.

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(28) Unit 24—Columbia River.

(i) Columbia River from a lower point located at 46.246 degrees latitude, and −124.048 degrees longitude to an upper point located at 48.067 degrees latitude, and −119.516 degrees longitude.

(ii) [Reserved]

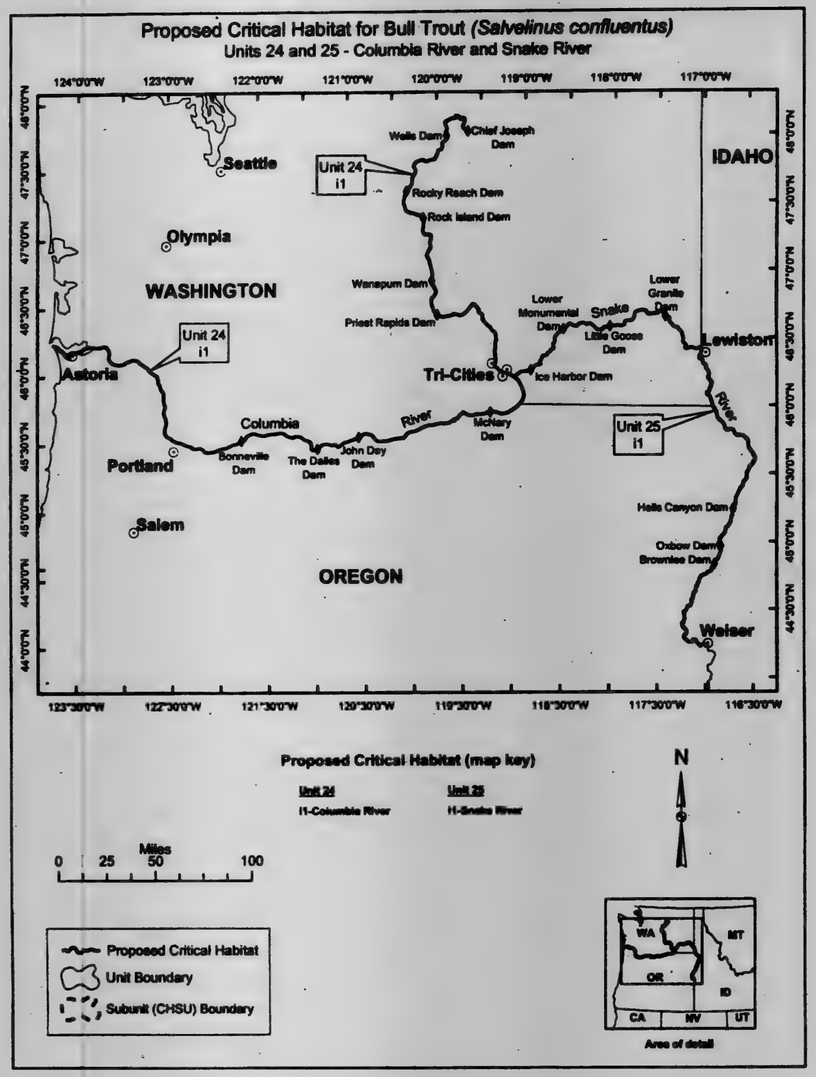
(29) Unit 25—Snake River.

(i) Snake River from a lower point located at 46.189 degrees latitude, and −119.03 degrees longitude to an upper point located at 44.243 degrees latitude, and −117.041 degrees longitude.

(ii) [Reserved]

Note: Map follows for Units 24 and 25.

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* * * * *

Dated: November 8, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29232 Filed 11–27–02; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for Three of the Five Distinct Population Segments of Bull Trout (*Salvelinus confluentus*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of 25 chapters of the draft recovery plan for the bull trout (*Salvelinus confluentus*) for public review and comment. Bull trout are char which are native to the Pacific northwest and western Canada. We identified five distinct population segments of bull trout in five States (Idaho, Montana, Nevada, Oregon, and Washington), and listed the fish under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) by distinct population segments during 1998 and 1999. The final listing resulted in all bull trout in the coterminous United States being listed as threatened. At this time, the draft recovery plan addresses three of the five distinct population segments, the Klamath, Columbia, and St. Mary-Belly Rivers. Draft recovery plan chapters for the remaining distinct population segments will become available for public review in approximately 1 year. Because bull trout in the coterminous United States are widely distributed within a large area, the recovery plan is organized into multiple chapters. The introductory chapter (Chapter 1) discusses programmatic issues that broadly apply to bull trout in the coterminous United States. This chapter describes our range-wide recovery strategy for bull trout and identifies recovery tasks applicable to bull trout in general. Each following chapter focuses on bull trout in specific areas (*i.e.*, recovery units), and describes habitat conditions, defines recovery objectives and criteria, and identifies specific recovery tasks for a particular recovery unit. We have identified 27 recovery units in the 5 distinct population segments of bull trout. This notice of document availability concerns the introductory chapter (Chapter 1) and the 24 recovery unit chapters within the 3 distinct population segments mentioned above.

DATES: We will consider comments on the 25 chapters of the draft recovery plan for bull trout received by February 27, 2003.

ADDRESSES: The document is available online at *http://pacific.fws.gov/bulltrout*. Copies of the 25 chapters of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: Snake River Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709 (phone: 208–378–5243); Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park, Suite 320, Helena, Montana 59601 (phone: 406–449–5322); Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd., Suite 234, Reno, Nevada 86502 (phone: 775–867–6300); Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266 (phone: 503–231–6179); and Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Dr., SE., Suite 102, Lacey, Washington 98503 (phone: 360–753–9440). Requests for copies of the document should be addressed to these offices, as appropriate.

Comments may be submitted electronically to us at the following email address: *FW1SRBOComments@fws.gov*. The subject line must state "Bull Trout Comments," and include the name and address of the person submitting the comments. Written comments may be sent directly to the Supervisor, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. Comments may also be submitted by facsimile to 208–378–5262; please state in the subject line "Bull Trout Comments," and include the name and address of the person submitting the comments.

FOR FURTHER INFORMATION CONTACT: Jeri Wood, Fish and Wildlife Biologist, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (phone: 208–378–5243).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Act. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

Bull trout are char native to the Pacific northwest and western Canada. We identified five distinct population segments of bull trout in five states, and issued a final rule listing the Columbia River (Idaho, Montana, Oregon, and Washington) and Klamath River (Oregon) population segments of bull trout as threatened species on June 10, 1998 (63 FR 31647). The Jarbidge River population segment (Idaho and Nevada) was listed as threatened on April 8, 1999 (64 FR 17110). The Coastal-Puget Sound (Washington) and St. Mary-Belly River (Montana) population segments were listed as threatened on November 1, 1999 (64 FR 58910), which resulted in all bull trout in the coterminous United States being listed as threatened.

Bull trout have more specific habitat requirements than most other salmonid fish. Habitat components that influence bull trout distribution and abundance include water temperature, cover, channel form and stability, spawning and rearing substrate conditions, and migratory corridors. Bull trout require colder water than most other salmonids for incubation, juvenile rearing, and spawning. All life-history stages of bull trout are associated with complex forms of cover, including large woody debris, undercut banks, boulders, and pools. Alterations in channel form and reductions in channel stability influence bull trout due to habitat degradation and negative effects on early life-history stages. Channel alterations may reduce the abundance and quality of side channels, stream margins, and pools, which are areas bull trout frequently inhabit. Because bull trout have a relatively long incubation and development period within spawning gravel (greater than 200 days), bedload transport in unstable channels may kill young bull trout. Spawning and rearing areas are often associated with cold-water springs, groundwater infiltration, and the coldest streams in a watershed.

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Bull trout require loose, clean gravel relatively free of fine sediments for spawning and early rearing. Bull trout use migratory corridors to move from spawning and rearing habitats to foraging and overwintering habitats and back. Different habitats provide bull trout with diverse resources, and migratory corridors allow local populations to connect, which may increase the potential for gene flow and support or refounding of populations.

Bull trout distribution, abundance, and habitat quality have declined range wide. These declines are the results of combined effects of habitat degradation and fragmentation; the blockage of migratory corridors; poor water quality; angler harvest and poaching; diversion structures that cause injuries or fatalities; and introduced nonnative species. Specific land and water management activities that have degraded and continue to depress bull trout populations and degrade habitat include dams and other diversion structures, forest management practices, livestock grazing, agriculture, road construction and maintenance, mining, and urban and rural development.

Because the threatened bull trout population segments are widely distributed over a large area, and population segments were subject to listing at different times, we adopted a two-tiered approach to develop the draft recovery plan for bull trout. The first tier addresses broad aspects of bull trout recovery that apply at the level of population segments. The second tier addresses bull trout recovery in smaller areas, such as specific river basin areas or collections of river basins within population segments, termed "recovery units." We relied on two types of teams to assist in developing the draft recovery plan.

To address "big-picture" issues, such as identifying an overall recovery strategy, designating recovery units, and providing guidance in developing the recovery plan, we convened a recovery oversight team. Membership on the recovery oversight team consisted of our biologists, a representative from State fish and wildlife resource agencies in each of four northwestern States (Idaho, Montana, Oregon, and Washington), and a representative from the Upper Columbia United Tribes (Confederated Tribes of the Colville Reservation, Coeur d'Alene Tribe, Kalispel Tribe, Kootenai Tribe of Idaho, and Spokane Tribe).

To develop local recovery strategies at the recovery unit level, we enlisted the assistance of recovery unit teams, one for each recovery unit or recovery subunit. Membership on the recovery unit teams consisted of persons with technical expertise in various aspects of bull trout biology within each recovery unit, typically representing Federal and State agencies, Tribes, and industry and interest groups. Major tasks of recovery unit teams include: defining recovery for recovery units, including recovery unit-specific objectives and recovery criteria; reviewing factors affecting bull trout; estimating recovery costs; and identifying site-specific recovery actions. Members of the recovery oversight team coordinated the recovery unit teams to ensure consistency among recovery units.

The draft bull trout recovery plan available for public comment differs from many recovery plans in that it is organized into multiple chapters. The introductory chapter (Chapter 1) discusses programmatic issues that broadly apply to bull trout in the coterminous United States. This chapter describes our recovery strategy for bull trout, defines recovery, and identifies recovery tasks applicable to bull trout in general. Each following chapter (Chapters 2 through 28) addresses a specific recovery unit, and describes conditions, defines recovery objectives and criteria, identifies specific recovery tasks, and estimates time and cost required to achieve recovery for a particular recovery unit.

The general goal of all recovery plans is to describe courses of actions necessary for the ultimate delisting of a species. The specific goal of the draft bull trout recovery plan is to ensure the long-term persistence of self-sustaining, complex interacting groups of bull trout distributed across the species' native range in the United States. Recovery of bull trout will require reducing threats to the long-term persistence of populations, maintaining multiple interconnected populations of bull trout across the diverse habitats of their native range, and preserving the diversity of bull trout life-history strategies (*e.g.*, resident or migratory forms, emigration age, spawning frequency, local habitat adaptations). To accomplish this goal throughout the coterminous United States, the draft recovery plan recommends the following four objectives: (1) Maintain current distribution of bull trout within core areas in all recovery units as described in recovery unit chapters and restore distribution where recommended in recovery unit chapters; (2) maintain stable or increasing trends in abundance of bull trout in all recovery units; (3) restore and maintain suitable habitat conditions for all bull trout life history stages and strategies; and (4) conserve genetic diversity and provide opportunity for genetic exchange. These objectives would apply to bull trout in all recovery units. Additional objectives may be necessary to achieve recovery in some recovery units, which will be identified in the respective recovery unit chapters.

The draft recovery plan provides criteria to assess whether actions have resulted in the recovery of bull trout. The overall recovery criterion for bull trout in the coterminous United States is that all recovery units meet their criteria, as identified in the recovery unit chapters. Criteria specific to each recovery unit are presented in each draft recovery unit chapter. Individual chapters may contain criteria for assessing the status of bull trout and alleviation of threats that are unique to one or several recovery units. However, every draft recovery unit chapter contains criteria to address the following four characteristics: (1) The distribution of bull trout in identified and potential local populations in all core areas within the recovery unit; (2) the estimated abundance of adult bull trout within core areas in the recovery unit, expressed as either a point estimate or a range of individuals; (3) the presence of stable or increasing trends for adult bull trout abundance in the recovery unit; and (4) the restoration of passage at specific barriers identified as inhibiting recovery.

The draft recovery plan identifies specific tasks falling within the following seven categories as necessary to promote recovery: (1) Protect, restore, and maintain suitable habitat conditions for bull trout; (2) prevent and reduce negative effects of nonnative fishes and other nonnative taxa on bull trout; (3) establish fishery management goals and objectives compatible with bull trout recovery, and implement practices to achieve goals; (4) characterize, conserve, and monitor genetic diversity and gene flow among local populations of bull trout; (5) conduct research and monitoring to implement and evaluate bull trout recovery activities, consistent with an adaptive management approach using feedback from implemented, site-specific recovery tasks; (6) use all available conservation programs and regulations to protect and conserve bull trout and bull trout habitats; and (7) assess the implementation of bull trout recovery by recovery units, and revise recovery unit plans based on evaluations.

Public Comments Solicited

We solicit written comments on any aspect of the draft recovery plan described, including the estimated costs associated with the recovery tasks outlined in the implementation schedule in each draft recovery unit chapter. All comments received by the date specified above will be considered in developing a final bull trout recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: October 18, 2002.

Anne Badgley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–29349 Filed 11–27–02; 8:45 am]

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Vol. 67, No. 230

Friday, November 29, 2002

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H.R. 5005/P.L. 107–296
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Terrorism Risk Insurance Act of 2002 (Nov. 26, 2002; 116 Stat. 2322)

H.R. 2546/P.L. 107–298
Real Interstate Driver Equity Act of 2002 (Nov. 26, 2002; 116 Stat. 2342)

H.R. 3366/P.L. 107–299
National Sea Grant College Program Act Amendments of 2002 (Nov. 26, 2002; 116 Stat. 2345)

H.R. 4678/P.L. 107–300
Improper Payments Information Act of 2002 (Nov. 26, 2002; 116 Stat. 2350)

H.R. 5348/P.L. 107–301
To facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interest and other interests retained by the United States in 1955 when the land was conveyed to the State of Missouri. (Nov. 26, 2002; 116 Stat. 2352)

S. 3044/P.L. 107–302
Court Services and Offender Supervision Agency Interstate Supervision Act of 2002 (Nov. 26, 2002; 116 Stat. 2353)

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Rules and Regulations

Federal Register
Vol. 67, No. 231
Monday, December 2, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, 235, 264, 286, and 299

[INS No. 1931–98]

RIN 1115–AF24

Requirements for Biometric Border Crossing Identification Cards (BCCs) and Elimination of Non-Biometric BCCs on Mexican and Canadian Borders

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as amended, requires the establishment of regulations governing the issuance and use of border crossing identification cards (BCCs) containing biometric information. See 8 U.S.C. 1101(a)(6) and note. To satisfy documentary requirements for admission to the United States, Mexican nationals who are not permanent residents must possess either a BCC or a valid passport and a nonimmigrant visa issued at a consulate abroad. Canadians and certain other residents of Canada are not required to possess a visa, but they must present documentation of any waivers of inadmissibility. This rule amends the Immigration and Naturalization Service (Service) regulations by requiring that an alien seeking admission to the United States by presentation of a BCC must present a BCC that contains biometric information that is machine readable. The biometric information on the card will be verified by machine at the ports-of-entry (POEs) where feasible or by other reliable means. This rule further eliminates certain former versions of BCCs and clarifies the validity period of waivers of inadmissibility issued under 8 CFR 212.4. This rule promotes uniformity and clarity in the adjudication and production processes, and is necessary to comply with the congressional mandates set forth in section 104 of the IIRIRA.

DATES: *Effective date:* October 1, 2002.

Comment date: Written comments must be submitted on or before January 31, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, you must include INS No. 1931–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment. Comments can also be submitted electronically at *insregs@usdoj.gov*. When submitting comments electronically, please make sure to place the INS No. 1931–98 in the subject box.

FOR FURTHER INFORMATION CONTACT: Michael J. Flemmi, Assistant Chief Inspector, Office of Inspections, U.S. Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, Telephone (202) 305–9247.

SUPPLEMENTARY INFORMATION:

Background

This rule is essential to meet the requirements of section 104 of the IIRIRA, which amended section 101(a)(6) of the Immigration and Nationality Act (Act) (codified as amended at 8 U.S.C. 1101(a)(6) and 1101 note (2002)). The definition of a BCC and related requirements are covered by section 101(a)(6) of the Act. The IIRIRA, section 104 establishes two new requirements: (1) A machine-readable biometric identifier must be included in any document issued on or after April 1, 1998, that is designated as a "border crossing identification card," and (2) an alien who presents such a card cannot be permitted to cross the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien who presents the card on or after October 1, 2002.

Section 601 of the Enhanced Border Security and Visa Entry Reform Act (Border Security Act), Public Law 107–173, 116 Stat. 543 (May 14, 2002) amended section 104 of IIRIRA to extend the deadline from October 1, 2001 to October 1, 2002 for presentation of the biometric BCC at the borders. The deadline had previously been extended from 1999 to 2001. (Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Sec. 410(b), Public Law 105–277, 112 Stat. 2681 (October 21, 1998)). Between October 1, 2001 and the passage of the most recent deadline extension in the Border Security Act, the Service required border crossers to present the new biometric BCC, passports, visas, other appropriate documents, or valid waivers if required. After enactment of the Border Security Act extension, the Service again accepted unexpired non-biometric BCCs. This regulation ends the acceptance of the non-biometric BCCs as required by law.

The Service and the Department of State (DOS) have realigned their responsibilities so that each agency specializes in part of the BCC adjudication and production process: The DOS adjudicates all applications for the biometric BCCs for Mexicans, and the Service produces most such BCCs. The DOS also produces some of the BCCs. Canadian BCCs are no longer produced. Canadians and certain other Canadian residents are not required to possess a visa or BCC; however, waivers of any relevant grounds of inadmissibility will continue to be required of eligible Canadians and Canadian residents. See 8 U.S.C. 1182(d)(3–4); 8 CFR 212.1(a); 8 CFR 212.4, and 8 CFR 212.7. The concept for the realignment of responsibilities for the adjudication and production of BCCs grew out of discussions with the DOS about areas where the two agencies' programs interface.

This rule eliminates the use of Form I–175, Application for Nonresident Alien Canadian Border Crossing Card, and Form I–190, Application for Nonresident Alien Mexican Border Crossing Card. It also terminates the production of Form I–185, Nonresident Alien Canadian Border Crossing Card, and Form I–586, Nonresident Alien Mexican Border Crossing Card. In addition, this rule prohibits the use of

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Form I–186 (previous version of the Mexican BCC Card), Form I–185 and Form I–586 BCCs. The rule also prohibits the use of the non-biometric BCC portion of the combined B–1/B–2 visitor visa and border crossing identification card (B–1/B–2 Visa/BCC) (or similar combination stamp in a passport) that the DOS issued prior to April 1, 1998. The B–1/B–2 visas contained on the older DOS-issued cards will remain valid until their expiration dates unless otherwise revoked or voided.

Mexican Border Crossing Cards

How Were Mexican BCCs Issued Prior to This Rulemaking?

Under the previous procedures, both the Service and the DOS adjudicated and produced Mexican BCCs. The Service issued BCCs on Form I–586 and Form I–186. Several different revisions of the Forms have been issued (last revision 1997). The Service adjudicated about 240,000 BCC applications per year at more than 30 southwest border POEs. Approximately 180,000 BCC applications were approved annually.

The DOS adjudicated about 800,000 BCC applications per year at its eight consular posts in Mexico. The DOS non-biometric BCCs were also issued in several formats, including a document that is a combination B–1/B–2 Visa/BCC and a similar combination stamp in the person's passport. In 1998, the DOS published regulations on application procedures and criteria for the new biometric BCC (Form DSP–150). See 22 CFR 41.32. Those procedures must be followed by all Mexican applicants seeking BCCs. Following publication of this rule, the Service's previous regulations concerning applications for the older non-biometric cards will no longer be effective.

How Many of the Service-Issued BCCs Are Now in Use, and Why Must They Be Replaced?

In 1998 when the biometric BCCs became available and all other versions ceased to be produced, the Service had estimated that between 2 and 5 million of the non-biometric, Service-issued BCCs remained in circulation. The number of such cards has steadily declined as the older versions of both the Service-issued and DOS-issued cards have been replaced with the biometric BCC. The Service and DOS have adjudicated and produced nearly 6 million BCCs with a biometric identifier.

Section 104 of the IIRIRA requires that each BCC issued on or after April 1, 1998, include a biometric identifier that is machine readable, and that each alien presenting a BCC on or after October 1, 2002, be refused admission unless the biometric identifier on the card matches the biometric identifier of the alien. None of the BCCs issued before April 1, 1998, contain the required biometric identifier. Thus, they cannot be accepted for admission into the United States on or after October 1, 2002. Therefore, an individual who wishes to continue using a BCC (rather than obtaining a B–1/B–2 visa at a consulate) must replace his or her older BCC with the new biometric BCC in order to be admitted to the United States on or after October 1, 2002.

Is a DOS-Issued Combination B–1/B–2 Visa/BCC Document or Stamp Issued Before April 1, 1998, Still Valid for Admission?

The BCC portion will no longer be valid for admission because it does not contain the required biometric identifier. The B–1/B–2 visa portion will remain valid for admission until its expiration date, unless the alien is subject to a ground of inadmissibility that has not been waived. However, a holder of any B–1/B–2 visa, including a visa documented on a non-biometric BCC, must also present his or her passport, unless otherwise exempt from the passport requirement. Since the DOS-issued BCCs are considered both a nonimmigrant visa and a BCC, they will not be subject to this card replacement requirement and may continue to be used only as a nonimmigrant visa after October 1, 2002, with a passport.

Is a Biometric BCC Mandatory for Mexican Nationals?

No. A biometric BCC may be presented in lieu of a passport and visa. A nonimmigrant Mexican national may present any of the following documents for admission into the United States: (1) A valid, unexpired visa *and* unexpired passport if the alien is otherwise admissible; (2) A valid, unexpired biometric BCC (DSP–150) if the alien is otherwise admissible and provided that the inspector has matched the biometric identifier on the card to the bearer's corresponding characteristic(s). If the biometric authentication is unsuccessful, the alien cannot be permitted to cross the border, as required under section 104 of IIRIRA. A passport may be required under 8 CFR 212.6 if the BCC-bearer is not arriving from Mexico or Canada, or is arriving from Canada but has been in another country other than the United States or Canada since leaving Mexico; (3) a non-biometric DOS-issued combination BCC/B–1/B–2 visa (or similar stamp in a passport) may be accepted on the basis of the unexpired B–1/B–2 visa portion only. The non-biometric BCC portion of the card (or stamp) is no longer valid on or after October 1, 2002. As usual with a B–1/B–2 visa, a valid, unexpired passport is also required. A Form I–94 should be issued unless the individual is otherwise exempt from the Form I–94 requirement by regulation; or (4) other applicable documents may be accepted depending on the alien's eligibility for admission (*e.g.*, Form I–512, Authorization for Parole; Form I–194, Notice of Advance Permission to Enter as Non-immigrant Pursuant to 212(d)(3)(A) or (B) of the Act).

What Are the Application Procedures for Replacing the Non-Biometric BCCs?

The application procedures for replacing a non-biometric BCC are described in the regulation published by the DOS at 22 CFR 41.32. The DOS consular officers in Mexico accept and adjudicate the application for replacement BCCs. After receiving an appropriate card order from the DOS, the Service (or DOS in some cases) will process and produce the biometric BCC (DSP–150, B–1/B–2 Visa and Border Crossing Card), through its Integrated Card Production System (ICPS). The Service sends the cards to the DOS and the DOS will then return the biometric BCC to the applicant.

Each time the bearer presents this biometric BCC to an immigration officer at the border, the officer must make sure that the biometric identifier on the BCC matches the bearer's characteristics. If the biometric identifier does not match, the person will not be admitted to the United States.

If An Immigration Officer Voids and Cancels Either a Biometric or a Non-Biometric BCC For Any Reason, What Procedures Will Apply?

If an alien's BCC is voided and cancelled and the alien presenting the BCC does not possess other valid admission documents (such as a visa and a passport), he or she may be denied admission, unless the Service grants a discretionary waiver of the applicable ground of inadmissibility, or for an unforeseen emergency under sections 212(d)(3) or 212(d)(4) of the Act, or determines that the alien should be paroled into the United States under section 212(d)(5) of the Act. If a waiver or parole is not granted, the Service, in its discretion, may permit the alien to withdraw his or her application for admission and seek appropriate documentation for his or her future admission. See 8 CFR 235.4. In certain cases, the alien may be subject to

expedited removal under section 235(b)(1) of the Act and 8 CFR 235.3. The expedited removal provisions give immigration officers at POEs the authority to order aliens removed, without further hearing or review (unless they request asylum or express a fear of persecution) if they apply for admission without proper documents, or seek to procure documentation or admission by fraud or misrepresentation. Following consultation with a wide variety of immigrant, legal, and community-based groups, the Service developed extensive detailed regulations and procedures to ensure fair and consistent application of the expedited removal process. These procedures further ensure that individuals who express fears of persecution or torture are given an opportunity for a determination of credible fear and to apply for asylum where appropriate. See 8 CFR 235.3. During the transition period of the new biometric BCC, immigration officers generally will not apply the expedited removal procedures to aliens who present only their older, non-biometric BCCs, even if they do not meet the criteria discussed above for granting a section 212(d)(4)(A) waiver. Unless there is fraud, willful misrepresentation, evidence that the applicant is an imposter, or other serious violations involved in the alien's application for a visa or application for admission, the alien will be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

If there is evidence of fraudulent documentation or willful misrepresentation, or other serious violations, the Service may take appropriate investigative and enforcement actions, where necessary. These enforcement actions may include administrative procedures and criminal charges.

Where the person is not subject to the expedited removal procedures, this rule restates the existing procedures that will be applied when a BCC is declared void and cancelled. The individual will be advised that he or she may request a hearing before an immigration judge to determine admissibility in accordance with 8 CFR 235.6 and may be represented by an attorney of his or her choice with no expense to the government. The person will be provided with a list of free legal services providers. If the applicant chooses not to have a hearing, the BCC will be cancelled and the applicant will receive a notice of the action taken and the reasons for that action. If the BCC was issued by the DOS, the Service will also notify the DOS in writing of the reasons for the voidance of the BCC. Where applicable, the alien may also be ordered removed under the expedited removal provisions.

Canadian Border Crossing Cards

How Will the Issuance of Canadian BCCs Be Affected by This Rulemaking?

As a result of the IIRIRA mandate and the realignment of responsibilities with the DOS, the issuance of Canadian BCCs (Form I–185) ceased as of April 1, 1998. Long existent regulations permit Canadians to travel temporarily to the United States without visas. 8 CFR 212.1(a). Currently, Canadian BCCs are used primarily for Canadian citizens and certain other Canadian residents in possession of an approved Form I–194, Notice of Approval of Advance Permission to Enter as Nonimmigrant, following a request for a discretionary waiver of inadmissibility under section 212(d)(3) of the Act. The Canadian card is both a BCC and documentation of the waiver, which is noted separately on the card. This procedure allows Canadian citizens, who would otherwise be inadmissible, to enter the United States.

Although the Canadian BCC is no longer issued, Canadians who require and are eligible for a waiver of inadmissibility still must possess appropriate documentation of the waiver. Individuals who require but do not have any documentation of a waiver of inadmissibility must apply for one according to the procedures in 8 CFR 212.4. If eligible, a waiver applicant will be issued a Form I–194, Notice of Approval of Advance Permission to Enter as Nonimmigrant. The rule further provides that an unexpired waiver of inadmissibility that was previously granted and documented on a BCC issued to a Canadian or other Canadian resident exempt from the visa requirements under 8 CFR 212.1 remains valid, although the non-biometric BCC portion of the card does not. The Service is considering alternative documentation for waivers issued to Canadians and certain other Canadian residents.

In addition, with the issuance of this rule, approvals of new applications for the exercise of discretion under section 212(d)(3) of the Act may be granted for a maximum period of 5 years. All admissions pursuant to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the waiver authorization. The period for which the alien's admission is authorized shall not exceed the period justified, subject to the limitations specified in 8 CFR part 214 (Nonimmigrant Classes). The section 212(d)(3) waiver allows the applicant to apply for admission into the United States without reapplying for a discretionary waiver for the same grounds of inadmissibility upon each application for admission into the United States. Previous regulations restricted the granting of such waiver approvals to 1 year unless the DOS had recommended a longer period. The extension of the period of validity of waiver approvals will provide long-term documentation (the Form I–194 will be valid for up to 5 years) to approved waiver applicants.

Proposed Changes

What Exactly Does This Rule Do?

This rule establishes the procedures to terminate the use of current non-biometric BCCs and introduces a card that is machine-readable and contains a personal biometric identifier of the alien. The rule also provides a requirement that the biometric characteristic contained in any BCC presented for admission on or after October 1, 2002, must be matched to the alien presenting the card. The rule further removes references to application forms and documents that can no longer be used. Specifically this rule:

(1) Amends 8 CFR 103.7 to remove references to Form I–175 and Form I–190.

(2) Amends 8 CFR 212.1 to prohibit the use of the former non-biometric BCCs, to add references to allow the use of the biometric DSP–150, B–1/B–2 Visa and Border Crossing Card; and to add the requirement that the biometric identifier on any BCC presented must be matched to the alien presenting the BCC at time of admission before the alien will be permitted to enter the United States.

(3) Amends 8 CFR 212.4 to extend the maximum period of validity of a waiver authorization issued under section 212(d)(3)(A) or (B) of the Act from 1 to 5 years and restructures the section for the purpose of clarity. Further amends 8 CFR 212.4 to provide that a waiver previously issued in conjunction with a Form I–185, Nonresident Alien Canadian Border Crossing Card, may remain valid although the Form I–185 itself is void.

(4) Amends 8 CFR 212.6 to change the title; add a reference to the biometric Form DSP–150, B–1/B–2 Visa and Border Crossing Card, to be issued by the DOS; specify the application process for the DOS-issued card; limit the remaining validity period of the current border crossing cards; give authority to Service officers to physically cancel the

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former non-biometric DOS-issued cards; and provides for the replacement of the former versions of specified Service-issued BCCs.

(5) Amends 8 CFR 214.2 to eliminate the use of the Nonresident Alien Mexican Border Crossing Card (Form I–186 or I–586) and allows for the use of the Form DSP–150, B–1/B–2 Visa and Border Crossing Card, for applications for admission of aliens pursuant to the North American Free Trade Agreement. Substantive changes have not been made to this section.

(6) Amends 8 CFR 235.1(f)(1)(iv) to reference § 212.1(c) for Mexican documentary requirements.

(7) Amends 8 CFR 264.1 to remove references to Form I–175 and Form I–190.

(8) Removes 8 CFR 264.4, which refers only to the collection of fees for applications for BCCs, in its entirety.

(9) Amends 8 CFR 286.9 to add a reference to the Form DSP–150, B–1/B–2 Visa and Border Crossing Card, where the issuance of Form I–94 is required, and to remove 8 CFR 286.9(b)(5) and (6) which referenced the collection of fees in conjunction with the former BCC applications.

(10) Amends 8 CFR 299.1 to remove the references to BCC applications (Form I–175 and Form I–190), to the "Nonresident Alien Canadian Border Crossing Card" (Form I–185), to the "Nonresident Alien Border Crossing Card (Form I–586), and to add a reference to the new DOS Form DSP–150, B–1/B–2 Visa and Border Crossing Card.

(11) Amends 8 CFR 299.5 to remove references to Form I–175 and Form I–190.

Good Cause Exception

Implementation of this rule as an interim rule with provision for post-promulgation public comments is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for immediate implementation of this interim rule is that the statutory deadlines contained in section 104 of the IIRIRA of 1996, as amended, require that only BCCs bearing a machine-readable biometric identifier may be produced on or after April 1, 1998, and that a verification of the biometric identifier for all bearers of these cards must be completed before the alien may be admitted on or after October 1, 2002. The production of the new cards began on April 1, 1998, in accordance with regulations published by the DOS, and these cards are now in use. The publication of an interim rule will promote the timely institution of procedures necessary to comply with the statute. Accordingly, since delaying the effective date of this rule is impractical and contrary to the public interest, there is good cause under 5 U.S.C. 553 to make this rule effective immediately.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individuals who are applicants for admission. Although some applicants may be business persons, the requirement for a machine-readable biometric identifier in any BCC presented for admission after October 1, 2002 is a statutory mandate that the Service must implement. This rule further standardizes the adjudication and production processes for BCCs, thereby improving government efficiency and service to the public. It also provides greater flexibility in the permissible validity periods for waivers under section 212(d)(3) of the Act. This is anticipated to reduce the burdens on certain frequent border crossers and thereby help to improve traffic flows at the POEs.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department has reviewed this rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget. The Department has assessed both the costs and benefits of this rule and has made a reasoned determination that the benefits of this regulation justify its costs. The benefits include the following: (1) Promulgation of this rule meets the statutory requirements of section 104 of IIRIRA, as amended; (2) this rule ensures consistency between the Service's regulations on BCCs and the regulations issued in 1998 by the DOS regarding the application process for the new biometric BCC (22 CFR 41.32); (3) the rule's requirement that INS inspectors must match the biometric identifier in any BCC that is presented for admission to the characteristic of the nonimmigrant card holder enhances enforcement of the immigration laws and national security by improving the verification of a border crosser's true identity; (4) the rule will reduce the ability of illegal aliens to present fraudulent BCCs at the ports and in the interior of the United States; (5) the rule maintains the validity of waivers of inadmissibility issued to certain Canadian BCC holders so that they will continue to be able to enter the country although their non-biometric BCCs are now invalid.

The costs considered by the Department include: (1) The effort required by holders of the invalid non-biometric BCC to obtain the biometric BCC (DSP–150), or a valid visa and passport by the effective date of this rule. The Department determined that the vast majority of people who wished to replace their nonbiometric BCCs had already done so by October 1, 2002 because nearly 6 million biometric BCCs have been issued since 1998, and the Service had estimated that there were between 2–5 million old cards in circulation that would require replacement; DOS also reports that the vast majority of current applicants (approximately 95%) are applying for a BCC for the first time, not replacing a nonbiometric BCC; in addition, there are no significant card processing backlogs; and (2) the costs and burdens to the public associated with the BCC application process under the DOS procedures at 22 CFR 41.32. The DOS has previously determined that the BCC application can be completed in approximately one hour and that the application fee would be $65 for adults and $13 for children under age 15. *See* 63 FR 16892–01 (April 7, 1998); 22 CFR 22.1 (schedule of fees).

The primary purpose of this rule and the Congressional mandate in section 104 of IIRIRA is to enhance the security of BCCs, reduce the prevalence of fraudulent documents presented by border crossers, and improve the ability of immigration inspectors to verify a card holder's identity. The benefits of implementing this rule outweigh any burdens it imposes.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires the use of Optional Form DS–156, Nonimmigrant Visa Application, and Service Form I–192, Application for Advance Permission to Enter as Nonimmigrant, and Form I–193, Application for Waiver of Passport and/or Visa, which are considered information collections under the Paperwork Reduction Act. These information collections have previously been approved for use by the Office of Management and Budget (OMB). The OMB information collection control numbers are 1405–0018, 1115–0028 and 1115–0042, respectively. This rule also eliminates Form I–185, I–175, I–190, and I–586.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Reporting and recordkeeping requirements.

8 CFR Part 212

Aliens, Immigration, Passports and visas.

8 CFR Part 214

Foreign officials, Health professionals, Students.

8 CFR Part 235

Aliens, Immigration.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Maritime carriers.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended]

2. Section 103.7(b)(1) is amended by removing the entry for "Form I–175" and "Form I–190."

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

4. Section 212.1 is amended by removing paragraphs (c–1) and (c–2), and by revising paragraphs (c) and (g) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(c) *Mexican nationals.*

(1) A visa and a passport are not required of a Mexican national who:

(i) Is in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the DOS and is applying for admission as a temporary visitor for business or pleasure from contiguous territory.

(ii) Is a Mexican national entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border.

(2) A visa shall not be required of a Mexican national who:

(i) Is in possession of a Form DSP–150, with a biometric identifier, issued by the DOS, and a passport, and is applying for admission as a temporary visitor for business or pleasure from other than contiguous territory;

(ii) Is a crew member employed on an aircraft belonging to a Mexican company owned carrier authorized to engage in commercial transportation into the United States; or

(iii) Bears a Mexican diplomatic or official passport and who is a military or civilian official of the Federal Government of Mexico entering the United States for 6 months or less for a purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States, and the official's spouse or any of the official's dependent family members under 19 years of age, bearing diplomatic or official passports, who are in the actual company of such official at the time of admission into the United States. This provision does not apply to the spouse or any of the official's family members classifiable under section 101(a)(15)(F) or (M) of the Act.

(3) A Mexican national who presents a BCC at a POE must present the DOS-issued DSP–150 containing a machine-readable biometric identifier. The alien will not be permitted to cross the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(4) Mexican nationals presenting a combination B–1/B–2 nonimmigrant visa and border crossing card (or similar stamp in a passport), issued by DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains admissible. A passport is also required.

(5) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* A visa and a passport are not required of an alien employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment.

* * * * *

(g) *Unforeseen emergency.* A nonimmigrant seeking admission to the United States must present an unexpired visa and a passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act or a valid biometric border crossing card, issued

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by the DOS on Form DSP–150, at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f),(i) or (o) of this section. Upon a nonimmigrant's application on Form I–193, Application for Waiver of Passport and/or Visa, a district director may, in the exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director or the Deputy Commissioner may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

* * * * *

5. Section 212.4 is amended by revising paragraph (c) to read as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).

* * * * *

(c) *Terms of authorization.*

(1) *General.* Except as provided in paragraph (c)(2) of this section, each authorization under section 212(d)(3)(A) or (B) of the Act shall specify:

(i) Each section of law under which the alien is inadmissible;

(ii) The intended date of each arrival, unless the applicant is a bona fide crewman. However, if the authorization is valid for multiple entries rather than for a specified number of entries, this information shall be specified only with respect to the initial entry;

(iii) The length of each stay authorized in the United States, which shall not exceed the period justified and shall be subject to limitations specified in 8 CFR part 214. However, if the authorization is valid for multiple entries rather than for a specified number of entries, this information shall be specified only with respect to the initial entry;

(iv) The purpose of each stay;

(v) The number of entries for which the authorization is valid;

(vi) Subject to the conditions set forth in paragraph (c)(2) of this section, the dates on or between which each application for admission at POEs in the United States is valid;

(vii) The justification for exercising the authority contained in section 212(d)(3) of the Act; and

(viii) That the authorization is subject to revocation at any time.

(2) *Conditions of admission.*

(i) For aliens issued an authorization for temporary admission in accordance with this section, admissions pursuant to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the authorization.

(ii) The period for which the alien's admission is authorized pursuant to this section shall not exceed the period justified, or the limitations specified, in 8 CFR part 214 for each class of nonimmigrant, whichever is less.

(3) *Validity.*

(i) Authorizations granted to crew members may be valid for a maximum period of 2 years for application for admission at U.S. POEs and may be valid for multiple entries.

(ii) An authorization issued in conjunction with an application for a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, issued by the DOS shall be valid for a period not to exceed the validity of the biometric BCC for applications for admission at U.S. POEs and shall be valid for multiple entries.

(iii) A multiple entry authorization for a person other than a crew member or applicant for a Form DSP–150 may be made valid for a maximum period of 5 years for applications for admission at U.S. POEs.

(iv) An authorization that was previously issued in conjunction with Form I–185, Nonresident Alien Canadian Border Crossing Card, and that is noted on the card may remain valid. Although the waiver may remain valid, the non-biometric border crossing card portion of this document is not valid after that date. This waiver authorization shall cease if otherwise revoked or voided.

(v) A single-entry authorization to apply for admission at a U.S. POE shall not be valid for more than 6 months from the date the authorization is issued.

(vi) An authorization may not be revalidated. Upon expiration of the authorization, a new application and authorization are required.

* * * * *

6. Section 212.6 is revised to read as follows:

§ 212.6 Border crossing identification cards.

(a) *Application for Form DSP–150, B–1/B–2 Visa and Border Crossing Card, issued by the Department of State.* A citizen of Mexico, who seeks to travel temporarily to the United States for business or pleasure without a visa and passport, must apply to the DOS on Form DS–156, Visitor Visa Application, to obtain a Form DSP–150 in accordance with the applicable DOS regulations at 22 CFR 41.32 and/or instructions.

(b) *Use.*

(1) *Application for admission with Non-resident Canadian Border Crossing Card, Form I–185, containing separate waiver authorization; Canadian residents bearing DOS-issued combination B–1/B–2 visa and border crossing card (or similar stamp in a passport).*

(i) A Canadian citizen or other person sharing common nationality with Canada and residing in Canada who presents a Form I–185 that contains a separate notation of a waiver authorization issued pursuant to § 212.4 may be admitted on the basis of the waiver, provided the waiver has not expired or otherwise been revoked or voided. Although the waiver may remain valid on or after October 1, 2002, the non-biometric border crossing card portion of the document is not valid after that date.

(ii) A Canadian resident who presents a combination B–1/B–2 visa and border crossing card (or similar stamp in a passport) issued by the DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains otherwise admissible.

(2) *Application for admission by a national of Mexico—Form DSP–150 issued by the DOS; DOS-issued combination B–1/B–2 visa and border crossing card (or similar stamp in a passport).*

(i) The rightful holder of a Form DSP–150 issued by the DOS may be admitted under § 235.1(f) of this chapter if found otherwise admissible and if the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(ii) The bearer of a combination B–1/B–2 nonimmigrant visa and border crossing card (or similar stamp in a passport) issued by DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains otherwise admissible. A passport is also required.

(iii) Any alien seeking admission as a visitor for business or pleasure, must also present a valid passport with his or her border crossing card, and shall be issued a Form I–94 if the alien is applying for admission from:

(A) A country other than Mexico or Canada, or

(B) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

(c) *Validity.* Forms I–185, I–186, and I–586 are invalid on or after October 1, 2002. If presented on or after that date, these documents will be voided at the POE.

(d) *Voidance for reasons other than expiration of the validity of the form.*

(1) *At a POE.*

(i) In accordance with 22 CFR 41.122, a Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric border crossing identification card or (a similar stamp in a passport), issued by the DOS, may be physically cancelled and voided by a supervisory immigration officer at a POE if it is considered void pursuant to section 222(g) of the Act when presented at the time of application for admission, or as the alien departs the United States. If the card is considered void and if the applicant for admission is not otherwise subject to expedited removal in accordance with 8 CFR part 235, the applicant shall be advised in writing that he or she may request a hearing before an immigration judge. The purpose of the hearing shall be to determine his/her admissibility in accordance with § 235.6 of this chapter. The applicant may be represented at this hearing by an attorney of his/her own choice at no expense to the Government. He or she shall also be advised of the availability of free legal services provided by organizations and attorneys qualified under 8 CFR part 3, and organizations recognized under § 292.2 of this chapter located in the district where the removal hearing is to be held. If the applicant requests a hearing, the Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric border crossing identification card (or similar stamp in a passport), issued by the DOS, shall be held by the Service for presentation to the immigration judge.

(ii) If the applicant chooses not to have a hearing, the Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric BCC (or similar stamp in a passport) issued by the DOS, shall be voided and physically cancelled. The alien to whom the card or stamp was issued by the DOS shall be notified of the action taken and the reasons for such action by means of Form I–275, Withdrawal of Application for Admission/Consular Notification, delivered in person or by mailing the Form I–275 to the last known address. The DOS shall be notified of the cancellation of the biometric Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric BCC (or similar stamp in a passport) issued by DOS, by means of a copy of the original Form I–275. Nothing in this paragraph limits the Service's ability to remove an alien pursuant to 8 CFR part 235 where applicable.

(2) *Within the United States.* In accordance with former section 242 of the Act (before amended by section 306 of the IIRIRA of 1996, Div. C, Public Law 104–208, 110 Stat. 3009 (Sept. 30, 1996,) or current sections 235(b), 238, and 240 of the Act, if the holder of a Form DSP–150, or other combined B–1/B–2 visa and BCC, or (similar stamp in a passport) issued by the DOS, is placed under removal proceedings, no action to cancel the card or stamp shall be taken pending the outcome of the hearing. If the alien is ordered removed or granted voluntary departure, the card or stamp shall be physically cancelled and voided by an immigration officer. In the case of an alien holder of a BCC who is granted voluntary departure without a hearing, the card shall be declared void and physically cancelled by an immigration officer who is authorized to issue a Notice to Appear or to grant voluntary departure.

(3) *In Mexico or Canada.* Forms I–185, I–186 or I–586 issued by the Service and which are now invalid, or a Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric BCC, or (similar stamp in a passport) issued by the DOS may be declared void by United States consular officers or United States immigration officers in Mexico or Canada.

(4) *Grounds.* Grounds for voidance of a Form I–185, I–186, I–586, a DOS-issued non-biometric BCC, or the biometric Form DSP–150 shall be that the holder has violated the immigration laws; that he/she is inadmissible to the United States; that he/she has abandoned his/her residence in the country upon which the card was granted; or if the BCC is presented for admission on or after October 1, 2002, it does not contain a machine-readable biometric identifier corresponding to the bearer and is invalid on or after October 1, 2002.

(e) *Replacement.* If a valid Border Crossing Card (Forms I–185, I–186, or I–586) previously issued by the Service, a non-biometric border crossing card issued by the DOS before April 1998, or a Form DSP–150 issued by the DOS has been lost, stolen, mutilated, or destroyed, the person to whom the card was issued may apply for a new card as provided for in the DOS regulations found at 22 CFR 41.32 and 22 CFR 41.103.

PART 214—NONIMMIGRANT CLASSES

7. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 1301–1305; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively; 8 CFR part 2.

8. Section 214.2 is amended by revising paragraph (b)(4) introductory text to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(4) *Admission of aliens pursuant to the North American Free Trade Agreement (NAFTA).* A citizen of Canada or Mexico seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of such citizenship in the case of Canadian applicants, and valid, unexpired entry documents such as a passport and visa, or a passport and BCC in the case of Mexican applicants, a description of the purpose for which the alien is seeking admission, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section. Existing requirements, with respect to Canada, are those requirements which were in effect at the time of entry into force of the Canada/U.S. Free Trade Agreement and, with respect to Mexico, are those requirements which were in effect at the time of entry into force of the NAFTA. Additionally, nothing shall preclude the admission of a citizen of Mexico or Canada who meets the requirements of paragraph (b)(4)(ii) of this section.

* * *

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

9. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

§ 235.1 [Amended]

10. Section 235.1(f)(1)(iv) is amended by revising the reference to "§ 212.1(c–1)" to read "§ 212.1(c)".

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PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

11. The authority citation for part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

§ 264.1 [Amended]

12. Section 264.1(a) is amended by removing the entries for Forms "I–175" and "I–190".

§ 264.4 [Removed and reserved]

13. Section 264.4 is removed and Reserved.

PART 286—IMMIGRATION USER FEE

14. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

15. Section 286.9 is amended by revising paragraph (b)(3) and by removing paragraphs (b)(5) and (b)(6).

The revisions read as follows:

§ 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

* * * * *

(b) * * *

(3) A Mexican national in possession of a valid Form DSP–150, B–1/B–2 Visa and Border Crossing Card, issued by the DOS, or a passport and combined B–1/B–2 visa and non-biometric BCC (or similar stamp in a passport) issued by the DOS, who is required to be issued Form I–94, Arrival/Departure Record, pursuant to § 235.1(f) of this chapter, must remit the required fee for issuance of Form I–94 upon determination of admissibility.

* * * * *

PART 299—IMMIGRATION FORMS

16. The authority citation for part 299 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

17. Section 299.1 is amended in the table by removing the entries for Form "I–175", and Form "I–190" and by adding an entry for Form "DSP–150", in proper alpha numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
. . . . .	. . .	. . .
DSP–150	01–01–98	B–1/B–2 Visa and Border Crossing Card.
. . . . .	. . .	. . .

§ 299.5 [Amended]

18. Section 299.5 is amended by removing the entries in the table for Form "I–175" and Form "I–190".

Dated: November 22, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–30295 Filed 11–29–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–24–AD; Amendment 39–12965; AD 2002–23–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspection of the flap tracks of the wing trailing edge flaps for adequate cadmium plating and for corrosion of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary. This amendment also requires post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps for discrepancies, and corrective actions, if necessary. This amendment is prompted by reports of corrosion and cracks found in certain bolt holes reworked according to the existing AD. The actions specified by this AD are intended to find and fix discrepancies of the bolt holes, which could result in fracture of the flap track, separation of the flap, and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 6, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–03–17, amendment 39–6884 (56 FR 4534, February 5, 1991), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on July 1, 2002 (67 FR 44116). The action proposed to continue to require inspection of the flap tracks of the wing trailing edge flaps for adequate cadmium plating and for corrosion of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary. That action also proposed to require post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps for discrepancies, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 553 airplanes of the affected design in the worldwide fleet. The FAA estimates that 169 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 91–03–17 take approximately 50 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to $3,000 per airplane.

The borescope inspection required by this AD action will take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the borescope inspection required by this AD on U.S. operators is estimated to be $324,480, or $1,920 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the eddy current inspection, it takes approximately 40 work hours per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection is estimated to be $2,400 per airplane.

Should an operator be required to accomplish the modification of the bolt holes, it takes approximately 256 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification is estimated to be $15,360 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6884 (56 FR 4534, February 5, 1991), and by adding a new airworthiness directive (AD), amendment 39–12965, to read as follows:

2002–23–21 Boeing: Amendment 39–12965. Docket 2002–NM–24–AD. Supersedes AD 91–03–17, Amendment 39–6884.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps, which could result in separation of the flap and consequent loss of control of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 91–03–17

Inspections

(a) Prior to the accumulation of 30,000 total flight hours, or 8 years time-in-service on current production flap tracks, whichever is first; or within 2,000 flight cycles after March 11, 1991 (the effective date of AD 91–03–17, amendment 39–6884); whichever is later: Perform a borescope inspection of the forward four bolt holes on each side of the affected trailing edge flap tracks for corrosion and adequate cadmium plating, in accordance with the procedures specified in Boeing Service Bulletin 747–57–2256, dated March 8, 1990; Revision 1, dated November 15, 1990; Revision 2, dated March 5, 1992; or Revision 3, dated June 21, 2001. If the cadmium plating is adequate, as specified in the service bulletin, and no corrosion or cracks are found, no further action is required for this paragraph. If the cadmium plating is not adequate, or if corrosion exists in any bolt hole, prior to further flight, conduct an eddy current inspection of the bolt hole for cracks, in accordance with the service bulletin. After the effective date of this AD only Revision 3 of the service bulletin may be used.

Corrective Actions

(b) If the cadmium plating is not adequate and no corrosion or cracks are found during the inspection required by paragraph (a) of this AD: Within 1,000 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD, cadmium plate the affected bolt holes in accordance with Boeing Service Bulletin 747–57–2256, dated March 8, 1990; Revision 1, dated November 15, 1990; Revision 2, dated March 5, 1992; or Revision 3, dated June 21, 2001; and conduct the inspections of the affected track as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, in accordance with the service bulletin. Restoration of the cadmium plating terminates the inspections required by this paragraph.

Inspections

(1) Within 50 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD: Perform a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes, and repeat the inspection thereafter at intervals not to exceed 50 flight cycles.

(2) Within 250 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD: Perform an eddy current inspection for cracks of the bolt holes, and repeat the inspection thereafter at intervals not to exceed 250 flight cycles.

(3) Prior to each flight on which a fifth engine is to be carried, perform a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes.

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New Requirements of this AD

Cadmium Plating Applied During Production

(c) For airplanes on which cadmium plating of the forward four bolt holes was applied during production: No further action is required by this AD. If operator records indicate that during the inspection required by paragraph (a) of this AD cadmium plating was applied during production (not during rework or replating), no further action is required by this AD. (Indications of rework include oversized fasteners and/or fasteners with repair sleeves, and/or flap track dash numbers that have been changed per the service bulletin.)

Compliance Time for Borescope Inspection

(d) For airplanes on which cadmium plating of the forward four bolt holes was *not* applied during production: Do the action required by paragraph (e) of this AD at the later of the times given in paragraphs (d)(1) and (d)(2) of this AD.

(1) Within 2 years or 2,000 flight cycles after the effective date of this AD, whichever is first; or

(2) Within 6 years after doing the initial bolt hole rework per AD 91–03–17.

Borescope Inspection

(e) Do a borescope inspection of the forward four bolt holes on each side of the fail-safe bar of the flap tracks of the trailing edge flaps for discrepancies (corrosion, cracks, damaged cadmium plating), per Part 2 of the Work Instructions of Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001. Then, do the actions specified in paragraph (e)(1), (e)(2), or (e)(3) of this AD, as applicable, and repeat the borescope inspection every 8 years or 8,000 flight cycles, whichever is first. Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (a) of this AD.

Corrective Actions

(1) If the cadmium plating is damaged, but no corrosion or cracking is found: Before further flight, do the eddy current inspection specified in and per Part 2.F. of the Work Instructions of the service bulletin. If no cracking is found, before further flight, cadmium plate the affected bolt holes per Part 2.F. of the Work Instructions of the service bulletin.

(2) If any corrosion is found, before further flight, rework the affected bolt holes as specified in and per Part 2.G. of the Work Instructions of the service bulletin.

(3) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–03–17, amendment 39–6884, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (e)(3) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–57–2256, dated March 8, 1990; Boeing Service Bulletin 747–57–2256, Revision 1, dated November 15, 1990; Boeing Service Bulletin 747–57–2256, Revision 2, dated March 5, 1992; or Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001; as applicable. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on January 6, 2003.

Issued in Renton, Washington, on November 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30026 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–417–AD; Amendment 39–12963; AD 2002–23–19]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Dassault Model Falcon 2000 series airplanes, and certain Dassault Model Falcon 900EX and Mystere Falcon 900 series airplanes. That AD currently requires repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary; repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and repetitive measurement of the screw/nut play of the jackscrews on the inboard and outboard flaps to detect discrepancies, and corrective action if necessary. This amendment removes Model 900EX and Mystere Falcon 900 series airplanes from the applicability of the existing AD. For Model Falcon 2000 series airplanes, this amendment also adds certain repetitive measurements, deletes certain repetitive measurements, and extends the interval for repetitive replacement of certain jackscrews. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent jamming of the flap jackscrews during the approach to landing, which could result in inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane.

DATES: Effective January 6, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–14–07, amendment 39–11218 (64 FR 36561, July 7, 1999), was published in the **Federal Register** on February 15, 2002 (67 FR 7093). The proposal is applicable to all Dassault Model Falcon 2000 series airplanes; whereas, AD 99–14–07 was applicable to all Dassault Model Falcon 2000 series airplanes, and certain Dassault Model Falcon 900EX and Mystere Falcon 900 series airplanes. The action proposed to supersede AD 99–14–07 to continue to require the following:

- Repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary;
- Repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and
- Repetitive measurement of the screw/nut play of the outboard and center flap jackscrews to detect discrepancies, and corrective action, if necessary.

The action also proposed to remove Model 900EX and Mystere Falcon 900 series airplanes from the applicability of the existing AD. For Model Falcon 2000 series airplanes, the action also proposed to add certain repetitive measurements, delete certain repetitive measurements, and extend the interval for repetitive replacement of certain jackscrews.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Add Part Numbers

One commenter requests adding "Amdt A" to the jackscrew part numbers (P/Ns) that are already specified by the proposed AD (*i.e.*, P/Ns 5318–1, 1–5319–1, and 2–5319–1). We concur with the commenter's request, noting that the designation of "Amdt A" simply indicates a reconditioned jackscrew that has been reidentified. As such, we have determined that this change further clarifies, but does not change, the requirements of this AD. In light of this, we have added P/Ns 5318–1 Amdt A, 1–5319–1 Amdt A, and 2–5319–1 Amdt A, as appropriate, for those P/Ns that have been reconditioned and reidentified. We have revised the applicable P/Ns in paragraphs (b) through (h) of the final rule accordingly.

Request To Revise Airplane Maintenance Manual References

The same commenter requests that the final rule reference only Chapter 5–40 of the Airplane Maintenance Manual (AMM) for the operational testing, inspections, and replacement action. The commenter adds that operators are managing the jackscrew life limits and inspections, and have planned the spares and maintenance inspections based on the actions required by AD 99–14–07. The commenter considers that the corrective action can be accomplished only per Chapter 5–40 of the AMM.

We do not concur with the commenter's request that only Chapter 5–40 of the AMM should be cited in the final rule as the appropriate source of service information for the actions required by the AD. In order to accomplish the requirements of the AD, it is necessary to cite all of the service information references that were included in the proposed AD, which include various AMMs and Temporary Revisions. No change to the final rule is necessary in this regard.

Explanation of Changes To Clarify/Revise the Final Rule

We have made the following additional changes to the final rule:

- In the Summary section of the final rule, we have clarified the requirements for the repetitive measurement action. The Summary section of the proposed AD specifies repetitive measurement of the screw/nut play of the "outboard and center flap" jackscrews. However, the repetitive measurement action in paragraph (f) of the proposed AD specifies the location of the jackscrew on the "outboard flaps," and paragraph (g) of the proposed AD specifies the "inboard flap." For this reason, we have revised the Summary of the final rule to specify measurement of the jackscrews on the "inboard and outboard flaps." The exact location of the affected jackscrews is specified in paragraphs (f) through (h) of the final rule.
- Although paragraphs (c) and (e) of the proposed AD specify a reconditioned jackscrew having P/N 5318–1, we have revised those paragraphs in the final rule to clarify that the correct P/N of a reconditioned jackscrew is P/N 5318–1 Amdt A.
- Although paragraphs (c)(1) and (e)(1) and Note 2 of the proposed AD did not include the date of the referenced service bulletin, we have added the date (September 16, 1999) in those paragraphs in the final rule.
- In the proposed AD, paragraph (c)(2) specifies that the jackscrew is located on the inboard flap in the "inboard" position, and paragraph (e)(2) specifies the location of the jackscrew in the "outboard" position. However, because the jackscrew could be located in either the inboard or outboard position, we have determined that the requirements in those paragraphs are unnecessary and should be deleted. In light of this, we have revised the final rule and renumbered the subparagraphs accordingly.
- In paragraph (d) of the final rule, we have clarified the location of the middle jackscrew by specifying that the jackscrew is located on the inboard flap and in the outboard position. We have also clarified the location of the jackscrew in paragraph (e) of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This AD is considered to be interim action. The manufacturer has advised that it is currently developing a modification that will positively address the unsafe condition which is the subject of this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 45 airplanes of U.S. registry that will be affected by this AD.

The costs of performing actions required by AD 99–14–07 and retained in this AD for Falcon 2000 series airplanes are described below.

The repetitive operational test of the flap asymmetry detection system takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive operational test on U.S. operators is estimated to be $2,700, or $60 per airplane, per test cycle.

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The measurement of the screw/nut play in the flap jackscrews takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the measurement on U.S. operators is estimated to be $21,600, or $480 per airplane, per measurement cycle.

The repetitive replacement of jackscrews takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. New jackscrews cost approximately $21,200 per airplane. However, the AD permits a one-time reconditioning and re-use of jackscrews, which could reduce the cost of parts by 50%. Based on these figures, the cost impact of replacement of jackscrews on U.S. operators is estimated to be between $498,600 and $975,600, or between $11,080 and $21,680 per airplane, per replacement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11218 (64 FR 36561, July 7, 1999), and by adding a new airworthiness directive (AD), amendment 39–12963, to read as follows:

2002–23–19 Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)): Amendment 39–12963; Docket 2000–NM–417–AD. Supersedes AD 99–14–07, Amendment 39–11218.

Applicability: All Model Falcon 2000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the flap jackscrews during the approach to landing, which could result in the inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Operational Test

(a) Within 5 flight cycles after August 11, 1999 (the effective date of AD 99–14–07, amendment 39–11218): Perform an operational test of the flap asymmetry detection system to ensure that the system is functioning correctly, in accordance with the procedures specified in Dassault Falcon 2000 Airplane Maintenance Manual (AMM) 27–502, dated November 1995. Prior to further flight, repair any discrepancy detected, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent). Repeat the operational test thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Repetitive Replacement

(b) Prior to the accumulation of 1,000 total flight cycles on the inboard jackscrew located on the inboard flap in the inboard position, or within 25 flight cycles after August 11, 1999, whichever occurs later: Replace each jackscrew having part number (P/N) 5318–1 or 5318–1 Amdt A, which is located on the inboard flap in the inboard position, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995. The replacement jackscrew may be new or may have been reconditioned in accordance with paragraph (c) of this AD. Repeat the replacement of a jackscrew having P/N 5318–1 or 5318–1 Amdt A thereafter at intervals not to exceed 1,000 flight cycles on the jackscrew located on the inboard flap in the inboard position.

(c) A jackscrew having P/N 5318–1 and located on the inboard flap in the inboard position may be replaced by a reconditioned jackscrew having P/N 5318–1 Amdt A, provided that all of the conditions specified in paragraphs (c)(1) and (c)(2) of this AD are met.

(1) The jackscrew has been reconditioned and reidentified as P/N 5318–1 Amdt A, in accordance with Dassault Service Bulletin AVIAC 5318–27–01, dated September 16, 1999.

(2) The jackscrew has been reconditioned only one time.

(d) Prior to the accumulation of 2,200 total flight cycles on the middle jackscrew located on the inboard flap and in the outboard position, or within 25 flight cycles after August 11, 1999, whichever occurs later: Replace each jackscrew having P/N 5318–1 or 5318–1 Amdt A on the inboard flap and in the outboard position, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995. The replacement jackscrew may be new or may have been reconditioned in accordance with paragraph (e) of this AD. Repeat the replacement of a jackscrew having P/N 5318–1 or 5318–1 Amdt A thereafter at intervals not to exceed 2,200 flight cycles on the jackscrew located on the inboard flap and in the outboard position.

(e) A jackscrew having P/N 5318–1 and located on the inboard flap and in the outboard position may be replaced by a reconditioned jackscrew having P/N 5318–1 Amdt A, provided that all of the conditions specified in paragraphs (e)(1) and (e)(2) of this AD are met.

(1) The jackscrew has been reconditioned and reidentified as P/N 5318–1 Amdt A, in accordance with Dassault Service Bulletin AVIAC 5318–27–01, dated September 16, 1999.

(2) The jackscrew has been reconditioned only one time.

Repetitive Measurements

(f) Prior to the accumulation of 1,000 total flight cycles on the outboard jackscrews located on the outboard flaps, or within 25 flight cycles after August 11, 1999, whichever occurs later: Measure the screw/nut play of the jackscrews having P/N 1–5319–1 or 1–5319–1 Amdt A (on the left wing) and P/N 2–5319–1 or 2–5319–1 Amdt A (on the right wing) on the outboard flaps, in accordance with the procedures specified in Dassault Falcon 2000 AMM Temporary Revision (TR) 27–504, dated October 1998.

Note 2: Jackscrews having P/N 1–5319–1 or 2–5319–1 may be reconditioned in accordance with Dassault Service Bulletin AVIAC 5319–27–01, dated September 16, 1999. These jackscrews may be reconditioned and reused more than one time.

(1) If the initial measurement is equal to or less than 0.014 inch: Repeat the measurement thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first. If any repetitive measurement detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraph (f)(2) of this AD.

(2) If the initial measurement is greater than 0.014 inch: Perform the actions required by paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Prior to further flight, replace the jackscrew with a new or reconditioned jackscrew, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995.

(ii) Prior to the accumulation of 1,000 total flight cycles on the new or reconditioned jackscrew, perform a follow-on measurement of the screw/nut play in accordance with the procedures specified in Dassault Falcon 2000 AMM TR 27–504, dated October 1998.

(iii) If any follow-on measurement required by paragraph (f)(2)(ii) of this AD detects a nut/screw play equal to or less than 0.014 inch, perform the actions required by paragraph (f)(1) of this AD. If any follow-on measurement required by paragraph (f)(2)(ii) of this AD detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(g) Prior to the accumulation of 750 total flight cycles on the jackscrew located on the inboard flap in the inboard position, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the jackscrew having P/N 5318–1 or 1–5318–1 Amdt A, which is located on the inboard flap in the inboard position, to detect discrepancies, in accordance with the procedures specified in Dassault Falcon 2000 AMM TR 27–504, dated October 1998. If the measurement is greater than 0.014 inch, prior to further flight, replace the discrepant jackscrew with a new or reconditioned jackscrew, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995.

(h) Prior to the accumulation of 1,000 total flight cycles on the jackscrew located on the inboard flap in the outboard position, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the jackscrew having P/N 5318–1 or 5318–1 Amdt A, which is located on the inboard flap in the outboard position, in accordance with the procedures specified in Dassault Falcon 2000 AMM TR 27–504, dated October 1998.

(1) If the initial measurement is equal to or less than 0.014 inch: Repeat the measurements thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first. If repetitive measurement detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraph (h)(2) of this AD.

(2) If the initial measurement is greater than 0.014 inch: Perform the actions required by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Prior to further flight, replace the jackscrew with a new or reconditioned jackscrew, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995.

(ii) Prior to the accumulation of 1,000 total flight cycles on the new or reconditioned jackscrew, perform a follow-on measurement of the screw/nut play in accordance with the procedures specified in Dassault Falcon 2000 AMM TR 27–504, dated October 1998.

(iii) If any follow-on measurement required by paragraph (h)(2)(ii) of this AD detects a nut/screw play equal to or less than 0.014 inch, perform the actions required by paragraph (h)(1) of this AD. If any follow-on measurement required by paragraph (h)(2)(ii) of this AD detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

Alternative Methods of Compliance

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–14–07, amendment 39–11218, are not considered to be approved as alternative methods of compliance with this AD.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with Dassault Falcon 2000 Airplane Maintenance Manual Temporary Revision 27–504, dated October 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–038–008(B) R1, dated September 20, 2000.

Effective Date

(l) This amendment becomes effective on January 6, 2003.

Issued in Renton, Washington, on November 19, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30025 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–40–AD; Amendment 39–12968; AD 2002–24–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. This amendment requires revising the Airplane Flight Manual to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 6, 2003.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

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include an airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes, was published in the **Federal Register** on July 17, 2002 (67 FR 46937). That action proposed to require revising the Airplane Flight Manual to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 168 Airbus Model A300 B2 and B4; A300–600; and Model A310 series airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,080, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–24–04 Airbus: Amendment 39–12969. Docket 2002–NM–40–AD.

Applicability: All Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

(1) For Model A300 series airplanes, revise the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"EMERGENCY PROCEDURES

Cabin Depressurization:	
Crew Oxygen Masks	ON
Crew Communications	established
Passenger Oxygen	as required

"EMERGENCY PROCEDURES—Continued

Emergency Descent	as required (see 3.02.00 page 8)"

(2) For Model A300–600 and A310 series airplanes: Revise the Procedures Following Failure section of the FAA-approved AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"PROCEDURES FOLLOWING FAILURE

Cabin Press:	
Excess Cab Alt.	
Oxy Masks	ON
Descent	AS RQRD
If Rapid Decompression	APPLY"
Emerg Descent Proc.	

Removal of AD From AFM

(b) When the information included in the AFM procedures specified in paragraphs (a)(1) and (a)(2) of this AD has been incorporated into the FAA-approved general revision of the AFM, and the information contained in the general revision is identical to that specified in this AD, this AD may be removed from the AFM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on January 6, 2003.

Issued in Renton, Washington, on November 21, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30341 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–23]

Establishment of Class E5 Airspace; Tazewell, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Tazewell, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for New Tazewell Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Effective 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Tazewell, TN, (67 FR 62412). This action provides adequate Class E5 airspace for IFR operations at New Tazewell Municipal Airport, Tazewell, TN. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Tazewell, TN.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRPSACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Tazewell, TN [NEW]

New Tazewell Municipal Airport, TN
Point In Space Coordinates
(lat. 36°24′47″ long. 83°30′00″)
That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°24′47″ long. 83°30′00″ W) serving New Tazewell Municipal Airport.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30333 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–22]

Amendment of Class E5 Airspace; Rockwood, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Rockwood, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Harriman City Hospital, Harriman, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Effective 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Rockwood, TN, (67 FR 62413). This action provides adequate Class E5 airspace for IFR operations at Harriman City Hospital, Harriman, TN. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 74009.K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

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The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Rockwood, TN.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO TN E5 Rockwood, TN [REVISED]

Rockwood Municipal Airport, TN
(lat. 35°55′20″N, long. 84°41′23″W)
Harriman City Hospital
Point in Space Coordinates
(lat. 35°56′36″N, long. 84°30′18″W)
That airspace extending upward from 700 feet or more above the surface within a 9.5-mile radius of Rockwood Municipal Airport and within a 6-mile radius of the point in space (lat. 35°56′36″N, long. 84°30′18″W) serving Harriman City Hospital; excluding that airspace within the Crossville, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30332 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–21]

Establishment of Class E5 Airspace; Newport, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Newport, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Cocke County Baptist Hospital, Newport, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Effective 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Newport, TN, (67 FR 62414). This action provides adequate Class E5 airspace for IFR operations at Cocke County Baptist Hospital, Newport, TN. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Newport, TN.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Newport, TN [NEW]

Cocke County Baptist Hospital, TN
Point In Space Coordinates
(Lat. 36°00′13″N long. 83°10′53″W)
That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°00′13″N long. 83°10′53″W) serving Cocke County Baptist Hospital; excluding that airspace within the Knoxville TN, and the Morristown, TN Class E airspace areas.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30331 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–20]

Establishment of Class E5 Airspace; Middlesboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Middlesboro, KY. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Middlesboro—Bell County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Middlesboro, KY, (67 FR 62415). This action provides adequate Class E5 airspace for IFR operations at Middlesboro—Bell County Airport, Middlesboro, KY. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Middlesboro, KY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Area Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO KY E5 Middlesboro, KY [NEW]

Middlesboro-Bell County Airport, KY

Point In Space Coordinates
(lat. 36°36′37″ long. 83°43′32″
That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°36′37″ long. 83°43′32″ W) serving Middlesboro-Bell County Airport.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30330 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–19]

Amendment of Class E5 Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Class E5 airspace at Augusta, GA. A Non-Directional Beacon (NDB) Runway (RWY) 17 Standard Instrument Approach Procedure (SIAP) has been developed for Millen Airport, Millen, GA. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Millen Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include FR operations concurrent with the publication of the SIAP.

DATES: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace

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at Augusta, GA, (67 FR 62416). This action provides adequate Class E5 airspace for IRF operations at Millen, GA. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Augusta, GA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1964 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Augusta, GA [REVISED]

Augusta, Bush Field, GA
(Lat 33°22′12″N, long. 81°57′52″W)
Bushe NDB
(Lat. 33°17′13″N, long. 81°56′49″W)
Daniel Field
(Lat. 33°27′59″N, long. 82°02′21″W)
Burke County Airport
(Lat. 33°02′27″N, long. 82°00′14″W)
Burke County NDB
(Lat. 33°02′33″N, long. 82°00′17″W)
Millen Airport
(Lat. 32°53′38″N, long. 81°57′54″W)
Millen NDB
(Lat. 32°53′41″N, long. 81°58′01″W)
That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Bush Field and within 8 miles west and 4 miles east of the Augusta ILS localizer south course extending from the 8.2-mile radius to 16 miles south of the Bushe NDB, and within a 6.3-mile radius of Daniel Field, and within a 6.2-mile radius of Burke County Airport and within 3.5 miles each side of the 243° bearing from the Burke County NDB extending from the 6.2-mile radius to 7 miles southwest of the NDB, and within a 6.4-mile radius of Millen Airport and within 4 miles east and 8 miles west of the 357° bearing from the Millen NDB extending from the 6.4-mile radius to 16 miles north of the airport.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30329 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2001–10527; Airspace Docket No. ASD 02–AGL–16]

RIN 2120–AA66

Revision of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action realigns Jet Route 211 (J–211) southeast of the Johnstown, PA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) by realigning it clockwise by one degree. The realignment is necessary because the Johnstown 129° radial has become unusable. The FAA is taking this action to enhance aviation safety in the Johnstown, PA, area.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Aircraft navigating on J–211 currently use the 129° radial of the Johnstown, PA, VORTAC. A review by the FAA has revealed that the 129° radial of the Johnstown, PA, VORTAC has become unusable. This action revises J–211 from the Johnstown 129° radial to the Johnstown 130° radial. The FAA is taking this action to enhance aviation safety in the affected area.

The Rule

This amendment to 14 CFR part 71 realigns a segment of J–211 southeast of the Johnstown, PA, VORTAC by moving it one degree from the Johnstown 129° radial to the Johnstown 130° radial. This action is necessary to ensure the safety of aircraft navigating on J–211. Because this action is needed for safety reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–211 [Revised]

From Youngstown, OH; Johnstown, PA; INT Johnstown 130° and Westminster, MD, 292° radials; to Westminster.

* * * * *

Issued in Washington, DC, on November 22, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–30326 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 16

[Docket No. 02N–0251]

Presiding Officers at Regulatory Hearings; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of January 2, 2003, for the direct final rule that appeared in the **Federal Register** of August 15, 2002 (67 FR 53305). The direct final rule amends the administrative regulations governing who may act as a presiding officer at a regulatory hearing. This document confirms the effective date of the final rule.

DATES: Effective date confirmed: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of the Chief Counsel (GCF–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7144.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 15, 2002 (67 FR 53305), FDA solicited comments concerning the direct final rule for a 75-day period ending October 29, 2002. FDA stated that the effective date of the direct final rule would be 30 days after the publication of this confirmation document in the **Federal Register**, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Therefore, under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 et al.), and under the authority delegated to the Commissioner of Food and Drugs, the amendments issued thereby will go into effect on January 2, 2003.

Dated: November 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30483 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 02P–0177]

Food Labeling: Health Claims; D-tagatose and Dental Caries

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation authorizing a health claim on sugar alcohols and dental caries, i.e., tooth decay, to include the sugar D-tagatose, a novel food ingredient. Similar to the sugar alcohols currently listed in § 101.80 (21 CFR 101.80), D-tagatose is a carbohydrate sweetener that is slowly fermented by oral microorganisms, thus producing less acid than more fermentable carbohydrates. We (FDA) are taking this action in response to a petition filed by Arla Foods Ingredients amba. We previously concluded that there was significant scientific agreement for the relationship between slowly fermented carbohydrate sugar substitutes, specifically certain sugar alcohols, and the nonpromotion of dental caries. Based on the totality of publicly available scientific evidence, we now have determined that the sugar D-tagatose, like the sugar alcohols, is not fermented by oral bacteria to an extent sufficient to lower dental plaque pH to levels that would cause the erosion of dental enamel. Therefore, we have concluded that D-tagatose does not promote dental caries, and we are amending the regulation authorizing a health claim relating certain sugar alcohols and nonpromotion of dental caries to include D-tagatose as a substance eligible for the claim. Moreover, because D-tagatose is a sugar, we are denying the petitioner's request to exclude D-tagatose from the definition of "sugars," and instead are exempting foods containing D-tagatose from the requirement that foods bearing a health claim about nonpromotion of dental caries be sugar-free. Accordingly, although products containing D-tagatose will not be permitted to be labeled as "sugar-free," they will be authorized to say that D-tagatose sugar does not promote, or may reduce the risk of, tooth decay.

DATES: This rule is effective December 2, 2002. Submit written or electronic comments by February 18, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: James Hoadley, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–832), Harvey W. Wiley Federal Bldg., 5100 Paint Branch Pkwy., College Park, MD, 20740–3835, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535) amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One aspect of the 1990 amendments was that they confirmed FDA's authority to

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regulate health claims on food labels and in food labeling.

We issued several new regulations in 1993 that implemented the health claim provisions of the 1990 amendments. Among these were § 101.14 (21 CFR 101.14), Health Claims: General Requirements, (58 FR 2478, January 6, 1993) and § 101.70 (21 CFR 101.70), Petitions for Health Claims (58 FR 2478, January 6, 1993), which established a process for petitioning the agency to authorize health claims about substance-disease relationships and set out the types of information that a health claim petition must include. These regulations became effective on May 8, 1993.

The final rule for § 101.80 (61 FR 43433, August 23, 1996), relating sugar alcohols and the nonpromotion of dental caries (the dental caries health claim), completed the first rulemaking that we conducted in response to a health claim petition (Docket No. 95P–0003). Section 101.80(a) describes the role of fermentable carbohydrates, i.e., dietary sugars and starches, in the development of dental caries. The fermentation of these carbohydrates by microorganisms on the surface of teeth produces organic acids, which contribute to the development of dental caries through erosion of tooth enamel. Section 101.80 (b) explains that sugar alcohols are fermented by oral microorganisms more slowly than fermentable carbohydrates. Thus, the rate of acid production is lower than that from fermentable carbohydrates. Consequently, sugar alcohols, when used in place of fermentable carbohydrates, are useful as sweeteners that do not promote dental caries. Section 101.80 (c) describes the specific requirements of the dental caries health claim, including the requirement that the food bearing the claim be "sugar free" as defined by § 101.60(c)(1)(i) (21 CFR 101.60(c)(1)(i)). Section 101.80 (c) also specifies the sugar alcohols that are eligible for the claim: xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, erythritol, or a combination of these (§ 101.80(c)(2)(ii)(B)). Section 101.80(c)(2)(ii)(C) further states that:

> When fermentable carbohydrates are present in the sugar alcohol-containing food, the food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption, or up to 30 minutes after consumption, as measured by the indwelling plaque pH test found in "Identification of Low Caries Risk Dietary Components," * * * which is incorporated by reference * * *.

In the dental caries health claim final rule, the agency stated that for other sugar alcohols to be listed in § 101.80(c)(2)(ii)(B), a petitioner must show how the substance conforms to the requirements of §§ 101.14(b) and 101.80 and must provide evidence that the new sugar alcohol will not lower dental plaque pH below 5.7 (61 FR 43433 at 43442).

In 1997, the agency received a health claim petition (Docket No. 97P–0206) requesting that we amend the dental caries health claim regulation to include erythritol among the sugar alcohols listed in § 101.80(c)(2)(ii)(B). The petition met the requirements in §§ 101.14(b) and 101.80, including evidence from clinical studies using the indwelling plaque pH test cited in § 101.80(c)(2)(ii)(C), demonstrating that erythritol-containing foods do not lower plaque pH below 5.7. Therefore, we amended § 101.80(c)(2)(ii)(B) to include erythritol as one of the sugar alcohols that is eligible to bear a dental caries health claim (62 FR 63653, December 2, 1997).

II. Petition for Health Claim on D-tagatose and the Nonpromotion of Dental Caries

A. The Petition

On January 9, 2002, Arla Foods Ingredients amba, DK–8260 Viby, Denmark, (the petitioner) submitted a petition under section 403(r)(4) of the act (21 U.S.C. 343(r)(4)). The petition requested that we: (1) Amend § 101.80 to include the sugar D-tagatose as one of the substances eligible to bear the dental caries health claim; (2) amend § 101.9 (21 CFR 101.9), the nutrition labeling regulation, to exclude D-tagatose from the definition of "sugars" (§ 101.9(c)(6)(ii)), thereby allowing a "sugar free" nutrient content claim; and (3) modify the wording of § 101.80 because D-tagatose is not a sugar alcohol. On April 19, 2001, we notified the petitioner that we had completed our initial review of the petition and that the petition had been filed for further action (Docket No. 02P–0177, Let 1) in accordance with section 403(r)(4) of the act. The April 19, 2001, letter stated that consistent with our strategy for implementation of the 1999 Pearson court decision (see 65 FR 59855, October 6, 2000), the agency would consider using its interim final rule authority under section 403(r)(7)(A)(iii) of the act to allow use of the health claim immediately upon publication of the proposal. If the agency does not act, by either denying the petition or issuing a proposed regulation to authorize the health claim, within 90 days of the date of filing, the petition is deemed to be denied unless an extension is mutually agreed upon by the agency and the petitioner (Section 403(r)(4)(A)(i) of the act and § 101.70(j)(3)(iii)). On July 11, 2002, FDA and the petitioner agreed to extend the deadline to publish a proposed regulation until December 2, 2002 (Docket No. 02P–0177, Let 2).

B. Nature of the Substance

As noted by the petition, D-tagatose, the subject of this health claim, is a sugar (see Ref. 1 at page 2). D-tagatose is a monosaccharide ketohexose sugar.[1] There are four different ketohexose sugars, differing only in the orientation of the hydroxyl groups attached to the carbon atoms in positions 3, 4, and 5; the other three ketohexoses are D-fructose, D-sorbose, and D-psicose. D-fructose is the only abundant ketohexose in nature; D-tagatose occurs naturally in the human food supply at only trace amounts. D-tagatose and D-fructose differ in the orientation of the hydroxyl group at the carbon atom at position 4. The Chemical Abstracts Service Registry Number (CAS No.) for D-tagatose is 87–81–0. It has a sweetness of about 75–92 percent that of sucrose.

C. Review of Preliminary Requirements for a Health Claim

1. The Substance Is Associated With a Disease for Which the U.S. Population Is at Risk

At the time that the dental caries health claim initially was proposed, the agency recognized that, although the prevalence of dental caries among children in the United States had been declining since the early 1970s, the overall prevalence of dental caries remained a substantial burden throughout the U.S. population (60 FR 37507 at 37509, July 20, 1995). Currently, the Department of Health and Human Services' Healthy People 2010 Objectives recognizes dental caries as the single most common chronic disease of childhood, and states that 30 percent of adults have untreated dental decay (Ref. 2). Based on these facts, FDA concludes that, as required in § 101.14(b)(1), dental caries is a disease for which the U.S. population is at risk.

2. The Substance Is a Food

Under § 101.14(b)(3)(i), the substance that is the subject of a health claim must contribute taste, aroma, or nutritive value, or any other technical effect

[1] All of the common monosaccharides are six-carbon sugars, i.e., hexoses. All sugars have a carbon-oxygen double bond at either the carbon atom in position 1 (aldose) or at the carbon atom in position 2 (ketose). Sugar alcohols differ from sugars in that the double-bonded oxygen of sugars is reduced to a hydroxyl group (-OH) in the sugar alcohols.

listed in § 170.3(p) (21 CFR 170.3(o)), to the food and must retain that attribute when consumed at the levels that are necessary to justify a claim. The petition states that the intended use of D-tagatose in foods is as a nutritive sweetener, humectant, texturizer or stabilizer (§ 170.3(o)(16), (o)(21), (o)(28), (o)(32)). D-tagatose used as a sweetener contributes taste to the food. Existing § 101.80 does not specify the levels in foods of sugar alcohols necessary to justify the health claim and the current petition does not propose a qualifying level for D-tagatose. As a substitute for dietary sugars, D-tagatose will be used in foods at levels necessary to provide the desired level of sweetness in the finished product. Because D-tagatose contributes taste and other technical effects listed in § 170.3(o) to food, the agency concludes that the preliminary requirement of § 101.14(b)(3)(i) is satisfied.

3. The Substance Is Safe and Lawful

On May 11, 2001, the petitioner notified FDA of its view that D-tagatose is generally recognized as safe (GRAS), through scientific procedures, for use as a bulk sweetener, humectant, texturizer, or stabilizer in a variety of foods. FDA replied to this notice on October 25, 2001, stating that based on the information provided by the petitioner, as well as other information available to FDA, the agency had no questions regarding the petitioner's determination that the intended use of D-tagatose is GRAS (Agency Response Letter to GRAS Notice No. GRN 000078, October 25, 2001) (Ref. 1, Appendix 2). Furthermore, FDA is not aware of any scientific evidence that D-tagatose, under the intended conditions of use, would be harmful. The agency has not made its own determination regarding the GRAS status of D-tagatose, however, and notes that authorization of a health claim for a substance should not be interpreted as affirmation that the use of the substance is GRAS.

The petitioner's May 11, 2001 submission reveals significant evidence supporting the safety of the use of D-tagatose as a sweetener. FDA is not aware of any evidence that provides a basis to reject the petitioner's position that the use of D-tagatose as a sweetener is safe and lawful. Therefore, FDA concludes that the petitioner has satisfied the requirement of § 101.14(b)(3)(ii) to demonstrate that the use of D-tagatose as a sweetener is safe and lawful.

III. Review of Scientific Evidence of the Substance-Disease Relationship

A. Basis for Evaluating the Relationship Between D-Tagatose and Dental Caries

In the preamble to the 1996 dental caries health claim final rule, the agency concluded that there was significant scientific agreement among qualified experts to support the relationship between certain sugar alcohols and the nonpromotion of dental caries (61 FR 43433). The agency noted that it would take action to add additional sugar alcohols to this regulation when presented with evidence that the additional sugar alcohols will not lower plaque pH below 5.7, and that the substance conforms to the requirements of § 101.14(b) (61 FR 43433 at 43442).

In 1997, the agency amended the dental caries health claim to add erythritol as an additional sugar alcohol eligible for the claim (62 FR 63653, December 2, 1997). The petition to amend § 101.80 to add erythritol (Docket No. 97P–0206) presented scientific data from a rodent cariogenicity study and from a clinical indwelling plaque pH test of erythritol. The agency was satisfied that the results of these two studies were consistent with the results of the studies that investigated the cariogenic potential of the sugar alcohols listed in § 101.80(c)(2)(ii)(B) and that erythritol met the requirements of § 101.14(b). Therefore, erythritol was added to the list of eligible sugar alcohols.

The substance that is the subject of the current petition, D-tagatose, is a sugar rather than a sugar alcohol. However, like the sugar alcohols, the intended food ingredient use of D-tagatose is as a nutritive sweetener with reduced caloric value relative to traditional sugars. Also, as is the case with the sugar alcohols, the potential dental health benefit from D-tagatose derives from its reduced fermentability relative to traditional sugars. Consequently, the criteria that were used to evaluate the sugar alcohols in the existing dental caries health claim can be applied to D-tagatose to assess whether it qualifies for such a claim. As discussed in section II.C of this document FDA has concluded that D-tagatose satisfies the requirements of § 101.14(b).

B. Review of Scientific Evidence

1. Evidence Considered in Reaching the Decision

In the initial proposal to authorize a health claim relating sugar alcohols and nonpromotion of dental caries (60 FR 37507, July 20, 1995), FDA considered evidence about the cariogenic potential of several specific sugar alcohols from long-term controlled human caries trials, in vivo and in vitro plaque pH measurements, demineralization and remineralization techniques, and rat caries experimental models. FDA's review focused on the scientific evidence from studies evaluating changes in plaque pH, plaque acid production, decalcification or remineralization of tooth enamel, and the incidence of dental caries with sugar alcohols. FDA limited its review to these types of studies because previous Federal Government and other authoritative reviews had focused on these areas, and the majority of research efforts have also focused on these areas (60 FR 37507 at 37523). The well-established role of sucrose in the etiology of dental caries is related to the ability of sucrose to be metabolized by oral bacteria into extracellular polymers that adhere firmly to the tooth surfaces (i.e., plaque), at the same time forming acids that can demineralize tooth enamel. FDA previously concluded that human studies show sugar alcohols, relative to sucrose, are associated with reduced rate of acid production in dental plaque and, in some studies, a reduced incidence of dental caries (60 FR 37507 at 37523).

The current petition to amend the dental caries health claim requires FDA to consider the effects of a sugar, D-tagatose, on the rate of acid production in dental plaque and thus on the incidence of dental caries. To determine whether there is an association between D-tagatose and the nonpromotion of dental caries, FDA compared scientific evidence regarding the cariogenic potential of D-tagatose from two human studies investigating the rate of acid production in dental plaque from D-tagatose relative to that of sucrose with the similar evidence that the agency had previously reviewed regarding the cariogenic potential of certain sugar alcohols. Upon review of this evidence, FDA concluded that, like the sugar alcohols previously authorized for this health claim, D-tagatose is associated with the nonpromotion of dental caries.

2. Review of D-tagatose Studies

The petition included reports (Ref. 1, Appendix 3) from the evaluation of D-tagatose using the indwelling plaque pH test described in "Identification of Low Caries Risk Dietary Components," T. N. Imfeld, Volume 11, *Monographs in Oral Science*, 1983, which is incorporated by reference in the dental caries health claim regulation (§ 101.80(c)(2)(iii)(C)). This evaluation was conducted twice under the same test protocol and with

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the same six test subjects. The purpose of the repeat test was to investigate the potential for oral bacteria adaptation to D-tagatose.

Each of the six subjects of these trials had his or her normal dental prosthesis replaced with a mandibular bridge-work that contained a miniaturized telemeterized glass pH-electrode that transmits pH data to an external recording device. Once the telemetric pH prosthesis was inserted into the subject's mouth, the subject was asked not to alter his or her eating habits. The prostheses remained in place throughout the test period to allow an undisturbed growth of plaque over the tips of the pH-electrodes. With the exception of water rinses, the subjects also were asked to refrain from all oral hygiene measures. Following a 3- to 7-day plaque buildup period, the interdental plaque pH telemetry test was conducted. The two tests differed only in that, for the first test, exposure to D-tagatose was limited to a single 2-minute rinse during the pH measurements that followed the plaque buildup period; in the second test, subjects rinsed with D-tagatose five times per day throughout the 3- to 7-day plaque buildup period to determine whether the oral bacteria could adapt to utilize D-tagatose.

For both tests, baseline plaque pH was measured over a 15-minute period after the subjects chewed a piece of paraffin for 3 minutes. The subjects then rinsed with a 10-percent aqueous solution of D-tagatose, followed by plaque pH measurements over a 30-minute period. The same paraffin chew and rinse sequence was then repeated using a 10-percent sucrose rinse. The sucrose rinse served as a positive control to demonstrate the accurate functioning of the pH telemetric equipment and of plaque metabolism.

The results of these tests showed that baseline plaque pH, following the first paraffin chew, ranged from 6.7 to 7.15. The report of these two studies notes that baseline plaque pH in these trials was comparable to that of previous trials of other substances conducted with the same subjects and plaque ages (Ref. 1, Appendix 3). During the D-tagatose rinse and the 30 minutes following the D-tagatose rinse, lowest plaque pH recorded among the six subjects ranged from 5.7 to 6.55. During and after the sucrose rinse, lowest plaque pH recorded among the six subjects ranged from 4.10 to 4.90. Plaque pH measurements during the first test (without exposure to D-tagatose during the plaque build-up period) and the second test (with daily D-tagatose exposure during the plaque buildup period) were substantially the same. The report of these studies concluded that no critical decrease (i.e. below pH 5.7) in the pH of interdental plaque due to bacterial fermentation of D-tagatose occurred; and that dental plaque layers having grown up under repeated exposure to D-tagatose were not more acidified by D-tagatose bacterial fermentation than were nonexposed plaque layers in the same volunteers. Although these two reports of in vivo dental plaque pH tests of D-tagatose constitute a limited body of scientific evidence on the cariogenic potential of D-tagatose, we are satisfied that these reports, in conjunction with the information previously considered by the agency on the etiology of dental caries and the effects of slowly fermentable carbohydrates, are sufficient to enable the agency to evaluate whether D-tagatose should be added to the list of substances eligible for the dental caries health claim.

IV. Decision to Authorize a Health Claim Relating D-Tagatose to the Nonpromotion of Dental Caries

FDA previously concluded that there is significant scientific agreement among qualified experts to support the relationship between certain sugar alcohols and the nonpromotion of dental caries in that the rate and amount of acid production from the metabolism of sugar alcohols by bacteria is significantly less than that produced from the metabolism of sucrose and other fermentable carbohydrates and therefore does not cause the loss of important minerals from tooth enamel (§ 101.80(b)). The petition contains evaluations of the cariogenic potential of D-tagatose from two indwelling plaque pH tests. As discussed previously, the results of the plaque pH tests demonstrate that D-tagatose does not lower plaque pH below 5.7 and, therefore, does not promote demineralization of dental enamel. The results of these studies are consistent with the results of the studies that investigated the cariogenic potential of the sugar alcohols originally listed in § 101.80(c)(2)(ii)(B), and are consistent with the evidence relied upon by the agency when adding erythritol to this list. Therefore, based on the totality of publicly available evidence pertaining to the cariogenicity of D-tagatose and to the relationship between dental plaque pH and dental caries, we conclude that there is significant scientific agreement that D-tagatose does not promote dental caries. Accordingly, we are amending § 101.80 to authorize a dental caries health claim for D-tagatose.

V. Request to Amend the Definition of "Sugars" in § 101.9(c)(6)(ii) and Decision to Exempt Foods Containing D-Tagatose From the Sugar-Free Requirement

Section 101.80 (c)(2)(ii)(A) (the dental caries health claim regulation) requires that foods bearing the health claim be "sugar free" as defined by (§ 101.60(c)(1)(i) (21 CFR 101.60(c)(1)(i)). D-tagatose is a sugar under the nutrition labeling definition of "sugars"[2] in 21 CFR 101.9(c)(6)(ii); therefore, by definition, a food containing D-tagatose is not "sugar free." The petition urges FDA to amend § 101.9(c)(6)(ii) to exclude D-tagatose from the "sugars" definition, thereby qualifying D-tagatose-containing foods for the "sugar free" nutrient content claim, and to provide for a separate declaration of D-tagatose in nutrition labeling. The stated purpose of this request was to assure consistency with other regulations, and to permit D-tagatose-containing noncariogenic foods to inform consumers that the product is "sugar free" in accordance with 21 CFR 101.60. (Ref. 1). However, the effect of this request also would be to alter the reported information in the nutrition label for foods containing D-tagatose, because if the request were granted, the amount of D-tagatose in the product would not be recorded under sugars. Thus, products containing D-tagatose and no other sugars would appear to contain zero sugars for purposes of the nutrition label.

The petition identifies D-tagatose as a sugar but asserts that: (1) There is no compelling health or nutritional reason for D-tagatose to be included in the nutrition labeling "sugars" definition and (2) excluding D-tagatose from the "sugars" definition will help address public health concerns about tooth decay and will improve the ability of

[2] Simple sugars (monosaccharides) consist of a single polyhydroxy aldehyde or ketone unit. The most abundant simple sugars are six-carbon molecules; i.e., hexoses. Two or more monosaccharides can be combined to form disaccharides (e.g., sucrose and lactose) and polysaccharides; however, in general, polysaccharides of more than two saccharide units are not sweet. For purposes of food labeling, the term "sugar" refers only to sucrose (§ 101.4(b)(20)). For nutritional labeling purposes FDA has defined the term "sugars" as the sum of all mono- and disaccharides present in a food (§ 101.9(c)(6)(ii)). Although the authorized nutrient content claims that characterize the amount of sugars in a food (e.g., sugar free) use the term "sugar," the criteria for these claims are based on the amount of "sugars" as defined in § 101.9(c)(6)(ii); e.g. the criteria for a "sugar free" claim is that the food contain less than 0.5 gram of "sugars" per reference amount and per labeled serving (§ 101.60(c)(1)(i)). D-tagatose is included within this definition of "sugars" as any other monosaccharide sugar would be.

the label to assist consumers in maintaining healthy dietary practices with respect to dental health. The petition asserts that not excluding D-tagatose from the definition of "sugars" will frustrate efforts to address the public health concerns about dental caries.

FDA disagrees with these arguments. D-tagatose is a sugar (Ref. 3), unlike sugar alcohols, which are not; therefore, a sugar-free claim for D-tagatose would be neither scientifically accurate nor truthful. Moreover, the petition provides no data to support the assertion that identifying D-tagatose as a sugar in the nutrition label will frustrate efforts to address public health concerns about dental caries. This interim final rule provides the petitioner with an opportunity to use health claim label statements to promote the usefulness of D-tagatose as a sweetener that does not promote dental caries. The agency does not believe that a "sugar free" nutrient content claim is essential to the effectiveness of the dental caries health claim in communicating the usefulness of D-tagatose as a sweetener that does not promote dental caries.

The petition also asserts that the metabolic and nutritional characteristics of D-tagatose are sufficiently different from those of dietary sugars to justify excluding D-tagatose from the sugars definition for nutrition labeling purposes. The petition further states that, unlike dietary sugars and similar to sugar alcohols, D-tagatose passes unabsorbed through the small intestine on to the large intestine where it is reduced to short chain fatty acids via fermentation by intestinal bacteria; for this reason, and because D-tagatose is intended to substitute for dietary sugars, the petition argues that D-tagatose should be exempted from the "sugars" definition as are the sugar alcohols.

FDA disagrees with these assertions. FDA had proposed to include the sugar alcohols within the nutrition labeling definition of "sugars" in the "Food Labeling; Reference Daily Intakes and Daily Reference Values" proposed rule (56 FR 60366 at 60369, November 27, 1991). However, as explained in the 1993 final rule, we were persuaded by public comments to revise our "sugars" definition to exclude the sugar alcohols in recognition of their usefulness as sugar substitutes in reducing the cariogenic potential of foods, and because of their metabolic differences from dietary sugars, e.g., differences in intestinal digestion and absorption (58 FR 2079 at 2099, January 6, 1993). We agree with the petitioner that these are attributes that the sugar alcohols and D-tagatose have in common. However, a critical difference is that sugar alcohols are sugar-like substances used in foods to substitute for sugars, whereas D-tagatose is a sugar. The current situation, therefore, is distinguishable from our previous decision to exclude sugar alcohols from the nutrition labeling "sugars" definition.

We also had considered, in the 1993 mandatory nutrition labeling final rule, public comments urging the exclusion of lactose from the nutrition labeling "sugars" definition. These comments argued that lactose, the disaccharide sugar of dairy products, should be excluded from "sugars" because, due to its inefficient intestinal digestion and absorption, the metabolism of lactose more closely resembles that of complex carbohydrates than that of simple sugars (58 FR 2079 at 2098). FDA disagreed, stating:

> * * * The agency has been persuaded of the need to define "sugars" * * * to be consistent with standard analytical methodologies and in conformity with the traditional usage of the term. Lactose, a di-saccharide, is clearly a sugar by conventional standards and is identified with all other mono- and di-saccharides in routine analytical procedures (58 FR 2079 at 2098).

Thus, although in 1993, FDA cited slow intestinal digestion and absorption among the factors considered in our decision to exclude sugar alcohols from the definition of "sugars," those same factors were rejected as a rationale for excluding lactose because, unlike sugar alcohols, lactose is clearly a sugar within the traditional definition and usage of the term, as well as by conventional standards. Likewise, D-tagatose is clearly a sugar within the traditional definition and usage of the term, as well as by conventional standards (Ref. 3).

The petition asserts that identifying noncariogenic D-tagatose-containing foods as "sugar free" is fully consistent with the commonly understood meaning of a "sugar free" food and fully consistent with consumer expectations. The petition further argues that to exempt D-tagatose from the "sugars" definition, and thereby allow a "sugar free" claim, would provide consumers with critical information needed to select noncariogenic foods, reduced calorie foods, and foods that help diabetics follow healthy dietary practices.

FDA is not persuaded by these arguments. The petition contains no consumer survey data with regard to consumer understanding or expectations of "sugar free" nutrient content claims. Absent factual support for the petitioner's assertion that a "sugar free" claim on a food sweetened with D-tagatose is consistent with consumer understanding and expectations (to which we are open and which we would consider), FDA finds no reason to depart from the accepted scientific classification of D-tagatose as a sugar (Ref. 3). We remain skeptical that a "sugar free" claim on the food label is critical information needed for consumers to select D-tagatose-containing noncariogenic foods when such foods will be permitted to bear the dental caries health claim to identify them as noncariogenic. Neither are we convinced that a "sugar free" claim is critical information required for consumers to be able to select reduced calorie foods. The "calories per serving" declaration in the nutrition label, not a "sugar free" claim, is the primary food label information that identifies the energy content of the food. Further, if a food meets the criteria for a "reduced calorie" food (described in § 101.60(b)), the food may bear such a claim regardless of the sugar content of the food. Finally, the subject of this health claim petition is D-tagatose and nonpromotion of dental caries. A consideration of labeling information useful to identify foods that help diabetics follow healthy dietary practices is clearly outside the scope of this petition. This health claim petition contains no scientific data regarding the appropriateness of recommending D-tagatose for use by diabetics, and FDA has not evaluated any such information.

Finally, the petition asserts that excluding D-tagatose from the nutrition labeling "sugars" definition would allow consistency between the dental caries health claim, the "sugar-free" nutrient content claim, and nutrition labeling. The petition also asserts that consumers will be thoroughly confused by a nutrition label showing a food to contain sugars when the food label also bears a "Does not promote tooth decay" health claim. The petition contains no data to measure the extent of consumer understanding, misunderstanding, or confusion from foods labeled both as noncariogenic and as containing sugars. Therefore, we have no basis, other than the petitioner's subjective views, to evaluate whether or not consumers would be confused. We note that, in the future, it would be helpful to have data like this submitted along with the petition. If such data are submitted, FDA will consider them.

In summary, the petition presents two main arguments for why FDA should omit D-tagatose from the term "sugars" as used in the nutrition labeling of foods so as to permit D-tagatose-containing foods to be labeled as "sugar free": (1) There is no compelling nutritional or public health reason to include D-

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tagatose within the definition of "sugars," and (2) identifying D-tagatose as a sugar will frustrate efforts to communicate the potential dental health benefits of D-tagatose. The agency notes that the dental caries health claim, which is the subject of this health claim petition, is the most direct vehicle for promoting the dental health benefits of the substance. Should there be some potential misunderstandings on the part of consumers regarding the health claim, such problems can be addressed by refining the wording of the health claim. The declaration of "sugars" in the nutrition label and the use of "sugar free" nutrient content claims are not label information intended to communicate the specific disease-related health benefits (e.g., nonpromotion of dental caries) of a food. Moreover, this situation is not analogous to FDA's decision to exclude sugar alcohol, a nonsugar substance, from the "sugars" declared in nutrition labeling. To grant the petitioner's request would be to allow a labeling claim identifying a sugar as a nonsugar. Such a claim would be both false and misleading. For these reasons, FDA is not amending § 101.9(c)(6)(ii) to exclude D-tagatose, a sugar, from the definition of "sugars."

The dental caries health claim regulation requires that a food bearing the health claim meet the requirements of § 101.60(c)(1)(i), the "sugar free" nutrient content claim (§ 101.80(c)(2)(ii)(A)). As discussed earlier, we are satisfied that the scientific evidence presented in the petition demonstrates that the cariogenic potential of D-tagatose, like that of certain sugar alcohols, is significantly lower than the cariogenic potential of sucrose. However, because D-tagatose is a sugar, we believe that it would be false and misleading to allow D-tagatose containing foods to bear a "sugar free" claim. Consequently, rather than granting the petitioner's request and allowing a sugar to declare itself to be "sugar free," we instead are exempting D-tagatose from the "sugar free" requirement for the dental caries health claim by amending redesignated § 101.80(c)(2)(iii)(A) to provide that a food bearing the claim be "sugar free" except for D-tagatose.

We do recognize that there is a potential incongruity in declaring D-tagatose as a sugar in the nutrition label of a D-tagatose-containing food bearing the dental caries health claim stating that foods high in sugars promote tooth decay. To address this concern, we are adding a new provision in the "Nature of the Claim" paragraph to inform consumers about the uniqueness of D-tagatose as a noncariogenic sugar. New § 101.80(c)(2)(i)(H) will provide that where D-tagatose is the substance referred to by the dental caries health claim, the claim must identify D-tagatose as a sugar that, unlike other sugars, does not promote tooth decay or dental caries.

VI. First Amendment Analysis

This interim final rule affects speech because it grants the petitioner's request to authorize a health claim for D-tagatose and dental caries, while denying the petitioner's request to permit a "sugar free" nutrient content claim for foods containing D-tagatose. Because Government regulation of food labeling and other commercial speech has constitutional implications, we are providing an analysis explaining why our decision is consistent with the first amendment.

Speech that is inherently misleading is not protected by the first amendment and may be prohibited. (*Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n*, 447 U.S. 557, 563–64 (1980)). The Supreme Court has labeled as misleading, and thus not protected, both speech that is inherently likely to deceive and that "experience has proved * * * is subject to abuse." (*In re R.M.J.*, 455 U.S. 191, 203 (1982)). The agency believes that a sugar-free nutrient content claim for D-tagatose would be inherently likely to deceive, because it is simply untrue. D-tagatose is a sugar and thus, by definition, cannot be sugar-free.

However, even if a sugar-free nutrient content claim for D-tagatose would be only potentially misleading, FDA's decision not to permit such a claim, but to authorize a dental caries health claim for D-tagatose by making an exception to the sugar-free requirement, is constitutional. The Government may place restrictions on commercial speech that is merely potentially misleading as long as the Government interest is substantial, the restrictions directly advance the Government interest, and the restrictions are no more extensive than necessary to serve that interest. (*Central Hudson*, 447 U.S. at 566). FDA's authorization of the dental caries health claim by making an exception to the sugar-free requirement for foods containing the sugar D-tagatose, rather than allowing such foods to be considered "sugar free" and to bear a sugar-free claim as the petitioner requested, passes this test.

First, the Government has a substantial and compelling interest in ensuring that food labels are truthful, nonmisleading, and scientifically valid. More specifically, FDA's interest in preventing deceptive nutrient content claims from being made is clearly substantial. The food labeling regulations seek to ensure that consumers have access to information about food that is scientifically valid, truthful, reliable, understandable, and not misleading. (58 FR 2478 at 2526, January 6, 1993). Consumers have a first amendment interest in obtaining information on which to base a decision regarding whether to buy a product, and this interest is "served by insuring that the information is not false or deceptive." (*National Comm'n on Egg Nutrition* v. *FTC*, 570 F.2d 157, 162 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978)).

Second, this interim final rule regulating D-tagatose claims in food labeling directly advances the Government interest. It allows the petitioner and other marketers of D-tagatose to publicize the benefits of D-tagatose in not promoting dental caries, without causing the product to carry a false nutrient content claim (i.e., calling itself sugar-free when it is actually a sugar). Thus, the interim final rule reasonably and effectively ensures that claims for D-tagatose on food labels will be scientifically valid, informative, and not misleading.

Finally, FDA's regulation of D-tagatose claims in food labeling is no more extensive than necessary to serve the Government interest. Under *City of Cincinnati* v. *Discover Network, Inc.*, regulations that are narrowly tailored to serve the government interest will meet this prong of the *Central Hudson* test. (507 U.S. 410, 418n.13 (1993); *see also 44 Liquormart, Inc.* v. *Rhode Island*, 517 U.S. 484, 507–08 (1996)). "A regulation need not be absolutely the least severe that will achieve the desired end," but in determining whether a restriction on commercial speech is reasonable, an agency must consider whether there are "numerous and obvious less-burdensome alternatives." (id.) By exempting D-tagatose from the sugar-free requirement, rather than allowing a sugar to carry a sugar-free claim, FDA has found a reasonable balance between the interest in making information available about the relationship between D-tagatose and dental caries and the interest in ensuring that information about D-tagatose on food labels is truthful, nonmisleading, and scientifically valid. The restriction on "sugar-free" claims for foods containing D-tagatose is no more extensive than necessary to serve the Government's interest in preventing the dissemination of false and misleading information through food labeling, and there do not exist numerous and obvious less-burdensome alternatives in this case.

Moreover, we know of no disclaimer that could cure the deception that would be caused by allowing a sugar to be called "sugar free." (*See Continental Wax Corp.* v. *Federal Trade Comm'n*, 330 F.2d 475 (2d Cir. 1964) (holding that no disclaimer could cure the deception implicit in the name "Continental Six Month Floor Wax" where the evidence showed that the wax would not be effective for 6 months)). Where "the offending deception is caused by a clear and unambiguous false representation implicit in the product's name," courts routinely deny the use of disclaimers because "the addition of a qualifying phrase denying the truth of that representation would lead to a confusing contradiction in terms." (id. at 479–80; *see also Bakers Franchise Corp.* v. *Federal Trade Comm'n*, 302 F.2d 258, 261 (3d Cir. 1962) (use of the phrase "Lite Diet" with the phrase "not a low calorie bread" or "not low in calories" would be "a contradiction in terms and would completely confuse the public" where the bread at issue contained the same number of calories as other white bread but had thinner slices)). Here, allowing a sugar to be exempted from the definition of "sugars" and thus market itself as "sugar-free" would be inherently misleading. We are not aware of any evidence that a disclaimer could cure this deception, and common sense counsels against any such conclusion.

Thus, this interim final rule, allowing the dental caries health claim for foods containing D-tagatose but prohibiting "sugar-free" claims for such foods, meets the Central Hudson test and does not violate the first amendment.

VII. Description of Modifications to § 101.80

A. Title of the Regulation

Although in this interim final rule we are responding to a specific petition to authorize a claim about D-tagatose and dental caries, we are amending § 101.80 to establish a framework that will allow the agency to readily add to the list of eligible substances additional noncariogenic sugars, as well as additional sugar alcohols. This will provide flexibility for the inclusion of other noncariogenic carbohydrate sweeteners when adequate data are provided to demonstrate that they do not lower plaque pH below 5.7 and, therefore, that they do not promote tooth decay.

We are amending the title of § 101.80 to reflect that the amended regulation includes a noncariogenic sugar, in addition to sugar alcohols, as a substance that is eligible for the health claim about nonpromotion of dental caries. The amended title is: "Health Claims: dietary noncariogenic carbohydrate sweeteners and dental caries." Throughout the regulation references to "sugar alcohols" have been changed to "noncariogenic carbohydrate sweeteners."

B. Requirements

1. General Requirements

Section 101.80 (c)(1) specifies that all of the requirements set forth in § 101.14 are to be met, except that sugar alcohol-containing foods are exempt from § 101.14(e)(6). Section 101.14(e)(6) specifies that, except for dietary supplements or where provided for in other 21 CFR part 101 regulations, foods making health claims must contain 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or dietary fiber per reference amount customarily consumed before any nutrient addition. We are amending § 101.80(c)(1) to broaden the exception from the nutrient content requirement in § 101.14(c)(6) to include foods sweetened with any noncariogenic carbohydrate sweetener listed in new paragraph (c)(2)(ii) of this section, including D-tagatose, because of the public health benefit of having a dental caries health claim on the types of foods to which these noncariogenic sweeteners may be added (i.e., chewing gums and confections).

2. Requirements on the Nature of the Claim

Section 101.80 (c)(2)(i) contains requirements on the nature of the claim. For simplicity, we are allowing D-tagatose to be identified in the claim statement as "tagatose." In addition to expanding the coverage of this section from "sugar alcohols" to "noncariogenic carbohydrate sweeteners," we are adding new paragraph (c)(2)(i)(H) to require that when a noncariogenic sugar, such as D-tagatose, is the subject of a claim, the claim must explain that the substance is a sugar, but unlike other sugars, does not promote the development of dental caries.

3. Requirements on the Nature of the Substance

As part of establishing a framework to facilitate the addition of other noncariogenic carbohydrate sweeteners to the dental caries health claim, we are adding a new paragraph (c)(2)(ii) to § 101.80 in which to list substances eligible for the claim. This format is consistent with that of most other authorized health claim regulations in which the specific requirements of the claim (§ 101.80 (c)(2)) are divided into three parts: (c)(2)(i) Nature of the claim, (c)(2)(ii) Nature of the substance, and (c)(2)(iii) Nature of the food. Existing § 101.80 (c)(2)(ii) is redesignated as § 101.80 (c)(2)(iii).

The list of sugar alcohols eligible for the dental caries health claim, which is now in the "Nature of the food" section, is being moved to new § 101.80 (c)(2)(ii)(A). The noncariogenic sugars currently eligible for the claim, i.e., D-tagatose, are being listed in new § 101.80 (c)(2)(ii)(B).

4. Requirements on the Nature of the Food

Redesignated § 101.80 (c)(2)(iii) contains requirements on the nature of the food bearing the dental caries health claim. Current § 101.80 (c)(2)(ii)(A), redesignated as § 101.80 (c)(iii) (A), reads "The food shall meet the requirement in § 101.60(c)(1)(i) with respect to sugars content." This means that a criterion of the health claim is that the food be "sugar free." As previously discussed, we are amending redesignated § 101.80 (c)(2)(iii)(A) to exempt D-tagatose from the "sugar free" requirement for a food bearing the dental caries health claim. Amended § 101.80 (c)(2)(iii)(A) will read "The food shall meet the requirement in § 101.60(c)(1)(i) with respect to sugars content, except that the food may contain D-tagatose." As discussed in section V of this document we are taking this action as an alternative to the petitioner's recommendation that D-tagatose be excluded from the "sugars" definition.

We are amending redesignated § 101.80 (c)(2)(iii)(B) to reflect the addition of D-tagatose as a substance eligible for a dental caries health claim. As amended, the section will state "A food whose labeling includes a health claim under this section shall contain one or more of the noncariogenic carbohydrate sweeteners listed in paragraph (c)(2)(ii) of this section." We also are amending redesignated § 101.80 (c)(2)(iii)(C) to reflect the broadening of the scope of the claim beyond sugar alcohols only. This paragraph now will provide that when carbohydrates other than noncariogenic sweeteners eligible for the claim are present in a food bearing the claim, the food shall not lower plaque pH below 5.7 by bacterial fermentation, as measured by the indwelling plaque test specified in § 101.80 (c)(2)(iii)(C). The address of the Center for Food Safety and Applied

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Nutrition also has been updated in this paragraph.

The agency is not specifying a qualifying level of D-tagatose in the food product because, like sugar alcohols, D-tagatose will be used as a substitute for fermentable sugars. Therefore, the amount of the substance required is that needed to achieve a desired level of sweetness.

C. Optional Information

Section 101.80(d) lists the optional information that may be included in the dental caries health claim. We are amending this paragraph to reflect the fact that the claim now includes a noncariogenic carbohydrate sweetener other than sugar alcohols.

D. Model Health Claims

Section 101.80 (e) provides model health claims as examples of statements that meet the requirements to make a claim about nonpromotion of dental caries. FDA emphasizes that these model health claims are illustrative only. These model claims illustrate the required, and some of the optional, elements of the interim final rule. Because the agency is authorizing a claim about the relationship between D-tagatose and the nonpromotion of dental caries, and not approving specific claim wording, manufacturers will be free to design their own claim so long as it is consistent with § 101.80(c) and (d).

Current § 101.80 (e)(1) consists of two model claims as examples of the full claim, and § 101.80 (e)(2) consists of two model claims as examples of the shortened claim for use on packages with less than 15-square inches of surface area available for labeling. We are amending § 101.80(e)(1) and (e)(2) to add model claims for D-tagatose. The first example of the full claim states: "Frequent eating of foods high in sugars and starches as between-meal snacks can promote tooth decay. Tagatose, the sugar used to sweeten this food, unlike other sugars, may reduce the risk of dental caries." (§ 101.80(e)(1)(iii)). The second example of the full claim states: "Frequent between-meal consumption of foods high in sugars and starches promotes tooth decay. Tagatose, the sugar in [name of food], unlike other sugars, does not promote tooth decay." (§ 101.80(e)(1)(iv)). We are amending § 101.80 (e)(2) by adding two shortened model claims (paragraphs (e)(2)(iii) and (e)(2)(iv)) that read "Tagatose sugar does not promote tooth decay" and "Tagatose sugar may reduce the risk of tooth decay."

VIII. Issuance of an Interim Final Rule and Immediate Effective Date

We are issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. Section 403(r)(7) of the act authorizes us to make proposed regulations issued under section 403(r) of the act effective upon publication pending consideration of public comment and publication of a final regulation, if the agency determines that such action is necessary for public health reasons. This authority enables us to act promptly on petitions that provide for information that is necessary to: (1) Enable consumers to develop and maintain healthy dietary practices, (2) enable consumers to be informed promptly and effectively of important new knowledge regarding nutritional and health benefits of food, or (3) ensure that scientifically sound nutritional and health information is provided to consumers as soon as possible. Proposed regulations made effective upon publication under this authority are deemed to be final agency action for purposes of judicial review. The legislative history indicates that such regulations should be issued as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

We are satisfied that all three of the criteria in section 403(r)(7)(A) of the act have been met in the petition submitted by Arla Food Ingredients. This health claim will help enable consumers to develop and maintain healthy dietary practices, such as limiting snacks that contain fermentable sugars. The health claim also will provide consumers with important new knowledge regarding the reduced cariogenic potential of D-tagatose relative to that of other sugars, and will provide consumers with scientifically sound information on the dental health benefits of foods containing D-tagatose . Therefore, we are using the authority given to us in section 403(r)(7)(A) of the act to issue an interim final rule authorizing a health claim for D-tagatose and nonpromotion of dental caries, effective immediately.

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this interim final rule by February 18, 2003. Two copies of any comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This regulation is effective upon publication in the **Federal Register**. The agency will address comments and confirm or amend the interim final rule in a final rule.

IX. Analysis of Impacts

A. Regulatory Impact Analysis

We have examined the economic implications of this interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. We have determined that this interim final rule is not a significant regulatory action as defined by Executive Order 12866.

FDA has identified three options: (1) Deny the petition; (2) add D-tagatose to the dental caries health claim and amend § 101.80(c)(2)(ii)(A), the "Nature of the Food" requirement that the food be "sugar free" except for D-tagatose; or (3) add D-tagatose to the dental caries claim and amend § 101.9(c) to exclude D-tagatose from sugars.

Option one: FDA's denial of the petition would mean no change in the dental caries health claim. Therefore, this option generates no new costs and benefits and is the point of comparison for all other options.

Option two: Option two, the option chosen by the agency, permits foods that contain D-tagatose to bear the dental caries health claim under certain conditions. It will generate social benefits because it provides additional information to consumers who wish to avoid dental caries. Treatment of dental caries creates considerable costs. Dental caries is the most common chronic childhood disease and 94 percent of adults have either untreated decay or fillings in the crowns of their teeth, with an average of 22 affected surfaces, according to the National Oral Health Survey, part of the National Health and Nutrition Examination Survey (Ref. 6). The cost of treating tooth caries includes: The cost of applying an amalgam, maintaining that amalgam for an individual's lifetime, and lost work time for the application of the amalgam. The median life of an amalgam is 9 to 14 years, and so it must be replaced regularly as long as the tooth remains. The estimated average, weighted lifetime cost of a carious surface is 100.62 dollars in 1995 (Ref. 5). This cost estimate includes: The discounted future costs of replacement amalgams and lost work time, and incorporates the incidence of dental caries by age and the age distribution of the U.S. population. With inflation, the cost is 118.37 dollars in 2002. This estimate does not include pain and suffering associated with dental caries, or possible problems associated with failure to treat dental caries, such as tooth losses or root canals. There are a number of risk factors for developing dental caries: Genetic factors, eating behaviors, and types and characteristics of foods eaten (Ref. 4). Specifically, consumption of dietary sugars and starches have been linked to development of dental caries. Substitution of D-tagatose for other sugars in foods, such as gum, candies, and baked goods, can potentially reduce the risk of dental caries. This would lead to benefits in reduced expenditures on dental care, less work time lost for dental visits, and other complications, such as tooth loss.

Option two will not generate any compliance costs relative to option one, because use of the claim is voluntary. No firm will choose to use the claim allowed by this interim rule unless the firm believes that doing so will increase its profits. However, because the interim rule specifies the manner in which a health claim can be made in product labeling, this interim rule imposes restrictions that may lead to greater or smaller social benefits or costs compared with alternative requirements for making the claim. The expected net benefits of option two are positive.

Option 3: Allowing the addition of D-tagatose to the dental caries claim and amending the definition of sugars also would aid consumers in choosing foods that do not promote dental caries. However, D-tagatose is a sugar. Amending the nutrition labeling definition of sugars to exclude D-tagatose would be counter to the commonly understood definition of sugars. To declare D-tagatose not to be a sugar would mislead consumers and undermine the scientific accuracy of the nutritional labeling, which many consumers currently rely on to make healthy food choices. It is not possible to quantify this cost. Amending the definition of sugars to exclude D-tagatose, and therefore, allowing foods containing D-tagatose to be labeled "sugar free," could potentially generate considerable benefits to the petitioner in its efforts to market D-tagatose. However, these benefits would be offset by the costs of providing invalid information to consumers.

B. Regulatory Flexibility Analysis

We have examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires the agency to analyze regulatory options that would minimize the economic impact of the rule on small entities.

As previously explained, this interim final rule will not generate any compliance costs for any small entities, because it does not require small entities to undertake any new activity. No small business will choose to use the dental caries health claim authorized by this rule unless it believes that doing so will increase its profits. Accordingly, we certify that this interim final rule will not have a significant impact on a substantial number of small entities. Under the Regulatory Flexibility Act, no further analysis is required.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a "Federal Mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." We have determined that this interim final rule does not constitute a significant regulatory action under the Unfunded Mandates Reform Act.

X. Environmental Impact

We have determined under 21 CFR 25.32(p) that the actions resulting from this interim final rule are categorically excluded. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Paperwork Reduction Act

FDA concludes that the labeling provisions of this interim final rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between D-tagatose and the nonpromotion of dental caries is a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public." (5 CFR 1320.3(c)(2)).

XII. Federalism

We have analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States or on the relationship between the National Government and the States, or on the distribution of power and responsibility among the various levels of government. Accordingly, we have concluded that the interim final rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

XIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Arla Foods Ingredients amba, "Petition to amend the regulation for 21 CFR Sec. 101.80 to authorize a noncariogenicity dental health claim for D-tagatose," CP–1, Docket No. 02P–0177, January 9, 2002.

2. U.S. Department of Health and Human Services, "Oral Health," Chapter 21 in *Healthy People 2010*, vol. II, part B, 2d ed., Washington, DC., U.S. Government Printing Office, (www.health.gov/healthypeople/Document/HTML/Volume2/21Oral.htm), November 2000.

3. Lubert Stryer, "Carbohydrates," Chapter 18 in *Biochemistry*, 4th ed., New York, W. H. Freeman and Co., 1995.

4. U.S. Department of Health and Human Services, *Oral Health in America: A Report of the Surgeon General—Executive Summary*, Rockville, MD, U.S. Department of Health and Human Services, National Institute of Dental and Craniofacial Research, National Institutes of Health, (http://www.nidcr.nih.gov/sgr/execsumm.htm), 2000.

5. Susan O. Griffin, Kari Jones, and Scott L. Tomar, "An Economic Evaluation of Community Water Fluoridation," *Journal of Public Health Dentistry*, 61:78–86, 2001.

6. Department of Health and Human Services, Results of National Oral Health Survey Results Released (press release), (http://www.hhs.gov/news/press/1996pres/960311.html, visited on 6/11/2002), March 11, 1996.

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List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.80 is amended by redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii); by revising the section heading, paragraph (a)(4), the first two sentences in paragraph (b), paragraphs (c)(1), (c)(2)(i) introductory text, (c)(2)(i)(B), (c)(2)(i)(C), (c)(2)(i)(E), and (c)(2)(i)(F); by revising newly redesignated paragraph (c)(2)(iii); by revising paragraphs (d)(1), (d)(4), and (e) introductory text; and by adding new paragraphs (c)(2)(i)(H), (c)(2)(ii), (e)(1)(iii), (e)(1)(iv), (e)(2)(iii), and (e)(2)(iv) to read as follows:

§ 101.80 Health claims: dietary noncariogenic carbohydrate sweeteners and dental caries.

(a) * * *

(4) Noncariogenic carbohydrate sweeteners, such as sugar alcohols, can be used to replace dietary sugars, such as sucrose and corn sweeteners, in foods such as chewing gums and certain confectioneries. Noncariogenic carbohydrate sweeteners are significantly less cariogenic than dietary sugars and other fermentable carbohydrates.

(b) *Significance of the relationship between noncariogenic carbohydrate sweeteners and dental caries.* Noncariogenic carbohydrate sweeteners do not promote dental caries. The noncariogenic carbohydrate sweeteners listed in paragraph (c)(2)(ii) of this section are slowly metabolized by bacteria to form some acid. * * *

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met, except that noncariogenic carbohydrate sweetener-containing foods listed in paragraph (c)(2)(ii) of this section are exempt from § 101.14(e)(6).

(2) *Specific requirements*—(i) *Nature of the claim.* A health claim relating noncariogenic carbohydrate sweeteners, compared to other carbohydrates, and the nonpromotion of dental caries may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) * * *

(B) The claim shall state that the noncariogenic carbohydrate sweetener present in the food "does not promote," "may reduce the risk of," "useful [or is useful] in not promoting," or "expressly [or is expressly] for not promoting" dental caries.

(C) In specifying the nutrient, the claim shall state "sugar alcohol," "sugar alcohols," or the name or names of the substances listed in paragraph (c)(2)(ii) of this section, e.g., "sorbitol." D-tagatose may be identified as "tagatose."

(D) * * *

(E) The claim shall not attribute any degree of the reduction in risk of dental caries to the use of the noncariogenic carbohydrate sweetener-containing food.

(F) The claim shall not imply that consuming noncariogenic carbohydrate sweetener-containing foods is the only recognized means of achieving a reduced risk of dental caries.

(G) * * *

(H) When the substance that is the subject of the claim is a noncariogenic sugar, the claim shall identify the substance as a sugar that, unlike other sugars, does not promote the development of dental caries.

(ii) *Nature of the substance.* Eligible noncariogenic carbohydrate sweeteners are:

(A) The sugar alcohols xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, and erythritol, or a combination of these.

(B) The sugar D-tagatose.

(iii) *Nature of the food.* (A) The food shall meet the requirement in § 101.60(c)(1)(i) with respect to sugars content, except that the food may contain D-tagatose.

(B) A food whose labeling includes a health claim under this section shall contain one or more of the noncariogenic carbohydrate sweeteners listed in paragraph (c)(2)(ii) of this section.

(C) When carbohydrates other than those listed in paragraph (c)(2)(ii) of this section are present in the food, the food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption or up to 30 minutes after consumption, as measured by the indwelling plaque pH test found in "Identification of Low Caries Risk Dietary Components," dated 1983, by T. N. Imfeld, in Volume 11, *Monographs in Oral Science*, 1983. The Director of the Office of the Federal Register has approved the incorporation by reference of this material in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from Karger AG Publishing Co., P.O. Box, Ch–4009 Basel, Switzerland, or you may examine a copy at the Center for Food Safety and Applied Nutrition's Library, Harvey W. Wiley Federal Building, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the **Federal Register**, 800 North Capital St. NW., suite 700, Washington, DC.

(d) *Optional information.* (1) The claim may include information from paragraphs (a) and (b) of this section, which describe the relationship between diets containing noncariogenic carbohydrate sweeteners and dental caries.

* * * * *

(4) The claim may indicate that a substance listed in paragraph (c)(2)(ii) of this section serves as a sweetener.

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the relationship between noncariogenic carbohydrate sweetener-containing foods and dental caries.

(1) Examples of the full claim:

(i) * * *

(ii) * * *

(iii) Frequent eating of foods high in sugars and starches as between-meal snacks can promote tooth decay. Tagatose, the sugar used to sweeten this food, unlike other sugars, may reduce the risk of dental caries.

(iv) Frequent between-meal consumption of foods high in sugars and starches promotes tooth decay. Tagatose, the sugar in [name of food], unlike other sugars, does not promote tooth decay.

(2) Examples of the shortened claim for small packages:

(i) * * *

(ii) * * *

(iii) Tagatose sugar does not promote tooth decay.

(iv) Tagatose sugar may reduce the risk of tooth decay.

Dated: November 25, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30474 Filed 11–27–02; 1:26 pm]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 2003. This rule also amends the PBGC's regulation on Disclosure to Participants by adding information on 2003 maximum guaranteed benefit amounts. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 2003.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]." This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022). Appendix D to part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to Appendix D to Part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $64,500 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2003. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: $750 multiplied by $64,500/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 2003 is $3,664.77 per month in the form of a life annuity beginning at age 65. This amendment updates Appendix D to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 2003. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $3,664.77 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 2003 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 2003 maximum guaranteeable benefit amounts for the information of the public.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4011

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

PART 4011—DISCLOSURE TO PARTICIPANTS

1. The authority citation for Part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

2. Appendix B to part 4011 is amended by adding a new entry in numerical order to the table to read as follows.

APPENDIX B TO PART 4011—TABLE OF MAXIMUM GUARANTEED BENEFITS

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
.	.	.	.	.	.	.	.	.
2003	$3,664.77	$43,977.24	$2,895.17	$34,742.04	$2,382.10	$28,585.20	$1,649.15	$19,789.80

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PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

3. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

4. Appendix D to part 4022 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

APPENDIX D TO PART 4022—MAXIMUM GUARANTEEABLE MONTHLY BENEFITS

[The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:]

Year	Maximum guaranteeable monthly benefit
. . . . .	
2003	3,664.77

Issued in Washington, DC, this 25th day of November, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–30304 Filed 11–29–02; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table that applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 2003, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b), early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, *etc.*

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–02 with Table I–03 in order to provide an updated correlation, appropriate for calendar year 2003, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–03 will be used to value benefits in plans with valuation dates during calendar year 2003.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2003, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2003.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 4044 is amended by removing Table I–02 and adding in its place Table I–03 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–03.—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 2002, and before January 1, 2004]

Participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low [1] if monthly benefit at URA is less than—	Medium [2] if monthly benefit at URA is		High [3] if monthly benefit at URA is greater than—
		From	To	
2004	485	485	1,965	1,965
2005	476	476	2,010	2,010
2006	487	487	2,059	2,059
2007	499	499	2,108	2,108
2008	511	511	2,159	2,159
2009	523	523	2,210	2,210
2010	535	535	2,261	2,261
2011	547	547	2,313	2,313
2012	560	560	2,368	2,368
2013 or later	573	573	2,421	2,421

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, DC, this 25th day of November, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–30303 Filed 11–29–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–02–033]

RIN 2115–AE47

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the Rock Island Railroad & Highway Drawbridge, Mile 482.9, Upper Mississippi River at Rock Island, Illinois. This deviation allows the drawbridge to remain closed to navigation for 57 days starting at 8 a.m., December 28, 2002, and ending at 8 a.m., February 22, 2003, Central Standard Time. This deviation is necessary to allow the bridge owner time for preventive maintenance that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 8 a.m., December 28, 2002 until 8 a.m., February 22, 2003.

ADDRESSES: Materials referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Department of the Army, Rock Island Arsenal requested a temporary deviation on October 1, 2002 for the operation of the drawbridge to allow the bridge owner time for preventive maintenance. The drawbridge operation regulations found at 33 CFR 117.5, require the drawbridge to open on signal. In order to perform extensive repairs and required annual maintenance, the bridge must be kept inoperative and in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for 57 days starting at 8 a.m., December 28, 2002 and ending at 8 a.m., February 22, 2003. This maintenance period was scheduled during the winter months to lessen the impact on vessel traffic which will increase when Lock 17 reopens on March 1, 2003.

The Rock Island Railroad & Highway Drawbridge provides a vertical clearance of 23.8 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will not be able to open for emergencies during the repair period. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 14, 2002.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 02–30323 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–029]

RIN 2115–AE47

Drawbridge Operation Regulation; St. Croix River, Prescott, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the Burlington Northern Railroad Drawbridge, Mile 0.2, St. Croix River at Prescott, Wisconsin. This deviation allows the drawbridge to remain closed to navigation except upon 24 hours notice to open for 44 days from 8 a.m., November 8, 2002, until 11:59

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p.m., December 14, 2002, Central Standard Time. The deviation will facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 8 a.m., November 8, 2002, until 11:59 p.m., December 14, 2002.

ADDRESSES: Materials referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

The Burlington Northern Santa Fe Railroad requested a temporary deviation on September 23, 2002 for the operation of the drawbridge to allow the bridge owner time for preventative maintenance. The drawbridge operation regulations found at 33 CFR 117.667(a) require the drawbridge to open on signal if at least 24 hours notice is given from December 15 through March 31. At all other times the bridge is required to open on signal. This deviation allows the bridge to remain closed to navigation, even upon signal, from 8 a.m., November 8, 2002, to 11:59 p.m., December 14, 2002 unless 24 hours advance notice is given. The bridge will open for vessels giving at least 24 hours advance notice.

The Burlington Northern Santa Fe Railroad Drawbridge provides a vertical clearance of 20.4 feet above normal pool in the closed to navigation position. Navigation on the waterway is a mixture of recreational boating and commercial tows. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 8, 2002.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 02–30322 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–135]

RIN 2115–AE47

Drawbridge Operation Regulations; Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the 103 Street (Wards Island) Bridge, at mile 0.0, across the Harlem River at New York. This temporary change to the drawbridge operation regulations will allow the bridge to remain closed to vessel traffic from November 21, 2002 through January 19, 2003. This action is necessary to facilitate maintenance at the bridge.

DATES: This rule is effective from November 21, 2002 through January 19, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–02–135) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

On September 27, 2002, the Coast Guard published a temporary deviation from the Drawbridge Operation Regulations (67 FR 60865) entitled Drawbridge Operation Regulations Harlem River, New York. That temporary deviation allowed the bridge to remain closed to navigation from September 23, 2002 through November 20, 2002. The bridge has been in the closed position to navigation since September 23, 2002.

The bridge owner recently advised the Coast Guard that due to inclement weather the completion of the repair work has been delayed and will not be completed until January 19, 2003. The bridge is presently inoperable due to painting scaffolding located at the bridge.

There have been no requests to open the bridge during the time period November through January for several years. The Coast Guard believes this closure is reasonable and notice and public comment are not necessary based upon the need to complete the bridge maintenance and the fact that the bridge has no requests to open.

Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to complete this bridge maintenance.

Background and Purpose

The Wards Island Bridge has a vertical clearance of 55 feet at mean high water and 60 feet at mean low water. The existing regulations are listed at 33 CFR 117.789(c).

The bridge owner, New York City Department of Transportation, asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to need not open for the passage of vessel traffic from September 23, 2002 through November 20, 2002, to facilitate structural repairs and bridge painting operations. On September 27, 2002, the Coast Guard published a temporary deviation from the Drawbridge operation regulations (67 FR 60865) [CGD01–02–105] entitled Drawbridge Operation Regulations Harlem River, New York.

The Coast Guard was recently notified by the bridge owner that the painting operations at the bridge will not be completed by November 20, 2002, the end of the temporary deviation effective period. They requested to extend the bridge closure from November 21, 2002 through January 19, 2003, to complete their work. The bridge normally has no requests to open November through January. The Coast Guard believes the bridge closure is reasonable due to the need to complete the bridge maintenance and the lack of vessel traffic.

Discussion of Rule

In § 117.789 a new paragraph (h) will be added to allow the 103 Street (Wards Island) Bridge to remain closed to vessel traffic from November 21, 2002 through January 19, 2003.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the bridge has historically had no requests to open during the effective period of this temporary final rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge has historically had no requests to open during the effective period of this temporary final rule.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1d, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From November 21, 2002 through January 19, 2003, in § 117.789, a new paragraph (h) is added, to read as follows:

§ 117.789 Harlem River.

* * * * *

(h) The draw of the 103 Street (Wards Island) Bridge shall open on signal from 10 a.m. to 5 p.m. if at least a four-hour notice is given to the New York City Highway Radio (Hotline) Room; except that, from November 21, 2002 through January 19, 2003, the 103 Street (Wards Island) Bridge need not open for the passage of vessel traffic.

Dated: November 18, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–30434 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–02–148]

RIN 2115–AA97

Security Zones; Ports of Jacksonville and Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones around certain vessels within the ports of Jacksonville and Canaveral. The security zones will prohibit entry into or movement within 100 yards of all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the ports

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of Jacksonville and Canaveral. These security zones are needed to ensure public safety and prevent sabotage or terrorist acts against vessels in the COTP Jacksonville area of responsibility. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Jacksonville, Florida or his designated representative.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD07–02–148] and are available for inspection or copying at Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

DATES: This rule is effective from 12 a.m. (noon) on November 20, 2002 until 12 a.m. (noon) on January 30, 2003.

FOR FURTHER INFORMATION CONTACT: LTJG Drew Casey, Coast Guard Marine Safety Office Jacksonville, at (904) 232–3610, ext. 105.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since the Captain of the Port of Jacksonville has determined that immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 12, 2001, one day after the September 11 terrorist attacks, the Coast Guard established a temporary rule establishing security zones around tank vessels, passenger vessels, and military pre-positioned ships until October 3, 2001. On October 3, 2001, the Coast Guard published a second temporary rule continuing these zones until June 15, 2002. A third temporary rule continued the zones until November 15, 2002. This fourth temporary rule will continue the zones until January 30, 2003. The Coast Guard published a notice of proposed rulemaking on June 18, 2002 proposing to make these regulations permanent in nature.

Regulatory Evaluation

On September 12, 2001, one day after the September 11 terrorist attacks, the Coast Guard established a temporary rule establishing security zones around tank vessels, passenger vessels, and military pre-positioned ships until October 3, 2001 (published on September 26, 2001, 66 FR 49104). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. As a result, on October 17, 2001, the Coast Guard published a second temporary rule in the **Federal Register** continuing these zones through 11:59 p.m. June 15, 2002 (66 FR 52689). The third temporary rule continued the zones through noon on November 15, 2002 (67 FR 41339). This fourth temporary rule continues the zones until January 30, 2003 so the Coast Guard can give adequate consideration to the comments received from the notice of proposed rulemaking (67 FR 55184).

This temporary rule creates 100-yard security zones around all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the Ports of Jacksonville and Canaveral. No person or vessel may enter these zones without the permission of the Captain of the Port of Jacksonville. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30 deg. 23″ 35′ N, 81 deg. 19″ 08′ West, when entering the Port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28 deg. 22.7′ N, 80 deg. 31.8′ W, and 28 deg. 23.7′ N, 80 deg. 29.2′ W, when entering Port Canaveral. Temporary fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville and Canaveral, Florida.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case-by-case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary § 165.T07–148 is added to read as follows:

§ 165.T07–148 Security zone; Ports of Jacksonville and Canaveral, Florida.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships during transits entering or departing the ports of Jacksonville and Canaveral, Florida. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30 deg. 23′ 35″ N, 81 deg, 19′ 08″ West, when entering the port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28 deg. 22.7′ N, 80 deg 31.8′ W, and 28 deg. 23.7′ N, 80 deg. 29.2′ W, when entering Port Canaveral. Temporary fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville and Canaveral, Florida.

(b) *Regulations.* In accordance with the regulations of § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Definition.* As used in this section: Cruise ship means a passenger vessel, except for a ferry, greater than 100 feet in length that is authorized to carry more than 12 passengers for hire.

(d) *Dates.* This section becomes effective at 12 a.m. (noon) on November 20, 2002 and will terminate at 12 a.m. (noon) on January 30, 2003, unless terminated earlier by the Captain of the Port, Jacksonville, Florida.

Dated: November 20, 2002.

R.J. Petow,

Commander, U.S. Coast Guard, Acting Captain of the Port, Jacksonville.

[FR Doc. 02–30433 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 259

[Docket No. 2002–9 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to continuing delays in the receipt of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2002. In order to ensure that their claims are timely received, claimants are encouraged to file their DART claims online or by fax, utilizing the special procedures described in this document.

EFFECTIVE DATE: December 2, 2002.

ADDRESSES: If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540. *See* **SUPPLEMENTARY INFORMATION** for information about on-line electronic filing through the Copyright Office website. Submissions by facsimile should be sent to (202) 252–3423. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Susan Grimes, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media ("DART") who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or

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analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed "[d]uring the first 2 months of each calendar year" with the Librarian of Congress "in such form and manner as the Librarian of Congress shall prescribe by regulation." 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February [1] or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed.[2] 37 CFR 259.5(e). The regulations do not provide for the filing of DART claims by alternative methods such as on-line submission or facsimile transmission.

Last year, due to severe disruptions in the delivery of mail to the Office caused by threat of possible anthrax contamination, the Copyright Office waived the regulations requiring that claims bear "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and prohibiting the filing of by "facsimile transmission," 37 CFR 259.5(d), for the filing of claims to the DART royalty funds for the year 2001. *See* 67 FR 5213 (February 5, 2002). While mail delivery to the Office has now resumed, incoming mail continues to be irradiated and diverted to an off-site location for treatment, resulting in delays in its delivery. Consequently, in light of these continuing delays, the Office once again is waiving §§ 259.3(b) and 259.5(d) and allowing the on-line and facsimile submission of DART claims to the 2002 royalty funds. The Office has decided not to allow the filing of claims by electronic mail because lists of joint claimants can now be filed through the Office's website. The alternative methods set forth in this Notice apply only to the filing of DART claims for the 2002 royalties which are due by February 28, 2003, and in no way apply to other filings with the Office.

This Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2002

Claims to the 2002 DART royalty funds may be submitted as follows:

a. Hand Delivery

In order to best ensure the timely receipt by the Copyright Office of their DART claims, the Office strongly encourages claimants to personally deliver their claims by 5 p.m. E.S.T. on February 28, 2003, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers are subject to treatment at the off-site facility before being delivered to the Office and will be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on February 28, 2003. Thus, claims should be hand delivered by the claimant or a representative of the claimant (*i.e.*, the claimant's attorney or a member of the attorney's staff).

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR part 259.

b. On-line Submission

The Office has devised on-line electronic forms for filing both single and joint DART claims. Claimants will be able to access and complete the forms via the Copyright Office website and may submit the forms electronically as provided in the instructions accompanying the forms. DART forms will be posted on the Office Web site at *http://www.copyright.gov/carp/dart/index.html*. Claimants filing a joint claim may list each of their joint claimants directly on the Office's on-line joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document ("PDF") format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the list of names of joint claimants. Joint claims with attachments containing information other than the joint claimants' names will be rejected.

The DART forms will be available for use during the months of January and February. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted on-line using forms or formats other than those specified in this Notice will not be accepted by the Office. Claims filed on-line must be received by the Office no later than 11:59 p.m. E.S.T. on February 28, 2003. Specifically, the completed electronic forms must be received in the Office's server by that time. Any claim received after that time will be considered as untimely filed. Claimants will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. Claimants submitting their claims on-line are strongly encouraged to send their claim no later than February 27, 2003, in order to better ensure timely receipt by the Office.

When filing claims on-line, all provisions set forth in 37 CFR part 259 apply except § 259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

c. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252–3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on February 28, 2003. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 with the exception of § 259.5(d), which prohibits the filing of claims by facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

d. By Mail

Section 259.5(a)(2) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after the last day in February. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January or February, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

Because of delays in mail delivery, claimants are urged not to use the mail as a means of filing their claims to the 2002 DART royalty funds. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner, and/or that the mail, when received by the Office, will be damaged. Claims sent by mail should be addressed in accordance with § 259.5(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after February 28, 2003, will be rejected as being untimely filed.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

Waiver of Regulation

The regulations governing the filing of DART claims require "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and do not allow claims to be filed by "facsimile transmission," 37 CFR 259.5(d). This document, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2002 DART royalties. The Office is not, and indeed cannot, waive the statutory deadline for the filing of DART claims. *See, United States* v. *Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by February 28, 2003.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company* v. *FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also, Wait Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the continuing delays in the delivery of the mail constitutes a special circumstance which has forced the Office to deviate from its usual mail processing procedures. Thus, given the delays in mail delivery, the Office believes that the public interest will best be served by waiving, for this filing period, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed on-line through the Office's website. *See* 67 FR at 5214.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after February 28, 2003. *See Locke, supra*. Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in order to assist them in timely filing their claims. By allowing claims to be filed on-line and by facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Dated: November 26, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–30445 Filed 11–29–02; 8:45 am]

BILLING CODE 1410–31–P

[1] In those years where the last day of February falls on a Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims must be received by the first business day in March. 37 CFR 259.5(b).

[2] Claims dated only with a business meter that are received after the last day in February will not be accepted as having been timely filed. 37 CFR 259.5(c).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7415–2]

Clean Air Act Approval of Revision to Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve, as a revision to Washington's title V air operating permits program, revisions to Washington's regulations for insignificant emissions units and other minor revisions to Washington's title V regulations. In a notice of deficiency published in the **Federal Register** on January 2, 2002 (67 FR 73), EPA notified Washington of EPA's finding that Washington's provisions for insignificant emissions units do not meet minimum Federal requirements for program approval. Final approval of this program revision resolves the deficiency identified in the Notice of Deficiency.

EFFECTIVE DATE: January 2, 2003.

ADDRESSES: Copies of Washington's submittal and other supporting information used in developing this action are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Jeff Kenknight, Office of Air Quality (OAQ–107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6641.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Washington's operating permits program was submitted in response to this directive. EPA granted interim approval to Washington's air operating permits program on November 9, 1994 (59 FR 55813). EPA repromulgated final interim approval of Washington's operating permits program on one issue, along with a notice of correction, on December 8, 1995 (60 FR 62992).

Washington's title V operating permits program is implemented by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Commission (EFSEC), and seven local air pollution control authorities: The Benton Clean Air Authority (BCAA); the Northwest Air Pollution Authority (NWAPA); the Olympic Regional Clean Air Authority (ORCAA); the Puget Sound Clean Air Agency (PSCAA); the Spokane County Air Pollution Control Authority

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(SCAPCA); the Southwest Clean Air Agency (SWCAA); and the Yakima Regional Clean Air Authority (YRCAA). After these State and local agencies revised their operating permits programs to address the conditions of the interim approval, EPA promulgated final full approval of Washington's title V operating permits program on August 13, 2001 (66 FR 42439).

On May 15, 2002, Ecology proposed revisions to its regulations for insignificant emissions units (IEU), as well as other minor revisions to its title V regulations. The proposed revisions to Ecology's IEU regulations were intended to resolve a deficiency in Washington's title V program identified by EPA in a notice of deficiency published in the **Federal Register** on January 2, 2002 (67 FR 73). On June 28, 2002, EPA proposed to approve Ecology's proposed revisions to its title V regulations at the same time that Ecology was considering and taking public comment on the proposed changes. *See* 67 FR 43575. The public comment period on the Ecology regulations ended on June 21, 2002. In response to comments received by Ecology during that public comment process, Ecology made minor changes to its proposed title V revisions. On September 26, 2002, Ecology submitted the final revisions to its title V regulations and asked EPA to give final approval to the revisions.

EPA received no comments on its proposal to approve Ecology's proposed revisions to its title V regulations. EPA has reviewed Ecology's final submittal and has determined that the minor changes made by Ecology in response to public comment at the state level do not change the substance of the regulatory revisions proposed by Ecology and continue to meet the requirements of part 70. Accordingly, EPA is taking final action to approve Ecology's final revisions to its IEU provisions, as well as the other minor revisions to its title V regulations.

The version of WAC 173–401–530 (Ecology's IEU provision) finalized by Ecology is identical to the proposed rule submitted to EPA in May 2002. Ecology did make a minor change to the definition of "continuous compliance," which is used in the IEU provision as well as elsewhere in Ecology's title V regulations in describing the compliance certification obligations of permittees. The definition of "continuous compliance" proposed by Ecology was identical to the definition in the instructions to the standard annual compliance certification form developed by EPA for use by permittees subject to the Federal operating permits program. *See http://www.epa.gov/oar/oaqps/permits/p71forms.html.* Under that definition, a permittee could certify continuous compliance if there were no "deviations and no other information that indicates deviations, except for malfunctions or upsets during which compliance is not required." The final definition adopted by Ecology states that a permittee could certify continuous compliance if there were no "deviations and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required." Ecology has clarified that nothing in the final definition of "continuous compliance" it adopted was intended to take a position on whether compliance is or is not required during unavoidable excess emissions or other operating conditions. EPA therefore continues to believe that the definition of "continuous compliance" is approvable. As noted by EPA in the proposal and by Ecology during its rulemaking process, however, Ecology would be required to later revise its definition of "continuous compliance" if EPA later adopts a definition of this term after notice and comment rulemaking and Ecology's definition is not consistent with the Federal definition. *See* 67 FR 43577.

Ecology also added a sentence to the proposed definition of "intermittent compliance," which is also used in describing the compliance certification obligations of permittees. The added sentence clarifies that a certification of intermittent compliance is appropriate where the monitoring data or other information shows there are periods of noncompliance or periods of time during which monitoring required by the permit was not performed or recorded. EPA finds this definition approvable, subject again to the qualification that if EPA later adopts a definition of "intermittent compliance" after notice and comment rulemaking and if the Ecology definition is not consistent with the Federal definition, Ecology would be required to later revise its definition.

Ecology also made a further change to the definition of "major source" in its final title V revisions. *See* WAC 173–401–200. In the final rule adopted by Ecology, the definition of "major source" is consistent with EPA's recent amendments to the definition of "major source" in part 70 in all respects. *See* 66 FR 59161 (November 27, 2001). As originally proposed, the Ecology definition was more stringent than EPA's definition in one respect. *See* 67 FR 43577. Because the final definition of "major source" adopted by Ecology is consistent with the definition in part 70, EPA continues to believe that Ecology's final change to the definition of "major source" is approvable.

Finally, Ecology made a minor change to its proposed revision to the time for reporting of deviations that do not represent a potential threat to human health or safety.[1] *See* WAC 173–401–615(3)(b). As proposed, such a deviation was required to be reported no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports, whichever occurred first. In the final version, the rule requires such deviations to be reported no later than 30 days after the end of the month during which the deviation is discovered. This is still more stringent that the previous version of Ecology's rule which gave permitting authorities the discretion to require reporting of "other deviations" (that is, deviations that do not represent a potential threat to human health or safety) either no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports. EPA therefore continues to believe that the final rule adopted by Ecology is consistent with the requirements of part 70.

II. Final Action

EPA is taking final action to approve as a revision to Ecology's title V air operating permits program revisions to Ecology's regulations for IEUs, specifically, revisions to WAC 173–401–530(2)(c) and the deletion of WAC 173–401–530(2)(d). EPA has determined that these changes meet the requirements of title V and part 70 relating to IEUs, and adequately address the deficiency identified in the notice of deficiency published in the **Federal Register** on January 2, 2002 (67 FR 73). EPA is also approving the addition of definitions for "continuous compliance" and "intermittent compliance," the change to the definition of "major source," changes to clarify that the use of a standard application form is not required if all required information is provided by the applicant, and a change to the time frame for the prompt reporting of permit deviations. Because the revisions chapter 173–401 apply throughout the State of Washington, this approval applies to all State and local agencies that implement Washington's operating permits program. As discussed above, those agencies include Ecology, EFSEC, BCAA, NWAPA, ORCAA, PSCAA, SCAPCA, SWCAA, and YRCAA.

[1] Reporting of deviations that represent a potential threat to human health and safety continues to be required as soon as possible, but in no case later than twelve hours after the deviation is discovered. WAC 173–401–615(3)(b).

Consistent with EPA's proposal to approve these revisions, this approval does not extend to "Indian Country," as defined in 18 U.S.C. 1151, except with respect to non-trust lands within the 1873 Survey Area of the Puyallup Reservation.[2] *See* 66 FR 42439, 42440 (August 13, 2001); 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR 42552, 42554 (August 18, 1994).

III. Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because if will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely approves existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 20, 2002.

Ronald A. Kreizenbeck,

Deputy Regional Administrator, Region 10.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In appendix A to part 70, the entry for Washington is revised to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Washington

(a) Department of Ecology (Ecology): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(b) Energy Facility Site Evaluation Council (EFSEC): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(c) Benton Clean Air Authority (BCAA): Submitted on November 1, 1993; interim approval effective on

[2] As these terms are defined in the Agreement dated August 27, 1988, among the Puyallup Tribe of Indians, local governments in Pierce County, the State of Washington, the United States, and certain private property owners.

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December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(d) Northwest Air Pollution Authority (NWAPA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(e) Olympic Regional Clean Air Authority (ORCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(f) Puget Sound Clean Air Agency (PSCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(g) Spokane County Air Pollution Control Authority (SCAPCA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(h) Southwest Clean Air Agency (SWCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(i) Yakima Regional Clean Air Authority (YRCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

* * * * *

[FR Doc. 02–30465 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps ((FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 or (e-mail) *michael.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the final determinations of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator, Federal Insurance and Mitigation Administration, has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Cleburne, (Case No. 02–06–784P) (FEMA Docket No. P7610).	Unincorporated Areas.	April 3, 2002, April 10, 2002, *The Sun Times.*	The Honorable Claude Dill, Judge, Cleburne County, County Courthouse, 301 West Main Street, Heber Springs, AR 72543.	Mar. 12, 2002	050424
Sebastian, (Case No. 01–06–1837P) (FEMA Docket No. P7612).	City of Fort Smith	June 12, 2002, June 19, 2002, *Southwest Times Record.*	The Hon. Raymond C. Baker, Mayor, City of Fort Smith, P.O. Box 1908, Fort Smith, AR 72902.	May 31, 2002	55013
Illinois:					
Will, (Case No. 02–05–2034P) (FEMA Docket No. P7612).	City of Joliet	June 20, 2002, June 27, 2002, *Farmers Weekly Review.*	The . Honorable Arthur Schultz, Mayor, City of Joliet, Municipal Building, 150 West Jefferson Street, Joliet, IL 60432.	Sept. 26, 2002	170702
McHenry, (Case No. 01–05–3762P) (FEMA Docket No. P7614).	Village of Lake In The Hills.	July 2, 2002, July 9, 2002, *The Northwest Herald.*	The Honorable Ed Plaza, Village President, 1115 Crystal Lake Road, Lake In The Hills, IL 60156.	Oct. 8, 2002	170481
McHenry, (Case No. 01–05–3762P) (FEMA Docket No. P7614).	Unincorporated Areas.	July 2, 2002, July 9, 2002, *The Northwest Herald.*	The Honorable Mike Tryon, Chairperson, McHenry County Board, McHenry County Gov't Center, 2200 North Seminary Avenue, Woodstock, IL 60098.	Oct. 8, 2002	170732
Will, (Case No. 02–05–2034P) (FEMA Docket No. P7612).	Village of Plainfield.	June 19, 2002, June 26, 2002, *The Enterprise.*	Mr. Richard Rock, Village President, Village of Plainfield, 530 West Lockport Street, Suite 206, Plainfield, IL 60544.	Sept. 25, 2002	170771
Will, (Case No. 02–05–2034P) (FEMA Docket No. P7612).	Unincorporated Areas.	June 19, 2002, June 25, 2002, *The Herald News.*	Mr. Joseph Mikan, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	Sept. 24, 2002	170695
Minnesota:					
Dakota, (Case No. 01–05–2461P) (FEMA Docket No. P7612).	City of Lakeville ...	May 1, 2002, May 8, 2002, *The Lakeville Sun Current.*	Mr. Robert Erickson, Lakeville City Administrator, 20195 Holyoke Avenue, Lakeville, MN 55044.	Aug. 7, 2002	270107

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State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dakota, (Case No. 02–05–0298P) (FEMA Docket No. P7612).	City of Lakeville ...	May 22, 2002, May 29, 2002, *The Lakeville Sun Current.*	Mr. Robert Erickson, Lakeville City Administrator, 20195 Holyoke Avenue, Lakeville, MN 55044.	Aug. 28, 2002	270107
Lyon, (Case No. 02–05–1586P) (FEMA Docket No. P7612).	City of Marshall ...	May 24, 2002, May 31, 2002, *Marshall Independent.*	The Honorable Robert Byrnes, Mayor, City of Marshall, 344 West Main Street, Marshall, MN 56258.	Aug. 30, 2002	270258
Missouri:					
St. Louis, (Case No. 01–07–499P) (FEMA Docket No. P7610).	City of Ladue	April 19, 2002, April 26, 2002, *Saint Louis Post Dispatch.*	The Honorable Jean Quenlen, Mayor, City of Ladue, 9345 Clayton Road, Ladue, MO 63124–1511.	Apr. 2, 2002	290363
Ohio:					
Lorain, (Case No. 02–05–1841P) (FEMA Docket No. P7612).	City of Avon Lake	May 23, 2002, May 30, 2002, *The Sun.*	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon-Belden Road, Avon Lake, OH 44012.	Aug. 28, 2002	390602
Butler and Warren (Case No. 01–05–1645P) (FEMA Docket No. P7614).	Village of Monroe	July 3, 2002, July 10, 2002, *Middletown Journal.*	The Hon. Michael P. Morris, Mayor, Village of Monroe, 233 South Main Street, Monroe, OH 45050.	Oct. 9, 2002	390042
Cuyahoga, (Case No. 01–05–542P) (FEMA Docket No. P7612).	City of Parma Heights.	May 2, 2002, May 9, 2002, *Parma Sun Post.*	The Honorable Paul Cassidy, Mayor, City of Parma Heights, 6281 Pearl Road, Parma Heights, OH 44130.	Aug. 8, 2002	390124
Franklin and Delaware, (Case No. 02–05–1465P) (FEMA Docket No. P7612).	City of Westerville	May 22, 2002, May 29, 2002, *Westerville News and Public Opinion.*	The Hon. Stewart Flaherty, Mayor, City of Westerville, 21 South State Street, Westerville, OH 43081.	Aug. 29, 2002	390179
Warren, (Case No. 01–05–1645P) (FEMA Docket No. P7614).	Unincorporated Areas.	July 3, 2002, July 10, 2002, *The Western Star.*	Mr. C. Michael Kilburn, President, Warren County, Board of Commissioners, 406 Justice Drive, Lebanon, OH 45036.	Oct. 9, 2002	390757
Oklahoma:					
Tulsa, (Case No. 01–06–701P) (FEMA Docket No. P7612).	City of Bixby	April 25, 2002, May 2, 2002, *The Bixby Bulletin.*	The Honorable Joe Williams, Mayor, City of Bixby, 116 West Needles Street, Bixby, OK 74008.	Aug. 1, 2002	400207

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma, Canadian, Cleveland, McClain and Pottawatomie, (Case No. 01–06–2001P) (FEMA Docket No. P7612).	City of Oklahoma City.	June 18, 2002, June 25, 2002, *The Daily Oklahoman.*	The Hon. Kirk Humphreys, Mayor, City of Oklahoma city, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	Sept. 24, 2002	405378
Texas:					
Collin, (Case No. 02–06–1539P) (FEMA Docket No. P7612).	City of Allen	May 29, 2002, June 5, 2002, *The Allen American.*	The Honorable Steve Terrell, Mayor, City of Allen, One Allen Civil Plaza, Allen, TX 75013.	Sept. 4, 2002	480131
Collin, (Case No. 01–06–820P) (FEMA Docket No. P7612).	City of Allen	June 14, 2002, June 21, 2002, *The Allen American.*	The Honorable Steve Terrell, Mayor, City of Allen, One Allen Civic Plaza, Allen, TX 75013.	Sept. 18, 2002	480131
Travis, (Case No. 02–06–826P) (FEMA Docket No. P7610).	City of Austin	April 30, 2002, May 7, 2002, *Austin American Statesman.*	The Honorable Kirk Watson, Mayor, City of Austin, 124 West 8th Street, Austin, TX 78701.	Aug. 6, 2002	480624
Travis, (Case No. 01–06–338P) (FEMA Docket No. P7612).	City of Austin	May 31, 2002, June 7, 2002, *Austin American Statesman.*	The Honorable Gus Garcia, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	Sept. 6, 2002	480624
Bexar, (Case No. 02–06–761P) (FEMA Docket No. P7612).	Unincorporated Areas.	May 9, 2002, May 16, 2002, *San Antonio Express News.*	The Honorable Nelson Wolff, Judge, Bexar County, 100 Dolorosa, Suite 120, San Antonio, TX 78205.	Aug. 15, 2002	480035
Bexar, (Case No. 01–06–1795P) (FEMA Docket No. P7612).	Unincorporated Areas.	May 24, 2002, May 31, 2002, *San Antonio Express News.*	The Honorable Nelson Wolff, Judge, Bexar County, 100 Dolorosa, Suite 120, San Antonio, TX 78205.	Aug. 30, 2002	480035
Brazos, (Case No. 02–06–031P) (FEMA Docket No. P7612).	City of College Station.	May 24, 2002, May 31, 2002, *The Bryan/College Station Eagale.*	The Hon. Lynn McIlhaney, Mayor, City of College Station, P.O. Box 9960, College Station, TX 77842.	Aug. 30, 2002	480083
Denton, (Case No. 02–06–276P) (FEMA Docket No. P7612).	City of Denton	May 22, 2002, May 29, 2002, *Denton Record Chronicle.*	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	May 2, 2002	480194
Tarrant, (Case No. 01–06–508P) (FEMA Docket No. P7610).	City of Fort Worth	March 20, 2002, March 27, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, City Hall, Fort Worth, TX 76102–6311.	June 26, 2002	480596

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State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant, (Case No. 01–06–982P) (FEMA Docket No. P7612).	City of Forth Worth.	June 7, 2002, June 14, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, City Hall, Fort Worth, TX 76102.	Sept. 13, 2002	480596
Gillespie, (Case No. 00–06–1860P) (FEMA Docket No. P7612).	City of Fredericksburg.	May 22, 2002, May 29, 2002, *Fredericksburg Standard Radio Post.*	The Honorable Tim Crenwelge, Mayor, City of Fredericksburg, 126 West Main Street, Fredericksburg, TX 78624.	Aug. 28, 2002	480252
Dallas, (Case No. 02–06–591P) (FEMA Docket No. P7610).	City of Garland	March 7, 2002, March 14, 2002, *Garland Morning News.*	The Honorable Jim Spence, Mayor, City of Garland, 200 North 5th Street, P.O. Box 469002, Garland, TX 76046–9002.	June 13, 2002	485471
Dallas, (Case No. 02–05–151P) (FEMA Docket No. P7612).	City of Garland	May 2, 2002, May 9, 2002, *Garland Morning News.*	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, TX 75046–9002.	Aug. 8, 2002	485471
Dallas, (Case No. 01–06–1213P) (FEMA Docket No. P7612).	City of Glenn Heights.	May 22, 2002, May 29, 2002, *Focus Daily News.*	The Honorable Mary Coffman, Mayor, City of Glenn Heights, 1938 South Hampton, Glenn Heights, TX 75154.	Aug. 28, 2002	481265
Hood, (Case No. 02–06–198P) (FEMA Docket No. P7612).	City of Granbury ..	May 30, 2002, June 6, 2002, *Hood County News.*	The Honorable David Southern, Mayor, City of Granbury, P.O. Box 969, Granbury, TX 76048.	Sept. 5, 2002	480357
Hidalgo, (Case No. 02–06–715P) (FEMA Docket No. P7612).	Unincorporated Areas.	July 1, 2002, July 8, 2002, *The Monitor.*	The Honorable Jose E. Pulido, Judge, Hidalgo County, 100 E. Cano Street, Edinburg, TX 78539.	May 30, 2002	480334
Hood, (Case No. 02–06–198P) (FEMA Docket No. P7612).	Unincorporated Areas.	May 30, 2002, June 6, 2002, *Hood County News.*	The Honorable Linda Steen, Judge, Hood County, 100 East Pearl Street, Granbury, TX 76048.	Sept. 5, 2002	480356
Tarrant, (Case No. 01–06–1481P) (FEMA Docket No. P7612).	City of Hurst	May 24, 2002, May 31, 2002, *Dallas Morning News.*	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	Apr. 30, 2002	480601
Gregg and Harrisson, (Case No. 02–06–512P) (FEMA Docket No. P7612).	City of Longview ..	May 10, 2002, May 17, 2002, *Longview News Journal.*	The Honorable Earl Roberts, Mayor, City of Longview, P.O. Box 1952, 300 West Cotton Street, Longview, TX 75606.	Aug. 16, 2002	480264
Collin, (Case No. 01–06–1229P) (FEMA Docket No. P7612).	City of McKinney	May 7, 2002, May 14, 2002, *McKinney Courier Gazette.*	The Honorable Don Dozier, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Aug. 13, 2002	480135

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montgomery, (Case No. 02–06–763P) (FEMA Docket No. P7612).	Unincorporated Areas.	May 1, 2002, May 8, 2002, *The Courier.*	The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	Aug. 7, 2002	480483
Travis, (Case No. 00–06–1827P) (FEMA Docket No. P7610).	Unincorporated Areas.	March 6, 2002, March 13, 2002, *Austin American Statesman.*	The Honorable Samuel Biscoe, Judge, Travis County, P.O. Box 1748, Austin, TX 78767–1748.	June 12, 2002	481026

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 14, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–29867 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 112202D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota transfers; fishery reopening.

SUMMARY: NMFS adjusts the October-December subquota for the coastwide General category Atlantic bluefin tuna (BFT) fishery by transferring 10.0 metric tons (mt) from the Longline North subcategory quota, 15.0 mt from the Angling category (10.0 mt from the school size class North and 5.0 mt from the school size class South subcategories), 15.0 mt from the Harpoon category, 65.0 mt from the Reserve category, and 10.0 mt from the General category New York Bight set-aside for a revised coastwide General category subquota of approximately 386.7 mt for October-December. NMFS reopens the coastwide BFT General category until the adjusted October-December subquota has been filled. These actions are being taken to allow for maximum utilization of the U.S. BFT landings quota while maintaining a fair distribution of fishing opportunities, preventing overharvest of the adjusted subquotas for the affected fishing categories, helping to achieve optimum yield in the General category fishery, and allowing the collection of a broad range of data for stock monitoring purposes, consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: The quota transfers are effective November 26, 2002, through May 31, 2003. The coastwide General category reopening is effective December 1 through December 31, 2002 or until the subquota has been reached.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

Quota Transfers

Under the implementing regulations at 50 CFR 635.27(a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the HMS FMP.

If it is determined, based on the factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

Quota Adjustments

Annual BFT quota specifications issued under § 635.27 provide for a quota of 647.0 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the General category quota during the 2002 fishing year. The General category BFT quota is further subdivided into time period subquotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities. The October-December subquota was initially set at 63.7 mt for the 2002 fishing year, and is currently 271.7 mt, after the addition of approximately 78.0 mt of unharvested subquota from previous periods and a previous quota transfer of 130 mt (67 FR 63854, October 16, 2002). As of November 13, 2002, BFT landings against the adjusted October-December General category subquota have totaled approximately 326.8 mt, exceeding the available coastwide quota by 55.1 mt. An additional 10 mt has been set aside for the traditional fall New York Bight fishery.

After considering the factors for making transfers between categories,

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NMFS has determined that 10 mt of the remaining adjusted Longline North subcategory quota of approximately 13.3 mt should be transferred to the coastwide General category quota. NMFS has also determined that 15 mt of the remaining Angling school subcategory quota of approximately 195.6 mt (10 mt of the remaining Angling school north subcategory quota of approximately 94.1 mt, and 5 mt of the remaining Angling school south subcategory quota of approximately 57.4 mt), 15 mt of the remaining Harpoon category quota of approximately 36.2 mt, and 65 mt of the remaining Reserve category quota should be transferred to the coastwide General category. Finally, NMFS has determined to transfer the remaining General category New York Bight set-aside subquota of approximately10 mt into the coastwide General category quota. The adjusted subquota for the coastwide General category fishery for the October-December period is 386.7 mt. Landings of large medium or giant BFT in the General category New York Bight set-aside area have been minimal this year and the transfer of the 10 mt set-aside should not adversely impact General category participants in this set-aside area. Vessels participating in General category New York Bight fishery may continue to land and sell large medium or giant BFT against the adjusted coastwide General category quota.

Once the adjusted General category subquota for the October-December period has been attained, the coastwide fishery will be closed. Announcement of the closure will be filed with the Office of the **Federal Register**, stating the effective date of closure, and further communicated through the HMS Fax Network, the Atlantic Tunas Information Lines, HMS websites, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA or (978) 281–9305 or access *www.nmfspermits.com*, to check the status of the fishery before leaving for a fishing trip.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that providing prior notice and public comment, as required under 5 U.S.C. 553 (b)(B), is impracticable and contrary to the public interest. Without immediate effectiveness of these inseason adjustments, NMFS would not be providing U.S. fishermen with a reasonable opportunity to catch the quota that ICCAT allocated to the United States. For this reason, and because the action relieves a restriction in reopening the fishery, the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553 (d)(1) and (3). This action is undertaken pursuant to 50 CFR 635.27 and is exempt for review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 25, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30451 Filed 11–26–02; 5:00 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 101602D]

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Winter II Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scup commercial quota harvested for Winter II period.

SUMMARY: NMFS announces that the scup commercial quota available in the 2002 Winter II period (November - December) to the coastal states from Maine to North Carolina has been harvested. Federally permitted commercial vessels may not land scup in these states for the remainder of the 2002 Winter II quota period (through December 31, 2002). Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the scup quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders.

DATES: Effective 0001 hrs local time, December 2, 2002, through 2400 hrs local time, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods. The Winter II commercial quota (November through December) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the seasonal allocation is described at § 648.120.

The total commercial quota for scup for the 2002 calendar year was initially set at 8,000,000 lb (3,628,739 kg) and then adjusted downward to 7,834,522 lb (3,553,679 kg), to account for research quota set-asides (66 FR 66351; December 26, 2001). The Winter II period quota, which is equal to 15.94 percent of the annual commercial quota, was 1,248,823 lb (566,456 kg). The 2002 Winter II quota allocation was then adjusted downward to compensate for 2001 Winter II landings in excess of the 2001 Winter II quota (67 FR 49621, July 31, 2002), consistent with the procedures specified at § 648.120(d)(3)(ii). Accordingly, the final adjusted 2002 Winter II period commercial quota is 1,179,502 lb (535,013 kg).

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying federally permitted commercial vessels and federally permitted dealers that, effective upon a specific date, the scup commercial quota has been harvested. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota for the 2002 Winter II period has been harvested.

The regulations at § 648.4(b) provide that Federal scup moratorium permit holders agree, as a condition of the permit, not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, December 2, 2002, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through December 31, 2002. The 2003 Winter I period for commercial scup harvest will open on January 1, 2003. Effective 0001 hours, December 2, 2002, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Winter II period (through December 31, 2002).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30452 Filed 11–26–02; 5:00 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 112202B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Catcher Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific cod allocated for catcher processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 25, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2002 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear in the BSAI was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) and by two reallocations of Pacific cod (67 FR 61826, October 2, 2002 and 67 FR 70557 November 25, 2002) as a directed fishing allowance of 89,920 metric tons. *See* § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A)&(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear as a directed fishing allowance in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the 2002 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 2002.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30354 Filed 11–25–02; 4:34 pm]

BILLING CODE 3510-22-S

VOL 67 ISS 231 DEC 2 2002 UMI

Proposed Rules

Federal Register
Vol. 67, No. 231
Monday, December 2, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–78]

Robert H. Leyse; Receipt of Petition for Rulemaking, Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; extension of comment period.

SUMMARY: On October 31, 2002, the Nuclear Regulatory Commission (NRC) published for public comment a notice of receipt of a petition for rulemaking (PRM) filed by Robert H. Leyse (PRM–50–78). The petitioner is requesting that the NRC regulations that govern domestic licensing of production and utilization facilities be amended to address the impact of fouling on the performance of heat transfer surfaces throughout licensed nuclear power plants. The comment period for this PRM was to have expired on December 16, 2002, after a 45-day comment period. The comment period is normally 75 days. The NRC has decided to extend the comment period for an additional 30 days.

DATES: The comment period has been extended and now expires on January 16, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (*http://ruleforum.llnl.gov*). At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to this action, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may also be viewed and downloaded electronically via the rulemaking website.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *MTL@NRC.Gov*.

Dated at Rockville, Maryland, this 25th day of November, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–30417 Filed 11–29–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE191]; Notice No. 23–03–022–SC]

Special Conditions: Air Tractor Incorporated, Models AT–401, AT–402, AT–502, AT–602, and AT–802; Seats With Goodrich Aircraft Interior Products (AIP) Four-Point Inflatable Restraints

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the following Air Tractor AT series airplanes; AT–401, AT–402, AT–502, AT–602, and AT–802. These airplanes, as modified by Goodrich Aircraft Interior Products, will have novel and unusual design features associated with a four-point inflatable (airbag) restraint. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before January 2, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE191, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE191. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Pat Mullen, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4128, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to CE191." The postcard will be date stamped and returned to the commenter.

Background

On March 8, 2002, Goodrich Aircraft Interior Products (GAIP), 1275 N. Newport Road, Colorado Springs, CO 80916–2779, applied for a supplemental type certificate to install four-point inflatable restraints in Air Tractor AT series airplanes AT–401, AT–402, AT–502, AT–602, and AT–802. The Air Tractor AT series airplanes comprise a group of agricultural aircraft certificated under 14 Code of Federal Regulations (CFR) 21.25, Restricted Category. These airplanes are intended for single pilot operation, sharing the same seating environment and seat-to-aircraft attachments. Therefore, the inflatable restraint system proposed by GAIP can be used with each Air Tractor model listed. The inflatable restraint system limits occupant forward excursion in case of an accident, while forming a protective cushion around the sides of the occupant's head. This will reduce the potential for head and torso injury. The inflatable four-point restraint behaves in a manner that is similar to an automotive airbag, but in this case, the airbags are integrated into each shoulder harness, inflating away from the occupant. The lapbelt portion of this four-point restraint is conventional and does not inflate. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable four-point restraint is novel for agricultural operations.

Agricultural airplanes, like the Air Tractor AT series, contain many elements of a cashworthy design first described in a 1949 Cornell University study. These elements include a cockpit structure that encases the pilot, crushable structure forward of and underneath the pilot, a low-positioned instrument panel which the pilot's head would not strike, required use of a helmet, and other features such as a strong harness system and an energy absorbing seat. These design features have contributed to the excellent safety record of agricultural airplanes. The fatality rates experienced by the agricultural airplane fleet are roughly half of that experienced by the general aviation fleet. This lower fatality rate is in spite of a higher overall accident rate with respect to that of general aviation.

In consideration of the excellent fatality record of agricultural airplanes in general, and the Air Tractor AT series in particular, the FAA has determined that installation of a four-point inflatable restraint must be accomplished on the basis of not lowering the current level of safety of the AT–401, AT–402, AT–502, AT–602, and AT–802. Therefore, the FAA considers that installation of an inflatable restraint as having two primary safety concerns:

- That it perform properly under foreseeable operating conditions, and;
- That it not perform in a manner or at such times as would constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. Agricultural operations typically occur at very low altitudes. An unexpected deployment while conducting these operations may result in an unsafe condition in flight. The unexpected deployment may either startle the pilot, or generate a force sufficient to cause a sudden movement of the control stick. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitude. The FAA has considered this when establishing the special conditions.

GAIP has developed a "Smartbelt" Four-Point Manually Adjusting Restraint seatbelt with an integrated inflatable airbag device. This inflatable restraint will rely on electronic sensors for firing and pyrotechnic charges for activation. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. GAIP must substantiate that the effects of an inadvertent deployment in flight are not a hazard to the airplane. In addition, the operating conditions of agricultural aircraft can generate a large amount of cumulative wear and tear on the restraint system. It is likely that the potential for inadvertent deployment increases as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Ultimately, because of the effects of this cumulative damage, a life limit must be established for the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. Agricultural airplanes are exposed to an extreme operating environment. The effect of this environment on inadvertent deployment of the restraint must be understood. The qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for agricultural airplanes, and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of this threat. For complying with HIRF requirements, the inflatable system is considered a critical system if its deployment could have a hazardous effect on the airplane; otherwise, it is considered an essential system. Finally, the inflatable restraint should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

While restricted category aircraft need not demonstrate compliance to 14 CFR part 23, § 23.562, there are many elements of § 23.562 that can be used to ensure an adequate level of protection during an emergency landing. These elements include an appropriate crash pulse and various injury pass/fail criteria. Therefore, the inflatable seatbelt must undergo qualification tests of the firing hardware/software for the 26 G deceleration pulse defined under § 23.562(b)(2). When the inflatable portion of the restraint is subjected to, and operates as a result of the 26 G deceleration pulse, it must be shown that deployment of the device will not be a hazard to the occupant. This can be accomplished by assuring that the 4-point restraint does not ride above the pelvis into the abdomen, as required by § 23.562(c)(4). This also includes satisfying the maximum harness loads permitted by § 23.562(c)(6).

Given the level of safety of the current Air Tractor harness, the inflatable restraint must show that it will offer an equivalent level of protection in the event the inflatable portion fails to deploy. In the event of an inadvertent deployment, the restraint must still have the same strength capability after the inflatable portion of the restraint has been deployed. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable seatbelt system must deploy and provide protection under crash conditions where it is necessary to prevent serious injury. In support of this operational capability, there must be a means to verify the integrity of this system before each flight. As an option, GAIP can establish inspection intervals

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where they have demonstrated the system to be reliable between these intervals.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. In addition, the operation of this restraint must be transparent to the user. Therefore, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. In addition, when deployment does occur, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit area.

Finally, the inflatable restraint is likely to have a large volume displacement, where the inflated bag could impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restrain may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Type Certification Basis

Under the provisions of § 21.101, Goodrich Aircraft Interior Products must show that the Air Tractor AT series airplanes AT–401, AT–402, AT–502, AT–602, and AT–802, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A17SW (for AT–401, AT–402, and AT–502) and Type Certificate No. A19SW (for AT–602 and AT–802) or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A17SW are as follows:

• For models AT–401, AT–401A, and AT–401B, § 21.25(a)(1), 14 CFR part 23 through 23–9, and Appendix B, CAM 8. For models AT–402, AT–402A, AT–402B, AT–502, AT–502A, and AT–502B, § 21.25(a), (b)(1), (b)(2), Amendments 23–1 through 23–9, Appendix B, CAM 8, and additional turbine engine requirements that are of no relevance to the special conditions.

The regulations incorporated by reference in Type Certificate No. A19SW are as follows:

• For model AT–602, 14 CFR part 23 through Amendment 23–42. For model AT–802, 14 CFR part 23 through Amendment 23–42, plus § 21.25(b)(1), (b)(2), and (b)(7). For model AT–802A, 14 CFR part 23 through Amendment 42, plus § 21.25(b)(1), (b)(2), and (b)(7).

For each model listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

The Administrator has determined that the applicable airworthiness regulations (*i.e.*, part 23 as amended) do not contain adequate or appropriate safety standards for the GAIP inflatable restraint as installed on Air Tractor models AT–401, AT–402, AT–502, AT–602, and AT–802 because of a novel or unusual design feature. Therefore, special conditions are prescribed under the provisions of § 21.6.

In addition to the applicable airworthiness regulations and special conditions, Air Tractor models equipped with the GAIP inflatable restraint must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Air Tractor Models AT–401, AT–402, AT–502, AT–601, and AT–802 will incorporate the following novel or unusual design features.

The Goodrich Aircraft Interior Products "Smartbelt" Four-Point Manually Adjusting Restraint Seatbelt

The purpose of the inflatable airbag seatbelt is to reduce the potential for injury in the event of an accident. In a severe impact, airbags will deploy out of the shoulder harnesses portion of the restraint, in a manner similar to an automotive airbag. These airbags will restrain the motion of the occupant during a severe impact and offer some protection to the head of the occupant. The restraint will rely on electronic sensors for firing, and pyrotechnic charges for activation.

The CFR states performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints in agricultural airplanes. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of inflatable four-point restraints.

Accordingly, these special conditions are adopted for Air Tractor Models AT–401, AT–402, AT–502, AT–602, and AT–802 equipped with the Goodrich Aircraft Interior Products four-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety for these Air Tractor models. The FAA recognizes that the current Air Tractor occupant restraint system has an excellent safety record. The FAA has considered the installation of inflatable restraints as having two primary safety concerns: (1) That they perform properly under foreseeable operating conditions; (2) that they not perform in a manner or at such times as would constitute a hazard to the airplane or occupants.

Applicability

As discussed above, these special conditions are applicable to the Air Tractor model series AT–401, AT–402, AT–502, AT–602, and AT–802 equipped with the GAIP four-point inflatable restraint. Should GAIP apply at a later date for a supplemental type certificate to modify any other model on Type Certificate numbers A17SW or AW19SW to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Air Tractor model series AT–401, AT–402, AT–502, AT–602, and AT–802 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101 for STC or 21.17 for TC; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety for the Air Tractor Model AT–401, –402, –502, –602, and –802 series occupant restraint design. Accordingly, the (FAA) proposes the following special conditions as part of the type certification basis for Air Tractor series airplanes AT–401, AT–402, AT–502, AT–602, and AT–802 modified by Goodrich Aircraft Interior Products.

4-Point Inflatable Restraints for Agricultural Airplanes

1. It must be shown that the inflatable seatbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious injury. A dynamic test is required to verify that the system operates as intended when subjected to the 26 G deceleration pulse described in § 23.562(b)(2). The dynamic test need only be performed using a 50 percentile male ATD.

2. The means of protection must take into consideration a range of stature from a 5 percentile female to a 95 percentile male. The inflatable seatbelt must provide a consistent level of energy absorption throughout that range.

3. The design must prevent the inflatable seatbelt from either being incorrectly buckled or incorrectly installed, or both, such that the airbag would not properly deploy.

4. It must be shown that an inadvertent deployment does not cause an unsafe condition (or hazard to the airplane). Consideration needs to be given as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service. The seat belt must have the same strength capability after the inflatable portion of the restraint has been deployed.

5. It must be shown that deployment of the device is not hazardous to the occupant. In addition, the seated occupant must not be injured as established by criteria in § 23.562 as a result of the inflatable seatbelt deployment, including keeping the lap belt located on the pelvis.

6. It must be shown that the inflatable seatbelt will not impede rapid egress of the occupant 10 seconds after its deployment.

7. For the purpose of complying with HIRF and lightning requirements, the inflatable seatbelt system is considered a "critical system" if its deployment could have a hazardous effect on the airplane; otherwise, it is considered an "essential" system.

8. It must be shown that the inflatable seatbelt will not release hazardous quantities of gas or particulate matter into the cabin.

9. The inflatable seatbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

10. There must be a means to verify the integrity of the inflatable seatbelt activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

11. A life limit needs to be established for appropriate system designs.

12. Qualification testing of the internal firing mechanism must be accomplished using the vibration levels appropriate for an agricultural airplane.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30325 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Turmo IV A and Turmo IV C Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Turbomeca Turmo IV A and IV C series turboshaft engines. This proposal would require initial and repetitive borescope and eddy current or ultrasonic inspections of centrifugal compressor intake wheel blades for cracks and evidence of corrosion pitting, and, if found cracked or if there is evidence of corrosion pitting, replacement with serviceable parts. This proposal is prompted by reports of cracked centrifugal compressor intake wheel blades, resulting in the release of one or more blade fragments. The actions specified by the proposed AD are intended to prevent centrifugal compressor intake wheel blade cracks, which can result in in-flight engine power loss or shutdown.

DATES: Comments must be received by January 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00; fax (33) 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

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proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca Turmo IV A and IV C series turboshaft engines. The DGAC advises that they have received reports of cracked centrifugal compressor intake wheel blades. The phenomena of blade cracking occurs in two phases; initiation after a single event, such as foreign object damage or surge, and crack propagation due to operating at a gas generator speed, between 80 percent and 83 percent, that appears to set up a vibration. Although the exact cause of the initiation of cracks has not yet been identified, cracks could initiate at corrosion pits. The investigation is continuing. This condition, if not corrected, could result in centrifugal compressor intake wheel blade cracks, which can result in in-flight engine power loss or shutdown.

Manufacturer's Service Information

Turbomeca has issued Turmo IV Service Bulletin (SB) No. 249 72 0100, Update No. 4, dated January 25, 2000, that specifies procedures for the centrifugal compressor intake wheel blade inspections. The DGAC classified this SB as mandatory and issued airworthiness directive (AD) DGAC AD 97–122(A), Revision 3, dated April 5, 2000, in order to ensure the airworthiness of these engines in France. Turbomeca has also issued Turmo IV SB No. 249 72 0117, dated March 11, 2000, that specifies procedures for installation of modification TU 224.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require:

- Initial and repetitive borescope and eddy current or ultrasonic inspections of centrifugal compressor intake wheel blades for cracks and evidence of corrosion pitting; and
- Replacement with serviceable parts if found cracked or if there is evidence of corrosion pitting.

At this time there is no modification available as terminating action; as the investigation is ongoing into the cause of crack initiation, future rulemaking may be necessary. The actions would be required to be done in accordance with the SB described previously.

Economic Analysis

There are approximately 1,110 engines of the affected design in the worldwide fleet. The FAA estimates that there are currently 11 engines installed on helicopters of U.S. registry that would be affected by this proposed AD, that it would take approximately 41 work hours per engine to perform the proposed inspections, including disassembling and assembling engines, and that the average labor rate is $60 per work hour. A replacement centrifugal compressor assembly costs approximately $21,651. Based on these figures, the cost per inspection is estimated to be $265,221.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca: Docket No. 99–NE–12–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca Turmo IV A and IV C series turboshaft engines. These engines are installed on but not limited to Aerospatiale FA 330–PUMA helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance is required as indicated, unless already done.

To prevent centrifugal compressor intake wheel blade cracks, which can result in in-flight engine power loss or shutdown, do the following:

(a) For engines that have been modified to TU 197 standard, but have not been modified to TU 191 or TU 224 standard, do the following:

(1) Remove modification TU 197 and install modification TU 224 in accordance with Turmo IV SB 249 72 0117, dated March 11, 2000, within the next 50 cycles or six months after the effective date of the AD, whichever occurs first.

(2) Within 1,000 flight hours (FH) after the installation of modification TU 224 standard, do the following:

(i) Perform a visual inspection and an ultrasonic inspection (USI) in accordance with paragraph 2.B.(3) of Turbomeca Turmo IV SB 249 72 0100, Update 4, dated January 25, 2000.

(ii) Thereafter, perform a visual inspection and a USI at intervals not to exceed 1,000 FH in accordance with paragraph 2.B.(3) of Turbomeca Turmo IV SB 249 72 0100, Update 4, dated January 25, 2000.

(b) For engines that have not been modified to TU 191, TU 197, or TU 224 standard, do the following in accordance with Turbomeca Turmo IV SB 249 72 0100, Update 4, dated January 25, 2000:

(1) For centrifugal compressor intake wheels that, on the effective date of this AD, have been operated for more than 250 FH since the last inspection of the centrifugal compressor intake wheel blades, do the following:

(i) Perform an initial borescope inspection of the blades for evidence of corrosion within the next 50 FH, or six months after the effective date of this AD, whichever occurs first, in accordance with paragraph 2.B.(1) of the SB.

(ii) If corrosion is found, perform an ECI or USI, as applicable, of the blades for cracks within 50 FH after the borescope inspection performed in accordance with paragraph 2.B.(3) of the SB, and if necessary, replace with serviceable parts.

(iii) If corrosion is not found, perform an ECI or USI, as applicable, of the blades for cracks within 250 FH after the borescope inspection performed in accordance with paragraph (b)(1)(i) of this AD, and if necessary, replace with serviceable parts.

(iv) Thereafter, perform borescope inspections and ECI's or USI's, as applicable, of the blades for cracks and evidence of corrosion, alternating at intervals not to exceed 250 FH since the last inspection.

(v) Remove from service centrifugal compressor intake wheels found cracked and replace with serviceable parts.

(2) For centrifugal compressor intake wheels that, upon the effective date of this AD, have been operated for less than or equal to 250 FH since the last inspection of the blades, do the following:

(i) Perform an initial borescope inspection of the blades for evidence of corrosion prior to accumulating 250 FH since the last inspection of the blades in accordance with paragraph 2.B.(1) of the SB.

(ii) If corrosion is found, perform an ECI or USI, as applicable, of the blades for cracks, and, if necessary, replace with serviceable parts, within 50 FH after the borescope inspection performed in accordance with paragraph 2.B.(3) of the SB.

(iii) If corrosion is not found, perform an ECI or USI, as applicable, of the blades for cracks, and, if necessary, replace with serviceable parts, within 250 FH after the borescope inspection performed in accordance with paragraph (b)(2)(i) of this AD.

(iv) Thereafter, perform borescope inspections and ECI's or USI's, as applicable, of the blades for cracks and evidence of corrosion, alternating at intervals not to exceed 250 FH since the last inspection.

Note 2: Alternating intervals means that if the last inspection was an ECI or a USI, the next inspection will be a borescope inspection. If the last inspection was a borescope inspection, the next 250 FH inspection will be an ECI or a USI as applicable.

(v) Remove from service centrifugal compressor intake wheels found cracked and replace with servicesable parts.

(c) For engines not modified to TU 197 but have been modified to TU 191 or TU 224 standard, that have been operated for more than 1,000 flight hours since the last inspection of the blades, do the following in accordance with Turbomeca Turmo IV SB 249 72 0100, Update 4, dated January 25, 2000:

(1) Perform an initial ECI or USI, as applicable, of the blades for cracks, in accordance with paragraph 2.B.(3) of the SB, within the next 50 FH, or 6 months after the effective date of this AD, whichever occurs first.

(2) Thereafter, inspect at intervals not to exceed 1,000 FH.

(3) Remove from service centrifugal compressor intake wheels found cracked, and replace with a serviceable part

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Note 4: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive AD97–122(B), dated May 21, 1997.

Issued in Burlington, Massachusetts, on November 21, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–30351 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Model RB211–22B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) model RB211–22B turbofan engines with intermediate pressure (IP) compressor stage 6 to 7 rotor shaft assembly part number (P/N) UL37094 installed. This proposal would require removal from service of IP compressor stage 6 to 7 rotor shaft assemblies P/N UL37094 before reaching newly reduced life limits. This proposal is prompted by the discovery of corrosion during inspection and analysis of IP compressor stage 6 to 7 rotor shaft assemblies returned from the field. The actions specified by the proposed AD are intended to prevent corrosion-induced cracking of the IP compressor stage 6 to 7 rotor shaft assembly, resulting in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by January 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

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Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–10—AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The manufacturer has recently analyzed the conditions of some IP compressor stage 6 to 7 rotor shaft assemblies, P/N 37094, that were returned from the field, and has determined that rotor shafts of this part number are unable to achieve currently published life limits. This is due to the potential for corrosion-induced cracking to occur at these published life limits. As a result of this analysis, new lower life limits have been assigned to this P/N IP compressor stage 6 to 7 rotor shaft assembly. This condition, if not corrected, could result in corrosion-induced cracking of the IP compressor stage 6 to 7 rotor shaft assembly, resulting in an uncontained engine failure and damage to the airplane.

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other RR model RB211–22B turbofan engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require removing from service IP compressor stage 6 to 7 rotor shaft assemblies, P/N UL37094, before reaching new reduced life limits. The life limits are established based on whether or not the engine has incorporated service bulletin (SB) RR SB 72–8700. That SB increases the engine thrust rating.

Economic Analysis

The FAA estimates that one engine installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that no additional labor cost will be incurred to remove the affected part, which will be at time of engine shop visit. Required parts would cost approximately $33,150 per engine, based on a part life reduction estimate. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $33,150.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2002–NE–10–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce (RR) model RB211–22B turbofan engines with intermediate pressure (IP) compressor stage 6 to 7 rotor shaft assembly part number (P/N) UL37094 installed. These engines are installed on, but not limited to Lockheed Martin L1011 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance:

Compliance with this AD is required as indicated, unless already done.

To prevent corrosion-induced cracking of the IP compressor stage 6 to 7 rotor shaft assembly, resulting in an uncontained engine failure and damage to the airplane, do the following:

(a) For engines that have not incorporated RR service bulletin (SB) 72–8700, remove IP compressor stage 6 to 7 rotor shaft assemblies from service before accumulating 13,500 cycles-since-new (CSN).

(b) For engines that have incorporated RR service bulletin (SB) 72–8700, remove IP compressor stage 6 to 7 rotor shaft assemblies from service before accumulating 12,980 cycles-since-new (CSN).

(c) After the effective date of this AD, do not install any IP compressor stage 6 to 7 rotor shaft assembly, P/N UL37094, that has accumulated the CSN specified in paragraph (a) or (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on November 20, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–30350 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747–400, 747–400D, 747–400F, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections for cracking of the forward end clevis lugs of the flap track, and replacement of the flap track with a new flap track, if necessary. That AD also provides for an optional modification of the forward end clevis lugs, which terminates the required inspections. This action would expand the applicability of the existing AD, and would require new repetitive inspections for evidence of rotation or migration of the bushings or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, and corrective actions if necessary. This action also would require an eventual terminating action. This action is necessary to prevent cracking and fracture of the forward end clevis of the flap track, which could result in reduced structural capability of the flap and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–55–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–55–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has previously issued AD 90–24–09, amendment 39–6815 (55 FR 48228, November 20, 1990), applicable to certain Boeing Model 747 series airplanes. That AD requires inspections of the forward end clevis lugs of the flap track, and replacement of the flap track with a new flap track, if necessary. That AD also provides for an optional modification of the forward end clevis lugs, which terminates the required inspections. That action was prompted by reports of cracked or failed clevis lugs on two flap tracks. The requirements of that AD are intended to prevent separation of the wing trailing edge flap track from the airplane and reduction in the controllability of the airplane.

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Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received many reports of rotated and migrated bushings of the forward end clevis of the flap tracks that support the wing trailing edge flaps. Rotation and migration of the bushings has been attributed to insufficient interference fit. These findings occurred on airplanes not included in the applicability of the existing AD. In some cases, the rotation or migration of bushings resulted in stress corrosion cracking and fracture of the forward end clevis. This condition, if not corrected, could result in reduced structural capability of the flap and reduced controllability of the airplane.

Explanation of Relevant Service Information

The existing AD refers to Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990, as the applicable source of service information for the actions required by that AD. Since the issuance of the existing AD, the FAA has reviewed and approved Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002. That service bulletin replaces Boeing Service Bulletin 747–57–2231, and describes actions similar to those in Boeing Service Bulletin 747–57–2231, Revision 2, as described below. Modification of the forward end clevis lugs as described in Boeing Service Bulletin 747–57–2231, Revision 2, eliminates the need to do the actions in Boeing Service Bulletin 747–57–2307, Revision 1.

Boeing Service Bulletin 747–57–2307, Revision 1, describes procedures for repetitive detailed inspections for evidence of rotation or migration of the bushings or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, and corrective actions if necessary. Evidence of migration or rotation of the bushings includes cracked or missing sealant around the bushing flange, or a gap between the bushing flange and the lug face. If migration or rotation of the bushings is found, but there is no cracking of the lugs, corrective actions include application of corrosion-inhibiting compound to the area around the flanged and shank ends of the migrated or rotated bushings, and repetitive inspections at a reduced interval. If any cracking is found, corrective actions involve replacement of the flap track with a new track. Replacement with a new track having certain part numbers eliminates the need for the repetitive inspections described previously for the replaced track.

The service bulletin also describes procedures for a terminating modification/replacement of the bushings of the forward end clevis with new bushings with a higher interference fit (including machining, performing magnetic particle inspections, and applying cadmium plating to the clevis bore and bushing). If migration or rotation of the bushings is found, but there is no cracking of the lugs, it may be necessary to do this terminating modification before further flight or at a reduced compliance time, depending on what group the airplane is listed in. The service bulletin recommends eventually doing this terminating modification on any forward end clevis for which the flap track is not replaced with a new flap track with certain part numbers, or on which the modification described in Boeing Service Bulletin 747–57–2231, Revision 2, has not been done. Doing the terminating modification eliminates the need for the repetitive inspections described previously.

Doing the actions specified in Boeing Service Bulletin 747–57–2307, Revision 1, is intended to adequately address the identified unsafe condition.

Explanation of Change to Requirements of Existing AD

Paragraph (a) of the existing AD requires visual inspections of the forward end clevis lugs of the flap tracks for cracking. Under the heading "Restatement of Requirements of AD 90–24–09," we have revised paragraph (a) of this proposed AD to specify that the required inspection is considered to be a "detailed" inspection. Note 2 of this proposed AD defines such an inspection.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–24–09 to continue to require inspections of the forward end clevis lugs of the flap track, and replacement of the flap track with a new flap track, if necessary. The proposed AD also would require the actions specified in Boeing Service Bulletin 747–57–2307, Revision 1, described previously, except as discussed below. Doing a modification according to Boeing Service Bulletin 747–57–2231, Revision 2; or Boeing Service Bulletin 747–57–2307, Revision 1; would terminate the requirements of this proposed AD.

Difference Between Proposed AD and Service Bulletin

Certain compliance times in the proposed AD would differ from those specified in Boeing Service Bulletin 747–57–2307, Revision 1, as explained below.

For certain airplanes not inspected previously, the service bulletin specifies an inspection threshold of 8 years after airplane delivery or 30,000 [total] flight hours, whichever occurs sooner. However, for these same airplanes, paragraph (e)(2)(i) of this proposed AD specifies an inspection threshold of 8 years after the earlier of the date of issuance of the ORIGINAL Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness. This decision is based on our determination that "date of delivery" may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

For airplanes not inspected previously that are near or over the threshold specified above, the service bulletin specifies a compliance time of 300 or 1,200 flight cycles after the issue date of the service bulletin, depending on the airplane's configuration. However, for all airplanes not inspected previously, paragraph (e)(2)(ii) of the proposed AD specifies a compliance time of the earlier of 300 flight cycles or 120 days after the effective date of the AD. This decision is based on new data received by the FAA that indicate that inspecting within 1,200 flight cycles may not provide an adequate level of safety. In light of these new data, we find a compliance time of 300 flight cycles or 120 days after the effective date of the AD, whichever occurs first, for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 1,002 airplanes of the affected design in the worldwide fleet. The FAA estimates that 219 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 90–24–09 take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $120 per airplane, per inspection cycle.

The new inspections that are proposed in this AD action would take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the newly proposed inspections on U.S. operators is estimated to be $26,280, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6815 (55 FR 48228, November 20, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–55–AD. Supersedes AD 90–24–09, Amendment 39–6815.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes; as listed in Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and fracture of the forward end clevis of the flap track, which could result in reduced structural capability of the flap and reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 90–24–09

Initial Inspection

(a) For airplanes listed in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990: Perform a detailed inspection of the forward end clevis lugs of the flap tracks for evidence of cracking, according to Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990, and according to the following schedule:

(1) For airplanes listed in Group 1 in the service bulletin: Perform the inspection at flap track positions 1 through 8 within the next 30 days after December 5, 1990 (the effective date of AD 90–24–09, amendment 39–6815).

(2) For airplanes listed in Group 2 in the service bulletin: Perform the inspection at flap track positions 1, 2, 7, and 8 prior to the later of the following:

(i) Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

(ii) Within 120 days after December 5, 1990.

(3) For airplanes listed in Group 3 in the service bulletin: Perform the inspection at flap track positions 1 through 8 prior to the later of the following:

(i) Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

(ii) Within 120 days after December 5, 1990.

Flap Track Replacement

(b) If cracking is found during any inspection required by paragraph (a) of this AD, replace the flap track prior to further flight, according to Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990.

Repetitive Inspections

(c) If no cracking is found during any inspection required by paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 300 flight cycles for Group 1 airplanes, and 1,200 flight cycles for Group 2 and Group 3 airplanes, until paragraph (d), (e), or (i) of this AD has been done.

Optional Terminating Action

(d) For airplanes listed in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990: Accomplishment of the modification of the forward end clevis lugs of the flap tracks as specified in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990, constitutes terminating action for the requirements of paragraphs (a), (c), (e), and (i) of this AD.

New Requirements of this AD

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Detailed Inspections

(e) At the applicable compliance time specified in paragraph (e)(1) or (e)(2) of this AD, perform detailed inspections for evidence of rotation or migration of the bushings (including cracked or missing sealant around the bushing flange, or a gap between the bushing flange and the lug face) or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, according to Part 1 of the Work Instructions in Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002.

(1) For airplanes inspected before the effective date of this AD according to paragraph (a) of this AD: Do the inspection in paragraph (e) of this AD at the time specified in paragraph (e)(1)(i) or (e)(1)(ii) of this AD, as applicable. Doing this inspection terminates the requirements of paragraph (c) of this AD.

(i) For airplanes listed in Group 1 of Boeing Service Bulletin 747–57–2231, Revision 2:

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Inspect within 300 flight cycles after the most recent inspection per paragraph (a) or (c) of this AD.

(ii) For airplanes listed in Group 2 or 3 of Boeing Service Bulletin 747–57–2231, Revision 2: Inspect within 1,200 flight cycles after the most recent inspection per paragraph (a) or (c) of this AD.

(2) For airplanes NOT inspected before the effective date of this AD according to paragraph (a) of this AD: Do the inspection in paragraph (e) of this AD at the time specified in paragraph (e)(2)(i) or (e)(2)(ii) of this AD, whichever occurs later. This terminates the requirement to do paragraph (a) of this AD.

(i) Within 8 years after the EARLIER of the date of issuance of the ORIGINAL Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, or before the accumulation of 30,000 total flight hours, whichever occurs first.

(ii) Within 300 flight cycles or 120 days after the effective date of this AD, whichever occurs first.

Repetitive Inspections

(f) If no evidence of migration or rotation of the bushings or cracking of the lugs is found during the inspection required by paragraph (e) of this AD: Repeat the inspections at the applicable repetitive interval specified in Figure 1 of Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002, until paragraph (d) or (i) of this AD has been done.

Corrective Actions and Repetitive Inspections

(g) If evidence of migration or rotation of the bushings is found during any inspection required by paragraph (e) or (f) of this AD, but NO cracking is found: Do paragraph (g)(1) or (g)(2) of this AD, as applicable, according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002.

(1) For airplanes listed in Group 1 in the service bulletin and flap track numbers 3 and 6 on airplanes listed in Group 2 of the service bulletin: Before further flight, do the terminating modification in paragraph (i) of this AD, as specified in paragraph (i)(2) of this AD.

(2) For airplanes other than those identified in paragraph (g)(1) of this AD: Before further flight, apply corrosion-inhibiting compound according to the service bulletin, and do paragraphs (g)(2)(i) and (g)(2)(ii) of this AD at the intervals specified in those paragraphs, until paragraph (d) or (i) of this AD is done. Do paragraph (i) of this AD at the applicable time specified in paragraph (i)(2) of this AD.

(i) Repeat the inspections in paragraph (e) of this AD at the intervals specified in Figure 1 of the service bulletin.

(ii) Apply corrosion-inhibiting compound according to the service bulletin at intervals not to exceed 200 flight cycles.

Replacement of Flap Track

(h) If any cracking is found during any inspection required by paragraph (e), (f), or (g)(2)(i) of this AD: Before further flight, replace the cracked flap track with a new flap track, according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002. Replacement with a new flap track having a part number listed in the "New Part Number" column of the table under paragraph 2.E. of the service bulletin constitutes terminating action for the requirements of this AD for the replaced track.

Terminating Modification

(i) At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Do all actions (including but not limited to machining, performing magnetic particle inspections, and applying cadmium plating to the clevis bore and bushing) associated with replacing the bushings of the forward end clevis with new bushings with a higher interference fit on flap tracks 1, 2, 3, 4, 5, 6, 7, and 8; as applicable; according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002. This replacement terminates the requirements of this AD.

(1) If no evidence of migration or rotation of the bushings or cracking of the lugs is found during any inspection required by paragraph (e) or (f) of this AD: Do the replacement within 8 years after the effective date of this AD.

(2) If any evidence of bushing migration or rotation is found during any inspection required by paragraph (e) or (f) of this AD: Do the replacement at the applicable time specified in Figure 1 of the service bulletin.

Credit for Actions According to Previous Revision of Service Bulletin

(j) Inspections, corrective actions, and terminating action done before the effective date of this AD according to Boeing Service Bulletin 747–57–2307, dated July 29, 1999, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(k)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously according to AD 90–24–09, amendment 39–6815, are approved as alternative methods of compliance with paragraphs (a), (b), (c), and (d) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 21, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30349 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–326–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–400, –500, –600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–400, –500, –600, –700, and –800 series airplanes. This proposal would require modification of the wiring to the windshield wiper motors in the flight compartment and nose wheel well areas. For certain airplanes, this proposal also provides for optional replacement of the windshield wiper motor/converters in the flight compartment. This action is necessary to prevent a reduction in flight crew visibility due to stalled wiper motors during heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–326–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–326–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue–by–issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA–public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self–addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–326–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–326–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of windshield motors stalling during flight on certain Boeing Model 737 series airplanes. In a number of incidents, the windshield wipers of both the pilot and first officer stalled. Stalling of the wiper motors was attributed to inadequate torque, caused by insufficient electrical current to the motor due to undersized wires to the windshield wiper motors. In addition, there have been reports of loss of windshield wiper blade load, which can lead to flutter of the windshield wiper arm and inability to clear the windshield. Such conditions could result in a reduction in flight crew visibility during heavy precipitation and a period of substantial crew workload, and consequent damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletins 737–30A1049, dated June 1, 2000 (for Model 737–600, –700, and –800 series airplanes); and 737–30A1052, dated October 12, 2000 (for Model 737–400 and –500 series airplanes). The service bulletins describe procedures for modification of the wiring to the windshield wiper motor in the flight compartment and nose wheel well areas, as applicable. The modification specified in service bulletin 737–30A1049 includes changing wire bundles W0018, W2108, W2208, W2653, and W5506 in the flight compartment, and W2175 and W5506 above the nose wheel well area; reducing the blade force of the windshield wipers to between 3.5 and 4.5 pounds; and doing an operational test of the windshield wiper system. The modification specified in Service Bulletin 737–30A1052 includes changing wire bundles W0018, W0036, W0504, and W0544 in the flight compartment; reducing the blade force of the windshield wipers to between 3.5 and 4.5 pounds; and doing an operational test of the windshield wiper system.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

We also have reviewed and approved Boeing Service Bulletin 737–30–1054, dated May 9, 2002 (for Model 737–600, –700, –700C, –800, and –900 series airplanes). The service bulletin describes procedures for replacing the windshield wiper motor/converters in the flight compartment; increasing the blade force of the windshield wipers to between 6.5 and 7.5 pounds; and doing an operational test of the windshield wiper system. Replacement of the motor/converters will support an increase in blade load, which will eliminate the flutter of the windshield wiper arms. The service bulletin recommends prior or concurrent accomplishment of Service Bulletin 737–30A1049.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the wiring to the windshield wiper motors in the flight compartment and nose wheel well areas. For certain airplanes, this proposal also provides for optional replacement of the windshield wiper motor/converters in the flight compartment. The modification would be required to be accomplished in accordance with Service Bulletins 737–30A1049, and 737–30A1052, as applicable, except as discussed below.

Differences Between Proposed AD and Service Information

The Boeing service bulletins listed below differ from the proposed AD in the compliance times specified for accomplishment of the proposed modification.

- 737–30A1052 recommends that the modification of the wiring to the windshield wiper motors be done as soon as manpower and facilities are available.
- 737–30A1049 recommends that the modification of the left-side wiring be done within 90 days of receipt of the service bulletin, and the modification of the right-side wiring at the next 5,000-hour maintenance interval.

We find that we must ensure that the necessary modification is completed in a timely manner. Therefore, this proposed AD would require modification of the windshield wiper motors within 18 months after the effective date of this AD.

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Cost Impact

There are approximately 483 airplanes of the affected design in the worldwide fleet. The FAA estimates that 162 Model 737–600, –700, and –800 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 15 work hours per airplane to accomplish the proposed wiring modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $145,800, or $900 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to do the replacement of the wiper motor/converters, it would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Parts cost would be minimal. Based on these figures, the cost impact of the replacement proposed by this AD is estimated to be $180 per airplane.

Currently, there are no affected Model 737–400 or –500 series airplanes on the U.S. Register. However, should an airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of this proposed modification would be $1,200 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–326–AD.

Applicability: Model 737–400 and –500 series airplanes as listed in Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000; and Model 737–600, –700, and –800 series airplanes as listed in Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduction in flight crew visibility due to stalled wiper motors during heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing; accomplish the following:

Modification

(a) For all airplanes, within 18 months after the effective date of this AD: Modify the wiring to the left and right windshield wiper motors in the flight compartment and nose wheel well areas, as applicable (including changing certain wire bundles, reducing the windshield wiper blade force to between 3.5 and 4.5 pounds, and doing an operational test of the windshield wiper system), per Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000 (for Model 737–400 and –500 series airplanes); or Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000 (for Model 737–600, –700, and –800 series airplanes); as applicable.

Optional Replacement

(b) For Model 737–600, –700, and –800 series airplanes: Replace the left and right windshield wiper motor/converters in the flight compartment (including increasing the blade force of the windshield wipers to between 6.5 and 7.5 pounds; and doing an operational test of the windshield wiper system), per Boeing Service Bulletin 737–30–1054, dated May 9, 2002. Paragraph (a) of this AD must be done prior to or concurrent with this paragraph. Replacement of the motor/converters will support an increase in blade load, which will eliminate the flutter of the windshield wiper arms.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30348 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –106 Airplanes; Model DHC–8–201 and –202 Airplanes; and Model DHC–8–301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier airplanes. This proposal would require replacement of the elevator stop bumpers of the horizontal stabilizer with new bumpers. This action is necessary to prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–109–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–109–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an elevator trim problem was detected on a Model DHC–8–100 series airplane due to a broken or missing elevator stop bumper. Investigation revealed that the damaged elevator was bent into the elevator spring tab, which resulted in the trim problem. Further investigation revealed that a broken or missing elevator stop bumper could lead to elevator over-travel and damage to the elevator trailing edge if the elevator impacts the top portion of the rudder. The damaged elevator could then cause the spring tab to jam.

As a result of these findings, we informed Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, that an unsafe condition may exist on Bombardier Model DHC–8 series airplanes. The subject components on certain Bombardier Model DHC–8–200 and –300 series airplanes are identical to those on the affected Model DHC–8–100 series airplane. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

Bombardier has issued service information that describes procedures for replacing the left and right upper and lower elevator stop bumpers. The following table lists the service information for the specified airplane models:

Model DHC–8 series airplanes—	Product support manuals (PSMs)—	de Havilland Inc. Temporary Revisions (TRs), Task Nos. 2730/22, all dated November 6, 2000, of the Airworthiness Limitations Lists (AWLs) of the DHC–8 Maintenance Program Manual—
–100	PSM 1–8–7	TR AWL–77
–200	PSM 1–82–7	TR AWL 2–20
–300	PSM 1–83–7	TR AWL 3–84

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Accomplishment of the actions specified in the service information is intended to adequately address the identified unsafe condition.

TCCA classified this service information as mandatory and issued Canadian airworthiness directive CF–2001–08, dated February 7, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described previously. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Between the Proposed Rule and Canadian AD/Service Information

Operators should note the following differences:

- Although the Canadian airworthiness directive includes Bombardier Model DHC–8–314 airplanes, the applicability of this proposed rule does not include that airplane model, because it is not included on the most recent type certificate data sheet for the affected models. In addition, TCCA has confirmed that Model DHC–8–314 airplanes are not certified for operation in the United States.
- The Canadian airworthiness directive only specifies "replacing" the elevator stop bumpers, and the procedures in the previously referenced TRs only specify "discarding" the bumpers. However, we have determined that it is necessary for this proposed rule to require replacement of the elevator stop bumpers with new bumpers. After contacting TCCA regarding this, they have agreed that it is appropriate to specify replacement with a new bumper, provided that it has the same part number as the existing bumper. Paragraph (a) of this proposed rule specifies such replacement action.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 195 Bombardier Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; and Model DHC–8–301, –311, and –315 airplanes; of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $23,400, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2001–NM–109–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 and subsequent.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) At the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, and thereafter at intervals not to exceed 12,000 flight hours or 5 years since the last replacement, whichever occurs earlier, replace the left and right upper and lower elevator stop bumpers of the horizontal stabilizer with new bumpers having the same part numbers as the existing bumpers, per the applicable service information listed in the following table:

Model DHC–8 series airplanes—	Product support manuals (PSMs)—	de Havilland Inc. temporary revisions (TRs), task Nos. 2730/22, all dated November 6, 2000, of the airplanes limitations lists (AWLs) of the DHC–8 maintenance program manual—
–100	PSM 1–8–7	TR AWL–77
–200	PSM 1–82–7	TR AWL 2–20
–300	PSM 1–83–7	TR AWL 3–84

(1) For airplanes that have accumulated 11,000 total flight hours or fewer as of the effective date of this AD: Prior to the accumulation of 12,000 total flight hours or within 5 years after the effective date of this AD, whichever occurs earlier.

(2) For airplanes that have accumulated more than 11,000 total flight hours as of the effective date of this AD: Within 1,000 flight hours or 6 months after the effective date of this AD, whichever occurs earlier.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–08, dated February 7, 2001.

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30347 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–18–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP and 800 (Including Variant U–125A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP and 800 (including variant U–125A) airplanes. This proposal would require a one-time inspection to identify the bolts installed at certain locations in the wing or fuselage, and corrective actions if necessary. This action is necessary to prevent failure of certain attachment bolts due to manufacturing discrepancies, which could result in reduced structural integrity of the airplane, and loss of system function for flaps, controls, and landing gear. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–18–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Senior Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.

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2001–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of broken bolts found in the wing and fuselage of certain Hawker Model 800XP and 800 (including variant U–125A) airplanes. Investigation revealed inadequate control of the heat treat process during manufacture of the subject bolts. This resulted in an increased sensitivity to hydrogen embrittlement when electro-deposited cadmium plating was applied to the bolts. A bolt that incurs damage (hydrogen embrittlement) during manufacture will break in a short time after installation because of the bolt's installation preload. Intact (nonbroken) bolts currently installed on affected airplanes are considered adequate to carry the design loads. However, broken bolts could result in reduced structural integrity of the airplane, and the loss of the systems for flaps, controls, and landing gear.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletins SB 51–3408, dated October 2000, and SB 51–3426, Revision 1, dated November 2001 (for Model Hawker 800XP airplanes); and SB 51–3421, Revision 1, dated November 2001 (for Model Hawker 800 (including variant U–125A) airplanes). The service bulletins describe procedures for a one-time inspection to identify any Ravenstone Jackson DHS bolts installed at certain locations in the wing and fuselage, a one-time ultrasonic inspection of those bolts to detect breakage, and replacement of any broken bolt with an acceptable new bolt identified in the service bulletins. Accomplishment of the actions specified in the applicable service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously. The proposed AD would also require that operators report inspection findings of broken bolts to the FAA.

Cost Impact

There are approximately 104 airplanes of the affected design in the worldwide fleet. The FAA estimates that 76 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 44 or 600 work hours per airplane (depending on configuration) to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,640 or $36,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, the FAA has been advised that the actions specified in this proposed AD have already been accomplished on a number of airplanes that are subject to this AD. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be reduced. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company: Docket 2001–NM–18–AD.

Applicability: Model Hawker 800XP and 800 (including variant U–125A) airplanes, certificated in any category, serial numbers 258287 through 258390, excluding the following serial numbers:

258289
258291
258292
258293
258294
258295
258301
258303
258310
258312
258313
258315
258321
258336
258343

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain attachment bolts due to manufacturing discrepancies, which could result in reduced structural integrity of the airplane, and loss of system function for flaps, controls, and landing gear, accomplish the following:

Inspection for Ravenstone Jackson Bolts

(a) Perform a general visual inspection to identify the type of bolts installed at specified locations of the wing and fuselage, in accordance with paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5), as applicable, of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) For Model Hawker 800XP airplanes identified in the effectivity of Raytheon Service Bulletin SB 51–3408, dated October 2000: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin.

(2) For Model Hawker 800XP airplanes identified in the effectivity of Raytheon Service Bulletin SB 51–3426, Revision 1, dated November 2001: Inspect within 18 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3426, dated December 2000, is acceptable for compliance with the inspection requirements only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

(3) For Model Hawker 800 (including variant U–125A) airplanes identified as Group A airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, dated December 2000, is acceptable for compliance with this inspection requirement for Group A airplanes.

(4) For Model Hawker 800 (including variant U–125A) airplanes identified as Group B airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001: Inspect within 18 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, dated December 2000, is acceptable for compliance with the inspection requirement only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

(5) For Model Hawker 800 (including variant U–125A) airplanes identified as Group C airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, dated December 2000, is acceptable for compliance with the inspection requirement only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

Inspection for Broken Bolts

(b) For any discrepant bolt (any Ravenstone Jackson DHS bolt or any bolt that cannot be identified) found during the inspection required by paragraph (a) of this AD: Before further flight following detection of the discrepant bolt, perform an ultrasonic inspection to determine if the bolt is broken, in accordance with the applicable service bulletin identified in paragraph (a) of this AD. Replace any broken bolt with a new bolt before further flight, in accordance with the applicable service bulletin.

Reporting Requirement

(c) If any broken bolt is found during the inspection specified in paragraph (b) of this AD: Send an inspection report at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD to the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; fax (316) 946–4407. The report must include the inspection results, a description of all discrepancies found, and the airplane serial number. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

Part Installation

(d) As of the effective date of this AD, no person may install on any airplane a Ravenstone Jackson DHS bolt having a batch number identified in paragraph 3.B. of Raytheon Service Bulletin SB 51–3426, Revision 1, dated November 2001; paragraph 3.A. Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001; or paragraph 2.B. of Raytheon Service Bulletin SB 51–3408, dated October 2000.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 22, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30346 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–27]

Proposed Establishment of Class D Airspace; Shaw AFB, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Shaw AFB, SC. Shaw Radar Approach Control (RAPCON) is closed daily from 0330 UTC to 1100 UTC. Shaw AFB Airport Traffic Control Tower (ATCT) is open continuously. Therefore, when the RAPCON is closed Class D airspace must be established for the ATCT. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the airport.

DATES: Comments must be received on or before January 2, 2003.

ADDRESSES: Send comments to the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–27, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

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The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive pubic contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Shaw AFB, SC. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Shaw AFB, SC [NEW]

Shaw AFB, SC
(Lat. 33°58′23″ N, long. 80°28′22″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the Shaw AFB, excluding that airspace contained within Restricted Area R–6002 when it is in use. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30328 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–16]

Proposed Establishment of Class E Airspace, Richfield, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Richfield Municipal Airport, Richfield, UT. A newly developed Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) at the Richfield Municipal Airport has made this action necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Richfield Municipal Airport, Richfield, UT.

DATES: Comments must be received on or before January 16, 2003.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ANM–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA NPRM proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace around Richfield Municipal Airport at Richfield, UT. A Newly developed RNAV approach procedure at the Richfield Municipal Airport has made this proposal necessary because aircraft using RNAV require additional airspace to complete the maneuver. This proposal would promote safe flight operations under IFR at the Richfield Municipal Airport and between the terminal and en route transition stages.

This new RNAV SIAP and the area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9k, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700-feet or More Above the Surface of the Earth

* * * * *

ANM UT E5 Richfield, UT [New]

Richfield Municipal Airport, UT
(Lat. 38°44′11″N., long. 112°05′56″W.)

That airspace extending upward from 700-feet above the surface within the 7.5-mile radius of the Richfield Municipal Airport; and that airspace extending upward from 1,200-feet above the surface bounded by a line beginning at lat. 39°24′30″N., long, 112°27′41″W.; to lat. 39°16′00″N., long. 112°00′00″W.; to lat. 39°42′00″N., long. 110°54′00″W.; to lat. 39°42′00″N., long. 110°54′00″W.; to lat. 39°27′00″N., long. 110°46′00″W.; to lat. 39°03′00″N., long. 111°30′00″W., to lat. 38°32′00″N., long. 110°42′00″W.; to lat. 38°20′00″N., long. 110°48′00″W., to lat. 38°52′00″N., long. 111°47′00″W., to lat. 38°16′40″N., long. 112°36′40″W., to lat. 38°29′00″N., long. 112°53′00″W., to lat. 39°11′30″N., long. 112°34′00″W.; thence to the point of origin; and excluding that airspace within Federal airways and the Price, UT, Huntington, UT, Milford, UT, and Delta, UT Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on November 20, 2002.

Raul C. Trevino,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–30327 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–12]

Proposed Establishment of Class E Airspace; Moundridge, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Moundridge, KS. An Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17 ORIGINAL Standard Instrument Approach Procedure (SIAP) and an RNAV (GPS) RWY 35 ORIGINAL SIAP have been

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developed to serve Moundridge Municipal Airport, Moundridge, KS. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing these approaches.

DATES: Comments for inclusion in the Rules Docket must be received on or before February 15, 2003.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket Number 02–ACE–12, Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ACE–12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Central Region, Room 506, DOT Regional Headquarters Building, 901 Locust, Kansas City, MO 64106, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, 901 Locust, Kansas City, MO 64106. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Moundridge, KS by creating controlled airspace for Moundridge Municipal Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designated as extending upward from 700 feet above the surface of the earth listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraphs 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Moundridge, KS

Moundridge Municipal Airport, KS
(Lat. 38°12'25" N., long. 97°30'11" W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5-mile radius of Moundridge Municipal Airport.

* * * * *

Issued in Kansas City, MO, on November 15, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 02–30334 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

Customs Service Field Organization; Fargo, North Dakota

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to Customs field organization by establishing a new port of entry at Fargo, North Dakota. The new port of entry would include Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which is currently operated as a user-fee airport, and a portion of Clay County in Minnesota. This change will assist the Customs Service in its continuing efforts to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before January 31, 2003.

ADDRESSES: Written comments may be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Richard L. Balaban, Mission Support, Office of Field Operations, (202) 927–0031.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing efforts to provide better service to carriers, importers, and the general public, Customs is proposing to amend § 101.3(b)(1) of the Customs Regulations (19 CFR 101.3(b)(1)) by establishing a new port of entry at Fargo, North Dakota. The new port of entry would include Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which currently operates and is listed as a user-fee airport at § 122.15(b) of the Customs Regulations (19 CFR 122.15(b)). A portion of Clay County in Minnesota would also be part of the proposed port. This proposed change of status for Hector International Airport from a user fee airport to being included within the boundaries of a port of entry would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

Port of Entry Criteria

The criteria considered by Customs in determining whether to establish a port of entry are found in T.D. 82–37 (47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328). Under these criteria, Customs will evaluate whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service at an existing location. Specifically, Customs will consider if the proposed port of entry location can:

(1) Demonstrate that the benefits to be derived justify the Federal Government expense involved;

(2) Except in the case of land border ports, be serviced by at least two major modes of transportation (rail, air, water, or highway); and

(3) Except in the case of land border ports, have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius).

In addition, at least one of the following actual or potential workload criteria (minimum number of transactions per year) must be met in the area to be serviced by the proposed port of entry:

(1) 15,000 international air passengers;

(2) 2,500 (formal) consumption entries, with the applicant location committing to optimal use of electronic data input means to permit integration with any Customs system for electronic processing of entries, with no more than half of the 2,500 entries being attributed to one private party;

(3) For land border ports, 150,000 vehicles;

(4) 2,000 scheduled international aircraft arrivals (passengers and/or crew);

(5) 350 cargo vessel arrivals; or

(6) Any appropriate combination of the above.

Finally, facilities at the proposed port of entry must include, where appropriate, wharfage and anchorage adequate for oceangoing vessels in the case of a water port, cargo and passenger facilities, warehouse space for the secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas, and other space as necessary for regular Customs operations.

In certain cases, where the potential workload at a given location shows pronounced growth, Customs will consider granting conditional port-of-entry status to the location, pending further review of the actual workload generated within the new port of entry. See T.D. 96–3 and 97–64.

Fargo's Workload Statistics

The proposal in this document to establish Fargo, North Dakota as a port of entry is based on Customs analysis of the following information:

1. Fargo is serviced by three modes of transportation:

(a) Rail (the Burlington Northern Santa Fe railroad);

(b) air (at Hector International Airport, two passenger carriers (Northwest and United Express) and five courier-delivery carriers (Air Bourne Express, Corporate Express, DHL, FED EX, and UPS); and

(c) highway (two U.S. interstate highways: I–29 and I–94);

2. The Fargo, North Dakota area has a population of approximately 175,000, with the potential to increase even further;

3. Regarding the five actual or potential workload criteria:

(a) Hector International Airport had 2,911 international air passengers for FY 2001, an increase of 61% over FY 2000;

(b) Hector International Airport had 151 formal consumption entries for FY 2001, with no single company accounting for more than half of the projected entries; and

(c) Hector International Airport had 814 scheduled international aircraft arrivals for FY 2001, an increase of 65% over FY 2000.

Customs believes that significant benefits would be provided to the North Dakota business community by creating a port of entry at Fargo and that the cost of providing the services of one full-time and one part-time Customs official would be minimal to the Federal Government.

Customs believes that the Fargo-area community is committed to making optimal use of electronic data transfer capability to permit integration with the Customs Automated Commercial System for processing entries. In addition, Customs has been informed that the Fargo-area community is developing adequate cargo and passenger facilities, that passenger areas can be secured to accommodate international arrival passenger clearance, and that there are several warehouse facilities in close proximity to Hector International Airport that are being developed for the secure storage of cargo pending inspection and release by Customs. The Fargo-area community is also committed to providing administrative office space, inspection areas, storage areas, and other space necessary for regular Customs operations and will also furnish the Customs office with necessary communications equipment such as a computer, a telephone, a facsimile machine, and computer lines as well as access to photocopiers.

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Conditional Status

Based on the information above and the level and pace of development in the Fargo area, Customs believes that there is sufficient justification for the establishment of Fargo, North Dakota, as a port of entry on a conditional basis. If, after reviewing the public comments, Customs decides to create a port of entry at Fargo and terminate Hector International Airport's designation as a user-fee airport, then Customs will notify the airport of that determination in accordance with the provisions of 19 CFR 122.15(c). However, it is noted that this proposal relies on potential, rather than actual, workload figures. Therefore, even if the proposed port of entry designation is adopted as a final rule, in 1 year Customs will review the actual workload generated within the new port of entry. If that review indicates that the actual workload is below the T.D. 82–37 standards, as amended, procedures may be instituted to revoke the port of entry status. In such case, the airport may reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

Description of Proposed Port of Entry Limits

The geographical limits of the proposed Fargo port of entry would be as follows:

In Cass County, North Dakota: Northern boundary Cass County highway 20, Southern boundary U.S. Interstate 94, Western boundary U.S. Interstate 29

In Clay County, Minnesota: Northern boundary Clay County highway 22, Southern boundary U.S. Interstate 94, Eastern boundary Clay County highway 11

Proposed Amendments

If the proposed port of entry designation is adopted, the list of Customs ports of entry at § 101.3(b)(1) will be amended to add Fargo as a port of entry in North Dakota, and Hector International Airport will be deleted from the list of user-fee airports at § 122.15(b).

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). Further, matters involving agency management and organization are not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

Robert C. Bonner,

Commissioner of Customs.

Approved: November 25, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–30356 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 122 and 123

RIN 1515–AC73

Private Aircraft Programs: Establishment of the General Aviation Telephonic Entry (GATE) Program and Revisions to the Overflight Program

AGENCY: Customs Service, Treasury.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: This document informs the public that Customs has decided to withdraw its proposal to both establish a regulatory framework for the General Aviation Telephonic Entry (GATE) Program and revise the Overflight Program regulations. The withdrawal of the proposed rulemaking is based on Customs reconsideration of all aircraft entry procedures since the events of September 11, 2001.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Tritt, Passenger Processing, Office of Field Operations; telephone (202) 927–4434.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2001, Customs published a document in the **Federal Register** (66 FR 40649) proposing to amend the Customs Regulations pertaining to private aircraft programs. The amendments proposed to establish the General Aviation Telephonic Entry (GATE) Program—a voluntary program that was designed to facilitate Customs processing of certain pre-qualified frequent travelers on pre-registered general aviation aircraft arriving in the United States directly from Canada.

The amendments also proposed to revise certain aspects of the Overflight Program—a voluntary program that exempts certain private aircraft arriving in the continental United States via certain areas south of the United States from the special landing requirement applicable to such aircraft. The proposed revisions of the Overflight Program would have modified the application process to standardize and streamline the information required and provide for centralized processing of requests for overflight privileges.

Comments on the proposed amendment to the Customs Regulations were solicited for 60 days.

Six comments were received in response to this proposal. All of the comments were favorable to the private aircraft programs, but certain clarifications were requested.

The GATE Program had been operated on a test basis and allowed participating aircraft to report its arrival information to Customs telephonically and exempted to some degree participating frequent travelers in compliance with the program's requirements from the general Customs requirements concerning entry into the United States. On September 11, 2001, the GATE Program was indefinitely suspended following the terrorist attacks on the United States. On August 3, 2002, the program was discontinued. Consistent with the discontinuation of the GATE test, Customs has determined not to proceed with establishing the program in the regulations.

Regarding the proposed revisions to the Overflight Program, Customs has carefully considered the comments received and further reviewed the matter. Taking into consideration the enhanced security concerns following the events of September 11, 2001, Customs has concluded that the proposed amendments concerning the Overflight Program must be further revised concerning advance notice of arrival issues. Customs anticipates issuing a new proposal in the near future regarding changes to the Overflight Program. In accordance with the above discussion, Customs is withdrawing the proposal it published August 3, 2001.

Robert C. Bonner,

Commissioner of Customs.

Approved: November 25, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–30357 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–095]

RIN 2115–AE47

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing the notice of proposed rulemaking governing the operation of the Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River at Sea Bright, New Jersey. The bridge repair project for the Monmouth County highway bridge was cancelled. This action withdraws the notice of proposed rulemaking and closes the docket.

ADDRESSES: Documents indicated in this preamble are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION: On July 12, 2001, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (66 FR 36527) entitled Drawbridge Operation Regulations, Shrewsbury River, New Jersey. That NPRM, Coast Guard docket (CGD01–01–095), requested public comment regarding the proposal to temporarily change the drawbridge operation regulations that govern the Monmouth County highway. The purpose of the rulemaking was to facilitate bridge maintenance repairs scheduled to be performed during the winter of 2001–2002. No comments were received in response to the NPRM.

The repair project and proposed temporary operating schedule were subsequently cancelled for 2001–2002, due to unresolved contractual issues between the bridge owner and the contractor.

The bridge owner submitted a new request to the Coast Guard to temporarily change the drawbridge operation regulations for the Monmouth County highway bridge in order to facilitate the bridge maintenance previously scheduled for the winter of 2001–2002.

The Coast Guard published a temporary final rule under a new Coast Guard docket number (CGD01–02–122) on November 6, 2002, (67 FR 67549) entitled Drawbridge Operation Regulations Shrewsbury River, New Jersey, to facilitate the bridge repair work scheduled to be performed during the winter of 2002–2003.

The notice of proposed rulemaking (CGD01–01–095) published on July 12, 2001, is no longer necessary. The notice of proposed rulemaking is withdrawn and the docket is closed.

Dated: November 15, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–30436 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–016]

RIN 2115–AE84

Regulated Navigation Area; Olympic View EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a permanent regulated navigation area on a portion of Commencement Bay, Tacoma, Washington. This regulated navigation area would be used to preserve the integrity of a clean sediment cap placed over the seabed as part of the remediation process at the Olympic View Environmental Protection Agency (EPA) superfund cleanup site. This regulated navigation area would prohibit activities that would disturb the seabed, such as anchoring, dredging, spudding, laying cable or other disturbance of the bottom. It would not affect transit or navigation of the area.

DATES: Comments must reach the Coast Guard on or before January 31, 2003.

ADDRESSES: You may mail comments to U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134, or deliver them to room 523 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (206) 217–6232. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address and times.

FOR FURTHER INFORMATION CONTACT: MST2 C.R. Petersen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names, addresses, identify this rulemaking (CGD13–02–016) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it is determined that the

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opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register**.

Background and Purpose

The Olympic View Superfund Site is located between the eastern boundary of the Thea Foss Waterway and the western boundary of the Middle Waterway of Commencement Bay, Washington. The site includes property owned and or leased by the now closed Puget Sound Plywood Company, contaminated sediments in Commencement Bay, and other upland sources of contamination. The site is approximately 12.4 acres in size and includes 10.6 acres of intertidal and shallow subtidal marine aquatic land. An area of 2.2 acres of marine sediments is contaminated within the site.

Part of the remediation process for this site consists of covering the contaminated sediments with a layer of clean medium to course grained sand approximately one-meter (3-feet) thick. This cap is used to isolate contaminants and limit their vertical migration and release into the water column. The cap will also limit the potential for marine organisms to reach the contaminated sediment.

Discussion of Proposed Rules

This is to be a permanent regulation restricting activities such as anchoring, salvage or dredging, which would disturb the sediment cap covering the contaminated seabed. The regulation would not affect normal transit or navigation of the area. The Olympic View Restoration Area is located offshore of the peninsula between the Thea Foss and Middle Waterways in Commencement Bay, Tacoma, Washington. The sediment cap includes approximately 480 feet of shoreline extending approximately 420 feet into the bay. This area is relatively unprotected and is rarely utilized as an anchorage.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the rule would encompass a small area that should not impact commercial or recreational traffic. The Olympic View Resource Area does not appear to have any viable industrial or commercial use. Moreover, and any land or water use on the site that would be at odds with the regulated navigation area (RNA) would likely be restricted through the site's designation by the City of Tacoma as a Natural Resource Damage Assessment (NRDA) settlement site, pursuant to a Consent Decree between the City of Tacoma and the Natural Resource Trustees. Furthermore, on May 24, 2000, the State Commissioner of Public Lands established the project area as part of an environmental reserve under RCW 79.68.060. This designation removes the site from potential development or commercial leasing. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The zone would not have a significant economic impact due to its small area. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection and copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.1311 to read as follows:

§ 165.1311 Olympic View Resource Area, Tacoma, WA.

(a) *Regulated area.* The following area is a regulated navigation area: that portion of Commencement Bay bounded by a line beginning at: 47°15′40.19753″ N, 122°26′09.27617″ W; thence to 47°15′42.21070″ N, 122°26′10.65290″ W; thence to 47°15′41.84696″ N, 122° 26′11.80062″ W; thence to 47°15′45.57725″ N, 122°26′14.35173″ W; thence to 47°15′53.06020″ N, 122°26′06.61366″ W; thence to 47°15′46.74493″ N, 122°26′09.27617″ W; thence returning along the shoreline to the point of origin. [Datum NAD 1983].

(b) *Regulations.* All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the seabed in the designated regulated navigation area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver.* The Captain of the Port, Puget Sound, upon advice from the U.S. EPA Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if it is determined that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests should be submitted in triplicate, to facilitate review by U.S. EPA, Coast Guard, and Washington State Agencies. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Olympic View Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: November 5, 2002.

E.M. Brown,

Rear Admiral, U.S. Coast Guard, 13th District Commander.

[FR Doc. 02–30435 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH154–1; FRL–7415–3]

Approval and Promulgation of Implementation Plans; Ohio Particulate Matter

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing action on a variety of revisions to particulate matter regulations submitted by Ohio on July 18, 2000. USEPA is proposing to approve revisions to the form of opacity limits for utility and steel mill storage piles and roadways. USEPA is also proposing to approve formalization of existing requirements for continuous emission monitoring for certain types of facilities, criteria for the state to issue equivalent visible emission limits, and revised limits for stationary internal combustion engines. USEPA is proposing to disapprove authority for revising emission limits for Ford Motor's Cleveland Casting Plant via Title V permit modifications.

DATES: Written comments on this proposed rule must arrive on or before January 2, 2003.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J). United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J). U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: This document is organized as follows:

I. Background
II. Revisions to Opacity Limits for Utilities
III. Revisions to Opacity Limits for Steel Companies
IV. Criteria for State-Issued Visible Emissions Limits
V. Revisions to Limits via Title V Permit
VI. Other Submittal Elements
VII. Summary of USEPA Action
VIII. Administrative Requirements

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I. Background

Ohio adopted major revisions to its particulate matter regulations in 1991, addressing requirements of the Clean Air Act amendments of 1977 and 1990. Ohio has submitted and USEPA has approved those regulations. (See 59 FR 27464, May 27, 1994, and 61 FR 29662, June 12, 1996) However, several companies appealed those regulations to the state Environmental Review Board. As a result of lengthy discussions aimed at resolving these appeals, Ohio adopted an assortment of revisions to its particulate matter regulations on December 17, 1997. Ohio submitted the revised regulations to USEPA on July 18, 2000.

The submitted regulations reflect several significant revisions to prior particulate matter regulations. First, Ohio has redesigned the limits on visible emissions from roadways and storage pile operations at utility storage piles. Second, Ohio has similarly redesigned the visible emission limits for roadways and storage piles at iron and steel facilities. Third, Ohio has established criteria for determining the appropriate visible emissions limit for cases where a source meets its mass emission limit but cannot comply with the standard visible emissions limit. These revisions are intended to provide objective criteria by which the state can establish alternate visible emission limits without need for State Implementation Plan (SIP) review by USEPA. Fourth, Ohio adopted provisions by which Ford could modify its limits via amendments to its Title V permit. Ohio further made a variety of other revisions, including adoption of a rule requiring continuous emission monitoring systems (CEMS) that are already required in permits, updating the form and content of the limits for stationary internal combustion engines, updating the rule on contingency measures, and removing an appendix that provided guidance to state permit writers. Finally, Ohio has modified the limits for several facilities in Cuyahoga County (the Cleveland area), including Ford, LTV, and General Chemical.

Based on discussions with USEPA, Ohio is conducting a further assessment of whether the revised limits in Cuyahoga County suffice to assure attainment of the annual particulate matter standard. USEPA is deferring action on these revisions pending receipt of this further assessment. The remaining elements of Ohio's submittal are addressed in today's action.

II. Revisions to Opacity Limits for Utilities

A consortium of utility companies requested a variety of revisions to limitations applicable to fugitive emissions from their coal storage piles. The previous state rule included in the current SIP limited visible emissions to 13 minutes per hour. The revised rule limits opacity from material handling operations to 20 percent opacity, assessed as a 3-minute average. The revised rule sets a separate limit for vehicle operations on coal piles (not including vehicle exhaust), also set at 20 percent opacity as a 3-minute average. The revised rule retains the 13 minutes per hour visible emissions limit for wind erosion off storage piles, the same limit for unpaved roads, and a 6 minutes per hour visible emissions limit for paved roads.

The revised rules also amend certain aspects of the methods by which opacity readings are taken. Observations for material handling at utility coal piles are to be taken "where the fugitive dust plume is distinctly separate from the falling material and from the surface of the pile." Observations of opacity from vehicles moving on coal piles are to be taken at or above the top of the vehicle and at least one vehicle length from the rear of the vehicle, so as to be outside the immediate wake of the vehicle.

USEPA views these revised limits as having approximately the same stringency as the previous limits. All of these facilities are in areas attaining the air quality standards for particles nominally 10 microns and smaller in aerodynamic diameter (PM_{10}), and so both the prior limits and the revised limits are intended only to assure fairly modest precautions to avoid excess fugitive emissions. While opacity observations both at or above vehicle height and at least one vehicle length away will be lower than opacity observations at more typical observation points (about a meter above ground), USEPA nevertheless anticipates that this limit will require a similar level of control as was expected under the previous limit. USEPA also views as reasonable the provision to avoid observing visible emissions where these observations can be confounded by falling material or the surface of the pile. Therefore, USEPA believes that the proposed revisions to limits for fugitive emissions from utility coal piles given in Rule 3745–17–07(B)(7) are approvable.

Ohio also revised the test method for observing visible emissions on utility roadways and parking areas. The revised rule, in Rule 3745–17–03(B)(4)(d), states that observations of visible emissions on roadways and parking areas are to be taken at a fixed location at a height four feet above ground. In most contexts, USEPA rejects observing visible emissions at a fixed location, requiring instead that each observation be taken wherever the plume is densest. However, since a roadway dictates a fixed path for vehicles, thus preventing circumvention by vehicles taking variable paths on the roadway, and since the distribution of emissions along the road will not change from vehicle traverse to vehicle traverse, USEPA accepts this test method feature for this particular source type.

III. Revisions to Opacity Limits for Steel Companies

Ohio's revised Rule 3745–17–07, specifically new provisions in 3745–17–07(B)(8), specify revised opacity limits for Ohio steel companies that resemble some of the revised limits for utilities. The limit for material handling operations is the same 20 percent opacity limit based on the same 3-minute average method. For wind erosion, while the rules for utilities retain the prior limit of 13 minutes of visible emissions per hour, the revised rules subject wind erosion at steel plants to a limit of 10 percent opacity as a 3-minute average.

The limits for fugitive emissions from vehicle operations are based on a new test method originally used by Illinois. In this method, opacity readings are initiated when a vehicle passes the observer, with follow-up readings taken 5 and 10 seconds later. These 3 readings are taken for each of 4 vehicle passes. The average of these 12 readings must not exceed 10 percent. This 10 percent limitation applies both to vehicles traversing storage piles and to vehicles traveling on plant roadways and parking areas.

USEPA supports use of the Illinois method, which focuses opacity readings on the times emissions are occurring and thus is not unduly affected by the number of vehicles that pass by. Although limited information exists as to the emission levels required by for example a 10 percent opacity limit under this method, USEPA's judgment is that this limit requires a similar control level as the previous limit of 13 minutes of visible emissions per hour. USEPA also believes that the other limits being applied to fugitive dust from iron and steel facilities in Rule 3745–17–07(B)(8) are also at least approximately equivalent to the prior limits.

Unlike most of Ohio's steel mills, two mills are in areas that were previously designated nonattainment. In such areas, the state must show that control requirements for relevant source suffice to assure attainment. Ohio's rule changes alter the control requirements for one of these mills, specifically LTV Steel's Cleveland Works facilities. As noted previously, Ohio is conducting a further evaluation of the impact of various Cleveland area limit revisions, and USEPA is deferring action on these changes pending this further evaluation.

Ohio also changed the limitations in Rule 3745–17–13 (E) and (F) governing Wheeling-Pittsburgh Steel, replacing the visible emission limitations applicable to fugitive dust with detailed requirements for the work practices the company must undertake to limit fugitive dust. USEPA views the work practice requirements given in the new Appendix A to Rule 3745–17–13 as likely to achieve approximately the same level of control as was required by the previous visible emission limitations. No other changes were made to the limitations applicable to Wheeling-Pittsburgh Steel. Therefore, USEPA believes that the revisions for Wheeling-Pittsburgh Steel are approvable without any further attainment demonstration.

IV. Criteria for State-Issued Visible Emissions Limits

The current SIP provides the option for sources to justify source-specific stack opacity limits in lieu of the standard stack opacity limit. The standard stack opacity limit supplements mass emission limits by providing an additional means of requiring effective emission control. However, some sources can meet applicable mass emission limits and yet cannot meet the standard stack opacity limit. For these sources, the SIP provides the option for the source to demonstrate that an alternative opacity limit corresponds to compliance with the mass emission limit, or more precisely that compliance with the alternative opacity limit suffices to indicate compliance with the mass emission limit. Ohio labels this an equivalent visible emission limit.

In the current SIP, when the State concludes that an equivalent visible emission limit is warranted, the State must submit a source-specific request with suitable justification to USEPA. In the revised rules, Ohio has given itself the authority to establish federally enforceable equivalent visible emission limits without requiring USEPA review, based on detailed criteria inserted into the rules. USEPA may approve the revised rules only if these criteria would lead Ohio to establish the same equivalent visible emission limit that USEPA would establish.

The prerequisites for equivalent visible emission limits are given in Rule 3745–17–07(C). The source must demonstrate compliance with its mass emission limit. The source must observe opacity during the mass emissions test. The source must be "operated and maintained so as to minimize the opacity of the emissions during the [mass emissions] test." An equivalent visible emission limit may be established only if opacity exceeds the standard opacity limits despite satisfaction of these requirements.

If the source satisfies these prerequisites, Ohio must then follow the detailed procedures in Engineering Guide numbers 13 and 15 (versions effective June 20, 1997) as referenced in Rule 3745–17–07(C)(4) to determine the numerical value of the equivalent visible emission limit. In cases where the average of three emission test runs shows compliance with mass emission limits despite one or two of these runs exceeding the emission limit, an equivalent visible emission limit may be derived only from test runs that show emissions at or below the emission limit. Since the general opacity limit has two parts, equivalent visible emission limits may have two parts as well. Specifically, the general opacity limit requires 6-minute average opacity values to be at or below 20 percent, except for one 6-minute average opacity that may be as high as 60 percent. Equivalent visible emission limits may be set in lieu of either or both of these general limits. If any 6-minute average opacity exceeds 60 percent, despite compliance with the mass emission limit and minimization of opacity, the higher value may be set as a once-per-hour 6-minute average opacity limit. If any hour's second highest 6-minute average opacity exceeds 20 percent, again despite compliance with the mass emission limit and minimization of opacity, the highest second highest 6-minute average opacity value would be set as a limit on the second highest 6-minute average opacity.

USEPA follows essentially the same criteria and procedures in setting equivalent visible emission limits for new source performance standards pursuant to 40 Code of Federal Regulations part 60.11(e) (40 CFR 60.11(e)). If a source subject to a new source performance standard in 40 CFR part 60 cannot meet an applicable opacity limit, it may petition USEPA for an equivalent visible emission limit. Under 40 CFR 60.11(e)(7), "[USEPA] will grant such a petition upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by [USEPA], and that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard." Under 40 CFR 60.11(e)(8), USEPA sets an equivalent visible emission limit at the maximum level that is consistent with compliance with the mass emission limit.

Ohio's criteria for setting equivalent visible emission limits closely parallel USEPA's criteria in 40 CFR 60.11(e). Ohio has an explicit prerequisite that affected facility and associated air pollution control equipment was operated and maintained in a manner so as to minimize the opacity. Rule 3745–17–07(C)(3)(a) dictates that the performance tests must be conducted in accordance with conditions and procedures accepted by Ohio. Although Ohio's rule does not have an explicit prerequisite of the facility and control equipment being incapable of being adjusted or operated to meet the opacity limits, USEPA views this prerequisite as part of the prerequisite for minimizing emissions. Thus, if in USEPA's judgment the facility could meet the general opacity limits through adjustments or changes in operation of the facility and/or control equipment, USEPA would conclude that the source has failed the prerequisite for operating the facility and control equipment so as to minimize opacity.

USEPA thus concludes that Ohio imposes the same prerequisites for granting equivalent visible emission limits as USEPA. Further, Ohio has provided specific procedures by which their equivalent visible emission limits would be set at appropriate levels. Therefore, USEPA believes that it is appropriate to authorize Ohio to issue equivalent visible emission limits according to these criteria without source-specific USEPA review.

V. Revisions to Limits via Title V Permit

In Rule 3745–17–12(I)(50), Ohio authorizes use of Title V permits to establish an alternative set of emission limits at Ford Motor Company's Cleveland Casting Plant. This paragraph identifies several elements of procedure for the state to follow, much of which reflects standard Title V procedures for

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permit modifications. Ohio must give USEPA 45 days' notice of the proposed Title V permit modifications. Ohio shall not issue the permit modifications if USEPA objects to the permit modification, unless and until USEPA's objection is resolved. Ford Motor Company must provide a demonstration using modeling consistent with USEPA's modeling guidelines that the alternative set of limits assures attainment of the air quality standards for PM10. Once the alternative set of limits are in effect in issued permit modifications, Ford no longer needs to comply with the superseded limits in Rule 3745–17–12(I).

Rule 3745–17–12(I)(50) also provides the option of amending Ford's emission limitations via new source permit issued under Rule 3745–31–02. In accordance with new source permitting procedures, USEPA and other interested parties would have 30 days to comment, and permit issuance would not be contingent on USEPA objections being resolved. Although new source permits are issued only if at least one emission unit is newly constructed or modified, such permits may also amend the limitations for other, existing and unmodified units. Ordinarily, such limitations supplement and do not supersede any SIP limits that apply to the units. However, in this case, Rule 3745–17–12(I)(50) provides that the new source permit limits would supersede the SIP limits, and Ford's Cleveland Casting Plant need not comply with the limits in the SIP so long as it complies with the limits in the new source permit.

Ohio also added Rule 3745–17–12(I)(51). This paragraph states that once a permit has been issued in accordance with Rule 3745–17–12(I)(50) that amends the requirements applicable to Ford, Ohio shall revise Rule 3745–17–12(I) to become consistent with the revised control strategy.

USEPA believes that the Clean Air Act does not authorize these revisions. Section 504 in Title V of the Clean Air Act provides that permits required under Title V must include provisions "as are necessary to assure compliance with applicable requirements of [the Clean Air Act], including the requirements of the applicable implementation plan." That is, these permits must assure compliance with the existing implementation plan. The permits may not change the implementation plan or assure compliance with an alternative set of provisions that fail in any way to assure compliance with the existing implementation plan.

If a state wishes to revise its implementation plan, it must pursue the revisions in accordance with section 110 in Title I of the Clean Air Act, entitled "Implementation Plans." Section 110 includes detailed criteria and a detailed review process for state implementation plan revisions. Congress clearly designed a process involving substantial USEPA oversight of revisions to SIPs, specifically providing USEPA with a much longer time for review of SIPs than for Title V permits. The first step in review of implementation plan revisions is a review for completeness, including whether the state has provided adequate technical information to judge the merits of the revision; no counterpart to this step is provided in USEPA's review of Title V permits. Section 110(k) then grants USEPA 12 months to review proposed revisions to implementation plans, in stark contrast to the 45 days for USEPA review of proposed Title V permits. Finally, state implementation plans under section 110 remain unchanged unless USEPA takes affirmative action approving revisions to the plan, whereas Title V permits take effect in the absence of USEPA raising timely objections to the permit. Thus, the provision in Ohio's Rule 3745–17–12(I)(50) for using the Title V permit process to change emission limits that are at the core of Ohio's implementation plan for meeting the PM10 standard in the Cleveland area is clearly contrary to the structure and provisions of the Clean Air Act.

Rule 3745–17–12(I)(50) is also contrary to USEPA's regulations addressing the contents of Title V permits and their relationship to state implementation plans. Regulations for Title V permits in 40 CFR 70.1 define "applicable requirements" as, among other things, "[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act". The first and foremost elements of Title V permit content, as described in 40 CFR 70.6(a)(1), are provisions to "assure compliance with all applicable requirements". Neither here nor elsewhere in 40 CFR part 70 does USEPA authorize a Title V permit to modify applicable requirements.

In contrast, 40 CFR part 51 has extensive guidance on revisions to implementation plans. Appendix V to 40 CFR part 51 defines criteria for judging whether a submittal is complete. As stated in 40 CFR 51.103, "[r]evisions of a plan * * * will not be considered part of an applicable plan until such revisions have been approved by [USEPA] in accordance with this part."

Importantly, with the exception of periodic monitoring to assure compliance, neither 40 CFR part 70 nor the Title V of the Clean Air Act give a permitting authority the authority to create new requirements through a Title V permit. In some cases, USEPA allows permitting authorities to include in Title V permits conditions that differ from but are equivalent to streamlined applicable requirements. USEPA has issued white papers addressing this possibility. However, these white papers do not offer the option of altering the core requirement of any individual applicable requirement, even if a case is made that a relaxation for one applicable requirement is compensated for by tightening another applicable requirement. Such proposals for net equivalent limits must be submitted to USEPA as requests for state implementation plan revisions subject to review under Title I of the Clean Air Act and 40 CFR part 51.

Rule 3745–17–12(I)(50) authorizes changes to limitations through new source permits as well as through Title V permits. This approach is also not authorized in the Clean Air Act or in applicable regulations. New source permits, like Title V permits, do not satisfy the procedural requirements for state implementation plan review. For this reason, limits imposed in new source permits on new or existing sources are supplemental to and do not supersede existing SIP limits. Neither the Clean Air Act nor USEPA regulations authorize a new source permit to allow noncompliance with a SIP limitation on any emission unit. Consequently, USEPA believes that Rule 3745–17–12(I)(50) must be disapproved.

Rule 3745–17–12(I)(51) states simply that any alternative limitations established by permit under Rule 3745–17–12(I)(50) must be incorporated into Ohio regulations in Rule 3745–17–12(I). While USEPA does not object to this particular provision, USEPA believes that this paragraph has no effect because no alternative limits may be established under Rule 3745–17–12(I)(50). For this reason, and because paragraph (I)(51) is closely tied to paragraph (I)(50), USEPA believes it most appropriate to disapprove both paragraphs.

VI. Other Submittal Elements

In addition to the revisions requested by industry appellants of Ohio's rules, Ohio also made four revisions that might be considered corrections to their rules. These revisions include adoption of a rule requiring continuous emission monitoring systems (CEMS) that are already required in permits, updating the form and content of the limits for stationary internal combustion engines, updating the rule on contingency measures, and removing an appendix that provides guidance to state permit writers.

Rule 3745–17–03(C) requires facilities subject to 40 CFR 51 Appendix P to operate, maintain, and submit periodic results from CEMS. In general terms, Appendix P requires CEMS at large boilers, fluid catalytic cracking units (at refineries), nitric acid plants, and sulfuric acid plants. Ohio previously satisfied this requirement by submitting state operating permits for each affected facility mandating CEMS. USEPA approval of these permits is codified at 40 CFR 52.1870(c)(88). These permits have now expired. USEPA believes that Rule 3745–17–03(C) provides for satisfaction of the requirements of Appendix P on a more permanent basis. In conjunction with approving this rule, USEPA intends to remove the codification of its approval of the now expired permits.

Ohio modified both the criteria for differentiating large and small stationary internal combustion engines (defined in paragraphs (B)(23) and (B)(24) of Rule 3745–17–01) and the emission limits applicable to each (specified in Rule 3745–17–11(B)(5)). These revisions parallel the changes in the source characteristics that USEPA recommends using in evaluating emissions from this source type. These revisions should not affect the level of control of these sources and thus should not have any significant effect on emissions from this source category. Therefore, USEPA believes these revisions are acceptable.

Rule 3745–17–14 identifies sources to provide contingency measures and provides criteria for implementing these measures if needed to attain particulate matter standards. Ohio used the measures identified by the sources to develop the contingency plan required under Clean Air Act section 172(c)(9), which USEPA approved on May 6, 1996, at 61 FR 20139. The approved plan reflected measures for only a subset of the sources in Rule 3745–17–14, since other sources listed in this rule were unable to identify suitable contingency measures. Ohio's recent revisions to Rule 3745–17–14(A) delete these extraneous sources from the listing in Rule 3745–17–14 and more generally bring the requirements for identification of measures into conformance with the set of measures actually identified and incorporated into the approved contingency plan. These rule revisions do not in any way change the stringency, triggering process, or other features of the existing contingency plan. Therefore, USEPA believes these revisions are acceptable.

Finally, Ohio revised its Rule 3745–17–14 to remove guidance contained as Appendix B to this rule concerning criteria for particulate matter sources to be eligible for registration status rather than requiring permits to operate. USEPA has not previously approved Appendix B, and Appendix B is not necessary to meet any Clean Air Act requirement. Therefore, USEPA has no objection to Ohio rescinding this appendix, and USEPA need not take any action for this appendix to remain as not part of Ohio's SIP.

VII. Summary of USEPA Action

USEPA is proposing action on most elements of Ohio's particulate matter SIP revisions submitted July 18, 2000. USEPA is proposing to approve revisions to limitations in Rule 3745–17–07 on fugitive dust emissions for utilities and steelmaking facilities and the associated revisions to test methods in Rule 3745–17–03, with one exception. This exception is that USEPA is deferring action on the revisions of limitations for Ford Motor in Rule 3745–17–07(B)(9) and (B)(10), in conjunction with USEPA's deferral of action on various limit revisions for Cleveland area sources.

USEPA is proposing to approve Rule 3745–17–03(C), which requires that sources subject to Appendix P of 40 CFR 51 install, satisfactorily operate, and report results from continuous emission monitoring systems. In conjunction with this action, USEPA is proposing to remove from the SIP the now-expired permits that Ohio previously submitted to satisfy Appendix P. USEPA is proposing to approve revisions to Rule 3745–17–04, requiring immediate compliance with the newly adopted limitations, except that USEPA is deferring action on compliance dates associated with Cleveland area limitations pending action on the limits themselves. USEPA is proposing to approve revisions in Rule 3745–17–01 and 3745–17–11 to limits for stationary internal combustion engines. USEPA is proposing to approve replacement of fugitive emission limitations in Rule 3745–17–13 for the Wheeling-Pittsburgh Steel Company with requirements that the company follow specified practices to limit fugitive emissions. USEPA is proposing to approve revisions to Rule 3745–17–14 that bring this rule into conformance with the approved contingency plan and that remove a guidance statement that was not previously part of the SIP.

USEPA is proposing to disapprove Rule 3745–17–12(I)(50) and 3745–17–12(I)(51), which would allow Ohio to incorporate a revised set of emission limits for Ford Motor Company's Cleveland Casting Plant into either a Title V permit or a new source permit. USEPA proposes to conclude that this type of revision to applicable limitations must be subject to the review process under section 110 of the Clean Air Act for revisions to state implementation plans. Finally, USEPA is deferring action on revisions in Rules 3745–17–08, 3745–17–11, and 3745–17–12 that alter the control strategy for meeting the PM10 standards in Cuyahoga County, pending further analysis of whether these revisions continue to assure attainment of the annual PM10 standard.

Final disapproval of the above paragraphs of Rule 3745–17–12(I) would not start any sanctions clock. This submittal was not needed to meet any provision of the Clean Air Act. Disapproval of these paragraphs would simply prevent the addition of these paragraphs to Ohio's state implementation plan and would not constitute a plan deficiency that under section 179 of the Clean Air Act would need to be remedied to avoid sanctions.

VIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship

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between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), USEPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 15, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–30468 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7415–5]

Notice of Data Availability; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants; Additional Information on the Colitag™ Method

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of data availability—supplemental information.

SUMMARY: On March 7, 2002, the Environmental Protection Agency (EPA) published "Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for Aeromonas; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants; Proposed Rule." In this proposed rule, EPA sought comments on the proposed promulgation of multiple industry-developed methods, one of which was the Colitag™ method, a "Test for Detection and Identification of Coliforms and *E. coli* Bacteria in Drinking Water and Source Water as Required in National Primary Drinking Water Regulations." This method was proposed for the analysis of total coliforms and *E. coli* in finished drinking water samples. After the close of the public comment period on the March 7 proposed rule, EPA received additional information from CPI International, developers of Colitag™, relevant to the performance of the method. Such information (herein after collectively referred to as "additional information") includes supplemental data as well as a re-evaluation of previously reported data included in the public record that supported the proposed approval of Colitag™. EPA is using today's action to invite comments on this additional information.

DATES: EPA must receive public comment, in writing, by January 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0031. Follow the detailed instructions as provided in section I of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Herb Brass, Technical Support Center, Standards and Risk Management Division, Office of Ground Water and Drinking Water, Environmental Protection Agency, Mail Stop 140, 26 W. Martin Luther King Drive, Cincinnati, OH, PH: (513) 569–7926. E-mail: *brass.herb@epa.gov*. For general information and copies of this document, contact the Safe Drinking Water Hotline at (800) 426–4791. The hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4:30 p.m. eastern standard time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0031. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., eastern standard time, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket materials, please call (202) 566–1744 to schedule an appointment.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. The Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic copies must be submitted in WP5.1 or higher, or ASCII file format file, avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number OW–2002–0031. Comments will also be accepted on disks in WP 5.1 or higher, or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

a. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Do not send duplicate electronic and paper comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW–2002–0031. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. E-mail. Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov*, Attention Docket ID No. OW–2002–0031. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies (including attachments) plus the original of your comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0031.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, Environmental Protection Agency, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2002–0031. Such deliveries are only accepted during the Docket's normal hours of operation, as identified in 1.A.1.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Colitag™ Combination Method for Detection of Total Coliform Bacteria and E. Coli in Drinking Water

The Safe Drinking Water Act (SDWA), as amended in 1996, requires USEPA to

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promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412; (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401(1)(A); (42 U.S.C. 300f(1)(A)). According to SDWA section 1401 (1)(D), NPDWRs include "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures." In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. USEPA's promulgation of analytical methods is authorized under these sections as well as the general rulemaking authority in SDWA section 1450(a); (42 U.S.C. 300j–9(a)).

On March 7, 2002, EPA published "Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for Aeromonas; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants; Proposed Rule." (67 FR 10532, March 7, 2002). In this proposed rule, EPA sought comments on the proposed promulgation of multiple industry-developed methods, one of which was the Colitag™ method, a "Test for Detection and Identification of Coliforms and *E. coli* Bacteria in Drinking Water and Source Water as Required in National Primary Drinking Water Regulations." This method was proposed for the analysis of finished drinking water samples.

After the close of the public comment period on the March 7 proposed rule, EPA received additional information from CPI International, developers of Colitag™, relevant to the performance of the method. This information included data from two additional studies and a re-evaluation of data in the original record associated with the March 7 proposal. Because this additional information serves to supplement the data included in the public record that supported the proposed rule (Docket No. W–01–13), and because the data are relevant to a decision on whether to promulgate Colitag™, EPA is using today's action to invite comments on this additional information.

The additional information concerns the results of comparability studies that evaluated the equivalence of Colitag™ to approved reference methods. A key aspect of the studies included the comparison between the proposed and reference methods for measurement of chlorine-stressed total coliforms and *E. coli*. Detection of chlorine stressed bacteria in chlorinated distribution system water is important, and selective media are tested to determine that their selectivity does not inhibit recovery of stressed organisms. The degree of chlorine stress is represented as "log reduction" (comparing organism counts before and after exposure to chlorine).

Data originally included in Docket No. W–01–13 (in support of the March 7, 2002 proposed rule) for the Colitag™ method reported log reductions ranging from 0.7 to 4.5 for total coliforms, and 1 to 2.0 for *E. coli*. On July 29, 2002, CPI provided information to EPA showing that a re-evaluation of the raw data significantly changed the values for the log reduction for the Colitag™ comparability study. Such re-evaluation was based on a measurement (using membrane filter analysis) of bacteria density in the source/effluent water used in the studies; a dilution factor, accounting for the addition of drinking water to the source/effluent water; and a measurement (again using membrane filter analysis) of bacterial density following chlorine stressing of the diluted source/effluent water:

Log reduction = $\log_{10}$ [(M_{source}/DF)/($M_{chlorinated}$ × CF)], where:

M_{source} = original measurement of bacteria density in the source/effluent water;

DF = dilution factor associated with the addition of tap water to the source water;

$M_{chlorinated}$ = measurement of bacteria density following chlorine stressing

CF = adjustment factor accounting for dilution by the chlorine solution

The original and re-evaluated data for total coliforms and *E. coli* using this approach are given in Tables 1 and 2, respectively. They show that for total coliforms, the corrected log reduction ranged from 1.9 to 3.4. For *E. coli*, the log reduction ranged from 1.6 to 3.4.

The figures originally reported by CPI (and originally included in Docket No. W–01–13) were not based on the calculation above but were instead based on a membrane filter analysis of the diluted source water. EPA experts in microbiological analytical methods have reviewed the two approaches to determining bacterial density in the diluted source water (*i.e.*, measurement by membrane filter analysis of the diluted source water, versus calculation based on the dilution factor and a measurement of the source water prior to dilution) and have concluded that the latter approach is sound and provides consistency with previous method evaluations by EPA.

CPI has also provided supplemental technical information, from two additional studies, for the Agency's consideration. This supplemental information, provided to EPA on July 29, 2002, may be found in Docket No. OW–2002–0031. The first of the two supplemental studies conducted by CPI was performed with Richmond Field Station primary wastewater influent. In three of three dilutions with a 4.3 log reduction of bacteria, Colitag™ performed as well as or better than the reference method for detecting *E. coli* at 44.5° C. In the second supplemental study conducted by CPI, using the same primary wastewater influent, and with a 3.4 log reduction from chlorine stress, Colitag™ again performed as well as or better than the reference method at 44.5° C.

EPA is requesting public comment on the additional information presented in this notice, relative to the Agency's March 2002 proposed promulgation of the Colitag™ method. Comments should be submitted only on the additional information presented in this notice and in Docket No. OW–2002–0031. EPA is not reconsidering any other drinking water issue in this notice nor will EPA respond to any comments on other issues. Comments should be limited to the additional information (described herein and found in Docket No. OW–2002–0031) and its applicability to the Agency's consideration of the Colitag™ method.

TABLE 1.—CHLORINE STRESS REDUCTION, ORIGINAL AND CORRECTED DATA FOR TOTAL COLIFORMS

Sample ID	Sample source	Source water CFU measurement/100 mL (M_{source})	Dilution factor (DF)	Post-chlorine CFU measurement/100 mL ($M_{chlorinated}$)	Chlorine dilution adjustment factor (CF)	Corrected log reduction	Original log reduction
982084A	Millbrae, CA	1,400,000	1000	6	2	2.1	1.8–2.1
982305A	Millbrae, CA	30,000,000	1000	6	2	3.4	4.5
990025A	Jacksonville, FL	11,000,000	500	7	2	3.2	3.3
990052A	Schaumberg, IL	1,000,000	1250	2	2	2.3	2
990095A	Watertown, WI	16,000,000	7000	2	2	2.8	3.3
990217A	Mission, KS	5,000,000	600	7	2	2.8	1.2
990273A	Salem, OR	2,000,000	800	7	2	2.3	2.1
990438A	Ames, IA	2,000,000	13,000	1	2	1.9	1
990442A	Mission, KS	14,000,000	9000	2	2	2.6	1.4
990443A	Liberty, MO	9,000,000	8000	2	2	2.4	0.7

TABLE 2.—CHLORINE STRESS REDUCTION, ORIGINAL AND CORRECTED DATA FOR E. COLI

Sample ID	Sample source	Source water CFU measurement/100 mL (M_{source})	Dilution factor (DF)	Post-chlorine CFU measurement/100 mL ($M_{chlorinated}$)	Chlorine dilution adjustment factor (CF)	Corrected log reduction	Original log reduction
982084A	Millbrae, CA	230,000	1000	3	2	1.6	1.6
982305A	Millbrae, CA	11,000,000	1000	2	2	3.4	NA
990025A	Jacksonville, FL	700,000	500	1	2	2.8	NA
990052A	Schaumberg, IL	1,000,000	1250	1	2	2.6	2
990095A	Watertown, WI	NA	3000	7	2	NA	1.7
990217A	Mission, KS	4,000,000	800	4	2	2.8	1.4
990273A	Salem, OR	1,000,000	80	5	2	3.1	1.9
990438A	Ames, IA	1,000,000	1000	1	2	2.7	1
990442A	Mission, KS	3,000,000	1000	1	2	3.2	1
990443A	Liberty, MO	2,000,000	1000	1	2	3.0	1

Dated: November 25, 2002.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 02–30467 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 451

[FRL–7415–6]

RIN 2040–AD55

Extension of Comment Period for Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA proposed effluent limitations guidelines and standards for the Concentrated Aquatic Animals Production (CAAP) Category on September 12, 2002. The proposed regulations would apply to discharges from certain facilities in the CAAP Category that grow, contain or produce aquatic animals above 100,000 pounds. EPA is extending the comment period by approximately six weeks. The comment period will now close on January 27, 2003. EPA has carefully considered the court-ordered promulgation date in making the decision to extend the comment period for this rulemaking.

DATES: Comments regarding the proposed rule will be accepted on or before January 27, 2003.

ADDRESSES: Send written comments to W–02–01, Ms. Marta E. Jordan, Engineering and Analysis Division (4303T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. For hand-deliveries or Federal Express, please send comments to Ms. Marta E. Jordan, Office of Water, Engineering and Analysis Division, Room 6233M, 1301 Constitution Avenue, NW., 6th Floor, Connecting Wing, Washington, DC 20460. EPA requests an original and three copies of your written comments and enclosures (including copies of references). Comments may be sent by email to the following e-mail address: *aquaticanimals@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Marta E. Jordan, Engineering and Analysis Division (4303T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone (202) 566–1049, fax (202) 566–1053 or E-Mail *jordan.marta@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA proposed effluent limitations guidelines and standards for the CAAP Category on September 12, 2002, *see* 67 FR 57871. The proposed regulation would apply to producers of aquatic animals which produce at least 100,000 pounds of animals per year in one of three specific production systems. EPA proposed to establish requirements for the production of aquatic animals in flow through, recirculating, and net pen systems. EPA proposes to establish numeric limitations for Total Suspended Solids (TSS) in the wastewater discharged from flow through and recirculating systems. EPA also proposes to require the development and implementation of Best Management Practices (BMPs) to

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control the discharge of pollutants from flow through, recirculating and net pens systems. EPA described the bases for these requirements in section VIII of the preamble to the proposed regulation (67 FR 57895).

EPA held three public meetings to provide an overview of the proposed rule and opportunities for the regulated community and other interested parties to ask questions on issues pertaining to the proposed rule.

EPA received several requests to extend the comment period to allow more time to address the issues on which EPA solicited public comment. The requests for an extension pointed out that this is a very busy season for a large portion of this industry. Many sectors are involved in harvest through the fall months. EPA agrees that many producers may need more time to develop comments to the proposal. The comment period for the proposed rule is extended until January 27, 2003.

EPA is scheduled to take final action on effluent limitations guidelines and new source performance standards for this industry by June 2004. EPA is using its best efforts to comply with this deadline and expects to meet the schedule even with this extension of the comment period.

Dated: November 25, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–30466 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 764

[OPPT–2002–0006; FRL–7183–9]

RIN 2070–AC17

Acrylamide and N-methylolacrylamide Grouts; Withdrawal of Proposed Ban

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is hereby withdrawing a proposed rule that would have prohibited the manufacture, importation, distribution, and use of acrylamide and N-methylolacrylamide (NMA) grouts. In 1991, EPA proposed the rule in order to protect grouters from neurotoxic and carcinogenic risks arising from significant dermal and inhalation exposure to the acrylamide and NMA in these grouts. EPA found that grouters were exposed when using these grouts, even while wearing the best practical personal protective equipment (PPE) available at the time the rule was proposed. EPA has found that there is now affordable PPE that provides adequate protection from exposure to the acrylamide and NMA in these grouts. EPA has determined that as long as appropriate PPE is used during grouting operations, it is no longer necessary to prohibit the use of these grouts to protect the health of grouters.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John Bowser, Office of Pollution Prevention and Toxics, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8082; e-mail address: bowser.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, distribute in commerce, or use acrylamide or N-methylolacrylamide (NMA) grout. Potentially affected categories and entities may include, but are not limited to:

- Chemical manufacturers or importers (NAICS code 32519), e.g., persons who manufacture (defined by statute to include import) acrylamide or NMA grout.
- Chemical processors (NAICS code 32519), e.g., persons who process acrylamide or NMA grout.
- Chemical distributers (NAICS code 42269), e.g., persons who distribute acrylamide or NMA grout in commerce.
- Municipalities (NAICS code 22132), e.g., persons who use acrylamide or NMA grout for sealing sewer lines and manholes, and for structural water control and geotechnical grouting.
- Grouters and sewer rehabilitators (NAICS code 23491), e.g., persons who use acrylamide or NMA grout for sealing sewer lines and manholes, and for structural water control and geotechnical grouting.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0006. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744. The telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

II. Background

A. What Action Did the Agency Propose to Take?

In 1991, EPA proposed to prohibit the manufacture, distribution in commerce, and use of acrylamide grout (56 FR 49863, October 2, 1991) (FRL–3767–7). In addition, EPA proposed to prohibit all uses of NMA grout, except its use for

sewer line repair. EPA proposed to ban that use 3 years following promulgation. EPA proposed that action because, based on the information available to EPA at that time, EPA determined that it was necessary to protect grouters (i.e., the individuals who routinely use acrylamide and NMA grouts in the workplace) from the neurotoxic and carcinogenic risks arising from significant exposures to the acrylamide and NMA present in these grouts. EPA found that workers experienced significant exposure even while wearing personal protective equipment (PPE) (Ref. 1). For more information on acrylamide and NMA grouts and their uses, see Unit II. of the preamble to the proposed rule. For more information on the health effects of acrylamide and NMA, see Unit III. of the preamble to the proposed rule. EPA issued the proposed rule under the authority of sections 6(a) and 8(a) of TSCA. EPA based its action on its determination that the use of acrylamide and NMA grouts presented an unreasonable risk of injury to human health, and that a prohibition of their manufacture, distribution in commerce, and use, was the least burdensome action available to protect adequately against these risks.

B. What Grouting Processes Were Covered by the Proposed Rule?

Grout is injected into and around concrete, rock, and soil to strengthen its mass and restrict the flow of water. Following application, the grout solidifies into a stiff, impervious gel.

Sewer rehabilitation is the major use of acrylamide and NMA grouts. Sewer rehabilitation is discussed in this preamble as two separate activities: sewer line sealing and manhole sealing. Both activities seal cracks, holes, and joints in order to suppress infiltration of rainwater, nonpoint source run-off, and ground water into sewer systems. Preventing these inflows reduces demand on sewage treatment capacity and wastewater treatment costs.

Sewer line sealing entails sealing main and lateral sewer line pipes and joints using remotely operated equipment including closed-circuit video cameras, an inflatable packer, and a grout delivery system. The video camera is inserted into a sewer line and slowly pulled through, transmitting images of the interior of the pipe to a worker stationed at a control board inside a service truck. The worker operates the packer from inside the truck to deliver the grout to seal cracks and defective joints in the interior wall. The grout is forcibly injected and flows through the crevices into the surrounding soil and "gels," thereby sealing the fissures and preventing water infiltration.

Manhole sealing is accomplished manually by a worker using a hand-held device to inject grout into holes that have been drilled into the sides of the manhole.

C. How are Workers Exposed to Acrylamide and NMA Grouts?

The following information is drawn from EPA's "Assessment of Airborne Exposure and Dermal Contact to Acrylamide During Chemical Grouting Operations"; "Regulatory Impact Analysis of the TSCA Section 6 Final Rule for Acrylamide Grout"; and "Economic Analysis of a Proposed Ban on Chemical Grouts Containing Acrylamide and N-methylolacrylamide," and the related Addendums (Refs: 1, 2, 3, 4, and 5). Monitoring of acrylamide grouting operations conducted in 1987 by EPA at four grouting sites, as well as the inherent nature of sewer grouting work, established that workers were being dermally exposed to acrylamide despite the use of PPE recommended at the time. A subsequent field evaluation of acrylamide grouting operations by the Occupational Safety and Health Administration (OSHA) (Ref. 6) also confirmed the potential occurrence of significant exposures for workers using the same recommended PPE. The following two sections describe exposures experienced in different applications. Dermal exposures were invariably the primary concern.

1. *Dermal exposure—a. Manhole sealing.* Sealing manholes presents the greatest opportunity for dermal exposures because it is performed with hand-held injection devices in tightly confined areas for extended periods. Workers engaged in this process must be protected from exposures to liquid acrylamide grout resulting from runoff and splashes. Opportunities for exposure to liquid grout also occur during mixing, gel testing, equipment disassembly, and clean up.

In the 1987 study, EPA measured dermal exposures of workers who were sealing manholes while using the PPE recommended at the time, including disposable Tyvek® coveralls, eye goggles, half-mask air purifying respirators, and rubber gloves. Workers sealing manholes experienced dermal exposure ranging from 2.6 to 5.0 milligrams/hour (mg/h).

b. *Sewer line sealing.* Sewer line sealing generates less of an opportunity for dermal exposures because it is done with closed-circuit video cameras and remotely controlled grout delivery systems, so that little or no exposures occur during application. As with manhole sealing, however, dermal contact can occur during mixing, gel testing, equipment disassembly, and clean up.

EPA's 1987 monitoring study found dermal exposure levels in this application ranging from 0.61 to 1.8 mg/h--less than one-third the level experienced sealing manholes.

c. *Effectiveness of Tyvek® protective coveralls.* In the 1987 study, acrylamide was found on dermal exposure monitoring pads placed inside the Tyvek® protective coveralls and against the skin of workers engaged in both sewer line and manhole sealing activities. This finding indicates that Tyvek® coveralls are not an effective barrier to acrylamide.

2. *Inhalation exposure.* Inhalation exposure to acrylamide and NMA can occur during mixing, application, equipment disassembly, and clean up. It may also occur when water from spilled solutions evaporates, and the remaining dry powder becomes airborne. In EPA's 1987 field study, monitored inhalation exposures to acrylamide ranged from one-fifth to one-twentieth of measured dermal exposures. There was little variation in inhalation exposures between sealing manholes and sealing sewer lines; both applications generated virtually identical air concentrations. Eight-hour time-weighted average (TWA) exposures within the breathing zones of workers ranged from 0.008 to 0.12 mg/m^3. Three of the breathing zone samples exceeded the American Conference of Governmental Industrial Hygienist's (ACGIH) Threshold Limit Value (TLV), and the National Institute of Occupational Safety and Health Recommended Exposure Limit (NIOSH REL) of 0.03 mg/m^3, although none exceeded the current 0.3 mg/m^3 OSHA permissible exposure limit (PEL).

D. What is the Role of PPE in Protecting Workers?

Based on the 1987 field study described above, the Agency concluded that even under the best of circumstances--in which informed and motivated workers were properly using the best practical PPE and practices available at the time the study was conducted--acrylamide exposures would remain unacceptably high. In 2001, while preparing to promulgate the proposed rule, EPA examined current data on PPE for use with acrylamide and NMA grout to determine what equipment is currently in use and whether equipment is available that can provide effective and affordable protection for workers (Refs. 7, 8, 9, 10, 11, 12, 13, and 14). EPA found that

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effective and affordable equipment is now available, although it is not yet in general use by grouting workers.

1. *PPE currently being used with acrylamide grout may not be effective.* In the fall of 2001, EPA conducted a telephone survey to determine what kind of protective equipment was being used by acrylamide grout applicators (Ref. 14). EPA found that the most common type of PPE used to prevent dermal exposure during acrylamide grouting operations was a combination of Tyvek® coveralls and gloves. Latex, nitrile, and rubber were the most frequently reported glove types. This type of PPE is the same as was being recommended and used in 1987 when EPA conducted its field study (Ref. 1). In the EPA field study, dermal exposure monitoring pads were placed under the Tyvek® coveralls, directly against the skin of the workers. In every case, acrylamide was found on the dermal exposure monitoring pads at the end of the workday. This finding indicates that acrylamide penetrated the Tyvek®.

a. *Concerns regarding the use of Tyvek® suits for dermal protection from acrylamide grout.* The following information is drawn from EPA documentation (Ref. 7). Tyvek® is a proprietary, porous non-woven polyethylene fabric designed for disposable use as protection against exposure to dry particulate matter, not liquids. Because Tyvek® is a porous fabric, the most important factor in determining its effectiveness as a barrier to a liquid is the ability of the liquid to penetrate the pores in the fabric. The ability of a liquid to penetrate the pores is affected, in part, by the total amount of force exerted on the liquid on the outer surface of the suit and by the surface tension of the liquid. If enough pressure is applied to liquid on the outer surface of Tyvek®, it can push the liquid through, e.g., kneeling down while wearing a suit with acrylamide on the outer surface of the suit could put enough pressure on the acrylamide to push it through the suit.

In general, the lower the surface tension of a liquid, the easier it is for it to pass through the pores of the fabric. Surface tension causes a liquid to tend to contract to the smallest area possible. In other words, a liquid with a high surface tension would tend to form droplets on the surface of another material. Low surface tension liquids on the other hand tend to spread out over the surface. Liquids with sufficiently low surface tension can pass through the pores without the application of external pressure. EPA has not been able to find empirical data on the surface tension of aqueous acrylamide solutions such as liquid acrylamide grout. EPA estimates, however, that the surface tension of an aqueous acrylamide solution is well below the level at which the manufacturer of Tyvek® says liquids are likely to penetrate the fabric.

The amount of liquid that gets on the fabric is also important, particularly if the liquid has a low surface tension. When a porous fabric such as Tyvek® comes in contact with enough low surface tension liquid, it can readily become saturated, even if the liquid is in a mist form when it makes initial contact with the fabric. Saturation of protective clothing such as a Tyvek® suit may actually increase the potential for dermal exposure, because it can hold the liquid against the skin longer than would have occurred otherwise.

Another concern involves the construction of Tyvek® suits. The seams of these suits are not generally sealed to prevent penetration by liquids. Liquids can pass through gaps in the seams of such a garment regardless of their ability to pass through the pores of the fabric. This is particularly true of liquids which have low viscosity, such as uncured acrylamide grout. Low viscosity fluids flow easily, and have the ability to penetrate cracks and crevices such as the seams of an unsealed garment.

The only way to be sure of the effectiveness of Tyvek® against any liquid is to test the fabric against the liquid. EPA is unaware of any such tests of Tyvek® against aqueous acrylamide solutions in general, or acrylamide grout in particular, although in the 1987 field study, acrylamide was found on dermal exposure pads worn inside Tyvek® protective overalls. The manufacturer of Tyvek® does not claim that it is an effective barrier against liquid acrylamide solutions. While it is possible that PPE made with Tyvek® may be effective in some situations for use with certain liquid chemicals, it appears unlikely that PPE made with Tyvek® will be an effective barrier against aqueous acrylamide solutions.

b. *Concerns regarding the use of latex, nitrile, and generic "rubber" gloves with acrylamide grout.* The following information is drawn from EPA documentation (Ref. 7). EPA believes that gloves should provide an effective barrier to acrylamide for a full work shift (at least 8 hours) to be considered acceptable for use in acrylamide grouting operations. A supplier of nitrile gloves reports that its 15 mil thick nitrile gloves are effective for at least 8 hours of exposure to acrylamide (Ref. 9). Nitrile gloves that are too thin may not provide adequate protection against uncured acrylamide grout over an 8–hour period. Certain types of rubber gloves may be acceptable for protection against uncured acrylamide grout, but other types may not be. For example, it is likely that natural rubber, or latex will not be effective for protection against uncured acrylamide grout, while butyl rubber is more likely to provide adequate protection. Only testing of the individual material and selected gauge will determine its effectiveness against uncured acrylamide grout.

2. *Effective and affordable PPE for acrylamide is now available.* An affordable and effective PPE combination for protection against dermal exposure to acrylamide during grouting operations would be a PPE product such as a Tychem® SL suit, along with nitrile gloves of an appropriate thickness (Ref. 7). Tychem® SL is a nonporous laminate of Tyvek® and Saranex® 23P film (Ref. 11). It is designed to serve as a barrier to liquids and vapors. It is a widely available material and has been tested by an independent laboratory and shown to provide an effective barrier to acrylamide for 8 hours.

3. *PPE for NMA.* NMA grout is a chemical mixture consisting of about 90% NMA monomer and small amounts of acrylamide, formaldehyde, and methylene bisacrylamide. In EPA's judgement, the structural properties of NMA grout and acrylamide grout are sufficiently similar that materials that provide an effective barrier against acrylamide are likely to provide an effective barrier to NMA (Ref. 15).

E. Is the Use of Acrylamide Grout Related to the Finding of Acrylamide in Cooked Food?

Earlier this year, the Swedish National Food Administration reported that it had found acrylamide in certain foods (Refs. 19, 20, and 21). Government agencies in Great Britain, Norway, and Switzerland subsequently reported similar findings (Refs. 22, 23, 24, 25, 26, and 27). Detection of acrylamide in foods has also been confirmed by the U.S. Food and Drug Administration (FDA) (www.cfsan.fda.gov). Acrylamide was detected in fried and baked foods, but not in raw or boiled foods, leading the researchers to conclude that acrylamide is formed during the cooking process and is not present prior to cooking. The absence of acrylamide in uncooked foods indicates that environmental contamination from the use of acrylamide grout is not the source of the acrylamide. FDA is working with other government agencies to coordinate research related to assessment of risk from exposure to acrylamide. FDA is also investigating the mechanisms by which acrylamide is formed during the cooking process, and what steps can be taken to minimize its formation. EPA has no evidence or reason to believe that use of acrylamide grout is in any way related to the acrylamide found in foods after cooking.

III. What Action is the Agency Taking Today?

A. Withdrawal of the Proposed Rule

EPA is withdrawing the 1991 proposal to ban the manufacture, importation, distribution, and use of acrylamide and NMA grouts. This action reflects the Agency's conclusion that affordable and effective PPE is now available, and that workers who properly use such equipment can be adequately protected while using acrylamide and NMA grouts. The Agency no longer believes that it is necessary to ban acrylamide and NMA grouts to protect workers.

B. Rationale for Withdrawal of the Proposed Rule

The 1991 proposed rule was based in large part on the determination that, even when grouters used the best practical protective equipment and techniques available at the time of the proposal, they were still exposed to potentially significant levels of acrylamide and NMA. Given the advancements in protective equipment and techniques that have occurred since the 1991 proposed rule was issued, EPA has determined that effective and affordable means of protecting grouters are now available without banning the use of acrylamide or NMA.

On January 24, 2002, EPA met with the National Association of Sewer Service Companies (NASSCO), and Avanti International Incorporated, the sole supplier of acrylamide and NMA grouts in the United States (Ref. 16). EPA informed them of its findings concerning the inadequacies of the PPE currently in general use in the industry and of the existence of more suitable PPE. At the meeting NASSCO and Avanti International expressed general agreement with EPA's findings and pledged to take measures to incorporate the new information into their product stewardship and worker safety programs.

Following the meeting, Avanti International modified its Safe Operating Practices Program (SOPP) manual (Refs. 17, 18, and 28). The revised manual recommends that employees who may be exposed to acrylamide grout use protective clothing made from materials such as Tychem® SL which have been shown to be effective in laboratory tests with acrylamide. The revised SOPP also recommends that workers wear chemical resistant boots and gloves that have been shown to be effective against acrylamide, and use full face respirators with P100/organic vapor cartridges. The revised SOPP includes a checklist of appropriate housekeeping procedures for workers to follow when handling acrylamide grout. Avanti International has also developed a program that addresses safe handling and mixing of chemical grouts, including demonstrations of the recommended PPE and acrylamide grout mixing/handling procedures (Ref. 28).

NASSCO stated that it has decided to develop an industry standard guideline (ISG) on safe operating procedures for the use of acrylamide grout (Refs. 17 and 18). The ISG is expected to adopt the recommendations on PPE contained in Avanti International's SOPP. NASSCO also stated that its guideline on safe operating procedures would be referenced in a baseline standard for the application of chemical grouts being developed by the American Society for Testing and Materials (ASTM).

EPA welcomes these voluntary commitments by industry to improve worker safety for grouters. EPA expects that as Avanti International and NASSCO introduce and fully implement their revised programs, the use of effective PPE and adherence to improved work practices will become standard practice throughout the industry. EPA believes that the best way to provide safety information to users of NMA and acrylamide grouts is for grout suppliers to provide the information to their customers through material safety data sheets (MSDSs), training programs and other product stewardship efforts.

In view of the existence of affordable and effective PPE, and the expectation that it will be generally adopted by the grouting industry, EPA believes that it is not necessary at this time to promulgate the proposed rule to protect grouting workers. EPA will continue to follow Avanti International's and NASSCO's efforts and to encourage them to make appropriate modifications to their worker safety programs. EPA will monitor measures taken to protect workers in all sectors of the grouting industry. If EPA determines that workers are not being protected from exposure to acrylamide or NMA, it will reassess the issue to determine whether further action is necessary.

IV. References

The official record for this action has been established under docket ID number OPPT–2002–0006. Other documents relevant to this action can be found in docket OPPTS–62089, which is the docket for the proposed ban on acrylamide and NMA. References identified below by a number starting with OPPTS–62089 are located in the docket for the proposed ban. Unit I.B. describes the official record and how you can access the public version of the official record. The following is a listing of the documents that have been placed in the official record for this action:

1. USEPA, OTS, EED, FSB. "Assessment of Airborne Exposure and Dermal Contact to Acrylamide During Chemical Grouting Operations." (OPPTS–62089–B1–004) EPA 560/ 5–87–009. July 1987.

2. USEPA, OTS, ETD, RIB. "Regulatory Impact Analysis of the TSCA Section 6 Final Rule for Acrylamide Grout." (OPPTS–62089–B1–209) March 31, 1995.

3. USEPA, OTS, ETD, RIB. "Economic Analysis of a Proposed Ban on Chemical Grouts Containing Acrylamide and N-methylolacrylamide." (OPPTS–62089–B1–001) November 1990.

4. USEPA, OTS, ETD, RIB. "Economic Analysis of a Proposed Ban on Chemical Grouts Containing Acrylamide and N-methylolacrylamide; Addendum." (OPPTS–62089–B1–003) July 1991.

5. USEPA, OTS, ETD, RIB. "Economic Analysis of the TSCA Section 6 Final Rule for Acrylamide Grout; Addendum." (OPPTS–62089–B1–221) June 1999.

6. DOL, OSHA. "Evaluation of Acrylamide Sewer Grouting Operations." Salt Lake Technical Center Report No. 91-102. (OPPTS–62089–B1–222) January 25, 1991.

7. USEPA, OPPT. "Personal Protective Equipment (PPE) Recommendations and Documentation for Acrylamide Grout " with attachments by Faraci, J., 2002.

8. Fax with attachments from Glenna Jordan, of E.I. du Pont de Nemours and Company, Inc. to Jennifer Faraci of EPA. OPPT. July 9, 2001.

9. Sol-Vex® gloves. Web Page from Ansell Occupational Healthcare Product Catalog http://www.ansell-edmont.com. Ansell Occupational Healthcare. July 10, 2001.

10. Tyvek® Spunbonded Olefin. Material Safety Data Sheet. http://www.Tyvek®protectiveapprl.com/products/msds/msdssarn.htm. E.I. du Pont de Nemours and Company, Inc. July 19, 2001.

11. Tychem® SL. Material Safety Data Sheet. http://www.Tyvek®protectiveapprl.com/products/msds/msdssarn.htm. E.I. du Pont de Nemours and Company, Inc. July 19, 2001.

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12. Tyvek® Protects Workers from Agricultural Chemicals. http://www.Tyvek®protectiveapprl.com/products/industryspecific/enduse/tyndust1.htm. E.I. du Pont de Nemours and Company. November 8, 2001.

13. Tychem®Data Table http://Tyvek®protective apprl.com/databases/tychem.html. E.I. du Pont de Nemours and Company, Inc. June 28, 2001.

14. USEPA, OPPT, EETD, EPAB. "Acrylamide Economics Survey: Rig Operating Costs and Personal Protective Equipment Final Report" and attachments. October 8, 2001.

15. USEPA, OPPT. "N-Methylolacrylamide (NMA) PPE" by Blouin, J.J. February 8, 2002.

16. Meeting summary and attachments from National Association of Sewer Service Companies. (NASSCO)/EPA meeting. January 24, 2001.

17. Letter with attachments from Lynn L. Bergeson, Bergeson & Campbell, P.C. to William H. Sanders, Director, Office of Pollution Prevention and Toxics, EPA. February 11, 2002.

18. Letter with attachment from Lynn L. Bergeson, Bergeson & Campbell, P.C. to William H. Sanders, Director, Office of Pollution Prevention and Toxics, EPA. March 22, 2002.

19. Acrylamide is Formed During the Preparation of Food and Occurs in Many Foodstuffs. http://192.71.90.8/engakrylpressmeddelande.htm. Swedish National Food Administration. April 24, 2002.

20. Summary--Acrylamide in Heat Processed Foods. http://192.71.90.8/engakrylsammanfattning.htm. Swedish National Food Administration. April 24, 2002.

21. Analytical Methodology and Survey Results for Acrylamide in Foods. http://192.71.90.8/engakrylanalysresultat.htm. Swedish National Food Administration. April 24, 2002.

22. Study Confirms Acrylamide in Food. http://www.food.gov.uk/news/newsarchive/65268. Food Standards Agency. May 17, 2002.

23. Food Standards Agency Study of Acrylamide in Food Background Information & Research Findings Press Briefing 17.05.02. Food Standards Agency. May 17, 2002.

24. Food Standards Agency Acrylamide Study: Your Questions Answered. http://www.food.gov.uk/multimedia/webpage/acrylamide_study_faq/. Food Standards Agency. May 17, 2002.

25. Food Standards Agency Study Shows Acrylamide in Food. http://www.food.gov.uk/news/pressreleases/acrylamide_study_infood. Food Standards Agency. May 17, 2002.

26. Results of Acrylamide in Thirty Norwegian Food Samples. http://www.snt.no/nytt/tema/image/akrylamid/engakrylanalysresultat.htm. Norwegian Food Control Authority.

27. Informations de l'Office Fédéral de la santé publique. http://www.bag.admin.ch/dienste/medien/2002/f/02053129.htm. Swiss Federal Office of Public Health. May 31, 2002.

28. Letter with attachments from Lynn L. Bergeson, Bergeson & Campbell, P.C. to Charles M. Auer, Director, Office of Pollution Prevention and Toxics. EPA. September 10, 2002.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 764

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: November 15, 2002.

Christine T. Whitman,

Administrator.

[FR Doc. 02–30470 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 73

RIN 0920–AA08

Possession, Use, and Transfer of Select Agents and Toxins; Notice of Public Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice of public meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces a public meeting on Possession, Use and Transfer of Select Agents and Toxins.

DATES: December 16, 2002, 9 a.m.—12 p.m. and 1:30 p.m.—4 p.m.

ADDRESSES: The meeting will be held at the Wilbur J. Cohen Building/Voice of America Building in the Cohen Auditorium. While open to the public, seating capacity may be limited.

The Wilbur J. Cohen Building/Voice of America Building is located at 330 Independence Avenue SW, Washington, DC, 20201. No parking is available at the Cohen Building. The nearest Metro stop is Federal Center SW.

FOR FURTHER INFORMATION CONTACT: Minh Thomas, Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Road, MS E–79, Atlanta, Georgia 30333, phone (404) 498–2259.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public meeting to obtain comment on 42 CFR Part 73, Interim Final Rule for Select Agents. On June 12, 2002, the President signed Public Law 107–188, Public Health Safety and Bioterrorism Preparedness and Response Act of 2002. The Act specifies that both the Department of Health and Human Services and the Department of Agriculture will issue their Interim Final Rule implementing the Act on or before 180 days of enactment. DHHS will issue its Interim Final Rule on or about December 9, 2002, and USDA will issue its Interim Final Rule on or about December 9, 2002. These rules will describe implementation of the Act.

Matters to be Considered: The meeting will begin with an overview of the DHHS Interim Final Rule, followed by an overview of the USDA Interim Final Rule. The Department of Justice has also been invited to provide an overview of the personnel requirements specified by the Act. A public comment period will follow the presentations. Each individual or group making public comment will be limited to a total time of 2 minutes.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to Tony Johnson, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, MS C–19, Atlanta, Georgia 30333, phone (404) 639–0100.

Procedure: Any member of the public who wishes to submit oral or written comments at the meeting should contact Angie Frey, Select Agent Program, Centers for Disease Control and Prevention at (404) 498–2272 on or before December 12, 2002. Written comments received by CDC on or before December 12, 2002 will be provided at the meeting. Submit written comments to Select Agent Program, ATTN: Comment for Public Meeting, Centers for Disease Control and Prevention, 1600 Clifton Road, MS E–79, Atlanta, Georgia 30333. Each individual or group wishing to make oral comment will be limited to a total of 2 minutes. Persons attending this meeting are advised that the agency is not responsible for providing access to electrical outlets.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 24, 2002.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–30381 Filed 11–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI81

Endangered and Threatened Wildlife and Plants; Endangered Status for the Dugong in the Republic of Palau

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the United States Fish and Wildlife Service (Service), announce the re-opening of the comment period on the proposed listing of the population of dugong, *Dugong dugon*, in the Republic of Palau as endangered under the Endangered Species Act of 1973, as amended. We are re-opening the comment period to request additional information and comments from the public regarding the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period and will be fully considered in the final rule.

DATES: We will accept public comments until March 3, 2003.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203, or by fax, 703–358–2276, or by e-mail, *Scientificauthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address. You may obtain copies of the proposed rule from the above address.

FOR FURTHER INFORMATION CONTACT: Eleanora Babij at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *Scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The dugong, an aquatic, herbivorous mammal, is currently listed under the Endangered Species Act as endangered throughout its entire range, except in the Republic of Palau. It is classified as Vulnerable by The World Conservation Union (IUCN, 2000), and all populations of dugong are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The dugong has a large range that covers approximately 37 countries and territories. It is believed that Palauan waters support one of the most isolated populations of dugong in the world. The closest dugong populations are 800 km to the south and 850 km to the west. In both of these areas, dugongs are under threat from human exploitation, and it is unlikely that the Palauan population is supplemented by recruitment from either of these areas. Surveys have been conducted in these waters in 1978, 1983, and 1991. The number of dugongs sighted in the 1991 survey was lower than in the previous two surveys, which suggests a reduction in the number of dugongs in Palauan waters. The major threat to this species in Palau is poaching (UNEP, 2002).

Prior to the enactment of the Endangered Species Act, species were afforded protection through the Endangered Species Conservation Act of 1969. Under this Act, the Service prepared two lists: a "Native" and "Foreign" list. Originally, dugong was included in the "Foreign" list of protected species. When the Endangered Species Act became effective in 1973, it supplanted the Endangered Species Conservation Act of 1969. The "Foreign" and "Native" lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). When this happened, the dugong was listed as endangered throughout its entire range.

When the lists were combined, the United Nations Trust Territory of the Pacific Islands (Republic of Palau) was under the jurisdiction of the United States. Section 4(b)(5) of the Endangered Species Act requires that notice of proposed regulations be given to affected States in which the species occurs. The U.S. population of dugong was included on the list without prior notice to the Republic of Palau. Therefore in 1988, the Service amended the Code of Federal Regulations to exclude the U.S. population from the listing. The Republic of Palau was then formally notified and the proposed rule was published in 1993 to extend Endangered status to the dugong population in Palau (58 FR 41688, August 5, 1993). This would then result in the species being classified as endangered throughout its entire range, as intended by the original listing. However, this rule was never finalized, and we are reopening the comment period to allow all interested parties to submit additional information and written comments to be considered by the Service. You may obtain a copy of the 1993 proposed rule by contacting the address listed in **ADDRESSES.**

Public Comments Solicited

We will accept written comments and information during this re-opened comment period from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the dugong in the Republic of Palau;

(2) Additional information concerning the range, distribution, and population size of the dugong in the Republic of Palau;

(3) Current planned activities in the Republic of Palau and their possible impacts on this species.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any person commenting may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public comment in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

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UNEP (United Nations Environment Program). 2002. *Dugong. Status Report and Action Plans for Countries and Territories.* UNEP Early Warning and Assessment Report Series.

Hilton-Taylor, C. (Compiler) (2000). *2000 IUCN Red List of Threatened Species.* IUCN, Gland, Switzerland and Cambridge, UK. Xviii + 61 pp.

Author

The primary author of this notice is Eleanora Babij, Division of Scientific Authority, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 2002.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–30297 Filed 11–29–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 231

Monday, December 2, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: The following persons are members of the Performance Review Board for 2002.

Members: Arnold J. Haiman, Chair, Adrienne R. Rish, SES Member, Franklin C. Moore, SES Member, James E. Painter, SES Member, Jessalyn L. Pendarvis, SES Member.

FOR FURTHER INFORMATION CONTACT: Dan Stoll, 202–712–1076.

Dated: November 22, 2002.

Irma Marshall,

Acting Chief, M/HR/EM.

[FR Doc. 02–30226 Filed 11–29–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho; Meadows Slope Wildland Fire Protection Project

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare the Meadows Slope Wildland Fire Protection Project EIS. The proposed action in the EIS is to create and maintain a half-mile fuelbreak on National Forest System lands to reduce the risk of damage to rural homes, private property, and National Forest resources from wildland fires. The Payette National Forest invites written comments and suggestions on the scope of the analysis and the issues to address. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision-making process so that interested and affected people know how they may participate and contribute to the final decision.

DATES: Comments need to be received by January 6, 2003.

ADDRESSES: Send written comments to Kimberly A. Brandel, District Ranger, New Meadows Ranger District, Payette National Forest, P.O. Box J, New Meadows, Idaho 83654.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Suzanne Acton, Interdisciplinary Team Leader, at the above address, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: The Meadows Slope project area is located in the Sixmile-Threemile, Lower Goose, Little Creek, Little Goose Creek, Middle North Fork Payette River, and Payette Lake sub-watersheds on the New Meadows and McCall Ranger Districts. It is about four miles east of New Meadows and three miles northwest of McCall, and approximately 6,480 acres in size. The purpose and need for this activity is to (1) reduce crown fire risk, (2) reduce forest fuel loading, and (3) reduce risk to life, property, natural resources, and suppression resources on National Forest System lands surrounding the Timber Ridge, Rock Flat, King's Pine, and Crescent Rim Subdivisions, and additional private developments adjacent to the project area.

The proposed action includes a variety of activities to meet the purpose and need. (1) Harvest timber on approximately 4,736 acres, producing approximately 24.9 million board feet (MMBF), using tractor and skyline logging systems. The silvicultural method used would be free thinning with reserve shelterwood/seed tree. (2) Hand pile and burn approximately 852 acres within Riparian Habitat Conservation Areas. (3) Conduct no immediate treatment on approximately 892 acres. (4) Salvage dead and dying timber killed by fir engraver beetle and other pests or weakened due to light, water, or nutrient competition which may increase the fire potential within the project area. (5) Restore 164 acres of unproductive soil to improve soil productivity by obliterating roads, skid trails and/or landings in order to meet the 1988 Forest Plan Standard for total soil resource commitment (TSRC). (6) Improve approximately 21.0 miles of road to provide access for fuelbreak activities. (7) Ensure desired species composition by planting and/or natural regeneration of fire-tolerant Douglas-fir, ponderosa pine, and western larch seedlings on 947 acres following fuelbreak activities. (8) Treat harvest-generated fuels on approximately 4,736 acres. Treatments would include machine piling and burning (excavator piling would be used where slopes exceed 35 percent); broadcast burning; and/or yarding tops. (9) Monitor and treat noxious weeds, if created, within the fuelbreak area. A total of 6,480 acres would be treated with this proposed action. This proposed action would require three one-time, site-specific, non-significant amendments to the Payette National Forest Plan for 5th-year planted tree stocking levels, elk habitat effectiveness, and retention of Visual Quality Objectives.

Preliminary issues for this project include effects on water quality, soil productivity, wildlife habitat, recreation, access management, visual quality, and fish habitat.

A range of reasonable alternatives will be considered. The no-action alternative will serve as a baseline for comparison of alternatives. The proposed action will be considered along with additional alternatives developed that meet the purpose and need and address major issues identified during scoping. Alternatives may have different amounts, locations, and types of project activities.

Comments received in response to this notice, including names and addresses of those who comment, will be part of the project record and available for public review.

The Forest Service is seeking information and comments from other Federal, State, and local agencies; Tribal governments; organizations; and individuals who may be interested in or affected by the proposed action. This input will be used in preparation of the EIS.

Comments will be appreciated throughout the analysis process. The draft EIS will be filed with the Environmental Protection Agency (EPA) and is anticipated to be available for public review by fall 2003. The comment period on the draft EIS will be 45 days. It is important that those interested in the management of the Payette National Forest participate at that time.

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The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1002 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E. D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45-day comment period ends on the draft EIS, the Forest Service will analyze comments received and address them in the final EIS. The final EIS is scheduled to be completed in 2004. The Responsible Official is the Payette National Forest Supervisor. The decision will be documented, including the rationale for the decision, in a Record of Decision (ROD). The decision will be subject to review under the Forest Service Appeal Regulations at 36 CFR part 215.

Dated: November 22, 2002.

Mark Madrid,

Forest Supervisor.

[FR Doc. 02–30379 Filed 11–29–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the New Jersey Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4 p.m. on Tuesday, December 3, 2002, at the New Jersey State House, Room One, 125 W. State Street, Trenton, New Jersey 08625. The purpose of the planning meeting with briefing is to (1) review the status of current activity, (2) plan new projects, and (3) receive briefings from invited speakers on civil rights developments in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Leanna Y. Brown, 973–635–8660 or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, November 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–30398 Filed 11–29–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 1 p.m. on Wednesday, December 4, 2002, at the GSA Conference Center, Conference Room E, Javits Building, 26 Federal Place, New York, New York 10278. The purpose of the meeting is to provide orientation for new Committee members and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, November 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–30394 Filed 11–29–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12:45 p.m. on Wednesday, December 11, 2002, at the Main Capitol Building, Room 8E–A (East Wing), Harrisburg, PA 17120. The Committee will hold a press conference to promote the dissemination of its report Barriers Facing Minority and Women Owned Businesses in Pennsylvania, released in Philadelphia in August 2002. The Committee will also hold a briefing session with community representatives, state and local officials, and minority and women owned business owners to discuss issues raised in the raport that are unique to the Harrisburg/York area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, 202–376–7533, *mpentino@usccr.gov*, (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, November 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–30395 Filed 11–29–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Utah Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8:30 p.m. on Thursday, December 12, 2002, at the Horizonte School, 1234 S. Main Street, Salt Lake City, Utah 84101. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, November 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–30396 Filed 11–29–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 112602B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Bluefin Tuna Dealer Reporting Package.

Form Number(s): NOAA Form 88–144.

OMB Approval Number: 0648–0239.

Type of Request: Regular submission.

Burden Hours: 526.

Number of Respondents: 575.

Average Hours Per Response: 2 minutes for an Atlantic daily landing report; 15 minutes for an Atlantic biweekly report; 8 minutes for a Pacific biweekly report; and 10 minutes for tagging a tuna, labeling a container, and recording a tag number.

Needs and Uses: The purpose of this collection-of-information is to comply with U.S. obligations under the Magnuson-Stevens Fishery Conservation and Management Act (16. U.S.C. 1801 *et.seq.*) and the Atlantic Tunas Convention Act (ATCA—16 U.S.C. 971 *et. seq.*). The ATCA requires the Secretary of Commerce to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The information collected under this clearance serves three purposes: (1) provides stock assessment and research information, (2) monitors landings so the country quota will not be exceeded, and (3) verifies Atlantic and Pacific bluefin tuna export shipments in conjunction with the Bluefin Tuna Statistical Document program. Requirements include a landing report, if certain large tuna are caught, bi-weekly reports, and tagging/labeling of fish and containers.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion, bi-weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: November 25, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30457 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of December 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings Period	
Argentina: Honey, A–357–812	5/11/01–11/30/02
Brazil:	
Certain Carbon Steel Butt-Weld Pipe Fittings, A–351–602	12/1/01–11/30/02
Silicomanganese, A–351–824	12/1/01–11/30/02
Chile: Certain Preserved Mushrooms, A–337–804	12/1/01–11/30/02
India:	
Certain Hot-Rolled Carbon Steel Flat Products, A–533–820	5/3/01–11/30/02

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	Period
Stainless Steel Wire Rod, A–533–808	12/1/01–11/30/02
Indonesia: Certain Hot-Rolled Carbon Steel Flat Products, A–560–812	5/3/01–11/30/02
Japan:	
Drafting Machines and Parts Thereof, A–588–811	12/1/01–11/30/02
Polychloroprene Rubber, A–588–046	12/1/01–11/30/02
P.C. Steel Wire Strand, A–588–068	12/1/01–11/30/02
Welded Large Diameter Line Pipe, A–588–857	6/27/01–11/30/02
Republic of Korea: Welded ASTM A–312 Stainless Steel Pipe, A–580–810	12/1/01–11/30/02
Taiwan:	
Carbon Steel Butt-Weld Pipe Fittings, A–583–605	12/1/01–11/30/02
Porcelain-On-Steel Cooking Ware, A–583–508	12/1/01–11/30/02
Welded ASTM A–312 Stainless Steel Pipe, A–583–815	12/1/01–11/30/02
The People's Republic of China:	
Cased Pencils, A–570–827	12/1/01–11/30/02
Porcelain-on-Steel Cooking Ware, A–570–506	12/1/01–11/30/02
Silicomanganese, A–570–828	12/1/01–11/30/02
Countervailing Duty Proceedings	
Argentina: Honey, C–357–813	1/1/01–12/31/01
India: Certain Hot-Rolled Carbon Steel Flat Products, C–533–821	1/1/01–12/31/01
Indonesia: Certain Hot-Rolled Carbon Steel Flat Products, C–560–813	1/1/01–12/31/01
Thailand: Certain Hot-Rolled Carbon Steel Flat Products, C–549–818	1/1/01–12/31/01
Suspension Agreements	
None.	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of December 2002. If the Department does not receive, by the last day of December 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 26, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–30459 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Turkey: Extension of Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Young at (202) 482–6397, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue: (1) The preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On August 20, 2001, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 2000 to June 30, 2001 (66 FR 43570). On August 7, 2002, and August 9, 2002, the Department issued the preliminary results of certain pasta from Turkey (67 FR 51194) and Italy (67 FR 51827), respectively. The final results are currently due no later than December 5, 2002, for Turkey and December 9, 2002, for Italy.

Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of these reviews within the original time limits, for reasons stated in the Decision Memorandum from Melissa Skinner to Bernard Carreau, dated November 22, 2003, which is on file in the Central Records Unit, B–099 of the main Commerce Building. Therefore, we are extending the final results deadlines in each of the above-referenced reviews until February 3, 2003.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 25, 2002.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–30460 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke Export Trade Certificate of Review No. 84–00022.

SUMMARY: On September 5, 1984, the Secretary of Commerce issued an Export Trade Certificate of Review to Great Agassiz Basin Export Trading Company, Inc. Because this certificate holder has failed to file an annual report as required by law the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Great Agassiz Basin Export Trading Company, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a Certificate of Review was issued on September 5, 1984 to Great Agassiz Basin Export Trading Company, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Great Agassiz Basin Export Trading Company, Inc., on August 26, 2002, a letter containing annual report questions with a reminder that its annual report was due on October 20, 2002. An additional reminder was sent on November 7, 2002. The Department has received no written response to any of these letters.

On November 25, 2002, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify Great Agassiz Basin Export Trading Company, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: November 25, 2002.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–30362 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("ACertificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free

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number) or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by E-mail at *oetca@ita.doc.gov*. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 97–6A003."

The Association for the Administration of Rice Quotas, Inc.'s original Certificate was issued on January 21, 1998 (63 FR 4220, January 28, 1998), and previously amended on June 4, 1998 (63 FR 31738, June 10, 1998); September 25, 1998 (63 FR 53013, October 2, 1998); June 1, 2000 (65 FR 36410, June 8, 2000); April 5, 2001 (66 FR 21368, April 30, 2001); and February 5, 2002 (67 FR 7357, February 19, 2002). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Association for the Administration of Rice Quotas, Inc. (AARQ), c/o David Van Oss of Riviana Foods Inc., 2777 Allen Parkway, Houston, Texas 77019.

Contact: M. Jean Anderson, Esq., Counsel to Applicant, Telephone: (202) 682–7217.

Application No.: 97–6A003.

Date Deemed Submitted: November 19, 2002.

Proposed Amendment: AARQ seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(l) of the Regulations (15 C.F.R. § 325.2(l) (2002)): JIT Products, Inc., Davis, California; Nidera, Inc., Stamford, Connecticut (a subsidiary of Nidera Handelscompagnie BV (Netherlands)); and Sunshine Rice, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.).

2. Delete the following companies as Members of the Certificate: Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division; and Liberty Rice Mill, Inc., Kaplan, Louisiana.

3. Change the listing of the following Members: "CAL PAC Investments, LLC dba California Pacific Rice Milling, Woodland, California" should be amended to read "Gold River Mills, LLC dba California Pacific Rice Milling, Woodland, California;" "Incomar Texas Ltd., and its subsidiary, Gulf Rice Arkansas, LLC, Houston, Texas" should be amended to read "Gulf Rice Arkansas, LLC (subsidiary of Ansera Marketing, Inc.), Houston, Texas;" "PS International, Ltd., Durham, North Carolina" should be amended to read "PS International, Ltd., Chapel Hill, North Carolina;" "Texana Rice, Inc., Houston, Texas" should be amended to read "Texana Rice Inc., Louise, Texas;" "The Connell Company, Berkeley Heights, New Jersey" should be amended to read "The Connell Company for the activities of itself, its subsidiary, Connell (Taiwan) Ltd., and its two divisions, Connell Rice & Sugar Co. and Connell International Company, Berkeley Heights, New Jersey;" and "Uncle Ben's, Inc., Houston, Texas" should be amended to read "Uncle Ben's Inc., Greenville, Mississippi."

Dated: November 25, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 02–30415 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Indirect Cost Rates for the Damage Assessment and Restoration Program for Fiscal Years 2000 and 2001

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The National Oceanic Administration's (NOAA) Damage Assessment and Restoration Program (DARP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal years (FY) 2000 and 2001. The indirect cost rates for these fiscal years and dates of implementation are provided in this notice. More information on these rates and the DARP policy can be found at the DARP Web site at: *http://www.darp.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301–713–3038, ext. 193; (FAX: 301–713–4387; e-mail: *Eli.Reinharz@noaa.gov*), or Linda Burlington, 301–713–1217 (FAX: 301–713–1229; e-mail: *Linda.B.Burlington@noaa.gov*).

SUPPLEMENTARY INFORMATION: The mission of the DARP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) The NOAA DARP consists of three component organizations: the Damage Assessment Center (DAC) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with Federal accounting requirements, the DARP is required to account for and report the full costs of its programs and activities. Further, the DARP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARP's Indirect Cost Effort

In December 1998, the DARP hired the public accounting firm Rubino & McGeehin, Chartered (R&M), to: evaluate the cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARP. A **Federal Register** notice on R&M's effort, their assessment of the DARP's cost accounting system and practice, and their determination respecting the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARP Web site at: *http://www.darp.noaa.gov*.

R&M continued its assessment of DARP's indirect cost rate system and structure for FYs 2000 and 2001. As in the prior years, R&M concluded that the cost accounting system and allocation practices of the DARP component organizations are consistent with Federal accounting requirements. R&M also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. The indirect costs rates that R&M computed for each of the three DARP component organizations were further assessed as being fair and equitable. A report on R&M's recent assessment of the DARP's cost accounting system and recommended cost rate structure can also be found on the DARP Web site at: *http://www.darp.noaa.gov*.

The DARP's Indirect Cost Rates and Policies

The DARP will apply the indirect cost rates for FY 2000 and 2001 as recommended by R&M for each of the DARP component organizations as provided in the following table:

DARP Component organization	Fiscal years (percent)	
	2000	2001
Damage Assessment Center (DAC)	196.54	217.27
Restoration Center (RC)	219.60	257.79
General Counsel for Natural Resources (GCNR	270.10	239.24

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2000 and 2001 revised rates identified in the above table will be applied to all damage assessment and restoration case costs for the respective fiscal year periods. The FY 2000 rate is effective as of May 16, 2002. The FY 2001 rate is effective as of September 30, 2002. DARP will use FY 2001 indirect cost rates for future fiscal years until year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARP indirect cost rate policies and procedures approved as of October 18, 2000 and published in the **Federal Register** on December 7, 2000 (65 FR 76611) remain in effect except as updated by this notice.

Dated: November 22, 2002.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–30416 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112502E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc VMS Committee will hold a meeting, which is open to the public.

DATES: The meeting will convene at 8:30 a.m. on Wednesday, December 18, 2002, and adjourn when business for the day is completed.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, (503) 820–2280.Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Fishery Management Council, (503) 820–2280.

SUPPLEMENTARY INFORMATION: At its November 2002 meeting, the Council recommended the implementation of a pilot VMS program for West Coast groundfish fisheries. The primary purpose of the meeting is to review the Council recommendations and develop draft language for a proposed regulatory package.

Although non-emergency issues not contained in the meeting agenda may come before the Ad Hoc VMS Committee for discussion, those issues may not be the subject of formal Ad Hoc VMS Committee action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Ad Hoc VMS Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

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Dated: November 25, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30456 Filed 11–29–02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112502D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting/public hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will meet on December 16, 2002, at 2 p.m.

ADDRESSES: The Council meeting will be held via telephone conference call at the Council offices, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813; telephone: (808)522-8220; fax: (808) 522-8226.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: The agenda during the Council meeting will include the items listed here:

1. Pelagic Fisheries

Consideration of new provisions for turtle conservation measures for pelagic vessels in the Western Pacific.

In 2002, the Western Pacific Council developed a regulatory framework adjustment to the Pelagic Fisheries Management Plan (PFMP) which was intended to minimize interactions with and harm to sea turtles. These measures stemmed from the non- discretionary Reasonable and Prudent Measures contained in a Endangered Species Act Biological Opinion published by the NMFS in 2001. Although primarily intended for the Hawaii longline fishery, these measures included provisions for all pelagic fisheries under the jurisdiction of the Council. The measures included requirements for small troll and handline vessels to carry bolt cutters and line clippers, to remove hooks and fishing line from any turtles caught while fishing. A new Biological Opinion for pelagic fisheries in the Western Pacific was completed on November 15, 2002. The new Opinion states that in the event of interaction with a sea turtle, operators of vessels using handline and trolling fishing gears to target Pacific pelagic management unit species in waters of the U.S. Western Pacific Exclusive Economic Zone, must handle the sea turtle in a manner to minimize injury and promote post-hooking survival as previously published in the Code of Federal Regulations (CFR 660.32 (c) and (d)). The Council will consider whether initial action is required to adjust the WPFMC regulatory requirements, in order to be consistent with the language in the new Biological Opinion. A public hearing will be held to give the public opportunity to comment before the Council takes action on this agenda item.

2. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522- 8220 (voice) or 808-522-8226 (fax), at least 5 days prior to the meeting date.

Dated: November 25, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30455 Filed 11–29–02; 8:45 am]

BILLING CODE 3510-22-S

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Procurement of Goods and Services

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of September 16, 2002 (67 FR 58357), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of a collection of information associated with the procurement of goods and services. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The Commission's procurement activities are governed by the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 *et seq.*). That law requires the Commission to procure goods and services under conditions most advantageous to the government, considering cost and other factors. Forms used by the Commission request persons who quote, propose, or bid on contracts with the agency to provide information about costs or prices of goods and services to be supplied; specifications of goods and descriptions of services to be supplied; specifications of goods and descriptions of services to be delivered; competence of the offeror to provide the goods or services; and other information about the offeror, such as the size of the firm and whether it is minority owned.

The Commission uses the information provided by bidders to determine the reasonableness of prices and costs and the responsiveness of potential contractors to undertake the work involved so that all bids may be awarded in accordance with Federal Procurement laws.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Information Collection Associated with Procurement of Goods and Services.

Type of request: Extension of approval without change.

General description of respondents: Persons and firms providing bids, proposals, and quotations to the Commission for goods and services.

Estimated number of respondents: 2,539.

Estimated average number of hours per respondent: 5.58 per year.

Estimated number of hours for all respondents: 14,174 per year.

Estimated cost of collection for all respondents: $558,714 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by January 2, 2003 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: November 22, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–30314 Filed 11–29–02; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 25, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: State Eligibility Plan Under Part B of the Individuals with Disabilities Education Act.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 57, Burden Hours: 570.

Abstract: State educational agencies were required to submit State Plans to the U.S. Department of Education in order to receive funds under Part B of the Individuals with Disabilities Education Act (IDEA). Each State now has a State Plan on file with the Department. Any policies and procedures that are currently on file that are consistent with the 1997 amendments to IDEA remain in effect, unless the Secretary or the State determine the need for a change.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2156. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30364 Filed 11–29–02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice has been issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada and Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 180,038 kg of U.S.-origin natural uranium hexafluoride, 121,706 kg of which is uranium, from the Cameco Corporation, Ontario, Canada to Urenco Capenhurst, England. The material, which is now located at Cameco Corp., Port Hope, Ontario, will be transferred to Urenco for enrichment. Upon completion of the enrichment, the material will be retransferred to Commonwealth Edison Company, Downers Grove, Illinois for use as fuel. The uranium hexafluoride was originally obtained by the Cameco Corp. from Power Resources, Inc. pursuant to export license number XSOU8744.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement is not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the National Nuclear Security Administration.

Trisha Dedik,

Director, Office of Nonproliferation Policy.

[FR Doc. 02–30410 Filed 11–29–02; 8:45 am]

BILLING CODE 6450-01-P

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DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41713 entitled "Regional Carbon Sequestration Partnerships". This solicitation will support the Department of Energy's Carbon Sequestration Program by promoting the development of a framework and infrastructure necessary for the validation, demonstration and wide-scale deployment of carbon sequestration technologies. This initiative directly supports the President's Global Climate Change Initiative (GCCI) goal of reducing greenhouse gas intensity by 18% by 2012 and to ensure that a suite of commercially-ready sequestration technologies are available for the 2012 technology assessment mandated by the GCCI. The DOE will call for applications and select multiple Regional Partnerships to receive financial assistance awards that would be chartered to evaluate options and potential opportunities for regional CO_2 storage and capture, CO_2 transport, regulatory permitting, communication and outreach, public acceptance, monitoring and verification requirements, and environmental efficacy of sequestration in their multi-state region(s). The DOE plans to fund 4–10 partnerships for a period of up to 24 months. Total Federal funding for this initiative will be $8–$10 million dollars with a non-Federal cost share of at least 20%.

DATES: The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Martin J. Byrnes, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236. E-mail Address: *byrnes@netl.doe.gov*. Telephone Number: 412–386–4486.

SUPPLEMENTARY INFORMATION: This notice is to inform an array of organizations including private landowners, mining and power generation industry, oil and gas industry, forest product industry, other commercial businesses, climate change and environmental special interest groups, academicians, community leaders, county/city planners, commissioners, engineers, and the general public of the availability of the Regional Carbon Sequestration Partnerships Solicitation so that these groups can begin collaboration.

1. Background Information

A. Introduction

This initiative directly supports the President's Global Climate Change Initiative (GCCI) goal of reducing greenhouse gas intensity by 18% by 2012 and will help ensure that a suite of commercially-ready sequestration technologies are available for the 2012 technology assessment mandated by the GCCI. The establishment of several Regional Carbon Sequestration Partnerships will promote the implementation of the current RD&D technology for the capture, transport, and storage of anthropogenic fossil fuel CO_2 emissions across the United States by developing regional solutions.

For sequestration to be economically acceptable, the cost and energy penalty associated with CO_2 capture must be reduced, the long-term environmental efficacy and safety of CO_2 storage must be verified, and an infrastructure amenable to sequestration must be developed. The geographical differences in fossil fuel use and sequestration sinks across the United States dictates that regional approaches will be required to address the sequestration of CO_2. Each partnership will be chartered to develop permitting requirements, initiate public acceptance, develop protocols for the application of the latest advancements in technology from the DOE Carbon Sequestration Program and other RD&D efforts, evaluate these emerging technologies on capture and storage of CO_2, and establish the monitoring, verification and accounting protocols required in the event that wide-scale deployment of sequestration technologies becomes necessary.

Regionally oriented partnerships represent an important step towards meeting these objectives. The regional diversity of CO_2 sources and storage options calls for a diverse portfolio of strategies for carbon management. Multi-partner collaborations are encouraged. A Regional Partnership may consist of academia, national laboratories, energy producers and users, non-profit organizations, and state agencies and local agencies indigenous to a specific region. The multi-state region should be based upon commonality of interests and contributions to the Partnership including the similarity of CO_2 sources and storage options. States in the multi-state region need not be contiguous.

B. The Regional Carbon Sequestration Partnerships Initiative

A two-phased approach is being pursued for this Partnership initiative. This Phase I solicitation will result in a detailed framework, conceptual design and cost information for follow-on activities in Phase II, "Implementation and Technology Validation". Phase II is anticipated to be a separate, open competitive solicitation as a follow-on to Phase I.

In Phase I the Regional Partnership shall as a minimum:

(1) *Define the Geographical Boundaries of the Region.* There will be several approaches for the capture, storage, and sequestration of CO_2 that will be required for the United States. For example, two sinks in the U.S. may have similar geologic characteristics but one of the two may not be suitable for sequestration because of regional conditions (*e.g.*, land use change patterns, seismic considerations, use as a drinking water aquifer). In addition, a region may have a concentration of unique CO_2 sources. These sources could use the same capture technologies and yield a significant reduction of the CO_2 emitted from a region. Regions should be defined based on similarities of CO_2 sources, sinks, permitting considerations, partners and other analogous features.

(2) *Characterize the Region.* Characterize the region relative to sources, sinks, transport, sequestration options, and existing and future infrastructure requirements. For direct sequestration approaches (*i.e.*, capture and injection of CO_2 into geologic reservoirs), partnerships are required to address all of these issues. For indirect sequestration approaches (*e.g.*, reforestation, agriculture practices), partnerships are required to identify the natural sinks and regional sources of CO_2 emissions. Information gathered during the characterization phase should be archived in a relational database and geographic information system (GIS). The GIS is essential to analyzing the costs of transport, concentration of sources, capacity of sinks, and the creation of regional carbon accounting methods/protocols.

(a) Sources identified within a region must be of collective size that CO_2 capture would significantly reduce the total emissions within the region.

Information presented should include, but are not limited to, annual emissions of CO_2, emissions of other green house gases (GHGs), and locations of large individual sources. Sources of CO_2 can include, but are not limited to, fossil fuel combustion power plants, metals manufacturing facilities, chemical processing plants, ethanol production, natural gas production and fossil fuel energy facilities.

(b) Storage options (*i.e.*, sinks) must include the predominant geologic and terrestrial sinks of the defined region. Storage options could include, but are not limited to, geologic reservoirs such as depleted oil/gas reservoirs; unmineable coal seams; saline formations; terrestrial sequestration options such as reforestation of abandoned mine lands; enhancement of unproductive lands; and modifying land management practices on lands with existing carbon stock to increase carbon content. Value-added storage options such as enhanced oil recovery, natural gas production, or growth of timber or agricultural products should be considered.

(c) Matching sources/sinks with CO_2 transportation issues must be addressed. Transport of the captured CO_2 from the source to the sink may be a significant consideration in regional greenhouse gas mitigation strategies. The Partnerships must analyze options/issues related to transport of CO_2 between sources/sinks (*e.g.*, via pipeline, tanker, *etc.*) within the region. Transport options/issues are obviously not applicable to indirect sequestration approaches such as reforestation and agricultural practices.

(3) *Identify the Most Promising Capture, Sequestration and Transport Options.* Analyze results from Paragraphs 1 & 2 above to identify the most promising regional opportunities for CO_2 capture, transport, storage and sequestration (direct or indirect) from the perspective of technical feasibility, safety, estimated cost, perceived public acceptability, CO_2 reduction potential, and environmental efficacy. Technologies assessed for direct capture of CO_2 are likely to come from the most promising options emerging from the DOE Carbon Sequestration Program or other related R&D initiatives conducted by academia and industry. This Regional Partnership initiative is not intended to be a "technology development" initiative. This initiative should, where possible, assess and validate the most promising emerging technology developments and if necessary, identify minor modifications required to fit the technology(s) to the regional applications. Near the conclusion of Phase I Partnership activities, these results shall be used to identify and plan small scale, regional technology validation field tests to be conducted if the Partnerships desire to participate and are selected for follow on activity in Phase II Regional Partnership Solicitation. The results from both Phase I and Phase II activities will ultimately provide prime candidate regional options for future large scale (> 1 million tonnes per year CO_2 sequestered) demonstration and deployment opportunities, unrelated to these Regional Partnership solicitations.

(4) *Identify and Address Barrier Issues for Wide-Scale Deployment.* Conduct a preliminary assessment of safety, regulatory and permitting requirements, public perception, ecosystem impacts, and other potential challenges associated with wide scale deployment of promising regional opportunities selected for CO_2 capture, transport, and storage (direct and/or indirect approaches). The technology(ies) to be evaluated will be those chosen as the most promising opportunities from Paragraph 3. Develop actions plans to overcome these challenges and begin implementing these plans where possible.

(5) *Develop Public Involvement and Education Mechanisms.* Develop public involvement and education action plans that would be applicable in overcoming the potential challenges identified in Paragraph 4 above. For example, a public involvement plan may consist of, but not limited to, public education in the form of mailing lists, public meetings, media advertising, local interviews and education programs available at libraries, schools, and local businesses.

(6) *Prepare Action Plans for Implementation and Technology Validation Activity.* Follow on action plans should be prepared related to implementation of the framework developed leading to small scale regional technology validation field tests identified in Paragraph 3 above. Relative to direct capture options from energy facilities, Partnerships are encouraged to consider cost-effective approaches that provide flexibility for assessing multiple candidate technology options, if appropriate, such as a small slip stream from existing facility. Action plans for implementing Paragraphs 4 & 5 above should address the Partnerships plans forward related to public acceptance, public involvement and education, regulatory, permitting and accounting frameworks necessary for demonstration and wide-scale deployment of the most promising greenhouse gas mitigation strategies identified from this solicitation.

DOE anticipates requiring the following information as part of the application for financial assistance:

(1) A list of participating public and private organizations, descriptions of the roles and responsibilities, and letters of intent for each partner. Regional partnerships can include industry, state and regional governments, non-profit organizations, academia, and national laboratories that collectively possess all relevant expertise and capabilities. Letters of commitment from all members of the partnership will be required with each application. Those members offering to provide cost-share are also required to provide details of that commitment.

(2) A description of the geographic region as defined by the Partnership including reasons that it should be considered (*e.g.*, concentration of particular type sources or sinks), and factors that make the proposed Partnership necessary for consideration over areas with similar sources or sinks.

(3) A description of the particular region's CO_2 sources and potential storage sites including a plan to provide detailed characterization of these sources and potential storage sites.

(4) A description of the potential aggregate amounts of greenhouse gas storage and value-added benefits (such as enhanced oil recovery, enhanced gas recovery, improved forestry/agriculture practices) that could result from the Regional Partnerships.

(5) Identification of environmental efficacy, permitting, and regulatory issues associated with carbon sequestration and any approach for resolving these challenges.

(6) An approach to developing an outreach plan to inform the public of the capabilities and economic benefits of the partnership activities and engage the public in decision-making when appropriate.

(7) A method for conducting technology transfer and information sharing on the results of the project.

Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the technical and organizational evaluation factors and the relative importance of each factor. Applications submitted by or on behalf of (1) another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award

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under this solicitation. However, these organizations may be proposed as partnership members subject to the guidelines provided in the solicitation.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business*. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, November 25, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30406 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41714 entitled "Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and other Minority Institutions." The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to U.S. Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a select number of applicants based on the scientific merit of the application, relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

DATES: The solicitation was made available on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on November 21, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business*.

FOR FURTHER INFORMATION CONTACT: Angela M. Delmastro, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochran's Mill Road, Pittsburgh PA 15236, E-mail Address: *angela.delmastro@netl.doe.gov*, Telephone Number: 412–386–5038.

SUPPLEMENTARY INFORMATION: DOE anticipates issuing Financial Assistance (Grants) awards. Approximately 1.0 to 1.5 million of DOE funding is planned to award between 4 to 8 projects from this solicitation.

The intent of the Fossil Energy HBCU/OMI Program is to establish a mechanism for cooperative HBCU/OMI research and development projects; to provide faculty and student support at the institutions; to foster private sector participation and interaction with HBCU/OMIs in fossil energy research and development; to provide for the exchange of technical information and research hardware; to raise the overall level of competitiveness by the HBCU/OMIs with other institutions in the field of fossil research; and to tap a heretofore under-utilized resource by increasing the number of opportunities in the areas of science, engineering and technical management for HBCU/OMIs. The collaborative involvement of professors and students from the HBCU/OMI and the commercial sector in the development and execution of fresh new research ideas, and the establishment of linkages between the HBCU/OMI and private sector fossil energy community are essential to the success of this program and equally consistent with the goal of ensuring the U.S. a future supply of technically competent managers, scientists, engineers and technicians from a previously under-utilized resource. It will also serve to maintain and upgrade the educational, training, and research capabilities of our HBCUs/OMIs in the fields of science, engineering and technical management, and provide the talent for an improved utilization of the nation's fossil fuel resources. Therefore, the DOE's National Energy Technology Laboratory (NETL) invites HBCUs/OMIs, in collaboration with the private sector, to submit applications for innovative research and development of advanced concepts related to fossil energy utilization and conversion. The overall purpose of this collaborative effort is to improve prospective U.S. commercial capabilities, and to increase scientific and technical understanding of the chemical and physical processes involved in the conversion and utilization of fossil fuels, thereby broadening fossil resource and technology benefits to our commerce and the consumer. Thus, HBCU/OMI faculty members and their institutions, in collaboration with the private sector, are strongly encouraged to undertake fossil energy-related research and development or to continue ongoing work in this area. Pursuant to 10 CFR 600.6(b), eligibility for award under the subject solicitation is restricted to HBCUs/OMIs. Statutory authority for this Program is provided by Pub. L. 95–224, as amended by 97–258.

Once released, the solicitation will be available for downloading from the IIPS internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751, or e-mail the Help Desk personnel at IIPS *HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business*. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on November 19, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30407 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT15391 entitled "Advanced and Key Oilfield Technologies for Independents." The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NPTO), seeks applications for cost-shared development and demonstration projects using advanced and key oilfield technologies in the United States. The proposed project should address a technical risk that results in the technology's full acceptance by the independents. The goal is to provide technical solutions to issues that are limiting domestic on-shore or off-shore oil exploration and production by independent oil producing companies while providing the same or higher levels of environmental protection expected under the law. Applications will either address: (1) Existing Fields or (2) Exploration.

DATES: The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Keith R. Miles, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: *miles@netl.doe.gov*, Telephone Number: 412–386–5984.

SUPPLEMENTARY INFORMATION: The goals of the Department of Energy's Fossil Energy Oil Program are derived from the National need for increased oil production as a part of the national security, requirements for Federal Lands stewardship, and increased protection of the environment. The Oil Reservoir Life Extension Program supports those goals. In addition, the program supports the National Energy Policy goals to increase domestic oil exploration through continued partnership with public and private entities and to promote enhanced oil recovery from existing wells through new technology. By providing demonstrations of new technologies and approaches that improve oil recovery and increase reserves the oil program will increase the domestic oil supply. The Department of Energy Oil Program has, through funding by Congress focused on the needs of the Nation's independent oil producers. The Administration also addressed the needs of the independent oil producer in the National Energy Policy when they recognized that, "Small independent businesses account for 50–65% of domestic petroleum and natural gas production in the lower 48 states." Independent producers have rapidly moved operations into regions that were traditionally explored and operated by the major oil companies. Recently many of the Nation's independent producers placed in the ranks of the top 20 producing companies in the United States. They currently maintain 63% of the oil reserves and 62% of the oil production. They control 50% of the gas reserves and 52% of the gas production. This program builds on the successful reservoir field demonstrations in the Research with Independents program by expanding the research and demonstration opportunities for independent producers to more complex, higher risk projects. Projects selected would be mid-term projects that could impact Independent production capabilities and thus have a potential for significant impact on domestic production and proved reserves, thereby increasing energy security and supply. Mid-term projects should have results in 5–10 years. The projects should encourage other independents to adopt the use of advanced and key technologies that prove successful in the future exploration and development of domestic reserves.

Projects do not need to be limited to one area of operations. They may address multiple technologies such as exploration, drilling and completion, well stimulation, enhanced oil recovery or other operational issues. The proposed project must however address the identified problems in such a way that evaluation of the success or failure can occur and the reasons can be attributed clearly to the technology.

The two areas of interest for this solicitation are:

Area of Interest 1—Existing Fields—The projects in this area will promote the goals of the National Energy Policy to use new technology to promote enhanced oil and gas recovery in established areas of production. It addresses the technical risk associated with developing, testing and deploying an advanced or key technology under actual field conditions. This program provides the connection between the laboratory and the oilfield and applications are expected to provide documentation of the need for this technology and the problem that it will address. The program allows continued development of a technology to create evolutionary improvements in performance and then the demonstration of such improvements in actual field conditions.

Area of Interest 2—Exploration—The projects in this area target the National Energy Policy goal of advancing exploration methodologies and technologies through the partnership with the independent producers conducting exploration. The DOE will partner with independent producers and others in an effort to push the limits of standard exploration technologies and to improve them. Applications are expected to describe the overall exploration problem and propose the technical solution to the identified problem. They should address the need of the independent producer with regard to a region and show that the project provides such a solution to the problem or problems.

DOE anticipates awarding approximately four (4) or five (5) financial assistance (*i.e.*, Cooperative Agreements) with a project performance period no less than three years in length and no more than five years in length. Approximately $7.0 million of DOE funding is planned over a 3-year period for this solicitation. The proposed projects will contain a field demonstration and as such under the Energy Policy Act of 1992 a minimum of 50% cost share of the total estimated project cost is required. The maximum DOE share of an award will be $2000K.

This competitive solicitation is open to any business, educational institution or state agency and is for the benefit of domestic independent producers. Moreover, for the purposes of this solicitation, an Independent operator shall be a non-integrated company which receives most of its revenue from crude oil or natural gas production at the wellhead. Independents are exclusively in the exploration and production segment of the industry with no retail outlets, marketing or refining operations. Applications submitted by

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or on behalf of (1) another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–03NT15391.

(**Note:** The limit on participation by an M&O contractor for an individual project under this solicitation cannot exceed 25% of the total project cost).

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business*. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on November 22, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30408 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41716 entitled "Gasification Technologies Fundamental Research." This solicitation is intended to support near-term fundamental gasification technologies research projects that are: (1) Fundamental in nature, and (2) Important for the commercial success of gasification technologies. It is anticipated that the resultant projects will provide fundamental data useful to many organizations across the industry to help move gasification technologies toward the commercial marketplace. A secondary objective is to increase university involvement with the Gasification Technologies Program to ensure the inclusion of fresh, innovative ideas in the program, and to educate future scientists and engineers in gasification technologies.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about November 27, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business*.

FOR FURTHER INFORMATION CONTACT: Keith L. Carrington, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, E-mail Address: *keith.carrington@netl.doe.gov*, Telephone Number: (304) 285–4456.

SUPPLEMENTARY INFORMATION: It is anticipated that this action will consist of a single solicitation focused on three specific topic areas. Last year, the Gasification Technologies Product Team held interviews with industry organizations to gain industry's perspective on barriers to the commercial success of gasification technologies. This resulted in a list of specific research and development areas for product team consideration. This solicitation will address some of the near-term fundamental research needs described on this industry-generated list, chosen and modified by the Gasification Technologies Product Team based on additional input from industry and the needs of the DOE Gasification Technologies Program. The following two websites contain background information on gasification technologies: *http://www.netl.doe.gov/coalpower/gasification/* & *http://www.gasification.org/resource/library/library.html*. The program solicitation will focus on the following three topic areas:

1. Develop technologies to remove the barriers preventing the economic use of low ranked (sub-bituminous and lignite) coals. Examples: (a) New/improved approaches for increasing the thermal stability of dewatered lignite. (b) Process/technology to create a higher energy density feed slurry, including understanding the critical properties changed by the process in terms of feed systems.

2. Develop improved materials to increase equipment life or reliability in the gasifier and through the process to the syngas cooler inlet. The net result of the material improvement must have potential to be an economic advantage to the gasification industry. Examples: (a) Improve feed system injector materials to increase the injector life. (b) Increase the life of gasifier refractory, by creating a more robust refractory, through investigation of refractory reactivity with gasifier contaminants and techniques to improve refractory stability, etc. (c) Metal alloys/fabrication that can survive in the gasifier environment long enough to: (1) Assist the development of more robust instrumentation (current average lifetime of thermocouples is 30–45 days), or (2) Permit metal candle filter use at temperatures approaching those in the gasifier (current metal filters have an operation limit of about one year at 450 °C).

3. Develop innovative, less expensive approaches to resolve environmental and/or economic concerns with coal gasification fuel gas contaminants and combustion flue gas pollutants, including the need for ultra clean feed gas for chemical production. Examples: (a) Conduct a mercury balance on the gasification process. (b) Create an added value technology or study for solid or chemical by products such as the concentration of mercury from conventional removal system for sale, creation of a process using high purity sulfur to make a more lucrative product, etc. (c) More effective/less expensive reduction of pollutants and/or trace contaminants in the combustion flue gas. (d) New instrumentation/techniques to measure trace metal concentrations in a high-temperature, high-pressure, reducing environment.

It is anticipated that this program solicitation will result in between three (3) to six (6) awards. The period of performance for each award will range from one to three years with budget periods to be established independently based on the logical technical phases of each individual project. Based on

current planning levels, and subject to the availability of future funding, DOE expects to provide up to approximately $3,600,000 to support work under this solicitation. However, please note that due to DOE's current operation under a continuing resolution, funds are not presently available for this solicitation. Given the objective of this program to increase university involvement in the Gasification Technologies Program, a determination was made to limit recipients under this program solicitation to U.S. colleges and universities and university-affiliated research institutions. Industry collaboration will be encouraged under this program, but only through cost-share and subcontracting arrangements. Subcontracting opportunities by for-profit organizations is limited to no more than 10% of DOE funding provided under the cooperative agreement. In addition, Federal agencies and agents (*i.e.* Management and Operating (M&O) contractors and/or National Laboratories) are prohibited from proposing as a prime contractor or subcontractor under this solicitation. Cost sharing is encouraged, but not required, under the subject program solicitation.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation. However, all questions relating to the solicitation must be submitted electronically through IIPS. All responses to questions, as well as all amendments to the solicitation, will be released on the IIPS homepage.

Issued in Pittsburgh, Pennsylvania on November 20, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30409 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on December 9–10, 2002, at the Chinese State Development Planning Commission in Beijing, China.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the Chinese State Development Planning Commission, 38 Yuetannanjie, Xicheng District, Beijing, China 100824 on December 9 and 10, 2002, commencing at 9 a.m. on December 9. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's China Seminar on Oil Stocks and Emergency Response, which is scheduled to be held at the same time and location. The Agenda for the meeting is under the control of the IEA. It is expected that the IEA will adopt the following Agenda:

Monday, December 9, 2002

I. Introduction
II. Opening Remarks and Keynote Speeches
  —Opening Remarks—Mr. Zhang Guobao, Vice-Chairman, SDPC
  —Opening Remarks—Amb. William Ramsay, Deputy Executive Director, IEA
  —China's Energy Security Challenges and Progress in Meeting Them
  —Oil Emergency Challenges: Introduction and Video Presentation of a Hypothetical Disruption Scenario
III. IEA Oil Security Policies and Procedures
  —Overview of IEA Oil Emergency Response Policies
  —An Industry Perspective on IEA Oil Emergency Response Policies
  —IEA Oil Data Reporting System and Oil Emergency Data Collection
  —Oil Information and Data Collection in China
IV. Oil Disruption and Response Simulation Exercise
  —Replay of the Video Presentation of a Hypothetical Disruption Scenario
  —Oil Disruption and Response Simulation Exercise
  —Presentation on the Lessons Learned from Previous IEA Emergency Response Simulation Exercises
  —Key Points Learned from Today's Simulation Exercise
  —Case Study of the U.S. Oil Disruption Simulation Model
V. IEA Members' Experience in Emergency Response
  —Overview of Oil Emergency Procedures and Measures in IEA Countries
  —Japan's Experience in Emergency Response
  —The UK's Experience in Emergency Response

Tuesday, December 10, 2002

I. Introduction
II. IEA Experiences in Building Oil Stockholding Facilities
  —German Experiences in Building the German Independent Stockholding Agency (EBV)
  —Hungarian Experiences in Establishing the Crude Oil and Oil Product Stockholding Association (KKKSZ)
  —Korean Experience in Building Emergency Oil Stocks by Utilization of Stocks and Facilities
  —SINOPEC Experience in Building Oil Stockholding Facilities and Managing Commercial Stocks
III. Technical and Operational Aspects of Emergency Stockholding
  —U.S. Experience in the Operation of the Strategic Petroleum Reserve
  —Budget and Operation of a Government Stockholding Agency
  —French Government Experience with the Government-Industry Relationship in the Professional Committee for Strategic Petroleum Stocks (CPSSP)
  —A Major Oil Company's Experience in Managing Commercial and Strategic Oil Stocks
  —CNPC/PetroChina's Experience with the Technical and Operational Aspects of Emergency and Commercial Oil Stockholding
V. Summary and Closing Remarks

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel; representatives of members of the SEQ; representatives of the Departments of Energy, Justice, and

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State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, November 25, 2002.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 02–30411 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637–022—WA]

Public Utility District No.1 of Chelan County; Notice of Availability of Draft Environmental Assessment

November 25, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff have reviewed the application for a new license for the Lake Chelan Hydroelectric Project, an existing, operating facility located on the Chelan River near the City of Chelan, Washington. The 48-megawatt project occupies land managed by the U.S. Forest Service and the National Park Service. In the DEA, the staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Comments on the DEA should be filed by January 6, 2003. Comments should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Copies of the DEA can be viewed at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 02–30517 Filed 11–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

November 25, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 1273–009.

c. *Date Filed:* November 15, 2002.

d. *Applicant:* Parowan City.

e. *Name of Project:* Center Creek Hydroelectric Project.

f. *Location:* At the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah. The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Alden C. Robinson, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151 and/or Clark Gates II, City Manager, Parowan City, P.O. Box 576, Parowan, Utah 84761, (435) 477–3331.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–8163, *gaylord.hoisington@FERC.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 20, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site*http://www.ferc.gov* under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. The existing Center Creek Hydroelectric Project consists of: (1) A 15-foot-high, 54-foot-long concrete overflow type diversion dam; (2) a radial gate; (3) trash racks; (4) a 19.9 acre-foot de-silting pond; (5) an 18 to 26-inch-diameter, 18,825-foot-long steel penstock; (5) a 600-kilowatt powerhouse; and (6) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Utah State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance letter: February 2003.

Issue Scoping Document 1 for comments: February 2003.

Request Additional Information: April 2003.

Issue Scoping Document 2: June 2003.

Notice of application is ready for environmental analysis: June 2003.

Notice of the availability of the draft EA: September 2003.

Notice of the availability of the final EA: November 2003.

Ready for Commission's decision on the application: March 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Note: The schedule is going to vary depending upon the circumstances of the project (deficiencies, additional information, etc.). *See* Guidance for Publishing Hydro Licensing Schedules.

Magalie R. Salas,

Secretary.

[FR Doc. 02–30515 Filed 11–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

November 25, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2009–018.

c. *Date filed:* January 28, 1999.

d. *Applicant:* Dominion Generation.

e. *Name of Project:* Roanoke Rapids and Gaston Hydropower Project.

f. *Location:* On the Roanoke River, near the Town of Roanoke Rapids, North Carolina. The project is located in Brunswick County and Mecklenburg County Virginia, and Northampton County, Halifax County, and Warren County, North Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jim Thornton, Dominion Generation, 500 Dominion Blvd., Glenn Allen, VA 23060, telephone 804–273–3257.

i. *FERC Contact:* Ron McKitrick, telephone 770–452–3778, or e-mail *ronald.mckitrick@ferc.gov.*

j. This application has been accepted for filing and is now ready for environmental analysis.

k. *Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the "e-Filing" link.

l. *Description of the Project:* The Project consists of the Gaston Development and Roanoke Rapids Development located on the Roanoke River, immediately downstream from the John H. Kerr Dam and Reservoir operated by the U.S. Army Corps of Engineers.

The Gaston Development is located 34 miles downstream of Kerr Dam at river mile 145.5, and consists of: (1) A 3,600-foot-long and 105-foot-high concrete and earth dam; (2) a 550-foot-long concrete ogee spillway with 11 steel radial gates 40 feet wide by 38 feet high; (3) a 34-mile-long reservoir with a total volume of 450,000 acre-feet and surface area of 20,300 acres at a water surface elevation of 200 feet mean sea level; (4) a concrete and masonry powerhouse, service bay, and unloading bay, about 425 feet long; (6) 4 turbines (3 vertical shaft fixed blade and 1 vertical shaft Kaplan turbine) with a total installed capacity of 225 megawatts, and a maximum hydraulic capacity of 44,000 cfs, producing an average of 336,362 megawatt hours annually, and a maximum dependable capacity of 225 MWH; and (7) four 14.4-kV generators connected to two 230-kilovolt transformers; and other appurtenances.

The Roanoke Rapids Development is located 42 miles downstream of Kerr Dam at river mile 138, and consists of: (1) A 3,050-foot-long and 72-foot-high concrete gravity dam; (2) a 1,133-foot-long concrete ogee spillway with 24 spillway bays each 44 feet wide with steel gates 38 feet wide, and one skimmer bay 25 feet wide; (3) an 8-mile-long reservoir with a total volume of 77,140 acre-feet and surface area of 4,600 acres at a water surface elevation of 132 feet mean sea level; (4) a concrete and masonry powerhouse and service bay about 406 feet long; (6) 4 Kaplan turbines with a total installed capacity of 104 megawatts, and a maximum hydraulic capacity of 20,000 cfs, producing an average of 336,408 megawatt hours annually, and a maximum dependable capacity of 99 MWH; and (7) four 14.4-kV generators connected to two 110-kilovolt transformers; and other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to section 4.34(b) of the Regulations (*see*

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Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–30516 Filed 11–29–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–7]

National Advisory Council for Environmental Policy and Technology; Full Council Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. The Council is a proactive, strategic panel of experts that identifies emerging challenges facing EPA and responds to specific charges requested by the Administrator and the program office managers.

The purpose of the meeting is to develop the NACEPT Council's agenda for FY03 to support the Administrator's priorities. In addition, NACEPT will report on the work of its subcommittees.

DATES: NACEPT will hold a two day public meeting on Tuesday, December 10, 2002, from 8 a.m. to 5 p.m. and Wednesday, December 11, 2002, from 8 a.m. to 3 p.m. Due to meeting date scheduling conflicts, contractual arrangements were unavoidably delayed.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel at 10 Thomas Circle, NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer, *whitt.gwen@epa.gov*, (ph) (202) 233–0090, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Council should be sent to Gwendolyn Whitt, Designated Federal Officer/NACEPT using the contact information below. The public is welcome to attend all portions of the meeting. Members of the public expecting to submit written comments and/or make brief oral statements (5-minute limit) during the public comment session are encouraged to contact Ms. Whitt by December 6, 2002.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Gwendolyn Whitt at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 25, 2002.

Gwendolyn Whitt,

Designated Federal Officer.

[FR Doc. 02–30469 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–1]

Announcement of a Meeting of the Microbial and Disinfection Byproducts Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of meeting.

SUMMARY: Under section 10(a)(2) of Public Law 920423, "The Federal Advisory Committee Act," notice is hereby given of a meeting of the Microbial and Disinfection Byproducts Advisory Committee (Committee) established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The purpose of this meeting is to provide an update to the Committee on the status of the Long Term 2 Enhanced Surface Water Treatment Rule and the Stage 2 Disinfection Byproducts Rule. The meeting will be held as a teleconference and a limited number of lines will be made available to the public. The call-in number and access code for this meeting will be provided to participants upon registration. See **FOR FURTHER INFORMATION CONTACT** in this notice for information on how to register.

DATES: The meeting will be held from 2:30 p.m. to 4:00 p.m. Eastern Time on December 13, 2002.

FOR FURTHER INFORMATION CONTACT: For registration and general information about this meeting, please contact Ms. Crystal Rodgers, Designated Federal Officer, Microbial and Disinfection Byproducts Advisory Committee, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The telephone number is 202–564–5275; e-mail is *rodgers.crystal@epa.gov*. Any person needing special accommodations for this meeting should contact Ms. Rodgers (contact information previously noted), at least five business days before the meeting so that appropriate arrangements can be made.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency (EPA) is developing the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Stage 2 Disinfection Byproducts Rule (DBPR) to provide greater protection against risks associated with microbial pathogens and disinfection byproducts in drinking water. The Committee provided consensus recommendations for the LT2ESWTR and Stage 2 DBPR in September 2000, as stated in an Agreement in Principle (65 FR 83015, December 29, 2000). In this meeting, EPA will inform the Committee regarding the status of development of the LT2ESWTR and Stage 2 DBPR.

Dated: November 25, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–30461 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–9]

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming conference call meeting of the National Drinking Water Advisory Council (Council), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will discuss underground injection control with respect to the practice of hydraulic fracturing for coal-bed methane production.

DATES: The meeting will be held on December 12, 2002, from 10 a.m. to 1 p.m., Eastern Standard Time.

ADDRESSES: Council members will teleconference into Room 2123 of the EPA East building, which is physically located at 1201 Constitution Avenue, NW, Washington, DC. A limited number of additional phone lines may be available for members of the public who are outside of the Washington DC metropolitan commuting area and are unable to attend in person. Any additional teleconferencing lines that are available will be reserved on a first-come, first-serve basis by the Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, submit a written statement in advance, or make arrangements to teleconference into the meeting should contact Brenda Johnson, Designated Federal Officer, National Drinking Water Advisory Council, by December 6, 2002. Ms. Johnson can be reached at (202) 564–3791; by e-mail at *johnson.brendap@epa.gov*, or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (M/C 4601M), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate a portion of the meeting for this purpose. To ensure adequate time for public involvement, oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Dated: November 25, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–30462 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0311; FRL–7283–7]

Endangered Species Protection Program Field Implementation

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Notice of proposed field implementation approach and request for comment.

SUMMARY: EPA's Office of Pesticide Programs is describing, and requesting comment on, implementation of its Endangered Species Protection Program (ESPP, or the Program). The goal of the ESPP is to carry out responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in compliance with the Endangered Species Act (ESA), while at the same time not placing unnecessary burden on agriculture and other pesticide users. This Notice describes how EPA proposes to implement its responsibilities under section 7(a)(2) of ESA by completing and upgrading County Bulletins, amending pesticide labels to reference County Bulletins, and enhancing monitoring programs.

Regulations found at 50 CFR part 402 acknowledge that there may be Federal programs for which revisions to standard regulatory processes could result in more effective and efficient coordination among Federal agencies and thus, more effective and efficient protection of listed species. As such, those regulations (50 CFR part 402) allow Federal agencies to establish alternate procedures, applicable to specific Federal programs, for satisfying the provisions of ESA section 7(a)(2). Those alternate procedures are known as counterpart regulations.

Through a separate Advance Notice of Proposed Rulemaking (ANPR) to be issued on or about the same date as this Notice, EPA, the Department of the Interior (DOI), and the Department of Commerce (DOC) are seeking public input on ways that such counterpart regulations could improve the ESA consultation process with respect to pesticide registrations. Similarly, implementing regulations under FIFRA may be revised to ensure a more effective program.

The docket for this Notice (docket identification number OPP–2002–0311) includes a summary of the current technical review and consultation approaches employed by the Agency, and the standard evaluation procedure used for ecological risk assessments. That information has been subject to public comment in the past, has been used during EPA's Interim Endangered Species Protection Program, and will continue to be used until the Agency, DOI and DOC take comment on these aspects of the Program through the ANPR and modify them as appropriate.

DATES: Comments, identified by docket ID number OPP–2002–0311, must be received on or before March 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of this Notice.

FOR FURTHER INFORMATION CONTACT: Mary Powell, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7384; fax number: (703) 308–3259; e-mail address: *powell.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: This Notice is organized into four units. Unit I. provides general information about applicability of this Notice, availability of additional information, and how to

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comment on the Notice. Unit II. provides background information, including the Agency's legal authority for taking this action, the Interim ESPP, and EPA's efforts to develop this proposed field implementation approach. Unit III. describes the proposed field implementation of the ESPP, and Unit IV. provides the references cited throughout this Notice.

While the Agency seeks comments on any aspect of this Notice, it also is hoping to obtain input on certain specific aspects. Within the various units of this Notice, EPA has indicated specific issues on which the Agency is particularly interested in obtaining comment. These issues are noted within the appropriate units under a subheading of "Specific Input Requested." Further, the Agency seeks comment on whether any aspect of this field implementation proposal is more appropriately addressed through the counterpart regulations that are the subject of a separate ANPR, to be published by the Agency, DOI, and DOC on or about the same date as this Notice.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to farmers; pesticide registrants; pesticide users; agricultural trade associations; public interest groups; groups involved in or interested in endangered species protection; and local, State, Tribal, U.S. Territory, and Federal government agencies. Because other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0311. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number (in this case, number OPP–2002–0311) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0311. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2002–0311. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0311.

3. By hand delivery or courier. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0311. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find these suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number (in this case, docket ID number OPP–2002–0311) in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background Information on the Endangered Species Protection Program

A. Authority and Responsibility under FIFRA and ESA

Since 1970, EPA has had responsibility for regulating the sale, distribution and use of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). EPA has granted registrations, or licenses, to thousands of pesticides containing hundreds of active ingredients and has continuing oversight over such actions. These registrations encompass thousands of different use sites and practices across the United States.

FIFRA as amended (7 U.S.C. 135 *et seq.*) governs the regulation of pesticides in the United States. Under FIFRA, a pesticide product may be sold or distributed in the United States only if it is registered or exempted from registration by EPA. Before a product can be registered unconditionally, it must be shown, among other things, that the pesticide, when used in accordance with widespread and commonly recognized practice, will not generally cause "unreasonable adverse effects on the environment" (section 3(c)(5)). FIFRA defines this standard to include "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of" the pesticide (FIFRA section (2)(bb)(1)). This is known as the FIFRA risk/benefit standard.

Amendments to FIFRA in 1988 required that in addition to the original registration decision, all pesticides first registered before November 1984 be reviewed against more up-to-date data requirements and standards, and decisions made about whether these pesticides should be "reregistered" (FIFRA section 4(a)). FIFRA was amended again in 1996 with enactment of the Food Quality Protection Act. FQPA put into place a new standard for assessing human dietary risk (FIFRA section 2(bb)(2)), but it did not alter the risk benefit-standard of section 2(bb)(1) for assessing ecological risk. It also required that EPA periodically review pesticide registrations (establishing a goal of such review every 15 years) to determine whether such registrations meets the requirements of the Act (FIFRA section 3(g)(1)(A)).

Congress enacted the ESA (16 U.S.C. 1531 *et seq.*) to protect and promote the recovery of animal and plant species that are threatened or in danger of becoming extinct and to ensure that the critical habitat upon which they depend is not destroyed or adversely modified. The ESA institutes certain prohibitions against "taking" threatened or endangered (listed) species.

Section 7(a)(1) of the ESA, 16 U.S.C. 1536(a)(1), requires Federal agencies use their authorities in furtherance of the purposes of the Act, by carrying out programs for the conservation of listed species. Public Law 100–478, October 7, 1988, amended the ESA and states that EPA should fulfill its obligation to conserve listed species, while at the same time considering the needs of agriculture and other pesticide users. Section 7(a)(2) of the ESA, 16 U.S.C. 1536, and the implementing regulations at 50 CFR part 402, further require Federal agencies to ensure that their

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actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. This duty extends to licensing activities such as the registration of pesticides by EPA. In meeting the section 7(a)(2) requirement, EPA must consult with the Services regarding the effects of Agency actions on listed species. In fulfilling this requirement, Federal agencies must use the best scientific and commercial data available. The Secretary of the Interior has delegated the interagency consultation responsibilities to the U.S. Fish and Wildlife Service; the Secretary of Commerce has delegated the interagency consultation responsibilities to the National Oceanic and Atmospheric Administration.

EPA and the Services are currently engaged in a number of separate, but related activities relative to EPA's responsibilities under the ESA. First, under ESA section 7(a)(1), EPA and the Services are engaged in an ongoing Proactive Conservation Review. This review of EPA's ESPP, is intended to clarify for the Federal agencies, EPA's approach to risk assessment, criteria that indicate a listed species may be at risk, and the requirements imposed on EPA by the ESA regulations governing consultation. The review will also identify areas or issues relative to risk assessment, criteria and consultations that may require modification to ensure an effective and efficient process of consultation among EPA and the Services. While this review is conducted under ESA section 7(a)(1), the outcomes of the review will likely be used to help focus discussions on technical and science policy issues that need to be addressed in order to effectively carry out responsibilities under ESA section 7(a)(2).

As noted in the **SUMMARY** section of this Notice, EPA and the Services are also publishing an ANPR, at or about the same time as publication of this Notice. The purpose of the ANPR is to gain public input relative to the consultation, technical, and science policy issues that need to be addressed in order to effectively carry out responsibilities under ESA section 7(a)(2).

As part of the ESPP, this **Federal Register** Notice proposes a field implementation plan for putting in place any protection measures necessary to ensure EPA's compliance with ESA section 7(a)(2). This plan, once final, will be used to put in place protection measures identified through consultations with the Services. EPA may also use this implementation approach as appropriate, to put measures in place necessary to protect listed species, even in the absence of a Biological Opinion from the Services.

B. EPA's Role

1. *ESA section 7(a)(1) obligations.* As noted in Unit II.A. above, EPA has responsibilities under both section 7(a)(1) and 7(a)(2) of the ESA. Under section 7(a)(1), EPA uses its authorities to conserve listed species, in consultation with the Services. The Proactive Conservation Review discussed in Unit II.F.2. is being carried out under section 7(a)(1) of ESA. In addition, EPA has carried out a number of other activities intended to conserve listed species including: Hosting a Wb site that contains listed species fact sheets and a county-scale data base of listed species occurrences; maintaining a toll-free telephone number for public inquiries relative to pesticide use and listed species protection; and producing and disseminating educational materials for students. Additionally, EPA has worked with State agencies responsible for pesticide programs, to ensure that pesticide applicators certified by the States, receive information during their certification training, relative to endangered species protection needs.

2. *ESA section 7(a)(2) obligations.* Under section 7(a)(2) of ESA, EPA must ensure that its actions are "not likely to jeopardize the continued existence of any" listed species or "result in the destruction or adverse modification of" their designated critical habitat. In carrying out its responsibilities, EPA's challenge is how to implement FIFRA, a risk/benefit statute, in a way that ensures compliance with the requirements of the ESA mandate to protect listed species and to do so at use sites that are geographically, ecologically, agronomically, and economically diverse and changeable. EPA seeks to carry out these protections for thousands of pesticide products in ways that users can be expected to implement reliably and routinely without unnecessary burden.

The Agency is responsible for reviewing information and data to determine whether a pesticide product may be registered for a particular use. As part of that determination, the Agency assesses whether listed species or their designated critical habitat may be affected by the use of the product. If EPA determines that the action may affect a listed species, the interagency coordination regulations require the Agency to enter into a process with the Services called "consultation" (**50 CFR 402.14**). The consultation process is designed to ensure that the Agency action is not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of its designated critical habitat (ESA section 7(a)(2)). Following consultation, the Agency is responsible for implementing protections, if necessary, through its available authority. More information on "may affect determinations" and consultations may be found in Unit II.D. EPA must also "confer" with the Services if its actions may jeopardize the continued existence of species proposed for listing or result in destruction or adverse modification of habitat proposed for designation as critical habitat. Consultation is not necessary if EPA determines that a particular action will have "no effect" on listed species or designated critical habitat. (See Unit II.D.1.c. for a discusssion of "no effect determinations."

C. The Roles of FWS and NOAA Fisheries

DOI's U.S. Fish and Wildlife Service (FWS) administers the ESA for most species. DOC's National Marine Fisheries Service (NOAA Fisheries) administers the ESA for certain listed marine and anadromous species. Both FWS and NOAA Fisheries (jointly, the Services) enter into formal or informal consultation or conference with EPA concerning effects to listed species and species proposed for listing as well as effects on critical habitat. The consultation process is described in Unit II.D.3. below. The Services may determine whether an EPA action is likely to cause jeopardy to the continued existence of a species and if so, the Services may propose reasonable and prudent alternatives to the action to avoid jeopardy. The Services may also issue incidental take statements that authorize takings of listed species incidental to certain Federal actions.

D. Effects Determinations and Consultations

In the past, EPA has conducted a number of consultations with the Services. The Agency's experience with those has demonstrated that the agencies need to reexamine their programs to improve both the efficiency and effectiveness of consultation. EPA and the Services are currently participating in a joint Proactive Conservation Review (see Unit II.F.2.) to explore potential modifications for better integrating the FIFRA and ESA processes. The Agency, DOI and DOC are seeking public input on the consultation process and EPA's endangered species assessment processes through a separate ANPR, to be published on or about the same date as this Notice, and intend to address these provisions through counterpart regulations. Similarly, subsequent to the ANPR, certain FIFRA regulatory processes may be reviewed for possible revisions that could make the program more efficient or effective.

While the Agency is not seeking comment on these aspects of its protection efforts through this Notice, it is including a summary of its current process for making effects determinations and consulting with the Services in Unit II.D.2. below, for purposes of providing context to the reader.

1. *Effects determinations.* To the degree possible, endangered species issues are and will be addressed within the Agency's existing processes of registration and reregistration. Concurrently, the Agency will review those pesticides that have been through reregistration and that may affect listed species, or did not undergo ESA review during reregistration.

EPA has no standard data requirements for endangered species effects determinations, beyond those normally required during registration and reregistration. However, in making such effects determinations in the past, the Agency has requested data for specific listed species concerns, and may continue to do so in the future. As the Proactive Conservation Review and ANPR move forward (see Unit II.F.2.), and as EPA begins to meld the process for making these determinations into existing registration and reregistration activities, the Agency may revisit the necessity for identifying data requirements specific to listed species.

The potential of a pesticide to directly affect any particular species is based on two factors: The toxicity of the chemical to the species, and exposure. The latter includes the estimated environmental concentrations (EECs) that would result from labeled use of a pesticide and the potential for actual exposure of the species of concern to those EECs. Direct effects may be in either of two broad categories: Acute effects or chronic effects, including both lethal and sublethal effects. Species may also be affected indirectly through modification of their habitat or through effects on their food supply. EPA relies on a wide range of environmental data to assess the potential effects of pesticides on listed species. These data include toxicological studies, laboratory and field studies of the fate and transport of pesticides, mathematical fate and transport models, and field studies monitoring pesticide concentrations and adverse effects to non-target organisms.

a. *Acute lethal and sublethal effects.* Acute data are derived from toxicity tests with lethality as the primary endpoint. The standard acute tests submitted for pesticide registration also include analysis of observable sublethal effects. For example, a typical acute test for a fish will include concentrations that cause no mortality and often no observable sublethal effects, as well as concentrations that would cause 100% mortality. Sublethal effects may or may not be observed at concentrations below that which cause 100% mortality. Where sublethal effects are observed, the Agency includes such information in its assessment of whether a pesticide may affect a listed species. The effects at test concentrations can be used to statistically predict the effects likely to occur at various pesticide concentrations; a well-done test can even be extrapolated to concentrations below those tested (or above the test concentrations, if the highest concentration did not produce 100% mortality).

b. *Chronic lethal and sublethal effects.* Potential chronic effects of a pesticide can be evaluated based on several types of tests and conducted on one of several possible species, depending on the listed species of interest. For example, chronic tests for a listed bird could be conducted on the mallard or bobwhite quail, whereas such tests for a listed estuarine species would be conducted on mysid shrimp. Chronic tests primarily evaluate the potential for reproductive effects and effects on the offspring. Other observed sublethal effects are also required to be reported. An abbreviated chronic test is usually the first chronic test conducted and will indicate the likelihood of reproductive or chronic effects at relevant concentrations. If such effects are found, then a full life-cycle test will generally be required. If the nature of the chemical is such that reproductive effects are expected, the abbreviated test may be skipped in favor of the full life-cycle test. These chronic tests are designed to determine a "no observable effect level" (NOEL) and a "lowest observable effect level" (LOEL).

c. *Assessment.* EPA typically evaluates the potential of a pesticide to affect listed species by conducting a screening level assessment and, if necessary, a species-specific assessment. During the screening level assessment process, the Agency generally does not determine whether in fact any specific threatened or endangered species may be affected by the pesticide, but merely whether a concern would exist if a threatened or endangered species were exposed to the EECs, given the toxicity of the specific pesticide to the species. The screening steps start out very conservative and become more refined with each step. EPA determines that there is "no effect" on listed species if, at any step in the screening level assessment, no Levels of Concern (LOCs) are exceeded. After EPA performs all the available steps in the screening level assessment, a pesticide may still exceed the Agency's LOCs for listed species (see Unit II.D.1.d.). The Agency will then conduct a species-specific assessment to make effects determinations for individual listed species and their designated critical habitat. Units II.D.1.d. through II.D.1.g. provide an example of this process for aquatic species. Similar steps are undertaken for terrestrial species.

d. *Screening level assessment.* EPA begins its screening level assessments by conducting a basic ecological risk assessment that uses available data and generally conservative assumptions to establish the EEC. EPA then uses increasingly specific methods and data and more refined exposure models to refine the EEC of the pesticide. Where available, EPA may also use field monitoring data for a variety of purposes. At each screening step, the more refined EEC is compared to the toxicity of the pesticide active ingredient to determine whether the pesticide exceeds LOCs established for listed aquatic and terrestrial species. EPA's Standard Evaluation Procedure for Ecological Risk Assessment (June, 1986. EPA-540/9-85-001) provides that LOCs are exceeded for acute effects on listed species when the EEC of a pesticide is greater than 1/20th the LC_{50} for appropriate aquatic species or 1/10th the LC_{50} or LD_{50} for appropriate terrestrial species. Thus, under current practices, the LOCs for listed species incorporate an extra level of protection that is not used in the LOCs for other non-target species. (LC_{50} is the statistically derived estimate of concentration expected to cause 50% lethality. LD_{50} is the statistically derived estimate of oral dose expected to result in 50% lethality.) LOCs are exceeded for chronic and/or reproductive effects when the EEC exceeds the NOEL in appropriate studies.

In the first step of EPA's screening level assessment, the Agency uses a quantitative comparison between the default EEC and the toxicity of the chemical. A default EEC is based on application rates from pesticide labels and on extremely conservative assumptions of movement of the pesticide to water rather than on actual

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chemical fate and transport data. Toxicity values for the pesticide are taken from data submitted by pesticide registrants to support their registration request. The application rate is determined from pesticide labels. EPA then compares the toxicity values with the default EEC to determine whether the pesticide exceeds EPA's endangered species LOCs. If no LOCs are exceeded, the pesticide has "no effect" on listed species and the analysis ends. However, if an LOC is exceeded, EPA may proceed to the next screening step to refine its assessment.

In this next step, the Agency refines its ecological risk assessment by running the GENEEC (generic EEC) model with a variety of inputs on application methods and rates, and chemical fate and transport data to calculate the EEC. Running this model provides a more refined EEC for comparison with the toxicity data. Again, if an endangered species' LOC is exceeded at this step, EPA may proceed to the next step to further refine its assessment. If the model described below is not available for the particular use scenario being evaluated, EPA would typically move to a species-specific assessment as described in Unit II.D.1.e. below.

In the next step, the Agency uses a much more sophisticated model the Pesticide Root Zone Model-Exposure Analysis Modeling System (PRZM/EXAMS) to calculate more refined EECs. This model includes more chemical fate and transport data, and it involves selecting a use site (e.g., wheat or apples) scenario and modifying the scenario to reflect the nature of the pesticide use. These scenarios are based upon actual field data on crop location, extent to which the crop is grown, soil characteristics, climate, etc. Use site scenarios exist only for major and a few minor crops, and would need to be developed to run this model for other crops. If an endangered species LOC is exceeded at this step, a species-specific assessment is conducted.

e. *Species-specific assessment.* To conduct a species-specific assessment, EPA takes the basic quantitative information from its screening level assessment developed for all non-target organisms and puts that information in context for individual listed species and their locations. Important ecological parameters such as stream flow rates and soil types, pesticide use information, the geographic relationship between specific pesticide uses and species locations, and biological requirements and behavioral aspects of the particular species are typically considered. Where reliable, published data are not available, information for such parameters is typically obtained through contacts with knowledgeable experts, including extension agents, crop advisors, resource specialists, and watershed experts. These steps enable the Agency to refine its generic assessment into one specific to individual listed species and their designated critical habitat. If LOCs are exceeded after this analysis, the Agency may work with the registrant to determine whether sufficient protection measures can be incorporated into the registration or reregistration to achieve a no-effect determination. Only if those efforts are unsuccessful will EPA declare a "may affect determination."

f. *Use of field monitoring in assessing risks.* Field monitoring data can supplement modeling and provide a more direct means to assess whether species may be exposed to the pesticide at a level sufficient to cause an effect, if the monitoring program was designed or is appropriate for this purpose. For example, using monitoring data where water samples are obtained one time per quarter year does not necessarily provide information from which exposure levels can be determined, although data can alert EPA to locations where pesticide exposure may be occurring to trigger further assessment or analysis. However, even in cases where appropriately designed monitoring was conducted, EPA would still typically conduct exposure modeling when field monitoring data do not exist for all species locations, and EPA would still typically conduct a species-specific assessment, as described in Unit II.D.1.e. above, to determine whether a particular species may be exposed to the monitored levels of the pesticide.

In summary, EPA typically evaluates the potential of a pesticide to affect listed species by conducting increasingly refined screening level assessments, and, if necessary, a final species-specific assessment.

2. *Consultation procedures.* Service regulations provide for two types of consultations once a "may affect determination" has been made.

a. *Informal consultation.* Informal consultation is an option available to an action agency (in this case EPA) to assist the action agency in determining whether formal consultation is required. During this process, the Services can suggest modifications to an EPA action to avoid the likelihood of adverse effects to a listed species or its designated critical habitat. The informal consultation process is completed with a written concurrence by the Services with EPA's determination that its action is "not likely to adversely affect" listed species or designated critical habitat. If the Services do not concur with EPA's finding of "not likely to adversely affect," then formal consultation must be initiated.

b. *Formal consultation.* Formal consultation is required if the Agency determines that a pesticide may affect or is likely to adversely affect a listed species or critical habitat. In this case, EPA makes a written request for formal consultation with the Services on a particular Agency action (i.e., a pesticide registered for a specific use).

Basically, a consultation package consists of EPA's assessment of the potential for a listed species or designated critical habitat to be adversely affected by the registration of a particular pesticide. More specifically, the package includes a description of the action under consideration, areas that may be affected, listed species or critical habitats at issue, a description of the manner in which the action may affect any listed species or critical habitat, and an analysis of cumulative effects and any relevant reports. The consultation package must use the best scientific and commercial data available.

In response, the Services develop and provide to EPA a Biological Opinion, which provides the Services' opinion on whether the use of the pesticide in question is "likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat" (50 CFR 402.14(g)).

If a Biological Opinion concludes that an action is likely to jeopardize a listed species or adversely modify its designated critical habitat, then the Biological Opinion will include "reasonable and prudent alternatives," if any, that EPA may undertake to avoid the likelihood of jeopardy to the species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives (50 CFR 402.02) are actions that:

(1) The consulting agency is capable of implementing under its authority and jurisdiction.

(2) Allow the agency action to be implemented in a manner consistent with its intended purpose.

(3) Are economically and technologically feasible.

(4) Are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

Biological Opinions will frequently include information for use in implementing protections. For those few species that the Services determine are subject to collection threats, the Services generally will encourage development of alternative protections, such as landowner agreements (see Unit II.E.3.b. for more information on landowner agreements).

Biological Opinions may also include an "incidental take statement." For listed species, to "take" means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (ESA section 3). Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity (50 CFR 402.02). Incidental take statements specify, among other things, the amount or extent of any anticipated incidental taking (e.g., the number of individuals) and the "reasonable and prudent measures" needed to minimize the impact of such a taking. The Biological Opinion may contain reasonable and prudent measures to reduce the impact of incidental take, even if no jeopardy to the listed species is found. If the amount or extent of taking specified in the incidental take statement is exceeded, EPA must reinitiate formal consultation (50 CFR 402.16(a)). The incidental take statement also conveys to the action agency, any applicant to the agency, and any users of the product an exemption from the take prohibitions of the ESA, provided that the action is implemented in a manner consistent with the reasonable and prudent measures included with the incidental take statement (ESA section 7(o)(2)).

Reinitiation of consultation must occur if new information reveals effects of the action that may affect listed species or critical habitat in a manner or extent not previously considered; if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the Biological Opinion; or if a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16).

E. Initial Efforts at Program Implementation

EPA's past efforts to carry out its responsibilities under FIFRA and ESA fall into three areas: Assessment and consultation; implementation of protections; and an interim Program that relies on education, cooperation and public outreach.

1. *Assessment and consultation.* EPA has been consulting with FWS on endangered species issues since 1977, and has used a variety of approaches to these consultations. The various approaches yielded variable results in terms of efficiency, effectiveness at addressing potential risk to a given species, and equity among pesticide registrants and equity among pesticide users.

a. *"Case-by-case" consultations.* In more than 80 instances, the Agency has assessed the potential effects of a pesticide on all listed species, across all proposed uses of a single pesticide. The benefit to this approach to consultation (one pesticide, all proposed uses) is that it is comprehensive as to the agency action and manageable since it involves a single pesticide. The major drawbacks to this approach resulted from use limitations being proposed for a specific pesticide while competing pesticides that may also pose risks to species had not yet been reviewed.

b. *"Cluster" consultations.* In order to mitigate the potential inequity to competing registrants from the case-by-case approach, the Agency engaged the FWS in several "cluster" consultations. These consultations were based on an assessment of all pesticides registered for use on certain crops. For example, in the "cotton cluster" EPA assessed and consulted as appropriate on any pesticide registered for use on cotton. By approaching assessment and consultation in this manner, the Agency alleviated the potential inequity of case-by-case consultations since competitive products for the same use were assessed at the same time. However, this approach carried with it certain other problems. The consultations resulting from this approach were much larger and more complex. At the request of the FWS, EPA reinitiated consultation on portions of these "clusters" to address newly listed species and obtain "incidental take" statements. The resulting reinitiation encompassed certain uses of 112 pesticides that had the potential to affect one or more of 165 different listed species. For both the original consultations and the reinitiation, the statutory time frame provided for the Services to complete a Biological Opinion proved difficult to meet. This approach, while eliminating the inequity among pesticide registrants, created a potential inequity among pesticide users. In these cluster consultations, a pesticide was assessed for one crop, but not for other crops for which it was registered. If the assessed crop was grown adjacent to the unassessed crop, growers of the one crop could face use limitations while growers of the other did not.

c. *"Species-based" consultations.* A third approach to assessment and consultation was intended to ensure that a species was completely addressed at once. This "species-based" approach was used to request formal consultation for 31 pesticides. Under this approach, the Agency and the Services identified the species most vulnerable to effects from exposure to pesticides; identified all the pesticides to which that species might be exposed; and identified all other species that might be exposed to those uses of these pesticides. The Agency's consultation would encompass any combination of these factors that produced a "may affect determination." Because of the diversity of uses of these pesticides and the large number of species potentially affected, it was necessary to divide the consultation into two parts. FWS has completed part I. EPA asked FWS to suspend work on part II while EPA and the Services undertake the ESA Section 7(a)(1) Proactive Conservation Review to facilitate the overall consultation process (see Unit II.F.2. for more information on the Proactive Conservation Review). The benefits of this approach appear to be that a particular species would be protected from all pesticide exposures with a potential to harm the species, at one time. However, because of the complexity of these assessments, the time necessary to identify protections is protracted significantly.

2. *Implementation of protections.* In the past, EPA has proposed several approaches for implementing an endangered species protection program (53 FR 7716, March 9, 1988; 54 FR 27984, July 3, 1989). Under these previous proposals, product labels would have been amended, where necessary, to instruct users to follow specific use limitations. These limitations would have been described in County Bulletins developed by EPA to protect listed species in their area. Bulletins would contain general information about the ESPP, a map of the county depicting areas in which limitations applied, and a table indicating the particular use limitations for specific pesticides in specific areas of the county. States and Tribes would have had the option to initiate and propose to EPA alternative plans for protecting listed species in their area. If EPA deemed these plans to be feasible, and the Services deemed them protective of the species, EPA would adopt the provisions of the plan as the Federal requirements for that State or Tribe.

Other elements of implementation would have included public participation, to include the opportunity for comment on the maps and County Bulletins and State-initiated plans (Unit III.F.).

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Moving forward with a final program implementation scheme did not seem feasible at those earlier points in the history of the program's development. There remained significant issues with potential resulting inequities and resource implications created by the variety of priority setting schemes for assessment and consultation. There also was concern that County Bulletins, enforceable under FIFRA misuse provisions, did not provide sufficient flexibility for pesticide applicators to exercise judgement based on local conditions, to protect listed species in ways that posed the least burden. Consequently, EPA decided, for the interim, to maintain its case-by-case approach to assessment and consultation and to conduct a voluntary ESPP to protect listed species and their habitats. As part of this interim program, EPA has undertaken a number of activities designed to address efficiency, effectiveness and equity issues and to develop an improved ESPP implementation plan.

3. *Interim program.* The interim ESPP relies on education, cooperation and public outreach to achieve its goals. The interim ESPP involves the voluntary participation of States and pesticide users, typically through the use of Interim Pamphlets as described below. Some States also have participated in the program by developing and piloting State-initiated plans to protect listed species within that State. Key components of the interim ESPP include:

a. *Distributing Interim Pamphlets.* These Pamphlets, which are precursors to the County Bulletins, were developed for voluntary use during the Interim ESPP to encourage the protection of listed species. Based largely on Biological Opinions, the Pamphlets include the name of the species of concern, a table of the pesticides that may harm that species, a description of the use limitations necessary to protect the species, and a county-level map showing the geographic areas associated with these use limitations. The type of map and level of detail depends in part on the sensitivity of the listed species to other factors, such as collection. (See Unit III.B. for distribution procedures and more information on County Bulletins.)

b. *Developing State- and Tribe-specific approaches.* Several States have developed alternative approaches to protecting certain listed species during the Interim Program. For example, Minnesota and Wisconsin have succeeded in protecting listed plants by developing landowner agreements with private individuals. These agreements identify protective measures specific to the geographic area involved in the agreement and are made with FWS and the appropriate State agencies.

California has put a program in place whereby use of particular pesticides requires a State permit, the provisions of which take into account the proximity of use to a listed species. Still others have proceeded under the general direction of the Agency's Interim Program but have developed alternatives to county mapping that better communicate protection measures to their citizens.

F. Development of this Implementation Proposal

In developing this implementation proposal, EPA considered information and comments from a number of sources. Those sources included public comments submitted in response to past proposals and other information described below.

1. *EPA initiatives.* EPA has been working on the technical aspects of the ESPP. These efforts include collecting additional data on species biology and habitat locations, agricultural crop and other pesticide use locations, and pesticide toxicity and exposure. In certain cases, additional research was conducted that specifically provided data needed to address risks to listed species. Examples include studies on herbicide effects on cacti, and effects of insecticide use on terrestrial snails.

As required by Public Law 100–478, October 7, 1988, EPA completed and submitted a report to Congress titled "Report to Congress on the Endangered Species Protection Program as it Relates to Pesticide Regulatory Activities." The report describes the joint efforts by EPA, USDA, and FWS to determine the effects of pesticide use on listed species. It also summarizes EPA's efforts to communicate use limitations to pesticide users, to determine alternatives to outright prohibitions, to develop and distribute accurate maps of use limitation areas related to listed species, and to improve communications among EPA, USDA, and FWS.

2. *Proactive Conservation Review.* In a joint effort with the Services, the Agency has undertaken a Proactive Conservation Review, authorized under ESA section 7(a)(1). EPA and the Services are analyzing the processes EPA uses to determine whether a pesticide may affect a listed species and to assess generic mitigation measures. The Services and EPA have agreed to explore issues relative to five specific areas: (1) EPA's test methodologies, (2) environmental exposure assessment processes, (3) risk assessments, (4) conservation measures, and (5) follow-up to EPA action to ensure continuing protection and conservation of listed species. One product of the Proactive Conservation Review will be a handbook setting forth the processes and procedures that will be followed by EPA, NOAA Fisheries and FWS relative to species conservation, pesticide consultations, and protection measures for listed species deemed to be potentially affected by pesticide exposure.

3. *EPA Regional programs.* EPA Regional offices continue to act as liaisons with State lead agencies (SLAs) for pesticide regulatory activities, Tribes and U.S. territories; train State representatives in the ESPP; distribute program materials; contribute to the development of educational and outreach materials; and work closely with States in developing State-initiated plans.

4. *State efforts.* To ensure that the county maps delineating the pesticide use limitation areas are precise and reflect the result of assessments that were based on currently occupied habitat, EPA has continued to work with the States, FWS, and USDA in developing, reviewing and revising the maps. Opportunity also has been provided for their comment on the specific pesticide use limitations for individual species.

State involvement varies, but review usually includes participation by the SLA responsible for pesticide programs at the State level (usually the State Department of Agriculture), State heritage and conservation agencies, the pesticide coordinator for pesticide applicator certification and training, and others. EPA has encouraged the States to include a balanced role for representatives of non-government environmental groups and the pesticide user community as well.

States continue to play an active role in other aspects of the ESPP. Their efforts include developing State-initiated plans, incorporating endangered species modules into pesticide applicator certification and training programs, refining species location information, and providing input on the future directions of the ESPP and ways to achieve program goals more effectively.

5. *National partners' workshops.* As EPA began to revitalize the ESPP, three national workshops were held (in 1997, 1999 and 2001). The purpose of these workshops was to seek input on future directions of the ESPP and on ways to achieve goals more effectively. These workshops resulted in the formulation

of the framework for this final program proposal.

At the heart of each of these workshops was the discussion of a range of practical, nuts-and-bolts solutions for furthering endangered species protection consistent with the ESA. A few dominant themes were apparent throughout: To better protect threatened and endangered species, everyone involved needs to communicate better; to share information, data and resources; and to identify and focus on priorities to make better use of limited resources. While the use of technology to foster endangered species protection is crucial, consideration must also be given to non-technological alternatives and innovative practices (see Unit III.E.3.b. for some examples).

III. The Endangered Species Protection Program - Field Implementation Proposal

EPA's implementation proposal is based on two goals. The first is to provide appropriate protection to listed species and their habitats from potential harm due to pesticide use. The second is to avoid placing unnecessary burden on pesticide users and agriculture.

The following sections describe the elements of EPA's proposed approach to implementing endangered species protections under existing ESA regulations. These elements include: Scope, approach to reviewing pesticides, completing and upgrading County Bulletins, amending pesticide labels to reference County Bulletins, enhancing monitoring programs, compliance and enforcement, and public participation. Finally, this section describes the role of States and Tribes in the Program, implementation timing, and program maintenance.

A. Scope of the ESPP

All pesticide products for which EPA makes a "may affect" determination may be subject to the ESPP.

1. *Indoor products determination.* EPA has determined that pesticide products bearing label directions only for use indoors, and where the applied pesticide remains indoors, will not result in exposure to listed species. Therefore, these products will have "no effect" on listed species and generally would not be subject to the ESPP. Indoor use includes application within transport vehicles and within any structure with enclosed walls and a roof, such as buildings, greenhouses, outbuildings, etc.

This "no effect" determination would not apply to a pesticide that is applied indoors, but could expose outdoor environments (such as pesticides applied in cooling towers or used as cattle dips). Whether these products result in a "may affect" determination will be assessed on a case-by-case basis. If a "may affect" determination is made for these products, they would be subject to the ESPP.

2. *Public health emergencies.* Under section 18 of FIFRA (40 CFR part 166), a State or Federal public health agency may request that EPA grant an emergency exemption from pesticide registration requirements for a public health emergency if the State or Federal agency can demonstrate that:

a. An emergency, non-routine condition exists that requires the use of a pesticide.

b. Effective registered pesticides or alternative practices are not available or economically or environmentally feasible.

c. The situation will present significant risks to human health.

Public health emergencies, verified by State or Federal public health authorities, include situations in which:

(1) A pest outbreak poses a significant risk to human health or in which the elements for disease outbreak (i.e., virus activity, large population of disease vectors either present or pending, or others) are demonstrated to be in place and prompt action is required to avert an actual disease outbreak, and

(2) An actual disease outbreak is in progress and immediate action is essential to arrest the outbreak.

In the latter case, a crisis exemption under section 18 may be appropriate, which allows a Federal or State agency to authorize the emergency use of a pesticide if its use is critical and enough time is not available for EPA to receive and complete a review of the specific request for a public health exemption. Consultations on emergency actions are conducted in accordance with Service regulations found at 50 CFR 402.05.

Generally, in accordance with the ESA, EPA does not authorize use of a pesticide under section 18 if that pesticide will jeopardize a listed species or adversely modify critical habitat. However, if no practical alternative control measures are available, during a public health emergency, a public health exemption under section 18 may be sought for the use of a pesticide that was found to jeopardize listed species or adversely modify its critical habitat.

Specific Input Requested - Public Health Emergencies

- Is the above section 18 approach the appropriate mechanism to address potential intersections of public health and listed species protections?
- Should actions relative to public health emergencies require consultation with the Services, and if so, should it be an emergency consultation?
- What specific alternatives might be appropriate? How do these alternatives allow the appropriate weighing and balancing of public health and listed species protection?

3. *Review of pesticides.* To the degree possible, endangered species issues will be addressed within the Agency's existing review processes of registration and reregistration so that when a registration or reregistration decision is made, it fully addresses issues relative to listed species protection. Concurrently, the Agency will begin a process to review those pesticides that have been through reregistration review and were found potentially to affect listed species or their critical habitat, or where the potential for effects on listed species or their critical habitat was not considered. This does not limit EPA's ability to make changes in its technical approach nor in its data requirements. EPA and the Services are seeking input relative to the technical and consultation aspects of the program through an ANPR.

EPA attempted several different approaches to prioritizing reviews in the past (see Unit II.E.a. through II.E.c.), each resulting in a different set of issues and each more or less effective in differing ways. EPA's proposed approach of addressing potential effect to listed species on a chemical-by-chemical basis, is not without issues. With any approach, EPA believes the best way to address the issues is to develop a technical and consultation process that allows the Federal Government to make appropriate decisions in a timely manner. By focusing our internal processes to address listed species concerns during registration and reregistration where possible, and by identifying and implementing improvements in the technical aspects of review and in the consultation processes, EPA believes many of the issues resulting from a chemical-by-chemical approach to review will be resolved.

4. *Effect determinations and consultations.* EPA's technical review policies (Unit II.D.) and the Services' technical information and analysis requirements under the ESA section 7 consultation regulations currently form the analytical and procedural bases of EPA's Interim Endangered Species Protection Program. As noted in Unit II.F.2., EPA is engaged in a Proactive Conservation Review with the Services under ESA section 7(a)(1) to analyze, among other things, the processes EPA uses to determine whether a pesticide may affect a listed species. Further, EPA

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and the Services will be taking comment through an ANPR on options for counterpart regulations that could amend the existing ESA and FIFRA regulatory regimes in a manner that improves consultations on pesticide actions. Until these efforts are finalized, EPA's current procedures and the Services' existing regulations at 50 CFR part 402 will continue to form the analytical and procedural bases of the ESPP.

B. Completing and Upgrading County Bulletins

The Interim Pamphlets (Unit II.E.3.) have been the centerpiece of the ESPP. As a top priority, EPA will update existing Pamphlets to reflect all current Biological Opinions, including the identified species of concern, a table of pesticides that may harm those species, and current use limitations to protect listed species. EPA will then convert these Pamphlets to County Bulletins. The Agency will continue to provide access to the Bulletins through its home page on the Internet (*www.epa.gov/espp*) and improve the distribution network.

The Bulletins will be developed by EPA in cooperation with the Services, USDA, States and Tribes. EPA will generally determine appropriate use limitations and recommendations in the Bulletins by reviewing results of ESA section 7 consultations and any other relevant information that addresses the needs of the listed species. The Bulletins will only be maintained and issued for counties for which protection measures have been deemed necessary. Bulletins will:

1. Identify the species of concern.
2. Name the pesticides that may harm the listed species.
3. Provide a description of the protection measures necessary to protect the species. Where species or habitat descriptions are helpful or necessary to identify use limitations, EPA will also include this information.
4. Contain a county map showing the geographic area associated with the protection measures, depending on the sensitivity of the species to other factors such as collection. Typically, maps will show a shaded area indicating the area where pesticide use should be modified to protect that species. Within shaded areas on the maps, the specific protection measures will be identified for the pesticide and the species being protected.

To ensure precision, EPA has been working with other Federal agencies and the States in revising the maps and the tables of pesticide use. EPA will develop draft maps and tables of pesticide use limitations and send them to the States, Services, and USDA for review as EPA updates the information for the County Bulletins, or as completion of consultations results in EPA's decision to include additional pesticides or species, or delete currently included pesticides or species. Based on comments from Federal agencies, States and Tribes during the review process, EPA will work with the commenters to resolve any problems and to make any necessary revisions to the Bulletins.

EPA also is working on making the maps easier to use. For example, EPA has been exploring various mapping formats in attempting to convey information to pesticide users most effectively. In some cases, township-range-section designation may be the best way to delineate the habitat of a species, while in other situations, local landmarks such as roads or streams may work more effectively.

The Bulletins also will contain a printing date to indicate the date the Bulletin was issued. As new information becomes available and a Bulletin is revised, EPA will issue a new, revised Bulletin with a new printing date. This Bulletin will supersede the Bulletin previously issued, as identified by the new printing date. EPA will review the County Bulletins as necessary, but generally will not update them more than once annually.

Specific Input Requested - County Bulletins

County Bulletins will be the main basis for conveying information to pesticide users. The Agency is particularly interested in comment on various aspects of these documents as detailed below. (To facilitate comment, an Interim Pamphlet may be printed from the Web site at *www.epa.gov/espp/usa-map.htm*.)

- Are there ways to make the instructions for use easier to understand?
- Is the mapped information depicted in a way that is understandable? For example, is the use of township-range-section designations appropriate?
- Is the use of natural and man-made landmarks appropriate?
- Is it clear what pesticides are subject to what use modifications to protect listed species?
- Are there ways to make the protection measures easier to understand?
- Are the narrative descriptions of habitat or of species as a map supplement helpful?
- How can the Agency make protection areas as specific as possible without infringing on the privacy of individual landowners, who may be the sole custodians of a species on their property, while still protecting the species and not subjecting the species to potential harm by revealing its specific location?
- How can EPA ensure that growers know they have the most recent Bulletins?
- Is annual updating of the Bulletins the right frequency? If not, how often should EPA update them?
- How can EPA work with States to improve the development of Bulletins?

C. Bulletin Distribution Procedures

EPA has been developing its distribution plan for Bulletins and other ESPP information. A key factor in developing this plan is to make sources of Bulletins and other information convenient to pesticide users. In addition, different mechanisms may be appropriate for different States and Tribes. As a result, distribution mechanisms could include several or all of the following methods, depending on the State or Tribe:

1. Mechanisms identified by SLAs.
2. Direct mailing to pesticide applicators within an affected county.
3. Pesticide dealers and distributors. Ideally, Bulletins will be available when and where pesticide applicators buy or obtain their pesticides.
4. Cooperative Extension Service, Natural Resources Conservation Service, Agricultural Stabilization and Conservation offices, and USDA county offices in the vicinity of affected counties.
5. The Services' regional and field offices, where appropriate.
6. EPA Headquarters, Regional offices, EPA's toll-free number and Web site.

EPA plans to evaluate these mechanisms continually and to modify any part of the distribution process as the need arises and as more is learned about the effectiveness of the various mechanisms.

Specific Input Requested - Bulletin Distribution

- Are the mechanisms identified for Bulletin distribution appropriate?
- What other mechanisms would be of value?

D. Amending Pesticide Labels to Reference County Bulletins

EPA proposes to request label amendments of pesticide products for which protection measures have been identified. This amendment would generally include a statement directing the user to follow the information in the County Bulletin. The label also would include a statement regarding the potential for effects to listed species. Finally, the label would include information on how the user can obtain the County Bulletin. The County Bulletins, in turn, would contain specific information on species and areas where protection measures were necessary. Such a system would help ensure that pesticide users are aware, before applying pesticides, of both the potential harm to listed species and how they can obtain information necessary to protect listed species.

The Agency has several approaches to requesting label amendments for currently registered pesticides. In Reregistration Eligibility Decisions (REDs), the Agency can make clear its regulatory position on listed species protection and indicate the labeling that would be necessary for products to be considered eligible for reregistration. The Agency also could issue a Pesticide Registration (PR) Notice requesting amendments of pesticide labels for which limitations have been identified to protect listed species or critical habitat. The Agency also could determine that in the absence of the amended label language, the pesticide would no longer meet the risk/benefit standard of FIFRA and would, therefore, be subject to cancellation.

The Agency intends to use the first approach when completion of a listed species and critical habitat assessment and the identification of use limitations coincides with completion of a RED. However, this approach will not work in those instances where these two activities are not coincidental (i.e., the RED is completed ahead of the listed species determinations or vice versa).

To facilitate label changes in these situations, the Agency would first review the existing Interim Pamphlets to determine that the information is current. The Agency then intends to prepare a PR Notice that will generally request registrants of products in those Pamphlets to make label changes relative to listed species. Specific suggested label language would be articulated in the PR Notice. After passage of the time frames that would be articulated in that Notice, products for which revised label statements are requested, and which do not bear that statement, may be considered misbranded under FIFRA section 12(a)(1)(E) and may be subject to a Notice of Intent to Cancel. If necessary, subsequent PR Notices would generally be issued annually to request label changes for additional products. These Notices will also indicate any products that have been removed from the Program.

Because the label statements would not be county-specific or use-site specific, registrants would not need to change their product label once the appropriate changes have been made, if protection measures are extended to new locations or new species need protection. Label changes would be necessary only if the protective measures specified in the Bulletin are rescinded for all uses of the product. As noted in Unit III.H., the Agency intends to take public input on several phases of listed species assessment before implementing new measures.

The Agency proposes the following generic label statement be adopted for instructing pesticide users about listed species protection:

> This product may have effects on federally listed threatened and endangered species or critical habitat in some counties. When using this product, you must follow the measures contained in the County Bulletin for the county in which you are applying the pesticide. To determine whether your County has a Bulletin consult *http://www.epa.gov/espp/usa-map.htm*. Bulletins also may be available from local pesticide dealers, extension offices, or State pesticide agencies.

Specific Input Requested - Labels

The Agency specifically requests comment on how best to accomplish label changes to protect listed species, where EPA, FWS or NOAA Fisheries has identified use limitations to ensure protection. The Agency also seeks suggestions for specific label language to relay the information articulated in this section.

E. Enforcement

For pesticide products determined to affect listed species or critical habitat, the Agency is proposing that the product labels carry a statement directing users to follow the appropriate County Bulletin in effect at the time of product application. Another option is that all Bulletins published by an annual date certain will be in effect for 12 months. In either case, pesticide users who fail to follow provisions applicable to their pesticide application, whether that failure results in harm to a listed species or not, would be subject to enforcement under the misuse provisions of FIFRA (section 12(a)(2)(G)).

Specific Input Requested - Enforcement

In connection with these approaches, EPA seeks public comment on whether:

- Either or both of these approaches provide effective means to implement species protection.
- There are alternative means to ensure appropriate protection of species that may be adversely affected from the use of a pesticide.

F. Enhancing Monitoring Programs

Evaluating the extent to which the ESPP is protecting and contributing to the conservation of listed species can be accomplished in several ways. Potential options include monitoring to determine the degree to which pesticide users in affected areas are or are not applying pesticides in accordance with the County Bulletins, best management practices associated with landowner agreements, and State-specific approaches.

To determine the feasibility of this type of monitoring, EPA proposes several pilot studies. At least two States would conduct a pilot study with the Agency regarding adherence to information in the Bulletins. States selected for this pilot would be from among those that are currently working on more efficient ways to distribute County Bulletins. EPA also proposes that another State, from among those currently employing landowner agreements in their endangered species protection efforts, pilot a review of the effectiveness of landowner agreements. Finally, the Agency proposes that two additional States assist in piloting a review of the effectiveness of State-specific approaches (Unit II.E.3.b.). Again, the States selected for this pilot would be from among those that have implemented protection programs that vary from EPA's proposal in some significant respect.

Also, it is important that data being collected through acceptable sources be used to the fullest extent possible to maximize efficiencies and minimize costs. EPA proposes to use more effectively the information being obtained by the U.S. Geological Survey to detect pesticides in surface and ground water, information provided to EPA's Office of Water under the Clean Water Act, and State-level ground or surface water monitoring resulting from State pesticide program efforts. EPA will also use the technical data identified during section 7 consultations with the Services. EPA proposes to analyze this information to determine if residues of pesticides are occurring at levels of concern in aquatic environments. Further, EPA proposes to augment these data with targeted terrestrial residue monitoring, possibly to include post-registration monitoring by registrants or others. Locations would be determined with input from the Services and the appropriate State or Tribe, based on proximity of pesticide use sites with species locations. If such pilots result in broader monitoring, this would be conducted as part of the States' or Tribes' ongoing enforcement efforts.

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Finally, EPA would continue and improve upon its cooperation with the Services, States, Tribes, and others to review reported incidents in which pesticides have had an impact on listed species and critical habitat. EPA has been working with FWS field offices throughout the country, as well as other Federal and State agencies, to ensure that EPA has the best possible information on incidents. EPA's Environmental Fate and Effects Division maintains an Ecological Incidents Information System. EPA also gathers incident information from registrant reports submitted under FIFRA section 6(a)(2), or those in which pesticide registrants report to the Agency on observed adverse effects.

Specific Input Requested - Enhanced Monitoring

In particular, the Agency is interested in obtaining public input on the following issues:

- The appropriate role of pesticide registrants and manufacturers in performing environmental monitoring.
- The role incident data could play in protecting listed species and critical habitat.
- Whether there are other ongoing monitoring programs EPA should consider reviewing routinely for information.
- The role the Services should play in monitoring programs.
- Other methods of monitoring that might be appropriate for the agencies to implement.
- How to improve the quality of information on the effects of pesticides on listed species and critical habitat.

G. Role of the States and Tribes

Because local and State and Tribal circumstances may influence the effectiveness of different approaches to listed species protection, States and Tribes will continue to be integral to the success of the ESPP. Specific roles include review of county maps; review of use limitations to protect species; determining the effectiveness of the program; and, at their discretion, development of alternative approaches for protecting listed species.

1. *Review of county maps.* States and Tribes will be requested to provide input to the Agency on county maps to accomplish several things. First, accuracy of the maps is key to success of relaying information to pesticide users. Therefore, States and Tribes will be requested to provide feedback on draft maps relative to whether they accurately depict landmarks, rivers, roads, etc. Further, State and Tribal input on how best to characterize use limitation areas on the County maps will be sought. For example, some States believe that their pesticide users would be best served by designating limitation areas based on township-range-section mapping, while other States believe their pesticide users would prefer designations based on natural and man-made landmarks such as rivers, roads and railways.

2. *Review of use limitations to protect species.* States and Tribes also will be requested to provide input to the Agency on any potential use limitations for species protection. The purpose of this review would be for the Agency to ascertain, based on local conditions, whether specific use limitations could be implemented. States and Tribes will also be sources of input on the technological and economic feasibility of implementing any proposed use limitations.

3. *Help determine the effectiveness of the program.* Because States and Tribes are in closer contact with pesticide users than is the Agency, they will be requested to assist the Agency in determining whether the ESPP as implemented is effective in protecting listed species. They also will be requested to assist in determining whether the limitations outlined in County Bulletins are being followed or modified based on local conditions, and whether any generic changes in the County Bulletins would improve the success of this program.

4. *Develop alternative approaches to protect listed species.* States and Tribes may develop and propose alternative plans for protecting listed species in their areas. Such a plan would recommend measures and approaches that EPA could use to protect listed species in that area. If these plans are submitted to EPA for review and approval, EPA will coordinate with the Services and consult, as appropriate, to determine that the provisions of the plan will provide adequate protections for listed species within that State or Tribal land. If EPA approves the plan following any necessary consultation with the Services, EPA would then adopt it and could require, through Bulletins, that users comply with the requirements of the plan. Alternative plans can be developed for all or a portion of the species affected in that State or Tribal land.

An alternative plan may be submitted to EPA at any time. However, once the federally initiated actions are implemented within an area, those requirements will be effective in that area until the alternative plan is approved for implementation.

H. Public Participation

EPA has encouraged the involvement of Federal agencies, States, Tribes and members of the public throughout the development of the ESPP and will continue to provide opportunities for public participation once the program is final. EPA intends the final ESPP to be as flexible as possible and to modify it as necessary to achieve the goals of protecting listed species and minimizing the impact on pesticide users. Eventually, the ongoing program will meld its components of public participation with existing practices in the registration and reregistration processes.

EPA will always welcome comments from the public on the various aspects of the program. EPA intends periodically to reevaluate the Program, review public comments, and modify the ESPP to continually improve protection of listed species while serving the public interest. Additionally, there are several major phases of a listed species assessment that have opportunity for public input: (1) Prior to a "may affect determination" by EPA, (2) subsequent to such determination but during development of information with which to consult with the Services, and (3) prior to issuance of a Biological Opinion to EPA by the Services. EPA proposes to engage the public in each of these phases as noted below. When any of these phases corresponds with a public participation phase under EPA's ongoing review processes (i.e, reregistration review), that ongoing public process will be used.

1. *Prior to a "may affect determination."* The Agency proposes to notify affected pesticide registrants and provide them an opportunity to update information or provide additional information relative to the determination. Subsequently, the Agency will make public in draft, any determination that a pesticide "may affect" a listed species. The public will have a 30–day opportunity to provide input to that determination.

2. *Subsequent to a "may affect determination."* The Agency will accept information provided for use during consultation with the Services. Information provided subsequent to a "may affect determination" being made will not be considered by the Agency alone but will be shared with the Services for joint consideration during consultation.

3. *Public comment on draft Biological Opinion.* The Agency intends to request that the Services provide draft Biological Opinions to the Agency upon their development. The Agency will provide opportunity for public input to any reasonable and prudent measures or alternatives recommended by the Services in these draft Biological Opinions. The purpose of this review would be to determine whether the alternatives or measures can be reasonably implemented and whether there are alternative measures that may provide similar protection but result in less impact. The Agency will consider this input in developing its response to the draft Biological Opinions.

Specific Input Requested - Public Participation

The Agency seeks specific suggestions on how the public could most effectively be informed of the Agency's determinations and consultations. The Agency also seeks other suggestions for enhancing public involvement in the ESPP.

I. Implementation Timing

Once public comment on this Notice has been considered and a final Notice issued, the Agency intends to begin field implementation of the ESPP. At the same time, EPA recognizes that technical and consultation process issues may change based on input in response to the ANPR the Agency will issue with DOI and DOC on or about the same date as this Notice, or changes to FIFRA implementation regulations. However, the Agency believes the responsible approach is to implement in a timely manner, those aspects of listed species protection that the Agency can, while building modifications and efficiencies into the longer term effort of a sustained approach to protecting listed species.

Within 6 months of reviewing existing Interim Pamphlets for accuracy, the Agency intends to modify them as appropriate and issue them as County Bulletins. While the Bulletins will be widely available, they will be effective upon reference to them on pesticide labels. The Agency also will develop for public comment a PR Notice that will identify time frames in which the Agency anticipates that registrants could modify labels for these products.

Upon issuance of a final Notice of Program Field Implementation, the Agency will begin the process of reviewing, for endangered species implications, those pesticides for which REDs have already been issued but for which specific endangered species assessments were not completed during the RED process.

As pesticides are reviewed and determinations made for listed species, the Agency will begin creating Bulletins or preparing to include these pesticides in existing Bulletins, as appropriate. EPA will review the County Bulletins as necessary, but generally update them not more than once annually.

Specific Input Requested - Implementation Timing

How can EPA time the release of County Bulletins to minimize the potential disruption to pesticide users during a growing season?

J. Program Maintenance

To the degree possible, endangered species issues are and will be addressed within the Agency's existing processes of registration and reregistration. Concurrently, the Agency will review those pesticides that have been through reregistration and were found potentially to affect listed species, or did not undergo ESA review during reregistration. Once all registered pesticides have been re-evaluated, EPA's future obligations to consult under ESA will be fulfilled through an ongoing process of evaluation and referral. If new, valid information becomes available on existing pesticide registrations, or if new species affected by specific pesticides are listed under the ESA, EPA will re-evaluate its determinations and reinitiate consultation when appropriate. EPA anticipates that reinitiation on the basis of new information will occur on an annual or biannual basis, as necessary. EPA will periodically reinitiate consultation, as appropriate, on pesticides already included in the Program to obtain Biological Opinions for newly listed species. It is not the Agency's intent, however, to change product labels and County Bulletins constantly; rather, EPA intends to maintain the ability to act on listed species and critical habitat issues if a new body of data becomes available.

IV. References

All references are available for public review in the public docket. The references used in this document are:

1. U.S. Environmental Protection Agency. 2002. Process for Assessing Potential Risks to Endangered and Threatened Species and Consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

2. U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure, Ecological Risk Assessment.

3. U.S. Environmental Protection Agency. 1991. Report to Congress on the Endangered Species Protection Program as it Relates to Pesticide Regulatory Activities.

List of Subjects

Environmental protection, Pesticides, Endangered species.

Dated: November 25, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

[FR Doc. 02–30463 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–4]

CERCLA Administrative Consent Order Containing Proposed Past Costs Settlement Related to the Butternuts Landfill Superfund Site, Town of Butternuts, Otsego County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of an administrative consent order ("Order") pursuant to sections 104, 106, 107, and 122 of CERCLA 42 U.S.C. 9604, 9606, 9607, and 9622, addressing, *inter alia*, proposed recovery of past response costs paid by EPA with regard to the Butternuts Landfill Superfund Site ("Site") located in the Town of Butternuts, Otsego County, New York. The Order requires the settling party, Hugo Neu Schnitzer East ("Respondent"), to perform a removal action at the Site and also pay $40,000 in reimbursement of EPA's past response costs at the Site. The settlement includes a covenant not to sue the Respondent pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606, 9607(a), for performance of the removal action and for recovery of EPA's past costs and oversight costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating only to the portion of the Order which settles EPA's claim for recovery of its past response costs. EPA will consider all such comments received and may modify or withdraw its consent to the past costs settlement if comments received disclose facts or considerations that indicate that the proposed past costs settlement is inappropriate, improper or inadequate. EPA's response

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to any comments received will be available for public inspection at EPA Region II office at 290 Broadway, 18th floor, New York, New York 10007–1866.

DATES: Comments must be submitted on or before January 2, 2003.

ADDRESSES: The Order is available for public inspection at EPA's Region II office at 290 Broadway, 18th floor, New York, New York 10007–1866. Comments should reference the Butternuts Landfill Superfund Site located in the Town of Butternuts, Otsego County, New York, Index No. CERCLA–02–2002–2028. To request a copy of the Order, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Henry Guzmán, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3166.

Dated: November 15, 2002.

William J. Muszynski,

Deputy Regional Administrator, Environmental Protection Agency, Region 2.

[FR Doc. 02–30464 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Thirteenth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on January 8, 2003, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: January 8, 2003; 2:30 p.m. to 4:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the thirteenth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the thirteenth meeting is as follows:

Agenda

Thirteenth Meeting of the WRC–03 Advisory Committee. Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC 20554

January 8, 2003; 2:30 p.m. to 4:30 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Twelfth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–30402 Filed 11–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, December 3, 2002, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule—Revisions to 12 CFR part 303—Relating to Applications, Compliance and Enforcement.

Discussion Agenda

Memorandum and Resolution Re: 2003 FDIC Budget

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550, 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–3742.

Dated: November 26, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–30547 Filed 11–27–02; 9:14 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Reimbursement for Cost of Fighting Fire on Federal Property.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0141.

Abstract: The collection of information is required in order to reimburse fire services for claims submitted for fighting fires on property, which is under the jurisdiction of the United States and to determine the amount authorized for payment. The FEMA Director, the United States Fire Administration Administrator, and the U.S. Department of Treasury will use the information to ensure proper expenditure of Federal funds.

Affected Public: Business or Other For Profit, Not-For-Profit Institutions, and State, Local or Tribal Government.

Number of Respondents: 4.

Estimated Time per Respondent: 1.5 hours.

Estimated Total Annual Burden Hours: 24 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov.*

Dated: November 25, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–30387 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Federal Hotel and Motel Fire Safety Declaration Form.

Type of Information Collection: Existing collection in use without OMB approval.

OMB Number: 3067—New.

Abstract: FEMA is required to establish and maintain a National Master List (NML) of approved fire safe hotels, motels, or other places of public accommodation. The Federal Hotel Motel Fire Safety Declaration Form is submitted either electronically or in a paper format, and used by property managers to report a property's compliance with safety equipment requirements. The NML is also available to Federal employees, States and the general public, and the hotel and motel industry.

Affected Public: Business or Other For-Profit, Not-For-Profit, and Federal Government.

Number of Respondents: 2,000 properties per year.

Estimated Time per Respondent: Property Owners—15 minutes; Property Owner Updates—3 minutes; State Burden—20 minutes.

Estimated Total Annual Burden Hours: 1,182 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. facsimile number (202) 646–3347or email address *InformationCollections@fema.gov.*

Dated: November 19, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–30388 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1440–DR]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1440–DR), dated November 8, 2002, and related determinations.

EFFECTIVE DATE: November 10, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 10, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30390 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1440–DR]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1440–DR), dated November 8, 2002, and related determinations.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include Individual Assistance and Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the

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catastrophe declared a major disaster by the President in his declaration of November 8, 2002:

Alaska Gateway Regional Educational Attendance Area with the communities of Dot Lake, Mentasta, Northway, Tanacross, and Tetlin. Copper River Regional Educational Attendance Area with the communities of Chistochina for Individual Assistance and Categories C through G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558 Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30391 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1444–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio, (FEMA–1444-DR), dated November 18, 2002, and related determinations.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 18, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio resulting from severe storms and tornadoes on November 10, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Hancock, Ottawa, Paulding, Putnam, Seneca, and Van Wert Counties for Individual Assistance.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30389 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 15, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30392 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Mark Charles Hewitt, Ventura, Iowa; to acquire additional voting shares of Arneson Bancshares, Inc., Clear Lake, Iowa, and thereby indirectly acquire additional voting shares of Clear Lake Bank and Trust Company, Clear Lake, Iowa.

Board of Governors of the Federal Reserve System, November 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30414 Filed 11–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 2002.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Commerce Bancorp, Inc., Cherry Hill, New Jersey; to acquire up to 8 percent of the voting shares of The Bancorp.com, Inc., Wilmington, Delaware, and thereby indirectly acquire voting shares of The Bancorp Bank, Wilmington, Delaware.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. New West Banks of Colorado, Inc., Greeley, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of New West Bank, Greeley, Colorado.

Board of Governors of the Federal Reserve System, November 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30413 Filed 11–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Community Bancshares of West Georgia, Inc., Villa Rica, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of West Georgia (In Organization), Villa Rica, Georgia.

Board of Governors of the Federal Reserve System, November 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30478 Filed 11–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 3:45 p.m., Thursday, December 5, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

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Dated: November 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30620 Filed 11–27–02; 2:06 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY: Federal Trade Commission.

TIME AND DATE: 10 a.m., Tuesday, January 7, 2003.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: *Portion Open to the Public:* (1) Oral Argument in Schering-Plough Corporation *et al.*, Docket 9297.

Portion Closed to Public: (2) Executive Session to follow Oral Argument in Schering-Plough Corporation, *et al.*, Docket 9297.

FOR FURTHER INFORMATION CONTACT: Mitch Katz, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 02–30651 Filed 11–27–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Notice and Request for Comment Regarding Textile Corporate Leniency Policy

AGENCY: Federal Trade Commission.

ACTION: Notice of Textile Corporate Leniency Policy Statement and request for comment.

SUMMARY: The Federal Trade Commission (the "Commission") is announcing a policy statement describing the Commission's approach to self-reported minor and inadvertent violations of certain provisions of the rules and regulations implementing the Textile Fiber Products Identification Act ("Textile Act"), 15 U.S.C. section 70, *et seq.*, and the Wool Products Labeling Act ("Wool Act"), 15 U.S.C. section 68, *et seq.* Although this policy is already in effect, the Commission is soliciting comments about this policy from interested persons. If, after considering any comments, the Commission determines to revise the policy, it will publish a revised policy statement.

DATES: The policy statement is effective on December 2, 2002. Comments must be received by December 31, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave. NW., Washington, DC 20580. All comments should be captioned "Textile Corporate Leniency Comments." Comments in electronic form should be sent to: *textilecorporateleniency@ftc.gov* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2966, or *cvecellio@ftc.gov.*

SUPPLEMENTARY INFORMATION: This policy statement discusses how the Commission expects to consider mitigating factors in matters where minor and inadvertent violations of the Textile or Wool Rules are self-reported by a company. This policy statement provides guidance and information only, and does not create any rights, duties, obligations, or defenses, implied or otherwise. The Commission specifically retains its discretion for determining how to proceed in particular cases.

As noted above, the Commission is soliciting comments about this policy from interested persons. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *textilecorporateleniency@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii), on normal business days between the hours of 8:30 a.m. and 5 p.m. at Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

I. Introduction

The Commission is announcing a policy statement that describes generally how the Commission will exercise its discretion in matters where minor and inadvertent violations of the Textile or Wool Rules are self-reported by a company. The purpose of the policy is to help increase overall compliance with these rules while also minimizing the burden on business of inadvertent labeling errors that are not likely to cause injury to consumers. In developing this policy, the Commission looked for guidance to its existing Civil Penalty Leniency Program, 62 FR 16809 (April 8, 1997). That program was adopted under Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. No. 104–21) ("SBREFA"), and affects only small businesses. This Textile Corporate Leniency Policy is not limited to small businesses, and it differs from the Civil Penalty Leniency Program in that it is not limited to situations involving the assessment of civil penalties.

II. Background

A. Statutory Disclosure/Labeling Requirements

The Textile and Wool Acts cover most textile products, including apparel and home furnishings such as sheets and towels. They require that labeling of wool and other textile products convey three basic pieces of information to consumers: the fiber content, the country of origin, and the name (or registered identification number) of the manufacturer, importer, or some other dealer responsible for the item. The Textile and Wool Rules promulgated by the Commission explain in detail how this information should be conveyed, and these requirements have been well publicized through "how to comply" guides and industry seminars. The industry, however, is very large, and many of its members are small businesses. About 17.7 billion textiles were sold in the United States in 2001, and about 34,000 companies participated in the manufacture, importation, and sale of these items. Accordingly, it is not surprising that minor violations regularly occur.

B. Enforcement Authority and History

The Textile and Wool Acts provide that violations of those acts, or of the implementing Textile or Wool Rules, are violations of the Federal Trade Commission Act.[1] Violations of the Textile or Wool Rules can be prosecuted administratively or in district court. In addition, pursuant to section 5(l) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(l), violation of a Commission administrative order can result in a federal court action, with civil penalties of up to $11,000 per violation. The Commission also can seek penalties in appropriate situations under section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B). Under this section, a company that engages in a practice that the Commission has found to be unfair or deceptive in a prior decision also can be subject to civil penalties of up to $11,000 per violation. Thus, in appropriate instances, the Commission can seek civil penalties in federal court, even when the party is not subject to a prior order.

[1] Section 3 of the Textile Act, 15 U.S.C. 70a; Section 3 of the Wool Act, 15 U.S.C. 68a.

There have been 31 Textile or Wool Act cases since 1990—nine of them federal court actions with civil penalties ranging from $10,000 to $360,000. One of these cases was a criminal action. (Under both the Textile and Wool Acts, willful acts of mislabeling can be charged as a misdemeanor.)

C. Current Informal Policy for Self-Reported Violations

For many years, the staff of the Commission has been receiving reports from businesses about minor mislabeling problems and requests for advice on how to handle them. The staff has advised that it would not recommend enforcement action if the mislabeled goods are sold without relabeling under the following conditions: "first offense" of this type for the company; the mislabeling was inadvertent; the mislabeling is not likely to lead to consumer injury; and the company has undertaken to institute new procedures to ensure the mislabeling will not occur again. The Commission staff tells the company that its decision does not bind the Commission, and asks the company to affirm that it understands that the Commission remains free to take whatever action it deems appropriate and that the staff is making its decision not to recommend action on a one-time basis only. In many of these cases, the cost of relabeling is prohibitive, and the goods would be destroyed if they could not enter commerce without being relabeled.

The following is a list of the types of mislabeling that have been reported to the Commission staff and have resulted in advice from the Commission staff that it would not recommend enforcement action if the goods were sold without relabeling:

- Label with required information is accessible but not immediately obvious (*e.g.*, covered by another label that may be lifted up).
- Fiber content is correct but constituent fibers are not listed in order of prominence (*e.g.*, 20% polyester, 80% cotton instead of 80% cotton, 20% polyester).
- A trade name is used to identify the fiber rather than the generic name (*e.g.*, lycra rather than spandex).
- A shortened form of the generic name is used (*e.g.*, "poly" is listed rather than polyester).
- Label contains country of origin but is not in the neck of the garment.
- The fiber content is slightly incorrect (*e.g.*, 90% nylon, 10% spandex rather than 85% nylon, 15% spandex).[2]

In instances such as these, the Commission staff has advised companies that it would not recommend enforcement action. The Commission believes it will be useful to publicly announce this policy, for the benefit of those companies that are not aware that they have the option of self-reporting and seeking a one-time reprieve from the expense of relabeling mislabeled goods.

III. Textile Corporate Leniency Policy

The Commission announces that consideration of the following factors will lead the staff to allow mislabeled textiles to be sold without relabeling:

1. The entity reported the violation to the Commission promptly after discovering it and the violation has not been discovered by the Commission or any other government agency.
2. The entity undertakes, in writing, to adopt procedures that will help ensure that the violation does not occur in the future.
3. The entity has a low degree of culpability. The degree of culpability reflects the efforts taken by the entity to determine and meet its legal obligations.
4. The entity has not been granted leniency under this program in the last three years. In addition, it has not been subject to any previous enforcement action by the Commission or other federal, state, or local law enforcement jurisdiction for the same or similar conduct. Where there have been prior enforcement actions, however, the Commission staff may take into consideration, as possible mitigating factors, when the previous enforcement action occurred, and whether the entity's management has changed since the previous enforcement action, and other appropriate factors (for example, the use of a new sub-contractor).
5. The entity's violations did not involve willful or criminal conduct.
6. The violations do not cause significant injury to consumers.

As noted, the Commission looked to its Civil Penalty Leniency Program under SBREFA for guidance. The factors listed above are in most cases identical to, or similar to the factors listed in the SBREFA program. Factor 1 is similar to SBREFA factor 1 except that the Textile Corporate Leniency Program includes the additional requirement that no other government agency has discovered the violation.[3] Factor 2 differs from the second SBREFA factor, which states that the entity "corrected the violation within a reasonable time, if feasible." Under the Textile Corporate Leniency Policy, however, the entity is allowed to sell the mislabeled goods without correcting the mislabeling, for the reasons stated above, but it must undertake to adopt procedures that will help ensure that the mislabeling does not occur in the future. Factor 3 is identical to factor 3 in the SBREFA program in that the efforts taken by the entity to determine and meet its legal obligations are important in determining culpability. In the SBREFA program, however, efforts to comply with the law "are judged in light of such factors as the size of the business; the sophistication and experience of its owners, officers, and managers; the length of time it has been in operation; the availability of relevant compliance information; the clarity of its legal obligations; and any active attempts to clarify any uncertainties regarding its obligations." Because a company can have minor and inadvertent violations of the Textile and Wool Rules in spite of its size or sophistication or the other factors listed in the SBREFA statement, the relevant criteria for culpability, or lack thereof, in this program is based on the efforts taken by the entity to determine and meet its legal obligations.

Factor 4 in the SBREFA program—ability to pay the usual civil penalty—is not relevant to this program. Factor 4 in this program is identical to factor 5 in the SBREFA program, except that there is an additional requirement that the entity has not been granted leniency under this program in the last three years. Factor 5 in this program is identical to factor 6 in the SBREFA program, requiring that the conduct not be willful or criminal. Factor 6 in this program is similar to the last factor in the SBREFA program, except that reference to health, safety, and environmental threats has been omitted because the Textile and Wool Rules do not address health, safety, or environmental issues.

The policy announced today is not limited to small businesses because the Commission believes it is a desirable policy for any business, large or small, that meets the criteria described above.

[2] The Textile Act itself provides a 3% tolerance, so variations of less than 3% do not violate the Act.

[3] In particular, violations of labeling rules discovered by U.S. Customs are not eligible for consideration under this policy. The Commission staff currently cooperates informally with U.S. Customs in assessing the seriousness of labeling violations, and will continue to do so.

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Nevertheless, the Commission believes it is primarily small businesses that will benefit from the publication of the policy because they, unlike larger businesses, may be unaware that self-reporting and seeking a one-time reprieve from relabeling is an option. For that reason, the Commission has used Section 223 of SBREFA as a model. Section 223 of SBREFA requires that agencies establish policies to reduce or waive penalties for small entities in appropriate circumstances. The primary goal of this provision is to foster a more cooperative, less threatening regulatory environment for small entities. Although the Commission has already established the policies required by SBREFA, it believes that the proposed corporate leniency policy for violations of the Textile and Wool Rules will also foster a more cooperative, less threatening regulatory environment for small entities. In addition, the Commission believes that the informal policy developed by Commission staff has resulted in more compliance with the Textile and Wool Rules because it has encouraged self-reporting of violations and subsequent reform of internal company policies to avoid future violations. The Commission believes that the policy announced today will also result in more compliance with those rules for the same reason.

IV. Request for Comments

Members of the public are invited to comment on any issues or concerns that they believe are relevant or appropriate to the policies described above. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies specific issues on which it solicits public comments. This list is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Should the Commission revise in any way the corporate leniency policy that it has announced? (*e.g.*, should the policy be revised to include other possible violations, such as catalog disclosure requirements?) If so, please provide specific suggestions.

(2) How would the revisions affect the benefits provided by the policy?

(3) Are any of the criteria that the Commission has used in establishing the leniency policy inappropriate? If so, please explain.

(4) Are there any other criteria that the Commission should use? If so, please elaborate.

Such comments may be filed until December 31, 2002.

Authority: 38 Stat. 717, as amended, 15 U.S.C. 41 *et seq.*; 15 U.S.C. 68 *et seq.*; 15 U.S.C. 70 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–30479 Filed 11–29–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Public Health Emergency Preparedness; Office of Public Health and Science; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AA, Immediate Office of the Secretary, Chapter AN, "Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP)"; Chapter AB, Deputy Secretary, Chapter ABC as last amended at 66 FR 40288, dated August 2, 2001; and Chapter AC, the "Office of Public Health and Science (OPHS)" as last amended at 67 FR 48903–48905, dated 7/26/2002; and ACK "Office of the Surgeon General (OSG)," OPHS, as last amended at 60 FR 56606–06, dated November 9, 1995. This organizational change is primarily to realign the functions of the OASPHEP to more clearly delineate responsibilities for the various activities associated with emergency preparedness and response. The changes are as follows:

I. Under Part A, Chapter AN, "Office of the Assistant Secretary for Public Health Emergency Preparedness," delete in its entirety and replace with the following:

Office of the Assistant Secretary for Public Health Emergency Preparedness (AN)

AN.00 Mission
AN.10 Organization
AN.20 Functions

Section AN.00 Mission. On behalf of the Secretary, the Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) directs and coordinates HHS-wide efforts with respect to preparedness for and response to bioterrorism and other public health emergencies. OASPHEP will direct the National Disaster Medical System (NDMS) and any other emergency response activities within the Department of Health and Human Services that are related to bioterrorism and other public health emergencies. OASPHEP is responsible for ensuring a "One-Department" approach to developing such preparedness and response capabilities and directs and coordinates relevant activities of the OPDIVs.

Section AN.10 Organization. The Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) is headed by an Assistant Secretary for Public Health Emergency Preparedness (ASPHEP), who reports directly to the Secretary, and includes the following components:

- Immediate Office of the ASPHEP (ANA)
- Office of Research and Development Coordination (ANB)
- Office of Emergency Response (ANC)
- Office of Planning and Emergency Response Coordination (ANE)
- Office of State and Local Preparedness (ANF)

Section AN.20 Functions

1. *Immediate Office of the Assistant Secretary for Public Health and Emergency Preparedness (ANA).* The Immediate Office of the ASPHEP provides executive and administrative direction to OASPHEP components. The ASPHEP is the principal advisor to the Secretary on matters relating to bioterrorism and other public health emergencies. The ASPHEP coordinates interagency interfaces between HHS and other Departments, agencies, offices of the United States and state and local entities with responsibility for emergency preparedness and direct activities relating to protecting the civilian population from acts of bioterrorism and other public health emergencies. The ASPHEP provides the necessary leadership and coordinates activities for emergency preparedness matters internal to the Office of the Secretary's components and represents the HHS in working closely with the **Federal Emergency** Management Agency and other Federal departments and agencies. OASPHEP acts as the lead Federal agency for Emergency Support Function #8 within the Federal Response Plan.

2. *Office of Research and Development Coordination (ANB).* The Office of Research and Development Coordination (ORDC) is headed by a Director and is responsible for research and development toward new vaccines, diagnostics, and drugs related to the pathogenic organisms most likely to be used in a terrorist attack on the U.S. homeland. A key function of ORDC is to direct and coordinate activities related to the development of vaccines and other pharmaceuticals to be included in the National Pharmaceutical Stockpile. ORDC supports the ASPHEP by working with all scientific agencies of the Department, including the National Institutes of Health (NIH), the Centers of Disease Control and Prevention (CDC), and the Food and Drug Administration (FDA), as well as other governmental, private, and non-profit scientific entities.

3. *Office of Emergency Response (ANC).* The Office of Emergency Response (OER) is responsible for supporting the interdepartmental NDMS Senior Policy Group and Directorate Staff; enrolling Disaster Medical Assistance Teams (DMAT), Disaster Mortuary Operational Response Teams (DMORT), National Medical Response Teams (NMRT), Veterinary Medical Assistant Teams (VMAT), International Medical Surgical Response Teams (IMSuRT) and specialty team volunteers; maintaining the national NDMS data base; and supporting NDMS personnel requirements during training exercises and deployments; credentialing for NDMS team members; developing and implementing policies, procedures, and guidance for NDMS; developing and coordinating of web-based training and development and implementation of field training for NDMS; overseeing Federal Coordinating Centers; facilitating hospital claims processing; interfacing with and supporting the Metropolitan Medical Response Systems localities; and development of the yearly NDMS conference.

a. *The Division of Emergency Response Operations (ANC1):* The Division of Emergency Response Operations (DERO) is responsible for developing national DMATs, DMORTs, NMRTs, VMATs, IMSuRTs, and specialty teams capable of dealing with health and medical consequences of natural and man-made disasters, and terrorist incidents involving mass casualties, improving the communications infrastructure to support NDMS field response resources, especially for mass casualty incidents; maintaining the equipment required for emergency responses; and managing the Emergency Operations Center.

1. *National Disaster Medical System (NDMS) Branch (ANC11):* NDMS Branch is responsible for supporting the interdepartmental NDMS Senior Policy Group and Directorate Staff; enrolling Disaster Medical Assistance Teams (DMAT), Disaster Mortuary Operational Response Teams (DMORT), National Medical Response Teams (NMRT), Veterinary Medical Assistant Teams (VMAT), International Medical Surgical Response Teams (IMSuRT) and specialty team volunteers; maintaining the national NDMS data base; supporting NDMS personnel requirements during training exercises and deployments; credentialing for NDMS team members; developing and implementing policies, procedures, and guidance for NDMS; developing and coordinating of web-based training and development and implementation of field training for NDMS; overseeing Federal Coordinating Centers; facilitating hospital claims processing; interfacing with and supporting the Metropolitan Medical Response Systems localities; and development of the yearly NDMS conference, including the award ceremony.

2. *The Field Operations Branch ANC12):* The Field Operations Branch (FOB) is responsible for developing national DMATs, DMORTs, NMRTs, VMATs, IMSuRTS, and specialty teams capable of dealing with health and medical consequences of natural and man-made disasters and terrorist incidents involving mass casualties; improving the communications infrastructure to support NDMS field response resources, especially for mass casualty incidents; maintaining the equipment required for emergency response; managing the Emergency Operations Center during emergencies; working with the Department of Veterans Affairs to achieve appropriate pharmaceutical availability, especially for mass casualty incidents; and establishing Management Support Teams at the site of emergencies.

b. *The Division of Administration and Support (ANC2).* The Division of Administration and Support (DAS) is responsible for OER budget execution and formulation, personnel and procurement actions, and other administrative activities. To accomplish these tasks, DAS works with the OASPHEP Operations Officer; and the Office of the Secretary Executive Office (OSEO) and OER program managers to develop solutions to administrative related problems and to develop more effective and efficient administrative support for accomplishing OER activities. DAS also provides staff support for the OASPHEP Operations Officer in coordinating cross-cutting activities.

4. *Office of Planning and Emergency Response Coordination (ANE).* The Office of Planning and Emergency Response Coordination (OPERC) is headed by a Director, who reports to the ASPHEP and is responsible for ensuring that the ASPHEP has in place the systems and processes necessary to coordinate the HHS response to bioterrorism and other public health emergencies. OPERC represents the ASPHEP in the planning and execution of activities to support the Continuity of Government in times of crisis. Key functions of OPERC include: (1) Development and direction of the Secretary's Command Center; (2) implementation and management of the Secretary's Emergency Response Teams; (3) development of the HHS Continuity of Operations Plan (COOP) and coordination of its execution whenever required; (4) direction and coordination of HHS activities under the Federal Response Plan (especially Emergency Support Function #8); (5) liaison with the OASPHEP Office of Emergency Response (OER); (6) primary HHS liaison with emergency response entities elsewhere within HHS (especially CDC and FDA), within other Departments and Agencies (especially the Office of Homeland Security, the Department of Justice, the Department of State, and the Federal Emergency Management Agency), and within other Nations and multi-national organizations such as the World Health Organization; (7) planning, development, and implementation of exercises and other tools for assessing the readiness of HHS emergency response entities; and (8) professional education and training of OPERC personnel and response staff.

a. *The Readiness Enhancement and Assessment Program (ANE1).* The Readiness Enhancement and Assessment Program (REAP) is responsible for evaluating the response capabilities of the Department, through its many operational assets (*e.g.*, the National Medical Disaster System, the Commissioned Corps Readiness Force, and the Epidemic Intelligence Service). Through this analysis, REAP will recommend and implement necessary changes to operational plans, Departmental functions and policy guidance. The REAP will design, implement and analyze internal and external exercises, both functional and command post. REAP supports the Director OPERC and the ASPHEP by providing analytical analysis of plans, operations and exercises, making recommendations for future improvements.

b. *The Secretary's Emergency Response Team Office (ANE2).* The Secretary's Emergency Response Team (SERT) Office is responsible for coordinating health activities between

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state or local government officials involved on site with emergency incidents and the Secretary of Health and Human Services or his representative. The SERT will design, roster, equip, train and exercise a rapidly deployable group of personnel to support the combined local, state and national response to public health emergencies. The SERT will provide on-site policy guidance and communications linkages between field operations and the ASPHEP.

c. *Secretary's Command Center (ANE3).* The Secretary's Command Center (SCC) is responsible for coordinating all information received by the HHS related to public health emergencies. The SCC shall monitor both internal and external information sources and communicate relevant information directly to the ASPHEP or the Secretary. The SCC will serve as the single point of contact for all public health emergencies providing 24 hour staffing, 7 days a week, 365 days a year. During emergencies, the SCC shall serve as the focal point for liaison activities within HHS.

5. *Office of State and Local Preparedness (ANF).* The Office of State and Local Preparedness (OSLP) is headed by a Director, who réports to the ASPHEP and is responsible for directing and coordinating the activities of HHS Operating and Staff Divisions with respect to enhancing state and local preparedness for bioterrorism and other public health emergencies. OSLP takes the lead in developing policies, plans and strategies that are intended to strengthen and upgrade State and local public health and medical capacities to respond to bioterrorism. OSLP is also responsible for ensuring stewardship of the federal investment in State and local preparedness and provides oversight, in collaboration with the Operating Divisions. Such oversight will include financial auditing, project monitoring and readiness assessment.

II. Under Part A, Chapter AB, Deputy Secretary," add the following new component "Security Clearance and Drug Testing Office (ABE):"

Security Clearance and Drug Testing Office (ABE). The Security Clearance and Drug Testing Office (SCDTO) reports directly to the Deputy Secretary and receives operational oversight from OASPHEP. (1) provides Department-wide guidance for policy, oversight, and operations of personnel security; classified information; and telecommunication security; and (2) coordinates the Department's drug-free workplace program, which includes scheduling drug and alcohol testing.

III. Under Part A, Chapter AC, "Office of Public Health and Science," add the following new paragraph at the end of Section AC.20 Functions, Paragraph K, "Office of the Surgeon General (ACK)".

The Commissioned Corps Readiness Force (CCRF) is responsible for developing, commanding, deploying and coordinating a specialized cadre of U.S. Public Health Service (PHS) officers uniquely qualified by education and skills, who can be mobilized in times of extraordinary need during disaster, strife, or other pubic health emergencies. In coordination with the Assistant Secretary for Public Health and Emergency Preparedness (ASPHEP), the CCRF will respond to domestic or international requests to provide leadership and expertise by directing, enhancing, and supporting the services of the PHS and other HHS Operating Divisions, other U.S. government agencies or other responders.

IV. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the functions contained in this reorganization, heretofore issued and in effect prior to the date of this reorganization, are continued in full force and effect.

V. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

VI. *Funds, Personnel and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: November 21, 2002.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 02–30458 Filed 11–29–02; 8:45 am]

BILLING CODE 4150–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–5, CMS–R–96, CMS–209]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; Title of Information Collection: Physician Certifications/Recertifications in Skilled Nursing Facilities (SNFs) Manual Instructions and Supporting Regulations in 42 CFR Section 424.20; *Form No.:* CMS–R–5 (OMB# 0938–0454); *Use:* This information collection requires SNFs to keep record of physician certifications and recertifications of information such as the need for care and services, estimated duration of the SNF stay, and plan for home care.; *Frequency:* On occasion; *Affected Public:* State, local or tribal government, individuals or households, business or other for-profit, not-for-profit institutions; *Number of Respondents:* 2,068,716; *Total Annual Responses:* 883,838; Total Annual Hours: 441,793.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Emergency and Foreign Hospital Services-Beneficiary Statement in Canadian Travel Claims and Supporting Regulations in 42 CFR, Section 424.123; *Form No.:* CMS–R–96 (OMB# 0938–0484); *Use:* Payment may be made for certain part A inpatient hospital services and part B outpatient hospital services provided in a non-participating U.S. or foreign hospital when services are necessary to prevent the death or serious impairment of the health of the individual. This statement must be submitted by the beneficiary to support their claim for payment.; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 1,100; *Total Annual Responses:* 1,100; *Total Annual Hours:* 275.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1—493.2001; *Form No.:* HCFA–0209 (OMB# 0938–0151); *Use:* CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. Information on personnel qualifications of all technical personnel is needed to ensure the sample is representative of all laboratories; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal government, and State, local or tribal government; *Number of Respondents:* 22,500; *Total Annual Responses:* 11,250; *Total Annual Hours:* 5,625.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 21, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30366 Filed 11–29–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–855]

Agency Information Collection Activities: Proposed collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Federal Health Care Programs Provider/Supplier Enrollment Application; *Form No.:* CMS–855 (OMB# 0938–0685); *Use:* This information is needed to enroll providers and suppliers into the Medicare program by identifying them, pricing and paying their claims, and verifying their qualifications and eligibility to participate in Medicare; *Frequency:* Initial enrollment/recertification and Every three years; *Affected Public:* Business or other for-profit, individuals or households, and not-for-profit institutions; *Number of Respondents:* 274,000; *Total Annual Responses:* 274,000; *Total Annual Hours:* 642,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 25, 2002.

Julie E. Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30377 Filed 11–26–02; 11:20 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–250]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* SNF Resident Assessment MDS Data and Supporting

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Regulations in 42 CFR, Sections 413.337, 413.343, 424.32, and 483.20; *Form No.:* CMS–R–250 (OMB# 0938–0739); *Use:* Skilled Nursing Facilities (SNFs) are required to submit the resident assessment data as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337. Pursuant to sections 4204(b) and 4214(d) of OBRA 1987, the current requirements related to the submission and retention of resident assessment data for the 5th, 30th, 60th, and 90th days following admission, necessary to administer the payment rate methodology described in Section 413.337, are subject to the Paperwork Reduction Act. The burden associated with this is the SNF staff time required to complete the Minimum Data Set (MDS), SNF staff time to encode, and SNF staff time spent in transmitting the data.; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 17,000; *Total Annual Responses:* 2,657,859; *Total Annual Hours:* 1,993,394.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 21, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30365 Filed 11–29–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0486]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Marketing Act of 1987

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Public Law 100–293).

DATES: Submit written or electronic comments on the collection of information by January 31, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements—21 CFR part 3 (OMB Control Number 0910–0435)—Extension

FDA is requesting OMB approval under the PRA for the reporting and recordkeeping requirements contained in the regulations implementing PDMA. PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk of counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as American goods returned causing a health and safety risk to American consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against American manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

TABLE 1.—REPORTING AND RECORDKEEPING REQUIREMENTS

21 CFR Section	Requirements
203.11	Applications for reimportation to provide emergency medical care.
203.30(a)(1) and (b)	Drug sample requests (drug samples distributed by mail or common carrier).
203.30(a)(3), (a)(4), and (c)	Drug sample receipts (receipts for drug samples distributed by mail or common carrier).
203.31(a)(1) and (b)	Drug sample requests (drug samples distributed by means other than the mail or a common carrier).
203.31(a)(3), (a)(4), and (c)	Drug sample receipts (drug samples distributed by means other than the mail or a common carrier).
203.37(a)	Investigation of falsification of drug sample records.
203.37(b)	Investigation of a significant loss or known theft of drug samples.
203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples.
203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples.
203.38(a)	Printing lot or control numbers on the drug sample unit label.
203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples.
203.50(a)	Drug origin statement.
203.23(a) and (b)	Credit memo for returned drugs.
203.23(c)	Documentation of proper storage, handling, and shipping conditions for returned drugs.
203.30(a)(2) and 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized to prescribe the product.
203.31(d)(1) and (d)(2)	Contents of the inventory record and reconciliation report required for drug samples distributed by representatives.
203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report.
203.31(e)	Lists of manufacturers' and distributors' representatives.
203.34	Written policies and procedures describing administrative systems.
203.37(a)	Report of investigation of falsification of drug sample records.
203.37(b)	Report of investigation of significant loss or known theft of drug samples.
203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed.
203.39(d)	Records of drug samples destroyed or returned by a charitable institution.
203.39(e)	Record of drug samples donated to a charitable institution.
203.39(f)	Records of donation and distribution or other disposition of donated drug samples.
203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions.
203.50(a)	Drug origin statement.
203.50(b)	Retention of drug origin statement for 3 years.
203.50(d)	List of authorized distributors of record.

The reporting and recordkeeping requirements are intended to help achieve the following goals:

(1) To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care;

(2) To ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any drug sample;

(3) To limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner;

(4) To require licensed or authorized practitioners to request samples in writing;

(5) To mandate storage, handling, and recordkeeping requirements for drug samples;

(6) To prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization;

(7) To require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.11	12	1	12	.5	6
203.30(a)(1) and (b)	61,961	12	743,532	.06	44,612
203.30(a)(3), (a)(4), and (c)	61,961	12	743,532	.06	44,612
203.31(a)(1) and (b)	232,355	135	31,367,925	.04	1,254,717
203.31(a)(3), (a)(4), and (c)	232,355	135	31,367,925	.03	941,038
203.37(a)	25	1	25	6.00	150
203.37(b)	200	1	200	6.00	1,200
203.37(c)	50	1	50	1.00	50

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TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN—Continued

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.37(d)	2,208	1	2,208	.08	177
203.38(a)	2,208	1	2,208	3.00	6,624
203.39(g)	3,221	1	3,221	2.00	6,442
203.50(a)	125	100	12,500	.08	1,000
Total					2,300,628

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.23(a) and (b)	31,676	5	158,380	.25	39,595
203.23(c)	31,676	5	158,380	.08	12,670
203.30(a)(2) and 203.31(a)(2)	2,208	100	220,800	.50	110,400
203.31(d)(1) and (d)(2)	2,208	1	2,208	40.00	88,320
203.31(d)(4)	442	1	442	24.00	10,608
203.31(e)	2,208	1	2,208	1.00	2,208
203.34	2,208	1	2,208	40.00	88,320
203.37(a)	25	1	25	18.00	450
203.37(b)	200	1	200	18.00	3,600
203.38(b)	2,208	14,543	32,111,457	.02	642,229
203.39(d)	65	1	65	1.00	65
203.39(e)	3,221	1	3,221	.50	1,610
203.39(f)	3,221	1	3,221	8.00	25,768
203.39(g)	3,221	1	3,221	8.00	25,768
203.50(a)	125	100	12,500	.17	2,125
203.50(b)	125	100	12,500	.50	6,250
203.50(d)	691	1	691	2.00	1,382
Total					1,061,368

[1] There are no operating and maintenance costs or capital costs associated with this collection of information.

Dated: November 21, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30404 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1527]

Laverne M. Charpentier; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Ms. Laverne M. Charpentier's request for a hearing and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Ms. Laverne M. Charpentier for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Charpentier was convicted of a felony under Federal law for conspiring to make false statements in matters within the jurisdiction of a Government agency, and that Ms. Charpentier's conduct undermined the process for the regulation of drugs. Ms. Charpentier has failed to file with the agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: This order is effective December 2, 2002.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1997, the U.S. District Court for the Central District of California accepted the plea of Ms. Laverne M. Charpentier to one count of conspiring to make false statements in matters within the jurisdiction of a Government agency under 18 U.S.C. 371 and 1001.

Ms. Charpentier, a former drug study coordinator, was employed by a private company retained by drug manufacturers to conduct clinical studies of new pharmaceutical products to be submitted to FDA in support of approval of the drug products. In her capacity as a drug study coordinator, Ms. Charpentier participated in the conduct of clinical studies to test the safety and effectiveness of investigational new drugs. Ms. Charpentier admitted that she, among other things: (1) Falsely reported that certain subjects participated in clinical trials when in fact, they had not; (2) substituted samples and data from qualifying subjects for nonqualifying subjects; and (3) enrolled nonexistent and nonqualifying subjects in the clinical studies and falsified data for those nonexistent and nonqualifying subjects.

As a result of Ms. Charpentier's conviction, FDA served her by certified letter on May 14, 2002, a proposal to debar her for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Ms. Charpentier an opportunity for a hearing on the proposal. FDA based the debarment proposal on a finding, under section 306(b)(2)(B)(i)(II) and (a)(2) of the act (21 U.S.C. 335a(b)(2)(B)(i)(II) and (a)(2)) that Ms. Charpentier was convicted of a felony under Federal law for conspiring to make false statements in matters within the jurisdiction of a Government agency, FDA, and that Ms. Charpentier's conduct undermined the process for the regulation of drugs.

The certified letter also informed Ms. Charpentier that her request for a hearing could not rest upon mere allegations or denials, but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also informed Ms. Charpentier that if it conclusively appeared from the face of the information and factual analyses in her request for a hearing that there was no genuine and substantial issue of fact that precluded the order of debarment, FDA would enter summary judgment against her and deny her request for a hearing.

In a letter dated May 28, 2002, Ms. Charpentier requested a hearing on the proposal and indicated she would submit further information to justify a hearing. Ms. Charpentier filed a letter dated July 1, 2002, in which she again requested an opportunity for a hearing. In her request for a hearing, Ms. Charpentier discusses her motives for her illegal conduct, her embarrassment and her financial problems resulting from her conviction. Such matters do not create a basis for a hearing because hearings will not be granted on mere allegations, denials, or general descriptions of positions and contentions, nor on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)(2) and (b)(3)).

II. Denial of Hearing

In her requests for a hearing, Ms. Charpentier does not present any arguments or information to show why she should not be debarred. Ms. Charpentier acknowledges that the agency is aware of the facts and states that she submitted the July 1, 2002, request for a hearing to set forth "some of the circumstances that led up to this unfortunate situation." Ms. Charpentier's explanation of the facts leading to her conviction does not raise a genuine and substantial issue of fact requiring a hearing.

Ms. Charpentier is subject to permissive debarment based on: (1) FDA's findings that she was convicted of a Federal felony that undermined the regulatory process (section 306(b)(2)(B)(i)(II) and (a)(2) of the act)) and (2) FDA's determination that debarment is appropriate in this case based on a consideration of applicable factors set forth in section 306(c)(3) of the act. After FDA finds that the statutory criteria for permissive debarment has been met, the only relevant issue is whether Ms. Charpentier was, in fact, convicted as alleged in the proposal to debar. Ms. Charpentier does not dispute that she pled guilty to one Federal felony count for actions that undermined the regulation of drug products. In fact, in her letter of July 1, 2002, Ms. Charpentier: (1) Acknowledges wrongdoing, stating that she made a "big mistake"; (2) expresses her remorse; and (3) offers an apology for her illegal conduct. Section 306(l)(1)(B) of the act includes in its definition of a conviction, a guilty plea. The facts underlying Ms. Charpentier's conviction have been established by her conviction and, therefore, are not at issue. In her July 1, 2002, letter, Ms. Charpentier's discusses the motives resulting in her conviction, her remorse, her apology, and her statements indicating that she will not again participate in illegal activity. This information does not justify a hearing. Although such information may be considered in determining whether to grant special termination of debarment under section 306(d)(4)(C) of the act, this information does not raise a factual dispute regarding Ms. Charpentier's conviction, but rather supports it. Thus, FDA finds that Ms. Charpentier has failed to identify any genuine and substantial issue of fact requiring a hearing. Accordingly, FDA denies Ms. Charpentier's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner, under section 306(b) of the act and under authority delegated to him (21 CFR 5.10), finds that Ms. Laverne M. Charpentier has been convicted of a felony under Federal law for conspiracy to make false statements to a Government agency, and that Ms. Charpentier's conduct undermined the process for the regulation of drugs.

As a result of the foregoing findings, Ms. Laverne M. Charpentier is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective December 2, 2002 (sections 306 (c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Charpentier, in any capacity, during her period of debarment, will be subject to civil money penalties. If Ms. Charpentier, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Charpentier during her period of debarment.

Any application by Ms. Charpentier for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 00N–1527 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 2002.

Lester M. Crawford,

Deputy Commissioner.

[FR Doc. 02–30482 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0451]

Withdrawal of 20 Guidances on Individual Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of 20 individual product labeling guidances. The guidances are being withdrawn because they are out of date and of little use to the generic drug industry. The agency has developed other guidance and resources to assist the industry in obtaining up-to-date labeling for reference listed drugs.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See

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the **SUPPLEMENTARY INFORMATION** section for electronic access to agency guidance documents.

FOR FURTHER INFORMATION CONTACT: Rita Hassall, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5845.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the withdrawal of 20 individual product labeling guidances. A list of FDA's Center for Drug Evaluation and Research (CDER) guidances (the Comprehensive List) can be found on the Internet on the CDER guidance page at *http://www.fda.gov/cder/guidance/index.htm*, and many of the guidances on the Comprehensive List are posted on the CDER guidance page (old draft guidances have not been posted). This withdrawal of labeling guidances is in addition to the withdrawal of 53 individual product labeling guidances announced in the **Federal Register** of July 5, 2002 (67 FR 44857).

The labeling guidances being withdrawn were intended to provide sponsors of abbreviated new drug applications (ANDAs) with product specific templates for package insert labeling that could be submitted to the Office of Generic Drugs (OGD). Because package insert labeling for innovator products changes frequently, it is difficult to keep the guidances updated; and because these labeling guidances are out of date, they are being withdrawn.

In May 2000, the agency issued a guidance for industry entitled "Revising ANDA Labeling Following Revision of the RLD Labeling." This guidance provides information on how to access current package insert labeling on OGD's Labeling Review Branch Internet site at *http://www.fda.gov/cder/ogd/rld/labeling_review_branch.htm*.

The withdrawal of product-specific labeling guidances is part of a long-term effort in OGD to review guidance documents on the development of generic drug products with the goal of identifying documents that need to be revised, reformatted, or withdrawn because they are no longer current.

CDER is withdrawing the following labeling guidances:

Chlordiazepoxide Hydrochloride Capsules—January 1, 1988

Clorazepate Dipotassium Capsules/Tablets—March 1, 1993

Cyproheptadine Hydrochloride Tablets/Syrup—December 1, 1986

Dipivefrin Hydrochloride Ophthalmic Solution, 0.1%—November 2, 1998

Ergoloid Mesylate Tablets—January 1, 1988

Hydroxyzine Hydrochloride Injection—December 1, 1989

Isoetharine Inhalation Solution—March 1, 1989

Meclofenamate Sodium Capsules—July 1, 1992

Naphazoline Hydrochloride Ophthalmic Solution—March 1, 1989

Niacin Tablets—July 1, 1992

Phendimetrazine Tartrate Capsules/Tablets, and Extended-Release Capsules—February 1, 1991

Phentermine Hydrochloride Capsules/Tablets—August 1, 1988

Promethazine Hydrochloride Tablets—March 1, 1990

Propantheline Bromide Tablets—August 1, 1988

Pyridoxine Hydrochloride Injection—June 1, 1984

Quinidine Sulfate Capsules USP—October 1, 1995

Sulfamethoxazole and Phenazopyridine Hydrochloride Tablets—February 1, 1992

Theophylline Immediate Release Oral Dosage Forms—February 1, 1995

Thiamine Hydrochloride Injection—February 1, 1988

Vitamin A Capsules—February 1, 1992

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain guidance documents at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 25, 2002.

Margaret M. Dotzel

Assistant Commissioner for Policy.

[FR Doc. 02–30481 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0503]

Compliance Policy Guide: "Filth from Insects, Rodents, and Other Pests in Food"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) entitled "Filth from Insects, Rodents, and Other Pests in Food." The purpose of this CPG is to revise and clarify existing guidance on the interpretation of filth in foods within the context of current science. The CPG provides guidance to FDA components as well as to the industry.

DATES: Submit written or electronic comments concerning the CPG at any time.

ADDRESSES: Submit written requests for single copies of the CPG "Filth from Insects, Rodents, and Other Pests in Food" to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or FAX your request to 301–827–0482. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

Submit written comments on the CPG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT:

Technical Questions Concerning Filth in Foods: Alan R. Olsen, Microanalytical Branch (HFS–315), Office of Plant, Dairy Foods, and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1962, FAX 301–436–2644.

Questions Concerning Regulatory Actions: Nina Adler, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0417, FAX 301–827–0482.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of December 18, 2001 (66 FR 65214), FDA announced the availability of a draft CPG entitled "Filth from Insects, Rodents, and Other Pests in Food." FDA has finalized the draft CPG after receiving no comments on the document. The CPG revises and clarifies existing guidance on foods that contain filth from insects, rodents, and other pests to reflect recent advances in science. The purpose of this CPG is to provide clear policy to FDA's field and headquarters staff with regard to filth from insects, rodents, and other pests in foods. It also contains information that may be useful to the regulated industry and to the public.

The CPG supersedes the current CPG and represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of applicable statutes or regulations.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

II. Comments

Interested persons may submit to the Docket Management Branch (*see* **ADDRESSES**) written or electronic comments on the CPG entitled "Filth from Insects, Rodents, and Other Pests in Food" at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the CPG and received comments may be seen in the Dockets Management Branch (*see* **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the CPG also may be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs home page includes the CPG and may be accessed at *http://www.fda.gov/ora* under "Compliance References."

Dated: November 4, 2002.

John M. Taylor,

Senior Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–30403 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1378]

Draft Guidance for Industry on Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients." FDA has considered evidence that suggests that topically applied cosmetic products containing alpha hydroxy acids (AHAs) may increase the sensitivity of skin to the sun while the products are used and for up to a week after use is stopped and that this increased skin sensitivity to the sun may increase the possibility of sunburn. The purpose of this draft guidance is to educate manufacturers to help ensure that their labeling for AHA-containing cosmetic products is not false or misleading. The draft guidance suggests content for a labeling statement for AHA-containing cosmetic products. This action was prompted by a citizen petition filed by the Cosmetic, Toiletry, and Fragrance Association (CTFA), which requested that FDA issue a regulation establishing sun alert labeling on AHA-containing products.

DATES: Submit written or electronic comments by January 31, 2003, to ensure their adequate consideration in preparation of the final document. Comments on this draft guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Cosmetics and Colors (HFS–100), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Submit electronic comments on the draft guidance to *http://www.fda.gov/dockets/ecomments*. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Julie N. Barrows, Center for Food Safety and Applied Nutrition (HFS–105), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3412.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients." This draft guidance explains FDA's suggested labeling of topically applied cosmetic products that contain AHAs to alert consumers of the need to use sun protection when using these products. The guidance will educate manufacturers to help ensure that their labeling for AHA-containing cosmetic products is not false or misleading under 21 U.S.C. 362(a) and 321(n).

AHAs are organic acids with a hydroxyl group on the carbon adjacent to the carboxylic acid group. The predominant AHAs present in cosmetic products are glycolic acid and lactic acid. Other AHAs that are found in cosmetic products include citric acid, -hydroxyoctanoic acid, and -hydroxydecanoic acid (Ref. 1). Since the early 1990s, there has been a proliferation of AHA-containing cosmetic and salon products (Ref. 2). AHAs have been formulated into skin products, make-up, hair products, nail products, bath products, colognes, and suntan preparations. Most AHA-containing products are "leave on" products that are intended for daily use on the skin or mucous membrane or are "discontinuous use" products that are intended to be applied to the skin for a short period of time (*e.g.*, less than an hour) followed by thorough rinsing. Salon products are usually discontinuous use products.

FDA received a total of 107 adverse dermatologic experience reports for AHA-containing skin care products between 1992 and 2000, with the maximum number (32) in 1994 (Ref. 2). The reported adverse experiences include: Burning (43), dermatitis or rash (33), swelling (26), pigmentary changes (15), blisters or welts (13), skin peeling (12), itching (12), irritation or tenderness (6), chemical burns (6), and increased sunburn (3).

Starting in 1994, CTFA's Cosmetic Ingredient Review (CIR) Expert Panel, FDA's AHA Review Committee, and FDA reviewed the safety of topically applied AHAs in cosmetic products

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(Refs. 2 through 4). The reviewers evaluated human clinical studies that investigated the effects of ultraviolet (UV) radiation on the skin after exposure to AHAs. The studies demonstrated that topically applied AHAs increase skin sensitivity to UV radiation during application and that this increased skin sensitivity to UV radiation diminishes after discontinuing application for a week.

Sensitivity to UV radiation is the main reason for the skin's sensitivity to the sun (Ref. 5). Short-term exposure to the sun may cause sunburn, and chronic long-term exposure to the sun may increase the risk of premature skin aging (Ref. 5). Experimental and epidemiological studies have demonstrated that prolonged exposure to the UV radiation in sunlight is a primary risk factor for certain types of skin cancer (Refs. 6 through 8).

The human clinical studies provided data for the effects of UV radiation on the skin after short-term (up to 12 weeks) topical exposure to AHAs. The evidence from the clinical studies suggests that increased skin sensitivity to UV radiation may increase the possibility of sunburn for consumers. Adverse experience reports of increased sunburn after AHA use support this conclusion (Ref. 2). The increased skin sensitivity to UV radiation also may result in other harmful effects to the skin, but the data available to FDA's Center for Food Safety and Applied Nutrition (CFSAN) are still inconclusive on this point.

FDA's National Center for Toxicological Research (NCTR) currently is investigating the effects of long-term exposure to AHAs in a photocarcinogenicity study by the National Toxicology Program's Center for Phototoxicology (Ref. 2). The purpose of the NCTR study is to allow quantitative determination of the effect AHA treatment (glycolic acid) has on the induction of mouse skin cancer (SKH–1 hairless mouse) by simulated solar radiation.

FDA believes that increased skin sensitivity to the sun, and particularly the possibility of sunburn following AHA use, may be material facts that manufacturers should disclose to users under 21 U.S.C. 362(a) and 321(n) and 21 CFR 1.21. Accordingly, FDA believes that if manufacturers inform users of AHA-containing products about the potential for increased skin sensitivity to the sun and particularly the possibility of sunburn, and what steps a user may take to avoid such consequences, this will help avoid the potential that the products are misbranded under 21 U.S.C. 362(a) and 321(n).

In the draft guidance, FDA suggests that the following statement appear on the label of AHA-containing cosmetic products:

"Sunburn Alert: This product contains an alpha hydroxy acid (AHA) that may increase your skin's sensitivity to the sun and particularly the possibility of sunburn. Use a sunscreen and limit sun exposure while using this product and for a week afterwards."

FDA expects that a label statement such as the recommended "Sunburn Alert" will be a source of new information about sun protection for most consumers, as well as a reminder about sun protection for consumers who already are aware of the need to use sun protection when using these products (Ref. 2).

CTFA submitted a citizen petition (dated June 29, 2000, and assigned FDA Docket No. 00P–1378/CP1), which requested that under 21 U.S.C. 362(a), FDA issue a regulation on cosmetic labeling in 21 CFR part 701 establishing labeling requirements related to sun protection with use of cosmetics containing AHAs. FDA is issuing this draft guidance entitled "Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients" rather than a proposed regulation.

FDA is announcing the availability of this draft guidance at this time pending the results of the NCTR study because the agency believes interim action is warranted to recommend that manufacturers label topically applied cosmetic products that contain AHAs to alert consumers of the need to use sun protection when using these products. After assessing the results of the photocarcinogenicity study and the effectiveness of any final guidance, the agency intends to determine if additional agency action is appropriate.

This draft guidance is a level 1 guidance issued consistent with FDA's regulation on good guidance practices (21 CFR 10.115). The draft guidance represents the agency's current thinking on the labeling of topically applied cosmetic products that contain an AHA as an ingredient. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (*see* **ADDRESSES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this draft guidance is available on the Internet at *http://www.cfsan.fda.gov/~dms/guidance.html.*

IV. References

The following references are on display in the Dockets Management Branch (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Yates, R. L., and D. C. Havery, "Determination of Phenol, Resorcinol, Salicylic Acid and -Hydroxy Acids in Cosmetic Products and Salon Preparations," *Journal of Cosmetic Science*, vol. 50, pp. 315–325, 1999.

2. Barrows, Julie N., memorandum to the administrative file, "Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients," Office of Cosmetics and Colors, CFSAN, FDA, September 12, 2002.

3. Andersen, F. A., Ed., "Final Report on the Safety Assessment of Glycolic Acid, Ammonium, Calcium, Potassium, and Sodium Glycolates, Methyl, Ethyl, Propyl, and Butyl Glycolates, and Lactic Acid, Ammonium, Calcium, Potassium, Sodium, and TEA-Lactates, Methyl, Ethyl, Isopropyl, and Butyl Lactates, and Lauryl, Myristyl, and Cetyl Lactates," *International Journal of Toxicology*, vol. 17, supplement 1, pp. 1–241, 1998.

4. FDA, memoranda of meetings of AHA Review Committee, May 6, 1997, and February 12, 1997, and index of reviewed information.

5. Hawk, J. L. M., Ed., "*Photodermatology*," Arnold Publishers, chapters 4, 6, and 7, pp. 43–52 and 69–102, 1999.

6. DeGruijl, F. R., J. B. VanDerMeer, and J. C. VanDerLeun, "Dose-Time Dependency of Tumor Formation by Chronic UV Exposure," *Photochemistry and Photobiology*, vol. 37, pp. 53–62, 1983.

7. Strickland, P. T., et al., "Quantitative Carcinogenesis in Man: Solar Ultraviolet B Dose Dependence of Skin Cancer in Maryland Watermen," *Journal of the National Cancer Institute*, vol. 81, pp. 1910–1913, 1989.

8. Forbes, P. D., et al., "Simulated Stratospheric Ozone Depletion and Increased Ultraviolet Radiation: Effects on Photocarcinogenesis in Hairless Mice," *Cancer Research*, vol. 42, pp. 2796–2803, 1982.

Dated: November 15, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30340 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Treatment Outcomes Monitoring System (NTOMS)—New—NTOMS is an extension and expansion of two pilot projects funded by the Office of National Drug Control Policy (ONDCP), the Drug Evaluation Network System (DENS) and Random Access Monitoring of Narcotics Addicts (RAMONA). NTOMS will be a surveillance system that will provide periodic reporting on access to and effectiveness of drug abuse treatment using a nationally representative sample of patients receiving treatment for psychoactive substance dependence in a sample of specialty treatment providers throughout the United States. NTOMS will collect information from and about clients, and limited information about treatment facilities. A sample of 250 facilities and 84,000 clients is planned. The clients will be sampled over a period of four years. NTOMS will permit SAMHSA's Center for Substance Abuse Treatment (CSAT) to enhance its ability to carry out statutory responsibilities to determine the quality and appropriateness of treatment, as required by Sections 507(b)(13) and (14) of the Public Health Service Act [42 U.S.C. 290bb].

Specialized substance abuse treatment facilities will be sampled as clusters of service delivery units (SDU's). Facilities will be asked to complete a single instrument, the Addiction Treatment Inventory once per year to track changes in facility treatment programs and activities. Some facilities will thus complete this instrument four times; those that are recruited late in the beginning stages of the system will complete it less often. Replacements for dropouts and closures, or for the purpose of adjusting the facility sample to changes in the facility population, will also have fewer administrations.

Upon admission, a baseline battery consisting of several different instruments will be administered to a sample of clients. The principal questionnaire will include the content of the Addiction Severity Index, an intake assessment instrument already widely used at treatment facilities. This content will impose no marginal burden on clients beyond the normal intake process. However, the Addiction Severity Index will be supplemented by additional items that are required for CSAT to meet its obligations under the Government Performance Results Act of 1993 (GPRA) (31 U.S.C. 101) and by items concerning entering patients collected at publicly-funded treatment facilities as part of the Treatment Episode Data Set, a component of the Drug and Alcohol Services Information System. At admission, three other questionnaires will be administered. The Life History Interview (LHI) will obtain information about patterns of substance use over the past five years. The Waiting List Module will ask about access to treatment and how long entering patients have waited for admission since seeking treatment. The Locator/Tracking Form will request information needed to find clients six months after discharge to determine the outcome of their treatment. Clients will also be asked to read and sign a consent form for participation in subsequent stages of the study.

During treatment, sampled clients who are still in treatment will be contacted periodically by telephone and asked the questions in the Treatment Services Review, an extant instrument used to determine the treatment services and activities actually delivered to clients. This instrument will be administered periodically. Therefore, clients who spend more than 30 days in treatment will be asked to complete it more than once. Because of high initial drop-out rates, it is estimated that only 60 percent of clients will be asked to complete at least one Treatment Services Review.

Selected items from the expanded ASI will be administered to a sample of the original clients again shortly after they leave treatment and the sampled clients will be asked to confirm or update the locating information. Six months after discharge, a sample of 20 percent of the clients who left treatment will be interviewed in person or by telephone. The expanded ASI will be administered for a third time, and the LHI for a second time. Approximately one-third of this sample of clients, all interviewed in person, will also be asked to provide a urine sample for analysis.

To obtain a response rate at both the institutional and client levels that will support estimates in larger populations, CSAT plans to offer incentives for participation in NTOMS to both facilities and clients. Estimated annual burden for NTOMS is shown below:

Type of respondent and activity	Number of respondents	Responses/ respondent	Hours/response	Total burden hours
Treatment Facilities				
Addiction Treatment Inventory	250	1	0.33	83
Facility Subtotal	250			83
Clients				
Instruments administered at admission or during treatment:				
Expanded ASI at admission [1]	21,000	1	0.17	3,500
LHI at admission	21,000	1	0.50	10,500

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Type of respondent and activity	Number of respondents	Responses/ respondent	Hours/response	Total burden hours
Waiting List questionnaire	21,000	1	0.08	1,750
Treatment Services Review	12,600	[2] 1.6	0.75	15,120
Instrument administered at discharge: Reduced ASI	5,250	1	0.50	2,625
Instruments administered six months after discharge:				
Follow-up interview	1,975	1	0.50	988
Follow-up LHI	1,975	1	0.25	494
Provision of urine sample	670	1	0.08	56
Client subtotal	21,000			35,033
Total	21,250			35,116

[1] Time burden includes only marginal time required to administer NTOMS-specific items not normally included in the ASI when it is used as an intake instrument—GPRA items, TEDS minimum data set, locating information—and securing consent from patients.
[2] Assumes that TSR is administered once to 60% of admission sample, twice to 18%, three times to 13%, four times to 6%.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 24, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–30384 Filed 11–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of SAMHSA Special Emphasis Panels I in December 2000.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Division of Extramural Policy Management, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b© (6) and 5 U.S.C. App.2, 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: December 9th–13th, 2002.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 8:30 a.m. December 9th to Adjournment December 13th.

Panel: Targeted Capacity Expansion, PA 03–01, two committees.

Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Dated: November 19, 2002.

Diane McMenamin,

Chief, Review Branch, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–30484 Filed 11–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–19]

Announcement of Funding Awards for Fiscal Year 2002 for the Housing Choice Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2002 to housing agencies (HAs) under the Section 8 housing choice voucher program. The purpose of this notice is to publish the names, addresses, and the amount of the awards to housing agencies for housing conversion actions, special housing conversion fees, public housing relocations and replacements, and Section 8 counseling.

FOR FURTHER INFORMATION CONTACT: Deborah Hernandez, Acting Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Room 4232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–2934. Hearing-or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the housing choice voucher program are published at 24 CFR 982. The regulations for allocating housing assistance budget authority under Section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR Part 791, Subpart D.

The purpose of this rental assistance program is to assist eligible families to pay the rent for decent, safe, and sanitary housing. The FY 2002 awardees announced in this notice were provided Section 8 funds on an as needed basis, *i.e.*, not consistent with the provisions of a Notice of Funding Availability (NOFAs). Announcements of awards provided consistent with NOFAs for family unification, mainstream housing, designated housing programs, and family self-sufficiency coordinators will be published in a separated **Federal Register** notice.

Awards published under this notice were provided (1) to assist families living in HUD-owned properties that are being sold; (2) to assist families affected by the expiration or termination of assistance; (3) to assist families in properties where the owner has prepaid the HUD mortgage; (4) to provide special housing fees to compensate housing agencies for any extraordinary Section 8 administrative costs associated with the previous three categories; (5) to provide relocation and replacement housing in connection with the demolition of public housing; and (6) to provide counseling and assistance to families so that they may move to areas that have low racial and ethnic concentrations.

A total of $142,295,161 in budget authority for rental vouchers (22,839 units) was awarded to recipients under all of the above-mentioned categories.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: November 1, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002

Housing agency	Address	Units	Award
PROPERTY DISPOSITION FEES			
SAN FRANCISCO HSG AUTH	440 TURK STREET, SAN FRANCISCO, CA 94102	0	$5,250
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE., NE., ATLANTA, GA 30303.	0	23,000
INDIANAPOLIS HSG AGENCY	1919 N. MERIDIAN STREET, INDIANAPOLIS, IN 46202	0	32,750
FORD COUNTY HSG AUTH	P.O. BOX 1636, DODGE CITY, KS 67801	0	16,000
WEST CENTRAL HSG AUTH	P.O. BOX 599, OGALLALA, NE 69153	0	250
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	0	7,750
HSG AUTH CITY OF PITTSBURG	200 ROSS STREET, PITTSBURGH, PA 15219	0	43,250
LANCASTER HSG AUTH	325 CHURCH STREET, LANCASTER, PA 17602	0	1,750
JACKSONVILLE HSG AUTH	301 E COMMERCE, 2ND FL, JACKSONVILLE, TX 75766	0	15,250
Total for Property Disposition Fees		0	$145,250
PRESERVATION/PREPAYMENT FEES			
MOBILE HOUSING BOARD	P.O. BOX 1345, MOBILE, AL 36633	0	23,000
HA OF ANNISTON	P.O. BOX 2225, ANNISTON, AL 36202	0	2,000
HA OF TUSCALOOSA	P.O. BOX 2281, TUSCALOOSA, AL 35403	0	16,750
NORTH LITTLE ROCK HA	PO BOX 516, NORTH LITTLE ROCK, AR 72115	0	25,750
TEMPE HSG AUTH	132 E. 6TH ST, STE 201, P.O. BOX 5002, TEMPE, AZ 85280	0	11,000
LOS ANGELES COUNTY HA	2 CORAL CIRCLE, MONTEREY PARK, CA 91755	0	4,750
SACRAMENTO HSG & REDEV	P.O. BOX 1834, SACRAMENTO, CA 95812	0	47,500
YOLO COUNTY HSG AUTH	P.O. BOX 1867, WOODLAND, CA 95776	0	24,250
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE., SAN DIEGO, CA 92113	0	12,750
CITY OF REDDING HSG AUTH	P.O. BOX 496071, 777 CYPRESS AVE., REDDING, CA 96049.	0	12,500
BOULDER CITY HSG AUTH	3120 BROADWAY, BOULDER, CO 80304	0	4,250
D.C HOUSING AUTHORITY	1133 NORTH CAPITOL ST, NE., WASHINGTON, DC 20002	0	81,500
HA OF COLUMBUS GA	P.O. BOX 630, COLUMBUS, GA 31902	0	13,750
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE., NE., ATLANTA, GA 30303.	0	7,500
DCA	60 EXECUTIVE PARK SO., NE STE 250, ATLANTA, GA 30329.	0	15,750
SOUTHERN IOWA REG HSG AUTH	219 N PINE, CRESTON, IA 50801	0	750
NORTHWEST IOWA REG HA	P.O. BOX 7980, 125 WEST 4TH ST., SPENCER, IA 51301	0	750
CENTRAL IOWA REG HA	950 OFFICE PARK RD., STE 321, WEST DES MOINES, IA 50265.	0	7,500
CHICAGO HSG AUTH	626 WEST JACKSON BLVD., CHICAGO, IL 60661	0	11,750
OGLE COUNTY HSG AUTH	407 NORTH UNION STREET, POLO, IL 61064	0	11,250
FORT WAYNE HA–CITY OF FORT WAY	P.O. BOX 13489, FORT WAYNE, IN 46869	0	40,750
INDIANA DEPT OF HUMAN SERVICES	P.O. BOX 6116, INDIANAPOLIS, IN 46206	0	50,000
TOPEKA HSG AUTH	2010 SE CALIFORNIA AVE., TOPEKA, KS 66607	0	11,500
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139	0	6,250
HARFORD COUNTY HSG AGENCY	15 SOUTH MAIN STREET SUITE 106, BEL AIR, MD 21014	0	13,500
MD DEPT OF HSG & COMM DEV	100 COMMUNITY PLACE, CROWNSVILLE, MD 21032	0	16,500
LANSING HSG COMMISSION	310 NORTH SEYMOUR STREET, LANSING, MI 48933	0	57,500
MOUNT PLEASANT HSG COMM	ONE MOSHER STREET, MOUNT PLEASANT, MI 48858	0	32,500
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	0	34,250
ST. PAUL PHA	480 CEDAR STREET, ST. PAUL, MN 55101	0	2,750
DETROIT LAKES HRA	P.O. BOX 731, DETROIT LAKES, MN 56501	0	13,000
METROPOLITAN COUNCIL HRA	230 EAST FIFTH STREET, ST. PAUL, MN 55101	0	59,750
WASHINGTON COUNTY HRA	321 BROADWAY AVENUE, ST. PAUL PARK, MN 55071	0	15,000
SOUTH CENTRAL MULTI-COUNTY HRA	410 JACKSON STREET, STE 100, MANKATO, MN 56002	0	7,000
INDEPENDENCE HSG AUTH	210 SOUTH PLEASANT, INDEPENDENCE, MO 64050	0	16,500
MANCHESTER HSG AUTH	198 HANOVER STREET, MANCHESTER, NH 03104	0	33,750
NEWARK HSG AUTH	57 SUSSEX AVENUE, NEWARK, NJ 07103	0	24,750
JERSEY CITY HSG AUTH	400 U.S. HIGHWAY #1, JERSEY CITY, NJ 07306	0	13,250
CITY OF RENO HSG AUTH	1525 EAST NINTH ST, RENO, NV 89512	0	30,750
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	0	189,000
THE CITY OF NEW YORK DHPD	100 GOLD STREET, ROOM 5N, NEW YORK, NY 10038	0	289,250
NEW YORK STATE HSG FIN AGENCY	25 BEAVER STREET, RM 674, NEW YORK, NY 10004	0	45,000
LUCAS MHA	P.O. BOX 477, 435 NEBRASKA AVE., TOLEDO, OH 43602	0	50,000
LAKE MHA	189 FIRST STREET, PAINESVILLE, OH 44077	0	45,000

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APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	0	19,000
BUCKS COUNTY HSG AUTH	350 SO. MAIN ST., STE 205, DOYLESTOWN, PA 18901	0	88,000
LEBANON COUNTY HSG AUTH	303 CHESTNUT STREET, LEBANON, PA 17042	0	37,500
CUMBERLAND COUNTY HSG AUTH	114 NORTH HANOVER STREET, CARLISLE, PA 17013	0	51,250
HA OF SOUTH CAROLINA REG NO 1	P.O. BOX 326, LAURENS, SC 29360	0	12,000
AUSTIN HOUSING AUTHORITY	P.O. BOX 6159, AUSTIN, TX 78762	0	32,500
DALLAS	3939 N. HAMPTON RD., DALLAS, TX 75212	0	1,000
MC ALLEN HSG AUTH	2301 JASMINE AVE., MC ALLEN, TX 78501	0	11,250
TARRANT COUNTY	1200 CIRCLE DR., #100, FORT WORTH, TX 76119	0	20,500
LANCASTER	525 W. PLEASANT RUN RD STE K, LANCASTER, TX 75146	0	25,750
GREENVILLE	4417 O'NEAL, GREENVILLE, TX 75401	0	1,750
DALLAS COUNTY	2377 N. STEMMONS FREEWAY, STE 200—LB 16, DALLAS, TX 75207.	0	14,750
ALAMO AREA COG	8700 TESORO SUITE 700, SAN ANTONIO, TX 78217	0	12,000
HA OF ASOTIN COUNTY	1212 FAIR STREET, CLARKSTON, WA 99403	0	7,250
HA OF THE CITY OF MILWAUKEE	P.O. BOX 324, 809 NORTH BROADWAY, MILWAUKEE, WI 53201.	0	1,250
BROWN COUNTY HA	100 N., JEFFERSON ST., ROOM 608, GREEN BAY, WI 54301.	0	14,500
KANAWHA COUNTY HA	P.O. BOX 3826, CHARLESTON, WV 25338	0	42,500
Total for Preservation/Prepayment Fees		0	1,825,250
PRESERVATION/PREPAYMENT			
MOBILE HOUSING BOARD	P.O. BOX 1345, MOBILE, AL 36633	108	480,816
HA OF ANNISTON	P.O. BOX 2225, ANNISTON, AL 36202	19	66,804
HA OF TUSCALOOSA	P.O. BOX 2281, TUSCALOOSA, AL 35403	70	256,200
NORTH LITTLE ROCK HA	P.O. BOX 516, NORTH LITTLE ROCK, AR 72115	107	471,228
TEMPE HSG AUTH	132 E. 6TH ST., STE 201, P.O. BOX 5002, TEMPE, AZ 85280.	44	252,912
LOS ANGELES COUNTY HA	2 CORAL CIRCLE, MONTEREY PARK, CA 91755	19	127,224
SACRAMENTO HSG & REDEV	P.O. BOX 1834, SACRAMENTO, CA 95812	90	950,920
YOLO COUNTY HSG AUTH	P.O. BOX 1867, WOODLAND, CA 95776	97	498,192
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE., SAN DIEGO, CA 92113	51	328,032
CITY OF REDDING HSG AUTH	P.O. BOX 496071, 777 CYPRESS AVE., REDDING, CA 96049.	100	390,000
BOULDER CITY HSG AUTH	3120 BROADWAY, BOULDER, CO 80304	17	120,972
CONN DEPT OF SOCIAL SERVICES	25 SIGOURNEY ST., 9TH FLOOR, HARTFORD, CT 06105	71	512,902
D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL ST., NE., WASHINGTON, DC 20002	328	2,727,648
HA OF COLUMBUS GA	P.O. BOX 630, COLUMBUS, GA 31902	58	212,280
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE., NE., ATLANTA, GA 30303.	30	219,240
DCA	60 EXECUTIVE PARK SO, NE. STE 250, ATLANTA, GA 30329.	94	451,200
SOUTHERN IOWA REG HSG AUTH	219 N PINE, CRESTON, IA 50801	6	19,224
NORTHWEST IOWA REG HA	P.O. BOX 7980, 125 WEST 4TH STREET, SPENCER, IA 51301.	8	21,792
CENTRAL IOWA REG HSG AUTH	950 OFFICE PARK ROAD STE 321, WEST DES MOINES, IA 50265.	58	203,928
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	58	436,392
OGLE COUNTY HSG AUTH	407 NORTH UNION STREET, POLO, IL 61064	48	171,648
FORT WAYNE HA–CITY OF FORT WAY	P.O. BOX 13489, FORT WAYNE, IN 46869	192	937,728
INDIANA DEPT OF HUMAN SERVICES	P.O. BOX 6116, INDIANAPOLIS, IN 46206	200	847,200
TOPEKA HSG AUTH	2010 SE CALIFORNIA AVE, TOPEKA, KS 66607	75	336,600
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139	25	309,900
HARFORD COUNTY HSG AGENCY	15 SOUTH MAIN STREET, SUITE 106, BEL AIR, MD 21014	54	258,552
MD DEPT OF HSG & COMM DEV	100 COMMUNITY PLACE, CROWNSVILLE, MD 21032	66	255,024
LANSING HSG COMMISSION	310 NORTH SEYMOUR ST, LANSING, MI 48933	252	1,209,600
MOUNT PLEASANT HSG COMM	ONE MOSHER STREET, MOUNT PLEASANT, MI 48858	130	511,680
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	155	781,200
ST PAUL PHA	480 CEDAR STREET, ST. PAUL, MN 55101	214	1,389,288
DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	42	190,800
DETROIT LAKES HRA	P.O. BOX 731, DETROIT LAKES, MN 56501	53	144,372
METROPOLITAN COUNCIL HRA	230 EAST FIFTH STREET, ST. PAUL, MN 55101	240	1,372,296
SOUTH CENTRAL MULTI-COUNTY HRA	410 JACKSON STREET, SUITE 100, MANKATO, MN 56002	28	92,736
INDEPENDENCE HSG AUTH	210 SOUTH PLEASANT, INDEPENDENCE, MO 64050	110	546,480
MANCHESTER HSG AUTH	198 HANOVER STREET, MANCHESTER, NH 03104	135	638,280
NEWARK HSG AUTH	57 SUSSEX AVENUE, NEWARK, NJ 07103	99	651,024
JERSEY CITY HSG AUTH	400 U.S. HIGHWAY #1, JERSEY CITY, NJ 07306	48	382,800
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	758	5,512,176

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
THE CITY OF NEW YORK DHPD	100 GOLD STREET ROOM 5N, NEW YORK, NY 10038	1,157	7,469,592
NEW YORK STATE HSG FIN AGENCY	25 BEAVER STREET, RM 674, NEW YORK, NY 10004	180	1,451,520
LUCAS MHA	P.O. BOX 477, 435 NEBRASKA AVENUE, TOLEDO, OH 43602.	200	825,600
LAKE MHA	189 FIRST STREET, PAINESVILLE, OH 44077	182	884,520
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	76	342,000
BUCKS COUNTY HSG AUTH	350 SOUTH MAIN STREET, SUITE 205, DOYLESTOWN, PA 18901.	352	1,938,816
LEBANON COUNTY HSG AUTH	303 CHESTNUT STREET, LEBANON, PA 17042	150	541,800
CUMBERLAND COUNTY HA	114 NORTH HANOVER STREET, CARLISLE, PA 17013	208	818,688
HA SOUTH CAROLINA REG NO 1	P.O. BOX 326, LAURENS, SC 29360	60	230,400
DALLAS HSG AUTH	3939 N. HAMPTON RD., DALLAS, TX 75212	4	30,240
MC ALLEN HSG AUTH	2301 JASMINE AVE, MC ALLEN, TX 78501	48	183,168
CISCO HOUSING AUTHORITY	714 EAST 10TH STREET, CISCO, TX 76437	0	91,123
TARRANT COUNTY	1200 CIRCLE DR, #100, FORT WORTH, TX 76119	82	436,896
LANCASTER HSG AUTH	525 WEST PLEASANT RUN RD, STE K, LANCASTER, TX 75146.	104	655,200
GREENVILLE HSG AUTH	4417 O'NEAL, GREENVILLE, TX 75401	7	35,700
DALLAS COUNTY	2377 N. STEMMONS FREEWAY, STE 200—LB 16, DALLAS, TX 75207.	74	482,184
ALAMO AREA COG	8700 TESORO SUITE 700, SAN ANTONIO, TX 78217	48	164,736
HA OF ASOTIN COUNTY	1212 FAIR STREET, CLARKSTON, WA 99403	29	124,584
BROWN COUNTY HA	100 N JEFFERSON STREET, RM 608, GREEN BAY, WI 54301.	58	205,320
KANAWHA COUNTY HA	P.O. BOX 3826, CHARLESTON, WV 25338	177	828,360
Total for Preservation/Prepayment		7,553	$43,027,737
PROPERTY DISPOSITION RELOCATION			
SAN FRANCISCO HSG AUTH	440 TURK STREET, SAN FRANCISCO, CA 94102	24	260,928
ADAMS COUNTY	7190 COLORADO BLVD, 6TH FL, COMMERCE CITY, CO 80022.	82	609,096
BROWARD COUNTY HSG AUTH	1773 NORTH STATE ROAD 7, LAUDERHILL, FL 33313	108	716,688
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE. NE, ATLANTA, GA 30303	120	876,960
SOUTHERN IOWA REG HSG AUTH	219 N. PINE, CRESTON, IA 50801	23	73,692
REGIONAL HSG AUTH—VOUCHER XI	108 WEST 6TH ST, P.O. BOX 663, CARROLL, IA 51401	55	143,220
INDIANAPOLIS HOUSING AGENCY	1919 N. MERIDIAN ST, INDIANAPOLIS, IN 46202	134	643,200
FORD COUNTY HSG AUTH	P.O. BOX 1636, DODGE CITY, KS 67801	96	291,456
OWENSBORO HSG AUTH	2161 EAST 19TH STREET, OWENSBORO, KY 42303	38	130,872
APPALACHIAN FOOTHILLS HA	1214 RIVERSIDE BOULEVARD, WURTLAND, KY 41144	32	128,640
H.A.K.C.	301 EASTARMOUR BLVD, KANSAS CITY, MO 64111	48	243,648
GASTONIA HSG AUTH	340 W. LONG AVENUE P.O. BOX 2398, GASTONIA, NC 28053.	82	378,840
WEST CENTRAL HSG AUTH	P.O. BOX 599, OGALLALA, NE 69153	8	23,808
CLOVIS HOUSING AUTHORITY	P.O. BOX 1240, 2101 W. GRAND AVE., CLOVIS, NM 88102	50	153,000
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	164	1,192,608
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	98	216,000
HA OF CITY OF PITTSBURG	200 ROSS STREET, PITTSBURGH, PA 15219	399	1,891,260
PHILADELPHIA HSG AUTH	12 SOUTH 23RD STREET, PHILADELPHIA, PA 19103	218	1,600,992
LANCASTER HSG AUTH	325 CHURCH STREET, LANCASTER, PA 17602	8	40,704
BROOKINGS HSG AUTH	1310 MAIN AVE. SOUTH, BROOKINGS, SD 57006	18	63,288
SAN BENITO HSG AUTH	P.O. BOX 1900, SAN BENITO, TX 78586	65	277,680
CISCO HSG AUTH	714 EAST 10TH STREET, CISCO, TX 76437	68	204,816
ARLINGTON HSG AUTH	501 W. SANFORD, SUITE 20, ARLINGTON, TX 76011	44	261,888
CITY OF PASADENA HSG AUTH	P.O. BOX 672, PASADENA, TX 77501	76	397,632
JACKSONVILLE HSG AUTH	301 E COMMERCE, 2ND.FL, JACKSONVILLE, TX 75766	64	273,408
Total for Property Disposition Relocation		2,122	11,094,324
PUBLIC HOUSING RELOCATION/REPLACEMENTS			
HA OF CITY OF MONTGOMERY	1020 BELL ST, MONTGOMERY, AL 36104	230	1,059,840
HA OF HUNTSVILLE	P.O. BOX 486, HUNTSVILLE, AL 35804	76	329,232
CITY OF PHOENIX	251 W. WASHINGTON ST, 4TH FL, PHOENIX, AZ 85034	364	2,197,104
SAN FRANCISCO HSG AUTH	440 TURK STREET, SAN FRANCISCO, CA 94102	150	1,980,200
CITY OF FRESNO HSG AUTH	1331 FULTON MALL, FRESNO, CA 93776	36	172,800
ORLANDO H/A	300 REEVES COURT, ORLANDO, FL 32801	90	498,780
HA OF FORT LAUDERDALE CITY	437 S W 4TH AVENUE, FORT LAUDERDALE, FL 33315	100	583,200
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE. NE, ATLANTA, GA 30303	444	3,489,840

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APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
HA OF FULTON COUNTY	10 PARK PLACE SE, SUITE 550, ATLANTA, GA 30303	144	855,360
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	2,469	19,347,084
CHRISTIAN CTY HA	P.O. BOX 86, PANA, IL 62557	32	110,208
NEW ORLEANS HSG AUTH	4100 TOURO STREET, NEW ORLEANS, LA 70122	120	665,280
HSG AUTH OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	575	3,077,400
HAGERSTOWN HSG AUTH	35 WEST BALTIMORE ST, HAGERSTOWN, MD 21740	97	416,712
EAST GRAND FORKS ECON DEV HA	P.O. BOX 439, EAST GRAND FORKS, MN 56721	65	295,620
BURLEIGH COUNTY HSG AUTH	410 SOUTH 2ND STREET, BISMARCK, ND 58504	34	137,088
ATLANTIC CITY HA	227 VERMONT AVE, P.O. BOX 1258, ATLANTIC CITY, NJ 08404.	40	299,040
EAST ORANGE HSG AUTH	160 HALSTED STREET, EAST ORANGE, NJ 07018	9	75,294
CITY OF LAS VEGAS HSG AUTH	420 N. 10TH STREET P.O. BOX 1897, LAS VEGAS, NV 89125.	102	807,840
MERCER COUNTY HSG AUTH	80 JEFFERSON AVENUE P.O. BOX 683, SHARON, PA 16146.	76	234,384
NEWPORT HSG AUTH	1 YORK STREET, NEWPORT, RI 02840	33	260,964
HA OF NORTH CHARLESTON	P.O. BOX 70987, NORTH CHARLESTON, SC 29415	140	666,960
METROPOLITAN DEV & HA	701 SOUTH SIXTH ST, P.O. BOX 846, NASHVILLE, TN 37202.	66	380,160
FORT WORTH HSG AUTH	P.O. BOX 430, 1201 E. 13TH ST, FORT WORTH, TX 76101	268	1,382,880
HA COUNTY OF KING	600 ANDOVER PARK WEST, TUKWILA, WA 98188	279	2,290,032
Total for Public Housing Relocation/Replacements		6,039	41,593,302
SECTION 8 COUNSELING			
PORT ARTHUR HSG AUTH	P.O. BOX 2295, 920 DEQUEEN BLVD, PORT ARTHUR, TX 77643.	0	1,200,000
Total for Section 8 Counseling		0	1,200,000
TERMINATIONS/OPTOUTS/PD RELOCATION FEES			
AK HSG FINANCE CORP	P.O. BOX 101020, ANCHORAGE, AK 99510	0	13,750
HA OF BIRMINGHAM DISTRICT	1826 3RD AVE. SOUTH, BIRMINGHAM, AL 35233	0	45,500
HA OF PRICHARD	P.O. BOX 10307, PRICHARD, AL 36610	0	4,250
HA OF THE CITY OF PINE BLUFF	P.O. BOX 8872, PINE BLUFF, AR 71611	0	1,750
JACKSONVILLE HSG AUTH	P.O. BOX 734, JACKSONVILLE, AR 72076	0	5,000
TUCSON HSG MANAGEMENT DIV	310 NORTH COMMERCE PARK LOOP, TUCSON, AZ 85726	0	36,000
LOS ANGELES COUNTY HSG AUTH	2 CORAL CIRCLE, MONTEREY PARK, CA 91755	0	42,000
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD, 3RD FL, LOS ANGELES, CA 90057	0	66,000
COUNTY OF SAN JOAQUIN HA	448 SOUTH CENTER ST, P.O. BOX 447, STOCKTON, CA 95203.	0	24,500
SAN BUENAVENTURA HSG AUTH	995 RIVERSIDE STREET, VENTURA, CA 93003	0	24,250
COUNTY OF SANTA CLARA HA	505 WEST JULIAN ST, SAN JOSE, CA 95110	0	2,500
CITY OF PITTSBURG HSG AUTH	333 EAST LELAND RD, PITTSBURG, CA 94565	0	29,250
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113	0	4,250
ALAMEDA COUNTY HSG AUTH	22941 ATHERTON STREET, HAYWARD, CA 94541	0	9,000
ORANGE COUNTY HSG AUTH	1770 NORTH BROADWAY, SANTA ANA, CA 92706	0	18,250
AURORA HSG AUTH	10745 E. KENTUCKY AVENUE, AURORA, CO 80012	0	18,500
CO DEPT OF HUMAN SERVICES	4131 S. JULIAN WAY, DENVER, CO 80236	0	2,250
BRIDGEPORT HSG AUTH	150 HIGHLAND AVENUE, BRIDGEPORT, CT 06604	0	9,000
HA OF CITY OF NEW HAVEN	360 ORANGE STREET, NEW HAVEN, CT 06511	0	18,250
D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL ST. NE., WASHINGTON, DC 20002	0	63,000
NEW CASTLE COUNTY	87 READ'S WAY, NEW CASTLE, DE 19720	0	15,500
HA OF TAMPA	1514 UNION ST, P.O. BOX 4766, TAMPA, FL 33607	0	3,000
HA OF THE CITY OF TITUSVILLE	524 S. HOPKINS AVE., TITUSVILLE, FL 32782	0	9,250
HIALEAH HSG AUTH	70 EAST 7TH STREET, HIALEAH, FL 33010	0	12,000
HILLSBOROUGH COUNTY–BOCC	9260 BAY PLAZA BOULEVARD, STE 510, TAMPA, FL 33619	0	7,250
HA OF SAVANNAH	P.O. BOX 1179, SAVANNAH, GA 31402	0	5,500
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE., NE., ATLANTA, GA 30303.	0	66,250
CITY OF MARIETTA HA	P.O. BOX 609, MARIETTA, GA 30061	0	6,250
DCA	60 EXECUTIVE PARK SO, NE STE 250, ATLANTA, GA 30329.	0	6,000
CITY & COUNTY OF HONOLULU	715 SOUTH KING ST., SUITE 311, HONOLULU, HI 96813	0	2,750
SIOUX CITY HSG AUTH	CITY HALL P.O. BOX 447, SIOUX CITY, IA 51102	0	1,250
AREA XV MULTI–COUNTY HA	417 NORTH COLLEGE P.O. BOX 276, AGENCY, IA 52530	0	12,250
EASTERN IOWA REG HSG	330 NESLER CENTRE P.O. BOX 1140, DUBUQUE, IA 52001	0	5,750
CENTRAL IOWA REG HSG AUTH	950 OFFICE PARK ROAD, STE 321, WEST DES MOINES, IA 50265.	0	750

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
IOWA NORTHLAND REG HA	2530 UNIVERSITY AVE., SUITE #5, WATERLOO, IA 50701	0	2,250
HA OF CITY OF POCATELLO	P.O. BOX 4161, POCATELLO, ID 83205	0	26,250
IDAHO HSG & FINANCE ASSN	565 W MYRTLE STREET, P.O. BOX 7899, BOISE, ID 83707	0	4,250
CHICAGO HSG AUTH	626 WEST JACKSON BLVD., CHICAGO, IL 60661	0	23,250
GREATER MAH OF ROCK ISLAND	325 SECOND STREET, SILVIS, IL 61282	0	19,000
JACKSON COUNTY HSG AUTH	P.O. BOX 1209, MURPHYSBORO, IL 62966	0	12,000
HA OF CITY OF EVANSVILLE	P.O. BOX 3605, 500 COURT STREET, EVANSVILLE, IN 47735.	0	9,250
INDIANAPOLIS HOUSING AGENCY	1919 N. MERIDIAN STREET, INDIANAPOLIS, IN 46202	0	9,000
NEK–CAP, INC	P.O. BOX 380, HIAWATHA, KS 66434	0	10,000
KENTUCKY HSG CORP	1231 LOUISVILLE ROAD, FRANKFORT, KY 40601	0	22,500
JEFFERSON PARISH HA	1718 BETTY STREET, MARRERO, LA 70072	0	15,500
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVE., CAMBRIDGE, MA 02139	0	4,250
WAKEFIELD HSG AUTH	26 CRESCENT ST., WAKEFIELD, MA 01880	0	11,000
HA OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	0	35,000
HA OF THE CITY OF FREDERICK	209 MADISON STREET, FREDERICK, MD 21701	0	6,000
MONTGOMERY CO HSG AUTH	10400 DETRICK AVENUE, KENSINGTON, MD 20895	0	34,000
HA OF PRINCE GEORGE'S CO	9400 PEPPERCORN PLACE, STE 200, LARGO, MD 20774	0	12,000
ANNE ARUNDEL COUNTY HA	7885 GORDON COURT, P.O. BOX 0817, GLEN BURNIE, MD 21060.	0	21,750
HOWARD COUNTY HSG COMM	6751 COLUMBIA GATEWAY DR., 3RD FL., COLUMBIA, MD 21046.	0	12,000
DETROIT HSG COMMISSION	1301 EAST JEFFERSON AVENUE, DETROIT, MI 48207	0	9,750
LIVONIA HSG COMMISSION	19300 PURLINGBROOK ROAD, LIVONIA, MI 48152	0	4,500
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	0	22,250
MINNEAPOLIS PHA	1001 WASHINGTON AVE. NORTH, MINNEAPOLIS, MN 55401.	0	1,000
MOORHEAD PHA	800 SECOND AVENUE NORTH, MOORHEAD, MN 56560	0	6,000
H.A.K.C.	301 EASTARMOUR BLVD., KANSAS CITY, MO 64111	0	17,750
ST. LOUIS COUNTY HSG AUTH	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121	0	12,250
LEES SUMMIT HSG AUTH	111 SOUTH GRAND, LEES SUMMIT, MO 64063	0	10,500
RALEIGH HSG AUTH	P.O. BOX 28007, RALEIGH, NC 27611	0	7,750
HA OF WINSTON–SALEM	901 CLEVELAND AVENUE, WINSTON–SALEM, NC 27101	0	250
HA OF DURHAM	330 E. MAIN STREET, P.O. BOX 1726, DURHAM, NC 27702	0	3,750
ISOTHERMAL PLAN'G & DEV COMM	111 W. COURT ST., P.O. BOX 841, RUTHERFORDTON, NC 28139.	0	22,250
PORTSMOUTH HSG AUTH	245 MIDDLE STREET, PORTSMOUTH, NH 03801	0	7,500
NEW HAMPSHIRE HSG FIN AGENCY	P.O. BOX 5087, MANCHESTER, NH 03108	0	12,500
NEWARK HSG AUTH	57 SUSSEX AVENUE, NEWARK, NJ 07103	0	43,750
JERSEY CITY HSG AUTH	400 U.S. HIGHWAY #1, JERSEY CITY, NJ 07306	0	5,500
EDISON HSG AUTH	WILLARD DUNHAM DRIVE, EDISON, NJ 08837	0	16,500
NORTH LAS VEGAS HSG AUTH	1632 YALE STREET, NORTH LAS VEGAS, NV 89030	0	6,750
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO ROAD, LAS VEGAS, NV 89122	0	12,750
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	0	57,750
HEMPSTEAD HSG AUTH	260 CLINTON STREET, HEMPSTEAD, NY 11550	0	25,750
NEW YORK STATE HSG FIN AGENCY	25 BEAVER STREET, RM 674, NEW YORK, NY 10007	0	43,500
COLUMBUS METRO HA	880 EAST 11TH AVENUE, COLUMBUS, OH 43211	0	12,750
CUYAHOGA MHA	1441 WEST 25TH STREET, CLEVELAND, OH 44113	0	37,500
CINCINNATI METRO HSG AUTH	16 WEST CENTRAL PARKWAY, CINCINNATI, OH 45210	0	20,750
DAYTON METROPOLITAN HA	400 WAYNE AVE POST OFFICE BOX 8750, DAYTON, OH 45401.	0	46,750
LUCAS MHA	P.O. BOX 477 435 NEBRASKA AVENUE, TOLEDO, OH 43602.	0	23,500
LORAIN MHA	1600 KANSAS AVENUE, LORAIN, OH 44052	0	5,250
HAMILTON COUNTY PUB HSG AUTH	138 EAST COURT STREET, ROOM 507, CINCINNATI, OH 45202.	0	3,000
PARMA PHA	6901 WEST RIDGEWOOD DRIVE, PARMA, OH 44129	0	4,500
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	0	69,500
HA OF CHARLESTON	20 FRANKLIN STREET, CHARLESTON, SC 29401	0	3,000
HA OF COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	0	6,500
HA OF GREENVILLE	P.O. BOX 10047, GREENVILLE, SC 29603	0	4,000
MADISON HSG AUTH	111 S. WASHINGTON AVE., MADISON, SD 57042	0	2,250
HA OF MEMPHIS	700 ADAMS AVE, P.O. BOX 3664, MEMPHIS, TN 38103	0	20,500
METROPOLITAN DEV & HA	701 SOUTH SIXTH ST, P.O. BOX 846, NASHVILLE, TN 37202.	0	16,000
KINGSPORT HSG & REDEV AUTH	P.O. BOX 44, KINGSPORT, TN 37662	0	19,250
AUSTIN HSG AUTH	P.O. BOX 6159, AUSTIN, TX 78762	0	500
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	0	43,750
WACO HSG AUTH	P.O. BOX 978, 1001 WASHINGTON, WACO, TX 76703	0	0,500
ARLINGTON HSG AUTH	501 W. SANFORD, SUITE 20, ARLINGTON, TX 76011	0	5,750
GRAND PRAIRIE HSG AUTH	201 NW 2ND ST, STE 150, GRAND PRAIRIE, TX 75053	0	25,000

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APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
GARLAND HSG AUTH	P.O. BOX 469002, 210 CARVER ST, STE 201B, GARLAND, TX 75046.	0	8,500
LANCASTER HSG AUTH	525 WEST PLEASANT RUN RD STE K, LANCASTER, TX 75146.	0	9,000
HARRIS COUNTY HSG AUTH	8410 LANTERN POINT, HOUSTON, TX 77054	0	7,500
FAIRFAX CO RED & HSG AUTH	3700 PENDER DRIVE SUITE 300, FAIRFAX, VA 22030	0	12,750
VIRGINIA HSG DEV AUTH	601 SOUTH BELVIDERE STREET, RICHMOND, VA 23220	0	13,750
HA OF COUNTY OF KING	600 ANDOVER PARK WEST, TUKWILA, WA 98188	0	10,000
HA OF CITY OF TACOMA	902 SOUTH "L" STREET SUITE 2C, TACOMA, WA 98405	0	4,500
HA OF CITY OF VANCOUVER	2500 MAIN STREET, #200, VANCOUVER, WA 98660	0	6,000
HA OF THE CITY OF MILWAUKEE	P.O. BOX 324 809, NORTH BROADWAY, MILWAUKEE, WI 53201.	0	500
RIVER FALLS HA	625 NORTH MAIN STREET, RIVER FALLS, WI 54022	0	1,500
WEST BEND HSG AUTH	475 MEADOWBROOK DR, WEST BEND, WI 53095	0	24,250
DANE COUNTY HSG AUTH	2001 W BROADWAY, SUITE 1, MONONA, WI 53713	0	5,250
Total for Terminations/Opt-outs/PD Relocation Fees		0	1,714,500
TERMINATIONS/OPT-OUTS			
AK HSG FINANCE CORP	P.O. BOX 101020, ANCHORAGE, AK 99510	55	335,280
HA OF BIRMINGHAM DISTRICT	1826 3RD AVE. SOUTH, BIRMINGHAM, AL 35233	190	836,760
HA PRICHARD	P.O. BOX 10307, PRICHARD, AL 36610	40	185,280
HA OF THE CITY OF PINE BLUFF	P.O. BOX 8872, PINE BLUFF, AR 71611	7	26,712
JACKSONVILLE HSG AUTH	P.O. BOX 734, JACKSONVILLE, AR 72076	20	76,080
TUCSON HSG MANAGEMENT DIV	310 NORTH COMMERCE PARK LOOP, TUCSON, AZ 85726	154	842,688
LOS ANGELES COUNTY HA	2 CORAL CIRCLE, MONTEREY PARK, CA 91755	168	1,163,328
CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD, 3RD FL, LOS ANGELES, CA 90057	264	1,708,032
COUNTY OF SAN JOAQUIN HA	448 SOUTH CENTER ST, P.O. BOX 447, STOCKTON, CA 95203.	101	267,120
SAN BUENAVENTURA HA	995 RIVERSIDE STREET, VENTURA, CA 93003	97	663,480
CITY OF PITTSBURG HSG AUTH	333 EAST LELAND RD, PITTSBURG, CA 94565	124	952,320
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113	17	109,344
ALAMEDA COUNTY HSG AUTH	22941 ATHERTON STREET, HAYWARD, CA 94541	36	307,152
ORANGE COUNTY HSG AUTH	1770 NORTH BROADWAY, SANTA ANA, CA 92706	74	522,144
AURORA HSG AUTH	10745 E KENTUCKY AVENUE, AURORA, CO 80012	74	517,704
CO DEPT OF HS	4131 S. JULIAN WAY, DENVER, CO 80236	13	54,600
BRIDGEPORT HSG AUTH	150 HIGHLAND AVENUE, BRIDGEPORT, CT 06604	36	230,688
HA OF CITY OF NEW HAVEN	360 ORANGE STREET, NEW HAVEN, CT 06511	77	609,840
D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	301	2,503,116
NEW CASTLE COUNTY HA	87 READ'S WAY, NEW CASTLE, DE 19720	100	584,400
HA OF TAMPA	1514 UNION ST P.O. BOX 4766, TAMPA, FL 33607	12	75,168
HA OF THE CITY OF TITUSVILLE	524 S. HOPKINS AVE, TITUSVILLE, FL 32782	37	184,704
HIALEAH HSG AUTH	70 EAST 7TH STREET, HIALEAH, FL 33010	48	307,008
HILLSBOROUGH COUNTY–BOCC	9260 BAY PLAZA BLVD STE 510, TAMPA, FL 33619	29	150,684
HA OF SAVANNAH	P.O. BOX 1179, SAVANNAH, GA 31402	23	124,752
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE NE, ATLANTA, GA 30303	285	2,082,780
HA OF CITY OF MARIETTA	P.O. BOX 609, MARIETTA, GA 30061	26	187,512
DCA	60 EXECUTIVE PARK SOUTH, NE, STE 250, ATLANTA, GA 30329.	37	177,600
CITY & COUNTY OF HONOLULU	715 SOUTH KING ST., SUITE 311, HONOLULU, HI 96813	11	89,496
SIOUX CITY HSG AUTH	CITY HALL P.O. BOX 447, SIOUX CITY, IA 51102	5	19,020
AREA XV MULTI–COUNTY HA	417 NORTH COLLEGE P.O. BOX 276, AGENCY, IA 52530	54	160,464
EASTERN IOWA REG HSG AUTH	330 NESLER CENTRE, P.O. BOX 1140, DUBUQUE, IA 52001.	24	79,776
CENTRAL IOWA REG HSG AUTH	950 OFFICE PARK RD, STE 321, WEST DES MOINES, IA 50265.	8	28,128
IOWA NORTHLAND REG HA	2530 UNIVERSITY AVE., STE #5, WATERLOO, IA 50701	12	39,168
HA OF CITY OF POCATELLO	P.O. BOX 4161, POCATELLO, ID 83205	105	428,400
IDAHO HSG & FIN ASSN	565 W. MYRTLE ST., P.O. BOX 7899, BOISE, ID 83707	22	88,968
CHICAGO HSG AUTH	626 WEST JACKSON BLVD., CHICAGO, IL 60661	94	707,226
GREATER MAH OF ROCK ISLAND	325 SECOND STREET, SILVIS, IL 61282	76	320,112
JACKSON COUNTY HSG AUTH	P.O. BOX 1209, MURPHYSBORO, IL 62966	48	176,256
HA CITY OF EVANSVILLE	P.O. BOX 3605 500 COURT ST, EVANSVILLE, IN 47735	40	159,360
INDIANAPOLIS HSG AGENCY	1919 N. MERIDIAN STREET, INDIANAPOLIS, IN 46202	37	177,600
NEK–CAP, INC	P.O. BOX 380, HIAWATHA, KS 66434	44	117,744
KENTUCKY HSG CORP	1231 LOUISVILLE ROAD, FRANKFORT, KY 40601	107	412,164
JEFFERSON PARISH HA	1718 BETTY STREET, MARRERO, LA 70072	62	283,464
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139	17	210,732
WAKEFIELD HSG AUTH	26 CRESCENT ST., WAKEFIELD, MA 01880	44	350,064
HA OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	140	720,720

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
HA OF THE CITY OF FREDERICK	209 MADISON STREET, FREDERICK, MD 21701	24	180,288
MONTGOMERY CO HSG AUTH	10400 DETRICK AVENUE, KENSINGTON, MD 20895	86	724,464
HA OF PRINCE GEORGE'S CO	9400 PEPPERCORN PLACE SUITE 200, LARGO, MD 20774	48	395,136
ANNE ARUNDEL COUNTY HA	7885 GORDON CT., P.O. BOX 0817, GLEN BURNIE, MD 21060.	106	657,624
HOWARD COUNTY. HSG COMM	6751 COLUMBIA GATEWAY DR., 3RD FL, COLUMBIA, MD 21046.	48	363,456
DETROIT HSG COMMISSION	1301 EAST JEFFERSON AVE., DETROIT, MI 48207	52	321,984
LIVONIA HSG COMMISSION	19300 PURLINGBROOK ROAD, LIVONIA, MI 48152	32	178,944
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	89	448,560
MINNEAPOLIS PHA	1001 WASHINGTON AVE NORTH, MINNEAPOLIS, MN 55401.	5	34,500
METROPOLITAN COUNCIL HRA	230 EAST FIFTH STREET, ST. PAUL, MN 55101	41	91,620
H.A.K.C.	301 EASTARMOUR BLVD., KANSAS CITY, MO 64111	73	370,548
ST. LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121	66	316,800
LEES SUMMIT HSG AUTH	111 SOUTH GRAND, LEES SUMMIT, MO 64063	42	210,672
RALEIGH HSG AUTH	P.O. BOX 28007, RALEIGH, NC 27611	31	194,928
HA OF WINSTON–SALEM	901 CLEVELAND AVENUE, WINSTON–SALEM, NC 27101	4	20,880
HA OF DURHAM	330 E MAIN STREET P.O. BOX 1726, DURHAM, NC 27702	16	93,696
ISOTHERMAL PLAN'G & DEV COMM	111 W COURT ST., P.O. BOX 841, RUTHERFORDTON, NC 28139.	100	358,800
PORTSMOUTH HSG AUTH	245 MIDDLE STREET, PORTSMOUTH, NH 03801	30	174,960
NEWARK HSG AUTH	57 SUSSEX AVENUE, NEWARK, NJ 07103	175	1,150,800
JERSEY CITY HSG AUTH	400 U.S. HIGHWAY #1, JERSEY CITY, NJ 07306	22	153,120
EDISON HSG AUTH	WILLARD DUNHAM DRIVE, EDISON, NJ 08837	66	502,920
NORTH LAS VEGAS HSG AUTH	1632 YALE STREET, NORTH LAS VEGAS, NV 89030	30	209,160
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO ROAD, LAS VEGAS, NV 89122	51	306,000
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	231	1,679,832
HEMPSTEAD HSG AUTH	260 CLINTON STREET, HEMPSTEAD, NY 11550	103	1,067,904
NEW YORK STATE HSG FIN AGENCY	BEAVER STREET, RM 674, NEW YORK, NY 10007	178	1,435,392
COLUMBUS MHA	880 EAST 11TH AVENUE, COLUMBUS, OH 43211	51	261,324
CUYAHOGA MHA	1441 WEST 25TH STREET, CLEVELAND, OH 44113	150	813,600
CINCINNATI MHA	16 WEST CENTRAL PARKWAY, CINCINNATI, OH 45210	100	464,400
DAYTON METROPOLITAN HA	400 WAYNE AVE, P.O. BOX 8750, DAYTON, OH 45401	240	540,000
LUCAS MHA	P.O. BOX 477, 435 NEBRASKA AVE, TOLEDO, OH 43602	96	396,288
LORAIN MHA	1600 KANSAS AVENUE, LORAIN, OH 44052	24	119,808
HAMILTON COUNTY PHA	138 EAST COURT ST, RM 507, CINCINNATI, OH 45202	12	61,488
PARMA PHA	6901 WEST RIDGEWOOD DRIVE, PARMA, OH 44129	39	171,288
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	318	1,431,000
HA OF CHARLESTON	20 FRANKLIN STREET, CHARLESTON, SC 29401	12	54,288
HA OF COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	26	139,464
HA OF GREENVILLE	P.O. BOX 10047, GREENVILLE, SC 29603	16	66,816
HA OF GREENWOOD	P.O. BOX 973, GREENWOOD, SC 29648	0	15,984
MADISON HSG AUTH	111 S. WASHINGTON AVE, MADISON, SD 57042	32	93,312
HA OF MEMPHIS	700 ADAMS AVE, P.O. BOX 3664, MEMPHIS, TN 38103	82	436,896
METROPOLITAN DEV & HA	701 SOUTH SIXTH ST, P.O. BOX 846, NASHVILLE, TN 37202.	71	400,440
KINGSPORT HSG & REDEV AUTH	P.O. BOX 44, KINGSPORT, TN 37662	79	326,112
AUSTIN HSG AUTH	P.O. BOX 6159, AUSTIN, TX 78762	2	14,712
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	175	1,026,900
ARLINGTON HSG AUTH	501 W. SANFORD, STE 20, ARLINGTON, TX 76011	23	136,896
GRAND PRAIRIE HSG AUTH	201 NW, 2ND ST., SUITE 150, GRAND PRAIRIE, TX 75053	100	603,600
GARLAND HSG AUTH	210 CARVER STREET, STE 201B, GARLAND, TX 75046	39	286,756
LANCASTER HSG AUTH	525 WEST PLEASANT RUN RD STE K, LANCASTER, TX 75146.	44	277,200
HARRIS COUNTY HSG AUTH	8410 LANTERN POINT, HOUSTON, TX 77054	30	197,280
FAIRFAX CO RED & HSG AUTH	3700 PENDER DRIVE, STE 300, FAIRFAX, VA 22030	51	408,204
VIRGINIA HSG DEV AUTH	601 SOUTH BELVIDERE STREET, RICHMOND, VA 23220	59	276,120
HA OF COUNTY OF KING	600 ANDOVER PARK WEST, TUKWILA, WA 98188	40	297,120
HA OF CITY OF TACOMA	902 SOUTH "L" STREET SUITE 2C, TACOMA, WA 98405	18	94,824
HA OF CITY OF VANCOUVER	2500 MAIN STREET, #200, VANCOUVER, WA 98660	24	138,816
RIVER FALLS HSG AUTH	625 NORTH MAIN STREET, RIVER FALLS, WI 54022	6	24,408
DANE COUNTY HSG AUTH	2001 W BROADWAY, SUITE 1, MONONA, WI 53713	22	119,328
Total for Terminations/Opt-outs		7,125	41,694,798
Grand Total		22,839	142,295,161

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[FR Doc. 02–30363 Filed 11–29–02; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Availability of Geographic Information and Related Spatial Data

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of geographic information and related spatial data.

SUMMARY: Notice is hereby given that effective with this publication, MMS will assume its responsibilities for National Spatial Data Infrastructure (NSDI) Data Themes as defined in the Office of Management and Budget's Circular No. A–16, "Coordination of Geographic Information and Related Spatial Data Activities," as revised on August 19, 2002.

FOR FURTHER INFORMATION CONTACT: To acquire spatial data from MMS for the following Data Themes, Offshore Minerals, please contact Renee Orr, Chief, Leasing Division Minerals Management Service, Mail Stop 4010, 381 Elden Street, Herndon, Virginia 20170, Telephone (703) 787–1165, Cadastral (Offshore) and Outer Continental Shelf Submerged Lands, please contact Leland F. Thormahlen, Chief, Mapping and Boundary Branch, Minerals Management Service, PO Box 25165, Mail Stop 4011, Denver Federal Center, Lakewood, Colorado 80225, Telephone (303) 275–7120 or visit our web site at *www.mms.gov/ld/leasing.htm.*

SUPPLEMENTARY INFORMATION: Under the Revised OMB Circular A–16 the following Data Themes as defined are the sole responsibility of the MMS:

Cadastral (Offshore): DOI, MMS

Definition: Offshore cadastre is the land management system used on the Outer Continental Shelf. The cadastre extends from the baseline to the extent of United States jurisdiction. Existing coverage is currently limited to the conterminous United States and portions of Alaska. The maximum extent of United States jurisdiction has not been mathematically determined and will be available as soon as the information is provided by the Department of Commerce.

Offshore Minerals: DOI, MMS

Definition: Offshore minerals include minerals occurring in submerged lands. Examples of marine minerals include oil, gas, sulfur, gold, sand and gravel, and manganese.

Outer Continental Shelf Submerged Lands: DOI, MMS

Definition: This data includes lands covered by water at any stage of the tide, as distinguished from tidelands, which are attached to the mainland or an island and cover and uncover with the tide. Tidelands presuppose a high-water line as the upper boundary; whereas submerged lands do not.

Dated: November 18, 2002.

Johnnie Burton,

Director, Minerals Management Service.

[FR Doc. 02–30442 Filed 11–29–02; 8:45 am]
BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–989 (Final)]

Ball Bearings From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On October 8, 2002, the Commission established a schedule for the conduct of the final phase of the subject investigation (67 FR 65142, October 23, 2002). The Commission hereby revises the date for its hearing in the investigation from March 4, 2003, to March 6, 2003.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 26, 2003; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 3; the prehearing staff report will be placed in the nonpublic record on February 21; the deadline for filing prehearing briefs is February 28; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 6; the deadline for filing posthearing briefs is March 13; the Commission will make its final release of information on March 26; and final party comments are due on March 28. For further information concerning this investigation see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 25, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30371 Filed 11–29–02; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–757 and 759 (Review)]

Collated Roofing Nails From China and Taiwan

AGENCY: International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in October 2002 to determine whether revocation of the antidumping duty orders on collated roofing nails from China and Taiwan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On November 25, 2002, the Department of Commerce published notice that it was revoking the orders effective November 25, 2002 because "no domestic party responded to the sunset review notice of initiation by the applicable deadline" (67 FR 70578). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: November 25, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30443 Filed 11–29–02; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–430A and 430B and 731–TA–1019A and 1019B (Preliminary)][1]

Durum and Hard Red Spring Wheat From Canada

Determinations

On the basis of the record[2] developed in the subject investigations, the United States International Trade Commission (Commission) determines,[3] pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that industries in the United States are materially injured by reason of imports from Canada of durum and hard red spring wheat, provided for in subheadings 1001.10.00, 1001.90.10, and 1001.90.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada and sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 13, 2002, a petition was filed with the Commission and Commerce by the North Dakota Wheat Commission (hard red spring wheat), Bismarck, ND; the Durum Growers Trade Action Committee (durum wheat), Bismarck, ND;[4] and the U.S. Durum Growers Association (durum wheat), Bismarck, ND, alleging that industries in the United States are materially injured and are threatened with material injury by reason of subsidized and LTFV imports of durum and hard red spring wheat from Canada. Accordingly, effective September 13, 2002, the Commission instituted countervailing duty and antidumping duty investigations Nos. 701–TA–430 and 731–TA–1019 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 25, 2002 (67 FR 60256). The conference was held in Washington, DC, on October 4, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 25, 2002.

The views of the Commission are contained in USITC Publication 3563 (December 2002), entitled *Durum and Hard Red Spring Wheat from Canada: Investigations Nos. 701–TA–430A and 430B and 731–TA–1019A and 1019B (Preliminary).*

Issued: November 25, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30444 Filed 11–29–02; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–456]

Certain Gel-Filled Wrist Rests and Products Containing Same; Notice of Final Determination of No Violation of Section 337 of the Tariff Act OF 1930

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

[1] Subsequent to the Commission's institution of these investigations, the Department of Commerce (Commerce) initiated separate countervailing duty investigations on durum wheat (C–122–846) and hard red spring wheat (C–122–848), and separate antidumping investigations on durum wheat (A–122–845) and hard red spring wheat (A–122–847). For consistency, the Commission is further delineating its investigation numbers for the duration of the investigations as follows: investigations Nos. 701–TA–430A and 731–TA–1019A will cover durum wheat and investigations Nos. 701–TA–430B and 731–TA–1019B will cover hard red spring wheat.

[2] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[3] Commissioner Stephen Koplan dissenting.

[4] In a petition supplement dated September 24, 2002, the petitioners informed Commerce that, with respect to the petition on durum wheat, the petitioners were replacing the North Dakota Wheat Commission with the Durum Growers Trade Action Committee.

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Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 17, 2001, based on a complaint filed on behalf of Minnesota Mining and Manufacturing Company (now called 3M Company) and 3M Innovative Properties Company (collectively complainants), both of St. Paul, Minnesota. 66 FR 27535 (2001). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, and sale after importation of certain gel-filled wrist rests and products containing same that infringe certain claims of U.S. Letters Patent 5,713,544 ("the '544 patent"). The Commission named as respondents Velo Enterprise Co. Ltd., Taiwan; Aidma Enterprise Co. Ltd. ("Aidma"), Taiwan; Good Raise Chemical Industry Co., Ltd. ("Good Raise"), Taiwan; ACCO Brands, Inc., Lincolnshire, Illinois; Curtis Computer Products Inc. ("Curtis"), Provo, Utah; Allsop, Inc. ("Allsop"), Bellingham, Washington; American Covers Inc., Draper, Utah; and Gemini Industries ("Gemini"), Clifton, New Jersey. The complaint and notice of investigation were later amended to add Crown Vast Development Ltd. and Hornleon Company, Ltd. ("Hornleon") both of Taiwan as respondents. On October 22, 2001, the presiding administrative law judge ("ALJ") issued an initial determination ("ID"), Order No. 6, granting complainants" unopposed motion to terminate the investigation with respect to respondent Gemini on the basis of a consent order. On January 9, 2002, the ALJ issued an ID, Order No. 12, finding respondents Good Raise and Aidma in default. On May 15, 2002, the ALJ issued an ID, Order No. 15, granting complainants' unopposed motion to terminate the investigation with respect to respondent Curtis on the basis of a consent order. On May 21, 2002, the ALJ issued an ID, Order No. 16, granting complainants' unopposed motion to terminate the investigation with respect to respondent Allsop on the basis of a consent order. None of these IDs was reviewed by the Commission. The ALJ held an evidentiary hearing from January 14, 2002, to January 18, 2002. On July 24, 2002, the ALJ issued his final ID in which he found no infringement of the claims of the "544 patent at issue, and hence no violation of section 337. He also found that complainants had failed to demonstrate satisfaction of the technical prong of the domestic industry requirement of section 337 for the "544 patent, and that the claims in issue of the "544 patent are invalid due to obviousness and failure to disclose the best mode of practicing the invention. The ALJ also found that the claims in issue of the "544 patent are not invalid due to anticipation, indefiniteness, lack of a written description or the lack of enablement, or improper joinder or non-joinder of inventors; that the "544 patent is not unenforceable due to inequitable conduct before the U.S. Patent and Trademark Office; and that complainants are not barred from asserting the "544 patent due to equitable estoppel. The ALJ noted that respondent Hornleon did not respond to the complaint and notice of investigation or provide written discovery in this investigation, although a representative of the firm appeared and testified at a deposition. Hornleon neither appeared at the hearing nor filed briefs. However, complainants did not move to find Hornleon in default. The ALJ thus found no violation of section 337 with respect to Hornleon, and no party contested that finding. All parties filed petitions for review and subsequently responded to each other's petitions. On September 9, 2002, the Commission determined to review: (1) The ID's construction of the asserted claims of the "544 patent; (2) the ID's infringement conclusions; (3) the ID's validity conclusions with regard to obviousness and failure to disclose best mode of practice; and (4) the ID's conclusion with respect to the technical prong of the domestic industry requirement.

The Commission determined not to review the remainder of the ID. In accordance with the Commission's instructions, the parties filed their main briefs on September 23, 2002, and reply briefs on September 30, 2002. Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is no violation of section 337. More specifically, the Commission found that the domestic products of complainants do not practice any claim of the "544 patent, and thus the technical prong of the domestic industry requirement of section 337 is not met in this investigation. The Commission also found that the accused imported wrist rests, except the Jelly Mouse product, infringe the asserted claims of the "544 patent, and that the "544 patent is not invalid due to obviousness or failure to disclose the best mode of practicing the invention. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's rules of practice and procedure, 19 CFR 210.45–210.51.

By order of the Commission.

Issued: November 25, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30372 Filed 11–29–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title: Reporting for Temporary Extended Unemployment Compensation Program.

OMB Number: 1205–0433.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Number of Respondents: 53.

ANNUALIZED REPORTING BURDEN

Form	Frequency	Annual responses	Average response time (hours)	Total annual burden hours
ETA–207	Quarterly	212	0.5	106
ETA–218	Quarterly	212	0.2	42
ETA–227	Quarterly	212	1.0	212
ETA–2112	Monthly	636	0.2	127
ETA–5130	Monthly	636	1.0	636
ETA–5159	Monthly	636	1.0	636
ETA–539	Weekly	2,756	0.01	28
Total:		5,300		1,787

Total Burden Cost (capital/startup): $ 0.

Total Burden Cost (operating/maintaining): $ 0.

Description: On March 9, 2002, President Bush signed into law the Temporary Extended Unemployment Compensation (TEUC) program. This program provides up to 26 weeks of additional unemployment benefits to eligible claimants who have exhausted their regular entitlement. This is a temporary, federally funded program enacted through December 31, 2002. To properly administer and monitor this program, specific information is required from states. The information requested through these reports are necessary to proper administer the program and interpretation of labor market conditions. Approval is not being sought for any new forms, but rather, approval is being sought for an additional use of the following existing forms:

Report	OMB No.	Expiration date
ETA 207	1205–0150	10/31/2004
ETA 218	1205–0177	07/31/2004
ETA 227	1205–0173	11/30/2003
ETA 2112	1205–0154	01/31/2003
ETA 5130	1205–0172	10/31/2004
ETA 5159	1205–0010	03/31/2003
ETA 539	1205–0028	07/31/2003

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–30420 Filed 11–29–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E–Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: New collection.

Title: Local Area Survey of Self-directed Labor Exchange Services.

OMB Number: 1205–ONEW.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Twice over three years.

Number of Respondents: 605.

Annual Responses: 605.

Average Response Time: 30 minutes.

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Total Annual Burden Hours: 303.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The data collected on this survey will provide a national snapshot of self-service tools and resources available in local workforce areas and the systems and mechanisms that areas use to track customers' usage, outcomes, and satisfaction with services. In addition to contributing to ETA's understanding of the resources and tools that have been developed for delivery of self-directed services, survey results will be used to select a sample of states and local areas for subsequent in-depth analysis of the quality and cost-effectiveness of self-directed services.

Ira L. Mills,
Departmental clearance Officer.
[FR Doc. 02–30421 Filed 11–29–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 22, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.
Agency: Mine Safety and Health Administration (MSHA).
Title: Noise Exposure Assessment; Audiometric Testing, Evaluation, and Records and Training in all Mines.
OMB Number: 1219–0120.
Affected Public: Business or other for-profit and State, Local, or Tribal Government.
Type of Response: Recordkeeping.
Frequency: On occasion.
Number of Respondents: 13,552.
Annual Responses: 821,843.
Total Annual Burden Hours: 101,852.
Average Response Time: Varies from 5 minutes to post notices to 5 hours to establish a system for monitoring noise exposure.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $4,151,448.
Description: 30 CFR Sections 62.110, 62.130, 62.170, 62.171, 62.172, 62.173, 62.174, 62.175, 62.180, and 62.190 establish uniform noise exposure recordkeeping requirements for the mining industry. Records of miner exposures are necessary so that mine operators and MSHA can evaluate the need for and effectiveness of engineering controls, administrative controls, and personal protective equipment to protect miners from harmful levels of noise exposure. Records of miner hearing examinations enable mine operators and MSHA to ensure that controls are effective in preventing noise-induced hearing loss for individual miners. Records of training are needed to confirm that miners receive the information they need to become active participants in hearing conservation efforts.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 02–30422 Filed 11–29–02; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 21, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or e-mail *Howze-Marlane@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.
Agency: Pension and Welfare Benefits Administration (PWBA).
Title: Disclosures for Participant Directed Individual Account Plans under the Employee Retirement Income Security Act (ERISA) Section 404(c).
OMB Number: 1210–0090.
Affected Public: Business or other for-profit, individuals or households, and Not-for-profit institutions.
Frequency: On Occasion.
Number of Respondents: 324,000.
Number of Annual Responses: 39,100,000.

Estimated Time Per Response: 1 hour.
Total Burden Hours: 36,950.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $17,555.00.
Description: Section 404(c) of ERISA provides that where an individual account pension plan permits individual investment direction, the individual will not be deemed a fiduciary and no person otherwise a fiduciary shall be liable for any loss or breach that results from the individual's exercise of control. The information collection requirements are mandatory only if a plan wishes to utilize the relief available under ERISA Section 40(c). There is no reporting to the Federal government under this regulation.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 02–30423 Filed 11–29–02; 8:45 am]
BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; ERISA Procedure 76–1 " Advisory Opinion Procedure

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.
ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments on the proposed extension of ERISA Procedure 76–1 " Advisory Opinion Procedure.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before January 31, 2003.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Employee Retirement Income Security Act of 1974, as amended, (ERISA) the Secretary of Labor is responsible for administration and enforcement of reporting, disclosure, fiduciary, and other standards established for pension and welfare benefit plans. ERISA Procedure 76–1 describes the administrative procedures to be used by the public when requesting a legal interpretation from the Department with regard to specific facts and circumstances (an Advisory Opinion or information letter), and the procedures used by the Department in issuing such interpretations. The procedure is designed to promote efficient handling of inquiries, and to facilitate prompt responses.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on January 31, 2003. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Pension and Welfare Benefits Administration, Department of Labor.
Title: ERISA Procedure 76—1— Advisory Opinion Procedure.
Type of Review: Extension of a currently approved collection of information.
OMB Number: 1210–0066.
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.
Respondents: 115.
Responses: 115.
Average Response time: 14 hours.
Estimated Total Burden Hours: 161.
Estimated Total Burden Cost (Operating and Maintenance): $98,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 2002.
Gerald B. Lindrew,
Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.
[FR Doc. 02–30424 Filed 11–29–02; 8:45 am]
BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; National Medical Support Notice—Part B

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.
ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the

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Pension and Welfare Benefits Administration is soliciting comments on the proposed extension of the National Medical Support Notice—Part B.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before January 31, 2003.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 609(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), provides that each group health plan, as defined in ERISA section 607(1), shall provide benefits in accordance with the applicable requirements of any "qualified medical child support order" (QMCSO). Based on a desire to eliminate concerns raised both by state agencies that enforce the programs under Title IV–D of the SSA (known as the Child Support Enforcement Program, which is administered by the Federal Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services (HHS)), and by sponsors and administrators of group health plans about difficulties in establishing medical child support orders that are qualified, Congress enacted section 401 of the Child Support Performance and Incentive Act of 1998 (CSPIA) to amend both ERISA and the SSA.

Section 401(a) of CSPIA mandated that the Secretaries of Labor and of Health and Human Services (the Secretaries) jointly establish a Medical Child Support Working Group (the Working Group) whose purpose was to identify the impediments to the effective enforcement of medical support by state agencies and to submit a report to the Secretaries containing recommendations for appropriate measures to address such impediments. CSPIA specifically directed the Working Group to make recommendations based on assessments of the form and content of QMCSOs.

As a response to the concerns of state agencies and plan administrators regarding QMCSOs, the Department and HHS jointly promulgated the National Medical Support Notice (Notice). The Notice simplifies the issuance and processing of medical child support orders, provides standardized communication between state agencies, employers, and plan administrators, and creates a uniform and streamlined process for enforcement of medical child support to ensure that all children receive the health care coverage for which they are eligible and to which they are entitled. Part B pertains to plan administrators pursuant to ERISA.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on January 31, 2003. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: National Medical Support Notice—Part B.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0113.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 156,000.

Responses: 770,000.

Average Response time: One hour to and hour and three-quarters.

Estimated Total Burden Hours: 785,000.

Estimated Total Burden Cost (Operating and Maintenance): $1,100,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–30425 Filed 11–29–02; 8:45 am]

BILLING CODE 4510–29–P

Medicare Payment Advisory Commission

Commission Meeting

AGENCY: MEDICARE PAYMENT ADVISORY COMMISSION.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, December 12, 2002, and Friday, December 13, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on December 12, and at 9 a.m. on December 13.

Topics for discussion include: Beneficiaries' spending for Medicare and other health care services; payment adequacy and updating Medicare payments; comparing of Medicare physician payments to the private sector; paying for new technologies; PPS for inpatient psychiatric facilities; Medicare+Choice and other options available to beneficiaries; expanded transfer policy for hospital inpatient services; indirect medical education payments above the costs of teaching; and beneficiaries' access to care.

Agendas will be mailed on December 4, 2002. The final agenda will be available on the Commission's website (*http://www.MedPAC.gov.*)

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Elllison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 02–30393 Filed 11–29–02; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 02–145]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). NASA will utilize the information collected to expedite reporting of Government-owned, contractor-operated vehicles as required by Executive Order 13149.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. William Gookin, Code JG, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Federal Automotive Statistical Tool (FAST) Collection.

OMB Number: 2700.

Type of review: New collection.

Need and Uses: Data gathered in this report will enable NASA transportation managers to control costs and energy use by contractors operating Government-owned vehicles.

Affected Public: Business or other for-profit.

Number of Respondents: 93.

Responses Per Respondent: 1.

Annual Responses: 93.

Hours Per Request: 15 min/vehicle.

Annual Burden Hours: 425.

Frequency of Report: Annually.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–30353 Filed 11–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meetings (Conference Calls)

Time and Dates for 2003: 12 noon, Eastern Time, January 9, March 6, May 1, July 3, September 4, November 6.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of these conference calls will be open to the public. Those interested in participating in conference calls should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for each conference call.

Agendas: Roll call, announcements, overview of accomplishments, planning, reports, new business, adjournment.

Contact Person for More Information: Joan M. Durocher, Attorney Advisor and Designated Federal Official, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *jdurocher@ncd.gov* (e-mail).

International Watch Advisory Committee Mission: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Dated: November 25, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–30401 Filed 11–29–02; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of proposed projects.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by January 31, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: For further information or for a copy of the collection instruments and instructions, contact Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Earned Doctorates.

OMB Approval Number: 3145–0019.

Expiration Date of Approval: May 31, 2003.

Type of Request: Intent to seek approval to extend an information collection for three years.

1. *Abstract:* The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The Survey of Earned Doctorates is part of an integrated survey system that meets the human resources part of this mission.

The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by six Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly

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educated individuals. Data are obtained via paper questionnaire or Web option from each person earning a research doctorate at the time they receive the degree. Data are collected on their field of specialty, educational background, source of support in graduate school, debt level, post graduation plans for employment, and demographic characteristics. The Federal government, universities, researchers, and others use the information extensively.

The National Science Foundation, as the lead agency, publishes statistics from the survey in many reports, but primarily in the annual publication series, "Science and Engineering Doctorates." The National Opinion Research Corporation at the University of Chicago disseminates a free interagency report entitled "Doctorate Recipients from U.S. Universities: Summary Report." These reports are available in print and electronically on the World Wide Web.

The survey will be collected in conformance with the Privacy Act of 1974 Confidential Information Protection and Statistical Efficiency Act of 2002. Responses from individuals are voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A total response rate of 92% of the total 40,744 persons who earned a research doctorate was obtained in academic year 2000/2001. This level of response rate has been consistent for several years. The respondents will be individuals and the estimated number of respondents annually is 37,484 (based on 2001 data)

3. *Estimate of Burden:* The Foundation estimates that, on average, 19 minutes per respondent will be required to complete the survey, for a total of 11,714 hours for all respondents (based on the Academic 2000/2001 number). This is reduced by 2,514 hours from the last annual estimate approved by OMB; this reduction is due to a revised, more efficient section on educational history and a declining number of research doctorate recipients since 1998.

Dated: November 26, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 02–30399 Filed 11–29–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste

Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on December 17, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, December 17, 2002—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: November 25, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–30418 Filed 11–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on December 11–12, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 11, 2002–8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the work performed by NRC's Office of Nuclear Regulatory Research (RES) pertaining to the use of the RELAP–5 code for calculation of the thermal-hydraulic parameters used in the Oak Ridge National Laboratory FAVOR code, pursuant to the Pressurized thermal Shock Rule Reevaluation effort.

Thursday, December 12, 2002–8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the RES TRAC–M code consolidation and documentation project.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its contractors, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 25, 2002.

Sher Bahadur,

Associate Director, for Technical Support, ACRS/ACNW.

[FR Doc. 02–30419 Filed 11–29–02; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated-collection techniques or other forms of information technology.

Title and purpose of information collection: RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act; OMB 3220–0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Pub. L. 100–647), the amount of each employer's contribution is determined by the RRB, primarily on the basis of RUIA benefit payments made to the employees of that employer. These experienced based contributions, take into account the frequency, volume and duration of RUIA benefits, both unemployment and sickness, attributable to a railroad's employees. Each employer's contribution rate includes a component for administrative expenses and a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments of underpayments of contributions are contained in 20 CFR 345.

RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act, is currently utilized by the RRB for the reporting and remitting of quarterly contributions by railroad employers. The RRB utilizes a manual version of Form DC–1 and also provides railroad employers with the option of reporting the required information and remitting their quarterly contributions via and Internet equivalent version Form DC–1.

The RRB estimates that 2,200 responses are received annually. One response is requested quarterly of each respondent. Completion is mandatory. The RRB proposes non-burden impacting editorial changes to Form DC–1. The estimated completion for the manual and Internet version of Form DC–1 is estimated at 25 minutes.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board , 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–30431 Filed 11–29–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medicare.

(2) *Form(s) submitted:* AA–6, AA–7, AA–8, RL–311–F.

(3) *OMB Number:* 3220–0082.

(4) *Expiration date of current OMB clearance:* 9/30/2003.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or Households, Business or other-for-profit.

(7) *Estimated annual number of respondents:* 1,040.

(8) *Total annual responses:* 1,040.

(9) *Total annual reporting hours:* 165.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The forms in the collection obtain information needed to enroll non-retired employees and survivor applicants in the plan and also obtain information from railroad employers needed to determine if a railroad retirement beneficiary is entitled to a special enrollment period when applying for supplemental medical coverage under Medicare.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–30432 Filed 11–29–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (CII Financial, Inc., 9½% Senior Debentures (Due September 15, 2004)) on the New York Stock Exchange, Inc. File No. 1–18324

November 22, 2002.

CII Financial, Inc., a California corporation ("Issuer"), has filed an

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application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 9½% Senior Debentures (due September 15, 2004) ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Issuer stated in its application that it has complied with all applicable laws in effect in the state of California, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

The Board of Directors ("Board") of the Issuer unanimously adopted resolutions on September 16, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making the decision to withdraw its Security from the NYSE, the Issuer noted that: (i) As of September 12, 2002, there were approximately 75 holders of the Security, including holders of record and those firms that held the Security through Cede & Co.; (ii) the Issuer states that it is not obligated under the indenture under which the Security was issued nor any other documents to maintain a listing of the Security on the NYSE or any other exchange and; (iii) the burden and expense of maintaining the Issuer's listing on the NYSE are disproportionate, given the small number of holders of the Security, and the fact that the Security will mature in less than two years.

Any interested person may, on or before December 20, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,
Secretary.

[FR Doc. 02–30368 Filed 11–29–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27607]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 22, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 17, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 17, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Gas Markets LLC, et al. (70–10097)

Northeast Gas Markets LLC ("NEGM"), 100 Cummings Center, Suite 457G, Beverly, Massachusetts 01915–6132, a nonutility subsidiary of KeySpan Corporation ("KeySpan"), a registered holding company; and KeySpan's utility subsidiaries Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York ("KEDNY"), One MetroTech Center, Brooklyn New York, 11201; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island ("KEDLI"), 175 East Old Country Road, Hicksville, New York 11801; Boston Gas d/b/a KeySpan Energy Delivery New England ("Boston Gas") and Essex Gas Company d/b/a KeySpan Energy Delivery New England ("Essex Gas"), both located at One Beacon Street, Boston, Massachusetts 02108; and EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England ("ENGI"), 1260 Elm Street, P.O. Box 329, Manchester, New Hampshire 03105 (collectively "Applicants"),[1] have filed an application-declaration, as amended, under sections 12(f) and 13(b) of the Act and rule 54 under the Act.

NEGM, a Delaware limited liability company, is a nonutility company that provides natural gas procurement, contract management and marketing services to clients located in the northeastern part of the United States. KeySpan indirectly holds a 90% ownership interest in NEGM. Michael S. Lucy Associates, a company which is wholly owned by Michael S. Lucy, owns the remaining 10% interest of NEGM. Mr. Lucy is the president of NEGM.

Currently, NEGM is a "facilitating entity" providing contract services to customers in connection with large natural gas supply contracts with Western Canadian gas producers. The two major gas supply projects administered by NEGM are Boundary Gas, Inc. ("Boundary") and Alberta Northeast Gas Limited ("ANE"). NEGM provides contract services to ANE and Boundary under longstanding management services arrangements. ANE and Boundary purchase Canadian natural gas and resell it to numerous local distribution companies ("US Customers") in the northeast United States. The Boundary arrangements end on January 15, 2003. The ANE arrangements will not expire in their entirety until 2007.

In order to avoid interruption of the base load supplies once the Boundary arrangement ends, the KeySpan Gas Utilities as well as several gas utilities that are Boundary participants but not affiliated with KeySpan ("Unaffiliated Utilities"),[2] have each entered into contracts with EnCana Corporation ("Encana") to supply Canadian gas beginning on January 15, 2003 ("Encana Gas Contracts"). Specifically, the Unaffiliated Utilities and the KeySpan Gas Utilities have entered into a management service agreement and agency agreement (collectively, the "M&A Agreement") under which NEGM will provide contract services to the utilities for the EnCana Gas Contracts after Boundary expires. However, the KeySpan Gas Utilities and NEGM have executed a letter of agreement which states that the effectiveness of the M&A Agreement as between NEGM and the KeySpan Gas Utilities is conditioned upon obtaining any necessary approvals from the Commission under the Act and applicable state regulatory commissions.

In accordance with the M&A Agreement it has negotiated with the Unaffiliated Utilities and the KeySpan Gas Utilities, NEGM will provide day-to-day contract services consisting of notifying EnCana of the amounts of gas the utilities would like to schedule for delivery; processing and auditing the EnCana gas supply bills to ensure their accuracy and submitting to the utilities their pro rata share of the gas supply costs based on the amount of gas they each purchased; preparing and filing regulatory and customs reports in Canada and the U.S. relating to the EnCana gas supply; providing informational support to the gas utilities for their federal and state regulatory filings; and daily interactions with EnCana regarding the Encana Gas Contracts (including price negotiations when appropriate). These are the same types of services NEGM currently provides under the Boundary and ANE arrangements. The fee structure under the M&A Agreement with NEGM is the same as for a Boundary and ANE projects—$0.0128/Mcf of contracted volume. Because the KeySpan Gas Utilities and the Unaffiliated Utilities are parties to the same M&A Agreement, all of the participating utilities (affiliated and non-affiliated) will receive the same services at the same price and terms. Accordingly, Applicants seek authorization for NEGM to provide gas contract services to the KeySpan Gas Utilities under the terms as outlined above.

With respect to the KeySpan Gas Utilities, the Encana Gas Contracts and the M&A Agreement expire on March 31, 2004, unless extended pursuant to the terms of those agreements. Once these arrangements terminate, NEGM may wish to enter into contracts to provide the KeySpan Gas Utilities with contract services for new Canadian gas supplies that the KeySpan Gas Utilities purchase. Accordingly, NEGM also requests authorization to enter into future agreements to provide contract services to the KeySpan Gas Utilities with respect to their gas supplies provided the following conditions are met: (1) The price charged to a KeySpan Gas Utility is no greater than the prices that unaffiliated entities pay to NEGM for the same type of contract services; (2) the non-price terms of any NEGM gas contract services provided to a KeySpan Gas Utility are the same as those provided to non-affiliated entities obtaining the same type of service from NEGM; and (3) the KeySpan Gas Utility's cost of gas is regulated by its applicable state commission and the utility treats the price paid for NEGM services as a cost of gas.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02–30369 Filed 11–29–02; 8:45 am]
BILLING CODE 8010–01–P

[1] KEDNY, KEDLI, Boston Gas, Essex Gas and ENGI are collectively referred to as the "KeySpan Gas Utilities."

[2] The Unaffiliated Utilities are Bay State Gas Company, The Berkshire Gas Company, and Northern Utilities, Inc., gas utility subsidiaries of NiSource and Energy East.

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 2, 2002: A Closed Meeting will be held on Tuesday, December 3, 2002, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (6), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (6), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, December 3, 2002 will be: Institution and settlement of administrative proceedings of an enforcement nature; settlement of injunctive actions; and amicus consideration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 26, 2002.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02–30567 Filed 11–27–02; 10:54 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46885; File No. SR–NASD–2002–142]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto To Establish an Execution Price Governor in SuperMontage

November 22, 2002.

On October 9, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish in SuperMontage a permanent execution price governor to prevent inadvertent executions significantly away from the inside market. The NASD amended its proposals on October 10, 2002.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 21, 2002.[4] The Commission received no comments on the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 15A of the Act[5] and the rules and regulations thereunder.[6] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 15(A)(b)(6),[7] which provides that the rules of the association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 10, 2002 ("Amendment No. 1").
[4] See Securities Exchange Act Release No. 46650 (October 11, 2002), 67 FR 64683.
[5] 15 U.S.C. 78o–3.
[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[7] 15 U.S.C. 78o–3(b)(6).

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and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the establishment of a SuperMontage execution price governor may prevent inadvertent executions significantly away from the inside market. The Commission also agrees with Nasdaq that this approach may act to balance the goals of rapid execution and price discovery while protecting market participants and the public investors they represent from excessive volatility and market confusion that can result from grossly mispriced/sized quotes/orders in an automated and linked trading environment. The Commission also notes that Nasdaq separately filed and received accelerated approval of a proposal, pursuant to Section 19(b)(2) of the Act,[8] to establish the execution price governor on a 60-day pilot basis, which is scheduled to expire on December 13, 2002.[9] Since the implementation of the pilot program, Nasdaq has indicated that it has encountered no problems with the establishment of the execution price governor.[10]

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change and Amendment No. 1 (SR-NASD–2002–142) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30370 Filed 11–29–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 46652 (October 11, 2002), 67 FR 64681 (October 21, 2002).

[10] Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Cyndi Nguyen, Attorney, Division, Commission, on November 21, 2002.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3469]

State of Alaska

As a result of the President's major disaster declaration for Public Assistance on November 8, 2002, and subsequent amendment adding Individual Assistance on November 18, 2002, I find that the Alaska Gateway Regional Educational Attendance Area (REAA) and the Copper River Regional Educational Attendance Area (REAA) in the State of Alaska constitute a disaster area due to damages caused by an earthquake occurring on November 3, 2002 and continuing through November 10, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 17, 2003 and for economic injury until the close of business on August 18, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the following areas and jurisdictions may be filed until the specified date at the above location: Chugach REAA, Delta/Greely REAA, Yukon Flats REAA, City & Borough of Yakutat, Fairbanks North Star Borough, and Matanuska—Susitna Borough in the State of Alaska. The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 346902. For economic injury the number is 9T1100 for Alaska.

Dated: November 21, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–30449 Filed 11–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3470]

State of Arkansas (And Contiguous Counties in Mississippi and Tennessee)

Crittenden County and the contiguous counties of Cross, Lee, Mississippi, Poinsett and St. Francis Counties in the State of Arkansas; DeSoto and Tunica Counties in the State of Mississippi; and Shelby and Tipton Counties in the State of Tennessee constitute a disaster area as a result of severe storms and tornadoes that occurred on November 9, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 21, 2003, and for economic injury may be filed until the close of business on August 22, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	6.648
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.324
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.324

The numbers assigned to this disaster for physical damage are 347011 for Arkansas; 347111 for Mississippi; and 347211 for Tennessee. The numbers assigned to this disaster for economic injury are 9T1200 for Arkansas; 9T1300 for Mississippi; and 9T1400 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 22, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–30447 Filed 11–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3462]

State of Tennessee; Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency, dated November 22, 2002, the above numbered declaration is hereby amended to include Bledsoe, Fentress, Roane and Van Buren Counties in the State of Tennessee as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on November 9 through November 12, 2002.

In addition, applications for economic injury loans from small businesses located in Hamilton, McMinn, Meigs, Overton and Sequatchie Counties in the State of Tennessee may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 13, 2003, and for economic injury the deadline is August 13, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 28, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–30446 Filed 11–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated November 20, 2002, the above numbered declaration is hereby amended to include Jim Wells County in the State of Texas as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing through November 15, 2002.

In addition, applications for economic injury loans from small businesses located in Brooks and Duval Counties in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 25, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–30448 Filed 11–29–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4211]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-five letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 18, 2002.

William J. Lowell,

Director, Office of Defense Trade Controls, Department of State.

Department of State, Washington, D.C. 20520

October 4, 2002.

The Honorable Henry J. Hyde,
Chairman, Committee on International Relations, House of Representatives.

Dear Mr. Chairman: I am transmitting, herewith, certification of a proposed issuance of export licenses pursuant to Section 126.14 of the International Traffic in Arms Regulations concerning a Global Project Authorization (GPA) and Section 36(c) of the Arms Export Control Act.

The transaction described in the attached certification concerns the Systems Design and Development phase of the Joint Strike Fighter program and involves the export of technical data and defense services among U.S. defense firms and their foreign collaborative partners located in the countries of Canada, Denmark, Italy, Norway, The Netherlands, Turkey and the United Kingdom.

The United States Government is prepared to license exports of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Michael C. Polt,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 277–02

Department of State, Washington, D.C. 20520

October 7, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data and assistance for the manufacture of C–130 nacelles for use by Lockheed Martin in the production and support of C–130 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Michael C. Polt,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 146–02

Department of State, Washington, D.C. 20520

October 7, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act,

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I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of Significant Military Equipment, which also involves the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense services and defense articles for the manufacture, test and depot level repair of data terminal equipment for the United Kingdom BOWMAN Radio Communication Program with end-use by the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Michael C. Polt,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 244–02

Department of State, Washington, DC 20520

October 10, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to France in order to manufacture nozzle-exit cone extensions for incorporation into the RL10B–2 production engines, which will in turn be integrated into Delta III and IV launch vehicles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 208–02

Department of State, Washington, DC 20520

October 11, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to South Korea to support the manufacture and assembly of forty (40) F–15 fighter aircraft with associated spares and support equipment.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 209–02

Department of State, Washington DC 20520

October 11, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which also involves the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the Republic of Korea of technical data, defense services and defense articles for the manufacture of eighty-eight F110–GE–129 engines and component parts for installation in the F–15K fighter aircraft being developed for the Republic of Korea Air Force for end-use in the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 245–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which also involves the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the manufacture of Bowman HF radio subsystems for integration into the Bowman Communications System for end-use by the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 280–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement (MLA) involving the manufacture abroad of significant military equipment.

The transaction contained in the attached certification involves the export to Spain of technical data and assistance in the manufacture of the Dragoon/Patroller vehicle for end-use by Spain, and marketing to Portugal, Greece, Turkey, Argentina, Brazil, Canada, Chile, Colombia, Dominican Republic, Ecuador, Jamaica, Peru, Venezuela, Egypt, Israel, Kuwait, Oman, Qatar, Saudi Arabia, Malaysia, the Philippines, Taiwan and Thailand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification, which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 222–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act,

I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more and includes the manufacture of significant military equipment overseas.

The transaction contained in the attached certification involves the export of defense services and technical data to South Korea to support the development and production of M77 grenades used in the Multiple Launch Rocket System (MLRS) by the South Korean Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 247–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to support the manufacture of F100–PW–220 and F100–PW–229 engine parts, components and assemblies in South Korea, for shipment back to the U.S.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 248–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which also involves the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense services and defense articles for the production of the Mk 46 Mod 5A(S) and Mod 5A(SW) Torpedo assemblies and components in Japan for end-use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 249–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture in Italy of significant military equipment.

The transaction described in the attached certification involves the transfer of technical data and defense services for the replication of HAVE QUICK II software object code for incorporation into Italian manufactured radio equipment for sale to Australia, Belgium, Canada, Denmark, Greece, The Netherlands, Norway, Portugal, South Korea, Spain, Turkey, France, Poland and Oman.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 250–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data and assistance in

The transaction contained in the attached certification involves the continuation of an expired manufacturing license agreement for the production of F–15 aircraft fuel cells in Japan for end-use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 251–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more and includes the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of hardware, technical data and assistance to support the manufacture of Tactical Air Launched Decoys (TALD) and Improved TALDs with Israel Military Industries Ltd. of Israel, for sale in the U.S. and thirteen countries.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 252–02

Department of State, Washington, DC 20520

Ooctober 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data and assistance in

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the production of the control section for the Advanced Medium Range Air-to-Air Missile (AMRAAM) for final incorporation into the missile back in the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 268–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves a manufacturing license agreement with Japan for the production, service and overhaul of Model 501–K34 naval engine parts for end-use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 269–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment.

The transaction described in the attached certification involves the transfer of technical data and defense services to Canada for the production of Optomechanical Major Assemblies and Optical Components and Subassemblies for the Advanced Short Range Air-to-Air Missile (ASRAAM) for end-use by the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 270–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Taiwan of defense services, technical data and defense articles to support the operational readiness of the Taiwanese Air Force's fleet of F–16 fighter aircraft by providing F100 engine parts, support equipment and training.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 274–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with the United Kingdom for the manufacture of Significant Military Equipment overseas.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to the United Kingdom for the manufacture of seeker and roll gyros for the United Kingdom Ministry of Defence's Javelin Anti-Tank Weapon System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 275–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with Chile, Germany and the United Kingdom for the manufacture of Significant Military Equipment overseas.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Chile, jointly with Germany and the United Kingdom, for the overhaul and upgrade of up to 158 military ground vehicles for use by the Chile Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 276–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which also involves the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Canada and Australia of technical data, defense services and defense articles for the manufacture of LAV–25 turrets for installation on Warrior Armored Vehicles for end-use by the Kuwaiti Armed Forces in Kuwait.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 278–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement (MLA) involving the manufacture abroad of Significant Military Equipment.

The transaction contained in the attached certification involves the export to Japan of technical data and assistance in the manufacture of HTPE solid rocket motor propellant for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 279–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of hardware, technical data and assistance to support manufacture of airfoils for F100, J–52, J–57, TF–30, F119, F135, TF33 and F117 aircraft engines with Israel, for sale back to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 281–02

Department of State, Washington, DC 20520

October 25, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: I am transmitting, herewith, certification of a proposed issuance of export licenses pursuant to Section 126.14 of the International Traffic in Arms Regulations concerning a Global Project Authorization (GPA) and Section 36(c) of the Arms Export Control Act.

The transaction described in the attached certification concerns the inclusion of Australia in the GPA for the Systems Design and Development phase of the Joint Strike Fighter program, which was notified separately under DTC 277–02, and involves the export of technical data and defense services to Australian firms.

The United States Government is prepared to license exports of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 283–02

Department of State, Washington, DC 20520

October 28, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which involves the export of defense articles and defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the manufacture of sporting rifles in Japan for sale in the United States and Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 253–02

[FR Doc. 02–30454 Filed 11–29–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4191]

Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations

Agency: Office of the Legal Adviser, U.S. Department of State.

This notice amends and supplements Department of State public notice 3802, 66 FR 58544 (November 21, 2001).

Section 459A of the Social Security Act (42 U.S.C. 659A) authorizes the Secretary of State with the concurrence of the Secretary of Health and Human Services to declare foreign countries or their political subdivisions to be reciprocating countries for the purpose of the enforcement of family support obligations if the country has established or has undertaken to establish procedures for the establishment and enforcement of duties of support for residents of the United States. These procedures must be in substantial conformity with the standards set forth in the statute. The statutory standards are: Establishment of child support orders, including the establishment of paternity if necessary to establish the order; enforcement of child support orders, including collection and distribution of payments under such orders; cost-free services (including administrative and legal services, as well as paternity testing; and the designation of an agency as Central Authority to facilitate enforcement.

Once such a declaration is made, support agencies in jurisdictions of the United States participating in the program established by title IV-D of the Social Security Act (the IV-D program) must provide enforcement services under that program to such reciprocating countries as if the request for service came from a U.S. state.

The declaration authorized by the statute may be made "in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis." The Secretary of State has authorized either the Legal Adviser or the Assistant Secretary for Consular Affairs to make such a declaration after consultation with the other.

As of this date, the following countries (or Canadian provinces) have

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been designated foreign reciprocating countries:

Country	Effective date
Australia	May 21, 2001.
Canadian Provinces:	
Alberta	Sept. 4, 2002.
British Columbia	Dec. 15, 1999.
Manitoba	July 11, 2000.
Newfoundland/Labrador.	August 7, 2002.
Nova Scotia	Dec. 18, 1998.
Ontario	August 7, 2002.
Czech Republic	May 3, 2000.
Ireland	Sept. 10, 1997.
Netherlands	May 1, 2002.
Norway	June 10, 2002.
Poland	June 14, 1999.
Portugal	Mar. 17, 2001.
Slovak Republic	Feb. 1, 1998.

Information

Each of these countries (or Canadian provinces) has designated a Central Authority to facilitate enforcement and ensure compliance with the standards of the statute. Information relating to the designated Central Authorities, and the procedures for processing requests may be obtained by contacting the United States Central Authority for International Child Support, Department of Health and Human Services, Office of Child Support Enforcement (OCSE), 370 L'Enfant Promenade, SW., 4-East, Washington, DC 20447; phone 202.401.5566, fax 202.401.5539, e-mail *ocseinternational@acf.hhs.gov*.

Questions regarding this notice, the status of negotiations, declarations and agreements may be obtained by contacting Mary Helen Carlson at the Office of the Assistant Legal Adviser for Private International Law, Suite 203 South Building, 2430 E Street, NW., Washington, DC 20037–2851; phone 202.776.8420, fax 202.776.8482, E-mail *carlsonmh@ms.state.gov*.

The law also permits individual states of the United States to establish or continue existing reciprocating arrangements with foreign countries when there has been no federal declaration. Many states have such arrangements with additional countries not yet the subject of a federal declaration. Information as to these arrangements may be obtained from the individual state IV-D Agency.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law, Department of State.

[FR Doc. 02–30453 Filed 11–29–02; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Redelegation of Authority and Further Assignment of Functions

AGENCY: Office of the United States Trade Representative.

ACTION: The United States Trade Representative (USTR) is redelegating authorities and further assigning functions under the Trade Act of 2002 ("Trade Act") to other agencies and departments of the Executive Branch.

SUMMARY: The Trade Act specifically granted to the President certain authorities and assigned certain functions related to agreements covered by Trade Act provisions. In Executive Order 13277 (67 FR 7305), the President delegated certain authorities and assigned certain functions to the USTR and provided guidance for exercising that authority and performing those functions, including the redelegation of authority and further assignment of functions to officers of any other department or agency within the Executive Branch. This notice informs the public of the USTR's redelegation of authorities and further assignment of functions. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

DATES: These actions are effective immediately.

Redelegation of Authorities and Further Assignment of Functions

Pursuant to section 3(b)(ii) of Executive Order 13277, the USTR hereby redelegates certain authorities and further assigns certain functions delegated or assigned to the USTR as set forth below. Agencies and departments to which authorities are delegated or functions are assigned shall exercise or perform them in a manner that is supportive of agreements subject to the Trade Act.

(a) The functions of the President under section 2102(c)(5) of the Trade Act with respect to reviewing the impact of trade agreements on U.S. employment, including labor markets, assigned to the USTR are further assigned to the Secretary of Labor. Such reviews will be conducted through the interagency Trade Policy Staff Committee.

(b) The USTR, in carrying out the assessment required under section 2104(c), may obtain the advice and assistance of the Secretary of Commerce. The USTR will report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on proposals related to trade remedies as provided under section 2104(d)(3)(A) with the advice and assistance of the Secretary of Commerce and the U.S. International Trade Commission.

(c) The functions of the President under section 2108(a)(1–3) and (5), as they pertain to section 2108(1–3) of the Trade Act with respect to preparing and submitting to Congress implementation and enforcement plans for trade agreements, that have been assigned to the USTR are further assigned to the Director of the Office of Management and Budget who shall carry out these functions with the advice and assistance of the Secretaries of Agriculture, Commerce, State and the Treasury and the U.S. Trade Representative and other agencies and departments as necessary.

(d) The authorities and functions of the President under sections 204(b)(3)(B)(ii), 204(b)(3)(B)(vi)(II)(cc), 204(b)(3)(C), 204(b)(3)(D), and 204(b)(3)(E) of the Andean Trade Preferences Act (ATPA) (19 U.S.C. 3203(b)(3)(B)(ii), 3203(b)(B)((vi)(II)(cc), 3203(b)(3)(C), 3203(b)(3)(D), and 3202(b)(3)(E)) that have been delegated or assigned to the USTR are redelegated and further assigned to the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Labor and may be redelegated or further assigned within each department or agency consistent with law. In exercising these authorities and performing these functions, these officials, including the USTR, or their designees shall act collectively in accordance with the requirements and procedures set forth in sections 1(a) and (b) of Executive Order 11651, as amended, and in Executive Order 13191.

Dated: November 25, 2002.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–30427 Filed 11–29–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Extension of Deadline for the Submission of Requests (Anniversary) for Exclusion of Particular Products From Actions With Regard to Certain Steel Products Under Section 203 of the Trade Act of 1974, as Established in Presidential Proclamation 7529 of March 5, 2002

AGENCY: Office of the United States Trade Representative.

ACTION: Extension of deadline for submission of comments and responses.

SUMMARY: The United States Trade Representative (USTR) is extending the deadline for the submission of requests for the exclusion of certain steel products (exclusion requests) from the safeguard measures established by Presidential Proclamation 7529 of March 5, 2002.

DATES: The deadline for the submission of exclusion requests is being extended to December 10, 2002. The deadlines for public comments expressing objections to the exclusion of certain products will be announced on the USTR web site.

FOR FURTHER INFORMATION CONTACT: Please send inquiries regarding the exclusion process by e-mail simultaneously to: *<exclusion_support@ita.doc.gov>* and *<FR001@ustr.gov>* You may also contact the Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On November 19, 2002, the USTR published in the **Federal Register** a notice establishing a deadline for the submission of exclusion requests and modifying certain procedures for the consideration of exclusion requests by USTR and the Department of Commerce. See 67 FR 69802 ("Notice"). According to the Notice, the deadline for the submission of exclusion requests is December 3, 2002. The USTR is extending the deadline for submitting exclusion requests until not later than December 10, 2002. Interested persons should refer to the Notice for instructions for the submission of exclusion requests.

Peter Davidson,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 02–30426 Filed 11–29–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Office Relocation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new office address and telephone number.

SUMMARY: Effective as of November 18, 2002, the FAA Office of Dispute Resolution for Acquisition relocated to a new address different from the one listed in its Procedural Regulations, 14 CFR part 17. The new address, telephone and facsimile numbers are as follows: 800 Independence Avenue, SW., Room 323, Washington, DC 20591, Telephone (202) 267–3290, Facsimile (202) 267–3720.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Dispute Resolution Officer, FAA Office of Dispute Resolution for Acquisition, AGC–70, Room 323, 800 Independence Avenue, SW., Washington, DC 20591, telephone number (202) 267–3290, facsimile (202) 267–3720.

Issued in Washington, DC, on November 25, 2002.

Anthony N. Palladino,

Associate Chief Counsel and Director, Office of Dispute Resolution for Acquisition.

[FR Doc. 02–30335 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 2002, there were eight applications approved. This notice also includes information on application, approved in August 2001, inadvertently left off the August 2001 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Lebanon, New Hampshire.

Application Number: 01–04–C–00–LEB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $77,330.

Earliest Charge Effective Date: September 1, 2001.

Estimated Charge Expiration Date: March 1, 2002.

Classes of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators—nonscheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Lebanon Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Reconstruct north ramp, including adjacent taxiways.

Reconstruct emergency access road.

Construct aircraft rescue and firefighting vehicle ramp.

Install airfield control and power cables.

Groove runway 7/25.

Engineering.

Airport master plan update.

PFC administration

Decision Date: August 2, 2001.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Blair County Airport Authority, Martinsburg, Pennsylvania.

Application Number: 02–04–U–00–AOO.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $43,610.

Charge Effective Date: July 1, 2000.

Estimated Charge Expiration Date: March 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Avigation easement acquisition and obstruction removal.

Decision Date: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Daboin, Harrisburg Airports District Office, (717) 730–2830.

Public Agency: City of La Crosse, Wisconsin.

Application Number: 02–06–C–00–LSE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,022,045.

Earliest Charge Effective Date: January 1, 2003.

Estimated Charge Expiration Date: May 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxis filing FAA Form 1800–31, except commuter air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the

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total annual enplanements at La Crosse Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Reconstruct runway 13/31.
Baggage handling system.
Airfield electrical upgrades phase 1.
Airport snow removal equipment.
Terminal development.
PFC administration.
Environmental assessment.

Decision Date: October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: City of Atlanta, Georgia.

Application Number: 03–03–C–00–ATL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,269,547,063.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: October 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators with limited, irregular, and special service operations.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hartsfield Atlanta International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Construction of fifth runway.
Taxiway L extension.
Taxiway construction and intersection upgrades.
Airfield pavement replacement.
Airfield lighting system.
Surface movement guidance system.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Approach clearing and landscape safety.

Brief Description of Project Approved for Collection at a $4.50 PFC Level: End around taxiway.

Brief Description of Project Approved for Collection at a $3.00 PFC Level: Airport access road.

Brief Description of Project Partially Approved for Collection at a $3.00 PFC Level: Consolidated rental car facility automated people mover system.

Determination: The maintenance facility element of the project was determined to be ineligible in accordance with paragraph 622 of FAA Order 5100.38B, Airport Improvement Program Handbook (May 31, 2002).

Decision Date: October 10, 2002.

FOR FURTHER INFORMATION CONTACT: Terry R. Washington, Atlanta Airports District Office, (404) 305–7143.

Public Agency: City of Pullman, Washington.

Application Number: 02–03–U–00–PUW.

Application Type: $4.50.

Total PFC Revenue To Be Used in This Decision: $290,000.

Charge Effective Date: February 1, 2000.

Estimated Charge Expiration Date: May 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Purchase land leased from Washington State University.
Purchase new snowplow.
Rehabilitate terminal apron.
Rehabilitate runway 5.23
Taxiway edge lighting.

Decision Date: October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Susanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Toledo-Lucas County Port Authority, Toledo, Ohio.

Application Number: 02–04–C–00–TOL.

Application Type: Impose and use a PFS.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $3,921,997.

Earliest Charge Effective Date: December 1, 2003.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on-demand air taxi operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Toledo Express Airport.

Brief Description of Projects Approved for collection and Use:

Terminal roadway reconstruction.
Reconstruct air carrier apron.
Purchase snow removal equipment.
Terminal renovations: heating, ventilation, and air conditioning units; and multiple user flight information display system.
Replace aircraft rescue and firefighting vehicle.
Jetway replacement.
Taxiway D extension.

Decision Date: October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: City of Pullman, Washington.

Application Number: 02–04–C–00–PUW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $89,900.

Earliest Charge Effective Date: May 1, 2004.

Estimated Charge Expiration Date: January 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxi operators who conduct operation sin air commerce carrying persons for compensation or hire.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pullman-Moscow Regional Airport.

Brief Description of Projects Approved for collection and Use:

Purchase Kopf, LLC property.
Snow removal equipment building expansion.
Security enhancements.
Airfield friction meter device.
Construct parking lot (non-revenue).

Decision Date: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Susquehanna Area Regional Airport Authority, Middletown, Pennsylvania.

Application Number: 02–04–C–00–MDT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

total PFC Revenue Approved in This Decision: $66,334,500.

Earliest Charge Effective Date: January 1, 2003.

Estimated Charge Expiration Date: August 1, 2020.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Harrisburg International Airport.

Brief Description of Projects Approved For Collection and Use at a $4.50 PFC Level:

Construct parallel taxiway, taxilanes, and lighting.

NAVAIDS and runway lighting.
Construct terminal and related work.
Preparation of PFC application.

Brief Description of Project Approved for Use at a $3:00 PFC Level: Relocate terminal loop road.

Decision Date: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Salt Lake City Department of Airports, Salt Lake City, Utah.

Application Number: 02–05–C–00–SLC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $19,001,300.

Earliest Charge Effective Date: February 1, 2003.

Estimated Charge Expiration Date: September 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Salt Lake City International Airport (SLC).

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $4.50 PFC Level:

Concourse A apron expansion.
Concourse A apron reconstruction, phase I.
Concourse A apron reconstruction, phase II.
Deicing lagoon upgrade.
Security identification display area perimeter patrol road, phase I.
Security identification display area perimeter patrol road, phase II.
Taxiway H reconstruction H10–H12.
Taxiway H reconstruction H7–H10.
Terminal unit 2 checked baggage and screening checkpoint queuing modifications.
Concourse E SkyWest Interim facility.
Land acquisition for approach protection and noise compatibility, phase I.
Terminal roadway security improvements, phase II.

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $3.00 PFC Level:

Airport layout plan/environmental update, phase I.
Electronic visual information display system installation.
East apron rehabilitation, phase II.
East apron rehabilitation, phase III.
Surface condition analyzer upgrade.

Brief Description of Project Approved for Collection at SLC and Use at Salt Lake City Municipal Airport II at a $3.00 PFC Level:

Runway overlay.

Brief Description of Project Approved for Collection at SLC and Use at Tooele Valley Airport at a $3.00 PFC Level: Runway 16/34 widening and extension.

Brief Description of Disapproved Project: East side oil/water separator.

Determination: The FAA has determined that the project does not meet any of the objectives of § 158.15(a). The public agency did not provide documentation regarding project justification, nor did it demonstrate compliance with Advisory Circular 150/5320–15 for water quality equipment.

Decision Date: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge ext. date	Amended estimated charge ext. date
00–06–C–02–CRW Charleston, WV	09/24/02	$1,051,081	$1,141,822	09/01/01	09/01/01
99–06–C–01–STT St. Thomas, VI	10/02/02	3,000,000	3,450,000	12/01/02	12/01/02
99–04–C–02–EYW Key West, FL	10/08/02	1,596,503	1,344,903	06/01/01	06/01/01
01–05–C–01–EYW Key West, FL	10/09/02	1,631,431	1,042,931	04/01/04	06/01/03
92–01–I–03–BUF Buffalo, NY	10/30/02	81,167,538	62,817,833	05/01/05	01/01/05
92–02–C–04–BUF Buffalo, NY	10/30/02	5,757,959	2,528,721	09/01/15	06/01/05
98–03–C–02–BUF Buffalo, NY	10/30/02	2,659,807	1,902,652	07/01/15	10/01/05

Issued in Washington, DC on November 21, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–30336 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–C–00–MSP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 2, 2003

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffrey W. Hamiel, Executive Director of the Metropolitan Airports Commission at the following address: Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Airports Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International

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Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 28, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Airports Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 25, 2003.

The following is a brief overview of the application.

Proposed charge effective date: April 1, 2003.

Proposed charge expiration date: October 1, 2017.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $94,832,543.

Brief description of proposed projects:

(Impose and Use Projects)

Runway 12R/30L temporary extension; runway 4/22 property acquisition; airside bituminous construction—2001; pavement rehabilitation—aprons/taxiways; miscellaneous airfield construction; taxiway A/H reconstruction; Green/Gold connector bag belt; Green/Gold connector ticket counter/bag check; security fence/gate replacements; maintenance facility addition.

(Impose Only Project)

Concourse F expansion.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $1,121,378,685.

Brief description of proposed projects:

(impose and Use Projects)

Runway 12L deicing pad; runway 12R deicing pad; buildings demolition; taxiway B construction; runway 17/35 site preparation and utility installation (including wetland mitigation, concrete paving, storm sewer and storm water pond construction); runway 17/35 site demolition (on and off airport); runway 17/35 runways, taxiways, taxilanes, and connectors (including runway 17 deicing pad); runway 17/35 airfield service road; runways 17/35 and 4/22 tunnels; taxiways W–Y/Y–3 tunnels; tenant lease extinguishment; deicing agent processing facility; airfield material and equipment storage facilities; property acquisition (for runway 17/35); program planning/management costs; residential noise insulation; Green Concourse (Concourse C) expansion (Phases 1 and 2); Green Concourse apron expansion (including runway 30R deicing pad); Green/Gold connector; Green Concourse automated people mover; Humphrey terminal hydrant fueling system.

(Impose Only Project)

Fire/rescue replacement facility. Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Airports Commission.

Issued in Des Plaines, Illinois on November 22, 2002.

Barbara Jordan,

Acting Manager, Airports Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–30337 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–6480, FMCSA–2000–7006, FMCSA–2000–7165, FMCSA–2000–7363, and FMCSA–2000–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA's decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 44 individuals.

DATES: This decision is effective December 8, 2002. Comments from interested persons should be submitted by January 2, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for receiving an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 44 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 44 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Henry W. Adams	Donald Grogan	Arthur A. Sappington
Willie F. Adams	Christopher L. Humphries	James L. Schneider
Delbert R. Bays	Nelson V. Jaramillo	Patrick W. Shea
Robert F. Berry	Jimmie W. Judkins	Carl B. Simonye
James A. Bright	Bruce T. Loughary	Everett J. Smeltzer
Robert W. Brown	Demitrio Lozano	William H. Smith
Gary Bryan	Michael L. Manning	Paul D. Spalding
Robert R. Buis	Wayne R. Mantela	Timothy W. Strickland
David D. Bungori, Jr.	Kenneth D. May	George W. Thornhill
Richard S. Carter	David P. McCabe	Rick N. Ulrich

Lynn A. Childress	Harold J. Mitchell	Roy F. Varnado, Jr.
David R. Cox	Gordon L. Nathan	Larry D. Wedekind
Gerald W. Cox	Jerry L. New	Daniel G. Wilson
Rosalie A. Gifford	Bernice R. Parnell	Wonda L. Wooten
Eugene A. Gitzen	Franklin D. Reed, Sr.	

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 44 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285, 63 FR 54519, 64 FR 68195, 65 FR 20251, 65 FR 20245, 65 FR 57230, 65 FR 33406, 65 FR 45817, 65 FR 77066), and two of the applicants have previously satisfied the conditions for renewing an exemption (65 FR 66293, 65 FR 77069). Each of these 44 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 2, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: November 22, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–30338 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway Company

[Docket Number FRA–2002–13570]

The Canadian National Railway Company and its wholly owned U.S. subsidiaries, Illinois Central Railroad Company, Wisconsin Central, LTD., Grand Trunk Western Railroad Company, Chicago Central & Pacific Railroad Company, and Duluth, Winnipeg & Pacific Railway Company (hereafter "CN"), seeks a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR Part 218, regarding blue signal protection of workers. Specifically, CN seeks to permit train and yard crew members, and utility employees to remove and replace batteries in two-way end-of-train telemetry devices (EOT) while the EOT is in place on the rear of the train the individual has been called to operate, without establishing any blue signal protection. CN's waiver request is identical to the waiver granted to the Burlington Northern and Santa Fe Railway, FRA–2001–10660. CN's waiver request is only for the replacement of batteries in EOTs manufactured by Digitair PULSE and is not for any other EOT device.

Section 218.5 defines worker as "any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning." Both § 218.25 and § 218.27, require blue signal protection when workers are on, under, or between rolling equipment on main track or other than main track. Section 218.22(b) states in part: "A utility employee may

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be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions * * * (5) The utility employee is performing one or more of the following functions: * * * inspect, test, install, remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with § 218.23 through § 218.30 of this part."

The FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

CN contends that safety would be enhanced if the individual were allowed to perform the battery work without removing the device from the rear of the train. Exposure to injury is greatly reduced because the individual would be handling a battery pack that weighs 10.1 pounds or less, as opposed to lifting the EOT device that weighs 32–34 pounds. Also, it takes approximately five minutes to remove and then re-install the EOT device, as opposed to removing and replacing a battery pack that takes less than one minute to complete. CN contends that the time the employee is performing the safety sensitive task is reduced by 80 percent. Coupling and uncoupling the air hose between the car and EOT also poses a risk of a striking injury from the air hose, if the air pressure has not been completely released. CN also believes that there is potential for reduction in train delays if this waiver is granted, which could contribute to increased train velocity, efficiency of operations, and to CN's ongoing fuel conservation initiatives. In analyzing safety risks and benefits, CN believes that there are no adverse consequences or costs that will accrue from granting this petition. Also, there are no anticipated costs to the private sector, to the consumer, or to federal, state, and local governments if this waiver is granted.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13570) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level) 400–7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on November 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–30438 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation

(Docket Number FRA–2002–13096)

The Norfolk Southern Corporation (NS), on behalf of itself and its subsidiaries and affiliates, seeks a permanent waiver of compliance from the requirements of Railroad Workplace Safety Standards, 49 CFR part 214. The NS intends this waiver to cover all "railroad bridge workers" or "bridge workers" (as those terms are defined by 49 CFR 214.7) employed by NS or its contractors, including track inspectors and signal maintainers who perform their duties on bridges. The waiver would apply to all installations and locations, and related equipment where the NS is responsible for the construction, inspection, testing, or maintenance of a bridge.

Bridge workers employed by or contracting with the NS are required by § 214.107 to wear life vests or buoyant work vests and to have available ring buoys and lifesaving skiffs when working "over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists." These requirements apply even where bridge workers are otherwise exempt from wearing fall protection, such as where satisfactory walkways and railings (§ 214.103(c)(1)) exist on the bridge, where workers remain at least six feet from the edge of a roadway deck or any opening (§ 214.103(c)(2)), or where workers perform a repair or inspection of a minor nature that is completed by working exclusively within the gauge of the rail (§ 214.103(d)). There appear to be no exceptions to the requirements for ring buoys and lifesaving skiffs where a bridge worker is working alone on or near a bridge. Accordingly, the NS requests a waiver of § 214.107 in those situations where (1) bridge workers are not at risk of falling from a bridge, or (2) the risk of falling is so minimal that fall protection is not required. Specifically, the NS requests a waiver of drowning protection requirements under the same conditions where the exceptions to the fall protection requirements set forth in §§ 214.103(c) and (d) apply.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13096) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400–7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as

practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on November 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–30439 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13942]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–4161; FAX: 202–366–7901 or E-mail: *joe.strassburg@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Approval of Underwriters for Marine Hull Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0517.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Foreign and domestic applicants will be required to submit financial data upon which MARAD approval would be based.

Need and Use of the Information: This information is needed in order that MARAD officials can evaluate the underwriters and determine their suitability for providing marine hull insurance on MARAD vessels.

Description of Respondents: Underwriters of marine insurance and marine insurance brokers.

Annual Responses: 62.

Annual Burden: 46 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: November 26, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–30429 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: 30-day Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on July 27, 2000 [65 FR 46228].

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: William D. Evans at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards, 202–366–2272, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 571.403 Platform lift systems for motor vehicles; 49 CFR Part 571.404 Platform lift installations in motor vehicles.

OMB Number: 2127–New.

Type of Request: New collection.

Abstract: On July 27, 2000, NHTSA published a Supplemental Notice of Proposed Rulemaking (SNPRM) [65 FR 46228], and a Final Rule will be published eminently, to facilitate the safe use of platform lifts by the disabled population. The regulation will be found at 49 CFR Part 571.403 and 49 CFR Part 571.404. This final rule includes several new "collection of information," requirements as the term is defined in 5 CFR Part 1320 Controlling Paperwork Burdens on the Public: a label, a vehicle owner's manual insert, and a installation instruction insert.

Affected Public: Businesses that manufacturer platform lifts for the purpose of assisting persons with limited mobility in entering and exiting a vehicle and vehicle manufacturers that install such lifts in vehicles before first retail sale.

Estimated Total Annual Burden: 144 hours and $9315.32.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

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Issued on: November 26, 2002.

Noble N. Bowie,

Acting Associate Administrator for Rulemaking.

[FR Doc. 02–30437 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Collection; Comment Request; Customer Survey

AGENCY: Financial Crimes Enforcement Network (FinCEN).

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on an information collection requirement concerning a survey of customer satisfaction with regulatory guidance. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 31, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Management, Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, VA 22183, *Attention:* PRA Comments-Customer Satisfaction Survey. Comments also may be submitted by electronic mail to the following Internet address: *"regcomments@fincen.treas.gov"* with the caption in the body of the text, *"Attention:* PRA Comments—Customer Satisfaction Survey."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the information collection should be directed to: Office of Management, FinCEN, 703–905–3947, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Survey.

OMB Number: None.

Form Number: None

Abstract: The Government Performance and Results Act requires agencies to submit an annual performance plan and performance report to Congress. In connection with this requirement, FinCEN will conduct a survey of customer satisfaction with regulatory guidance provided under the Bank Secrecy Act.

Current Action: New collection.

Affected Public: Individuals, business or other for-profit institutions, not-for-profit institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 33 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: November 21, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–30352 Filed 11–29–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker Permit

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit No.	Issuing port
Jonathan T. Cottingham	30–02–ACP	Seattle.
ABX Logistics (USA), Inc	35–00–060	Minneapolis.
All Nations Forwarding Import Co., Inc	271	Miami.

Dated: November 21, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–30361 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and any and all associated local and national permits are canceled without prejudice.

Name	License No.	Issuing port
Leif, Inc.	09768	San Francisco.
Gene Brosterhous Customs Broker, Inc.	21187	Portland, Oregon.

Dated: November 21, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–30359 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Customs Service, Department of the Treasury.

ACTION: Cancellation of license.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license has been cancelled due to death of the broker:

Name	License No.	Port name
William J. O'Donnell	03452	Philadelphia.
Rene Alvarez	04692	Miami.

Dated: November 21, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–30358 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Triennial Status Report and Status Report Fee: General Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of due date for status report and fee.

SUMMARY: This is to advise Customs brokers that the Triennial Status Report Fee of $100 that is assessed for each license held by a broker whether it may be an individual, partnership, association or corporation, is due during the month of February 2003 along with the corresponding status report.

SUPPLEMENTARY INFORMATION: In accordance with 19 U.S.C. 1641(g) and 19 CFR 111.30(d), each broker must file a written status report and pay the corresponding fee of $100 every three years. The report is due every three years regardless of the date the license was issued to the broker. The last status report and fee were due during the month of February 2000. Reports and fees must next be filed during the month of February 2003. They should be delivered to the director of the port that originally delivered the license to the broker. No reports or fees should be submitted directly to Customs Headquarters.

The elements that must be included in the report are prescribed in 19 CFR 111.30(d). While no particular format is required, a model report may be obtained from your local Customs Service Port.

DATES: Due date for payment of fee: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Scott J. Nielsen, Broker Management, (202) 927–0380.

Dated: November 21, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–30360 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–189–84]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–189–84 (TD 8517), Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property (§§ 1.1272–3, 1.1273–2(h), 1.1274–3(d), 1.1274–5(b), 1.1274A–1(c), and 1.1274–3(b)).

DATES: Written comments should be received on or before January 31, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–3869, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property.

OMB Number: 1545–1353.

Regulation Project Number: FI–189–84.

Abstract: This regulation provides definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms and state, local or tribal governments.

Estimated Number of Respondents: 525,000.

Estimated Time Per Respondent: 21 min.

Estimated Total Annual Burden Hours: 185,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 21, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–30315 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, December 10, 2002.

FOR FURTHER INFORMATION CONTACT: James McGurn at 1–888–912–1227, or 718–488–3553.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel will be held Tuesday, December 10, 2002 from 2 pm EST to 4 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3553, or write to James McGurn, TAP Office, 625 Fulton Street, 6th Floor, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with James McGurn. Mr. McGurn can be reached at 1–888–912–1227 or 718–488–3553.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 14, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–30317 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Credit Issue Committee will be held Wednesday, December 18, 2002, from 2 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the website: *www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 14, 2002.

Cathy Vanhorn,

Director, Communication and Liaison.

[FR Doc. 02–30319 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, December 16, 2002, from 2 p.m. p.s.t. to 3 p.m. p.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 14, 2002.

Cathy Vanhorn,

Director, Communication and Liaison.

[FR Doc. 02–30318 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via Conference call.

DATES: The meeting will be held Tuesday, December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, December 17, 2002, from 1 p.m. e.s.t. 2 p.m. e.s.t. via a telephone conference call. Public comments will be welcome during the meeting. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly summary report, self-assessment report, getting started issues, and discussion of next meetings.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 18, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–30320 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, November 15, 2002, from 1 p.m. e.s.t. to 3 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *firstcapsfl@mindspring.com*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or e-mail *firstcapsfl@mindspring.com*.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 14, 2002.

Cathy Vanhorn,

Communication & Liaison.

[FR Doc. 02–30321 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Texas, Oklahoma, Kansas, Missouri, Nebraska, Iowa, South Dakota, North Dakota, and Minnesota)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, December 16, 2002.

FOR FURTHER INFORMATION CONTACT: James McGurn at 1–888–912–1227, or 718–488–3553.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, December 16, 2002, from 2:30 p.m. central time to 4:30 p.m. central time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3553, or write to James McGurn, TAP Office, 625 Fulton Street, 6th Floor, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with James McGurn. Mr. McGurn can be reached at 1–888–912–1227 or 718–488–3553.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 26, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–30475 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Thursday, December 19, 2002, from 1

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p.m. e.s.t. to 3 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 26, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–30476 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, December 20, 2002, from 11 a.m. e.s.t. to 12 noon e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 26, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–30477 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
December 2, 2002

Part II

State Justice Institute

Grant Guideline; Notice

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STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final grant guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2003 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Kathy Schwartz, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States. Complete information about the Institute and its grant programs, including tutorials, forms, and instructions for all grant applications, can be found at *http://www.statejustice.org*.

This Guideline is being published at a time when the Institute is operating on a Continuing Resolution (CR) that expires on January 11, 2003. The Guideline is contingent on further action by Congress to either extend the CR or enact an appropriations bill funding the Institute in FY 2003 at no less than the level approved by the Senate Appropriations Committee ($3.1 million).

Types of Grants Available and Funding Schedules

SJI offers five types of grants in FY 2003: Project Grants, Technical Assistance (TA) Grants, Judicial Branch Education Technical Assistance (JBE TA) Grants, Continuation Grants, and Scholarships.

Project Grants

The Guideline allocates up to $2 million for Project Grants in FY 2003, in addition to the $800,000 in FY 2003 and 2004 funds allocated for the Solutions Project described below.

Project Grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. As provided in section V.C. of the Guideline, Project Grants may ordinarily not exceed $200,000 a year; however, grants in excess of $150,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

The Solutions Project is a multi-stage project that will draw on State and local court initiatives to identify and exchange promising solutions to the most critical problems facing the courts, and define a national agenda to improve the quality of justice in State courts nationwide. The Project will entail five steps:

(1) Information collection about the specific needs of State courts, the efforts they have made to address them, and other possible responses to those needs;

(2) Information analysis;

(3) A national event to identify the most promising solutions to the State courts' most critical problems;

(4) Development of a comprehensive catalogue of promising solutions; and

(5) Distribution of a final product, clearly stating both the problems facing State courts as well as real and promising solutions, to State court leaders, Congress, and other interested parties.

The first step of the Solutions Project is well under way. Twenty-three (23) States have submitted information collection grant applications requesting approximately $450,000. The Board of Directors anticipates awarding grants to support these applications before the end of the year. Applicants interested in a grant to support the remaining steps of the Solutions Project may obtain information about these projects upon request. Interested applicants are encouraged to include creative uses of technology to maximize participation in the remaining phases of the project as well as distribution of the final product. See sections II.C. and VI.C.

SJI also awards "think piece" Project Grants to support the development of essays of publishable quality that explore emerging issues that could result in significant changes in court processes or judicial administration. "Think pieces" are limited to no more than $10,000. See section II.B.

All project grant applications, including "think piece" proposals, must address a topic included in the five Special Interest categories listed in the Guideline.

The deadline for submitting Project Grant applications (including Solutions Project applications) is February 7, 2003. The Board of Directors will meet in early May 2003 to approve grant awards. See section VI.A. for project grant application procedures.

Technical Assistance Grants

Section II.C. reserves up to $300,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance Grant may be submitted at any time. Applicants submitting letters by January 10, 2003 will be notified by March 28, 2003; those submitting letters between January 11 and February 28, 2003 will be notified by May 30, 2003; those submitting letters between March 1 and June 6, 2003 will be notified by August 29, 2003; and those submitting letters between June 7 and September 26, 2003 will be notified of the Board's decision by December 12, 2003. See section VI.E. for Technical Assistance Grant application procedures.

Judicial Branch Education Technical Assistance Grants

The Guideline implements an expansion of the Institute's former Curriculum Adaptation grant program that was proposed for comment last year. Up to $300,000 will be allocated for grants under the expanded program, which is renamed the Judicial Branch Education Technical Assistance (JBE TA) grant program. Grants of up to $20,000 are available to: (1) Enable a State or local court to adapt and deliver an education program that was previously developed and evaluated under an SJI project grant (*i.e.*, curriculum adaptation); and/or (2) support expert consultation in planning, developing, and administering State judicial branch education programs.

Letters requesting JBE TA Grants may be submitted at any time. The grant cycles for JBE TA Grants are the same as the grant cycles for TA Grants:

Applicants submitting letters by January 10, 2003 will be notified by March 28, 2003; those submitting letters between January 11 and February 28, 2003 will be notified by May 30, 2003; those submitting letters between March 1 and June 6, 2003 will be notified by August 29, 2003; and those submitting letters between June 7 and September 26, 2003 will be notified of the Board's decision by December 12, 2003. See section VI.F. for JBE TA Grant application procedures.

Scholarships

The Guideline allocates up to $200,000 of FY 2003 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs.

Scholarships for eligible applicants are approved largely on a "first come, first served" basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (*e.g.*, trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) address topics included in the Guideline's Special Interest categories (section II.A.); (2) enhance the skills of judges and court managers; or (3) are part of a graduate degree program for judges or court personnel.

Applicants interested in obtaining a scholarship for a program beginning between April 1 and June 30, 2003 must submit their applications and documents between January 3 and March 3, 2003. For programs beginning between July 1 and September 30, 2003, the applications and documents must be submitted between April 1 and June 2, 2003. For programs beginning between October 1 and December 31, 2003, the applications and documents must be submitted between July 7 and August 29, 2003. For programs beginning between January 1 and March 31, 2004, the applications and documents must be submitted between October 1 and December 1, 2003. See section VI.G. for Scholarship application procedures.

Continuation Grants

Continuation Grants (see sections III.F, V.B.2., and VI.B.) are intended to enhance the specific program or service begun during the initial project grant period. The Guideline establishes a firm limit for Continuation Grants of 20% of the total amount projected to be available for Project Grants in FY 2003, *i.e.*, $400,000. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide continuation funding. No grant awarded in FY 2003 will be continued for more than five years.

An applicant for a Continuation Grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its Continuation Grant application.

Response to Comments

The Proposed Guideline generated a substantial number of comments, many of which sought clarification and, in some cases, elimination of the policy that would require all grantees to provide matching funds to support their SJI-supported projects. After consideration of the comments and a review of Federal grant match policies, SJI has decided to retain the match requirement for all grantees but to add provisions that would permit the Institute to waive the match and cash match requirements in certain circumstances. See revised section VIII.A.8.

The Final Guideline also revises prior Institute policy by permitting project income, *e.g.*, tuition and proceeds from the sale of grant products, to be used as match. See sections III.O. and IX.G.3. and 4.

In addition, section III.L. of the Guideline has been revised to clarify what the Institute considers cash match and in-kind match. See also section 7 of Appendix A—Recommendations to Grantwriters for further guidance on match issues.

The following discussion summarizes the Final Guideline's match requirements.

Match requirements for State and local units of government. The Guideline applies the statutorily-mandated requirement that governmental grantees provide matching support equal to 50% of a new SJI-funded project (see 42 U.S.C. 10705(d)), subject to the statutory waiver provision noted below. Except for Solutions Project Information Collection grants made under section VI.C. of the Guideline, at least 20% of the required match must be in cash.

Example. If a court receives a $100,000 grant from the Institute, it must provide a $50,000 match. Under the Final Guideline, the court must provide at least 20% of the required match for a new grant ($10,000 in the example) in the form of cash rather than in-kind support.

Match requirements for all other grantees. The Guideline requires all other grantees (except scholarship recipients and individuals who receive grants to develop "think pieces") to contribute a match of 25% to a new SJI-funded project. At least 10% of the required match must be in cash.

Example. If a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match. Under the Guideline, a non-profit must provide at least 10% of the required match for a new grant ($2,500 in the example) in the form of cash.

Waivers. An applicant may request a waiver of the match requirement, the cash match requirement, or both, in its application. See section VIII.A.8.c.

For State and local government grantees, the Institute's enabling legislation provides that the match requirement may be waived by the Board of Directors in "exceptionally rare circumstances." The Guideline incorporates this requirement in section VIII.A.8.c.(1)(a). Section VIII.A.8.c.(1)(b) permits a waiver by non-profit organizations in similar circumstances.

For grantees required to provide cash match, section VIII.A.8.c.(2) requires an applicant seeking a waiver to demonstrate that it would be a financial hardship to meet the requirement.

Section VIII.A.8.c.(3) encourages all applicants to provide the largest amount of cash and in-kind match they can, even if it does not meet the level required.

Cash Match. Ordinarily, the Institute will consider the following types of match to be cash match:

- The dedication of funds to support a new employee or purchase new equipment to carry out the project;
- That portion of the grantee's Federally-approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits);
- Any other reduction in the indirect cost rate to be charged to the grant; and
- The application of project income (*e.g.*, tuition or the proceeds of sales of grant products) to grant costs.

Ordinarily, the Institute will consider the donation of time by current staff or advisory committee members to the project to be in-kind match. See section III.L.

Continuation grants. Subject to the granting of a waiver of all or part of the match requirement in a particular year, all grantees will be required to assume a greater share of project support over time. See section VIII.A.8.b.

State and local units of government must provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year.

Example. If SJI awards a State court $100,000 for the first year of a grant, the court must provide $50,000 in match. If the second-year grant is also $100,000, the court must provide $60,000 in match. A court that wishes to limit its second-year contribution to $50,000 can ask SJI for a reduced amount, *i.e.*, $83,333, in order to meet the 60% requirement.

All other grantees must provide match equaling at least 25% of the amount provided by SJI in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year.

Example. If SJI awards a non-profit organization $100,000 for the first year

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of a grant, the organization must provide $25,000 in match. If the second year grant is also $100,000, the court must provide $30,000 in match. An organization that wishes to limit its second-year contribution to $25,000 can ask SJI for a reduced amount, *i.e.*, $83,333, in order to meet the 30% requirement.

Other comments recommended that the Institute reconsider its proposal to impose a five-year limit on continuation grants. Although the Institute may reconsider that change in future years, depending on its appropriation level and its experience with the change, this year's Final Guideline includes the limitation.

Recommendations to Grantwriters

Recommendations to Grantwriters may be found in Appendix A.

The following Grant Guideline is adopted by the State Justice Institute for FY 2003:

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I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an 11-member Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. However, during FY 2003, the Institute will consider applications for funding support that address only the topics included in the following five program categories designated by the Board as being of special interest. Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

A. Special Interest Program Categories

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the State judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other States; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a *Special Interest* project if it meets the four criteria set forth above and (1) it falls within the scope of the *Special Interest* program categories designated below; or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

The Board has designated the areas set forth below as *Special Interest* program categories. The order of listing does not imply any ordering of priorities among the categories. For a complete list of projects supported in previous years in each of these categories, please visit the Institute's Internet homepage at *http://www.statejustice.org/* and click on *Grants by Category*.

1. Access to the Courts

This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process.

The Institute is particularly interested in supporting innovative projects that:

- Test and evaluate new approaches to enhance public access to the courts, including demonstrations of innovative collaborative efforts between courts and community institutions (*e.g.*, bar associations, legal service agencies, schools, and public libraries) to enhance access to the courts by people without lawyers (in this regard, however, Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases); and
- Develop and test a range of strategies, methodologies, guidelines, and outcome measures to evaluate the effectiveness of programs established to assist people without lawyers.

2. Application of Technology in the Courts

This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels. The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, "untested" includes novel applications of technology developed for the private sector that have not previously been applied in the courts.

The Institute is particularly interested in supporting efforts to test and evaluate technologies that, if successfully implemented, would significantly re-engineer the way that courts currently do business, including projects that would:

- Demonstrate and evaluate the delivery of technology to rural courts through an Internet-based "application service provider" approach;
- Evaluate approaches for electronically filing pleadings, briefs, and other documents; approaches to integrate electronic filing and electronic document management; and the impact of electronic court record systems on case management and court procedures;
- Test and evaluate the use of Geographic Information System (GIS) software as a means of examining and improving courts' outreach to particular segments of the communities they serve;
- Demonstrate and evaluate innovative applications of voice recognition technologies in the adjudication process;
- Demonstrate and evaluate the use of expert system technology to assist judicial decision-making; and
- Evaluate innovative applications of technology designed to ensure the safety of all who use and work in the courts.

3. Children and Families in Court

This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that would:

- Demonstrate and evaluate innovative approaches to manage and coordinate cases and proceedings involving multiple members of the same family;
- Demonstrate and evaluate the effectiveness of a "one social worker/one family" or judge-social worker team approach to handling child abuse and neglect cases;
- Develop and test innovative protocols, procedures, educational programs, and other measures to address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;
- Educate judges about how to interpret and evaluate evidence presented by psychologists, psychiatrists, and other professionals appearing in child custody and visitation cases involving domestic violence between the parents;
- Develop and test the implementation of a differentiated case management system for handling child custody disputes;
- Develop and evaluate educational programs addressing a collaborative community approach to reducing and preventing domestic violence for a multidisciplinary audience that includes judges, prosecutors, defense attorneys, victim advocates, doctors, and social services providers;
- Evaluate the impact of court policies and procedures and collaborative community approaches designed to ensure that juvenile sex offenders have access to an appropriate array of services;
- Create and test educational programs, guidelines, and monitoring systems to assure that the juvenile justice system meets the needs of girls and children of color; and
- Develop and test educational programs to assure that everyone coming into contact with courts serving children and families is treated with dignity, respect, and courtesy.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes. (Applicants interested in obtaining such operational support should contact the Office for Victims of Crime [OVC], Office of Justice Programs, U.S. Department of Justice, or the agency in their State that awards OVC funds to State and local victim assistance and compensation programs.)

4. Judicial Branch Education

The Institute is interested in supporting projects that will continue to strengthen and broaden the availability of court education programs at the State, regional, and national levels. This category is divided into three subsections: (a) Innovative Educational Programs; (b) Judicial Branch Education Technical Assistance Projects; and (c) Scholarships.

a. *Innovative Educational Programs.* This category includes support for the development and pilot-testing of innovative, high-quality educational programs for trial and appellate judges or court personnel that address key issues of concern to the nation's courts, or help local courts or State court systems develop or enhance their capacity to deliver quality continuing education.

Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on an assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills participants will acquire (as opposed to a description of what will be taught); incorporate adult education principles and multiple teaching/learning methods; and result in the development of a curriculum as defined in section III.E.

The Institute is particularly interested in supporting the development of educational programs that:

- Educate State court judges, law clerks, and staff counsel about capital case law, DNA evidence, and other legal and scientific issues related to the trial and appeal of capital cases;
- Educate State court judges and court personnel about special problems related to the adjudication of capital cases, including jury voir dire, jury sequestration, sentencing hearings, court security, and media management;
- Educate judges and court officials about the threat of terrorism and steps they can take to effectively protect courthouses against acts of terrorism;
- Assist judges, court managers, community leaders, and other State or local government agency administrators in collaboratively developing and evaluating courthouse security policies

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and programs, and disaster recovery plans;

• Develop and test curricula and materials designed to familiarize judges and court managers with the need for and key elements of effective assistance programs for people without lawyers, and the resources required to sustain them; and

• Examine the long-term cognitive effects of substance abuse (including alcohol) and their implications for compliance with court orders, probation conditions, release, visitation orders, *etc.*

b. *Judicial Branch Education Technical Assistance Projects.* The Board is reserving up to $300,000 to support technical assistance and on-site consultation in planning, developing, and administering comprehensive and specialized State judicial branch education programs, as well as the adaptation of model curricula previously developed with SJI funds.

The goals of the Judicial Branch Education Technical Assistance Program (JBE TA) are to:

(1) Provide State and local courts with expert assistance in developing systematic or innovative judicial branch education programming as well as improved methods for assessing the need for and evaluating the impact of court education programs; and

(2) Enable courts to modify a model curriculum, course module, or conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; train instructors to present portions or all of the curriculum; and pilot-test it to determine its appropriateness, quality, and effectiveness. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix E.

Only State or local courts may apply for JBE TA funding. Application procedures may be found in Section VI.F.

c. *Scholarships for Judges and Court Managers.* The Institute is reserving up to $200,000 to support a scholarship program for State judges and court managers. The purposes of the scholarship program are to:

• Enhance the skills, knowledge, and abilities of judges and court managers;

• Enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and

• Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. Application procedures may be found in Section VI.G.

5. The Relationship Between State and Federal Courts

This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts.

The Institute is particularly interested in innovative projects that:

• Evaluate State and Federal courts' experiences with capital cases to identify reasons for reversals of trial court convictions, barriers to timely disposition, and steps that can be taken to minimize reversals and undue delay;

• Educate judges about capital case law, DNA evidence, and judicial administration issues arising from death penalty cases, *e.g.*, court security, jury sequestration, and media management;

• Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels; and

• Provide technical assistance nationwide to help court officials develop effective emergency responses to acts of terrorism.

B. "Think Pieces"

This category addresses the development of essays of publishable quality directed to the court community. The essays should explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public. Grants supporting such projects are limited to no more than $10,000. Applicants should follow the procedures explained in section VI.B. of this Guideline.

Think piece topics are limited to the five Special Interest categories listed in section II.A. of this Guideline.

C. The Solutions Project

1. Overview

The Board of Directors is reserving up to $800,000 to support the Solutions Project, a process intended to infuse the State courts with the ability to develop innovative and creative ways to address the problems they face and provide a mechanism to transfer these ideas throughout the nation. In addition to providing State courts with an array of promising solutions to their most pressing problems, the Solutions Project will generate consensus on projects, ideas, and programs that merit additional Federal funding support because of their broad appeal and promise.

The process will entail five steps:

A. Information collection about the specific needs of the State courts, the efforts the courts have made to date to address those needs, and other possible solutions;

B. Information analysis;

C. A national event, *e.g.* an in-person or virtual conference, to identify the most promising solutions to the State courts' most critical problems;

D. Development of a comprehensive catalogue of promising solutions; and;

E. Distribution of a final product clearly stating both the problems facing State courts, as well as real and promising solutions, to State court leaders and other interested parties.

2. State Court Information Collection Grants

Grants of up to $20,000 are available to State court systems interested in undertaking a town hall meeting, focus groups, survey(s), or other initiatives designed to (a) collect information about the problems facing their courts, (b) assess the effectiveness of the solutions the court system has developed to respond to those problems, or (c) solicit the public's recommendations about other potential solutions. Only State supreme courts or State court administrative offices may apply for these grants. See section VI.C.1. for the application procedures.

A grant or grants will be awarded to support the remaining work outlined in the five steps listed above. Applicants are encouraged to include creative uses of technology to maximize participation in the project and distribution of the final product. Applications should conform to the requirements set forth in section VI.A. for Project Grants.

D. Technical Assistance Grants

The Board will set aside up to $300,000 to support the provision of technical assistance to State and local courts. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of Technical Assistance Grants throughout the year.

Technical Assistance Grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Normally, the technical assistance must be completed within 12 months after the start date of the grant.

Only a State or local court may apply for a Technical Assistance Grant. The application procedures may be found in section VI.E.

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. Acknowledgment of SJI Support

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape identifying the grant number. See section VIII.A.11.a.(2) for the precise wording of the statement.

B. Application

A formal request for an Institute grant. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed 25-page description of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. See section VI. for a complete description of application submission requirements. See Appendix F for the Project Grant application forms.

C. Close-out

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

D. Continuation Grant

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. See section VI.D. for a complete description of continuation application requirements.

E. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

F. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for SJI grant funds and to receive, administer, and be accountable for those funds.

G. Disclaimer

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with Institute support that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. See section VIII.A.11.a.(2) for the precise wording of this statement.

H. Grant Adjustment

A change in the design or scope of a project from that described in the approved application, acknowledged in writing by the Institute. See section X.A for a list of the types of changes requiring a formal grant adjustment. Ordinarily, changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget) should be requested at least 30 days in advance of the implementation of the requested change.

I. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court or its designee.

J. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

K. Judicial Branch Education Technical Assistance (JBE TA) Grant

A grant of up to $20,000 awarded to a State or local court to support expert assistance in designing or delivering judicial branch education programming, and/or the adaptation of an education program based on an SJI-supported curriculum that was previously developed and evaluated under an SJI Project Grant. See also section VI.F. for a complete description of JBE TA Grant application requirements.

L. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project; that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits); any other reduction in the indirect cost rate to be charged to the grant; and the application of project income (*e.g.*, tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (*e.g.*, advisory board members) working directly on the project.

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program.

See section VIII.A.8. for the Institute's matching requirements.

M. Products

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines;

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videotapes; audiotapes; computer software; and CD–ROM disks.

N. Project Grant

An initial grant lasting up to 15 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $200,000 a year; however, a grant in excess of $150,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact. See section VI.A. for a complete description of Project Grant application requirements.

O. Project-Related Income

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of an Institute grant. Registration and tuition fees, and proceeds from the sale of products generated during the grant period may be counted as match. For a more complete description of different types of project-related income, see section IX.G.

P. Scholarship

A grant of up to $1,500 awarded to a judge or court employee to cover the cost of tuition for and transportation to and from an out-of-State educational program within the United States. See section VI.G. for a complete description of scholarship application requirements.

Q. Special Condition

A requirement attached to a grant award that is unique to a particular project.

R. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* means that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

S. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

T. Technical Assistance Grant

A grant, lasting up to 12 months, of up to $30,000 to a State or local court to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem.

See section VI.E. for a complete description of technical assistance grant application requirements.

IV. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705(b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

The Institute supports the following general types of projects:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute supports the following types of grants:

1. Project Grants

See sections II.A. and B., and VI.A. The Institute places no annual limitations on the overall number of project grant awards or the number of awards in each Special Interest category.

As part of the Solutions Project, the Institute will make grants available to State court systems to support the collection of information about the most critical problems facing the State courts, and promising solutions to those problems. See sections II.C. and VI.C.

2. Continuation Grants

See sections III.D. and VI.D. In FY 2003, the Institute is allocating no more than 20% of available Project Grant funds for continuation grants.

3. Technical Assistance Grants

See sections II.D. and VI.E. In FY 2003, the Institute is reserving up to $300,000 for these grants.

4. Judicial Branch Education Technical Assistance Grants

See sections II.A.4.b., III.K., and VI.F. In FY 2003, the Institute is reserving up to $300,000 for Judicial Branch Education Technical Assistance Grants, which includes adaptations of curricula previously developed with SJI funding.

5. Scholarships

See sections II.A.4.c., III.P., and VI.G. In FY 2003, the Institute is reserving up to $200,000 for scholarships for judges and court employees. The Institute will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

C. Maximum Size of Awards

1. Except as specified below, applicants for new Project Grants and continuation grants may request funding in amounts up to $200,000 for 15 months, although new and continuation awards in excess of $150,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applicants for Solutions Project Grants may request funding in amounts up to $20,000.

3. Applicants for Technical Assistance Grants may request funding in amounts up to $30,000.

4. Applicants for Judicial Branch Education Technical Assistance Grants may request funding in amounts up to $20,000.

5. Applicants for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily may not exceed 15 months. Absent extraordinary circumstances, no grant awarded in FY 2003 will continue for more than five years.

2. Grant periods for Technical Assistance Grants and Judicial Branch Education Technical Assistance Grants ordinarily may not exceed 12 months.

VI. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix F for the Project Grant application forms. For a summary of the application process, visit the Institute's Web site (*http://www.statejustice.org*) and click on On-Line Tutorials, then Project Grant.

1. Forms

a. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Forms (Form C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VI.A.4. below.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities

Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section VIII.A.7.)

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.*, to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (*e.g.*, provide training for 32 judges and court managers, or review data from 300 cases).

b. Program Areas To Be Covered

The applicant should note the Special Interest category or categories that are addressed by the proposed project (see section II.A.).

c. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. Tasks, Methods and Evaluation

(1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address

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the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) *Evaluation.* Every project must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) *Research.* An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) *Education and Training.* The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) *Demonstration.* The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (*e.g.*, how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (*e.g.*, was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (*e.g.*, what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) *Technical Assistance.* For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.*, no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. Products

The program narrative in the application should contain a description of the products to be developed (*e.g.*, training curricula and materials, videotapes, articles, manuals, or handbooks), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (See Appendix C), State chief justice, State court administrator, and other appropriate judges or court personnel.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (*i.e.*, whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VIII.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix C.) Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product (*i.e.*, a written report with a reference to the web site).

Fifteen (15) copies of all project products must be submitted to the Institute, along with an electronic version in .html format.

(2) *Types of Products and Press Releases.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period. (See section VIII.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) *Institute Review.* Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD–ROM format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute. (See section VIII.A.11.e.)

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VIII.A.11.a.(2) of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. Organizational Capacity

Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts. See Appendix F.

k. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received by March 15, 2003.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all

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project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.*, the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section IX.I.2.c. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section IX.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VIII.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. Indirect Costs

Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. See sections III.L. and IX.I.4.

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.*, a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section IX.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

l. Match

Courts or other units of State or local government (not including publicly supported institutions of higher education) must provide a match from private or public sources of not less than 50% of the total amount of the Institute's award. 42 U.S.C. 10705(d). At least 20% of the required match for a new grant to a court or other unit of State or local government (other than a Solutions Project Information Collection grant) must be cash. All other grantees (except scholarship recipients and individuals receiving "think piece" grants) must contribute a match of 25% to a new grant; at least 10% of the required match must be cash.

The applicant should describe the source of the matching contribution and the nature of the match provided. Any additional cash and in-kind contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed would be documented for audit purposes. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (See sections III.L., VIII.A.8., and IX.E.1.)

The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

5. Submission Requirements

a. Every applicant must submit an original and four copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either Form C or C–1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

All applications must be sent by first class or overnight mail or by courier no later than February 7, 2003. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted without good cause.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

B. "Think Piece" Applications

1. Purpose and Scope

"Think pieces" are essays of publishable quality directed to the court community. They are intended to explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public.

2. Forms

An application for a "think piece" must include the same forms required for a project grant. See A.1. above in this section.

3. Program Narrative

The program narrative should be no longer than necessary, but must not exceed 8 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi. The pages should be numbered. The narrative should:

a. Identify the specific Special Interest category into which the "think piece" would fall;

b. Describe the subject it would address;

c. Explain how the essay would advance the current state of the art or knowledge about the subject;

d. Discuss the benefits that would accrue to the State courts generally as a result of the essay's publication; and

e. Outline plans for the publication of the "think piece," *e.g.*, the intended audience, and the types or titles of periodicals or journals to which it would be submitted.

4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in A.4. above in this section; however, individuals proposing to develop "think pieces" are not required to provide match.

5. Submission Requirements

The submission requirements set forth in section VI.A.5 apply to all "think piece" applications.

C. Solutions Project Grants

1. State Court Information Collection Grants

Solutions Project Grants of up to $20,000 are available to State court systems to support the costs of town hall meetings, focus groups, surveys, or other information-gathering initiatives designed to (a) identify the critical problems facing the State's courts, (b) assess the effectiveness of the solutions the court system has developed to respond to those problems, or (c) solicit the public's recommendations about other potential solutions.

a. Application Procedures

In lieu of applications, applicants may submit a two-page letter describing how they propose to gather the information on critical problems and promising solutions. The letter must be signed by either the chief justice of the State supreme court or the State court administrator.

b. Application Format

Although there is no prescribed form for the letter, it should describe briefly the nature of the problem(s) sought to be addressed, the mechanism(s) to be used to collect the information sought, who would oversee the collection process, the anticipated time frame required to complete the process, and the manner and form in which the information would be submitted to the Institute.

c. Budget and Matching State Contribution

A completed Form C (Budget) and budget narrative must be included with the letter requesting the Solutions Project Grant. The budget narrative should provide the basis for all costs. If the information-gathering process entails the involvement of a consultant, applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and no consultant will be paid more than $900 per day from Institute funds.

As with all Institute grants to State and local courts, applicants must provide matching support equal to 50% of the amount requested from the Institute; however, no cash match is required for Solutions Project Grants.

Recipients of Solutions Project Grants do not have to submit an audit but must maintain appropriate documentation to support all expenditures (see section VIII.A.3.).

d. Submission Requirements

Letters requesting Solutions Project Grants must be postmarked no later than October 25, 2002. Please mark SOLUTIONS PROJECT on the envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

2. National Solutions Project Grant(s)

A grant or grants will be awarded to support the analysis and dissemination of the information collected by the State court systems. The proposed project design should describe:

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• The processes that would be used to analyze the information gathered by the participating State court systems;

• The type and size of national event (*e.g.*, an in-person or virtual conference) that would be held to identify the most promising solutions to the State courts' most critical problems;

• The methods that would be used to compile a comprehensive catalogue of promising solutions; and

• The format of the final product, which should clearly state both the problems facing State courts, as well as real and promising solutions, and how it would be distributed to State court leaders and other interested parties.

a. Application Procedures

Applications should conform to the requirements for Project Grants outlined in section VI.A.

b. Submission Requirements

The submission requirements set forth in section VI.A.5 apply to these applications.

D. Continuation Grant Applications

1. Purpose

Continuation grants are intended to support projects that carry out the same type of activities carried out under a previous grant. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

2. Limitations

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks. Absent extraordinary circumstances, no grant awarded in FY 2003 will continue for more than five years.

3. Letters of Intent

A grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

4. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in A.2. of this section, a program narrative, a budget narrative, a Certificate of State Approval—Form B (if the applicant is a State or local court), a Disclosure of Lobbying Activities form (from applicants other than units of State or local government), and any necessary appendices. See Appendix F for the application forms.

The program narrative should conform to the length and format requirements set forth in section VI.A.3. However, rather than the topics listed there, the program narrative of a continuation application should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff, and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

5. Budget and Budget Narrative

a. Institute Funds

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in VI.A.4. above. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

b. Matching Contribution

i. State and local units of government must provide match equaling at least 50% of the amount provided by the Institute in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year.

For example, if the Institute awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court would be required to provide $60,000 in match. A State or local unit of government would have to provide at least 20% of the required match in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project).

ii. All other grantees must provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization would be required to provide $25,000 in match. If the second year grant is also $100,000, the court would be required to provide $30,000 in match. A non-profit organization must provide at least 10% of the required match in the form of cash.

iii. For the purpose of calculating match requirements for continuation grants, an award in FY 2003 will constitute the first year of the project, regardless of whether the project was funded initially in a prior year.

iv. The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

6. References to Previously Submitted Material

A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

7. Submission Requirements

The submission requirements set forth in section VI.A.5., other than the mailing deadline, apply to continuation applications.

E. Technical Assistance Grants

1. Purpose and Scope

Technical Assistance Grants are awarded to State and local courts to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures

For a summary of the application procedures for Technical Assistance Grants, visit the Institute's Web site (*www.statejustice.org*) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for Technical Assistance Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

3. Application Format

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix F) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, Line-Item Budget Form (see Appendix G), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.*, the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

Recipients of Technical Assistance Grants do not have to submit an audit but must maintain appropriate documentation to support expenditures. (See section VIII.A.3.)

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 10, 2003 will be notified of the Institute's decision by March 28, 2003; those submitting letters between January 11 and February 28, 2003 will be notified by May 30, 2003; those

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submitting letters between March 1 and June 6, 2003 will be notified by August 29, 2003; and those submitting letters between June 7 and September 26, 2003 will be notified by December 12, 2003.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than three weeks prior to the Board meeting at which the technical assistance requests will be considered (*i.e.*, by February 7, April 10, July 3, and October 16, 2003).

F. Judicial Branch Education Technical Assistance Grants

1. Purpose and Scope

Judicial Branch Education Technical Assistance (JBE TA) Grants are awarded to State and local courts to support: (1) Expert assistance in planning, developing, and administering State judicial branch education programs; and/or (2) replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a curriculum once (*i.e.*, with one grant) in a given State.

JBE TA Grants may support consultant assistance in developing systematic or innovative judicial branch educational programming. The assistance might include development of improved methods for assessing the need for, and evaluating the quality and impact of, court education programs and their administration by State or local courts; faculty development; and/or topical program presentations. Such assistance may be tailored to address the needs of a particular State or local court or specific categories of court employees throughout a State and, in certain cases, in a region, if sponsored by a court.

2. Application Procedures

For a summary of the application procedures for Judicial Branch Education Technical Assistance Grants, visit the Institute's web site (*www.statejustice.org*) and click on On-Line Tutorials, then Judicial Branch Education Technical Assistance Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. For on-site consultant assistance:

(1) *Need for Funding.* What is the critical judicial branch educational need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

(2) *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix F) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

b. For adaptation of a curriculum:

(1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it with Institute funding? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.*, from across the State, from a single local jurisdiction, from a multi-State region)?

(2) *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)

(5) *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix F.)

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix G) and a budget narrative (see A.4. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 10, 2003 will be notified of the Board's decision by March 28, 2003; those submitting letters between January 11 and February 28, 2003 will be notified by May 30, 2003; those submitting letters between March 1 and June 6, 2003 will be notified by August 29, 2003; and those submitting letters between June 7 and September 26, 2003 will be notified by December 12, 2003.

For curriculum adaptation requests, applicants should allow at least 60 days between the notification deadline and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in late May 2003 should submit its application no later than January 10, 2003, in time for the Board's decision by March 28, 2003.

G. Scholarships

1. Purpose and Scope

The purposes of the Institute scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an educational program in another State. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition and transportation expenses. Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (*e.g.*, reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive $.345/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition and transportation expenses in excess of $1,500 and other costs of attending the program—such as lodging, meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

For a summary of the Scholarship award process, visit the Institute's web site at *www.statejustice.org* and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A Scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works. The course must be designed to enhance the skills of new or experienced judges and court managers; address any of the topics listed in the Institute's Special Interest categories; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

3. Forms

a. Scholarship Application—Form S–1 (Appendix H)

The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. Scholarship Application Concurrence—Form S–2 (Appendix H)

Judges and court managers applying for Scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix H). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

January 3 and March 3, 2003 for programs beginning between

April 1 and June 30, 2003; April 1 and June 2, 2003 for programs beginning between July 1 and September 30, 2003;

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July 7 and August 29, 2003 for programs beginning between October 1 and December 31, 2003; and

October 1 and December 1, 2003 for programs beginning between January 1 and March 31, 2004.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

VII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. Project Grant and Continuation Grant Applications

a. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) The applicant's management plan and organizational capabilities;

(5) The qualifications of the project's staff;

(6) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(7) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(8) The reasonableness of the proposed budget;

(9) The demonstration of cooperation and support of other agencies that may be affected by the project; and

(10) The proposed project's relationship to one of the Special Interest categories set forth in section II.A.

b. For continuation grant applications, the key findings and recommendations of evaluations and the proposed responses to those findings and recommendations also will be considered.

c. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section IV.); the availability of financial assistance from other sources for the project; the amount and nature (cash and in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance Grant Applications

Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the court;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. The court's commitment to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Judicial Branch Education Technical Assistance Grant Applications

Judicial Branch Education Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. For on-site consultant assistance:

(1) Whether the assistance would address a critical need of the court;

(2) The soundness of the technical assistance approach to the problem;

(3) The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

(4) The court's commitment to act on the consultant's recommendations; and

(5) The reasonableness of the proposed budget.

b. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into the State's or local jurisdiction's ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent;

b. The unavailability of State or local funds to cover the costs of attending the program or scholarship funds from another source;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project and Continuation Grant Applications

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for grants. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

2. Technical Assistance and Judicial Branch Education Technical Assistance Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. Applications will be reviewed competitively by a committee of the Board of Directors. The Board of Directors has delegated its authority to approve Technical Assistance and Judicial Branch Education Technical Assistance Grants to the committee established for each program.

Approved awards will be signed by the Chairman of the Board on behalf of the Institute.

3. Scholarships

Scholarship applications are reviewed quarterly by a committee of the Institute's Board of Directors. The Board of Directors has delegated its authority to approve Scholarships to the committee established for the program.

Approved awards will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except Scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each Scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for Scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration.

VIII. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles. (See section IX.K. of the Guideline for the requirements of such audits.) Scholarship recipients and recipients of Solutions Project State Court Information Collection Grants, Judicial Branch Education Technical Assistance Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

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6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients and individuals who receive "think piece" grants are required to provide match. See section III.L. for the definition of match. The amount and nature of required match depends on the type of organization receiving the grant and the duration of the Institute's support.

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section IX.E.1.).

The amount and nature of unrequired match contributed by applicants is a factor the Board of Directors considers in making grant decisions. Cash match and non-cash match may be provided, subject to the requirements of subsections a. and b. below.

a. New Project Grants

(1) *State and local units of government.* All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if a State court or executive branch agency receives a $100,000 grant from the Institute, it must provide a $50,000 match (50% of the $100,000 awarded by SJI). At least 20% of the required match for a new grant ($10,000 in the example) must be provided in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project).

(2) *All other grantees.* All other grantees are required to contribute a match of 25% to a new SJI-funded project. For example, if a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match. A non-profit organization must provide at least 10% of the required match for a new grant ($2,500 in the example) in the form of cash.

b. Continuation Grants

All grantees are required to assume a greater share of project support over time.

(1) *State and local units of government.* State and local units of government are required to provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year. For example, if SJI awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court is required to provide $60,000 in match. A court that wishes to limit its second-year contribution to $50,000 may ask the Institute for a reduced amount, *i.e.*, $83,333, in order to meet the 60% requirement.

(2) *All other grantees.* All other grantees are required to provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization must provide $25,000 in match. If the second-year grant is also $100,000, the grantee is required to provide $30,000 in match. An organization that wishes to limit its second-year contribution to $25,000 may ask the Institute for a reduced amount, *i.e.*, $83,333, in order to meet the 30% requirement.

c. Waiver

(1) *Match generally.*

(a) The match requirement for State and local units of government may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

(b) The match requirement for all other grantees required to provide match may be waived in exceptionally rare circumstances upon the request of an appropriate official and approval by the Board of Directors

(2) *Cash match.* For all grantees required to provide cash match, the requirement may be waived upon the applicant's demonstration that providing the required cash match will cause the applicant a financial hardship.

(3) The Board of Directors encourages all applicants to provide the maximum amount of in-kind and cash match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process. See section VII.B.1.c.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

b. Charges for Grant-Related Products/ Recovery of Costs

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (*e.g.*, a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.O. and IX.G. for requirements regarding project-related income realized during the project period.

c. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Judicial Branch Education Technical Assistance grant, in which case submission of 2 copies is required;

(2) an electronic version of the product in .html format to the Institute; and

(3) one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in Appendix C. Labels for these libraries are available on the Institute's Web site, *http://www.statejustice.org.*) Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

f. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than Scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

b. The quarterly Financial Status Report must be submitted in accordance with section IX.H.2. of this Guideline. A

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final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section IX.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4).

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants

Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants must comply with the requirements listed in section VIII.A. (except the requirements pertaining to audits in section VIII.A.3. and product dissemination in section VIII.A.11.d. and e.) and the reporting requirements below:

1. Judicial Branch Education Technical Assistance Grant Reporting Requirements

Recipients of Judicial Branch Education Technical Assistance Grants must:

a. Submit one copy of the manuals, handbooks, conference packets, or consultant's report developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future and/or implement the consultant's recommendations, as well as two copies of the consultant's report; and

b. Complete a Technical Assistance Evaluation Form at the conclusion of the grant period, if appropriate.

2. Technical Assistance Grant Reporting Requirements

Recipients of Technical Assistance Grants must:

a. Submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report; and

b. Complete a Technical Assistance Evaluation Form at the conclusion of the grant period.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (*e.g.*, by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the Scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program).

Scholarship Payment Vouchers should be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

IX. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

3. generating financial data to be used in planning, managing, and controlling projects; and

4. facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *http://www.whitehouse.gov/OMB.)*

1. Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions.

2. Office of Management and Budget (OMB) Circular A–87, Cost Principles for State and Local Governments.

3. Office of Management and Budget (OMB) Circular A–88 (revised), Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

4. Office of Management and Budget (OMB) Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

5. Office of Management and Budget (OMB) Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

6. Office of Management and Budget (OMB) Circular A–122, Cost Principles for Non-profit Organizations.

7. Office of Management and Budget (OMB) Circular A–128, Audits of State and Local Governments.

8. Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Non-profit Institutions.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. (See section III.F.)

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (see section VIII.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (see sections K. below and VIII.A.3.)

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a *total project cost* basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

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1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section IX.C.2. above.)

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (See section IX.H.2. below.) The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VIII.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "check-issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation Awards.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation grants should treat each grant as a new project and number the requests accordingly (*i.e.*, on a grant rather than a project basis). For example, the first request for payment from a continuation grant would be number 1, the second number 2, etc. (See Appendix B, Answers to Grantees' Frequently Asked Questions, for further guidance.)

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Two copies of the Financial Status Report are required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation Grants.* Grantees receiving continuation grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance with Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in OMB Circulars A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; A–87, Cost Principles for State and Local Governments; and A–122, Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *http://www.whitehouse.gov/OMB.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval. See section X.A.1.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. See sections III.L. and VI.A.4.k.

a. Approved Plan Available

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.*, accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution

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involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all Institute grantees and subgrantees except as provided in section VIII.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant (other than a State court receiving an information collection grant in connection with the Solutions Project) must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128,* or *OMB Circular A–133,* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: Follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a new grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see section IX.L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship, even when the project will continue under a continuation grant.

2. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

X. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments that require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget. See section IX.I.2.d.

For continuation grants, funds from the original award may be used during the new grant period and funds awarded through a continuation grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VIII.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section IX.I.2.a.).

13. The purchase of automated data processing equipment and software (see section IX.I.2.b.).

14. Consultant rates (see section IX.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section IX.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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David I. Tevelin, Executive Director.

Appendix A—Recommendations to Grant Writers

Over the past 15 years, the Institute staff has reviewed approximately 1,750 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing an application. Applications should, however, be presented in the format specified in section VI. of the Guideline.

1. What Is the Subject or Problem You Wish To Address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

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2. What Do You Want To Do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (*e.g.*, to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (*e.g.*, hold 3 training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper, nor does a clever but uninformative title.

3. How Will You Do It?

Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks, and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How Will You Know It Works?

Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Applications should present the criteria that will be used to evaluate the project's effectiveness; identify program elements that will require further modification; and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How Will Others Find Out About It?

Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What Are the Specific Costs Involved?

The budget in an application should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. What, If Any, Match Is Being Offered?

Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required to contribute a match of at least 50 percent of the funds requested from the Institute for a new grant. At least 20% of the required match must be in the form of cash. All other applicants must contribute a match of 25% to a new SJI-funded project, and at least 10% of that match must be in the form of cash.

The match requirement works as follows: If, for example, a State court system receives a $100,000 grant from the Institute, it must provide a $50,000 match; at least 20% of the required match for a new grant ($10,000 in the example) must be in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project). If a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match, and at least 10% of that match ($2,500 in the example) must be in the form of cash.

Cash match includes funds directly contributed to the project by the applicant, or by other private or authorized public sources; income generated from tuition fees or the sale of project products during the grant period; and funds dedicated to the project by the grantee's assumption of approved indirect costs.

Non-cash match refers to in-kind contributions by the applicant, or other private or authorized public sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). The nature of the match (cash or in-kind) should be explained, and the tasks and line items for which costs will be covered wholly or in part by match should be specified.

The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

8. Which of the Two Budget Forms Should Be Used?

Section VI.A.1.c. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How Much Detail Should Be Included in the Budget Narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VI.A.4. of the Guideline. To avoid common shortcomings of application budget narratives, applicants should include the following information:

Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (*e.g.*, Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

Estimates for supplies and expenses supported by a complete description of the supplies to be used, the nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (*e.g.*, 100 reports x 75 pages each x .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What Travel Regulations Apply to the Budget Estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which policies apply to the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site, or the average of airfares from each coast to the meeting site, may be used. Applicants should arrange travel so as to be able to take advantage of advanced-purchase price discounts whenever possible.

11. May Grant Funds Be Used To Purchase Equipment?

Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. The Institute's written prior approval is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To What Extent May Indirect Costs Be Included in the Budget Estimates?

If an indirect cost rate has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. A copy of the approved indirect cost rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement and cannot budget directly for all costs, an indirect cost rate proposal should be prepared in accordance with section IX.I.4. of the Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an aud it should budget all project costs directly.)

13. What Meeting Costs May Be Covered With Grant Funds?

SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals.

14. Does the Budget Truly Reflect All Costs Required To Complete the Project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (*e.g.*, development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Appendix B—Answers to Grantees' Frequently Asked Questions

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,500 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the Grant Has Been Awarded, When Are the First Quarterly Reports Due?

Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—*i.e.*, no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly progress report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, quarterly progress reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, *etc.* The quarterly progress report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a quarterly progress report and attachments should be submitted to the Institute.

Additional quarterly progress report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do Reporting Requirements Differ for Continuation Grants?

Recipients of continuation grants are required to submit quarterly progress and Financial Status Reports on the same schedule and with the same information as recipients of grants for single new projects.

A continuation grant should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant should be designated as number one, the second as number two, and so on, through the final progress and Financial Status Reports due within 90 days after the end of the grant period.

3. What Information About Project Activities Should Be Communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend, if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements, quarterly financial reporting, or payment requests should be addressed to the Institute's Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. Why Are Special Conditions Attached to the Award Document?

Special conditions may be imposed to establish a schedule for reporting certain key information, assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and provide reminders of pertinent Guideline requirements. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Managers any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections VIII., IX., and X. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff are always available to answer questions and provide assistance regarding these provisions.

5. What Is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents or deobligate funds from the grant.

6. What Schedule Should Be Followed in Submitting Requests for Reimbursements or Advance Payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. Do Procedures for Submitting Requests for Reimbursement or Advance Payment Differ for Continuation Grants?

The basic procedures are the same for any grant. A continuation grant should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant should be designated as number one, the

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second as number two, and so on through the final payment request for that grant.

8. If Things Change During the Grant Period, Can Funds Be Reallocated From One Budget Category to Another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations is expected to allocate funds to a previously unbudgeted cost category or to exceed five percent (5%) of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request prior Institute approval.

The same standard applies to continuation grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the continuation award, or to use continuation grant monies to cover costs incurred during the original grant period.

9. What Is the 90-day Close-out Period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. Are Funds Granted by SJI "Federal" Funds?

The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C.10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grant funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

11. If SJI Is Not a Federal Agency, Do OMB Circulars Apply With Respect to Audits?

Unless they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128, and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" (see 42 U.S.C. 10711(c)(1)), the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section IX.K.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133 to satisfy the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline section IX.K.) Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *http://www.whitehouse.gov/OMB.*

12. Does SJI Have a CFDA Number?

Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards.

Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 2001 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees who are required to satisfy either the Single Audit Act or OMB Circulars A–128 or A–133, and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in section IX.K. of the Grant Guideline.

Appendix C—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court Bldg., 300 Dexter Avenue, Montgomery, AL 36104, (334) 242–4347

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska Court Libraries 820 W. Fourth Ave., Anchorage, AK 99501, (907) 264–0583

Arizona

State Law Library

Ms. Gladys Ann Wells, Collection Development, Research Division, Arizona Dept. of Library, Archives and Public Records, State Law Library 1501 W. Washington, Phoenix, AZ 85007 (602) 542–4035

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, Little Rock, AR 72201, (501) 682–9400

California

Administrative Office of the Courts

Mr. William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts 455 Golden Gate Avenue, San Francisco, CA 94107, (415) 865–4200

Colorado

Supreme Court Library

Ms. Linda Gruenthal, Deputy Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, CO 80203, (303) 864–4522

Connecticut

State Library

Ms. Denise D. Jernigan, State Librarian, Connecticut State Library 231 Capital Avenue, Hartford, CT 06106, (860) 566–2516

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building 820 North French Street 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 577–8481

District of Columbia

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks, Executive Officer, District of Columbia Courts 500 Indiana Avenue, NW., Suite 1500, Washington, D.C. 20001, (202) 879–1700

Florida

Administrative Office of the Courts

Ms. Dee Beranek, Deputy State Courts Administrator, Florida Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399–1900, (850) 922–5081

Georgia

Administrative Office of the Courts

Mr. David Ratley, Director, Administrative Office of the Courts, 47 Trinity Avenue, Suite 414, Atlanta, GA 30334, (404) 656–5171

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, 417 South King St., Room 119, Honolulu, HI 96813, (808) 539–4965

Idaho

AOC Judicial Education Library/State Law Library

Ms. Beth Peterson, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court of Illinois Library, 200 East Capitol Avenue, Springfield, IL 62701–1791, (217) 782–2425

Indiana

Supreme Court Library

Mr. Dennis Lager, Supreme Court Librarian, Supreme Court Library, State House, Room 316, Indianapolis, IN 46204, (317) 232–2557

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Office of the State Court Administrator, State Capital Building, Des Moines, IA 50319–0001, (515) 281–8279

Kansas

Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, KS 66612, (913) 296–3257

Kentucky

State Law Library

Ms. Marge Jones, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, KY 40601, (502) 564–4848

Louisiana

State Law Library

Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, LA 70112, (504) 568–5705

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, 43 State House Station, Augusta, ME 04333, (207) 287–1600

Maryland

State Law Library

Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, MD 21401, (410) 260–1430

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer, Librarian , Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494–4148

Michigan

Michigan Judicial Institute

Dawn F. McCarty, Interim Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, MI 48909, (517) 334–7805

Minnesota

State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (612) 297–2084

Mississippi

Mississippi Judicial College

Mr. Leslie Johnson, Director, University of Mississippi, P.O. Box 8850, University, MS 38677, (601) 232–5955

Montana

State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, 215 North Sanders, Helena, MT 59620, (406) 444–3660

Nebraska

Administrative Office of the Courts

Mr. Joseph C. Steele, State Court Administrator, Administrative Office of the Courts/Probation, State Capitol Building, Room 1220, Post Office Box 98910, Lincoln, NE 68509–8910, (402) 471–3730

Nevada

National Judicial College

Mr. Randall Snyder, Law Librarian, National Judicial College , Judicial College Building, University of Nevada, Reno, NV 89550, (775) 784–6747

New Hampshire

New Hampshire Law Library

Ms. Christine Swan, Law Librarian, New Hampshire Law Library, Supreme Court Building, One Noble Drive, Concord, NH 03301–6160, (603) 271–3777

New Jersey

New Jersey State Library

Ms. Marjorie Garwig, Supervising Law Librarian, New Jersey State Law Library, 185 West State Street, P.O. Box 520, Trenton, NJ 08625–0250, (609) 292–6230

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, NM 87504, (505) 827–4850

New York

Supreme Court Library

Ms. Barbara Briggs, Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, 401 Montgomery Street, Syracuse, NY 13202, (315) 435–2063

North Carolina

Supreme Court Library

Mr. Thomas P. Davis, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, 2 East Morgan Street, Raleigh, NC 27601, (919) 733–3425

North Dakota

Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, Dept. 182, 2nd Floor, Judicial Wing, Bismarck, ND 58505–0540, (701) 328–2229

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Honorable Miguel Sablan Demapan, Chief Justice, Supreme Court of the Commonwealth of the Northern Mariana Islands, P.O. Box 2165 CK, Saipan, MP 96950, (670) 236–9700

Ohio

Supreme Court Library

Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2044

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers, Administrative Director of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450,

Oregon

Administrative Office of the Courts

Ms. Kingsley W. Click, State Court Administrator, Office of the State Court Administrator, Supreme Court Building, Salem, OR 97310, (503) 986–5900

Pennsylvania

State Library of Pennsylvania

Ms. Barbara Miller, Collection Management Librarian, State Library of Pennsylvania, Room 218, Forum Building, P.O. Box 1601, Harrisburg, PA 17105, (717) 787–5718

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Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919,

Rhode Island

Roger Williams University

Ms. Gail Winson, Director of the Library, Roger Williams University, School of Law Library, 10 Metacom Avenue, Bristol, RI 02809

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley, Library Director, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, SC 29208, (803) 777–5944

South Dakota

State Law Library

Librarian, 500 East Capitol, Pierre, South Dakota 57501, (605) 773–4898

Tennessee

Tennessee State Law Library

Honorable Cornelia A. Clark, Director, Administrative Office of the Courts, Tennessee Supreme Court, 511 Union, Nashville, TN 37243–0607, (615) 741–2687

Texas

State Law Library

Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463–1722

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Debbie Christiansen, Utah State Judicial Administration Library, Administrative Office of the Courts, 450 South State, P.O. Box 140241, Salt Lake City, UT 84114–0241, (801) 533–6371

Vermont

Supreme Court of Vermont

Mr. Paul J. Donovan, Law Librarian, Department of Libraries, 109 State Street, Montpelier, VT 05609, (802) 828–3278

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin, State Court Administrator, Supreme Court of Virginia, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455

Washington

Washington State Law Library

Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504–0751, (360) 357–2136

West Virginia

Administrative Office of the Courts

Ms. Kathleen Gross, Deputy Director of Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, 1900 Kanawha Boulevard East, Building 1, Room E–100, Charleston, WV 25305, (304) 558–0145

Wisconsin

State Law Library

Ms. Jane Colwin, Director of Public Services, State Law Library 310 E. State Capitol, P.O. Box 7881, Madison, WI 53707, (608) 261–2340

Wyoming

Wyoming State Law Library

Ms. Kathleen B. Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building 2301 Capitol Avenue, Cheyenne, WY 82002, (307) 777–7509

National:

American Judicature Society

Ms. Clara Wells, Assistant for Information and Library Services, 180 North Michigan Avenue, #600, Chicago, IL 60601, (312) 558–6900,

National Center for State Courts

Ms. Peggy Rogers, Acquisitions/Serials Librarian 300 Newport Avenue, Williamsburg, VA 23187–8798, (757) 259–1857

JERITT

Dr. Maureen E. Conner, Executive Director, The JERITT Project, 1407 S. Harrison, Suite 330 Nisbet, East Lansing, MI 48823–5239, (517) 353–8603; (517) 432–3965 (fax); e-mail: *connerm@msu.edu*; Web site: *http://jeritt.msu.edu*

Appendix D—Illustrative List of Technical Assistance Grants

The following list presents examples of the types of technical assistance for which State and local courts can request Institute funding. Please check with the JERITT project (517/353–8603 or *jeritt@msu.edu*) for more information about these and other SJI-supported technical assistance projects.

Application of Technology

Technology Plan (Office of the South Dakota State Court Administrator: SJI–99–066).

Children and Families in Court

Expanded Unified Family Court (Ventura County, CA, Superior Court: SJI–01–122).

Trial Court Performance Standards for the Unified Family Court of Delaware (Family Court of Delaware: SJI–98–205).

Court Planning, Management, and Financing

Job Classification and Pay Study of the New Hampshire Courts (New Hampshire Administrative Office of the Courts: SJI–98–011).

A Model for Building and Institutionalizing Judicial Branch Strategic Planning (12th Judicial Circuit, Sarasota, FL: SJI–98–266).

Strategic Planning (Fourth Judicial District Court, Hennepin County, MN: SJI–99–221).

Differentiated Case Management for the Improvement of Civil Case Processing in the Trial Courts of Texas (Texas Office of Court Administration: SJI–99–222).

Dispute Resolution and the Courts

Evaluating the New Mexico Court of Appeals Mediation Program (New Mexico Supreme Court: SJI–00–122).

Improving Public Confidence in the Courts

Mississippi Task Force on Gender Fairness in the Courts (Mississippi Administrative Office of the Courts: SJI–00–108).

Analysis of the Juror Debriefing Project (King County, WA, Superior Court: SJI–00–049).

Improving the Court's Response to Family Violence

New Hampshire Fatality Reviews (New Hampshire Administrative Office of the Courts: SJI–99–142).

Education and Training for Judges and Other Court Personnel

Iowa Supreme Court Advisory Committee on Judicial Branch Education (Iowa State Court Administrator's Office: SJI–01–200).

Appendix E—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Judicial Branch Education Technical Assistance Grant. *Please refer to section VI.F. for information on submitting a letter application for a Judicial Branch Education Technical Assistance Grant.* A list of all SJI-supported education projects is available on the SJI Web site (*http://www.statejustice.org*). Please also check with the JERITT project (517/353–8603 or http://jeritt.msu.edu). and your State SJI-designated library (see Appendix C). for more information about these and other SJI-supported curricula that may be appropriate for in-State adaptation.

Alternative Dispute Resolution

Judicial Settlement Manual (National Judicial College: SJI–89–089).

Improving the Quality of Dispute Resolution (Ohio State University College of Law: SJI–93–277).

Comprehensive ADR Curriculum for Judges (American Bar Association: SJI–95–002).

Domestic Violence and Custody Mediation (American Bar Association: SJI–96–038).

Court Coordination

Bankruptcy Issues for State Trial Court Judges (American Bankruptcy Institute: SJI–91–027).

Intermediate Sanctions Handbook: Experiences and Tools for Policymakers (Center for Effective Public Policy: IAA–88–NIC–001).

Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships (U.S. Court of Appeals for the 9th Circuit: SJI–92–087).

Bankruptcy Issues and Domestic Relations Cases (American Bankruptcy Institute: SJI–96–175).

Court Management

Managing Trials Effectively: A Program for State Trial Judges (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026).

Caseflow Management Principles and Practices (Institute for Court Management/National Center for State Courts: SJI–87–056).

A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts (National Center for State Courts: SJI–90–052).

Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards (Institute for Court Management/National Center for State Courts: SJI–91–043).

Strengthening Rural Courts of Limited Jurisdiction and *Team Training for Judges and Clerks* (Rural Justice Center: SJI–90–014, SJI–91–082).

Interbranch Relations Workshop (Ohio Judicial Conference: SJI–92–079).

Integrating Trial Management and Caseflow Management (Justice Management Institute: SJI–93–214).

Leading Organizational Change (California Administrative Office of the Courts: SJI–94–068).

Privacy Issues in Computerized Court Record Keeping: An Instructional Guide for Judges and Judicial Educators (National Judicial College: SJI–94–015).

Managing Mass Tort Cases (National Judicial College: SJI–94–141).

Employment Responsibilities of State Court Judges (National Judicial College: SJI–95–025).

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from "NACM Core Competency Curriculum Guidelines" (National Association for Court Management: SJI–96–148).

Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff (Institute for Court Management/ National Center for State Courts: SJI–96–159).

Caseflow Management from "Innovative Educational Programs for Judges and Court Managers" (Justice Management Institute: SJI–98–041).

Courts and Communities

Reporting on the Courts and the Law (American Judicature Society: SJI–88–014).

Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI–89–083).

National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI–91–013).

Access to Justice: The Impartial Jury and the Justice System and When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide (National Judicial College: SJI–91–054).

You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI–94–048).

Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI–96–040).

Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference (California Administrative Office of the Courts: SJI–98–008).

Charting the Course of Public Trust and Confidence in Our Courts (Mid-Atlantic Association for Court Management: SJI–98–208).

Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community (National Center for State Courts: SJI–98–268).

Public Trust and Confidence (Arizona Courts Association: SJI–99–063).

Diversity, Values, and Attitudes

Troubled Families, Troubled Judges (Brandeis University: SJI–89–071).

The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–90–058).

Enhancing Diversity in the Court and Community (Institute for Court Management/ National Center for State Courts: SJI–91–043).

Cultural Diversity Awareness in Nebraska Courts from Native American Alternatives to Incarceration Project (Nebraska Urban Indian Health Coalition: SJI–93–028).

Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI–93–063).

A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and *The Ethics Fieldbook: Tool For Trainers* (American Judicature Society: SJI–93–068).

Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI–93–075).

Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI–94–019).

Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI–95–006).

Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI–95–082).

Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI 95–245).

Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI 96–089).

Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI–96–150).

When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI 96–161).

When Judges Speak Up: Ethics, the Public, and the Media (American Judicature Society: SJI–96–152).

Family Violence and Gender-Related Violent Crime

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI–88–081).

Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI–89–062).

Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI–92–003, SJI–98–133 [video curriculum]).

Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI–93–255).

Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute (National Judicial Education Program: SJI 95–019).

Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI–93–274).

Health and Science

Environmental Law Resource Handbook (University of New Mexico Institute for Public Law: SJI–92–162).

A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI–97–030).

Judicial Education for Appellate Court Judges

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI–88–086).

Civil and Criminal Procedural Innovations for Appellate Courts. (National Center for State Courts: SJI–94–002).

Judicial Branch Education: Faculty and Program Development

The Leadership Institute in Judicial Education and *The Advanced Leadership Institute in Judicial Education* (University of Memphis: SJI–91–021).

Faculty Development Instructional Program" from *Curriculum Review* (National Judicial College: SJI–91–039).

Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI–95–233).

Institute for Faculty Excellence in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–96–042; University of Memphis: SJI–01–202).

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Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI–89–043, SJI–91–040).

Pre-Bench Training for New Judges (American Judicature Society: SJI–90–028).

A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI–90–078).

Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI–91–043).

Judicial Review of Administrative Agency Decisions (National Judicial College: SJI–91–080).

New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI–92–155).

Magistrates Correspondence Course (Alaska Court System: SJI–92–156).

Computer-Assisted Instruction for Court Employees (Utah Administrative Office of the Courts: SJI–94–012).

Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94–058).

Ethical Issues in the Election of Judges (National Judicial College: SJI–94–142).

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from "NACM Core Competency Curriculum Guidelines" (National Association for Court Management: SJI–96–148).

Innovative Approaches to Improving Competencies of General Jurisdiction Judges (National Judicial College: SJI–98–001).

Caseflow Management from "Innovative Educational Programs for Judges and Court Managers" (Justice Management Institute: SJI–98–041.

Juveniles and Families in Court

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI–90–017).

Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI 94–321).

Juvenile Justice at the Crossroads: Literature-Based Seminars for Judges, Court Personnel, and Community Leaders (Brandeis University: SJI–99–150).

Strategic and Futures Planning

Minding the Courts into the Twentieth Century (Michigan Judicial Institute: SJI–89–029).

An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI–91–045).

Substance Abuse

Effective Treatment for Drug-Involved Offenders: A Review & Synthesis for Judges and Court Personnel (Education Development Center, Inc.: SJI–90–051).

Good Times, Bad Times: Drugs, Youth, and the Judiciary (Professional Development and Training Center, Inc.: SJI–91–095).

Gaining Momentum: A Model Curriculum for Drug Courts (Florida Office of the State Courts Administrator: SJI–94–291).

Judicial Response to Substance Abuse: Children, Adolescents, and Families (National Council of Juvenile and Family Court Judges: SJI–95–030).

BILLING CODE 6820–SC–P

Appendix F

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Applicant Name _____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person _____
k. Title _____
l. E-Mail Address _____

2. TYPE OF APPLICANT *(Circle appropriate letter)*
a. State court
b. National organization operating in conjunction with State court
c. National State court support organization
d. College or university
e. Other non-profit organization or agency
f. Individual
g. Corporation or partnership
h. Other unit of government
i. Other _____ (specify)

3. PROPOSED START DATE _____

4. PROJECT DURATION (Months) _____

5. EMPLOYER IDENTIFICATION # _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____

7. ENTITY TO RECEIVE FUNDS *(if different from above)*
a. Organizational Name _____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person _____
k. Title _____
l. E-Mail Address _____

8. a. AMOUNT REQUESTED FROM SJI $ _____
b. AMOUNT OF MATCH
Cash match $ _____
Non-cash match $ _____
c. TOTAL MATCH $ _____
d. TOTAL PROJECT COST $ _____

9. TITLE OF PROPOSED PROJECT

10. CONGRESSIONAL DISTRICT OF: _____ (Name of Representative, District Number) _____ (Project (if different than applicant): Name of Representative, District Number)

11. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on behalf of the applicant.

_____ SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT
_____ TITLE
_____ DATE
(For applications from State and local courts, Form B, Certificate of State Approval, must be attached.)

FOR INSTITUTE USE ONLY

12. a. APPLICATION NUMBER _____
b. CONCEPT PAPER NUMBER _____
c. GRANT NUMBER _____

13. DATE RECEIVED

14. DATE OF ACTION

Form A 09/00

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STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-l **Legal name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of applicant, including phone and fax numbers and web site address; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. a **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

2. b **National organizations operating in conjunction with State court** include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

2. c **National state court organizations** include national non-profit organizations with the primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

2. d **College or university** includes all institutions of higher education.

2. e **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

2. f **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

2. g **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

2. h **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. **The proposed start date** of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award.

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. **Employer Identification #** as assigned by the Internal Revenue Service.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of the submission, the **amount** of funding sought, and the **disposition** (if any).

7. a-l **The entity to receive funds** is the court or organization that will receive, administer, and account for any monies awarded. If the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its agency or council designated in accordance with 42 U.S.C. 10705(b) (4). **Applicants should complete this block only if the entity that will receive the funds is different from the applicant.**

8. a Insert the **amount requested** from the State Justice Institute to conduct the project.

8. b The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, a Federal agency, or private sources. See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project.

8. c **Total match** refers to the sum of the cash and in-kind contributions to the project.

8. d **Total project cost** represents the sum of the amount requested from the Institute and all match contributions to the project.

9. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

10. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.

11. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

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(Form B)

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____
Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____ _____
Signature *Date*

_____
Name

_____
Title

INSTRUCTIONS

The State Justice Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council.

The term "State Supreme Court' refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

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STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs							
Total							

Remarks:

Form C 5/95 *(Instructions on reverse side)*

91853

STATE JUSTICE INSTITUTE

PAGE ____ OF ____

PROJECT BUDGET

(SPEADSHEET FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

(See instruction regarding column headings)

ITEM							
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs (%)							
SJI Total							
STATE FUNDS							
FEDERAL FUNDS							
APPLICANT FUNDS							
OTHER FUNDS							
IN-KIND FUNDS							
Total							

Form C1 5/95 *(Instructions on reverse side)*

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Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE

ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

   a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

   b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

   c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

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9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must by properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project: This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

☐ Yes ☐ No **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered YES above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

_____

Signature **Name (Typed)**

_____

Title **Date**

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Appendix G

(Form E)

STATE JUSTICE INSTITUTE

LINE-ITEM BUDGET FORM

For Judicial Branch Education Technical Assistance and Technical Assistance Grant Requests*

Category	SJI Funds	Cash Match	In-Kind Match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____

PROJECT TOTAL $_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Judicial Branch Education Technical Assistance Grant requests and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

Appendix H

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____ (Last) _____ (First) _____ (MI)
2. Position: _____
3. Name of Court: _____
4. Address: _____ Street/P.O. Box
   _____ City _____ State _____ Zip Code
5. Telephone No. _____
6. Congressional District: _____

PROGRAM INFORMATION:

7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

ESTIMATED EXPENSES:

(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $ _____ Transportation: $ _____
(Airfare, train fare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Amount Requested: $_____

Are you seeking/have you received a scholarship for this course from another source?

☐ Yes ☐ No. If so, please specify the source(s) and amounts(s) _____

_____

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SJI SCHOLARSHIP APPLICATION PAGE 2

ADDITIONAL INFORMATION

Please attach a current resume or professional summary, and provide the information requested below. (You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how will taking this course benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? _____

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

❑ 0–1 year ❑ 2–4 years ❑ 5–7 years ❑ 8–10 years ❑ 11+ years

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ Signature

_____ Date

Please return this form and Form S-2 to:

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

SJI Scholarship Application

Concurrence

I, _____
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____

prepared by _____
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

_____
Signature

_____
Name

_____
Title

_____
Date

Form S2 (9/98)

[FR Doc. 02–29993 Filed 11–29–02; 8:45 am]
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Federal Register

Monday,
December 2, 2002

Part III

Securities and Exchange Commission

17 CFR Part 205
Implementation of Standards of Professional Conduct for Attorneys; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 205

[Release Nos. 33–8150; 34–46868; IC–25829; File No. S7–45 –02]

RIN 3235–AI72

Implementation of Standards of Professional Conduct for Attorneys

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comments on a proposed rule that would establish standards of professional conduct for attorneys who appear and practice before the Commission on behalf of issuers. Section 307 of the Sarbanes-Oxley Act of 2002 requires the Commission to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers. The standards must include a rule requiring an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors. Proposed Part 205 responds to this directive and is intended to protect investors and increase their confidence in public companies by ensuring that attorneys who work for those companies do not ignore evidence of material misconduct.

DATES: Comments should be received on or before December 18, 2002.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or by e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Alternatively, comments may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. 33–8150.wp; this file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on the Commission's internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Timothy N. McGarey or Edward C. Schweitzer at 202–942–0835.

SUPPLEMENTARY INFORMATION: The Commission is proposing to add a new Part 205 to Title 17, Chapter II, of the Code of Federal Regulations[2] establishing standards of professional conduct for attorneys who appear and practice before the Commission in the representation of issuers, under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Sarbanes-Oxley Act of 2002.

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I. Purpose of This Rule Proposal

The purpose of this release is to solicit comments on proposed Part 205,[3] which prescribes Standards of Professional Conduct for Attorneys who appear and practice before the Commission in any way in the representation of issuers.

Section 307 of the Sarbanes-Oxley Act of 2002 (the "Act") (15 U.S.C. 7201 *et seq.*) mandates that the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) Requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) If the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

The proposed rule responds to this directive.[4]

II. Commission Initiatives to Establish Professional Standards for Attorneys Appearing and Practicing Before the Commission

A. The Role of Attorneys Who Appear Before the Commission

Attorneys play a varied and crucial role in the Commission's processes. Attorneys prepare, or assist in the preparation of, materials that are filed with or submitted to the Commission by, or on behalf of, issuers. These materials are relied upon by public investors in making their investment decisions. Thus, the Commission, and the investing public, must be able to rely upon the integrity of in-house and retained lawyers who represent issuers.

Attorneys also play an important and expanding role in the internal processes and governance of issuers, ensuring compliance with applicable reporting and disclosure requirements (including, inter alia, requirements mandated by the federal securities laws). During the floor debate on the amendment that was subsequently adopted and enacted as Section 307 of the Act, Senator John Edwards emphasized the important function attorneys play at public companies. "This amendment is about making sure those lawyers, in addition to the accountants and executives in the company, don't violate the law and, in fact, more importantly, ensure that the law is being followed."[5] Unfortunately, the actions of some attorneys have drawn increasing scrutiny and criticism in light of recent events demonstrating that at least "some lawyers have forgotten their responsibility."[6] Moreover, existing state ethical rules have not proven to be an effective deterrent to attorney misconduct.[7] The July 16, 2002 *Preliminary Report of the American Bar Association Task Force on Corporate Responsibility* (hereinafter the "Cheek Report") noted that "a disturbing series of recent lapses in corporations involving false or misleading financial statements and alleged misconduct by executive officers' has compromised investors' confidence in both the "quality and the integrity'of the governance of public companies.[8] Indeed, the Task Force concluded that "the system of corporate governance at many public companies has failed dramatically." Moreover, the Task Force's preliminary report acknowledges that attorneys representing and advising corporate clients bear some share of the blame for this failure.[9]

Moreover, foreign attorneys are playing an ever greater role in connection with their representation of issuers making Commission filings. With the globalization of the U.S. capital markets, there has been a marked increase in the number of companies from non-U.S. jurisdictions registering securities with the Commission.[10] At present, there are over 1,300 foreign private issuers from 59 countries that are filing reports with the Commission under the Exchange Act, as compared with approximately 400 issuers from less than 30 countries in 1990. As a result, it is important to address how the proposed rule would apply to these foreign attorneys.

B. The Commission's Ability To Discipline Attorneys Under Rule 102(e)

Rule 102(e) of the Commission's Rules of Practice has been the primary vehicle available to the Commission to protect its processes and ensure the competence of professionals (including attorneys) who appear and practice before it.[11] The Commission adopted Rule 102(e) as a "means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence."[12] The rule permits the Commission to initiate disciplinary proceedings against attorneys who lack integrity or competence, engage in improper professional conduct,[13] or who are determined to have violated provisions of the federal securities laws. The sanctions available in those proceedings include censure, temporary suspension, and permanent bar.

Professionals against whom the Commission has instituted Rule 102(e) proceedings (particularly accountants) have challenged the Commission's authority to promulgate the rule. Every court that has ever considered the issue has concluded that the Commission possessed the authority to promulgate Rule 102(e), and the courts have recognized that it is appropriate for the Commission to use a disciplinary mechanism like Rule 102(e) to protect the integrity of its processes and to encourage professionals to adhere to minimum standards of competence.[14] Nevertheless, as noted below, the Commission's use of Rule 102(e) has proven to be controversial,[15] and until enactment of the Act, the Commission has never had express statutory authority to promulgate a rule establishing standards of conduct for attorneys representing issuers.[16]

C. Prior Commission Consideration of an Attorney's Obligation to Report Corporate Misconduct to Management

Even before enactment of the Act, the Commission had addressed the responsibility of attorneys appearing and practicing before the Commission to report to management evidence of misconduct of which they become aware during the course of their representation of a public company.

In a 1981 decision, *In the Matter of William R. Carter, Charles J. Johnson, Jr.*, 22 S.E.C. Docket No. 292, 1981 WL 384414, the Commission reversed an initial decision by a Commission Administrative Law Judge that concluded that two attorneys who failed to correct misstatements contained in a client's press releases and Commission filings concerning earnings had aided and abetted their client's violation of the federal securities laws. The Commission

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[1] The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested persons submitting comments should only submit information that they wish to make publicly available.

[2] 17 CFR part 205.

[3] Proposal 17 CFR part 205.

[4] The Act mandates that the Commission issue a rule establishing such minimum standards of conduct for attorneys within 180 days of its enactment. The Act was signed into law by President Bush on July 30, 2002. Accordingly, the new rule must be issued by January 26, 2003. The Commission may, in the event it determines it appropriate in light of the mandate of Section 307, supplement the rule establishing minimum standards after that date.

[5] See remarks by Senator John Edwards, 148 Cong. Rec. S6552 (July 10, 2002).

[6] *Id.* at S6551. *See also* Speech by SEC Chairman Harvey L. Pitt: Remarks Before the Annual Meeting of the American Bar Association's Business Law Section (Aug. 12, 2002) ("recent events have refocused our attention on the need for the profession to assist us in ensuring that fundamental tenets of professionalism, ethics and integrity work to ensure investor confidence in public companies."), available at http://www.sec.gov/news/speech/spch579.htm.

[7] See remarks by Senator Michael Enzi, 148 Cong. Rec. at S6555 ("I am usually in the camp that believes that [s]tates should regulate professionals within their jurisdiction. However, in this case, the [s]tate bars as a whole have failed. They have provided no specific ethical rule of conduct to remedy this kind of situation. Even if they do have a general rule that applies, it often goes unenforced.").

[8] See Cheek Report at 3–4.

[9] See Cheek Report at 7 ("It is a clear failure of corporate responsibility if executive officers aware of potential accounting irregularities sell millions of dollars of stock to public investors who are unaware of [earnings misstatements and self-dealing by corporate officers]. It is a clear failure of corporate responsibility for insiders to borrow enormous amounts from their companies without adequate security beyond inflated stock of the company itself. And it is a clear failure of corporate responsibility when outside directors, auditors and lawyers, who have important roles in our system of independent checks on the corporation's management, fail to avert or even discover—and sometimes actually condone or contribute toward the creation of—the grossest of financial manipulations and fraud.").

[10] The Commission realizes that the application of Section 307 and the rules we are proposing under Part 205 to foreign law firms, multijurisdictional law firms, and foreign lawyers employed by those law firms and foreign registrants, raises a number of significant and difficult issues. We are requesting comment on a broad range of questions in this area, including whether foreign law firms and foreign lawyers should be exempt from Part 205.

[11] Rule 2(e), the predecessor to Rule 102(e), was promulgated in 1935. Rule 2(e) was redesignated Rule 102(e) in 1995. For the sake of uniformity, the rule will be referred to throughout this release as Rule 102(e).

[12] *Touche Ross & Co.* v. *SEC*, 609 F.2d 570, 582 (2d Cir. 1979). The Commission's existing Rule 102 addresses the conduct of attorneys, accountants, engineers and other professionals or experts who appear or practice before the Commission. 17 CFR 201.102(e)(2) and (f)(2).

[13] Rule 102(e) does not establish professional standards. Rather, the rule enables the Commission to discipline professionals who have engaged in improper professional conduct by failing to satisfy the rules, regulations or standards to which they are already subject, including state ethical rules governing attorney conduct, or generally accepted accounting principles (GAAP) or generally accepted auditing standards (GAAS) governing the conduct of accountants.

[14] *See Touche Ross* v. *SEC*, 609 F.2d 570 (2d Cir. 1979) (Rule 2(e) was validly promulgated pursuant to the Commission's "broad authority" to adopt rules and regulations necessary to carry out the Commission's designated functions); *Davy* v. *SEC*, 792 F.2d 1418 (9th Cir. 1986)(concluding that the Commission had statutory authority to adopt Rule 102(e)); *Checkosky* v. *SEC*, 23 F.3d 452, 456 (D.C. Cir. 1994) ("There can be little doubt that the Commission, like any other institution in which lawyers or other professionals participate, has authority to police the behavior of practitioners before it") (Silberman, J., *quoting Polydoroff* v. *ICC*, 773 F.2d 372, 374 (D.C. Cir. 1985)).

[15] *Compare* Norman S. Johnson & Ross A. Albert, *"Deja Vu All Over Again": The Securities and Exchange Commission Once More Attempts to Regulate the Accounting Profession Through Rule 102(e) of its Rules of Practice*, 1999 Utah L. Rev. 553, *with* Paul Gonson, *The 1998 Amendment to SEC Rule 102(e) Will Withstand Judicial Scrutiny*. 1999 Utah L. Rev. 609.

[16] In 1998, in response to the opinion from the U.S. Court of Appeals for the District of Columbia Circuit in *Checkosky* v. *SEC*, in which the Court criticized the Commission's interpretation of Rule 102(e) to the extent it was applied to accountants, the Commission amended Rule 102(e) to clarify the Commission's standard for determining when accountants engage in "improper professional conduct". The Commission did not at that time amend the rule to address how it would apply the rule to misconduct by attorneys.

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concluded that existing ethical standards governing the conduct of attorneys did not unambiguously proscribe the behavior in question, and the Commission therefore did not sanction the attorneys. Nevertheless, the Commission announced that in the future it would interpret Rule 102(e) to require an attorney who learns that a client is "engaged in a substantial and continuing failure to satisfy" disclosure requirements prescribed by the federal securities laws to "take[] prompt steps to end the client's noncompliance" in order to avoid violating professional standards. 1981 WL 384414 at *29–*31.[17] The Commission indicated that the attorney can initially simply "counsel[] accurate disclosure" by the client. However, in the event the client does not cure the deficiency, the Commission stated that an attorney must take additional "more affirmative steps" including possibly a "direct approach to the board of directors or one or more individuals or officers" or an attempt "to enlist the aid of other members of the firm's management" to correct the deficiency. *Id.* at *31. "What is required, in short, is some prompt action that leads to the conclusion that the lawyer is engaged in efforts to correct the underlying problem, rather than having capitulated to the desires of a strong-willed, but misguided client." *Id.* at *31.

The Commission announced in its decision in *Carter and Johnson* that it would solicit comments from the public regarding whether the newly articulated interpretation of "unethical or improper professional conduct" should be expanded or modified. *Id.* at *28. The release doing so stated that, based on the comments received, the Commission might or might not expand or modify its interpretation of the phrase "unethical or improper professional conduct" in Rule 102(e). "Until that time, the present interpretation will govern all similar circumstances for purposes of proceedings pursuant to Rule [102](e) if the conduct occurred after February 28, 1981"—the date on which the Commission announced its interpretation in *Carter and Johnson*.[18]

[17] The Commission specifically opined that "[w]hen a lawyer with significant responsibilities in the effectuation of a company's compliance with the disclosure requirements of the federal securities laws becomes aware that his client is engaged in a substantial and continuing failure to satisfy those disclosure requirements, his continued participation violates professional standards unless he takes prompt steps to end the client's noncompliance." 1981 WL 384414 at *29.

[18] *Request for Comments on Standard of Conduct Constituting Unethical or Improper Professional Practice Before the Commission*, 1981 SEC LEXIS 730 at *3–*4 (Sept. 21, 1981).

The Commission's announcement in *Carter and Johnson* of the standard to be applied to similar cases in the future and its request for written comments engendered strong opposition from the private bar. The Commission, however, never amended the interpretation of "unethical or improper professional conduct" articulated in *Carter and Johnson*.[19]

Subsequently, the Commission's then-General Counsel expressed concern in a speech regarding the Commission's lack of either "the time or expertise" to fashion a code of professional conduct for attorneys appearing and practicing before it.[20] He further suggested that the Commission should focus its attention on bringing Rule 102(e) proceedings against attorneys when the alleged misconduct represents "a violation of established state law ethical or professional misconduct rules and has a direct impact on the Commission's internal processes," and indicated that the Commission generally should not institute Rule 102(e) proceedings against attorneys absent a judicial determination that the lawyer has violated the federal securities laws.[21]

In 1988, the Commission issued a release announcing adoption of an amendment to Rule 102(e) to provide for public proceedings initiated under the rule. *See Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission*, 1988 SEC LEXIS 1365 (July 7, 1988). The majority of the release discussed the basis for the Commission's conclusion that the benefit of conducting such proceedings in public outweighed the competing privacy concerns. The Commission noted in the release that it "has generally utilized Rule [102(e)] proceedings against attorneys only where the attorney's conduct has already provided the basis for a judicial or administrative order finding a securities law violation in a non-rule [102(e)] proceeding" and that it would continue to follow this policy. *Id.* at *22.

Nevertheless, the Commission has continued to assess the actions of attorneys who learn of misconduct by public company clients outside of the context of Rule 102(e). In a subsequent case, *In the Matter of George C. Kern, Jr.*, 50 S.E.C. 596, 1991 SEC LEXIS 1222 (June 21, 1991), a Commission Administrative Law Judge concluded that an attorney serving both as outside counsel and as a director of a company caused his client to violate the Exchange Act by failing to amend his client's prior filing with the Commission to reflect more recent developments during the course of a tender offer. The ALJ nevertheless concluded that he lacked authority to enter an order directing future compliance pursuant to Section 15(c)(4) of the Exchange Act, and discontinued the proceedings. The Commission affirmed the order discontinuing proceedings.

In another case, *In the Matter of John H. Gutfreund, Thomas W. Strauss and John W. Meriwether*, 51 S.E.C. 93 (Dec. 3, 1992), the Commission issued a report of investigation pursuant to its authority under Section 21(a) of the Exchange Act (15 U.S.C. 78u(a)) concerning the actions of the chief legal officer at a broker-dealer who was apprised of criminal wrongdoing by a corporate officer. While the chief legal officer was not named as a respondent, the Commission issued the report to emphasize its views on the supervisory responsibilities of legal and compliance officers who learn of misconduct by their employer or by a co-worker. The Commission concluded that such individuals are "obligated to take affirmative steps to ensure that appropriate action is taken to address the misconduct," including "disclosure of the matter to the entity's board of directors, resignation from the firm, or disclosure to regulatory authorities." *Id.* at 113–114.[22]

[19] In a previous case, *In the Matter of Keating, Muething & Klekamp*, 1979 SEC LEXIS 1186 (July 2, 1979), the Commission instituted and settled a Rule 102(e) proceeding against a law firm which prepared Commission filings by a financial client. The Commission concluded that virtually every member of the firm knew that disclosures contained in the client's filings were inadequate and misleading, but that the internal procedures at the firm were inadequate to ensure that this information was properly evaluated in connection with the firm's preparation of Commission filings or reflected within the filings. The Commission specifically opined that "[a] law firm has a duty to make sure that disclosure documents filed with the Commission include all material facts about a client of which it has knowledge as a result of its legal representation of that client." *Id.* at *27.

[20] *See* Edward F. Greene, Lawyer Disciplinary Proceedings before the Securities and Exchagne Commission, Remarks to the New York County Lawyers' Association, (Jan. 18, 1982), Fed. Sec. L. Rep. (CCH) ¶ 83,089.

[21] *See* Fed. Sec. L. Rep. (CCH) ¶ 83,089 ("When the attorney's alleged misconduct is predicated on theories of aiding and abetting liability, as it almost always is when the conduct involves the preparation and filing of documents, and the Commission is also proceeding against the principals in a simultaneous injunctive action, I believe that the wisest course for the Commission to follow is to add the attorney to the injunctive action as a co-defendant. If that is not possible for unusual reasons, then an administrative proceeding under Rule (102(e)] could be commenced. And in those administrative proceedings based upon violations of standards of ethical or professional conduct, I believe that the Commission should use existing state law standards.").

[22] In 1997, the Commission issued another report of investigation in a matter involving officers and directors of W.R. Grace Co. The Commission concluded that these individuals failed to take action to ensure full and prompt disclosure of substantial retirement benefits the company had agreed to pay to its former CEO in the company's annual report, a 10K filing, and a proxy statement. *See Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Concerning the Conduct of Certain Former Officers and Directors of W.R. Grace & Co.*, 1997 SEC LEXIS 2038 (Sep. 30, 1997). The Commission issued the report in order "to emphasize the affirmative responsibilities of corporate officers and directors to ensure that the shareholders whom they serve receive accurate and complete disclosure of information required by the proxy solicitation and periodic reporting provisions of the federal securities laws." 1997 SEC LEXIS 2038, *3. Although none of the officers and directors named in the matter were attorneys, the report emphasizes the affirmative duty of an issuer's management to correct misconduct and make full disclosure of relevant matters to investors. See also cases discussed infra in n.31 and accompanying text.

In sum, while the Commission has opined on a case-by-case basis that lawyers appearing and practicing before the Commission have an obligation to report corporate misconduct to appropriate officers and directors, it has not adopted comprehensive standards directing attorneys to report instances of misconduct.

III. Section 307 of the Sarbanes-Oxley Act

In the wake of sensational revelations concerning Enron and other public companies, a group of legal academics forwarded a letter to Chairman Pitt urging the Commission to impose an "up the ladder" reporting requirement on attorneys that would oblige attorneys who learn of misconduct at public companies to report this information to the management of the company.[23] In a March 28, 2002 response, the Commission's then-General Counsel did not take issue with the academics' proposals but noted that there are good reasons why "a significant change in established practice should be undertaken in the context of Congressional legislation, as opposed to agency rulemaking."[24] Senator John Edwards, the sponsor of Section 307, learned of this exchange of letters and concluded that it was time for Congress to act to provide a context of Congressional legislation for Commission rules imposing an "up the ladder" reporting requirement on attorneys representing public companies.[25]

[23] *See* March 7, 2002 letter to Chairman Pitt from Richard Painter, *et al.*, at http://www.abanet.org/buslaw/corporateresponsibility/responsibility_relatedmat.html.

[24] *See* March 28 letter from David Becker to Painter, *et al.*, at http://www/abanet.org/buslaw/corporateresponsibility/responsibility_relatedmat.html.

[25] *See* 148 Cong. Rec. S6524–02, S6551–6552 (July 10, 2002).

[26] *See* 148 Cong. Rec. S6552 (July 10, 2002).

[27] Although legislative history for Section 307 is limited, comments made by its sponsors in speeches delivered on the Senate floor suggest that the sponsors' immediate goal was to impose an "up the ladder" reporting system upon lawyers representing issuers. *See* remarks by Senator John Edwards, 148 Cong. Rec. S6552 (July 10, 2002) ("This amendment is about making sure those lawyers, in addition to the accountants and executives in the company, don't violate the law and, in fact, more importantly, ensure that the law is being followed. * * * If you find out that the managers are breaking the law, you must tell them to stop. If they won't stop, you go to the board of directors, which represents the shareholders, and tell them what is going on. If they won't act responsibly and in compliance with the law, then you go to the board and say something has to be done; there is a violation of the law occurring. It is basically going up the ladder, up the chain of command. * * *. This amendment acts in a very simple way. It basically instructs the SEC to start doing exactly what they were doing 20 years ago, to start enforcing this up-the-ladder principle."). *See also id.* at S6555 (comments by Senator Enzi) ("When their counsel and advice is sought, attorneys should have an explicit, not just an implied, duty to advise the primary officer and then, if necessary, the auditing committee or the board of directors of any serious legal violation of the law by a corporate agent. Currently, there is no explicit mandate requiring this kind of conduct. It is clearly in the best interest of their client to disclose this type of information") and S6556 (comments by Senator Corzine) ("The bottom line is this. Lawyers can and should play an important role in preventing and addressing corporate fraud. Our amendment seeks to ensure that. It seeks to go back to the old way: when lawyers know of illegal actions by a corporate agent, they should be required to report the violation to the corporation.").

Section 307 of the Act requires the Commission to promulgate minimum ethical standards for attorneys representing issuers, including an "up the ladder" reporting requirement on attorneys as originally proposed by the Commission in *Carter and Johnson*[26] as a means of addressing the same types of concerns regarding attorney behavior and shareholder protection as were described in the Cheek Report. The provision directs the Commission to issue rules applicable to all attorneys appearing and practicing before the Commission in the representation of issuers that require attorneys initially to report evidence of a material violation to appropriate officers within the issuer and, thereafter, to the highest authority within the issuer if the initial report does not result in an appropriate response.[27]

IV. Proposed Part 205

A. General Overview

Proposed Part 205 responds to Congress' mandate that the Commission adopt an effective "up the ladder" reporting system, and evidences the Commission's intention to implement a robust system in this regard. As set forth in greater detail in the discussion below, the proposed rule would adopt an expansive view of who is appearing and practicing before the Commission. This approach recognizes that attorneys interact with the Commission on behalf of issuer clients in a number of ways, and protects investors by reaching attorney conduct that may threaten the Commission's processes and harm shareholders.

In addition to a rigorous "up the ladder" reporting requirement, the proposed rule incorporates several corollary provisions that are not explicitly required by Section 307, but which the Commission believes are important components of an effective "up the ladder" reporting system. Under certain circumstances, these provisions permit or require attorneys to effect a so-called "noisy withdrawal" and to notify the Commission that they have done so and permit attorneys to report evidence of material violations to the Commission. These provisions embody ethical principles that legal commentators and the ABA have been considering for years,[28] and are similar in important respects to ethical rules that have already been enacted in a number of jurisdictions. At the same time, the proposed rule does not attempt to articulate a comprehensive set of standards regulating all aspects of the conduct of attorneys who appear and practice before the Commission. The Commission does not intend to supplant state ethics laws unnecessarily, particularly in areas (*e.g.*, safeguarding of client assets, escrow procedures, advertising) where the Commission lacks expertise. The Commission believes that the proposed rule will deter instances of attorney and issuer misconduct and where misconduct has occurred, minimize its impact upon issuers and their shareholders.

At the same time, the Commission does not want the rule to impair zealous advocacy, which is essential to the Commission's processes. The Commission also does not want the rule to discourage issuers from seeking and obtaining effective and creative legal advice. Finally, the Commission is cognizant of the ongoing efforts by the ABA and other organizations to address many of the same issues that are covered by the rule, and will continue to monitor those efforts and review the content and operation of the rule, particularly insofar as any measure adopted by the ABA or some other organization or entity extends beyond the scope of Section 307.

[28] Indeed, the ABA's ongoing evaluation of the Cheek Report focuses, in large measure, upon a provision which would impose a reporting obligation comparable to that in proposed Part 205. Cheek Report at 27–30.

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B. Summary of Part 205

Section 205.3(b) of proposed Part 205 prescribes the duty of an attorney who appears or practices before the Commission in the representation of an issuer to report evidence of a "material violation." The rule's reporting obligation is triggered only when an attorney becomes aware of information that would lead a reasonable attorney to believe a *material* violation has occurred, is occurring, or is about to occur, thus limiting the instances in which the reporting duty prescribed by the rule will arise to those where it is appropriate to protect investors. The attorney is initially directed to make this report to the issuer's chief legal officer ("CLO"), or to the issuer's CLO and chief executive officer ("CEO"). Absent exigent circumstances, the attorney is also obligated to take reasonable steps to document his or her reports, as well as any response received from the CLO or CEO and retain the documentation for a reasonable time. Keeping such documentation will protect the attorney in the event his or her compliance with the proposed rule is put in issue in some future proceeding.

When presented with a report of a possible material violation, the rule obligates the issuer's CLO to conduct a reasonable inquiry to determine whether the reported material violation has occurred, is occurring, or is about to occur. A CLO who reasonably concludes that there has been no material violation must notify the reporting attorney of this conclusion. A CLO who concludes that a material violation has occurred, is occurring, or is about to occur must take reasonable steps to ensure that the issuer adopts appropriate remedial measures and/or sanctions, including appropriate disclosures. Furthermore, the CLO is required to report "up the ladder" within the issuer what remedial measures have been adopted or sanctions imposed and to advise the reporting attorney of his or her conclusions.

A reporting attorney who receives an appropriate response within a reasonable time and has taken reasonable steps to document his or her report and the response to it has satisfied his or her obligations under the rule. In the event a reporting attorney does not receive an appropriate response within a reasonable time, he or she must report the evidence of a material violation to the issuer's audit committee, or (if the issuer does not have an audit committee) to another committee of independent directors, or (if the issuer does not have another committee of independent directors) to the full board. If the attorney reasonably believes that it would be futile to report evidence of a material violation to the CLO and CEO, the attorney may report directly to the issuer's audit committee, or (if the issuer does not have an audit committee) to another committee of independent directors, or (if the issuer does not have another committee of independent directors) to the full board. A reporting attorney who has reported a matter all the way "up the ladder" within the issuer and who reasonably believes that the issuer has not responded appropriately must take reasonable steps to document the response, or absence thereof.

The proposed rule would also provide an alternative system for reporting evidence of material violations. *See* Section 205.3(c). Issuers may, but are not required to, establish a qualified legal compliance committee ("QLCC") composed of at least one member of the issuer's audit committee, and two or more independent members of the issuer's board for the purpose of investigating reports of material violations made by attorneys. A QLCC must have the authority and the responsibility to conduct any necessary inquiry into the reported evidence, to require the issuer to adopt appropriate remedial measures to prevent an ongoing, or alleviate a past, material violation, and to notify the Commission of the material violation and disaffirm any tainted document submitted to the Commission. The QLCC would be required to notify the board, the CLO, and the CEO of the results of any inquiry and the remedial measures the QLCC decided were appropriate. In the event the issuer fails to take remedial measures as directed by the QLCC, each member of the QLCC, the CLO, and the CEO would each be individually responsible for notifying the Commission of the material violation and for disaffirming any tainted submission to the Commission. An attorney would satisfy his reporting obligation under the rule by reporting evidence of a material violation to a QLCC. Additionally, a CLO who receives a report of a material violation may refer the report to a QLCC in lieu of conducting his or her own inquiry.

Paragraph 205.3(d) discusses the obligations of an attorney who has not received an appropriate response from the issuer. The provision distinguishes between outside attorneys retained by the issuer and attorneys employed by the issuer. Outside attorneys who have made a report and have not received an appropriate response and who reasonably believe that the reported material violation is ongoing or is about to occur *and* is likely to result in substantial injury to the financial interest of the issuer or of investors are *required* to withdraw from the representation, notify the Commission of their withdrawal, and disaffirm any submission to the Commission that they have participated in preparing which is tainted by the violation. In-house attorneys employed by an issuer who reasonably believe that the reported violation is ongoing or is about to occur *and* is likely to result in substantial injury to the financial interest of the issuer or of investors are *required* to disaffirm any tainted submission they have participated in preparing, but are *not* required to resign. In the event an attorney reasonably believes that a material violation has already occurred and has no ongoing effect, the attorney is *permitted, but not required,* to take these steps, so long as he or she *also* reasonably believes that the reported material violation is likely to have caused substantial injury to the financial interest of the issuer or of investors. Finally, an attorney formerly employed or retained by an issuer who reasonably believes that he or she has been discharged because he or she fulfilled the reporting obligation imposed by the rule *may, but is not required* to, notify the Commission of his or her belief that he or she was discharged for reporting evidence of a material violation and also disaffirm in writing any submission to the Commission that he or she participated in preparing which is tainted by the violation. A notification to the Commission under this section does not breach the attorney-client privilege.

Paragraph 205.3(e) sets forth the specific circumstances under which an attorney is authorized to disclose confidential information related to his or her appearance and practice before the Commission in the representation of an issuer. Pursuant to this provision, an attorney may use the documentation he or she has prepared under the rule to defend against charges of attorney misconduct. Paragraph 205.3(e)(2) also allows an attorney to reveal confidential information to the extent necessary to prevent the commission of an illegal act which the attorney reasonably believes will result either in perpetration of a fraud upon the Commission or in substantial injury to the financial or property interests of the issuer or investors. Similarly, the attorney may disclose confidential information to rectify an issuer's illegal actions when such actions have been advanced by the issuer's use of the attorney's services.

Sections 205.4 and 205.5 detail the respective responsibilities of supervisory and subordinate attorneys, both those employed in-house by the issuer and those serving as outside counsel retained by the issuer. Collectively, these provisions broadly define who is serving as a supervisory attorney, specifically providing that an individual serving as the CLO of an issuer (or who serves in an equivalent role) is a supervisory attorney under the rule. The provision also places the responsibility for compliance with the rule's reporting requirements and documentation obligations upon the supervisory attorney after he or she has been informed of evidence of a material violation by a subordinate. Subordinate attorneys are not exempt from the rule, though they will have complied with it where they report evidence of material violations they learn about to their supervisory attorney. In addition, a subordinate attorney who has reported evidence of a material violation to a supervisory attorney, and who believes that the supervisory attorney has failed to comply with the reporting requirement under the rule is permitted, but not obligated, to report the evidence "up the ladder" within the issuer.

Section 205.6 describes the manner in which violations of the rule will be addressed by the Commission. Violation of the proposed rule will subject the violator to all the remedies and sanctions available under the Exchange Act, including injunctions, and cease and desist orders. An attorney who violates a provision of Part 205 will have engaged in improper professional conduct and may also be subject to administrative disciplinary proceedings that can result in a censure, or a suspension or bar from practicing before the agency. Paragraph 205.6(b) incorporates the same state of mind requirements that were adopted for accountants by the Commission in the 1998 amendment to Rule 102(e). Specifically, an attorney is subject to discipline for (1) intentional, including reckless, violations of the Part, and (2) negligent conduct in the form of a single instance of highly unreasonable conduct that results in a violation, or repeated instances of unreasonable conduct resulting in a violation of the Part. The rule provides that the Commission may impose discipline and sanction an attorney who violates the rule, even when the attorney is subject to discipline in the state where he or she practices or is admitted.

V. Section-by-Section Discussion of the Proposed Rule and Request for Comments

The proposing release invites interested persons to submit comments on a large number of specific issues. However, the Commission invites any interested person to submit comments on any aspect of the proposed rule, whether or not comments have been specifically solicited.

Section 205.1 Purpose and Scope

Section 307 of the Act expressly directs the Commission to adopt a rule imposing a reporting requirement upon attorneys "appearing and practicing before the Commission in any way in the representation of issuers". Section 307 mandates that the Commission "shall issue rules * * * setting forth minimum standards of professional conduct * * * including a rule" imposing an "up the ladder" reporting requirement. At the very least, this language directs the Commission to issue a rule requiring attorneys to report material misconduct within an issuer. The Commission may at some future date supplement or amend this rule to expand its scope and address additional ethical issues that are relevant to practice before the Commission.[29] Interested persons are invited to comment on whether the Commission should promulgate additional rules, the issues those rules should address, how, in what form, and why.

Section 205.2 Definitions

Proposed Part 205 includes a section defining a number of terms that appear in the statute and are used throughout the rule. Section 307 of the Act does not define any of its terms. The Act itself defines the term "issuer," and that definition is incorporated into the rule. For several of the terms in the rule, the Commission has adopted the definitions contained in the ABA's Model Rules of Professional Conduct or a variation thereof. For others, the Commission has relied upon statutory definitions or adopted definitions from other sources, including the Restatement (Third) of the Law Governing Lawyers.

For those terms in Section 307 that are included in the proposed rule but not specifically defined in the proposed rule (*e.g.*, "in any way" and "similar violations"), the Commission's intention is that their meaning shall be determined or interpreted according to Commission decisions. Interested persons are invited to comment on whether the Commission should leave these or other terms undefined in the rule or, alternatively, to propose definitions for these or other terms.

(a) *Appearing and practicing* before the Commission includes, but is not limited to, an attorney's:

(1) Transacting any business with the Commission, including communication with Commissioners, the Commission, or its staff;

(2) Representing any party to, or the subject of, or a witness in a Commission administrative proceeding;

(3) Representing any person in connection with any Commission investigation, inquiry, information request, or subpoena;

(4) Preparing, or participating in the process of preparing, any statement, opinion, or other writing which the attorney has reason to believe will be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(5) Advising any party that:

(i) A statement, opinion, or other writing need not or should not be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(ii) The party is not obligated to submit or file a registration statement, notification, application, report, communication or other document with the Commission or its staff.

The definition of the term "appearing and practicing before" the Commission is based upon Rule 102(f).[30] The wording of that definition has been modified to clarify and confirm that (as under existing Rule 102(f)) the term includes, among other things, representation of an issuer during the course of an investigation or inquiry conducted by the Commission and that an attorney appears and practices before the Commission if he or she advises an issuer either (1) that a statement, opinion, or other writing does not need to be filed with or incorporated into any type of submission to the Commission or its staff, or (2) that the issuer is not required to submit or file any registration statement, notification, application, report, communication or

[29] The Commission does not propose to create an "SEC Bar" with admission requirements, of which attorneys must be members to appear or practice before the Commission. *See* 5 U.S.C. 500(b) (prohibiting agencies from enacting their own supplemental admission requirements for duly admitted members of a state bar). However, the Commission "like any other institution in which lawyers or other professionals participate, has authority to police the behavior of practitioners appearing before it." *Polydoroff* v. *ICC*, 773 F.2d 372, 374 (D.C. Cir. 1989). This authority is confirmed, of course, in the new Section 4C of the Exchange Act and Section 307 of the Sarbanes-Oxley Act.

[30] The definition prescribed in Rule 102(f) is unaffected by the proposed rule.

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other document with the Commission or its staff.

Moreover, the definition of the term has also been drafted to make clear that it covers all communications (oral or written) with the Commission or its staff on behalf of an issuer, as well as conduct involving the preparation of any statement, opinion, or other writing which is submitted to Commissioners, the Commission, or its staff which is incorporated into materials submitted to the Commission—or participation in the process of preparing such a statement, opinion, or other writing. Participation in that process covers both adding and excluding information or a particular characterization of information. The definition also makes clear that an attorney who advises an issuer not to make a filing or submission to the Commission is also appearing and practicing before the Commission.

This broad definition is consistent with the position the Commission has taken as amicus curiae in cases involving liability under Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) in which the Commission has argued that attorneys should be held responsible for materials which they have drafted, or participated in drafting, that they knew would be included in a document to be filed with the Commission but which have been submitted without attribution or under another individual's signature.[31] The modification also reflects the reality that materials filed with the Commission frequently contain information contributed, edited or prepared by individuals who are not necessarily responsible for the actual filing of the materials.

An attorney ordinarily does not appear and practice before the Commission if his or her representation of an issuer involves no business or communication with the Commission, no participation in any way in a Commission process, and no assistance in the preparation of at least a portion of a document filed with or submitted to the Commission. The conduct of attorneys in practice specialties other than securities law will be covered by the proposed rule where their representation of an issuer involves contact with the Commission or where they have reason to believe they are assisting in the preparation of a document transmitted to the Commission, or where they supervise an attorney who does appear and practice before the Commission.

The proposed definition of "appearing and practicing" is broad enough to include attorneys who do not serve in the legal department of an issuer or do not act in their capacities as attorneys, but who either transact business with the Commission or assist in the preparation of documents filed with or submitted to the Commission.

Interested persons are invited to comment on any aspect of this definition, including its appropriate scope and whether the Commission should exclude any persons from the definition of "appearing and practicing" (*e.g.*, in-house corporate attorneys working outside of a legal department who assist in preparing a document to be filed with the Commission). Interested persons are specifically invited to comment on whether, and how, the definition of "appearing and practicing" will impact upon attorneys representing issuers during the course of Commission investigations, inquiries, administrative proceedings or civil litigation, and whether and how the definition should be modified in those contexts. Does the definition need to be modified to make clear that an attorney defending an issuer in a civil injunctive action by the Commission in a district court is not appearing and practicing before the Commission, because the issuer is not transacting business with the Commission, even though the defense attorney is in contact with the Commission's staff who are representing the Commission in that litigation? In the event an attorney representing an issuer in an administrative proceeding fails to receive an appropriate response to evidence of a material violation that the attorney has reported, should the attorney's response be governed by the proposed rule or by the Commission's Rules of Practice? Why? Comment is also particularly invited on the breadth of "participating in the process of preparing" in paragraph (a)(4) and whether the "has reason to believe" standard in that paragraph is too high or too low (*e.g.*, whether an attorney must have actual knowledge or give express consent for a document to be sent to the Commission in order to be appearing and practicing before the Commission).

The concept of "appearing and practicing" also raises issues regarding foreign attorneys employed or retained by foreign issuers. Such attorneys may, for example, be involved in the preparation of documents for use in a foreign jurisdiction that might subsequently be used as the basis for other documents prepared by others for filing with the Commission, with or without the knowledge of the foreign attorneys who prepared the original documents. Interested persons are invited to comment on whether such foreign attorneys are "appearing and practicing" before the Commission; if not, how the proposed definition might be modified to make that clear; whether an express exclusion for such foreign attorneys is necessary and, if so, how it might be crafted.

(b) *Appropriate response* means a response to evidence of a material violation reported to appropriate officers or directors of an issuer that provides a basis for an attorney reasonably to believe:

(1) That no material violation, as defined in paragraph (i) of this section, is occurring, has occurred, or is about to occur; or

(2) That the issuer has, as necessary, adopted remedial measures, including appropriate disclosures, and/or imposed sanctions that can be expected to stop any material violation that is occurring, prevent any material violation that has yet to occur, and/or rectify any material violation that has already occurred.

The definition of the term "appropriate response" emphasizes that the actions of attorneys in evaluating possible instances of material violations and the appropriateness of the response made by an issuer apprised of possible instances of material violations will be evaluated against an objective reasonableness standard. The Commission's intent is to permit attorneys to exercise their judgment as to whether a response to a report is appropriate, so long as their determination of what is an "appropriate response" is objectively reasonable.

For example, if an issuer responds to an attorney's report regarding the legality of a particular transaction by informing the attorney that a reputable law firm has reviewed the transaction and concluded that there has been no violation, and if the issuer provides a copy of the opinion to the attorney, the attorney could reasonably believe that the issuer's response was appropriate so long as the opinion satisfactorily addresses all of the reporting attorney's reasonable legal and factual concerns and is otherwise reasonable. Similarly, if an issuer responds to an attorney's report concerning another employee's potentially illegal conduct by, for example, disciplining or terminating the employee, and remedying any impact of the employee's misconduct, the attorney could reasonably believe that the issuer's response was appropriate. If, however, the issuer responds to the attorney's report by peremptorily informing the attorney that the reported matter is not cause for concern, and fails to provide any factual or legal basis for the reporting attorney to conclude there was no violation, such a response may not reasonably be viewed as appropriate by the attorney.

An appropriate response where there has been a disclosure violation would include disclosure of the material information or the correction of any material misstatement. Further, it could include an express directive forbidding the unlawful conduct at issue or, if it has already commenced, ordering that it cease at once. The definition also clarifies that past instances of misconduct may not need to be reported further where that misconduct has been addressed, for example, through the imposition of sanctions or other means. A past instance of misconduct that nevertheless may have an ongoing impact (*e.g.*, a misstatement contained in a prior Commission filing that investors may continue to rely upon) will need to be rectified.

Interested persons are invited to comment on any aspect of what is an appropriate response. Should an attorney's reasonable belief determine whether a response is appropriate? What circumstances would permit an attorney reasonably to believe either that no violation has occurred or that any violation has been rectified? Is there a better objective test to measure whether a response is appropriate and, if so, what is it?

(c) *Attorney* refers to any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

The term "attorney" is defined broadly so that the proposed rule applies equally to lawyers employed in-house by an issuer and attorneys retained to perform legal work on behalf of an issuer, and covers persons who hold themselves out as attorneys, even if they are not in fact admitted, licensed, or otherwise qualified to practice law. Interested persons are invited to comment on the impact this definition will have upon attorneys in particular positions, or performing particular functions, and to identify situations in which the definition may reach too broadly. In particular, the Commission requests comment on whether the definition should require, with respect to in-house counsel, that the attorney actually provide legal services to the issuer such that an attorney-client relationship exists, so as to exclude attorneys employed by issuers in non-legal capacities, even if they prepare portions of documents submitted to or filed with the Commission.

The proposed definition of "attorney" also covers lawyers licensed in foreign jurisdictions, whether or not they are also admitted to practice in the United States. Under the proposed definition, foreign attorneys who prepare filings or other materials that are submitted to the Commission would be covered by the rule to the extent they are appearing and practicing before the Commission within the meaning of the rule. Potential difficulties related to applying the term "appearing and practicing" to foreign attorneys have been discussed above. The Commission also recognizes that significant issues would be raised by application of the proposed rule to foreign attorneys, or attorneys representing or employed by multijurisdictional firms, who may be subject to statutes, rules, and ethical standards in these foreign jurisdictions that are different from, and potentially incompatible with, the requirements of this rule. As noted above, over 1,300 foreign private issuers from 59 countries are registered and reporting with the Commission. These foreign companies are represented by a wide-range of legal counsel. While U.S. lawyers at U.S. law firms often play the principal role in the preparation of disclosure documents filed with the Commission by foreign companies, foreign lawyers can also undertake significant roles in these filings. For example, foreign counsel is often called upon to file a legal or tax opinion as an exhibit to a registration statement filed by a foreign company. In addition, a number of non-U.S.-based law firms (principally firms based in the United Kingdom) have established significant legal practices under the U.S. federal securities laws, and may be the sole law firms representing a particular issuer before the Commission. Generally, such firms have attorneys who are licensed in the United States. Likewise, many U.S. law firms have expanded globally and now employ as partners, counsel and associates lawyers who are admitted to practice solely in jurisdictions outside the United States. These non-U.S. lawyers may play significant roles in connection with Commission filings by both foreign and U.S. issuers. Further, some non-U.S. registrants have employed U.S. or non-U.S. lawyers to serve as their in-house counsel with respect to federal securities law questions.

As proposed, Part 205 would cover lawyers who are licensed in foreign jurisdictions, although only to the extent they "appear and practice" before the Commission in the representation of issuers. The Commission recognizes that the application of Part 205 to foreign law firms, multijurisdictional law firms and foreign lawyers raises significant and difficult issues. Because of these issues, the Commission seeks comment on the application of Part 205 to these entities. In particular:

Are there statutes, rules and ethical standards in foreign jurisdictions that govern the conduct of foreign attorneys that are different from, and potentially incompatible with, the requirements of Part 205 and, if so, what foreign authority conflicts with what specific provisions of Part 205?

Are there provisions in Part 205 that could not be given effect (or would be nullified) under statutes, rules, or ethical standards in some foreign jurisdictions? If so, which provisions are affected, and how would this situation affect implementation of Part 205?

How would the "up the ladder" rule apply to in-house and retained attorneys in jurisdictions where issuers use different internal corporate structures not contemplated by Part 205?

What difficulties are likely to arise in applying the QLCC alternative to foreign issuers, and how, specifically, could the QLCC alternative be adapted to foreign private issuers?

What are the difficulties in applying Part 205 to law firms that operate in multiple jurisdictions or that have partners, counsel and associates who are admitted to practice law in a foreign jurisdiction but not admitted to practice law in the United States and who participate in the preparation of documents filed with the Commission (or documents that form the basis for documents filed with the Commission)? Are there different considerations in the application of Part 205 in this circumstance depending on whether the law firm in question is principally based in the United States or outside the United States?

What are the difficulties in applying Part 205 to an issuer's in-house attorneys who are admitted to practice law in a foreign jurisdiction but are not admitted to practice law in the United States and who participate in the preparation of documents filed with the Commission (or documents that form the basis for documents filed with the Commission)? Are there different considerations in the application of Part 205 in this circumstance whether the issuer is incorporated in the United States or in a foreign jurisdiction? Any such special difficulties and considerations should be discussed with specificity.

Are there mechanisms that satisfy the objectives of Part 205 that would apply

[31] The Commission has taken this position in several important recent cases, including Newby, *et al.* v. *Enron Corp.* (C.A. HO–13624) (S.D. Tex) (an ongoing private class action suit in which the Commission has submitted briefs as an amicus curiae) and *Klein* v. *Boyd*, 1998 U.S. App. LEXIS 2004 (3rd Cir. Feb. 12, 1998), *vacated* and *reh'g, en banc, granted*, 1998 U.S. App. LEXIS 4121 (3rd Cir. Mar. 9, 1998).

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the rule to a narrower category of foreign-licensed attorneys—for example, by employing a variation of the proposed definitions of supervisory and subordinate attorneys or by identifying attorneys in the United States who would have responsibility for compliance with U.S. securities laws? How, specifically, would such mechanisms work?

With respect to disciplinary proceedings, do foreign jurisdictions maintain procedures for disciplining attorneys for violations of statutes, rules or standards relating to ethical conduct and, if so, how do these procedures operate? Is a Commission proceeding against an attorney that violated Part 205 reconcilable with a disciplinary proceeding in the home jurisdiction?

Should foreign attorneys be exempted in whole or in part from the application of Part 205, and if so, why? Are there protections under foreign statutes, rules and standards relating to ethical conduct that serve as an adequate substitute for the various provisions of Part 205? Should the Commission establish a process under which foreign attorneys may apply for exemptions on a case-by-case basis, and if so, what should this process be (for example, the submission of a legal opinion as to the incompatibility of some or all of Part 205 with foreign statutes, rules and standards, and whether those statutes, rules and standards serve as an adequate substitute for the various provisions of Part 205)?

(d) *Breach of fiduciary duty* refers to any breach of fiduciary duty recognized at common law, including, but not limited to, misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

This definition is intended to identify typical common-law breaches of fiduciary duty. It is not intended to change the law.

Interested persons are invited to comment on any aspect of the definition of "breach of fiduciary duty," including whether the examples given should be expanded or narrowed, and, if so, how.

(e) *Evidence of a material violation* means information that would lead an attorney reasonably to believe that a material violation has occurred, is occurring, or is about to occur.

This objective standard is intended to preclude reports based on mere suspicion of a material violation while providing reasonable flexibility to attorneys when evaluating their reporting obligations under the proposed rule. An individual attorney is not excused from reporting evidence of a material violation on the grounds that he or she does not personally believe that a material violation has occurred, is occurring, or is about to occur. Under the definition of "reasonably believes" in paragraph (l) of Section 205.2, any information that would lead an attorney, acting reasonably, to believe that a material violation has occurred, is occurring, or is about to occur must be reported—whether or not the reporting attorney subjectively believes it. An individual attorney is not, however, required to report within the issuer evidence of a material violation that the attorney thinks is insufficient to lead an attorney, acting reasonably, to believe that a material violation has occurred, is occurring, or is about to occur. The definition does not prescribe a process by which an attorney must evaluate evidence he or she learns about.

Interested persons are invited to comment on any aspect of the definition of "evidence of a material violation." Should a different standard be adopted than that proposed by the Commission and, if so, what should that different standard be? Should the test be subjective rather than objective? Where along the spectrum from actual knowledge to mere suspicion should the line be drawn? Is the correct measure "beyond a reasonable doubt," "knows or should know," "substantial credible information," a "prima facie case," "more likely than not," "at least as likely as not," "reason to believe," "some credible information," "a mere scintilla of information sufficient to raise suspicion," or another test and, if so, what? If reasonable belief is the appropriate standard, what should be reasonably believed: that a material violation has occurred, is occurring, or is about to occur or that a material violation may have occurred, may be occurring, or may be about to occur, or something else? Should the definition be revised to make clearer that the standard is objective rather than subjective and, if so, how?

(f) *In the representation of an issuer* means acting in any way on behalf, at the behest, or for the benefit of an issuer, whether or not employed or retained by the issuer.

The proposed rule includes a broad definition of what constitutes "in the representation of an issuer." A broad definition is essential to protect investors. Accordingly, the term is defined to cover attorneys providing any legal services at the request of, or for the benefit of, an issuer.

For example, an attorney employed or retained by a non-public subsidiary of a public parent issuer is appearing and practicing before the Commission in the representation of an issuer when the subsidiary is covered by an umbrella representation agreement or understanding, whether explicit or implicit, under which the attorney represents the parent company and its subsidiaries, and can invoke privilege claims with respect to all communications involving the parent and its subsidiaries. Similarly, an attorney at a non-public subsidiary appears and practices before the Commission in the representation of an issuer when he or she is assigned work by the parent (*e.g.*, preparation of a portion of a disclosure document) which will be consolidated into material submitted to the Commission by the parent, or if he or she is performing work at the direction of the parent and discovers evidence of misconduct which is material to the parent. The definition of the term is also intended to reflect the duty of an attorney retained by an issuer to report to the issuer evidence of misconduct by an agent of the issuer (*e.g.*, an underwriter) if the misconduct would have a material impact upon the issuer.

An attorney employed by a privately-held investment adviser who prepares, or assists in preparing, materials that the attorney has reason to believe will be submitted to or filed with the Commission by or on behalf of a registered investment company, or will be incorporated into any document filed with or submitted to the Commission, is appearing and practicing before the Commission. Such an attorney, though employed by a privately-held investment adviser, is representing the investment company before the Commission. Where such an attorney discovers evidence of a material violation by an officer of the investment adviser that is related to the investment company, the attorney is obliged to report that evidence to the CLO of the investment company under 205.3(b). The investment adviser is an agent of the investment company and owes the investment company a fiduciary duty under common law and under Section 36 of the Investment Company Act of 1940.[32] Section 307 of the Act requires an attorney to report evidence of a material violation by any agent of an issuer to the issuer's CLO or CEO.

This reporting obligation does no violence to the attorney-client privilege. Because the attorney is providing legal services for the registered investment company, the attorney is reporting to his or her client evidence of a material violation that is related to his or her representation of the client.[33] In effect, an attorney employed by the investment adviser and representing the investment company before the Commission has joint clients. Fairness and candor between co-clients regarding matters of common interest normally preclude any expectation of confidentiality regarding communications with their attorney, even regarding a communication of which one co-client was unaware at the time it was made.[34] That analysis must apply with special force where the co-clients are both organizations, with the investment adviser owing a fiduciary duty to the investment company, and where the attorney employed by the investment adviser, like any attorney employed by an organization, represents the investment adviser as an organization, not officers or employees who may have engaged in misconduct injuring the investment company.

Interested persons are invited to comment on the appropriate scope of the term, and its impact upon attorneys. Does the definition provide sufficient clarity and, if not, how could it be improved? Are there factual circumstances the definition would bring in that might better be excluded? Does the definition go far enough to protect investors?

(g) *Issuer* means an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under Section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under Section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

The definition for the term "issuer" adopts the definition set forth in Section 2(a)(7) of the Act, which in turn incorporates the definition contained in the Exchange Act. This definition raises a question regarding whether the rule should also apply to attorneys who represent various entities that are subject to comprehensive Commission regulation and oversight, and who regularly appear before the agency, but whose clients are not "issuers." For example, many broker-dealers, investment advisers, self-regulatory organizations, transfer and clearing agents are, by law, required to register with the Commission. Attorneys for these entities prepare documents that are filed with the Commission and interact regularly with the Commission. As a regulated entity that is not an issuer presumably does not have a board of directors or an audit committee, and perhaps not even a chief legal officer, imposing the proposed rule on such entities may be inappropriate.

Certain foreign governments have listed debt securities that are registered under Section 12(b) of the Exchange Act. These foreign governments are thus issuers under the Act's definition. These foreign governments, however, may not have the organizational structure contemplated by the proposed rule in that the foreign governments may not have reasonable equivalents to a CEO, an audit committee, independent directors, or a board of directors. Thus, it may be difficult or inappropriate to apply the new Part 205 to such foreign issuers. It may be necessary for the Commission to create an exception or exemption for foreign governments that are issuers of listed debt securities.

The Commission invites interested persons to comment on any aspect of this definition, including: whether some form of "up the ladder" reporting should be implemented for attorneys employed by regulated entities that are not issuers; whether there is good reason or a legal basis to alter the definition in Section 2(7) of the Act; and whether the Commission should create an exemption for foreign issuers—providing, for example, that "Part 205 shall not apply to foreign governments that are eligible to register [or "that register"] securities under Schedule B of the Securities Act of 1933"—or should modify the definition of "issuer" to exclude foreign issuers—and, if so, how.

(h) *Material* refers to conduct or information about which a reasonable investor would want to be informed before making an investment decision.

The definition for the term "material" is derived from Supreme Court precedent, and is consistent with the remarks of Senator John Edwards, the sponsor of Section 307, who stated that "the obligation to report is triggered only by violations that are material—violations that a reasonable investor would want to know about."[35]

Interested persons are invited to comment on this definition, particularly whether it provides sufficient clarity or, alternatively, whether another formulation would be preferable.

(i) *Material violation* means a material violation of the securities laws, a material breach of fiduciary duty, or a similar material violation.

The rule defines the term "material violation" to clarify that the term "material" in Section 307(b) modifies all three succeeding references to violations (*i.e.*, "violation of securities law," "breach of fiduciary duty," and "similar violation"), and that only evidence of material misconduct triggers the rule's reporting obligation.

The rule does not define what constitutes a "violation of securities law" since the term is well-understood. The Commission believes that the term covers violations of the federal securities laws, as defined in Section 2(a)(15) of the Act, as well as violations of state securities laws. The rule separately defines "breach of fiduciary duty" to cover those forms of breach of fiduciary duty recognized at common law, including misfeasance, nonfeasance, abdication of duty, abuse of trust and the approval of unlawful transactions.

The rule does not define the term "similar violation." However, it appears from the context in which it is used in Section 307 that the term is intended to extend beyond a breach of fiduciary duty or a violation of the securities laws.

Interested persons are invited to comment on any aspect of the definition. Is there good reason to exempt violations of state securities laws from the definition? Should the term "similar violation" be defined and, if so, how? Does the definition encompass conduct about which the Commission should not be concerned? Would an alternate test be better? What test, and why?

(j) *Qualified legal compliance committee* means a committee of an issuer that:

(1) Consists of at least one member of the issuer's audit committee and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, "interested persons" as defined in Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19));

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[32] 15 U.S.C. 80a–35.

[33] *See Restatement (Third) of the Law Governing Lawyers*, section 14 and Comment c ("a client-lawyer relationship results when legal services are provided"), and Virginia Supreme Court Rule 6:1–1(B) ("Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill."). *See also* 205.3(d)(2) (permitting an attorney appearing and practicing before the Commission in any way in the representation of an issuer to disclose client confidences to the Commission under specified circumstances).

[34] *See Restatement (Third) of the Law Governing Lawyers*, section 75 and Comment d (explaining that in a subsequent proceeding in which the co-clients' interests are adverse there is normally no attorney-client privilege regarding either co-client's communications with their attorney during the co-client relationship).

[35] *See* 148 Cong. Rec. at S6552 (July 10, 2002). *See also TSC Indus. v. Northway, Inc.*, 426 U.S. 438 (1976); *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988); Staff Accounting Bulletin 99, 99 WL 1123037.

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(2) Has been duly established by the issuer's board of directors and authorized to investigate any report of evidence of a material violation by the issuer, its officers, directors, employees or agents;

(3) Has established written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under § 205.3(c);

(4) Has the authority and responsibility:

(i) To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in § 205.3(b)(5));

(ii) To decide whether an investigation is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur and, if so, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and

(iii) At the conclusion of any such investigation under paragraph (j)(4)(ii) of this section, to:

(A) Direct the issuer to adopt appropriate remedial measures, including appropriate disclosures, and/or to impose appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under paragraph (j)(4)(ii) of this section and the appropriate remedial measures to be adopted; and

(5) Each member of which individually, together with the issuer's chief legal officer and chief executive officer (or the equivalents thereof) individually, has the authority and responsibility, in the event the issuer fails in any material respect to take any of the remedial measures that the qualified legal compliance committee has directed the issuer to take, to notify the Commission that a material violation has occurred, is occurring or is about to occur and to disaffirm in writing any document submitted to or filed with the Commission by the issuer that the individual member of the qualified legal compliance committee or the chief legal officer or the chief executive officer reasonably believes is false or materially misleading.

A "qualified legal compliance committee" ("QLCC"), as here defined, is part of an alternative procedure for reporting evidence of a material violation. That alternative procedure is set out in Section 205.3(c) of the proposed rule and is discussed below. Excluding "interested persons" of a registered investment company from the investment company's QLCC is intended to ensure that the members of such a QLCC will be truly independent, as explained further in the discussion of Section 205.3(b)(4) below.

Interested persons are invited to comment on any aspect of the definition of a QLCC, considered in light of Section 205.3(c), specifically including whether any changes should be made to the definition, either in light of Section 205.3(c) as proposed or in light of changes that the interested persons believe should be made to that section. Should the written procedures for the retention of reports, which a QLCC must establish pursuant to paragraph 205.2(j)(3), require the QLCC to retain paper or electronic copies of all reports submitted by attorneys? Should this requirement be expanded to obligate the QLCC to retain paper or electronic copies of responses to attorney reports?

(k) *Reasonable* or *reasonably* denotes the conduct of a reasonably prudent and competent attorney.

The definition of "reasonable" or "reasonably" is taken from Rule 1.0(h) of the ABA's Model Rules of Professional Conduct. Interested persons are invited to comment on whether this definition is sufficiently clear and whether alternative language would be an improvement.

(l) *Reasonably believes* means that an attorney, acting reasonably, would believe the matter in question.

This definition is based on the definition of "reasonable belief" or "reasonably believes" in Rule 1.0(i) of the ABA's Model Rules of Professional Conduct, modified to eliminate any implied subjective element. It is intended to define when belief is objectively reasonable. Interested persons are invited to comment on whether this definition is sufficiently clear and whether alternative language would be an improvement and, if so, what alternative language interested persons would propose. Would the definition of "reasonable belief" by New Jersey's Supreme Court, for example, be clearer: "Reasonable belief for purposes of R[ule of]P[rofessional] C[onduct] 1.6 is the belief or conclusion of a reasonable lawyer that is based upon information that has some foundation in fact and constitutes prima facie evidence of the matters referred to in paragraphs (b) or (c)"?

(m) *Report* means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

This definition emphasizes that an attorney who is obligated to report evidence of a material violation must do so directly rather than indirectly. Although the attorney is not required to communicate in person with the appropriate individual, the Commission believes that it is essential for any report to be made directly rather than through a third party to ensure clarity. In light of the report's importance, most attorneys would want to report directly in any event.

Interested persons are invited to comment on any aspect of this definition. Should the attorney be required to make a written report, or to memorialize the substance of the report in writing shortly after making it? Should the attorney be required to keep a record of the report, including all supporting documentation? Should the Commission require that the report be made in person? Should the Commission prescribe a format for the report? Should the Commission require that a witness be present for each report? Should an attorney be permitted to delegate his or her reporting requirement to another and, if so, under what circumstances?

Section 205.3 Issuer as Client

Section 205.3 is at the core of the Commission's proposed "Standards of Professional Conduct for Attorneys." It sets out the rule on reporting "evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof," as required by the Act. It also sets out related provisions addressing an attorney's obligations to the issuer.

Representing an Issuer

Section 205.3(a) provides:

(a) *Representing an issuer.* An attorney appearing and practicing before the Commission in the representation of an issuer represents the issuer as an organization and shall act in the best interest of the issuer and its shareholders. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

This paragraph of the proposed rule makes explicit that the client of an attorney representing an issuer before the Commission, in any way, is the issuer as an entity, not the issuer's individual officers or employees that the attorney regularly interacts with and advises on the issuer's behalf. Those officers and other employees, like the attorney, have a fiduciary duty to act in the best interests of the issuer and its shareholders.

This paragraph is grounded in a lawyer's well-established duty to act with reasonable competence and diligence in representing a client and to take steps to prevent reasonably foreseeable harm to the client—

including harm from persons who work for the client.[36] As the Cheek Report explains (at 27), the premise of the ABA's equivalent rule (Model Rule 1.13) is that, when a lawyer represents an organization (such as an issuer),

> the organization is the lawyer's client and * * * the lawyer owes that client an obligation of protection from harm. Harm can result when an officer breaches a duty to the corporation (*e.g.* wastes or misappropriates corporate assets), when the corporation will be caused to injure a third party who will then have a claim against the corporation or when the corporation will be exposed to a fine or penalty. In any such case the lawyer's duty to protect the corporate client from harm requires the lawyer to serve the interest of the corporation and its shareholders rather than the interests of the individual officers or employees who are acting for the corporation.

The attorney representing an issuer does not represent the issuer's officers and employees simply because the attorney necessarily interacts with them in representing the issuer, and the attorney should make that clear to those officers and employees. Any attorney-client privilege for information related to the issuer's affairs that the officers and employees communicate to the attorney belongs to the issuer.[37]

Interested persons are invited to comment on any aspect of this paragraph, including whether it should be expanded to address under what circumstances an attorney for the issuer may also represent officers, directors and employees, and, if an attorney does so, the related questions of: (1) The responsibilities of an attorney when there is a potential for a conflict of interest; (2) obtaining waivers from clients when there is a conflict of interest; and (3) terminating representation when an actual conflict arises.

Reporting Within the Issuer Evidence of a Material Violation

Section 205.3(b) of the proposed rule clarifies and codifies an attorney's duty to protect the interests of the issuer the attorney represents by reporting within the issuer evidence of a material violation by any officer, director, employee, or agent of the issuer.

Paragraph (b)(1) provides:

(b) *Duty to report evidence of a material violation.* (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report any evidence of a material violation to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or to the equivalents thereof) forthwith (unless the issuer has a qualified legal compliance committee and the attorney chooses instead to report the evidence of a material violation to that committee under paragraph (c) of this section). An attorney does not reveal client confidences or secrets by communicating information related to the attorney's representation of an issuer to the issuer's officers or directors.

Paragraph (b)(1) describes the first step that an attorney representing an issuer is required to take after he or she becomes aware of information that would lead an attorney reasonably to believe that a material violation by an issuer or by any of the issuer's officers, directors, employees, or agents has occurred, is occurring, or is about to occur (unless the issuer has a qualified legal compliance committee, and the attorney chooses to report to it).[38] In utilizing this standard, the rule seeks to balance the likelihood of increased compliance with the law as a result of having an appropriate triggering standard that prompts the bringing of potentially illegal conduct to the attention of the issuer's management against the likelihood of decreased compliance resulting from reduced consultation with an issuer's attorneys through adoption of too high a standard.

As paragraph (b)(1) itself expressly states, an attorney does not reveal client confidences or secrets (or breach the attorney-client privilege) by communicating to the issuer's officers or directors information related to the attorney's representation of the issuer. This legal principle is not controversial.[39] The Cheek Report, however, recommends incorporating into the ABA's Model Rule 1.13 a clear statement that Model Rule 1.6 does not prohibit communicating client confidences or secrets "to higher authority *within* the corporation."[40] The consensus of the Cheek Task Force was that the existing language of Model Rule 1.13(b) "tends to discourage action by the lawyer to prevent or rectify corporate misconduct" generally and to "discourage[] a lawyer from seeking review by higher corporate authority," even though the lawyer's goal ought to be to "minimiz[e] harm resulting from the misconduct." *Id.* The Commission has incorporated such an explicit statement of the legal principle into paragraph (b)(1) of this section.

The report required in Section 205.3(b) to prevent or minimize the harm to an issuer resulting from a material violation is internal. It involves no disclosure of confidential information outside the issuer.[41] The

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[36] *See, e.g., Restatement (Third) of the Law Governing Lawyers* (2000) section 96; Model Rules 1.1 and 1.2; *FDIC* v. *O'Melveny & Myers*, 61 F.3d 17, 19 (9th Cir. 1995) (incorporating verbatim the applicable section of its earlier opinion); *FDIC* v. *O'Melveny & Myers*, 969 F.2d 744, 748–49 (9th Cir. 1992), *rev'd on other grounds*, 512 U.S. 79 (1994).

[37] *See, e.g., United States* v. *Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO*, 119 F.3d 210, 215–17 (2d Cir. 1997).

[38] This appears to have been the expectation of the Senators who drafted Section 307 of the Act. *See* 148 Cong. Rec. S6552 (July 10, 2002) (statement of Sen. Edwards) ("the SEC shall make one rule in particular, and it is a simple rule with two parts. No. 1, a lawyer with evidence of a material violation has to report that evidence either to the chief legal counsel or the chief executive officer of the company. No. 2, if the person to whom that lawyer reports doesn't respond appropriately by remedying the violation, by doing something that makes sure it is cured, that lawyer has an obligation to go to the audit committee or to the board. It is that simple. * * * If the CEO can do a short investigation, for example, and figure out that no violation occurred, then the obligation stops there. But if there is a serious violation of the law, the appropriate response is clear: The CEO has to act promptly to remedy the violation. If he doesn't, the lawyer has to go to the board. It is that simple."). *Accord id.* at S6555 (statement of Sen. Enzi) ("This amendment instructs the Commission to establish rules that require an attorney, with evidence of material legal violation by the corporation or its agent, to notify the chief legal counsel or the chief executive officer of such evidence and the appropriate response to correct it. If these officers do not promptly take action in response, the Commission is instructed to establish a rule that the attorney then has a duty to take further appropriate action, including notifying the audit committee of the board of directors or the board of directors themselves, of such evidence and the actions of the attorney and others regarding this evidence."), S6556 (statement of Sen. Corzine) ("when lawyers are aware of a potential violation, they do have a duty to investigate. And if they determine there is a material violation of law—not some small violation, some insignificant rule—that violation should be remedied by the corporation. If it is not remedied, it is the duty of the lawyer, under our language, to report it to the board.").

[39] Information related to the issuer's affairs communicated to the attorney is effectively communicated to the issuer. The officer or employee thus cannot have any reasonable expectation of confidentiality against the issuer regarding such information, and the attorney breaches no confidence in communicating the information to the issuer's CLO, CEO, or directors. *See, e.g., Int'l Bhd. of Teamsters*, 119 F.3d at 215–17.

[40] *Id.* at 28 (original emphasis). The Cheek Report is available at *http://www.abanet.org/buslaw/corporateresponsibility/preliminary_report.pdf*. It reflects the consensus of the task force appointed by the ABA's President in March 2002 to re-examine "the framework of laws and regulations and ethical principles governing the roles of lawyers, executive officers, directors, and other key participants" so that the ABA could contribute to legislative and regulatory reform aimed at improving corporate responsibility after the Enron bankruptcy; as the report notes, however, not every member of the task force endorses every recommendation. Cheek Report at 1–2. The Cheek Report recommends amending Model Rules 1.2, 1.6, 1.13, 1.16, and 4.1, especially Rules 1.6 and 1.13. *Id.* at 27–33, 45–46.

[41] *See also* discussion, above, of disclosure to the CLO, CEO, or directors of a registered investment company regarding misconduct by officers or

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report, moreover, is intended to prevent, if possible, misconduct that would injure the issuer and its shareholders, or at least to limit the injury. Accordingly, awareness of information leading an attorney reasonably to believe that a material violation has occurred, is occurring, or is about to occur appears to be the appropriate trigger for the obligation to make an internal report of the evidence of a material violation.

As the reporter for the ABA's Commission of Evaluation of Professional Standards ("Kutak Commission") wrote in 1984, explaining why he considered the ABA's present Model Rule 1.6 (on disclosure of confidential information *to outsiders*) inadequate,

> there is an unavoidable tension between the proposition that the lawyer should act early, to prevent the fraud, and the requirement that he should act only on the basis of solid information. The longer the wait, the more solid the information, but also the greater the likelihood of the client's deeper *inculpation*.[42]

Requiring more than "a reasonable basis" for believing that a client intends to commit, or has committed, fraud before allowing the lawyer to reveal confidential client information *to outsiders* "would virtually preclude the possibility of the lawyer's action except in most egregious situations." *Id.* at 285–86. That analysis would appear to apply with even greater force where the disclosure is within an issuer, as required by Section 205.3(b).

Proposed Section 205.3(b) would require an attorney representing an issuer to report within the issuer evidence of "a material violation by the issuer or by any officer, director, employee, or agent of the issuer." The internal report of evidence of a material violation is not comparable to a judicial determination that a material violation actually occurred. There must, however, be some factual basis that would lead an attorney to reasonably believe that a material violation has occurred, is occurring, or is about to occur. The internal report then allows responsible officers of an issuer to consider the reported evidence, investigate where appropriate, and take actions necessary to prevent or minimize any threatened harm to the issuer.[43]

The ABA's Model Rule 1.13 includes a similar but narrower reporting requirement for attorneys representing an organization, applicable only when the attorney *knows* that a violation is occurring or going to occur that is likely to result in substantial injury to the organization:

> If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

Even though a securities lawyer "may be taken as knowing what an alert lawyer would know upon looking with a professional eye at the totality of circumstances there to be seen,"[44] the ABA's Model Rule appears to set too high a standard for reporting within an issuer evidence of a material violation, both in requiring an attorney to *know* that an officer, employee or other person associated with the issuer organization is engaged in or intends a material violation and in requiring that material violation to result in substantial injury to the issuer. Such a high threshold for internal reporting would be inconsistent with Section 307's emphasis on the public interest and protecting investors.

The proposed rule obligates an attorney to report information he or she has become aware of that would lead an attorney, acting reasonably, to believe that a material violation has occurred, is occurring or is about to occur. In the Commission's decision in *Carter and Johnson* and the order entered in *Keating, Muething & Klekamp*, the Commission addressed the responsibilities of an attorney who "knows" of a violation of law by the issuer or its officers. Because those cases dealt with situations where the attorneys knew, or should have known, about their client's misconduct, the Commission's discussion in both cases focused upon an attorney's obligation in that situation. Neither case, however, established actual knowledge of a client's misconduct as a minimum threshold for triggering an attorney's duty to report such misconduct. A rule which obligates an attorney to report only a material violation of which he or she "knows" could be interpreted as imposing an initial investigative obligation upon the attorney which he or she may be poorly situated to perform, and which section 307 indicates should be borne by appropriate personnel within the issuer after an attorney has made a report.

When an attorney "becomes aware" of information that would lead an attorney reasonably to believe in the existence of a material violation would turn, at least in part, on the attorney's training, experience, position and seniority. Attorneys are not necessarily expected to identify issues they are not equipped to see. What the reasonable, experienced securities lawyer might regard as a clear violation of the law may appear different—or not appear at all—to an unseasoned attorney with a different level of expertise.[45]

The evidence of a material violation that an attorney first becomes aware of may be the tip of an iceberg and, may, on its face, appear unlikely to result in substantial injury to the issuer. For example, evidence indicating that an issuer controls one or two of many special-purpose entities, which individually do not qualify for the off-balance-sheet treatment they have been given, might indicate a material misstatement in the issuer's financial statements, and a material violation of securities law, but not, without more, a material violation likely to result in substantial injury to the issuer.[46]

The proposed rule, however, is not intended to impose upon an attorney, whether employed or retained by the issuer, a duty to investigate evidence of a material violation or to determine whether in fact there is a material violation. Of course, nothing in the proposed rule is intended to discourage any such inquiry. On the other hand, the attorney cannot ignore evidence of a material violation of which he or she is aware.

In proposing this rule, the Commission does not intend to inhibit the consultative process between an issuer and its attorney. The duty to report "up the ladder" under section 205.3(b)(2) does not arise from a consultation in which an attorney advises an officer or employee of an issuer that the law regarding a proposed course of action is unsettled and there is some possibility that a court might hold in the future that the action violated the securities laws. Nor does it arise where an officer actually pursues a course of action despite being advised by the attorney that the course of action has been held illegal by courts in three states, in none of which the issuer does business, even if the attorney thinks there is a reasonable argument that other courts would also be likely to find it illegal. The course of action is not clearly illegal, because its legality has not been addressed by courts in any state where the issuer does business. The duty to report does not even arise where the officer tells the attorney that he or she intends to pursue a course of action that the attorney thinks is clearly illegal where the issuer does business, because the officer might reconsider and not do what he or she said he or she would do. The attorney's reporting obligation is not triggered until the attorney can be sure that the officer or employee will actually pursue an illegal course of action.

Interested persons are invited to comment on: Whether the "reasonably believes" standard is an appropriate standard to trigger the requirement that an attorney make a report or whether the requirement should be triggered only in instances where the attorney "knows" or "reasonably should know" of a material violation; and whether the standard should also address the quantity and/or quality of evidence required to trigger a report.

The Commission also does not intend the proposed rule to chill zealous advocacy by an issuer's defense counsel. Under certain circumstances, however, the proposed rule would require an attorney defending an issuer to report "up the ladder" to the issuer's CLO evidence of any material violation that the attorney becomes aware of while defending the issuer. That reporting obligation exists whether or not the evidence of a material violation is directly related to a matter under inquiry or investigation by the Commission. Evidence of a material violation that an attorney learns about while defending an issuer does not pose any less a threat to the issuer and to investors than does evidence of a material violation that an attorney becomes aware of under other circumstances, and requiring defense counsel to report such evidence to the issuer-client's CLO—or even, under extraordinary circumstances, to appropriate directors of the issuer—should not chill an attorney's ability to provide effective representation to the issuer. Indeed, the intended deterrent effect of the proposed rule would be significantly compromised if the rule did not apply when an attorney appears and practices during Commission inquiries, investigations and administrative proceedings. (As a rule of reason, the proposed rule should not be construed to require defense counsel to report to the CLO evidence of a material violation that the CLO has made the defense counsel aware of.)[47]

Moreover, the rule's reporting obligation is consistent with defense counsel's ethical obligations to the issuer-client. ABA Model Rule 1.4 *requires* an attorney to "keep a client reasonably informed about the status of a matter" as "reasonably necessary to permit the client to make informed decisions regarding the representation."[48] In the context of a Commission inquiry, investigation, or administrative proceeding, the issuer cannot make informed decisions without knowing about evidence that its officers or employees are responsible for a material violation and, if so, what steps would be required to rectify it. In such a context, the issuer's CLO needs to be aware of information indicating that a material violation has occurred, is occurring, or is about to occur in order to participate intelligently with defense counsel in making decisions about the objectives of the representation and how to pursue them. In the context of an inquiry, investigation, or administrative proceeding by the Commission, one of the affected issuer's objectives should be to determine whether there has been any violation and, if so, to decide how best to rectify it. Accordingly, it should be important to ensure that the issuer's CLO knows about any evidence of a material violation.

In an administrative proceeding, even where the Commission's staff asserts it has evidence of a material violation by an issuer, an attorney defending an issuer may assert any relevant and colorable affirmative defense on the issuer's behalf, and may require the Commission staff to prove its case against his or her client. It would not be an inappropriate response to reported evidence of a material violation for an issuer's CLO to direct defense counsel to assert either a colorable defense or a colorable basis for contending that the staff should not prevail. Such directions from the CLO, therefore, would not require defense counsel to report any evidence of a material violation to the issuer's directors under section 205.3(b)(4) of the proposed rule. On the other hand, if the CLO's *sole* response to reported evidence of a material violation from defense counsel is to direct defense counsel to argue in the proceeding that no violation has occurred and the CLO is conducting no internal inquiry and considering no remedial steps, defense counsel, acting reasonably, would probably believe that the CLO's response to the evidence of a material violation is inadequate and would be obligated to report the evidence of a material violation to the issuer's CEO under section 205.3(b)(1) or to appropriate directors under Section 205.3(b)(4) of the proposed rule.[49] Such reporting "up the ladder," however, would constitute—not chill—zealous representation of the issuer's best interest. Responsible defense counsel should probably make such a report under those circumstances in any

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employees of its investment adviser under Section 205.2(f).

[42] Geoffrey C. Hazard, Jr., *Rectification of Client Fraud: Death and Revival of a Professional Norm*, 33 Emory L.J. 271, 286 (1984).

[43] Senator Edwards foresaw that a CEO to whom the evidence was reported might "do a short investigation, for example, and figure out that no violation occurred." 148 Cong. Rec. S6552 (July 10, 2002).

[44] Hazard, *Rectification of Client Fraud*, 33 Emory L.J. at 283 (citing cases). *See also* Cheek Report at 33–35.

[45] See letter from SIA Ad Hoc Committee to Securities and Exchange Commission, dated Oct. 22, 2002.

[46] The massive fraud perpetrated by O.P.M. Leasing Services, Inc. in the 1970s and early 1980s unraveled after an attorney noticed that payments for computers leased from O.P.M. by one of O.P.M.'s largest customers were being paid directly to O.P.M., even though the lease agreement called for the payments to be made to the lender that was providing financing. Investigation over several months turned up no documentation for two of the many leases at issue. Copies of the missing documentation supplied by the lender revealed that O.P.M. had fabricated the leases and related title documents. O.P.M. had arranged to have the customer's relatively small payments channeled through O.P.M. so that O.P.M. could use its own funds to make the inflated payments due to the lender on the fabricated leases. *See* Report of the Trustee Concerning Fraud and Other Misconduct in the Management of the Affairs of the Debtor at 24–26, *In re O.P.M. Leasing Services, Inc.*, Reorg. No. 81–B–10533, (Bankr. S.D.N.Y., filed April 25, 1983). Clearly, even two fabricated leases were qualitatively material. However, they were arguably unlikely, by themselves, to result in substantial injury to O.P.M.

[47] The fundamental purpose of reporting to the CLO, as Section 205.3(b)(3) makes clear, is to have the CLO "cause such inquiry into the evidence of a material violation as he or she reasonably believes is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur." Defense counsel may be effectively part of the issuer's own investigation. Because the defense counsel is investigating, there should be no need for defense counsel to report separately each piece of evidence that the defense counsel becomes aware of. Moreover, the "noisy withdrawal" provisions in Section 205.3(d) are triggered only when the issuer's response to evidence of a material violation is not appropriate. What response is appropriate must depend on the particular circumstances. Circumstances in which the Commission is already investigating an issuer and the attorney is defending the issuer may well be fundamentally different from circumstances in which an issuer is preparing a filing with or submission to the Commission and the attorney is participating in preparing that filing or submission.

[48] As comment [1] to Model Rule 1.4 explains, "[t]he client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so."

[49] Moreover, if the attorney becomes aware during an administrative proceeding that the issuer intends to commit a fraud upon the Commission (*e.g.*, by offering testimony which the attorney knows to be false), then the attorney would be obligated to take appropriate remedial steps to prevent or correct such fraud. The attorney could also report to the Commission pursuant to Section 205.3(e)(2)(ii) of the proposed rule to prevent the client from committing an illegal act, such as suborning perjury, that would perpetrate a fraud on the Commission.

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event.[50] The attorney's client is the issuer, not the issuer's CLO. A prudent defense counsel should report "up the ladder" in this situation to ensure that upper management is aware of the evidence and has an opportunity to take appropriate action. As the rule makes clear, reporting potential violations to officers and directors of the issuer does not reveal any client confidences.

If the attorney defending an issuer reports the matter all the way "up the ladder" within the issuer and does not receive an appropriate response even from the issuer's directors, and if the material violation is ongoing or about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or of investor, section 205.3(d)(1)(i) obligates an attorney retained by an issuer, even as an advocate, to withdraw from representation and notify the Commission that such withdrawal was for "professional considerations." Section 205.3(d)(2)(i) permits, but does not require, an attorney retained by the issuer to take these steps if he or she reasonably believes the material violation has occurred and is not ongoing and is likely to have resulted in substantial injury to the financial interest or property of the issuer or of investors. The ABA's Model Rule 1.16 *requires* even an advocate in a criminal case to withdraw, unless ordered not to by a court, where continuing the representation "will result in violation of the rules of professional conduct," as asserting frivolous defenses would, under Model Rule 3.4.

An attorney defending an issuer in a civil injunctive action by the Commission in a district court would not be appearing and practicing before the Commission, because the issuer would not be transacting business with the Commission, even though the attorney may be interacting with Commission staff assigned to the litigation. However, if that attorney is also appearing and practicing before the Commission by defending the issuer in a Commission inquiry or investigation and becomes aware of evidence of a material violation by the issuer, the attorney will have the reporting responsibilities under the proposed rule discussed above, whether or not the evidence is related to the subject matter of the litigation. If the evidence of a material violation relates to the subject of the litigation, the attorney should also observe his or her duty of candor to the court.

The Commission invites interested persons to comment on whether there is a potential chilling effect inherent in requiring an attorney to report within the issuer evidence of a material violation or make a "noisy withdrawal" while representing an issuer in an inquiry, investigation, or administrative proceeding by the Commission, and invites interested persons to suggest how to address this situation. Should the definition of the term "appropriate response" in 205.2(b) be modified to explicitly recognize an attorney's obligation to continue to defend an issuer client in a Commission administrative proceeding, even if the attorney does not believe the client has a meritorious defense? Should the definition be modified to state that an issuer's decision to require the Commission to establish its claims against the issuer in an administrative proceeding constitutes an "appropriate response" by an issuer, notwithstanding the fact that an attorney learns of evidence during the proceeding which indicates that the Commission's claims are valid? Should paragraphs 205.3(d)(1)(i) and 205.3(d)(2)(i) be revised to explicitly state that an attorney is not required, or even permitted, to effect a "noisy withdrawal" under these circumstances?

Maintaining a Contemporaneous Record

Paragraph (b)(2) of the proposed rule provides:

(2) The attorney reporting evidence of a material violation shall take steps reasonable under the circumstances to document the report and the response thereto and shall retain such documentation for a reasonable time.

Absent exigent circumstances, the attorney retained or employed by an issuer who reports "up the ladder" within the issuer evidence of a material violation is required to take reasonable steps to make and retain a contemporaneous record of his or her report and the response it receives.[51] A subordinate attorney who reports evidence of a material violation to his or her supervising attorney is also required to take such steps. Such contemporaneous records would typically include the date, time, location, manner, and substance of the report and the response and the identity of witnesses to either. Much or all of this information would likely be included in the report or the response itself, if the report or the response is in written form. Requiring such a contemporaneous record of the report may protect the attorney in any proceeding in which his or her compliance with this rule is at issue by demonstrating that the attorney acted properly under the circumstances.[52] The rule does not establish any requirement for documentation of an attorney's determination that information does not constitute evidence of a material violation (except where a supervisory attorney believes the information reported to the supervisory attorney by a subordinate attorney is not evidence of a material violation). In close cases, it would be prudent for an attorney to do so.

In certain limited circumstances it may not be practicable or reasonable for the attorney to prepare a written record at the time. The attorney, for example, may learn of possible misconduct in the course of a fast-moving corporate deal. In this situation, it may appear more important to bring the evidence to the CLO's attention immediately than to memorialize it. Other exigent or extenuating circumstances also may result in the lack of a contemporaneous record, although the Commission believes that such cases will be rare. In some cases, the CLO's or management's written response may provide adequate documentation of the report as well as the response. Where it does provide adequate documentation, retaining a copy of the CLO's report would satisfy the requirements of (b)(2) and (7). Where it does not, the reporting attorney should endeavor to make a record of his or her report as soon as possible.

Where a report is directed to an issuer's audit committee, to some other committee of the issuer's board of directors, or to the full board—either because the reporting attorney considered it necessary to bypass the CLO and CEO or because the response from the CLO or CEO was inappropriate or was unreasonably delayed—those circumstances may make it important for the reporting attorney to make and retain a contemporaneous record of his or her report.

In the extreme and unlikely event that the issuer's audit committee, some other committee of the issuer's board of directors, or the full board of directors does not provide an appropriate response within a reasonable time, it may be essential for the reporting attorney to prepare and retain a contemporaneous written record documenting those circumstances. Accordingly, in that unlikely event, paragraph (b)(8) of the proposed rule would require the reporting attorney to take reasonable steps to document the response—typically preserving a copy of a written response—the attorney believes inappropriate, and to retain that documentation for a reasonable time. What is a reasonable time will depend on the circumstances but would probably not be shorter than the statute of limitations applicable to the material violation at issue.

A prudent attorney is likely to make such a contemporaneous record whether or not the Commission requires it, and all attorneys should do so under the circumstances covered by Sections 205.3 (b)(1), (4), and (5) and 205.5(c). Section 205.3(d)(1) expressly authorizes an attorney who has made and retained such contemporaneous records under the proposed rule to use them in self-defense in the event his or her conduct is called into question.

Interested persons are invited to comment on: (1) Whether the rule should require the attorney making a report to maintain a written record of that report; (2) whether the rule should prescribe in detail the form and content of the report, and if so, what form and content should or should not be prescribed; and (3) whether the rule should prescribe specific time deadlines for the preparation of the report, and if so, what time deadlines would or would not be appropriate.

Chief Legal Officer's Duty To Investigate

Paragraph (b)(3) of the proposed rule would provide:

(3) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur. If the chief legal officer reasonably believes no material violation has occurred, is occurring, or is about to occur, he or she shall so advise the reporting attorney. If the chief legal officer reasonably believes that a material violation has occurred, is occurring, or is about to occur, he or she shall take any necessary steps to ensure that the issuer adopts appropriate remedial measures, including appropriate disclosures, and/or imposes appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred. The chief legal officer shall promptly report the remedial measures adopted and/or sanctions imposed to the chief executive officer, to the audit committee of the issuer's board of directors, or to the issuer's board of directors, and to the reporting attorney. The chief legal officer shall take reasonable steps to document his or her inquiry and to retain such documentation for a reasonable time. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section. If the issuer fails in any material respect to take any remedial measure that the qualified legal compliance committee directs the issuer to take in order to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred, the chief legal officer shall notify the Commission that a material violation has occurred, is occurring or is about to occur and shall disaffirm in writing any documents submitted to or filed with the Commission by the issuer that the chief legal officer reasonably believes are false or materially misleading.

Paragraph (b)(3) would clarify the obligations of the issuer's CLO (or equivalent) under the proposed rule. The Commission has not imposed on attorneys making reports under Section 205.3(b) a duty to investigate independently the evidence before making their reports. Attorneys employed by the issuer or retained as outside counsel are often not in a position to conduct such an inquiry. In many cases, attorneys may lack the experience, resources, and access to records and other employees necessary to conduct an appropriate inquiry. Such an inquiry may be beyond the scope of outside counsel's representation. The issuer's CLO, however, is in a position to conduct an internal inquiry when appropriate. Moreover, a CLO has a clear duty to protect the issuer—as opposed to its other officers and employees—in every possible way.[53] The proposed rule, accordingly, would expressly make the CLO responsible for having an inquiry conducted in response to a report under paragraph (b), unless the CLO makes a reasonable determination that it is not necessary to do so.

Where an issuer has no general counsel or chief legal officer, the "equivalent" would be the chief executive officer, who would, under the proposed rule, be responsible for having an inquiry conducted in response to a report under 205.3(b), unless he or she makes a reasonable determination that it is not necessary to do so. In most such cases, the CEO would probably authorize whatever attorneys the issuer normally uses for its legal work to conduct the inquiry or retain another law firm to do so.

Interested persons are invited to comment on whether: (1) The chief legal officer should have an obligation to conduct an inquiry in response to a report and, if so, whether he or she should be permitted to retain or assign other counsel to conduct the inquiry; (2) the "reasonably believes" standard is appropriate for determining whether the chief legal officer must cause an inquiry to be conducted; (3) the "reasonably believes" standard is an appropriate guide for the chief legal officer's determination regarding whether a material violation has occurred: (4) the rule should further address when it is necessary for the issuer to take "necessary steps" in response to a material violation; (5) the rule should further address when remedial measures and/or sanctions are appropriate and the kinds of sanctions and remedial

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[50] *See* ABA Model Rules 3.1 ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.") and 1.4 (quoted above). As comments [1] and [2] to Model Rule 3.1 elaborate:

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[51] Section 205.4(d) of the proposed rule would require a supervisory attorney to document the subordinate attorney's report and the supervisory attorney's response to it only where the supervisory attorney believes the information reported by the subordinate attorney is not evidence of a material violation.

[52] *See* Section 205.3(d)(1) of the proposed rule and *Meyerhofer* v. *Empire Fire & Marine Ins. Co.*, 497 F.2d 1190, 1192–93 (2d Cir. 1974) (Friendly, J.), *cert. denied*, 419 U.S. 998 (1974) (associate attorney who had resigned from a law firm because the partners ignored his concerns about the adequacy of disclosures in registration statements, parts of which the associate had worked on, was entitled to disclose to plaintiffs in a subsequent law suit, claiming that one of those registration statements was fraudulent and naming the former associate as a defendant, an affidavit that the associate had previously given to the SEC and that contained confidential client information; the affidavit convinced the plaintiffs' attorney that the associate had not participated in the fraud, and the associate was dropped as a defendant); Hazard, *Rectification of Client Fraud*, 33 Emory L.J. at 283–85 (explaining why "an innocent lawyer—however competent and however watchful—is inevitably at risk in any transaction where the client could commit fraud" and why "the notion that competent lawyers can take care of themselves under a confidentiality rule that does not have an exception concerning client fraud" cannot be taken seriously).

[53] See O'Melveny & Myers, 969 F.2d at 748–49 (holding that outside counsel had such a duty).

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measures that are acceptable under different circumstances; and (6) the rule should address what steps by an issuer are sufficient to "stop," "prevent" or "rectify" a material violation.

Reporting a Material Violation to the Issuer's Directors

Paragraph (b)(4) of the proposed rule would provide:

(4) If an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has not provided an appropriate response, or has not responded within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

This paragraph applies where the issuer's CLO and/or CEO fail to respond appropriately to the reported evidence of a material violation, requiring the reporting attorney to report the evidence to the issuer's audit committee, another committee of independent directors, or to the full board of directors. The term "appropriate response" is defined in Section 205.2(b) and identifies the steps a CLO or CEO must take in responding to a report of evidence of a material violation, including making appropriate disclosures when the reported evidence demonstrates the existence of a disclosure violation.

The statutory language refers to situations in which a CLO or CEO "does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation)." The proposed rule makes clear that providing no response at all within a reasonable time may be equivalent to not providing an appropriate response and no response may, under certain circumstances, require the attorney to report to a higher level of authority within the issuer—when, for example, a filing or submission that the attorney reasonably believes contains a misstatement of material fact is to be made the next day.

The direction that the attorney must report "up the ladder" to the audit committee of the issuer's board of directors, if there is one; if there is no audit committee, then to another committee of the issuer's board of directors consisting solely of independent directors, if there is one; and if there is no committee of independent directors, then to the full board of directors is intended to implement the statutory language on reporting "up the ladder" [54] while avoiding a situation in which one attorney might report some evidence of a material violation to one committee of directors while another attorney might report other evidence of a material violation to a second committee, obscuring the full, cumulative significance of reported evidence.

Requiring that the committee of a registered investment company's board of directors to which an attorney is allowed to report evidence of a material violation—here and in paragraph (b)(5) of this section—must exclude "interested persons" is intended to assure that the report will go to independent directors. That exclusion has the same rationale here as does excluding "interested persons" from an investment company's QLCC, as defined in Section 205.2(j). Usually, a director who is *not* "employed directly or indirectly by the issuer" is an independent director of the issuer. However, registered investment companies (including mutual funds) constitute an important group of issuers that typically are managed externally. As a result, a director of a registered investment who is "not employed directly or indirectly" by the investment company but is employed by the investment company's investment advisor may well not be independent. Independent directors of a registered investment company thus cannot include any "interested person" of the investment company as defined in Section 2(a)(19) of the Investment Company Act of 1940.

The Commission solicits comment on any aspect of this section, including whether: (1) The "reasonably believes" standard is appropriate for the reporting attorney to determine whether he or she has received an "appropriate response" and, if not, what alternative standard should be used; (2) the "reasonable time" standard is appropriate or whether the rule should contain a more specific deadline (or deadlines) or one that is linked to the complexity of the issues presented by the report; and (3) the rule should specifically prescribe the form and content of any report to the audit committee or the board of directors and, if so, what form and content would or would not be appropriate.

Paragraph (b)(5) of the proposed rule would provide for circumstances under which it may be appropriate to bypass the CLO and CEO:

(5) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report the evidence of a material violation as provided under paragraph (b)(4) of this section.

In the interest of expediting any required corrective action within the issuer, paragraph (b)(5) permits, but does not require, an attorney to bypass the CLO or CEO of an issuer and report evidence of a material violation directly to appropriate directors of an issuer—to the audit committee of the issuer's board of directors, if there is one; if there is no audit committee, then to another committee of the issuer's board of directors consisting solely of independent directors, if there is one; and if there is no committee of independent directors, then to the full board of directors—where the attorney reasonably believes that it is likely to be futile to report the evidence to the CLO or CEO. It provides a shortcut under the circumstances implicit in paragraph (b)(4), where the inappropriate response of a CLO and/or CEO can reasonably be anticipated. Reporting to the CLO or CEO might appear futile where those officers appear to be involved in the wrongdoing to be reported. Indeed, a report to participants in the wrongdoing might enable them to destroy relevant evidence. This is an amendment that the Cheek Report (at 29–30) recommends to Model Rule 1.13.

Interested persons are invited to comment on any aspect of this section, including whether: (1) The rule should contain a bypass provision, such as this, allowing a reporting attorney to forego reporting evidence to the chief legal officer and, if so, what its advantages and disadvantages would be; (2) a reporting attorney's ability to bypass the chief legal officer should be limited to instances where it is "futile" or whether it should be expanded to other situations, what those other situations should be, and why; (3) the "reasonably

[54] Section 307 of the Act calls for a rule requiring an attorney to "report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors."

believes" standard is appropriate and, if not, what standard or standards would be appropriate; and (4) the rule should provide that the reporting attorney "may" bypass the chief legal officer or should it require that he or she do so under certain circumstances.

Attorneys Retained or Directed To Investigate a Reported Material Violation

Paragraph (b)(6) of the proposed rule would address circumstances in which those to whom evidence of a material violation is reported direct others, either in-house attorneys or outside attorneys retained for that purpose, to investigate the possible violation:

(6) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(4), or (b)(5) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve the officers or directors of the issuer to whom the evidence of a material violation has been reported under paragraph (b)(1), (b)(4), or (b)(5) of this section of the duty to respond to the reporting attorney.

Paragraph (b)(6) makes two points. First, the investigating attorneys would themselves be appearing and practicing before the Commission. They would therefore be bound by the requirements of the proposed rule. Second, the officer or directors who caused them to investigate remain obligated to respond to the attorney who initially reported the evidence of a material violation. Either the issuer's officer or directors or, under the officer's or directors' instructions, the investigating attorneys would make the reporting attorney aware of the inquiry, to keep the reporting attorney from concluding mistakenly that the required response was unreasonably delayed.

Interested persons are invited to comment on all aspects of this section, including: (1) Whether it is appropriate for an attorney retained or directed to investigate a report to be deemed to be appearing and practicing before the Commission; and (2) to what extent, if any, the rule should permit the retained or directed attorney to fulfill the issuer's obligation to respond to the reporting attorney.

Assessment of the Issuer's Response to the Reported Evidence of a Material Violation

Paragraph (b)(7) of the proposed rule would provide for circumstances in which the attorney receives an appropriate and timely response to the evidence he has reported:

(7) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section from the issuer's chief legal officer, chief executive officer, audit committee, another committee of the issuer's board of directors consisting solely of directors not employed, directly or indirectly, by the issuer, or the issuer's board of directors and who has taken reasonable steps to document his or her report and the response thereto under paragraph (b)(2) of this section need do nothing more under this section regarding the evidence of a material violation.

This paragraph confirms that the attorney would fully comply with proposed Section 205.3 once the attorney has reported evidence of a material violation and reasonably believes that the issuer's response to that reported evidence is appropriate, so long as there is a record of the report and the response.

Interested persons are invited to comment on any aspect of this section, including whether the rule should have such a "safe harbor" and, if so, its scope.

Paragraph (b)(8) of the proposed rule would provide for circumstances in which the attorney does not receive an appropriate response to the evidence he has reported or does not receive any response in a reasonable time:

(8) If the attorney reasonably believes that the issuer has not made an appropriate response to the report or reports made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section, or the attorney has not received a response in a reasonable time, the attorney shall:

(i) Explain his or her reasons for so believing to the chief legal officer, chief executive officer, or directors to whom the attorney reported the evidence of a material violation pursuant to paragraph (b)(1), (b)(4), or (b)(5); and

(ii) Take reasonable steps to document the response, or absence thereof, and to retain such documentation for a reasonable time.

It should be truly extraordinary for an attorney reporting evidence of a material violation to receive an inappropriate response—one, for example, that simply asserted that the reported evidence is no cause for concern without any hint of evaluation or inquiry—or to receive no response at all within a reasonable time. Any attorney who believes that the response to evidence of a material violation is not appropriate or is unreasonably delayed is obligated to the client-issuer to explain to the responsible officers or directors why he or she so believes. Where the attorney's explanation is unavailing and the attorney continues to believe that the issuer's response is not appropriate, that extraordinary event should be documented, and the attorney should retain that documentation for a reasonable time.[55]

Interested persons are invited to comment on any aspect of the rule, including: (1) Whether the "reasonably believes" standard is appropriate and, if not, what is an appropriate standard; (2) whether the rule should prescribe what is a "reasonable time" to permit the issuer to respond to a report; and (3) whether it is important to provide a "safe harbor" from civil suits for the attorney who reports evidence of a material violation under paragraph (b) or paragraph (c).

Section 205.3(c) of the proposed rule would provide an alternative to the reporting requirements of paragraphs 205.3(b) and to requirements under 205.3(d) that become applicable where an attorney reporting evidence of a material violation under 205.3(b) does not receive an appropriate response:

(c) *Alternative reporting procedures for attorneys retained or employed by an issuer with a qualified legal compliance committee.* (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence of a material violation to a qualified legal compliance committee, if the issuer has duly formed such a committee. Except as provided in paragraph (b)(3) of this section, an attorney who reports evidence of a material violation to a qualified legal compliance committee has satisfied his or her obligation to report evidence of a material violation within the issuer, is not required to assess the issuer's response to the reported evidence of a material violation, and is not

[55] *See* Cheek Report at 28 (characterizing situations in which directors within a corporate client fail to act under such circumstances as "extreme"); Thomas Riesenberg, *Trying to Hear the Whistle Blowing: The Widely Misunderstood "Illegal Act" Reporting Requirements of Exchange Act Section 10A*, 56 Business Lawyer 1417, 1444–45 (2001) (noting that SEC received less than a dozen reports that an issuer had failed to take appropriate remedial action under Section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1, in four years). Statements by Senators Edwards, Enzi, and Corzine in the floor debate regarding Section 307 of the Act indicate that they believed that an issuer's directors, once notified of evidence of a material violation, could be counted on to remedy it. *E.g.*, 148 Cong. Rec. S6552 (July 10, 2002) (statement of Sen. Edwards), S6555 (statement of Sen. Enzi), S6556 (statement of Sen. Corzine). If that assumption is correct, Section 205.3(d) would never be applicable. *But see Lincoln Savings & Loan Ass'n v. Wall*, 743 F. Supp. 901, 910 (D.D.C.1990) (Sporkin, J.) (finding that the directors of Lincoln Savings & Loan "completely abdicated their duties to Lincoln" by paying $94 million of Lincoln's assets to Lincoln's corporate parent, payments that the parent was "under no circumstances" entitled to and that "led to a substantial dissipation of Lincoln's assets").

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required to take any action under paragraph (d) of this section regarding the evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee in lieu of causing an inquiry to be conducted under paragraph (b)(3) of this section. Thereafter, pursuant to the requirements under § 205.2(j), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c) of this section.

This alternative to the reporting requirements of paragraphs Sections 205.3(b) and (d) would allow, though not require, an attorney to seek expedited assessment of reported evidence of a material violation. It would also relieve the reporting attorney of any further obligation once he or she had reported such evidence to an issuer's QLCC. Such a provision may well encourage attorneys to report evidence of a material violation more promptly, since the reporting attorney would not have to worry that he or she might ultimately be obliged to decide whether the issuer's response was "appropriate," and, if the attorney concluded the issuer's response was not appropriate, to go outside the issuer and provide notice of "noisy withdrawal" to the Commission. Junior attorneys employed by an issuer might be especially concerned about having to second-guess their superiors, and yet those junior attorneys might also be the first to find evidence of a material violation that the issuer would want to know about.

The QLCC—itself a committee of the issuer's board of directors with special authority and special responsibility—is responsible for carrying out all the steps required by Section 307 of the Act: notifying the CLO of the report of evidence of a material violation (except where such notification would have been excused as futile under 205.3(b)(5)); causing an investigation where appropriate; determining what remedial measures are appropriate where a material violation has occurred, is occurring, or is about to occur; reporting the results of the investigation to the CLO, the CEO, and the full board of directors; and notifying the Commission if the issuer fails in any material respect to take any of those appropriate remedial measures.

More generally, the QLCC institutionalizes the process of reviewing reported evidence of a possible material violation. That would be a welcome development in itself.[56] It may also produce broader synergistic benefits, such as heightening awareness of the importance of early reporting of possible material violations so that they can be prevented or stopped.

Probably the most important respects in which Section 205.3(c) differs from Sections 205.3(b) and 205.3(d) taken together is that Section 205.3(c) relieves an attorney who has reported evidence of a material violation to a QLCC from any obligation "to assess the issuer's response to the reported evidence of a material violation," to alert the Commission as to the material violations, or even to withdraw silently. If the issuer fails, in any material respect to take any remedial action that the QLCC has directed it to take, each member of the QLCC, as well as the CLO and the CEO, is individually responsible for notifying the Commission that a material violation has occurred, is occurring or is about to occur and for disaffirming any document submitted to or filed with the Commission by the issuer that the individual member considers false or materially misleading.

Unlike Sections 205.3(b) and (d), Section 205.3(c) does not address a situation where an issuer's directors fail to stop, prevent, or rectify a material violation, or where it might be reasonable to consider an investigation unreasonably prolonged. On the other hand, Congress itself did not explicitly direct the Commission to address by rule what an attorney who had reported evidence of a material violation should do in the event that an issuer's directors did not respond appropriately. It might thus be argued that Section 205.3(c) of the proposed rule more accurately reflects Congressional intent than do Sections 205.3(b) and (d).

Interested persons are invited to comment on any aspect of this section, including whether: (1) Section 205.3(c) better implements Congressional intent than do Sections 205.3(b) and (d) taken together; (2) Section 205.3(c) reasonably incorporates the two-step process for review of evidence of a material violation described in Section 307 of the Act; (3) Section 205.3(c) is a valuable alternative to Sections 205.3(b) and (d), as it does not impose a requirement beyond reporting evidence of a material violation to an issuer's audit committee, a committee of independent directors, or its full board of directors; (4) Section 205.3(c) should specify circumstances under which an attorney may or should use that alternative and, if so, what would be appropriate circumstances; (5) Section 205.3(c) should indicate circumstances, if any, under which an attorney must *not* or should *not* use that alternative and, if so, what such circumstances should be; (6) an issuer's CLO should be able to make the same use of a QLCC as any other attorney employed by an issuer, with no obligation to assess the results of an investigation by outside attorneys who might be retained specifically to investigate evidence of a material violation; and (7) the QLCC alternative can be reasonably adapted to small issuers and, if so, how.

Notification to the Commission Where There Is No Appropriate Response

Section 205.3(d) of the proposed rule would address the rare situation in which an attorney reasonably believes an issuer's directors have either made no response (within a reasonable time) to reported evidence of a material violation or have not made an appropriate response. That section of the proposed rule is broadly based on the ABA's Model Rules 1.13 and 1.16 and on Section 10A of the Exchange Act. It distinguishes between material violations that have already occurred and are not ongoing and material violations that are either ongoing or have not yet occurred and between outside attorneys retained by an issuer and in-house attorneys employed by an issuer.

Section 205.3(d)(1) of the proposed rule would provide:

(d) *Notice to the Commission where there is no appropriate response within a reasonable time.* (1) Where an attorney who has reported evidence of a material violation under paragraph 3(b) of this section rather than paragraph 3(c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report, and the attorney reasonably believes that a material violation is ongoing or is about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or of investors:

(i) An attorney retained by the issuer shall:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;

(B) Within one business day of withdrawing, give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Promptly disaffirm to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;

(ii) An attorney employed by the issuer shall:

[56] *See, e.g.*, Cheek Report at 37–41 (encouraging institutional changes providing for regular communications between a company's general counsel, outside counsel, and directors that would facilitate early disclosure of possible misconduct).

(A) Within one business day, notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Promptly disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has withdrawn that the previous attorney's withdrawal was based on professional considerations.

Although such extreme situations should be rare, the proposed rule would probably be incomplete if it did not provide for them. Providing notification to the Commission, however, goes beyond what the Act expressly directed the Commission to do. The proposed rule, accordingly, sets a higher standard for notifying the Commission than for reporting "up the ladder" within the issuer. Paragraph (d)(1) addresses material violations that are ongoing or have yet to occur and distinguishes between in-house attorneys employed by an issuer and outside attorneys retained by the issuer. It requires the reporting attorney to take certain actions that paragraph (d)(2)—addressing past material violations that have no continuing effect—merely permits. Paragraph (d)(1), however, does not require even an outside attorney retained by the issuer to disclose evidence of the reported material violation, only to make a "noisy withdrawal."[57] An attorney would not be obligated to withdraw and notify the Commission unless paragraph (d)'s higher threshold is met.

The Commission is aware that the ABA is currently addressing the issues raised by this section and the Commission will be monitoring the progress of the ABA's efforts in assessing whether there is a need for the Commission's rule to reach this issue.

Outside Attorneys

Where the material violation at issue is ongoing or has yet to occur, Section 205.3(d)(1) of the proposed rule would require an outside attorney appearing and practicing before the Commission in the representation of the issuer to give notice to the Commission of the issuer's inappropriate response to the reported evidence through the "signal" or "flag waving" of "noisy withdrawal" that has long been recognized as a compromise between silent withdrawal and disclosure of specific confidential information.[58] It requires that signal, however, only when the attorney actually believes that the material violation of which the attorney reported evidence is occurring or is about to occur and is, *in addition*, likely to result in substantial injury to the financial interest or property of the issuer or of investors.

That is, where the issuer's directors have responded inappropriately to evidence of a material violation that is ongoing or has yet to occur, *and* this additional threshold is met, an attorney retained by the issuer is required, under paragraph (d)(1)(i), to withdraw from representing the issuer, in all matters, "forthwith." Within one business day after withdrawing, the attorney is required to notify the Commission that he or she has withdrawn and was required to do so for "professional considerations." Use of the phrase "professional considerations" to explain the withdrawal keeps confidential the particular facts underlying the withdrawal while signaling that the withdrawal reflects substantially more than a disagreement about the best legal strategy or a dispute over the cost of representation.[59] A purely silent withdrawal would be likely to assist an issuer in carrying out an ongoing or intended violation.

Under these circumstances, the attorney retained by an issuer is also required, "promptly," to disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading.

The distinction between "forthwith" in 205.3(d)(i)(A), "within one business day" in 205.3(d)(i)(B), and "promptly" in 205.3(d)(i)(C) recognizes that it may be impractical for an attorney to accomplish withdrawal, notification thereof, and disaffirmance of false or misleading statements in filings with or submissions to the Commission in a single day.

The limited disclosure involved in the "noisy withdrawal" required by Section 205.3(d) should provide such a powerful incentive for an issuer to take actions appropriate to prevent or rectify a material violation that such "noisy withdrawals" should be rare. Requiring such "noisy withdrawal" appears appropriate to protect shareholders and investors, where the reported material violation appears likely to result in substantial financial injury to the issuer or investors, by effectively requiring an issuer's directors to act and by virtually ensuring an immediate inquiry by the Commission if they do not.

In-House Attorneys

Even where the higher threshold under 205.3(d)(1) has been met and the material violation at issue is ongoing or has yet to occur, an attorney employed by the issuer is *not* required to resign. The in-house attorney is, however, required to notify the Commission that he or she intends to disaffirm an opinion or document within one business day of concluding that the issuer's response to the evidence reported by the attorney is inappropriate or unreasonably delayed, and is thereafter required to disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading. If the in-house attorney has not prepared or assisted in preparing any such submission or filing, the in-house attorney is not required to notify the

[57] Senator Enzi stated in the floor debate over Section 307 of the Act that "[t]he amendment [he] support[ed] would not require the attorneys to report violations to the SEC, only to corporate legal counsel or the CEO, and ultimately, to the board of directors." 148 Cong. Rec. S6555 (July 10, 2002). He was, however, contrasting the reporting requirement in what would be Section 205.3(b) of the proposed rule with the reporting requirement in Section 10A(3) of the Exchange Act. As Senator Enzi explained, requiring an attorney to report evidence of a material violation first to senior officers of an issuer, and then, if they do not rectify the violation, to the board of directors, as Section 205.3(b) would, is "less onerous" than Section 10A's requirement that an accountant must, as the Senator put it, "report, *both to the client's directors and simultaneously to the SEC*, an[] illegal act if management fails to take remedial action." *Id.* (emphasis added). Senator Enzi nowhere suggested that an attorney representing an issuer should not be required (1) to withdraw in the unlikely and extreme event that the issuer's board of directors failed to prevent an ongoing material violation and (2) to notify the Commission that he had withdrawn for "professional considerations."

[58] *See* Comment [14] to the ABA's Model Rule 1.6, Comment [3] to Model Rule 1.16, and the discussion of the history of the "signal" of "noisy withdrawal" in Hazard, *Rectification of Client Fraud*, 33 Emory L.J. at 301–07. *See also* ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 92–366 (explaining that the ABA's Model Rules permit "noisy" withdrawal, which involves disavowing work product, only when the client's fraud is continuing or intended, not when it is past).

[59] *See* Comment [2] to Model Rule 1.16, Comment [10] to Model Rule 1.2 and Comment [3] to Model Rule 4.1.

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Commission. Requiring an in-house attorney employed by the issuer to resign when that attorney receives an inappropriate response to the attorney's reported evidence of an ongoing or impending material violation appears to be unreasonably harsh.

Notice to Successor Attorneys

Paragraph (d)(1)(iii) of this section would require the issuer to notify any attorneys retained or employed to replace the attorney who has withdrawn that the previous attorney withdrew based on professional considerations. The purpose of this paragraph is to avoid a situation in which successor attorneys are unaware that the previous attorney waved a red flag in withdrawing. Under such circumstances, an issuer engaged in fraud may shift work previously done by outside attorneys to its own in-house legal staff, over which it has more control, and it may take the successor attorneys some time to become aware of the evidence of material violations that led the previous attorneys to withdraw.[60] To provide substantial assurance that successor attorneys will be alerted to a potential material violation, the proposed paragraph (d)(1)(iii) would require the issuer's chief legal officer to inform any attorney retained or employed to replace the attorney who has withdrawn that the previous attorney's withdrawal was based on professional considerations.[61] Proposed paragraph (d)(2)(iii) would impose the same obligation on the issuer's chief legal officer where an attorney has chosen to withdraw based on professional considerations regarding the issuer's response to evidence of a past material violation.

Past Material Violations

Section 205.3(d)(2) of the proposed rule would provide for situations in which the reported material violation has already occurred and is not ongoing. Here too, the threshold for action by the attorney is higher than for reporting "up the ladder" within the issuer and corresponds to the higher threshold in 205.3(d)(1):

(2) Where an attorney who has reported evidence of a material violation under paragraph (b) rather than paragraph (c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report under paragraph (b) of this section, and the attorney reasonably believes that a material violation has occurred and is likely to have resulted in substantial injury to the financial interest or property of the issuer or of investors but is not ongoing:

(i) An attorney retained by the issuer may:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal was based on professional considerations;

(B) Give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Disaffirm to the Commission, in writing, any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(ii) An attorney employed by the issuer may:

(A) Notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

If the material violation at issue has already occurred and is not ongoing, the actions required of the attorney are more limited than if the violation is ongoing or has yet to occur. Under the proposed rule, an ongoing violation includes an inaccurate disclosure in a filing with or submission to the Commission that has not been corrected and may be relied on by investors. If the past material violation at issue has already occurred and is not ongoing and is likely to have resulted in substantial financial injury to the issuer, Section 205.3(d)(2)(ii) of the proposed rule would allow, but not require, the reporting attorney to withdraw, notify the Commission, and disaffirm false or misleading filings or submissions the attorney has prepared or assisted in preparing. The attorney's silence, under those circumstances, would not assist the violation. To the extent investors may continue to rely upon false or misleading statements in earlier filings or submissions, which have not been disaffirmed, the material violation would be ongoing and Section 205.3(d)(1) would apply.

The Commission once again distinguishes between the obligations of outside attorneys retained by an issuer and in-house attorneys employed by an issuer because it believes that in-house attorneys, as a practical matter, have less freedom of action than outside attorneys and that requiring an attorney to resign is more severe than requiring an attorney to withdraw from a particular representation.

Paragraph (d)(3) restates what is largely settled law:

(3) The notification to the Commission prescribed by this paragraph (d) does not breach the attorney-client privilege.

"Noisy withdrawal" signals that something is wrong *without* revealing any privileged communication between attorney and client.[62] "Noisy withdrawal" under Section 205.3(d), moreover, presupposes that the attorney actually believes that the material violation of which the attorney reported evidence has occurred, is occurring, or is about to occur and, *in addition*, likely resulted or will result in substantial injury to the financial interest of the issuer or of investors. Under such circumstances, nearly forty states, adopting the 1981 recommendation of the Kutak Commission, permit disclosure of confidential information to the extent an attorney reasonably believes necessary to prevent a criminal or fraudulent act or to rectify the consequences of a criminal or fraudulent act in which the attorney's services were used.[63] The Commission's proposed rule would make clear that the attorney thus does not violate the attorney-client privilege in making the disclosures at issue here. Moreover, the attorney is not acting as the issuer's agent and accordingly also does not waive the issuer's attorney-client privilege in the information disclosed or any other privilege or protection that the issuer is entitled to assert regarding that information.[64] These disclosures should in most cases also be covered by the whistleblower protections of 18 U.S.C. 1514A.

Interested persons are invited to comment on any aspect of Section 205.3(d)(1)–(3), including:

(1) Whether the proposed rule should include any provision permitting or requiring notification to the Commission when an attorney receives an inappropriate response or whether this is a matter best left to the ABA or state bar associations;

(2) Whether a higher standard should apply to notification to the Commission than to reporting "up the ladder" within the issuer and, if so, how much higher it should be;

(3) Whether "noisy withdrawal" should be mandatory under some circumstances but permissive under others and, if so, what circumstances should make "noisy withdrawal" mandatory and what circumstances should make "noisy withdrawal" permissive, or whether "noisy withdrawal" should be mandatory under all circumstances covered by Section 205.3(d) or should be permissive under all such circumstances;

(4) Whether it is appropriate to distinguish between material violations that are ongoing or impending and material violations that are past and have no continuing effect;

(5) Whether a distinction between material violations that are ongoing or impending and material violations that are past and have no continuing effect is meaningful regarding investors;

(6) Whether the attorney who has reported evidence of a material violation to which the issuer has not made an appropriate response must know that the reported material violation has occurred, is occurring, or is about to occur before the attorney is required, or allowed, to make a "noisy withdrawal";

(7) Whether an attorney should be required, or permitted, to make a "noisy withdrawal" where the attorney has not received an appropriate response to reported evidence of a material violation, and the attorney reasonably believes that the reported material violation has occurred, is occurring, or is about to occur;

(8) Whether there is a sufficient basis for a "noisy withdrawal," under those circumstances, where the attorney believes that the reported material violation is likely to have occurred, to be occurring, or to be about to occur;

(9) Whether there is a sufficient basis for a "noisy withdrawal," under those circumstances, where the attorney believes that the reported material violation may have occurred, may be occurring, or may be about to occur;

(10) Whether substantial injury to the financial interest of investors is an appropriate prerequisite to a "noisy withdrawal";

(11) Whether substantial injury to the financial interest of the issuer-client is an appropriate prerequisite to a "noisy withdrawal" and, if so, whether such substantial injury to a financial interest must be certain, or likely, or merely possible;

(12) Whether the rule should distinguish between outside attorneys and those employed by the issuer and, if so, under what circumstances, how, and why;

(13) Whether an attorney who is employed by an investment adviser and who is appearing and practicing before the Commission in the representation of the investment company should be treated as an outside attorney retained by the investment company under paragraph (d)(1)(i) or should be treated as an in-house attorney under paragraph (d)(1)(ii);

(14) Whether the rule should distinguish between United States and foreign attorneys;

(15) Whether the rule should specify the content of a disaffirmance of an opinion or representation;

(16) Whether the rule should require that any disaffirmance be in writing;

(17) Whether there are any actions the rule should require an attorney to take when the attorney does not receive an appropriate response to his or her report of evidence of a material violation and, if so, which and why;

(18) Whether it would be reasonable to require an attorney making a "noisy withdrawal" to take all required steps within one business day;

(19) Whether it is important to require any successor attorney to be notified that the previous attorney withdrew based on "professional considerations" and, if so, whether there is a better way to require such notification be made than is proposed in paragraph (d)(1)(iii);

(20) Whether such notification should be required where "noisy withdrawal" is merely permissive; and

(21) Whether it is important to provide a "safe harbor" from civil suits for the attorney who notifies the Commission that he or she has withdrawn based on professional considerations under paragraph (d).

Discharge of an Attorney for Reporting a Material Violation

Section 205.3(d)(4) of the proposed rule addresses the situation where an issuer attempts to obstruct the proposed rule's notification requirements by discharging an attorney after the attorney had reported evidence of a material violation under 205.3(b) but before the attorney was obligated to notify the Commission under 205.3(d)(1) or allowed to do so under 205.3(d)(2). Under such circumstances, paragraph (d)(4) permits but does not require an attorney who reasonably believes he or she has been discharged for reporting evidence of a material violation to notify the Commission:

(4) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this section and reasonably believes that he or she has been discharged for so doing may notify the Commission that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section and may disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading.

The Commission was prompted to add this provision to Section 205.3 by a decision of the Board of Governors of the Florida Bar Association in August 2002, holding, by a vote of 22–15, that a Florida attorney who had been discharged by a large corporation could not report his concerns about improper accounting to the SEC.[65] The attorney

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[60] When the law firm representing O.P.M. Leasing Services finally withdrew because of O.P.M.'s continuing fraud, after being informed by the attorney for the head of O.P.M.'s in-house accounting department that O.P.M. "could not survive without continuing wrongdoing," the law firm agreed to characterize its withdrawal as a "mutual determination" to terminate the relationship. Report of the Trustee Concerning Fraud and Other Misconduct in the Management of the Affairs of the Debtor at 33–35, *In re O.P.M. Leasing Services, Inc.*, Reorg. No. 81–B–10533, (Bankr. S.D.N.Y., filed April 25, 1983). As the law firm anticipated, O.P.M. retained replacement outside counsel and relied more heavily on its in-house legal staff, but neither the new CLO or the new outside counsel had any inkling of the reasons for the previous attorneys' withdrawal. *Id.* at 405–06, 411–13, 417–188. Those successor attorneys, in-house and outside, handled over $15 million in fraudulent transactions in last months of 1981, after O.P.M.'s original law firm withdrew. *Id.* at 405, 408.

[61] Both O.P.M.'s new outside law firm and its new chief legal officer wanted to know why the previous law firm had withdrawn. O.P.M. told both its new outside law firm and its new CLO that it had agreed not to discuss the reasons for the withdrawal but nevertheless led both to believe that it was the previous law firm's reputation that would be damaged by discussion because the parting of the ways had resulted from the law firm's exorbitant fees and its inability (because it was too small) to handle the "peaks and valleys" of work for O.P.M. *Id.* at 413, 418.

[62] *See* Comment [14] to the ABA's Model Rule 1.6, Comment [3] to Model Rule 1.16, and the discussion of the history of the "signal" of "noisy withdrawal" in Hazard, *Rectification of Client Fraud*, 33 Emory L.J. at 301–07. *But see* ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 92–366 (explaining that the ABA's Model Rules permit "noisy" withdrawal, which involves disavowing work product, only when the client's fraud is continuing or intended, not when it is past).

[63] *See* Kutak Commission's Final Draft of the Model Rules of Professional Conduct, Rule 1.6 and related discussion of "Disclosure Adverse to Client"; Thomas D. Morgan & Ronald D. Rotunda, *Model Code of Professional Responsibility, Model Rules of Professional Conduct, and Other Selected Standards* (2001), at 146 (stating that 41 states either permit or require disclosure to prevent criminal fraud; 18 either permit or require disclosure to rectify prior criminal fraud in which the attorney's services were used; and 40 require disclosure to rectify a prior fraud on a tribunal).

[64] *See, e.g., Restatement (Third) of the Law Governing Lawyers* (2000) Section 67 and comment c.

[65] Gary Blankenship, *May Lawyers Report Past Corporate Misconduct?*, Florida Bar News, September 15, 2002, at 1. From the reported

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believed that the profits of the corporation he worked for had been inflated by several million dollars, preventing a slump in the price of its publicly-traded stock, when the company amortized over several years an expense that should have been recognized immediately. After taking his concerns to the company's "top executives"—in effect reporting evidence of a material violation "up the ladder" as in proposed Section 205.3(b)—the attorney was fired. The Ethics Department of the Florida Bar decided that the attorney was prohibited from revealing confidential information about these improper accounting practices because it viewed them as past misconduct by a company that the attorney had learned about in connection with his prior representation of that company (even though the past misconduct had an ongoing effect). The Professional Ethics Committee agreed with the Ethics Department. The Board Review Committee on Professional Ethics voted 4–1 to endorse that opinion (because the continuing crime could not be disclosed without also disclosing the past crime). And the Board of Governors voted to bar disclosure.

There is no reason to think such a scenario would not recur. Almost twenty years ago, the Reporter for the ABA's Kutak Commission wrote that "an innocent lawyer—however competent and however watchful—is inevitably at risk in any transaction where the client could commit fraud."[66]

Interested persons are invited to comment on any aspect of this section of the rule, including: (1) Whether the reporting attorney's reasonable belief that he or she has been discharged for making a report is an appropriate standard and, if not, what alternative standard would be more appropriate; (2) Whether the permissive disclosure to the Commission should be limited to ongoing or future violations or should extend to past violations.

Disclosure of Issuer Confidences

Section 205.3(e) would allow an attorney to disclose, under specified circumstances, confidential information related to his appearing and practicing before the Commission in the representation of an issuer. Paragraph (e)(1) would provide:

(e) *Issuer confidences.* (1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof), may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

Paragraph (e)(1) would make clear that an attorney may use the contemporaneous records required by Sections 205.3(b) and 205.4(d) to defend himself or herself against charges of misconduct. It is effectively equivalent to the ABA's present Model Rule 1.6(b)(3), and corresponding "self-defense" exceptions to client-confidentiality rules in every state. The Commission believes that it is important to make clear in its proposed rule that the contemporaneous records that the rule would require attorneys to prepare can be used to protect honest attorneys, and are meant to be so used.

Interested persons are invited to comment on any aspect of this section, including whether: (1) The rule should have a provision allowing the attorney to use documents generated under this rule in self-defense; and (2) the types of proceedings in which the documents may be used should be expanded or limited and, if so, why and in what way.

Paragraph (e)(2) would provide:

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of the issuer's illegal act in the furtherance of which the attorney's services had been used.

Paragraph (e)(2) corresponds to the ABA's Model Rule 1.6 as proposed by the ABA's Kutak Commission in 1981–1982[67] and by the ABA's Commission of Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") in 2000,[68] and as adopted in the vast majority of states.[69] It would provide additional protection for investors by allowing, though not requiring, an attorney to disclose confidential information relating to his appearing and practicing before the Commission in the representation of an issuer "to the extent the attorney reasonably believes necessary (1) to prevent the issuer from committing an illegal act that the lawyer reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors; (2) to prevent the issuer from committing an illegal act that the lawyer reasonably believes is likely to perpetrate a fraud upon the Commission; or (3) to rectify the consequences of the issuer's illegal act in the furtherance of which the attorney's services were used.

New Jersey's Rule of Professional Conduct 1.6(b) *requires* an attorney to reveal confidential "information relating to the representation of a client"

to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client:

(1) From committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in * * * substantial injury to the financial interest or property of another;

(2) From committing a criminal, illegal or fraudulent act that the lawyer reasonably

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decision, it is not clear that the Florida attorney would be covered by the proposed rule, because it is not clear that the Florida attorney was appearing and practicing before the Commission.

[66] Hazard, *Rectification of Client Fraud*, 33 Emory L.J. at 283–84. Section 806 of the Act foresaw that employees of an issuer might be discharged for providing information, or causing information to be provided, regarding fraudulent misconduct by an issuer's employees or agents and sought to protect such a discharged employee by adding 18 U.S.C. 1514A to provide for a civil action to obtain relief.

[67] *Final Draft: Model Rules of Professional Conduct*, pullout supplement to the November 1982 issue of the *American Bar Association Journal*, proposed a version of Model Rule 1.6(b)—ultimately rejected by the House of Delegates—providing that a lawyer may reveal confidential information relating to the representation of a client "to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is likely to result in * * * substantial injury to the financial interests or property of another;

(2) to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services had been used. * * * " Law Governing Lawyers (2000) section 67 and comment c.

[68] *Report of the Commission on Evaluation of the Rules of Professional Conduct* (November 2000) recommended permitting a lawyer to disclose confidential "information relating to the representation of a client to the extent the lawyer reasonably believes necessary * * * to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services."

[69] Thirty-seven states permit an attorney to reveal confidential client information in order to prevent the client from committing criminal fraud. *See Restatement (Third) of the Law Governing Lawyers* (2000) section 67, Comment f, and Thomas D. Morgan & Ronald D. Rotunda, *Model Code of Professional Responsibility, Model Rules of Professional Conduct, and Other Selected Standards*, at 146 (reproducing the table prepared by the Attorneys' Liability Assurance Society ("ALAS") cited in the Restatement). The ABA's Model Rule 1.6, which prohibits disclosure of confidential client information even to prevent a criminal fraud, is a minority rule. In its *Carter and Johnson* decision (1981 WL 384414 at n.78), the Commission expressly did not address an attorney's obligation to disclose a client's intention to commit fraud or an illegal act.

believes is likely to perpetrate a fraud upon a tribunal.

(Emphasis added.) The corresponding rule in Wisconsin is virtually identical to New Jersey's, though it makes no reference to "proper authorities."[70] Florida's Rule of Professional Conduct 4–1.6 requires a lawyer to reveal confidential information "to the extent the lawyer reasonably believes necessary * * * to prevent a client from committing a crime."[71]

The ABA's Cheek Task Force recommended making such disclosures mandatory in 2002.[72] Even the ABA's Canons of Professional Ethics, in effect until 1970, provided in Canon 37:

> The announced intention of a client to commit a crime is not included within the confidences [a lawyer] is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened;

and in Canon 41:

> When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should endeavor to rectify it; at first by advising his client, and if his client refuses to forego the advantage thus unjustly gained, he should promptly inform the injured person or his counsel, so that they may take appropriate steps.[73]

The "noisy withdrawal" provision in Section 205.3(d) probably makes permissive disclosure of confidential information under the circumstances in Section 205.3(e) sufficient to protect investors.

Moreover, the rules requiring disclosure in New Jersey, Wisconsin, and Florida raise a question about "conflicts" between such states' rules and the permissive disclosure provisions in the proposed rule. So do the rules forbidding disclosure in jurisdictions such as the District of Columbia.

In theory, an attorney could simultaneously comply with the Commission's proposed rule permitting disclosure of confidential information and a state's rule forbidding disclosure by not disclosing the information, just as an attorney could simultaneously comply with the Commission's proposed rule permitting disclosure of confidential information and a state's rule requiring disclosure by disclosing the information. However, a Commission rule permitting disclosure would appear to preempt a state's rule forbidding disclosure. Accordingly, an attorney appearing and practicing before the Commission who is admitted in a jurisdiction that forbids disclosure of confidential information under circumstances where the proposed rule would permit disclosure, may disclose the information to the Commission, notwithstanding the contrary state rule.

A different case exists when a state rule requires disclosure in a case where the proposed rule would merely allow it. In such a case there will likely be no conflict between the Commission rule and the state rule, and the attorney should thus be bound by the state rule requiring disclosure.[74] The Commission, however, invites comments on whether an attorney appearing and practicing before the Commission and admitted in a jurisdiction that requires disclosure of confidential information under circumstances where the proposed rule would merely permit disclosure is required to disclose the information to the Commission.

Paragraph 205.3(e)(2)(ii) permits an attorney to reveal client information to the Commission to the extent the attorney reasonably believes necessary to prevent an issuer from committing "an illegal act" likely to "perpetrate a fraud" upon the Commission. The term "illegal acts" in this paragraph refers to acts proscribed in 18 U.S.C. 1001, as well the commission and subornation of perjury (proscribed, respectively, in 18 U.S.C. 1621 and 1622). The term "perpetrate a fraud" in this paragraph is intended to cover conduct involving the knowing misrepresentation of a material fact to, or the concealment of a material fact from, the Commission with the intent to induce the Commission to take, or not to take, a particular action. Therefore, this paragraph would not apply to filings or submissions to the Commission which satisfy a general requirement imposed upon issuers by the Commission (*e.g.*, 10-K or 10-Q filings). Rather, this paragraph is intended to apply to more specific submissions or contacts with the Commission by issuers which attempt to persuade the Commission to take, or not to take, particular actions, including, among other things, Wells submissions, applications for relief, and requests for "no action" letters.

Interested persons are invited to comment on any aspect of this section, including whether: (1) The rule should permit an attorney to disclose client confidences in any circumstances or only in some, or all, of the instances in the proposed rule; (2) the Commission should delay any action on this section until the ABA has had an opportunity to determine its position on Model Rule 1.6 in connection with its current reconsideration of the Ethics 2000 proposal; (3) an attorney should be permitted to act under (e)(2)(i) to prevent other misconduct besides that which is "illegal"; (4) "substantial injury to the financial interest or property" is an appropriate standard and, if not, what is an appropriate standard; (5) the rule should be limited to instances where only the issuer may be financially harmed; (6) the rule should specify when and in what way an attorney may rely upon the rule "to rectify" the consequences of an illegal act; and (7) the rule should provide that disclosures to the Commission under this section are protected by the whistleblower provisions of 18 U.S.C. 1514A, added by the Act.

Paragraph (e)(3) would provide:

(3) Where an issuer, through its attorney, shares with the Commission, pursuant to a confidentiality agreement, information related to a material violation, such sharing of information shall not constitute a waiver of any otherwise applicable privilege or protection as to other persons.

This paragraph would set forth the Commission's position on an unsettled question: whether an issuer waives attorney-client privilege and/or other protection (such as work-product protection) by sharing with the Commission, pursuant to a confidentiality agreement, confidential information regarding misconduct by the issuer's employees or officers?[75]

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[70] Wisconsin Supreme Court Rule 20:1.6 (available at *http://www.courts.state.wi.us/supreme/sc_rules.asp).*

[71] Available at *http://www.flabar.org/* under "Regulation."

[72] The Kutak Commission and the Ethics 2000 Commission, in their proposed versions of Rule 1.6(b)(2), both recommended permitting a lawyer to disclose confidential information to outsiders under similar circumstances. The Kutak Commission recommended permitting an attorney to reveal confidential information relating to representation of a client where New Jersey and Wisconsin require disclosure. The Ethics 2000 Commission recommended permitting disclosure "to the extent the lawyer reasonably believes necessary . . . to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services." The Ethics 2000 Commission considered the ABA's Model Rule 1.6 to be "out of step with public policy and the values of the legal profession as reflected in the rules currently in force in most jurisdictions." Reporter's Explanation of Changes.

[73] Reprinted in Morgan & Rotunda, Selected Standards, at 811–12.

[74] *See* the general discussion of preemption under Section 205.6 below.

[75] *See In re Columbia/HCA Healthcare Corp. Billing Practices Litigation*, 293 F.3d 289, 294–95 (case law on selective waiver of attorney-client privilege "in a state of hopeless confusion") (citation and internal quotation marks omitted). 304–05 (work-product protection may survive where attorney-client privilege has been waived) (Moore & Russell, JJ.). 307–06 (case law both limited

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Allowing issuers to produce internal reports to the Commission—including, but not limited to, those prepared in response to reports under 205.3(b)—without waiving otherwise applicable privilege or protection serves the public interest because it significantly enhances the Commission's ability to conduct expeditious investigations and obtain prompt relief, where appropriate, for defrauded investors.[76] Even cooperative issuers are generally reluctant to produce internal reports to the Commission for fear that production will waive otherwise applicable privilege or protection as to third parties. Some parties to Commission investigations, however, have produced otherwise privileged or protected reports where they believe only the government—and not adversaries in private litigation—will have access to them.

Obtaining such otherwise privileged or protected reports furthers the public interest—and does not circumvent courts' rejection of the selective waiver doctrine—because the Commission enters into confidentiality agreements only when it has reason to believe that obtaining the reports will allow the Commission to save substantial time and resources in conducting investigations and/or provide more prompt monetary relief to investors.[77] Limiting those instances where producing documents to the Commission will not waive privilege or protection to circumstances where the Commission enters into a confidentiality agreement, as the proposed rule would, should curtail any abuse of this provision by issuers, because the Commission intends to abide by its current practice of entering into confidentiality agreements only when it is in the public interest to do so.

Although the Commission must verify that internal reports are accurate and complete and must conduct its own investigation, doing so is far less time-consuming and less difficult than starting and conducting investigations without the internal reports. When the Commission can conduct expeditious and efficient investigations, it can then obtain appropriate remedies for investors more quickly. The public interest is clearly served when the Commission can promptly identify illegal conduct and provide compensation to victims of securities fraud.[78]

Moreover, preserving the privilege or protection for internal reports shared with the Commission does not harm private litigants or put them at any kind of strategic disadvantage. At worst, private litigants would be in exactly the same position that they would have been in if the Commission had not obtained the privileged or protected materials.[79] Private litigants may even benefit from the Commission's ability to conduct more expeditious and thorough investigations. Indeed, many private securities actions follow the successful completion of a Commission investigation and enforcement action. "Without the exception, much otherwise disclosed material would stay completely in the dark, under the absolute cover of privilege." *Columbia/HCA*, 293 F.3d at 312 (Boggs, J., dissenting). Consequently, allowing the Commission access to otherwise privileged and inaccessible internal reports but denying access to others would not be unfair to private litigants but is appropriate in the public interest and for the protection of investors.

These arguments apply with special force to internal reports and responses to them that the Commission would require under the proposed rule.

The Commission believes that Congress authorized it to adopt a regulation providing for such an exception, by directing the Commission to "promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act"—as the Commission believes such an exception is. Moreover, such a rule would be consistent with the confidentiality provisions that Congress itself enacted regarding investigations by the Public Company Accounting Oversight Board (the "Board") in Section 105 of the Act, 15 U.S.C. 7215.

Section 105(b)(1) of the Act authorizes the Board to "conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm * * * regardless of how the act, practice, or omission is brought to the attention of the Board." Section 105(b)(5)(A) of the Act further provides that documents and information "received by * * * the Board * * * shall be confidential and privileged" until the documents or information are used in a public proceeding. Section 105(b)(5)(B) of the Act provides that documents and information received by the Board continue to be confidential and privileged, even if the Board shares them with the Commission—and even if the Board discloses them to the Attorney General of the United States, an appropriate Federal regulator, state attorneys general, or any "appropriate State regulatory authority"—so long as the Board determines that those disclosures are "necessary to accomplish the purposes of this Act or to protect investors." The Attorney General, appropriate Federal regulators, state attorneys general, and appropriate State regulatory authorities with which the Board shares confidential information are required to keep it confidential. *Id.*

The Commission's proposed rule would establish a provision for attorneys and the officers and directors of an issuer consistent with Section 105(b)(5)'s provision for accountants and accounting firms. Like Section 105(b)(5) of the Act, proposed section 205.3(e)(3) would facilitate investigations by the Commission and protect investors by maintaining the privileged or protected status of internal reports shared with the Commission.[80]

Interested persons are invited to comment on any aspect of this section, including: (1) Whether the rule should contain such a provision; (2) the disadvantages and advantages of such a provision and its potential impact on private securities litigation where plaintiffs may seek to discover such documents from the issuer or the Commission; (3) whether the rule should reflect the Commission's long-standing policy of not entering into confidentiality agreements covering purportedly privileged materials except where it believes it would be in the public interest to do so; (4) whether the rule should reflect that even where the Commission enters into such confidentiality agreements, such agreements do not impact the Commission's ability to use the privileged materials in performing its statutory responsibilities; and (5) whether the rule should be limited to certain types of privileged or protected information and, if so, which ones.

Section 205.4 Responsibilities of Supervisory Attorneys

Section 205.4 would provide:

(a) An attorney supervising, directing, or having supervisory authority over another attorney is a supervisory attorney. An issuer's chief legal officer (or the equivalent) is a supervisory attorney under this rule.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in § 205.5(a), that he or she supervises, directs, or has supervisory authority over in appearing and practicing before the Commission conforms to this rule and complies with the statutes and other rules administered by the Commission. To the extent a subordinate attorney appears and practices before the Commission on behalf of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in § 205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who reasonably believes that information reported to him or her by a subordinate attorney under § 205.5(c) is not evidence of a material violation shall take reasonable steps to document the basis for the supervisory attorney's belief.

Proposed Section 205.4 is based, in part, on Rule 5.1 of the ABA's Model Rules, which (1) mandates that supervisory attorneys (including partners at law firms and attorneys exercising similar management responsibilities at law firms) must make reasonable efforts to ensure that attorneys at the firm conform to the Rules of Professional Conduct; and (2) provides that a supervisory attorney may be held liable for violative conduct by another attorney which he or she knowingly ratifies or which he or she fails to prevent when able to do so.

Paragraphs 205.4(a) and (b) of the proposed rule are similar in concept in that they define who is a supervisory attorney, and obligate a supervisory attorney to make reasonable efforts to ensure compliance with the rule by subordinate attorneys. However, these paragraphs broaden the formulation from Rule 5.1 beyond attorneys who are actually supervising other attorneys to include attorneys "directing or having supervisory authority over another attorney". This expansion was intended to clarify that individuals who may exercise authority over subordinate attorneys for a particular matter, but who do not routinely supervise that attorney, are supervisory attorneys under the proposed rule. Paragraph 205.4(a) also states that an issuer's chief legal officer is a supervisory attorney, and cannot avoid responsibility under the rule by claiming a lack of knowledge of, or supervision over, the actions of subordinate attorneys.

Paragraph 205.4(b) obligates a supervisory attorney to take affirmative steps to ensure that subordinates comply with the proposed rule. While the rule imposes an obligation on the supervisory attorney to take affirmative steps, it leaves to the professional judgment of the supervisory attorney how best to accomplish that goal. Particularly in a large organization, the Commission would expect that these steps would include the creation of procedures for subordinate attorneys to report evidence of material misconduct they learn about and, perhaps, periodic meetings for the purpose of discussing how to address such matters. In addition, the provision affirms that the supervisory attorney of a subordinate attorney who appears and practices before the Commission also appears and practices before the Commission. Sections 205.4 and 205.5 place the burden of compliance with Section 205.3's reporting requirement on the supervisory attorney once he or she has received a report of a material violation from a subordinate.

Paragraph 205.4(c) affirmatively states that a supervisory attorney assumes the responsibility for compliance with section 205.3's reporting requirement when a subordinate attorney reports evidence of a possible material violation. The Commission believes that this provision is consistent with common practice. A supervisory attorney is expected to be in a better position (as a result of a presumed higher level of experience and/or expertise) than a subordinate attorney to evaluate whether the evidence of potential wrongdoing obtained by the subordinate needs to be reported. Moreover, the issuer (either a client or the employer of the supervisory attorney) is likely to assume (and, indeed, may reasonably expect) that a subordinate attorney will discuss the evidence of potential wrongdoing with the supervisor before reporting it to the issuer. Finally, an issuer is probably more likely to respond diligently to a report of potential wrongdoing under section 205.3 received from a supervisory attorney than from a subordinate attorney.

Finally, paragraph 205.4(d) obligates a supervisory attorney who believes that evidence of potential wrongdoing presented by a subordinate does not need to be reported under Section 205.3 to take reasonable steps to document the basis for that belief. The reporting requirement under section 205.3 will be weakened, if not entirely undermined, unless a supervisory attorney is required to memorialize a unilaterally arrived at conclusion that evidence of purported wrongdoing does not need to be reported to an issuer. Moreover, a supervisory attorney to whom a subordinate attorney presents evidence of potential wrongdoing will as a matter of good practice typically memorialize his or her conclusion that the evidence does not need to be reported, and the bases for that conclusion. Accordingly, as with the prior paragraph, this requirement is consistent with how responsible attorneys will conduct themselves.

Interested persons are invited to comment on any aspect of this section of the proposed rule including: (1) Whether the definition of a "supervisory attorney" in 205.4(a) is too broad and should be curtailed, or whether it is too narrow and should be expanded, and, if so, how; (2) whether the rule imposes too much responsibility upon supervisory attorneys for the actions of subordinate attorneys and, if so, how the rule should be revised; (3) whether

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and conflicting, with circuit courts of appeals "deeply split on whether a disclosure of privileged information to the government, in the course of an investigation, waives the privilege as to all other parties") (Boggs, J., dissenting) (6th Cir. 2002); *Saito* v. *McKesson HBOC, Inc.*, No. 18553, 2002 WL 31458233, at *6–*11 (adopting a selective waiver rule for disclosures made to law enforcement agencies pursuant to a confidentiality agreement because such a rule "encourages cooperation with law enforcement agencies without any negative cost to society or to private plaintiffs") (Del. Ch. Oct. 25, 2002).

[76] *See, e.g., amicus* briefs filed by the Commission during the last two years in *Saito* v. *McKesson HBOC, Inc.*, No. 18553 (Del. Ch.); *United States* v. *Bergonzi & Gilbertson*, No. CR–00–05050MJ] (N.D. Cal.); *Adler* v. *McKesson HBOC, Inc.*, No. 99–C–7980–3 (Gwinnett County, Georgia) (S–01–347-GC); *McKesson HBOC, Inc.* v. *Adler*, No. A01A1836 (Ga. Ct. App.) (all arguing that sharing with the Commission, pursuant to confidentiality agreements, reports of internal investigations by outside lawyers does not waive work-product protection). In these briefs, the Commission has taken no position on selective waiver of the attorney-client privilege.

[77] *Cf. SEC* v. *Jerry T. O'Brien, Inc.*, 467 U.S. 735, 745–46, 750–51 (1984) (recognizing the importance of speed in the Commission's enforcement of the securities laws).

[78] In one case, the Commission subpoenaed over forty boxes of documents related to a complex scheme that had defrauded investors. Through a confidentiality agreement, it also obtained notes and interview memoranda from an internal investigation that had cost the company over $9 million, and Commission staff benefitted from presentations by the internal investigators that explained the scheme and helped the staff understand the subpoenaed materials more quickly. That otherwise protected work product allowed the Commission to file civil enforcement actions and obtain disgorgement of millions of dollars (ultimately distributed to investors and other injured parties) sooner than it otherwise could have.

[79] *See Westinghouse Electric Corp.* v. *Republic of the Philippines*, 951 F.2d 1414, 1426 (3d Cir. 1991) (refusing to adopt the rationale that "it is inherently unfair for a party to selectively disclose privileged information in one proceeding but not another" when rejecting the selective waiver theory because "when a client discloses privileged information to a government agency, the private litigant in subsequent proceedings is no worse off than it would have been had the disclosure to the agency not occurred").

[80] Section 307 of the Act does not contain a similar confidentiality provision, but the Act's treatment of attorneys is much briefer and much less detailed than its treatment of accountants, we believe in part because the treatment of accountants in Section 10A of the Exchange Act is much more detailed than the treatment of attorneys. (*Compare, e.g.*, the treatment of accountants and attorneys in 17 CFR 201.102.) Section 105(b)(5) of the Act indicates that a similar confidentiality provision is an appropriate part of proposed Part 205, which elaborates on standards of conduct that attorneys appearing and practicing before the Commission must meet.

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the responsibility for complying with the rule's reporting obligation should be placed upon supervisory attorneys at all and, if not, why imposing that responsibility upon supervisory attorneys is inappropriate, and how the rule should be amended to insure that the reporting obligation is satisfied; (4) whether the Commission's premise that supervisory attorneys are in a better position to report evidence of material violations "up the ladder" with the issuer than subordinate attorneys is correct; and (5) whether supervisory attorneys should be required to document their conclusion that evidence presented by a subordinate does not need to be reported.

Section 205.5 Responsibilities of a Subordinate Attorney

Section 205.5 would provide:

(a) An attorney under the supervision, direction, or supervisory authority of another attorney is a subordinate attorney.

(b) A subordinate attorney is bound by this rule notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with § 205.3 of this rule if the subordinate attorney reports to his or her supervising attorney under paragraph (3)(b) of that section evidence of a material violation that the subordinate attorney becomes aware of in the course of appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by § 205.3(b), (c), and (d) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under § 205.3(b) has failed to comply with § 205.3.

Paragraphs 205.5 (a) and (b) of the proposed rule are based on Rule 5.2 of the ABA's Model Rules (which provides that subordinate attorneys remain bound by the Model Rules notwithstanding the fact that they acted at the direction of another person). These proposed paragraphs define who is a subordinate attorney, and confirm that subordinate attorneys are responsible for complying with section 205.3. The Commission believes that subordinate attorneys should not be exempted from the application of the rule merely because they operate under the supervision or at the direction of another person (who may or may not be an attorney), and that creation of such an exemption would seriously undermine Congress' intent to provide for the reporting of evidence of material violations to issuers. Indeed, because subordinate attorneys frequently perform a significant amount of work on behalf of issuers, the Commission believes that subordinate attorneys are at least as likely (indeed, potentially more likely) to learn about evidence of material violations as supervisory attorneys.

Paragraph 205.5(c), which obligates subordinate attorneys to report evidence indicating a material violation to their supervisor, is related to paragraph 205.4(c), which provides that a supervisory attorney is charged with the responsibility for compliance with Section 205.3(b)'s reporting requirement when a subordinate attorney reports evidence of a material violation. As with paragraph 205.4(c), paragraph 205.5(c) is premised upon the concept that supervisory attorneys are in a better position than subordinate attorneys to report instances of possible material violations to appropriate individuals in the issuer.

A subordinate attorney is obligated under Section 205.3(b)(2) to maintain a record of a report made to the supervisory attorney, as supervisory attorneys are by paragraph 205.4(d). The Commission believes that the requirement imposed by this provision simply replicates the practice which responsible attorneys would adopt in any event.

Paragraph 205.5(d) provides that a subordinate attorney who reasonably believes that a supervisory attorney to whom he or she has reported evidence of a possible material violation has failed to comply with the reporting requirements of section 205.3 may report the evidence to appropriate officers and directors of the issuer pursuant to paragraph 205.3(b) or to the issuer's QLCC, if the issuer has established such a committee, and may carry out a "noisy withdrawal" under the circumstances specified in paragraph 205.3(d). The Commission is confident that supervisory attorneys will satisfy their reporting obligations under the rule, and that instances when a subordinate attorney disagrees with the supervisory attorney's actions will be exceedingly rare. The Commission also notes that this paragraph is permissive rather than mandatory. Nevertheless, the Commission believes that inclusion of such a provision is both appropriate and necessary to address those situations where it is clear that a supervisory attorney has neither made the report permitted by paragraph 205.3(c) nor complied with the reporting obligations imposed by paragraphs 205.3(b) and (d), and the subordinate attorney believes he or she must act to prevent harm to the issuer and its shareholders.

Interested persons are invited to comment on any aspect of this section of the proposed rule, including whether: (1) The definition of who is a subordinate attorney in 205.5(a) is too broad (or too narrow) and should be curtailed (or expanded); (2) the rule should distinguish between supervisory attorneys and subordinate attorneys at all or should do so in some other ways and, if so, what those other ways should be; (3) both subordinate and supervisory attorneys should be held to the same obligation to report evidence of material violations "up the ladder" within the issuer, and if so, why; (4) subordinate attorneys should have any obligations under the rule; (5) the rule should permit subordinate attorneys to report evidence of material violations if they reasonably believe that a supervisory attorney has failed to comply with the rule.

Section 205.6 Sanctions

Section 205.6 would provide:

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and any such attorney shall be subject to the same penalties and remedies, and to the same extent, as for a violation of that Act.

(b) With respect to attorneys appearing and practicing before the Commission on behalf of an issuer, "improper professional conduct" under section 4C(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d-3(a)) includes:

(1) Intentional or knowing conduct, including reckless conduct, that results in a violation of any provision of this part; and

(2) Negligent conduct in the form of:

(i) A single instance of highly unreasonable conduct that results in a violation of any provision of this part; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of a provision of this part.

(c) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices.

Part 205 sets forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in the representation of issuers. As discussed above, some of the provisions of the proposed rule are permissive; others are mandatory. When an attorney fails to comply with a mandatory provision of the proposed rule, that failure will be treated as a violation of a substantive rule and will subject the attorney to enforcement and/or disciplinary action by the Commission.

Proposed paragraph 205.6(a), which tracks the language of Section 3(h) of the Act, expressly states that a violation of the proposed rule shall be treated as a violation of the Exchange Act, subjecting any person committing such a violation to the same penalties as are prescribed for violations of the Exchange Act. Thus, if an attorney violates the proposed rule, the Commission may commence a civil action seeking injunctive and other appropriate equitable relief, as well as civil money penalties, pursuant to Section 21(d) of the Exchange Act. Alternatively, the Commission may commence a cease-and-desist proceeding against the violator, and any other person who was a cause of the violation, pursuant to Section 21C of the Exchange Act.

The Commission does not believe, however, that violations of the proposed rule would, without more, meet the standard prescribed in Section 32(a) of the Exchange Act (15 U.S.C. 78ff), which provides for the imposition of criminal penalties.

In the event that an injunction is entered against an attorney for violating this rule, the Commission may initiate administrative proceedings to determine an appropriate disciplinary sanction. Even when no injunctive action is brought against an attorney under this rule, the Commission may bring an original administrative proceeding for a cease-and-desist order and/or seeking an appropriate disciplinary sanction for a violation of this rule.

The Commission notes that nothing in Section 307 creates a private right of action against an attorney. Indeed, statements by the sponsors of the provision unequivocally demonstrate that there was never an intention to create a right of action by third parties for violation of the rule. [81] Similarly, the Commission does not intend that the provisions of Part 205 create any private right of action against an attorney based on his or her compliance or non-compliance with its provisions.

Paragraph (b) of this section reflects the fact that Section 602 of the Act amends the Exchange Act by adding Section 4C(a), which incorporates that portion of the text of Rule 102(e) which provides that the Commission may discipline professionals for improper professional conduct. Accordingly, an attorney who violates any provision of Part 205 engages in improper professional conduct. The Commission may proceed against such an attorney in the manner described above.

Paragraph (b) of this section incorporates the state-of-mind requirements prescribed in Section 4C(b)(2). The "[i]ntentional or knowing conduct, including reckless conduct" standard articulated in 205.6(b)(1) is the standard which has been applied by the Commission in Rule 102(e) cases brought against accountants since the amendment to the rule in 1998. The "negligent conduct" standard prescribed in 205.6(b)(2) is similar to the standard adopted by the Commission in the 1998 amendment to Rule 102(e). [82] Accordingly, a single, highly unreasonable instance of attorney misconduct, or repeated instances of unreasonable attorney misconduct which result in violation of the rule will constitute improper professional conduct. Paragraph 205.6(b) evidences that the Commission will not proceed against attorneys when conduct that amounts to no more than simple negligence results in a failure to comply with a provision of Rule 205.

In proposing Part 205, the Commission does not intend to rescind Rule 102(e). While the Commission has employed Rule 102(e) as a disciplinary tool to protect the Commission's processes from improper professional conduct, Part 205 may serve both an enforcement and a disciplinary function. As noted, the Commission intends to proceed against individuals violating Part 205 as it would against other violators of the Exchange Act. In addition, when appropriate, the Commission may initiate proceedings under this rule seeking the imposition of an appropriate disciplinary sanction. At present, the Commission intends to limit its use of Part 205 to address only misconduct arising under that rule. Rule 102(e) will continue to be used to address the same types of misconduct it has been traditionally relied upon for, except those that would now fall under Part 205. The Commission intends to revisit this issue at such time as it determines whether to promulgate more comprehensive standards of professional conduct. In the event it does implement such rules, it may be necessary to reconsider whether it is appropriate to continue prosecuting disciplinary actions under Rule 102(e).

Interested persons are invited to comment on (1) the interaction between Part 205 and Rule 102(e), and (2) whether (and if so, how) the Commission should amend Rule 102(e) in light of the adoption of Part 205.

Paragraph (c) of the Act recognizes that the Commission may discipline attorneys who violate the rule, regardless whether the attorney is subject to prosecution or discipline for violation of a state ethical rule which applies to the same conduct. Accordingly, in the event that an attorney's conduct violates Part 205 as well a state ethical rule, the Commission may bring proceedings against the attorney regardless of whether the state proceeds against the attorney.

The prospect of simultaneous Commission and state disciplinary proceedings for the same misconduct raises the question of the impact of the rule upon state ethical rules and regulations. Due to the breadth and specificity of the Congressional mandate to the Commission to implement an "up the ladder" reporting system applicable to attorneys representing issuers, the Commission is considering whether Congress intended for the agency's rule to "occupy the field" on this issue, and whether Part 205 would preempt any state rules governing the reporting of evidence of a material violation by attorneys representing issuers before the Commission. Commission preemption of any state ethical rules as topics covered by Part 205 would have the salutary benefit of creating a single uniform standard which attorneys in all jurisdictions must satisfy; and it would also resolve the dilemma faced by attorneys who practice in multiple jurisdictions, and thereby subject themselves to different (and potentially conflicting) standards prescribed in the ethical rules adopted by those jurisdictions. Alternatively, the Commission is considering whether those provisions of the rule which are necessary to effectively implement an "up the ladder" reporting system may preempt conflicting state ethical rules which impose a lower obligation upon the attorney (or impose no obligation at all). [83] In those limited circumstances in which a state rule actually imposes a higher obligation than Part 205 (*e.g.*, by requiring an attorney to take some step

[81] See statement by Senator Edwards, 148 Cong. Rec. S6552 ("Nothing in this bill gives anybody a right to file a private lawsuit against anybody. The only people who can enforce this amendment are the people at the SEC."); see also statement by Senator Enzi, *id.* at S6555 ("[T]his amendment creates a duty of professional conduct and does not create a right of action by third parties.").

[82] Exchange Act Section 4C(b)(2) defines the term "improper professional conduct" to include negligent conduct by an accountant in the form either of a single instance of highly unreasonable behavior or repeated instances of unreasonable conduct which results in a violation of applicable professional standards and indicates a lack of competence.

[83] *See Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372 (2000) (Court will find preemption "when it is impossible for a private party to comply with both state and federal law, and where under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress"); *City of New York* v. *FCC*, 486 U.S. 57, 64 (1988) (agency regulations can preempt state laws).

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which Part 205 does not mandate), the attorney would remain free to comply with the state rule.

Interested persons are invited to comment on any aspect of this section of the rule. With respect to state-of-mind requirements, parties are invited to comment on the following issues: (1) What the state-of-mind requirement for violations of the rule should be; (2) what the required mental state should be in an injunctive action for violation of the rule; (3) whether attorneys who violate the rule should also be subject to disciplinary proceedings under Rule 102(e) for improper professional conduct; (4) whether the state-of-mind requirements for disciplinary proceedings set forth in paragraph 205.6(b) provide adequate guidance to attorneys, and whether they are appropriate; (5) whether the same state of mind requirements for accountants should also apply to attorneys and, if not, why.

With respect to the issue of preemption, interested persons are invited to comment on: (1) whether the internal reporting requirements within the issuer proposed by Section 307 and Part 205 should be interpreted to "occupy the field" so as to preempt all state regulation of an attorney's internal reporting evidence of a material violation; and (2) whether the reporting requirements preempt only conflicting state ethical rules.

The Commission has not established a "safe harbor" provision within the rule similar to Section 10A(3)(c) of the Exchange Act (15 U.S.C. 78j–1(3)(c)), which proscribes private suits against auditor's for statements or conclusions expressed in notices to the Commission mandated by Section 10A(b)(3). Interested persons are invited to comment on whether the Commission should include a similar provision within the proposed rule prohibiting private actions challenging an attorney's decision to take, or not to take, action under the proposed rule, when taken in good faith. Would inclusion of such a provision promote effective operation of the proposed rule by protecting attorneys who make a good faith effort to comply with the rule, and preventing ancillary litigation for alleged violations of the rule? Why or why not?

VI. Paperwork Reduction Act

The proposed rule contains a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[84] The title for this collection of information is "Reports of Evidence of Material Violations." We have submitted the collection of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The proposed rule would impose an "up the ladder" reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. As discussed in greater detail elsewhere in this release, an attorney must report such evidence to the issuer's chief legal officer ("CLO") or to both the chief legal officer and chief executive officer ("CEO"), and must take reasonable steps to document his or her report and the response received, and retain this documentation for a reasonable time. A subordinate attorney complies with the proposed rule if he or she reports evidence of a material violation to his or her supervisory attorney (who is then responsible for complying with the proposed rule's requirements). A subordinate attorney may also take the other steps described in the proposed rule if the supervisor fails to comply. Additionally, when a supervisory attorney believes that information reported to him or her by a subordinate attorney is not evidence of a material violation, the supervisory attorney must take reasonable steps to document the basis for his or her belief.

If the CLO, after investigation, reasonably believes that there is no violation, he or she must so advise the reporting attorney. If the CLO reasonably believes that there is a violation, he or she must ensure that the issuer adopts remedial measures and/or imposes sanctions appropriate to stop, prevent or rectify any violation. The CLO must also promptly report on the remedial measures or sanctions to the CEO, the audit committee or the board of directors, and the reporting attorney. The CLO must take reasonable steps to document his or her inquiry and to retain such documentation for a reasonable time.

As described in detail elsewhere in this release, the proposed rule also requires attorneys to take certain steps if the CLO or CEO does not provide an appropriate response to a report of evidence of a violation. These steps include reporting the evidence "up the ladder" to the audit committee, another committee consisting solely of outside directors if there is no audit committee, or to the board of directors if there is no such committee, and taking reasonable steps to document the report and response and to retain the documentation for a reasonable time. If the attorney believes that the issuer has not made an appropriate response to the report, the attorney must explain the reasons for his or her belief to the CEO, CLO or directors to whom the report was made, and take reasonable steps to document the response, or absence thereof, and retain the documentation for a reasonable time. In addition, outside counsel must, if the violation is ongoing or about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or investors (or may, if the violation is not ongoing and is likely to have resulted in substantial injury to the financial interest or property of the issuer or investors): (1) Withdraw from the representation and notify the issuer that the withdrawal is based on professional considerations, (2) notify the Commission in writing of the withdrawal indicating that the withdrawal was based on professional considerations, and (3) disaffirm in writing any tainted documents filed with the Commission. In these circumstances, in-house attorneys must or may, depending on whether the violation is ongoing or not, notify the Commission in writing that they intend to make a disaffirmation and make the disaffirmation. The issuer's CLO must also inform any attorney retained or employed to replace an attorney who withdrew under these circumstances that the withdrawal was based on professional considerations. An attorney who reasonably believes that he or she has been discharged for making a report covered by the proposed rule may notify the Commission of this belief and may also disaffirm in writing any tainted documents.

Alternatively, if an attorney other than a CLO reports the evidence to a qualified legal compliance committee ("QLCC"), he or she need take no further action under the proposed rule. The QLCC would have written procedures for the receipt, retention, and consideration of reports of material violations, and would be authorized and responsible to notify the CLO and CEO of the report, determine whether an investigation is necessary and, if so, to notify the audit committee or the board of directors. The QLCC would also initiate an investigation to be conducted by the CLO or outside attorneys, and retain any necessary additional expert personnel. At the conclusion of the investigation, the QLCC would direct the issuer to adopt appropriate remedial measures and/or impose sanctions, and would notify the CLO, CEO, and board of directors of the results of the inquiry and appropriate remedial measures to be adopted. Where an issuer failed to take the remedial measures directed by the QLCC, each member of the QLCC, along with the CEO and CLO, would have the authority and responsibility to notify the Commission of the material violation and disaffirm in writing any false or misleading documents. A CLO may also refer a report of evidence of a material violation to a QLCC, which then would have responsibility for taking the steps required by the rule. In the case of such a referral from the CLO, if the issuer fails to take any remedial measures directed by the QLCC, the CLO must notify the Commission of the violation and disaffirm in writing any tainted documents.

The information collection is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the proposed rule and required by Section 307 of the Sarbanes-Oxley Act of 2002. Specifically, the collection of information is intended to ensure that evidence of violations is communicated to appropriate officers and/or directors of issuers, so that they can adopt appropriate remedies and/or impose appropriate sanctions. In the rare cases in which issuers do not act appropriately, the information would be communicated to the Commission, so that the Commission could take appropriate action. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

We believe that the burden imposed by the proposed collection of information would be minimal. The respondents to this proposed collection of information would be attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. For the most part, and except as described below, we believe that these respondents are already making the types of reports and retaining the records contemplated by the proposed rule. In providing quality representation to issuers, attorneys already report evidence of violations to others within the issuer, including the CLO, the CEO, and, where necessary, the directors. We believe that attorneys also generally document their advice to clients and the responses to that advice that they receive. In addition, officers and directors already investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Officers and directors generally also document these actions. Except as discussed below, we therefore believe that the reporting and recordkeeping requirements imposed by the proposed rule are "usual and customary" activities that do not add to the burden that would be imposed by the collection of information.[85]

Certain aspects of the collection of information would, however, impose a new burden. As described above, if an issuer chooses to establish a QLCC, the QLCC would have to establish written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation. Additionally, outside attorneys might, in certain cases, notify the Commission and the issuer that their withdrawal from representation is based on professional considerations, and disaffirm any tainted filings. Similarly, in-house attorneys might, in certain cases, notify the Commission that they must make a disaffirmation and make a disaffirmation. CEOs, CLOs and QLCCs, as well as attorneys who believe that they were discharged for making a report under the proposed rule, might, depending on the circumstances, notify the Commission of a violation and make a disaffirmation. Finally, in cases of an ongoing violation, a CLO would notify any successor attorneys retained or employed to replace an attorney who withdrew that the withdrawal was based on professional considerations.

We estimate for purposes of the PRA that there are approximately 18,200 issuers that would be subject to the proposed rule.[86] Of these, we estimate that approximately one quarter, or 4,550 will choose to establish a QLCC. Establishing the written procedures required by the proposed rule should not impose a significant burden. We assume that an issuer would incur a greater burden in the year that it first establishes the procedures than in subsequent years, in which the burden would be incurred in updating, reviewing, or modifying the procedures. For purposes of the PRA, we assume that an issuer would spend 6 hours every three-year period on the procedures. This would result in an average burden of 2 hours per year. Thus, we estimate for purposes of the PRA that the total annual burden imposed by this aspect of the collection of information would be 9,100 hours.

We cannot estimate with precision how many attorneys will be subject to the rule's requirements or how frequently they will be required to make the "up the ladder" reports required by the proposed rule. There are approximately 18,200 issuers that may employ or retain attorneys that would be subject to the rule. These issuers may employ in-house attorneys, outside counsel, or a combination of both. We believe, however, that it will be the rare occasion when, as a last resort, a disclosure will be made to the Commission. In the vast majority of cases, we expect that problems will be resolved at the corporate level, and the Commission will not be notified. We therefore estimate for the purposes of the PRA that approximately 10 attorneys, CLOs, CEOs, or QLCCs per year will make one disclosure to the Commission per year. Depending on the circumstances, the disclosure could consist of a notice of withdrawal (and a similar notice to the issuer and a CLO's notice to successor attorneys), a notice of material violations, a notice of discharge, a notice of disaffirmation, a disaffirmation, or some combination thereof. The burden hours for the disclosure will obviously vary depending on the circumstances. None of the components of the disclosure would, however, require a significant amount of time to compile. We therefore estimate, for purposes of the PRA that, on average, each disclosure would require 10 burden hours. Under these assumptions, this aspect of the collection of information would impose approximately 100 annual burden hours.

The total annual burden hours imposed by the collection of information would therefore be 9,200. Assuming half of the burden hours will be incurred by outside counsel at a rate of $300 per hour would result in a cost of $1,380,000.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those

[84] 44 U.S.C. 3501 *et seq.*

[85] *See* 5 CFR 1320.3(b)(2).

[86] This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10–K (8,484), Form 10–KSB (3,820), Form 20–F (1,194) or Form 40–F (134) during the 2001 fiscal year, and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (100). In addition, we estimate that approximately 4,500 investment companies currently file periodic reports on Form N–SAR.

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who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirement should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. 33–8150.wp. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. 33–8150.wp, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning its review of the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the collection of information requirements is, as described above, in some cases mandatory and in some cases voluntary depending upon the circumstances. As described above, in certain cases, records must be retained for a reasonable time; in other cases, there is no mandatory retention period. Responses to the requirements to make disclosures to the Commission will not be kept confidential.

VII. Costs and Benefits

We are proposing Part 205 to implement Section 307 of the Sarbanes-Oxley Act. Part 205 will affect all attorneys who appear and practice before the Commission in the representation of an issuer and who learn of evidence that tends to show that a material violation of the federal securities laws, a material breach of fiduciary duty, or a similar material violation by the issuer or an officer, director, agent, or employee of the issuer has or may have occurred or may occur. The rule that we are proposing today implements a Congressional mandate. We recognize that any implementation of the Sarbanes-Oxley Act will likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of our proposal. We discuss these costs and benefits below.

Part 205 would implement an "up the ladder" reporting requirement upon attorneys representing an issuer before the Commission who become aware of potential misconduct of which a reasonably prudent investor in the issuer would want to be informed. It is expected that, in the vast majority of instances of such reports, the situation will be addressed and remedied before it causes significant harm to investors. Where the potential impropriety is ongoing and not taken care of internally following a report mandated by the rule, Part 205 mandates that the covered attorney, if retained by the issuer, effectuate a "noisy withdrawal" from representation of the issuer and disaffirm to the Commission any tainted documents, which will alert the Commission to investigate the issuer. In the same circumstance, if the attorney is employed by the issuer, the attorney must disaffirm to the Commission any tainted documents.

In addition to these requirements, the rule would authorize a covered attorney to reveal to the Commission confidences or secrets relating to the attorney's representation of an issuer before the Commission to the extent the attorney reasonably believes it necessary to: (i) Prevent the issuer from committing an illegal act likely to cause substantial financial harm to the issuer or investors; (ii) prevent the issuer from perpetrating a fraud upon the Commission; or (iii) rectify the consequences of the issuer's illegal act that the attorney's services had furthered.

A. Benefits

Part 205 is designed to improve the accuracy and reliability of corporate disclosures made pursuant to the securities laws and foster investor confidence in the securities markets. This may lower the cost of capital. In addition, Part 205 should, in some instances, prevent or mitigate illegal conduct and hasten the apprehension of wrongdoers whose misconduct injures investors and others. These benefits are difficult to quantify.

Interested persons are invited to comment upon this benefits analysis. Are there other foreseeable benefits? What is the likely economic impact of these benefits? Can the benefits be quantified in any meaningful way? If so, how and what conclusions should be drawn?

B. Costs

Part 205 will impose costs on issuers and law firms representing them. For issuers, the proposed rule will require the chief legal officer of an issuer to investigate and, where necessary, cause remedial actions and/or sanctions to be taken and/or imposed. It also will cause the chief executive officer, qualified legal compliance committee, and board of directors of the issuer to review evidence of possible impropriety. For the most part, we believe that most issuers already have procedures for reviewing evidence of reports of misconduct. Similarly, we expect that most issuers already incur costs with investigating and documenting such reports.

Those companies that choose to form a qualified legal compliance committee to implement this provision will incur a cost. These might include increased compensation for QLCC members, and administrative costs to establish the committee. Additionally, for purposes of the PRA, we assume that one-quarter of issuers will form such a committee and incur an annualized paperwork cost of 2 hours for a total annual burden of 9,100 hours. Assuming outside counsel accounts for half of these hours at a cost of $300 per hour, and inside counsel accounts for the other half at $110 per hour would result in a cost of $1,865,500.

For lawyers, the proposal could have an effect upon malpractice insurance premiums, which could, in turn, increase the cost of attorney services to issuers. It may also encourage issuers to handle more legal matters in-house to avoid the possibility of a noisy withdrawal. The proposal will also impose some costs to make and document required reports and responses. For purposes of the Paperwork Reduction Act, we assume that attorneys already document most important legal advice given to corporate clients. We also assume that the number of times an attorney, CEO, CLO or QLCC will report potential illegal conduct outside the issuer will be rare—for purposes of that analysis we estimate a total of ten times a year (although we cannot, of course predict how many will actually be submitted). Further, we estimate in that analysis that preparing the various notices and disaffirmations will on average take 10 hours to prepare. We assume for the purposes of the PRA that half of these hours would be incurred by in-house counsel, QLCCs, CEOs and CLOs, and half would be incurred by outside counsel. Assuming an outside attorney charges $300 an hour, and the cost of in-house personnel is $110 an hour, these reporting requirements would impose a cost of $20,500.

There may also be some additional costs of the proposal imposed on the market that are exceedingly difficult to predict or quantify. To the extent the obligation to report some illegal conduct outside the issuer creates an incentive on issuers not to share confidences with a lawyer, the lawyer may not be able to avoid, remedy or report illegal conduct. While we recognize that such an effect would decrease the rule's effectiveness, we have no data to suggest that the rule would create such an incentive. We request data on this issue. In addition, there may also be some incentives to maximize use of inside counsel rather than retained attorneys, or small firms rather than large firms, or the reverse, for issuers that presently have no attorney employees to hire at least one attorney, and for issuers to reduce or eliminate reliance upon attorneys in some circumstances. Additionally, there may be economic consequences of "noisy withdrawals" that may occur under the rule.

Interested persons are invited to comment upon this costs analysis. Are there other foreseeable costs? What is the likely economic impact of these costs? Can the costs be quantified in any meaningful way? If so, how and what conclusions should be drawn? Interested persons are invited to address all aspects of costs and benefits attributable to proposed Part 205. The Commission requests data to quantify the expected costs and the value of the anticipated benefits.

VIII. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act (15 U.S.C. 78w(a)(2)) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b) of the Securities Act, Section 3(f) of the Exchange Act, and Section 2(c) of the Investment Company Act require us when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

Part 205 is intended to assure that attorneys representing issuers before the Commission are governed by standards of conduct that increase disclosure of potential impropriety within an issuer so that prompt intervention and remediation can take place. Doing so should boost investor confidence in the financial markets. We anticipate that these proposals would enhance the proper functioning of the capital markets and promote efficiency by reducing the likelihood that illegal behavior would remain undetected and unremedied for long periods of time. Part 205 would apply to all issuers and attorneys appearing before the Commission and is therefore unlikely to affect competition.

Interested persons are invited to comment upon any aspect of this analysis. We request comment on whether Part 205, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

IX. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603.

A. Reasons for the Proposed Action

We are proposing Part 205 to comply with Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*)("the Act").

B. Objectives

Section 307 of the Act requires the Commission to prescribe "minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers." The standards must include a rule requiring an attorney to report "evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof" to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors.

C. Legal Basis

We are proposing Part 205 under the authority set forth in Section 19 of the Securities Act of 1933, Sections 3(b), 4C, 13, and 23(a) of the Securities Exchange Act of 1934, Sections 38 and 39 of the Investment Company Act of 1940, Section 211 of the Investment Advisers Act of 1940, and Sections 3(a), 307 and 404 of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to Proposed Part 205

Proposed Part 205 would affect issuers and law firms that are small entities. Exchange Act Rule 0–10(a) (17 CFR 240.0–10(a)) defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of October 23, 2002, we estimated that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[87] We estimate that there are 211 small investment companies that would be subject to the proposed rule. The proposed revisions would apply to any small entity that is subject to Exchange Act reporting requirements.

Proposed Part 205 also would affect law firms that are small entities. The Small Business Administration has defined small business for purposes of "offices of lawyers" as those with under $6 million in annual revenue.[88] Because we do not directly regulate law firms appearing before the Commission, we do not have data to estimate the number of small law firms that practice before the Commission or, of those, how many have revenue of less than $6 million. We request data on that issue.

E. Reporting, Recordkeeping, and Other Compliance Requirements

Paragraph 205.3(b) of proposed Part 205 prescribes the duty of an attorney who appears or practices before the Commission in the representation of an issuer to report evidence of a material violation that has or may have occurred, or may occur. The attorney is initially directed to make this report to the issuer's chief legal officer ("CLO"), or to the issuer's CLO and chief executive officer ("CEO"). Absent exigent circumstances, the attorney is also obligated to take reasonable steps to make and retain a contemporaneous written record of his or her reports, as well as any response received from the CLO or CEO. Requiring the attorney to keep a contemporaneous written record will protect the attorney in the event his or her compliance with the proposed rule is put in issue at some future proceeding.

[87] 17 CFR 270.0–10.
[88] 13 CFR 121.201.

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When presented with a report of a possible material violation, the rule obligates the issuer's CLO to conduct a reasonable inquiry to determine whether the reported material violation has occurred, is occurring or may occur. A CLO who reasonably concludes that there has been no material violation must advise the reporting attorney of this conclusion, and must also preserve all relevant documentary evidence that supports that conclusion. A CLO who concludes that a material violation has occurred, is occurring or is about to occur must take reasonable steps to ensure that the issuer adopts appropriate remedial measures and/or sanctions—including appropriate disclosures. Furthermore, the CLO is required to report "up the ladder" within the issuer and to the reporting attorney what remedial measures have been adopted. A reporting attorney who receives an appropriate response within a reasonable time has satisfied all obligations under the rule. In the event a reporting attorney does not receive an appropriate response within a reasonable time, he or she must report the evidence of a material violation to the issuer's audit committee, to another committee of independent directors if the issuer has no audit committee, or to the full board if the issuer has no such committee. Similarly, if the attorney reasonably believes that it would be futile to report evidence of a material violation to the CLO and CEO, the attorney may report directly to the issuer's audit committee, another committee of independent directors, or to the full board. A reporting attorney who has reported a matter all the way "up the ladder" within the issuer and who reasonably believes that the issuer has not responded appropriately must take reasonable steps to document and retain the response or lack thereof.

Alternatively, issuers may (but are not required to) establish a QLCC, consisting of at least one member of the issuer's audit committee, and two or more independent members of the issuer's board for the purpose of investigating reports of material violations made by attorneys. Such a QLCC would be authorized to require the issuer to adopt appropriate remedial measures to prevent ongoing, or alleviate past, material violations, and empowered to notify the Commission of the material violation and disaffirm any document submitted to the Commission which has been tainted by the material violation. The QLCC would be required to notify the board of the results of any inquiry. An attorney other than a CLO may satisfy entirely his reporting obligation under the rule by reporting evidence of a material violation to a QLCC. Further, a chief legal officer to whom a report of a material violation has been made may refer the matter to a QLCC.

Paragraph 205.3(d) discusses the obligation of an attorney who has not received an appropriate response from the issuer and, in certain instances, requires or permits a "noisy withdrawal." The provision distinguishes between outside attorneys retained by the issuer and attorneys employed by the issuer. A provision which obligates a reporting attorney under certain circumstances to disaffirm a submission to the Commission which the attorney believes has been tainted by a material violation (and permits the attorney to disaffirm under other circumstances) is also important to the effective operation of the reporting obligation in those instances where an issuer does not respond appropriately. The provision imposes an affirmative obligation on attorneys to disaffirm a document or filing where they believe a violation is ongoing or prospective because of the greater potential of harm to investors inherent in such violations. Pursuant to this provision, outside attorneys who have reported a material violation which they believe has occurred, is ongoing or is about to occur that is likely to result in substantial injury to the financial interest or property of the issuer or investors, and who have not received an appropriate response, are *required* to withdraw from representation, notify the Commission and the issuer that their withdrawal is based on professional considerations, and disaffirm any submission to the Commission which is tainted by the violation (unless, as noted above, they have reported the information to a QLCC). Attorneys employed by an issuer who have reported a material violation which they believe is ongoing or about to occur that is likely to result in substantial injury to the financial interest or property of the issuer or investors and have not received an appropriate response are *required* to disaffirm any tainted submission, but are not required to resign. Attorneys are *permitted, but not required,* to take these steps in the event they believe that the violation has already occurred and has no ongoing effect and is likely to have resulted in substantial injury to the financial interest or property of the issuer or investors. Issuers must also, in certain cases, notify an attorney who is employed or retained to replace an attorney who withdrew, that the withdrawal was based on professional considerations. Finally, an attorney formerly employed or retained by an issuer who reasonably believes that he or she has been discharged because he or she fulfilled the reporting obligation imposed by the rule *may, but is not required to,* notify the Commission of his or her belief and disaffirm in writing any submission to the Commission which is tainted by the violation.

Paragraph 205.3(e) sets forth the specific circumstances under which an attorney is authorized to disclose confidential information related to his or her appearance and practice before the Commission in the representation of an issuer. Pursuant to this provision, an attorney may use the contemporaneous records he or she is required to create by the rule to defend against charges of attorney misconduct. Paragraph 205.3(e)(2) also allows an attorney to reveal confidential information to the extent necessary to prevent the commission of an illegal act which the attorney reasonably believes will result either in perpetration of fraud upon the Commission or in substantial injury to the financial or property interests of the issuer or investors. Similarly, the attorney may disclose confidential information to rectify an issuer's illegal actions when such actions have been advanced by the issuer's use of the attorney's services.

We expect that the various reporting and recordkeeping requirements required by proposed Part 205 would, at least to a limited extent, increase costs incurred by both small issuers and law firms. We believe that many of these reports are, however, already being made and retained by those affected by the proposed rule. We are unable to estimate the frequency with which reports would have to be prepared and retained by small entities. The time required for the actual preparation of a report would vary, but should not be extensive. Small issuers and law firms may bolster, and in some instances, institute, internal procedures to ensure compliance—although the rule does not dictate how these procedures should be implemented.

F. Duplicative, Overlapping, or Conflicting Federal Rules

Proposed Part 205 would not duplicate, overlap, or conflict with other federal rules. There are no other statutory federal requirements that small entities make similar reports or provide similar information.

G. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) an exemption from coverage of the requirements, or any part thereof, for small entities; and (d) the use of performance rather than design standards. As discussed above, the Sarbanes-Oxley Act directs the Commission to implement rules requiring "up the ladder" reporting. The Act does not contain any exemption or other limitation for small entities. Small business issuers may have some difficulty staffing a QLCC, as we presume that they may have fewer independent directors. We note that issuers are not required to have a QLCC under the proposal, but we nevertheless seek comment on whether the QLCC should be modified for small issuers or if another committee or procedure could accomplish the same regulatory purpose. We do not believe that the rule will impose any significant increased costs on small law firms.

The proposed rule uses some performance standards and some design standards. While the rule establishes a framework for reporting evidence of material violations "up the ladder," it does not set specific standards for how to comply with the rule's requirements. For the most part, rather than requiring reports to contain specific, detailed disclosures, the proposed rule prescribes general requirements for reporting and recordkeeping. It does not dictate the time period that records need to be kept, but directs only that they be retained for a reasonable time. This should give small entities flexibility in complying with the proposed rule.

We believe that utilizing different reporting or other compliance requirements for small entities would seriously undermine the effective functioning of the proposed reporting regime. The proposed rule is designed to restore investor confidence in the reliability of the financial statements of the companies they invest in—if small entities were not subject to such requirements, investors might shun their securities. Further, we see no valid justification for imposing different standards of conduct upon small law firms than would apply to others who choose to appear and practice before the Commission. We also believe that the proposed reporting and recordkeeping requirements will be at least as well understood by small entities as would be any alternate formulation we might formulate to apply to them. Therefore, it does not seem necessary or appropriate to develop separate requirements for small entities. We solicit comment on whether small entities should be subject to different requirements.

H. Solicitation of Comments

Interested persons are invited to comment upon any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments concerning: (i) The number of law practices that constitute small entities; (ii) the number of small entities that may be affected by proposed Part 205; (iii) the existence or nature of the potential impact of the proposed rule on small entities; and (iv) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule is adopted, and will be placed in the same public file as comments on the proposed rule itself.

X. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), we must advise the OMB as to whether the proposed rule constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

—An annual effect on the economy of $ 100 million or more (either in the form of an increase or a decrease);
—A major increase in costs or prices for consumers or individual industries; or
—Significant adverse effects on competition, investment, or innovation. Where a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XI. Statutory Basis and Text of Proposed Part 205

We propose to add a new Part 205 to Title 17, Chapter II, of the Code of Federal Regulations under the authority in Sections 3, 307, and 404 of the Sarbanes-Oxley Act of 2002,[89] Section 19 of the Securities Act of 1933,[90] Sections 3(b), 4C, 13, and 23 of the Securities Exchange Act of 1934,[91] Sections 38 and 39 of the Investment Company Act of 1940,[92] and Section 211 of the Investment Advisers Act of 1940.[93]

List of Subjects in 17 CFR Part 205

Standards of conduct for attorneys.

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations by adding Part 205 to read as follows:

PART 205—STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE REPRESENTATION OF AN ISSUER

Sec.
205.1 Purpose and scope.
205.2 Definitions.
205.3 Issuer as client.
205.4 Responsibilities of supervisory attorneys.
205.5 Responsibilities of a subordinate attorney.
205.6 Sanctions.

Authority: 15 U.S.C. 77s, 78d–3, 78w, 80a–37, 80a–38, 80b–11, 7202, 7245, and 7262.

§ 205.1 Purpose and scope.

Consistent with Section 307 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7245, the Commission is adopting rules setting forth minimum standards of professional conduct for attorneys appearing and practicing before it in any way in the representation of an issuer. Where the standards of a state where an attorney is admitted or practices conflict with this part, this part shall govern.

§ 205.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Appearing and practicing* before the Commission includes, but is not limited to, an attorney's:

(1) Transacting any business with the Commission, including communication with Commissioners, the Commission, or its staff;

(2) Representing any party to, or the subject of, or a witness in a Commission administrative proceeding;

(3) Representing any person in connection with any Commission investigation, inquiry, information request, or subpoena;

[89] 15 U.S.C. 7202, 7245, 7262.
[90] 15 U.S.C. 77S.
[91] 15 U.S.C. 78c(b), 78d–3, 78m, 78w.
[92] 15 U.S.C. 80a–37, 80a–38.
[93] 15 U.S.C. 80b–11.

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(4) Preparing, or participating in the process of preparing, any statement, opinion, or other writing which the attorney has reason to believe will be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(5) Advising any party that:

(i) A statement, opinion, or other writing need not or should not be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(ii) The party is not obligated to submit or file a registration statement, notification, application, report, communication or other document with the Commission or its staff.

(b) *Appropriate response* means a response to evidence of a material violation reported to appropriate officers or directors of an issuer that provides a basis for an attorney reasonably to believe:

(1) That no material violation, as defined in paragraph (i) of this section, is occurring, has occurred, or is about to occur; or

(2) That the issuer has, as necessary, adopted remedial measures, including appropriate disclosures, and/or imposed sanctions that can be expected to stop any material violation that is occurring, prevent any material violation that has yet to occur, and/or rectify any material violation that has already occurred.

(c) *Attorney* refers to any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

(d) *Breach of fiduciary duty* refers to any breach of fiduciary duty recognized at common law, including, but not limited to, misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

(e) *Evidence of a material violation* means information that would lead an attorney reasonably to believe that a material violation has occurred, is occurring, or is about to occur.

(f) *In the representation of an issuer* means acting in any way on behalf, at the behest, or for the benefit of an issuer, whether or not employed or retained by the issuer.

(g) *Issuer* means an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under Section 12 of that Act (15 U.S.C. 78*l*), or that is required to file reports under Section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

(h) *Material* refers to conduct or information about which a reasonable investor would want to be informed before making an investment decision.

(i) *Material violation* means a material violation of the securities laws, a material breach of fiduciary duty, or a similar material violation.

(j) *Qualified legal compliance committee* means a committee of an issuer that:

(1) Consists of at least one member of the issuer's audit committee and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, "interested persons" as defined in Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19));

(2) Has been duly established by the issuer's board of directors and authorized to investigate any report of evidence of a material violation by the issuer, its officers, directors, employees or agents;

(3) Has established written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under § 205.3(c);

(4) Has the authority and responsibility:

(i) To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in § 205.3(b)(5));

(ii) To decide whether an investigation is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur and, if so, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and

(iii) At the conclusion of any such investigation under paragraph (j)(4)(ii) of this section, to:

(A) Direct the issuer to adopt appropriate remedial measures, including appropriate disclosures, and/or to impose appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under paragraph (j)(4)(ii) of this section and the appropriate remedial measures to be adopted; and

(5) Each member of which individually, together with the issuer's chief legal officer and chief executive officer (or the equivalents thereof) individually, has the authority and responsibility, in the event the issuer fails in any material respect to take any of the remedial measures that the qualified legal compliance committee has directed the issuer to take, to notify the Commission that a material violation has occurred, is occurring or is about to occur and to disaffirm in writing any document submitted to or filed with the Commission by the issuer that the individual member of the qualified legal compliance committee or the chief legal officer or the chief executive officer reasonably believes is false or materially misleading.

(k) *Reasonable* or *reasonably* denotes the conduct of a reasonably prudent and competent attorney.

(l) *Reasonably believes* means that an attorney, acting reasonably, would believe the matter in question.

(m) *Report* means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

§ 205.3 Issuer as client.

(a) *Representing an issuer.* An attorney appearing and practicing before the Commission in the representation of an issuer represents the issuer as an organization and shall act in the best interest of the issuer and its shareholders. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

(b) *Duty to report evidence of a material violation.* (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report any evidence of a material violation to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or to the equivalents thereof) forthwith (unless the issuer has a qualified legal compliance committee and the attorney chooses instead to report the evidence of a material violation to that committee under paragraph (c) of this section). An attorney does not reveal client confidences or secrets or privileged or otherwise protected information by communicating such information related to the attorney's representation of an issuer to the issuer's officers or directors.

(2) The attorney reporting evidence of a material violation shall take steps reasonable under the circumstances to document the report and the response thereto and shall retain such documentation for a reasonable time.

(3) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur. If the chief legal officer reasonably believes no material violation has occurred, is occurring, or is about to occur, he or she shall so advise the reporting attorney. If the chief legal officer reasonably believes that a material violation has occurred, is occurring, or is about to occur, he or she shall take any necessary steps to ensure that the issuer adopts appropriate remedial measures, including appropriate disclosures, and/or imposes appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred. The chief legal officer shall promptly report the remedial measures adopted and/or sanctions imposed to the chief executive officer, to the audit committee of the issuer's board of directors, or to the issuer's board of directors, and to the reporting attorney. The chief legal officer shall take reasonable steps to document his or her inquiry and to retain such documentation for a reasonable time. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section. If the issuer fails in any material respect to take any remedial measure that the qualified legal compliance committee directs the issuer to take in order to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred, the chief legal officer shall notify the Commission that a material violation has occurred, is occurring or is about to occur and shall disaffirm in writing any documents submitted to or filed with the Commission by the issuer that the chief legal officer reasonably believes are false or materially misleading.

(4) If an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has not provided an appropriate response, or has not responded within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19))).

(5) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report the evidence of a material violation as provided under paragraph (b)(4) of this section.

(6) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(4), or (b)(5) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve the officers or directors of the issuer to whom the evidence of a material violation has been reported under paragraph (b)(1), (b)(4), or (b)(5) of this section of the duty to respond to the reporting attorney.

(7) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section and who has taken reasonable steps to document his or her report and the response thereto under paragraph (b)(2) of this section need do nothing more under this section regarding the evidence of a material violation.

(8) If the attorney reasonably believes that the issuer has not made an appropriate response to the report or reports made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section, or the attorney has not received a response in a reasonable time, the attorney shall:

(i) Explain his or her reasons for so believing to the chief legal officer, chief executive officer, or directors to whom the attorney reported the evidence of a material violation pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section; and

(ii) Take reasonable steps to document the response, or absence thereof, and to retain such documentation for a reasonable time.

(c) *Alternative reporting procedures for attorneys retained or employed by an issuer with a qualified legal compliance committee.* (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence of a material violation to a qualified legal compliance committee, if the issuer has duly formed such a committee. Except as provided in paragraph (b)(3) of this section, an attorney who reports evidence of a material violation to a qualified legal compliance committee has satisfied his or her obligation to report evidence of a material violation within the issuer, is not required to assess the issuer's response to the reported evidence of a material violation, and is not required to take any action under paragraph (d) of this section regarding the evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee in lieu of causing an inquiry to be conducted under paragraph (b)(3) of this section. Thereafter, pursuant to the requirements under § 205.2(j), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c) of this section.

(d) *Notice to the Commission where there is no appropriate response within a reasonable time.* (1) Where an attorney who has reported evidence of a material violation under paragraph 3(b) of this

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section rather than paragraph 3(c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report, and the attorney reasonably believes that a material violation is ongoing or is about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or of investors:

(i) An attorney retained by the issuer shall:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;

(B) Within one business day of withdrawing, give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Promptly disaffirm to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;

(ii) An attorney employed by the issuer shall:

(A) Within one business day, notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Promptly disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

(2) Where an attorney who has reported evidence of a material violation under paragraph (b) rather than paragraph (c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report under paragraph (b) of this section, and the attorney reasonably believes that a material violation has occurred and is likely to have resulted in substantial injury to the financial interest or property of the issuer or of investors but is not ongoing:

(i) An attorney retained by the issuer may:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;

(B) Give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Disaffirm to the Commission, in writing, any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;

(ii) An attorney employed by the issuer may:

(A) Notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

(3) The notification to the Commission prescribed by this paragraph (d) does not breach the attorney-client privilege.

(4) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this section and reasonably believes that he or she has been discharged for so doing may notify the Commission that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section and may disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading.

(e) *Issuer confidences.* (1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof), may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of the issuer's illegal act in the furtherance of which the attorney's services had been used.

(3) Where an issuer, through its attorney, shares with the Commission information related to a material violation, pursuant to a confidentiality agreement, such sharing of information shall not constitute a waiver of any otherwise applicable privilege or protection as to other persons.

§ 205.4 Responsibilities of supervisory attorneys.

(a) An attorney supervising, directing, or having supervisory authority over another attorney is a supervisory attorney. An issuer's chief legal officer (or the equivalent) is a supervisory attorney under this section.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in § 205.5(a), that he or she supervises, directs, or has supervisory authority over is appearing and practicing before the Commission conforms to this part and complies with the statutes and other rules administered by the Commission. To the extent a subordinate attorney appears and practices before the Commission on behalf of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in § 205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who reasonably believes that information reported to him or her by a subordinate attorney under § 205.5(c) is not evidence of a material violation shall take reasonable steps to document the basis for the supervisory attorney's belief.

§ 205.5 Responsibilities of a subordinate attorney.

(a) An attorney under the supervision, direction, or supervisory authority of another attorney is a subordinate attorney.

(b) A subordinate attorney is bound by this part notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with § 205.3 if the subordinate attorney reports to his or her supervising attorney under § 205.3(b) evidence of a material violation that the subordinate attorney becomes aware of in the course of appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by § 205.3(b), (c), and (d) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under § 205.3(b) has failed to comply with § 205.3.

§ 205.6 Sanctions.

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and any such attorney shall be subject to the same penalties and remedies, and to the same extent, as for a violation of that Act.

(b) With respect to attorneys appearing and practicing before the Commission on behalf of an issuer, "improper professional conduct" under section 4C(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d—3(a)) includes:

(1) Intentional or knowing conduct, including reckless conduct, that results in a violation of any provision of this part; and

(2) Negligent conduct in the form of:

(i) A single instance of highly unreasonable conduct that results in a violation of any provision of this part; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of a provision of this part.

(c) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices.

Dated: November 21, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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Federal Register

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Part IV

Department of Education

34 CFR Part 200
Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA91

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the programs administered under Title I, parts A, C, and D of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (hereinafter referred to as the Title I programs.) These regulations are needed to implement recent changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: These regulations are effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: For subparts A, D, and E of part 200, Jacquelyn C. Jackson, Ed. D. Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

For subparts B and C of part 200, Francisco Garcia, Director, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E217, FB–6, Washington, DC 20202–6135. Telephone: (202) 260–0089.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: These regulations implement changes to Title I of the ESEA, as amended by the NCLB Act (Public Law 107–110), enacted January 8, 2002. On August 6, 2002, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (67 FR 50986).

In the preamble to the NPRM, the Secretary discussed on pages 50986 through 51001 the major revisions proposed in that document to implement changes in the provisions of Title I made by the NCLB Act. These included the following:

- Clarifying in § 200.11 that a condition of receiving Title I funds is that, if selected, the local educational agency (LEA) must participate in the National Assessment for Educational Progress (NAEP).
- Specifying in § 200.12 that the implementation of the statutory provisions requiring a single, statewide accountability system take effect beginning with the 2002–2003 school year.
- Requiring in § 200.12 that States include, in their accountability systems, guidelines for identifying the students with disabilities who should take alternate assessments and that States report on the number of students who take an alternate assessment.
- Clarifying in §§ 200.13 through 200.20 statutory provisions in section 1111(b)(2) of the NCLB Act requiring each State to demonstrate what constitutes adequate yearly progress (AYP), particularly the interrelationship among the timeline, starting points, intermediate goals, and annual measurable objectives that are part of AYP.
- Clarifying in § 200.13(c)(1) and (2) that States can define achievement standards for students with the most significant cognitive disabilities who take an alternate assessment, but that the percentage of students with disabilities included in accountability measures using alternate standards cannot be more than .5 percent of all students assessed in a State or LEA.
- Specifying in § 200.16 that a State must set separate starting points for reading/language arts and mathematics, and permitting the establishment of separate starting points by grade span.
- Clarifying in § 200.20 the statutory requirement that 95 percent of the students enrolled in each subgroup must take the State's academic assessment for the school to make AYP.
- Requiring in § 200.21 that the Secretary review both a State's AYP and its annual measurable achievement objectives relating to the English proficiency of limited English proficient students.
- Reorganizing in §§ 200.25 through 200.28 schoolwide program regulations to emphasize the fundamental purpose of a schoolwide program and to create smaller and simpler sections.
- Clarifying in §§ 200.30 and 200.31 the statutory requirement that an LEA conduct an annual review of the performance of all schools receiving funds under subpart A of the ESEA and provide schools with the data on which it has based a proposed identification for improvement, corrective action, or restructuring.
- Clarifying in §§ 200.32 through 200.35 the statutory provisions related to the LEA's identification of schools for improvement, corrective action, and restructuring as well as provisions governing the delay or termination of requirements related to identification.
- Clarifying in §§ 200.36 through 200.38 the manner in which State educational agencies (SEAs), LEAs, and schools must meet notification requirements under section 1116 of the ESEA.
- Restating in §§ 200.39 through 200.41 the statutory requirements related to both LEA and school-level responsibilities under the school improvement process.
- Clarifying in §§ 200.42 and 200.43 the statutory requirements related to corrective action and restructuring.
- Restating and reorganizing in § 200.44 the statutory provisions related to the public school choice option and clarifying the statutory deadline to provide this option.
- Specifying in §§ 200.45 through 200.47 requirements for the provision of supplemental services.
- Clarifying in § 200.48 statutory provisions regarding the reservation of funds to pay for choice-related transportation and supplemental educational services.
- Clarifying in §§ 200.49 through 200.51 statutory provisions related to SEA responsibilities in the school improvement process, including SEA review of LEA progress and notice requirements.
- Including in §§ 200.52 and 200.53 the statutory requirements for LEA improvement and corrective action.
- Incorporating in § 200.54 the statutory provision with respect to State or local laws or collective bargaining agreements in effect on January 8, 2002—the day the NCLB Act was signed into law.
- Incorporating in §§ 200.55 through 200.57 the statutory provisions regarding qualifications of teachers, and clarifying that the requirements apply to teachers of the core academic subjects and do not apply to teachers who do not teach core subjects, employees of third-party contractors, or supplemental services providers.
- Incorporating in §§ 200.58 and 200.59 statutory provisions governing paraprofessionals, clarifying that the term applies to individuals performing instructional support duties and to paraprofessionals in both targeted assistance and schoolwide program schools supported by funds under subpart A of this part.
- Clarifying in § 200.60 that professional development funds may be used for paraprofessionals as well as teachers.
- Incorporating in §§ 200.61 through 200.66 statutory changes from the previous law governing the participation of eligible children in private schools and clarifying provisions in this area about which questions have arisen in the past.
- Specifying in §§ 200.70 through 200.75 procedures that SEAs must follow in adjusting allocations determined by the Secretary to account for unique situations within their states.
- Clarifying in §§ 200.77 and 200.78 within-district allocation procedures as specified in section 1113 of the ESEA.
- Restating in § 200.79 the criteria a State or local program must meet in order to be excluded from "supplement not supplant" and "comparability" determinations, and incorporating a change in the poverty threshold for schoolwide programs.
- Clarifying in §§ 200.81 through 200.88 program specific regulations for subpart C—Migrant Education Program (MEP).
- Specifying that the regulations for subpart D—Prevention Programs for Children and Youth Who Are Neglected, Delinquent, or At-risk of Dropping Out have not changed.
- Clarifying in §§ 200.100 through 200.103 new procedures an SEA must follow when reserving funds for school improvement, State administration, and the State academic achievement awards program, addressing the use of funds reserved for State administration, and providing certain definitions that apply to all of the programs governed by the regulations.

The final regulations reflect these provisions, modified as noted in the analysis of comments and changes in the appendix.

Significant Changes From the NPRM

- *AYP Requirements:* Numerous comments were received from states requesting information on potential flexibility in determining AYP. One of the cornerstones of the NCLB is its strong emphasis on accountability for results. Only if we hold schools and LEAs accountability for the improved achievement of *all* students will we meet the goal of leaving no child behind. As a result, the NCLB Act included very specific, rigorous requirements that States must implement to determine the AYP of each public school, LEA, and the State itself. In preparing the final regulations, the Secretary has faithfully implemented the statutory provisions governing AYP, addressing additional flexibility wherever possible. The Secretary realizes that the accountability systems currently in place in many States may not fully meet the statutory and regulatory requirements. To meet the requirements in NCLB and these final regulations, a State may continue to use its current State accountability system, consistent with Secretary's July 24, 2002 *Dear Colleague* letter, if that system integrates AYP, as defined in the statute and regulations, into its system. A State must submit evidence to the Secretary, for peer review, that thoroughly describes the State's accountability system and demonstrates how it has integrated the AYP provisions required by the statute and regulations.
- *AYP for students with the most significant cognitive disabilities:* Section 200.13 of the NPRM would have allowed the use of alternate achievement standards for students with the most significant cognitive disabilities for determining the AYP of states and LEAs, provided that use did not exceed 0.5 percent of all students. Numerous comments were received on this proposal, with many of them indicating that commenters misunderstood this proposal as limiting the number of students with disabilities who could take an alternate assessment, rather than providing flexibility by allowing the use of alternate achievement standards to determine proficiency for calculating AYP for a limited group of students with disabilities. Because the Secretary believes that the policy may need further clarification, the Secretary will be seeking public comment in an NPRM to be published shortly on a proposed policy regarding the appropriate use of alternate achievement standards in determining AYP for students with the most significant cognitive disabilities.

  However, because it is critical to ensure that students with disabilities are not excluded from state accountability systems, the final regulations provide that the same grade level academic content and achievement standards that apply to all public schools and public school students in the State will be applied to alternate assessments. The Secretary anticipates that the separate NPRM will propose an exception to this policy for a small group of students with disabilities.
- *Graduation Rates and Other Indicators:* Section 200.19 of the NPRM required States to include in their definition of AYP graduation rates and one other academic indicator for elementary and middle schools. The final regulation clarifies that States are required to use the other indicators to determine whether or not a school or LEA has made AYP.
- *Restructuring:* Section 200.34 of the NPRM did not address school status after implementation of restructuring. The final regulations modify the NPRM by clarifying that a school in restructuring must continue to provide supplemental educational services and choice, and to implement its restructuring plan, until it has made AYP for two consecutive years.
- *School choice and capacity:* Numerous commenters requested clarification of the NPRM on the issue of a school district's capacity to provide choice for all students. Section 200.44(d) of the final regulation clarifies that an LEA may not use lack of capacity to deny an eligible student the opportunity to transfer to another school not identified for improvement.
- *LEA responsibility for supplemental educational services.* Sections 200.46(a)(4) and 200.47(a)(5) of the NPRM did not address the responsibility of LEAs and SEAs to ensure that limited English proficient students receive appropriate educational services and language assistance in the provision of supplemental services. The final regulation clarifies that both the LEA and SEA are required to ensure that students with limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.
- *Providers of supplemental educational services:* Section 200.47(b)(3) of the NPRM stated: "A private provider may not, on the basis of disability, exclude a qualified student with disabilities or a student covered under Section 504 if the student can, with minor adjustments, be provided supplemental educational services designed to meet the individual educational needs of the student unless otherwise provided by law." NPRM provisions §§ 200.46(a)(4) and 200.47(a)(5) provided that LEAs and SEAs must ensure that eligible students with disabilities and students covered by Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services. The final regulation is amended to eliminate the "minor adjustments" standard for private providers of supplemental services.
- *Scientifically Based Research and Supplemental Services Providers:* Section 200.47(b)(4)(ii) of the NPRM prohibited states from requiring

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providers to demonstrate that their instructional strategies were based on scientifically based research as a condition of approval. The final regulation removes this restriction.

• *Alternate Certification:* The NPRM specified that one of the requirements of being a "highly qualified teacher" is having obtained full State certification as a teacher—which may include certification obtained through alternative routes to certification. The final regulation adds language that requires teachers who are enrolled in alternative route programs to receive high-quality professional development before and while teaching, to participate in a program of intensive supervision or a teacher mentoring program, to assume the functions of a teacher while in the alternative route program only for a specified period of time not to exceed three years, and to demonstrate satisfactory progress toward full certification as prescribed by the State. The regulations have been further amended by requiring the State to ensure, through its certification and licensure process, that these provisions are met.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, approximately 140 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We group major issues according to subject. We discuss other substantive issues under the sections of these regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Waiver of Rulemaking

In response to comments, the Secretary has added § 200.61 in these final regulations regarding parents' right to know the qualifications of their child's teachers. This section merely incorporates statutory requirements in section 1111(h)(6) of Title I. The Secretary has included it, however, to emphasize the important responsibility of LEAs to notify parents of students in Title I schools that they have a right to request information regarding the professional qualifications of their child's teachers. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory provisions and do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations are unnecessary.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements, and those we have determined to be necessary for administering this program effectively and efficiently. Based on our assessment of the regulatory burden on States, LEAs, and schools, we estimate that the total cost of administering these regulations is $52 million. In deriving this cost estimate, we calculated the burden hours at the SEA level to be 55,952 hours. Using a cost rate of $25 per hour at the SEA level, we estimated the administrative burden cost to States to be $1.4 million. At the LEA and school levels, we calculated the burden hours to be 2,530,476 hours. Based on a cost rate of $20 per hour, the estimated administrative burden cost at the local level is $50.6 million. The section of this preamble on the Paperwork Reduction Act of 1995 discusses the burden that the statutory requirements of the NCLB Act impose on States, LEAs, and schools in more detail. The fiscal year (FY) 2002 appropriation for Title I, part A provided a $1.6 billion (18 percent) increase in funds. This increase in funding will enable States, LEAs, and schools to meet the administrative costs associated with the requirements of the NCLB Act at the State, LEA, and school levels.

In assessing the potential costs of implementing these regulations compared to the $10.6 billion in Title I, Part A, Part C, and Part D, subpart 1 funds received by the States and LEAs, we have determined that the benefits of the regulations justify the costs. The FY 2002 appropriation of $10.6 billion for these programs, which represents an 18 percent increase over the prior year appropriation, will provide enough resources for States, LEAs, and schools to carry out the requirements of the statute. The NCLB Act represents a sweeping overhaul of Federal efforts to support elementary and secondary education in the United States and is a landmark in education reform designed to improve student achievement and change the culture of our nation's schools. The new law is based on four basic principles—stronger accountability for results; greater flexibility for States, school districts, and schools in the use of Federal funds; more choices for parents of children from disadvantaged backgrounds; and an emphasis on teaching methods that have been demonstrated to work.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Most of the final regulations would add clarity where the statute is ambiguous or unclear or would reorganize statutory provisions to facilitate a better understanding of their requirements. These regulations would not add significantly to the costs of implementing the Title I programs authorized by the Elementary and Secondary Education Act (ESEA) or alter the benefits that the Secretary believes will be obtained through successful implementation. The vast majority of the implementation costs and benefits will stem from the underlying legislation.

The programs authorized by Title I of the ESEA, as reauthorized by the No Child Left Behind Act of 2001, have as their goal the education of all students, including students who are economically disadvantaged, limited English proficient, disabled, migratory, residing in institutions for neglected or delinquent youth and adults, or members of other groups typically considered "at risk," so that they can achieve to challenging content and academic achievement standards. Thus, the benefits that will be obtained through the reauthorized Title I and its implementing regulations are those primarily of a more educated society. National data sets and studies by prominent researchers have demonstrated repeatedly that better education has major benefits, both economic and non-economic, not only for the individuals who receive it but for society as a whole. Nations that invest in quality education enjoy higher levels of growth and productivity, and a high-quality education system is an indispensable element of a strong economy and successful civil society.

Data from the 1999 Current Population Survey, conducted by the Census Bureau, indicate that adults with a high school diploma (but no further education) had a median income of $23,061, compared to $17,015 for those with no diploma and $15,098 for those with less than 9 years of education. High school graduates are more likely to continue their education and receive the additional skills and knowledge necessary to compete for jobs in a high-technology, knowledge-driven economy. Scholars have also found strong, positive correlations between higher levels of schooling and higher lifetime earnings, higher savings rates, and reduced costs of job search.

Researchers have, in addition, found that more and better education correlates with other outcomes that, while not directly related to employment and earnings, have a major, positive benefit on society. More educated individuals lead healthier lives and have lower mortality rates. They are more likely to donate time and money to charity, and to vote in elections. Researchers have demonstrated the intergenerational impact of education, as the educational level of parents is a positive predictor of children's health, cognitive development, education, occupational status, and future earnings. In addition, education is negatively correlated with criminal activity and incarceration, and more educated mothers are less likely to have daughters who give birth out of wedlock as teens.

The reauthorized Title I programs, and the final regulations for those programs, will also lead to improvements in the qualifications of teachers, both in programs supported by Title I and in schools generally. The Department believes that the new teacher qualifications provisions will also convey major benefits on students and on society generally. Research has found that the academic success of children is more dependent on teacher quality than on any other variable, with the exception of family background; it is, in other words, the most important school-related determinant of achievement.

The major costs to States and to LEAs imposed by the statute and the regulations are the costs of administering the Title I programs: At the State level, distributing funds to LEAs, monitoring LEA activities, providing technical assistance, and carrying out other activities specified in the statute, and, at the local level, administering programs in schools and classrooms, providing professional development to teachers and other staff, and ensuring program accountability, among other things. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources. For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

Regulatory Flexibility Act

This Final Regulatory Flexibility Analysis (FRFA) has been prepared in accordance with the Regulatory Flexibility Act. It involves final regulations under Title I of the ESEA, as amended by the NCLB Act. Its provisions require LEAs, without regard to size, to take certain actions to improve student academic achievement.

1. Need for, Objectives of, and Legal Basis for Final Regulations

The purpose of the final regulations is to implement recent changes to Title I of the ESEA made by the NCLB Act. We are issuing final regulation under the authority in section 1901(a) of Title I.

2. Summary of Significant Issues Raised in Response to the Initial Regulatory Flexibility Analysis (IRFA)

We have received no comments concerning the cost implications of these regulations on small entities as result of our request for comments to the IRFA published in the NPRM on August 6, 2002. However, there was one comment on the proposed regulation regarding the impact of particular provisions on small LEAs.

Comment: One commenter recommended that the final regulations provide flexibility in defining AYP for small school districts, and single-school LEAs in particular, that may find it difficult to implement the subgroup-based accountability requirements of the Act.

Discussion: The intent of the law is to ensure that all schools and districts are held accountable for student achievement. In those instances where schools and districts are too small to include any subgroups, the school and district will need to make a decision about AYP at least on the basis of all its students who were within the school or district for a full academic year. The Department of Education will issue nonregulatory guidance to advise States about particular methodologies for handling this issue. The regulations clarify at § 200.7(d) that subgroups too small to be reported or identified at one level must be included at the next higher level, assuming the subgroup reaches the appropriate size.

3. A Description of the Small Entities to Which These Regulations Will Apply

The small entities that would be affected by these final regulations are small LEAs receiving Federal funds under Title I programs. Based on the Small Business Administration's (SBA) standards, which defines "small entities" as those jurisdictions serving a population of less than 50,000, 13,231 LEAs out of a total of 13,335 LEAs that receive Title I, part A funds would be considered small. As noted earlier, the FY 2002 appropriation provides a $1.6 billion increase in the Title I, part A amount available for school year 2002–03 to States and to all LEAs, both large and small.

4. Reporting, Recordkeeping and Other Compliance Requirements

Under these regulations, an LEA must: (1) Publicize and disseminate the results of its annual progress review, (2) notify parents and teachers of any school identified for improvement or subject to corrective action or restructuring, (3) publicize and disseminate information regarding any action taken by the school and LEA to address the problems that led to the identification, and (4) for schools subject to restructuring, prepare a plan to carry out alternative governance arrangements. An LEA also must maintain in its records, and provide to the SEA, a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred. The potential costs and benefits of associated with these regulations are discussed in the section on Executive Order 12866.

5. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. Although the NCLB Act makes no special provisions for "small" LEAs that serve fewer than 50,000 students, which account for 99 percent of all school districts receiving Title I part A funds, the Department has, to the extent allowable under the statute accommodated small LEAs in these regulations. For example, § 200.74 of the regulations outlines procedures a State must use in using alternative poverty data, which it believes better reflect where poor children are located, to determine final Title I allocations for LEAs with a total population of less than 20,000. This provision potentially applies to roughly 80 percent of all LEAs nationally that meet this criteria. LEAs with fewer than 1,000 students enrolled are exempt from the within-district allocation requirements outlined

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in § 200.78. More than 4,060 LEAs receiving Title I Part A funds are affected by this policy. Moreover, activities required under these regulations would be financed through the appropriations for Title I programs, which have increased by $1.6 billion for FY 2002, and the responsibilities encompassed in the law and regulations would not impose a financial burden that small entities would have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Title I, part A of the Elementary and Secondary Education, as amended by the No Child Left Behind Act, contains several provisions that require SEAs, LEAs, or schools to collect or disseminate information. They are: Sections 200.26, 200.27, 200.28, 200.30, 200.31, 200.34, 200.36, 200.37, 200.38, 200.39, 200.41, 200.42, 200.43, 200.45, 200.46, 200.47, 200.49, 200.50, 200.51, 200.52, 200.57, 200.61, and 200.62. Section 200.61 was added to the final regulation to incorporate statutory language requiring LEAs to notify parents that they may request information about the professional qualifications of their child's classroom teacher. All these sections relate to OMB control number 1810–0581. Sections 200.12, 200.13, and 200.33 are covered under OMB control number 1810–0576. Section 200.53 is covered under OMB control number 1810–0516. Sections 200.70 through 200.75 and 200.100 are covered under OMB control numbers 1810–0620 and 1810–0622. Section 200.83, 200.84, and 200.88 are covered under OMB control number 1810–0659. Section 200.91 is covered under OMB control number 1810–0060.

SEAs must: (1) Provide annual notice to potential supplemental service providers of the opportunity to provide such services, (2) maintain an updated list of approved providers from which parents may select, and (3) publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by each approved provider and for withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental services. As part of their responsibility to annually review the progress of each LEA to determine whether schools are making AYP, SEAs must: (1) Provide, before the beginning of the next school year, the results of academic assessments administered as part of the State assessment system in a given school year to LEAs, (2) publicize and disseminate the results of the State review, (3) notify parents when LEAs are identified for improvement or corrective action, including providing information on the corrective action, and (4) notify the Secretary of Education of major factors that have significantly affected student academic achievement in schools identified for improvement. Additionally, under Title I, part D, States must submit a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected children and youth and adult correctional institutions.

As part of their responsibility to annually review the progress of schools to determine whether they are making AYP, each LEA must (1) publicize and disseminate the results of its annual progress review, (2) notify parents and teachers of any school identified for improvement or subject to corrective action or restructuring, (3) publicize and disseminate information regarding any action taken by the school and LEA to address the problems that lead to the identification, and (4) for schools subject to restructuring, prepare a plan to carry out alternative governance arrangements. LEAs also must maintain in their records, and provide to the SEA, written affirmation signed by officials of each private school with participating children, or appropriate private school representatives, that the required consultation has occurred.

At the school level, an eligible school choosing to operate a schoolwide program must develop a comprehensive schoolwide plan and maintain records demonstrating that it addresses the intent and purpose of each Federal program included.

The total estimated burden hours for SEA activities covered by the paperwork requirements are 55,952 across 52 SEAs. The total estimated burden hours for LEA activities covered by the paperwork requirements are 1,119,500 hours across 13,335 LEAs. The total estimated burden hours for school-level activities is 1,410,976 hours. Almost all the burden hours at the LEA and school level result from statutory requirements that require: (1) LEAs to prepare restructuring plans for schools that do not make AYP after one full year in corrective action, and (2) schools seeking to operate schoolwide programs to develop schoolwide program plans. The actual impact on an individual LEA or school will vary depending on whether the LEA or school is subject to these specific requirements. The estimate of the burden hours at the LEA level includes an estimate of additional hours that result from adding a new § 200.61 to the final regulations, which requires an LEA to notify parents that they can request information about the professional qualifications of their child's classroom teacher.

Section 200.83 outlines an SEA's responsibility to implement its State Title I, part C (Migrant Education) program through a comprehensive needs assessment and a comprehensive State plan for service delivery. Section 200.84 outlines an SEA's responsibility for evaluating the effectiveness of its Title I, part C (Migrant Education) program. The yearly estimated public reporting burden for the collection of information to implement these two regulatory requirements is 19,925 hours. The Department requested that the Office of Management and Budget (OMB)review the information collections, 1810–0581 and 1810–0659, on an emergency basis. Although these information collections have been approved on an emergency basis, we continue to invite your comments through January 31, 2003. We request those wishing to comment to send their comments to the individual identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local and tribal government and the private sector. These regulations contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. As noted in the cost/benefit analysis, the fiscal year 2002 appropriation for Title I, part A provided a $1.6 billion (18 percent) increase in funds for States to use in implementing the changes mandated by the NCLB Act. Therefore, these regulations are not subject to the requirements of sections 202 and 205 of UMRA.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although we did not believe our NPRM would have federalism implications, we encouraged State and local elected officials to review the NPRM for federalism implications and to provide comments. We did not receive any comments on federalism implications. We also consulted extensively with Chief State School Officers, other State representatives, Superintendents, and leaders of various education organizations. In May of 2002, we hosted a series of regional meetings to share important information about the proposed regulations during the public comment period. We also conducted numerous teleconferences with State Chiefs and their staff to learn more about the implications of these regulations.

These regulations implement various statutory changes to Title I of the ESEA made by the NCLB Act. We do not believe that these regulations have federalism implications as defined in Executive Order 13132 or that they preempt State law. Accordingly, the Secretary has determined that these regulations do not contain policies that have federalism implications.

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(Catalog of Federal Domestic Assistance Numbers: 84.010 Improving Programs Operated by Local Educational Agencies, 84.011 Education of Migrant Children, 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out, 84.214A Even Start—Migrant Education)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs-education, Indians education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: November 25, 2002.

Rod Paige,

Secretary of Education.

The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1–2. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

3. In § 200.6, revise paragraph (a)(2) to read as follows:

§ 200.6 Inclusion of all students.

(a) * * *.

(2) *Alternate assessments.* (i) The State's academic assessment system must provide for one or more alternate assessments for a child with a disability as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) whom the child's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.

(ii) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

* * * * *

4. In § 200.7, add new paragraphs (c) and (d) to read as follows:

§ 200.7 Disaggregation of data.

* * * * *

(c) *Inclusion of subgroups in assessments.* If a subgroup under § 200.2(b)(10) is not of sufficient size to produce statistically reliable results, the State must still include students in that subgroup in its State assessments under § 200.2.

(d) *Disaggregation at the LEA and State.* If the number of students in a subgroup is not statistically reliable at the school level, the State must include those students in disaggregations at each level for which the number of students is statistically reliable—*e.g.*, the LEA or State level.

5. In subpart A to part 200, remove the undesignated center headings "Participation of Eligible Children in Private Schools", "Capital Expenses", "Schoolwide Programs", Procedures for the Within-State Allocation of LEA Program Funds", and "Procedures for the Within-District Allocation of LEA Program Funds".

6. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.10 to read as follows:

Participation in National Assessment of Educational Progress (NAEP)

7. Revise § 200.11 and place it under the new undesignated center heading "Participation in National Assessment of Educational Progress (NAEP)" in subpart A of part 200 to read as follows:

§ 200.11 Participation in NAEP.

(a) *State participation.* Beginning in the 2002–2003 school year, each State that receives funds under subpart A of this part must participate in biennial State academic assessments of fourth and eighth grade reading and mathematics under the State National Assessment of Educational Progress (NAEP), if the Department pays the costs of administering those assessments.

(b) *Local participation.* In accordance with section 1112(b)(1)(F) of the Elementary and Secondary Education Act of 1965 (ESEA), and notwithstanding section 411(d)(1) of the National Education Statistics Act of 1994, an LEA that receives funds under subpart A of this part must participate, if selected, in the State-NAEP assessments referred to in paragraph (a) of this section.

(Authority: 20 U.S.C. 6311(c)(2); 6312(b)(1)(F), 9010(d)(1))

8. Add a new undesignated center heading to subpart A of part 200 and place it after revised § 200.11 to read as follows:

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State Accountability System

9. Revise § 200.12 and place it under the new undesignated center heading "State Accountability System" in subpart A of part 200 to read as follows:

§ 200.12 Single State accountability system.

(a)(1) Each State must demonstrate in its State plan that the State has developed and is implementing, beginning with the 2002–2003 school year, a single, statewide accountability system.

(2) The State's accountability system must be effective in ensuring that all public elementary and secondary schools and LEAs in the State make adequate yearly progress (AYP) as defined in §§ 200.13 through 200.20.

(b) The State's accountability system must—

(1) Be based on the State's academic standards under § 200.1, academic assessments under § 200.2, and other academic indicators under § 200.19;

(2) Take into account the achievement of all public elementary and secondary school students;

(3) Be the same accountability system the State uses for all public elementary and secondary schools and all LEAs in the State; and

(4) Include sanctions and rewards that the State will use to hold public elementary and secondary schools and LEAs accountable for student achievement and for making AYP, except that the State is not required to subject schools and LEAs not participating under subpart A of this part to the requirements of section 1116 of the ESEA. (Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6311(b)(2)(A))

10. Add a new undesignated center heading to subpart A of part 200 and place it after revised § 200.12 to read as follows:

Adequate Yearly Progress (AYP)

11. Revise §§ 200.13 through 200.18 and place them under the new undesignated center heading "Adequate Yearly Progress (AYP)" in subpart A of part 200 to read as follows:

§ 200.13 Adequate yearly progress in general.

(a) Each State must demonstrate in its State plan what constitutes AYP of the State and of all public schools and LEAs in the State—

(1) Toward enabling all public school students to meet the State's student academic achievement standards; while

(2) Working toward the goal of narrowing the achievement gaps in the State, its LEAs, and its public schools.

(b) A State must define, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Applies the same high standards of academic achievement to all public school students in the State;

(2) Is statistically valid and reliable;

(3) Results in continuous and substantial academic improvement for all students;

(4) Measures the progress of all public schools, LEAs, and the State based primarily on the State's academic assessment system under § 200.2;

(5) Measures progress separately for reading/language arts and for mathematics;

(6) Is the same for all public schools and LEAs in the State; and

(7) Consistent with § 200.7, applies the same annual measurable objectives under § 200.18 separately to each of the following:

(i) All public school students.

(ii) Students in each of the following subgroups:

(A) Economically disadvantaged students.

(B) Students from major racial and ethnic groups.

(C) Students with disabilities, as defined in section 9101(5) of the ESEA.

(D) Students with limited English proficiency, as defined in section 9101(25) of the ESEA.

(c) The State must establish a way to hold accountable schools in which no grade level is assessed under the State's academic assessment system (*e.g.*, K–2 schools), although the State is not required to administer a formal assessment to meet this requirement.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.14 Components of Adequate Yearly Progress.

A State's definition of AYP must include all of the following:

(a) A timeline in accordance with § 200.15.

(b) Starting points in accordance with § 200.16.

(c) Intermediate goals in accordance with § 200.17.

(d) Annual measurable objectives in accordance with § 200.18.

(e) Other academic indicators in accordance with § 200.19.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.15 Timeline.

(a) Each State must establish a timeline for making AYP that ensures that, not later than the 2013–2014 school year, all students in each group described in § 200.13(b)(7) will meet or exceed the State's proficient level of academic achievement.

(b) Notwithstanding subsequent changes a State may make to its academic assessment system or its definition of AYP under §§ 200.13 through 200.20, the State may not extend its timeline for all students to reach proficiency beyond the 2013–2014 school year.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.16 Starting points.

(a) Using data from the 2001–2002 school year, each State must establish starting points in reading/language arts and in mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement.

(b) Each starting point must be based, at a minimum, on the higher of the following percentages of students at the proficient level:

(1) The percentage in the State of proficient students in the lowest-achieving subgroup of students under § 200.13(b)(7)(ii).

(2) The percentage of proficient students in the school that represents 20 percent of the State's total enrollment among all schools ranked by the percentage of students at the proficient level. The State must determine this percentage as follows:

(i) Rank each school in the State according to the percentage of proficient students in the school.

(ii) Determine 20 percent of the total enrollment in all schools in the State.

(iii) Beginning with the lowest-ranked school, add the number of students enrolled in each school until reaching the school that represents 20 percent of the State's total enrollment among all schools.

(iv) Identify the percentage of proficient students in the school identified in paragraph (iii).

(c)(1) Except as permitted under paragraph (c)(2) of this section, each starting point must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7).

(2) A State may use the procedures under paragraph (b) of this section to establish separate starting points by grade span.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.17 Intermediate goals.

Each State must establish intermediate goals that increase in equal increments over the period covered by the timeline under § 200.15 as follows:

(a) The first incremental increase must take effect not later than the 2004–2005 school year.

(b) Each following incremental increase must occur in not more than three years.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.18 Annual measurable objectives.

(a) Each State must establish annual measurable objectives that—

(1) Identify for each year a minimum percentage of students that must meet or exceed the proficient level of academic achievement on the State's academic assessments; and

(2) Ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline under § 200.15.

(b) The State's annual measurable objectives—

(1) Must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7); and

(2) May be the same for more than one year, consistent with the State's intermediate goals under § 200.17.

(Authority: 20 U.S.C. 6311(b)(2))

12. Add § 200.19 and place it under the new undesignated center heading "Adequate Yearly Progress (AYP)" in subpart A of part 200 to read as follows:

§ 200.19 Other academic indicators.

(a) Each State must use the following other academic indicators to determine AYP:

(1) *High schools.* (i) The graduation rate for public high schools, which means—

(A) The percentage of students, measured from the beginning of high school, who graduate from high school with a regular diploma (not including an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a GED) in the standard number of years; or

(B) Another definition, developed by the State and approved by the Secretary in the State plan, that more accurately measures the rate of students who graduate from high school with a regular diploma as defined in paragraph (a)(1)(i)(A) of this section.

(ii) In defining graduation rate, the State must avoid counting a dropout as a transfer.

(2) *Elementary and middle schools.* At least one academic indicator for public elementary schools and at least one academic indicator for public middle schools, such as those under paragraph (b) of this section.

(b) The State may include additional academic indicators determined by the State, including, but not limited to, the following:

(1) Additional State or locally administered assessments not included in the State assessment system under § 200.2.

(2) Grade-to-grade retention rates.

(3) Attendance rates.

(4) Percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

(c) A State must ensure that its other academic indicators are—

(1) Valid and reliable;

(2) Consistent with relevant, nationally recognized professional and technical standards, if any; and

(3) Consistent throughout the State within each grade span.

(d)(1) A State may, but is not required to, increase the goals of its other academic indicators over the course of the timeline under § 200.15.

(2) The State—

(i) Must disaggregate its other academic indicators by each group in § 200.13(b)(7) for purposes of § 200.20(b)(2) and section 1111(h) of the ESEA; but

(ii) Need not disaggregate those indicators for determining AYP except as required under section 1111(b)(2)(C)(vii) of the ESEA.

(e) Except as provided in § 200.20(b)(2), a State—

(1) May not use the indicators in paragraphs (a) and (b) of this section to reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring if those indicators were not used; but

(2) May use the indicators to identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(2), (b))

13. Revise §§ 200.20 and 200.21 and place them under the new undesignated center heading "Adequate Yearly Progress (AYP)" in subpart A of part 200 to read as follows:

§ 200.20 Making adequate yearly progress.

A school or LEA makes AYP if it complies with paragraph (c) and with either paragraph (a) or (b) of this section separately in reading/language arts and in mathematics.

(a)(1) A school or LEA makes AYP if—

(i) Each group of students under § 200.13(b)(7) meets or exceeds the State's annual measurable objectives under § 200.18; and

(ii) The school or LEA, respectively, meets or exceeds the State's other academic indicators under § 200.19.

(2) For a group under § 200.13(b)(7) to be included in the determination of AYP for a school or LEA, the number of students in the group must be sufficient to yield statistically reliable information under § 200.7(a).

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes AYP if—

(1) The percentage of students in that group below the State's proficient achievement level decreased by at least 10 percent from the preceding year; and

(2) That group made progress on one or more of the State's academic indicators under § 200.19 or the LEA's academic indicators under § 200.30(c).

(c)(1) A school or LEA makes AYP if—

(i) Not less than 95 percent of the students enrolled in each group under § 200.13(b)(7) takes the State assessments under § 200.2; and

(ii) The group is of sufficient size to produce statistically reliable results under § 200.7(a).

(2) The requirement in paragraph (c)(1) of this section does not authorize a State, LEA, or school to systematically exclude 5 percent of the students in any group under § 200.13(b)(7).

(3) If a student takes the State assessments for a particular subject or grade level more than once, the State must use the student's results from the first administration to determine AYP.

(d) For the purpose of determining whether a school or LEA has made AYP, a State may establish a uniform procedure for averaging data that includes one or more of the following:

(1) *Averaging data across school years.* (i) A State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

(ii) If a State averages data across school years, the State must—

(A) Implement, on schedule, the assessments in reading/language arts and mathematics in grades 3 through 8 and once in grades 10 through 12 required under § 200.5(a)(2);

(B) Report data resulting from the assessments under § 200.5(a)(2);

(C) Determine AYP under §§ 200.13 through 200.20, although the State may base that determination on data only from the reading/language arts and mathematics assessments in the three grade spans required under § 200.5(a)(1); and

(D) Implement the requirements in section 1116 of the ESEA.

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(iii) A State that averages data across years must determine AYP on the basis of the assessments under § 200.5(a)(2) as soon as it has data from two or three years to average. Until that time, the State may use data from the reading/language arts and mathematics assessments required under § 200.5(a)(1) to determine adequate yearly progress.

(2) *Combining data across grades.* Within each subject area and subgroup, the State may combine data across grades in a school or LEA.

(e)(1) In determining the AYP of an LEA, a State must include all students who were enrolled in schools in the LEA for a full academic year, as defined by the State.

(2) In determining the AYP of a school, the State may not include students who were not enrolled in that school for a full academic year, as defined by the State.

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi))

§ 200.21 Adequate yearly progress of a State.

For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the ESEA, the Secretary must, beginning with the 2004–2005 school year, annually review whether the State has—

(a)(1) Made AYP as defined by the State in accordance with §§ 200.13 through 200.20 for each group of students in § 200.13(b)(7); and

(2) Met its annual measurable achievement objectives under section 3122(a) of the ESEA relating to the development and attainment of English proficiency by limited English proficient students.

(b) A State must include all students who were enrolled in schools in the State for a full academic year in reporting on the yearly progress of the State.

(Authority: 20 U.S.C. 7325)

14. Remove and reserve §§ 200.22 through 200.24 and place them under the new undesignated center heading "Adequate Yearly Progress (AYP)" in subpart A of part 200.

15. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.24 to read as follows:

Schoolwide Programs

16. Revise § 200.25 and place it under the undesignated center heading "Schoolwide Programs" in subpart A of part 200 to read as follows:

§ 200.25 Schoolwide programs in general.

(a) *Purpose.* (1) The purpose of a schoolwide program is to improve academic achievement throughout a school so that all students, particularly the lowest-achieving students, demonstrate proficiency related to the State's academic standards under § 200.1.

(2) The improved achievement is to result from improving the entire educational program of the school.

(b) *Eligibility.* (1) A school may operate a schoolwide program if—

(i) The school's LEA determines that the school serves an eligible attendance area or is a participating school under section 1113 of the ESEA; and

(ii) For the initial year of the schoolwide program—

(A) The school serves a school attendance area in which not less than 40 percent of the children are from low-income families; or

(B) Not less than 40 percent of the children enrolled in the school are from low-income families.

(2) In determining the percentage of children from low-income families under paragraph (b)(1)(ii) of this section, the LEA may use a measure of poverty that is different from the measure or measures of poverty used by the LEA to identify and rank school attendance areas for eligibility and participation under subpart A of this part.

(c) *Participating students and services.* A school operating a schoolwide program is not required to—

(1) Identify particular children as eligible to participate; or

(2) As required under section 1120A(b) of the ESEA, provide services that supplement, and do not supplant, the services participating children would otherwise receive if they were not participating in a program under subpart A of this part.

(d) Supplemental funds. A school operating a schoolwide program must use funds available under subpart A of this part and under any other Federal program included under paragraph (e) of this section and § 200.29 only to supplement the total amount of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency.

(e) *Consolidation of funds.* An eligible school may, consistent with § 200.29, consolidate and use funds or services under subpart A of this part, together with other Federal, State, and local funds that the school receives, to operate a schoolwide program in accordance with §§ 200.25 through 200.29.

(f) *Prekindergarten program.* A school operating a schoolwide program may use funds made available under subpart A of this part to establish or enhance prekindergarten programs for children below the age of 6, such as Even Start programs or Early Reading First programs.

(Authority: 20 U.S.C. 6314)

17. Add a new § 200.26 and place it under the undesignated center heading "Schoolwide Programs" in subpart A of part 200 to read as follows:

§ 200.26 Core elements of a schoolwide program.

(a) *Comprehensive needs assessment.* (1) A school operating a schoolwide program must conduct a comprehensive needs assessment of the entire school that—

(i) Is based on academic achievement information about all students in the school, including all groups under § 200.13(b)(7) and migratory children as defined in section 1309(2) of the ESEA, relative to the State's academic standards under § 200.1 to—

(A) Help the school understand the subjects and skills for which teaching and learning need to be improved; and

(B) Identify the specific academic needs of students and groups of students who are not yet achieving the State's academic standards; and

(ii) Assesses the needs of the school relative to each of the components of the schoolwide program under § 200.28.

(2) The comprehensive needs assessment must be developed with the participation of individuals who will carry out the schoolwide program plan.

(3) The school must document how it conducted the needs assessment, the results it obtained, and the conclusions it drew from those results.

(b) *Comprehensive plan.* Using data from the comprehensive needs assessment under paragraph (a) of this section, a school that wishes to operate a schoolwide program must develop a comprehensive plan, in accordance with § 200.27, that describes how the school will improve academic achievement throughout the school, but particularly for those students furthest away from demonstrating proficiency, so that all students demonstrate at least proficiency on the State's academic standards.

(c) *Evaluation.* A school operating a schoolwide program must—

(1) Annually evaluate the implementation of, and results achieved by, the schoolwide program, using data from the State's annual assessments and other indicators of academic achievement;

(2) Determine whether the schoolwide program has been effective in increasing the achievement of students in meeting the State's academic standards, particularly for those students who had been furthest from achieving the standards; and

(3) Revise the plan, as necessary, based on the results of the evaluation, to ensure continuous improvement of students in the schoolwide program.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6314)

18. Revise §§ 200.27 and 200.28 and place them under the undesignated center heading "Schoolwide Programs" in subpart A of part 200 to read as follows:

§ 200.27 Development of a schoolwide program plan.

(a)(1) A school operating a schoolwide program must develop a comprehensive plan to improve teaching and learning throughout the school.

(2) The school must develop the comprehensive plan in consultation with the LEA and its school support team or other technical assistance provider under section 1117 of the ESEA.

(3) The comprehensive plan must—

(i) Describe how the school will carry out each of the components under § 200.28;

(ii) Describe how the school will use resources under subpart A of this part and from other sources to carry out the components under § 200.28; and

(iii) Include a list of State and local programs and other Federal programs under § 200.29 that the school will consolidate in the schoolwide program.

(b)(1) The school must develop the comprehensive plan, including the comprehensive needs assessment, over a one-year period unless—

(i) The LEA, after considering the recommendations of its technical assistance providers under section 1117 of the ESEA, determines that less time is needed to develop and implement the schoolwide program; or

(ii) The school was operating a schoolwide program on or before January 7, 2002, in which case the school may continue to operate its program, but must amend its existing plan to reflect the provisions of §§ 200.25 through 200.29 during the 2002–2003 school year.

(2) The school must develop the comprehensive plan with the involvement of parents, consistent with the requirements of section 1118 of the ESEA, and other members of the community to be served and individuals who will carry out the plan, including—

(i) Teachers, principals, and administrators, including administrators of programs described in other parts of Title I of the ESEA;

(ii) If appropriate, pupil services personnel, technical assistance providers, and other school staff; and

(iii) If the plan relates to a secondary school, students from the school.

(3) If appropriate, the school must develop the comprehensive plan in coordination with other programs, including those carried out under Reading First, Early Reading First, Even Start, the Carl D. Perkins Vocational and Technical Education Act of 1998, and the Head Start Act.

(4) The comprehensive plan remains in effect for the duration of the school's participation under §§ 200.25 through 200.29.

(c)(1) The schoolwide program plan must be available to the LEA, parents, and the public.

(2) Information in the plan must be—

(i) In an understandable and uniform format, including alternative formats upon request; and

(ii) To the extent practicable, provided in a language that the parents can understand.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6314)

§ 200.28 Schoolwide program components.

A schoolwide program must include the following components:

(a) *Schoolwide reform strategies.* The schoolwide program must incorporate reform strategies in the overall instructional program. Those strategies must—

(1) Provide opportunities for all students to meet the State's proficient and advanced levels of student academic achievement;

(2)(i) Address the needs of all students in the school, particularly the needs of low-achieving students and those at risk of not meeting the State's student academic achievement standards who are members of the target population of any program included in the schoolwide program; and

(ii) Address how the school will determine if those needs have been met;

(3) Use effective methods and instructional practices that are based on scientifically based research, as defined in section 9101 of the ESEA, and that—

(i) Strengthen the core academic program;

(ii) Provide an enriched and accelerated curriculum;

(iii) Increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs and opportunities;

(iv) Include strategies for meeting the educational needs of historically underserved populations; and

(v) Are consistent with, and are designed to implement, State and local improvement plans, if any.

(b) *Instruction by highly qualified teachers.* A schoolwide program must ensure instruction by highly qualified teachers and provide ongoing professional development. The schoolwide program must—

(1) Include strategies to attract highly qualified teachers, as defined in § 200.56;

(2)(i) Provide high-quality and ongoing professional development in accordance with sections 1119 and 9101(34) of the ESEA for teachers, principals, paraprofessionals and, if appropriate, pupil services personnel, parents, and other staff, to enable all students in the school to meet the State's student academic standards; and

(ii) Align professional development with the State's academic standards;

(3) Devote sufficient resources to carry out effectively the professional development activities described in paragraph (b)(2) of this section; and

(4) Include teachers in professional development activities regarding the use of academic assessments described in § 200.2 to enable them to provide information on, and to improve, the achievement of individual students and the overall instructional program.

(c) *Parental involvement.* (1) A schoolwide program must involve parents in the planning, review, and improvement of the schoolwide program plan.

(2) A schoolwide program must have a parental involvement policy, consistent with section 1118(b) of the ESEA, that—

(i) Includes strategies, such as family literacy services, to increase parental involvement in accordance with sections 1118(c) through (f) and 9101(32) of the ESEA; and

(ii) Describes how the school will provide individual student academic assessment results, including an interpretation of those results, to the parents of students who participate in the academic assessments required by § 200.2.

(d) *Additional support.* A schoolwide program school must include activities to ensure that students who experience difficulty attaining the proficient or advanced levels of academic achievement standards required by § 200.1 will be provided with effective, timely additional support, including measures to—

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(1) Ensure that those students' difficulties are identified on a timely basis; and

(2) Provide sufficient information on which to base effective assistance to those students.

(e) *Transition.* A schoolwide program in an elementary school must include plans for assisting preschool students in the successful transition from early childhood programs, such as Head Start, Even Start, Early Reading First, or a preschool program under IDEA or a State-run preschool program, to the schoolwide program.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6314)

19. Add § 200.29 and place it under the undesignated center heading "Schoolwide Programs" in subpart A of part 200 to read as follows:

§ 200.29 Consolidation of funds in a schoolwide program.

(a) In addition to funds under subpart A of this part, a school may consolidate and use in its schoolwide program Federal funds from any program administered by the Secretary that is included in the most recent notice published for this purpose in the **Federal Register**.

(2) For purposes of §§ 200.25 through 200.29, the authority to consolidate funds from other Federal programs also applies to services provided to the school with those funds.

(b)(1) Except as provided in paragraphs (b)(2) and (c) of this section, a school that consolidates and uses in a schoolwide program funds from any other Federal program administered by the Secretary—

(i) Is not required to meet the statutory or regulatory requirements of that program applicable at the school level; but

(ii) Must meet the intent and purposes of that program to ensure that the needs of the intended beneficiaries of that program are addressed.

(2) A school that chooses to consolidate funds from other Federal programs must meet the requirements of those programs relating to—

(i) Health;

(ii) Safety;

(iii) Civil rights;

(iv) Student and parental participation and involvement;

(v) Services to private school children;

(vi) Maintenance of effort;

(vii) Comparability of services;

(viii) Use of Federal funds to supplement, not supplant non-Federal funds in accordance with § 200.25(d); and

(ix) Distribution of funds to SEAs or LEAs.

(c) A school must meet the following requirements if the school consolidates and uses funds from these programs in its schoolwide program:

(1) *Migrant education.* Before the school chooses to consolidate in its schoolwide program funds received under part C of Title I of the ESEA, the school must—

(i) Use these funds, in consultation with parents of migratory children or organizations representing those parents, or both, first to meet the unique educational needs of migratory students that result from the effects of their migratory lifestyle, and those other needs that are necessary to permit these students to participate effectively in school, as identified through the comprehensive Statewide needs assessment under § 200.83; and

(ii) Document that these needs have been met.

(2) *Indian education.* The school may consolidate funds received under subpart 1 of part A of Title VII of the ESEA if the parent committee established by the LEA under section 7114(c)(4) of the ESEA approves the inclusion of these funds.

(3) *Special education.* (i) The school may consolidate funds received under part B of the IDEA.

(ii) However, the amount of funds consolidated may not exceed the amount received by the LEA under part B of IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program.

(iii) The school may also consolidate funds received under section 8003(d) of the ESEA (Impact Aid) for children with disabilities in a schoolwide program.

(iv) A school that consolidates funds under part B of IDEA or section 8003(d) of the ESEA may use those funds for any activities under its schoolwide program plan but must comply with all other requirements of part B of IDEA, to the same extent it would if it did not consolidate funds under part B of IDEA or section 8003(d) of the ESEA in the schoolwide program.

(d) A school that consolidates and uses in a schoolwide program funds under subpart A of this part or from any other Federal program administered by the Secretary—

(1) Is not required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular funds; but

(2) Must maintain records that demonstrate that the schoolwide program, as a whole, addresses the intent and purposes of each of the Federal programs whose funds were consolidated to support the schoolwide program.

(e) Each State must—

(1) Encourage schools to consolidate funds from other Federal, State, and local sources in their schoolwide programs; and

(2) Modify or eliminate State fiscal and accounting barriers so that schools can easily consolidate funds from other Federal, State, and local sources in their schoolwide programs.

(Authority: 20 U.S.C. 6314, 1413(a)(s)(D), 6396(b), 7703(d), 7815(c))

20. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.29 to read as follows:

LEA and School Improvement

21. Transfer §§ 200.30 through 200.69 to subpart A of part 200.

22. Revise § 200.30 and place it under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.30 Local review.

(a) Each LEA receiving funds under subpart A of this part must use the results of the State assessment system described in § 200.2 to review annually the progress of each school served under subpart A of this part to determine whether the school is making AYP in accordance with § 200.20.

(b)(1) In reviewing the progress of an elementary or secondary school operating a targeted assistance program, an LEA may choose to review the progress of only the students in the school who are served, or are eligible for services, under subpart A of this part.

(2) The LEA may exercise the option under paragraph (b)(1) of this section so long as the students selected for services under the targeted assistance program are those with the greatest need for special assistance, consistent with the requirements of section 1115 of the ESEA.

(c)(1) To determine whether schools served under subpart A of this part are making AYP, an LEA also may use any additional academic assessments or any other academic indicators described in the LEA's plan.

(2)(i) The LEA may use these assessments and indicators—

(A) To identify additional schools for school improvement or in need of corrective action or restructuring; and

(B) To permit a school to make AYP if, in accordance with § 200.20(b), the school also reduces the percentage of a student group not meeting the State's proficient level of academic achievement by at least 10 percent.

(ii) The LEA may not, with the exception described in paragraph (c)(2)(i)(B) of this section, use these assessments and indicators to reduce the number of, or change the identity of, the schools that would otherwise be identified for school improvement, corrective action, or restructuring if the LEA did not use these additional indicators.

(d) The LEA must publicize and disseminate the results of its annual progress review to parents, teachers, principals, schools, and the community.

(e) The LEA must review the effectiveness of actions and activities that schools are carrying out under subpart A of this part with respect to parental involvement, professional development, and other activities assisted under subpart A of this part.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(a) and (b))

23. Add new §§ 200.31 through 200.39 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.31 Opportunity to review school-level data.

(a) Before identifying a school for school improvement, corrective action, or restructuring, an LEA must provide the school with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based.

(b)(1) If the principal of a school that an LEA proposes to identify for school improvement, corrective action, or restructuring believes, or a majority of the parents of the students enrolled in the school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal may provide supporting evidence to the LEA.

(2) The LEA must consider the evidence referred to in paragraph (b)(1) of this section before making a final determination.

(c) The LEA must make public a final determination of the status of the school with respect to identification not later than 30 days after it provides the school with the opportunity to review the data on which the proposed identification is based.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b)(2))

§ 200.32 Identification for school improvement.

(a)(1) An LEA must identify for school improvement any elementary or secondary school served under subpart A of this part that fails, for two consecutive years, to make AYP as defined under §§ 200.13 through 200.20.

(2) The LEA must make the identification described in paragraph (a)(1) of this section before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year.

(b)(1) An LEA must treat any school that was in the first year of school improvement status on January 7, 2002 as a school that is in the first year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must, in accordance with § 200.44, provide public school choice to all students in the school.

(c)(1) An LEA must treat any school that was identified for school improvement for two or more consecutive years on January 7, 2002 as a school that is in its second year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must—

(i) In accordance with § 200.44, provide public school choice to all students in the school; and

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school.

(d) An LEA may remove from improvement status a school otherwise subject to the requirements of paragraphs (b) or (c) of this section if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school makes AYP for a second consecutive year.

(e)(1) An LEA may, but is not required to, identify a school for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school fails to make AYP for a second consecutive year.

(2) An LEA that does not identify such a school for improvement, however, must count the 2001–2002 school year as the first year of not making AYP for the purpose of subsequent identification decisions under paragraph (a) of this section.

(f) If an LEA identifies a school for improvement after the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year—

(1) The school is subject to the requirements of school improvement under § 200.39 immediately upon identification, including the provision of public school choice; and

(2) The LEA must count that school year as a full school year for the purposes of subjecting the school to additional improvement measures if the school continues to fail to make AYP.

(Authority: 20 U.S.C. 6316)

§ 200.33 Identification for corrective action.

(a) If a school served by an LEA under subpart A of this part fails to make AYP by the end of the second full school year after the LEA has identified the school for improvement under § 200.32(a) or (b), or by the end of the first full school year after the LEA has identified the school for improvement under § 200.32(c), the LEA must identify the school for corrective action under § 200.42.

(b) If a school was subject to corrective action on January 7, 2002, the LEA must—

(1) Treat the school as a school identified for corrective action under § 200.42 for the 2002–2003 school year; and

(2) Not later than the first day of the 2002–2003 school year—

(i) In accordance with § 200.44, provide public school choice to all students in the school;

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school; and

(iii) Take corrective action under § 200.42.

(c) An LEA may remove from corrective action a school otherwise subject to the requirements of paragraphs (a) or (b) of this section if, on the basis of assessments administered by the LEA during the 2001–2002 school year, the school makes AYP for a second consecutive year.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6316)

§ 200.34 Identification for restructuring.

(a) If a school continues to fail to make AYP after one full school year of corrective action under § 200.42, the LEA must prepare a restructuring plan for the school and make arrangements to implement the plan.

(b) If the school continues to fail to make AYP, the LEA must implement the

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restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6316(b)(8))

§ 200.35 Delay and removal.

(a) *Delay.* (1) An LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, under corrective action, or under restructuring if—

(i) The school makes AYP for one year; or

(ii) The school's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school.

(2) The LEA may not take into account a period of delay under paragraph (a) of this section in determining the number of consecutive years of the school's failure to make AYP.

(3) Except as provided in paragraph (b) of this section, the LEA must subject the school to further actions as if the delay never occurred.

(b) *Removal.* If any school identified for school improvement, corrective action, or restructuring makes AYP for two consecutive school years, the LEA may not, for the succeeding school year—

(1) Subject the school to the requirements of school improvement, corrective action, or restructuring; or

(2) Identify the school for improvement.

(Authority: 20 U.S.C. 6316(b))

§ 200.36 Communication with parents.

(a) Throughout the school improvement process, the State, LEA, or school must communicate with the parents of each child attending the school.

(b) The State, LEA, or school must ensure that, regardless of the method or media used, it provides the information required by §§ 200.37 and 200.38 to parents—

(1) In an understandable and uniform format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

(c) The State, LEA, or school must provide information to parents—

(1) Directly, through such means as regular mail or e-mail, except that if a State does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and

(2) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

(d) All communications must respect the privacy of students and their families.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316)

§ 200.37 Notice of identification for improvement, corrective action, or restructuring.

(a) If an LEA identifies a school for improvement or subjects the school to corrective action or restructuring, the LEA must, consistent with the requirements of § 200.36, promptly notify the parent or parents of each child enrolled in the school of this identification.

(b) The notice referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary and secondary schools served by the LEA and the SEA involved.

(2) The reasons for the identification.

(3) An explanation of how parents can become involved in addressing the academic issues that led to identification.

(4)(i) An explanation of the parents' option to transfer their child to another public school, including the provision of transportation to the new school, in accordance with § 200.44.

(ii) The explanation of the parents' option to transfer must include, at a minimum, information on the academic achievement of the school or schools to which the child may transfer.

(iii) The explanation may include other information on the school or schools to which the child may transfer, such as—

(A) A description of any special academic programs or facilities;

(B) The availability of before- and after-school programs;

(C) The professional qualifications of teachers in the core academic subjects; and

(D) A description of parental involvement opportunities.

(5)(i) If the school is in its second year of improvement or subject to corrective action or restructuring, a notice explaining how parents can obtain supplemental educational services for their child in accordance with § 200.45.

(ii) The annual notice of the availability of supplemental educational services must include, at a minimum, the following:

(A) The identity of approved providers of those services available within the LEA, including providers of technology-based or distance-learning supplemental educational services, and providers that make services reasonably available in neighboring LEAs.

(B) A brief description of the services, qualifications, and demonstrated effectiveness of the providers referred to in paragraph (b)(5)(ii)(A) of this section.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316)

§ 200.38 Information about action taken.

(a) An LEA must publish and disseminate to the parents of each student enrolled in the school, consistent with the requirements of § 200.36, and to the public information regarding any action taken by a school and the LEA to address the problems that led to the LEA's identification of the school for improvement, corrective action, or restructuring.

(b) The information referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the school is doing to address the problem of low achievement.

(2) An explanation of what the LEA or SEA is doing to help the school address the problem of low achievement.

(3) If applicable, a description of specific corrective actions or restructuring plans.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b))

§ 200.39 Responsibilities resulting from identification for school improvement.

(a) If an LEA identifies a school for school improvement under § 200.32—

(1) The LEA must—

(i) Not later than the first day of the school year following identification, with the exception described in § 200.32(f), provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA; and

(ii) Ensure that the school receives technical assistance in accordance with § 200.40; and

(2) The school must develop or revise a school improvement plan in accordance with § 200.41.

(b) If a school fails to make AYP by the end of the first full school year after the LEA has identified it for improvement under § 200.32, the LEA must—

(1) Continue to provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA;

(2) Continue to ensure that the school receives technical assistance in accordance with § 200.40; and

(3) Make available supplemental educational services in accordance with § 200.45.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b))

24. Revise §§ 200.40 through 200.45 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.40 Technical assistance.

(a) An LEA that identifies a school for improvement under § 200.32 must ensure that the school receives technical assistance as the school develops and implements its improvement plan under § 200.41 and throughout the plan's duration.

(b) The LEA may arrange for the technical assistance to be provided by one or more of the following:

(1) The LEA through the statewide system of school support and recognition described under section 1117 of the ESEA.

(2) The SEA.

(3) An institution of higher education that is in full compliance with all of the reporting provisions of Title II of the Higher Education Act of 1965.

(4) A private not-for-profit organization, a private for-profit organization, an educational service agency, or another entity with experience in helping schools improve academic achievement.

(c) The technical assistance must include the following:

(1) Assistance in analyzing data from the State assessment system, and other examples of student work, to identify and develop solutions to problems in—

(i) Instruction;

(ii) Implementing the requirements for parental involvement and professional development under this subpart; and

(iii) Implementing the school plan, including LEA- and school-level responsibilities under the plan.

(2) Assistance in identifying and implementing professional development and instructional strategies and methods that have proved effective, through scientifically based research, in addressing the specific instructional issues that caused the LEA to identify the school for improvement.

(3) Assistance in analyzing and revising the school's budget so that the school allocates its resources more effectively to the activities most likely to—

(i) Increase student academic achievement; and

(ii) Remove the school from school improvement status.

(d) Technical assistance provided under this section must be based on scientifically based research.

(Authority: 20 U.S.C. 6316(b)(4))

§ 200.41 School improvement plan.

(a)(1) Not later than three months after an LEA has identified a school for improvement under § 200.32, the school must develop or revise a school improvement plan for approval by the LEA.

(2) The school must consult with parents, school staff, the LEA, and outside experts in developing or revising its school improvement plan.

(b) The school improvement plan must cover a 2-year period.

(c) The school improvement plan must—

(1) Specify the responsibilities of the school, the LEA, and the SEA serving the school under the plan, including the technical assistance to be provided by the LEA under § 200.40;

(2)(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in the core academic subjects at the school and address the specific academic issues that caused the LEA to identify the school for improvement; and

(ii) May include a strategy for implementing a comprehensive school reform model described in section 1606 of the ESEA;

(3) With regard to the school's core academic subjects, adopt policies and practices most likely to ensure that all groups of students described in § 200.13(b)(7) and enrolled in the school will meet the State's proficient level of achievement, as measured by the State's assessment system, not later than the 2013–2014 school year;

(4) Establish measurable goals that—

(i) Address the specific reasons for the school's failure to make adequate progress; and

(ii) Promote, for each group of students described in § 200.13(b)(7) and enrolled in the school, continuous and substantial progress that ensures that all these groups meet the State's annual measurable objectives described in § 200.18;

(5) Provide an assurance that the school will spend not less than 10 percent of the allocation it receives under subpart A of this part for each year that the school is in school improvement status, for the purpose of providing high-quality professional development to the school's teachers, principal, and, as appropriate, other instructional staff, consistent with section 9101(34) of the ESEA, that—

(i) Directly addresses the academic achievement problem that caused the school to be identified for improvement;

(ii) Is provided in a manner that affords increased opportunity for participating in that professional development; and

(iii) Incorporates teacher mentoring activities or programs;

(6) Specify how the funds described in paragraph (c)(5) of this section will be used to remove the school from school improvement status;

(7) Describe how the school will provide written notice about the identification to parents of each student enrolled in the school;

(8) Include strategies to promote effective parental involvement at the school; and

(9) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year.

(d)(1) Within 45 days of receiving a school improvement plan, the LEA must—

(i) Establish a peer-review process to assist with review of the plan;

(ii) Promptly review the plan;

(iii) Work with the school to make any necessary revisions; and

(iv) Approve the plan if it meets the requirements of this section.

(2) The LEA may condition approval of the school improvement plan on—

(i) Inclusion of one or more of the corrective actions specified in § 200.42; or

(ii) Feedback on the plan from parents and community leaders.

(e) A school must implement its school improvement plan immediately on approval of the plan by the LEA.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b)(3))

§ 200.42 Corrective action.

(a) *Definition.* "Corrective action" means action by an LEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure of a school that led the LEA to identify the school for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the school;

(2) Is designed to increase substantially the likelihood that each group of students described in § 200.13(b)(7) and enrolled in the school will meet or exceed the State's proficient levels of achievement as

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measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Requirements.* If an LEA identifies a school for corrective action, in accordance with § 200.33, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Continue to ensure that the school receives technical assistance consistent with the requirements of § 200.40.

(3) Make available supplemental educational services in accordance with § 200.45.

(4) Take at least one of the following corrective actions:

(i) Replace the school staff who are relevant to the school's failure to make AYP.

(ii) Institute and fully implement a new curriculum, including the provision of appropriate professional development for all relevant staff, that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students and of enabling the school to make AYP.

(iii) Significantly decrease management authority at the school level.

(iv) Appoint one or more outside experts to advise the school on—

(A) Revising the school improvement plan developed under § 200.41 to address the specific issues underlying the school's continued failure to make AYP and resulting in identification for corrective action; and

(B) Implementing the revised improvement plan.

(v) Extend for that school the length of the school year or school day.

(vi) Restructure the internal organization of the school.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b)(7))

§ 200.43 Restructuring.

(a) *Definition.* "Restructuring" means a major reorganization of a school's governance arrangement by an LEA that—

(1) Makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve student academic achievement in the school;

(2) Has substantial promise of enabling the school to make AYP as defined under §§ 200.13 through 200.20; and

(3) Is consistent with State law.

(b) *Requirements.* If the LEA identifies a school for restructuring in accordance with § 200.34, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Make available supplemental educational services in accordance with § 200.45.

(3) Prepare a plan to carry out one of the following alternative governance arrangements:

(i) Reopen the school as a public charter school.

(ii) Replace all or most of the school staff, which may include the principal, who are relevant to the school's failure to make AYP.

(iii) Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the school as a public school.

(iv) Turn the operation of the school over to the SEA, if permitted under State law and agreed to by the State.

(v) Any other major restructuring of a school's governance arrangement consistent with this section.

(4) Provide to parents and teachers—

(i) Prompt notice that the LEA has identified the school for restructuring; and

(ii) An opportunity for parents and teachers to—

(A) Comment before the LEA takes any action under a restructuring plan; and

(B) Participate in the development of any restructuring plan.

(c) *Implementation.* (1) If a school continues to fail to make AYP, the LEA must—

(i) Implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (b)(3) of this section; and

(ii) Continue to offer public school choice and supplemental educational services in accordance with §§ 200.44 and 200.45.

(2) An LEA is no longer required to carry out the requirements of paragraph (c)(1) of this section if the restructured school makes AYP for two consecutive school years.

(d) *Rural schools.* On request, the Secretary will provide technical assistance for developing and carrying out a restructuring plan to any rural LEA—

(1) That has fewer than 600 students in average daily attendance at all of its schools; and

(2) In which all of the schools have a School Locale Code of 7 or 8, as determined by the National Center for Education Statistics.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b)(8))

§ 200.44 Public school choice.

(a) *Requirements.* (1) In the case of a school identified for school improvement under § 200.32, for corrective action under § 200.33, or for restructuring under § 200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA.

(2) The LEA must offer this option not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring.

(3) The schools to which students may transfer under paragraph (a)(1) of this section—

(i) May not include schools that—

(A) The LEA has identified for improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34; or

(B) Are persistently dangerous as determined by the State; and

(ii) May include one or more public charter schools.

(4) If more than one school meets the requirements of paragraph (a)(3) of this section, the LEA must—

(i) Provide to parents of students eligible to transfer under paragraph (a)(1) of this section a choice of more than one such school; and

(ii) Take into account the parents' preferences among the choices offered under paragraph (a)(4)(i) of this section.

(5) The LEA must offer the option to transfer described in this section unless it is prohibited by State law in accordance with paragraph (b) of this section.

(6) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action before January 8, 2002, the State must ensure that the LEA provides a public school choice option in accordance with paragraph (a)(1) of this section not later than the first day of the 2002–2003 school year.

(b) *Limitation on State law prohibition.* An LEA may invoke the State law prohibition on choice described in paragraph (a)(5) of this section only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school.

(c) *Desegregation plans.* (1) If an LEA is subject to a desegregation plan, whether that plan is voluntary, court-ordered, or required by a Federal or State administrative agency, the LEA is not exempt from the requirement in paragraph (a)(1) of this section.

(2) In determining how to provide students with the option to transfer to another school, the LEA may take into account the requirements of the desegregation plan.

(3) If the desegregation plan forbids the LEA from offering the transfer option required under paragraph (a)(1) of this section, the LEA must secure appropriate changes to the plan to permit compliance with paragraph (a)(1) of this section.

(d) *Capacity.* An LEA may not use lack of capacity to deny students the option to transfer under paragraph (a)(1) of this section.

(e) *Priority.* (1) In providing students the option to transfer to another public school in accordance with paragraph (a)(1) of this section, the LEA must give priority to the lowest-achieving students from low-income families.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(f) *Status.* Any public school to which a student transfers under paragraph (a)(1) of this section must ensure that the student is enrolled in classes and other activities in the school in the same manner as all other students in the school.

(g) *Duration of transfer.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school.

(2) The LEA's obligation to provide transportation for the student may be limited under the circumstances described in paragraph (i) of this section and in § 200.48.

(h) *No eligible schools within an LEA.* If all public schools to which a student may transfer within an LEA are identified for school improvement, corrective action, or restructuring, the LEA—

(1) Must, to the extent practicable, establish a cooperative agreement for a transfer with one or more other LEAs in the area; and

(2) May offer supplemental educational services to eligible students under § 200.45 in schools in their first year of school improvement under § 200.39.

(i) *Transportation.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must, consistent with § 200.48, provide or pay for the student's transportation to the school.

(2) The limitation on funding in § 200.48 applies only to the provision of choice-related transportation, and does not affect in any way the basic obligation to provide an option to transfer as required by paragraph (a) of this section.

(3) The LEA's obligation to provide transportation for the student ends at the end of the school year in which the school from which the student transferred is no longer identified by the LEA for school improvement, corrective action, or restructuring.

(j) *Students with disabilities and students covered under Section 504 of the Rehabilitation Act of 1973 (Section 504).* For students with disabilities under the IDEA and students covered under Section 504, the public school choice option must provide a free appropriate public education as that term is defined in section 602(8) of the IDEA or 34 CFR 104.33, respectively.

(Authority: 20 U.S.C. 6316)

§ 200.45 Supplemental educational services.

(a) *Definition.* "Supplemental educational services" means tutoring and other supplemental academic enrichment services that are—

(1) In addition to instruction provided during the school day;

(2) Specifically designed to—

(i) Increase the academic achievement of eligible students as measured by the State's assessment system; and

(ii) Enable these children to attain proficiency in meeting State academic achievement standards; and

(3) Of high quality and research-based.

(b) *Eligibility.* (1) Only students from low-income families are eligible for supplemental educational services.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(c) *Requirement.* (1) If an LEA identifies a school for a second year of improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34, the LEA must arrange, consistent with paragraph (d) of this section, for each eligible student in the school to receive supplemental educational services from a State-approved provider selected by the student's parents.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the State must ensure that the LEA makes available, consistent with paragraph (d) of this section, supplemental educational services to all eligible students not later than the first day of the 2002–2003 school year.

(3) The LEA must, consistent with § 200.48, continue to make available supplemental educational services to eligible students until the end of the school year in which the LEA is making those services available.

(4)(i) At the request of an LEA, the SEA may waive, in whole or in part, the requirement that the LEA make available supplemental educational services if the SEA determines that—

(A) None of the providers of those services on the list approved by the SEA under § 200.47 makes those services available in the area served by the LEA or within a reasonable distance of that area; and

(B) The LEA provides evidence that it is not otherwise able to make those services available.

(ii) The SEA must notify the LEA, within 30 days of receiving the LEA's request for a waiver under paragraph (c)(4)(i) of this section, whether it approves or disapproves the request and, if it disapproves, the reasons for the disapproval, in writing.

(iii) An LEA that receives a waiver must renew its request for that waiver on an annual basis.

(d) *Priority.* If the amount of funds available for supplemental educational services is insufficient to provide services to each student whose parents request these services, the LEA must give priority to the lowest-achieving students.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316)

25. Add new §§ 200.46 through 200.49 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.46 LEA responsibilities for supplemental educational services.

(a) If an LEA is required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the LEA must do the following:

(1) Provide the annual notice to parents described in § 200.37(b)(5).

(2) If requested, assist parents in choosing a provider from the list of approved providers maintained by the SEA.

(3) Apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all eligible

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students whose parents request services consistent with § 200.45.

(4) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(5) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(6) Not disclose to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(b)(1) In addition to meeting the requirements in paragraph (a) of this section, the LEA must enter into an agreement with each provider selected by a parent or parents.

(2) The agreement must—

(i) Require the LEA to develop, in consultation with the parents and the provider, a statement that includes—

(A) Specific achievement goals for the student;

(B) A description of how the student's progress will be measured; and

(C) A timetable for improving achievement;

(ii) Describe procedures for regularly informing the student's parents and teachers of the student's progress;

(iii) Provide for the termination of the agreement if the provider is unable to meet the goals and timetables specified in the agreement;

(iv) Specify how the LEA will pay the provider; and

(v) Prohibit the provider from disclosing to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(3) In the case of a student with disabilities under IDEA or a student covered under Section 504, the provisions of the agreement referred to in paragraph (b)(2)(i) of this section must be consistent with the student's individualized education program under section 614(d) of the IDEA or the student's individualized services under Section 504.

(4) The LEA may not pay the provider for religious worship or instruction.

(c) If State law prohibits an SEA from carrying out one or more of its responsibilities under § 200.47 with respect to those who provide, or seek approval to provide, supplemental educational services, each LEA must carry out those responsibilities with respect to its students who are eligible for those services.

(Authority: 20 U.S.C. 6316(e))

(Approved by the Office of Management and Budget under control number 1810–0581)

§ 200.47 SEA responsibilities for supplemental educational services.

(a) If one or more LEAs in a State are required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the SEA for that State must do the following:

(1)(i) In consultation with affected LEAs, parents, teachers, and other interested members of the public, promote participation by as many providers as possible.

(ii) This promotion must include annual notice to potential providers of—

(A) The opportunity to provide supplemental educational services; and

(B) Procedures for obtaining the SEA's approval to be a provider of those services.

(2) Consistent with paragraph (b) of this section, develop and apply to potential providers objective criteria.

(3) Maintain by LEA an updated list of approved providers, including any technology-based or distance-learning providers, from which parents may select.

(4) Develop, implement, and publicly report on standards and techniques for—

(i) Monitoring the quality and effectiveness of the services offered by each approved provider; and

(ii) Withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental educational services from that provider.

(5) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(6) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(b) *Standards for approving providers.* (1) As used in this section and in § 200.46, "provider" means a non-profit entity, a for-profit entity, an LEA, an educational service agency, a public school, including a public charter school, or a private school that—

(i) Has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the State's academic content and student achievement standards described under § 200.1;

(ii) Is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and with the State academic content standards and State student achievement standards described under § 200.1;

(iii) Is financially sound; and

(iv) In the case of—

(A) A public school, has not been identified under §§ 200.32, 200.33, or 200.34; or

(B) An LEA, has not been identified under § 200.50(d) or (e).

(2) In order for the SEA to include a provider on the State list, the provider must agree to—

(i)(A) Provide parents of each student receiving supplemental educational services and the appropriate LEA with information on the progress of the student in increasing achievement; and

(B) This information must be in an understandable and uniform format, including alternative formats upon request, and, to the extent practicable, in a language that the parents can understand;

(ii) Ensure that the instruction the provider gives and the content the provider uses—

(A) Are consistent with the instruction provided and the content used by the LEA and the SEA;

(B) Are aligned with State student academic achievement standards; and

(C) Are secular, neutral, and nonideological; and

(iii) Meet all applicable Federal, State, and local health, safety, and civil rights laws.

(3) As a condition of approval, a State may not require a provider to hire only staff who meet the requirements under §§ 200.55 and 200.56.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(e))

§ 200.48 Funding for choice-related transportation and supplemental educational services.

(a) *Amounts required.* (1) To pay for choice-related transportation and supplemental educational services required under section 1116 of the ESEA, an LEA may use—

(i) Funds allocated under subpart A of this part;

(ii) Funds, where allowable, from other Federal education programs; and

(iii) State, local, or private resources.

(2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part to—

(i) Provide, or pay for, transportation of students exercising a choice option under § 200.44;

(ii) Satisfy all requests for supplemental educational services under § 200.45; or

(iii) Pay for both paragraph (a)(2)(i) and (ii) of this section, except that—

(A) The LEA must spend a minimum of an amount equal to 5 percent of its allocation under subpart A of this part on transportation under paragraph (a)(2)(i) of this section and an amount equal to 5 percent of its allocation under subpart A of this part for supplemental educational services under paragraph (a)(2)(ii) of this section, unless lesser amounts are needed to meet the requirements of §§ 200.44 and 200.45; and

(B) The LEA may not include costs for administration or transportation incurred in providing supplemental educational services, or administrative costs associated with the provision of public school choice options under § 200.44, in the amounts required under paragraph (a)(2) of this section.

(3) If the amount specified in paragraph (a)(2) of this section is insufficient to pay all choice-related transportation costs, or to meet the demand for supplemental educational services, the LEA may make available any additional needed funds from Federal, State, or local sources.

(4) To assist an LEA that does not have sufficient funds to make available supplemental educational services to all students requesting these services, an SEA may use funds that it reserves under part A of Title I and part A of Title V of the ESEA.

(b) *Cap on school-level reduction.* (1) An LEA may not, in applying paragraph (a) of this section, reduce by more than 15 percent the total amount it makes available under subpart A of this part to a school it has identified for corrective action or restructuring.

(c) *Per-child funding for supplemental educational services.* For each student receiving supplemental educational services under § 200.45, the LEA must make available the lesser of—

(1) The amount of its allocation under subpart A of this part, divided by the number of students from families below the poverty level, as counted under section 1124(c)(1)(A) of the ESEA; or

(2) The actual costs of the supplemental educational services received by the student.

(Authority: 20 U.S.C. 6316)

§ 200.49 SEA responsibilities for school improvement, corrective action, and restructuring.

(a) *Transition requirements for public school choice and supplemental educational services.* (1) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school provides public school choice in accordance with § 200.44 not later than the first day of the 2002–2003 school year.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school makes available supplemental educational services in accordance with § 200.45 not later than the first day of the 2002–2003 school year.

(b) *State reservation of funds for school improvement.* (1) In accordance with § 200.100(a), an SEA must reserve 2 percent of the amount it receives under this part for fiscal years 2002 and 2003, and 4 percent of the amount it receives under this part for fiscal years 2004 through 2007, to—

(i) Support local school improvement activities;

(ii) Provide technical assistance to schools identified for improvement, corrective action, or restructuring; and

(iii) Provide technical assistance to LEAs that the SEA has identified for improvement or corrective action in accordance with § 200.50.

(2) Of the amount it reserves under paragraph (b)(1) of this section, the SEA must—

(i) Allocate not less than 95 percent directly to LEAs serving schools identified for improvement, corrective action, and restructuring to support improvement activities; or

(ii) With the approval of the LEA, directly provide for these improvement activities or arrange to provide them through such entities as school support teams or educational service agencies.

(3) In providing assistance to LEAs under paragraph (b)(2) of this section, the SEA must give priority to LEAs that—

(i) Serve the lowest-achieving schools;

(ii) Demonstrate the greatest need for this assistance; and

(iii) Demonstrate the strongest commitment to ensuring that this assistance will be used to enable the lowest-achieving schools to meet the progress goals in the school improvement plans under § 200.41.

(c) *Technical assistance.* The SEA must make technical assistance available, through the statewide system of support and improvement required by section 1117 of the ESEA, to schools that LEAs have identified for improvement, corrective action, or restructuring.

(d) *LEA failure.* If the SEA determines that an LEA has failed to carry out its responsibilities with respect to school improvement, corrective action, or restructuring, the SEA must take the actions it determines to be appropriate and in compliance with State law.

(e) *Assessment results.* (1) The SEA must ensure that the results of academic assessments administered as part of the State assessment system in a given school year are available to LEAs before the beginning of the next school year and in such time as to allow for the identification described in § 200.32(a)(2).

(2) The SEA must provide the results described in paragraph (e)(1) of this section to a school before an LEA may identify the school for school improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34.

(f) *Accountability for charter schools.* The accountability provisions under section 1116 of the ESEA must be overseen for charter schools in accordance with State charter school law.

(g) *Factors affecting student achievement.* The SEA must notify the Secretary of Education of major factors that have been brought to the SEA's attention under section 1111(b)(9) of the ESEA that have significantly affected student academic achievement in schools and LEAs identified for improvement within the State.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6311 and 6316)

26. Revise §§ 200.50 and 200.51 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.50 SEA review of LEA progress.

(a) *State review.* (1) An SEA must annually review the progress of each LEA in its State that receives funds under subpart A of this part to determine whether—

(i) The LEA's schools served under this part are making AYP, as defined under §§ 200.13 through 200.20, toward meeting the State's student academic achievement standards; and

(ii) The LEA is carrying out its responsibilities under this part with respect to school improvement, technical assistance, parental involvement, and professional development.

(2) In reviewing the progress of an LEA, the SEA may, in the case of targeted assistance schools served by the LEA, consider the progress only of the students served or eligible for services under this subpart, provided the students selected for services in such schools are those with the greatest need

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for special assistance, consistent with the requirements of section 1115 of the ESEA.

(b) Rewards. If an LEA has exceeded AYP as defined under §§ 200.13 through 200.20 for two consecutive years, the SEA may—

(1) Reserve funds in accordance with § 200.100(c); and

(2) Make rewards of the kinds described under section 1117 of the ESEA.

(c) *Opportunity for review of LEA-level data.* (1) Before identifying an LEA for improvement or corrective action, the SEA must provide the LEA with an opportunity to review the data, including academic assessment data, on which the SEA has based the proposed identification.

(2)(i) If the LEA believes that the proposed identification is in error for statistical or other substantive reasons, the LEA may provide supporting evidence to the SEA.

(ii) The SEA must consider the evidence before making a final determination not later than 30 days after it has provided the LEA with the opportunity to review the data under paragraph (c)(1) of this section.

(d) *Identification for improvement.* (1) The SEA must identify for improvement an LEA that, for two consecutive years, including the period immediately before January 8, 2002, fails to make AYP as defined in the SEA's plan under section 1111(b)(2) of the ESEA.

(2) The SEA must identify for improvement an LEA that was in improvement status on January 7, 2002.

(3)(i) The SEA may identify an LEA for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA fails to make AYP for a second consecutive year.

(ii) An SEA that does not identify such an LEA for improvement, however, must count the 2001–2002 school year as the first year of not making AYP for the purpose of subsequent identification decisions under paragraph (d)(1) of this section.

(4) The SEA may remove an LEA from improvement status if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA makes AYP for a second consecutive year.

(e) *Identification for corrective action.* After providing technical assistance under § 200.52(b), the SEA—

(1) May take corrective action at any time with respect to an LEA that the SEA has identified for improvement under paragraph (d) of this section;

(2) Must take corrective action—

(i) With respect to an LEA that fails to make AYP, as defined under §§ 200.13 through 200.20, by the end of the second full school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make AYP for a second consecutive year and led to the SEA's identification of the LEA for improvement under paragraph (d) of this section; and

(ii) With respect to an LEA that was in corrective action status on January 7, 2002; and

(3) May remove an LEA from corrective action if, on the basis of assessments administered by the LEA during the 2001–2002 school year, it makes AYP for a second consecutive year.

(f) *Delay of corrective action.* (1) The SEA may delay implementation of corrective action under § 200.53 for a period not to exceed one year if—

(i) The LEA makes AYP for one year; or

(ii) The LEA's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the LEA's financial resources.

(2)(i) The SEA may not take into account the period of delay referred to in paragraph (f)(1) of this section in determining the number of consecutive years the LEA has failed to make AYP; and

(ii) The SEA must subject the LEA to further actions following the period of delay as if the delay never occurred.

(g) *Continuation of public school choice and supplemental educational services.* An SEA must ensure that an LEA identified under paragraph (d) or (e) of this section continues to offer public school choice in accordance with § 200.44 and supplemental educational services in accordance with § 200.45.

(h) *Removal from improvement or corrective action status.* If an LEA makes AYP for two consecutive years following identification for improvement under paragraph (d) or corrective action under paragraph (e) of this section, the SEA need no longer—

(1) Identify the LEA for improvement; or

(2) Subject the LEA to corrective action for the succeeding school year.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(c))

§ 200.51 Notice of SEA action.

(a) *In general.* (1) An SEA must—

(i) Communicate with parents throughout the review of an LEA under § 200.50; and

(ii) Ensure that, regardless of the method or media used, it provides information to parents—

(A) In an understandable and uniform format, including alternative formats upon request; and

(B) To the extent practicable, in a language that parents can understand.

(2) The SEA must provide information to the parents of each student enrolled in a school served by the LEA—

(i) Directly, through such means as regular mail or e-mail, except that if an SEA does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and

(ii) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

(3) All communications must respect the privacy of students and their families.

(b) *Results of review.* The SEA must promptly publicize and disseminate to the LEAs, teachers and other staff, the parents of each student enrolled in a school served by the LEA, students, and the community the results of its review under § 200.50, including statistically sound disaggregated results in accordance with §§ 200.2 and 200.7.

(c) *Identification for improvement or corrective action.* If the SEA identifies an LEA for improvement or subjects the LEA to corrective action, the SEA must promptly provide to the parents of each student enrolled in a school served by the LEA—

(1) The reasons for the identification; and

(2) An explanation of how parents can participate in improving the LEA.

(d) *Information about action taken.* (1) The SEA must publish, and disseminate to the parents of each student enrolled in a school served by the LEA and to the public, information on any corrective action the SEA takes under § 200.53.

(2) The SEA must provide this information—

(i) In a uniform and understandable format, including alternative formats upon request; and

(ii) To the extent practicable, in a language that parents can understand.

(3) The SEA must disseminate the information through such means as the Internet, the media, and public agencies.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(c))

27. Add new §§ 200.52 and 200.53 and place them under the new undesignated center heading "LEA and School Improvement" in subpart A of part 200 to read as follows:

§ 200.52 LEA improvement.

(a) *Improvement plan.* (1) Not later than 3 months after an SEA has identified an LEA for improvement under § 200.50(d), the LEA must develop or revise an LEA improvement plan.

(2) The LEA must consult with parents, school staff, and others in developing or revising its improvement plan.

(3) The LEA improvement plan must—

(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in core academic subjects in schools served by the LEA;

(ii) Identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the State's student academic achievement standards;

(iii) Address the professional development needs of the instructional staff serving the LEA by committing to spend for professional development not less than 10 percent of the funds received by the LEA under subpart A of this part for each fiscal year in which the SEA identifies the LEA for improvement. These funds—

(A) May include funds reserved by schools for professional development under § 200.41(c)(5); but

(B) May not include funds reserved for professional development under section 1119 of the ESEA;

(iv) Include specific measurable achievement goals and targets—

(A) For each of the groups of students under § 200.13(b)(7); and

(B) That are consistent with AYP as defined under §§ 200.13 through 200.20;

(v) Address—

(A) The fundamental teaching and learning needs in the schools of the LEA; and

(B) The specific academic problems of low-achieving students, including a determination of why the LEA's previous plan failed to bring about increased student academic achievement;

(vi) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year;

(vii) Specify the responsibilities of the SEA and LEA under the plan, including the technical assistance the SEA must provide under paragraph (b) of this section and the LEA's responsibilities under section 1120A of the ESEA; and

(viii) Include strategies to promote effective parental involvement in the schools served by the LEA.

(4) The LEA must implement the improvement plan—including any revised plan—expeditiously, but not later than the beginning of the school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make AYP for a second consecutive year and led to the SEA's identification of the LEA for improvement under § 200.50(d).

(b) *SEA technical assistance.* (1) An SEA that identifies an LEA for improvement under § 200.50(d) must, if requested, provide or arrange for the provision of technical or other assistance to the LEA, as authorized under section 1117 of the ESEA.

(2) The purpose of the technical assistance is to better enable the LEA to—

(i) Develop and implement its improvement plan; and

(ii) Work with schools needing improvement.

(3) The technical assistance provided by the SEA or an entity authorized by the SEA must—

(i) Be supported by effective methods and instructional strategies grounded in scientifically based research; and

(ii) Address problems, if any, in implementing the parental involvement and professional development activities described in sections 1118 and 1119, respectively, of the ESEA.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(c))

§ 200.53 LEA corrective action.

(a) *Definition.* For the purposes of this section, the term "corrective action" means action by an SEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure that caused the SEA to identify an LEA for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the LEA;

(2) Is designed to meet the goal that each group of students described in § 200.13(b)(7) and enrolled in the LEA's schools will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Notice and hearing.* Before implementing any corrective action under paragraph (c) of this section, the SEA must provide notice and a hearing to the affected LEA—if State law provides for this notice and hearing—not later than 45 days following the decision to take corrective action.

(c) *Requirements.* If the SEA identifies an LEA for corrective action, the SEA must do the following:

(1) Continue to make available technical assistance to the LEA.

(2) Take at least one of the following corrective actions:

(i) Defer programmatic funds or reduce administrative funds.

(ii) Institute and fully implement a new curriculum based on State and local content and academic achievement standards, including the provision of appropriate professional development for all relevant staff that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students.

(iii) Replace the LEA personnel who are relevant to the failure to make AYP.

(iv) Remove particular schools from the jurisdiction of the LEA and establish alternative arrangements for public governance and supervision of these schools.

(v) Appoint a receiver or trustee to administer the affairs of the LEA in place of the superintendent and school board.

(vi) Abolish or restructure the LEA.

(vii) In conjunction with at least one other action in paragraph (c)(2) of this section—

(A) Authorize students to transfer from a school operated by the LEA to a higher-performing public school operated by another LEA in accordance with § 200.44, and

(B) Provide to these students transportation, or the costs of transportation, to the other school consistent with § 200.44(h).

(Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 6316(c)(10))

28. Place reserved § 200.54 under the undesignated center heading "LEA and school improvement" in subpart A of part 200.

29. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.54 to read as follows:

Qualifications Of Teachers And Paraprofessionals

30. Add new §§ 200.55 through 200.59 and place them under the new undesignated center heading "Qualifications of Teachers and Paraprofessionals" in subpart A of part 200 to read as follows:

§ 200.55 Qualifications of teachers.

(a) *Newly hired teachers in Title I programs.* (1) An LEA must ensure that all teachers hired after the first day of the 2002–2003 school year who teach core academic subjects in a program supported with funds under subpart A of this part are highly qualified as defined in § 200.56.

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(2) For the purpose of paragraph (a)(1) of this section, a teacher teaching in a program supported with funds under subpart A of this part is—

(i) A teacher in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A teacher in a schoolwide program school; or

(iii) A teacher employed by an LEA with funds under subpart A of this part to provide services to eligible private school students under § 200.62.

(b) *All teachers of core academic subjects.* (1) Not later than the end of the 2005–2006 school year, each State that receives funds under subpart A of this part, and each LEA in that State, must ensure that all public elementary and secondary school teachers in the State who teach core academic subjects, including teachers employed by an LEA to provide services to eligible private school students under § 200.62, are highly qualified as defined in § 200.56.

(2) A teacher who does not teach a core academic subject—such as some vocational education teachers—is not required to meet the requirements in § 200.56.

(c) *Definition.* The term "core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(d) *Private school teachers.* The requirements in this section do not apply to teachers hired by private elementary and secondary schools.

(Authority: 20 U.S.C. 6319; 7801(11))

§ 200.56 Definition of "highly qualified teacher."

To be a "highly qualified teacher," a teacher covered under § 200.55 must meet the requirements in paragraph (a) and either paragraph (b) or (c) of this section.

(a) *In general.* (1) Except as provided in paragraph (a)(3) of this section, a teacher covered under § 200.55 must—

(i) Have obtained full State certification as a teacher, which may include certification obtained through alternative routes to certification; or

(ii)(A) Have passed the State teacher licensing examination; and

(B) Hold a license to teach in the State.

(2) A teacher meets the requirement in paragraph (a)(1) of this section if the teacher—

(i) Has fulfilled the State's certification and licensure requirements applicable to the years of experience the teacher possesses; or

(ii) Is participating in an alternative route to certification program under which—

(A) The teacher—

(*1*) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(*2*) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(*3*) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(*4*) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(B) The State ensures, through its certification and licensure process, that the provisions in paragraph (a)(2)(ii) of this section are met.

(3) A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in the State's charter school law.

(4) If a teacher has had certification or licensure requirements waived on an emergency, temporary, or provisional basis, the teacher is not highly qualified.

(b) *Teachers new to the profession.* A teacher covered under § 200.55 who is new to the profession also must—

(1) Hold at least a bachelor's degree; and

(2) At the public elementary school level, demonstrate, by passing a rigorous State test (which may consist of passing a State certification or licensing test), subject knowledge and teaching skills in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum; or

(3) At the public middle and high school levels, demonstrate a high level of competency by—

(i) Passing a rigorous State test in each academic subject in which the teacher teaches (which may consist of passing a State certification or licensing test in each of these subjects); or

(ii) Successfully completing in each academic subject in which the teacher teaches—

(A) An undergraduate major;

(B) A graduate degree;

(C) Coursework equivalent to an undergraduate major; or

(D) Advanced certification or credentialing.

(c) *Teachers not new to the profession.* A teacher covered under § 200.55 who is not new to the profession also must—

(1) Hold at least a bachelor's degree; and

(2)(i) Meet the applicable requirements in paragraph (b)(2) or (3) of this section; or

(ii) Based on a high, objective, uniform State standard of evaluation in accordance with section 9101(23)(C)(ii) of the ESEA, demonstrate competency in each academic subject in which the teacher teaches.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 7801(23))

§ 200.57 Plans to increase teacher quality.

(a) *State plan.* (1) A State that receives funds under subpart A of this part must develop, as part of its State plan under section 1111 of the ESEA, a plan to ensure that all public elementary and secondary school teachers in the State who teach core academic subjects are highly qualified not later than the end of the 2005–2006 school year.

(2) The State's plan must—

(i) Establish annual measurable objectives for each LEA and school that include, at a minimum, an annual increase in the percentage of—

(A) Highly qualified teachers at each LEA and school; and

(B) Teachers who are receiving high-quality professional development to enable them to become highly qualified and effective classroom teachers;

(ii) Describe the strategies the State will use to—

(A) Help LEAs and schools meet the requirements in paragraph (a)(1) of this section; and

(B) Monitor the progress of LEAs and schools in meeting these requirements; and

(iii) Until the SEA fully complies with paragraph (a)(1) of this section, describe the specific steps the SEA will take to—

(A) Ensure that Title I schools provide instruction by highly qualified teachers, including steps that the SEA will take to ensure that minority children and children from low-income families are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers; and

(B) Evaluate and publicly report the progress of the SEA with respect to these steps.

(3) The State's plan may include other measures that the State determines are appropriate to increase teacher qualifications.

(b) *Local plan.* An LEA that receives funds under subpart A of this part must develop, as part of its local plan under section 1112 of the ESEA, a plan to ensure that—

(1) All public elementary and secondary school teachers in the LEA who teach core academic subjects, including teachers employed by the LEA to provide services to eligible private school students under § 200.62, are highly qualified not later than the end of the 2005–2006 school year; and

(2) Through incentives for voluntary transfers, professional development, recruitment programs, or other effective strategies, minority students and students from low-income families are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6311(b)(8)(C), 6312(c)(1)(I), (L); 6319(a)(2)–(3); 7801(34))

§ 200.58 Qualifications of paraprofessionals.

(a) *Applicability.* (1) An LEA must ensure that each paraprofessional who is hired by the LEA and who works in a program supported with funds under subpart A of this part meets the requirements in paragraph (b) of this section and, except as provided in paragraph (e) of this section, the requirements in either paragraph (c) or (d) of this section.

(2) For the purpose of this section, the term "paraprofessional"—

(i) Means an individual who provides instructional support consistent with § 200.59; and

(ii) Does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties).

(3) For the purpose of paragraph (a) of this section, a paraprofessional working in "a program supported with funds under subpart A of this part" is—

(i) A paraprofessional in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A paraprofessional in a schoolwide program school; or

(iii) A paraprofessional employed by an LEA with funds under subpart A of this part to provide instructional support to a public school teacher covered under § 200.55 who provides equitable services to eligible private school students under § 200.62.

(b) *All paraprofessionals.* A paraprofessional covered under paragraph (a) of this section, regardless of the paraprofessional's hiring date, must have earned a secondary school diploma or its recognized equivalent.

(c) *New paraprofessionals.* A paraprofessional covered under paragraph (a) of this section who is hired after January 8, 2002 must have—

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate's or higher degree; or

(3)(i) Met a rigorous standard of quality, and can demonstrate—through a formal State or local academic assessment—knowledge of, and the ability to assist in instructing, as appropriate—

(A) Reading/language arts, writing, and mathematics; or

(B) Reading readiness, writing readiness, and mathematics readiness.

(ii) A secondary school diploma or its recognized equivalent is necessary, but not sufficient, to meet the requirement in paragraph (c)(3)(i) of this section.

(d) *Existing paraprofessionals.* Each paraprofessional who was hired on or before January 8, 2002 must meet the requirements in paragraph (c) of this section no later than January 8, 2006.

(e) *Exceptions.* A paraprofessional does not need to meet the requirements in paragraph (c) or (d) of this section if the paraprofessional—

(1)(i) Is proficient in English and a language other than English; and

(ii) Acts as a translator to enhance the participation of limited English proficient children under subpart A of this part; or

(2) Has instructional-support duties that consist solely of conducting parental involvement activities.

(Authority: 20 U.S.C. 6319(c)–(f))

§ 200.59 Duties of paraprofessionals.

(a) A paraprofessional covered under § 200.58 may not be assigned a duty inconsistent with paragraph (b) of this section.

(b) A paraprofessional covered under § 200.58 may perform the following instructional support duties:

(1) One-on-one tutoring for eligible students if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher.

(2) Assisting in classroom management.

(3) Assisting in computer instruction.

(4) Conducting parent involvement activities.

(5) Providing instructional support in a library or media center.

(6) Acting as a translator.

(7) Providing instructional support services.

(c)(1) A paraprofessional may not provide instructional support to a student unless the paraprofessional is working under the direct supervision of a teacher who meets the requirements in § 200.56.

(2) A paraprofessional works under the direct supervision of a teacher if—

(i) The teacher plans the instructional activities that the paraprofessional carries out;

(ii) The teacher evaluates the achievement of the students with whom the paraprofessional is working; and

(iii) The paraprofessional works in close and frequent physical proximity to the teacher.

(d) A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under subpart A of this part—including non-instructional duties and duties that do not benefit participating students—if the amount of time the paraprofessional spends on those duties is the same proportion of total work time as the time spent by similar personnel at the same school.

(Authority: 20 U.S.C. 6319(g))

31. Revise §§ 200.60 and 200.61 and place them under the new undesignated center heading "Qualifications of Teachers and Paraprofessionals" in subpart A of part 200 to read as follows:

§ 200.60 Expenditures for professional development.

(a)(1) Except as provided in paragraph (a)(2) of this section, an LEA must use funds it receives under subpart A of this part as follows for professional development activities to ensure that teachers and paraprofessionals meet the requirements of §§ 200.56 and 200.58:

(i) For each of fiscal years 2002 and 2003, the LEA must use not less than 5 percent or more than 10 percent of the funds it receives under subpart A of this part.

(ii) For each fiscal year after 2003, the LEA must use not less than 5 percent of the funds it receives under subpart A of this part.

(2) An LEA is not required to spend the amount required in paragraph (a)(1) of this section for a given fiscal year if a lesser amount is sufficient to ensure that the LEA's teachers and paraprofessionals meet the requirements in §§ 200.56 and 200.58, respectively.

(b) The LEA may use additional funds under subpart A of this part to support ongoing training and professional development, as defined in section 9101(34) of the ESEA, to assist teachers and paraprofessionals in carrying out activities under subpart A of this part.

(Authority: 20 U.S.C. 6319(h), (l); 7801(34))

§ 200.61 Parents' right to know.

(a) At the beginning of each school year, an LEA that receives funds under subpart A of this part must notify the parents of each student attending a Title I school that the parents may request, and the LEA will provide the parents on request, information regarding the professional qualifications of the

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student's classroom teachers, including, at a minimum, the following:

(1) Whether the teacher has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

(2) Whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived.

(3) The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.

(4) Whether the child is provided services by paraprofessionals and, if so, their qualifications.

(b) A school that participates under subpart A of this part must provide to each parent—

(1) Information on the level of achievement of the parent's child in each of the State academic assessments required under § 200.2;

(2) Timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by, a teacher of a core academic subject who is not highly qualified.

(c) An LEA and school must provide the notice and information required under this section—

(1) In a uniform and understandable format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6311(h)(6))

32. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.61 to read as follows:

Participation of Eligible Children in Private Schools

33. Add § 200.62 and place it under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.62 Responsibilities for providing services to private school children.

(a) After timely and meaningful consultation with appropriate officials of private schools, an LEA must—

(1) In accordance with §§ 200.62 through 200.67 and section 1120 of the ESEA, provide special educational services or other benefits under subpart A of this part, on an equitable basis and in a timely manner, to eligible children who are enrolled in private elementary and secondary schools; and

(2) Ensure that teachers and families of participating private school children participate on a basis equitable to the participation of teachers and families of public school children receiving these services in accordance with § 200.65.

(b)(1) Eligible private school children are children who—

(i) Reside in participating public school attendance areas of the LEA, regardless of whether the private school they attend is located in the LEA; and

(ii) Meet the criteria in section 1115(b) of the ESEA.

(2) Among the eligible private school children, the LEA must select children to participate, consistent with § 200.64.

(c) The services and other benefits an LEA provides under this section must be secular, neutral and nonideological.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6315(b); 6320(a))

34. Revise § 200.63 and place it under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.63 Consultation.

(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA's program for eligible private school children.

(b) At a minimum, the LEA must consult on the following:

(1) How the LEA will identify the needs of eligible private school children.

(2) What services the LEA will offer to eligible private school children.

(3) How and when the LEA will make decisions about the delivery of services.

(4) How, where, and by whom the LEA will provide services to eligible private school children.

(5) How the LEA will assess academically the services to eligible private school children in accordance with § 200.10, and how the LEA will use the results of that assessment to improve Title I services.

(6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and, consistent with § 200.64, the proportion of funds that the LEA will allocate for these services.

(7) The method or sources of data that the LEA will use under § 200.78 to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data if a survey is used.

(8) The equitable services the LEA will provide to teachers and families of participating private school children.

(c)(1) Consultation by the LEA must—

(i) Include meetings of the LEA and appropriate officials of the private schools; and

(ii) Occur before the LEA makes any decision that affects the opportunity of eligible private school children to participate in Title I programs.

(2) The LEA must meet with officials of the private schools throughout the implementation and assessment of the Title I services.

(d)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the LEA can use to provide equitable services to eligible private school children; and

(ii) A thorough consideration and analysis of the views of the officials of the private schools on the provision of services through a contract with a third-party provider.

(2) If the LEA disagrees with the views of the officials of the private schools on the provision of services through a contract, the LEA must provide in writing to the officials of the private schools the reasons why the LEA chooses not to use a contractor.

(e)(1) The LEA must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

(2) If the officials of the private schools do not provide the affirmations within a reasonable period of time, the LEA must submit to the SEA documentation that the required consultation occurred.

(f) An official of a private school has the right to complain to the SEA that the LEA did not—

(1) Engage in timely and meaningful consultation; or

(2) Consider the views of the official of the private school.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6320(b))

35. Add § 200.64 and place it under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.64 Factors for determining equitable participation of private school children.

(a) *Equal expenditures.* (1) Funds expended by an LEA under subpart A of this part for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under paragraph (a)(2) of this section.

(2) An LEA must meet this requirement as follows:

(i)(A) If the LEA reserves funds under § 200.77 to provide instructional and related activities for public elementary or secondary school students at the district level, the LEA must also provide from those funds, as applicable, equitable services to eligible private school children.

(B) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

(ii) The LEA must reserve the funds generated by private school children under § 200.78 and, in consultation with appropriate officials of the private schools, may—

(A) Combine those amounts, along with funds under paragraph (a)(2)(i) of this section, if appropriate, to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or

(B) Provide equitable services to eligible children in each private school with the funds generated by children from low-income families under § 200.78 who attend that private school.

(b) *Services on an equitable basis.* (1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits that the LEA provides to public school children participating under subpart A of this part.

(2) Services are equitable if the LEA—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

(ii) Meets the equal expenditure requirements under paragraph (a) of section; and

(iii) Provides private school children with an opportunity to participate that—

(A) Is equitable to the opportunity provided to public school children; and

(B) Provides reasonable promise of the private school children achieving the high levels called for by the State's student academic achievement standards or equivalent standards applicable to the private school children.

(3)(i) The LEA may provide services to eligible private school children either directly or through arrangements with another LEA or a third-party provider.

(ii) If the LEA contracts with a third-party provider—

(A) The provider must be independent of the private school and of any religious organization; and

(B) The contract must be under the control and supervision of the LEA.

(4) After timely and meaningful consultation under § 200.63, the LEA must make the final decisions with respect to the services it will provide to eligible private school children.

(Authority: 20 U.S.C. 6320)

36. Revise § 200.65 and place it under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.65 Determining equitable participation of teachers and families of participating private school children.

(a)(1) From applicable funds reserved for parent involvement and professional development under § 200.77, an LEA shall ensure that teachers and families of participating private school children participate on an equitable basis in professional development and parent involvement activities, respectively.

(2) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

(b) After consultation with appropriate officials of the private schools, the LEA must conduct professional development and parent involvement activities for the teachers and families of participating private school children either—

(1) In conjunction with the LEA's professional development and parent involvement activities; or

(2) Independently.

(c) Private school teachers are not covered by the requirements in § 200.56.

(Authority: 20 U.S.C. 6320(a))

37. Add new §§ 200.66 and 200.67 and place them under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200 to read as follows:

§ 200.66 Requirements to ensure that funds do not benefit a private school.

(a) An LEA must use funds under subpart A of this part to provide services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children.

(b)(1) The LEA must use funds under subpart A of this part to meet the special educational needs of participating private school children.

(2) The LEA may not use funds under subpart A of this part for—

(i) The needs of the private school; or

(ii) The general needs of children in the private school.

(Authority: 20 U.S.C. 6320(a), 6321(b))

§ 200.67 Requirements concerning property, equipment, and supplies for the benefit of private school children.

(a) The LEA must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under subpart A of this part for the benefit of eligible private school children.

(b) The LEA may place equipment and supplies in a private school for the period of time needed for the program.

(c) The LEA must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Title I purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The LEA must remove equipment and supplies from a private school if—

(1) The LEA no longer needs the equipment and supplies to provide Title I services; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes.

(e) The LEA may not use funds under subpart A of this part for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 6320(d))

38. Place reserved §§ 200.68 and 200.69 under the undesignated center heading "Participation of Eligible Children in Private Schools" in subpart A of part 200.

39. Add a new undesignated center heading to subpart A of part 200 and place it after reserved § 200.69 to read as follows:

Allocations To LEAS

40. Add new §§ 200.70 through 200.75 and place them under the undesignated center heading "Allocations to LEAs" in subpart A of part 200 to read as follows:

§ 200.70 Allocation of funds to LEAs in general.

(a) The Secretary allocates basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas

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of the LEA (hereinafter referred to as the "Census list").

(b) In establishing eligibility and allocating funds under paragraph (a) of this section, the Secretary counts children ages 5 to 17, inclusive (hereinafter referred to as "formula children")—

(1) From families below the poverty level based on the most recent satisfactory data available from the Bureau of the Census;

(2) From families above the poverty level receiving assistance under the Temporary Assistance for Needy Families program under Title IV of the Social Security Act;

(3) Being supported in foster homes with public funds; and

(4) Residing in local institutions for neglected children.

(c) Except as provided in §§ 200.72, 200.75, and 200.100, an SEA may not change the Secretary's allocation to any LEA that serves an area with a total census population of at least 20,000 persons.

(d) In accordance with § 200.74, an SEA may use an alternative method, approved by the Secretary, to distribute the State's share of basic grants, concentration grants, targeted grants, and education finance incentive grants to LEAs that serve an area with a total census population of less than 20,000 persons.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6333–6337)

§ 200.71 LEA eligibility.

(a) *Basic grants.* An LEA is eligible for a basic grant if the number of formula children is—

(1) At least 10; and

(2) Greater than two percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Concentration grants.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph (a) of this section; and

(2) The number of formula children exceeds—

(i) 6,500; or

(ii) 15 percent of the LEA's total population ages 5 to 17 years, inclusive.

(c) *Targeted grants.* An LEA is eligible for a targeted grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(d) *Education finance incentive grants.* An LEA is eligible for an education finance incentive grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6333–6337)

§ 200.72 Procedures for adjusting allocations determined by the Secretary to account for eligible LEAs not on the Census list.

(a) *General.* For each LEA not on the Census list (hereinafter referred to as a "new" LEA), an SEA must determine the number of formula children and the number of children ages 5 to 17, inclusive, in that LEA.

(b) *Determining LEA eligibility.* An SEA must determine basic grant, concentration grant, targeted grant, and education finance incentive grant eligibility for each new LEA and re-determine eligibility for the LEAs on the Census list, as appropriate, based on the number of formula children and children ages 5 to 17, inclusive, determined in paragraph (a) of this section.

(c) *Adjusting LEA allocations.* An SEA must adjust the LEA allocations calculated by the Secretary to determine allocations for eligible new LEAs based on the number of formula children determined in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6333–6337)

§ 200.73 Applicable hold-harmless provisions.

(a) *General.* (1) Except as authorized under paragraph (c) of this section and § 200.100(d)(2), an SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under paragraph (a)(4) of this section.

(2) The hold-harmless protection limits the maximum reduction of an LEA's allocation compared to the LEA's allocation for the preceding year.

(3) Except as provided in § 200.100(d), an SEA must apply the hold-harmless requirement separately for basic grants, concentration grants, targeted grants, and education finance incentive grants as described in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the ESEA, the hold-harmless percentage varies based on the LEA's proportion of formula children, as shown in the following table:

LEA's number of formula children ages 5 to 17, inclusive, as a percentage of its total population of children ages 5 to 17, inclusive	Hold-harmless percentage	Applicable grant formulas
(i) 30% or more	95	Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants.
(ii) 15% or more but less than 30%	90	
(iii) Less than 15%	85	

(b) *Targeted grants and education finance incentive grants.* The number of formula children used to determine the hold-harmless percentage is the number before applying the weights described in section 1125 and section 1125A of the ESEA.

(c) *Adjustment for insufficient funds.* If the amounts made available to the State are insufficient to pay the full amount that each LEA is eligible to receive under paragraph (a)(4) of this section, the SEA must ratably reduce the allocations for all LEAs in the State to the amount available.

(d) *Eligibility for hold-harmless protection.* (1) An LEA must meet the eligibility requirements for a basic grant, targeted grant, or education finance incentive grant under § 200.71 in order for the applicable hold-harmless provision to apply.

(2) An LEA not meeting the eligibility requirements for a concentration grant under § 200.71 must be paid its hold-harmless amount for four consecutive years.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6332(c))

§ 200.74 Use of an alternative method to distribute grants to LEAs with fewer than 20,000 total residents.

(a) For eligible LEAs serving an area with a total census population of less than 20,000 persons (hereinafter referred to as "small LEAs"), an SEA may apply to the Secretary to use an alternative method to distribute basic grant, concentration grant, targeted grant, and education finance incentive grant funds.

(b) In its application, the SEA must—

(1) Identify the alternative data it proposes to use; and

(2) Assure that it has established a procedure through which a small LEA that is dissatisfied with the determination of its grant may appeal directly to the Secretary.

(c) The SEA must base its alternative method on population data that best reflect the current distribution of children from low-income families among the State's small LEAs and use the same poverty measure consistently for small LEAs across the State for all Title I, part A programs.

(d) Based on the alternative poverty data selected, the SEA must—

(1) Re-determine eligibility of its small LEAs for basic grants, concentration grants, targeted grants, and education finance incentive grants in accordance with § 200.71;

(2) Calculate allocations for small LEAs in accordance with the provisions of sections 1124, 1124A, 1125, and 1125A of the ESEA, as applicable; and

(3) Ensure that each LEA receives the hold-harmless amount to which it is entitled under § 200.73.

(e) The amount of funds available for redistribution under each formula is the separate amount determined by the Secretary under sections 1124, 1124A, 1125, and 1125A of the ESEA for eligible small LEAs after the SEA has made the adjustments required under § 200.72(c).

(f) If the amount available for redistribution to small LEAs under an alternative method is not sufficient to satisfy applicable hold-harmless requirements, the SEA must ratably reduce all eligible small LEAs to the amount available.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6333–6337)

§ 200.75 Special procedures for allocating concentration grant funds in small States.

(a) In a State in which the number of formula children is less than 0.25 percent of the national total on January 8, 2002 (hereinafter referred to as a "small State"), an SEA may either—

(1) Allocate concentration grants among eligible LEAs in the State in accordance with §§ 200.72 through 200.74, as applicable; or

(2) Without regard to the allocations determined by the Secretary—

(i) Identify those LEAs in which the number or percentage of formula children exceeds the statewide average number or percentage of those children; and

(ii) Allocate concentration grant funds, consistent with § 200.73, among the LEAs identified in paragraph (a)(2)(i) of this section based on the number of formula children in each of those LEAs.

(b) If the SEA in a small State uses an alternative method under § 200.74, the SEA must use the poverty data approved under the alternative method to identify those LEAs with numbers or percentages of formula children that exceed the statewide average number or percentage of those children for the State as a whole.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6334(b))

41. Add and reserve new § 200.76 and place it under the revised undesignated center heading "Allocations to LEAs" in subpart A of part 200.

42. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.76 to read as follows:

Procedures for the Within-District Allocation of LEA Program Funds

43. Add new §§ 200.77 and 200.78 and place them under the undesignated center heading "Procedures for the Within-District Allocation of LEA Program Funds" in subpart A of part 200 to read as follows:

§ 200.77 Reservation of funds by an LEA.

Before allocating funds in accordance with § 200.78, an LEA must reserve funds as are reasonable and necessary to—

(a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve—

(1) Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live;

(2) Children in local institutions for neglected children; and

(3) If appropriate—

(i) Children in local institutions for delinquent children; and

(ii) Neglected and delinquent children in community-day school programs;

(b) Provide, where appropriate under section 1113(c)(4) of the ESEA, financial incentives and rewards to teachers who serve students in Title I schools identified for school improvement, corrective action, and restructuring for the purpose of attracting and retaining qualified and effective teachers;

(c) Meet the requirements for choice-related transportation and supplemental educational services in § 200.48, unless the LEA meets these requirements with non-Title I funds;

(d) Address the professional development needs of instructional staff, including—

(1) Professional development requirements under § 200.52(a)(3)(iii) if the LEA has been identified for improvement or corrective action; and

(2) Professional development expenditure requirements under § 200.60;

(e) Meet the requirements for parental involvement in section 1118(a)(3) of the ESEA;

(f) Administer programs for public and private school children under this part, including special capital expenses, if any, incurred in providing services to eligible private school children, such as—

(1) The purchase and lease of real and personal property (including mobile educational units and neutral sites);

(2) Insurance and maintenance costs;

(3) Transportation; and

(4) Other comparable goods and services, including non-instructional computer technicians; and

(g) Conduct other authorized activities, such as school improvement and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3) and (4), 6316(b)(10), (c)(7)(iii), 6318(a)(3), 6319(l), 6320, 7279d)

§ 200.78 Allocation of funds to school attendance areas and schools.

(a)(1) An LEA must allocate funds under subpart A of this part to school attendance areas and schools, identified as eligible and selected to participate under section 1113(a) or (b) of the ESEA, in rank order on the basis of the total number of children from low-income families in each area or school.

(2)(i) In calculating the total number of children from low-income families, the LEA must include children from low-income families who attend private schools.

(ii) To obtain a count of private school children, the LEA may—

(A) Use the same poverty data the LEA uses to count public school children;

(B)(*1*) Use comparable poverty data from a survey of families of private school students that, to the extent possible, protects the families' identity; and

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(2) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable;

(C) Use comparable poverty data from a different source, such as scholarship applications;

(D) Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or

(E) Use an equated measure of low income correlated with the measure of low income used to count public school children.

(iii) An LEA may count private school children from low-income families every year or every two years.

(iv) After timely and meaningful consultation in accordance with § 200.63, the LEA shall have the final authority in determining the method used to calculate the number of private school children from low-income families;

(3) If an LEA ranks its school attendance areas and schools by grade span groupings, the LEA may determine the percentage of children from low-income families in the LEA as a whole or for each grade span grouping.

(b)(1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA must allocate to each participating school attendance area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under part A, subpart 2 of Title I. The LEA must calculate this per-pupil amount before it reserves funds under § 200.77, using the poverty measure selected by the LEA under section 1113(a)(5) of the ESEA.

(2) If an LEA is serving only school attendance areas or schools in which the percentage of children from low-income families is 35 percent or more, the LEA is not required to allocate a per-pupil amount of at least 125 percent.

(c) An LEA is not required to allocate the same per-pupil amount to each participating school attendance area or school provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

(d) An LEA may reduce the amount of funds allocated under this section to a school attendance area or school if the area or school is spending supplemental State or local funds for programs that meet the requirements in § 200.79(b).

(e) If an LEA contains two or more counties in their entirety, the LEA must distribute to schools within each county a share of the LEA's total grant that is no less than the county's share of the child count used to calculate the LEA's grant.

(Authority: 20 U.S.C. 6313(c), 6320(a) and (c)(1), 6333(c)(2))

44. Add a new undesignated center heading to subpart A of part 200 and place it after new § 200.78 to read as follows:

Fiscal Requirements

45. Add new § 200.79 and place it under the new undesignated center heading "Fiscal Requirements" in subpart A of part 200 to read as follows:

§ 200.79 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For the purpose of determining compliance with the supplement not supplant requirement in section 1120A(b) and the comparability requirement in section 1120A(c) of the ESEA, a grantee or subgrantee under subpart A of this part may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging academic achievement standards that all students are expected to meet;

(iii) Is designed to meet the educational needs of all students in the school, particularly the needs of students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards; and

(iv) Uses the State's assessment system under § 200.2 to review the effectiveness of the program; or

(2)(i) Serves only students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards;

(ii) Provides supplementary services designed to meet the special educational needs of the students who are participating in the program to support their achievement toward meeting the State's student academic achievement standards; and

(iii) Uses the State's assessment system under § 200.2 to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under section 1113(b)(1)(D) and 1113(c)(2)(B) of the ESEA.

(Authority: 20 U.S.C. 6321(b)–(d))

46. Revise subpart B of part 200 to read as follows:

Subpart B—Even Start Family Literacy Programs

Sec.

200.80 Migrant Education Even Start Program definition.

Subpart B—Even Start Family Literacy Programs

§ 200.80 Migrant Education Even Start Program definition.

Eligible participants under the Migrant Education Even Start Program (MEES) must meet the definitions of a migratory child, a migratory agricultural worker, or a migratory fisher in § 200.81.

(Authority: 20 U.S.C. 6381a and 20 U.S.C. 6399)

47. Revise subpart C of part 200 to read as follows:

Subpart C—Migrant Education Program

Sec.

200.81 Program definitions.
200.82 Use of program funds for unique program function costs.
200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.
200.84 Responsibilities of SEAs for evaluating the effectiveness of the MEP.
200.85 Responsibilities of SEAs and operating agencies for improving services to migratory children.
200.86 Use of MEP funds in schoolwide projects.
200.87 Responsibilities for participation of children in private schools.
200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.
200.89 [Reserved]

Subpart C—Migrant Education Program

§ 200.81 Program definitions.

The following definitions apply to programs and projects operated under subpart C of this part:

(a) *Agricultural activity* means—

(1) Any activity directly related to the production or processing of crops, dairy products, poultry or livestock for initial commercial sale or personal subsistence;

(2) Any activity directly related to the cultivation or harvesting of trees; or

(3) Any activity directly related to fish farms.

(b) *Fishing activity* means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or personal subsistence.

(c) *Migratory agricultural worker* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in agricultural activities (including dairy work) as a principal means of livelihood.

(d) *Migratory child* means a child who is, or whose parent, spouse, or guardian is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent, spouse, guardian in order to obtain, temporary or seasonal employment in agricultural or fishing work—

(1) Has moved from one school district to another;

(2) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(3) Resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

(e) *Migratory fisher* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in fishing activities as a principal means of livelihood. This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles, and moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity as a principal means of livelihood.

(f) *Principal means of livelihood* means that temporary or seasonal agricultural or fishing activity plays an important part in providing a living for the worker and his or her family.

(Authority: 20 U.S.C. 6391–6399, 6571)

§ 200.82 Use of program funds for unique program function costs.

An SEA may use the funds available from its State Migrant Education Program (MEP) to carry out other administrative activities, beyond those allowable under § 200.101, that are unique to the MEP, including those that are the same or similar to administrative activities performed by LEAs in the State under subpart A of this part. These activities include but are not limited to—

(a) Statewide identification and recruitment of eligible migratory children;

(b) Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States;

(c) Procedures for providing for educational continuity for migratory children through the timely transfer of educational and health records, beyond that required generally by State and local agencies;

(d) Collecting and using information for accurate distribution of subgrant funds;

(e) Development of a statewide needs assessment and a comprehensive State plan for MEP service delivery;

(f) Supervision of instructional and support staff;

(g) Establishment and implementation of a State parent advisory council; and

(h) Conducting an evaluation of the effectiveness of the State MEP.

(Authority: 20 U.S.C. 6392, 6571)

§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.

(a) An SEA that receives a grant of MEP funds must develop and update a written comprehensive State plan (based on a current statewide needs assessment) that, at a minimum, has the following components:

(1) *Performance targets.* The plan must specify—

(i) Performance targets that the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as the State's performance targets, if any, for school readiness; and

(ii) Any other performance targets that the State has identified for migratory children.

(2) *Needs assessment.* The plan must include an identification and assessment of—

(i) The unique educational needs of migratory children that result from the children's migratory lifestyle; and

(ii) Other needs of migratory students that must be met in order for migratory children to participate effectively in school.

(3) *Service delivery.* The plan must describe the strategies that the SEA will pursue on a statewide basis to achieve the performance targets in paragraph (a)(1) of this section by addressing—

(i) The unique educational needs of migratory children consistent with paragraph (a)(2)(i) of this section; and

(ii) Other needs of migratory children consistent with paragraph (a)(2)(ii) of this section.

(4) *Evaluation.* The plan must describe how the State will evaluate the effectiveness of its program.

(b) The SEA must develop its comprehensive State plan in consultation with the State parent advisory council or, for SEAs not operating programs for one school year in duration, in consultation with the parents of migratory children. This consultation must be in a format and language that the parents understand.

(c) Each SEA receiving MEP funds must ensure that its local operating agencies comply with the comprehensive State plan.

(Approved by the Office of Management and Budget under control number 1810–0659)

(Authority: 20 U.S.C. 6396)

§ 200.84 Responsibilities of SEAs for evaluating the effectiveness of the MEP.

Each SEA must determine the effectiveness of its program through a written evaluation that measures the implementation and results achieved by the program against the State's performance targets in § 200.83(a)(1), particularly for those students who have priority for service as defined in section 1304(d) of the ESEA.

(Approved by the Office of Management and Budget under control number 1810–0659)

(Authority: 20 U.S.C. 6394)

§ 200.85 Responsibilities of SEAs and operating agencies for improving services to migratory children.

While the specific school improvement requirements of section 1116 of the ESEA do not apply to the MEP, SEAs and local operating agencies receiving MEP funds must use the results of the evaluation carried out under § 200.84 to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

§ 200.86 Use of MEP funds in schoolwide projects.

Funds available under part C of Title I of the ESEA may be used in a schoolwide program subject to the requirements of § 200.28(c)(3)(i).

(Authority: 20 U.S.C. 6396)

§ 200.87 Responsibilities for participation of children in private schools.

An SEA and its operating agencies must conduct programs and projects under subpart C of this part in a manner consistent with the basic requirements of section 9501 of the ESEA.

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(Authority: 20 U.S.C. 6394)

§ 200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the ESEA, a grantee or subgrantee under part C of Title I may exclude supplemental State and local funds expended in any school attendance area or school for carrying out special programs that meet the intent and purposes of part C of Title I.

(b) Before funds for a State and local program may be excluded for purposes of these requirements, the SEA must make an advance written determination that the program meets the intent and purposes of part C of Title I.

(c) A program meets the intent and purposes of part C of Title I if it meets the following requirements:

(1) The program is specifically designed to meet the unique educational needs of migratory children, as defined in section 1309 of the ESEA.

(2) The program is based on performance targets related to educational achievement that are similar to those used in programs funded under part C of Title I of the ESEA, and is evaluated in a manner consistent with those program targets.

(3) The grantee or subgrantee keeps, and provides access to, records that ensure the correctness and verification of these requirements.

(4) The grantee monitors program performance to ensure that these requirements are met.

(Approved by the Office of Management and Budget under control number 1810–0659)

(Authority 20 U.S.C. 6321(d))

§ 200.89 [Reserved]

48. Revise subpart D of part 200 to read as follows:

Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk of Dropping Out

Sec.
200.90 Program definitions.
200.91 SEA counts of eligible children.
200.92–200.99 [Reserved]

Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk of Dropping Out

§ 200.90 Program definitions.

(a) The following definitions apply to the programs authorized in part D, subparts 1 and 2 of Title I of the ESEA:

Children and youth means the same as "children" as that term is defined in § 200.103(a).

(b) The following definitions apply to the programs authorized in part D, subpart 1 of Title I of the ESEA:

Institution for delinquent children and youth means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

Institution for neglected children and youth means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

Regular program of instruction means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in part D, subpart 2 of Title I of the ESEA:

Immigrant children and youth and limited English proficiency have the same meanings as the term "immigrant children" is defined in section 3301 of the ESEA and the term "limited English proficient" is defined in section 9101 of the ESEA, except that the terms "individual" and "children and youth" used in those definitions mean "children and youth" as defined in this section.

Locally operated correctional facility means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth.

Migrant youth means the same as "migratory child" as that term is defined in § 200.81(d).

(Authority: 20 U.S.C. 6432, 6454, 6472, 7801)

§ 200.91 SEA counts of eligible children.

To receive an allocation under part D, subpart 1 of Title I of the ESEA, an SEA must provide the Secretary with a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section.

(a) *Enrollment.* (1) To be counted, a child or youth must be enrolled in a regular program of instruction for at least—

(i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or

(ii) 15 hours per week if in an adult correctional institution.

(2) The State agency must specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified must be—

(i) Consistent for all institutions or community day programs operated by the State agency; and

(ii) Represent a school day in the calendar year preceding the year in which funds become available.

(b) *Adjustment of enrollment.* The SEA must adjust the enrollment for each institution or community day program served by a State agency by—

(1) Multiplying the number determined in paragraph (a) of this section by the number of days per year the regular program of instruction operates; and

(2) Dividing the result of paragraph (b)(1) of this section by 180.

(c) *Date of submission.* The SEA must annually submit the data in paragraph (b) of this section no later than January 31.

(Approved by the Office of Management and Budget under control number 1810–0060)

(Authority: 20 U.S.C. 6432)

§§ 200.92–200.99 [Reserved]

49. Revise subpart E of part 200 to read as follows:

Subpart E—General Provisions

Sec.
200.100 Reservation of funds for school improvement, State administration, and the State academic achievement awards program.
200.101–200.102 [Reserved]
200.103 Definitions.
200.104–200.109 [Reserved]

Subpart E—General Provisions

§ 200.100 Reservation of funds for school improvement, State administration, and the State academic achievement awards program.

A State must reserve funds for school improvement, State administration, and State academic achievement awards as follows:

(a) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the ESEA, an SEA must first reserve—

(i) Two percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA for fiscal years 2002 and 2003; and

(ii) Four percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA for fiscal year 2004 and succeeding years.

(2) In reserving funds under paragraph (a)(1) of this section, a State may not reduce the sum of the allocations an LEA receives under section 1002(a) of the ESEA below the sum of the allocations the LEA received under section 1002(a) for the preceding fiscal year.

(3) If funds under section 1002(a) are insufficient in a given fiscal year to implement both paragraphs (a)(1) and (2) of this section, a State is not required to reserve the full amount required under paragraph (a)(1) of this section.

(b) *State administration.* (1) An SEA may reserve for State administrative activities authorized in sections 1004 and 1903 of the ESEA no more than the greater of—

(i) One percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the ESEA; or

(ii) $400,000 ($50,000 for the Outlying Areas).

(2)(i) An SEA reserving $400,000 under paragraph (b)(1)(ii) of this section must reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002(a), but is not required to reserve proportionate amounts from section 1002(a), (c), and (d) of the ESEA.

(ii) If an SEA reserves funds from the amounts allocated to the State or Outlying Area under section 1002(c) or (d) of the ESEA, the SEA may not reserve from those allocations more than the amount the SEA would have reserved if it had reserved proportionate amounts from section 1002(a), (c), and (d) of the ESEA.

(3) If the sum of the amounts allocated to all the States under section 1002(a), (c), and (d) of the ESEA is greater than $14,000,000,000, an SEA may not reserve more than one percent of the amount the State would receive if $14,000,000,000 had been allocated among the States under section 1002(a), (c), and (d) of the ESEA.

(4) An SEA may use the funds it has reserved under paragraph (b) of this section to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under Title I, parts A, C, and D of the ESEA.

(c) *State academic achievement awards program.* To operate the State academic achievement awards program authorized under section 1117(b)(1) and (c)(2)(A) of the ESEA, an SEA may reserve up to five percent of the excess amount the State receives under section 1002(a) of the ESEA when compared to the amount the State received under section 1002(a) of the ESEA in the preceding fiscal year.

(d) *Reservations and hold-harmless.* In reserving funds under paragraphs (b) and (c) of this section, an SEA may—

(1) Proportionately reduce each LEA's total allocation received under section 1002(a) of the ESEA while ensuring that no LEA receives in total less than the hold-harmless percentage under § 200.73(a)(4), except that, when the amount remaining is insufficient to pay all LEAs the hold-harmless amount provided in § 200.73, the SEA shall ratably reduce each LEA's hold-harmless allocation to the amount available; or

(2) Proportionately reduce each LEA's total allocation received under section 1002(a) of the ESEA even if an LEA's total allocation falls below its hold-harmless percentage under § 200.74(a)(3).

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20-U.S.C. 6303, 6304, 6317(c)(2)(A))

§§ 200.101—200.102 [Reserved]

§ 200.103 Definitions.

The following definitions apply to programs operated under this part:

(a) *Children* means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children below the age and grade level at which the agency provides free public education.

(b) *Fiscal year* means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for record-keeping.

(Authority: 20 U.S.C. 6315, 6571)

§§ 200.104—200.109 [Reserved]

Appendix—Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations)

Section 200.11 Participation In NAEP

Comment: One commenter recommended that the language requiring LEAs receiving Title I funds to participate in State-NAEP assessments be strengthened by specifying an expected participation rate for States and LEAs. The commenter further requested additional language that would describe allowable extenuating circumstances that would excuse schools from participating in the State NAEP assessments.

Discussion: Section 1112(b)(1)(F) of the ESEA requires that an LEA, in its plan submitted to the State, provide an assurance that it will participate, if selected, in NAEP. The statute is clear that all LEAs, if selected, must participate. Therefore, the Secretary does not believe that language concerning expected participation rates is needed. The Secretary further believes that there will be few, if any, extenuating circumstances that would excuse a school from participating in the State-NAEP and will address any special circumstances on a case-by-case basis.

Changes: None.

Comment: One commenter, while agreeing that participation of fourth and eighth graders in NAEP testing in mathematics and reading is appropriate, stated that the costs for administering those tests should not be taken from a district's Title I allocation.

Discussion: Section 200.11 states that participation in the State NAEP is mandatory, if the Department pays the costs of administering those assessments.

Changes: None.

Comment: One commenter recommended clarifying that the criteria used for selecting students to participate in NAEP reflect the student population that the State tests for State assessment purposes and for making determinations.

Discussion: Section 411(b)(2)of the National Education Statistics Act of 1994 requires NAEP to "use a random sampling process which is consistent with relevant, widely accepted professional assessment standards and that produces data that are representative on a national and regional basis."

Changes: None.

Comment: One commenter recommended adding language to

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address the situation for rural schools with no fourth or eighth grade students by stating that "if the selected school has students in fourth or eighth grade, the school is required to participate in NAEP."

Discussion: Since it would not be possible for a school to participate in NAEP if it had no students enrolled at the grade(s) tested, no further clarification is necessary.

Changes: None

Comment: One commenter stated that if NAEP results are to be valid and accurate, a district may not be allowed to opt out of tests that rely on sampling techniques. To reinforce this policy the commenter recommended that the Department request Congress to make a technical correction to the ESEA and statutorily modify the contradiction in § 602 of that Act, which amended § 411(d)(1) of the National Education Statistics Act of 1994. Another commenter, however, recommended that § 200.11 allow for voluntary participation in NAEP, consistent with § 1112(b)(1)(f) of the ESEA.

Discussion: The regulation clarifies that, if selected, an LEA that receives funds under part A of Title I of the ESEA must participate in NAEP notwithstanding the provisions of § 411(d)(1) of the National Education Statistics Act of 1994, which generally provides for voluntary participation of LEAs.

Changes: None.

Comment: One commenter recommended clarification of the meaning of "participate" because an LEA could agree to participate, but all or most of the selected schools in that LEA could refuse to participate. The current NAEP guidelines require 85 percent participation of selected schools if a State is to report State-level results.

Discussion: Additional clarification is not necessary because an LEA cannot meet the NAEP participation requirement unless it requires all schools selected to participate.

Changes: None.

Section 200.12 Single State Accountability System

Comment: One commenter suggested that States should be directed to develop accountability systems that include multiple assessments that measure higher-order thinking skills. The commenter's rationale was that this would provide more valid and reliable student data.

Discussion: Section 1111(b)(3)(C)(vi) of the ESEA requires that statewide assessments include multiple measures that assess higher-order thinking skills and understanding. This requirement is clarified in § 200.2(b)(7) of the standards and assessment regulations published on July 5, 2002 at 67FR 45038.

Changes: None.

Comment: One commenter suggested that the statutory requirements for determining adequate yearly progress (AYP) be integrated into the State's existing system of accountability. Furthermore, the commenter expressed opposition to using different accountability measures in different States.

Discussion: The Secretary agrees that the statutory and regulatory provisions governing AYP must be integrated into a State's accountability system. To comply with the NCLB Act, each State will need to incorporate these requirements into its current accountability system. The statute gives States flexibility to define achievement standards, design assessments, and implement the accountability provisions. The Secretary believes that these State responsibilities will necessarily result in variation among State accountability systems.

Changes: None.

Comment: One commenter expressed concerns that State accountability systems will exclude homeless children.

Discussion: The statute and the regulations in § 200.6(d) require States to include homeless students in their assessment, reporting, and accountability systems. However, the Secretary is aware that the NCLB Act does not specifically identify homeless students as one of the subgroups whose progress will be monitored in meeting the 2013–2014 proficiency goals. Nevertheless, these students are required to be included in the accountability system. Schools and districts are required to test all students, and high participation rates in statewide assessments (*i.e.*, 95 percent) are a condition of making AYP. Furthermore, these students will be included in at least one subgroup—the "all student" category—and schools will be accountable for ensuring this group of students is proficient. To the extent that homeless children are mobile, and many are, the regulations clarify that students who have not been in a school for a full academic year must be included in district accountability, or in State accountability in those cases where students have been in multiple districts.

Changes: None.

Section 200.13 Adequate Yearly Progress in General

Comment: A number of commenters urged the Secretary to include flexibility in the final regulations on to accommodate "rigorous models that States have already developed that may achieve the same fundamental principles of the statute, although through different approaches," as discussed in the preamble to the proposed regulations and the Secretary's July 24, 2002 *Dear Colleague* letter. In particular, commenters sought recognition of the validity of models that use "growth trajectories," performance indices, or other "value-added" measures. Other commenters, however, strongly urged the Secretary to ensure that any flexibility regarding the definition in the final regulations does not go beyond the original intention of the ESEA.

Discussion: The NCLB Act included very specific, rigorous requirements that States must implement to determine the AYP of each public school, LEA, and the State itself. In preparing the final regulations, the Secretary has faithfully implemented the statutory provisions governing AYP addressing additional flexibility wherever possible. The Secretary realizes that the accountability systems currently in place in many States may not fully meet the statutory and regulatory requirements. To meet the requirements in the ESEA and these final regulations, a State may continue to use its current State accountability system, consistent with the Secretary's July 24, 2002 *Dear Colleague* letter, if that system integrates AYP as defined in the statute and regulations.

Changes: None.

Comment: One commenter requested clarification regarding the impact of recent changes in the definitions of ethnic groups issued by the Office of Management and Budget (OMB) on the requirement to ensure by major racial and ethnic groups. Another commenter also suggested that any changes in such definitions could hinder State efforts to collect student level achievement data.

Discussion: The Department is developing guidance on the implementation of OMB standards for data on multi-racial/ethnic groups of individuals. Those standards will take effect for educational agencies no sooner than the fall of 2004. Once the Department guidance is issued, the Department plans to provide adequate lead-time for educational agencies to make appropriate adjustments to their data systems. Until that happens, educational agencies are under no obligation to maintain, use, or report data under the OMB standards. Although implementation of the new multi-racial data requirements must await publication of guidance by the Department, the Secretary encourages States to consider taking appropriate steps to implement other provisions of the OMB standards, such as separating Asians from Native Hawaiians and Other Pacific Islanders.

Changes: None.

Comment: Several commenters strongly recommended that any alternate assessment be based on the same State academic content standards used for the regular assessments. The commenters believed that applying the same standards to all children is the cornerstone of standards-based education. Other commenters, however, supported alternate standards as long as they are developed through a documented and validated process. Additional commenters urged that any student prevented by a disability from completing the regular assessment be permitted to take an alternate assessment based on different standards, not just students with "the most significant cognitive disabilities." One commenter expressed concern that requiring grade-level testing for students with disabilities would be unfair both to individual students and to schools enrolling such students.

Discussion: Too often in the past, schools and LEAs have not expected students with disabilities to meet the same grade-level standards as other students. The NCLB Act sought to correct this problem by requiring each State to develop grade-level academic content and achievement standards that it expects all students—including students with disabilities—to meet, and by holding schools and LEAs responsible for all students meeting those standards. If students with disabilities cannot take a State's regular assessment, even with accommodations, § 200.6(a) of the final Title I regulations published on July 5, 2002 at 67 FR 45038, 45041 required the State to provide for one or more alternate assessments to measure those students' achievement against the State's standards. Those final regulations, however, did not clearly link those alternate assessments to grade-level expectations. To make this link, the Secretary has revised § 200.6(a)(2)(ii) of the final regulations issued on July 5, 2002 to make clear that alternate assessments must yield results for the grade in which a student with disabilities is enrolled. This change is critical to ensure that students with disabilities are not excluded from State accountability systems. This policy may be modified in the future after public comment on the separate notice of proposed rulemaking discussed in the preamble to these final regulations.

Changes: Section 200.6(a)(2)(ii) has been revised to make clear that alternate assessments for students with disabilities who cannot take the State's regular assessment must yield results for the grade in which the student is enrolled.

Comment: Several commenters expressed concern that proposed § 200.13(d) would create a "loophole" permitting arbitrary exclusion of some schools from an SEA's regular assessment and accountability system. The commenters noted in particular that widely differing definitions of "full academic year" could lead to abuses of the proposed regulations, and that the proposed regulations could be manipulated to avoid assessment of certain students. One commenter recommended clarifying that students attending a school for only part of the academic year, but who are in an assessed grade and who have attended schools in a single LEA for a full academic year, must be assessed and counted in the calculation of AYP for the LEA.

Discussion: The intent behind the proposed regulation was to ensure that schools in which no student attends for a full academic year are held accountable. It was in no way intended to create a "loophole" that would permit certain students to not be assessed. In response to these comments, this proposed regulation is removed. Instead, these schools are governed by the final regulation in §§ 200.20(e) and 200.21(b): any student who is not in a school for a full academic year but within a single district for a full academic year is included in accountability for the LEA, and any student who attends schools within several districts but within the same State for a full academic year is included in determinations of State AYP. Schools in which no student has attended for a full academic year would not be subject to determinations of AYP; those students, however, would be assessed and included, as discussed above, in decisions about LEA and State progress.

Changes: Section 200.13(d) has been amended to remove the proposed requirement that a State must establish a way to hold accountable "schools whose purpose is to serve students for less than a full academic year."

Comment: Two commenters sought clarification of the types of schools referred to in proposed § 200.13(d)(1)(ii)—that is, those whose purpose was to serve students for less than a full academic year. In particular, one commenter expressed concern that the proposed regulations might require an SEA to hold accountable schools not under its jurisdiction, such as juvenile justice alternative education programs.

Discussion: As discussed above, proposed § 200.13(d)(1)(ii) has been deleted. In accordance with § 200.20(e)(2), to the extent that a school serves students in a juvenile justice alternative education program for less than a full academic year, the school would not be held accountable for those students in determinations of AYP.

With respect to the issue of whether a State must hold accountable schools not under the jurisdiction of the SEA, § 200.13 of the regulations, consistent with the statute, requires each State to develop a single, statewide accountability system that will be effective in ensuring that all LEAs, public elementary and public secondary schools make AYP. The Department generally defers to the State interpretation of what is a public elementary and secondary school and an LEA, in accordance with State law. In a number of States, juvenile justice alternative education programs are conducted in public schools operated within school districts or other entities that are LEAs under State law. In some States, the SEA has oversight responsibility for juvenile justice alternative education programs, or enters into an agreement with the State agency responsible for such programs.

Changes: Section 200.13(d)(1)(ii) has been deleted.

Section 200.15 Timeline

Comment: Several commenters requested clarification of how changes in assessment systems or AYP definitions will impact baselines and AYP calculations over the course of the 12-year timeline for ensuring that all students are proficient.

Discussion: As a State changes its assessments and collects new data, the State may adjust its timeline, annual measurable objectives and intermediate goals, as long as the new system has as its goal that all students achieve proficiency by 2013–14. Further, regardless of changing assessment systems, States must review the progress of schools each year and, based on this annual review, identify schools that do not meet AYP. If a Title I school has not made AYP for two consecutive years, it must be identified for improvement, even if the assessment system changed between those years, thereby changing the basis for identification. Similarly, a school that has been identified for improvement cannot exit school improvement status merely because a different assessment system is used. Examples of ways in which States can continue providing accountability decisions while moving to new

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assessments will be included in nonregulatory guidance.

Changes: None.

Section 200.16 Starting Points

Comment: One commenter requested clarification that States are permitted to average assessment data over a period of several years to establish starting points for reading/language arts and mathematics.

Discussion: The Secretary agrees that, consistent with § 200.20(d)(1)(i), more than one year of data can be used to establish the starting point as long as that data includes assessment results from the 2001–02 school year and does not delay the establishment of the starting point. This clarification will be further explained in nonregulatory guidance.

Changes: None.

Comment: Three commenters requested that the final regulations permit States to establish separate starting points for each subgroup of students.

Discussion: The NCLB Act clearly states that the starting point must be the same for each subgroup of students. The final regulations maintain this position. The Secretary believes that this approach establishes similar expectations for all schools and requires high achievement for all students. The final regulations do allow a State to establish separate starting points by grade span.

Changes: None.

Section 200.18 Annual Measurable Objectives

Comment: Two commenters requested that the final regulations permit a State to establish separate baselines and measurable objectives for each subgroup of students.

Discussion: The ESEA clearly states that the starting point and annual measurable objectives must be the same for each subgroup of students.

Changes: None.

Comment: One commenter objected to determining AYP for an LEA based on the academic achievement of all the students enrolled in the LEA, rather than the performance of the schools within the LEA. On the other hand, another commenter recommended that the final regulations clarify that AYP for an LEA be based on the aggregated achievement of its students and not its schools.

Discussion: The ESEA clearly specifies that LEAs are to be held accountable for the achievement of students in the same manner as schools. This means that each LEA is held accountable for all students attending schools within the district for a full academic year. These students must meet or exceed the annual measurable objectives and State goals for the other academic indicators. These provisions are a critical means of ensuring that students who are mobile within a district are not excluded from accountability; they are included in LEA and State accountability.

Changes: None.

Section 200.19 Other Academic Indicators

Comment: Several commenters asserted that, contrary to the ESEA, the proposed regulations appear to make the use of other academic indicators, including graduation rate, optional in the determination of AYP. The commenters recommended that the final regulations clarify that States must include graduation rate at the high school level and one other academic indicator at the elementary and middle school levels as part of their definitions of AYP, and that progress toward intermediate and final objectives for these indicators is required for a State, LEA, or school to make AYP. Another commenter made a similar recommendation, based on the principle that a school that improves test scores by increasing its dropout rate should not make AYP and should be identified for improvement. Another commenter requested that the final regulations reflect the statutory requirement that the other academic indicators adopted by a State be measured separately for each subgroup of students.

Discussion: As stated in § 200.19(a), a State must use graduation rate for high schools and another academic indicator of its choosing for elementary schools and for middle schools to determine AYP. Section 200.19(d)(2) makes clear that the State must disaggregate its other academic indicators, including graduation rate, by each subgroup in order to report that information under section 1111(h) of the ESEA and to calculate whether schools that do not meet the State's annual measurable objectives but have decreased for each subgroup the percentage of students below proficient by at least 10 percent can be considered to have made AYP. As indicated in § 200.19(d)(2)(ii), however, the State need not disaggregate its other academic indicators for determining AYP. The Secretary is confident that publicly reporting disaggregated data on the other academic indicators will ensure that schools, LEAs, and the State are held accountable for subgroup performance.

Changes: Section 200.19(a) and (d)(2) have been modified as discussed above.

Comment: One commenter requested clarification on the definition of "a regular diploma," as used in § 200.19(a)(1)(i). Another commenter asked whether a "certificate of attendance" or similar recognition for students with disabilities may be considered a "regular diploma."

Discussion: The Secretary believes it is important to clarify this term to ensure that States use graduation rates that are as accurate and meaningful as possible. As a result, the final regulations make clear that a "regular diploma" must be fully aligned with the State's academic content standards and may not include a certificate or GED. Thus, if a student with disabilities is given only a certificate of attendance that does not reflect the student's achievement against the State's content standards, that student would not have received a "regular diploma" and thus would not be considered to have graduated for purposes of calculating graduation rate.

Changes: The final regulations clarify in § 200.19(a)(1)(i) that a regular diploma may not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or GED.

Comment: One commenter objected to the use of the term "standard number of years" as part of the regulatory definition of graduation rate, on the grounds that such a limitation could penalize schools serving students—such as students with disabilities, limited English proficient students, and returning dropouts—who typically take longer to graduate.

Discussion: The Secretary believes that the regulations provide sufficient flexibility to address such students. For students that, in very limited instances, may take longer than the standard number of years to graduate, a State may propose a manner for accurately accounting for these students in an alternate definition of graduation rate under § 200.19(a)(1)(i)(B). This definition must be included with the State accountability plan and submitted for peer review.

Changes: None.

Comment: Several commenters expressed concern that proposed § 200.19(a)(1) does not reflect conference report language accompanying the NCLB Act that requires measurement of graduation rates in a way that "avoids counting dropouts as transfers" and specifically includes the graduation rate in the definition of AYP. Several commenters also maintained that any alternative to the statutory definition of graduation rate must be based on a "more accurate longitudinal system that follows individual student progress" and thus could accommodate varying numbers of years required to graduate for students with special educational needs. Two of the commenters encouraged the Secretary to take the lead in establishing a "common framework" for calculating graduation and dropout rates in all States, and one commenter recommended a specific definition based on a combination of statutory and conference report language. Two other commenters supported the flexibility regarding graduation rates provided in the proposed regulation.

Discussion: The Secretary agrees that the graduation rate should not include students who have dropped out of school as students who have transferred to another school. With the passage of the NCLB Act, the expectations for schools to make AYP have increased; it is critically important that schools do not make AYP simply because students have dropped out of school. The Secretary also agrees that graduation rate should be measured from the beginning of high school in order to capture students who drop out before reaching 12th grade.

Changes: Section 200.19(a)(1)(ii) of the final regulations clarifies that a State must define graduation rate in a manner that does not count students who have dropped out of school as students who have transferred to another school. In addition, § 200.19(a)(1)(i)(A) of the final regulations has been amended to require States to measure graduation rate "from the beginning of high school."

Comment: One commenter agreed with proposed § 200.19(c), that gives States discretion to require progress on other academic indicators by setting increasing goals for those indicators, but recommended that the final regulation also not permit a decline in such indicators from the initial baseline level. Another commenter requested clarification as to whether the State must set goals for these indicators or may simply require "progress" over a certain "threshold" level. A third commenter recommended requiring a timeline for any additional indicators used by a State, including starting points, intermediate goals, and annual measurable objectives for such indicators.

Discussion: The NCLB Act offers flexibility to States to define how progress will be measured relative to the other academic indicators. The regulations permit, but do not require, a State to increase the goals of its other academic indicators over the course of the timeline.

Changes: None.

Section 200.20 Making Adequate Yearly Progress

Comment: In determining AYP, one commenter requested clarification regarding the use of academic indicators in a school that includes both high school students and middle or elementary school students. Since these schools will have two indicators, the commenter asked if the groups must make progress on both for the school to make AYP.

Discussion: The NCLB Act is silent on this issue. The use of these indicators in determining AYP may vary depending on the configuration of a school (*e.g.*, kindergarten through eighth grade, eighth through twelfth grade). The Secretary asks States to propose a policy for addressing this issue when they submit plans for their State accountability systems.

Changes: None.

Comment: One commenter expressed concern that the 95 percent assessment requirement in proposed § 200.20(c)(1)(i) may be misconstrued as relieving States, LEAs, and schools from the requirement to assess all students under §§ 200.2(b)(9) and 200.6.

Discussion: The NCLB Act clearly states that *all* students must be assessed to measure their achievement toward meeting the State's challenging academic standards. Schools and districts are held accountable for ensuring high rates of participation: no less than 95 percent of all students and student subgroups must participate in the statewide assessments.

Changes: Section 200.20(c)(2) clarifies that a State, LEA, or school may not systematically exclude students from taking the statewide assessments.

Comment: Several commenters requested that the final regulations provide flexibility to States in applying the requirement that 95 percent of each subgroup be tested in order to make AYP. Three of these commenters were particularly concerned about the impact on this requirement of State rules permitting parents to exclude their children from statewide assessments. Two other commenters recommended phasing in the 95 percent requirement over several years.

Discussion: The ESEA does not allow for a phase-in of the participation requirement for AYP. The statute does acknowledge through the 95 percent participation rate requirement that there may be instances in which parents do not allow their students to take the statewide assessments. Schools, LEAs, and States need to carefully and thoughtfully explain to parents the importance of participating in such assessments and the consequences for not participating.

Changes: None.

Comment: Two commenters requested clarification that proposed § 200.20(c)(1)(ii), which requires subgroups to be of sufficient size to produce statistically reliable results, applies only to the determination of AYP and does not change the requirement that all students must participate in the annual assessment system.

Discussion: The ESEA clearly states that all students must be assessed to measure their achievement on challenging academic standards. For purposes of determining AYP, if a subgroup within any particular school or district is too small to produce statistically reliable results, the requirement for 95 percent participation would not apply to that subgroup. The Secretary clarifies in the final regulations that a State, LEA, or school may not systematically exclude students from participating in the assessments.

Changes: Section 200.20(c)(2) of the final regulations clarifies that the "95 percent participation rule" does not permit a school or LEA to systematically exclude 5 percent of students from participating in the assessments.

Comment: Several commenters recommended that the final regulations clarify that, even if a subgroup is too small to produce statistically reliable data at the school level, the results of that subgroup must be aggregated at the next level—in this case, for the LEA—to ensure that the progress of the subgroup is not simply overlooked or excluded from all calculations of AYP.

Discussion: The Secretary agrees with these comments.

Changes: Sections 200.20(e)(1) and 200.21(b) and 200.7(d) make clear that all students enrolled for a full academic year in an LEA or in a State must be included for accountability purposes at that level, provided the size of a subgroup is large enough to produce statistically reliable results. Subgroups too small to be reported or identified at one level must be included at the next higher level, assuming the subgroup reaches the appropriate size.

Comment: Two commenters expressed concern that varying definitions of "statistical significance" applied under proposed § 200.20(c)(1)(ii) could undermine the subgroup-based accountability provisions of the NCLB Act. One commenter recommended that the final regulations include standards to guide States in determining the number of students required to yield statistically reliable information.

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Discussion: Determining the number of students required to yield statistically reliable information is the responsibility of each State. The Secretary will review and approve these definitions as part of his approval of State accountability systems. In nonregulatory guidance, the Department may offer some guidelines for States to consider as they make this decision.

Changes: None.

Comment: One commenter recommended that the final regulations provide flexibility in defining AYP for small school districts and single-school LEAs, in particular, that may find it difficult to implement the subgroup-based accountability requirements of the ESEA.

Discussion: The intent of the law is to ensure that all schools and districts are held accountable for student achievement. In those instances in which schools and districts are too small to include any subgroups, the school and district will need to make a decision about AYP at least on the basis of all its students who were enrolled in the school or district for a full academic year. The Department of Education will issue nonregulatory guidance to provide examples of methodologies for handling this issue.

Changes: None.

Comment: Two commenters objected to proposed § 200.20(d)(1)(ii)(B), which would permit a State to delay the determination of AYP on the basis of the new assessments for grades 3–8 required by the NCLB Act until the State has two or three years of data to average under proposed § 200.20(d)(1)(i). One commenter noted that this provision potentially delays the use of the new assessment data until the final year of the current authorization. Another commenter, however, expressed support for the flexibility provided in the proposed regulation.

Discussion: Section 1111(b)(2)(J) of the ESEA permits a State to establish a uniform procedure for averaging data across grades and across years in determining AYP. That provision specifically permits a State averaging data across years to accumulate two or three years of data under the new grades 3–8 assessments required by the NCLB Act before using that data to determine AYP. The final regulations accurately reflect this authority. They also make clear, however, that a State may not delay implementing the new grades 3–8 assessment requirements. Moreover, the State must report these data under section 1111(h)of the ESEA. Further, at a minimum, the State must continue making annual decisions about AYP on the basis of data from the reading/language arts and mathematics assessments in the three grade spans required in Section 1111(b)(3)(C)(v)(I) of the ESEA.

Changes: Section 200.20(d)(1) has been revised to clarify better the intent of these provisions.

Comment: Two commenters recommended modifying proposed § 200.20(e) to restore the statutory emphasis on mitigating the impact of student mobility on assessment results and prevent the potential creation of a loophole permitting the exclusion of dropouts from the determination of AYP. Additionally, another commenter recommended permitting either the State or the LEA to define "full academic year."

Discussion: The final regulations are an accurate reflection of the statute: students who are enrolled within a district for a full academic year must be included in the AYP of an LEA. Moreover, the final regulations clarify that students who were not enrolled within a school for a full academic year may not be included within that school's determination of AYP. The Secretary also believes that it is appropriate and justified to leave the decision of what is a "full academic year" to each State.

Changes: None.

Section 200.21 Adequate Yearly Progress of a State

Comment: Three commenters recommended that the final regulations specify that students who attend schools within a State but in more than one LEA must be included in the determination of AYP for the State. Two commenters also urged the Secretary to require States to report on the progress of these students.

Discussion: The Secretary concurs with these comments.

Changes: Section 200.21(b) of the final regulations specifies that all students who were enrolled within schools in a State for a full academic year must be included in determining the progress of the State.

Comment: One commenter requested that the final regulations include a description of required technical assistance and other interventions by the Secretary in the case of States that do not make AYP.

Discussion: In the case of a State that does not make AYP, the technical assistance offered by the Secretary would be specific to the State's needs. In order to offer the maximum amount of flexibility in designing technical assistance, this issue will not be addressed in the regulations but will be handled on a case-by-case basis within the statutory parameters.

Changes: None.

Comment: One commenter urged the Secretary to include in the final regulations a description of State obligations and requirements under section 1111 of the ESEA to ensure that each State provides sufficient support to LEAs and schools in implementation.

Discussion: The ambitious goals for student achievement contained within the NCLB Act will best be achieved when States, districts, and schools work together. To that end, the Department will provide nonregulatory guidance about the roles of each entity and how they can support improved achievement. The Secretary understands the important role of the U.S. Department of Education as well and intends to review State accountability plans in an expeditious manner.

Changes: None.

Comment: Two commenters recommended that the final regulations require States to establish English Language Development Standards designed to measure the oral, reading, and written proficiency in English of limited English proficient students, as well as annual exams linked to those standards.

Discussion: These final regulations cover only those provisions contained within Title I of the ESEA. The provisions governing the development of English proficiency are found in Title III. The Department plans to issue nonregulatory guidance on this issue.

Changes: None.

Schoolwide Programs

Section 200.25 Schoolwide Program Purpose and Eligibility

Comment: One commenter cautioned that because the final regulations are used frequently at the district and school level, they should adhere as closely as possible to the NCLB Act. The commenter strongly suggested that the regulations be restored to reflect the omitted statutory requirements for schoolwide programs such as: opportunities for advanced instruction and increased learning time, extended learning opportunities, and provisions related to the needs assessment. The commenter also recommended that the regulations be changed to ensure that schoolwide programs include strategies to meet the educational needs of historically underserved populations.

Discussion: The preamble to the NPRM makes specific reference to the major purpose of schoolwide programs, which is to address the needs and improve academic achievement of all students in the school, especially for those furthest away from demonstrating proficiency. The language in the preamble did not especially address the comprehensive needs assessment and its provisions because the needs assessment is an integral part of the schoolwide planning process outlined in § 200.26.

Changes: None.

Comment: One commenter requested clarification of the apparently contradictory regulatory language in §§ 200.25 through 200.27, that defines low-achieving children as "those students furthest away from demonstrating proficiency," while the language in § 200.25 states that a schoolwide program need not identify, target, or track these children.

Discussion: In defining lowest achieving children, the preamble refers to those students furthest away from meeting proficient and advanced levels of achievement consistent with sections 1111 and 1116 of the Title I statute. The Secretary agrees that there is a need to clarify in guidance that identification of those students furthest away from meeting proficient and advanced levels of achievement and identification of students for program participation have different implications. Schoolwide programs must be able to accomplish the former. They do not have to perform the latter as a means to achieve it. The Department will clarify this issue further in nonregulatory guidance.

Changes: None.

Comment: One commenter expressed concern about the requirement that all paraprofessional instructional staff in the schoolwide program meet the requirements for paraprofessionals that apply to targeted assistance schools. The commenter expressed concern that many schools will elect to remain in or return to targeted assistance status.

Discussion: Section 1119(c) of the ESEA requires that paraprofessionals hired after January 8, 2002 and working in a program supported with Title I, part A funds be highly qualified. Section 200.58 of the regulations further clarifies that statutory requirement by providing that all paraprofessionals working in a schoolwide program are considered to be supported by Title I, Part A funds. The Secretary believes that individual schools will make the decision to operate a schoolwide program, and continue their operation based on the need to reform the school and improve student achievement.

Changes: None.

Comments: Two commenters objected to the provision in § 200.25(b)(1)(ii) that the 40 percent poverty eligibility threshold for operating a schoolwide program is required for only the initial year of the program. The commenters suggested that this provision be deleted, so that if a school's poverty level decreases in subsequent years it can no longer operate as a schoolwide project.

Discussion: Section 1114(a)(1) of the ESEA establishes the 40 percent eligibility threshold for a school to operate a schoolwide program. The intent of the statute is to enable the schoolwide program to improve the entire educational program of the school. Long-term reform occurs over time and requires sustained and consistent intervention if student achievement is to improve. The Secretary believes that making the 40 percent threshold an initial eligibility requirement, rather than an annual eligibility requirement, reinforces this long-range approach.

Changes: None.

Comments: Two commenters questioned, in § 200.25(b)(2), the advisability of allowing schools to choose a measure of poverty to determine eligibility for schoolwide programs that is different from the measure used by LEAs for Title I allocation purposes. One recommended requiring identical measures of poverty across the LEA's Title I program, or at least requiring equivalent or comparable measures of poverty.

Discussion: The provision to allow a school to use a poverty measure that is different from the one the LEA selects for Title I allocation purposes when determining eligibility for operating a schoolwide program is a continuation of flexibility provided under the old regulations. An LEA may use more restrictive free school lunch data, rather than free and reduced-price lunch data to determine which schools are eligible for Title I and to allocate funds. Based on free lunch data, however, a school might not meet the 40 percent schoolwide eligibility criteria data, while it might qualify if free and reduced-price lunch data were used. The Secretary wants to continue providing as much flexibility as possible to enable schools to qualify for implementing a schoolwide program.

Changes: None.

Section 200.26 Development and Evaluation of Schoolwide Program Plan

Comment: One commenter remarked that the language of the proposed regulation concerning the development of the schoolwide plan is complex and confusing because of its organizational structure and recommended reorganizing § 200.26 along the lines of the NCLB Act.

Discussion: The language in § 200.26 of the NPRM was intended to clarify that a schoolwide plan must describe how the school will improve academic achievement and make explicit the process used for developing the plan. However, the Secretary believes that the organization in the NPRM may be confusing and concurs that reorganizing the regulations to make them more consistent with the NCLB Act would make clearer the planning process required to operate a schoolwide program.

Changes: The Secretary has reorganized the regulations by adding a new § 200.26 (renamed "Core elements of a schoolwide program") and placed it under the undesignated center heading "Schoolwide Programs" in subpart A of part 200 to make the regulations consistent with the statute. All cross-references have been amended appropriately.

Comment: One commenter recommended an addition to § 200.26(b)(1) to acknowledge that the needs of migratory children are constantly changing, requiring an ongoing needs assessment process.

Discussion: The comprehensive needs assessment described in § 200.26 addresses the needs of the school, in general, and specifically requires that the needs of migratory children be taken into account when conducting the needs assessment. The Secretary has added language to this section that includes migratory children as part of the needs assessment and provides a specific reference to the definition contained in section 1309(2) of the ESEA.

Changes: The Secretary has added a new § 200.26 and placed it under the undesignated center heading "Schoolwide Programs." The language in this new section provides for the use of academic achievement information for all students in the school including all demographic groups of students as part of the needs assessment. The inclusion of migratory students in the needs assessment, and as defined in section 1309(2) of the NCLB Act is referenced in this section.

Comments: Several commenters referenced language in § 200.26(a)(2)(ii) requiring a focus on scientifically based research. One remarked that the meaning of this term is widely debated and that the application of science to improved instruction is often a complex process. One commenter asked for clarification about the meaning of regulatory language that requires a school's process for developing its schoolwide plan to focus on scientifically based research.

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Discussion: Scientifically based research is defined in section 9101(B)(37) of the ESEA as "research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs." The strategies and methods used in schoolwide programs must be of high quality and have a reasonably high probability of increasing student achievement.

Changes: None.

Comments: Several commenters requested amplification of language regarding the schoolwide planning process to reinforce the notion that the process must be meaningful, to provide clarity regarding who should participate in the evaluation of the program's effectiveness, and to require that the comprehensive needs assessment include data on school funding and the school's capacity to meet needs. One commenter in this group also requested that the regulations be more explicit about the importance of the comprehensive needs assessment to the planning process.

Discussion: The Secretary agrees that the schoolwide planning process must be meaningful, and reflect data obtained from the comprehensive needs assessment. The resulting plan must include strategies for improved student achievement, evaluation, monitoring for effectiveness, and for amendment of the plan, as needed.

Changes: To make this policy clear and to address the comenters' concerns, the Secretary has reorganized § 200.26 and renamed it "Core elements of a schoolwide program". In the NPRM, these provisions were contained under § 200.28—Use of funds in a schoolwide program. The new § 200.26 outlines the basic elements of the schoolwide program planning process with regard to conducting a comprehensive needs assessment, developing a comprehensive plan, and evaluating the program.

Comment: One commenter noted widespread confusion about the Title I provisions related to serving homeless children and recommended further elaboration in nonregulatory guidance on needs and issues affecting homeless students. The commenter also suggested that the school needs assessment take into account the needs of homeless as well as migrant students.

Discussion: The Secretary agrees with the commenter's concerns and will address in nonregulatory guidance the issue of including the homeless population in all schoolwide reform efforts. The language included in revised § 200.26(a)(1)(i) provides that the comprehensive needs assessment must be based on academic achievement information about all students in the school, which includes homeless and migrant students.

Changes: None.

Comments: One commenter expressed concern that the needs assessment was taken out of the listing of components, thereby eliminating the requirement for a school to describe the needs assessment in its schoolwide plan.

Discussion: The needs assessment is critical to the development of the comprehensive schoolwide program plan. A review of the core elements of the schoolwide program includes the comprehensive needs assessment, the comprehensive plan, and the evaluation. The description of the comprehensive needs assessment may be included as a part of this section.

Changes: In the revised § 200.26, the Secretary has included three subparts that address the comprehensive needs assessment, the comprehensive plan, and the evaluation.

Comments: Two commenters expressed concern about the importance of including strategies to increase parental involvement, and requested that the regulations make reference to the parental involvement requirements contained in section 1118 of the ESEA.

Discussion: The Secretary concurs that including parents in all aspects of schoolwide program planning, development, and implementation is essential.

Change: The Secretary has included provisions for parental involvement, consistent with the ESEA, in §§ 200.27(b)(2); 200.27(c)(1) and (2); and 200.28 (c)(3)(i).

Section 200.27 Schoolwide Program Implementation Components

Comments: Several commenters expressed concern that this section of the proposed regulations omitted several key components that are critical to operating a schoolwide program: These components include the participation of teachers in the decisions regarding use of assessments, increasing the amount and quality of learning time, strategies to meet the needs of historically underserved populations, methods that help provide an accelerated and enriched curriculum, language that refers to proficient and advanced levels of academic achievement, inclusion of information about how the school will determine if academic needs have been met, and instruction by highly qualified teachers.

Discussion: The proposed regulations organized the schoolwide requirements to emphasize key components necessary for the operation of a successful schoolwide program. The intent of the NPRM was to outline an approach that would lead schools to restructure in ways that would be most likely result in improved student achievement. However, the Secretary agrees that the proposed regulations may be confusing because those provisions did not parallel the language in the ESEA.

Changes: The Secretary has amended and renamed § 200.27—Schoolwide program components—to make the regulations parallel the statute more closely and to address the specific concerns of the commenters.

Comments: Two commenters expressed concerns about proposed language in § 200.27(c) of the NPRM, which requires the inclusion of parents in the planning and academic intervention process, and requires that student achievement reports be provided to parents in a language that they can understand.

Discussion: The Secretary strongly supports the right of parents to be involved in the schoolwide planning process and to have information regarding the education services provided to their children in a form and language they can understand.

Changes: The Secretary has clarified the parental involvement provisions in §§ 200.27(b)(2) and 200.27(c) to require that a school develop its schoolwide comprehensive plan with the involvement of parents, consistent with section 1118 of the ESEA and to make that plan available to parents in an understandable format and, to the extent practicable, in a language that parents can understand.

Comment: One commenter believed that the reference in § 200.27(a) concerning the application of the new science requirement by 2005–06 was inappropriate because improvement in meeting standards cannot be demonstrated without a proper assessment.

Discussion: the Secretary agrees that the reference to science in § 200.27(a) is confusing and that providing a general reference to improving the opportunities of students to meet the State's proficient and advanced levels of student achievement is more appropriate.

Changes: The Secretary has made this clarifying change in § 200.28(a)(1).

Section 200.28 Use of Funds in a Schoolwide Program

Comment: One commenter asked that § 200.28 be further clarified to confirm that consolidation of funds does not constitute a waiver of the school's obligation to comply with the requirements of the NCLB Act, nor does it diminish the school's obligation to fulfill other programs' purposes. All program purposes and needs must be met, not merely addressed.

Discussion: The Secretary agrees with the commenter's concern and will provide further clarification in nonregulatory guidance.

Changes: None.

Comments: Several commenters recommended that § 200.28(c)(3)(i)(A) and (B) require that before consolidating Title I part C funds, a school first meet the unique educational needs of migratory students that result from their migratory lifestyle and document that these needs have been met. Several of these commenters further recommended that documentation could consist of maintaining a record of the actions taken by the school or LEA on behalf of migrant students.

Discussion: The Secretary agrees with these concerns and will provide further clarification in nonregulatory guidance.

Changes: None.

Comment: Several commenters recommended an addition to § 200.28(c)(3)(i) of the NPRM to include consultation with parents of migrant children or organizations representing those parents, or both.

Discussion: The Secretary concurs with commenters regarding the importance of involving parents of migratory children and the organizations that represent them.

Changes: The Secretary has clarified in § 200.28(c)(1)(i) that an LEA must consult with parents of migratory children or organizations representing those parents, or both.

Comment: One commenter noted that currently the latest list of programs identified by the Department that may be combined in a schoolwide program was published in a September 21, 1995 **Federal Register** notice. This does not allow for combining of funds from new programs created by the NCLB Act. The commenter recommended that the regulations specify which Federal funds administered by the Secretary may be combined in a schoolwide program.

Discussion: The Secretary understands the importance of LEAs and schools knowing which funds may be combined in a schoolwide program and will publish an updated list in the **Federal Register** soon after publication of the final regulations.

Changes: None.

Comment: One commenter noted that the provision in § 200.28(c)(3)(iii) allowing for consolidation of IDEA funds in a schoolwide program is not in the ESEA, and recommended that this provision should be deleted from the regulations.

Discussion: The provisions in the regulations concerning consolidation of special education funds are consistent with the requirements of section 613(a)(2)(D) of the IDEA. The regulations provide that the amount of funds consolidated for special education purposes may not exceed the amount received by the LEA under part B of IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program.

Changes: None.

Comment: One commenter noted that § 200.28(c)(4)(i)(A), of the proposed regulations, that provides that programs consolidated in a schoolwide program are exempt from statutory or regulatory provisions governing their operation, does not include an important qualification contained in section 1114 (a)(3)(A) of the ESEA. This statutory provision allows programs to be consolidated only "if the intent and purpose of such other programs are met." This omission must be restored in order to conform to the ESEA.

Discussion: The Secretary agrees with the commenter.

Changes: The Secretary has added clarifying language in § 200.29(b)(1)(ii) requiring that a school consolidating and using in a schoolwide program funds from any other Federal program administered by the Department meet the intent and purposes of that program and ensure that the needs of the intended beneficiaries of that program are addressed.

Comment: One commenter urged that the regulations be changed to ensure that a school operating a schoolwide program does not use Title II, part D, Education Technology Grant funds for purposes other than those authorized by the statute. The commenter suggested that language be added to § 200.28(c)(4)(i)(C) to require that a schoolwide program as a whole, addresses the "intent, purposes, activities and uses" of funds, rather than just the "intent and purposes" of funds, for each Federal program whose funds were consolidated to support the schoolwide program.

Discussion: The Secretary believes that the language now in § 200.29(d) requiring that the intent and purposes of the programs consolidated in a schoolwide program be met provides sufficient protection to ensure that the needs of the children specifically designed to be served by those programs are met. The proposed change would take away the flexibility a school would have in operating schoolwide programs. The purpose of a schoolwide program is to enable a school to combine its Federal, State and local resources so it can focus on providing comprehensive services that best enable its students to meet State's academic content and student achievement standards. In exchange for this flexibility, the school must ensure that its students make progress toward meeting those academic content and student achievement standards.

Changes: None.

Comment: One commenter recommended adding a new paragraph (d) to § 200.28 mandating that States require LEAs to involve providers of federally funded adult education and career technical education programs to ensure the maximum support for the academic achievement of students in local schools.

Discussion: While the Secretary agrees that providers of Federally funded adult education and career technical education programs can play an important role in providing services to students in local schools, involving these providers in not a specific statutory requirement and may not be appropriate in every schoolwide program.

Changes: None.

LEA and School Improvement

Section 200.30 Local Review

Comment: One commenter objected to giving LEAs the responsibility for conducting the annual progress review to determine whether participating schools are making AYP, on the grounds that a statewide system would better ensure equity and reliability in making AYP determinations.

Discussion: The Secretary understands the concerns of the commenter, but believes that the combination of the statewide assessment system described in § 200.2 and the AYP requirements described in §§ 200.13 through 200.20, which LEAs must use in conducting their review of school performance, will ensure that such reviews are conducted in a fair and uniform manner across each State. While the statute clearly specifies that the local review and school improvement process is an LEA responsibility, it also ensures that, in carrying out this responsibility, LEAs will rely primarily on standards and indicators developed at the State level.

Changes: None.

Comment: One commenter expressed concern that the proposed regulations do not address the role of charter school LEAs or other single-school LEAs in the school review and improvement process.

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Discussion: Single-school LEAs have the same role and responsibilities in the school review and improvement process as other LEAs, including responsibility for review of school progress in meeting adequately yearly progress requirements, identifying the school for improvement, corrective action, or restructuring, providing public school choice options under § 200.44, and making available supplemental educational services in accordance with §§ 200.45 and 200.46.

Changes: None.

Comment: One commenter expressed concern that the proposed regulations imply that LEAs are not required to use other academic indicators in determining whether a school has made AYP.

Discussion: As clarified in § 200.19(a), a State must use graduation rate for high schools and another academic indicator of its choosing for elementary schools and for middle schools to determine AYP. At the local level, an LEA may use additional academic assessments or indicators for the purpose of identifying additional schools for improvement, corrective action or restructuring. In addition, progress on these LEA academic indicators may permit a school to make AYP in accordance with the exception clause specified in § 200.20(b).

Changes: None.

Comment: One commenter objected to the proposed regulation permitting an LEA to limit its review of a school operating a targeted assistance program to the academic achievement of only those children served by the program. The commenter noted that this regulation could create a disincentive for schools to operate schoolwide programs and could hinder the development of single, statewide accountability systems covering all students.

Discussion: The Secretary agrees with the concerns expressed by the commenter, but notes that the regulations reflect the clear language of the statute. In addition, the Secretary believes that few schools will take advantage of this provision, because it would, by definition, limit review to the lowest-achieving students and thus might make it more difficult for a school to demonstrate AYP.

Changes: None.

Comment: One commenter recommended adding to the final regulations statutory language regarding the use of the results of the LEA's annual review of school performance.

Discussion: The Secretary believes that in the overall context of AYP and school improvement requirements, the purposes of the annual progress review and the use of the results of that review are sufficiently explained in the regulations. Any further explanation may be accomplished through nonregulatory guidance.

Changes: None.

Section 200.32 Identification for School Improvement

Comment: Several commenters maintained that the identification timeline in the proposed regulations does not allow sufficient time for States to make available assessment data from a given school year, or for school districts to analyze that data and identify schools for improvement, corrective action, or restructuring, prior to the beginning of the next school year.

Discussion: The identification timeline in the proposed regulations is faithful to the timeline specified in the ESEA. The Secretary recognizes that States may have to adjust their assessment schedules to comply with this timeline, but the centrality of the timeline to the integrity of the entire improvement process, as well as the plain language of the statute, permit no alternative.

Changes: None.

Comment: One commenter recommended that the timeline for identifying schools for improvement be based on the school year in which assessment results become available, rather than the school year in which the assessments are administered.

Discussion: Section 1116(b)(1)(B) of the ESEA requires identification "before the beginning of the school year following such failure to make." The Secretary believes that this phrase unambiguously links identification to the school year in which the failure occurred, and not to the availability of assessment results documenting that failure. In addition, section 1116(a)(2) of the ESEA, incorporated into the regulations as § 200.49(e), reinforces this approach by requiring SEAs to make assessment results in a given school year available to LEAs before the beginning of the next school year. Any delay in this identification timeline would severely undermine the strong accountability, with consequences for schools and options for students, that is at the core of the NCLB Act.

Changes: None.

Comment: Two commenters expressed concern that the proposed regulations appear to hold LEAs responsible for identifying schools for improvement prior to the beginning of the school year even if SEAs fail to make assessment results available on a timely basis.

Discussion: Section 200.49(e) of the final regulations specifically requires SEAs to ensure that the results of academic assessments administered as part of the State assessment system for a given year are available to LEAs before the beginning of the next school year. In addition, § 200.49(e)(1) clarifies that the SEA must provide the required assessment data in sufficient time to permit the LEA to make the identification in accordance with § 200.32(a)(2). Finally, § 200.49(e)(2) prohibits an LEA from identifying a school for improvement, corrective action, or restructuring unless the SEA has provided assessment results to the school.

Changes: The final regulations include additional language in § 200.49(e)(1) requiring SEAs to make available assessment data for a given school year to LEAs "in such time as to allow for the identification" for improvement prior to the beginning of the next school year.

Comment: Several commenters objected to the flexibility provided in proposed § 200.32(d) and (e) regarding the identification of schools for improvement or removal of schools from improvement status on the basis of 2001–2002 assessment results. The commenters interpret the statute as requiring the identification for improvement of any school that fails to make AYP for two consecutive years, as well as the removal from improvement status of any school that makes AYP for two consecutive years, regardless of the years involved.

Discussion: The Secretary believes that the absence of any reference to 2001–2002 assessment results in the otherwise very specific transition provisions of the statute, combined with the strong likelihood that many States would not be able to make these results available to LEAs prior to the beginning of the 2002–2003 school year, supports a flexible approach to the use of those results for identification purposes during the transition to the NCLB Act.

Changes: None.

Comment: Two commenters expressed concern that the proposed regulations, which give LEAs flexibility in the use of 2001–2002 assessment data in making identification decisions not specifically covered under the transition provisions of the statute, could create confusion regarding the use of 2001–2002 assessment data in subsequent years.

Discussion: The Secretary agrees that the flexibility provided in the proposed regulations could be interpreted as permitting LEAs to ignore 2001–2002 assessment data in making identification decisions in subsequent years. The regulations clarify that an LEA decision not to identify for improvement a school that, on the basis of 2001–2002 assessment data, does not make AYP for a second consecutive year, does not permit the LEA to ignore that failure in making future identification decisions.

Changes: Section 200.32(e) has been amended to clarify that if an LEA chooses not to identify for improvement a school that, on the basis of 2001–2002 assessment results, does not make AYP for a second consecutive year, it nevertheless must consider the school's 2001–2002 performance as the first year of not making AYP for the purpose of subsequent identification decisions.

Comment: One commenter asserted that the proposed regulations unfairly penalize schools that were hoping to exit improvement status by making AYP in two out of three years, as provided for under the previous statute. For example, under the old law, a school that made AYP in the 1999–2000 school year, failed to make AYP in 2000–2001, and made AYP in 2001–2002 would be removed from improvement status. Under the new law, however, such a school would continue to be identified for improvement until it makes AYP for two consecutive years.

Discussion: The reauthorized ESEA specifies the identification status of schools identified for improvement under the previous law, but makes no exceptions to the new requirement that schools may be removed from improvement only after making AYP for two consecutive years. The Secretary has provided limited flexibility to LEAs to identify for improvement or remove from improvement schools in certain situations not covered by the statutory transition provisions. In both instances, however, this flexibility is consistent with the "two consecutive year" standard of the statute. The Secretary's authority to provide flexibility in implementing the new law does not extend to overriding this standard.

Changes: None.

Comment: Several commenters objected to the proposed requirement that LEAs make choice immediately available to students attending schools that are identified for improvement after the beginning of the school year following the year in which the LEA administered the assessments that resulted in the identification for improvement. The commenters believe that this requirement will be unnecessary if identification takes place in accordance with the statutory timeline (prior to the beginning of the school year), and that if identification occurs following the beginning of the school year, the statute requires LEAs to provide choice no sooner than the first day of the school year following identification.

Discussion: The commenters are correct in their observation that the mid-year choice requirement of proposed § 200.32(f)(1) is unnecessary if identification occurs in accordance with the statutory timeline. The Secretary's intention, however, was to encourage adherence to that statutory timeline by removing a potential incentive for delaying identification until after the beginning of the school year. In other words, an LEA may not postpone its obligation to provide public school options to students attending schools identified for improvement simply by delaying identification.

Changes: None.

Comment: Several commenters objected to the proposed regulations requiring an LEA to count as a full year of improvement any year in which the LEA identifies a school for improvement after the beginning of the school year. The commenters maintained that mid-year identification would not provide adequate time for districts and schools to develop and implement effective improvement plans. They also noted that the statutory timeline is linked to identification and generally requires a "full school year" at each stage of the improvement process. One commenter suggested that while a school identified in mid-year should start the improvement process, it should not officially enter improvement status until the beginning of the next school year.

Discussion: The Secretary understands the concerns of the commenters, particularly with regard to giving schools adequate time to prepare and carry out effective improvement plans. However, the clear intention of the NCLB Act is to impose rigorous accountability measures on a precise timeline designed both to bring about rapid improvement in school quality and to provide immediate options to students attending identified schools. Giving primacy to the "full school year" language of the statute potentially rewards LEAs that violate the statutory identification timeline, delays the availability of public school choice and supplemental educational services to students, and unacceptably extends an already lengthy improvement timeline (which permits six years of not making before implementation of restructuring). The regulations underscore, in § 200.49(e), the importance of SEAs ensuring that LEAs and schools receive their assessment data in a timely manner so that they can meet the statutory school improvement deadlines.

Changes: None.

Section 200.33 Identification for Corrective Action

Comment: Two commenters objected to the flexibility provided to LEAs in proposed § 200.33(c) to remove from corrective action a school that, on the basis of assessments administered during the 2001–2002 school year, makes AYP for a second consecutive year. They maintained that the statute requires LEAs to remove schools from corrective action in such cases, and one commenter argued that LEAs also should use 2001–2002 assessment data to identify additional schools for corrective action.

Discussion: The Secretary believes that the proposed regulations are an appropriate way to address an inequity in the statutory transition provisions covering identification for corrective action. These provisions require LEAs to treat schools that were identified for corrective action prior to enactment of the NCLB Act as subject to corrective action for the 2002–2003 school year. Some of these schools, however, may have made AYP in both 2000–2001 and 2001–2002, thus meeting the statutory requirement for removal from corrective action. The proposed regulations permit LEAs to remove these schools from corrective action, but does not require such removal because some LEAs may, in part due to the uncertain timing of assessment results, prefer simply to adhere to the statutory transition provisions.

On the issue of identifying additional schools for corrective action, § 200.32(c)(1) already specifies the identification status of schools that have been identified for improvement for two or more consecutive years. LEAs must treat such schools as being in the second year of improvement under the new law for the 2002–2003 school year. Failure to make AYP in 2001–2002 would not change this designation. The proposed regulations thus reflect the clear intent of the NCLB Act to identify for corrective action, for the 2002–2003 school year, only those schools identified for corrective action under the previous law.

Changes: None.

Section 200.36 Communication with Parents

Comment: One commenter expressed concern about the rights of parents with limited English proficiency, in light of Title VI of the Civil Rights Act and Executive Order 13166, to receive communications about their child in a

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language that they understand. In addition, two commenters urged the Secretary to require the use of native language to communicate with parents in areas where large numbers of students share the same primary language.

Discussion: Section 1116 of the ESEA requires SEAs and LEAs to keep parents informed during the school improvement process and, to the extent practicable, to provide information to parents with limited English proficiency in a language the parent understands. In addition, Title VI of the Civil Rights Act of 1964 and longstanding Department policy require SEAs and LEAs to communicate information to limited-English proficient parents that is communicated to non-limited English proficient parents. Under Title VI, SEAs and LEAs have flexibility in determining what mix of oral and written translation services may be necessary and reasonable for communicating this information. This policy is also consistent with Executive Order 13166.

It is the Department's position that, pursuant to the requirements of section 1116 of the ESEA, it is "practicable" to provide information to limited-English proficient parents orally in a language that they understand. This interpretation of Section 1116 of the ESEA also is consistent with Title VI, longstanding Department policy under Title VI, and Executive Order 13166.

Additionally, section 1116 of the ESEA requires written translations of printed information to be provided to parents with limited English proficiency in a language they understand, whenever such written translations are "practicable." If it is not "practicable" to provide written translations of notices, section 1116 requires SEAs and LEAs to ensure that parents with limited English proficiency are provided oral translations of the written information. This requirement to translate orally written information whenever a written translation is not practicable is consistent with Title VI, longstanding Department policy under Title VI, and Executive Order 13166.

Changes: None.

Comment: One commenter suggested additional regulatory language to ensure effective communication with the parents of limited English proficient and migrant students. In particular, the commenter recommended the use of non-traditional communication vehicles, such as posting notices at churches and distributing information through social service providers.

Discussion: The Secretary agrees that effective communication with the parents of limited-English proficient and migrant students is important, but he believes that widely varying local circumstances argue in favor of addressing the concerns raised by the commenter in nonregulatory guidance rather than through "one-size-fits-all" regulatory prescription.

Changes: None.

Comment: One commenter expressed concern that it would not be possible for a State to communicate directly with parents, as required by the proposed regulations, if the State does not maintain information, such as street or e-mail addresses, on individual students. The commenter recommended requiring States to communicate to parents only through such broader means as the Internet and other media. Another commenter addressed a similar concern by recommending that States be permitted to fulfill their obligation by providing school improvement information to LEAs and schools, which would then distribute the information to parents, rather than requiring States to communicate directly with parents.

Discussion: The Secretary agrees that the proposed regulations should be amended to reflect the limited student information available to States in some cases. However, the final regulations continue to require States to communicate to individual students and their families, even if they must do so indirectly through LEAs and schools.

Changes: Section 200.36(b)(1) has been amended to permit States to distribute information to parents through LEAs and schools.

Comment: One commenter recommended that any information provided to parents also be provided to teachers and other school staff so that educators know and understand what is happening in their schools.

Discussion: Section 200.36 is intended to clarify statutory requirements regarding communication with parents during the school improvement process. Notice requirements affecting teachers and school staff are addressed elsewhere, such as in §§ 200.30 and 200.43.

Changes: None.

Comment: One commenter requested clarification of proposed § 200.36(c), which requires all communications to respect the privacy of students and their families.

Discussion: The proposed regulations are intended to help prevent, for example, the public disclosure of the names of students receiving supplemental educational services, as prohibited by § 200.46(a)(5) and (b)(2)(v). Further clarification will be provided in nonregulatory guidance.

Changes: None.

Section 200.37 Notice of Identification for Improvement, Corrective Action, or Restructuring

Comment: Two commenters recommended adding a definition of "promptly" in proposed § 200.37(a), which requires LEAs to "promptly notify" parents when their child's school has been identified for improvement. The commenters expressed particular concern that parents have sufficient time to consider public school choice options.

Discussion: The Secretary agrees that timely notification is essential to ensuring that parents are able to make informed choices regarding their children's education. Such notifications should be made as soon as possible. However, the precise amount of time required may vary depending on local circumstances. The Department has issued nonregulatory guidance on this issue.

Changes: None.

Comment: One commenter recommended including, in the notice to parents that their child's school has been identified for improvement, a description of the actions being taken to improve the school.

Discussion: The Secretary agrees that information on the action being taken to improve a school is important, and notes that § 200.38(a) requires an LEA to provide such information to parents. However, because parental consideration of choice and supplemental educational service options generally must occur at the same time a school is developing its school improvement plan, it will usually be impossible to include such information in the initial notice of identification.

Changes: None.

Comment: One commenter recommended that the explanation of the option to transfer described in § 200.37(b)(4)(i) include a reference to the provision of transportation to the new school.

Discussion: The proposed regulations referenced proposed § 200.44, which included choice-related transportation requirements, but the Secretary agrees that the restoration of the statutory reference to transportation in the notice requirement will clarify this issue.

Changes: Section 200.37(b)(4)(i) has been amended to include a discussion of transportation in the explanation of the option to transfer provided to parents as part of the notice of identification for improvement, corrective action, or restructuring.

Comment: Two commenters objected to the proposed requirement in § 200.37(b)(4)(ii) that LEAs provide information to parents on the performance of the school or schools to which their children may transfer. Both commenters found this requirement administratively burdensome, particularly in districts that offer a large number of choices and thus would have to document the performance of many schools. One commenter suggested that LEAs be permitted to "direct" parents to publicly available sources of such information, such as a school or district Web site.

Discussion: Since a basic principle of the public school choice option required as part of the school improvement process is to give parents in low-performing schools the opportunity to send their children to a higher-performing school, the Secretary believes the provision of the information called for in proposed § 200.37(b)(4)(ii) is essential. However, the regulations provide substantial flexibility to LEAs in selecting the most meaningful local measures of academic achievement, rather than mandating either the kind or number of such measures. LEAs are free, and indeed encouraged, to summarize school performance in a manageable and understandable format, rather than overwhelm parents with detailed reports. In addition, the final regulations clarify that, for the purposes of § 200.44, the only required indicator of performance is the academic achievement of students in the receiving schools. Finally, while it may be appropriate to direct parents to sources such as Web sites for additional information, basic performance information should be provided directly to parents, many of whom lack access to electronic information sources such as the Internet.

Changes: Section 200.37(b)(4)(ii) has been amended so that the only performance information required in the explanation of the public school choice option is the academic achievement of the schools to which a student may transfer.

Comment: One commenter suggested that the Secretary require, rather than encourage, LEAs to provide the additional information on public school choice options described in § 200.37(b)(4)(iii).

Discussion: The ESEA requires only that LEAs offer parents and students the option to transfer to another public school that is not identified for improvement, corrective action, or restructuring. This emphasis on academic performance is reflected in the information required by § 200.37(b)(4)(ii). The Secretary agrees that additional information on the options available to parents is desirable, but believes that LEAs should have flexibility to provide the most useful information in light of local needs and circumstances.

Changes: None.

Comment: One commenter recommended that the information on the school or schools to which a student may transfer include a description of parental involvement programs.

Discussion: The Secretary agrees that, in addition to the academic quality of the school, the opportunity for greater involvement in their child's education could be an important consideration for parents exploring public school choice options. However, we do not agree that such information should be required.

Changes: In order to clarify that information on parent opportunities may be provided in the explanation of the parents' option to transfer their child to another school, § 200.37(b)(4)(iii)(D) has been amended to specifically authorize provision of a description of parental involvement opportunities at the school or schools to which the student may transfer.

Comment: Two commenters objected to the proposed requirement that the annual notice of the availability of supplemental educational services include approved providers of technology-based or distance-learning services. One commenter maintained that the proposed regulations are unnecessary and implied a preference for technology-based providers over other providers, while another asserted that any clarification of means of providing services is more properly the role of SEAs, since they are responsible for approving providers.

Discussion: The success of the supplemental educational services component of the school improvement process depends on the availability of a sufficient number of providers to meet the diverse educational needs of students. Provider availability is a particular concern in poor urban and rural areas where it is reasonable to expect there will be the greatest demand for supplemental educational services. Technology provides a means to overcome geographic and demographic barriers to the provision of high-quality services. For this reason, the Secretary believes it is appropriate to emphasize the potential role of technology-based providers. Finally, the ESEA clearly assigns responsibility for providing annual notice to parents of the availability of supplemental educational services to the LEA, not the SEA.

Changes: None.

Comment: One commenter recommended including in the information about supplemental educational service providers the religious affiliation of such providers, the duration of services, whether services are school-based, and whether transportation to the provider is available.

Discussion: The Secretary believes that § 200.37(b)(5)(ii)(B) is sufficient to ensure the provision of such information in the annual notice of the availability of supplemental educational services, and will clarify this requirement in nonregulatory guidance.

Changes: None.

Comment: One commenter recommended requiring LEAs to include, in the explanation of public school choice and supplemental educational service options, a detailed discussion of procedures required to exercise such options, including any required forms, documentation, and schedules or deadlines.

Discussion: Procedures for exercising a public school choice or supplemental educational service option may vary widely from district to district depending on such factors as pre-existing choice programs, the timing of identification, and the use of technology. For this reason, the Secretary believes that the best way to address the commenter's concerns is through general guidelines in nonregulatory guidance.

Changes: None.

Section 200.38 Information About Action Taken

Comment: One commenter suggested that the final regulations require an LEA to include, in its explanation of corrective action or restructuring, a description of actions recommended by school-level staff or a school-level governance committee.

Discussion: The ESEA requires only that LEAs publish and disseminate information about measures actually taken to address the problems that led to the identification of a school for improvement, corrective action, or restructuring. Districts are free to provide additional information on the process that led to the adoption of such measures if they believe such information will support school improvement efforts.

Changes: None.

Section 200.39 Responsibilities Resulting From Identification for School Improvement

Comment: One commenter expressed concern that proposed § 200.39(a)(1)(i)

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potentially misleads students and their families by suggesting that all students in schools identified for improvement will have the option to transfer to a better-performing school, when in fact the ESEA requires LEAs to give priority to the lowest-achieving students from low-income families in providing public school choice options.

Discussion: The regulation, like the statute, does indeed require that LEAs provide a public school choice option to all eligible students, defined as all students—regardless of achievement or family income—enrolled in a school identified for improvement, corrective action, or restructuring. The statutory priority on the lowest-achieving students from low-income families is a priority in providing transportation, as well as in making assignments to the family's preferred choice among available schools. It is not an invitation to LEAs to limit choice to only those students.

Changes: None.

Section 200.40 Technical Assistance

Comment: One commenter recommended that all technical assistance providers comply with the requirements of Title II of the Higher Education Act of 1965 (HEA), which requires institutions of higher education that conduct teacher preparation programs and receive Federal financial assistance under the HEA to issue reports on the "pass rates" of their teacher education graduates on State certification and licensure assessments, as well as on other aspects of their teacher education programs.

Discussion: The requirements in Title II of the Higher Education Act do not apply to other private organizations or to technical assistance providers.

Changes: None.

Comment: One commenter recommended that an LEA be required to "publicly identify" any entities providing technical assistance when it identifies a school for improvement.

Discussion: The ESEA requires only that an LEA "ensure the provision of technical assistance as the school develops and implements" its improvement plan. In addition, the improvement plan must include a description of the technical assistance to be provided by the LEA. This suggests that information on the precise nature of the technical assistance required, as well as the identity of the providers, is unlikely to be available at the time of identification.

Changes: None.

Comment: One commenter observed that the proposed regulations are inconsistent with the statutory requirements governing technical assistance to schools identified for improvement, particularly with regard to the goals of such technical assistance.

Discussion: The Secretary agrees that the proposed regulations inadvertently omitted the statutory reference to technical assistance in identifying and addressing any failure of the LEA or school in implementing the school plan.

Changes: Section 200.40(c)(1) has been amended to restore the omitted reference to technical assistance regarding LEA and school fulfillment of responsibilities under the school plan.

Section 200.41 School Improvement Plan

Comment: One commenter requested that the parental consultation requirement in § 200.41(a)(2) include a reference to a similar requirement in section 1118 of the ESEA.

Discussion: The Secretary believes that both the ESEA and the proposed regulations are unambiguous in requiring schools to consult with parents in developing or revising their school improvement plans, and that further clarification is unnecessary.

Changes: None.

Comment: One commenter suggested that the required consultation with parents, school staff, the LEA, and outside experts should take the form of written comments that are included in the school improvement plan.

Discussion: The ESEA does not require schools to seek comments in written form as part of the consultation process, but also does not preclude such an approach. The final regulations maintain this flexibility, which helps to ensure that school improvement planning is focused on results, not process.

Changes: None.

Comment: One commenter objected to the proposed regulation requiring school improvement plans to include "measurable goals" rather than the "annual, measurable objectives" terminology employed by the ESEA.

Discussion: The Secretary believes that the term "annual, measurable objectives" used in section 1116(b)(3)(A)(v) of the ESEA is ambiguous and, in particular, risks unintentional confusion with the annual measurable objectives required by § 200.18 as part of the definition of AYP. The substitution of the term "measurable goals" is intended to clarify that schools must set their own separate, interim performance goals that will contribute to the attainment of the annual measurable objectives required to make AYP and gain removal from improvement status.

Changes: None.

Comment: Two commenters requested that schools identified for improvement be permitted to use both Part A and non-Part A funds to satisfy the requirement in § 200.41(c)(5) that such schools spend not less than 10 percent of their part A allocation on professional development designed to help remove the school from improvement status.

Discussion: The proposed regulations accurately reflect the specific language of the ESEA, and the Secretary has no authority to modify this requirement.

Changes: None.

Comment: One commenter requested the addition of a reference to section 1119 of the ESEA in proposed § 200.41(c)(5), which outlines the requirements for school improvement-related professional development.

Discussion: The Secretary modified the statutory reference to section 1119 of the ESEA because this provision specifically covers professional development intended to ensure that all teachers are highly qualified, and not professional development designed to help remove a school from school improvement status.

Changes: None.

Comment: One commenter objected to the omission of the statutory requirement for an explanation of how funds reserved for professional development will be used to remove a school from improvement status, which in the proposed regulations was reflected only in a requirement for an assurance that such funds would "contribute to removing the school from school improvement status."

Discussion: The Secretary agrees that the proposed regulations could have inadvertently weakened the requirement for a firm commitment on the use of professional development funds in school improvement plans.

Changes: Section 200.41(c)(6) of the final regulations requires a school to specify how it will use its 10 percent reservation of Part A funds to gain removal from improvement status.

Comment: One commenter objected to the requirement that school improvement plans incorporate teacher mentoring programs.

Discussion: The Secretary has no authority to remove this requirement, which is specifically provided for in the ESEA. However, the final regulations clarify that the intention is to include teacher mentoring programs as a necessary element of the professional development provided as part of the school improvement plan.

Changes: The requirement for teacher mentoring programs has been moved to § 200.41(c)(5)(iii) of the final regulations.

Comment: One commenter objected to the omission of the notice requirement from the proposed regulation on school improvement plans.

Discussion: The notice requirement was omitted from proposed § 200.41 both because it concerned the initial identification for improvement, which in most cases will precede the development of the school improvement plan, and because it was included in proposed § 200.37, which covers all of the various statutory notice requirements related to the school improvement process. The Secretary agrees with the commenter, however, that it is important for the school improvement plan to describe how the school will notify parents of the identification for improvement.

Changes: Section 200.41(c)(7) requires the school improvement plan to include a description of how notice of identification for improvement will be provided to parents.

Section 200.42 Corrective Action

Comment: One commenter expressed concern that some of the corrective actions described in the proposed regulations may conflict with State charter school laws.

Discussion: Section 200.42(a) includes a range of corrective action options and requires any action taken to be "consistent with State law." Where certain corrective actions specified in the ESEA and regulations conflict with State charter school laws, LEAs are not required to adopt those actions.

Changes: None.

Comment: One commenter requested clarification of the role of school support teams in providing technical assistance during corrective action.

Discussion: As described in § 200.42(b)(2), the LEA must continue to make available technical assistance, whether provided through school support teams or through some other mechanism, that meets the requirements of § 200.40.

Changes: None.

Comment: One commenter requested explanation of the proposed regulations regarding the appointment of an outside expert as a corrective action.

Discussion: The ESEA includes, as one of the corrective actions that may be taken by an LEA, the appointment of an outside expert "to advise the school on its progress toward making AYP, based on its school plan under paragraph (3)." The school plan cited in the statute, however, is the school improvement plan developed after initial identification for improvement and covering the two years of improvement efforts prior to the identification for corrective action. Since it presumably was at least in part the failure of this plan to improve the performance of the school that led to identification for corrective action, the Secretary believed that rather than providing advice based on this plan, it would be more appropriate for the outside expert to assist in revising the plan and in implementing the revised plan. Accordingly, § 200.42(b)(4)(iv) requires this approach when an LEA appoints an outside expert as a corrective action.

Changes: None.

Section 200.43 Restructuring

Comment: Three commenters requested clarification of the status of a school that has implemented a restructuring plan. One recommended that it be treated as a new school, and one asked whether such a school would be required to offer choice and supplemental educational services to its students.

Discussion: The ESEA does not address the status of a school that has implemented a restructuring plan. However, section 1116(b)(12) of the statute requires an LEA to remove a school from improvement, corrective action, or restructuring status only after the school has made AYP for two consecutive school years. The Secretary believes that the best interpretation of this language as it applies to a restructured school is that such a school remains "in improvement" until it makes AYP for two consecutive school years. For this reason, the LEA serving a restructured school must continue to provide public school choice options and make available supplemental educational services to eligible students enrolled in the school until the school makes AYP for two consecutive school years.

Changes: Section 200.43(c)(2) of the final regulations requires an LEA to provide public school choice options and make available supplemental educational services to students enrolled in a restructured school until the school makes AYP for two consecutive school years.

Comment: One commenter recommended that any entity selected to operate a school as part of a restructuring plan be required to demonstrate financial stability.

Discussion: The ESEA and proposed regulations require only that such an entity have a "demonstrated record of effectiveness." States and LEAs, which presumably will enter into a contract with the entity, may identify other requirements or standards that the entity must meet. The ESEA requires that restructuring options be implemented "consistent with state law."

Changes: None.

Section 200.44 Public School Choice

Comment: One commenter requested clarification regarding LEA flexibility in providing public school choice options to students enrolled in schools identified for improvement, including whether an LEA may, in view of capacity constraints, offer choice to students only at some and not all of the schools it has identified for improvement.

Discussion: Both the ESEA and the proposed regulations clearly require, except where State law prohibits, LEAs to offer all students enrolled in all schools identified for improvement the option of transferring to another public school that has not been identified for improvement.

Changes: None.

Comment: Several commenters maintained that existing overcrowding of schools, teacher shortages, transportation difficulties, class-size limits, health and safety concerns, and other capacity issues prevent many LEAs from implementing the public school choice option in accordance with the requirements of § 200.44. One commenter, for example, recommended that the final regulations permit LEAs to preclude transfers to schools that have reached their "maximum instructional capacity under State or local laws or ordinances." Another asked whether a State law limiting class size would permit an LEA to limit choice on the basis of the "State law prohibition" in § 200.44(a)(5).

Discussion: In general, as the Secretary has made clear in *Dear Colleague* letters, nonregulatory guidance, proposed regulations, and other policy statements, the ESEA does not permit an LEA to preclude choice options on the basis of capacity constraints. Rather, the statute requires an LEA to take measures to overcome issues such as overcrowding, class size limits, and health and safety concerns, that otherwise might prevent the LEA from complying with Title I public school choice requirements. This could mean, for example, adding classes and hiring additional teachers so that the LEA can offer choices to students while adhering to State-mandated class size limits.

In addition, LEAs have broad latitude in determining the schools to which students can transfer. They may, for example, consider health and safety factors in providing transfer options to

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students and their parents. Such factors do not permit an LEA, however, to simply avoid its obligation to provide public school choice options as required by section 1116 of the ESEA. The expectation is that LEAs will need to find ways to provide choice, consistent with their obligations to provide a healthy and safe learning environment.

Changes: Section 200.44(d) of the final regulations clarifies that an LEA may not use lack of capacity to deny an eligible student the opportunity to transfer to another school not identified for improvement.

Comment: Two commenters requested that the final regulations include language permitting LEAs to limit the availability of choice options to comply with "health and safety code requirements regarding facility capacity."

Discussion: In implementing the public school choice requirements, an LEA must provide parents of students eligible to transfer a choice of more than one school if more than one school is available. The LEA is not required, however, to make available every school in the district. Rather, the LEA may take into consideration factors such as health and safety requirements or transportation costs in determining which schools in the district would be available to accept transfer students. Such factors may not be used, however, to deny students the opportunity to transfer to any other school.

Changes: Section 200.44(d) of the final regulations makes clear that an LEA may not use lack of capacity to deny an eligible student the opportunity to transfer to another school not identified for improvement.

Comment: One commenter recommended that the final regulations permit LEAs to offer supplemental educational services to those students whose transfer requests cannot be accommodated due to capacity constraints.

Discussion: Section 200.44(g)(2) of the final regulations permits an LEA with no eligible schools to which a student may transfer to offer supplemental educational services to eligible students enrolled in schools identified for their first year of improvement. However, since neither the ESEA nor § 200.44(d) of the final regulations permits an LEA to deny public school choice options to eligible students due to capacity constraints, there is no reason to offer supplemental educational services in lieu of choice under the circumstances suggested by the commenter.

Changes: None.

Comment: One commenter noted that some States and school districts currently operate public school choice plans and asked whether the new law requires additional choices beyond those already provided.

Discussion: If an existing choice plan meets the requirements of § 200.44, then the LEA is already in compliance with the ESEA. In most cases, however, the Secretary believes that it will be necessary to modify existing choice plans to meet these requirements, which include, for example, the provision of transportation, a choice of more than one school, and a priority for the lowest-achieving students from low-income families.

Changes: None.

Comment: One commenter expressed concern that proposed § 200.44(a)(2), which would require LEAs to offer choice "not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in the identification of the school for improvement, corrective action, or restructuring," could require mid-year implementation of choice that would lead to major disruptions in both sending and receiving schools.

Discussion: Proposed § 200.44(a)(2) is based on the clear language of section 1116(b)(1)(E)(i) of the ESEA, which assumes SEA and LEA compliance with the equally clear statutory identification timeline. SEAs and LEAs that adhere to this timeline will not face the additional challenge of implementing the public school choice requirements of § 200.44 in the middle of a school year. The Secretary does not believe it is appropriate, however, to reward LEAs that do not comply with the law by permitting them to postpone their obligations under § 200.44 until the following school year and thereby deny students attending identified schools the opportunity to transfer immediately to a better school.

Changes: None.

Comment: One commenter noted that States and school districts may have their own "improvement" designations based on different criteria than those provided under section 1116 of the ESEA. For this reason, the commenter requested clarification that the standard proposed under § 200.44(a)(3)(i)(A) limits transfers to schools that have not been identified for improvement, corrective action, or restructuring under Title I.

Discussion: The Secretary agrees that the proposed regulations did not clearly reflect the statutory requirement under section 1116(b)(1)(E)(i) of the ESEA that an LEA provide a public school choice option "that has not been identified for school improvement under this paragraph." The phrase "under this paragraph" expressly limits the exclusion from eligible choice options of schools identified under section 1116(b)(1) of the ESEA, and does not rule out schools that may have been identified for improvement under other State or local criteria as possible schools to which students may transfer.

Changes: The final regulations specify that transfers are limited to schools that have not been identified under §§ 200.32 through 200.34.

Comment: Two commenters requested clarification that proposed § 200.44(a)(3)(ii) refers only to public charter schools that are served by the LEA.

Discussion: The Secretary believes that both the ESEA and the regulations are clear in requiring choice only within LEAs. The precise relationship between public charter schools and LEAs, however, varies widely and is better addressed through nonregulatory guidance.

Changes: No change.

Comment: Several commenters objected to proposed § 200.44(a)(4)(i), which requires LEAs to offer parents of eligible students the choice of more than one school that is not identified for improvement, corrective action, or restructuring. The commenters argued that this requirement is inconsistent with both the NCLB Act and the Secretary's overall goal of regulating only where necessary to provide clarity or flexibility.

Discussion: The Secretary believes that the principle and intent of choice embodied in the NCLB Act has meaning only if parents and students have the ability to choose from more than one public school choice option. One school is effectively no choice. Choice implies, at a minimum, the opportunity to choose between at least two better-performing schools. However, the regulations do not prohibit an LEA from limiting choice options on the basis of such factors as transportation arrangements, so long as it provides more than one option to students enrolled in schools identified for improvement, corrective action, or restructuring.

Changes: None.

Comment: One commenter requested clarification as to whether an LEA may limit the number of schools to which a student may transfer on the basis of such factors as transportation arrangements, so long as the LEA provides parents and students more than one option from which to choose.

Discussion: The Secretary has issued nonregulatory guidance explaining that LEAs are indeed permitted to take into account logistical concerns, such as transportation, in limiting the range of available choices to students exercising an option under § 200.44.

Changes: None.

Comment: One commenter recommended deletion of proposed § 200.44(a)(4)(ii), which requires LEAs to "take into account" parent preferences in making final assignments among public school choice options offered to students attending schools identified for improvement, corrective action, and restructuring. The commenter noted that this provision is not included in the ESEA and "interferes with the local control of school systems."

Discussion: The Secretary recognizes that the final decision regarding student assignment among available choices rests with the LEA, but believes that meaningful choice requires that LEAs take into account parental preferences.

Changes: None.

Comment: One commenter requested clarification of the eligibility for choice and supplemental educational services of students who plan to attend, but are not yet enrolled in, a school for which an LEA must provide such options.

Discussion: The answer to this question depends in large part on State and local definitions of "enrollment," but the Secretary believes that in general LEAs should provide new students the same options offered to existing students at a given school.

Changes: None.

Comment: One commenter requested clarification of the limitation on the State law prohibition in § 200.44(b), including examples of improper application of the prohibition.

Discussion: Section 1116(b)(1)(E)(i) of the ESEA requires an LEA to provide public school choice to any student in a school identified for improvement, unless such public school choice is prohibited by State law. Section 200.44(b) of the final regulations clarifies that an LEA may invoke the State law exception only if the State law prohibits choice through restrictions on public school assignments or student transfers among schools. Such a State law could explicitly prohibit an LEA from permitting students to transfer to other public schools or it could, for example, enforce desegregation by restricting transfers in such a way that effectively makes choice impossible. A State law that limits class size, however, is not a State law prohibiting choice, because an LEA could add teachers to meet class size requirements and still permit students to transfer.

Changes: None.

Comment: Several commenters objected to the language in proposed § 200.44(c)(3) requiring LEAs to "secure appropriate changes" to desegregation plans to permit compliance with the public school choice requirements of § 200.44. Commenters noted that LEAs could only seek such changes and only courts or the responsible agencies could grant the changes. In addition, two commenters were concerned that this provision may impose the burden and expense of protracted litigation on LEAs.

Discussion: Nothing in the proposed regulations or these final regulations provides an LEA with the authority to violate an applicable desegregation plan; rather, § 200.44(c)(1) holds that the existence of a desegregation plan does not exempt an LEA from the public school choice requirements of § 200.44. In addition, § 200.44(c)(2) states that an LEA may take into account the requirements of its desegregation plan in determining how to implement a transfer option. An LEA is required to "secure appropriate changes" from the court only if it is unable to implement the choice requirement consistent with the plan. The Department of Education anticipates that courts and responsible agencies will recognize the benefits of allowing students to transfer from schools identified as needing improvement and will grant amendments to desegregation plans permitting such transfers. If a court or responsible agency denies an LEA's request to amend its desegregation plan to allow for choice, then the LEA should contact the Department of Education. It is not the Secretary's intent to deny Title I funding to an LEA that in good faith takes appropriate action to seek amendments to the desegregation plan in order to comply with the public school choice requirements of § 200.44.

Changes: None.

Comment: One commenter recommended that LEAs be permitted to limit eligible students to a single public school choice option, rather than the multiple options required by § 200.44(a)(4)(i), in order to support the goals of existing desegregation plans.

Discussion: Section 1116(b)(1)(E)(i) of the ESEA requires an LEA with Title I schools identified for improvement to provide students in those schools the opportunity to transfer to a school not identified for improvement. Consistent with § 200.44(a), eligible students must have the opportunity to express a preference among at least two eligible schools and that preference must be considered by the school district in making their assignment. An LEA may take into account the requirements of its desegregation plan in determining how to implement the transfer option. If its desegregation plan offers no opportunity for the LEA to implement the choice requirement consistent with the plan, the LEA would need to secure appropriate changes from the court.

Changes: None.

Comment: One commenter maintained that compliance with the priority in § 200.44(d), and a similar priority for supplemental educational services in § 200.45(d), will require students to re-apply annually for a public school choice option to ensure equity in the context of limited funding for choice-related transportation and supplemental educational services.

Discussion: The Secretary understands the concerns of the commenter, but notes that § 200.44(f) contains the statutory requirement permitting students who exercise a public school choice option to remain in the new school until the student has completed the highest grade in that school. For this reason, the Secretary believes that the priority in § 200.44(d) was intended to apply only to students requesting a choice option for the first time, not those who have already exercised such an option. As for the commenter's similar concern regarding supplemental educational services, § 200.45(b)(3) requires LEAs to make such services available only until the end of the school year in which they are first provided, a limitation that mandates annual re-application for such services.

Changes: None.

Comment: One commenter recommended that the Department regulate the State role in encouraging cooperative agreements between LEAs to make available choice to students in LEAs in which all schools have been identified for improvement, corrective action, or restructuring.

Discussion: While the Secretary agrees that it would helpful, and consistent with the spirit of the NCLB Act, for States to encourage cooperative agreements between LEAs that would increase the availability of public school choice options, it would be inappropriate to regulate in this area of State authority.

Changes: None.

Comment: One commenter recommended setting geographic limits on the distance between LEAs that arrange cooperative agreements for the purpose of expanding public school choice options available to students enrolled in schools identified for improvement, corrective action, or restructuring.

Discussion: The Secretary believes that geographic limits are the kind of issue the authorizers intended to

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address when they called for such cooperative agreements "to the extent practicable," a limitation that is repeated in § 200.44(h)(1).

Changes: None.

Comment: One commenter requested clarification as to whether "receiving school districts," presumably under a cooperative agreement such as that provided for under § 200.44(h)(1), would be permitted to refuse to accept certain students, such as students with disabilities who might require special services and support.

Discussion: All public school districts, as recipients of Federal financial assistance, must comply with applicable Federal civil rights requirements, including those under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (ADA).

Changes: None.

Comment: One commenter objected to § 200.44(h)(2), which permits LEAs with no eligible schools to which a student may transfer to offer supplemental educational services in lieu of choice to students enrolled in schools identified for their first year of improvement. The commenter stated that the proposed regulations go beyond the scope of the statute.

Discussion: The proposed regulations are consistent with the NCLB Act's emphasis on increasing educational options for all students attending low-performing schools. The proposed regulations do not create a new authority, but merely highlight an existing one, since the provision of tutoring and other supplemental instructional services is already a permissible use of Federal funds as part of the regular Title I program in both schoolwide projects and targeted assistance schools. An LEA may implement any corrective action or restructuring measure earlier than what is required by the statute.

Changes: None.

Comment: One commenter suggested that if the transportation costs associated with public school choice become excessive, funds might be better used to pay for supplemental educational services.

Discussion: Section 200.44(h)(2) permits an LEA with no eligible schools to which a student may transfer to offer supplemental educational services to eligible students enrolled in a school in its first year of improvement. Neither the ESEA nor the regulations, however, allow an LEA to offer supplemental educational services in lieu of choice solely on basis of the costs incurred in providing choice in accordance with the requirements of § 200.44.

Changes: None.

Comment: Two commenters expressed concern that public school choice could require costly replication of specialized services for various student populations, including limited-English proficient and migrant students and students with disabilities.

Discussion: In order to provide public school choice, some school districts may need to make specialized services for special populations of students, such as limited-English proficient students and students with disabilities, available in other schools in order to provide those students with the opportunity to attend an eligible school, namely, a school that has not been identified for school improvement, corrective action or for restructuring, and that has not been identified by the State as persistently dangerous. However, in offering school choice, the school district has the flexibility to offer parents the option to enroll their child in eligible schools of choice that already provide the language or disability-related services needed by the student.

Changes: None.

Comment: One commenter expressed concern about the eligibility for choice and supplemental services of students who have been involuntarily transferred from Title I schools that are identified for improvement, corrective action, or restructuring.

Discussion: Generally, Title I affords parents of students in low-performing schools an option to choose a school that has not been identified for improvement for their child. There are a very few situations, however, that are handled differently. If a student is assigned to a particular school by a family court for child custody reasons and that school has been identified for improvement, the student could be eligible to transfer under the provisions in the ESEA. However, the student's parents may not be able to exercise that option without first obtaining permission from the court to move their child. In the case of a student assigned to a particular school by a juvenile court due to the student's violent or criminal behavior, or for disciplinary reasons sufficiently serious to justify placement in a particular learning environment, the LEA may limit or deny the choice option.

Changes: None.

Comment: Two commenters expressed concern that parental exercise of a choice option in the case of a student receiving special education services, without the approval of the student's Individualized Education Program (IEP) team, may constitute a unilateral change in placement under the IDEA that could violate the student's right to a free appropriate public education (FAPE).

Discussion: Under the IDEA, a change in the location of delivery of services, in and of itself, does not trigger the "change of placement" procedures of the IDEA. The LEA can allow the school of choice either to implement the IEP that the prior school developed for the new school year, or convene an IEP team meeting and develop a new IEP that meets the student's needs. If the LEA adopts the student's existing IEP, none of the "change of placement" procedures apply. However, the school district must comply with the "change of placement" requirements of the IDEA if the new IEP will change either the services in the IEP or the extent to which the student will participate with nondisabled students in academic and nonacademic activities. Similar rules apply to students who are covered only by Section 504 and Title II of the ADA.

Changes: None.

Comment: One commenter requested clarification that an LEA would be permitted to limit the choices of a student with a disability to those eligible schools with the capacity to provide the services required by the student's IEP.

Discussion: LEAs are not required to offer students with disabilities the same choices of schools as are offered to nondisabled students, but may match the abilities and needs of a student with a disability, as indicated on the student's IEP, to those schools that have the ability to provide FAPE to the student. However, school districts must offer students with disabilities and those eligible under Section 504 and Title II of the ADA the opportunity to be educated in an eligible school, namely, a school that has not been identified for school improvement, corrective action, or restructuring and that has not been identified by the State as persistently dangerous. Like other students, students with disabilities and those covered by Section 504 and Title II of the ADA must have the opportunity to express a preference among at least two eligible schools and that preference must be considered by the school district in making their assignment.

Changes: None.

Section 200.45 Supplemental Educational Services

Comment: Two commenters expressed concern that proposed § 200.45(b)(1) goes beyond the NCLB Act in requiring LEAs to "arrange" for each eligible student to receive supplemental educational services, rather than "make available" such services at the request of parents.

Discussion: The ESEA requires LEAs that are identified for a second year of improvement or subject to corrective action or restructuring to "make supplemental services available" in accordance with section 1116(e) of the statute. Section 1116(e)(1) requires such LEAs to "arrange for the provision of supplemental educational services to eligible children in the school from a provider with a demonstrated record of effectiveness, that is selected by the parents." The proposed regulations are consistent with this statutory language.

Changes: None.

Comment: One commenter urged the Secretary to issue "clarifying regulations and guidance" encouraging States and LEAs to promote maximum participation by providers that utilize distance-learning technologies.

Discussion: The Secretary recognizes the potential value of technology as a means to overcome geographic and cost barriers to the universal availability of high-quality supplemental educational services, particularly in poor urban and rural areas where it is reasonable to expect there will be the greatest demand for such services. This is why § 200.37(b)(5)(i)(A) requires the LEA's annual notice of the availability of supplemental educational services to specifically include providers of technology-based or distance-learning services, when such providers are on the SEA's list. However, the ESEA does not give the Secretary authority to promote one type of provider over another; rather, it places responsibility for promoting participation by the maximum number of providers on SEAs, which must develop standards for approving providers and maintain an updated list of approved providers from which parents may select. Unless evidence emerges that the State approval process presents barriers to participation by technology-based or distance-learning providers, the Secretary believes there is no need for further regulations on this issue.

Changes: None.

Comment: One commenter requested additional language in proposed § 200.45(b)(4)(i)(A) requiring an SEA, before granting a waiver from the requirement to provide supplemental educational services, to determine that the providers on its approved list makes services available within the LEA requesting the waiver through technology-based or distance-learning methods.

Discussion: The proposed regulations require the SEA to determine that none of the providers on its list makes available supplemental educational services to students served by the LEA before granting a waiver from the requirement to provide such services. Since the SEA's list presumably will include providers using technology-based or distance-learning methods, no additional language is needed.

Changes: None, except that the final regulation has been renumbered as § 200.45(c)(4)(i)(A).

Comment: One commenter maintained that since any transportation costs related to supplemental educational services would strain "already tight school budgets," the final regulations should encourage the use of school-based services wherever possible.

Discussion: The Secretary appreciates the concern of the commenter, and acknowledges the potential benefits of providing supplemental educational services at the school site. However, the ESEA unambiguously leaves the selection of services up to the parents of eligible students.

Changes: None.

Section 200.46 LEA Responsibilities for Supplemental Educational Services

Comment: One commenter recommended that the regulations clarify that for students with disabilities, supplemental educational services must "continue to meet the goals and objectives of the IEP."

Discussion: For a student with disabilities, the supplemental educational services agreement must include a statement of specific achievement goals for the student, a description of how the student's progress will be measured, and a timetable for improving achievement, that are consistent with the student's IEP. However, the supplemental educational services do not also have to meet the goals and objectives of the IEP.

Changes: Section 200.46(b)(3) of the final regulations clarifies that each of the provisions of the statement included in the supplemental educational services agreement, and not just the timetable for improving achievement, must be consistent with the student's IEP or individualized services under Section 504.

Comment: One commenter requested clarification of the relationship of supplemental educational services to Individualized Education Programs (IEPs) under IDEA or individualized services under a section 504 plan, out of concern that if such services are written into these plans, they could be subject to challenge in a due process proceeding.

Discussion: § 200.46(b)(2)(i)(c) requires supplemental educational services to be "consistent" with IEPs and section 504 services, but these services are provided in addition to the instruction and services provided during the school day under the IEP or Section 504 plan and are not considered part of IEPs or section 504 plans.

Changes: None.

Comment: One commenter requested that the regulations provide an exemption from restrictions under the Family Educational Rights and Privacy Act to permit the sharing of IEP and section 504 plans with supplemental educational services providers.

Discussion: Under the Family Educational Rights and Privacy Act (FERPA), parental consent must be obtained before developing the supplemental services agreements provided for in section 1116(e)(3) of the ESEA and § 200.46(b), without regard to whether a particular student is a student with disabilities or a nondisabled student, because all supplemental services agreements will require the LEA to share information from education records with the services provider. Therefore, an exemption for students with IEPs or Section 504 plans is not appropriate.

Changes: None.

Comment: One commenter recommended strengthening proposed §§ 200.46(a)(4) and 200.47(a)(5) by adding language ensuring that eligible students with disabilities and students covered under section 504 of the Rehabilitation Act of 1973 "are provided with equal access to each provider."

Discussion: The Secretary has determined that no change is necessary. Sections 200.46(a)(4) and 200.47(a)(5) of the final regulations must be read consistent with the requirements of Section 504 and Title II of the ADA. Under Section 504, SEAs and LEAS, as recipients of Federal financial assistance, have responsibility for ensuring that there is no discrimination in the supplemental services program. SEAs and LEAS have similar duties under Title II of the ADA, which applies to public entities. In particular, SEAs and LEAs must ensure that students with disabilities and students covered by Section 504 receive appropriate supplemental educational services and necessary accommodations in the provision of those services. Consistent with this duty, LEAs may not, through contractual or other arrangements with private providers, discriminate against a student with a disability by failing to provide for appropriate supplemental educational services with necessary

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accommodations. Such services and necessary accommodations must be available, but not necessarily from each provider. Rather, SEAs and LEAs are responsible for ensuring that the supplemental educational service providers made available to parents include some providers that can serve students with disabilities and students covered under Section 504 with any necessary accommodations, with or without the assistance of the SEA or LEA. If no provider is able to make the services with necessary accommodations available to a student with a disability, the LEA would need to provide these services, with necessary accommodations, either directly or through a contract.

Changes: None.

Comment: In giving further consideration to the proposed regulations during the review of public comments, the Secretary noted that while proposed § 200.46(a)(4) required an LEA to ensure that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services, the proposed regulations were silent on the LEA's obligation to ensure the provision of appropriate services, including any necessary language assistance, to students with limited English proficiency.

Discussion: Eligible students are entitled to supplemental educational services regardless of their English proficiency and, in fact, some students may need such services due to their limited English proficiency. Under § 200.20, each LEA is required to report on the annual yearly progress of each subgroup, including students with limited English proficiency. Additionally, under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, an LEA implementing the Title I program is prohibited from discriminating against students with limited English proficiency. For these reasons, the final regulations include new language emphasizing an LEA's responsibility to ensure that the supplemental education providers made available to parents include some who can serve students with limited English proficiency, with or without the assistance of the LEA.

Changes: Section 200.46(a)(5) of the final regulations require LEAs to ensure that students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

Comment: One commenter asked whether an LEA may identify and approve providers of supplemental educational services if an SEA fails to provide a list of approved providers in a timely manner.

Discussion: The ESEA does not authorize an LEA to identify and approve providers of supplemental educational services except, as described under section 1116(e)(11), when State law prohibits an SEA from carrying out this responsibility. In general, the Secretary would consider an SEA that fails to provide a list of approved providers in a timely manner to be out of compliance with the statute, and would take action to bring the SEA into compliance and ensure that LEAs can arrange for eligible students to receive supplemental educational services.

Changes: None.

Comment: One commenter asked whether LEAs are permitted to establish additional criteria for supplemental educational service providers on the SEA's list.

Discussion: With the narrow exception in § 200.46(c), the ESEA clearly assigns authority for identifying and approving supplemental service providers to the SEA. LEAs, which also may serve as providers and thus would face a potential conflict of interest in setting additional barriers to participation by SEA-approved providers, are not permitted to set additional criteria or otherwise modify the list of providers made available by the SEA.

Changes: None.

Section 200.47 SEA Responsibilities for Supplemental Educational Services

Comment: One commenter expressed concern that proposed § 200.47(a)(3), which requires SEAs to "maintain by LEA an updated list of approved providers from which parents may select," could inadvertently lead to the exclusion of technology-based or distance-learning providers located outside the LEA.

Discussion: The Secretary agrees that the language of the proposed regulations could be misconstrued to exclude technology-based or distance-learning providers.

Changes: Final § 200.47(a)(3) includes additional language requiring the updated LEA lists of providers to include technology-based and distance-learning providers serving the respective LEAs.

Comment: None.

Discussion: In giving further consideration to the proposed regulations during the review of public comments, the Secretary noted that while proposed § 200.47(a)(5) requires an SEA to ensure that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services, the proposed regulations were silent on the SEA's obligation to ensure the provision of appropriate services, including any necessary language assistance, to students with limited English proficiency.

Eligible students are entitled to supplemental educational services regardless of their English proficiency and, in fact, some students may need such services due to their limited English proficiency. Under § 200.21, each SEA is required to report on the annual yearly progress of each subgroup, including students with limited English proficiency. Additionally, under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, an SEA implementing a Title I program is prohibited from discriminating against students with limited English proficiency. For these reasons, the final regulations include new language emphasizing an SEA's responsibility to ensure that the supplemental education providers made available to parents include some who can serve students with limited English proficiency, with or without the assistance of the SEA.

Changes: Section 200.47(a)(6) of the final regulations requires SEAs to ensure that students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

Comment: One commenter expressed concern over the exclusion of educational service agencies from the list of potential providers in proposed § 200.47(b)(1). The commenter noted that such agencies may be considered LEAs under section 9101(26) of the NCLB Act.

Discussion: The Secretary agrees that it is appropriate to clarify that educational service agencies may be supplemental educational service providers.

Changes: Educational service agencies have been added to the definition of entities eligible to be supplemental educational service providers in § 200.47(b)(1).

Comment: Several commenters objected to proposed § 200.47(b)(1)(iv), which would prohibit States from approving as a supplemental service provider any school that has been identified for improvement, corrective, or restructuring. Commenters asserted that this restriction would prevent some identified schools that operate "very effective" after-school programs from serving as providers, complicate efforts to make services available on school grounds, and limit the availability of providers in poor and rural communities.

Discussion: The Secretary believes that schools that are identified for improvement or subjected to corrective action or restructuring need to be focused on carrying out comprehensive efforts to make in helping all student meet challenging State academic achievement standards, and not divert staff and other resources to the creation and operation of supplemental educational service programs. Though the proposed regulations excluded only identified schools as service providers, the same concerns apply to LEAs identified for improvement or corrective action. The purpose of supplemental educational services—increasing the academic achievement of eligible children on State assessments and helping them attain proficiency in meeting the State's academic achievement standards—is not well served if students obtain such services from an entity that is demonstrably failing to achieve those goals as shown by a consistent inability to make AYP. The final regulations do not hinder in any way the ability of a provider to offer services on school grounds or in LEA facilities. Finally, the success of supplemental educational services depends not merely on the availability of services, but on the availability of high-quality services that meet student needs. The Secretary believes there will be sufficient incentive for independent providers or potential providers, including those offering technology-based or distance-learning services, to offer such services in poor urban and rural communities.

Changes: Section 200.47(b)(1)(v) has been added to clarify that an LEA that has been identified for improvement or corrective action is not eligible to be a supplemental educational services provider.

Comment: One commenter supported proposed § 200.47(b)(1)(iv), which would prohibit States from approving as a supplemental service provider any school that has been identified for improvement, corrective action, or restructuring. However, the commenter requested clarification that highly qualified teachers employed by such schools are eligible to provide such services.

Discussion: The final regulations do not restrict in any way the ability of a highly qualified teacher employed by a school identified for improvement, corrective action, or restructuring from forming an entity that would serve as a supplemental educational services provider, or from working for such an entity.

Changes: None.

Comment: One commenter expressed concern that the purpose and quality of supplemental educational services may be undermined if providers are permitted to hire as instructors staff who teach at schools identified for improvement, corrective action, or restructuring.

Discussion: The Secretary understands the concern of the commenter, but believes that even the lowest-performing schools may have teachers who have the experience and skill to provide high-quality supplemental educational services. In addition, the Secretary has no authority to limit contractual agreements between teachers and other entities.

Changes: None.

Comment: One commenter recommended that the regulations encourage SEAs to include input from parents in developing standards for approving and monitoring supplemental educational service providers.

Discussion: The ESEA neither requires nor precludes participation by parents in the process of approving and monitoring supplemental educational service providers, and SEAs that wish to include parents in this process are free to do so.

Changes: None.

Comment: Several commenters maintained that proposed § 200.47(b)(3) could have permitted providers to exclude students with disabilities, based on the possibility of an "arbitrary judgment" regarding the "minor adjustments" required to serve them. Some commenters requested a definition of "minor adjustments," including an explanation of who would pay for such adjustments, while others recommended that the final regulations simply prohibit providers from discriminating against any eligible student with a disability.

Discussion: The Secretary agrees with commenters that the proposed regulations potentially created confusion regarding the civil rights obligations that are applicable when students with disabilities and students covered by Section 504 and Title II of the ADA receive supplemental educational services. Under Section 504 and Title II, SEAs and LEAs have primary responsibility for ensuring that there is no discrimination in the provision of supplemental educational services. Thus, SEAs and LEAs are responsible for ensuring that the supplemental educational service providers made available to parents include some providers that can serve students with disabilities and students covered by Section 504 with any necessary accommodations, with or without the assistance of the SEA or LEA.

At the SEA level, this responsibility must involve efforts to identify and approve providers that will be available to serve these students with necessary accommodations. LEAs also are responsible for ensuring that supplemental services are available for students with disabilities and students covered by Section 504, and may have to provide services and necessary accommodations directly to these students in the absence of a private provider that is able to provide supplemental educational services with necessary accommodations.

Private supplemental service providers are not deemed recipients merely by virtue of their provision of these services and therefore are not covered under Section 504; nor are they covered under Title II of the ADA since they are not public entities. For this reason, proposed § 200.47(b)(3), which governed the obligations of private providers of supplemental educational services for students with disabilities and students covered by Section 504 and Title II of the ADA, has been removed from the final regulations. However, private providers may have certain responsibilities under Federal, State and local civil rights laws, and SEAs must ensure that providers fulfill these responsibilities as a condition of approval as a supplemental educational services provider. For example, private providers that are not religious entities must comply with the nondiscrimination requirements of Title III of the ADA (Title III).

Under Title III, which is enforced by the U.S. Department of Justice, private entities that are places of public accommodation (except for religious entities) must make reasonable modifications to their policies, practices, and procedures to ensure nondiscrimination on the basis of disability, unless to do so would fundamentally alter the nature of the program. Likewise, these providers must take those steps necessary to ensure that students with disabilities are not denied services or excluded because of the absence of auxiliary aids and services, unless taking those steps would fundamentally alter the nature of the services or would result in an undue burden (i.e., significant difficulty or expense). Private providers may also be subject to Title VII of the Civil Rights Act concerning discrimination in employment.

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Changes: Proposed § 200.47(b)(3) has been removed from the final regulations.

Comment: Two commenters found proposed § 200.47(b)(3), which appears to permit providers to exclude some students with disabilities, to be inconsistent with proposed §§ 200.46(a)(4) and 200.47(a)(5), which require LEAs and SEAs to ensure that these students "receive appropriate supplemental educational services and accommodations in the provision of those services."

Discussion: The Secretary agrees with the commenters, as explained in the discussion of the previous comment.

Changes: Proposed § 200.47(b)(3) has been removed from the final regulation.

Comment: Several commenters objected to proposed § 200.47(b)(4)(i), which would prohibit States from requiring providers to hire staff who are highly qualified, as defined by §§ 200.55 and 200.56. The commenters argued that the proposed regulations are inconsistent with the letter and spirit of the NCLB Act, which prohibits Title I programs from hiring new teachers who are not highly qualified and requires States to adopt plans for ensuring that all public school teachers are highly qualified by 2005–2006.

Discussion: The Secretary believes that requiring supplemental educational service providers to use only highly qualified staff, as defined in the NCLB Act, would severely limit the availability of providers, particularly in poor urban and rural areas. For example, retired teachers might not be able to provide services through approved providers. States, LEAs, and schools receive substantial resources through Federal education programs that may be used to help ensure that all teachers are highly qualified. Because these resources are unavailable to supplemental service providers, few providers would be able to meet the same standard. In addition, unprecedented accountability requirements will help to ensure the quality of instruction offered by providers. All providers must have a "demonstrated record of effectiveness" to win approval by the SEA, must be selected by parents, must enter into agreements with specific achievement goals for each student, and must meet those goals to remain on the SEA's list of approved providers. Furthermore, parents of eligible students must request services annually, giving providers a strong incentive both to produce results as measured by improved achievement and to offer high-quality customer service to parents and students. Finally, even though States may not bar participation by providers who do not use only highly qualified staff, they would be permitted to indicate the qualifications of provider staff in information provided to parents.

Changes: None.

Comment: Several commenters also objected to proposed § 200.47(b)(4)(ii), under which States could not require, as a condition of approval, that supplemental educational service providers document that they use instructional strategies based on scientifically based research. The commenters believe that this proposal would have undermined one of the core principles of the NCLB Act, which requires the use of instructional strategies based on scientifically based research in nearly all of its authorities, including Part A of Title I.

Discussion: The use of instruction based on scientifically based research is indeed a core principle of the NCLB Act. It is absent, however, from the statutory definition of supplemental educational services, which refers only to services that are "research-based." This term suggests that Congress intended a different standard to apply to supplemental educational services, one based on the unique accountability inherent in such services. However, the Secretary agrees that States should be permitted, but not required, to include the use of instruction grounded in scientifically based research in the criteria used to approve supplemental educational service providers.

Changes: Proposed § 200.47(b)(4)(ii) has been removed from the final regulations.

Section 200.48 Funding for Choice-Related Transportation and Supplemental Educational Services

Comment: A number of commenters raised objections to proposed § 200.48(a)(2), which covers funding requirements related to the provision of public school choice options and supplemental educational services. Their comments focused primarily on concerns that the proposed regulations were confusing and deviated from what commenters believed was the clear language of the ESEA.

Discussion: Proposed § 200.48(a)(2) reflects the Secretary's best interpretation of a section of the ESEA that includes ambiguous and sometimes contradictory provisions. This interpretation is based primarily on section 1116(b)(10)(A) of the statute, which states that "Unless a lesser amount is needed to comply with paragraph (9) [choice-related transportation] and to satisfy all requests for supplemental educational services under subsection (e), a local educational agency shall spend an amount equal to 20 percent of its allocation under subpart 2 [Title I, Part A allocations]" for choice-related transportation and supplemental educational services.

The primary effect of this provision, as described in proposed § 200.48(a)(2), is to clearly obligate an LEA to spend "an amount equal to" 20 percent of its allocation under subpart 2 on choice-related transportation, supplemental educational services, or a combination of the two, regardless of the actual source of the funds. The emphasis is on the amount that must be spent—an amount equal to 20 percent of its subpart 2 allocation—not the source of the funds. The final regulations maintain this requirement.

LEA discretion in spending such funds is limited by the requirement in section 1116(b)(10)(A)(i) and (ii) of the ESEA that an LEA spend an amount equal to 5 percent of its allocation under subpart 2 on choice-related transportation and 5 percent on supplemental educational services, assuming there is demand for both. In other words, if students require transportation to a school selected under § 200.44, and parents have requested supplemental educational services under § 200.45, the LEA does not have discretion to use the full 20 percent reservation on only one of these activities.

Proposed § 200.48(a)(2)(iii)(A), which was intended to prevent an LEA from using the entire 20 percent on choice-related transportation and ignoring demand for supplemental educational services, should have clarified that an LEA also is not permitted to use the entire amount for supplemental educational services and potentially deny choice to students by failing to provide or pay for choice-related transportation.

On the other hand, if there is demand for either choice-related transportation or supplemental educational services, but not both, the Secretary believes that section 1116(b)(10)(A) of the statute requires an LEA to spend the full 20 percent on the required activity, and not the maximum of 15 percent suggested by some commenters.

In addition, the claim by some commenters that section 1116(b)(10)(B) of the ESEA caps an LEA's spending on supplemental educational services at an amount equal to 5 percent of its allocation ignores the requirements of the introductory clause of section 1116(b)(10)(A) of the statute and the overall legislative context of this provision. Section 1116(b)(10)(B) appears to set such a cap, and thus contradict the introductory clause of subparagraph (A), which requires the expenditure of an amount equal to 20 percent of an LEA's subpart 2 allocation "to satisfy all requests for supplemental educational services under subsection (e)." However, the plain language of section 1116(b)(10)(B) of the statute refers to a maximum amount to be spent on supplemental services "under this part." "[T]his part" refers to the source of funds, which is Title I, Part A. Thus, the maximum amount that an LEA is required to spend out of its Title I, Part A funds is an amount equal to 5 percent of its allocation under subpart 2 of this part. Subparagraph (B) does not change or otherwise reduce the obligation under subparagraph (A) for an LEA to spend an amount equal to 20 percent of its subpart 2 allocation, but simply places a 5 percent limitation on the required use of Title I, Part A funds for this purpose. An LEA, for example, could use funds allocated under Part A of Title V of the ESEA to meet the remaining 15 percent requirement. However, the 5 percent limitation on the required use of Title I, part A funds for this purpose does not prevent an LEA, at its option, from using a higher percentage of Title I, part A funds for this purpose.

Finally, one commenter observed that the proposed regulations appear to ignore section 1116(b)(9) of the ESEA, which requires affected LEAs to provide or pay for choice-related transportation, without specifying either the source of funds or any limit on such costs. Section 1116(b)(9) must be read in context with section 1116(b)(10), which was negotiated during the House Senate conference committee meetings on the ESEA. Earlier versions of the bill had uniformly required transportation for all students exercising a choice option until all needs were met, while limiting the contribution of subpart 2 funds for transportation to 15 percent of an LEA's allocation. If transportation costs exceeded this 15 percent cap on subpart 2 funds, an LEA would have had to use other funds to pay the balance of the choice-related transportation costs. However, the final language of the NCLB Act required only the expenditure of an "amount equal to 20 percent of its allocation under subpart 2," thereby extending the cap to funding from all sources and limiting the obligation to pay transportation costs until all needs were met.

Changes: The final regulations maintain the NPRM requirement in § 200.48(a)(2) that an LEA spend an amount equal to 20 percent of its Title I, part A allocation on choice-related transportation and supplemental educational services, unless a lesser amount is needed to meet the requirements of §§ 200.44 and 200.45. Section 200.48(a)(2)(iii)(A) has been amended to clarify that an affected LEA must spend a minimum of an amount equal to 5 percent of its allocation under subpart A for transportation required under § 200.44 and an identical amount for supplemental educational services under § 200.45, unless a lesser amount is needed to comply with all requests for choice-related transportation and supplemental educational services.

Comment: One commenter requested regulatory clarification that Title I, Part A funds may be used to pay the administrative costs associated with supplemental educational services.

Discussion: Section 1116(b)(10) of the ESEA requires an LEA to spend an amount equal to 20 percent of its Title I allocation for transportation costs related to public school choice and to provide supplemental educational services. This requirement establishes a minimum amount an LEA must spend on the actual supplemental educational services in order to make those services available to as many eligible students as possible. As a result, the Secretary has revised § 200.48(a)(2)(iii)(B) of the final regulations to make clear that an LEA may not include costs for administration or transportation incurred in providing supplemental educational services, or any administrative costs associated with the provision of public school choice options under § 200.44, in the amounts required to be spent to meet the requirements of section 1116(b)(10) of the ESEA. Such costs, however, are allowable Title I expenditures and may be taken off the top of the LEA's Title I allocation like other proper administrative costs.

Changes: Section 200.48(a)(2)(iii)(B) has been amended to clarify that administrative costs associated with providing supplemental educational services may not "count" toward meeting the minimum expenditure requirements in section 1116(b)(10) of the ESEA.

Comment: Two commenters objected to proposed § 200.48(a)(2)(iii)(B), which prohibits an LEA from including supplemental educational services-related administrative or transportation costs as part of the minimum 5 percent of an LEA's Part A allocation that must be spent on satisfying all requests for such services. One of the commenters asserted that since a provider would be permitted to include transportation costs in its fees, LEAs should be permitted to include similar costs under the 5 percent minimum.

Discussion: The ESEA is silent on the treatment of administrative or transportation costs associated with supplemental educational services. The Secretary believes, however, that the funds made available for supplemental educational services under § 200.48(a)(2) are intended to pay for actual services and not administrative or transportation costs. Funding limitations may restrict significantly the availability of supplemental educational services in many LEAs, and permitting LEAs to count administrative or transportation costs toward satisfying the funding requirements of § 200.48(a)(2) would only further reduce the number of students receiving supplemental educational services. In addition, the proposed regulations should have stated that an LEA may not use administrative or transportation costs related to supplemental educational services to satisfy any of the funding requirements of § 200.48(a)(2), and not just the 5 percent minimum requirements under § 200.48(a)(2)(iii)(A).

Changes: The final regulations clarify that LEAs may not include administrative or transportation costs associated with the provision of supplemental educational services in meeting the funding requirements of § 200.48(a)(2).

Comment: One commenter requested that the final regulations clarify that LEAs have fulfilled their responsibility to fund "all requests for supplemental educational services" once they have spent an amount equal to 20 percent of their Part A allocations on choice-related transportation, supplemental educational services, or a combination of the two.

Discussion: The Secretary believes that it is clear from the proposed regulations that an LEA's obligation to "satisfy all requests for supplemental educational services" is limited by available funding specified under § 200.48(a)(2). This limitation is explicitly acknowledged in proposed § 200.48(a)(3) and (4), which permit but do not require LEAs and SEAs to make available additional funding for choice-related transportation and supplemental educational services from other sources.

Changes: None.

Comment: One commenter requested that the final regulations permit the use of alternatives to census poverty estimates in calculating the per-child funding for supplemental educational services under proposed § 200.48(c).

Discussion: Section 1116(e)(6) of the ESEA explicitly requires an LEA to use census poverty estimates to calculate the per-child amount available for

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providing supplemental educational services. The Department provides these estimates to each State when it makes annual Title I allocations, and thus they are available to each LEA. The Secretary has no authority to permit the use of alternative poverty data to determine the per-child amount available for supplemental educational services. We note, however, that an LEA does not use the census poverty estimates to identify those low-income students eligible for supplemental educational services. Rather, an eligible student is a student from a low-income family as determined by the LEA for purposes of allocating Title I funds to schools under section 1113 of the ESEA.

Changes: None.

Section 200.49 SEA Responsibilities for School Improvement, Corrective Action, and Restructuring

Comment: Several commenters recommended modifying proposed § 200.49(b)(2)(ii), which permits an SEA to use school improvement funds to directly provide school improvement activities "if requested by an LEA," by returning to the language of section 1003(b)(2) of the ESEA, which permits SEA retention of such funds "with the approval of the local educational agency." The proposed regulations could be interpreted as preventing a State from developing a cost-effective, statewide approach to supporting school improvement efforts absent a request from LEAs.

Discussion: The Secretary agrees that the proposed regulations could be subject to misinterpretation.

Changes: Section 200.49(b)(2)(ii) has been changed to permit SEAs to directly support school improvement activities "with the approval of the LEA."

Comment: One commenter expressed concern that while proposed § 200.49(e) requires SEAs to make the results of academic assessments in a given year available to LEAs before the beginning of the next school year, the inclusion of local assessments, over which SEAs have little or no authority, in State assessment systems may prevent SEAs from meeting this requirement.

Discussion: SEAs are responsible for ensuring that their State assessment systems, which may include local assessments, comply with all the requirements of the ESEA.

Changes: None.

Comment: One commenter expressed concern that charter schools, many of which enjoy LEA status or are treated as LEAs in the administration of Federal education programs, might not be subject to the rigorous accountability of the NCLB Act if they are effectively permitted to monitor themselves.

Discussion: Section 1111(b)(2)(K) of the ESEA recognizes the unique and varying circumstances of charter schools by requiring that accountability be overseen for charter schools in accordance with State charter school law. The Secretary agrees that the inclusion of this language in the final regulations would help clarify that while the accountability provisions of the NCLB Act apply to charter schools, they are not intended to expand the authority of SEAs or LEAs over charter school operations except to the extent authorized by State charter school law.

Changes: Section 200.49(f) of the final regulations incorporates the charter school accountability language of section 1111(b)(2)(K) of the ESEA.

Section 200.50 SEA Review of LEA Progress

Comment: One commenter requested clarification of the SEA review of LEA progress required by proposed § 200.50(a), which does not appear to include progress on other indicators, such as graduation rates.

Discussion: The Secretary agrees that proposed § 200.50(a)(1)(ii)(A) appears to require progress only in meeting State student academic achievement standards, rather than the broader definition of suggested by the statutory reference to section 1111(b)(2) of the ESEA.

Changes: Section 200.50(a)(1)(i) has been amended to require "as defined under §§ 200.13 through 200.20," which includes progress on other academic indicators in the State plan.

Comment: Two commenters objected to the permissive authority in proposed §§ 200.50(d)(3) and (d)(4) to identify an LEA for improvement or remove an LEA from improvement, respectively, on the basis of 2001–2002 assessment data. The commenters interpret the ESEA as requiring the identification for improvement of any LEA that fails to make AYP for two consecutive years, as well as the removal from improvement status of any LEA that makes AYP for two consecutive years, regardless of the years involved.

Discussion: The Secretary believes that the absence of any reference to 2001–2002 assessment results in the otherwise very specific transition provisions of the new law, combined with the strong likelihood that many States would not be able to make these results available to LEAs prior to the beginning of the 2002–2003 school year, supports a flexible approach to the use of those results for identification purposes during the transition to the new law. To avoid any confusion about the use of 2001–2002 assessment results in subsequent years, however, the Secretary has added language clarifying that an SEA decision not to identify for improvement an LEA that, on the basis of 2001–2002 assessment data, does not make AYP for a second consecutive year, does not permit the SEA to ignore that failure in making future identification decisions.

Changes: Section 200.50(d)(3)(ii) clarifies that if an SEA chooses not to identify for improvement a school that, on the basis of 2001–2002 assessment results, does not make AYP for a second consecutive year, it nevertheless must consider the LEA's 2001–2002 performance as the first year of not making AYP for the purpose of subsequent identification decisions.

Comment: One commenter objected to the flexibility provided SEAs in proposed § 200.50(e)(3) to remove from corrective action an LEA that, on the basis of assessments administered during the 2001–2002 school year, makes AYP for a second consecutive year. The commenter maintained that the ESEA requires SEAs to remove LEAs from corrective action in such cases, as well as to use 2001–2002 assessment data to identify additional LEAs for corrective action.

Discussion: The Secretary believes that the proposed regulations are an appropriate way to address an inequity in the statutory transition provisions covering identification for corrective action. These provisions require SEAs to treat LEAs that were identified for corrective prior to enactment of the NCLB Act as subject to corrective action for the 2002–2003 school year. Some of these LEAs, however, may have made AYP in both 2000–2001 and 2001–2002, thus meeting the statutory requirement for removal from corrective action. The proposed regulations thus permit SEAs to remove these LEAs from corrective action, but does not require such removal because some SEAs may, in part due to the uncertain timing of assessment results, prefer to simply adhere to the statutory transition provisions. As for identifying additional LEAs for corrective action on the basis of 2001–2002 assessment data, proposed § 200.50(e)(1) already permits an SEA to take corrective action against any LEA that it has identified for improvement, but the statutory transition provisions suggest that mandatory identification for corrective action in the 2002–2003 school year is limited to those LEAs identified under the previous law.

Changes: None.

Section 200.51 Notice of SEA Action

Comment: Two commenters requested clarification on whether SEAs, rather than communicating directly to parents as required by proposed § 200.51(a)(2)(i), are permitted to work with the LEA to deliver information about the LEA review and improvement process directly to parents.

Discussion: The Secretary agrees that it may be more effective for SEAs, in cases where an SEA does not have access to individual student addresses, to communicate with parents through means provided by the LEA.

Changes: Section 200.51(a)(2)(i) has been changed to permit an SEA, in cases where an SEA does not have access to individual student addresses, to provide information on the LEA review and improvement process by using LEA- and school-level delivery mechanisms.

Section 200.54 Rights of School and School District Employees

Comment: Numerous commenters objected to proposed § 200.54, which would have given LEAs greater flexibility in negotiating collective bargaining agreements and other agreements between employers and employees that are consistent with the school and LEA improvement requirements of proposed §§ 200.30 through 200.53. Commenters maintained that the proposed regulations were inconsistent with both the statute and with many State and local laws governing collective bargaining agreements.

Discussion: The Secretary believes that section 1116(d) of the ESEA was not intended to deny LEA and school leaders the management tools needed to implement effective LEA and school improvement measures, which may often involve changes in the assignment and duties of LEA and school personnel. However, the Secretary agrees that the proposed regulations arguably were inconsistent with a strict reading of the NCLB Act and may have conflicted with applicable State and local laws.

Changes: Proposed § 200.54 has been removed from the final regulations.

Qualifications of Teachers and Paraprofessionals

Section 200.55 Qualifications of Teachers

Comment: Several commenters asked for clarification as to which subjects are "core academic subjects." One commenter asked that foreign languages and the arts be excluded from the definition of core academic subjects. One commenter asked why science was listed as a stand-alone discipline when social studies was broken down into civics, geography, and history. Another commenter asked why special education was not listed as a core academic area.

Discussion: The definition of core academic subjects is in section 9101(11) of the ESEA, and is repeated in § 200.55(c) of the regulations. The statute defines core academic subjects as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. Hence, the definition lists science generally but civics, geography, and history separately. The statute does not identify special education as a core academic subject, and the Secretary lacks authority to delete or change the subjects included in this statutory definition.

Changes: None.

Comment: A commenter recommended that newly hired Title I teachers serving private school students meet the same standards of quality as those who teach in public schools.

Discussion: We agree with this recommendation.

Changes: Section 200.55 (a)(2) and (b) has been modified to clarify that the requirements governing "highly qualified" teachers apply to teachers employed by an LEA with funds under part A of Title I, who teach eligible private school students, to the same extent as they apply to those who teach eligible public school students.

Comment: One commenter recommended that the regulations clarify that a teacher in a targeted assistance program is one who teaches students participating in that program.

Discussion: We believe that the existing language is clear and that no further clarification is needed.

Changes: None.

Comment: One commenter recommended that the "highly qualified" requirement not apply to all teachers in a school that operates a schoolwide program.

Discussion: Inherent to the concept of schoolwide programs is the elimination of any distinction between Title I and non-Title I students; that is, a schoolwide program is intended to provide an instructional program that helps all students in the school. Therefore, it would subvert the intent of schoolwide programs to have requirements that govern highly qualified teachers apply to some, but not all, teachers in a schoolwide program school.

Changes: None.

Comment: One commenter recommended that § 200.55(b)(1) clarify that the requirement that "all teachers in the State" be highly qualified by the end of the 2005–2006 school year applies only to public elementary and secondary school teachers, and not to others, such as private school and college teachers.

Discussion: The Secretary agrees with the comment.

Changes: Section 200.55(b) has been revised to clarify that the requirements governing highly qualified teachers apply to "all public elementary and secondary school teachers." This clarification was also made in § 200.56(b)(1) and (b)(2). In addition, § 200.55(d) has been added to clarify that the requirements of the section do not apply to teachers hired by private elementary and secondary schools.

Comment: As proposed, § 200.55(b)(2) provided, as an example of teachers who do not need to meet the highly qualified requirements because they do not teach a core academic subject, "some vocational educational teachers." One commenter recommended deletion of the word "some."

Discussion: We disagree with the comment. If a vocational education teacher teaches a core academic subject, such as applied physics, section 1119 of the ESEA requires that teacher to be highly qualified. On the other hand, if a vocational education teacher teaches only a trade, such as auto mechanics, the teacher would not need to meet these requirements since the law does not treat that area of study as a core academic subject. Hence, § 200.56(b)(2) only exempts "some" vocational educational teachers.

Changes: None.

Comment: A number of commenters requested clarification about how the "highly qualified" requirements apply to special education teachers and teachers of limited-English proficient (LEP) students. Several recommended that special education teachers be deemed to have met the "highly qualified" requirements that apply to other teachers if they are certified or licensed in special education and have passed an appropriate State test.

Discussion: The ESEA specifies that all teachers of core academic subjects are to meet the requirements set forth in the statute. Students with limited English proficiency or with disabilities are expected to meet the same standards as all other students, and their teachers should be expected to have met the same standards for content knowledge. On the other hand, special educators who do not directly instruct students on any core academic subject or who provide only consultation to highly qualified teachers of core academic subjects in adapting curricula, using

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behavioral supports and interventions, and selecting appropriate accommodations do not need to meet the same "highly qualified" subject-matter competency requirements that apply under the NCLB Act to teachers of core academic subjects. SEAs and LEAs must ensure that all special education personnel, including related services providers, meet the personnel-standards requirements of section 612(a)(15) of the IDEA and 34 CFR § 300.136. Special education teachers who are providing instruction in core academic subjects also must meet the "highly qualified" requirements of the ESEA.

The Secretary recognizes that there is an urgent need for highly qualified teachers, and that critical shortages exist in some areas, particularly math and science teachers, and special education teachers. Nevertheless, the NCLB Act sets high standards for students, as well as teachers, and States should work to meet them. The statute provides a certain amount of flexibility in how the standards are met. Teachers can demonstrate competency by taking a test, and States have flexibility to tailor those tests to the subjects taught by teachers, including special education teachers and teachers of LEP students. This issue will be addressed further in guidance.

Changes: None.

Section 200.56 Definition of "Highly Qualified Teacher"

Comment: Several commenters recommended tightening the requirements for teachers in alternative route programs so that these individuals receive, as quickly as possible, the training and full State certification they need to be effective teachers.

Discussion: We agree with the comment. Our proposal that a teacher in an alternative route program be considered highly qualified if the teacher "is making satisfactory progress toward full certification as prescribed by the State and the program" reflects the need for States to ensure that alternative routes to certification do not become vehicles for granting long-term waivers of certification requirements. Still, we understand that, for these teachers to be effective, those in alternative route programs need to be prepared to teach their students from the moment they step into their classrooms, and receive the follow-up support they need as beginning teachers. We also believe that, in order to ensure that alternative route programs do not become long-term vehicles for waiving State requirements for full certification, it is reasonable to establish a maximum period—three years—in which a teacher in an alternative route can be considered to be fully certified without having received State certification.

Changes: Section 200.56(a)(1)(iii)(B) is amended by adding language that requires teachers in alternate route programs to (1) receive high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching, (2) participate in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program, (3) assume functions as a teacher only for a specified period of time not to exceed three years before receiving full State certification, and (4) demonstrate satisfactory progress toward full certification as prescribed by the State. The regulations have been further amended by requiring that the State ensure, through its certification and licensure process, that these provisions are met.

Comment: A commenter recommended deleting the proposed language that would permit teachers in alternative route programs to be deemed to have obtained full State certification for purposes of meeting the requirements governing highly qualified teachers. Several other commenters expressed support for the Department's proposal.

Discussion: We do not agree with those commenters who wish to delete the flexibility that we would provide LEAs for teachers in alternative routes to certification. First, Congress has chosen both to authorize and fund two alternative route programs, Troops-to-Teachers and Transition to Teaching, in Title II, part C of the ESEA, and has permitted States and LEAs to use Title II, part A formula grant funds to hire teachers in alternative route programs. Hence, we do not believe that Congress intended that teachers in alternative route program would be unable to teach until they had obtained full State certification. Beyond this, we believe that LEAs can and should be able to continue to effectively use alternate routes to certification as a mechanism for increasing the number of teachers who are capable of providing effective instruction, and, indeed that these alternative routes can also serve as models for the certification system as a whole.

Changes: None.

Comment: A commenter recommended that teachers participating in alternative certification programs be required to demonstrate subject matter competency.

Discussion: Sections 9101(23)(B) and (C) of the ESEA, and § 200.56(b) and (c) of the regulations already require this.

Changes: None.

Comment: A commenter requested that the regulations clarify that current teachers may demonstrate their subject area competency in the same ways as new teachers can, or through a state-established system of evaluation as section 9101(23)(c)(ii) of the ESEA permits.

Discussion: Section 200.56(c)(2) already provides this clarification.

Changes: None.

Comment: One commenter recommended that teachers be allowed to demonstrate subject-matter competency needed to be highly qualified on the basis of a minor in an academic area. Another commenter requested that where an evaluation of teacher performance is used to demonstrate competency, LEAs, rather than SEAs, be allowed to determine the standard of evaluation.

Discussion: We disagree with both recommendations. Section 9101(b)(ii) of the ESEA permits middle and secondary school teachers to demonstrate subject-matter competency by successful completion, in each academic subject the teacher teaches, of an academic major or coursework equivalent to an academic major (or a graduate degree or advanced certification or recredentialing). The law does not authorize receipt of a minor in the subject being taught as sufficient to demonstrate competency. Similarly, section 9101(23)(c)(ii) of the ESEA expressly permits the demonstration of subject-matter competency to be based on "a high objective State standard of evaluation," not a "local standard" of evaluation. Moreover, the Secretary lacks authority to delete or change the aspects of this statutory definition.

Changes: None.

Comment: Section 9101(23(A)(ii)) of the ESEA, like § 200.56(B)(3), provides that to be highly qualified a teacher may not have had "certification or licensure requirements waived on an emergency, temporary, or provisional basis." One commenter recommended that the terms temporary, emergency, and provisional licensure be defined.

Discussion: State certification and licensure is a matter of State law and policy, and hence the definition of these terms is left to State decisionmaking. We do not believe that attempting to establish a common definition of these terms is needed. We add only that with one exception the Secretary interprets the phrase "waived on an emergency, provisional, or temporary basis," to encompass any form of a waiver, by whatever name a State uses, under which the State permits a teacher to teach without having obtained full certification or licensure applicable to the years of experience the teacher possesses. That exception is for teachers in alternative routes to certification consistent with § 200.56(a)(2)(ii).

Change: None.

Comment: One commenter requested that all of the highly qualified teacher provisions apply to charter school teachers.

Discussion: Section 9101(23)(A)(i) of the ESEA provides that, for teachers of public charter schools, obtaining full State certification (or passing the State teacher licensing examination and holding a license to teach) means that teachers have met the requirements of their State charter school laws. Thus, the certification and licensure requirements of the ESEA do not apply to charter school teachers if State law exempts charter school teachers from these requirements. The statute's definition of highly qualified teachers provides no other exceptions for charter school teachers.

Changes: None.

Comment: One commenter recommended that, as part of the definition of highly qualified, all teachers be required to complete an approved educator preparation program.

Discussion: We assume that the comment was meant to apply to teachers progressing through alternate routes to certification. The Secretary agrees that proposed § 200.56(a)(1)(iii)(B) should be modified to include a requirement that teachers in alternative route programs receive high-quality professional development before beginning to teach. However, the Secretary does not believe that those progressing through alternative routes to teaching should need to complete a State "approved educator preparation program," particularly since this kind of requirement would very likely discourage a great many talented individuals who would want to change careers and become teachers from ever doing so.

Changes: § 200.56(a)(2)(ii)(A) now contains language that requires teachers in alternative route programs to receive rigorous training before assuming instructional duties and to participate in a teacher mentoring program.

Comment: One commenter requested that the language in paragraph (b)(1) be revised to require teachers new to the profession either to hold a Bachelor's degree or, for those in teacher preparation programs, to have completed all of the requirements for the degree with the exception of student teaching.

Discussion: Sections 9101(23)(B)(i)(I), 9101(23)(B)(ii), and 9101(23)(C)(i) of the ESEA expressly require all teachers to hold a Bachelor's degree in order to be considered highly qualified. The Secretary lacks authority to delete or change the subjects included in this statutory definition.

Changes: None.

Comment: A commenter requested clarification of the terms "advanced certification or credentialing."

Discussion: The NCLB Act offers these vehicles as alternative means by which middle and high school teachers not new to the profession may demonstrate subject matter competency in the subjects they teach. Each State may define these terms, and establish policies that implement them, as it believes will meet the purpose of the law—to enable teachers to demonstrate subject matter competency.

Changes: None.

Section 200.57 Plans to Increase Teacher Quality

Comment: One commenter recommended that the regulations should require the State to outline specific steps for carrying out the highly qualified teacher provision, and how the State intends to monitor LEAs in this regard.

Discussion: The Secretary agrees with this recommendation.

Changes: Section 200.57(a) has been amended to require that the State's plan describe the strategies the state will use to help LEAs and schools have all teachers meet the highly qualified requirements no later than the end of the 2005–2006 school year, and to monitor the progress of LEAs and schools in meeting these requirements.

Comment: One commenter recommended that the regulations include the statutory references to the "parents right to know" provision.

Discussion: The Secretary believes that it is critical that parents be kept well informed on the status of their child's education, and so he agrees with this recommendation.

Changes: A new section, § 200.61, has been added that restates the language on a "parent's right to know," as stated in section 1111(h)(6) of the NCLB Act.

Comment: A commenter recommended that the regulations clarify that State plans to increase teacher quality must indicate both the steps States will take to ensure that minority students have equal access to high quality teachers, and how the States will measure their progress in meeting this requirement.

Discussion: The Secretary agrees with this recommendation. Including this information in the State plan merely ensures that, through the plan, the SEA is ensuring that LEAs implement the assurance they provide the State in section 1111(c)(1)(L) of the ESEA that they "ensure, through incentives for voluntary transfers, the provision of professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers." Indeed, given this LEA assurance, the Secretary also believes that comparable information should be included in the local plan to increase teacher quality.

Changes: Section 200.57(a) has been amended to require that the SEA take specific steps to ensure that Title I schools provide instruction by highly qualified teachers, including steps to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers. SEAs must evaluate and publicly report their progress with respect to these steps.

Section 200.58 Qualifications of Paraprofessionals

Comment: One commenter asked that the regulations clarify that it is the paraprofessional's choice as to which of the three allowable options (two years of study at an institute of higher education, an associate's degree, or demonstrating knowledge and ability to assist in instruction through an assessment) the paraprofessional will meet. The commenter also recommends that the regulations clarify that once a paraprofessional has met qualification requirements in one district, he or she does not have to re-qualify after moving to another school district.

Discussion: The Secretary does not believe a change in the regulations is necessary. Any needed clarifications will be addressed in future nonregulatory guidance.

Changes: None.

Comment: Several commenters asked for greater clarification about which paraprofessionals must meet the requirements in § 200.58. One commenter requested that the regulations be revised to clarify that the requirements apply only to paraprofessionals hired by the school district or school. Another commenter asked whether the requirements apply to paraprofessionals with non-instructional duties working in a schoolwide project school.

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Discussion: The requirements of section 1119(c) of the ESEA and § 200.58 apply to individuals hired by an LEA whether individually or as part of a partnership. They do not apply to volunteers or other paraprofessionals who may be employed by a private contractor. They also do not apply to individuals with solely non-instructional roles in schoolwide project schools.

Changes: Section 200.58(a)(1) has been amended to clarify that the qualification requirements apply to each paraprofessional "who is hired by the LEA" and who meets the other criteria set out in this section of the regulations.

Comment: Two commenters asked that the regulations be modified to provide a four-year transition period for paraprofessionals to obtain a high school diploma or the equivalent. Another commenter recommended that the regulations include a grandfather clause that would exempt paraprofessionals with ten or more years of experience from having to meet any of the qualification requirements.

Discussion: Section 1119(f) of the ESEA requires that LEAs receiving Title I, part A funds ensure that all paraprofessionals working in a program supported with Title I, part A funds, regardless of the paraprofessional's hiring date, have a high school diploma. The ESEA provides no authority for a phase-in of this requirement or to exempt paraprofessionals with ten or more years of experience from meeting this requirement.

Changes: None.

Comment: One commenter requested that the regulations be modified to permit a paraprofessional enrolled in an associate's degree program to be considered as meeting the qualification requirements through an alternative qualification process.

Discussion: The statute does not authorize paraprofessionals to meet the qualification requirements in the manner suggested.

Changes: None.

Comment: Two commenters objected to the qualification option that paraprofessionals have an associate's degree.

Discussion: An associate's degree is one of the three ways that the statute provides for paraprofessionals to demonstrate they are qualified. A paraprofessional may (1) complete two years of study at an institution of higher education, or (2) have an associate's degree, or (3) pass a state or local assessment that demonstrates knowledge of and ability to assist in the instruction of reading, writing or mathematics (or reading readiness, writing readiness, or mathematics readiness), as appropriate. The options recognize that, depending on a paraprofessional's background and experience, there is more than one way to demonstrate the appropriate competency.

Changes: None.

Comment: Several commenters sought clarification of what it means for a paraprofessional to have completed at least two years of study at an institution of higher education. One commenter asked that the regulations specify the specific number of semester hours necessary to demonstrate that a paraprofessional has completed the required two years of study. On the other hand, other commenters asked that the regulations make it clear that there is no specific number of credit hours that defines two years of study.

Discussion: The number of credit hours necessary to demonstrate that a paraprofessional has completed at least two years of study at an institution of higher education will vary by institution. Therefore, a "one-size-fits-all" definition would be inappropriate. Each State may choose to define, for paraprofessionals working in the State, what these two years of study encompass. If it does not do so, the policies of each institution will govern whether a paraprofessional has completed two years of study.

Changes: None.

Comment: One commenter requested that the regulations make it clear that paraprofessionals providing instructional support for teachers of eligible students attending private schools must meet the same standards as other paraprofessionals.

Discussion: The Secretary agrees with this recommendation. Paraprofessionals hired by an LEA to provide instructional support for Title I, part A teachers of eligible students attending private schools are employees of the school district and must meet the same requirements as any other paraprofessionals providing instructional support in a program supported by Title I, part A funds.

Change: Section 200.58(a)(3)(iii) is added to clarify that the qualification requirements apply to paraprofessionals hired by an LEA to provide instructional support to public school teachers providing Title I services to eligible private school students.

Comment: Several commenters sought clarification of the option that paraprofessionals may meet a rigorous standard of quality by demonstrating competency through a formal State or local academic assessment. One commenter requested clarification that the assessment does not have to be in writing. Other commenters wanted the regulations to require States and districts to develop these assessments; make clear that States or districts may adopt an existing assessment; require that assessments be available before September 2003; specify that the assessment should be made available at no cost to the paraprofessionals; and clarify that Title I, part A funds may be used to develop or purchase such assessments.

Discussion: Under the ESEA, States and LEAs have considerable flexibility in how they design and administer their assessments. The Secretary does not believe that additional regulations are necessary and intends to highlight this flexibility in future nonregulatory guidance.

Change: None.

Comment: Two commenters sought clarification on how the requirements apply to paraprofessionals hired "on" January 8, 2002 as opposed to those before or after that date.

Discussion: The Secretary agrees that clarification is needed.

Changes: Section 200.58(d) is amended to clarify that existing paraprofessionals are those hired on or before January 8, 2002.

Comment: Several commenters sought clarification on how the requirements apply to paraprofessionals in specified circumstances, *e.g.*, paraprofessionals with multiple roles, such as translators who also provide instructional support, paraprofessionals who provide instructional support to teachers of subjects other than core academic subjects, such as physical education, and non-instructional computer technicians.

Discussion: The ESEA is very explicit about the requirements and to whom they apply. The requirements apply to any paraprofessionals in Title I, part A programs who are assigned an instructional support duty, even as one of many assigned responsibilities, identified in section 1111(g)(2) of the ESEA and § 200.59(b). With regard to computer technicians, § 200.58(a)(2)(ii) of the regulations states that solely providing technical support for computers is a non-instructional duty.

Changes: None.

Comment: One commenter sought clarification on how the requirements apply to paraprofessionals working in a variety of pre-Kindergarten programs, such as Head Start, or pre-Kindergarten programs funded with Head Start and State pre-Kindergarten funds.

Discussion: A number of questions have been raised about how the paraprofessional qualification requirements apply to paraprofessionals working in these pre-Kindergarten programs. The Secretary intends to address this issue in nonregulatory guidance.

Change: None.

Section 200.59 Duties of Paraprofessionals

Comment: One commenter wanted changes in the proposed § 200.59 in order to reinforce the difference between instructional and non-instructional duties.

Discussion: The Secretary agrees with the recommendation.

Changes: Section 200.59(b) is amended to read, "A paraprofessional covered under § 200.58 may perform the following instructional support duties:" Regardless of an employee's title, an individual hired by an LEA who does not perform instructional support duties as identified in § 200.59 is not a "paraprofessional" for purposes of Section 1119 of the ESEA or these regulations. Moreover, it is possible that one employee, for example, performs parental involvement that is instructional support while another employee performs parental involvement that is not instructional support. The Department intends to issue guidance to help explain that distinction.

Comment: Several commenters recommended deleting language that would specify that one-on-one tutoring must take place outside of the regular school day.

Discussion: The Secretary agrees that there may be circumstances in which tutoring could be provided during the school day at a time when a student is not receiving instruction from a teacher.

Changes: Section 200.59(b)(1) is amended to remove the language requiring one-on-one tutoring to take place outside of the regular school day.

Comment: Many commenters addressed the regulatory provisions in paragraph (c), and asked that it clarify what it means for a paraprofessional to work under the direct supervision of a teacher. For example, several commenters said that the proposed language was too prescriptive, while another proposed that the regulations require paraprofessionals to work in the same room as the teacher. One commenter sought additional clarification of what "close and physical proximity to a teacher" means, while still another commenter recommended deleting this language.

Discussion: This regulatory provision responds to a finding of the National Assessment of Title I that, even though the prior statute also required paraprofessionals to work under the direct supervision of a teacher, 41 percent of paraprofessionals reported that half or more of the time they spent teaching or helping to teach was on their own, without a teacher present.

Changes: None.

Participation of Eligible Children in Private Schools

Section 200.62 Responsibilities for Providing Services to Private School Children

Comment: One commenter recommended that the regulations confirm that Title I services and benefits to private school students be secular, neutral, and non-ideological.

Discussion: The Secretary concurs. Section 1120(a) of the ESEA requires that Title I services and benefits provided to eligible private school children be secular, neutral, and non ideological.

Changes: Section 200.62 incorporates the statutory language that reflects the recommended change.

Section 200.63 Consultation

Comment: One commenter recommended that the consultation topics listed in § 200.63(b) be examples of timely and meaningful consultation by the LEA rather than required topics for consultation.

Discussion: Section 1120(b)(2) of the ESEA requires that consultation by an LEA occur prior to an LEA's making any decision that affects the opportunities of private school children to participate in Title I. The Secretary believes that all of the consultation topics listed in § 200.63(b) are necessary because they affect the opportunities of private school children to participate in Title I.

Changes: None.

Comment: One commenter asked that § 200.63(b)(5), concerning an LEA's responsibility for assessing services to private school children, be clarified by adding a reference to the LEA's assessment responsibility under § 200.10.

Discussion: The Secretary concurs that a reference to § 200.10 clarifies the LEA's assessment responsibility.

Changes: Section 200.63(b)(5) contains a reference to § 200.10.

Comment: One commenter recommended that § 200.63(b)(6), concerning size and scope of equitable services, be clarified by including a reference to § 200.64, that addresses factors for determining equitable participation of private school children.

Discussion: The Secretary agrees that a reference to § 200.64 clarifies an LEA's responsibility to consider the factors listed in that section when determining equitable participation for private school students.

Changes: Section 200.63(b)(6) contains a reference to § 200.64.

Comment: One commenter suggested that § 200.63(b)(7) singles out one method for determining poverty data for private school children, and asked that the words "including whether the LEA will extrapolate data from a survey" be deleted.

Discussion: Section 1120(c) of the ESEA lists four ways an LEA may determine the number of private school children from low-income families. The Secretary's intent is to give direction for consultation rather than to indicate a preference for any method.

Changes: To make the intent clear, § 200.63(b)(7) has been amended to clarify that consultation regarding the source of poverty data for private school children must include a discussion of extrapolation only if a survey is used.

Comment: One commenter recommended that the SEA be allowed flexibility in implementing § 200.63(e)(1), that outlines the records an LEA must maintain and submit to the SEA when documenting that it has consulted with private school officials.

Discussion: The Secretary believes that the language in § 200.63(e) accurately reflects the statute and gives an SEA the flexibility needed to implement provisions of this section.

Changes: None.

Comment: One commenter requested that § 200.63(e)(2), that requires an LEA to report to the SEA that it has consulted private school representatives, be amended by adding a provision requiring that an LEA indicate the reason why the private school officials did not provide affirmation.

Discussion: The Secretary believes that the proposed regulations accurately reflect the NCLB Act. The Secretary assumes, and would encourage, that any documentation that an LEA provides to the SEA concerning its consultation with private school officials would include an explanation about why private school officials did not provide the requisite affirmation.

Changes: None.

Section 200.64 Factors for Determining Equitable Participation of Private School Children

Comment: One commenter asked that the clause "In the aggregate," at the beginning of § 200.64(a)(1), concerning equal expenditures, be deleted.

Discussion: The Secretary concurs and believes that this clause was

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included in error. This same clause is contained elsewhere in § 200.64(a)(1).

Changes: Section 200.64(a)(1) has been amended to remove "In the aggregate."

Comment: One commenter stated that the language concerning equal expenditures lacks specificity and could result in confusion. The equitable services requirements would not apply to all of the district-wide activities for which an LEA must reserve funds under § 200.77. For example, an LEA would not need to ensure that private school students receive equitable services from funds reserved to meet transportation costs related to public school choice or to provide supplemental services to students in public schools identified as in need of improvement. The commenter asked that § 200.64(a)(2) be changed to make clear that the equitable services requirement applies only to reserved funds that affect services to private school students. Another commenter stated that funds reserved under § 200.77 are not limited to instructional activities, and that § 200.64(a)(2) should not limit the use of the funds only to "instructional activities." In order to be consistent with the language in § 200.77, the commenter recommended the use of the more inclusive word "services."

Discussion: The Secretary agrees that, where applicable, funds an LEA reserves under § 200.77 must be used to provide equitable services for private school children. An LEA must also, when reserving funds under § 200.77, ensure that it provides instructional and related activities for eligible private school children that are equitable to activities provided for public elementary or secondary school students.

Changes: Section 200.64(a)(2)(i)(A) is amended to make clear that an LEA must provide equitable services to private school students from funds it reserves off the top of its allocation if those funds are used to provide instructional and related activities to public elementary and secondary school students.

Comment: One commenter recommended that § 200.64(a)(2)(i) be changed to specify that the equitable services an LEA must provide include "necessary educational support such as technology and interpreters".

Discussion: The needs of the private school participants determine what Title I services an LEA provides. Technology and interpreters are two of many Title I service options available, but may not be what is required in all instances.

Change: None.

Comment: One commenter stated the language in § 200.64(a)(2)(i), concerning district-level funds reserved for student instructional and related activities, is confusing with regard to how an LEA provides equitable services to private school children from Title I funds reserved by the LEA for district-wide activities. The commenter believes that equitable services should be based on a comparison to services and benefits provided to public school students rather than on the proportion to the number of private school children from low-income families residing in participating attendance areas.

Discussion: The Secretary believes that, in order to ensure that private school children receive an equitable share of services from funds an LEA reserves under § 200.77, the amount of funds made available from that reserve for equitable services must be proportionate to the number of private school children from low-income families residing in participating attendance areas. The Secretary agrees that this regulatory language needs to be modified in order to make this policy clearer.

Changes: The Secretary has amended proposed § 200.62(a)(2)(i)(B) to clarify that equitable services must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

Comment: None.

Discussion: In giving further consideration to the proposed regulations, Departmental staff determined that § 200.64(b)(2)(iii)(B) needed further clarification concerning the need for private school participants to meet the State's student academic performance standards. Because a private school's curriculum may not be aligned with State standards, it may be inappropriate to expect private school participants to meet the same State standards. The Secretary is making a clarifying change to give an LEA the flexibility to use equivalent standards to measure the academic progress of private school participants.

Changes: The Secretary has made this change.

Comment: One commenter recommended a technical correction in § 200.64(b)(3)(i), concerning an LEA's choice to provide services to private school children either directly or through a third-party contractor, to replace the word "must" with the word "may" and thereby make the language consistent with the statute.

Discussion: The Secretary concurs with this change.

Changes: Section 200.64(b)(3)(i) has been amended to make clear that an LEA may provide equitable services either directly or through a third-party provider.

Comment: One commenter suggested that § 200.64(b)(3)(ii) of the regulations be clarified so that, if an LEA provides services through a contract with a third-party provider, the contractor must be independent of the private school and of any religious organization.

Discussion: The Secretary agrees with the recommended change. Section 1120(c)(2)(B) of the ESEA requires that a third-party provider who provides equitable services to private school students must be independent of the private school and of any religious organization and that the contractor be under the control and supervision of the LEA.

Changes: The Secretary has amended § 200.64(b)(3)(ii) to include the statutory language.

Comment: One commenter suggested that § 200.64(b)(4) be changed to clarify that timely and meaningful consultation with private school officials must take place in accordance with § 200.63 before an LEA makes final decisions with respect to providing Title I services to eligible private school children.

Discussion: The Secretary agrees that an LEA must make final decisions with respect to the services it will provide to eligible private school children only after timely and meaningful consultation with private school officials in accordance with § 200.63.

Changes: Section 200.64(b)(4) has been amended to reflect the recommended clarification.

Section 200.65 Determining Equitable Participation of Teachers and Families of Participating Private School Children

Comment: A commenter recommended clarifying § 200.65(a)(1), concerning the reservation of funds for parent involvement and professional development activities, by inserting the word "applicable" before "funds".

Discussion: The Secretary agrees with this recommendation because the equitable services requirements apply to most, but not all, funds reserved for professional development and parent involvement activities. For example, equitable services for private school teachers would not apply to professional development funds an LEA in improvement must reserve in order to improve the quality of its schools.

Changes: The Secretary has made this change.

Comment: A commenter recommended that § 200.65(a)(1) be changed so that an LEA must ensure that "pupil services personnel," in addition to teachers who provide services to private school children, be involved in professional development on an equitable basis.

Discussion: The requirement for equitable services in section 1120(a) of the ESEA applies to private school teachers of students participating in Title I to improve the achievement of those students. To the extent that "pupil services personnel" are involved with improving the achievement of participating private school students, they may participate in professional development activities under Title I.

Changes: None.

Comment: One commenter did not agree that the amount of funds an LEA must make available under § 200.65(a)(1) to ensure equitable services to private school children must be based on the proportion of private school children from low-income families residing in participating school attendance areas. The commenter believed that the measure of service equity is more appropriately based on the services provided to the teachers and parents of private school students compared to services provided to teachers and parents of public school students.

Discussion: The Secretary believes that the best way to ensure that the equitable participation of teachers and families of participating private school children occurs is to base the amount available for those services from the applicable reserve on the proportion of private school children from low-income families residing in participating public school attendance areas. To make this policy more clear, the Secretary has made a clarifying amendment.

Change: The Secretary has amended § 200.65(a)(2) to clarify that the amount of funds available to provide equitable services from reserved funds for parent involvement and professional development must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

Allocations to LEAs

Section 200.70 Allocation of Funds to LEA in General

Comment: One commenter recommended clarifying the references to total population used for determining whether an LEA is a small or large LEA in § 200.70(c) and (d) to indicate that this means total census population.

Discussion: The language in the proposed regulations is consistent with the statutory language in section 1124(a)(2)(B)(vi)(II) of the ESEA, which defines a small LEA as one with a total population of less than 20,000. However, the Secretary, in fact, provides States with data from the Census Bureau on the total resident population for each LEA in order for the SEA to identify large and small LEAs for the purpose of redistributing Title I, Part A funds among its small LEAs using alternative poverty data. We agree that the commenter's recommendation adds clarity. Such a change will make the regulations consistent with the Department's current practice of providing States with total census population data for each LEA.

Changes: The Secretary has changed the "total population" references in §§ 200.70(c) and (d) and 200.74(a) to "total census population".

Comment: One commenter asked what was meant by the term "limited instances" used in the preamble to the proposed regulations, which stated that § 200.70 establishes the principle that an SEA must change the allocations determined by the Department in limited instances.

Discussion: As a general rule, the Department of Education determines allocations for LEAs. Sections 200.70 through 200.75 outline the specific, limited instances when an SEA must adjust the allocations determined by the Department. For example, the list of LEAs that the Secretary uses to determine LEA allocations is provided by the Census Bureau and is based on the geographic boundaries of LEAs as they existed several years ago. Because that list does not match the current universe of LEAs in many States, SEAs must adjust the Department's LEA allocations to account for school district consolidations, break-ups, and boundary changes and to account for the creation of new LEAs (such as charter school LEAs) that are legitimately eligible for Title I, part A funds. In addition, SEAs must adjust the Department's allocations to (1) reserve funds for school improvement, State administration, and the State academic achievement awards program; and (2) allow, in certain cases, for the use of alternative poverty data to redistribute Department-determined Title I allocations among districts with fewer than 20,000 total residents.

Changes: None.

Section 200.72 Procedures for Adjusting Allocations Determined by the Secretary To Account for Eligible LEAs not on the Census List

Comment: One commenter recommended that this section be revised to require that an SEA provide final allocations to LEAs no later than 60 days following the receipt of the final allocation notification from the Department.

Discussion: While the Secretary supports the need for SEAs to determine final allocations as quickly as possible, it is sometimes impossible for an SEA with a significant number of newly created or expanding charter school LEAs to make final allocations within the 60 day deadline recommended by the commenter. In many cases the poverty and enrollment data for the charter school LEAs and the districts from which they draw their students are not available until the beginning of the school year. The data available at the beginning of the school year are often estimates, which the SEA uses to determine preliminary allocations. The SEA must adjust these allocations later in the school year after it receives actual data in order to determine final LEA allocations.

Changes: None.

Section 200.73 Applicable Hold-Harmless Provisions

Comment: One commenter believed that the language of this section implied that an LEA must meet the eligibility requirements for three of the four Title I, part A formulas in order to benefit from the hold-harmless protection.

Discussion: For the Basic, Targeted, and Education Finance Incentive Grant formulas, § 200.73(d)(1) requires that an LEA be eligible under each of those formulas in order for the applicable hold-harmless provision to apply.

Changes: The Secretary has amended the language in § 200.73(d)(1) to clarify that, to benefit from the hold-harmless provision under a particular formula, an LEA need only be eligible under that formula.

Section 200.75 Special Procedures for Allocating Concentration Grant Funds to Small States

Comment: One commenter raised a concern whether the Concentration Grant hold-harmless provision applies to the special procedures that a small State may use in allocating those funds to LEAs.

Discussion: The Concentration Grant hold-harmless provision described in § 200.73(d)(2) applies to LEAs in all States. Therefore, an SEA must pay an LEA not meeting the eligibility thresholds for Concentration Grants its hold-harmless amount for four consecutive years. This hold-harmless provision applies to a small State that uses the flexibility available to it under section 1124A(d) of the ESEA and

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§ 200.75 of the regulations when allocating Concentration Grant funds to eligible LEAs in which the number or percentage of formula children equals or exceeds the Statewide average number or percentage of those children.

Changes: The Secretary has added a reference § 200.75(a)(2)(ii) to make clear that the Concentration Grant hold-harmless provision in § 200.73(d) applies to small States using the special procedures outlined in § 200.75.

Procedures for the Within-District Allocation of LEA Program Funds

Section 200.77 Reservation of Funds by an LEA

Comment: One commenter asked why there is a provision regarding reserving funds for capital expenses since there are no funds appropriated for the Capital Expenses program and the authorization for that program will expire on September 30, 2003.

Discussion: Section 200.77(f) of the regulations continues the authority for an LEA reserve Title I funds that are reasonable and necessary to administer programs for public and private school children. An LEA may still use Title I funds it reserves for administration to pay for capital expenses associated with providing services to private school children even though Congress has appropriated no funds specifically for capital expenses in fiscal year 2002 and the authorization, which governs the use of funds appropriated for the program will expire on September 30, 2003.

Changes: None.

Comment: One person commented that an LEA should have the flexibility to meet the reserve requirements for professional development in §§ 200.52(a)(3)(iii) and 200.60 from non-Title I funds and asked whether the parental involvement reserve can be met from non-Title I funds.

Discussion: In all three instances, the Title I statute requires that these reserve requirements be met from Title I funds received by the LEA.

Change: None.

Section 200.78 Allocation of Funds to School Attendance Areas and Schools

Comment: One commenter recommended amending the language in § 200.78(a)(2)(ii)(B)(*1*) related to obtaining a poverty count of children in private schools through a survey to make it consistent with the statute.

Discussion: In obtaining a count of private school children from low-income families for within-district Title I, part A allocation purposes, the regulations provide that an LEA could, instead of using the same poverty data it uses to count public school children, use comparable poverty data from a different source such as a private school survey so long as that survey protects the identity of families of private school children. In order to be consistent with the language in the statute, the Secretary agrees with the language change in § 200.78(a)(2)(ii)(B)(*1*) that the commenter suggests. However, in order to provide LEAs with the greatest flexibility possible in obtaining poverty data for students attending private schools, the Secretary is adding language that enables an LEA to use comparable poverty data from a different source such as scholarship applications.

Changes: The Secretary has made the suggested change and added further clarifying language noted in the discussion by adding a new paragraph (a)(2)(ii)(C) to § 200.78.

Comment: One commenter recommended changing the language in § 200.78(a)(2)(iv) to make it consistent with the provisions in § 200.63 that address district consultation with private school officials and reference § 200.78. The commenter believed this change would make clearer that an LEA has the final authority to determine the method used to calculate the number of private school children from low-income families for Title I allocation purposes only after the LEA has engaged in timely and meaningful consultation with private school officials.

Discussion: The Secretary agrees that the commenter's proposed change makes it clearer that an LEA must engage in timely and meaningful consultations with local private school officials before making a final decision about the method it will use to determine the number of private school children from low-income families who reside in participating public school attendance areas. The change would also make this provision consistent with the requirements in § 200.63.

Changes: The Secretary has modified § 200.78(a)(2)(iv) to make clear that an LEA must consult with appropriate private school officials about the method of collection of poverty data.

Fiscal Requirements

Section 200.79 Exclusion of Supplemental State and Local Funds From Supplement, Not Supplant and Comparability Determinations

Comment: One commenter asked for clarification, in either the regulations or guidance, to indicate that the use of Title I funds to pay for substantial increases in transportation costs of an LEA directly attributable to the public school choice provisions of section 1116 of the ESEA do not violate supplement, not supplant or comparability provisions. Another commenter asked whether an LEA could combine State and local funds with Title I, part A funds to pay for transportation costs associated with implementing the public school choice provision in section 1116 of the ESEA. If an LEA can combine State and local funds with Title I funds for transportation costs, the commenter further asked whether an LEA will be in compliance with the supplement, not supplant requirement even though it is using Title I funds to supplement local funds for transportation.

Discussion: The Secretary will address this issue in guidance. Generally, however, an LEA must first determine what its transportation costs would be in the absence of Title I. Additional transportation costs attributable to the public choice provision of section 1116 of ESEA may be met with Title I, part A funds.

Changes: None.

Subpart C—Migrant Education Program

Section 200.82 Use of Program Funds for Unique Program Function Costs

Comment: One commenter recommended adding in § 200.82(e) the term "MEP" to clarify that the comprehensive State plan is for the delivery of MEP services.

Discussion: The Secretary agrees with the suggested editorial change.

Change: Section 200.82(e) has been amended to refer to a "comprehensive State plan for MEP service delivery."

Comment: Three commenters recommended adding several additional items to the list of examples in § 200.82 of "other administrative activities * * * unique to the MEP" for which an SEA may expend MEP funds that it does not reserve for general administration. The commenters recommended adding one or more of the following activities: parent advisory council activities; advocacy and outreach activities for migratory children and their families; planning, operation and evaluation of program effectiveness; and services to migratory children who are failing, or most at risk of failing, to meet the State's academic standards and whose parents do not have a high school diploma or its recognized equivalent or who have low levels of literacy.

Discussion: The Secretary agrees that, under the statute, MEP funds can be expended for all of these activities. However, the Secretary does not agree that each of these activities constitutes the other administrative activities unique to the MEP, or activities that are the same or similar to administrative activities that LEAs perform under Title I, part A, for which MEP funds not reserved for general administration may be expended under § 200.82. Of the commenters' suggestions, the Secretary believes that activities associated with an SEA's establishment and operation of a State parent advisory council, and its evaluation of the effectiveness of the State MEP are the appropriate additional examples of those other administrative activities that are the subject of § 200.82.

Change: Section 200.82(g) and (h) has been added to clarify that the establishment and implementation of a State parent advisory committee and the evaluation of the effectiveness of the State MEP are additional examples of other administrative activities, unique to the MEP, or are the same or similar to administrative activities that LEAs perform under Title I, part A for which an SEA may expend MEP funds that are not reserved for general administration.

Section 200.83 Responsibilities of SEAs To Implement Projects Through a Comprehensive Needs Assessment and a Comprehensive State Plan for Service Delivery

Comment: None.

Discussion: In giving further consideration to the proposed regulations, Departmental staff determined that § 200.83(a)(3)(ii) refers to the "general educational needs of migratory children" that must be addressed by an SEA's MEP service delivery plan, while § 200.83(a)(2)(ii) refers to the "other needs of migratory children" that are to be identified in an SEA's needs assessment. Given that both references are intended to refer to the same needs, and that section 1306(a) of the ESEA provides that these needs are to be "special educational needs of migratory children," the Secretary believes that it is desirable to improve the clarity of both of these regulations so that they reflect special educational needs that an SEA's needs assessment must address.

Change: The "special educational needs" of migratory children that are identified and addressed through the SEA's comprehensive needs assessment and State plan for service delivery are those identified in section 1306(b)(1) of the ESEA, *i.e.*, (1) unique needs arising from these children's migratory lifestyle, and (2) those needs that must be addressed in order to permit these children to participate effectively in school. Section 200.83(a)(2)(i) and (a)(3)(i) already provide that the SEA's needs assessment and service delivery must address the unique needs arising from migratory lifestyle. Section 200.83(a)(2)(ii) and (a)(3)(ii) have been revised to clarify that the needs assessment and service delivery also must address other needs of migratory children that must be met in order for these children to participate effectively in school.

Comment: One commenter recommended the inclusion of additional, detailed requirements and examples for carrying out parental consultation under § 200.83(b). The commenter proposed adding language to this paragraph to require that this consultation include (1) interpreter services; (2) notices to parents in a language that the parents can understand; taking into account language proficiency and literacy levels; (3) the use of non-traditional communications vehicles, such as posting notices at churches and other social service facilities; and (4) the establishment of networks with other care-givers who serve the population of migratory workers. The commenter stated that providing these examples of communication strategies would help ensure more effective communications with the families of migratory children.

Discussion: Section 200.83(b) requires an SEA to develop its MEP service delivery plan in consultation with parents. The Secretary believes that this level of detail is more appropriate for nonregulatory guidance. However, the Secretary does agree that, consistent with § 1304(c)(3)(B) of the ESEA, § 200.83(b) should clarify that the required parental consultation regarding the SEA's MEP service delivery plan must be through a format and language that parents understand.

Change: Section 200.83(b) has been amended to note that consultation shall be in a format and language that parents understand.

Section 200.84 Responsibilities of SEAs for Evaluating the Effectiveness of the MEP

Comment: One commenter recommended amending § 200.84 to specifically include the use of alternatives to standardized testing used with other children when an SEA evaluates the effectiveness of its MEP. The commenter suggested that migratory children often cannot be assessed through standard or traditional means since standardized testing used with other children to determine overall program progress is not likely to be valid with the population of migratory children.

Discussion: The Secretary does not believe the commenter's proposed additional language to § 200.84 is needed. The Secretary believes that specific details about the methods an SEA might use for determining the effectiveness of its MEP are more appropriately presented in nonregulatory guidance.

Change: None.

Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-risk of Dropping Out

Section 200.90 Program Definitions

Comment: One commenter asked that a provision be added to clarify that the supplement, not supplant requirement applies to Title I, part D, subpart 2.

Discussion: This fiscal requirement does not apply because NCLB does not specifically make the supplement, not supplant requirement applicable to programs authorized under part D, Subpart 2 of Title I.

Changes: None.

Subpart E—General Provisions

Section 200.100 Reservation of Funds for School Improvement, State Administration, and the State Academic Achievement Awards Program

Comment: One commenter stated that the $400,000 cap on the amount a small State may reserve for State administration is inadequate.

Discussion: Section 1004 of the ESEA authorizes an SEA to reserve for State administration up to one percent from funds allocated to the State under Title I, part A (Grants to LEAs), part C (Migrant Education), and part D, Subpart 1 (State Agency Neglected or Delinquent Program. The ESEA further provides that if the amount calculated as available to be reserved for State administration totals less than $400,000, an SEA may reserve up to $400,000. The Department cannot increase these limitations through regulations.

Changes: None.

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7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Miscellaneous Provisions; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AB10

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Miscellaneous Provisions

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends a number of existing provisions in the WIC Program regulations. In response to issues raised by WIC State agencies and other members of the WIC community, the United States Department of Agriculture (the Department) proposes two principal changes. First, this rulemaking would streamline the Federal requirements for financial and participation reporting by State agencies. Second, it would clarify the rules on confidentiality of WIC information in order to strengthen coordination with organizations and private physicians, and to provide guidance to State agencies on responding to subpoenas and other court-ordered requests for confidential information.

These two provisions are intended to strengthen services to WIC participants, improve Program administration, and increase State agency flexibility in managing the Program. The other provisions in this rule have been designed to improve program administration or to incorporate program policies that have been in effect for some time into regulations.

DATES: To be assured of consideration, comments must be postmarked on or before April 1, 2003.

ADDRESSES: Comments should be sent to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, VA 22302. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday), at the above address.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Chief of the Policy and Program Development Branch, Supplemental Food Programs Division, at the address indicated in the ADDRESSES section or at (703) 305–2730, during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

1. Definitions of "Sign or Signature" and "Electronic Signature" (§ 246.2)

This rule proposes to amend § 246.2 to add new definitions of "sign or signature" and "electronic signature." These definitions would give State agencies the option to use electronic signatures in their administration of the WIC Program. WIC regulations require signatures in various contexts. For example, § 246.7(i)(9) requires the "signature" of the competent professional authority (CPA) who determined that the applicant is at nutritional risk and the "signature" of the administrative person who determined that the applicant meets WIC income eligibility requirements. In addition, § 246.7(i)(10) requires the "signature" of the applicant, parent, or caretaker as part of the WIC application/certification process, and § 246.12(r)(2) requires participants and their representatives to "sign" when they receive WIC supplemental foods or food instruments. Currently, the terms "sign" or "signature" throughout part 246 could be interpreted to exclude the use of electronic signatures. With advancements in technology, we do not want to limit State agencies' authority to use such tools. Many State agencies are using or implementing automated management information systems whereby all information collected from applicants is typed into an electronic record/data system at the time of application. As part of the move to automated records and paperless systems, some State agencies are interested in using electronic signatures.

While new technologies continue to emerge, currently, electronic signatures include a broad range of signature types. For example, an applicant could sign his/her name on a device similar to a note pad, called a digital pen and pad. The signature becomes digitized and is stored in the data system as an exact replica of the applicant's signature. Other types of electronic signature devices allow for the collection of an applicant's signature with the digital pen and pad and the signature is subsequently converted and stored as a unique series of digits or numbers. For administrative purposes, an electronic signature could be a unique key and/or personal identification number assigned by staff that is authorized to determine a WIC applicant's nutrition risk or income eligibility. Depending on its application, a combination of electronic signature tools may be necessary to address appropriately the reliability and integrity of the technology and/or security of the State agency's system.

This rule would define "electronic signature" in the same way as it is defined in the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229, signed June 30, 2000), also known as ESIGN. ESIGN covers the use of electronic signatures in most business, consumer, and commercial transactions, but does not generally cover "governmental" transactions. However, we believe the broad application of ESIGN will make the definition of "electronic signature" the standard. Therefore, we propose to adopt the ESIGN definition of "electronic signature" for WIC purposes.

This rule would make clear that electronic signatures may be used only if the State agency ensures the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices and WIC Program regulations concerning confidentiality. State agencies interested in using electronic signatures will need to assess the suitability of electronic signatures for various applications, security issues, and cost implications. Interested State agencies should explore available technology, including off-the-shelf software that may meet WIC's needs at a reasonable price. This rule would not require the use of electronic signatures.

2. Selection of Local Agencies (§ 246.5)

The Department proposes to remove the requirement in §§ 246.5(c)(1) and (d)(2) of the regulations for WIC State agencies to fund new local agencies in areas based on the sequential order of neediest areas listed in the Affirmative Action Plans that are part of each State agency's Plan of Operation. This change is intended to give State agencies more flexibility in using their WIC Program grants as efficiently and practically as possible to best meet the needs of program participation. In order to do this, it may not always be practical to adhere strictly to the sequential order of neediest areas when funding local WIC agencies for expansion.

At §§ 246.5(c)(1) and (d)(2), emphasis is placed on expanding the Program through the selection of local agencies that are next in line on the basis of need as established by the State agency's Affirmative Action Plan. Although State agencies should continue to consider the relative need of certain areas for program expansion as identified in the Affirmative Action Plan when selecting new local agencies, we are aware that there are certain practical considerations in expanding program operations that may override the choice

of a local agency in an area that is next in line according to the Plan. For example, while it remains important to expand operations in the "neediest one-third of all areas unserved or partially served", as required in § 246.4(a)(5)(i), it may be impossible to do so at a particular point in time because of lack of funding. An inadequate health care system infrastructure (public or private) to provide health-related services to support the opening of a local agency is a common situation that State agencies often face in attempting to expand in remote areas. The cost of opening new WIC clinics in such areas, even if those areas happen to be "next in line" for expanded services may exceed the funds that the State agency has available for caseload growth. By comparison, it may be more cost-effective and expeditious to expand caseload in other areas that are also underserved, but possess the health care infrastructure to support additional WIC services.

3. Mid-Certification Actions (§ 246.7(h))

The Department proposes several revisions to this section. The most significant proposed change would require local agencies to reassess a participant's *income* eligibility (including household composition) during the certification period if information is received about a change in circumstances, indicating possible ineligibility. Although many State agencies require reassessment of income eligibility based on receipt of information indicating a change, current regulations do not mandate such reassessments. This proposal would strengthen Federal requirements for local agencies to act on information about changes in household circumstances that affect only the income eligibility of participants, not the nutrition risk eligibility.

Income Eligibility Reassessments

Currently, WIC program regulations (§ 246.7(h)(1)) require local agencies to disqualify an individual in the middle of a certification period if, on the basis of a reassessment of Program eligibility status, the individual is found to be ineligible. Because of the ambiguity in the reference to reassessment of "Program eligibility" during certification periods, the Department wishes to exercise its interpretive discretion to specify that mid-certification reassessments pertain to *income* eligibility, not to the participant's nutrition risk status.

This proposed interpretation is consistent with the Department's policy about mid-certification reassessments. Many State agencies already specify in their formal policies that disqualifications due to reassessments are appropriate only in response to information that establishes ineligibility based on income. It has not been the Department's position that local agencies should reassess nutrition risk status during the certification period or disqualify a participant based on a learned improvement in nutrition risk status. Provided that the individual remains *income-eligible* for WIC benefits, the Department believes that enrollment in the Program generally entails a commitment to the participant for a full certification period. This policy regarding nutrition risk status recognizes the preventive nature of the WIC Program.

However, the Department also believes that local agencies *should* follow up on information that a change in income or household size may make a participant ineligible to continue to receive WIC benefits. Current regulations only require State agencies to ensure that local agencies disqualify participants who are found to be ineligible only *if* a reassessment of program eligibility is conducted. The regulations do not currently mandate that any reassessment be performed. This proposed change would require that local agencies reassess income eligibility when information is received indicating that a change in income eligibility has occurred. Local agencies would not be required to seek out information. However, if information comes to their attention, either from the participant or from other sources, which suggests ineligibility, this would trigger the regulatory requirement to reassess WIC income eligibility.

For an adjunctively income-eligible participant, the trigger action for income reassessment within a certification period would be *confirmation* that the individual or other eligible family member is no longer participating in any of the programs forming the basis for adjunctive income eligibility. This proposed provision would require local agencies to ask the adjunctively income-eligible participant for proof of current eligibility to participate in another qualifying program only when that local agency has reason to believe that the original program participation has ended. If, on the basis of the reassessment, the participant is no longer eligible to receive WIC benefits because of income, then disqualification proceedings would be initiated.

Disqualification based on a reassessment of income ineligibility also applies to other household members currently receiving WIC benefits. When one household member is reassessed for income eligibility and determined ineligible based on household size and income, in effect all participating members of that household have been reassessed and are equally ineligible. Therefore, the regulations have been revised to require that if one member of a household is reassessed for income eligibility and determined ineligible, all other participating household members in the economic unit must be disqualified. This provision applies to normal income screenings as well as to proof that a participant is no longer receiving benefits under another program that confers adjunctive income eligibility.

The Department is not interested in limiting State agency flexibility in this area, but is establishing clear Federal requirements that are both reasonable and responsible. The Department understands that many State agencies already have similar or even more stringent policies in place regarding reassessing income eligibility during the certification period. State agency policy need not be changed as long as State requirements meet the minimum Federal requirements.

The Department is aware that some State agencies oppose both reassessment of income eligibility and program disqualification based on such reassessment during a certification period. Some of the arguments offered to FNS include the disparity of treatment among participants according to their willingness to report income changes, and the consideration that financial situations of many participants are tenuous and subject to fluctuations. Another concern is the fact that other family members who are also WIC participants will be disqualified if a reassessment reveals the family to be over the income standard.

The philosophical issue underlying the arguments for or against mid-certification reassessments and disqualifications for income ineligibility is whether WIC's commitment to improving an individual's nutritional status during a period of time (*e.g.*, during a 6-month certification period) is more or less important than ensuring the integrity of income eligibility standards. The Department can find no statutory justification for allowing known income ineligible persons to continue to receive WIC benefits. The Department agrees with the rationale that because nutritional status may take at least a full certification period to improve, a commitment to the participant is implied. However, that commitment may not be extended to persons who no longer meet the basic income eligibility requirements set forth

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in the Child Nutrition Act. A participant whose household income clearly exceeds the income standards used by the State agency is no longer eligible for WIC benefits. Federal policy should be unequivocal regarding the ineligibility of known over-income participants.

Again, the Department is not requiring local agencies to seek out information about the income status of participants during the certification period. Rather, if information regarding a change in income and/or family size is brought to the attention of the local agency, action must be taken to reassess the participant's income eligibility for program benefits. The proposed language represents a reasonable approach that balances responsible action against unnecessary paperwork burden.

The Department also proposes to indicate clearly the mandatory or optional nature of other mid-certification actions addressed in this section. As proposed, *mandatory* mid-certification actions would include reassessment of income eligibility based on information received and disqualification of participants, including family members, if found to be over-income. *Optional* mid-certification disqualification actions would include those necessitated by funding shortages or the failure to pick up food instruments or supplemental foods for a number of consecutive months as established by the State.

4. Requesting Pregnancy Tests, Checking Identification and Other Basic Certification Procedures (§ 246.7(c))

We propose to expand § 246.7(c) to address several basic certification procedures, along with the delineation of eligibility criteria, in an effort to highlight the importance of certain procedures, such as providing proof of residency and proof of identity, and ensuring that applicants are not charged for certification. To accomplish this, the following changes are being made:

(a) The provisions currently found at §§ 246.7 (l)(2) and (m), addressing proof of residency/proof of identity, and program certification without charge to the applicant, respectively, are being moved to more prominent positions in the regulations;

(b) A new provision concerning pregnancy tests is proposed; and

(c) A reference is made to the application processing standards contained in paragraph (f) of this section.

Pregnancy Tests

In response to questions that have arisen in recent years, we are proposing basic guidelines that State and local agencies must observe if documentation of pregnancy is part of the certification process. Some State and local agencies have expressed an interest in requiring proof of pregnancy to stem possible abuse from ineligible applicants claiming categorical eligibility as pregnant women. We realize that pregnancy in its very early stages may not be immediately apparent. We also understand why a local agency may wish to obtain confirmation of the pregnancy before it issues WIC benefits, especially if incidents of possible fraud have been reported. For these reasons, we are proposing in a new paragraph (c)(2)(ii) that State agencies may issue benefits to applicants who claim to be pregnant (assuming that all other eligibility criteria are met) but who do not have documented proof of pregnancy at the time of the certification interview and determination. The State agency should then allow a reasonable period of time, not to exceed 60 days, for the applicant to provide the requested documentation. If such documentation is not provided as requested, the local agency would then be justified in terminating the woman's WIC participation in the middle of a certification period.

5. Determining Income Eligibility (§ 246.7(d))

The Department proposes several changes to this section of the regulations.

A. Use of State or Local Income Health Care Guidelines to Determine Income Eligibility for WIC

The first proposed revision, at paragraph (d)(2)(iii) would require State agencies using State or local income guidelines for free or reduced-price health care to base the income eligibility determinations of WIC applicants on the income and family definition and exclusions outlined in paragraphs (d)(2)(iii) and (d)(2)(iv), respectively. This change would continue to allow variation among the State agencies only with regard to the actual income guidelines used (*i.e.*, the percent of gross income above the Federal poverty income guidelines, up to a maximum of 185 percent), but not with the definition of income, family, or exclusions from income. This proposed revision would continue the WIC Program's current policy of excluding from these requirements persons who are determined adjunctively or automatically income eligible.

We are proposing this change for two reasons:

1. The number of WIC State agencies that use State or local free or reduced-price income guidelines has declined over the years. At this time, all 88 WIC State agencies use income guidelines which are set at 185 percent of the Federal poverty income guidelines, established and updated annually by the Department of Health and Human Services.

2. Current WIC Program regulations at § 246.7(d)(2)(iii) allow State agencies using State or local free or reduced-price health care income guidelines to use the State or local definition of income, provided that the values of in-kind housing or other in-kind benefits are not counted toward an applicant's income determination and that no one with gross income over 185 percent of the Federal poverty income guidelines is determined eligible for WIC. Because the local agency must ensure that the applicant's income is within the Federal guidelines after applying the State or local income definition, procedurally it would be simpler for local agencies to apply the WIC income definition and exclusions outlined in the regulations to all applicants rather than apply two sets of income guidelines and family definitions and exclusions.

B. Consideration of Loans as Income

Finally, this proposal would specify that funds from loans are excluded from consideration as income when determining an applicant's income eligibility. Program regulations have not specifically addressed this issue; however, FNS Instruction 803–3, Rev. 1, clarifies that funds from loans are not to be counted as income because they are only temporarily available and must be repaid.

6. Limitation on the Use of Possibility of Regression as a Nutrition Risk Criterion (§ 246.7(e)(1)(vi)

Historically, program regulations have permitted WIC participants to remain on the program due to the possibility of regression, *i.e.*, previously certified participants who might regress in nutritional status if they are not allowed to continue to receive WIC benefits. The possibility of regression has been allowed as a nutrition risk criterion in order to prevent the "revolving door" situation in which individuals improve their nutritional status as the result of participation in the WIC Program and are therefore removed, only to deteriorate in nutritional status at a later date and have to re-enter the program.

It has always been the Department's position, however, that the possibility of regression should not be used excessively as a nutrition risk criterion,

because this practice may result in participants with no current nutrition risk condition continuing to be served while other eligible applicants who do have current nutritionally-related medical conditions or deficient diets go unserved. To encourage the limited use of regression, the Department confirmed the State agency's authority to limit the number of times and circumstances under which a participant may be certified for possible regression in a final rule published on February 13, 1985 (50 FR 6108).

The use of regression as a basis for certification has continued to cause concern, particularly as the Department has intensified its efforts to encourage State agencies to target benefits to those persons at greatest nutritional risk. Therefore, the Department issued further guidance on the use of regression in FNS Instruction 803–2, Rev. 1, which recommends that possibility of regression be employed as a reason for certification one time at most. The Instruction also clarifies that certification based on possible regression for Priority II infants is generally inappropriate, because the infant's certification is based upon the mother's nutrition risk condition, and there is no prior condition on which to base the infant's supposed regression.

While the possibility of regression can be a legitimate basis for certification, a regulatory limit on its use would ensure that possibility of regression is not employed repeatedly as a basis of continued program participation by persons who are not currently at nutritional risk. Such a limit is consistent with the Department's efforts to target benefits to those persons in greatest need and at greatest nutritional risk. Further, a limit on the use of possibility of regression as a basis for certification is logical because the term itself implies that there must be a prior nutrition risk condition on which the regression would be based. Therefore, it follows that once a participant has been certified one time for possible regression to a prior condition, there is no longer a prior nutrition risk condition to justify an additional certification on this basis.

In view of these concerns, we propose to prohibit the use of possibility of regression as the basis of nutrition risk eligibility for *consecutive* certifications.

Example: A child might be initially certified for WIC based on iron-deficiency anemia; at the end of that 6-month certification period, s/he might have improved just enough to be barely outside the definition of anemia established by the Centers for Disease Control and Prevention (CDC), and could legitimately be certified for another 6 months based on the possibility of regression to his/her earlier anemic condition. At the end of this second certification period, if this child does not exhibit some other condition that is an allowed nutrition risk, s/he would no longer be eligible to receive WIC benefits.

State agencies who elect to use the possibility of regression as a basis for WIC certification would be expected to certify the WIC participant either at the same priority level for which s/he was initially certified (based on a specific medical, anthropometric, or dietary condition) or at the Priority VII level (if the State agency is using Priority VII). State agencies should also keep in mind that in those situations where a waiting list must be used because funding levels are limited, the certification of an applicant based on the possibility of regression to a prior condition can exclude the certification of another applicant who may be at greater nutritional risk, and should make their decisions about the use of regression (as well as the priority levels to which it applies) very carefully.

Commenters should note that this proposal would not place an absolute limit on the number of times that regression can be used as the nonconsecutive basis for certification. This provision would not restrict, for example, the certification of a child on the basis of possibility of regression several times during the years that s/he is categorically eligible. The Department believes that this provision places a reasonable limit on the use of possibility of regression but, at the same time, recognizes instances in which a subsequently developed nutrition risk condition may warrant an additional certification period based on the real possibility of regression to that condition. Finally, the provision in no way infringes upon the State agency's authority to limit the *circumstances* under which a participant may be certified for possible regression, as long as the condition in question is one to which an individual can actually regress. Because it is not possible for a woman who has been receiving WIC benefits as a pregnant woman to regress to that pregnancy once it has ended, it would not be appropriate to certify her as a postpartum woman based on a condition that was caused by or unique to her pregnancy, such as hyperemesis gravidum (morning sickness) or pregnancy-induced hypertension.

7. Certification Periods (§ 246.7(g)(1))

In response to concerns cited by Congress, State agencies, and the National WIC Association (NWA) (formerly known as the National Association of WIC Directors (NAWD)), the Department proposes to modify the timeframes for certification periods in order to make them more consistent across participant categories. Current regulations establish the following timeframes for certification:

A/an:	Is currently certified:
Pregnant woman	For the duration of her pregnancy, and up to 6 weeks after the infant is born or the pregnancy is ended.
Postpartum woman	Up to 6 months after the baby is born or the pregnancy is ended (postpartum).
Breastfeeding woman	Every 6 months ending with the infant's first birthday.
Infant	Approximately every 6 months. The State agency may permit its local agencies to certify infants under 6 months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
Child	Approximately every sixth month ending with the last day of the month in which a child reaches his/her fifth birthday.

Some State agencies have expressed concern that the timeframes for establishing certification periods are complicated and administratively burdensome. These State agencies contend that current regulations require the frequent proration of monthly food benefits and special data processing capabilities to accommodate specific cut-off dates. NWA/NAWD has also expressed concern about the lack of consistency in certification period timeframes.

The Department fully supports greater simplicity and consistency in this area. Therefore, the Department proposes to adopt the recommendation made by NWA/NAWD to allow certification periods for all participant categories to be extended to the end of the month.

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Specifically, the following maximum certification periods are proposed in § 246.7(g)(1):

A/an:	Will be certified:
Pregnant woman	For the duration of her pregnancy, and up to the last day of the month in which the infant becomes 6 weeks old. (For example, if the infant is born June 4, 6 weeks after birth would be July 16, and certification would end July 31.)
Postpartum woman	Up to the last day of the sixth month after the baby is born (postpartum).
Breastfeeding woman	Approximately every 6 months ending with the last day of the month in which the infant turns 1 year old.
Infant	Approximately every 6 months. The State agency may permit its local agencies to certify infants under 6 months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
Child	Approximately every sixth month ending with the last day of the month in which a child reaches his/her fifth birthday. (No change from current regulations)

The Department believes that these proposed timeframes will alleviate concerns voiced by State agencies. However, we want to emphasize that State and local agencies should continue to exercise good judgment in assigning certification periods, particularly in the case of pregnant participants. The current regulatory provision, which limits the certification period for pregnant women to up to 6 weeks postpartum, was designed to facilitate the scheduling of the mother's and infant's visit to the clinic soon after delivery and to encourage the prompt reassessment of continued program eligibility. Scheduling the postpartum clinic visit within this timeframe best serves the health care needs of the mother and the infant, and strengthens the program's tie to health services. Commenters should note that this proposed change would have the effect of extending a woman's certification under the pregnant woman category to up to 9 weeks postpartum. Some State and local agencies may not want to extend the certification periods for these women, preferring instead to concentrate their resources on women who are in the early months of pregnancy.

Finally, the proration of program benefits for all participant categories continues to be an effective means of targeting benefits and managing program costs. State agencies should also be aware that these proposed regulations would not remove their authority to maintain current certification period lengths or to permit local agencies to shorten certification periods on a case-by-case basis. The Department encourages State agencies to exercise this authority as appropriate.

8. Certification Forms (§ 246.7(i))

The Department proposes to allow State agencies the option of substituting simpler language in order to make the "rights and obligations" statement contained in § 246.7(i)(10) clearer to applicants. State agencies would also have the option of modifying the language at § 246.7(j)(2)(i)–(iii), which must be read to or by the participant (or parent/caregiver of a participating infant or child) at the time of certification along with the statement of "rights and obligations" contained in paragraph (i)(10). Modification of the "rights and obligations" statements would be subject to FNS approval during the State Plan approval process. Approval of alternate language would be contingent upon whether the language substitutions convey the same meaning and intent as the existing regulatory text.

In addition, in § 246.7(i)(11), the required content of the certification form statement which acknowledges the potential disclosure of applicant and participant information would be revised to incorporate the changes proposed in § 246.26(d) pertaining to confidentiality and data sharing. These changes primarily pertain to expansion of the types of programs with which information can be shared. The proposed changes are discussed later in this preamble as part of a larger discussion about confidentiality.

9. Continuation of Benefits During Fair Hearings (§ 246.9(g))

It has come to the Department's attention that current provisions at § 246.9(g) allow for the continuation of benefits for a categorically ineligible participant who has appealed an adverse action to terminate benefits and is waiting for a fair hearing decision. The situation involves breastfeeding participants who continued to receive WIC benefits although they had discontinued breastfeeding and were more than 6 months postpartum. These participants, as postpartum non-breastfeeding women, are no longer categorically eligible for program benefits and should be terminated from the WIC Program. Under these circumstances, when a change in the participant's breastfeeding status becomes known to the WIC local agency and the participant is not eligible to continue receiving benefits as a postpartum participant, the agency would issue a notice of adverse action to terminate benefits. Such written notice must be issued not less than 15 days before the benefits are actually terminated. However, the language at paragraph (g) of this section technically allows the categorically ineligible individual to continue to receive WIC benefits during the appeal process. To correct this minor inconsistency, the Department proposes to revise paragraph (g) to prohibit any participants who have become categorically ineligible from continuing to receive benefits while a fair hearing decision is pending.

10. Prohibition Against the Use of Program Funds To Provide Retroactive Benefits (§ 246.14(a))

This proposed rule would specify that WIC Program funds may not be used to provide retroactive benefits to participants. Regulations have not previously addressed the issue of retroactive benefits, although it has been a long-standing policy in the WIC Program (based on fundamental principles of appropriation law) that such benefits are inappropriate. The WIC food package is designed to be consumed during specified periods when participants are undergoing critical growth and development. Providing WIC foods to persons after they have passed through such periods is not consistent with the nutritional goals of the WIC Program, nor is it appropriate to give participants more food than they can reasonably consume within a given period of time. In either case, it is not an effective use of program benefits. A regulatory prohibition against the use of program funds to provide retroactive benefits would clearly and formally establish the inappropriateness of such benefits in WIC.

11. Transportation as Allowable Costs (§ 246.14(c)(7))

The Department has learned that a number of urban and suburban localities experience difficulties in serving needy program eligibles due to inadequate access to transportation by existing or potential WIC participants. Limited, expensive, or nonexistent transportation has been identified as a primary barrier that prevents or discourages potentially eligible persons and participants from getting to WIC clinics. To address this problem, several State agencies have purchased mobile vans to deliver WIC services to participants in "non-rural" areas. State agencies have also requested approval to purchase vans to transport participants to and from inner city and suburban clinics. Currently, however, the allowability of such transportation costs is limited to assisting *rural* participants. Because State agencies may purchase vans to bring WIC services to participants, it seems only reasonable to allow the transportation of WIC participants to WIC clinic sites in any situation, rural or non-rural, where access is a barrier. The Department wants to remove unnecessary barriers that prevent State and local agencies from reaching potentially eligible persons. Therefore, the Department proposes to revise § 246.14(c)(7) by removing the limiting word "rural" from the allowability of costs in transporting applicants and participants to clinics.

In developing policies to allow reimbursement to local agencies for transportation costs, State agencies should consider other competing demands for nutrition services and administration (NSA) funds. State and local agencies should note that alternatives to providing transportation to participants exist, such as establishing fixed-location satellite clinics in strategic locations with sufficient access to public transportation. State agencies may want to limit approvals to those areas where transportation is urgently needed to ensure access and where they stand to get the biggest return in terms of increased participation. Finally, State agencies should be aware that approving local use of NSA funds for transportation of some participants may raise issues of fairness and civil rights concerns; participants residing in areas where transportation to and from the WIC clinic is not provided may argue that they too qualify or deserve such a service given their circumstances. This underscores the need for State agencies to develop a carefully-structured rationale for allowing the provision of transportation assistance to certain participants that cannot be perceived as a discriminatory policy.

Local agencies seeking to provide transportation must obtain prior approval from the State agency, and must document that the transportation service is essential to assure program access. A fee may be charged for providing transportation services. The State agency must advise participants that the provision of transportation is offered as a convenience to the participant, and is not a condition of eligibility or a standard program benefit. Finally, the Department proposes to require that a State agency which elects to allow the provision of transportation to participants must include its policy for approving such costs in the portion of the State Plan that describes the State agency's plans to provide program benefits to eligible persons most in need of such benefits. Section 246.4(a)(21) would be revised accordingly to reflect this requirement.

12. Capital Expenditures Which Require Agency Approval (§ 246.14(d))

The Department proposes three revisions to this section: A. Paragraph (d)(1) would be deleted because the purchase of automated information systems constitutes a capital expenditure and therefore is subject to the requirements for prior approval from FNS. This modification simplifies prior approval requirements.

B. Paragraph (d)(3) would also be deleted. Current WIC regulations at § 246.14(d)(3) require prior FNS approval for management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency. However, on May 17, 1995, the Office of Management and Budget (OMB) published a revision to its Circular A–87, Cost Principles for State, Local and Indian Tribal Governments. The revision no longer requires prior approval of the cost of management studies. To be consistent with revised OMB Circular A–87, prior approval of the cost of management studies is no longer required for WIC State agencies. State agencies were advised of this change through WIC Policy Memorandum 98–8, issued by FNS on September 30, 1998.

C. The third revision to this section redesignates paragraph (d)(2) as paragraph (d). The newly designated paragraph (d) would then be revised to eliminate the specific dollar threshold for capital expenditures above which State agencies must obtain the prior approval of FNS. The dollar threshold is being eliminated in recognition of a change in OMB Circular A–87 that allows Federal awarding agencies to waive prior approval requirements in regard to capital expenditures for equipment. Therefore, rather than specify a dollar threshold, newly designated paragraph (d) will be revised to say that State agencies must obtain prior approval for capital expenditures in accordance with FNS policy and guidance. Please note, however, that FNS waiver authority is applicable only to the requirement for prior approval. Equipment costs that do not meet requirements or tests for allowability (as determined by audits or other means) may still be disallowed.

The Department believes that these provisions are reasonable and will not compromise accountability.

13. Other Program Income (§ 246.15(b))

The Department proposes to revise paragraph (b) of this section to authorize the use of the addition method of applying program income. As required at 7 CFR 3016.25(g)(1) and (2), the deduction method of applying program income must be used unless the addition method is authorized through program regulations. If the addition method is authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The following example describes the difference between the deduction and the addition methods of applying program income:

If a State agency receives a WIC grant of $1 million and it generates program income of $5,000, the deduction method would allow the State to spend $1 million: $995,000 to be funded by the Federal grant, and $5,000 to be funded by the program income. The remaining $5,000 in Federal grant funds is returned to FNS for reallocation. Using the same amounts, under the addition method the State agency could spend a total of $1,005,000—its $1 million grant *plus* its program income of $5,000.

The Department believes that State agencies should be authorized to use the addition method of applying program income because the addition method encourages State agencies and clinics to make the best use of Program funds, including generating new revenues that are used for Program purposes.

14. Closeout Procedures (§ 246.17(b)(2), § 246.12(f)(2)(iv), and § 246.12(q))

To help ensure timely allocation of funds and closeout of WIC expenditures for the previous fiscal year, the Department proposes that the current 150-day reporting cycle, as described in

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§ 246.17(b)(2), be reduced to 120 days. Under the current 150-day reporting cycle, the participant has 30 days to redeem the food instrument from the date it first becomes valid (as described in § 246.12(q)), and the vendor has a maximum of 90 days from the first valid date of the food instrument to submit it for payment (§ 246.12(f)(2)(iv)). Thus, in the first 90 days of the reporting cycle, if the participant uses his/her full 30 days to redeem the food instrument at an authorized vendor's place of business, that vendor still has 60 days to submit the food instrument to the State agency for payment. The State agency then has the remaining 60 days left in the 150-day cycle in which to review the food instrument for accuracy, approve payment to the vendor, bill appropriate companies, and receive payment of any negotiated rebates.

The Department notes that most State agencies are already reporting 99 percent of food outlays within 120 days or less. Conference Report language from the Agriculture Appropriations Act for Fiscal Year 1998 (House Report 105–825) specifically directs the Department to reduce to 120 days the time period in which States are required to report on monthly obligation of funds. To reduce the expenditure reporting cycle from 150 days to 120 days, the Department proposes to revise § 246.12(f)(2)(iv) to reduce the amount of time currently allowed for redemption of the food instrument by authorized vendors from 90 days to 60 days. This reduction would still allow the vendor a minimum of 30 days to submit a food instrument for payment, even if a participant took the entire allowable 30 days to redeem the food instrument. As it is in the vendor's interest to receive payment for the food instruments as soon as possible, the Department does not believe that this change would impose a burden on vendors. Comments are welcomed on the impact of the provision, and any specific problems that State agencies foresee in meeting a shorter reporting cycle.

15. State Audit Responsibilities (§§ 246.20(b)(1) and (2))

Proposed language at § 246.20(b)(1) would direct State agencies to the requirements of 7 CFR part 3052 for obtaining audits. State agencies would be required to instruct local agencies, including private nonprofit local agencies, that they must obtain audits in accordance with 7 CFR part 3052. Further, State agencies would inform local agencies that they may choose to obtain either an organization-wide audit or a WIC Program-specific audit if allowed to do so under the provisions of 7 CFR part 3052.

This proposed language is needed for two primary purposes:

First, it references Departmental audit requirements at 7 CFR part 3052.

Second, the revised language establishes State agency responsibility for ensuring that local agencies are appropriately audited.

Consistent with the proposed revisions to paragraph (b)(1) of this section as described above, the Department further proposes to delete paragraph (b)(2). The references in paragraph (b)(1) to 7 CFR part 3052 which contain the requirements for organization-wide audits make the specific listing of those requirements in paragraph (b)(2) redundant.

16. State Agency Reporting Requirements (§§ 246.25(b) and (c))

The Department proposes a number of revisions to the State agency reporting requirements at §§ 246.25(b) and (c). A reporting system should yield useful management tools for both Federal and State program managers, and should be responsive to requests for program information from Congress and the general public. The objectives of the proposed revisions to § 246.25 in this rulemaking are to encourage faster reporting, better quality data, more efficient data collection, and a reduction in the current paperwork burden on State agencies.

Participation Reporting

Under the regulatory requirements as detailed in § 246.25, State agencies should report actual and projected participation and expenditure information on a monthly basis. In order to bring the regulatory language up to date with current reporting practices, the Department proposes several revisions to these monthly reporting requirements, listed in paragraph (b)(1).

A. The stated *purpose* for reporting monthly financial and program performance data is to support program management and funding decisions.

B. Most of the items specified in paragraph (b)(1) as currently requiring monthly reporting would be retained, except that the requirement to report itemized NSA expenditures would be dropped; instead, only the monthly totals of NSA expenditures would be reported.

C. Itemized NSA expenditures would be reported annually, as an addendum to the fiscal year closeout report.

D. State agencies would also report actual and projected food funds expenditures and available food and NSA funds, which would be listed by the funding source year. This information is necessary in order to improve monitoring of program expenditures as well as to keep FNS fully informed about State agency plans to use available funds. It is, in fact, the reporting of this data that alerts FNS to impending caseload management problems. Early warning and prudent action based on this information should avert the need for severe caseload fluctuations.

Section 17(i)(2) of the Child Nutrition Act of 1966 (CNA) as amended, requires the Secretary to reallocate funds periodically, if a State agency is unable to spend its full allocation. To fulfill this obligation, FNS must make funding determinations that involve continuous forecasting and reevaluation of State agencies' funding needs through the analysis of reported data. The Department would retain regulatory language at paragraphs (b)(1)(i) and (ii) of § 246.25, which specifies additional information that State agencies may be required to include in their monthly financial and participation reports. This information pertains to the amount of excess cash allowances held by local agencies and the actions taken by the State agency to reduce such excess balance.

The Department proposes to revise paragraph (b)(2) of this section to delete the quarterly report of participants by category (*i.e.*, pregnant women, breastfeeding women, postpartum women, infants, and children) and by priority level. This revision corresponds to reporting changes made in Fiscal Year 2001 to reduce paperwork. Additionally, the number of migrant participants, as well as itemized NSA funds expenditures, which current regulations require to be reported monthly, would be reduced to an annual reporting requirement.

Reporting quarterly on participation by priority and category became a requirement with the May 3, 1988, publication of revised program regulations. The Department's purpose in requiring State agencies to report this information four times a year was two-fold. First, it enabled FNS to determine how well State agencies were targeting limited program benefits to persons eligible within the highest priority groups. Second, the data were used in the formula for allocation of food funds. In Fiscal Year 1993, State agencies began reporting these data annually instead of quarterly. WIC funding formulas no longer utilize priority data and priority participation is relatively stable. Thus in Fiscal Year 2000, State agencies began reporting these data every other year instead of annually.

The regulatory language would be revised to reflect the current practice in which State agencies report participation by priority every other year. While State agencies continue to track participation by priority on a monthly basis for program management purposes, they only have to report the data to FNS once every other year.

As previously mentioned, the regulatory language would be revised to require that the itemized NSA expenditures are reported through an addendum to the annual closeout report. The itemized NSA expenditures are used to determine a State agency's compliance with the statutory requirements (section 17(h)(3)(A)(i)(I) and (II) of the CNA) to spend at least one-sixth of its NSA expenditures on nutrition education and its proportionate share of the national minimum breastfeeding promotion expenditures.

Section 17(g)(4) of the CNA requires that not less than nine-tenths of one percent of the annual WIC Program appropriation shall be available first for services to eligible members of migrant populations. In order to determine the migrant expenditure target amount each year, FNS needs documentation of each State agency's annual average migrant participation. To calculate each State's share of the migrant expenditure target, FNS uses a 12-month average of State migrant participation. Because a 12-month average is used for establishing the annual migrant expenditure target, yearly submission of the average of 12 months of data is sufficient.

Racial/Ethnic Group Reporting

The Department also proposes revisions to §§ 246.25(b)(3) and (c) to reflect current reporting practices that have reduced reporting of participant category by priority level and racial and ethnic participation data to a biennial basis. Prior to Fiscal Year 1993, racial and ethnic participation information had been collected and reported annually by all local agencies, through the State agencies, on the form FNS–191 (Racial/Ethnic Group Participation Report). Not only did the FNS–191 constitute a significant reporting burden, but it was also duplicative. Racial and ethnic data are captured by the Participant Characteristics (PC) Minimum Data Set (MDS), a comprehensive reporting format designed by FNS to provide information for the biennial report provided to the Secretary of Agriculture and to Congress on income and nutritional risk characteristics, migrant farmworker status, and other matters determined by the Secretary. Beginning with the 1992 PC report, WIC State agencies have provided an MDS using a census or a State-representative sample of WIC participants, making use of ongoing data collection routinely conducted as a component of WIC certification. The racial/ethnic group data collected on the MDS is identical to the data collected on the FNS–191. Therefore, the Department proposes the following revisions to the biennial reports at § 246.25(b)(3) that reflect the current reporting practices:

A. Add a new paragraph (b)(3)(i) that names and describes the participant characteristics reporting requirements;

B. Redesignate paragraph (c) of this section as paragraph (b)(3)(ii); and

C. Specify that racial and ethnic participation data submitted for the Report on Participant Characteristics will also be used to fulfill civil rights reporting requirements.

Finally, the Department proposes to add a new paragraph (c) to this section to collect data that were previously only reported on the FNS–191. In addition to racial/ethnic data provided by the FNS–191, the name, address, telephone number, and number of clinics of all WIC local agencies were reported. FNS has compiled this information into an annual directory of local agencies, and it has become an indispensable resource for program communications. The local agency directory has been used to provide referrals to participants inquiring about the availability of WIC Program services, to maintain continuity of program services for migrants and other transient participants, and to provide a cross-reference for the PC MDS data to ensure complete coverage of all local agencies. To prevent the loss of this valuable local agency information, the Department proposes to revise the regulatory language to require State agencies to submit additions and deletions of local agencies administering the WIC Program, as well as local agency address changes, when such changes occur.

17. Confidentiality of Participant Information (§§ 246.26(d) through (i)

The Department proposes several revisions to the participant confidentiality provisions in § 246.26(d) of the current regulations. This rule would completely revise paragraphs (d) and (g) and add new paragraphs (h) and (i) to address the use and disclosure of confidential information. The Department proposes these changes in order to remove barriers to coordination among programs caused by restrictions on sharing participant information, and to provide regulatory clarification and guidance on legal issues pertaining to the release of confidential applicant and participant information in connection with court proceedings, criminal investigations, or instances of known or suspected child abuse or neglect.

State agencies are reminded that under both the current and proposed confidentiality provisions, confidential applicant and participant information may be used or disclosed only to the extent permitted by those provisions. Any other use or disclosure is not permitted. Additionally, State agencies should be aware that information obtained from WIC applicants or participants is protected by these provisions regardless of the manner in which the information is recorded or stored. For example, confidential information that is written in a participant case file, confidential information that is stored on a magnetic medium, such as computer tape or disk, or as part of a general office record such as a sign-in sheet, are equally protected. State agencies must ensure that confidential information stored on computer disks or tapes will not be available to persons or programs that are not authorized to receive such data.

The additional flexibility afforded by this proposed rule would not disturb the balance between sharing information in the interest of enhanced services and safeguarding information so that barriers to Program participation are not created. We are fully committed to the principle that the integration of health care and social service programs must proceed with careful regard for an individual's right to privacy.

A. Definition of Confidential Applicant and Participant Information

Current Program regulations, at § 246.26(d), limit the use and disclosure of information obtained from applicants and participants. The current confidentiality provisions do not differentiate between the treatment of information about applicants and participants obtained from other sources or generated as a result of WIC application, certification, or participation. This rule would make clear in proposed § 246.26(d)(1) that confidential applicant and participant information is any information about an applicant or participant (whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation) that individually identifies those individuals and/or a family member(s).

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B. Use in the Administration and Enforcement of the WIC Program

Presently, applicant/participant information may be used and disclosed to only the following:

1. Persons directly connected with the administration or enforcement of the WIC Program;

2. Representatives of public organizations designated by the chief State health officer (or the governing authority in the case of Indian State agencies) which administer health or welfare programs that serve persons categorically eligible for the WIC Program; and

3. The Comptroller General of the United States, for audit and examination.

In addition, current § 246.25(a)(4) requires State agencies to provide the Department and the Comptroller General of the United States access to all Program records, except medical care records of individual participants unless they are the only source of certification data.

This rule would clarify the scope of the first category by emphasizing that even when confidential applicant/participant information is used for the administration or enforcement of the WIC Program, it may only be used by persons who have a need to know the information. Confidential applicant/participant information may include sensitive financial and medical information and not all State agency or local agency personnel need access to this information. Also, the proposed rule makes clear that this information may be used for the administration and enforcement of *any* WIC Program, not just by the State agency or local agency where the applicant or participant is certified. This clarification is necessary to facilitate the transfer of participants from one State agency or local agency to another and for Program oversight.

C. Use and Disclosure for non-WIC purposes

Currently, State agencies choosing to disclose applicant/participant information to public organizations designated by the chief State health officer pursuant to the second category discussed above must execute a written agreement with each agency. The agreement must limit the use of the information by the receiving agency to establishing eligibility for their own programs and conducting outreach for such programs. The organizations must assure that WIC applicant/participant information will not be disclosed to a third party. Also, § 246.7(i)(9) in current regulations requires State agencies to inform WIC applicants on the WIC certification form that information they provide may be disclosed to public organizations that administer other health or welfare programs for purposes of determining eligibility and conducting outreach.

Although section 17 of the CNA does not address the confidentiality of WIC information, the current regulations at § 246.26(d) and the guidance provided in FNS Instruction 800–1 reflect the Department's commitment to maintaining the confidentiality of the financial and health information of WIC applicants and participants. The current narrow avenues of disclosure of confidential applicant/participant information reflect the Department's position that an individual's right to privacy interests should not be surrendered as a condition of Program participation. Even more fundamentally, the Department understands that individuals may refuse to apply or participate in the WIC Program if they fear that their privacy will not be safeguarded.

At the same time, the Department recognizes that there are legitimate reasons for disclosing confidential information, many of which directly benefit the applicant or participant. One important reason is to facilitate the delivery of health services and other benefits for which WIC applicants or participants are eligible. Coordination among programs and "one-stop shopping" represent a dynamic area of growth and development in public service delivery. Requests for access to WIC applicant and participant information as a practical means of facilitating services have increased as States and local agencies strengthen coordination efforts with other agencies or persons delivering benefits or services to WIC applicants/participants. Members of Congress have also encouraged greater coordination among health, education, and social service programs as an effective means of maximizing funds and reaching individuals who are eligible for several programs. Finally, there are indications that the "users" of public health, education, and social service programs desire a more convenient, coordinated, integrated system of service delivery.

The Department's goal is to facilitate these coordination efforts without sacrificing the privacy interests of applicants and participants. We are committed to maintaining the confidentiality of applicant/participant information as programs coordinate services and share information, although the task becomes more challenging. One way to control the access of confidential information while promoting coordination is through the use of a written agreement between programs, specifying how and with whom data may be disclosed, and the proposed use of such information.

For these reasons, the Department proposes to allow State agencies greater flexibility in determining organizations to which they may disclose confidential applicant/participant information pursuant to written agreements as well as the permissible uses of such information. Specifically, in proposed § 246.26(d)(2) the reference to "health or welfare" programs would be removed. This would provide State agencies greater latitude in choosing appropriate programs with which to coordinate and share information. Additionally, proposed § 246.26(h)(3)(i) would expand the permitted uses of confidential applicant/participant information to add three new categories. As noted above, currently applicant/participation information may be used by another public organization only for the purpose of establishing eligibility and conducting outreach for the programs administered by that organization. The three new categories of permissible use proposed by this rule are:

- Enhancing the health, education, or well-being of WIC applicants or participants;
- Streamlining administrative procedures in order to minimize burdens on staff and applicants or participants; and
- Assessing and evaluating a State's health system in terms of responsiveness to participants' health care needs and health care outcomes.

However, as a balance to this proposed expansion, the Department proposes a new § 246.4(a)(24) that would require State agencies to include in their State Plan a list of the programs with which the State agency or its local agency has or intends to execute written agreements for the disclosure and use of confidential applicant/participant information and planned use of the information, consistent with the uses authorized in proposed § 246.26(d). This rule includes a cross-reference to the State plan requirement in proposed § 246.26(h)(3). This list is to be included in the State Plan for informational purposes only; FNS does not need to approve State agencies' decisions in this matter as long as the reasons for sharing information are consistent with the authorized uses in the proposed rule.

This broader language would address some situations that State agencies have cited as examples of administrative inefficiency or as barriers to the health and well-being of WIC applicants and participants resulting from the current confidentiality provisions. For example, these proposed changes would:

- Permit streamlining of duplicative administrative and health procedures among programs;
- Make it easier to coordinate with public educational programs, such as the Expanded Food and Nutrition Education Program (EFNEP), or with educational organizations that provide health services to WIC applicants or participants;
- Encourage sharing information with other programs in which WIC participants are currently enrolled, such as Head Start; and
- Permit sharing with child protective service programs certain information that is deemed to be critical to the health and well-being of WIC participants.

This proposed rule also would make clear in proposed §§ 246.26(d)(2) and (h)(3) that the conditions for disclosing confidential applicant/participant information extend to non-WIC use of the information by the State agency and its local agencies. In these cases, the written agreement would be between the WIC State agency or local agency and the unit of the WIC State agency or local agency that will be using the information for non-WIC purposes. The rule proposes to require a written agreement in these instances because the State or local agency personnel who will be using the information for non-WIC purposes may be unfamiliar with the limits on the use of the information. Requiring a written agreement in these cases provides an additional safeguard for this sensitive information.

Some State agencies have objected to the requirement of written agreements prior to disclosing applicant/participant information because of the amount of paperwork that can be involved, especially when programs are not administered at the State level. The Department agrees that written agreements may not always be practical for sharing information, and later in this preamble we discuss the situations in which release forms may be used. However, there are ways to limit the amount of paperwork involved in written agreements in some situations. For example, FNS Instruction 800–1 states that separate agreements do not have to be executed for each program. Instead, the chief State health officer (or his equivalent) may list in one agreement all of the programs with which information is to be disclosed. Responsible officials for each of the programs listed would then sign the written agreement. This rule would retain the requirement for written agreements between WIC and other program providers because such agreements establish accountability. They also provide a protocol for sharing data, thus protecting confidential information.

State agencies that choose to share information as authorized by Program regulations are not required to obtain a separate release form signed by the applicant or participant. However, this rule would require State and local agencies that choose not to use release forms to notify applicants and participants at the time of application or through a subsequent notice that information about their participation in the WIC Program may be used by State and local WIC agencies and public organizations in the administration of their programs that serve persons eligible for the WIC Program. This requirement is contained in proposed §§ 246.7(i)(11) and 246.26(h)(2) of this proposed rule.

D. Child Abuse and Neglect Reporting

In the past, questions have arisen about the disclosure of applicant/participant information to child protective services or other State or local officials in cases of known or suspected child abuse or neglect. The Department's current policy, as detailed in FNS Instruction 800–1, is determined by Federal and State law. The Department's policy stems from a requirement in Section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a). This Act authorizes the Secretary of Health and Human Services to make grants to States to assist them in developing and implementing child abuse and neglect prevention and treatment programs. A State's statute must require that known or suspected child abuse or neglect be reported to specified persons in order for that State to receive such grants. Generally, the Department's regulations take precedence over State laws or regulations. However, in this case State laws requiring the reporting of suspected child abuse reflect federal statutory intent designed to safeguard the health and well-being of the nation's children.

If a State statute requires known or suspected child abuse or neglect to be reported, then WIC staff must report or release applicant/participant information to State or local officials who have requested such information. If State law does not require that known or suspected child abuse be reported by public programs, such as WIC, the guidance in FNS Instruction 800–1 encourages WIC State agencies to consult with State legal counsel to determine the appropriateness of reporting such information. The Department's position remains the same as that stated in guidance. However, we propose to codify the current policy as stated in FNS Instruction 800–1 in proposed § 246.26(d)(3).

In the absence of State reporting laws, the proposed language at § 246.26(h)(3)(i)(C) would allow State agencies the option to disclose such information if a written agreement has been executed between the WIC State or local agency and the appropriate child protective service organization. The written agreement could also be used to strengthen ties between WIC and agencies that provide child abuse counseling.

E. Release Forms

State agencies have requested latitude to allow medical information to be disclosed to private parties such as physicians treating WIC applicants or participants. After examining the issue, we concluded that permitting a general or blanket release form under which an applicant or participant would permit a local or State agency to release confidential information to unidentified parties would be inappropriately broad. At the same time, the Department recognizes that some increased flexibility in disclosing medical information can be beneficial to the applicant or participant, as well as the respective party.

As a result, this rule proposes in § 246.26(d)(4) to allow disclosure of confidential applicant/participant information when an applicant or participant signs a form authorizing disclosure and specifying the parties to which the information may be disclosed. In addition, the applicant or participant must be given the right to refuse to sign the release form and notified that consent is not a condition of WIC Program participation and that refusal to sign the release form will not affect the application or participation in the WIC Program. To underscore the voluntary nature of the release form, the proposed rule would permit only release forms authorizing disclosure to the applicant or participant's physicians or other health care providers at the time of application or certification for the WIC Program. All other requests for signature of release forms would be required to take place after the application and certification process is completed. In addition, to the extent that an applicant or participant voluntarily signs a release form, agreeing that confidential information may be disclosed, the restrictions in

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proposed §§ 246.26(d) and (h) would not apply.

F. Access by Applicants and Participants

This rule would codify in proposed § 246.26(d)(5) the current policy of requiring State and local agencies to provide applicants and participants access to the information they provide. In the case of an applicant or participant who is an infant or child, the State or local agency would be required to provide access to the parent or guardian of the infant or child, assuming that any issues regarding custody of guardianship are resolved. This rule would not require State and local agencies to provide access to any other information concerning an applicant or participant, such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the information supports a State or local agency decision that is being appealed by the applicant or participant pursuant to § 246.9.

G. Access by the USDA and the Comptroller General of the United States

This rule would also revise paragraph (g) in § 246.26 to clarify that access to Program records by the Department and Comptroller General of the United States includes confidential applicant and participant information. This rule also proposes to amend § 246.25(a)(4) to require State and local agencies to make available to the Department and the Comptroller General all Program records, including confidential applicant and participant information. However, the proposed rule would prohibit any reports or other documents resulting from the examination of such records that are publicly released from including confidential applicant or participant information. We also want to point out that the provisions providing access to the Department and the Comptroller General extend to contractors and other agents of the Department or the Comptroller General who may be performing research or other activities on behalf of the Department, so long as those activities relate to the administration or enforcement of the WIC Program.

H. Subpoenas and Search Warrants

The Department additionally proposes to add a new paragraph (i) to § 246.26 that would specify the procedures State and local agencies must follow in responding to requests from courts for confidential information pertaining to WIC applicants, participants, and vendors. The Department proposes to add these procedures to the WIC regulations in response to an increase in instances in which State and local agencies are presented with subpoenas or search warrants for confidential applicant and participant information. This rule proposes step-by-step procedures that State and local agencies, in consultation with legal counsel, would be required to follow in handling these requests. The proposed procedures are intended to create a basic, standard approach that emphasizes the importance of preserving confidentiality within the scope of the Federal regulations governing the WIC Program. At the same time, these procedures would protect WIC staff from adverse legal action for refusals to release confidential information.

In proposed § 246.6(i), the Department proposes to identify the situations in which State or local agencies must release information: when served with a search warrant or when served with a subpoena which the court has already denied the State or local agency's attempt to quash or which the local agency and legal counsel have reviewed and determined not to attempt to quash. If the State or local agency fails to comply in these situations, WIC staff may face adverse legal action, including imprisonment.

This rule proposes different procedures for responding to subpoenas as opposed to search warrants in recognition of the differences between these legal documents. A subpoena is a written directive for information to be provided by an individual or entity. Generally, a subpoena directs an individual or entity to appear at a stated time and place and give information on a topic about which the individual or entity is knowledgeable. One type of subpoena is a "subpoena *duces tecum*." A subpoena *duces tecum* is a written directive that orders the production and delivery of documents. Documents may be requested by type, *e.g.*, all records for participants of a certain age and gender, or by topic, *e.g.*, all documents which deal with immunization. The deadline for delivery, as well as the site for delivery, is generally specified. Search warrants are issued by the courts and are used by law enforcement officers to obtain information, and sometimes objects, from specific premises. Compliance with a search warrant is required at the time the search warrant is served.

Compared to a search warrant, with which State or local agency compliance must be immediate, a response to a subpoena may involve a process of several steps. This process, as outlined at proposed paragraph (i)(2), would allow State and local agencies, in consultation with legal counsel, to determine how to respond to a subpoena when it is initially received. However, if efforts to quash the subpoena (*i.e.*, receive court approval not to comply with the directive) have been denied by the court, then the State or local agency must comply.

Subpoenas *duces tecum* for information about Program participants have been the most common type of court-ordered directive. Subpoenas, whether directed to an individual or an entity, generally do not initially represent a court's ruling that a WIC State or local agency must release the requested information. However, subpoenas cannot be ignored. The Department proposes that the primary consideration in deciding how to respond to subpoenas follows the provisions of proposed § 246.26(i). Under the proposed procedures, State and local agencies, acting on the advice of legal counsel, would first determine whether the requested information is in fact confidential applicant or participant information prohibited from release under the federal regulations. If not, the state or local agency would provide the information requested. If so, however, we propose that the State or local agency, or legal counsel acting on its behalf, must proceed to attempt to quash the subpoena. In doing so, the State/local agency or legal counsel may be required to appear before the court to argue against the release of information. The Department further proposes that at a minimum in attempting to quash a subpoena, the State/local agency or legal counsel acting on its behalf must inform the court of the federal regulatory prohibitions against providing the requested information. If the court denies the motion to quash the subpoena and rules that the information must be released, then, as proposed in this rule, the State/local agency or legal counsel would attempt to limit the extent of the disclosure of confidential WIC Program information by:

- Ensuring that the information released is only what is essential to respond to the subpoena; and
- Limiting to the greatest extent possible the public access to the confidential WIC information disclosed.

Occasionally, State and local agencies have confronted serious dilemmas when requested confidential applicant or participant information was key to the solution of criminal investigations of felonies. Program regulations prohibited disclosure of the information, even though Program interests would have been well served in furthering the investigations. The Department therefore proposes to recognize, in new § 246.26(i)(2)(iii), that in rare instances a State or local agency in consultation with legal counsel could decide that disclosing confidential applicant or participant information would be in the best interest of the Program. Because requests arising from investigations of this caliber and seriousness are rare, we expect State and local agencies to conclude only infrequently that such disclosure is necessary.

In § 246.26(i)(3), the Department proposes to set forth procedures for State and local agencies to follow when they are served with search warrants. As proposed, the State and local agency are required to:

- If a local agency, immediately notify the State agency;
- Immediately notify legal counsel;
- Comply with the search warrant;
- Inform the individual(s) producing the search warrant of the confidential nature of WIC information; and
- Review the search warrant and provide only the specific information requested in the warrant and no other information.

Search warrants differ from subpoenas in that generally, they are issued or approved by a court in criminal matters only when law enforcement officials have made an adequate showing of the need for the search. Failure to comply with a search warrant at the time it is served could result in the immediate imprisonment of WIC State or local agency staff. As stated above, State or local legal counsel should be alerted to the request for the provision of the information required in the search warrant immediately upon service of the warrant. WIC clinic staff should retain a copy of the search warrant for their files as evidence of the cause of the specific information's being released.

The proposed process for responding to court-ordered requests for confidential WIC Program information will assist State and local agencies in handling future requests. These proposed procedures are intended to achieve two objectives. First, the Department intends to clarify through regulations the primacy of Federal authority to limit disclosure of information in the interest of preserving the confidentiality of WIC applicant/participant information. The Department further intends to communicate a national, uniform approach to disclosure of WIC records that will assist the courts in handling matters related to the confidentiality of Program information. Because of variation in State law, however, the Department encourages legal counsel for State and local agencies to consider these proposed revisions carefully, and to provide comments that will assist the Department in issuing final regulations that are sufficiently flexible to accommodate State laws in this area.

18. Conflict of Interest

One of the recommendations included in an August 1999 Report by the General Accounting Office (GAO) addressing fraud and abuse in the WIC Program ("FOOD ASSISTANCE: Efforts to Control Fraud and Abuse in the WIC Program Can Be Strengthened") stated that WIC State agencies should be required to have policies and procedures for addressing employee conflicts of interest at the local agency level. Conflicts of interest may arise when local agency employees who participate in the WIC Program are in a position to certify their own eligibility and issue their own benefits. They may also arise when there is no separation of duties within the local agency staff so that an employee can certify and issue benefits to the same individual. The GAO report indicated that 45 percent of the local WIC agencies do not have conflict-of-interest policies in place for employees who also receive WIC benefits. Furthermore, an estimated 30 percent of the local agencies do not separate duties within the certification process. In this latter case, employees could certify and issue WIC benefits to relatives and friends.

The Department realizes that in many local agencies, the WIC clinics do not have enough employees on site to separate these essential duties. However, GAO reminds the Department that even in such understaffed situations, prudent precautions can and should be taken. For example, one agency uses a separate agency number for issuing WIC benefits to employee participants. Another agency requires a supervisor's sign-off whenever an employee is going to both certify and issue benefits to the same individual because staffing levels are low.

Consistent with GAO's recommendation, a new paragraph (a)(25) would be added to § 246.4 to require that State agencies develop and implement reasonable policies and procedures to prevent conflicts of interest within the local agency staffs.

19. Participant and Employee Fraud and Abuse (§ 246.4(a))

The GAO study on fraud and abuse in the WIC Program also noted that consistent and reliable information regarding participant fraud and abuse—who is committing the fraud and how often, what types of fraud are being committed, and how much program funding is lost—is important in evaluating the effectiveness of both Federal and State agency efforts aimed at preventing and detecting these problems. Currently, State agencies do not collect information on the number and characteristics of participants who engage in participant fraud and abuse. In fact, nearly half of the states that were included in the GAO study reported that they do not maintain such data. Without this information, FNS is not able to assess the extent of participant fraud and abuse, evaluate State and local agencies' efforts to control it, or identify the changes needed to improve program integrity.

GAO suggests that not collecting such information may send an unintentional message to agency officials and other stakeholders that preventing and detecting participant/employee fraud and abuse is a low priority, thus damaging the public's trust in the WIC Program. Therefore, this rule proposes that State agencies include as part of the annual State Plan of Operation a description of the system(s) that are in place at the local agency level for collecting and maintaining information on cases of fraud and abuse by participants as well as by employees (including any violations caused by employee conflicts of interest described above). The information should include the nature of the fraud detected and the associated dollar losses that are the actual or estimated result of such fraud and abuse. This requirement would be added to § 246.4 of the regulations as a new paragraph (a)(26).

20. State Plan Requirements (§ 246.4(a))

The proposed revisions described above will also require several changes to the State Plan. Therefore, § 246.4(a)(11)(i) would be revised to incorporate the following provisions:

(1) State agencies which allow local agencies the option of requesting documentation of pregnancy from applicants would specify in their State Plans the type of documentation that is requested, and would also provide assurance that the request for documentation will not constitute a barrier to participants.

(2) States would specify any alternate language, developed at their option, that will be used to inform WIC applicants of their rights and responsibilities, as provided in § 246.7(i)(10) of this proposed rule. The alternate language must be approved by FNS before it can be used by WIC local agencies.

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(3) State agencies must describe their policies concerning the approval of local agency costs for transporting participants to and from WIC clinics, as provided in § 246.4(a)(18).

(4) A new paragraph (a)(24) would be added to this section to require that State agencies list all programs with which written agreements for sharing participant information have been or will be executed. State agencies would also be required to specify the reason(s), as specified by § 246.26(d)(2)(i), for sharing information with each program.

Procedural Matters

Executive Order 12866

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Roberto Salazar, Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant effect on a substantial number of small entities. State and local WIC agencies would be most affected because there are several additional program administration requirements. However, this rule also reduces considerably more program administration requirements. The net effect on State and local agencies is expected to result in reduced and streamlined administrative procedures. Participants and applicants would also be affected by changes in application processing, certification, and the disclosure of information.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is submitting for public comment the change in the information collection burden that would result from the adoption of the proposals in this rule, as indicated below.

ESTIMATED ANNUAL REPORTING BURDEN

Section of regulations	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting:				
246.4(a)(11)(i)	88	1	1.00	88.00
246.4(a)(11)(ii)	88	1	.50	44.00
246.4(a)(18)	88	1	1.00	88.00
246.4(a)(24)	88	1	1.00	88.00
Total Reporting Burden	88		3.50	308.00

Comments are invited on:

- Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility;
- The accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and the information to be collected; and
- Ways to minimize the burden of information collection on those who are required to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

In addition to the proposed reporting requirements noted above, this rulemaking would also update regulatory language at section 246.25 regarding the State agency reporting requirements to reflect the current reporting requirements that began in Fiscal Year 1993. Revisions to the information collection burden associated with these reporting changes have been previously approved by OMB as follows:

- FNS–798 and –798A, WIC Financial Management and Participation Report with Addendum (OMB #0584–0045);
- FNS–648, WIC Local Agency Directory Report (OMB #0584–0431).

Comments may be sent to Laura Wittenberg, Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. (A copy may also be sent to Debra Whitford at the address below.) For further information, or for copies of the information collection, please contact Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, VA 22302, or telephone (703) 305–2730.

Comments and recommendations on the proposed information collection must be received by January 31, 2003. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of the preamble to the final rule. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 10404, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of that rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, add new definitions of "Electronic signature" and "Sign or signature" in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Electronic signature means an electronic sound, symbol, or process, attached to or associated with an application or other record and executed and or adopted by a person with the intent to sign the record.

* * * * *

Sign or signature means a handwritten signature on paper or an electronic signature. If the State agency chooses to use electronic signatures, the State agency must ensure the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices and the confidentiality requirements in § 246.26.

* * * * *

3. In § 246.4:

a. Revise paragraphs (a)(11)(i) and (a)(11)(ii);

b. Add a sentence to the end of paragraph (a)(21); and

c. Add new paragraphs (a)(24), (a)(25), and (a)(26).

The revision and additions read as follows:

§ 246.4 State plan.

(a) * * *

(11) * * *

(i) Certification procedures, including:

(A) a list of the specific nutritional risk criteria by priority level which explains how a person's nutritional risk is determined;

(B) hematological data requirements including timeframes for the collection of such data;

(C) the State agency's income guidelines for Program eligibility;

(D) adjustments to the participant priority system (*see* § 246.7(e)(4)) to accommodate high-risk postpartum women or the addition of Priority VII; and

(E) alternate language for the statement of rights and responsibilities which is provided to applicants, parents, or caretakers when applying for benefits as outlined in § 246.7(i)(10) and (j)(2)(i) through (j)(2)(iii). This alternate language must be approved by FNS before it can be used in the required statement.

(ii) Methods for providing nutrition education to participants, and criteria for deciding who will be offered individual care plans. Nutrition education will include drug abuse information. Participants will include homeless individuals.

* * * * *

(21) * * * The State agency will also describe its policy for approving transportation of participants to and from WIC clinics.

* * * * *

(24) A list of all organizations with which the State agency or its local agencies has executed or intends to execute a written agreement pursuant to § 246.26(h) authorizing the use and disclosure of confidential applicant and participant information for non-WIC purposes.

(25) The State agency's plan to prevent conflicts of interest at the local agency or clinic level. At a minimum, this plan must address situations in which local agency or clinic staff:

(i) are also WIC participants;

(ii) certify relatives or close friends; or

(iii) perform both certification and food instrument issuance functions.

(26) The State agency's plan for collecting and maintaining information on cases of participant and employee fraud and abuse. Such information should include the nature of the fraud detected and the associated dollar losses.

* * * * *

4. In § 246.5:

a. Revise the first sentence of paragraph (c)(1) and remove the last sentence; and

b. Revise paragraph (d)(2).

The revisions read as follows:

§ 246.5 Selection of local agencies.

* * * * *

(c) * * *

(1) The State agency will consider the Affirmative Action Plan (*see* § 246.4(a)(5)) when funding local agencies and expanding existing operations, and may consider how much of the current need is being met at each priority level. * * *

* * * * *

(d) * * *

(2) The State agency will, when seeking new local agencies, publish a notice in the local media (unless it has received an application from a local public or nonprofit private health agency which can provide adequate services). The notice will include a brief explanation of the Program, a description of the local agency priority system (outlined in this paragraph (d)), and a request that potential local agencies notify the State agency of their interest. In addition, the State agency will contact all potential local agencies to make sure they are aware of the opportunity to apply. If no agency submits an application in 30 days, the State agency may then select a local agency in another area. If sufficient funds are available, a State agency will give notice and consider applications outside the local area at the same time.

* * * * *

5. In § 246.7:

a. Revise the heading of paragraph (c) and revise paragraph (c)(1);

b. Redesignate paragraph (c)(2) as paragraph (c)(3) and add new paragraphs (c)(2) and (c)(4);

c. Revise paragraph (d)(2)(iii);

d. Redesignate paragraph (d)(2)(iv)(C) as paragraph (d)(2)(iv)(D) and add a new paragraph (d)(2)(iv)(C);

e. Revise paragraph (e)(1)(vi);

f. Revise paragraph (g)(1);

g. Revise paragraph (h);

h. Revise paragraph (i)(10) introductory text;

i. Revise paragraph (i)(11);

j. Revise paragraph (j)(2) introductory text;

k. Redesignate paragraph (l)(1) as paragraph (l) introductory text, and remove paragraph (l)(2);

l. Redesignate paragraphs (l)(1)(i) through (l)(1)(iv) as (l)(1) through (l)(4), respectively; and

m. Remove paragraph (m), and redesignate paragraphs (n), (o), (p), and

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(q) as paragraphs (m), (n), (o), and (p), respectively.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(c) *Eligibility criteria and basic certification procedures.* (1) To qualify for the Program, infants, children, and pregnant, postpartum, and breastfeeding women must:

(i) Reside within the jurisdiction of the State (except for Indian State agencies). Indian State agencies may establish a similar requirement. All State agencies may determine a service area for any local agency, and may require that an applicant reside within the service area. However, the State agency may not use length of residency as an eligibility requirement.

(ii) Meet the income criteria specified in paragraph (d) of this section.

(iii) Meet the nutritional risk criteria specified in paragraph (e) of this section.

(2)(i) At certification, the State or local agency must require each applicant to present proof of residency (*i.e.*, location or address where the applicant routinely lives or spends the night) and proof of identity. The State or local agency must also check the identity of participants, or in the case of infants or children, the identity of the parent or guardian, or proxies when issuing food or food instruments. The State agency may authorize the certification of applicants when no proof of residency or identity exists (such as when an applicant or an applicant's parent is a victim of theft, loss, or disaster; a homeless individual; or a migrant farmworker). In these cases, the State or local agency must require the applicant to confirm in writing his/her residency or identity. Further, an individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may establish proof of residency by providing the State agency their mailing address and the name of the remote Indian or Native village.

(ii) The State agency may issue benefits to applicants who claim to be pregnant (assuming that all other eligibility criteria are met) but who do not have documented proof of pregnancy at the time of the certification interview and determination. The State agency should then allow a reasonable period of time, not to exceed 60 days, for the applicant to provide the requested documentation. If such documentation is not provided as requested, the woman can no longer be considered categorically eligible, and the local agency would then be justified in terminating the woman's WIC participation in the middle of a certification period.

* * * * *

(4) The certification procedure shall be performed at no cost to the applicant.

(d) * * *

(2) * * *

(iii) *Use of a State or local health care definition of "Income".* If the State agency uses State or local free or reduced-price health care income guidelines, it will ensure that the definitions of income (*see* paragraph (d)(2)(ii) of this section), family (*see* § 246.2) and allowable exclusions from income (*see* paragraph (d)(2)(iv) of this section) are used uniformly to determine an applicant's income eligibility. This ensures that households with a gross income in excess of 185 percent of the Federal income guidelines (*see* paragraph (d)(1) of this section) are not eligible for Program benefits. The exception to this requirement is persons who are also income eligible under other programs (*see* paragraph (d)(2)(vi) of this section).

(iv) * * *

(C) Short term, unsecured loans that are expected to be repaid in a reasonably short period of time, and to which the applicant does not have constant or unlimited access.

* * * * *

(e) * * *

(1) * * *

(vi) *Regression.* A WIC participant who is reapplying for WIC benefits may be considered to be at nutritional risk in the next certification period if the competent professional authority determines that his/her nutritional status will worsen (regress) without supplemental foods. However, such participants may not be considered at nutritional risk for this reason (regression) for more than one certification period immediately following the initial certification. Individuals who are certified based on the possibility of regression should be placed either in the same priority for which they were initially certified, or in Priority VII, if the State agency is using that priority level.

* * * * *

(g) * * *

(1) Program benefits will be based upon certifications established in accordance with the following timeframes:

A/an:	Will be certified:
(i) Pregnant woman	For the duration of her pregnancy, and up to the last day of the month in which the infant becomes six weeks old or the pregnancy ends (for example, if the infant is born June 4, six weeks after birth would be July 16, and certification would end July 31).
(ii) Postpartum woman	Up to the last day of the sixth month after the baby is born or the pregnancy ends (postpartum).
(iii) Breastfeeding woman	Approximately every six months ending with the last day of the month in which the infant turns 1 year old.
(iv) Infant	Approximately every six months. The State agency may permit its local agencies to certify infants under six months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
(v) Child	Approximately every sixth months ending with the last day of the month in which a child reaches his/her fifth birthday.

* * * * *

(h) *Mid-certification period disqualifications.* Participants may be disqualified from the Program during a certification period for:

(1) *Income ineligibility.* If the local agency finds out that an individual's household income level has changed, the local agency will reassess the individual's income eligibility during the current certification period. The local agency will disqualify an individual and any other household members currently receiving WIC benefits determined ineligible based on the new information. However, adjunctively-eligible WIC participants (as defined in paragraphs (d)(2)(vi)(A) or (d)(2)(vi)(B) of this section) may not be disqualified from the WIC Program solely because they, or certain family members, no longer participate in one of the other specified programs. The State agency will ensure that such persons, and other household members currently receiving WIC benefits, are disqualified during a certification period only after their income eligibility has been reassessed based on the income screening procedures used for applicants who are not adjunctively eligible.

(2) *Other (optional) reasons.* Local agencies may disqualify an individual during a certification period for the following reasons:

(i) Failure to obtain food instruments or supplemental foods for several consecutive months. Proof of such failure includes failure to pick up supplemental foods or food instruments, nonreceipt of food instruments (when mailed instruments are returned), or failure to have an electronic benefit transfer card revalidated for purchase of supplemental foods; or

(ii) If a State agency experiences funding shortages, it may be necessary to discontinue Program benefits to some certified participants. The State agency must explore alternatives (such as elimination of new certifications) before taking such action. Reduction of food benefit quantities for cost reasons is not an acceptable alternative action. In discontinuing benefits, the State agency will affect the least possible number of participants and those whose nutritional and health status would be least impaired by the action. When a State agency elects to discontinue benefits due to insufficient funds, it will not enroll new participants during that period. The State may discontinue benefits by:

(A) Disqualifying a group of participants; and/or

(B) Withholding benefits of a group with the expectation of providing benefits again when funds are available.

(i) * * *

(10) A statement of the rights and obligations under the Program. The statement must contain a signature space, and must be read by or to the applicant, parent, or caretaker. It must contain the following language or alternate language as approved by FNS (see § 246.4(a)(11)(i)), and be signed by the applicant, parent, or caretaker after the statement is read:

* * * * *

(11) If the State agency exercises the authority to use and disclose confidential applicant and participant information for non-WIC purposes pursuant to § 246.26(d)(2), a statement that:

(i) Notifies applicants that the chief State health officer (or the governing authority, in the case of an Indian State agency) may authorize the use and disclosure of information about their participation in the WIC Program for non-WIC purposes;

(ii) Must indicate that such information will be used by State and local WIC agencies and public organizations only in the administration of their programs that serve persons eligible for the WIC Program; and

(iii) Will be added to the statement required under paragraph (i)(10) of this section. This statement must also indicate that such information can be used by the recipient organizations only for the following:

(A) To determine the eligibility of WIC applicants and participants for programs administered by such organizations;

(B) To conduct outreach for such programs;

(C) To enhance the health, education, or well-being of WIC applicants and participants currently enrolled in those programs;

(D) To streamline administrative procedures in order to minimize burdens on participants and staff; and

(E) To assess and evaluate a State's health system in terms of responsiveness to participants' health care needs and health care outcomes.

(j) * * *

(2) At the time of certification, each Program participant, parent or caretaker must read, or have read to him or her, the statement provided in paragraph (i)(10) of this section (or an alternate statement as approved by FNS). In addition, the following sentences (or alternate sentences as approved by FNS) must be read:

* * * * *

6. In § 246.9, revise paragraph (g) to read as follows:

§ 246.9 Fair hearing procedures for participants.

* * * * *

(g) *Continuation of benefits.* Participants who appeal the termination of benefits within the period of time provided under paragraph (e) of this section must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification period has expired or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, or participants who become categorically ineligible during a certification (or whose certification period expires), may appeal the denial or termination, but must not receive benefits while awaiting the hearing.

* * * * *

§ 246.12 [Amended]

7. In § 246.12:

a. Amend paragraph (f)(2)(iv) by removing the words "90 days" wherever they appear and by adding in their place the words "60 days"; and

b. Amend paragraph (q) by removing the words "150 days" and by adding in their place the words "120 days".

8. In § 246.14:

a. Add a new sentence at the beginning of paragraph (a)(2);

b. Amend the first sentence of paragraph (c)(7) by removing the word "rural"; and

c. Revise paragraph (d).

The addition and revision read as follows:

§ 246.14 Program costs.

(a) * * *

(2) Program funds may not be used to pay for retroactive benefits. * * *

* * * * *

(d) *Costs allowable with approval.* The costs of capital expenditures exceeding the dollar threshold established in Agency policy and guidance are allowable only with the approval of FNS prior to the capital investment. These expenditures include the costs of facilities, equipment (including medical equipment), automated data processing (ADP) projects, other capital assets, and any repairs that materially increase the value or useful life of such assets.

* * * * *

9. In § 246.15, revise the first sentence of paragraph (b) to read as follows:

§ 246.15 Program income other than grants.

* * * * *

(b) *Other Program income.* The State agency may use current program income (applied in accordance with the addition method described in § 3016.25(g)(2) of this title) for costs incurred in the current fiscal year and, with the approval of FNS, for costs incurred in previous years or subsequent fiscal years. * * *

§ 246.17 [Amended]

10. In § 246.17, remove the words "150 days" in paragraph (b)(2), and add in their place the words "120 days".

11. In § 246.20:

a. Revise paragraph (b)(1); and

b. Remove paragraph (b)(2), and redesignate paragraph (b)(3) as paragraph (b)(2).

The revision reads as follows:

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§ 246.20 Audits.

* * * * *

(b) * * * (1) State agencies must obtain annual audits in accordance with part 3052 of this title. In addition, States must require local agencies under their jurisdiction to obtain audits in accordance with part 3052 of this title.

* * * * *

12. In § 246.25, revise paragraphs (a)(4), (b) and (c) to read as follows:

§ 246.25 Records and reports.

(a) * * *

(4) All records shall be available during normal business hours for representatives of the Department and the Comptroller General of the United States to inspect, audit, and copy. Any reports or other documents resulting from the examination of such records that are publicly released may not include confidential applicant or participant information.

(b) *Financial and participation reports.*

(1) *Monthly reports.* (i) State agencies must submit financial and program performance data on a monthly basis, as specified by FNS, to support program management and funding decisions. Such information must include, but may not be limited to:

(A) Actual and projected participation;

(B) Actual and projected food funds expenditures;

(C) A listing by source year of food and NSA funds available for expenditure; and

(D) NSA expenditures.

(ii) State agencies must require local agencies to report such financial and participation information as is necessary for the efficient management of food and NSA funds expenditures. When considered necessary and feasible by FNS, State agencies may be required to:

(A) Show in the "Remarks" section of the WIC Financial Management and Participation Report the amount of cash allowances exceeding three days' need being held by their local agencies or contractors; and

(B) Provide short narrative explanations of actions taken by the State agency to reduce such excess balances.

(2) *Annual reports.* (i) Every year, State agencies must report to FNS the average number of migrant farmworker household members participating in the Program during a 12-month period of time specified by FNS.

(ii) State agencies must submit itemized NSA expenditure reports annually as an addendum to their WIC Program closeout reports, as required by § 246.17(b)(2).

(3) *Biennial reports.* (i) *Participant characteristics report.* State and local agencies must provide such information as may be required by FNS to provide a biennial participant characteristics report to Congress. This includes, at a minimum, information on income and nutritional risk characteristics of participants, information on breastfeeding incidence and duration, and participation in the Program by category (*i.e.*, pregnant, breastfeeding and postpartum women, infants and children) within each priority level (as established in § 246.7(e)(4)) and by migrant farmworker households.

(ii) *Civil rights report.* Racial and ethnic participation data contained in the participant characteristics report that is submitted biennially to Congress will also be used to fulfill civil rights reporting requirements.

(c) *Other reports.* State agencies must submit reports to reflect additions and deletions of local agencies administering the WIC Program and local agency address changes as these events occur.

* * * * *

13. In § 246.26, revise paragraphs (d) and (g) and add new paragraphs (h) and (i) to read as follows:

§ 246.26 Other provisions.

* * * * *

(d) *Confidentiality of applicant and participant information.*

(1) *WIC purposes.* Confidential applicant and participant information is any information about an applicant or participant (whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation) that individually identifies those individuals and/or a family member(s). Except as otherwise permitted by this section, the State agency must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom the State agency determines have a need to know the information for WIC Program purposes. These persons may include personnel from its local agencies and other WIC State and local agencies, persons under contract with the State agency to perform research regarding the WIC Program, and persons investigating or prosecuting WIC Program violations under Federal, State or local law.

(2) *Non-WIC purposes.* (i) *Use by WIC State and local agencies.* Any WIC State or local agency may use confidential applicant and participant information in the administration of its other programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(ii) *Disclosure to public organizations.* The State agency and its local agencies may disclose confidential applicant and participant information to public organizations for use in the administration of their programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(3) *Child abuse and neglect reporting.* Staff of the State agency and its local agencies who are required by State law to report known or suspected child abuse or neglect may disclose confidential applicant and participant information to the extent necessary to comply with such law.

(4) *Release forms.* Except in the case of subpoenas or search warrants (see paragraph (i) of this section), the State agency and its local agencies may disclose confidential applicant and participant information to individuals or entities not listed in this section only if the affected applicant or participant signs a release form authorizing the disclosure and specifying the parties to which the information may be disclosed. The State or local agency must permit applicants and participants to refuse to sign the release form and must notify the applicants and participants that signing the form is not a condition of eligibility and refusing to sign the form will not affect the applicant's or participant's application or participation in the WIC Program. Release forms authorizing disclosure to private physicians or other health care providers may be included as part of the WIC application or certification process. All other requests for applicants or participants to sign voluntary release forms must occur after the application and certification process is completed.

(5) *Access to information by applicants and participants.* The State or local agency must provide applicants and participants access to all information they have provided to the WIC Program. In the case of an applicant or participant who is an infant or child, the access may be provided to the parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship have been settled. However, the State or local agency need not provide the applicant or participant (or the parent or guardian of an infant or child) access to any other information in the file or record such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the

information supports a State or local agency decision being appealed pursuant to § 246.9.

* * * * *

(g) *USDA and the Comptroller General.* The State agency must provide the Department and the Comptroller General of the United States access to all WIC Program records, including confidential vendor, applicant and participant information, pursuant to § 246.25(a)(4).

(h) *Requirements for use and disclosure of confidential applicant and participant information for non-WIC purposes.* The State or local agency must take the following steps before using or disclosing confidential applicant or participant information for non-WIC purposes pursuant to paragraph (d)(2) of this section.

(1) *Designation by chief State health officer.* The chief State health officer (or, in the case of an Indian State agency, the governing authority) must designate in writing the permitted non-WIC uses of the information and the names of the organizations to which such information may be disclosed.

(2) *Notice to applicants and participants.* The applicant or participant must be notified either at the time of application (in accordance with § 246.7(i)(11)) or through a subsequent notice that the chief State health officer (or, in the case of an Indian State agency, the governing authority) may authorize the use and disclosure of information about their participation in the WIC Program for non-WIC purposes. This statement must also indicate that such information will be used by State and local WIC agencies and public organizations only in the administration of their programs that serve persons eligible for the WIC Program.

(3) *Written agreement and State plan.* The State or local agency disclosing the information must enter into a written agreement with the other public organization or, in the case of a non-WIC use by a State or local WIC agency, the unit of the State or local agency that will be using the information. The State agency must also include in its State plan, as specified in § 246.4(a)(24), a list of all organizations (including units of the State agency or local agencies) with which the State agency or its local agencies has executed or intends to execute a written agreement. The written agreement must:

(i) Specify that the receiving organization may use the confidential applicant and participant information only for:

(A) Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;

(B) Conducting outreach to WIC applicants and participants for such programs;

(C) Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect that is not otherwise required by State law;

(D) Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC Program; and/or

(E) Assessing and evaluating the responsiveness of a State's health system to participants' health care needs and health care outcomes; and

(ii) Contain the receiving organization's assurance that it will not use the information for any other purpose or disclose the information to a third party.

(i) *Subpoenas and search warrants.* (1) *General.* The State agency may disclose confidential applicant, participant, or vendor information pursuant to a valid subpoena or search warrant only if it has been reviewed in accordance with this paragraph (i).

(2) *Subpoena procedures.* In determining how to respond to a subpoena duces tecum (*i.e.*, a subpoena for documents) or other subpoena for confidential information, the State or local agency must use the following procedures:

(i) Upon receiving the subpoena, immediately notify its State agency;

(ii) Consult with legal counsel for the State or local agency and determine whether the information requested is in fact confidential and prohibited by this section from being used or disclosed as stated in the subpoena;

(iii) If the State or local agency determines that the information is confidential and prohibited from being used or disclosed as stated in the subpoena, attempt to quash the subpoena unless the State or local agency determines that disclosing the confidential information is in the best interest of the Program. The determination to disclose confidential information without attempting to quash the subpoena should be made only infrequently; and

(iv) If the State or local agency seeks to quash the subpoena or decides that disclosing the confidential information is in the best interest of the Program, inform the court or the receiving party that this information is confidential and seek to limit the disclosure by:

(A) Providing only the specific information requested in the subpoena and no other information; and

(B) Limiting to the greatest extent possible the public access to the confidential information disclosed.

(3) *Search warrant procedures.* In responding to a search warrant for confidential information, the State or local agency must use the following procedures:

(i) Upon receiving the search warrant, immediately notify its State agency;

(ii) Immediately notify legal counsel for the State or local agency;

(iii) Comply with the search warrant; and

(iv) Inform the individual(s) serving the search warrant that the information being sought is confidential and seek to limit the disclosure by:

(A) Providing only the specific information requested in the search warrant and no other information; and

(B) Limiting to the greatest extent possible the public access to the confidential information disclosed.

14. In § 246.27, paragraph (c) is revised to read as follows:

§ 246.27 Program information.

* * * * *

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., Room 8T36, Atlanta, Georgia 30303.

* * * * *

Dated: November 22, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–30223 Filed 11–29–02; 8:45 am]

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Part VI

The President

Memorandum of November 27, 2002—Determination Under the Interstate Commerce Commission Termination Act of 1995

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Presidential Documents

Title 3—

The President

Memorandum of November 27, 2002

Determination Under the Interstate Commerce Commission Termination Act of 1995

Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982, Public Law 97–261, 96 Stat. 1103, imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country and authorized the President to modify the moratorium. The Interstate Commerce Commission Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803, maintained these restrictions, subject to modifications made prior to the enactment of the ICCTA, and empowered the President to make further modifications to the moratorium.

Pursuant to 49 U.S.C. 13902(c)(3), I modified the moratorium on June 5, 2001, to allow motor carriers domiciled in the United States that are owned or controlled by persons of Mexico to obtain operating authority to transport international cargo by truck between points in the United States and to provide bus services between points in the United States.

The North American Free Trade Agreement (NAFTA) established a schedule for liberalizing certain restrictions on the provision of bus and truck services by Mexican-domiciled motor carriers in the United States. Pursuant to 49 U.S.C. 13902(c)(3), I hereby determine that the following modifications to the moratorium are consistent with obligations of the United States under NAFTA and with our national transportation policy and that the moratorium shall be modified accordingly.

First, qualified motor carriers domiciled in Mexico will be allowed to obtain operating authority to transport passengers in cross-border scheduled bus services. Second, qualified motor carriers domiciled in Mexico will be allowed to obtain operating authority to provide cross-border truck services. The moratorium on the issuance of certificates or permits to Mexican-domiciled motor carriers for the provision of truck or bus services between points in the United States will remain in place. These modifications shall be effective on the date of this memorandum.

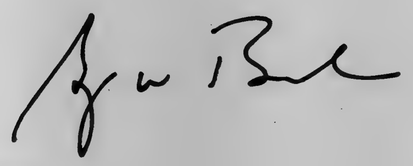
Furthermore, pursuant to 49 U.S.C. 13902(c)(5), I hereby determine that expeditious action is required to implement this modification to the moratorium. Effective on the date of this memorandum, the Department of Transportation is authorized to act on applications, submitted by motor carriers domiciled in Mexico, to obtain operating authority to provide cross-border scheduled bus services and cross-border truck services. In reviewing such applications, the Department shall continue to work closely with the Department of Justice, the Office of Homeland Security, and other relevant Federal departments, agencies, and offices in order to help ensure the security of the border and to prevent potential threats to national security.

Motor carriers domiciled in Mexico operating in the United States will be subject to the same Federal and State laws, regulations, and procedures that apply to carriers domiciled in the United States. These include safety regulations, such as drug and alcohol testing requirements; insurance requirements; taxes and fees; and other applicable laws and regulations, including those administered by the United States Customs Service, the Immigration

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and Naturalization Service, the Department of Labor, and Federal and State environmental agencies.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 27, 2002.

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CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 3389/P.L. 107–299
National Sea Grant College Program Act Amendments of 2002 (Nov. 26, 2002; 116 Stat. 2345)

H.R. 4878/P.L. 107–300
Improper Payments Information Act of 2002 (Nov. 26, 2002; 116 Stat. 2350)

H.R. 5348/P.L. 107–301
To facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interest and other interests retained by the United States in 1955 when the land was conveyed to the State of Missouri. (Nov. 26, 2002; 116 Stat. 2352)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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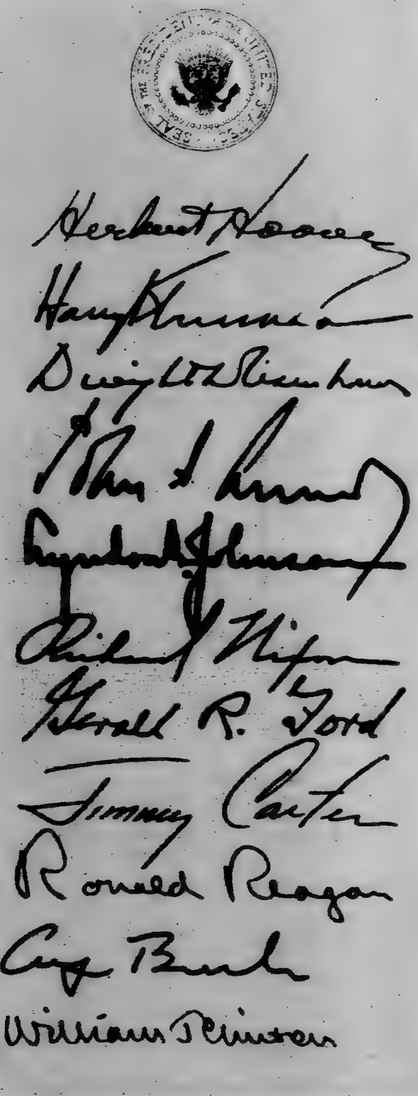
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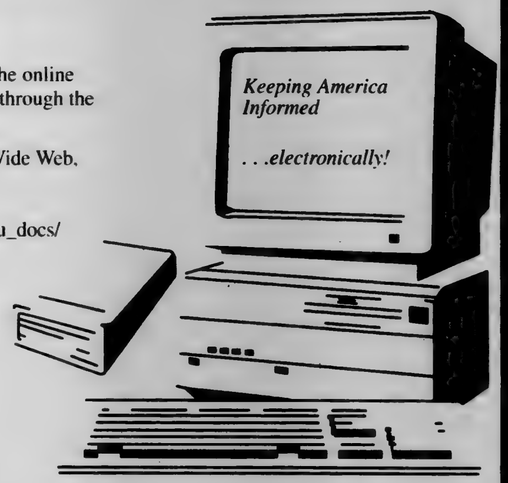
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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

RIN: 0560–AG55

Skip Row and Strip Crops

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations to revise the provisions governing how densely a producer's acreage must be planted in order for the full acre to be considered planted for program purposes in the Non-insured Crop Disaster Assistance Program and other programs. Under the revised rule the amount of a field considered planted will be limited to certain specified widths beyond the actual planted rows, which will allow for a more uniform determination of acreage.

EFFECTIVE DATE: November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Daniel McGlynn (202) 720–3463.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because FSA is not required by 5 U.S.C. 553 or any other provisions of the law to publish a notice of final rule making regarding the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

This rule does not contain any new information collection requirements.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Discussion of the Final Rule

For purposes of the operation of several programs, including the Non-Insured Crop Disaster Assistance Program (NAP), operated under rules set out at 7 CFR part 1437, it is necessary and important to determine how much of a field can be considered planted to a particular crop, and that determination can raise issues of how densely the field must be planted in order for the full acreage to be considered planted. Such determinations for NAP and other programs administered by FSA and the Commodity Credit Corporation are made using standards that are set out in regulations found at 7 CFR part 718. In particular, 7 CFR 718.107 addresses this issue. For example, persons filing for NAP benefits will indicate that they had a loss on a certain number of acres. That loss, in numbers of acres, will be multiplied by a yield per acre to arrive at a gross estimate of the amount of loss. This means, accordingly, that the number of acres considered committed to the crop can be critical in determining the amount of payments that the farmers can receive. In recent years, several situations have arisen in which farmers have reported unusual planting patterns that raise a question of whether the pattern reflected a desire to increase benefits rather than simply a desire to farm in the most productive manner possible for the market for the crop. These situations have prompted a review of the rule. That review has indicated that an overhaul of the measurement regulation is in order. Such an overhaul is undertaken in this rule, which provides that acreage planted to a crop will only be considered to be the rows of the crop itself and a set amount (as defined in the rule) on either side of the actual planted rows (including those rows which might be the last rows before a row is skipped and the first row after the skip). In the past, under the terms of the pre-existing regulation, it could occur that the full area of the skip might be considered to be planted even though the space was far greater than that which would normally occur between rows. It is believed that this revised rule will be fairer and will give a more accurate measure of the amount of the field that should be considered planted to a crop, assuming an intended full production of the crop.

The rules in 7 CFR part 718 were revised in response to the Agricultural Market Transition Act of 1996, Pub. L. No. 104–127, which, among other things, in section 196, re-instituted NAP within the CCC as it is now constituted. Originally, NAP was administered by the Federal Crop Insurance Program and the Risk Management Agency. After the 1996 Act, new rules were finalized for NAP (61 FR 69005, December 31, 1996) and also for the generic regulations in 7

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CFR part 718 (61 FR 37552, July 18, 1996), which cover a number of issues common to a number of programs, including NAP. Section 161 of the 1996 Act provides for an exemption from the normal provisions of rule-making for implementing decisions made pursuant to that Act, and this exemption applies in this instance as well because this rule is part of the overall implementation of the 1996 Act and the administration of NAP. The rule has been designed to accommodate normal planting practices and to be flexible where needed to handle the special needs of special crops or special conditions in special areas.

Also, to provide for a transition from the old rules that would not occur in the middle of a crop year, the amended regulation in § 718.107 provides that the new provisions will apply only to the 2003 and subsequent crops.

List of Subjects in 7 CFR Part 718

Determination of Acreage and Compliance, Reconstitution of Farms, Allotments, Quotas, and Acreages.

For reasons set out in the preamble, 7 CFR part 718 is revised as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. The authority citation for 7 CFR part 718 continues to read as follows:

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b and 714c; and 21 U.S.C. 889.

2. Revise § 718.107 to read as follows:

§ 718.107 Measuring acreage including skip row acreage.

(a) When one crop is alternating with another crop, whether or not both crops have the same growing season, only the acreage that is actually planted to the crop being measured will be considered to be acreage devoted to the measured crop.

(b) Subject to the provisions of this paragraph and section, whether planted in a skip row pattern or without a pattern of skipped rows, the entire acreage of the field or subdivision may be considered as devoted to the crop only where the distance between the rows, for all rows, is 40 inches or less. If there is a skip that creates idle land wider than 40 inches, or if the distance between any rows is more than 40 inches, then the area planted to the crop shall be considered to be that area which would represent the smaller of: a 40-inch width between rows, or the normal row spacing in the field for all other rows in the field—those that are not more than 40 inches apart. The allowance for individual rows would be made based on the smaller of: actual spacing between those rows, or the normal spacing in the field. For example, if the crop is planted in single wide rows that are 48 inches apart, only 20 inches to either side of each row (for a total of 40 inches between the two rows) could, at a maximum, be considered as devoted as the crop and normal spacing in the field would control. Half the normal distance between rows will also be allowed beyond the outside planted rows not to exceed 20 inches and will reflect normal spacing in the field.

(c) In making calculations under this section, further reductions may be made in the acreage considered planted to the extent it is determined that the acreage is more sparsely planted than would be normal using reasonable and customary full production planting techniques.

(d) The Deputy Administrator for Farm Programs has the discretionary authority to allow row allowances other than those specified in this section in those instances in which crops are normally planted with spacings greater or less than 40 inches, such as in the case of tobacco, or where other circumstances are presented which the Deputy Administrator finds justifies that allowance.

(e) Paragraphs (a) through (d) of this section shall apply with respect to the 2003 and subsequent crops. For preceding crops, the rules in effect on January 1, 2002, shall apply.

Signed at Washington, DC, on November 27, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–30702 Filed 11–29–02; 1:54 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Change in the Minimum Maturity Requirements for Fresh Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule increasing the minimum maturity requirements for fresh grapefruit under the marketing order for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida (order). The Citrus Administrative Committee (Committee), which locally administers the order, recommended this change for Florida grapefruit.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Post Office Box 1035, Moab, Utah 84532; telephone: (435) 259–7988, Fax: (435) 259–4945; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which

the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an increase in the minimum maturity requirements for fresh Florida grapefruit. This action continues to increase the minimum maturity from a 7.5 percent soluble solids (sugars) and a 7.0 to 1 solids to acid ratio with a sliding scale minimum ratio of 6.0 to 1, to an 8.0 percent soluble solids (sugars) and a 7.5 to 1 solids to acid ratio with a sliding scale minimum ratio of 7.2 to 1. This change results in a sweeter grapefruit taste and should increase consumer demand for fresh grapefruit. This action was recommended by the Committee at its meeting on May 22, 2002, during which thirteen Committee members voted in favor of this change, and three voted against the change.

Section 905.52 of the order provides authority for the establishment of grade and size requirements for Florida citrus. One element of grade is maturity. Section 905.306 of the order specifies, in part, the minimum grade requirements for grapefruit. The current grade requirement for Florida grapefruit is a U.S. No. 1. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Florida Grapefruit (7 CFR 2851.750–2851.784).

The U.S. Standards for Grades of Florida Grapefruit (Standards) specify minimum and/or maximum allowances for discoloration, firmness, color, texture, form/shape, varietal characteristics, and maturity. The Standards define maturity by referencing the 1995 Florida Department of Citrus (FDOC) Florida Citrus Code, Chapter 601 and the FDOC Official Rules Affecting the Florida Citrus Industry, Part 1, Chapter 20–13. The 1995 Florida Citrus Code specifies a minimum maturity of 7.5 percent soluble solids (sugars) and a 7.0 to 1 ratio of solids to acid. The FDOC also employs a Citrus Fruit Maturity Chart as a sliding scale to determine equivalent soluble solids and ratio maturity combinations. The sliding scale allows for a range of soluble solids and ratio combinations that are comparable to the required minimum maturity level rather than just a fixed minimum requirement. With the sliding scale, a higher level of soluble solids (sugars) allows for a lower solids to acid ratio. In other words, grapefruit with higher soluble solids can have a lower solids to acid ratio and meet the minimum maturity requirements.

This rule continues to increase the minimum maturity requirements for fresh Florida grapefruit. At its meeting on May 22, 2002, the Committee recommended increasing the minimum maturity level for fresh grapefruit from a 7.5 percent soluble solids (sugars) and a 7.0 to 1 solids to acid ratio with a sliding scale minimum ratio of 6.0 to 1 as specified in the Standards, to an 8.0 percent soluble solids (sugars) and a 7.5 to 1 solids to acid ratio with a sliding scale minimum of 7.2 to 1.

The Committee had formed a subcommittee to examine the maturity issue, the Subcommittee on Grapefruit Maturity Standards (subcommittee). The subcommittee determined that the minimum maturity requirements for fresh grapefruit should be increased and forwarded this idea to the full Committee at the May meeting. The subcommittee's presentation to the full Committee focused on declining fresh grapefruit sales, which it attributed to consumer dissatisfaction with taste. Furthermore, it discussed the potential to increase consumer demand through increasing the sweetness of grapefruit, particularly early in the season.

The subcommittee found that consumers would be more likely to make repeat purchases if their initial taste experience with early season grapefruit was positive. By increasing the minimum maturity requirements, the industry could meet consumer demand for a sweeter tasting fruit. The subcommittee based its recommendation to increase the minimum maturity standard on recent market research studies and cited industry requests and support for a higher maturity standard.

The research studies referenced by the subcommittee were undertaken by the FDOC, or at their request, and were designed to determine those factors causing sales of fresh grapefruit to decline and those that cause demand to increase. Much of the decline in sales was attributed to consumer dissatisfaction with bitter tasting grapefruit early in the harvest season which, in turn, resulted in consumer reluctance to make repeat purchases. The studies indicate that consumer demand for grapefruit would increase if the initial taste experience of consumers was positive. In other words, repeat purchases are linked to consumer satisfaction with taste (Florida Department of Citrus, Consumer Research, February 20, 2002, conducted by a market research group; Grapefruit Sensory Evaluation Study, February 19, 1997, conducted by the FDOC; FDOC Grapefruit Strategy Working Session, February 20, 2002, conducted by a market research group).

The subcommittee stated there was also substantial industry support for an increase in the minimum maturity requirements, and referenced memos received by the Committee in support of such an increase. The memos received were from several industry groups representing nearly 80 percent of fresh grapefruit shipments. The memos specified the need to increase sales and identified an increased maturity standard as a means to improve consumer demand, particularly through repeat purchases.

The Committee, in its deliberations following the subcommittee's presentation, discussed the state of the fresh grapefruit market. Discussion centered around declining market demand and the need to improve consumer purchasing patterns, particularly for early season and repeat purchases. The Committee drew from information provided by the subcommittee, market studies, and from Committee members, and determined that providing the consumer with a sweeter, more mature grapefruit will likely result in improved fresh fruit sales.

The purpose of this action is to help stabilize the market for Florida grapefruit and improve producer returns by strengthening demand and increasing the number of repeat purchases of grapefruit. Market research indicates that this rule provides the consumer with a grapefruit that is closer to consumer expectations in terms of sweetness, thereby resulting in an increased demand for fresh grapefruit.

According to the FDOC Florida Citrus Outlook 2001–2002 report, domestic consumption of fresh Florida grapefruit has been declining in recent years, dropping from 7-pounds per capita consumption in the early 1980's to 6-pounds per capita consumption in the late 1990's. The Economic Research Service, USDA, listed per capita domestic consumption of grapefruit as 5.19 pounds in 2000.

This reduced consumption is reflected in shipping data for fresh grapefruit. The Committee's 2000–2001 Annual Statistical Report indicates that shipments of Florida fresh grapefruit have declined 28 percent over the past five seasons, dropping from 22.1 million boxes (1⅗ bushels) in 1996–1997, to 15.9 million boxes in 2000–2001. For the same period, FDOC reports show that domestic consumption of fresh grapefruit has declined nearly 38 percent, from 18.6 million cartons (⅘ bushel) during the 1996–1997 season to

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11.6 million cartons for the 2000–2001 season.

The FDOC also notes that Florida's share of the U.S. fresh grapefruit market has declined from 71.7 percent in 1990–1991, to 44.0 percent in 2001–02. Much of this lost market share has gone to Texas. Texas shipped an estimated 273 million pounds of fresh grapefruit to the domestic and Canadian markets in 2000–2001 compared to 184.3 million pounds in 1995–96, and accounted for over 31 percent of those market shipments in 2000–2001, up from 17 percent in 1995–96. Texas had a 32 percent increase in shipments to those markets over the 1995–96 season. During the same period, to the same markets, Florida fresh grapefruit shipments decreased by 32 percent.

The Committee raised the question as to the minimum maturity requirements for fresh Texas grapefruit. One reason for the increasing demand for Texas grapefruit may be its sweeter taste. Texas currently has a higher minimum maturity requirement than Florida. Minimum maturity requirements for fresh Texas grapefruit include a 9.0 percent soluble solids (sugars) and a 7.2 to 1 solids to acid ratio.

The Committee recognizes that Florida grapefruit production has been declining along with demand. However, the lower market supply has not stabilized market prices. Florida accounts for nearly 80 percent of total domestic grapefruit production. Production for the 2000–2001 season was approximately 46 million boxes. This compares to production of approximately 47.1 million boxes for the 1998–99 season, and is substantially less than the 55.8 million boxes produced in 1996–97. While this represents nearly an 18 percent decrease in Florida grapefruit production, lower supply did not result in higher producer returns as demand for fresh Florida grapefruit also declined during this period.

The weakening demand for Florida fresh grapefruit has contributed to declining on-tree prices and has led to economic abandonment of fruit. According to the National Agricultural Statistical Service, on-tree prices for fresh Florida grapefruit, fell from an average of $6.52 per box in 1999–2000 to an average of $4.80 per box in 2000–2001. Due to low economic returns the past several years, some producers have resorted to leaving portions of their crops unharvested. Economic abandonment has impacted the Florida grapefruit industry for four of the past six seasons, reaching an apex of 12 percent of total production in the 1997–1998 season. Abandoned fruit accounted for 4 percent of production in the 2000–2001 and the 2001–02 seasons.

The Committee believes that the over shipment of smaller-sized red seedless grapefruit contributes to poor returns and lower prices. To address this situation the Committee has recommended weekly percentage of size regulation under § 905.153 for the last five seasons. This regulation limits the volume of small sizes entering the market during the regulated period. Under weekly percentage of size regulation, f.o.b. prices and on-tree returns increased and movement stabilized as compared to years with no percentage of size regulation. Weekly percentage of size regulation has helped improved the situation, but it has not solved all the problems. Consequently, the Committee believes it is important to also address the demand side of the market.

The Committee's recommendation to increase the minimum maturity requirements recognizes that due to the loss of market demand, decreasing production and limiting shipments alone cannot adequately stabilize weakening prices. In its efforts to achieve market stabilization, the Committee has turned its focus to increasing consumer demand. The Committee's recommendation to increase the minimum maturity requirement seeks to increase demand by meeting consumer preferences with a sweeter tasting grapefruit.

The Committee's recommendation is supported by several recent market studies. FDOC research on consumer purchasing attitudes towards grapefruit demonstrates the need for increasing sweetness in grapefruit taste. Research results indicate that taste is a crucial factor in consumer grapefruit purchasing patterns, particularly repeat purchases (Grapefruit Sensory Evaluation Study, February 19, 2002, conducted by the FDOC).

One study, compiled in April of 2002 by the FDOC, Blue Ribbon Committee on Grapefruit, links the 30-percent decline in fresh grapefruit sales in less than 10 years to customer attrition and consumer perceptions of inconsistent taste. Another study conducted by the Opinion Dynamics Corporation, a market research group (February 20, 2002), states that taste is by far the most important consideration in consumer purchases of fruit.

A "Grapefruit Sensory Evaluation Study" conducted by the FDOC in 1997, concluded that the major determinant of repeat purchases of fresh grapefruit was the flavor of the consumer's first grapefruit purchase of the season. The results of this study indicate a strong correlation between sweetness of flavor and consumer's willingness to make additional purchases. The more bitter the consumer's initial grapefruit experience, the less likely the consumer was to make an immediate repeat purchase. Conversely, increased sweetness resulted in increased repeat purchases of fresh grapefruit.

An additional study prepared by the Compendium Group, a market research group, for the FDOC Grapefruit Strategy Working Session, February 2002, also stressed the importance of consumer perceptions and expectations in purchasing decisions. According to this study, consumers associate sweetness of grapefruit flavor to the overall quality of the fruit. The study states "consumers want consistent fruit that tastes the way they want it."

In addition to the above-mentioned market research, there is strong industry support for an increase in the minimum maturity requirements. Industry support for an increase in the minimum maturity requirements was indicated through memos representing nearly 80 percent of Florida grapefruit production. Indian River Citrus League requested, in a memo to the Committee, a raise in the minimum maturity to 8.0 percent soluble solids and a 7.2 to 1 solids to acid ratio, a ratio slightly lower than ultimately recommended by the Committee. Florida Citrus Packers and the Peace River Citrus Growers Association supported an even larger increase in the minimum maturity standard. Several Committee members also expressed strong support for an increase.

The Committee's recommendation to raise the minimum maturity standard incorporates its belief that a sweeter fresh grapefruit is more attractive to consumers, and that consumer satisfaction with taste will lead to an increase in repeat purchases. In turn, greater demand for fresh grapefruit benefits the industry as a whole, as increased demand will likely help stabilize market prices.

While the recommendation to increase the minimum maturity standard was accepted by a majority of Committee members, some raised concerns about the impact of the higher standards on the different grapefruit producing regions and on early market sales. These concerns provided the basis for the three Committee members who opposed the Committee's recommendation.

One concern was that grapefruit production in areas lying to the north of the dominant, central grapefruit growing region could be disadvantaged due to differences in growing conditions. One member indicated there were some areas in the northern production region that may not be able to reach the higher maturity standard regardless of the use of a sliding scale, and, therefore, be excluded from the market. Variety of rootstock and geographic differences in soil and climate were listed as possible reasons for some production not being able to meet the higher standard.

Although some fruit may not meet the higher maturity standard, it is expected that it represents a very small percentage of the overall crop. The Committee's recommendation represents only a slight increase in the minimum maturity and includes a sliding scale. The sliding scale provides producers additional flexibility in meeting the higher standard. Also, the sliding scale helps producers in differing regions of the production area to meet the higher maturity requirements without compromising the desired outcome of a sweeter grapefruit taste.

Florida citrus maturity samples also indicate that the majority of Florida grapefruit will meet the higher maturity level, albeit later in the season. Therefore, while some fruit may require longer maturing periods before harvest, the majority of Florida citrus is expected to meet the higher standard at some point during the season. It is estimated that less than 2 percent of the Florida grapefruit crop will not make the higher maturity in a typical growing season.

Committee members also countered that, although a small percentage of Florida grapefruit production may not be able to meet the higher maturity standard, this percentage pales in comparison to the amount of grapefruit production currently left unharvested due to low economic returns. Several million boxes of grapefruit were left on the tree four of the past six seasons.

Another concern raised was that the higher maturity standard requires some fruit to be left on the tree longer than current industry practice, and that some producers will then forfeit the more lucrative early-season sales. A concern over a potential loss of competitive advantage was also voiced by the Gulf Citrus Growers Association (GCGA), which indicated in a memo to the Committee its opposition to an increase in the maturity standard. The southern production region has historically benefited from early-season sales as climate conditions allow their grapefruit production to mature sooner than the rest of the production area.

The FDOC maturity sampling results indicate that while soluble solids (sugars) levels are on average well over 8.0 from the onset of the grapefruit harvest season, average grapefruit ratio solids to acid levels in Florida grapefruit generally do not increase over 7.0 to 1 until the month of October, nearly one month after the traditional harvest season begins. Hence, a portion of Florida grapefruit crop will not meet the higher maturity requirements until slightly later in the season. However, maturity samples also indicate that meeting the increased maturity requirements later in the season is practicable for the majority of the Florida grapefruit industry as average soluble solids and solids to acid ratio levels are consistently above the recommended minimum threshold.

While the increase in minimum maturity could cause a delay in some fruit being released into the higher priced, early-season market, the Committee pressed the importance of meeting consumer expectations of flavor in order to secure repeat purchases. There is a push to get fruit into the market early to take advantage of high prices available at the beginning of the season. However, early fruit tends to be less mature. The availability of this early, less mature fruit can negatively impact repeat purchases and reduce demand in the long term. In addition, the higher maturity requirements apply to all Florida fresh grapefruit. This change impacts the entire industry, not just individual regions. Any harvesting delays resulting from this increase in maturity will impact all regions of the production area.

Committee members stated that while an increase in the minimum maturity standard could delay the release of some grapefruit onto the market, the potential opportunity costs of losing early-season sales will be more than compensated for by consumers buying grapefruit more frequently due to its sweeter, more appealing taste. Furthermore, the Committee estimated that only a small percentage of total Florida fresh grapefruit shipments will be affected by this change in the minimum maturity standard. In addition, the whole industry benefits from a stronger market demand and increased consumer satisfaction.

Taking into consideration the above concerns, the Committee believes increasing the maturity standard will benefit the industry. The Committee believes the higher maturity requirements will result in a sweeter grapefruit taste and improve producer returns through increased consumer purchases of fresh grapefruit by addressing consumer preferences for a more appealing taste. Moreover, as maturity naturally increases throughout the season, the overall impact on industry shipments will be equal to or less than 2 percent of the total grapefruit crop. Also, the sliding scale allows some flexibility for handlers to meet the higher maturity requirements without compromising the desired sweeter grapefruit taste.

This rule continues to raise the minimum maturity requirements from a 7.5 percent soluble solids (sugars) and a 7.0 to 1 solids to acid ratio with a sliding scale minimum ratio of 6.0 to 1, to an 8.0 percent soluble solids (sugars) and a 7.5 to 1 solids to acid ratio with a sliding scale minimum of 7.2 to 1. The sliding scale is based on the FDOC Citrus Fruit Maturity Chart, and is as follows:

Minimum total solids (sugars), %	Solids to acid minimum ratio
8.0 to (not including) 9.1.	7.50 to 1
9.1 to (not including) 9.2.	7.45 to 1
9.2 to (not including) 9.3.	7.40 to 1
9.3 to (not including) 9.4.	7.35 to 1
9.4 to (not including) 9.5.	7.30 to 1
9.5 to (not including) 9.6.	7.25 to 1
9.6 and greater	7.20 to 1

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule increases the minimum maturity requirements under the domestic handling regulations, a corresponding change to the import regulations must also be accomplished. A rule making a similar change to the maturity requirements under the import regulations will be issued as a separate action.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued there under, are unique in that they are brought about through group action of essentially small entities acting on their own

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behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 producers of citrus in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2001–02 season was approximately $6.98 per 4/5-bushel carton, and total fresh shipments for the 2001–2002 season were estimated at 31.68 million cartons. Approximately 33 percent of all handlers handled 72 percent of Florida grapefruit shipments. Using the average f.o.b. price, at least 66 percent of grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

There has been a significant decline in consumer purchases of fresh Florida grapefruit. The Committee believes that taste is one of the prime factors effecting demand and repeat purchases. This rule continues in effect an increase in the minimum maturity requirements from a 7.5 percent soluble solids and a 7.0 to 1 solids to acid ratio with a sliding scale minimum ratio of 6.0 to 1, to an 8.0 percent soluble solids (sugars) and a 7.5 to 1 solids to acid ratio with a sliding scale minimum ratio of 7.2 to 1. The increase in maturity results in a sweeter tasting fruit, particularly during the early months of the harvest season, and should increase consumer demand for fresh grapefruit. The Committee made its recommendation at its May 22, 2002, meeting, in a vote of thirteen in favor of this change, with three opposed. This rule continues in effect the modifications made to the grade provisions of § 905.306. Authority for this action is provided in § 905.52 of the order.

The increased minimum maturity requirements result in a sweeter grapefruit being released into the marketplace, particularly during the early months of the season. Lower maturity, which often translates into a more tart or bitter grapefruit taste, is typical of early season fresh-picked grapefruit. Market research indicates that a sweeter grapefruit taste is more desirable to consumers and could contribute to more repeat purchases of fresh grapefruit.

A "Grapefruit Sensory Evaluation Study" conducted by the FDOC in 1997, concluded that the major determinant of repeat purchases of fresh grapefruit was the flavor of the consumer's first grapefruit purchase of the season. The results of this study indicate a strong correlation between sweetness of flavor and consumer's willingness to make additional purchases. The more-bitter the consumer's initial grapefruit experience, the less likely the consumer was to make an immediate repeat purchase. Conversely, increased sweetness resulted in increased repeat purchases of fresh grapefruit.

The Committee discussed the potential costs associated with this action. It was mentioned that some producers could be disadvantaged by increased costs. Such costs may include, for example, the need for additional maturity checks and fruit that does not meet the higher maturity requirements.

The changes in this rule may require some producers to run additional maturity checks prior to harvest and shipping to ensure maturity. While additional maturity checks could be required for some, such checks are considered a standard practice within the industry and are not expected to result in significant increased costs to producers. Additional maturity tests could be avoided by simply delaying the harvest of the groves in question. Also, the overall impact of this change on shipments is expected to be minimal. Because grapefruit continues to mature throughout the season, the overall impact on industry shipments should be small, with only a small part of the grapefruit crop, equal to or less than 2 percent of overall production, possibly not meeting the increased maturity. The sliding scale also provides some additional flexibility to help producers meet the higher maturity requirements.

This rule may necessitate a delay in the onset of the fresh grapefruit harvest for some producers. This may mean selling fruit later in the season, and possibly missing the higher prices typically available in the early-season. However, the higher maturity requirements apply to all Florida fresh grapefruit. This change will impact the entire industry, not just individual regions. Any harvesting delays resulting from this increase in maturity will impact all regions of the production area.

In addition, it is anticipated that this change will result in higher consumer satisfaction and more repeat purchases, which should strengthen demand and stabilize prices. Therefore, the Committee believes the benefits gained from increased sales as a result of more frequent consumer purchases outweigh any losses associated with slightly lower prices received for shipments delayed due to increased maturity requirements. Any additional harvesting costs should also be compensated for through increased sales and stability in on-tree prices.

The purpose of this rule is to help stabilize the market and improve producer returns by increasing the number of repeat purchases of grapefruit, particularly earlier in the season. Based on the information given above, market research indicates this rule provides the consumer with a product that is closer to consumer expectations in terms of sweetness of flavor, therefore resulting in an increased demand for fresh grapefruit. The opportunities and benefits of this rule are expected to be available to all grapefruit handlers and producers regardless of their size of operation.

The Committee considered alternatives to taking this action. One alternative considered was a fixed maturity rate near the level identified in the market research studies of 8.5 percent soluble solids and an 8.0 to 1 solids to acid ratio or higher. Committee members believed this option would be too drastic of a change to effectuate in one season. While market research demonstrates that consumer tastes prefer a higher soluble solids (sugars) and ratio combination and sweeter taste, many producers would not be able to achieve that level until much later into the season. Therefore, this option was rejected.

Another alternative considered was a fixed maturity rate of 8.0 percent soluble solids and a 7.5 to 1 solids to acid ratio without the addition of an equivalent soluble solids and solids to acid ratio sliding scale. However, due to geographical and climactic differences between varying regions in the production area, some Committee members believed that some producers would have more difficulty in achieving the fixed rate, therefore disproportionately foregoing the more lucrative early season sales. Therefore, this alternative was also rejected.

The Committee also discussed leaving the regulations as previously issued. However, the majority of Committee members agreed that some change to minimum maturity was necessary to improve consumer demand for fresh grapefruit and to help them compete in the present market. Consequently, this alternative was also rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, as previously stated, grapefruit have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on August 28, 2002. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period, which ended October 28, 2002.

One comment was received during the comment period. The comment favored the regulation as published. The commenter believes that this is a positive move for the industry. According to the commenter, if the marketing season is delayed until better tasting grapefruit is available, consumers will not be as hesitant to make repeat purchases and may purchase more often. Accordingly, no changes are made to the rule based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing this interim final rule, without change, as published in the **Federal Register** (67 FR 55101; August 28, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905, which was published at 67 FR 55101 on August 28, 2002, is adopted as a final rule without change.

Dated: November 26, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–30584 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–6 FIR]

Raisins Produced From Grapes Grown in California; Decrease in Desirable Carryout Used to Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This action continues to decrease the amount of tonnage available early in the season and is expected to help the industry reduce an oversupply of California raisins.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor

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in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This action continues to decrease the desirable carryout for Natural (sun-dried) Seedless (NS) raisins from a rolling average of 3 to 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This action also continues to decrease the desirable carryout for all other varietal types of raisins covered under the order from a rolling average of 3 to 2½ months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. These actions were recommended by the Committee at meetings held on June 27 and July 24, 2002.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to 2 months in 1996–97. The Committee reduced the desirable carryout between 1991–1997 because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

In 1998, the Committee determined that, because of the reduced desirable carryout, not enough raisins were being made available for growth. Thus, the desirable carryout was increased to 2½ months of prior year's shipments to allow for a higher trade demand figure and, thus, a higher free tonnage percentage, making more raisins available to handlers, especially for immediate use early in the season when supplies are often tight. This action also allowed desirable carryout to move towards what handlers actually hold in inventory at the end of a crop year, or about 100,000 tons. The Committee continued this practice and, in 2000, desirable carryout was changed to equal a rolling average of 3 months of prior year's shipments (August, September, and October) over the past 5 years, dropping the high and low figures.

June 27, 2002, Recommendation

At a meeting on June 27, 2002, the Committee reviewed the desirable carryout level. Most Committee members believe that the supply of free tonnage raisins on the market has once again become excessive and is contributing to unstable market conditions. The following table illustrates how handler inventories for NS raisins have been building in recent years:

CARRYOUT INVENTORY OVER PAST 5 YEARS

Crop years	Carryout inventory (Natural condition tons)
2001–02	133,815 (estimated)
2000–01	116,131
1999–2000	101,946
1998–99	98,291
1997–98	92,769

To moderate the oversupply of marketable tonnage early in the crop year, the Committee recommended reducing the desirable carryout level for all varietal types of raisins from a rolling average of 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments over the past 5 years, dropping the high and low figures. Committee staff estimated that this change to the desirable carryout level would reduce the 2002 trade demand for NS raisins by 15,000 tons. Decreasing the trade demand will reduce the free tonnage percentage, thus, making less free tonnage available to handlers for immediate use.

The Committee's vote on this action was 41 in favor and 5 opposed. Two of the members voting no commented that the large carryout at the end of the current crop year was due mainly to an extra 32,000 tons of reserve raisins that were purchased by handlers in September 2001. They believe that the carryout problem will correct itself next season. Other members commented that this action would create a hardship on producers by reducing the free tonnage percentage, thereby reducing producer payments. After much deliberation, the majority of Committee members supported reducing the desirable carryout from a rolling average of 3 to 2½ months of shipments over the past 5 years, dropping the high and low figures.

Most of the discussion at the Committee's meeting concerned the desirable carryout level for NS raisins. NS raisins are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99 crop year, volume regulation has been implemented for NS raisins for the past several seasons. However, the Committee also believes that the decrease in desirable carryout should apply to the other varietal types of raisins covered under the order.

July 24, 2002, Revised Recommendation for NS Raisins

The raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a "surplus pool and non-harvest" program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee met on July 24, 2002, and revisited its oversupply situation and the desirable carryout issue. As a result, the Committee voted to further reduce the NS supply by decreasing the NS desirable carryout to a rolling average of 2 months (August and September) of prior year's shipments over the past 5 years, dropping the high and low figures, or 60,000 natural condition tons, whichever is higher. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

The Committee's vote on this action was 32 in favor, 10 opposed, and 2 abstentions. The members voting no were primarily concerned that this action would reduce the free tonnage percentage and producer payments.

Although this action tightens the supply of raisins available early in the season, handlers will still be provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers and other releases of reserve raisins available under the order. The 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Although this rule tends to tighten the supply of raisins early in the season, handlers will still have the opportunity to obtain additional raisins from the 10 plus 10 offers. Thus, paragraph (a) in § 989.154 is modified accordingly.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to reduce the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule continues to reduce the desirable carryout specified in paragraph (a) of § 989.154 for NS raisins from a rolling average of 3 months (August, September, and October) to 2 months (August and September) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule also continues to reduce the desirable carryout for all other varietal types covered under the order from 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three.

The desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, reducing the desirable carryout will reduce the trade demand and free tonnage percentage, thus making less raisins available to handlers early in the season. This action is expected to help reduce the burdensome supply of California raisins, thereby improving market conditions. Handlers will be provided opportunities throughout the crop year to purchase raisins from the reserve pool to increase their inventories.

The Committee considered a number of alternative levels of desirable carryout. The Committee has an appointed subcommittee, which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on June 26, 2002, and discussed desirable carryout. Some industry members supported maintaining the status quo. Others supported an incremental reduction to the desirable carryout, reducing the level to a rolling average of 2¾ months in 2002, and to a rolling average of 2½ months in 2003. The subcommittee ultimately recommended to the full Committee in June that the desirable carryout be reduced for all varietal types to a rolling average of 2½ months of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. The full Committee adopted the subcommittee's June recommendation.

As mentioned earlier, the raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a "surplus pool and non-harvest" program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee revisited the desirable carryout issue on July 24, 2002. At that meeting, the Committee reviewed an alternative proposal that would revise the trade demand formula by eliminating the adjustment for carryin and carryout inventory. The Committee also reviewed the merits of reducing the desirable carryout for NS raisins to a rolling average of 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. After much discussion, the majority of Committee members supported further reducing the desirable carryout for NS raisins to this level. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not

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identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on June 26, 2002, and the Committee's meetings on June 27 and July 24, 2002, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

Comments were received addressing the interim final rule including its initial regulatory flexibility analysis. These comments are addressed in the following discussion of comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

An interim final rule concerning this action was published in the **Federal Register** on August 12, 2002 (67 FR 52390). Copies of the rule were mailed by Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 10-day comment period that ended on August 22, 2002. Two comments were received. One favored the action. The other opposed the action.

The comment in favor stated that reducing the amount of NS raisins available to processors in terms of trade demand will not short the availability of raisins to the handler community because reserve raisins for free use can be made available to handlers under the marketing order. According to this commenter, producers need handlers to purchase their raisins and handlers need a marketing environment to sell those raisins in the most productive and efficient manner possible, and the reduction in desirable carryover appears to address both these needs.

The commenter opposed to the action stated that the reduction in desirable carryout is designed solely to protect the existing unsold inventory of weaker handlers. This action, however, is intended to decrease the amount of tonnage available early in the season and to help the industry reduce an oversupply of California raisins.

The commenter alleges that the decrease in desirable carryout, and eventually trade demand, first to 2.5 months and then to 2 months for NS raisins is entirely arbitrary and capricious. The commenter states that neither the Committee nor USDA have supplied price, revenue, or grower income responses to the formula change. Previous adjustments in desirable carryover were similarly lacking such analysis, according to the commenter.

The commenter states that the admitted effect of reducing carryout is to reduce trade demand by 30,000 tons, and, therefore, the total amount of free tonnage. The commenter contends that this would have a disproportionate impact on both growers and handlers based upon their relative sizes. According to the commenter, since one of the main effects of the proposal is price protection for existing inventory, those handlers with greater unsold inventories will experience more net gain compared to those handlers who hold less remaining inventory, thus creating a wealth transfer (from both growers and more efficient handlers) to those handlers less capable of effective marketing. The commenter further contends that the regulatory flexibility analysis is inadequate and defective and fails to take account of the net adverse effect on all growers and handlers of the lost revenue from reducing trade demand by 30,000 tons, and its addition to the unprofitable reserve.

The commenter further contends that the Committee and USDA have increasingly mismanaged the volume control program under the marketing order to produce a dynamically unstable condition of simultaneous oversupply and under-marketing. The commenter also contends that the volume control and various disposition programs for reserve raisins implemented under the order have prevented a normal and orderly supply response to changes in domestic and world demand and have contributed to unreasonable fluctuations in supplies and prices contrary to the Act.

The commenter states that the volume control program is careening out of control in terms of regulatory complexity, misallocation of resources, and distortions of supply, demand, and price signals. The Committee is losing consensus, has no strategic plan for the long-run future of the industry, and volume control should be stopped immediately. Only then, the commenter states, will supply, demand, and price balance be restored to long-term equilibrium. According to the commenter, wasting half the crop is simply absurd, and the raisin order was never intended as a prorate program or as an excuse to accumulate increasingly large price depressing surpluses. The commenter states that domestic price and supply manipulation is unwise, if not impossible, in an increasingly competitive world market.

The intent of volume control under the marketing order is to help stabilize raisin supplies and prices, strengthen market conditions, and improve producer returns. The marketing order has been quite successful in achieving these goals over the years. From the mid-1980's to the late 1990's producer prices were strong, demand in export was growing, and demand domestically was holding steady, due in part to the volume control programs implemented under the marketing order.

It is true that the industry has been experiencing an oversupply of raisins and weak marketing conditions since 1999. However, an immediate stop to volume regulation could result in an even worse situation and more than one-half of the expected 2002–03 crop probably would have to be disposed of in low return outlets.

The raisin industry has more raisins than it can sell, is faced with low prices, and weak domestic and export demand. It needs some means to help improve the situation. Most of the raisins produced are made from the Thompson Seedless grape, and the predominant raisin varietal is Natural (sun-dried) Seedless, comprising about 90 percent of the California crop. In previous seasons, producers earned as much as $1,425 a ton on raisins. Last season, the price dropped to about $880 per ton. This year's price has yet to be set, but is expected to be about the same or lower. Producers are having difficulty covering their production costs at such prices. Further, possible foreclosures on grower loans could add to the existing difficult situation.

Handlers are carrying in an aggregate of about 150,000 tons of 2001 NS crop inventory (about 45,000 tons higher than usual). With the large carryin, additional NS raisins available through a raisin-back export program (about 18,000 tons) and the 2002 diversion program (about 51,000 tons), and a 2002–03 bumper NS crop of about 400,000 tons, the available supply of NS raisins could exceed 600,000 tons. The industry ships about 310,000 tons of raisins annually. Thus, with no volume regulation the industry could have an excess of over 300,000 tons of raisins. This has made it difficult for handlers and producers to agree on a field price, and handlers are continuing to have difficulty selling their raisins at competitive prices. Without a mechanism in place to withhold the excess from the market, much of the crop might be wasted, and weak marketing conditions would continue for both producers and handlers. This would be disastrous for both producers and handlers. On October 8, 2002, preliminary volume regulation percentages were computed and announced for 2002–03 by the Committee. For NS, Oleate Seedless, Zante Currant, and Other Seedless raisins, a percentage of the crop will be held in reserve, which is expected to help balance supply with demand, and help alleviate the economic pressures caused by oversupply, low prices, and weak demand.

USDA disagrees with the commenter's views concerning this rulemaking and the operation of the marketing order program. This action is intended to help the raisin industry alleviate the oversupply problem it is facing and as the commenter in favor of the action states, it should meet the marketing needs of both growers and handlers. This action is consistent with the Agricultural Marketing Agreement Act of 1937 and the marketing order as well as other applicable law.

The current volume regulation procedures are intended to fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market, and have been used in previous years to help the industry. These procedures have been used carefully in an attempt to help the industry consistent with the Act.

Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins have remained fairly steady between the 1992–93 through the 1997–98 seasons, although production has varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 42 percent. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent. Total producer prices for the 1998–99 and 1999–2000 season increased significantly due to back-to-back short crops during those years.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Production (natural condition tons)	Producer prices
2000–2001	432,616	[1] $570.82
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] Return to date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to 91,600 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.55 pounds in 2000. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has been decreasing (as reflected in decline in commercial shipments), production has been increasing. The production of dried raisins reached an all-time high of an estimated 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; production was 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Production for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Estimated production is more moderate at 372,499 tons in 2001–02. However, with 2001–02 carryin inventory totaling 116,131 tons, total available supply is quite large.

The order permits the industry to exercise supply control provisions, which allow for the establishment of

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free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, grower prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances grower returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets. crop year.

There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 52390 on August 12, 2002, is adopted as a final rule without change.

Dated: November 26, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–30583 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–271–AD; Amendment 39–12970; AD 2002–24–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This action requires detailed inspections to detect cracking and corrosion of the upper chord of the rear spar of the wing; and repair, if necessary. This action also requires detailed inspections to detect and permanently repair any cracking that has been previously repaired by stop-drilling. This action is necessary to prevent failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the upper chord of the rear spar. This action is intended to address the identified unsafe condition.

DATES: Effective December 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–271–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–271–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2131; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of spanwise stress corrosion cracking of the upper chord of the rear spar of the wing between Wing Butt Line (WBL) 70.5 and the wing tip. Investigation revealed that some cracks were up to 14 inches long. Further, one of the cracks was almost long enough to jeopardize the residual strength capability of the upper chord of the rear spar. Such cracking of the upper chord of the rear spar of the wing, if not corrected, could result in structural failure of the wing and fuel leaks in the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin (ASB) 727–57A0145, revision 2, dated October 24, 2002. That ASB describes procedures for performing repetitive external detailed inspections on airplanes specified as "Group 1" to detect cracking and corrosion of the upper chord of the rear spar of the wing, and repair, if necessary. The ASB also describes procedures for detecting and permanently repairing any cracking that was previously repaired by stop-drilling. Additionally, the ASB describes procedures to perform high-frequency eddy current inspections (HFEC) on "Group 1" airplanes to detect cracking and corrosion of the upper chord of the rear spar and corrective action. Further, the ASB describes procedures to perform external detailed inspections and HFEC inspections on "Group 1" airplanes to detect cracking and corrosion of other areas such as the lower chord of the rear spar and the upper and lower chords of the front spar. In addition, the ASB describes procedures for certain other airplanes specified as "Group 2" airplanes that include external detailed inspections and HFEC inspections of various areas to detect cracking and corrosion; and repair, if necessary. The ASB also describes repair procedures for minor surface defects, corrosion, and cracking.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the upper chord of the rear spar. This AD requires the following actions for airplanes designated as "Group 1" in Boeing Alert Service Bulletin 727–57A0145, revision 2, dated October 24, 2002:

- Repetitive external detailed inspections to detect cracking and corrosion of the upper chord of the rear spar of the wing,
- Repair of cracking and corrosion,
- External detailed inspections to detect any cracking that has been previously repaired by stop-drilling, and
- Permanent repair of any previously stop-drilled cracking.

Clarification of Certain Repair Conditions

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires that those conditions be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

The actions required by this AD are considered to be interim action. The FAA is currently considering requiring additional actions specified in the alert service bulletin. However, the planned compliance time for the implementation of those actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–271–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT regulatory policies and procedures, a final regulatory evaluation will be prepared and placed in the rules docket. A copy of it, if filed, may be obtained from the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–24–05 Boeing: Amendment 39–12970. Docket 2002–NM–271–AD.

Applicability: Model 727 series airplanes, serial numbers 1 through 1832 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the upper chord of the rear spar, accomplish the following:

Inspection and Repair

(a) For airplanes specified as "Group 1" airplanes in Boeing Alert Service Bulletin 727–57A0145, revision 2, dated October 24, 2002: Within 20 years after the date of manufacture or within 90 days after the effective date of this AD, whichever occurs

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later, perform an external detailed inspection for cracking, corrosion, and existing stop-drilled repairs of cracking in the upper chord on the rear spar from Wing Butt Line (WBL) 70.5 through WBL 249.3, per Boeing Alert Service Bulletin 727–57A0145, revision 2, paragraph 3.B, "Work Instructions," part 1, dated October 24, 2002. Thereafter, repeat the inspection at intervals not to exceed 2 years.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking, corrosion, or existing stop-drilled repairs of previous cracking is detected during any inspection required by this AD, repeat the inspection at intervals not to exceed 2 years.

(2) If any existing stop-drilled repairs of previous cracking are detected during any inspection required by this AD, before further flight, permanently repair the cracking per the alert service bulletin.

(3) If any cracking or corrosion is detected during any inspection required by this AD that is within the limits specified in the alert service bulletin, before further flight, repair per the alert service bulletin.

(4) If any cracking or corrosion is detected during any inspection required by this AD that exceeds the limits specified in the alert service bulletin, and the bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as specified in paragraph (a)(4) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 727–57A0145, revision 2, dated October 24, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on December 18, 2002.

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30344 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–192–AD; Amendment 39–12967; AD 2002–24–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that requires repetitive inspections for fatigue cracking of certain areas of the forward and aft frames of the cargo doorways and repair, if necessary. The actions specified by this AD are intended to find and fix such cracking, which could lead to rapid depressurization of the airplane and result in reduced structural integrity of the cargo doorway. This action is intended to address the identified unsafe condition.

DATES: Effective January 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes was published in the **Federal Register** on July 12, 2002 (67 FR 46132). That action proposed to require repetitive inspections for fatigue cracking of certain areas of the forward and aft frames of the cargo doorways, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter states that the proposed AD does not apply to its fleet.

Request To Change Certain Terminology

One commenter states that the terminology throughout the proposed AD which reads, "cargo door frame(s)" should be changed to "cargo doorway frames." The commenter notes that the structures requiring the inspections are the cutout fuselage frames of the cargo door and not the cargo door frames. The commenter adds that the term "cargo doorway," as specified in Boeing Alert Service Bulletin 757–53A0080, dated February 3, 2000 (referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions), is a better description.

We agree with the commenter in that the description of the frames of the cargo door should be clarified. We have changed the description throughout this final rule to read, "cargo doorway."

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA may consider further rulemaking.

Cost Impact

There are approximately 57 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD.

For all airplanes: It will take approximately 3 work hours per airplane to do the high frequency eddy current and detailed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $5,040, or $180 per airplane, per inspection cycle.

For Group 3 airplanes: It will take approximately 1 work hour per airplane to do the additional detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–24–02 Boeing: Amendment 39–12967. Docket 2001–NM–192–AD.

Applicability: Model 757–200 series airplanes, line numbers 1 through 57 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking of the cargo doorway frames, which could lead to rapid depressurization of the airplane and result in reduced structural integrity of the cargo doorway, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 22,000 total flight cycles or within 500 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspections specified in paragraphs (a)(1) and (a)(2) of this AD, per Boeing Alert Service Bulletin 757–53A0080, excluding Evaluation Form, dated February 3, 2000.

(1) For all airplanes: Do detailed and high frequency eddy current (HFEC) inspections for cracking of the doorway frames of the number 1 and 2 cargo doors (includes the frame webs, frame inner and outer chords, bear strap, and skin panels between the upper and lower sills of the cargo doorway). Repeat the detailed inspections every 3,000 flight cycles, and the HFEC inspections every 12,000 flight cycles.

(2) For Group 3 airplanes: Do a detailed inspection for cracking of the doorway frame of the number 3 cargo door. Repeat the inspection every 3,000 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repair

(b) Before further flight, repair any cracking found in the frame webs, per Boeing Alert Service Bulletin 757–53A0080, excluding Evaluation Form, dated February 3, 2000. If any cracking is found in any other area and the service bulletin specifies to contact Boeing for disposition of those repairs, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 3: There is no terminating action currently available for the repetitive inspections required by this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that

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provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done per Boeing Alert Service Bulletin 757–53A0080, excluding Evaluation Form, dated February 3, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 7, 2003.

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30342 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–17–AD; Amendment 39–12968; AD 2002–24–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered by General Electric (GE) CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes powered by GE CF6–80C2 series engines, that requires repetitive inspections and torque checks to find discrepancies of the fasteners that attach the diagonal brace fittings of the lower spar to the inboard engine struts, and modification of the fasteners if discrepancies are found. This amendment also requires eventual modification of all the fasteners, which ends the repetitive inspections and checks. The actions specified by this AD are intended to find and fix discrepant fasteners of the diagonal brace fittings, which could result in reduced structural integrity of the diagonal brace-to-strut attachment, and possible separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes powered by General Electric CF6–80C2 series engines was published in the **Federal Register** on August 30, 2002 (67 FR 55739). That action proposed to require repetitive inspections and torque checks to find discrepancies of the fasteners that attach the diagonal brace fittings of the lower spar to the inboard engine struts, and modification of the fasteners if discrepancies are found. That action also proposed to require eventual modification of all the fasteners, which would end the repetitive inspections and checks.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Cost Impact

There are approximately 237 airplanes of the affected design in the worldwide fleet. We estimate that 14 airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane to accomplish the inspection and torque check at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required actions on U.S. operators is estimated to be $4,200, or $300 per airplane, per inspection/check cycle.

It will take approximately 76 work hours per airplane to accomplish the terminating action at an average labor rate of $60 per work hour. Required parts will cost approximately $4,268 per airplane. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $123,592, or $8,828 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–24–03 Boeing: Amendment 39–12968. Docket 2001–NM–17–AD.

Applicability: Model 747–200B, –300, –400, –400D, and –400F series airplanes powered by General Electric CF6–80C2 series engines, as listed in Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepant fasteners of the diagonal brace fittings, which could result in reduced structural integrity of the diagonal brace-to-strut attachment, and possible separation of the strut and engine from the airplane, accomplish the following:

Repetitive Inspections and Torque Checks/ Corrective Action

(a) Do a detailed inspection and torque check to find discrepancies of the fasteners (e.g., loose, fractured, or missing fastener heads) that attach the diagonal brace fittings of the lower spar to the inboard engine struts, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD, per Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, excluding Evaluation Form. Repeat the inspection and check after that every 8,000 flight hours or 24 months, whichever is first.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes that have not been modified as required by AD 95–13–06, amendment 39–9286 (all Group 2 airplanes): Before the accumulation of 6,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later.

(2) For airplanes that have been modified as required by AD 95–13–06 (all Group 1 airplanes): Before the accumulation of 6,000 total flight cycles after doing the modification or within 24 months after the effective date of this AD, whichever is later.

(b) If no discrepancy is found during any inspection/check required by paragraph (a) of this AD, repeat the inspection/check at the time specified in paragraph (a) of this AD until the terminating action specified in paragraph (c) of this AD is done. If any discrepancy is found, do the applicable actions specified in paragraph (b)(1) or (b)(2) of this AD.

(1) If any discrepancy is found in the area that connects the diagonal brace fitting to the aft bulkhead, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD.

(2) If any discrepancy is found in any area other than that specified in paragraph (b)(1) of this AD, before further flight, do the terminating action specified in paragraph (c) of this AD.

Terminating Action

(c) Except as provided by paragraph (b)(2) of this AD, within 72 months after the effective date of this AD: Do the modification (including doing a high frequency eddy current (HFEC) inspection, oversizing the fastener holes, and installing new fasteners) as specified in and per Figure 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, excluding Evaluation Form. If any cracking is found during the HFEC inspection and the service bulletin specifies contacting Boeing for repair procedures, before further flight, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD. Accomplishment of the actions specified in this paragraph ends the repetitive inspections and checks.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraphs (b)(1) and (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on January 7, 2003.

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Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30343 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–37–AD; Amendment 39–12971; AD 2002–24–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG, Model Tay 620–15 and 650–15 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Deutschland Ltd. & Co KG (RRD), Model Tay 620–15 and 650–15 turbofan engines. This action requires initial and repetitive inspections of certain low pressure (LP) fuel tubes. This amendment is prompted by a dual-engine flameout. The actions specified in this AD are intended to prevent a dual-engine flameout due to fuel exhaustion, which could lead to forced landing and possible damage to the airplane.

DATES: Effective December 18, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, D–15827 DAHLEWITZ, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176; fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on RRD Model Tay 620–15 and 650–15 turbofan engines. The LBA advises that there has been a dual-engine flameout on a Fokker 100 airplane that resulted in a forced landing and destruction of the airplane. The LBA has determined that a leak from the LP fuel tube, which connects the LP fuel flowmeter to the high pressure (HP) fuel pump, resulted in complete fuel exhaustion and subsequent dual engine flameout.

Manufacturer's Service Information

RRD has issued Service Bulletin (SB) TAY–73–1540, Revision 1, dated September 13, 2002, that specifies procedures for inspecting the LP fuel tube for fretting. The LBA classified this service bulletin as mandatory and issued AD No. 2002–331, dated September 13, 2002, in order to assure the airworthiness of these RRD Model Tay 620–15 and 650–15 turbofan engines in Germany.

Bilateral Airworthiness Agreement

This engine model is type certificated in Germany, and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RRD Model Tay 620–15 and 650–15 turbofan engines of the same type design, this AD is being issued to prevent a dual-engine flameout due to fuel exhaustion, which could lead to forced landing and possible damage to the airplane. This AD requires an initial inspection of the LP fuel tube for fretting within 300 hours or one month after the effective date of this AD, whichever occurs first, and thereafter, repetitive inspections for fretting within 2,000 hours time-in-service after the last inspection. The actions must be done in accordance with the service bulletin described previously. The inspections required by this AD are considered interim action, and further rulemaking actions may be taken.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–37–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–24–06 Rolls-Royce Deutschland Ltd. & Co KG: Amendment 39–12971. Docket No. 2002–NE–37–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Deutschland Ltd. & Co KG (RRD), Model Tay 620–15 and 650–15 turbofan engines with low pressure (LP) fuel tube part number, (P/N) JR33021A, installed. These engines are installed on, but not limited to Fokker F.28 Mark 0100 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent a dual-engine flameout due to fuel exhaustion which could lead to forced landing and possible damage to the airplane, do the following:

(a) Within 300 hours time-in-service (TIS) after the effective date of this AD or one month after the effective date of this AD, whichever occurs first, inspect LP fuel tube, P/N JR33021A, for fretting in accordance with 3.C.1. through 3.C.10. of the Accomplishment Instructions of RRD service bulletin (SB) TAY–73–1540, Revision 1, dated September 13, 2002.

(b) Thereafter, inspect the LP fuel tube, P/N JR33021A, for fretting in accordance with 3.C.1. through 3.C.10. of the Accomplishment Instructions of RRD SB TAY–73–1540, Revision 1, dated September 13, 2002; at intervals not to exceed 2,000 hours TIS since the last inspection.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(e) The inspections must be done in accordance with Rolls-Royce Deutschland Ltd. & Co KG service bulletin TAY–73–1540, Revision 1, dated September 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, D–15827 DAHLEWITZ, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in LBA airworthiness directive 2002–331, dated September 13, 2002.

Effective Date

(f) This amendment becomes effective on December 18, 2002.

Issued in Burlington, Massachusetts, on November 21, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–30345 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–32]

Revision of Class E Airspace, Holyoke, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Holyoke, CO. This change is necessary because the Airport Reference Point (ARP) coordinates for the Class E5 airspace at the Holyoke Airport have been changed. The legal description of the Holyoke Airport Class E airspace must be changed to reflect the new coordinates. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Holyoke Airport, Holyoke, CO.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, ANM–520.7 Federal Aviation Administration, Docket No. 00–ANM–32, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

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SUPPLEMENTARY INFORMATION:

History

On August 29, 2001, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Holyoke, CO, to reflect a change in the ARP at the Holyoke Airport, Holyoke, CO (66 FR 45659). This action creates Class E5 airspace at Holyoke, CO, to meet current airspace requirements for IFR flight in Holyoke, Colorado. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises the description of Class E5 airspace at Holyoke, CO, to reflect the change to the ARP coordinates in the legal description of Holyoke Airport. Class E5 controlled airspace is required to contain aircraft executing IFR procedures at Holyoke Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Holyoke Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E5 airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E5 airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E5 airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM CO E5 Holyoke, CO [Revised]

Holyoke Airport, CO
(Lat. 40°34'10"N., long. 102°16'22"W.)
Heginbotham NDB
(Lat. 40°34'53"N., long. *102°16'52.7"W).*

That airspace extending upward from 700-feet above the surface within the 6.7-mile radius of the Holyoke Airport, and within 2.5 miles each side of the 325° bearing from the Heginbotham NDB extending from the 6.7-mile radius to 7 miles northwest of the NDB; excluding that airspace within Federal Airways.

Issued in Seattle, Washington, on October 10, 2002.

Raul C. Trevino,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–30611 Filed 12–2–02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30341; Amdt. No. 3033]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 3, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on November 22, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective December 26, 2002

Sacramento, CA, Sacramento Mather, ILS RWY 22L, Amdt 3

Effective January 23, 2003

Tallahassee, FL, Tallahassee Regional, VOR OR GPS RWY 18, Amdt 10
Tallahassee, FL, Tallahassee Regional, VOR/DME OR TACAN RWY 36, Orig
Tallahassee, FL, Tallahassee Regional, NDB OR GPS RWY 36, Amdt 19
Tallahassee, FL, Tallahassee Regional, ILS RWY 27, Amdt 7
Tallahassee, FL, Tallahassee Regional, ILS RWY 36, Amdt 23
Tallahassee, FL, Tallahassee Regional, RNAV (GPS) RWY 9, Orig
Tallahassee, FL, Tallahassee Regional, RNAV (GPS) RWY 27, Orig
Tallahassee, FL, Tallahassee Regional, GPS RWY 9, Orig-A, CANCELLED
Tallahassee, FL, Tallahassee Regional, GPS RWY 27, Orig-A, CANCELLED
Americus, GA, Souther Field, LOC RWY 23, Amdt 3
Americus, GA, Souther Field, NDB RWY 23, Amdt 3
Americus, GA, Souther Field, RNAV (GPS) RWY 5, Orig
Americus, GA, Souther Field, RNAV (GPS) RWY 23, Orig
Brazil, IN, Brazil Clay County, RNAV (GP) RWY 27, Orig
South Bend, IN, South Bend Regional, VOR RWY 18, Amdt 7D
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 9L, Orig
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 18, Orig
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 27R, Orig
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 36, Orig
Ulysses, KS, Ulysses, NDB RWY 12, Amdt 13
Ulysses, KS, Ulysses, RNAV (GPS) RWY 12, Orig
Ulysses, KS, Ulysses, RNAV (GPS) RWY 17, Orig
Ulysses, KS, Ulysses, RNAV (GPS) RWY 30, Orig
Ulysses, KS, Ulysses, RNAV (GPS) RWY 35, Orig
Henderson, KY, Henderson-City County, VOR–A, Amdt 10

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Henderson, KY, Henderson-City County, NDB RWY 9, Amdt 4
Henderson, KY, Henderson-City County, RNAV (GPS) RWY 9, Orig
Henderson, KY, Henderson-City County, RNAV (GPS) RWY 27, Orig
Henderson, KY, Henderson-City County, GPS RWY 27, Orig, CANCELLED
Prestonburg, KY, Big Sandy Regional, VOR/DME–A, Amdt 2
Prestonburg, KY, Big Sandy Regional, RNAV (GPS) RWY 3, Orig
Prestonburg, KY, Big Sandy Regional, RNAV (GPS) RWY 21, Orig
Tallulah, LA, Vicksburg Tallulah Regional, LOC RWY 36, Amdt 1
Tallulah, LA, Vicksburg Tallulah Regional, NDB RWY 36, Amdt 1
Tallulah, LA, Vicksburg Tallulah Regional, RNAV (GPS) RWY 18, Amdt 1
Tallulah, LA, Vicksburg Tallulah Regional, RNAV (GPS) RWY 36, Amdt 1
Bay City, MI, James Clements Muni, RNAV (GPS) RWY 18, Orig
Hancock, MI, Houghton County Memorial, RNAV (GPS) RWY 7, Orig
Hancock, MI, Houghton County Memorial, RNAV (GPS) RWY 25, Orig
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 9, Orig
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 27, Orig
Sedalia, MO, Sedalia Memorial, NDB RWY 18, Amdt 8
Sedalia, MO, Sedalia Memorial, NDB RWY 36, Amdt 9
Sedalia, MO, Sedalia Memorial, RNAV (GPS) RWY 18, Orig
Sedalia, MO, Sedalia Memorial, RNAV (GPS) RWY 36, Orig
Sedalia, MO, Sedalia Memorial, GPS RWY 18, Orig-B, CANCELLED
Sedalia, MO, Sedalia Memorial, GPS RWY 36, Orig-B, CANCELLED
Laurel, MT, Laurel Muni, VOR RWY 22, Amdt 2
Laurel, MT, Laurel Muni, RNAV (GPS) RWY 4, Orig
Laurel, MT, Laurel Muni, RNAV (GPS) RWY 22, Orig
Greensboro, NC, Piedmont Triad Intl, VOR RWY 5, Amdt 12C
Greensboro, NC, Piedmont Triad Intl, VOR/DME RWY 23, Amdt 9D
Greensboro, NC, Piedmont Triad Intl, NDB RWY 14, Amdt 15D
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 5, Orig
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 14, Orig
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 23, Orig
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 32, Orig
Greensboro, NC, Piedmont Triad Intl, GPS RWY 32, Orig, CANCELLED
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 8, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 20, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 26, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) Y RWY 2, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) Z RWY 2, Orig
Greenville, NC, Pitt-Greenville, GPS RWY 2, Amdt 1, CANCELLED
Greenville, NC, Pitt-Greenville, GPS RWY 20, Amdt 1, CANCELLED
Williamston, NC, Martin County, NDB RWY 21, Amdt 5
Williamston, NC, Martin County, RNAV (GPS) RWY 3, Orig
Williamston, NC, Martin County, RNAV (GPS) RWY 21, Orig
Minot, ND, Minot Intl, ILS RWY 31, Amdt 9
Gordon, NE, Gordon Muni, RNAV (GPS) RWY 4, Orig
Kearney, NE, Kearney Muni, ILS RWY 36, Amdt 1
Kearney, NE, Kearney Muni, NDB RWY 36, Amdt 5
Kearney, NE, Kearney Muni, VOR RWY 13, Amdt 2
Kearney, NE, Kearney Muni, VOR RWY 18, Amdt 13
Kearney, NE, Kearney Muni, VOR RWY 36, Amdt 10
Kearney, NE, Kearney Muni, RNAV (GPS) RWY 36, Orig
Kearney, NE, Kearney Muni, GPS RWY 36, Orig, CANCELLED
Valentine, NE, Miller Field, RNAV (GPS) RWY 14, Orig
Farmington, NM, Four Corners Regional, VOR RWY 23, Orig
Farmington, NM, Four Corners Regional, VOR RWY 25, Amdt 10
Farmington, NM, Four Corners Regional, VOR/DME RWY 5, Orig
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 5, Orig
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 7, Amdt 1
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 23, Orig
Las Cruces, NM, Las Cruces Intl, NDB RWY 30, Amdt 1
Las Cruces, NM, Las Cruces Intl, ILS RWY 30, Amdt 2
Las Cruces, NM, Las Cruces Intl, RNAV (GPS) RWY 12, Orig
Las Cruces, NM, Las Cruces Intl, RNAV (GPS) RWY 30, Orig
Las Cruces, NM, Las Cruces Intl, GPS RWY 30, Orig, CANCELLED
Buffalo, OK, Buffalo Muni, NDB–A, Amdt 2
Buffalo, OK, Buffalo Muni, RNAV (GPS) RWY 17, Orig
Buffalo, OK, Buffalo Muni, GPS RWY 17, Orig, CANCELLED
Chandler, OK, Chandler Muni, NDB RWY 35, Amdt 1
Chandler, OK, Chandler Muni, RNAV (GPS) RWY 17, Orig
Chandler, OK, Chandler Muni, RNAV (GPS) RWY 35, Orig
Chandler, OK, Chandler Muni, GPS RWY 17, Orig, CANCELLED
Chandler, OK, Chandler Muni, GPS RWY 35, Orig, CANCELLED
Clinton, OK, Clinton Muni, RNAV (GPS) RWY 35, Orig
Clinton, OK, Clinton Muni, GPS RWY 35, Amdt 1, CANCELLED
Hobart, OK, Hobart Muni, RNAV (GPS) RWY 17, Orig
Hobart, OK, Hobart Muni, RNAV (GPS) RWY 35, Orig
Hobart, OK, Hobart Muni, GPS RWY 17, Orig–A, CANCELLED
Hobart, OK, Hobart Muni, GPS RWY 35, Orig–A, CANCELLED
Bend, OR, Bend Muni, VOR/DME RWY 16, Amdt 8
Bend, OR, Bend Muni, RNAV (GPS) RWY 16, Orig
Redmond, OR, Roberts Field, VOR–A, Amdt 5
Redmond, OR, Roberts Field, VOR/DME RWY 22, Amdt 3
Redmond, OR, Roberts Field, RNAV (GPS) RWY 28, Orig
Redmond, OR, Roberts Field, GPS RWY 28, Orig, CANCELLED
Paris, TN, Henry County, RNAV (GPS) RWY 20, Orig
Smithville, TN, Smithville Muni, RNAV (GPS) RWY 6, Orig
Austin, TX, Austin-Bergstrom Intl, ILS RWY 17L, Amdt 1
Austin, TX, Austin-Bergstrom Intl, ILS RWY 17R, Amdt 2
Austin, TX, Austin-Bergstrom Intl, ILS RWY 35L, Amdt 2
Austin, TX, Austin-Bergstrom Intl, ILS RWY 35R, Amdt 1
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) RWY 17L, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) RWY 17R, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) Y RWY 35L, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) Z RWY 35L, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) RWY 35R, Orig
Austin, TX, Austin-Bergstrom Intl, GPS RWY 17L, Orig. CANCELLED
Austin, TX, Austin-Bergstrom Intl, GPS RWY 17R, Amdt 1B, CANCELLED
Austin, TX, Austin-Bergstrom Intl, GPS RWY 35L, Amdt 1B, CANCELLED
Austin, TX, Austin-Bergstrom Intl, GPS RWY 35R, Orig B, CANCELLED
George West, TX, Live Oak County, VOR/DME–A, Amdt 2
George West, TX, Live Oak County, RNAV (GPS) RWY 13, Orig
George West, TX, Live Oak County, GPS RWY 13, Orig, CANCELLED
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 26L, Orig
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 26R, Orig
El Paso, TX, El Paso Intl, GPS RWY 26L, Orig, CANCELLED
Houston, TX, West Houston, RNAV (GPS) Y RWY 33, Orig
Temple, TX, Draughon-Miller Central Texas Regional, LOC/DME BC RWY 33, Amdt 3A, CANCELLED
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, NDB RWY 33L, Amdt 11
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, VOR–D, Amdt 14
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, RNAV (GPS) RWY 15R, Orig
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, RNAV (GPS) RWY 33L, Orig
Evanston, WY, Evanston-Uinta County Burns Field, VOR/DME RWY 23, Amdt 2B
Evanston, WY, Evanston-Uinta County Burns Field, RNAV (GPS) RWY 5, Orig
Evanston, WY, Evanston-Uinta County Burns Field, RNAV (GPS) RWY 23, Orig

The FAA published the following procedure in Docket No. 30339; Amdt. No. 3031 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 225, Page 70155; dated Thursday, November 21, 2002) under section 97.29 effective November 28, 2002 which is hereby amended to be effective December 26, 2002:

Sacramento, CA, Sacramento Mather, ILS RWY 22L, Amdt 3

[FR Doc. 02–30441 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520

Oral Dosage Form New Animal Drugs; Lincomycin Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations for preslaughter withdrawal time for lincomycin soluble powder products used to make medicated drinking water for swine to correct inadvertant editorial errors. This action is being taken to ensure accuracy and clarity in the agency's regulations.

DATES: This rule is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: ghaibel@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: FDA has found that § 520.1263c (21 CFR 520.1263c) does not reflect the approved preslaughter withdrawal time for three lincomycin soluble powder products used to make medicated drinking water for swine. The 6-day withdrawal time was inadvertently removed for a generic product approved under ANADA 200–189 at the time it was being removed for the pioneer product approved under NADA 111–636 (64 FR 13341, March 18, 1999). The conditions of use for two other products approved February 4, 1999, under ANADA 200–241 (64 FR 13508, March 19, 1999) and September 22, 1999, under ANADA 200–233 (64 FR 66382, November 26, 1999) were subsequently codified without a withdrawal period. At this time, the regulations are being amended in § 520.1263c to correct these errors.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1263c [Amended]

2. Section 520.1263c *Lincomycin hydrochloride soluble powder* is amended in paragraph (d)(1)(iii) by adding at the end the sentence "For Nos. 046573 and 051259: Do not slaughter swine for 6 days following last treatment."

Dated: November 8, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30639 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Virbac AH, Inc. The ANADA provides for oral use of ivermectin paste in horses for treatment and control of various internal parasites or parasitic conditions.

DATES: This rule is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137, filed ANADA 200–320 for EQUELL (ivermectin) Paste. The application provides for oral use of 1.87 percent ivermectin paste in horses for the treatment and control of various species of internal parasites or parasitic conditions. Virbac's EQUELL Paste is approved as a generic copy of Merial Limited's EQUALEN Paste, approved under NADA 134–314. ANADA 200–320 is approved as of August 9, 2002, and 21 CFR 520.1192 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1192 [Amended]

2. Section 520.1192 *Ivermectin paste* is amended in paragraph (b)(2) by removing "No." and by adding in its place "Nos. 051311 and".

Dated: November 18, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30640 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Ractopamine and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for use of ractopamine and tylosin single-ingredient Type A medicated articles to make combination drug Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, increased carcass leanness; and for the prevention of swine dysentery in finishing swine.

DATES: This rule is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141–172 that provides for use of PAYLEAN (9 or 45 grams per pound (g/lb) ractopamine hydrochloride) and TYLAN (10, 40, or 100 g/lb tylosin phosphate) Type A medicated articles to make combination drug Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; and for the prevention of swine dysentery in finishing swine. The supplemental NADA is approved as of June 19, 2002, and the regulations are amended in § 558.500 (21 CFR 558.500) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, § 558.500 is being revised to reflect a current format. The entire text of this section is being provided for the convenience of the reader.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.500 is revised to read as follows:

§ 558.500 Ractopamine.

(a) *Specifications.* Type A medicated articles containing 9 or 45 grams of ractopamine hydrochloride per pound.

(b) *Approvals.* See No. 000986 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.570 of this chapter.

(d) *Special considerations.*

(1) Labeling of Type B and Type C swine feeds shall bear the following:

(i) "Caution: Pigs fed PAYLEAN are at an increased risk for exhibiting the downer pig syndrome (also referred to as "slows," "subs," or "suspects"). Pig handling methods to reduce the incidence of downer pigs should be thoroughly evaluated prior to initiating use of PAYLEAN."

(ii) "Not for use in breeding swine."

(2) Tylosin in combinations as tylosin phosphate.

(e) *Conditions of use.* (1) *Swine*—

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 4.5		For increased rate of weight gain, improved feed efficiency, and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 lb (68 kg) to 240 lb (109 kg) body weight.	Feed continuously as sole ration.	000986

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(ii) 4.5	Tylosin 40	Finishing swine: As in paragraph (e)(1)(i) of this section; and for prevention of swine dysentery (vibrionic).	Feed continuously as sole ration until market weight following the use of tylosin at 100 grams per ton (g/t) for at least 3 weeks.	000986
(iii) 4.5	Tylosin 100	1. Finishing swine: As in paragraph (e)(1)(i) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*. 2. Finishing swine: As in paragraph (e)(1)(i) of this section; and for prevention of swine dysentery (vibrionic).	Feed continuously as sole ration for 21 days. Feed continuously as sole ration for at least 3 weeks followed by tylosin at 40 g/t until market weight.	000986 000986
(iv) 4.5 to 18		For improved feed efficiency and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 lb (68 kg) to 240 lb (109 kg) body weight.	Feed continuously as sole ration.	000986
(v) 4.5 to 18	Tylosin 40	Finishing swine: As in paragraph (e)(1)(iv) of this section; and for prevention of swine dysentery (vibrionic).	Feed continuously as sole ration until market weight following the use of tylosin at 100 g/t for at least 3 weeks.	000986
(vi) 4.5 to 18	Tylosin 100	1. Finishing swine: As in paragraph (e)(1)(iv) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*. 2. Finishing swine: As in paragraph (e)(1)(iv) of this section; and for prevention of swine dysentery (vibrionic).	Feed continuously as sole ration for 21 days. Feed continuously as sole ration for at least 3 weeks followed by tylosin at 40 g/t until market weight.	000986 000986

(2) [Reserved]

Dated: November 8, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30637 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Boehringer Ingelheim Vetmedica, Inc., to Pennfield Oil Co.

DATES: This rule is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 128–550 for ANCHOR Zinc Bacitracin Type A medicated article to Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137. Accordingly, the agency is amending the regulations in 21 CFR 558.78 to reflect the transfer of ownership.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.78 [Amended]

2. Section 558.78 *Bacitracin zinc* is amended in paragraph (a)(2) by removing "To 000010" and by adding in its place "No. 053389".

Dated: November 8, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30638 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9021]

RIN 1545–AX58

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries. These final regulations affect administrators of, participants in, and beneficiaries of qualified employer plans that permit

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participants or beneficiaries to receive loans from plans, including loans from section 403(b) contracts and other contracts issued under qualified employer plans.

DATES: *Effective Date:* These regulations are effective December 3, 2002.

Applicability Date: These regulations apply to assignments, pledges, and loans made on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 72 of the Internal Revenue Code of 1986 (Code). Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324), and amended by the Technical Corrections Act of 1982 (96 Stat. 2365), the Deficit Reduction Act of 1984 (98 Stat. 494), the Tax Reform Act of 1986 (100 Stat. 2085), and the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342).

On July 31, 2000, final regulations were published in the **Federal Register** in TD 8894 (65 FR 46588) with respect to issues arising under section 72(p)(2). On the same date, a notice of proposed rulemaking (REG–116495–99) was published in the **Federal Register** (65 FR 46677) with respect to issues arising under section 72(p)(2) that were not addressed in the 2000 final regulations. The proposed regulations addressed the suspension of loan repayments during a leave of absence for military service in accordance with section 414(u)(4), the effect of a new loan following a deemed distribution of a prior loan, and the effect of refinancings and multiple loans. The preamble to the proposed regulations also requested comments on the application of the Electronic Signature in Global and National Commerce Act (114 Stat. 464) (ESIGN), which had been enacted shortly before publication of the proposed regulations. Following publication of the proposed regulations, comments were received and a public hearing was held on January 17, 2001. After consideration of the comments received the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) to a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan, the repayment schedule, and the amount loaned. For example, except in the case of certain home loans, the exception in section 72(p)(2) only applies to a loan that by its terms is to be repaid over not more than five years in substantially level installments. Such a loan is not a deemed distribution to the extent it does not exceed the lesser of (i) an amount equal to $50,000, reduced to the extent that the participant's or beneficiary's highest balance for plan loans outstanding during the preceding 12 months exceeds the current balance for plan loans, or (ii) 50 percent of the participant's or beneficiary's nonforfeitable benefit. Under section 72(p)(2)(D), these limitations apply by treating the loans from all plans of the employer's controlled group as one loan.

For purposes of section 72, a qualified employer plan includes a plan that qualifies under section 401 (relating to qualified trusts), 403(a) (relating to qualified annuities) or 403(b) (relating to tax sheltered annuities), as well as a plan (whether or not qualified) maintained by the United States, a State or a political subdivision thereof, or an agency or instrumentality thereof. A qualified employer plan also includes a plan which was (or was determined to be) a qualified employer plan or a government plan.

Summary of Comments Received, Changes Made, and Summary of the Final Regulations

These final regulations retain the general structure and much of the substance of the proposed regulations, including a variety of examples illustrating the provisions. Some changes have been made in connection with specific recommendations for modifications and clarifications. The comments received in response to the proposed regulations are generally summarized below.

A. Loan Repayment Suspension During Leave of Absence for Military Service in Accordance with Section 414(u)(4)

The proposed regulations stated that, under section 414(u)(4), a plan that permits suspension of loan repayment during a leave of absence for military service (as defined in 38 U.S.C. chapter 43) will not cause the loan to be deemed distributed, even if the leave exceeds a year. The rule was conditioned on loan repayments resuming upon the completion of the military service, the amount remaining due on the loan being repaid in substantially level installments, and the loan being fully repaid by the end of the original term of the loan plus the period of the military service. One commentator was concerned that because the requirement that interest accruing during military service be paid within the extended term would result in larger loan payments following military service than payments preceding military service, the rule could work a hardship on some participants. The commentator suggested that the regulations be modified to allow extension of the loan term in these cases to the period necessary to repay the loan with payments in the same amount as before the military service leave. Another commentator requested that the same extension of loan repayments be permitted for other *bona fide* leaves of absence.

Section 414(u)(4) accommodates military service personnel by permitting postponement of loan repayments while performing military service, but does not alter the accrual of interest or any conditions in section 72(p)(2). Under the proposed regulations, upon resuming repayment, a lender may permit a participant to choose to increase the amount of the payments or to make payments at the previous rate with a balloon payment due at the end of the required time. The IRS and Treasury believe that the amendments suggested by these comments would not satisfy the conditions in section 72(p)(2) that are unaffected by section 414(u)(4). Therefore, the final regulations adopt the regulation as proposed. However, an example in the final regulations has been modified to reflect the application of a maximum 6 percent interest rate during the military leave in accordance with the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. A modification has also been made to clarify that loan repayments can be revised at the end of a military leave to extend the repayment schedule in the event the loan originally had a term of fewer than five years, as discussed below at the end of section C.

B. May Another Loan Be Extended After a Deemed Distribution

The proposed regulations provided that if a loan is deemed distributed to a participant or beneficiary and has not been repaid, then, unless certain conditions are satisfied, any payment made to the participant or beneficiary thereafter will not be treated as a loan for purposes of section 72(p)(2). Specifically, the proposed regulations provided that to avoid this result, the plan must enter into an agreement under which either repayments are made by payroll withholding or adequate security for the additional loan (in addition to the participant's accrued benefit) is obtained. Some commentators stated that because individuals often hold section 403(b) annuity contracts with more than one issuer, it may be difficult for an issuer to determine whether an individual has defaulted on a plan loan with another issuer. A concern was expressed that if upon a deemed distribution a form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, *etc.*, is not issued reflecting taxable income, a subsequent loan to a defaulting participant could subject the loan issuer to penalties.

However, in order to satisfy the limitations on the maximum amount that may be loaned from plans of the employer imposed by section 72(p)(2)(A), the issuer of any loan under section 72(p)(2) must inquire about other loans made from the plan or any other plan of the employer before extending a loan. As part of this process, the issuer can condition a new loan on a participant's disclosure of such prior loans and, for this purpose, can rely on an employee's certification concerning the status of prior loans, assuming the issuer has no reason to doubt the employee's certification. Accordingly, the final regulations adopt the provision as proposed.

C. May a Loan Be Refinanced

The proposed regulations provided that, while a loan may be refinanced, the refinancing arrangement must satisfy the requirements of section 72(p)(2)(B) and (C) that loans be repaid in substantially level installments, not less often than quarterly and over a period not in excess of five years (longer for certain home loans). Under the proposed regulations, a refinancing is treated as a continuation of the prior loan, plus a new loan to the extent of any increase in the loan balance. Thus, while a refinancing loan can be repaid over a five-year period from the date of the refinancing to the extent the refinancing loan exceeds the prior loan amount, the prior outstanding loan must continue to be repaid in substantially level installments over a period not longer than the original term remaining on the prior loan in order for the refinancing not to result in a deemed distribution. A refinancing can also satisfy the repayment requirements of section 72(p)(2)(B) and (C) if the refinanced loan is repaid within the original term remaining on the prior loan. If any portion of the refinancing loan has a later repayment date than the original term remaining on the prior loan, then both the prior loan and the refinancing loan are treated as outstanding at the time of the refinancing for purposes of the limitations on the maximum amount that may be loaned from plans of the employer under section 72(p)(2) (which is generally the lesser of a $50,000 amount described above or 50 percent of the employee's nonforfeitable benefit). These standards were illustrated in examples.

Commentators requested that the regulations be modified so that the rules for refinancings accommodate a prior loan with a term of less than five years that is refinanced to a date that is five years from the date of the prior loan.

The final regulations generally adopt the provision on loan refinancings as proposed. However, the refinancing rules have been modified to conform with the recommendation made by commentators on the extension of a prior loan with an original term of less than five years to a term of five years from the date of the prior loan. A similar modification has also been made for repayments made following a military leave.

D. Are Multiple Loans Permitted

Section 72(p)(2) does not prohibit a participant from borrowing from a plan more than once a year. However, in order to address the risk that additional loans could be taken out in order to avoid repayment of prior loans, the proposed regulations provided that a deemed distribution occurs if a participant obtains more than two loans a year.

Several commentators stated that obtaining loans simply to repay previous loans is an abuse that should not be permitted, and commentators and others also provided information indicating that the vast majority of defined contribution plans already include limitations under which a participant is not permitted to have more than two loans outstanding at any time. However, commentators generally requested the flexibility of being allowed to make more than two loans per year to a participant and provided various examples of situations (such as a parent with several children in college) in which a participant might have a legitimate need for multiple borrowings during a year. They also noted that there is no direct statutory foundation for limiting the number of loans under section 72(p) and that the special 12-month rule with respect to the calculation of the $50,000 limitation under section 72(p)(2)(A)(i) inherently limits the number of loans that can be made for larger borrowings. In recognition of these comments, the final regulations do not include any limitation on the number of loans that can be made under section 72(p)(2). Treasury and the IRS recognize that the absence of any limitation on the number of loans that may be made to a participant will allow certain practices that could not otherwise occur without generating taxable income through a deemed distribution under section 72(p). For example, as pointed out by certain commentators, the use of a participant's account balance under a qualified employer plan to secure a credit card is a practice that would not be permissible if the regulations were to limit the number of loans that could be made to a participant from a plan. Thus, Treasury and the IRS recognize that, because the final regulations do not include any limitation on the number of loans that can be made, there will be no section 72(p) barrier to credit card loans that otherwise meet the requirements of that section.

E. Application of ESIGN

The 2000 final regulations require that the terms of a plan loan be set forth in an enforceable agreement and provide that the agreement may be set forth in an electronic medium that satisfies standards that are based on the standards for an electronic consent to a distribution contained in § 1.411(a)–11(f)(2). As noted in the preamble to the proposed regulations under § 1.417(a)(3)–1 published in the **Federal Register** on October 7, 2002 (67 FR 62417) (relating to disclosure of relative values of optional forms of benefit), the IRS and the Treasury Department are considering the extent to which notices under the various Code requirements relating to qualified retirement plans can be provided electronically, taking into account the effect of ESIGN. As further noted in that preamble, the IRS and the Treasury Department anticipate issuing proposed regulations regarding

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these issues, and invite comments on these issues. The requirements applicable to electronic plan loan agreements may be considered in connection with those upcoming proposed regulations as well.[1]

F. May Section 457(b) Governmental Plans Have Plan Loans

Commentators requested that the regulations be modified to clarify that eligible governmental plans under section 457(b) are permitted to offer loans to employees in a manner consistent with section 72(p). Proposed regulations under section 457 (REG–105885–99) that were published in the **Federal Register** on May 8, 2002 (67 FR 30626), clarify the conditions under which loans can be made to participants in such plans (at proposed § 1.457–6(f)) and that section 72(p) applies to any such loan (at proposed § 1.457–7(b)(3)).

G. Regulation Effective Date

The proposed regulations would have been effective on the first January 1 that is at least 6 months after they are published as final regulations. These final regulations apply to assignments, pledges, and loans made on or after January 1, 2004, but do not apply to loans made under an insurance contract that is in effect on December 31, 2003, if the insurance carrier is required to offer loans to contractholders that are not secured (other than by the participant's or beneficiary's benefit under the contract).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.72(p)–1 is amended as follows:

1. A–9, Q&A–19, and Q–20 are revised, and A–20 is added.

2. A–22 is amended by adding paragraph (d).

The revisions and additions read as follows:

§ 1.72(p)–1 Loans treated as distributions.

* * * * *

A–9: (a) *Leave of absence.* The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u) and paragraph (b) of this Q&A–9), that a participant is on a *bona fide* leave of absence, either without pay from the employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest permissible term of the loan and the amount of the installments due after the leave ends must not be less than the amount required under the terms of the original loan.

(b) *Military service.* In accordance with section 414(u)(4), if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services (as defined in 38 U.S.C. chapter 43), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p) or this section. Thus, if a plan suspends loan repayments for any part of a period during which the employee is performing military service described in the preceding sentence, such suspension shall not cause the loan to be deemed distributed even if the suspension exceeds one year and even if the term of the loan is extended. However, the loan will not satisfy the repayment term requirement of section 72(p)(2)(B) and the level amortization requirement of section 72(p)(2)(C) unless loan repayments resume upon the completion of such period of military service and the loan is repaid thereafter by amortization in substantially level installments over a period that ends not later than the latest permissible term of the loan.

(c) *Latest permissible term of a loan.* For purposes of this Q&A–9, the latest permissible term of a loan is the latest date permitted under section 72(p)(2)(B) (*i.e.*, five years from the date of the loan, assuming that the replacement loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans) plus any additional period of suspension permitted under paragraph (b) of this Q&A–9.

(d) *Examples.* The following examples illustrate the rules of this Q&A–9 and are based upon the assumptions described in the introductory text of this section:

Example 1. (i) On July 1, 2003, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. The participant was not performing military service during this period. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2008.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2008 repaid the full balance remaining due.

Example 2. (i) The facts are the same as in *Example 1*, except the participant was on leave of absence performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for two years and the rate of interest charged during this period of military service is reduced to 6 percent compounded annually under 50 App. section 526 (relating to the Soldiers' and Sailors' Civil Relief Act Amendments of 1942). After the military service ends on April 2, 2006, the participant resumes active employment on April 19, 2006, continues the monthly installments of $825 thereafter, and on June 30, 2010, repays the full balance remaining due ($6,487).

(ii) Because the loan satisfies the requirements of section 72(p)(2) and paragraph (b) of this Q&A–9, the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would also be satisfied if the amount of each monthly installment after April 19, 2006, is increased to $930 in order to repay the loan by June 30, 2010 (without any balance remaining due then).

* * * * *

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes and what effect does the deemed distribution have on subsequent loans?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded for purposes of applying section 72 to the participant or the beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. *See* Q&A–16 of this section.

(b) *Effect on subsequent loans*—(1) *Application of section 72(p)(2)(A).* A loan that is deemed distributed under section 72(p) (including interest accruing thereafter) and that has not been repaid (such as by a plan loan offset) is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

(2) *Additional security for subsequent loans.* If a loan is deemed distributed to a participant or beneficiary under section 72(p) and has not been repaid (such as by a plan loan offset), then no payment made thereafter to the participant or beneficiary is treated as a loan for purposes of section 72(p)(2) unless the loan otherwise satisfies section 72(p)(2) and this section and either of the following conditions is satisfied:

(i) There is an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding. For this purpose, an arrangement will not fail to be enforceable merely because a party has the right to revoke the arrangement prospectively.

(ii) The plan receives adequate security from the participant or beneficiary that is in addition to the participant's or beneficiary's accrued benefit under the plan.

(3) *Condition no longer satisfied.* If, following a deemed distribution that has not been repaid, a payment is made to a participant or beneficiary that satisfies the conditions in paragraph (b)(2) of this Q&A–19 for treatment as a plan loan and, subsequently, before repayment of the second loan, the conditions in paragraph (b)(2) of this Q&A–19 are no longer satisfied with respect to the second loan (for example, if the loan recipient revokes consent to payroll withholding), the amount then outstanding on the second loan is treated as a deemed distribution under section 72(p).

Q–20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A–20: (a) *Refinancings and multiple loans*—(1) *General rule.* A participant who has an outstanding loan that satisfies section 72(p)(2) and this section may refinance that loan or borrow additional amounts if, under the facts and circumstances, the loans collectively satisfy the amount limitations of section 72(p)(2)(A) and the prior loan and the additional loan each satisfy the requirements of section 72(p)(2)(B) and (C) and this section. For this purpose, a refinancing includes any situation in which one loan replaces another loan.

(2) *Loans that repay a prior loan and have a later repayment date.* For purposes of section 72(p)(2) and this section (including paragraph (a)(3) of this Q&A–20 and the amount limitations of section 72(p)(2)(A)), if a loan that satisfies section 72(p)(2) is replaced by a loan (a replacement loan) and the term of the replacement loan ends after the latest permissible term of the loan it replaces (the replaced loan), then the replacement loan and the replaced loan are both treated as outstanding on the date of the transaction. For purposes of the preceding sentence, the latest permissible term of the replaced loan is the latest date permitted under section 72(p)(2)(C) (*i.e.*, five years from the original date of the replaced loan, assuming that the replaced loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans and that no additional period of suspension applied to the replaced loan under Q&A–9 (b) of this section). Thus, for example, if the term of the replacement loan ends after the latest permissible term of the replaced loan and the sum of the amount of the replacement loan plus the outstanding balance of all other loans on the date of the transaction, including the replaced loan, fails to satisfy the amount limitations of section 72(p)(2)(A), then the replacement loan results in a deemed distribution. This paragraph (a)(2) does not apply to a replacement loan if the terms of the replacement loan would satisfy section 72(p)(2) and this section determined as if the replacement loan consisted of two separate loans, the replaced loan (amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan) and, to the extent the amount of the replacement loan exceeds the amount of the replaced loan, a new loan that is also amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan.

(b) *Examples.* The following examples illustrate the rules of this Q&A–20 and are based on the assumptions described in the introductory text of this section:

Example 1. (i) A participant with a vested account balance that exceeds $100,000 borrows $40,000 from a plan on January 1, 2005, to be repaid in 20 quarterly installments of $2,491 each. Thus, the term of the loan ends on December 31, 2009. On January 1, 2006, when the outstanding balance on the loan is $33,322, the loan is refinanced and is replaced by a new $40,000 loan from the plan to be repaid in 20 quarterly installments. Under the terms of the refinanced loan, the loan is to be repaid in

[1] The staff of the Board of Governors of the Federal Reserve System (Board) has advised the IRS that a plan loan that satisfies section 72(p)(2) and these regulations would constitute an extension of credit under 12 CFR 226.2(a)(14) of regulation Z, implementing the Truth in Lending Act (TILA). Thus, unless the plan or the loan is otherwise excepted from the application of regulation Z (for example, the plan could be exempt because the plan has not made enough loans to be considered a creditor under regulation Z, or a particular loan could be exempt because it exceeds TILA's limit of $25,000 for loans not secured by real property or a dwelling), a plan loan that satisfies the requirements of Q&A–3(b) of § 1.72(p)–1 would be subject to the disclosure and other requirements of regulation Z. The staff of the Board has further advised the IRS and Treasury that, pending the Board's adoption of final rules regarding electronic disclosures, creditors may provide electronic disclosures required by regulation Z if the consumer's consent is obtained as required under ESIGN. *See* 66 FR 17322 (March 30, 2001, relating to reg. M, Consumer Leasing Act); 66 FR 17329 (March 30, 2001, relating to reg. Z, TILA); 66 FR 17779 (April 4, 2001, relating to reg. B, Equal Credit Opportunity Act); 66 FR 17786 (April 4, 2001, relating to reg. E, Electronic Fund Transfer Act); and 66 FR 17795 (April 4, 2001, relating to reg. DD, Truth in Savings Act).

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level quarterly installments (of $2,491 each) over the next 20 quarters. Thus, the term of the new loan ends on December 31, 2010.

(ii) Under section 72(p)(2)(A), the amount of the new loan, when added to the outstanding balance of all other loans from the plan, must not exceed $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on December 31, 2005, over the outstanding balance of loans from the plan on January 1, 2006, with such outstanding balance to be determined immediately prior to the new $40,000 loan. Because the term of the new loan ends later than the term of the loan it replaces, under paragraph (a)(2) of this Q&A–20, both the new loan and the loan it replaces must be taken into account for purposes of applying section 72(p)(2), including the amount limitations in section 72(p)(2)(A). The amount of the new loan is $40,000, the outstanding balance on January 1, 2006, of the loan it replaces is $33,322, and the highest outstanding balance of loans from the plan during 2005 was $40,000. Accordingly, under section 72(p)(2)(A), the sum of the new loan and the outstanding balance on January 1, 2006, of the loan it replaces must not exceed $50,000 reduced by $6,678 (the excess of the $40,000 maximum outstanding loan balance during 2005 over the $33,322 outstanding balance on January 1, 2006, determined immediately prior to the new loan) and, thus, must not exceed $43,322. The sum of the new loan ($40,000) and the outstanding balance on January 1, 2006, of the loan it replaces ($33,322) is $73,322. Since $73,322 exceeds the $43,322 limit under section 72(p)(2)(A) by $30,000, there is a deemed distribution of $30,000 on January 1, 2006.

(iii) However, no deemed distribution would occur if, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan were equal to $2,907, which is the sum of the $2,491 originally scheduled quarterly installment payment amount under the first loan, plus $416 (which is the amount required to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the excess of the refinanced loan over the January 1, 2006, balance of the first loan ($40,000 minus $33,322 equals $6,678)), and the amount of the 4 remaining installments was equal to $416. The refinancing would not be subject to paragraph (a)(2) of this Q&A–20 because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. Similarly, the transaction also would not result in a deemed distribution (and would not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the refinanced loan provided for repayments to be made in level quarterly installments (of $2,990 each) over the next 16 quarters.

Example 2. (i) The facts are the same as in *Example 1*(i), except that the applicable interest rate used by the plan when the loan is refinanced is significantly lower due to a reduction in market rates of interest and, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan is equal to $2,848 and the amount of the next 4 installments on the refinanced loan is equal to $406. The $2,848 amount is the sum of $2,442 to repay the first loan by December 31, 2009 (the term of the first loan), plus $406 (which is the amount to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the $6,678 excess of the refinanced loan over the January 1, 2006, balance of the first loan).

(ii) The transaction does not result in a deemed distribution (and is not subject to paragraph (a)(2) of this Q&A–20) because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan), and the other of which is in the additional amount ($6,678) borrowed under the new loan. The transaction would also not result in a deemed distribution (and not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the new loan provided for repayments to be made in level quarterly installments (of $2,931 each) over the next 16 quarters.

* * * * *

A–22: * * *

(d) *Effective date for Q&A–19(b)(2) and Q&A–20.* Q&A–19(b)(2) and Q&A–20 of this section apply to assignments, pledges, and loans made on or after January 1, 2004.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 7, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–29204 Filed 12–2–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[MS–017–FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed revisions to and additions of rules about valid existing rights, roads, formal review of citations, and revegetation success standards. Mississippi intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Mississippi program on September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the Mississippi program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Submission of the Amendment

By letter dated September 28, 2001 (Administrative Record No. MS–0388), Mississippi sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Mississippi sent the amendment in response to our letters dated August 17, 2000, and August 23, 2000 (Administrative Record Nos. MS–0382 and MS–0381, respectively), that we sent to Mississippi in accordance with 30 CFR 732.17(c). Mississippi also sent the amendment in response to required program amendments at 30 CFR 924.16(i) and (l). Finally, the amendment included changes made at Mississippi's own initiative.

We announced receipt of the proposed amendment in the November 2, 2001, **Federal Register** (66 FR 55611). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on December 3, 2001. Because no one requested a public hearing or meeting, we did not hold one. We received comments from one State agency.

During our review of the amendment, we identified concerns relating to the definition of "immediate mining area" and provisions concerning limited use vehicular pathways. We notified Mississippi of these concerns by letter dated January 23, 2002 (Administrative Record No. MS–0390). By letter dated July 22, 2002, Mississippi sent us a revised amendment (Administrative Record No. MS–0394). Based upon Mississippi's revisions to its amendment, we reopened the public comment period in the September 6, 2002, **Federal Register** (67 FR 56967). The public comment period closed on September 23, 2002. We did not receive any comments.

Also during our review, we identified editorial concerns relating to Mississippi's revegetation success standards. We notified Mississippi of these concerns by telephone on September 10, 2002 (Administrative Record No. MS–0398). By letter dated September 12, 2002, Mississippi sent us revisions to its amendment (Administrative Record No. MS–0397). Because the revisions merely clarified certain provisions of Mississippi's amendment, we did not reopen the public comment period.

III. OSM's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment to the Mississippi program. Any revisions that we do not discuss below are minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Mississippi's Rules That Are Substantively the Same as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State rule	Federal counterpart regulation
Areas where mining is prohibited or limited	Section 1105	30 CFR 761.11
Submission and processing of requests for valid existing rights determinations.	Section 1106	30 CFR 761.16
Valid existing rights review at time of permit application review.	Section 3114	30 CFR 761.17
Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.	Section 2103(b)(14), (c), (d), (e), and (f)	30 CFR 772.12(b)(14), (c), (d), and (e)

Because the above State rules are substantively the same as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

B. Revisions to Mississippi's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Section 105, Definition of "Valid Existing Rights"

Mississippi revised its definition of "valid existing rights" to closely follow the Federal definition at 30 CFR 761.5. However, Mississippi's definition of "valid existing rights" includes language in paragraph (a) specifying that valid existing rights must have been in existence on August 3, 1977, unless, subsequent to the adoption of the definition, section 53–9–71(4) of the Mississippi Surface Coal Mining and Reclamation Law is amended to delete that requirement. Mississippi's definition further provides that if section 53–9–71 of the Mississippi Surface Coal Mining and Reclamation Law is amended to delete the requirement that a right exist as of August 3, 1977, then the right must have been in existence at the time the land came under the protection of 30 CFR 761.11, 30 U.S.C. 1272(e), Miss. Code Ann. 53–9–71, or section 1105 of the Mississippi regulations. In a letter dated September 28, 2001 (Administrative Record No. MS–0388), Mississippi explained that section 53–9–71(4) of Mississippi's Surface Coal Mining and Reclamation Law provides that valid existing rights must have existed on or before August 3, 1977. Mississippi further explained that it may suggest a statutory change to the Mississippi Legislature to bring the state law in line with the Federal statute and regulations.

Mississippi's definition of "valid existing rights" provides that a person claiming valid existing rights must demonstrate valid existing rights in the same manner required by the Federal definition at 30 CFR 761.5, except that those rights must have existed on August 3, 1977. The Federal regulations require that valid existing rights must have existed on the date that the land came under the protection of 30 CFR 761.11 or 30 U.S.C 1272(e)—a date that could occur on or after August 3, 1977. Because rights that exist under the Mississippi rules would also exist under the Federal regulations, we find that Mississippi's proposed definition is no less effective than the Federal definition at 30 CFR 761.5. Therefore, we are approving it.

2. Section 1103, Responsibility

Mississippi revised the language in this section by adding the phrase, "a valid existing rights determination made by OSM" after the reference to "30 U.S.C. 1272(e)." Mississippi also replaced the phrase, "this Chapter" with the phrase, "these regulations."

As revised, section 1103 reads as follows:

The Permit Board shall comply with Chapters 17 to 37 and determine whether an application for a permit must be denied because surface coal mining operations on those lands are prohibited or limited by § 522(e) of SMCRA, 30 U.S.C. 1272(e), a valid existing rights determination made by OSM, § 53–9–71, these regulations, or a designation of the Commission.

The Federal regulations at 30 CFR 761.3 authorizes a State regulatory authority to prohibit or limit surface coal mining operations on or near

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certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977. Therefore, we find that Mississippi's revisions to section 1103 are not inconsistent with 30 CFR 761.3, and we are approving it.

3. Section 1107, Procedures

a. At paragraph (a), Mississippi added language to require the Permit Board to determine whether proposed surface coal mining operations are limited or prohibited under section 1105 prior to the submission of a complete application, if the applicant requests the Permit Board to do so under section 1106. We find that the revision of this section is not inconsistent with the Federal provisions at 30 CFR 761.16, which allow an applicant to request that the regulatory authority make a valid existing rights determination prior to preparing and submitting an application for a permit or boundary revision. Therefore, we are approving it.

b. Mississippi revised the first sentence of paragraph (b) to provide that where a proposed operation would be located on any lands listed in section 1105, the Permit Board must deny the permit if the applicant has no valid existing rights for the area. We find that Mississippi's revisions are no less effective than the Federal provisions at 30 CFR 773.15(c)(ii), which provides that no permit application can be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing that the proposed permit area is not within an area subject to the prohibitions of 30 CFR 761.11. Therefore, we are approving it.

c. Mississippi revised paragraph (f) to provide that the Permit Board will follow the procedures required by section 3114(d) of Mississippi's rules when it determines that a proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places. Section 3114(d) of Mississippi's rules is substantively the same as the Federal provisions at 30 CFR 761.17(d), which describe the procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places. Because Mississippi's revision merely directs the reader to the procedures found in 3114(d), we find that Mississippi's revision at section 1107(f) is no less effective than the Federal provisions at 30 CFR 761.17(d), and we are approving it.

d. Finally, Mississippi removed paragraph (h), which provided that determinations made by the Permit Board concerning whether a person has valid existing rights are subject to administrative and judicial review under Miss. Code Ann. 53–9–77. Paragraph (h) also provided that determinations made by the Permit Board concerning whether surface coal mining operations existed on the date of enactment are subject to administrative and judicial review under Miss. Code Ann. 53–9–77.

Section 1106(g) of Mississippi's revised rules provides that a determination that valid existing rights do or do not exist is subject to administrative and judicial review under section 53–9–77 of the Mississippi Surface Coal Mining and Reclamation Law. Therefore, we find that the removal of the portion of section 1107(h) concerning administrative and judicial review of valid existing rights determinations does not render the Mississippi rules less effective than the Federal regulations, and we are approving it.

On December 17, 1999, we removed the portion of former 30 CFR 761.12(h) that provided for administrative appeals of existing operations determinations. In the preamble, we explained that because the exception for existing operations in 30 CFR 761.12 does not require any affirmative action or decision on the part of the permittee or the regulatory authority, no action or decision exists to appeal (64 FR 70804). Therefore, Mississippi's removal of the portion of section 1107(h) concerning administrative and judicial review of existing operations determinations is consistent with the removal of our counterpart provision at former 30 CFR 761.12(h), and we are approving it.

C. Revisions to Mississippi's Rules With No Corresponding Federal Regulations

1. Section 105, Definition of "Immediate Mining Area"

Mississippi added a definition for "immediate mining area" to read as follows:

Immediate Mining Area—as used in the definition of Road in this section, means an area of mining activity or pre-mining construction activity covered by a construction stormwater pollution prevention plan or, after construction is completed, situated so that surface water run-off will be routed to an approved water control structure such as a sedimentation pond. Routes of travel within the immediate mining area will be either: consumed by mining; reclaimed; or have design plans submitted for approval as permanent postmine features prior to phase II bond release.

No Federal counterpart to this definition exists. However, in the preamble to our November 8, 1988, **Federal Register** (53 FR 44356) concerning roads, we discussed what the phrase meant. In that discussion, we incorporated two concepts into the interpretation of "immediate mining area"—frequent changes and drainage control. Several commenters suggested that the term be interpreted consistent with drainage control since the necessary environmental protection would be provided and it would provide an exact meaning of the term. We stated that our view is in part consistent with the commenters concerning the exclusion of roads within the permit area for which drainage control is otherwise provided. We went on to explain that because all of the other standards of section 515 of SMCRA would also necessarily apply to temporary routes not considered roads, the protection required by section 515(b)(17) of SMCRA would still be achieved. However, we retained the concept of frequent changes in order to ensure that all roads are adequately reclaimed. We stated that all routes subject to frequent changes would be obliterated during the mining process, but routes no longer changing need to be included in the definition of road to ensure that they are adequately designed, constructed, maintained, and reclaimed. No further guidance in interpretation of the phrase "frequent changes" was provided.

Routes of travel in large mines over relatively flat terrain, such as the mine in Mississippi, move as operations move, and are therefore subject to frequent change. We believe that, considering the nature of mining operations in Mississippi, it would not be unreasonable or an abuse of discretion for the State to consider the immediate mining area as matching the area where drainage control has been established through construction of siltation structures so long as mechanisms are in place to ensure that when travel routes are no longer changing, they are either (1) Reclaimed with vegetation established or (2) approved as roads as mining and reclamation operations are completed, such as by the time of phase II bond release. We believe that these mechanisms would ensure full and contemporaneous reclamation, and ensure that travel routes not reclaimed as part of the general reclamation of an area would be included in the definition of a road.

By letter dated January 23, 2002 (Administrative Record No. MS–0390), we notified Mississippi that its definition lacked the mechanisms to ensure that all travel routes are either reclaimed or approved as roads as mining and reclamation operations are completed. By letter dated July 22, 2002 (Administrative Record No. MS–0394), Mississippi sent a revision to its definition to add a provision requiring routes of travel within the immediate mining area to be (1) Consumed by mining; (2) reclaimed; or (3) have design plans submitted for approval as permanent postmine features prior to phase II bond release. Because Mississippi's definition of "immediate mining area" provides mechanisms to ensure that all travel routes are either (1) reclaimed with vegetation established or (2) approved as roads prior to phase II bond release, we find that it is not inconsistent with the requirements of the Federal program, and we are approving it.

2. Section 53111, Roads: General

Mississippi added new paragraphs (a)(4) and (5) to read as follows:

(4) A limited use vehicular pathway is not classified as a road if it meets all the following:

(i) the pathway has no improved roadbed, which means it has no constructed crown, compacted base, roadway ditches, or surface material added to enhance use as a pathway which precludes vegetation;

(ii) the pathway has no bridges or other cross-drainage structures;

(iii) the pathway is not located in and/or does not cross or ford any channel of an intermittent or perennial stream;

(iv) the pathway has only limited clearing, if any, of woody vegetation, typically wide enough only for the safe passage of one vehicle;

(v) the pathway is located so as to control erosion and siltation; and

(vi) maintenance of the pathway is limited to maintenance consisting only of the occasional filling of potholes and ruts in order to remain passable.

(5) A limited use vehicular pathway:

(i) shall be reclaimed with vegetation sufficient to prevent erosion prior to phase II bond release;

(ii) along with the area it disturbs, is a mining related activity and must be covered by an appropriate reclamation bond;

(iii) will be reclassified as a road if upgraded by construction activities such as blading, construction, placement of a compacted surface, cut and fill of the natural grade, construction of drainage ditches or low water crossings, or installation of drainage structures. The submittal and approval of plans and drawings required by these regulations must be completed prior to the upgrading of a limited use vehicular pathway.

No Federal counterpart to these provisions exists. However, we recognize that in flat agricultural areas such as those that occur in the mining areas of Mississippi, occasional overland travel that occurs repeatedly in the same place will create tracks that can be called pathways, trails, lanes, etc., even though there has been no improved roadbed. We further recognize that such pathways will need occasional repair or maintenance to remain passable, and that such maintenance does not necessarily make the pathway a road. We do not believe it would be unreasonable or an abuse of discretion for the State to exempt such pathways from regulation as a "road" so long as the State does not allow the pathways to have any characteristics of ancillary or primary roads.

By letter dated January 23, 2002 (Administrative Record No. MS–0390), we notified Mississippi that its provisions at 53111(a)(4) and (5) could allow limited use vehicular pathways to have some characteristics of ancillary roads. By letter dated July 22, 2002 (Administrative Record No. MS–0394), Mississippi revised its provisions at section 53111(a)(4) and (5) by removing language that would have allowed limited use vehicular pathways to have culverts, be located in and/or cross or ford channels of intermittent or perennial streams, and include water bars across the pathway and drainage ways incidental to the area. Because Mississippi's provisions at 53111(a)(4) and (5) do not allow limited use vehicular pathways to have any characteristics of ancillary or primary roads, we find that it is not inconsistent with the requirements of the Federal regulations, and we are approving it.

C. Section 6511, Formal Review of Citations

Mississippi revised the first sentence of paragraph (c) to allow any party to a proceeding that is the result of the issuance of a notice of violation or cessation order to apply to the Commission for temporary relief from the notice or cessation order.

Mississippi's revision at section 6511(c) is substantively the same as the Federal regulation at 30 CFR 4.1261. Further, the revision satisfies the requirements placed on the Mississippi program at 30 CFR 924.16(l). Therefore, we are approving Mississippi's revision and removing the required program amendment at 30 CFR 924.16(l).

D. Revegetation Success Guidelines

1. Section 53103, Revegetation: Standards for Success

Mississippi redesignated paragraph (a)(1) as paragraph (b)(1); paragraph (b)(1) as paragraph (b)(2); paragraph (b)(2) in its entirety as paragraph (b)(3); and paragraph (b)(3) as new paragraph (b)(4). Mississippi also revised paragraph (a) to incorporate by reference a revegetation success guidance document titled "Appendix A, Revegetation Success Standards." Finally, Mississippi added language in paragraph (a) to provide that if a postmining land use is selected and approved by the Permit Board for which standards are not specified in Appendix A, or if Appendix A does not specify a more specific standard of success for a postmining land use, the general standards of success found at redesignated paragraph (b) will apply.

The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program. We find that Mississippi's incorporation by reference of Appendix A into its rules at 53103(a) meets the requirements of 30 CFR 816.116(a)(1), and we are approving it. Further, we find that Mississippi's Appendix A provides success standards for the most probable types of postmining land use that an operator might choose. It would be highly unlikely that an operator would select a postmining land use that was not covered by Appendix A. If an operator did choose a postmining land use that was not covered under Appendix A, Mississippi would need to develop success standards for that land use and submit them to us for approval. Therefore, we are approving Mississippi's provision at section 53103(a).

2. Appendix A, Revegetation Success Standards

Mississippi added Appendix A to describe the standards for revegetation success on commercial forest lands, croplands, industrial or commercial lands, pasture and previously mined areas, prime farmlands, recreation lands, residential lands, and wildlife habitats.

The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program.

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Mississippi developed its revegetation success guidelines to satisfy this requirement. The guidelines include revegetation success standards and statistically valid sampling techniques for measuring revegetation success of reclaimed commercial forest lands, croplands, industrial or commercial lands, pasture and previously mined areas, recreation lands, residential lands, and wildlife habitats in accordance with Mississippi's counterparts to the Federal regulations at 30 CFR 816.116. The guidelines also include revegetation success standards and statistically valid sampling techniques for restoring soil productivity of prime farmland soils in accordance with Mississippi's counterparts to the Federal regulations at 30 CFR 823.15. Mississippi's standards, criteria, and parameters for revegetation success reflect the extent of cover, species composition, and soil stabilization required in the Federal regulations at 30 CFR 816.111. As required by the Federal regulations at 30 CFR 816.116(a)(2) and (b) and 823.15, Mississippi's revegetation success standards include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking suitable to the approved postmining land uses. Mississippi's guidelines specify the procedures and techniques to be used for sampling, measuring, and analyzing vegetation parameters. Ground cover, production, and stocking suitable to the approved postmining land uses, except prime farmland, are considered equal to the approved success standard when they are not less than 90 percent of the success standard. The average production of crops for prime farmland soils must equal or exceed the average production of the same crops for the same or similar unmined prime farmland soils. Sampling techniques for measuring success use a 90-percent statistical confidence interval for all land uses. We found that use of these procedures and techniques will ensure consistent, objective collection of vegetation data.

For the above reasons, we find that the revegetation success standards and statistically valid sampling techniques for measuring revegetation success contained in Mississippi's revegetation success guidelines satisfy the requirements of 30 CFR 816.116(a)(1) and 823.15. The guidelines also satisfy the requirement placed on the Mississippi program at 30 CFR 924.16(i), and we are removing it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On October 11, 2001, and July 30, 2002, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Mississippi program (Administrative Record Nos. MS–0395 and MS–0396, respectively). We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Mississippi proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

On October 11, 2001, and July 30, 2002, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. MS–0395 and MS–0396, respectively). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On October 11, 2001, and July 30, 2002, we requested comments on Mississippi's amendment (Administrative Record Nos. MS–0395 and MS–0396, respectively). The SHPO responded on November 20, 2001 (Administrative Record No. MS–0389). The SHPO stated that sections 1105(c), 1106(e)(2)(ii), 1107(f), and 3114(d)(1) of Mississippi's rules should be modified to include any place that is eligible for the National Register of Historic Places as well as those that have already been included in the Register. Also, the SHPO stated that at section 2103(b)(8), Mississippi should add another item to require applications for exploration permits to contain a statement from the SHPO that assesses the need for a cultural resources survey.

On September 24, 2002 (Administrative Record No. MS–0399), we sent a letter to the SHPO informing them that Mississippi's rules are consistent with Section 522(e)(3) of SMCRA and Part 761 of the Federal regulations. We also explained that even though SMCRA and the Federal regulations do not require consideration of properties eligible for listing on the National Register of Historic Places when making a determination of whether a person has valid existing rights to mine in areas where surface coal mining operations are normally prohibited or limited, the permit application requirements of the Federal regulations do require this consideration for these areas. Finally, we informed the SHPO that Mississippi did not propose changes to section 2103(b)(8), and that we've previously found that Mississippi's provisions at section 2103(b)(8) are substantively identical, and no less effective than, the Federal regulations at 30 CFR 772.12(b)(8).

V. Director's Decision

Based on the above findings, we approve the amendment Mississippi sent to us on September 28, 2001, and as revised on July 22, 2002, and September 12, 2002. We approve the rules that Mississippi proposed with the provision that the rules be published in identical form to the rules sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 924, which codify decisions concerning the Mississippi program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that a State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999. The other provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions will have no substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 17, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 924 is amended as set forth below:

PART 924—MISSISSIPPI

1. The authority citation for Part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 924.15 is amended in the table by adding a new entry in chronological order by Date of final publication to read as follows:

§ 924.15 Approval of Mississippi regulatory program amendments.

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Original amendment submission date	Date of final publication	Citation/description
September 28, 2001	December 3, 2002	Sections 105; 1103; 1105; 1106; 1107(a), (b), (f), and (h); 2103(b)(14), (c), (d), (e), and (f); 3114; 53103(a) and (b); 53111(a)(4) and (5); 6511(c); and Appendix A: Revegetation Success Guidelines

§ 924.16 [Amended]

3. Section 924.16 is amended by removing and reserving paragraphs (i) and (l).

4. Section 924.17 is amended by revising the section heading to read as follows:

§ 924.17 State regulatory program provisions and amendments not approved.

[FR Doc. 02–30607 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–096–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: We are announcing our approval with one exception of amendments to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments we are approving concern changes to the Code of State Regulations as contained in State House Bill 4163 and Senate Bill 2002, concerning contemporaneous reclamation of mine land.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a) (1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 9, 2002 (Administrative Record Number WV–1296), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of several changes to the Code of State Regulations (CSR) at 38–2, and the addition of new CSR 38–4, the Coal Related Dam Safety Rules, as contained in House Bill 4163.

We announced receipt and provided an opportunity to comment on the amendment in the June 6, 2002, **Federal Register** (67 FR 38919) (Administrative Record Number WV–1311). The comment period closed on July 8, 2002. We received comments from the U.S. Department of Labor, Mine Safety and Health Administration.

By letter and electronic mail dated June 19, 2002, WVDEP sent us additional amendments to its program that are contained in Senate Bill 2002 concerning changes to CSR 38–2 (Administrative Record Number WV–1316). Senate Bill 2002 was signed by the Governor on June 21, 2002. Senate Bill 2002 authorized the WVDEP to promulgate revisions to its Surface Mining and Reclamation Regulations.

We announced receipt of the proposed amendments in the August 16, 2002, **Federal Register** (67 FR 53542) (Administrative Record Number WV–1322). In that notice, we also identified proposed amendments that we inadvertently omitted identifying in the June 6, 2002, **Federal Register** notice, including the new Coal Related Dam Safety Rules at CSR 38–4. The comment period closed on September 16, 2002. We received comments from the U.S. Department of Labor, Mine Safety and Health Administration, the U.S. Fish and Wildlife Service, and the Environmental Protection Agency.

Revisions to the State's contemporaneous reclamation requirements are contained in the two amendment submittals discussed above. In order to expedite our review of the State's amendments to its contemporaneous reclamation provisions, we have separated those amendments from the two amendment submittals discussed above. In this notice, we are presenting our findings only on the proposed amendments to the State's contemporaneous reclamation requirements at CSR 38–2–14.15. We will present our findings on the remainder of the amendments submitted by the State on April 9 and June 19, 2002, in a separate **Federal Register** notice at a later date.

III. OSM's Findings

For the reasons discussed below, we are approving, with one exception, the proposed amendments to the State's contemporaneous reclamation standards at CSR 38–2–14.15. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes that do not require specific approval.

1. CSR 38–2–14.15.a.1

This provision concerns backfilling and grading of spoil that is returned to the mined out area. The first sentence in this provision has been amended by adding the phrase "unless a waiver is granted pursuant to W. Va. Code [Code of West Virginia] 22–3–13(c)(2)" between the words "approximate original contour" and the words "with all highwalls eliminated." As amended, the first sentence is as follows:

14.15.a.1. Spoil returned to the mined-out area shall be backfilled and graded to the approximate original contour unless a waiver is granted pursuant to W. Va. Code 22–3–13(c)(2) with all highwalls eliminated.

This amended provision authorizes an exception to the requirement to return land to approximate original contour (AOC) pursuant to a waiver granted pursuant to W. Va. Code 22–3–13(c)(2) concerning mountaintop removal mining operations. SMCRA contains such a variance from the requirements to return land to AOC for mountaintop removal mining operations at section 515(c)(2). Therefore, we find that this amendment does not render the West Virginia program less stringent than SMCRA and can be approved.

2. CSR 38–2–14.15.a.2

This provision, which was transferred from former Subdivision 14.15.b.6.B.1. and slightly modified, provides as follows:

14.15.a.2. All permit applications shall incorporate into the required mining and reclamation plan a detailed site specific description of the timing, sequence, and areal extent of each progressive phase of the mining and reclamation operation which reflects how the mining operations and the reclamation operations will be coordinated so as to minimize the amount of disturbed, unreclaimed area, and to quickly establish and maintain a specified ratio of disturbed versus reclaimed area throughout the life of the operation.

In effect, this modified provision provides that the required mining and reclamation operations plan submitted with each permit application, include a detailed site-specific description of the timing, sequence, and areal extent of each progressive phase of proposed mining and reclamation operations. Such detailed site-specific description should provide a clear indication of how the mining and reclamation operations will be coordinated by the permittee. The required information should enable the WVDEP to assess the potential effectiveness of the proposed mining and reclamation operations plan in complying with the contemporaneous reclamation requirements at CSR 38–2–14.15. We find that this proposed provision is consistent with and no less effective than the Federal mining and reclamation plan requirements at 30 CFR 780.11 and 780.18, and consistent with the Federal contemporaneous reclamation requirements at 30 CFR 816.100 and can be approved.

3. CSR 38–2–14.15.b.5

This provision is amended by adding a sentence to the end of the existing provision that provides as follows:

Regardless of the allowable limits contained in this section, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal.

As amended, CSR 38–2–14.15.b.5. provides as follows:

14.15.b.5. Where the operation consists of multiple seam mining along the topographic contour on steep or non-steep slopes, and where the coal seams running through the mountain, hill, or ridge are only partially removed, disturbed and unreclaimed acreage including excess spoil disposal sites, shall not exceed two hundred (200) acres or fifty (50) percent of the permit area, whichever is less. Augering and/or highwall mechanical mining which becomes a part of these types of operations shall be incorporated into the operation in such a fashion so as to meet the subject acreage limitations. Regardless of the allowable limits contained in this section, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal.

In effect, this provision sets the standard for completion of rough backfilling and grading of multiple seam mining operations where the coal seams are only partially removed at 180 days, except for those areas classified as "reclaimed" and exempted under subdivision 14.15.c.2., as discussed below. The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, we find that this provision is not inconsistent with the Federal requirements at 30 CFR 816/817.100 concerning contemporaneous reclamation and can be approved.

4. CSR 38–2–14.15.b.6.A

This provision concerns disturbed and unreclaimed acreage limitations for mountaintop mining operations or combination mountaintop mining operations with incidental contour mining. The provision was amended by adding the following language after the second sentence:

Where operations contemplated under this [sub]section are approved with incidental contour mining, which may include augering or highwall mining, the acreage must be calculated in the allowable disturbance authorized in this paragraph. The incidental contour pit length cannot exceed 3000 feet and backfilling/grading shall follow mineral removal within 180 days. Regardless of the allowable limits contained in section fourteen of this rule, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal. Operations required to comply with AOC+ guidelines or approved specific post-mining land use requirements must complete backfilling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this [sub]section.

As amended, CSR 38–2–14.15.b.6.A. provides as follows:

14.15.b.6.A. Disturbed and unreclaimed acreage, including excess spoil disposal sites, shall not exceed thirty-five (35) percent of the total permit acreage, or three hundred (300) acres, whichever is less. Provided; however, the Secretary may grant a variance not to exceed five hundred (500) acres on operations which consist of multiple spreads of equipment. Where operations contemplated under this [sub]section are approved with incidental contour mining, which may include augering or highwall mining, the acreage must be calculated in the allowable disturbance authorized in this paragraph. The incidental contour pit length cannot exceed 3000 feet and backfilling/grading shall follow mineral removal within 180 days. Regardless of the allowable limits contained in section fourteen of this rule, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal. Operations required to comply with AOC+ guidelines or approved specific post-mining land use requirements must complete backfilling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this [sub]section.

The ratio of disturbed and unreclaimed acreage versus reclaimed or undisturbed acreage shall be shown on progress maps submitted annually or as otherwise required by the Secretary. The subject ratios shall be verified by the Secretary to be consistent with the mining and reclamation plan on the next regular inspection following receipt of the progress map.

Under the proposed rule, mountaintop mining operations with incidental contour mining, which may include auger or highwall mining, will have to complete backfilling and grading of the incidental contour pit within 180 days of mineral removal. In addition, proposed mountaintop mining operations with complete coal removal, and mountaintop mining operations with contour mining with partial coal removal are required to complete backfilling and rough grading of any disturbed areas within 180 days of final mineral removal. However, mountaintop mining operations subject to the recently developed AOC guidelines (also known as AOC+ guidelines) or with specific postmining

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land uses must be backfilled and graded within 270 days of final mineral removal, unless a waiver is granted by the Secretary.

The AOC+ guidelines referred to above are dated January 27, 2000, and took effect on March 24, 2000. The AOC+ guidelines are to be used in determining when AOC has been achieved by surface coal mining operations in steep slope areas of the State. They are also used in determining when placement of excess spoil in fills has been optimized by applicants both seeking or not seeking an AOC variance. The AOC+ guidelines do not apply to contour mining operations. Those operations are subject to the AOC/Excess Spoil Guidance document that was issued on March 16, 1999. OSM and other Federal agencies have concurred with the State's AOC+ guidelines, because they have been found to be useful in providing guidance on AOC demonstrations within the context of the approved State regulatory program (Administrative Record Numbers WV–1150, WV–1153, and WV–1154).

As proposed, mountaintop mining operations without exceptions to AOC that are subject to the AOC+ guidelines or mountaintop removal mining operations with the approvable postmining land uses at subsection 22–3–13(c)(3) of the West Virginia Surface Coal Mining and Reclamation Act would be required to complete backfilling and rough grading within 270 days of final coal removal, unless a waiver is granted by the State. To date, only a few mountaintop mining operations have been approved by the State pursuant to the AOC+ guidelines and are required to complete backfilling and grading within 270 days of final coal removal. All contour and mountaintop mining operations that were approved prior to March 24, 2000, must complete backfilling and grading within 180 days of final coal removal. Therefore, all contour mining operations and most mountaintop mining operations that have been approved by the State to date would have to complete backfilling and grading within 180 days of final coal removal.

We note that, as required by proposed CSR 38–2–14.15.a.2, the operator through the proposed mining and reclamation operations plan, which will contain detailed site-specific information concerning the timing, sequence, and areal extent of each progressive phase of the mining and reclamation operations, must minimize the amount of disturbed area throughout the life of the mining operation. This information will be supplemented with progress maps that the operator will have to submit to ensure compliance with the mining and reclamation plan. We anticipate that the permit application will specify the need for any waiver of these requirements, and provide the regulatory authority with sufficient information it needs in granting such waivers.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, the remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. We find that the proposed provisions are reasonable and further limit the amount of disturbed area that can go unreclaimed at any time under the State's contemporaneous reclamation requirements by imposing time and distance limitations on backfilling and grading. Because the proposed revisions are not inconsistent with the Federal regulations at 30 CFR 816/817.100, they can be approved.

5. CSR 38–2–14.15.b.6.B

This provision concerns mountaintop removal mining operations or combination mountaintop removal and contour mining operations that use draglines with a bucket capacity of greater than 45 cubic yards. This provision is amended by deleting existing paragraphs 14.15.b.6.B.1. and B.2, and replacing these provisions with new paragraph 14.15.b.6.B.1. As amended, CSR 38–2–14.15.b.6.B. provides as follows:

14.15.b.6.B. On operations which utilize draglines with a bucket capacity of greater than forty-five (45) cubic yards, the requirements of subparagraph 14.15.b.6.A. of this paragraph is waived and the following contemporaneous reclamation requirements apply:

14.15.b.6.B.1. Pre-stripping or benching operations cannot exceed four hundred (400) acres for any single permit and cannot precede dragline operations more than twenty-four (24) months unless otherwise approved by the Secretary or necessary to satisfy AOC+ requirements, specific post-mining land use requirements or special materials handling facilities requirements. All fill construction must occur during this phase of operation and be conducted in accordance with subdivision 14.15.d. of this rule.

14.15.b.6.B.2. Rough backfilling and regrading shall be completed within one hundred (180) days following coal removal and not more than four (4) spoil ridges behind the pit being worked, the spoil form the active pit constituting the first spoil ridge; and

14.15.b.6.B.3. The ratio of disturbed acreage versus reclaimed or undisturbed acreage shall be shown on progress maps submitted annually or as otherwise required by the Secretary.

Under the proposed rule, mountaintop removal or combination mountaintop removal and contour mining operations that use draglines with a bucket capacity of greater than 45 cubic yards cannot allow pre-stripping activities of more than 400 acres and such activities cannot precede the dragline operation by more than 24 months, unless approved by the Secretary. These criteria represent the maximum amount of acreage disturbance and time that pre-stripping or benching operations can precede the dragline operation. Currently, there are about five draglines operating in West Virginia. Pre-stripping or benching operations include that disturbance which is necessary to prepare an area for the dragline to operate safely and effectively. These operations may involve the mining of one or more coal seams in advance of the dragline in order to prepare for additional coal removal. Under the previous rules, the area of disturbance preceding the dragline could not exceed 400 acres. Under the proposed revision, the State will also impose a time limitation of 24 months on pre-stripping or benching operations, unless otherwise approved by the regulatory authority. In addition, all fill construction is to occur during this phase of the operation.

We must note that, except for pre-stripping or benching operations, the existing requirements at subdivision 14.15.b.6.B. do not impose a limit on the total amount of permitted acreage that can be disturbed at any given time. However, those same provisions do require that backfilling and grading of the area disturbed by the dragline must be completed within 180 days following coal removal and with no more than four spoil ridges behind the pit being worked.

We also note that under subdivision 14.15.a.2, as discussed above, the mining and reclamation operations plan for these kinds of operations will contain detailed, site-specific information concerning the timing, sequence, and areal extent of both the proposed pre-stripping and dragline operations and reflect how the mining and reclamation operations will be coordinated throughout the life of the mining operation. This detailed information, together with the progress maps, should provide the regulatory authority sufficient information to assess the proposed ratio of disturbed versus reclaimed area, and to ensure compliance with the contemporaneous reclamation rules at CSR 38–2–14.15.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, the remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. For the reasons discussed above, we find that the proposed provision is not inconsistent with the Federal regulations at 30 CFR 816/817.100 and can be approved.

6. CSR 38–2–14.15.c

This provision is amended by adding the words "and meets Phase I standards" at the end of the first sentence. As amended, this provision provides as follows:

14.15.c. Reclaimed Area. For purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan and meets Phase I standards. The following shall not be included in the calculation of disturbed area:

The addition of the phrase "and meets Phase I standards" appears to clarify the meaning of reclaimed area as previously approved at CSR 38–2–14.15.c. In addition to being fully regraded and stabilized in accordance with the reclamation plan, the proposed revision will require that reclaimed acreage must also meet the Phase I bond release requirements at CSR 38–2–12.2.c.1. We find that the amendment to this provision does not render the West Virginia rule less effective than the Federal regulations concerning contemporaneous reclamation at 30 CFR 816.100 and can be approved.

7. CSR 38–2–14.15.c.1

This provision concerns the identification of those areas that shall not be included in the calculation of disturbed area. This provision is amended by adding a new proviso at the end of the existing provision that limits, with exceptions, the total acreage of semi-permanent ancillary facilities that shall not be included in the calculation of disturbed area to a total of 10 percent of the permitted acreage. As amended, CSR 38–2–14.15.c.1. provides as follows:

14.15.c.1. Semi-permanent ancillary facilities (haulroads, drainage control systems, parking areas, maintenance, storage and supply areas, etc.), and areas cleared but not grubbed, provided, that such areas have appropriate drainage control systems in place; Provided, that with the exception of permanent haulroads, drainage control systems and material handling facilities (including but are not limited to such facilities as preparation plants, fixed coal stockpiles/transfer areas and commercial forestry topsoil areas) the total acreage of all other semi-permanent ancillary facilities cannot exceed ten percent of the total permit acreage.

The existing rules exempt all semi-permanent ancillary facilities and cleared areas from the contemporaneous reclamation requirements, regardless of size. The revised language limits the size of certain semi-permanent ancillary facilities to no more than 10 percent of the total permitted acreage. Otherwise, the area will have to be considered disturbed area for contemporaneous reclamation purposes. We find that the provision, as amended, is reasonable in that it limits the exemption from the State's contemporaneous reclamation requirements for certain semi-permanent ancillary facilities to not more than 10 percent of the permitted acreage. Because the proposed revision is more restrictive and not inconsistent with the Federal regulations concerning contemporaneous reclamation at 30 CFR 816/817.100, it can be approved.

8. CSR 38–2–14.15.c.3

This provision concerns the identification of cleared and grubbed acreage that shall not be included in the calculation of disturbed area. This provision is amended by adding the following language to the end of the existing provision:

the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.

As amended, this provision provides as follows:

14.15.c.3. Areas containing 30 aggregate acres or less which have been cleared and grubbed and have the appropriate drainage control (temporary or permanent) installed and certified, and which will become a part of the operational area within six months or less. Failure to incorporate these areas into the operational area within six months may result in the loss of this exemption; the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.

The purpose of the amendment is to enable the Secretary of WVDEP to allow coal operators to clear (i.e., cut only, not grub) trees on areas larger than 30 acres. The State is trying to protect the Indiana bat and other endangered plant and animal species by minimizing habitat loss at certain times of the year, notably mating season. By allowing larger areas to be timbered and still have the reclamation be considered contemporaneous, the WVDEP hopes to discourage clear cutting operations prior to getting permits, when the practices are not subject to SMCRA's environmental protections and may affect wildlife at critical times. Once permits are issued, operators cannot timber at certain times of the year when certain endangered or threatened species are breeding.

Under SMCRA, the issuance of a SMCRA permit by the State is not considered an action under NEPA. Appendix 8 of the U.S. Department of the Interior Manual provides that "[p]ermit applications under approved State programs are excluded from NEPA compliance." January 19, 1981; 46 FR 2316. In addition, individual States have no authority to require compliance with NEPA and, therefore, the State's proposed reference to NEPA has no effect on the West Virginia program. We find that because the proposed reference to NEPA is a nullity and has no practicable effect on the West Virginia program, we are not rendering a decision on the proposed language. Because we are not rendering a decision on the proposed language, this requirement is not part of the approved West Virginia program. To avoid confusion in the future, we recommend that this language be removed from these rules.

9. CSR 38–2–14.15.c.4

This provision has been deleted in its entirety in the revised rule authorized with the passage of Senate Bill 2002. Prior to being deleted, this provision provided that the following area would not be included in the calculation of disturbed area:

14.15.c.4. Areas that have been cleared and grubbed which exceed the thirty aggregate acres and/or those which will not be included in the operational area within six months may be excluded if the appropriate temporary or permanent drainage control structures are installed and certified and have temporary vegetative cover established; and

We find that the deletion of this provision, which provides an exemption for areas that have been cleared and grubbed from the contemporaneous reclamation requirements, does not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.100 concerning contemporaneous reclamation and can be approved.

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10. CSR 38–2–14.15.d

CSR 38–2–14.15.d., concerning Applicability, has been deleted, relocated to subdivision 14.15.e., and revised (see below). New subdivision 14.15.d. concerns excess spoil disposal fills, and provides as follows:

14.15.d. Excess Spoil Disposal Fills. All fills must be constructed contemporaneously and contiguously with that segment of the operations that contains the material that is designated to be placed in the fill. In addition to all other standards in effect, the following shall apply to excess spoil disposal fills.

14.15.d.1. All fills must be planned for continuous material placement until designed capacity is reached and cannot have a period of inactivity that exceeds 180 days unless otherwise approved by the secretary on a permit specific basis to accommodate AOC+, post-mining land use or special material handling situations.

14.15.d.2. The areas where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in 14.15.c.2.

14.15.d.3. Operations that propose fills that are designed to use single lift top-down construction shall bond the proposed fill areas based upon the maximum amount per acre specified in WV Code 22–3–12(c)(1).

At subdivision 14.15.d, the proposed provision adds a requirement that all excess spoil disposal fills must be constructed contemporaneously and contiguously with that portion of the operation that contains the material that is to be placed in the fill. This provision is to ensure that the construction of excess spoil disposal fills will be done simultaneously with the mining operation. We note that under proposed subdivision 14.15.a.2, discussed above, the mining and reclamation operations plans submitted with each permit application must include a detailed site-specific description of the timing, sequence, and areal extent of each progressive phase of proposed mining and reclamation operations. This information and these requirements should enable the regulatory authority to ensure more timely construction and reclamation of excess spoil fills.

Subsection 14.15.d.1 provides that both the conventional and end-dump fills must be planned for continuous material placement until design capacity is reached and cannot have a period of inactivity exceeding 180 days. We interpret the latter provision to mean that inactivity during fill construction cannot exceed 180 continuous days. This subdivision also provides for permit-specific waiver of the 180-day criterion, on a permit specific basis, to accommodate AOC+, postmining land use, or special material handling situations. Prior to this proposed provision, there was no time limit on the construction and reclamation of fills. While the proposal does allow for a waiver to the 180-day criterion, it may only be granted on a permit-specific basis.

Subsection 14.15.d.2 provides that the areas where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in subsection 14.15.c.2. Subsection 14.15.c.2 provides that fills that are constructed using conventional methods (constructed in lifts from the toe up) shall not be included in the calculation of disturbed area. Therefore, under subsection 14.15.d.2, areas where contour mining is proposed within the confines of the fill are not eligible to be excluded from the calculation of disturbed area, and are not exempt from the State's contemporaneous reclamation requirements.

Subsection 14.15.d.3 provides that bonds for areas with single lift, top down constructed fills are to be set at the maximum amount per acre ($5 thousand per acre). These fills are often referred to as end-dump fills. Increasing the bond on such fills to the maximum amount will protect the State's special reclamation fund should an operator forfeit the bond and fail to complete reclamation of end-dump fill areas. We note that there is a typographical error in this provision. The site-specific bond amount per acre is specified at W. Va. Code 22–3–12(b)(1), not 12(c)(1) as specified in this provision.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). The remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. We find that because the proposed excess spoil fill provisions at CSR 38–2–14.15.d., d.1, d.2 and d.3 enhance the State's contemporaneous reclamation standards and are not inconsistent with the Federal regulations at 30 CFR 816/817.100, they can be approved.

11. CSR 38–2–14.15.e

This subdivision, which concerns applicability, has been relocated from subdivision 14.15.d., and has been revised. As amended, subdivision 14.15.e. provides as follows:

14.15.e. Applicability. Permit applications pending approval on the first day of January, two thousand three, shall within 120 days of permit approval have a mining and reclamation plan which is consistent with the criteria set forth in this subdivision. Permit applications which are submitted after the first day of January, two thousand three shall not be issued a permit without a mining and reclamation plan which is consistent with the criteria set forth in this subdivision.

14.15.e.1. After the first day of January, two thousand three, the mining and reclamation plan for all active mining operations must be consistent with the applicable time criteria set forth in this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary's approval.

14.15.e.2. After the first day of January, two thousand three, the mining and reclamation plan for mining operations which have approved inactive status or when permits have been issued but the operation has not started must be consistent with the applicable time criteria of this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary's approval.

14.15.e.3. The Secretary may consider contemporaneous reclamation plans on multiple permitted areas with contiguous areas of disturbance to ensure that contemporaneous reclamation is practiced on a total operational basis. In order to establish a method of orderly transition between operations, plans submitted on multiple permitted areas cannot add allowable disturbed areas in such a manner as to result in increased disturbed areas on a single operation unless a variance is obtained pursuant to subdivision 14.15.g.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, these provisions provide reasonable time limits for compliance with these revised contemporaneous reclamation regulations. Therefore, we find that the provisions at CSR 38–2–14.15.e. are not inconsistent with and do not render the West Virginia program less effective than the Federal regulations at 30 CFR 700.11 can be approved.

12. CSR 38–2–14.15.g

This provision, concerning variance, was formerly subdivision 14.15.f. and has been recodified and amended by two deletions, and by adding a requirement to comply with the requirements of subsection 3.32 concerning permit issuance findings, to provide as follows:

14.15.g. Variance—Permit Applications. The Secretary may grant approval of a mining and reclamation plan for a permit which seeks a variance to one or more of the standards set forth in this subsection, if on the basis of site specific conditions and sound scientific and/or engineering data, the applicant can demonstrate that compliance with one or more of these standards is not technologically or economically feasible. The Secretary shall make written findings in accordance with the applicable provisions of section 3.32 of this rule when granting or denying a request for variance under this section.

We find that the recodification and amendment of this provision does not render the provision less effective than the Federal regulations at 30 CFR 816/817.100 and can be approved, except as follows.

The State deleted from preexisting subdivision 14.15.f. a provision that required that the amount of bond for an operation that requests a variance to one or more of the standards set forth in subsection 14.15 concerning contemporaneous reclamation shall be based on the maximum amount per acre specified in W. Va. Code 22–3–12(c)(1). We initially announced the approval of the State contemporaneous reclamation requirements in the **Federal Register** on February 21, 1996 (61 FR 6525). Since then, the State statute has been amended and the site-specific bonding amounts are now set forth at W. Va. Code 22–3–12(b)(1), not 12(c)(1).

On August 18, 2000, OSM approved in the **Federal Register** the revision to subdivision 14.15.f. which requires the maximum amount of bond for operations that request variances to the State's contemporaneous reclamation standards (65 FR 50409, 50424). In approving the requirement, we noted that the proposed change is to ensure that the bond amount will be sufficient to complete the reclamation plan of a revoked permit with a contemporaneous reclamation variance in the event of bond forfeiture. The effect of eliminating the requirement for the maximum bond amount on operations requesting variances will increase the risk of liability on the State's alternative bonding system (ABS) in the event of bond forfeiture. The State's ABS is funded by a special reclamation tax on each ton of coal mined, plus a site-specific bond that can range from $1,000 to $5,000 per acre.

On May 29, 2002, OSM concluded that recently approved changes to the West Virginia program (66 FR 67446; December 28, 2001) had satisfied a required program amendment concerning the State's ABS (67 FR 37610). The required amendment, codified at 30 CFR 948.16(lll), required that the West Virginia program be amended to eliminate the deficit in the State's ABS and to ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites. The State's amendments that we approved on December 28, 2001, included an increase in the special reclamation tax from 3 cents per ton of clean coal mined to 7 cents per ton, plus an additional 7 cents per ton would be levied for up to 39 months. In addition, the State created the Special Reclamation Fund Advisory Council (Advisory Council) to monitor the special reclamation fund and bond forfeiture obligations to ensure "the effective, efficient and financially stable operation of the special reclamation fund." One of the main tasks of the Advisory Council is the elimination of the ABS deficit. It must also ensure that the special reclamation fund remains solvent once the deficit is eliminated. It appears to us that the proposed deletion of the requirement to require maximum bond per acre for operations seeking a variance from one or more of the contemporaneous reclamation requirements at subsection 14.15 inappropriately increases the risk of liability to the ABS in the event of bond forfeiture.

As we discussed in the May 29, 2002, **Federal Register** notice, with respect to future reclamation obligations, the Advisory Council has an obligation under State Law to monitor the special reclamation fund, address funding-related issues, and recommend measures to ensure the long-term solvency of the special reclamation fund. We find that the proposed deletion is an example of an action that could adversely affect the ABS and that should be reviewed by the Advisory Council to determine its potential effect on the solvency of the ABS. Therefore, we are deferring decision on the proposed deletion of the requirement to impose the maximum bond amount of $5,000 per acre on operations seeking a variance from one or more of the provisions of subsection 14.15. We will reconsider this proposed deletion after such time as the Advisory Council has assessed the potential impact of the proposed deletion and rendered its opinion to the State Legislature and Governor.

Paragraph 14.15.g lacks the transition sentence contained in former paragraph 14.15.f, which stated that "[t]he variance request shall be in writing and must contain the following elements." Without such a transition sentence, paragraphs 14.15.g.1 through g.5. do not flow logically from the introductory paragraph and do not require that the variance request be in writing. We assume that deletion of the last sentence of former paragraph 14.15.f. was inadvertent. We recommend that the State add the quoted sentence at the end of CSR 38–2–14.15.g. or otherwise amend subsection 14.15.g to improve its clarity and to ensure that the variance request be in writing. The addition of the deleted language will also ensure consistency with subdivision 14.15.h.

13. CSR 38–2–14.15.g.2

This provision identifies part of the required elements for a variance requested under subdivision 14.15.g. This provision was amended by adding the phrase "including a discussion and feasibility analysis of alternatives that were considered" at the end of this provision. As amended, subdivision 14.15.g.2 provides as follows:

14.15.g.2. A statement with supporting documentation and scientific and/or engineering data which describes how site specific conditions make compliance with the standard(s) technologically or economically infeasible, including a discussion and feasibility analysis of alternatives that were considered.

The additional requirement of a discussion and feasibility analysis of alternatives that were considered by the operator in evaluating the contemporaneous reclamation standards should provide the regulatory authority with additional information necessary to help determine whether a variance is justified. We find that the provision does not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.100 and can be approved.

14. CSR 38–2–14.15.g.5

This provision was added by House Bill 4163 and then deleted in its entirety in the revised rule authorized with the passage of Senate Bill 2002. Prior to being deleted, the provision provided the following:

14.15.g.5. A detailed economic analysis including a discussion and feasibility analysis of possible alternatives that were considered must be submitted for variance requests that use economics as the basis for the request.

The State has provided no justification for the deletion of this provision. Nevertheless, because the deleted provision was never approved by OSM, it was never part of the approved West Virginia program and our approval of its deletion is not necessary.

15. CSR 38–2–14.15.i

This provision is new and provides as follows:

14.15.i. Notwithstanding any provision of this rule to the contrary, revision of the

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mining and reclamation plan contained in a permit is required prior to any change in mining methods which would substantially affect the standards contained in this section.

In essence, the provision would require that, prior to an operator changing the method of mining that would substantially affect the contemporaneous reclamation standards, the mining and reclamation plan would have to be revised and approved by the regulatory authority. We find that this provision, which requires a permit revision for a change in mining methods that would substantially affect the State's contemporaneous reclamation standards is consistent with the Federal requirements concerning permit revisions at SMCRA section 511(a)(2) and at 30 CFR 774.13, and can be approved. We are approving this provision to the extent that any significant changes to the mining and reclamation plan would be done as a significant revision to the permit and subject to the public notice requirements as required by CSR 38–2–3.28.b.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our request for comments from the public on the proposed amendment (see Section II of this preamble).

Federal Agency Comments.

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on June 14, 2002, and August 7, 2002, we requested comments on these amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV–1314 and WV–1321, respectively). By letters dated July 11, 2002, and September 20, 2002, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded (Administrative Record Numbers WV–1320 and WV–1331). In addition, the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) responded to our request for comments on September 10, 2002 (Administrative Record Number WV–1329).

MSHA stated that it finds no changes or issues that impact upon coal miner's health and safety and that there is no conflict with MSHA regulations.

USFWS provided comments pursuant to the Fish and Wildlife Coordination Act and the Endangered Species Act. USFWS stated that the proposed exemptions at subsection CSR 38–2–14.15.c appear to be contrary to the Federal regulations at 30 CFR 701.5 concerning the definition of "disturbed area." In response, the proposed exemption at subsection CSR 38–2–14.15.c that certain areas will not be included in the calculation of disturbed area applies only to the contemporaneous reclamation standards at CSR 38–2–14.15, and not to all of the State's surface mining reclamation requirements. Furthermore, the State has a definition of disturbed area at W. Va. Code section 22–3–3(j) that has been determined to be no less effective than the Federal definition. For these reasons, we disagree that the proposed exemptions at subsection CSR 38–2–14.15.c appear to be contrary to the Federal regulations at 30 CFR 701.5 concerning the definition of "disturbed area."

USFWS stated that the meaning of language at subdivision 14.15.c.3 which states that "[t]he Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements' is unclear. This implies, USFWS stated, that NEPA documentation would have to be prepared which is required prior to Federal action. USFWS stated that the sentence should be stricken. USFWS stated that using impacts to fish and wildlife resources as a basis for gauging disturbance, these proposed exemptions from inclusion as disturbed areas are particularly untenable. USFWS recommended that the proposed exemption not be approved.

In response, and for the reasons discussed above in Finding 8, we determined that the State's proposed reference to NEPA has no practicable effect on the West Virginia program. Therefore, we did not render a decision on the proposed language. However, the State will not be allowed to implement this provision as part of its approved program.

USFWS commented on language at CSR 38–2–14.15.g that allows the Secretary of the WVDEP to grant a variance of one or more of the standards set forth at CSR 38–2–14.15. Specifically, USFWS stated that removing the requirement to provide a detailed economic analysis removes the applicant's responsibility to justify a variance based on economic considerations. USFWS stated that under this amendment, conceivably, an applicant could be exempt from all contemporaneous reclamation requirements for any type of mining by merely claiming economic infeasibility. USFWS recommended that the provision requiring economic analysis be retained in the regulations.

In response, the USFWS comment relates to a portion of the proposed rules at CSR 38–2–14.15.g.5, that was never approved by OSM. As discussed above in Finding 14, because the proposed revision has been deleted by the State, our approval of the deletion is not necessary.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On June 14, 2002, we requested concurrence and comments from EPA on House Bill 4163 (Administrative Record Numbers WV–1313). On August 7, 2002, we requested comments from EPA on Senate Bill 2002 (Administrative Record Number WV–1321).

EPA responded by letter dated October 28, 2002 (Administrative Record Number WV–1340), concurred on the proposed amendments and provided the following comments. EPA stated that CSR 38–2–14.15.d includes a requirement that fills be constructed adjacent to the excavated area where the spoil material originates. EPA stated that it is concerned that this requirement could result in unnecessary construction of fills in waters of the United States where the excavated areas are adjacent to such waters. EPA recommended that fill optimization and minimization efforts be provided to avoid construction of fills in waters of the United States where feasible. In response, we note that this provision is only intended to encourage contemporaneous reclamation of fills. All applicable requirements of the Clean Water Act will continue to apply.

EPA also noted that mining-related discharges into waters of the United States, including excess spoil, are subject to permit requirements under the Clean Water Act. Before conducting such activities, EPA stated, the Corps of Engineers and the West Virginia Department of Environmental protection should be contacted regarding necessary permits. In response, we note that the proposed amendments do not supersede any Clean Water Act requirements. All the existing requirements of the West Virginia program continue to apply.

V. OSM's Decision

Based on the above findings, we are approving the amendments to CSR 38–2–14.15 as submitted to us on April 9, 2002 and June 19, 2002, except as indicated below.

At CSR 38–2–14.15.c.3, we are not rendering a finding on the sentence, "the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements."

At CSR 38–2–14.15.g., concerning variance-permit applications, we are deferring our decision on the proposed deletion of the following sentence, "Furthermore, the amount of bond for the operation shall be based on the maximum amount per acre specified in WV Code section 22–3–12(c)(1)."

We are not rendering a decision concerning CSR 38–2–14.15.g.5 because the deleted provision was never approved by OSM, and therefore never a part of the approved West Virginia program, and our approval of its deletion is not necessary.

CSR 38–2–14.15.i., is approved to the extent that any significant changes to the mining and reclamation plan would be done as a significant permit revision and subject to the public notice requirements as required by CSR 38–2–3.28.b.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. Our regulations at 30 CFR 732.17(h)(12) specify that all decisions approving or disapproving amendments will be published in the **Federal Register** and that they will be effective upon publication, unless the notice specifies a different date. We are making this final rule effective immediately to expedite the State program amendment process and to assist the State in making its program conform with the Federal standards as required by the Act.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various

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laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 1, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended in the table by adding a new entry in chronological order by "Date of publication of final rule" to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission dates	Date of publication of final rule	Citation/description
April 9, 2002 June 19, 2002	December 3, 2002	CSR 38–2–14.15.a.1, a.2; b.5; b.6.A, b.6.B.1; c, c.1, c.4; d, d.1, d.2, d.3; e, e.1, e.2, e.3; g (partial approval), g.2; i (qualified approval).

[FR Doc. 02–30609 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 117 and 165

[USCG–2002–13968]

Safety Zones, Security Zones, Drawbridge Operation Regulations and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between July 1, 2002 and September 30, 2002, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, drawbridge operation regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between July 1, 2002 and September 30, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LT Sean Fahey, Office of Regulations and Administrative Law, at telephone number (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation at (202) 366–5149.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Special local regulations are issued to enhance the safety to participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, drawbridge operation regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of all substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, drawbridge operation regulations, security zones, and safety zones.

Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations, drawbridge operation regulations, and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from July 1, 2002, and through September 30, 2002, unless otherwise indicated. This notice also includes rules that were not received in time to be included on the quarterly notice for the first and second quarters of 2002.

Dated: November 27, 2002.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP Quarterly Report—3rd Quarter 2002

COTP Docket	Location	Type	Effective date
Charleston 02–089	Cooper River, Port of Charleston, SC	Safety Zone	07/16/2002
Guam 02–019	F–1 Wharf, APRA, Harbor, Guam	Security Zone	07/02/2002
Huntington 02–006	Ohio River, 171.5 To 172.5, Marietta, OH	Safety Zone	07/05/2002
Jacksonville 02–078	St. John's River, Sanford, FL	Safety Zone	07/04/2002
Jacksonville 02–079	Intracoastal Waterway, Melbourne, FL	Safety Zone	07/04/2002
Jacksonville 02–080	Atlantic Ocean, Daytona Beach, FL	Safety Zone	07/04/2002
Jacksonville 02–081	Indian River, Titusville, FL	Safety Zone	07/04/2002
Jacksonville 02–082	St. Johns River, Orange Park, FL	Safety Zone	07/04/2002
Jacksonville 02–083	Indian River, Cocoa, FL	Safety Zone	07/04/2002
Jacksonville 02–084	Matanzas River, St. Augustine, FL	Safety Zone	07/04/2002
Jacksonville 02–085	St. Johns River, Jacksonville, FL	Safety Zone	07/04/2002
Jacksonville 02–086	Intracoastal Waterway, Ormond Beach, FL	Safety Zone	07/04/2002
Jacksonville 02–093	Atlantic Ocean, Cocoa Beach, FL	Safety Zone	07/22/2002
Jacksonville 02–100	St. Johns River, Atlantic Ocean, Mayport, FL	Security Zone	08/16/2002
Jacksonville 02–106	Jacksonville, FL	Safety Zone	08/29/2002
Jacksonville 02–106	St. Johns County, FL	Safety Zone	09/05/2002
LA/Long Beach 02–013	Huntington Beach, CA	Safety Zone	08/18/2002
Louisville 02–006	Ohio River, M. 602 To 604	Safety Zone	09/21/2002
Memphis 02–009	LWR Mississippi River, M. 590.5 To 592	Safety Zone	08/16/2002
Miami 02–075	Miami River, Miami, FL	Safety Zone	07/26/2002
Miami 02–092	Port Of Miami	Safety Zone	08/01/2002
Miami 02–103	Biscayne Bay, Dinner Key Channel, Fl	Safety Zone	08/26/2002
Miami 02–107	Biscayne Bay–Port of Miami, Miami FL	Security Zone	08/26/2002
Miami 02–113	Atlantic Ocean	Safety Zone	09/13/2002
Miami 02–118	Atlantic Ocean Bad Boys II Film Production	Safety Zone	09/27/2002
Mobile 02–016	Pascagoula River, Pascagoula, Mississippi	Safety Zone	09/18/2002
Mobile 02–016	Gulf Intracoastal Waterway, FL	Safety Zone	07/03/2002
Mobile 02–017	Mississippi Sound, Pascagoula, Mississippi	Safety Zone	09/16/2002
Morgan City 02–005	Atchafalaya River, Morgan City, LA	Safety Zone	09/17/2002
New Orleans 02–011	Red River, M. 227.5 To 229.5	Safety Zone	07/04/2002
New Orleans 02–012	LWR Mississippi River, M. 174.5 To 176.5	Safety Zone	07/03/2002
New Orleans 02–013	LWR Mississippi River, M. 362 To 364	Safety Zone	07/04/2002
New Orleans 02–014	Yazoo Diversion Canal, Vicksburg, MS	Safety Zone	07/04/2002
New Orleans 02–015	Casino Magic Marina, Bay St. Louis, MS	Safety Zone	07/03/2002
New Orleans 02–016	LWR Mississippi River, M. 120.5 To 122.5	Safety Zone	07/03/2002
New Orleans 02–017	LWR Mississippi River, M. 137 To 139	Safety Zone	07/03/2002
New Orleans 02–020	SW Pass Sea Buoy To Nashville Ave Wharf	Safety Zone	08/06/2002
New Orleans 02–021	Main Pass, Gulf of Mexico	Safety Zone	07/24/2002
Paducah 02–006	Upper Mississippi River, M. 52 To 53	Safety Zone	07/04/2002
Paducah 02–007	Ohio River, M. 943 To 945	Safety Zone	09/14/2002
Paducah 02–008	Tennessee River, M. 612 To 625	Safety Zone	09/15/2002
Paducah 02–009	Cumberland River, M. 190.5 To 192	Security Zone	09/17/2002
Philadelphia 02–005	Atlantic City, New Jersey	Security Zone	09/21/2002
Philadelphia 02–002	Absecon Inlet, New Jersey	Safety Zone	09/26/2002
Pittsburgh 02–014	Ohio River, M. 90 To 91	Safety Zone	07/27/2002
Pittsburgh 02–015	Monongahela River, M. 22.5 To 23.5	Safety Zone	07/27/2002
Pittsburgh 02–018	Youghiougheny River, M. 0.0 To 0.5	Safety Zone	07/25/2002
Pittsburgh 02–020	Monongahela River, M. 0.0 To 1.3	Safety Zone	08/21/2002
Pittsburgh 02–021	Allegheny River, M. 0.0 To 0.3	Safety Zone	08/31/2002
Port Arthur 02–005	Sabine Jetty Channel, Sabine, Texas	Safety Zone	07/02/2002
Port Arthur 02–006	Sabine River, Port Arthur, Texas	Safety Zone	07/23/2002
San Diego 02–008	Colorado River, Laughlin, NV	Safety Zone	07/04/2002
San Diego 02–014	North San Diego Bay, CA	Safety Zone	07/04/2002
St. Louis 02–007	Illinois River, M. 157.6 To 166.6	Safety Zone	07/04/2002
St. Louis 02–008	Missouri River, M. 29 to 27.5	Safety Zone	07/04/2002
St. Louis 02–009	Upper Mississippi River, M. 179.2 To 180	Security Zone	07/03/2002
St. Louis 02–010	Upper Mississippi River, M. 179.2 To 180	Safety Zone	07/03/2002
St. Louis 02–011	Lake City, MN	Safety Zone	07/04/2002
St. Louis 02–012	Cassville Fire Works, Cassville, WI	Safety Zone	07/20/2002
St. Louis 02–013	UPR Mississippi River, M. 496.4 To 496.6	Safety Zone	08/09/2002
St. Louis 02–014	UPR Mississippi River, M. 497.5 To 497.7	Safety Zone	08/10/2002
St. Louis 02–015	Kansas City Air Show Expo, Kansas City, Mo	Safety Zone	08/16/2002
St. Louis 02–016	UPR Mississippi River, M. 662.5 To 663.6	Safety Zone	07/10/2002
Western Alaska 02–008	Pioneer Dock, Kachemak Bay, Homer, Alaska	Security Zone	07/02/2002
Western Alaska 02–009	Resurrection Bay, Alaska	Security Zone	07/03/2002
Western Alaska 02–010	Resurrection Bay, Alaska	Security Zone	07/03/2002
Western Alaska 02–011	Resurrection Bay, Alaska	Security Zone	07/04/2002
Western Alaska 02–012	Resurrection Bay, Alaska	Security Zone	07/05/2002

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DISTRICT QUARTERLY REPORT—3RD QUARTER 2002

District docket	Location	Type	Effective date
01–02–066	Middletown, Connecticut River, CT	Safety Zone	07/04/2002
01–02–079	Orchard Beach, Long Island Sound, NY	Safety Zone	07/02/2002
01–02–080	Marblehead, Massachusetts	Safety Zone	07/03/2002
01–02–081	Triathlon Swim, Hudson River, Ulster Landing	Safety Zone	07/14/2002
01–02–086	New Jersey Pierhead, Channel, NJ	Safety Zone	07/20/2002
01–02–087	Salem, MA	Safety Zone	07/04/2002
01–02–088	Charles River Esplanade, Boston, MA	Safety Zone	07/03/2002
01–02–095	Cashman Park, Newburyport, MA	Safety Zone	08/03/2002
01–02–097	Dorchester Bay, Dorchester, MA	Safety Zone	08/03/2002
01–02–098	Prouts Neck, Scarborough, ME	Safety Zone	08/03/2002
01–02–103	Coast Guard Activities New York	Safety Zone	08/30/2002
01–02–106	Port of New York/New Jersey	Safety Zone	09/14/2002
01–02–109	Port of New York/New Jersey	Safety Zone	09/05/2002
01–02–111	Ellis and Liberty Islands, NY/New Jersey	Safety Zone	09/11/2002
01–02–112	Hudson River, Pier 25, Manhattan, NY	Safety Zone	09/24/2002
01–02–120	Port of New York/New Jersey	Safety Zone	09/10/2002
05–02–044	York River, Yorktown, Virginia	Safety Zone	07/04/2002
05–02–045	Chickahominy River, Williamsburg, Virginia	Safety Zone	07/04/2002
05–02–046	Piankatank River, Hills Bay, Mathews, VA	Safety Zone	07/04/2002
05–02–047	James River, Newport News, Virginia	Safety Zone	07/04/2002
05–02–050	Chesapeake Bay, Hampton, VA	Safety Zone	08/01/2002
05–02–051	Patuxent River, Solomons, MD	Special Local	08/10/2002
05–02–053	James River, Newport News, VA	Safety Zone	07/30/2002
05–02–056	Pamlico River, Washington, North Carolina	Special Local	08/17/2002
05–02–063	James River, Newport News, Virginia	Safety Zone	09/16/2002
05–02–069	Patapsco River, Inner Harbor, Baltimore, MD	Special Local	09/14/2002
05–02–070	Severn River and Spa Creek, Annapolis, MD	Safety Zone	09/05/2002
05–02–073	Susquehanna River, Harford County, MD	Security Zone	09/06/2002
05–02–074	Potomac River, Washington, DC	Safety Zone	09/11/2002
05–02–077	Hampton Roads, Elizabeth River, Virginia	Security Zone	09/16/2002
05–20–068	Delaware Bay and River	Safety Zone	08/15/2002
08–02–020	Mississippi River, Iowa and Illinois	Drawbridge Operation	09/22/2002
09–02–032	Milwaukee Harbor, Milwaukee	Safety Zone	07/19/2002
09–02–044	Maumee River, Toledo, Ohio	Safety Zone	07/04/2002
09–02–048	White Lake, Whitehall, MI	Safety Zone	07/04/2002
09–02–049	Lake Kalamazoo, Saugatuck, MI	Safety Zone	07/04/2002
09–02–050	Lake Michigan, Manistee, MI	Safety Zone	07/04/2002
09–02–051	Michigan City, IN	Safety Zone	07/07/2002
09–02–052	Lake Michigan, Hammond, IN	Safety Zone	07/13/2002
09–02–053	Lake Michigan, Evanston, IL	Safety Zone	07/04/2002
09–02–055	Lake Michigan, Pentwater, MI	Safety Zone	07/03/2002
09–02–057	Cleveland Harbor, Cleveland, OH	Safety Zone	07/04/2002
09–02–061	Thunderfest Powerboat Race, Detroit, MI	Safety Zone	07/11/2002
09–02–062	Lake Michigan, Michigan City, IN	Safety Zone	07/14/2002
09–02–064	Lake Michigan, Ferrysburg, MI	Safety Zone	07/20/2002
09–02–066	Lake Michigan, Michigan City, MI	Safety Zone	07/20/2002
09–02–067	Lake Michigan, St. Joseph, MI	Safety Zone	07/20/2002
09–02–069	Lake Michigan, Chicago, IL	Safety Zone	07/20/2002
09–02–070	Lake Michigan, Chicago, IL	Safety Zone	07/22/2002
09–02–071	Grand River, Grand Haven, MI	Safety Zone	07/27/2002
09–02–072	Kalamazoo Lake, Saugatuck, MI	Safety Zone	07/02/2002
09–02–073	Lake Michigan, Chicago, IL	Safety Zone	07/27/2002
09–02–074	Grand River, Grand Haven, MI	Safety Zone	07/30/2002
09–02–075	Hammond Marina, Hammond, IN	Safety Zone	08/03/2002
09–02–502	Buffalo River, Buffalo, NY	Safety Zone	08/01/2002
09–02–507	Lake Erie, Buffalo, NY	Safety Zone	08/08/2002
09–02–514	Kalamazoo Lake, Saugatuck, MI	Safety Zone	08/31/2002
09–02–516	Detroit Ambassador Bridge	Security Zone	09/09/2002
09–02–517	Detroit Renaissance Waterfront Area	Security Zone	09/09/2002
09–02–518	Illinois River, Morris, IL	Safety Zone	09/26/2002
13–02–013	Puget Sound, Washington	Security Zone	08/12/2002
13–02–014	Portland International Airport	Security Zone	08/22/2002

REGULATIONS NOT ON PREVIOUS 1ST AND 2ND QUARTERLY REPORT

District/COTP	Location	Type	Effective date
District regulation for 1st quarter.			

REGULATIONS NOT ON PREVIOUS 1ST AND 2ND QUARTERLY REPORT—Continued

District/COTP	Location	Type	Effective date
05–02–005 COTP regulations for 2nd quarter.	Hampton Roads James River, VA	Safety zone	02/20/02
Guam 02–007	COCOS Swim, COCOS Lagoon Guam	Safety zone	05/26/02
Guam 02–013	Commonwealth Port Authority, Saipan	Security zone	05/06/02
Guam 02–014	Commonwealth Port Authority, Saipan	Security zone	05/08/02
Guam 02–015	Port Authority of Guam	Security zone	05/07/02
Guam 02–016	Port Authority of Guam	Security zone	05/07/02
Guam 02–017	APRA Harbor, (Hotel Wharf) Guam	Security zone	05/28/02
Jacksonville 02–076	Indian River, New Smyrna Beach, FL	Safety zone	06/29/02
Memphis 02–008	LWR Mississippi River, M. 0 TO 3	Safety zone	06/08/02
Mobile 02–007	Bayou Casotte, Mississippi	Safety zone	04/14/02
Mobile 02–008	Highway 90 Bridge, Pascagoula River, MS	Safety zone	04/26/02
Mobile 02–009	Bayou Casotte, Mississippi	Safety zone	04/22/02
New Orleans 02–018	Almonaster Bridge, New Orleans, LA	Safety Zone	06/25/02
New Orleans 02–019	Mississippi Rive Gulf Outlet Channel	Safety Zone	06/24/02
Tampa 02–064	Tampa Bay, Florida	Security zone	06/27/02

[FR Doc. 02–30617 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 501

Authorization to Manufacture and Distribute Postage Meters; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: The Postal Service published in the **Federal Register** of November 18, 2002, a final rule amending the regulations for inspecting postage meter production facilities that are located outside the continental United States. Inadvertently, some paragraphs of the regulation were designated incorrectly.

DATES: This correction is effective November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager of Postage Technology Management, at 703–292–3782, or by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: In the final rule published in the **Federal Register** of November 18, 2002 (67 FR 69478–69479), two paragraphs in section 501.2 were designated incorrectly.

§ 501.2 [Corrected]

On page 69479, in the first column, the paragraph designated as (c)(i) should be correctly designated as (c)(1), and in the second column the paragraph designated as (c)(ii) should be correctly designated as (c)(2).

Dated: November 18, 2002.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–30650 Filed 12–2–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7416–3]

Withdrawal of Certain Federal Human Health and Aquatic Life Water Quality Criteria Applicable to Vermont, the District of Columbia, Kansas and New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In 1992, EPA promulgated Federal regulations establishing water quality criteria for toxic pollutants for twelve States and two territories (hereafter "States"), including Vermont, the District of Columbia, Kansas and New Jersey. These States have now adopted, and EPA has approved, human health and aquatic life water quality criteria for many of these pollutants. In today's action, EPA is amending the Federal regulations to withdraw certain human health and aquatic life water quality criteria applicable to these States. EPA published the proposal to this rulemaking in the **Federal Register** on March 26, 2001 and provided an opportunity for public comment on the proposed withdrawal of the criteria, because the States adopted certain criteria less stringent than the promulgated Federal criteria. Seven comments were received, but no changes were made to the proposed rulemaking and EPA is finalizing the proposed withdrawal.

In addition, New Jersey adopted, and EPA approved, additional water quality criteria no less stringent than the promulgated Federal criteria. EPA is withdrawing these criteria without notice and comment rulemaking because New Jersey's adopted criteria are no less stringent than the promulgated Federal criteria.

DATES: This final rule is effective January 2, 2003.

ADDRESSES: The administrative record for this action in Vermont is available for public inspection at EPA Region 1, Office of Water, 1 Congress Street, Suite 1100, Boston MA 02114–1505 during normal business hours of 9 a.m. to 5 p.m. The administrative record for today's action in the District of Columbia is available at EPA Region 3, Water Protection Division, 1650 Arch Street, Philadelphia PA 19103–2029 during normal business hours of 9 am to 5 pm. The administrative record for today's action in Kansas is available for public inspection at EPA Region 7, Water, Wetland and Pesticides Division, 901 North 5th Street, Kansas City, Kansas 66101 during normal business hours of 8 a.m. to 4:30 p.m. The administrative record for today's action in New Jersey is available for public inspection at EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 during normal business hours of 8 a.m. to 4:30 p.m.

Comments and EPA's Response to Comments document are also available for review at EPA Headquarters under docket number W–00–23. These records are available for inspection and copying from 8:30 a.m. to 4:30 p.m., excluding

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legal holidays at the Water Docket, U.S. EPA, EPA West, 1301 Constitution Ave NW, Room B135, Washington, DC 20460. For access to Docket Materials, please call (202) 566–2426 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Thomas J. Gardner at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave NW., Washington, DC, 20460 (tel: 202–566–0386, fax 202–566–0409) or e-mail *gardner.thomas@epa.gov*. Alternatively, for questions regarding Vermont, contact Bill Beckwith in EPA's Region 1 at 617–918–1544; for questions regarding the District of Columbia, contact Garrison Miller in EPA's Region 3 at 215–814–5745; for questions regarding Kansas, contact Ann Jacobs in EPA's Region 7 at 913–551–7930; and for questions regarding New Jersey, contact Wayne Jackson in EPA's Region 2 at 212–637–3807.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

No one is regulated by this rule. This rule merely withdraws certain Federal water quality criteria applicable in these States.

Background

In 1992, EPA promulgated a final rule (known as the "National Toxics Rule", or "NTR") to establish numeric water quality criteria for 14 States that had not complied fully with section 303(c)(2)(B) of the Clean Water Act ("CWA") (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 States for all purposes and programs under the CWA effective February 5, 1993.

When a State adopts and EPA approves water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR to withdraw its criteria. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment on the criteria is unnecessary. However, if a State adopts criteria that are less stringent than the Federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will withdraw the Federally promulgated criteria after notice and opportunity for public comment. (see 57 FR 60860)

In today's action, EPA is amending the Federal regulations to withdraw certain human health and aquatic life criteria applicable to these States. In addition, this action makes certain nonsubstantive revisions to the regulatory language at 40 CFR 131.36 to reflect format changes in water quality standards that have occurred in the corresponding State regulations cited at 40 CFR 131.36.

Vermont

On July 12, 1994, Vermont adopted revisions to its surface water quality standards (Appendix C, *Vermont Water Quality Standards*, effective August 1, 1994). EPA Region 1 approved the State's adoption of criteria for all toxics contained in the NTR on December 5, 1996, because they are consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 1 requested that the Agency withdraw the Federal criteria applicable to Vermont for which the State now has numeric criteria.

In an earlier action, EPA withdrew Vermont from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria (see 65 FR 19659, April 12, 2000). Today's action addresses an arsenic criterion Vermont adopted that is less stringent than the corresponding Federal criteria in the NTR, but that nonetheless meets the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. In reviewing Vermont's submission, EPA Region 1 concluded that the State's calculation of the arsenic human health criterion for the consumption of fish (organisms only) of 1.5 µg/L was scientifically defensible. EPA published a proposed rule to remove this criterion in the **Federal Register** on March 26, 2001 (66 FR 1643) and provided an opportunity for public comment, because the State's adopted criterion was less stringent than the promulgated Federal criterion. No changes were made to the proposed rulemaking, and EPA is finalizing the proposed withdrawal as to Vermont. For a copy of the comments received and EPA's responses, please see the "Response to Comments" document in the administrative record for this rulemaking. Today's rule removes the arsenic human health criterion for the consumption of fish (organisms only) applicable to Vermont. Today's rule leaves in place the Federal continuous concentration criterion of 0.08 µg/L for gamma-BHC (Lindane). The current adopted State criterion for this pollutant is apparently the result of a transcription error resulting in a criterion 10 times higher than the promulgated Federal criterion. EPA will initiate action to withdraw the Federally promulgated criterion for this pollutant when the State corrects the error in its standards.

District of Columbia

On March 4, 1994, the District of Columbia adopted revisions to its surface water quality standards [amended Chapter 11 of Title 21 DCMR pursuant to the authority set forth in Section 5 of the Water Pollution Control Act of 1984, D.C. Law 5–188, effective March 16, 1985, D.C. Code Section 6–924 (1988) and Mayor's Order 85–152], adopting human health criteria to protect from effects related to fish consumption and removing the emergency public water supply use designation previously identified for a segment of the Potomac River. EPA Region 3 approved these revisions on November 4, 1996 and April 18, 2000, because the revisions were consistent with the CWA and EPA's implementing regulations at 40 CFR Part 131.11.

For those waters that did not have the previously-designated emergency public water supply use designation, EPA has already acted. That is, EPA withdrew the District of Columbia from the NTR for human health criteria for the consumption of fish (organism only) because the District adopted criteria that are no less stringent than the Federal criteria (see 65 FR 19659, April 12, 2000). For those waters that did have the previously-designated emergency supply use, EPA Region 3 requested that the Agency withdraw the Federal human health criteria applicable to the District.

Today's action withdraws the District from the NTR for human health criteria corresponding to the previously designated emergency public water supply use. The District removed this use and therefore has no need for human health criteria for water and organisms. EPA published a proposed rule to remove these criteria in the **Federal Register** on March 26, 2001 (66 FR 1643) and provided an opportunity for public comment, because the removed Federal criteria were not replaced by District criteria. No changes were made to the proposed rulemaking, and EPA is finalizing the proposed withdrawal as to the District of Columbia. For a copy of the comments received and EPA's responses, please see the "Response to Comments" document in the administrative record for this rulemaking.

Kansas

On June 28, 1994, Kansas adopted revisions to its water quality standards (K.A.R. 28–16–28) regarding both human health and aquatic life criteria, and submitted them to EPA Region 7 for review and approval on October 31, 1994. On February 19, 1998, EPA Region 7 approved certain new or revised water quality criteria for the protection of human health and aquatic life because they are consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 7 requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria. Also, on June 29, 1999, Kansas adopted new and revised ambient water quality criteria for additional pollutants. They were submitted to EPA for review and approval on August 10, 1999. On January 19, 2000, EPA Region 7 approved these additional criteria because they are also consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 7 requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria.

In an earlier action, EPA withdrew Kansas from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria. (See 65 FR 19659, April 12, 2000) Today's action addresses arsenic and cadmium criteria Kansas adopted that are less stringent than the corresponding criteria in the NTR, but that nonetheless meet the requirements of the CWA and EPA's implementing regulation at 40 CFR 131.11. In reviewing Kansas's submission, EPA Region 7 concluded that the State's calculation of an arsenic human health criteria for the consumption of fish (organisms only) of 20.5 µg/L was scientifically defensible; that the State's calculation of a cadmium freshwater aquatic life criteria (Criteria Maximum Concentration) of 4.5 µg/l was scientifically defensible; that the State's calculation of a cadmium freshwater aquatic life criteria (Criteria Continuous Concentration) of 2.5 µg/L was scientifically defensible, and that these criteria meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA published a proposed rule to remove these criteria in the **Federal Register** on March 26, 2001 (66 FR 1643) and provided an opportunity for public comment, because the States' adopted criteria were less stringent than the promulgated Federal criteria. No changes were made to the proposed rulemaking, and EPA is finalizing the proposed withdrawal as to Kansas. For a copy of the comments received and EPA's responses, please see the "Response to Comments" document in the administrative record for this rulemaking. Today's rule removes the Federal human health criteria for the consumption of fish (organisms only) for arsenic and the Federal freshwater acute and chronic cadmium criteria for Kansas.

New Jersey

On August 4, 1994, New Jersey submitted to EPA Region 2 revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life and human health criteria. New Jersey adopted aquatic life and human health criteria for many of the toxic pollutants contained in the NTR and reorganized certain designated use classifications and requirements pertaining to the Delaware River and Bay. EPA Region 2 approved the State's criteria (with the exception of the State's PCB human health criteria) on March 17, 2000, because New Jersey's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 2 requested that the Agency withdraw the Federal criteria applicable to New Jersey for which the State now has numeric criteria.

For certain pollutants, New Jersey adopted water quality criteria for aquatic life and human health that are less stringent than the promulgated Federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA published a proposed rule to remove these criteria in the **Federal Register** on March 26, 2001 (66 FR 1643) and provided an opportunity for public comment because the State's adopted criteria were less stringent than the promulgated Federal criteria. No changes were made to the proposed rulemaking, and EPA is finalizing the proposed withdrawal as to New Jersey. For a copy of the comments received and EPA's responses, please see the "Response to Comments" document in the administrative record for this rulemaking. Today's rule removes the Federal criteria for these pollutants in New Jersey.

In addition, EPA is removing the Federal criteria for a number of pollutants for which New Jersey has adopted water quality criteria for aquatic life and human health that are no less stringent than the promulgated Federal criteria. EPA has determined that New Jersey's criteria are no less stringent than the promulgated Federal criteria either because they are identical, identical when rounded using conventional rounding techniques, or more stringent than the promulgated Federal criteria. Today's rule removes the promulgated Federal criteria for these pollutants without notice and comment rulemaking because additional comment on the criteria is unnecessary (see 57 FR 60860). Section 553 of the Administrative Procedure Act, U.S.C. 553(b)(B) provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and opportunity for public comment. EPA has determined that there is good cause for removing the Federal criteria for these pollutants without prior proposal and opportunity for public comment because EPA has determined that if a State's adopted and approved criteria are no less stringent than the promulgated Federal criteria, additional comment on the criteria is unnecessary. EPA finds that this constitutes good cause for issuing a final rule removing the Federal criteria for these pollutants without notice and comment. A list of the Federal criteria which had been promulgated for New Jersey by the NTR and are being removed by today's action is included in the Docket for this rulemaking.

In 1994, New Jersey reorganized certain use classification requirements pertaining to the Delaware River and Bay, including a definition of the appropriate points of application for criteria in these waters. EPA is making corresponding revisions to 40 CFR 131.36(d)(3) to be consistent with the State regulations that the Federal regulations are intended to augment. In addition, on November 9, 1999, EPA amended the NTR criteria for PCBs-human health (columns D1 and D2 of the table at 40 CFR 131.36) to provide for a total criteria for this pollutant, in lieu of criteria for individual isomers (see 64 FR 61181). EPA is making corresponding revisions to 40 CFR 131.36(d)(3) to be consistent with this change. These changes do not result in any substantive changes to the Federal criteria applicable to New Jersey. These revisions clarify the existing Federal regulations.

Statutory and Executive Order Review

Executive Order 12866—Regulatory Planning and Review

This action withdraws Federal requirements applicable to Vermont, the District of Columbia, Kansas and New Jersey and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary

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impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 because it is administratively withdrawing Federal requirements that no longer need to apply to Vermont, the District of Columbia, Kansas and New Jersey.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

Executive Order 13132—Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments. This rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000).

Executive Order 13045—Protection of Children from Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Executive Order 13211—Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule does not involve technical standards.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2) and will be effective on January 2, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

1. Section 131.36 is amended by:

a. Revising the table in paragraph (d)(2)(ii).

b. Revising the table in paragraph (d)(3)(ii).

c. Revising the table in paragraph (d)(5)(ii).

d. Revising the table in paragraph (d)(9)(ii).

The revisions read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act Section 303(c)(2)(B).

(d) * * *

(2) * * *

(ii) * * *

Use classification	Applicable criteria
1. Classes A1, A2, B1, B2, B3	These classification are assigned the criterion in: Column B2—#105.

* * * * * (ii) * * *

(3) * * *

Use classification	Applicable criteria
1. Freshwater Pinelands, FW2	These classifications are each assigned the criteria in: i. Column B1—#2, 4, 5a, 5b, 6–11, 13. ii. Column B2—#2, 4, 5a, 5b, 6–10, 13. iii. Column D1— #125b at a 10^{-6} risk level. iv. Column D2—#125b at a 10^{-6} risk level. v. Column D2—#23, 30, 37, 42, 87, 89, 93 and 105 at a 10^{-5} risk level.
2. PL (Saline Water Pinelands), SE1, SE2, SE3, SC, Delaware Bay Zone 6.	These classifications are each assigned the criteria in: i. Column C1—#2, 4, 5b, 6–11, 13. ii. Column C2—#2, 4, 5b, 6–10, 13. iii. Column D1— #125b at a 10^{-6} risk level. iv. Column D2—#125b at a 10^{-6} risk level. v. Column D2—#23, 30, 37, 42, 87, 89, 93 and 105 at a 10^{-5} risk level.
3. Delaware River Zones 1C, 1D, 1E, 2, 3, 4, and 5	i. Column B1—none. ii. Column B2—none. iii. Column D1—none. iv. Column D2—none.
4. Delaware River Zones 3, 4, and 5	These classifications are each assigned the criteria in: i. Column C1—none. ii. Column C2—none. iii. Column D2—none.

* * * * * (ii) * * *

(5) * * *

Use classification	Applicable criteria
1. Class C	This classification is assigned the additional criteria in: Column B2; #10, 118, 126.

* * * * * (ii) * * *

(9) * * *

Use classification	Applicable criteria
1. Sections (2)(A), (2)(B), (2)(C), (4)	These classifications are each assigned criteria as follows: i. Column B1, #2. ii. Column D2, #12, 21, 29, 39, 46, 68, 79, 81, 86, 93, 104, 114, 118.
2. Section (3)	This classification is assigned all criteria in: Column D1, all except #1, 9, 12, 14, 15, 17, 22, 33, 36, 39, 44, 75, 77, 79, 90, 112, 113, and 115.

* * * * *

[FR Doc. 02–30599 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0278; FRL–6824–2]

Pesticides; Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food-Contact Surface Sanitizing Solutions)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to add a new section to part 180 which lists the pesticide chemicals that are exempt from the requirement of a tolerance when used in food-contact surface sanitizing solutions. The initial list of exempt pesticide chemicals in the new section is duplicated from the Food and Drug Administration's (FDA) regulations in 21 CFR 178.1010. EPA is also changing FDA's naming

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conventions for some of the chemical substances that were duplicated.

Until recently, FDA under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 409, regulated food-contact surface sanitizing solutions. With the amendments to FFDCA by the Food Quality Protection Act (FQPA) of 1996 and by the Antimicrobial Regulation Technical Corrections Act (ARTCA) of 1998, these responsibilities have been restructured. Under FFDCA section 408, EPA will now regulate the pesticide uses of these chemical substances and FDA under FFDCA section 409 will continue to regulate any indirect food additive uses of these chemical substances.

Registrants of existing food-contact surface sanitizing solutions that contain chemical substances other than those listed in this direct final rule should identify these chemical substances and support their claim that the chemical substance is generally recognized as safe (GRAS), or permitted by FDA prior sanction, or approval, or subject to a letter of no objection in order to remain exempt from the requirement of a FFDCA section 408 tolerance.

DATES: This direct final rule is effective on April 2, 2003 without further notice, unless EPA receives a relevant adverse comment by February 3, 2003. If, however, EPA receives a relevant adverse comment during the comment period, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. We will also publish a notice of proposed rulemaking in a future issue of the **Federal Register**. We will address the comments on the direct final rule as part of that notice of proposed rulemaking.

Registrants should submit chemical substances not listed in this document and support their claims of GRAS, or prior sanction, or approval, or no objection of these chemical substances on or before June 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Registrants identifying chemical substances not listed in this document and the supporting documentation for their claims of GRAS, or prior sanction, or approval, or no objection of these chemical substances for inclusion in 40 CFR 180.940 should submit the information directly to the person listed under **FOR FURTHER INFORMATION.** Identification of a chemical substance is not a comment and should be identified as "Submission of Non-designated Prior Approved Chemical Substance."

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a food manufacturer, or antimicrobial pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry Producers	311 32561	Food manufacturing Antimicrobial pesticides

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0278. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly

available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0278. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0278. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0278.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0278. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

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II. Authority

A. What is the Agency's Authority for Taking this Action?

This direct final rule is issued under FFDCA section 408, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), and ARTCA (Public Law 105–324).

Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Section 408(j)(2) of FFDCA provides that all regulations issued by FDA under FFDCA section 409 that stated conditions for safe use of substances that are now, post-FQPA, considered pesticide chemical residues in or on processed food or that otherwise stated the conditions under which such pesticide chemicals could be safely used, shall be deemed to be regulations issued under FFDCA section 408.

Due to the FQPA and ARTCA amedments to FFDCA, those chemical substances originally regulated by FDA under FFDCA section 409 as food-contact surface sanitizing solutions are now the responsibility of EPA. These pesticide chemicals are now subject to modification or revocation at EPA's initiative under FFDCA section 408(e). This direct final rule duplicates those chemical substances found in 21 CFR 178.1010 which are now pesticide tolerance exemptions to 40 CFR 180.940.

EPA's rulemaking activity will have no effect on any of the FDA regulated FFDCA section 409 food additive regulations in 21 CFR 178.1010.

B. Why is EPA Issuing this as a Direct Final Rule?

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and is not likely to result in any adverse comments, inasmuch as this action simply implements amendments to the statutory authority and reflects the statutory transfer of jurisdiction from FDA to EPA. Its primary effect is to substitute EPA's regulatory procedures for those of FDA in approving food-contact surface sanitizing solutions under FFDCA. The chemical substances were subject to FDA review under FFDCA section 409 and have food additive clearances codified at 21 CFR 178.1010. This direct final rule duplicates the conditions for use of certain pesticide chemical residues that are currently listed in 21 CFR 178.1010 to 40 CFR 180.940. In addition, this direct final rule changes the process by which pesticide registrants obtain approval of food-contact surface sanitizing solutions as well as how those approvals are expressed in the CFR. However, it does not alter the quantity or nature of residues of these food-contact surface sanitizing solutions that might lawfully be present in food. The Agency believes that it is important to make this action effective as soon as possible, in order to clarify the jurisdiction between EPA and FDA over these chemical substances.

This direct final rule is effective on April 2, 2003 without further notice, unless EPA receives a relevant adverse comment by February 3, 2003. If, however, EPA receives a relevant adverse comment during the comment period, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. We will also publish a notice of proposed rulemaking in a future issue of the **Federal Register**. We will address the comments on the direct final rule as part of that notice of proposed rulemaking.

III. Summary of this Action

A. Why is There an Overlap of EPA's and FDA's Regulatory Authorities?

Since EPA was created in 1970, EPA and FDA have shared authority under FFDCA over pesticide chemical residues in food. Enactment of FQPA in 1996 amended FFDCA, and shifted to EPA regulatory authority over certain pesticide residues which were previously subject to FDA authority. Prior to 1996, products used to sanitize or disinfect permanent or semi-permanent food-contact surfaces were regulated by FDA as indirect food additives under FFDCA section 409. Under the FQPA and ARTCA amendments to FFDCA, antimicrobial formulations used on permanent or semi-permanent food-contact surfaces other than food packaging are now considered "pesticide chemicals" and are regulated by EPA under FFDCA section 408.

FQPA added a provision to FFDCA to assure an orderly transition to the new regulatory system. Section 408(j)(2) of FFDCA provides that all food additive regulations issued under FFDCA section 409 prior to the enactment of FQPA for antimicrobial uses that became pesticide chemical uses subsequent to FQPA and that were not affected by ARTCA shall be deemed to be regulations issued under FFDCA section 408. Thus, FQPA converted existing food additive regulations issued by FDA under FFDCA section 409, for chemical substances that post-FQPA became pesticide chemicals, into FFDCA section 408 pesticide chemical tolerances or tolerance exemptions. This "grandfather" provision of FFDCA section 408(j) assures that pesticide chemical residues conforming to regulations issued under the authority of FFDCA section 409 will not render food adulterated as a result of the jurisdictional shift from FDA to EPA.

In 1998, ARTCA amended the definition of "pesticide chemical" in FFDCA section 201(q) so as to exclude certain antimicrobial pesticide residues from the authority of FFDCA section 408. Consistent with FFDCA section 408(j)(4), these residues now fall within the authority of FFDCA section 409. As a result, certain uses of food-contact surface sanitizing solutions identified in FDA's regulations at 21 CFR 178.1010 remain subject to FFDCA section 409 regulations just as they did pre-FQPA, while other uses are now subject to EPA's jurisdiction under FFDCA section 408.

B. Why are These Tolerance Exemptions not Subject to Tolerance Reassessment at this Time?

Under FFDCA section 408(q), EPA is required to reassess all tolerance exemptions that were in effect on the day before the enactment of the FQPA. The tolerance exemptions for inert ingredients as well as those active ingredients not yet completed will be reassessed in accordance with EPA's schedule for tolerance reassessment published in the **Federal Register** of August 4, 1997 (62 FR 42019) (FRL–5734–6).

The tolerance exemptions in this direct final rule codified in 40 CFR 180.940 already exist as valid FFDCA section 408 regulations. FDA promulgated the food additive regulations in 21 CFR 178.1010 under the authority of FFDCA section 409 prior to the enactment of FQPA. By operation of FFDCA section 408(j)(2), those portions of 21 CFR 178.1010 that pertain to chemical substances that are pesticide chemicals post-FQPA and remain as such post-ARTCA were converted to FFDCA section 408 tolerance exemptions. EPA's duplication of these tolerance exemptions is not "establishing, modifying, or revoking a tolerance" under FFDCA section 408(b). EPA is, therefore, not required to conduct a full reassessment of these tolerance exemptions at this time.

C. Why is 40 CFR 180.940 Being Created?

The Agency is duplicating in 40 CFR 180.940 only those portions of the regulations in 21 CFR 178.1010 that pertain to pesticide chemicals. This duplication will have no effect on any of FDA's regulated FFDCA section 409 food additive regulations in 21 CFR 178.1010.

In establishing food additive regulations for food-contact surface sanitizing solutions in 21 CFR 178.1010, FDA used a formulation-specific approach. Consistent with its authority under FFDCA section 409, FDA issued regulations prescribing the conditions under which food-contact surface sanitizing solutions might be safely used. FDA approved the use of each food-contact surface sanitizing solution formulation as a whole, rather than regulating each component chemical substance individually. In addition, FDA included a generic exemption for any chemical substance considered to be GRAS, and in some cases, issued letters not objecting to certain additional chemical substances in the formulations.

By contrast, FFDCA section 408 authorizes EPA to issue regulations establishing tolerances or exemptions from the requirement of a tolerance. EPA's practice has been to issue these regulations on a chemical-specific basis, whereby each ingredient in the product is the subject of a separate tolerance or exemption regulation. Food-contact surface sanitizing solutions meet the requirements of FFDCA if each ingredient has an appropriate clearance under FFDCA, either a tolerance or an exemption from the requirement of a tolerance, and any conditions on the clearance are observed.

Translating the regulatory decisions made by FDA into a comparable EPA scheme requires considerably greater work on EPA's part than merely copying those portions of the existing regulations in 21 CFR 178.1010 that pertain to pesticide chemicals directly into 40 CFR 180.940. EPA must disaggregate the formulations in 21 CFR 178.1010 that pertain to pesticide chemicals into their component ingredients. EPA must also provide a mechanism to address those ingredients not identified by name in 21 CFR 178.1010 but that were, for example, permitted by prior sanction or approval, not objected to, or generally recognized as safe. This, in fact, places a higher initial demand on EPA resources than would be required to simply copy FDA's approach. However, EPA is convinced that the long-term administrative convenience of using a consistent regulatory scheme for all pesticide chemicals subject to FFDCA section 408 outweighs the initial burdens.

FDA's formulation-specific approach is different from EPA's chemical-specific approach. Under EPA's approach, a tolerance exemption would be approved once for each particular pesticide chemical, and would not need to be repeated as new products containing that chemical substance enter the market. EPA's approval process is not complex, will allow for a wide variety of potential products, and fosters innovative formulation approaches. In addition, by listing in one place (40 CFR 180.940) all chemical substances exempted from the requirement of a tolerance when used in food-contact surface sanitizing solutions, EPA's approach will increase the transparency of its regulatory process.

This duplication will not allow any residues beyond those already permitted by 21 CFR 178.1010. EPA believes that the chemical-specific approach and FDA's formulation-specific approach are equivalent from a risk management perspective, inasmuch as each would result in the same levels of residues from these chemical substances.

As part of the duplication, EPA changed the naming conventions (chemical nomenclature), as well as combining, as appropriate, chemical substances that appear in 21 CFR 178.1010 under two or more names under a single name. The Agency has attempted to identify each of the listed chemical substances using the Chemical Abstracts Service Registry Number (CAS No.). The CAS No. provides one of the most distinct and universally accepted means of identifying chemical substances. Generally, there will be only one CAS No. per listed chemical substance; however, it is possible that more than one CAS No. may be appropriate for some chemical substances. The lack of a CAS No. will not preclude EPA from including chemical substances in 40 CFR 180.940.

The lower-concentration limits specified in 21 CFR 178.1010 are not included in 40 CFR 180.940 because of the differences between FDA's approach and EPA's approach. Although EPA establishes tolerance exemptions for use in food-contact surface sanitizing solutions under FFDCA, all pesticide products must also meet the criteria for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) before being offered for sale. EPA relies on conditions imposed through the FIFRA registration process to address safety and for antimicrobial-formulated products efficacy. Accordingly, the lower limits on concentrations of pesticide chemicals, that appear in 21 CFR 178.1010 will not appear in 40 CFR 180.940.

Three types of food-contact surface sanitizing solutions are described in 21 CFR 178.1010:

- Those used on food-contact surfaces in public eating places.
- Those used on dairy-processing equipment.
- Those used on food-processing equipment and utensils.

According to FDA, food-contact surface sanitizing solutions that are acceptable for use on food-contact surfaces in public eating places can also be used on dairy-processing equipment, and on food-processing equipment and utensils. Food-contact surface sanitizing solutions that are acceptable for use on dairy equipment can also be used on food-processing equipment and utensils. EPA has separated the component ingredients by both chemical and concentration for these three types of food-contact surface sanitizing solutions, which will be included in 40 CFR 180.940.

IV. Addition of Non-Designated Prior Approved Chemical Substances

21 CFR 178.1010 allows the use of GRAS chemical substances and chemical substances "permitted by prior sanction or approval," that are not expressly identified. These chemical substances were subject to the sanitizer formulation approval under FDA's regulation before these uses became FFDCA section 408 tolerance exemptions under FFDCA section 408(j)(2). Accordingly, many food-contact sanitizing solutions that presently are authorized for use under 21 CFR 178.1010 contain ingredients which are not identified in this direct final rule. As discussed in this unit, EPA is asking registrants to identify these other ingredients that they believe should be included in 40 CFR 180.940. EPA intends to publish a revision to 40 CFR 180.940 adding these chemical substances. In the interim, to preserve the use of food-contact surface sanitizing solutions that were cleared for use before FQPA's enactment and that contain chemical substances that are not specifically identified in 21 CFR 178.1010, EPA has decided to honor those approvals under 21 CFR 178.1010 until EPA has received and reviewed registrant's claims with respect to unspecified pesticide chemicals, as discussed in this unit.

FDA's regulations (21 CFR 178.1010(b)) allowed the addition to food-contact surface sanitizing solutions

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of GRAS components, and components permitted by prior sanction or approval or subject to a letter of no objection. Much of this information should be in EPA's files. The Agency will access this information. However, EPA may not have ready access to all information on all chemicals in existing food-contact surface sanitizing solution formulations which could meet these criteria. Submission of this information to EPA would also reduce the possibility of an existing food-contact surface sanitizing solution having a component that lacks a tolerance exemption under 40 CFR 180.940. Therefore, registrants who believe that components of their food-contact surface sanitizing solutions are exempted under 21 CFR 178.1010(b) should advise EPA in writing that these chemical substances (along with the CAS No.) should be included in 40 CFR 180.940. The submission of this information facilitates EPA's process for adding these chemical substances cleared under 21 CFR 178.1010(b), but not specifically listed by name, to 40 CFR 180.940. The EPA will also need any available information documenting the claim that the component is GRAS, prior sanctioned or approved, or subject to a letter of no objection.

Claims and supporting documentation should be sent directly to the person listed under **FOR FURTHER INFORMATION CONTACT**. Claims are not comments on this direct final rule and should be identified on the subject line as "Submission of Non-designated Prior Approved Chemical Substance." If you have any questions about the many types of information that could be submitted please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. The Agency does not anticipate that registrants will be required to submit an excessive amount of information, and, in fact, believes that most registrants will be able to submit the necessary information with minimal effort.

EPA will review and evaluate the information provided. Chemical substances identified in claims received not later than June 2, 2003 may be eligible for inclusion in § 180.940 under FFDCA section 408(j)(2). EPA anticipates publishing a notice of proposed rulemaking identifying those chemical substances shortly after that date.

V. Regulatory Assessment Requirements

EPA is taking direct final action to add a new § 180.940 to 40 CFR part 180, subpart D which lists the pesticide chemicals that are exempt from the requirement of a tolerance when used in food-contact surface sanitizing solutions. The initial list duplicates pesticide chemicals in 40 CFR 180.940 that are active and inert ingredients listed in 21 CFR 178.1010. Since this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This direct final rule directly regulates food processors, food handlers, and food retailers, but does not affect States, local, or Tribal governments directly. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). This action does not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, this action does not require any action under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards under to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that the creation of a new § 180.940 does not have significant negative economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. This direct final rule does not impose any requirements, it establishes exemptions from the requirement for a tolerance. The Agency is, however, also commencing a process whereby EPA will require certain persons to identify chemical substances considered to be GRAS (which could include self-affirmed GRAS chemicals), or permitted by prior sanction or approval in existing food-contact surface sanitizing solutions. The information available to the Agency indicates that fewer than 500 companies have approximately 1,300 products that could fall under this category. EPA anticipates the economic burden on small entities to be minor, since the Agency is only asking for confirmation that the chemical substances considered to be GRAS or permitted by prior sanction or approval in existing food-contact surface sanitizing solutions are in fact part of an existing formulation, and information as to why the chemical is considered to be GRAS, or a copy of an FDA letter not objecting to the use of a chemical substance. By contrast, this direct final rule is beneficial to the regulated community by increasing the number of inert ingredients for use in antimicrobial formulations and by reducing the regulatory burden on persons seeking to market new combinations of ingredients for certain hard surface sanitizing solutions. Additionally, this direct final rule provides a more transparent listing of pesticide chemicals used in food-contact surface sanitizing solutions to the public.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

This direct final rule does not impose any new information collection requirements that would require separate approval by OMB under the PRA. Under 5 CFR 1320.3(h), the request for information discussed in Unit VII. is not subject to approval under the PRA, and the information collection activities related to the Agency's tolerance exemption process have already been approved by OMB under OMB control numbers 2070–0024 (EPA ICR No. 597). The annual "respondent" (petitioner) burden for the pesticide tolerance petitions program is estimated to average 1,726 hours per petition. According to the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations; planning the necessary data collection activities; conducting tests; analyzing data; generating reports and completing other required paperwork; and storing, filing, and maintaining the data. Send comments regarding this burden estimate or any other aspect of the collection activity, including suggestions for reducing the burden to: Director, Collection Strategies Division, Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Include the OMB control number 2070–0024 in any correspondence about this collection activity, but do not submit the requested information or forms to this address.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 22, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. A new § 180.940 is added to subpart D of part 180 to read as follows.

§ 180.940 Food-contact surface sanitizing solutions; exemptions from the requirement of a tolerance.

Residues of the following chemical substances are exempted from the requirement of a tolerance when used in accordance with good manufacturing practice as ingredients in an antimicrobial pesticide formulation, provided that the chemical substance is applied on a semipermanent or permanent food-contact surface (other than being applied on food packaging) with adequate draining before contact with food.

(a) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 290 parts per million (ppm)
α-Alkyl(C_{16}–C_{14})-ω-hydroxypoly(oxyethylene) poly (oxypropylene) average molecular weight (in amu), 768 to 837	None	None
α-Alkyl(C_{12}–C_{18})-ω-hydroxypoly(oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1,120	None	None
Ammonium chloride	12125–02–9	When ready for use, the end-use concentration is not to exceed 48 ppm
D&C Blue No.1 (methylene blue)	61–73–4	When ready for use, the end-use concentration is not to exceed 0.4 ppm
Dextrin	9004–53–9	When ready for use, the end-use concentration is not to exceed 16 ppm
Ethanol	64–17–5	None
Ethylenediaminetetraacetic acid (EDTA), tetrasodium salt	64–02–8	None
Hydrogen peroxide	7722–84–1	When ready for use, the end-use concentration is not to exceed 91 ppm
Hypochlorous acid, sodium salt	7681–52–9	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Iodine	7553–56–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Magnesium oxide	1309–48–4	None

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Pesticide chemical	CAS No.	Limits
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) average poly(oxyethylene) content 11 moles)	None	None
Octadecanoic acid, calcium salt	1592–23–0	When ready for use, the end-use concentration is not to exceed 16 ppm
1-Octanesulfonic acid, sodium salt	5324–84–5	When ready for use, the end-use concentration is not to exceed 46 ppm of total active fatty acids
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 52 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, minimum molecular weight (in amu), 1,900	9003–11–6	None
Peroxyacetic acid	79–21–0	When ready for use, the end-use concentration is not to exceed 58 ppm
Peroxyoctanoic acid	33734–57–5	When ready for use, the end-use concentration is not to exceed 52 ppm
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 14 ppm
Phosphoric acid, trisodium salt	7601–54–9	When ready for use, the end-use concentration is not to exceed 5,916 ppm
Potassium bromide	7758–02–3	When ready for use, the end-use concentration is not to exceed 46 ppm total available halogen
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Potassium permanganate	7722–64–7	When ready for use, the end-use concentration is not to exceed 0.7 ppm
2-Propanol (isopropanol)	67–63–0	None
Quaternary ammonium compounds, alkyl (C_{12}–C_{16}) benzyldimethyl, chlorides, average molecular weight (in amu), 351 to 380	None	When ready for use, the end-use concentration is not to exceed 150 ppm of active quaternary compound
Quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyldimethyl, chlorides	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound in the formulated product
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{14}) dimethyl ethylbenzyl ammonium chloride, average molecular weight (in amu), 377 to 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds n-alkyl (C_{12}–C_{18}) dimethyl ethylbenzyl ammonium chloride average molecular weight (in amu), 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds di-n-alkyl (C_8–C_{10}) dimethyl ammonium chloride, average molecular weight (in amu), 332 to 361	None	When ready for use, the end-use concentration is not to exceed 150 ppm of active quaternary compound
Sodium bicarbonate	144–55–8	When ready for use, the end-use concentration is not to exceed 120 ppm
Starch	9005–25–8	When ready for use, the end-use concentration is not to exceed 16 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	When ready for use, the end-use concentration is not to exceed 3 ppm
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, sodium salt	2893–78–9	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine

(b) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Dairy-processing equipment, and food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 686 ppm
Acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1H-imidazole-1-ethanol and sodium hydroxide	68608–66–2	When ready for use, the end-use concentration is not to exceed 42 ppm chloroacetic acid
Benzenesulfonic acid, dodecyl-	27176–87–0	When ready for use, the end-use concentration is not to exceed 5.5 ppm
Butanedioic acid, octenyl-	28805–58–5	When ready for use, the end-use concentration is not to exceed 156 ppm
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, minimum average molecular weight (in amu), 2400	None	None
Calcium chloride	10043–52–4	When ready for use, the end-use concentration is not to exceed 17 ppm
n-Carboxylic acids (C_6–C_{12}), consisting of a mixture of not less than 56% octanoic acid and not less than 40% decanoic acid	None	When ready for use, the end-use concentration is not to exceed 39 ppm
Citric acid	77–92–9	None
Decanoic acid	334–48–5	When ready for use, the end-use concentration is not to exceed 90 ppm total active fatty acids
Ethanesulfonic acid, 2-[cyclohexyl (1-oxohexadecyl)amino]-, sodium salt	132–43–4	When ready for use, the end-use concentration is not to exceed 237 ppm
Ethylenediaminetetraacetic acid (EDTA), disodium salt	139–33–3	When ready for use, the end-use concentration is not to exceed 1,400 ppm
FD&C Yellow No. 5 (Tartrazine) (conforming to 21 CFR 74.705)	1934–21–0	None
D-Gluconic acid, monosodium salt	527–07–1	When ready for use, the end-use concentration is not to exceed 760 ppm
Hydriodic acid	10034–85–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Hydrogen peroxide	7722–84–1	When ready for use, the end-use concentration is not to exceed 465 ppm
Hypochlorous acid	7790–92–3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Iodine	7553–56–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Lactic acid	50–21–5	When ready for use, the end-use concentration is not to exceed 138 ppm
α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8–9 moles ethylene oxide, average molecular weight (in amu), 400	None	None
Nonanoic acid	112–05–0	When ready for use, the end-use concentration is not to exceed 90 ppm
1-Octanamine, N,N-dimethyl-	7378–99–6	When ready for use, the end-use concentration is not to exceed 113 ppm
1,2-Octanedisulfonic acid	113669–58–2	When ready for use, the end-use concentration is not to exceed 102 ppm
1-Octanesulfonic acid	3944–72–7	When ready for use, the end-use concentration is not to exceed 172 ppm
1-Octanesulfonic acid, sodium salt	5324–84–5	When ready for use, the end-use concentration is not to exceed 297 ppm

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Pesticide chemical	CAS No.	Limits
1-Octanesulfonic acid, 2-sulfino-	113652–56–5	When ready for use, the end-use concentration is not to exceed 102 ppm
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 176 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis[propanol] (4:1)	11111–34–5	When ready for use, the end-use concentration is not to exceed 20 ppm in the formulated product
Oxychloro species (including chlorine dioxide) generated by acidification of an aqueous solution of sodium chlorite	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, "Iodometric Method for the Determination of Available Chlorine Dioxide" (50–250 ppm available chlorine dioxide)
Peroxyacetic acid	79–21–0	When ready for use, the end-use concentration is not to exceed 315 ppm
Peroxyoctanoic acid	33734–57–5	When ready for use, the end-use concentration is not to exceed 122 ppm
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 34 ppm
Phosphoric acid	7664–38–2	None
Phosphoric acid, monosodium salt	7558–80–7	When ready for use, the end-use concentration is not to exceed 350 ppm
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Propanoic acid	79–09–4	When ready for use, the end-use concentration is not to exceed 297 ppm
2-Propanol (isopropanol)	67–63–0	
2,6-Pyridinedicarboxylic acid	499–83–2	When ready for use, the end-use concentration is not to exceed 1.2 ppm
Sodium mono-and didodecylphenoxy-benzenedisulfonate	None	When ready for use, the end-use concentration is not to exceed 1,920 ppm
Sulfuric acid	7664–93–9	When ready for use, the end-use concentration is not to exceed 288 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	When ready for use, the end-use concentration is not to exceed 350 ppm

(c) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 686 ppm
Acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1H-imidazole-1-ethanol and sodium hydroxide	68608–66–2	When ready for use, the end-use concentration is not to exceed 42 ppm chloroacetic acid
α-Alkyl(C_{10}–C_{14})-ω-hydroxypoly(oxyethylene) poly (oxypropylene) average molecular weight (in amu), 768 to 837	None	None
α-Alkyl(C_{11}–C_{15})-ω-hydroxypoly(oxyethylene) with ethylene oxide content 9 to 13 moles	None	None
α-Alkyl(C_{12}–C_{15})-ω-hydroxypoly (oxyethylene) polyoxypropylene, average molecular weight (in amu), 965	None	None

Pesticide chemical	CAS No.	Limits
α-Alkyl(C_{12}–C_{18})-ω-hydroxypoly(oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1,120	None	None
Alkyl (C_{12}–C_{15}) monoether of mixed (ethylene-propylene) polyalkylene glycol, cloud point of 70–77 °C in 1% aqueous solution, average molecular weight (in amu), 807	None	None
Ammonium chloride	12125–02–9	When ready for use, the end-use concentration is not to exceed 48 ppm
Benzenesulfonamide, N-chloro-4-methyl, sodium salt	127–65–1	None
Benzenesulfonic acid, dodecyl-	27176–87–0	When ready for use, the end-use concentration is not to exceed 400 ppm
Benzenesulfonic acid, dodecyl-, sodium salt	25155–30–0	When ready for use, the end-use concentration is not to exceed 430 ppm
Benzenesulfonic acid, oxybis[dodecyl-	30260–73–2	When ready for use, the end-use concentration is not to exceed 474 ppm
[1,1'-Biphenyl]-2-ol	90–43–7	When ready for use, the end-use concentration is not to exceed 400 ppm
Boric acid, sodium salt	7775–19–1	
Butanedioic acid, octenyl-	28805–58–5	When ready for use, the end-use concentration is not to exceed 156 ppm
Butanedioic acid, sulfo-, 1,4-dioctyl ester, sodium salt	1639–66–3	None
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, cloudpoint of 90–100 °C in 0.5 aqueous solution, average molecular weight (in amu), 3,300	None	None
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, minimum average molecular weight (in amu), 2,400	None	None
Calcium bromide	7789–41–5	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Calcium chloride	10043–52–4	When ready for use, the end-use concentration is not to exceed 17 ppm
n-Carboxylic acids (C_6–C_{12}), consisting of a mixture of not less than 56% octanoic acid and not less than 40% decanoic acid	None	When ready for use, the end-use concentration is not to exceed 39 ppm
Citric acid	77–92–9	None
3-Cyclohexene-1-methanol, α.α,4-trimethyl-	98–55–5	None
D&C Blue No.1 (methylene blue)	61–73–4	When ready for use, the end-use concentration is not to exceed 0.4 ppm
1-Decanaminium, N-decyl-N, N-dimethyl-, chloride	7173–51–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Decanoic acid	334–48–5	When ready for use, the end-use concentration is not to exceed 234 ppm total active fatty acids
Dextrin	9004–53–9	When ready for use, the end-use concentration is not to exceed 16 ppm
Ethanesulfonic acid, 2-[cyclohexyl (1-oxohexadecyl)amino]-, sodium salt	132–43–4	When ready for use, the end-use concentration is not to exceed 23 ppm
Ethanol	64–17–5	None
Ethanol, 2 butoxy-	111–76–2	None
Ethanol, 2-(2-ethoxyethoxy)-	111–90–0	None

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Pesticide chemical	CAS No.	Limits
Ethylenediaminetetraacetic acid (EDTA), disodium salt	139-33-3	When ready for use, the end-use concentration is not to exceed 1,400 ppm
Ethylenediaminetetraacetic acid (EDTA), tetrasodium salt	64-02-8	None
Fatty acids, coco, potassium salts	61789-30-8	None
Fatty acids, tall-oil, sulfonated, sodium salts	68309-27-3	When ready for use, the end-use concentration is not to exceed 66 ppm
FD&C Yellow No. 5 (Tartrazine) (conforming to 21 CFR 74.705)	1934-21-0	None
D-Gluconic acid, monosodium salt	527-07-1	When ready for use, the end-use concentration is not to exceed 760 ppm
Hydriodic acid	10034-85-2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Hydrogen peroxide	7722-84-1	When ready for use, the end-use concentration is not to exceed 1,100 ppm
Hypochlorous acid	7790-92-3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Hypochlorous acid, calcium salt	7778-54-3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Hypochlorous acid, lithium salt	13840-33-0	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine and 30 ppm lithium
Hypochlorous acid, potassium salt	7778-66-7	When ready for use, the end-use concentration is not to exceed 200 ppm determined as available chlorine
Hypochlorous acid, sodium salt	7681-52-9	When ready for use, the end-use concentration is not to exceed 200 ppm determined as available chlorine
Iodine	7553-56-2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Lactic acid	50-21-5	None
α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8-9 moles ethylene oxide, average molecular weight (in amu), 400	None	None
Magnesium oxide	1309-48-4	None
Naphthalene sulfonic acid, sodium salt	1321-69-3	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives	None	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives alkylated at 3% by weight with C_6–C_9 linear olefins	None	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Neodecanoic acid	26896-20-8	When ready for use, the end-use concentration is not to exceed 174 ppm
Nonanoic acid	112-05-0	When ready for use, the end-use concentration is not to exceed 90 ppm
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) maximum average molecular weight (in amu), 748	None	None
α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) average poly(oxyethylene) content 11 moles	None	None
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole p-nonylphenol with 9 to12 moles ethylene oxide	None	None

Pesticide chemical	CAS No.	Limits
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene), 9 to 13 moles ethylene oxide	None	None
Octadecanoic acid, calcium salt	1592-23-0	When ready for use, the end-use concentration is not to exceed 16 ppm
9-Octadecenoic acid (9Z)-, sulfonated	68988-76-1	When ready for use, the end-use concentration is not to exceed 312 ppm
9-Octadecenoic acid (9Z)-sulfonated, sodium salts	68443-05-0	When ready for use, the end-use concentration is not to exceed 200 ppm
1-Octanamine, N,N-dimethyl-	7378-99-6	When ready for use, the end-use concentration is not to exceed 113 ppm
1,2-Octanedisulfonic acid	113669-58-2	When ready for use, the end-use concentration is not to exceed 102 ppm
1-Octanesulfonic acid	3944-72-7	When ready for use, the end-use concentration is not to exceed 172 ppm
1-Octanesulfonic acid, sodium salt	5324-84-5	When ready for use, the end-use concentration is not to exceed 312 ppm
1-Octanesulfonic acid, 2-sulfino-	113652-56-5	When ready for use, the end-use concentration is not to exceed 102 ppm
Octanoic acid	124-07-2	When ready for use, the end-use concentration is not to exceed 234 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, minimum molecular weight (in amu), 1,900	9003-11-6	None
Oxirane, methyl-, polymer with oxirane, block, average molecular weight (in amu), 1,900	106392-12-5	None
Oxirane, methyl-, polymer with oxirane, block, minimum average molecular weight (in amu), 2,000	None	None
Oxirane, methyl-, polymer with oxirane, block, 27 to 31 moles of polyoxypropylene, average molecular weight (in amu) 2,000	None	None
Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis[propanol] (4:1)	11111-34-5	When ready for use, the end-use concentration is not to exceed 20 ppm
Oxychloro species (predominantly chlorite, chlorate and chlorine dioxide in an equilibrium mixture) generated either: By directly metering a concentrated chlorine dioxide solution prepared just prior to use, into potable water, or by acidification of an aqueous alkaline solution of oxychloro species (predominately chlorite and chlorate) followed by dilution with potable water	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, "Iodometric Method for the Determination of Available Chlorine Dioxide" (50–250 ppm available chlorine dioxide)
Oxychloro species (including chlorine dioxide) generated by acidification of an aqueous solution of sodium chlorite	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, "Iodometric Method for the Determination of Available Chlorine Dioxide" (50–250 ppm available chlorine dioxide)
2,4-Pentanediol, 2-methyl-	107-41-5	None
Peroxyacetic acid	79-21-0	When ready for use, the end-use concentration is not to exceed 315 ppm in the formulated product
Peroxyoctanoic acid	33734-57-5	When ready for use, the end-use concentration is not to exceed 122 ppm
Phenol, 4-chloro-2-(phenylmethyl)-	120-32-1	When ready for use, the end-use concentration is not to exceed 320 ppm
Phenol, 4-(1,1-dimethylpropyl)-	80-46-6	When ready for use, the end-use concentration is not to exceed 80 ppm

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Pesticide chemical	CAS No.	Limits
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 34 ppm
Phosphoric acid	7664–38–2	None
Phosphoric acid, monosodium salt	7558–80–7	When ready for use, the end-use concentration is not to exceed 350 ppm
Phosphoric acid, trisodium salt	7601–54–9	When ready for use, the end-use concentration is not to exceed 5916 ppm in the formulated product
Poly(oxy-1,2-ethanediyl), α-[(1,1,3,3-tetramethylbutyl) phenyl]-ω-hydroxy-, produced with one mole of the phenol and 4 to 14 moles ethylene oxide	None	None
Potassium bromide	7758–02–3	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Potassium permanganate	7722–64–7	When ready for use, the end-use concentration is not to exceed 0.7 ppm
Propanoic acid	79–09–4	When ready for use, the end-use concentration is not to exceed 297 ppm
2-Propanol (isopropanol)	67–63–0	None
2,6-Pyridinedicarboxylic acid	499–83–2	When ready for use, the end-use concentration is not to exceed 1.2 ppm
Quaternary ammonium compounds, alkyl (C_{12}–C_{16}) benzyldimethyl, chlorides,	8001–54–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyldimethyl, chlorides	8001–54–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{14}) dimethyl ethylbenzyl ammonium chloride, average molecular weight (in amu), 377 to 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{18}) dimethyl ethylbenzyl ammonium chloride average molecular weight (in amu) 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, di-n-Alkyl (C_8–C_{10}) dimethyl ammonium chloride, average molecular weight (in amu), 332 to 361	None	When ready for use, the end-use concentration is not to exceed 240 ppm of active quaternary compound
Sodium-α-alkyl(C_{12}–C_{15})-ω-hydroxypoly (oxyethylene) sulfate with the poly(oxyethylene) content averaging one mole	None	None
Sodium bicarbonate	144–55–8	When ready for use, the end-use concentration is not to exceed 120 ppm
Sodium bromide	7647–15–6	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Sodium iodide	7681–82–5	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Sodium mono-and didodecylphenoxy-benzenedisulfonate	None	When ready for use, the end-use concentration is not to exceed 1,920 ppm
Starch	9005–25–8	When ready for use, the end-use concentration is not to exceed 16 ppm
Sulfuric acid	7664–93–9	When ready for use, the end-use concentration is not to exceed 228 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	None

Pesticide chemical	CAS No.	Limits
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-	2782–57–2	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, potassium salt	2244–21–5	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, sodium salt	2893–78–9	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-trichloro-	87–90–1	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine, N,N',N''-trichloro-2,4,6-triamino-	7673–09–8	When ready for use, the end-use concentration is not to exceed 200 ppm as total available chlorine
Xylenesulfonic acid, sodium salt	1300–72–7	When ready for use, the end-use concentration is not to exceed 62 ppm

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 02–292]

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission implemented certain aspects of per-payphone compensation pursuant to a 1997 remand by the U.S. Court of Appeals for the District of Columbia Circuit. To implement the remand, the Commission established a new default compensation amount per payphone per month for access code and subscriber toll-free calls, allocated this monthly amount among the designated payors of per-payphone compensation, resolved some compensation offset issues, determined issues regarding the valuation of payphone assets transferred by local exchange carriers to a separate affiliate or division, and resolved a number of issues raised in petitions for reconsideration.

DATES: Effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Order on Reconsideration and Order on Remand (Order) in CC Docket No. 96–128, adopted on October 17, 2002, and released on October 23, 2002. The complete text of this Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the Order may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *qualexint@aol.com*.

Synopsis of Fifth Order on Reconsideration and Order on Remand

1. Instead of revising its approach to estimating monthly call volumes at the average payphone, the Commission retained the estimate of 148 monthly compensable calls as determined in the *Fourth Reconsideration Order*, 67 FR 9610, March 4, 2002. In this regard, the Commission explicitly rejected the reconsideration arguments of: (1) Sprint and WorldCom that per-payphone compensation should be based on the 131 monthly compensable calls estimated by the Commission in 1996, (2) Sprint that the underlying call volumes were unreliable, (3) WorldCom that the Commission should reduce the monthly estimate by a set factor each year after the Interim Period, and (4) Sprint that the Commission should use a weighted averaged, instead of a straight average as used in the *Fourth Reconsideration Order*.

2. The Commission's calculation of a per-call compensation rate in the *Third Report and Order*, 64 FR 13701, March 22, 1999, included a component of $0.009 to reflect an assumed average delay in the rendering of payphone compensation according to the quarterly system established by industry consensus and endorsed by the Commission in the *First Report and Order*, 61 FR 52307, October 7, 1996. APCC requested that the Commission reconsider its deduction in the *Fourth Reconsideration Order* of this $0.009 from the per-call compensation rate. The Commission in this Order granted APCC's request and reinstated this $0.009 component for the purpose of calculating per-payphone compensation. Granting APCC's reconsideration petition on this issue effectively mooted Sprint's request for clarification that the 22.9 cent rate adopted in the *Fourth Reconsideration Order* be applied to all true-ups for the Intermediate Period, whether a carrier paid on a per-payphone or per-call basis. It also mooted WorldCom's request to clarify that the rate of 22.9 cents applies to payments for payphones that do not transmit payphone-specific coding digits, even if the carrier has compensated on a per-call, rather than per-payphone basis, for those payphones. The same 23.8 cent rate that applied to per-call compensation during the Intermediate Period applies to determine per-payphone compensation.

3. The Colorado Payphone Association (CPA) asked the Commission to reconsider the 24-cent compensation rate established in the *Third Report and Order* arguing that the Commission inappropriately used a "stripped down" coinless phone model for the purpose of calculating payphone capital costs, inappropriately used 11.25% as the interest rate, and

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incorrectly calculated maintenance costs. The Commission denied CPA's reconsideration petition with respect to each of these factors.

4. The Commission denied the RBOC Coalition's reconsideration petition request to add some amount of additional compensation to the per-payphone compensation required in this Order as compensation for 1+ calls originated during the Interim Period for which the payphone service providers (PSPs) were not otherwise compensated. The definition provided of a 1+ call was an interLATA toll call originating at a payphone and carried by an interexchange carrier (IXC), where the IXC's operator or its automated rating system directs that calling party to deposit coins for the call.

5. After considering reconsideration requests regarding the per-payphone compensation calculation, the Commission recalculated a per-payphone compensation amount based on a per-call rate of $0.238 cents. The per-call rate of $0.238 multiplied by the call estimate of 148 calls per month equals a compensation amount of $35.224 per payphone per month for the Interim Period (November 7, 1996, through October 6, 1997) and the Intermediate Period (October 7, 1997, through April 20, 1999). The compensation obligations as shown at Appendices A, B and C are calculated using this increased amount.

6. After determining the amount of compensation to be paid per payphone per month, the Commission next allocated this monthly payphone compensation obligation among the payors of per-payphone compensation, to implement the remand by the U.S. Court of Appeals for the District of Columbia Circuit in *Illinois Pub. Telecomm. Ass'n* v. *FCC*, 117 F.3d 555 (D.C. Cir. 1997), *clarified on reh'g*, 123 F.3d 693 (D.C. Cir. 1997), *cert. denied sub nom. Virginia State Corp. Comm'n* v. *FCC*, 523 U.S. 1046 (1998) (hereinafter *Illinois*). *See Remand Public Notice*, 62 FR 43686, August 15, 1997. During the first four months of 2002, the four Regional Bell Operating Companies (RBOCs) provided the Wireline Competition Bureau with aggregate call data listing the next destination past the RBOC switch of payphone calls placed during 1997, 1998, and October 1, 2000, through September 30, 2001. From that data set, the Commission aggregated the numbers to determine the total number of payphone calls received by each carrier in each of the three time periods, as well as the total number of calls placed in the time period. From there, each carrier's share of the total was calculated, and thus the proportion of the monthly $35.224 per-payphone compensation that each identified carrier should rightfully bear.

7. Once the basic aggregation was completed, the Commission adjusted the data in various ways in order to obtain a reasonable allocation. For example, the Commission excluded unusable data from the final data set, such as, calls routed to destinations not identified in the RBOC data. Another exclusion concerned some RBOC data submitted for payphone calls routed to destinations that were not IXCs or other carriers, including entities with dedicated private line service assigned a carrier identification code (CIC), a four digit number that uniquely identifies the destination of the call, even though they are not "communications carriers." The Commission also excused governmental entities, such as, the Internal Revenue Service, and various state governments, that were in the RBOC data. Because such non-carrier entities had no notice that they could be responsible for payphone compensation, the Commission decided not to hold them liable and removed those calls from the data set. The non-carrier CIC holders eliminated from consideration are: AmVox, Arco Paypoint, Arthur Anderson & Co., Buypass Corp., California State Lottery, Cam-Net, Card Establishment, Compuserve, Contact America, Dean Witter, Department of Treasury (IRS), Discover & Co., EDS, Envoy Corporation, ETSC, First USA, Full Service Computing, Harmonic Systems, HUB Distributing, Idaho State Government, JC Penney Business Services, Landmark Communications, Legal Aid Society of Orange County, MAG Card, MasterCard International, MCSC Access in Canada, Merchant Link, Mobile Oil Credit Corp., Morgan Stanley, National Data Corp., Nexus Communications, Paradise Communications, PaymentTech, Professional Fusion Enterprises, PSA, Inc., Public Service Company of New Mexico and Gas Company of New Mexico, Resource Technology, Southeast Switch, State of California, Stone & Co., Telemoney Services, Transaction Network Services, United Refining, Vacation Villages of America, Visa USA, Vital Processing Services, VoiceCom Systems, VTA, Inc., and Weeks Communications.

8. The Commission may not have identified all of them; thus, some entities in the Tables of Allocations in Appendices A, B, or C may not in fact be carriers. The Commission made the following provision for entities that are not "communications carriers" and thus not responsible for per-payphone compensation. Any entity named in the Commission's allocation in this Order that then receives a request for per-payphone compensation from a PSP or other entity may, within 90 days of receiving such a request, file a waiver request with the Wireline Competition Bureau for exclusion from the per-payphone allocation, with a demonstration that the entity provides no communications service to others.

9. In the *First Report and Order*, the Commission decided that local exchange carriers (LECs) must pay payphone compensation to the extent that they carry compensable payphone calls. The Commission in this Order allocated to both RBOC and non-RBOC incumbent LECs 2.19% of the calls originating from payphones within their own service territories because it reflects the fact that an incumbent LEC does receive and carry compensable payphone calls originated within its territory. This percentage and the appropriate compensation amount were listed in Appendices A, B and C. Rather than making each incumbent LEC remit payment to each PSP in the nation the Commission required each incumbent LEC to remit the 2.19% payment to PSPs for each payphone located in its service territory, even if the PSP had/has its payphones connected to a competitive LEC.

10. After an examination of the RBOC data showed that the RBOCs themselves sometimes behaved as IXCs, the Commission concluded that incumbent LECs owe compensation for calls where the incumbent LEC performed the function of an IXC. This compensation obligation was allocated in a manner consistent with other payors of per-payphone compensation. The Allocation Tables reflect compensable payphone calls routed to identified incumbent LECs acting in an IXC capacity, and specify the amount of per-payphone compensation to be paid by that incumbent LEC to all PSPs nationwide.

11. In Appendices A, B and C, the Commission identified payors obligated to pay per-payphone compensation by the names of payors and CICs provided by the RBOCs in the payphone call data. The Commission explained in this Order that given consolidation and change in the telecommunications industry over the last several years, the payor names may fail to accurately identify current per-payphone obligations imposed by this Order. Any failure on the Commission's part in the name identification in Appendices A, B and C does not excuse full payment by any entity of its compensation obligation. According to the Commission, the per-payphone obligation must be paid by each listed entity, or by its successors in interest, assigns, transferees or their entity legally responsible for the listed entity's obligations under this Order.

12. The Commission noted, moreover, that this name identification was provided for the convenience of carriers and PSPs alike, and was not intended to impose a modification to otherwise appropriate intracorporate relationships. If an entity listed in Appendices A, B or C has provided for payment of its payphone compensation allocations through separate subsidiaries or otherwise, it may, absent some other resolution agreeable to the PSPs to which it owes payment, ask for clarification from the Wireline Competition Bureau, which will promptly provide the appropriate attribution of allocation amounts among subsidiaries or other entities, or otherwise provide clarification of the per-payphone compensation obligation required by this Order. An entity listed in Appendices A, B, or C may not, however, avoid its obligation to pay per-payphone compensation by requesting such clarification.

13. KTNT Communications is an exception in the Commission's listing of entities in Appendices A, B, and C according to the RBOC data. The Commission identified KTNT Communications as the company obligated to pay the per-payphone compensation required by this Order for 39 operator service providers. In explaining this decision, the Commission noted that KTNT Communications filed a notice with the Public Utility Commission of Texas on April 18, 1997 that it was the management company responsible for these other operator service providers. In addition, KTNT Communications and each of the 38 other operator service providers submitted "concurring carrier" documentation to qualify to use KTNT Communications tariff submissions. The 38 other operator service providers with payphone call data aggregated with data for KTNT Communications are: Bay TNT Network, Who Ever, U Speak Long Distance, It Doesn't Matter, Zimmer Way, I Don't Care, I Don't Know, Riverbend Communications, Minh Long Distance, Viva Tel L.D., Bryant Service, Rea Long Distance, Signature Network Service, Brown Service Co., Exco Long Distance, Mustang Operators, Far Point, Knox Service Group, Sandell Operator Service, Christine LD Service, Vera Long Distance, Old Laredo Service, Old Home Operator, Andril Service Group, Any One Is Okay, MCV, Brahms Communications, Forest Pine Telcom, Amadeus, Dvorak, KBTN, Callum Long Distance, Sunrise Operator, Wisteria LD Service, World Window, Hickory Grover Group, Alert Operators, and Friendly Voice Network. While KTNT Communications must pay all of the per-payphone compensation required in this Order for itself and each of the 38 entities listed in this paragraph, KTNT Communications has a right of recovery from these listed 38 entities if such recovery does not lead to double recovery by KTNT Communications.

14. In this Order, the Commission granted Sprint's petition for reconsideration regarding the obligation of resellers to pay per-payphone compensation to the following extent. The RBOC call data listed carriers receiving calls by name and by CIC. Because many resellers have their own CICs, numerous resellers are included on these lists, and hence included in the allocation delineated at Appendices A, B and C. Accordingly, the Commission addressed at least part of Sprint's concern by including resellers as well as "first switch" carriers, without regard to the label borne by the carrier. Further, the Commission explicitly held that allocating compensation obligations among carriers through the use of this methodology replaces the more general statements made in the *Fourth Reconsideration Order* about requiring first facilities-based carriers to bear the entire burden of per-payphone compensation. Moreover, the Commission reconsidered its decision to use Carrier Locator Reports to distinguish IXCs from resellers and instead made the allocation without regard to whether a company considers itself to be an IXC, a reseller, or some other type of provider of telecommunications services.

15. In contrast, the Commission recognized in this Order that calls routed to facilities-based carriers' CICs may in fact have been ultimately routed to resellers. Given the inclusion of a significant number of resellers in the allocation methodology, the Commission decided that the ultimate impact on the compensation paid by other carriers will most likely not be significant. Sprint's proposed alternative method for allocating per-payphone compensation proposal effectively would have excluded all resellers from compensation and the Commission did not consider it to be fair compensation to PSPs. The Commission stipulated explicitly that, if a carrier has data that payphone calls allocated to them (*i.e.*, routed to its CIC) were actually carried by resellers, nothing in this Order prevents carriers from seeking reimbursement of the cost of these calls from resellers. The Commission added that carriers may in no way delay payment of compensation to PSPs on account of seeking such reimbursement.

16. In adopting its allocation methodology, the Commission explicitly denied reconsideration petitions asking the Commission to establish alternative ways of calculating compensation for the Interim and Intermediate Periods. The Commission also rejected ITC^DeltaCom's reconsideration petition request to exempt from Interim Period compensation obligations those carriers with revenues below $100 million. In addition, APCC, Sprint Corporation, MCI and Frontier Corporation filed petitions for reconsideration or review of a Bureau-level decision and a Division-level decision, each related to per-payphone compensation for the Intermediate Period. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–128, *Memorandum Opinion & Order*, 63 FR 26497, May 13, 1998; *Order*, 63 FR 26495, May 13, 1998. These petitions attack various aspects of the waiver process by which per-payphone compensation was paid during the Intermediate Period. After establishing in the *Fourth Reconsideration Order* and this Order the methodology for calculating and apportioning per-payphone compensation for the Interim and Intermediate Periods, and allocating the responsibility for per-payphone compensation to as large a group of carriers as possible, the Commission dismissed these petitions as moot.

17. In its reconsideration petition, Sprint Corporation asserted that it did not believe the obligation created in the *Fourth Reconsideration Order* regarding per-payphone compensation for the Intermediate Period was intended to force carriers that previously paid on a per-call basis to now conduct true ups on a per-payphone basis for the Intermediate Period. The Commission declared in this Order that if carriers have already paid per-call compensation on payphones for which they received coding digits in the Interim, Intermediate or any other period, nothing in the *Fourth Reconsideration Order* or this Order requires carriers to now go back and apply per-payphone compensation to these payphones.

18. CPA requested reconsideration of the decision that PSPs must pay refunds for the Intermediate Period. In this Order, the Commission affirmed its decision in the *Third Report and Order* that PSPs must refund the difference

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between payments they received at the 28.4 cent rate established in the *Second Report and Order*, 62 FR 58659, October 30, 1997, and payments recalculated at a 23.8 cent rate.

19. The Commission affirmed in this Order the decisions in the *Third Report and Order* and the *Fourth Reconsideration Order* that obligations for payment of outstanding compensation for the Interim and Intermediate Periods, and payment of refunds and any adjustments, shall run from specific carriers to specific PSPs. The Commission declined to adopt APCC's reconsideration petition to the extent it asked for the establishment of a carrier-to-carrier mechanism for resolving payments and refunds. The Commission, however, reiterated its conclusion in the *Fourth Reconsideration Order* that alternative arrangements between or among carriers, with the agreement of the PSP, are not prohibited.

20. The Commission explained how carriers and PSPs should handle the compensation and refund process by providing the following guidelines to clarify the requirements of the *Third Report and Order*. After the effective date of this Order, PSPs and carriers may render bills to one another or otherwise arrange for payment of outstanding Interim and Intermediate Period compensation obligations or refunds. They may use whatever commercially reasonable payment or dispute resolution processes to handle this process they may currently use in their dealings with one another or to which they may otherwise mutually agree, including clearinghouse processes. In accordance with the *Third Report and Order* determination that "IXCs may recover their overpayments to the PSPs at the same time as the PSPs receive payment from the IXCs for the Interim Period," the Commission clarified in this Order that this means IXCs (or other carriers rendering payment) shall initially claim an offset for refunds of overpayments only against amounts claimed by the PSP for Interim and Intermediate Period compensation. Only after the carrier and the PSP have resolved the offset against this amount may the IXC "deduct the remaining overpayment from future payments to PSPs" as stipulated in the *Third Report and Order*. The Commission clarified that IXCs (or other carriers claiming refunds) may only withhold undisputed amounts from future payments. Thus, any carrier wishing to deduct a refund out of future payments to PSPs may only do so after providing that specific PSP notice of the refund claimed, and allowing the PSP adequate time to dispute the claim. To the extent a PSP disputes any portion of the refund claimed, the carrier may not deduct that portion from any future payment until it resolves the dispute with the PSP. Again, carriers and PSPs may use existing commercially reasonable processes to handle these disputes and arrange for payment. The only requirement the Commission placed on these processes is that if a carrier is able to apply undisputed amounts against future payments, the carriers must allow PSPs to make payments of refunds over a reasonable number of future payments, subject to ongoing accrual of interest, if reasonably requested by the PSP.

21. The Commission in this Order rejected reconsideration requests and affirmed its decision in the *Fourth Reconsideration Order* to apply the IRS-prescribed interest rate to payments of Interim and Intermediate Period compensation, as well as to refunds owed by PSPs to carriers. The Commission specified, however, that because it had reinstated the $0.009 interest rate component as described above, the IRS-prescribed interest rate will only begin to accrue after the date payment normally would have been rendered under the quarterly payment system applicable to payphone compensation. Consistent with the Commission's assumptions under prior orders in this proceeding, the IRS-prescribed interest rate for payments that should have been made for the first quarter of the year will begin accruing on July 2 of that same year, for the second quarter of the year on October 2 of that same year, for the third quarter on January 2 of the next year, and for the fourth quarter on April 2 of the next year.

22. WorldCom asked the Commission to clarify that, with the exception of Interim Period inmate calls not otherwise compensated, PSPs may not now submit any new claims for any other type of coinless payphone call after the one year deadline for submitting calls for compensation. The Commission decided it was not necessary to further clarify its holding and rejected WorldCom's clarification request.

23. In this Order, the Commission denied CPA's reconsideration petition asking the Commission to require carriers to implement targeted call blocking, the technological ability of an IXC to not accept (or "block") a dial-around access code call from one payphone while accepting calls from another payphone.

24. The Commission decided in this Order that it is constrained by the court's holding in *Illinois* to allow LECs to use net book value when valuing payphone assets transferred to a separate affiliate or operating division. The Commission noted that the court's holding, however, was enunciated in the specific context of the transfers at issue in *Illinois*. Thus, to avoid confusion as to the reach of the Commission's implementation of the court's decision, the Commission provided in this Order clarification as follows. If a LEC chooses to retain payphone assets, reclassification of these assets from regulated to nonregulated status must be consistent with § 32.32 and the Commission's part 64 cost allocation rules. If a LEC chooses to make a one-time transfer of payphone assets to a nonregulated affiliate or operating division, then such a transfer would be recorded at net book value. The Commission expressly limited this treatment to only such transfers as may be made pursuant to Commission implementation of section 276(b)(1)(B), as it is only these types of transfers that could reasonably be considered the kind of one-time industry reform contemplated by the court in Illinois. The Commission also explained that, to the extent a transfer of payphone assets does not meet these requirements, the Commission's affiliate transaction rules would apply. In this event, carriers were reminded that they must include in fair market valuations of payphone assets the going concern value associated with location contracts supporting the payphone assets.

25. The Commission also clarified that the effective date of the *Fourth Reconsideration Order* and this Order shall be 30 days after the date that this Order is published in the **Federal Register**. The Commission specifically declined, however, to require compensation payment to be made within thirty days after release of this Order, as the RBOC Coalition requested. According to the Commission, once any PSP or carrier has performed the tasks necessary to render bills for compensation or refunds in accordance with this Order, the PSP or carrier may render such bills as soon as practicable after this Order's effective date, provided that they observe the offset resolution guidelines described in the Order.

26. The Commission delineated the results of its allocations, showing each carrier's pro rata share of the per-payphone payment, in Tables of Allocation located in Appendices A, B and C. In Appendix A, the Commission identified the payors and designated the monthly per-payphone compensation amounts for the Interim Period,

beginning November 7, 1996 through October 6, 1997.

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST

No.	Name	Percentage	Amount
1	AT&T Communications	35.6752385	$12.58624601
2	MCI	27.1012154	9.54613210
3	Sprint	11.8235636	4.16473205
4	WorldCom	11.7792597	4.14912643
5	LCI International	2.5385089	0.89416436
6	Frontier Communications Services	2.3634942	0.83251720
7	ILEC 2.19	2.1900000	0.77140560
8	Cable & Wireless	0.9357654	0.32961401
9	Global Crossing Telecommunications	0.6794139	0.23931675
10	Switched Service Communications	0.5008847	0.17643164
11	U.S. Long Distance	0.4286315	0.15098115
12	Tel America	0.3227813	0.11369647
13	WorldCom Technologies	0.2815205	0.09916277
14	Qwest	0.2801439	0.09867788
15	Long Distance Savers	0.1505964	0.05304608
16	Frontier Communications-North Central Region	0.1446970	0.05096805
17	Pac-West Telecomm dba AmeriCall	0.1425208	0.05020151
18	Frontier Communications Int'l, Inc.	0.1390850	0.04899130
19	Telco Communications Group dba Dial & Save	0.1360130	0.04790920
20	Bell Atlantic Communications	0.1346397	0.04742549
21	Brooks Fiber Communications	0.1134805	0.03997236
22	Business Telecom, Inc. (BTI)	0.1101138	0.03878650
23	NETECH Comm. (US West)	0.0989391	0.03485029
24	One Call Communications	0.0986707	0.03475578
25	ATX Telecommunications Services	0.0941000	0.03314579
26	McLeodUSA	0.0938146	0.03304526
27	WorldXChange	0.0844956	0.02976272
28	American Network Exchange (AMNEX)	0.0666730	0.02348490
29	Broadwing Communications Services Inc.	0.0551409	0.01942282
30	American Telco	0.0534454	0.01882561
31	WesTel	0.0517618	0.01823259
32	West Coast Telecommunications	0.0513034	0.01807112
33	OCI	0.0503072	0.01772023
34	Access Long Distance	0.0448941	0.01581348
35	Total-Tel USA	0.0442117	0.01557311
36	GST Call America	0.0429595	0.01513205
37	NYNEX—Corridor	0.0404028	0.01423148
38	US Long Distance	0.0384286	0.01353608
39	Eastern Telecom International	0.0362242	0.01275963
40	Network Operator Services	0.0351831	0.01239290
41	GTE Communications Corp.	0.0344361	0.01212976
42	Shared Communications Services	0.0329638	0.01161116
43	Long Distance/USA (Sprint)	0.0321199	0.01131393
44	DeltaCom L.D.S.	0.0299628	0.01055411
45	Tandem Access for Database Query	0.0260948	0.00919165
46	The CommuniGroup Of KC	0.0245338	0.00864178
47	Ameritel	0.0244719	0.00861997
48	U.S. WATS	0.0237662	0.00837141
49	LONG DISTANCE OF MICHIGAN	0.0231463	0.00815304
50	Consolidated Network	0.0223181	0.00786132
51	Westinghouse Electric Corp.	0.0210979	0.00743153
52	ICON Communications	0.0205224	0.00722881
53	T–NETIX, Inc.	0.0201631	0.00710224
54	Telecom*USA (MCI)	0.0186833	0.00658099
55	Teltrust	0.0178732	0.00629566
56	EconoPhone	0.0176599	0.00622051
57	Switch 2000	0.0158645	0.00558811
58	VarTec Telecom	0.0153027	0.00539021
59	Chadwick Telephone	0.0149991	0.00528326
60	One Star Long Distance	0.0142973	0.00503606
61	Capital Telecommunications	0.0142091	0.00500501
62	BN1 Telecommunications	0.0141515	0.00498473
63	I-Link Communications	0.0138405	0.00487516
64	American Telecommunications Enterprises	0.0137892	0.00485709
65	Touch America, Inc.	0.0137339	0.00483762
66	U.S. Link	0.0134288	0.00473015
67	Nationwide Communications	0.0133776	0.00471211
68	Deluxe Data Systems	0.0132089	0.00465272
69	Long Distance Management	0.0129085	0.00454690

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APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
70	Intermedia Communications	0.0127663	0.00449680
71	XO Communications	0.0127328	0.00448501
72	NATIONAL Telecom of Florida	0.0122282	0.00430726
73	Feist Long Distance	0.0122252	0.00430620
74	Intercontinental Communications Group (ICG)	0.0118296	0.00420207
75	American Long Lines	0.0114326	0.00402701
76	Call America Business Comm. Corp.	0.0095168	0.00335218
77	IBM (Advantis)	0.0091183	0.00321183
78	Valu-Line of Kansas	0.0081410	0.00286759
79	General Communication	0.0079124	0.00278708
80	North American Communications	0.0077779	0.00273969
81	Eastern Telephone Systems	0.0077552	0.00273169
82	MFS Intelnet	0.0077267	0.00272166
83	Fox Communications	0.0076554	0.00269654
84	Global Crossing Telemanagement	0.0073930	0.00260412
85	ATI Telecom	0.0073558	0.00259101
86	Hedges & Associates	0.0073188	0.00257797
87	Cincinnati Bell Long Distance	0.0060972	0.00214768
88	Telemanagement Consultants Corp.	0.0060399	0.00212750
89	U.S. Communications	0.0059806	0.00210660
90	Network Plus	0.0057186	0.00201433
91	Action Telcom Co.	0.0056086	0.00197558
92	GST Telecom	0.0055754	0.00196386
93	Ciera Network Systems	0.0053358	0.00187949
94	Long Distance Discount	0.0049896	0.00175754
95	Frontier Communications of the Great Lakes	0.0049638	0.00174843
96	Electric Lightwave	0.0048339	0.00170270
97	Long Distance Wholesale Club (Excel)	0.0047378	0.00166884
98	Eclipse Communications	0.0047049	0.00165727
99	ConQuest	0.0045662	0.00160842
100	CUSTOMER TELECOM NET dba CTN	0.0045581	0.00160555
101	POPP Telcom	0.0045046	0.00158671
102	Off Campus Telecommunications	0.0043316	0.00152577
103	Long Distance Telephone Savers	0.0043164	0.00152041
104	PSP Marketing Group	0.0042606	0.00150076
105	Telephone Assoc. Long Distance Svcs.	0.0038594	0.00135945
106	Broadwing Telecommunications Inc.	0.0038149	0.00134377
107	Cooperative Communications	0.0037533	0.00132206
108	Cleartel Communications	0.0036203	0.00127523
109	Austin Bestline	0.0034801	0.00122582
110	KLP, Inc. dba Call-America	0.0033858	0.00119262
111	United Communications	0.0032397	0.00114116
112	Cherry Communications	0.0032314	0.00113822
113	South Carolina Network	0.0031970	0.00112610
114	The CommuniGroup	0.0031261	0.00110112
115	Digital Network, Inc.	0.0028377	0.00099956
116	IDS Long Distance	0.0028330	0.00099791
117	Citizens Communications	0.0025995	0.00091563
118	TCG	0.0024961	0.00087993
119	Arcada Communications	0.0023550	0.00082953
120	American Tel Group	0.0022940	0.00080805
121	Countdown Communications	0.0022744	0.00080114
122	Long Distance USA	0.0022334	0.00078671
123	MRC Telecommunications	0.0022097	0.00077833
124	TCA Long Distance	0.0021371	0.00075277
125	Norlight Telecommunications	0.0020836	0.00073392
126	Global Crossing Bandwidth	0.0017834	0.00062817
127	Capital Network Systems (AMNEX)	0.0016998	0.00059868
128	TransNet	0.0016856	0.00059372
129	LCC	0.0016652	0.00058656
130	Iowa Communications Network	0.0016243	0.00057216
131	Parkway Communications	0.0016207	0.00057087
132	TresCom U.S.A.	0.0015496	0.00054582
133	Convergent Communications	0.0015135	0.00053311
134	NEXTLINK	0.0013910	0.00048996
135	Cypress Telecommunications Corp. (Cytel)	0.0013087	0.00046097
136	Yavapai Telephone Exchange	0.0012903	0.00045451
137	MVP Communications	0.0011185	0.00039398
138	C-COM	0.0011021	0.00038821
139	United Telephone Co.	0.0010314	0.00036331
140	US Comm. dba Southwest L.D.N.	0.0010174	0.00035838
141	CTS Telcom of Florida	0.0010157	0.00035776

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
142	Telescan	0.0010114	0.00035625
143	Ionex Telecommunications	0.0010013	0.00035269
144	Logix Communications	0.0009404	0.00033124
145	Phonetel Technologies	0.0009246	0.00032569
146	AT&T Canada Long Distance Services Co.	0.0009223	0.00032489
147	Mon-Cre Long Distance	0.0009146	0.00032217
148	Connect America Communications	0.0008774	0.00030905
149	Concord Telephone Long Distance	0.0008735	0.00030770
150	WATS/800	0.0008587	0.00030248
151	Athena International	0.0008516	0.00029998
152	First Financial Management Corp.	0.0008481	0.00029873
153	International Telcom, Ltd	0.0008441	0.00029734
154	Sunshine Telephone Inc. dba SUNTEL	0.0008324	0.00029319
155	Keystone Telecom	0.0008213	0.00028929
156	Powercom Corp.	0.0008187	0.00028838
157	Midco Communications	0.0007770	0.00027368
158	T-One Communications	0.0007631	0.00026880
159	Star Tel, Inc.	0.0007553	0.00026604
160	Eastern Telecom dba InterQuest	0.0007479	0.00026343
161	American Telesource International	0.0007413	0.00026112
162	Econo. Call Long Distance Services	0.0007150	0.00025186
163	TELUS Communications (Edmonton)	0.0006984	0.00024599
164	Telehop Communications	0.0006840	0.00024092
165	KTNT Communications	0.0006757	0.00023802
166	AT&T EasyLink Services	0.0006601	0.00023251
167	Valuline Long Distance	0.0006399	0.00022538
168	American Express Travel Related Services	0.0006270	0.00022086
169	Interlink Telecommunications	0.0005725	0.00020165
170	US Link Long Distance	0.0005406	0.00019041
171	Americall Communications	0.0005347	0.00018836
172	Intl.800 Telecom dba Telecall Long Dist. (EGLOBE)	0.0005293	0.00018645
173	Union Telephone Co.	0.0004803	0.00016918
174	Western Telecom, Inc.	0.0004568	0.00016092
175	Uni-Tel of Farmington	0.0004503	0.00015860
176	Euronet Communications Corp.	0.0004437	0.00015629
177	Show-Me Long Distance	0.0004221	0.00014869
178	North American Telephone	0.0004139	0.00014579
179	Dial-Net, Inc.	0.0004132	0.00014553
180	USLINK	0.0004120	0.00014512
181	First Communications	0.0004057	0.00014292
182	TelaMarketing Communications	0.0003922	0.00013815
183	TXU Communications	0.0003481	0.00012261
184	Shoreham Telephone	0.0003353	0.00011809
185	U.S. Connect Corp.	0.0003313	0.00011669
186	AT&T Global Network Services (AGNS)	0.0003161	0.00011133
187	Telephone Communications Corp.	0.0003080	0.00010850
188	Alternate Communications Technology	0.0003071	0.00010817
189	Baystar Satellite Paging	0.0003000	0.00010568
190	JSM Tele-Page	0.0002989	0.00010527
191	Systems 1000	0.0002880	0.00010145
192	Operator Service Co.	0.0002539	0.00008944
193	Autumn Communications	0.0002291	0.00008070
194	Call America/Palm Desert	0.0002226	0.00007842
195	NACT	0.0002222	0.00007827
196	ACC Long Distance Corp.	0.0001873	0.00006597
197	NTS Communications	0.0001863	0.00006564
198	TTI Telecommunications	0.0001830	0.00006446
199	Sound Communications West	0.0001828	0.00006439
200	National Network Corp.	0.0001826	0.00006432
201	ARCADA	0.0001796	0.00006332
202	PT-1 Communications	0.0001796	0.00006332
203	LCI	0.0001658	0.00005840
204	TresCom U.S.A., Inc./TresCom Caribbean	0.0001524	0.00005366
205	Executives of Sacramento	0.0001521	0.00005359
206	Dancris Comm.	0.0001441	0.00005076
207	Midcom of Arizona, Inc	0.0001432	0.00005043
208	Digital Technologies	0.0001397	0.00004922
209	Connect Americom Corp.	0.0001359	0.00004786
210	Communications Options	0.0001329	0.00004680
211	KRB Telecom	0.0001301	0.00004584
212	Connect America Corp.	0.0001199	0.00004224
213	Oncor Communications	0.0001195	0.00004209

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APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
214	Tele Tech	0.0001177	0.00004147
215	ECI Communications	0.0001161	0.00004088
216	NTS Communications/GMW Co.	0.0001116	0.00003930
217	Ameritech	0.0001110	0.00003908
218	Capsule Communications	0.0001063	0.00003743
219	Telenet Comm. Corp.	0.0001055	0.00003717
220	American Telecommunications Holding	0.0001038	0.00003655
221	Citilink of UT	0.0001035	0.00003647
222	NTI	0.0001030	0.00003629
223	Business Discount Plan dba LD Discount Plan	0.0001007	0.00003548
224	Home Owners L.D. dba HOLD Billing Svcs.	0.0000993	0.00003497
225	QCC, Inc.	0.0000964	0.00003394
226	Tele-Sys., Inc.	0.0000953	0.00003357
227	Telecom Affiliates	0.0000894	0.00003148
228	USLink Long Distance	0.0000871	0.00003067
229	Americom Communications	0.0000859	0.00003027
230	L.D. Services	0.0000839	0.00002957
231	Telecommunications Service Center	0.0000824	0.00002902
232	SWITCHED SERVICE	0.0000820	0.00002887
233	Nuestra Telefonica	0.0000715	0.00002520
234	Alternative Long Distance dba Money $avers	0.0000636	0.00002241
235	Call Savers	0.0000592	0.00002086
236	Excel Telecommunications	0.0000554	0.00001950
237	Asia International Services Corp.	0.0000554	0.00001950
238	WestCom Inc. (Western Telecom, Inc.)	0.0000501	0.00001763
239	ComCentral dba Southnet Services	0.0000467	0.00001646
240	ABC Telecom	0.0000465	0.00001638
241	Gulf Long Distance	0.0000463	0.00001631
242	SouthTel Corp.	0.0000461	0.00001624
243	Valu-Line of Amarillo	0.0000456	0.00001605
244	TELECOM WEST	0.0000441	0.00001554
245	Sound Communication	0.0000439	0.00001546
246	DeltaCom Long Distance Services	0.0000429	0.00001510
247	Hi-Rim Communications	0.0000428	0.00001506
248	RSL COM U.S.A.	0.0000421	0.00001484
249	Olympic Telecommunications	0.0000419	0.00001477
250	Communication Cable Laying Co.	0.0000404	0.00001421
251	Atlantic Telephone Co.	0.0000393	0.00001385
252	Integrated Systems Corp.	0.0000373	0.00001315
253	FIRSTEL, INC	0.0000371	0.00001308
254	Access Services dba Pacific NW Telecom	0.0000365	0.00001286
255	Amerinet Communications	0.0000348	0.00001227
256	International Cellular	0.0000348	0.00001227
257	NYNEX	0.0000315	0.00001109
258	Coast to Coast Telecommunications	0.0000293	0.00001032
259	VarTec Telecom dba Clear Choice Communicat	0.0000277	0.00000977
260	CCC Communications Corp. (Z-TEL, Inc.)	0.0000267	0.00000940
261	International Telephone Corp.	0.0000264	0.00000929
262	Light Link Inc dba Taylor Comm. Grp.	0.0000260	0.00000915
263	R,D,&J Communications Mgmt.	0.0000254	0.00000896
264	Sprint Canada, Inc.	0.0000242	0.00000852
265	TEL-SPAN COMMUNICATIONS	0.0000235	0.00000826
266	DeltaCom, Inc.	0.0000235	0.00000826
267	BMG/TELEMANAGEMENT SYSTEMS (BMG)	0.0000230	0.00000812
268	Long Distance International	0.0000221	0.00000779
269	Eclipse Telecommunications	0.0000221	0.00000779
270	Telephone Assoc. dba Thief River Falls LD	0.0000217	0.00000764
271	Tel Serv	0.0000215	0.00000757
272	Roseville Telephone Co.	0.0000210	0.00000738
273	Valu-Line of Longview	0.0000208	0.00000731
274	Working Assets	0.0000191	0.00000672
275	Souris River Telecommunications	0.0000188	0.00000661
276	EGLOBE INC dba INTL.800 TELECOM dba TELECAL	0.0000186	0.00000654
277	Call America of Riverside	0.0000184	0.00000646
278	Independent Network Services	0.0000173	0.00000610
279	TSC Communications	0.0000172	0.00000606
280	Fone America	0.0000172	0.00000606
281	Primus	0.0000165	0.00000580
282	Commonwealth Telecom Services	0.0000164	0.00000577
283	WCS Operators	0.0000163	0.00000573
284	WinStar	0.0000159	0.00000558
285	Hertz Technologies	0.0000156	0.00000551

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
286	Iowa Network Services	0.0000151	0.00000533
287	A & N Telecom	0.0000147	0.00000518
288	Matrix Telecom	0.0000146	0.00000514
289	Fones West Digital Systems	0.0000141	0.00000496
290	Data & Electronic Services	0.0000131	0.00000463
291	Payline Systems	0.0000119	0.00000419
292	MIDCOM Communications	0.0000109	0.00000386
293	Nationwide Emergency Telecomm. System	0.0000108	0.00000382
294	GST Net	0.0000107	0.00000378
295	Hi-Plains NTS Communications	0.0000103	0.00000364
296	North County Communications Corp.	0.0000100	0.00000353
297	Intel Communications	0.0000098	0.00000345
298	Coast International	0.0000095	0.00000334
299	fONOROLA	0.0000093	0.00000327
300	ITC Networks	0.0000091	0.00000320
301	PDQ Communications Source	0.0000086	0.00000301
302	Teleport Communications Group	0.0000084	0.00000298
303	Value Tel	0.0000080	0.00000283
304	The Furst Group	0.0000078	0.00000275
305	NexGen 511	0.0000078	0.00000275
306	Telephone Express	0.0000074	0.00000261
307	U S West Long Distance	0.0000073	0.00000257
308	AUC Communications	0.0000072	0.00000253
309	B.R. Communications	0.0000072	0.00000253
310	U.S. Fibercom	0.0000066	0.00000231
311	MetroLink	0.0000065	0.00000228
312	Budget Call Long Distance	0.0000063	0.00000220
313	DTG Communications	0.0000059	0.00000209
314	American Discount Telecommunications	0.0000057	0.00000202
315	U.S. Communications	0.0000057	0.00000202
316	CEO Telecommunications	0.0000055	0.00000195
317	NET-tel Corp.	0.0000055	0.00000195
318	USN Communications	0.0000052	0.00000184
319	EMI Communications Corp.	0.0000051	0.00000180
320	Pacific Gateway Exchange	0.0000051	0.00000180
321	Extelcom dba Express Tel	0.0000050	0.00000176
322	Premier Long Distance Svcs.	0.0000049	0.00000173
323	National Fibernet, Inc.	0.0000049	0.00000173
324	ADDTEL Communications (SA Tel)	0.0000048	0.00000169
325	Affiliated Telecom Svcs.	0.0000045	0.00000158
326	Comwest Communications	0.0000045	0.00000158
327	TTE OF CHARLESTON	0.0000044	0.00000154
328	CoreComm	0.0000044	0.00000154
329	Priority One Long Distance	0.0000043	0.00000151
330	Digital Network Services	0.0000043	0.00000151
331	Econ-A-Call Inc. of Hays	0.0000043	0.00000151
332	National Telephone Communications	0.0000042	0.00000147
333	Manitoba Telephone System	0.0000041	0.00000143
334	ALLTEL Communications, Inc.	0.0000039	0.00000136
335	AmeriVision Communications	0.0000039	0.00000136
336	Interstate Telecom Svcs.	0.0000039	0.00000136
337	SBS/MCI	0.0000038	0.00000132
338	Call Technology Corp. of Philadelphia	0.0000035	0.00000125
339	METRONET Long Distance Communications	0.0000034	0.00000121
340	Tel-One	0.0000026	0.00000092
341	Century Telecommunications	0.0000025	0.00000088
342	USP Communications	0.0000025	0.00000088
343	Fibernet Telecommunications	0.0000024	0.00000084
344	TelVue Corp.	0.0000024	0.00000084
345	Public Phone	0.0000023	0.00000081
346	Touch 1 Communications	0.0000022	0.00000077
347	Trinet	0.0000022	0.00000077
348	ILD Telecommunications	0.0000020	0.00000070
349	Global Tone Communications	0.0000019	0.00000066
350	HOTEL CONNECT	0.0000019	0.00000066
351	ONE–2–ONE Communications	0.0000018	0.00000062
352	United Telephone Co. dba TELAMERICA L.D.	0.0000018	0.00000062
353	Telco Holdings	0.0000016	0.00000055
354	Caribbean Telecommunications Consortium	0.0000016	0.00000055
355	Axces	0.0000016	0.00000055
356	Fiberline Network Communications	0.0000016	0.00000055
357	WorldCom dba Touch One Long Distance	0.0000016	0.00000055

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APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
358	Tel-Optic, Inc. dba Universal Network Services	0.0000016	0.00000055
359	MEANS Telcom	0.0000016	0.00000055
360	United Telephone Long Distance	0.0000016	0.00000055
361	LA CONEXION FAMILIAR, INC.	0.0000014	0.00000048
362	Economy Telephone	0.0000014	0.00000048
363	FiberNet Telemanagement	0.0000013	0.00000044
364	Telecom One	0.0000011	0.00000040
365	National Brands dba Sharenet Communications	0.0000011	0.00000040
366	Empire One Telecommunications	0.0000011	0.00000040
367	American Long Distance Corp.	0.0000010	0.00000037
368	T–NET (Cable & Wireless)	0.0000010	0.00000037
369	North American Telephone Network, Inc.	0.0000010	0.00000037
370	Advanced Telecommunications Network	0.0000010	0.00000037
371	Blue Mountain Cellular dba CellularOne	0.0000010	0.00000037
372	American Long Distance Exchange	0.0000010	0.00000037
373	SB Communications	0.0000010	0.00000037
374	MCI/1–800–COLLECT	0.0000010	0.00000037
375	Telec Inc.	0.0000009	0.00000033
376	LECNet, Inc.	0.0000009	0.00000033
377	L.D. Network, Inc.	0.0000008	0.00000029
378	Aliant Systems	0.0000008	0.00000029
379	EATELNET	0.0000008	0.00000029
380	Trans National Communications	0.0000008	0.00000029
381	Preferred Telecom	0.0000008	0.00000029
382	Star Tel of Abilene	0.0000008	0.00000029
383	First Data Resources, Inc.	0.0000008	0.00000029
384	Central Telephone Co.	0.0000007	0.00000026
385	INFO-TEL, Inc.	0.0000007	0.00000026
386	Commonwealth Telecom, Inc.	0.0000007	0.00000026
387	Phoenix Network	0.0000007	0.00000026
388	Vista Group International	0.0000006	0.00000022
389	VALU–LINE OF ANGLETON	0.0000006	0.00000022
390	Standard Long Distance	0.0000006	0.00000022
391	EqualNet Corp.	0.0000005	0.00000018
392	Farmers Long Distance	0.0000005	0.00000018
393	Select Communications	0.0000005	0.00000018
394	American Fiber Com	0.0000005	0.00000018
395	REAMS COMMUNICATIONS dba VALULINE	0.0000005	0.00000018
396	U.S. Republic Communications	0.0000005	0.00000018
397	The Switchboard	0.0000005	0.00000018
398	Regency Long Distance	0.0000005	0.00000018
399	Future Connect	0.0000005	0.00000018
400	Xtracom	0.0000005	0.00000018
401	TresCom Puerto Rico	0.0000005	0.00000018
402	U.S. Net	0.0000004	0.00000015
403	Thrifty Call	0.0000004	0.00000015
404	KDD America, Inc.	0.0000004	0.00000015
405	ARC Networks	0.0000004	0.00000015
406	Interstate Operators	0.0000004	0.00000015
407	J B Operators	0.0000004	0.00000015
408	Metro One Telecommunications	0.0000004	0.00000015
409	Comtel Tech	0.0000004	0.00000015
410	Telephone Support Systems	0.0000004	0.00000015
411	Century Communications	0.0000004	0.00000015
412	Group Long Distance	0.0000004	0.00000015
413	Call America	0.0000004	0.00000015
414	BC Tel	0.0000004	0.00000015
415	The Phone Co.	0.0000003	0.00000011
416	Century Long Distance	0.0000003	0.00000011
417	STARTEC	0.0000003	0.00000011
418	Friendship Long Distance	0.0000003	0.00000011
419	National Fiber Com	0.0000003	0.00000011
420	Associated Network Partners	0.0000003	0.00000011
421	Northern Arizona Communications Corp.	0.0000003	0.00000011
422	Northwest Telecom	0.0000003	0.00000011
423	Progressive National Telephone Co.	0.0000003	0.00000011
424	World Wide Connect	0.0000003	0.00000011
425	Digital Communications	0.0000003	0.00000011
426	Gala Communications	0.0000003	0.00000011
427	TeleHub Communications Corp.	0.0000003	0.00000011
428	Fastline Communication Network	0.0000003	0.00000011
429	West River Long Distance	0.0000003	0.00000011

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
430	Cable & Wireless (TDX)	0.0000003	0.00000011
431	Fibernet, Inc.	0.0000003	0.00000011
432	Incomnet Communications Corp.	0.0000002	0.00000007
433	Tel-Share	0.0000002	0.00000007
434	Coastal Long Distance Services	0.0000002	0.00000007
435	Colorado River Communications	0.0000002	0.00000007
436	TMC Long Distance dba Cherry Communications	0.0000002	0.00000007
437	Nationwide Long Distance	0.0000002	0.00000007
438	Heritage Communications	0.0000002	0.00000007
439	Savernore Network	0.0000002	0.00000007
440	OPTICOM ONE CALL	0.0000002	0.00000007
441	Alascom	0.0000002	0.00000007
442	BKC Telecommunications	0.0000002	0.00000007
443	Network Billing & Collection	0.0000002	0.00000007
444	Vortel Communications	0.0000002	0.00000007
445	Rainier Cable	0.0000002	0.00000007
446	St. Pierre Communication Network	0.0000002	0.00000007
447	PNG Telecomms. dba PowerNet Global Commu	0.0000002	0.00000007
448	BellSouth Long Distance	0.0000002	0.00000007
449	Americatel	0.0000002	0.00000007
450	Basico Group	0.0000002	0.00000007
451	United Communications Assn., Inc.	0.0000002	0.00000007
452	Telamerica Communications	0.0000001	0.00000004
453	Cellnet	0.0000001	0.00000004
454	CapRock Telemanagement	0.0000001	0.00000004
455	Advanced Telecom, Inc.	0.0000001	0.00000004
456	US TeleServices	0.0000001	0.00000004
457	Execulines of North Central Region	0.0000001	0.00000004
458	National Telephone Exchange (PA)	0.0000001	0.00000004
459	SouthWest United Communication	0.0000001	0.00000004
460	National Tele-Sav Inc.	0.0000001	0.00000004
461	Discount Long Distance of America	0.0000001	0.00000004
462	Sprint Local Telecommunications Division	0.0000001	0.00000004
463	Sam's Discount Long Distance	0.0000001	0.00000004
464	Scherers Communications Group	0.0000001	0.00000004
465	BT North America	0.0000001	0.00000004
466	Mountainview Communications	0.0000001	0.00000004
467	TELCO	0.0000001	0.00000004
468	OCOM Long Distance	0.0000001	0.00000004
469	STANDARD TELCOM	0.0000001	0.00000004
470	OmniCall	0.0000001	0.00000004
471	RANGER TELECOMMUNICATIONS	0.0000001	0.00000004
472	Long Distance Assistance	0.0000001	0.00000004
473	Roanoke & Botetourt Telephone Co.	0.0000001	0.00000004
474	Fairview Telecom	0.0000001	0.00000004
475	Bluegrass Long Distance	0.0000001	0.00000004
476	Valu-Line of St. Joseph	0.0000001	0.00000004
477	Telelink	0.0000001	0.00000004
478	TeleCable Corp.	0.0000001	0.00000004
479	Federal TransTel, Inc. (FTT)	0.0000001	0.00000004
480	UI Long Distance	0.0000001	0.00000004
481	Texustel	0.0000001	0.00000004
482	Continental Long Distance	0.0000001	0.00000004
483	Marathon Communications	0.0000001	0.00000004
484	Pioneer Telecom	0.0000001	0.00000004
485	Starcom International Optics Corp.	0.0000001	0.00000004
486	TeleData International	0.0000001	0.00000004
487	ZEPTEL	0.0000001	0.00000004
488	SouthEast Telephone, LTD.	0.0000001	0.00000004
489	TRT Telecommunications Corp.	0.0000001	0.00000004
490	Access-Plus	0.0000001	0.00000004
491	Apple Communications	0.0000001	0.00000004
492	Allgood Taylor Telephone	0.0000001	0.00000004
493	Guide Network International	0.0000001	0.00000004
494	Xnet, Inc.	0.0000001	0.00000004
495	LDI Solutions	0.0000001	0.00000004
496	Teleglobe USA	0.0000001	0.00000004
497	Caribsat Telecommunications	0.0000001	0.00000004
498	Innovative Telecom	0.0000001	0.00000004
499	Bethany Telecom	0.0000001	0.00000004
500	Westel Telecommunications, Ltd.	0.0000001	0.00000004
501	Cincinnati Bell Telephone	0.0000001	0.00000004

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APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
502	World Access Communications Corp.(WACC)	0.0000001	0.00000004
503	BELL SOUTH BUSINESS SYSTEMS	0.0000001	0.00000004

27. In Appendix B, the Commission identified the payors and designated the monthly per-payphone compensation amounts for the Intermediate Period, beginning October 7, 1997, through April 20, 1999.

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST

No.	Name	Percentage	Amount
1	AT&T Communications	35.24391644	$12.41431713
2	MCI	23.61161155	8.31695405
3	WorldCom	12.96694860	4.56747797
4	Sprint	12.51899810	4.40969189
5	Frontier Communications Services	3.92149599	1.38130775
6	LCI International	2.37673530	0.83718124
7	ILEC 2.19%	2.19000001	0.77140560
8	Cable & Wireless	0.97917273	0.34490380
9	Switched Service Communications	0.49097550	0.17294121
10	Global Crossing Telecommunications	0.42983911	0.15140653
11	U.S Long Distance	0.42561847	0.14991985
12	LCI	0.33335911	0.11742241
13	Telco Communications Group dba Dial & Save	0.31307165	0.11027636
14	PT–1 Communications	0.25384298	0.08941365
15	Business Telecom, Inc (BTI)	0.23496687	0.08276473
16	Long Distance Savers	0.21586112	0.07603492
17	Qwest	0.20372964	0.07176173
18	IXC Communication Services	0.19060904	0.06714013
19	Teltrust	0.18761125	0.06608419
20	One Call Communications	0.14547001	0.05124036
21	EconoPhone	0.14188411	0.04997726
22	ATX Telecommunications Services	0.12896413	0.04542633
23	WorldXChange	0.10813630	0.03808993
24	Tel America	0.10673413	0.03759603
25	American Network Exchange (AMNEX)	0.10326189	0.03637297
26	Bell Atlantic Communications	0.09986097	0.03517503
27	American Telco	0.08260508	0.02909681
28	US Long Distance	0.08048481	0.02834997
29	Total-Tel USA	0.07600848	0.02677323
30	Cincinnati Bell Long Distance	0.06237390	0.02197058
31	WesTel	0.06191358	0.02180844
32	DeltaCom L.D.S	0.06105990	0.02150774
33	Consolidated Network	0.05901859	0.02078871
34	OCI	0.05889480	0.02074511
35	Broadwing Communications Services Inc	0.05419353	0.01908913
36	Network Operator Services	0.05175470	0.01823007
37	NETECH Comm (US West)	0.05022277	0.01769047
38	Pac-West Telecomm dba AmeriCall	0.04830760	0.01701587
39	Tandem Access for Database Query	0.04718756	0.01662135
40	GTE Communications Corp	0.04716124	0.01661208
41	Frontier Communications of the Great Lakes	0.04687323	0.01651063
42	NYNEX—Corridor	0.04680553	0.01648678
43	McLeodUSA	0.04342555	0.01529621
44	LONG DISTANCE OF MICHIGAN	0.04219019	0.01486107
45	The CommuniGroup Of KC	0.04049647	0.01426448
46	Telecom*USA (MCI)	0.03835522	0.01351024
47	ACC Long Distance Corp	0.02988201	0.01052564
48	Network Plus	0.02915011	0.01026784
49	Brooks Fiber Communications	0.02861186	0.01007824
50	U.S WATS	0.02782831	0.00980224
51	American Long Lines	0.02735606	0.00963590
52	Access Long Distance	0.02553887	0.00899581
53	Eclipse Communications	0.02337135	0.00823232
54	VarTec Telecom	0.02292436	0.00807488
55	One Star Long Distance	0.02237160	0.00788017
56	American Telecommunications Enterprises	0.02223350	0.00783153
57	Long Distance/USA (Sprint)	0.02133906	0.00751647
58	T–NETIX, Inc	0.02082489	0.00733536
59	Nationwide Communications	0.02071495	0.00729663
60	Intercontinental Communications Group (ICG)	0.02005349	0.00706364
61	Westinghouse Electric Corp	0.01984365	0.00698973

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
62	Capital Telecommunications	0.01917389	0.00675381
63	NATIONAL Telecom of Florida	0.01833703	0.00645903
64	GST Call America	0.01707555	0.00601489
65	Feist Long Distance	0.01695584	0.00597252
66	Frontier Communications-North Central Region	0.01678545	0.00591251
67	Intermedia Communications	0.01676333	0.00590472
68	WorldCom Technologies	0.01625195	0.00572459
69	Cooperative Communications	0.01598441	0.00563035
70	Chadwick Telephone	0.01517026	0.00534357
71	ATI Telecom	0.01515622	0.00533863
72	BN1 Telecommunications	0.01429701	0.00503598
73	Shared Communications Services	0.01403492	0.00494366
74	Long Distance Management	0.01364885	0.00480697
75	Valu-Line of Kansas	0.01352852	0.00476528
76	ConQuest	0.01224107	0.00431179
77	ICON Communications Corp	0.01171125	0.00412517
78	Long Distance International	0.01170991	0.00412470
79	South Carolina Network	0.01122426	0.00395363
80	Frontier Communications Int'l, Inc	0.00996360	0.00351662
81	Eastern Telephone Systems	0.00966909	0.00340549
82	Electric Lightwave	0.00948198	0.00333993
83	North American Communications	0.00927736	0.00326786
84	Telemanagement Consultants Corp	0.00921237	0.00324496
85	I-Link Communications	0.00892608	0.00314412
86	Action Telcom Co	0.00888023	0.00312797
87	Citizens Telecom	0.00857354	0.00301995
88	Deluxe Data Systems	0.00841646	0.00296461
89	Hedges & Associates	0.00834672	0.00294075
90	PSP Marketing Group	0.00826651	0.00291180
91	Cleartel Communications	0.00788868	0.00277905
92	Telebeam	0.00769037	0.00270885
93	Long Distance Discount	0.00734681	0.00258784
94	Touch America, Inc	0.00694482	0.00244617
95	Cellnet	0.00654483	0.00230535
96	US Link Long Distance	0.00626399	0.00220643
97	XO Communications	0.00608506	0.00214340
98	West Coast Telecommunications	0.00578794	0.00203875
99	LCC	0.00517270	0.00182203
100	The CommuniGroup	0.00471144	0.00165956
101	Austin Bestline	0.00470626	0.00165773
102	CapRock Telemanagement	0.00465249	0.00163879
103	Ameritel	0.00463064	0.00163110
104	FOX COMMUNICATIONS CORP	0.00449544	0.00158347
105	IDT Corp	0.00441009	0.00155341
106	Switch 2000	0.00438008	0.00154284
107	MRC Telecommunications	0.00423041	0.00149012
108	IDS Long Distance	0.00415224	0.00146258
109	VarTec Telecom dba Clear Choice Communications	0.00408650	0.00144013
110	General Communication	0.00383755	0.00135174
111	Global Crossing Telemanagement	0.00370561	0.00130526
112	Excel Telecommunications	0.00369988	0.00130325
113	Amerinet Communications	0.00360841	0.00127103
114	US COMMUNICATIONS, INC	0.00350306	0.00123392
115	GTS Global Link	0.00343038	0.00120832
116	US WATS	0.00316367	0.00111437
117	Call America Business Comm Corp	0.00311844	0.00109844
118	Americatel	0.00300132	0.00105719
119	Coast to Coast Telecommunications	0.00289923	0.00102122
120	Iowa Communications Network	0.00280372	0.00098758
121	Capital Network Systems (AMNEX)	0.00277552	0.00097765
122	TCG	0.00275516	0.00097048
123	Coastal Telephone Co.	0.00274736	0.00096773
124	MVP Communications	0.00265973	0.00093686
125	Communications Options	0.00250057	0.00088080
126	Norlight Telecommunications	0.00243746	0.00085857
127	TresCom U.S.A.	0.00232207	0.00081792
128	Digital Network, Inc.	0.00223911	0.00078870
129	Off Campus Telecommunications	0.00222471	0.00078363
130	GST Telecom	0.00218579	0.00077027
131	Connect America Communications	0.00217267	0.00076530
132	KTNT Communications	0.00203546	0.00071697
133	United Telephone Co.	0.00201083	0.00070830

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APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
134	ATLANTIC CELL	0.00198526	0.00069929
135	United Communications	0.00196949	0.00069373
136	IBM (Advantis)	0.00194129	0.00068380
137	Concord Telephone Long Distance	0.00189395	0.00066712
138	PhoneTel Technologies	0.00186928	0.00065843
139	Eastern Telecom dba InterQuest	0.00179777	0.00063325
140	Ionex Telecommunications	0.00165422	0.00058268
141	Cypress Telecommunications Corp. (Cytel)	0.00162880	0.00057373
142	KLP, Inc. dba Call-America	0.00161107	0.00056748
143	FRESH START COMMUNICATIONS	0.00157899	0.00055618
144	Parkway Communications	0.00156769	0.00055220
145	SP Telecom	0.00146132	0.00051474
146	Mon-Cre Long Distance	0.00144332	0.00050839
147	Sunshine Telephone Inc. dba SUNTEL	0.00140869	0.00049620
148	TELUS Communications (Edmonton)	0.00137327	0.00048372
149	CCC GlobalCom Corp.	0.00136758	0.00048172
150	TGEC Communications	0.00128349	0.00045210
151	CTS Telcom of Florida	0.00123434	0.00043478
152	POPP Telcom	0.00123242	0.00043411
153	Midco Communications	0.00118147	0.00041616
154	EMI Communications Corp.	0.00116688	0.00041102
155	Coast International	0.00103921	0.00036605
156	WATS/800	0.00103913	0.00036602
157	Valu-Line of Longview	0.00101234	0.00035659
158	American Tel Group	0.00100932	0.00035552
159	Arcada Communications	0.00099292	0.00034975
160	Athena International	0.00095229	0.00033543
161	Interlink Telecommunications	0.00092801	0.00032688
162	CEO TELECOMM (STAR TELECOMM INC)	0.00090459	0.00031863
163	Broadwing Telecommunications Inc.	0.00087624	0.00030865
164	T-One Communications	0.00086753	0.00030558
165	Fibernet Telecommunications	0.00084713	0.00029839
166	First Financial Management Corp.	0.00084148	0.00029640
167	U.S. Connect Corp.	0.00081999	0.00028883
168	Western Telecom, Inc.	0.00080014	0.00028184
169	Connect Americom Corp.	0.00078834	0.00027698
170	Telescan	0.00077979	0.00027467
171	Digital Technologies	0.00077638	0.00027347
172	SouthTel Corp.	0.00077410	0.00027267
173	Keystone Telecom	0.00069907	0.00024624
174	Euronet Communications Corp.	0.00067696	0.00023846
175	WestCom Inc. (Western Telecom, Inc.)	0.00067687	0.00023842
176	Americall Communications	0.00066004	0.00023249
177	C–COM	0.00064098	0.00022578
178	Convergent Communications	0.00063941	0.00022523
179	Ameritech	0.00063117	0.00022232
180	TRESCOM	0.00060717	0.00021387
181	Autumn Communications	0.00059317	0.00020894
182	Shoreham Telephone	0.00058603	0.00020642
183	TransNet	0.00057438	0.00020232
184	AT&T Global Network Services (AGNS)	0.00056967	0.00020066
185	Star Tel, Inc.	0.00056830	0.00020018
186	U.S. Link	0.00054633	0.00019244
187	Dancris Comm.	0.00054320	0.00019134
188	ATLANTIC CONNECTIONS	0.00052002	0.00018317
189	Kelhorn Comm Inc.	0.00050750	0.00017876
190	US Comm. Inc. dba SOUTHWEST L.D.N.	0.00050566	0.00017811
191	STAR TELECOM/ALLSTAR	0.00048154	0.00016962
192	Alternate Communications Technology	0.00047511	0.00016735
193	Logix Communications	0.00045773	0.00016123
194	Long Distance Wholesale Club (Excel)	0.00044612	0.00015714
195	Econo. Call Long Distance Services	0.00043271	0.00015242
196	Powercom Corp.	0.00042537	0.00014983
197	Dial-Net, Inc.	0.00040497	0.00014265
198	XTEL	0.00040043	0.00014105
199	AT&T EasyLink Services	0.00037344	0.00013154
200	Baystar Satellite Paging	0.00034720	0.00012230
201	North American Telephone	0.00033359	0.00011750
202	Yavapai Telephone Exchange	0.00032767	0.00011542
203	Integrated Systems Corp.	0.00032747	0.00011535
204	JSM Tele-Page	0.00032676	0.00011510
205	Payline Systems	0.00032351	0.00011395

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
206	TelaMarketing Communications	0.00031512	0.00011100
207	Valuline Long Distance	0.00029570	0.00010416
208	Midcom of Arizona, Inc	0.00028833	0.00010156
209	Citizens Communications	0.00028589	0.00010070
210	Operator Service Co.	0.00028368	0.00009992
211	Call America	0.00027527	0.00009696
212	Uni-Tel of Farmington	0.00025985	0.00009153
213	Telco Holdings	0.00025911	0.00009127
214	Union Telephone Co.	0.00025279	0.00008904
215	First Communications	0.00024095	0.00008487
216	Telehop Communications	0.00022149	0.00007802
217	Cherry Communications	0.00021977	0.00007741
218	Tele-Sys., Inc.	0.00018517	0.00006522
219	American Telesource International	0.00017886	0.00006300
220	Commonwealth Telecom Services	0.00017156	0.00006043
221	Intl.800 Telecom dba Telecall Long Dist. (EGLOBE)	0.00016776	0.00005909
222	R,D,&J Communications Mgmt.	0.00015442	0.00005439
223	Telecommunications Service Center	0.00014881	0.00005242
224	TEL-SPAN COMMUNICATIONS	0.00014720	0.00005185
225	NACT	0.00014709	0.00005181
226	American Express Travel Related Services	0.00014661	0.00005164
227	Gulf Long Distance	0.00014575	0.00005134
228	IntelCom Group	0.00013991	0.00004928
229	USLink Long Distance	0.00013391	0.00004717
230	ECI Communications	0.00012794	0.00004507
231	DeltaCom Long Distance Services	0.00012559	0.00004424
232	ComCentral dba Southnet Services	0.00012355	0.00004352
233	Brooke Telecom Co-operative	0.00012210	0.00004301
234	TresCom U.S.A., Inc./TresCom Caribbean	0.00012045	0.00004243
235	DeltaCom, Inc.	0.00011053	0.00003893
236	Telephone Assoc. Long Distance Svcs.	0.00010523	0.00003707
237	TSC Communications	0.00010488	0.00003694
238	QCC, Inc.	0.00010276	0.00003620
239	Independence Telephone Co.	0.00010029	0.00003533
240	Citilink of UT	0.00009598	0.00003381
241	Home Owners L.D. dba HOLD Billing Svcs.	0.00009225	0.00003249
242	Tele Tech	0.00008876	0.00003127
243	Systems 1000	0.00008186	0.00002883
244	ALLTEL Communications, Inc.	0.00008080	0.00002846
245	Oncor Communications	0.00007911	0.00002787
246	Americom Communications	0.00007739	0.00002726
247	Eclipse Telecommunications	0.00007587	0.00002676
248	NTS Communications	0.00007499	0.00002642
249	TXU Communications	0.00007323	0.00002579
250	L.D. Services	0.00007001	0.00002466
251	PSA, Inc.	0.00006915	0.00002436
252	International Cellular	0.00006735	0.00002372
253	Capsule Communications	0.00006440	0.00002269
254	Executives of Sacramento	0.00006425	0.00002263
255	ARCADA	0.00006366	0.00002242
256	Caribbean Telecommunications Consortium	0.00006240	0.00002198
257	Olympic Telecommunications	0.00006013	0.00002118
258	Global Crossing Bandwidth	0.00005907	0.00002081
259	ABC Telecom	0.00005707	0.00002010
260	MIDCOM Communications	0.00005570	0.00001962
261	Long Distance Telephone Savers	0.00005472	0.00001927
262	Business Discount Plan dba LD Discount Plan	0.00005236	0.00001844
263	International Telephone Corp.	0.00004773	0.00001681
264	NTI	0.00004722	0.00001663
265	Iowa Network Services	0.00004648	0.00001637
266	TCA Long Distance	0.00004632	0.00001632
267	Premier Long Distance Svcs.	0.00004617	0.00001626
268	Time Warner	0.00004613	0.00001625
269	Communication Cable Laying Co.	0.00004338	0.00001528
270	Tel Serv	0.00004283	0.00001509
271	Intel Communications	0.00003989	0.00001405
272	Axces	0.00003605	0.00001270
273	Lucky Dog Phone Co.	0.00003585	0.00001263
274	Manitoba Telephone System	0.00003514	0.00001238
275	Telephone Communications Corp.	0.00003357	0.00001183
276	Atlantic Telephone Co.	0.00003322	0.00001170
277	TTI Telecommunications	0.00003267	0.00001151

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APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
278	Fone America	0.00003020	0.00001064
279	Data & Electronic Services	0.00002938	0.00001035
280	Light Link Inc dba Taylor Comm. Grp.	0.00002851	0.00001004
281	NYNEX	0.00002793	0.00000984
282	RCC Network	0.00002632	0.00000927
283	NET-tel Corp.	0.00002440	0.00000859
284	Incomnet Communications Corp.	0.00002220	0.00000782
285	ITC Networks	0.00002208	0.00000778
286	GST Net	0.00002185	0.00000770
287	AMERICAN TELECOMMUNICATIONS HOLDING	0.00002126	0.00000749
288	Matrix Telecom	0.00002020	0.00000712
289	Show-Me Long Distance	0.00002008	0.00000707
290	Working Assets	0.00001847	0.00000651
291	T-NET (Cable & Wireless)	0.00001800	0.00000634
292	NTS Communications/GMW Co.	0.00001765	0.00000622
293	Asia International Services Corp.	0.00001757	0.00000619
294	Touch 1 Communications	0.00001679	0.00000591
295	TELECOM WEST	0.00001632	0.00000575
296	Teleport Communications Group	0.00001455	0.00000513
297	MetroLink	0.00001432	0.00000504
298	fONOROLA	0.00001424	0.00000502
299	AUC Communications	0.00001408	0.00000496
300	WinStar	0.00001396	0.00000492
301	Call America of Riverside	0.00001369	0.00000482
302	Sprint Canada, Inc.	0.00001357	0.00000478
303	LA CONEXION FAMILIAR, INC.	0.00001334	0.00000470
304	EqualNet Corp.	0.00001294	0.00000456
305	BMG/TELEMANAGEMENT SYSTEMS (BMG)	0.00001294	0.00000456
306	MID ATLANTIC TELECOM	0.00001267	0.00000446
307	National Network Corp.	0.00001181	0.00000416
308	Primus (Primus Telecommunications)	0.00001134	0.00000399
309	Hi-Rim Communications	0.00001106	0.00000390
310	Independent Network Services	0.00001083	0.00000381
311	The Phone Co.	0.00001059	0.00000373
312	Century Telecommunications	0.00001059	0.00000373
313	Roseville Telephone Co.	0.00001047	0.00000369
314	Tel-Share	0.00000992	0.00000350
315	AmeriVision Communications	0.00000992	0.00000350
316	Call Savers	0.00000988	0.00000348
317	Valu-Line of Amarillo	0.00000981	0.00000345
318	AT&T Canada Long Distance Services Co.	0.00000969	0.00000341
319	TTE OF CHARLESTON	0.00000969	0.00000341
320	Telec Inc.	0.00000965	0.00000340
321	Coastal Long Distance Services	0.00000957	0.00000337
322	A & N Telecom	0.00000906	0.00000319
323	PDQ Communications Source	0.00000879	0.00000309
324	Hi-Plains NTS Communications	0.00000843	0.00000297
325	EGLOBE INC dba INTL.800 TELECOM dba TELECAL	0.00000843	0.00000297
326	ADDTEL Communications (SA Tel)	0.00000765	0.00000269
327	DTG Communications	0.00000741	0.00000261
328	Access Services dba Pacific NW Telecom	0.00000741	0.00000261
329	Uni Dial	0.00000722	0.00000254
330	Questar InfoComm	0.00000710	0.00000250
331	Century Long Distance	0.00000706	0.00000249
332	Southwestern Bell Telephone	0.00000686	0.00000242
333	Pacific Bell Interactive Media	0.00000675	0.00000238
334	Nationwide Emergency Telecomm. System	0.00000655	0.00000231
335	GCI Globalcom	0.00000635	0.00000224
336	Priority One Long Distance	0.00000588	0.00000207
337	North County Communications Corp.	0.00000577	0.00000203
338	Souris River Telecommunications	0.00000577	0.00000203
339	National Telephone Communications	0.00000569	0.00000200
340	RSL COM U.S.A.	0.00000569	0.00000200
341	North American Telephone Network, Inc.	0.00000561	0.00000198
342	USN Communications	0.00000549	0.00000193
343	Extelcom dba Express Tel	0.00000541	0.00000191
344	Telecom Affiliates	0.00000530	0.00000187
345	Advanced Telecommunications Network	0.00000530	0.00000187
346	Global Tone Communications	0.00000522	0.00000184
347	US TeleServices	0.00000510	0.00000180
348	CCC Communications Corp. (Z–TEL, Inc.)	0.00000510	0.00000180
349	CoreComm	0.00000486	0.00000171

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
350	Westcom Long Distance	0.00000486	0.00000171
351	L.D. Network, Inc.	0.00000467	0.00000164
352	FiberNet Telemanagement	0.00000443	0.00000156
353	Alternative Long Distance dba Money Savers	0.00000392	0.00000138
354	Dial Long Distance Billing Svcs.	0.00000386	0.00000137
355	Interstate Telecom Svcs.	0.00000377	0.00000133
356	MCI/1–800–COLLECT	0.00000373	0.00000131
357	Call Technology Corp. of Philadelphia	0.00000365	0.00000128
358	National Fibernet, Inc.	0.00000357	0.00000126
359	Nuestra Telefonica	0.00000353	0.00000124
360	Fiberline Network Communications	0.00000341	0.00000120
361	Affiliated Telecom Svcs.	0.00000341	0.00000120
362	WCS Operators	0.00000322	0.00000113
363	Microvoice Applications	0.00000322	0.00000113
364	orldCom dba Touch One Long Distance	0.00000318	0.00000112
365	B.R. Communications	0.00000310	0.00000109
366	Public Phone	0.00000298	0.00000105
367	American Discount Telecommunications	0.00000294	0.00000104
368	Budget Call Long Distance	0.00000294	0.00000104
369	SBS/MCI	0.00000290	0.00000102
370	U.S. Net	0.00000286	0.00000101
371	Thrifty Call	0.00000282	0.00000099
372	Farmers Long Distance	0.00000278	0.00000098
373	KRB Telecom	0.00000275	0.00000097
374	Fones West Digital Systems	0.00000267	0.00000094
375	Hertz Technologies	0.00000263	0.00000093
376	Vista Group International	0.00000255	0.00000090
377	Digital Network Services	0.00000255	0.00000090
378	U.S. Fibercom	0.00000255	0.00000090
379	Aliant Systems	0.00000243	0.00000086
380	CellToll Corp.	0.00000239	0.00000084
381	METRONET Long Distance Communications	0.00000227	0.00000080
382	EATELNET	0.00000204	0.00000072
383	United Telephone Long Distance	0.00000196	0.00000069
384	Trinet	0.00000192	0.00000068
385	ProCom, Inc.	0.00000192	0.00000068
386	Tel-One	0.00000188	0.00000066
387	Escondido Telephone Co.	0.00000188	0.00000066
388	HOTEL CONNECT	0.00000184	0.00000065
389	International Telecommunication Corp.	0.00000180	0.00000064
390	America One Communications	0.00000165	0.00000058
391	Tel-Optic, Inc. dba Universal Network Services	0.00000153	0.00000054
392	Pacific Bell Communications	0.00000153	0.00000054
393	U.S. Communications	0.00000149	0.00000053
394	The Furst Group	0.00000141	0.00000050
395	Easton Telecom Services	0.00000133	0.00000047
396	NTS/HI–PLAINS/MIDCOM AZ	0.00000129	0.00000046
397	Telecom One	0.00000126	0.00000044
398	U S West Long Distance	0.00000126	0.00000044
399	Voice Technology Corp	0.00000122	0.00000043
400	Comwest Communications	0.00000110	0.00000039
401	Telephone Assoc. dba Thief River Falls LD	0.00000110	0.00000039
402	Horry Telephone Long Distance	0.00000110	0.00000039
403	INFO–TEL COMMUNICATIONS	0.00000106	0.00000037
404	BC Tel	0.00000102	0.00000036
405	ONE–2–ONE Communications	0.00000102	0.00000036
406	Pacific Gateway Exchange	0.00000102	0.00000036
407	Long Distance Network	0.00000102	0.00000036
408	Motorola Inc.	0.00000102	0.00000036
409	Star Telecommunications	0.00000102	0.00000036
410	National Telephone Exchange (PA)	0.00000096	0.00000035
411	Economy Telephone	0.00000094	0.00000033
412	North State Telephone Long Distance Co.	0.00000094	0.00000033
413	National Tele-Sav Inc.	0.00000090	0.00000032
414	SouthWest United Communication	0.00000090	0.00000032
415	Central Telephone Co.	0.00000090	0.00000032
416	American Long Distance Corp.	0.00000090	0.00000032
417	Phoenix Network	0.00000086	0.00000030
418	First Data Resources, Inc.	0.00000086	0.00000030
419	Trans National Communications	0.00000082	0.00000029
420	United Telephone Co. dba TELAMERICA L.D.	0.00000082	0.00000029
421	Telaplex Long Distance	0.00000082	0.00000029

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APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
422	National Brands dba Sharenet Communications	0.00000078	0.00000028
423	People's Telephone	0.00000078	0.00000028
424	LECNet, Inc.	0.00000075	0.00000026
425	NOS Communications	0.00000075	0.00000026
426	Empire One Telecommunications	0.00000067	0.00000023
427	United States Cellular	0.00000067	0.00000023
428	Associated Telenet	0.00000067	0.00000023
429	Innovative Telecom	0.00000063	0.00000022
430	RCN Long Distance	0.00000063	0.00000022
431	North American Digicom Corp.	0.00000063	0.00000022
432	Discount Long Distance of America	0.00000059	0.00000021
433	Blue Mountain Cellular dba CellularOne	0.00000059	0.00000021
434	ARRIVA Communications	0.00000059	0.00000021
435	TMC Long Distance dba Cherry Communications	0.00000055	0.00000019
436	American Long Distance Exchange	0.00000055	0.00000019
437	TelVue Corp.	0.00000055	0.00000019
438	Frontier Communications International	0.00000055	0.00000019
439	KDD America, Inc.	0.00000051	0.00000018
440	Preferred Telecom	0.00000051	0.00000018
441	MEANS Telcom	0.00000051	0.00000018
442	HSS Vending Distributors	0.00000051	0.00000018
443	Alo-USA Corp.	0.00000051	0.00000018
444	Nationwide Long Distance	0.00000047	0.00000017
445	U S P & C, Inc.	0.00000047	0.00000017
446	Low Country Carrier dba Hargray L.D. Co.	0.00000047	0.00000017
447	Call America/Palm Desert	0.00000043	0.00000015
448	Select Communications	0.00000043	0.00000015
449	Chautauqua & Erie Communications	0.00000043	0.00000015
450	Poka-Lambro Telecommunications	0.00000043	0.00000015
451	Telecare	0.00000043	0.00000015
452	International Telcom, Ltd	0.00000039	0.00000014
453	STARTEC	0.00000039	0.00000014
454	Association Communications	0.00000039	0.00000014
455	Ben Lomand Communications	0.00000039	0.00000014
456	Sprint Local Telecommunications Division	0.00000035	0.00000012
457	American Fiber Com	0.00000035	0.00000012
458	INFO–TEL, Inc.	0.00000035	0.00000012
459	USP Communications	0.00000035	0.00000012
460	PBC Long Distance	0.00000035	0.00000012
461	Advanced Telecommunications	0.00000035	0.00000012
462	Advanced Telecom, Inc.	0.00000031	0.00000011
463	U.S. Republic Communications	0.00000031	0.00000011
464	REAMS COMMUNICATIONS dba VALULINE LONG D	0.00000031	0.00000011
465	CoServ	0.00000031	0.00000011
466	Sam's Discount Long Distance	0.00000027	0.00000010
467	ARC Networks	0.00000027	0.00000010
468	VALU–LINE OF ANGLETON	0.00000027	0.00000010
469	Michigan Independent Network	0.00000027	0.00000010
470	Valley Telephone Long Distance	0.00000027	0.00000010
471	Scherers Communications Group	0.00000024	0.00000008
472	Heritage Communications	0.00000024	0.00000008
473	Friendship Long Distance	0.00000024	0.00000008
474	Interstate Operators	0.00000024	0.00000008
475	TELCO	0.00000020	0.00000007
476	Mountainview Communications	0.00000020	0.00000007
477	BT North America	0.00000020	0.00000007
478	The Basico Group	0.00000020	0.00000007
479	Colorado River Communications	0.00000020	0.00000007
480	National Fiber Com	0.00000020	0.00000007
481	J B Operators	0.00000020	0.00000007
482	Westel Telecommunications, Ltd.	0.00000020	0.00000007
483	Atlas Communications & Telephone C.D.	0.00000020	0.00000007
484	Northern Communications	0.00000020	0.00000007
485	Pencor/Palmerton	0.00000020	0.00000007
486	RANGER TELECOMMUNICATIONS	0.00000016	0.00000006
487	OMNICALL COMMUNICATIONS CORPORATION	0.00000016	0.00000006
488	Standard TelCom	0.00000016	0.00000006
489	Alascom	0.00000016	0.00000006
490	OPTICOM ONE CALL	0.00000016	0.00000006
491	Savemore Network	0.00000016	0.00000006
492	Northern Arizona Communications Corp.	0.00000016	0.00000006
493	Associated Network Partners	0.00000016	0.00000006

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
494	Standard Long Distance	0.00000016	0.00000006
495	ABCO Communications	0.00000016	0.00000006
496	Global Com	0.00000016	0.00000006
497	Oneonta Telephone Co.	0.00000016	0.00000006
498	360° Long Distance	0.00000016	0.00000006
499	Verizon Select Services	0.00000016	0.00000006
500	ITC Networks of Utah	0.00000016	0.00000006
501	Southern New England Telephone (SNET)	0.00000016	0.00000006
502	NEXTLINK	0.00000012	0.00000004
503	Texustel	0.00000012	0.00000004
504	Fairview Telecom	0.00000012	0.00000004
505	Long Distance Assistance	0.00000012	0.00000004
506	Progressive National Telephone Co.	0.00000012	0.00000004
507	Northwest Telecom	0.00000012	0.00000004
508	Comtel Tech	0.00000012	0.00000004
509	Metro One Telecommunications	0.00000012	0.00000004
510	Commonwealth Telecom, Inc.	0.00000012	0.00000004
511	Bethany Telecom	0.00000012	0.00000004
512	Covista, Inc.	0.00000012	0.00000004
513	NetLinx Telecommunications Corp.	0.00000012	0.00000004
514	CFW NETWORK	0.00000012	0.00000004
515	Nextel Communications	0.00000012	0.00000004
516	Mid-Com Communications	0.00000012	0.00000004
517	American Fibernet, Inc.	0.00000012	0.00000004
518	Williams Communications	0.00000012	0.00000004
519	Cellular One 800 & Long Distance Services	0.00000012	0.00000004
520	Telephone Systems of Georgia	0.00000012	0.00000004
521	TeleCable Corp.	0.00000008	0.00000003
522	Telelink	0.00000008	0.00000003
523	Valu-Line of St. Joseph	0.00000008	0.00000003
524	Bluegrass Long Distance	0.00000008	0.00000003
525	OCOM Long Distance	0.00000008	0.00000003
526	Vortel Communications	0.00000008	0.00000003
527	BKC Telecommunications	0.00000008	0.00000003
528	Gala Communications	0.00000008	0.00000003
529	Digital Communications	0.00000008	0.00000003
530	World Wide Connect	0.00000008	0.00000003
531	Telephone Support Systems	0.00000008	0.00000003
532	The Switchboard	0.00000008	0.00000003
533	Econ-A-Call Inc. of Hays	0.00000008	0.00000003
534	Metro Telecomm. Svcs.	0.00000008	0.00000003
535	Diamond Communications	0.00000008	0.00000003
536	Long Distance by Cellular One	0.00000008	0.00000003
537	Econocom Long Distance	0.00000008	0.00000003
538	Genesis Communications Int'l	0.00000008	0.00000003
539	Infonet Long Distance	0.00000008	0.00000003
540	Tel-Central of Jefferson City	0.00000008	0.00000003
541	Chibardun Telephone Cooperative	0.00000008	0.00000003
542	Guam Telephone Authority	0.00000008	0.00000003
543	International Telemedia Associates	0.00000008	0.00000003
544	Cominex	0.00000008	0.00000003
545	Standard Communications Inc. dba SCI	0.00000008	0.00000003
546	Partners Telecom	0.00000008	0.00000003
547	Sisk Communications	0.00000008	0.00000003
548	Telecommunications Consultants	0.00000008	0.00000003
549	Valley Star-Tel	0.00000008	0.00000003
550	Western Telenet	0.00000008	0.00000003
551	Willamette Valley Telecom	0.00000008	0.00000003
552	GTE Telephone Operations	0.00000008	0.00000003
553	Communication TeleSystems Intl. (CTS)	0.00000008	0.00000003
554	OCOM Corp.	0.00000008	0.00000003
555	UI Long Distance	0.00000004	0.00000001
556	Federal TransTel, Inc. (FTT)	0.00000004	0.00000001
557	St. Pierre Communication Network	0.00000004	0.00000001
558	Rainier Cable	0.00000004	0.00000001
559	Network Billing & Collection	0.00000004	0.00000001
560	Fastline Communication Network	0.00000004	0.00000001
561	TeleHub Communications Corp.	0.00000004	0.00000001
562	Future Connect	0.00000004	0.00000001
563	Regency Long Distance	0.00000004	0.00000001
564	Telephone Express	0.00000004	0.00000001
565	Firstel	0.00000004	0.00000001

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APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
566	Cincinnati Bell Telephone	0.00000004	0.00000001
567	HTC Communications	0.00000004	0.00000001
568	American Consultants Alliance	0.00000004	0.00000001
569	Branson Telephone	0.00000004	0.00000001
570	Community Long Distance	0.00000004	0.00000001
571	Digi-Cell, Inc.	0.00000004	0.00000001
572	DigiTel	0.00000004	0.00000001
573	Island Tel, PEI	0.00000004	0.00000001
574	London Telecom Network Corp.	0.00000004	0.00000001
575	Meridian Telecom	0.00000004	0.00000001
576	NETWORK ONE	0.00000004	0.00000001
577	Northland Telephone Systems	0.00000004	0.00000001
578	PBT Communications	0.00000004	0.00000001
579	TCAST Communications, Inc.	0.00000004	0.00000001
580	Telecon Communications Corp.	0.00000004	0.00000001
581	TELEFONICA LARGA DISTANCIA	0.00000004	0.00000001
582	TLD DE PUERTO RICO	0.00000004	0.00000001
583	TransWorld Network Corp.	0.00000004	0.00000001
584	U.S.Fiberline Communications	0.00000004	0.00000001
585	WBC Communications, Inc.	0.00000004	0.00000001
586	WORLD-WIDE TELCO	0.00000004	0.00000001
587	American Communications Technology	0.00000004	0.00000001
588	Western Telephone & Television	0.00000004	0.00000001
589	Cimco Communications	0.00000004	0.00000001
590	Cellular XL Associates	0.00000004	0.00000001
591	CityNet Communications	0.00000004	0.00000001
592	Future Telephone Communications	0.00000004	0.00000001
593	Network Technologies	0.00000004	0.00000001
594	Voyager Networks	0.00000004	0.00000001
595	DIGITRAN CORP.	0.00000004	0.00000001
596	CP-Tel Network Services, Inc.	0.00000004	0.00000001
597	CommNet Cellular	0.00000004	0.00000001
598	Carrier Concepts International Corp.	0.00000004	0.00000001
599	Intelenet Commission	0.00000004	0.00000001
600	METRO TELEPHONE	0.00000004	0.00000001
601	U.S. TELE-COMM, INC.	0.00000004	0.00000001
602	Citizens Long Distance	0.00000004	0.00000001
603	TLD, Inc.	0.00000004	0.00000001
604	Ameritech Communications	0.00000004	0.00000001
605	BizTel Long Distance Telephone Co.	0.00000004	0.00000001
606	Redwood Long Distance	0.00000004	0.00000001
607	Contact America	0.00000004	0.00000001
608	MID MCND dba MIDCOM Communications	0.00000004	0.00000001
609	Off Campus Communications	0.00000004	0.00000001
610	Consolidated Comm. Public Services	0.00000004	0.00000001
611	Beehive Telephone Co.	0.00000004	0.00000001
612	Hawaiian Telephone Co. (GTE)	0.00000004	0.00000001
613	Tel Serve	0.00000004	0.00000001
614	Ray-Tel, Inc.	0.00000004	0.00000001

28. In Appendix C, the Commission identified the payors and designated the monthly per-payphone compensation amounts for the Post-Intermediate Period, beginning April 21, 1999.

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST

No.	Name	Percentage	Amount
1	AT&T Communications	33.69552735	$11.96865132
2	MCI	17.02639727	6.04777631
3	Sprint	11.11485111	3.94799511
4	WorldCom	10.23852165	3.63672289
5	Global Crossing Telecommunications	7.15106942	2.54005986
6	Qwest	7.12891379	2.53219018
7	WCOM	3.45572976	1.22747521
8	ILEC 2.19	2.19000000	0.77788800
9	Cable & Wireless	0.87472581	0.31070251
10	Global Crossing	0.73143840	0.25980692
11	Frontier Communications Services	0.67982311	0.24147317
12	Broadwing Communications Services Inc.	0.60573560	0.21515729
13	Telco Communications Group dba Dial & Save	0.57331218	0.20364049
14	Touch America, Inc.	0.52556846	0.18668192

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
15	IDT Corp.	0.46487055	0.16512202
16	Business Telecom, Inc. (BTI)	0.41529492	0.14751276
17	LCI International	0.38508503	0.13678220
18	WorldXChange	0.24004960	0.08526562
19	PT-1 Communications	0.19235182	0.06832337
20	McLeodUSA	0.18014775	0.06398848
21	One Call Communications	0.16435648	0.05837942
22	ATX Telecommunications Services	0.16231652	0.05765483
23	Excel Telecommunications	0.11654172	0.04139562
24	DeltaCom L.D.S.	0.11205694	0.03980263
25	Network Plus	0.09200160	0.03267897
26	Long Distance of Michigan (LDMI)	0.09124486	0.03241010
27	EconoPhone	0.08965730	0.03184627
28	Switched Service Communications	0.08282780	0.02942043
29	Intermedia Communications	0.08202164	0.02913409
30	VERIZON (not Verizon IntraLATA—LEC)	0.07539638	0.02678080
31	Total-Tel USA	0.06460827	0.02294815
32	Tel America	0.05266606	0.01870698
33	One Star Long Distance	0.05075153	0.01802694
34	The CommuniGroup Of KC	0.04547681	0.01615336
35	Tandem Access for Database Query	0.04360270	0.01548768
36	American Long Lines	0.04159377	0.01477411
37	Logix Communications	0.04139743	0.01470437
38	Bell Atlantic Communications	0.04136967	0.01469451
39	WesTel	0.03890862	0.01382034
40	NETECH Comm. (US West)	0.03875592	0.01376610
41	US WATS	0.02990079	0.01062076
42	Cooperative Communications	0.02482544	0.00881800
43	Pac-West Telecomm dba AmeriCall	0.02391389	0.00849421
44	Global Crossing Telemanagement	0.02192701	0.00778847
45	Capital Telecommunications	0.02078209	0.00738180
46	Broadwing Telecommunications Inc.	0.01993413	0.00708060
47	South Carolina Network	0.01829131	0.00649707
48	ACC Long Distance Corp.	0.01741376	0.00618537
49	Cincinnati Bell Long Distance	0.01650786	0.00589904
50	Long Distance Savers	0.01650078	0.00586106
51	First Communications	0.01497019	0.00531741
52	TXU Communications	0.01421800	0.00505023
53	Southwestern Bell Telephone	0.01407712	0.00500019
54	TCAST Communications, Inc.	0.01311337	0.00465787
55	Shared Communications Services	0.01300293	0.00461864
56	ITC DeltaCom Communications	0.01299003	0.00461406
57	I-Link Communications	0.01274703	0.00452774
58	Birch Telecom	0.01229039	0.00436555
59	Williams Communications	0.01197243	0.00425261
60	CTS Telcom of Florida	0.01189664	0.00422569
61	WinStar	0.01143703	0.00406243
62	US Xchange	0.00998448	0.00354649
63	SBC	0.00983683	0.00349404
64	IDS Long Distance	0.00948736	0.00336991
65	Long Distance Management	0.00869285	0.00308770
66	Long Distance Telephone Savers	0.00839879	0.00298325
67	Long Distance Discount	0.00775520	0.00275465
68	Powercom Corp.	0.00755607	0.00268392
69	GST Telecom	0.00736841	0.00261726
70	Westinghouse Electric Corp.	0.00725440	0.00257676
71	EATELNET	0.00683467	0.00242768
72	Norlight Telecommunications	0.00667620	0.00237138
73	TeleBeam	0.00652307	0.00231700
74	Frontier Communications Int'l, Inc.	0.00630040	0.00223790
75	Austin Bestline	0.00617985	0.00219506
76	Electric Lightwave	0.00601377	0.00213609
77	Eastern Telephone Systems	0.00567334	0.00201517
78	XTEL	0.00563197	0.00200047
79	US Link Long Distance	0.00526181	0.00186900
80	Destia	0.00523810	0.00186057
81	Williams Local Network	0.00495801	0.00176144
82	Southwestern Bell Comms. Svcs. dba Pacific Bell L.D.	0.00484096	0.00171951
83	GCI Globalcom	0.00478277	0.00169884
84	Atlantic Cell. dba Long Distance by Cellular One	0.00452978	0.00160896
85	XO Communications	0.00448589	0.00159894
86	Arcada Communications	0.00423173	0.00150311

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APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
87	C–COM	0.00382073	0.00139264
88	RSL COM U.S.A.	0.00379352	0.00134746
89	The CommuniGroup	0.00359706	0.00127768
90	Chadwick Telephone	0.00354778	0.00126017
91	General Communication	0.00352525	0.00125217
92	CapRock Telemanagement	0.00350136	0.00124368
93	Iowa Communications Network	0.00347936	0.00123587
94	FOX COMMUNICATIONS CORP.	0.00305548	0.00108531
95	Capsule Communications	0.00294991	0.00104781
96	COMMUNICATIONS OPTIONS	0.00294503	0.00104608
97	Coast to Coast Telecommunications	0.00279191	0.00099169
98	Cypress Telecommunications Corp. (Cytel)	0.00252727	0.00089769
99	GST ACTION TELECOM	0.00240553	0.00085444
100	Americall Communications	0.00221222	0.00078578
101	KTNT Communications	0.00194140	0.00068959
102	VarTec Telecom	0.00192173	0.00068260
103	Network One	0.00183167	0.00065061
104	QCC, Inc.	0.00173757	0.00061719
105	Valuline Long Distance	0.00171546	0.00060933
106	Concord Telephone Long Distance	0.00155247	0.00055144
107	INFO-TEL COMMUNICATIONS	0.00142683	0.00050752
108	ProCom, Inc.	0.00139191	0.00049441
109	AT&T EasyLink Services	0.00139090	0.00049405
110	RCC Network	0.00136219	0.00048385
111	Digital Telecommunications	0.00111140	0.00039477
112	Midco Communications	0.00111122	0.00039471
113	United Communications	0.00102200	0.00036301
114	Off Campus Telecommunications	0.00096565	0.00034300
115	WorldCom dba Touch One Long Distance	0.00094597	0.00033601
116	BN1 Telecommunications	0.00092659	0.00032913
117	Ionex Telecommunications	0.00085419	0.00030341
118	TresCom U.S.A.	0.00079612	0.00028278
119	American Telco	0.00079392	0.00028200
120	Feist Long Distance	0.00076758	0.00027265
121	Citizens Communications	0.00075159	0.00026697
122	Atlantic Connections	0.00075011	0.00026644
123	MichTel	0.00073091	0.00025962
124	Sunshine Telephone Inc. dba SUNTEL	0.00068983	0.00024503
125	PaeTec Communications	0.00062587	0.00022231
126	Consolidated Comm. Public Services	0.00061838	0.00021965
127	Voice Technology Corp	0.00055514	0.00019718
128	OCI	0.00054735	0.00019442
129	Ameritech	0.00054681	0.00019423
130	Midcom of Arizona, Inc	0.00053647	0.00019055
131	American Telesource International	0.00049450	0.00017565
132	Telescan	0.00048125	0.00017094
133	Long Distance/USA (Sprint)	0.00044856	0.00015933
134	TCG	0.00039761	0.00014123
135	Mon-Cre Long Distance	0.00037193	0.00013211
136	Global Crossing Bandwidth	0.00033686	0.00011965
137	Uni-Tel of Farmington	0.00030690	0.00010901
138	EMI Communications Corp.	0.00030548	0.00010851
139	Shoreham Telephone	0.00030209	0.00010730
140	First Financial Management Corp.	0.00028842	0.00010245
141	Access Point	0.00028663	0.00010181
142	Questar InfoComm	0.00025715	0.00009134
143	Switch 2000	0.00025204	0.00008952
144	Union Telephone Co.	0.00023735	0.00008431
145	Florida Digital Network	0.00022707	0.00008066
146	Motorola Inc.	0.00020611	0.00007392
147	Baystar Satellite Paging	0.00019129	0.00006795
148	NTS Communications/GMW Co.	0.00018778	0.00006670
149	VarTec Telecom dba Clear Choice Communications	0.00018481	0.00006564
150	AT&T Global Network Services (AGNS)	0.00017773	0.00006313
151	NTS Communications	0.00016888	0.00005999
152	Time Warner	0.00016151	0.00005737
153	NACT	0.00014742	0.00005236
154	Full Service Network	0.00014670	0.00005211
155	Primus (Primus Telecommunications)	0.00014445	0.00005131
156	Ameritel	0.00014361	0.00005101
157	ALLTEL Communications, Inc.	0.00014237	0.00005057
158	AT&T Canada Long Distance Services Co.	0.00013880	0.00004930

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
159	GTE Communications Corp.	0.00012891	0.00004508
160	TELUS Communications (Edmonton)	0.00011496	0.00004083
161	Telecom*USA (MCI)	0.00011449	0.00004067
162	Axces	0.00011229	0.00003988
163	NATIONAL Telecom of Florida	0.00010581	0.00003758
164	POPP Telcom	0.00010373	0.00003684
165	BC Tel	0.00009243	0.00003283
166	U.S. Long Distance	0.00009231	0.00003279
167	Tel Serve	0.00008649	0.00003072
168	Oncor Communications	0.00007638	0.00002713
169	CEO Telecommunications Star Telecommunica	0.00007145	0.00002538
170	Tele-Sys., Inc.	0.00006901	0.00002451
171	IPS Telecom	0.00006509	0.00002312
172	Teleport Communications Group	0.00006390	0.00002270
173	American Express Travel Related Services	0.00005290	0.00001879
174	POPP Telecom	0.00005076	0.00001803
175	Coastal Long Distance Services	0.00004720	0.00001676
176	Fibernet Telecommunications	0.00004702	0.00001670
177	Yavapai Telephone Exchange	0.00004345	0.00001543
178	Advanced Mktg. Svcs. dba Dial Anywhere	0.00004155	0.00001476
179	American Telecommunications Enterprises	0.00004066	0.00001444
180	Citizens	0.00004012	0.00001425
181	Touch America Services	0.00003864	0.00001372
182	Canby Telephone Association	0.00003787	0.00001345
183	EASTERNTEL	0.00003323	0.00001180
184	STAR TELECOM/ALLSTAR	0.00003174	0.00001127
185	Iowa Network Services	0.00003032	0.00001077
186	Alliance Group Services	0.00002592	0.00000921
187	SBC Long Distance	0.00002562	0.00000910
188	Cleartel Communications	0.00002550	0.00000906
189	Interloop, Inc.	0.00002503	0.00000889
190	Incomnet Communications Corp.	0.00002342	0.00000832
191	PSA, Inc.	0.00002128	0.00000756
192	United Telephone Co.	0.00002045	0.00000726
193	U.S. Net	0.00002003	0.00000712
194	NetLinx Telecommunications Corp.	0.00001902	0.00000676
195	Cherry Communications	0.00001807	0.00000642
196	Systems 1000	0.00001551	0.00000551
197	Sprint Canada, Inc.	0.00001504	0.00000534
198	Valu-Line of Longview	0.00001391	0.00000494
199	Baltimore-Washington Telephone	0.00001379	0.00000490
200	Parkway Communications	0.00001183	0.00000420
201	CellToll Corp.	0.00001022	0.00000363
202	MTS Communications	0.00000963	0.00000342
203	Matrix Telecom	0.00000915	0.00000325
204	Eastern Telecom dba InterQuest	0.00000898	0.00000319
205	Century Telecommunications	0.00000886	0.00000315
206	Star Tel, Inc.	0.00000862	0.00000306
207	Trinet	0.00000814	0.00000289
208	Deluxe Data Systems	0.00000761	0.00000270
209	Light Link Inc dba Taylor Comm. Grp.	0.00000737	0.00000262
210	West Coast Telecommunications	0.00000713	0.00000253
211	Pacific Bell Communications	0.00000684	0.00000243
212	Horry Telephone Long Distance	0.00000642	0.00000228
213	Phoenix Network	0.00000642	0.00000228
214	Westcom Long Distance	0.00000630	0.00000224
215	Escondido Telephone Co.	0.00000618	0.00000220
216	WorldCom Technologies	0.00000565	0.00000201
217	Intl.800 Telecom dba Telecall Long Dist. (EGLOBE)	0.00000565	0.00000201
218	NEXTLINK	0.00000499	0.00000177
219	Nationwide Communications	0.00000493	0.00000175
220	Coastal Telephone Co.	0.00000493	0.00000175
221	Access Long Distance	0.00000470	0.00000167
222	Tel-Share	0.00000464	0.00000165
223	Genesis Communications Int'l	0.00000464	0.00000165
224	Gulf Long Distance	0.00000440	0.00000156
225	Hi-Plains NTS Communications	0.00000428	0.00000152
226	ARRIVA Communications	0.00000422	0.00000150
227	Network Operator Services	0.00000404	0.00000144
228	American Network Exchange (AMNEX)	0.00000357	0.00000127
229	Pilgrim Telephone	0.00000357	0.00000127
230	Southern New England Telephone (SNET)	0.00000351	0.00000125

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APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
231	Long Distance Wholesale Club (Excel)	0.00000345	0.00000122
232	Low Country Carrier dba Hargray L.D. Co.	0.00000309	0.00000110
233	People's Telephone	0.00000279	0.00000099
234	NOS Communications	0.00000273	0.00000097
235	North State Telephone Long Distance Co.	0.00000262	0.00000093
236	Star Tel Transmission Co.	0.00000256	0.00000091
237	Frontier Communications-North Central Region	0.00000250	0.00000089
238	Call Savers	0.00000250	0.00000089
239	Century Long Distance	0.00000250	0.00000089
240	Souris River Telecommunications	0.00000250	0.00000089
241	SouthWest United Communication	0.00000250	0.00000089
242	Wholesale Telecom Corp.	0.00000250	0.00000089
243	Uni Dial	0.00000232	0.00000082
244	Texustel	0.00000226	0.00000080
245	ITC Networks	0.00000220	0.00000078
246	Eclipse Communications	0.00000208	0.00000074
247	ConQuest	0.00000190	0.00000068
248	EGLOBE INC dba INTL.800 TELECOM dba TELECAL	0.00000178	0.00000063
249	Telergy	0.00000178	0.00000063
250	Long Distance Network	0.00000172	0.00000061
251	Dial Long Distance Billing Svcs.	0.00000166	0.00000059
252	Fones West Digital Systems	0.00000166	0.00000059
253	Home Long Distance	0.00000166	0.00000059
254	Call America of Riverside	0.00000160	0.00000057
255	Aliant Systems	0.00000160	0.00000057
256	USN Communications	0.00000137	0.00000049
257	HSS Vending Distributors	0.00000131	0.00000046
258	Chautauqua & Erie Communications	0.00000131	0.00000046
259	Star Tel Victoria	0.00000131	0.00000046
260	IONOROLA	0.00000119	0.00000042
261	The Phone Co.	0.00000119	0.00000042
262	REAMS COMMUNICATIONS dba VALULINE LONG D	0.00000113	0.00000040
263	Apple Communications	0.00000113	0.00000040
264	Convergent Communications	0.00000107	0.00000038
265	EqualNet Corp.	0.00000107	0.00000038
266	Central Telephone Co.	0.00000101	0.00000036
267	KRB Telecom	0.00000095	0.00000034
268	Ben Lomand Communications	0.00000083	0.00000030
269	Valu-Line of Amarillo	0.00000077	0.00000027
270	Econo. Call Long Distance Services	0.00000065	0.00000023
271	Public Phone	0.00000065	0.00000023
272	United States Cellular	0.00000065	0.00000023
273	PBC Long Distance	0.00000065	0.00000023
274	Alo-USA Corp.	0.00000059	0.00000021
275	USLink Long Distance	0.00000053	0.00000019
276	Show-Me Long Distance	0.00000053	0.00000019
277	Farmers Long Distance	0.00000053	0.00000019
278	Interlink Telecommunications	0.00000048	0.00000017
279	Fiberline Network Communications	0.00000048	0.00000017
280	TelVue Corp.	0.00000048	0.00000017
281	Association Communications	0.00000048	0.00000017
282	American Tel Enterprises	0.00000048	0.00000017
283	Integrated Systems Corp.	0.00000042	0.00000015
284	L.D. Services	0.00000042	0.00000015
285	United Telephone Co. dba TELAMERICA L.D.	0.00000042	0.00000015
286	Colorado River Communications	0.00000042	0.00000015
287	Metro One Telecommunications	0.00000042	0.00000015
288	Frontier Communications of the Great Lakes	0.00000036	0.00000013
289	Working Assets	0.00000036	0.00000013
290	Brooks Fiber Communications (WorldCom)	0.00000030	0.00000011
291	WATS/800	0.00000030	0.00000011
292	American Tel Group	0.00000030	0.00000011
293	Call America	0.00000030	0.00000011
294	Caribbean Telecommunications Consortium	0.00000030	0.00000011
295	International Telephone Corp.	0.00000030	0.00000011
296	MCI/1–800-COLLECT	0.00000030	0.00000011
297	Verizon Select Services	0.00000030	0.00000011
298	BizTel Long Distance Telephone Co.	0.00000030	0.00000011
299	Cameron Long Distance	0.00000030	0.00000011
300	STARTEC, Inc.	0.00000030	0.00000011
301	Athena International	0.00000024	0.00000008
302	Telephone Assoc. Long Distance Svcs.	0.00000024	0.00000008

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
303	Home Owners L.D. dba HOLD Billing Svcs.	0.00000024	0.00000008
304	Extelcom dba Express Tel	0.00000024	0.00000008
305	SBS/MCI	0.00000024	0.00000008
306	Easton Telecom Services	0.00000024	0.00000006
307	National Brands dba Sharenet Communications	0.00000024	0.00000008
308	Heart of Iowa Communications	0.00000024	0.00000008
309	Consolidated Network	0.00000018	0.00000006
310	BMG/TELEMANAGEMENT SYSTEMS (BMG)	0.00000018	0.00000006
311	Telecom Affiliates	0.00000018	0.00000006
312	Vista Group International	0.00000018	0.00000006
313	OCOM Long Distance	0.00000018	0.00000006
314	Marietta Fibernet	0.00000018	0.00000006
315	NYNEX Long Distance	0.00000018	0.00000006
316	Intercontinental Communications Group (ICG)	0.00000012	0.00000004
317	Americatel	0.00000012	0.00000004
318	U. S. Link	0.00000012	0.00000004
319	Tele Tech	0.00000012	0.00000004
320	TCA Long Distance	0.00000012	0.00000004
321	Intel Communications	0.00000012	0.00000004
322	AUC Communications	0.00000012	0.00000004
323	AmeriVision Communications	0.00000012	0.00000004
324	OPTICOM ONE CALL	0.00000012	0.00000004
325	ABCO Communications	0.00000012	0.00000004
326	MID SEA dba MIDCOM COMMUNICATIONS	0.00000012	0.00000004
327	PBT Communications	0.00000012	0.00000004
328	USLINK	0.00000012	0.00000004
329	Hotel America	0.00000012	0.00000004
330	Lexington Telephone Long Distance	0.00000012	0.00000004
331	Worldlink Long Distance	0.00000012	0.00000004
332	CTS dba WorldXChange	0.00000012	0.00000004
333	AirTouch Cellular	0.00000012	0.00000004
334	VTA, Inc.	0.00000012	0.00000004
335	US Long Distance	0.00000006	0.00000002
336	GST Call America	0.00000006	0.00000002
337	Valu-Line of Kansas	0.00000006	0.00000002
338	Action Telcom Co.	0.00000006	0.00000002
339	Amerinet Communications	0.00000006	0.00000002
340	Connect Americom Corp.	0.00000006	0.00000002
341	IntelCom Group	0.00000006	0.00000002
342	DeltaCom Long Distance Services	0.00000006	0.00000002
343	ComCentral dba Southnet Services	0.00000006	0.00000002
344	Lucky Dog Phone Co.	0.00000006	0.00000002
345	Manitoba Telephone System	0.00000006	0.00000002
346	Telephone Communications Corp.	0.00000006	0.00000002
347	Asia International Services Corp.	0.00000006	0.00000002
348	Touch 1 Communications	0.00000006	0.00000002
349	MetroLink	0.00000006	0.00000002
350	LA CONEXION FAMILIAR, INC.	0.00000006	0.00000002
351	TTE OF CHARLESTON	0.00000006	0.00000002
352	Advanced Telecommunications Network	0.00000006	0.00000002
353	American Discount Telecommunications	0.00000006	0.00000002
354	METRONET Long Distance Communications	0.00000006	0.00000002
355	Tel-Optic, Inc. dba Universal Network Services	0.00000006	0.00000002
356	American Long Distance Corp.	0.00000006	0.00000002
357	RCN Long Distance	0.00000006	0.00000002
358	TMC Long Distance dba Cherry Communications	0.00000006	0.00000002
359	KDD America, Inc.	0.00000006	0.00000002
360	Startec Global Operating Co.	0.00000006	0.00000002
361	Westel Telecommunications, Ltd.	0.00000006	0.00000002
362	ITC Networks of Utah	0.00000006	0.00000002
363	Nextel Communications	0.00000006	0.00000002
364	Telelink	0.00000006	0.00000002
365	Communication TeleSystems Intl.	0.00000006	0.00000002
366	TLD DE PUERTO RICO	0.00000006	0.00000002
367	American Communications Technology	0.00000006	0.00000002
368	Hawaiian Telephone Co. (GTE)	0.00000006	0.00000002
369	TRT Telecommunications Corp.	0.00000006	0.00000002
370	Allcomm Long Distance	0.00000006	0.00000002
371	Beauzile Devereux Communications	0.00000006	0.00000002
372	CCT (California Catalog and Technology)	0.00000006	0.00000002
373	H.G. Telecom	0.00000006	0.00000002
374	Long Distance Direct	0.00000006	0.00000002

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
375	O.L.C. Co.	0.00000006	0.00000002
376	Plant Long Distance Co.	0.00000006	0.00000002
377	Skycomm Technologies	0.00000006	0.00000002
378	Tri-Rural Independent Operations	0.00000006	0.00000002
379	Quest Telecommunications	0.00000006	0.00000002
380	American Lightwave Communications	0.00000006	0.00000002
381	Diversified Communications	0.00000006	0.00000002
382	Metropolitan Telecommunications	0.00000006	0.00000002
383	Monroe Telephone Co. dba Monroe Area Comm	0.00000006	0.00000002
384	Plains Cooperative Telephone Association	0.00000006	0.00000002
385	VISTA–UNITED TELECOMMUNICATIONS	0.00000006	0.00000002
386	World Pass Communications Corp.	0.00000006	0.00000002
387	Econ-o-Call, Inc.	0.00000006	0.00000002
388	Fiberlink Communications Corp	0.00000006	0.00000002
389	Wisconsin Communications Network	0.00000006	0.00000002
390	JAS Networks	0.00000006	0.00000002
391	LAKES STATES COMM	0.00000006	0.00000002
392	NexBell	0.00000006	0.00000002
393	Opticall Communications Services	0.00000006	0.00000002
394	Bell Canada	0.00000006	0.00000002
395	Enhanced Services Billing	0.00000006	0.00000002
396	Innovative Communications	0.00000006	0.00000002
397	Consolidated Communications Network	0.00000006	0.00000002
398	Southwestern Bell Comms. Svcs. dba Ameritech	0.00000006	0.00000002
399	Viatel, Inc.	0.00000006	0.00000002
400	Nexus Communications	0.00000006	0.00000002
401	Net Communications Corp.	0.00000006	0.00000002
402	Communication Services of Colorado	0.00000006	0.00000002
403	Frontier Local Services	0.00000006	0.00000002
404	Omni Communications	0.00000006	0.00000002
405	Total Media Technologies, Inc.	0.00000006	0.00000002
406	Centennial De Puerto Rico	0.00000006	0.00000002
407	Massena Telephone Co.	0.00000006	0.00000002
408	Paradise Communications	0.00000006	0.00000002
409	LDC Telecommunications Co.	0.00000006	0.00000002

Paperwork Reduction Act Analysis

29. This Order was analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13. It contains no new or modified information collections subject to Office of Management and Budget review.

Supplemental Final Regulatory Flexibility Act Analysis

30. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was provided in the *Notice of Proposed Rulemaking* in CC Docket No. 96–128, 61 FR 31481, June 20, 1996. The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking*, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was provided in the *First Report and Order*, 61 FR 52307, October 7, 1996, the *First Reconsideration Order*, 61 FR 65341, December 12, 1996, the *Second Report and Order*, 62 FR 58659, October 30, 1997, the *Third Report and Order*, 64 FR 13701, March 22, 1999, and the *Fourth Reconsideration Order*, 67 FR 9610, March 4, 2002.

31. This present Supplemental FRFA conforms to the RFA, as amended. *See* 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

32. To the extent that any statement in this Supplemental FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the Order preceding the Supplemental FRFA, the rules and statements set forth in those preceding sections are controlling.

Need for, and Objectives of, the Rules

33. In adopting section 276 in 1996, Public Law No. 104–104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated inter alia that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. * * *" In this Order, the Commission redetermined certain aspects of the per-payphone compensation to be paid to payphone service providers (PSPs) pursuant to the remand by the U.S. Court of Appeals for the District of Columbia Circuit in *Illinois*, 117 F.3d. at 555. To implement the remand, the Commission calculated a per-call allocation for each carrier and clarified the manner in which the true up and offset procedures are to be applied to determine refunds and overpayments.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

34. The Commission received no comments in direct response to the FRFA in the *Fourth Reconsideration Order*. The Commission believes that the rules as adopted in this Order minimize the burdens of the per-payphone compensation procedure to the benefit of all parties, including small entities. *See* "Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered," *infra*.

Description and Estimate of the Number of Small Entities to which Rules Will Apply

35. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rules adopted herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are more appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**."

36. The Commission included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. *See* letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

37. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310. According to the most recent *Telephone Trends Report* data, 1,329 incumbent local exchange carriers (LECs) reported that they were engaged in the provision of local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (May 2002) (hereinafter *Telephone Trends Report*), Table 5.3. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rules and policies adopted herein.

38. *Competitive Local Exchange Carriers or Competitive Access Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers (CAPs) or to "Other Local Exchange Carriers." The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report*, Table 5.3. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. *Id.* In addition, 55 carriers reported that they were "Other Local Exchange Carriers." *Id.* Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

39. *Local Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 134 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report*, Table 5.3. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of local resellers are small entities that may be affected by the rules and policies adopted herein.

40. *Toll Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report*, Table 5.3. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of toll resellers are small entities that may be affected by the rules and policies adopted herein.

41. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers (PSPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 936 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report*, Table 5.3. Of these 936 PSPs, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the

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Commission estimates that the great majority of PSPs are small entities that may be affected by the rules and policies adopted herein.

42. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the most recent *Telephone Trends Report* data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report*, Table 5.3. Of these 229 carriers, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies adopted herein.

43. *Operator Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 22 companies reported that they were engaged in the provision of operator services. *Telephone Trends Report*, Table 5.3. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

44. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 32 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report*, Table 5.3. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

45. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has $12.5 million or less in average annual receipts. 13 CFR 121.201, NAICS code 513340. According to the Commission's most recent *Telephone Trends Report* data, 31 carriers reported that they were engaged in the provision of satellite services. *Telephone Trends Report*, Table 5.3. Of these 31 carriers, an estimated 25 have 1,500 or fewer employees and six have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most satellite service carriers are small entities that may be affected by the rules and policies adopted herein.

46. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 42 carriers reported that they were engaged in the provision of "Other Toll" services. *Telephone Trends Report*, Table 5.3. Of these 42 carriers, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

47. *Wireless Service Providers.* The SBA has developed a size standard for wireless small businesses within the two separate categories of Paging and of Cellular and Other Wireless Telecommunications. Under those SBA size standards, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513322. According to the Commission's most recent *Telephone Trends Report* data, 1,761 companies reported that they were engaged in the provision of wireless service. *Telephone Trends Report*, Table 5.3. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

48. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 FR 33859, July 1, 1996; see also 47 CFR 24.720(b). For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 FR 33859, July 1, 1996. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. *See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, *Fifth Report and Order*, 59 FR 37566, July 22, 1994. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97–82, *Second Report and Order*, 62 FR 55348, October 24, 1997. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

49. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. 47 CFR 90.814. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

50. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. The service is defined in 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). BETRS is defined in 47 CFR 22.757, 22.759. For purposes of this Supplemental FRFA, the Commission uses the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the rules and policies adopted herein.

51. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. For common carrier fixed microwave services (except Multipoint Distribution Service), *see* 47 CFR part 101 (formerly 47 CFR part 21). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by 47 CFR part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as, a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

52. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to microwave services. For purposes of this Supplemental FRFA, the Commission uses the SBA's size standard applicable to wireless service providers, *supra*—an entity with no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

53. *39 GHz Licensees.* The Commission has created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, *Report and Order*, 63 FR 6079, February 6, 1998. An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id.* The SBA has approved these size standards. *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998). The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. As mandated by the court in the *Illinois* decision, the Commission established in this Order a compensation procedure for resolving monthly payments and refunds between PSPs and carriers for the Interim Period,

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beginning November 7, 1996, through October 6, 1997, where PSPs and carriers may have been overpaid or underpaid for per-payphone compensation. The Commission also applied the Interim Period procedures to cover the subsequent Intermediate Period, beginning October 7, 1997, through April 20, 1999. With this exception, this Order imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this or related payphone proceedings.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. Although the Commission rejected a proposal to establish a carrier-to-carrier payment mechanism for resolving payments and refunds due to the degree of regulatory intervention it would require, the Commission specified carrier-specific per-call costs that can be used by carriers and PSPs to calculate total overpayments or underpayments. The Commission also affirmed the conclusions reached in the *Fourth Reconsideration Order* that alternative payment arrangements can be made between or among carriers, provided affected PSPs agree. Adoption of this payment scheme will minimize the economic impact and administrative burden for both payors and recipients of per-payphone compensation, including small entities.

56. The Commission recognized in this Order that small entities such as PSPs would be disadvantaged by true up and offset mechanisms used in the per-call compensation process because carriers could use a self-help remedy of withholding future payments from PSPs and would have no incentive to resolve such disputes in a timely manner. *See* paragraph 20, *supra*. The Commission affirmed the conclusion reached in the *Third Report and Order* that carriers may deduct the remaining overpayments from future payments to PSPs, but clarified that it may only be done as follows: (1) Carriers may only withhold undisputed amounts from future payments; (2) carriers may not withhold any amounts from future payments until PSPs and carriers have had an opportunity to apply the refund against Interim and Intermediate Period compensation claimed by the PSP; and (3) carriers must allow PSPs to make payments of refunds over multiple future payments subject to ongoing accrual of interest, if reasonably requested by the PSP. These procedural safeguards will restore necessary measures of fairness to the process for small entities.

Report to Congress

57. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

Ordering Clauses

58. Accordingly, pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, 276 and 405, it is ordered that the policies, rules and requirements set forth herein are adopted.

59. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Fifth Order on Reconsideration and Order on Remand, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 47 U.S.C. 276. 151, 154, 201, 202, 205, 218–220, 254, 276, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Revise § 64.1301 to read as follows:

§ 64.1301 Per-payphone compensation.

(a) *Interim access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix A of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96–128, FCC 02–292, must pay default compensation to payphone service providers for payphone access code calls and payphone subscriber 800 calls for the period beginning November 7, 1996, and ending October 6, 1997, in the amount listed in Appendix A per payphone per month. A complete copy of Appendix A is available at *www.fcc.gov*.

(b) *Interim payphone compensation for inmate calls.* In the absence of a negotiated agreement to pay a different amount, if a payphone service provider providing inmate service was not compensated for calls originating at an inmate telephone during the period starting on November 7, 1996, and ending on October 6, 1997, an interexchange carrier to which the inmate telephone was presubscribed during this same time period must compensate the payphone service provider providing inmate service at the default rate of $0.238 per inmate call originating during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997, or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(c) *Interim compensation for 0+ payphone calls.* In the absence of a negotiated agreement to pay a different amount, if a payphone service provider was not compensated for 0+ calls originating during the period starting on November 7, 1996, and ending on October 6, 1997, an interexchange carrier to which the payphone was presubscribed during this same time period must compensate the payphone service provider in the default amount of $4.2747 per payphone per month during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997, or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(d) *Intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix B of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96–128, FCC 02–292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning October 7, 1997, and ending April 20, 1999, in the amount listed in Appendix B for any payphone for any month during which per-call compensation for that payphone for that month was not paid by the listed entity. A complete copy of Appendix B is available at *www.fcc.gov*.

(e) *Post-intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix C of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96–128, FCC 02–292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning April 21, 1999, in the amount listed in Appendix C for any payphone for any month during which per-call compensation for that payphone for that month was or is not paid by the listed entity. A complete copy of Appendix C is available at *www.fcc.gov*.

[FR Doc. 02–30499 Filed 12–2–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2929; MM Docket No. 01–155 RM–10175]

Radio Broadcasting Services; Goliad, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots Channel 282A at Goliad, Texas, as the community's second FM transmission service. *See* 66 FR 39128 (July 27, 2001). Channel 282A is allotted at Goliad, Texas, with a site restriction of 4.6 kilometers (2.9 miles) north of the community. Since this proposal is within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment has been received. Coordinates for Channel 282A at Goliad are 28–42–35 NL and 97–23–02 WL.

DATES: Effective December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–155, adopted October 23, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 282A at Goliad.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30507 Filed 12–2–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3170, MB Docket No. 02–58; RM–10415]

Radio Broadcasting Services; Buttonwillow and Shafter, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of American General Media of Texas, Inc., this document substitutes Channel 226A for Channel 282A at Shafter, California, and modifies the Station KCOO license to specify operation on Channel 226A. This document also allots Channel 265A to Buttonwillow, California, as a first local service. *See* 67 FR 52925, published August 14, 2002. The reference coordinates for the Channel 226A allotment at Shafter, California are 35–30–06 and 119–16–18. The reference coordinates for the Channel 265A allotment at Buttonwillow, California, are 35–23–56 and 119–29–52. With this action, the proceeding is terminated.

DATES: Effective December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 02–58, adopted November 13, 2002, and released November 16, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Buttonwillow, Channel 265A; by removing Channel 282A, and adding Channel 226A at Shafter.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30505 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3166; MB Docket No. 02–192; RM–10507]

Radio Broadcasting Services; Albany, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to Albany, Vermont, in response to a petition filed by Lutterloh Community Broadcasters. *See* 67 FR 50850, August 6, 2002. The coordinates for Channel 233A at Albany are 44–45–26 and 72–20–09. There is a site restriction 4.6 kilometers (2.8 miles) northeast of the community. Although concurrence has been requested for the allotment of Channel 233A at Albany as

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a specially negotiated short-spaced allotment, concurrence from the Canadian Government has not been received. Therefore, operation with the facilities specified for the allotment of Channel 233A at Albany herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement or if specifically objected to by Canada. With this action, this proceeding is terminated. A filing window for Channel 233A at Albany will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–192, adopted November 6, 2002, and released November 15, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Albany, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30501 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3165; MB Docket No. 02–204; RM–10314]

Radio Broadcasting Services; Pampa, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277C2 to Pampa, Texas, in response to a petition filed by Katherine Pyeatt. *See* 67 FR 53902, August 20, 2002. The coordinates for Channel 277C2 at Pampa are 35–42–07 and 100–50–28. There is a site restriction 21.3 kilometers (13.2 miles) northeast of the community. With this action, this proceeding is terminated. A filing window for Channel 277C2 at Pampa will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–204, adopted November 6, 2002, and released November 15, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 277C2 at Pampa.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30502 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3164; MB Docket No. 02–205; RM–10470; MB Docket No. 02–206; RM–10469; MB Docket No. 02–207; RM–10468]

Radio Broadcasting Services; Big Lake, TX, Leakey, TX, and Vici, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM channels Big Lake, Texas (MB Docket No. 02–206), Leakey, Texas (MB Docket No. 02–207), and Vici, Oklahoma (MB Docket No. 02–205), in response to three separate petitions filed by Robert Fabian that were combined in a multiple *Notice of Proposed Rule Making*. *See* 67 FR 53901, August 20, 2002. The coordinates for Channel 249A at Vici, OK are 36–08–59 and 99–17–53. The coordinates for Channel 246A at Big Lake, Texas, are 31–11–33 and 101–20–53. The coordinates for Channel 275A at Leakey, Texas, are 29–41–30 and 99–50–07. Although Mexican concurrence has been requested for the allotments at Big Lake and Leakey, Texas, notification has not been received. Therefore, operation with the facilities specified for Big Lake and Leakey herein are subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this proceeding is terminated. A filing window for Channel 249A, Vici, OK, Channel 246A, Big Lake, TX and Channel 275A, Leakey, TX will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Dockets 02–205, 02–206 and 02–207, adopted November 6, 2002, and released November 15, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Vici, Channel 249A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 246A at Big Lake and Channel 275A at Leakey.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30503 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3167; MB Docket No. 02–226; RM–10459; MB Docket No. 02–227; RM–10467; MB Docket No. 02–228; RM–10460]

Radio Broadcasting Services; Groom, TX, Sonora, TX and Spur, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 223A at Groom, Texas, in response to a petition filed by Maurice Salsa (MB Docket No. 02–226), allots FM Channel 272A at Sonora, Texas, in response to a petition filed by Katherine Pyeatt (MB Docket No. 02–227), and allots Channel 254A at Spur, Texas, in response to a petition filed by Maurice Salsa (MB Docket No. 02–228). See 67 FR 53901, August 20, 2002. The coordinates for Channel 223A at Groom, TX, are 35–10–49 and 101–01–46. The coordinates for Channel 272A at Sonora, TX, are 30–28–07 and 100–36–54. Mexican concurrence has been received for the allotment of Channel 272A at Sonora. The coordinates for Channel 254A at Spur, TX, are 33–28–35 and 100–51–19. With this action, this proceeding is terminated. A filing window for Channel 223A, Groom, TX, Channel 272A, Sonora, TX, and Channel 254A, Spur, TX, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Dockets 02–226, 02–227 and 02–228, adopted November 6, 2002, and released November 15, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Groom, Channel 223A, Spur, Channel 254A and Channel 272A at Sonora.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30504 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3068; MB Docket No. 02–203; RM–10466]

Radio Broadcasting Services; Hooks, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Hooks, Texas, in response to a petition filed by Katherine Pyeatt. *See* 67 FR 53902, August 20, 2002. The coordinates for Channel 231A at Hooks are 33–28–30 and 94–21–32. There is a site restriction 8.6 kilometers (4.1 miles) west of the community. With this action, this proceeding is terminated. A filing window for Channel 231A at Hooks will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–203, adopted October 30, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 231A at Hooks.

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Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30511 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3067; MB Docket No. 02–258, RM–10500; MB Docket No. 02–259, RM–10501; MB Docket No. 02–262, RM–10504; MB Docket No. 02–264, RM–10505; MB Docket No. 02–265, RM–10556]

Radio Broadcasting Services; Dickens, Floydada, Rankin, San Diego, and Westbrook, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants five proposals that allot new channels to Dickens, Texas, Floydada, Texas, Rankin, Texas, San Diego, Texas, and Westbrook, Texas. The Audio Division, at the request of Maurice Salsa, allots Channel 294A at Dickens, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 294A can be allotted to Dickens in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) northeast to avoid a short-spacing to the license site of Station KEJS, Channel 293C2, Lubbock, Texas. The coordinates for Channel 294A at Dickens are 33–40–43 North Latitude and 100–45–00 West Longitude. Filing windows for Channel 294A at Dickens, Texas, Channel 255A at Floydada, Texas, Channel 229C3 at Rankin, Texas, Channel 273A at San Diego, Texas, and Channel 272A at Westbrook, Texas, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order. *See* Supplementary Information, *infra.*

DATES: Effective December 23, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–258, 02–259, 02–262, 02–264, 02–265, adopted November 6, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Audio Division, at the request of Linda Crawford, allots Channel 255A at Floydada, Texas, as the community's second local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 255A can be allotted to Floydada in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) northeast to avoid a short-spacing to the license site of Station KQBR, Channel 258C1, Lubbock, Texas. The coordinates for Channel 255A at Floydada are 34–00–54 North Latitude and 101–18–29 West Longitude.

The Audio Division, at the request of Robert Fabian, allots Channel 229C3 at Rankin, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 229C3 can be allotted to Rankin in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) east of Rankin, Texas. The coordinates for Channel 229C3 at Rankin are 31–11–24 North Latitude and 101–48–39 West Longitude. Although concurrence has been requested for Channel 229C3 at Rankin, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Rankin herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Audio Division, at the request of Charles Crawford, allots Channel 273A at San Diego, Texas, as the community's second local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 273A can be allotted to San Diego in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (5.9 miles) west to avoid a short-spacing to the license site of Station KNDA, Channel 275C2, Alice, Texas. The coordinates for Channel 273A at San Diego are 27–46–29 North Latitude and 98–20–04 West Longitude. Although concurrence has been requested for Channel 273A at San Diego, Texas, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for San Diego herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Audio Division, at the request of Maurice Salsa, allots Channel 272A at Westbrook, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 272A can be allotted to Westbrook in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) west to avoid a short-spacing to the license site of Station KFZX, Channel 271C, Gardendale, Texas. The coordinates for Channel 272A at Westbrook are 32–22–24 North Latitude and 101–04–58 West Longitude. Although concurrence has been requested for Channel 272A at Westbrook, Texas, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Westbrook herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Dickens, Channel 294A; by adding Channel 255A at Floydada; by adding Rankin, Channel 229C3; by adding Channel 273A at San Diego; by adding Westbrook, Channel 272A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30512 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket 020313057–2278–02; I.D. 031102E]

RIN 0648–AP91

Sea Turtle Conservation; Restrictions to Fishing Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is enacting a seasonally adjusted gear restriction by closing portions of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8–inch (20.3 cm) stretched mesh. The purpose of this action is to reduce the impact of large-mesh gillnet fisheries on endangered and threatened species of sea turtles, primarily the monkfish fishery which uses large-mesh gillnet gear and operates in the area when sea turtles are present.

DATES: This final rule is effective on January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis L. Klemm (address: 9721 Executive Center Drive N., St. Petersburg, FL 33702; ph. 727–570–5312, fax 727–570–5517, e-mail *Dennis.Klemm@noaa.gov*), or Barbara A. Schroeder (address: 1315 East-West Highway, Silver Springs, MD 20910; ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green turtle (*Chelonia mydas*) are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles— even incidentally—is prohibited, with exceptions for takes of threatened species identified in 50 CFR 223.206. The incidental take of endangered species may be authorized only by an incidental take statement provided, or an incidental take permit issued, pursuant to section 7 or 10 of the ESA, respectively.

Background

Beginning in 1995, sea turtle strandings along the coast of North Carolina suddenly and dramatically increased during April and May, and this pattern continued in subsequent years. The increase in strandings coincided with increasing effort in the monkfish gillnet fishery, which first began off North Carolina in 1995. In the spring of 2000, 280 sea turtles stranded in two short time periods, coincident with the monkfish and dogfish gillnet fisheries operating offshore. Four of the carcasses were carrying gillnet gear measuring 10–12 inches (25.4–30.5 cm) stretched mesh, which is consistent with the gear used in the monkfish fishery. Large mesh gillnets are known to be highly effective at catching sea turtles and were the gear of choice in the historical sea turtle fishery. The majority of the turtles stranded in the 2000 event were loggerheads, but Kemp's ridleys were also documented. The northern subpopulation of loggerheads is disproportionately represented in the mid-Atlantic waters off North Carolina, and a number of the stranded loggerheads likely came from this subpopulation. The northern subpopulation is not showing evidence of recovery and continuous mortality as a result of large mesh gillnet fisheries is likely to impede recovery efforts (TEWG 2000).

A number of changes to the Fishery Management Plan (FMP) for the monkfish fishery over the past few years have resulted in changes in effort and timing of the fishery, and additional changes are expected as part of future FMP revisions. Various temporary protections to reduce sea turtle mortality in large mesh gillnets have been enacted by NMFS since the 2000 stranding event (65 FR 31500, May 18, 2000; 66 FR 28842, May 25, 2001; and 67 FR 13098, March 21, 2002). Detailed background information on the events leading to these restrictions may be found in each notice and is not repeated here. The most recent of these temporary protections, an interim final rule effective from March 15 to November 10, 2002, implemented a series of seasonally-adjusted closures in federal waters to move large-mesh gillnetting north in advance of sea turtle migrations. In the interim final rule, NMFS stated that it was considering adopting those restrictions as a final rule and took comments on that proposal through June 19, 2002 (67 FR 13098).

Seasonally Adjusted Closure of Large-mesh Gillnet Fishing in the Mid-Atlantic

The provisions of the interim final rule (67 FR 13098, March 21, 2002) established seasonally adjusted gear restrictions by closing portions of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8–inch (20.3–cm) stretched mesh to protect migrating sea turtles. The areas and times closed to fishing with gillnets larger than 8–inch (20.3–cm) stretched mesh were as follows: waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35° 46.0′ N (Oregon Inlet) - at all times; waters north of 35°46.0′ N (Oregon Inlet) and south of 36° 22.5′ N (Currituck Beach Light, NC) - from March 16 through January 14; waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA) - from April 1 through January 14; waters north of 37° 34.6′ N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA) - from April 16 through January 14. Waters north of 37°56.0′ N (Chincoteague, VA) were not affected by the interim final rule. NMFS promulgated the interim final rule to prevent further mortalities and other takes of listed species in large-mesh gillnet fisheries, of which the federal monkfish fishery is the most likely to be

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affected. NMFS limited the interim final rule to Federal waters only, as the monkfish fishery was not thought to be prosecuted in state waters, and to avoid unintentionally affecting the black drum gillnet fishery which occurs in the nearshore waters of the Eastern Shore of Virginia, and which was cooperating with NMFS observers to document sea turtle interactions. Gillnets with 10- and 12–inch (25.4- and 30.5–cm) mesh were clearly associated with the 2000 mass stranding in that four of the carcasses were carrying gillnet gear measuring 10 to 12 inches (25.4 to 30.5 cm) stretched mesh, which is consistent with the gear used in the monkfish fishery. Although the monkfish gillnet fishery currently uses 12–inch (30.5–cm) stretched mesh as their primary gear type, the Fishery Management Plan for the monkfish fishery allows use of gillnets with stretched mesh as small as 10 inches (25.4 cm). The potential exists, however, for other fisheries to utilize large-mesh gillnets with smaller size mesh that could still pose a serious risk of entanglement to sea turtles. The 8–inch (20.3–cm) cutoff size as mentioned above is, therefore, being enacted in this rule. Although gillnets with mesh sizes smaller than 8 inches (20.3 cm) are known to capture and kill sea turtles, NMFS selected an 8–inch (20.3–cm) cut-off size for the interim final rule. NMFS considered prohibiting smaller mesh sizes, but the size range chosen is believed to have the highest impact on sea turtles. If new information indicates otherwise, NMFS will consider amending the rule to include smaller mesh sizes. The timing of the restrictions was based upon an analysis of sea surface temperatures for the above areas. Sea turtles are known to migrate into and through these waters when the sea surface temperature is 11 degrees Celsius or greater (Epperly and Braun-McNeill 2002). The January 15 date for the reopening of the areas north of Oregon Inlet (35o 46.0' N) to the large-mesh gillnet fisheries was also based upon the 11 degree Celsius threshold and is consistent with the seasonal boundary established for the Summer flounder fishery-sea turtle protection area (50 CFR 223.206(d)(2)(iii)(A)).

Response to Comments

Comments were received from five sources: The Mid-Atlantic Fishery Management Council (Council); an individual Council member; a North Carolina commercial fisherman; the North Carolina Department of Marine Fisheries (NCDMF); and a joint letter from environmental organizations (EOs). Below are the individual comments and NMFS' responses.

Comment 1: The EOs and the individual Council member expressed support for the permanent enactment of the final rule. The Council and the fisherman, on the other hand, felt that there is no need for a final rule and that there was no scientific evidence to support the gillnet restrictions.

Response: The three previous temporary restrictions (65 FR 31500, May 18, 2000; 66 FR 28842, May 25, 2001; and 67 FR 13098, March 21, 2002) present in detail the scientific information (e.g., analysis of stranding patterns vs. sea surface temperature regimes and fishing effort) that was considered in determining that large mesh gillnetting, particularly for monkfish, was the likely cause of mass sea turtle strandings in the Mid-Atlantic and that large mesh gillnetting poses a significant risk of capture and death, particularly to migrating sea turtles. That information and analysis is not repeated here, and NMFS has received no new information that would lead it to change those determinations.

The restrictions in 2001 and 2002 appeared to be effective, in that repetition of the mass strandings of 2000 was avoided. Strandings in reporting zone 35, for example, (the zone in eastern North Carolina that experienced most of the 2000 stranding event) were lower in the spring months in 2001 and 2002. In March, offshore sea turtle strandings declined from 16 in 2000 to three in 2001 and zero in 2002. In April, strandings also declined from 81 in 2000 to one in 2001 and 19 in 2002. In May, they declined most significantly, from 223 in 2000 to 11 in 2001 and 25 in 2002.

NMFS agrees with the EOs and the Council member that the restrictions on large-mesh gillnetting are warranted and that permanent restrictions are necessary to replace the series of temporary restrictions and to provide long-term protection to sea turtles by reducing the potential for a serious impact to sea turtle populations. This final rule, therefore, will make permanent the restrictions of the interim final rule.

Comment 2: The EOs expressed concern that the restrictions need to be extended to North Carolina state waters to prevent gillnetters from relocating effort and contributing substantially to the mortality of sea turtles in those waters.

Response: NMFS limited the interim final rule to Federal waters only, as the monkfish fishery was not thought to be prosecuted in state waters, and to avoid unintentionally affecting the black drum gillnet fishery which occurs in the nearshore waters of the Eastern Shore of Virginia, and which was cooperating with NMFS observers to document sea turtle interactions. Following the implementation of the interim final rule, several fishermen shifted monkfish gillnet effort to North Carolina state waters. NMFS has reviewed North Carolina landings data comparing gillnet landings for monkfish caught in state waters and Federal waters. From 1995 to 2000, state waters only accounted for one to ten percent of the monkfish landings. In 2002, though, when the interim final rule was in place, state waters have accounted for 92 percent of the monkfish landings. The amount of monkfish landed from state waters in 2002 to date is five times higher than the average state waters landings for 1995 to 2000. This large shift in fishery effort to North Carolina state waters was not foreseen by NMFS, and if the 2002 data represent a real change in fishing behavior, leaving state waters out of the restrictions would pose a substantial risk to sea turtles in state waters.

Because state waters were not included in the interim final rule, NMFS would need to issue a new proposed rule for public comment in order to expand the restrictions to state waters. NMFS will investigate the significance, if any, of the 2002 state monkfish landings. If restrictions on large-mesh offshore gillnetting in state waters appear warranted to protect turtles, NMFS will consider alternative actions and seek public comment on a proposed rule.

Comment 3: The EOs recommended that NMFS support research on the seasonal distribution, abundance, and habitat use of sea turtles in state and adjacent Federal waters.

Response: NMFS already has a large body of knowledge on these topics and continues to collect new data. The North Carolina and Virginia cape regions are very important for overwintering, migrating, and foraging sea turtles, and they are also very complex and dynamic oceanographically. Aerial surveys, review of new scientific literature and state reports, and behavioral studies are all ongoing efforts aimed at expanding this knowledge.

Comment 4: The fisherman and the Council questioned the assertion that strandings may be disproportionately composed of northern subpopulation loggerheads. In contrast, the individual Council member expressed concern with the potential impact to the northern subpopulation, which has not shown signs of recovery and may be declining.

Response: Studies support the assertion made by NMFS. Genetic data from live sea turtles off North Carolina (Bass *et al.*, in press), and from stranded turtles in North Carolina through New Jersey (Norrgard 1995, Bass *et al.*, 1998, Rankin-Baransky *et al.*, 2001), indicate that the northern-nesting subpopulation is disproportionally represented in Mid-Atlantic and North Atlantic coastal waters compared to the small size of that subpopulation. Between 25 to 59 percent of the loggerheads found foraging from the Northeast U.S. to Georgia come from this nesting subpopulation, yet the northern-nesting subpopulation only represents around 8 percent of the total nesting in the U.S.

Comment 5: The fisherman and the Council commented that there was no support for the assumption that the number of turtles killed during the 2000 mass stranding was actually greater than the 280 stranded individuals.

Response: Multiple studies have found that the majority of sea turtle carcasses at-sea will not strand on shore and that stranding numbers are only a portion of the total deaths. The Turtle Expert Working Group (TEWG 1998) reviewed various studies on shrimp trawl mortalities and stranding records prior to the NMFS implementation of turtle excluder device (TED) requirements and estimated that 5 to 6 percent of the total mortality due to shrimp trawls was reflected in strandings from 1986 through 1989. Murphy and Hopkins-Murphy (1989) released marked sea turtle carcasses offshore of South Carolina, of which only 28 percent were later recorded as strandings. In one particular study focusing on the same area as the 2000 mass stranding, Epperly *et al.* (1996) reported that turtles dying offshore of the northern North Carolina coast during the winter and spring likely would be transported offshore by bottom currents. It was reported that, at best, strandings represented 7 to 13 percent of the individuals killed by the winter trawl fishery for flounder during November 1991–1992. Moorside (2000) reported that strandings may represent at best, approximately 40 percent, 30 percent, and less than 1 percent of the total number of at-sea carcasses during the summer, fall/spring, and winter, respectively, in the waters off North Carolina.

Comment 6: The EOs commented that gillnet restrictions should be in place throughout the year. They especially felt this was applicable to inland/nearshore North Carolina waters which are known to be important developmental grounds for immature sea turtles on a year-round basis. The EOs also recommended working closely with other states in the Mid-Atlantic to reduce sea turtle take in other gillnet fisheries and to establish incidental take limits and thresholds for closing the fisheries.

Response: NMFS has enacted seasonal closures for the inshore large-mesh (greater than 4.25 inches (10.8 cm) stretched mesh) gillnet fisheries in Pamlico Sound, NC. In 2001, NMFS published a notice of intent to prepare an Environmental Impact Statement for a comprehensive approach and ordered strategy for addressing incidental take of sea turtles by fishing gear type, which would include working closely with states (66 FR 39474, July 31, 2001). Broader fishery-turtle interaction problems will be addressed through that process. The intent of this final rule is to address a particular gear type with a known, and high, threat to sea turtles.

Comment 7: The EOs urged NMFS to move forward quickly with the reinitiation of the ESA section 7 consultation for the monkfish fishery.

Response: The consultation, which resulted in a no jeopardy opinion, was concluded on May 14, 2002.

Comment 8: The Council and the fisherman commented that they felt there was improper notification of the issuance of the interim final rule. The fishing industry was not notified of any changes until publication in the **Federal Register**.

Response: NMFS makes every effort to provide early notification to the public and the affected constituents of its rulemakings whenever practicable. The interim final rule was enacted on an emergency basis because of changes in the fishery, some resulting from a court order, which necessitated quick action to prevent mass sea turtle takes. NMFS made every effort to immediately notify the public, and particularly the fishing industry, when the interim final rule became effective. Notification was accomplished via NOAA Weather Radio announcements, a Fishery Bulletin release, and e-mail announcements to the appropriate state agency personnel and fishery management councils.

Comment 9: The Council and the fisherman commented that the mass strandings cited in the rule summary could have been the result of cold-water stunning and that there is no proof that the 280 turtles found were a result of fisheries activity given that only 4 were found stranded with portions of net still attached. Conversely, the individual Council member commented that the strandings occurred too late in the year to be attributed to cold-water stunning and that lack of gear on the turtles would be expected since no fisherman would leave evidence of gear on a dead turtle.

Response: Based upon the timing of the mass stranding incidents in 2000 as well as other evidence, NMFS remains confident in its conclusion that a large-mesh gillnet fishery was the primary source of mortality to listed sea turtles during the referenced event. The 2000 strandings occurred in April and May, which is likely too late in the year for a large cold-water stunning event. NMFS also reviewed satellite sea-surface temperature images and found no data to support cold-stunning at that time. During the mass stranding event 4 individuals were found entangled in large-mesh gillnet gear and no other fisheries were operating at that time which could have contributed to such large impacts. It is unusual to find stranded sea turtles entangled in gillnet gear. The occurrence of these four turtles carrying gillnet gear in the same stranding event is suggestive of how high the level of turtle interaction may have been. In addition, strandings began increasing dramatically during April and May since 1995, concurrent with the start of the monkfish gillnet fishery off North Carolina.

Comment 10: The Council and the fisherman commented on the fishing effort and stranding differences between 2000 and 2001. The Council felt that there was no support for the statement that monkfish gillnet fishing occurred farther north in 2001, when there were few turtle strandings, compared to 2000 when the mass stranding occurred. They also stated that few sea turtle takes aboard monkfish gillnet boats were observed in 2001 despite nearly 100–percent observer coverage. The commenters used a straight-line extrapolation based on 2000 stranding levels and fishing effort and concluded that the 2001 fishing effort should have resulted in 59 observed strandings instead of 11, thus demonstrating that the 2000 levels cannot be attributed to the fishery.

Response: Observer data and vessel trip reporting (VTR) data support NMFS' assertion that the fishery moved north earlier in the season in 2001 compared to 2000. In 2001, with observers on board a large percentage of the monkfish gillnet trips, the latest trips in North Carolina occurred on April 23 and 24. All monkfish vessels had pulled their gear and headed to Chincoteague, VA by April 24, 2001 at the latest, with most heading north at least a week or more prior to that date. In 2000, based upon VTR data, monkfish boats continued gillnetting in North Carolina waters south of the 36th parallel as late as May 13th. In addition,

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despite the intent to do so, observer coverage did not reach 100 percent in 2001. From March 27 to June 20, observer coverage in North Carolina and Virginia was 70 percent for boats that possessed limited access permits and 90 percent for boats that were operating under an Exempted Fishery Permit (the blackfin monkfish EFP). There were a total of 4 loggerhead takes observed over 171 trips, but additional takes may have occurred on trips that did not have observer coverage and therefore were not documented. A straight-line extrapolation based on strandings is not an appropriate means of determining the take from one year to the next. As stated in the response to comment 5, strandings likely represent less than 13 percent of the actual at-sea mortality (Epperly *et al.* (1996). Many carcasses never reach the beach and are transported offshore by bottom currents. Fluctuations in weather patterns that affect offshore winds or currents may determine the level of carcasses that wash ashore each year. Sea turtle presence, abundance, and distribution are also affected by oceanographic features such as sea surface temperatures and convergence zones which may vary year to year. Changes in these environmental parameters affect both the proportion of at-sea mortality represented in beach strandings and the probability that a fishing operation will interact with a sea turtle.

Comment 11: The Council, the fisherman, and NCDMF all commented that they felt the original rolling closure proposal by the North Carolina fishermen was sound and should be enacted instead of the restrictions in the interim final rule. They felt that NMFS' utilization of a stricter version of a closure based upon the fishermen's proposal was a violation of a good faith, proactive effort by the fishermen. NCDMF also requested that in addition to using the fishermen's version of the restrictions, the rule should expire every December 31 to review the effectiveness and impact of the rule.

Response: NMFS recognizes and appreciates the fact that the North Carolina fishermen were taking a proactive approach to an important problem. However, the restrictions proposed by the fishermen were not sufficient to provide the necessary protections for sea turtles. Analysis of data on water temperature and turtle distributions resulted in the timing and areas chosen for the rolling closures. The fishermen's plan that closures be based upon three consecutive days of 60 degrees Fahrenheit (15.6 degrees Celsius) sea surface temperature does not reflect the temperature cutoff that sea turtles avoid. Data have shown that sea turtles can regularly be found in water as low as 11 degrees Celsius (approximately 52 degrees Fahrenheit). In addition, the fishermen's plan was based on measuring sea surface temperatures for 3 consecutive days prior to enacting a closure. This plan would result in a delay in implementing restrictions when they are needed to protect turtles. A yearly expiration for the final rule would be impracticable. Implementing a new rule every year would be a very time intensive process, would potentially result in delays in implementing the necessary restrictions, and would be unnecessary based upon the information available. However, rules are always open to review and amendment based upon new information.

Comment 12: The EOs commented that NMFS should implement and fund an observer program of 20–percent coverage for all small-mesh gillnet fisheries during the times of year when previous mass strandings have occurred.

Response: NMFS is continually exploring ways to obtain more data on fishery interactions with protected species. While not necessarily 20 percent coverage, small-mesh gillnet trips are observed annually in Virginia and North Carolina. Some observer coverage of gillnet fisheries using gear with stretched mesh smaller than 8 inches (20.3 cm) is occurring in Pamlico Sound under an ESA section 10 permit with the state of North Carolina. Observer coverage under that permit is 10 percent. Funding and manpower availability constraints do not currently allow for a full-scale observer program to cover all small-mesh fisheries.

Comment 13: NCDMF commented that the mesh size for the rule should be changed to 7 (17.8 cm) inches instead of 8 inches (20.3 cm) because some fisheries that have the same impact may have been left out of the restrictions.

Response: NMFS agrees that gillnets with 7 inch (17.8 cm) mesh size can pose a threat of capturing and killing sea turtles. However, when NMFS was developing the interim final rule, the primary concern was the fishing effort in the monkfish fishery, based on recent turtle strandings and the management changes in the fishery. NMFS attempted to limit the effect of the interim final rule to gear that is, or might be used to target monkfish and that had been shown to have the highest impact on sea turtles. NMFS intends to investigate the need for an amendment to this rule that would consider, as one alternative, extending the restrictions for gillnets with stretched mesh greater than 8 inches (20.3 cm) into North Carolina and Virginia state waters. NMFS will also investigate and consider additional mesh-size restrictions for both Federal and state waters (See Comment and Response #2). NMFS recognizes the complexity of addressing the impacts of fishing activities, particularly gillnet fisheries, on sea turtles. NMFS has previously announced its intent to implement a comprehensive, gear-based management approach (see 66 FR 39474, July 31, 2001) but believes that the degree of threat to sea turtles from large-mesh gillnets is so significant that measures must be taken now, in advance of the more comprehensive strategy.

Comment 14: The Council commented that because Framework 1 of the FMP, which limited monkfish trips per vessel, was adopted by the Councils, no action is needed and this rule is not necessary.

Response: Although the emergency measures (67 FR 35928; effective May 17, 2002) which replaced Framework 1 reduced the Southern Fishery Management Area (SFMA) monkfish trip limits as originally approved by the Councils, these measures are in effect through November 18, 2002, only. In addition, the emergency measures did not further limit the number of monkfish vessels that could fish in the SFMA. Therefore, even if these trip limits were extended by final rule, an influx of monkfish vessels to the SFMA in the spring, as has been seen in the past, could result in an increase in gillnet fishing effort despite the reduction in trip limits. For example, in light of recent changes to the multispecies fishery, the Councils are considering a measure that would enable vessels to use their allocated monkfish days-at-sea (DAS) separate from multispecies DAS (currently vessels possessing both have to use a multispecies DAS when fishing under a monkfish DAS). Finally, although the interim final rule makes main reference to the monkfish fishery, the restrictions are not specific to one fishery. Large-mesh gillnet gear poses an entanglement risk to sea turtles wherever this gear type and sea turtles occur. Given the occurrence of sea turtles in Federal waters off of North Carolina and Virginia, these measures are necessary to reduce the risk of sea turtle interactions with large-mesh gillnet gear.

Adoption of the Seasonally Adjusted Closure of Large-mesh Gillnet Fishing in the Mid-Atlantic as a Final Rule

After considering public comment received on NMFS' proposal to permanently adopt the seasonal restrictions on large-mesh gillnetting in the Mid-Atlantic EEZ, NMFS has determined that the restrictions are necessary to adequately protect endangered and threatened species of sea turtles and that the restrictions should be enacted permanently, without change, through this final rule. Some comments suggested more restrictive actions to regulate gillnet fishing for sea turtle protection (see Comments #2 and 13). NMFS is not enacting more restrictive measures than those originally proposed but will investigate the necessity for additional measures to protect sea turtles, and, if warranted, will consider alternative actions and seek public comment on a proposed rule.

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TEWG (Turtle Expert Working Group). 2000. Assessment update for the Kemp's ridley and loggerhead sea turtle populations in the western North Atlantic. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC–444, 115 pp.

Classification

NMFS prepared an Environmental Assessment (EA) for the final rule and concluded that these regulations would neither pose a significant adverse environmental impact nor have a significant effect on the quality of the human environment. The actions implemented by this final rule are expected to impact approximately 20 to 25 monkfish gillnet vessel owners and operators. Seven alternatives were evaluated in the EA prepared for this rule, including a "no action" alternative. For a description and analysis of the alternatives, copies of the EA may be requested at the addresses listed above.

Because a general notice of proposed rulemaking was not required by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. are inapplicable. However, the total cost to the monkfish fishery is expected to be minimal. The primary effect of this final rule will be to establish restrictions in an area which is not heavily used by the fishery and to set required dates for the northward movement of the fishery up through 37°56.0′ N (Chincoteague, VA) in order to avoid sea turtle interactions. Based on VTR data from May 1998 through April 2001, the Virginia and North Carolina trips make up a small part of the total effort in the monkfish sink gillnet fishery. Together they represent 5.1 percent of the monkfish tail weight, 0.9 percent of the liver weight, and 4.1 percent of the total gillnet trips. The fishery normally migrates northward anyway as it follows the monkfish movements. This rule does not prevent or limit fishermen from moving north of 37°56.0′N (Chincoteague, VA) to prosecute the fishery, although the small number of vessels in this fishery that are based in North Carolina and Virginia would have extra fuel costs that would impact profitability. In 2002, a number of trips were landed in Virginia waters during the time frame of the large mesh gillnet restrictions, indicating that these vessels were likely fishing north of the closed area. This rule does not impact any available DAS or catch limits established under previous regulations.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is consistent with the ESA and other applicable laws.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS has conferred with the States of North Carolina and Virginia regarding the need for NMFS to implement this rule to protect listed sea turtles.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements.

Dated: November 26, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are amended to read as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; and 31 U.S.C. 9701 *et seq.*

2. In § 222.102, add the definition for "Gillnet" in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 223.206, paragraph (d) introductory text is revised and paragraph (d)(8) is added to read as follows:

§ 222.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) *Exception for incidental taking.* The prohibitions against taking in

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§ 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(8) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

* * * * *

(8) *Restrictions applicable to large-mesh gillnet fisheries in the mid-Atlantic region.* No person may fish (including, but not limited to, setting, hauling back, or leaving in the ocean) with, or possess any gillnet with a stretched mesh size larger than 8 inches (20.3 cm), unless all gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected. This restriction applies in the Atlantic Exclusive Economic Zone (as defined in 50 CFR 600.10) during the following time periods and in the following areas:

(i) Waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N (Oregon Inlet) at any time;

(ii) Waters north of 35°46.0′ N (Oregon Inlet) and south of 36°22.5′ N (Currituck Beach Light, NC) from March 16 through January 14;

(iii) Waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA) from April 1 through January 14; and

(iv) Waters north of 37°34.6′ N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA) from April 16 through January 14.

[FR Doc. 02–30605 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–2292–10; I.D. 112702B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 1,600 square nautical miles (nm²) (2,965 km²), east of Portsmouth, NH, called Jeffreys Ledge, for 15 days. The purpose of this action is to provide immediate protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours December 5, 2002, through 2400 hours December 20, 2002.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION: The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right whales, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap and anchored gillnet fishing gear in areas north of 40°N. lat. on an expedited basis to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 20, 2002, NMFS Aerial Survey Team reported a sighting of 8 right whales in the proximity of 43° 00′ N lat. and 70° 08′ W long. This position lies east of Portsmouth, NH, in an area called Jeffreys Ledge.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above and, through this action, restricts lobster trap and gillnet gear set in the waters bounded by:

43°19′N, 70°35′W (NW Corner)
43°19′N, 69°40′W
42°39′N, 69°40′W
42°39′N, 70°35′W (SW Corner)

Please note that the western DAM boundary (70°35′W) from 43°11′N due north to 43°19′N will follow the coastline.

The restrictions for the DAM zone are as follows: All anchored gillnet and lobster trap gear must be removed from these waters and no new gear may be set during the 15–day restricted period. The restrictions will be in effect beginning at 0001 hours December 5, 2002, through 2400 hours December 20, 2002, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**. The restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

Providing prior notice and an opportunity for public comment on this action would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. To meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. The criteria were triggered with respect to this temporary rule on November 20, 2002. If NMFS were to provide notice and an opportunity for public comment prior to the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Nevertheless, NMFS recognizes the need for fishermen to have time to remove their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective beginning at 0001 hours December 5, 2002, through 2400 hours December 20, 2002. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as possible.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (**ADDRESSES**).

This rule has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: November 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory ProgramsNational Marine Fisheries Service.

[FR Doc. 02–30774 Filed 11–29–02; 2:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 112602D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the northern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., local time, November 30, 2002, through June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone 727–570–5305, fax 727–570–5583, e-mail *Mark.Godcharles@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate

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quotas. The quota implemented for the northern Florida west coast subzone is 168,750 lb (76,544 kg)(50 CFR 622.42(c)(1)(i)(A)(2)(ii)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 168,750 lb (76,544 kg) for Gulf group king mackerel in the northern Florida west coast subzone was reached on November 30, 2002. Accordingly, the commercial fishery for king mackerel in the northern Florida west coast subzone is closed at 12:01 a.m., local time, November 30, 2002, through June 30, 2003, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31′06″ W. long. (a line directly south from the Alabama/Florida boundary).

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on October 25, 2002 (67 FR 65902, October 29, 2002). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the northern Florida west coast subzone through June 30, 2003.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 27, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30603 Filed 11–27–02; 2:42 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112602E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, November 30, 2002, through June 30, 2003, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone 727–570–5305, fax 727–570–5583, e-mail *Mark.Godcharles@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota for the northern Florida west coast subzone is 168,750 lb (76,544 kg)(50 CFR 622.42(c)(1)(i)(A)(*2*)(*ii*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel

in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone has been reached. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial fishery for king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, November 30, 2002. The 500–lb (227–kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2003), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31′06′ W. long. (a line directly south from the Alabama/Florida boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to reduce the trip limit constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 27, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30604 Filed 11–27–02; 2:42 pm]

BILLING CODE 3510-22-S

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Proposed Rules

Federal Register
Vol. 67, No. 232
Tuesday, December 3, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation Models 690D, 695A, and 695B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Twin Commander Aircraft Corporation (TCAC) Models 690D, 695A, and 695B airplanes. The proposed AD would require you to initially inspect and modify and repetitively inspect areas of the wing and fuselage structure for fatigue damage and modify or replace any damaged parts. The proposed AD is the result of tests that show that the service life of certain airplane parts cannot be reached unless an inspection and modification program (with any necessary replacements or modifications if fatigue damage is found) is incorporated. The actions specified by the proposed AD are intended to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplane. Such undetected and uncorrected damage could result in structural failure with consequent loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by January 31, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–56–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2000–CE–56–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in the proposed AD from the Twin Commander Aircraft Corporation, 19010 59th Drive NE., Arlington, Washington 98223–7832; telephone: (360) 435–9797; facsimile: (360) 435–1112. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 687–4246; facsimile: (425) 687–4248.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–56–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received results of fatigue testing of the wing and fuselage structure on Models 690D, 695A, and 695B airplanes. These results reveal that fatigue damage could occur prior to the published service lives.

TCAC has developed an inspection and modification program to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplanes.

What Are the Consequences if the Condition Is Not Corrected?

Such fatigue damage, if not detected and corrected, could result in structural failure with consequent loss of control of the airplane.

Relevant Service Information

Is There Service Information That Applies to This Subject?

TCAC has issued the following service information:

—Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000, which includes procedures, schedules, and drawings for repetitively inspecting and modifying the wing and fuselage areas of the affected airplanes;

—Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000, which changes compliance schedules and clarifies information presented in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; and

—Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001, which changes compliance schedules and clarifies information presented in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other TCAC Model 690D, 695A, and 695B airplanes of the same type design;

—The inspections and modifications (and necessary replacements or modifications if fatigue damage is found) specified in the service information should be accomplished on the affected airplanes; and

—FAA should take AD action to correct this unsafe condition.

What Would the Proposed AD Require?

The proposed AD would require you to repetitively inspect areas of the wing and fuselage structure for fatigue damage and modify or replace any damaged parts.

Compliance Time

Why Is the Initial Compliance Time Presented in Hours Time-in-service (TIS) and Calendar Time?

Normally, fatigue problems would carry a compliance time based solely upon hours TIS, *e.g.*, upon accumulating a certain amount of hours TIS. However, the number of airplanes that still need to have the initial actions of the proposed AD accomplished compared to the number of authorized repair centers justifies a compliance time of both hours TIS and calendar time, whichever occurs first.

TCAC estimates 125 airplanes worldwide (about 87 percent of the worldwide fleet) that still need to have the initial proposed inspections accomplished. This 87 percent would amount to 94 of the 108 U.S.-registered airplanes with only 7 authorized service centers accredited to do the work. The FAA has worked with TCAC in establishing a compliance table that categorizes the airplanes based upon the amount of hours TIS each airplane has accumulated.

This would ensure that the service centers have adequate time to accomplish the proposed actions.

Cost Impact

How Many Airplanes Does This Proposed AD Impact?

We estimate the proposed AD would affect 108 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to do the proposed inspection for TCAC Models 690D, 695A, and 695B airplanes:

Inspection only labor cost for each airplane	Total inspection cost on U.S. Operators
Minimum 270 workhours × $60 per hour = $16,200	Minimum: $1,749,600.
Maximum 416 workhours × $60 each hour = $24,960	Maximum: $2,695,680.

We estimate the following costs to do any necessary modifications that would be required based on the results of the proposed inspection. We have no way of finding out the number of airplanes that may need modifications:

Costs	Minimum	Maximum
Labor Costs	81 workhours × $60 per hour = $4,860	2,790 workhours × $60 per hour = $167,400.
Estimated Parts Cost	$2,847	$65,978.
Estimated Total Cost for Each Airplane	$7,707	$233,378.
Total Cost on U.S. Operators	$832,356	$25,204,824.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The proposed regulations would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may get a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Therefore, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Twin Commander Aircraft Corporation:

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Docket No. 2000–CE–56–AD.

(a) *What airplanes are affected by this AD?* The following Twin Commander Aviation Corporation (TCAC) airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
690D	15001 through 15036 and 15038 through 15040.
695A	96001 through 96062, 96065 through 96068, 96070, 96071, 96073, 96074, 96076, 96077, and 96079 through 96084, 96086, 96087, and 96089 through 96100.
695B	96063, 96069, 96075, 96078, 96085, and 96204 through 96208.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplane. Such undetected and uncorrected damage could result in structural failure with consequent loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must initially inspect and modify the wing and fuselage areas (Part 1 Inspection/Modifications as identified in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000) and repetitively inspect with necessary modification or replacement of damaged parts (Part 2 Recurrent Inspections as identified in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000) in accordance with the following schedules:

(1) *Part 1 Initial Inspections/Modifications:* Initially (unless already done) accomplish the Part 1 Inspections/Modifications at whichever compliance time in paragraph (d)(1)(i) or (d)(1)(ii) of this AD that occurs later:

(i) the compliance times presented in Part 1 Table 1 of of Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001; or

(ii) the Table A compliance times presented on page 1 of the service information and replicated below:

Current airframe hours time-in-service (TIS)	Initial compliance time
(A) 0000 through 1,700	Upon accumulating 2,700 hours TIS or within the next 36 months after the effective date of this AD, whichever occurs first.
(B) 1,701 through 2,500	Upon accumulating 3,400 hours TIS or within the next 36 months after the effective date of this AD, whichever occurs first.
(C) 2,501 through 3,000	Upon accumulating 3,800 hours TIS or within the next 36 months after the effective date of this AD, whichever occurs first.
(D) 3,001 through 5,000	Upon accumulating 5,500 hours TIS or within the next 30 months after the effective date of this AD, whichever occurs first.
(E) 5,001 through 6,000	Upon accumulating 6,400 hours TIS or within the next 24 months after the effective date of this AD, whichever occurs first.
(F) 6,001 through 7,500	Upon accumulating 7,800 hours TIS or within the next 18 months after the effective date of this AD, whichever occurs first.
(G) Over 7,500	Within the next 12 months after the effective date of this AD.

(2) *Part 2 Recurring Inspections:* Repetitively inspect as referenced in Part 2 Recurring Inspections on page 62 of Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001.

(3) *Mandatory Replacements and Modifications:* If any damage is found during any inspection required by paragraphs (d), (d)(1), and (d)(2) of this AD, prior to further flight, replace or modify the part as specified in the following:

(i) Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000;

(ii) Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and

(iii) Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Seattle Aircraft Certification Office (ACO), approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance following paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 687–4246; facsimile: (425) 687–4248.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can perform the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get the service information referenced in this AD from the Twin Commander Aircraft Corporation, 19010 59th Drive N.E., Arlington, Washington 98223–7832; telephone: (360) 435–9797; facsimile: (360) 435–1112. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 22, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30496 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–18]

Proposed Modification of Class D Airspace; Terre Haute, IN; Proposed Establishment of Class E Airspace; Terre Haute, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class D airspace at Terre Haute, IN, and Establish Class E airspace at Terre Haute, IN. A proposal has been made to reduce the operating hours of the Terre Haute Air Traffic Control Tower (HUF ATCT). The effective hours of the Class D airspace for Terre Haute must coincide with the HUF ATCT's hours of operation. Class E airspace extending upward from the surface is also required to protect aircraft executing Instrument Approach Procedures when the HUF ATCT is closed. This action would modify the effective time of the existing area of Class D airspace, and establish a radius of Class E airspace for Terre Haute International-Hulman Field Airport.

DATES: Comments must be received on or before December 29, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 02–AGL–18, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–420, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AGL–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and establish Class E airspace at Terre Haute, IN, by modifying the effective time of the existing Class D airspace and establishing Class E airspace for the Terre Haute International-Hulman Field Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant" regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

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§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 74.00.9k, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace

* * * * *

AGL IN D Terre Haute, IN [Revised]

Terre Haute International-Hulman-Field Airport, IN
(Lat. 39°27′05″N., long. 87°18′27″W.)
Terre Haute, Sky King Airport, IN
(Lat. 39°32′52″N., long. 87°22′38″W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 5.7-mile radius of the Terre Haute International-Hulman Field Airport, excluding that airspace within a 1-mile radius of Sky King Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from the surface of the earth.

* * * * *

AGL in E2 Terre Haute, IN

Terre Haute International-Hulman Field Airport, IN
(Lat. 39°27′05″N., long. 87°18′27″W.)
Terre Haute, Sky King Airport, IN
(Lat. 39°32′52″N., long. 87°22′38″W.)

Within a 5.7-mile radius of the Terre Haute International-Hulman Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on October 16, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division.

[FR Doc. 02–30610 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2002–13464; Notice No. 02–17]

RIN 2120–AC84

Improved Seats in Air Carrier Transport Category Airplanes; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); extension of comment period.

SUMMARY: This action extends the comment period for an SNPRM the FAA issued on September 26, 2002. In that document, the FAA proposed to require that all passenger and flight attendant seats in transport category airplanes used in passenger-carrying operations meet improved crashworthiness standards. This extension is a result of requests from the Aerospace Industries Association (AIA), The Boeing Company (Boeing), and the General Aviation Manufacturers Association (GAMA).

DATES: Send your comments on or before March 3, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13464 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also send comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aircraft Certification Service, Aircraft Engineering Division, AIR–120, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–8807, facsimile (202) 267–5340, or E-mail: *hal.jensen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On September 26, 2002, the FAA issued Notice No. 02–17, Improved Seats in Air Carrier Transport Category Airplanes (67 FR 62294, October 4, 2002). Comments to that document were to be received on or before December 3, 2002.

On October 29, 2002, Boeing asked the FAA to extend the comment period on Notice No. 02–17 an additional 4 months. In its petition, Boeing indicates that additional time is necessary to collect and confirm economic data. Boeing adds the SNPRM is significantly different from the FAA's original proposal. On November 5, 2002, AIA asked for a 4–6 month extension of the comment period for the same reasons identified by Boeing. Further, on November 6, 2002, GAMA asked for a 90-day extension. GAMA states the proposal is complex and an extension is necessary to allow interested parties time to develop meaningful and substantive comments.

While the FAA agrees with the petitioners' requests for an extension of the comment period on Notice No. 02–17, the FAA believes that a 4–6 month extension would be excessive. The FAA believes an added 90 days would be adequate for these petitioners to collect economic data necessary to provide meaningful comment to Notice No. 02–17. This will also allow commenters who may have anticipated an extension in the comment period to send their comments by a date certain. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by AIA, Boeing, and GAMA for extension of the comment period to Notice No. 02–17. The FAA finds that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. These petitioners have a substantive interest in the proposed rule and good cause for the extension.

Accordingly, the comment period to Notice No. 02–17 is extended until March 3, 2003.

Issued in Washington, DC, on November 27, 2002.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 02–30695 Filed 11–29–02; 12:22 pm]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46920; File No. S7–48–02]

RIN 3235–AI58

Broker-Dealer Exemption from Sending Certain Financial Information to Customers

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Proposed rule.

SUMMARY: We are proposing for comment amendments to a rule under the Securities Exchange Act of 1934 that would provide a conditional exemption from the rule's requirement that a broker-dealer that carries customer accounts send its full balance sheet and certain other financial information to each of its customers twice a year. Under the proposed amendments, the broker-dealer could send its customers only certain information regarding its net capital, as long as it also provided customers with a toll-free number to call for a free copy of its full balance sheet and made its full balance sheet available to customers over the Internet. The proposed amendments are intended to reduce the cost of doing business for a broker-dealer while providing customers of the broker-dealer with free and easy access to the information they need to evaluate the financial soundness of the broker-dealer.

DATES: You should send us your comments so that they arrive at the Commission by January 2, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, you may submit your comments electronically to the following electronic-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–48–02; please include this file number in the subject line if you use electronic mail. We will make all comment letters available for public inspection and copying in our public reference room at the above address. We will post electronically submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 942–0132; Thomas K. McGowan, Assistant Director, at (202) 942–4886; or Rose Russo Wells, Attorney, at (202) 942–0143; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

A broker-dealer that carries customer accounts must generally send its full balance sheet to each of its customers twice a year (once audited and once unaudited) under Section 17(e)(1)(B) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a–5(c).[2] The full balance sheet includes footnote disclosures required by generally accepted accounting principles ("GAAP") and a footnote disclosing the amount of net capital the broker-dealer held as of the balance sheet date and the minimum amount of net capital we required the broker-dealer to hold as of that date.[3] According to the Commission's Office of Economic Analysis, there are currently 412 broker-dealers subject to the rule that carry a total of approximately 103 million public customer accounts.[4]

When we adopted Rule 17a–5(c) on June 30, 1972,[5] our goal was for broker-dealers to "directly" send a customer essential information so that a customer could "judge whether his broker or dealer is financially sound."[6] We adopted the Rule in response to the failures of many broker-dealers holding customer funds and securities in the period between 1968 and 1971. When first adopted, Rule 17a–5(c) required a broker-dealer to send its balance sheet

[1] We do not edit personal identifying information, such as names or electronic-mail addresses, from electronic submissions. You should submit only information that you wish to make publicly available.

[2] Section 240.17a–5(c).

[3] Exchange Act Rule 15c3–1 defines net capital and sets minimum net capital requirements for a broker-dealer. Rule 15c3–1 is designed to ensure that each broker-dealer maintains sufficient liquid assets (those assets that can be readily converted into cash) in excess of liabilities to promptly satisfy the firm's liabilities, including those to customers. A broker-dealer that fails to meet the minimum net capital requirements must cease conducting a securities business.

[4] These estimates are based on reports broker-dealers are required to file with the Commission on Form X–17a–5, "Financial and Operational Combined Uniform Single Report" (commonly referred to as FOCUS Reports).

[5] We adopted Rule 17a–5(c) pursuant to Exchange Act Sections 17(a), 10(b), 15(c)(1), (2) and (3), and 23(a). In 1975, Congress passed the Securities Acts Amendments, Pub. L. No. 94–29, 89 Stat. 97, which gave the Commission explicit authority, pursuant to Exchange Act Section 17(e), over the accounting practices of broker-dealers. Section 17(e) provides:

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by a registered public accounting firm, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this title and the accounting principles and accounting standards used in their preparation.

[6] Exchange Act Release No. 9658 (June 30, 1972).

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to its customers five times a year. We later reduced this to two times a year.[7]

The staff of the Commission's Division of Market Regulation ("Division") has taken steps to reduce the cost to broker-dealers of complying with Rule 17a–5(c). In a letter of February 26, 2001, the Division provided no-action relief to allow a broker-dealer to send its balance sheet with its quarterly mailing of customer account statements, provided that the broker-dealer also sent certain updated net capital information.[8] Further, the Commission has provided that, with the consent of the customer, a broker-dealer may send its balance sheet electronically.[9]

In July 1998, the Securities Industry Association ("SIA")[10] requested additional relief on behalf of broker-dealers due to the cost of sending a full balance sheet to each customer and the availability of the Internet as an alternative method of delivery.[11] Full balance sheets for large broker-dealers may be six or more pages long, primarily due to the footnote disclosures required by GAAP.

In response to the request for relief, we issued a conditional exemptive order establishing a pilot program that permitted a broker-dealer that elected to take advantage of the relief to send only its net capital footnote to its customers when it otherwise would have had to send its full balance sheet.[12] One condition of the order was that a customer of the broker-dealer wishing to obtain a copy of the firm's full balance sheet was able to do so, at no cost to the customer, by calling a toll-free number to promptly obtain a paper copy or, with the customer's consent, an electronic copy or by accessing the broker-dealer's Internet website. The relief was designed to reduce the cost to broker-dealers of complying with Rule 17a–5(c) while making it as easy as possible for customers to get the information they need to evaluate the financial soundness of a broker-dealer that may be holding their cash and securities. Participation in the pilot program was voluntary, and broker-dealers that participated in the pilot program were the firms that were likely to benefit most from taking advantage of the exemption. No broker-dealer dropped out of the pilot program. On December 20, 2001, the Commission issued an order extending the pilot program for one year, until December 31, 2002.[13] Today, the Commission issued an order extending the pilot program for six months, until June 30, 2003 (Exchange Act Release No. 46921), during which time the Commission, after receiving and considering comments on these proposed rule amendments, may adopt amendments to Rule 17a–5(c).

During the pilot program, we required a broker-dealer taking advantage of the relief to submit to us a report on the number of times its balance sheet was viewed on its website and the number of requests it received for copies via its toll-free number, and, during the December 31, 2001 to December 31, 2002 extension of the pilot program, written customer complaints it received regarding the exemption. As of July 1, 2002, 29 firms, which hold a total of about 40 million customer accounts, had elected to take advantage of the relief. The reports filed since the program was established on December 10, 1999, through July 1, 2002, show that 1,384 customers have called the toll-free numbers to request copies of the balance sheets and that there were 139,888 total viewings of the balance sheets on the websites of the firms participating in the pilot program. This indicates that customers are using the mechanisms provided by the pilot program to access broker-dealers' financial information. In addition, the reports show that the firms taking advantage of the exemption received no customer complaints regarding the exemption.

II. Description of the Proposed Amendments

We now propose to amend Rule 17a–5(c) to codify the relief we granted in the pilot program. The proposed amendments closely track the text of the orders establishing and extending the pilot program with two substantive exceptions.[14] First, as discussed below, the proposed amendments contain a modification from the pilot program regarding when a firm could take advantage of the relief if it had a net capital deficiency or other disqualifying factor. We also propose to eliminate the requirement contained in the pilot that broker-dealers taking advantage of the relief submit reports to us concerning the number of requests for copies of their balance sheets via their toll-free numbers, the number of viewings of their balance sheets on their websites, and the number of complaints they have received regarding the exemption. The reason for requesting this information in the pilot was to permit the Commission to be able to evaluate how the relief was working, so that the Commission could decide whether to propose permanent relief. At this time, we no longer believe such a reporting requirement would be necessary in the proposed rule amendments. We seek comment on whether the proposed rule amendments should contain a reporting requirement.

The pilot program prevented a broker-dealer from taking advantage of the relief in the event of a net capital deficiency or other disqualifying factor. The proposed amendments would extend the circumstances in which the relief would not be available. The amendments would not allow a broker-dealer to take advantage of the relief if, during the year prior to the date of the broker-dealer's balance sheet, the broker-dealer was required to provide notice to the Commission of the occurrence of any disqualifying event specified in the rule.[15] Disqualifying events would include net capital deficiencies, net capital early warning deficiencies, books and records failures, and internal control or financial disclosure inadequacies and are set out in Exchange Act Rule 17a–11 (b)(1), (c)(2), (c)(3), (d), and (e). In such a situation, a broker-dealer would be required to send all mandated financial information directly to each customer because customers would be more likely to want to review the broker-dealer's balance sheet under the circumstances. In the pilot program, the relief was available to a broker-dealer that had a capital deficiency within the past year that was not corrected within 24 hours as long as the deficiency was corrected by the next date that financial disclosures were required. We changed this provision in the proposed amendments because even if the deficiency was promptly cured, the deficiency might indicate that the broker-dealer's overall financial condition has changed significantly. In those circumstances, we believe that customers should receive the full balance sheet for at least one year after the deficiency is cured. We request comment on whether customers should receive the full balance sheet for a time

[7] Exchange Act Release No. 11187 (Jan. 17, 1975).

[8] Letter of February 26, 2001 from Michael Macchiaroli, Associate Director, to Cheryl M. Kallem, Chairperson, Securities Industry Association (2001 SEC No-Act. LEXIS 523).

[9] Exchange Act Release No. 37182 (May 15, 1996).

[10] The 600 member firms of the SIA include investment banks, broker-dealers, and mutual fund companies.

[11] Letter of July 17, 1998 from Mark Holloway, Chairman, SIA Capital Committee to Michael A. Macchiaroli, Associate Director.

[12] Exchange Act Release No. 42222 (Dec. 10, 1999).

[13] Exchange Act Release No. 45179 (Dec. 20, 2001), 66 FR 67341 (Dec. 28, 2001).

[14] In addition to the two changes discussed here, we have made minor technical corrections and clarifications to the conditions previously set out in the pilot program.

[15] *See* proposed paragraph (c)(5)(vi) of Rule 17a–5.

period that is more than one year or less than one year after the deficiency is cured. In addition, as specified in the proposed amendments, we have extended the disqualifying events to include a failure by the broker-dealer to make and keep current certain of its books and records. We request comment on whether the disqualifying events specified in the proposed amendments, certain of the "Notification Provisions for Brokers and Dealers" enumerated in paragraphs (b)(1), (c)(1), (c)(2), (c)(3), (d), and (e) of Rule 17a–11, are appropriate. In particular, are there other circumstances in which it would not be appropriate for us to permit a broker-dealer to take advantage of the relief, should any of the specified circumstances not be included in the rule amendments, or should the disqualifying events in the proposed rule amendments be revised? For example, should the levels of net capital that constitute disqualifying events for purposes of the proposed amendments be different from those requiring notification under Rule 17a–11?

The proposed amendments reflect our view that it is not necessary for a broker-dealer to send a full balance sheet two times a year to keep a customer informed of the financial condition of the broker-dealer if the customer receives the broker-dealer's net capital information twice a year and if the full balance sheet is available through a call to a toll-free number or is posted on the website of the broker-dealer. Under the proposed amendments, a broker-dealer that elects to take advantage of the relief provided to broker-dealers through the proposed amendments would continue to send to its customers or have readily available for its customers the financial information about the broker-dealer that is necessary in order for the customer to assess the broker-dealer's financial condition. In turn, we anticipate that if we were to adopt the proposed amendments, the cost to broker-dealers of complying with Rule 17a–5(c) would be substantially reduced. As a result, and as described below, we believe that the conditional exemption, as proposed today, would be consistent with the public interest and the protection of investors.

The amendments would require a broker-dealer taking advantage of the relief to continue to send specified financial information to each customer twice a year. This financial information would consist of the amount of the broker-dealer's net capital as of the date of the balance sheet the broker-dealer would have sent absent the exemption, the amount of the broker-dealer's required net capital as of that date, and information on how to obtain the full balance sheet of the broker-dealer via a toll-free number or on the broker-dealer's website. Sending this financial information twice a year would remind customers that the full balance sheet of the broker-dealer is available to them at no cost and would highlight and keep them informed of the firm's net capital position. We request comment on whether a broker-dealer taking advantage of the relief should send either more or less information to its customers and whether it should send the information more or less often than two times a year.

The amendments would require that the financial information be "given prominence in the materials delivered to customers. . . ."[16] We request comment on whether the rule should include additional requirements. For example, should the rule mandate that the financial information be on a separate page, to help make customers aware that the financial information is included in the materials sent to them by their broker-dealer taking advantage of the exemption? Further, should the broker-dealer be required to use other methods to inform its customers how to obtain its full balance sheet?

We believe that customers must have the opportunity to evaluate for themselves whether the broker-dealer is sufficiently financially sound to be entrusted to hold their securities and cash. The net capital requirements are designed to ensure that brokers and dealers have sufficient liquid assets (those assets that can be readily converted into cash) in excess of liabilities to promptly satisfy the firm's liabilities, including those to customers. Information about a broker-dealer's net capital is therefore useful in gauging the financial soundness of the broker-dealer. The amendments would require that a broker-dealer send customers its net capital information directly and give customers directions on how to obtain the full balance sheet of the broker-dealer.

Under the amendments, the full balance sheet of a broker-dealer taking advantage of the exemption would be available to a customer at no cost—by calling a toll-free number to obtain a copy and by accessing it on the firm's website. We request comment on whether there should be other ways in which customers could obtain the broker-dealer's full balance sheet.

The proposed amendments are intended to make it easy and convenient for a customer to obtain the firm's balance sheet. When posting its balance sheet to its website, the broker-dealer would be required to place a prominent link directly to the balance sheet on any web page that a customer would typically use to enter the website. The links would have to be placed on the broker-dealer's home page and on each page at which a customer can enter or log on to the broker-dealer's website. We request comment on how the full balance sheet and hyperlinks to the full balance sheet of a broker-dealer taking advantage of the relief should be placed on its website.

Rule 17a–5(c) requires a broker-dealer that carries customer accounts to annually send each customer certain financial information, including an audited balance sheet, within 105 days of the date of the balance sheet and to semiannually send each customer certain financial information, including an unaudited balance sheet dated six months after the date of the audited balance sheet, within 65 days of the date of the unaudited balance sheet. The Commission's staff has provided no-action relief to allow a broker-dealer to send the balance sheets after the 105 and 65-day time limits, provided that the broker-dealer sent the balance sheets with its next mailing of quarterly customer account statements[17] and provided that the broker-dealer also sent certain net capital information as of a fiscal month end that is within 75 days of the date that statements are sent to customers.[18]

We request comment on whether the time-frames for the sending of broker-dealer financial information to customers required by Rule 17a–5(c) and the no-action relief are appropriate. Should the 105 days for the sending of audited balance sheets be shortened, for example, to somewhere between 105 and 75 days? Should the 65 days for the sending of unaudited balance sheets be shortened, for example, to somewhere between 65 and 45 days? We also request comment on whether these shortened time frames should apply if the firm has experienced the occurrence of financial or operational difficulties, such as a disqualifying event under paragraph (c)(5)(vi) of the proposed amendments. Further, should we codify the time frames in the no-action letter by which the broker-dealer must send

[16] *See* proposed paragraph (c)(5)(ii) to Rule 17a–5.

[17] A broker-dealer that carries customer accounts must send account statements to customers at least quarterly under New York Stock Exchange Rule 409 and Section 45 of Article III of the NASD Rules of Fair Practice.

[18] Letter of February 26, 2001 from Michael Macchiaroli, Associate Director, to Cheryl M. Kallem, Chairperson, Securities Industry Association (2001 SEC No-Act. LEXIS 523).

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its balance sheets to each customer into Rule 17a–5(c)? Should such a rule provide a time period that is shorter than the time period permitted in the no-action letter? Should such a rule require that the updated net capital information that a broker-dealer sends with its mailing of quarterly customer account statements under the no-action relief be as of a fiscal month end that is within a time period that is shorter or longer than 75 days?

Under amendments as currently proposed, a broker-dealer taking advantage of the exemption would be required, within 105 days of the date of the audited balance sheet, to send its financial disclosure statement to each customer (as described in paragraphs (5)(i)–(ii) of the proposed amendments), to place its audited balance sheet on its website, and to make its audited balance sheet available to customers who call its toll-free number to request it. The corresponding time frame is 65 days for the unaudited balance sheet. Should we codify the no-action relief to allow a broker-dealer taking advantage of the exemption to send its financial disclosure statement with its next mailing of quarterly customer account statements after the expiration of the prescribed time limits?

We request comment on whether some or all of these time frames for broker-dealers taking advantage of the proposed exemption are appropriate. For example, should a broker-dealer taking advantage of the exemption be required to place its balance sheets on its website sooner than it is required to send the financial disclosure statement to customers? Should the time period for posting the balance sheet on the website be somewhere between 60 and 105 days of the date of the audited balance sheet? Should the time period be somewhere between 45 and 60 days of the date of the unaudited balance sheet? We request comment on whether the time-frames for the sending the financial disclosure statement to each customer under the proposed exemption are appropriate. Should the 105 days for the sending of the financial disclosure statement relating to the audited balance sheet be shortened, for example, to somewhere between 105 and 75 days? Should the 65 days for the sending of the financial disclosure statement related to the unaudited balance sheet be shortened, for example, to somewhere between 65 and 45 days? We also request comment on whether these shortened time frames should apply if the firm has experienced the occurrence of financial or operational difficulties, such as a disqualifying event under paragraph (c)(5)(vi) of the proposed amendments.

We encourage any interested person to submit comments on the proposed amendments from the point of view of broker-dealers, their customers, and investors and other users of information about the financial condition of broker-dealers. Comments are of greatest assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

The proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[19] We are submitting the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[20] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The title for the collection of information affected by the proposed amendments is "Rule 17a–5(c)" (OMB Control No. 3235–0199).

If adopted, the proposed amendments would allow a broker-dealer that elects to take advantage of the exemption, instead of sending its full balance sheet, to send a financial disclosure statement, consisting of its net capital information and information on how to obtain its full balance sheet, to its customers twice a year, as long as the broker-dealer also posts its balance sheet on its website and promptly sends its balance sheet to its customers who request it via a toll-free number. We estimate that the proposed amendments would reduce the existing paperwork burden on broker-dealers taking advantage of the exemption.

The current PRA burden for Rule 17a–5(c) is 542,222 hours and $19.52 million. The hour burden is based on an estimated average of 10 seconds to send each balance sheet times 97.6 million public customer accounts times two balance sheets per year (195,200,000 responses * 10 seconds /60 seconds/60 minutes = 542,222 hours per year). The cost burden is based on an estimated average of 10 cents per response for postage and printing costs (195,200,000 responses * $.10 = $19.52 million).

Since the time of the last calculation of the PRA burden, the number of public customer accounts has increased to 103 million. Further, industry sources represented that it now costs approximately 11 cents to mail a full balance sheet to a customer, primarily due to the additional postage required to mail the approximately six pages of footnotes required by GAAP, and that few customers agreed to accept the balance sheets electronically. We are now using that estimate of 11 cents instead of the 10 cents per balance sheet we had used previously. We request comment on the accuracy of that estimate.

Since the inception of the pilot program on December 10, 1999, to July 1, 2002, 29 broker-dealers, carrying a total of approximately 40 million customer accounts, have taken advantage of the relief. If the Commission adopts the proposed amendments, some additional firms may take advantage of the exemption. Because these firms have not yet taken advantage of the relief and because they may be smaller firms than some of the firms that have already taken advantage of the relief, these firms may realize fewer benefits from the exemption than those firms already taking advantage of the exemption.

Broker-dealers currently taking advantage of the exemption send the financial disclosure statement, instead of their full balance sheet, twice a year. Some broker-dealers print the financial disclosure statement, which is typically about one paragraph in length, on a separate page, and some broker-dealers print it on the account statement.

We estimate that the 29 broker-dealers currently taking advantage of the exemption would spend 222,000 hours per year sending the financial disclosure statements to their customers. This estimate is based on an estimated average of 10 seconds to send each statement times 40 million customers times 2 financial disclosure statements per year. We have estimated in previous Paperwork Reduction Act filings that it requires 10 seconds to send a full balance sheet to a customer. Sending the financial disclosure statement instead of the full balance sheet may require less time. We request comment on the accuracy of the estimate of the amount of time required to send each financial disclosure statement.

We estimate that broker-dealers taking advantage of the exemption would save up to 11 cents each on postage and printing to send the financial disclosure statement instead of the full balance sheet to their customers. We estimate that the 29 firms currently taking advantage of the exemption have reduced their postage and printing costs by up to $8.8 million per year (40 million accounts * 2 mailings * up to 11 cents). If adopted, the proposed amendments would allow these firms to continue to realize these savings. We request comment on the accuracy of this estimate.

Broker-dealers that take advantage of the exemption must send balance sheets to customers who request them via a toll-free number. Based on requests received by broker-dealers participating in the pilot program, we estimate that the firms that take advantage of the exemption would send approximately 550 balance sheets per year to customers who request them via the firms' toll-free numbers (1384 requests from December 31, 1999 to July 1, 2002/30 months * 12 months = 554).[21] We request comment on how much time would be required to send each balance sheet to a customer. Even if it takes 10 minutes to send each balance sheet, the total annual burden would be small (10 minutes * 550 balance sheets/ 60 =92 hours). In addition, we estimate that it would cost approximately 74 cents in postage to mail the balance sheet (two 37-cent stamps to mail six pages) for a total of $407 and that there may be small printing costs, which we are not able to quantify. We request comment on these estimates. We believe that the firms that would take advantage of the exemption already maintain a toll-free number for their customers and already have an Internet website. We request comment on those assumptions.

We therefore estimate the total burden for broker-dealers who take advantage of the exemption to be 222,000 hours and less than $10,000.

We estimate the burden for broker-dealers who do not take advantage of the exemption (383 broker-dealers carrying approximately 63 million customer accounts) to be about 350,000 hours per year and $13.9 million per year. The hour burden was calculated by multiplying the estimated number of balance sheets to be sent annually (63 million customers times two balance sheets sent per year) by the estimated average amount of time required to send each balance sheet (10 seconds). The cost burden was calculated by multiplying the number of balance sheets sent per year (126 million) by estimated postage and printing costs for each balance sheet (11 cents). We request comment on the accuracy of these estimates.

If the amendments are adopted, therefore, we estimate that the total annual hour burden for Rule 17a–5(c) would be approximately 572,000 hours (350,000 hours for firms not taking advantage of the exemption and 222,000 hours for firms taking advantage of the exemption), and the total annual cost burden would be approximately $13.9 million. The hour burden would increase by 29,778 hours from our previous estimate (572,000 hours—542,222 hours). All of this increase is due to an increase in the total number of public customer accounts since the time of the last submission. The estimated cost burden is $2.38 million higher due to an increase in the number of public customer accounts and an increase in estimated average postage and printing costs and is $8 million lower due to the proposed amendments. The cost burden is therefore lower by $5.62 million ($8 million − $2.38 million=$5.62 million).

We request comment on the proposed collection of information in order to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) evaluate the accuracy of our estimates of the burden of the proposed collection of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. 270–199. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. 270–199, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington DC 20549. Because the OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Costs and Benefits of the Proposed Amendments

The proposed amendments are intended to reduce the cost of doing business to a broker-dealer while providing customers of the broker-dealer with free and easy access to the information they need to evaluate the financial soundness of the broker-dealer. No costs to customers are expected. The proposed amendments provide regulatory relief for those broker-dealers that take advantage of the exemption. The broker-dealers who take advantage of the exemption do so because they believe that the benefits of doing so outweigh the costs.

There are currently 412 broker-dealers that carry customer accounts. These firms carry a total of approximately 103 million accounts. Since the inception of the pilot program on December 10, 1999, to July 1, 2002, 29 broker-dealers, carrying a total of approximately 40 million customer accounts, have taken advantage of the relief. If the Commission adopts the proposed amendments, some additional firms may take advantage of the exemption. Because these firms have not yet taken advantage of the relief and because they may be smaller firms than some of the firms that have already taken advantage of the relief, these firms may realize fewer benefits from the exemption than those firms already taking advantage of the exemption.

The proposed amendments reflect our view that subject to certain conditions it is not necessary for a broker-dealer to send its balance sheet two times a year to customers to keep them informed of the financial condition of the broker-dealer if customers receive the broker-dealer's net capital information twice a year and if the full balance sheet is available on the Web site of the broker-dealer or by a call to a toll-free number. In fact, customers with Internet access would be able to obtain the full balance sheet of their broker-dealer within minutes at any time. Customers without Internet access could call at any time to be promptly sent a free copy of the full balance sheet.

We expect that the proposed amendments will provide benefits to broker-dealers and to investors. We expect that broker-dealers taking advantage of the exemption would reduce their cost of compliance with Rule 17a–5(c). As discussed above, we estimate that the 29 firms currently taking advantage of the exemption have reduced their postage and printing costs by up to $8.8 million per year. If

[19] 44 U.S.C. Section 3501 *et seq.*

[20] 44 U.S.C. Section 3507(d) and 5 CFR § 1320.11.

[21] Customers, when requesting that the full balance sheet be sent to them, have not requested that the balance sheet be sent electronically.

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adopted, the proposed amendments would allow these firms to continue to realize these savings. Larger broker-dealers are likely to realize greater benefits than smaller firms as larger firms carry more customer accounts. As election of the exemption is voluntary, we would expect a broker-dealer to elect the exemption only if the firm would be able to conduct business at a lower cost than under current Commission rules. The proposed amendments could reduce overall costs to broker-dealers. In general, to the extent that costs to broker-dealers are reduced, such cost reductions may ultimately be passed on to consumers.

We estimate that the proposed amendments will result in certain costs to broker-dealers. Firms taking advantage of the exemption must have and maintain a toll-free telephone line and must have and maintain Web sites containing their balance sheets. We expect, however, that firms taking advantage of the exemption will already have a toll-free number for their customers and will already have a Web site, as these tend to be the larger firms. Firms taking advantage of the exemption must also send their full balance sheet to customers who request it via the toll-free telephone number. However, as election of the relief is voluntary, any new associated costs only reduce the net benefit of the election and do not impose a new burden.

Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid us in our evaluation of the costs and benefits that may result from the amendments to Rule 17a–5(c) proposed in this release.

V. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act [22] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules on small entities unless the Commission certifies that the rule change, if adopted, would not have a significant economic impact on a substantial number of small entities.[23]

The Commission hereby certifies, pursuant to 5 U.S.C. Section 605(b), that the proposed amendments to Rule 17a–5(c) contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. These provisions would apply only to broker-dealers that carry customer funds, securities, or property. According to the Commission's Office of Economic Analysis, as of October 2001, there were approximately 412 such firms and, of these firms, approximately 14 were small businesses.[24] Further, election of the relief provided by the proposed rule amendments is voluntary. The proposed amendments, therefore, should not have a significant impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[25] a rule is "major" if it has resulted, or is likely to result, in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. We request that commenters provide empirical data and other factual support for their views.

VII. Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act [26] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [27] requires us to consider the anticompetitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes the proposed amendments should improve efficiency, competition, and capital formation by decreasing the costs of doing business for a broker-dealer that carries customer accounts and elects to take advantage of the relief. Additional firms taking advantage of the relief, however, may be smaller firms that may realize fewer benefits from taking advantage of the exemption than larger firms currently taking advantage of the relief. In addition, the proposed amendments should have no anticompetitive effects not necessary or appropriate in furtherance of the purposes of the Act because any broker-dealer should be able to use the exemption, because the complexity and length of financial statements generally varies proportionately with the volume and complexity of the broker-dealer's business, and because the number of financial statements that a broker-dealer must send to its customers is proportional to the number of customers of the broker-dealer.

We solicit comments on these matters with respect to the proposed rule amendments. Would the amendments have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? Would the proposed amendments, if adopted, promote efficiency, competition, and capital formation? Commenters are requested to provide empirical data and other factual support for their views, if possible.

VIII. Statutory Basis

The amendments contained in this release are being proposed under the Exchange Act, particularly Section 17 and Section 23(a).

[22] 5 U.S.C. Section 603(a).

[23] 5 U.S.C. Section 605(b).

[24] Pursuant to 17 CFR 240.0–10, "the term *small business* or *small organization* shall: [. . .] (c) [w]hen used with reference to a broker or dealer, mean a broker or dealer that: (1) [h]ad total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) [i]s not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section . . ." (17 CFR 240.0–10(c)). Further, pursuant to § 240.0–10(i), "[f]or purposes of paragraph (c) of this section, a broker or dealer is affiliated with another person if [. . .] [s]uch broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis." (17 CFR 240.0–10(i)).

[25] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[26] 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78w(a)(2).

List of Subjects in 17 CFR Part 240

Brokers, Customers, Dealers, Reporting and recordkeeping.

Text of Proposed Rule

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17a–5 is amended by:

a. Revising the phrase "except if the activities" to read "except as provided in paragraph (c)(5) of this section or if the activities" in the introduction text of paragraph (c); and

b. Adding paragraph (c)(5).

The addition reads as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(c) * * *

(5) *Exemption from sending certain financial information to customers.* A broker or dealer is not required to send to its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section if the following conditions are met:

(i) The broker or dealer semi-annually sends its customers, at the times it otherwise is required to send its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, a financial disclosure statement that includes:

(A) The amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3–1, as of the date of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section;

(B) To the extent required under paragraph (c)(2)(ii) of this section, a description of the effect on the broker's or dealer's net capital and required net capital of the consolidation of the assets and liabilities of subsidiaries or affiliates consolidated pursuant to Appendix C of § 240.15c3–1; and

(C) Any statements otherwise required by paragraph (c)(2)(iii) and (iv) of this section.

(ii) The financial disclosure statement is given prominence in the materials delivered to customers of the broker or dealer and includes an appropriate caption stating that customers may obtain the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, at no cost, by:

(A) Accessing the broker's or dealer's Web site at the specified Internet Uniform Resource Locator (URL); or

(B) Calling the broker's or dealer's specified toll-free telephone number.

(iii) The broker or dealer publishes the statements in accordance with paragraphs (c)(2) and (c)(3) of this section on its Web site, accessible by hyperlinks, in either textual or button format, which are separate, prominent links, are clearly visible, and are placed in each of the following locations:

(A) On the broker's or dealer's Web site home page; and

(B) On each page at which a customer can enter or log on to the broker's or dealer's Web site; and

(C) If the Web sites for two or more brokers or dealers can be accessed from the same home page, on the home page of the Web site of each broker or dealer.

(iv) The broker or dealer maintains a toll-free telephone number that customers can call to request a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section.

(v) If a customer requests a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, the broker or dealer sends it promptly at no cost to the customer.

(vi) During the year prior to the date as of which the statements prescribed by paragraphs (c)(2) and (c)(3) of this section were prepared, the broker or dealer was not required to provide notice to the Commission of the occurrence of any circumstance enumerated in paragraph (b)(1), (c)(1), (c)(2), (c)(3), (d), or (e) of § 240.17a–11.

* * * * *

Dated: November 26, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30664 Filed 12–2–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25835; File No. S7–47–02]

RIN 3235–AI57

Certain Research and Development Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment a new rule under the Investment Company Act of 1940 that would provide a nonexclusive safe harbor from the definition of investment company for certain bona fide research and development companies. The rule is intended to allow research and development companies greater flexibility to raise and invest capital pending its use in research, development and other operations and would also clarify the extent to which a company relying on the rule may make investments in other research and development companies pursuant to collaborative research and development arrangements.

DATES: Comments must be received on or before January 15, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–47–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed rule 3a–8 [17 CFR 270.3a–8] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act").

I. Introduction and Summary

The Commission is proposing for comment new rule 3a–8 under the Act

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

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as a nonexclusive safe harbor from investment company status for certain bona fide research and development companies ("R&D companies"). The Commission previously proposed rule 3a–8 in 1993 ("1993 Proposal").[2] The 1993 Proposal was intended to codify the terms of a Commission order under section 3(b)(2) of the Act issued to ICOS Corporation, a biotechnology company ("ICOS order").[3] In the ICOS order, the Commission addressed how the status of a company engaged largely in research and development activities should be determined under the Act. The Commission recently received a petition for rulemaking from the Biotechnology Industry Organization ("BIO") asking the Commission to update and clarify Commission interpretations relating to the status of biotechnology companies under the Act.[4]

R&D companies often raise large amounts of capital, invest the proceeds and use the principal and return on these investments to fund research and development activities during their lengthy product development phase. An R&D company also may purchase a non-controlling equity stake in another R&D company as part of a strategic alliance with the other company to conduct research and develop products jointly. Either or both of these activities may cause an R&D company to fall within the definition of investment company and to fail to qualify for an exclusion from the definition when using the Commission's traditional analysis to determine a company's primary business for purposes of the Act.

The Act defines an "investment company" rather broadly. Among other definitions, the Act provides that any company that owns or proposes to acquire certain types of securities having a value exceeding 40 percent of the value of the company's total assets on an unconsolidated basis (exclusive of U.S. government securities and cash items) is an investment company. The Act also provides certain exclusions from the definition of investment company for a company that is primarily engaged in a non-investment business. When the Commission determines whether a company is primarily engaged in a non-investment business, we principally look at the composition of the company's assets and the sources of its income. We also consider the company's historical development, its public representations, and the activities of its officers and directors.[5]

In the ICOS order, the Commission recognized that the traditional analysis emphasizing the composition of a company's assets and income might not appropriately reflect an R&D company's non-investment business activities. Accordingly, we modified the traditional analysis of a company's primary business to better fit the business realities of R&D companies.

According to BIO, the analysis set forth in the ICOS order no longer provides some biotechnology companies sufficient flexibility or clarity to raise capital or enter into strategic alliances.[6] The Commission believes that it may be appropriate for biotechnology and other R&D companies to have greater flexibility to raise capital and make strategic investments in other R&D companies. Therefore, we are proposing new rule 3a–8 to update and codify the analysis set forth in the ICOS order with respect to R&D companies. We believe that it is in the public interest to ensure that bona fide R&D companies do not inadvertently fall within the definition of investment company and are not unnecessarily hindered in their operations by the Act.[7] We are equally concerned, however, that companies that are primarily engaged in the investment business not escape regulation under the Act and thereby deny their investors the protections afforded by the Act.

In order to accomplish these goals, the proposed rule generally would determihe the primary business activity of a company based on how the company uses its assets and income. A company would be eligible to rely on the rule's nonexclusive safe harbor if it: (a) Has research and development expenses that are a substantial percentage of its total expenses for its last four fiscal quarters combined and that equal at least half of its investment revenues for that period; (b) has investment-related expenses that do not exceed five percent of its total expenses for its last four fiscal quarters combined; (c) makes its investments to conserve capital and liquidity until it uses the funds in its primary business subject to certain exceptions; and (d) is primarily engaged, directly or through a company or companies that it controls primarily, in a noninvestment business, as evidenced by the activities of its officers, directors and employees, its public representations of policies, and its historical development.

II. Background

A. The Definition of Investment Company

Section 3 of the Act determines when an issuer is an investment company subject to regulation under the Act. General provisions for determining investment company status are set forth in sub-sections 3(a) and 3(b).

Section 3(a) has two definitions of investment company that may be relevant to R&D companies.[8] Section 3(a)(1)(A) defines an investment company as any issuer that is, holds itself out as, or proposes to be engaged primarily in the business of investing, reinvesting, or trading in securities.[9] Section 3(a)(1)(C) defines as an investment company any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of its total assets on an unconsolidated basis (exclusive of U.S. government securities and cash items).[10] Section 3(a)(2) defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies.[11]

An issuer that meets the definition of investment company in section 3(a)(1)(C) of the Act nevertheless may be deemed not to be an investment company under two provisions in section 3(b). Section 3(b)(1) provides that an issuer is not an investment company if it is primarily engaged, directly or through wholly-owned subsidiaries, in a business other than that of investing, reinvesting, owning, holding or trading in securities.[12] Section 3(b)(2) provides that an issuer is not an investment company if the Commission by order finds and declares it to be primarily engaged (directly, through majority-owned subsidiaries or controlled companies[13] conducting similar types of businesses) in a business other than that of investing, reinvesting, owning, holding or trading in securities.[14]

To receive an order from the Commission under section 3(b)(2), an issuer initially must establish that it is engaged in some non-investment business. If an identifiable non-investment business exists, the inquiry then shifts to whether that business is "primary." In Tonopah Mining Co.,[15] the Commission stated that its determination of an issuer's primary business under section 3(b)(2) would be based on five principal factors: (a) the issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income (the "Tonopah factors," also referred to as the "Tonopah test"). The two most important factors are the composition of the issuer's assets and the sources of its income.[16] The Tonopah factors also have been applied to determine whether an issuer satisfies the primary business standard under section 3(b)(1).[17] Rule 3a-1 under the Act, adopted in 1981, codified a series of Commission orders issued under section 3(b)(2).[18]

B. Certain R&D Companies

The Tonopah test, while well suited for most issuers, may not appropriately identify the primary business of certain R&D companies. For example, "in the biotechnology industry, there is typically a significant time lag between research and development investments, and revenues produced by those investments."[19] Accordingly, biotechnology companies must obtain financing many years[20] before they offer their products for sale and invest the proceeds in liquid instruments[21] so the funds are readily accessible for research and development activities.[22] Some R&D companies also enter into strategic alliances with other R&D companies to conduct research and develop products jointly.[23] These alliances may involve a strategic investment whereby one R&D company purchases a non-controlling equity stake in another R&D company.[24]

Many of the instruments in which R&D companies invest their capital and most investments made as part of a strategic alliance are investment securities counted toward the 40 percent threshold in section 3(a)(1)(C). Moreover, research and development expenses,[25] including those associated with the development of "intellectual capital," are not recognized as assets on balance sheets prepared in accordance

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[2] See Certain Research and Development Companies, Investment Company Act Release No. 19566 [July 9, 1993] [58 FR 38095 (July 15, 1993)] (the "1993 Proposal"). The Commission withdrew rule 3a–8 from the Unified Agenda on April 1, 1996, because the Commission did not expect to consider the item within the next 12 months. Regulatory Flexibility Agenda, Investment Company Act Release No. 21795 (Mar. 4, 1996) [61 FR 24066 (May 13, 1996)].

[3] ICOS Corp., Investment Company Act Release Nos. 19274 (Feb. 18, 1993) [58 FR 1426 (Feb. 25, 1993)] (notice) and 19334 [53 S.E.C. Docket 2965] (Mar. 23, 1993) [58 FR 15392 (Mar. 22, 1993)] (order) (the "ICOS Order").

[4] Petition for Investment Company Act of 1940 Rulemaking, submitted by Matthew A. Chambers and John C. Nagel, Wilmer, Cutler & Pickering, on behalf of the Biotechnology Industry Organization, File No. 4–457 (May 23, 2002) ("BIO Petition") (available at *http://www.sec.gov/rules/petitions/petn4–457.htm*). BIO represents more than 950 biotechnology companies in the United States and 33 other countries. Its members are involved in the research and development of health care, agricultural, industrial, and environmental biotechnology products.

[5] *See infra* note 14.

[6] *Id.* at 1, 7.

[7] R&D companies increasingly are recognized as making an important contribution in many areas. For example, the U.S. Senate recently passed a resolution designating a "National Biotechnology Week" in recognition of the importance of biotechnology to the U.S. economy and to an improved quality of life overall. *See* Senate Resolution 243 Designating The Week Of April 21 Through April 28, 2002, as "National Biotechnology Week," 107th Cong., 2d Session, April 16, 2002. The resolution noted that the biotechnology industry is instrumental in the research and development of antibiotics and other drugs to treat and cure diseases and conditions such as cancer, diabetes, epilepsy, multiple sclerosis and Acquired Immune Deficiency Syndrome. It also develops products to improve agriculture, industrial processes, the environment, and national security. *Id.*

[8] Section 3(a)(1)(B) of the Act [15 U.S.C. 80a–3(a)(1)(B)] defines an investment company to include companies that issue face-amount certificates of the installment type and is not relevant for purposes of this release.

[9] 15 U.S.C. 80a–3(a)(1)(A).

[10] 15 U.S.C. 80a–3(a)(1)(C).

[11] 15 U.S.C. 80a–3(a)(2). "Government security" is defined in section 2(a)(16) of the Act [15 U.S.C. 80a–2(a)(16)] and generally includes any security issued or guaranteed as to the principal or interest by the United States. "Employees" securities company" is defined in section 2(a)(13) of the Act [15 U.S.C. 80a–2(a)(13)] generally to mean an investment company owned by employees of a company. "Majority-owned subsidiary" of an issuer is defined in section 2(a)(24) of the Act [15 U.S.C. 80a–2(a)(24)] to mean a company 50 percent or more of the outstanding securities of which are owned by the issuer or by a majority-owned subsidiary of the issuer.

[12] 15 U.S.C. 80a–3(b)(1).

[13] Section 2(a)(9) of the Act [15 U.S.C. 80a–2(a)(9)] defines "control" as the power to exercise a controlling influence over the management or policies of a company. This section creates a rebuttable presumption that owners of 25 percent or more of a company's voting securities control the company, and that owners of less than 25 percent do not. Unless otherwise stated, "control," when used in this release, refers to the section 2(a)(9) definition.

[14] 15 U.S.C. 80a–3(b)(2). Section 3(b)(2) allows issuers that are investment companies as defined by section 3(a)(1)(C) to apply to the Commission for an order. An exclusion pursuant to section 3(b)(1), on the other hand, is "automatic" in that it is determined by the issuer itself. A determination under either section 3(b)(2) or section 3(b)(1) that an issuer is engaged primarily in a noninvestment business also means that it is not an investment company under section 3(a)(1)(A). *See* M.A. Hanna Co., 10 S.E.C. 581 (1941).

[15] Tonopah Mining Co., 26 S.E.C. 426 (1947)("Tonopah Order").

[16] *Id.* at 427, 430–431.

[17] *See* Moses v. Black, Fed. Sec. L. Rep. (CCH) P 97,866 (S.D.N.Y. 1981).

[18] 17 CFR 270.3a–1. The rule provides that a company that meets the definition of investment company in section 3(a)(1)(C) will not be deemed to be an investment company if it meets certain requirements. The rule essentially requires that the issuer derive no more than 45 percent of the value of its total assets, and no more than 45 percent of its net income for the last four fiscal quarters, from securities other than Government securities, securities issued by employees securities companies, securities issued by the issuer's majority-owned subsidiaries that are not investment companies, and securities issued by companies that are controlled primarily by the issuer through which the issuer engages in a non-investment business.

[19] BIO Petition, *supra* note 3, at I.B. BIO states that it takes approximately 10 to 14 years and costs approximately $300 million to $500 million to develop a new drug and obtain approval from the Food and Drug Administration ("FDA") to market it. See also Ernst & Young, *Convergence: The Biotechnology Industry Report, Millenium Edition* ("Ernst & Young Report 2000") at 6 (estimating that the average research and development cost of bringing a new drug to market is $400 million); Cynthia Robbins-Roth, *Magic Bullets: The Breakthroughs, the Business and the People of Biotechnology*, Forbes, May 31, 1999 at 42 (stating that new pharmaceutical products generally take more than 10 years from conception to approval by the FDA).

[20] Several cycles of equity offerings and depletions of the resulting investment pools can occur before an R&D company achieves profitable operations, if ever. *See* Financing the Biotech Industry: Can the Risks Be Reduced?, 4 B.U. J. SCI. & TECH. L. 1 (1998) ("Financing the Biotech Industry") (noting that Chiron Corporation, a biotechnology company, "came to market approximately six times * * * to get where it is today."). *See also* Ernst & Young Report 2000, *supra* note 20 (indicating that at the end of 1999, 36 percent of public biotechnology companies had less than one year's worth of cash on hand).

[21] Biotechnology companies, for example, are traditionally financially conservative because they need to preserve cash for high research and development expenses. *See Biotech Firms Growing Up Fast*, Standard & Poors, April 10, 2002.

[22] On an industry-wide basis, research and development accounts for approximately 45 percent of all expenses incurred by U.S. biotechnology companies. *See* Ernst & Young, *Focus on Fundamentals, The Biotechnology Report* (Executive Summary) (Oct. 2001) ("Ernst & Young Report 2001").

[23] In the biotechnology area, a very high risk business with few profitable companies, strategic alliances allow firms to share the risk and reduce fund-raising pressures. *See* Financing the Biotech Industry, *supra* note 20. Additionally, strategic alliances with pharmaceutical companies facilitate biotechnology companies' ability to raise additional funds in the market by providing confirmation of the company's prospects and tending to put a valuation on its products and technology. *See* Ernst & Young Report 2000, *supra* note 19, at 48.

[24] In addition to equity interests, strategic partnerships can also take the form of licensing agreements and other contractual partnerships. *See* Hagedoorn, John, *"Inter-firm R&D Partnership—An Overview of Major Trends and Patterns Since 1960,"* Strategic Research Partnerships: Proceedings from an NSF Workshop, August, 2001 ("Inter-Firm R&D Partnership").

[25] Statement of Financial Accounting Standards No. 2 defines "research" as planned search or critical investigation aimed at discovery of new knowledge with hope that such knowledge will be useful in developing a new product or service or a new process or technique or in bringing about a significant improvement to an existing product or process. "Development" is the translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use. *See* Accounting for Research and Development Costs, Statement of Financial Accounting Standards No. 2 (Fin. Accounting Standards Bd. 1974] at P 8 ("SFAS No. 2"). Research and development expenses generally include costs incurred for materials, equipment, facilities, personnel, intangibles, and indirect costs that are clearly related to research and development activities. *Id.* at 11.

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with Generally Accepted Accounting Principles ("GAAP").[26] R&D companies therefore may have few assets other than investment securities. As a result, a bona fide R&D company may fall within section 3(a)(1)(C)'s definition of investment company and fail to meet the traditional assets and income factors for determining a company's primary non-investment business. Becoming subject to regulation under the Act, however, typically is incompatible with how operating companies, including R&D companies, conduct their business.[27]

C. The ICOS Order

In the ICOS order, the Commission set forth an alternative test for determining the primary business of an R&D company under sections 3(b)(1) and 3(b)(2) of the Act. The ICOS order stated that, "Given the unique nature of [R&D] companies, the Commission believes that it is appropriate to expand the traditional Tonopah analysis. If a company demonstrates that it is engaged actively in bona fide research and development activities, the Commission would consider the use, rather than simply the composition, of the company's assets and income."[28] Under the ICOS order, this consideration focuses on three factors: (1) Whether the company uses its securities and cash to finance its research and development activities; (2) whether the company has substantial research and development expenses and insignificant investment-related expenses; and (3) whether the company invests in securities in a manner that is consistent with the preservation of its assets until needed to finance operations. If a company satisfies these factors, the remaining factors of the traditional primary business test—the company's historical development, its public representations of policy, and the activities of its officers and directors—then should be examined to determine whether the company is engaged primarily in a noninvestment business.[29] Several months after issuing the ICOS order, the Commission proposed rule 3a–8 to codify the analysis that it set forth in the ICOS order. The rule was withdrawn from the Commission's rulemaking agenda in 1996.[30]

D. The BIO Petition

The BIO Petition requests that the Commission adopt a rule to address what BIO perceives as weaknesses in the tests used to determine its members' status under the Act. BIO asserts that with respect to the biotechnology industry today, the ICOS test is arbitrary and unduly limiting. The BIO Petition states that competition for skilled personnel and technology has increased the need for strategic collaborations and, without greater certainty about their investment company status, biotechnology companies forego these investments, or invest liquid assets solely in government securities, rather than those that may provide a higher return. BIO also argues that the increased duration of the drug development cycle, the nature of the capital markets, and biotechnology companies' ability to receive financing early in the product development cycle may cause companies to forego funding opportunities that may result in its income exceeding research and development expenses during some periods. To address these issues, the BIO Petition requests that the Commission adopt a rule that modifies the ICOS analysis to permit biotechnology companies to own more strategic investments and capital preservation investments (the "BIO Proposal").

[26] *See id.* at 12. Under GAAP, costs of self-developed intangible assets generally, and research and development expenses for "intellectual assets," in particular, are charged to expense when incurred.

[27] Section 18 of the Act [15 U.S.C. 80a–18], for example, places limits on a registered investment company's capital structure, and would significantly reduce the ability of an R&D company to raise capital. Section 18's restrictions on the issuance of warrants, options, and other rights also would limit the company's ability to attract scientific talent.

[28] The ICOS Order, *supra* note 3, at section II. ICOS, a development stage biopharmaceutical company, had no drug products approved for commercial use and, as a result, no revenues from product sales. It had, however, raised $90 million in public and private stock offerings that it had invested in short-term U.S. government and commercial debt securities pending the use of the proceeds in its research and development programs and for capital expenditures. As a result, most of ICOS' revenues were derived from securities. On the other hand, a substantial percentage of ICOS' total expenses were for research and development, its research and development expenses exceeded its investment revenues, and its investment-related expenses were insignificant. ICOS' historical development, its public representations of policy, and the activities of its officers and directors also all indicated that it was not engaged primarily in the investment company business. ICOS thus applied for an order under section 3(b)(2) declaring it to be engaged primarily in a business other than investing, reinvesting, or trading in securities. In the ICOS order, the Commission stated that, "The Commission believes that ICOS may rely on the automatic exclusion provided by section 3(b)(1) * * * The Commission, however, believes an order is appropriate here to modify the analysis for determining the primary business of bona fide [R&D] companies." *Id.*

[29] *Id.* at sections II.A—II.C.

[30] *See supra* note 2. It appears that the Commission's analysis set forth in the ICOS Order provided R&D companies and their counsel with sufficient guidance for determining their status under the Act.

III. Discussion

Today we are proposing rule 3a–8 to update and codify the primary business test for R&D companies set forth in the ICOS order. The proposed rule would serve as a nonexclusive safe harbor from the definition of investment company in sections 3(a)(1)(A) and 3(a)(1)(C) of the Act. The analysis set forth in the proposed rule generally focuses on an R&D company's use of its capital and other indicia of the company's primary engagement in a non-investment business. Rule 3a–8, as proposed, differs from the BIO Proposal in certain respects, which are noted below. We generally request comment on these differences.

A. Use of Capital

As the Commission has recognized, an R&D company would not be expected to maintain perpetually a portfolio of investment securities, and the amounts earned on the company's investments should bear some reasonable relationship to its actual research and development costs.[31] A bona fide R&D company also would be expected to invest its capital in a manner designed to preserve it, rather than in a manner designed to produce speculative profits.[32] Finally, we recognize that there are circumstances where an R&D company may want to make a strategic investment to gain access to another company's intellectual property or for other reasons related to the company's non-investment business.[33] These strategic investments, however, should not be for speculative purposes and should not comprise an overly large portion of the company's assets (because, as non-controlling minority equity investments, they are not investments in companies through which the R&D company conducts its non-investment business).[34]

[31] *See* the ICOS Order, *supra* note 3, at section II.A and the 1993 Proposal, *supra* note 2, at section II.A.1.

[32] *See* the ICOS Order, *supra* note 3, at section II.C and the 1993 Proposal, *supra* note 2, at section II.A.4.

[33] *See* the 1993 Proposal, *supra* note 2, at section II.A.4. *See also* Inter-Firm R&D Partnership, *supra* note 24. Strategic alliances enable R&D companies to cross-fertilize technological disciplines, achieve technology synergies and complements as well as R&D economies of scale and scope, share R&D costs, utilize a partner's R&D expertise, and jointly cope with R&D uncertainty. *Id.*

[34] Both the framers of the Act and the Commission in administering the Act have viewed non-controlling minority equity interests as a type of investment security, which, if it comprises a significant portion of a company's assets, suggests that the company may in fact be an investment company. *See* sections 3(a)(1)(C) and 3(b)(2) of the Act; the Tonopah Order, *supra* note 14. The Act was an outgrowth of a Commission study of the investment company industry conducted between

We view these factors as important to the distinction that must be drawn between bona fide R&D companies that should not be subject to the Act and investment companies that should be. The provisions of proposed rule 3a–8 described below are designed to limit the rule's safe harbor to bona fide R&D companies.

1. Substantial Research and Development Expenses

Paragraph (a)(1) of proposed rule 3a–8 would require that research and development expenses[35] for an R&D company's last four fiscal quarters combined be a substantial percentage of its total expenses for that period. The proposed rule leaves the determination of "substantial" undefined in order to allow R&D companies to take into account fluctuations in the composition of their expenses over time. If an R&D company's research and development expenses are the majority of its expenses but for nonrecurring items or unusual fluctuations in recurring items, the research and development expenses certainly would be "substantial" for purposes of this provision. We request comment whether the rule should provide a more objective standard and if so, what that standard should be.

2. Revenues from Investments Compared to Research and Development Expenses

Paragraph (a)(2) of proposed rule 3a–8 would require that the R&D company's revenues from investments in securities not exceed twice the amount of its research and development expenses.[36] As defined in paragraph (b)(6), "investments in securities" would include all securities owned by the R&D company other than securities issued by majority-owned subsidiaries and companies controlled by the R&D company that conduct similar types of businesses, through which the R&D company is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities.[37] Investment revenues, for purposes of the proposed rule, would include all investment returns, including amounts earned from dividends, interest on securities, and profits on securities (net of losses).

The requirement set forth in paragraph (a)(2) is designed to allow an R&D company to raise a significant amount of capital during favorable market conditions while precluding a situation in which the company's primary focus is its revenues from investments rather than its research and development activities. We note that the proposed rule would permit R&D companies to raise and hold more capital than the ICOS order currently permits. Under the ICOS order, an R&D company was expected to spend more on research and development than its gross investment income. R&D companies are spending an increasing amount on research and development. For example, between 1997 and 2000, total funds for industrial research and development in the U.S. increased over 26 percent.[38] Given these increased capital requirements and the lengthy product development phases faced by R&D companies, additional flexibility to raise and invest capital pending use in research and development would appear appropriate so long as the other requirements of the rule are met.

In the 1993 Proposal, the Commission noted that, if an R&D company did not deplete its invested funds over time to fund its research and development, a question would arise as to whether it was maintaining the value of its reserves for use in its operations or was running a perpetual investment program.[39]

- We request comment on whether the rule as proposed today sufficiently protects against that possibility.
- We also request comment on whether the rule should address an R&D company's other operational expenses as well.
- Would a requirement that an R&D company spend more on research and development and other operational expenses than its gross investment income be more appropriate?
- The Commission also requests comment on whether the rule should define "investment revenues," and, if so, how that term should be defined.
- We also request comment on whether the proposed test unduly limits the ability of R&D companies to raise capital during favorable market conditions. If so, what would be an appropriate alternative test for determining whether a company's investment program is consistent with a primary engagement in research and development and related non-investment business activities?
- We also request comment on whether the holding of investments by an R&D company should be subject to custody, bonding or other requirements, similar to those contained in the Act, relating to the safekeeping of liquid securities.[40]

3. Insignificant Investment-Related Expenses

Paragraph (a)(3) of proposed rule 3a–8 would require that an R&D company devote no more than five percent of its total expenses for its last four fiscal quarters combined to investment advisory and management activities, investment research and selection, and supervisory and custodial fees.[41] Under paragraph (a)(4), as discussed more fully below, most of an R&D company's investments would be made to conserve capital and liquidity pending use of the funds in its operations. Consequently, its excess funds generally would be invested in instruments presenting limited investment risk. Accordingly,

1938 and 1940 pursuant to a Congressional mandate in the Public Utility Holding Company Act of 1935 [15 U.S.C. 79z–4]. When determining which companies to include in the study, the Commission distinguished between "investment companies" and "holding companies" on the basis of whether the company held a controlling interest in other companies, or instead smaller blocks of securities. SEC, REPORT ON THE STUDY OF INVESTMENT TRUSTS AND INVESTMENT COMPANIES (1939–1942).

[35] Research and development expenses are defined in paragraph (b)(5) by reference to SFAS No. 2, as currently in effect or as it may be subsequently revised.

[36] The Commission recognizes that bona fide R&D companies at times experience fluctuations in their research and development expenses and investment revenues. Consequently, the requirements in paragraphs (a)(1) and (a)(2) are calculated using the last four fiscal quarters combined.

[37] The BIO Proposal contains a similar requirement—that a company's investment income (excluding any income from strategic investments) be less than or equal to twice the amount the company spends on research and development. As proposed, paragraph (a)(2) would not exclude income from strategic investments. We request comment on our proposed approach. We ask commenters to discuss the types of income an R&D company receives from strategic investments and whether such income would be more properly viewed as indicative of research and development operations, rather than as investment income.

[38] *See* National Science Foundation, *Research and Development in Industry: 2000* (Early Release Tables), Table E–1 at *http://www.nsf.gov/sbe/srs/srs02403/tables/e1.xls* (last visited Nov. 26, 2002). Since 1993, research and development expenses for biotechnology companies alone more than doubled. *See Report on the State of the Industry*, presentation by Carl B. Feldbaum, President of the Biotechnology Industry Organization to Covance Senior Management, Washington, D.C. (April 29, 2002)("Feldbaum Speech") available at *http://www.bio.org/news/speeches/20020429.asp* (last visited Nov. 26, 2002). From 1999 to 2000 alone, these expenses rose from $10.7 billion to $13.8 billion, a 29.2 percent increase. *See* Ernst & Young Report 2001, *supra* note 22.

[39] *See* 1993 Proposal, *supra* note at section II.A.1.

[40] Under the Act, securities and similar investments of a registered investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with Commission rules. 15 U.S.C. 80a–17(f); *see also* 17 CFR 270.17f–1 and 2. As authorized by the Act, the Commission requires registered management investment companies to provide and maintain a fidelity bond against larceny and embezzlement that covers officers and employees of the company who have access to its securities or funds. 15 U.S.C. 80a–17(g); *see also* 17 CFR 270.17g–1.

[41] *See* 17 CFR 210.6–07.2(a) (Regulation S–X).

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investment advisory, management, research, and similar expenses should be limited. In contrast, a high level of spending on these types of expenses may indicate that the company is more focused on its investment activities then its research and development activities, and should therefore be regulated as an investment company. We request comment on whether a different limitation on investment-related expenses would be more appropriate.

4. Investments to Conserve Capital and Liquidity

Paragraph (a)(4) of proposed rule 3a–8 would require that an R&D company's investments in securities be capital preservation investments, subject to two exceptions for "other investments." The exceptions are designed to clarify the extent to which an R&D company may make investments that are not consistent with the preservation of capital and still remain within the safe harbor provided by the rule.

a. Definition of Capital Preservation Investments. "Capital preservation investments" are defined in paragraph (b)(3) as investments made to conserve an R&D company's capital and liquidity until the funds are used in its primary business or businesses. In general, capital preservation investments are liquid so that they can be readily sold to support the issuer's research and development activities as necessary and present limited credit risk. This requirement is intended to ensure that the investments are being used to support the company's research and development activities, rather than in a speculative manner that would be more characteristic of an investment company.

- We request comment on whether this definition provides sufficient guidance and, if more guidance would be appropriate, the types of issues any such guidance should address.
- We also request comment on whether the rule should require the board of directors of the company to adopt investment guidelines designed to assure that the company's funds are invested consistent with the goals of capital preservation and liquidity.[42]

Finally, the proposed rule, like the ICOS order, does not impose a limit on capital preservation investments relative to the company's total assets because R&D companies tend to have few tangible assets and large amounts of capital are needed to conduct research and development activities. We request comment on this approach.

[42] See the ICOS order, *supra* note 3, at section II.C.; *see also* BIO Petition, *supra* note 4, at 9.

b. Other Investments. In the 1993 Proposal, the Commission proposed a requirement that an R&D company's investment portfolio, viewed overall, present limited investment risk.[43] The Commission also stated that it would not view the acquisition of a limited amount of equity securities of a noncontrolled company, pursuant to a collaborative arrangement or "strategic business relationship," as necessarily placing the issuer outside of this requirement, depending upon the facts and circumstances of that investment.[44] In recent years, companies are increasingly collaborating with other companies to conduct joint research and development.[45] Further, these collaborative arrangements appear to enhance research and development efforts.[46]

We believe that R&D companies should have some flexibility to obtain equity stakes that advance their strategic and business goals. The countervailing concern, however, remains that such investments, while being "strategic," are nonetheless non-controlling minority equity interests which, if they constitute a significant portion of a company's assets, may indicate that the company's primary business is that of an investment company.[47] We also note that it is unclear why some collaborative research and development arrangements include the purchase of a non-controlling equity interest, while others do not.[48] We request comment on the specific reasons for including non-controlling interests in securities as part of collaborative research and development arrangements.[49]

Paragraph (a)(4) of proposed rule 3a–8 is designed to balance these considerations by drawing a distinction between investments made pursuant to a collaborative research and development arrangement and other investments that are not made to preserve capital and liquidity. Paragraph (a)(4)(i) would permit an R&D company to acquire investments that are not capital preservation investments ("other investments," defined in paragraph (b)(7) of the proposed rule), provided that immediately after the acquisition no more than 10 percent of its total assets consist of other investments. Alternatively, paragraph (a)(4)(ii) would permit a larger 20 percent "basket" of investments that are not capital preservation investments so long as at least 75 percent of those investments were made pursuant to collaborative research and development arrangements. These alternatives are designed both to ensure that an R&D company's investment portfolio, viewed overall, presents limited investment risk and to reflect the increased use of collaborative relationships to conduct research and development since the ICOS order was issued.

- We request comment on whether the proposed limits on other investments set forth in paragraph (a)(4) are too restrictive or whether they may be too broad.
- We also request comment on whether other investments that were made pursuant to collaborative research and development arrangements should continue to be considered with respect the 75 percent calculation, if the collaborations are no longer ongoing.[50]

Under the proposed approach, the limits on other investments would be calculated only at the time other investments are acquired. If an R&D company's other investments increase in value due to market fluctuations, it would not be required to sell any other investments it already owns, but it would not be able to continue to acquire other investments.

- Is this approach appropriate?
- Should the rule provide a limit, applicable at any time, on the percentage of an R&D company's assets, valued in accordance with section 2(a)(41) of the Act, that may consist of other investments?
- Should the rule provide a period of time after a collaborative research and development arrangement ends during which securities obtained pursuant to it must be sold?

We also encourage commenters to suggest alternative tests. We note that the BIO Proposal would not impose any asset-based limit on investments that meet its definition of strategic investments.[51] The BIO Proposal would impose a cost-based limit on strategic investments, requiring that the cost of all strategic investments at any time be less than the total amount of the company's research and development expenses during the most recent four fiscal quarters.[52]

- We request comment on the approach advocated by BIO.
- We also request that commenters who propose tests alternative to that which we are proposing today address how their proposed test(s) would ensure that companies that should be regulated under the Act are not afforded the benefit of the rule's safe harbor.

c. CollaborativeResearch and Development Arrangements. "Collaborative research and development arrangement" is defined in paragraph (b)(4) as a business relationship which (i) is designed to achieve narrowly focused goals that are directly related to, and an integral part of, the issuer's research and development activities; (ii) calls for the issuer to conduct joint research and development activities with one or more other parties, and (iii) is not entered into for the purpose of avoiding regulation under the Act. Together, paragraphs (a)(4) and (b)(4) recognize that certain investments, while not interests in controlled companies through which the issuer engages in a non-investment business, nonetheless may be sufficiently related to an R&D company's primary business that their holding should be permitted by the rule's safe harbor.

- We request comment on the scope of the definition of collaborative research and development arrangement.[53]
- Does the proposed definition appropriately distinguish a "strategic" investment of an R&D company from one that primarily has an investment purpose?
- Should other relationships, such as a licensor-licensee relationship with respect to a patent or other intellectual property rights, be included in the definition?[54]
- Should activities other than research and development activities, such as manufacturing and joint marketing activities, be included?[55] In this regard, we ask commenters to address whether R&D companies face any unique challenges that are not faced by other operating companies seeking to produce and market their products.

We note that paragraph (b)(1) of the proposed rule provides that assets are to be valued for purposes of the rule in accordance with section 2(a)(41) of the Act.[56] Section 2(a)(41)(B) provides, in relevant part, that for purposes of section 3 of the Act the term "value" means, (i) with respect to securities for which market quotations are readily available, the market value of those securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors. We request comment on whether some other basis (for example, cost) would be more appropriate for investments made pursuant to collaborative research arrangements, and if so, why.

B. Conducting Business Through Primarily Controlled Companies

The rule's safe harbor would be available to any R&D company that conducts business directly, through majority-owned subsidiaries, "or through one or more companies which it controls primarily." Paragraph (b)(5) of the rule provides that "controlled primarily" means that the issuer has control over the company within the meaning of section 2(a)(9) of the Act and that the degree of the issuer's control is greater than that of any other person. The "controlled primarily" standard, also found in rule 3a–1 under the Act, is designed to distinguish securities representing interests in operating companies through which an issuer engages in a non-investment business from mere investments in securities.[57] The Commission traditionally has viewed the fact that an issuer's degree of control over a company is greater than that of any other person as strong evidence that the issuer is engaged in a business through the other company.[58]

[43] See the 1993 Proposal, *supra* note 2, at section II.A.2.

[44] *Id.*

[45] See Inter-Firm R&D Partnership *supra* note 24. The trend among biotechnology companies over the last 9 years, for example, has been a substantial increase in the number of strategic partnerships, including a six-fold increase between biotechnology and pharmaceutical companies, and a twelve-fold increase in partnerships between biotechnology companies. See Feldbaum Speech, *supra* note 38. Although the most common alliance remains between biotechnology and pharmaceutical companies, partnering between biotechnology companies is growing as smaller companies with narrow areas of expertise require other biotechnology companies to generate product candidates. *Id.*

[46] See Audretsch, David B., *Strategic Research Linkages and Small Firms, Strategic Research Partnerships: Proceedings from an NSF Workshop* (Aug. 2001) (noting that it has been argued that linkages and partnerships among R&D companies has "contributed to a superior innovative performance"). *See also* Ernst and Young Report 2000, *supra* note 19, at 48 (noting that pharmaceutical companies rely on biotechnology companies to drive product development and to access cost-cutting technologies, which may increase the speed and efficiency of the drug discovery process).

[47] See the 1993 Proposal, *supra* note 2, at II.A.4.

[48] Although joint ventures and other equity partnerships previously dominated the alliances among R&D companies, recently R&D companies seem increasingly to prefer contractual partnerships. See Inter-Firm R&D Partnerships, *supra* note 24. *See also* Windhover's Pharmaceutical Strategic Alliances, Volume XIII (September 2002) (indicating that 98 of more than 650 strategic alliances signed between July 2001 and June 2002 included equity investments) (available at *http://www.windhover.net/pubs/psa/psa.asp*) (last visited Nov. 26, 2002).

[49] According to one commentator, the investing company may be motivated to make an investment more for strategic reasons than for the financial rewards. Mark A. Medearis & Michael W. Hall, *Minority Equity Investments In Connection With Strategic Alliances*, 1323 PLI/Corp 117, 119 (July-August 2002). These strategic reasons may include investment: (a) to obtain influence or control over the investee and its business plans; (b) to serve as a prelude to an ultimate acquisition of the investee by the investing company; (c) to provide a mechanism through which the investing company may provide development funding without incurring an expense for accounting purposes; and (d) to serve as a "goodwill" gesture to the investee. *Id.* According to a recent article, however, technology corporations that invested in other technology companies for strategic reasons in the late 1990's are now selling those interests as their value has declined. Ann Grimes, *Tech Companies Itch to Shed VC Portfolios in Tough Times*, Wall Street Journal, September 26, 2002. It is not clear that any of these motives are directly connected to the long, expensive research and development cycles experienced by R&D companies. We believe that understanding the reasons for structuring a strategic alliance to include an investment in a non-controlling interest in securities is important because, absent such an investment, a strategic alliance would not raise any issues under the Act.

[50] Under the BIO Proposal, an investment would not qualify as strategic if the subject of the collaborative activity or contractual right is not ongoing (*i.e.*, once the collaboration or contractual right terminates, the investment would no longer be treated as a strategic investment.) *See* BIO Petition, *supra* note 4, at 8.

[51] *See id.* The BIO Proposal would allow a company to hold strategic investments, provided they are owned to achieve goals that are directly related to its research and development activities. *Id.*

[52] *Id.* Unlike the proposed rule, the approach suggested in the BIO Proposal would not limit an R&D company's ability to continue to acquire other investments when non-controlling strategic investments, valued in accordance with section 2(a)(41) of the Act, are a large portion of the company's assets.

[53] The BIO Proposal similarly would require that strategic investments be owned to achieve narrowly focused goals that are directly related to, and an integral part of, the issuer's research and development activities. *Id.*

[54] Under the BIO Proposal, an investment will qualify as "strategic" if, among other things, the investing company made the investment in connection with a strategic agreement with another company under which (1) the parties collaboratively will conduct research, development, manufacturing, or commercialization activities, *or* (2) the investing company provides or receives a license of, or similar contractual right to use (or an option to provide or receive a license of, or similar contractual right to use) patents, know-how, or other proprietary intellectual property to use in research, development, manufacturing, or commercialization activities. *Id.*

[55] The BIO Proposal also would permit an investment to qualify as strategic when the parties collaboratively conduct manufacturing or commercialization activities.

[56] 15 U.S.C. 80a–2(a)(41)(B).

[57] Rule 3a–1(a)(4) [17 CFR 270.3a–1(a)(4)]. *See, e.g.*, Standard Shares, Inc., Investment Company Act Release Nos. 10200 (Apr. 11, 1978) (notice) and 10234 (May 9, 1978) (order).

[58] *See* Health Communications Services Inc. (pub. avail. Apr. 26, 1985). To demonstrate control over a company for purposes of section 2(a)(9) under the Act, an issuer must show not only the ability to exercise control, but also that it is exercising it. *See id.* (ownership of more than 25 percent of the outstanding stock of affiliates, if "outstanding stock" is comprised of voting securities, constituted control over those entities for purposes of the rebuttable presumption established by section 2(a)(9) of the Act). *See also* In the Matter of ENERSIS S.A., Investment Company Act Release Nos. 20925 (Feb. 27, 1995) (notice) and 20965 (Mar. 24, 1995) (order); In the Matter of CITIC Pacific Limited, Investment Company Act Release Nos. 21282 (Aug. 15, 1995) (notice) and 21345 (Sept. 12, 1995) (order); In the Matter of Safeguard Scientifics,

Continued

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We request comment on extending the rule's safe harbor to R&D companies that conduct their business in this manner.

C. Holding Out as Primarily Engaged in a Non-investment Business

Paragraph (a)(5) of the proposed rule would require that an R&D company not hold itself out as being engaged in the business of investing, reinvesting, or trading in securities. This requirement would ensure that any issuer that holds itself out as being an investment company could not rely on the rule. Paragraph (a)(5) further requires that the company not be a special situation investment company.[59]

D. Other Tonopah Factors

Paragraph (a)(6) of the proposed rule codifies the requirement in the ICOS order that the activities of an R&D company's officers, directors and employees,[60] its public representations of policies, and its historical development demonstrate that it is primarily engaged in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities. Paragraph (a)(6) also requires that the board of directors of a company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business.[61] We request comment on these provisions.

E. Consolidation With Financial Statements of Wholly-Owned Subsidiaries

Paragraph (b)(2) provides that, for purposes of the proposed rule, an R&D company's assets, expenses and revenues should be determined on an unconsolidated basis, except that the company shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries. This approach is consistent with rule 3a–1 under the Act.[62] We note that, under GAAP, the assets, income and expenses of majority-owned subsidiaries of an issuer also are consolidated with the issuer's statement of operations.[63] We request comment on whether it would be more appropriate for the proposed rule to require or permit consolidation of an R&D company's financial statements with those of its majority-owned subsidiaries.

An R&D company's investments in companies it controls primarily (but which are not majority-owned subsidiaries) may be accounted for using the equity method.[64] Statements of operations prepared on the basis of the equity method of accounting reflect, in a single amount, the parent's share of the controlled company's net income, but not the parent's share of its investment revenues, investment-related expenses, or research and development expenses. We request comment on whether an R&D company should be allowed or required to combine its pro rata share of the relevant expenses and revenues of any companies it controls primarily with its own when determining whether it meets the requirements of paragraphs (a)(1) through (a)(3) of the proposed rule.[65]

IV. General Request for Comment

The Commission requests comment on the rule proposed in this release, suggestions for other additions to the rule, and comment on other matters that might have an effect on the proposal contained in this release.

V. Cost-Benefit Analysis

The Commission is proposing a rule that would serve as a nonexclusive safe harbor from investment company status for certain R&D companies. The rule is designed primarily to benefit R&D companies that currently are relying on the ICOS Order. The rule primarily would address two aspects of the analysis in the ICOS Order. First, it would allow R&D companies greater flexibility to raise and invest capital pending its use in research, development and other operations by modifying the requirement that an R&D company generally spend more on research and development that it earns on its investments. Second, the proposed rule would clarify the extent to which an R&D company may make investments in other R&D companies pursuant to collaborative research and development arrangements.

The proposed rule generally would determine the primary business activity of a company based on how the company uses its assets and income. A company would be eligible to rely on the rule's nonexclusive safe harbor if it: (a) Has research and development expenses that are a substantial percentage of its total expenses for its last four fiscal quarters combined and that equal at least half of its investment revenues for that period; (b) has investment-related expenses that do not exceed five percent of its total expenses for its last four fiscal quarters combined; (c) makes its investments to conserve capital and liquidity until it uses the funds in its primary business subject to certain exceptions; and (d) is primarily engaged, directly or through a company or companies that it controls, in a noninvestment business, as evidenced by the activities of its officers, directors and employees, its public representations of policies, and its historical development.

As the proposed rule is exemptive, rather than prescriptive, R&D companies are not required to rely on it. Therefore, we assume that R&D companies will only rely on the provisions of the proposed rule if the anticipated benefits from such actions would exceed the anticipated costs.

A. Benefits

Proposed rule 3a–8 is intended to benefit R&D companies by reducing costs on an ongoing basis. When an R&D company's status under the Act is uncertain, it may experience higher costs when issuing securities or when borrowing. The proposed rule is designed to assist R&D companies in determining their status under the Act by clarifying the applicable test. Clarification of the test should both reduce the costs that an R&D company may need to incur to determine its status under the Act and reduce any uncertainty in such determination, which may reduce costs when issuing securities or borrowing.

In addition, the rule is designed to afford R&D companies greater flexibility to both raise and invest capital. R&D companies may be forgoing opportunities to access the markets or reducing the amounts raised when accessing the markets because of limits contained in the current test. The current limits also may discourage investment in higher yielding capital preservation instruments. The rule should allow R&D companies to raise larger amounts of capital in a more cost-effective manner and to formulate more efficient asset allocations than would be permitted under the existing tests. Thus, the rule is expected to reduce any costs that may be associated with a lack of flexibility (1) to access fully the markets when conditions are favorable, and (2) to make capital preservation investments.

B. Costs

In addition to the benefits of the rule, the Commission is sensitive to the costs that may be associated with it. The proposed rule would require a company's board of directors to adopt and record a resolution that the company is primarily engaged in a non-investment business. The Commission believes the cost of this requirement, which generally would need to be fulfilled once, to be minimal relative to its benefits. We estimate that to comply with this requirement, an R&D company would need to have its in-house counsel spend 45 minutes preparing the resolution, and its board of directors spend 15 minutes adopting the resolution. Based on our estimate that 500 companies would rely on the rule, one hour per company at a blended hourly rate results in a total cost of $103,750.[66] The Commission requests comment on whether its estimates of the number of companies that may rely on the rule, the amount of time needed to adopt the required resolution and the costs of such time are appropriate. The Commission requests comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the proposal.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is "major" if it results or is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, investment, or innovation. The Commission requests comment on the potential impact of the proposed rule on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Act provides that whenever the Commission is engaged in rulemaking under the Act and is required to consider or determine whether an action is consistent with the public interest, the Commission also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The Commission has considered rule 3a–8 in light of these standards and believes that, by clarifying the status of certain R&D companies under the Act, and allowing R&D companies greater flexibility to raise and invest capital, the rule is consistent with the public interest and will positively affect capital formation. The Commission also believes that the proposed rule will promote efficiency and competition, and that the rule would not be unduly burdensome to those companies wishing to rely on it.

The Commission requests comment on whether the proposed rule, if adopted, would promote efficiency, competition, and capital formation. Will the proposed rule materially affect both the number of R&D companies and their ability to raise capital for their business? Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Act. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Paperwork Reduction Act

R&D companies wishing to rely on the safe harbor provided by proposed rule 3a–8 must fulfill certain conditions set forth in the rule. One such condition requires that the board of directors of the company adopt an appropriate resolution evidencing that the company is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities. The proposed rule would require that the resolution be recorded contemporaneously in the company's minute books or comparable documents. This requirement constitutes a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*], because adopting the resolution is necessary to meet the conditions of the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information without display of a valid Office of Management and Budget ("OMB") control number. Accordingly, the Commission has submitted the proposed rule to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Rule 3a–8 under the Investment Company Act."

The Commission has estimated the paperwork burden under the proposed rule. The total aggregate estimated annual reporting burden associated with the rule's requirements is 500 hours. The required board resolution would need to be adopted and recorded only once (unless relevant circumstances change). Thus, the Commission believes that the annual collection of information requirement will not be a significant burden.

The Commission estimates that of the 500 R&D companies that may take advantage of the proposed rule, the reporting burden imposed by rule 3a–8 is one hour per company, for a total aggregate reporting burden of 500 hours.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–47–02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB

Inc., Investment Company Act Release Nos. 24317 (Feb. 25, 2000) (notice) and 24345 (Mar. 22, 2000) (order).

[59] For a discussion of a special situation investment company, *see e.g.*, Certain Prima Facie Investment Companies, Investment Company Act Release No. 10937 at nn. 19–20 & accompanying text (Nov. 13, 1979).

[60] In the Tonopah Order, and subsequent Commission orders under section 3(b)(2) of the Act, the Commission considered the activities of a company's employees in determining a company's primary business. *See* Tonopah Order, *supra* note 14. *See also, e.g.*, Yahoo! Inc., Investment Company Act Release Nos. 24459 (May 18, 2000) (notice) and 24494 (June 13, 2000) (order); Airtouch Communications, Inc., Investment Company Act Release Nos. 24271 (Jan. 28, 2000) (notice) and 24294 (Feb. 23, 2000) (order); Internet Capital Group, Inc. Investment Company Act Release Nos. 23923 (July 28, 1999) (notice) and 23961 (Aug. 23, 1999) (order); and Extended Stay America, Inc., Investment Company Act Release Nos. 23167 (Apr. 30, 1998) (notice) and 23210 (May 27, 1998) (order).

[61] This requirement is modeled on the requirement in rule 3a–2 under the Act that provides a temporary exemption from the Act for transient investment companies. 17 CFR 270.3a–2.

[62] *See* rule 3a–1(c). Under section 3(a)(1)(C) of the Act, an issuer's status is determined by the composition of its assets on an unconsolidated basis.

[63] The consolidated statement reflects all income and expenses of these subsidiaries, whether the issuer/parent owns all or just a majority of the outstanding common stock of the subsidiary. The net income attributable to minority ownership of the subsidiaries is also deducted in arriving at consolidated net income on the consolidated income statement. 1993 Proposal, *supra* note , at n.31.

[64] *See* The Equity Method of Accounting, Accounting Principles Board Opinion No. 18 (American Institute of Certified Public Accountants 1971) ("APB No. 18"). APB No. 18 generally prescribes the equity method of accounting by investors for investments in investees when the investor owns more than 20 percent, but not more than 50 percent, of the investee's voting interests.

[65] This method of accounting, generally referred to as the pro rata consolidation method, currently is applied in certain industries in lieu of the equity method. *See* Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports, Securities and Exchange Commission Release No. 34–33139 (Nov. 3, 1993) [58 FR 60307 (Nov. 3, 1993)].

[66] The Commission's estimate concerning the weighted average hourly wage rate is based on salary information for the securities industry compiled by the Securities Industry Association. *See* Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry—2001. The weighted average hourly wage rate of $207.50 includes overhead costs and assumes that 75 percent of the time will be by in-house counsel at a rate of $110 per hour and 25 percent by the board of directors at a rate of $500 per hour.

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is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–47–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

IX. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed rule 3a–8 under the Act. The IRFA explains that the proposed rule would provide a safe harbor to allow R&D companies more investment flexibility and the ability to hold and invest more capital without becoming subject to the Act. The IRFA also explains that in order to be eligible for the nonexclusive safe harbor the proposal would create, an R&D company must have research and development expenses that are a substantial percentage of its total expenses, have relatively small investment-related expenses, make its investments to conserve capital and liquidity until it uses the funds in its primary business, subject to certain exceptions, and be primarily engaged, directly or through a company or companies that it controls primarily, in a noninvestment business.

The IRFA states that proposed rule 3a–8 is designed to clarify, and provide greater certainty concerning, the status of an R&D company under the Act. Rule 3a–8 would have no reporting requirements, but the board of directors of a company seeking to rely on the rule would need to adopt a board resolution and record that resolution contemporaneously in its minute books or comparable documents. The IRFA states that the only significant alternative to the proposed rule would be for an R&D company to engage in its own analysis and application of existing statutory provisions, Commission orders and interpretations to determine the R&D company's status under the Act. The Commission therefore concluded that the proposal, although it could affect small entities, would be less burdensome than this alternative and, thus, would minimize any impact upon, or cost to, small businesses. Any company with net assets of $50 million would be a small entity for purposes of the proposed rule. The IRFA also states that the Commission believes that there are no duplicative, overlapping, or conflicting Federal rules with the proposed rule.

The Commission encourages comment with respect to any aspect of the IRFA. The Commission specifically requests comment on the number of small entities that would be affected by the proposed rule, and the likely impact of the proposal on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the rule, and will be placed in the same public file as comments on the proposed rule itself. A copy of the IRFA may be obtained by contacting Karen L. Goldstein, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

X. Statutory Authority

We are proposing rule 3a–8 pursuant to our authority set forth in sections 6(c) and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–6(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulation is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.3a–8 is added to read as follows:

§ 270.3a–8 Certain research and development companies.

(a) Notwithstanding sections 3(a)(1)(A) and 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(A) and 80a–3(a)(1)(C)), an issuer will be deemed not to be an investment company if:

(1) Its research and development expenses, for the last four fiscal quarters combined, are a substantial percentage of its total expenses for the same period;

(2) Its revenues from investments in securities, for the last four fiscal quarters combined, do not exceed twice the amount of its research and development expenses for the same period;

(3) Its expenses for investment advisory and management activities, investment research and custody, for the last four fiscal quarters combined, do not exceed five percent of its total expenses for the same period;

(4) Its investments in securities are capital preservation investments, except that the issuer may acquire other investments, provided that immediately after such acquisition:

(i) No more than 10 percent of its total assets consist of other investments; or

(ii) No more than 20 percent of its total assets consist of other investments and at least 75 percent of such other investments were made pursuant to collaborative research and development arrangements;

(5) It does not hold itself out as being engaged in the business of investing, reinvesting or trading in securities, and it is not a special situation investment company; and

(6) It is primarily engaged, directly, through majority-owned subsidiaries, or through one or more companies which it controls primarily, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, as evidenced by:

(i) The activities of its officers, directors and employees;

(ii) Its public representations of policies;

(iii) Its historical development; and

(iv) An appropriate resolution of its board of directors, or by an appropriate action of the person or persons performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this section:

(1) All assets shall be valued in accordance with section 2(a)(41)(A) of the Act (15 U.S.C. 80a–2(a)(41)(A));

(2) The percentages described in this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries;

(3) *Capital preservation investments* means investments that are made to conserve capital and liquidity until the funds are used in the issuer's primary business or businesses;

(4) *Collaborative research and development arrangement* means a business relationship which:

(i) Is designed to achieve narrowly focused goals that are directly related to, and an integral part of, the issuer's research and development activities;

(ii) Calls for the issuer to conduct joint research and development activities with one or more other parties;

and (iii)Is not entered into for the purpose of avoiding regulation under the Act;

(5) *Controlled primarily* means the issuer has control over the company within the meaning of section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)) and the degree of the issuer's control is greater than that of any other person;

(6) *Investments in securities* means all securities other than securities issued by majority-owned subsidiaries and companies controlled primarily by the issuer that conduct similar types of businesses, through which the issuer is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities;

(7) *Other investments* means investments in securities that are not capital preservation investments; and

(8) *Research and development expenses* means research and development expenses as defined in the Statement of Financial Accounting Standards No. 2, as currently in effect or as it may be subsequently revised.

By the Commission.
Dated: November 26, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30663 Filed 12–2–02; 8:45 am]

BILLING CODE 8015–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 02–2721, MB Docket No. 02–335, RM–10545]

Radio Broadcasting Services; Coopersville, Hart & Pentwater, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Waters Broadcasting Corporation and Synergy Media, Inc. requesting the substitution of Channel 287B for Channel 287C2 at Hart, Michigan, and reallotment of Channel 287B from Hart, Michigan, to Coopersville, Michigan, and modification of the license for Station WCXT to specify operation on Channel 287B at Coopersville. The coordinates for Channel 287B at Coopersville are 43–20–36 and 85–52–16. To accommodate the proposal for Coopersville, we shall also propose the reallotment of Channel 231C3 from Pentwater to Hart, Michigan, and modification of the license for Station WWKR accordingly. The coordinates for Channel 231C3 at Hart are 43–51–33 and 86–18–27. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 287B at Coopersville or Channel 231C3 at Hart. Canadian concurrence will be requested for both allotments.

DATES: Comments must be filed on or before December 30, 2002, and reply comments on or before January 15, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Matthew H. McCormick, Reddy, Begley & McCormick, LLP, 2175 K Street, NW., Suite 350, Washington, DC 20037–1845 and Robert L. Olender, Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, North Bethesda, Maryland 20852–5706.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–335, adopted October 23, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 287C2 at Hart, by adding Coopersville, Channel 287B, and by removing Channel 231C3 at Pentwater and adding Channel 231C3 at Hart.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30508 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2927; MB Docket No. 02–314 RM–10594]

Radio Broadcasting Services; Encino, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a petition for rulemaking filed by Charles Crawford proposing the allotment of Channel 283A at Encino, Texas, as the community's first local transmission service. Channel 283A can be allotted at Encino, Texas, with a site restriction of 6.4 kilometers (4.0 miles) west of the community. Coordinates for Channel 283A at Encino, Texas are 26–55–42 NL and 98–11–56 WL . Since this proposal is within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment has been requested.

DATES: Comments must be filed on or before December 30, 2002, and reply comments must be filed on or before January 14, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

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and Order, MB Docket No. 02–314, adopted October 23, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Encino, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30506 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3064, MB Docket No. 02–351, RM–10601]

Radio Broadcasting Services; Blanket, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 284A at Blanket, Texas, as that community's first local FM service. The coordinates for Channel 284A at Blanket are 31–49–24 and 98–47–12.

DATES: Comments must be filed on or before December 30, 2002, and reply comments on or before January 14, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–351, adopted October 30, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Blanket, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30509 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3066; MB Docket No. 02–352, RM–10602]

Radio Broadcasting Services; Glenville, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Glenville Radio Broadcasters proposing the allotment of Channel 289A at Glenville, North Carolina, as the community's first local aural transmission service. Channel 289A can be allotted to Glenville in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (.93 miles) west to avoid a short-spacing to the licensed site of Station WZNY(FM), Channel 289C, Augusta, Georgia. The coordinates for Channel 289A are 35–09–38 North Latitude and 83–07–28 West Longitude.

DATES: Comments must be filed on or before December 30, 2002, and reply comments on or before January 14, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–352, adopted October 30, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Glenville, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30510 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3069; MB Docket No. 02–206; RM–10515]

Radio Broadcasting Services; Buttonwillow, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the Petition for Rule Making filed by Dangerous Broadcasting, L.P., II, requesting the allotment of Channel 265A to Buttonwillow, California. On October 29, 2002, Dangerous Broadcasting, L.P., II filed a Motion to Withdraw its Petition for Rule Making in this proceeding. This document grants the Motion to Withdraw the Petition for Rule Making filed by Dangerous Broadcasting, L.P., II.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–208, adopted November 6, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via *e-mail qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30513 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

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Notices

Federal Register
Vol. 67, No. 232
Tuesday, December 3, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–006–2]

Monsanto Co.; Extension of Determination of Nonregulated Status for Canola Genetically Engineered for Glyphosate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to one additional canola event our determination that a canola line developed by Monsanto Company, which has been genetically engineered for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by Monsanto Company in its request for an extension of a determination of nonregulated status, an analysis of other scientific data, and a comment received from the public in response to a previous notice. This notice also announces the availability of our finding of no significant impact.

EFFECTIVE DATE: January 2, 2003.

ADDRESSES: You may read copies of the extension request, the environmental assessment and finding of no significant impact, and the comment received on an earlier notice of the availability of the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On November 20, 2001, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 01–324–01p) from Monsanto Company (Monsanto) of St. Louis, MO, for a canola (*Brassica napus* L.) transformation event designated as glyphosate-tolerant canola event GT200 (GT200), which has been genetically engineered for tolerance to the herbicide glyphosate. Monsanto requested an extension of a determination of nonregulated status that was issued for Roundup Ready® canola line RT73, the antecedent organism, in response to APHIS petition number 98–216–01p (see 64 FR 5628–5629, Docket No. 98–089–2, published February 4, 1999). Based on the similarity of GT200 to the antecedent organism RT73, Monsanto requested a determination that glyphosate-tolerant canola event GT200 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On February 28, 2002, APHIS published a notice in the **Federal Register** (67 FR 0247–0248, Docket No. 02–006–1) announcing that an environmental assessment (EA) for the Monsanto extension request had been prepared and was available for public comment. APHIS received one comment on the subject EA during the 30-day comment period, which ended April 1, 2002. The comment, which was from a consumer organization, urged denial of the subject extension request based on alleged deficiencies in the environmental assessments prepared for the antecedent organism and event GT200 canola. We have provided a response to this comment in an addendum to the finding of no significant impact (FONSI). The EA and FONSI are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Analysis

Like the antecedent organism, canola event GT200 has been genetically engineered to express an enzyme, 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS), from *Agrobacterium* sp. strain CP4, and the glyphosate oxidoreductase (GOX) gene/protein from *Ochrobactrum anthropi* strain LBAA, both of which impart tolerance to the herbicide glyphosate. The subject canola and the antecedent organism were produced through use of the *Agrobacterium tumefaciens* method to transform the parental canola variety Westar. Expression of the added genes in GT200 and the antecedent organism is controlled in part by gene sequences derived from the plant pathogen figwort mosaic virus.

Canola event GT200 and the antecedent organism were genetically engineered using the same transformation method and contain the same enzymes that make the plants tolerant to the herbicide glyphosate. Accordingly, we have determined that canola event GT200 is similar to the antecedent organism in APHIS petition number 98–216–01p, and that canola event GT200 should no longer be regulated under the regulations in 7 CFR part 340.

The subject canola has been considered a regulated article under APHIS regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, GT200 has been approved for unconfined environmental release and food and feed use in Canada since 1997, with no subsequent reports of deleterious effects on plants, nontarget organisms, or the environment.

Determination

Based on an analysis of the data submitted by Monsanto and a review of other scientific data, APHIS has determined that canola event GT200: (1) Exhibits no plant pest characteristics; (2) is no more likely to become a weed than non-transformed traditional varieties; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that canola event GT200 and any progeny derived from crosses with other canola varieties will be as safe to grow as canola that is not subject to regulation under 7 CFR part 340.

Because APHIS has determined that the subject canola event does not present a plant pest risk based on its similarity to the antecedent organism, Monsanto's canola event GT200 will no longer be considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject canola event or its progeny. However, importation of canola event GT200 and seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine any potential environmental impacts associated with the proposed extension of a determination of nonregulated status. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to the determination that Monsanto's canola event GT200 and events developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of Monsanto's extension request and the EA and FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 26th day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–30514 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–060–2]

Vector Tobacco; Availability of Determination of Nonregulated Status for Tobacco Genetically Engineered for Reduced Nicotine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Vector Tobacco (USA) Ltd. tobacco designated as Vector 21–41, which has been genetically engineered for reduced nicotine, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms and products. Our determination is based on our evaluation of data submitted by Vector Tobacco (USA) Ltd. in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our written determination document and our finding of no significant impact.

EFFECTIVE DATE: September 16, 2002.

ADDRESSES: You may read a copy of the determination, an environmental assessment and finding of no significant impact, the petition for a determination of nonregulated status submitted by Vector Tobacco (USA) Ltd., and all comments received on the petition and the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology Regulatory Services, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2001, the Animal and Plant Health Inspection (APHIS) received a petition (APHIS Petition No. 01–121–01p) from Vector Tobacco (USA) Ltd. (Vector) of Durham, NC, requesting a determination of nonregulated status under 7 CFR part 340 for tobacco (*Nicotiana tabacum* L.) designated as Vector 21–41, which has been genetically engineered to produce a very low level of nicotine. The Vector petition states that the subject tobacco should not be regulated by APHIS because it does not present a plant pest risk.

On February 12, 2002, APHIS published a notice in the **Federal Register** (67 FR 6480–6481, Docket No. 01–060–1) announcing that the Vector petition was available for public review. In the notice, APHIS solicited comments from the public on whether this tobacco presents a plant pest risk. APHIS also made available for public comment an environmental assessment for the proposed determination of nonregulated status. APHIS received 45 comments on the petition and the environmental assessment during the 60-day comment period which ended April 15, 2002. The comments were received from tobacco farmers, tobacco companies, State

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farmers' organizations, State department of agriculture officials, private individuals, tobacco growers' cooperatives, tobacco marketing organizations, university cooperative extension centers, members of the U.S. Congress, a foundation seed producer, an agronomic consultant, a county chamber of commerce, and a consumer organization. Twenty-three of the comments were in favor of a determination of nonregulated status for Vector 21–41 tobacco, and 22 comments either opposed deregulation or recommended no action on the petition until certain concerns are addressed about the effects of Vector 21–41 deregulation on traditional tobacco growers and markets. A majority of commenters in favor of deregulation stressed that Vector 21–41 did not present a plant pest risk, displayed disease and insect susceptibilities and agronomic characteristics similar to conventionally bred tobacco, and noted the benefits to local economies from growing Vector 21–41. Those commenters not expressing support for deregulation of the subject tobacco at this time generally expressed the following concerns about Vector 21–41: Blue mold and insect susceptibilities, the limited number of years of field testing, the potential for gene transfer to conventional tobacco, and the potential for commingling with conventional tobacco in the absence of growing and processing guidelines. One commenter found the environmental assessment inadequate, alleging that it failed to address the impacts of Vector 21–41 on organic farmers and certain human health effects, including the impacts of an antibiotic resistance gene. We have provided a response to the comments as an attachment to our finding of no significant impact, which is available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Analysis

Vector 21–41 tobacco has been genetically engineered to express a quinolinic acid phosphoribosyltransferase (QPTase) in the reverse, or antisense position, which disrupts the normal expression of QPTase, a key enzyme in the biosynthetic pathway leading to the production of nicotine and related alkaloids. The effect of this genetic change is to reduce the nicotine levels of nicotine, nor-nicotine, and total alkaloids in the leaves of Vector 21–41 tobacco. The subject tobacco also contains the *nptII* marker gene derived from the bacterium *Escherichia coli*. The *nptII* gene encodes the enzyme neomycin phosphotransferase type II (NPTII) and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogen *Agrobacterium tumefaciens*. The *A. tumefaciens* method was used to transfer the added genes into the parental recipient Burley 21–LA tobacco variety.

The subject tobacco has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from a plant pathogen. Vector 21–41 tobacco has been field tested since 1999 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of this tobacco, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Vector, a review of other scientific data, field tests of the subject tobacco, and comments submitted by the public, APHIS has determined that Vector 21–41 tobacco: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than tobacco developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject tobacco and any progeny derived from hybrid crosses with other nontransformed tobacco varieties will be as safe to grow as tobacco in traditional breeding programs that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that Vector's 21–41 tobacco is no longer considered a regulated article under APHIS" regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject tobacco or its progeny. However, importation of Vector 21–41 tobacco or seeds capable of propagation are still subject to the restrictions found in APHIS" foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment has been prepared to examine the potential environmental impacts associated with this determination. The environmental assessment was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that environmental assessment, APHIS has reached a finding of no significant impact with regard to its determination that Vector 21–41 tobacco and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the petition and the environmental assessment and finding of no significant impact are available upon request from the individual listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Done in Washington, DC, this 26th day of November 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–30518 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, section IV of the New York State Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue an interim conservation practice standard in its National Handbook of Conservation Practices. This standard is: Transition to Organic Production (NY000).

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Joseph R. DelVecchio, State Conservationist, Natural Resources Conservation Service (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made to the NRCS regarding disposition of those comments and final determination of change will be made.

Dated: November 19, 2002.

Tyrone M. Goddard,

State Soil Scientist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 02–30582 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of Housing Application Packaging Grants.

DATES: Comments on this notice must be received by February 3, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, South Building, Washington, DC 20250, Telephone 202–720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Title: Housing Application Packaging Grants.

OMB Number: 0575–0157.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) under section 509 of the Housing Act of 1949, 42 U.S.C. 1479, provides grants to public and private nonprofit organizations and state and local governments to package housing applications for loans under sections 502, 504, 514, 515, and 524 grants under section 533 of the Housing Act of 1949 in colonias and designated undeserved counties. RHS reimburses eligible organizations for part or all of the costs of conducting, administering and coordinating an effective housing application packaging program in colonias and designated underserved counties. Eligible organizations assist very low and low-income families that are without adequate housing to buy, build, or repair housing for their own use. Also, the organizations package applications for loans to buy, build or repair rental units for lower income families.

RHS will be collecting information from grantees to assure the organizations participating in this program are eligible entities and have participated in RHS training in application packaging. The respondents are nonprofit organizations, States, State agencies, and units of general local government. The information required for approval of housing application packaging grants is used by RHS personnel to verify program eligibility requirements. The information is collected at the RHS field office responsible for the processing of the application being submitted. The information is also used to ensure the program is administered in a manner consistent with legislative and administrative requirements. If not collected, RHS would be unable to determine if a grantee would qualify for grant assistance.

The grantees facilitate the application process by helping applicants submit complete applications to RHS. This saves RHS time by prescreening applicants, making preliminary determinations of eligibility, ensuring that the application is complete, and helping the applicant understand the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.12 hours per response.

Respondents: Private and public nonprofit organizations and State and local governments.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 900 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimates of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 18, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–30519 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 021121280–2280–01]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2002 Annual Surveys in the Manufacturing Area. The 2002 Annual Surveys consist of the Current Industrial Reports surveys, the Survey of Industrial Research and Development, and the Survey of Plant Capacity Utilization. We have determined that annual data collected from these surveys are needed to aid the efficient performance of

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essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: William G. Bostic, Jr., Chief, Manufacturing and Construction Division, on (301) 763–4593.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct mandatory surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), sections 61, 81, 131, 182, 193, 224, and 225. For 2002, the economic census year, the surveys will, as they have in the past, operate as separate collections of national statistical data on manufacturing. The data collected in these surveys will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. In this, the economic census year, all the data collected in these surveys are mandatory under Title 13, U.S.C. In the interim years, most of these surveys are conducted under a mandatory basis as well.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

Survey Title	
MA311D	Confectionery
MA313F	Yarn Production
MA313K	Knit Fabric Production
MA314Q	Carpets and Rugs
MA315D	Gloves and Mittens
MA316A	Footwear Production
MA321T	Lumber Production and Mill Stocks
MA325F	Paint and Allied Products
MA325G	Pharmaceutical Preparations, except Biologicals
MA327C	Refractories
MA327E	Consumer, Scientific, Technical, and Industrial Glassware
MA331A	Iron and Steel Castings
MA331B	Steel Mill Products
MA331E	Nonferrous Castings
MA332Q	Antifriction Bearings
MA333A	Farm Machinery and Lawn and Garden Equipment
MA333D	Construction Machinery
MA333F	Mining Machinery and Mineral Processing Equipment
MA333L	Internal Combustion Engines
MA333M	Refrigeration, Air-conditioning, and Warm Air Equipment
MA333N	Fluid Power Products
MA333P	Pumps and Compressors
MA334B	Selected Instruments and Related Products
MA334M	Consumer Electronics
MA334P	Communication Equipment
MA334Q	Semiconductors, Printed Circuit Boards, and Electronic Components
MA334R	Computers and Office and Accounting Machines
MA334S	Electromedical and Irradiation Equipment
MA335A	Switchgear, Switchboard Apparatus, Relays, and Industrial Controls
MA335E	Electric Housewares and Fans
MA335F	Major Household Appliances
MA335H	Motors and Generators
MA335J	Insulated Wire and Cable
MA335K	Wiring Devices and Supplies

The following list of surveys represent annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Survey Title	
M311H	Animal and Vegetable Fats and Oils (Stocks)
M311J	Oilseeds, Beans, and Nuts (Primary Producers)
M311L	Fats and Oils (Renderers)
M311M	Animal and Vegetables Fats and Oils (Consumption and Stocks)
M311N	Animal and Vegetables Fats and Oils (Production, Consumption, and Stock)
M313P	Consumption on the Cotton System
M313N	Cotton and Raw Linters in Public Storage
M327G	Glass Containers
M331J	Inventories of Steel Producing Mills
M336G	Civil Aircraft and Aircraft Engines
MQ311A	Flour Milling Products
MQ313D	Consumption on the Woolen System and Worsted Combing
MQ313T	Broadwoven Fabrics (Gray)
MQ314X	Bed and Bath Furnishings
MQ315A	Apparel
MQ325A	Inorganic Chemicals
MQ325B	Fertilizer Materials
MQ325C	Industrial Gases
MQ327D	Clay Construction Products
MQ333W	Metalworking Machinery
MQ335C	Fluorescent Lamp Ballasts

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information with funding from the National Science Foundation (NSF). The NSF publishes the results in its publication series.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

Based upon the foregoing, the Census Bureau will be conducting the Annual Surveys in the Manufacturing Area for the purpose of collecting these data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. chapter 45, the OMB approved the 2002 Annual Surveys under the following OMB Control Numbers: Current Industrial Reports—0607–0206, 0607–0392, 0607–0393, 0607–0395, and 0607–0476; Survey of Industrial Research and Development—3145–0027; and Survey of Plant Capacity Utilization—0607–0175. We will provide copies of each form upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0001.

Dated: November 26, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–30573 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 021121281–2281–01]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code (U.S.C.), sections 182, 224, and 225, the Bureau of the Census (Census Bureau) has determined that limited financial data (revenue, expenses, and the like) for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs.

FOR FURTHER INFORMATION CONTACT: Ruth A. Bramblett, Chief, Current Services Branch, Service Sector Statistics Division, on (301) 763–7089.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, U.S.C. The Service Annual Survey provides continuing and timely national statistical data each year. Data collected in this survey are within the general scope, type, and character of those inquiries covered in the economic census.

The Census Bureau needs reports only from a limited sample of service sector firms in the United States. Selected service industries include professional, scientific, and technical services; administrative and support services; healthcare and social assistance; telecommunications, publishing, broadcasting and other information service industries; trucking, courier and messenger, and warehousing; financial services; arts, entertainment and recreation; and so forth. The probability of a firm's selection is based on its revenue size (estimated from payroll); that is, firms with a larger payroll will have a greater probability of being selected than those with smaller ones. We are mailing report forms to the firms covered by this survey and require their submission within thirty days after receipt. These data are not publicly available from nongovernment or other government sources.

Based upon the foregoing, the Census Bureau will be conducting the annual survey for the purpose of collecting these data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. chapter 35, the OMB approved the Service Annual Survey under OMB Control Number 0607–0422. Copies of the proposed forms are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233.

Dated: November 26, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–30574 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1260]

Expansion of Foreign-Trade Zone 181; Akron/Canton, OH Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Northeast Ohio Trade & Economic Consortium, grantee of Foreign-Trade Zone No. 181, submitted an application to the Board for authority to expand FTZ 181 in the Akron/Canton, Ohio area, within and adjacent to the Cleveland Customs port of entry (FTZ Docket 8–2002, filed 1/30/2002; amended 9/18/02 to withdraw the proposed Lorain site);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 6679, 2/13/2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 181 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project, and to a sunset provision that would terminate authority for each of the sites on December 31, 2007, except for those sites that are activated pursuant to 19 CFR part 146 of the U.S. Customs regulations at any time prior to the termination date.

Signed at Washington, DC, this 21st day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–30626 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1259]

Approval for Subzone Expansion, (Watches and Accessories), Foreign-Trade Subzone 39E, Fossil Partners, L. P.; Richardson and Dallas, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C., 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, has requested authority, on behalf of Fossil Partners, L.P. (Fossil), which operates Subzone 39E at its watch and accessories warehousing/distribution facility located in the Dallas, Texas, area, to expand the subzone to include a site in Dallas, Texas, and to reinstate FTZ status at the original site in Richardson, Texas (FTZ Doc. 22–2002, filed 5/1/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 31768, 5/10/02);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby approves the request, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–30625 Filed 12–2–02; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1262]

Grant of Authority for Subzone Status, Canon Virginia, Inc. Manufacturing Plant (Computer Printers and Related Products); Newport News, VA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Virginia Port Authority, grantee of Foreign-Trade Zone 20, has made application to the Board for authority to establish special-purpose subzone status at the computer printer and related products manufacturing plant of Canon Virginia, Inc., located in Newport News, Virginia (FTZ Docket 29–2002, filed July 2, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 46632, 7/16/02); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the computer printer and related products manufacturing plant of Canon Virginia, Inc., located in Newport News, Virginia, (Subzone 20D), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–30627 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 C.F.R. 351.214(d), we are initiating a review for Xiangfen Hengtai Brake System Co., Ltd. and Xianghe Xumingyuan Auto Parts Co., Ltd.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Davina Hashmi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1280 or 482–0984, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to 19 C.F.R. Part 351 (April 2002).

Background

The Department has received timely requests from Xiangfen Hengtai Brake System Co., Ltd. ("Hengtai") and Xianghe Xumingyuan Auto Parts Co., Ltd. ("Xumingyuan"), in accordance with 19 C.F.R. 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"), which has an April anniversary date.

As required by 19 C.F.R. 351.214(b)(2)(i) and (iii)(A), each of the exporters identified above, which are also producers, has certified that it did not export brake rotors to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 C.F.R. 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 C.F.R. 351.214(b)(2)(iv), Hengtai and Xumingyuan each submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 C.F.R. 351.214(b), and based on information on the record, we are initiating a new shipper review for Hengtai and Xumingyuan.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Hengtai and Xumingyuan (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 C.F.R. 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review.

Antidumping Duty Proceeding	Period to be Reviewed
PRC: Brake Rotors, A–570–846.	
Hengtai Brake System Co., Ltd.	04/01/02 - 09/30/02
Xianghe Xumingyuan Auto Parts Co., Ltd.	04/01/02 - 09/30/02

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies in accordance with 19 C.F.R. 351.214(e). Because Hengtai and Xumingyuan certified that they both produce and export the subject merchandise, the sale of which was the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 C.F.R. 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 C.F.R. 351.214(d).

Dated: November 25, 2002.

Susan Kuhbach,

Acting Deputy-Assistant Secretary for Import Administration.

[FR Doc. 02–30622 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Zev Primor at (202) 482–4114 or Tom Futtner at (202) 482–3814, Office of AD/CVD Enforcement 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On October 1, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Thailand, covering the period July 1, 2000 through June 30, 2001 (66 FR 49924). On August 7, 2002 (67 FR 51178), we published the preliminary results of review. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than 120 days after the date of publication of the preliminary results, December 5, 2002.

Extension of Time Limit for Final Results of Review

Due to the complexity of the issues raised in this segment of the review, we determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than February 3, 2003. For details, *see* Decision Memorandum from Holly Kuga to Bernard Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the main Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 26, 2002.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–30623 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Salim Bhabhrawala, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 and (202) 482–1784, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days from the date of publication of the preliminary determination (or 300 days if the Department does not extend the time limit for the preliminary determination).

Background

On August 20, 2001, we published in the **Federal Register** the notice of initiation of the third administrative review of the antidumping duty order on fresh Atlantic salmon from Chile, covering the period July 1, 2000, through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001). On January 22, 2002, the Department published in the **Federal Register** the notice of an extension of the preliminary results of the third administrative review. *See Fresh Atlantic Salmon From Chile: Extension of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 2856 (January 22, 2002). On August 7, 2002, the Department

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published the preliminary results of the third administrative review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile*, 67 FR 51182 (August 7, 2002) (*Preliminary Results*). In our notice of preliminary results, we stated our intention to issue the final results of this review no later than December 5, 2002.

Extension of Time Limit for Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than February 3, 2003. *See* Decision Memorandum from Constance Handley to Gary Taverman, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 27, 2002.

Gary Taverman,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 02–30628 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium from Canada: Correction of Notice of Initiation and Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Correction of Notice of Initiation and Partial Rescission of Countervailing Duty Administrative Review.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4987.

Correction of Notice of Initiation

On September 25, 2000, the Department of Commerce published in the **Federal Register** (67 FR 60210) the notice of initiation of the countervailing duty administrative review of pure and alloy magnesium from Canada. The notice of initiation incorrectly stated the period of review (" POR") as January 1, 2001 to December 31, 2002. The correct POR is January 1, 2001 to December 31, 2001.

Partial Rescission of Review

This initiation was based on a request made on August 28, 2002, by the petitioner, U.S. Magnesium, LLC., with respect to the imports of pure and alloy magnesium produced by Norsk Hydro Canada Inc. and Magnola Metallurgy ("Magnola"). Magnola is currently a party in a new shipper review ("NSR") covering the same POR and the same subject merchandise. (*See Pure and Alloy Magnesium from Canada: Notice of Initiation of New Shipper Countervailing Duty Review*, 67 FR 15767, (April 3, 2002)). Therefore, in accordance with 19 CFR 351.213(d) we are rescinding this administrative review with respect to Magnola.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: November 24, 2002.

Susan Kuhbach,

Acting Deputy Assistant, Secretary for Import Administration, Group 1.

[FR Doc. 02–30624 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the Project Officer indicated below.

Aerospace Executive Service at the Australian International Airshow

Avalon Airport, Melbourne, Australia.

February 12–14, 2003.

Recruitment closes on January 3, 2003.

For further information contact: Ms. Diane Mooney, U.S. Department of Commerce, telephone 206–553–7261, or e-mail to *dmooney@mail.doc.gov.*

Environmental Technologies Trade Mission

Milan, Italy.

March 5–8, 2003.

Recruitment closes on January 10, 2003.

For further information contact: Ms. Yvonne Jackson, U.S. Department of Commerce, telephone 202–482–2675, or e-mail to *Yvonne.Jackson@mail.doc.gov.*

U.S. Microelectronics Trade Mission to Shanghai, China

March 10–14, 2003.

Recruitment closes on January 31, 2003.

For further information contact: Ms. Marlene Ruffin, U.S. Department of Commerce, telephone 202–482–0570, or e-mail to *Marlene_Ruffin@ita.doc.gov.*

ACE/Infrastructure Trade Mission to China

Beijing, Shanghai and Hong Kong (SAR).

April 7–15, 2003.

Recruitment closes on January 31, 2003.

For further information contact: Mr. Sam Dhir, U.S. Department of Commerce, telephone 202–482–4756, or e-mail to *Sam.Dhir@mail.doc.gov.*

Recuitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997. For further information contact Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov.*

Dated: November 26, 2002.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 02–30629 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Consistent with section 129 of the Uruguay Round Agreements Act (URAA), which governs the Department's actions following WTO reports, the Department has calculated new rates with respect to the antidumping duty investigation on hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Japan, in order to implement findings of the World Trade Organization (WTO) Appellate Body. These new rates will apply to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after November 22, 2002.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001). Finally, citation to "section 129" refers to section 129 of the URAA, codified at 19 U.S.C. § 3538.

Background

On April 28, 1999, the Department of Commerce issued a final determination of sales at less than fair value in the antidumping investigation on hot-rolled steel from Japan. *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 24329 (May 6, 1999) (*Final Determination*). Following an affirmative injury determination issued by the United States International Trade Commission, the Department issued an antidumping duty order on this product on June 23, 1999. *Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 34778 (June 29, 1999).

Subsequently, the Government of Japan requested the establishment of a WTO dispute resolution panel (the Panel) to consider, among other issues, various aspects of the Department's final determination in this case. The Panel circulated its report on February 28, 2001. *United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/R (February 28, 2001).

The United States and Japan appealed certain findings and conclusions in the Panel report. The WTO Appellate Body (the Appellate Body) issued its report on July 24, 2001. *United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R (July 24, 2001). The Appellate Body report and the Panel report, as modified by the Appellate Body report, were adopted by the WTO Dispute Settlement Body (DSB) on August 23, 2001. *United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/8 (August 23, 2001).

On September 10, 2001, the United States informed the DSB that it would implement the recommendations and rulings of the DSB in a manner consistent with its WTO obligations. On November 5, 2002, pursuant to section 129(b)(2) of the URAA, the United States Trade Representative requested that the Department issue a determination that would render the Department's actions in the investigation not inconsistent with the findings of the DSB.

Section 129 of the URAA is the applicable provision governing the nature and effect of determinations issued by the Department to implement findings by WTO panels and the Appellate Body. Specifically, section 129(b)(2) provides that "{n}otwithstanding any provision of the Tariff Act of 1930 . . .," within 180 days of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. 19 U.S.C. § 3538(b)(2). The Statement of Administrative Action for the URAA (SAA) variously refers to such a determination by the Department as a "new," "second," and "different" determination. SAA at 1025, 1027. This determination is subject to judicial review separate and apart from judicial review of the Department's original determination. 19 U.S.C. § 1516a(a)(2)(B)(vii).

In addition, section 129(c)(1)(B) of the URAA expressly provides that a determination under section 129 applies only with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which the U.S. Trade Representative directs the Department to implement that determination. In other words, as the SAA clearly provides, "such determinations have prospective effect only." SAA at 1026. Thus, "relief available under subsection 129(c)(1) is distinguishable from relief in an action brought before a court or a NAFTA binational panel, where . . . retroactive relief may be available." *Id.*

Accordingly, this new determination, pursuant to section 129 of the URAA (*Section 129 Determination*), does not render moot the federal court appeal currently pending with respect to the antidumping duty order on hot-rolled steel. As detailed below, the *Section 129 Determination* rates will apply only to cash deposits for entries made after the effective date, and subsequent assessments on such entries, should no administrative review be requested under section 351.213 of the Department's regulations.

On November 8, 2002, the Department issued a draft **SECTION 129 DETERMINATION** to the Government of Japan and to the parties to the less than fair value investigation segment of the proceeding, soliciting comments by November 15, 2002 and rebuttal comments by November 19, 2002. On November 15, two petitioning parties provided joint comments on the draft determination. No other affirmative or rebuttal comments were received.

Appellate Body Findings and Conclusions

In its report, the Appellate Body found, *inter alia*, that certain aspects of the Department's final determination in the hot-rolled steel investigation were inconsistent with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement).

1. The Appellate Body's report, at paragraph 240(a), upholds the finding, in paragraph 8.1(a) of the Panel Report, that the United States acted inconsistently with Article 6.8 and Annex II of the Antidumping Agreement in applying "facts available" to Nippon Steel Corporation (Nippon) and NKK Corporation (NKK) with respect to sales affected by their failure to timely provide weight conversion factors. The information, which was needed to allow the Department to compare steel sold on an actual weight basis with steel sold on a theoretical weight basis, was provided by the two companies after the stipulated deadline.

2. The Appellate Body's report, at paragraph 240(b), upholds the finding, in paragraph 8.1(a) of the Panel Report, that the United States acted inconsistently with Article 6.8 and Annex II of the Antidumping Agreement in applying adverse facts available to Kawasaki Steel Corporation (Kawasaki).

3. The Appellate Body's report, at paragraph 240(c), upholds the Panel's findings that the United States' application of section 735(c)(5)(A) of the United States Tariff Act of 1930, as

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amended, to determine the "all others" rate in this case, was inconsistent with the United States' obligations under Article 9.4 of the Antidumping Agreement.

4. The Appellate Body's report, at paragraph 240(d), upholds the finding, in paragraph 8.1(c) of the Panel Report, that the United States acted inconsistently with Article 2.1 of the Antidumping Agreement by excluding from the calculation of normal value, as outside "the ordinary course of trade," certain home market sales to parties affiliated with an investigated exporter, on the basis of the "99.5 percent" or "arm's length" test.

Implementation

The Department is implementing the recommendations and rulings of the DSB as follows:

1. All three investigated companies (Kawasaki, NKK, and Nippon) made home market sales through affiliates. In order to determine which of these related party sales may have been made at arm's length and thus may be considered for use in calculating normal value, the Department applied a new arm's length methodology. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). Specifically, under the new methodology, for sales by the exporter or producer to an affiliate to be included in the normal value calculation, those sales prices must fall, on average, within a defined range, or band, around sales prices of the same or comparable merchandise sold by that exporter or producer to all unaffiliated customers. The band established for this test provides that the overall ratio calculated for an affiliate be between 98 percent and 102 percent, inclusive, of prices to unaffiliated customers in order for sales to that affiliate to be considered "in the ordinary course of trade" and used in the normal value calculation. This new test is consistent with the view, expressed by the Appellate Body at paragraph 148 of its report, that rules aimed at preventing the distortion of normal value through sales between affiliates should reflect, "even-handedly," that "both high and low-priced sales between affiliates might not be 'in the ordinary course of trade.'" Additionally, under the new methodology, the Department will compare sales to affiliates with sales to unaffiliated parties of the most similar merchandise, when sales of identical merchandise to unaffiliated parties are unavailable.

In comparing merchandise sold in the United States with merchandise sold in the home market, the Department makes an adjustment, where appropriate, to normal value for differences in physical characteristics. This adjustment normally is based on differences in the variable costs of manufacturing attributable to the physical differences between the products. While product characteristics differ from case to case, the Department generally does not compare a comparison market product to a given product sold in the United States if the difference in variable manufacturing costs of the two products is greater than 20 percent. Under the new arm's length methodology, the Department has applied a comparable adjustment to prices of similar merchandise sold to unaffiliated customers.

As a result of the application of this new methodology, the home market sales used to calculate normal value changed somewhat, in this *Section 129 Determination*, for each of the three companies examined during the investigation.

2. In the *Final Determination*, the Department applied adverse facts available to sales of Nippon and NKK that were affected by the absence of weight conversion factors on the record. Commerce has placed the weight conversion factor data submitted by Nippon and NKK on the record of this *Section 129 Determination*, and has used these factors in calculating the margins for affected sales, rather than using facts available margins for those sales. Refer to the proprietary *Memorandum to the File from Mark Hoadley through Sally Gannon, Analysis of Nippon Steel Corp.*, dated November 12, 2002, and the proprietary *Memorandum to the File from Mark Hoadley through Sally Gannon, Analysis of NKK Corp.*, dated November 12, 2002, for the conversion factors used.

3. In the *Final Determination*, the Department used adverse facts available to determine the margin for U.S. sales made by Kawasaki through its affiliate California Steel Industries (CSI), because Kawasaki did not provide requested information with respect to these sales. The Department stated in the *Final Determination* that, in not providing these data, Kawasaki had failed to cooperate by not acting to the best of its ability to obtain the CSI data, and, thus, that the use of an adverse inference was warranted in selecting facts available for the CSI sales. However, the Appellate Body report stated that the Department's determination that Kawasaki had not cooperated was inconsistent with Article 6.8 and Annex II of the Antidumping Agreement. Therefore, under the circumstances in this case, in selecting the facts available for the missing sales made through CSI, the Department has, in this *Section 129 Determination*, applied neutral facts available to these sales. Specifically, the Department has applied the weighted-average margin calculated for sales to all customers other than CSI.

4. Using the new rates for examined respondents, the Department also recalculated the "all others" rate. The Appellate Body's report, at paragraph 129, stated:

> [S]ection 735(c)(5)(A) of the United States Tariff Act of 1930, as amended, requires the inclusion of margins established, in part, on the basis of facts available, in the calculation of the 'all others' rate, and to the extent that this results in an 'all others' rate in excess of the maximum allowable rate under Article 9.4, we uphold the Panel's finding that section 735(c)(5)(A) of the United States Tariff Act of 1930, as amended, is inconsistent with Article 9.4 of the *Anti-Dumping Agreement*.

As required by section 735(c)(5) of the Act, the Department has calculated the "all others" rate for this *Section 129 Determination* as the amount equal to the weighted average of the estimated margins established for the exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely on the basis of the facts available. In this *Section 129 Determination*, none of the exporters and producers individually examined had a rate which was zero, *de minimis*, or determined entirely on the basis of the facts available. Therefore, the "all others" rate for this *Section 129 Determination* is the weighted average of the recalculated company-specific rates for Nippon, NKK, and Kawasaki, the three individually examined producers and exporters. This rate is 22.92 percent.

Article 9.4 of the Antidumping Agreement requires that, when the authorities have limited their examination of the known exporters or producers in accordance with Article 6.10, any antidumping duty applied to imports from exporters or producers not included in the examination *shall not exceed* the weighted average margin of dumping established with respect to the selected exporters or producers. Article 9.4 further provides that, for purposes of that calculation, the authorities shall disregard any zero and *de minimis* margins and "margins established under the circumstances referred to in paragraph 8 of Article 6."

The "all others" rate in this *Section 129 Determination* conforms to the requirements of Article 9.4 because the new "all others" rate of 22.92 percent *does not exceed* the rate of 25.95 percent, which is the weighted average of the company-specific rates for NKK and Kawasaki, the rates which are based solely on the data provided by those respondents for the purposes requested. Therefore, this weighted average is made up of margins that are not "established under the circumstances referred to in paragraph 8 of Article 6." The new rate for Nippon, in contrast, is based in part on the application of a facts-available "plug" to U.S. sales matched to home market products ("CONNUMs") for which Nippon failed to report product-specific costs. For those sales, the Department used the highest margin calculated for other sales, and averaged those margins into the overall margin for Nippon, thereby changing that margin. 64 FR 24329, 24348 (May 6, 1999). This methodology was not contested before either the WTO Panel or the Appellate Body. In contrast, Kawasaki's margin was calculated solely on the basis of the information Kawasaki provided with respect to the non-CSI sales, and was not altered by any use of facts available. Thus, Kawasaki's overall margin was not "established under the circumstances referred to in paragraph 8 of Article 6."

Comment 1

Two petitioning steel companies stated that the Department's draft *Section 129 Determination* adequately implemented the findings of the Appellate Body, but that it was ambiguous as to the nature and effect of that determination. They urged the Department to make clear that it is a new and different determination, rather than an amendment to the original determination in the investigation, and that it has prospective effect only. They also asked that the Department address the proper assessment rates for entries made prior to the date of implementation of the *Section 129 Determination*.

Department Position

We agree with petitioners' first argument, and have clarified, in this notice, the nature and effect of this *Section 129 Determination*. We do not agree, however, that a section 129 Determination should necessarily include a discussion of the proper assessment rates for entries made prior to the effective date of that determination, *i.e.*, entries to which that determination expressly does not apply. Under U.S. law, such prior entries, if reviewed, are governed by the results of the relevant review. Section 751(a)(1) and (a)(2)(C) of the Act. If such prior entries are not reviewed, they are liquidated as entered. 19 CFR § 351.212(c).

Section 129 Determination Margins

As a result of the changes to the calculations, we determine that the following Section 129 Determination margins exist:

Kawasaki	40.26%
NKK	17.70%
Nippon	18.37%
All Others	22.92%

Continuation of Suspension of Liquidation

In accordance with section 129(c)(1)(B) of the URAA, we will instruct the U.S. Customs Service (Customs) to continue to suspend liquidation of all imports of hot-rolled steel from Japan that are entered, or withdrawn from warehouse, for consumption on or after November 22, 2002, the date on which the Trade Representative directed the Department under subsection (b)(4) of that section to implement this *Section 129 Determination*. Customs shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice.

Because we completed an administrative review of Kawasaki subsequent to the issuance of the order in this proceeding, we will not issue a new cash deposit rate for Kawasaki pursuant to this *Section 129 Determination*. We have not conducted reviews of Nippon and NKK, however. Thus, we will instruct Customs to revise the cash deposit rates for these two firms with respect to subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 22, 2002. The *Section 129 Determination* "all others" rate will be the new cash deposit rate for all exporters of subject merchandise other than Nippon, NKK and Kawasaki, with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 22, 2002.

This Section 129 Determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: November 22, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30621 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology (NIST)

Proposed Information Collection; Comment Request; Manufacturing Extension Partnership (MEP) Management Information Reporting

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (2)(A)).

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Direct written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brian Clark, National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Gaithersburg, MD 20899–4800, 301–975–8841 (phone) and 301–926–3787 (fax).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Manufacturing Extension Partnership (MEP), sponsored by NIST, is a national network of locally-based manufacturing extension centers working with small manufacturers to help improve their productivity, improve profitability and enhance their economic competitiveness.

The collected information will provide the MEP with information regarding the centers' performance in the delivery of technology, and business solutions to US-based manufacturers. The information obtained will assist in

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determining the performance of the MEP Centers at both a local and national level, as well as, the impact on the national economy. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR 290, 291, 292, and H. R. 1274–Section 2).

II. Method of Collection

Web forms will be the primary method to collect and analyze a wide range of information.

III. Data

OMB Number: 0693–0032.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Time Per Response: 68 hours.

Estimated Total Annual Burden Hours: 4,048.00.

Estimated Total Annual Cost to the Public: $202,400.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 27, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30606 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on December 18, 2002. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Report from the Judges' Panel; Status of Baldrige Program; Internal Supplier Eligibility, Baldrige Not-For-Profit Eligibility Category; CEO Marketing Study; State and Local Programs; 2003 Criteria Update—Ethics and Governance; Topics for Discussion with NIST Director; Recommendations to the NIST Director; and New Business. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Virginia Davis no later than Monday, December 16, 2002, and she will provide you with instructions for admittance. Ms. Davis' email address is *virginia.davis@nist.gov* and her phone number is (301) 975–2361.

DATES: The meeting will convene December 18, 2002 at 8:30 a.m. and adjourn at 3:00 p.m. on December 18, 2002.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Room, Gaithersburg, Maryland 20899. Please note admittance instructions under SUMMARY paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: November 22, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–30494 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–13–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Funding To Support Scholars Under the Civil Society-Nonprofit Scholars Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") announces the availability of funding to offer up to three nine-month residency scholars' awards under the Civil Society-Nonprofit Scholars program, a joint venture with the Woodrow Wilson International Center for Scholars in Washington, DC. Applicants are encouraged to submit proposals to conduct applied research in three thematic areas: (1) The relationship between democratic institutions and nonprofit organizations; (2) the role of service and citizenship in modern and civil society; and (3) civic engagement and public policy. This program solicits applications from individuals with experience in government, the corporate world, the professions and academia. Eligibility for academic applicants is limited to candidates with demonstrated scholarly development beyond the doctoral level. Non-academic candidates shall match professional, governmental or corporate levels of experience similar to those established for the Woodrow Wilson Fellows program. Memoir projects will be considered but are discouraged. A full description of the program, eligibility requirements and application material are located at the Corporation's Web site: *http://www.nationalservice.org/scholars.*

DATES: The application deadline is February 3, 2003. Notification of scholarship awards shall take place in mid-April, 2003. Scholars will be in residence at the Corporation's Washington, DC headquarters from September 2003 through May 2004.

ADDRESSES: If you cannot access the Corporation's Web site, you may request a program description and application materials by writing to the following address: The Corporation for National and Community Service, Civil Society-Nonprofit Scholars Program, 1201 New York Avenue, NW., Room 8100–H, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Robin Dean at (202) 606–5000 ext. 436, TTY: (202) 565–2799; Fax: (202) 565–2743; E-mail: *scholars@cns.gov;* World Wide Web: *http://www.nationalservice.org/scholars.*

Dated: November 25, 2002.

David A. Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 02–30585 Filed 12–2–02; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0130]

Federal Acquisition Regulation; Information Collection; Buy American Act—North American Free Trade Agreement-Israeli Trade Act Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0130).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—North American Free Trade Agreement-Israeli Trade Act Certificate. The clearance currently expires on March 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 3, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA, (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the North American Free Trade Agreement (NAFTA) Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and NAFTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and NAFTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

B. Annual Reporting Burden

Respondents: 1,140;

Responses Per Respondent: 5;

Annual Responses: 5,700;

Hours Per Response: .167;

Total Burden Hours: 952.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0130, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all correspondence.

Dated: November 26, 2002.

Jeremy F. Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–30548 Filed 12–2–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Federal Acquisition Regulation; Information Collection; Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0026).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning change order accounting. This OMB clearance expires on March 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 3, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the

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estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Respondents: 8,750.
Responses Per Respondent: 18.
Annual Responses: 157,500.
Hours Per Response: .084.
Total Burden Hours: 13,230.

C. Annual Recordkeeping Burden

Recordkeepers: 8,750.
Hours Per Recordkeeper: 1.5.
Total Recordkeeping Burden Hours: 13,125.
Total Burden Hours: 26,355.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: November 26, 2002.

Jeremy F. Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–30549 Filed 12–2–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Applications Concerning Automated Inhalation Toxicology Exposure Systems

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR part 404 announcement is made of the availability for licensing of the U.S. Patent Applications concerning "Automated Inhalation Toxicology Exposure Systems" list under **SUPPLEMENTARY INFORMATION**. The inventions listed have been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION:

1. U.S. Patent Application No.: 09/919,741. Foreign rights are also available (PCT/US01/27077).
Title: Automated Inhalation Toxicology Exposure System.
Filing Date: July 31, 2001.
Description: A method of exposing an animal to an inhalant; acquiring near real time measurement of at least respiration during said exposing; and calculating a received dose of the inhalant in response to the near real time measurement of the at least respiration during said exposing. The method further includes to automatically controlling an environment of an inhalant chamber; automatically controlling a concentration of an inhalant in the inhalant chamber, and displaying near real time measurement data related to an animal in an inhalant chamber.

2. U.S. Patent Application No.: 10/166,228, which is a continuation-in-part of U.S. Patent Application 09/919,741, above.
Title: Inhalant System.
Filing Date: May 29, 2002.
Description: The present application relates, in general, to multi-animal inhalation exposure systems.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–30568 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Hybrid Inhalation System for Precious Materials

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Provisional Patent No. 60/396,698 entitled "Hybrid Inhalation System for Precious Materials," filed July 17, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention is a method and associated system for generating a cycle of dynamic and static test atmospheres designed to be sued for aerosol characterization or exposing animals to all materials potentially aerosolized but especially limited production materials such as new chemical entities or biologics.

This method will greatly reduce the cost and time required for evaluation of precious materials under testing. The method includes complete computer automated control of aerosol generation, characterization, and exposure duration and can be utilized with a variety of commercially-available aerosol generators, sampling devices, and material types.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Final Estuary Habitat Restoration Strategy Prepared by the Estuary Habitat Restoration Council

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Corps of Engineers on behalf of the interagency Estuary Habitat Restoration Council is publishing the final "Estuary Habitat Restoration Strategy." The comments received on the draft published on May 3, 2002,

were reviewed and changes have been made to clarify the intent of the Council and correct errors.

FOR FURTHER ASSISTANCE CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Restoration Act of 2000, title I of Pub. L. 106–457 has four purposes: (1) Promotion of estuary habitat restoration; (2) Development of a national strategy for creating and maintaining effective estuary habitat restoration partnerships; (3) Provision of Federal assistance for estuary habitat restoration projects; and (4) Development and enhancement of monitoring and research capabilities to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies. The Estuary Habitat Restoration Council, consisting of representatives from Department of the Army, National Oceanic and Atmospheric Administration, the Environmental Protection Agency, United States Fish and Wildlife Service, and the Department of Agriculture, was established to oversee implementation of the Act.

The Council is charged with developing an estuary habitat restoration strategy designed to ensure a comprehensive approach to maximize benefits and foster coordination of Federal and non-Federal activities. The goal of the strategy is restoration of 1,000,000 acres of estuary habitat by the year 2010. Elements of the strategy are discussed in section 106(d) of the Act. The intent of this notice is to publish the strategy prepared by the Estuary Habitat Restoration Council in accordance with these requirements.

The Council received comments on the draft strategy published in May from 26 parties including five Federal and six State agencies, 11 non-governmental groups, one corporation, two intergovernmental bodies and one individual. Responses to the questions published with the draft Strategy were thought provoking and varied. There was no strong consensus among the commenters in support of major changes to the draft strategy. However, a new section was added to recognize the importance of innovative technology and the role of the National Estuarine Research Reserve System. Commenters were divided regarding the merits of local vs. national awards and the definition of small vs. large projects. There were several requests for the inclusion of additional examples to those in the draft. In some instances additional examples have been added but the Council did not intend for the strategy to be an inclusive list of all possibly relevant activities or documents. Many commenters suggested clarifying language that has generally been incorporated or resulted in related modifications of the text. A number of commenters took issue with aspects of the strategy, including definitions and requirements such as including the Great Lakes, that are dictated by the Act and therefore cannot be changed. Several commenters desired more information about the process that will be used to implement the program for estuary habitat restoration. The Council still believes that this level of programmatic detail is inappropriate for inclusion in the strategy. This material will be released in the future using various means. Some of the changes by section are highlighted below.

a. Introduction. The term "unimpaired connection" in the definition of "estuary" has been clarified to indicate that this is in reference to "natural" convergence patterns between fresh and salt-water sources. In response to comments from practitioners in the Great Lakes area, the areas to be considered as "estuary" under this Act are described as "riparian and nearshore areas adjacent to the drowned mouths of streams." A sentence has been added to clarify that the strategy supports restoration of degraded estuary habitat or creation of estuary habitat, including activities in estuaries and associated ecosystems.

b. Trends of Estuary Habitats. The Council acknowledges that when using trends data it is important to understand the rationale underlying the data presented, as it may not be accurate to make local assumptions based on data acquired for a national study. The discussion of the use of trends data in proposals has been modified to clarify that existing information should be used. While there was support for using a classification system based on Cowardin *et al.*, the Council acknowledges that there may be times when regional clarifying refinements should be recognized.

c. Estuary Management or Habitat Restoration Plans. Language has been added to clarify that the Federal plans listed in the Act are not the only Federal plans that will be considered as meeting the Act's definition of "estuary habitat restoration plan." A reference to protection of estuary habitat was deleted to reduce confusion regarding the scope of activities considered under the Act.

d. Ecosystem Level Approach. In response to comments, a definition for "self-sustaining" has been added. The importance of addressing causes of degradation is noted and the potential synergy of locating restoration projects adjacent to protected areas is acknowledged.

e. Partnerships. An acknowledgement of the variety of possible partnership models has been added. In response to comments requesting that lists of funding sources be included in the strategy, a citation has been added for one example of existing lists.

f. Habitat Restoration Program. Most of the changes were designed to improve clarity in the discussion of the project selection criteria included in the Act and the scope of the cost covered in the definition of a "small" project. Recognition of the possible synergy of combining estuarine habitat restoration activities with otherwise "excluded activities" has been included.

g. Innovative Technology. This section was added to acknowledge the role of the National Estuarine Research Reserve System.

h. Ensuring Success. The need to consult with existing broad-scale monitoring programs when developing a long-term monitoring program to detect large-scale changes has been added.

Estuary Habitat Restoration Strategy

Introduction

This Estuary Habitat Restoration Strategy (Strategy) has been developed in accordance with the requirements of the Estuary Restoration Act of 2000, title I of Pub. L. 106–457 (the Act). The purpose of the Strategy is to ensure a comprehensive approach to maximize benefits derived from estuarine habitat restoration projects, provide incentives for the creation of new partnerships between the public and private sectors, and foster coordination of Federal and non-Federal activities related to restoration of estuarine habitat. The Act also provides Federal assistance, promotes efficient financing of technically sound and cost-effective estuarine habitat restoration projects, and encourages the use of innovative technologies.

Congress enacted the Estuary Restoration Act to establish a collaborative process for addressing the pressures facing our Nation's estuaries. As part of the Act, an inter-agency Estuary Habitat Restoration Council (Council) was established to develop and submit the Strategy to Congress, solicit, review, and evaluate project

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proposals, and recommend projects to the Secretary of the Army. Much of the Council's work will involve soliciting and funding on-the-ground habitat restoration projects. The Strategy, however, is broader than site-specific restoration. It encourages coordinating, integrating, and capitalizing upon the broad spectrum of ongoing estuary restoration efforts throughout the country. Its goal is to bring together the collective expertise, technical, and financial resources of the Federal community, the practical experience of tribal, State, local and nongovernmental groups, and the vision of the corporate world to restore the integrity of our Nation's estuarine systems. The Federal investment will be used to leverage the financial and technical contribution of non-Federal partners, providing sound ecological and economic returns.

The Strategy calls for restoration activities that improve degraded estuaries or estuarine habitat, or those that create estuarine habitat, with the goal of attaining a self-sustaining system integrated into the surrounding landscape. Restoration projects must improve or establish function to degraded or destroyed habitats and be located to recapture regional ecological integrity. Successful restoration of estuarine habitat will protect native flora and fauna in estuaries and their watersheds, while providing multiple additional benefits such as improved surface and ground water quality and quantity, nutrient cycling, flood control, outdoor recreation, and other services, valued by local stakeholders and consistent with the establishment and maintenance of healthy ecosystems.

The goal of the Strategy is to restore one million-acres of estuarine habitat by 2010. The Council will organize and support a task force to recommend methods for tracking progress toward the million-acre goal, including defining a baseline timeframe for comparison. The task force will consider regional and local perspectives on quantifying project successes. Subsequently, the Council will produce periodic reports on progress toward meeting the Strategy's million-acre goal, as well as other habitat trends.

The Act defines estuary as "a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water from land drainage." Estuary also includes the "* * * near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries." For the purposes of this Strategy, estuaries are considered to extend from the head of tide to the boundary with the open sea (to downstream terminus features or structures such as barrier islands, reefs, sand bars, mud flats, or headlands in close proximity to the connection with the open sea). In the Great Lakes, riparian and nearshore areas adjacent to the drowned mouth of a stream entering one of the Lakes will be considered estuaries. Additionally, an unimpaired connection refers to "natural" convergence patterns between fresh and salt-water sources, disregarding the influence of man-made structures and obstructions. Estuary habitat includes the estuary and its associated ecosystems, such as: salt, brackish, and fresh water coastal marshes, coastal forested wetlands and other coastal wetlands, maritime forests, coastal grasslands, tidal flats, natural shoreline areas, shellfish beds, sea grass meadows, kelp beds, river deltas, and river and stream corridors under tidal influence. The Strategy supports restoration work targeted at improving degraded estuarine habitat or creating estuarine habitat, including activities occurring both within estuaries and in their associated ecosystems.

Some restoration projects can easily measure success in terms of acreage (for example, projects that plant vegetation), but many cannot (for example, projects that alter hydrology). By manipulating a relatively small area, the function of a much larger habitat area can be improved. For the purposes of this Strategy, therefore, the restored area will be defined as that area over which appropriate monitoring can document the establishment or improvement of desirable ecosystem characteristics.

The Estuary Habitat Restoration Council developed this Strategy building on work done by Council member agencies, environmental professionals, and private conservation organizations, including Restore America's Estuaries. In consultation with restoration professionals, scientists, academics, and nonprofit organizations, Restore America's Estuaries has developed A National Strategy to Restore Coastal and Estuarine Habitat. The document provides a framework for restoring function to estuary and coastal habitats, which can aid in focusing restoration efforts to reach this Strategy's million-acre goal.

This Strategy is dynamic. It will evolve over time according to information collected through monitoring and research programs and feedback from restoration practitioners, scientists, and public agencies and private organizations. Reaching the one-million-acre goal will require further close coordination among the Federal partners and tribal, State, local and private partners as habitat priorities, project efficiencies, and funding sources are identified.

Trends of Estuarine Habitats

Section 106(d) of the Estuary Restoration Act of 2000 requires that the National Strategy include guidance on addressing trends of estuarine habitats, including historic losses, estimated current rate of loss, the extent of the threat of future loss or degradation, and a measurement of the rate of change. For purposes of this Strategy, estuarine habitats will include the complex of physical and hydrologic features and living organisms within estuaries and their associated ecosystems, including salt and fresh water coastal marshes, coastal forested wetlands and other coastal wetlands, maritime forests, coastal grasslands, tidal flats, natural shoreline areas, shellfish beds, sea grass meadows, kelp bed, river deltas, and river and stream corridors under tidal influence.

Understanding trends as well as the structure, function and extent of various estuarine habitats is key to an effective and efficient restoration program. Trends data provide a chronological and geographic picture of change in habitat types, thereby helping managers to recognize ecological stability or stress. These help to identify existing or potential habitat threats so that early action can be taken to avoid or rectify them. This information can be used to establish a baseline from which to quantify restoration success. By identifying both healthy and impaired ecosystems, trends information can help managers to target habitat restoration efforts in a cost-effective manner. For these reasons this Strategy encourages the development and use of trends data in designing restoration programs for estuarine habitats. The Strategy recognizes that when using this data, it is important to understand the conventions and mapping standards that underlie data collection so that they can be appropriately applied. For instance, it may not be accurate to make local assumptions based on data that was meant for a national study.

The Council will use a classification system based on Cowardin *et al.* (1979). The Cowardin classification system is the national standard for wetland mapping, monitoring and data reporting as determined by the Federal Geographic Data Committee (*http://www.fgdc.gov/*). Examples of the relevant classes are: Estuarine subtidal, including open water, bay bottoms, and reefs; estuarine intertidal emergents, such as salt marsh; estuarine intertidal forested/shrub, such as mangroves; estuarine intertidal unconsolidated shore, such as beaches, bars and mudflats; and estuarine aquatic bed, such as submerged or floating estuarine vegetation. Freshwater habitat categories to be included because they are estuarine-associated ecosystems or are found in the Great Lakes include: palustrine forested wetlands, such as forested swamps or riparian zones; palustrine shrub wetlands; and palustrine emergents, including inland marshes and wet meadows. As appropriate and supported by the scientific and resource management communities, the Council will recognize and use regional refinements in classification of habitat types that augment the Cowardin system.

Within two years after publication of this Strategy, the Council will review information available for estuarine habitats concerning historic losses, current rates of loss, the extent of the threat of future loss or degradation, and measures of the rate of change, and identify gaps in trends information that can be addressed by the Council members and/or its partners. Data collected will be used to help identify regional and national restoration priorities.

Organizations and agencies preparing or updating estuary management or restoration plans should incorporate available information on estuary trends in their documents and consider this data when establishing project priorities. In addition, project proposals submitted to the Council for potential funding should address existing information about the trends for estuarine habitat types in the project area and explain how this information was considered when developing the project proposal. Among the sources of information to consult are historic maps and navigation charts, tribal, State and local agencies, available aerial photography and other remote sensing data, Federal agencies such as the members of the Estuary Habitat Restoration Council and the United States Geological Survey, reports on Federal projects in estuaries, and universities conducting research in local estuaries.

It is also important to collect information relating to the causes of change in estuarine habitat types, distribution, quality and quantity. This will help in defining the types of projects that may be needed, setting realistic goals, and influencing the design. For example, if the primary limiting factor is water quality and the source of the problem is upstream, success of any estuary restoration project might be limited until the upstream problem is resolved. The Council will give priority to projects that clearly address historic losses in areas where steps are being taken to address the causes of degradation and where there is a reasonable likelihood of success in the foreseeable future.

Estuary Management or Habitat Restoration Plans

This Strategy will be implemented in a manner consistent with estuary management or habitat restoration plans. An estuary habitat restoration plan is defined in the Act as "* * * any Federal or State plan for restoration of degraded estuary habitat that was developed with the substantial participation of appropriate public and private stakeholders." These plans include (but are not limited to) the estuarine habitat restoration components of comprehensive conservation and management plans approved under section 320 of the Federal Water Pollution Control Act, lakewide management plans or remedial action plans developed under section 118 of the Federal Water Pollution Control Act, management plans approved under the Coastal Zone Management Act of 1972, and the interstate management plan developed pursuant to the Chesapeake Bay program under section 117 of the Federal Water Pollution Control Act.

Effective estuary habitat restoration plans typically contain common elements such as focusing on the watershed as the basic management unit, integrating good science with sound decision-making, and emphasizing collaborative problem solving. Also essential is public and private stakeholder participation. This is crucial to the final success of any plan, because those individuals and private interests affected by measures to maintain and restore the estuary are ultimately responsible for implementing the plan. Providing them the opportunity to design and contribute during early planning stages promotes "buy-in" when the time comes to undertake restoration actions and activities.

Another component of successful restoration plans is clearly identifying a central goal or set of goals and describing means for measuring progress toward achieving these goals. Performance measures may be as simple as the number of acres of habitat directly restored. Many federally approved estuary management and restoration plans track major milestones or other implementation activities to ensure progress is occurring, or if it is not, to identify what necessary steps to take to move forward.

Successful plans also include trend assessment, which is critical to watershed characterization, such as loss of historic estuarine habitat, land use, development, recreation, and fisheries pressures. This information is necessary to identify problems facing a given watershed and to select those actions necessary to return it to the desired state. Status and trend information can help to assess the condition of the highest priority resources and can forecast future conditions should current trends continue. It can also highlight data gaps.

Finally, plans should identify management and restoration priorities. Identifying regional or estuary-level restoration priorities will help projects address the most critical habitat needs. The Council will give priority to those projects that have the best potential to restore habitat functions successfully. Improved planning will also allow benefits to be accrued over a larger scale, enhancing the overall effectiveness of restoration efforts.

In accordance with the Act, every project considered for funding under this authority must address restoration needs identified in an estuary habitat restoration plan. Additionally, one of the factors for the Secretary of the Army (Secretary) to consider when selecting a project to fund is whether the project is part of an approved Federal estuary management or habitat restoration plan. This selection criterion will help ensure that the Strategy is implemented in a manner consistent with such plans.

Agency staff supporting the Council participated in and reviewed the results of a recent effort supported by the National Oceanic and Atmospheric Administration and led by Restore America's Estuaries, a nongovernmental organization, to review existing estuary restoration plans. Plans reviewed included those developed for Federal programs, such as the National Estuary Program (Comprehensive Conservation and Management Plans), State Coastal Zone Management Plans, and other Tribal and State plans; and watershed or estuary plans, such as the Puget Sound Water Quality Management Plan and The Nature Conservancy's Ecoregional Plans. Review of these plans revealed that the level and sophistication of planning for estuarine and coastal habitat restoration varies significantly among the regions and watersheds of the United States. In some coastal areas, only broad, coastal management planning has been completed, while in other areas sophisticated planning

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efforts with strong community and stakeholder participation have determined specific habitat restoration goals and priorities.

By working with tribal, State and local agencies and nongovernmental organizations, the Council will help to identify gaps in planning, and encourage sharing of information and other collaborative efforts to improve restoration plans. The Council will also seek to promote coordination of planning activities associated with other tribal, State and Federal programs. For example, the Council will encourage regional planning workshops, bringing together resource managers, scientists, and other stakeholders to establish restoration goals and priorities. The Council could also identify and recommend the use of successful planning frameworks such as those developed by the National Estuary Program and other examples.

Ecosystem Level Approach

This Strategy recognizes that successful estuary restoration projects with multiple goals will improve ecosystem function. Restoration projects should be designed using an ecosystem or watershed approach to establish a self-sustaining area that provides the structure and function necessary to support the many interrelated physical, biological, and chemical components of healthy estuarine habitats. The definition of "self-sustaining" will vary according to specific site conditions, the landscape context, and project goals, but will generally include those habitats that require little or no high cost maintenance following the period of initial establishment and adaptive management. The prospects for self-sustainability can be enhanced by ensuring that the original causes of habitat degradation have been addressed, both within and surrounding the restoration site.

While protection is not explicitly included within the scope of the Estuary Restoration Act, restoration activities should be planned and performed with awareness of the surrounding land use/land cover. Siting a restoration project close to protected areas can increase the habitat effectiveness of both the restoration area and nearby protected areas, by extending wildlife corridors, decreasing edge effects, and ultimately forming a more intact ecosystem.

An ecosystem or watershed approach will facilitate the development of projects with multiple benefits. Examining how actions fit into the surrounding area and considering economic, recreational, water quality, land use, and other parameters, are necessary to achieve restoration goals. Estuarine habitats are a web of interrelated components, each supporting and depending on the other for healthy function.

Estuary restoration projects that include physical and functional restoration should also include objectives to provide healthy ecosystems to support wildlife, including endangered and threatened species, migratory birds, and resident species of an estuary watershed, as well as fish and shellfish, including commercial and recreational fisheries.

Restoration of healthy ecosystem function can provide improved water quality and flood control benefits. For example, healthy and intact tidal wetlands filter water flowing from rivers and tributaries to the ocean, remove pollutants from runoff and trap and assimilate nutrients. Estuarine wetlands also have the capacity to store floodwater and can provide a critical physical buffer between land and water, protecting communities from flooding and storm surge.

Healthy estuaries also provide multiple opportunities for outdoor recreation, such as recreational fishing, boating, birding, and a variety of water sports. The recreation industry dependent on healthy estuaries provides significant income to coastal regions. Restoration projects completed under this Strategy may incorporate recreational features that are compatible with the primary goal of restoring healthy habitat function.

In its review of project proposals, the Council will support projects developed in an ecosystem context with multiple benefits and those that utilize natural processes to restore and maintain estuary habitat. The Council will work with others to share examples of particularly effective projects that exemplify the ecosystem approach.

Partnerships

To achieve the goal of restoring one million-acres of estuarine habitat, it will be important to involve individuals and organizations from both the public and private sectors. Enhancing partnerships among agencies and establishing new public-private partnerships is a central theme of the Act and a critical part of this Strategy.

In order to meet the goals of the Act, the Council will improve coordination among existing restoration programs by reviewing and discussing programs administered by agencies represented on the Council, and developing shared goals and objectives for habitat restoration. Although agencies may differ in their implementation strategies, developing common goals will facilitate coordination. The Council will also coordinate with tribal and State habitat restoration programs to improve the effectiveness of restoration efforts.

In order to maximize public-private partnerships, the Council encourages collaboration among public agencies, private organizations, companies, and individuals (*e.g.*, private landowners, hunters, birders, fishermen, *etc.*) in restoration efforts. This connectivity encourages private organizations, companies, landowners and others to bring their resources (financial or in-kind) to the table to assist in planning and implementing successful restoration projects. There are several existing programs that provide models for successful partnerships, including the Coastal America Corporate Wetlands Restoration Partnership, a voluntary public-private partnership in which corporations join with Federal, tribal and State agencies to restore wetlands and other aquatic habitats. The Joint Venture Partnerships developed to implement the North American Waterfowl Management Plan provide another model of regionally based partnerships (public/private/tribal) that plan and implement habitat projects within a regional and international context using diverse funding sources, notably the North American Wetlands Conservation Act grants program. The Strategy recognizes that partnership models will vary throughout the country and need to be broad enough to allow for regional differences and local preferences.

Private support can range from providing materials or funding to the use of volunteers for hands-on restoration or monitoring. One way to encourage resourceful, active partnerships, and especially to acknowledge the efforts of volunteers, is to establish annual awards recognizing successful restoration efforts. These awards may be given to a wide variety of groups, including nongovernmental organizations, individuals, businesses, and local, State, tribal, and Federal agencies to reward efforts at all levels.

Private partnerships may also be critical for those projects involving demonstration or pilot testing of an innovative technology. The estuarine habitat restoration program established in the Act requires a non-Federal sponsor to provide a minimum of 35 percent of the costs of a restoration project. However, when innovative technology is involved, the percentage required to be contributed by the non-Federal sponsor shall be reduced to 15 percent for the incremental cost of using the new technology. The Council will consider technology "innovative" if it involves a new process, technique, or material or uses existing processes, techniques, or materials in a new application. The non-Federal sponsors must provide all of the lands, easements, rights-of-way and relocations. The non-Federal sponsor is also responsible for all costs associated with operation, maintenance, replacement, repair and rehabilitation of the project, including monitoring. This presents many opportunities for the involvement of a broad array of individuals and organizations to participate in the restoration effort.

To expand the base of support for restoration, the Council will encourage member agencies and private partners to maintain and expand existing web sites that provide information on both public and private sources of funding for estuary projects. Web sites should include links to other web sites that emphasize accomplishments of completed restoration projects. Effective implementation of any restoration plan requires a well-developed funding strategy that identifies governmental, nonprofit, and private resources to provide support both in the near and long term. The Council will work with other Federal, tribal, State and local agencies, nongovernmental organizations and private parties to identify and publicize funding sources, and will also identify examples of effective partnerships that have implemented estuary restoration projects. Examples include: The U.S. Environmental Protection Agency's Environmental Finance Program, the National Oceanic and Atmospheric Administration's Community-based Restoration Program, the U.S. Fish and Wildlife Service's Coastal Program, the U.S. Department of Agriculture's Wetland Reserve Program, Restore America's Estuaries' inventory of federal funding sources, the National Fish and Wildlife Foundation and the Coastal America Corporate Wetlands Restoration Partnership.

Habitat Restoration Program

The Act establishes "an estuary habitat restoration program under which the Secretary may carry out estuary habitat restoration projects and provide technical assistance in accordance with the requirements of this title." This is one means for achieving the one-million-acre goal of the Strategy. The statute includes requirements for non-Federal origination of projects, selection criteria, cost-sharing, operation and maintenance, authority for nongovernmental agencies to be sponsors, a requirement for a written agreement between the non-Federal partner and the Secretary, and potential delegation of project implementation.

The Act defines the term estuary habitat restoration activity to mean "an activity that results in improving degraded estuaries or estuary habitat or creating estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining system integrated into the surrounding landscape." Projects funded under this program will be consistent with this definition. Eligible habitat restoration activities include establishment or improvement of chemical, physical, hydrologic, and biological features and components associated with an estuary. Projects that may be considered include, but are not limited to, improvement of estuarine wetland tidal exchange or reestablishment of historic hydrology, providing fish passage, establishment of riparian buffer zones, construction of reefs to promote fish and shellfish production, reintroduction of native species or populations, and control of invasive species. Cleanup of pollution for the benefit of estuarine habitat may be considered, as long as it does not meet the definition of excluded activities in the Act. Excluded activities are those required for mitigation of adverse effects of a regulated activity or that constitutes restoration for natural resource damages. However, synergy may be achieved by combining estuarine habitat restoration activities with otherwise "excluded activities" as long as the activities can be clearly separated for cost-sharing and other purposes.

Section 104(c) of the Act contains four required elements and seven selection factors to be considered by the Secretary of the Army when determining which projects to fund. Required elements include: contribution to meeting restoration needs identified in an estuary plan, consistency with this Strategy, inclusion of a monitoring plan, and satisfactory assurance that the non-Federal sponsor has adequate authority and resources. Selection factors listed in the Act are: Inclusion in an approved Federal plan, technical feasibility, scientific merit, encouragement of increased cooperation among government agencies at all levels, fostering of public-private partnerships, cost-effectiveness, and whether the State has a dedicated source of funding for acquisition or restoration of estuarine habitat. If a project merits selection based on the above criteria, then priority consideration will be given to a project if it: (a) Occurs within a watershed where there is a program being implemented that addresses sources of pollution and other activities that otherwise would adversely affect the restored habitat water quality in the watershed; or (b) includes an innovative technology having the potential to achieve better restoration results than other technologies in current practice, or comparable results at lower cost in terms of energy, economics, or environmental impacts. More detailed information about processes to be used for accepting, reviewing, evaluating and selecting projects to be funded under the Act will be contained in documents to be released at a future date.

The Council will consider the factors discussed above during its review and ranking of proposals for the Secretary's consideration. Additional criteria may also be developed by the Council to facilitate review and these will be included in the program guidance. The list of recommended projects will be provided in priority order. The Secretary may consider other factors when selecting projects to fund from the list provided by the Council.

In addition to considering the selection and priority factors in sections 104(c)(3) and (4), the Secretary will also select a balance of smaller and larger estuarine habitat projects and ensure an equitable geographic distribution of the funded projects. The Council recognizes that the scope and benefits of a project are not always directly proportional to the cost and that projects are sometimes difficult to characterize adequately in terms of acreage to be restored. For purposes of selecting a balance of smaller and larger estuarine habitat restoration projects, the Council will use a combination of cost and acreage as criteria to define small projects. In general, a small project would be one with a Federal cost-share (applied to planning, design and construction activities) of $250,000 or less and that manipulates 50 acres or less. The Council will discuss and classify projects that cannot be easily characterized as "small" or "large" because of conflicts between cost and acreage factors. The availability of funding, project costs, and the nature of the proposals will affect the ability to assure equitable geographic distribution of projects funded by this program. In any one year, the Council may recommend funding more projects in one region than another but will consider the number, scope and cost of funded projects in a region when making subsequent funding decisions.

The goal will be to select those projects that address national priorities while assuring that all regions of the country benefit from the program. The

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Council will explore various means for defining national priorities and consider those priorities in project selection.

Innovative Technology

To support the incorporation of innovative technologies in restoration projects conducted under the Act, the Council, in cooperation with the National Estuarine Research Reserve System and other federal research and development facilities, will encourage the development of innovative restoration technology and monitoring capabilities. This will include efforts to identify and transfer innovative restoration technologies, methods, and monitoring strategies to program participants for future use in restoration activities carried out under the Act.

Ensuring Success

The Act stipulates that monitoring is essential for evaluating and documenting our progress toward reaching the goal of restoring one million-acres of estuarine habitat. By closely tracking progress at the project level, we can determine whether individual projects contribute to meeting the goals of estuary and regional restoration plans, and tally habitat acreage restored over a national scale. In addition to monitoring at the project level, ecosystem-level monitoring may also be needed to judge restoration success. Monitoring information will allow restoration planners and practitioners to modify their efforts according to on-the-ground results, and can build long-term public support for habitat protection and restoration efforts.

Because monitoring is essential to both documenting success and adapting project and program approaches, it should be a central concern of those designing a restoration project or regional restoration plan. For each habitat type to be restored, the monitoring plan should define the desired structure and functions in the context of project goals, and identify attributes indicating those functions. Quantitative performance standards for projects should include functional and structural elements and be linked to appropriate, local reference habitats that represent "target conditions." It may also be useful to compare the project site to degraded, non-restored "control" sites to better document project-induced improvements in habitat condition.

Ideally, restoration goals should be quantitative, as well as spatially and temporally specific. Project goals should also be measurable and realistic. A realistic goal should consider causes of past decline of the habitat proposed for restoration and surrounding land cover and ecosystem conditions. Monitoring data should be used to guide project operations and maintenance.

Specific project goals will determine the appropriate complexity of each monitoring plan. The project must include monitoring on a regular basis and over a meaningful time period. The length of the ideal monitoring program will vary depending on the habitat type and project goals for restoring function, but should always include pre-construction measurements to establish baseline conditions, monitoring during project construction to determine whether to adjust techniques or goals, and post-construction monitoring to confirm success of the restoration and alert project managers to the need for adjustments. Project monitoring should document any changes to the original construction specifications, including what problems were encountered, the reasoning behind any changes, and any changes the project staff would recommend with the knowledge they now possess. Information on changes from baseline conditions and comparison to reference or control sites should be included as well.

Beyond monitoring individual restoration projects, local, tribal, State or regional groups should also conduct monitoring over the estuary or regional scale to allow a more complete evaluation of restoration successes. System-wide monitoring of water quality and other habitat parameters can gauge ecosystem improvements beyond those achieved at project sites. Additionally, remote sensing may be useful in documenting both baseline habitat information and large-scale changes in habitat coverage and conditions. Broad-scale monitoring programs such as those currently being developed through the National Oceanic and Atmospheric Administration's National Estuarine Research Reserve System program and the U.S. Environmental Protection Agency's National Estuary Program should be consulted in the development of long-term monitoring programs.

The restoration and maintenance of healthy coasts and estuaries will require the long-term support of a broad cross-section of the public. Including local communities in planning and implementing restoration projects will build interest in protecting and maintaining restored habitat. Increased awareness of the attributes needed to sustain healthy habitat will increase local stewardship of the environment and will help to ensure the long-term success of restoration projects.

The National Oceanic and Atmospheric Administration, in consultation with the Council, will develop standard data formats for project monitoring, along with requirements for types of data collected and frequency of monitoring. These standards will build on existing inter-agency efforts to develop monitoring protocols and restoration databases. These standards are not intended to limit the types of information gathered by project managers, but rather to ensure that data will be useful to other parties, and to facilitate regional and national tracking of restoration success. Consistent data collection and reporting standards should clarify results, make selection and justification of restoration methods more straightforward, ensure that success is documented based on sufficient data, enhance the restoration knowledge base, and increase the comparability of data among restoration projects.

In addition to developing monitoring data standards, the National Oceanic and Atmospheric Administration will also maintain a database of information concerning estuarine habitat restoration projects carried out under the Act, including information on project techniques, project completion, monitoring data, and other relevant information. This database will be Internet-accessible, to allow widespread dissemination and use of restoration project and monitoring data.

Conclusions

The actions described in this Strategy facilitate reaching the goal of restoring one million-acres of estuarine habitat by 2010. There are many existing programs and organizations actively involved in estuary restoration whose efforts will also contribute significantly to estuary restoration. Examples include the National Estuary Program, the National Estuarine Research Reserve System, the U.S. Fish and Wildlife Service's Coastal Program and North American Waterfowl and Wetlands Program, Restore America's Estuaries member organizations, and the program implementing the Coastal Wetlands Planning, Protection, and Restoration Act.

The Strategy is intended to be dynamic. Working with the organizations listed above and other interested stakeholders, the Council will review and refine this Strategy over time in an iterative process, as new information becomes available and progress toward meeting the goals of the Act is evaluated. Section 108(a) of the Act requires the Secretary to report to Congress at the end of the third and fifth fiscal years. As part of this process the Council will review the Strategy and update as necessary.

The Council is preparing additional documents regarding habitat restoration program implementation and the development of monitoring standards that will be published upon completion. As indicated in this Strategy, the Council will promote a variety of efforts to facilitate promotion of partnerships and efficient, effective restoration of estuarine habitats.

References: Cowardin, L.M. V. Carter, F.C. Golet, and E.T. LaRoe. 1979. "Classification of wetlands and deepwater habitats of the United States." U.S. Fish and Wildlife Service. Biological Services Program; FWS/OBS–79/31. 131 pp.

Restore America's Estuaries. 2002. "A National Strategy to Restore Coastal and Estuarine Habitat." Arlington, VA.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–30570 Filed 12–2–02; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 3, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 26, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Revision.

Title: U.S. Department of Education Budget Information—Non-Construction Programs Form and Grant Performance Report Form.

Frequency: Once, only per application for new awards (524).

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 23,250. Burden Hours: 421,875.

Abstract: This collection is necessary for the award and administration of discretionary and formula grants. The collections specific to ED forms are part of the reinvented process ED used for awarding multi-year discretionary grants. The new process substantially increases flexibility of the grant process by enabling all years of multi-year budget to be negotiated in at the time of initial award (Budget Information Non-Construction Programs, ED FORM 524). The U.S. Department of Education Grant Performance Report (ED Form 524B) is one of the tools used by ED Staff as a monitoring tool in the Post-Award and Grant Administration functions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2149. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30554 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 3, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4)

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Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 26, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 100. Burden Hours: 100.

Abstract: The purpose of the Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE) is to examine and evaluate ESEA Title I accountability systems and school improvement efforts in a nationally representative sample of districts and schools. This project addresses both the implementation of accountability practices in 1,300 school districts and 740 schools. The state data collection component of TASSIE will provide data on the impact of state policies that impact district and school responses to accountability requirements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2190. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30555 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On November 19, 2002, the Department of Education published a 30-day public comment period notice in the **Federal Register** (Page 69729, Column 1) for the information collection, "School Improvement: Foreign Language Assistance Program for Local Educational Agencies". Under reporting and recordkeeping burden, responses were stated as 150 and burden hours as 12,000. The correct responses are 250 and the burden hours are 20,000. The Leader, Regulatory Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*

Dated: November 26, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–30540 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On November 22, 2002, the Department of Education published a 30-day public comment period notice in the **Federal Register** (page 70415, column 2) for the information collection, "Tech-Prep Demonstration Grants". Under Type of Review, the correct type of information collection should be Revision, not Reinstatement. The Leader, Regulatory Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*.

Dated: November 26, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–30541 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 26, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Direct Loan Income Contingent Repayment Plan Alternative Documentation of Income.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 690,685.

Burden Hours: 227,927.

Abstract: A William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan uses this form to submit alternative documentation of income if the borrower's adjusted gross income is not available or does not accurately reflect the borrower's current income.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2127. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at his e-mail address *Lew.Oleinick@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30542 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 26, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Direct Loan Income Contingent Repayment Plan—Consent to Disclosure of Tax Information.

Frequency: Once every 5 years.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 314,861.

Burden Hours: 62,972.

Abstract: This form is the means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan provides written consent for the Internal Revenue Service to disclose certain tax return information to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2126. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at his e-mail address *Lew.Oleinick@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30543 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

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DATES: Interested persons are invited to submit comments on or before January 2, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 26, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Even Start and Title I Preschool Classroom Literacy Environment and Outcomes (CLEO) Study.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 3,500.

Burden Hours: 1,155.

Abstract: CLEO will test the effectiveness of three different two-generation family literacy interventions in a sample of Even Start projects and will conduct a screener in a national sample of Title I preschool projects to evaluate the feasibility of conducting an impact study.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2142. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to James Jones at his e-mail address *James.Jones@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30552 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice/extension of comment period.

SUMMARY: On October 15, 2002, the Department of Education published a 30-day public comment period notice in the **Federal Register** (Page 63635, Column 3) for the information collection, "Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program." Because of a system software error, the contents of *http://edicsweb.ed.gov* were not updated to reflect the materials submitted to OMB. The Leader, Regulatory Management Group, Office of the Chief Information Officer, sincerely apologizes for any inconvenience caused by this error and hereby extends the public comment period through January 3, 2003.

While the contents of *http://edicsweb.ed.gov* have been updated to reflect the correct information, written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Dated: November 26, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–30553 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–12; Environmental Management Science Program (EMSP): Research Related to Transuranic and Mixed Wastes

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announce its interest in receiving grant applications to support the performance of innovative, fundamental research on the characterization of transuranic (TRU) and mixed wastes (MW) that are currently stored at DOE sites, or will be produced as part of DOE's environmental cleanup efforts.

DATES: The deadline for receipt of formal applications is 4:30 p.m., e.s.t., Tuesday, March 4, 2003, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the *IIPS Help Desk at: HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.science.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT:

Dr. Roland F. Hirsch, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, SC–73/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone: (301) 903–9009, facsimile: (301) 903–0567, E-mail: *roland.hirsch@science.doe.gov*, or

Mr. Mark Gilbertson, Office of Science and Technology, Office of Environmental Management, EM–50, 1000 Independence Avenue, SW., Washington, DC 20585, telephone: (202) 586–7150, facsimile: (202) 596–1492, E-mail: *mark.gilbertson@em.doe.gov*.

The full text of Program Notice 03–12 is available on the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: *The Environmental Management Science Program:* Over the past 60 years, the United States created an industrial complex to develop, test, manufacture, and maintain nuclear weapons for national security purposes. The production and testing of nuclear weapons created a legacy of significant environmental contamination, ranging from uranium mining and milling, waste disposal, and radionuclide migration in ground water and soil. In 1995, the 104th Congress authorized creation of the Environmental Management Science Program (EMSP) to develop a long term, basic science infrastructure that would focus on scientific and technical challenges facing DOE's environmental cleanup effort. Since its inception in 1996, the Program has held seven competitions and has awarded over $320 million in funding to nearly 400 research projects. To address the largest environmental cleanup program in the world, from a cost perspective, EMSP has the following objectives:

- To provide scientific knowledge that will revolutionize technologies and cleanup approaches to significantly reduce future costs, schedules, and risks;
- To "bridge the gap" between broad fundamental research that has wide-ranging applicability and needs-driven applied technology development;
- To focus the Nation's science infrastructure on critical DOE environmental management problems.

Basic research proposed under this Notice should contribute to DOE's environmental management activities by decreasing risk for the public and workers, providing opportunities for major cost reductions, reducing the time required to achieve DOE's mission goals, and, in general, should address problems that are considered intractable without new knowledge.

TRU and Mixed Waste Challenge: DOE's inventory of transuranic and mixed wastes (TM wastes) includes about 155,000 cubic meters of waste stored on some 30 DOE sites and another 450,000 cubic meters of buried waste at least some of which is likely to require retrieval in the course of DOE's site cleanup program. Most of the stored inventory is in 55-gallon drums or other containers. Although some of the buried waste is similarly packaged, knowledge of the condition of the containers and their contents is limited.

Information on DOE's waste inventory has been summarized in a recent report (USDOE, 2001), and is also available via the World Wide Web at DOE's Central Internet Database (*http://cid.em.doe.gov*). A short summary of the nature of DOE's TM wastes, including definitions of TRU and MW, is given in the "Background Information" section of this Notice.

While DOE is making a concerted effort to accelerate the removal of TM wastes from its sites, the size of the inventory translates to a multi-decade effort that will require handling, characterizing, shipping, and disposing of hundreds of thousands of waste drums and other containers at a total cost of billions of dollars.

Overall, it is the intent of this Notice to solicit and encourage research that will provide the scientific basis for the new technologies and approaches that will be necessary to characterize DOE's MW and TRU wastes over the next decades, and to enhance the quantity and quality of scientific information available for decision-making.

Research Needs: This research Notice has been developed for Fiscal Year 2003, with the primary objective of developing scientific knowledge that will enable major advances in technologies available for characterizing TRU and MW waste. This section provides a summary of research needs in this area, and is based on a National Academy of Sciences, National Research Council (NRC) report published in 2002 entitled "Research Opportunities for Managing the Department of Energy's Transuranic and Mixed Wastes (National Research Council, 2002"). That report identified significant knowledge gaps and research opportunities in a number of areas; however, due to the limited funds expected to be available to support new EMSP projects in Fiscal Year 2003, this Notice focuses on research needs for waste characterization, including characterization and detection of buried wastes.

Research is needed to improve the efficiency of characterizing DOE's TRU and mixed waste inventory. This includes research toward developing faster and more sensitive characterization and analysis tools to reduce costs and accelerate throughput, particularly for waste that produces sufficient penetrating radiation that it requires remote handling. It also includes research to develop a fuller understanding of how waste characteristics may change with time (chemical, biological, radiological, and physical processes) to aid in decision making about disposition paths and to simplify the demonstration of regulatory compliance.

Determining the physical, chemical, and radiological properties of TM wastes pertinent to handling, processing, transportation, and storage is costly and time-consuming. The problem is amplified by the wide variety of the wastes and their heterogeneity. Improving and simplifying waste characterization can reduce costs and increase the rate of shipping wastes to disposal facilities.

There is a need for faster and more sensitive characterization technologies, for making automated sampling more reliable, and for improving statistical sampling methods. There is a lack in basic knowledge of how waste characteristics may change with time, including both short-term changes that affect storage and shipment and long-

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term changes that may occur in a disposal facility. This lack of knowledge drives conservatism in characterization, transportation, and disposal requirements. Possible microbial effects in waste have generally been ignored.

The greatest challenges for the next generation of characterization technologies will be to provide the following:

• More rapid, automated nondestructive assay and evaluation methods;

• More sensitive nondestructive assay and evaluation technologies for larger containers and hard-to-detect contaminants; and

• Improved methods, based on fundamental modeling, to derive present and future waste characteristics from a limited number of sampling parameters.

Research toward new, noninvasive, remote imaging and image recognition methods and in-drum sensors to provide faster and more sensitive technologies for characterization could lead to significant savings in time, cost, and risk of worker exposure. Although noninvasive diagnostics are highly preferred, the use of minimally invasive sensors also has promise.

Research is needed to evaluate the microbiology of MW and TRU wastes. This research should focus on identifying the microorganisms that exist in the waste, and evaluating their relationship to waste materials (*i.e.*, whether these microbes affect the hazardous or radioactive components of the waste in ways that make it more or less toxic, or more or less suitable for disposal in hazardous waste, low-level waste, or other landfills or repositories. Additional research is needed to develop tools for rapidly diagnosing microbial activity or identifying specific microbes.

One of the most beneficial cost-saving tools would be the formulation of more reliable predictive models, validated by experimental data, of how waste characteristics may change with time due to chemical, biological, radiological, and physical processes. This would be most useful in predicting deleterious processes that might occur in the waste, such as gas generation or matrix degradation.

Program Funding: It is anticipated that up to a total of $2,000,000 of Fiscal Year 2003 funds will be available for new EMSP awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice. A parallel Notice with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers (FFRDCs). All projects will be evaluated using the same criteria, regardless of the submitting institution.

Collaboration and Training: Applicants to the EMSP are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National Laboratories, where appropriate. Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to EMSP.

Application Format: Applicants are expected to use the following format in addition to following instructions in the Office of Science Application Guide (*see: http://www.science.doe.gov/production/grants/guide.html*). Applications must be written in English, with all budgets in U.S. dollars. In the case of applications involving multiple institutions, only one application that encompasses the entire scope of the proposed research should be submitted; however, the application should include separate budgets and budget explanations for each participating institution.

• Office of Science Face Page (DOE F 4650.2 (10–91))

• Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section)

• Table of Contents

• Project Abstract (no more than one page)

• Budgets for each year and a summary budget page for the entire project period (using DOE F–4620.1)

• Budget Explanation. (Note: applicants are requested to include in the travel budget funds to attend: (1) An initial research kick-off meeting; (2) an annual EMSP workshop; and (3) one or more extended visits (1 to 2 weeks in duration) to a cleanup site by the Principal Investigator, a senior staff member, or a collaborator

• Budgets and Budget explanations for each collaborating institution, if any

• Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary, up to a total of 35 pages)

—Project Goals
—Significance of Project to the EM Mission
—Background
—Preliminary Studies (if applicable) and/or Summary of Results from Previous Research (if application is a renewal)
—Research Plan
—Research Design and Methodologies

• Literature Cited

• Collaborative Arrangements (if applicable)

• Biographical Sketches of Senior Investigators (limit 2 pages per investigator)

• Description of Facilities and Resources

• Current and Pending Support for each senior investigator

Application Categories: In order to properly classify each application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, selected from the following list.

Field of Scientific Research

1. Actinide Chemistry.
2. Analytical Chemistry and Instrumentation.
3. Engineering Sciences.
4. Geochemistry.
5. Geophysics.
6. Inorganic Chemistry.
7. Materials Science.
8. Biology (including Microbiology).
9. Other.

Application Evaluation and Selection

Scientific Merit: Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria listed in descending order of importance as codified at 10 CFR part 605.10(d):

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of applicant's personnel and adequacy of proposed resources;

4. Reasonableness and appropriateness of the proposed budget.

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution(s).

Relevance to Mission: In addition to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of EMSP. DOE will also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Additional information about the general program can be found at: *http://emsp.em.doe.gov*. Past research solicitations, abstracts, and research reports of projects funded under EMSP can be found at: *http://emsp.em.doe.gov/researcher.htm*.

Applicants are encouraged to demonstrate a linkage between their research projects and significant problems related to MW and TRU waste at DOE sites. This linkage can be established in a variety of ways; for example, by elucidating the scientific problems to be addressed by the proposed research and explaining how the solution of these problems could lead to improved capabilities that would reduce costs, accelerate throughput, or reduce the risk of worker exposure. It is understood that given the nature of basic research, there will not always be a clear pathway between research results and application to site remediation.

A listing of points of contact and site web pages is provided for applicants who may have site-specific questions related to TRU and MW problems:

Hanford (http://www.hanford.gov): Rudy Garcia, (509) 376–5494, *Rudolph_F_Garcia@rl.gov*.

Idaho (http://www.id.doe.gov): William Owca, (208) 526–1983, *owcawa@id.doe.gov*.

Oak Ridge (http://www.oro.doe.gov): for TRU—Gary Riner, (805) 241–3498, *rinerg@oro.doe.gov;* for MW—Brian Westich, (805) 241–2198, *westichb@oro.doe.gov*.

Savannah River (http://sro.srs.gov): for TRU—Bert Crapse, (803) 725–9866, *Herbert.Crapse@srs.gov* or Ann Gibbs, (803) 952–2265, *Ann.Gibbs@srs.gov;* for MW—Mike Simmons, (803) 725–1627, *Jonathan.Simmons@srs.gov* or Bernie Mayancsik, (803) 952–2271, *Bernadette.Mayancsik@srs.gov*.

Waste Isolation Pilot Plant (http://www.wipp.carlsbad.nm.us): George Basabilvazo, (505) 234–7488, *George.Basabilvazo@wipp.ws*

Application Guide and Forms: Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available on the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is made.

Background Information: Information on DOE's waste inventory has been summarized in a recent report (USDOE, 2001), and is also available via the World Wide Web at DOE's Central Internet Database (*http://cid.em.doe.gov*). The two categories of waste listed in these sources that are pertinent to this Notice are transuranic (TRU) and mixed low-level waste (MLLW). Transuranic waste is defined by DOE Order 435.1 as waste that contains more than 100 nanocuries per gram arising from alpha-emitting radionuclides having atomic numbers greater than that of uranium (92) and half-lives greater than 20 years. Low-level waste (LLW) is defined in the Low-Level Radioactive Policy Amendments Act of 1985 by what it is not, and consequently is a very broad category of waste. LLW is defined as waste that is not spent nuclear fuel, not high-level waste resulting from reprocessing of spent nuclear fuel, and not byproduct material as defined in section 11e.2 of the Atomic Energy Act of 1954. LLW encompasses materials that are slightly above natural radiation background levels to highly radioactive materials that require extreme caution when handling. Hazardous waste is defined by the U.S. Environmental Protection Agency (EPA) in Title 40 of the Code of Federal Regulations, parts 260 and 261, as a subset of solid wastes that pose substantial or potential threats to public health or the environment and that meet any of the following three criteria: (1) Waste that is specifically listed as a hazardous waste by EPA; (2) waste that exhibits one or more of the characteristics of hazardous waste (ignitability, corrosiveness, reactivity, and/or toxicity); or (3) waste that is generated by the treatment of hazardous waste, or is contained in a hazardous waste. Mixed low-level waste (MLLW) is waste that meets the above definitions of both LLW and hazardous waste. It contains low levels of radioactive contamination as well as materials that are chemically hazardous. Mixed transuranic waste (MTRU) is waste that meets the definitions of both TRU and hazardous wastes. The EPA estimates that over half of DOE's TRU inventory is MTRU (EPA 2002); however, because all of DOE's retrievably stored, defense TRU wastes are slated for disposal in the Waste Isolation Pilot Plant (WIPP), DOE no longer distinguishes MTRU as a special category in its inventory (USDOE, 2001).

Since 1970, DOE sites have stored most TRU waste and MW in retrievable 55-gallon drums or larger containers for future treatment (if needed) and disposal. Prior to 1970, DOE sites buried materials that meet the current definition of TRU waste and MW in shallow land facilities, within about 30 meters of the surface. A much smaller fraction of these wastes were buried at depths between 30 and 300 meters. Most of this waste was buried in 55-gallon drums; however, some was buried in other types of containers, and some had no form of durable containment. At the time, DOE considered buried wastes to be permanently disposed, but some of the buried wastes may require retrieval and treatment.

The previous practice of discharging low-level liquid wastes to retention basins has resulted in the generation of contaminated soils and sediments. DOE recognizes that some of these materials are sufficiently contaminated to warrant retrieval. Such materials are termed "*ex-situ* contaminated media" in the inventory summary (USDOE 2001). If they are retrieved, both the pre-1970 buried wastes and the *ex-situ* media will be considered newly generated waste. In addition to these historical wastes, activities at DOE sites, including environmental cleanup activities, will continue to generate new MLLW and TRU wastes over the next several decades.

The materials making up DOE's inventory of MW and TRU wastes are extremely diverse. This diversity was described in a report (USDOE, 1995) based on data compiled by the various DOE sites in order to develop site remediation plans. The inventory was divided into five groups, each with various subcategories:

1. Debris

• Metallic debris (including materials containing lead and cadmium)

• Inorganic, nonmetallic debris (*e.g.*, concrete, glass, graphite, and rock)

• Organic debris (*e.g.*, such as rubber, leaded gloves, halogenated and nonhalogenated plastics, wood, paper, and biological materials

• Heterogeneous debris (*e.g.*, composite fillers, asphalt, electronic

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equipment, and other types of organic and inorganic materials)

2. Inorganic Homogenous Solids and Soils

- Homogeneous solids (*e.g.*, ash, sandblasting media, inorganic particulate absorbents, absorbed organic liquids, inorganic ion-exchange media, metal chips and turnings, glass, ceramics, and activated carbon)
- Sludges (*e.g.*, sludges arising from wastewater treatment ponds, off-gas treatment, plating activities, and low-level reprocessing)
- Other wastes (*e.g.*, paint chips, solids, and sludges, salt waste containing chlorides, sulphates, nitrates, metal oxides/hydroxides, and other inorganic chemicals)
- Solidified homogeneous solids (*e.g.*, soil and gravel)

3. Organics

- Liquids (aqueous streams containing both halogenated and nonhalogenated organic compounds)
- Homogeneous solids (*e.g.*, particulate matter such as resins and absorbents, biological sludges, halogenated and nonhalogenated organic sludges, and organic chemicals)

4. Unique wastes

- Lab packs (*e.g.*, organic, aqueous, and solid laboratory chemicals and scintillation cocktails)
- Special wastes (*e.g.*, elemental mercury, lead, and cadmium, beryllium dust, batteries, reactive metals in bulk and as contamination in/on other components, pyrophoric particulates, explosives or propellants, and compressed gasses and aerosols)
- All others (materials placed in a final waste form are included in this category)

5. Wastewaters

- Aqueous liquids and slurries ranging from acidic to basic pH, including cyanide-containing materials.

The 1995 inventory also characterized DOE's level of confidence as to how well the wastes were characterized. In general terms, DOE has high or medium confidence that the physical nature (*i.e.*, soil or sludge) of most wastes is correctly identified, but it lacks confidence in the existing quantitative data on the wastes' chemical and radioactive constituents.

The volume and diversity of DOE's MW and TRU wastes pose significant challenges for disposing of this waste. Currently, DOE's TRU waste disposal efforts are focused on maximizing the utility of the WIPP. Several hundred thousand drums of TRU waste will need to be shipped to WIPP, and the characterization required for shipping and acceptance at the WIPP currently requires many hours and costs thousands of dollars for each drum of waste generated prior to 1999. Methods to improve characterization are therefore likely to result in significant savings of time and money.

Some components in TRU waste are problematic for shipping to or disposal in the WIPP. About two percent (approximately 14,200 drum equivalents) of DOE's TRU waste contains organic materials that continue to pose shipping problems due to potential gas generation, especially of hydrogen. Drums containing reactive and corrosive chemicals, as well as drums containing liquids, sealed containers, and gas cylinders (including paint cans) may not be accepted by the WIPP, and they are currently removed by manually sorting through the waste. Waste that is contaminated with polychlorinated biphenyls (PCBs) constitutes about one percent of the inventory, and currently cannot be accepted by the WIPP. Approximately two to four percent of the TRU waste inventory produces sufficient penetrating radiation from fission products that it requires remote handling, rather than hands-on operator contact. The requirement for remote handling greatly increases the cost and difficulty of characterizing, treating, and packaging or repackaging of this waste. Meeting the per-drum limits on heat generation and fissile material content can necessitate repackaging of the waste. In addition to increasing the waste volume, repackaging to meet these limits is expensive, time-consuming, and creates the potential for worker exposure.

DOE currently relies primarily on private contractors and commercial facilities for treating and disposing of its MLLW. (MLLW cannot be disposed in the WIPP because under current law, only TRU waste can be disposed there). The characterization and treatment of MLLW that will be necessary to meet the disposal requirements of the Resource Conservation and Recovery Act (RCRA) have received relatively little attention compared to TRU waste. Despite the general lack of quantitative chemical characterization, it is known that much of DOE's MLLW inventory contains hazardous chemicals that can be difficult to treat (*e.g.*, heavy metals, solvents and other organics, and mercury). Furthermore, there is considerable commingling of these materials, which complicates the selection of disposition options. MLLW that contains certain specified materials is prohibited from near-surface disposal under current EPA and Nuclear Regulatory Commission (NRC) regulations. These include the following:

- Liquids,
- Reactive or explosive materials,
- Flammable materials,
- Untreated biological material,
- Materials that may emit toxic gases or fumes,
- Other materials subject to the EPA's land disposal restrictions, as listed in 40 CFR 268,
- Radioactive isotopes that exceed the NRC limits for Class C wastes (>700 Ci/m3 of 63Ni, or >7,000 Ci/m3 of 90Sr, or >4,600Ci/m3 of 137Cs).

In order to be disposed, these wastes will require treatment that may be difficult and expensive. Characterization of the wastes is a necessary first step in the selection of disposition options.

References

National Research Council, 2002, *Research Opportunities for Managing the Department of Energy's Transuranic and Mixed Wastes.* National Academy Press, Washington, DC, 118pp. *http://www.nap.edu/books/0309084717/html/.*

USEPA, 2002, *Mixed Waste Glossary.* EPA Radiation Protection Program Waste Management Team. Available at: *http://www.epa.gov/radiation/mixed-waste/mw_pg5.htm.*

USDOE, 1995, *The DOE National 1995 Mixed Waste Inventory Report.* U.S. Department of Energy, Washington DC.

USDOE, 2001, *Summary Data on the Radioactive Waste, Spent Nuclear Fuel, and Contaminated Media Managed by the U.S. Department of Energy.* April 2001, U.S. Department of Energy, Washington DC *http://cid.em.doe.gov/.*

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.)

Issued in Washington DC on November 25, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30561 Filed 12–2–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–10; Experimental Program To Stimulate Competitive Research (EPSCoR); Building EPSCoR-State/National Laboratory Partnerships

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of basic science, engineering, and mathematics, announces its interest in receiving grant applications for collaborative partnerships between academic or industrial researchers from states eligible for the DOE/EPSCoR program and researchers at DOE's National Laboratories, facilities, and centers. The purpose of the DOE/EPSCoR program is to enhance the capability of designated states to conduct nationally competitive energy-related research, and to develop science and engineering manpower in energy-related areas to meet current and future needs. The purpose of this program notice is to initiate and promote partnering and collaborative relationships that build beneficial energy-related research programs with strong participation by students, postdoctoral fellows, and young faculty from EPSCoR states.

DATES: Potential applicants are required to submit a brief preapplication. All preapplications, referencing Program Notice 03–10, must be received by April 16, 2003, (preapplications received after this date will not be considered). Due to special review process for this program no FAX or e-mail submission will be accepted. A response to the preapplications encouraging or discouraging a formal application will be communicated to the applicant within approximately thirty days of receipt. To permit timely consideration for award in Fiscal Year 2004, formal applications submitted in response to this notice must be received by July 9, 2003, (formal applications received after this date will not be considered).

ADDRESSES: All preapplications, referencing Program Notice 03–10, should be sent to Dr. Matesh N. Varma, Office of Basic Energy Sciences, Division of Materials Sciences and Engineering, SC–132/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications. No other formal applications will be considered.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific proposal as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE, at: (301) 903–5212 in order to gain assistance for submission through IIPS, or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, DOE/EPSCoR Program Manager, Division of Materials Sciences and Engineering, SC–132/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Telephone: (301) 903–3209; Fax: (301) 903–9513; E-Mail: *matesh.varma@science.doe.gov.*

SUPPLEMENTRY INFORMATION: To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR), DOE encourages the formation of partnerships between academic and industrial researchers in EPSCoR states and the researchers at DOE's National Laboratories, facilities and centers in scientific areas supported by DOE's Office of Science. These collaborations should address areas of research of current interest to the Department. Undergraduate and graduate students, postdoctoral fellows, and young faculty must be active members of the research team, and it is encouraged that these investigators spend a summer or significant time during the academic year at a National Laboratory, facility, or center. It is also encouraged that collaborating scientists from the National Laboratories visit collaborating EPSCoR state faculty for exchange of scientific ideas and fostering active collaboration. Subcontracting arrangements with DOE National Laboratories will not be permitted. DOE eligible states and territories for the EPSCoR program are: Alaska, Alabama, Arkansas, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

Program Funding

It is anticipated that approximately $1,200,000 will be available in Fiscal Year 2004, for research that encourages and facilitates collaborative efforts between researchers from EPSCoR states and researchers at DOE's National Laboratories, facilities, and centers. Multiple-year funding of grant awards is expected subject to satisfactory progress of the research, the availability of funds, and evidence of substantial interactions between the EPSCoR researchers and the National Laboratory partner. Awards are expected to range up to a maximum of $150,000 annually with terms up to three years. The number of awards and range of funding will depend on the number of applications received and selected for award. Cost sharing of exactly 10% of the total budget is required from non-federal sources. All DOE/EPSCoR award funds will be provided to the recipient organization within the EPSCoR state for the purpose of supporting activities in the EPSCoR state and may include travel and lodging, faculty or student stipends, materials, services, and equipment.

Applications

To minimize undue effort on the part of applicants and reviewers, interested parties must submit preapplications. Only one application per individual is permitted, and individuals currently receiving DOE EPSCoR funds are not eligible to apply. The preapplications

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will be evaluated relative to the scope and research needs of the Department of Energy. The brief preapplication must consist of (1) one to two pages of narrative describing the research objectives and methods of accomplishment, (2) a letter from the appropriate state EPSCoR coordinator endorsing the preapplication, and (3) a letter of intent from the DOE National Laboratory researcher confirming willingness to collaborate on the project. The preapplications will be grouped according to programmatic areas of interest to the DOE and will be reviewed by DOE laboratory management to determine the priority of the proposed research. The preapplications will also be reviewed by the relevant programmatic research area program manager. DOE program managers will be asked to rank EPSCoR preapplications by program priority. They will also be asked for their willingness to provide co-funding if a project is selected for approval. Based on this review, DOE/EPSCoR management will recommend formal submission of applications to the Department. A telephone number, facsimile number, and e-mail address are required parts of the preapplication. Instructions regarding the contents of a preapplication and other preapplication guidelines can be found on the SC Grants and Contracts web site at: *http://www.sc.doe.gov/production/grants/preapp.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition to the project description, all preapplications and formal applications must include the following information:

(1) Applications should explain the relevance of the proposed research to the agency's programmatic needs. On the cover page, applicants should specify the relevant DOE technical program office, and if known, the name of the program manager, and telephone number. DOE program descriptions and the contact person information may be accessed via the web at: *http://www.doe.gov*.

(2) Applications must demonstrate clear evidence of collaborative intent, including a delineation of each partner's role and contribution to the research effort as well as a "Letter-of-Intent" from the participating DOE National Laboratory, facility, or center.

(3) Applications must explain the individual value to both the EPSCoR and the National Laboratory partners. There should be clear objectives, not necessarily the same, for each partner.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, listed in descending order of importance as codified at 10 CFR part 605.10(d).

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs and priority. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications received by SC under its current competitive application mechanisms that meet the criteria outlined in this notice may also be deemed appropriate for consideration under this announcement and may be funded under this program.

General information about the development and submission of preapplications, applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the latest version of SC's Application Guide is possible via the Internet at the following web address: *http://www.sc.doe.gov/production/grants/grants.html*.

Additional information regarding format, preparation and specific requirements for this program may be found at the following web address: *http://www.sc.doe.gov/production/bes/EPSCoR/APPLI1.HTM* and takes precedence.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on November 25, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30559 Filed 12–2–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed by January 2, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. ERA–766R.
2. General Counsel.
3. OMB Number 1903–0073.
4. Three-year approval requested.
5. Mandatory.
6. The ERA–766R is the recordkeeping requirements contained in 10 CFR 210.1 of DOE's General Allocation and Price Rules. The data are used to help DOE's General Counsel in its efforts to complete the enforcement program with respect to prior petroleum price and allocation regulations. No data are submitted; only maintenance of records is required.
7. Business or other for-profit.
8. 400 hours (100 respondents × 1 response per year × 4 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, DC, November 27, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–30562 Filed 12–2–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Energy Information Administration Policy for Release of the Weekly Petroleum Status Report; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy statement. Energy Information Administration Policy for release of the weekly petroleum status report; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on a proposed change in the policy for the release time of EIA's Weekly Petroleum Status Report (WPSR). Under the proposed policy, the release time would be changed to coincide with normal New York Mercantile Exchange (NYMEX) and International Petroleum Exchange (IPE) trading hours.

DATES: Comments must be filed by January 2, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ronald W. O'Neill. To ensure receipt of the comments by the due date, submission by FAX (202–586–5846) or e-mail (*ron.oneill@eia.doe.gov*) is recommended. The mailing address is Ronald W. O'Neill, M.S. EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0640. Alternatively, Mr. O'Neill may be contacted by telephone at (202) 586–2991.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ronald W. O'Neill at the address above. The WPSR is available on EIA's Internet site at *http://www.eia.doe.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) requires that EIA carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and long term domestic demands.

EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to EIA's dissemination of energy information. Comments received help EIA when preparing information collections and information products necessary to EIA's mission.

EIA's Weekly Petroleum Status Report (WPSR) provides timely information on supply and selected prices of crude oil and principal petroleum products. It serves the industry, the press, planners, policymakers, consumers, analysts, and State and local governments with a ready, reliable source of current information.

II. Current Actions

The WPSR data are based primarily on weekly company submissions of information as of 7 a.m. Eastern Standard Time (EST) Friday. Weekly data are filed with EIA by 5 p.m. EST on the following Monday. Currently, the WPSR data are publicly released electronically at 9 a.m. each Wednesday, and the printed version is available on Friday. For weeks that include holidays, release of the WPSR may be delayed by one day.

The American Petroleum Institute (API) has released its version of the same data about 5 p.m. on Tuesday. As a result, the API release was the most closely watched and had the greatest impact on petroleum markets. More significantly, the Tuesday night release occurred when all major petroleum trading markets were closed. The API recently announced that, starting January 8, 2003, they would begin releasing their weekly data at 9 a.m. on Wednesdays.

With market focus now turning to both EIA and API data, EIA is soliciting public opinion on the best or most beneficial release time for the data. To the extent that the weekly supply data reflect current market conditions, and thereby facilitate market efficiency, EIA is considering moving its release time to 10:10 a.m. on Wednesday to coincide with normal NYMEX and IPE trading hours. However, public opinion is sought on alternative times as well.

III. Request for Comments

The public should comment on the actions discussed in item II concerning the proposed policy change in the WPSR release schedule.

Comments submitted in response to this notice will be considered during final development of EIA's policy for scheduled releases of the WPSR. The comments will also become a matter of public record. After EIA has considered any comments and developed the final WPSR release policy, a Federal Register notice will be issued announcing the policy.

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Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. No. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, November 27, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–30563 Filed 12–2–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–19–000, et al.]

El Paso Merchant Energy, et al.; Electric Rate and Corporate Filings

November 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. El Paso Merchant Energy North America Company, Kenneth M. Pollock and Connie J. Pollock Rado, Mt. Carmel Cogen, Inc.

[Docket No. EC03–19–000]

Take notice that on November 21, 2002, El Paso Merchant Energy North America Company (EPME), Kenneth M. Pollock and Connie J. Pollock Rado (the Pollocks), and Mt. Carmel Cogen, Inc. (Mt. Carmel) (jointly Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization to effectuate a transfer of all shares of stock in Mt. Carmel (which constitutes an indirect change in control over Mt. Carmel's jurisdictional facilities) from EPME to the Pollocks. Mt. Carmel owns and operates a 45–MW generating facility in Mount Carmel, Pennsylvania. Applicants also request expedited consideration of this application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: December 12, 2002.

2. Prairie State Generating Company, LLC

[Docket No. EG02–21–000]

Take notice that on November 21, 2002, Prairie State Generating Company, LLC (Prairie State) with a principle place of business at 701 Market Street, Suite 900, St. Louis, MO 63101 filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission regulations.

Prairie State states that it is a wholly owned subsidiary of Peabody Energy Corporation, a private-sector coal company. Prairie State filed its application in conjunction with the proposed construction of two 750 MW mine-mouth pulverized coal generating units to be located in Washington County, Illinois.

Comment Date: December 16, 2002.

3. TransCanada Power Marketing Ltd.

[Docket No. ER98–564–007]

Take notice that on November 21, 2002, TransCanada Power Marketing Ltd. (TCPM) filed with the Federal Energy Regulatory Commission (Commission) a notification of a change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority.

Comment Date: December 12, 2002.

4. Idaho Power Company

[Docket No. ER03–66–001]

Take notice that on November 21, 2002, Idaho Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its filing in the above-captioned docket.

Comment Date: December 12, 2002.

5. PPL Electric Utilities Corporation

[Docket No. ER03–77–000]

Take notice that on November 21, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of its filing made on October 23, 2002, in the above-captioned proceeding.

The notice of the withdrawal has been served on Long Island Lighting Company.

Comment Date: December 12, 2002.

6. PPL Electric Utilities Corporation

[Docket No. ER03–79–000]

Take notice that on November 21, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of its October 23, 2002, filing in the above-captioned proceeding.

The notice of the withdrawal has been served on Consolidated Edison Company of New York, Inc.

Comment Date: December 12, 2002.

7. PPL Electric Utilities Corporation

[Docket No. ER03–80–000]

Take notice that on November 21, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of its October 23, 2002, filing in the above-captioned proceeding.

The notice of the withdrawal has been served on Electric Clearinghouse, Inc.

Comment Date: December 12, 2002.

8. Termoelectrica US, LLC

[Docket No. ER03–175–001]

Take notice that on November 19, 2002, Termoelectrica US, LLC (Termoelectrica US) filed with the Federal Energy Regulatory Commission (Commission) an errata to its November 12, 2002, filing of a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its proposed Rate Schedule FERC No. 1 authorizing Termoelectrica U.S. to make sales at market-based rates. The errata corrects an error in the header of the Rate Schedule.

Termoelectrica U.S. intends to sell electric power and ancillary services at wholesale. In transactions where Termoelectrica U.S. sells electric power or ancillary services it proposed to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. The Rate Schedule provides for the sale of energy and capacity and ancillary services at agreed prices.

Termoelectrica U.S. is requesting an effective date of November 13, 2002.

Comment Date: December 10, 2002.

9. Pacific Gas and Electric Company

[Docket No. ER03–198–000]

Take notice that on November 20, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition requesting clarification that PG&E is authorized to make wholesale power sales outside the California Power Exchange at market-based rates by granting certain waivers and accepting for filing a proposed tariff governing sales of electric capacity, energy and certain ancillary services at market-based rates in the Western Interconnection pursuant to section 205 of the Federal Power Act.

Comment Date: December 11, 2002.

10. New York Independent System Operator, Inc.

[Docket No. ER03–200–000]

Take notice that on November 18, 2002, the New York Independent System Operator, Inc. (NYISO) filed a new attachment V of its Open Access Transmission Tariff (OATT) regarding the ISO's Working Capital Fund. The NYISO has requested an effective date of January 17, 2003 for the filing.

The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Services Tariff and upon the New York State Public Service Commission.

Comment Date: December 9, 2002.

11. EnCana Energy Services Inc.

[Docket No. ER03–201–000]

Take notice that on November 21, 2002, EnCana Energy Services Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its market based rate tariff, Rate Schedule FERC No. 1.

Comment Date: December 12, 2002.

12. New England Power Pool

[Docket No. ER03–202–000]

Take notice that on November 21, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted a filing that contains a weekly billing agreement between NEPOOL, ISO New England Inc. and NRG Power Marketing Inc., on behalf of itself and several affiliates (collectively, the NRG Participants). The filing reflects billing arrangements for the NRG Participants that are being followed by ISO New England Inc. as NEPOOL's billing agent on and after November 15, 2002, the date that the agreement was executed.

The Participants Committee states that copies of this filing were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: December 12, 2002.

13. Wisconsin Public Service Corporation

[Docket No. ER03–203–000]

Take notice that on November 21, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its T–1 tariff for transmission service, FERC Electric Tariff, Original Volume No. 4. In conformity with Order No. 614, WPSC also tendered a cancelled tariff sheet.

WPSC respectfully requests that the Commission accept its filing and allow the cancellation to become effective as of November 22, 2002, the day after filing.

A copy of the filing was served upon the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: December 12, 2002.

14. Southwest Power Pool, Inc.

[Docket No. ER03–204–000]

Take notice that on November 21, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources d.b.a. Westar Energy (Transmission Customer). SPP seeks an effective date of November 1, 2002 for this service agreement.

The Transmission Customer was served with a copy of this filing.

Comment Date: December 12, 2002.

15. CES Marketing, LLC

[Docket No. ER03–205–000]

Take notice that on November 21, 2002, CES Marketing, LLC tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

16. CES Marketing II, LLC

[Docket No. ER03–206–000]

Take notice that on November 21, 2002, CES Marketing II, LLC tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

17. CES Marketing III, LLC

[Docket No. ER03–207–000]

Take notice that on November 21, 2002, CES Marketing III, LLC tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

18. CES Marketing IV, L.P.

[Docket No. ER03–208–000]

Take notice that on November 21, 2002, CES Marketing IV, L.P. tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

19. CES Marketing V, L.P.

[Docket No. ER03–209–000]

Take notice that on November 21, 2002, CES Marketing V, L.P. tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

20. New England Power Pool, ISO New England Inc.

[Docket No. ER03–210–000]

Take notice that on November 22, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted for filing the Ninety-Second Agreement Amending New England Power Pool Agreement (Ninety-Second Agreement) which proposes changes to the Restated NEPOOL Agreement to implement Market rule 1, and the Ninety-Third Agreement Amending New England Power Pool Agreement (Ninety-Third Agreement) which proposes changes to the NEPOOL tariff to implement Market rule 1. In the same filing, NEPOOL and ISO New England (ISO–NE) jointly filed amendments to Market rule 1 and its appendices.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL participants, non-participant transmission customers and the New England state governors and regulatory commissions.

Comment Date: December 13, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the

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Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30560 Filed 11–29–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–8]

Inquiry to Learn Whether Businesses Assert Business Confidentiality Claims Covering Information Contained in Notifications of Intent to Export Hazardous Waste From the United States, or Notifications Under 40 CFR Part 262, Subpart H, Manifests for Shipments of Hazardous Waste From the United States and Other Documents Containing the Same Information; Notice of Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has received Freedom of Information (FOIA) requests for the Hazardous Waste Export Data System and documents contained therein pertaining to the export of hazardous waste from the United States. The purpose of this notice is to contact affected businesses other than those who furnished the documents sought in the FOIA requests and to provide notice to those businesses of the opportunity to submit comments to EPA regarding whether the information sought in those FOIA requests is entitled to treatment as confidential business information.

DATES: You must ensure that your comments are postmarked or hand delivered to the EPA office designated below by January 2, 2003. The period for submission of comments may be extended if, before the comments are due, you make a request for an extension of the comment period and it is approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under 5 U.S.C. 552 is pending.

ADDRESSES: Comments concerning this inquiry and notice should be submitted to Joseph F. Schive, Enforcement Planning, Targeting and Data Division (MC 2222A), Office of Compliance, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Room 5146A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joseph F. Schive, 202–564–4156.

SUPPLEMENTARY INFORMATION: The three types of documents subject to the document requests are the notification of intent to export (NOI) (part 262, subpart E) or notification (part 262, subpart H), submitted to EPA in accordance with 40 CFR 262.53 and 262.83, respectively; the manifest,[1] a copy of which is given to the United States Customs Service on leaving the United States, in accordance with 40 CFR 263.20(g)(4), and is then forwarded by Customs to EPA; and the annual report, submitted to EPA in accordance with 40 CFR 262.56 or 262.87(a).[2]

For the purposes of this notice, submitters of NOIs, notifications, manifests and annual reports shall be referred to as "submitters," and non-submitters which might be expected to assert a claim of business confidentiality because their information also is contained in the database or the requested documents shall be referred to as "other affected businesses." The types of businesses which comprise the category of submitters are the primary exporters[3] (NOI and annual report) and notifiers[4] (notification and annual report), and the generators[5] (manifest). The two types of businesses included in the category of other affected businesses are the transporters[6] of hazardous waste; and the consignees[7] (and alternate consignees) under subpart E, or consignees[8] and recovery facilities[9] under subpart H. The latter are located outside the United States, in the receiving or importing countries. Thus, affected businesses may include foreign business entities, as well as domestic businesses.

The submitters of the documents sought in the FOIA requests did not assert a claim of business confidentiality covering part or all of that information. As set forth in the Resource Conservation and Recovery Act (RCRA) regulations, at 40 CFR 260.2(b), "if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it." Moreover, as EPA pointed out in the preambles to the proposed and final RCRA export rules, 51 FR 8744 (March 13, 1986) and 51 FR 28644 (August 8, 1986), respectively, EPA does not believe that notification information and also manifest information generally are entitled to treatment as confidential business information. Nevertheless, EPA is mindful of the fact that the cited provision must be read in conjunction with the protection which the FOIA regulations afford other affected businesses.

[1] Section 260.10 defines "manifest" as "the shipping document EPA form 8700–22 and, if necessary, EPA form 8700–22A, originated and signed by the generator in accordance with the instructions included in the appendix to part 262."

[2] Other documents contained in the database, including renotifications (40 CFR 262.53(c)), transit notifications, acknowledgments of consent (*id.* § 262.53(f)), and exception reports (*id.* §§ 262.56 and 262.87(b)), also involve the same parties and some of the same types of information. To the extent the parties and information overlap, this inquiry and notice will provide the opportunity to claim confidential business information treatment for these documents as well.

[3] Section 262.51 defines "primary exporter" as "any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR part 262, subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export."

[4] Section 262.81 defines "notifier" as "the person under the jurisdiction of the exporting country which has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the exporting country, notifier is interpreted to mean a person domiciled in the U.S."

[5] Section 260.10 defines "generator" as "any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation."

[6] Section 260.10 defines "transporter" as "a person engaged in the offsite transportation of hazardous waste by air, rail, highway or water."

[7] Section 262.51 defines "consignee" for purposes of subpart F as "the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent."

[8] Section 262.83 defines "consignee" for purposes of subpart H as "the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country."

[9] Section 262.83 defines "recovery facility" as "an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them."

1. Other Affected Businesses

EPA regulations regarding FOIA requirements, at 40 CFR 2.204(c)(1), require an EPA office which is responsible for responding to a request under 5 U.S.C. 552 for the release of business information (EPA office) "to determine which businesses, if any are affected businesses (*see* § 2.201(d)) * * *" "Affected business" is defined at § 2.201(d) as

> "* * * with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed."

EPA has furnished, to those persons whose request for release of information is pending under 5 U.S.C. 552, a determination (in accordance with 40 CFR 2.113) that the information may be entitled to confidential treatment under this subpart and 5 U.S.C. 552(b)(4), that further inquiry by EPA pursuant to this subpart is required before a final determination on the request can be issued, that the persons' requests are therefore initially denied, and that after inquiry a final determination will be issued by an EPA legal office. 40 CFR 2.204(d)(1)(ii).

2. The Purposes of This Notice

This notice encompasses two distinct steps in the process of communication with other affected businesses: the preliminary inquiry and the notice of opportunity to comment.

a. Inquiry to Learn Whether Other Affected Businesses Assert Claims Covering the Information

Section 2.204(c)(2) provides:

> If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA official shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information.

b. Notice of Opportunity To Submit Comments

Sections 2.204(d)(1)(i) and 2.204(e) require that written notice be provided to businesses stating that EPA is determining under this subpart whether the information is entitled to confidential treatment, and affording the businesses an opportunity to comment.

3. The Use of Publication in the Federal Register

Section 2.0204(e)(1) requires that this type of notice be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. EPA, however, has determined that in the present circumstances the use of a **Federal Register** notice is the only practical and efficient way to contact other affected businesses and to furnish the notice of opportunity to submit comments. Its determination to follow this course was made in recognition of the large number of businesses included in the pertinent universe. EPA estimates that there are approximately 400 other affected businesses, including approximately 100 transporters, 150 consignees and alternate consignees under subpart E, and 150 consignees and recovery facilities under subpart H. Employment of publication in the **Federal Register** also dispenses with orally informing a responsible representative of the business that it should expect to receive a written notice, and requesting the business to contact the EPA office if the written notice has not been received within a few days, so that EPA may furnish a duplicate notice. 40 CFR 2.204(e)(3).

4. Submission of Your Response in the English Language

All responses to this notice must be in the English language.

5. The Effect of Failure To Respond to This Notice

In accordance with 40 CFR 2.204(e), EPA will construe your failure to furnish timely comments as a waiver of the business's claim.

6. What To Include in Your Comments

If you feel that some or all of the information contained in the two types of documents which are subject to FOIA requests is entitled to confidential treatment, please specify which portions of the information you consider confidential. Information not specifically identified as subject to a confidentiality claim will be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions:

1. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question no. 1?

3. What measures have you taken to protect the information claimed as confidential?

Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further?

If so, why should the information still be considered confidential?

4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

5. Is the information contained in any publicly available material such as promotional publications, annual reports, articles, *etc.*? Is there any means by which a member of the public could obtain access to the information?

6. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is "voluntarily submitted" as defined at 40 CFR 2.201(i)? If so, explain why, and how disclosure would tend to lessen EPA's ability to obtain similar information in the future.

8. Any other issue you deem relevant.

Please note that *you bear the burden of substantiating your confidentiality claim* pursuant to 40 CFR 2.208(e). Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response "CONFIDENTIAL" or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in 40 CFR part 2. If you fail to claim the information as confidential upon submission it may be made available to the public without further notice to you.

Dated: November 22, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–30597 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7416–1]

Intent to Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR Part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the inventions described and claimed in the patents listed below, all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patents, to BHA Group, Inc., Kansas City, Missouri. The patents are:

U.S. Patent No. 5,217,511 ('511 patent), entitled "Enhancement of Electrostatic Precipitation with Electrostatically Augmented Fabric Filtration," issued June 8, 1993.

U.S. Patent No. 6,152,988 ('988 patent), entitled "Enhancement of Electrostatic Precipitation with Precharged Particles and Electrostatically Augmented Fabric Filtration," issued November 28, 2000.

The '511 patent was announced as being available for licensing in the March 9, 1992 issue of the **Federal Register** (57 FR 8330) as U.S. Patent Application No. 07/826,302, filed January 24, 1992. The '988 patent has not been previously announced as being available for licensing. However, EPA has the authority under 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious granting of the license will best serve the interests of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability for the '988 patent because a notice had been published for the associated technology embodied in the '511 patent and because the only applicant, BHA Group, Inc., has filed an application for an exclusive license under 37 CFR 404.8 and is prepared to enter into an exclusive license agreement. Therefore, expeditious granting of the license is in the public's interest because the products will be brought to market sooner. Expeditious granting of the license is also in the Federal government's interest because the royalty income generated can be more quickly used for the purposes permitted under the Federal Technology Transfer Act.

The proposed exclusive license will contain appropriate terms, limitations, and conditions to be negotiated in accordance with 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 15 days from the date of this notice EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patents should include an application for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director of the National Risk Management Research Laboratory, who has been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATE: Comments on this notice must be received by EPA at the address listed below by December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (Mail Code 2377A), Environmental Protection Agency, Washington, DC 20460, Telephone (202) 564–5457.

Marla E. Diamond,

Associate General Counsel, Finance and Operations Law Office.

[FR Doc. 02–30601 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–9]

OSWER 9355.0–85 Contaminated Sediment Remediation Guidance for Hazardous Waste Sites; Request for Comment on Draft Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Office of Solid Waste and Emergency Response (OSWER) is requesting comments on OSWER 9355.0–85, the draft "Contaminated Sediment Remediation Guidance for Hazardous Waste Sites." EPA will accept comments on all aspects of the draft guidance, but comments are specifically solicited for the following topics: Approaches to sediment characterization; evaluation methods for sediment stability; measurement methods for natural recovery processes; methods to reduce dredging resuspension and residual contamination; new in-situ technologies; and monitoring methods. Comments received may be used to revise the draft guidance or to assist with future EPA guidance on this topic. A written response to comments will not be issued.

DATES: Comments are due on or before March 3, 2003.

ADDRESSES: This draft guidance is available electronically at: *http://www.epa.gov/superfund/resources/sediment.* A limited number of copies on compact disk (CD) may be requested by electronic mail to the address below. Comments may be submitted electronically, by mail, through hand delivery/courier, or by facsimile.

1. *By Email.* You may submit comments or requests by electronic mail to *evison.leah@epa.gov.* Please include "Sediment Guidance" in the topic line of your email and include the sender's address in the body of the message.

2. *By U.S. Mail.* Send comments to: Leah Evison, U.S. EPA Headquarters, Mail Code 5204G, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Sediment Guidance Comments.

3. *By Hand Delivery/Courier.* Deliver comments to: Leah Evison, U.S. EPA Crystal Gateway (12th fl. Customer Service Desk), 1235 Jefferson Davis Highway, Arlington, VA 22202, Attention: Sediment Guidance Comments

4. *By Facsimile.* Fax your comments to: (703) 603–9100, Attention: Leah Evison, Sediment Guidance Comments.

FOR FURTHER INFORMATION CONTACT: Stephen Ells, phone (703) 603–8822, Sediment Team Leader, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA is authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) to respond to releases of hazardous substances. The draft Contaminated Sediment Remediation Guidance for Hazardous Waste Sites provides technical and policy guidance for project managers and management teams making risk management decisions for contaminated sediment sites. The purpose of the guidance is to increase project managers' understanding of sediment environments and all potential cleanup methods for sediment and to improve national consistency in decision-making for sediment sites. It is primarily intended for project managers considering remedial response actions or non-time-critical removal actions under CERCLA, or more commonly known as Superfund, although technical aspects of the guidance are also intended to assist project managers addressing sediment contamination under RCRA.

Following the introductory chapter (Chapter 1), the guidance presents information concerning sediment-specific considerations during the Remedial Investigation (Chapter 2) and the Feasibility Study (Chapter 3); information concerning evaluation of the three major cleanup methods for sediment, Monitored Natural Recovery, In-Situ Capping, and Dredging and Excavation (Chapters 4, 5 and 6); information about selecting sediment remedies (Chapter 7) and about monitoring sediment sites (Chapter 8). Although some issues concerning site characterization and risk are discussed early in the guidance, the emphasis of this guidance is on evaluating and selecting cleanup methods for contaminated sediment.

Dated: November 12, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Reponse.

[FR Doc. 02–30598 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7416–2]

Proposed CERCLA Administrative Agreement Relating to the Liberty Industrial Finishing Superfund Site, Town of Oyster Bay, Nassau County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Agency's May 24, 1995, "Guidance on Agreements with Prospective Purchasers of Contaminated Property," notice is hereby given of a proposed prospective purchaser agreement ("PPA agreement") with the Town of Oyster Bay (the "Town") concerning their possible acquisition, by eminent domain, of an approximately 15-acre parcel of real property (the "Property") included within the Liberty Industrial Finishing Superfund Site in the Town of Oyster Bay, Nassau County, New York (the "Site"). Under the PPA agreement, the United States would covenant not to sue or take administrative action against the Town under section 106 or 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") if the Town becomes the owner of the Property. In exchange, the Town will pay to EPA the difference between the value of the Property, determined as though the Property was not contaminated, and the amount that the Town is required to pay to the owners of the Property for the eminent domain taking, but in no event less than $500,000 nor more than $5,300,000. By publication of this notice, a 30 day period has been established in which the Agency will accept written comments relating to the PPA agreement. The Agency will consider all comments received and may modify or withdraw its consent to the PPA agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region II, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866.

DATES: Comments must be submitted on or before January 2, 2003.

ADDRESSES: The proposed PPA agreement is available for public inspection at the U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866. A copy of the proposed PPA agreement may be obtained from the individual listed below. Comments should reference the Liberty Industrial Finishing Superfund Site, Nassau County, New York and EPA Index No. CERCLA–02–2002–2019, and should be addressed to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866, Telephone: (212) 637–3168.

Dated: November 18, 2002.

William J. Muszynski,

Deputy Regional Administrator, U.S. Environmental Protection Agency, Region II.

[FR Doc. 02–30600 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the R&D Investment Subcommittee of the President's Council of Advisors on Science and Technology

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the Subcommittee on Federal Research and Development Investment and its National Benefits, of the President's Council of Advisors on Science and Technology (PCAST), will hold an open public forum on federal technology transfer mechanisms. The PCAST panel invites all interested persons to attend.

DATES AND PLACE: December 12, 2002, Washington, DC, beginning at 9:00 a.m. The meeting will be held in the RAND Washington Office, 1200 S. Hayes St., Arlington, VA, Room 4204. The location is accessible from the Pentagon City metro stop, or with parking at the Pentagon City shopping mall.

REGISTRATION AND FURTHER INFORMATION: Guests are requested to pre-register for this event by December 6. A Web site has been set up for information, agenda, and registration for this forum: *http://www.rand.org/scitech/stpi/TechTransfer/.* Information may also be obtained by emailing *ttsubmit@rand.org* or calling 703–413–1100 x5674.

Proposed Schedule and Agenda

The PCAST Subcommittee on Federal Research and Development (R&D) Investment and its National Benefits is scheduled to host an open forum on Thursday, December 12, 2002, at approximately 9:00 a.m., to discuss technology transfer of federally funded R&D. The forum is scheduled to begin with an overview of the subject of technology transfer from university, federal laboratory, and federally funded industry R&D. A roundtable discussion will follow at approximately 10:15 a.m. and "open session" is scheduled to begin approximately 1:00 p.m. A particular focus will be discussion of the goals of technology transfer, how technology transfer is measured, and best practices from a variety of perspectives. The forum will end at approximately 4:00 p.m.

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Public Comments

The afternoon "open session" will be devoted to receipt of public comments on any aspect of technology transfer from federally funded R&D. To pre-register to make public comments or to submit brief written comments, please fill out the form located on the web http://www.rand.org/scitech/stpi/TechTransfer/. All those who have not submitted an overview prior to December 6, 2002 may speak following those who have. The time for public comments will be limited to no more than 3–5 minutes per person. Written comments are welcome at any time prior to or following the meeting. Written comments should be faxed to 703–414–4785 or mailed to Tech Transfer Forum, c/o RAND Science & Technology Policy Institute, MS–W7154, 1200 South Hayes Street, Arlington, VA 22202–5050. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place and agenda, please refer to the website or call Gabrielle Bloom at 703–413–1100 x5674, prior to 3:00 p.m. on Friday, December 6, 2002.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers. PCAST established the R&D Investment subcommittee to explore various aspects of the federal R&D effort, including federal technology transfer programs, and to make draft findings and recommendations to the full PCAST.

Shana Dale,

Chief of Staff and General Counsel, Office of Science and Technology Policy.

[FR Doc. 02–30595 Filed 12–2–02; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Meetings for 2003

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on the following dates in room 7C13 of the GAO Building.

—Wednesday and Thursday, February 12 and 13, 2003

—Wednesday and Thursday, April 23 and 24, 2003

—Wednesday and Thursday, June 18 and 19, 2003

—Wednesday and Thursday, August 13 and 14, 2003

—Wednesday and Thursday, October 8 and 9, 2003

—Wednesday and Thursday, December 10 and 11, 2003

The purpose of the meeting is to discuss issues related to:

—National Defense PP&E,

—Consolidated Financial Reporting,

—Stewardship Reporting,

—Technical Agenda, and

—Any other topics as needed.

A more detailed agenda can be obtained from the FASAB web site (*www.fasab.gov*) one week prior to each meeting.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350, and for the subsequent meetings one day prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mailstop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: November 26, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–30578 Filed 12–2–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of New Exposure Draft Accounting for Imputed Intra-Departmental Costs: An Interpretation of SFFAS No. 4

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB rules of procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has published a new exposure draft, *Accounting for Imputed Intra-departmental Costs: An interpretation of SFFAS No. 4.*

A Summary of the Proposed Interpretation Follows: The proposed interpretation clarifies that paragraph 110 of SFFAS No. 4 does not limit the recognition of imputed intra-departmental costs. The proposed interpretation further explains that intra-departmental costs should be accounted for in accordance with the full cost provisions of SFFAS No. 4, which includes the recognition of imputed intra-departmental costs.

The exposure draft is available on the FASAB home page *http://www.fasab.gov/exposure.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *loughanm@fasab.gov.*

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by January 8, 2003, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463.

Dated: November 26, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–30579 Filed 12–2–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0398.

Title: Equipment Authorization Measurement Standards, Sections 2.948 and 15.117(g)(2).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 320.

Estimated Time per Response: 28.44 hours (avg.).

Frequency of Response: Recordkeeping; Three year reporting requirements.

Total Annual Burden: 9,100 hours.

Total Estimated Gost: None.

Needs and Uses: 47 CFR 2.948 and 15.117(g)(2) of FCC rules require that data accompanying all requests for equipment authorization are valid and that proper testing procedures are used. Testing ensures that potential interference to radio communications is controlled, and if necessary, the data may be used for investigating complaints or harmful interference, or for verifying the manufacturer's compliance with FCC rules. Manufacturers were no longer required to file UHF noise figure data documenting the performance of TV receivers tested and marketed in the U.S. following release of the FCC's Report and Order in ET Docket No. 95–144.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–30557 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed By the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

November 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0310.

Title: Section 74.1251, Technical and Equipment Modifications.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 100.

Estimated Time per Response: 30 mins. (0.50 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 50 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 74.1251 requires station owners/licensees to certify compliance with technical requirements when they replace a transmitter without first seeking FCC approval. Additionally, section 74.1251 requires FM translator licensees to notify the FCC in writing of any changes in the primary FM station being retransmitted. The station owners use these records to provide the FCC with up-to-date information about modifications to their station's equipment.

OMB Control Number: 3060–0310.

Title: Registration Statement Required, Section 76.1801.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 600.

Estimated Time per Response: 15 mins. (0.25 hrs.).

Frequency of Response: One time reporting requirement.

Total Annual Burden: 150 hours.

Total Annual Costs: $28,200.

Needs and Uses: 47 CFR 76.1801 requires a registration statement be filed with the Commission before a system community unit is be authorized to

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commence operation. A system community unit is a cable television system, or portion of a cable television system, that operates within a separate and distinct community or municipal entity. The Commission staff use these data to maintain complete records on cable systems and to ensure compliance with our rules.

OMB Control Number: 3060–0288.
Title: Specific Temporary Authority (Cable Television Relay Stations), Section 78.33.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 35.
Estimated Time per Response: 140 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 1,500 hours.
Total Annual Costs: $4,585.
Needs and Uses: 47 CFR 76.1801 requires cable television relay stations (CARS) to file informal requests for special temporary authority to install and operate equipment in a manner different than the way normally authorized in the station license. The special temporary authority also may be used by cable operators and equipment suppliers to conduct field surveys to determine necessary data in connection with preparing a formal application for installation of a radio system, or to conduct equipment, program, service, and path tests.

OMB Control Number: 3060–0546.
Title: Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules.
From Number: N/A.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 150.
Estimated Time per Response: 4 to 40 hours.
Total Annual Burden: 1,680 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Costs: $721,500.
Needs and Uses: On May 26, 1999, the Commission released an *Order on Reconsideration and Second Report and Order* ("Order"), which, among other things, established final rules for procedures for refining the market modification process by adopting a standardized evidence approach to the market modification process. The Order also made various changes to 47 CFR part 76, which concern the definitions applicable to the must carry rules and the specific information submission requirements for the market modification process.

OMB Control Number: 3060–0564.
Title: Cost accounting and cost allocation requirements, section 76.924.
From Number: N/A.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 50.
Estimated Time per Response: 40 hours.
Total Annual Burden: 2,000 hours.
Frequency of Response: Recordkeeping; Third party disclosure.
Total Annual Costs: None.
Needs and Uses: 47 CFR 76.924 of FCC rules specifies cost accounting and cost allocation requirements for regulated cable operators. Section 76.924 was established as part of the cable rate regulation requirements set forth in the *Cable Television Consumer Protection and Competition Act of 1992* ("1992 Cable Act"), which requires cable operators to rearrange their accounting records to comply with the requirements set forth in section 76.924. Because these requirements became effective July 21, 1993, existing cable operators are assumed to have already rearranged their accounting records and comply with this recordkeeping requirement. Cable operators use the information derived from their accounting records to complete their rate filings, while the local franchising authorities use it to review these rate filings.

OMB Control Number: 3060–0176.
Title: Experimental Authorizations, Section 73.1510.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 55.
Estimated Time per Response: 15 mins. (0.25 hrs.).
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 14 hours.
Total Annual Costs: $34,500.
Needs and Uses: 47 CFR 73.1510 requires that a licensee of an AM, FM, and TV broadcast station file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal transmission, and the proposed hours and duration of the experimentation. FCC staff use these data to maintain complete technical information about a broadcast station and to ensure that such experimentation does not cause interference to other broadcast stations.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 02–30558 Filed 12–2–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:
OMB Control No.: 3060–0740.
Title: Section 95.1015, Disclosure Policies.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 203.
Estimated Time Per Response: 1 hour.
Frequency of Response: On occasion reporting requirement, third party disclosure requirement.
Total Annual Burden: 203 hours.
Total Annual Cost: $10,000.
Needs and Uses: Prior to operating a Low Power Radio Service (LPRS) transmitter for Automated Maritime Telecommunications System (AMTS) purposes, an AMTS licensee must notify, in writing, each television station that may be affected by such operations, as defined in § 80.215(h) of this chapter. The notification provided with the station's license application is sufficient to satisfy this requirement if no new television stations would be affected. The information is used by the Commission staff and affected television stations to be aware of the location of potential harmful interference from AMTS operations.
OMB Control No.: 3060–XXXX.
Title: Section 27.602, Guard Band Manager Agreements.
Form No.: N/A.
Type of Review: New collection.
Respondents: Business or other for-profit.
Number of Respondents: 62.
Estimated Time Per Response: 6 hours.
Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.
Total Annual Burden: 372 hours.
Total Annual Cost: N/A.
Needs and Uses: This rule section is necessary for Guard Band Managers to maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date such agreements expire. The records must be kept current and be made available upon request for inspection by the Commission or its representative.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 02–30556 Filed 12–2–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System
ACTION: Notice

SUMMARY: BACKGROUND.
On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the ethodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 3, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14 A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Revision, of the Following Report:

Report title: Survey of Terms of Bank Lending.
Agency form number: FR 2028A, FR 2028B, and FR 2028S
OMB control number: 7100–0061.
Frequency: Quarterly.
Reporters: commercial banks (all three reports) and U.S. branches and agencies

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of foreign banks (FR 2028A and FR 2028S).

Annual reporting hours: 8,095 hours.

Estimated average hours per response: FR 2028A: 4.0. FR 2028B: 1.5. FR 2028S: 0.1.

Number of respondents: FR 2028A: 398. FR 2028B: 250. FR 2028S: 567.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. § 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The Survey of Terms of Bank Lending provides unique information concerning the price and certain nonprice terms of loans made to businesses and farmers by commercial banks. The reports are completed for the first full business week of the mid–month of each quarter (February, May, August, and November). The FR 2028A and B collect detailed data on individual loans made during the survey week. The FR 2028S collects the prime interest rate for each day of the survey. From these sample STBL data, estimates of the terms of business and farm loans extended during the reporting week at all insured U.S. commercial banks are constructed. The estimates for business loans are published in the quarterly E.2 release, "Survey of Terms of Bank Lending," while estimates for farm loans are published in the quarterly E.15 release, "Agricultural Finance Databook."

Current actions: The Federal Reserve proposes to revise the FR 2028A by: (1) adding a field for the date on which the terms, including pricing, for loans made under formal commitment became effective, (2) reducing the number of base pricing rate options from five to one, (3) deleting the item indicating whether loans are callable, (4) modifying the format of the recalculation and maturity date items, and (5) making minor clarifications to the instructions. The Federal Reserve also proposes to revise the FR 2028B by modifying the format of the recalculation and maturity date items. The proposed revisions to reporting forms and instructions would be effective for the May 2003 survey week. No changes are proposed to the FR 2028S. The FR 2028A and FR 2028B reporting instructions would be revised according to the proposed changes, with other minor clarifications.

Board of Governors of the Federal Reserve System, November 26, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30546 Filed 12–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 17, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Ronald R. Bramlage, Junction City, Kansas, and Frederick Bramlage, Manhattan, Kansas; to retain control of Fort Riley Bancshares, Inc., and thereby indirectly retain control of Fort Riley National Bank, both of Fort Riley, Kansas.

Board of Governors of the Federal Reserve System, November 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30632 Filed 12–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Tropical Bancshares of Florida, Inc., Englewood, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Englewood Bank, Englewood, Florida.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bancorp V, Inc., Olathe, Kansas; to become a bank holding company by acquiring 97.2 percent of the voting shares of Bank of Leeton, Leeton, Missouri.

Board of Governors of the Federal Reserve System, November 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30633 Filed 12–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, December 9, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 29, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30757 Filed 11–29–02; 12:35 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: "Pilot Study of the Hospital Adverse Event Reporting Survey". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

The proposed information collection was previously published in the **Federal Register** on September 23, 2002, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 2, 2003.

ADDRESSES: Written comments should be submitted to: OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Pilot Study of the Hospital Adverse Event Reporting Survey"

The Pilot Study of the Hospital Adverse Event Reporting Survey will pilot test a survey instrument which was developed to examine and characterize adverse event reporting in the nation's hospitals. The survey will collect information from staff for a nationally representative sample of U.S. non-Federal hospitals. The Pilot Study will test the survey and methodology of its administration at 40 hospitals. Different staff, specifically, risk managers, directors of nursing, pharmacy, laboratory medicine, and transfusion medicine, infection control officers; and medical directors will complete a questionnaire.

Two versions of the questionnaire have been developed: One to be administered to hospital risk managers, and the other to be administered to the above-named Departmental managers.

To achieve responses from 40 hospitals, AHRQ will contact 50 hospitals to enlist their cooperation (thus, AHRQ anticipates an 80% response rate). Contacting 50 hospitals should yield 40 risk managers with whom to conduct an interview. In addition, we plan to conduct interviews with six specific Department heads. Not all hospitals will have such positions, and thus, we anticipate at most, 240 interviews with Departmental managers (assuming an 80% response rate).

The questionnaire will ask whether hospitals collect information on adverse events, and how the information is stored. The questionnaire also asks about the hospital's case definition of a reportable event and whether information on the severity of the adverse event is collected. It inquires about who might report information and whether they can report to a system which is confidential and/or anonymous. The questionnaire also asks about the uses of the data that are collected, reporting systems, and whether information is used for purposes including analytic uses, personnel action, and intervention design. Finally, the questionnaire asks about the other sources of information that are useful for patient safety-related interventions.

The sample will be randomly drawn from the American Hospital Association Field Guide (the "AHA Guide"). The AHA Guide is a listing of 5,890 registered hospitals, which include Department of Defense, and Veteran's Administration hospitals. The AHA believes its database is close to 100 percent complete. AHA gathers additional information directly from hospitals via an annual survey. The resulting database includes over 600 fields in areas such as organizational structure, facilities, bed numbers, finances and services specialties.

Their survey results are published annually in the AHA Guide. In our sample, AHRQ will include only non-Federal hospitals and we will aim to pilot the instruments in large, medium and small hospitals.

Mandate for Data Collection; Sponsorship

In the Fiscal Year 2002 Senate Appropriations Report for the Departments of Labor, HHS, and Education (Rpt. 107–84), AHRQ was given the following specific requirements:

> The Committee further directs AHRQ to provide a report detailing the results of its efforts to reduce medical errors. The report should include how hospitals and other healthcare facilities are reducing medical errors; how these strategies are being shared among healthcare professionals; how many hospitals and other healthcare facilities record and track medical errors; how medical error information is used to improve patient safety; what types of incentives and/or disincentives have helped healthcare professionals reduce medical errors and; a list of the most common root causes of medical errors. . .

This project is sponsored by the Federal Quality Interagency Taskforce (QuIC) Errors Workgroup. The QuIC is responsible for the Federal Interagency coordination of patient safety efforts. AHRQ serves as provider of operational support to the chair of the QuIC.

Method of Collection

As a pilot study, this survey offers researchers the opportunity to experiment with the mode in which to collect the information.

Accordingly, in this pilot study, respondents from one-half of the hospitals will be mailed a self-administered questionnaire. Respondents from the other hospitals will be telephoned and administered the questionnaire by a trained interviewer. The following steps outline the data collection procedures.

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1. All sample hospitals will be contacted and "screened" to obtain the Risk Manager's name, direct telephone number, Fax number and verify the hospital's mailing address.

2. Half of the sample will then be randomly assigned to either the mail or telephone mode of data collection.

3. All Risk Managers will receive an advance letter explaining the study and notifying them that they will soon receive a telephone call or survey in the mail.

4. When the Risk Manager receives the survey/telephone call, he/she will be asked to provide the names of Departmental Managers.

5. The Departmental Managers will be contacted in the same fashion (telephone or mail) as their institution's Risk Manager. Thus, they will receive an advance letter and then a telephone call or mail survey.

A thank you/reminder postcard will be sent to all mail respondents. A second questionnaire will be mailed to the nonrespondents in the mail mode. Finally, all the mail nonrespondents will be contacted by telephone to complete the questionnaire.

Estimated Annual Respondent Burden

The estimated annual hour burden is as follows:

Type of respondent	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Estimated annual cost to the government
Risk Manager	40	.58	23.2	$628.72
Departmental Manager	240	.42	100.8	$4,048.13

Request for Comments

In accordance with the above-cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 22, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–30630 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: "Pilot Data for the Development of a Hospital Patient Safety Culture Survey". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

The proposed information collection was previously published in the **Federal Register** on September 23, 2002, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 2, 2003.

ADDRESSES: Written comments should be submitted to: OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Pilot Data for the Development of a Hospital Patient Safety Culture Survey"

The project is being conducted in partial response to an AHRQ task order entitled "Patient Safety Measures" (issued under Contract 290–96–0004). With AHRQ's Director chairing the Quality Interagency Coordination Task Force (QuIC), and AHRQ coordinated the Federal response to the Institute of Medicine's (IOM) 1999 report on medical errors. The response outlined specific initiatives the QuIC agencies would take.

This project addresses the need for a measurement tool to assess patient safety culture within health care institutions.

The project is to develop a hospital patient safety culture survey, conduct cognitive pretesting, collect pilot data using the survey, analyze the pilot data to determine the psychometric properties of the survey (internal consistently, reliability, response variability, *etc.*), and then, to prepare survey administration procedures accordingly. The overall goal of this study is to provide AHRQ with a reliable employee survey instrument to assess a hospital's patient safety culture. The survey instrument will be made publicly available to enable hospitals throughout the nation to evaluate aspects of their organizational culture that impact medical errors, error reporting, and patient safety.

The hospital patient safety culture survey to be pilot tested for this project is an employee survey that places an emphasis on medical error reporting. The survey also includes scales that measure other aspects of organizational culture that impact patient safety, such as: organizational learning, overall perceptions of safety, compliance with procedures, attitudes and frequency of error reporting, nonpunitive response to error, reasons errors occur, and employee teamwork. Through the proposed project, a reliable hospital patient safety culture survey will be developed and then made available to the public, to reduce the burden to hospitals in developing their own instruments, to reduce the proliferation and use of untested instruments, and to foster benchmarking across hospitals.

Method of Collection

The purpose of this pilot data collection is to gather enough survey responses to evaluate the internal consistency, reliability, response variability, and other psychometric properties of a newly developed survey, not to produce national estimates. Therefore, a purposive sample (hand-chosen, non-statistical sample) of 12 hospitals will suffice to participate in the study.

Hospitals will be selected based on two factors: bed size and teaching vs. non-teaching status (two large/teaching, two medium/teaching, two small/teaching, two large/non-teaching, two medium/non-teaching, two small/non-teaching).

Surveys will be distributed to 100 employees at each of the 12 sites (a total of 1,200 employees). A contact person at each hospital will be asked to select 100 employees using a systematic random sample of employees. The contact person at each hospital will distribute the paper surveys to the 100 selected employees at each site. For purposes of individual confidentiality, no individuals identifiers will be used, so it will not be possible to track individual responses. Respondents will be instructed to mail their completed surveys directly to the research organization conducting the study using a postage-paid return envelope that will be provided. The hospitals will at no time have access to individual responses.

The survey will be distributed to a total of 1,200 hospital employees (100 individuals at each of 12 hospitals), with a target response rate of 75%, or 900 returned surveys. Standard techniques like using a prenotification letter, a cover letter of support from the hospital, a follow-up postcard, and distribution of a second survey will be used to achieve the target response rate. Respondents should take approximately 20 minutes to complete the survey. Therefore, we estimate that the respondent burden for completing the survey will be 300 hours (900 completes multiplied by 20 minutes per completed survey).

Estimated Annual Respondent Burden

Data collection effort	Number of respondents	Estimated time per respondent (in minutes)	Estimated total burden hours
Safety Culture Survey Pilot	900	20	300

Respondents will not be asked to maintain any records. No additional equipment purchases will be made to support data collection processes or record keeping. Respondents will incur no monetary cost in completing the survey.

Estimated Annual Costs to the Federal Government

The total cost to the government for conducting this survey development project is approximately $227,000 which includes the cost of survey development, pretesting, data collection, analysis, preparation of survey administration procedures, and preparation of a final report. The estimated cost of the data collection component is $50,000, which includes labor costs, fringe expenses, administrative expenses, and costs associated with copying, postage, and telephone expenses.

Request for Comments

In accordance with the Paperwork Reduction legislation cited in the summary section above, comments on the AHRQ information collection proposal are requested with regard to any of the following:

(a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility;

(b) The accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 22, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–30631 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR 1309 Head Start Facilities Purchase.

OMB No.: 0970–0193.

Description: This rule contains the administrative requirements applicable to Head Start grantees when applying for funding to purchase Head Start program facilities. The rule ensures that standard business practices are applied when acquiring real property to protect the federal interest in properties purchased with public funds. The rule further ensures compliance with all other federal statutes applicable to the expenditure of public funds when purchasing real property.

Respondents: Head Start and Early Head Start grantees applying to purchase program facilities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Regulation	200	1	41	8,200

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ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Estimated Total Annual Burden Hours				8,200

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 25, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–30645 Filed 12–2–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR 1302 Head Start Grants Administration.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR Part 1301	2500	2	2	5,000

Estimated Total Annual Burden Hours: 5,000.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 25, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–30646 Filed 12–2–02; 8:45 am]

BILLING CODE 4184–01–M

OMB No.: 0980–0243.

Description: 45 CFR contains provisions applicable to program administration and grants administration under the Head Start Act, as amended. The provisions specify the requirements for grantee agencies for insurance, bonding, the submission of audits, matching of federal funds, accounting systems certifications and other provisions applicable to personnel administration.

Respondents: Head Start and Early Start grantees.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0116]

Agency Information Collection Activities; Announcement of OMB Approval; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Veterinary Feed Directive 21 CFR Part 558," has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 19, 2002 (67 FR 53806), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0363. The approval expires on October 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: November 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30643 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0476]

Bavarian Red Cross; Revocation of U.S. License No. 1002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biologics license (U.S. License No. 1002), issued to the Bavarian Red Cross (BRC), for the manufacture of Whole Blood and Red Blood Cells. In a letter to FDA dated June 3, 2002, BRC voluntarily requested revocation of its licenses without prejudice and thereby waived its opportunity for a hearing. In a letter dated July 22, 2002, FDA revoked the firm's license.

DATES: The revocation of the biologics license (U.S. License No. 1002) is effective July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has revoked the biologics license (U.S. License No. 1002), issued to BRC, Herzog-Heinrich-Strasse 4, D–80336, Munich, Germany, for the manufacture of Whole Blood and Red Blood Cells. Additional locations affected by the revocation include: Prof.-Ernst-Nathan-Str. 1, D–90419, Nurnburg, Germany; Klinikstrasse 5, D–97070, Wurzburg, Germany; Dr. Franz-Strasse 3, D–95445, Bayreuth, Germany; Westheimer Strasse 80, D–86156, Augsburg, Germany; Nikolaus-Fey-Strasse 32, D–97353, Wiesentheid, Germany; and Hoher Kreuz Weg 7, D–93055, Regensburg, Germany.

FDA inspected four of the six licensed locations of the BRC from October 27 through November 13, 1997. The inspections were conducted at the Munich, Wiesentheid, Nurnberg, and Bayreuth facilities. During the inspections, FDA observed significant deviations from the standards established in the license as well as the applicable Federal regulations. The standards and regulations are designed to ensure the continued safety, purity, and potency of the manufactured product. FDA also determined that the firm had discontinued the manufacture of Whole Blood and Red Blood Cells intended for distribution in the United States. FDA concluded that a meaningful inspection of BRC's ability to appropriately manufacture products under the license could not be made. The deviations noted during the inspections included, but were not limited to, the following: (1) In violation of 21 CFR 640.3(b), donor suitability was not adequately determined, in that questions were not asked, concurrently with the direct questions on high risk behavior, for exclusion of donors who are at increased risk for human immunodeficiency virus–1 (HIV–1) group O infection; (2) in violation of §§ 606.140, 610.40, and 610.45 (21 CFR 606.140, 610.40, and 610.45), inspections of the Nurnburg and Munich facilities disclosed that the Abbott Prism system, a device that was not approved by FDA, was utilized to test for antibody to HIV types 1 and 2 plus O (anti-HIV 1/2), the hepatitis B surface antigen (HBsAg), the antibody to hepatitis B core antigen (anti-HBc), and antibody to hepatitis C virus encoded antigen (anti-HCV). Additionally, blood and blood products were not tested for HIV–1 antigen and antibody to human lymphotropic virus type I (anti-HTLV–I); (3) in violation of § 606.140, the New LAV-Bolt I by Sanofi Diagnostics Pasteur, an HIV–1 western blot assay that was not approved by FDA, was used as an assay for reentry of donors; (4) in violation of § 606.140, the New LAV-Bolt II by Sanofi Diagnostics Pasteur, an HIV–2 western blot assay that was not approved by FDA, was used as an assay for reentry of donors; and (5) in violation of 21 CFR 606.121(c)(5)(i), blood and blood products that were intended for transfusion and collected from paid donors were not labeled as to distinguish them from blood products collected from volunteer donors.

In a letter dated July 8, 1998, and issued under § 601.5(b) (21 CFR 601.5(b)), FDA outlined the deviations noted at the inspection. FDA notified BRC of FDA's intent to revoke U.S. License No. 1002 and announced its intent to offer an opportunity for hearing unless the deviations were adequately addressed. In a letter to FDA dated July 30, 1998, BRC addressed FDA's concerns about the inability to inspect products prepared under the U.S. License No. 1002.

In a certified, return-receipt letter dated January 21, 1999, to BRC, FDA stated that the firm's July 30, 1998, response was inadequate to address all the violations that FDA documented at the inspections. FDA advised BRC that its response was unsatisfactory in that BRC had not provided a comprehensive corrective action plan, adequate to bring the firm into compliance with the applicable Federal standards and regulations. In the same letter, FDA suggested that the firm voluntarily request that U.S. License No. 1002 be revoked, and a new application be submitted at a later date.

In a letter dated November 3, 2000, FDA notified BRC that since the receipt of the July 30, 1998, letter to FDA, FDA had not received any additional response from the firm. The letter stated under § 601.5(b)(2), FDA had provided a reasonable period for the firm to demonstrate or achieve compliance with the applicable standards established in the license and regulations before proceeding to initiate revocation of U.S. License No. 1002. Since BRC did not submit a response addressing the methods intended to demonstrate or achieve compliance and did not waive an opportunity for hearing, FDA notified the firm in the same letter of FDA's intent to revoke the license and to issue a notice of opportunity for hearing under 21 CFR 12.21(b).

In the **Federal Register** of May 9, 2002 (67 FR 31348), FDA announced a notice of opportunity for a hearing on a proposal to revoke the biologics license (U.S. License No. 1002) issued to BRC. In a letter to FDA dated June 3, 2002, BRC voluntarily requested revocation of its licenses without prejudice and thereby waived its opportunity for a hearing. In a letter to BRC dated July 22, 2002, FDA revoked the firm's license.

FDA had placed copies of the documents relevant to the revocation on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Accordingly, under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.202), the biologics license (U.S. License No. 1002) issued to BRC was revoked, effective July 22, 2002.

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Dated: November 22, 2002.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 02–30642 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463), notice is hereby given of the following meeting. The meeting will be open to the public.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: December 8, 2002, 7 p.m.–9 p.m. December 9, 2002, 8 a.m.–5:30 p.m. December 10, 2002, 8:30 a.m.–3 p.m.

Place: Wyndham Washington Hotel, 1400 M Street, NW, Washington, DC 20005.

Agenda: Agenda items will include, but not be limited to: Welcome, plenary session on bioterrorism and public health preparedness with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. Meeting content will address the critical nature of bioterrorism, current activities related to public health preparedness by the DHHS, state responses to bioterrorism and public health preparedness, and how the constituency groups of the committee are incorporating and will further incorporate bioterrorism and public health preparedness into their workforce education and training efforts. Proposed agenda items are subject to change as priorities dictate.

Public Comments: Public comment will be permitted before lunch and at the end of the Committee meeting on December 10, 2002. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Wyndham Washington Hotel, Washington, D.C., on December 10, 2002. These persons will be allocated time as the Committee meeting agenda permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Dated: November 26, 2002.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 02–30551 Filed 12–2–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following websites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers).

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.).

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

Northwest Drug Testing, a Division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 / 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory.

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

* Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

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818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176x276.
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–3714.

Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 02–30385 Filed 12–2–02; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Correction of Application Deadline for the Grant Program, Community Collaborations to Prevent Youth Violence and Promote Youth Development (SM 03–005) (Short Title: Youth Violence Prevention Grants)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Correction of application deadline for the grant program, Community Collaborations to Prevent Youth Violence and Promote Youth Development (SM 03–005) (Short Title: Youth Violence Prevention Grants).

SUMMARY: This notice is to inform the public that the application deadline published on November 26, 2002, for the grant program, Community Collaborations to Prevent Youth Violence and Promote Youth Development (SM 03–005) (Short Title: Youth Violence Prevention Grants), is incorrect. The correct application deadline is January 22, 2003.

Program Contact

For questions about the due date for this program or other program issues relating to this program, contact: Pat Shea, M.S.W., M.A., Special Programs Development Branch, CMHS/SAMHSA, Parklawn Building, Room 17C–26, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–3655. (Email) *pshea@samhsa.gov.*

Dated: November 26, 2002.

Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 02–30644 Filed 12–2–02; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4797–N–01]

Notice of Reminder for Fiscal Year 2002 HOPE VI Demolition Grant Applicants of the Need For Prior Demolition Approval

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice reminds potential applicants for Fiscal Year 2002 HOPE VI demolition grants, that they must secure demolition approval under section 18 of the United States Housing Act of 1937 on or before the HOPE VI demolition grant application deadline.

FOR FURTHER INFORMATION CONTACT: Caroline Clayton, Office of Public and Indian Housing, Room 4130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 401–8812. (This number is not toll-free). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the toll-free Federal Information Relay Service at 1–800–877–8339. The section 18 demolition application form (HUD–52860) is available at *http://www.hudclips.org/sub_nonhud/html/pdfforms/52860.pdf.*

SUPPLEMENTARY INFORMATION: HUD anticipates that it will soon publish the FY 2002 HOPE VI demolition notice of funding availability (NOFA). This notice serves to remind public housing authorities that anticipate applying for a Fiscal Year (FY) 2002 HOPE VI demolition grant that demolition approval must be obtained on or before the HOPE VI demolition grant application deadline. Section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) establishes the demolition approval application process for properties not already approved for demolition through a Mandatory Conversion Plan or HOPE VI Revitalization Plan. In addition, regulations at 24 CFR part 970 describe the administrative steps required to perform demolition/disposition activity in accordance with the United States Housing Act of 1937. Public housing agencies are also advised that HUD's Special Application Center, which processes demolition approval applications, requires 100 days to process an application.

This notice applies to demolition-only grants, not demolition conducted pursuant to a HOPE VI revitalization grant or a Mandatory Conversion Plan approved under applicable regulations (24 CFR part 971). Guidance on preparing a demolition approval application and links to the regulations and applicable notices, is available though HUD's Web site at *http://www.hud.gov/offices/pih/centers/sac/demo_dispo/.* The section 18 demolition application form (HUD–52860) is available at *http://www.hudclips.org/sub_nonhud/html/pdfforms/52860.pdf.*

Dated: November 25, 2002.

Michael Liu,
Assistant Secretary for Public and Indian Housing.
[FR Doc. 02–30572 Filed 12–2–02; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–060–1610–DU]

Notice of Intent

AGENCY: Bureau of Land Management.

ACTION: Notice of Intent to prepare two Environmental Assessments (EAs) and consider amending the Grand Resource Area Resource Management Plan (RMP); Moab, Utah.

SUMMARY: Pursuant to the Bureau of Land Management (BLM) Planning Regulations (43 CFR 1600) this notice advises the public that the Utah Bureau of Land Management (BLM), Moab Field Office, is considering amending an existing planning document. The BLM will prepare two Environmental Assessments (EAs) to consider amending the 1985 Grand Resource Area RMP. Off Highway Vehicle (OHV) categories in the Utah Rims and Cameo Cliffs areas will be re-evaluated to create potential opportunities for sustainable motorized recreation. In addition, mountain bike travel will be addressed. This action is being considered in response to recent and anticipated increases in visitor use.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. For 30 days from the date of publication of this notice in the **Federal Register**, the BLM will accept comments on this potential action. There will also be an opportunity for public comment during the planning process.

ADDRESSES: Comments should be sent to the BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532. Comments, including names and street addresses of respondents, will be available for public review at the Utah BLM Moab Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EA and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Katie Stevens (Cameo Cliffs) or Chad Niehaus (Utah Rims) at the above address or telephone (435) 259–2100. Existing planning documents and information are also available at the Moab Field Office.

SUPPLEMENTARY INFORMATION: After interdisciplinary review, no specific planning criteria were determined necessary for this proposed plan amendment. OHV designations and mountain bike travel have been identified as the preliminary issues for the proposed plan amendments, representing the BLM's knowledge to date on the existing issues and concerns with current management.

Utah Rims is a 15,337 acre area located in Grand County, Utah just west of Rabbit Valley (the motorized portion of Colorado Canyons National Conservation Area) between the Colorado River and Interstate 70. The 1985 Grand RMP divided the Utah Rims Recreation Area into two OHV designations. The central portion of Utah Rims (2,560 acres) was "limited to existing roads and trails" to reduce saline soil discharge into the Colorado River, while the remainder (12,771 acres) was placed in the "open" category.

On January 22, 2001, 5,756 of these open acres were designated as "limited to existing roads and trails for motorized and mechanized use" on an interim basis through a **Federal Register** notice to facilitate management of increased recreational use.

The Cameo Cliffs area is located in San Juan County, Utah, south of Moab along the east side of U.S. Highway 191 between Utah State Route 46 and San Juan County Road 114 and includes the Casa Colorado Rock area. The 1985 Grand RMP designated the entire Cameo Cliffs area (24,666 acres) as "open."

As a result of the proposed action, existing OHV designations and mountain bike management could change for both Utah Rims and Cameo Cliffs Recreation Areas.

Dated: November 22, 2002.

Sally Wisely,
State Director, Utah.
[FR Doc. 02–30498 Filed 12–2–02; 8:45 am]
BILLING CODE 3410–DS–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0135).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR 208.11(a), (b), (d) and (e)—Surety Requirements (Forms MMS–4071 and MMS–4072).

DATES: Submit written comments on or before February 3, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, or e-mail *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 208.11 (a), (b), (d) and (e)—Surety Requirements.

OMB Control Number: 1010–0135.

Bureau Form Numbers: Forms MMS–4071 and MMS–4072.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS; collecting royalties from lessees who produce minerals; and distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

When the Secretary determines that sufficient need exists among small refining companies to justify taking royalty oil in kind and offering this oil for sale to eligible refiners, small refiners may apply to participate in this sale of Federal royalty oil and follow procedures under which contracts for the purchase of royalty oil will be awarded. Completed applications to participate in the sale bid proposals, signed contracts, and surety instruments are submitted to MMS.

The application must be complete and timely filed, and applicants for royalty oil may be required to provide a surety instrument with their bid package. This surety instrument may be a Letter of Credit (Form MMS–4071) or a Royalty-In-Kind Contract Surety Bond (Form MMS–4072), or other acceptable commercial surety.

MMS is requesting OMB's approval to continue to collect this information. Without the surety protection, the Government can lose money if a refiner does not pay for oil he has received. Proprietary information submitted is

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protected, and there are no questions of a sensitive nature included in this ICR.

We have also changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 208.

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 10 purchasers.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 10 burden hours. The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph.

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
208.11 (a), (b), (d), and (e)	The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. * * * The "MMS-specified surety instrument" shall be in the form specified by MMS instructions or approved by MMS. All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests.	1	10	10
Total	.....	.....	.....	10

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or record keepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 25, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–30565 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Environmental Statement; Notice of Availability

AGENCY: National Park Service.

ACTION: Notice of Availability for public review of a Draft Environmental Impact Statement (EIS) for the General Management Plan Amendment (GMPA) for Biscayne National Park in the State of Florida.

SUMMARY: The National Park Service (NPS) has prepared a draft Environmental Impact Statement on the General Management Plan Amendment for Biscayne National Park. The statement evaluates potential environmental impacts associated with various management alternatives for the preservation and use of 7 structures collectively known as Stiltsville in the northern portion of Biscayne Bay within the National Park. This GMPA and EIS have been prepared in response to the requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and in accord with Director's Order Number 2, the planning guidance for National Park Service units that became effective May 27, 1998. The NPS has conducted public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of the Stiltsville area of Biscayne National Park. The comment period for this draft GMPA/EIS will be 60 days from the publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**.

Please note that due to public disclosure requirements, the National Park Service, if requested, is required to make the names and addresses of those who submit written comments public. Individual respondents may request that we withhold their names and addresses from the public record. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. Anonymous comments will be included in the public record. However, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Two public meetings will be conducted to receive comments on the draft EIS for the GMPA. On Monday, December 16, 2002, a meeting will be held at Keys Gate Golf and Tennis Club, 2300 Palm Drive, Homestead, Florida from 3 p.m. until 8 p.m. On Tuesday, December 17, 2002, a meeting will be held at the Renaissance Ballroom, 5910 SW 8 Street, Miami, Florida from 3 p.m. until 8 p.m.

ADDRESSES: Comments on the EIS should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida, 33033–5634 or by email, *bisc_stiltsville@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida, 33033–5634, (305) 230–1144, ext. 3002.

SUPPLEMENTARY INFORMATION: The Draft and Final General Management Plan Amendment and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: September 26, 2002.

Jerre Brumbelow,

Acting Regional Director, Southeast Region.

[FR Doc. 02–30490 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/General Management Plan, For Vancouver National Historic Site, Clark County, Washington; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service (NPS), Department of the Interior, has prepared a draft general management plan (GMP) and environmental impact statement (EIS) for Fort Vancouver National Historic Site (NHS) located in Vancouver, Washington. This GMP describes and analyzes three alternatives which respond to both NPS planning requirements and to the issues identified during the public scoping process. These alternatives address visitor use and the preservation of the cultural and natural resources that provide the environment in which the Hudson's Bay Company story is presented to the public. *Alternative A* constitutes the No Action alternative and assumes that existing programming, facilities, staffing, and funding would generally continue at their current levels. *Alternative B*, the Preferred Alternative, expands opportunities for the visitor to appreciate the broad sense of history that occurred at Fort Vancouver and its place in Northwest history. *Alternative C*, proposes full reconstruction within the Fort and additional reconstruction or delineation elsewhere within the NHS. The environmental consequences of all the alternatives, and mitigation strategies, are identified and analyzed in the EIS.

Scoping: Public meetings were initiated in January 1999 to solicit early participation into the conservation planning and environmental impact analysis process, and aided in defining the range of issues to be analyzed. A Notice of Intent announcing the decision to prepare the general management plan and environmental impact statement was published in the **Federal Register** on January 7, 1999. A newsletter was produced and mailed to approximately 600 people on the park's mailing list to encourage participation and comment on critical park issues. The park received 29 written comment letters. The NPS held two public meetings in January 2000 and received and recorded over 150 oral comments during the two meetings. Scoping comments continued to be accepted and considered through the end of March 1999. During this period, the NPS facilitated discussions and briefings to park staff, the Vancouver National Historic Reserve Trust Board, congressional staff, elected officials, tribal representatives, public service organizations, educational institutions, and other interested members of the public.

Proposed Plan and Alternatives: The draft EIS/GMP includes two action alternatives and a no-action (existing conditions) alternative. Under all the alternatives, the agricultural fields around the fort palisade would be restored as part of the Hudson's Bay Company (HBC) historic landscape when the City of Vancouver vacates Pearson Airfield T-hangars and the former aviation museum building by the end of the year 2002. In addition, The NPS staff would administer any and all portions of the south and east Vancouver Barracks area determined to be excess to the needs of the U.S. Army by the Secretary of the Army. Use of this area could include restoring the Vancouver Barracks cultural landscape, adapting and reusing existing historic buildings, leasing properties to the City of Vancouver, providing for additional parking, staging public transportation operations, and incorporating administrative functions. Decisions

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would be made in consultation with the Reserve Partners.

Alternative A is the no-action alternative and assumes that existing conditions, including programming, facilities, staffing, and funding, would generally continue at their current levels. This alternative would include fulfilling the existing commitments and relationships with the Reserve Partners and providing technical assistance to the McLoughlin House National Historic Site in Oregon City, Oregon, currently an affiliated unit of the National Park System. No new substantial facility or program initiatives would be proposed under this alternative. The NHS would continue to work with the City of Vancouver to extend the City's proposed Discovery Historic Loop Trail through the Village of the NHS and along East Fifth Street. In cooperation with the City of Vancouver and Washington Department of Transportation, the pedestrian overpass would be built over State Route 14 and the railroad to connect the Fort Vancouver Waterfront and the City's Old Apple Tree Park to link the Fort and HBC Village. The current NHS visitor center would be retained in its current configuration and location, as would the current Vancouver National Historic Reserve visitor center situated in the historic General O.O. Howard House at the Vancouver Barracks.

Alternative B constitutes the Preferred Alternative, and this proposed course of action has also been determined to be the "environmentally preferred" alternative. *Alternative B* contains several new elements for implementation that would result in expanded opportunities for the visitor to appreciate the broad sense of history that occurred at Fort Vancouver and its place in Northwest history. Specific actions include the reconstruction of nine HBC period structures within the fort palisade and two at the Village. A research and education center would be developed within the fort. Interpretive components would be added including wayside exhibits and delineation of structures in certain locations. Much of the historic landscape would be restored. The NPS would develop an interpretive area at the Waterfront by partially reconstructing the Salmon Store as an interpretive shed, and delineating several other historic HBC structures. The original location of the wharf would be simulated and the historic pond delineated with wetland plants. A portion of Columbia Way would be realigned to better accommodate visitor circulation and interpretation.

In cooperation with the City of Vancouver and the Washington Department of Transportation, the pedestrian overpass would be widened as a land bridge to allow for interpretation devices and vegetation. A local transit authority, in cooperation with NPS and other Reserve Partners, would implement a shuttle system to facilitate visitation. Other cooperative sharing would include administrative, maintenance, and visitor facilities with Reserve Partners. The NPS would recommend that one of the four buildings fronting the historic Parade Ground as determined excess by the Secretary of the Army be renovated as the joint administrative headquarters for the part and other Reserve offices. Maximum use would be made of existing structures including renovation of the existing Fort Vancouver visitor center as the Vancouver National Historic Reserve visitor center jointly managed by the Reserve Partners including the NPS.

Implementation of this alternative would result in development of additional educational outreach programs and new research facilities related to the HBC and early U.S. Army period. This alternative recommends that the McLoughlin House National Historic Site in Oregon City, Oregon become a unit of Fort Vancouver NHS and be managed by Fort Vancouver National Historic Site staff. An act of Congress would be required to implement this recommendation.

Alternative C contains many of the same actions as the Preferred Alternative, but key differences include: Full reconstruction within the fort palisade, along with the reconstruction of the two historic School Houses and a barn to the north of the Fort. Additional delineation of structures would occur at the Waterfront and the Village. The historic Salmon Store would be reconstructed along the Columbia River shoreline, as would the historic wharf and other waterfront features. An ethnobotanical garden would be constructed to interpret the local historic uses of native plants. An opening in the railroad berm would be created to visually link the Fort to the Waterfront. To facilitate visitor use and interpretation, a portion of Columbia Way would be closed to vehicular traffic in cooperation with the City of Vancouver. The current NHS visitor center would be renovated and retained for more detailed interpretation concerning Fort Vancouver, while a new location would be sought for a joint Vancouver National Historic Reserve visitor facility to provide the public with information and orientation to all the Reserve stories and venues. The location for this facility is yet to be determined, but priority would be given to rehabilitation of an historic structure within the Vancouver Barracks Historic District that is listed in the National Register of Historic Places. The research and education center would be located within the Vancouver Barracks portion of the Reserve.

Public Review and Comment: The draft EIS\GMP is now available for public review. Interested persons and organizations wishing to express any concerns or provide relevant information are encouraged to obtain the document from the Superintendent, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, Washington 98661, or via telephone at (360) 696–7655. The document may also be reviewed at area libraries, or obtained electronically via the park's Web site at *http://www.nps.gov/fova/news.htm*.

In addition, the park will conduct public meetings to facilitate public review and comment on the draft EIS\GMP. At this time, meetings are scheduled for December 11 (Vancouver, Washington) and December 12 (Oregon City, Oregon). Confirmed details on meeting locations, times, etc., will be posted on the park's Web site, or can be obtained by contacting the Superintendent, as noted above.

All written comments must be postmarked not later than 60 days following the date the EPA notice of filing is published in the **Federal Register**, or February 8, 2003, *whichever is later*—immediately upon determination of the actual date this will be announced via local and regional news media and posted on the park's Web site. All comments will become part of the public record. If individuals submitting comments request that their name or\and address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials or organizations; and, anonymous comments may not be considered.

Decision: Following the review period for the draft EIS\GMP, all comments received will be considered in preparing the final EIS\GMP. The final document is anticipated to be completed during spring 2003. Its availability will be similarly announced in the **Federal Register**. As this is a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation would be the Superintendent, Fort Vancouver National Historic Site.

Dated: November 25, 2002.

Arthur E. Eck,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–30485 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Record of Decision on the Final Environmental Impact Statement/Oil and Gas Management Plan for Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Potter, Hutchinson, and Moore Counties, Texas.

SUMMARY: On September 26, 2002, the Director, Intermountain Region, approved the Record of Decision for the project. As soon as practical, the National Park Service will begin to implement the Oil and Gas Management Plan as described as the Preferred Alternative (Alternative B) contained in the FEIS issued on August 9, 2002. In the Preferred Alternative, all areas of the two NPS units would be formally designated as Special Management Areas (SMA's), and specific operating stipulations would be applied. While this alternative was not deemed to be the environmentally preferred alternative, it was determined to best accomplish the legislated purposes of the two NPS units by balancing the statutory mission of the NPS to provide long-term protection to the NPS units' resources and significance, while allowing for the exercise of rights to oil and gas not owned by the United States. It was also determined that implementation of the Preferred Alternative will not constitute an impairment of park resources and values. This course of action and two alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures identified.

The full Record of Decision includes a statement of the decision made; synopses of the alternatives considered, a description of the environmentally preferable alternative; the decision rationale used in selecting the alternative; a finding on impairment of park resources and values; a description of mitigation measures and monitoring plans that will be implemented for the selected alternative; a statement that addresses how all practical means to avoid or minimize environmental harm from the selected alternative have been adopted; and a description of public involvement in the decision-making process.

Basis for Decision

In reaching its decision to select the preferred alternative, the National Park Service considered the purposes for which the two NPS units were established, and other laws and policies that apply to lands in the units, including the Organic Act, National Environmental Policy Act, and the *NPS Management Policies*. The National Park Service also carefully considered public comments received during the planning process.

FOR FURTHER INFORMATION CONTACT: Karren Brown, Superintendent, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, TX 79036, Telephone: 806–857–3131.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the Record of Decision may be obtained from the Superintendent listed above.

Dated: September 26, 2002.

Karen Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 02–30487 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area, Big Lagoon Wetland and Redwood Creek Restoration, Marin County, California; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: In accordance with § 102 (2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq*), the National Park Service (NPS) is undertaking a comprehensive conservation planning and environmental impact analysis process regarding the proposed restoration/enhancement of the lower Redwood Creek watershed at Muir Beach. The purpose of the project is to restore or enhance ecological conditions and processes, reducing flooding of local infrastructure, and providing public access to the beach and restored wetland and creek. Key issues to be addressed will include habitat for fish and wildlife, ecosystem conditions and processes, effects on special status plant and animal species, hydrology, flood hazards, traffic, visitor access, and visitor experience. Notice is hereby given that a public scoping process has been initiated. The purpose of the public scoping process is to elicit public comment regarding the full spectrum of issues and concerns, a suitable range of alternatives, the nature and extent of potential environmental impacts or ecological benefits, and appropriate mitigation strategies that should be addressed in preparing a draft Environmental Impact Statement (EIS).

Background: The Big Lagoon project site is located at the mouth of the Redwood Creek watershed, which drains an 8.9-square-mile area on the southwestern slopes of Mt. Tamalpais in coastal Martin County. Approximately half of the restoration planning area is federally owned and is situated within the Golden Gate National Recreation Area (GGNRA); the remainder is owned by the San Francisco Zen Center. The project site is a popular destination in the park, receiving approximately 440,000 visitors annually. Historically this area supported a freshwater and brackish lagoon with associated permanent and seasonal wetlands, riparian forest, and beach dune communities. The entire area of Muir Beach and the adjacent lowland pastures were part of the Redwood Creek floodplain. The creek meandered across the valley floor and, during floods, deposited sediment across the floodplain area. Today, the creek has been confined and much of the floodplain eliminated due to the combined effects of road and levee construction, channeling projects, and placement of the NPS parking lot and picnic area.

Restoration Goals: The GGNRA is preparing an EIS to address possible extent of restoration and/or enhancement of natural resource values. The goals of the proposal include the following:

- Restore a functional, self-sustaining ecosystem, including wetland, aquatic, dune, upland, and riparian components.
- Develop a restoration design that: (a) Functions in the context of the watershed and other pertinent regional boundaries, (b) identifies and, to the extent possible, mitigates factors that reduce the site's full restoration

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potential. Understanding of historical and current conditions and physical processes in the watershed is required to meet this objective.

- Consistent with restoring a functional ecosystem, create habitat adequate to support sustainable populations of special status species.
- Reduce flooding on Pacific Way and in the Muir Beach community on a long-term basis, and work with Marin County to ensure that vehicle access is provided to the Muir Beach community.
- Work with Comprehensive Transportation Management Plan staff to identify transportation alternatives that are consistent with ecosystem restoration.
- Provide for visitor experience, public access, and resource interpretation that are compatible with ecosystem restoration and historic preservation.
- Protect cultural resources and work with the Federated Indians of Graton Rancheria to incorporate cultural values and indigenous archaeological sites into the restoration design and site stewardship.
- Provide opportunities for public education and community-based restoration, including engaging local and broader communities in site stewardship and restoration planning.

Public Process to Date: The National Park Service drafted a preliminary Environmental Assessment (EA) for restoration measures considered for this area in 1994; however the EA process was not ever completed and no project was implemented. Since that time, the site has changed and new information has been developed. Due to the changed conditions, a new analysis of restoration options, mitigation issues, etc will be undertaken. At this time, public scoping meetings for the Big Lagoon wetlands and Redwood Creek restoration are scheduled as follows: Oct. 22, 2002 at the regular meeting of the GGNRA Citizens' Advisory Commission, Oct. 29, 2002 at the Muir Beach Community Center, and Nov. 2, 2002 at Tamalpais High School in Mill Valley. Site walk-thrus are be conducted on Nov. 9, 2002. Also, early technical scoping reviews were held on-site throughout July and August 2002 with experts of various disciplines (archaeology, biology, wetland and riparian ecology, geomorphology, and visitor access) to assist the project team in building a knowledge base on which study designs and preliminary alternatives will be formulated. To support the public process and foster ready access to information, GGNRA is developing a website for the project that will be hosted on the GGNRA Web site (*http://www.nps.gov/goga/admin/planning*). The Web site will be a key component of the public involvement strategy and will allow the public to view and retrieve planning documents, fact sheets, and meeting notices for the project. Following scoping and with continued input from the public and regulatory and resources agencies, a full range of preliminary project alternatives will be developed and evaluated. GGNRA staff anticipate a minimum of three alternatives, including the *No-Action* Alternative. An "environmentally preferred" alternative will be disclosed in the draft EIS.

Comments and Public Scoping: As noted above, three scoping meetings are scheduled during Fall 2002. Confirmed details on all scoping meetings will be announced through direct mailing, the project Web site, and local and regional media. Interested individuals, organizations and agencies are invited to attend these meetings to comment orally and/or provide written comments or suggestions. Interested persons may also refer to the GGNRA Web site for more information on this project. A scoping document (including applicable information from the 1994 EA) and site information will be available at the above Web site, or can be obtained by writing or telephoning the GGNRA staff person listed below. Comments, suggestions, or relevant information (or requests to be added to the project mailing list) should be sent to: Big Lagoon Wetland and Redwood Creek Restoration, Golden Gate National Recreation Area (*Attn:* Jennifer Vick, Project Manager), Building 201, Fort Mason, San Francisco, CA 94123 [Telephone (415) 561–4942]. All written comments for the scoping phase of Big Lagoon Wetland and Redwood Creek Restoration EIS must be postmarked not later than 45 days following the publication of this notice in the **Federal Register**.

All respondents are advised that individual names and addresses of persons commenting on the project EIS may be included as part of the public record. If individuals submitting comments request that their name or\and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision Process: Availability of the draft EIS for review and written comment will be announced in the **Federal Register**, as well as through local and regional news media, the GGNRA Web site, and direct mailing to the project mailing list. At this time, the draft EIS is anticipated to be available for public review in early 2004. To ensure further opportunity to comment on the draft EIS after it is distributed, additional public meetings will be held (dates and locations to be determined). Notice of the availability of the final EIS will similarly be published in the **Federal Register**. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently, the official responsible for implementation is the Superintendent, Golden Gate National Recreation Area.

Dated: October 9, 2002.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 02–30489 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Notice of Intent to Prepare an Environmental Assessment and Notice of Public Meeting

AGENCY: National Park Service, Rock Creek Park, Washington, DC.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–109 section 102(c)) and pursuant to a court order, the National Park Service (NPS) is preparing an Environmental Assessment (EA) regarding two privately owned and operated cellular communications towers located within Rock Creek Park pursuant to an NPS permit.

SUPPLEMENTARY INFORMATION: In 1998, pursuant to the Telecommunications Act of 1996, Bell Atlantic filed applications for permits to locate two cellular towers along with their associated equipment shelters within Rock Creek Park. In 1999, pursuant to NEPA, NPS prepared an EA that considered the environmental impacts of siting the two towers inside the park. After completing the EA, NPS concluded that the towers would not have a significant impact to the quality of the human environment, and issued a Finding of No Significant Impact (FONSI). Subsequently NPS issued the permits necessary for Bell Atlantic to construct and operate within Rock Creek Park one 100-foot monopole at the Tennis Center, and one 130-foot monopole in the Maintenance Yard. Both towers have since been built and are currently in use. In 2000, suit was filed opposing these cellular towers, and on July 2, 2002 the Federal district court for the District of Columbia, in *Audubon Naturalist Society of the Central Atlantic States v. NPS and Bell Atlantic Mobile,* ordered the NPS to prepare this new EA.

Meeting and Public Scoping Information: To facilitate this process, during December 2002, NPS will hold a public meeting that will provide an opportunity for public input into the scoping for the EA. The date, time, and location of this meeting will be announced through local media and direct mailings to interested parties known to the NPS. The purpose of the meeting will be to obtain both written and verbal comments from the public to assist NPS in preparing the new EA. In addition, NPS is seeking comments on the issues and alternatives to be addressed in the EA.

The EA is expected to be completed and available for public review in early 2003.

FOR FURTHER INFORMATION CONTACT: Written comments may be directed to the address below: Superintendent, Rock Creek Park, 3545 Williamsburg Lane NW., Washington, DC 20008–1207, or *ROCR@den.nps.gov.*

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 02–30486 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, January 11, at 9 a.m.

Address: Bushkill Visitor Center, Bushkill, PA 18324.

The agenda will include reports from Citizen Advisory Commission members, specifically Commission vacancies and setting up a timetable for annual reports. Superintendent William Laitner will give a report on various park issues, including an update on the park's historic leasing program. The agenda is set up to invite the public to bring issues of interest before the Commission. These issues typically include treatment of historic buildings within the recreation area, monitoring of waste water facilities outside the recreation area but emptying into the Delaware River, and wildlife management issues.

Meeting Date and Time: Thursday, April 3 at 7 p.m.

Address: New Jersey District Office, Walpack, New Jersey 07881.

The agenda for this meeting will consist of Commission reports which typically include natural resources, recreation, and historic structures. The Superintendent will provide reports on park issues and items of interest brought forth by the Commission and the public. The agenda is set up to invite the public to bring issues of interest before the Commission.

Meeting Date and Time: Thursday, April 3 immediately following previous meeting.

Address: New Jersey District Office, Walpack, New Jersey 07881.

Congressional Listing for Delaware Water Gap NRA

Honorable Jon Corzine, United States Senate, Washington, DC 20510.
Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001.
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510.
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802.
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, DC 20515.
Honorable Don Sherwood, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810.
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005.
Honorable Paul E. Kanjorski, 2353 Rayburn House Office Building, S. Capitol Street & Independence Avenue, SW., Washington, DC 20515.
Governor of Pennsylvania, State Capitol, Harrisburg, PA 17120.
Governor of New Jersey, State House, Trenton, NJ 08625.

The agenda for this meeting will consist of the annual Commission meeting and election of officers for 2003–2004.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: October 9, 2002.

William G. Laitner,

Superintendent.

[FR Doc. 02–30488 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Museum of African American History and Culture Plan for Action Presidential Commission; Meeting

AGENCY: National Park Service.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Museum of African American History and Culture Plan for Action Presidential Commission will meet December 3 and 4, 2002, at The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC. On December 3, the Commission will convene at 7:30 a.m., EST, and adjourn at 5:15 p.m., EST. December 4, the Commission will convene at 7:30 a.m., EST and adjourn at 1:30 p.m., EST.

December 3, the Commission will receive and discuss reports from its Executive Committee and Committees on Mission Role and Vision; Site and Building; Public Relations and Legislation; Fundraising, Finance and Budget; and Governance and Organization.

December 4, the Commission will be briefed regarding information gathering town hall meetings held to date, the White House interim report analysis, and the historical retrospective of the 1929 National Memorial Commission.

The Commission meeting is open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis.

Due to an unintentional misrouting of this notice during processing within the National Park Service, the notice could not be published at least 15 days prior

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to the meeting dates. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of Commission members who have adjusted their schedules to accommodate the proposed meeting dates, and the high level of anticipation by all parties who will be affected by the outcome of the Commission's actions.

Assistance to Individuals with Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed in this notice at least two weeks (2 weeks) before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Commission a written statement concerning the establishment of a National Museum for African American History and Culture. The Commission may also permit attendees to address the assembled Commission, but may restrict the length of the presentations, as necessary to allow the Commission to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to Staff to the Commission, National Museum of African American History and submit a written statement, may contact George S. McDonald, Project Manager, Culture, National Park Service, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–4227.

Draft minutes of the meeting will be available for public inspection approximately 12 weeks after the meeting, in room 2012, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: November 20, 2002.

George S. McDonald,

Project Manager, Staff to the National Museum of African American History and Culture Plan for Action Presidential Commission.

[FR Doc. 02–30491 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Immigration and Naturalization Service, DOJ.

ACTION: 30-day notice of information collection under review: INS case status service online (File No. OMB–33).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The INS published a notice in the **Federal Register** on August 13, 2002 at 67 FR 52746. The notice allowed for a 60-day public review and comment period on a proposed new information collection. The INS received one comment regarding assisting the INS in realizing its case management objectives relative to the proposed Case Status Service Online system. The INS has reviewed the comment and maintains the efficacy of the current system.

The purpose of this notice is to allow an additional 30 days for public comment to satisfy the requirements of the Paperwork Reduction Act. Comments are encouraged and will be accepted until January 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* INS Case Status Service Online.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–33); National Customer Service Center, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals are Households. The INS proposes to permit the requestor to look up status by entering on a Web site the receipt number of the submitted action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 responses at 4.5 minutes (.075 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: November 25, 2002.

Stephen R. Tarragon,

Acting Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–30492 Filed 12–2–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1955 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or Email *Howze_Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration,(ESA).

Title: Application for Federal Certificate of Age,

OMB Number: 1215–0083.

Affected Public: Business or other for-profit; individuals or households; not-for profit institutions; farms; and State, local or tribal government.

Frequency: On occasion.

Number of Respondents: 10.

Number of Annual Responses: 10.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 2.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 3(1) of the Fair Labor Standards Act (FLSA) provides that an employer may protect against unwitting employment of oppressive child labor by obtaining a certificate of age certifying that a youth meets the FLSA minimum age requirements. Section 11(c) of the FLSA requires that all employers covered by the Act make, keep and preserve records of wages, hours and other conditions and practices of employment with respect to their employees. Form WH–14 is an application for a Federal Certificate of Age. Without the information provided with the application, there would be insufficient proof of age to issue a certificate.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 02–30594 Filed 12–2–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Senior Community Service Employment Program Grants for PY 2003—Amendment

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; amendments to the SGA.

SUMMARY: The Employment and Training Administration published a document in the November 8, 2002 **Federal Register** (67 FR 68178), concerning the availability of grant funds for the national grants portion of the Senior Community Service Employment Program (SCSEP). The document is being amended to reflect several technical changes as well as provide some clarifications.

The following amendments apply to this SGA:

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to Lorraine Saunders, Division of Federal Assistance, phone (202) 693–3301 or Fax (202) 693–2879. (These are not toll free numbers). All inquiries should include the new SGA number (DFA–03–101), a contact name, fax number, and phone number.

I. G. Submission of Proposals

Electronic Applications. Due to the erratic mail delivery in the Washington, DC area, in addition to using the U.S. Postal Service or overnight delivery services, applicants have the option of submitting their applications via e-mail to *SCSEPSolicitation@doleta.gov.* E-mailed applications must be followed up with a hard copy of the SF–424 with original signature. Applications should follow the instructions in the original publication.

II. A. Eligible Applicants

(1) General National Grant Funds

Applications for general SCSEP national grant funds will be accepted from nonprofit organizations, including community- and faith-based organizations; Federal public agencies; and tribal organizations that can administer an effective program in accordance with section 502(b)(1) of the OAA, and which have a familiarity with the areas and populations to be served and have the capacity to administer multi-State programs.

Any eligible entity may apply for one or more locations within a State or among several States. An application that is for positions solely in one State will not be rejected for that reason, as long as it meets the other requirements of this SGA. Being "capable" of administering multi-State programs allows the Department to negotiate with successful applicants to ensure that contiguous locations that did not receive a proposal are served as described in the SGA. It also ensures that participants in locations that did not receive a proposal do not experience a disruption in services.

It is not the Department's intent to open the national grants portion of funds to the States, State agencies, or local governments. State grantees will continue to receive funds through the distribution of funding under the legislation.

III. A. Program Components

The Department also intends to hold informational conferences for prospective applicants for all interested entities that want to learn more about the program and the competition process. Locations and dates for these conferences are as follows:

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Washington, DC—December 4, 2002
St. Louis, Missouri—December 10, 2002
San Francisco, California—December 12, 2002

As details become available, additional information on conferences may be obtained from the SCSEP Web site at *http://wdsc.doleta.gov/seniors*.

Signed at Washington, DC, this 26th day of November, 2002.

R. Lance Grubb,

Director, Office of Grants and Contracts Management.

[FR Doc. 02–30480 Filed 12–2–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Lykens Coal Company (B & H)

[Docket No. M–2002–090–C]

Lykens Coal Company, 140 Deerlane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its (I.D. No. 36–08830) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) for transporting persons without installing safety catches or other no less effective devices. The petitioner would instead use increased rope strength and secondary safety rope connections in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Perry County Coal Corporation

[Docket No. M–2002–091–C]

Perry County Coal Corporation, 1845 S. KY Hwy 15, Hazard, Kentucky 41702 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its E4–1 Mine (I.D. No. 15–18565) located in Perry County, Kentucky. The petitioner proposes to use belt air to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Mountain Side Coal Company

[Docket No. M–2002–092–C]

Mountain Side Coal Company, RD 3 Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 49.2 (Availability of mine rescue teams) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and members of the rescue team and that the proposed alternative method would provide at least the same measure of protection as the existing standard. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Mountain Side Coal Company

[Docket No. M–2002–093–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.335 (Construction of seals) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner proposes to use wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Mountain Side Coal Company

[Docket No. M–2002–094–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1100 (Quantity and location of firefighting equipment) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical. The petitioner proposes to use two (2) portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the Mountain Side Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Mountain Side Coal Company

[Docket No. M–2002–095–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (Mine map) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Mountain Side Coal Company

[Docket No. M–2002–096–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (Temporary notations, revisions, and supplements) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program

under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Consolidation Coal Company

[Docket No. M–2002–097–C]

Consolidation Coal Company, Consol Energy, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Marion County, Pennsylvania. The petitioner proposes to establish check points 3W–1 and 3W–2 to measure the quality and quantity of air at the inlet of the air course area where roof conditions are deteriorating. The petitioner states that due to the deteriorating conditions in the affected area, traveling the area in its entirety would be unsafe. The petitioner further states that the check points and all approaches to the check points would be maintained in safe condition at all times, and a certified person will conduct tests for methane and the quantity of air at each check point on a weekly basis and place his/her initials, date, and time in a record book that would be kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Mountain Side Coal Company

[Docket No. M–2002–098–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) for transporting persons without installing safety catches or other no less effective devices. The petitioner would instead use increased rope strength and secondary safety rope connections in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. The New Coal Company, Inc.

[Docket No. M–2002–099–C]

The New Coal Company, Inc., P.O. Box 369, Harlan, Kentucky 40831 has filed a petition to modify the application of 30 CFR 77.1607(cc) (Loading and hauling equipment; operation) to its Dayhoit Tipple Mine (I.D. No. 15–10391) located in Harlan County, Kentucky. The petitioner proposes to install locked gates instead of emergency stop devices or cords at ungarded conveyors with walkways to eliminate any entrance to these conveyors. The petitioner states that only the supervisor will have a key to unlock the gates, that access to the conveyors will be for repairs only, and the conveyors will be shut off and the power locked out before the gates are unlocked. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. Highland Mining Company

[Docket No. M–2002–100–C]

Highland Mining Company, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Highland 11 Mine (I.D. No. 15–18480) located in Union County, Kentucky. The petitioner proposes to use a spring-loaded locking device on battery plug connectors on mobile battery-powered equipment to prevent the threaded ring securing the battery plugs to the battery receptacles from unintentional loosening, and attach locking device brackets to the battery receptacles to prevent the loss of the brackets. The petitioner will install a warning tag that states "Do Not Disengage Under Load," on all battery plug connectors and provide instructions on the safe practices and provisions to all persons who operate or maintain the battery-powered machines. The petitioner further states that the training plan for the mine will be revised to specify initial and refresher training for use of the spring-loaded devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

12. Oxbow Mining, LLC

[Docket No. M–2002–101–C]

Oxbow Mining, LLC, P.O. Box 535, 3737 Highway 133, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Elk Creek Mine (I.D. No. 05–04674) located in Gunnison County, Colorado. The petitioner proposes an alternate method in lieu of front wheel brakes on the Getman Roadbuilder, S/N 6718, diesel grader used at the Elk Creek Mine. The petitioner proposes to operate its diesel grader at a maximum speed of 10 miles per hour or less, to train all grader operators to lower the moldboard (grader blade) for additional stopping capability in emergencies, and on how to recognize appropriate levels of speed for different road conditions and slopes. The petitioner states that its alternate method would not be implemented until all grader operators have been trained, and the diesel grader would not be put into service until MSHA has inspected the equipment for compliance. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

13. Lafarge Corporation

[Docket No. M–2002–005–M]

Lafarge Corporation, 2200 Courtney & Atherton Road, Sugar Creek, Missouri 64050 has filed a petition to modify the application of 30 CFR 56.12016 (Work on electrically-powered equipment) to its Sugar Creek Cement Plant (I.D. No. 23–00158) located in Jackson County, Missouri. The petitioner requests a waiver from the existing standard so that neither signatures nor warning notices would be required at the Lafarge Mine. The petitioner proposes to provide each employee with specifically designated locks for lockout that would be engraved with the employee's name. The employee will have the only key and the locks will be identified by color. The petitioner states that unlike a tag or sign, the engraved name would not be accidentally removed or become unreadable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

14. Lafarge Corporation

[Docket No. M–2002–006–M]

Lafarge Corporation, 2200 Courtney & Atherton Road, Sugar Creek, Missouri 64050 has filed a petition to modify the application of 30 CFR 56.12017 (Work on power circuits) to its Sugar Creek Cement Plant (I.D. No. 23–00158) located in Jackson County, Missouri. The petitioner requests a waiver from the existing standard so that warning signs would not be required at the Lafarge Mine. The petitioner proposes to provide each employee with specifically designated locks for lockout that would be engraved with the employee's name. The employee will have the only key

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and the locks will be identified by color. The petitioner states that unlike a tag or sign, the engraved name would not be accidentally removed or become unreadable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

15. Lafarge Corporation

[Docket No. M–2002–007–M]

Lafarge Corporation, 2200 Courtney & Atherton Road, Sugar Creek, Missouri 64050 has filed a petition to modify the application of 30 CFR 57.12016 (Work on electrically-powered equipment) to its Sugar Creek Underground Limestone Mine (I.D. No. 23–02171) located in Jackson County, Missouri. The petitioner requests a waiver from the existing standard so that neither signatures nor warning notices would be required at the Lafarge Mine. The petitioner proposes to provide each employee with specifically designated locks for lockout that would be engraved with the employee's name. The employee will have the only key and the locks will be identified by color. The petitioner states that unlike a tag or sign, the engraved name would not be accidentally removed or become unreadable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

16. Lafarge Corporation

[Docket No. M–2002–008–M]

Lafarge Corporation, 2200 Courtney & Atherton Road, Sugar Creek, Missouri 64050 has filed a petition to modify the application of 30 CFR 57.12017 (Work on power circuits) to its Sugar Creek Underground Limestone Mine (I.D. No. 23–02171) located in Jackson County, Missouri. The petitioner requests a waiver from the existing standard so that warning signs would not be required at the Lafarge Mine. The petitioner proposes to provide each employee with specifically designated locks for lockout that would be engraved with the employee's name. The employee will have the only key and the locks will be identified by color. The petitioner states that unlike a tag or sign, the engraved name would not be accidentally removed or become unreadable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before January 2, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 26th day of November 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–30493 Filed 12–2–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0New1 (2003)]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Construction Project Survey

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning a proposed new information collection request entitled Construction Project Survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 3, 2003. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Suggest ways to minimize the burden of collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 1218–0New1 (2003), U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–2350. Written comments limited to 10 pages or less in length may be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, room N3644, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Todd Owen at (202) 693–2444. For electronic copies of the OSHA Data Initiative information collection request, contact OSHA's Web page on the Internet at *http://www.osha-slc.gov/OCIS/Info_coll.html*.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA proposes to collect occupational injury and illness data from general contractors at selected construction projects. The agency will collect this information from up to 2,500 employers. The collection of data will span the lifetime of the construction project. Participation in this data collection will be on a voluntary basis. OSHA will ask the general contractors to provide the average employment, hours worked, and general information pertaining to the construction project and detailed information pertaining to each work-related injury and illness that occurs at the construction project.

OSHA will compile the data, generate injury and illness rates by project type, and develop profiles of the relative hazards of various construction types. The agency will use the aggregate rates and profiles mainly to guide its future outreach and enforcement efforts towards the project types with the most significant hazards identified by the data. This collection will provide OSHA with data on illnesses and injuries that are associated with distinct types of construction activity, with the various phases of construction, and with the methods, materials, and hazards that are common to those types of work. With this data, OSHA will obtain a measure of injuries and illnesses that affect all employees—regardless of employer—on a common construction project. OSHA could then target its resources to projects with a greater potential for illness and injuries by weighting the selection of types of projects by their relatives degree of hazardousness.

II. Current Actions

This notice requests public comment pertaining to OMB approval of the paperwork requirements for the Construction Project Survey.

Type of Review: New collection.

Agency: Occupational Safety and Health Administration.

Title: Construction Project Survey.

OMB Number: 1218–XXXX.

Agency Number: ICR 1218–0New1 (2003).

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: Construction Project Survey Form.

Total Respondents: 2,500.

Frequency: Recordkeeping.

Average Time per Response: 3 hours.

Estimated Total Burden Hours: 7,500 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–30581 Filed 12–2–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Emergency clearance: public information collection requirements submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request emergency approval of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than six months.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted below, comments on these information collection and record keeping requirements must be received by the designees referenced below by December 26, 2002

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*, and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Stuart Shapiro, NSF Desk Officer.

COMMENTS: Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. When we have received approval, we will begin the process for regular approval.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title:* Survey of Research and Development Expenditures at Universities and Colleges: Fiscal Year 2002.

OMB Approval Number: OMB 3145–0100.

Expiration Date: April 30, 2002.

Use of the Information: This survey is conducted as an annual census of about 610 academic institutions and their 16 Federally-funded research and development centers. NSF's Division of Science Resources Statistics designs, supports, directs and administers periodic surveys and other data collections, including R&D surveys. Recently, coverage of (the Survey of Research and Development Expenditures at Universities and Colleges, *http://www.nsf.gov/sbe/srs/rdexp/start.htm*) was expanded to collect information on R&D about each of the Nation's 36 Federally-funded R&D centers, whether administered by universities (16), industrial firms (4), or nonprofit organizations (16). (As directed under the Federal Acquisition Regulations recorded in the **Federal Register** "35.017–6 Master list of FFRDCs, [t]he National Science Foundation (NSF) maintains a list of FFRDCs. Primary sponsors will provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information." The Division of Science Resources Statistics (SRS) maintains the Master FFRDC List, and thus fulfills this responsibility of NSF's as well. * * *

The academic institutions account for over 95 percent of the Nation's academic R&D funds. This survey has

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provided continuity of statistics since 1954 on R&D expenditures by source of funds and by science & engineering (S&E) field, with separate data requested on current fund expenditures for research equipment by S&E field. Statistics from the survey are published in NSF's annual publication series Academic Science and Engineering R&D Expenditures and are available electronically on the World Wide Web.

The survey will be submitted electronically primarily to the administrators at the Institutional Research Offices. To minimize burden and provide for security, each institution is provided with their institutional code and password. Files are pre-loaded with the institution's previous year's data, instructions, help menus, and a complete program for editing and trend checking. A link is provided to print a complete pdf survey form. Respondents are encouraged to submit their response electronically via the web. Approximately 95% responded via the web and only 15 used other means to submit their data (telephone, paper, email) to this voluntary survey in FY 2001. A total response rate of 95.6% was obtained. Burden estimates are as follows:

Years	Doctorate-granting burden hours	Masters-granting burden hours	Bachelors degree or below burden hours
FY 1999	29.3	13.0	7.4
FY 2000	28.7	12.0	10.4
FY 2001	30.2	11.9	9.0

Dated: November 26, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–30526 Filed 12–2–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, December 10, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The One Item is Open to the Public.

MATTER TO BE CONSIDERED:

7263B Aviation Accident Report—Loss of control and impact with Pacific Ocean, Alaska Airlines flight 261, McDonnell Douglas MD–83, N963AS, about 2.7 miles north of Anacapa Island, California, January 31, 2000.

News Media Contact: Telephone: (202) 314–6100. Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, December 6, 2002.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: November 29, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–30775 Filed 11–29–02; 2:30 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of December 2, 9, 16, 23, 30, 2002, January 6, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

MATTERS TO BE CONSIDERED:

Week of December 2, 2002

Wednesday, December 4, 2002

8:45 a.m.
Discussion of security issues (closed-Ex. 1)

10 a.m.
Briefing on decommissioning bankruptcy issues (closed-Ex. 4&9)

Week of December 9, 2002—Tentative

There are no meetings scheduled for the week of December 9, 2002.

Week of December 16, 2002—Tentative

Tuesday, December 17, 2002

9:30 a.m.
Briefing on policy options and recommendations for revising the NRC's process for handling discrimination issues (public meeting) (contact: Ho Nieh, 301–415–1721)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, December 18, 2002

9:30 a.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (public meeting) (contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of December 23, 2002—Tentative

There are no meetings scheduled for the week of December 23, 2002.

Week of December 30, 2002—Tentative

There are no meetings scheduled for the week of December 30, 2002.

Week of January 6, 2003—Tentative

There are no meetings scheduled for the week of January 6, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (recording)—(301) 415–1292. Contact persons for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at : *www.nrc.gov/what-we-do/policy-making/schedule/html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 27, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–30703 Filed 11–29–02; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Order No. 1353]

Petition Seeking a Proceeding

AGENCY: Postal Rate Commission.

ACTION: Notice and order on petition seeking a proceeding.

SUMMARY: A petition has been filed seeking review of the jurisdictional status of numerous services offered by the Postal Service, such as First Class Phone Cards and Returns@ease. The petition also seeks, for services deemed non-jurisdictional, development of accounting and reporting rules. Although formal action on the petition has been deferred pending completion of a related Postal Service assessment, the Commission is soliciting comments from the public.

DATES: Submit comments by January 30, 2003.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system, which may be accessed at *http://www.prc.gov.* See

SUPPLEMENTARY INFORMATION for further filing information.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION: On October 15, 2002, Consumer Action (CA), a nonprofit membership-based organization based in San Francisco, California, filed a petition requesting the Commission to initiate proceedings concerning fourteen (14) services (or products) offered by the Postal Service to the public.[1] In support of its petition, CA incorporates by reference a letter it co-authored with the Office of the Consumer Advocate (OCA) that provides the petitioner's legal argument and the substantive and procedural relief requested.[2] In their joint letter, CA and OCA request the Commission to institute a proceeding: (1) To review and determine whether the enumerated services are subject to the Commission's rate and classification jurisdiction under §§ 3622 and 3623 of the Postal Reorganization Act; and (2) if some services are not subject to the Commission's jurisdiction, to establish new accounting and reporting rules to ensure a complete separation of "non-jurisdictional (domestic)" costs and revenues from those of jurisdictional services.[3]

Reasons for Deferring Formal Action

During the Commission's consideration of the petition, the Chairman received a letter from the Chairman of the Board of Governors noting, inter alia, that the petition had been filed, that the Board viewed its assertions very seriously, and that the Postal Service currently is conducting an evaluation of what is characterized as its "non-postal service offerings."[4] Chairman Rider expressed the hope that, prior to addressing the request for a formal proceeding, the Commission would afford the Postal Service an opportunity to comment on the issues and further that it first be able to complete its internal review.[5] It is anticipated that the review will be completed by early January 2003.[6]

The petition and all related correspondence are available on the Commission's Web site, *http://www.prc.gov.* On the Commission's home page, this material can be accessed by clicking on "Contents" and then either on "Docketed Cases & Matters," or on "Pending Cases & Matters." It can be found under "Other Matters," where it is listed separately.

Taking into consideration both the representations in Chairman Rider's letter and the lack of any statutorily imposed deadlines, the Commission finds it appropriate to accede to the request to defer action on the petition pending completion of the Postal Service's internal review. The brief deferral should not prejudice the petitioner. Moreover, the scope of the issues raised may be significantly clarified by the results of the Postal Service's review, which, it is indicated, will "bear substantially on the representations in the petition."[7]

Comments

In the interim, interested persons may review the petition and advise the Commission on the most appropriate way to proceed. Comments are due by no later than January 30, 2003.

Ordering Paragraphs

It is ordered:

1. Notice is hereby given of the petition of Consumer Action requesting that the Commission institute proceedings to (1) review the jurisdictional status of 14 specified services and (2) establish rules to require a full accounting of the costs and revenues of non-jurisdictional services, filed October 15, 2002.

2. Comments from interested persons concerning how the Commission should proceed with the petition are due no later than January 30, 2003.

3. The Secretary shall arrange for publication of this notice in the **Federal Register**.

Additional Note on Filing Procedure

The comment period on the joint petition coincides with a formal transition from rules of practice based on traditional hard copy filing, with an electronic filing option, to mandatory use of the Commission's Filing Online system, which can be accessed via *http://www.prc.gov.* See Order No. 1349 in Docket No. RM2002–1 (67 FR 67552), recently-adopted 39 CFR § 3001.9. A User's Guide to the new filing system is also available on the Commission's Web site. The effective date of the switch to mandatory electronic filing is January 7, 2003. Prior to that date, those wishing to comment on the petition may file either hard copy or electronic submissions; on or after January 7, 2003, they should submit comments electronically.

By the Commission.

Issued November 21, 2002.

Steven W. Williams,

Secretary.

[FR Doc. 02–30539 Filed 12–2–02; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of Consumer Action Requesting that the Commission Institute Proceedings to (1) Review the Jurisdictional Status of Fourteen Specified Services and (2) Establish Rules to Require a Full Accounting of the Costs and Revenues of Non-Jurisdictional Services, October 15, 2002 (Petition).

[2] Id. at 3. The joint letter is attached to the petition.

[3] See Joint Letter at 4; see also Petition at 1. The fourteen services identified are: Liberty Cash, Sure Money, Online Payment Services, including eBillPay, Pay@Delivery, and USPS Send Money, ePayments, NetPost CardStore, NetPost Certified Mail, Electronic Postmark, Unisite Antenna Program, Returns@Ease, Mail Package Shipment Program, First Class Phone Cards, and Retail Merchandise. CA and OCA also reserve the right to supplement the list should other such services come to light.

[4] Letter to the Honorable George A. Omas from the Honorable Robert F. Rider, Chairman of the Board of Governors, November 14, 2002, at 1 (Rider Letter). This letter and Chairman Omas's reply are posted on the Commission's Web site.

[5] Rider Letter at 2.

[6] Ibid.

[7] Id. at 1.

POSTAL SERVICE

Postage Evidencing Product Submission Procedures; Correction

AGENCY: Postal Service.

ACTION: Final notice of procedures; correction.

SUMMARY: The Postal Service is correcting an error in the printing of the final product submission procedures published in the **Federal Register** November 5, 2002 (Vol. 67, No. 214, pages 67425–67430).

DATES: The procedures were effective November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager, Postage Technology Management, by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: When the notice of the final Product Submission Procedures was published on November 5, 2002, several lines were inadvertently omitted from the table of Required Documentation in section 4.2 on pages 67428 to 67429. We are reprinting the final procedures here in full for reader convenience.

Product Submission Procedures for Postage Meters (Postage Evidencing Systems)

1. General Information

1.1 Independent Testing Laboratory

To receive authorization from the Postal Service to manufacture, produce, or distribute a postage meter (postage evidencing system) under 39 CFR part 501, Authorization to Manufacture and Distribute Postage Meters, the provider must obtain approval under these product submission procedures. These

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procedures also apply to providers requesting approval to manufacture, produce, or distribute a product under proposed 39 CFR part 502, Authority to Produce and Distribute Postage-Evidencing Systems that Generate Information-Based Indicia (IBI) (65 FR 58689).

The provider must select an independent testing laboratory accredited by the National Institutes of Standards and Technology (NIST) under the National Voluntary Laboratory Accreditation Program (NVLAP) to conduct the detailed product review and testing required by these procedures. When the product contains a postal security device (PSD) or cryptographic module, the laboratory must be an NVLAP-accredited cryptographic module testing laboratory.

Technical documentation (section 4) and production systems (section 5) must be provided to the selected test laboratory in sufficient detail to support testing. The testing laboratory will submit an executive summary containing the information referenced in the Required Documentation table set forth in paragraph 4.2 and the results of the product evaluation directly to the Postal Service. All supporting documentation, products, PSDs and cryptographic modules, and other materials used or generated during testing will be maintained by the testing laboratory for the life of the test. At the time of product approval, the manager, Postage Technology Management (PTM), will determine the ongoing disposition of all supporting documentation, products, PSDs and cryptographic modules, and other materials used or generated during testing.

During the product's life cycle, the provider may choose to use a different laboratory. In that event, all materials used or generated during testing and product evaluation must be transferred to the new laboratory.

Upon completion of the testing, the Postal Service may require that any or all of the following categories of information be forwarded directly from the accredited laboratory to the manager, PTM:

(a) A copy of all information that the provider gives to the laboratory, including a summary of all information transmitted orally.

(b) A copy of all instructions from the provider to the testing laboratory with respect to what is and what is not to be tested.

(c) Copies of all proprietary and nonproprietary reports and recommendations generated during the test process.

(d) Written full disclosure identifying any contribution by the test laboratory to the design, development, or ongoing maintenance of the system.

1.2 Product Submission Procedures

To submit a postage meter (postage evidencing system) for Postal Service approval, the provider will complete the following steps:

(a) Submit a letter of intent (section 2).

(b) Complete and sign the nondisclosure agreements (section 3).

(c) Submit the required documentation (section 4).

(d) Submit the postage evidencing system for evaluation (section 5).

(e) Enable the Postal Service to review the provider's system infrastructure (section 6).

(f) Place the product into limited distribution for field testing (section 7), after completing any additional security testing that the Postal Service requires.

1.3 Additional Security Testing

The Postal Service may choose to use resources under direct contract to the Postal Service to support the product review for additional security testing. The activities of these resources are independent of the testing laboratory selected by the provider and must be covered by nondisclosure agreements (section 3).

1.4 Product Approval Process

When the field testing (section 7) is completed successfully, the Postal Service performs an administrative review of the test and evaluation results and, when appropriate, grants authorization to distribute the product, as described in section 8.

At each stage of the product submission process, the manager, PTM, reserves the right to terminate testing if a review shows that the system as proposed will adversely impact Postal Service processes. The provider may resubmit the product after the problems have been resolved.

The provider can avoid unnecessary delays in the review and evaluation process by testing the product thoroughly prior to submitting it to the independent testing laboratory and to the Postal Service. If the Postal Service determines that there are significant deficiencies in the product or in the required supporting materials, then the Postal Service will return the submission to the provider without reviewing it further.

2. Letter of Intent

The provider must submit a letter of intent to Manager, Postage Technology Management (PTM), United States Postal Service, 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6050. The manager, PTM, will assign a point of contact to coordinate the submission and review process. The letter of intent must be dated and must include the following:

(a) Identification (name, mailing address, e-mail address, and telephone number) of all parties involved in the proposed product, including the provider, those responsible for the product's assembly, product management, hardware/firmware/software development and testing, and any other party involved (or expected to be involved) with the design or construction of the product, including all suppliers of product components which could affect the security of Postal Service revenues.

(b) Provider's business qualifications, including proof of financial viability and proof of the provider's ability to be responsive and responsible.

(c) System concept narrative, including the provider's infrastructure that will support the product.

(d) Target Postal Service market segment the proposed system is envisioned to serve.

When there is a significant change to any aspect of the product described in the letter of intent, or of the parties involved in developing or producing the product, prior to submission of the concept of operations (section 4), the provider must revise the letter of intent and resubmit it.

3. Nondisclosure Agreements

When the Postal Service uses resources under direct contract to the Postal Service to support the product review, the provider must establish a nondisclosure agreement with these resources. These nondisclosure agreements may require extension to third-party suppliers or others identified in the letter of intent (section 2). Providers are encouraged to share copies of nondisclosure agreements provided by the Postal Service with all parties identified in the letter of intent, to ensure that these parties will execute the agreement if needed to support Postal Service review of the product. Failure to sign nondisclosure agreements, provided by the Postal Service to support review activities, might adversely affect a product submission. Questions regarding this process should be directed to the manager, PTM.

4. Technical Documentation

4.1 Introduction

The provider must submit the materials listed in the Required Documentation table. If the provider considers that a given requirement is not applicable to the product, the provider should note this in the document submission. The table is not meant to be an exhaustive list of all possible areas that need to be documented to support the evaluation of a postage meter (postage evidencing system). Ongoing advances and changes in technology and new approaches to providing postage evidencing can add other components that must be considered. The provider should submit any additional information that it considers necessary or desirable to describe the product fully. The independent testing laboratory may determine the level of detail that must be submitted to meet its test and evaluation requirements. The laboratory or the Postal Service may request additional information if needed for a complete evaluation.

Documentation must be submitted to the independent laboratory and the Postal Service as indicated in the Required Documentation table. The laboratory will prepare an executive summary and submit it to the Postal Service when required. Documentation must be in English and must be formatted for standard letter size (8.5″ × 11″) paper, except for engineering drawings, which must be folded to letter size. Where appropriate, documentation must be marked as "Confidential." The document recipient will determine the number of paper copies and the format of electronic copies of each document at the time of submission based on current technology and review requirements.

The provider should schedule a meeting with PTM staff shortly after or simultaneously with the submission of technical data and the concept of operations to permit full discussion and understanding of the technical concepts being presented for evaluation. The manager, PTM, will indicate Postal Service agreement or concerns relevant to the concept, as appropriate. However, no Postal Service communication or acknowledgement of receipt of documentation or other submission is meant to imply acceptance or approval of the concept of operation, of any documentation, or of the product. Approval of the product is granted only after the product prototype has been developed and testing has been successfully completed in accordance with all requirements of these procedures.

4.2 Required Documentation

The following table details the documents that the provider must prepare. Providers are responsible for submitting any additional documentation the Postal Service may require during the product submission process. The table shows which documents must be submitted directly to the Postal Service and which must be submitted to the independent testing laboratory.

REQUIRED DOCUMENTATION

Document/section	Submit to test laboratory?	Postal Service requirement
Concept of Operations (CONOPS)		
System overview, including: • Concept overview and business model. • Postal security device (PSD) implementation, features, and components, including the digital signature algorithm. • System life cycle overview. • Adherence to industry standards, such as FIPS PUB 140–1 or 140–2 (after May 25, 2002), as required by Postal Service	Yes	Provider submits in full. Executive summary prepared by laboratory.
System design details, including: • PSD features and functions. • All aspects of key management. • Client (host) system features and functions. • Other components required for system use including, but not limited to, the proposed indicia design and label stock.	Yes	Executive summary prepared by laboratory. Laboratory report on indicium compliance with Postal Service requirements as given in the performance criteria.
Indicium Specification for Human Readable Data	No	Provider submits in full.
System life cycle, including: • Manufacturing • Postal Service certification of the system. • Production. • Distribution. • Meter licensing. • Initialization. • System authorization and installation. • Postage value download or resetting process. • System and support system audits. • Inspections. • Procedures for system withdrawal and replacement, including procedures for system malfunctions. • Procedures to destroy scrapped systems.	Yes	Provider submits in full. Executive summary prepared by laboratory.

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REQUIRED DOCUMENTATION—Continued

Document/section	Submit to test laboratory?	Postal Service requirement
Finance overview, including: • Customer account management (payment methods, statements, and refunds). • Individual product finance account management (resetting or postage value download, refunds). • Daily account reconciliation (provider reconciliation, Postal Service detailed transaction reporting). • Periodic summaries (monthly reconciliation, other reporting as required by the Postal Service).	Yes	Provider submits in full. Executive summary prepared by laboratory.
Interfaces, including: • Communications and message interfaces with the Postal Service infrastructure for resetting or postage value downloads, refunds, inspections, product audits, and lost or stolen product procedures. • Communications and message interfaces with Postal Service financial functions for resetting or postage value downloads, daily account reconciliation, and refunds. • Communications and message interfaces with customer infrastructure for cryptographic key management, product audits, and inspections. • Message error detection and handling.	Yes	Provider submits in full. Executive summary prepared by laboratory.
Configuration management and detailed change control procedures for all components, including, but not limited to: • Software. • Hardware and firmware. • Indicia. • Provider infrastructure. • Postal rate change procedures. • Interfaces.	Yes	Executive summary prepared by laboratory.
Physical security	Yes	Executive summary prepared by laboratory.
Personnel/site security	Yes	Executive summary prepared by laboratory.
Update the identification of all parties involved in the proposed product as originally submitted in accordance with the letter of intent.	No	Provider submits in full.
Softwware and Documentation		
Detailed design	Yes	Executive summary prepared by laboratory.
Executable code	Yes	On request.
Source code	Yes	On request.
Operations manuals	Yes	Executive summary prepared by laboratory.
Communications interfaces	Yes	Executive summary prepared by laboratory.
Maintenance manuals	Yes	Executive summary prepared by laboratory.
Schematics	Yes	Executive summary prepared by laboratory.
Product initialization procedures	Yes	Executive summary prepared by laboratory.
Finite state machine models/diagrams	Yes	Executive summary prepared by laboratory.
Block diagrams	Yes	Executive summary prepared by laboratory.
Details of security features	Yes	Executive summary prepared by laboratory.
Description of cryptographic operations, as required by FIPS PUB 140–1 or 140–2 (after May 25, 2002), Appendix A.	Yes	Executive summary prepared by laboratory.
Test Plan		
Postal Service requirements	Yes	Executive summary prepared by laboratory.
FIPS PUB 140–1 or 140–2 (after May 25, 2002) requirements	Yes	Executive summary prepared by laboratory.
Physical security of provider's Internet server, administrative site, and firewall	Yes	Executive summary prepared by laboratory.
Security for remote administrative access and configuration control	Yes	Executive summary prepared by laboratory.
Secure distribution or transmission of software and cryptographic keys	Yes	Executive summary prepared by laboratory.
Test plan for system infrastructure: • Test parameters. • Infrastructure systems. • Interfaces. • Reporting requirements.	Yes	Executive summary prepared by laboratory.
Test plan for limited-distribution field tests: • Test parameters • System quantities • Geographic location • Test participants • Test duration • Test milestones • Systems recall plan	Yes	Executive summary prepared by laboratory.

REQUIRED DOCUMENTATION—Continued

Document/section	Submit to test laboratory?	Postal Service requirement
Provider Infrastructure Plan		
Public key infrastructure	Yes	Executive summary prepared by laboratory.
Procedures for enforcement of all provider-related, customer-related, and Postal Service-related processes, procedures, and interfaces discussed in CONOPS or required by Postal Service regulations..	Yes	Executive summary prepared by laboratory.

5. Product Submission and Testing

5.1 General Submission Requirements

The provider must submit complete production systems to the independent testing laboratory for evaluation. The laboratory will determine how many systems are needed for a complete evaluation. The provider must also provide any equipment and consumables required to use the submitted systems in the manner described in the CONOPS. The provider must also submit complete production systems, supporting equipment, and consumables directly to the Postal Service, if requested. The Postal Service may test these for compliance with Postal Service regulations and processes under section 6, System Infrastructure Testing.

5.2 Submission Requirements for Products Containing a Postal Security Device or Cryptographic Module

The NVLAP-accredited cryptographic modules testing (CMT) laboratory must evaluate all PSDs and cryptographic modules for FIPS PUB 140–1 or 140–2 certification, or equivalent, as authorized by the Postal Service. After May 25, 2002, FIPS PUB 140–2 certification will be required. The Postal Service requires that the PSD or cryptographic module receive FIPS PUB 140–1 or 140–2 certification as it is implemented. That is, the PSD or cryptographic module and the installed application must be considered as a whole in determining whether or not it receives FIPS certification. The FIPS certification of the PSD or cryptographic module is dependent on the application. Since any certification could be in question once any noncertified or untested software is installed, the PSD or cryptographic module must be certified as it will be implemented, and the accredited CMT lab must reevaluate any changes that would risk the certification.

Upon completing FIPS PUB 140–1 or 140–2 certification, or equivalent, the CMT laboratory must forward the following documentation directly to the manager, PTM:

(a) A copy of the letter of recommendation for certification of the PSD or cryptographic module that the laboratory submitted to NIST.

(b) A copy of the certificate, if any, issued by NIST for the PSD or cryptographic module.

6. System Infrastructure Testing and Provider System Security Testing

To achieve Postal Service approval of a postage evidencing system, the provider must demonstrate that the system satisfies all applicable Postal Service regulations and reporting requirements and that it is compatible with Postal Service mail processing functions and all other functions with which the product or its users interface. The tests must involve all entities in the proposed architecture, including the postage evidencing system, the provider infrastructure, the financial institution, and Postal Service infrastructure systems and interfaces. The tests may be conducted in a laboratory environment in accordance with the test plan for system infrastructure testing. Test and approval of system infrastructure functions must be completed before the postage evidencing system can be field tested under section 7. The functions to be tested include, but are not limited to, the following:

(a) Meter licensing, including license application, license update, and license revocation.

(b) System status activity reporting.

(c) System distribution and initialization, including system authorization, system initialization, customer authorization, and system maintenance.

(d) Total system population inventory, including leased and unleased systems; new system stock; and system installation, withdrawal, and replacement.

(e) Irregularity reporting.

(f) Lost and stolen reporting.

(g) Financial transactions, including cash management, individual system financial accounting, account reconciliation, and refund management.

(h) Financial transaction reporting, including daily summary reports, daily transaction reporting, and monthly summary reports.

(i) System initialization.

(j) Cryptographic key changes and public key management.

(k) Postal rate table changes.

(l) Print quality assurance.

(m) Device authorization.

(n) Postage evidencing system examination and inspection, including physical and remote inspections.

In addition to testing the system infrastructure, the Postal Service must be assured that the provider's support systems and infrastructure are secure and not vulnerable to security breaches. This will require site reviews of provider manufacturing, distribution, and other support facilities, and reviews of network security and system access controls.

7. Limited-Distribution Field Test

To achieve Postal Service approval of a postage evidencing system, the provider must demonstrate that the system satisfies all applicable Postal Service processing and interface requirements in a real-world environment. This is achieved by placing a limited number of systems in distribution for field testing. The Postal Service will determine the number of systems to be tested. The test will be conducted in accordance with the Postal Service-approved test plan for limited-distribution field testing. The purpose of the limited-distribution field test is to demonstrate the product's utility, security, audit and control, functionality, and compatibility with other systems, including mail entry, acceptance, and processing when in use. The field test will employ available communications and will interface with current operational systems to exercise all system functions.

The manager, PTM, will review the executive summary of the provider-proposed test plan for limited-distribution field testing. The review will be based on, but not limited to, the assessed revenue risk of the system, system impact on Postal Service operations, and requirements for Postal Service resources. Approval may be

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based in whole or in part on the anticipated mail volume, mail characteristics, and mail origination and destination patterns of the proposed system. For systems designed for use by an individual meter user, product users engaged in field testing must be approved by the Postal Service before they are allowed to participate in the test. These participants must sign a nondisclosure/confidentiality agreement when reporting system security, audit and control issues, deficiencies, or failures to the provider and the Postal Service. This requirement does not apply to users of systems designed for public use.

8. Postage Evidencing System Approval

Postal Service approval of the postage meter (postage evidencing system) is based on the results of an administrative review of the materials and test results generated during the product submission and approval process. In preparation for the administrative review, the provider must update all documentation submitted in compliance with these procedures to ensure accuracy. When approval is granted, the Postal Service will prepare a product approval letter detailing the conditions under which the specific product may be manufactured, distributed, and used. The provider must submit the following materials for the Postal Service administrative review:

(a) Materials prepared for the Postal Service by the independent testing laboratory.

(b) The final certificate of evaluation from the NVLAP laboratory, where required.

(c) The results of system infrastructure testing.

(d) The results of field testing of a limited number of systems.

(e) The results of any other Postal Service testing of the system.

(f) The results of provider site security reviews.

9. Intellectual Property

Providers submitting postage evidencing systems to the Postal Service for approval are responsible for obtaining all intellectual property licenses that may be required to distribute their product in commerce and to allow the Postal Service to process mail bearing the indicia produced by the product.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–30649 Filed 12–2–02; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 12f–1, SEC File No. 270–139, OMB Control No. 3235–0128
Rule 12f–3, SEC File No. 270–141, OMB Control No. 3235–0249
Rule 24b–1, SEC File No. 270–205, OMB Control No. 3235–0194

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Applications for permission to reinstate unlisted trading privileges

Rule 12f–1, originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Securities Exchange Act of 1934 (the "Act") and as modified in 1995, sets forth the information which an exchange must include in an application to reinstate its ability to extend unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. An application must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning the security is reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act, and any other pertinent information. Rule 12f–1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges to a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f–1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the rule, the Commission would be unable to fulfill these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12f–1. The burden of complying with Rule 12f–1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the rule.

The Commission staff estimates that there could be as many as eight responses annually and that each respondent's related cost of compliance with Rule 12f–1 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $428.40 (8 responses × $53.55/response).

• Termination or Suspension of Unlisted Trading Privileges

Rule 12f–3, which was originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Act, as modified in 1995, prescribes the information which must be included in applications for and notices of termination or suspension of unlisted trading privileges for a security as contemplated in Section 12(f)(4) of the Act. An application must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security and its recent trading history; and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f–3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f–3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the rule.

The Commission staff estimates that there could be as many as ten responses annually and that each respondent's related cost of compliance with Rule 12f–3 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $535.50 (10 responses × $53.55/response).

• Rule 24b–1: Documents To Be Kept Public By Exchanges

Rule 24b–1 requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto. Implementing the requirements of Section 24(a), the rule requires that upon Commission action granting an exchange's application for registration or exemption from registration as a national securities exchange, the exchange must make available for public inspection at its offices during reasonable business hours a copy of the registration statement and exhibits filed with the Commission (along with any amendments thereto). However, the rule exempts those portions of this information to which the exchange has filed with the Commission an objection to disclosure and when the Commission has not overruled the objection. While the rule does not specify a retention period, the exchanges generally maintain this information for five years.

There are nine national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of four hours per year. The staff estimates that the average cost per respondent is $62.58 per year, calculated as the costs of copying ($13.41) plus storage ($49.17), resulting in a total cost of compliance for the respondents of $563.22.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: November 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30529 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 31a–1, SEC File No. 270–173, OMB Control No. 3235–0178
Rule 18f–3, SEC File No. 270–385, OMB Control No. 3235–0441
Rule 498, SEC File No. 270–435, OMB Control No. 3235–0488

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension.

Rule 31a–1 [17 CFR 270.31a–1] under the Investment Company Act of 1940 (the "Act") is entitled "Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies." Rule 31a–1 requires registered investment companies ("funds"), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 30 of the Act [15 U.S.C. 80a–30] and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws.

There are approximately 4,500 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each registered investment company is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1,400 hours annually per series for a total of 5,600 annual hours per investment company. The estimated total annual burden for all 4,500 investment companies subject to the rule therefore is approximately 25,200,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, most of the records created pursuant to the rule are the type that generally would be created as a matter of normal business custom and to prepare financial statements.

Section 18(f)(1)[1] of the Act[2] prohibits registered open-end management investment companies from issuing any senior security. Rule 18f–3 under the Act[3] exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a "multiple class fund") if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement.

The rule includes one requirement for the collection of information. A multiple class fund must prepare and fund directors must approve a written plan setting forth the separate arrangement and expense allocation of

[1] 15 U.S.C. 80a–18(f)(1).
[2] 15 U.S.C. 80a.
[3] 17 CFR 270.18f–3.

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each class, and any related conversion features or exchange privileges ("rule 18f–3 plan").[4] Approval of the plan must occur before the fund issues any shares of multiple classes, and whenever the fund materially amends the plan. In approving the plan, a majority of the fund board, including a majority of the fund's independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare and directors approve a written rule 18f–3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

There are approximately 516 multiple class funds.[5] Based on a review of typical rule 18f–3 plans, the Commission's staff estimates that the 516 funds together make an average of 258 responses each year to prepare and approve a written rule 18f–3 plan, requiring approximately 18.5 hours per response, and a total of 4,773 burden hours per year in the aggregate.[6] Preparation of the rule 18f–3 plan may require 11 hours of the services of an attorney or accountant, at a cost of approximately $130 per hour for professional time, and approval of the plan may require 1.5 hours of the attention of each of 5 directors, at a cost of approximately $500 per hour per director. The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $1,336,440 ((11 hours × 1 professional × 258 responses x $130) + (1.5 hours × 5 directors × 258 responses × $500)).

[4] Rule 18f–3(d).

[5] This estimate is based on data from Form N–SAR, the semi-annual report that funds file with the Commission.

[6] The estimate reflects the assumption that each multiple class fund prepares and approves a rule 18f–3 plan every two years when issuing a new class or amending a plan (or that 258 of all 516 funds prepare and approve a plan each year). The estimate assumes that the time required to prepare a plan is 11 hours per plan (or 2,838 hours for 258 funds annually), and the time required to approve a plan is an additional 1.5 hours per director per plan (or 1,935 hours for 258 funds annually (assuming five directors per fund)).

The estimated annual burden of 4,773 hours represents an increase of 3,260.5 hours over the prior estimate of 1,512.5 hours. The increase in burden hours is attributable to more accurate estimates of the burden hours that reflect additional time spent by professionals and time spent by directors. The estimated number of multiple class funds has decreased, however, from 550 to 516.

Rule 498 of the Securities Act of 1933 [17 C.F.R. 230.498] permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) to provide investors with a "profile" that contains a summary of key information about a fund, including the fund's investment objectives, strategies, risks and performance, and fees, in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission thirty days before first use. Such a filing allows the Commission to review the profile for compliance with rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 16 initial profiles and 316 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 20 portfolios filed annually on initial profiles and 395 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under rule 498 is 4,450, representing a decrease of 2,660 hours from the prior estimate of 7,110. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 21, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30530 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–31265]

Issuer Delisting; Notice of Application of PlanetCAD, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

November 26, 2002.

PlanetCAD, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on November 1, 2002 to withdraw the Issuer's Security from listing on the Amex and to list the Security on the OTC Bulletin Board. In making its decision to delist the Issuer's Security from the Exchange, the Board considered the Issuer's merged with Avatech Solutions, Inc. on November 19, 2002. The Issuer stated in its application that trading in the Security began on the OTC Bulletin Board at the opening of business on November 21, 2002.

The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4] Any interested person may, on or before December 20, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–30566 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78l(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25633; File No. 812–12662]

Integrity Life Insurance Company, *et al.*

November 26, 2002.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the "Act").

Applicants: Integrity Life Insurance Company ("Integrity"), Separate Account I of Integrity Life Insurance Company ("Integrity Separate Account I"), Separate Account II of Integrity Life Insurance Company ("Integrity Separate Account II"), National Integrity Life Insurance Company ("National Integrity"), Separate Account I of National Integrity Life Insurance Company ("National Integrity Separate Account I"), and Separate Account II of National Integrity Life Insurance. Company (National Integrity Separate Account II") (collectively, the "Applicants").

Summary of Application: Applicants seek an order approving the proposed substitution of shares of the Franklin Income Securities Portfolio for shares of the Janus Aspen Balanced Portfolio, shares of the Franklin Growth and Income Securities Portfolio for shares of the Janus Aspen Capital Appreciation and Janus Aspen Core Equity Portfolios, shares of the Franklin Mutual Shares Portfolio for shares of the Janus Aspen Strategic Value Portfolio, and shares of the Fidelity VIP Money Market Portfolio for shares of the Janus Aspen Money Market Portfolio (the "Substitution").

Filing Date: The application was filed on July 25, 2002 and amended on November 22, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 20, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, P.O. Box 740074, Louisville, Kentucky, 40202–3319.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. Integrity is a stock life insurance company organized under the laws of Ohio. Integrity is a subsidiary of Western and Southern Life Insurance Company, a mutual life insurance company originally organized under the laws of Ohio in 1888.

2. Integrity Separate Account I was established under Ohio law in 1986. Integrity Separate Account I is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. Three variable annuity contracts funded by Integrity Separate Account I are affected by this application.

3. Integrity Separate Account II was established under Ohio law in 1992. Integrity Separate Account II is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. One variable annuity contract funded by Integrity Life Separate Account II is affected by this application.

4. National Integrity is a stock life insurance company organized under the laws of New York. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern Life Insurance Company.

5. National Integrity Separate Account I was established under New York law in 1986. National Integrity Separate Account I is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. Three variable annuity contracts funded by National Integrity Separate Account I are affected by this application.

6. National Integrity Separate Account II was established under New York law in 1992. National Integrity Separate Account II is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. One variable annuity contract funded by National Integrity Separate Account II is affected by this application (all eight variable annuities contracts affected by this application are hereinafter collectively referred to as the "Contracts").

7. Purchase payments under the Contracts are allocated to one or more subaccounts of the Separate Accounts. Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without

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regard to other income, gains or losses of Integrity and National Integrity, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Integrity or National Integrity, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Integrity and National Integrity. Accordingly, all of the assets of each of Integrity and National Integrity are available to meet its obligations under its Contracts.

8. Each of the Contracts permits allocations of accumulation value to available subaccounts that invest in specific investment portfolios of underlying mutual funds. Each Contract offers between 56 and 63 portfolios. All of the Contracts offer the five portfolios of the Janus Aspen Series that are the subject of the Substitution (the "Replaced Portfolios"). The Fidelity VIP Money Market Portfolio, which is proposed as the Replacement Portfolio for the Janus Money Market Portfolio, is also available under all of the Contracts. Before the date of the Substitution, three portfolios of the Franklin Templeton Variable Insurance Products Trust (together with the Fidelity VIP Money Market Portfolio, the "Replacement Portfolios"), which are proposed as the Replacement Portfolios for four of the Replaced Portfolios, will be added to the Contracts as investment options. In addition, included in the Contracts are several alternative fixed interest rate options that are available to contract owners.

9. Each of the Contracts permits transfers of accumulation value from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges described below. No sales charge applies to such a transfer of accumulation value among subaccounts.

10. The Contracts permit up to twelve free transfers during any contract year. A fee of $20 may be imposed on transfers in excess of twelve transfers in a contract year. Transfers must be at least $250, or, if less, the enfire amount in the subaccount from which value is to be transferred. A variety of automatically scheduled transfers are permitted without charge and are not counted against the twelve free transfers in a contract year.

11. Each of the Contracts reserves the right, upon notice to contract owners and compliance with applicable law, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount, and this reserved right is disclosed in each Contract's prospectus.

12. On an ongoing basis, Integrity and National Integrity review the performance of the portfolios underlying the Contracts. During the past several years, the Replaced Portfolios have not maintained the level of performance that was the basis for their inclusion in the Contracts. These unfavorable performance records have occurred on an absolute basis, as well as relative to comparable portfolios with other investment advisers. This performance record may be attributable to certain changes that were occurring at the investment adviser to the Replaced Portfolios.

13. The poor performance results realized by the Replaced Portfolios have led to a significant decrease in Applicants' assets under management advised by Janus Capital Corporation. Since a peak of $279 million in August 2000, Applicants' assets under management in the non-money market Replaced Portfolios have decreased to $158 million as of June 30, 2002, a decline of 43%. Moreover, the Replaced Portfolios have also had net outflows for at least the past year, a situation mirrored at the Janus retail fund level. Investors withdrew $4.7 billion from the Janus retail funds during the second quarter of 2002.

14. Due to the poor performance of the Replaced Portfolios in recent years, Applicants propose the following substitutions of shares:

Replaced portfolio	Replacement portfolio
Janus Aspen Balanced Portfolio	Franklin Income Securities Portfolio.
Janus Aspen Capital Appreciation Portfolio	Franklin Growth and Income Securities Portfolio.
Janus Aspen Core Equity Portfolio	Franklin Growth and Income Securities Portfolio.
Janus Aspen Strategic Value Portfolio	Franklin Mutual Shares Portfolio.
Janus Aspen Money Market Portfolio	Fidelity VIP Money Market Portfolio.

15. In each case, shares of each class of the Replaced Portfolios will be substituted by shares of the corresponding class of the Replacement Portfolios. Therefore, service class shares of the Replaced Portfolios will be substituted by the equivalent class of shares of the Replacement Portfolios (i.e., Class 2 shares of the portfolios of the Franklin Templeton Variable Insurance Products Trust and Service Class shares of the Fidelity VIP Money Market Portfolio). In addition, in the case of three of the Replacement Portfolios whose institutional class shares are also offered under prior versions of the Contracts funded by Integrity Separate Account II and National Integrity Separate Account II, shares of the corresponding class of shares of the Replacement Portfolios will be used to replace the institutional shares of the relevant Replaced Portfolio (*i.e.*, Class 1 shares of the portfolios of the Franklin Templeton Variable Insurance Products Trust and Initial Class shares of the Fidelity VIP Money Market Portfolio).

16. Janus Capital Corporation serves as the investment adviser to each of the Replaced Portfolios. Franklin Templeton Investments serves as the investment adviser to each of the portfolios of the Franklin Templeton Variable Insurance Products Trust. Fidelity Management and Research Company serves as the investment adviser to the Fidelity VIP Money Market Portfolio. None of the Applicants are affiliated with any of the investment advisers to the Replaced or Replacement Portfolios.

17. The 2001 expenses for each of the Replaced and Replacement Portfolios are shown below in Chart A. Historical performance as of June 30, 2002 is included in Chart B.

18. The Janus Aspen Balanced Portfolio seeks long-term capital growth, consistent with capital preservation and balanced by current income. It is a diversified portfolio that pursues its objective by normally investing 40–60% of its assets in securities selected primarily for their growth potential and 40–60% of its assets in securities selected primarily for their income potential. The portfolio normally invests at least 25% of its assets in fixed-income securities.

19. The Franklin Income Securities Portfolio seeks to maximize income while maintaining prospects for capital appreciation. Under normal market conditions, the portfolio will invest in both debt and equity securities. The portfolio seeks income by investing in corporate, foreign, and U.S. Treasury bonds. In its search for income producing growth opportunities the portfolio invests in common stocks with attractive dividend yields of companies from a variety of industries such as electric utilities, oil, gas, real estate and consumer goods.

20. The Janus Aspen Capital Appreciation Portfolio seeks long-term growth of capital. It is a non-diversified portfolio that pursues its objective by investing primarily in common stocks selected for their growth potential. The portfolio may invest in companies of any size, from larger, well-established companies to smaller, emerging growth companies.

21. The Janus Aspen Core Equity Portfolio seeks current income and long-term growth of capital. It normally emphasizes investments in common stocks, and growth potential is a significant investment consideration. The portfolio tries to provide a lower level of volatility than the S&P 500 Index. Normally, it invests at least 80% of its net assets in equity securities selected for growth potential. Eligible securities include domestic and foreign common stocks, preferred stocks, securities convertible into common stocks or preferred stock such as convertible preferred stocks, bonds, debentures, and other securities with equity characteristics.

22. The Franklin Growth and Income Securities Portfolio seeks capital appreciation with a secondary goal to provide current income. Under normal market conditions, the portfolio will invest at least 65% of its total assets in a broadly diversified portfolio of equity securities that the portfolio's manager considers to be financially strong, but undervalued by the market. The portfolio may invest in real estate investment trusts but does not intend to invest more than 15% of its assets in these trusts.

23. The Janus Aspen Strategic Value Portfolio seeks long-term growth of capital. It is a non-diversified portfolio that pursues its objective by investing primarily in common stocks with the potential for long-term growth of capital using a "value" approach. The "value" approach the portfolio manager uses emphasizes investments in companies believed to be undervalued relative to their intrinsic worth.

24. The Franklin Mutual Shares Securities Portfolio seeks capital appreciation with a secondary goal of income. Under normal market conditions the portfolio will invest at least 65% of its total assets in equity securities of companies that the manager believes are available at market prices less than their value based on certain recognized objective criteria. The portfolio currently intends to invest up to approximately 25% of its total assets in foreign investments.

25. The Janus Aspen Money Market Portfolio seeks maximum current income to the extent consistent with stability of capital. The portfolio will invest in high-quality, short-term money market instruments that present minimal credit risk. The portfolio may invest only in U.S. dollar denominated instruments.

26. The Fidelity VIP Money Market Portfolio seeks to earn a high level of current income while preserving capital and providing liquidity. It invests only in high-quality, U.S. dollar denominated money market securities of domestic and foreign issuers, such as certificates of deposit, obligations of governments and their agencies, and commercial paper and notes.

CHART A.—2001 PORTFOLIO EXPENSES

[In percent]

Portfolio	Mgmt. fee	12b-1 fee	Other expenses	Total annual operating expenses	Mgmt. fee reduction	Net total annual expenses
Service Class Shares to Class 2 or Service Class Shares:						
Janus Balanced	.65	.25	.01	.91		
Franklin Income Securities	.49	.25	.04	.78		
Janus Capital Appreciation	.65	.25	.01	.91		
Janus Core Equity	.65	.25	.40	1.30		
Franklin Growth and Income	.48	.25	.03	.76		
Janus Strategic Value	.65	.25	.70	1.60	(.10)	1.50
Franklin Mutual Shares	.60	.25	.19	1.04		
Janus Money Market	.25	.25	.09	.59		
Fidelity Money Market	.18	.25	.12	.55		
Institutional Class Shares to Initial Class or Class 1 Shares:*						
Janus Balanced	.65	.00	.01	.66		
Franklin Income Securities	.49	.00	.04	.53		
Janus Capital Appreciation	.65	.00	.01	.66		
Franklin Growth and Income	.48	.00	.03	.51		
Janus Money Market	.25	.00	.09	.34		
Fidelity Money Market	.18	.00	.10	.28		

*Applicable only to older Contracts offered by certain registration statements.

CHART B.—PORTFOLIO PERFORMANCE AS OF JUNE 30, 2002

[In percent]

Portfolio	YTD	1 year	3 year	5 year	10 year
Service Class Shares to Class 2 or Service Class Shares:					
Janus Balanced	−3.34	−4.68	0.69	10.72	N/A
Franklin Income Securities	−0.52	−2.04	4.87	5.52	8.09
Janus Capital Appreciation	−7.05	−15.90	−8.04	10.72	N/A
Janus Core Equity	−7.12	−12.63	−4.29	12.16	N/A

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CHART B.—PORTFOLIO PERFORMANCE AS OF JUNE 30, 2002—Continued

[In percent]

Portfolio	YTD	1 year	3 year	5 year	10 year
Franklin Growth and Income	−4.09	−6.06	1.11	6.39	10.86
Janus Strategic Value	−9.59	−15.22	N/A	N/A	N/A
Franklin Mutual Shares	−3.89	−7.83	4.98	7.69	N/A
Janus Money Market	—	2.55	4.69	4.87	N/A
Fidelity Money Market	—	2.46	4.69	4.96	N/A
Institutional Class Shares to Initial Class or Class 1 Shares:*					
Janus Balanced	−3.19	−4.44	0.67	10.79	N/A
Franklin Income Securities	−0.46	−1.90	5.12	5.70	8.17
Janus Capital Appreciation	−6.90	−15.69	−7.45	11.16	N/A
Franklin Growth and Income	−4.02	−5.87	1.32	6.55	10.95

*Applicable only to older Contracts offered by certain registration statements.

27. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the subaccounts. Accordingly, there will be no financial impact on any contract owner. The Substitution will be effected by having each of the subaccounts that invests in the Replaced Portfolios redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the respective Replacement Portfolios at the net asset value calculated on the same date.

28. The Substitution will be described in supplements to the prospectuses for the Contracts ("Stickers") filed with the Commission and mailed to contract owners. The Stickers will give contract owners notice of the Substitution and will describe the reasons for engaging in the Substitution. The Stickers will also inform contract owners with assets allocated to a subaccount investing in the Replaced Portfolios that no additional amount may be allocated to those subaccounts on or after the date of the Substitution. In addition, the Stickers will inform affected contract owners that they will have the opportunity to reallocate accumulation value:

- Prior to the Substitution from the subaccounts investing in the Replaced Portfolios, and
- For 30 days after the Substitution from the subaccounts investing in the Replacement Portfolios,

to subaccounts investing in other portfolios available under the respective Contracts, without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

29. The prospectuses for the Contracts, as supplemented by the Stickers, will reflect the Substitution. Each contract owner will be provided with a prospectus for the Replacement Portfolios before the Substitution. Within five days after the Substitution, Integrity and National Integrity will each send affected contract owners written confirmation that the Substitution has occurred. The confirmation will remind contract owners that they have 30 days from the date of the Substitution to make a transfer from the subaccounts investing in the Replacement Portfolios to subaccounts investing in other portfolios under the Contracts without paying a transfer charge or diminishing the number of available free transfers.

30. Integrity and National Integrity, as applicable, will pay all expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution. No costs will be borne by contract owners. Affected contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

31. Applicants believe that their request satisfies the standards for relief of Section 26(c) of the Act, as set forth below, because the affected contract owners will have:

(a) Contract values allocated to a subaccount invested in a Replacement Portfolio with an investment objective and policies substantially similar to the investment objective and policies of the Replaced Portfolio;

(b) In all cases the Replacement Portfolios have superior or equal performance for the three years ended June 30, 2002 to that of the Replaced Portfolios; and

(c) Total annual expenses that are lower than those of the Replaced Portfolio.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contract owner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

4. Substitutions have been common where the substituted portfolio has investment objectives and policies that are similar to those of the eliminated portfolio, current expenses that are similar to or lower than those of the eliminated portfolio, and performance that is similar to or better than that of the eliminated portfolio.

5. In all cases the investment objectives and policies of the Replacement Portfolios are sufficiently similar to those of the corresponding Replaced Portfolios that contract owners will have reasonable continuity in investment expectations. Accordingly, the Replacement Portfolios are appropriate investment vehicles for those contract owners who have contract values allocated to the Replaced Portfolios.

6. In addition, the Replacement Portfolios have lower annual expenses than the Replaced Portfolios and superior or equal performance for the three years ended June 30, 2002. Integrity and National Integrity will not increase separate account fees and charges of the subaccounts that invest in the Replacement Portfolios for those contract owners who were contract owners on the date of the Substitution for a period of one year from the date of the Substitution except to the extent of any increase in premium or similar taxes charges by a state or other locality.

7. Moreover, Integrity and National Integrity will not receive, for three years from the date of the Substitution, any direct or indirect benefit from the Replacement Portfolios, their advisers or underwriters, or from affiliates of the Replacement Portfolios, their advisers or underwriters, in connection with the assets attributable to the Contracts affected by the Substitution, at a higher rate than Integrity and National Integrity received from the Replaced Portfolios, their advisers or underwriters, or from affiliates of the Replaced Portfolios, their advisers or underwriters, including without limitation Rule 12b–1 fees, shareholder service, administrative, or other service fees, revenue sharing or other arrangements. The Substitution and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid to Integrity or National Integrity or their affiliates by the Replacement Portfolios, their advisers or underwriters, or their affiliates.

8. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each of the Replacement Portfolios is an appropriate portfolio to which to move contract owners with values allocated to the Replaced Portfolios because the portfolios have substantially similar investment objectives and policies.

(b) The costs of the Substitution, including any brokerage costs, will be borne by Integrity and National Integrity and will not be borne by contract owners. No charges will be assessed to effect the Substitution.

(c) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contract owner's accumulation value.

(d) The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution and will result in contract owners' contract values being moved to a Replacement Portfolio with lower total annual expenses.

(e) All contract owners will be given notice of the Substitution prior to the Substitution and will have an opportunity for 30 days after the Substitution to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the contract owner's free transfers in a contract year.

(f) Within five days after the Substitution, Integrity and National Integrity will send to its affected contract owners written confirmation that the Substitution has occurred.

(g) The Substitution will in no way alter the insurance benefits to contract owners or the contractual obligations of Integrity and National Integrity.

(h) The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

Conclusion

Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30531 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 46821 / November 26, 2002]

Securities Exchange Act of 1934; Order Extending Broker-Dealer Exemption From Sending Financial Information to Customers

In the Matter of Securities Industry Association, 1401 Eye Street, NW., Washington, DC 20005–2225.

The Securities and Exchange Commission ("Commission") is extending its Temporary Order, which was originally issued on December 10, 1999[1] and then extended on December 20, 2001,[2] under Section 17(e) of the Securities Exchange Act of 1934 ("Exchange Act"), exempting broker-dealers from Exchange Act Section 17(e)(1)(B) and Rule 17a–5(c). These sections require a broker-dealer to send each of its customers semi-annually its balance sheet with appropriate footnotes prepared in accordance with generally accepted accounting principles ("GAAP") and a footnote disclosing the firm's net capital and required net capital. To take advantage of the exemption, a broker-dealer must semi-annually send the net capital footnote to its customers, must send its balance sheet and appropriate footnotes to customers upon request via a toll-free number, and must place its balance sheet and appropriate footnotes on its website.

The Commission's Temporary Order and extension established a pilot program which expires on December 31, 2002. During the pilot program, a broker-dealer taking advantage of the exemption was required, among other things, to report to the Commission the number of times its balance sheet was viewed on its website and the number of requests for paper copies received via its toll-free number. During the December 31, 2001 to December 31, 2002 extension of the pilot program, a broker-dealer was also required to report to the Commission any written customer

[1] Exchange Act Release No. 42222.

[2] Exchange Act Release No. 45179.

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complaints it received regarding the exemption.

The Commission has determined, on the basis of information reported by broker-dealers taking advantage of the exemption, which indicates that customers are using the exemption to access broker-dealers' financial information and that broker-dealers taking advantage of the exemption have received no written customer complaints regarding the exemption, that extending the exemption for six months is consistent with the public interest and the protection of investors. The Commission has today proposed a rule amendment for comment which, if adopted, would make the relief permanent (Exchange Act Release No. 46920; File No. S7–48–02).

A broker-dealer exempted under this Order must comply with each of the following requirements:

(1) The broker-dealer semi-annually sends its customers, at the times it otherwise would have sent its customers its balance sheet in accordance with Rule 17a–5(c), a statement which includes:

(a) The amount of the broker-dealer's net capital and its required net capital in accordance with Rule 15c3–1;

(b) To the extent required under Rule 17a–5(c)(2)(ii), a description of the effect on the broker-dealer's net capital and required net capital of subsidiaries consolidated pursuant to Appendix C of Rule 15c3–1 (jointly the "Net Capital Disclosure"); and

(c) Any statements otherwise required by Rule 17a–5(c)(2)(iii) and (iv).[3]

(2) The above statement is given prominence in the materials sent to its customers and includes an appropriate caption stating that customers may obtain the broker-dealer's balance sheet (in the case of the annual balance sheet, audited and with the auditor's certification) at no cost, by accessing the broker-dealer's website or calling the broker-dealer's stated toll-free number. The statement must provide the specific Internet Uniform Resource Locator (URL) at which the broker-dealer's balance sheet is located.

(3) The broker-dealer publishes a balance sheet prepared in accordance with GAAP, including footnotes and the Net Capital Disclosure, accessible through each of the following Internet locations:

(a) The broker-dealer's website home page, containing a hyperlink providing a direct link to the broker-dealer's balance sheet;

(b) Each page at which a customer can log-on to the broker-dealer's website, containing a hyperlink providing a direct link to the broker-dealer's balance sheet; and

(c) If the websites for two or more broker-dealers can be accessed from the same home page, a hyperlink directing the Internet user to the home page of each broker-dealer. Upon reaching the broker-dealer's home page, the home page contains a hyperlink providing a direct link to the particular broker-dealer's balance sheet.

Each of the above hyperlinks is placed on the broker-dealer's website, in either textual or button format, as a separate, prominent link, in a manner that is clearly visible.[4]

(4) The broker-dealer maintains a toll-free number that customers can call to request a paper or electronic copy of its balance sheet.

(5) If a customer requests a paper or electronic copy of the broker-dealer's balance sheet, the firm sends it promptly at no cost to the customer.

(6) If the broker-dealer's net capital falls below the early warning levels of Rule 17a–11 and the broker-dealer fails to cure the relevant deficiency within 24 hours, or if the broker-dealer's auditors determine that a material inadequacy exists with regard to any of the financial disclosures contained in the audited financial statements or in the broker-dealer's internal controls, the firm returns to sending its balance sheet as required under Rule 17a–5(c), including footnotes, by the next date that financial disclosures are required, until the deficiency or material inadequacy is cured.

(7) The broker-dealer submits to the Commission, addressed to Division of Market Regulation, United States Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001, no later than 60 days after each distribution of its published statement containing the Net Capital Disclosure:

(a) A report on the number of requests that the broker-dealer has received for copies of its balance sheet via its toll-free number and the number of times its balance sheet has been viewed on its website. The report contains the number of requests received in the month following its website publishing of its recent balance sheet and, except in the case of the first website publishing, in the preceding six months; and

(b) Written investor complaints regarding the exemption received by the broker-dealer in the preceding six months.

Accordingly,

It is ordered, under Exchange Act Section 17(e)(l)(C) and Rule 17a–5(l)(3), that the exemption from Exchange Act Section 17(e)(1)(B) and Rule 17a–5(c) granted in Exchange Act Release No. 42222 and extended in Exchange Act Release No. 45179 is extended to June 30, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30665 Filed 12–2–02; 8:45 am]

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[3] A broker-dealer may comply with this requirement by: (a) Delivering the statements to its customers in paper copy form or (b) transmitting the statements to its customers electronically.

[4] This Order exempts certain firms from the delivery requirement under Rule 17a–5(c), in part, based on the protections afforded by the Commission's financial responsibility rules. The condition that a broker-dealer makes its balance sheet available on its website is not an alternative method of delivering this information to customers under Rule 17a–5(c).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45857; File No. SR–Amex–2001–06]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Relief and Temporary Specialists

November 21, 2002.

On February 14, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require specialists units consisting of fewer than three members to arrange for the registration of one or more relief specialists,[3] and to revise the Exchange's rules regarding the appointment of temporary specialists. The Exchange also proposed allowing specialist units with less than three persons six months (or such longer time as the Chief Executive Officer of the Exchange may determine is appropriate) from the date of approval of the proposed rule change to obtain Exchange approval of their relief specialist arrangements. The Exchange submitted Amendment Nos. 1,[4] 2,[5] and 3[6] to the proposed rule change, respectively. The proposed rule change, as amended, was published in the **Federal Register** on October 22, 2002.[7] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange identified that specialists units with more than three persons may also arrange for relief specialists pursuant to this proposed rule. Telephone conversation among William Floyd-Jones, Assistant General Counsel, Amex, Terri Evans, Assistant Director, and Lisa N. Jones, Attorney, Division, Commission, dated May 30, 2002.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Specifically, the Commission believes requiring specialists units consisting of fewer than three members to arrange for the registration of one or more relief specialists, approved by the Exchange's Committee on Floor Members Performance, helps to ensure that there is no interruption of service when the Exchange is open for business. Similarly, the Commission believes that it is appropriate for a temporary specialist to be appointed by the Exchange in the event of an emergency or other unusual situations in which the regular or relief specialist would be unable to adequately manage the volume or business in a particular stock or stocks to ensure adequate staffing on the Exchange floor. The Commission notes that relief specialists and temporary specialists, to the extent that no regular or relief specialist is present, will be subject to the same responsibilities for the maintenance and stabilization of the market as regular registered specialists. Further, the Commission notes that these arrangements are similar to arrangements already allowed by the New York Stock Exchange, Inc.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–AMEX–2001–06), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30535 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[4] See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 17, 2001 ("Amendment No. 1") (replacing the original filing in its entirety).

[5] See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 30, 2002 ("Amendment No. 2") (replacing the original filing in its entirety).

[6] See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002 ("Amendment No. 3") (replacing the original filing in its entirety).

[7] See Securities Exchange Act Release No. 46655 (October 11, 2002), 67 FR 64940.

[8] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46872; File No. SR–CSE–2002–04]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Introduction of Order Delivery and Automated Response

November 21, 2002.

I. Introduction

On April 22, 2002, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change related to the introduction of order delivery and automated response. The proposed rule change was published for comment in the **Federal Register** on May 10, 2002.[3] On September 13, 2002, the CSE filed Amendment No. 1 to the proposed rule change [4] and on September 17, 2002, filed Amendment No. 2 to the proposed rule change.[5] The proposed rule change, as amended by Amendment Nos. 1 and 2, was republished in its entirety for comment in the **Federal Register** on October 11, 2002.[6] No comments were received on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to amend its rules to increase the flexibility of CSE execution systems to accommodate member needs. Specifically, CSE proposes to modify CSE's execution functionality within the CSE System from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE System. CSE is proposing this modification to facilitate a diverse membership base while promoting a fair and orderly market. CSE members that operate as electronic communications networks ("ECNs")[7] or alternative trading systems ("ATSs") subject to SEC Regulation ATS,[8] as well as members that act as Designated Dealers or specialists on CSE will have the option of selecting the type of centralized execution system that best fits their business model.

Currently, CSE's NSTS functions solely in an automatic execution mode. In an automatic execution system like NSTS, a Designated Dealer's quotation is held in NSTS, and NSTS executes any like-priced contra-side order against the dealer's quotation. NSTS then informs the Designated Dealer and the contra-side CSE member that the quotation and the order have been executed by delivering execution messages to both parties.

With the advent of ECN/ATS trading on CSE, members have expressed concern that CSE's automatic execution system exposes them to significant multiple execution liability. Given the speed with which ECN/ATSs operate, it is likely that displayed quotations will be subject to internal matches at the same time as another CSE member attempts to execute against the same displayed quotations. When faced with a similar dilemma, the Nasdaq Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 45873 (May 3, 2002), 67 FR 31856.

[4] See letter from Jennifer M. Lamie, CSE, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission (September 12, 2002). In Amendment No. 1, the CSE deleted proposed rule language in Paragraph 11.9(i)(2)(a) regarding price/time and agency/principal priorities, which was inadvertently included in the original proposal.

[5] See letter from Jennifer M. Lamie, CSE, to Katherine England, Assistant Director, Division, Commission (September 18, 2002). In Amendment No. 2, the CSE expanded the proposed order delivery and automated response alternative to all securities traded through the Exchange's National Securities Trading System ("NSTS" or "System"), rather than simply Nasdaq National Market Securities. In addition, Amendment No. 2 made certain non-substantive grammatical changes.

[6] See Securities Exchange Act Release No. 46599 (October 4, 2002), 67 FR 63484.

[7] ECNs are defined in SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8), as any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part.

[8] 17 CFR 242.300–303.

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Market, Inc. permitted ECN/ATSs to remain on SelectNet (an order delivery system) for inbound executions against the ECN/ATSs' displayed quotations rather than requiring them to migrate to the automatic execution methodology of the Nasdaq National Market Execution System ("NNMS").[9] Nasdaq even amended its Intermarket Trading System ("ITS") / Computer Assisted Execution System ("CAES") (together, "ITS/CAES") definitions and functionality to permit ECN/ATSs to operate in an order delivery format when interacting with inbound commitments from ITS. Similarly, CSE now proposes to permit members to select order delivery and automated response for order interaction with displayed quotations within the CSE System or to continue interacting through CSE's automatic execution facility.

In an order delivery and automated response system, a member's quotation or displayed order will be held in the CSE System, and when a contra-side order is received in the CSE System, CSE will immediately forward the order message to the quoting member, who will be obligated by rule to respond instantaneously to the order message. Moreover, the quoting member must have a demonstrated capability to respond instantaneously to the order message. On receipt of the order message delivered by CSE, the quoting member will automatically determine whether its quote is still active. If so, the member will automatically deliver to the CSE System matched orders representing its quote and the contra-side for execution. If the member's quote is in the process of changing due to a prior internal match at the displayed price, consistent with the Firm Quote Rule,[10] the member will reject the inbound order and send it back to the CSE System. The CSE System will then automatically send a cancellation message to the member submitting the order. The entire duration of the order delivery and automated response process likely will be less than one second.

CSE will require that members demonstrate the capacity to accept inbound orders and to automatically respond to the CSE System before they will be permitted use of this functionality. Moreover, CSE Rule 11.9(i)(2) provides that the CSE System will offer order delivery and automated response subject to the requirement that members demonstrate the capability to respond in an automated manner. Therefore, by rule and through demonstrated capacity verified by CSE examiners before operation, the CSE will reduce the risk of multiple execution liability, while ensuring that members comply with their obligations under the Firm Quote Rule.

[9] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) in which Nasdaq designated SelectNet as the link to ECNs pursuant to the SEC's Order Handling Rules. *See* Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997).

[10] 17 CFR 240.11Ac1–1.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[11] in general, and section 6(b)(5) of the Act,[12] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal furthers the purpose of this section by reducing the risk of dual liability to CSE members. By reducing the risk of dual liability, the proposal may encourage CSE members, such as ECNs, to display larger sized quotations thereby adding liquidity and transparency to the market. Moreover, the Commission approved a similar approach to reducing the risk of dual liability in the Nasdaq market and believes that CSE's proposal should similarly benefit all market participants in the Nasdaq and listed markets. The Commission believes that the proposal's requirement that CSE members demonstrate the ability to process inbound orders and respond appropriately within one second should facilitate the efficient functioning of the order delivery and automated response execution option. The Commission believes that encouraging greater participation in the national market system by market participants, including ECNs, furthers the Congressional goal of developing a comprehensive national market system.

It is important to note that, upon approval of the instant proposal, a CSE member (or other market participant routing an order to the CSE via ITS) may attempt to execute a trade at a price quoted on the CSE by an ECN. In such a case, a CSE member (or ITS user) submitting an order to the CSE's NSTS may not receive an execution at the price originally quoted by the ECN on the CSE, because the ECN may have adjusted its quoted price while the order was in transit from the CSE to the ECN. CSE represents that this transit time is less than one second, and, for firm quote rule[13] compliance purposes, the Commission believes this time to be *de minimis*. Moreover, the Commission believes it is significant that this one-second transit time is generally less than the internal transmission time of order routing systems in place in other markets.

CSE has committed to examine regularly for patterns of adjustments in ECNs' quoted prices that lead to the rejection of orders. Specifically, the CSE will analyze those rejections that occur after an order arrives at the CSE and before the order arrives at the ECN. Should any such patterns be detected, CSE will scrutinize them for violations of the Firm Quote Rule and take appropriate action. The CSE has also committed to reporting the results of its examination of ECN order rejection patterns to the Commission.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CSE–2002–04), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30537 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] SEC Rule 11Ac1–1, 17 CFR 240.11Ac1–1 ("Firm Quote Rule").

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46893; File No. SR–NASD–2002–167]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 7010(k)—Fees for the Trade Reporting and Compliance Engine (TRACE)

November 22, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2002, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as "establishing or changing a due, fee, or other charge" under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. In addition, the NASD is changing references in the text of the rule from "the Association" to "NASD." This change is effective immediately pursuant to Section 19(b)(3)(A)(iii) of the Act,[5] as it is concerned solely with the administration of the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR § 240.19b–4(f)(2).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 7010(k) to reduce certain fees that are currently in effect for the Trade Reporting and Compliance Engine (TRACE). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Rule 7010(k) Trade Reporting and Compliance Engine (TRACE)

(Rule 7010(k) shall expire on December 28, 2002, unless amended, extended, or permanently adopted by NASD pursuant to SEC approval at or before such date).

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine ("TRACE"):

System fees	Transaction reporting fees	Market data fees
Web Browser Access: $85/month for 1 user ID; $75/month for 2–9 user IDs; $70/month for 2–10+ user IDs. *If less than 25 trades per month, in October, November, or December 2002—$25/month per user ID.*	Trades up to and including $200,000 per value—$0.50/trade; Trades between $201,000 and $999,999 par value—$0.0025 times the number of bonds traded/trade; Trades of $1,000,000 par value or more—$2.50/trade.	BTDS Professional Display—$60/month per terminal.
CTCI—$25/month/line	Cancel/Correct—$3/trade: *For October 2002—$1.50/trade. For November 2002—$2.25/trade.*	BTDS Internal Usage Authorization—$500/month per organization.
Third Party—$25/month	"As of" Trade Late—$3/trade: *For October 2002—$1.50/trade. For November 2002—$2.25/trade.*	BTDS External Usage Authorization— $1,000/month per organization.
		Daily List Fax—$15/month per fax number/addressee.

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to *NASD* [the Association] pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to *NASD* [the Association]: (a) a TRACE web browser (either over the Internet or a secure private data network ("PDN")); (b) a Computer-to-Computer Interface ("CTCI") (either one dedicated solely to TRACE or a multi-purpose line); or (c) a third-party reporting intermediary. Fees will be charged based on the reporting methodology selected by the member.

(A) Web Browser Access. The charge to be paid by a member that elects to report TRACE data to *NASD* [the Association] via a TRACE web browser shall be as follows: for the first user ID registered, a charge of $85 per month; for the next two through nine user IDs registered, a charge of $75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of $70 per month, per user ID from two to ten or more. *If a member reports less than 25 trades per month to the TRACE system in October, November, or December 2002, the charge to be paid by a member for the TRACE web browser shall be $25, per such month, per user ID.* In addition, a member that elects to report TRACE data to the Association via a web browser over a secure PDN rather than over the Internet shall pay an additional administrative charge of $100 per month, per line.[6]

(B) Computer-to-Computer Interface Access. No change.

(C) Third Party Access " Indirect Reporting. No change.

(2) Transaction Reporting Fees. For each transaction in corporate bonds that is reportable to *NASD* [the Association] pursuant to the Rule 6200 Series, the following charges shall be assessed against the member responsible for reporting the transaction:

(A) Trade Reporting Fee. No change.

(B) Cancel or Correct Trade Fee. A member shall be charged a Cancel or Correct Trade Fee of $3.00 per canceled or corrected transaction. To provide firms with time to adjust to the new reporting system, the Cancel or Correct Trade Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. *For the month of October 2002, the Cancel or Correct Trade Fee shall be $1.50 per canceled or corrected transaction. For the month of November 2002, the Cancel or Correct Trade Fee shall be $2.25 per canceled or corrected transaction.*

(C) "As of" Trade Late Fee. A member shall be charged an "As of" Trade Late Fee of $3.00 per transaction for those transactions that are not timely reported "As of" as required by these rules. To provide firms with time to adjust to the new reporting system, the "As of" Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. *For the month of October 2002, the "As of" Trade Late Fee shall be $1.50 per such transaction. For the month of November 2002, the "As of" Trade Late Fee shall be $2.25 per such transaction.*

(D) Browse and Query Fee. No change.

(3) Market Data Fees. No change.

[6] Charges that may be imposed by third parties, such as network providers, are not included in these fees.

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(4) Daily List Fax Service. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 1, 2002, TRACE became effective. On June 28, 2002, the Commission approved proposed NASD fees relating to the operation of the TRACE system (Rule 7010(k)) on a pilot basis for a six-month period expiring on December 28, 2002.[7] As part of that rule filing (Amendment No. 3 to SR–NASD–2002–63), NASD committed to review and reassess the proposed TRACE fees as soon as practicable and within six months after the effective date of TRACE, based on such factors as actual volume, usage, costs, and revenues.

Based on an initial review of the TRACE fees, and concerns raised by member firms, NASD is proposing to reduce the Web Browser Access Fee for low volume participants, and phase in the implementation of the Cancel or Correct Fee and the "As of" Trade Late Fee during the fourth quarter of 2002. NASD is proposing to make the proposed rule change effective as of October 1, 2002.

Following the effective date of TRACE, a large number of small member firms have reported to NASD staff that the Web Browser Access Fee is too burdensome for firms that handle a small volume of corporate bond transactions per month. In addition, the current fees (approved by the SEC on a pilot basis for a six-month period) included a fee holiday for the first 90 days after the effective date of TRACE for Cancel or Correct Fees and "As of" Trade Late Fees to permit firms to adjust to the new TRACE rules.[8] Following operation of the TRACE system, NASD staff reviewed the financial impact of these three fees on members. This review indicates that full implementation of these fees on October 1, 2002, at the currently approved rate, will result in a significant increase in the fees paid by many firms.

As a result, NASD is proposing the rule change described herein. NASD believes that the proposed rule change will alleviate some of the immediate burden on small firms resulting from TRACE reporting requirements and grant all firms additional time to adjust to the Cancel or Correct Fee and the "As of" Trade Late Fee. In addition, NASD is in the process of reassessing the entire TRACE fee structure and expects to submit additional proposed amendments to TRACE fees to the SEC prior to the expiration of the pilot program.

Proposed Amendments to Reduce Web Browser Fee for Period of October 1, 2002 to December 31, 2002

Many small member firms have registered to report TRACE transactions through the web browser to satisfy their TRACE reporting obligations because the alternative reporting methods available under the TRACE rules (through a service bureau, clearing firm or a direct computer-to-computer interface) are not cost-effective for them. Following the effective date of TRACE, small member firms have raised concerns regarding the burden of paying the Web Browser Access Fee. Small member firms have reported to NASD staff that the small number of TRACE transactions that they handle and, therefore, are required to report on a monthly basis are not in line with the $85 per month cost for one web browser.

The current Web Browser Access Fee for each registered member is: $85 per month for the first user ID; $75 per month for the second through ninth user ID; and $70 per month for the second through ten or more user ID, if the member registers ten or more user IDs. The web browser permits the reporting of transactions into the TRACE system, and, through the use of a query feature, allows members access to TRACE transactions and real time TRACE market data. At this point in time, NASD does not have the capability to separate the real time market data access feature from the web browser, although NASD expects this capability will be available in early 2003. When such capability does become available, NASD expects it will adjust the Web Browser Access Fee to allow members to choose whether or not they would like to receive the real time TRACE data access through the web browser.

After carefully reviewing the data collected from the first three months of operation of the TRACE system, in particular data on the monthly reporting volume of small firms, NASD is proposing that the Web Browser Access Fee be amended for the period commencing October 1, 2002 and ending December 31, 2002 as follows: all registered members that report less than 25 trades per month will be charged $25 for such month, per user ID. All members registered to report TRACE transaction data through the web browser will continue to have access to the real time market data feature included in the web browser during this time period.

Proposed Amendments to Phase In Cancel, and/or Correct Fee and "As of" Late Fee for October and November 2003

To achieve the goal of market transparency mandated by the SEC, members must report TRACE transaction data accurately. NASD has included Cancel or Correct Fees and "As of" Trade Late Fees in the overall TRACE fee structure to provide incentives to members to enter trade data correctly, and on time, into the TRACE system. Cancel or Correct, and "As of" transactions (collectively, referred to as "corrective transactions") are used by participants to modify and correct original trade entries. While NASD believes that a certain level of corrective transactions will always be necessary, NASD believes it is very important that trades be entered into the system correctly the first time to ensure that data disseminated through the TRACE system is accurate and to allow investors to rely on the data stream they receive. In addition, a large volume of corrective transactions on a regular basis will increase NASD's technology costs over time.

In NASD's original rule filing for TRACE fees, NASD had delayed the effectiveness of the Cancel or Correct Fee and the "As of" Late Fee to October 1, 2002 (effectively granting a 90-day fee holiday) to allow firms time to adjust to the new TRACE system. The current charge for the Cancel or Correct Fee and the "As of" Late Fee is $3.00 for each such reported trade. Based on NASD review of the data collected on such corrective transactions to date, NASD is proposing to reduce the Cancel or Correct Fee and the "As of" Late Fee charge assessed to each member for the month of October 2002 from $3.00 per trade to $1.50 per trade (a 50% discount), and to reduce the Cancel or Correct Fee and the "As of" Late Fee for the month of November 2002 from $3.00 per trade to $2.25 per trade (a 25% discount).

The proposed rule change is based on an analysis by NASD of the economic impact of the current fees versus the proposed amended fees on TRACE participants. NASD had initially anticipated that the number of corrective transactions entered into the TRACE system over time would decline as participants grew more familiar with the new system and improved their reporting accuracy. However, a review by NASD of the unbilled July, August and September 2002 activity in these corrective transactions does not evidence the anticipated decline in these transactions. Moreover, certain firms have experienced a disproportionately high volume of corrective transactions largely because of reporting and system coding errors by participants. As a result, NASD believes that phasing-in the full fee structure for corrective transactions will allow firms greater time to learn to effectively use the new TRACE system and focus on methods to reduce corrective transactions, while still establishing an incentive for firms to report TRACE transactions correctly and on time.

NASD will continue to review and reassess the impact of the overall TRACE fee structure over time to ensure that the fees are reasonable and equitable for participants in the TRACE system.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[9] which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. NASD proposes to reduce the Web Browser Access Fee, the Cancel or Correct Fee, and the "As of" Trade Late Fee during the periods described for the TRACE system to allow member firms more time to adjust to the new reporting system and focus on methods to decrease the likelihood of incurring such charges over time. NASD believes that such proposed rule change will more equitably allocate fees to NASD members during the early stages of implementing TRACE.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] because the proposal is "establishing or changing a due, fee, or other charge." The rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder, and is operational as of October 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–167 and should be submitted by December 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30532 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[7] The Commission approved Rule 7010(k) relating to TRACE fees on June 28, 2002 on a six-month pilot basis. See Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR–NASD–2002–63).

[8] See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65).

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46901; File No. SR–NASD–2002–85]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Issuer Disclosure of Material Information

November 25, 2002.

I. Introduction

On June 26, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Nasdaq's rules pertaining to issuer disclosure of material information. The proposed rule change was published for notice and comment in the **Federal Register** on August 7, 2002.[3]

The Commission received one comment on the proposed rule change.[4] On October 16, 2002, Nasdaq filed a letter in response to comments on the proposal.[5] This order approves the proposed rule change.

II. Summary of Comments

The PR Newswire Letter

In its comment letter, PR Newswire ("Commenter") submits that the filing of a Form 8–K via EDGAR, without more, does not achieve the goal of providing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46288 (July 31, 2002), 67 FR 51306.

[4] See August 26, 2002 letter from Charles H. Morin, Chief Executive Officer, PR Newswire, to Margaret H. McFarland, Deputy Secretary, Commission ("PR Newswire Letter").

[5] See October 15, 2002 letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Nasdaq Response Letter").

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investors with timely access to material corporate information.[6] According to the Commenter, when an issuer files a Form 8–K with the Commission, investors will receive the information only if investors (1) know when to anticipate the disclosure; (2) know where to find the information; and (3) have access to the Commission's Web site or a site carrying EDGAR content.[7] The Commenter believes that allowing only the filing of a Form 8–K in satisfaction of disclosure requirements would reduce the possible dissemination of information to the investing public.[8]

The Commenter suggests that requiring the filing of a Form 8-K in tandem with a news release distributed by a commercial newswire service and posted on an issuer's Web site will "fully address the desired goals."[9] Additionally, the Commenter believes that the scope of dissemination of such a press release should "correspond to dissemination that the issuer normally effects with respect to its results of operations."[10] The Commenter suggests that disclosure through a press release should require dissemination of the entire text of the press release, to avoid providing limited and selective disclosure, in contrast to the information obtained by those who obtain the complete press release.[11]

Nasdaq's Response Letter

Nasdaq believes that the filing of a Form 8–K provides "effective, broad and non-exclusionary public disclosure," and that requiring the issuance of a press release in tandem with filing a Form 8–K would place a burden on issuers while providing "no significant benefit to investors."[12] Nasdaq states that filings made with the Commission via EDGAR are available on "most major financial news Web sites and Web portals," and lists a number of Web sites that have direct links to issuers' filings.[13] In addition to obtaining this information via the Internet, Nasdaq notes that filing of a Form 8–K may result in media coverage, and that under Nasdaq rules, issuers must provide notification of material news announcements, including those made by filing a Form 8–K, to Nasdaq's Market Watch Department before disseminating them to the public. The Market Watch Department evaluates such information for materiality, and implements trading halts for dissemination of news, if appropriate.[14]

Nasdaq maintains that the proposal is "designed to harmonize its disclosure rules with Regulation FD" to enable issuers to reap the benefits of using "current technologies as part of a comprehensive disclosure strategy," and to address concerns that self-regulatory organization rules override the flexibility provided by Regulation FD.[15]

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, and Nasdaq's response to comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [16] and, in particular, the requirements of section 15A(b)(6) of the Act. Section 15A(b)(6) requires rules that are designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. The Commission finds that aligning Nasdaq's disclosure rules with Regulation FD should minimize confusion among issuers, while simultaneously allowing issuers to use current technologies to disseminate material information to the public in a broad, inclusive manner. The Commission makes no finding as to whether requiring issuers to provide a news release to be distributed by a commercial newswire service and posted on the issuer's web site, in addition to filing a Form 8–K, will result in expanding the reach of disclosure to the investing public. The Commission is satisfied that the proposal conforms to the requirements for disclosure as delineated in Regulation FD, and as such, finds it is consistent with the requirements of the Act, in general, and specifically, with section 15A(b)(6).

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NASD–2002–85) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30538 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[6] PR Newswire Letter at p.3.
[7] *Id.*
[8] *Id.* at p.4.
[9] *Id.*
[10] *Id.* at 5.
[11] *Id.*
[12] Nasdaq Response Letter at p.2.
[13] *Id.*
[14] *Id.*
[15] *Id.* at p.3.
[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[17] 15 U.S.C. 78s(b)(2).
[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46903; File No. SR–NSCC–2002–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Imposition of Fines

November 25, 2002.

I. Introduction

On July 26, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–NSCC–2002–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and on August 21, 2002, amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 27, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

NSCC's rule change amends Addendum P of its Rules and Procedures to clarify existing fines and to impose new fines upon its members. The rule change specifically sets forth actions or inactions which will result in NSCC imposing fines.[3]

NSCC's Rule 48 allows NSCC to impose fines upon its members for any error, delay, or other conduct that is determined to be detrimental to the operations of NSCC. Historically, NSCC has imposed fines upon members for failures to settle in a timely manner end of day settlement balances, for late settlement acknowledgements, and for late payments of clearing fund deposits.

NSCC's Rule 15 permits NSCC to request that members furnish to NSCC such adequate assurances of their financial responsibility and operational capability as NSCC may at any time deem necessary. Pursuant to this rule

[1] 15 U.S.C. 78s(b)(1).
[2] Securities Exchange Act Release No. 46385 (August 20, 2002), 67 FR 55051.
[3] Exhibit 1 to this order sets forth NSCC's revised fine schedule.

and in furtherance of NSCC's responsibility, NSCC periodically requests that its members provide financial and operational information about their business. While many members comply with these requests, some do not. The lack of this information could create risk for NSCC. To address this concern, NSCC will fine members who fail to timely respond to requests for such information.

In connection with imposing fines for failure to timely provide requested financial and operational information, NSCC is establishing a list of information items, such as financial statements and disaster recovery procedures, that its members must submit on an ongoing basis so that its members will know exactly what information must be provided and that failure to provide the information will result in a fine being imposed. NSCC will begin assessing fines from the approval of this rule change. For a period of one year from that date, members that fail to timely provide information will be issued one warning letter prior to the imposition of a fine. At the conclusion of the one-year period, NSCC will discontinue the warning letters prior to fining.[4]

Under NSCC's Rules and Procedures, members have an affirmative duty to notify NSCC on an ongoing basis of changes in certain internal conditions that may cause NSCC to reevaluate the member's continued participation. Addendum T. NSCC will fine members that fail to meet these notification requirements. No reminder or warning letter will be sent in this context.[5]

Members will continue to have the ability to contest fines, as currently provided for within NSCC's Rules and Procedures. Fines imposed against settling members will be collected through a miscellaneous charge in the member's monthly statement of charges. Fines imposed against settling bank members may be collected through an adjustment to the settling bank's end-of-day settlement balance, through a separate fed wire payment, or through a check made payable to NSCC. Alternatively, if the settling bank maintains additional memberships with NSCC, the fine may be collected through a settling account under its additional membership.

In conjunction with the above, NSCC is making a technical correction to Rule 48, Disciplinary Proceedings. In Release No. 34–36866, the Commission approved an NSCC rule change to accommodate same-day funds settlement ("SDFS").[6] That rule change, in part, created Addendum P that set SDFS Failure to Settle fines in the range of $100 to $10,000. At that time, Section 1 of Rule 48 should have been modified to change the maximum fine for any single offense from $5,000 to $10,000, and a reference to settling bank only members should also have been included. Accordingly, those changes are now being made.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it ensures that NSCC is able to safeguard securities and funds in NSCC's possession.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[7] The Commission finds that the proposed rule change allowing NSCC to fine members that fail to timely provide requested financial and operational information or who fail to notify NSCC of changes in conditions that may cause NSCC to reevaluate the member's continued participation should improve NSCC's ability to monitor its members. Accordingly, the Commission believes the proposed rule change is consistent with NSCC's obligation to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2002–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1: Text of NSCC'S Revised Rules and Procedures

Addendum P

Fine Schedule

(1) SDFS Failure-to-Settle and Late Acknowledgment Fines

Net debit	First occasion	Second occasion	Third occasion	Fourth occasion
$0–100,000	$100	$200	$500	$1,000
$100,000–900,000	300	600	1,500	3,000
$900,000–1,700,000	600	1,200	3,000	6,000
$1,700,000–2,500,000	900	1,800	4,500	9,000
$2,500,000–up	1,000	2,000	5,000	10,000

Notes: (a) In addition to the fine, interest is charged to the Member, or the Settling Bank Only Member, that failed to settle for the cost of borrowing to complete settlement.

(b) The number of occasions will be determined over a moving three-month period. A Member, or a Settling Bank Only Member, that exceeds four failure-to-settle occasions in a three-month period will be subject to further fees and/or other actions at the Corporation's discretion after consultation between the Member, or the Settling Bank Only Member, and the Corporation.

(c) If the Corporation determines that it had significantly affected a Member's, or a Settling Bank Only Member's, ability to settle (because of a Corporation system delay, for example), the Corporation may determine to waive failure-to-settle fines for that occurrence.

(2) Failure to notify and supply required data as provided for under these Rules & Procedures (other than as provided in items one, three and four of this addendum): Each single offense, $5,000.00 fine.

[4] Addendum P, 4.
[5] Addendum P, 2.
[6] Securities Exchange Act Release No. 36866 (February 27, 1996), 61 FR 7288 [File No. NSCC–96–03] (order modifying NSCC's Rules and Procedures to accommodate same-day funds settlement).
[7] 15 U.S.C. 78q–1(b)(3)(F).
[8] 17 CFR 200.30–3(a)(12).

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(3) Late Satisfaction of Clearing Fund Deficiency Call [1]

Amount	First occasion	Second occasion	Third occasion	Fourth occasion (or greater)
Up to $100 M	(*)	$100	$200	$500
$100 M to $900 M	(*)	300	600	1,500
$900 M to $1.7 MM	(*)	600	1,200	3,000
$1.7 MM to $2.5 MM	(*)	900	1,800	4,500
Greater than $2.5 MM	(*)	1,000	2,000	5,000

*First occasions result in a warning letter issued to the Member.

(4) Requests for information [2]

Request for information (failure to timely provide)	First occasion	Second occasion	Third occasion	Fourth occasion
Financial Statements:				
Audited Financial Statements for Member or Parent	(*)	$300	$600	$1,500
Monthly and/or Quarterly Regulatory Filings	(*)	300	600	1,500
Monthly and/or Quarterly Financial Statements	(*)	300	600	1,500
Proforma Financial Statements	(*)	300	600	1,500
Any Financial Computations, Consolidating Worksheets or Internal Statements, Upon Special Request	(*)	300	600	1,500
Risk Questionnaires/Profiles:				
Questionnaires	(*)	150	300	750
Profiles	(*)	150	300	750
Risk Management Policies and Procedures	(*)	150	300	750
Disaster Recovery Procedures	(*)	150	300	750

*First occasions result in a warning letter issued to the Member. Warning Letters for first occasion violations will be discontinued one year after implementation of this schedule, at which time each violation will be subject to imposition of a fine.

[FR Doc. 02–30533 Filed 12–2–02; 8:45 am]
BILLING CODE 8010–01–P

[1] The number of occasions is determined over a moving three-month period beginning with the first occasion.

[2] Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46875; File No. SR–Phlx–2002–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Amend Schedule of Dues, Fees and Charges Relating to Floor Brokerage Assessments

November 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges by: (1) Suspending the current equity floor brokerage assessment fee of 5 percent of net floor brokerage income through December 31, 2003; and (2) adopting a monthly fee of $250 for each member who derives his/her primary income from equity floor brokerage business.[4] For purposes of the $250 monthly fee, "primary income" means that the member derives at least 80 percent of gross income generated from Phlx floor-based activities from his/her floor brokerage business conducted on the Exchange.[5]

The Phlx intends to suspend the floor brokerage assessment fee of 5 percent for transactions settling on or after November 1, 2002, and implement the $250 monthly fee beginning November 2002.

The text of the proposed rule change is available at the Phlx and at the Commission. A copy of the Exchange's Summary of Equity Charges is attached to the proposed rule change filed with the Commission as Exhibit 2.

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] This fee will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Phlx by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001)(SR–Phlx–2001–49).

[5] For purposes of this proposed rule change, floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to attract business to the Exchange. Specifically, the Phlx believes that waiving the 5 percent assessment through December 31, 2003 and implementing a modest monthly fee of $250 should encourage floor brokers to send additional order flow to the Exchange and enhance the competitiveness of the Exchange. The Exchange will reassess the waiver of the 5 percent assessment as appropriate,[6] and will file any modification to it with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4)[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[6] Absent any modification, the 5 percent assessment will recommence on January 1, 2004.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2002–70, and should be submitted by December 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30534 Filed 12–2–02; 8:45 am]
BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46886; File No. SR–Phlx–2002–39]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Providing Automatic Executions for Eligible Orders at the Exchange's Disseminated Size, Subject to a Minimum and Maximum Eligible Size Range

November 22, 2002.

I. Introduction

On July 3, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. Notice of the proposed rule change was published for comment in the **Federal Register** on August 15, 2002.[3] The Commission received no comments on the proposal. On August 26, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On November 20, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46323 (August 8, 2002), 67 FR 53374.

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Sonia Patton, Special Counsel, Division of Market Regulation ("Division"), Commission, dated August 23, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx (i) requested accelerated approval of the proposed rule change; (ii) explained how its current pilot, regarding the disengagement of its automatic execution system ("AUTO–X") once the AUTO–X guarantee for a particular option has been exhausted within a fifteen second time frame, will interact with this proposal; (iii) stated that, although AUTO–X guarantees sizes are subject to approval by the Phlx's Options Committee, that the Committee has delegated this responsibility to two Phlx Floor Officials; and (iv) discussed how the proposed rule will work when the disseminated size is greater than the maximum guaranteed AUTO–X size and how options contracts will be allocated.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated November 20, 2002 ("Amendment No. 2"). In Amendment No. 2, the Phlx amended the proposed rule text to reflect a change to Exchange Rule 1080(c) that was made to

Continued

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is approving the proposed rule change, and is publishing notice of, and granting accelerated approval to, Amendment Nos. 1 and 2 to the proposed rule change.

II. Description of the Proposal

The Exchange proposes to codify a change in its AUTOM and Auto-Quote[6] systems that would permit the automatic execution of eligible orders[7] at the Phlx's disseminated size, as defined in Exchange Rule 1082(a)(ii).[8] Currently, the Exchange automatically executes eligible orders at a size equal to the AUTO–X guarantee for a given option, regardless of the Exchange's disseminated size. The proposed rule change would allow the Exchange to provide automatic executions for eligible orders at a size equal to the Exchange's disseminated size, subject to minimum and maximum guaranteed AUTO–X sizes (which the Exchange represents cannot exceed the Exchange's floor-wide allowable maximum guaranteed AUTO–X size for an option, which currently is 250 contracts),[9] to be determined by the specialist and subject to the approval of the Options Committee.[10]

The proposed amendments to Phlx Rule 1080(c) would include the following provisions:

1. If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders would be automatically executed up to the Exchange's disseminated size. Remaining contracts would be executed manually by the specialist or placed on the limit order book.

Example 1:

Minimum Guaranteed AUTO–X Size=10
Maximum Guaranteed AUTO–X Size=50
Disseminated Size=35
Inbound Order Size=90

In this example, the Exchange would automatically execute 35 contracts (the disseminated size). The specialist would be required to execute the remaining 55 contracts manually or, in the case of a limit order, to place the remaining 55 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

2. If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders delivered via AUTOM would be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts would be executed manually by the specialist or placed on the limit order book.

Example 2:

Minimum Guaranteed AUTO–X Size=10
Maximum Guaranteed AUTO–X Size=50
Disseminated Size=6
Inbound Order Size=20

In this example, the Exchange would automatically execute 10 contracts (the minimum guaranteed AUTO–X size) even though its disseminated size is for 6 contracts. The specialist would be required to execute the remaining 10 contracts manually at that price or the next best price or, in the case of a limit order, to place the remaining 10 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

3. If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders would be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts would be executed manually by the specialist at the disseminated price.

Example 3:

Minimum Guaranteed AUTO–X Size=10
Maximum Guaranteed AUTO–X Size=50
Disseminated Size=100
Inbound Order Size=90

In this example, the Exchange would automatically execute 50 contracts (the maximum guaranteed AUTO–X size). The specialist would be required to execute the remaining 40 contracts manually at that same price because the Exchange's rules concerning firm quotations[11] require the Exchange to be firm at that price up to the disseminated size of 100 contracts.

The Exchange represents that the proposed rule change would provide that the minimum and maximum guaranteed AUTO–X sizes for a given option is to be determined on an issue-by-issue basis by the specialist and subject to the approval of the Options Committee.[12] In determining whether to approve the minimum and maximum guaranteed AUTO–X size for each option, the Options Committee may consider, without limitation, the number of series and open interest in the option; the volatility of the option; the liquidity of the option; historical and projected volume of trading in the option; and the projected share of total trading in the option that is likely to occur at the Exchange, as well as other relevant factors.

The Exchange also proposes to delete references to public customer orders from the description of AUTO–X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO–X.[13] Minimum and maximum sizes could be for a different number of contracts for broker-dealer orders than for customer orders.[14] In addition, the Exchange represents that contracts that are automatically executed would be allocated automatically on the Exchange's "Wheel."[15] The Exchange notes that contracts executed manually would be allocated by the specialist in the same manner as all orders received via AUTOM that are manually executed by the specialist in accordance with Phlx rules.[16]

III. Discussion

The Commission has carefully reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).[17] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)[18] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, should enable the Phlx to codify the merger of its new Auto-Quote system with its current AUTO–X system, and should provide for a more orderly system for the automatic execution of eligible orders through AUTO–X. The Commission notes that this proposed rule change will enable the Phlx to automatically execute eligible orders at the Exchange's disseminated size, subject to a minimum and a maximum AUTO–X guarantee size that would be set by the specialist on an issue-by-issue basis, subject to the Phlx Options Committee's approval. In addition, the Commission believes that providing automatic executions at the Exchange's disseminated size should enhance the ability of investors to ascertain the actual number of contracts available for automatic execution of eligible orders. Accordingly, the proposed rule change should result in more transparency for investors and the marketplace.

The Commission also notes that the Exchange is eliminating the reference to public customers orders from Exchange Rule 1080(c) because, for certain issues, broker-dealer orders may be eligible for automatic execution. The Commission further notes that the Exchange has represented that, because public customers and broker-dealers may have different AUTO–X guarantee sizes, the Exchange will make sure that the larger of the two sizes will constitute the AUTO–X guarantee for purposes of the pilot.[19] This is based on the fact that, as a business practice, the Exchange represents that it wants to provide automatic executions for the largest size possible.[20]

In addition, the Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that Amendment No. 1 provides clarification as to how the proposed rule change will operate in relation to Phlx's current pilot in which AUTO–X is disengaged for thirty seconds once the AUTO–X guarantee is exhausted within a fifteen-second period. In addition, Amendment No. 1 provides a more detailed description as to how orders will be allocated and executed, and clarifies that the Options Committee will delegate its authority to approve the minimum and maximum AUTO–X guarantee size for a particular option to two Phlx Floor Officials. Amendment No. 2 amends the proposed rule text to reflect changes to Exchange Rule 1080(c) that have been made to the rule since this original 19b–4 proposal was filed on July 3, 2002. The Commission, therefore, finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment Nos. 1 and 2 to the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–39 and should be submitted by December 24, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Phlx–2002–39) is hereby approved, and that Amendment Nos. 1 and 2 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30536 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

Office of the Coordinator for Counterterrorism

[Public Notice 4213]

Designation of Foreign Terrorist Organizations

Pursuant to section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the

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the rule subsequent to the filing of the proposed rule change on July 3, 2002. Amendment No. 2 reflects the fact that the allowable AUTO–X guarantee for options on the Nasdaq-100 Index Tracking Stock ("QQQ") is now a maximum of 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months.

[6] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[7] AUTO–X eligible orders are orders that do not otherwise bypass AUTO–X for manual handling by the specialist in accordance with Exchange Rule 1080(c)(iv).

[8] *See* Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (notice of filing and order granting accelerated approval File No. SR–Phlx–2002–15).

[9] In Amendment No. 2, the Exchange noted that the QQQ options are permitted to have an AUTO–X guaranteed size of up to 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months. *See* Securities Exchange Act Release Nos. 46307 (August 2, 2002), 67 FR 52508 (August 12, 2002) (notice of filing and immediate effectiveness of File No. SR–Phlx–2002–43, increasing the AUTO–X guarantee for QQQ options up to 1000 contracts); 34531 (September 23, 2002) (notice of filing and immediate effectiveness of File No. SR–Phlx–2002–47, increasing the AUTO–X guarantee for QQQ options up to 2000 contracts for the first two near term expiration months and to 1000 contracts for all other expiration months). Thus, under the proposed rule change, automatic executions for eligible orders in QQQ options up to the Exchange's disseminated size could be set at a maximum of 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months.

[10] The Exchange represented that the Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. *See* Exchange Rule 1080(c). In Amendment No. 1, the Exchange noted that, because it would be cumbersome and impractical for the Options Committee to meet and vote to approve a change to the guaranteed AUTO–X size for an option each time a specialist determines to make such a change, the Options Committee has delegated its authority to approve such changes to two Exchange Floor Officials, who would indicate their approval by signing the appropriate form and submitting the form to Market Surveillance.

[11] *See* Exchange Rule 1082, Firm Quotations.

[12] The Exchange has stated that the maximum guaranteed AUTO–X size for a given option generally would not be changed intra-day. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

[13] *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (File No. SR–Phlx–2001–40).

[14] Currently, the Exchange is operating an AUTO–X pilot program that disengages AUTO–X in an option for 30 seconds when the number of contracts executed automatically for the option meets the AUTO–X guarantee within a 15 second time frame. *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002). The Exchange has stated that this pilot will continue to operate and that if there is a different size for customers and broker-dealers, the larger of the two sizes will constitute the AUTO–X guarantee for purposes of the pilot. This is based on the fact that, as a business practice, the Exchange wants to provide automatic executions for the largest size possible. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002). *See also* Amendment No. 1, *supra* note 4.

[15] *See* Phlx Rule 1080(g) and Option Floor Procedure Advice ("OFPA") F–24.

[16] In a separate rule proposal, the Exchange has proposed amendments to OFPA F–2, OFPA F–12, and Exchange Rule 1014(g) regarding who is responsible for allocating a trade executed on its floor. *See* File No. SR–Phlx–2001–28. In another separate proposal, the Exchange proposed amendments to OFPA B–6 and Exchange Rule 1014(g) regarding the method for allocating trades executed on its floor. *See* File No. SR–2001–39.

[17] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] For a brief description of the pilot, *see supra* note 14.

[20] *See supra* note 14.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

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Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009 (1996), and by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107–56 (2001), the Deputy Secretary of State hereby amends, effective December 3, 2002, the 2001 redesignation of the Kurdistan Workers' Party (PKK and other aliases) as a "foreign terrorist organization" to add the following names as aliases of the PKK:

Kurdistan Freedom and Democracy Congress
Freedom and Democracy Congress of Kurdistan
KADEK

Dated: November 26, 2002.

William P. Pope,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–30544 Filed 12–2–02; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4194]

Notice of Meetings: United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS) which will take place in December 2003, including U.S. preparations for the WSIS. The meeting will take place on December 17, 2002, from 10 a.m. to 12 p.m. at the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. People intending to attend a meeting at the Department of State should send the following data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202 647–2592 or e-mail to *worsleydm@state.gov*.

Dated: November 26, 2002.

Sally Shipman,

Telecommunication Policy Advisor, Department of State.

[FR Doc. 02–30596 Filed 12–2–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13929]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Subsection (c) of Section 7405 of the Transportation Equity Act for the 21st Century makes $5,000,000 available each of five fiscal years to the Secretary of Transportation for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. The Act requires that the Secretary publish annually in the **Federal Register** a detailed accounting of the projects, programs, and activities under this subsection.

ADDRESSES: You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at *http://dms.dot.gov* and at *http://www.uscgboating.org*.

FOR FURTHER INFORMATION CONTACT: Captain Scott Evans, USCG, Chief, Office of Boating Safety, telephone 202–267–1077, fax 202–267–4285, or Mr. Jeffrey N. Hoedt, Chief, Program Management Division, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century became law on June 9, 1998. The Act requires that of the $5 million made available to carry out the national recreational boating safety program, each year, $2,000,000 shall be available only to ensure compliance with Chapter 43 of title 46, U.S. Code—Recreational Vessels. The responsibility to administer these funds is delegated to the Commandant of the United States Coast Guard. The statute directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year, 1999–2003, shall remain available until expended. Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The following activities have been initiated using fiscal year 1999–2002 funds transferred to the Coast Guard from the Aquatic Resources (Wallop-Breaux) Trust Fund. The total amount of fiscal year 1999, 2000, 2001 and 2002 funding committed, obligated and/or expended for each activity is shown.

Factory Visit Program: An initial contract was awarded to establish a national recreational boat factory visit program using contractor personnel. The contract included the development of a plan of action and an eighteen-month pilot program to validate the elements of the plan and the concept of the program. The pilot program commenced in the summer of 2000. "Compliance associates" (inspectors) were trained and formal factory visits were initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit approximately 2,000 recreational boat manufacturers each year to inspect for compliance with the Federal regulations, communicate with the manufacturers as to why they need to comply with the Federal regulations, and educate them, as necessary, on how to comply with the Federal regulations. ($4,484,665)

Boat Compliance Testing: Funding is providing for expansion of the boat compliance testing program whereby new manually propelled and outboard recreational boats are purchased in the open market and tested for compliance with the Federal flotation standards. The expanded program includes inboard/sterndrive boats and used boats. ($401,381)

Associated Equipment Compliance Testing: A contract was awarded to buy recreational boat "associated equipment," *e.g.*, starters, alternators, fuel pumps, bilge pumps, etc., and test this equipment for compliance with Federal safety regulations. This new initiative complements the boat compliance testing program. ($346,446)

Compliance Associated Travel: Travel by employees of the Office of Boating Safety is being performed to carry out additional compliance actions and to gather background and planning information for new compliance initiatives. ($98,395)

New Boat Manufacturer Outreach Package: A contract was awarded to design and develop a comprehensive and user-friendly outreach package for distribution to new recreational boat manufacturers. Included are a brochure and video that outline the many facets of the recreational boat manufacturing business, including, Federal regulations, voluntary standards, self-certification, financial aspects, insurance concerns, liability issues, points of contact and the steps necessary to become a new recreational boat manufacturer. The package also includes plain language guidelines that help clarify Federal requirements. The new outreach package is aimed at increasing the level of new recreational boat manufacturer compliance with applicable Federal regulations. ($357,582)

National Boating Survey: A contract has been awarded for a comprehensive major national recreational boating survey scheduled to be conducted during the fall of 2002. The purpose of this project is to obtain up-to-date statistical estimates of recreational boats, boating households, boaters, boating exposures, practices and activities for the 2002 boating season. This data will be extrapolated to produce national, regional and state estimates of boat use as well as the characteristics of boat operators, passengers, boats and the operating environment ($1,591,666).

Boating Accident Report Database (BARD): A contract has been awarded to enhance the capability of all States and the Coast Guard for the successful electronic exchange, management, and reporting of recreational boating accident report data using the BARD software application. This contract provides for software module development, software module testing, applicable rework, implementation, maintenance, and technical support for the user community in the 50 States, five Territories, and the District of Columbia. ($2,267,320)

State Incident Notification: The Coast Guard Search and Rescue Management Information System (SARMIS) software has been modified to electronically notify the relevant State boating law administrators regarding any fatal recreational boating incident cases to which the Coast Guard responds. The intent of this notification is to ensure that these cases are captured in the accident report data submitted by the State boating law administrators to the Boating Accident Report Database (BARD). ($12,678)

Articulated Mannequins/Computer Simulation Model: The objective of this contracted program is to improve the safety of recreational boaters by fostering developmental technology for improved personal flotation devices (PFDs). This program is furthering development of flotation mannequins and a water forces computer simulation program to promote the rapid, objective evaluation of different PFD designs on various body types that are representative of the recreational boating population. The computer simulation program will be validated through the use of a family of anthropomorphic, articulated mannequins. Under the contract to develop the articulated mannequins and computer simulation model, a male model has been built and is almost perfected. Currently, a female/child mannequin is being developed. The development of a computer simulation program will facilitate evaluation of the effectiveness of new and unique PFD designs. ($814,341)

Risk-Based Personal Flotation Device Approval Process: This ongoing effort will improve the approval process for personal flotation devices (PFDs) by developing a risk-based compliance system that is based on an objective Life Saving Index. This index will provide a formal structure and consistency to the process for accepting new approaches to designing devices for drowning prevention. The risk-based process identifies critical factors for evaluating PFD lifesaving potential and defines the minimum level of performance necessary for approval. ($398,509)

Carbon Monoxide Research: The Office of Boating Safety has entered into a Memorandum of Agreement with the Department of Health and Human Services, U.S. Public Health Service, Federal Occupational Health Program, to continue investigation into identifying and classifying additional recreational boating carbon monoxide related deaths and injuries. ($573,475)

Houseboat Manufacturers Workshop/ Conference Support: Funding provided support services for a Coast Guard-sponsored gathering of the houseboat industry to explore potential design solutions to the carbon monoxide poisonings that have occurred on recreational houseboats. ($17,830)

Hull Identification Number (HIN) Economic Analysis: The objective of this contracted effort is to provide the Coast Guard with a cost/benefit analysis on the effects of expanding the current 12-character HIN to a 17-character HIN for all newly constructed recreational boats. ($47,626)

Virtual Reality Personal Watercraft (PWC): A virtual reality PWC is being developed under contract to provide a platform to gather objective data on operator reactions to various scenarios. This information would otherwise be unobtainable or would require more costly methods and sources, due to the risk of injury to the operator as well as due to the difficulty of accurately replicating conditions for all operators. The virtual reality PWC will be used in various test scenarios to collect human factors data including the measurement of reactive movements and reaction time that will assist in making decisions or taking action to improve personal watercraft safety. The data from this effort will give greater insight into the human/machine interface related to PWC operation and will assist in the effort to attempt to reduce PWC accidents. ($407,638)

Knowledge Management System: The first phase of this three-phase contracted effort entailed the development of a comprehensive Knowledge Management plan for automating office processes in the Office of Boating Safety. The second phase, when implemented, will install document imaging software to capture and fully automate product assurance and consumer files and provide support that will ultimately enhance efficiency in supporting customers, partners and stakeholders. The third phase, if implemented, would provide quicker, more effective and efficient program oversight while providing customers with the ability to do business with the Coast Guard via web-based technology, thus enabling the Coast Guard to reduce the amount of paper transactions involved in servicing external customers. This system will assist in the electronic monitoring, storage and daily use of information and materials within the Office of Boating Safety. ($360,787)

Coast Guard Infoline/Office of Boating Safety Web Site: Funding has been provided for both technological and educational enhancements to the toll free Coast Guard Infoline and the Office of Boating Safety Web site to create a "one-stop" customer service center. The Infoline provides information about safety, regulations, communications, Coast Guard policy, and available material related to boating safety issues. Additionally, this effort provides a complete interactive recreational boating safety Web site that offers the public and boating safety agencies and organizations real-time information on

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every aspect of recreational boating safety. One of the goals of this program is to create a "one-stop" customer service center for all users. ($635,243)

Federal Requirements Publication: A customer-friendly "Federal Requirements and Safety Tips for Recreational Boats" publication was developed based on easy-to-read, high visibility graphics, and with subject-specific safety tips that promote high retention by the reader. Both hard copy and electronic interactive versions have been created for the public. The enhanced Federal Requirements brochure is being widely distributed, and in addition, can be downloaded from the Office of Boating Safety Web site (*http://www.uscgboating.org*). ($253,000)

Emergency Radio Call Procedures Decal: An emergency radio call procedures decal was produced and disseminated that provides the recreational boater with the proper procedures to use in making an emergency or distress call via VHF–FM Channel 16. This decal will be distributed via the Coast Guard Auxiliary, U.S. Power Squadrons, and State boating offices, as well as U.S. Army Corps of Engineers, Tennessee Valley Authority, and the Bureau of Land Management. This item also supports the Vessel Safety Check (VSC) program provided by the Coast Guard Auxiliary, U.S. Power Squadrons and States. The VSC program is a free service provided by these organizations offering a safety check of recreational boats 65′ or less in length. ($25,810)

Aids to Navigation Booklet: A full-color booklet, "U.S. Aids to Navigation System," was produced to assist recreational boaters in better understanding the use and identification of navigational aids. This booklet is now used as an educational adjunct to the safe boating classes taught by the Coast Guard Auxiliary, U.S. Power Squadrons, and many of the States. It is also distributed in conjunction with the Vessel Safety Check program. ($55,327)

"Operation BoatSmart" Support: Funding support was provided to this initiative which coordinated Coast Guard and other boating safety organizations aims to energize recreational boating safety programs by strengthening and extending partnerships at the national, State and local levels. Through combined and coordinated efforts, the BoatSmart partners targeted those activities and behaviors that presented the greatest risk for the recreational boater. "Operation BoatSmart" brought together these organizations to work in tandem to promote a positive change in boater awareness and behavior, with special emphasis on inland waters where most recreational boating takes place. Special emphasis was focused on encouraging life jacket wear, boater education, and scrupulous enforcement of boating under the influence laws by appropriate authorities. ($273,586)

Recreational Boating Safety Program Marketing Support: A national marketing, awareness and education campaign in support of "Operation BoatSmart," as well as America's Boating Course, Boating Under the Influence Campaign, and the Vessel Safety Check (VSC) Program has been funded. America's Boating Course is a joint boating safety education course developed by the U.S. Coast Guard Auxiliary and the U.S. Power Squadrons, supported by the Coast Guard. This course, available via CD–Rom or Internet will set the standard for recreational boating safety in our country. The Boating Under the Influence (BUI) campaign, "It's a Different World on the Water," is a multi-year effort to educate the recreational boater about the hazards of boating under the influence of alcohol or drugs. The marketing plan utilizes nationally recognized cartoon characters, Popeye and Olive Oyl, to advertise the VSC program to the boating public at marinas, yacht clubs, boat storage facilities, retail outlets and other recreational outlets. ($98,956)

Recreational Boating Safety Outreach Program

This program provides full marketing, media, public information, and program strategy support to the RBS effort. The goal is to coordinate the RBS outreach campaigns some of which include: National Boating Under the Influence Campaign (BUI), Operation BoatSmart, PFD Wear, Vessel Safety Check Program (VSC), America's Boating Course, and other recreational boating safety issues on an as needed basis. ($746,091)

Kayak/Canoe Sponson Study

Study conducted in conjunction with the CG Research and Development Center to study the efficacy of the use of sponsons in canoes and kayaks. ($26,171)

Field Support—District Funded Projects

Seventeenth Coast Guard District Boating Safety Detachment: Funding was provided on a one-time, non-recurring basis to the Seventeenth Coast Guard District in support of a Coast Guard Boating Safety Detachment to assist in the transition of the State of Alaska's assumption of Recreational Boating Safety Program responsibilities. ($25,000)

Seventeenth Coast Guard District Boating Education and Safety (BEST)Teams: A three year effort, the BEST teams operate in the 17th District in 16 separate locations, with more than 30 team members providing educational benefits to the boaters of that district. ($100,000)

Eighth Coast Guard District Western Rivers Strike Team: Similar to the 17th District program these strike teams operate in the western rivers in the 8th District conducting safety education. ($190,000)

National Boating Registration System: As a service for States/Territories that currently have inadequate (or no) computer software program to maintain their vessel numbering system information, funding was provided to the U.S. Coast Guard Operations Systems Center (OSC) to develop a National Boating Registration System software program that can easily be adapted by any State/Territory for their own use. The software that has been provided to States/Territories at no cost includes a function to automatically generate the annual report on numbered vessels that must be submitted to the Coast Guard each year. ($25,000)

Marine Dealer Literature Display Racks: Display racks for U.S. Coast Guard and U.S. Coast Guard Auxiliary literature were purchased to improve distribution of boating safety literature. These display racks are intended to be used at retail outlets and marine dealers. ($23,725)

Personnel Support: Funding is providing for personnel to support the development of new regulations, to support new contracting activities associated with the additional funding, and to monitor and manage the contracts awarded. ($660,121)

A total of $15,337,569 of the $20,000,000 made available to the Coast Guard through annual transfers of $5 million in fiscal years 1999, 2000, 2001, and 2002 has been committed, obligated or expended as of September 30, 2002 and $245,000 is being held for a national boating survey.

Dated: November 25, 2002.

Harvey E. Johnson,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 02–30619 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–02–041]

Houston/Galveston Navigation Safety Advisory Committee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, January 30, 2003, from 9 a.m. to 12 p.m. The meeting of the Committee's working groups will be held on Thursday, January 16, 2003, at 9 a.m. to 11 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting.

ADDRESSES: The full Committee meeting will be held at the Offices of the Houston Pilots Association, 8150 South Loop East, Houston, Texas, telephone (713) 645–9620. The working groups' meeting will be held at the Offices of the Galveston/Texas City Pilots Association, Pelican Island, Galveston, Texas, telephone (409) 740–3690.

FOR FURTHER INFORMATION CONTACT: Captain Kevin Cook, Executive Director of HOGANSAC, telephone (713) 671–5199, Commander Tom Marian, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant Junior Grade Kelly Tobey, assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5103, e-mail *katobey@vtshouston.uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Casto or his representative), Executive Director (CAPT Cook), and Chairman (Tim Leitzell).

(2) Approval of the September 19, 2002, minutes.

(3) Old Business:

(a) Dredging projects.

(b) Electronic navigation.

(c) AtoN Knockdown Working Group.

(d) Mooring subcommittee report.

(e) Bolivar Roads anchorage areas.

(f) Recreational boating education initiative.

(g) Port Security Subcommittee report.

(h) Bridge Allision Working Group

(4) New Business:

(a) New HOGANSAC charter and members.

(b) Status of PORTS.

(c) Update on AIS implementation.

(d) State of the Waterways presentation.

Working Groups Meeting. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: dredging and related matters, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, recreational boater education, and port security. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or assistant ot the Executive Secretary.

Dated: November 18, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–30616 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Opportunity for Public Comment on Property Release at Gwinnett County Airport, Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from Gwinnett County to release two areas of land located at the Gwinnett County Airport from aeronautical to nonaeronautical use.

DATES: Comments must be received on or before January 2, 2003.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave, Suite 2–260, Campus Building, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed to Mr. Matthew L. Smith, Airport Manager, of the Gwinnett County Airport at the following address: P.O. Box 1446, Lawrenceville, GA 30046–1446.

FOR FURTHER INFORMATION CONTACT: Lee Kyker, Manager of Airport Programs, Atlanta Airports District Office, 1701 Columbia Ave, Suite 2–260, Campus Building, College Park, GA 30337–2747, (404) 305–7161. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Gwinnett County to release 2.24 acres of Gwinnett County purchased property at the Gwinnett County Airport currently shown on the approved Airport Layout Plan as aeronautical land. Gwinnett County will continue to retain the property for use by the Parks and Recreation Department. The navigation easement will continue to be in effect for the property. The parcels are located along Hosea Road.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Gwinnett County Airport Manager's office.

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Issued in Atlanta, Georgia, on November 15, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–30612 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–115–20]

Corded Electrical Devices Used in the Passenger Cabin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy that addresses potential hazards associated with the installation of corded electrical devices used in the passenger cabin.

DATES: This final policy was issued in the Transport Airplane Directorate on November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2195; fax (415) 227–1149 e-mail: *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Comments: A notice of proposed policy was published in the **Federal Register** on August 30, 2002 (67 FR 55912). Four commenters responded to the request for comments.

Background

The policy provides an applicant with various certifications options, which will require little or no on-aircraft evaluation of corded devices, provided that these devices meet certain basic criteria. Examples of corded electrical deices are telephone handsets and video system controllers. This guidance supersedes the previously issued guidance in this area.

The final policy as well as the disposition of public comments received is available on the Internet at the following address; *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: Issued in Renton, Washington, on November 21, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30614 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–115–21]

Stowage, Retention, and Breakaway of Deployable Individual Video Systems (IVS) Installed in Transport Airplane Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy that addresses the use of industry standards in the seat certification process regarding qualification of video systems mounted on seats.

DATES: This final policy was issued by the Transport Airplane Directorate on November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2195; fax (425) 227–1149; e-mail: *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION: *Discussion of Comments:* A notice of proposed policy was published in the **Federal Register** on September 4, 2002 (67 FR 56611). Four commenters responded to the request for comments.

Background

The policy further simplifies the certification process pertaining to the retention of video components on seats for which the supplier has been granted a Technical Standard Order authorization. This policy reduces the regulatory burden on industry by acknowledging the acceptability of test data generated by the seat supplier.

The final policy as well as the disposition of public comments received is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on November 21, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30613 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Draft Environmental Impact Statement on the Proposed East-Southwest Corridor Study Project in Jacksonville, Duval County and Clay County, FL

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an alternatives analysis and draft environmental impact statement (AA/DEIS).

SUMMARY: The Federal Transit Administration (FTA) as lead agency, the Florida Department of Transportation (FDOT) and the Jacksonville Transportation Authority (JTA) intend to conduct an Alternatives Analysis and prepare a Draft Environmental Impact Statement (AA/DEIS) on a proposal by the JTA to study the implementation of transportation improvements within a corridor known as the Jacksonville East/Southwest Corridor. The East/Southwest Corridor is an approximate 35-mile radial corridor connecting the Town of Orange Park in northern Clay County to the Jacksonville beach communities, through downtown Jacksonville. The analysis is necessary to identify mobility options that address the high level of travel demand and traffic congestion within the East/Southwest Corridor.

Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, State and local agencies, and three public scoping meetings.

DATES: Comment Due Date: Written comments on the scope of the alternatives and impacts to be considered should be submitted by January 2, 2003 to Mr. Kevin Feldt, Senior Transportation Planner, Jacksonville Transportation Authority. Written and verbal comments may also be made at the public scoping meetings to be held on December 11 and December 12, 2002. See **ADDRESSES** below.

ADDRESSES: Written and verbal comments on the scope and related matters should be sent to Mr. Kevin Feldt, Senior Transportation Planner, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203. Telephone: (904) 398–2216.

Three public scoping meetings will be held at the following dates and locations:

Public Scoping Meeting No. 1

Date: Wednesday, December 11, 2002.

Time: 5 p.m. to 8 p.m.

Location: J.E.B. Stuart Middle School, 4815 Westconnett Boulevard, Jacksonville, Florida 32210.

Public Scoping Meeting No. 2

Date: Thursday, December 12, 2002.

Time: 12 p.m. to 3 p.m.

Location: Jacksonville Transportation Authority, 100 North Myrtle Avenue, Jacksonville, Florida 32203.

Public Scoping Meeting No. 3

Date: Thursday, December 12, 2002.

Time: 5 p.m. to 8 p.m.

Location: FCCJ South Campus—Wilson Arts Center, 11901 Beach Boulevard, Jacksonville, Florida 32246.

Persons with special needs should contact Ms. Winova Hart, Project Coordinator, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203. Telephone: (904) 398–3882.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Feldt, Senior Transportation Planner, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203. Telephone: (904) 398–2216. You may also contact Mr. Derek R. Scott, Community Planner, FTA, 61 Forsyth Street, SW., Suite 17T50, Atlanta, GA 30303. Telephone: (404) 562–3524.

SUPPLEMENTARY INFORMATION: FTA, FDOT and JTA invite interested individuals, organizations, and Federal, State and local agencies to participate in defining the transportation improvement alternatives to be evaluated in the East/Southwest Corridor AA/DEIS Study and identify any significant social, economic, or environmental issues related to the alternatives. The scoping process will also include early agency coordination in accordance with Section 106, 36 CFR 800, the identification and evaluation of the concept and scope of the alternatives, and selection of a preferred design concept and scope of an alternative(s). Subsequently, alternatives that are consistent with the purpose of and the need for the proposed project will be addressed in the DEIS.

I. Scoping

The transportation improvements are being defined in conjunction with preparation of an Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS). The AA/DEIS will include a scoping process in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended. An information packet describing the purpose of the AA/DEIS study, the corridor location, the proposed initial alternatives, and the impact areas to be evaluated, is being mailed to affected Federal, State, and local agencies. Others may request scoping materials by contacting Mr. Kevin Feldt, Senior Transportation Planner, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203. Telephone: (904) 398–2216.

The JTA will hold public scoping meetings as described above. FTA, FDOT and JTA invite interested individuals, organizations, and public agencies to attend the scoping meetings and participate in establishing the study's purpose, alternatives to be studied, time frame of the study, and the approach to the analysis. The public and agencies are invited to comment on the alternatives to be addressed, the modes and technologies to be evaluated, the alignments and termination points to be considered, the environmental, social, and economic impacts to be analyzed, and the evaluation approach to be used.

II. Description of the Study Area and Transportation Needs

The East/Southwest Corridor is an approximate 35-mile radial corridor connecting downtown Jacksonville with northern Clay County (Town of Orange Park), the Argyle/Naval Air Station (NAS), Ortega, Avondale, Riverside, Arlington, Mayport areas and the Jacksonville beach communities. The study area encompasses areas with the highest number of trips to downtown Jacksonville. The study area corridor will address 200 miles of congested roadways, representing approximately 40 percent of the urban area's congestion. It also connects the two large Naval installation employment centers to areas with the highest concentrations of minority and zero-auto households in the region by connecting to the North-Southeast Corridor. Through these connections, the proposed improvements have the potential to improve mobility and provide access to job opportunities for transportation disadvantaged populations.

In 1999, as a part of the federally required metropolitan transportation planning process, the JTA and the Florida Department of Transportation (FDOT), in cooperation with the First Coast Metropolitan Planning Organization (MPO), conducted a Transportation Alternatives Study (TAS) for the Jacksonville metropolitan area (Transportation Alternatives Study Corridors Evaluation Report, June 19, 2000). The TAS study area included all of Duval County and portions of northern Clay County and northern St. Johns County to the south.

The TAS evaluated regional travel corridors and recommended sequencing of corridors to be carried forward into more detailed study. A significant public involvement program was implemented during the preparation of the TAS, including numerous stakeholder interviews, public meetings and community workshops. The resulting recommended corridors and sequence for study included two radial corridors (the North/Southeast and the East/Southwest) and two crosstown corridors (Westside and Beaches). The two radial corridors focus on travel to and through downtown Jacksonville, which is the primary travel shed in the region today and is projected to remain so into the year 2025.

A public meeting was conducted on April 18, 2000 in Jacksonville to present the preliminary corridor recommendations and sequencing of future studies. Public comments on the recommendation were solicited from affected communities. In addition to the public hearing, the recommended corridors and sequencing were presented to the TAS Citizens Advisory Committee, the MPO Technical Coordinating Committee and Citizens Advisory Committee, the JTA Board of Directors, and the MPO Board of Directors.

The TAS findings resulted in the first sequenced corridor, the North/Southeast corridor, advancing into the AA/DEIS phase. During the course of the North-Southeast AA/DEIS, a more thorough identification of corridor facilities was performed and potential social, economic and environmental impacts have been evaluated. Additionally, corridor transportation needs will be further analyzed, alternative transportation solutions will be identified and evaluated, and decisions will be made on a proposed locally preferred alternative (LPA). The North-Southeast AA/DEIS will be completed with the LPA adopted in Spring, 2003.

It is expected that the ongoing scoping process, including the formal scoping meetings, stakeholder input, public

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meetings and workshops, along with written comments, will result in the final set of alternatives to be studied in the East/Southwest Corridor DEIS. Potential variations on the alternatives, including both transit and non-transit alternatives, will be considered.

III. Alternatives

A number of transportation alternatives will be evaluated and will include:

(1) No-Build Alternative consisting of existing and planned/programmed transportation improvements identified in the Jacksonville Urban Area Transportation Study (JUATS) 2025 Cost Feasible Long Range Transportation Plan (LRTP). This alternative provides the baseline for establishing the project's environmental impacts.

(2) Transportation System Management/Traffic Demand Management (TSM/TDM) alternative. This alternative will include enhanced bus service and facilities in addition to other TSM/TDM projects. The TSM/TDM alternative is defined as low cost, operational oriented improvements designed to address the identified transportation problems in the corridor. The TSM/TDM alternative provides the baseline criteria against which all of the "build" alternatives are evaluated.

(3) Busway/Bus Rapid Transit (BRT) alternative.

(4) Light Rail Transit (LRT) alternative.

(5) Commuter Rail alternative.

(6) Street and highway alternative.

(7) Combinations of the above modes with various alignment alternatives, using facilities that include but are not limited to Arlington Expressway/ Atlantic Boulevard (SR 10), Hart Expressway (Alt US 1)/Beach Boulevard (US 90), and J. Turner Boulevard (SR 202) in the East district, and Roosevelt Boulevard (US 17)/CSX Railroad, Blanding Boulevard (SR 21) and Interstate 295 in the Southwest district.

(8) Other alternatives to be identified as a result of the scoping process.

As part of the alternative analysis, capital, operating and maintenance costs and other financial impacts will be evaluated. After identification and screening of a set of initial alternatives, promising conceptual alternatives will be identified and will undergo an evaluation process to reduce them to a set of refined alternatives. A more detailed analysis of refined alternatives will be undertaken during the preparation of the AA/DEIS. The AA/DEIS will be presented to the public and agencies at a public hearing followed by the JTA Board action to select a proposed LPA. If a Build alternative is selected, JTA will then request the First Coast MPO Board to review and approve the LPA selection. After approval, the proposed improvements within the LPA would be adopted within the cost feasible Jacksonville 2025 LRTP.

IV. Probable Effects

FTA, FDOT and JTA will evaluate, in the DEIS, all significant social, economic and environmental impacts of the refined alternatives. Issues and impacts to be considered during the study include potential changes to the physical environment (air quality, noise, vibration, water quality, aesthetics, ecological resources, navigable waterways, *etc.*); the social environment (land use, development, neighborhoods, *etc.*); parklands, cemeteries, and historic resources.

Among the primary transportation issues to be evaluated in the DEIS are the expected increases in transit ridership, the expected increase in mobility for the transportation disadvantaged population, impacts to environmental justice groups of concern, and the proposed project's support for the region's air quality goals. Evaluation criteria will include consideration of the local goals and objectives established for the study, measures of effectiveness identified during the ongoing scoping process, and criteria established by FTA.

V. FTA Procedures

In accordance with FTA policy, all Federal laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the DOT Act, will be addressed to the maximum extent practicable during the NEPA process. In addition, following selection and adoption of the LPA, JTA may seek FTA Section 5309 New Starts funding for the LPA or related projects that may terminate within the project area and will therefore be subject to the FTA New Starts regulations (49 CFR part 611). This New Starts regulation requires submission of information specified by FTA to support a JTA request to initiate preliminary engineering. The alternatives analysis and subsequent preliminary engineering activities are to be executed in conjunction with the NEPA process.

Issued on: November 26, 2002.

Jerry Franklin,

Regional Administrator, Federal Transit Administration, Atlanta, Georgia.

[FR Doc. 02–30524 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13067]

Requested Non-availability Waiver

AGENCY: Maritime Administration, Department of Transportation ("MARAD", "we", "us" or "our").

ACTION: Notice of termination of consideration of requested administrative finding under the Merchant Marine Act of 1936, as amended, (Act) to allow cargo carriage by a non-qualified U.S.-flag vessel in the absence of available qualified U.S.-flag vessels.

SUMMARY: The Act (46 App. U.S.C. 1241(b)), requires that at least 50 percent of Government-sponsored cargoes (75 percent with regard to certain agricultural exports) transported on ocean-going vessels be transported on certain U.S.-flag vessels when such vessels are available at a fair and reasonable rate for U.S.-flag commercial vessels. The statute excludes from eligibility to carry such cargoes foreign built or foreign rebuilt vessels or vessels previously registered under a foreign flag, unless the vessel has been registered under the United States flag for at least three years. Implicit in the statute is that, upon a finding by MARAD that U.S.-flag privately owned commercial vessels are not available for a fair and reasonable rate for U.S.-flag vessels, a foreign-flag may be used.

The Government of Israel, Ministry of Defense (GOI-MOD) purchases jet fuel from the Defense Security Cooperative Agency (DSCA) under the Foreign Military Sales Program. The cargo is subject to the Act, which requires 50 percent U.S.-flag carriage, but longstanding U.S. Government policy set forth in the DSCA manual requires 100 percent U.S.-flag carriage. GOI-MOD has expressed a concern that qualified U.S.-flag vessels may not be available in 2004 and beyond, due to many U.S.-flag tankers being retired under the Oil Pollution Act of 1990. GOI-MOD requested that MARAD allow future use of U.S.-flag vessels which have not met the three year wait requirement to carry preference cargo only when no fully qualified U.S.-flag vessel is available, thus meeting the U.S.-flag requirement and providing employment for U.S. citizen mariners.

We published a notice on August 13, 2002, 67 FR 52771, inviting comments in this docket on how we should respond to this innovative suggestion. The preponderance of comments urged us to delay taking any action because the requested finding would not be needed, if at all, until 2003. Other comments supported and opposed the request altogether. After review of these and other comments received, we will not take any action at this time.

ADDRESSES: Comments are not solicited, but if you so desire, you may submit comments. Comments should refer to docket number MARAD–2002–13067. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas W. Harrelson, Director, Office of Cargo Preference, MAR–580 Room 8118, 400 7th St., SW., Washington, DC 20590. Telephone no. (202) 366–5515.

Dated: November 27, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–30586 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13858; Notice 1]

Dorel Juvenile Group; Receipt of Application for Determination of Inconsequential Non-Compliance

Dorel Juvenile Group (Cosco) (DJG), of Columbus, Indiana, failed to comply with S5.4.1(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," which incorporates S4.2(e) of FMVSS No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." DJG has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

The following summarizes the DJG petition based upon information provided with the petition in accordance with the requirements of 49 CFR part 556, "Exemption for Inconsequential Defect or Noncompliance."

Summary of the Petition

On July 25, 2002, as a result of its fiscal year 2002 testing, NHTSA notified DJG, by telephone, of a potential noncompliance regarding DJG's gray harness webbing. The non-compliant webbing is identified as gray Wellington style #N2216E2–917, lots numbered 2063F, 2100F, and 2140D, used in child restraint harnesses that are manufactured by DJG (14 Models and 54,400 units). The manufactured dates for this webbing are from March 15, 2002 through August 1, 2002. DJG's original (before light exposure) harness webbing breaking strength, measured by NHTSA's FY 2002 compliance testing, was 2,780 pounds, and after light exposure it was 1,020 pounds (a ratio of light exposed/original strength of 37%). Section 4.2(e) of FMVSS No. 209 requires webbing after light exposure to have breaking strength of not less than 60% of its original breaking strength.

DJG's independent testing at Veridian showed dynamic load range between 190 pounds and 322 pounds. DJG believes that its light exposed harness webbing breaking strength at 1,020 pounds far exceeds forces in dynamic crash testing by a factor of 3.1 to 6.8 times. DJG argues that without a minimum breaking strength requirement, webbing with much lower initial breaking strength could comply with the standard at much lower breaking strength than the DJG's 1,020 pounds as long as it retains 60 percent of the original webbing strength. DJG commented that while its webbing (made of nylon fabrics) was noncompliant when exposed to carbon arc light filtered by a Corex-D filter (tested according to the standard's requirements), the webbing was compliant when exposed to carbon arc light filtered by a soda-lime glass filter (specified by the standard for use only for polyester fabrics). DJG also commented that because the standard relies on carbon arc light for resistance to light testing, the method is obsolete. Therefore, DJG filed this petition on the basis that the noncompliance is inconsequential to motor vehicle safety.

Availability of the Petition and Other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2002–13858. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 Seventh Street, SW., Washington, DC 20590 (10 a.m. to 5 p.m., Monday through Friday). You may also view the petition and other relevant information on the Internet. To do this, do the following:

(1) Go to Docket Management System (DMS) Web page for the Department of Transportation (*http://dms.dot.gov/search*).

(2) On the next page (*http://dms.dot.gov/search/SearchFormSimple.cfm*), type the docket number "13858." After typing the docket number, click on "search."

(3) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments

Interested persons are invited to submit written data, views and arguments on the petition of DJG described above. Comments should refer to the Docket Number and be submitted to: U.S Department of Transportation Docket Management, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 2003.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: November 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30521 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–59–P

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12544; Notice 2]

Mercedes-Benz, U.S.A. Inc.; Grant of Application for Decision That Noncompliance is Inconsequential to Motor Vehicle Safety

Mercedes-Benz, U.S.A., Inc. (MBUSA), has determined that "a limited number" of model year 2003 Mercedes-Benz SL-Class, E-Class and CLK-Class vehicles that it produced and sold do not fully comply with 49 CFR 571.135, Federal Motor Vehicle Safety Standard (FMVSS) No. 135, "Passenger Car Brake Systems," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." MBUSA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice or receipt of the application was published in the **Federal Register** on July 8, 2002, with a 30-day comment period (67 FR 45180). NHTSA received no comments on this application.

The noncompliant vehicles were produced and sold with brake warning indicators that do not meet certain requirements mandated by FMVSS No. 135. Paragraph S5.5.5 (a) of FMVSS No. 135 requires that all vehicles be equipped with a brake warning indicator lamp. The standard enumerates specific minimum parameters applicable to the warning:

> Each visual indicator shall display a word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) [i.e., "Brake"] and this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (1/8 inch) high and the letters and background shall be of contrasting colors, one of which is red. Words and symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of safety.

The affected vehicles are equipped with "Brake" indicator warning lamps located in the upper right hand corner of the speedometer display. The letters in the indicator warning "BRAKE" were changed from all upper-case letters to mixed upper and lower-case letters. As a result, the letters "B" and "k" in the "Brake" indicator lamp meet the minimum height requirements of FMVSS No. 135, but the letters "r, " "a," and "e" are 7/10 mm shorter than the minimum 3.2 mm requirements. MBUSA does not believe that the 7/10 mm difference is discernible by the average driver for the following reasons:

1. The "Brake" warning indicator is still easily recognizable due to its positioning on the dashboard, the color of the indicator, and other factors.

2. In addition to the "Brake" warning indicator, each of the affected Mercedes-Benz vehicles is also equipped with a dual screen message center that provides brake system information in a highly visible and audible manner.

MBUSA also cited an agency action from 1982, 47 FR 31347, in which the agency granted an application for a decision that a noncompliance by Subaru was inconsequential to vehicle safety. As with MBUSA, Subaru failed to use letters of sufficient height for the brake malfunction telltale in a number of its vehicles. MBUSA believes that the Subaru issues were essentially the same as the current MBUSA noncompliance issues and further believes the Subaru case should support the MBUSA request for a determination that the noncompliance is inconsequential to vehicle safety. Also, MBUSA believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted.

The agency has reviewed the section of FMVSS No. 135 that discusses the requirements for character height in the brake warning indicator lamp, paragraph S5.5.5 (a), and concurs with MBUSA's decision that it is in noncompliance with that paragraph. However, the agency does not believe that the noncompliance will degrade the legibility of the brake malfunction telltale, or will have an adverse effect on vehicle safety. According to MBUSA, three of the letters in the word "Brake", the "r", "a", and the "e" are about 78% of the minimum height required for such letters, while the other two letters in the word "Brake," the "B" and the "k", meet the minimum height requirement of 3.2 mm. MBUSA stated in its petition that the affected vehicles are equipped with a dual screen message center that displays brake system information in addition to the brake telltale required by FMVSS No. 135 whenever a brake system problem is detected. The messages displayed by the message center, which provide information about the specific problem the vehicle diagnostic system has detected, are illuminated along with the "Brake" telltale. When the vehicle detects a high priority brake system malfunction, the message center also triggers an audible signal in addition to the illumination of the "Brake" telltale and the specific brake malfunction message.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, the application is granted and the applicant is exempted from providing the notification and remedy requirements of 49 U.S.C. 30118 and 49 U.S.C. 30120, respectively.

Authority: (49 U.S.C. 301118, 301120: delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: November 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30520 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13895; Notice 1]

Michelin North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 750 size 215/55R16 Energy MXV4 Plus tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 109 (S4.3(e)) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with S4.3(e) relates to the sidewall markings. Michelin's Ardmore, Oklahoma plant produced approximately 750 tires with incorrect markings during the period from March 13, 2002, through March 27, 2002. The tires were marked: "Tread Plies: 1 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 1 Polyester." The correct marking required by FMVSS No. 109 is as follows: "Tread Plies: 2 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 2 Polyester.

"Michelin stated that the noncompliant tires were actually constructed with more sidewall and tread plies than indicated on the sidewall marking (2 tread and sidewall plies rather than 1). Therefore, this noncompliance is particularly unlikely to have an adverse safety impact and is clearly inconsequential to motor vehicle safety. The noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: January 2, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30522 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Notification of the Susceptibility to Premature Brittle-Like Cracking of Older Plastic Pipe

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of November 26, 2002, (67 FR 70806) the Research and Special Programs Administration (RSPA) published a notice document issuing an advisory bulletin on the susceptibility to premature brittle-like cracking of older plastic pipe (ADB–02–7). RSPA is submitting this correction notice to reflect minor wording changes and include a website address.

EFFECTIVE DATE: This correction takes effect November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri, (202) 366–4503, or by email at *gopala.vinjamuri@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Correction

The last sentence in the first paragraph of the Supplementary Information heading under **I. Background**, reads:

Copies of this report may be obtained by calling NTSB's Public Inquiry Office at 202–314–6551.

We are revising this sentence to add NTSB's website address. The sentence is revised to read as follows:

Copies of this report may be obtained by calling NTSB's Public Inquiry Office at 202–314–6551, or on the NTSB website at *www.ntsb.gov.*

In the fourth paragraph under **SUPPLEMENTARY INFORMATION**, the first sentence reads:

The NTSB report suggests that ..... . Remove the word "suggests" and replace with the word "states".

In the fourth paragraph under Supplementary Information, the third sentence reads:

NTSB alleges that ..... . Remove the word "alleges" and replace with the word "concluded".

Under **II. Advisory Bulletin (ADB–02–7)** of the **SUPPLEMENTARY INFORMATION** heading, in the second paragraph under *Advisory*. The fourth sentence reads:

These older polyethylene pipe materials include the following:

The sentence is revised to read as follows:

These older polyethylene pipe materials include, but are not limited to:

Issued in Washington, DC on November 27, 2002.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 02–30615 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 22, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 2, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0499.

Form Number: IRS Form 5305-SEP.

Type of Review: Extension.

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

Description: This form is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in section 408(k). This form is not filed with the IRS but to be retained in the employer's records as proof establishing a SEP and justifying a deduction for contributions to the SEP. The data is used to verify the deduction.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 40 min.
Learning about the law or the form	1 hr., 35 min.
Preparing the form	1 hr., 41 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 495,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–30575 Filed 12–2–02; 8:45 am]

BILLING CODE 4830–01–P

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 22, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 2, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1425.
Regulation Project Number: PS–55–93 (Temporary and Cross-Reference NPRM).
Type of Review: Extension.
Title: Certain Elections for Intangible Property.
Description: The information is required by the IRS to aid it in the law and preventing manipulation. The information will be used to verify that a taxpayer is properly reporting its amortization and income taxes. The likely respondents are businesses or other for-profit institutions.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (once, 1993 tax return).
Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1515.
Regulation Project Number: REG–209817–96 NPRM.
Type of Review: Extension.
Title: Treatment of Obligation-Shifting Transactions.
Description: Section 1.7701(1)–2 recharacterizes certain multiple-party financing transactions. Pass-through entities engaging in these transactions must reflect the required recharacterization on their books. This collection of information is required to verify compliance with the regulation and will be used to determine whether the amount of tax has been correctly computed.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 100.
Estimated Burden Hours Per Recordkeeper: 5 hours.
Estimated Total Recordkeeping Burden: 500 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 02–30576 Filed 12–2–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 25, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 2, 2003 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0467.
Form Number: ATF F 5000.24.
Type of Review: Revision.
Title: Excise Tax Return—Alcohol and Tobacco.
Description: Businesses report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF F 5000.24. ATF needs this form to identify the taxpayers and to determine the amount and type of taxes due and paid.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,800.
Estimated Burden Hours Per Respondent/Recordkeeper: 15 minutes.
Frequency of Response: Other (semi-monthly).
Estimated Total Reporting/ Recordkeeping Burden: 35,280 hours.
OMB Number: 1512–0497.
Form Number: ATF F 5000.25.
Type of Review: Revision.
Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).
Description: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF F 5000.25. ATF needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeeping: 30.
Estimated Burden Hours Per Respondent/Recordkeeper: 15 minutes.
Frequency of Response: Other (semi-monthly).
Estimated Total Reporting/ Recordkeeping Burden: 130 hours.
OMB Number: 1512–0551.
Form Number: ATF F 5300.42.
Type of Review: Extension.
Title: Certification of Secure Gun Storage or Safety Devices.
Description: The requested information will be used to ensure that applicants for a Federal firearms license are in compliance with the requirements pertaining to the availability of secure gun storage or safety devices.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 31,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 minute.
Frequency of Response: Other (non-required).
Estimated Total Reporting/ Recordkeeping Burden: 600 hours.
OMB Number: 1512–0552.
Form Number: None.
Type of Review: Extension.
Title: Open Letter to Federal Firearms Licenses.
Description: The requested information will be used to determine why Federal firearms licensees have failed to enroll with the FBI. This is necessary because non-enrolled licensees that transfer a firearm to a nonlicensed individual are in violation of the GCA, as amended.
Respondents: Business or other for-profit, Federal Government.
Estimated Number of Respondents: 18,000.
Estimated Burden Hours Per Respondent: 1 minute.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,130 hours.
Clearance Officer: Jacqueline White, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 02–30577 Filed 12–2–02; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0156]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to report changes in a student enrollment status.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 3, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0156" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice of Change in Student Status (Under Chapter 30, 32, or 35, Title 38, U.S.C; Chapter 1606, Title 10. U.S.C. or section 901 or 903 of Pub. L. 96–342), VA Form 22–1999b.
OMB Control Number: 2900–0156.
Type of Review: Extension of a currently approved collection.
Abstract: VA Form 22–1999b is used by educational institutions to report changes in the enrollment of students in receipt of VA education benefits. The information is used to determine a student's entitlement to educational benefits or whether the benefit should be increased, decreased, or terminated. Without this information, VA might underpay or overpay benefits.
Affected Public: State, local or tribal government, business or other for-profit, and not-for-profit institutions.
Estimated Annual Burden: 24,750 hours. VA Form 22–1999b—13,750. VA Form 22–1999b Electronically Filed—11,000.
Estimated Average Burden Per Respondent: VA Form 22–1999b—5 minutes. VA Form 22–1999b Electronically Filed—4 minutes.
Frequency of Response: On occasion.
Estimated Number of Respondents: 9,817.
Number of Responses Annually: 330,000. VA Form 22–1999b—165,000. VA Form 22–1999b Electronically Filed—165,000.

Dated: November 22, 2002.
By direction of the Secretary.

Ernesto Castro,
Director, Records Management Service.
[FR Doc. 02–30587 Filed 12–2–02; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the number of lessons completed by a student and serviced by the correspondence school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 3, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0353" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

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ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of Lessons Completed, VA Forms 22–6553b and 22–6553b-1.

OMB Control Number: 2900–0353.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 22–6553b and 22–6553b-1 are used to determine the number of lessons completed by a student and serviced by the correspondence school, and if necessary to determine the date of completion or termination of correspondence training. VA pays education benefits based on the information furnished on the form. Benefits are not payable when training is interrupted, discontinued or completed. Without this information, VA would be unable to determine the proper payment or the student's training status.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 1,782 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 3,564.

Number of Responses Annually: 10,692

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30588 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0005."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0005" in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–535 is used by surviving parent or parents of a deceased veteran to apply for benefits. Dependency and Indemnity Compensation may be payable when the veteran dies (a) From disease or injury incurred or aggravated in line of duty while on active duty or active duty for training, (b) from injury incurred or aggravated in line of duty while on inactive duty training, or (c) from disability compensable under laws administered by VA. VA uses the information to determine a parent's eligibility, dependency and income, as applicable, for the death benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2002, at page 53045.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,056.

Estimated Average Burden Per Respondent: 1 hour 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,880.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30589 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0171."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0171" in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Application and Enrollment Certification for Individualized Tutorial Assistance (38 U.S.C. Chapters 30, 32, or 35 and 10 U.S.C. Chapter 1606), VA Form 22–1990t.

OMB Control Number: 2900–0171.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used by students who are receiving VA educational assistance and who require tutoring to overcome a deficiency in one or more courses. The information submitted by the student must be certified by the tutor, and the certifying official of the educational institution that the student is attending.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 26, 2002, at pages 54843—54844.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30590 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0460]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0460." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0460" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Verification of Employment, VA Form 26–8497.

OMB Control Number: 2900–0460.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8497 is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. VA, however, does not require the exclusive use of this form for verification purposes; any comprehensible form or independent verification would be acceptable, provided all information presently shown on VA Form 26–8497 is provided. The form is also used in processing direct loan cases, offers on acquired properties, and release of liability/substitution of entitlement cases when needed.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on September 13, 2002, at pages 58102–58103.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 25,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 150,000.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30591 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "2900-New."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "2900-New."

SUPPLEMENTARY INFORMATION:

Title: Study of Health and Communications of Veterans for the War Related Illnesses and Post-Deployment Health Issues, VA Form 10–21060(NR).

Type of Review: New collection.

Abstract: The purpose of this study is to develop a plan for clinical, research, risk communication and educational activities for war-related illnesses and post-deployment health issues.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 12, 2002, at pages 52523—52524.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,750 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 3,500.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30592 Filed 12–2–02; 8:45 am]

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Federal Register

Tuesday,
December 3, 2002

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, et al.

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 178 and 180

[Docket No. RSPA–2002–13658 (HM–215E)]

RIN 2137–AD41

Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RPSA is proposing to amend the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce.

DATES: With the exception of incorporation by reference materials, comments must be received by February 3, 2003.

Comments for the incorporation by reference of publications listed in § 171.7 must be received by January 2, 2003.

ADDRESSES: Address your comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh St., SW., Room PL 401, Washington, DC 20590. Comments must identify Docket Number RSPA–2002–13658 (HM–215E). If you wish to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You may also submit and review all comments by accessing the Dockets Management System's Web-site at *http://dms.dot.gov*. The Dockets Management System is located on the Plaza Level of the Nassif Building at the above address. You may view public dockets between the hours of 9 a.m. and 5 p.m., Monday through Friday, except on federal holidays. Comments received after the comment closing date will be filed in the docket and considered to the extent practicable. Comments should include relevant data, factual information, and justification for any requested actions.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1990, RSPA ("we") published a final rule (Docket HM–181; 55 FR 52402) based on the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), which comprehensively revised the Hazardous Materials Regulations (HMR), 49 CFR Parts 171 to 180, for harmonization with international standards. Since publication of the 1990 final rule, we have issued four additional international harmonization final rules, (Dockets HM–215A, 59 FR 67390; HM–215B, 62 FR 24690; HM–215C, 64 FR 10742; and HM–215D, 66 FR 33316). The rules provided additional harmonization with international transportation requirements by more fully aligning the HMR with the corresponding biennial updates of the UN Recommendations, the International Maritime Dangerous Goods Code (IMDG Code) and the International Civil Aviation Organization's Technical Instructions (ICAO Technical Instructions).

The UN Recommendations are not regulations, but rather are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the UN Committee of Experts. They serve as the basis for National, regional, and international modal regulations; specifically, the IMDG Code issued by the International Maritime Organization (IMO), and the ICAO Technical Instructions issued by the ICAO Dangerous Goods Panel. In 49 CFR 171.12, the HMR authorize domestic transportation of hazardous materials shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations. In § 171.11, subject to certain conditions and limitations, the HMR authorizes the offering, acceptance and transport of hazardous materials by aircraft, and by motor vehicle either before or after being transported by aircraft, provided the shipment is in accordance with the ICAO Technical Instructions.

The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation and at the same time ensures the safety of people, property and the environment. While the intent of the harmonization rulemakings is to align the HMR with international standards, we review and consider each amendment on its own merit. Each amendment is considered on the basis of the overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. In our efforts to continue to align the HMR with international requirements, this notice of proposed rulemaking (NPRM) proposes changes to the HMR based on the twelfth revised edition of the UN Recommendations, Amendment 31 to the IMDG Code, and the 2003–2004 ICAO Technical Instructions, which become effective January 1, 2003. Petitions for rulemaking concerning harmonization with international standards and the facilitation of international transportation are also addressed in this NPRM and serve as the basis of certain proposed amendments. Other proposed amendments are based on feedback from the regulated industry, other DOT modal administrations and our initiative. Also included are various proposed editorial clarifications. Unless otherwise stated, the proposed revisions are for harmonization with international standards.

II. Overview of Changes in this NPRM

Proposed amendments to the HMR in this NPRM include, but are not limited to the following:

—Amendments to the Hazardous Materials Table (HMT) which would add, revise or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, passenger and cargo aircraft maximum quantity limitations and vessel stowage provisions.
—Amendments to the List of Marine Pollutants.
—Revisions and additions of special provisions. Included is the addition of a special provision for assignment to aerosol entries setting forth the criteria for classifying aerosols.
—Addition of a requirement to enter the subsidiary hazard class or subsidiary division number on shipping papers.
—Addition of a requirement to indicate types of packagings on shipping papers.
—Addition of an alternative basic description sequence on shipping papers.
—Revision of marking requirements for limited quantities.
—Addition of an air eligibility marking requirement.
—Revision of requirements in § 173.27 for packagings intended for transportation by aircraft, including revision of requirements for use of absorbent material for such packagings.
—Revision of classification of air bag modules, air bag inflators and seat-belt pretensioners from Division 2.2 to Class 9.
—Revision of the non-liquefied and liquefied compressed gases descriptions, and the addition of high pressure and low pressure liquefied gases categories.
—Revisions and additions to the Self-Reactive Materials Table.
—Revisions and additions to the Organic Peroxide Table.
—Revision of the net weight restrictions for explosives in freight containers exceeding 20 feet (6 m) in length.
—The IMDG Code, Amendment 31.
—The UN Recommendations, twelfth edition.

We are also proposing to add an IMO standard titled "International Convention for the Safety of Life at Sea," 1974, as amended, Chapter II–2/ Regulation 19, for incorporation into proposed § 176.63 to address hatchless container ship requirements.

Because the updated editions of the international standards become effective January 1, 2003, we are proposing a 30-day comment period for these proposed amendments only. Consistent with our previous harmonization (HM–215 docket numbers) rulemakings, our intent is to publish a separate final rule authorizing the use of these standards by January 1, 2003. This action will authorize compliance with the updated standards when they become effective, and is necessary to prevent disruption of hazardous materials shipments that are being transported internationally.

III. Summary of Regulatory Changes by Section

Part 171

Section 171.7. We are proposing to update the incorporation by reference materials for the ICAO Technical Instructions, the IMDG Code and the UN Recommendations. The updated editions of these standards become effective January 1, 2003. Additionally, the International Maritime Organization (IMO) recommends authorizing a one-year transition period, with a delayed compliance date of January 1, 2004, for the use of the updated edition (Amendment 31) of the IMDG Code. We are also proposing to authorize use of either Amendment 30 or Amendment 31 of the IMDG Code until January 1, 2004.

The standards would be updated as follows:

—The ICAO Technical Instructions, 2003–2004 edition.

Section 171.8. In the definition for "Large packaging," we are proposing to add the words "Chapter 6.6" to let readers know the location in the UN Recommendations for the construction, testing and marking of such packagings.

Section 171.11. We are proposing to revise paragraphs (c), (d)(5) and (d)(17) to address certain limitations for the use of the ICAO Technical Instructions.

In paragraph (c), for hazardous materials being transported in accordance with the ICAO Technical Instructions, the restrictions for the use of the Instructions would be revised to include hazardous materials that are forbidden by passenger and cargo aircraft, as designated in Columns (9A) and (9B) of the § 172.101 HMT. Currently, the paragraph restricts materials that are forbidden according to § 173.21 and Column (3) of the HMT.

In paragraph (d)(5), we are proposing to remove the wording "except for Division 2.2" regarding shipping paper requirements for air bag inflators, air bag modules and seat-belt pretensioners. This proposal is consistent with the proposed removal of the Division 2.2 air bag inflator, air bag module and seat-belt pretensioner entry in the HMT (see § 172.101).

Paragraph (d)(17) would be revised to clarify a current requirement that in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) also must be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

Section 171.12. We are proposing to revise paragraphs (b)(3), (b)(5), (b)(19), and (b)(20).

In paragraph (b)(3), we are proposing to remove certain viscous flammable liquids as an example of a material designated as a hazardous material subject to the HMR, but not subject to the IMDG Code. The IMO removed the exception in Amendment 31 to the IMDG Code.

In paragraph (b)(5), we are proposing to make an editorial revision by removing a redundant and confusing phrase.

In paragraph (b)(19), we are proposing to remove the wording "except for Division 2.2" regarding shipping paper requirements for air bag inflators, air bag modules and seat-belt pretensioners. This proposal is consistent with the proposed removal of the Division 2.2 air bag inflator, air bag module and seat-belt pretensioner entry in the HMT (see § 172.101).

In paragraph (b)(20), we are proposing to clarify a current requirement that in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) must also be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

For the readers' information, recently adopted amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, will change the status of the use of the IMDG Code, effective January 1, 2004, from recommended to mandatory for international transportation by vessel. This issue will be addressed under a separate rulemaking.

Section 171.12a. We are proposing to revise paragraph (b)(18) by clarifying a current requirement that in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) also must be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

Section 171.14. We are proposing to revise paragraphs (d), (d)(1), (d)(2), (d)(4), and (d)(5) and add paragraph (d)(6). Paragraphs (d) and (d)(1) would be revised to authorize a delayed implementation date for the proposed amendments in this NPRM. We are proposing an effective date of October 1, 2003, and a voluntary compliance date of January 1, 2003 to correspond with the effective implementation dates of the 2003–2004 ICAO Technical Instructions and Amendment 31 of the IMDG Code. This authorization would allow shippers to prepare their international shipments in accordance with international standards that will become effective on January 1, 2003. We are proposing to authorize a delayed

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compliance date of October 1, 2004, which is comparable to the transition provisions provided in the final rule published under Docket HM–215D. The delayed mandatory compliance date would offer sufficient time to implement the new requirements.

Paragraph (d)(2) would be revised to authorize certain intermixing of old and new requirements.

Paragraph (d)(4) would be revised to include DOT Specification 51 portable tanks in the provision to allow, until January 1, 2010, conformance with the T Codes (Special Provisions) in effect on September 30, 2001.

Paragraph (d)(5) would be revised by extending the October 1, 2005 compliance date allowing proper shipping names that included the word "inhibited" prior to the June 21, 2001 final rule, HM–215D, to continue to be shown on packagings in place of the word "stabilized" until October 1, 2007. Additionally, the October 1, 2007 date would also apply to the proper shipping names in this NPRM that are proposed to be revised by removing the word "compressed" (see § 172.101, HMT).

Paragraph (d)(6) would be added to authorize, until October 1, 2005, the marking of certain other proper shipping names on packagings. The proper shipping names would be those that are proposed to be revised to include the position identifiers of the substituents, such as 2-Ethylbutyl acetate (see § 172.101, HMT).

Part 172

Section 172.101. In the regulatory text preceding the Hazardous Materials Table, we are proposing the following changes:

Paragraph (c)(15) would be revised by removing the words "of inorganic substances." Currently, unless a hydrate is specifically listed in the HMT, only hydrates of inorganic substances may be identified using the proper shipping name for the equivalent anhydrous substance, provided the hydrates meet the same hazard class, division, subsidiary risk(s) and packaging group. With the removal of the phrase "of inorganic substances," paragraph (c)(15) would apply to all hydrates.

§ 172.101 The Hazardous Materials Table (HMT). We are proposing to make various amendments to the HMT. Readers should review all changes for a complete understanding of the proposed Table amendments. For purposes of the Government Printing Office's typesetting procedures, proposed changes to the HMT will appear under three sections of the Table, "remove," "add" and "revise." Certain entries in the HMT, such as those with proposed revisions to the proper shipping names, will appear as a "remove" and "add." Proposed amendments to the HMT for the purpose of harmonizing with international standards, unless otherwise stated, include, but are not limited to the following:

—"*Accumulators, pressurized, pneumatic or hydraulic (containing non-flammable gas), see* Articles, pressurized, pneumatic *or* hydraulic (*containing non-flammable gas*)" would be added as a "see" entry into the HMT to aid the reader in locating the updated entry. This proposed action is based on feedback we received from users of the HMR after we removed the domestic entry ("Accumulators, pressurized, pneumatic," UN1956), as well as certain other domestic entries from the HMT in a final rule, HM–215D (66 FR 33316), published June 21, 2001. The entries were removed because we determined that they were no longer necessary considering the HMT already includes equally appropriate international entries. (Also see § 173.306(f) for a related editorial revision.)

—"Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas," Division 2.2, UN3353 would be removed. All air bag inflators, air bag modules and seat-belt pretensioners currently classified as Division 2.2 would be reclassified as Class 9. A provision to allow this reclassification without further testing is also being proposed for incorporation into the HMR (see § 173.166). In line with the proposed removal of this entry, Special Provision 133 would also be removed. We are aware that removal of the UN3353 entry will require repackaging, remarking and relabeling of all compressed gas air bag assemblies. We believe that the delayed mandatory compliance date of October 1, 2004 and the transitional provisions proposed in § 171.14(d)(2), authorizing certain intermixing of old and new requirements, will offer sufficient time and flexibility to implement the new requirements and reduce the costs of meeting this requirement.

—"Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic*" UN0503, Division 1.4G, would be amended by adding an "I" in Column (1), removing the word "pyrotechnic" from the proper shipping names in Column (2), revising Columns (8A) and (8C) to read "None," revising Column (8B) to read "§ 173.62" (also see § 173.62), adding proposed Special Provision 161 (see § 172.102), and revising the vessel stowage columns (10A) and (10B). We are proposing to add the "I" in Column (1) because we do not agree that an air bag that meets the criteria for a Division 1.4G explosive should be transported under an air bag description for domestic transportation. We believe that a more appropriate name is "Articles, pyrotechnic *for technical purposes*," UN0431. We are not aware of any air bags that have been shown through testing to meet a Division 1.4G classification for transport in the United States.

—"Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic*," UN3268, Class 9, would be amended by removing the optional word "pyrotechnic" and adding proposed Special Provision 160 (see § 172.102).

—"Ammonium nitrate, *with not more than 0.2 percent combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance*," UN1942 would be amended by editorially correcting the italicized portion of the proper shipping name by adding the word "total" after "0.2 %."

—"Ammonium nitrate based fertilizers," UN2071, and "Ammonium nitrate based fertilizers," UN2067 would be amended by removing the italicized portion of the proper shipping names, adding proposed new Special Provision 150 to the UN2067 entry, and revising Special Provision 132 which applies to the UN2071 entry (see § 172.102 for Special Provision amendments).

—"Ammonium nitrate fertilizers," NA2072 and "Ammonium nitrate mixed fertilizers," NA2069 would be removed. We believe that the international entry "Ammonium nitrate fertilizers," UN2067 can be used in place of the domestic entries which do not provide any additional exceptions.

—A new entry, "Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives*," UN3375 (also see § 172.102, Special Provisions 52 and 147) would be added.

—For the entry "Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water*," UN2880, the wording "*not more than 10 percent water*" would be revised to read "*not more than 16 percent water.*"

—Four proper shipping names would be revised by adding the position identifiers of the substituents. The proper shipping names are "Diethylaminopropylamine," position identifier "3"; "Dimethylcyclohexylamine," position identifiers "N,N"; "Ethylbutyl acetate," position identifier "2"; "Propyl chloride" which would be replaced by "1-Chloropropane," and "Tetrachloroethane," position identifiers "1,1,2,2,". Also, see § 171.14(d)(6) for the proposed continued use provision of these proper shipping names.

—The entry "Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not less than 37 percent but not more than 64 percent hydrazine, by mass*," UN2030 and "Hydrazine, anhydrous or Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass*," UN2029 would be removed and "Hydrazine aqueous solution, *with more than 37% hydrazine, by mass*," UN2030 and "Hydrazine, anhydrous," UN2029 would be added.

—Eleven entries would be revised by removing the qualifying word "compressed." This action is consistent with the revisions to proper shipping names for compressed and liquefied gases that were incorporated into the twelfth edition of the UN Recommendations and which we are proposing to adopt into the HMR (see § 173.115 for additional discussion). The eleven entries are "Boron trifluoride, compressed," UN1008; "Carbonyl fluoride, compressed," UN2417; "Diborane, compressed," UN1911; "Ethylene, compressed," UN1962; "Hexafluoroethane, compressed *or* Refrigerant gas R 116," UN2193; "Nitrogen trifluoride, compressed," UN2451; "Phosphorus pentafluoride, compressed," UN2198; "Silane, compressed," UN2203; "Silicon tetrafluoride, compressed," UN1859; "Tetrafluoromethane, compressed *or* Refrigerant gas R 14," UN1982; and "Xenon, compressed," UN2036. Also, see § 171.14(d)(6) for the proposed continued use provision of these proper shipping names.

—For the proper shipping name "Lighters *or* Lighter refills *cigarettes, containing flammable gas*," UN1057, the word "cigarettes" would be removed.

—The proper shipping name "Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid," UN2680 would be revised to read "Lithium hydroxide."

—For the entry "Medicine, liquid, toxic, n.o.s.," UN1851, we propose to add Special Provision 36. The special provision, which limits the maximum net quantity per package at 5 L (1 gallon) for liquids and 5 kg (11 pounds) for solids, is currently assigned to "Medicine, liquid, flammable, toxic, n.o.s.," UN3248 and "Medicine, solid, toxic, n.o.s.," UN3249.

—For the entry "Motor fuel anti-knock mixtures," UN1649, we propose to remove the subsidiary risk hazard from the labeling requirement, and add proposed Special Provision 151. This action is based on a petition for rulemaking (P–1420) we received (see discussion under § 172.102).

—The proper shipping name "Uranium nitrate hexahydrate solution," UN2980 would be corrected by replacing the word "Uranium" with "Uranyl." The typographical error occurred in the April 3, 2002 document published in the **Federal Register** (67 FR 15736).

—The entry "Xylidines, solution," UN1711 would be revised to read "Xylidines, liquid."

—In addition to those entries identified above, we are proposing to add the following new entries: "Chlorosilanes, toxic, corrosive, n.o.s.," UN3361; "Chlorosilanes, toxic, corrosive, flammable, n.o.s.," UN3362; "Ethylene glycol diethyl ether," UN1153; "Fibers, animal *or* fibers, vegetable *burnt, wet or damp*," UN1372; "Fibers, vegetable, dry," UN3360; "4-Nitrophenylhydrazine, *with not less than 30% water, by mass*," UN3376; "Organometallic compound, solid, water-reactive, flammable, n.o.s.," UN3372; "Rags, oily," UN1856; "Rubber scrap *or* Rubber shoddy, *powdered or granulated, not exceeding 840 microns and rubber content exceeding 45%*," UN1345; "Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass*," UN3369; "Textile waste, wet," UN1857; "Trinitrobenzene, wetted, *with not less than 10% water by mass*," UN3367; "Trinitrobenzoic acid, wetted, *with not less than 10% water by mass*," UN3368; "Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass*," UN3365; "Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass*," UN3364; "Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass*," UN3366 and "Wool waste, wet," UN1387.

—Various entries would be amended by revising the vessel stowage columns (10A) and/or (10B). The entries include the following: the five "Aerosols," UN1950 entries; "Ammunition, smoke *with or without burster, expelling charge or propelling charge*," UN0303; "Battery fluid, alkali," UN2797; "Methacrylic acid, stabilized," UN2531; "Sulfur, molten," UN2448; and "Urea, nitrate, *wetted with not less than 20 percent water, by mass*," UN1357.

Also, see § 172.102 for additional HMT amendments.

Appendix B to § 172.101. In Appendix B to § 172.101, List of Marine Pollutants, we are proposing to revise paragraphs "4" and "5" to update the location in the IMDG Code for the "Guidelines for the Identification of Harmful Substances in Packaged Form." This update is based on the IMDG Code's change in location from the General Introduction to Chapter 2.10.

In addition, we are removing the entries "Alkylphenols, liquid, n.o.s. (*including C2–C12 homologues*)," "Alkylphenols, solid, n.o.s. (*including C2–C12 homologues*)," "Chlorophenols, liquid," and "Chlorophenols, solid," from the List of Marine Pollutants. We are revising the entry "Alkylbenzenesulphonates, branched and straight chain" by adding a qualifying phrase to clarify that C11-C13 straight chain or branched chain homologues are not regulated as marine pollutants. Finally, we are adding the entry "Decyl acrylate."

Section 172.102. We are proposing to amend § 172.102, Special Provisions, as follows:

—Special Provisions 7 and 10 would be removed. These special provisions are assigned to the entries "Ammonium nitrate mixed fertilizers," NA2069 and "Ammonium nitrate fertilizers," NA2072, respectively, which we propose to remove (see § 172.101, HMT).

—Special Provision 15, which is assigned to "Chemical kits," UN3316 and "First aid kits," UN3316, would be revised by removing the authorized packagings, revising them consistent with packagings authorized for limited quantity exceptions, and relocating them to § 173.161. The proposed Special Provision 15 would specify which chemical and first aid kits apply to the entries; that for transportation by aircraft, materials forbidden by air may not be included in the kits; and that kits carried on board transport vehicles for first aid or operating purposes are not subject to the HMR.

—Special Provision 30 would be revised to include an exception from the

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placarding requirements for "Sulfur, molten" UN2448 and "Sulfur," UN1350. Currently, the domestic entries "Sulfur, molten," NA2448 and "Sulfur," NA1350 do not require placards because both entries are assigned as Class 9 materials and meet the placarding exceptions for the hazard class in §172.504(f)(9). We are proposing to provide the same placarding exceptions for the international entries through the revision of Special Provision 30, provided the markings in § 172.325 are applied.

—Special Provision 52 would be editorially revised by removing the wording specific to fertilizers. The special provision, which is currently applied to "Ammonium nitrate fertilizers," UN2067, would be added to the proposed new entry "Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives*," UN3375. The special provision states that a material using the assigned entries may not exhibit explosive properties of Class 1 (explosive) when tested in accordance with the UN Manual of Tests and Criteria, Part I, Test Series 1 and 2.

—Special Provision 130, which excepts dry batteries from the HMR, would be revised by adding the requirement that such batteries must be securely packed and protected against short circuits and by clarifying that dry batteries specifically named in the § 172.101 Table are not eligible for the exception.

—Special Provision 132 would be revised by adding the criteria for which the assigned entry may be used. The special provision would be added to the proposed revised entry "Ammonium nitrate," UN2071, Class 9. Currently, the special provision provides the criteria for ammonium nitrate fertilizers that are excepted from the HMR.

—Special Provision 133 would be removed. The special provision is currently assigned to "Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas" UN3353, Division 2.2, which is proposed to be removed from the HMT (see discussion under § 172.101, HMT.)

—New Special Provision 145 would be added for the existing entry "Hydrogen peroxide and peroxyacetic acids mixtures, stabilized, *with acids, water and not more than 5 percent peroxyacetic acid*," UN3149. The special provision describes the formulations for which this entry would apply.

—New Special Provision 146 would be added for the entries "Environmentally hazardous substances, liquid, n.o.s.," UN3082 and "Environmentally hazardous substances, solid, n.o.s.," UN3077 to clarify that the entries may be used to describe materials that pose a hazard to the environment but do not meet the definition of a hazardous waste, hazardous substance or any hazard class as defined in the HMR. This includes materials or wastes that are designated as environmentally hazardous by the Competent Authority of the country of origin.

—New Special Provision 147 would be added for assignment to the proposed new entry, "Ammonium nitrate emulsion *or* Suspension *or* Gel, *intermediate for blasting explosives*," UN3375. The special provision describes the composition of the material for which the use of the entry would be authorized and prohibits the material from being classified and transported unless approved by the Associate Administrator.

—New Special Provision 149 would be added to the Packing Group II entries for 14 existing proper shipping names. The special provision would allow the maximum net capacity for inner packagings to be increased to no more than 5 L (1.3 gallons) when the material is transported as a limited quantity. The 14 entries are: "Adhesives, *containing a flammable liquid*," UN1133; "Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*)," UN1139; "Extracts, aromatic, liquid," UN1169; "Extracts, flavoring, liquid," UN1197; "Printing ink, *flammable or* Printing ink related material (*including printing ink thinning or reducing compound), flammable*," UN1210; "Paint including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base," UN1263; "Paint related material *including paint thinning, drying, removing, or reducing compound*," UN1263; "Perfumery products *with flammable solvents*," UN1266; "Rubber solution," UN1287; "Wood preservatives, liquid," UN1306; "Resin solution, *flammable*," UN1866; "Tars, liquid *including road asphalt and oils, bitumen and cut backs*," UN1999; "Alcoholic beverages," UN3065; and "Polyester resin kit," UN3269 for Packing Group II resin kits as specified in Special Provision 40.

—New Special Provision 150 would be added for assignment to the entry "Ammonium nitrate based fertilizer," UN2067 to authorize the use of the entry for uniform mixtures containing ammonium nitrate as the main ingredient within certain composition limits.

—New Special Provision 151 would be added for assignment to the proposed new entry "Hydrazine aqueous solution, *with more than 37% hydrazine, by mass*" UN2030, Packing Group I and to the existing entry "Motor fuel anti-knock mixtures," UN1649. The special provision requires a packaging containing a material meeting the definition of a flammable liquid to display a flammable liquid label, and requires a Class 3 subsidiary hazard to be shown on shipping papers.

With regard to the entry "Motor fuel anti-knock mixtures," UN1649, we received a petition for rulemaking (P–1420) requesting that we remove the flammable subsidiary risk for this entry. The petitioner stated that the international standards do not assign the entry a flammable subsidiary risk and that the inconsistency with the HMR causes a regulatory compliance burden when transporting the material internationally. The petitioner stated that removing the subsidiary risk is additionally justified because motor fuel anti-knock mixtures containing tetramethyl lead, with fire points greater than 54 °C (129.2 °F) are no longer manufactured or transported. Although the UN Recommendations, the ICAO Technical Instructions and the IMDG Code do not assign a flammable subsidiary risk to the entry, all three standards assign a special provision stating that mixtures with a flashpoint of less than 60.5 °C (141 °F) must bear a flammable liquid subsidiary risk label. We are proposing to remove the flammable subsidiary risk from the label requirements in Column (6) of the HMT for "Motor fuel anti-knock mixtures," UN1649 and add a new Special Provision 151 to require a flammable liquid subsidiary label only when the mixtures have a flashpoint of less than 60.5 °C (140.9 °F). Also, see preamble text under the § 172.101 Table changes.

—New Special Provision 153 would be added to the five "Aerosols," UN1950 entries to provide the criteria for classifying aerosols.

—New Special Provision 155 would be added to two entries, "Fish meal, stabilized *or* Fish scrap, stabilized," UN2216 and "Fish meal, unstabilized *or* Fish scrap, unstabilized," UN1374. The special provision specifies that if the temperature of fish scrap at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (41 °F) above the ambient temperature, whichever is higher, the fish scrap may not be transported. Also see § 173.218 for additional discussion.

—New Special Provision 156 would be added for assignment to three entries, "Blue asbestos *(Crocidolite) or* Brown asbestos (*amosite, mysorite*)," UN2212, "White asbestos *(chrysotile, actinolite, anthophyllite, tremolite)*," UN2590, and "Asbestos," NA2212. The special provision provides an exception from the HMR for certain asbestos. The exception, which is currently in § 173.216(b), excepts asbestos immersed or fixed in a natural or artificial binder material and asbestos contained in manufactured products. We received comments that the current § 173.216 location for this exception is not appropriate because it is referenced in the non-bulk column of the HMT, leading readers to believe that the exception applies to non-bulk packagings only. To clarify that this exception applies to both non-bulk and bulk packagings, we are proposing to move the exception from § 173.216(b) to proposed Special Provision 156.

—New Special Provision 157 would be added to the entries "Vehicle, flammable gas powered," and "Vehicle, flammable liquid powered," each of which is assigned to UN3166. The proposed special provision specifies that the use of the entries includes hybrid electric vehicles powered by both internal combustion engines and wet, sodium or lithium batteries.

—New Special Provision 159 would be added to the entry "5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk Xylene," UN2956. The special provision requires this material to be protected from direct sunshine and kept in a cool, well-ventilated place away from sources of heat.

—New Special Provision 160 would be added to the entry "Air bag inflators, *or* Air bag modules, or Seat-belt pretensioner," UN3268, Class 9. The special provision includes the requirement that air bag inflators and modules must be tested in accordance with Test series 6(c) of Part I of the UN Manual of Tests and Criteria, and also includes an exception from testing air bag modules that contain an inflator previously approved for transportation. Also, see § 172.102, HMT, which includes additional proposed revisions such as removing the italicized word "pyrotechnic" from the UN3268 entry.

—New Special Provision 161 would be added to the entry "Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic*," UN0503, Division 1.4G. The special provision specifies that the UN0503 entry may not be used for domestic transportation, and that the more appropriate description is "Articles, pyrotechnic *for technical purposes*," UN0431. We are specifically requesting comments concerning whether this may result in an unnecessary burden for international shippers. We are not aware of any air bag inflators that are transported as Division 1.4G in the United States. Also, see § 172.102, HMT, which includes the proposed amendment to remove the italicized word "pyrotechnic" from the UN0503 entry.

—New Special Provision 162 would be added to eight proposed entries and two existing entries. The Special Provision authorizes the material to be transported under the provisions of Division 4.1, only if it is so packed that at no time during transport will the percentage of diluent fall below the percentage that is specified in the proper shipping name. The proposed new entries are "4-Nitrophenylhydrazine, *with not less than 30% water, by mass*," UN3376; "Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass*," UN3369; "Trinitrobenzene, wetted, *with not less than 10% water by mass*," UN3367; "Trinitrobenzoic acid, wetted, *with not less than 10% water by mass*, UN3368; "Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass*," UN3365; "Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass*," UN3364; "Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass*," UN3366; and "Urea nitrate, wetted, *with not less than 10% water by mass*," UN3370. The two existing entries are "Barium azide, wetted *with not less than 50 percent water, by mass*," UN1571 and "Dipicryl sulfide, wetted *with not less than 10 percent water, by mass*," UN2852.

—New Special Provisions A54 and A55 would be added to address certain requirements for the transportation of lithium batteries by aircraft. Special Provision A54 provides an approval provision that authorizes lithium batteries and lithium batteries contained in equipment or packed with equipment to exceed the quantity limits as specified in Column (9B) of the HMT when transported by cargo aircraft, if approved by the Associate Administrator. Special Provision A55 provides an approval provision to authorize prototype batteries to be transported by cargo aircraft if approved by the Associate Administrator. Special Provisions A54 and A55 would be assigned to "Lithium battery," UN3090, "Lithium batteries, contained in equipment," UN3091 and "Lithium batteries packed with equipment," UN3091.

—New Special Provision A56 would be added to address the air transport of radioactive material with subsidiary hazards of Divisions 4.2, Packing Group I, 2.1 or 2.3. Division 4.2, Packing Group I subsidiary hazard materials would be required to be transported by aircraft in Type B packagings only. Division 2.1 subsidiary hazard materials would be prohibited from passenger aircraft. The special provision is in alignment with the ICAO Technical Instruction's Special Provision A78, with regard to radioactive materials with Division 2.1 subsidiary hazard but not the Division 4.2, PG I packaging requirement or the Division 2.3 subsidiary hazard approval provision. Proposed Special Provision A56 includes Division 4.2, PG I because we believe it was inadvertently omitted in ICAO's Special Provision A78, and we understand that steps are being taken to address the matter with the ICAO Dangerous Goods Panel. See the § 172.101 HMT in the regulatory text of this rule for specific entries.

—Special Provision IB3 would be revised by excepting "Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*," UN2672 from the special provision's "Additional Requirement" that authorizes liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F). Proposed new Special Provision IP8 would also be added to the UN2672 entry.

—Special Provision IB52 (Table 2) would be revised by adding additional packaging authorizations for certain entries and correcting various typographical errors. The entry "Dicumyl peroxide, "UN3110 would be corrected by adding "2000" as the maximum quantity in liters. In addition, we are proposing to move the approval provision for formulations not covered in Special Provision IB52 to § 173.225(e)(5).

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Section 173.225(e) currently contains an approval provision for portable tanks, and we believe this paragraph is a more appropriate location for the IB52 approval provision.

—New Special Provision IP8 (Table 3) would be added for assignment to the existing entry "Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*," UN2672 (see Special Provision IB3). The special provision authorizes ammonia solutions to be transported in rigid or composite plastic intermediate bulk containers (IBCs) (31H1, 31H2 and 31HZ1), if the rigid plastic and composite IBCs have successfully passed, without leakage or permanent deformation, the hydraulic test specified in § 178.814 at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).

—New Special Provision N83 would be added to the proposed new entry "Urea nitrate, wetted, *with not less than 10% water by mass*," UN3370. This special provision limits the quantity of this material to no more than 11.5 kg (25.4 lbs) per package.

—New Special Provision N84 would be added for assignment to six proposed new entries and one existing entry. The special provision limits the quantity per package to no more than 500 g (1.1 lbs.). The six proposed new entries are: "Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass*," UN3364; "Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass*," UN3365; "Trinitrotoluene (TNT), wetted *with not less than 10% water by mass*," UN3366; "Trinitrobenzene, wetted, *with not less than 10% water by mass*," UN3367; "Trinitrobenzoic acid, wetted, *with not less than 10% water by mass*," UN3368; and "Sodium Dinitrooresolate, wetted, *with not less than 10% water by mass*," UN3369. The existing entry is "Dipicryl sulfide, wetted *with not less than 10 percent water, by mass*," UN2852.

—New Special Provision N85 would be added for assignment to two existing entries, "Isosorbide dinitrate mixture *with not less than 60 percent lactose, mannose, starch or calcium hdrogen phosphate*," UN2907 and "Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *with more than 10 percent but not more than 20 percent PETN, by mass*," UN3344. The special provision prohibits the material from being transported in packagings conforming to the requirements of Part 178 of the HMR at the Packing Group I performance level. This proposed action would address overconfinement hazards associated with these materials by prohibiting the use of packagings meeting the Packing Group I performance criteria.

—Special Provision T23 would be revised to correct typographical errors for the entries "tert-Butyl peroxyacetate, not more than 32% in diluent type B" and "tert-Butyl peroxypivalate, not more than 27% in diluent type B." The word "tyupe" would be corrected to read "type" in the former and the control "temperature, −5 °C," would be corrected to read "+5 °C."

—Special Provision TP3 would be editorially revised for clarity.

Section 172.202. We are proposing to revise paragraphs (a)(2), (a)(5) and (b). In paragraph (a)(2), we are proposing to require the subsidiary hazard class or subsidiary division number(s) to be entered in parentheses following the primary hazard class or division number on shipping papers. This requirement is currently required only for transportation by vessel. This proposed requirement responds to three petitions for rulemaking, P–1363, P–1398 and P–1402. One petitioner (P–1363) stated that the lack of such a requirement poses problems for motor carriers with regard to complying with segregation, separation and placarding requirements, as well as posing a safety hazard. The petitioner pointed out that when the hazardous materials being transported include a subsidiary hazard such as "dangerous when wet" or a subsidiary hazard requiring more stringent requirements than the primary hazard, there is no indication of the subsidiary hazards on the shipping papers and no indication of the subsidiary risks on placards. The petitioner stated that when motor vehicles are being loaded at a dock, labels are not enough to alert hazardous materials employees loading the vehicles or emergency responders of the subsidiary risks of materials in the vehicle.

Two petitions (P–1398 and P–1402) were specific to Division 4.3 materials. The petitioners requested that we require the shipping paper to contain the words "dangerous when wet" following the basic description for hazardous materials classed as Division 4.3 or having a Division 4.3 subsidiary hazard. The petitioners stated that the additional information would aid emergency responders by more clearly identifying the hazard.

We agree with the petitioners with regard to their request to require that subsidiary hazard class or subsidiary division number(s) be entered on the shipping paper. Thus, we are proposing to add a requirement to identify all subsidiary risks of a hazardous material on the shipping paper. We do not agree, however, with the suggestion to adopt the same requirement for the primary hazard class. We believe that this is unnecessary because the primary hazard is clearly identified on shipping papers by the division number as part of the basic description. We also do not agree with the petitioner's (P–1363) suggestion to provide an exception from the proposed requirement to include the subsidiary hazard on shipping papers when the subsidiary hazard is identified in the proper shipping name (for example, "Flammable liquid, toxic, n.o.s."). This suggested approach would be inconsistent with the UN Recommendations and would result in the addition of a domestic exception that would not enhance hazard communication and could also lead to frustrated international shipments while unnecessarily complicating the HMR.

We are also proposing to revise paragraph (a)(5) regarding the indication on shipping papers of the total quantity of hazardous materials. The proposed requirement, which is currently optional for all modes of transportation other than vessel, would make it mandatory for shippers to indicate on shipping papers the types of packages, such as drums, boxes, jerricans, etc., being used to transport hazardous materials by all modes of transportation. This requirement is consistent with international standards. We invite comments on costs, benefits, and complications that could result from adoption of this requirement. For example, certain electronic shipping paper programs, materials transported under a single basic description that are packaged in more than one type of packaging possibly would need to be listed more than once on the shipping paper. Alternatively, alterations to those programs may be necessary to provide space required to list more than one type of package for a single basic description. Therefore, we request comments addressing these issues, including suggestions to minimize any impacts associated with this proposed change, such as providing an extended transition period. For the purpose of consolidation, we would also transfer to this paragraph the existing additional requirements for transportation by vessel currently located in § 172.203 (i)(1), (i)(2), (i)(3) and (i)(6).

In addition, paragraph (b) would be revised to allow, as an alternative to the basic description sequence currently required in this paragraph, the identification number to be listed first on shipping papers and the proper shipping name to be listed following the hazard class and subsidiary risk. Noting that international standards will allow both sequences, we request comments specific to whether we should incorporate this amendment as an alternative for all shipments to, from, or within the U.S., or whether we should allow it for international shipments only. We also ask for comments addressing the impact this proposed amendment may have on emergency response training.

Section 172.203. We are proposing to remove and relocate paragraphs (i)(1), (i)(2), (i)(3) and (i)(6). With adoption of the proposal to indicate types of packagings on shipping papers in § 172.202, we would consolidate the four vessel requirements in § 172.203(i) by moving them to the description requirements in § 172.202(a)(5). The paragraphs address additional shipping paper requirements for the identification of the type, number and gross mass of packagings, and the identification of subsidiary hazards consistent with international standards. The current paragraphs (i)(4) and (i)(5) would be redesignated (i)(1) and (i)(2).

Section 172.301. Paragraph (a)(1) would be revised to reflect the proposed new marking requirement in § 172.315 for packagings containing limited quantities of hazardous materials. Packagings containing limited quantities would no longer require the proper shipping name on the packagings, but would be required to be marked in accordance with the proposed § 172.315 marking requirement that consists of an identification number placed within a diamond. (See § 172.315).

Section 172.312. A new paragraph (c)(6) would be added to allow packages containing liquid infectious substances in primary receptacles not exceeding 50 ml (1.7 oz) to be excepted from the requirements in § 172.312(a). Section 172.312(a) requires liquid hazardous materials packaged in non-bulk combination packagings to be packed with closures upward and to be legibly marked with orientation markings.

Section 172.315. A new section, § 172.315, would be added as a new marking requirement for packagings containing limited quantities of hazardous materials. This section would require such packagings to be marked with the identification (ID) number placed within a diamond. Marking the proper shipping name on limited quantity packagings would not be required. The line forming the diamond would be required to be at least 2 mm thick and the height of the ID number no less than 6 mm. For packagings containing more than one limited quantity of hazardous materials with different ID numbers, the packaging would be required to be marked with either individual diamonds bearing a single ID number, or a single diamond large enough to include each applicable ID number. The marking would be required to be durable, legible and of a size relative to the packaging as to be readily visible.

Section 172.323. A new section, § 172.323, would be added to incorporate an air eligibility marking requirement into the HMR for all non-bulk packages offered for transportation or transported by aircraft. The marking would certify compliance with all applicable air transport package requirements, including pressure differential requirements, package markings and labels, inner packaging limits, selection of appropriate types of packagings, use of closure instructions for inner packagings, application of the cargo aircraft handling label (when applicable), and proper classification.

The ICAO has adopted this requirement in the 2003–2004 edition of the ICAO Technical Instructions, and a number of packaging vendors and military shippers are currently marking packagings to indicate that they meet the additional air requirements through the use of an air eligibility symbol, such as we are proposing, or by use of the statement "Air Eligible." In addition to consistency with the ICAO Technical Instructions, we believe that the use of an air eligibility mark would be beneficial in heightening shipper awareness and responsibility for meeting the additional air transport package requirements. Adoption of this requirement would reduce the inadvertent acceptance for transportation by aircraft of packages that conform only to highway, rail or vessel requirements.

The shipper would be responsible for the application of the marking, but would not be required to physically place it on the package. The marking could be applied by using a durable sticker or label, preprinting it on the packaging, or drawing it on the package by hand. The marking would be required to be durable, legible, and of such size relative to the packaging as to be readily visible. Preprinting by the package manufacturer would require the manufacturer and the shipper to closely coordinate to ensure that the package meets the applicable air transport requirements. The shipper would be responsible for ensuring that the package meets the applicable air transport requirements.

Section 172.411. We are proposing to revise the section heading and paragraphs (b) and (d), and to add new paragraphs (e) and (f). In the June 21, 2001 HM–215D final rule, we removed the requirement to differentiate between primary and subsidiary labels by requiring the class number to be displayed on both types of labels. The primary explosive label requires the appropriate division number and compatibility group to be displayed, but the explosive subsidiary label does not. This disparity was an oversight, and we are proposing to correct this section by adding the pictorial of the explosive subsidiary label and revising the text accordingly.

Section 172.504. Based on a telephone call we received from a shipper, paragraph (g) would be editorially revised by adding a clarification emphasizing the distinction between the words "explosive articles" and "explosive substances." The commenter stated that the paragraph is often misinterpreted because the two phrases are not understood as having different meanings.

Part 173

Section 173.2a. In paragraph (b), the second line of the title of the Precedence of Hazard Table is editorially revised to include the word "division." In addition, the Table is revised for the first three entries by inserting "4.3" under the Division 4.3 column to indicate that Division 4.3 takes precedence over Class 3 when classifying a material having more than one hazard.

Section 173.21. In paragraph (f)(3)(ii), we are proposing to update the location reference to the control temperature requirements in the IMDG Code to its current location in Chapter 7.7.

Section 173.22. We are proposing to revise paragraph (a)(4) to clarify that, in addition to complying with the Part 178 requirements, the shipper is responsible for ensuring that packages comply with the Part 173 requirements. This revision is consistent with the proposed amendments to § 173.24a relative to closures, and to § 173.27 relative to packages intended for air transport.

Section 173.24. A new paragraph (b)(4) would be added and paragraph (f)(1) would be revised. Paragraph (b)(4) would be revised by adding general requirements applicable to the integrity of packagings. The revision would amend the requirement that packagings must be closed in accordance with the

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closure instructions provided by the manufacturer. Paragraph (f)(1) would be revised to address requirements for the construction and design of closures.

Section 173.25. In paragraph (a)(2), for the marking requirements pertaining to overpacks, we are proposing to include the air eligibility marking as proposed in § 172.323.

Section 173.27. We are proposing to revise paragraph (e) and add a new paragraph (i).

Paragraph (e) would be revised to require packagings with plastic and metal inner packagings to be packaged using absorbent material when Packing Group I or II liquids of Class 3, 4 or 8 or Division 5.1, 5.2 or 6.1 are offered for transport by passenger or cargo aircraft. Currently, the requirement to use absorbent material applies to Packing Group I and II materials when offered for transport by passenger aircraft, and to Packing Group I materials when offered for transport by cargo aircraft. We are proposing to also apply this requirement to Packing Group II materials offered for transport by cargo aircraft. Existing absorbent material requirements apply when inner packagings are constructed of glass or earthenware. The absorbent material requirement currently does not apply to Division 5.2 liquids. Various air carriers are currently imposing such a requirement, and it has been adopted in the 2003–2004 edition of the ICAO Technical Instructions, effective January 1, 2003. Therefore, offerors and shippers will be required to meet these requirements when air transport is in accordance with the ICAO Technical Instructions regardless of whether the requirements are incorporated into the HMR.

We are proposing to add a new paragraph (i) to refer the reader to proposed new section § 172.323 for the air eligibility marking requirement for packagings containing hazardous materials being transported by aircraft. See § 172.323 for the discussion on this proposed requirement.

Section 173.62. In § 173.62, in the paragraph (b) Explosives Table, the entry "UN0503" would be added for assignment to the packing instruction P135. UN0503 is assigned to the proper shipping name "Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners," Division 1.4G (also see § 172.101, HMT). The Class 9 "Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners" entry would continue to be packaged in accordance with § 173.166.

In addition, in paragraph (c), in the Explosives Packing Instructions Table, in the first column, for the packing instruction entry 112(b), in the last sentence, the obsolete ID number, "UN 0223," would be removed. The entry was removed from the § 172.101 Table in a separate rulemaking.

Section 173.115. In paragraphs (d) and (e), we are proposing to amend the regulatory text that describes "non-liquefied compressed gas" and "liquefied compressed gas." The proposed amendment would revise the reference temperature from 20 °C to −50 °C, consistent with internationally accepted definitions for gases and consistent with the twelfth edition of the UN Recommendations.

We are also proposing to divide compressed liquefied gases into high and low pressure categories. The UN Subcommittee revised the terminology for gases to align them with the terminology used in the International Organization for Standardization (ISO) Standard 10286. This standard establishes the terminology applicable to gas cylinders and provides definitions for gases. The proposed regulatory text would affect 11 entries in the § 172.101 Table by removing the word "compressed" from the proper shipping names. Under a separate rulemaking, we will address whether the affected gases should be reassigned to more appropriate packagings sections, such as revising the packaging authorization from § 173.302 to § 173.304 in Column (8B) in the § 172.101 Table. We will also address the use of the high- and low-pressure compressed liquefied gas designations.

Sections 173.152, 173.153 and 173.154. The following sections would be revised by increasing the inner packaging net capacity limit for Packing Group III liquids from 4 L (1.1 gallons) to 5 L (1.3 gallons): § 173.152(b)(2), exceptions for Division 5.1 oxidizers and Division 5.2 organic peroxides; § 173.153(b)(1), exceptions for Division 6.1 poisonous materials; and § 173.154(b)(2), exceptions for Class 8 corrosive materials. Section 173.152(b)(4)(ii) would also be revised by raising the net capacity of inner packagings containing PG II flammable liquids in polyester resin kits from 1 L (0.3 gallons) to 5 L (1.3 gallons) each.

Section 173.159. A new sentence would be added to paragraph (a) requiring packagings for certain batteries to include an acid/alkali proof liner or a supplementary packaging with sufficient strength and adequate sealant to prevent leakage of electrolyte fluid in the event of spillage. This requirement would apply to packagings transported by aircraft and containing electric storage batteries with electrolyte acid or alkaline corrosive battery fluid.

A new paragraph (d)(4) would be added to require non-spillable batteries, that are excepted from all other requirements of the HMR, to meet the condition that at a temperature of 55 °C (131 °F), the electrolyte will not flow from a ruptured or cracked case and there is no free, unabsorbed liquid in the battery.

Section 173.161. We are proposing to revise this section to specify the packaging requirements for chemical and first aid kits consistent with international standards.

Section 173.166. This section would be revised consistent with the proposed removal of the Division 2.2 entry for "Air bag inflators, compressed gas or Air bag modules, compressed gas or Seat-belt pretensioners, compressed gas," UN3353 (see § 172.101, HMT). We are proposing in this section to authorize reclassification to Class 9 without further testing for air bag inflators, air bag modules and pretensioners currently approved for transportation as Division 2.2.

Section 173.185. Paragraphs (e)(4) and (e)(7) would be revised and a new paragraph (k) would be added. We are proposing to combine paragraphs (e)(4) and (e)(5) into one paragraph, (e)(4), and to remove and reserve paragraph (e)(5).

The proposed revised paragraph (e)(4) would allow the use of dividers or other suitable means as alternative methods to inner packagings for effective means of preventing short circuits of lithium cells and batteries.

Based on a comment that was beyond the scope of the HM–215D final rule, we are proposing to revise paragraph (e)(7) by applying the prohibition to offer for transportation or transport certain cells and batteries to only those with a liquid cathode containing sulfur dioxide, sulfuryl chloride or thionyl chloride. Currently, any cell or battery with a cell that has been discharged to the extent that the open circuit voltage is less than 2 volts, or less than two-thirds of the open circuit voltage of the fully charged cell, whichever is less, is prohibited from being offered for transportation or transported. We have included sulfuryl chloride in this proposal and specifically request comments on whether these types of batteries exist to determine whether it is necessary to include sulfuryl chloride batteries and cells in this amendment. The UN Recommendations do not include this prohibition. The reduced voltage condition was included in the HMR to address lithium sulfur dioxide, sulfuryl chloride and lithium thionyl chloride primary batteries on the basis of safety issues with low-voltage cells. The lithium sulfur dioxide batteries present hazards in transportation when the sulfur dioxide is depleted. The depletion can cause the removal or breakdown of the passivation film on the lithium anode which could result in a undesirable exothermic reaction of the lithium metal and the electrolyte solvent leading to high temperatures, cell venting, cell rupture, and fires. In addition, a new paragraph (k) would be added to allow batteries with a mass of 12 kg or greater and having strong, impact-resistant outer casings to be packed in strong outer packagings, protective enclosures, or unpacked on pallets. Packaging in this manner for transportation by cargo-only aircraft would be permitted only with the approval of the Associate Administrator.

Additional amendments to the requirements for lithium batteries are being addressed in a separate rulemaking, under Docket HM–224C (NPRM published on April 2, 2002, 67 FR 15510). One of the proposals under Docket HM–224C addresses a reorganization of § 173.185. Any amendments adopted in either final rule will be reflected in the other.

Section 173.216. We are proposing to move the exceptions for asbestos in paragraph (b) to a new special provision (see Special Provision 156 in § 172.102). Paragraph (b) excepts asbestos immersed or fixed in a natural or artificial binder material and also excepts asbestos contained in manufactured products. We understand that because the exception is located in § 173.216 and referenced in Column (7) of the HMT for non-bulk packagings, the exception appears to be limited to non-bulk packagings. To clarify the applicability, we are proposing to remove and reserve paragraph (b) and transfer the exception to the proposed new Special Provision 156. The exception will continue to apply to three entries, "Blue asbestos (Crocidolite) or Brown asbestos (amosite, mysorite)," UN2212, "White asbestos (chrysotile, actinolite, anthohyllite, tremolite)," UN2590, and "Asbestos," NA2212.

Section 173.218. Paragraph (a) introductory text would be revised and paragraph (b) would be removed. Paragraph (a) introductory text would be editorially revised to reflect the proposed relocation of the requirement currently contained in paragraph (b). In the current paragraph (b), the requirement for the maximum temperature at which fish meal or fish scrap may not be offered for transportation would be revised from 49 °C (120 °F) to 35 °C (95 °F), or 5 °C (41 °F) above ambient temperature, whichever is higher, and relocated to proposed Special Provision 155 (see § 172.102).

Section 173.220. We are proposing to add a new paragraph to include additional requirements for certain engines and vehicles. The current paragraph (e) would be redesignated (f) and the new paragraph would become paragraph (e). The new paragraph would include several additional requirements for internal combustion engines and vehicles equipped with certain devices when transported by aircraft or vessel. When engines are shipped separately, we are proposing that all fuel, coolant or hydraulic systems in or on the engine must be drained as far as practicable, must have disconnected fluid pipes sealed with leak-proof caps that are positively retained, and any installed theft-protection devices, radio communications equipment or navigational systems must be disabled.

Section 173.223. We are proposing to add a new packaging section, § 173.223, for musk xylene. Currently, the authorized packaging section, § 173.214, for musk xylene requires approval by the Associate Administrator. We are proposing to add a new section that is consistent with the UN packing instruction P409 assigned to musk xylene, so that approval by the Associate Administrator will no longer be necessary.

Section 173.224. In paragraph (b)(4), the incorrect reference for bulk packaging authorizations, § 173.225(d), would be corrected to read § 173.225(e). In the Self-Reactive Materials Table following paragraph (b)(7), five entries in Column (1) would be revised and four new entries would be added. The five revised entries appear first as "removes" and then "adds" in the regulatory text section of this NPRM. For the entry "2,2'-Azodi(isobutryonitrile) as a water based paste," the misaligned column entries would be corrected. A new Note 4 would be added following the table for assignment to the new entry "2-Diazo-1Naphthol sulphonic acid ester mixture, Type D."

Section 173.225. We are proposing to amend the paragraph (b) Organic Peroxide Table, the Notes following the Table, and paragraphs (e)(3)(xii) and (e)(5).

The proposed amendments to the Organic Peroxide Table include the addition of bulk and IBC packaging authorizations for certain entries, the addition of several new entries and various corrections to certain entries.

Note 9 following the Table would be revised by correcting the paragraph reference "(e)(3)(ii)" to read "(e)(3)(xii)." A new Note 27 would be added for the proposed entry "Peroxyacetic acid, distilled, Type F, stabilized," UN3110. A new Note 28 would be added to clarify that "Peroxyacetic acid" and Peracetic acid" are synonymous.

Paragraph (e)(3)(xii) would be revised to clarify that DOT Specification 57 portable tanks are not subject to any other requirements in paragraph (e).

We are also proposing to move the approval provisions currently contained in the § 172.102(c)(4) Table 2, Special Provision IB52, to paragraph (e)(5). We believe this is a more appropriate section for the approval provisions, which we are proposing to expand to provide for the use of IBCs other than those indicated in the IB52 Table when approved by the Associate Administrator.

Section 173.244. We are proposing to revise paragraph (c) by adding a clarification that UN portable tanks are also authorized for use if a T code is specified in Column (7) of the HMT for the specific hazardous material.

Section 173.306. We are proposing to revise the paragraph heading in § 173.306(f) by adding the proper shipping name "Articles, pressurized, pneumatic *or* hydraulic *containing non-flammable gas.*" The revision is based on the proper shipping name replacing the domestic entry "Accumulators, pressurized, pneumatic *or* hydraulic (*containing non-flammable gas*)," which was removed in HM–215D published on June 21, 2001. We received telephone calls requesting the addition to the paragraph heading to clarify the intent of the paragraph.

We are also proposing to add a new paragraph (j) to reference the exception for certain compressed gases in § 173.307.

Section 173.307. We are proposing to add a new paragraph (a)(5) to except Division 2.2 gas aerosols with a capacity of not more than 50 ml and with a pressure not exceeding 970 kPa (141 psig) from the HMR.

Section 173.422. We are proposing to revise the certification statements in paragraphs (a)(2), (a)(3) and (a)(4) to reflect the updated proper shipping names and UN identification numbers currently authorized in the § 172.101 Table for excepted packages of radioactive materials.

Part 175

Section 175.10. We are proposing to revise paragraph (a)(25) to allow two small CO_2 cartridges fitted in self-inflating life jackets and two spare cartridges to be carried by a passenger or crew member in checked or carry-on

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baggage. Currently, paragraph (a)(25) allows, with the approval of the aircraft operator, one small carbon dioxide cylinder fitted into a self-inflating life-jacket, plus one spare cartridge.

We are also proposing to add a new paragraph (c) to extend the paragraph (a) exceptions from the HMR to aircraft operators when transporting baggage that has been inadvertently separated from a passenger or crew member before reaching its final destination.

Section 175.30. We are proposing to add a new paragraph (a)(5) requiring that the proposed air eligibility marking requirement in § 172.323 must be met before a person may accept hazardous materials for transportation by aircraft.

Section 175.90. We are proposing to revise paragraphs (b) and (c). Paragraph (b) would be revised to include amendments relative to an aircraft operator's responsibility concerning packagings, baggage or cargo that have become contaminated by leaking hazardous materials. This proposal is consistent with the 2003–2004 edition of the ICAO Technical Instructions and is in response to a National Transportation Safety Board (NTSB) recommendation (A–96–30) issued to the Federal Aviation Administration. This NTSB recommendation resulted from an incident involving an undeclared shipment of a hydrogen peroxide solution that leaked, resulting in injuries to airline personnel and a potential fire hazard aboard a passenger aircraft. Paragraph (c) prohibits a person from placing a damaged packaging aboard an aircraft. We are proposing to revise the paragraph by including the words "baggage or cargo" when referring to a damaged or leaking packaging.

Part 176

Section 176.27. In paragraph (c)(2), we are proposing to remove the words "of 49 CFR 176.27(c)" at the end of the certification statement and add the words "of 49 CFR" or "of the IMDG Code."

Section 176.63. We are proposing to add a new paragraph (f) to include the conditions for the authorized stowage of containers on board hatchless container ships.

Section 176.83. We are proposing to add a new paragraph (l) to include the requirements for the segregation of containers on board hatchless container ships.

Section 176.84. In the paragraph (b) Table of Provisions, we are proposing to add nine new provisions (codes) for certain stowage and segregation requirements for hazardous materials that are transported by vessel. The terms "separated from" and "away from" in the proposed codes are defined in § 176.83 of the HMR.

Code 124 would be added for assignment to the proposed new entry "Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives,*" UN3375 and would require the material to be stowed "separated from" bromates.

Code 125 would be added for assignment to the proposed new entry "Chlorosilanes, toxic, corrosive, flammable, n.o.s.," UN3362 and would require segregation to be the same as for flammable liquids; however, those materials also would be required to be "away from" flammable solids.

Code 126 would be added for assignment to the five current UN1950 aerosol entries and would require segregation to be the same as for Class 9 miscellaneous hazardous materials.

Code 127 would be added for assignment to "5-tert-Butyl-2,4,6-trinitro-m-xy-xylene," UN2956 and would require packagings carrying a subsidiary risk of Class 1 (explosives) to be segregated as required for Class 1, Division 1.3.

Code 128 would be added for assignment to "Fish meal, stabilized," UN2216 and "Fish meal, unstabilized," UN1374 and would require stowage to be in accordance with the IMDG Code, sub-section 7.1.10.3.

Code 129 would be added for assignment to "Radioactive material, low specific activity (LSA–I) *non fissile or fissile-excepted,*" UN2912 (the international entry); "Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.," UN2912 (the domestic entry); "Radioactive material, low specific activity (LSA–II) *non fissile or fissile-excepted,* "UN3321; and "Radioactive material, low specific activity (LSA–III) *non fissile or fissile excepted,*" UN3322. This code would require stowage to be in accordance with Stowage Category A, with certain exceptions noted.

Code 130 would be added for assignment to "Radioactive material, Type A package *non-special form, non fissile or fissile-excepted,*" UN2915 to require Stowage Category A. Certain exceptions are noted.

Code 131 would be added for assignment to "Radioactive material, Type A package, fissile *non-special form,*" UN3327 to require Stowage Category A, with certain exceptions noted.

Code 132 would be added for assignment to "Uranium hexafluoride, fissile (*with more than 1 percent U–235),*" UN2977; "Uranium hexafluoride, *fissile excepted or non-fissile,*" UN2978; "Radioactive material, uranium hexafluoride, fissile," UN2977; and "Radioactive material, uranium hexafluoride *non fissile or fissile-excepted,*" UN2978. This code requires stowage to be in accordance with Stowage Category A and note that any supplementary requirements specified in the transport documents must be considered.

Section 176.140. The reference to the IMDG Code in paragraph (b) would be updated by removing the wording "General Introduction."

Section 176.170. Paragraph (b) would be removed and reserved. For alignment with a revision made in Amendment 31 of the IMDG Code, we are removing the requirement that prohibits freight containers exceeding 6 m (20 feet) in length from carrying more than 5000 kg (11,023 pounds) net explosive weight of most explosive substances. This provision was removed from the IMDG Code because it placed an inconsistent and unnecessary restriction on containers exceeding 6 m (20 foot) in length while placing no such restriction on smaller containers.

Sections 176.410 and 176.415. We are proposing to update these sections for consistency with international standards and with the prior removal of ammonium nitrate fertilizer proper shipping names from the HMR.

Part 178

Section 178.2. Paragraph (c)(1)(ii) would be revised by clarifying the information that the packaging manufacturer and each subsequent distributor are required to provide to packaging users.

Section 178.274. Based on a telephone call we received, in paragraph (j)(6), the size of the "NOT FOR RAIL TRANSPORT" marking would be revised from 20 cm (8 inches) to no less than 10 cm (4 inches) in height. We agree with the commenter's reasoning that 8 inches is excessive for portable tanks in that it could require a decal as long as 14 feet, 3 inches.

Section 178.705. We are proposing to correct the paragraph (c)(1)(iv)(A) wall thickness table for metal IBCs. During the typesetting process of the HM–215D final rule (66 FR 33316), published on June 21, 2001, the headings for the IBC types were misaligned, and we are proposing to correct them as presented in the HM–215D NPRM (65 FR 63294) published on October 23, 2000.

Section 178.812. In § 178.812(b)(1), we are proposing to add the words "with the load being evenly distributed," consistent with the wording in § 178.812(b)(2). This text is necessary to clarify that the test must not be conducted with the load unequally applied to an individual lifting device.

Part 180

Section 180.350. We are amending § 180.350 by revising the section heading from "Applicability" to "Applicability and definitions" and by adding definitions for "Remanufactured IBCs," "Repaired IBCs" and "Routine Maintenance of IBCs."

Section 180.352. Two paragraphs would be revised and one new paragraph would be added. Paragraph (d)(1)(i) would be revised to specify that a repaired IBC must be retested and inspected in accordance with the applicable requirements in this section. Paragraph (f) would be revised to require that a record of such tests performed on repaired IBCs must be kept by the IBC owner or lessee. Finally, a new paragraph (d)(1)(iv) would be added to specify a requirement for marking repaired IBCs.

Section 180.605. Paragraph (k) would be revised to restore the inadvertently omitted inspection and test marking requirements for Specification DOT 51, 56, 57 and 60 portable tanks. The text, which was previously located in § 173.32, was omitted during the process of consolidating certain requirements and moving them to part 180 in the final rule, HM–215D, published June 21, 2001. For the height of the marking when displayed on the portable tank, we are also proposing to revise the "0.5 inches" conversion for 12 mm to "0.47" inches consistent with § 178.3.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Benefits resulting from the adoption of the amendments in this proposed rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by domestic shippers of hazardous materials. This proposed rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, radiopharmaceutical companies, and training companies.

The majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America. For example, cost savings will be realized by shippers and carriers as a result of the following:

—Eliminating the differences between proper shipping names, UN number assignments and hazard classification, including subsidiary hazards, between the HMR and international regulations. As a result of these changes, shippers and carriers would not have to re-mark or repackage hazardous materials that are offered in both domestic and international transportation. Shipping papers would not need to be revised when shipping descriptions differ in domestic and international regulations.

—Providing certain exceptions including a placarding exception for sulfur and molten sulfur when the UN number is displayed on bulk packagings, and providing a packaging exception for large hard-cased robust lithium batteries.

We would authorize a delayed effective date and a one-year transition period to allow for training of employees and to ease any burden on entities affected by the amendments.

We recognize that there may be costs associated with the proposed § 172.202(a)(5) amendment requiring the type of packaging(s) to be entered on shipping papers. We believe that the proposed one-year transition period should minimize any costs; however, we are specifically requesting comments addressing the impact that the proposed amendment may have on businesses. Additionally, we are requesting suggestions to minimize any adverse impact, such as providing an extended transition period.

Many companies involved in domestic, as well as global operations, would realize economic benefits as a result of the adoption of amendments in this rulemaking. If the proposed changes are not adopted, U.S. companies will be at an economic disadvantage by being forced to comply with a dual system of regulations. The total net increase in costs to businesses in implementing this rulemaking is considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items (1), (2), (3), and (5) above and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This proposed rule is necessary to incorporate changes adopted in international standards, effective January 1, 2003. If the changes in this proposed rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes proposed in this rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must

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determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption be 90 days from the date of publication of a final rule in the **Federal Register**.

C. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule would serve to facilitate the transportation of hazardous materials in international commerce by providing consistency with international standards. This proposed rule applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, and training companies.

As discussed above, under *Executive Order 12866*, the majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

We recognize that there may be costs associated with the proposed § 172.202(a)(5) amendment requiring the type of packaging(s) to be entered on shipping papers. We believe that the proposed one-year transition period should allow sufficient time to train employees and to ease any burden on small entities affected by the amendments. We are specifically requesting comments addressing the impact that the proposed amendment may have on businesses, including suggestions to minimize any adverse impact, such as incorporating an extended transition period.

Many companies will realize economic benefits as a result of the proposed amendments. If the changes proposed in this NPRM are not adopted, U.S. companies, including small entities competing in foreign markets, will be forced to comply with a dual system of regulations to their economic disadvantage. Therefore, I certify that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposed rulemaking.

E. Paperwork Reduction Act

We submitted the information collection and recordkeeping requirements contained in this NPRM to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, Section 1320.8(d). Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person must comply with an information collection requirement unless it has been approved by OMB and displays a valid OMB control number.

Due to the new information collection requirement proposed in this NPRM for additional shipping paper documentation, we will be submitting a proposed new information collection to OMB for review and approval. This proposed new information collection, "Subsidiary Hazard Class & Number/ Type of Packagings", would be assigned an OMB control number after review and approval by OMB. There would be an increase in information collection and recordkeeping burdens under this new information collection, OMB Control Number 2137–xxxx due to additional information, (*e.g.*, subsidiary hazard class or division number and number and type of packagings) proposed to be included on shipping papers under this rule. RSPA currently has an approved information collection under OMB Control Number 2137–0557, "Approvals for Hazardous Materials" with 25,605 burden hours and $562,837.40. There would be only minor editorial revisions for section designations, etc., and no change in the burden for OMB Control Number 2137–0557 proposed under this rule. There would be only minor editorial revisions for section designations, etc., and no change in the burden for OMB Control Number 2137–0557 proposed under this rule.

We estimate that the new total information collection and recordkeeping burden resulting from the proposed additional information required on shipping papers would be:

"Subsidiary Hazard Class & Number/ Type of Packagings" (New Information Collection) OMB No. 2137–xxxx

Total Annual Number of Respondents: 250,000.
Total Annual Responses: 6,337,500.
Total Annual Burden Hours: 17,604.
Total Annual Burden Cost: $216,705.
Total Year Annual Burden Hours: 45,705.
Total First Year Annual Start Up Cost: $1,115,992.

There are minor editorial changes proposed under this rule; however, there is no increase in burden for this information collection approval proposed under this rule. We estimate that the proposed total information collection and recordkeeping burden as follows:

"Approvals for Hazardous Materials"

OMB Number 2137–0557:
Total Annual Number of Respondents: 3,523.
Total Annual Responses: 3,874.8.
Total Annual Burden Hours: 25,605.
Total Annual Burden Cost: $562,837.40.

Requests for a copy of this information collection should be directed to Deborah Boothe or Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553. Written comments should be addressed to the Dockets Unit identified in the Addresses section of this rulemaking. We should receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. We will publish a notice advising interested parties of the OMB control number for the new information collection when assigned by OMB.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with this proposed rule. Consistency in the regulations for the transportation of hazardous materials aids in the shipper's understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. For interested parties, an environmental assessment is available in the public docket.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the paragraph (a)(3) table, the following changes would be made:

a. Under the entry "International Civil Aviation Organization (ICAO)", the existing entry would be revised;

b. Under the entry "International Maritime Organization (IMO)", the entry "International Maritime Dangerous Goods (IMDG) Code, 1994 Consolidated Edition, as amended by Amendment 29 (1998) (English edition)" would be removed and one entry would be added in its place;

c. Under the entry "International Organization for Standardization", a new entry would be added in alpha-numeric order; and

d. Under the entry "United Nations", the entry "UN Recommendations on the Transport of Dangerous Goods, Eleventh Revised Edition (1999)" would be revised.

The revisions and additions would read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
International Civil Aviation Organization (ICAO),	
* * * * * * *	
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2003–2004 Edition.	171.11; 172.202; 172.323; 172.401; 172.512; 172.602
International Maritime Organization (IMO),	
International Maritime Dangerous Goods (IMDG Code), as amended by Amendment 31 (English Edition).	171.12; 172.401; 172.502; 173.21; 176.2; 176.5; 176.11; 176.27; 176.30
* * * * * * *	
International Organization for Standardization,	
* * * * * * *	
International Convention for the Safety of Life at Sea, 1974, as amended, Chapter II–2/Regulation 19.	176.63
* * * * * * *	
United Nations,	
* * * * * * *	
UN Recommendations on the Transport of Dangerous Goods, Twelfth Revised Edition (2001).	172.401; 172.407; 172.502; 173.24

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Source and name of material	49 CFR reference
* * * * * * *	

* * * * *

3. In § 171.8, in the definition "Large packaging", in paragraph (5), the wording "UN Recommendations" would be removed and "UN Recommendations, Chapter 6.6 (incorporated by reference; see § 171.7)" would be added in its place.

4. In § 171.11, paragraphs (c), (d)(5) and (d)(17) would be revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(c) Is not a forbidden material or package according to § 173.21 of this subchapter; is not a forbidden material as designated in Column (3) of the § 172.101 Table of this subchapter; is not forbidden on cargo aircraft as designated in Columns (9A) and (9B) of the § 172.101 Table of this subchapter; and is not transported on passenger-carrying aircraft if forbidden on passenger-carrying aircraft in Column (9A) of the § 172.102 Table.

(d) * * *

(5) For air bag inflators, air bag modules, or seat-belt pretensioners, the shipping paper description must conform to the requirements of § 173.166(c) of this subchapter.

* * * * *

(17) A self-reactive substance that is not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter. An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

5. In § 171.12, paragraph (b)(3) would be revised; in paragraph (b)(5), the first sentence would be revised; and paragraphs (b)(19) and (b)(20) would be revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(3) A material that is designated as a hazardous material under this subchapter, but is not subject to the requirements of the IMDG Code (see § 171.12 of this subchapter) may not be transported under the provisions of this section and is subject to the requirements of this subchapter. Examples of such materials include flammable gas powered vehicles and combustible liquids.

* * * * *

(5) Except for IBCs and UN portable tanks intended for liquids or solids, bulk packagings must conform to the requirements of this subchapter. * * *

* * * * *

(19) The shipping paper description for an air bag inflators, air bag module, or seat-belt pretensioner must conform to the requirements of § 173.166 of this subchapter.

(20) A self-reactive substance that is not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter. An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

6. In § 171.12a, paragraph (b)(18) would be revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(18) A self-reactive substance that is not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter.An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

7. In § 171.14, paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (d)(4) and (d)(5) would be revised, and paragraph (d)(6) would be added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(d) A final rule published in the **Federal Register** on (INSERT PUBLICATION DATE OF FINAL RULE), effective October 1, 2003, resulted in revisions to this subchapter. During the transition period, until October 1, 2004, as provided in paragraph (d)(1) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on September 30, 2003, or the requirements published in the (INSERT PUBLICATION DATE OF FINAL RULE) final rule.

(1) *Transition dates.* The effective date of the final rule published on (INSERT PUBLICATION DATE OF FINAL RULE) is October 1, 2003. A delayed compliance date of October 1, 2004 is authorized. On and after October 1, 2004, all applicable regulatory requirements adopted in the final rule in effect on October 1, 2003 must be met.

(2) *Intermixing old and new requirements.* Marking, labeling, placarding, and shipping paper descriptions must conform to either the old requirements of this subchapter in effect on September 30, 2003, or the new requirements of this subchapter in the final rule without intermixing communication elements, except that intermixing is permitted, during the applicable transition period, for packaging, hazard communication, and handling provisions, as follows:

* * * * *

(4) Until January 1, 2010, a hazardous material may be transported in an IM, IMO, or DOT Specification 51 portable tank in accordance with the T Codes (Special Provisions) assigned to a hazardous material in Column (7) of the § 172.101 Table in effect on September 30, 2001.

(5) Until October 1, 2007, proper shipping names that included the word "inhibited" prior to the June 21, 2001 final rule in effect on October 1, 2001 are authorized on packagings in place of the word "stabilized." Until October 1, 2007, proper shipping names that included the word "compressed" prior to the final rule published on (INSERT PUBLICATION DATE OF FINAL RULE) and effective on October 1, 2003 may continue to be shown on packagings.

(6) Until October 1, 2005, proper shipping names that did not identify specific isomers by numbers or letters preceding the chemical name prior to the final rule published on (INSERT PUBLICATION DATE OF FINAL RULE) and effective on October 1, 2003, may continue to be marked on packagings in place of the proper shipping names revised in the (INSERT PUBLICATION DATE OF FINAL RULE) final rule.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 172.101, paragraph (c)(15) would be revised, and the Hazardous Materials Table would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(15) Unless a hydrate is specifically listed in the Table, a proper shipping name for the equivalent anhydrous substance may be used, if the hydrate meets the same hazard class or division, subsidiary risk(s) and packing group.

* * * * *

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§ 172.101 Hazardous Materials Table

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas.	2.2	UN3353		2.2	133	155	166	166	75 kg	150 kg	A.	
	Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic.*	1.4G	UN0503	II	1.4G		166	166	166	Forbidden	75 kg	02	24E
	Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic.*	9	UN3268	III	9		166	166	166	25 kg	100 kg	A.	
D	Ammonium nitrate fertilizers.	5.1	NA2072	III	5.1	7, IB8	152	213	240	25 kg	100 kg	B	46, 59, 60, 117
	Ammonium nitrate fertilizers; *uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90 percent ammonium nitrate and not more than 0.2 percent combustible material (including organic material calculated as carbon), or with more than 70 percent but less than 90 percent ammonium nitrate and not more than 0.4 percent total combustible material.*	5.1	UN2067	III	5.1	52,IB8, IP3	152	213	240	25 kg	100 kg	B	48, 59, 60, 117

A, W	Ammonium nitrate fertilizers: *uniform non-segregating mixtures of nitrogen/phosphate or nitrogen/potash types or complete fertilizers of nitrogen/phosphate/potash type, with not more than 70 percent ammonium nitrate and not more than 0.4 percent total added combustible material or with not more than 45 percent ammonium nitrate with unrestricted combustible material.*	9	UN2071	III	9	132, IB8	155	213	240	200 kg	200 kg	A.	
	Ammonium nitrate mixed fertilizers.	5.1	NA2069	III	5.1	10, IB8	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
	Ammonium nitrate, *with not more than 0.2 percent of combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.*	5.1	UN1942	III	5.1	A1, A29, IB8, IP3.	152	213	240	25 kg	100 kg	A	48, 59, 60, 116
	Boron trifluoride, compressed.	2.3	UN1008		2.3	2, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
	Calcium hypochlorite, hydrated *or* Calcium hpyochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water.*	5.1	UN2880	II	5.1	IB8, IP2, IP4, W9.	152	212	240	5 kg	25 kg	D	4, 5, 25, 48, 56, 58, 69
	Carbonyl fluoride, compressed.	2.3	UN2417		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
+	Chlorodinitrobenzenes	6.1	UN1577	II	6.1	IB8, IP2, IP4, T7, TP2.	None	212	242	25 kg	100 kg	A	91
	Cigar and cigarette lighters, charged with fuel, see Lighters for cigars, cigarettes, *etc.*												
	Cresols	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B.	
	Diborane, compressed	2.3	UN1911		2.3, 2.1	1	None	302	None	Forbidden	Forbidden	D	40, 57
	Diethylamino-propylamine	3	UN2684	III	3, 8	B1, IB3, T4, TP1.	150	203	242	5 L	60 L	A.	
	Dimethylcyclo-hexylamine	8	UN2264	II	8, 3	B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	40
	Ethyl methacrylate	3	UN2277	II	3	IB2, T4, TP1.	150	202	242	5 L	60 L	B.	
	Ethylbutyl acetate	3	UN1177	III	3	B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
	Ethylene, compressed	2.1	UN1962		2.1		306	304	302	Forbidden	150 kg	E	40
	Hexafluoroethane, compressed *or* Refrigerant gas R 116.	2.2	UN2193		2.2		306	304	314, 315	75 kg	150 kg	A.	

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§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass.*	8	UN2029	I	8, 3, 6.1	A3, A6, A7, A10, B7, B16, B53.	None	201	243	Forbidden	2.5 L	D	21, 40, 42, 100
	Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not less than 37 percent but not more than 64 percent hydrazine, by mass.*	8	UN2030	II	8, 6.1	B16, B53, IB2, T7, TP2, TP13.	None	202	243	Forbidden	30 L	D	40, 42, 82
	Lighters *or* Lighter refills *cigarettes, containing flammable gas.*	2.1	UN1057		2.1	N10	None	21, 308	None	1 kg	15 kg	B	40
	Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid.	8	UN2680	II	8	IB8, IP2, IP4.	154	212	240	15 kg	50 kg	A.	
	Nitrogen trifluoride, compressed.	2.2	UN2451		2.2, 5.1		None	302	None	75 kg	150 kg	D	40
	Phosphoric acid, liquid or solid.	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1.	154	203	241	5 L	60 L	A.	
	Phosphorus pentafluoride, compressed.	2.3	UN2198		2.3, 8	2, B9, B14	None	302, 304	314, 315	Forbidden	Forbidden	D	40
	Propyl chloride	3	UN1278	II	3	IB2, IP8, N34, T7, TP2.	None	202	242	Forbidden	60 L	E.	
	Refrigerating machines, *containing non-flammable, non-toxic liquefied gas or ammonia solution (UN2672).*	2.2	UN2857		2.2	A53	306, 307	306	306, 307	450 kg	450 kg	A.	
	Silane, compressed	2.1	UN2203		2.1		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	Silicon tetrafluoride, compressed.	2.3	UN1859		2.3, 8	2	None	302	None	Forbidden	Forbidden.	D	40
	Tetrachloroethane	6.1	UN1702	II	6.1	IB2, N36, T7, TP2.	None	202	243	5 L	60 L	A	40
	Tetrafluoromethane, compressed *or* Refrigerant gas R 14.	2.2	UN1982		2.2		None	302	None	75 kg	150 kg	A.	
D	Uranium nitrate hexahydrate solution.	7	UN2980		7, 8		421, 427	415, 416, 417.	415, 416, 417.			D	95
	Xenon, compressed	2.2	UN2036		2.2		306	302	None	75 kg	150 kg	A.	
	Xylidines, solution	6.1	UN1711	II	6.1	IB2, T7, TP2.	None	202	243	5 L	60 L	A.	
	[ADD] *Accumulators, pressurized, pneumatic or hydraulic (containing non-flammable gas), see* Articles pressurized, pneumatic *or* hydraulic *(containing non-flammable gas).*												

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
I	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	1.4G	UN0503	II	1.4G	161	None	62	None	Forbidden	75kg	02.	
	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	9	UN3268	III	9	160	166	166	166	25 kg	100 kg	A.	
	Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives.*	5.1	UN3375	II	5.1	52, 147	None	214	214	Forbidden	Forbidden	D	48, 59, 60, 124
	Ammonium nitrate based fertilizer.	5.1	UN2067	III	5.1	52, 150, IB8, IP3.	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
A, W	Ammonium nitrate based fertilizer.	9	UN2071	III	9	132, IB8	155	213	240	200 kg	200 kg	A.	
	Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance.*	5.1	UN1942	III	5.1	A1, A29, IB8, IP3.	152	213	240	25 kg	100 kg	A	48, 59, 60, 116
	Boron trifluoride	2.3	UN1008		2.3	2, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 16 percent water.*	5.1	UN2880	II	5.1	IB8, IP2, IP4, W9.	152	212	240	5 kg	25 kg	D	4, 5, 25, 48, 56, 58, 69
	Carbonyl fluoride	2.3	UN2417		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
+	Chlorodinitrobenzenes, liquid.	6.1	UN1577	II	6.1	IB2, T11, TP2, TP27.	None	202	243	5 L	60 L	B	91
+	Chlorodinitrobenzenes, solid.	6.1	UN1577	II	6.1	IB8, IP4, T7, TP2.	None	212	242	25 kg	100 kg	A	91
	1-Chloropropane	3	UN1278	II	3	IB2, N34, T7, TP2.	None	202	242	Forbidden	60 L	E.	
	Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40
	Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1, 3, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40, 125

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§ 172.101 Hazardous Materials Table—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Cigar and cigarette lighters, charged with fuel, see Lighters *or* Lighter refills *containing flammable gas.*												
	Cresols, liquid	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B.	
	Cresols, solid	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B.	
	Diborane	2.3	UN1911		2.3, 2.1	1	None	302	None	Forbidden	Forbidden	D	40, 57
	3-Diethylamino-propylamine.	3	UN2684	III	3, 8	B1, IB3, T4, TP1.	150	203	242	5 L	60 L	A.	
	N, N-Dimethylcyclohexylamine.	8	UN2264	II	8, 3	B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	40
	Ethyl methacrylate, stabilized.	3	UN2277	II	3	IB2, T4, TP1.	150	202	242	5 L	60 L	B.	
	2-Ethylbutyl acetate	3	UN1177	III	3	B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
	Ethylene	2.1	UN1962		2.1	306	304	302	Forbidden	150kg	E	40.	
	Ethylene glycol diethyl ether.	3	UN1153	II	3	IB2, T4, TP1.	150	202	242	5 L	60 L	A.	
A, I, W	Fibers, animal *or* Fibers, vegetable *burnt, wet or damp.*	4.2	UN1372	III	4.2		151	213	240	Forbidden	Forbidden	A.	
I, W	Fibers, vegetable, dry	4.1	UN3360		4.1	137	151	213	240	No limit	No limit	A.	
	Hexafluoroethane, *or* Refrigerant gas R 116.	2.2	UN2193		2.2		306	304	314, 315	75 kg	150 kg	A.	

	Hydrazine, anhydrous	8	UN2029	I	8, 3, 6.1	A3, A6, A7, A10, B7, B16, B53.	None	201	243	Forbidden	2.5 L	D	40, 125
	Hydrazine aqueous solution, *with more than 37% hydrazine, by mass.*	8	UN2030	I	8, 6.1	151	None	201	243	Forbidden	2.5 L	D	40
				II	8, 6.1		None	202	243	Forbidden	30 L	D	40
				III	8, 6.1		154	203	241	5 L	60 L	D	40
	Hydrobromic acid, with more than 4 percent hydrobromic acid 9.	8	UN1788										
	Lighters *or* Lighter refills *containing flammable gas.*	2.1	UN1057		2.1	N10	None	21, 308	None	1 kg	15 kg	B	40
	Lithium hydroxide	8	UN2680	II	8	IB8, IP2, IP4.	154	212	240	15 kg	50 kg	A.	
	2-Methylbutanal	3	UN3371	II	3	IB2, T4, TP1.	150	202	242	5 L	60 L	B.	
	Nitrogen trifluoride	2.2	UN2451		2.2, 5.1		None	302	None	75 kg	150 kg	D	40
	4-Nitrophenylhydrazine, *with not less than 30% water, by mass.*	4.1	UN3376	I	4.1	162, A8, A19, A20, N41.	None	211	None	Forbidden	Forbidden	E	36
G	Organometallic compound, solid, water-reactive, flammable, n.o.s.	4.3	UN3372	I	4.3, 4.1	IB4, N40	None	211	242	Forbidden	15 kg	E	40
				II	4.3, 4.1	IB4	151	212	242	15 kg	50 kg	E	40
				III	4.3, 4.1	IB6	151	213	241	25 kg	100 kg	E	40
	Phosphoric acid, liquid	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1.	154	203	241	5 L	60 L	A.	
	Phosphoric acid, solid	8	UN1805	III	8	IB8, IP3, T3, TP1.	154	213	240	25 kg	100 kg	A.	
	Phosphorus	2.3	UN2198		2.3, 8	2, B9, B14	None	302, 304	314, 315	Forbidden	Forbidden	D	40
	Propyl chloride see 1-Chloropropane.												
A, W	Rags, oily	4.2	UN1856	III	4.2		151	213	240	Forbidden	Forbidden	A.	

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§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	(8) Packaging (§ 173.***) Non-bulk	(8) Packaging (§ 173.***) Bulk	(9) Quantity limitations Passenger aircraft/rail	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage Location	(10) Vessel stowage Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Refrigerating machines, *containing non-flammable, non-toxic, liquefied or compressed gas or ammonia solution (UN2672).*	2.2	UN2857		2.2	A53	306, 307	306	306, 307	450 kg	450 kg	A.	
	Rubber scrap *or* shoddy, *powdered or granulated, not exceeding 840 microns and rubber content exceeding 45%.*	4.1	UN1345	II	4.1	IB8, IP2, IP4.	151	212	240	15 kg	50 kg	A.	
	Silane	2.1	UN2203		2.1		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	Silicon tetrafluoride	2.3	UN1859		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
	Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass.*	4.1	UN3369	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	1,1,2,2-Tetrachloroethane	6.1	UN1702	II	6.1	IB2, N36, T7, TP2.	None	202	243	5 L	60 L	A	40
	Tetrafluoromethane, *or* Refrigerant gas R 14.	2.2	UN1982		2.2		None	302	None	75 kg	150 kg	A.	
A, I, W	Textile waste, wet	4.2	UN1857	III	4.2		151	213	240	Forbidden	Forbidden	A.	
	Trinitrobenzene, wetted, *with not less than 10% water by mass.*	4.1	UN3367	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	Trinitrobenzoic acid, wetted, *with not less than 10% water by mass.*	4.1	UN3368	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass.*	4.1	UN3365	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36

	Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass.*	4.1	UN3364	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass.*	4.1	UN3366	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
D	Uranyl nitrate hexahydrate solution.	7	UN2980		7, 8		421, 427	415, 416, 417.	415, 416, 417.			D	95
	Urea nitrate, wetted, *with not less than 10% water by mass.*	4.1	UN3370	I	4.1	162, A8, A19, N41, N83.	None	211	None	0.5 kg	0.5 kg	E	36
A, I, W	Wool waste, wet	4.2	UN1387	III	4.2		151	213	240	Forbidden	Forbidden	A.	
	Xenon	2.2	UN2036		2.2		306	302	None	75 kg	150 kg	A.	
	Xylidines; liquid	6.1	UN1711	II	6.1	IB2, T7, TP2.	None	202	243	5 L	60 L	A.	
	[REVISE]												
	Adhesives, *containing a flammable liquid.*	3	UN1133	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
	Aerosols, *corrosive, Packaging Group II or III, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 8	153, A34	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, *flammable, (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	153, N82	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, *flammable, n.o.s. (engine starting fluid) (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	153, N82	306	304	None	Forbidden	150 kg	A	48, 87, 126
	Aerosols, *non-flammable, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2	153	306, 307	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, poison, *each not exceeding 1 L capacity.*	2.2	UN1950		2.2	153	306	None	None	Forbidden	Forbidden	A	48, 87, 126
	Alcoholic beverages	3	UN3065	II	3	24, 149, B1, IB2, T4, TP1.	150	202	242	5 L	60 L	A	
	Alkylsulfuric acids	8	UN2571	II	8	B2, IB2, T8, TP2, TP12, TP13, TP28.	154	202	242	1 L	30 L	C	14

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§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia.*	8	UN2672	III	8	IB3, IP8, T7, TP1.	154	203	241	5 L	60 L	A	40, 85
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.2G	UN0015	II	1.2G			62	None	Forbidden	Forbidden		8E, 17E, 20E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.3G	UN0016	II	1.3G			62	None	Forbidden	Forbidden		8E, 17E, 20E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.4G	UN0303	II	1.4G			62	None	Forbidden	75 kg		7E, 8E, 14E, 15E, 17E
	Arsenic compounds, liquid, n.o.s. *inorganic, including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1556	I	6.1	T14, TP2, TP9, TP13, TP27.	None	201	243	1 L	30 L	B	40
				II	6.1	IB2, T11, TP2, TP13, TP27.	None	202	243	5 L	60 L	B	40
				III	6.1	IB3, T7, TP2, TP28.	153	203	241	60 L	220 L	B	40
	Asbestos	9	NA2212	III	9	156, IB8, IP2, IP4.	155	216	240	200 kg	200 kg	A	34, 40
	Barium azide, wetted *with not less than 50 percent water, by mass.*	4.1	UN1571	I	4.1, 6.1	162, A2	None	182	None	Forbidden	0.5	D	28
	Battery fluid, alkali	8	UN2797	II	8	B2,IB2, N6, T7, TP2, TP28.	154	202	242	1 L	30 L	A	26

I	Blue asbestos (*Crocidolite*) *or* Brown asbestos (*amosite, mysorite*).	9	UN2212	II	9	156, IB8, IP2, IP4.	155	216	240	Forbidden	Forbidden	A	34, 40
	5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene.	4.1	UN2956	III	4.1	159	None	223	None	Forbidden	Forbidden		D12, 25, 48, 127
	Chemical kits	9	UN3316		9	15	161	161	None	10 kg	10 kg	A	
	Chloroacetic acid, molten	6.1	UN3250	II	6.1, 8	IB1, T7, TP3, TP28.	None	202	243	Forbidden	Forbidden	C	40
	4-Chloro-o-toluidine hydrochloride.	6.1	UN1579	III	6.1	IB8, IP3, T4, TP1.	153	213	240	100 kg	200 kg	A	
	Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*).	3	UN1139	II	3	149,IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	Dichlorodimethyl ether, symmetrical.	6.1	UN2249	I	6.1, 3		None	201	243	Forbidden	Forbidden		40
	Dipicryl sulfide, wetted *with not less than 10 percent water, by mass.*	4.1	UN2852	I	4.1	162, A2, N41, N84.	None	211	None	Forbidden	0.5 kg	D	28
G	Environmentally hazardous substances, liquid, n.o.s.	9	UN3082	III	9	8, 146, IB3, T4, TP1, TP29.	155	203	241	No limit	No limit	A	
G	Environmentally hazardous substances, solid, n.o.s.	9	UN3077	III	9	8, 146, B54, IB8, N20.	155	213	240	No limit	No limit	A	
	Extracts, aromatic, liquid	3	UN1169	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	Extracts, flavoring, liquid	3	UN1197	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	First aid kits	9	UN3316		9	15	161	161	None	10 kg	10 kg	A	
W	Fish meal, stabilized *or* Fish scrap, stabilized.	9	UN2216	III		155, IB8	155	218	218	No limit	No limit	B	88, 122, 128
	Fish meal, unstabilized *or* Fish scrap, unstabilized.	4.2	UN1374	II	4.2	155, A1, A19, IB8, IP2.	None	212	241	15 kg	50 kg	B	88, 122, 128

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§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Flammable liquids, n.o.s	3	UN1993	I	3	T11, TP1, TP27.	150	201	243	1 L	30 L	E	
	Hydrobromic acid, *with not more than 49 percent hydrobromic acid.* (Revision to PG III entry only).	8	UN1788	III	8	IB3, T4, TP1.	154	203	241	5 L	60 L	C	8
	Hydrocarbons, liquids, n.o.s.	3	UN3295	I	3	T11, TP1, TP8, TP28.	150	201	243	1 L	30 L	E	
	Hydrogen peroxide and peroxacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid.*	5.1	UN3149	II	5.1, 8	145, A2, A2, A6, B53, IB2, IP5, T7, TP2, TP6, TP24.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Iodine pentafluoride	5.1	UN2495	I	5.1, 6.1, 8		None	205	243	Forbidden	Forbidden	D	25, 40, 66, 90
	Isosorbide dinitrate mixture *with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate.*	4.1	UN2907	II	4.1	IB6, IP2, N85.	None	212	None	15 kg	50 kg	E	
	Lithium batteries, contained in equipment.	9	UN3091	II	9	29, A54, A55.	185	185	None	5 kg	5 kg	A	
	Lithium batteries packed with equipment.	9	UN3091	II	9	29, A54, A55.	185	185	None	5 kg gross	35 kg gross	A	
	Lithium battery	9	UN3090	II	9	29, A54, A55.	185	185	None	5 kg gross	35 kg gross	A	
	Medicine, liquid, toxic, n.o.s.	6.1	UN1851	II	6.1	36	153	202	243	5 L	5 L	C	40
				III	6.1	36	153	203	241	5 L	5 L	C	40
	Methacrylic acid, stabilized.	8	UN2531	II	8	IB3, T4, TP1, TP18, TP30.	154	202	242	1 L	30 L	C	40

	Methyl bromide	2.3	UN1062		2.3	3, B14, T50	None	193	314, 315	Forbidden	Forbidden	D	40
	Morpholine	8	UN2054	I	8,3	T10, TP2	None	201	243	.5 L	2.5 L	A	
+	Motor fuel anti-knock mixtures.	6.1	UN1649	I	6.1	14, 151, B9, B90, T14, TP2, TP13.	None	201	244	Forbidden	30 L	D	25, 40
G	Organic peroxide type F, solid temperature controlled.	5.2	UN3120	II	5.2	IB52, T23	None	225	225	Forbidden	Forbidden	D	2
	Organochlorine pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C.*	6.1	UN2995	III	6.1, 3	B1, IB3, T7, TP2, TP28.	153	203	242	60 L	220 L	A	40
	Organophosphorus compound, toxic, flammable, n.o.s.	6.1	UN3279	I	6.1, 3	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	40
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base.*	3	UN1263	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
	Paint related *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
	Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *with more than 10 percent but not more than 20 percent PETN, by mass.*	4.1	UN3344	II	4.1	118, N85	None	214	None	Forbidden	Forbidden	E	
	Perfumery products *with flammable solvents.*	3	UN1266	II	3	149, IB2, T4, TP1, TP8.	150	202	242	15 L	60 L	B	
	Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution.	4.2	UN1381	I	4.2, 6.1	B9, B26, N34, T9, TP3, TP31.	None	188	243	Forbidden	Forbidden	E	

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§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Piperazine	8	UN2579	III	8	IB8, IP3, T4, TP1, TP30.	154	213	240	25 kg	100 kg	A	12
	Polyester resin kit	3	UN3269		3	40, 149	152	225	None	5 kg	5 kg	B	
	Potassium	4.3	UN2257	I	4.3	A19, A20, B27, IB1, IP1, N6, N34, T9, TP3, TP7, TP31.	None	211	244	Forbidden	15 kg	D	
	Potassium sodium alloys	4.3	UN1422	I	4.3	A19, B27, IB4, IP1, N34, N40, T9, TP3, TP7, TP31.	None	211	244	Forbidden	15 kg	D	
	Printing ink, *flammable* or Printinig ink related material (*including printing ink thinning or reducing compound*), *flammable*.	3	UN1210	II	3	149, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
D	Radioactive material, fissile, n.o.s.	7	UN2918		7	A56	453	417	417			A	95, 105
I	Radioactive material, low specific activity (LSA–I) *non fissile or fissile-excepted.*	7	UN2912		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
I	Radioactive material, low specific activity (LSA–II) *non fissile or fissile-excepted.*	7	UN3321		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
I	Radioactive material, low specific activity (LSA–II) *non fissile or fissile excepted.*	7	UN3322		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
D	Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.	7	UN2912		7	A56, T5, TP4.	421, 428	427	427			A	95, 129
D	Radioactive material n.o.s	7	UN2982		7	A56	421, 428	415, 416	415, 416			A	95

D	Radioactive material, special form, n.o.s.	7	UN2974		7	A56	421, 424	415, 416	415, 416			A	95
D	Radioactive material, surface contaminated object *or* Radioactive material, SCO.	7	UN2913		7	A56	421, 424, 426.	427	427			A	95
D	Radioactive material surface contaminated objects (SCO–I *or* SCO–II) *non fissile or fissile-excepted.*	7	UN2913		7	A56	421, 422, 428.	427	427			A	95
I	Radioactive material, transported under special arrangement, *non fissile or fissile excepted.*	7	UN2919		7	A56, 139						A	95, 105
I	Radioactive material, transported under special arrangement, fissile.	7	UN3331		7	A56, 139						A	95, 105
I	Radioactive material, Type A package, fissile *non-special form.*	7	UN3327		7	A56, W7, W8.	453	417	417			A	95, 105, 131
I	Radioactive material, Type A package *non-special form, non fissile or fissile-excepted.*	7	UN2915		7	A56, W7, W8.		415	415			A	95, 130
I	Radioactive material, Type A package, special form *non fissile or fissile-excepted.*	7	UN3332		7	A56, W7, W8.		415, 476	415, 476			A	95
I	Radioactive material, Type A package, special form, fissile.	7	UN3333		7	A56, W7, W8.	453	417, 476	417, 476			A	95, 105
I	Radioactive material, Type B(M) package, fissile.	7	UN3329		7	A56	453	417	417			A	95, 105
I	Radioactive material, Type B(M) package *non fissile or fissile-excepted.*	7	UN2917		7	A56		416	416			A	95, 105
I	Radioactive material, Type B(U) package, fissile.	7	UN3328		7	A56	453	417	417			A	95, 105
I	Radioactive material, Type B(U) package *non fissile or fissile-excepted.*	7	UN2916		7	A56		416	416			A	95, 105
I	Radioactive material, uranium hexafluoride *non fissile or fissile-excepted.*	7	UN2978		7, 8		423	420, 427	420, 427			A	95, 132
	Radioactive material, uranium hexafluoride, fissile.	7	UN2977		7, 8		453	417, 420	417, 420			A	95, 132
	Resin solution, *flammable*	3	UN1866	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
	Rubber solution	3	UN1287	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	

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§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Self-reactive liquid type F	4.1	UN3229	II	4.1	T23	None	114	None	10 L	25L	D	61
	Silver picrate, wetted *with not less than 30 percent water, by mass.*	4.1	UN1347	I	4.1	23	None	211	None	Forbidden	Forbidden	D	28, 36
	Sludge, acid	8	UN1906	II	8	A3, A7, B2, IB2, N34, T8, TP2, TP12, TP28.	None	202	242	Forbidden	30 L	C	14
	Sodium	4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP3, TP7, TP31, TP46.	None	211	244	Forbidden	15 kg	D	
D	Sulfur, molten	9	NA2448	III	9	30, IB3, T1, TP3.	None	213	247	Forbidden	Forbidden	C	61
I	Sulfur, molten	4.1	UN2448	III	4.1	30, IB1, T1, TP3.	None	213	247	Forbidden	Forbidden	C	74
	Tars, liquid *including road asphalt and oils, bitumen and cut backs.*	3	UN1999	II	3	149, B13, IB2, T3, TP3, TP29.	150	202	242	5 L	60 L	B	
D	Thorium metal, pyrophoric	7	UN2975		7, 4.2	A56	None	418	None			D	95
D	Thorium nitrate, solid	7	UN2976		7, 5.1		None	419	None	Forbidden	15 kg	A	95
D	Uranium hexafluoride, *fissile excepted or non-fissile.*	7	UN2978		7, 8		423	420, 427	420, 427			A	95, 132
D	Uranium hexafluoride, fissile (*with more than 1 percent U–235*).	7	UN2977		7, 8		453	417, 420	417, 420			A	95, 132
D	Uranium metal, pyrophoric	7	UN2979		7, 4.2	A56	None	418	None			D	95
D	Uranyl nitrate, solid	7	UN2981		7, 5.1		None	419	None	Forbidden	15 kg	A	95

	Urea nitrate, wetted *with not less than 20 percent water, by mass.*	4.1	UN1357	I	4.1	23, 39, A5, A19, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Vehicle, flammable gas powered.	9	UN3166		9	135, 157	220	220	220	Forbidden	No limit	A	
	Vehicle, flammable liquid powered.	9	UN3166		9	135, 157	220	220	220	No limit	No limit	A	
I	White asbestos (*chrysotile, actinolite, anthophyllite, tremolite*).	9	UN2590	III	9	156, IB8, IP2, IP3.	155	216	240	200 kg	200 kg	A	34, 40
	Wood preservatives, liquid	3	UN1306	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	

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10. In Appendix B to § 172.101, paragraphs 4. and 5. would be revised and the List of Marine Pollutants would be amended by removing 5 entries, and adding 2 entries in appropriate alphabetical order to read as follows:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

4. If a material is not listed in this appendix and meets the criteria for a marine pollutant as provided in Chapter 2.10 of the IMDG Code, "Guidelines for the Identification of Harmful Substances in Packaged Form" (incorporated by reference; see § 171.7 of this subchapter), the material may be transported as a marine pollutant in accordance with the applicable requirements of this subchapter.

5. If a material listed in this appendix does not meet the criteria for a marine pollutant as provided in Chapter 2.10 of the IMDG Code, "Guidelines for the Identification of Harmful Substances in Packaged Form" (incorporated by reference; see § 171.7 of this subchapter), it may be excepted from the requirements of this subchapter as a marine pollutant if that exception is approved by the Associate Administrator.

* * * * *

LIST OF MARINE POLLUTANTS

S.P.M. (1)	(2)
[Remove:]	
	Marine pollutant
	Alkylbenzenesulphonates, branched and straight chain.
	Alkylphenols, liquid, n.o.s. (*including C2–C12 homologues*).
	Alkylphenols, solid, n.o.s. (*including C2–C12 homologues*).
	Chlorophenols, liquid.
	Chlorophenols, solid.
[Add:]	
. .	. . . . .
	Alkybenzenesulphonates, branched and straight chain (*excluding C11–C13 straight chain or branched chain homologues*).
. .	. . . . .
	Decyl acrylate.
. .	. . . . .

11. In § 172.102:

a. In paragraph (c)(1), Special Provisions 15, 30, 52, 130 and 132 would be revised; Special Provisions 7, 10 and 133 would be removed; and Special Provisions 145, 146, 147, 149, 150, 151, 153, 155, 156, 157, 159, 160, 161 and 162 would be added.

b. In paragraph (c)(2), Special Provisions A54, A55 and A56 would be added.

c. In paragraph (c)(4), the text would be revised; in Table 1, Special Provision IB3 would be revised; in Table 2, the Table heading would be revised, 1 entry would be removed, 4 entries would be added, and 1 entry would be revised; and in Table 3, Special Provision IP8 would be added.

d. In paragraph (c)(5), Special Provisions N83, N84 and N85 would be added.

e. In paragraph (c)(7)(iii), Portable Tank Code T23 would be revised by removing 2 entries, adding 4 entries, and revising 2 entries.

f. In paragraph (c)(7)(viii), Special Provision TP3 would be revised.

The additions and revisions would read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

15 This entry applies to "Chemical kits" and "First aid kits" containing one or more compatible items of hazardous materials in boxes, cases, *etc.* that are used for medical, analytical, diagnostic or testing purposes. For transportation by aircraft, materials forbidden for transportation by passenger aircraft or cargo aircraft may not be included in the kits. The quantity of hazardous materials in any inner packaging must not exceed the limited quantity inner packaging limits specified for each hazardous material in the applicable limited quantity sections (§ 173.150 through § 173.155, and § 173.306) in Part 173 of this subchapter. Each package must conform to the packaging requirements of Subpart B of Part 173 and must not exceed 30 kg (66 lbs.) gross weight. Chemical and first aid kits are excepted from labeling, unless offered or intended for transportation by aircraft, from the specification packaging requirements of this subchapter when packaged in combination packagings, and from the placarding requirements of this subchapter. Chemical and first aid kits may be transported in accordance with the consumer commodity and ORM exceptions in § 173.156, provided they meet all required conditions. Kits that are carried on board transport vehicles for first aid or operating purposes are not subject to the requirements of this subchapter.

* * * * *

30 Sulfur is not subject to the requirements of this subchapter if transported in a non-bulk packaging or if formed to a specific shape (for example, prills, granules, pellets, pastilles, or flakes). A bulk packaging is not subject to the placarding requirements of subpart F of this part, if it is marked with the appropriate identification number as required by subpart D of this part. Molten sulfur must be marked as required by § 172.325 of this subchapter.

* * * * *

52 This entry may only be used for substances that do not exhibit explosive properties of Class 1 (explosive) when tested in accordance with Test Series 1 and 2 of Class 1 (explosive) in the UN Manual of Tests and Criteria, Part I (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

130 For other than a dry battery specifically covered by another entry in the § 172.101 Table, "Batteries, dry" are not subject to the requirements of this subchapter when they are securely packaged and offered for transportation in a manner that prevents the dangerous evolution of heat (for example, by the effective insulation of exposed terminals) and protects against short circuits.

* * * * *

132 This entry may only be used for uniform, ammonium nitrate-based fertilizer mixtures, containing nitrogen, phosphate or potash, meeting the following criteria: (1) Contains not more than 70% ammonium nitrate; and (2) Contains not more than 0.4% total combustible, organic material calculated as carbon or with not more than 45% ammonium nitrate and unrestricted combustible material. Fertilizers within these composition limits are only subject to the requirements of this subchapter when transported by air or sea, and are not subject to the requirements of this subchapter if shown by a trough test, as specified in the UN Manual of Tests and Criteria, Part III, sub-section 38.2 (incorporated by reference; see § 171.7 of this subchapter), not to be liable to self-sustaining decomposition.

* * * * *

145 This entry applies to formulations that neither detonate in the cavitated state nor deflagrate in laboratory testing, show no effect when heated under confinement, exhibit no explosive power, and are thermally stable (that is the self-accelerating decomposition temperature (SADT) at 60 °C (140 °F) or higher for a 50 kg (110.2 lbs.) package). Formulations not meeting these criteria must be transported under the provisions applicable to the appropriate entry in the Organic Peroxide Table in § 173.225 of this subchapter.

146 This description may be used for a material that poses a hazard to the environment but does not meet the definition for a hazardous waste or a hazardous substance, as defined in § 171.8 of this subchapter, or any hazard class as defined in Part 173 of this subchapter, if it is designated as environmentally hazardous by the Competent Authority of the country of origin, transit or destination.

147 This entry applies to non-sensitized emulsions, suspensions and gels consisting primarily of a mixture of ammonium nitrate and a fuel intended to produce a Type E blasting explosive only after further processing. The mixture typically has the following composition: 60—85% ammonium nitrate; 5—30% water; 2—8% fuel; 0.5—4% emulsifier or thickening agent; 0—10% soluble flame suppressants; and trace additives. Other inorganic nitrate salts may replace part of the ammonium nitrate. These substances may not be classified and transported unless approved by the Associate Administrator.

* * * * *

149 When transported as a limited quantity, the maximum net capacity for inner packagings may be increased to 5 L (1.3 gallons).

150 This description may be used only for uniform mixtures of fertilizers containing ammonium nitrate as the main ingredient within the following composition limits:

a. Not less than 90% ammonium nitrate with not more than 0.2% total combustible, organic material calculated as carbon, and with added matter, if any, that is inorganic and inert when in contact with ammonium nitrate; or

b. Less than 90% but more than 70% ammonium nitrate with other inorganic materials, or more than 80% but less than 90% ammonium nitrate mixed with calcium carbonate and/or dolomite, and not more than 0.4% total combustible, organic material calculated as carbon; or

c. Ammonium nitrate-based fertilizers containing mixtures of ammonium nitrate and ammonium sulphate with more than 45% but less than 70% ammonium nitrate, and not more than 0.4% total combustible, organic material calculated as carbon such that the sum of the percentage of compositions of ammonium nitrate and ammonium sulphate exceeds 70%.

151 If this material meets the definition of a flammable liquid in § 173.120 of this subchapter, a flammable liquid label is also required and the basic description on the shipping paper must indicate the Class 3 subsidiary hazard.

* * * * *

153 The following applies to aerosols:

a. Division 2.1 applies when the aerosol is flammable according to § 173.306(i) of this subchapter.

b. Division 2.2 applies when the contents of the aerosol do not meet the above criteria for Division 2.1, or Division 2.3.

c. Gases of Division 2.3 may not be used in an aerosol dispenser.

d. When the contents are classified as Division 6.1, or Class 8, the aerosol must have a subsidiary risk of Division 6.1 or Class 8.

e. Aerosols with contents meeting the criteria for PG I and PG II for Division 6.1 or Class 8 are forbidden for transportation.

f. Aerosols must meet the definition for aerosols in § 171.8 of this subchapter.

* * * * *

155 Fish meal or fish scrap may not be transported if the temperature at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (41 °F) above the ambient temperature, whichever is higher.

156 Asbestos that is immersed or fixed in a natural or artificial binder material such as cement, plastic, asphalt, resins or mineral ore, and manufactured products containing asbestos are not subject to the requirements of this subchapter.

157 This entry includes hybrid electric vehicles powered by both an internal combustion engine and wet, sodium or lithium batteries, transported with one or more batteries installed. Vehicles containing an internal combustion engine must be described as "Vehicle, flammable gas powered," UN3166, or "Vehicle, flammable liquid powered," UN3166, as appropriate.

159 This material must be protected from direct sunshine and kept in a cool, well-ventilated place away from sources of heat.

160 This entry applies to articles that are used as life-saving vehicle air bag inflators, air bag modules or seat-belt pretensioners that contain Class 1 (explosive) materials or materials of other hazard classes. Air bag inflators and modules must be tested in accordance with Test series 6(c) of Part I of the UN Manual of Tests and Criteria (incorporated by reference; see § 171.7 of this subchapter), with no explosion of the device, no fragmentation of device casing or pressure vessel, and no projection hazard or thermal effect that would significantly hinder fire-fighting or other emergency response efforts in the immediate vicinity. If the air bag inflator unit satisfactorily passes the series 6(c) test, it is not necessary to repeat the test on the air bag module.

161 For domestic transport, air bag inflators or air bag modules that meet the criteria for a Division 1.4G explosive must be transported using the description, "Articles, pyrotechnic *for technical purposes,*" UN0431.

162 This material may be transported under the provisions of Division 4.1 only if it is so packed that at no time during transport will the percentage of diluent fall below the percentage that is stated in the shipping description.

(2) * * *

Code/Special Provisions

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A54 Lithium batteries or lithium batteries contained or packed with equipment that exceed 35 kg (77 pounds) gross weight may only be

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transported on cargo aircraft if approved by the Associate Administrator.

A55 Prototype lithium batteries and cells that are packed with not more than 24 cells or 12 batteries per packaging that have not completed the test requirements in Sub-section 38.3 of the UN Manual of Tests and Criteria (incorporated by reference; see § 171.7 of this subchapter) may be transported by cargo aircraft if approved by the Associate Administrator and provided the following requirements are met:

a. The cells and batteries must be transported in rigid outer packagings that conform to the requirements of part 178 of this subchapter at the Packing Group I performance level ; and

b. Each cell and battery must be protected against short circuiting, surrounded by cushioning material that is non-combustible and non-conductive, and be individually packed in an inner packaging that is placed inside an outer specification packaging.

A56 Radioactive material with a subsidiary hazard of Division 4.2, Packing Group I, must be transported by aircraft in Type B packages. Radioactive material with a subsidiary hazard of Division 2.1 is forbidden from transport on passenger aircraft.

* * * * *

(4) *Table 1, Table 2, and Table 3—IB Codes, Organic Peroxide IBC Code, and IP Special IBC Packing Provisions.*

These provisions apply only to transportation in IBCs. When no IBC code is assigned in the § 172.101 Table for a specific proper shipping name, an IBC may be authorized when approved by the Associate Administrator. When only certain types of IBCs are authorized in Table 2 (IBC Code IB52), alternative types of IBCs may be authorized when approved by the Associate Administrator. The letter "Z" shown in the marking code for composite IBCs must be replaced with a capital code letter designation found in § 178.702(a)(2) of this subchapter to specify the material used for the outer packaging. Tables 1, 2, and 3 follow:

TABLE 1.—IB CODES (IBC CODES)

IBC code	Authorized IBCs
IB3	*Authorized IBCs:* Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1 and 31HA2, 31HB2, 31HN2, 31HD2 and 31HH2). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized, except for UN2672 (also see Special Provision IP8 in Table 3 for UN2672).

TABLE 2.—ORGANIC PEROXIDE IBC CODE (IB52)

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
	REMOVE:				
3109	Di-tert-butyl peroxide, not more than 52% in diluent type A.	31A 31HA1	1250 1000		
	ADD:.				
3109	Dicumyl peroxide, less than or equal to 100%.	31A 31HA1	1250 1000		
3109	Di-tert-butyl peroxide, not more than 52% in diluent type B.	31A 31HA1	1250 1000		
	Peroxyacetic acid, with not more than 26% hydrogen peroxide.	31A 31HA1	1500 1500		
	Peroxyacetic acid, type F, stabilized	31A 31HA1	1500 1500		
	REVISE:				
3110	Dicumyl peroxide, less than or equal to 100%.	31A	2000		

* * * * *

TABLE 3.—IP CODES

IP8 Ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2 and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydraulic test specified in §178.814 of this subchapter at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).

(5) * * *

Code/Special Provisions

* * * * *

N83 This material may not be transported in quantities of more than 11.5 kg (25.4 lbs) per package.

N84 The maximum quantity per package is 500 g (1.1 lbs.).

N85 Packagings certified at the Packing Group I performance level may not be used.

* * * * *

(7) * * *

(iii) * * *

PORTABLE TANK CODE T23

[Portable tank code T23 applies to self-reactive substances of Division 4.1 and organic peroxides of Division 5.2.]

UN No.	Hazardous material	Minimum pressure (bar)	Minimum test thickness (min-reference steel) See...	Bottom opening requirements See...	Pressure-relief requirements See...	Filling limits	Control temperature	Emer temperature
3119	REMOVE: tert-Butyl peroxyacetate, not more than 32% in diluent type B.	4	§178.274(d)(2) ..	§178.275(d)(3) ..	§178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).	+30 °C	+35 °C
3120	Organix peroxide, Type F, solid, temperature controlled.	4	§178.274(d)(2) ..	§178.275(d)(3) ..	§178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).	As approved by Assoc. Admin.	As approved by Assoc. Admin.
	ADD:							
3109	Dicumyl peroxide, less than or equal to 100% in diluent type B.	4	§178.274(d)(2) ..	§178.275(d)(3) ..	§178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).		
3119	tert-Butyl peroxyacetate, not more than 32% in diluent type B.	4	§178.274(d)(2) ..	§178.275(d)(3) ..	§178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).	+30 °C	+35 °C
	Peroxyacetic acid, distilled, stabilized, not more than 41%.	4	§178.274(d)(2) ..	§178.275(d)(3) ..	§178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).	+30	+35
3120	Organic peroxide Type F, solid, temperature controlled.	4	178.274(d)(2)	§178.275(d)(3) ..	§178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).	As approved by Assoc. Admin.	As approved by Assoc. Admin.
3110	REVISE:							
	Dicumyl peroxide, less than or equal to 100% with inert solids. Maximum quantity per portable tank 2,000 kg.	4	§178.274(d)(2) ..	§178.275(d)(3) ..	§178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).		

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PORTABLE TANK CODE T23—Continued

[Portable tank code T23 applies to self-reactive substances of Division 4.1 and organic peroxides of Division 5.2.]

UN No.	Hazardous material	Minimum pressure (bar)	Minimum test thickness (mm-reference steel) See...	Bottom opening requirements See...	Pressure-relief requirements See...	Filling limits	Control temperature	Emer temperature
3119	tert-Butyl peroxypivalate, not more than 27% in diluent type B.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	+5 °C	+10 °C

(viii) * * *

Code/Special Provisions

* * * * *

TP3 For materials transported under elevated temperatures, the maximum degree of filling is determined by the following:

$$\left(\text{Degree of filling} = 95\frac{d_t}{d_f}\right).$$

Where:

d_t is the density of the material at the maximum mean bulk temperature during transport; and d_f is the density of the material at the temperature in degrees celsius of the material during filling; and

* * * * *

12. In § 172.202, paragraphs (a)(2), (a)(5) and (b) would be revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(2) The hazard class or division number prescribed for the material, as shown in Column (3) of the § 172.101 Table. Except for combustible liquids, the subsidiary hazard class or subsidiary division number(s) must be entered in parentheses following the primary hazard class or division number. Subsidiary hazard(s) must be enclosed in parentheses following the primary hazard class or division number. The words "Class" or "Division" may be included preceding the primary and subsidiary hazard class or division numbers. The hazard class need not be included for the entry "Combustible liquid, n.o.s.";

* * * * *

(5) Except for empty packagings (see § 173.29 of this subchapter), cylinders for Class 2 materials and bulk packagings, the total quantity of hazardous materials covered by the description (by volume or mass, as appropriate) of each hazardous material bearing a different proper shipping name, UN number or packing group must be indicated together with the appropriate units of measurement (for example, 200 kgs). For Class 1 (explosive) materials, the quantity must be the net explosive mass. For shipments of packages in an overpack or transport unit (for example, freight container), this information must be provided for each hazardous material in each package within the overpack or transport unit. For hazardous materials transported in salvage packagings, an estimate of the quantity must be indicated. For cylinders for Class 2 materials and bulk packagings, indication of the total quantity must be shown (for example, "10 cylinders," "2 IBCs," or "1 cargo tank"). The number of packages and type of packages (for example, drum, box, jerrican, etc.) must also be indicated. Abbreviations may be used to specify the unit of measurement for the total quantity. Examples of descriptions of units of measure and the number and type of packagings include: "1 box, net mass, 30 kg" or "2 drums, gross mass, 200 kg."

(b) Except as provided in this subpart, the basic description specified in paragraphs (a)(1), (2), (3) and (4) of this section must be shown in sequence with no additional information interspersed. For example, "Cyclobutyl chloroformate, 6.1, (8,3), UN2744, PGII." Alternatively, the identification (ID) number may be listed first and the proper shipping name may be listed directly following the class and subsidiary risk. For example, "UN2744, 6.1, (8,3), Cyclobutyl chloroformate, PGII."

* * * * *

§ 172.203 [Amended]

13. In § 172.203, paragraphs (i)(1), (i)(2), (i)(3) and (i)(6) would be removed and paragraphs (i)(4) and (i)(5) would be redesignated (i)(1) and (i)(2), respectively.

14. In § 172.301, paragraph (a)(1) is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) * * *

(1) Except as otherwise provided by this subchapter, each person who offers for transportation a hazardous material in a non-bulk packaging must mark the package with the proper shipping name and identification number (preceded by "UN" or "NA," as appropriate) for the material as shown in the § 172.101 Table. Identification numbers are not required on packagings that contain only ORM–D materials. Packagings that contain only limited quantities, as defined in § 171.8 of this subchapter, may be marked with the proper shipping name, but must be marked in accordance with § 172.315.

* * * * *

15. In § 172.312, a new paragraph (c)(6) would be added to read as follows:

§ 172.312 Liquid hazardous materials in non-bulk packagings.

* * * * *

(c) * * *

(6) Packages containing liquid infectious substances in primary receptacles not exceeding 50 ml (1.7 oz.).

16. A new section § 172.315 would be added to read as follows:

§ 172.315 Packagings containing limited quantities.

(a) Packagings containing limited quantities of hazardous materials need not be marked with the proper shipping name, but must be marked with the identification (ID) number, preceded by the letters "UN" or "NA," as applicable, and placed within a diamond as follows:



(b) The ID number marking must be durable, legible and of such a size relative to the packaging as to be readily visible. The width of line forming the diamond must be at least 2 mm and the height of the ID number must be at least 6 mm. The marking must be applied on at least one side or one end of the outer packaging and must be durable, legible and of a size that is clearly visible.

(c) When more than one hazardous material is contained in the packaging and the hazardous materials are assigned different ID numbers, the packaging must be marked with either individual diamonds bearing a single ID number, or a single diamond large enough to include each applicable ID number.

17. A new section § 172.323 would be added to read as follows:

§ 172.323 Air eligibility mark.

(a) *Air eligibility marking.* Except as otherwise specified in this subchapter, each person who offers for transportation or transports by aircraft a hazardous material in a non-bulk package, including packages used for consumer commodities and limited quantities of hazardous materials, must mark the package to indicate that it meets the applicable requirements for air transport. The marking is a certification that the person offering the package into transportation has determined that it complies with the requirements of this subchapter.

(b) The marking must be placed adjacent to the markings prescribed in § 172.301(a), or for limited quantity packages, adjacent to the marking prescribed in § 172.315. The marking must be durable, legible and of a size relative to the package so as to be readily visible. The marking must include an aircraft within a circle and may include the words "Air Eligible" in conjunction with the mark such as:



Air Eligible

(c) *Exceptions from the air eligibility mark.* The air eligibility mark is not required for packagings that are transported in accordance with the small quantity exception in § 173.4, or for packagings that contain solid carbon dioxide (dry ice) packaged with materials that are not subject to the requirements of this subchapter.

18. In § 172.411, the section heading and paragraphs (b) and (d) would be revised, and new paragraphs (e) and (f) would be added to read as follows:

§ 172.411 EXPLOSIVE 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 labels, and EXPLOSIVE Subsidiary label.

* * * * *

(b) In addition to complying with § 172.407, the background color on the EXPLOSIVE 1.1, EXPLOSIVE 1.2 and EXPLOSIVE 1.3 labels must be orange. The "**" must be replaced with the appropriate division number and compatibility group. The compatibility group letter must be the same size as the division number and must be shown as a capitalized Roman letter.

* * * * *

(d) In addition to complying with § 172.407, the background color on the EXPLOSIVE 1.4, EXPLOSIVE 1.5 and EXPLOSIVE 1.6 label must be orange. The "*" must be replaced with the appropriate compatibility group. The compatibility group letter must be shown as a capitalized Roman letter. Division numbers must measure at least 30 mm (1.2 inches) in height and at least 5 mm (0.2 inches) in width.

(e) An EXPLOSIVE subsidiary label is required for materials identified in Column (6) of the HMT as having an explosive subsidiary hazard. Except for size and color, the EXPLOSIVE subsidiary label must be as follows:

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(f) In addition to complying with § 172.407, the background color on the EXPLOSIVE subsidiary label must be orange.

19. In § 172.504, paragraph (g) introductory text would be revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(g) For shipments of Class 1 (explosive materials) by aircraft or vessel, the applicable compatibility group letter must be displayed on the placards required by this section. When more than one compatibility group placard is required for Class 1 materials, only one placard is required to be displayed, as provided in paragraphs (g)(1) through (g)(4) of this section. For the purposes of paragraphs (g)(1) through (g)(4), there is a distinction between the phrases *explosive articles* and *explosive substances*. *Explosive article* means an article containing an explosive substance; examples include a detonator, flare, primer or fuse. *Explosive substance* means a substance contained in a packaging that is not contained in an article; examples include black powder and smokeless powder.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

20. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

21. In § 173.2a, in the paragraph (b) Precedence of Hazard Table, the title of the table and the first three entries in Precedence of Hazard Table would be revised to read as follows:

§ 173.2a Classification of a material having more than one hazard.

* * * * *

(b) * * *

PRECEDENCE OF HAZARD TABLE

[Hazard class or division and packing group]

	4.2	4.3	5.1 I[1]	5.1 II[1]	5.1 III[1]	6.1, I dermal	6.1, I oral	6.1 II	6.1 III	8, I liquid	8, I solid	8, II liquid	8, II solid	8, III liquid	8, III solid
3 II[2]	.....	4.3	.....	.....	.....	3	3	3	3	3	(3)	3	(3)	3	(3)

PRECEDENCE OF HAZARD TABLE—Continued

[Hazard class or division and packing group]

	4.2	4.3	5.1 I[1]	5.1 II[1]	5.1 III[1]	6.1, I dermal	6.1, I oral	6.1 II	6.1 III	8, I liquid	8, I solid	8, II liquid	8, II solid	8, III liquid	8, III solid
3 II[2]	.....	4.3	.....	.....	.....	3	3	3	3	3	(3)	3	(3)	3	(3)
3 III[2]	.....	4.3	.....	.....	.....	6.1	6.1	6.1	[4]3	8	(3)	8	(3)	3	(3)

* * * * * * *

[2] Materials of Division 4.1 other than self-reactive substances and solid desensitized explosives, and materials of Class 3 other than liquid desensitized explosives.
[3] Denotes an impossible combination.
[4] For pesticides only, where a material has the hazards of Class 3, Packing Group III, and Division 6.1, Packing Group III, the primary hazard is Division 6.1, Packing Group III.

* * * * * * *

22. In § 173.21, paragraph (f)(3)(ii) would be revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) * * *

(ii) For transportation by vessel, shipments are authorized in accordance with the control temperature requirements in Chapter 7.7 of the IMDG Code (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

23. In § 173.22, paragraph (a)(4) would be revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(4) For a DOT Specification or UN standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer's closure instructions) in accordance with § 178.2 of this subchapter.

* * * * *

24. In § 173.24, paragraph (b)(4) would be added and paragraph (f)(1) introductory text would be revised to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(b) * * *

(4) The packagings are strong enough to withstand the shocks and loadings encountered during transportation, including removal from a pallet, unit load device or overpack for subsequent manual or mechanical handlings. Packagings must be constructed and closed in a manner that prevents any loss of contents that may be caused under normal conditions of transportation, by vibration, or by changes in temperature, humidity or pressure, including pressure changes resulting from altitude. Packagings, including inner packagings and receptacles, must be closed in accordance with the information provided by the manufacturer (see § 178.2 of this subchapter). No hazardous material residue may adhere to the outside of the package during transport (see §§ 173.24 and 173.24a).

* * * * *

(f) * * * (1) The closures of packagings must be constructed to resist the effects of temperature, pressure changes and vibration that occur during normal conditions of transportation. Screw-type closures on packagings must be secured to prevent the closures from loosening due to vibration or substantial change in temperature. For air transport, stoppers, corks or other such friction type closures must be held securely, tightly and effectively in place by positive means. This may be accomplished by the use of adhesive tape, friction sleeves, welding br soldering, or positive locking wires, or other equally effective methods. The closure device must be so designed that it is unlikely it can be incorrectly or incompletely closed. The requirements of this paragraph apply to new, reused, reconditioned or remanufactured packagings. Closures must be designed and closed so that under conditions normally incident to transportation—

* * * * *

25. In 173.25, paragraph (a)(2) would be revised to read as follows:

§ 173.25 Authorized packagings and overpacks.

(a) * * *

(2) The overpack is marked with the proper shipping name and identification number, the air eligibility marking, when applicable, and labeled as required by this subchapter for each hazardous material contained therein, unless markings and labels representative of each hazardous material in the overpack are visible.

* * * * *

26. In § 173.27, paragraph (e) would be revised, and a new paragraph (i) would be added to read as follows:

§ 173.27 General requirements for transportation by aircraft.

* * * * *

(e) Absorbent materials. Except as otherwise provided in this subchapter, liquid hazardous materials, other than Class 9, that are packaged and offered for transport in glass, earthenware, plastic or metal inner packagings must be packaged using absorbent material as follows:

(1) Packing Group I liquids on passenger aircraft must be packaged using materials capable of absorbing the entire contents of the inner packagings.

(2) Packing Group I liquids on cargo aircraft, and Packing Group II liquids including Division 5.2 liquids on passenger and cargo aircraft, must be packaged using a sufficient quantity of absorbent material to absorb the entire contents of any one of the inner packagings containing such liquids. When the inner packagings are of different sizes and quantities, sufficient absorbent material must be used to absorb the entire contents of the inner packaging with the greatest volume of liquid.

(3) When absorbent materials are required and the outer packaging is not liquid tight, a means of containing the liquid in the event of a leakage must be provided in the form of a leakproof liner, plastic bag or other equally efficient means of containment.

(4) Absorbent material must not react dangerously with the liquid (see §§ 173.24 and 173.24a.).

(5) Absorbent material is not required if the inner packagings are so protected that breakage of them and leakage of their contents from the outer packaging is not likely to occur under normal conditions of transportation.

* * * * *

(i) Air eligibility marking. Each person who offers for transportation a hazardous material by aircraft must mark the packagings containing the hazardous materials with an air

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eligibility mark as specified in § 172.323 of this subchapter.

27. In § 173.62, the following changes would be made:

a. In paragraph (b), in the Explosives Table, a new entry would be added in appropriate numerical order; and

b. In paragraph (c), in the Explosives Packing Instructions Table, in the first column, for the packing instruction entry 112(b), in the last sentence, the wording "3. For UN 0222 and UN 0223" would be removed and "3. For UN 0222" would be added in its place.

The new entry to be added to the paragraph (b) Explosives Table would read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(b) * * *

EXPLOSIVES TABLE

ID#	PI
* * * * *	
UN0503	135
* * * * *	

* * * * *

28. In § 173.115, paragraphs (d) and (e) would be revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(d) *Non-liquefied compressed gas.* A gas, which when packaged under pressure for transportation is entirely gaseous at −50 °C (−58 °F) with a critical temperature less than or equal to −50 °C (−58 °F), is considered to be a non-liquefied compressed gas.

(e) *Liquefied compressed gas.* A gas, which when packaged under pressure for transportation is partially liquid at temperatures above −50 °C (−58 °F), is considered to be a liquefied compressed gas. A liquefied compressed gas is further categorized as follows:

(1) *High pressure liquefied gas* which is a gas with a critical temperature between −50 °C (−58 °F) and +65 °C (149 °F), and

(2) *Low pressure liquefied gas* which is a gas with a critical temperature above +65 °C (149 °F).

* * * * *

29. In § 173.152, paragraphs (b)(2) and (b)(4)(ii) would be revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) * * *

(2) For oxidizers in Packing Group III, inner packagings not over 5 L (1.3 gallons) net capacity each for liquids or not over 5.0 kg (11 pounds) net capacity each for solids, and packed in strong outer packagings.

* * * * *

(4) * * *

(ii) The flammable liquid component must be packed in inner packagings not over 5 L (1.3 gallons) net capacity each for Packing Group II or III liquid; and

* * * * *

30. In § 173.153, in paragraph (b) introductory text, a new first sentence would be added, and paragraph (b)(1) would be revised to read as follows:

§ 173.153 Exceptions for Division 6.1 (poisonous materials).

* * * * *

(b) *Limited quantities of Division 6.1 materials.* The exceptions in this paragraph do not apply to poison-by-inhalation materials. * * *

(1) For poisonous liquids in Packing Group III, inner packagings not over 5 L (1.3 gallons) net capacity each, packed in strong outer packagings; and

* * * * *

31. In § 173.154, paragraph (b)(2) would be revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(b) * * *

(2) For corrosive materials in Packing Group III, in inner packagings not over 5.0 L (1.3 gallons) net capacity each for liquids, or not over 5.0 kg (11 pounds) net capacity each for solids, and packed in strong outer packagings.

* * * * *

32. In § 173.159, in paragraph (a), a second sentence would be added, and a new paragraph (d)(4) would be added to read as follows:

§ 173.159 Batteries, wet.

(a) * * * For transportation by aircraft, the packaging for wet cell batteries must incorporate an acid-or alkali-proof liner, or include a supplementary packaging with sufficient strength and adequately sealed to prevent leakage of electrolyte fluid in the event of spillage.

* * * * *

(d) * * *

(4) At a temperature of 55 °C (131 °F), the battery must not contain any unabsorbed free-flowing liquid, and must be designed so that electrolyte will not flow from a ruptured or cracked case.

* * * * *

33. Section 173.161 would be revised to read as follows:

§ 173.161 Chemical kits and first aid kits.

(a) Chemical kits and First aid kits must conform to the following requirements:

(1) The kits may only contain hazardous materials for which packaging exceptions are provided in the § 172.101 table of this subchapter.

(2) The kits must be packed in a strong outer packaging conforming to the packaging requirements of subpart B of this subchapter.

(3) The kits must include sufficient absorbent material to completely absorb the contents of any liquid hazardous materials contained in the kits. The contents must be separated, placed, or packed, and closed with cushioning material to protect them from damage.

(4) The contents of the kits must be packed so there will be no possibility of the mixture of contents causing dangerous evolution of heat or gas.

(5) The packing group assigned to the kits as a whole must be the most stringent packing group assigned to any individual substance contained in the kits.

(6) Inner receptacles containing hazardous materials within the kits must not contain more than 250 ml for liquids or 250 g for solids per receptacle.

(7) The total quantity of hazardous materials in any one outer package must not exceed either 10 L or 10 kg.

(b) Except when offered for transportation or transported by air, Chemical kits and First aid kits are excepted from the labeling requirements and the specification packaging requirements of this subchapter. In addition, chemical kits and first aid kits are not subject to subpart F of part 172 of this subchapter (Placarding), part 174 (Carriage by rail) of this subchapter except § 174.24 (Shipping papers), and part 177 (Carriage by highway) of this subchapter except § 177.817 (Shipping papers). Kits that meet the definition for a consumer commodity in § 171.8 of this subchapter may be transported in accordance with the exceptions for ORM materials in § 173.156.

34. In § 173.166, paragraphs (b), (c), (d)(2), (e) introductory text and (f) would be revised; paragraph (d)(3) would be redesignated as paragraph (d)(4); and new paragraphs (d)(3), (d)(5), and (e)(5) would be added to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(b) *Classification.* For an air bag inflator, air bag module or seat-belt pretensioner that meets the criteria of Class 1 (explosive), see § 173.62. An air bag inflator, air bag module, or seat-belt pretensioner may be classed as Class 9 (UN3268) if:

(1) The manufacturer has submitted each design type air bag inflator, air bag module, or seat-belt pretensioner to a person approved by the Associate Administrator, in accordance with § 173.56(b), for examination and testing. The submission must contain a detailed description of the inflator or pretensioner or, if more than a single inflator or pretensioner is involved, the maximum parameters of each particular inflator or pretensioner design type for which approval is sought and details on the complete package. The manufacturer must submit an application, including the test results and report recommending the shipping description and classification for each device or design type to the Associate Administrator, and must be notified in writing by the Associate Administrator that the device has been approved for transportation; or,

(2) The manufacturer has submitted an application, including an approved classification issued by the competent authority of a foreign government to the Associate Administrator, and been notified in writing by the Associate Administrator that the device has been approved for transportation and assigned an EX number.

(c) *EX numbers.* When offered for transportation, the shipping paper must contain the EX number or product code for each approved inflator or pretensioner in association with the basic description required by § 172.202(a) of this subchapter. Product codes must be traceable to the specific EX number assigned to the inflator, module or pretensioner by the Associate Administrator. The EX number or product code is not required to be marked on the outside package.

(d) * * *

(2) An air bag module containing an inflator that has been previously approved for transportation is not required to be submitted for further examination or approval.

(3) An air bag module containing an inflator that has previously been approved as a Division 2.2 material is not required to be submitted for further examination to be reclassed as a Class 9 material.

(4) *Shipments for recycling.* When offered for domestic transportation by highway, rail freight, cargo vessel or cargo aircraft, a serviceable air bag module or seat-belt pretensioner removed from a motor vehicle that was manufactured as required for use in the United States may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in paragraph (c) of this section. However, the word "Recycled" must be entered on the shipping paper immediately after the basic description prescribed in § 172.202 of this subchapter. No more than one device is authorized in the packaging prescribed in paragraph (e)(1), (2) or (3) of this section. The device must be cushioned and secured within the package to prevent movement during transportation.

(5) Until October 1, 2005, approved "Air bag inflators, compressed gas, *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas," UN3353, packaged in a nonspecification packaging before October 1, 2003, may be transported or offered for domestic transportation when described, marked, and labeled as a Division 2.2 material in accordance with the HMR in effect on September 30, 2002.

(e) *Packagings.* Rigid, outer packagings, meeting the requirements of Part 178 of this subchapter at the Packing Group III performance level are authorized. The packagings must be designed and constructed to prevent movement of the articles and inadvertent operation.

* * * * *

(5) Packagings specified in the approval document issued by the Associate Administrator in accordance with paragraph (e) of this section are also authorized.

(f) *Labeling.* Notwithstanding the provisions of § 172.402 of this subchapter, each package or handling device must display a CLASS 9 label. Additional labeling is not required when the package contains no hazardous materials other than the devices.

35. In § 173.185, paragraph (e)(4) would be revised, paragraph (e)(5) would be removed and reserved, paragraph (e)(7) would be revised, and a new paragraph (k) would be added to read as follows:

§ 173.185 Lithium batteries and cells.

* * * * *

(e) * * *

(4) Authorized outer packagings: rigid outer packagings that conform to the requirements of part 178 of this subchapter at the Packing Group II performance level. Cells and batteries must be packed in such a manner as to effectively prevent short circuits through the use of inner packagings, dividers, or other suitable means.

(5) [Reserved]

* * * * *

(7) Except as provided in paragraph (h) of this section, cells and batteries with a liquid cathode containing sulfur dioxide, sulfuryl chloride or thionyl chloride may not be offered for transportation or transported if any cell has been discharged to the extent that the open circuit voltage is less than two volts, or is less than two-thirds of the voltage of the fully charged cell, whichever is less.

* * * * *

(k) Batteries employing a strong, impact-resistant outer casing and exceeding a gross mass of 12 kg (26.5 lbs.), and assemblies of such batteries, may be packed in strong outer packagings, in protective enclosures (for example, in fully enclosed wooden slatted crates) or on pallets. Batteries must be secured to prevent inadvertent movement, and the terminals may not support the weight of other superimposed elements. Prior to its being offered for transportation aboard cargo aircraft, the packaging must be approved by the Associate Administrator.

§ 173.216 [Amended]

36. In § 173.216, paragraph (b) would be removed and reserved.

37. In § 173.218, paragraph (a) introductory text would be revised and paragraph (b) would be removed and reserved to read as follows:

§ 173.218 Fish meal or fish scrap.

(a) Except as provided in Column (7) of the HMT in § 172.101 of this subchapter, fish meal or fish scrap, containing at least 6%, but not more than 12% water, is authorized for transportation by vessel only when packaged as follows:

* * * * *

(b) [Reserved]

* * * * *

38. In § 173.220, paragraph (e) would be redesignated as paragraph (f) and a new paragraph (e) would be added to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

* * * * *

(e) *Additional requirements for internal combustion engines and vehicles with certain electronic equipment when transported by aircraft or vessel.* When internal combustion engines are shipped separately by aircraft or vessel, all fuel, coolant or hydraulic systems remaining in the

engine must be drained as far as practicable, and all disconnected fluid pipes must be sealed with leak-proof caps that are positively retained. Vehicles equipped with theft-protection devices, installed radio communications equipment or navigational systems must have such devices, equipment or systems disabled.

* * * * *

39. A new § 173.223 would be added to read as follows:

§ 173.223 Musk xylene.

(a) Packagings for "Musk xylene" or "5-tert-Butyl-2,4,6-trinitro-m-xylene," when offered for transportation or transported by rail, highway, or vessel, must conform to the general packaging requirements of Subpart B of Part 173, and to the requirements of Part 178 of this subchapter at the Packing Group III performance level and may only be transported in the following packagings:

(1) Fiberboard box (4G) with a single inner plastic bag, and a maximum net mass of not more than 50 kg (110 lbs).

(2) Fiberboard box (4G) or fiber drum (1G), with a plastic inner packaging not exceeding 5 kg (11 lbs), and a maximum net mass of not more than 25 kg (55 lbs).

(3) Fiber drum (1G), and a maximum net mass of not more than 50 kg (110 lbs), that may be fitted with a coating or lining.

(b) [Reserved]

40. In § 173.224, in paragraph (b)(4), the fourth sentence would be revised; in the table following paragraph (b)(7), 5 entries would be removed, 9 entries would be added, and 1 entry would be revised in appropriate alphabetical order; and in the "NOTES" immediately following the Table, a new Note "4" would be added in appropriate numerical order to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * * *

(b) * * *

(4) * * * Bulk packagings are authorized as specified in § 173.225(e) for Type F self-reactive substances.

* * *

* * * * *

(7) * * *

SELF-REACTIVE MATERIALS TABLE

Self-reactive substance	Identification No.	Concentration (%)	Packing method	Control temperature(°C)	Emergency temperature	Notes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
. . .	.	.	.	.	.	.
[REMOVE:]						
Benzene-1,3-disulphohydrazide, as a paste.	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
. . .	.	.	.	.	.	.
2-Diazo-1-Naphthol-4-sulphochloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphochloride	3222	100	OP5			
Diphenyloxide-4,4'-disulphohydrazide	3226	100	OP7			
[ADD:]						
. . .	.	.	.	.	.	.
Benzene-1,3-disulphonylhydrazide, as a paste.	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
. . .	.	.	.	.	.	.
2-Diazo-1-Naphthol sulphonic acid ester mixture.	3226	<100	OP7			4
2-Diazo-1-Naphthol-4-sulphonyl chloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphonyl chloride	3222	100	OP5			
2,5-Dibutoxy-4-(4-morpholinyl)-Benzene-diazonium, tetrachlorozincate (2:1).	3228	100	OP8			
. . .	.	.	.	.	.	.
2,5-Diethoxy-4-(4-morpholinyl)-benzene-diazonium sulphate.	3226	100	OP7			
. . .	.	.	.	.	.	.
4-(Dimethylamino)-benzenediazonium trichlorozincate (-1).	3228	100	OP8			
Diphenyloxide-4,4'-disulphonylhydrazide	3226	100	OP7			
. . .	.	.	.	.	.	.
[REVISE:]						
2,2'-Azodi(isobutyronitrile) as a water based paste.	3224	≤50	OP6			

* * * * *

Notes:

* * * * *

4. This entry applies to mixtures of esters of 2-diazo-1-naphthol-4-sulphonic acid and 2-diazo-1-naphthol-5-sulphonic acid.

41. In § 173.225, paragraph (b)(6) would be revised; in the Organic Peroxide Table, 1 entry would be removed, 9 entries would be added, and 21 entries would be revised in appropriate alphabetical order; in the "Notes" immediately following the Table, Note "9" would be revised, and two new notes, "28" and "29" would be added in appropriate numerical order; in paragraph (e)(3)(xii), the last sentence would be revised; and paragraph (e)(5) would be revised to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

(6) *Packing method.* Column 6 specifies the highest packing method (largest packaging capacity) authorized for the organic peroxide. Lower numbered packing methods (smaller packaging capacities) are also authorized. For example, if OP3 is specified, then OP2 and OP1 are also authorized. The designation "IBC" means Special Provision IB52 in § 172.102 of this subchapter applies. The designation "Bulk" means paragraph (e) of this section applies. When an IBC or bulk packaging is authorized and meets the requirements of paragraph (e) of this section, lower control temperatures than those specified for non-bulk packagings may be required. The Table of Packing Methods in paragraph (d) of this section defines the non-bulk packing methods.

* * * * *

(8) * * *

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ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B				Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
[REMOVE:]										
Peracetic acid with not more than 20% hydrogen peroxide.										
[ADD:]										
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤42					OP8, IBC	−5	+5	
Di-tert-butyl peroxide	UN3109	≤32		≥68			Bulk			14
Diisopropyl peroxydicarbonate	UN3115	≤28		≥72			OP7	−15	−5	
Di-n-Propyl peroxydicarbonate	UN3113	≤100					OP3	−25	−15	
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3119	≤38		≥62			Bulk	−5	+5	14
Peroxyacetic acid *with not more than 20% hydrogen peroxide.*	Exempt	≤6				≥60	Exempt			28
Peroxyacetic acid *with not more than 26% hydrogen peroxide.*	UN3109	≤17					OP8, IBC			13, 20, 28
Peroxyacetic acid *with 7% hydrogen peroxide.*	UN3107	≤36				≥15	OP8			13, 20, 28
Peroxyacetic acid, distilled, Type F, stabilized.	UN3119	≤41					Bulk	+30	+35	14, 27, 28
[REVISE:]										
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8, IBC, Bulk.			13, 4
tert-Butyl peroxyacetate	UN3109	≤32		≥68			OP8, IBC.			
tert-Butyl peroxyacetate	UN3109	≤32			≥68		OP8.			

tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3117	≤52					OP8, IBC	0	+10	
tert-Butyl peroxyneodecanoate	UN3119	≤32		≥68			OP8, IBC	0	+10	
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3109	≤32		≥68			OP8, IBC.			
Cumyl hydroperoxide	UN3109	≤90		≥10			OP8, IBC, Bulk.			13, 14, 15
Dibenzoyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8, IBC.			
Di-(4-tert-butylcyclohexyl)peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8, IBC	+30	+35	
Di-tert-butyl peroxide	UN3109	≤52			≥48		OP8, IBC, Bulk.			14, 24
1,1-Di-(tert-butylperoxy)cyclo-hexane	UN3109	≤42		≥58			OP8, IBC.			
Dicetyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8, IBC	+30	+35	
Dicumyl peroxide	UN3109	>52–100			≤48		OP8, IBC, Bulk.			9, 11, 14
Dicumyl peroxide	UN3110	>52–100				≤48	OP8, IBC, Bulk.			9, 11, 14
Dilauroyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8, IBC.			
Di-(3,5,5-trimethylhexanoyl)peroxide [as a stable dispersion in water].	UN3119	≤52					OP8, IBC	+10	+15	
Isopropylcumyl hydroperoxide	UN3109	≤72		≥28			OP8, IBC, Bulk.			13, 14
p-Menthyl hydroperoxide	UN3109	≤72		≥28			OP8, IBC, Bulk.			14
Peroxyacetic acid, type F, stabilized	UN3109	≤43					OP8, IBC			13, 20, 28

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ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %) A	Diluent (mass %) B	Diluent (mass %) Water (mass %)	Packing method	Temperature (°C) Control	Temperature (°C) Emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(6)	(7a)	(7b)	(8)
*	*	*	*	*	*	*	*	*	*
Pinanyl hydroperoxide	UN3109	≤56	≥44	*	*	OP8, Bulk	*	14	*
*	*	*	*	*	*	*	*	*	*
1,1,3,3-Tetramethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52	*	*	*	OP8, IBC	−5	+5	*
*	*	*	*	*	*	*	*	*	*

Notes:

* * * * *

9. For domestic shipments, this material may be packaged in bulk packagings under the provisions of paragraph (e)(3)(xii) of this section.

* * * * *

27. Formulations derived from distillation of peroxyacetic acid originating from peroxyacetic acid in a concentration of not more than 41% with water, total active oxygen less than or equal to 9.5% (peroxyacetic acid plus hydrogen peroxide).

28. For the purposes of this section, the names "Peroxyacetic acid" and "Peracetic acid" are synonymous.

* * * * *

(e) * * *

(3) * * *

(xii) * * * These portable tanks are not subject to any other requirements of paragraph (e) of this section.

* * * * *

(5) *IBCs.* IBCs are authorized subject to the conditions and limitations of this section if the IBC type is authorized according to Special Provision IB52 (see § 172.102(c)(4) of this subchapter), as applicable, and the IBC conforms to the requirements in subpart O of part 178 of this subchapter at the Packing Group II performance level. The additional requirements in paragraphs (e)(5)(i) and (e)(5)(ii) of this section also apply. Type F organic peroxides or self-reactive substances that are not authorized for a specific IBC may be transported in IBCs other than those specified in IB52 if approved by the Associate Administrator.

* * * * *

42. In § 173.244, paragraph (c) would be revised to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1).

* * * * *

(c) *Portable tanks:* DOT 51 portable tanks, and UN portable tanks that meet the requirements of this subchapter when a T code is specified in Column (7) of the § 172.101 Table of this subchapter for the specific hazardous material are authorized.

43. In § 173.306, the paragraph (f) heading would be revised and a new paragraph (j) would be added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(f) *Accumulators (Articles, pressurized pneumatic or hydraulic containing non-flammable gas).* * * *

* * * * *

(j) For certain compressed gases not subject to the requirements of this subchapter, see § 173.307(a)(5).

44. In § 173.307, a new paragraph (a)(5) would be added to read as follows:

§ 173.307 Exceptions for compressed gases.

(a) * * *

(5) *Aerosols with a capacity of less than 50 ml.* Aerosols, as defined in § 171.8 of this subchapter, with a capacity not exceeding 50 ml and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter.

* * * * *

45. In § 173.422, paragraphs (a)(2), (a)(3), and (a)(4) would be revised to read as follows:

§ 173.422 Additional requirements for excepted packages containing Class 7 (radioactive materials).

(a) * * *

(2) "This package conforms to the conditions and limitations specified in 49 CFR 173.424 for radioactive material, excepted package—instruments or articles, UN 2911";

(3) "This package conforms to the conditions and limitations specified in 49 CFR 173.426 for radioactive material, excepted package—articles manufactured from natural uranium or depleted uranium or natural thorium, UN 2909"; or

(4) "This package conforms to the conditions and limitations specified in 49 CFR 173.428 for radioactive material, excepted package—empty packaging, UN 2908."

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

46. The authority citation for part 175 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

47. In § 175.10, paragraph (a)(25) would be revised and a new paragraph (c) would be added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(25) With approval of the aircraft operator, a passenger or crew member may carry in checked or carry-on baggage no more than two small gas cartridges of carbon dioxide or another non-flammable, non-toxic inert gas in Division 2.2 that are fitted into a self-inflating life-jacket for inflation purposes, plus no more than two spare cartridges.

* * * * *

(c) The exceptions provided in paragraph (a) of this section also apply to aircraft operators when transporting passenger or crew member baggage that has been inadvertently separated from or improperly routed to its intended final destination.

48. In § 175.30, a new paragraph (a)(5) would be added to read as follows:

§ 175.30 Accepting and inspecting shipments.

* * * * *

(a) * * *

(5) Marked with the air eligibility marking in accordance with § 172.323 of this subchapter.

* * * * *

49. In § 175.90, paragraphs (b) and (c) would be revised to read as follows:

§ 175.90 Damaged shipments.

* * * * *

(b) Except as provided in § 175.700, the operator of an aircraft must remove from the aircraft any package, baggage or cargo that appears to be leaking or contaminated by a hazardous material. In the case of a package, baggage or cargo that appears to be leaking, the operator must ensure that other packages, baggage or cargo in the same shipment are in proper condition for transport aboard the aircraft and that no other package, baggage or cargo has been contaminated or is leaking. If an operator becomes aware that a package, baggage or cargo not identified as containing a hazardous material has been contaminated, the operator has cause to believe that a hazardous material may be the cause of the contamination, the operator must take reasonable steps to identify the nature and source of contamination before proceeding with the loading of the contaminated baggage or cargo. If the contaminating substance is found or suspected to be a hazardous material, the operator must isolate the package, baggage or cargo and take appropriate steps to eliminate any identified hazard before continuing the transportation of the item by air.

(c) No person may place aboard an aircraft, a package, baggage or cargo that is contaminated with a hazardous material or appears to be leaking.

* * * * *

PART 176—CARRIAGE BY VESSEL

50. The authority citation for part 176 would continue to read as follows:

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Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

51. In § 176.27, paragraph (c)(2) would be revised to read as follows:

§ 176.27 Certificate.

* * * * *

(c) * * *

(2) The certification may appear on a shipping paper or on a separate document as a statement, such as "It is declared that the packing of the container has been carried out in accordance with the applicable provisions [of 49 CFR], [of the IMDG Code], or [of 49 CFR and the IMDG Code].".

52. In § 176.63, a new paragraph (f) would be added to read as follows:

§ 176.63 Stowage locations.

* * * * *

(f) *Stowage of containers on board hatchless container ships* (1) Containers holding a hazardous material may be stowed in or vertically above a hatchless container hold if the following conditions are met:

(1) All hazardous materials are permitted for *under deck* stowage as specified in the Table in § 172.101 of this subchapter; and

(2) The hatchless container hold is in full compliance with the provisions of IMO's "International Convention for the Safety of Life at Sea (SOLAS)," Regulation II–2/19 of SOLAS 1974, as amended (incorporation by reference; see § 171.7 of this subchapter), applicable to enclosed container cargo spaces, as appropriate for the cargo transported.

53. In § 176.83, a new paragraph (l) would be added to read as follows:

§ 176.83 Segregation.

* * * * *

(l) *Segregation of containers on board hatchless container ships* (1) This paragraph applies to the segregation of containers that are transported on board hatchless container ships provided that the cargo spaces are properly fitted to give permanent stowage of the cargo transport units during transport.

(2) For partly hatchless container ships that have spaces suitable for breakbulk cargo, conventional container stowage, or any other method of stowage, the appropriate requirements of this section apply to the relevant cargo space.

(3) *Segregation Table:* Table § 176.83(l)(3) sets forth the general requirements for segregation of containers on board hatchless container vessels.

(4) In Table § 176.83(l)(3), a container space means a distance of not less than 6 m (20 feet) fore and aft or not less than 2.5 m (8 feet) athwartship.

TABLE § 176.83(L)(3)—SEGREGATION OF CONTAINERS ON BOARD HATCHLESS CONTAINER SHIPS

Segregation requirement	Vertical		Horizontal					
	Closed versus closed	Closed versus open	Closed versus closed		Closed Versus Open		Open Versus Open	
			On deck	Under deck	On deck	Under deck	On deck	Under deck
1. "Away from"	One on top of the other permitted.	Open on top of closed permitted. Otherwise as for open versus open.	No restriction. No restriction.	No restriction. No restriction.	No restriction. No restriction.	No restriction. No restriction.	One container space. One container space.	One container space or one bulkhead One container space
2. "Separated from"	Not in the same vertical line.	As for open versus open.	One container space. One container space.	One container space or one bulkhead. One container space.	One container space. Two container spaces.	One container space or one bulkhead. Two container spaces.	One container space and not above same hold. Two container spaces and not above same hold.	One bulkhead One bulkhead
3. "Separated by a complete compartment or hold from".	.....	.....	One container space and not above same hold. Two container spaces and not above same hold.	One bulkhead. One bulkhead.	One container space and not in or above same hold. Two container spaces and not above same hold.	One bulkhead. One bulkhead.	Two container spaces and not above same hold. Three container spaces and not above same hold.	Two bulkheads Two bulkheads
4. "Separated longitudinally by an intervening complete compartment or hold from".	Prohibited		Minimum horizontal distance of 24 M and not above same hold. Prohibited	One bulkhead and minimum horizontal distance of 24 M. Prohibited	Minimum horizontal distance of 24 M and not above same hold. Prohibited	Two bulkheads. Prohibited	Minimum horizontal distance of 24 M and not above same hold. Prohibited	Two bulkheads Prohibited

"Containers not less than 6 m (20 feet) from intervening bulkhead.
NOTE: All bulkheads and decks must be resistant to fire and liquid.

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54. In § 176.84, in paragraph (b), Table of provisions, nine new entries would be added in appropriate numerical order to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
*	* * * * *
124	Stow "separated from" bromates.
125	Segregation same as for flammable liquids, but "away from" flammable solids.
126	Segregation same as for Class 9, miscellaneous hazardous materials.
127	For packages carrying a subsidiary risk of Class 1 (explosives), segregation same as for Class 1, Division 1.3.
128	Stow in accordance with the IMDG Code, Subsection 7.1.10.3 (incorporated by reference; see § 171.7 of this subchapter).
129	Stowage Category A applies, except for uranyl nitrate hexahydrate solution for which Category D applies.
130	Stowage Category A applies, except for uranyl nitrate hexahydrate solution, uranium metal pyrophoric and thorium metal pyrophoric for which Category D applies.
131	Stowage Category A applies, except for uranyl nitrate hexahydrate solution, uranium metal pyrophoric and thorium metal pyrophoric for which Category D applies, and taking into account any supplementary requirements specified in the transport documents.
132	Stowage Category A applies, taking into account any supplementary requirements specified in the transport documents.
*	* * * * *

* * * * *

55. In § 176.140, in paragraph (b), the first sentence would be revised to read as follows:

§ 176.140 Segregation from other classes of hazardous materials.

* * * * *

(b) Class 1 (explosive) materials must be segregated from bulk solid dangerous cargoes in accordance with the IMDG Code (incorporated by reference; see § 171.7 of this subchapter).* * *

§ 176.170 [Removed and Reserved]

56. In § 176.170, paragraph (b) would be removed and reserved.

57. In § 176.410, paragraph (a)(2) would be revised; paragraphs (a)(3), (a)(5) and (a)(6) would be removed; and current paragraph (a)(4) would be redesignated (a)(3) to read as follows:

§ 176.410 Division 1.5 materials, ammonium nitrate and ammonium nitrate mixtures.

(a) * * *

(2) Ammonium nitrate, Division 5.1 (oxidizer), UN1942.

(3) Ammonium nitrate fertilizer, Division 5.1 (oxidizer), UN2067.

* * * * *

58. In § 176.415, paragraphs (a) introductory text, (a)(1), (a)(2), (b)(1), (c)(1) and (c)(2) would be revised; paragraphs (b)(3), (b)(4) and (c)(5) would be removed; and paragraphs (b)(5) and (b)(6) would be redesignated (b)(3) and (b)(4), respectively to read as follows:

§ 176.415 Permit requirements for Division 1.5, ammonium nitrates, and certain ammonium nitrate fertilizers.

(a) Except as provided in paragraph (b) of this section, before any of the following material is loaded on or unloaded from a vessel at any waterfront facility, the owner/operator must obtain written permission from the Captain of the Port (COTP).

(1) Ammonium nitrate UN1942, ammonium nitrate fertilizers containing more than 70% ammonium nitrate, or Division 1.5 compatibility group D materials packaged in a paper bag, burlap bag, or other nonrigid combustible packaging, or any rigid packaging with combustible inside packagings,

(2) Any other ammonium nitrate or ammonium nitrate fertilizer not listed in § 176.410(a) or (b).

(b) * * *

(1) Ammonium nitrate, Division 5.1 (oxidizer) UN1942, in a rigid packaging with a noncombustible inside packaging.

* * * * *

(3) Division 1.5 compatibility group D material in a rigid packaging with a noncombustible inside packaging.

(4) Ammonium nitrate fertilizer, Class 9, UN2071.

(c) * * *

(1) If the material is Explosives, blasting, type E, Division 1.5 compatibility group D, UN0332 in a combustible packaging or in a rigid packaging with a combustible inside packaging, it must be loaded or unloaded at a facility remote from populous areas, or high-value or high-hazard industrial facilities, so that in the event of fire or explosion, loss of lives and property may be minimized;

(2) If the material is a Division 1.5 compatibility group D material in a non-rigid combustible packaging and loaded in a freight container or transport vehicle, it may be loaded or unloaded at a non-isolated facility if the facility is approved by the COTP.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

59. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

60. In § 178.2, paragraph (c)(1)(ii) would be revised to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(c) * * *

(1) * * *

(ii) With information specifying the type(s) and dimensions of the closures, including gaskets and any other components needed to ensure that the packaging is capable of successfully passing the applicable performance tests and the general packaging requirements in §§ 173.24 and 173.27 of this subchapter. This information must include any procedures to be followed, including closure instructions for inner packagings and receptacles, to effectively assemble and close the packaging for the purpose of preventing leakage in transportation. For transportation by aircraft, this information must include relevant guidance to ensure that the packaging, as prepared for transportation, will be capable of withstanding the pressure differential requirements in § 173.27 of this subchapter.

* * * * *

§ 178.274 [Amended]

61. In § 178.274, in paragraph (j)(6), in the fourth sentence, the wording "20 cm (8 inches) on at least two sides" would be removed and "10 cm (4 inches) on at least two sides" would be added in its place.

62. In § 178.705, paragraph (c)(1)(iv)(A) would be revised to read as follows:

§ 178.705 Standards for metal IBCs.

(c) * * *

(1) * * *

(iv) * * *

(A) For a reference steel having a product of Rm × Ao = 10,000, where Ao is the minimum elongation (as a percentage) of the reference steel to be used on fracture under tensile stress (Rm × Ao = 10,000 × 145; if tensile strength is in U.S. Standard units of pounds per square inch), the wall thickness must not be less than:

Capacity (C) in liters [1]	Wall thickness (T) in mm			
	Types 11A, 11B, 11N		Types 21A, 21B, 21N, 31A, 31B, 31N	
	Unprotected	Protected	Unprotected	Protected
C≤1000	2.0	1.5	2.5	2.0
1000<C≤2000	T=C/2000 + 1.5	T=C/2000 + 1.0	T=C/2000 + 2.0	T=C/2000 + 1.5
2000<C≤3000	T=C/2000 + 1.5	T=C/2000 + 1.0	T=C/1000 + 1.0	T=C/2000 + 1.5

[1] Where: gallons=liters × 0.264.

* * * * *

63. In § 178.812, paragraph (b)(1) would be revised to read as follows:

§ 178.812 Top lift test.

* * * * *

(b) *Special preparation for the top lift test.* (1) Metal, rigid plastic, and composite IBC design types must be loaded to twice the maximum permissible gross mass with the load being distributed.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

64. The authority citation for part 180 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

65. Section 180.350 would be revised to read as follows:

§ 180.350 Applicability and definitions.

(a) This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic retesting of an IBC. In addition, the following definitions apply:

(1) *Remanufactured IBCs* are metal, rigid plastic or composite IBCs produced as a UN type from a non-UN type, or are converted from one UN design type to another UN design type. Remanufactured IBCs are subject to the same requirements of this subchapter that apply to new IBCs of the same type (also see § 178.801(c)(1) of this subchapter for design type definition).

(2) *Repaired IBCs* are metal, rigid plastic or composite IBCs that, as a result of impact or for any other cause (such as corrosion, embrittlement or other evidence of reduced strength as compared to the design type), are restored so as to conform to the design type and to be able to withstand the design type tests. For the purposes of this subchapter, the replacement of the rigid inner receptacle of a composite IBC with a receptacle conforming to the original manufacturer's specification is considered repair. Routine maintenance of IBCs (see definition in paragraph (a)(3) of this section) is not considered repair. The bodies of rigid plastic IBCs and the inner receptacles of composite IBCs are not repairable.

(3) *Routine maintenance of IBCs* is the routine performance on metal, rigid plastic or composite IBCs of operations such as:

(i) Cleaning;

(ii) Removal and reinstallation or replacement of body closures (including associated gaskets), or of service equipment conforming to the original manufacturer's specifications provided that the leaktightness of the IBC is verified; or

(iii) Restoration of structural equipment not directly performing a hazardous material containment or discharge pressure retention function so as to conform to the design type (for example, the straightening of legs or lifting attachments), provided the containment function of the IBC is not affected.

66. In § 180.352, paragraphs (d)(1)(i) and (f) would be revised and a new paragraph (d)(1)(iv) would be added to read as follows:

§ 180.352 Requirements for retest and inspection of IBCs.

* * * * *

(d) * * *

(1) * * *

(i) The repaired IBC conforms to the original design type, is capable of withstanding the applicable design qualification tests, and is retested and inspected in accordance with the applicable requirements of this section;

* * * * *

(iv) The person performing the tests and inspections after the repair must durably mark the IBC near the manufacturer's UN design type marking to show the following:

(A) The country in which the tests and inspections were performed;

(B) The name or authorized symbol of the person performing the tests and inspections; and

(C) The date (month, year) of the tests and inspections.

* * * * *

(f) *Record retention.* The owner or lessee of the IBC must keep records of periodic retests, initial and periodic inspections, and tests performed on the IBC if it has been repaired.

67. In § 180.605, paragraph (k) would be revised to read as follows:

§ 180.605 Requirements for periodic testing, inspection and repair of portable tanks.

* * * * *

(k) *Inspection and test markings.* (1) Each IM or UN portable tank must be durably and legibly marked, in English, with the date (month and year) of the last pressure test, the identification markings of the approval agency witnessing the test, when required, and the date of the last visual inspection. The marking must be placed on or near the metal identification plate, in letters and numerals of less than 3 mm (0.118 inches) high when on the metal identification plate, and 12 mm (0.47 inches) high when on the portable tank.

(2) Each Specification DOT 51, 56, 57 or 60 portable tank must be durably and legibly marked, in English, with the date (month and year) of the most recent periodic retest . The marking must be placed on or near the metal certification plate and must be in accordance with § 178.3 of this subchapter. The letters and numerals must not be less than 3 mm (0.118 inches) high when on the metal certification plate, and 12 mm (0.47 inches) high when on the portable tank, except that a portable tank manufactured under a previously authorized specification may continue to be marked with smaller markings if originally authorized under that specification (for example, DOT Specification 57 portable tanks).

* * * * *

Issued in Washington, DC on November 19, 2002, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

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Part III

Department of Education

National Assessment of Educational Progress (NAEP)—Secondary Analysis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 84.902B]

National Assessment of Educational Progress (NAEP)—Secondary Analysis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To encourage the preparation of reports that would not otherwise be available and that apply new approaches to the analysis and reporting of the NAEP and NAEP High School Transcript Studies data. Analyses and reports prepared under this program should potentially be useful to the general public, parents, educators, educational researchers, or policy makers.

For FY 2003, the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: Public or private organizations and consortia of organizations.

Applications Available: December 6, 2002.

The application package for this competition is also available on line at: *http://ed.gov/GrantApps/.*

Deadline for Transmittal of Applications: February 7, 2003.

Estimated Available Funds: $700,000.

The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $15,000—$100,000.

Estimated Average Size of Awards: $85,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 18 months.

Estimated Number of Awards: 6–8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 60 pages, using the following standards:

- A page is 8.5" × 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for those provisions of part 75 noted in 34 CFR 700.5(a)), 77, 80, 81, 82, 85, and 86. (b) The regulations in 34 CFR part 700.

Priorities

Invitational Priorities

We are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1—Analysis projects that use NAEP achievement data alone or in combination with other data sets to produce reports designed to assist policy makers and educators in the educational improvement process.

Invitational Priority 2—Projects designed to assist NAEP users in the analysis, interpretation and reporting of State and district-level NAEP results.

Invitational Priority 3—Projects that include the development of methodological or analytic procedures which improve precision in the estimation and reporting of NAEP results.

Invitational Priority 4—Projects to analyze and report data using statistical software developed by the project to permit more advanced analytic techniques to be readily applied to NAEP data.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the priorities a competitive or absolute preference over other applications.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Alex Sedlacek, U.S. Department of Education, 1990 K Street, NW., room 8007, Washington, DC 20006. Telephone: (202) 502–7446 or via Internet: *Alex.Sedlacek@ed.gov.*

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Program Authority: 20 U.S.C. 9010.

Dated: November 27, 2002.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Presidential Documents

Title 3—

The President

Proclamation 7631 of November 27, 2002

World AIDS Day, 2002

By the President of the United States of America

A Proclamation

The HIV/AIDS pandemic has taken the lives of more than 20 million people and is projected to take millions more. On World AIDS Day, countries around the world are united to support the individuals, families, and communities affected by this disease, and to renew our commitment to preventing the spread of HIV/AIDS, developing and delivering more effective treatments, and finding a cure.

To support our struggle against HIV/AIDS, we must call upon the compassion, energy, and generosity of all people. Through their service and dedication, faith-based and volunteer organizations are providing local and global communities with strategies to confront the HIV/AIDS pandemic. By responding to the needs of their neighbors, these organizations and individual citizens offer invaluable support and hope to countless people. These organizations also help overcome dangerous barriers to HIV prevention, care, and treatment such as the stigma and discrimination that often attaches to those suffering from HIV/AIDS. By raising awareness and promoting acceptance of people living with HIV/AIDS, we help improve the lives of millions of people around the world and demonstrate the compassion of our Nation.

My Administration remains strongly committed to supporting research that treats those living with HIV/AIDS, prevents the spread of this disease, and that can develop a cure. For this coming year, my Administration has requested $2.9 billion for research on vaccines and treatments to combat the disease. This is a significant increase over prior year funding for these efforts, and expresses my Administration's commitment to helping find a cure.

To help stop the global spread of AIDS we must prevent mothers from passing the HIV virus to their children. My Administration has committed $500 million to the new International Mother and Child HIV Prevention Initiative, which will focus on countries in Africa and the Caribbean where the problem is the most severe. This Initiative seeks to treat 1 million women annually and to reduce mother-to-child transmission of HIV/AIDS by 40 percent within 5 years. It also increases the availability of preventative care and drug treatment therapy, and seeks to improve critical healthcare delivery systems. The International Mother and Child Prevention Initiative will save thousands of lives, and assist our vital effort to overcome the global devastation of HIV/AIDS.

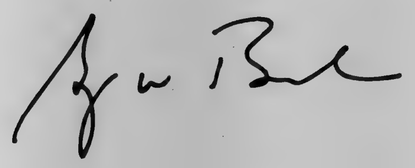
The United States intends to provide more than $1.3 billion in 2003 to international efforts to combat HIV/AIDS, a 30 percent increase over the prior year's commitment. I was very pleased to help launch the Global Fund to Fight HIV/AIDS, Tuberculosis, and Malaria together with U.N. Secretary-General Annan and Nigerian President Obasanjo. My Administration has since then pledged $500 million to the Global Fund, and we are committed to further support the Fund as it continues to demonstrate its success.

On World AIDS Day, I urge world leaders and citizens to join the efforts to combat HIV/AIDS. By working together, we can provide hope and comfort to all those affected by this devastating disease.

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NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 2002, as World AIDS Day. I invite the Governors of the States and the Commonwealth of Puerto Rico, officials of other territories subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating HIV/AIDS. I encourage all Americans to participate in appropriate commemorative programs and ceremonies in houses of worship, workplaces, and other community centers to remember those who have lost their lives to this deadly disease and to comfort and support those living with and impacted by HIV/AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–30867
Filed 12–03–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

RIN 3150–AF51

Electronic Maintenance and Submission of Information Revision, Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have amended its rules to clarify when and how licensees and other members of the public might use electronic means to communicate with the agency. The NRC is taking this action because it has received significant adverse comments on the rule. Those comments will now be considered as comments on the identical proposed rule that was published concurrently with the direct final rule. The agency will address those comments in a later final rule.

FOR FURTHER INFORMATION CONTACT: John A. Skoczlas, (301) 415–7186, *EIE@nrc.gov*; or Brenda J. Shelton, (301) 415–7233, *bjs1@nrc.gov*.

SUPPLEMENTARY INFORMATION: On September 6, 2002 (67 FR 57084), the NRC published a direct final rule in the **Federal Register** amending its regulations to clarify when and how the public might communicate with the agency through electronic media. Appended to the rule, for comment, was guidance on how to submit documents to the agency electronically. The direct final rule and the guidance were to have become effective on December 5, 2002. The NRC also concurrently published for comment an identical proposed rule on September 6, 2002 (67 FR 57120).

In the September 6, 2002, notice of the direct final rule, the NRC stated that if any significant adverse comments were received, a timely notice of withdrawal of the direct final rule would be published in the **Federal Register**, and no rule and guidance would take effect until the comments had been addressed and rule text revised if necessary.

The NRC received significant adverse comments on the rule; therefore, the NRC is withdrawing the direct final rule, and neither it nor the guidance that was appended to it will take effect on December 5, 2002. As stated in the September 6, 2002, notice of the direct final rule, the NRC will now treat the comments as comments on the companion proposed rule, and will address those comments in a later final rule. The NRC will not initiate a second comment period on the rule.

Dated at Rockville, Maryland this 27th day of November, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–30704 Filed 12–3–02; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–86–AD; Amendment 39–12972; AD 2002–24–07]

RIN 2120–AA64

Airworthiness Directives; Aerostar Aircraft Corporation Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Aerostar Aircraft Corporation (Aerostar) Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P). This AD requires you to replace Roto-Master and Rajay scavenge pumps with improved design Aerostar scavenge pumps. This AD is the result of failures of the existing Roto-Master and Rajay scavenge pumps found during regular maintenance inspections. The actions specified by this AD are intended to prevent in-flight failure of the oil scavenge pumps, which could result in loss of engine oil and possible loss of engine power.

DATES: This AD becomes effective on January 17, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 17, 2003.

ADDRESSES: You may get the service information referenced in this AD from Aerostar Aircraft Corporation, 10555 Airport Drive, Coeur d'Alene Airport, Hayden Lake, Idaho 83835–8742; telephone: (208) 762–0338; facsimile: (208) 762–8349. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–86–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055; telephone: (425) 687–4247; facsimile: (425) 687–4248.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received several reports of excessive internal pump wear found during normal maintenance inspections on Aerostar Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes. Analysis of these incidents reveals that inadequate retention of the existing left-hand (LH) oil scavenge pump rotor allows the rotor to machine its way through the LH end plate.

Also, through the buildup of the right-hand (RH) scavenge pump/hydraulic pump stack, axial migration of the RH pump rotor causes damage to the washers and seals. This then causes hydraulic and engine oil to be mixed along with metal shavings being released into the engine oil system.

For these reasons, the FAA determined that both the LH and RH scavenge pumps should be replaced.

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What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in an in-flight failure of the oil scavenge pumps with consequent loss of engine oil and possible loss of engine power.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Aerostar Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 24, 2001 (66 FR 53741). The NPRM proposed to require you to replace the Roto-Master or Rajay scavenge pumps with Aerostar scavenge pumps.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: The Airworthiness Concerns Process Was Not Utilized for This Project

What Is the Commenter's Concern?

One commenter states that FAA did not use the Small Airplane Directorate Airworthiness Concerns Process for this subject. This process is the way the Small Airplane Directorate and industry work together to identify potential airworthiness concerns and share technical information prior to FAA's decision on how to proceed. We infer that the commenter wants the NPRM withdrawn because this process was not utilized.

What Is FAA's Response to the Concern?

The FAA concurs that the formal Small Airplane Directorate Airworthiness Concerns Process was not utilized. This subject originated before the formal implementation of this process. The FAA used all resources and made all reasonable efforts to obtain the necessary technical information and to coordinate this subject. Although we did not implement the formal process, we did utilize the basic concept.

While it is the Small Airplane Directorate's policy to use the Airworthiness Concerns Process, there is no regulation that mandates its use. If, at any time, we choose not to use this process, we still have the regulatory authority to issue an airworthiness directive.

No changes have been made to the final rule AD action as a result of this comment.

Comment Issue No. 2: No Supporting Data Exists; Provide Details of Failures

What Is the Commenter's Concern?

Several commenters state that FAA does not have sufficient data to justify the unsafe condition described in the NPRM. The commenters believe that we have not adequately documented the problem and request more details on the failures.

What Is FAA's Response to the Concern?

The FAA does not concur that the unsafe condition is not justified. As stated in the NPRM, "the FAA has received several reports of excessive internal pump wear found during normal maintenance inspections on Aerostar Models 601, 601P, 602P, and 700P airplanes. Analysis of these incidents reveals that inadequate retention of the existing oil scavenge pump rotor allows the rotor to machine its way through the end plate."

The following is additional information on these incidents:

—In January 1996, one of the affected airplanes experienced complete engine oil loss and an in-flight engine shutdown. Inspection of the engine revealed that the shaft of the LH oil scavenge pump had machined its way through the LH pump's end plate. The scavenge pump was replaced with a new unit, and a short time later an inspection of the new unit revealed that the shaft had once again started to bore through the LH end plate. The RH scavenge pump was then inspected and showed significant wear at the retaining ring and washer.

—Another affected airplane experienced two separate instances of complete engine oil loss and in-flight shutdown caused by the LH scavenge pump machining through the LH end plate. Inspections revealed numerous occurrences of broken retaining rings and washers and some reports of shafts boring through the LH end plates.

The FAA has determined that the information presented above justifies the AD action of replacing the scavenge pumps with pumps of improved design that are less susceptible to these failures.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 3: No Service Reports From RAJAY, the Original Equipment Manufacturer (OEM)

What Is the Commenter's Concern?

Several commenters point out that the OEM, RAJAY, has submitted no reports of the scavenge pumps boring through the LH end plates. The commenters state that if RAJAY does not have service data, then there is obviously not a safety issue. The commenters suggest that FAA withdraw the NPRM.

What Is FAA's Response to the Concern?

We do not concur. Aerostar, as the type certificate (TC) holder, has the regulatory responsibility to submit failures, malfunctions, and defects under 14 CFR 21.3. Aerostar obtains these parts from RAJAY and Roto-Master. However, RAJAY and Roto-Master are the parts suppliers and do not have the regulatory responsibility that Aerostar has. Because of these regulatory responsibilities, we have determined that the reports that Aerostar has submitted under 14 CFR 21.3 are valid and are not undermined by the absence of service information from RAJAY or Roto-Master.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 4: Why Are the Pumps Unsafe When Installed on Aerostar Airplanes and Not Unsafe When Installed on Other Type Design Airplanes

What Is the Commenter's Concern?

Several commenters state that these scavenge pumps are installed on numerous other type design airplanes. The commenters question why the scavenge pumps are only unsafe on the affected Aerostar airplanes and not on other type design airplanes. We infer that the commenters either want the NPRM withdrawn or expanded to include other type design airplanes.

What Is FAA's Response to the Concern?

The FAA does not concur that we should either withdraw the NPRM or include other type design airplanes. We have extensively searched our databases and only have reports on the scavenge pumps that are installed in the Aerostar Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes. We have determined that the condition is based on the design configuration of the pump installation in the Aerostar airplanes.

Currently, there is nothing restraining these scavenge pumps in the Aerostar airplane configuration. Engine vibration and other variables within the installation allow the shafts of the LH oil scavenge pumps to bore through the LH end plates.

We will continue to monitor the continuing airworthiness of these scavenge pumps as installed on other type design airplanes, and we will take appropriate regulatory action, as necessary.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 5: This Is a Maintenance Issue and Is Not Justified as an AD

What Is the Commenter's Concern?

Several commenters state that properly maintained scavenge pumps do not have the failure problems that FAA defines. These commenters question why FAA is issuing this AD to punish those who have adequately maintained their airplanes. They further state that this is an incorrect use of an AD and request that FAA withdraw or give them an exemption from the AD.

What Is FAA's Response to the Concern?

We do not concur. The service history shows that the unsafe condition is a design problem and not a maintenance issue. As discussed earlier, the condition is based on the design configuration of the pump installation in the Aerostar airplanes. Currently, there is nothing restraining these scavenge pumps in the Aerostar airplane configuration. Engine vibration and other variables within the installation allow the shafts of the LH oil scavenge pumps to bore through the LH end plates. Based on the service history received on this subject, we have determined that this AD is justified.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 6: The Improved Design Pumps Are More Unsafe Than the Existing Pumps

What Is the Commenter's Concern?

Several commenters question whether the unsafe condition will be addressed through the installation of the improved design scavenge pumps. The commenters state that these improved design pumps are more unsafe than the scavenge pumps currently installed. No evidence or details were submitted to substantiate these claims. We infer that the commenters want the NPRM withdrawn.

What Is FAA's Response to the Concern?

We do not concur that the improved design scavenge pumps are more unsafe than the ones currently installed. We have received no reports of the unsafe condition occurring on these improved design scavenge pumps.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 7: Allow the Option of Repetitive Inspections or Mandatory Pump Replacement

What Is the Commenter's Concern?

Several commenters believe that FAA should provide the option to repetitively inspect the scavenge pumps for wear and only require mandatory replacement if wear is found. A few of these commenters suggest a repetitive inspection interval of 50 hours time-in-service (TIS).

What Is FAA's Response to the Concern?

The FAA does not concur. The only way to properly inspect the scavenge pump for wear is to remove the pump and disassemble it. Repetitively removing, disassembling, reassembling, and reinstalling the scavenge pumps presents a greater chance of damage to the scavenge pumps than replacing them. Also, the labor of repetitively removing and reinstalling (8 workhours at $60 an hour = $480 per installation) would eventually exceed the one-time replacement cost.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 8: Only Require Replacement of the LH Pump; RH Pump Replacement Is Not Necessary

What Is the Commenter's Concern?

One commenter states that the RH scavenge pump should not be replaced because it does not have an end plate, and it is the middle member of a "stack" that includes the airplane hydraulic pump. This commenter requests that FAA revise the proposed AD to reflect replacement of only the LH scavenge pump.

What Is FAA's Response to the Concern?

The FAA concurs that the RH scavenge pump does not have an end plate and that it is the middle member of a "stack" that includes the airplane hydraulic pump. However, through the buildup of the scavenge pump/hydraulic pump stack, axial migration of the pump rotor would cause damage to the washers and seals. This could cause the hydraulic oil and engine oil to be mixed along with metal shavings being released into the engine oil system. For these reasons, FAA has determined that both the LH and RH scavenge pumps should be replaced as proposed in the NPRM.

We are not changing the final rule AD action as a result of this comment.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

What Are the Differences Between the Service Bulletin and This AD?

Aerostar specifies (in the service information) replacing the scavenge pumps within the next 50 hours TIS or at the next annual inspection, whichever occurs first. We require that you replace the scavenge pumps within the next 50 hours TIS after the effective date of this AD. We cannot enforce a compliance time of "at the next annual inspection." We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the actions required by this AD done without compromising the safety of the airplanes. This will allow the owners/operators to work this replacement into regularly scheduled maintenance.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 650 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the modification:

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Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours for both the left and right engine scavenge pumps × $60 per hour = $480.	$4,750	$5,230	$5,230 × 650 = $3,399, 500

Flexibility Determination and Analysis

What Are the Requirements of the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

What Is FAA's Determination?

The FAA has determined that this AD could have a significant economic impact on a substantial number of small entities. However, we have determined that we should continue with this action in order to address the unsafe condition and ensure aviation safety.

You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled "Initial Regulatory Flexibility Analysis") that was prepared for this AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) could have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–24–07 Aerostar Aircraft Corporation: Amendment 39–12972; Docket No. 99–CE–86–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent in-flight failure of the oil scavenge pumps, which could result in loss of engine oil and possible loss of engine power.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace any scavenge pump specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD with an Aerostar scavenge pump, part number 300110–001 or 300110–002 or FAA-approved equivalent part number. (i) Any Roto-Master scavenge pump, part number 101633–01 or 101633–02 or FAA-approved equivalent part number; and (ii) Any Rajay scavenge pump, part number RJ1025–1 or RJ1025–2 or FAA-approved equivalent part number.	Within the next 50 hours time-in-service after January 17, 2003 (the effective date of this AD), unless already accomplished.	Do this replacement following the INSTRUCTIONS paragraph of Aerostar Mandatory Service Bulletin SB600–131A, January 10, 1998, and the Aerostar Maintenance Manual.

Actions	Compliance	Procedures
(2) Do not install, on an affected airplane, any Roto-Master or Rajay scavenge pump specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.	As of January 17, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Seattle Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Manager, Seattle ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 227–2597; facsimile: (425) 227–1181.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Aerostar Aircraft Corporation Mandatory Service Bulletin SB600–131A, January 10, 1998. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Aerostar Aircraft Corporation, 10555 Airport Drive, Coeur d'Alene Airport, Hayden Lake, Idaho 83835–8742. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 17, 2003.

Issued in Kansas City, Missouri, on November 25, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30495 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket No. 020919216–2287–02]

RIN 0607–AA37

Bureau of the Census Geographically Updated Population Certification Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: Following the 1970 decennial census and every decennial census thereafter, the Bureau of the Census (Census Bureau) has provided the opportunity for county, local, and tribal governments to obtain certified population and housing unit counts for areas in which their boundaries have changed from those used to tabulate the results of the immediately preceding decennial census. These changes might occur either as the result of newly created governmental units (incorporations), additions to existing governmental units (annexations), the combination of two existing governmental units (merger), or other circumstances. These governmental units are established by law for the purpose of implementing specified general- or special-purpose governmental functions; the certification process is available to both.

Most governmental units have legally established boundaries and names and have officials (usually elected) who have the power to carry out legally prescribed functions, provide services for residents, and raise revenues. These are commonly referred to as general-purpose governmental units and typically include counties, boroughs, cities, towns, villages, townships, and federally recognized American Indian reservations. Special-purpose governmental units typically are limited to one function, such as school districts.

This update service was suspended on June 1, 1998, to accommodate the taking of the 2000 census. The Census Bureau developed this rule to reinstate the service through a centralized system for certifying population and housing counts and to establish a fee structure that accurately reflects the costs associated with this certification service. This service will be a permanent process, but one that will be temporarily suspended during future decennial censuses. Typically, the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the **Federal Register** announcing when it suspends and, in turn, resumes, the service. The Census Bureau earlier issued a notice of proposed rulemaking and request for comments in the **Federal Register** on this subject (67 FR 62657; October 8, 2002).

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Rodger V. Johnson, Population Division, U.S. Census Bureau, Room 2324, Federal Building 3, Washington, DC 20233, (301) 763–2419, by fax (301) 457–2481, or e-mail *(rodger.v.johnson@census.gov)*.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau first began to certify decennial census population counts for updated governmental unit boundaries in 1972 in response to the request of local governments to establish eligibility for participation in the General Revenue Sharing Program, authorized under Pub. L. 92–152. At that time, the Census Bureau established a fee-based program, enabling governmental units with annexations to obtain updated decennial census population counts that included the population living in annexed areas. The Census Bureau also received funding from the U.S. Department of the Treasury to make those determinations for larger annexations that met prescribed criteria and for newly formed general-purpose governmental units.

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The General Revenue Sharing Program ended on September 30, 1986, but the certification program continued into 1988 with support from the Census Bureau. The program was suspended to accommodate the taking of the 1990 decennial census and resumed in 1992. The Census Bureau supported the program through fiscal year 1995 for cities with large annexations and through fiscal year 1996 for newly incorporated places. The program was continued on a fee-basis only until June 1, 1998, at which time it was suspended for the 2000 decennial census (*see* **Federal Register**, 63 FR 27706, May 20, 1998). At that time, it was stated that the program would resume in three years; however, resumption was delayed by continuing resource demands of the 2000 decennial census. In 2002, resumption of the program was announced as a proposed rulemaking (*see* **Federal Register**, 67 FR 62657; October 8, 2002) with a comment period running through November 7, 2002. No comments were received during this period.

Although there is no legal requirement that the Census Bureau provide this service, there is a demand by governmental units for Census 2000 population and housing counts certified to reflect boundary updates or the formation of new governmental units dated after January 1, 2000 (the legally effective date for boundaries used in tabulating Census 2000). Title 13, Section 8, allows the Census Bureau to continue this program by providing certain statistical materials (certified population and housing counts) upon payment of costs for the service. The Census Bureau is the sole provider of this service obtained through the processing of individual Census 2000 enumeration records protected by the confidentiality restrictions of Title 13, United States Code (U.S.C.).

A geographically updated population certification from the Census Bureau confirms that an official population count is an accurate retabulation of the Census 2000 population as configured for the new boundaries. A population certification may be needed for many reasons. For example, general-purpose governments may be required by state law to produce a Census Bureau population certification for funds disbursement from their respective states, or federally sponsored programs may require or honor a Census Bureau population certification for program eligibility. Special-purpose governmental units also may need official certification of census population and housing counts for other purposes.

The Census Bureau is reinstating a fee-based program that will use current geographic and demographic programs to support customer requests. The final fee structure reflects variations in resources needed to meet customer requirements for certifications of standard governmental units, as listed later in this notice (see paragraph (c) under section 50.60, "Request for Certification"). To create a consistent process to meet the anticipated demand for the service, the Census Bureau amended Title 15, Code of Federal Regulations (CFR), Part 50 to:

- Add a new Section 50.60 containing the Census Bureau's certification process.
- Establish a consistent fee structure. The fees will depend on the degree of geographic processing tasks required to complete the certification request and on the urgency of the request. There are two types of fees, based upon whether the population certificate is generated through an annually scheduled geographic update process, or is expedited in order to meet customer needs. The annual and expedited certification fees further depend on whether or not additional geographic data must be acquired from the customer and reviewed, tracked, and processed. The lowest fee applies to customers whose geographic data have been collected as part of the annual geographic update process and whose schedules permit waiting until the annual processing has been completed. The highest fee applies to customers from whom additional geographic data must be acquired (over and above the normal annual process) and who also specify expedited processing.
- Require requests for certifications to contain information on Form BC–1869(EF), "Request for Geographically Updated Official Population Certification." (See the Census Bureau's Web site, *www.census.gov/mso/www/certification.*)

Administrative Procedure and Regulatory Flexibility Act

A notice of final rulemaking is not required by Title 5, U.S.C., section 553, or any other law, for this rule of agency organization, procedure and practice that involves a matter relating to public property, loans, grants, benefits, or contracts. Accordingly, it is exempt from the notice and comment provisions of the Administrative Procedure Act under 5 U.S.C.(b)(A) and 5 U.S.C. 553(a)(2). Therefore, the analytical requirements of the Regulatory Flexibility Act are not applicable (5 U.S.C. 601, *et seq.*). As a result, a Regulatory Flexibility Analysis is not required and none has been prepared. However, this rule was published in the **Federal Register** as a proposed rule on October 8, 2002 (67 FR 62657), with an opportunity for public comment, because of the importance of the issues raised by this rulemaking.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined in Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), Title 44, U.S.C., Chapter 35, unless that collection of information displays a current Office of Management and Budget control number. This notice does not represent a collection of information and is not subject to the PRA's requirements. The form referenced in the rule, Form BC–1869(EF), will collect only information necessary to process a certification request. As such, it is not subject to the PRA's requirements (5 CFR 1320.3(h)(1)).

List of Subjects in 15 CFR Part 50

Census data, Geographic updates, Population census, Seals and insignia, Statistics.

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for 15 CFR part 50 is revised to read as follows:

Authority: 15 U.S.C. 1525–1527; and 13 U.S.C. 3 and 8.

2. Add § 50.60 to read as follows:

§ 50.60 Request for Certification

(a) *Certification Process.* Upon request, the Census Bureau certifies population and housing counts of standard governmental units to reflect boundary updates, including new incorporations, annexations, mergers, and so forth. The Census Bureau will produce a certificate, that is, a signed statement by a Census Bureau official attesting to the authenticity of the certified Census 2000 population and housing counts to reflect updates to the legal boundaries of governmental units after those in effect for Census 2000. This service will be a permanent process, but one that will be temporarily suspended during future decennial censuses. Typically, the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the **Federal Register** announcing when it suspends and, in turn, resumes, the service.

(1) The Census Bureau charges customers a preset fee for this service according to the amount of work involved in compiling the population and housing counts, as determined by the resources expended to meet customer requirements and the set cost of the product (one certificate). Certification fees may increase somewhat if the customer requests additional original certificates. Each additional certificate costs $35.00. Certification prices are shown in the following table:

DESCRIPTION AND ESTIMATED FEE

Standard governmental units	Estimated fee
Annual Certification	$693 to $1,799.
Expedited Certification	1,530 to 9,075.

(2) [Reserved]

(b) *Description of Certification Types.* The Census Bureau will process requests for population certificates for standard governmental units, in accordance with the Census Bureau's annual certification schedule or under an expedited certification arrangement. The boundaries for standard governmental units are regularly and customarily updated between decennial censuses by the Census Bureau's geographic support system. These governmental units include a variety of legally defined general- and special-purpose governmental units, including counties and statistically equivalent entities, minor civil divisions, incorporated places, consolidated cities, federally recognized American Indian reservations, and school districts. A complete list of entities is defined in paragraph (c) of this section.

(1) *Annual Certification.* Annual population and housing certification is available around October 1 of each calendar year to new or existing governmental units that report legal boundary updates in the Census Bureau's annual Boundary and Annexation Survey. In accordance with reporting requirements of this survey, the legally effective dates of the boundary updates may not be later than January 1 of the calendar year. These certifications are available through September of the following year.

(i) The annual certification service also is available to standard governmental units that are not in the Boundary and Annexation Survey of that year. Governmental units electing participation in this service must draft the legal boundary updates upon Census Bureau-supplied maps. The legally effective dates of the boundaries may not be later than January 1 of the calendar year. The Census Bureau must receive the census maps annotated with the legally certified boundaries and associated address ranges by April 1 of the same calendar year. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable, and that the legal boundaries on the maps have been attested by the governmental unit as submitted in accordance with state law or tribal authority.

(ii) [Reserved]

(2) *Expedited Certification.* (i) Expedited certification will be available where the customer requests any of the following:

(A) Certification of boundary updates legally effective after January 1 of the current calendar year; or

(B) Certification of boundary updates reported to the Census Bureau after April 1 of the current calendar year; or

(C) Certification of boundary updates by the Census Bureau before October 1 of the current calendar year.

(ii) Governmental units electing participation in this service must draft the legal boundary updates upon Census Bureau-supplied maps. To allow sufficient processing time, the Census Bureau must receive acceptable census maps annotated with the legally certified boundaries and associated address ranges no later than three months before the date requested by the customer to receive the population certificate. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable and that the legal boundaries on the maps have been attested as submitted in accordance with state law or tribal authority.

(c) *List of Standard Governmental Units.* The following is a list of the standard governmental units eligible for the Geographically Updated Population Certification Program:

(1) Federally recognized American Indian reservations and off-reservation trust land entities [tribal government]; this includes a reservation designated as a colony, community, Indian community, Indian village, pueblo, rancheria, reservation, reserve, and village.

(2) Counties and statistically equivalent entities, including the following: counties in 48 states; boroughs, municipalities, and census areas in Alaska [state official]; parishes in Louisiana; and municipios in Puerto Rico.

(3) Minor civil divisions as recognized in Census 2000 in the following 28 states: Arkansas, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, and Wisconsin.

(4) Incorporated places, including the following: boroughs in Connecticut, New Jersey, and Pennsylvania; cities in 49 states and the District of Columbia; cities, boroughs, and municipalities in Alaska; towns in 30 states (excluding towns in New England, New York, and Wisconsin, which are minor civil divisions); and villages in 20 states.

(5) Consolidated cities.

(6) School districts.

(d) *Non-Standard Certifications.* Certifications for population and housing counts of non-standard geographic areas or of individual census blocks are not currently available under this program but will be announced under a separate notice at a later date.

(e) *Submitting Certification Requests.* Submit requests for certifications on Form BC–1869(EF), Request for Geographically Updated Official Population Certification, to the Census Bureau by fax, (301) 457–4714, or by e-mail, *MSO.certify@census.gov.* Form BC–1869(EF) will be available on the Census Bureau's Web site at: *http://www.census.gov/mso/www/certification/.* A letter or e-mail communication requesting the service without Form BC–1869(EF) will be accepted only if it contains the information necessary to complete a Form BC–1869(EF).

Dated: November 27, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–30741 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–07–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM01–6–000; Order No. 892]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Brownell; Assignment of Firm Capacity on Upstream Interstate Pipelines

November 21, 2002.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to remove Subpart H of Part 284 which requires interstate natural gas pipelines to assign to their firm shippers capacity the pipelines hold on other interstate pipelines. This requirement was a necessary part of the unbundling of interstate pipelines' gas sales from their gas transportation service required in Order No. 636. On December 14, 2000, the Commission announced a new policy under which it would no longer require pipelines to give up their capacity on other pipelines but would allow them to acquire and hold capacity on other pipelines without prior Commission approval. Since Subpart H no longer reflects the Commission policy with respect to pipelines' holding capacity on other pipelines, the Commission is removing the regulation.

EFFECTIVE DATE: Removal of these regulations becomes effective January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Cecilia Desmond, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8695.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations by removing subpart H of part 284 (18 CFR 284.241 and 284.242) which requires interstate natural gas pipelines to assign to their firm shippers capacity the pipelines hold on other interstate pipelines. The policies embedded in these regulations have been overtaken by subsequent policy developments, most particularly the Commission's December 14, 2000 announcement of a new policy allowing unbundled open access pipelines to acquire and hold capacity on other pipelines without prior Commission approval.[1] Subpart H was promulgated in Order No. 636[2] and was a necessary part of the unbundling of interstate gas sales from transportation. However, all natural gas companies have implemented Order No. 636 and the Commission now allows unbundled open access pipelines to acquire capacity on other pipelines as can any other shipper without seeking prior Commission approval. Since Subpart H is inconsistent with current Commission policy, the Commission is removing Subpart H from its regulations.

II. Discussion

2. In Order No. 636, the Commission required interstate gas pipelines to unbundle the sale of gas from the sale of transportation and to assign their upstream capacity to their firm shippers.[3] The Commission found that pipelines' access to upstream capacity needed to provide bundled gas sales gave them an undue competitive advantage over other gas merchants since the upstream capacity gave pipelines access to more gas suppliers. The Commission also found that a pipeline's holding upstream capacity inhibited the goal of a competitive national market because the downstream gas purchasers would not be able to access the production areas and gas merchants reached by the downstream pipeline through its upstream capacity.

3. The Commission adhered to that policy for several years during the individual pipelines' Order No. 636 restructuring proceedings. Then, in *Texas Eastern Transmission Corporation (Texas Eastern)*, the Commission determined that Order No. 636 did not create a *per se* rule precluding restructured pipelines from entering into contracts for transportation or storage capacity on other pipelines (offsystem capacity).[4] The Commission reasoned that pipelines had completed the unbundling of gas sales and transportation service required by Order No. 636 and that the market had become sufficiently competitive to allow pipelines to hold capacity on other pipelines. Therefore, the Commission said it would decide whether to allow pipelines to acquire offsystem capacity on a case-by-case basis.

4. Two pipelines appealed the *Texas Eastern* requirement for case-specific approval, claiming that it discriminated against pipelines because non-pipeline shippers could acquire capacity without prior approval.[5] They also argued that the Commission's blanket certificate and capacity release regulations, which require pipelines to make transportation services available on a nondiscriminatory basis under Commission-approved open access tariffs, were sufficient to control unduly discriminatory or anticompetitive actions that might arise when a pipeline acquires offsystem capacity. The court agreed and remanded the case.

5. On December 14, 2000, the Commission issued its Order on Remand in the *Texas Eastern* proceeding. In that order, the Commission announced a new policy that unbundled open access pipelines will no longer be required to seek Commission approval before acquiring offsystem capacity, that existing safeguards provide the necessary protection against discriminatory and anticompetitive actions with respect to acquired offsystem capacity, and that pipelines will be at-risk for the costs of any such capacity. Before transporting gas for others on any acquired offsystem capacity, the Commission required a pipeline to seek a blanket waiver of the shipper-must-hold-title policy by amending its tariff to include a general statement that it will only transport for others on offsystem capacity pursuant to its existing open access tariff and rates.[6]

6. On April 10, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR)[7] proposing in this docket to amend the Commission's regulations by removing Subpart H of Part 284.[8] In the NOPR, the Commission noted that the natural gas marketplace has fundamentally changed since the issuance of Order No. 636. The Commission stated that, in the *Texas Eastern* series of orders, the Commission developed and modified its policy with respect to pipelines' acquiring capacity on other pipelines in light of these changes. Since the requirement to assign upstream capacity contained in § 284.242 was specific to the implementation of Order No. 636, all interstate pipelines had implemented Order No. 636, and the Commission now allows pipelines to acquire capacity on other pipelines as can any other shipper without seeking prior Commission approval, the Commission stated, Subpart H is no longer necessary.

7. However, as the Commission stated in the NOPR, the removal of the regulation will not modify the Commission's *Texas Eastern* policy under which the appropriateness of a pipeline's acquisitions of capacity on other pipelines is subject to review in a subsequent general section 4 rate proceeding or the Commission's requirement that the shipper must hold title to any gas being shipped through the acquired capacity.

III. Environmental Analysis

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[9] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[10] No environmental consideration is necessary in this instance since the final rule is clarifying, corrective, or procedural and affects transportation of natural gas that requires no construction of facilities.[11]

IV. Regulatory Flexibility Impact Statement

9. The Regulatory Flexibility Act of 1980 (RFA)[12] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if a rule would not have such an effect.[13]

10. The Commission does not believe that this rule removal would have such an impact on small entities. The removal of these regulations would have an impact only on interstate pipelines, which generally do not fall within the RFA's definition of small entity.[14] Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that the removal of the regulations will not have a significant economic impact on a substantial number of small entities.

V. Information Collection Statement

11. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[15] However, this final rule contains no information reporting requirements, and therefore is not subject to OMB approval.

VI. Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

13. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for FERRIS and the FERC's website during normal business hours. Please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

VII. Effective Date

15. This Final Rule will take effect January 3, 2003.

16. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 1331–1356.

Subpart H—[Removed and Reserved].

2. In part 284, remove and reserve subpart H, consisting of §§ 284.241 and 284.242.

[FR Doc. 02–30706 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–145]

Drawbridge Operation Regulations; Atlantic Avenue Bridge (SR 806), Atlantic Intracoastal Waterway, Mile 1039.6, Delray Beach, Palm Beach County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Atlantic Avenue bridge (SR 806), across the Atlantic Intracoastal Waterway, mile 1039.6, Delray Beach, Palm Beach County, Florida. This deviation allows the bridge owner or operator to keep a single-leaf of the drawbridge in the closed position. A double-leaf opening is available if at least 12 hours notice is provided to the bridge tender. This deviation is necessary to facilitate repairs to the bridge.

DATES: This deviation is effective from 8 p.m. on December 9, 2002, until 11:59 p.m. on December 31, 2002.

ADDRESSES: Materials received from the public, as well as documents indicated

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[1] Texas Eastern Transmission Corp., 93 FERC ¶ 61,273 (2000); *reh'g denied*, 94 FERC ¶ 61,139; *reh'g denied*, 95 FERC ¶ 61,056 (2001).

[2] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats & Regs., Regulations Preambles, January 1991–June 1996 ¶ 30,939 (Apr. 8, 1992).

[3] The Commission allowed pipelines to retain upstream capacity for operational management and balancing purposes and no-notice transportation service.

[4] 74 FERC ¶ 61,074 (1996); 78 FERC ¶ 61,277 (1997); *order on remand*, 93 FERC ¶ 61,273 (2000); *reh'g denied*, 94 FERC ¶ 61,139; *reh'g denied*, 95 FERC ¶ 61,056 (2001).

[5] *See Colorado Interstate Gas Co.* v. *FERC*, 146 F.3d 889 (D.C. Cir. 1998).

[6] *See* Texas Eastern, 95 FERC ¶ 61,056 (2001).

[7] Assignment of Firm Capacity on Upstream Interstate Pipelines, 67 FR 19136 (Apr. 18, 2002), FERC Stats. & Regs. ¶ 32,549.

[8] The Commission received one comment in response to the NOPR from Williston Basin Interstate Pipeline Co. which supports the proposal to remove Subpart H of Part 284.

[9] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[10] 18 CFR 380.4.

[11] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(27).

[12] 5 U.S.C. 601–612.

[13] 5 U.S.C. 605(b).

[14] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operations.

[15] 5 CFR Part 1320.

requirements, Incorporation by reference.

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in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The existing regulations in 33 CFR 117.261(aa) governing the operation of the Atlantic Avenue bridge (SR 806), mile 1039.6, at Delray Beach, Florida, allow the draw to open on signal, except that, from November 1 through May 31 from 10 a.m. to 6 p.m., Monday through Friday, the draw need open only on the hour, and half hour. This bridge provides a horizontal clearance of 45 feet between the fender and the down span.

Quinn Construction requested on September 30, 2002, that the Coast Guard allow it to keep a single-leaf of the bridge in the closed position from 8 p.m. on December 9, 2002, until 11:59 p.m. on December 31, 2002, to facilitate repairs to the bridge spans.

The District Commander granted a deviation from the operating requirements listed in 33 CFR 117.261(aa) to allow Quinn Construction, representing the owner, to facilitate repairs to the bridge spans. Under this deviation, one leaf of the Atlantic Avenue bridge may remain in the closed position from 8 p.m. on December 9, 2002, until 11:59 p.m. on December 31, 2002. A double-leaf opening is available if 12 hours notice is provided to the bridge tender.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 25, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–30738 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–144]

Drawbridge Operation Regulations; Florida East Coast Railroad Bridge, St. Johns River, Jacksonville, Duval County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railroad bridge across the St. Johns River, mile 24.9, Jacksonville, Duval County, Florida. This deviation allows the bridge to remain in the closed position from 11 p.m. on December 1 until 5 p.m. on December 12, 2002, for the completion of emergency repairs.

DATES: This deviation is effective from 11 p.m. on December 1, 2002, until 5 p.m. on December 12, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Florida East Coast Railroad Bridge across the St. Johns River, Jacksonville, Florida, is a single leaf bascule bridge with a vertical clearance of 9 feet above mean high water (MHW) measured at the fenders in the closed position and a horizontal clearance of 195 feet.

The current operating regulation in 33 CFR 117.325(c) requires that the bridge be constantly tended and have a mechanical override capability for the automated operation. A radiotelephone must be maintained at the bridge for the safety of navigation. The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass. When a train approaches, large signs on both the upstream and downstream sides of the bridge flash "Bridge Coming Down," the lights go to flashing red, and siren signals sound. After an eight minute delay, the draw lowers and locks if there are no vessels under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied. After the train has cleared, the draw opens and the lights return to flashing green.

This deviation will facilitate repairs to the upper trunnion of the moveable span. The work will be performed on an around-the-clock basis from 11 p.m. on December 1, 2002, until 5 p.m. on December 12, 2002. During this period of work the span will remain in the closed position.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 25, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–30737 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175, 177, 179, 181, and 183

46 CFR Parts 2, 10, 15, 24, 25, 26, 30, 70, 90, 114, 169, 175, 188, and 199

[USCG–1999–5040]

RIN 2115–AF89

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)

AGENCY: Coast Guard, DOT.

ACTION: Final rule; announcement of enforcement date.

SUMMARY: The Coast Guard is announcing the approval of a collection-of-information requirement pertaining to the implementation of safety measures for uninspected passenger vessels over 100 gross tons, which carry 12 or fewer passengers for hire. The implementation allows owners, operators, and/or agents of those type vessels to submit an application for the issuance of a special permit to participate in a Marine Event of National Significance. It also allows the development of specific manning, structural fire protection, operating, and equipment requirements for a limited fleet of PVSA-exempted vessels.

DATES: 46 CFR 26.03–8 as published May 15, 2002 (67 FR 34756), is enforceable as of June 24, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call Michael A. Jendrossek, Office of Operating and Environmental Standards (G–MSO–2), Coast Guard, telephone 202–267–0836. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on May 15, 2002, at 67 FR 34756 was effective on June 14, 2002. This rule amends an existing Office of Management and Budget (OMB) approved collection, OMB Control Number 2115–0133, that expires on April 30, 2003. As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the OMB for its review of the Collection-of-information. OMB approved the change to this collection effective June 24, 2002, and the collection now expires on June 30, 2005.

Dated: October 17, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–30618 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1200

RIN 3095–AB12

Official Seals

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its regulations on the NARA official seals. The rule adds our criteria for approving and denying requests submitted by the public and other Federal agencies to use our official seals. It also requires more detailed facts in written requests and includes NARA's conditions for use if a request is approved. This part has been rewritten in plain language format and applies to the public and other Federal agencies.

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the July 17, 2002, **Federal Register** (67 FR 46945) for a 60-day comment period. NARA did not receive any comments.

Information Collection Subject to the Paperwork Reduction Act

The information collection in § 1200.10, the written request, is subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number for this information collection is 3095–0052.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1200

Seals and insignia.

For the reasons set forth in the preamble, NARA revises part 1200 of title 36, Code of Federal Regulations, to read as follows:

PART 1200—OFFICIAL SEALS

Subpart A—General

Sec.
1200.1 Definitions.

Subpart B—How are NARA's Official Seals Designed and Used?

1200.2 How is each NARA seal designed?
1200.4 How does NARA use its official seals?
1200.6 Who is authorized to apply the official seals on documents or other materials?

Subpart C—Procedures for the Public to Request and Use NARA Seals

1200.8 How do I request to use the official seals?
1200.10 What are NARA's criteria for approval?
1200.12 How does NARA notify me of the determination?
1200.14 What are NARA's conditions for the use of the official seals?

Subpart D—Penalties for Misuse of NARA Seals

1200.16 Will I be penalized for misusing the official seals?

Authority: 18 U.S.C. 506 and 1017; 44 U.S.C. 2104(e), 2116(b), 2302.

Subpart A—General

§ 1200.1 Definitions.

The following definitions apply to this part:

Embossing seal means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

NARA means all organizational units of the National Archives and Records Administration.

Official seal means the original(s) of the seal showing the exact form and content.

Replica or reproduction means a copy of the official seal displaying the form and content.

Subpart B—How are NARA's Official Seals Designed and Used?

§ 1200.2 How is each NARA seal designed?

NARA's three official seals are illustrated in Figures 1, 2, and 30.

A description of each seal is as follows:

(a) *The National Archives and Records Administration seal.* The design is illustrated below in Figure 1 and described as follows:

(1) The seal is centered on a disc with a double-line border.

(2) The words "NATIONAL ARCHIVES AND RECORDS ADMINISTRATION" encircle the inside of the seal and the date 1985 is at the bottom center.

(3) A solid line rendition of a heraldic eagle displayed holding in its left talon 13 arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States.

(4) Displayed above the eagle's head is a partially unrolled scroll inscribed with the words "LITTERA SCRIPTA MANET" one above the other.

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Figure 1 – The National Archives and Records Administration Seal

(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words "THE NATIONAL ARCHIVES OF THE UNITED STATES" encircle the inside of the seal and the date 1934 is at the bottom center.

Figure 2 – The National Archives Seal

(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words "NATIONAL ARCHIVES TRUST FUND BOARD" encircle the inside of the seal and the date 1941 is at the bottom center.

Figure 3 – National Archives Trust Fund Board Seal

§ 1200.4 How does NARA use its official seals?

NARA uses its three official seals to authenticate various copies of documents and for informational purposes as follows:

(a) The National Archives and Records Administration seal, dated 1985, is used:

(1) For official business, *e.g.*, stationery;

(2) To authenticate copies of Federal records in NARA's temporary custody and copies of NARA operational records; and

(3) For informational purposes with NARA's prior approval (includes use by NARA employees, the public, and other Federal agencies).

(b) The National Archives seal, dated 1934, is used to authenticate copies of documents in NARA's permanent legal custody.

(c) The National Archives Trust Fund Board seal, dated 1941, is used for Trust Fund documents and publications.

§ 1200.6 Who is authorized to apply the official seals on documents or other materials?

The Archivist of the United States (and the Archivist's designee) is the only individual authorized to apply NARA official seals, embossing seals, and replicas and reproductions of seals to appropriate documents, authentications, and other material. NARA accepts requests to use the official seals and approves or denies them based on the criteria identified in § 1200.10.

Subpart C—Procedures for the Public To Request and Use NARA Seals

§ 1200.8 How do I request to use the official seals?

You may only use the official seals if NARA approves your written request. Follow the procedures in this section to request authorization.

(a) Prepare a written request explaining, in detail:

(1) The name of the individual/organization requesting use and how it is associated with NARA;

(2) Which of the three official seals you want to use and how or on what it is going to be displayed. Provide a sample of the document or other material on which the seal is intended to appear. Mark the sample in all places where the seal would be displayed;

(3) How the intended use of the official seal is connected to your work with NARA on an event or activity (example: requesting to use the official NARA seal on a program brochure, poster, or other publicity announcing a co-sponsored symposium or conference.); and

(4) The dates of the event or activity for which you intend to display the seal.

(b) You must submit the request at least six weeks before you intend to use it to the Archivist of the United States (N), 8601 Adelphi Rd., College Park, MD 20740–6001.

(c) The OMB control number 3095–0052 has been assigned to the information collection contained in this section.

§ 1200.10 What are NARA's criteria for approval?

NARA's criteria for approval are as follows:

(a) NARA must be participating in the event or activity by providing speakers, space, or other similar services (example: NARA co-sponsoring a symposium or conference).

(b) The seal is not going to be used on any article or in any manner that reflects unfavorably on NARA or endorses, either directly or by implication, commercial products or services, or a requestor's policies or activities.

§ 1200.12 How does NARA notify me of the determination?

NARA will notify you by mail of the final decision, usually within 3 weeks from the date we receive your request. If NARA approves your request, we will send you a camera-ready copy of the official seal along with an approval letter that will:

(a) Reference back to the submitted request (either through the date or another distinguishing characteristic) indicating approval of the specific use, as defined in the request; and

(b) Include NARA's conditions for use, which are identified in § 1200.14.

§ 1200.14 What are NARA's conditions for the use of the official seals?

If your request is approved, you must follow these conditions:

(a) Use the official seal only for the specific purpose for which approval was granted;

(b) Submit additional written requests for any uses other than the use granted in the approval letter;

(c) Do not delegate the approval to another individual(s) or organization without NARA's prior approval; and

(d) Do not change the official seals themselves. They must visually and

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physically appear as illustrated in § 1200.2, with no alterations.

(e) Only use the official seal for the time period designated in the approval letter (example: for the duration of a conference or exhibit).

Subpart D—Penalties for Misuse of NARA Seals

§ 1200.16 Will I be penalized for misusing the official seals?

(a) If you falsely make, forge, counterfeit, mutilate, or alter official seals, replicas, reproductions or embossing seals, or knowingly use or possess with fraudulent intent any altered seal, you are subject to penalties under 18 U.S.C. 506.

(b) If you use the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part, you are subject to penalties under 18 U.S.C. 1017 and to other provisions of law as applicable.

Dated: November 26, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–30766 Filed 12–3–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0005; FRL–7279–5]

Pyrithiobac Sodium (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate); Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pyrithiobac sodium (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on cotton, undelinted seed and cotton gin byproducts. DuPont Agricultural Products, Wilmington, DE requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective December 4, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0005, must be received on or before February 3, 2003.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0005 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Product Manager (PM) 25, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/4 0cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of September 24, 1997 (62 FR 49979) (FRL–5745–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996 (Public Law 104–170), announcing the filing of a pesticide petition PP 4F4391 by DuPont Agricultural Products, Wilmington, DE. This notice included a summary of the petition prepared by DuPont Agricultural Products, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.487 be amended by establishing a tolerance for residues of the herbicide pyrithiobac sodium, (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate), in or on cotton, undelinted seed at 0.02 parts per million (ppm) and cotton gin byproducts at 0.1 ppm. The Registrant subsequently amended the petition by

increasing the tolerance request for cotton gin byproducts to 0.15 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997, (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of pyrithiobac sodium on cotton, undelinted seed at 0.02 ppm and cotton gin byproducts at 0.15 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyrithiobac sodium are discussed below. This discussion refers to the no observed effect level (NOEL) and the lowest observed effect level (LOEL) from the toxicity studies reviewed rather than the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) because the toxicity studies for pyrithiobac sodium were reviewed prior to adoption in 1998 of the NOAEL/LOAEL terminology by EPA's Office of Pesticide Programs (OPP) and its Health Effects Division (HED). At the time of the switch to the revised terminology, HED noted that the new terminology was unlikely to have any substantive effect on its hazard evaluations: "In a practical sense, the terms NOEL and NOAEL have been used interchangeably in OPP. As a general rule, OPP would consider as appropriate for hazard identification and risk assessment only those effects which are adverse or potentially adverse. This inclusion of the term NOAEL should not change any of our hazard endpoints for regulation but add to the quality of the risk assessment." HED Standard Operating Procedure (SOP) 98.3

1. A rat acute oral study with a LD_{50} of 3,300 milligrams/kilogram (mg/kg) for males and a LD_{50} of 3,200 mg/kg for females.

2. A 90–day rat feeding study with a NOAEL of 50 parts per million (ppm) (3.25 mg/kg/day for males and 4.14 mg/kg/day for females) and a LOAEL of 500 ppm (31.8 mg/kg/day for males and 40.5 mg/kg/day for females based on decrease body weight gains and increased rate of hepatic beta-oxidation in males.

3. A 90–day mouse feeding study with a NOAEL of 500 ppm (83.1 mg/kg/day for males and 112 mg/kg/day for females) and a LOAEL of 1,500 ppm (263 mg/kg/day for males and 384 mg/kg/day for females) based on increased liver weight and an increased incidence of hepatocellular hypertrophy in males and decreased neutrophil count in females.

4. A 3–month dog feeding study with a NOAEL of 5,000 ppm (165 mg/kg/day) and a LOAEL of 20,000 ppm (626 mg/kg/day), based on decrease red blood cell count, hemoglobin, and hematocrit in females and increased liver weight in both sexes.

5. A 21–day rat dermal study with a Dermal Irritation NOAEL of 50 mg/kg/day and, a Dermal Irritation LOAEL of 500 mg/kg/day based on increased incidence of erythema and edema, and with a Systemic Dermal NOAEL of 500 mg/kg/day and a Systemic Dermal LOAEL of 1,200 mg/kg/day based on body weight gain inhibition.

6. A 90–day rat neurotoxicity screening battery with a Systemic NOAEL of 7,000 ppm (466 mg/kg/day for males and 588 mg/kg/day for females) and a Systemic LOAEL of 20,000 ppm (1,376 mg/kg/day for males and 1,609 mg/kg/day for females), based on deceased hind grip strength and increased foot spay in males, and a Neurotoxicity NOAEL of 20,000 ppm highest dose tested (HDT).

7. A 78–week dietary carcinogenicity study in mice with a NOAEL of 1,500 ppm 217 mg/kg/day (males) and 319 mg/kg/day (females) and a LOAEL of 5,000 ppm 745 mg/kg/day (males) and 1,101 mg/kg/day (females) based on decreased body weight gain in both sexes, treatment related increase in the incidence of foci/focus of hepatocellular alternation in males, and increased incidence of glomerulonephropathy (murine) in both sexes, and an increased incidence of infarct in the kidney and keratopathy of the eyes. There was evidence of carcinogenicity based on significant differences in the pair-wise comparisons of hepatocellular adenomas and combined adenoma/carcinoma in the 150 ppm and 1,500 ppm dose-groups (but not at the high dose of 5,000 ppm) with the controls. The carcinogenic effects observed are discussed below.

8. A 23–month rat chronic toxicity/carcinogenicity study with a Systemic NOAEL of 1,500 ppm (58.7 mg/kg/day) for males and 5,000 ppm (278 mg/kg/day) for females, and with a Systemic LOAEL of 5,000 ppm (200 mg/kg/day) for males and 15,000 ppm (918 mg/kg/day) for females, based on deceased body weight, body weight gain and food efficiency for females, the increased incidence of eye lesions in both sexes, mild changes in hematology and urinalysis in both sexes, clinical signs suggestive of urinary tract dysfunction in males and females, increased incidence of focal cystic degeneration in the liver in males, increased rate of hepatic peroxisomal beta-oxidation in males and an increased incidence of inflammatory and degenerative lesions in the kidney in females. There was evidence of carcinogenicity based on significant dose-related increasing trend in kidney tubular combined adenoma/carcinoma in male rats and a significant dose related increasing trend in kidney tubular bilateral and/or unilateral adenomas in females. The carcinogenic effects observed are discussed further below.

9. A 1–year dog chronic toxicity study with a NOAEL of 5,000 ppm (143 mg/kg/day for males and 166 mg/kg/day for females) and a LOAEL of 20,000 ppm (580 mg/kg/day for males and 647 mg/kg/day for females) based on decreases in body weight gain, increase thyroid

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and liver weights, and microscopic findings in the liver and kidneys.

10. A 2-generation reproduction study in rats with a NOAEL for maternal toxicity of 1,500 ppm (103 mg/kg/day) and a maternal LOAEL of 7,500 ppm (508 mg/kg/day), based on decreased body weight, body weight gain and food efficiency. The NOAEL for paternal toxicity is 1,500 ppm (86 mg/kg/day), while the LOAEL is 7,500 ppm (439 mg/kg/day), based on decreased body weight, body weight gain and food efficiency. The NOAEL for reproductive effects can be set at 7,500 ppm (508 mg/kg/day), the LOAEL at 20,000 ppm (1,551 mg/kg/day), based on decreased pup body weight. The NOAEL for effects on offspring is 7,500 ppm (508 mg/kg/day), and the LOAEL at 20,000 ppm (1,551 mg/kg/day), based on decreased pup body weight.

11. A 13–day dosing (gestation days 7–19) developmental toxicity study in rabbits with a maternal NOAEL of 300 mg/kg and a maternal LOAEL of 1,000 mg/kg based on deaths, decreased body weight gain and feed consumption, and an increase in early resorptions. There is developmental toxicity observed at 1,000 mg/kg based on decreased fetal body weights.

12. A 10–day dosing (gestation days 7–16) developmental toxicity study in rats wth a maternal NOAEL of 200 mg/kg and maternal LOAEL of 600 mg/kg due to increased incidence of peritoneal staining. The developmental NOAEL is 600 mg/kg and the developmental LOAEL is 1,800 mg/kg based on the increased incidence of skeletal variations.

13. No evidence of gene mutation was observed in a test for induction of forward mutations at the hypoxanthine guanine phophoribosyl transferase (HGPRT) locus in Chinese hamster ovary cells. No evidence was observed for inducing reverse gene mutation in two independent assays with *Salmonella typhimurium* with and without mammalian metabolic activation. Pyrithiobac sodium was negative for the induction of micronuclei in the bone marrow cells of mice, and negative for induction of unscheduled DNA synthesis in rat primary hepatocytes. Pyrithiobac sodium was positive for inducing chromosome aberrations assay in human lymphocytes.

14. A rat metabolism study showed that radio labeled pyrithiobac sodium is excreted in urine and feces with >90% being eliminated within 48 hours. A sex difference was observed in the excretion and biotransformation. Females excreted a greater amount of the radiolabel in the urine than males following all regimens, with a corresponding lower amount being eliminated in the feces compared to the males.

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL at which effects of concern are identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for pyrithiobac sodium used for human risk assessment is as follows:

1. *Acute toxicity.* EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from 1–day or single-event exposure.

2. *Short-term and intermediate-term toxicity.* EPA has concluded that available evidence does not indicate any evidence of significant toxicity from short-term and intermediate-term exposure.

3. *Chronic toxicity.* EPA has established the RfD for pyrithiobac sodium at 0.587 mg/kg/day. This RfD is based on the systemic NOAEL of 58.7 mg/kg/day for males in the rat chronic feeding study with a 100-fold safety factor to account for interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* EPA has concluded that the available data provide limited evidence of the carcinogenicity of pyrithiobac sodium in mice and rats and has classified pyrithiobac sodium as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** of (September 24, 1986, 51 FR 33992) and recommended that for the purpose of risk characterization a low dose extrapolation model should be applied to the experimental animal tumor data for quantification for human risk (Q_1^*). This decision was based on liver adenomas, carcinomas and combined adenoma/carcinomas in the male mouse and rare kidney tubular adenomas, carcinomas and combined adenoma/carcinomas in male rats. The unit risk, Q_1^* (mg/kg/day)-1, of pyrithiobac sodium is 1.05 x 10–3 (mg/kg/day)-1 in human equivalents based on male kidney tumors.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Permanent tolerances have been requested to replace the time limited tolerance in/on cottonseed 40 CFR 180.487 at 0.02 ppm, and a new tolerance for the residues of pyrithiobac sodium, in or on cotton gin byproducts at 0.1 ppm. The requested tolerance for cotton gin byproducts has been amended to 0.15 ppm based on the results of the submitted field residue trials, and cottonseed was changed to cotton, undelinted seed. Processing studies for cotton have shown that pyrithiobac sodium does not concentrate in cottonseed processed food/feed commodities. No requested tolerances were necessary for meat, milk, and eggs because detectible residues are not expected in these commodities from this use on cotton. Risk assessments were conducted by EPA to assess dietary exposures from pyrithiobac sodium in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from one-day or single-event exposure; therefore, an acute exposure assessment is not applicable.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™ analysis evaluated the individual food consumption as reported by respondents in the Department of Argiculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. EPA assumed that all commodities for which tolerances exist and all cotton food commodities had pyrithiobac sodium residues at the appropriate tolerance level.

iii. *Cancer.* The cancer exposure assessment relied upon the same data and assumptions as the chronic exposure assessment.

iv. *Anticipated residue and percent crop treated (PCT) information.* Tolerance level residues and treatment of 100% of the crop was assumed. Anticipated residues and PCT information was not used.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyrithiobac sodium in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of pyrithiobac sodium.

The Agency uses the GENEEC or the PRZM/EXAMS to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to pyrithiobac sodium they are further discussed in the aggregate risk sections in Unit E.

Based on the GENEEC and SCI-GROW models the EECs of pyrithiobac sodium for chronic exposures are estimated to be 7.76 parts per billion (ppb) for surface water and 0.778 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyrithiobac sodium is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether pyrithiobac sodium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyrithiobac sodium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyrithiobac sodium has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (November 26, 1997, 62 FR 62961).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Pre-natal and post-natal sensitivity.* In a preliminary review, EPA concluded that data do not indicate that there is a significant potential for reproductive or developmental effects from pyrithiobac sodium as tested.

3. *Conclusion.* There is a complete toxicity data base for pyrithiobac sodium and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Pyrithiobac sodium has not been formally reviewed by the Agency regarding the need to retain the additional 10X safety factor for the protection of infants and children. Thus, despite the completeness of the database and the lack of any indication of significant potential for reproductive or developmental effects, EPA has retained the additional 10X safety factor until a full review can be completed. Retention of the additional safety factor yields a

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cPAD for pyrithiobac sodium of 0.0587 mg/kg/day.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

Pyrithiobac sodium is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water.

1. *Acute risk.* EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute exposures from the use of pyrithiobac sodium on cotton.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyrithiobac sodium from food and water will utilize less than 0.2% of the cPAD for the U.S. population, and less than 0.2% of the cPAD for children 1 to 6 years at greatest exposure to both food and water. There are no residential uses for pyrithiobac sodium that result in chronic residential exposure to pyrithiobac sodium. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Due to the low exposure for the U.S. population (less than 0.2%) and for children 1 to 6 years (less than 0.2%) for both food and water, the calculated DWLOC is approximately equal to the cPAD.

3. *Short-term risk.* EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from short-term exposures from the use of pyrithiobac sodium on cotton.

4. *Intermediate-term risk.* EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from intermediate-term exposures from the use of pyrithiobac sodium on cotton.

5. *Aggregate cancer risk for U.S. population.* Based on the upper bound potency factor (Q*1) of 1.05 x 10–3 (mg/kg/day)-1, the aggregate upper bound lifetime cancer risk from the use of pyrithiobac sodium on cotton from worst case estimates of residues in food and drinking water is 2.3 x 10–7.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pyrithiobac sodium residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology high performance liquid chromotography using ultra-violent detection (HPLC-UV) with column switching) is available to enforce the tolerance expression. The method may be requested from: Paul Golden, U.S. Environmental Protection Agency, Office of Pesticide Programs, BEAD, ACB, Environmental Science Center, 701 Mapes Road Fort Meade, MD 20755–5350; Telephone (410) 305–2960.

B. International Residue Limits

There are no established Codex maximum residue levels (MRLs) for pyrithiobac sodium on cottonseed. An established Mexican tolerance for pyrithiobac sodium on cottonseed is identical to the U.S. tolerance. Compatibility of tolerance levels is not an issue at this time.

C. Conditions

There are no conditions. Adequate residue data has been submitted to support the tolerances established in this **Federal Register** Notice.

V. Conclusion

Therefore, the tolerance is established for residues of pyrithiobac sodium, (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate), in or on cotton, undelinted seed at 0.02 ppm and cotton gin byproducts at 0.15 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0005 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 3, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0005, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have

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any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government andIndian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 8, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.487 paragraph (a) is revised to read as follows:

§ 180.487 Pyrithiobac sodium; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, pyrithiobac sodium, (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate), resulting from the application of the pesticide chemical in or on the following foods/feeds:

Commodity	Parts per million
Cotton gin byproducts	0.15
Cotton, undelinted seed	0.02

* * * * *

[FR Doc. 02–30472 Filed 12–3–02; 8:45 am]
BILLING CODE 5560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 112702C]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of U.S. fish quotas and an effort allocation.

SUMMARY: NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the NAFO Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: All fish quotas and the effort allocation are effective January 1, 2003, through December 31, 2003. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2003. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through January 3, 2004.

ADDRESSES: Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: pat.moran@noaa.gov).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFCA) Permit is available from Jennifer L. Anderson at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9226, fax: 978–281–9394, e-mail: jennifer.anderson@noaa.gov) and from NAFO on the World Wide Web at http://www.nafo.ca.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2002 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2003. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities are as follows:

(1) Redfish NAFO Division 3M 69 mt
(2) Squid NAFO Subareas 3 & 4 453 mt
(3) Shrimp NAFO Division 3L 67 mt
(4) Shrimp NAFO Division 3M 1 vessel/100 days

Additionally, U.S. vessels may fish any portion of the 7,500 mt TAC of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K. This opportunity is available only to members of NAFO that are not members of the North East Atlantic Fisheries Commission, on a first-come, first-served basis. Allocations are also available to U.S. fisherman in the "Others" category for: Division 3LNO yellowtail flounder (73 mt) and Division 3LMNO Greenland halibut (2,070 mt).

U.S. Fish Quota Allocations

Expressions of interest in all U.S. fish quota allocations and "Others" category allocations in NAFO will be considered from U.S. vessels in possession of a valid HSFCA permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and time of fishing operations should be included. If necessary to ensure equitable access by U.S. vessel owners, NMFS may need to promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR parts 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization on board the vessel issued by the Regional Administrator;

(2) For the duration of the trip, the vessel fishes exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2003 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be considered from owners of U.S. vessels in possession of a valid HSFCA permit. All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may need to promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS NortheastRegional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Chartering Arrangements

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2003 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2003 U.S. quota allocation for 3L shrimp and/or the effort allocation for 3M shrimp. Under NAFO rules in effect through 2003, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. allocations provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocations are transferred to that flag state. Such a transfer must be adopted by NAFO Parties through a mail voting process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the U.S. must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: provisional monthly catches within 30 days following the calender month in which the catches were made; provisional monthly fishing days in Division 3M within 30 days following the calender month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention. Furthermore, the U.S. may also consider a Contracting Party's previous compliance with the NAFO incidental catch limits, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag state; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed 6 months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel would actually take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the use of chartering operations, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded for use in a chartering operation, NMFS will immediately take appropriate steps to transfer the U.S. 3M shrimp effort allocation to the vessel (pending approval by NAFO).

After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. All individuals/companies submitting expressions of interest to NMFS will be

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contacted if an allocation has been awarded. Please note that if the U.S. portion of the 2003 NAFO 3L or 3M shrimp allocation is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: November 27, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30754 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112502A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Fall Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the fall portion of the annual commercial quota for red snapper will be reached on December 7, 2002. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, December 7, 2002, until noon, local time, on February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2002. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available fall commercial quota of 1.40 million lb (0.64 million kg) for red snapper will be reached when the fishery closes at noon on December 7, 2002. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on February 1, 2003. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, December 7, 2002.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The 2002 recreational red snapper season opened on April 21, 2002, and closed on October 31, 2002. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, December 7, 2002, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: November 27, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainavle Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30751 Filed 11–29–02; 3:09 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 67, No. 233
Wednesday, December 4, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observance of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Rule, Interpretive Ruling and Policy Statement 02–4, Developing and Reviewing Government Regulations.

SUMMARY: This proposed rule, Interpretive Ruling and Policy Statement (IRPS) 02–4, amends the Regulatory Flexibility Act provisions of NCUA's IRPS 87–2. The Regulatory Flexibility Act generally requires federal agencies to prepare analyses to describe the impact of proposed and final rules on small entities. Since 1981, the NCUA has defined small entity in this context to mean those credit unions with less than one million dollars in assets. The proposed rule redefines small entity to mean those credit unions with less than ten million dollars in assets. In addition, the proposed rule amplifies a provision regarding NCUA's policy of reviewing all existing regulations every three years by stating that one-third of existing regulations will be reviewed each year and the public will receive notice of those regulations under review.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Send comments to Becky Baker, Secretary to the NCUA Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also fax comments to (703) 837–2914, or e-mail comments to *regcomments@ncua.gov*. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Paul M. Peterson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6555.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (the Act) encourages federal agencies to use innovative administrative procedures in dealing with small entities that would otherwise be unnecessarily affected by federal regulations. 5 U.S.C. 601 *et seq.*; S. Rep. No. 96–878, at 1 (1980). The Act requires federal agencies to conduct a special analysis for each proposed rule that will have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605(b). The analysis must describe the impact of the proposed rule on small entities and include a description of any significant alternatives to the rule that minimize the impact. 5 U.S.C. 604.

The term "small entities" as used in the Act includes small businesses, small organizations, and small government jurisdictions. 5 U.S.C. 601(6). Credit unions, as not-for-profit associations, fall within the definition of "organization." 5 U.S.C. 601(4). An agency that regulates small organizations may unilaterally establish its own definition of small organizations for purposes of the Act. *Id.* In 1981, the NCUA defined small credit union for purposes of the Act as any credit union having less than one million dollars in assets. NCUA IRPS 81–4, 46 FR 29248, June 1, 1981. IRPS 87–2 superseded IRPS 81–4, but continued the definition of small credit unions for purposes of the Act as those with less than one million dollars in assets. 52 FR 35231, 35232, September 8, 1987. IRPS 87–2 is incorporated by reference into NCUA's current rule governing the promulgation of regulations. 12 CFR 791.8(a).

The NCUA Board is opposed to placing unnecessary regulatory burdens on any credit union, regardless of size. Still, the Act requires particularly close analysis of the burden federal regulators, including NCUA, place on smaller entities. The Act's legislative history indicates that small entities need special consideration because they cannot absorb the impact of additional regulation as well as large entities. S. Rep. No. 96–878, at 4 (1980). Large entities are better able to withstand additional regulation for two reasons. First, large entities can spread the incremental cost of regulatory compliance over more units of output, or production, than smaller entities. Second, large entities can keep the incremental cost of compliance down because they are likely to employ internal staff with some compliance responsibilities. This internal staff may be able to absorb additional, incremental compliance burdens. Smaller entities, on the other hand, may have to hire additional staff or purchase expensive consulting services to handle any additional compliance burden. *Id.*

In light of this legislative history, the Board believes that NCUA's current definition of small credit union as one with less than one million dollars in assets, adopted in 1981, is now outdated. Today, some credit unions with significantly more than one million dollars in assets may not be able to maintain the staffing level of many 1981-era credit unions that had less than one million dollars in assets.[1]

The Board proposes to change the qualifying asset size for a small credit union from less than one million dollars in assets to less than ten million dollars in assets. The Board notes that today's credit unions with approximately one million dollars in assets average only 0.5 full-time and 1.2 part-time employees, indicating that there may be little or no staff time available for compliance issues. In contrast, federally insured credit unions with about ten million dollars in assets currently employ an average of 4.5 full-time employees and 1.3 part-time employees, which together constitute more than five full-time employee equivalents. Accordingly, a credit union with ten million dollars in assets employs on average about five times more staff than a credit union with one million dollars in assets employs. Part of this additional staffing may be available to perform compliance oversight and absorb incremental compliance burdens.

The proposed definition of small credit union is consistent with recent statutes and NCUA regulations providing regulatory compliance relief. For example, in 1998 Congress amended the Federal Credit Union Act (FCUA) to require that credit unions follow

[1] Due to inflation, the purchasing power of a dollar has decreased by almost half since 1981, and the cost of hiring staff has increased accordingly. It takes approximately $1.98 to purchase in 2002 what $1.00 purchased in 1981. Data obtained from Oregon State University, *www.orst.edu/Dept/pol-sci/fac/sahr/cv2002.pdf* (Sept. 10, 2002).

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generally accepted accounting principles, but at the same time excused credit unions with less than ten million dollars in assets under a *de minimus* exception. 12 U.S.C. 1782(a)(6)(C)(i), (iii). Another 1998 amendment to the FCUA requires NCUA to provide "small credit unions," defined as those under ten million dollars in assets, with special assistance in meeting prompt corrective action requirements. 12 U.S.C. 1790d(f)(2). Finally, NCUA regulations provide that federally insured credit unions with less than ten million dollars in assets may file a short form call report in the spring and fall. 12 CFR 741.6(a). The Board is not aware of any federal statute or any NCUA rule, regulation, or policy that defines small credit union in a manner that includes credit unions with more than ten million dollars in assets.

The Board also notes that by increasing the threshold from one million dollars in assets to ten million dollars in assets the percentage of federally insured credit unions considered to be small will return to a percentage much closer to the percentage captured by the size standard first adopted in 1981. In 1981, about 63% of all federally insured credit unions had assets of less than one million dollars and so were considered to be small. Today, due in part to credit union consolidation, only about 12% of all federally insured credit unions have assets of less than one million dollars. In contrast, credit unions with less than ten million dollars in assets currently constitute about 52% of all federally insured credit unions.

The Board proposes to add a provision in Section IV of IRPS 87–2 stating how NCUA carries out the policy of reviewing all existing regulations every three years. For several years, the Office of General Counsel has identified and reviewed one-third of existing regulations on a rolling schedule to ensure that all regulations are reviewed at least every three years. In addition, the Board believes in encouraging public participation in the review of regulations and proposes to amend IRPS 87–2 to provide for notice to the public of that portion of the regulations that are under review each year.

Request for Comment

The NCUA Board is interested in receiving comments on the proposed IRPS 02–4 amending IRPS 87–2.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, currently meaning those under one million dollars in assets. The proposed regulation will change the definition of small credit union to increase the number of credit unions receiving the procedural benefits of the Regulatory Flexibility Act and will provide notice to the public and opportunity to comment on regulations under internal review. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

Paperwork Reduction Act

NCUA has determined that the proposed rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Lists of Subjects in 12 CFR Part 790

Organization and functions (Government agencies).

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

Interpretative Ruling and Policy Statement 02–4, Developing and Reviewing Government Regulations

For the reasons stated above, IRPS 02–4 amends IRPS 87–2 (52 FR 35231, September 18, 1987) by revising the second sentence in Section II, paragraph 2., and adding a sentence to the end of Section IV to read as follows:

II. Procedures for the Development of Regulations

* * * * *

2. * * * Credit unions having less than ten million dollars in assets will be considered to be small entities. * * *

* * * * *

IV. Review of Existing Regulations. * * * To accomplish a review every three years of all regulations, the Office of General Counsel will maintain a rolling review schedule that identifies one-third of existing regulations for review each year and will provide notice to the public of that portion of the regulations under review each year so the public may have an opportunity to comment.

* * * * *

Conforming Amendment to NCUA Regulations, 12 CFR Part 791

For the reasons stated above, amend 12 CFR Part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

2. Amend § 791.8 by revising paragraph (a) to read as follows:

§ 791.8 Promulgation of NCUA Rules and Regulations.

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87–2 as amended by Interpretive Ruling and Policy Statement 02–4.

* * * * *

[FR Doc. 02–30090 Filed 12–3–02; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–302–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R Series Airplanes (Collectively Called A300–600); Model A310 Series Airplanes; Model A319, A320, and A321 Series Airplanes; Model A330–301, –321, –322, –341, and –342 Series Airplanes; and Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 series airplanes; and Model A340 series airplanes. This proposal would require, among other actions, replacement of certain pitot probes with certain new pitot probes. This action is necessary to prevent loss or fluctuation of indicated airspeed, which could result in inadvertent excursions outside the normal flight envelope. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–302–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–302–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–302–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–302–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 series airplanes; and Model A340 series airplanes. The DGAC advises that operators have reported several cases of loss or fluctuation of indicated airspeed when flying through heavy precipitation or freezing weather conditions. The probable cause has been attributed to the presence of ice crystals and/or water exceeding the weather limits for which the pitot probes are currently certified. Loss or fluctuation of indicated airspeed, if not corrected, could result in inadvertent excursions outside the normal flight envelope.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–34–0166, dated March 30, 2001 (for Model A300 B2 and B4 series airplanes); Service Bulletin A300–34–6116, Revision 02, dated May 25, 2000 (for Model A300 B4–600, A300 B4–600R, or A300 F4–600R series airplanes); and Service Bulletin A310–34–2137, Revision 02, dated May 25, 2000 (for Model A310 series airplanes). These service bulletins describe procedures for replacement of the Sextant pitot probes from the forward fuselage panel between FR6 and FR7 with new BF Goodrich pitot probes (including O-rings, gaskets, and nuts). In lieu of this replacement, Airbus has issued Service Bulletin A300–34–6141, dated December 3, 2001 (for Model A300 B4–600R series airplanes); and Airbus Service Bulletin A310–34–2154, Revision 01, dated April 19, 2000 (for Model A310 series airplanes). These service bulletins describe procedures for replacement of the Sextant pitot probes from the forward fuselage panel between FR6 and FR7 with new, improved Sextant pitot probes (including O-rings, gaskets, and nuts).

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Airbus also has issued Service Bulletin A300–34–069, Revision 05, dated April 8, 1982, as revised by A300 Service Bulletin Change Notice 5A, dated February 16, 1987 (for Model A300 B2 and A300 B4 series airplanes), which describes procedures for replacement of the Captain's, First Officer's, and standby Badin Crouzet pitot probes in zones 121 and 122 between STA881/FR6 and STA904FR7 with new Badin Crouzet pitot probes. The replacement includes replacing the O-rings, gaskets, and nuts; and modifying the electrical wiring and the equipment of the electrical wiring.

Airbus also has issued Service Bulletin A300–21–053, Revision 2, dated January 3, 1980 (for Model A300 B2 and A300 B4 series airplanes), which describes procedures for modifying the relay box of the automatic ground depressurization system. The modification includes installing blanking plates, a relay assembly, and placards; incorporating and attaching to existing bundles a new bundle with cable ties; and plugging unused holes of a certain relay.

Airbus also has issued Service Bulletin A300–32–052, dated November 15, 1976 (for Model A300 B2 and B4 series aiplanes), which describes procedures for cleaning, restoring paint coats, and applying Mystik tape 7355 to shock strut (barrel) of the main landing gear; and replacing the lower arm link with a new, reidentified lower arm lock link.

Airbus also has issued Service Bulletin A300–22–031, dated June 25, 1979 (for Model A300 B2 and A300 B4 series airplanes), which describes procedures for modification of the electronic racks, electrical wiring, and cable routing. The modification includes drilling and deburring structure, and plugging unused holes in connectors.

Airbus also has issued Service Bulletin A320–34–1127, dated April 24, 1997 (for Model A319, A320, and A321 series airplanes), which describes procedures for replacement of Thales (previously Sextant) pitot probes in zones 125, 9DA2, and 122 with new Thales pitot probes.

Airbus also has issued Service Bulletin A330–34–3038, dated November 19, 1996 (for Model A330–301, –321, –322, –341, and –342 series airplanes), which describes procedures for replacement of the Rosemount pitot probes in zones 121 and 122 with new BF Goodrich pitot probes. In lieu of this replacement for certain airplanes, Airbus also has issued Service Bulletin A330–34–3071, dated December 11, 1998 (for Model A330–301 series airplanes), which describes procedures for replacement of the Rosemount pitot probes in zones 121 and 122 with new Sextant pitot probes.

In addition, Airbus has issued Service Bulletin A340–34–4042, dated November 19, 1996 (for Model A340–211, –212, –213, –311, –312, and –313 series airplanes), which describes procedures for replacement of the Rosemount pitot probes in zones 121 and 122 with new BF Goodrich pitot probes. In lieu of this replacement for certain airplanes, Airbus also has issued Service Bulletin A340–34–4079, dated December 11, 1998 (for Model A340–211, –212, and –311 series airplanes), which describes procedures for replacement of the Rosemount pitot probes in zones 121 and 122 with new Sextant pitot probes.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2001–353(B), dated August 8, 2001; 2001–354(B), dated August 8, 2001; 2001–362(B), dated August 8, 2001; and 2001–265(B) R1, dated December 12, 2001; in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously.

Cost Impact

The FAA estimates that 559 airplanes of U.S. registry would be affected by this proposed AD. The "Table—Cost Figures" shows the estimated cost impact for certain airplanes affected by this AD. The average labor rate is $60 per work hour. "Table—Cost Figures" is as follows:

TABLE—COST FIGURES

Model	U.S.-registered airplanes	Work hours (estimated)	Parts cost (estimated)	Total cost (estimated)
A300 B2 and A300 B4	24	(*)	Between $120 to $56,669 (depending on airplane configuration).	Between $300, and $78,329, per airplane (depending on airplane configuration).
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600).	83	3	$5,700	$488,040, or $5,880 per airplane.
A310	46	3	$5,700 or $5,856 (depending on airplane configuration).	$270,480 or $277,656; or $5,880 or $6,036 per airplane (depending on airplane configuration).
A319, A320, and A321	397	3	$6,000	$2,453,460, or $6,180 per airplane.
A330–301, –321, –322, –341, and –342.	9	3	$6,000 or $11,100 (depending on airplane configuration).	$55,620 or 101,520; or $6,180 or $11,280 per airplane (depending on airplane configuration).

*Between 3 and 631.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. The cost of required parts would be $6,000 or $11,100 (depending on airplane configuration). Based on these figures, the cost impact of this AD would be $6,180 or $11,280 per airplane (depending on airplane configuration).

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2001–NM–302–AD.

Applicability: The series airplanes, certificated in any category, listed in Table—Applicability:

TABLE—APPLICABILITY

Model	Excluding airplanes modified per—	Excluding airplanes equipped with—
A300 B2 and A300 B4	Airbus Modification No. 12236 in service (reference Airbus Service Bulletin A300–34–0166, dated March 30, 2001, in service).	[Reserved].
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600).	Airbus Modification No. 11858 in production (reference Airbus Service Bulletin A300–34–6116, dated June 19, 1998; Revision 01, dated August 7, 1998; or Revision 02, dated May 25, 2000; in service); or Airbus Modification No. 12223 in service (reference Airbus Service Bulletin A300–34–6141, dated December 3, 2001, in service).	[Reserved].
A310	Airbus Modification No. 11858 in production (reference Airbus A310–34–2137, dated June 19, 1998; Revision 01, dated August 7, 1998; or Revision 02, dated May 25, 2000; in service); or Airbus Modification 12223 in service (reference Airbus A310–32–2154, dated January 13, 2000; or Revision 01, dated April 19, 2000; in service).	[Reserved].
A319, A320, and A321	Airbus Modification 25998 in production (reference Airbus Service Bulletin A320–34–1127, dated April 24, 1997, in service).	BF Goodrich (previously New Rosemount) pitot probes part number 0851HL per Airbus Modification No. 25578 (reference Airbus Service Bulletin A320–34–1170, dated April 12, 1979; Revision 01, dated March 14, 1980; Revision 02, dated April 10, 1980; Revision 03, dated March 23, 1981; Revision 04, dated October 1, 1981; or Revision 05, dated September 11, 2000.)
A330–301, –321, –322, –341, and –342.	Airbus Modification No. 44836 in production (reference Airbus Service Bulletin A330–34–3038, dated November 19, 1996, in service); or Airbus Modification No. 45638 in production (reference Airbus Service Bulletin A330–34–3071, dated December 11, 1998, in service).	[Reserved].

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TABLE—APPLICABILITY—Continued

Model	Excluding airplanes modified per—	Excluding airplanes equipped with—
A340–211, –212, –213, –311, –312, and –313.	Airbus Modification 44836 in production (reference Airbus Service Bulletin A340–34–4042, dated November 19, 1996, in service); or Airbus Modification 45638 in production (reference Airbus Service Bulletin A340–34–4079, dated December 11, 1998; Revision 01, dated May 27, 1999; or Revision 02, dated October 6, 1999; in service).	[Reserved].

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss or fluctuation of indicated airspeed, which could result in inadvertent excursions outside the normal flight envelope, accomplish the following:

For Model A300 B2 and A300 B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes: Replacement of Pitot Probes With New Pitot Probes

(a) Within 30 months after the effective date of this AD, do the action specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A300 B2 and A300 B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes: Replace the Sextant pitot probes from the forward fuselage panel between FR6 and FR7 with new BF Goodrich pitot probes (including O-rings, gaskets, and nuts), per Airbus Service Bulletin A300–34–0166, dated March 30, 2001 (for Model A300 B2 and B4 series airplanes); Airbus Service Bulletin A300–34–6116, Revision 02, dated May 25, 2000 (for Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes); or Airbus Service Bulletin A310–34–2137, Revision 02, dated May 25, 2000 (for Model A310 series airplanes); as applicable.

(2) For Model A300 B4–600R, A310–203, and A310–304 series airplanes: Replace the Sextant pitot probes from the forward fuselage panel between FR6 and FR7 with Sextant pitot probes (including O-rings, gaskets, and nuts), per Airbus Service Bulletin A300–34–6141, dated December 3, 2001 (for Model A300 B4–600R series airplanes); or Airbus Service Bulletin A310–34–2154, Revision 01, dated April 19, 2000 (for Model A310 series airplanes); as applicable.

For Model A300 B2 and A300 B4 Series Airplanes: Before or Concurrent Requirements

(b) For Model A300 B2 and A300 B4 series airplanes: Before or concurrently with the requirements of paragraphs (a)(1) of this AD, as applicable, replace the Captain's, First Officer's, and standby Badin Crouzet pitot probes in zones 121 and 122 between STA881/FR6 and STA904FR7 with new Badin Crouzet pitot probes (including replacement of O-rings, gaskets, and nuts; and modification of electrical wiring and equipment of electrical wiring); per Airbus Service Bulletin A300–34–069, Revision 05, dated April 8, 1982, as revised by A300 Service Bulletin Change Notice 5A, dated February 16, 1987.

(c) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 002, 004 through 028 inclusive, 030 through 051 inclusive: Before or concurrently with the requirements of paragraph (b) of this AD, modify the relay box of the automatic ground depression systems by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–21–053, Revision 2, dated January 3, 1980; per the service bulletin.

(d) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 002, 005 through 007 inclusive, 009 through 014 inclusive, 016, and 017: Before or concurrently with the requirements of paragraph (c) of this AD, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD per Airbus Service Bulletin A300–32–052, dated November 15, 1976.

(1) Clean, restore paint coats, and apply mystik tape 7355 to shock strut (barrel) of the main landing gear.

(2) Replace the lower arm link with a new, reidentified lower arm lock link.

(e) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 005 through 007 inclusive, 009 through 012 inclusive: Before or concurrently with the requirements of paragraph (b) of this AD, modify the electronic racks, electrical wiring, and cable routing by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–22–031, dated June 25, 1979, per the service bulletin.

For Model A319, A320, and A321 Series Airplanes: Replacement of Thales Pitot Probes

(f) For Model A319, A320, and A321 series airplanes: Within 24 months after the effective date of this AD: Replace the Thales (previously Sextant) pitot probes in zones 125, 9DA2, and 122 with new Thales pitot probes, per Airbus Service Bulletin A320–34–1127, dated April 24, 1997.

For Model A330–301, –321, –322, –341, and –342 Series Airplanes: Replacement of Rosemount Pitot Probes

(g) Within 30 months after the effective date of this AD, do the action specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model A330–301, –321, –322, –341, and –342 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new BF Goodrich pitot probes, per Airbus Service Bulletin A330–34–3038, dated November 19, 1996.

(2) For Model A330–301 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Sextant pitot probes, per Airbus Service Bulletin A330–34–3071, dated December 11, 1998.

For Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes: Replace the Rosemount Pitot Probes

(h) Within 30 months after the effective date of this AD, do the actions specified in paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For Model A340–211, –212, –213, –311, –312, and –313 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new BF Goodrich pitot probes, per Airbus Service Bulletin A340–34–4042, dated November 19, 1996.

(2) For Model A340–211, –212, and –311 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Sextant pitot probes, per Airbus Service Bulletin A340–34–4079, dated December 11, 1998. This replacement must be done before or concurrently with the requirements of paragraph (h)(1) of this AD.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–353(B), dated August 8, 2001; 2001–354(B), dated August 8, 2001; 2001–362(B), dated August 8, 2001; and 2001–265(B) R1, dated December 12, 2001.

Issued in Renton, Washington, on November 25, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30654 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–50–AD]

RIN 2120–AA64

Airworthiness Directives; Lindstrand Balloons Ltd Fuel Hoses

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all aircraft (specifically balloons) that incorporate certain Lindstrand Balloons Ltd (Lindstrand) fuel hoses. This proposed AD would require you to inspect for certain batches of installed fuel hoses and repair any of these fuel hoses. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and replace defective fuel hoses before they result in propane fuel leaks. Such propane fuel leaks could lead to a propane fuel fire.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 10, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–50–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2002–CE–50–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Lindstrand Balloons Ltd, Maesbury Road, Oswestry, Shropshire SY 10 8ZZ; telephone: +44 (0) 1691–671717; facsimile: +44 (0) 1691–671122. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–50–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on aircraft (specifically balloons) that incorporate certain Lindstrand fuel hoses. The CAA reports six incidents of 3/8-inch bore fuel supply hoses, batch identification number FHL 38381 or FHL 40579, failing in service.

The typical failure observed is of liquid fuel escaping at any position along the length of the hose and through the pinpricking on the outer surface. The leakage observed varies from small bubbles, when leak detection fluid is used on the surface of the hose, to visible jets of liquid propane.

What are the consequences if the condition is not corrected? Such propane fuel leaks could lead to a propane fuel fire.

Is there service information that applies to this subject? Lindstrand has issued Service Bulletin No. 7, Issue 1, dated July 11, 2002.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting all fuel hoses, including burner supply hoses, basket manifolds, and refueling hoses to detect the installation of hose batch FHL 38381 or FHL 40579; and

—Obtaining replacement fuel hoses and replacement instructions.

What action did the CAA take? The CAA classified this service bulletin as mandatory and issued British AD Number 002–07–2002, dated July 12, 2002, in order to ensure the continued airworthiness of these balloons in the United Kingdom.

Was this in accordance with the bilateral airworthiness agreement? These aircraft models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

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—The unsafe condition referenced in this document exists or could develop on type design aircraft (specifically balloons on the U.S. Registry) that incorporate certain Lindstrand Balloons Ltd fuel hoses;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many aircraft would this proposed AD impact? We estimate that this proposed AD affects 204 aircraft (specifically balloons) in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected aircraft? We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per aircraft	Total cost on U.S. operators
1 workhour × $60 per hour = $60.	Not applicable.	$60.	$60 × 204 = $12,240.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that may need such replacement:

Labor cost	Parts cost	Total cost per hose
1 workhour × $60 per hour = $60 per hose	Replacement hoses provided by manufacturer.	$60.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

LINDSTRAND BALLOONS LTD: Docket No. 2002–CE–50–AD.

(a) *What airplanes are affected by this AD?* This AD affects any aircraft (specifically balloons), certificated in any category, that incorporate Lindstrand 3/8-inch bore hoses from either hose batches FHL 38381 or FHL 40579.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the aircraft identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace defective fuel hoses before they result in propane fuel leaks. Such propane fuel leaks could lead to a propane fuel fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect all 3/8-inch bore hoses used within the aircraft, including burner supply hoses, basket manifolds, and refueling goses to determine if the hose is from either defective hose batch FHL 38381 or FHL 40579.	Within 5 hours time-in-service after the effective date of this AD.	In accordance with Linstrand Balloons Ltd Service Bulletin No. 7, Issue 1, dated July 11, 2002.
(2) If any hose from the defective hose batch is found during the inspection: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD. (ii) Incorporate this repair scheme.	Prior to further flight after the inspection in which the hose from the defective hose batch is found.	Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(3) Do not install Lindstrand 3/8-inch bore fuel hoses from either hose batch FHL 38381 or FHL 40579, unless repaired per paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.	As of the effective date of this AD.	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each aircraft (specifically balloons) with a Lindstrand Balloons Ltd 3/8-inch fuel hose identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft (specifically balloons) that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

(g) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Lindstrand Balloons Ltd, Maesbury Road, Oswestry, Shropshire SY 10 8ZZ; telephone: +44 (0) 1691–671717; facsimile: +44 (0) 1691–671122. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in British AD Number 002–07–2002, dated July 12, 2002.

Issued in Kansas City, Missouri, on November 26, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30778 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC53

NASA Grant and Cooperative Agreement Handbook—Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend the NASA Grant and Cooperative Agreement Handbook to require recipients of grants and cooperative agreements to provide adequate security for all Agency information collected, processed, transmitted, stored, or disseminated through information technology. This would extend the coverage applicable to NASA contractors to recipients of grants and cooperative agreements.

DATES: Comments should be submitted on or before February 3, 2003.

ADDRESSES: Interested parties should submit written comments to Paul Brundage, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20546. Comments may also be submitted by email to: *paul.brundage@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA Headquarters, Code HC, Washington, DC (202) 358–0481, e-mail: *paul.brundage@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Computer Security Act of 1987 and Appendix III of the Office of Management and Budget (OMB) Circular No. A–130, Security of Federal Automated Information Resources, require that adequate security be provided for all Agency information collected, processed, transmitted, stored, or disseminated. The NASA FAR Supplement (NFS) Part 1804 contains the requirement for all NASA contractors to comply with Federal and NASA policies in safeguarding unclassified NASA data held via information technology (IT). This change would establish comparable coverage for grants and cooperative agreements.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes will affect an insignificant number of grants and cooperative agreements.

C. Paperwork Reduction Act

An Office of Management and Budget (OMB) approval for data collection has previously been approved under OMB Control No. 2700–0098.

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 14 CFR Part 1260 is proposed to be amended as follows:

1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*), and OMB Circular A–110.

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

2. Amend section 1260.50 by adding paragraph (f) to read as follows:

§ 1260.50 Special conditions.

* * * * *

(f) Security requirements for unclassified information technology resources. Under NASA grants and cooperative agreements, recipients normally do not collect, process, transmit, store, or disseminate unique Agency data of substantial value using information technology. However, if it is known that a grant or cooperative agreement will include such use of information technology, the NASA Grant Officer shall insert a provision substantially the same as § 1274.937. When such use of information technology is not originally anticipated in the performance of a grant, but it later becomes appropriate, the NASA Technical Officer shall immediately notify the NASA Grant Officer before such use of information technology occurs, and the NASA Grant Officer shall amend the grant to include a provision substantially the same as § 1274.937. NASA policies and procedures on security for automated information technology are prescribed in NPD 2810.1, Security of Information Technology, and in NPG 2810.1, Security of Information Technology.

[FR Doc. 02–30652 Filed 12–3–02; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB33

Unemployment Compensation—Trust Fund Integrity Rule: Birth and Adoption Unemployment Compensation; Removal of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: The Department of Labor (Department or DOL) is proposing to remove the Birth and Adoption Unemployment Compensation (BAA–UC) regulations. Those regulations provide an experimental opportunity for states to provide, in the form of unemployment compensation (UC), partial wage replacement for parents taking approved leave or otherwise leaving employment while caring for their newborns or newly-adopted children.

DATES: DOL invites written comments on this proposal. Comments must be submitted by February 3, 2003.

ADDRESSES: Submit written comments to Cheryl Atkinson, Administrator, Office of Workforce Security, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC, 20210. E-mail: *trustfundintegrity@doleta.gov.*

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Office of Workforce Security, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: (202) 693–3038 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD); facsimile: (202) 693–2874; e-mail: *ghildebrand@doleta.gov.*

SUPPLEMENTARY INFORMATION: On June 13, 2000, the BAA–UC Final Rule was published in the **Federal Register** at 65 FR 37210 (June 13, 2000) and codified at 20 CFR Part 604. It implemented an experimental opportunity for state agencies responsible for administering the Federal-State UC program to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. In qualifying for UC, the individual would not have to be able to or available for work, commonly known as the able and available (A&A) requirements, in the sense traditionally used by the Department. Instead, parents of newborns and newly-adopted children would be viewed as meeting the federal A&A requirements (as implemented in state law) under the premise that the parents' long-term attachment to the workforce would be strengthened and promoted by the payment of UC, which would provide some financial support to accompany the introduction of a new child into the family.

As we noted during the final rulemaking, the BAA–UC experiment was "a reversal of our position taken in 1997," when the Department advised a state that UC could not be used in this manner. (65 FR 37212 (June 13, 2000).) The BAA–UC experiment was described as "part of an evolving interpretation of the Federal A&A requirements that recognizes practical and economic realities." (*Id.*) Simply stated, the A&A requirements were interpreted in a new and different way that emphasized the individual's potential attachment to the workforce. BAA–UC was intended to test whether individuals would be more attached to the workforce, even if their current separation from the workforce was either a conscious decision on their part, or due to compelling personal and family reasons relating to the birth or adoption of a child. Significantly, since the Department made the BAA–UC experiment available in 2000, no state has elected to participate.

The Department has now reviewed the BAA–UC Final Rule as part of a Department-wide review of all regulations. This review was conducted in the context of a substantial downturn in the economy, resulting in substantially lower state unemployment fund balances than in 2000. The review was also conducted in the context of a legal challenge in federal district court that the BAA–UC rule was inconsistent with federal UC law. Although the case was dismissed on procedural grounds, *LPA, Inc.* v. *Chao*, 211 F.Supp. 2d 160 (D.D.C. 2002), it did cause the Department to scrutinize the underlying statutory authority for BAA–UC.

Upon completion of this review, our conclusion is that the BAA–UC experiment is poor policy and a misapplication of federal UC law relating to the A&A requirements. Therefore, we are proposing to remove the BAA–UC regulations. As will be discussed below, the UC program is designed to provide temporary wage replacement to individuals who are unemployed due to lack of suitable work. However, the intended recipients of BAA–UC generally do not meet this test as they have initiated their separation from the workforce and it is their personal situation, rather than the lack of available work, that has removed them from the labor market. Because the BAA–UC experiment is based on an assumption of increased *future* labor force attachment, the payment of BAA–UC will likely be made for periods where parents have completely suspended their labor force attachment. Indeed, in cases where the parent is on approved leave from a job, BAA–UC more closely resembles a paid-leave program than a UC program.

As noted above, to date no state has elected to participate in the BAA–UC experiment. Therefore, terminating the experiment will not result in any state withdrawing benefits it previously granted. The only effect of the removal of the regulations is that it reduces state flexibility since a state could no longer elect to use its unemployment fund to pay BAA–UC. The Department's position on the A&A requirements will revert to that in existence before publication of the BAA–UC rule. Thus, to be eligible for UC an individual must, among other things, demonstrate current labor force attachment by meeting the A&A requirements. Each state remains free to create a paid family leave-type program using state moneys from sources other than its unemployment fund. Indeed, as discussed below, one state has already done so.

Policy. The UC program is designed as wage insurance for individuals who are unemployed due to lack of suitable work. This would generally not be the case for parents who would avail themselves of BAA–UC. Such parents would be out of work because they both initiated their separation from the workforce and are currently unavailable for work; they would have effectively withdrawn from the labor market for a brief period. For those individuals who were taking approved leave when an employer is holding a job open for them, BAA–UC would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. As such, it would be paid leave, which was not envisioned in the design of the UC program.

We again note that no state has actually enacted BAA–UC legislation since being given DOL clearance to do so. While we recognize that declining unemployment fund balances may have some bearing on this, the fact that one state has enacted a broad paid leave program suggests that there may be other factors. California recently passed legislation (enacted Senate Bill 1661; Chapter No. 901) that contains features of BAA–UC, as well as many features beyond the scope of BAA–UC. Notably, it authorizes payments to certain individuals who take time off from work to care for a sick or injured child, spouse, parent or domestic partner as well as for foster care placements of a new child. The California law does not use its unemployment fund as a funding source, but instead uses employee contributions to its Temporary Disability Insurance fund.

The restrictive nature of the BAA–UC rule, which limits the eligible population to parents taking leave or otherwise leaving employment to be with their newborns or newly-adopted children, would not have granted California the flexibility it desired. Similarly, the BAA–UC rule limits the types of eligibility conditions that may be imposed on individuals. Other flexibility issues may also exist. For example, we expressed concern with a state bill that appeared to be close to enactment because it appeared to be inconsistent with Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). This bill would have made BAA–UC mandatory for all services performed in the state, except for services performed for certain governmental and nonprofit entities that could elect to participate. Since federal law requires that, with respect to these governmental and nonprofit services, UC must be paid "in the same amount, on the same terms, and subject to the same conditions" as UC payable on other services performed under state law, we advised the state that this legislation, if enacted, would be inconsistent with Section 3304(a)(6)(A) of the FUTA. In sum, it appears that the limited flexibility of the BAA–UC approach may not be conducive to state needs and, therefore, may have contributed to the lack of state enactments.

Finally, since the implementation of the BAA–UC Final Rule in 2000, many states have seen a drastic decline in their unemployment fund balances, and most states are below our recommended 1.00 average high-cost multiple. (The average high-cost multiple indicates how many years of benefits a state has available under a recessionary scenario. A rating of 1.00 indicates the state has one year's worth of benefits on hand. The Department recommends a 1.00 high-cost multiple as a reasonable margin of safety to ensure trust fund solvency in periods of high unemployment.) Recognizing that fund levels were dropping, the Administration supported Congress's enactment of legislation distributing $8 billion to states to assist in the payment of UC and for other purposes. (Section 209 of Public Law 107–147, March 9, 2002.) Indeed, but for this extraordinary infusion of funds, some states would have had to borrow money from the federal government to keep their unemployment funds solvent. While we recognize that some states still have adequate reserves, we are concerned that current fund balances would be even lower had states enacted the BAA–UC experiment. Indeed, one of the policy arguments made for using a state's unemployment fund for BAA–UC was the claim that states had "surpluses" in their unemployment funds, which funds could be made immediately available to implement a BAA–UC experiment. The sudden and rapid decline in fund balances undercuts this argument.

Legal. The Department and its predecessors (the Social Security Board and the Federal Security Agency) have interpreted and enforced federal A&A requirements since the inception of the federal-state UC program. Although no A&A requirements are explicitly stated in federal law, the Department and its predecessors interpreted four provisions of federal UC law, contained in the Social Security Act (SSA) and FUTA, as requiring that states condition the payment of UC upon a claimant being able to and available for work. Two of these provisions, at section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a state's unemployment fund to the payment of "compensation." Section 3306(h), FUTA, defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." The A&A requirements provide a federal test of an individual's continuing "unemployment." (The meaning of "unemployment" in this statutory framework is discussed below.) The other two provisions, found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation "be paid through public employment offices." The requirement that UC be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to both an individual's ability to work and availability for work. These A&A requirements serve, in effect, to limit UC eligibility.

The basis for the federal A&A requirements was summarized in a March 11, 1939, letter from the Chair of the Social Security Board to the Governor of California, concerning whether the state could make payments with respect to temporary disability from its unemployment fund:

> The entire legislative history [of the UC titles of the original SSA] including the Report to the President of the Committee on Economic Security, the report of the House Committee on Ways and Means, the report of the Senate Committee on Finance, and the Congressional debates all indicate, either expressly or by implication, the compensation contemplated under [these titles] is compensation to individuals who are able to work but are unemployed by reason of lack of work. Several provisions of those titles are meaningful only if applied to State laws for the payment of such compensation. For example, the requirement that compensation be paid through public employment offices, or the requirement that States make [certain information] available to agencies of the United States charged with the administration of public works or assistance through public employment, are obviously without reasonable basis if applied to payments to disabled individuals. Many of the standards contained [in the experience rating provisions] are similarly without reasonable basis if applied to a State law for the payment of disability compensation.
>
> For these reasons, the Board is of the opinion that the [UC titles of the SSA] are applicable solely to State laws for the payment of compensation to individuals who are *able to work and are unemployed by reason of lack of work.*" [Emphasis added.]

That involuntary unemployment due to lack of suitable work was the key test is supported by the Congressional Committee Reports:

> The essential idea in unemployment compensation* * * is the accumulation of reserves in time of employment from which partial compensation may be paid to workers who become unemployed and are unable to find work.* * * In normal times it will enable most workers who lose their jobs to tide themselves over, until they get back to their old work or find other employment without having to resort to relief.* * * [H. Rep. 615, 74th Cong. 1st Sess. 1935 Page 5.]
>
> The essential idea in unemployment compensation is the creation of reserves during periods of employment from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed.* * * Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or they lose their right to compensation. [S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 11.]
>
> * * * In normal times most workers will secure other employment before exhaustion of their benefit rights.* * * For the great bulk of industrial workers unemployment compensation will mean security during the period following unemployment while they are seeking another job, or are waiting to return to their old position. [Id. Page 12.]

As illustrated by the above, the Federal A&A requirements are placed on claimants to test whether the fact that they did not work for any week was

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involuntary due to the *unavailability of work*. Since the BAA–UC experiment did not examine the Federal A&A requirements from this perspective, it permits the payment of UC to individuals for whom suitable work may exist, thus contradicting the basic purpose of the A&A requirements.

The legislative history quoted above indicates that eligibility for UC is not based on the individual's personal need, except to the extent that his/her "need" is created by lack of suitable work. (Note that this test looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it does not require that states hold an individual ineligible based on the reason for separation from employment, except to the extent that the individual may have not been A&A for the particular week of the separation.) BAA–UC; however, extended eligibility for UC to parents based on considerations of compelling personal or family need regardless of whether there is a lack of work. While the idea of providing UC to parents or families experiencing birth or adoption may be admirable, it is not in keeping with the fundamental limitation of paying UC only to individuals who are unemployed due to lack of work.

The legislative history also establishes a link between the public works programs in existence in 1935 and the UC program that bears on the A&A requirements. As noted in the Social Security Board's contemporaneous interpretation, an SSA provision (section 303(a)(7)) requires that states make available to agencies of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and the government's employment status of UC recipients. This requirement is predicated upon the understanding that UC recipients must be out of work due to a lack of available work. It would make no sense to refer an individual, for whom work was available, to a public works program, which should be the employer of last resort. Senator Wagner, who introduced the SSA in the Senate, described the relationship between the proposed UC program and the government's public works programs (as well as public employment offices) as follows in the floor debate on the SSA:

> [unemployment insurance] is not designed to supplant, but rather to supplement the public-works projects which must absorb the bulk of persons who may be disinherited for long periods of time by private industry.* * * A provision in the present bill requires that the Federal tax rebate shall be used to encourage a close connection between State job-insurance laws and unemployment-exchange offices. This provision emphasizes the fact that the [monetary] relief of existent unemployment is but a subordinate phase of the main task of providing work for all who are strong and willing. [79 Cong. Rec. 9284 (June 14, 1934).]

Thus, Congress intended the UC system to be subordinate to the main task of getting people back to work, which is, as noted above, implemented through the A&A requirements. BAA–UC is not consistent with this goal since it encourages parents to refuse available work.

Finally, as noted in the Social Security Board's letter, experience rating standards are meaningless if the test of involuntary unemployment due to lack of work is not used. Experience rating was originally established to ensure an equitable distribution among employers of the cost of the system, and to encourage employers to stabilize their work forces. ("Credits" will be provided "in the form of lower contribution rates * * * to employers who have stabilized their employment." (S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 14.)) BAA–UC contradicts the intent of experience rating since it allows payments based on a worker's own actions without regard to an employer's attempt to stabilize employment by offering suitable work to its current and former employees. Indeed, if BAA–UC (and similar-type payments which might be allowed) is paid to individuals who are not A&A, the states' experience rating systems could be overwhelmed to the point where an employer's efforts to stabilize its workforce through its continuing willingness to employ the worker is ignored, thereby effectively nullifying one of the primary purposes of experience rating.

In the preamble to the BAA–UC Final Rule, we addressed four situations—illness, jury duty, approved training, and temporary layoffs—that affected individuals' ability "to meet the stricter interpretations of the A&A requirements." (65 FR 37213 (June 13, 2000).) Although we also noted that "none of these situations precisely parallels the payment of BAA–UC, they do operate on the same premises: that situations exist in which it is important to allow a flexible demonstration of availability and in which attachment to the workforce can be demonstrated, and indeed strengthened, without requiring a current demonstration of availability." (Id.) Upon re-examination, we note that, unlike the BAA–UC experiment, none of these situations permit a voluntary withdrawal from the workforce:

- *Illness.* The interpretation pertaining to illness applies only to individuals who initially meet the A&A requirements, but who then become ill *and* who do not refuse suitable work. Until work is refused, the unemployment is due to lack of work, which is what the A&A requirements are designed to test. The A&A requirements are preserved because the individual must initially demonstrate availability before the illness and must be held ineligible if s/he refuses suitable work offered.
- *Jury Duty.* The interpretation pertaining to jury duty applies only to individuals who initially meet the A&A requirements, but who are then called for jury duty. It is unreasonable for a state to compel jury service for previously eligible individuals and at the same time hold such individuals ineligible for complying. Indeed, attendance at jury duty may be taken as evidence that the individual would otherwise be available for work.
- *Approved training.* Approved training is limited to situations where the state determines that short-term training will improve an individual's job prospects. Attendance at such training is accepted as evidence of availability for work. Indeed, if the individual refuses training, or fails to attend training, the states will evaluate eligibility under their A&A provisions.
- *Temporary lay-offs.* An individual on temporary layoff must be available to work for the employer who laid-off the individual. While this requires an individual's availability for work with only one employer, it is nonetheless a test of whether the unemployment is due to lack of suitable work.

None of these precedents is consistent with BAA–UC. Unlike the illness exception, an offer of suitable work under BAA–UC may be refused with no effect on eligibility. Unlike the illness and jury duty exceptions, no initial establishment of A&A is required. Unlike jury duty, there is no governmental compulsion. Unlike approved training, BAA–UC does not address a situation where an individual is attempting to remedy his or her continuing unemployment; indeed BAA–UC addresses a situation where a parent is responsible for his or her separation from the workforce. Also, for approved training, the state must approve the training as increasing the individual's job prospects; no similar requirement exists for BAA–UC, with the result that increased attachment to the workforce for any one individual is highly speculative. Finally, unlike temporary lay-offs, there is no requirement that the individual be available for at least one job; indeed, an offer of suitable work may be refused with no effect on eligibility. These precedents differ from BAA–UC in that they do not permit an individual to voluntarily remove him/herself from the labor market for a given week. BAA–UC, on the other hand, allows parents who have initiated their separation from the workforce and whose personal situation, rather than the lack of available work, that makes them unavailable for other employment.

In summary, A&A tests involuntary unemployment due to a continuing lack of suitable work. The legislative history amply supports this. The BAA–UC rule not only failed to recognize this, but is in fact contrary to the A&A requirement.

Executive Order 12866

This proposal to remove 20 CFR part 604 is a "significant regulatory action" within the meaning of section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this proposal was submitted to, and reviewed by, the Office of Management and Budget.

Before publication of the BAA–UC final rule (65 FR 37210 (June 13, 2000)), the Department prepared a Regulatory Impact Analysis, which estimated that the rule would result in costs ranging from zero to $196 million, depending upon the number of states enacting BAA–UC. Since publication of the BAA–UC final rule, no state enacted BAA–UC meaning that no benefits have been paid, nor administrative costs expended. Removing the BAA–UC rule would end the possibility that BAA–UC and its associated administrative costs will be paid out of state unemployment funds with the result that the estimated costs would not be incurred. Therefore, the removal of the rule would result in no costs or cost savings and potentially prevent costs from being incurred in the future. Because the Department expects the immediate economic impact of removing the rule to involve no costs, this regulatory action is unlikely to have an annual effect on the economy of $100 million or more and, consequently, is not "economically significant" within the meaning of Section 3(f)(1) of that Executive Order.

Finally, we have evaluated this regulatory action and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866. Though this action would remove authority for states to fund family leave from the state's unemployment fund, states would have flexibility to provide paid family leave from other funding sources. Further, because no state has enacted BAA–UC, no state would be adversely affected in a material way by having to dismantle such an experiment. Finally, this action removes a regulation and imposes no alternative regulatory requirements.

Paperwork Reduction Act

This regulatory action contains no information collection requirements.

Executive Order 13132

We have reviewed this proposal in accordance with Executive Order 13132 regarding federalism. That order requires agencies, when formulating and implementing policies that have federalism implications, to refrain from limiting state policy options, to consult with states before taking any action which would restrict states' policy options, and to take such action only where there is clear statutory or constitutional authority and the presence of a problem of national scope. Policies with federalism implications are those with substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Because this regulatory action would limit state policy options, by eliminating authority to pay for family leave out of unemployment funds, we will consult with organizations representing state elected officials at the Department of Labor in the upcoming weeks. We solicit comment on the federalism implications and the impact of this regulation on the relationship between the national government and the states.

Executive Order 13084

This regulatory action does not impose any regulatory requirements on Indian tribal governments and therefore does not impose substantial direct compliance costs on Indian tribal governments.

Executive Order 12988

This proposal has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposal, a mere one sentence, removes 20 CFR part 604. In its brevity, it is not likely to lead to litigation resulting from drafting errors or ambiguities.

Unfunded Mandates Reform Act of 1995

This proposal has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and does not include any unfunded federal mandate.

Regulatory Flexibility Act

This regulatory action will not have a significant economic impact on a substantial number of small entities. This action affects states and state agencies, which are not within the definition of "small entity" under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

We certify that this regulatory action has been assessed in accordance with section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. We conclude that this action would not adversely affect the well-being of the nation's families. No state has enacted BAA–UC; consequently no families would experience a termination of BAA–UC benefits. Though this proposed rule would withdraw authorization for states to pay for such benefits from the state's unemployment fund, paid family leave could be provided from other state funding sources. This proposal would preserve the availability of state unemployment funds for times when workers, who may support families, are unemployed due to lack of work.

Congressional Review Act

This proposed rule is not a "major rule" as defined by the Congressional Review Act (section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996). This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Catalogue of Federal Domestic Assistance Number

20 CFR Part 604 is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 604

Unemployment compensation.

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Signed at Washington, DC on November 25, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Words of Issuance

For the reasons set forth in this preamble, Chapter V of Title 20, Code of Federal Regulations, is proposed to be amended by removing part 604.

[FR Doc. 02–30316 Filed 12–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–099]

RIN 2115–AE47

Drawbridge Operation Regulations; Miami Beach Channel and Indian Creek, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the East 79th Street and the East Venetian Causeway bridges across Miami Beach Channel, and the 63rd Street bridge across Indian Creek, Miami-Dade County, Florida by allowing these bridges to remain closed during peak vehicular rush hour traffic. We anticipate that this proposed rule would reduce vehicle traffic congestion on Miami Beach during the rush hours while providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before February 3, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave, Room 406, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of (CGD07–02–099) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave Miami, FL 33131, telephone number 305–415–6744.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–02–099), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

A public meeting has not been scheduled. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE. 1st Ave, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Miami Beach has requested that the Coast Guard consider changing the existing regulations for the East 79th Street, East Venetian Causeway, and the 63rd Street bridges that lead into the City of Miami Beach because of the vehicle gridlock within the city each time the bridges are opened during rush hours. Based on the limited number of requested bridge openings during the proposed time window, the Coast Guard believes it can accommodate the request while still providing for the reasonable needs of navigation.

The East 79th Street, the East Venetian Causeway, and the 63rd Street bridges are located between Miami and Miami Beach. The current regulations in 33 CFR 117.5 require the East 79th Street and the 63rd Street bridges to open on signal. The current East Venetian Causeway bridge regulation in 33 CFR 117.269 requires this bridge to open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and from 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draw must open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m., if any vessels are waiting to pass. The draw must open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. The draw must open at any time for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

We believe that this proposed rule would lessen vehicular traffic congestion during the workday rush hours. This proposed rule would modify the current regulation for the East Venetian Causeway bridge by requiring "regularly scheduled cruise vessels" to comply with the regulation's opening schedule by eliminating the language that currently excepts them from the existing rule. This proposed rule would modify the existing regulation of the East Venetian Causeway bridge by requiring the bridge to open on signal during all Federal holidays, not just the holidays enumerated in the rule. This proposed rule would also slightly modify the existing times when the East Venetian Causeway bridge need not open during the morning and evening rush hours, and would allow the East 79th Street and the 63rd Street bridges to remain closed from 7 a.m. to 8:59 a.m.; and from 4:10 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Discussion of Proposed Rule

The Coast Guard proposes to modify the existing bridge operating regulations and create a permanent rule that would allow the East 79th Street and the East Venetian Causeway bridges across Miami Beach Channel, and the 63rd Street bridge across Indian Creek, to remain closed from 7 a.m. to 8:59 a.m.; and from 4:10 p.m. to 6 p.m., Monday through Friday, except Federal holidays. Public vessels of the United States, tugs with tows, and vessels in distress would be passed at anytime.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because there have been limited numbers of requests for openings during these time periods and this proposed rule still provides for regular openings throughout the day.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because there have been limited openings during these time periods and this proposed rule still provides for regular openings throughout the day.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.** We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.269 to read as follows:

§ 117.269 Biscayne Bay.

The East 79th Street and the East Venetian Causeway bridges across Miami Beach Channel, and the 63rd Street bridge across Indian Creek, need not open from 7 a.m. to 8:59 a.m.; and from 4:10 p.m. to 6 p.m., Monday through Friday, except Federal Holidays. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at anytime.

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Dated: November 12, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–30739 Filed 12–3–02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 31

RIN 0991–AB17

Tax Refund Offset

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) proposes to amend its tax refund offset regulations to reflect (1) the tax refund offset provisions of the Deficit Reduction Act of 1984 as amended by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720A, and (2) implementing regulations issued by the Department of the Treasury at 31 CFR 285.2. The proposed rule will amend the process by which HHS certifies and refers past-due debt to the Department of Treasury for tax refund offset to satisfy debt owed to the HHS.

DATES: Submit comments on or before February 3, 2003.

ADDRESSES: Send all comments concerning this proposed rule to: Katherine M. Drews, Deputy Associate General Counsel, Office of the General Counsel, General Law Division, Room 5362, 330 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, 202–619–0150.

SUPPLEMENTARY INFORMATION:

Background

This proposed regulation implements the tax refund offset provisions of the Deficit Reduction Act of 1984 as amended by the Debt Collection Act of 1996 (DCIA), codified at 31 U.S.C. 3720A, and the implementing regulations issued by the Department of the Treasury at 31 CFR 285.2. Within this framework, a Federal agency owed a past-due debt must notify the Secretary of the Treasury of such debt for collection by tax refund offset in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA. The Treasury Final Rule, as amended, is published at 31 CFR 285.2.

Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations issued by the Department of Treasury at 31 CER 285.2, the proposed regulation establishes the rules and procedures for certifying and referring a past-due debt to FMS for tax refund offset, correcting and updating referral information transmitted to FMS, and providing the debtor with written notice at least 60 days before the Department refers a debt to FMS. This written notice informs the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

Rules and Procedures

Except for minor changes to make the provisions agency-specific, the proposed rule is substantially identical to the Treasury Final Rule. In accordance with the substantive and procedural requirements of the DCIA and the Treasury Final Rule, this proposed rule would establish HHS rules and procedures for:

1. Certifying and referring a past-due debt to FMS for tax refund offset.
2. Correcting and updating referral information transmitted to FMS.
3. Providing the debtor with written notice at least 60 days before referring a debt to FMS. This written notice must inform the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

Economic Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, *Regulatory Planning and Review*), as amended by Executive Order 13258 (February 2002, *Amending Executive Order 12866 on Regulatory Planning and Review*) and the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96–354), the Unfunded Mandated Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 (August 1999, Federalism).

Executive Order 12866 (the Order), as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the proposed rule is consistent with the principles set forth in the Order, and we find that the proposed rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at U.S.C. 804(2). In accordance with the provisions of the Order, the rule was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this proposed regulation, will not have a significant economic impact on a substantial number of small entities. This proposed rule applies only to individuals with past-due debts owed to the United States.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure of in any I year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the proposed rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the proposed rule under the threshold criterial of Executive Order 13132, Federalism, and have determined that this proposed rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no Federalism implications, a Federalism impact statement is not required.

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this proposed rule will impose no new reporting or record-keeping requirements on any member of the public.

List of Subjects in 45 CFR Part 31

Administrative practice and procedure, Taxes, Claims, and Debts.

For the reasons set forth in the preamble, 45 CFR Subtitle A Part 31 is proposed to be revised as follows:

PART 31—REFERRAL OF DEBT TO IRS FOR TAX REFUND OFFSET

Sec.

31.1 Purpose and scope.
31.2 Definitions.
31.3 General rule.
31.4 Certification and referral of debt.
31.5 Notice.
31.6 Review of Departmental records.
31.7 Review of a determination that a debt is past-due and legally enforceable.

Authority: 31 U.S.C. 3720A, 31 C.F.R. 285.2, E.O. 12866, E.O. 13258.

§ 31.1 Purpose and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for submitting past-due, legally enforceable debts to the Department of the Treasury for collection by tax refund offset.

(b) *Authority.* These standards and procedures are authorized under tax refund offset provision of the Deficit Reduction Act of 1984, as amended by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720A, and implementing regulations issued by the Department of the Treasury at 31 CFR 285.2.

(c) *Scope.* (1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a past-due non-tax debt owed to the United States, and to all officers or employees of the Department authorized to collect such debt.

(2) Nothing in this part precludes the Department from pursuing other debt collection procedures, including administrative wage garnishment under part 32 of this title, to collect a debt that has been submitted to the Department of the Treasury under this part. The Department may use such debt collection procedures separately or in conjunction with the offset collection procedures of this part.

§ 31.2 Definitions.

In this part, unless the context otherwise requires:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or *claim* means an amount of money, funds, or other property determined by an appropriate official of the Federal government to be owed to the United States from any individual, entity, organization, association, partnership, corporation, or State or local government or subdivision, except another Federal agency.

Debtor means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

Department means the Department of Health and Human Services, and each of its Operating Divisions and regional offices.

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this regulation. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

FMS means the Financial Management Service, a bureau within the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury. *Legally enforceable* means that there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.

Operating division means each separate component within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, the Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, and the Office of the Secretary.

Past-due debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Secretary means the Secretary of the Department of Health and Human Services, or the Secretary's designee within any Operating Division or Regional Office.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed to the United States by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402–3(a)(6)(i) for any liabilities for any tax on the part of the person who made the overpayment.

§ 31.3 General rule.

(a) Any past-due, legally enforceable debt of at least $25, or such other minimum amount as determined by the Secretary of the Treasury, shall be submitted to FMS for collection by tax refund offset.

(b) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted by the Department under this part. A match will occur when the taxpayer identification number and name of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due legally enforceable debt. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

§ 31.4 Certification and referral of debt.

(a) *Certification.* The Secretary shall certify to FMS that:

(1) The debt is past-due and legally enforceable in the amount submitted and that the Department will ensure that collections are properly credited to the debt;

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(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred within ten (10) years after the Department's right of action accrues;

(3) The Department has made reasonable efforts to obtain payment of the debt, and has:

(i) Submitted the debt to FMS for collection by offset and complied with the administrative offset provision of 31 U.S.C. 3716(a) and related regulations, to the extent that collection by administrative offset is not prohibited by statute;

(ii) Notified, or made a reasonable attempt to notify, the debtor that the debt is past-due, and unless paid within 60 days of the date of the notice, the debt may be referred to Treasury for tax refund offset. For purposes of this regulation, the Department has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the Department's records related to the debt. If address validation is desired or necessary, the Department may obtain information from the IRS pursuant to 26 U.S.C. 6103 (m)(2)(4) or (5).

(iii) Given the debtor at least 60 days to present evidence that all or part of the debt is not past due or not legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(iv) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(4) The debt is at least $25.

(b) *Referral.* (1) The Secretary shall submit past-due, legally enforceable debt information for tax refund offset in the time and manner prescribed by the Department of the Treasury.

(2) For each debt referred under this part, the Secretary will include the following information:

(i) The name and taxpayer identifying number, as defined in 26 U.S.C. 6109, of the debtor responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due; and

(iv) The designation of the Department referring the debt.

(c) *Correcting and updating referral.* (1) After referring a debt under this part, the Secretary shall promptly notify the Department of the Treasury if:

(i) An error was made with respect to information transmitted to the Department of Treasury;

(ii) The Department receives a payment or credits a payment to the account of a debtor referred for tax refund offset; or

(iii) The debt amount is otherwise incorrect.

(2) The Department shall provide the certification required under paragraph (a) of this section for any increases to amounts owed.

(d) *Rejection of certification.* If the Department of Treasury rejects a certification because it does not comply with the requirements of paragraph (a) this section, upon notification of the rejection and the reason(s) for rejection, the Secretary will resubmit the debt with a corrected certification.

§ 31.5 Notice.

(a) *Requirements.* If not previously included in the initial demand letter provided under § 30.11, at least 60 days before referring a debt for tax refund offset, the Secretary shall mail, by first class mail to the debtor's last known address, written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The determination that the debt is past-due and legally enforceable, and unless paid within 60 days after the date of the notice, the Secretary intends to enforce collection by referring the debt the Department of the Treasury for tax refund offset; and

(3) The debtor's rights to:

(i) Inspect and copy Department records relating to the debt;

(ii) Enter into written agreement to repay the amount of the debt;

(iii) Request review and present evidence that all or part of the debt is not past-due or not legally enforceable.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice. The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 31.6 Review of Departmental records.

(a) To inspect or copy Departmental records relating to the debt, the debtor must send a written request to the address designated in the notice described in § 31.5. The request must be received by the Department within 60 days from the date of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the debtor of the location and time when the debtor may inspect and copy such records. If the debtor is unable to personally inspect such records as the result of geographical or other constraints, the Department will arrange to send copies of the records to the debtor.

§ 31.7 Review of a determination that a debt is past-due and legally enforceable.

(a) *Requesting a review.*

(1) If the debtor believes that all or part of the debt is not past-due or not legally enforceable, the debtor may request a review by the Department by sending a written request to the address provided in the notice. The written request must be received by the Department within 60 days from the date of the notice.

(2) The request for review must be signed by the debtor, state the amount disputed, and fully identify and explain the evidence that the debtor believes supports the debtor's position. The debtor must submit with the request any documents that the debtor wishes to be considered, or the debtor must state in the request that additional information will be submitted within the 60-day time period.

(3) Failure to timely request a review will be deemed an admission by the debtor that the debt is past-due and legally enforceable, and will result in a referral of the debt to the Department of the Treasury without further action.

(b) *Review.* Upon the timely submission of evidence by the debtor, the Department shall review the dispute and shall consider its records and any documentation and evidence submitted by the debtor. The Department shall make a determination based on the review of the written record, and shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(c) A debt that previously has been reviewed pursuant to this part, or that has been reduced to a judgment, will not be reconsidered under this part unless the evidence presented by the debtor disputes payments made or events occurring subsequent to the previous review or judgment.

Dated: August 23, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–30657 Filed 12–3–02; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021120279–2279–01; I.D. 102302B]

RIN 0648–AN12

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council). Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP, this proposed rule would establish an annual coastwide quota for black sea bass and eliminate a provision requiring certain vessels to cancel their Northeast Region Black Sea Bass Permits during a fishery closure if they intend to continue fishing for black sea bass south of Cape Hatteras. Finally, this proposed rule would require that vessels issued a Federal moratorium permit for summer flounder, scup, and black sea bass be subject to the presumption that any fish of these species on board were harvested from the exclusive economic zone (EEZ).

DATES: Comments must be received on or before 5 p.m., local time, on January 21, 2003. (Note: must end no later than the date of the close of the comment period on NOA for FMP)

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the FMP, Amendment 13, its Regulatory Impact Review (RIR) including the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 200 S. New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135, or email at Peter.Christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of Amendment 13 is to rectify problems in the black sea bass commercial fishery (specifically regarding the temporal and geographic distribution of landings and permit relinquishment requirements for certain vessels) and to consider management measures to minimize the adverse effects of fishing on essential fish habitat. Amendment 13 proposes a new quota program for the black sea bass commercial fishery and a change to the black sea bass permit requirements.

Black Sea Bass Management Measures

The black sea bass fishery is managed in Federal waters under the FMP and by the states through the Atlantic States Marine Fisheries Commission (ASMFC). Throughout the development of Amendment 13, the ASMFC was expected to consider and approve a state-by-state quota program. In August 2002, the ASMFC adopted state-by-state quota allocations for the states of Maine through North Carolina. Each state is required to establish management measures to ensure that its share of the quota is not exceeded.

With respect to the black sea bass fishery, the Council was concerned primarily with the quarterly quota program, which was causing a variety of problems in the fishery. Although the quarterly quota program was intended to ensure sustained landings of the species throughout each quarter, the last three quarters in 1999 and 2000 were closed early because the quotas were reached. Because some of the closures occurred early in the quarter, fishers in some states were not able to fish for black sea bass during the same time periods they had fished in the past. Upon reopening of the fishery in a subsequent quarter, market gluts and drops in prices occurred as high volumes of fish were landed. Further, the first quarter quotas in 1998 through 2000 were not harvested, indicating a problem in the overall allocation of the quota. Inequities in the quarterly quota program have arisen as higher amounts of landings have shifted to the north, leaving southern regions without the landings that may be needed to sustain the fishery in those regions. Finally, during a closure of the fishery, vessels in North Carolina with both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit are required to relinquish their Northeast Black Sea Bass Permits for 6 months if they want to continue to fish for black sea bass south of Cape Hatteras under their Snapper/Grouper Permits. The requirement to relinquish the permit for 6 months leaves these few vessels with no ability to fish for black sea bass north of Cape Hatteras when the fishery reopens in a subsequent quarter. The Council believed that this was inequitable and needed to be addressed in Amendment 13. The Council proceeded with Amendment 13, recognizing that any action it recommended would need to be compatible with the action taken by the ASMFC in order for management to be consistent and effective.

The Council considered several alternatives to the current quarterly coastwide quota program, including state-by-state and regional quotas, state-by-state quotas with a coastwide quota component, subregional quotas with a coastwide component, quota by permit category, and quotas by gear type. The program most compatible with ASMFC allocations would have been a state-by-state quota program; however, the Administrator, Northeast Region, NMFS (Regional Administrator) commented during the development of Amendment 13 that a state-by-state quota program implemented for Federal waters could not be monitored effectively (with current monitoring methods) due to the small amounts of fish some states could be allocated. The Regional Administrator urged the Council to select a quota program that would have sufficiently large allocation shares that they could be effectively monitored by NMFS, or to devise a monitoring system sufficient to monitor small quotas that could be implemented in conjunction with the state-by-state quota program.

The Council determined that it needed to select a quota program alternative that would meet the monitoring needs while remaining compatible with the state-by-state allocations adopted by the ASMFC. The Council selected an annual coastwide quota program that would facilitate ASMFC's state-by-state quota allocations. The Council determined that this was within the range of alternatives considered in the Draft Environmental Impact Statement (DEIS)

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because the impacts would be essentially the same as state-by-state allocations. The Council believes that the harvest of the coastwide quota will be extended throughout the year due to the management programs implemented by each state under the ASMFC's management plan.

To implement Amendment 13, NMFS proposes to: (1) Establish an annual (calendar year) coastwide quota for the commercial black sea bass fishery to replace the current quarterly quota allocation system; and (2) eliminate the provision requiring vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit to relinquish their Northeast Black Sea Bass Permits for 6 months if they want to continue to fish for black sea bass south of Cape Hatteras under their Snapper/Grouper Permits during a Federal black sea bass fishery closure.

In addition, NMFS proposes to revise the presumptions in 50 CFR 648.14(x) for summer flounder, scup, and black sea bass. During the review of this proposed rule, NMFS determined that § 648.14(x) erroneously omits the presumption that summer flounder, scup, and black sea bass on board were caught in the EEZ for vessels issued moratorium permits under the three fisheries covered by the FMP. Therefore, this proposed rule would add the presumption that all summer flounder, scup, and black sea bass possessed on board a vessel issued a Federal permit under 50 CFR 648.4 are deemed to have been harvested from the EEZ within the management unit for the particular species. This presumption, as it pertains to black sea bass, would not apply to vessels issued a Southeast Region Snapper/Grouper permit and a Northeast Black Sea Bass permit that are fishing for black sea bass south of Cape Hatteras during a black sea bass fishery closure, north of Cape Hatteras.

Classification

At this time, NMFS has not determined that Amendment 13 to the FMP, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the SUMMARY. While the IRFA prepared for this action by the Council does not follow NMFS' current "Guidelines for Economic Analysis of Fishery Management Actions," the analysis for this action provides an adequate description of the impacts on small entities for the purposes of the Regulatory Flexibility Act. Nevertheless, NMFS invites the public to comment specifically on the adequacy of the analysis using these criteria.

The proposed measures, and the alternatives, for addressing inefficiencies and inequities in the black sea bass fishery could affect any commercial vessel holding an active Federal permit for black sea bass, as well as vessels that fish for black sea bass in state waters. Data from the Northeast permit application database show that 1,119 commercial vessels are currently permitted to fish for black sea bass in Federal waters. Of these vessels, the Council considered the economic impacts on 727 vessels that were active in the black sea bass fishery in 2000. The analysis further investigated impacts on vessels by home state and affected counties. All of the federally permitted vessels, and vessels using the identified gear types listed above, readily fall within the Small Business Administration's (SBA) definition of small business and the RFA's definition of "small entity." Therefore, all alternatives and analyses associated with this proposed rule necessarily are alternatives and analyses applicable to impacts on small entities.

No additional recordkeeping and reporting requirements are included in this proposed rule.

Regulations implemented by the states under the ASMFC's Fishery Management Plan for black sea bass, which include state-by-state quota allocations, would overlap, but would not duplicate or conflict with the Federal coastwide quota program proposed in this action. NMFS is not aware of any other Federal rules that duplicate, overlap, or conflict with the proposed action. Any unavoidable adverse effects of the proposed action should be minimized due to the compatibility of the Federal coastwide annual quota program and the ASMFC's FMP.

Black Sea Bass Quota Alternatives

Under the proposed coastwide annual quota, the total number of vessels likely to be impacted by revenue losses of 5 percent or greater is expected to be similar to the number of vessels impacted under the state-by-state allocation alternative that is based on the best 5 landing years for each state during the period 1988 to 1997 (the alternative included in the FEIS that best resembles the ASMFC's state-by-state quota allocations). Relative to vessel revenues in 2000, the economic impacts for the 727 vessels participating in the black sea bass fishery range from expected revenue losses of less than 5 percent for a total of 137 vessels, to a loss in revenues of greater than or equal to 50 percent, for 12 vessels. An increase in revenue would be expected for 564 vessels. A total of 26 out of 727 vessels (3.6 percent) considered in the analysis would be expected to suffer losses in revenue of 5 percent or greater relative to 2000 revenues. In addition, impacts were examined relative to a vessel's home state as reported on the vessel's permit application. Vessels with revenue losses exceeding 5 percent are concentrated in Barnstable and Suffolk Counties, Massachusetts. The proposed action alternative may further discourage derby-style fishing because landings would be constrained to the landings allowed under each state's management program to comply with the ASMFC's state-by-state quota allocations. Distributing the landings throughout the year would reduce the likelihood of an initial market glut and thus lowered black sea bass prices. Seasonal closures would be less likely, eliminating the economic burdens on fishermen that would have little or no income during a fishery closure.

Several alternatives to the proposed coastwide annual quota (including the quarterly allocation, state-by-state allocation, and various allocations by fishery gear sector, permit category, or region) were considered in the FEIS for Amendment 13 to the FMP. Each of the alternatives was also broken into sub-alternatives based on historical black sea bass landings information from either 1988 through 1997, or 1993 through 1997. Further, the quota by permit category alternative was broken down into alternatives with two or three permit categories, and the state-by-state quota alternative contained two sub-alternatives using the best 5 years of landings from either 1980 through 1997, or 1988 through 1997. While the de minimus specification alternative is presented as a separate alternative in the FEIS and RIR, its impacts would be considered under the state-by-state quota program alternatives. The analysis concluded that none of these alternatives would minimize economic impacts on small entities relative to the proposed measures. NMFS is not aware of any other alternative that would achieve this action's objectives and minimize economic impacts on small entities.

Other Black Sea Bass Commercial Fishery Management Alternatives

According to both the Northeast and Southeast Region databases, the proposed action to no longer require vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit to relinquish their Northeast Region Black Sea Bass Permit during a fishery closure north of Cape Hatteras if they want to continue fishing for black sea bass south of Cape Hatteras under their Southeast Region Snapper Grouper Permit would affect five vessels. Because the action would allow vessels to continue fishing south of Cape Hatteras, it would have no negative impacts on the five affected vessels, or any other vessels that in the future may be affected by the proposed elimination of the restriction. In comparison, continuation of the status quo, or requiring vessels to relinquish their Northeast Region Black Sea Bass Permit during a closure, could contribute to revenue losses for vessels that would lose fishing time north of Cape Hatteras when the fishery re-opened. However, as noted, this would affect only 5 of the 727 vessels considered in the IRFA.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: November 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory ProgramsNational Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (b) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(b) Permit conditions. Any person who applies for a fishing permit under this section must agree, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species except tilefish managed under this part must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium, or a spiny dogfish, or bluefish, commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coast-wide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

* * * * *

3. In § 648.14, paragraphs (a)(96), (u)(3), (u)(11), (x)(3), (x)(6), and (x)(7) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(96) Purchase or otherwise receive for commercial purposes black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3' N. lat., after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(u) * * *

(3) Land black sea bass for sale in any state, or part thereof, north of 35°15.3' N. lat. after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(11) Possess black sea bass after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3' N. lat.

* * * * *

(x) * * *

(3) Summer flounder. All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

* * * * *

(6) Scup. All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(7) Black sea bass. All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3' N. lat.

4. In § 648.140, paragraph (d)(4) is removed and paragraphs (b)(1), (b)(2), and (d) are revised to read as follows:

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§ 648.140 Catch quotas and other restrictions.

* * * * *

(b) * * *

(1) A commercial quota allocated annually, set from a range of zero to the maximum allowed to achieve the specified target exploitation rate, set after the deduction for research quota.

(2) A commercial possession limit for all moratorium vessels may be set from a range of zero to the maximum allowed to assure that the annual coastwide quota is not exceeded, with the provision that these quantities be the maximum allowed to be landed within a 24–hour period (calendar day).

* * * * *

(d) *Distribution of annual quota.* (1) Beginning on [*insert effective date of the final rule*], a commercial annual coastwide quota will be allocated to the commercial black sea bass fishery.

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters will be counted against the quota by the state in which it is landed, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. The Regional Administrator will determine the date on which the coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3' N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission.

(3) Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

* * * * *

[FR Doc. 02–30756 Filed 12–3–02; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 233
Wednesday, December 4, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Forms FNS–806–A, Claim for Reimbursement (National School Lunch and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (Special Milk Program for Children)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the Food and Nutrition Service (FNS) use of forms FNS–806–A and FNS–806–B, Claims for Reimbursement. The forms are used to collect data to determine the amount of reimbursement school food authorities participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Special Milk Programs for Children (SMP) are eligible to receive.

DATES: Comments on this notice must be received by February 3, 2003, to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy, of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Hallberg at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Forms FNS–806–A, Claim for Reimbursement (National School Lunch, and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (Special Milk Program).

OMB Numbers: 0584–0284.

Expiration Date: October 31, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: The NSLP, SBP and SMP claims for reimbursement forms, FNS–806–A and FNS–806–B, are used to collect meal and cost data from school food authorities whose participation in these programs are administered directly by FNS Regional Offices (Regional Office Administered Programs, or ROAP). In order to determine the amount of reimbursement for meals and milk served, the school food authorities are required to complete these forms. The completed forms are submitted to FNS Regional Offices where they are entered into a computerized payment system. The payment system computes earned reimbursement.

Earned reimbursement in the NSLP, SBP and SMP is based on performance that is measured as an assigned rate per meal or half pint of milk served, with cost comparisons for free milk and severe need breakfasts. To fulfill the earned reimbursement requirements set forth in NSLP, SBP and SMP regulations issued by the Secretary of Agriculture (7 CFR 210.8, 220.11,215.10), the meal and cost data must be collected on forms FNS–806–A and FNS–806–B. These forms are an intrinsic part of the accounting system being used currently by the subject programs to ensure proper reimbursement as well as to facilitate adequate recordkeeping.

This request is being made to extend the current information collection for an additional three years. Current methods are the only practical means of collecting this information considering the resources of form users.

The claims for reimbursement for the NSLP and SBP are on the FNS–806–A and the claims for SMP are on the FNS–806–B.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: The respondents are school food authorities and facilities participating in the NSLP, SBP and SMP under the observation of the FNS ROAP.

Estimated Number of Respondents—Form 806–A: 209
Estimated Number of Responses per Respondent—Form 806–A: 10
Estimated Total Annual Responses—Form 806–A: 2090
Estimated Time per Response—Form 806–A: .5
Estimated Total Annual Burden—Form 806–A: *1045* hours
Estimated Number of Respondents—Form 806–B: 151
Estimated Number of Responses per Respondent—Form 806–B: 10
Estimated Total Annual Responses—Form 806–B: 1510
Estimated Time per Response—Form 806–B: .5
Estimated Total Annual Burden—Form 806–B: *755* hours
Total Annual Burden: Form 806–A and Form 806–B: 1045 + 755 = *1800* hours

Dated: November 26, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–30656 Filed 12–3–02; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and

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217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 1, 2002. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Appeals and Litigation Group Leader; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3696.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard.

Bitterroot—Ravalli Republic.

Clearwater—Lewiston Morning Tribune.

Custer—Billings Gazette (Montana). Rapid City Journal (South Dakota).

Dakota Prairie National Grasslands—Bismark Tribune (North and South Dakota).

Flathead—Daily Inter Lake.

Gallatin—Bozeman Chronicle.

Helena—Independent Record.

Idaho Panhandle—Spokesman Review.

Kootenai—Daily Inter Lake.

Lewis & Clark—Great Falls Tribune.

Lolo—Missoulian.

Nez Perce—Lewiston Morning Tribune.

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: November 25, 2002.

Kathleen A McAllister,

Deputy Regional Forester.

[FR Doc. 02–30687 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas and Lassen National Forests; California; Administrative Study 4202–02–01

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, Plumas and Lassen National Forests, in cooperation with the Pacific Southwest Research Station will prepare an Environmental Impact Statement (EIS) on a proposal to complete an administrative study on approximately 493,000 acres of National Forest System lands. The official title of the proposed administrative study is "Fire and Fuels Management, Landscape Dynamics, and Fish and Wildlife Resources: Study Design for Integrated Research on the Plumas and Lassen National Forests."

Direction to undertake this administrative study is in the Regional Forester's Record of Decision (January 12, 2001) for the Sierra Nevada Forest Plan Amendment. In his decision, the Regional Forester directed the Forest Service and the Pacific Southwest Research Station to cooperatively design and implement a study to examine the relationship between management-caused changes in vegetation and their effects on spotted owl habitat and spotted owl population dynamics. The Regional Forester also directed that this study include group selection provisions of the Herger-Feinstein Quincy Library Group pilot project.

To meet the Regional Forester's direction, the administrative study is designed to address four principal questions:

1. Are specific combinations of defensible fuel profile zones (DFPZs) and subsequent area fuel treatments effective in reducing the extent and severity of wildlands fires? What are practical considerations and costs of constructing, maintaining, and using (for fire suppression) alternative combinations of fuel treatments? Are hypothesized fire management gains from these fuel treatment combinations (in the form of reduced property and resource losses, increased resource benefits from wildland fires, and increased suppression efficiencies) commensurate with the costs and potential adverse ecological impacts of the treatments?

2. Is small group selection effective in promoting regeneration of shade-intolerant tree species; establishing desirable forest age, species, and size distributions at landscape scales; and providing sustainable levels of timber harvest?

3. How does the combination of DFPZs, area treatments, group selection, riparian protection standards, and species-specific protection measures—collectively defined as a management regime—affect landscape dynamics such as forest structure, composition, and succession at multiple scales of space and time?

4. How will key species, such as California spotted owls and their prey, respond to changes in vegetation composition, structure, and distribution induced by different forest management regimes? How is change manifested at the individual or local population level and larger population scales?

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing on or before February 3, 2003.

ADDRESSES: Send written comments to Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, CA 95971.

FOR FURTHER INFORMATION CONTACT: Anthony Matthews, Interdisciplinary Team Leader, Plumas National Forest, telephone (530) 283–5549.

SUPPLEMENTARY INFORMATION:

The Proposed Action

The proposed study encompasses eleven treatment units ranging in size from 45,000 to 79,000 acres (average size is 55,700 acres). The total area encompassed by the eleven treatment units is approximately 613,000 acres (493,000 acres of National Forest and 120,000 acres of other ownership). Two of the treatment units are located on the Lassen National Forest and nine on the Plumas National Forest.

The eleven treatment units (TUs) are divided into three treatment regimes (TRs) designed to reflect different levels of vegetative and fuels management and to create a range of forest conditions over the long term. TR–A proposes the least amount of activity and consists of 3 TUs (total of 191,000 acres); TR–B proposes the next highest amount and intensity of management activity and consists 4 TUs (total of 198,000 acres); and, TR–C proposes the greatest amount and intensity of management activity and consists of 4 TUs (total of 224,000 acres).

Specifically, TR–A includes approximately 13,854 acres of proposed defensible fuels profile zones (DFPZ) and 30,175 acres of strategically placed area treatments (SPLAT) designed to reduce fuel levels across the landscape. An estimated 11 miles of system road and 18 miles of temporary road would be constructed. Group selection is not proposed within TR–A. All activities proposed within TR–A would comply with current forest plan direction as amended by the Sierra Nevada Forest Plan Amendment.

TR–B includes approximately 15,970 acres of DFPZ and 39,185 acres of SPLATs. In addition, TR–B includes approximately 3,833 acres of group selection designed as ½-acre to 2-acre openings. An estimated 37 miles of system road and 19 miles of temporary road would be constructed. TR–B also proposes approximately 23 miles of road to be decommissioned.

TR–C includes approximately 19,055 acres of DFPZ and 46,439 acres of SPLATs. In addition, TR–C includes approximately 7,945 acres of group selection designed as ½-acre to 2-acre openings. An estimated 42 miles of system road and 34 miles of temporary road would be constructed. TR–C also proposes approximately 15 miles of road to be decommissioned.

Both TR–B and TR–C include a project-specific; non-significant forest plan amendment for the proposed deviation from current diameter and canopy cover standards. These deviations are necessary to provide the contrast and minimum spread of effects between the various management regimes and to increase the chance of invoking a range of resource responses necessary to meet the research objectives.

The proposed DFPZs and SPLATs are designed to harvest trees up to 30 inches diameter-at-breast-height (DBH). Group selection within TR–B and TR–C proposes to harvest trees up to 32 inches DBH in seven treatment units and up to 34 inches DBH in one treatment unit. These diameters deviate from current, amended forest plan direction which allows for harvest of trees up to 12 inches (20 inches for operability) in old-forest emphasis areas and 20 inches in general forest areas.

TR–B and TR–C also deviate from the current, amended forest plan standard that governs canopy cover. Current direction for areas where existing canopy cover exceeds 50% is that it not be reduced below 50%; also, where existing canopy is between 40% and 50%, no reduction is allowed. Under TR–B and TR–C, canopy cover would be reduced to a level less than 50% within the DFPZs and SPLATs. However, canopy cover would not be reduced below 40% across the treated landscape.

Implementation is proposed to occur within a six-year period. Group selection and DFPZs would be implemented in the first three to four years with SPLATs implemented during the last 3 years. Monitoring of the effects of all activities would occur during each of the implementation years and beyond for an estimated 10 to 20-year period.

Decision To Be Made

The decision to be made is whether to: (1) implement the proposed action, including the project-specific, non-significant forest plan amendment; (2) meet the purpose and need for action through some other combinations of activities; or (3) take no action at this time.

Lead Agency And Responsible Officials

The USDA Forest Service is the lead agency for this proposal. Responsible officials are James M. Peña (Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, CA 95971) and Edward C. Cole (Forest Supervisor, Lassen National Forest, 2550 Riverside Drive, Susanville, CA 96130).

Tentative or Preliminary Issues and Possible Alternatives

Alternatives being considered at this time include: (1) The proposed Action and (2) No Action. Other alternatives may be developed based on significant issues identified during the scoping process for this EIS. All alternatives would be expected to respond to the specific purpose and need and research objectives of the proposed administrative study.

The scoping process for this analysis includes: (a) Identifying potential issues; (b) identifying issues to be analyzed in depth; (c) eliminating non-significant issues or those previously covered by a relevant environmental analysis; (d) exploring additional alternatives; and, (e) identifying potential environmental effects of the proposed action and alternatives. As part of the current scoping process, the Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action.

Public participation is especially important at several points throughout the analysis. To facilitate public participation, information about the proposed action is listed in the Plumas National Forest and the Lassen National Forest Quarterly Schedule of Proposed Actions. An information packet will be mailed to all who have expressed interest in the proposed action. Notification of the public scoping period will be published in the Feather River Bulletin, Quincy, CA, the Sacramento Bee, Sacramento, CA, and the Lassen County Times, Susanville, CA.

Comments received during the scoping process should be in writing and should be specific to the proposed action. The comments should describe, as clearly and completely as possible, any issues the individual has with the proposal. An issue is defined as a point of discussion, debate, or dispute regarding the proposed action or its environmental effects.

Identification of Permits or Licenses Required

An Air Pollution Permit and a Smoke Management Plan are required by local agencies to implement the proposed action.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in March 2003. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the Federal Register. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for review and comment. It is very important that those interested in the management of the Plumas and Lassen National Forests participate at that time. The record of decision and final EIS are expected to be published in early June, 2003.

The Reviewer's Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage, but are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time

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when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 27, 2002.

James M. Peña,

Forest Supervisor.

[FR Doc. 02–30689 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to discuss and to recommend project proposals for FY2002 funds regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The will be held January 21, 2003, 6:30 pm to 9:30 pm.

ADDRESSES: 1600 Tollhouse Road, California. The meeting will be held at the Sierra National Forest, Forest Supervisor's office, 1600 Tollhouse Road, Clovis, California 93611–0532. Send written comments to Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *nfleenor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3350.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by January 21, 2003 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Review and approve the December 17, 2002 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Vote to recommend funds for FY2002 Title II Projects proposals received from the public and/or the RAC members; (4) Confirm the date, location and agenda of the next meeting; (6) Public comment.

Dated: Nobember 26, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–30696 Filed 12–03–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on December 9, 2002 in Dayton, Washington. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act, for Fiscal Year 2003 and outyears.

DATES: The meeting will be held on December 9, 2002 from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Dayton Post Office located at 202 South 2nd Street, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input will be solicited and individuals will have the opportunity to address the committee at that time.

Dated: November 26, 2002.

Monte Fujishin,

Designated Federal Official.

[FR Doc. 02–30748 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southeast Washington Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–4630, the Southeast Washington Resource Advisory Committee (RAC) will meet on January 8, 2003 in Clarkston, Washington. The purpose of the meeting is to discuss the selection of Title II projects under Pub. L. 106–393, HR. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act, for Fiscal Year 2003 and outyears.

DATES: The meeting will be held on January 8, 2003 from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held in the conference room of Bennett Lumber Company located at 1951 Wilma Drive, Clarkston, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input will be solicited and individuals will have the opportunity to address the committee at that time.

Dated: November 26, 2002.

Monte Fujishin,

Designated Federal Official.

[FR Doc. 02–30749 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RBS's) intention to request an extension for a currently approved information collection in support of the program for the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative.

DATES: Comments on this notice must be received by February 3, 2003 to be considered.

FOR FURTHER INFORMATION CONTACT: Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue SW., Washington, DC 20250–3252. Telephone: (202) 690–3407, E-mail: *edgar.lewis@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative.

OMB Number: 0570–0041.

Expiration Date of Approval: January 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The purpose of the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative is to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and are designed to help overcome current identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership through cooperative agreements between 1890 Institutions and RBS, to develop programs to assist future entrepreneurs and businesses.

Estimate of Burden: Public reporting burden for this collection is estimated to average 15 minutes to 15 hours per response.

Respondents: Only 1890 Land Grant Institutions of Higher Education and Tuskegee University.

Estimated Number of Respondents: 18.

Estimated Number of Responses per Respondent: 17.

Estimated Number of Responses: 297.

Estimated Total Annual Burden on Respondents: 762 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden to collect the required information, including the validity of the strategy used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on the paperwork burden may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 27, 2002.

John Rosso,

Administrator, , Rural Business-Cooperative Service.

[FR Doc. 02–30744 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On July 31, 2002, the Department of Commerce published the preliminary results of its new shipper reviews of fresh garlic from the People's Republic of China. On October 28, 2002, we published the rescission of the new shipper review of Shandong Heze International Trade and Developing Company and notice of the postponement of our final results of review for Jinan Yipin Corporation, Ltd. The period of review is November 1, 2000, through October 31, 2001. We gave interested parties an opportunity to comment on our preliminary results. Based on the comments we received from the interested parties, we have made changes in the margin calculation for Jinan Yipin Corporation, Ltd., for the final results of review. The respondent's final weighted-average dumping margin is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Mark Ross, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–4794, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR part 351 (April 2001).

Background

On July 15 and 16, 2002, the Department conducted a U.S. sales verification of Jinan Yipin Corporation Ltd.'s (Jinan Yipin's) U.S. affiliate, American Yipin Produce Company (American Yipin). See Memorandum to the file titled "U.S. Market Verification of the Response of Jinan Yipin Corporation, Ltd., to the Questionnaire of the New Shipper Review (11/01/00–10/31/01) of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated October 11, 2002.

We published in the **Federal Register** the preliminary results of the new shipper review on July 31, 2002. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part*, 67 FR 49669 (July 31, 2002) (*Preliminary Results*).

On August 14, 2002, the Department toured fresh garlic production operations in Coalinga, California. See Memorandum to the file titled "Tour of U.S. Production Operations," dated September 10, 2002.

On August 20, 2002, the petitioners and the respondent submitted additional surrogate-value data and on August 30, 2002, the petitioners submitted updated surrogate-value data.

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On September 19 and 20, 2002, the Department conducted a Factors of Production (FOP) data verification of Jinan Yipin. See Memorandum to the file titled "*Verification Report for Jinan Yipin Corporation, Ltd.*," dated October 16, 2002.

On October 24, 2002, the petitioners and Jinan Yipin submitted their case briefs, and on October 29, 2002, the petitioners and Jinan Yipin submitted rebuttal briefs. On November 6, 2002, we held a hearing in this review.

The Department has conducted this review in accordance with section 751 of the Act.

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Separate Rates

In our *Preliminary Results*, we found that Jinan Yipin had met the criteria for the application of a separate antidumping duty rate. We have not received any information since the *Preliminary Results* which would warrant reconsideration of our separate-rate determination with respect to Jinan Yipin. Therefore, we continue to find that Jinan Yipin should be assigned an individual dumping margin. For a complete discussion of the Department's determination that the respondent is entitled to a separate rate, see the *Preliminary Results*, 67 FR at 49669.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Issues and Decision Memorandum (Decision Memo) from Susan Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on the use of additional publicly available information and the comments we received from the interested parties, we have made changes in our calculation of the weighted-average dumping margin for Jinan Yipin.

For the final results, we calculated average surrogate percentages for factory overhead, selling, general, and administrative expenses, and profit using the 2000–2001 financial reports of Agro Dutch Foods Ltd., Flex Foods Ltd., and Himalya International Ltd. *See* Decision Memo at Comment 5. We also deducted a line item from the financial statements to avoid double-counting. We incorporated the pre-verification corrections as presented at the start of both the U.S. sales and factor-of-production verifications. We deducted a portion of building depreciation from the factory overhead equal to the portion of the lease agreement pertinent to bartered garlic sprouts. We valued garlic seed with information for garlic from two varieties of Indian garlic (*i.e.*, Yamuna Safed and Agrifound Parvati). We valued electricity with information for agricultural electricity rates published by the *Teri Energy Data Directory and Yearbook 1999/2000*. We removed packing materials and packing labor from the calculation of direct materials. We treated water as a variable overhead expense rather than a direct material.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final results. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Final Results of Review

The weighted-average dumping margin for subject merchandise manufactured and exported by Jinan Yipin for the period November 1, 2000, through October 31, 2001 is 0.00 percent.

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the import-specific assessment rate is zero.

Cash-Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Jinan Yipin of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise manufactured (*i.e.*, grown) and exported by Jinan Yipin, no cash deposit is required; (2) for subject merchandise exported by Jinan Yipin but not manufactured (*i.e.*, grown) by Jinan Yipin, the cash-deposit rate will be the PRC countrywide rate; (3) for all other PRC exporters, which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: November 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30771 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–877]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Lawn and Garden Steel Fence Posts From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala or Christopher Smith at (202) 482–1784 or (202) 482–1442, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Preliminary Determination

We preliminarily determine that lawn and garden steel fence posts (fence posts) from the People's Republic of China (PRC) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

This investigation was initiated on May 21, 2002.[1] *See Initiation of Antidumping Duty Investigation: Lawn and Garden Steel Fence Posts from the People's Republic of China*, 67 FR 37388 (May 29, 2002) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On June 17, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of fence post imports from the PRC. *See Lawn and Garden Steel Fence Posts from the People's Republic of China*, 67 FR 42581 (June 24, 2002).

On July 29, 2002, the Department issued its antidumping questionnaire[2] to the PRC Bureau of Fair Trade for Imports and Exports (BOFT), through the Embassy of the PRC in Washington, D.C. The Department requested that BOFT send the questionnaire to the companies who manufacture and export fence posts to the United States, as well as manufacturers who produce fence posts for companies who were engaged in exporting subject merchandise to the United States during the period of investigation (POI). In addition, we sent the questionnaire to BaoSteel Group International Trade Corporation (BaoSteel), Hebei Metals and Minerals Import and Export Corporation (Hebei), and China Nanyang Import & Export Corporation (Nanyang), which had contacted us through counsel. Only BaoSteel, Hebei, and Nanyang responded to the Department's questionnaire. The Department issued supplemental questionnaires to BaoSteel, Hebei, and Nanyang, where appropriate.

On August 26, 2002, the petitioner requested a postponement of the preliminary determination in this investigation. On September 10, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until November 27, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determination: Lawn and Garden Steel Fence Posts from the People's Republic of China*, 67 FR 57384 (September 10, 2002).

On August 27, 2002, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from BaoSteel on October 29, 2002, Hebei and Nanyang on September 18, 2002, and October 10, 2002, and from the petitioner on September 30, 2002, and October 23, 2002.

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On November 1, 2002, BaoSteel requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. On November 5, 2002, Hebei and Nanyang made the same request. All three respondents included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. In accordance with section 351.210(e) of the Department's regulations, because we have made an affirmative preliminary determination, the requesting parties account for a significant proportion of exports of the subject merchandise, and no compelling reasons exist to deny the request, we

[1] The petitioner in this investigation is the Steel City Corporation.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under this investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise under investigation. Section E requests information on further manufacturing.

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have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination, and are extending the provisional measures accordingly.

Period of Investigation

The POI is October 1, 2001, through March 31, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May, 2002). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the products covered include all lawn and garden fence posts produced in the PRC, regardless of form, shape, or size. The fence posts included within the scope of this investigation weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor posts. These posts are normally "U" shaped or "hat" shaped or any other similar shape excluding round or square tubing or pipes.

These posts are normally made in two different classes, light and heavy duty. Light duty lawn and garden fence posts are normally made of 14 gauge steel (0.068 inches–0.082 inches thick), 1.75 inches wide, in 3, 4, 5, or 6 foot lengths. These posts normally weigh approximately 0.45 pounds per foot and are packaged in mini-bundles of 10 posts and master bundles of 400 posts. Heavy duty lawn and garden steel fence posts are normally made of 13 gauge steel (0.082 inches–0.095 inches thick), 3 inches wide, in 5, 6, 7, and 8 foot lengths. Heavy duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini-bundles of 5 and master bundles of 200. Both light duty and heavy duty posts are included within the scope of the investigation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheading: 7326.90.85.35. Fence posts classified under subheading 7308.90 are also included within the scope of the investigation if the fence posts are made of steel and/or metal.

Specifically excluded from the scope are "tee" posts, farm posts, and sign posts, provided that the posts weigh over 1 pound per foot.[3] Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the written description of the merchandise under investigation is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002); and *Notice of Final Determination of Sales at Less Than Fair Value Certain: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. No party to this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as an NME country.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). BaoSteel, Hebei, and Nanyang have provided the requested company-specific separate rates information and have indicated that there is no element of government ownership or control over their operations. We have considered whether BaoSteel, Hebei, and Nanyang are eligible for a separate rate as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China*, 60 FR 14725, 14726–27 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide* and the *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

BaoSteel, Hebei, and Nanyang have placed on the record a number of documents to demonstrate the absence of *de jure* control, including their business licenses, and the "Company Law of the People's Republic of China" of December 29, 1993. Other than limiting BaoSteel's, Hebei's, and Nanyang's operations to the activities referenced in the license, we noted no restrictive stipulations associated with the license. In addition, in previous cases, the Department has analyzed the "Company Law of the People's Republic of China" and found that it establishes an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control.

B. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

With regard to the issue of *de facto* control, BaoSteel, Hebei, and Nanyang have reported the following: (1) There is no government participation in setting export prices; (2) their managers have authority to bind sales contracts; (3) they do not have to notify any government authorities of their management selection, and (4) there are no restrictions on the use of their export revenue and they are responsible for financing their own losses. Additionally, BaoSteel's, Hebei's, and Nanyang's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of BaoSteel's, Hebei's, and Nanyang's questionnaire responses reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over BaoSteel's, Hebei's, and Nanyang's export functions. Consequently, we preliminarily determine that BaoSteel, Hebei, and Nanyang have met the criteria for the application of separate rates. Since BaoSteel, Hebei, and Nanyang are the only responding producers/exporters, we preliminarily determine, as facts available, that all other non-responsive producers/exporters have not met the criteria for application of separate rates.

The PRC-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters located in the NME country comprise a single exporter under common government control, the "NME entity." Although the Department provided all PRC exporters of the subject merchandise, including BaoSteel, Hebei, Nanyang, and BOFT, through the Embassy of the PRC in Washington, D.C., with the opportunity to respond to its questionnaire, only BaoSteel, Hebei, and Nanyang submitted responses thereto. However, our review of U.S. import statistics reveals that there are other PRC companies, in addition to BaoSteel, Hebei, and Nanyang, that exported fence posts to the United States during the POI. Because these exporters did not submit a response to the Department's questionnaire, and thus did not demonstrate their entitlement to a separate rate, we have implemented the Department's rebuttable presumption that these exporters constitute a single enterprise under common control by the PRC government, and we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, some exporters of the subject merchandise failed to respond to the Department's request for information. The failure of these exporters to respond significantly impedes this proceeding. Thus, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have based the PRC-wide rate on total facts available.

In applying facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action (SAA) accompanying the URAA*, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). In this case, the complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. However, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Independent sources may include published price lists, official import statistics and Customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870 and 19 CFR 351.308(d). "Corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996)

[3] Tee posts are made by rolling red hot steel into a "T" shape. These posts do not have tabs or holes to help secure fencing to them and have primarily farm and industrial uses.

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For our preliminary determination, as adverse facts available, we have used as the PRC-wide rate, the highest recalculated dumping margin from the petition (see below). In the petition, the petitioner based export price (EP) on the actual prices of fence posts, which were produced in the PRC, offered by a U.S. importer.[4] For the NV calculation, the petitioner based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy, and representative capital costs) on the quantities of inputs used by the petitioner.

With regard to the EP calculation in the petition, the petitioner obtained price quotes offered by a U.S. importer who sold subject merchandise. We corroborated the petitioners' price quotations with data submitted by BaoSteel, Hebei, and Nanyang in its questionnaire responses. The price quotations fell within the range of export prices reported by the respondents in this proceeding and are therefore reliable and relevant. Therefore, we find that the U.S. price used in the petition margin calculation is sufficiently corroborated.

To corroborate the petitioners' NV calculations, we compared the petitioner's factor consumption data to that data on the record of this investigation. As discussed in a separate memorandum to the file, we found that the factors' consumption data in the petition were corroborated. *See* the Memorandum to the File Regarding Corroboration of the Petition Data for the PRC-Wide Entity (Corroboration Memo), dated November 27, 2002.

The surrogate values for the factors of production in the petition were based on publicly available information for comparable inputs in India. Where significant differences exist between surrogate values used in the petition and those used in deriving the calculated margins in this preliminary determination, we replaced the values used in the petition and revised the NV calculation accordingly. Therefore, we find that the surrogate values used to calculate the PRC-wide rate are sufficiently corroborated.

Because all elements of NV have been corroborated, we consider this revised NV to be reasonable and of probative value. As a result of this recalculation, the PRC-wide rate is, for the preliminary determination, 32.73 percent. *See* Corroboration Memo; *see also* the May 14, 2002, and May 21, 2002, supplements to the petition. For the final determination, the Department will consider all information on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

[4] In calculating export price, the petitioner adjusted for importer/distributor mark-up, unloading & handling fees, foreign brokerage & handling, foreign inland freight, repacking costs, U.S. inland freight, ocean freight, and U.S. Customs duties & fees.

Fair Value Comparisons

To determine whether BaoSteel's, Hebei's, and Nanyang's sales of fence posts to customers in the United States were made at LTFV, we compared EP to NV, calculated using our NME methodology, as described in the "Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(a) of the Act, we used EP for BaoSteel, Hebei, and Nanyang because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated.

BaoSteel

We calculated EP for BaoSteel based on packed F.O.B. prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight and brokerage and handling charges. Because transportation for all sales was provided by a NME company, we based movement expenses associated with these sales on surrogate values. *See* the Factors of Production Valuation Memorandum dated November 27, 2002 (FOP Memo), on file in the Central Records Unit (CRU) located in B–099 of the main Department of Commerce building.

Hebei

We calculated EP from Hebei based on packed F.O.B. prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight and brokerage and handling charges for all sales. For certain sales, international freight and marine insurance expenses have also been deducted. Because transportation for all sales was provided by a NME company, we based movement expenses associated with these sales on surrogate values. *See* the FOP Memo.

Nanyang

We calculated EP for Nanyang based on packed F.O.B. prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight and brokerage and handling charges. Because transportation for all sales was provided by a NME company, we based movement expenses associated with these sales on surrogate values. See the FOP Memo.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, on the prices or costs of factors of production in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The Department's Office of Policy initially identified five countries that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. Those countries are India, Pakistan, Indonesia, Sri Lanka and the Philippines (see the memorandum from Jeffrey May to Gary Taverman dated August 15, 2002, on file in the CRU). According to the available information based on the *United Nations Trade Statistics*, of the five economically comparable countries, we have found that India was the only significant producer of comparable merchandise during the POI, including merchandise under HTSUS subheadings 7308.90 and 7326.90, which include steel pipes, tubes, plates, rods, pillars, and columns. In addition, for most factors of production, India has quantifiable, contemporaneous, and publicly available data. Therefore, for purposes of the preliminary determination, we have selected India as the surrogate country. We have preliminarily calculated NV by applying Indian values to BaoSteel's, Hebei's, and Nanyang's factors of production.

2. Factors of Production

In their questionnaire responses, BaoSteel, Hebei, and Nanyang reported factors of production for the manufacturers of the subject merchandise during the POI. The factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. See section 773(c)(3) of the Act. To calculate NV, we multiplied the reported quantities by publicly available surrogate per-unit values from India.

In accordance with 19 CFR 351.408(c)(1) of the Department's regulations, we will normally use publicly available information to value factors of production. However, the Department's regulations also provide that where a producer sources an input from a market economy and pays for it in market-economy currency, the Department normally will use the actual price paid for the input in the market economy to calculate the factors-based NV. *See Shakeproof Assembly Components Division of Illinois Tool Works* v. *United States*, 268 F. 3d 1376, 1381–83 (Fed. Cir. 2001). Respondent BaoSteel reported that some of its inputs were sourced from market economies and paid for in a market-economy currency. *See* the FOP Memo for a listing of these inputs.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic input supplier to the factory processing subject merchandise or the distance from the nearest seaport to the relevant factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

We valued material inputs and packing materials (including steel coil, steel anchors, hot-rolled steel strip, pre-treated chemicals, acid washes, powder coating, wood pallets, steel screws, steel banding, rivets, blocks, plastic strips, plastic sheets, cardboard/corrugated paper, labels, plastic ties, and plastic twine) using publicly available 2001 Indian import statistics from the appropriate Indian Trade Classification categories, based on the Harmonized Commodity Description and Coding System (HS), published by the *Monthly Statistics of the Foreign Trade of India. Volume II: Imports* (*Indian Import Statistics*).

For energy, we valued coal using *Indian Import Statistics*. We calculated our surrogate value for electricity based on electricity rate data from the *Energy Data Directory and Yearbook* (2000/2001) published by Tata Energy Research Institute. We calculated a simple average of the rates for the "industrial" category listed for 18 Indian states or electricity boards. This method was used in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002).

We valued labor using the latest regression-based wage rate for China found on Import Administration's Web page (*http://ia.ita.doc.gov/wages/*) as described in 19 CFR 351.408(c)(3).

As noted above, respondent BaoSteel sourced certain raw material inputs from market-economy suppliers and paid for them in market-economy currencies. Specifically, BaoSteel sourced hot-rolled steel strip and powder coating from market-economy suppliers. For this preliminary determination, the Department has used the market-economy prices for the inputs listed above, in accordance with 19 CFR 351.408(c)(1). We added to the weighted-average price for each input the Indian surrogate value for transporting the input to the factory, where appropriate (*i.e.*, where the sales terms for the market-economy inputs were not delivered to the factory).

To value foreign inland truck freight costs, we relied upon per-kilometer price quotes used by the Department in the *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 67 FR 10892 (March 11, 2002), multiplied by an inflator to make the value contemporaneous with the POI. We valued brokerage and handling using the rates in effect in India, for these expenses, which were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod From India: Final Results of Administrative and New Shipper Review*, 64 FR 856 (January 6, 1999), multiplied by an inflator to make the values contemporaneous with the POI.

To value factory overhead, selling, general and administrative expenses (SG&A) and profit, we used the audited financial statements for the year ended March 31, 2001, from an Indian producer of circular welded steel pipe, Surya Roshni (Surya). *See* FOP Memo for the calculation of these ratios from Surya's financial statements. As noted above, section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, based on the prices or costs of factors of production in one or more market economy countries that are significant producers of comparable merchandise. The Department was unable to locate publicly available financial statements for an Indian fence post producer, and therefore, we looked for a producer of comparable merchandise. The production of fence posts and circular welded steel pipe have similar production processes and material inputs, in that the production of these products use steel sheets or strips in coil form as the major input, and the respective products inceptively use the process of roll forming to create the desired shape of the steel. *See* the *U.S. International Trade Commission Preliminary Determination of Lawn and Garden Steel Fence Posts from China* at I–7 (June 2002, Publication 3521) and the *U.S. International Trade Commission Final Determination of Circular Welded Non-Alloy Steel Pipe from China* at I–5 (July 2002, Publication 3523).

The petitioner argued that the Department should use the "1999–2000 combined income, value of production, expenditure and appropriation account" for a sample of 1,914 public limited companies in India that were reported in the June 2001 *Reserve Bank of India Bulletin*, as previously used in *Potassium Permanganate from the PRC: Preliminary Results of Antidumping New Shipper Review*, 67 FR 303 (January 3, 2001). While we recognize that the Department has used the *Reserve Bank of India Bulletin* in past cases, in the current case, we have access to the publicly available financial statements of a producer of comparable merchandise. Therefore, we find it is more appropriate to use the financial statements of Surya, which are the best information for a producer of comparable merchandise, rather than the *Reserve Bank of India Bulletin*, which calculates factory overhead, SG&A, and profit from an index that does not reflect the experience of a comparable industry.

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For a complete analysis of surrogate values used in the preliminary determination, *see* the FOP Memo.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

We are directing Customs to suspend liquidation of all entries of fence posts from the PRC, with the exception of merchandise produced by Hangzhou Hongyuan Sporting Goods Company, Ltd. and exported by Shanghai BaoSteel Group International Trade Corporation, that are entered that are entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. In addition, we are instructing Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-average margin (percent)
Shanghai BaoSteel Group International Trade Corporation	0.00
Hebei Metals and Minerals Imports and Export Corporation	16.53
China Nanyang Import & Export Corporation	14.69
PRC-Wide Rate	32.73

The PRC-wide rate applies to all entries of the subject merchandise except for entries from BaoSteel, Hebei, and Nanyang.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in the preliminary determination to interested parties within five days of the date of publication of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of fence posts from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than one week after issuance of the verification reports. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: November 27, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30770 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–847]

Persulfates from the People's Republic of China: Extension of Time Limit for Final Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of Time Limit for Final Results of Antidumping Duty Admininistrative Review.

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–0629, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

SUPPLEMENTARY INFORMATION: On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on persulfates from the People's Republic of China. On August 6, 2002, the Department published a notice of preliminary results of antidumping duty administrative review and notice of partial rescission. The period of review is July 1, 2000 through June 30, 2001. The review covers one exporter of the subject merchandise to the United States.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the day on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final determination of an administrative review to 180 days. Due to the complexity of the surrogate value issues raised in the case briefs, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with section 751 (a)(3)(A) of the Act, we have fully extended the deadline for the final results of this administrative review until February 2, 2003.

Dated: November 27, 2002.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–30768 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2000–2001 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of 2000–2001 administrative review.

SUMMARY: On November 7, 2002, the Department of Commerce announced the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China for the period June 1, 2000, through May 31, 2001. These final results were published in the Federal Register on November 14, 2002. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002). On November 12, 2002, both Zhejiang Machinery Import & Export Corp. and the petitioner, the Timken Company, filed allegations of ministerial errors. Based on our review of the comments received from all parties regarding potential ministerial errors, we have made a change to the margin calculation of respondent Zhejiang Machinery Import & Export Corp. The final weighted-average dumping margin for this company is listed below in the section entitled "Amended Final Results."

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, S. Anthony Grasso, or Andrew Smith, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0116, (202) 482–3853, and (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2002, the Department of Commerce ("the Department") published the final results in this administrative review. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002) ("*Final Results*"). The period of review is June 1, 2000, through May 31, 2001.

On November 12, 2002, ministerial error allegations were submitted by respondent Zhejiang Machinery Import & Export Corp. ("ZMC") and the petitioner.

Scope of Review

Merchandise covered by this review includes tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China ("PRC"); flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Amended Final Results

After analyzing the ministerial error comments submitted by the above-noted parties in this review, we have determined, in accordance with section 771(h) of the Tariff Act of 1930, as amended, and 19 CFR 351.224, that we made a ministerial error in the margin calculation for ZMC. Specifically, we inadvertently failed to correct a mis-labeled control number reported by ZMC that we stated in the *Final Results* we intended to change. For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* November 27, 2002 memorandum from team to Susan H. Kuhbach entitled *Ministerial Error Allegations*, which is on file in the Department's Central Records Unit located in the main Commerce building in Room B-099.

Therefore, we are amending the *Final Results* to reflect the correction of the above-noted ministerial error for ZMC. Based on this revision, we determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001:

Exporter/manufacturer	Revised weighted-average margin percentage
China National Machinery Import & Export Corporation	0.71
Wanxiang Group Corporation	0.00
Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory	0.00
Luoyang Bearing Corporation (Group)	0.08 (*de minimis*)
Zhejiang Machinery Import & Export Corp.	0.53
PRC-wide rate	33.18

Assessment Rates

Absent an injunction from the U.S. Court of International Trade, the Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these amended final results of review.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: November 27, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30769 Filed 12–3–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112702E]

Proposed Information Collection; Comment Request; Coral Reefs - Economic Valuation Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, MD 20910 (or via the Internet at *Bob.Leeworthy@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection is to provide information on the value of Hawaii's coral reef habitats to specific segments of the U.S. population. The study will measure total economic values for Hawaii's coral reefs. This effort is designed to provide defensible information for both resource managers and damage assessments on the value of coral reef habitats and alternative management actions. The project is designed as a phased three-year effort to ensure effective use of all the available information. This effort will involve development of extensive knowledge about how reef habitats are perceived, implication of alternative management actions, designing original survey instruments, interviewing of a large number of respondents (1500–2000), conducting formal statistical analysis of the data, and developing a decision support system for use by resource managers. For total economic value, a nationally-oriented survey will be conducted using stated preferences methods.

II. Method of Collection

Up to 48 one-on-one cognitive interviews will be conducted. In addition, one pretest of the full survey instrument will be tested for a response of up to 150 usable observations. The final survey instrument will be administered to a sample of up to 2000 people.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,198.

Estimated Time Per Response: 2 hours for an interview; 30 minutes for a pretest; and 30 minutes for a final survey.

Estimated Total Annual Burden Hours: 1,369.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 27, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30752 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112702D]

Proposed Information Collection; Comment Request; Designation of Fishery Management Council Members and Application for Reinstatement of State Authority

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Surdi, 1315 East-West Highway, room 13142, Silver Spring, MD 20910, phone 301–713–2337.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended in 1996, provides for the nomination for members of Fishery Management Councils by state governors and Indian treaty tribes, for the designation of a principal state fishery official who will perform duties under the Magnuson-Stevens Act, and for a request by a state for reinstatement of state authority over a managed fishery. Nominees for council membership must provide the governor or tribe with background documentation, which is then submitted to NOAA with the nomination. The information submitted with these actions will be used to ensure that the requirements of the Magnuson-Stevens Act are being met.

II. Method of Collection

State governors and Indian treaty tribes submit written nominations to the Secretary of Commerce, together with recommendations and statements of candidate qualifications. Designations of state officials and requests for reinstatement of state authority are also made in writing in response to regulations. No forms are used.

III. Data

OMB Number: 0648–0314.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal government.

Estimated Number of Respondents: 54.

Estimated Time Per Response: 1 hour to designate a principal state fishery official(s); 80 hours for a nomination for a Council appointment; 16 hours for background documentation from nominees; and 2 hours for a request to reinstate state authority.

Estimated Total Annual Burden Hours: 4,543.

Estimated Total Annual Cost to Public: $3,052.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 27, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30753 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Millennium Pipeline Company From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration (NOAA) Department of Commerce (Commerce).

ACTION: Reopening public comment period.

SUMMARY: This notice reopens the period for the public to comment on the administrative appeal filed with the Department of Commerce by the Millennium Pipeline Company (Consistency Appeal of Millennium Pipeline Company, L.P.).

DATES: Public comments on the appeal must be received by January 8, 2003.

ADDRESSES: Comments may be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record will be available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Branden Blum, Senior Counselor, Office of the General Counsel for Ocean Services, via e-mail at *gcos.inquiries@noaa.gov*, or at (301) 713–2967, extension 186.

SUPPLEMENTARY INFORMATION: The Millennium Pipeline Company filed an administrative appeal with the Department of Commerce, pursuant to the Coastal Zone Management Act of 1972, as amended, asking that the Secretary of Commerce override the State of New York's objection to Millennium's proposed natural gas pipeline. The pipeline would extend from the Canadian border in Lake Erie and cross the Hudson River, affecting the natural resources or land and water uses of New York's coastal zone.

On September 9, 2002, NOAA published a notice in the **Federal Register** inviting the public to comment on any of the issues that the Secretary may consider in deciding the appeal. The deadline for submitting comments was December 2, 2002.

NOAA has been requested to provide additional time to allow for adequate comment on the issues raised within the appeal. The State of New York submitted its brief and supporting materials on October 16, 2002; additional materials and briefs were submitted by three amici on October 23, 2002. In response to the public requests, and in recognition of the complex issues and information reflected in these and other filings, NOAA is reopening the public comment period and will accept comments through January 8, 2003. Comments received after the end of the initial comment period on December 2, 2002, but before publication of this notice will be considered to be timely filed.

Written comments may be submitted by e-mail to *millennium.comments@noaa.gov* or forwarded via mail to the Office of the General Counsel for Ocean Services. Comments must be received by January 8, 2003. Comments will be made available to the parties; they are also expected to be posted on the Department of Commerce Web site at *http://www.ogc.doc.gov/czma.htm*.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: November 26, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–30743 Filed 12–03–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112702A]

Marine Mammals; File No. 473–1433

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Janice Straley, Assistant Professor of Marine Biology, University of Southeast Alaska, 1332 Seward Avenue, Sitka, Alaska 99835–9498, has been issued an amendment to scientific research Permit No. 473–1433–02.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NOAA Fisheries, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

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FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, Lynne Barre or Trevor Spradlin, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 473–1433–02, originally issued on February 23, 2001 (66 FR 11274), has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

The permit holder requested authorization to extend Permit No. 473–1433–02 for an additional 12 months. The new expiration date for the permit is November 30, 2003, and the permit number has been changed to No. 473–1433–03 to reflect that the permit has been amended.

Dated: November 29, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–30755 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Fastener Quality Act Insignia Recordal Process

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Lynne Beresford, Deputy Commissioner for Trademark Examination Policy, Office of the Commissioner for Trademarks, USPTO, Washington, DC 20231; by telephone at (703) 306–3109; or by electronic mail at *lynne.beresford@uspto.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

Under Section 5 of the Fastener Quality Act (FQA), 15 U.S.C. 5401 *et seq.* (as amended by Pub. L. 104–113, Pub. L. 105–234, and Pub. L. 106–34), certain industrial fasteners are required to bear an insignia identifying the manufacturer. The manufacturer must record this insignia with the USPTO. The procedures for the recordal of insignias under the FQA are set forth in 15 CFR 280.300 *et seq.*

This information collection was previously approved by the Office of Management and Budget (OMB) in February 2000 in conjunction with a proposed rule implementing the changes contained in the FQA Amendments that were enacted on June 8, 1999 (Pub. L. 106–34). The final rule notice entitled "Procedures for Implementation of the Fastener Quality Act" was published in the **Federal Register** on June 28, 2000 (Vol. 65, No. 125). Under the current rules of practice, only manufacturers of certain fasteners are required to record insignias. Previously, private label distributors were also required to record fastener insignias. The purpose of this collection is to ensure that a fastener can be traced to its manufacturer.

It is mandatory for manufacturers of fasteners covered by the FQA to submit an application to the USPTO for recordal of an insignia on the Fastener Insignia Register. The insignia may be either a unique alphanumeric designation that the USPTO will issue upon request, or a trademark that is either (1) registered at the USPTO or (2) the subject of an application to obtain a registration. Upon successful application for recordal of a fastener insignia, the USPTO will issue a Certificate of Recordal, which must be renewed every five years. If ownership of a recorded alphanumeric designation is assigned to another entity, the designation becomes "inactive" and the new owner must submit an application in order to reactivate the designation within six months of the date of assignment. If the recordal is based on a trademark application or registration that is assigned to a new owner, the recordal becomes "inactive" and cannot be reactivated. Instead, the new owner of the trademark application or registration must apply for a new recordal.

This information collection includes one form, the Application for Recordal of Insignia under the Fastener Quality Act (PTO–1611), which provides manufacturers with a convenient way to submit a request for the recordal of a fastener insignia or to renew or reactivate an existing Certificate of Recordal. Use of form PTO–1611 is not mandatory, and applicants may instead prepare requests for recordal using their own format. In November 2001, OMB approved a change worksheet submitted by the USPTO that reduced the burden for this information collection due to the USPTO receiving fewer Applications for Recordal of Insignia under the Fastener Quality Act than previously estimated.

The USPTO uses the information in this collection to maintain the Fastener Insignia Register, which is open to public inspection. The Fastener Insignia Register may be downloaded from the USPTO web site, and printed copies may be purchased from the USPTO.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0028.

Form Number(s): PTO–1611.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 150 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to gather the necessary information, prepare the form, and submit the request for recordal or renewal of a fastener insignia to the USPTO.

Estimated Total Annual Respondent Burden Hours: 26 hours per year.

Estimated Total Annual Respondent Cost Burden: $780 per year. The USPTO expects that the information in this collection will be prepared by paraprofessionals at an estimated rate of $30 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be $780 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Application for Recordal or Renewal of Insignia Under the Fastener Quality Act.	10 minutes	150	26
Total		150	26

Estimated Total Annual Non-hour Respondent Cost Burden: $3,474. There are no capital start-up costs or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees. Customers may also incur postage costs when submitting the Application for Recordal of Insignia Under the Fastener Quality Act to the USPTO by mail.

Under 37 CFR 2.7, the filing fee for a recordal of fastener insignia, a renewal of an insignia recordal, or the surcharge for a late renewal is $20. If a manufacturer submits a renewal after the expiration date but within six months of that date, then the manufacturer must pay the $20 renewal fee as well as a $20 late renewal surcharge, for a total fee of $40 for a late renewal. The USPTO estimates that approximately 20 of the 150 responses per year will be late renewals that incur the surcharge. Therefore, the total filing costs for this collection will be $3,400 per year for applications for recordal of fastener insignia, renewals, and late renewals.

The public may submit the information for this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents, for a total postage cost of $74 per year.

The total non-hour respondent cost burden for this collection in the form of filing fees and postage costs is $3,474 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 27, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 02–30746 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Rules for Patent Maintenance Fees.

Form Number(s): PTO/SB/45/47/65/66.

Agency Approval Number: 0651–0016.

Type of Request: Revision of a currently approved collection.

Burden: 30,495 hours annually.

Number of Respondents: 348,110 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 8 hours to gather the necessary information, prepare the form or petition, and submit the completed request. The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to submit the Electronic Maintenance Fee Form.

Needs and Uses: In order to keep utility patents in force, patentees must pay maintenance fees at 3½, 7½, and 11½ years after the date of grant. The public uses this collection to submit a patent maintenance fee payment, to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment, to file a petition to request acceptance of a maintenance fee payment that was submitted prior to patent expiration but refused by the USPTO, and to designate or change an address to be used for fee-related correspondence with the USPTO. The USPTO uses the information collected from the public to process and record maintenance fee payments, to consider petitions regarding delayed maintenance fee payments or payments that were refused by the USPTO, and to send fee-related correspondence to the correct address.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, and the Federal government.

Frequency: On occasion and 3 times at 4-year intervals following the grant of the patent.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before January 3, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: November 27, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 02–30747 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–16–P

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DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of meeting and expert panel.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Monday, December 16—Tuesday, December 17, 2002.

TIME: Monday, December 16, 2002: Expert panels—8 a.m.–11:45 a.m., 2 p.m.–3:45 p.m., Tuesday, December 17, 2002: Commission meeting–8:30 a.m.–12:30 p.m.

ADDRESSES: The Commission panels and meeting will be held in New York City, New York, at the Marriott Marquis, 1535 Broadway, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Leslie Sanchez, Executive Director, or Adam Chavarria, Associate Director, White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Ave., SW., Washington, DC 20202, (202) 401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 13230 dated October 12, 2001. The Commission is established to provide advice to the Secretary of Education (Secretary) and issue reports to the President concerning: (a) The progress of Hispanic Americans in closing the academic achievement gap and attaining the goals established by the President's No Child Left Behind Act of 2002; (b) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans; (c) ways to increase parental, State and local, private sector, and community involvement in improving education; and (d) ways to maximize the effectiveness of Federal education initiatives within the Hispanics community.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Adam Chavarria at (202) 401–1411 by no later than December 12, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. An opportunity for public comment is available on Monday, December 16, 2002, from 4 p.m.–5 p.m. Those members of the public interested in submitting written comments in lieu of attendance may do so at the address indicated above before Friday, December 13, 2002.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans from the hours of 9 a.m. to 5 p.m.

Dated: November 26, 2002.

William Hansen,

Deputy Secretary, U.S. Department of Education.

[FR Doc. 02–30661 Filed 12–3–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–063]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 26, 2002.

Take notice that on November 19, 2002, ANR Pipeline Company (ANR) tendered for filing a service agreement with NG Energy Trading, L.L.C. ANR requests that this agreement be substituted for another agreement that ANR erroneously filed in response to a July 3, 2001 order pertaining to a related negotiated rate agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30732 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–98–000]

CenterPoint Energy—Mississippi River Transmission Corp.; Notice of Proposed Changes in FERC Tariff

November 26, 2002.

Take notice that on November 22, 2002, CenterPoint Energy—Mississippi Transmission Corporation (MTT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective on December 31, 2002:

First Revised Sheet No. 254

MTT states that the purpose of this filing is to comply with the Commission's October 31, 2002 "Order on Remand" issued in Docket No. RM98–10–011.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30730 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–99–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2002.

Take notice that on November 22, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective on December 31, 2002:

Second Revised Sheet No. 459

CEGT states that the purpose of this filing is to comply with the Commission's October 31, 2002 "Order on Remand" issued in Docket No. RM98–10–011.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30731 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–82–000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

November 26, 2002.

Take notice that on November 21, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed below to become effective December 1, 2002:

First Revised Sheet No. 6A
Fourth Revised Sheet No. 43

Chandeleur asserts that the purpose of this filing is to comply with the Commission's directives in Docket No. RM98–10–011, issued October 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30724 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–34–001]

Eastern Shore Natural Gas Company; Notice of Compliance Filing

November 26, 2002.

Take notice that on November 21, 2002, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 1, 2002:

Ninth Revised Sheet No. 4
Eighth Revised Sheet No. 5
Eighth Revised Sheet No. 6

Eastern Shore states such revised tariff sheets have been filed in accordance with the Stipulation and Agreement (S & A) approved by the Commission on October 10, 2002 (101 FERC ¶ 61,011, 2002), in the above-referenced docket.

Eastern Shore states that Article V, Paragraph 8 of the above-referenced S&A specifies that within 15 days after the date upon which the Commission's order approving the Stipulation becomes final, Eastern Shore shall file with the Commission revised rate tariff sheets reflecting the cost of service settlement base rates to be effective as of the first day of the month following the date of the Commission's order. The Commission's order became final on November 12; 2002.

Eastern Shore states that copies of its filing has been mailed to affected

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customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30718 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065]

El Dorado Irrigation District, California; Notice of Public Meetings

November 26, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and Federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. Meetings will be held as follows:

December 9: Joint Meeting of Aquatics/Hydrology, Recreation, and Terrestrial Workgroups—9:00am—4:00pm;

December 10: Aquatics/Hydrology Workgroup—9 am—4 pm; and

December 11: Recreation Workgroup—9 am—4 pm.

We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the El Dorado Board of Directors Meeting Room, located at EID Headquarters, 2890 Mosquito Road, Placerville, California.

For further information, please contact Elizabeth Molloy at (202) 502–8771 or John Mudre at (202) 502–8902.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30713 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–90–000]

Enbridge Pipelines (KPC); Notice of Refund Report

November 26, 2002.

Take notice that on November 21, 2002, Enbridge Pipelines (KPC) tendered for filing an Excess Interruptible Revenue Refund Report.

KPC states that the report is made pursuant to section 24.5 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. KPC has requested a waiver of the crediting provisions of section 24.5 in order to credit the amount otherwise refundable against the current balance of receivables from Kansas Gas Service, the only customer being charged KPC's maximum rate.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before December 3, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30722 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–103–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 27, 2002.

Take notice that on November 25, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 454; Original Sheet No. 534A; and Fifth Revised Sheet No. 535; to become effective January 1, 2003.

FGT states that the purpose of this filing, which is made in accordance with section 154.201 of the Commission's Regulations, is to make limited revisions to the forms of Service Agreements for Rate Schedules FTS–1 and Rate Schedule FTS–2 to conform to the provisions of agreements FGT has executed in connection with its recent pipeline expansions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30720 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–94–000]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2002.

Take notice that on November 22, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2003: Fifty-Sixth Revised Sheet No. 8A, Forty-Eighth Revised Sheet No. 8A.01, Forty-Eighth Revised Sheet No. 8A.02, Sixth Revised Sheet No. 8A.04, Fifty-First Revised Sheet No. 8B, Forty-Fourth Revised Sheet No. 8B.01.

FGT states that it is filing the above referenced tariff sheets pursuant to the Gas Research Institute's (GRI) Year 2003 Research, Development and Demonstration Program and 2003–2007 Five-Year Plan as approved by the Federal Energy Regulatory Commission Order issued September 19, 2002 in Docket No. RP02–354. For the year of 2003, the funding mechanism includes the approved GRI demand charges of 5.0 cents per MMBtu per month (.16¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors exceeding 50%, 3.10 cents per MMBtu per month (.10¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors of 50% or less and a volumetric charge of 0.40 cents per MMBtu to be applicable to all non-discounted interruptible rates and to the usage portion of two-part rates. In addition, the 2003 funding mechanism includes a volumetric charge of 0.60 cents per MMBtu to be applicable to all one-part small customer rates. This funding mechanism provides for a decrease in GRI charges as compared to the currently effective 2002 GRI charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30726 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6032]

Niagara Mohawk Power Corporation and Fourth Branch Associates (Mechanicville); Notice of Technical Conference

November 26, 2002.

On August 12, 2002, the Commission issued an order accepting surrender of the license for the Mechanicville Project No. 6032.[1] The order required Niagara Mohawk Power Corporation to submit plans and schedules for, among other things, complying with the Commission's regulations concerning dam safety (18 CFR part 12) and for recording historic resources associated with the project prior to the effective date of surrender.

On Monday, December 16, 2002, at 9 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, Commission staff will hold a conference to discuss technical issues related to compliance with the dam safety regulations and to consult with respect to protection of historic resources in the context of the powerhouse stabilization measures. Parties to the proceeding and all interested persons will be permitted to attend.

Any meeting attendee wishing to propose or support an alternative to the Niagara Mohawk Power Corporation's powerhouse stabilization proposal should be prepared to: (1) Present its alternative at the meeting, including technical details such as a detailed description, an implementation schedule to accomplish the powerhouse stabilization by August 2003, and an engineering cost estimate; and (2) answer implementation and feasibility questions regarding its proposal.

Any party or interested person who is planning to attend the conference should notify Commission staff before 4:30 p.m., Wednesday, December 11, 2002. Please notify Ellen Armbruster, Office of Energy Projects, Rm 6H–07, in writing, or by calling at 202–502–8330. If any local, state or federal authorized agency representative is unable to attend but wishes to participate by teleconferencing, please so indicate.

[1] 99 FERC ¶ 61,227 (2002), reh'g denied, 100 FERC ¶ 61,185 (2002), request for reconsideration pending.

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Teleconferencing details will be provided later.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30716 Filed 12–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG03–1–000]

Northern Natural Gas Company; Notice of Filing

November 27, 2002.

On October 10, 2002, Northern Natural Gas Company filed its revised standards of conduct under part 161 of the Commission's regulations, 18 CFR part 161.

Northern Natural Gas Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before December 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to assess the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30710 Filed 12–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Application

November 27, 2002.

Take notice that on November 20, 2002, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, filed in Docket No. CP03–13–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for permission and approval to abandon pipeline and appurtenant facilities in Clackamas County, Oregon, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Northwest proposes to abandon approximately 1.4 miles of existing 16-inch pipeline on its Camas to Eugene Lateral located in Clackamas County, Oregon. It is stated that the pipeline segment proposed for abandonment, located in the Clackamas River bed, that has become exposed due to high water flows in the river and that the exposed pipe is a navigation hazard to those utilizing the river for recreational activities and must be removed for safety reasons. It is asserted that the pipeline segment would be abandoned partially by removal (approximately 5,860 feet) and partially in place (approximately 1,270 feet of pipeline that is located at a sufficient depth that removal is not warranted). Northwest explains that the pipeline segment is not needed for Northwest's existing design and operations because the nearby 20-inch high pressure loop pipeline accommodates all existing service requirements in the area. It is further explained that the 20-inch loop pipeline was installed at a significantly deeper depth and at a location determined to be more hydrologically stable than the 16-inch pipeline. The cost of the proposed abandonment is estimated at $1.4 million. Northwest proposes to complete the abandonment by September 2003.

Any questions concerning this application may be directed to Gary Kotter, Manager, Certificates and Tariffs, at (801) 584–7117, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 18, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents

filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30707 Filed 12–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–121–002]

Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company; Notice of Filing

November 27, 2002.

Take notice that on November 12, 2002, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) an explanation regarding the justness and reasonableness of its tariff provision requiring the inclusion of certain interruptible loads in the calculation of the annual peak demand for purposes of billing network access charges.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 9, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30709 Filed 12–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–4–001]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

November 26, 2002.

Take notice that on November 20, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing various statements, schedules and information regarding transportation fuel usage and retention.

Panhandle states that the filing is in compliance with the Commission's October 31, 2002, order accepting and suspending tariff sheets subject to refund and conditions and further review, reported at 101 FERC ¶ 61, 124.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–30721 Filed 12–3–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–95–000]

PG&E Gas Transmission, Northwest Corp.; Notice of Tariff Filing

November 26, 2002.

Take notice that on November 22, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 6, to be effective January 1, 2003.

GTN indicates that the purpose of this filing is to comply with Paragraph 37 of the General Terms and Conditions of its Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." Pursuant to this paragraph, GTN's fuel and line loss surcharge percentage will change from −0.0002% per Dth per pipeline-mile to 0.0000% per Dth per pipeline-mile for the six-month period beginning January 1, 2003. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentages in effect for each month of the six-month period ending October 2002.

GTN further states that a copy of this filing has been served on its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

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determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30727 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–86–000]

PG&E Gas Transmission, Northwest Corp.; Notice of Tariff Filing

November 26, 2002.

Take notice that on November 22, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Third Revised Sheet No. 4, First Revised Sheet No. 5, and First Revised Sheet No. 12, with an effective date of January 1, 2003.

GTN states that these tariff sheets establish GTN's Gas Research Institute ("GRI") surcharge for calendar year 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30728 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–16–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

November 27, 2002.

Take notice that on November 22, 2002, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP03–16–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for service to DSM Chemicals North America, Inc. (DSM) under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Southern requests authorization to construct and operate certain measurement and appurtenant facilities in order to provide transportation service to DSM at the DSM Chemicals Plant in Richmond County, Georgia. Southern proposes to construct the facilities, consisting of one 6-inch turbine meter and tie-in piping, electric custody transfer equipment, dual 6-inch taps and other appurtenant facilities, on its 16-inch South Main and South Main Loop Lines in Richmond County, Georgia. Southern estimates the average annual volumes for delivery to DSM at 9 Bcf, and estimates the daily average at 24,658 Mcf, with a maximum of 31,200 Mcf per day. Southern proposes to provide transportation service to DSM under Southern's Rate Schedules FT and IT pursuant to existing service agreements. The cost of the facilities is estimated at $299,200, and it is stated that DSM will reimburse Southern for the cost of constructing and installing the proposed facilities.

Any questions regarding the application may be directed to Ernest Bates, Counsel, at (205) 325–7115.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30708 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–93–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

November 26, 2002.

Take notice that on November 18, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a report reflecting the flow through of refunds received from National Fuel Gas Supply Corp.

On November 18, 2002, in accordance with section 4 of its Rate Schedules SS–2 and LSS, Transco states that it refunded to its SS–2 customers $7,092.81 and its LSS customers $3,224.03 resulting from the refund of National Fuel Gas Supply Corp. The refund covers the period from January 1998 to June 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before December 3, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30725 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–97–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2002.

Take notice that on November 22, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing. Such tariff sheets are proposed to be effective January 1, 2003.

Transco states that the purpose of the instant filing is to reflect the 2003 GRI surcharges approved by the Commission's Order issued on September 19, 2002, in Docket No. RP02–354–000. Also, in accordance with GRI's 1993 settlement, Transco has calculated the firm transportation service load factors on the actual volumes transported during the 12 month period October 2001 through September 2002.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30729 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–91–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2002.

Take notice that on November 21, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2003:

One Hundred Twenty-Seventh Revised Sheet No. 5
Thirty-Second Revised Sheet No. 5A
Twenty-Fourth Revised Sheet No. 5A.02
Twenty-Fourth Revised Sheet No. 5A.03
Twenty-Ninth Revised Sheet No. 5B

Transwestern states that the purpose of this filing is to set forth the approved 2003 Gas Research Institute (GRI) surcharges for the 2003 calendar year to be effective January 1, 2003, in accordance with the Commission's Order approving The Gas Research Institute's Year 2003 Research, Development and Demonstration Program and 2002–2006 Five-Year Plan issued on September 19, 2001, in Docket No. RP01–434–000.

Transwestern states that: (1) High-Load factor firm shippers under Transwestern's Rate Schedules FTS–1, EFBH, FTS–3 and LFT (*i.e.*, FTS–1, EFBH, FTS–3 and LFT shippers with a load factor greater than 50%) will be assessed a GRI demand surcharge of $0.0500 per Dth/month ($0.0016 per Dth/day); (2) Low-load factor firm shippers under Transwestern's Rate Schedules FTS–1, EFBH, FTS–3 and LFT (*i.e.*, FTS–1, EFBH, FTS–3 and LFT shippers with a load factor less than or equal to 50%) will be assessed a GRI demand surcharge of $0.0310 per Dth/month ($0.0010 per Dth/day); (3) Firm shippers under Transwestern's FTS–2 Rate Schedule will be assessed a GRI volumetric surcharge of $0.0060 per Dth; and (4) Firm shippers under Transwestern's FTS–01, EFBH, FTS–3 and LFT Rate Schedules and interruptible shippers under Transwestern's ITS–1 Rate Schedule

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will be assessed a GRI commodity surcharge of $0.0040 per Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30723 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–102–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 27, 2002.

Take notice that on November 25, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective January 1, 2003:

Second Revised Volume No. 1
Forty-Eighth Revised Sheet No. 15
Forty-Eighth Revised Sheet No. 16
Forty-Sixth Revised Sheet No. 18
Original Volume No. 2
Ninety-First Revised Sheet No. 11B

Williston Basin states the proposed tariff sheets are being filed to incorporate the Gas Technology Institute (GTI) General Research, Development and Demonstration Funding Unit Adjustment Provision for 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30719 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 401–027, Michigan]

Indiana Michigan Power Company; Notice of Availability of Environmental Assessment

November 26, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) has reviewed the application for a new license for the Mottville Hydroelectric Project, located on the St. Joseph's River in Mottville Township in St. Joseph County, Michigan, and has prepared an Environmental Assessment (EA) for the project. The project does not use or occupy any Federal facilities or lands. In this EA, the staff has analyzed the potential environmental effects of the existing project and has concluded that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This EA may also be viewed on the Web at *http://www.ferc.gov*. Using the 'FERRIS' link, enter the docket number excluding the last three digits in the document field to access the document. For assistance, please contact FERC Online Support at *ferconline@ferc.gov*, call toll free (866)208–3676, or TTY (202) 502–8659.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix 'Mottville Project No. 401–027' to all comments. For further information, please contact Lee Emery at (202) 502–8379 or e-mail at *lee.emery@ferc.gov*.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30714 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 27, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Boundary.
b. *Project No:* 1835–222.
c. *Date Filed:* September 3, 2002.
d. *Applicant:* Nebraska Public Power District (NPPD).
e. *Name of Project:* North Platte\Keystone Diversion Dam Project.
f. *Location:* The project is located on the North Platte and South Platte Rivers, in Keith and Lincoln Counties, Nebraska. The area proposed to be deleted from the project boundary lies entirely within Lincoln County.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.
h. *Applicant Contact:* John Shadle, Nebraska Public Power District, P.O. Box 499, Columbus, NE 68601–0499, (402) 564–8561.
i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov*.
j. *Deadline for filing comments and or motions:* December 27, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–1835–222) on any comments or motions filed.

k. *Description of Request:* NPPD is proposing to remove approximately 33.67 acres of land from the project boundary. The land will be transferred to the Nebraska Department of Roads (NDOR) to accommodate a realignment of Highway 25 right-of-way near NPPD's Sutherland Reservoir. The land is not needed for project purposes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30712 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4914]

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

November 27, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.
b. *Project No.:* 4914.
c. *Date Filed:* November 20, 2002.
d. *Applicant:* International Paper Company.
e. *Name of Project:* Nicolet Mill Dam Project.
f. *Location:* At the U.S. Army Corps of Engineers' DePere Dam, on the Fox River, in the City of DePere, Brown County, Wisconsin.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C.791(a)–825(r).
h. *Applicant Contacts:* Licensee Contact: Thomas Piette, International Paper Company, 200 Main Avenue, De Pere, WI 54115, (920) 336–4211.
i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov*.
j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.
k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.
l. *Deadline for filing additional study requests and requests for cooperating agency status:* December 27, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–4914–010) on any documents filed.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the

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Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. The existing Nicolet Mill Dam Project consists of the following existing facilities: (1) A 13.6 foot-high, 400-foot-long diversion structure attached to the westerly end of the U.S. Army Corps of Engineers' DePere Dam; (2) intake works consisting of 28 gates screened with steel racks; (3) a powerhouse containing two generating units with a total installed capacity of 1,080 kW; and (4) other appurtenances.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter: January 2003.

Issue Scoping Document for comments: March 2003.

Notice of Application is Ready for Environmental Analysis: June 2003.

Notice of the availability of the EA: October 2003.

Ready for Commission's decision on the application: December 2003.

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA: February 2004.

Ready for Commission's decision on the application: March 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30715 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

November 27, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt

	Docket No.	Date filed	Presenter or Requester
1.	Project No. 1927–008	11–20–02	USDA Forest Service
2.	CP02–296–000	11–20–02	Gini R. Cooper
3.	Project No. 2726–000	11–20–02	Mark Druss
4.	Project No. 2726–000	11–20–02	Susan Pengilly Neitzel
5.	Project No. 2726–000	11–20–02	L. Lewis Wardle
6.	CP01–415–000	11–20–02	Medha Kochhar
7.	Project Nos. 2576–022	11–20–02	John T. Gangemi and 2597–019
8.	CP02–396–000	11–20–02	Becky Coleman
9.	Project No. 2726–000	11–26–02	Susan Pengilly Neitzel

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30717 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12087–001]

White River Falls Energy Associates, Inc.; Notice of Surrender of Preliminary Permit

November 27, 2002.

Take notice that White River Falls Energy Associates, Inc., permittee for the proposed White River Falls Project, has requested that its preliminary permit be terminated. The permit was issued on February 6, 2002, and would have expired on January 31, 2005. The project would have been located on the White River in Wasco County, Oregon.

The permittee filed the request on September 9, 2002, and the preliminary permit for Project No. 12087 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30711 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0321; FRL–7417–7]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0595.08/OMB Control No. 2070–0055; Notice of Pesticide Registration by States To Meet a Special Local Need Under FIFRA Section 24(c)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Notice of Pesticide Registration by States to Meet a Special Local Need Under FIFRA Section 24(c); EPA ICR No. 0595.08; OMB Control No. 2070–0055. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before January 3, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 12, 2001 (66 FR 64249). EPA received one comment on this ICR during the 60-day comment period, and that comment is addressed in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2002–0321 (formerly Docket Control No. OPP–00753), which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0321; and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

ICR Title: Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) Under FIFRA Section 24(c) (EPA ICR 0595.08, OMB Control No. 2070–0055).

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on November 30, 2002. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This data collection program is designed to provide the Environmental Protection Agency (EPA, the Agency) with the necessary data to review approval of State-issued pesticide registrations. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 24(c) authorizes the States to register additional uses of federally registered pesticides for distribution and use within the State to meet a special local need (SLN). A State-issued registration under FIFRA section 24(c) is deemed a Federal registration for the purposes of the pesticide's use within the State's boundaries. A State must notify EPA, in writing, of any

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action it takes, *i.e.*, issues, amends, or revokes, a State registration. The Agency has 90 days to disapprove the registration. In such cases, the State is responsible for notifying the affected registrant.

Burden Statement: According to the Paperwork Reduction Act (PRA), "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: State and territorial governments (the 50 states plus Washington, DC, Puerto Rico, the U.S. Virgin Islands, Guam and the islands of the Pacific Territory, and American Samoa).

Estimated total number of potential respondents: 60.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 5–6.

Estimated total annual burden hours: 18,200.

Estimated total annual burden costs: $1,585,150.

Changes in the ICR Since the Last Approval: The Agency revised its burden estimates for both States and applicants based on information received during the public comment period and in consultation with respondents. The average applicant response burden decreased by 29 hours while the average State response burden increased by 11.5 hours, resulting in a net decrease in burden for the activities associated with this ICR. EPA estimates that the overall respondent burden has decreased from 24,604 hours to 18,200 hours, a decrease in burden of 6,404 hours. These changes are described in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 22, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–30758 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0320; FRL–7417–6]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0161.09/OMB No. 2070–0027; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; OMB No. 2070–0027; EPA No. 0161.09. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before January 3, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 12, 2001 (66 FR 64246). EPA received no comments on this ICR during the 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2002–0320 (formerly Docket Control No. OPP–00751), which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0320; and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

ICR Title: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides (OMB NO. 2070–0027; EPA No. 0161.09)

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on November 30, 2002. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection program is designed to enable the Environmental Protection Agency (EPA) to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted in the form of annual or per-shipment statements to the EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticide.

Burden Statement: The annual "respondent" burden for this ICR is estimated to be 24,753 hours. According to the Paperwork Reduction Act (PRA), "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Individuals or entities engaged in activities related to the registration of a pesticide product.

Estimated total number of potential respondents: 2,500.

Frequency of response: Annual or per-shipment.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 24,753.

Estimated total annual burden costs: $1,902,400.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 22, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–30759 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7417–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Beverage Can Surface Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: NSPS for Beverage Can Surface Coating—40 CFR part 60, subpart WW, OMB Control Number 2060–0001, expiration date January 31, 2003. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 3, 2003.

ADDRESSES: Send comments, referencing EPA ICR Number 0663.08 and OMB Control Number 2060–0001, to the following addresses: Susan Auby, United States Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at (202) 566–1672 or by e-mail to *auby.susan@epa.gov* or download from the Internet at: *http://www.epa.gov/icr*, and refer to EPA ICR Number 0663.08. For technical questions about the ICR, contact Steven Hoover at (202) 564–7007, or by e-mail to: *hoover.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NSPS for Beverage Can Surface Coating—40 CFR part 60, subpart WW, OMB Control Number 2060–0001, EPA ICR Number 0663.08, expiration date January 31, 2003. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Surface Coating of Beverage Cans were proposed on November 26, 1980, and promulgated on August 25, 1983. These standards apply to each beverage can surface coating operation in which organic coatings are applied (exterior base coat operations, over varnish coating operations, and inside spray coating operations) that commenced construction, modification or reconstruction after November 26, 1980. Approximately 46 sources are currently subject to the standard, and it is estimated that 2 sources per year will

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become subject to the standard during this time period. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart WW.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. The estimated total cost of this ICR will be $1,085,853 over the next three years (including labor hours, operating & maintenance costs, and start up costs; $361,951 × 3 years). All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 20, 2002. Comments were not received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of beverage can surface coating facilities.

Estimated Number of Respondents: 48.

Frequency of Response: semiannual for all, every other year for excess emission report.

Estimated Total Annual Hour Burden: 4642.

Estimated Total Annualized Capital, O&M Cost Burden: $96,800.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 0663.08 and OMB Control Number 2060–0001 in any correspondence.

Dated: November 18, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–30760 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0004; FRL–7417–4]

Agency Information Collection Activities: Submission of EPA ICR No. 1704.06 (OMB No. 2070–0143) to OMB for Review and Approval; Comment Request; Toxic Chemical Release Reporting; Alternate Threshold for Low Annual Reportable Amounts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this notice announces that the following continuing Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the procedures described in 5 CFR 1320.12: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting (EPA ICR No. 1704.06, OMB No. 2070–0143). The ICR, which is described below, describes the nature of the information collection and its estimated burden and cost; where appropriate, it includes the actual data collection instrument.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on January 31, 2003. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on July 1, 2002 (67 FR 44197). A **Federal Register** correction notice, correcting the address for submission of comments in person, was issued on July 15, 2002 (67 FR 46503). EPA received a number of comments on this ICR during the comment period, which have been addressed. The comments and EPA's responses are included in an attachment to the ICR Supporting Statement that is being submitted to OMB with this ICR renewal request, and will be made available in the docket for OEI–2002–0004 and on the EPA TRI Web site at *www.epa.gov/tri.*

DATES: Additional comments may be submitted on or before January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Judith Kendall, TRI Program Division, Office of Environmental Information, Mailcode 2844, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0750; e-mail address: *kendall.judith@epa.gov;* fax number: (202)566–0741.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR 1704.06; OMB Control No. 2070–0143.

Current Expiration Date: Current OMB approval expires on January 31, 2003.

EPA has established a public docket for this ICR under Docket ID No. OEI–2002–0004, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically.

Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2844, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Title: Toxic Chemical Release Reporting, Alternate Threshold for Low Annual Reportable Amounts, Recordkeeping, Supplier Notification and Petitions under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Background: EPCRA section 313 requires certain facilities manufacturing, processing, or otherwise using certain toxic chemicals in excess of specified threshold quantities to report their environmental releases and other waste management quantities of such chemicals annually. Each such facility must file a separate report for each such chemical.

EPA has established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that otherwise exceeds the current reporting thresholds, but estimates that the total amount of the chemical in waste does not exceed 500 pounds per year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year, can take advantage of reporting under the alternate threshold option for that chemical for that reporting year.

Each qualifying facility that chooses to apply the revised threshold must file the Form A Certification Statement (EPA Form 9350–2) to certify that they are not required to file a Form R (EPA Form 9350–1). In submitting the Form A Certification Statement, the facility certifies that the sum of the amount of the EPCRA section 313 chemical in wastes did not exceed 500 pounds for the reporting year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year. Use of the Form A Certification Statement represents a substantial savings to respondents, both in burden hours and in labor costs.

The Form A Certification Statement provides communities with information that the chemical is being manufactured, processed or otherwise used at facilities. Additionally, the Form A Certification Statement provides compliance monitoring and enforcement programs and other interested parties with a means to track chemical management activities and verify overall compliance with the rule. Responses to this collection of information are mandatory (see 40 CFR part 372) and facilities subject to reporting must submit either a Form A Certification Statement or a Form R, as appropriate.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public burden for this collection of information, which is approved under OMB Control No. 2070–0143, is estimated to average 13.7 hours for a facility that certifies one chemical per Form A Certification Statement. Responding to this information collection requires (1) determining whether a listed toxic chemical is eligible for certification under the alternate threshold, and (2) completing the Form A Certification Statement. The burden of determining eligibility for certification and associated recordkeeping is estimated to average 12.3 hours for each chemical that is certified. The burden of completing the Form A Certification Statement is estimated to average 1.4 hours, regardless of the number of chemicals being certified. The total burden per response is the combination of these two, and will vary depending on the number of listed toxic chemicals being certified.

The ICR supporting statement provides a detailed explanation of the burden estimates that are summarized in this notice. The following is a summary of the estimates taken from the ICR supporting statement:

Estimated No. of Respondents: 5,451 respondents.

Frequency of Responses: Annual.

Estimated Total Annual Burden Hours: 172,313 burden hours.

Estimated Total Annual Burden Costs: $7.57 million.

Changes in the Burden Estimates: The estimated burden described above differs from what is currently in OMB's inventory for alternate threshold reporting: 14,793 responses (chemicals) and 644,761 burden hours. The burden estimated in this supporting statement differs from OMB's inventory as a result of adjustments to estimates of the number of responses (from 14,793 responses (chemicals) to 5,121 responses (Form A Certification Statements)), changes to subsequent year unit reporting burden estimates (from 30.2 to 9.2 burden hours per chemical certified on a Form A Certification Statement), and an adjustment for use of TRI–ME for those forms completed using TRI–ME. These changes are described in greater detail in the supporting statement for this ICR, available in the public version of the official record.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review

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and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 22, 2002.

Oscar Morales,

Director, Collection Strategies Division, Office of Environmental Information.

[FR Doc. 02–30761 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0003; FRL–7417–3]

Agency Information Collection Activities; Submission of EPA ICR No. 1363.12 (OMB No. 2070–0093) to OMB for Review and Approval; Comment Request; Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) (EPA ICR No. 1363.12; OMB Control No. 2070–0093) for the Toxics Release Inventory (TRI) Form R has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is summarized below, describes the nature of the information collection and its estimated burden and cost, and it includes the actual data collection instrument where appropriate.

The Agency is requesting that OMB renew for three years the existing approval for this ICR, which is scheduled to expire on January 31, 2003. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on July 1, 2002 (67 FR 44213). A **Federal Register** correction notice, correcting the address for submission of comments in person, was issued on July 15, 2002 (67 FR 46502). EPA received a number of comments on this ICR during the comment period, and EPA has developed responses to those comments. The comments and EPA's responses are included in an attachment to the ICR Supporting Statement that is being submitted to OMB with this ICR renewal request, and will be made available in the docket for OEI–2002–0003 and on the EPA TRI Web site at *http://www.epa.gov/tri.*

DATES: Additional comments may be submitted on or before January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Judith Kendall, TRI Program Division, Office of Environmental Information, Mailcode 2844, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202)566–0750; e-mail address: *kendall.judith@epa.gov;* fax number: (202)566–0741.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR 1363.12; OMB Control No. 2070–0093.

Current Expiration Date: Current OMB approval expires on January 31, 2003.

EPA has established a public docket for this ICR under Docket ID No. OEI–2002–0003, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2844, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is those public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Background: EPCRA section 313 requires owners and operators of certain facilities that manufacture, process, or otherwise use any of the more than 650 listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and other waste management quantities of such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires that facilities provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting of toxic chemical releases and other waste management information under EPCRA section 313 provides citizens with a more complete picture of the total disposition of chemicals in their communities and helps focus industries' attention on pollution prevention and source reduction opportunities. EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding

the disposition of toxic chemicals and other waste management information of toxic chemicals from manufacturing facilities in their areas.

EPA collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake enforcement activities. Environmental and public interest groups use the data in studies and reports, making the public more aware of releases of chemicals in their communities.

Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI data, and the real gains in understanding it has produced, communities and governments know what toxic chemicals are released, transferred, or otherwise managed as a waste in their area by industrial facilities. In addition, industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Burden Statement: Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR supporting statement provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 19.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are owners or operators of certain facilities that manufacture, process, or otherwise use certain specified toxic chemicals and chemical categories and are required to report annually on the environmental releases and transfers of waste management activities for such chemicals.

Estimated total number of potential responses: 88,117.

Frequency of response: Annual.

Estimated total annual burden hours: 2,477,952.

Estimated total annual burden costs: $107.4 million.

Changes in Burden Estimates: As a result of OMB's March 7, 2002 approval of an information correction worksheet, OMB's inventory reflects 145,972 responses and 9,612,104 hours for this information collection. This ICR supporting statement is for 88,117 responses and 2,477,952 hours. The reduction in burden of approximately 7.1 million hours is the result of five adjustments.

The first adjustment is to the number of responses. The estimate of 145,972 responses in the existing OMB approval incorporated predicted reporting increases from economic analyses for several final rules. In all cases, these predictions have overestimated actual reporting levels, resulting in a cumulative overestimate of the number of responses. For example, the 1997 program change for industry expansion estimated 39,033 responses would be submitted, but only 12,567 responses were actually submitted. Likewise, the 1999 program change for PBT chemical thresholds estimated 19,990 responses would be submitted, but only about 6,600 responses per year were actually submitted. The number of responses in this ICR supporting statement have been adjusted to accurately reflect actual subsequent year reporting levels, with the exception of predicted additional responses from the rule lowering reporting thresholds for lead and lead compounds. The prediction of 9,813 additional reports for lead and lead compounds may prove to be an overestimate, as with EPA predictions for past rules. Adjusting the number of responses to accurately reflect actual subsequent year reporting levels (where available) results in a decrease of 59,617 responses from subsequent year filers and approximately 3.1 million burden hours (at 52.1 hours per response).

The second adjustment is to the unit burden hours. EPA has adjusted the estimate of unit burden hours for Form R completion in subsequent years from 47.1 hours to 14.5 hours based on responses from actual TRI reporting facilities. The adjustment to unit burden hours does not affect the number of responses, but reduces total burden by approximately 2.8 million burden hours (using the number of subsequent year responses for this ICR).

The third adjustment relates to first-year reporting burden. In previous ICRs, the renewal period has coincided with programmatic changes in one or more years. Previous ICRs have been based on annualized estimates of burden (including time for rule familiarization and higher first year reporting burdens for facilities affected by programmatic changes). Since there are no final rules pending at this time, this ICR renewal does not require annualized burden estimates that account for first-year reporting burden by facilities affected by programmatic changes. However, the ICR does account for a baseline level of first-time filers that are new to TRI reporting each year. This accounts for a reduction of about 900,000 burden hours.

The fourth adjustment relates to the adoption of TRI–ME, an automated reporting software package. EPA has reduced the burden estimates related to Form R Completion and Recordkeeping/Submission by 25 percent for the reports filed using TRI–ME. On an annualized basis, an estimated 60 percent of reports are expected to be filed using TRI–ME over the three years of the ICR. This results in a reduction of approximately 270,000 hours.

The fifth adjustment relates to the number of petitions. In previous ICRs, EPA has estimated 11 petitions per year. Since the actual number has been 1 to 2 per year, this ICR renewal has reduced the expected number of petitions to 5. This adjustment has a very minor impact on total burden.

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The sum of these adjustments is a decrease of 57,855 responses and 7,134,152 burden hours from the current approved total. According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 22, 2002.

Oscar Morales,

Director, Collection Strategies Division, Office of Environmental Information.

[FR Doc. 02–30762 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0250; FRL–7274–7]

Fenarimol; Availability of the Risk Assessments on FQPA Tolerance Reassessment Progress and Tolerance Reassessment Decision (TRED)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's tolerance reassessment decision and related documents for fenarimol including the *Fenarimol Overview, Fenarimol Summary, Fenarimol Decision Document (TRED),* and supporting risk assessment documents. EPA has reassessed the 42 tolerances, or legal limits, for residues of fenarimol in or on raw agricultural commodities. These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments on the tolerance reassessment decision or on the human health effects risk assessment for fenarimol, identified by docket ID number OPP–2002–0250, must be received by EPA on or before January 3, 2003. In the absence of substantive comments, the tolerance reassessment decision will be considered final.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0250 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8589; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You can obtain copies of the TRED and related documents discussed in this notice on EPA's website at http://www.epa.gov/pesticides/reregistration/status.htm. Information on pesticide reregistration and tolerance reassessment, including the purpose and status of Agency programs to complete Reregistration Eligibility Decisions (REDs), Interim REDs, and tolerance reassessment decisions (TREDs), is available at http://www.epa.gov/pesticides/reregistration. General information is available on the Office of Pesticide Programs' home page, http://www.epa.gov/pesticides/.

2. *In person.* The Agency has established an official record for this action under docket ID numbers OPP–2002–0250. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0250 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0250. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that

you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has reassessed the risks associated with current food uses of the pesticide fenarimol, reassessed 42 existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is issuing for comment the resulting report on FQPA tolerance reassessment progress, including the *Fenarimol Overview, Fenarimol Summary, Fenarimol Decision Document (TRED),* and supporting risk assessment documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances and exemptions included in this notice. EPA approved registration of products containing fenarimol as an active ingredient prior to the 1996 enactment of the Food and Quality Protection Act; therefore, while no reregistration decision is required at present, risks from non-occupational exposure to fenarimol through food, drinking water, and residential uses must be reassessed. The Agency has evaluated the dietary risk associated with fenarimol and has determined that there is a reasonable certainty, with appropriate mitigation, that no harm to any population subgroup will result from aggregate exposure to fenarimol when considering dietary exposure and all other non-occupational sources of pesticide exposure for which there is reliable information. Residential post-application exposure was of concern for children and infants from fenarimol products applied in residential settings. To mitigate this risk, the registrant has agreed to remove the residential uses from their labels until they conduct a special developmental toxicity study that will assess possible effects of fenarimol on the adult and juvenile rat hormonal systems. Once these data are submitted and reviewed, the Agency will make a determination regarding the reinstatement of the residential uses. For chronic drinking water risk from surface water, potential (average) estimated environmental concentrations (EECs) of fenarimol (84 parts per billion (ppb)) exceeds the chronic drinking water level of comparison (DWLOC) for all populations.

The 84 ppb value includes all residential uses and the golf course use of fenarimol. However, with the residential uses removed from the label, a correction factor of 0.31 can be applied to the 84 ppb surface water number to account for the use of fenarimol only on tees, greens, and fairways on golf courses. This would reduce the chronic EEC to 26 ppb. Infants and children, the most sensitive population subgroups would still exceed the chronic DWLOC of 20. However, the chronic EECs were estimated using Tier I modeling and only slightly exceed the DWLOC. Additional data are being required that will provide important information on the mobility of fenarimol and its degradates. These studies will help to refine the chronic surface water, ground water, and drinking water risk assessments. The Agency has reassessed all 42 tolerances for fenarimol and can make a FQPA safety determination. In addition, available residue chemistry data support the establishment of a 0.02 part per million (ppm) permanent tolerance for fenarimol residues in filberts under 40 CFR 180.421 (a). The Agency has sufficient residue data for reassessing the tolerances for fenarimol. The chronic dietary exposure assessment for fenarimol is highly refined using anticipated residues based on 1996–1999 Food and Drug Administration (FDA) monitoring data for apples, bananas, cherries, grapes, and pears. Field trial residue data were used for pecans and filberts. Percent crop treated information and processing factors, where available, were used in the assessment. There were no U.S. Department of Agriculture Pesticide Data Program monitoring data available for fenarimol. Residues of fenarimol *per se* were non-detectable (below the method limit of detection (LOD)) in all 1996–1999 FDA monitoring samples of apples, bananas, grapes, and pears (a total of more than 3,000 samples). Out of 214 cherry samples, three had detectable residues. Residues of fenarimol *per se* were non-detectable <LOD in/on all but one pecan nut meat sample from seven trials. There were no detectable residues in filbert samples from four field trials. Chronic dietary risks from exposure do not exceed the Agency's level of concern.

EPA works with affected parties to reach the tolerance reassessment decisions. The Agency therefore is issuing the fenarimol decision as a final decision with a public comment period. All comments received during the public comment period will be carefully considered by the Agency. If any comment significantly affects the Agency's decision, EPA will publish an amendment to the decision in the **Federal Register**. In the absence of substantive comments, the tolerance reassessment decisions reflected here will be considered final.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 15, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–30471 Filed 12–3–02 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0293; FRL–7278–9]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Rosemary Biancardi, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8145; e-mail address: *biancardi.rosemary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0293. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*."

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Did EPA Approve the Application?

The Agency approved the applications after considering all required data on risks associated with the proposed use of "dipotassium phosphate," "dipotassium phosphonate," "sucrose octanoate esters [(α-D-glucopyranosyl, β-D-fructofuranosyl-octanoate), mono-, di- and triesters of sucrose octanoate]," "sodium carbonate peroxyhydrate," and "rust *Puccinia thlaspeos* strain woad," and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of "dipotassium phosphate," "dipotassium phosphonate," "sucrose octanoate esters [(α-D-glucopyranosyl, β-D-fructofuranosyl-octanoate), mono-, di- and triesters of sucrose octanoate]," "sodium carbonate peroxyhydrate," and "rust *Puccinia thlaspeos* strain woad" when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Applications

1. EPA issued a notice, published in the **Federal Register** of May 10, 2000; (65 FR 30112) (FRL–6556–6), which announced that Foliar Nutrient, Inc., 320 First Ave., Cairo, GA 31728 had submitted an application to register the pesticide product, Lexx-A-Phos Fungicide, (EPA File Symbol 72499–R), containing 22.67% dipotassium phosphate and (the registered active ingredient) 20.40% dipotassium phosphonate. This product was not previously registered.

The application was approved on September 16, 2002, as Lexx-A-Phos Fungicide (EPA Registration Number 72499–1. The technical grade of the active will be used for incorporation into the end-use product Lexx-A-Phos Fungicide, which is intended to control certain fungal diseases in woody ornamentals, turfgrasses and non-bearing fruits and nut tree crops. This use is classified as a terrestrial non-food application. (D. Benmhend)

2. EPA issued a notice, published in the **Federal Register** of August 11, 1999 (64 FR 43701) (FRL–6095–2), which announced that AVA Chemical Ventures, L.L.C., 80 Rochester Avenue, Suite 214, Portsmouth, NH 03801, had submitted applications to register the pesticide products, Avachem Sucrose Octanoate Manufacturing Use Product [63%], a manufacturing-use product for formulation into biological insecticide end-use products (EPA File Symbol 70950–R), and Sucrose Octanoate [32.1%], a biological insecticide end-use product (EPA File Symbol 70950–E), containing sucrose octanoate (C_8 fatty acid mono-, di- and triesters of sucrose octanoate and sucrose dioctanoate) (α-D-glucopyranoside, β-D-fructofuranosyl, monooctanoate and dioctanoate), which has since been designated by the Agency as sucrose octanoate esters [(α-D-glucopyranosyl, β-D-fructofuranosyl-octanoate), mono-, di- and triesters of sucrose octanoate]. These products were not previously registered.

The applications were approved on September 16, 2002, as Avachem Sucrose Octanoate Manufacturing Use Product (EPA Registration Number 70950–1) for formulating into biochemical insecticide/miticide end-use products and Avachem Sucrose Octanoate [40.0%] (EPA Registration Number 70950–2) for use as a biochemical insecticide/miticide end-use product. (D. Greenway)

3. EPA also issued a notice, published in the **Federal Register** of August 11, 1999 (64 FR 43701) (FRL–6095–2), which announced that BioSafe Systems, 80 Commerce St., Glastonbury, CT 06033, had submitted an application to register the pesticide product, TerraCare Granular, Algaecide, Fungicide (EPA File Symbol 70299–G), containing the active ingredient sodium percarbonate at 40% redesignated as sodium carbonate peroxyhydrate. This product was not previously registered.

The application was approved on September 20, 2002, as TerraCyte™ (EPA Registration Number 70299–3) for use as an algaecide and fungicide on ornamental plants and turf. (A. Ball)

4. EPA issued a notice, published in the **Federal Register** of March 8, 2002 (67 FR 10717) (FRL–6824–3), which announced that Greenville Farms, 6189 N. 1200 E., Logan, Utah 84341, had submitted an application to register the pesticide product, Woad Warrior, a herbicide (EPA File Symbol 73417–R), containing *Puccinia thlaspeos* "strain woad" on rust-infected pieces of dyer's woad at 100% and at least 7.6 x 10^9 teliospores/pound of woad warrior. This product was not previously registered.

The application was approved on June 26, 2002, as Woad Warrior containing the rust *Puccinia thlaspeos* "strain woad" as the active ingredient. (EPA Registration Number 73417–1) for controlling dyer's woad, an invasive weed rapidly spreading in several Western states. (B. Mandula)

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 20, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–30602 Filed 12–3–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7417–2]

Generic Assessment Endpoints for Ecological Risk Assessments (External Review Draft); Notice of Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the draft document titled Generic Assessment Endpoints for Ecological Risk Assessments prepared by the Agency's Risk Assessment Forum (RAF). The document is intended to assist EPA during the process of ecological risk assessment in selecting assessment endpoints, which are valued ecological entities and attributes to be protected. EPA will consider the public comment submissions in revising the document.

DATES: The 60-day public comment period begins December 4, 2002, and ends February 3, 2003. Comments must be provided by February 3, 2003.

ADDRESSES: The draft is available via the Internet on the EPA Risk Assessment Forum's home page at *http://www.epa.gov/ncea/raf* under the What's New and External Review Drafts menus. Comments may be submitted electronically, by mail, or in person, as described in the instructions under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, please contact Scott Schwenk, U.S. EPA, Office of Research and Development, National Center for Environmental Assessment (8601D), 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: 202–564–6667; fax: 202–565–0062; e-mail: *schwenk.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments

Electronic comments are preferred and may be sent by e-mail to: *risk.forum@epa.gov*. Alternatively, comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW., 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. In the case of paper comments, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Please note that all comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

II. Background

Ecological risk assessment is a process for evaluating the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors. A critical early step in conducting an ecological risk assessment is to select assessment endpoints. Assessment endpoints represent valued ecological entities, and their attributes, upon which risk-management actions are focused. Selecting assessment endpoints is often challenging because of the diversity of species, ecological communities, and ecological functions from which those involved in risk assessment can choose and because of statutory ambiguity regarding what is to be protected. The purpose of the RAF document is to assist EPA risk assessors by providing a set of generic ecological assessment endpoints that can be considered and adapted for use in specific ecological risk assessments, building on existing EPA guidance and experience. The document is not prescriptive, but rather is intended to be a useful starting point that is flexible enough to be applied to many different types of ecological risk assessments. The document is undergoing peer review concurrent with the public comment period described in this notice.

Dated: November 12, 2002.

George W. Alapas,

Director, National Center for Environmental Assessment.

[FR Doc. 02–30763 Filed 12–3–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–46–C (Auction No. 46); DA 02–1671]

Auction of License in the 1670–1675 MHz Band Auction Scheduled for April 30, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the 1670–1675 MHz band scheduled for April 30, 2003 (Auction No. 46). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 46 is scheduled to begin on April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Francis Gutierrez, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418–0660; Lisa Stover, Auctions Operations Branch, at (717) 338–2888, *Media Contact*: Lauren Kravetz at (202) 418–7944, *Public Safety & Private Wireless Division*: Keith Fickner or Brian Marenco, Policy and Rules Branch, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 46 Procedures Public Notice* released on August 5, 2002. The complete text of the *Auction No. 46 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 46 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

I. General Information

A. Introduction

1. By the *Auction No. 46 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of one nationwide license in the 1670–1675 MHz band scheduled for April 30, 2003 (Auction No. 46).

2. In accordance with the Balanced Budget Act of 1997, the Bureau released a public notice on May 24, 2002 seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 46. The Bureau received two comments and one reply comment in response to the *Auction No. 46 Comment Public Notice*, 67 FR 43118 (June 26, 2002). The Bureau subsequently released a second public notice on July 15, 2002, revising the license inventory, auction start date, and seeking comment on revisions to proposed auction procedures. The Bureau received one comment in response to the *Auction No. 46 Further Comment Public Notice*, 67 FR 49022 (July 29, 2002).

3. On August 5, 2002, the Bureau released the *Auction No. 46 Procedures Public Notice* that announced the procedures and minimum opening bids for the auction of one nationwide license in the 1670–1675 MHz band, scheduled to begin on October 30, 2002.

4. On September 13, 2002, the Bureau released a public notice seeking comment on a request for postponement of Auction No. 46 filed by ArrayComm, Inc. *Auction No. 46 Public Notice Seeking Comment on Postponement*, 67 FR 61104 (September 27, 2002).

5. On September 25, 2002, the Bureau released a public notice, which announced that based on the record of comments it received, Auction No. 46 is postponed until April 23, 2003. *Auction No. 46 Postponement Public Notice*, 67 FR 63095 (October 10, 2002).

i. Background of Proceeding

6. On May 24, 2002, the Commission released the *Service Rules Report & Order*, which adopted service rules to govern the licensing of 27 MHz of electromagnetic spectrum reallocated for non-Government use, including the 1670–1675 MHz band. In the *Service Rules Report & Order*, 67 FR 41847, (June 20, 2002), the Commission, among other things, established competitive bidding procedures for the 1670–1675 MHz band; decided to assign, on a nationwide basis, one license for a 5-megahertz block of contiguous unpaired spectrum in the 1670–1675 MHz band; and determined that all operations in the 1670–1675 MHz band will be generally regulated under the framework of the Commission's Part 27 technical, licensing, and operating rules. The Commission also explained that a non-government licensee in the 1670–1675 MHz band must comply with the provisions of § 1.924(g) of the Commission's rules to minimize harmful interference to Geostationary Operations Environmental Satellite (GOES) earth stations receiving in the band 1670–1675 MHz. The GOES earth stations are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland.

ii. Licenses To Be Auctioned

7. One nationwide license consisting of a 5-megahertz block of contiguous unpaired spectrum in the 1670–1675 MHz band will be available in Auction No. 46.

B. Rules and Disclaimers

i. Relevant Authority

8. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 1670–1675 MHz band contained in title 47, part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Auction No. 46 Procedures Public Notice, Auction No. 46 Comment Public Notice, Auction No. 46 Further Comment Public Notice, Auction No. 46 Public Notice Seeking Comment on Postponement, Auction No. 46 Postponement Public Notice*, and the *Part 1 Fifth Report and Order* 65 FR 52401 (August 29, 2000) (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

9. Auction participants bidding on the license in the 1670–1675 MHz spectrum band should also be familiar with the *Service Rules Report and Order*.

10. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554 or may be purchased from the

Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 02–152 for the *Service Rules Report and Order*).

ii. Prohibition of Collusion

11. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Because bidders in Auction No. 46 will be competing for the same license, they are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

12. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. Applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

13. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

14. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 46 Procedures Public Notice*.

iii. Due Diligence

15. Potential bidders are reminded that the 1670–1675 MHz band is being allocated for mixed use. The Commission made clear that a geographic area licensee operating in the reallocated band must protect Federal Government operations, either indefinitely or for a given period of time. These requirements may affect the ability of the geographic licensee to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license area.

16. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 46.

17. Accordingly, the 1670–1675 MHz licensee must protect indefinitely the Command and Data Acquisitions stations used to communicate with the GOES earth stations that are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland. The 1670–1675 MHz licensee must also comply with the Quiet Zone requirements of § 1.924 of the Commission's Rules.

18. Before planning to construct and operate a new or modified station within 100 kilometers of the Wallops Island, Virginia and Fairbanks, Alaska stations or within 65 kilometers of the Greenbelt, Maryland station, the 1670–1675 MHz licensee must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. NOAA's GOES coordination web page, at *http://www.osd.noaa.gov/radio/frequency/htm*, provides the technical parameters of the earth stations and the point-of-contact notification information. Additionally, the licensee must file an application with the Commission requesting authority to operate the new or modified station. This application should be filed through the Commission's Universal Licensing System. The application should state the date that notification to NOAA was made. After the Commission receives an application, NOAA has 20 days to comment or object to the proposed new or modified station. If NOAA objects during the 20-day period, the Commission will take whatever action is deemed appropriate. In the absence of an objection by NOAA, the Commission will grant the application if it is otherwise acceptable.

19. Potential bidders for "near the border" licenses must protect stations in Canada and Mexico from harmful interference. This will permit licensees to maximize their operations depending on the spectrum use, terrain, and other factors at the border areas, while still protecting operations across the border. However, operations in the 1670–1675 MHz band may be subject to future agreements with Canada and Mexico and therefore may be subject to further modification.

20. The Commission makes no representations or guarantees regarding the accuracy or completeness of the information concerning Federal Government incumbents that appears in the *Auction No. 46 Procedures Public Notice* or third party documents. Potential bidders who have questions regarding Federal Government use of the 1670–1675 MHz band may contact Gerald F. Hurt, Chief, Spectrum Engineering and Analysis Division, National Telecommunications and Information Administration, Room 6725, 1401 Constitution Ave., NW., Washington, DC, 20230, at (202) 482–4107, via fax at (202) 482–4595, or at *ghurt@ntia.doc.gov*.

21. Potential bidders also should be aware that certain applications, petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent Federal entities. In addition, certain judicial proceedings that may relate to particular applicants or the license available in Auction No. 46 may be commenced, or may be pending, or may be the subject to further review. Resolution of these matters could have an impact on the availability of spectrum in Auction No. 46. Some of these matters (whether

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before the Commission or the courts) may not be resolved by the time of the auction.

iv. Bidder Alerts

22. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

23. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

24. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 46 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

25. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 46 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act ("NEPA") Requirements

26. The licensee must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA"). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

27. The auction will begin on Wednesday, April 30, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on the license.

ii. Auction Title

28. Auction No. 46—1670–1675 MHz Band

iii. Bidding Methodology

29. The bidding methodology for Auction No. 46 will be multiple round, ascending auction. An ascending multiple round auction is the same as a simultaneous multiple round auction, but with only one license available for bid. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

30. Listed are important dates associated with Auction No. 46:

Auction Seminar: September 18, 2002
Short-Form Application (FCC Form 175) Filing Window Opens: March 18, 2003
Short-Form Application (FCC Form 175) Deadline: March 25, 2003; 6 p.m. ET
Upfront Payments Deadline: April 11, 2003; 6 p.m. ET
Mock Auction: April 25, 2003
Auction Begins: April 30, 2003

v. Requirements for Participation

31. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, March 25, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, April 11, 2003.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

32. The following is a list of general contact information relating to Auction No. 46.

General Auction Information
(General Auction Questions, Seminar Registration): FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888. Hours of service: 8 a.m.–5:30 p.m. ET.

Auction Legal Information
(Auction Rules, Policies, Regulations): Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information
(Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues): Public Safety & Private Wireless Division, (202) 418–0680.

Technical Support
Electronic Filing, Automated Auction System): FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY). Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET.

Payment Information

(Wire Transfers, Refunds): FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Copy Contractor: Qualex International.

Additional Copies of Commission Documents: Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax) and *qualexint@aol.com (E-mail).*

Press information: Meribeth McCarrick (202) 418–0654.

FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area) and *http://www.fcc.gov/formpage.html.*

FCC Internet Sites: http://www.fcc.gov, http://wireless.fcc.gov/auctions and *http://wireless.fcc.gov/uls.*

II. Short-Form (FCC Form 175) Application Requirements

33. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 46 Procedures Public Notice.* The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.D (Provisions Regarding Defaulters and Former Defaulters) of the *Auction No. 46 Procedures Public Notice,* that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

34. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

35. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the license being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, or bidding strategies. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

36. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

37. Bidding credits will be available to small and very small businesses, or consortia, thereof, as defined in 47 CFR 27.906, for the 1670–1675 MHz band. A bidding credit represents the amount by which the bidder's winning bid is discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years ("very small business") receives a 25 percent discount on its winning bid;
- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years ("small business") receives a 15 percent discount on its winning bid;

Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

ii. Tribal Land Bidding Credit

38. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* part V.D. of the *Auction No. 46 Procedures Public Notice.*

iii. Applicability of Part 1 Attribution Rules

39. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order,* in which the Commission, *inter alia,* adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that supersede inconsistent service-specific rules will control in Auction No. 46. *Accordingly, the "controlling interest" standard as set forth in the Part 1 rules will be in effect for Auction No. 46.*

40. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

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Attribution for small and very small business eligibility. In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

41. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which individually must satisfy the definition of small and very small business in §§ 1.2110(f), 27.906 of the Commission's rules. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

42. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.

43. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

44. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, separately and in the aggregate, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

45. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests, as defined by § 1.2110 of the Commission's rules. Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

46. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 46, provided that they are otherwise qualified. However, as discussed in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

47. Installment payment plans will not be available in Auction No. 46.

F. Other Information (FCC Form 175 Exhibits E and F)

48. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

49. After the short-form filing deadline (March 25, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction46@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

50. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Francis Gutierrez of the Auctions and Industry Analysis Division at (202) 418–0660.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

51. Applicants have an obligation under 47 CFR 1.65 to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

II. Pre-Auction Procedures

A. Auction Seminar

52. On Wednesday, September 18, 2002, the FCC sponsored a free seminar for Auction No. 46 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar provided attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the 1670–1675 MHz band and auction rules. The seminar also provided an opportunity for prospective bidders to ask questions of FCC staff.

B. Short-Form Application (FCC Form 175)—Due March 25, 2003

53. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on March 25, 2003. Late applications will not be accepted.

54. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D of the *Auction No. 46 Procedures Public Notice.*

i. Electronic Filing

55. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on March 18, 2003, until 6 p.m. ET on March 25, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 25, 2003.

56. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 46 Procedures Public Notice.* Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

57. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

58. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 46 Procedures Public Notice.* Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 46 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

59. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

Note: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the *Auction No. 46 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

60. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

61. As described more fully in the Commission's rules, after the March 25, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due April 11, 2003

62. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on April 11, 2003.

63. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 46 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the April 11, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

64. Wire transfer payments must be received by 6 p.m. ET on April 11, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BENEFICIARY: FCC/Account # 910–0180
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A46U)
FCC CODE 1 (same as FCC Form 159, block 28A: "46")
PAYOR NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358420

Note: The BNF and Lockbox number are specific to the upfront payments for this

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auction; do not use BNF or Lockbox numbers from previous auctions.

65. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 46." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

66. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 46 Procedures Public Notice.* An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

67. In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

68. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on the license, otherwise qualified bidders must have an eligibility level that meets the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on the license or else the applicant will not be eligible to participate in the auction.

69. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed an upfront payment of $12,628,000 for the nationwide 1670–1675 MHz license using the following formula: $0.01 * MHz * License Area Population with a minimum of $1,000.

ArrayComm and AeroAstro submitted comments regarding the Bureau's proposed formula for calculating the upfront payment for Auction No. 46. ArrayComm supports the Bureau's proposed upfront payment because it is appropriate given the nationwide scope of the license. AeroAstro, on the other hand, suggests that the proposed upfront payment is excessively high and may reduce potential participation and competition in the auction. AeroAstro recommends that the Commission reduce the upfront payment by a factor of ten, resulting in an upfront payment of $1,262,800.

70. The Bureau adopts its upfront payment as proposed. Given the nationwide scope of the 1670–1675 MHz license, the Bureau believes that the proposed upfront payment, as validated by the comments of ArrayComm, is appropriate.

71. The specific upfront payments and bidding units for the nationwide 1670–1675 MHz license is set forth in Attachment A of the *Auction No. 46 Procedures Public Notice.*

72. Former defaulters should calculate their upfront payment by multiplying the number of bidding units by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

73. The Commission will use wire transfers for all Auction No. 46 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by April 11, 2003. All refunds will be returned to the payor of record as identified on the FCC Form 159 unless the payor submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.F. of the *Auction No. 46 Procedures Public Notice.*

E. Auction Registration

74. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on the license.

75. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

76. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, April 23, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

77. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

78. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network at $2.30 per minute. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System User Manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 46. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference'electronic or telephonic'on the FCC Form 175.

79. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

80. All qualified bidders will be eligible to participate in a mock auction on Friday, April 25, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

81. The first round of bidding for Auction No. 46 will begin on Wednesday, April 30, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Ascending Multiple Round Auction

82. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 46 in a single, simultaneous multiple round auction. The Bureau received one comment on this issue. ArrayComm agrees with the Bureau's proposal stating that the simultaneous multiple round structure is most likely to result in efficient bidding, thereby awarding the licenses to the party with the greatest ability to bring innovative services to consumers. An "ascending multiple round auction" is the same as a simultaneous multiple round auction, but with only one license available for bid. The Bureau concludes that it is operationally feasible and appropriate to auction the license in the 1670–1675 MHz band through a single, ascending multiple round auction. Unless otherwise announced, bids will be accepted on the license in each round of the auction.

ii. Maximum Eligibility and Activity Rules

83. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

84. For Auction No. 46, the Bureau will adopt its proposal that the amount of upfront payment submitted by a bidder would determine the eligibility (in bidding units) for participation in Auction No. 46. Bidders are reminded that the upfront payment is a refundable deposit made by each bidder to determine and establish eligibility to bid on the license. The upfront payment does not affect the total dollars a bidder may bid on the license.

85. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction. In the *Auction No. 46 Further Comment Public Notice*, because only one license will be available for auction, the Bureau proposed a single stage auction with each bidder required to be active on one hundred (100) percent of its bidding eligibility in each round.

86. Only one commenter addressed the Bureau's revised proposal. ArrayCom states that monitoring the bidding activity of only one license makes the evaluation and bidding process of necessity more straightforward for participants. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureau adopts its proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction.

iii. Activity Rule Waivers and Reducing Eligibility

87. In the *Auction No. 46 Further Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided two activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. ArrayComm agreed with the Bureau's proposal that two waivers would be appropriate in light of the auction's narrowed scope.

88. Based upon the Bureau's experience in previous auctions, it adopts its proposal that each bidder be provided two activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. The Bureau is satisfied that its practice of providing two waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

89. The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required. If there are no activity rule waivers available, the bidder's eligibility will be reduced, eliminating them from the auction

90. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in

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which there are no new valid bids will not keep the auction open.

Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

91. For Auction No. 46, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction after the first round in which no bidder submits a proactive waiver or a new bid on the license when it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on the license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

92. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility, thus eliminating the bidder from the auction.

93. In addition, the Bureau proposed to reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or adjusting the amount of the minimum bid increments for the license.

94. The Bureau received no comments concerning the auction stopping rules and therefore, it adopts the proposals. Auction No. 46 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. These stopping rules are most appropriate for Auction No. 46, because the Bureau's experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

95. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

96. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. Exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

97. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the public notice referenced herein.

98. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

99. *Background.* The Communications Act, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau should consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

100. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 46. Specifically, for Auction No. 46, the Bureau proposed a minimum opening bid of $12,628,000 for the nationwide license using the following formula: $0.01 * MHz * License Area Population with a minimum of $1,000.

In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price. ArrayComm and AeroAstro submitted comments regarding the Bureau's proposed formula for calculating minimum opening bids for Auction No. 46. ArrayComm supports the Bureau's proposed minimum opening bid, stating that it will ensure a successful outcome overall for the auction. AeroAstro, on the other hand, suggests that the multi-million dollar minimum opening bid for the license in the 1670–1675 MHz Band is an artificially high barrier to entry and may defeat the purpose of the auction by eliminating bidders. AeroAstro proposes the following formula for calculating minimum opening bids for the nationwide license: $ 0.002 * MHz * License Area Population.

101. The Bureau adopts its minimum opening bid as proposed. The Bureau believes that the minimum opening bid, as adopted, is appropriate.

102. The specific minimum opening bid for the license is set forth in Attachment A of the *Auction No. 46 Procedures Public Notice.*

iii. Minimum Accepted Bids and Bid Increments

103. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

104. ArrayComm suggests that because the license inventory for Auction No. 46 is reduced to one license, a smaller bid increment is more appropriate. It notes that while higher bid increments can maintain the pace of large-scale auctions, they are not necessary under a single-license auction event such as Auction No. 46. ArrayComm further asserts that a reduced minimum bid increment may, in fact, increase auction efficiency in this scenario.

105. The Bureau adopts its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F of the *Auction No. 46 Procedures Public Notice.*

106. Upon consideration of ArrayComm's comments, the weighting factor will be set at 0.5, the minimum percentage increment at 0.05 (5 percent), and the maximum at 0.2 (20 percent). Because only a single license is available in Auction No. 46, it is appropriate to set the minimum bid increment at 5 percent. The Bureau reiterates that it retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment, for Auction No. 46 if circumstances warrant.

iv. High Bid

107. At the end of each bidding round, the Automated Auction System determines the standing high bid for the license based on the gross dollar amounts of the bids received.

108. In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

109. During a bidding round, a bidder may submit a bid (subject to its eligibility) as well as remove a bid placed in the same bidding round. If a bidder submits multiple bids for the license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with the license for which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

110. All bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 46.

111. The Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations after they submit their bid.

112. In each round, eligible bidders will be able to place a bid on the license in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts.

113. Once there is a standing high bid on the license, the Automated Auction System will calculate a minimum acceptable bid for the following round. The difference between the minimum acceptable bid and the standing high bid will define the *bid increment.* The nine acceptable bid amounts consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

114. Until a bid has been placed on the license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.05, the first additional bid amount will be approximately five percent higher than the minimum opening bid; the second, ten percent; the third, fifteen percent; etc.

115. See Attachment F of the *Auction No. 46 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

vi. Bid Removal and Bid Withdrawal

116. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal rules. The Bureau however revised its proposal concerning withdrawals in the *Auction No. 46 Further Comment Public Notice.* It proposed that bidders would not be permitted to withdraw bids in any round since Auction No. 46 had been limited to a single license. No commenters disagreed with the Bureau's proposal. Therefore, the Bureau will adopt its proposal and will not permit bidders to withdraw bids in any rounds during the auction.

117. Procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" a bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. Once a round closes, a bidder may no longer remove a bid.

vii. Round Results

118. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, current high bid, new minimum accepted bid, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports

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reflecting bidders' identities and bidder identification numbers for Auction No. 46 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

119. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

120. As noted in Part II.G. of the Auction No. 46 Procedures Public Notice, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: *auction46@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Francis Gutierrez of the Auctions and Industry Analysis Division at (202) 418–0660.

I. Post-Auction Procedures

A. Down Payments

121. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bid and bidder.

122. Within ten business days after release of the auction closing notice, the winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bid (actual bid less any applicable small or very small business bidding credit). *See* 47 CFR 1.2107(b).

B. Auction Discount Voucher

123. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher ("ADV") in the amount of $125,273,878.00. This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred $10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to pay a portion of one of its winning bids in Auction No. 35. The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 46.

C. Long-Form Application

124. Within ten business days after release of the auction closing notice, the winning bidder must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for the license won through Auction No. 46. A winning bidder that is a small or very small business must include an exhibit demonstrating their eligibility for the bidding credit. See 47 CFR 1.2112(b). Further filing instructions will be provided to the auction winner at the close of the auction.

D. Tribal Land Bidding Credit

125. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

126. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

127. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's web site by going to *http://wireless.fcc.gov/auctions* and clicking on *Tribal Land Credits*.

E. Default and Disqualification

128. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

F. Refund of Remaining Upfront Payment Balance

129. All applicants that submitted upfront payments but were not winning bidders for the license in Auction No. 46 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payor of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise.

130. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, and have no remaining bidding eligibility, must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

131. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–30701 Filed 12–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1442–DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama, (FEMA–1442–DR), dated November 14, 2002, and related determinations.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 14, 2002:

Henry and Winston Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30697 Filed 12–3–02; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1441–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1441–DR), dated November 13, 2002, and related determinations.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 13, 2002:

Anderson, Bedford, Carroll, Coffee, Crockett, Cumberland, Gibson, Madison, Marshall, Morgan, Scott, and Tipton for Public Assistance (already designated for Individual Assistance).

Meigs, Roane, Van Buren, and Warren Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30698 Filed 12–3–02; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Jim Wells County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30699 Filed 12–3–02; 8:45 am]

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FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC intends to conduct a survey of consumers to advance its understanding of the incidence of consumer fraud and allow it to better serve people who experience it. Before gathering this information, the FTC is seeking public comments on its proposed consumer research. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA).

DATES: Comments must be submitted on or before February 3, 2003.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *consumersurvey@ftc.gov* as prescribed below. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned "Consumer Fraud Survey—FTC File No. P014412."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Nat Wood, Assistant Director, Officer of Consumer and Business Education, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3407; e-mail *consumersurvey@ftc.gov*.

SUPPLEMENTARY INFORMATION: The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The FTC will submit the proposed information collection requirements to OMB for review, as required by the PRA (44 U.S.C. Chapter 35, as amended).

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consumersurvey@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR section 4.9(b)(6)(ii).

1. Description of the Collection of Information and Proposed Use

The FTC proposes to survey approximately 3,000 consumers in order to gather specific information on the incidence of consumer fraud in the general population. This information will be collected on a voluntary basis, and the identities of the consumers will remain confidential. The FTC has contracted with a consumer research firm to identify consumers and conduct the survey. The results will assist the FTC in determining whether the type and frequency of consumer frauds collected in its Consumer Sentinel database of fraud complaints representatively reflect the incidence of consumer fraud in the general population and will inform the FTC about how best to combat consumer fraud.

2. Estimated Hours Burden

The FTC will pretest the survey on approximately 100 respondents to ensure that all questions are easily understood. This pretest will take approximately 15 minutes per person and 25 hours as a whole (100 respondents × 15 minutes each). Answering the consumer survey will require approximately 15 minutes per respondent and 750 hours as a whole (3,000 respondents × 15 minutes each). Thus, cumulative total hours attributable to the consumer research will approximate 775 hours.

3. Estimated Cost Burden

The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Attachment B

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FTC NATIONAL SURVEY
FINAL DRAFT October 4, 2002

Project #
Public Opinion Strategies
Alexandria, Virginia

Hello, I'm _____ of _____, a national research firm. We're talking with people around the country today, and would like to ask you a few questions on a confidential basis. We are not calling to sell anything nor will this call result in any future sales calls. We are simply speaking to people for research purposes only.

A. First, are you at least 18 years of age or older?

1 YES **(CONTINUE TO QUESTION 1)**

IF NO THEN ASK: May I please speak to someone in your household who is 18 years of age or older?

(REPEAT QUESTION A WITH NEW RESPONDENT)

The first few questions are about some experiences you personally might have as a consumer...

1. Have you, yourself, received a telemarketing phone call in the past year?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

Now, please tell me whether, yes or no, you have done any of the following in the past YEAR.

In the past YEAR have you...**(RANDOMIZE AND INSERT Q2-Q6 STATEMENTS)**

YES	NO	(DO NOT READ) DK/REF
1	2	3

(IF YES, ASK:) And how many such (purchases/contributions) would you estimate that you have made in the last year? **(RECORD EXACT NUMBER)**

(IF Q1:1, ASK Q2)
2. Purchased something in response to a telemarketing call from a company with whom you have not previously done business

(IF Q1:1, ASK Q3)
3. Contributed to a charity in response to a telemarketing call, to which you have not previously donated

4. Purchased something from an internet web site

5. Placed an order for a product by phone, internet, or mail after seeing a television advertisement or infomercial

6. Placed an order for a product by phone, internet, or mail after receiving an unsolicited piece of mail from a company with whom you have not previously done business

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7. And, whether or not you purchase products and services via the Internet or the World Wide Web, how concerned are you about the security of sending your credit card number over the Internet or the World Wide Web **(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)** — very concerned, somewhat concerned, not very concerned, or not concerned at all?

1 | VERY CONCERNED
2 | SOMEWHAT CONCERNED
3 | NOT VERY CONCERNED
4 | NOT CONCERNED AT ALL
5 | DON'T KNOW/REFUSED **(DO NOT READ)**

(ASK SAMPLE A)

8a. In general, thinking about how your close friends or family would be most likely to describe the way you deal with people you do NOT know, would they be more likely to describe you as being... **(ROTATE PUNCHES 1-2)**

1 | Trusting and Friendly
...or...
2 | Cautious and Suspicious
3 | BOTH **(DO NOT READ)**
4 | NEITHER **(DO NOT READ)**
5 | DON'T KNOW/REFUSED **(DO NOT READ)**

(ASK SAMPLE B)

8b. In general, thinking about how your close friends or family would be most likely to describe the way you deal with salespeople, would they be more likely to describe you as being... **(ROTATE PUNCHES 1-2)**

1 | Trusting and Friendly
...or...
2 | Cautious and Suspicious
3 | BOTH **(DO NOT READ)**
4 | NEITHER **(DO NOT READ)**
5 | DON'T KNOW/REFUSED **(DO NOT READ)**

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9. Now, thinking about YOUR experiences as a consumer, was there ever a time you felt you were the subject of a consumer fraud?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q9:1, ASK)

10. When was the last time this happened? **(DO NOT READ LIST, OPEN-END PRE-CODE)**

1 During the past year
2 One to two years ago
3 Two to three years ago
4 Three to five years ago
5 More than five years ago
6 DON'T KNOW/REFUSED

(IF Q10:1, ASK)
(ASK 1/4 OF SAMPLE)

11. Can you BRIEFLY tell me what kind of fraud it was? And can you tell me anything else you can think of that is important about that experience?

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(ASK SAMPLE A ONLY)

12. Now if you learned there was a federal government web site or a toll free number that provides consumers with information on how to recognize and avoid fraudulent or deceptive offers and how to avoid becoming a victim of identity theft...How likely would you be to visit this web site or call the toll free number? Would you be...**(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)...**

1 VERY LIKELY
2 SOMEWHAT LIKELY
3 NOT TOO LIKELY
4 NOT LIKELY AT ALL

...to visit this website or call the toll free number?

5 DON'T KNOW/REFUSED **(DO NOT READ)**

(ASK SAMPLE B ONLY)

Now if you learned there was a federal government web site or a toll-free number where you could file a complaint about a fraud or identity theft...How likely would you be to visit this web site or call the toll-free number to file a complaint if you were a...**(ROTATE)**

Would you be **(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)** — Very Likely, Somewhat Likely, Not too Likely, or Not at all Likely to visit this web site or call the toll-free number to file a complaint?

VERY LIKELY	SMWT LIKELY	NOT TOO LIKELY	NOT AT ALL LIKELY	(DNR) DK/REF
1	2	3	4	5

13. Victim of consumer fraud?

14. Victim of identity theft?

Now we would like to ask you about some types of fraud that happen to consumers. Since there are a lot of ways in which a consumer might be cheated or be a victim of fraud, I am going to read you descriptions of some ways in which consumers are sometimes cheated or become victims of fraud. Please tell me which of these things, if any, have happened to YOU in the past YEAR.

(RANDOMIZE AS BLOCKS: Q15-Q19, Q20-Q28B, Q29-Q35, AND Q36-Q40)

A. In the past YEAR, have you paid money to anyone who promised or guaranteed...**(RANDOMIZE)**

B. **(IF YES, ASK:)** How many times has this happened to you in the past year?

HAPPENED			NUMBER OF TIMES				(DNR)
YES	NO	DK/REF (DNR)	Once	Twice	Three	Four +	Don't Know/Ref
1	2	3	1	2	3	4	5

15. To remove negative, but true, information from your credit record, but failed to get the information removed

16. To provide information to help you create a new identity or new credit record

17. To provide insurance to protect you against the unauthorized use of your credit cards

18. To provide you with a credit card or loan, other than a mortgage loan, but required you pay a fee before receiving the credit card or loan
(IF Q18A:1, ASK Q19 AFTER Q18B BUT BEFORE CONTINUING WITH REST OF SERIES)

(IF Q18A:1, ASK)

(IF Q18B:2-5, READ:) Thinking now about the most recent time this happened to you...

19. Did you actually receive the promised loan or credit card?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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(RANDOMIZE AS BLOCKS: Q15-Q19, Q20-Q28B, Q29-Q35, AND Q36-Q40)

20. In the past year, have you been billed for a product or service which you did not agree to purchase or were you billed for an amount that was substantially more than you expected to pay?

1 YES
2 NO **(SKIP TO Q27)**
3 DON'T KNOW/REFUSED **(DO NOT READ)(SKIP TO Q27)**

(IF Q20:1, ASK Q21A-Q24B:)

A. Did you have this experience while purchasing...**(RANDOMIZE Q21A-Q23A)**

B. **(IF YES, ASK:)** How many times has this happened to you in the past year?

HAPPENED			NUMBER OF TIMES				(DNR)
YES	NO	DK/REF (DNR)	Once	Twice	Three	Four +	Don't Know/Ref
1	2	3	1	2	3	4	5

21. Internet-related services, such as internet access or a web-site **(IF Q21A:1 ASK Q27 & Q27B AFTER Q21B BUT BEFORE CONTINUING WITH REST OF SERIES)**

22. Information services, such as adult entertainment, gambling or psychic services either delivered over the telephone through 900 pay-per-call services or via the internet **(IF Q22A:1 ASK Q27 & Q27B AFTER Q22B BUT BEFORE CONTINUING WITH REST OF SERIES)**

23. A publication or membership in a club that the seller told you would allow you to purchase something for a lower price than is generally available **(IF Q23A:1, ASK Q25-Q27b AFTER Q23B BUT BEFORE CONTINUING WITH REST OF SERIES)**

(ALWAYS ASK LAST)

24. Some other product or service

(IF Q24A:1, ASK:)
(IF Q24B:2-5 READ:) Thinking now about the most recent time this happened to you...

24c. What was the product or service?

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(IF Q23A:1, ASK)
(IF Q23B:2-5, READ) Thinking now about the most recent time this happened to you...

25. Did the membership or the information in the publication enable you to purchase something for a lower price as you had been promised?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q23A:1, ASK)

26. And what kinds of products were you supposed to be able to purchase at a reduced price? **(DO NOT READ)(OPEN-END PRE-CODE)**

1 Automobiles that had been seized by the government or had been repossessed
2 Houses where the owner had fallen behind on their mortgage payments and the mortgage holder had foreclosed
3 Travel services
4 Medical goods and services, such as dental care, eye care, or prescription drugs
5 Entertainment, such as restaurant meals or movie tickets
6 General Merchandise, like food or household products
7 OTHER **(SPECIFY)** _____
8 Don't know/refused

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(IF Q21A:1, Q22A:1, 23A:1 OR Q24A:1, ASK)
(IF Q21B:2-5 OR Q22B:2-5, READ:) Thinking now about the most recent time this happened to you...

27. Did you try to get the seller to give you a refund or otherwise make an adjustment?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q27:1, ASK)
27b. And was the seller willing to provide a refund, or otherwise make an adjustment that satisfied you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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28. And in the past year, has your long distance telephone service been switched to another company without your knowledge or consent?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q28:1, ASK:)

28b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(RANDOMIZE AS BLOCKS: Q15-Q19, Q20-Q28B, Q29-Q35, AND Q36-Q40)

A. In the past year, have you paid anyone...**(RANDOMIZE)**

B. **(IF YES, ASK:)** How many times has this happened to you in the past year?

HAPPENED			NUMBER OF TIMES				(DNR)
YES	NO	DK/REF (DNR)	Once	Twice	Three	Four +	Don't Know/Ref
1	2	3	1	2	3	4	5

29. For an opportunity to operate your own business, such as a work-at-home plan, a business opportunity or a franchise?
(IF Q29A:1, ASK Q31-Q34 AFTER Q29B BUT BEFORE CONTINUING WITH REST OF SERIES)

30. Who promised that you would obtain a job at the U.S. Postal Service or another branch of state or federal government?
(IF Q30A:1, ASK Q35, AFTER Q30B BUT BEFORE CONTINUING WITH SERIES)

(IF Q29A:1, ASK)
(IF Q29B:2-5, READ:) Thinking now about the most recent time this happened to you...

31. Were you led to believe that most of the money you earned from this business would be from recruiting others to join the business, rather than from the sale of products?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q29A:1, ASK)
32. And was the business to be operated out of your home?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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(IF Q29A:1, ASK)

33. Were you led to believe that you would earn a certain amount of income or profit from this business?

(IF YES ASK:) Did you earn at least roughly as much money as you had been led to expect?

1 YES - No earnings promises were made
2 YES - Promised level of earnings was realized
3 YES - Promised level of earnings was NOT realized
4 NO
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q29A:1, ASK)

34. Were you promised help in locating customers who would use your services or allow you to sell your products from their premises?

(IF YES ASK:) Did you obtain the promised assistance?

1 YES - No assistance was promised
2 YES - Promised assistance was provided
3 YES - Promised assistance was NOT provided
4 NO
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q31:1, Q33:3 OR Q34:3, ASK:)

34b. And how many months ago did you purchase this business?

_____ **RECORD NUMBER OF MONTHS**

(IF Q30A:1, ASK)
(IF Q30B:2-5, READ:) Thinking now about the most recent time this happened to you...

35. Did you get the job that was promised?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(RANDOMIZE AS BLOCKS: Q15-Q19, Q20-Q28B, Q29-Q35, AND Q36-Q40)

36. In the past year, has anyone told you that you had won a prize or been selected to receive an award such as money, a free vacation, or other product or service?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q36:1, ASK:)

37. Were you told that you had to pay something, purchase a good or service, or attend a sales presentation in order to receive your prize or award?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q37:1, ASK:)

38. Did you make the required payment or purchase or did you attend the required sales presentation?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q38:1, ASK:)

38b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

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(IF Q38:1, ASK)
(IF Q38B:2-5, READ:) Thinking now about the most recent time this happened to you...
39. Did you ever receive the prize or award?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q39:1, ASK)
40. And was the prize or award essentially what had been described to you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(ROTATE AS A BLOCK Q41-Q44 WITH Q45-Q49)
41. Other than the things we have already discussed, in the past year have you purchased something which you paid for but NEVER received?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q41:1, ASK:)
41b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q41:1, ASK)
(IF Q41B:2-5, READ:) Thinking now about the most recent time this happened to you...
42. Did you try to get the seller to give you a refund or otherwise make an adjustment?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q42:1, ASK)
43. And was the seller willing to provide a refund or otherwise make an adjustment that satisfied you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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(IFQ41:1, ASK)

44. What was the item that you purchased? **(DO NOT READ LIST (OPEN-END PRE-CODE)**

1 Business opportunities / franchises / distributorships / work-at-home plans
2 Buyers clubs
3 Cameras (including digital cameras and camcorders)
4 CDs / video tapes / DVDs
5 Computers: equipment or software
6 Health care products and services
7 Information such as psychic or adult entertainment services delivered over the internet
8 Internet access services
9 Internet web site design / advertising on the internet
10 Investments
11 Magazines
12 Office supplies
13 Pay-per-call and information services such as adult entertainment, gambling or psychic services delivered over the telephone or internet
14 Real estate (including timeshares)
15 Travel services / vacations
16 Other **(SPECIFY)** _____
17 DON'T KNOW/REFUSED

(ROTATE AS A BLOCK Q41-Q44 WITH Q45-Q49)

45. Other than the things we have already discussed, in the past year have you purchased something where the item you received turned out to be of substantially lower quality than what was originally represented to you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q45:1, ASK:)

45b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q45:1, ASK)

(IF Q45B:2-5, READ:) Thinking now about the most recent time this happened to you...

46. Did you try to return the item or seek to get the seller to make some other kind of an adjustment?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q46:1, ASK)

47. And was the seller willing to take the item back or otherwise make an adjustment that satisfied you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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(IF Q45:1, ASK)

48. What was the item that you purchased? (DO NOT READ LIST) (OPEN-END PRE-CODE)

1 Business opportunities / franchises / distributorships / work-at-home plans
2 Buyers clubs
3 Cameras (including digital cameras and camcorders)
4 CDs / video tapes / DVDs
5 Computers: equipment or software
6 Health care products and services
7 Information such as psychic or adult entertainment services delivered over the internet
8 Internet access services
9 Internet web site design / advertising on the internet
10 Investments
11 Magazines
12 Office supplies
13 Pay-per-call and information services such as adult entertainment, gambling or psychic services delivered over the telephone or internet
14 Real estate (including timeshares)
15 Travel services / vacations
16 Other (SPECIFY) _____
17 DON'T KNOW/REFUSED

(IF Q48:1-16, ASK)

49. Could you please briefly describe how the item differed from what you expected?

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50. In the past year, has anyone misused your credit card or credit card number that had either been lost or stolen and placed charges on your account?

1 YES
2 NO
3 DON'T KNOW/REFUSED (DO NOT READ)

---

51. And other than the misuse of your credit card we just discussed, in the past year, have you been the victim of Identity Theft. That is, has anyone used your personal information without your permission, to obtain credit in your name, to run up debts in your name or otherwise commit fraud or theft?

1 YES
2 NO
3 DON'T KNOW/REFUSED (DO NOT READ)

---

52. Now, we've been talking about some SPECIFIC ways in which you might have been cheated or defrauded in the last year. Now I'd like to know if there were any other occasions in the past year that you felt a person or company cheated you out of money or property?

1 YES
2 NO
3 DON'T KNOW/REFUSED (DO NOT READ)

(IF Q52:1, ASK:)

52b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED (DO NOT READ)

(IF Q52:1, ASK)

(IF Q52B:2-5, READ:) Thinking now about the most recent time this happened to you...

53. Can you briefly tell me what happened? And can you tell me anything else you can think of that is important about that experience?

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GENERAL FOLLOW-UP QUESTIONS (Q54-Q62) WILL EITHER BE ASKED AFTER EACH INSTANCE OF FRAUD REPORTED BY A RESPONDENT IN Q15-Q49 OR WILL BE ASKED FOR A MAXIMUM OF THREE INSTANCES OF FRAUD REPORTED BY A RESPONDENT IN Q15-Q49. THIS WILL BE DETERMINED BY A PRE-TEST SURVEY.

(IF Q15:1, Q16:1, Q17:1, Q18:1, Q21:1, Q22:1, Q23:1, Q24:1, Q28:1, Q31:1, Q33:3, Q34:3, Q35:2, Q39:2, Q40:2, Q43:2, Q47:2, ASK:)

54. How did you first learn about [Insert language describing the product or service involved in the fraud]? **(RANDOMIZE)**

1 through an internet auction site
2 from an internet web site, other than an auction site
3 from an unsolicited email
4 from a television advertisement or infomercial
5 from a mail advertisement or solicitation, including from a catalog
6 from a telemarketer
7 from a store you visited
8 from someone who came to your home
9 other **(SPECIFY)** _____
10 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q54:4-5, ASK)

55. And how did you purchase this product **(RANDOMIZE)**?

1 VISITED A STORE
2 ORDERED ON THE TELEPHONE
3 MAILED IN AN ORDER
4 ORDERED FROM INTERNET SITE
5 OTHER **(SPECIFY)** _____
6 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q15:1, Q16:1, Q17:1, Q18:1, Q21:1, Q22:1, Q23:1, Q24:1, Q28:1, Q31:1, Q33:3, Q34:3, Q35:2, Q39:2, Q40:2, Q43:2, Q47:2, ASK:)

56. How much money did you pay or lose as a result of the person or company who defrauded you?

PAID _____ **(RECORD EXACT AMOUNT, 9999999 FOR DK/REF)**
LOST _____ **(RECORD EXACT AMOUNT, 9999999 FOR DK/REF)**

(IF PAID MONEY ON Q56, ASK)

57. And how did you pay for this transaction?

1 Credit Card
2 Cash
3 Check
4 On-line payment system like PayPal,
5 Seller took money directly from my checking account
6 Charged to my telephone bill
7 Other SPECIFY) _____
8 DON'T KNOW/REFUSED **(DO NOT READ)**

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(IF Q15:1, Q16:1, Q17:1, Q18:1, Q21:1, Q22:1, Q23:1, Q24:1, Q28:1, Q31:1, Q33:3, Q34:3, Q35:2, Q39:2, Q40:2, Q43:2, Q47:2, ASK:)

58. What actions, if any, did you take in attempting to resolve this incident?**(DO NOT READ, OPEN-END PRE-CODE) (PROBE FOR MULTIPLE RESPONSES by following up with "Anything else?")**

1 Did nothing
2 Asked for a refund or replacement
3 Stopped payment or refused to pay
4 Stopped buying from the company
5 Consulted a lawyer or other professional
6 Complained to family or friends / told family or friends not to buy from the seller
7 Complained to salesperson, manager or owner of the company that sold the product
8 Complained to the product manufacturer
9 Complained to the Better Business Bureau
10 Complained to a bank
11 Complained to a credit card company
12 Complained to a local consumer agency
13 Complained to the local police department
14 Complained to the Department of Motor Vehicles
15 Complained to a local consumer help line
16 Complained to the state Attorney General or state consumer agency
17 Complained to the FTC
18 Complained to another federal agency (specify)
19 Other (SPECIFY) _____
20 DON'T KNOW/REFUSED

(IF Q58:1-6, 19-20 ONLY, ASK)

59. And, did you report your experience to anyone?

1 YES
2 NO
3 DON'T KNOW/REFUSED (DO NOT READ)

(IF Q59:1, ASK)

60. To whom did you report your experience? **(DO NOT READ OPEN-END PRE-CODE) (PROBE FOR MULTIPLE RESPONSES by following up with "Anything else?")**

1 Family or friends / tell family or friends not to buy from the seller
2 Salesperson, manager or owner of the company that sold the product
3 The product manufacturer
4 The Better Business Bureau
5 A bank
6 A credit card company
7 A local consumer agency
8 The local police department
9 The Department of Motor Vehicles
10 A local consumer help line
11 The state Attorney General or state consumer agency
12 The FTC
13 Another federal agency (SPECIFY) _____
14 Other (SPECIFY) _____
15 DON'T KNOW/REFUSED

(IF Q58:7-18 OR Q60:2-14, ASK)

61. How satisfied were you with the result of your report of your experience with **(INSERT FIRST PUNCH FROM Q58 OR Q60)**?...**(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)** — Very Satisfied, Somewhat Satisfied, Not Too Satisfied, or Not at all satisfied?

1 VERY SATISFIED
2 SOMEWHAT SATISFIED
3 NOT TOO SATISFIED
4 NOT AT ALL SATISFIED
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF MORE THAN ONE PUNCH ON Q58:7-18 OR Q60:2-14, ASK)

62. How satisfied were you with the result of your report of your experience with **(INSERT SECOND PUNCH FROM Q58 OR Q60)**?...**(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)** — Very Satisfied, Somewhat Satisfied, Not Too Satisfied, or Not at all satisfied?

1 VERY SATISFIED
2 SOMEWHAT SATISFIED
3 NOT TOO SATISFIED
4 NOT AT ALL SATISFIED
5 DON'T KNOW/REFUSED **(DO NOT READ)**

Changing Topics and thinking some more about you...

63. Do you ever go online to access the Internet or World Wide Web?

1 YES
2 NO

(IF Q63:1, ASK)

64. How many hours EACH WEEK would you say you spend on the Internet either at work OR at home ?

RECORD EXACT NUMBER OF HOURS, ENTER 999 FOR DK/REF

And for statistical purposes only...

65. In what year were you born?

____ ____ ____ ____ **(9999 = DK/REFUSED)**

---

66. Are you married, widowed, separated, divorced or have you never been married?

1 MARRIED
2 WIDOWED
3 SEPARATED
4 DIVORCED
5 NEVER BEEN MARRIED **(DO NOT READ)**
6 NOT SURE/REFUSED **(DO NOT READ)**

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67. And what was the last grade you completed in school? **(DO NOT READ CATEGORIES)**

1 SOME GRADE SCHOOL (1-8)
2 SOME HIGH SCHOOL (9-11)
3 GRADUATED HIGH SCHOOL (completed 9-12)
4 TECHNICAL OR VOCATIONAL SCHOOL (12)
5 SOME COLLEGE (13-15)
6 GRADUATED COLLEGE (16)
7 GRADUATE/PROFESSIONAL SCHOOL (16+)

8 REFUSED **(DO NOT READ)**

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68. Are you or is anyone in your household a military veteran?

(IF YES, ASK:) And is that you or someone else?

1 YES, SELF
2 YES, OTHER
3 YES, BOTH
4 NO
5 REFUSED/DON'T KNOW **(DO NOT READ)**

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69. Is English the primary language spoken in your home, or do you generally speak another language at home? **(IF NOT ENGLISH, ASK:** What other language do you generally speak?)

1 PRIMARILY ENGLISH
2 PRIMARILY SPANISH
3 OTHER **(SPECIFY)** _____
4 DO NOT KNOW/REFUSED **(DO NOT READ)**

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70. And for statistical purposes only...is your total annual HOUSEHOLD income greater or less than $60,000 dollars?

(IF LESS THAN $60,000, ASK:) Is it...
(ROTATE FROM TOP TO BOTTOM/BOTTOM TO TOP)
1 UNDER $20,000
2 BETWEEN $20,000 - $40,000
3 OVER $40,000

(IF GREATER THAN $60,000, ASK:) Is it...
(ROTATE FROM TOP TO BOTTOM/BOTTOM TO TOP)
4 UNDER $80,000
5 BETWEEN $80,000 - $100,000
6 OVER $100,000

7 REFUSED **(DO NOT READ)**

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71. Thinking ahead to three years from now, how do you think your income will compare to your income today? Do you think it will be **(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)**...?

1 MUCH LOWER
2 SLIGHTLY LOWER
3 ABOUT THE SAME
4 SLIGHTLY HIGHER
5 MUCH HIGHER
6 DON'T KNOW/REFUSED **(DO NOT READ)**

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72. And thinking for a moment about your personal debt on which you currently make interest payments. I am talking about your debts you partially pay-off each month for things like mortgages, credit cards, personal loans or car loans. Would you say the amount of debt you currently have is...**(DO NOT ROTATE)**

1 More than you can handle financially
2 About as much as you can handle financially
...or...
3 You could handle more debt than you currently have
4 Do not have any personal debt **(DO NOT READ)**
5 DON'T KNOW/REFUSED **(DO NOT READ)**

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73. Do you personally own any stock market investments, such as stocks, bonds, mutual funds, or have a retirement account, such as a 401K (FOUR-O-ONE-K) or other pension plan?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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74. What would be your estimate of the total value of your household's savings and investments. By savings and investments I mean things such as savings and money market accounts, stocks, bonds, mutual funds, government securities, CDs, bank accounts, IRAs, Keoghs, (KEY OHS) 401Ks (FOUR-O-ONE KS) and 403bs (FOUR-O-THREE-BEES). Please do NOT include in your answer any real estate investments or company-sponsored pension plans that are fully funded by your employer. Would you say that your total investments are **(READ LIST)**

1 Less than $25,000
2 Between $25,000 and $50,000
3 Between $50,000 and $100,000
4 More than $100,000

5 DON'T KNOW **(DO NOT READ)**
6 REFUSED **(DO NOT READ)**

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75. And other than being an American, what is your main racial or ethnic heritage? Is it... **(READ LIST SLOWLY BEFORE ACCEPTING ANSWER, THEN ACCEPT ONE RESPONSE ONLY.)**

1 CAUCASIAN OR WHITE
2 AFRICAN-AMERICAN OR BLACK
3 HISPANIC-AMERICAN OR LATINO
4 ASIAN-AMERICAN
5 NATIVE AMERICAN
6 OTHER **(DO NOT READ)** **(IF PUNCH, ASK:)** Now I realize you just said your main ethnic or racial heritage doesn't fall into any of the categories I just mentioned...but if you had to choose JUST ONE of these categories, which ONE would you choose?
7 REFUSED **(DO NOT READ)**

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76. GENDER **(BY OBSERVATION, BUT ASK EVERYONE)** Are you employed outside of the home, are you a homemaker, or are you retired?

1 MALE/EMPLOYED
2 MALE/HOMEMAKER
3 MALE/RETIRED
4 MALE/NOT IN LABOR FORCE
5 MALE/REFUSED

6 FEMALE/EMPLOYED
7 FEMALE/HOMEMAKER
8 FEMALE/RETIRED
9 FEMALE/NOT IN LABOR FORCE
10 FEMALE/REFUSED

[FR Doc. 02–30653 Filed 12–3–02; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability of Medical Reserve Corps—A Guide for Local Leaders

AGENCY: Department of Health and Human Services; Office of the Secretary, Office of Public Health and Science, Office of the Surgeon General.

ACTION: Notice of availability.

SUMMARY: The Department of Health and Human Services is announcing the availability of a guidance document entitled Medical Reserve Corps—A Guide for Local Leaders. This guidance document is intended to assist communities in the establishment of local citizen volunteer Medical Reserve Corps (MRC) units under the umbrella of the Citizen Corps, USA Freedom Corps.

Medical Reserve Corps—A Guide for Local Leaders provides background on the Citizen Corps and Medical Reserve Corps, helpful information on how to plan the establishment of a local citizen volunteer MRC unit, volunteer standards, managing a local MRC unit, education and training resources, legal considerations, and other related federal programs.

ADDRESSES: Electronic versions of the guide may be accessed, downloaded, and printed at the following worldwide Web site: *http://www.medicalreservecorps.gov*. A printed, single copy may be obtained by submitting a written request for: Medical Reserve Corps—A Guide for Local Leaders to the Office of the Surgeon General, Room 18–66, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your request.

FOR FURTHER INFORMATION CONTACT: MRC Staff, Office of the Surgeon General, 5600 Fishers Lane, Room 18–66, Rockville, MD 20857, 301–443–4000.

SUPPLEMENTARY INFORMATION: During his 2002 State of the Union address, President Bush called on all Americans to volunteer at least two years of their lives—the equivalent of 4,000 hours—to serve others. President Bush created the USA Freedom Corps to help Americans answer his call to service and to foster an American culture of service, citizenship, and responsibility.

The Medical Reserve Corps is a component of the Citizen Corps, USA Freedom Corps. The medical Reserve Corps is envisioned as a nationwide

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network of community-based, citizen volunteer MRC units. These units will be locally activated and directed in times of emergency to provide essential added capacity within the community, especially during the first hours of the emergency before outside assistance may arrive. Additionally, these volunteers will undertake activities to address pressing public health needs in communities throughout the year.

Dated: November 25, 2002.

Eve E. Slater,

Assistant Secretary for Health.

[FR Doc. 02–30658 Filed 12–3–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–189]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from July 2002 through September 2002. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on July 25, 2002 [67 FR 48660]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 1825, Century Blvd, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between July 1, 2002 and September 30, 2002, public health assessments were issued for the sites listed below:

NPL Sites

Alaska

Naval Air Facility, ADAK (a/k/a ADAK Naval Air Station) (PB2003–100146)

Connecticut

Broad Brook Mill (a/k/a Millbrook Condominium Site) (PB2002–106763)

Florida

Nocatee Hull Creosote (PB2002–107943)

Georgia

Tri-State Steel Company Incorporated (PB2002–105396)

Idaho

Poles, Incorporation Wood Treatment Facility (PB2003–100506)

Illinois

Sand Park (a/k/a Browning-Ferris Industry, Incorporated) (PB2002–105385)

Kansas

Sunflower Army Ammunition Plant (PB2002–104687)

Kentucky

Paducah Gaseous Diffusion Plant (USDOE) (PB2002–107319)

Louisiana

Mallard Bay Landing Bulk Plant (PB2002–108311)

Maine

Central Maine Disposal Landfill (a/k/a Central Maine Disposal Corporation) (PB2002–107944)

Massachusetts

Atlas Tack Site (a/k/a Atlas Tack Corporation) (PB2002–101491)

Minnesota

Joslyn Manufacturing and Supply Company (PB2003–100145)

New Jersey

Middlesex Sampling Plant (USDOE) (PB2002–107244)
Puchack Well Field (PB2002–106764)

New York

Garden City Park Industrial Area (GCPIA) (a/k/a Fulton Avenue) (PB2002–108031)

North Carolina

Barber Orchard (PB2002–106074)
Carolina Solite Corporation (a/k/a Carolina Solite Corporation/ Aquadale) (PB2002–100417)
Davis Park Road TCE (PB2002–106373)
Diamond Head Oil Refinery (PB2003–100153)

Pennsylvania

Naval Support Activity, Mechanicsburg (a/k/a Navy Ships Parts Control Center and Naval Inventory Control Point) (PB2002–106762)
Willow Grove Naval Air and Air Reserve Station (a/k/a Naval Air Station Joint Reserve Base and Air Force Reserve Station) (PB2002–107263)

Texas

Palmer Barge Line (PB2002–107243)

Non NPL Petitioned Sites

None

Dated: November 27, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–30688 Filed 12–3–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Proposed Collection; Comment Request; Second National Outcome Measures Surveys of Older Americans Act (OAA) Clients

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA), Department of Health and Human Services, provides an opportunity for comment on the following proposal for the collection of information in compliance with the Paperwork Reduction Act (PRA; Pub. L. 96–511): Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Second National Outcome Measures Surveys of Older Americans Act (OAA) Clients, and Coordinated Survey of State and Area Agencies on Aging.

DATES: Submit written or electronic comments on the collection of information by February 3, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *David.Bunoski@aoa.gov.*

Submit written comments on the collection of information to: Office of Planning and Evaluation, Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: David Bunoski, Administration on Aging, Washington, DC 20201 telephone: (202) 357–3514.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Type of Request: New information collection.

Use: Consumer assessment data will be collected in this second set of surveys to initiate national program outcome assessment consistent with the requirements of the Government Performance and Results Act and the Older Americans Act.

Frequency: One-time.

Respondents: Elderly individuals who have received selected services under Title III of the Older Americans Act and state and area agencies on aging.

Estimated Number of Responses: 5,000 for consumer surveys; 700 for agency surveys.

Total Estimated Burden Hours: 4,000 for consumer surveys; 2,100 for agency surveys.

Additional Information or Comments: The Administration on Aging plans to submit to the Office of Management and Budget for approval the Second National Outcome Measures Surveys of Older Americans Act (OAA) Clients, pursuant to requirements set forth by congressional statute. Through a contract with Westat, Inc., AoA will draw samples of individuals served through Area Agencies on Aging across the country for the purpose of obtaining OAA program service assessments from these individuals. The surveys will utilize information collection instruments and methods developed and tested by experts in the field of gerontology and by State and local entities that administer OAA programs. The surveys will include assessments from among the following service categories: nutrition, transportation, caregiver support, home-care, and information and assistance. AoA is also supporting the efforts of four states to obtain valid statewide data compatible with the national data.

AoA is also proposing for Westat, Inc., to conduct a survey of all state and area agencies on aging to collect information about how those agencies operate the programs for which they are responsible. We will be asking specifically about coordination between social services and health services; organizational and administrative arrangements; coordination of services at the state and local level; and coordination of, and expenditure levels among, different funding sources administered by the agencies.

Date: November 29, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–30740 Filed 12–3–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–200 and CMS–R–245]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an Administration initiative. We cannot reasonably comply

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with the normal clearance procedures because of the potential for public harm.

CMS is requesting OMB review and approval of this collection by December 6, 2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by December 5, 2002. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Reducing regulatory burden is one of the overarching goals of this Administration. Secretary Thompson convened an Advisory Committee on Regulatory Reform earlier this year to help guide HHS' broader efforts to streamline unnecessarily burdensome or inefficient regulations that interfere with the quality of health care. CMS worked with the recommendations from Secretary Thompson's Advisory Committee on Regulatory Reform to draft proposed changes to the OASIS. The Secretary announced these changes earlier and reported the reduced burden OASIS would be in place by December 16, 2002.

CMS is proposing immediate modifications to the OASIS instrument that will result in reduction of burden for providers that will have the effect of freeing home health nurses and therapists from paperwork so they can focus on patient care. To reduce the burden, we need to make significant adjustments as quickly as possible. Our rollout date is December 9, 2002, to become effective a week later on December 16, 2002. CMS is working closely with the HHA industry to accomplish this initiative. The revisions we are proposing in this Paperwork Reduction Act (PRA) package were also published in the **Federal Register** on August 30, 2002 (67 FR 55850). We have responded to the dozen comments from the **Federal Register** notice.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs; Use and Reporting OASIS Data as Part of the CoPs for HHAs and Supporting Regulations in 42 CFR 484.11 and 484.20; *Form No.:* CMS–R–209 (OMB # 0938–0761); *Use:* HHAs are required to report data from the OASIS as a condition of participation. Specifically, the above named regulations sections provide guidelines for HHAs for the electronic transmission of the OASIS data as well as responsibilities of the State agency or OASIS contractor in collecting and transmitting this information to HCFA. These requirements are necessary to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs, and to establish a prospective payment system for HHAs; *Frequency:* Reporting/monthly; *Affected Public:* Business or other-for-profit, Federal government, State, local or tribal government, not-for-profit institutions; *Number of Respondents:* 6,900; *Total Annual Responses:* 85,200; *Total Annual Hours:* 838,408.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs Use of the OASIS as Part of the CoPs for HHAs and Supporting Regulations in Part 484 of 42 CFR; *Form No.:* CMS–R–245 (OMB # 0938–0760); *Use:* This regulation requires HHAs to use a standard core assessment data set, the OASIS, to collect information and to evaluate adult non-maternity patients. In addition, data from the OASIS will be used for purposes of case mix adjusting patients under home health PPS and will facilitate the production of necessary case mix information at relevant time points in the patient's home heath stay. Modifications have been made to currently approved OASIS forms to allow for the preservation of masking of personally identifiable information for the non-Medicare/non-Medicaid individuals; *Frequency:* Recordkeeping/upon patient assessment; *Affected Public:* Business or other-for-profit, Federal government, State, local or tribal government, not-for-profit institutions; *Number of Respondents:* 7,100; *Total Annual Responses:* 9,510,900; *Total Annual Hours:* 8,013,013.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by December 5, 2002:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Brenda Aguilar, CMS Desk Officer.

Dated: November 27, 2002.

Julie E. Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30786 Filed 12–3–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Buprenorphine Waiver Program—Baseline Physician Survey—(New)—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating a program that permits office-based physicians to obtain Waivers from the requirements of the Narcotic Addict Treatment Act of 1974 (21 U.S.C. 823 (g)). Under the Drug Addiction Treatment Act of 2000 (21 U.S.C 823 (g)(2)), the Waiver Program permits qualifying physicians to prescribe and dispense buprenorphine, a schedule III narcotic drug recently approved by the FDA for the treatment of opiate addiction. Furthermore, the Drug Abuse Treatment Act specifies that the Secretary of the Department of Health and Human Services make a determination of whether: (1) Treatments provided under the Waiver Program have been effective forms of maintenance treatment and detoxification treatment in clinical settings; (2) the Waiver Program has significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and, (3) the Waiver Program has adverse consequences for the public health. In addition to the objectives above, the Evaluation of the Buprenorphine Waiver Program will examine other related objectives, including: (1) Describing the impact of the Waiver-based treatment on the existing treatment system; (2) providing information useful to guide and refine the processing/monitoring system being developed and maintained by CSAT/DPT; and (3) providing baseline data to inform future research and policy concerning the medicalization and mainstreaming of addiction treatment.

The evaluation by DPT of the Buprenorphine Waiver Program will be accomplished using three survey efforts. The first of these, in the first year of the evaluation, is a mail survey of addiction physicians from the American Society of Addiction Medicine (ASAM) and/or the American Academy of Addiction Psychiatry (AAAP). Some of these specialists will be prescribing and distributing buprenorphine, while others not prescribing buprenorphine may or may not provide referrals or ancillary services to patients receiving buprenorphine treatment. The survey will provide early data about the availability, effectiveness, and public health consequences associated with the Waiver Program. Specifically, the survey will assess early perceptions of physicians specializing in addiction medicine of whether buprenorphine as prescribed and distributed under the Waiver Program is a useful tool in the treatment of substance abuse, and whether there are any negative consequences associated with it. The survey will also assess whether there are early indications of limitations to the availability of the medication, related to factors such as geographic location, type of medical practice, patient population, or ability to pay.

Results from this survey will influence the focus and content of two additional proposed surveys to be fielded later in 2003. A second survey will focus on the clinical practice and perceived effectiveness of buprenorphine among physicians who are actively prescribing the medication. A third survey of patients who have received buprenorphine will assess its effectiveness and availability from the patients' point of view. A separate **Federal Register** notice will be published for these surveys.

The estimated response burden for the first survey of physicians over a period of one year is summarized below.

Addiction physicians	Number of respondents	Number of responses/respondent	Total number of responses	Hrs./response	Total hour burden
Physician survey	1,000	1	1,000	.5	500 hrs.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 26, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–30684 Filed 12–3–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Results of the Twelfth Regular Meeting; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: With this notice we announce a public meeting to discuss the results of the twelfth regular meeting of the Conference of the Parties (COP12) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

DATES: The public meeting will be held on December 13, 2002, from 9:30 a.m. to 12 noon.

ADDRESSES:

Public Meeting

The public meeting will be held in the Sidney Yates Auditorium of the Department of the Interior, 18th and C Streets, NW., Washington, DC.

Available Information

Information concerning the results of COP12 is available on the web site of the CITES Secretariat (*http://www.cites.org/eng/cop/index.shtml*), or upon request from the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT**, below), or via our COP12 web site (*http://international.fws.gov/cop12/cop12.html*).

FOR FURTHER INFORMATION CONTACT: Peter O. Thomas, Ph.D., Chief, Division of Management Authority, U.S. Fish and Wildlife Service, telephone: 703/358–2093, fax: 703/358–2280, e-mail: *cites@fws.gov;* or Robert R. Gabel, Chief, Division of Scientific Authority, telephone: 703/358–1708, fax: 703/358–2276, e-mail: *scientificauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international treaty designed to monitor and regulate international trade in certain animal and plant species which are, or may become, threatened with extinction, and are listed in Appendices to the treaty. Currently 160 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the

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Parties (COP), which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by the Conference of the Parties. CITES COP12 was held in Santiago, Chile, from November 3 to 15, 2002.

This is the seventh in a series of **Federal Register** notices concerning U.S. participation in CITES COP12. We published our first such **Federal Register** notice on June 12, 2001 (66 FR 31686), and with it we requested information and recommendations on potential species amendments for the United States to consider proposing at COP12. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Division of Scientific Authority (*see* **ADDRESSES**, above). We published our second such **Federal Register** notice on July 25, 2001 (66 FR 38739), and with it we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to submit for consideration at COP12. You may obtain information on that **Federal Register** notice, and on proposed resolutions, proposed decisions, and agenda items, from the Division of Management Authority (*see* **ADDRESSES**, above). We published our third such **Federal Register** notice on March 27, 2002 (67 FR 14728), and with it we announced a public meeting to discuss potential species amendment proposals, proposed resolutions, proposed decisions, and agenda items that the United States was considering submitting for consideration at COP12. With that notice, we also provided information on how non-governmental organizations based in the United States could attend COP12 as observers. You may obtain information on that **Federal Register** notice from the Division of Management Authority (*see* **ADDRESSES**, above). We published our fourth such **Federal Register** notice on April 18, 2002 (67 FR 19207), and with it we listed potential proposed resolutions, proposed decisions, agenda items, and proposed amendments to the CITES Appendices that the United States was considering submitting for consideration at COP12, and invited your comments on these potential proposals. You may obtain information on that **Federal Register** notice from the Division of Management Authority (for information pertaining to proposed resolutions, proposed decisions, and agenda items) or the Division of Scientific Authority (for information pertaining to proposed amendments to the Appendices) (*see* **ADDRESSES**, above). We published our fifth such **Federal Register** notice on August 20, 2002 (67 FR 53962), and with it we announced a public meeting on September 10, 2002, to discuss tentative negotiating positions of the United States for COP12 proposals and other agenda items. You may obtain information on that **Federal Register** notice from the Division of Management Authority (*see* **ADDRESSES**, above). We published our sixth such **Federal Register** notice on October 31, 2002 (67 FR 66463), in order to provide the agenda for COP12, announce our final tentative negotiating positions, and extend the comment period for providing information and input to the United States in the development of these positions. You may obtain information on that **Federal Register** notice from the Division of Management Authority (*see* **ADDRESSES**, above).

This series of **Federal Register** notices and public meetings provided the public with an opportunity to participate in the development of tentative U.S. negotiating positions for COP12.

On June 6, 2002, the United States submitted to the CITES Secretariat, for consideration at COP12, its proposed resolutions, proposed decisions, agenda items, and proposed amendments to the CITES Appendices. These documents are available from our web site at: *http://international.fws.gov/cop12/ussubmission.html*. You may locate our regulations governing this public process in 50 CFR 23.31 through 23.39.

Announcement of Public Meeting

The United States participated in COP12, and by this notice we announce a public meeting to discuss the results of that meeting. The public meeting will be held on December 13, 2002, from 9:30 a.m. to 12 noon in the Sidney Yates Auditorium of the Department of the Interior at 18th and C Streets, NW., Washington, DC. We recommend that you enter the Department of the Interior building via the C Street entrance. Directions to the meeting can be obtained by contacting the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT**, above). Please note that the auditorium is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible.

Author: This notice was prepared by Bruce Weissgold, Division of Management Authority, U.S. Fish and Wildlife Service.

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 2002.

Marshall P. Jones Jr.,

Deputy Director.

[FR Doc. 02–30700 Filed 12–3–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PG; G 03–0035]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will meet in the Lewis and Clark conference room at the Holiday Inn, Ontario, OR 97641, 541–573–3370 from 8 a.m. to 5 p.m., Mountain Time (MT), on Monday, February 24, 2003. On Tuesday, February 25, 2003 there will be a tour of the National Historic Oregon Trail Interpretative Center in Baker City, OR.

The meeting topics that may be discussed by the Council include a discussion of issues within southeast Oregon related to North Lake Recreation Plan, Birch Creek Management Plan, Wildland Fire Board, OHV, Wood River Project, Wild Horse & Burro, Rangeland Assessment, Federal officials' updates, and other matters as may reasonably come before the Council. The entire meeting is open to the public. Information to be distributed to the Council members is requested in written format 10 days prior to the Council meeting. Public comment is scheduled for 11:15 a.m. to 11:45 a.m., Mountain Time (MT), on Monday, February 24, 2003. For the tour scheduled for Tuesday, February 25, 2003, please contact the BLM office listed below for exact times as the date approaches.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC may be obtained from Peggy Diegan, Management Assistant/ Webmaster, Vale District Office, 100 Oregon Street, Vale, OR 97918 (541) 473–3144, or *Peggy_Diegan@or.blm.gov* and/or from the following Web site: *http://www.or.blm.gov/SEOR-RAC.*

Dated: November 26, 2002.

David R. Henderson,

District Manager.

[FR Doc. 02–30776 Filed 12–3–02; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–PH–252Z]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management(BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on January 16, 2003, at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado beginning at 9:15 a.m. The public comment period will begin at approximately 9:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics include: Manager reports, Update on Gold Belt Travel Management Plan, Overview of the Fuels Management Program, Management of Ecosystems Training.

All meetings are open to the public. The public can make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719)269–8500.

Dated: November 27, 2002.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 02–30777 Filed 12–3–02; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

Public Input on Improving Agency Procedures

AGENCY: International Trade Commission.

ACTION: Notice and solicitation of written comments

SUMMARY: The United States International Trade Commission invites public input on specific ways in which it could improve its conduct of antidumping and countervailing duty (CVD) injury investigations.

DATES: Written comments are invited to be filed no later than March 4, 2003.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter, should be submitted to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. Hand-delivered comments must be delivered to the prescribed room during the Commission's official business hours (8:45 a.m. to 5:15 p.m.) in order to be deemed filed on the day they are delivered.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott (202–205–2799), Secretary, U.S. International Trade Commission. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission also may be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: The Commission is an independent federal agency that is charged, *inter alia*, with conducting import injury investigations under the antidumping and CVD statutes. *See* title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*). In these investigations, the Commission determines whether a U.S. industry is materially injured, or threatened with material injury, by reason of imports of merchandise that the U.S. Department of Commerce has found to be subsidized or sold at less than fair value. The statutes also provide for a Commission review, after five years, of the continued need for each antidumping or CVD order to prevent or remedy material injury to the relevant U.S. industry.

In the course of an investigation, the Commission, *inter alia:* (1) Collects data from interested parties (such as domestic and foreign producers, U.S. importers, and purchasers) via written questionnaires and other means; (2) produces a staff report summarizing information collected concerning such indicators as imports, production, shipments, employment, profits and losses, and prices; (3) holds a public hearing (except in preliminary or expedited proceedings); and (4) produces a written opinion explaining the Commission's conclusions on factual and legal issues. The Commission's rules of procedure related to these import injury investigations are set out in the relevant portions of 19 CFR parts 201 and 207.

The Commission is committed to carrying out its mandate in an effective and efficient manner. As part of this commitment, the Commission endeavors to be responsive to the needs of those who avail themselves of the trade laws, those from whom the Commission collects information in its investigations, and the public.

To this end, the Commission is seeking input from the public, including persons and entities that appear before the agency, on ways the Commission can improve its methods of conducting its original antidumping and CVD investigations and its five-year reviews of outstanding antidumping and CVD orders. The Commission is interested in comments concerning all aspects of its investigations and reviews; in particular, questionnaires, hearings, staff reports, schedules and opinions.

With respect to questionnaires, commenters may wish to address whether particular standard questions or requests could be eliminated, reformulated, or streamlined, in order to obtain more relevant information or reduce the burden on those responding to questionnaires. In addition, commenters may wish to comment on electronic filing issues, including electronic questionnaires. With respect to hearings, commenters may wish to address whether a different manner of organizing presentations or commissioner questioning of witnesses would be more effective at clarifying salient issues or adducing relevant information. With respect to staff reports, commenters may wish to address whether the reports could be reorganized or whether certain parts may be made more concise in order to best present the key information collected in the investigation. With

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respect to schedules, commenters may wish to address whether the schedule could be modified, particularly in final phases of investigations or full five-year reviews, in order to ease the burden on parties, to permit additional briefing in order to clarify salient issues, or to add to the time available after the Commission's hearing. With respect to opinions, commenters may wish to address the organization, format, and content of opinions. The above items are provided as examples only, and are not intended to limit the topics that may be addressed in the comments. Commenters should indicate whether their comments pertain to original investigations, five-year reviews, or both. Comments should be limited to issues of form and procedure and, to the extent possible, should avoid discussion of the substance of particular determinations.

The Commission anticipates that it will hold a public hearing concerning the topics raised in comments submitted pursuant to this notice, although the need for and procedures of a hearing will depend on the comments submitted. The Commission would publish notice of a hearing in the **Federal Register**, and post notice on the Commission's Web site.

Sample questionnaires for original investigations and five-year reviews can be found at *http://info.usitc.gov/oinv/invest/oinvinvest.nsf*, and *http://info.usitc.gov/oinv/sunset.nsf*, respectively. Copies of the generic report outline for both original investigations and five-year reviews are available upon request. Comments must comply with Commission rule 19 CFR 201.8(a)–(d).

This notice is issued pursuant to 19 U.S.C. 1335 and the Commission's Strategic Plan for fiscal years 2001–2006.

Issued: November 27, 2002.

By Order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30655 Filed 12–3–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 27, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or E-Mail: *King_Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: OSHA Strategic Partnership Program for Worker Safety and Health.

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0244.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; and State, local, or tribal government.

Type of Response: Reporting.

Frequency: On occasion and annually.

Number of Respondents: 4,410.

Annual Responses: 4,410.

Average Response Time: 11 hours.

Annual Burden Hours: 49,254.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: OSHA requires employers participating in the strategic Partnership Program to assess their impact on worker safety and health. An OSHA Strategic Partnership aspires to have a measurable, positive impact on workplace safety and health that goes beyond what has historically been achievable only through traditional enforcement methods.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–30659 Filed 12–3–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

November 27, 2002.

The Department of Labor (DOL) has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by December 23, 2002. Attached is a copy of the proposed application procedures for the National Emergency Grants for Trade Health Insurance Assistance. A copy of this ICR, with applicable supporting documentation and application procedures, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 or e-mail: *king-darrin@dol.gov*.

Comments and questions about the ICR listed below should be forwarded by December 20, 2002 to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; andminimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Employment and Training Administration (ETA).

Title: Workforce Investment Act: National Emergency Grants for Trade Health Insurance Assistance-Application and Reporting Procedures.

OMB Number: 1205–0NEW.

Affected Public: State, Local, or Tribal Government.

Reference	Number of respondents *	Frequency	Annual responses *	Average time per response	Total annual burden hours *
Narrative Summary	50	On occasion	50	1.0 hour	50.0
ETA 9103	50	On occasion	50	90 minutes	75.0
ETA 9105	50	On occasion	50	30 minutes	25.0
ETA 9106	50	On occasion	50	1.0 hour	50.0
Reports: ETA 9104	50	Quarterly	200	30 minutes	100.0
Grant Modifications	40	On occasion	40	30 minutes	20.0
Total			440		320

* Actual number will vary, because the information collection is required to obtain a benefit.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: The Department of Labor/Employment and Training Administration announces proposed application and reporting procedures for states to enable them to access funds in order to implement Trade Health Insurance Assistance National Emergency Grant (NEG) programs. Trade Health Insurance Assistance NEG funds provide specialized assistance, including health insurance coverage, to trade-impacted workers and other individuals eligible under the Trade Adjustment Assistance Reform Act of 2002.

Ira L. Mills,

Departmental Clearance Officer.

Attachment—Workforce Investment Act: Application Procedures for Trade Health Insurance Assistance National Emergency Grants

Overview

This application package provides information and procedures by which states can apply for newly authorized National Emergency Grant (NEG) funds to provide health insurance assistance and related support services to certain eligible individuals. It consists of the following eight parts and two appendices:

- Part I provides background regarding the purpose and use of National Emergency Grant (NEG) funds to provide health insurance assistance for eligible individuals under the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210);
- Part II describes key policies regarding eligible individuals for assistance, allowable uses of grant funds, eligible entities for grant awards, and coordination;
- Part III identifies the policies governing administrative and project design requirements on Health Insurance Assistance NEGs;
- Part IV provides an overview of the application submission requirements for Health Insurance Assistance NEG projects;
- Part V identifies the elements in the application review process including the criteria that will be used to determine the appropriateness of the request for funds;
- Part VI describes alternative approaches to grant funding and the requirements associated with partial funding requests and actions;
- Part VII describes the follow-up planning, oversight and reporting requirements for awarded grants;
- Part VIII describes the grant modification process.

Appendix A contains copies of the required grant application forms. States are not required to submit these forms until OMB approval has been obtained. The forms are in an electronic format for ease of completion and timeliness of submission by the applicant. The Department seeks to establish a process that provides both timely submission of applications for funding, in relation to worker eligibility for assistance, and timely processing of such applications. The electronic formats have been developed to facilitate accomplishment of this objective.

Appendix B contains a directory of Regional Office contacts.

A companion piece to this document, Training and Employment Guidance Letter (TEGL) 10–02, was issued on October 10, 2002. It provides information and procedures by which states may apply for newly authorized NEG system-building funds to develop and implement the infrastructure needed to make the health insurance assistance authorized in the Trade Act of 2002 available.

Applications for NEG funds to provide the assistance described in this notice may be submitted at any time. The maximum allowable project performance period is defined by the months remaining in the Program Year in which the grant award is made plus the subsequent two Program Years. The ProgramYear for these projects is the twelve month period July 1–June 30. USDOL/ETA expects that the project performance period in any NEG application will reflect a time efficient approach to returning eligible individuals to appropriate employment consistent with the performance goals that apply to NEG projects.

The application procedures, application review process, and project oversight and reporting requirements described in this notice are issued under the WIA regulations at 20 CFR 671.125.

Applications may be filed electronically using the website *http://testetareports.doleta.gov*. To submit an application electronically, applicants will need to use a PIN # that has been assigned to them by USDOL. A PIN # can be obtained by contacting the appropriate Regional Office. Alternatively, applications may be mailed or hand-delivered to: Office of Grants and Contracts Management, Division of Federal Assistance, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: E. Fred Tello, Grant Officer. Applications may also be FAXed to the attention of Mr. Tello at (202) 693–2879. Applicants submitting by mail should be aware that mail delivery in the Washington, D.C. area may be delayed due to decontamination procedures. For non-electronic applications, a copy of the application should be concurrently submitted (via e-mail, mail, or FAX) to

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the appropriate Regional Administrator of USDOL/ETA.

For further information you may contact Shirley M. Smith, Administrator, Office of National Response at (202) 693–3501. (This is not a toll-free number.) A user's guide on preparing and submitting an application electronically, and technical assistance on application requirements are available from Regional Offices of ETA and from the Office of National Response, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue, NW., Washington DC 20210.

Part I: Background

The Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210), (the Act) was signed by the President on August 6, 2002. Title I of the Act amends the Trade Act of 1974 to consolidate the prior TAA and NAFTA–TAA programs into one comprehensive program of assistance. The Act expands the eligibility for TAA to additional groups of workers and enhances the assistance available under the program. Title II of the Act amends the Internal Revenue Code of 1986 and the Workforce Investment Act of 1998 (WIA) to establish new mechanisms by which certain TAA participants, as well as eligible Pension Benefit Guaranty Corporation (PBGC) pension recipients, can receive assistance in covering the cost of health insurance.

The primary mechanism for such assistance is a federal tax credit to be administered by the Internal Revenue Service. The tax credit is equal to 65% of the amount paid by an eligible individual for coverage of the individual and certain family members under qualified health insurance. The tax credit is applicable to qualified health insurance coverage costs paid by eligible individuals beginning December 2002, and the credit is to be made available on an advance payment basis by August 1, 2003. The provisions related to this tax credit are contained in Sections 201 and 202 of the Act.

The Act also establishes an additional mechanism, which is intended to be used as a bridge to when eligible individuals can receive the tax credit on an advance basis, by authorizing the use of NEG funds under the WIA to assist in paying the cost of qualified health insurance coverage for eligible individuals. These provisions are contained in section 203 of the Act, which establishes a new section 173(g) of WIA.

Section 203 of the Act identifies the specific groups of individuals who are eligible to receive the health insurance coverage assistance and the types of health insurance coverage programs that can qualify for this assistance. They are described in more detail in Part II of this document.

The approach to Health Insurance Assistance NEG grant awards will be based on quick turnaround initial funding actions where the following can be demonstrated:

- The individuals to receive assistance with grant funds are currently eligible to receive such assistance;
- The costs of heath insurance coverage assistance, processing payments to providers, and other allowable services are reasonable.

USDOL/ETA is committed to making a decision to approve or disapprove all submitted applications within 15 working days from receipt of a complete application. However, because of the variation between initial planning assumptions and subsequent implementation that has historically characterized NEGs, most applications for Trade Act Health Insurance coverage assistance will be partially funded at the outset. Approximately 90 days following grant award, a site review will be conducted to assess implementation status. This review will help verify the full amount of NEG funding needed.

Part II: Policies Governing the Award and Use of NEG Funds

A. Eligible Individuals for Assistance

In general, individuals eligible for health insurance coverage assistance under the Trade Adjustment Assistance Reform Act are:

—"An eligible TAA recipient" which is defined as an individual who is receiving a trade readjustment allowance (TRA) under the TAA program, or would be eligible for TRA except that he/she has not yet exhausted Unemployment Insurance benefits;

—"An eligible alternative TAA recipient" which is defined as an individual who is receiving benefits under a demonstration program of alternative trade adjustment assistance for older workers under section 246 of the Trade Act of 1974 (as amended by the Act), although it should be noted that the demonstration program does not commence until August 6, 2003; or

—"An eligible PBGC pension recipient" which is defined as an individual who is 55 years of age or older and is receiving a pension benefit paid in whole or part by the Pension Benefit Guaranty Corporation (PBGC).

Coverage may also be provided for the spouse and dependents of an eligible individual where such persons are not otherwise covered by health insurance. Dependents are limited under the law to those persons who are allowable dependent deductions on the eligible individual's tax return.

B. Allowable Uses and Limitations on the Use of NEG Funds

In general, NEG funds provided under section 173(g) may be used to provide assistance and support services to eligible individuals, including qualifying health insurance coverage, transportation, childcare, dependent care and income assistance. For both health insurance coverage and income support assistance, the assistance cannot supplant other federal, state, or local assistance for which the individual is eligible.

In order to promote consistency with, and a transition to, the advance payment tax credit and to conserve NEG resources in a manner that will allow broad participation by the states and eligible individuals, these NEG funds may be used to pay no more than 65% of the amount paid by an eligible individual for qualified health insurance coverage of the eligible individual and qualifying family members. This is the same level of assistance provided under the tax credit mechanisms and is intended to fulfill the objective of this NEG of providing a bridge to the advance payment tax credit mechanism.

In addition, the Department would generally expect the assistance provided under the NEG would be for prospective coverage, that is for payments for coverage for months after the individual has been determined eligible for assistance under the NEG. In extraordinary cases, as demonstrated by the applicant, the Department would consider the use of NEG funds to pay reimbursement for qualified health insurance coverage premium payments that were made for coverage on or after September 1, 2002. However, to qualify for such reimbursement, the individual would have to be determined to have met the eligibility requirements at the time such prior premiums were paid.

C. Qualified Health Insurance Coverage

In general, NEG funds can be used to pay for the following types of health insurance coverage assistance:

(1) Coverage under a COBRA continuation provision.

(2) Coverage under a state-based continuation provision.

(3) Coverage through a qualified state high risk pool.

(4) Coverage under a program offered to state employees.

(5) Coverage under a state-based health insurance program comparable to a program for state employees.

(6) Coverage through an arrangement between a state and

—A group health plan

—An issuer of healthcare coverage

—An administrator, or

—An employer

(7) Coverage offered through a state arrangement with a private sector healthcare coverage purchasing pool.

(8) Coverage under a state-operated health plan that does not receive any Federal financial participation.

(9) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

(10) Coverage under individual health insurance in which the eligible individual was enrolled during the entire 30 day period preceding the date of separation by which the individual became eligible for TAA assistance.

The health insurance coverage mechanisms described under items (2) through (8) will only qualify for assistance under an NEG if the state elects to establish and/or use those mechanisms and the coverage meets certain requirements. Those requirements are contained in the new section 173(f)(2)(B)(i) of WIA, and require that under such coverage a "qualifying individual" is (1) guaranteed enrollment; (2) no pre-existing conditions are imposed; (3) the premium charged is nondiscriminatory (*i.e.*, a qualifying individual is not charged a greater amount than a similarly situated individual who is not a qualifying individual); and (4) the benefits are the same or substantially similar to similarly situated individuals who are not qualifying individuals. The term "qualifying individual" is defined in the new section 173(f)(2)(B)(ii) of WIA, and means an individual who is eligible for assistance under the NEG and who, as of the date the individual seeks to enroll in one of these elected coverage mechanisms, had an aggregate period of creditable health insurance coverage (as defined in section 9801(c) of the IRC) of three months or longer. The individual also must not have other specified coverage or be imprisoned.

States must decide whether to elect to include all, some, or none of the coverage mechanisms described in items (2) through (8). States are encouraged to give consideration to these optional coverage mechanisms and evaluate their appropriateness in light of the particular circumstances in the state. The elected coverage mechanisms must be identified in the NEG application. The coverage mechanisms described in items (1), (9), and (10) qualify for assistance under the NEG without election by the state.

D. Eligible Entities for Grant Awards

In order to ensure coordination with the state system-building grants described in TEGL 10–02, eligible applicants for Health Insurance Assistance projects under this notice are limited to states.

The award of these grants will be expedited where the application for the NEG funds is submitted by the grant recipient under the current NEG Master Agreement between the Department and the State. This is not intended to limit the State regarding the participation in, or administration of, activities carried out under the NEG by other entities, including appropriate State agencies. For example, through subgrants or the interagency transfer of NEG funds, the Governor may decide to have other agencies provide aspects of the health insurance coverage assistance. However, the use of the currently designated grant recipient as the applicant ensures that the procedures necessary to facilitate the award of funds are in place.

E. Coordination

The Department strongly encourages efforts by the State to coordinate the provision of assistance under this NEG with the activities of appropriate State agencies, such as the State insurance commission, the State health licensing and regulatory board or entity, and other departments or entities involved in the provision of health insurance coverage.

Part III: Administrative and Project Design Requirements

1. General

Grantee organizations, administrative entities and service providers are subject to the WIA law, regulations, grant application instructions, the terms and conditions of the grant and any subsequent modifications, and to all other applicable Federal laws (including provisions in Federal appropriations law). Since eligible applicants are limited to states, Health Insurance Assistance NEG grantees will be subject to all administrative system requirements that apply to the use of WIA formula funds for dislocated workers, except as otherwise provided in these instructions.

2. Cost Limitations

Administrative cost limitations apply to all NEG grant awards. Cost limitations shall apply to actual expenditures.

Although administrative cost limits on NEG projects are subject to negotiation with the Grant Officer, in general, a ten percent (10%) limit will apply. Any request for a higher limit will have to be clearly and fully justified in terms of unusual project operating circumstances. Applicants should recognize that any such request will have to be negotiated with the Grant Officer and will delay the timing of the funding action.

Any costs associated with administering a system of health insurance coverage payments must be separately identified in the application budget and justified in the narrative.

3. Indirect Costs

If an indirect cost rate is applied in calculating administrative costs, the applicant must include information from the most recent approval document that identifies the approved indirect cost rate and base, the cognizant approval agency, and the date of the approval. Generally, indirect costs will only be approved at the grantee level.

4. Allowable Activities and Services

For Health Insurance Assistance projects, funds may be used for the services described in WIA section 173(g).

5. Project Design and Service Operations

Provision of services, in addition to health insurance coverage assistance, should be consistent with similar services provided under WIA including established policies and procedures of the state and local area(s) in which the project is to operate.

Part IV: Application Submission Requirements

In order to be considered for funding, a Health Insurance Assistance NEG application will need to include the following information:

a. Completed and signed *SF 424–Application for Federal Assistance.* This form is the required application for federal funds. Where the electronic submission option is used, the authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 will constitute authorized signature.

b. *Project Synopsis (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, planned number of participants, and contact information. It also includes identification of the types of health insurance coverage options that will be available to project participants.

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c. *Employer Data (ETA 9105).* This form provides information on the TAA petition and certification through which individuals are eligible for assistance.

d. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of services), and budget (*e.g.*, costs by type of activity, administrative costs).

e. *Narrative Statement.* A narrative explanation must be provided in cases where one or more of the following are reflected in the project plan:

—Indirect costs are included in the budget, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.

—"Other" costs are included in the budget, which requires identifying the specific cost items and amounts.

—Administrative costs related to processing payments for qualified healthcare coverage and/or income support are included in the budget, which requires explaining how the administrative cost estimate was derived (*i.e.*, based on number of check payments and check processing costs).

In addition, the application must include a narrative description of coordination activities and arrangements among appropriate state agencies. The applicant is free to include narrative explanations of other special factors, but the narrative should not exceed five pages.

A copy of forms that can be used to submit one or more the above requirements is provided in Attachment A.

Part V: Application Review Process

To be considered for funding, a Health Insurance Assistance NEG Project application must demonstrate that the proposed project meets the purpose of and is consistent with the Act and Regulations and provides all of the information required by these guidelines. Applications that are not completely in accordance with the requirements or do not contain all required submission forms will not be considered as submitted and will not be evaluated for funding until all required information and documentation is provided. Complete applications will be evaluated for responsiveness to the criteria identified in this part.

1. *Eligibility:* To ensure that NEG funds are only awarded where there is a verifiable group that is both eligible and in need of assistance.

a. TAA certifications and/or other appropriate documentation to demonstrate eligibility is either provided in the application or can be accessed from other sources in DOL/ETA.

2. *Reasonableness of Proposed Services and Costs:* To ensure that NEG projects are designed and operated in accordance with the federal requirements and the state and local policies that apply to trade adjustment assistance programs in the proposed project area.

a. The indirect costs are justified by identifying: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; (3) the date of the approval.

b. "Other" expenditures that are included in the budget are identified and justified in the narrative.

c. Total administrative costs, exclusive of health insurance premium processing costs, are within the cost limitation, OR are explained and justified.

d. The basis for administrative costs to process health insurance premium payments is justified.

Part VI: Funding Approaches

Applications for NEG funds can be funded in whole or in part. Full or partial funding can be at the applicant's request or at the Secretary's discretion. In order to ensure the effective use of NEG resources, in general these requests, when approved, will be funded partially. Where the grant award reflects a partial funding action, the grantee will be required to submit, at a later date, supplemental information to request the balance of funds. This information will be specified in the grant award letter but will include, at a minimum, current information on actual participant levels, performance outcomes, and expenditures.

Part VII: Post-Grant Award Requirements

A. Followup Planning Requirements

Recipients of a NEG will be required to develop a more complete project operational plan as followup to the grant award. This plan should be completed within 90 days of grant award and be available for review at the office of the grant recipient. The information in this plan will be used to verify the need for the full amount of requested funds and the feasibility of the planned levels of performance based on actual project implementation experience. The content of the plan will vary by type of project but, in general, will need to address factors such as participant enrollments, needs of participants for specific services, implementation schedules, project operator agreements and budgets, and project management structure.

B. Project Oversight

In addition to the 90 day review of the Project Operational Plan, each project will be reviewed at the project midpoint. The purpose of this review will be to verify core compliance factors such as participant eligibility and adequate financial management, and to assess the effectiveness of participant service policies and processes in achieving project performance goals.

C. Project Performance Reporting

Each grant recipient will be required to submit to the Grant Officer a Quarterly Report (ETA 9104) on actual performance to-date. The report will include the same factors as the Planning Form in the grant document. A copy of this form is included in Appendix A.

Part VII: Grant Modifications

Grant modifications will be required in the following circumstances:

—When end-of-project performance is expected to vary by more than 10% from the approved plan regarding: Total participants, participants to be enrolled in training, or expenditures for retraining;

—To increase the number of participants receiving health insurance premium assistance and/or the amount of expenditures for health insurance premium assistance;

—To increase the approved amounts of administrative costs;

—To change the performance period for the project;

—When actual end-of-project expenditures will be less than the amount of awarded funds.

Grant modifications must be submitted to the Grant Officer. They may be submitted in writing or electronically.

Grant modifications will not be accepted within 90 days prior to the scheduled expiration date of the project.

Where there is a need to increase the amount of approved funding and/or to expand the target group to include additional layoffs, these will have to submitted as a new request for funds.

Appendix A—e-Application and Reporting Forms

A. Application for Federal Assistance Form (SF 424)

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED: November 27, 2002	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, State, and zip code*):	Name and telephone number of person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (*EIN*): ☐☐–☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other(*specify*): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐–☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (*Cities, Counties, States, etc.*):	

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____	
b. Applicant	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
c. State	$ .00		
d. Local	$ .00		
e. Other	$ .00		
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No	
g. TOTAL	$ 0.00		

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as Item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

B.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Project Synopsis Form

State of	Amount of Funding Request $	Amount Approved by DOL $
Project Name:		
Project Type: Regular Disaster Trade Dual Enrollment Trade Act Health Insurance		
Eligible Event: Closure Mass Layoff Community Impact Layoffs Disaster		
Application Type: Full Partial (reason:)		
State-based Qualified Health Insurance Coverage Programs Selected by State Continuation Provision High-Risk Pool State Employees State Employee-Comparable Joint State-Private Nonpool Joint State-Private Pool Nonfederally Financed		
Applicant Contact Person:		
Street Address 1:		
Street Address 2:		
City: State: Zip Code:		
Telephone:		
FAX:		
Email:		
Planned Number of Participants:		Planned Entered Employment Rate: %
Planned Cost per Participant: $		Planned Wage Replacement Rate: %
% of Planned Participants Receiving NRPs: %		
Counties included in Project Service Area:		
Requested Funds Needed because:		
Project Operator Listing		

ETA 9106
(November 2002)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at one hour.
Send comments regarding this burden or any other aspect of this collection, including suggestions for reducing the burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington, D.C. 20210
(Paperwork Reduction Project 1205-XXXX).

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C.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Employer Data Form

Company/Industry	Location of Facility	Notification Issued?	Date of Notification	Layoff Date(s)	Number of Affected Workers
		__WARN __Public Announcement by Employer __Other(specify) __None			__Check if Closure

Company/Industry	Date(s) of Rapid Response Actions	# of Workers Contacted	TAA Petition	Labor Organization Representation
(should be same as above)	Contact with Employer: _____ Contact with Workers: _____ __None		Date Filed: _____ __Number of Workers Covered __Not applicable	

Type of Business	

ETA 9105
(November 2002)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 30 minutes.
Send comments regarding this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington, D.C. 20210.
(Paperwork Reduction Project 1205-XXXX).

D.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Planning Form

All quarterly entries are CUMULATIVE over all previous quarters.

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER							
IMPLEMENTATION SCHEDULE								
TOTAL PARTICIPANTS								
Receiving Support Services								
Rec. Health Insurance Premium Payments								
Exits								
Entering Employment at Exit								
EXPENDITURE SCHEDULE								
TOTAL EXPENDI-TURES								
Support Services								
Other								
Health Insurance Premiums								
Total Admin. excl. Health Insurance Premiums								
- Indirect								
Health Insurance Premium Admin.								

ETA 9103
(November 2002)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 90 minutes.
Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210.
(Paperwork Reduction Project 1205-XXXX).

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E.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Quarterly Report Form

Grantee:
Project:
Performance Period Covered by this Report: _____ through _____

PERFORMANCE FACTOR	TRADE ACT HEALTH INSURANCE
TOTAL PARTICIPANTS	
Enrolled in Core Services	
Enrolled in Intensive Services	
Enrolled in Trng.	
Receiving Support Services	
Rec. Needs-Related Payments	
Employed in Temp. Disaster Relief Asst.	
Rec. Health Insurance Premium Payments	
Exits	
Entering Employment at Exit	
TOTAL EXPENDITURES: STATE/GRANTEE LEVEL	
NRPs	
Support Services	
Health Insurance Premiums	
Other	
Total Admin., excl. NRPs/Health Insurance Premiums	
- Indirect	
NRP Admin.	
Health Insurance Premium Admin.	
TOTAL EXPENDITURES: LOCAL/ PROJECT OPERATOR LEVEL	
Participant Wages	
Participant FBs	
Core Services	
Intensive Services	
Training	
Support Services	
NRPs	
Other	
Total Admin. excl. NRPs	
- Indirect	
NRP Admin.	
TOTAL EXPENDITURES: STATE AND LOCAL	

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 30 minutes.
Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U. S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210.
(Paperwork Reduction Project1205-XXXX).

ETA 9104
(November 2002)

Appendix B – Directory of Regional Offices of USDOL/ETA

REGION 1 – BOSTON

Joseph F. Stoltz
Acting Regional Administrator
U.S. Department of Labor/ETA
JFK Federal Building
Room E-350
Boston, MA 02203
(617)565-3630
FAX: 617-565-1027

REGION 1 – NEW YORK

Patrick Rowe
Acting Regional Administrator
U.S. Department of Labor/ETA
201 Varick Street, Room 755
New York, NY 10014
(212)337-2139
FAX: 212-337-2144

REGION 2 – PHILADELPHIA

Lenita Jacobs-Simmons
Regional Administrator
U.S. Department of Labor/ETA
The Curtis Center
170 S. Independence Mall West
Suite 825 East
Philadelphia, PA 19106-3315
(215)861-5205
FAX: 215-861-5260

REGION 3 – ATLANTA

Anna Goddard
Regional Administrator
U.S. Department of Labor/ETA
Atlanta Federal Center
Room 6M12
61 Forsyth Street, SW
Atlanta, GA 30303
(404)562-2092
FAX: 404-562-2149

REGION 4 – DALLAS/DENVER

Joseph C. Juarez
Regional Administrator
U.S. Department of Labor/ETA
Federal Building, Room 317
525 Griffin Street
Dallas, TX 75202
(214)767-8263
FAX: 214-767-5113

REGION 5 – CHICAGO/KANSAS CITY

Byron Zuidema
Regional Administrator
U.S. Department of Labor/ETA
230 S. Dearborn Street
Room 628
Chicago, IL
(312)353-0313
FAX: 312-353-4474

REGION 6 – SAN FRANCISCO/SEATTLE

Armando Quiroz
Regional Administrator
U.S. Department of Labor/ETA
71 Stevenson Street, Room 830
PO Box 193767
San Francisco, CA 94119-3767
(415)975-4610
FAX: 415-975-4612

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[FR Doc. 02–30660 Filed 12–3–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–52; Exemption Application No. D–10986, et al.]

Grant of Individual Exemptions; Bank of America (BofA)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Bank of America (BofA), Located in Bethesda, MD

[Prohibited Transaction Exemption 2002–52; Exemption Application No. D–10986].

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the granting to BofA by the Westbrook Realbrook Real Estate Fund III, L.P. (LP), Delaware Limited Partnership, of a first, exclusive, and prior security interest in the capital commitments, reserve amounts, and capital contributions (Capital Contributions), whether now owned or after-acquired, of certain employee benefit plans (Plans) investing in the LP; (2) the collateral assignment and pledge by the LP to BofA of its security interest in each Plan's limited partnership interest, whether now owned or after-acquired; (3) the granting by the LP of a first, exclusive, and prior security interest in a borrower collateral account to which all Capital Contributions will be deposited when paid; (4) the granting to BofA by Westbrook Real Estate Partners Management III, L.L.C., a Delaware limited liability company and the general partner of the LP (the General Partner), of its right to make calls for cash contributions (Drawdowns) under the Amended and Restated Agreement of Limited Partnership of Westbrook Real Estate Fund III, L.P., dated as of June 10, 1998, where BofA is the representative of certain lender (the Lenders) that will fund a so-called "credit facility" providing credit to the LP, and the Lenders are parties in interest with respect to the Plans; and (5) the execution of a partner agreement and estoppel (Estoppel) under the Plans agree to honor the Drawdowns; provided that (i) the grants, assignments, and Estoppels are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (ii) the decisions on behalf of each Plan to invest in the LP and to execute such Estoppels in favor of BofA, for the benefit of each Lender, are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BofA; (iii) with respect to Plans that may invest in the LP in the future, such Plans will have assets of not less than $100 million [1] and not more than 5% of the assets of such Plan will be invested in the LP; and (iv) the General Partner is unrelated to any Plan and any Lender.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 23, 2002, at 67 FR 59558.

Effective Date: This exemption is effective July 30, 1998.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

A. Raimondo Inc. Pension Plan (the Plan), Located in Greensburg, PA

[Prohibited Transaction Exemption 2002–53; Exemption Application No. D–11085]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code,[2] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 1, 2002, to (1) the past and continued leasing (the Lease) of certain improved real property (the Property) by the Plan to A. Raimondo Inc. (the Employer), a party in interest with respect to the Plan; and (2) the exercise, by the Employer, of options to renew the Lease, for two additional terms.

This exemption is subject to the following conditions:

(a) The terms and conditions of the Lease have been, and continue to be, no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties.

(b) The Plan has been, and continues to be, represented for all purposes under the Lease, and during each renewal term, by a qualified, independent fiduciary.

(c) The Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the Lease and the options to renew the Lease on behalf of the Plan and has determined that the transactions are appropriate investments for the Plan and are in the best interests of the Plan and its participants and beneficiaries.

(d) The rent paid to the Plan under the Lease, and during each renewal term, is no less than the fair market rental value of the Property, as established by a qualified, independent appraiser.

(e) The rent is adjusted annually to reflect changes in the Consumer Price Index (the CPI) and the Property is re-appraised at least every three years by a qualified, independent appraiser who is selected by the independent fiduciary to determine the appropriate fair market rental value (but in no event is the rental rate less than that established for the preceding rental term).

(f) The Lease is triple net, requiring all expenses for maintenance, taxes, utilities and insurance to be paid by the Employer, as lessee.

(g) The Plan's independent fiduciary has monitored, and continues to monitor, compliance with the terms of the Lease throughout the duration of the Lease and each renewal term, and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the Lease.

(h) The Plan's independent fiduciary expressly approves any renewal of the Lease beyond the initial term.

(i) At all times throughout the duration of the Lease and each renewal term, the fair market value of the Property has not exceeded, and does not exceed, 25 percent of the value of the total assets of the Plan.

Effective Date: This exemption is effective as of May 1, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 23, 2002, at 67 FR 59562.

Written Comments

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The comment was submitted by the Employer and confirmed by Mr. Lawrence Walter, the Plan's independent fiduciary. The comment is intended to clarify two issues raised in the Summary of Facts and Representations (the Summary) of the proposed exemption. These issues are discussed below.

1. *Impact of Adjacent Real Estate on the Property's Value.* Representation 3 of the Summary states, in part, that the Property is not located in close proximity to other real estate that is owned by the Employer and/or its principles. The Employer explains that although certain of its principals do own a parcel of residential real property that is adjacent to a corner of the Property, it does not believe such ownership impacts on the merits of the transactions involving the Lease. Because the Property is zoned for commercial use and the adjacent property is zoned solely for residential use, the Employer indicates that the two properties cannot be combined or used for the same purpose, and therefore, the ownership of the adjacent residential property by certain of its principals does not affect the value of the Property.

In response to this comment, Mr. Walter has confirmed the representations made by the Employer. Mr. Walter also concurs that no additional value is attributable to the Property by reason of the ownership of contiguous residential property by certain of the Employer's principals.

2. *Excess Rental Value of the Property and Potential Code Violations.* Representation 6 of the Summary states, in part, that an independent appraisal report dated July 16, 2001 (the 2001 Appraisal), placed the monthly fair market rental value of the Property at $3,500. Representation 5 of the Summary further states, in part, that the Employer is currently paying the Plan $4,500 per month in rent. The Employer indicates that these facts suggest that the rent paid to the Plan exceeds the fair rental value of the Property, and that such excess amount might be treated as an additional contribution to the Plan.[3] In this regard, the Employer notes that Mr. Walter has been in communication with Mr. H. Kenneth Gehr, the independent appraiser, throughout the exemption application period and that based upon his experience in the real estate industry, Mr. Walter concluded that a slightly higher rental value was justified. Therefore, Mr. Walter set the current monthly rent at $4,500 rather than the $3,800 amount calculated by Mr. Gehr in the 2001 Appraisal.[4]

In addition, the Employer states that Mr. Walter was selected to serve as the Plan's independent fiduciary because he is a Licensed Public Accountant and Certified Financial Planner who does substantial work involving the real estate industry. Moreover, the Employer explains that Mr. Walter's determination of the Property's fair market value is not only entitled to weight, but, in light of his ongoing responsibility as the Plan's independent fiduciary, he is the final arbiter of fair market value to the Plan. Based upon Mr. Walter's determination of the fair market rental value of the Property, the Employer is of the belief that the Plan should not be viewed as receiving excess rental value for the Property that would cause violations of the Code.

In response to this comment, Mr. Walter again confirms the representations made by the Employer. In addition, Mr. Walter concurs that the Plan should not be viewed as receiving an amount that is in excess of the fair market rental value of the Property that would violate the Code.

On the basis of the Employer's comment letter and Mr. Walter's confirmation and agreement with the statements contained therein, the Department notes the foregoing clarifications to the Summary. The Department also notes that the valuation date for the 2001 Appraisal is July 16, 2001, instead of July 31, 2001.

For further information regarding the Employer's comment, Mr. Walter's confirmation statement, and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11085) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

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[1] In the case of multiple plans maintained by a single employer or a single group of employers treated as a single employer under sections 414(b), 414(c), 414(m), and 414(o) of the Code, the assets of which are invested on a commingled basis (e.g., through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans.

[2] For purposes of this exemption, references to provisions of title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[3] The Department notes that the Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and, therefore, must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

[4] In an appraisal report dated August 20, 2002, which was subsequent to the effective date of the Lease, Mr. Gehr updated the 2002 Appraisal. As of August 16, 2002, Mr. Gehr placed the fair market value of the Property at $258,700 and its fair market rental value at $4,200 monthly or $50,400 annually.

Under the terms of the former exemption that was issued to the Employer (Prohibited Transaction Exemption 87–63, 52 FR 24078, June 26, 1987) and the new exemption, the appraisal is only required to be updated once every three years. However, under both exemptions, the annual rent is to be adjusted by the independent fiduciary to reflect changes in the CPI.

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Accordingly, after giving full consideration to the entire record, including the written comment and the confirmation statement, the Department has decided to grant the exemption

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

J. Penner Corporation Profit, Sharing Plan (the Plan), Located in Doylestown, PA

[Prohibited Transaction Exemption 2002–54; Exemption Application No. D–11099].

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[5] shall not apply to (1) the sale (the Sale) of certain improved real property (the Property) by Thomas G. Frazier and Carol G. Frazier (the Fraziers) to their respective participant-directed individual investment accounts in the Plan (together, the Frazier Accounts); and (2) the simultaneous lease (the Lease) of the Property by the Frazier Accounts to J. Penner Corporation (the Corporation), the Plan sponsor and a party in interest with respect to the Plan.

This exemption is subject to the following conditions:

(a) The terms and conditions of the transactions are not less favorable to the Frazier Accounts than those which the Frazier Accounts would receive in an arm's length transaction with an unrelated party.

(b) The Sale is a one-time transaction for cash.

(c) The acquisition price that is paid by the Frazier Accounts for proportionate interests in the Property is not more than the fair market value of the Property as determined by a qualified, independent, appraiser on the date of the Sale.

(d) The value of the proportionate interests in the Property that are acquired by each of the Frazier Accounts does not exceed 25% of each of the Frazier Accounts' assets at the time of the Sale nor throughout the duration of the Lease.

(e) The Frazier Accounts do not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) The rental amount under the Lease is no less than the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the Lease is entered into by the parties.

(g) The Lease is a triple net lease under which the Corporation, as lessee, pays, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities.

(h) The Frazier indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of Federal, State or local environmental regulations or laws.

(i) The Sale is effected and the Lease comments only upon completion of the following transactions, which shall occur no later than sixty days after the granting of the final exemption: (1) The Fraziers and the Bucks County Industrial Development Corporation (BCIDC) fulfill all of their obligations to the Pennsylvania Industrial Development Authority; (2) the Fraziers pay off their debt obligation to BCIDC in accordance with the terms of an installment sale agreement and reacquire legal title to the Property; and (3) the lease agreement between the Fraziers and the Corporation is terminated.

For a more complete statement of the fats and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 8, 2002, at 67 FR 62824.

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person form certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory of administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 27th day of November, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–30564 Filed 12–3–02; 8:45 am]

BILLING CODE 4510–29–M

[5] For purposes of this exemption, references to provisions of title I of the Act, unless otherwise, specified, refer also to corresponding provisions of the Code.

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 3, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant, Permit Application No. 2003–016:* William Gilmore, Environmental Manager, Raytheon Polar Services Company, 7400 South Tucson Way, M.S. 29, Centennial, CO 80112–3938.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area. The applicant proposes to enter the Antarctic Specially Protected Area at Cape Crozier (ASPA #124) to perform an Environmental Field Camp Audit. The audit will include documentation of the camp footprint, as well as compliance with waste and Environmental, Health and Safety Protocols. These audits are part of a sustained and coherent monitoring program to form a reliable basis for sound environmental management decisions and possible improvements. Data obtained from the monitoring program will be used to document baseline conditions, verify operational impact, and monitor activities undertaken to recover from accidental impacts to the environment. The applicant plans to visit the site for no more than 3–4 hours. Access to the site will be via helicopter.

Location: Cape Crozier, Ross Island (ASPA #124).

Dates: January 2, 2003 to February 15, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 02–30772 Filed 12–3–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide and Standard Review Plan Chapter; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to a regulatory guide and its conforming standard review plan chapter. The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," provides guidance acceptable to the NRC staff on the use of probabilistic risk assessment (PRA) findings and risk insights in support of licensee requests for changes to a nuclear power plant's licensing basis.

Revision 1 of Standard Review Plan Chapter 19, "Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance," identifies the roles and responsibilities within the NRC that participate in risk-informed reviews of licensees' proposals for changes to the licensing basis of nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides and standard review plan chapters are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* in NRC's Electronic Reading Room under Regulatory Guides and in the ADAMS System at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of November 2002.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 02–30705 Filed 12–3–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25836; File No. 812–12890]

Allstate Life Insurance Company, *et al.*; Notice of Application

November 27, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order of exemption pursuant to Section 17(b) of the Investment Company Act of 1940 (the "Act") from Section 17(a) of the Act.

Applicants: Allstate Life Insurance Company ("Allstate"), Allstate Financial Advisers Separate Account I ("Allstate Separate Account I"), Northbrook Life Insurance Company ("Northbrook"), Northbrook Variable Annuity Account ("Northbrook VA"), and Northbrook Variable Annuity Account II ("Northbrook VA II," together with the Northbrook VA, the "Northbrook Separate Accounts").

Summary of Application: Applicants seek an order of exemption to the extent necessary to permit a transfer of assets and assumption of liabilities of Northbrook VA and Northbrook VA II by Allstate Separate Account I.

Filing Date: The application was filed on October 7, 2002 and amended and restated on November 26, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 23, 2002, and must be accompanied by proof of service, on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a

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hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, Charles Smith, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062; with a copy to Richard T. Choi, Esq., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the amended and restated application; the complete amended and restated application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Allstate is a stock life insurance company organized under the laws of the State of Illinois in 1957. Allstate's home office is located at 3100 Sanders Road, Northbrook, Illinois 60062. Allstate is licensed to operate in the District of Columbia, Puerto Rico, and all states except New York. Allstate is a wholly owned subsidiary of Allstate Insurance Company, a stock property-liability insurance company incorporated under the laws of Illinois. All of the outstanding capital stock of Allstate Insurance Company is owned by The Allstate Corporation.

2. Allstate established Allstate Separate Account I as a separate account pursuant to Illinois law. Allstate Separate Account I is a "separate account," as defined by Section 2(a)(37) of the Act, and is registered with the Commission pursuant to the Act as a unit investment trust.

3. Certain variable annuity contracts sponsored by Allstate and issued through Allstate Separate Account I ("Allstate contracts") are registered with the Commission pursuant to the Securities Act of 1933 (the "Securities Act").

4. Allstate Separate Account I is divided into 59 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of an open-end, diversified management investment company registered under the Act (the "Funds").

5. Northbrook is a stock life insurance company organized under the laws of the State of Arizona in 1998. Previously, from 1978 to 1998, Northbrook was organized under the laws of the State of Illinois. Northbrook's headquarters are located at 3100 Sanders Road, Northbrook, Illinois, 60062. Northbrook is a direct, wholly owned subsidiary of Allstate. Northbrook is currently licensed to operate in the District of Columbia, Puerto Rico, and all states except New York. Northbrook and Allstate entered into a reinsurance agreement effective December 31, 1987. Under the reinsurance agreement, Allstate reinsures all of Northbrook's liabilities under its annuity and life insurance contracts.

6. Northbrook established the Northbrook Separate Accounts as separate accounts pursuant to Illinois law, and the Northbrook Separate Accounts are currently subject to Arizona law following Northbrook's redomestication to Arizona in 1998. Each of the Northbrook Separate Accounts is a "separate account," as defined by Section 2(a)(37) of the Act, and is registered with the Commission pursuant to the Act as a unit investment trust.

7. Certain variable annuity contracts sponsored by Northbrook and issued through the Northbrook Separate Accounts (the "Northbrook contracts," and together with the "Allstate contracts," the "Contracts") are registered with the Commission pursuant to the Securities Act.

8. Northbrook VA is divided into 12 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds. Northbrook VA II is divided into 54 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds.

9. Allstate and Northbrook have determined to engage in transactions whereby Northbrook will be reorganized with and merged into Allstate, with Allstate as the surviving corporation (such transactions, collectively, the "Merger"). By resolutions dated September 11, 2002, a Merger Agreement and Articles of Merger (collectively "Agreement") were approved and adopted by the respective boards of directors of Allstate and Northbrook. Prior approval of the Merger and the Agreement also will be obtained from the insurance departments of Arizona and Illinois, the states of domicile for Northbrook and Allstate, respectively.

10. On the effective date of the Merger: (a) Allstate will assume ownership of all the assets of Northbrook, including all the assets held in the Northbrook Separate Accounts; (b) Allstate will conduct the business presently conducted by Northbrook, and will be responsible for satisfaction of all of the liabilities and obligations of Northbrook; and (c) Northbrook will cease to exist as a separate corporate entity. Allstate will then control the merged separate account supporting the Contracts.

11. After considering the nature and purpose of each separate account, the respective boards of directors of Allstate and Northbrook have determined that the efficiency of the operations of the separate accounts after the Merger could be improved, and the overall administration enhanced, by merging Northbrook VA and Northbrook VA II into Allstate Separate Account I (collectively, "Separate Accounts"). The Merger will be structured so there will be no change in the rights and benefits of persons having an interest in any of the Contracts issued by the Separate Accounts. Allstate, or an affiliate, will pay all expenses incurred in connection with the Merger. The Merger provides for the transfer of Northbrook VA's and Northbrook VA II's assets to Allstate Separate Account I and the assumption of the liabilities and contractual obligations of each of Northbrook VA and Northbrook VA II by Allstate Separate Account I in return for the crediting of accumulation units of Allstate Separate Account I to Northbrook VA and Northbrook VA II contract owners. Once this process has been completed, the units of Northbrook VA and Northbrook VA II would be cancelled, Northbrook VA and Northbrook VA II would each submit an application to the Commission pursuant to Section 8(f) of the Act to effect its deregistration as an investment company and would cease to exist, and Allstate Separate Account I would continue to exist.

12. Immediately following the Merger, each Northbrook VA and Northbrook VA II contract owner will possess a number of Allstate Separate Account I units, (both full and fractional) with an aggregate unit value equal to the aggregate unit value of the units the contract owner had in the respective Northbrook Separate Account immediately before the consummation of the Merger.

13. Upon the effective date of the Merger, Allstate will succeed to all of the business and operations of Northbrook, including the obligations pursuant to the Northbrook contracts. Allstate will distribute to each existing Northbrook VA and Northbrook VA II contract owner:

(a) A contract rider indicating that such contracts are thereafter funded by Allstate Separate Account I; (b) a letter informing such contract owners of the Merger; and (c) prospectus disclosure that reflects Allstate's sponsorship of the surviving separate account as a result of the Merger.

14. Except for the change in the depositor and the separate account funding the variable annuity contracts, all the rights and benefits of the Northbrook contract owners will remain unchanged after the Merger. Further, the fees and charges under the Northbrook contracts will not change as a result of the Merger.

15. Allstate and Northbrook assert that the Merger will have no tax consequences for Northbrook contract owners. In addition, no payments will be required or charges imposed under the Northbrook contracts in connection with, or by virtue of, the Merger that would not otherwise be required or imposed.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides generally that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal to knowingly purchase or to sell any security or other property from or to such registered company.

2. Section 17(b) of the Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by Section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. The Merger may be subject to the provisions of Section 17(a) of the Act because it could be viewed as involving an investment company (Northbrook VA or Northbrook VA II) selling its assets to another investment company (Allstate Separate Account I) that is affiliated by reason of having sponsoring insurance companies that are under common control, or by reason of having common directors.

4. Applicants request an order of the Commission pursuant to Section 17(b) of the Act to the extent necessary to exempt the Merger from the provisions of Section 17(a) of the Act.

5. Applicants assert that the terms of the Merger are fair and reasonable. The transfer of assets held by Northbrook VA and Northbrook VA II, respectively, will be made at the relative net asset values of the sub-accounts. Consequently, the interests of Allstate Separate Account I owners will not be diluted by the Merger, and each Northbrook VA and Northbrook VA II contract will be credited, immediately after the Merger, with units of Allstate Separate Account I having the same aggregate value as the aggregate value of the units of Northbrook VA and Northbrook VA II credited to such contract immediately prior to the Merger. The Merger will not result in any change in charges, costs, fees or expenses borne by any Contract owner. No direct or indirect costs will be incurred by any Separate Account concerned as a result of the Merger. Therefore, the proposed transactions will not result in dilution of the economic interests of any Contract owners. In addition, the Merger will result in no change in the investment options available to Northbrook contract owners. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Merger.

6. Applicants assert that the Merger does not involve overreaching on the part of any party involved and is consistent with the general purposes of the Act. The purpose of the Merger is to consolidate three separate accounts, each of which issues variable annuity contracts, into a single separate account. The Merger will allow for administrative efficiencies and cost savings by Allstate because it can consolidate its separate account operations. The Merger will not dilute or otherwise adversely affect the economic interests of the owners of the Northbrook contracts, nor will the Merger affect the values determined under the Northbrook contracts. The Merger will not affect any current Allstate contract owners. Allstate, or an affiliate, will pay all expenses incurred in connection with the Merger.

7. Applicants represent that the Merger is consistent with the policy of each Separate Account as set forth in its registration statement. The policy of each Separate Account is to invest in the Funds. As noted above, the Merger will result in no change to any Fund underlying the Northbrook Separate Accounts. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Merger. Accordingly, the assets underlying the Contracts will continue to be invested in accordance with the policies recited in the Separate Accounts' respective registration statements.

Conclusion

For the reasons summarized above, Applicants assert that the terms of the Merger, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of Allstate Separate Account I and the Northbrook Separate Accounts as recited in their registration statements, are consistent with the general purposes of the Act, and therefore meet the conditions for exemptive relief established by Section 17(b).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30666 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46887; File No. SR–Amex–2002–97]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Initial and Continued Listing Standards

November 22, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 20, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Sections 101, 102, and 1003 of the Amex *Company Guide* to modify initial and continued listing standards. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

American Stock Exchange LLC Company Guide

Section 101

(a) through (c)—No Change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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(d) Initial Listing Standard 4

(1) Total Value of Market Capitalization—$75,000,000; or Total assets and total revenue—$75,000,000 each in its last fiscal year, or in two of its last three fiscal years.
(2) Aggregate Market Value of Publicly Held Shares—$20,000,000.
(3) Distribution " See Section 102(a).

([d]e) Alternative Listing Standards

The securities of certain issuers which do not satisfy any of the Initial Listing Standards set forth in paragraphs (a)–([c]*d*) of this Section may be eligible for initial listing pursuant to the appeal procedures and the Alternative Listing Standards specified in Section 1203(c).

Additional criteria applicable to various classes of securities and issuers are set forth below. Applicants should also consider the policies regarding conflicts of interest, independent directors and voting rights described in §§ 120–125.

Commentary .01—No Change.

Section 102

(a)—No Change.

(b) Stock Price/Market Value of Shares Publicly Held—The Exchange requires a minimum market price of $3 per share for applicants seeking to qualify for listing pursuant to Section 101 (a), [or] (b) *or (d),* and $3,000,000 aggregate market value of publicly held shares for applicants seeking to qualify for listing pursuant to Section 101(a). In certain instances, however, the Exchange may favorably consider listing an issue selling for less than $3 per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above $3 per share, the applicant's capitalization and the number of outstanding and publicly-held shares of the issue.

(c)—No change.

° The terms "public distribution" and "public shareholders" as used in the Company Guide include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (*i.e.* 10% or greater), affiliated or family holdings.

* * * * *

Section 1003

* * * * *

(a) Financial Condition and/or Operating Results—The Exchange will normally consider suspending dealings in, or removing from the list, securities of a company which:

(i) has stockholders' equity of less than $2,000,000 if such company has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

(ii) has stockholders' equity of less than $4,000,000 if such company has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years; or

(iii) has stockholders' equity of less than $6,000,000 if such company has sustained losses from continuing operations and/or net losses in its five most recent fiscal years; or

(iv) has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the Exchange, as to whether such company will be able to continue operations and/or meet its obligations as they mature.

However, the Exchange will not normally consider suspending dealings in, or removing from the list, the securities of a company which is below any of standards (i) through (iii) above if the company is in compliance with the following:

(1) Total value of market capitalization of at least $50,000,000; or total assets and revenue of $50,000,000 each in its last fiscal year, or in two of its last three fiscal years; and*

(2) The company has at least 1,100,000 shares publicly held, a market value of publicly held shares of at least $15,000,000 and 400 round lot shareholders.

Companies falling below one of the above standards and considering a combination with an unlisted company should see Section 341 for the discussion of the Exchange's listing policies contained therein.

** Market capitalization for purposes of Section 1003 includes the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security, if such other security is a "substantial equivalent" of common stock. Generally, the security must be (1) publicly traded or quoted, or (2) convertible into a publicly traded or quoted security. A convertible security will be considered the "substantial equivalent" of common stock if the convertible security is presently convertible, and the conversion price is equal to or less than the current market price of the common stock. For partnerships, the current capital structure will be analyzed to determine whether it is appropriate to include other publicly traded or quoted securities in the calculation.*

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Based upon an evaluation of trends and developments within the Amex listed company community, as well as public issuers generally, the Exchange is proposing to modify initial and continued listing standards to enable it to evaluate listing eligibility against broader and more in-depth measures of financial condition. Specifically, some financially sound issuers may be unable to satisfy the shareholders' equity requirement contained in existing listing standards as a result of certain accounting conventions. An issuer may be forced to write-off goodwill associated with merger and acquisition activity or take significant depreciation charges which are customary in a particular industry (*e.g.*, telecommunications) which could have the effect of reducing the issuer's shareholders' equity and income.[3]

Accordingly, the Exchange is proposing to adopt a new initial listing standard (in addition to existing standards) which is designed to permit an assessment of an issuer's suitability for listing on the basis of compliance with total market capitalization or total assets and revenues in substitution of shareholders' equity. As accounting requirements become increasingly complex, it is important to provide such alternative criteria so that financially sound issuers are not precluded from listing on the Exchange solely on the basis of particular accounting conventions. Specifically, the new initial listing standard would require the following:

Total value of market capitalization: $75 million, or

Total assets and total revenue: $75 million each (in most recent fiscal year or two of last three most recently completed fiscal years)

Price: $3

Market value of public float: $20 million

Public float shares/public stockholders: 500,000/800 or 1 million/400 or 500,000/400 (plus average daily volume of 2,000 shares)

The Exchange states that the proposed new standard is not materially different from standards in place at other marketplaces and is consistent with existing Amex listing standards. In this regard it should be noted that both the New York Stock Exchange ("NYSE") and Nasdaq listing standards contain a variety of alternative qualifications standards, including standards based on measures of market capitalization, revenue and assets.

It is also proposed that corresponding revisions be adopted to the continued listing standards to provide that a listed company will not be subject to delisting (assuming compliance with other applicable standards) even if it has experienced net losses or losses from continuing operations, and does not satisfy existing equity requirements [4] if it is in compliance with the following requirements:

- Total value of market capitalization: $50 million, or
- Total assets and revenue: $50 million each (in most recent fiscal year or two of last three most recently completed fiscal years), and
- At least 1,100,000 shares publicly held, a market value of publicly held shares of at least $15,000,000 and 400 round lot shareholders.

The Exchange believes that an issuer with significant market capitalization or assets and revenue should be able to continue its listing despite several years of losses (and assuming compliance with other applicable continued listing standards), in that these financial measures are generally an indication of a company's strength.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) [6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change will allow for the evaluation of an issuer's listing eligibility against more meaningful and comprehensive criteria. The Exchange also believes that the proposed rule change will provide investors and potential investors in the securities that would be eligible for listing with the benefits inherent in an Amex listing. According to the Exchange, these benefits include: comprehensive regulation; transparent price discovery and trade reporting to facilitate best execution; and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–97 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30667 Filed 12–3–02; 8:45 am]

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[3] A number of large telecommunications issuers report significant deficit equity. For example, Cablevisions Systems Corporation (NYSE:CVC) reported a deficit of $1.8 billion; Nextel Communications, Inc. (Nasdaq NMS: NXTL) reported a deficit of $479 million; and Level 3 Communications Inc. (Nasdaq NMS: LVLT) reported a deficit of $78 million as of each issuer's most recent periodic SEC filing. Similarly, Amazon.com, Inc. (Nasdaq NMS: AMZN) reported a deficit of $1.5 billion.

[4] Section 1003(a) of the Amex Company Guide provides that a listed company which has sustained losses in two of its three, three of its four, or five of its most recent fiscal years will be subject to delisting if its stockholders' equity is less than $2 million, $4 million or $6 million, respectively.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46916; File No. SR–AMEX–2002–36]

Self-Regulatory Organizations; American Stock Exchange L.L.C.; Notice of Filing of Proposed Rule Change To Establish Resolution Times for Uncompared Transactions

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

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("Act"),[1] notice is hereby given that on April 22, 2002, American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend Amex's rule 731 and to adopt Commentary .08 to rule 731 to provide flexibility in establishing resolution times for uncompared transactions in equities, including shares of exchange traded funds and shares of trust-issued receipts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The resolution of uncompared trades ("DKs") has gone through substantial revision as the nature of trade comparison has changed. In 1966, standardized forms were adopted for the timely and efficient resolution of DKs. The primary responsibility for DK resolution at that time was entrusted to floor members.[4] In 1978, the time limit for replying to a DK notice was set at 3:45 p.m. on trade date plus three business days ("T+3") or prior to 10 a.m. on trade date plus five business days ("T+5") if a specialist or independent member was involved. Upon a change in the opening to 9:30 a.m. in 1985, members were then required to reply to a DK notice involving a specialist or independent member prior to 9:30 a.m. on T+5.

The Commission's 1987 Market Break Report[5] resulted in a major initiative to shorten the comparison process, including the development in 1990 of Amex's Intra-Day Comparison system ("IDC").[6] In 1990, Amex also implemented rule 719, Comparison of Exchange Transactions, which required that any transactions effected on the exchange must be compared or otherwise closed out by Amex's close of business on the business day following the day of the contract.[7] Amex adopted further rule changes in 1991 to formalize the operational procedures for full implementation of Amex's electronic equity trade comparison facility.[8] Among the new rules adopted was rule 731, Resolution of Uncompared Transactions, that expressly required that member organizations resolve uncompared trades no later than 3 p.m. on T+1 or 3:30 p.m. on T+1 if an agent was involved.

Because of the inherent risks in the settlement process and in uncompared trades, Amex believes it should have the flexibility to change the time periods for the resolution of DKs. For example, market conditions and systemic changes may require Amex to implement different cut-off time periods for the resolution of DKs depending on the particular product, such as stocks, bonds, ETFs, or TIRs. Accordingly Amex proposes to amend rule 731 to allow Amex to establish DK resolution time periods for equities, bond, ETFs, and TIRs as appropriate.

Specifically, the proposed rule change will amend rule 731 by providing Amex flexibility in determining cut-off times and dates for member organizations to make any necessary additions, deletions, or changes to its DK data and in determining cut-off times for resolution and acceptance of DKs remaining uncompared in the system. The proposed rule change also will adopt Commentary .08 to rule 731 that extends the applicability of the rule to Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts orders to buy or sell a security where the price is derivatively based upon another security or index of securities.[9] The proposed Commentary also provides that Amex may establish separate times to review and resolve DKs in these products.

The proposed rule change is consistent with section 6(b) of the Act[10] in general and furthers the objectives of section 6(b) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] 15 U.S.C. 78s(b)(1).

[2] Amex staff informed the Commission staff on October 23, 2002, that it had satisfactorily concluded its discussions with the National Securities Clearing Corporation regarding the filing.

[3] The Commission has modified the text of the summaries prepared by Amex.

[4] A separate rule for uncompared options trades, rule 970, was adopted when options commenced trading at the Amex in 1975. Rule 970 sets forth the procedures for settling uncompared options trades through the Rejected Option Transaction Notice.

[5] Commission, Division of Market Regulation, The October 1987 Market Break (February 1988).

[6] Exchange Act Release No. 28069 (May 29, 1990), 55 FR 23324 (June 7, 1990), (SR–Amex–90–01) (order approving IDC for post-trade processing of transactions in equity securities).

[7] Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 (April 5, 1990), (SR–Amex–89–05) (order permanently approving rule requiring regular way trades be compared or closed out by close of business on T+1). In 1994, the SEC approved trade date submission of comparison data at the Amex. Exchange Act Release No. 34298 (July 1, 1994), 59 FR 35397 (July 11, 1994), (SR–Amex–94–13)(order approving program to compare equity trades on trade date). Today Rule 719(a) requires members and member organizations to submit comparison data to their clearing firm for any transaction executed on Amex within two hours of the trade.

[8] Exchange Act Release No. 29157 (May 2, 1991), 56 FR 21510 (May 9, 1991), (SR–Amex–90–16)(order approving rule detailing mechanics of resolving uncompared equity trades through IDC).

[9] Orders to buy or sell an option will continue to be covered by rule 950(f) and the applicable Commentary to rule 950.

[10] 15 U.S.C. 78q–1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2002–36 and should be submitted by December 26, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30676 Filed 12–3–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46905; File No. SR–Amex–2002–85]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to Amendments to Sections 610 and 701 of the Exchange Company Guide

November 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 19, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Sections 610 and 701 of the Amex *Company Guide* to clarify that annual reports and proxy materials may be delivered as permitted by and in compliance with applicable state and federal law. The text of the proposed rule change is below. New language is italicized; deleted language is bracketed.

Sec. 610. Publication of Annual Report

A listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements prepared in conformity with the requirements of the Securities and Exchange Commission. The company must disclose in its annual report to security holders, for the year covered by the report: (a) The number of unoptioned shares available at the beginning and at the close if the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options. Three copies of the report must be filed with the Exchange. *Distribution of the annual report to shareholders shall be in such format and by such means as permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, materials referenced in Sec. 701, Comm. .01 of the Company Guide)*

Sec. 701. Filing Material [Mailed] *Distributed* to Shareholders

A listed company is required to file with the Exchange five copies of proxy statements, forms of proxy and other soliciting materials [mailed] *distributed* to shareholders. A listed company is also required to file with the Exchange one copy of the notice of shareholders' meetings and three copies of annual reports [mailed] *distributed* to shareholders. Copies of such materials should be sent to the Exchange when [mailed] *distributed* to shareholders, unless the material was otherwise filed electronically with the SEC.

Commentary .01

Proxy statements, forms of proxy and other soliciting materials shall be distributed by such means as are permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, the following interpretations by the SEC: Release No. 34–36345, File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; and Release No. 34–42728, File No. S7–11–00). Companies should also note Rule 576 applicable to member organizations regarding transmission of proxy material to customers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission in recent years has issued several interpretations regarding electronic delivery of materials to shareholders, including proxy materials. The Exchange has rules governing delivery of proxy materials by member organizations to shareholders (Amex Rules 574 through 585). Many of these rules are also included in the Amex *Company Guide* (Amex Sections 720 through 725). In addition, Amex Section

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 18, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to add the phrase "(including any intepretations thereof by the SEC)" to Section 610 of the Amex *Company Guide*.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

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610 of the Amex *Company Guide* requires listed companies to publish and furnish to shareholders an annual report containing audited financial statements. In the interest of promoting greater efficiency and potentially reduced costs incurred by listed companies and member organizations in delivery of such materials to shareholders, applicable sections of the *Company Guide* are proposed to be amended to clarify that annual reports and proxy materials may be delivered as permitted by and in compliance with applicable state and federal law.

The Exchange proposes to amend Amex Section 610 of the *Company Guide* to provide that a company's distribution of its annual report to shareholders shall be in such format and by such means as permitted or required by applicable law. Amex Section 701 of the *Company Guide* relating to filing of proxy materials with the Exchange would be amended to add Commentary .01 to provide that proxy materials shall be distributed by such means as are permitted or required by applicable law or regulation. For purposes of these provisions, applicable federal law includes any interpretations thereof by the Commission. References to materials "mailed" to shareholders in Amex Section 701 would be amended to "distributed" to reflect that alternative means of distribution (*e.g.*, electronic mail) may be applicable.

The Exchange will notify listed companies and member organizations of the amendments to Amex Sections 610 and 701, including reference to applicable state and federal law and Commission interpretations. In addition, the Exchange is interpreting Amex Rules 574 through 578 applicable to transmission of proxy materials by member organizations to permit member organizations to transmit materials to beneficial owners consistent with the proposed amendments to Amex Section 701.

Issuers and member organizations using electronic delivery means for annual reports, proxy materials and proxies are required under the proposed rule to ensure that they comply with current Commission interpretations, as well as any future interpretations that the Commission may issue on these issues. Amex understands that the Commission expects that the Exchange will monitor developments regarding electronic delivery requirements and notify their members and listed companies in the event the Commission issues future releases on these issues.[6]

[6] Telephone call between Michael Cavalier, Associate General Counsel, Amex, and Jennifer Lewis, Attorney, Division, Commission, on November 20, 2002.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent withSection 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–85 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30679 Filed 12–3–02; 8:45 am]

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). The Commission notes that it recently approved an identical proposal by the New York Stock Exchange. *See* Securities Exchange Act Release No. 45838 (April 26, 2002), 67 FR 22144 (May 2, 2002). The Commission did not receive any comments on that proposal when it was published for comment. *See* Securities Exchange Act Release No. 45602 (March 20, 2002), 67 FR 14756 (March 27, 2002).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46904; File No. SR–Amex–2002–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to Elimination of Separate Exchange Requirements Regarding the Use of Written Consent Solicitations

November 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Amex. On November 25, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend sections 705, 706, 710, 711, 712 and 713 of the Amex Company Guide to eliminate separate Exchange requirements regarding the use of consent solicitations. The following is the text of the proposed rule change. Proposed new language is italicized; deleted language is in brackets.

* * * * *

Sec. 705. Meetings and Solicitation of Proxies Required

A listed company is required, with respect to any matter requiring authorization by its [stockholders] *shareholders*, to *either (a)* hold a meeting of its [stockholders] *shareholders* in accordance with its charter, by-laws and applicable state or other laws and to solicit proxies (pursuant to a proxy statement conforming to the proxy rules of the SEC) for such meeting of stockholders[; unless, upon prior Exchange review and approval, the Exchange permits the solicitation from all stockholders of record, of written consents (conforming to the proxy rules of the SEC) in lieu of such meeting and proxy solicitation], *or, (b) use written consents in lieu of a special meeting of shareholders as permitted by applicable law. The Exchange has no separate requirements with respect to the solicitation of such consents, but listed companies must comply with applicable state and federal laws and rules (including interpretations thereof), including without limitation, SEC Regulations 14A and 14C.*

Note: An information statement under Regulation 14C of the SEC is not considered a proxy statement for purposes of this requirement.

[Sec. 706. Solicitation of Shareholder Consents

Upon prior Exchange review and approval, the Exchange permits solicitation of written consents from shareholders in lieu of a shareholder meeting and the solicitation of proxies (other than for the election of directors or other major corporate action) as appropriate authorization for corporate action by a listed company whenever it appears that a convened meeting of shareholders is not required. The use of consents may be granted by the Exchange on an individual basis subject to the observance of certain Exchange requirements including, among others, the condition that consents conforming to the proxy-solicitation regulations of the SEC be solicited from all shareholders of record.

A listed company's request for permission to solicit written consents of shareholders must be accompanied by a statement as to whether any substantial controversy regarding any of the matters to be acted upon is anticipated. If it appears that a contest or controversy will develop, the Exchange will require a shareholder meeting. If permission to solicit consents is granted, such authorization will be subject to the condition that, if a contest develops or a controversy arises after the consent material is distributed to shareholders, the company will terminate the solicitation of consents and revert to a formal proxy solicitation and convene a meeting of shareholders.

The use of consents will not be permitted in connection with any matter on which the Exchange requires the vote of shareholders. (*See* §§ 710–713.)

In addition to prior Exchange approval, the following requirements also apply:

(a) a record date for the distribution of consent forms must be used in the same manner as for the distribution of proxy-soliciting material;

(b) consents must be sent to, and solicited from, all shareholders of record in conformity with the proxy-soliciting regulations of the SEC, which also apply to the solicitation of consents;

(c) corporate action is not to be taken on the matters presented for shareholders' consideration until the consent solicitation period has expired, even if the required number of consents is received earlier; and

(d) the solicitation period (preferably about 30 days) must be for a minimum of 20 days.]

Sec. 710. Vote Required

(a) *With respect to votes cast on a proposal in person or by proxy,* [T]the minimum vote, under §§ 711, 712 and 713, which will constitute shareholder approval for listing purposes, is defined as approval by a majority of votes cast [on a proposal in person or by proxy]. (See § 123 regarding quorum requirements.) *With respect to the use of written consents in lieu of a special shareholders meeting, the written consent to the proposal of holders of a majority of the shares entitled to vote will constitute shareholder approval for listing purpose under §§ 711, 712 and 713.*

(b)—No change.

Sec. 711. Options to Officers, Directors or Key Employees

Approval of shareholders is required *in accordance with § 705* (unless exempted under paragraphs (a) and (b) below) as a prerequisite to approval of applications to list additional shares reserved for options granted or to be granted to officers, directors or key employees, regardless of whether or not such authorization is required by law or by the company's charter. [The Exchange requires that such shareholders' approval be solicited pursuant to a proxy statement conforming to SEC proxy rules which discloses all of the essential details of the options or of the plan pursuant to which the options will be granted.]

Note: This policy does not preclude the adoption of a stock option plan, or the granting of options, subject to ratification by shareholders, prior to the filing of an application for the listing of the shares reserved for such purpose.

The Exchange will not require shareholders' approval as a condition to listing shares reserved for the exercise of options when:

(a) through (b)—No change.

Sec. 712. Acquisitions

Approval of shareholders is required *in accordance with § 705* [(pursuant to a proxy solicitation conforming to SEC proxy rules)] as a prerequisite to approval of applications to list additional shares to be issued as sole or partial consideration for an acquisition of the stock or assets of another company in the following circumstances:

[3] *See* letter from Claudia Crowley, Assistant General Counsel—Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 22, 2002 ("Amendment No. 1"). In Amendment No. 1, Amex proposes to delete the last sentence of the first paragraph of section 711 of the Amex *Company Guide* because the requirements set forth therein are already contained in section 705 of the Amex *Company Guide*.

[4] 15 U.S.C. 78s(b)(3)A).

[5] 17 CFR 240.19b–4(f)(6).

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(a) through (b)—No change.

Sec. 713. Other Transactions

The Exchange will require shareholder approval *in accordance with § 705* [(pursuant to a proxy solicitation conforming to SEC proxy rules)] as a prerequisite to approval of applications to list additional shares to be issued in connection with:

(a) through (b)—No change.

Commentary—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex requires listed companies to obtain shareholder approval of certain discounted stock and option issuances as well as other potentially dilutive transactions. These requirements are set forth in Sections 711–713 of the Amex *Company Guide*. State law, as well as a company's charter and by-laws typically require shareholder approval of a variety of corporate actions as well. Section 705 of the Amex *Company Guide* requires listed companies to convene a formal shareholder meeting accompanied by a proxy solicitation conforming to SEC proxy requirements whenever shareholder approval is required. Although Section 706 of the Amex *Company Guide* permits a listed company, subject to Exchange approval, to solicit written consents from all shareholders in lieu of a meeting, it does not permit the use of consents for any matter requiring shareholder approval pursuant to Amex rules or for the election of directors and other major corporate action.

The Amex rules governing proxy solicitations and the use of written consents have been in existence for decades, and appear to be based on an assumption that the written consent process would not necessarily provide adequate shareholder participation or information. However, for several years, under Commission requirements, issuers relying on written consents have been required to provide disclosure comparable to that required in proxy solicitations. Consents will sometimes be used when a company is permitted under state law to take action without a shareholder meeting upon the written consent of a specified percentage of shareholders, and the company has an individual or a small group that holds sufficient voting power to approve the corporate action involved. Under federal securities laws, when a company is permitted to take corporate action without a shareholder meeting upon the written consent of a specified percentage of shareholders, such company is not required to solicit the consent of all shareholders. Instead, under certain circumstances, the company is required by Section 14(c) of the Act[6] and Regulation 14C thereunder[7] to furnish all shareholders with an information statement[8] that contains the same disclosure as would have been provided to those shareholders had they been sent a proxy or consent solicitation. Regulation 14C also requires that the information statement be sent at least 20 days prior to the earliest date that corporate action can be taken.[9]

A number of Amex-listed companies have such control vested in an individual or small group, and have, on occasion, indicated a desire to take corporate action on the basis of the written consent of such individual or group. Under existing Amex rules (Section 706 of the Amex *Company Guide*), listed companies are precluded from using consents for many corporate actions, and even if a company is permitted to use consents (*i.e.*, if the corporate action did not require shareholder approval pursuant to Amex rules or involve the election of directors or major corporate action), it would be required to actually solicit the consents from all shareholders, notwithstanding that the vote was predetermined because of the voting control of an individual or small group. The additional requirement to collect and tabulate votes adds an extra level of cost and burden to the process, which some companies argue has no substantive justification, since non-control shareholders cannot change the outcome, and receive the same information regarding the transaction whether their consent is solicited or not.

The Exchange believes that such concerns are credible and that it is appropriate to align the Exchange with what has become accepted corporate practice and has long been sanctioned by state and federal regulation. The federal proxy rules insure that all shareholders are provided all the information material to the corporate action being taken, regardless of whether the issuer must solicit shareholder approval generally, or is able to proceed based on the written consent of a smaller group. Accordingly, the Amex propóses to eliminate its separate requirements governing the use of written consents by listed companies in lieu of special shareholder meetings. This proposal would enable listed companies to obtain shareholder approval of corporate action when necessary by any lawful method.

Under the proposed rule amendments, a listed company would be permitted to obtain the requisite shareholder approval for corporate action (whether required by Amex rules or otherwise) by either holding a special meeting of shareholders and soliciting proxies in accordance with SEC proxy requirements, or by the use of written consents in lieu of such meeting as permitted by applicable law. However, Amex-listed companies will not be permitted to use written consents in lieu of the annual meeting of shareholders at which directors are to be elected.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no burden on competition.

[6] 15 U.S.C. 78n(c).

[7] 17 CFR 240.14C.

[8] An information statement is a disclosure document used to inform shareholders of corporate action that has or will be taken without the general solicitation of their proxy, consent or authorization.

[9] 17 CFR 240.14C.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved a similar proposal by the New York Stock Exchange.[14] The Commission did not receive any comments on that proposal when it was published for comment.[15] For these reasons, the Commission designates the amended proposal to be effective and operative upon filing with the Commission.[16]

At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* Securities Exchange Act Release No. 46654 (October 11, 2002), 67 FR 64687 (October 21, 2002).

[15] *See* Securities Exchange Act Release No. 46092 (June 19, 2002), 67 FR 43199 (June 26, 2002).

[16] The proposed rule change became effective on November 25, 2002, the date on which Amendment No. 1 was filed.

[17] Because the proposed rule change became effective on November 25, 2002, the date on which Amendment No. 1 was filed, the 60-day abrogation period began on November 25, 2002.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–87 and should be submitted by December 26, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30680 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46923; File No. SR–Amex–2002–92]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Corporate Bond TRACERS Units Representing Ownership Interests in a Trust Linked to a Basket of Investment Grade Fixed Income Securities

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under section 107A of the Amex Company Guide ("Company Guide"), trust certificates linked to a basket of investment-grade fixed-income corporate debt instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under section 107A of the Company Guide, Corporate Bond TRACERS Units (the "Units") representing ownership interests in the Structured Asset Trust Repackaging Series 2002–_____ (the "Trust"),[4] a special purpose entity to be formed by Morgan Stanley Dean Witter ("MSDW") Structured Asset Corporation ("SAC"),[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] A series number will be assigned when the Trust is established. Pursuant to a telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Hong-Anh Tran, Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 14, 2002.

[5] SAC is a wholly-owned special purpose entity of Morgan Stanley and the registrant under form S–

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the depositor, and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the Units are issued. The assets of the Trust will consist of a basket or portfolio of not less than 15 investment-grade fixed-income securities (the "Underlying Corporate Bonds").

The issuance of the Units will be a repackaging of the Underlying Corporate Bonds with the obligation of the Trust to make distributions to holders of the Units depending on the amount of distributions received by the Trust on the Underlying Corporate Bonds. Due to the pass-through and passive nature of the Units, the Exchange intends to rely on the asset and stockholder equity of the corporate issuer, parent or guarantor of such issuer of the Underlying Corporate Bonds rather than the Trust to meet the requirement in section 107A of the Company Guide. The distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Units.[6] The corporate issuer, parent or guarantor of such issuer of each of the Underlying Corporate Bonds will meet or exceed the requirements of section 107A of the Company Guide.[7] Further, the Units will initially conform to the listing guidelines under section 107A,[8] and the continued listing guidelines under sections 1001–1003.[9]

The Units will mature on the latest maturity date of the Underlying Corporate Bonds. Holders of the Units will have no direct ability to exercise any of the rights of a holder of the Underlying Corporate Bonds. However, holders of the Units as a group will have the right to direct the Trust in its exercise of its rights as a holder of the Underlying Corporate Bonds.

The Exchange states that the proposed Units are similar to equity linked notes ("ELNs"), previously approved by the Commission, except that the cash flow from the proposed Units will come from a basket of investment-grade corporate bonds as compared to a single equity, basket of equity securities or equity index in the case of an ELN.[11] In addition, ELNs may or may not pay interest while the Units will pay interest periodically based on the pass-through nature of the structure. Also, publicly issued asset backed securities that repackage a single underlying corporate debt obligation are currently listed and traded on the NYSE.[12] The proposed Units are similar to those repackaging transactions, except that the Trust will own more than one corporate debt obligation. In addition, the Exchange recently filed a similar proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income securities.[13] Accordingly, the Exchange proposes to provide for the listing and trading of the Units where the Underlying Corporate Bonds meet the Exchange's Bond and Debenture Listing Standards set forth in section 104 of the Company Guide. The Exchange represents that all of the Underlying Corporate Bonds in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the NYSE or on Nasdaq); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on Nasdaq) has guaranteed the debt security; (4) a NRSRO has assigned a current rating to the debt security that is no lower than a Standard & Poor's Corporation ("S&P") "B" rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than an S&P "B" rating or an equivalent rating by another NRSRO to a *pari passu* or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Corporate Bond must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket is required to contain Underlying Corporate Bonds from issuances of $100 million or more. The payment of principal of the Units is expected to be made upon the maturity of each Underlying Corporate Bond unless it is paid upon an earlier redemption (including any amortization payments) or liquidation, as discussed above, with the maturity date of the Units being the latest maturity date of the Underlying Corporate Bonds. Amortization of the Units will be based on (1) the respective maturities of the Underlying Corporate Bonds; (2) principal payout amounts reflecting the *pro-rata* principal amount of maturing Underlying Corporate Bonds; and (3) any early redemption or liquidation of the Underlying Corporate Bonds.

Investors will be able to obtain the prices for the Underlying Corporate Bonds through Bloomberg L.P. ("Bloomberg") or other market vendors, including the broker-dealer through whom the investor purchased the Units. In addition, the Bond Market Association provides links to price and other bond information sources on its investor web site at *http://www.investinginbonds.com*. Transaction prices and volume data for the most actively traded bonds on the exchanges are also published daily in newspapers and on a variety of financial websites. The National Association of Securities Dealers, Inc. ("NASD") Trade Reporting and Compliance Engine (TRACE) will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.[14] For a fee, investors can have access to intra-day bellwether quotes.[15] Price quotes are also available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices[16] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The prices of the Underlying Corporate Bonds generally will be determined by one or more market makers in accordance with applicable statutory rules, self-regulatory organization rules and generally accepted accounting principles regarding the valuation of securities.

The Units will be listed in $1,000 denominations with the Exchange's existing debt floor trading rules applying to trading. First, pursuant to Amex rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Units.[17] Second, the Units will be subject to the debt margin rules of the Exchange.[18] Third, the Exchange will, prior to trading the Units, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Units and highlighting the special risks and characteristics of the Units. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Units: (1) To determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units. Specifically, the Amex will rely on its existing surveillance procedures governing debt, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,[19] in general, and furthers the objectives of section 6(b)(5),[20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

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3 Registration Statement (No. 333–64879) under which the securities will be issued.

6 Telephone conversation between Jeff P. Burns, Assistant General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on November 26, 2002.

7 See section 104 of the Company Guide permitting the Exchange to list corporate debt securities where the issuer of equity securities listed on the Amex, New York Stock Exchange ("NYSE") or Nasdaq National Market ("Nasdaq"), directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security or has guaranteed the debt security.

8 The initial listing standards for the Units require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then there is no minimum public distribution and holder requirement. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

9 The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Units, the Exchange will rely, in part, on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

10 The Trust will pay to holders of the Units interest and principal distributions pursuant to the schedule set forth in the prospectus. Among other things, the schedule discloses to holders of the Units, the maturity dates of the Underlying Corporate Bonds. Upon such distributions, holders of the Units will receive a report or notification regarding interest and principal payments showing the remaining Underlying Corporate Bonds.

11 See *e.g.*, Securities Exchange Act Release Nos. 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (approving the listing and trading of notes linked to a basket of no more than 20 equity securities); 40956 (January 20, 1999), 64 FR 4480 (January 28, 1999) (approving the listing and trading of notes linked to Select Sector SPDRs); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (approving the listing and trading of the Top Ten Yield MITTS); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (listing and trading of equity linked securities). *See also* Securities Exchange Act Release No. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (Bond Index Term Notes).

12 See *e.g.* Structured Asset Trust Unit Repackagings (SATURNS), CSFB USA Debenture Backed Series 2002–10, 1,330,000 of 7.00% Class A Callable Units, dated August 15, 2002 and trading under the symbol "MKK"; 1,380,000 PreferredPlus 8.375% Trust Certificates underlying 7.05% Debentures of Citizens Communications Company, dated August 24, 2001 and trading under the symbol "PIY"; and 1,980,000 Corporate Backed Trust Certificates, Royal & Sun Alliance Bond Backed Series 2002–2, underlying securities 8.95% subordinated guaranteed bonds issued by Royal & Sun Alliance Insurance Group plc, dated February 11, 2002 and trading under the symbol "CCS."

13 See Securities Exchange Act Release No. 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002).

14 See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/*.

15 Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/*.

16 "Valuation Prices" refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

17 Amex rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

18 See Amex rule 462.

19 15 U.S.C. 78f(b).

20 15 U.S.C. 78f(b)(5).

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including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–92 and should be submitted by December 26, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[21] The Commission finds that this proposal is similar to several approved equity-linked instruments currently listed and traded on the Amex,[22] as well as to asset-backed securities listed and traded on the NYSE.[23] In addition, the Commission recently approved a similar proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income securities.[24] Accordingly, the Commission finds that the listing and trading of the Units are consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Securities 6(b)(5) of the Act.[25]

As described more fully above, the Units are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds, subject to certain distribution of interest obligations of the Trust. The Units are not leveraged instruments. The Units are debt instruments whose price will still be derived and based upon the value of the Underlying Corporate Bonds. The Exchange represents that the value of the Underlying Corporate Bonds will be determined by one or more market makers, in accordance with Exchange rules and generally accepted principles of accounting regarding the valuation of securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Corporate Bonds. In addition, holders of the Units will receive interest on the face value of the Underlying Corporate Bonds in an amount to be determined at the time of issuance of the Units and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Corporate Bonds. Distributions of interest will be made periodically. In addition, the Units will mature on the latest maturity date of the Underlying Corporate Bonds. However, due to the pass-through nature of Units, the level of risk involved in the purchase or sale of the Unit is similar to the risk involved in the purchase or sale of traditional common stock. The Commission notes that asset-backed securities that repackage a single underlying debt instrument are currently listed and traded on the NYSE. However, because the Units are asset-backed securities that repackage a basket of Underlying Corporate Bonds, instead of a single underlying corporate bond, there are several issues regarding the trading of this type of product that the Exchange must address.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Units. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements notes above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Units. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Units.

The Commission notes that the Units are dependent upon the individual credit of the issuers of the Underlying Corporate Bonds. To some extent the credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide, which provide that only issuers satisfying asset and equity requirements may issue securities such as the Units. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[26] The Commission notes that the Exchange has represented that the Units will be listed in $1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Corporate Bonds will be publicly available.[27]

Due to the pass-through and passive nature of the Units, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the corporate issuer, parent or guarantor of such issuer of the Underlying Corporate Bonds rather than the Trust to meet the requirement in section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Units. Thus, the Units will initially conform to the listing guidelines under section 107A and the continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the Unites will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the Units should not unduly impact the market for the Underlying Corporate Bonds or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Corporate Bonds meet the Exchange's section 107A listing requirements, the Underlying Corporate Bonds will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Company Guide, which among other things, requires that underlying debt instrument receive at least in investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the underlying basket is required to contain Underlying Corporate Bonds from issuances of $100 million or more. The Amex has also represents that the basket of Underlying Corporate Bonds will not be managed and will remain static over the term of the Units. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Corporate Bonds through market venders such Bloomberg, or though websites such as *www.investinbonds.com*.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to a recently approved proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income securities,[28] several other equity-linked instruments currently listed and traded on the Amex,[29] and other asset-backed securities currently listed and traded on the NYSE.[30] The Commission believes that the Units will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Units promptly. Additionally, the Units will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[31] to approve the proposal an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–2002–92), is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30681 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[21] *Id.*

[22] *See* Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than 20 equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow-based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approvel order for the listing and trading of the Top Ten Yield Market Index Target Term Securities ("MITTS")) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[23] *See e.g., supra* note 12.

[24] *See supra* note 13.

[25] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] *See* Company Guide section 107A.

[27] The Units will be registered under section 12 of the Act.

[28] *See supra* note 13.

[29] *See supra* note 22.

[30] *See, e.g. supra* note 12.

[31] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46911; File No. SR–BSE–2002–10]

Self Regulatory Organizations; The Boston Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Eliminate the BSE's Current Revenue Sharing Program and To Establish Two Market Data Revenue Sharing Programs

November 26, 2002.

On July 22, 2002, The Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change to eliminate its existing revenue sharing program and to establish two market data revenue sharing programs. The BSE amended the proposed rule change on August 2, 2002 and on August 20, 2002. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on September 19, 2002.[2] The Commission received two comments on the proposal.[3] On October 28, 2002, the BSE responded to the NYSE Letter.[4]

The BSE proposes to operate market data revenue sharing programs that are substantially similar to existing programs at other self-regulatory organizations.[5] As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),[6] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the BSE to operate market data revenue sharing programs that place the BSE on substantially similar footing as other self-regulatory organizations.

Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations

[1] See October 21, 2002 letter from Meyer S. Frucher, Chairman and Chief Executive Officer, The Philadelphia Stock Exchange, Inc., to Jonathan G. Katz, Secretary, Commission ("Phlx Letter"); and October 21, 2002 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"). The Phlx Letter took no position on the BSE proposal, but instead spoke generally about the regulation of market data fees and revenues. The NYSE Letter asked the Commission to institute disapproval proceedings "as a first step in eradicating all such [market data] rebate programs." Because neither letter specifically addresses the BSE proposed rule change, the Commission has not included a summary of comments in this order. The letters are available for review in the Public Reference Room at the Commission.

[2] *See* October 28, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Jonathan Katz, Secretary, Commission ("BSE Response Letter"). The BSE did not respond to the Phlx Letter because it did not receive the Phlx letter until after the BSE submitted its response to the NYSE Letter. The Commission did not require the BSE to submit an additional response letter to address the comments in the Phlx Letter, because the Phlx Letter "expresses no view" on the BSE's proposed rule change. *See* Phlx Letter at p. 1. The BSE Response Letter is available for review in the Public Reference Room at the Commission.

[3] *See e.g.*, Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999)(SR–CSE–99–03).

[4] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] *See* Securities Exchange Act Release No. 46496 (September 13, 2002), 67 FR 59084.

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thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the BSE to establish the market data revenue sharing programs described in this proposed rule change, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [10] that the proposed rule change (SR–BSE–2002–10), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30671 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46922; File No. SR–CBOE–2002–66]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Eliminate Certain CBOE*direct* Connectivity Fees

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice hereby is given that on November 1, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to eliminate certain CBOE*direct* member connectivity charges. The text of the proposed rule change is available at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, in order to set up a Trader Workstation to access the CBOE*direct* screen-based trading platform, CBOE members and member organizations are charged a one-time $5,000 set up fee as well as an additional $1,500 for each additional terminal beyond the first. The Exchange has determined that it can encourage greater use of the CBOE*direct* Trader Workstations by eliminating these fees, and therefore proposes to do so.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act [3] in general and section 6(b)(4) [4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE represents that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(B)(3)(A)(ii) of the Act [5] and subparagraph (f)(2) of rule 19b–4 thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–66 and should be submitted by December 26, 2002.

[9] 15 U.S.C. 78f(b)(5).
[10] 15 U.S.C. 78s(b)(2).
[11] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78f(b).
[4] 15 U.S.C. 78f(b)(4).
[5] 15 U.S.C. 78s(b)(3)(A)(ii).
[6] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30673 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46915; File No. SR–DTC–2002–13]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change To Establish the Prospectus Repository System

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 11, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by the DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish the Prospectus Repository System that will make prospectuses and official statements relating to new issues of corporate and municipal securities available electronically to interested DTC participants and DTC-authorized third parties.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In response to industry demand, DTC has recently developed a new service for participants that would make prospectuses and official statements relating to new issues of corporate and municipal securities ("Offering Documents") available in electronic format. The new service, the Prospectus Repository System ("PRS") will enable participants and DTC-authorized third parties (collectively referred to as "users") to view Offering Documents from a DTC-maintained website.[3]

As a new service related to DTC's underwriting services, PRS would function as a multi-purpose library where users can view, download, and print Offering Documents for those issues made eligible by DTC. Underwriters will be responsible for providing DTC with Offering Documents for both corporate and municipal securities. Access to the Offering Documents posted on the website will be controlled by password protection, where users will be able to view preliminary and final Offering Documents. By posting Offering Documents in PRS, DTC intends to make access to Offering Documents easier and more efficient. PRS features will include on-line search capabilities of preliminary and final Offering Documents, retrieval by ticker symbol, CUSIP, or issuer, and downloadable or printable files.

All users accessing Offering Document information in PRS will be required to affirm that they have read DTC's disclaimer prior to viewing the information. [4] The disclaimer states that Offering Documents posted on the PRS website are for informational purposes only and do not constitute bids, offers, or solicitations for securities. Further, DTC indicates that by virtue of offering the PRS service DTC is not participating in a particular offering as an underwriter, dealer, investment advisor, or otherwise and is not providing any form of investment advice or recommendation as to a particular security, issuer, or offering. In general, DTC will also disclaim responsibility for the following:

- Satisfying Offering Document delivery requirements under federal securities laws or under Municipal Securities Rulemaking Board rules;
- Informing users of PRS of restrictions or limitations on securities or participation in an offering;
- The form or content of any Offering Document posted on the PRS website;
- The accuracy or DTC's verification of information submitted to DTC;
- The responsibility to update any Offering Document posted on the website;
- Posting a final Offering Document if it posts a preliminary Document;
- Posting any supplements to a final Offering Document;
- Keeping an Offering Document posted for any amount of time.

DTC believes that the proposed rule filing is consistent with section 17A of the Act because it provides a service that will benefit DTC participants as well as the industry as a whole. PRS will reduce operating costs to underwriters, make Offering Documents readily available to syndicate members, and expand DTC's underwriting services to participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[7] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] The Commission has modified the text of the summaries prepared by the DTC.
[3] PRS authorized third-party users will include syndicate members, correspondent banks, paying agents, transfer agents, and certain legal counsel and financial advisors associated with the underwriting. Individual investors will not have access to Offering Documents via the website.
[4] A copy of DTC's PPS disclaimer is attached as exhibit B to DTC's filing and is available at the Commission's Public Reference office or through DTC.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the DTC. All submissions should refer to File No. SR–DTC–2002–13 and should be submitted by December 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30675 Filed 12–2–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46917; File No. SR–NASD–2002–151]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Modify SuperMontage Transaction Execution Fees and Credits

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify order execution charges and liquidity provider credits applicable to Non-Directed, Preferenced, and Directed Orders in Nasdaq's SuperMontage system. Nasdaq will implement the rule change on November 1, 2002. Because the transition from the current SuperSOES, SOES, and SelectNet environment to SuperMontage is occurring over the course of several weeks, with stocks moving from one system to the other in stages, Nasdaq will continue to charge its filed prices for SuperSOES, SOES, SelectNet, and quotation updates for stocks that have not transitioned, while charging the SuperMontage prices established through SR–NASD–2002–44,[5] SR–NASD–2002–91,[6] SR–NASD–2002–135,[7] and SR–NASD–2002–151 for stocks that have transitioned.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].

Rule 7010. System Services

* * * * *

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage).

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry	
Non-Directed Orders (excluding Preferenced Orders)	No charge
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge
Other Preferenced Orders	$0.02 per order entry
Directed Orders	$0.10 per order entry
Order Execution	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order	[$0.002] *$0.003* per share executed (but no more than $75 per trade for trades in securities executed at $1.00 or less per share)
Credit to member providing liquidity	[$0.001] *$0.002* per share executed (but no more than [$37.50] *$50* per trade for trades in securities executed at $1.00 or less per share)
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	$0.001 per share executed (but no more than [$37.50] *$25* per trade for trades in securities executed at $1.00 or less per share)
Directed Order	[$0.0025] *$0.003* per share executed
Non-Directed or Preferenced Order entered by a member that accesses a Quote/Order of such member.	No charge

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44). SR–NASD–2002–44 established a fee scheduled for members' use of SuperMontage.

[6] Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (SR–NASD–2002–91). SR–NASD–2002–91 provides that the fees for the use of SuperMontage by a national securities exchange trading Nasdaq securities on an unlisted trading privileges basis (a "UTP Exchange") may be established by means of an agreement between Nasdaq and the UTP Exchange.

[7] Securities Exchange Act Release No. 46648 (October 11, 2002), 67 FR 64439 (October 18, 2002) (SR–NASD–2002–135). SR–NASD–2002–135 established maximum execution fees and credits for transactions in low-priced securities.

Order Cancellation	
Non-Directed Orders (excluding Preferenced Orders)	$0.01 per order cancelled
Preferenced Orders	$0.01 per order cancelled
Directed Orders	$0.10 per order cancelled
Entry and Maintenance of Quotes/Orders by Nasdaq Quoting Market Participants	
Initial entry of Quote/Order	No charge
Change of Quote/Order due to order execution through SuperMontage.	No charge
Cancel/replace of Quote/Order to increase size	No charge
Cancel/replace of Quote/Order to change price	$0.01
Cancel/replace of Quote/Order to decrease size manually	$0.01
Cancellation of Quote/Order	$0.01
Cancellation of Quote/Order due to order purge or timeout	$0.0075

(j)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to increase the order execution charges and the liquidity provider credits applicable to the execution of Non-Directed, Preferenced, and Directed Orders in SuperMontage. Earlier this year, in anticipation of the launch of SuperMontage, Nasdaq established a price schedule that featured: (i) A $0.002 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through SuperMontage; (ii) a $0.001 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee; (iii) a $0.001 per share credit to a member that provides the liquidity for an execution and does not charge an access fee; and (iv) a $0.0025 per share charge for the execution of Directed Orders.

Nasdaq believes that a liquidity provider credit, which was introduced in Nasdaq's SuperSoes system[8] and was recently approved by the Commission for Nasdaq's InterMarket,[9] serves to encourage market makers to display quotes and limit orders that set the inside market through Nasdaq, thereby enhancing the opportunities for favorable executions of market orders routed to Nasdaq. Nasdaq also believes that the credit serves to enhance competition between electronic communications networks ("ECNs"), which are permitted to charge fees for accessing their quotations, and market makers, which generally are prohibited from doing so.[10] Accordingly, the credit is not available to members that charge fees for accessing their quotes through SuperMontage, because such market participants are already compensated for providing liquidity if their quote is executed against and an access fee is charged. Moreover, Nasdaq charges a lower fee for the execution of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee, in order to offset the access fee that the liquidity taker must pay.

According to Nasdaq, ECNs are now generally charging $0.003 per share to liquidity takers while offering $0.002 per share to liquidity providers. As such, Nasdaq believes that it must increase both the order execution fee and the credit to liquidity providers in order to ensure that competition between Nasdaq and ECNs is based on market quality rather than price. Without a change in SuperMontage fees, Nasdaq believes that market participants will have a financial incentive to route limit orders to ECNs rather than posting them in SuperMontage. Accordingly, Nasdaq is increasing the execution fee for Non-Directed and Preferenced Orders that access the Quote/Order of a market participant that does not charge an access fee, as well as the execution fee for Directed Orders, to $0.003 per share, while increasing the credit paid to liquidity providers that do not charge an access fee to $0.002 per share. The execution fee for a Non-Directed or Preferenced Order that accesses the Quote/Order of an access-fee-charging market participant remains $0.001. Finally, Nasdaq is adjusting the fee and credit caps established by SR–NASD–2002–135 for transactions in low-priced securities to ensure that the ratio between these caps remains equal to the ratio between underlying per share prices. Thus, the cap on the liquidity provider credit is being increased to $50, while the cap on the fee to access the Quote/Order of a market participant that charges an access fee is being lowered to $25.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general, and with section 15A(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[8] Securities Exchange Act Release No. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR–NASD–2001–67).

[9] Securities Exchange Act Release No. 46594 (October 3, 2002), 67 FR 63485 (October 11, 2002) (SR–NASD–2002–109).

[10] *Compare* letter from Richard R. Lindsay, Director, Division of Market Regulation ("Division"), to Charles R. Hood, Senior Vice President and General Counsel, Instinet Corporation (January 17, 1997) (acknowledging ECN access fee of up to $0.015 per share) *with* letter from Robert L.D. Colby, Deputy Director, Division, to M. Joseph Messina, Vice President, M.H. Meyerson & Co., Inc. (May 5, 1998) (interpreting SEC Rule 11Ac1–1 to prohibit market makers from charging fees for access to their public quotes).

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(5).

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C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [13] and rule 19b–4(f)(2) thereunder, because it establishes or changes a due, fee, or charge imposed by the self-regulatory organization.[14] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–151 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30678 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(a)(ii).
[14] 17 CFR 240.19b–4(f)(2).
[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–46913; File No. SR–NSCC–2002–09)

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Acceptance of Trade Data

November 26, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on October 24, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's rules to provide that NSCC may accept trade data from derivatives clearing organizations.

II. Self-Regulatory Organization's Statement of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to allow NSCC to accept trade data from derivatives clearing organizations ("DCOs") that are registered or deemed registered with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act. OneChicago LLC has developed a physically-settled, narrow-based security index futures that wills delivery of the underlying securities at expiration. To facilitate the settlement of these futures at expiration, NSCC will need to receive trade date relating to exercise obligations.

NSCC's rules currently provide that NSCC may accept trade data from self regulatory organizations ("SROs")", as defined in the Act.[3] In its connection with OneChicago and these physically-settled, narrow-based security index futures, the Chicago Mercantile Exchange ("CME") will have trade data relating to expiration obligations necessary for settlement. While the CME is a DCO, it is not an SRO. In order to be able to accept trade data from the CME, NSCC is proposing to amend Section 5 of its Rule 7 (Comparison and Trade Recording Operation) to provided that NSCC may accept trade data from DCOs that are registered or deemed to be registered with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

NSCC believes that the proposed rule filing is consistent with the requirements of the Act and the rules and regulations there under because it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations there under particularly with the requirements of Section 17A(b)(3)(F).[4] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By authorizing NSCC to accept trade data from registered DCOs, the proposed rule change will allow NSCC to accept trade relating to expiration obligations of security futures from CME or any other DCO with such information. As a result, the proposed rule change promotes the prompt and accurate clearance and settlement of security futures.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission funds good cause for approving the rule change prior to the thirtieth day after publication because by so approving NSCC will be able to accept trade data from the CME on these physically-settled, narrow-based security index futures once they begin trading in the near future.

[1] 15 U.S.C. 78s(b)(1).
[2] The Commission has modified parts of these statements.
[3] Section 3(a)(26) of the Act defines an SRO as any national securities exchange, registered securities association, registered clearing agency, or (solely for purposes of sections 19(b), 19(c), an 23(b) of the Act) the Municipal Securities Rulemaking Board established by Section 15B of the Act.
[4] 15 U.S.C. 78q–1(b)(3)(F).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications related to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–2002–09 and should be submitted by December 26, 2002.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2002–09) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30662 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46888; File No. SR–NYSE–2002–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Amendment of Rule 342 (Offices—Approval, Supervision, and Control)

November 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 22, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed amendment to NYSE Rule 342 ("Offices—Approval, Supervision, and Control") providing for a new definition of the term "branch office." The proposed amendment to the rule would limit the requirement to register certain business locations as "branch offices" to account for advances in technology used to conduct and monitor business, changes in the structure of broker-dealers and in the lifestyles and work habits of broker-dealers. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 342. Offices—Approval, Supervision, and Control

(a)–(e) No Change.

Supplementary Material

.19 [.10] Annual fee.—Each office of a member organization (including any foreign branch office), other than the main office of the member organization, shall be subject during its existence to a registration fee as determined by the Exchange for each calendar year or part thereof, unless specifically exempted by the Exchange.

.10 Definition of Branch Office

A "branch office" is any location, other than the main office, where one or more associated persons of a member or member organization ("associated person") regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:

(A) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(B) any location that is the associated person's primary residence; provided that: (i) the location is used for less than 50 business days in any one calendar year; (ii) only one associated person, or multiple associated persons, who reside at that location and are members of the same immediate family, conduct business at the location; (iii) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (iv) neither customer funds nor securities are handled at that location; (v) the associated person is assigned to a designated branch office, and such branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person; (vi) the associated person's correspondence and communications with the public are subject to the firm's supervision; (vii) electronic communications (i.e., e-mail) are made through the member organization's electronic system; (viii) all orders are entered through the designated branch office; (ix) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member or member organization; and

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (October 21, 2002) ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected the reference to the provision of the Act under which the proposal was filed. The original filing was incorrectly marked as having been filed pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), while Amendment No. 1 was marked as having been filed pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

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(x) a list of the locations is maintained by the member or member organization;

(C) any location, other than a primary residence, that is used for less than 30 business days in any one calendar year, provided the member organization complies with the provisions of (iii) through (ix) of paragraph (B) above;

(D) any office of convenience, where the associated person occasionally and exclusively by appointment meets with customers, which is not held out to the public as a branch office (where such location is on bank premises, however, only signage required by the Interagency Statement (Statement on Retail Sales of Nondeposit Investment Products required under Banking Regulations) may be displayed);

(E) any location that is used primarily to engage in non-securities activities and from which the associated person effects no more than 25 securities transactions in any one calendar year; provided that any advertisements or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person conducting business at the non-branch locations are directly supervised;

(F) the floor of a registered national securities exchange where a member or member organization conducts a direct access business with public customers; or

(G) a temporary location established in response to the implementation of a business continuity plan.

The term "business day" as used herein shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business. The term an "associated person of a member" for purposes of this Rule means member, allied member or employee associated with a member or member organization.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose [4]

Background

Currently, Exchange Rule 342(c) broadly requires that a member or member organization obtain the Exchange's prior written consent for each office established other than a main office. Continued advances in technology used to conduct and monitor business, changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce have caused the Exchange to reexamine whether all business locations continue to need to be registered as branch offices of broker-dealer members and member organizations.

The definition of the term "branch office" under various self-regulatory organizations' ("SROs") and states' rules in this regard differ significantly. Further, they differ in the registration, notification and approval process as well. Recently, the Exchange has worked with the NASD and states' regulators to develop a definition, which recognizes the industry changes noted above, while meeting regulatory objectives.

Proposed Definition

As proposed, the term "branch office" means any location, other than the main office, where one or more associated persons of a member or member organization ("associated person") regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such. The definition provides for exceptions noted below. The core definition is consistent with the term "office" as it is defined in the SEC's new amendments [5] to its books and records rules (Rules 17a–3 and 17a–4),[6] which were enacted to provide timely access to broker-dealers' books and records and to help expedite SEC, SRO and state examinations and investigations.

In developing a definition, the NYSE considered the evolving nature of its members' and member organizations' business models. For example, bank-owned members and member organizations often establish small offices on bank premises, whereby a registered representative would be designated to a parent branch for supervision but would visit different bank branches occasionally, and by appointment only, to meet with customers. Under the proposed definition such locations would be exempt from registering as branch offices, where the bank location is not held out as a branch office.

In exempting such offices of convenience from branch office registration, the NYSE has imposed important safeguards for the public. In this regard, at such offices of convenience, associated persons would be limited to meeting customers occasionally and exclusively by appointment. Further, at bank locations, the only permitted signage such offices of convenience may display, under regulations promulgated by the Office of the Comptroller of the Currency, will be ones advertising to the public that "non-deposit investment products" are being offered at such locations. This signage will prevent confusing customers who might otherwise believe that traditional riskless investments, such as deposits, are being offered by associated persons at such offices located on bank premises. In addition, other than meeting customers at these offices of convenience, all other functions of the associated person will be conducted and supervised through the designated branch office.

Changing life/work issues of members' and member organizations' associated persons is also recognized in the new definition. In this regard, associated persons are often forced to work occasionally from home to provide childcare and eldercare for certain family members. Moreover, illness forces work at home as well. Further, the development of technology, and advanced electronic communications, have necessitated rethinking traditional views of what constitutes a branch office and the supervision of such offices.

In excepting primary residences from the definition of branch office, important safeguards and limitations have been imposed on such locations to provide for monitoring and oversight of activities. Limitations include, in part, that: The location is used for less than 50 business days in one calendar year; the location is not held out as a branch office; the associated person is assigned to a designated branch office for supervision and such office is reflected on all business cards, stationery, advertisements and communications to the public; the associated person does not meet with customers at his or her residence; the associated person's correspondence and communications with the public are subject to the firm's supervision; electronic communications, including e-mails, are made through the firm's electronic system; all orders are entered through the designated branch office; and written procedures relating to the supervision of sales activities conducted at the residence are maintained by the member or member organization.

The definition also exempts from branch office registration any temporary location, other than the primary residence discussed above, provided it is used less than 30 business days in any calendar year. In granting this exemption, the NYSE has imposed the same safeguards noted above for the exemption granted for primary residence. The Exchange believes that effective supervision can be achieved because of the use of advanced and sophisticated technology in the supervision and review of associated persons in such exempt locations.

In addition, under both exceptions noted above, the NYSE has defined "business day" to include any partial day, provided the associated person spends less than four hours on such business day at his or her designated branch office during the hours such office is normally open for business.[7] In doing so, it will prevent associated persons from regularly conducting business from their primary or other residences for the majority of a business day, without such activity being counted towards the 30 and 50 day limitations.

Where the 50 business day (primary residence) and 30 business day (other location) exemptions are utilized by associated persons, members and member organizations are expected to maintain records adequate to demonstrate compliance with the "business day" limitations.

In addition, the definition exempts from registration locations where associated persons are primarily engaged in non-securities activities (*e.g.*, insurance) and from which an associated person effects no more than 25 securities transactions in a calendar year, provided that advertisements or sales literature identifying such location also set forth locations from which the associated persons are directly supervised. Further, such activities attendant to the primary function performed as an occasional accommodation to customers will be conducted through and supervised by the associated person's designated registered branch office.

Similarly, the new definition exempts non-sales locations, *e.g.*, where operations activities are conducted, from registering as a branch office. Such locations must be established solely for customer service and/or back office functions and not be held out to the public as a branch office, and no sales activities may be conducted from such locations.

The proposed definition of branch office would serve the entire broker-dealer community by recognizing the many different business models and streamlining the branch office registration process significantly. The scope of sales practice examinations conducted by the Exchange will be expanded to ensure compliance with the new rule amendments.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[8] in general, and section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2002–34 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30668 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[4] The NYSE requested that the Commission change certain language submitted by the NYSE in the purpose section of the filing to clarify that the instant filing pertains to the NYSE's proposed rule filing alone. While the Commission believes that other SROs will submit similar filings, such similar filings have not yet been submitted and it is not certain that other SROs' filings will be uniform. Telephone discussion between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Katherine England, Assistant Director, Elizabeth Badawy, Sr. Policy Liaison, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (November 21, 2002).

[5] Securities Exchange Act Release No. 44992 (October 26, 2001), 66 FR 55818 (November 2, 2001).

[6] 17 CFR 240.17a–3 and 240.17a–4.

[7] The NYSE requested that the Commission make a clarifying correction of language in the purpose section of the NYSE's filing with regard to the definition of "business day." Telephone discussion between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Katherine England, Assistant Director, Elizabeth Badawy, Sr. Policy Liaison, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (November 21, 2002).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46906; File No. SR–NYSE–2002–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Extending the NYSE Direct+ Pilot Program Through December 23, 2003

November 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 1, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through December 23, 2003[7] the effectiveness of a pilot program for NYSE Direct+ ("Pilot"). A current extension of the Pilot ends December 23, 2002.[8]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements. No changes to previously approved rule language are being proposed.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Direct+ was originally filed as a one-year pilot, ending on December 21, 2001.[9] The Exchange then extended the Pilot for an additional one-year period, ending December 23, 2002.[10]

The Pilot provides for the automatic execution of orders of 1099 shares or less ("auto ex" orders) against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as auto ex orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an auto ex order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

The Exchange proposes to extend the Pilot for an additional year (from December 24, 2002 until December 23, 2003). The Exchange notes, however, that there are two other proposed rule changes concerning NYSE Direct+ which have also been filed with the Commission during the current Pilot. These include (a) a proposal to amend NYSE Rule 1000 to provide that NYSE Direct+ executions will not be available if the resulting trade would be more than five cents away from the last sale;[11] and (b) a proposal to (i) amend NYSE Rule 13 to establish a one-year pilot program that would expand Direct+ order size eligibility for Exchange-Traded Funds ("ETFs") and Holding Company Depositary Receipts ("HOLDRs"); (ii) amend NYSE Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m.; and (iii) amend NYSE Rule 1005 to reflect that the rule applies to ETFs and HOLDRs. [12]

The Exchange proposes that the above-mentioned proposed filings amending NYSE Direct+ will become incorporated into the Pilot upon their respective approvals by the Commission.[13]

2. Statutory Basis

The Exchange represents that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act[14] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange further represents that the proposed rule change, as amended, is designed to support the principles of Section 11A(a)(1) of the Act[15] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 31, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange requested a waiver of the 5-day pre-filing requirement under Rule 19b–4(f)(6)(iii), withdrew its request for a waiver of the 30-day operative period under the same rule, and clarified that it would implement proposed changes to NYSE Direct+ that the NYSE has submitted in other proposed rule changes as they are approved by the Commission.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on November 1, 2002, when Amendment No. 1 was filed.

[7] Telephone conversation among Jeffrey Rosenstrock, Senior Special Counsel, Market Surveillance, NYSE and Terri Evans, Assistant Director and Steven Johnston, Special Counsel, Division, Commission, on November 5, 2002 (clarifying date of proposed extension of the pilot).

[8] See Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002)(File No. SR–NYSE–2001–50)(notice of filing and immediate effectiveness of proposal to extend NYSE Direct+ until December 23, 2002). The Pilot is implemented through a series of rules, NYSE Rules 1000 through 1005, and NYSE Rule 13. In addition, the Exchange previously submitted for Commission approval interpretations of certain rules, as well as a no action or interpretive position which the Exchange requested the Commission adopt under its short sale rule, Rule 10a–1 under the Act. See Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002). The Exchange proposes that these exemptions and interpretations be extended for an additional year concurrent with the extension of the NYSE Direct+ Pilot through December 23, 2003. Telephone conversation between Jeffrey Rosenstrock, Senior Special Counsel, Market Surveillance, NYSE and Terri Evans, Assistant Director, Division, Commission on November 25, 2002.

[9] See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (File No. SR–NYSE–00–18) (order approving amended proposed rule change establishing NYSE Direct+ pilot program).

[10] See *supra*, note 7.

[11] See File No. SR–NYSE–2002–44.

[12] See Securities Exchange Act Release No. 46527 (September 20, 2002), 67 FR 61368 (September 30, 2002)(noticing SR–NYSE–2002–37).

[13] See Amendment No. 1, *supra* note 3.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

The Exchange has requested that the Commission waive the pre-filing notice requirement. The Commission has determined to waive the five-day pre-filing notice requirement, given that the Exchange filed the original proposed rule change on October 8, 2002.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–47 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30670 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on November 1, 2002, when Amendment No. 1 was filed.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46858A; File No. SR–NYSE–2002–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Adopt Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, Rule 401 ("Business Conduct"), Rule 408 ("Discretionary Power in Customers' Accounts"), and Rule 410 ("Records of Orders")

November 27, 2002.

Correction

In Release No. 34–46858, issued on November 20, 2002, a portion of the rule text for New York Stock Exchange rule 401 was noticed incorrectly. The corrected text appears below. Additions are in italics; deletions are in brackets.

* * * * *

Business Conduct

Rule 401.(a)–(b) no change.

The policies and procedures required under (b)(1), (b)(2), and (b)(3) above must include a means/method of customer confirmation, notification, or follow-up that can be documented.

* * * * *

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30677 Filed 12–3–02; 8:45 am]

BILLING CODE 4010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46914; File No. SR–OCC–2002–22]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Clear and Settle Options on Nonequity Fund Shares

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), as amended,[1] notice is hereby given that on September 27, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on October 18, 2002, amended the proposed rule change as described in items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend OCC's by-laws and rules to accommodate the clearance and settlement of options on nonequity fund shares (*i.e.*, shares representing interests in entities holding portfolios or baskets of nonequity securities).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. OCC has prepared summaries, set forth in sections (A), (B)

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The immediate purpose of the proposed rule change amends article I, VI and XII of OCC's by-laws and chapters VI and XVIII of its rules to accommodate the introduction of options on "iShares." iShares represent interests in an investment company holding portfolios of government securities, corporate debt securities, or government and corporate debt securities. OCC currently issues and clears options on interests in various entities holding portfolios of equity securities (including iShares' equity-based funds). OCC's Rules define such options and their underlying interests as "stock fund options" and "stock fund shares," respectively. To accommodate options on iShares representing interests in an entity holding portfolios of debt securities and to accommodate the possibility that exchanges may in the future list options on interests in other entities holding non-equity securities (or a combination of equity and non-equity), the proposed rule change will replace the terms "stock fund options" and "stock fund shares" with the terms "fund options" and "fund shares" and will eliminate any reference to "stock" or "equity" within the definitions.[3]

OCC will interpret the term "fund shares" broadly, as it did the term "stock fund shares," to include not only interests in registered investment companies but also interests in unregistered trusts (*e.g.*, HOLDRs) and in other investment vehicles holding portfolios of securities. Accordingly, to reflect this broad interpretation the proposed rule change will substitute the term "trusts" for "unit investment trusts" in the definition of "fund share." Conforming changes will be made throughout OCC's By-laws and Rules to incorporate the new definitions.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act,[4] as amended, and the rules and regulations thereunder applicable to OCC because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder, requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The Commission finds that the proposed rule change is consistent with this obligation because by allowing OCC to clear and settle options on nonequity fund shares, market participants trading these products will obtain the efficiencies and safeguards provided by OCC, a registered clearing agency.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. Both the American Stock Exchange ("Amex") and the Chicago Board Options Exchange ("CBOE") have informed OCC that they intend to begin trading options on iShares debt-based funds upon the Commission's approval of this proposed rule change and of a related supplement to the Options Disclosure Document. Accordingly, the Commission finds that there is good cause to approve the rule change prior to the thirtieth day after publication of the notice of filing because by so approving OCC will be able to immediately commence clearing and settling nonequity fund options when Amex and CBOE commence trading them.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–22 and should be submitted by December 26, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–22) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30674 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Because the term "fund share" is now being defined to include a broad class of securities, OCC will separately amend Filing No. SR–OCC–2002–04, which proposes to expand the forms of margin collateral accepted by OCC to include money market fund shares, to eliminate the few instances in which the same term is used to refer narrowly to money market fund shares.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46902; File No. SR–PCX–2002–63]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Pacific Exchange, Inc., To Amend Its Clearly Erroneous Policy

November 25, 2002.

On September 23, 2002, the Pacific Exchange, Inc. ("PCX"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to its "Clearly Erroneous Policy." Notice of the proposed rule change was published for comment in the **Federal Register** on October 22, 2002.[3] No comments were received on the proposed rule change.

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend PCXE Rule 7.11(d) to confer authority on a PCXE officer designated by PCXE who, in addition to the Chief Executive Officer and President, may nullify transactions or modify their terms arising out of any disruption or malfunction in the Archipelago Exchange trading system, the equities trading facility of PCXE. The rule change also adds conforming language to PCXE Rule 10.13 regarding appeals from such decisions.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–PCX–2002–63) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30669 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46661 (October 15, 2002), 67 FR 64950.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46912; File No. SR–Phlx–2002–72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Set Time Limits Within Which Phlx Members Must Request Credits Under the Phlx Monthly Credit Program

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On November 26, 2002, the Phlx amended the proposed rule change.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt certain provisions in connection with its Monthly Credit Program ("Program").

Background

In May 2000, the Exchange adopted, for an aggregate period of 36 months,[5] the Program, which allows a monthly credit of up to $1,000 to be applied against fees, dues, charges and other amounts as may from time to time be owed to the Exchange that month (collectively referred to as "credit-eligible fees"), except fines, late fees, out-of-pocket expenses, pass-through costs, capital funding fees, payment for order flow fees, any fees paid by equity trading permit ("ETP") holders respecting any trading permits the Exchange may issue,[6] the fee for electronic communications networks, and the fee for the print subscription of the Phlx Guide by members who own the membership by which they are a member and certain other categories of members. The Program is in effect until May 16, 2003.

Pursuant to the Program, the amount of credit-eligible fees owed to the Exchange is reduced on a monthly basis by an amount equal to: (1) $1,000 per month if such fees, dues, charges and other amounts are equal to or greater than $1,000, or (2) the amount of such fees, dues, charges and other amounts if such fees, dues, charges and other amounts are less than $1,000. Credits may not be carried over from one month to the next and only one credit of up to $1,000 is available per membership per month.

Credits cannot be shared among members, except qualified member(s) in the same member organization may aggregate their credit(s). The monthly credit of up to $1,000 will be applied against the invoice of the member or member organization with which the member is associated. Currently, any request to receive the credit is application driven with each applicant submitting an Exchange form delineating the credit-eligible fees for that calendar month. A member's eligibility for the monthly credit is determined by the opening of trading on the first business day of each month.

Proposal

In connection with the Program, the Exchange has accrued on its books credit-eligible funds to be reimbursed to members who are eligible for the monthly credit of up to $1,000, but who have not submitted a request to receive

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See November 25, 2002, letter from Cynthia K. Hoekstra, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Phlx replaces the text in footnote 3 on page 2 (and also footnote 4 on page 9) of the original filing with new text. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 26, 2002, the date the Phlx filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] This aggregate period of 36 months includes the time period that previous pilot programs were in effect. The first monthly credit pilot program became effective upon filing on May 16, 2000, and lasted six months, expiring on November 16, 2000. See Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000)(SR–Phlx–00–44). The pilot program was then extended for six months through May 16, 2001. See Securities Exchange Act Release No. 43567 (November 15, 2000), 65 FR 71187 (November 29, 2000)(SR–Phlx–00–100). Therefore, the Program will be in effect from May 16, 2000 until May 16, 2003. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001)(SR–Phlx–2001–49).

[6] In March 2002, this provision was amended to provide that ETP monthly fees are credit-eligible. See Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002)(SR–Phlx–2002–10).

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the credit.[7] Therefore, the Exchange proposes to set a time limit within which Exchange members must request the credit.

In connection with unclaimed past credits, any member eligible for the monthly credit must submit his/her credit request form within three months after the date of the release issued pursuant to the Act whereby the proposal has been filed and has become effective. For example, if the Commission issues a Notice of Filing and Immediate Effectiveness respecting this change to the Program on, hypothetically, November 15, 2002, members will have until February 15, 2003 to claim any past credits. After that time period, any request for unclaimed past credits will be denied, except as described in the following paragraph.

Going forward, members must request their monthly credit within three months from the first day of the month in which the credits were earned. For example, if a member is eligible to receive a credit of $600 for the month of September, the member must request that credit by December 1 (three months from September 1). Any requests for credits not made within this three month time period will be denied, and credits will not be pro-rated over any month.

The Phlx proposes no other changes to the Program at this time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to set time limits within which Phlx Members must request credits under the Program. Due to the bookkeeping and associated costs with monitoring the Program, the Exchange proposes to set a date certain by which the members must request a claim for past-due credits. If the credit is not claimed by that date, the members will not be able to claim the credit in the future.

In addition, the time limit within which Exchange members must request the monthly credit should promote compliance with the Exchange's intent for members to timely claim the credit and to remove from the Exchange's books reserves for unclaimed credits that may never be requested.

The Phlx intends to send a memorandum to members, member organizations and clearing firms to clarify the proposed credit procedures, and will include a copy of the memorandum with the Exchange's monthly invoice.[8]

2. Statutory Basis.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(4)[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of rule 19b–4 thereunder,[12] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2002–72, and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30672 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[7] In addition, there are members who originally stated they were not eligible for the credit and therefore did not submit a request to claim the credit. These members, however, subsequently discovered they were eligible for the credit and provided supporting information to the Exchange. These members will also be allowed to claim past credits, although these amounts may not have been accrued.

[8] The Phlx notifies members of various Exchange proposals by way of memoranda generally sent to the members, member organizations and their respective clearing firms. The Exchange intends to send the memorandum with the October invoice, which is sent in the beginning of November.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Public Notice 4198]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Transport Law: Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Friday, December 13, 2002, to consider the draft instrument on the International Transport Law, under negotiation at the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 1 p.m. to 5 p.m. in the offices of Holland & Knight, Suite 100, 2099 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in preparing for the next session of the UNCITRAL Working Group on this draft instrument, to be held in New York from March 24 to April 4, 2003.

The draft text and the report of prior meetings of the UNCITRAL Working Group on this subject constitute the basic working documents of the UNCITRAL Working Group. These documents are available on UNCITRAL's web site, *http://www.uncitral.org.* (The documents are listed under Working Group III (Transportation).)

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to Docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20490–0001. You may also send comments electronically via the internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., EST, Monday through Friday, except federal holidays. An electronic version of all documents entered into this docket is available on the internet at *http//dms.dot.gov.*

For further information, you may contact Mary Helen Carlson at 202–776–8420, or by e-mail at *carlsonmh@ms.state.gov.*

Mary Helen Carlson,

Deputy Assistant Legal Adviser for Private International Law, Department of State.

Edmund T. Sommer, Jr.,

Chief, Division of General Law, International Law and Litigation, Office of the Chief Counsel, Maritime Administration, Department of Transportation.

[FR Doc. 02–30767 Filed 12–3–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 22, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13866.
Date Filed: November 18, 2002.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/116 dated November 11, 2002, Expedited Resolutions r1–r14, Intended effective date: expedited 2 January 2003.

Docket Number: OST–2002–13873.
Date Filed: November 19, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0221 dated 15 November 2002, TC31 North and Central Pacific Areawide Expedited Resolution r1, PTC31 N&C/CIRC 0223 dated 15 November 2002, TC3–Central America, South America Expedited Resolutions r2–r6, Intended effective date: 1 January 2003.

Docket Number: OST–2002–13874.
Date Filed: November 19, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0222 dated 15 November 2002, TC3 (except Japan)-North America, Caribbean Expedited Resolutions r1–r10 (except between Malaysia and USA), Intended effective date: 1 January 2003.

Docket Number: OST–2002–13919.
Date Filed: November 22, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0980 dated 22 November 2002, Mail Vote 253—Resolution 010j, TC3/TC23 Special Passenger Amending Resolution from Papua New Guinea, Intended effective date: 1 December 2002.

Docket Number: OST–2002–13920.
Date Filed: November 22, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0484 dated 8 November 2002 r1–r32, PTC2 EUR 0485 dated 8 November 2002 r33–r39, PTC2 EUR 0487 dated 15 November 2002 r40–r50, Minutes—PTC2 EUR 0488 dated 15 November 2002, Tables—PTC2 EUR Fares 0070 dated 8 November 2002, Intended effective dates: 1 March, 1 April, 2 April 2003.

Docket Number: OST–2002–13921.
Date Filed: November 22, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0978 dated 22 November 2002, Mail Vote 252—Resolution 010i, TC3/TC23 Special Passenger Amending Resolution from Korea (Dem. Rep. of) r1, Intended effective date: 1 December 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–30736 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA)

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition to upgrade and expand the scope of a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted by Mr. Clarence Ditlow, dated July 22, 2002, to NHTSA under 49 U.S.C. § 30162, which requested an ongoing investigation (SQ01–014) be upgrade to an Engineering Analysis to determine whether a safety defect trend exists in Model Year (MY) 1992–2001 Ford Crown Victoria, Mercury Grand Marquis, and Lincoln Town Car vehicles. The petition also requested that the scope of the investigation be broadened to include all subject vehicle fuel-fed crashes regardless of the direction of the impact and to include vehicle-to-object impacts. After reviewing the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly denies the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Borris, Safety Defects Engineer,

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Vehicle Integrity Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5202.

SUPPLEMENTARY INFORMATION: In a letter dated July 20, 2000, Clarence M. Ditlow, Executive Director of the Center for Auto Safety in Washington, DC, petitioned NHTSA to expand a then-pending investigation (SQ01–014) involving post-rear crash fires in certain Model Year (MY) 1992–2001 Ford Crown Victoria, Lincoln Town Car, and Mercury Grand Marquis vehicles. These are known as Panther Platform vehicles. The Office of Defects Investigation (ODI) opened a Service Query (SQ01–014) after reviewing a Technical Service Bulletin (TSB) (Ford Article 01–21–14) issued by Ford Motor Company (Ford). The TSB provides information and suggests modifications aimed at reducing the potential for post-rear crash fuel tank punctures in Ford's Panther Platform vehicles produced during MY 1992–2001.

Prior to the publication of the TSB, ODI received three letters from law enforcement organizations expressing concern or requesting an investigation into the potential for fuel leaks in Crown Victoria Police Interceptor (CVPI) vehicles following rear impact crashes. ODI requested additional information from one correspondent (National Troopers Coalition) and received summaries of 17 incidents alleging post-rear crash fires (PRCF) in CVPI vehicles from calendar year (CY) 1983 to 2001. The summaries included allegations of 11 deaths, of which 4 occurred during CY 2001. All the target vehicles involved were CVPIs, and 14 were within the scope of the TSB. It stands to reason that the majority of PRCF's would occur within the law enforcement population of Panther vehicles due to their use on highways where high-energy collisions are most likely to occur. Law enforcement officers routinely pull motorists to the shoulder area, exposing their vehicles to a greater risk of rear impact.

A search of ODI's consumer complaint database revealed one incident involving a MY 2000 CVPI that burst into flames following a high-energy rear impact. Fortunately, the officer escaped with relatively minor injuries.

Based on information available at the time of opening SQ01–014 indicating that each of the post-crash fires resulted from rear impacts, ODI limited the scope of its investigation to crashes where the initial impact point was between the 5 o'clock and 7 o'clock positions (with 12 o'clock representing the center of the front bumper). NHTSA requested information from Ford on all post-rear crash incidents resulting in fuel loss or fire in Panther Platform vehicles. A similar information request was sent to General Motors with respect to MY 1986–1996 Chevrolet B-Body (Caprice and Impala models) vehicles. The B-Body vehicles represent the closest comparative vehicle to the subject vehicles, since they have similar weight and dimensions, utilize a rear-mounted fuel tank, and were also used by law enforcement agencies.

ODI closed its investigation October 3, 2002, determining that further investigation would be unlikely to produce sufficient evidence to demonstrate the existence of a safety-related defect in the subject vehicles. To address assertions made by the petitioner and determine whether to grant the petition, ODI analyzed information produced during SQ01–014 and real-world crash data in NHTSA's Fatality Analysis Reporting System (FARS).

Analysis

To ascertain whether the Panther Platform vehicles have an elevated risk of fire following crashes (including high-energy crashes) compared to other sedans, ODI conducted searches of the FARS database for information on all MY 1992–2001 Panther vehicles and all other sedans (AOS) for fatal crashes involving fire. These searches included all impact locations and were executed both including police vehicles and excluding police vehicles. The risk of fire is expressed as a ratio of fires in fatal vehicles per total fatal vehicles. For the Ford Panther compared to AOS, with police vehicles included, the risk is identical at 0.033. Excluding police vehicles yields a ratio of 0.029 for the Ford Panther versus 0.033 for AOS. These results indicate that the subject vehicles are not over-represented with respect to the risk of fire in real-world high-energy crashes.

A further discussion of issues related to post-crash fires in Panther Platform vehicles is set out in the closing report for SQ01–014, which has been placed in the docket for this petition. It can be viewed at *http://www.nhtsa.dot.gov/current/crownvic/index.htm.*

Conclusion

According to the analysis of FARS data, the subject vehicles are not over-represented with respect to the risk of fire following a high-energy crash in all impact directions as alleged in the petition. In fact, the data show that the civilian population of Panther vehicles has an overall lower risk of post-crash fires than AOS when all impact points are considered.

After reviewing the petition and its supporting materials, as well as information furnished by Ford and GM, and information within the agency's possession from previous investigations and other related actions, NHTSA has concluded that further investigation concerning post-crash fires in the subject vehicles is not likely to lead to a decision that the vehicles contain a safety defect.

For the foregoing reasons, further expenditure of the agency's investigative resources on the allegation in the petition does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at 49 CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 02–30735 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13955; Notice 1]

Columbia Body Manufacturing Co.; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are asking for comments on the application by Columbia Body Manufacturing Co. ("Columbia") of Clackamas, Oregon, for an exemption of three years from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* Columbia asserts that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

Columbia's Need for an Exemption

Columbia manufactures and sells a dump body type of trailer (the "trailer") which means that the body's front end must be lifted in order to discharge the load out of the back. The load is asphalt, used in road construction. This design of trailer generally has an overhang at the rear for funneling asphalt material into a paving machine; consequently, it needs 16 to 18 inches of unobstructed clearance behind its rear wheels to hook up with the paving machine and dump its load. Standard No. 224 requires the rearmost surface of an underride guard to be located not more than 305mm (12 inches) from the "rear extremity" of the trailer.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Columbia's, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* Columbia argued that installation of the rear impact guard would prevent its trailer from operating with the paving machine, and "would interfere with the hook-up of the asphalt machine and dump operation of the trailer." Columbia avers that it "has investigated the retrofit and modifications needed to bring our products into compliance with FMVSS 224 without success." We discuss below its efforts to conform in greater detail.

Columbia's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith To Comply With Standard No. 224

Columbia is a small volume manufacturer. Its average production over the past three years has been 12 trailers a year, "none of which were asphalt paving trailers." Normally, it would produce 10 to 40 trailers annually. The company employs 30 people full time and has annual sales of $4–5,000,000. Columbia "has had requests to quote on 14" trailers and "14 truck mounted dump boxes, bringing the total sales figure to around $750,000.00." Absent an exemption, Columbia "will be unable to quote these units substantially decreasing our projected sales figures." Its cumulative net loss for the fiscal years 1998, 1999, and 2000 was $99,764. We have asked Columbia to provide data on its fiscal year ending December 31, 2001.

Columbia asserted that it has sought manufacturers of underride guards since 1998. As a result of its search,

> We only found one English company, Quinton-Hazell that is no longer making either type, telescoping or hydraulic. Their research found that because of the expense of these two types of guards they would not be marketable. We have also investigated the work done by SRAC, located in Los Angeles, CA in the hopes that we might be able to use or modify the guards they designed for the trailers we wish to build. Neither was suitable because retracting the bumper and finding a way to keep the build up of asphalt off of any moving parts was not possible.

The company stated that it intended to continue to try and resolve the problems through continued research.

Columbia's Reasons Why It Believes That a Temporary Exemption Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Columbia believes that an exemption would be in the public interest and consistent with traffic safety objectives because, "our type of trailer helps state and municipal governments to produce the safe highways that are needed." It contemplates building less than 50 units a year while an exemption is in effect. Further, the amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens.

How You May Comment on Columbia's Application

If you would like to comment on Columbia's application, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: January 3, 2003.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: November 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30734 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–13956, Notice 1]

Lotus Cars Ltd.; Receipt of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

Lotus Cars Ltd. ("Lotus") of Norwich, England, through Lotus Cars USA, Inc., has applied for a renewal of NHTSA Temporary Exemption No. 99–12 from S7, Performance Criterion, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact,* as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

Background

On November 10, 1999, NHTSA granted Lotus Cars Ltd. NHTSA Temporary Exemption No. 99–12 from S7, Performance Criterion, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact* (64 FR 61379). The basis of the grant was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The exemption covered the Esprit model, and was to expire on September 1, 2002. However, Lotus applied for a renewal of its hardship exemption on May 10, 2002, thereby staying the expiration date until the agency has acted upon its petition (49 CFR 555.8(e)). The reader is referred to the 1999 notice for information on the original application and Administrator's decision to grant it.

Why Lotus Needs a Temporary Exemption

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate the Elise for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, Phase-in-Schedule #3, of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998—September 1, 1999, and to conform 100% of its production thereafter.

But a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described in its original petition, the company found itself unable to conform the current Esprit to Standard No. 201. It petitioned for, and received, a temporary exemption until September 1, 2002. Its continued need for an exemption is explained in the next section.

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Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

Lotus remarks that the entity that ultimately controls Lotus Cars is "the Malaysian company Perusahan Otomobile Nasional Berhad." However, Lotus' balance sheets and income statements do not indicate that this Asian entity, itself a motor vehicle manufacturer, makes capital contributions to Lotus or otherwise participates in the management of this British company. Lacking these indicia of control, NHTSA has decided not to count cumulatively the production of the two companies which, if totaling at least 10,000 units would render Lotus ineligible for a hardship exemption. In 1999, Lotus produced 2,569 Lotus automobiles; in 2000, 2,993 Lotus automobiles plus 127 Opel/Vauxhall automobiles; and in 2001, 5,181 Lotus automobiles and 3,046 for Opel/Vauxhall. Over the same three-year period it exported 112,162, and 48 vehicles respectively to the United States. Notwithstanding the increase in production, Lotus submitted financial information on September 16, 2002, indicating a total operating loss of 7,513,000 pounds for its fiscal year 2001–2002, a loss of 20,244,000 pounds for its fiscal year 2000–2001, and an operating profit of 12,368,000 pounds for its fiscal year 1999–2000. This represents a cumulative loss of 15,389,000 pounds, or $24,622,400 computed at a rate of $1.6=1 pound.

Lotus had intended to cease production of the exemption Esprit by August 31, 2002, but the successor project was cancelled in early 2001 because of lack of capital. A back-up plan was conceived for a project called M260, but "was unable to launch itself." By the end of 2001, Lotus had laid off 197 employees, and, by early 2002, "an additional 241 employees were made redundant." However, it had located "an additional supply of air bags and transmissions * * * permitting the construction of up to an additional 140 vehicles." The company stated that its "only hope for keeping the U.S. market alive [is] to build the additional 140 Esprits, ending production on December 31, 2003," the period for which it has requested an exemption. No further exemption will be requested for the Esprit as its V8 engine is not designed to meet Model Year 2004 U.S. emissions standards. It hopes to "find a way to finance" the M260 project for introduction in the U.S. in 2004. Lotus's petition thus implies that the M260 is being designed to conform with Standard No. 201.

Absent an exemption until 2004, Lotus will suffer the loss of the U.S. market, a substantial economic hardship.

Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Lotus simply said that "the extension will continue to be consistent with the public interest and the objectives of the Safety Act." In the past, Lotus argued that after many years of sales of the Esprit with its current body shape, the company knew of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads.

If Lotus USA is required to close because of a denial, its employees will be out of work. In its new application, the company adds that its "image and credibility would be ruined." An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

How You May Comment on Lotus's Application

We invite you to submit comments on the application described above. Your comments should refer to the docket number and the notice number, and be submitted to: Docket Management Facility, room PI–401, 400 Seventh Street, SW., Washington, DC 20590. We ask, but do not require, that you submit your comments in duplicate. You may submit your comments by hand, mail, fax (202–493–2251) or electronically: log onto the DMS Web site, *http://dms.dot.gov*, and click on "Help and Information" or "Help/Info" to obtain instructions.

We shall consider all comments received before the close of business on the comment closing date indicated below. You may examine comments in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. You may also view them on the internet at Web site *http://dms.dot.gov*. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 3, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30733 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 191X)]

Union Pacific Railroad Company—Abandonment Exemption—in Davis and Weber Counties, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 23.69-mile line of railroad from milepost 754.31 near Valencia, to milepost 778.00 near Ogden, in Davis and Weber Counties, UT.[1] The line traverses United States Postal Zip Codes 84010, 84014, 84015, 84025, 84041, 84067, 84087, and 84401.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 2002, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mark H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our web site at *http://www.stb.dot.gov*.

Decided: November 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30690 Filed 12–3–02; 8:45 am]

BILLING CODE 4915–00–P

[1] UP states that the physical assets of the line, including the real property interests and track structure thereon, have been sold to the Utah Transit Authority (UTA), in connection with UTA's corridor preservation project. UTA previously filed a verified notice of exemption to acquire from UP this and several other nearby railroad rights-of-way and related improvements in Davis, Weber, Salt Lake and Utah Counties, UT. UTA also simultaneously filed a motion to dismiss that proceeding, maintaining that the transaction was not subject to the Board's jurisdiction, and UTA's dismissal request was granted. UP, however, retained an exclusive, perpetual easement and common carrier obligation on the line to conduct freight operations. *See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company*, STB Finance Docket No. 34170 (STB served Feb. 22, 2002 and May 22, 2002), respectively. The retained easement will expire upon consummation of the instant abandonment exemption.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 192X)]

Union Pacific Railroad Company—Abandonment Exemption—in Salt Lake and Utah Counties, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.23-mile portion of a line of railroad of the Provo Industrial Lead, from milepost 772.00 near Cutler, to milepost 775.23 near Mount, in Salt Lake and Utah Counties, UT.[1] The line traverses United States Postal Zip Codes 84003 and 84020.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 2002, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mark H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the

[1] UP states that the physical assets of the line, including the real property interests and track structure thereon, have been sold to the Utah Transit Authority (UTA), in connection with UTA's corridor preservation project. UTA previously filed a verified notice of exemption to acquire from UP this and several other nearby railroad rights-of-way and related improvements in Davis, Weber, Salt Lake and Utah Counties, UT. UTA also simultaneously filed a motion to dismiss that proceeding, maintaining that the transaction was not subject to the Board's jurisdiction, and UTA's dismissal request was granted. UP, however, retained an exclusive, perpetual easement and common carrier obligation on the line to conduct freight operations. *See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company*, STB Finance Docket No. 34170 (STB served Feb. 22, 2002 and May 22, 2002), respectively. The retained easement will expire upon consummation of the instant abandonment exemption.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: November 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30691 Filed 12–3–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 193X)]

Union Pacific Railroad Company—Abandonment Exemption—in Utah County, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.83-mile portion of the Provo Industrial Lead from milepost 753.27 near Provo, to milepost 756.10 near Gatex, in Utah County, UT.[1] The line traverses United States Postal Service Zip Code 84116.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: November 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30692 Filed 12–3–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 194X)]

Union Pacific Railroad Company—Abandonment Exemption—in Salt Lake County, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 5.21-mile rail line over the Bingham Industrial Lead from milepost 6.60 near Bagley, to milepost 11.81 near Lead Mine, in Salt Lake County, UT.[1] The line traverses United States Postal Service Zip Codes 84006, 84088 and 84095.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at http://www.stb.dot.gov.

Decided: November 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30693 Filed 12–3–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 22, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 3, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 Final (T.D. 8382).

Type of Review: Extension.

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

Description: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty of disclosing on a form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion, annually.

Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1545–1509.

Form Number: IRS form 941 TeleFile.

Type of Review: Revision.

Title: Employer's Quarterly Federal Tax Return.

Description: Form 941 TeleFile is used by employers to report by phone payments made to employees subject to income and social security and Medicare taxes and the amounts of these taxes.

Respondents: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Estimated Number of Respondents/Recordkeepers: 230,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form 941	
Recordkeeping	12 hr., 24 min.

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[1] UP states that the physical assets of the line, including the real property interests and track structure thereon, have been sold to the Utah Transit Authority (UTA), in connection with UTA's corridor preservation project. UTA previously filed a verified notice of exemption to acquire from UP this and several other nearby railroad rights-of-way and related improvements in Davis, Weber, Salt Lake and Utah Counties, UT. UTA also simultaneously filed a motion to dismiss that proceeding, maintaining that the transaction was not subject to the Board's jurisdiction, and UTA's dismissal request was granted. UP, however, retained an exclusive, perpetual easement and common carrier obligation on the line to conduct freight operations. *See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company,* STB Finance Docket No. 34170 (STB served Feb. 22, 2002 and May 22, 2002), respectively. The retained easement will expire upon consummation of the instant abandonment exemption.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

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Form 941	
Learning about the law or the form.	40 min.
Preparing the form	1 hr., 49 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Form 941 TeleFile	
Recordkeeping	5 hr., 30 min.
Learning about the law or the Tax Record.	18 min.
Preparing the Tax Record	24 min.
TeleFile phone call	11 min.

Frequency of Response: Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 5,740,000 hours.
OMB Number: 1545–1660.
Notice Number: Notice 99–43.
Type of Review: Extension.
Title: Nonrecognition Exchanges under Section 897.

Description: This notice announces a modification of the current rules under Temporary Regulation § 1.897–6T(a)(1) regarding transfers, exchanges, and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The new rule will be included in regulations finalizing the temporary regulations.

Respondents: Business or other for-profit, individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: 200 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental PRA Clearance Officer.

[FR Doc. 02–30750 Filed 12–3–02; 8:45 am]
BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 67, No. 233
Wednesday, December 4, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

Correction

In notice document 02–29882 beginning on page 70584 in the issue of Monday, November 25, 2002, make the following correction:

On page 70585, in the first column, after paragraph (b), in item number 3, in the first line, "Dr. C.I. Change" should read, "Dr. C.I. Chang".

[FR Doc. C2–29882 Filed 12–3–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

RIN 1904–AB11

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Extension of Time for Electric Motor Manufacturers To Certify Compliance With Energy Efficiency Standards

Correction

In rule document 02–29969 beginning on page 70677 in the issue of Tuesday, November 26, 2002, make the following correction:

§ 431.123 [Corrected]

On page 70678, in the first column, in § 431.123, in paragraph (g), in the third line, "February 28, 2003" should read, "April 30, 2003".

[FR Doc. C2–29969 Filed 12–3–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9020]

RIN 1545–BB19

Substantiation of Incidental Expenses

Correction

In rule document 02–28543 beginning on page 68512 in the issue of Tuesday, November 12, 2002 make the following correction:

§ 1.274–5T [Corrected]

On page 68513, in the second column, in §1.274–5T, in paragraph (j)(1) and (2), in the second line, "*see*" should read, "see".

[FR Doc. C2–28543 Filed 12–3–02; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

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Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7385–7]

RIN 2060–AG57

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for plastic parts and products surface coating operations located at major sources of hazardous air pollutants (HAP). The proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The proposed rule would protect air quality and promote the public health by reducing emissions of HAP emitted in the largest quantities by facilities in the surface coating of plastic parts and products source category to include methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), toluene, and xylenes. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucous membranes, and effects on the central nervous system, liver, and heart. In general, these findings have only been shown with concentrations higher than those typically in the ambient air. The proposed standards would reduce nationwide HAP emissions from major sources in this source category by approximately 80 percent.

DATES: *Comments.* Submit comments on or before February 3, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, they should do so by December 24, 2002. If requested, a public hearing will be held within approximately 30 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* By U.S. Postal Service, written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–99–12, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–99–12, U.S. EPA, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW, Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946, to request to speak at a public hearing or to find out if a hearing will be held.

Docket. Docket No. A–99–12 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW, Washington DC 20460, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Teal, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5580; facsimile number (919) 541–5689; electronic mail (e-mail) address: *teal.kim@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–99–12. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Ms. Kim Teal, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The source category definition includes facilities that apply coatings to plastic parts and products. In general, facilities that coat plastic parts and products are covered under the Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes listed in Table 1. However, facilities classified under other SIC or NAICS codes may be subject to the proposed standards if they meet the applicability criteria. Not all facilities classified under the SIC and NAICS codes in the following table will be subject to the proposed standards because some of the classifications cover products outside the scope of the NESHAP for plastic parts and products.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

Category	SIC	NAICS	Examples of potentially regulated entities
Industrial	2522	337214	Office furniture, except wood.
	3086	32614, 32615	Plastic foam products (*e.g.*, pool floats, wrestling mats, life jackets).
	3089	326199	Plastic products not elsewhere classified (*e.g.*, name plates, coin holders, storage boxes, license plate housings, cosmetic caps, cup holders).
	3579	333313	Office machines.
	3663	33422	Radio and television broadcasting and communications equipment (*e.g.*, cellular telephones).
	3711	336211	Motor Vehicle Body Manufacturing.
	3714	336399	Motor vehicle parts and accessories.
	3715	336212	Truck Trailer Manufacturing.
	3716	336213	Motor Home Manufacturing.
	3792	336214	Travel Trailer and Camper Manufacturing.
	3799	336999	Transportation equipment not elsewhere classified (*e.g.*, snowmobile hoods, running boards, tractor body panels, personal watercraft parts).
	3841	339111, 339112	Medical equipment and supplies.
	3949	33992	Sporting and athletic goods.
	3993	33995	Signs and advertising specialties.
	3999	339999	Manufacturing industries not elsewhere classified (*e.g.*, bezels, consoles, panels, lenses).
Federal, State, and Local Governments.			Government owned or operated facilities that perform plastic parts and products surface coating. Examples include Department of Defense facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your coating operation is regulated by this action, you should examine the applicability criteria in § 63.4481 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with HAP emissions from the surface coating of plastic parts and products?
II. Summary of the Proposed Rule
A. What source categories and subcategories are affected by this proposed rule?
B. What is the relationship to other rules?
C. What are the primary sources of emissions and what are the emissions?
D. What is the affected source?
E. What are the emission limits, operating limits, and other standards?
F. What are the testing and initial compliance requirements?
G. What are the continuous compliance provisions?
H. What are the notification, recordkeeping, and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category and subcategories?
B. How did we select the regulated pollutants?
C. How did we select the affected source?
D. How did we determine the basis and level of the proposed standards for existing and new sources?
E. How did we select the format of the proposed standards?
F. How did we select the testing and initial compliance requirements?
G. How did we select the continuous compliance requirements?
H. How did we select the notification, recordkeeping, and reporting requirements?
I. How did we select the compliance date?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental, and energy impacts?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Plastic Parts and Products (Surface Coating) category of major sources was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that emit or have the potential to emit equal to, or greater than, 9.1

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megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP Emissions From the Surface Coating of Plastic Parts and Products?

The major HAP emitted from the plastic parts and products surface coating industry include MEK, MIBK, toluene, and xylenes. These compounds account for over 85 percent of the nationwide HAP emissions from this source category. Other HAP identified in emissions include ethylene glycol monobutyl ether (EGBE) and glycol ethers. The HAP that would be controlled with this proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, birth defects and effects on the central nervous system, liver, and heart), and acute health disorders (*e.g.*, irritation of the lung, skin, and mucous membranes, and effects on the central nervous system).

We do not have the type of current detailed data on each of the facilities covered by the proposed emission standards for this source category, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures.

II. Summary of the Proposed Rule

A. What Source Categories and Subcategories Are Affected By This Proposed Rule?

The proposed rule will apply to you if you own or operate a plastic parts and products surface coating facility that is a major source, or is located at a major source, or is part of a major source of HAP emissions. We have defined a plastic parts and products surface coating facility as any facility engaged in the surface coating of any plastic part or product.

You will not be subject to the proposed rule if your plastic parts and products surface coating facility is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through your permitting authority.

The source category does not include research or laboratory facilities or janitorial, building, and facility maintenance operations, or hobby shops that are operated for personal rather than commercial purposes. The source category also does not include coating of magnet wire, coating of plastics to produce fiberglass boats (except post-mold coating of personal watercraft or their parts), or the extrusion of plastic onto a part or product to form a coating. Post-mold coating of personal watercraft and their parts is included in the source category.

This source category also does not include surface coating of plastic parts and products that would be subject to certain other subparts of 40 CFR part 63. In particular, it does not include the following coating operations:

(1) Coating operations that are subject to the aerospace manufacturing and rework facilities NESHAP (40 CFR part 63, subpart GG).

(2) Operations coating plastic and wood that are subject to the wood furniture NESHAP (40 CFR part 63, subpart JJ).

(3) Operations coating plastic and metal parts of large appliances that are subject to the large appliance surface coating NESHAP (40 CFR part 63, subpart NNNN, 67 FR 48254, July 23, 2002).

(4) Operations coating plastic and metal parts of metal furniture that would be subject to the proposed metal furniture surface coating NESHAP (67 FR 20206, April 24, 2002).

(5) Operations coating plastic and wood parts of wood building products that would be subject to the proposed wood building products surface coating NESHAP (67 FR 42400, June 21, 2002).

(6) In-mold and gel coating operations in manufacturing of reinforced plastic composites that are subject to the proposed reinforced plastics composites production NESHAP (66 FR 40324, August 2, 2001).

(7) Surface coating of parts that are pre-assembled from plastic and metal components, where greater than 50 percent of the surface area coated is metal and subject to the proposed NESHAP for the surface coating of miscellaneous metal parts and products (subpart MMMM of part 63; 67 FR 52780, August 13, 2002). If you can demonstrate that more than 50 percent of the surface area coated is comprised of metal, then you would need to demonstrate compliance only with the proposed NESHAP for miscellaneous metal parts and products (proposed subpart MMMM of part 63; 67 FR 52780, August 13, 2002). You must maintain records to document that more than 50 percent of the surface area coated is metal.

We have established four subcategories in the plastic parts and products surface coating source category: (1) General use coating, (2) thermoplastic olefin (TPO) coating, (3) headlamp coating, and (4) assembled on-road vehicle coating. The general use coating subcategory includes all plastic parts and products coating operations except TPO, headlamp, and assembled on-road vehicle coating. This includes operations that coat a wide variety of substrates, surfaces, and types of plastic parts, as well as more specialized coating scenarios. Each subcategory consists of all coating operations, including associated surface preparation, equipment cleaning, mixing, storage, and waste handling.

As discussed in section III.A. of this preamble, our analysis of data currently available to us indicates that while subcategories for headlamp coating, TPO coating, and assembled on-road vehicle coating are appropriate, there is no need for further subcategorization. We are, however, interested in public comments regarding whether there is additional information that would indicate the need for a separate subcategory for other plastic coating operations. Subcategorization may be appropriate in operations that employ separate and distinct processes for which there is no technology available (including reformulation) to allow compliance with the general use limits. We welcome public comments and data on any additional separate and distinct coating operations, including facility-specific data on processes, coating and cleaning material usage, emissions, and control techniques that may require consideration for subcategorization.

Late in development of the proposed rule, Department of Defense (DoD) stakeholders approached EPA and suggested that their operations are distinctly different from the kinds of operations addressed in these standards. Furthermore, DoD operations may present unique challenges in permitting, demonstrating compliance, and enforcement of potentially overlapping regulations. The DoD stakeholders suggested that a separate subcategory or source category dealing with multiple surface coating operations performed by DoD civilian and military personnel or performed at DoD installations may be appropriate.

Some of the specific concerns expressed by DoD stakeholders include the requirement to purchase materials that meet military specifications for their surface coating operations. Military specifications are typically based on the coating's performance characteristics (*e.g.*, chemical agent resistance), and the coatings must often be compatible with multiple substrates. These materials are purchased using a stock number which could represent hundreds of different formulations that meet the performance specifications; however, the HAP content of such materials could fluctuate widely between formulations. Additionally, since the materials may be used at the maintenance depot, DoD installation, or in the field, the options available to achieve emissions reductions (*e.g.*, add-on control technology) could be limited. Furthermore, much of DoD equipment is coated as an assembled product comprised of as many as five different substrates, in a wide range of shapes and sizes, which must be capable of serving in a multitude of challenging environments and situations. We are currently evaluating the need for a DoD source category or subcategory, and we request comment on the appropriate approach for addressing unique DoD coating operations.

An alternative approach to establishing separate emission limits for each subcategory would be to establish a "multi-component" emission limit for the entire source category. A multi-component approach could allow sources to calculate a source-specific emission limit based on a weighted-average using the MACT limit and the percentage solids for each component of the limit. The source would then calculate its emission rate to determine compliance with the source-specific emission limit.

The source-specific emission limit would be calculated as follows:

Emission Limit = ["component A" MACT limit) × ("component A" %solids)]+ ["component B" MACT limit) × ("component B" % solids)]

The source's emission rate would be calculated as follows:

$$\text{Emission Rate} = \frac{\text{Total pounds of organic HAP emitted}}{\text{Total pounds of solids used}}$$

The source-specific approach would allow averaging between the different components of the multi-component emission limit. However, there would be some additional requirements. In addition to the monitoring, recordkeeping, and reporting requirements included in these proposed standards, the multi-component emission limit approach would require a source to calculate and record the source-specific emission limit each month. The calculation would reflect a rolling 12-month compliance period based on the amount of coating solids used for each separate component during each rolling 12-month period.

We are requesting comments on the feasibility, and burden associated with each of the approaches (*i.e.*, subcategory or multi-component emission limits). Comments should include specific examples and supporting information for the advantages and disadvantages of each approach.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to other rules if they perform surface coating of parts or products that are regulated by other NESHAP. For example, there may be facilities that coat plastic and metal parts using the same or different coatings, coating application processes, and conveyance equipment, either simultaneously or at alternative times. These facilities could be required to demonstrate compliance with two surface coating NESHAP (*e.g.*, proposed subparts MMMM (67 FR 52780, August 13, 2002) and PPPP) with limits based on different units (*i.e.*, pounds HAP emitted per gallon of coating solids used versus pounds HAP emitted per pound of coating solids used) and possibly different compliance dates. Furthermore, because their operations may not be dedicated to particular parts or products (*e.g.*, job shops or contract coaters), their compliance requirements could vary over time due to fluctuations in their operations. These types of facilities may present unique challenges with respect to permitting, demonstrating compliance (*e.g.*, possibly dual recordkeeping and reporting requirements), and enforcement.

Historically, EPA has handled this situation by giving facilities the option of complying with the NESHAP with the most stringent emission limits (*i.e.*, the NESHAP that results in the lowest emissions from the affected source), in lieu of complying with each otherwise applicable NESHAP. This option would require sources to demonstrate which of the applicable standards is the most stringent. This demonstration is necessary because, as stated previously, the emission limits may be expressed in different units. Under this compliance option, once the demonstration is made, a facility would ensure that all coating operations covered by a NESHAP comply with the single, more stringent NESHAP. This option allows a facility operational flexibility, while ensuring that the facility is in compliance with the requirements of the CAA (*i.e.*,

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achieving emissions reductions consistent with section 112(d)). This option may also simplify permitting and provide clarity for compliance and enforcement. The EPA believes that this approach towards addressing potentially overlapping regulations is appropriate in this proposed rule and solicits comments on the desirability of providing such a compliance option.

A second option which may provide facilities with the desired operational flexibility is the "predominant activity" approach which was shared with stakeholders in May 2001. This approach would allow a facility to determine the predominant coating activity (*e.g.*, plastic parts) among all the coating activities that are subject to a NESHAP (*e.g.*, plastic parts and miscellaneous metal products) and demonstrate compliance with the NESHAP established for the source category represented by the predominant activity. A source not electing to comply with the predominant activity option would continue to be subject to separate NESHAP and would need to demonstrate compliance with each one.

Although EPA received encouraging feedback for a predominant activity approach from many stakeholders (*e.g.*, industry representatives, State and local authorities), there were few suggestions on either how to measure and document predominant (*e.g.*, surface area coated, volume solids used, *etc.*) or the appropriate criteria for establishing which activity is predominant (*e.g.*, a numerical percent of the facility's surface coating operations that would qualify appropriately as predominant).

In defining a predominant activity approach, the criteria used to define predominant should, for practical reasons, minimize fluctuation of the predominant activity between different source categories at job shops/contract coaters. In addition, the basis (*e.g.*, surface area coated, volume solids used, etc.) for measuring predominant would need to be established and should be suitable for all sources. One possible way to help minimize fluctuation over time in what is identified as the predominant activity would be to base predictions about which activity would be predominant on appropriate records for the most recent 3–5 years. Sources would then comply with the NESHAP relevant to that predominant activity under its operating permit and would have the opportunity to review its predominant activity designation, and modify as appropriate, during each permit renewal.

In implementing a predominant activity option, EPA needs to balance good public policy (avoiding overlapping regulations where feasible and sensible) with ensuring emissions reductions consistent with the legislative mandate of sections 112(d)(3) and (i)(3) of the CAA (*i.e.*, ensuring emission reductions achieved under the predominant activity option are comparable to those achieved through compliance with each applicable NESHAP separately). We specifically request comment on how a predominant activity approach should be structured to ensure that emission reductions achieved are consistent with the requirements of sections 112(d)(3) and (i)(3).

A third option under consideration is the development of a subcategory for facilities with coating operations that would otherwise be subject to more than one coating NESHAP. Based on survey data collected under CAA section 114, we would establish a MACT floor that reflects HAP emission rates from the relevant coating operations. The practical advantages associated with this approach are similar to the benefits stated for the more stringent NESHAP approach (*i.e.*, simplification of permitting, clarity of requirements, and achieving mandated emissions reductions). This approach may also limit the need for separate tracking systems for surface coating operations. A disadvantage with this option is that it may not afford facilities as much operational flexibility as the other two options.

A fourth option is to expand the definition of the source category and four subcategories currently under consideration to include "incidental" surface coating operations being performed on other substrates (*e.g.* metal) that meet the applicability criteria for another surface coating source category. Under this approach, a facility could demonstrate that a specified percentage of its NESHAP-regulated surface coating activities are within the scope of a specific category or subcategory. The remaining NESHAP-regulated coating operations would be considered incidental for purposes of determining which category or subcategory the overall operations were in, as they would represent a small portion of the total coating operations. Once this demonstration is made, all NESHAP-regulated coating operations conducted at the facility would be included in, and subject to, the emission limitations for the primary source category.

We request comment on the feasibility, benefits, and disadvantages associated with each option presented. We also request comment on additional options for consideration. For all options, we request facility-specific data that would support the recommended option. These data include information on the processes; coating and cleaning material usage; the proportion of coating and cleaning material being used with different substrates; and the difference in the emission reductions achieved based on complying with each applicable NESHAP separately and the option being recommended. Additionally, we request comment and supporting documentation on the criteria (*e.g.*, numerical percentage) and basis (*e.g.*, surface area coated) for determining predominant activity and defining incidental operations. Finally, we request comment on the burden associated with monitoring, recordkeeping, and reporting for each option.

Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines—40 CFR Part 60, Subpart TTT

The new source performance standards (NSPS) for plastic parts for business machines apply to facilities that apply coatings to plastic parts for use in business machines that began construction, reconstruction, or modification after January 8, 1986. The pollutants regulated are volatile organic compounds (VOC). Emissions of VOC are limited to 1.5 kilogram VOC per liter (kg VOC/liter) of coating solids applied for primers and color coats, and 2.3 kg VOC/liter of coating solids applied for texture coatings and touch-up coatings. The affected facility is each individual spray booth.

The proposed rule differs from the NSPS in three ways. First, the affected source for the proposed rule is defined broadly as the collection of all coating operations and related activities and equipment at the facility, whereas the affected facility for the NSPS is defined narrowly as each individual spray booth. The broader definition of an affected source allows a facility's emissions to be combined for compliance purposes. Second, the proposed rule regulates organic HAP. While most, although not all, organic HAP emitted from plastic parts and products surface coating operations are VOC, some VOC are not listed as HAP. Therefore, the NSPS regulate a potentially different range of pollutants than the proposed NESHAP. Third, the HAP emission limitations in the proposed rule are based on the amount of coating solids used at the affected source. The VOC limitations in the NSPS are based on the amount of coating solids actually applied to the plastic parts and products, which necessitates estimates of transfer efficiency in the compliance calculations.

Because of the differences between the NSPS and the proposed NESHAP, compliance with either rule cannot be deemed compliance with the other. A plastic parts and products surface coating operation that meets the applicability requirements of both the NSPS and the proposed NESHAP must comply with both. Overlapping reporting, recordkeeping, and monitoring requirements may be resolved through your title V permit.

Aerospace Manufacturing and Rework Facilities NESHAP (40 CFR Part 63, Subpart GG)

The aerospace NESHAP establish HAP and VOC emission limitations for aerospace manufacturing and rework facilities that produce or repair aerospace vehicles (*e.g.*, airplanes, helicopters, space vehicles) or vehicle parts. The aerospace NESHAP apply only to parts and assemblies that are critical to the aerospace vehicle's structural integrity or flight performance. Therefore, the possibility exists that some facilities would be subject to the requirements of both the aerospace NESHAP and the proposed plastic parts and products surface coating NESHAP. For example, a facility that performs maintenance operations consisting of both exterior and interior reconstruction and overhaul of commercial airplanes may perform coating of plastic parts, such as tray tables and seat panels, that are not considered critical to the structural integrity or flight performance. These parts may be removed from the airplane and painted on-site to cover scratches and other wear marks before being reinstalled. Such coating activities and associated equipment would be subject to the proposed plastic parts and products coating NESHAP.

We do not foresee that any conflicts will exist between the requirements for the aerospace NESHAP and the proposed plastic parts and products surface coating NESHAP. If a plastic part that is critical to the aerospace vehicle's structural integrity or flight performance is coated, the coating operation for that part will fall under the aerospace NESHAP. Only plastic parts that are not critical to the aerospace vehicle's structural integrity or flight performance will fall under the proposed plastic parts and products surface coating NESHAP.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

The proposed NESHAP would regulate emissions of organic HAP. Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from plastic parts and products surface coating operations include MEK, MIBK, toluene, and xylenes. These compounds account for over 85 percent of this source category's nationwide organic HAP emissions. Other organic HAP emissions identified include EGBE and glycol ethers. The majority of organic HAP emissions from a facility engaged in plastic parts and products surface coating operations can be attributed to the application, drying, and curing of coatings. The remaining emissions are primarily from cleaning operations. In most cases, organic HAP emissions from mixing, storage, and waste handling are relatively small.

The organic HAP emissions associated with coatings (the term "coatings" includes protective and decorative coatings as well as adhesives) occur due to volatilization of solvents and carriers. Coatings are most often applied either by using a spray gun in a spray booth or by dipping the substrate in a tank containing the coating. In a spray booth, volatile components evaporate from the coating as it is applied to the part and from the overspray. The coated part then passes through a flash-off area where additional volatiles evaporate from the coating. Finally, the coated part passes through a drying/curing oven, or is allowed to air dry, where the remaining volatiles are evaporated.

Organic HAP emissions also occur from the activities undertaken during cleaning operations where solvent is used to remove coating residue or other unwanted materials. Cleaning in this industry includes cleaning of spray guns and transfer lines (*e.g.*, tubing or piping), tanks, and the interior of spray booths. Cleaning also includes applying solvents to manufactured parts prior to coating application and to equipment (*e.g.*, cleaning rollers, pumps, conveyors, *etc.*).

Mixing and storage are other sources of emissions. Organic HAP emissions can occur from displacement of organic vapor-laden air in containers used to store organic HAP solvents or to mix coatings containing organic HAP solvents. The displacement of vapor-laden air can occur during the filling of containers and can be caused by changes in temperature or barometric pressure, or by agitation during mixing. Volatilization of organic HAP can also occur during waste handling.

D. What Is the Affected Source?

We define an affected source as a stationary source, a group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed standards define the affected source as the collection of all operations associated with the surface coating of plastic parts and products within each of the four subcategories (TPO, headlamps, assembled on-road vehicle and general use). These operations include preparation of a coating for application (*e.g.*, mixing with thinners or other additives); surface preparation of the plastic parts and products; coating application and flash-off; drying and/or curing of applied coatings; cleaning of equipment used in surface coating; storage of coatings, thinners, and cleaning materials; and handling and conveyance of waste materials from the surface coating operations. The coating operation does not include the application of coatings using hand-held aerosol containers.

A few facilities have coating operations in more than one subcategory. For example, a few facilities have TPO coating operations that are in the TPO coating subcategory and also have other plastic parts and products coating operations that are in the general use coating subcategory. In such a case, the facility would have two separate affected sources: (1) The collection of all operations associated with the surface coating of TPO, and (2) the collection of all operations associated with general use coating. Each of these affected sources would be required to meet the emission limits that apply to its subcategory.

Another example of a facility with coating operations in more than one subcategory would be a facility that assembles and paints motor homes. The use of adhesives, caulks, sealants, and associated materials in assembling the motor home would be in the general use coating subcategory and would constitute one affected source. The use of coatings and associated materials in painting the assembled motor home would be in the assembled on-road vehicle subcategory and would constitute a second affected source.

E. What Are the Emission Limits, Operating Limits, and Other Standards?

Emission Limits. We are proposing to limit organic HAP emissions from each existing affected source using the emission limits in Table 2. The proposed emission limits for each new

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or reconstructed affected source are given in Table 3.

TABLE 2.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

For any affected source applying coating to . . .	The organic HAP emission limit you must meet, in kg organic HAP emitted/kg coating solids used (lb organic HAP source emitted/lb coating solids used), is:
TPO substrates	0.23
Headlamps	0.45
Aassembled on-road vehicles	1.34
Other (general use) plastic parts and products.	0.16

TABLE 3.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

For any affected source applying coating to . . .	The organic HAP emission limit you must meet, in kg organic HAP emitted/kg coating solids used (lb organic HAP emitted/lb coating solids used), is:
TPO substrates	0.17
Headlamps	0.26
Assembled on-road vehicles	1.34
Other (general use) plastic parts and products.	0.16

You can choose from several compliance options in the proposed rule to achieve the emission limits. You could comply by applying materials (coatings, thinners and other additives, and cleaning materials) that meet the emission limits, either individually or collectively, during each compliance period. You could also use a capture system and add-on control device to meet the emission limits. You could also comply by using a combination of both approaches.

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the proposed operating limits would apply to you. These limits are site-specific parameter limits that you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures, you would establish average volumetric flow rates or duct static pressure limits for each capture device (*e.g.*, a hood or enclosure) in each capture system. For capture systems that are permanent total enclosures, you would establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you would monitor the combustion temperature. For catalytic oxidizers, you would monitor the temperature immediately before and after the catalyst bed, or you would monitor the temperature before the catalyst bed and prepare and implement an inspection and maintenance plan that includes periodic catalyst activity checks. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you would monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers for which you do not conduct a liquid-liquid material balance, you would monitor the outlet gas temperature from the condenser. For concentrators, you would monitor the temperature of the desorption stream and the pressure drop across the concentrator.

The site-specific parameter limits that you establish must reflect operation of the capture system and control device during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work Practice Standards. If you use an emission capture system and control device for compliance, you would be required to develop and implement a work practice plan to minimize organic HAP emissions from mixing operations, storage tanks and other containers, and handling operations for coatings, thinners, cleaning materials, and waste materials.

If you use a capture system and control device for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction of the capture system and control device.

The NESHAP General Provisions at 40 CFR part 63, subpart A, codify certain procedures and criteria for all 40 CFR part 63 NESHAP and would apply to you as indicated in the proposed rule. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The proposed rule refers to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed rule, all of the applicable General Provisions requirements would apply to you.

F. What Are the Testing and Initial Compliance Requirements?

Existing affected sources would have to be in compliance with the final rule no later than 3 years after the effective date of the final rule. New and reconstructed sources would have to be in compliance upon initial startup of the affected source or by the effective date of the final rule, whichever is later. The effective date is the date on which the final rule is published in the **Federal Register**. However, affected sources would not be required to demonstrate compliance until the end of the initial compliance period when they will have accumulated the necessary records to document the rolling 12-month organic HAP emission rate.

Compliance with the emission limits is based on a rolling 12-month organic HAP emission rate determined each month. Each 12-month period is a compliance period. The initial compliance period, therefore, is the 12-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following 12 months. We have defined "month" as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being "in compliance" means that the owner or operator of the affected source meets the requirements to achieve the proposed emission limitations during the initial compliance period. However, they will not have accumulated the records for the rolling 12-month organic HAP emission rate until the end of the initial compliance period. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance with the organic HAP emission limit and other applicable requirements for that period. If the affected source does not meet the applicable limit and other requirements, it is out of compliance.

Emission Limits. There are three proposed options for complying with the proposed emission limits, and the testing and initial compliance requirements vary accordingly. You may choose to use one compliance option for the entire affected source, or you may use different compliance options for different coating operations within the affected source. You may also use different compliance options for the same coating operation at different times.

Option 1: Compliant Materials

This option is a pollution prevention option that allows you to easily demonstrate compliance by using low-HAP or non-HAP coatings and other materials. If you use coatings that, based on their organic HAP content, individually meet the kg (pound (lb)) organic HAP emitted per kg (lb) coating solids used levels in the applicable emission limits and you use non-HAP thinners and other additives and cleaning materials, this compliance option is available to you. For this option, we have minimized recordkeeping and reporting requirements. You can demonstrate compliance by using manufacturer's formulation data and readily available purchase records to determine the organic HAP content of each coating or other material and the amount of each material used. You would not need to perform any detailed emission rate calculations.

If you demonstrate compliance based on the coatings and other materials used, you would demonstrate that the organic HAP content of each coating meets the emission limits for the appropriate subcategory as shown in Tables 2 and 3, and that you used no organic HAP-containing thinners, other additives, or cleaning materials. For example, if you are using the compliant materials option and your existing source has TPO coating operations, headlamp coating operations, assembled on-road vehicle coating operations, and general use coating operations, you would demonstrate that: (1) Each coating used in the TPO coating operation has an organic HAP content no greater than 0.23 kg (0.23 lb) organic HAP emitted per kg (lb) coating solids used; (2) each coating used in the headlamp coating operations has an organic HAP content no greater than 0.45 kg (0.45 lb) organic HAP emitted per kg (lb) coating solids used; (3) each coating used in the assembled on-road vehicle coating operations has an organic HAP content no greater than 1.34 kg (1.34 lb) organic HAP emitted per kg (lb) coating solids used; (4) each general use coating has an organic HAP content no greater than 0.16 kg (0.16 lb) organic HAP emitted per kg (lb) coating solids used; (5) and that you used no organic HAP-containing thinners, other additives, or cleaning materials. Note that "no organic HAP" is not intended to mean absolute zero. Materials that contain "no organic HAP" should be interpreted to mean materials that contain organic HAP levels below the levels specified in § 63.4541(a) of the proposed rule, which are typical reporting levels. These typical reporting levels only count organic HAP that are present at 0.1 percent or more by mass for Occupational Safety and Health Administration (OSHA)-defined carcinogens and at 1.0 percent or more by mass for other compounds.

To determine the mass of organic HAP in coatings, thinners, and cleaning materials and the mass fraction of coating solids, you could rely on manufacturer's formulation data. You would not be required to perform tests or analysis of the material if formulation data are available. Alternatively, you could use results from the test methods listed below. You may also use alternative test methods provided you get EPA approval in accordance with the NESHAP General Provisions, 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes. If you elect to perform tests:

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- The proposed rule would allow you to use nonaqueous volatile matter as a surrogate for organic HAP, which would include all organic HAP plus all other organic compounds, and excluding water. If you choose this option, use Method 24 of 40 CFR part 60, appendix A.
- For mass fraction of coating solids, use Method 24.

Option 2: Compliance Based on the Emission Rate Without Add-on Controls

This option is a pollution prevention option where you can demonstrate compliance based on the organic HAP contained in the mix of coatings, thinners and other additives, and cleaning materials you use. This option allows you the flexibility to use some individual coatings that do not, by themselves, meet the kg (lb) organic HAP emitted per kg (lb) coating solids used levels in the applicable emission limits if you use other low-HAP or non-HAP coatings such that overall emissions from the affected source over a 12-month period meet the emission limits. You must use this option if you use HAP-containing thinners, other additives, and cleaning materials and do not have add-on controls. You would keep track of the mass of organic HAP in each coating, thinner or other additive, and cleaning material, and the amount of each material you use in your affected source each month of the compliance period. You would use this information to determine the total mass of organic HAP in all coatings, thinners and other additives, and cleaning materials divided by the total mass of coating solids used during the compliance period. You would demonstrate that your emission rate (in kg (lb) organic HAP emitted per kg (lb) coating solids used) meets the applicable emission limit. You can use readily available purchase records and manufacturer's formulation data to determine the amount of each coating or other material you used and the organic HAP in each material. The proposed rule contains equations that show you how to perform the calculations to demonstrate compliance.

If you demonstrate compliance using Option 2, you would be required to:

- Determine the quantity of each coating, thinner and other additive, and cleaning material used.
- Determine the mass of organic HAP in each coating, thinner and other additive, and cleaning material using the same types of data and methods previously described for Option 1. You may rely on manufacturer's formulation data or you may choose to use test results as described under Option 1.
- Determine the mass fraction of coating solids for each coating using the same types of data or methods described under Option 1.
- Calculate the total mass of organic HAP in all materials and total mass of coating solids used each month. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the total mass of organic HAP emissions and total mass of coating solids for the initial compliance period by adding together all the monthly values for mass of organic HAP and for mass of coating solids for the 12 months of the initial compliance period.
- Calculate the ratio of the total mass of organic HAP emitted for the materials used to the total mass of coating solids used (kg (lb) organic HAP emitted per kg (lb) of coating solids used) for the initial compliance period.

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• Record the calculations and results and include them in your Notification of Compliance Status.

Note that if you choose to use this option for a particular coating operation rather than for an entire affected source, you would calculate the organic HAP emission rate using just the materials used in that operation. Similarly, if your facility has multiple affected sources using this option (*e.g.*, a TPO affected source, a headlamp affected source, an assembled on-road vehicle affected source, and a general use affected source), you would do a separate calculation for each affected source to show that each affected source meets its emission limit.

Option 3: Emission Rate With Add-on Controls Option

This option allows sources to use a capture system and an add-on pollution control device, such as a combustion device or a recovery device, to meet the emission limits. While we believe that, based on typical emission characteristics, most sources will not use control devices, we are providing this option for sources that can use control devices. Fewer than 10 percent of the existing sources for which we have data use control devices and may continue using the control devices for compliance with the proposed standards. Under this option, testing is required to demonstrate the capture system and control device efficiency. Alternatively, you may conduct a liquid-liquid material balance to demonstrate the amount of organic HAP collected by your recovery device. The proposed rule provides equations showing you how to use records of materials usage, organic HAP contents of each material, capture and control efficiencies, and coating solids content to calculate your emission rate during the compliance period.

If you demonstrate compliance based on this option, you would demonstrate that your emission rate considering controls (in kg (lb) organic HAP emitted per kg (lb) of coating solids used) is less than the applicable emission limit. For a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements would be as follows:

• Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed no later than the compliance date for existing sources and 180 days after the compliance date for new and reconstructed sources.

• Determine the mass of organic HAP in each coating and other material, and the mass fraction of coating solids for each coating used each month of the initial compliance period.

• Calculate the total mass of organic HAP in all coatings and other materials, and total mass of coating solids used each month in the controlled operation or group of coating operations. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.

• Calculate the organic HAP emissions from the controlled coating operations each month using the capture and control efficiencies determined during the performance test, and the total mass of organic HAP in materials used in controlled coating operations that month.

• Calculate the total mass of organic HAP emissions and total volume of coating solids for the initial compliance period by adding together all the monthly values for mass of organic HAP emissions and for mass of coating solids for the 12 months in the initial compliance period.

• Calculate the ratio of the total mass of organic HAP emissions to the total mass of coating solids used during the initial compliance period.

• Record the calculations and results and include them in your Notification of Compliance Status.

• Develop and implement a work practice plan to minimize emissions from storage, mixing, and handling of organic HAP-containing materials.

Note that if you choose to use this option for a particular coating operation rather than for the entire affected source, you would calculate the organic HAP emission rate using just the materials used in that operation. Similarly, if your facility has multiple affected sources using this option (*e.g.*, a TPO affected source, a headlamp affected source, an assembled on-road vehicle affected source, and a general use affected source), you would do a separate calculation for each affected source to show that each affected source meets its emission limit.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you would use specified test methods to determine both the efficiency of the capture system and the emission reduction efficiency of the control device. To determine the capture efficiency, you would either verify the presence of a permanent total enclosure using EPA Method 204 of 40 CFR part 51, appendix M (and all materials must be applied and dried within the enclosure); or use one of three protocols in § 63.4565 of the proposed rule to measure capture efficiency. If you have a permanent total enclosure and all materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, you would assume 100 percent capture.

To determine the emission reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

• Method 1 or 1A for selection of the sampling sites.

• Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.

• Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.

• Method 4 to determine stack moisture.

• Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could choose to determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the controlled coating operations served by the solvent recovery system during each month of the initial compliance period and determine the total volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system during each month of the initial compliance period. Then you would compare the amount recovered to the amount used to determine the overall control efficiency each month and apply this efficiency to the total mass of organic HAP in the materials used to determine total organic HAP emissions for the month. You would total these 12 monthly organic HAP emission values and divide by the total of the 12 monthly values for coating solids used to calculate the emission rate for the 12-month initial compliance period. You would record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you would establish operating limits as part of the initial performance test of a capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and control devices during the most recent performance test, conducted under representative conditions, that demonstrated compliance with the emission limits.

The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.4568 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal or catalytic oxidizer, you would continuously monitor the appropriate temperature and record[1] it at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test and for each consecutive 3-hour period, the average temperature would have to be at or above this limit. For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits would be the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed during the performance test. For each 3-hour period, the average temperature and the average temperature difference would have to be at or above these limits. Alternatively, you would be allowed to meet only the temperature limit before the catalyst bed if you develop and implement an inspection and maintenance plan for the catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature at the time the carbon bed is returned to service (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test and for each consecutive 3-hour period the average temperature would have to be at or below this limit.

If you use a concentrator, you would monitor the temperature of the desorption concentrate stream and the pressure drop across the concentrator. These values would be recorded at least once every 15 minutes. The operating limits would be the average temperature (to be met as a minimum) and the average pressure drop (not to be exceeded) measured during the performance test.

For each capture system that is not a permanent total enclosure, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a permanent total enclosure, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

Work Practices. If you use a capture system and control device for compliance, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. This plan would include a description of all steps taken to minimize emissions from these sources (*e.g.*, using closed storage containers, practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, placing solvent-laden cloths in closed containers immediately after use, *etc.*). You would have to make the plan available for inspection if the Administrator requests to see it.

If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

G. What Are the Continuous Compliance Provisions?

Emission Limits. If you use the compliant materials option (Option 1), you would demonstrate continuous compliance if each coating meets the applicable emission limit and you use no organic HAP-containing thinners, other additives, or cleaning materials. If you use the emission rate without add-on controls option (Option 2), you would demonstrate continuous compliance if, for each 12-month compliance period, the ratio of kg (lb) organic HAP emitted to kg (lb) coating solids used is less than or equal to the applicable emission limit. You would follow the same procedures for calculating the organic HAP emitted to coating solids ratio that you used for the initial compliance period.

For each coating operation on which you use a capture system and control device (Option 3) other than a solvent recovery system for which you conduct a liquid-liquid material balance, you would use the continuous parameter monitoring results for the month as part of the determination of the mass of organic HAP emissions. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you would assume the capture system and control device are achieving the same percent emission reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You would then apply this percent reduction to the total mass of organic HAP in materials used in the controlled coating operations to determine the emissions from those operations during the month. If there were any deviations from the operating limits during the month or any bypasses of the control device, you would account for them in the calculation of the monthly emissions by assuming the capture system and control device were achieving zero emission reduction during the periods of deviation. Then you would determine the organic HAP emission rate by dividing the total mass of organic HAP emissions for the 12-month compliance period by the total mass of coating solids used during the 12-month compliance period. Every month, you would calculate the emission rate for the previous 12-month period.

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For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you would use the liquid-liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions each month. Then you would determine the 12-month organic HAP emission rate in the same manner described above.

Operating Limits. If you use a capture system and control device, the proposed rule would require you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device are operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device with bypass lines that could allow emissions to bypass the control device, you would have to demonstrate that captured organic HAP emissions within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

A deviation would occur for any period of time the bypass monitoring indicates that emissions are not routed to the control device.

Work Practices. If you use an emission capture system and control device for compliance, you would be required to implement, on an ongoing basis, the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standard.

If you use a capture system and control device for compliance, you would be required to operate according to your SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the proposed rule. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notifications. If you own or operate an existing affected source, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency no later than 1 year after the final rule is published in the **Federal Register**. For new and reconstructed sources, you must send the notification within 120 days after the date of initial startup or 120 days after publication of the final rule, whichever is later. That report notifies us and your State agency that you have an existing affected source that is subject to the proposed standards or that you have constructed a new affected source. Thus, it allows you and the permitting authority to plan for compliance activities. You would also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you would conduct a performance test. The performance test would be required no later than the compliance date for an existing affected source. For a new or reconstructed affected source, the performance test would be required no later than 180 days after startup or 180 days after **Federal Register** publication of the final rule, whichever is later. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin and submit a report of the performance test results no later than 60 days after the test.

Notification of Compliance Status. You must submit a Notification of Compliance Status within 30 days after the end of the initial 12-month compliance period. In the notification, you must certify whether each affected source has complied with the proposed standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and provide information on any deviations from the emission limits, operating limits, or other requirements.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification must also include the measured range of each monitored parameter, the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

Recordkeeping Requirements. You must keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep records of the following:

- Organic HAP content or volatile organic matter content and coating solids content (for all compliance options).
- Quantity of the coatings, thinners and other additives, and cleaning materials used during each compliance period (for all compliance options).
- For the emission rate (with or without add-on controls) compliance options, calculations of your emission rate for each 12-month compliance period.
- All documentation supporting initial notifications and notifications of compliance status.

If you demonstrate compliance by using a capture system and control device, you must keep records of the following:

- All required measurements, calculations, and supporting documentation needed to demonstrate compliance with the standards.

- All results of performance tests and parameter monitoring.
- All information necessary to demonstrate conformance with your plan for minimizing emissions from mixing, storage, and waste handling operations.
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed.
- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device.
- Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's SSMP.
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).

The proposed rule would require you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from these records, would need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule including, but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce organic HAP emissions, you would have to make your SSMP available for inspection if the Administrator requests to see it. The plan would stay in your records for the life of the affected source or until the source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superseded versions on record for 5 years following the revision.

Periodic Reports. Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would include them in the report as follows:

- Report each deviation from the emission limit.
- Report each deviation from the work practice standards if you use an emission capture system and control device.
- If you use an emission capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances, report each deviation from an operating limit and each time a bypass line diverts emissions from the control device to the atmosphere.
- Report other specific information on the periods of time the deviations occurred.

You would also have to include in each semiannual report an identification of the compliance option(s) you used for each affected source and any time periods when you changed to another compliance option.

Other Reports. You would be required to submit reports for periods of startup, shutdown, or malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you would report those procedures with your semiannual reports in addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Subcategories?

The surface coating of plastic parts and products is a source category that is on the list of source categories to be regulated because it contains major sources which emit or have the potential to emit at least 9.07 Mg (10 tons) of any one HAP or at least 22.7 Mg (25 tons) of any combination of HAP annually. The proposed rule would control organic HAP emissions from both new and existing major sources. Area sources are not being regulated under this proposed rule.

The plastic parts and products surface coating category consists of facilities that apply protective or decorative coatings and adhesive coatings to plastic parts and products through a post-mold coating process. The surface coating of plastic parts and products includes any facility engaged in the surface coating of plastic parts or products, including panels, housings, bases, covers, and other components formed of synthetic polymers. We use the plastic parts and products lists contained in the SIC and NAICS code descriptions to describe the vast array of plastic parts and products.

Due to the broad scope of the plastic parts and products surface coating source category, the source category definition likewise needs to be broad in order to include the varieties of operations and activities that might occur at these facilities. However, a broad description has the potential to unintentionally include surface coating operations that we would not consider to be part of the source category. We intend the source category to include facilities for which the surface coating of plastic parts and products is either their principal activity or an integral part of a production process that is the principal activity. Most coating operations are located at plant sites that are dedicated to these activities. However, some may be located at sites for which some other activity is principal, such as automobile assembly plants that coat plastic automobile parts or accessories off the assembly line. Co-located surface coating operations comparable to the types and sizes of the dedicated plastic parts surface coating facilities, in terms of the coating operation and applicable emission control techniques, are included in the source category.

We reviewed the available data and information to identify a descriptor common to sources we intended to include in the category that would further help to describe the category. Based on our review, we believe the quantity of coating used is the most equitable descriptor for purposes of defining the scope of the category. Other descriptors that could have been used but were rejected because they would either be too difficult to implement or they are not as equitable as coating usage include production rate, quantity of emissions, and solvent usage.

In selecting the quantity of coating used, we found that facilities in the source category for which data were available to us reported annual coating usage of at least 100 gallons per year. Those facilities that reported below this amount used coatings to assist in or repair minor defects during product assembly operations, and the surface coating operations were not integral to plastic parts and products surface coating. Therefore, the MACT floor determination and the estimated environmental, energy, cost, and economic impacts were based on facilities that used greater than 100 gallons per year. We are not aware of any surface coating operation at a major source that is dedicated to plastic parts and products surface coating that is using less than 100 gallons per year and, thus, did not evaluate whether the MACT level of control would be appropriate for such operations if they exist.

The source category does not include research or laboratory facilities or janitorial, building, and facility maintenance operations, or hobby shops that are operated for personal rather than commercial purposes. The source category also does not include coating of magnet wire, coating of plastics to produce fiberglass boats (except the

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post-mold coating of personal watercraft or their parts), or the extrusion of plastic onto a plastic part or product to form a coating. These activities and operations are not comparable to the types and sizes of the dedicated facilities in terms of coating operations and applicable control techniques and are regulated or are being considered for regulation as part of other source categories. Thus, they are not considered to be within the scope of the source category. The post-mold coating of personal watercraft and their parts is considered within the scope of the source category.

The source category also does not include certain other coatings of plastic parts and products that are already being, or would be, regulated by another NESHAP as part of a different source category. We want to avoid overlap of source categories where coating of the same part would be subject to multiple rules.

Subcategory Selection. The statute gives us discretion to determine if and how to subcategorize. Once the floor has been determined for new or reconstructed and existing affected sources for a source category or subcategory, we must set MACT standards that are no less stringent than the MACT floor. Such standards must then be met by all sources within the source category or subcategory. A subcategory is a group of similar sources within a given source category. As part of the regulatory development process, we evaluate the similarities and differences between industry segments or groups of facilities comprising a source category. In establishing subcategories, we consider factors such as process operations (type of process, raw materials, chemistry/formulation data, associated equipment, and final products); emission characteristics (amount and type of HAP); control device applicability; and opportunities for pollution prevention. We may also consider existing regulations or guidance from States and other regulatory agencies in determining subcategories.

After reviewing survey responses from the industry, facility site visit reports, and information received from stakeholders meetings, we found that the plastic parts and products surface coating industry could be grouped into four subcategories: (1) General use coating, (2) TPO coating, (3) headlamp coating, and (4) assembled on-road vehicle coating. The general use coating subcategory includes all plastic parts and products coating operations except TPO, headlamp, and assembled on-road vehicle coating. This includes operations that coat a wide variety of substrates, surfaces, and types of plastic parts, as well as more specialized coating scenarios. Each of the subcategories includes coating operations, including associated surface preparation, equipment cleaning, mixing and storage, and waste handling.

The TPO coating is considered a separate subcategory from other plastic parts and products coating operations because the surface coating of TPO substrates requires the use of an adhesion promoter in order to apply subsequent coatings to the substrate. The adhesion promoters required in TPO coating operations contain significant levels of organic HAP because these materials contain organic HAP solvents that are capable of wetting the TPO substrate and swelling the rubber content of the substrate. Wetting of the substrate requires a solvent in the adhesion promoter that spreads out over the substrate, and this is dictated by the surface tension of the substrate and the solvent. The surface tensions of organic HAP solvents such as toluene, xylene, and other aromatics are ideal for wetting TPO while other non-HAP solvents have surface tensions too high to allow the adhesion promoter to spread out over the TPO part. In conjunction with adequate wetting of the TPO, the solvents in the adhesion promoter must be capable of migrating through the surface of the TPO substrate to swell the rubber content (elastomer) in the TPO. It is this optimum swelling of the rubber content in the TPO and the subsequent entanglement of the elastomer with the paint that provides the adhesion necessary to coat TPO successfully. Many non-HAP solvents either evaporate too quickly to adequately migrate through and swell the rubber or the solvents swell the rubber content of the TPO to the point of distortion of the part. Therefore, the adhesion promoters used in TPO coating operations often contain high levels of organic HAP solvents to achieve adequate wetting of the substrate, swelling of the rubber, and ultimately, adhesion of the paint to the substrate. The need to use these HAP-containing materials would make it technically difficult for existing facilities coating TPO to achieve the lower emission rates established by facilities that do not coat TPO. In summary, the technical differences in the type of coatings required due to the nature of the TPO substrate warrant a separate subcategory for TPO coating.

Headlamp coating is considered as a separate subcategory because these coating operations require specialized reflective argent coatings and hard clear coatings to meet U.S. Department of Transportation Motor Vehicle Safety Standards for reflectivity, brightness, color, and other performance criteria. The reflective argent coatings often used in automotive headlamp coating operations contain significant levels of organic HAP because these coatings achieve the required reflective aluminum appearance with aluminum pigments contained in the coating. These coatings require the use of aromatic or aliphatic HAP solvents in order to allow the aluminum pigments to rise to the surface correctly to create the reflective finish required by Federal safety standards. The hard clear coatings often used in automotive headlamp coating operations, such as the thermal cure and silicone hardcoat technologies, are required to provide the polycarbonate headlamp substrate with necessary abrasion and scratch resistance. Polycarbonate is currently the only plastic substrate approved by the National Highway Traffic Safety Administration for use in automotive headlamps because this material is shatter resistant and resists high levels of heat. The hard clear coatings used on the polycarbonate headlamps require the use of certain organic HAP solvents, such as butyl cellosolve, in these coatings to avoid etching of the substrate surface. Other non-HAP solvents can etch the surface of the polycarbonate which would deflect light and create performance and safety concerns for the final headlamp product. The need to use these materials would make it technically difficult for existing facilities coating automotive headlamps to achieve the lower emission rates established by facilities that do not coat headlamps. In summary, technical differences in the type of coatings required to meet unique end-product requirements warrant a separate subcategory for headlamp coating.

Assembled on-road vehicle coating is considered a separate subcategory because these coating operations are performed on fully-assembled vehicles that may contain heat sensitive parts. In addition, fully assembled on-road vehicles are physically larger than the other parts and products coated in this source category. The large size and presence of heat sensitive parts make certain lower-HAP technologies, such as heat-cured waterborne coatings, not feasible for use on fully assembled on-road vehicles and make it technically difficult for these sources to achieve the same emission level as sources that do not coat assembled on-road vehicles.

The problems associated with coating of assembled on-road vehicles were first raised by recreational vehicle manufacturers that build motor homes and travel trailers. The EPA recognized that the same problems (*i.e.*, large part size and heat sensitive components) would be encountered by other facilities that coat plastic bodies on other types of assembled on-road vehicles. In addition, some facilities coat a mix of assembled on-road vehicles including automobiles, recreational vehicles, public transportation vehicles, and fleet trucks. Therefore, EPA decided to include all of these in the assembled on-road vehicle subcategory and not limit the subcategory to just recreational vehicles. The on-road vehicle subcategory is limited to only surface coating on fully assembled on-road vehicles in order to avoid an overlap with source categories that include assembly-line coating operations at automobile, light-duty truck, and heavy-duty truck manufacturing facilities.

The EPA also recognizes that most assembled on-road vehicles are a mix of plastic and metal body components. An assembled on-road vehicle coating operation is considered part of this subcategory if greater than 50 percent of the surface being coated on a vehicle is plastic.

B. How Did We Select the Regulated Pollutants?

Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from the surface coating of plastic parts and products include MEK, MIBK, toluene, and xylenes. These compounds account for more than 85 percent of this category's nationwide organic HAP emissions. Other organic HAP emissions include EGBE and other glycol ethers. However, many other organic HAP are used, or can be used, in coatings, thinners, and cleaning materials. Therefore, the proposed rule would regulate emissions of all organic HAP.

Although most of the coatings used in this source category do not contain inorganic HAP, a few special purpose coatings used by a few facilities in this source category contain inorganic HAP such as chromium and lead. No inorganic HAP were reported in cleaning materials. If coatings are applied by spraying, inorganic HAP components remain as solids in the dry coating film on the parts being coated or are deposited onto the walls, floor, and grates of the spray booths in which they are applied. Some of the inorganic HAP particles would be entrained in the spray booth exhaust air. Although these emissions have not been quantified, we believe that the inorganic HAP emission levels are very low. Furthermore, emissions of these materials to the atmosphere are minimal because very few of the facilities in this source category use spray application techniques to apply coatings that contain inorganic HAP compounds. At this time, it does not appear that emissions of inorganic HAP from this source category warrant Federal regulation.

C. How Did We Select the Affected Source?

In selecting the affected source(s) for emission standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category being regulated. The affected source also serves to establish where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms "construction" and "reconstruction" with reference to the term "affected source" (40 CFR 63.2) and provide that new source MACT applies when construction or reconstruction of an affected source occurs (40 CFR 63.5). The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source.

When emission standards are based on a collection of emissions sources or total facility emissions, we select an affected source based on that same collection of emission sources or the total facility as well. This approach for defining the affected source broadly is particularly appropriate for industries where a single emission standard encompassing multiple emission points within the plant provides the opportunity and incentive for owners and operators to utilize control strategies that are more cost effective than if separate standards were established for each emission point within a facility.

The affected source for these proposed standards is broadly defined to include all operations associated with the coating of plastic parts and products and the cleaning of products, substrates or coating operation equipment in a subcategory (*i.e.*, TPO coating, headlamp coating, assembled on-road vehicle coating, or general use coating). These operations include storage and mixing of coatings and other materials; surface preparation of the plastic parts and products prior to coating application; coating application and flash-off, drying and curing of applied coatings; cleaning operations; and waste handling operations.

A few facilities have coating operations in more than one subcategory. For example, a few facilities have TPO coating operations that are in the TPO coating subcategory and also have other plastic parts and products coating operations that are in the general use coating subcategory. In such a case, the facility would have two separate affected sources: (1) The collection of all operations associated with the surface coating of TPO, and (2) the collection of all operations associated with general use coating. Each of these affected sources would be required to meet the emission limits that apply to its subcategory.

In selecting the affected source, we considered, for each operation, the extent to which HAP-containing materials are used and the amount of HAP that are emitted. Cleaning and coating application, flash-off, and curing/drying operations account for the majority of HAP emissions at plastic parts and products surface coating operations. These operations are included in the affected source.

Mixing, storage, and waste handling operations are included in the affected source. Because we are assuming that all the organic HAP in the materials entering the affected source are volatilized (emitted), emissions from operations occurring within the affected source (*e.g.*, mixing operations and storage) are accounted for in the estimate of total materials usage at the affected source.

A broad definition of the affected source was selected to provide maximum flexibility in complying with the proposed emission limits for organic HAP. In planning its compliance, each facility can select among available coatings, thinners and other additives, and cleaning materials, as well as the use of emissions capture and add-on control systems, to comply with the emission limits for each subcategory in the most cost-effective manner. Additional information on the plastic parts and products surface coating operations selected for regulation, and other operations, are included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

The MACT floor analysis was performed using a sourcewide emission rate approach for each of the four subcategories: (1) General use coating, (2) TPO coating, (3) headlamp coating, and (4) assembled on-road vehicle coating. Because organic HAP emissions from an affected source are directly related to the materials used, and since it is very difficult to estimate the emissions that occur in any one area within the affected source, an emission

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rate approach for affected sources in each subcategory is the most feasible way to determine emission limits. The emission rate approach covers the emissions from all areas within the affected source for each subcategory, including the application and curing process, equipment cleaning and surface preparation operations, mixing and storage of organic HAP materials, and waste handling.

The broad emission rate approach will allow for the maximum flexibility for those affected sources in the general use coating subcategory that perform many different types of coating applications and coat many different types of parts during a given year. It would be very difficult to define and set limits on each individual coating step within every coating process. Also, such rules would allow no flexibility and might not be technically feasible for every source. An emission limit that includes all coating operations within an affected source allows an owner/operator to determine how to most efficiently and cost effectively meet the emission limit for each subcategory.

To determine the existing and new source MACT floor for each subcategory, we determined the organic HAP emission rate for each facility in units of kg (lb) organic HAP emitted per kg (lb) of coating solids used for each subcategory. We then ranked the sources in each subcategory from lowest to highest emission rate to identify the best-performing sources. We used information obtained from industry survey responses and subsequent changes and clarifications received from the facilities to estimate the sourcewide organic HAP emission rate from each survey respondent. In the relatively few cases where a facility had coating operations in more than one subcategory (*e.g.*, a TPO coating operation, headlamp coating operation, or assembled on-road vehicle coating operation, and a general use coating operation), we calculated the organic HAP emission rate for each subcategory separately. For facilities that reported no add-on control devices, we calculated total organic HAP emissions by assuming that the organic HAP components in all coatings, thinners and other additives, and cleaning materials are emitted. If add-on control devices were reported, their capture and control efficiencies were taken into account. Sources included in the population for determining the MACT floor emission limits were those facilities that are identified as major sources based on their potential to emit, and those that were identified as "synthetic minor" sources.

For each of the four subcategories, the best-performing 12 percent of sources (or the best five sources) were the sources with the lowest calculated organic HAP emission rates. The average, or arithmetic mean, of the best-performing 12 percent of sources (or best five sources) was calculated to determine the MACT floor level for each subcategory. For the general use coating subcategory, the average of the best-performing 12 percent of existing sources was determined to be 0.16 kg (0.16 lb) organic HAP emitted per kg (lb) coating solids used. For the TPO coating subcategory, the average of the best-performing five existing sources was 0.23 kg (0.23 lb) organic HAP emitted per kg (lb) coating solids used. For the headlamp coating subcategory, the average of the best-performing five existing sources was 0.45 kg (0.45 lb) organic HAP emitted per kg (lb) coating solids used. For the assembled on-road vehicle coating subcategory, the average of the best-performing five existing sources was 1.34 kg (1.34 lb) organic HAP emitted per kg (lb) coating solids used.

The facilities represented by the average MACT floor emission level for each of the subcategories were reviewed to assess the achievability of the emission levels for the range of sources in the subcategory. The parameters that were considered in the review included coating types and technologies, application methods, curing temperatures, substrates, regulatory and performance specifications, location by state, part types, industry sectors and amounts of materials used. The review resulted in the determination that there were no differences in the ability of sources within a given subcategory to achieve the existing source MACT floor emission levels, and therefore, it appears that all sources could achieve the existing source MACT floor emission rate for their subcategory. The MACT floor memorandum in the docket includes additional details of our review. We request comment on the analysis and our conclusions.

The new source MACT floor level for the general use coating subcategory was determined to be the same as the MACT floor level for existing sources. For the general use coating subcategory, the facilities whose emission rates were lower than the existing source floor (0.16 kg (0.16 lb) organic HAP emitted per kg (lb) coating solids used) were evaluated to determine whether one of them could be considered the best-performing similar source and represent the diversity of operations included in the subcategory. We evaluated whether a single source with a lower emission rate was sufficiently similar to all other operations in the subcategory in terms of parts coated, coating types, and application methods used. No single source with an emission rate lower than the existing source MACT floor emission rate represented the full range of variability in the subcategory. For example, some of the facilities with the lowest emission rates used only one or two types of coatings with a narrow range of types of parts and coating application methods. Because a new facility might need to use a variety of coating types and technologies, we rejected facilities using only one or two types of coatings with a limited range of coated parts and application methods as similar sources for the purpose of setting a floor for new sources. Therefore, the new source MACT floor is determined to be the same as the MACT floor for existing sources. You may refer to the MACT floor memorandum in the docket for additional details.

The new source MACT floor levels for the TPO coating and headlamp coating subcategories are more stringent than the existing source MACT floor levels for these subcategories. For the TPO coating subcategory, the best-performing single source achieves an emission level of 0.17 kg (0.17 lb) organic HAP emitted per kg (lb) coating solids used. The facility is using a waterborne TPO coating process. Available information indicates that waterborne coatings are feasible for TPO substrates, including TPO used in external parts such as bumpers, and can meet performance specifications for the coated parts. When designing a new source, it would be feasible to design the TPO coating operations to use a waterborne coating process, or otherwise control emissions to achieve the emission level of the best-performing individual source in this subcategory. Therefore, the MACT floor for new sources in the TPO subcategory is determined to be 0.17 kg (0.17 lb) organic HAP emitted per kg (lb) coating solids used.

For the headlamp coating subcategory, the identification of best-performing similar source was conducted by reviewing the emission rates for existing headlamp coating sources, excluding any organic HAP and solids from adhesives that are used in these operations. The two best-performing headlamp coating sources both use low-HAP, high-solids adhesives in the headlamp operation to do final assembly of the headlamp. While the use of these adhesives is representative of the operations at these existing sources, it is unclear whether new sources in the headlamp coating subcategory would be performing final assembly of the headlamps or would only be coating one component of the headlamp body. The use of adhesives in headlamp coating operations is purely dependent upon individual customer needs and business decisions on whether to assemble the headlamps at the same site. New headlamp sources with lower emission rates that include adhesives do not represent a similar source that would establish a new source level for the range of new sources in the subcategory. The two best-performing similar sources in the headlamp subcategory achieve emission rates (excluding adhesives) of 0.034 kg (0.034 lb) HAP emitted per kg (lb) coating solids used and 0.26 kg (0.26 lb) HAP emitted per kg (lb) coating solids used. The source that is achieving the emission rate of 0.034 kg (0.034 lb) HAP emitted per kg (lb) coating solids used has total enclosures and add-on control devices on a portion of its headlamp coating operation. It is uncertain whether other new headlamp coating sources would be able to use enclosures and add-on control devices and achieve this emission rate. Typical organics stream concentrations estimated for sources in this subcategory are generally too low to make the use of enclosures and control devices technically feasible. However, the source that is achieving the emission rate of 0.26 kg (0.26 lb) HAP emitted per kg (lb) coating solids used coats automotive headlamps using low-HAP, ultra violet (UV)-cure clearcoat technology and low-HAP, vacuum metallizing technology on polycarbonate substrate. Although this emission rate is not achievable for existing sources that do not currently have the capability to use UV-cure clearcoat technology or vacuum metallizing technology, it would be feasible to design a new headlamp coating process to use similar low-HAP, UV-cure clearcoats and low-HAP, vacuum metallizing technology, or otherwise control emissions to achieve the emission level of this best-performing similar source in the headlamp subcategory. Therefore, the MACT floor for new sources in the headlamp coating subcategory is determined to be 0.26 kg (0.26 lb) HAP emitted per kg (lb) coating solids used.

The new source MACT floor level for the assembled on-road vehicle coating subcategory was determined to be the same as the MACT floor level for existing sources. For this coating subcategory, the facilities whose emission rates were lower than the existing source floor (1.34 kg (1.34 lb) organic HAP emitted per kg (lb) coating solids used) were evaluated to determine whether one of them could be considered the best-performing similar source (and sufficiently representative of the diversity of operations encompassing the subcategory). Some of the variables considered were the types of vehicles coated (*e.g.*, motorhomes or towable RVs), the amount of the vehicle coated (either fully painted or only partially painted), whether multiple colors of basecoat were used and the overall ratio of basecoat to clearcoat, and whether or not repair coating operations were performed. Given the diversity of assembled on-road vehicle coating operations observed during EPA site visits and among the facilities present in the MACT database, EPA has determined that the sources with emission rates lower than the existing source MACT floor emission rate are not representative of the possible range of new sources in the subcategory. For example, some facilities may use only a single color of basecoat per vehicle, while others may use up to four colors of basecoat in more elaborate color schemes. Some facilities may apply a single layer of clearcoat while others may apply two or three layers for a more durable finish. Additionally, some facilities may perform a combination of these during a single compliance period. Given the variability in these factors, EPA does not believe that any single source with a lower emission rate than the existing source floor represents a similar source for the full range of variability for this subcategory. Therefore, the new source MACT floor is determined to be the same as the MACT floor for existing sources.

After the MACT floors have been determined for new and existing sources in a source category or subcategory, we must set emission standards that are technically achievable and no less stringent than the floors. Such standards must then be met by all sources within the category or subcategory. We identify and consider any reasonable regulatory alternatives that are "beyond-the-floor," taking into account emissions reductions, cost, non-air quality health and environmental impacts, and energy requirements. These alternatives may be different for new and existing sources because of different MACT floors, and separate standards may be established for new and existing sources.

No options beyond the MACT floor could be identified for the general use coating subcategory that would be technically feasible for all new or existing facilities in the subcategory.

For the TPO coating subcategory, the use of a waterborne coating technology was identified as a beyond-the-floor option for existing sources to be considered. There are currently at least two existing sources that coat TPO using waterborne adhesion promoters and other coatings, and the new source MACT floor (0.17 kg (0.17 lb) HAP emitted per kg (lb) coating solids used) is based on a facility using the waterborne TPO coating process. We considered the beyond-the-floor option of requiring other existing sources coating TPO to switch their TPO coating operations to the waterborne process. However, requiring existing sources to switch to waterborne coating technology would require many costly retrofits to an existing TPO coating operation, including the addition of special pretreatment steps prior to coating application, the installation of curing ovens that aren't currently available at all existing TPO facilities, a lengthening of the coating line to allow for increased drying/flash-off time required for waterborne coatings, and a switch to stainless steel spray guns and lines to prevent corrosion of equipment. Information from an existing TPO source that retrofitted its existing coating lines to allow for waterborne TPO coating indicates that their cost to switch to waterborne coating was approximately $9 million. The HAP emissions reductions that would be achieved by a typical existing source complying with the MACT floor for TPO coating sources would be approximately 75 percent reduction. If the same typical existing source achieved the beyond the floor level of 0.17 kg (0.17 lb) HAP emitted per kg (lb) coating solids used, it would achieve approximately an additional 7 percent emission reduction. Without having information on the benefits that would be achieved by further reducing emissions beyond-the-floor, we do not believe the additional cost of going beyond the floor is warranted at this time without a further evaluation of risk. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. After implementation of these standards, we will evaluate the remaining health and environmental risks that may be posed as a result of exposure to emissions from the plastic parts and products surface coating source category. At that time, we will determine whether the additional costs are warranted in light of the available risk information.

For the headlamp coating subcategory, we considered two low-HAP technologies as beyond-the-floor options for existing sources. These technologies are UV-cure clearcoat and vacuum metallizing. There are currently two existing sources that use UV-cure

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clearcoats and one existing source that uses vacuum metallizing to obtain the necessary reflectivity for the headlamps. The new source MACT floor for headlamp coating (0.26 kg (0.26 lb) HAP emitted per kg (lb) coating solids used) is based on a facility using both technologies to coat automotive headlamps.

We considered the beyond-the-floor option of requiring other existing sources to switch their coating operations to either of these low-HAP technologies. However, based on industry information, requiring existing sources to switch to UV-cure clearcoats or vacuum metallizing could require costly retrofits to an existing headlamp coating operation. The switch to UV-cure clearcoat technology could require extensive modifications to coating line design as well as the installation of UV-lamps to cure the coatings. Furthermore, since UV-cure processes do not have production capacities as high as thermal-cure clearcoat processes, existing sources could be required to build additional coating lines to maintain the same production capacity, and this would require more floor space.

The switch to vacuum metallizing from liquid argent coatings could require extensive modifications to the coating line design and raw materials used, as well as the purchase and installation of vacuum metallizing equipment. A single vacuum metallizing chamber can produce approximately 500,000 headlamp lens bodies a year and could cost approximately $2 million per chamber. Many sources could need multiple chambers. In addition to the purchase and installation of vacuum metallizing chambers, existing sources would need to purchase more expensive raw plastic materials (*i.e.*, thermoplastics) in order to achieve the beyond-the-floor level of 0.26 kg (0.26 lb) organic HAP emitted per kg (lb) coating solids used. Vacuum metallizing requires an absolutely smooth surface for proper reflectivity, and this can be achieved with thermoplastics. Less expensive thermoset plastics that can be used in liquid argent coating processes do not produce the necessary surface to vacuum metallize, without a pre-coating step that would result in additional HAP emissions. For an existing facility to switch to vacuum metallizing from liquid argent coating without adding a pre-coating step, the cost of thermoplastic raw materials could be three times the cost of thermoset materials. Therefore, assuming existing headlamp coating sources would require at least two vacuum metallizing chambers and a switch to thermoplastic raw materials, retrofitting an existing headlamp source could result in capital costs of at least $4 million for the metallizing chambers and an annual material purchase cost of three times current annual material costs. These costs do not account for additional process line modifications, oven replacements, and testing requirements that will vary in cost from source to source.

The HAP emission reductions that would be achieved by a typical existing source complying with the MACT floor for headlamp coating sources would be approximately 78 percent reduction. The incremental emission reduction that would be achieved for the same typical source to reduce its emissions to the beyond-the-floor level would be approximately 9 percent. Without having information on the benefits that would be achieved by further reducing emissions beyond-the-floor, we do not believe the additional cost of going beyond the floor is warranted at this time without a further evaluation of risk. Therefore, we are not requiring beyond-the-floor levels of emission reductions at this time. After implementation of these standards, we will evaluate the remaining health and environmental risks that may be posed as a result of exposure to emissions from the plastic parts and products surface coating source category. At that time, we will determine whether the additional costs are warranted in light of the available risk information.

No options beyond the MACT floor could be identified for the assembled on-road vehicle coating subcategory that would be technically feasible for all new or existing facilities in the subcategory.

Add-on controls were also reviewed to determine if a facility using add-on controls would represent a technically feasible beyond-the-floor option for all new or existing sources in any of the four subcategories. Add-on controls are used at a few individual facilities in the plastic parts and products surface coating source category and three of its four subcategories. No add-on controls are used in the assembled off-road vehicle subcategory. However, based on typical organics stream concentrations estimated for typical facilities in the four subcategories, add-on control techniques are generally not technically feasible. Therefore, add-on control techniques were not considered as a beyond-the-floor option.

For existing sources, we based the proposed standards on the existing source MACT floors for each of the four subcategories. As described earlier, we determined that beyond-the-floor options were not technically or economically feasible for all existing sources. For the same reasons, we based the proposed standards for new sources on the new source MACT floor.

The MACT levels of control for new and existing sources can be achieved in several different ways. Many sources would be able to use lower-HAP coatings, although they may not be available to meet the needs of every source. If a source is also using cleaning materials that contain organic HAP, then it may be able to switch to lower-HAP or non-HAP cleaning materials, which are widely available, to reduce the sourcewide organic HAP emissions rate to the MACT level. Other available options might be the use of capture systems and add-on control devices to reduce emissions.

We note here that our assumption, used in the development of the MACT floors, that 100 percent of the organic HAP in the materials used are emitted by the affected source would not apply when the source sends organic HAP-containing waste materials to a facility for treatment or disposal. We made that assumption because the industry survey responses provided little information as to the amount of organic HAP recovered and recycled or treated and disposed. We, therefore, concluded that offsite or onsite treatment and disposal may not be common within the plastic parts and products surface coating industry. We recognize, however, that some facilities may conduct such activities and should be allowed to account for such activities in determining their emissions. Thus, the proposed rule allows you to reduce the organic HAP emissions by the amount of any organic HAP contained in waste treated or disposed at a hazardous waste treatment, storage, and disposal facility that is regulated under 40 CFR part 262, 264, 265, or 266.

E. How Did We Select the Format of the Proposed Standards?

We selected the format of the proposed standards to be an emission rate expressed in terms of the mass of organic HAP emitted per mass of coating solids used. The emission rate format would allow plastic parts and products surface coating operation owners and operators flexibility in choosing any combination of means (including coating reformulation, use of lower-HAP or non-HAP materials, solvent elimination, work practices, and add-on control devices) that is workable for their particular situation to comply with the emission limits.

We selected mass of coating solids used as a component of the proposed format to normalize the rate of organic HAP emissions across all sizes and types of facilities. We also selected kg (lb) organic HAP emitted per kg (lb) coating solids used because this is consistent with the data generally available in this industry through Material Safety Data Sheets and other manufacturers' formulation data. Considering the primary means of compliance is likely to be the use of low- and no-organic HAP coatings and other materials, this format best ensures that comparable levels of control are achieved by all affected sources. Also, this format allows sources flexibility to use a combination of emission capture and control systems, as well as low-HAP content coatings and other materials.

Other choices for the format of the proposed standards that we considered, but rejected, included a usage limit (mass per unit time) and a never-to-be-exceeded limit on the organic HAP content of each coating, solvent, or cleaning material. As it is not our intent to limit a facility's production under these proposed standards, we rejected a usage limit. We also rejected a never-to-be-exceeded organic HAP content limit in order to provide for averaging of HAP emissions from the materials used during the compliance period. In this decision, we considered the nature of the available data, as well as the need to allow for seasonal variations and frequent changes in some coating operations, such as job shops. Finally, we rejected a percent reduction limit as most plastic parts and products surface coating facilities are not expected to use capture systems and add-on control devices for compliance.

In lieu of emission standards, section 112(h) of the CAA allows work practice standards or other requirements to be established when a pollutant cannot be emitted through a conveyance or capture system, or when measurement is not practicable because of technological and economic limitations. Many plastic parts and products surface coating facilities use some type of work practice measure to reduce HAP emissions from mixing, cleaning, storage, and waste handling areas as part of their standard operating procedures. They use these measures to decrease solvent usage and minimize exposure to workers. However, we do not have data to quantify accurately the emissions reductions achievable by the work practice measures. The level of emissions depends on the type of equipment and the work practices used at the facility and would be very site-specific. For example, emissions from solvent-laden rags used to clean spray booths would depend on the method used to isolate and store such rags. In addition to lacking adequate data and information to quantify an emissions level for such operations, it is not practicable to measure emissions from these operations since they often occur in large open areas not amenable to testing. Therefore, work practice standards are appropriate for such operations under section 112(h) of the CAA.

Under the compliance options where emissions are reduced by using low- or no-HAP materials, the compliance determination procedure assumes that all the organic HAP in the materials entering the affected source are volatilized (emitted). Therefore, emissions from operations occurring within the affected source (*e.g.*, mixing operations) are accounted for in the determination of total materials usage and emission rate at the affected source. This may not be true when you comply by using capture systems and add-on control devices, particularly if some coating operations at your facility use capture systems and add-on control devices and others do not. In this case, you might determine usage of coatings and other materials in the controlled coating operations by some method other than total solvent purchase records. It is possible that emissions from mixing and transport of the materials prior to their use in the controlled coating operation might not be included in your usage and emission rate calculations. Emissions from mixing, storage, and waste handling operations are often not routed to the control devices and would not be practicable to measure for inclusion in a determination of compliance with the emission limit. Therefore, the proposed rule would require development and implementation of an emission reduction work practice plan to assure that emissions are reduced from such operations.

F. How Did We Select the Testing and Initial Compliance Requirements?

The proposed standards would allow you to choose among several options to demonstrate compliance with the proposed standards for organic HAP: compliant materials (*i.e.*, coatings and other materials with low or no organic HAP); emission rate without add-on controls option; or emission rate with add-on controls option.

Compliant Materials Option. You would be required to document the organic HAP content of all coatings (general use, TPO, headlamp, and assembled on-road vehicle coatings) on an as-received basis and show that each is less than the applicable emission limit. You would also have to show that each thinner, other additive, and cleaning material on an as-received basis contains no organic HAP. Note that "no organic HAP" is not intended to mean absolute zero. Materials that contain "no organic HAP" should be interpreted to mean materials that contain organic HAP levels below 0.1 percent by mass for OSHA-defined carcinogens and 1.0 percent by mass for other compounds.

You may use manufacturer's formulation data to demonstrate the HAP content of each material and the solids content of each coating. If you choose to use test data, you would use the following procedures on each coating, thinner or other additive, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and before any alteration. If you recycle or reclaim coatings, thinners, cleaning materials, or other additives at your facility, you do not need to demonstrate that these materials meet the emission limit, provided they were initially demonstrated to comply with the compliant material option.

Method 311 is the method developed by EPA for determining the mass fraction of organic HAP in coatings and has been used in previous surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed standards for determining organic HAP content.

Method 24 is the method developed by EPA for determining the mass fraction of volatile matter for coatings and can be used if you choose to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In past standards, VOC emission control measures have been implemented in coating industries, with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

Method 24 is the method specified for determining the coating solids content of each coating. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

Emission Rate Without Add-on Controls Option. To demonstrate initial compliance using this option, you would calculate the organic HAP emission rate for one or more coating operations in each affected source, based on the mass of organic HAP in all coatings, thinners and other additives, and cleaners, and the mass of coating solids used during the compliance period. You would demonstrate that your emission rate does not exceed the

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applicable emission limit for the affected source. You would determine the HAP content from manufacturer's formulation data or by using EPA Method 24 or 311 as discussed previously.

Emission Rate With Add-on Controls Option. If you use a capture system and control device other than a solvent recovery device for which you conduct a liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency using EPA Method 25 or 25A depending on the type of control device and the outlet concentration. You would also need to determine the capture efficiency of the capture system using EPA Methods 204 and 204A through 204F. For a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the quantity of volatile matter applied and the quantity recovered during the initial compliance period to determine its overall control efficiency. For both cases, the overall control efficiency would be combined with the monthly mass of organic HAP in the coatings and other materials used to calculate the monthly organic HAP emissions in kg (lb) HAP emitted. The monthly amount (kg (lb)) of coating solids used would also be determined. These values would be combined to calculate your emission rate for the 12-month compliance period according to equations in the proposed rule. You would demonstrate that your emission rate does not exceed the applicable emission limit for the affected source. If you conduct a performance test, you would also determine parameter operating limits during the test. The proposed test methods for the performance test have been required in many NSPS for industrial surface coating sources under 40 CFR part 60 and NESHAP under 40 CFR part 63. We have not identified any other methods that provide advantages over these methods.

G. How Did We Select the Continuous Compliance Requirements?

To demonstrate continuous compliance with either the compliant materials option or the emission rate without add-on controls option, you would need records of the data and calculations supporting your determination of the organic HAP content and solids content of each material used. You would also need records of the quantity of coatings and other materials used. For the compliant materials option, you would demonstrate compliance for each material used. For the emission rate without add-on controls option, you would demonstrate compliance with the applicable 12-month emission limit on a monthly basis using data from the previous 12 months of operation.

If you use the emission rate with add-on controls option, you would also be required to continuously monitor operating parameters of capture systems and control devices and maintain records of this monitoring. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and/or operating limits.

We are proposing that certain parameters be continuously monitored for the types of capture systems and control devices commonly used in the industry. These monitoring parameters have been used in other standards for similar industries and control devices. The values of these parameters are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the capture system and control device.

You would be required to determine 3-hour average values for most monitored parameters for the controlled coating operations within the affected source. We selected this averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

If you conduct liquid-liquid material balances, you would need records of the quantity of volatile matter used and the quantity recovered by the solvent recovery system. You would demonstrate compliance with the emission limit on a monthly basis using data from the previous 12 months of operation.

H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 2 of the proposed subpart PPPP. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with, and effective enforcement of, the proposed standards, modifying them as appropriate for the plastic parts and products surface coating source category.

I. How Did We Select the Compliance Date?

You would be allowed 3 years to comply with the final standards for existing affected sources. This is the maximum period allowed by the CAA. We believe that 3 years for compliance is necessary to allow adequate time to accommodate the variety of compliance methods that existing sources may use. Most sources in this category would need this 3-year maximum amount of time to develop and test reformulated coatings, particularly those that may opt to comply using a different lower-emitting coating technology. We want to encourage the use of these pollution prevention technologies. In addition, time would be needed to establish records management systems required for enforcement purposes. Some sources may need the time to purchase and install emission capture and control systems. In such cases, you would need to obtain permits for the use of add-on controls, which will require time for approval from the permitting authority.

The CAA requires that new or reconstructed affected sources comply with standards immediately upon startup or the effective date of the final rule, whichever is later.

IV. Summary of Environmental, Energy, and Economic Impacts

For the purpose of assessing impacts, we assumed that all sources would convert to liquid coatings, thinners, and other additives with lower organic HAP content than those presently used and would convert to lower-HAP or no-HAP cleaning materials rather than using add-on control devices, except for those already using add-on control devices.

A. What Are the Air Impacts?

The 1997 nationwide baseline organic HAP emissions for the 202 major source plastic parts and products surface coating facilities of which EPA is aware are estimated to be 9,820 tpy. Implementation of the emission limitations as proposed would reduce these emissions by approximately 80 percent to 2,260 tpy. In addition, the proposed emission limitations will not result in any significant secondary air impacts. We expect that the majority of facilities will switch to low- or no-organic HAP-containing materials to comply with the standards rather than installing add-on control devices. Thus, increases in electricity consumption (which could lead to increases in emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide from electric utilities) will be minimal.

B. What Are the Cost Impacts?

The total capital cost (including monitoring costs) for existing sources is estimated to be approximately $803,830. The nationwide annual cost (including monitoring, recordkeeping, and reporting costs) for existing sources is approximately $10.7 million per year. Costs for new sources were based on an estimate of six new sources being constructed within 5 years after promulgation of the final standards. The total capital cost (including monitoring costs) for new sources is $28,000. The total annual cost (including monitoring, recordkeeping, and reporting costs) for new sources is estimated to be approximately $194,000 per year.

Cost estimates are based on information available to the Administrator and presented in the economic analysis of this rule. The costs are calculated assuming that the majority of sources would comply by using lower HAP-containing or non-HAP coatings and cleaning materials because such materials are generally available, and add-on controls would not be technically feasible for typical facilities. Waterborne coatings are a type of potentially lower-HAP coating which could be used by facilities and may contribute to higher costs due to increased drying times or temperatures that may be needed for waterborne coatings. However, the data available in the plastic parts ICR database did not indicate any definite relationship between coating types and drying times or curing temperatures. We also assumed that facilities presently equipped with add-on controls would continue to operate those control devices and capture systems and would perform the required performance tests and parameter monitoring. During development of the proposed emission limitations, limited information was available on the costs associated with the switch to low-HAP or non-HAP coatings and cleaning materials. Thus, we request comment on the assumptions and methodology used to determine these costs. Any comments should provide detailed information that includes identification of the coatings or cleaning materials (and associated costs) currently being used and the coatings or cleaning materials (and associated costs) that would be used to comply with the proposed emission limitations, as well as the basis for the cost information. You may refer to the Determination of Baseline Emissions and Costs and Emissions Impacts for New and Existing Sources in the Plastic Parts and Products Surface Coating Source Category memorandum in the docket for additional details.

C. What Are the Economic Impacts?

We prepared an economic impacts analysis (EIA) to evaluate the impacts the proposed rule would have on the plastic parts and products surface coating industry, consumers, and society. Economic impacts were calculated on a facility-specific basis, as well as on a market segment basis (*e.g.*, automobile manufacturing, sporting goods, electronics equipment, etc.). Economic impact indicators examined included price, output, and employment impacts.

The EIA shows that the expected price increase for affected plastic parts and products would be less than 0.1 percent as a result of the proposed standards. Therefore, we do not expect any adverse impact to occur for those industries that produce or consume plastic parts and products such as home appliances, computer hardware producers, motor vehicle manufacturers, and recreational vehicle manufacturers.

The distribution of costs across plastic parts and products production facilities is slanted toward the lower impact levels with many facilities incurring costs related only to annually recurring monitoring, reporting, and recordkeeping activities. The EIA indicates that these regulatory costs are expected to represent only 0.25 percent of the value of coating services, which should not cause producers to cease or alter their current operations. Hence, no firms or facilities are at risk of closures because of the proposed standards.

D. What Are the Non-air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low-organic HAP content coatings, thinners and other additives, and cleaning materials at affected sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There would be no change in the utility requirements associated with the use of these materials, so there would be no change in the amount of energy consumed as a result of the material conversion. We estimate that the proposed emission limitations will have a minimal impact on water quality because only a few facilities are expected to comply by making process modifications or by using add-on control devices that would generate wastewater. However, because many low-HAP and no-HAP materials are waterborne, an increase in wastewater generation from cleaning activities may result. Although additional wastewater may be generated by facilities switching to waterborne coatings, the amount of wastewater generated by these facilities is not expected to increase significantly. We also estimate that the proposed emission limitations will result in a decrease in the amount of both solid and hazardous waste from facilities, as the majority of facilities will be using lower organic HAP-containing materials which will result in a decrease in the amount of waste materials that would have to be disposed of as hazardous. In addition, we expect that the majority of facilities will comply by using low-HAP or no-organic HAP-containing materials rather than add-on control devices. Thus, there will be little or no increase in energy usage caused by the operation of add-on controls.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10,

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1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that this proposed rule does not have "federalism implications" because it does not meet the necessary criteria. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, or the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate plastic parts and products surface coating facilities. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish environmental standards based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects. Affected sources are expected to comply with the proposed rule through pollution prevention rather than end-of-pipe controls, and therefore, there would be no increase in energy usage.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this proposed rule for any 1 year has been estimated to be slightly less than $11 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 or 1,000 employees, depending on the size definition for the affected NAICS Code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. It should be noted that companies in 32 NAICS codes are affected by this proposed rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration size standards (13 CFR part 121).

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that 67 of the 130 firms, or 51 percent of the total, affected by this proposed rule may be small entities. While the number of small firms appears to be a large proportion of the total number of affected firms, the small firms only experience 21 percent of the total national compliance cost of $11 million (1997 $). Of the 67 affected small firms, only three firms are estimated to have compliance costs that exceed 1 percent of their revenues. The maximum impact on any affected small entity is a compliance cost of 1.8 percent of its sales. Finally, while there is a difference between the median compliance cost-to-sales estimates for the affected small and large firms (0.08 percent compared to 0.01 percent for the large firms, and 0.03 percent across all affected firms), no adverse economic impacts are expected for either small or large firms affected by the proposed rule. Therefore, the affected small firms are not disproportionately affected by this proposed rule as compared to the affected large firms.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The Agency has also reached out to small entities as part of our outreach to affected industries. Representatives of small entities have participated in stakeholder meetings held during the last 3 years as well as site visits conducted by the EPA for data gathering purposes. Small entities will be afforded extensive flexibility in demonstrating compliance through pollution prevention rather than the use of add-on control technology. We are proposing compliance options which give small entities flexibility in choosing the most cost-effective and least burdensome alternative for their operation. For example, a facility could purchase and use low-HAP coatings and other materials (*i.e.*, pollution prevention) that meet the proposed standards instead of using add-on capture and control systems. This method of compliance can be demonstrated with minimum burden by using purchase and usage records. No testing of materials would be required, as the facility owner could show that their coatings and other materials meet the emission limits by providing formulation data supplied by the manufacturer.

We continue to be interested in the potential impacts of the proposed standards on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2044.01) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information collection requirements are not effective until OMB approves them.

The information collection requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require maintaining records of all coatings, thinners and other additives, and cleaning materials data and calculations used to determine compliance. This information includes the volume used during each compliance period, mass fraction of organic HAP, density, and mass fraction of coating solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected source's emissions for each 12-month compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The monitoring, recordkeeping, and reporting burden in the 3rd year after the effective date of the promulgated rule is estimated to be 118,835 labor hours at a cost of $5.4 million for new and existing sources. This estimate includes the cost of determining and recording organic HAP content, solids content, and density, as needed, of the regulated materials, and developing a system for determining and recording the amount of each material used and performing the calculations needed for demonstrating compliance.

For those affected sources using an add-on control device to comply, the costs also include a one-time performance test and report (with repeat tests where needed) of the add-on control device, one-time purchase and installation of CPMS, one-time submission of a SSMP, and any required startup, shutdown, and malfunction reports. Total capital/startup costs associated with the monitoring requirements over the 3-year period of

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the ICR are estimated at $133,000, with operation and maintenance costs of $655 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington DC 20460 (202 566–1700); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 4, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by January 3, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency does not use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A–F, and 311. The search and review results have been documented and are placed in the docket (Docket No. A–99–12) for this proposed rule.

Six VCS: ASTM D1475–90; ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference in EPA Method 24. In addition, we are separately specifying the use of ASTM D1475–98, "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products," for measuring the density of individual coating components, such as organic solvents.

Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311. The VCS ASTM D4457–85 (Reapproved 1996), "Standard Test Method for Determination of Dichloromethane (Methylene chloride) and 1,1,1-Trichloroethane (Methyl chloroform) in Paints and Coatings by Direct Injection into a Gas Chromatograph," is not a complete alternative to EPA Method 311, but is an acceptable alternative to EPA Method 311 for the following two HAP: (1) Dichloromethane (methylene chloride) and (2) 1,1,1-Trichlorethane (methyl chloroform). Therefore, EPA will incorporate by reference ASTM D4457 into 40 CFR 63.14 in the future.

In addition to the VCS EPA proposes to use in this proposed rule, the search for emission measurement procedures identified 17 other VCS. The EPA determined that 13 of these 17 standards were impractical alternatives to EPA test methods for the purposes of this proposed rulemaking. Therefore, EPA does not propose to adopt these standards today. (*See* docket A–99–12 for further information on the methods.)

The following four of the 17 VCS identified in this search were not available at the time the review was conducted for the purposes of this proposed rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A; and ISO/PWI 17895, "Paints and Varnishes—Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints," for EPA Method 24. While we are not proposing to include these four VCS in today's proposal, the EPA will consider the VCS when finalized.

The EPA takes comment on the compliance demonstration requirements in this proposed rulemaking and specifically invites the public to identify potentially-applicable VCS. Commentors should also explain why this proposed rule should adopt these VCS in lieu of or in addition to EPA's method. Emission test methods submitted for evaluation should be accompanied by a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Sections 63.4541, 63.4551, 63.4561, 63.4565, and 63.4566 of the proposed standards list the EPA testing methods included in the proposed standards. Under 40 CFR 63.7(f) of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 8, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart PPPP to read as follows:

Subpart PPPP—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products

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Tables to Subpart PPPP of Part 63

Table 1 to Subpart PPPP of Part 63—Operating Limits if Using the Emission Rate with Add-On Controls Option.

Table 2 to Subpart PPPP of Part 63—Applicability of General Provisions to Subpart PPPP of Part 63.

Table 3 to Subpart PPPP of Part 63—Default Organic HAP Mass Fraction of Solvents and Solvent Blends.

Table 4 to Subpart PPPP of Part 63—Default Organic HAP Mass Fraction for Petroleum Solvent Groups.

Subpart PPPP—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products

What This Subpart Covers

§ 63.4480 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for plastic parts and products surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.4481 Am I subject to this subpart?

(a) Plastic parts and products include, but are not limited to, plastic components of the following types of products as well as the products themselves: motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products. Except as provided in paragraph (c) of this section, the source category to which this subpart applies is the surface coating of any plastic part or product, as described in paragraph (a)(1) of this section, and it includes the subcategories listed in paragraphs (a)(2) through (5) of this section.

(1) Surface coating is the application of coating to a substrate using, for example, spray guns or dip tanks, and associated activities, such as surface preparation, cleaning, mixing, and storage, etc.

(2) The general use coating subcategory includes all coating operations that are not headlamp coating operations, thermoplastic olefin (TPO) coating operations, or assembled on-road vehicle coating operations.

(3) The headlamp coating subcategory includes the surface coating of plastic components of the body of an automotive headlamp; typical coatings used are reflective argent coatings and clear topcoats.

(4) The TPO coating subcategory includes the surface coating of TPO substrates; typical coatings used are adhesion promoters, primers, color coatings, clear coatings and topcoats. The coating of TPO substrates on fully assembled on-road vehicles is not included in the TPO coating subcategory.

(5) The assembled on-road vehicle coating subcategory includes the surface coating of plastic parts on fully assembled motor vehicles and trailers intended for on-road use, including, but not limited to, plastic parts on: automobiles and light trucks that have been repaired after a collision or otherwise repainted, fleet delivery trucks, and motor homes and other recreational vehicles (including camping trailers and fifth wheels). The assembled on-road vehicle coating subcategory does not include the surface coating of plastic parts prior to their attachment to an on-road vehicle on an original equipment manufacturer's (OEM) assembly line. The assembled on-road vehicle coating subcategory also does not include the use of adhesives, sealants, and caulks used in assembling on-road vehicles.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.4482, that uses 100 gallons per year, or more, of coatings in the surface coating of plastic parts and products defined in paragraph (a) of this section; and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any

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combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating that meets the criteria of paragraphs (c)(1) through (12) of this section.

(1) Surface coating conducted at a source that uses only coatings, thinners and other additives, and cleaning materials that contain no organic HAP, as determined according to § 63.4541(a).

(2) Surface coating of plastic subject to the NESHAP for aerospace manufacturing and rework facilities (subpart GG of this part).

(3) Surface coating of plastic and wood subject to the NESHAP for wood furniture manufacturing facilities (subpart JJ of this part).

(4) Surface coating of plastic and metal subject to the NESHAP for large appliance surface coating (subpart NNNN of this part).

(5) Surface coating of plastic and metal subject to the NESHAP for metal furniture surface coating.[1]

(6) Surface coating of plastic and wood subject to the NESHAP for wood building products surface coating.[2]

(7) In-mold coating operations or gel coating operations in the manufacture of reinforced plastic composite parts subject to the NESHAP for reinforced plastics composites production.[3]

(8) Surface coating of parts that are pre-assembled from plastic and metal components, where greater than 50 percent of the coatings (by volume, determined on a rolling 12-month basis) are applied to the metal surfaces, and where the source is subject to the NESHAP for miscellaneous metal parts surface coating.[4] If your source is subject to the NESHAP for miscellaneous metal parts surface coating[5] and you can demonstrate that more than 50 percent of coatings are applied to metal surfaces, then compliance with the NESHAP for miscellaneous metal parts surface coating[6] constitutes compliance with subpart PPPP. You must maintain records (such as coating usage or surface area) to document that more than 50 percent of coatings are applied to metal surfaces.

(9) Surface coating that occurs at research or laboratory facilities or is part of janitorial, building, and facility maintenance operations, or hobby shops that are operated for personal rather than commercial purposes.

(10) Surface coating of magnet wire.

(11) Surface coating of fiberglass boats or parts of fiberglass boats where the facility is subject to the requirements for fiberglass boat manufacturing facilities in the NESHAP for boat manufacturing (subpart VVVV of this part), except where the surface coating of the boat is a post-mold coating operation performed on personal watercraft or parts of personal watercraft. This subpart applies to post-mold coating operations performed on personal watercraft or parts of personal watercraft. For the purposes of this subpart, a personal watercraft is defined as a vessel (boat) which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person or persons sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(12) Operations where plastic is extruded onto the plastic part or product to form a coating.

(d) If you own or operate an affected source that is subject to this subpart and at the same affected source you also perform surface coating subject to any other NESHAP in this part, you may choose to be subject to the requirements of the more stringent of the subparts for the entire surface coating facility. If you choose to be subject to the requirements of another subpart and demonstrate that, by doing so, your facility-wide HAP emissions in kilograms (kg) per year (tons per year) from surface coating operations will be less than or equal to the emissions achieved by complying separately with all applicable subparts, compliance with the more stringent NESHAP will constitute compliance with this subpart.

§ 63.4482 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source within each of the four subcategories listed in § 63.4481(a).

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of plastic parts and products within each subcategory:

(1) All coating operations as defined in § 63.4581;

(2) All storage containers and mixing vessels in which coatings, thinners and other additives, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners and other additives, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new source if it meets the criteria in paragraph (c)(1) of this section and the criteria in either paragraph (c)(2) or (3) of this section.

(1) You commenced the construction of the source after December 4, 2002, by installing new coating equipment.

(2) The new coating equipment is used to coat plastic parts and products at a source where no plastic parts surface coating was previously performed.

(3) The new coating equipment is used to perform plastic parts and products coating in a subcategory that was not previously performed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.4483 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.4540, 63.4550, and 63.4560.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the compliance date is [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your new or reconstructed affected source occurs after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], whichever is later.

(d) You must meet the notification requirements in § 63.4510 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.4490 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (a)(1) through (4) of this section, determined according to the requirements in § 63.4541, § 63.4551, or § 63.4561.

(1) For each new general use coating affected source, limit organic HAP emissions to no more than 0.16 kg (0.16 pound (lb)) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(2) For each new headlamp coating affected source, limit organic HAP emissions to no more than 0.26 kg (0.26 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(3) For each new TPO coating affected source, limit organic HAP emissions to no more than 0.17 kg (0.17 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(4) For each new assembled on-road vehicle coating affected source, limit organic HAP emissions to no more than 1.34 kg (1.34 lb) of organic HAP emitted per kg (lb) of coating solids used during each 12-month compliance period.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (b)(1) through (4) of this section, determined according to the requirements in § 63.4541, § 63.4551, or § 63.4561.

(1) For each existing general use coating affected source, limit organic HAP emissions to no more than 0.16 kg (0.16 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(2) For each existing headlamp coating affected source, limit organic HAP emissions to no more than 0.45 kg (0.45 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(3) For each existing TPO coating affected source, limit organic HAP emissions to no more than 0.23 kg (0.23 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(4) For each existing assembled on-road vehicle coating affected source, limit organic HAP emissions to no more than 1.34 kg (1.34 lb) of organic HAP emitted per kg (lb) of coating solids used during each 12-month compliance period.

§ 63.4491 What are my options for meeting the emission limits?

You must include all coatings (as defined in § 63.4581), thinners and other additives, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.4490. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation, or to multiple coating operations as a group, or to the entire affected source. You may use different compliance options for different coating operations, or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.4530(c), and you must report it in the next semiannual compliance report required in § 63.4520.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.4490, and that each thinner, other additive, and cleaning material used contains no organic HAP. You must meet all the requirements of §§ 63.4540, 63.4541, and 63.4542 to demonstrate compliance with the applicable emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings, thinners and other additives, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.4490, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.4550, 63.4551, and 63.4552 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings, thinners and other additives, cleaning materials used in the coating operation(s), and the emissions reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.4490, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you use this compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.4492, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), and that you meet the work practice standards required in § 63.4493. You must meet all the requirements of §§ 63.4560 through 63.4568 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.4492 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4561(j), you must meet the operating limits specified in table 1 of this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.4567. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in table 1 of this

[1] Proposed at 67 FR 20206, April 24, 2002.
[2] Proposed at 67 FR 42400, June 21, 2002.
[3] Proposed at 66 FR 40323, August 2, 2001.
[4] Proposed at 67 FR 62780, August 13, 2002.
[5] Proposed at 67 FR 52780, August 13, 2002.
[6] Proposed at 67 FR 52780, August 13, 2002.

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subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.4493 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners and other additives, and cleaning materials used in, and waste materials generated by, the controlled coating operation(s) for which you use this option; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners and other additives, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners and other additives, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners and other additives, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.4500 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.4491(a) and (b), must be in compliance with the applicable emission limit in § 63.4490 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.4491(c), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.4490 at all times except during periods of startup, shutdown, and malfunction.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4492 at all times except during periods of startup, shutdown, and malfunction, and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.4493 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.4501 What parts of the General Provisions apply to me?

Table 2 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.4510 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than 1 year after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.4540, § 63.4550, or § 63.4560 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (9) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.4540, § 63.4550, or § 63.4560 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.4491 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.4490, include all the calculations you used to determine the kg (lb) of organic HAP emitted per kg (lb) coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers, or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material, or a summary of the results of testing conducted according to § 63.4541(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner or other additive, and for one cleaning material.

(ii) Mass fraction of coating solids for one coating.

(iii) Density for one coating, one thinner or other additive, and one cleaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.4551.

(8) The calculation of kg (lb) of organic HAP emitted per kg (lb) coating solids used for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 1 of § 63.4541.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month; the calculation of the total mass of coating solids used each month; and the calculation of the 12-month organic HAP emission rate, using Equations 1 and 1A through 1C, 2, and 3, respectively, of § 63.4551.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners and other additives, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4551; the calculation of the total mass of coating solids used each month using Equation 2 of § 63.4551; the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4561 and Equations 2, 3, and 3A through 3C of § 63.4561, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4561; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.4561.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section, except that the requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4493.

§ 63.4520 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.4540, § 63.4550, or § 63.4560 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission will be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section, and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12

months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.4491 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.4491(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations in §§ 63.4490, 63.4492, and 63.4493 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable HAP content requirements in § 63.4490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the applicable emission limit, and each thinner, other additive, and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content (using Equation 1 of § 63.4541) for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by coating suppliers or manufacturers, or test reports).

(iii) The determination of mass fraction of organic HAP for each thinner, other additive, and cleaning material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by material suppliers or manufacturers, or test reports).

(iv) A statement of the cause of each deviation.

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.4490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You must submit the calculations for Equations 1, 1A through 1C, 2, and 3 of § 63.4551; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4551(e)(4). You do not need to submit background data supporting these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) A statement of the cause of each deviation.

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.4490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners and other additives, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4551; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4551(e)(4); the calculation of the total mass of coating solids used each month, using Equation 2 of § 63.4551; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4561, and Equations 2, 3, and 3A through 3C of § 63.4561, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4561; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.4561. You do not need to submit the background data supporting these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 1 of this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 1 of this subpart and each bypass of the add-on control device during the semiannual reporting period, and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 1 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report as described in paragraph (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.4530 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating, thinner or other additive and cleaning material, and the mass fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or mass fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations on which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 1 of § 63.4541.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners and other additives, and cleaning materials used each month, using Equations 1, 1A through 1C, and 2 of § 63.4551 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4551(e)(4); the calculation of the total mass of coating solids used each month using Equation 2 of § 63.4551; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.4551.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings, thinners and other additives, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4551; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4551(e)(4);

(ii) The calculation of the total mass of coating solids used each month, using Equation 2 of § 63.4551;

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4561 and Equations 2, 3, and 3A through 3C of § 63.4561, as applicable;

(iv) The calculation of each month's organic HAP emission rate, using Equation 4 of § 63.4561; and

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.4561.

(d) A record of the name and volume of each coating, thinner or other additive, and cleaning material used during each compliance period. If you are using the compliant material option for all coatings at the source, you may maintain purchase records for each material used rather than a record of the volume used.

(e) A record of the mass fraction of organic HAP for each coating, thinner or other additive, and cleaning material used during each compliance period.

(f) A record of the mass fraction of coating solids for each coating used during each compliance period.

(g) If you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each coating, thinner or other additive, and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.4551 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.4551(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.4551, a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility, and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.4551.

(3) The methodology used in accordance with § 63.4551(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

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(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 1 of this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.4565(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.4564 and 63.4565(b) through (e), including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.4565(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.4566.

(i) Records of each add-on control device performance test conducted according to §§ 63.4564 and 63.4566.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.4567 and to document compliance with the operating limits as specified in Table 1 of this subpart.

(8) A record of the work practice plan required by § 63.4493 and documentation that you are implementing the plan on a continuous basis.

§ 63.4531 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4540 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.4541. The initial compliance period begins on the applicable compliance date specified in § 63.4483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.4541 and supporting documentation showing that during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.4490, and that you used no thinners, other additives, or cleaning materials that contained organic HAP as determined according to § 63.4541(a).

§ 63.4541 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.4490 and must use no thinner or other additive, or cleaning material that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.4492 and 63.4493, respectively. You must conduct a separate initial compliance demonstration for each general use coating, TPO coating, headlamp coating, and assembled on-road vehicle coating affected source. You must meet all the requirements of this section. Use the procedures in this section on each coating, thinner or other additive, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the HAP content of coatings, thinners and other additives, and cleaning materials that are reclaimed onsite and reused in the coating operation for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner or other additive, and cleaning material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.*, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.*, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in these solvent blends listed in Table 3 or 4 of this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 of this subpart, the Method 311 results will take precedence.

(b) *Determine the mass fraction of coating solids for each coating.* You must determine the mass fraction of coating solids (pounds of coating solids per pound of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (b)(1) through (3) of this section. If test results obtained according to paragraph (b)(1) or (2) of this section do not agree with the information obtained under paragraph (b)(3) of this section, the test results will take precedence.

(1) *Method 24 (appendix A to 40 CFR part 60).* You may use Method 24 for determining the mass fraction of solids of coatings.

(2) *Alternative method.* You may use an alternative test method for determining the solids content of each coating once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(3) *Information from the supplier or manufacturer of the material.* You may obtain the mass fraction of coating solids for each coating from the supplier or manufacturer. If there is disagreement between such information and the test method results, then the test method results will take precedence.

(c) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, kg (lb) of organic HAP emitted per kg (lb) coating solids used, of each coating used during the compliance period, using Equation 1 of this section:

$$H_c = \frac{W_c}{S_c} \qquad \text{(Eq. 1)}$$

Where:

H_c = organic HAP content of the coating, kg (lb) of organic HAP emitted per kg (lb) coating solids used.

W_c = mass fraction of organic HAP in the coating, lb organic HAP per lb coating, determined according to paragraph (a) of this section.

S_c = mass fraction of coating solids, lb coating solids per lb coating, determined according to paragraph (b) of this section.

(d) *Compliance demonstration.* The calculated organic HAP content for each coating used during the initial compliance period must be less than or equal to the applicable emission limit in § 63.4490; and each thinner or other additive, and cleaning material used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.4530 and 63.4531. As part of the Notification of Compliance Status required in § 63.4510, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.4490, and you used no thinners, other additives, or cleaning materials that contained organic HAP, determined according to the procedures in paragraph (a) of this section.

§ 63.4542 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period to demonstrate continuous compliance, you must use no coating for which the organic HAP content (determined using Equation 1 of § 63.4541) exceeds the applicable emission limit in § 63.4490, and use no thinner or other additive, or cleaning material that contains organic HAP, determined according to § 63.4541(a). A compliance period consists of 12 months. Each month, after the end of the initial compliance period described in § 63.4540, is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner or other additive, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.4510(c)(6) and 63.4520(a)(5).

(c) As part of each semiannual compliance report required by § 63.4520, you must identify the coating

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operation(s) for which you used the compliant material option. If there were no deviations from the applicable emission limit in § 63.4490, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.4490, and you used no thinner or other additive, or cleaning material that contained organic HAP, determined according to § 63.4541(a).

(d) You must maintain records as specified in §§ 63.4530 and 63.4531.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.4550 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4551. The initial compliance period begins on the applicable compliance date specified in § 63.4483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and mass of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.4551 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.4490.

§ 63.4551 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.4490, but is not required to meet the operating limits or work practice standards in §§ 63.4492 and 63.4493, respectively. You must conduct a separate initial compliance demonstration for each general use coating, TPO coating, headlamp coating, and assembled on-road vehicle coating affected source. You must meet all the requirements of this section. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners or other additives, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option or coating operations in a different affected source in a different subcategory. You do not need to redetermine the mass of organic HAP in coatings, thinners and other additives, or cleaning materials that have been reclaimed onsite and reused in the coating operation for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner or other additive, and cleaning material used during each month according to the requirements in § 63.4541(a).

(b) *Determine the mass fraction of coating solids.* Determine the mass fraction of coating solids (pounds of solids per pound of coating) for each coating used during each month according to the requirements in § 63.4541(b).

(c) *Determine the density of each material.* Determine the density of each coating, thinner or other additive, and cleaning material used during each month from test results using ASTM Method D1475–98, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other such information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (gallons) of each coating, thinner or other additive, and cleaning material used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners and other additives, and cleaning materials used during each month minus the organic HAP in certain waste materials. Calculate the mass of organic HAP emissions using Equation 1 of this section.

$$H_e = A + B + C - R_w \quad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the month, lb.

A = total mass of organic HAP in the coatings used during the month, lb, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners and other additives used during the month, lb, as calculated in Equation 1B of this section.

C = total mass of organic HAP in the cleaning materials used during the month, lb, as calculated in Equation 1C of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, lb, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the lb organic HAP in the coatings used during the month using Equation 1A of this section:

$$A = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \quad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the month, lb.

$Vol_{c,i}$ = total volume of coating, i, used during the month, gallons.

$D_{c,i}$ = density of coating, i, lb coating per gallon coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, lb organic HAP per lb coating.

m = number of different coatings used during the month.

(2) Calculate the lb of organic HAP in the thinners and other additives used during the month using Equation 1B of this section:

$$B = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \quad \text{(Eq. 1B)}$$

Where:

$Vol_{t,j}$ = total volume of thinner or other additive, j, used during the month, gallons.

$D_{t,j}$ = density of thinner or other additive, j, lb per gallon.

$W_{t,j}$ = mass fraction of organic HAP in thinner or other additive, j, lb organic HAP per lb thinner.

n = number of different thinners or other additives used during the month.

(3) Calculate the lb organic HAP in the cleaning materials used during the month using Equation 1C of this section:

$$C = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \quad \text{(Eq. 1C)}$$

Where:

C = total mass of organic HAP in the cleaning materials used during the month, lb.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, gallons.

$D_{s,k}$ = density of cleaning material, k, lb per gallon.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, lb organic HAP per lb material.

p = number of different cleaning materials used during the month.

(4) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (e)(4)(i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations in the affected source for which you use Equation 1 of this section and that will be treated or disposed of by a facility that is regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document the methodology you use to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.4530(h). To the extent that waste manifests include this, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total mass of coating solids used.* Determine the total mass of coating solids used, lb, which is the combined mass of coating solids for all coatings used during each month using Equation 2 of this section:

$$M_{st} = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(M_{s,i}) \quad \text{(Eq. 2)}$$

Where:

M_{st} = total mass of coating solids used during the month, lb.

$Vol_{c,i}$ = total volume of coating, i, used during the month, gallons.

$D_{c,i}$ = density of coating, i, lbs per gallon coating, determined according to 63.4551(c).

$M_{s,i}$ = mass fraction of coating solids for coating, i, lbs solids per lb coating, determined according to § 63.4541(b).

m = number of coatings used during the month.

(g) Calculate the organic HAP emission rate for the 12-month compliance period, kg (lb) of organic HAP emitted per kg (lb) coating solids used, using Equation 3 of this section:

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} M_{st}} \quad \text{(Eq. 3)}$$

Where:

H_{yr} = average organic HAP emission rate for the 12-month compliance period, kg (lb) of organic HAP emitted per kg (lb) coating solids used.

H_e = total mass of organic HAP emissions from all materials used during month, y, lb, as calculated by Equation 1 of this section.

M_{st} = total mass of coating solids used during month, y, lb, as calculated by Equation 2 of this section.

y = identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period must be less than or equal to the applicable emission limit in § 63.4490. You must keep all records as required by §§ 63.4530 and 63.4531. As part of the Notification of Compliance Status required by § 63.4510, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4490, determined according to the procedures in this section.

§ 63.4552 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.4551(a) through (g), must be less than or equal to the applicable emission limit in § 63.4490. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4550 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4551(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.4490, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4510(c)(6) and 63.4520(a)(6).

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(c) As part of each semiannual compliance report required by § 63.4520, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4490, determined according to § 63.4551(a) through (g).

(d) You must maintain records as specified in §§ 63.4530 and 63.4531.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.4560 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.4564, 63.4565, and 63.4566 and establish the operating limits required by § 63.4492 no later than 180 days after the applicable compliance date specified in § 63.4483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4561(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.4483.

(2) You must develop and begin implementing the work practice plan required by § 63.4493 no later than the compliance date specified in § 63.4483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4561. The initial compliance period begins on the applicable compliance date specified in § 63.4483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and mass of coatings solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4564, 63.4565, and 63.4566; results of liquid-liquid material balances conducted according to § 63.4561(j); calculations according to § 63.4561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.4490; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4568; and documentation of whether you developed and implemented the work practice plan required by § 63.4493.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4492 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.4561(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4564, 63.4565, and 63.4566 and establish the operating limits required by § 63.4492 no later than the compliance date specified in § 63.4483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4561(j), you must initiate the first material balance no later than the compliance date specified in § 63.4483.

(2) You must develop and begin implementing the work practice plan required by § 63.4493 no later than the compliance date specified in § 63.4483.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4561. The initial compliance period begins on the applicable compliance date specified in § 63.4483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and mass of coatings solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4564, 63.4565, and 63.4566; results of liquid-liquid material balances conducted according to § 63.4561(j); calculations according to § 63.4561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.4490; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4568; and documentation of whether you developed and implemented the work practice plan required by § 63.4493.

§ 63.4561 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in §§ 63.4490, 63.4492, and 63.4493. You must conduct a separate initial compliance demonstration for each general use coating, TPO coating, headlamp coating and assembled on-road vehicle coating affected source. You must meet all the requirements of this section. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners and other additives, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option or coating operations in a different affected source in a different subcategory. You do not need to redetermine the mass of organic HAP in coatings, thinners and other additives, or cleaning materials that have been reclaimed onsite and reused in the coatings operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.4560(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of paragraph (j) of this section, you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.4492, using the procedures specified in §§ 63.4567 and 63.4568.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.4493 during the initial compliance period, as specified in § 63.4530.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.4490 for each affected source in each subcategory.

(e) *Determine the mass fraction of organic HAP, density, volume used, and mass fraction of coating solids.* Follow the procedures specified in § 63.4551(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner or other additive, and cleaning material used during each month; and the mass fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.4551, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners and other additives, and cleaning materials used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balance.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners and other additives, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.4563(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, then you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_C = \left(A_C + B_C + C_C - H_{UNC}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \quad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emission reduction for the controlled coating operation during the month, lb.

A_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, lb, as calculated in Equation 1A of this section.

B_C = total mass of organic HAP in the thinners and other additives used in the controlled coating operation during the month, lb, as calculated in Equation 1B of this section.

C_C = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, lb, as calculated in Equation 1C of this section.

H_{UNC} = total mass of organic HAP in the coatings, thinners and other additives, and cleaning materials used during all deviations specified in § 63.4563(c) and (d) that occurred during the month in the controlled coating operation, lb, as calculated in Equation 1D of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.4564 and 63.4565 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures specified in §§ 63.4564 and 63.4566 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, lb, using Equation 1A of this section:

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$$A_C = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \quad \text{(Eq. 1A)}$$

Where:

A_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, lb.

$Vol_{c,i}$ = total volume of coating, i, used during the month, gallons.

$D_{c,i}$ = density of coating, i, lb per gallon.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, lb per lb.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners and other additives used in the controlled coating operation, lb using Equation 1B of this section.

$$B_C = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \quad \text{(Eq. 1B)}$$

Where:

B_C = total mass of organic HAP in the thinners and other additives used in the controlled coating operation during the month, lb.

$Vol_{t,j}$ = total volume of thinner or other additive, j, used during the month, gallons.

$D_{t,j}$ = density of thinner or other additive, j, lb per gallon.

$W_{t,j}$ = mass fraction of organic HAP in thinner or other additive, j, lb per lb.

n = number of different thinners and other additives used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, lb, using Equation 1C of this section.

$$C_C = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \quad \text{(Eq. 1C)}$$

Where:

C_C = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, lb.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, gallons.

$D_{s,k}$ = density of cleaning material, k, lb per gallon.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, lb per lb.

p = number of different cleaning materials used.

(4) Calculate the mass of organic HAP in the coatings, thinners and other additives, and cleaning materials used in the controlled coating operation during deviations specified in § 63.4563(c) and (d), using Equation 1D of this section.

$$H_{UNC} = \sum_{h=1}^{q} (Vol_h)(D_h)(W_h) \quad \text{(Eq. 1D)}$$

Where:

H_{UNC} = total mass of organic HAP in the coatings, thinners and other additives, and cleaning materials used during all deviations specified in § 63.4563(c) and (d) that occurred during the month in the controlled coating operation, lb.

Vol_h = total volume of coating, thinner or other additive, or cleaning material, h, used in the controlled coating operation during deviations, gallons.

D_h = density of coating, thinner or other additive, or cleaning material, h, lb per gallon.

W_h = mass fraction of organic HAP in coating, thinner or other additive, or cleaning material, h, lb organic HAP per lb coating.

q = number of different coatings, thinners and other additives, and cleaning materials used.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners and other additives, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating, thinner or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, lb volatile organic matter per lb coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating, thinner or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, lb per gallon, according to § 63.4551(c).

(5) Measure the volume of each coating, thinner or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, gallons.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section:

$$R_v = 100\frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i WV_{c,i} + \sum_{j=1}^{n} Vol_j D_j WV_{t,j} + \sum_{k=1}^{p} Vol_k D_k WV_{s,k}} \quad \text{(Eq. 2)}$$

Where:

R_v = volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the month, lb.

Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, gallons.

D_i = density of coating, i, lb per gallon.

$WV_{c,i}$ = mass fraction of volatile organic matter for coating, i, lb volatile organic matter per lb coating.

Vol_j = volume of thinner or other additive, j, used in the coating operation controlled by the solvent recovery system during the month, gallons.

D_j = density of thinner or other additive, j, lb per gallon.

$WV_{t,j}$ = mass fraction of volatile organic matter for thinner or other additive, j, lb volatile organic matter per lb thinner or other additive.

Vol_k = volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the month, gallons.

D_k = density of cleaning material, k, lb per gallon.

$WV_{s,k}$ = mass fraction of volatile organic matter for cleaning material, k, lb volatile organic matter per lb cleaning material.

m = number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = number of different thinners and other additives used in the coating operation controlled by the solvent recovery system during the month.

p = number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 3 of this section and according to paragraphs (j)(7)(i) through (iii) of this section:

$$H_{CSR} = (A_{CSR} + B_{CSR} + C_{CSR})\left(\frac{R_V}{100}\right) \quad \text{(Eq. 3)}$$

Where:

H_{CSR} = mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, lb.

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, lb, calculated using Equation 3A of this section.

B_{CSR} = total mass of organic HAP in the thinners and other additives used in the coating operation controlled by the solvent recovery system, lb, calculated using Equation 3B of this section.

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, lb, calculated using Equation 3C of this section.

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, lb, using Equation 3A of this section:

$$A_{CSR} = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \quad \text{(Eq. 3A)}$$

Where:

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, lb.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, gallons.

$D_{c,i}$ = density of coating, i, lb per gallon.

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$W_{c,i}$ = mass fraction of organic HAP in coating, i, lb organic HAP per lb coating.

m = number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners and other additives used in the coating operation controlled by the solvent recovery system, lb, using Equation 3B of this section:

$$B_{CSR} = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \quad \text{(Eq. 3B)}$$

Where:

B_{CSR} = total mass of organic HAP in the thinners and other additives used in the coating operation controlled by the solvent recovery system during the month, lb.

$Vol_{t,j}$ = total volume of thinner or other additive, j, used during the month in the coating operation controlled by the solvent recovery system, gallons.

$D_{t,j}$ = density of thinner or other additive, j, lb per gallon.

$W_{t,j}$ = mass fraction of organic HAP in thinner or other additive, j, lb organic HAP per lb thinner or other additive.

n = number of different thinners and other additives used.

(iii) Calculate the mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, lb, using Equation 3C of this section.

$$C_{CSR} = \sum_{k=1}^{p} (Vol_{s,k})(D_{s,k})(W_{s,k}) \quad \text{(Eq. 3C)}$$

Where:

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, lb.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month in the coating operation controlled by the solvent recovery system, gallons.

$D_{s,k}$ = density of cleaning material, k, lb per gallon.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, lb organic HAP per lb cleaning material.

p = number of different cleaning materials used.

(k) *Calculate the total mass of coating solids used.* Determine the total mass of coating solids used, pounds, which is the combined mass of coating solids for all the coatings used during each month in the coating operation or group of coatings for which you use the emission rate with add-on controls option, using Equation 2 of § 63.4551.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, lb, during each month, using Equation 4 of this section:

$$H_{HAP} = H_c - \sum_{i=1}^{q} (H_{C,i}) - \sum_{j=1}^{r} (H_{CSR,j}) \quad \text{(Eq. 4)}$$

Where:

H_{HAP} = total mass of organic HAP emissions for the month, lb.

H_c = total mass of organic HAP emissions before add-on controls from all the coatings, thinners and other additives, and cleaning materials used during the month, lb, determined according to paragraph (f) of this section.

$H_{C,i}$ = total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, lb, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, lb, from Equation 3 of this section.

q = Number of controlled coating operations not using a liquid-liquid material balance.

r = Number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, kg (lb) of organic HAP emitted per kg (lb) coating solids used, using Equation 5 of this section:

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} M_{st,y}} \quad \text{(Eq. 5)}$$

Where:

H_{annual} = organic HAP emission rate for the 12-month compliance period, kg of organic HAP emitted per kg coating solids used (lb organic HAP emitted per lb coating solids used).

$H_{HAP,y}$ = organic HAP emission rate for month, y, determined according to Equation 4 of this section.

$M_{st,y}$ = total mass of coating solids used during month, y, lb, from Equation 2 of § 63.4551.

y = identifier for months.

(n) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit for each subcategory in § 63.4490. You must keep all records as required by §§ 63.4530 and 63.4531. As part of the Notification of Compliance Status required by § 63.4510, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4490, and you achieved the operating limits required by § 63.4492 and the work practice standards required by § 63.4493.

§ 63.4562 [Reserved.]

§ 63.4563 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.4490, the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.4561, must be equal to or less than the applicable emission limit in § 63.4490 for that subcategory. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4560 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4561 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.4490, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4510(b)(6) and 63.4520(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.4492 that applies to you, as specified in Table 1 of this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 1 of this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.4510(b)(6) and 63.4520(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 1 of this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in §§ 63.4561(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.4561.

(d) You must meet the requirements for bypass lines in § 63.4568(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.4510(b)(6) and 63.4520(a)(7). For the purposes of completing the compliance calculations specified in §§ 63.4561(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.4561.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4493. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.4530(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4510(c)(6) and 63.4520(a)(7).

(f) As part of each semiannual compliance report required in § 63.4520, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4490, and you achieved the operating limits required by § 63.4492 and the work practice standards required by § 63.4493 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.4500(c).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4530 and 63.4531.

§ 63.4564 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4560 according to the requirements in § 63.7(e)(1) and under the conditions in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.4565. You must conduct each performance test of an add-on control device according to the requirements in § 63.4566.

§ 63.4565 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.4560.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners and other additives, and cleaning materials used in the coating operation are applied within the capture system; coating

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solvent flash-off, curing, and drying occurs within the capture system; and the removal or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of the production, which includes surface preparation activities and drying and curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners and other additives, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, thinner and other additive, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners and other additives, and cleaning materials used in the coating operation during each capture efficiency test run:

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = Mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, lb.

TVH_i = mass fraction of TVH in coating, thinner or other additive, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, lb TVH per lb material.

Vol_i = total volume of coating, thinner or other additive, or cleaning material, i, used in the coating operation during the capture efficiency test run, gallons.

D_i = density of coating, thinner or other additive, or cleaning material, i, lb material per gallon material.

n = number of different coatings, thinners and other additives, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, lb, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of TVH liquid input used in the coating operation during the capture efficiency test run, lb.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, lb.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners and other additives, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, lb, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, lb, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{(TVH_{captured} + TVH_{uncaptured})} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, lb.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, lb.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.4566 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.4560. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight.

(4) Use Method 4 of appendix A to 40 CFR part 60, to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet to the atmosphere of each device. For example, if one add-on control device is a concentrator with an outlet to the atmosphere for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet to the atmosphere for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions:

$M_f = Q_{sd}\, C_c\, (12)\, (0.0416)\, (10^{-6})$ (Eq. 1)

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Where:

M_f = total gaseous organic emissions mass flow rate, kg/per hour (h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m³) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section:

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}} \cdot 100 \qquad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.4567 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.4560 and described in §§ 63.4564, 63.4565, and 63.4566, you must establish the operating limits required by § 63.4492 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4492.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (i.e, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency according to § 63.4566.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrator.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to

paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture system.* For each capture device that is not part of a PTE that meets the criteria of § 63.4565(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 of this subpart.

(1) During the capture efficiency determination required by § 63.4560 and described in §§ 63.4564 and 63.4565, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.4568 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (nondiverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.4520.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the

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catalyst bed to measure the temperature difference across the bed.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrator.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.4580 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the work practice standards in § 63.4493 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.4581 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Additive means a material that is added to a coating after purchase from a supplier (*e.g.*, catalysts, activators, accelerators).

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive, adhesive coating means any chemical substance that is applied for the purpose of bonding two surfaces together.

Assembled on-road vehicle coating means any coating operation in which coating is applied to the surface of some plastic component or plastic surface of a fully assembled motor vehicle or trailer intended for on-road use, including, but not limited to, plastic components or surfaces on: automobiles and light trucks that have been repaired after a collision or otherwise repainted, fleet delivery trucks, and motor homes and other recreational vehicles (including camping trailers and fifth wheels). Assembled on-road vehicle coating does not include the surface coating of plastic parts prior to their attachment to an on-road vehicle on an original equipment manufacturer's (OEM) assembly line. Assembled on-road vehicle coating also does not include the use of adhesives, sealants, and caulks used in assembling on-road vehicles.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or capture system efficiency means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings and cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, oil, and dried or wet coating (*e.g.*, depainting), from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, liquid plastic coatings, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application (surface preparation) or to remove dried coating; to apply coating to a substrate (coating application) and to dry or cure the coating after application; or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Coating application with handheld, nonrefillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of this subpart.

Coatings solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Facility maintenance means the routine repair or renovation (including the surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity.

General-use coating means any coating operation that is not a headlamp, TPO, or assembled on-road vehicle coating operation.

Headlamp coating means any coating operation in which coating is applied to the surface of some component of the body of an automotive headlamp, including the application of reflective argent coatings and clear topcoats. Headlamp coating does not include any coating operation performed on an assembled on-road vehicle.

Hobby shop means any surface coating operation, located at an affected source, that is used exclusively for personal, noncommercial purposes by the affected source's employees or assigned personnel.

Liquid plastic coating means a coating made from fine, particle-size polyvinyl chloride (PVC) in solution (also referred to as plastisol).

Manufacturer's formulation data means data on a material (such as a

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coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.4541. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of coating solids means the ratio of the mass of solids (also known as the mass of nonvolatiles) to the mass of a coating in which it is contained; lb of coating solids per lb of coating.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as lb of organic HAP per lb of material.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per mass of coating solids for a coating calculated using Equation 1 of § 63.4541. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51 for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Personal Watercraft means a vessel (boat) which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person or persons sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Plastic part and product means any piece or combination of pieces of which at least one has been formed from one or more resins. Such pieces may be solid, porous, flexible or rigid.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. This includes use of a cleaning material to remove dried coating, which is sometimes called "depainting."

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thermoplastic olefin (TPO) coating means any coating operation in which the coatings are components of a system of coatings applied to a TPO substrate, including adhesion promoters, primers, color coatings, clear coatings and topcoats. Thermoplastic olefin coating does not include the coating of TPO substrates on assembled on-road vehicles.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

If you are required to comply with operating limits by § 63.4491(c), you must comply with the applicable operating limits in the following table:

TABLE 1.—TO SUBPART PPPP OF PART 63—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

For the following device	you must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.4567(a).	i. collecting the combustion temperature data according to § 63.4568(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.4567(b); and either.	i. collecting the temperature data according to § 63.4568(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.4567(b)(2); or	i. collecting the temperature data according to § 63.4568(c), reducing the data to 3-hour block averages, and maintaining the 3-hour average temperature difference at or above the temperature difference limit; or

TABLE 1.—TO SUBPART PPPP OF PART 63—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

For the following device	you must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
	c. develop and implement an inspection and maintenance plan according to § 63.4567(b)(4).	i. maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.4567(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. carbon adsorber	a. the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.4567(c).	i. measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to § 63.4568(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.4567(c).	i. measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to § 63.4568(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.4567(d).	i. collecting the condenser outlet (product side) gas temperature according to § 63.4568(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.4567(e).	i. collecting the temperature data according to 63.4568(f); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to § 63.4567(e).	i. collecting the pressure drop data according to 63.4568(f); and ii. reducing the pressure drop data to 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.
6. emission capture system that is a PTE according to § 63.4565(a).	a. the direction of the air flow at all times must be into the enclosure; and either b. the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or. c. the pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.4568(g)(1) or the pressure drop across the enclosure according to § 63.4568(g)(2); and ii. maintaining the facial velocity of air flow through all natural draft or the pressure drop openings at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
7. emission capture system that is not a PTE according to § 63.4565(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.4567(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.4568(g); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table:

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TABLE 2 TO SUBPART PPPP OF PART 63.— APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

Citation	Subject	Applicable to subpart PPPP	Explanation
§63.1(a)(1)–(14)	General Applicability	Yes.	
§63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart PPPP is also specified in §63.4481.
§63.1(c)(1)	Applicability After Standard Established	Yes.	
§63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart PPPP.
§63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§63.2	Definitions	Yes	Additional definitions are specified in §63.4581.
§63.3(a)–(c)	Units and Abbreviations	Yes.	
§63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§63.4(b)–(c)	Circumvention/Severability	Yes.	
§63.5(a)	Construction/Reconstruction	Yes.	
§63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§63.5(e)	Approval of Construction/Reconstruction	Yes.	
§63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	§63.4483 specifies the compliance dates.
§63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	§63.4483 specifies the compliance dates.
§63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes	Only sources using an add-on control device to comply with the standard must complete startup, shutdown, and malfunction plans.
§63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standard.
§63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart PPPP does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§63.6(j)	Presidential Compliance Exemption	Yes.	
§63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§63.4564, 63.4565, and 63.4566.
§63.7(a)(2)	Performance Test Requirements—Dates	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard. Section 63.4560 specifies the schedule for performance test requirements that are earlier than those specified in §63.7(a)(2).
§63.7(a)(3)	Performance Tests Required By the Administrator.	Yes.	
§63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.

TABLE 2 TO SUBPART PPPP OF PART 63.— APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

Citation	Subject	Applicable to subpart PPPP	Explanation
§63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in §63.4568.
§63.8(a)(4)	Additional Monitoring Requirements	No	Subpart PPPP does not have monitoring requirements for flares.
§63.8(b)	Conduct of Monitoring	Yes.	
§63.8(c)(1)–(3)	Continuous Monitoring Sysem (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in §63.4568.
§63.8(c)(4)	CMS	No	§63.4568 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§63.8(c)(5)	COMS	No	Subpart PPPP does not have opacity or visible emission standards.
§63.8(c)(6)	CMS Requirements	No	§63.4568 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	§63.4520 requires reporting of CMS out of control periods.
§63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§63.8(f)(1)–(5)	Use of an Alternative Monitoring Method	Yes.	
§63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§63.8(g)(1)–(5)	Data Reduction	No	§§63.4567 and 63.4568 specify monitoring data reduction.
§63.9(a)–(d)	Notification Requirements	Yes.	
§63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart PPPP does not have opacity or visible emission standards.
§63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§63.9(h)	Notification of Compliance Status	Yes	§63.4510 specifies the dates for submitting the notification of compliance status.
§63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§63.9(j)	Change in Previous Information	Yes.	
§63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§63.4530 and 63.4531.

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TABLE 2 TO SUBPART PPPP OF PART 63.— APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for Startup, Shutdown, and Malfunction records only apply to add-on control devices used to comply with the standard.
§ 63.10(b)(2)(vi)–(xi)		Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.4520(a)(7).
§ 63.10(c)(9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4520.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4520(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart PPPP or does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply withthe standard.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissinos/CMS Performance Reports.	No	§ 63.4520(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart PPPP does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart PPPP does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality	Yes.	

You may use the mass fraction values for which you do not have test data or in the following table for solvent blends manufacturer's formulation data.

TABLE 3 TO SUBPART PPPP OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene
3. Hexane	110–54–3	0.5	n-hexane
4. n-Hexane	110–54–3	1.0	n-hexane
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene
6. Aliphatic 140		0	None
7. Aromatic 100		0.02	1% xylene, 1% cumene
8. Aromatic 150		0.09	Naphthalene
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene
10. Aromatic solvent	64742–94–5	0.1	Naphthalene
11. Exempt mineral spirits	8032–32–4	0	None

TABLE 3 TO SUBPART PPPP OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

Solvent/solvent blend	CAS No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
12. Ligroines (VM & P)	8032–32–4	0	None
13. Lactol spirits	64742–89–6	0.15	Toluene
14. Low aromatic white spirit	64742–82–1	0	None
15. Mineral spirits	64742–88–7	0.01	Xylenes
16. Hydrotreated naphtha	64742–48–9	0	None
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene
18. Stoddard solvent	8052–41–3	0.01	Xylenes
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes
20: Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl

You may use the mass fraction values for which you do not have test data or in the following table for solvent blends manufacturer's formulation data:

TABLE 4 TO SUBPART PPPP OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

Solvent type	Average organic HAP mass fraction	Typical organic HAP percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene
Aromatic [c]	0.06	4% Xylene, 1% Toluerle, and 1% Ethylbenzene

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 3 to this subpart and you only know whether the blend is aliphatic or aromatic.
[b] Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.
[c] Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7385–5]

RIN 2060–AG58

National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes national emission standards for hazardous air pollutants (NESHAP) for facilities that coat paper and other web substrates and are major sources of hazardous air pollutants (HAP) emissions. The standards implement section 112(d) of the Clean Air Act (CAA) to protect public health and the environment by reducing HAP emissions from new and existing facilities. The CAA requires these sources to achieve the maximum degree of reduction in HAP emissions that is achievable. The final standards will eliminate approximately 80 percent of nationwide HAP emissions from facilities that coat paper and other web substrates.

EFFECTIVE DATE: December 4, 2002. The incorporation by reference of certain publications listed in today's final rule is approved by the Director of the Federal Register as of December 4, 2002.

ADDRESSES: *Docket.* Docket No. A–99–09 contains supporting information used in developing the standards for the paper and other web coating source category. The docket is located at the Environmental Protection Agency, Office of Air & Radiation Docket & Information Center, Mail Code 6102T, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodovar, Coating and Consumer Products Group (C539–03), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0283, facsimile number (919) 541–5689, electronic mail (e-mail) address: *almodovar.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

WorldWide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include those listed on the following table. This table is not intended to be exhaustive, but is just a guide to entities likely to be regulated by these standards. It lists the types of entities that may be regulated, but you should examine the applicability criteria in §§ 63.3290 and 63.3300 of the rule to decide whether your facility is regulated by the standards. If you have any questions about whether your facility is subject to the standards, call the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE STANDARDS

Category	NAICS Codes	Examples of Potentially Regulated Entities
Paper and Other Web Coating ..	322211	Those facilities with web coating operations[b] that coat substrate used in products including, but not limited to: corrugated and solid fiber boxes; folding paperboard boxes, including sanitary; flexible packaging (packing paper and plastics film, coated and laminated); pressure sensitive tape and labels, medical tape, duct tape, coated and laminated paper, not elsewhere classified (nec); plastics, foil, and coated paper bags; bags: uncoated paper and multiwall; die-cut paper and board; converted paper and paperboard products, nec (gift wrap, paper wallpaper, cigarette paper); commercial printing, gravure; manifold business forms; plastic aseptic packaging; unsupported plastics film and sheet; laminated plastics plate, sheet, and profile shapes; abrasive products; laminated aluminum (metal) foil and leaf, flexible packaging; photographic equipment and supplies; carbon paper and inked ribbons; linoleum, asphalted-felt base, and other hard surface floor coverings.
	322212	
	[a] 322221	
	322222	
	[a] 322223	
	[a] 322224	
	322225	
	322226	
	[a] 322299	
	323111	
	323116	
	325992	
	326111	
	326112	
	[a] 326113	
	32613	
	326192	
	[a] 32791	
	332999	
	339944	

[a] Facilities in these NAICS codes are expected to be primarily covered under the printing and publishing NESHAP.

[b] Web coating operations refer to the application of a continuous layer of coating material across the entire width or any portion of the width of a web substrate, and any associated curing/drying equipment between an unwind or feed station and a rewind or cutting station where the continuous web substrate is flexible enough to be wound or unwound as rolls.

Judicial Review. Under section 307(b) of the CAA, judicial review of the final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 3, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. What Are the Subject and Purpose of the Rule?
II. Does This Rule Apply to Me?
  A. What Facilities Are Subject to the Rule?
  B. What Is the Affected Source?
III. What Are the Emission Standards?
  A. Emission Limits
  B. Interaction with Other Regulations
IV. When Do I Show Initial Compliance with the Rule?
V. What Testing and Monitoring Must I Do?
  A. Test Methods and Procedures
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VI. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?
  A. Initial Notification
  B. Notification of Performance Tests
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VII. What Major Changes Have We Made to the Rule Since Proposal?
  A. Applicability
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VIII. What Are the Environmental, Energy, and Economic Impacts of the Rule?
  A. Emission Reductions
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  C. Energy Impacts
  D. Cost Impacts
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IX. Administrative Requirements
  A. Executive Order 12866, Regulatory Planning and Review
  B. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
  C. Executive Order 13132, Federalism
  D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
  E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, and Use
  F. Unfunded Mandates Reform Act of 1995
  G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601, *et seq.*
  H. Paperwork Reduction Act
  I. National Technology Transfer and Advancement Act
  J. Congressional Review Act

I. What Are the Subject and Purpose of the Rule?

The CAA requires us to establish standards to control HAP emissions from source categories identified under section 112(c) of the CAA. An initial source category list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The source category list identifies "Paper and Other Web Coating (Surface Coating)" as a source category because it contains major sources of HAP emissions. Under the CAA, a major source is defined as "* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) or more of any one HAP or 25 tpy or more of any combination of HAP." We have estimated that there are over 400 existing paper and other web coating facilities with approximately 203 estimated to be major sources of HAP emissions.

The purpose of the rule is to reduce emissions of HAP from paper and other web coating major sources. The source category is for major sources only. Area sources are not included in this source category and, therefore, are not subject to the standards. We estimate that annual baseline organic HAP emissions from this source category are approximately 37,800 megagrams per year (Mg/yr) (42,000 tpy). The final rule will eliminate approximately 31,300 Mg/yr (34,500 tpy) of these organic HAP emissions (about an 80 percent reduction).

The organic HAP emitted from the paper and other web coating process include toluene, methanol, methyl ethyl ketone, xylenes, phenol, methylene chloride, ethylene glycol, glycol ethers, hexane, methyl isobutyl ketone, cresols and cresylic acid, dimethylformamide, vinyl acetate, formaldehyde, and ethyl benzene. These pollutants can cause reversible or irreversible toxic effects following sufficient exposure. The potential toxic effects include eye, nose, throat, and skin irritation, and blood cell, heart, liver, kidney damage, and possibly cancer.

The degree of adverse effects to human health from exposure to HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced are dependent upon (1) the ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency and duration of exposures; (3) characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle) which vary significantly with the population; and (4) pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

II. Does the Rule Apply to Me?

A. What Facilities Are Subject to the Rule?

The paper and other web coating source category includes any facility that is located at a major source and is engaged in the coating of paper, plastic film, metallic foil, and other web surfaces. Paper and other web coating may be simply referred to as "web coating" since paper is one of several web substrates in the paper and other web coating source category. The source category does not include printing operations covered under the Printing and Publishing NESHAP (40 CFR part 63, subpart KK) or web coating lines subject to the Magnetic Tape Manufacturing NESHAP (40 CFR part 63, subpart EE). The source category does not include coil coating, *i.e.*, the application of a coating to the surface of any metal strip at least 0.15 millimeter (0.006 inch) thick that is packaged in a roll or coil, which is being regulated as a separate source category. However, we have identified facilities that coat metal webs greater than 0.15 millimeter thick that are coated for use in flexible packaging. These web coating lines are part of the paper and other web coating source category and, therefore, are not subject to the Coil Coating NESHAP. Fabric coating operations are also being regulated as a separate source category, except for fabric coating for use in pressure sensitive tape and abrasive materials.

The rule applies to you if you own or operate any web coating lines at a facility that is a major source of HAP emissions. This means that the web coating lines at a major source would be subject to the standards without regard to the relative proportion of HAP emissions from the web coating lines to total HAP emissions at the source.

If your facility is a nonmajor (area) source, *i.e.*, actual and potential annual emissions are less than 10 tons of any single HAP and less than 25 tons of all HAP combined, you would not be subject to the rule.

If your facility is a major source, you would be required to meet the emission limits for all the web coating lines at your facility. We have defined a web to be a continuous substrate (*e.g.*, paper, plastic film, foil) that is capable of being rolled at any point during the coating

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process. We have defined a web coating line to be any number of work stations, of which one or more applies a continuous layer of coating material along the entire width of a continuous web substrate or any portion of the width of the web substrate, and any associated curing/drying equipment between an unwind (or feed) station and a rewind (or cutting) station. As stated before, printing presses subject to the Printing and Publishing NESHAP (40 CFR part 63, subpart KK) are not web coating lines.

B. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific NESHAP applies. Within a source category, we select the specific emission sources (emission points or groupings of emission points) that will make up the affected source for that category. To select these emission sources, we mainly consider the constituent HAP and quantity emitted from individual or groups of emission points.

For the Paper and Other Web Coating NESHAP, the affected source is the collection of all the web coating lines at a facility. As previously stated, a web coating line is defined as any number of work stations, of which one or more applies a continuous layer of coating material across the entire width or any portion of the width of a web substrate, and any associated curing/drying equipment between an unwind or feed station and a rewind or cutting station.

Affiliated operations such as mixing or dissolving of coating ingredients prior to application; coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of coating lines and coating line parts; handling and storage of coatings and solvent; and conveyance and treatment of wastewater are part of the paper and other web surface coating source category. The final distinction between these affiliated operations and other activities that go beyond the affiliated operations described above will be resolved in the context of the Miscellaneous Organic Chemical Manufacturing NESHAP or the Miscellaneous Coating Manufacturing NESHAP, both currently under development. Review of the industry survey data reflected that only a small portion of the surveyed facilities reported any data concerning affiliated operations, and only some of these facilities reported that HAP emissions from affiliated operations were controlled. For facilities that reported control of HAP emissions from these sources, the data were not sufficiently detailed to determine if the reported control represented the facility level of control or the control for one unit operation of this type out of several in the facility. For example, mixing may be performed in a mix room and at the application station. It was not clear from the reported data if a facility reporting capture and control of emissions from mixing operations conducted all mixing at controlled application stations or possibly just a single mix room was controlled. When these operations occur inside a permanent total enclosure, emissions reductions can be achieved at the overall control efficiency of the capture and control system. We were not able to identify emissions reductions for affiliated operations with the available data. Since we were not able to identify emissions reductions for affiliated operations, we believe it is not appropriate at this time to include them in the affected source in the final rule.

The requirements of the future Miscellaneous Organic Chemical Manufacturing NESHAP and the Miscellaneous Coating Manufacturing NESHAP will not apply to affiliated operations located at a facility subject to the rule. Activities which go beyond the affiliated operations described above may, however, be subject to the requirements of the Miscellaneous Organic Chemical Manufacturing NESHAP and the Miscellaneous Coating Manufacturing NESHAP. Language will be added to both of these rules to clarify their applicability.

Coating lines and equipment that are not in the source category and thus, not in the affected source, include those that perform both coating and printing and are subject to the national emission standards for the printing and publishing industry (40 CFR part 63, subpart KK); metal coil coating operations, except for the coating of metal webs greater than 0.15 millimeter thick that are used in flexible packaging; and fabric coating operations, except for fabric coating for use in pressure sensitive tape and abrasive materials.

Many industrial facilities perform both coating and printing operations. Within the printing industry, the product and packaging rotogravure and wide-web flexographic industry segment (that includes the flexible packaging industry as a major subsector) does the most coating, with material use distributed almost equally between inks and other types of coatings. Printing operations are covered under the NESHAP for the printing and publishing industry (40 CFR part 63, subpart KK). The Printing and Publishing NESHAP also include an option for facilities that perform both printing and coating to include certain coating operations as affected sources subject to that rule. Therefore, many facilities that could potentially be subject to the Paper and Other Web Coating NESHAP may have coating lines already subject to the Printing and Publishing NESHAP. Such web coating lines included in compliance demonstrations under the Printing and Publishing NESHAP are not subject to the Paper and Other Web Coating NESHAP. A detailed discussion of the printing and publishing industry is included in the background information document for that industry (Docket No. A–92–42, National Emission Standards for Hazardous Air Pollutants: Printing and Publishing Industry—Background Information for Proposed Standards (EPA–453/R–95–002a)).

III. What Are the Emission Standards?

A. Emission Limits

In the rule, we expressed the emission limit in three formats based on whether HAP emissions are measured in terms of mass of organic HAP applied, mass of coating material applied, or mass of coating solids applied. You may choose to comply with any of these formats (referred to as the "emission limits"). The HAP emission limits are based on emission capture and control technology that can reduce total organic HAP emissions by 95 percent at existing affected sources and 98 percent at new affected sources. The HAP emission limits reflect this level of control by limiting organic HAP emissions to no more than 5 percent and 2 percent of the organic HAP applied each month at existing and new affected sources, respectively; and by equivalently limiting emissions based on the mass of the solids part of your coatings or the mass of your total coating materials. We believe expressing emission limits in this way is appropriately based on the maximum achievable control technology (MACT) level of control and offers flexibility to reduce emissions through the use of control technology, pollution prevention, or a combination of the two.

The three HAP emission limits for existing affected sources are: (1) Limit emissions to no more than 5 percent of the mass of organic HAP applied each month (95 percent reduction); (2) limit the total mass of organic HAP in your coating materials, or the total mass of organic HAP emitted, to no more than 4 mass percent of the total mass of coating materials applied to the web substrate each month; or (3) limit the total mass of organic HAP in your coatings, or the total mass of organic HAP emitted, to no more than 20 mass percent of the total mass of coating solids applied to web substrates each month.

The three HAP emission limits for new affected sources are: (1) Limit emissions to no more than 2 percent of the mass of organic HAP applied each month (98 percent reduction); (2) limit the total mass of organic HAP in your coating materials, or the total mass of organic HAP emitted, to no more than 1.6 mass percent of the total mass of coating material applied to the web substrate each month; or (3) limit the total mass of organic HAP in your coatings, or the total mass of organic HAP emitted, to no more than 8 mass percent of the total mass of coating solids applied to web substrates each month.

Alternatively, the owners or operators of both existing and new affected sources using a thermal oxidizer to control organic HAP emissions may choose to operate the oxidizer such that an outlet HAP concentration of no greater than 20 parts per million by volume (ppmv) by compound on a dry basis is achieved. If 100 percent capture efficiency is achieved and this outlet concentration is achieved on a continuous basis, then the source will be deemed to be in compliance with the emission limit. Our rationale for including this alternative emission limit is included in section VII.B of this preamble.

If your facility is subject to today's rule, the General Provisions (40 CFR part 63, subpart A) also apply to you. The General Provisions codify procedures and criteria we use to carry out all part 63 NESHAP promulgated under the CAA. The General Provisions contain administrative procedures, preconstruction review procedures, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The rule refers to individual sections of the General Provisions that we believe will be of particular interest to you. However, unless specifically overridden in Table 2 of the rule, all of the General Provisions requirements apply to you.

B. Interaction With Other Regulations

You may be subject to both the Paper and Other Web Coating NESHAP and other future or existing rules, such as new source performance standards (NSPS) and State rules requiring reasonably available control technology limits on volatile organic compounds (VOC) emissions. You must comply with all applicable rules. Duplicative recordkeeping and reporting requirements and differences in emission limitations may be resolved through your title V permit.

IV. When Do I Show Initial Compliance With the Rule?

Existing affected sources must comply with the rule no later than 3 years after December 4, 2002. The effective date is December 4, 2002. New or reconstructed affected sources must comply upon start-up or December 4, 2002, whichever is later. Details of the compliance requirements can be found in the General Provisions, as outlined in Table 1 of today's rule.

Before your initial compliance demonstration, you must choose which of the three emission limit options you will use for your affected source. In your initial compliance certification, you must notify the Administrator of your choice and after that, you must monitor and report compliance results accordingly. If you decide to change to other emission limit options, you are also required to notify the Administrator, as with other changes at the facility, as discussed in section VI of this preamble.

V. What Testing and Monitoring Must I Do?

In addition to the specific testing and monitoring requirements specified below for the affected source, the rule adopts the testing requirements specified in § 63.7 of 40 CFR part 63.

A. Test Methods and Procedures

You may comply with the standards by applying materials meeting the organic HAP emission rate limits, by using capture and control equipment to reduce organic HAP emissions by 95 percent at existing affected sources and by 98 percent at new affected sources, or by using a combination of low-organic-HAP materials and capture and control equipment to meet the organic HAP emission rate limits.

If you demonstrate compliance based on the coating materials applied on your web coating lines, you must determine the organic HAP content of materials applied using either EPA Method 311 of appendix A of 40 CFR part 63, an alternative method for determining the organic HAP content (but only after obtaining EPA approval), or the volatile organic content of the coating materials applied as the value for the organic HAP content. The volatile organic content must be determined by EPA Method 24 of appendix A of 40 CFR part 60 (or an approved alternative method). If you are demonstrating compliance by applying coating materials that meet the emission limit based on coating solids applied, the coating solids content of the materials must be determined using EPA Method 24.

You may rely on formulation data to determine the organic HAP content, volatile matter content, or coating solids content as an alternative to performing Method 311 or Method 24 testing.

To demonstrate compliance, you must calculate the average mass of organic HAP in the coating materials applied on the web coating lines and show that it is less than the organic HAP emission limits specified.

If you use an emission capture and control system to comply with the standards, you must demonstrate that the overall control efficiency reduces total organic HAP emissions by at least 95 percent at existing sources and 98 percent at new sources. Alternatively, you may use capture and control equipment in combination with low-organic-HAP materials and demonstrate you meet one of the other organic HAP emission limits. To comply using this combined approach, you must determine the overall control efficiency of the capture and control equipment and the organic HAP content of the materials applied on the web coating lines. If you choose to demonstrate compliance with the emission limit based on coating solids applied, then you must also determine the coating solids content of each coating material used on the web coating lines. These values must be determined for each monthly period.

To determine the capture system efficiency, you must either confirm that your capture system is a permanent total enclosure using EPA Method 204 of 40 CFR part 51, appendix M, in which case you may assume 100 percent capture; or use EPA Methods 204A through F to measure capture efficiency. You may also use any capture efficiency protocol or test method that satisfies either the data quality objectives or lower confidence limit approach as described in appendix A of 40 CFR part 63, subpart KK.

You must determine the emission destruction or removal efficiency of a control device by conducting a performance test or using a continuous emission monitoring system (CEMS). If you use a CEMS, you must determine the inlet and outlet concentration to calculate the control efficiency. The CEMS must comply with performance specification 8 or 9 in 40 CFR part 60, appendix B.

If you conduct a performance test, the destruction or removal efficiency of a control device must be determined based on three runs, each run lasting 1

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hour. Method 1 or 1A of 40 CFR part 60, appendix A, must be used for selection of the sampling sites. Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, must be used to determine the gas volumetric flow rate. Method 3, 3A, or 3B of 40 CFR part 60, appendix A, must be used for gas analysis to determine dry molecular weight. Method 4 of 40 CFR part 60, appendix A, must be used to determine stack moisture. Method 25 or 25A of 40 CFR part 60, appendix A, must be used to determine organic volatile matter concentration, although the use of Method 25A is limited as detailed in the rule. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used if approved by the Administrator.

If you use a solvent recovery system to comply with the requirements of the rule, you may alternatively determine the overall control efficiency using a liquid-liquid material balance. If you demonstrate compliance by using the material balance, you must measure the amount of all coating materials applied during each month to the web coating lines and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month and calculate the overall solvent recovery efficiency.

If you so choose, you may also take into account any amount of organic HAP retained in the coated web or otherwise not emitted to the atmosphere, as discussed in section VII.C of this preamble. The final rule requires you to develop a testing protocol for determining the mass of volatile matter retained or otherwise not emitted to the atmosphere. This protocol would have to be submitted and approved as part of your site-specific test plan.

The test methods we require, as discussed above, are existing EPA methods that are familiar to the industry, readily available, and appropriate to the device or the parameter being measured. The selected tests are expected to establish whether the facility is complying with the standards.

B. Monitoring Requirements

According to paragraph (a)(3) of section 114 of the CAA, monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. For affected sources complying with the standards by using capture and control systems, initial compliance is determined through an initial performance test and ongoing compliance through continuous monitoring. We specify the operating parameters that need to be monitored for certain control devices used in the paper and other web coating industry (thermal and catalytic oxidizers). You must set the values of these parameters, which demonstrate compliance with the standards, during your initial performance test. These values are your "operating limits." If future monitoring shows that capture and control equipment is operating outside the range of values established during the initial performance test, then you are deviating from the operating limits.

If you use a capture and control system to meet the standards, you are required to develop and maintain a plan identifying the operating limit and monitoring procedures for the capture system. You must monitor in accordance with your plan.

If you use a thermal or catalytic oxidizer to comply with the standards, you must monitor temperature using a continuous parameter monitoring system. If you use a thermal oxidizer to comply with the standards, you must establish the average combustion temperature recorded during the performance test as the operating limit. If you use a catalytic oxidizer to comply with the standards , you must establish as the operating limits the average inlet gas temperature and temperature rise across the catalyst bed recorded during the performance test. Alternatively, you may establish as the operating limits for a catalytic oxidizer the average gas temperature at the inlet of the catalyst bed and the average catalyst activity level.

If you use a solvent recovery system to comply with the emission limits, you must conduct monthly liquid-liquid material balances or operate continuous emission monitors.

VI. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?

The rule requires you to comply with notification, recordkeeping, and reporting requirements, generally as described in the General Provisions (*see* Table 2 of the rule) and specifically as designed to support demonstration of compliance with the rule. We believe that these requirements are necessary and sufficient to ensure that you comply with the requirements in the rule (40 CFR part 63 subpart JJJJ).

A. Initial Notification

If the NESHAP apply to you, you must send an initial notification to the EPA Regional Office in the region where your facility is located and to your State agency. If you have an existing affected source, you must submit the initial notification no later than 1 year before the compliance date, which is December 5, 2005. If you have a new or reconstructed affected source, you must submit the notification no later than 120 days after either the date of initial start-up or December 4, 2002, whichever is later.

The initial notification notifies us and your State agency that you have an existing affected source that is subject to the standards or that you have constructed a new affected source. Thus, it allows you and the Federal or State enforcement agency to plan for compliance activities. The General Provisions specify the information you must include in the initial notification and other reporting requirements for both existing affected sources and new or reconstructed affected sources.

B. Notification of Performance Tests

If the rule applies to you, you will have several options for demonstrating compliance. If you demonstrate compliance by using a capture and control system to reduce HAP emissions, you must conduct a performance test as described in the rule. Prior to conducting the performance test, you must notify us or the delegated State or local agency at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions.

C. Notification of Compliance Status

You are required to send a notice of compliance status within 180 days after the compliance date as specified in the General Provisions. This report must include your compliance certification, the results of any performance tests and monitoring, and a description of how you will demonstrate continuing compliance.

In conformance with 40 CFR 63.9(h), the notification of compliance status must identify whether low-HAP materials, emission capture and control systems, or a combination of low-HAP materials and capture and control systems were used to comply with the standards. For capture and control systems, it must also identify the operating limits established during the performance test. Specific reporting requirements are dependent upon how you choose to comply with the standards.

D. Recordkeeping Requirements

Records of the organic HAP, volatile organic content and solids content of each coating applied, and the amount of each coating applied on paper and other web coating lines each month must be maintained to comply with the standards based on organic HAP content or organic HAP emissions on a mass basis.

If capture and control technology is used, you are required to keep records of the equipment monitoring parameter measurements as specified in the final rule. You must also develop a start-up, shutdown, and malfunction plan. You would have to make the plan available for inspection if the Administrator requests to see it. It must stay in your records for the life of the affected source or until the source is no longer required to meet the standards.

E. Periodic Reports

Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual compliance report stating that the affected source has been in compliance. A deviation is any instance in which you fail to meet any requirement or obligation of the standards or any term or condition adopted to meet the standards. The following information would be required in semiannual compliance reports when deviations occur:

- If you are complying by using add-on control devices, report all deviations from the control device operating parameters.
- If you are complying by using solvent recovery systems and liquid-liquid material balance, report material balance calculations for all months when the material balances deviated from the emission limit.
- If you are complying by using add-on controls or solvent recovery systems with continuous emission monitors, report all deviations from the operating parameter values established for the capture system and all deviations from the emission limit.
- If you are complying by using low-HAP coating materials, report all deviations from the emission limit.
- If you are complying by using a combination of capture and control systems with low-HAP coating materials, report all deviations from the emission limit and all deviations from operating parameters described above.

You would also have to send us reports for each semiannual reporting period in which the following occur:

- A change occurs at your facility or within your process that might affect its compliance status.
- A change from what was reported in the initial notice occurs at your facility or within your process.
- You decide to change to another emission limitation option.
- You had a startup, shutdown, or malfunction of an emission control device during the semiannual period and the actions taken were consistent with your startup, shutdown, and malfunction plan (SSMP).

VII. What Major Changes Have We Made to the Rule Since Proposal?

We requested comments from the public on the proposed rule in general, as well as several specific areas. We received 26 comment letters from industry representatives, industry trade groups, and individuals. In response to these comments, we made several changes for the final rule. Many of these changes are clarifications designed to make our intentions clearer. However, some of the changes affect the requirements specified in the proposed rule. The more significant changes to the proposed rule are summarized in the following sections. Our complete responses to public comments for the final rule are contained in the document "National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Category: Paper and Other Web Coating, Summary of Public Comments and Responses on the Proposed Rule" (EPA–453/R–02–005).

A. Applicability

Several comments were received on the potential applicability overlap between the proposed rule and other coating standards. The affected source section has been revised to exclude web coating lines subject to the Magnetic Tape Manufacturing NESHAP (40 CFR part 63, subpart EE) and the Printing and Publishing NESHAP (40 CFR part 63, subpart KK) from the requirements of the final rule (40 CFR part 63, subpart JJJJ). The affected source section has also been revised to exclude web coating lines that will be an affected source under the NESHAP for metal coil surface coating operations currently under development. The final rule has been revised to exclude web coating lines that are engaged in the coating of both fabric and other webs on the same fabric coating line and that will be an affected source under the NESHAP for fabric and other textiles printing, coating, and dyeing operations currently under development. Finally, the rule has been revised to clarify that certain web coating lines engaged in fabric coating for use in pressure sensitive tape and abrasive materials are part of the Paper and Other Web Coating source category. While most of these products are commonly produced using a paper web, product applications that require higher performance or unique characteristics may necessitate the use of a fabric web. The coating equipment, the coating solutions, and the emissions are essentially the same whether the coated web is fabric or paper. Therefore, we are regulating these web coating processes under today's final rule.

B. New Source Emission Limit

We received a comment expressing doubt that new sources could consistently achieve 98 percent control efficiency using an oxidizer. The commenter stated that the data we used to develop the new source emission limit were based on short-term performance tests. Over the long term, according to the commenter, oxidizer performance can vary due to coating process variabilities. The commenter requested that we adopt the existing source control efficiency requirement of 95 percent for new sources. While the commenter did not explain what was meant by "coating process variabilities," we assumed that this was a reference to fluctuating organic HAP inlet concentrations during periods of reduced coating application. We recognize that oxidizer performance may decrease when the inlet concentration decreases. While we believe the 98 percent organic HAP overall control efficiency for new sources is achievable based on information provided by the paper and other web coating industry, we added an alternative emission limit based on outlet organic HAP concentration that should account for any variable or low inlet concentrations. The MACT floor analysis for the rule determined that the emission control of the best controlled source in this category was 98 percent. Therefore, we have retained the 98 percent overall control of organic HAP emissions for new affected sources. As stated in the preamble to the proposed rule (65 FR 55339), although some facilities reported more than 98 percent overall control of organic HAP emissions, this higher level of control may not be achievable on a continuous basis under all normal operating conditions applicable to new sources. In order to provide additional flexibility and ensure consistency with other coating-related NESHAP in development, we added an alternate emission limit based on outlet organic HAP concentration. Owners or operators of both existing and new affected sources using a thermal oxidizer to control organic HAP emissions may choose to operate the oxidizer such that

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an outlet organic HAP concentration of no greater than 20 ppmv is achieved as long as 100 percent capture efficiency is achieved.

The 20 ppmv by compound organic HAP limit is based on previous EPA studies of available oxidizer technology, cost, and energy use. The dual requirement of meeting a minimum control efficiency value or a 20 ppmv by compound limit accounts for a fall-off of oxidizer efficiency at lower inlet concentrations. For example, if an inlet concentration is only 200 ppmv, even if an outlet concentration of 20 ppmv is achieved, the control efficiency is only 90 percent. This is less than the existing source limit of 95 percent and the new source limit of 98 percent. We recognize this problem for oxidizers with low inlet concentrations and, consequently, have included the alternate 20 ppmv by compound organic HAP emission limit.

Previous EPA studies have shown that new oxidizers can achieve the 20 ppmv by compound emission limit even when the inlet organic HAP concentration is low. We believe that most existing oxidizers could also reach the emission limit with moderate adjustments. The combustion temperature and residence time used in the previous EPA studies to achieve the 20 ppmv by compound emission limit (870 degrees Celsius (1600 degrees Fahrenheit) and 0.75 second) are typical of the necessary operating conditions. We believe these operating conditions are achievable by both new and existing sources.

C. Solvent Retained in the Web

Numerous commenters provided information concerning volatile materials that may be retained in the coated web even after the drying/curing operation. Most of these commenters were concerned that a source using solvent recovery and demonstrating compliance by means of a liquid-liquid material balance would be at a disadvantage because the compliance demonstration procedures in the proposed rule assumed that all volatile materials in the coatings are emitted. Thus, the emissions would be overestimated when volatile material is retained in the coated web. The commenters requested that an "as-emitted" compliance option be added to the final rule.

Volatile HAP may be retained in the web due to reactive coatings in which the volatiles are consumed or changed in a chemical reaction during the drying/curing operation, or where a portion of the volatiles is physically retained within the coated web. Volatile HAP may also be recovered from the web coating process and recycled, therefore, not being emitted to the atmosphere. Under the proposed rule, sources using solvent recovery devices and demonstrating compliance through the use of a liquid-liquid material balance would have no means of accounting for the volatile HAP retained in the coated web and not emitted to the atmosphere. Even a small percentage of volatile HAP retained in the coated web would restrict the ability of such a source to comply with the emission limitations in the proposed rule.

In response to these comments, we have added paragraph (g) to § 63.3360, the performance testing section of the final rule. This paragraph allows a source to take into account the mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere. It also requires the source to develop a testing protocol for determining the mass of volatile matter retained or otherwise not emitted to the atmosphere. This protocol would have to be submitted and approved as part of a site-specific test plan. This added paragraph applies to any means of demonstrating compliance, not just liquid-liquid material balances.

In conjunction with the new paragraph in § 63.3360, we revised Equations 4, 5, 6, 7, 8, 12, 14, and 15 of § 63.3370 by adding a term (M_{vret}) to account for volatile matter not emitted from the coating operation. This term may be used to account for reactive coatings, volatile matter chemically bound in the dried coating, incomplete curing, or other situations. These modifications have the same effect as the commenters' request for adding an "as-emitted" compliance option.

D. Monitoring

We received numerous comments indicating that the performance specifications (PS) for parameter monitoring of control devices were overly burdensome, particularly the temperature monitor requirements for oxidizers. While we believe the requirements in the proposed rule were appropriate, we have reviewed these requirements and made modifications where continuous compliance assurance will not be compromised. For example, the temperature monitor requirements for oxidizers no longer require monthly inspection of the electrical connections of the temperature monitoring system because we believe the industry adequately performs such monitoring in the absence of specific requirements as part of their routine maintenance. If you wish to monitor an alternative parameter for an oxidizer, or choose to use a control device other than an oxidizer, then you must apply for and receive approval of an alternative monitoring method under § 63.8(f) of the General Provisions. Through this procedure, you have the option of selecting monitoring appropriate to your specific facility that is the most efficient for your needs while still assuring that continuous compliance is maintained.

A related change concerns control devices equipped with an automatic system that shuts down the control device when the temperature falls below the minimum set point. We received comments requesting that hourly averages of temperature readings not be required when such a system is installed. We agree that such a system is an adequate monitor of control device performance and will assure continuous compliance. The final rule specifies that you have the option of using such a system after receiving approval under § 63.8(f) of the General Provisions.

We clarified the minimum data availability requirements for calculating a valid hourly value from continuous monitoring system data, as well as for calculating values for the 3-hour averages derived from the hourly values. These changes were in response to comments indicating that the proposed rule did not clearly indicate what constituted a valid set of data for an hourly reading.

As an alternative to measuring the inlet temperature and temperature rise across the catalyst bed of a catalytic oxidizer to demonstrate continuous compliance, the rule includes a provision that allows you to monitor the temperature at the inlet to the catalyst bed and the catalyst activity level.

The proposed rule did not take into account that some existing facilities may already have CEMS in place. In order to allow such a facility to use the CEMS for compliance purposes, a provision was added to the final rule which allows the use of CEMS to monitor the organic HAP concentration in an exhaust stream from an emission source that is controlled by means other than solvent recovery. However, in order to use the CEMS data for compliance purposes, the emission source must also be operated within a permanent total enclosure.

VIII. What Are the Environmental, Energy, and Economic Impacts of the Rule?

We developed model facilities to represent the paper and other web coating industry based on the data we collected. We estimated environmental, energy, and economic impacts based upon what these modeled facilities must do to meet the rule. There are several options for demonstrating compliance with these standards, and each facility has flexibility to adopt the compliance option which has the least economic impact for their individual situation. Most of the existing major source facilities in this industry apply solvent-based coatings and utilize thermal oxidation to reduce HAP emissions. Therefore, in estimating the impacts associated with the rule, we assumed that most facilities would install a permanent total enclosure and either install a new thermal oxidizer or upgrade the mechanical components of an existing one. If, instead, a facility complies with the rule by applying coatings that meet the emission limitation, the capital and operating costs and other impacts would be lower than estimated. Hence, the estimates presented below may overestimate the costs and other impacts as some facilities may comply with the rule by applying low-HAP coatings.

A. Emission Reductions

For existing affected sources in the paper and other web coating industry (approximately 203 major sources), the nationwide baseline organic HAP emissions are estimated to be 35,000 Mg/yr (39,000 tpy). We estimate that implementation of the final rule would reduce emissions from existing major sources by approximately 29,000 Mg/yr (32,000 tpy), or approximately 80 percent.

We have projected the growth of the paper and other web coating industry and anticipate that 32 new affected sources (individual facilities with one or more web coating lines) will be constructed over the next 5 years. In the absence of this rule, these new sources would be required to comply with the NSPS in 40 CFR part 60 for VOC. Because nearly all the VOC used by the paper and other web coating industry are also organic HAP, the NSPS would reduce organic HAP emissions as well as VOC emissions. Based on the analysis performed to develop model plants to assess the impacts of the proposed rule on the industry, it was determined that the NSPS represents a 90 percent reduction of organic HAP emissions. Therefore, this level of control was used to estimate the baseline organic HAP emissions for new sources (*i.e.*, the level of emissions from new sources in the absence of this rule). We estimated that nationwide organic HAP baseline emissions from new sources will be about 2,800 Mg/yr (3,000 tpy). We estimate that implementation of the final rule will reduce emissions from new affected sources by about 2,300 Mg/yr (2,535 tpy), or approximately 80 percent.

B. Secondary Environmental Impacts

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the final standards. These impacts are exclusive of the direct organic HAP air emissions reductions discussed in the previous section.

We estimate that more than 99 percent of the organic HAP emissions from paper and other web coating are VOC. Therefore, the capture and control of organic HAP that are presently emitted will result in a decrease in VOC emissions. Consequently, we estimate the current nationwide VOC emissions from the paper and other web coating source category to be at least 35,000 mg/yr (39,000 tpy), the nationwide organic HAP estimate. The emission controls for organic HAP will reduce non-HAP VOC emissions as well.

Emissions of VOC have been associated with a variety of health and welfare impacts. The VOC emissions, together with nitrogen oxides, are precursors to the formation of ground-level ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

The use of newly installed or upgraded control devices to meet the standards would result in greater electricity consumption. Increases in emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide, as well as certain HAP, from electric utilities could result. The operation of newly installed or upgraded control devices would also require combustion of supplemental fuel, typically natural gas, resulting in additional emissions of nitrogen oxides, carbon monoxide, and carbon dioxide.

It is expected that some paper and other web coating facilities will comply with the standards by substituting non-HAP materials for organic HAP presently in use. In some cases, the non-HAP materials may be VOC, however, in other cases, non-VOC materials (*e.g.*, water) may be used. Facilities converting to waterborne materials as a means or partial means of compliance may have reduced Resource Conservation and Recovery Act hazardous waste disposal if the status of the waste material changes from hazardous to nonhazardous. An increase in wastewater discharge may then occur if this waste material and waterborne wash up materials are discharged to publicly owned treatment works. However, we do not expect any significant increases in wastewater discharge to result from the standards.

New and upgraded catalytic oxidizers will require catalysts. Catalyst life is estimated to be more than 10 years. Spent catalysts will represent a small amount of solid waste, and sometimes the spent catalyst will be regenerated by the manufacturer for reuse. Activated carbon used in solvent recovery systems is typically returned to the manufacturer at the end of its useful life and converted to other products. Little solid waste impact is expected from this.

C. Energy Impacts

The operation of new and upgraded control devices will require additional energy. Capture of previously uncontrolled solvent-laden air will require fan horsepower. Operation of oxidizers, particularly thermal oxidizers, may require supplemental fuel (typically natural gas) to increase the combustion temperature and improve destruction efficiency.

The total additional electrical energy required to meet the standards is estimated to be 313 million kilowatt-hours per year. Additional fuel requirements total 3.7 billion British thermal units per year. These fuel impacts are based on the use of thermal oxidizers at all facilities, which is the control scenario expected to result in the highest energy impacts.

D. Cost Impacts

The total nationwide capital and annualized costs (1998 dollars) attributable to compliance with the standards have been estimated for existing and new affected sources. Costs are based on the use of permanent total enclosures, thermal oxidizers, and monitoring equipment (*i.e.*, CEMS for solvent recovery systems). The capital costs with other methods of control (*e.g.*, applying low-HAP coatings) are expected to be significantly lower.

It is expected that any new facility using solvent-based coatings will install control systems to comply with applicable State and Federal regulations for reducing VOC emissions from this source category (*e.g.*, the standards of performance for new stationary sources in 40 CFR part 60). The data we gathered on this industry indicate that thermal oxidation is the most common control technology installed to meet the requirements of these existing State and Federal regulations. Thermal oxidation is capable of achieving a 98 percent reduction of HAP emissions. Therefore, the additional costs to a new facility resulting from the standards were estimated based on the costs of

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constructing a permanent total enclosure to deliver all HAP emissions to the existing thermal oxidizer.

Capital costs would be incurred by installing capture and control systems at existing facilities presently without capture and control systems, and upgrading capture and control systems at existing facilities that do not meet the standards. Additionally, we estimated the cost for the purchase of monitoring equipment needed as a capital investment to meet the monitoring, recordkeeping, and reporting requirements of the standards. Total nationwide capital costs are estimated to be $222 million with the cost for existing sources and new sources estimated to be $204 million and $18 million, respectively.

Total nationwide annualized costs of the standards have been estimated at $69 million with the annualized cost for existing and new sources estimated to be $64 million and $5 million, respectively. These costs include capital recovery over a 10-year period, operating costs for the newly installed and upgraded capture and control systems, and costs for monitoring, recordkeeping, and reporting. These are net costs after taking into account the costs presently being incurred for the baseline control level.

E. Economic Impacts

The economic impact analysis (EIA) shows that the expected price increases for affected output would range from only 0.1 to 1.1 percent as a result of the standards. The expected change in production of affected output is a reduction of 0.1 to 1.1 percent as a result of the standards. The economic impact analysis predicts three plant closures among the facilities included in the analysis. Although any facility closure is cause for concern, it should be noted that the baseline economic condition of the facilities predicted to close affects the closure estimate provided by the economic model. Facilities which are already experiencing adverse economic conditions for reasons unconnected to the final rule are more vulnerable to the impact of any new costs than those that are not. The facilities predicted to close appear to currently have low profitability levels. While the final rule may adversely impact the three facilities predicted to close, we do not predict an adverse economic impact to the industry as a whole.

IX. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based on technology performance and not on an assessment of health or safety risks. Furthermore, the rule has been determined not to be "economically significant" as defined under Executive Order 12866.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the rule. Although section 6 of Executive Order 13132 does not apply to the rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the rule.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate paper and other web coating lines. Thus, Executive Order 13175 does not apply to the rule.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and Use

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the rule does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the rule for any year has been estimated to be about $69 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the standards contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601, et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business ranging from 500 to 750 employees, according to Small Business Administration size standards established under the NAICS for the industries affected by today's rule; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant impact on a substantial number of small entities. We have determined that 50 of the 103 companies owning affected facilities are small businesses. Although small businesses represent 49 percent of the companies within the source category, they are expected to incur 25 percent of the total industry compliance costs of $64 million. There are six small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are four small firms with cost-to-sales ratios between 1 and 3 percent.

We performed an EIA to estimate the changes in product price and production quantities for the firms affected by the final rule. The analysis shows that of the 54 facilities owned by affected small firms, one would be expected to shut down rather than incur the cost of compliance with the final rule. Although any facility closure is cause for concern, it should be noted that the baseline economic condition of the facility predicted to close affects the closure estimate provided by the economic model. Facilities which are already experiencing adverse economic conditions for reasons unconnected to the rule are more vulnerable to the impact of any new costs than those that are not. The facility predicted to close appears to have low profitability levels currently. The EPA also notes that, while economies of scale will require individual small firms to pay a somewhat higher proportion of revenues than large firms for compliance, the burden on most small firms is quite low nevertheless. The median compliance cost is well below 1 percent of sales for both small and large firms affected by these standards (0.16 and 0.03 percent of sales for small and large firms, respectively).

In summary, while a few small firms may experience significant impacts, there will not be a substantial number incurring such a burden. For more information, consult the docket for this project.

H. Paperwork Reduction Act

The information collection requirements in the rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1951.02) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The annual monitoring, recordkeeping, and reporting burden for this collection (averaged over the first 3 years after the effective date of the rule) for existing web coating facilities is estimated to be 38,708 labor hours at a total annual cost of $2,914,796. For new sources, the annual burden for the same 3-year period is estimated to be 2,754 labor hours at a total annual cost of $206,283. This estimate covers all monitoring, recordkeeping, and reporting activities, including a one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed; semiannual compliance reports; notifications; and recordkeeping. The total annual capital/startup cost component (including purchase of services component) for

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existing sources over the 3-year period is estimated to be $2,015,800. The annual operation and maintenance costs component for existing sources is estimated to be $649,779. For new sources, the estimated annual capital/startup cost component is $233,500 and the estimated annual operation and maintenance cost component is $28,520. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR, chapter 15. The OMB control number for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final rule involves technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A through F, and 311; and PS 6, 8, and 9. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods/PS. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through F, and 311, and PS 6, 8, and 9. The search and review results have been documented and are placed in docket A–99–09 for the rule.

The VCS described below was identified as an acceptable alternative to EPA test methods for the purposes of the rule.

The VCS ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," is cited in the rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19.10–1981–Part 10 is an acceptable alternative to Method 3B.

Six VCS are already incorporated by reference (IBR) in EPA Method 24: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93. Five VCS are IBR in EPA Method 311: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94.

In addition to the VCS EPA uses in the rule, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 11 of these 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the rule were impractical alternatives to EPA test methods for the purposes of the rule. Therefore, EPA does not intend to adopt these standards for this purpose. Three of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of the final rule.

The VCS ASTM D3154–00, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," is impractical as an alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of the final rule since the standard appears to lack in quality control and quality assurance requirements. Specifically, ASTM D3154–00 does not include the following: (1) Proof that openings of standard pitot tube have not plugged during the test; (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, their calibration must be checked after each test series; and (3) the frequency and validity range for calibration of the temperature sensors.

The VCS ASTM D3464–96 (2001), "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of the final rule primarily because applicability specifications are not clearly defined, *e.g.*, range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in these areas.

The VCS ISO 10780:1994, "Stationary Source Emissions–Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in the final rule. The standard recommends the use of an L-shaped pitot which historically has not been recommended by EPA. The EPA specifies the S-type design which has large openings that are less likely to plug up with dust.

The VCS CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," is unacceptable as a substitute for EPA Method 3A since it does not include quantitative specifications for measurement system performance, most notably the calibration procedures and instrument performance characteristics. The instrument performance characteristics that are provided are nonmandatory and also do not provide the same level of quality assurance as the EPA methods. For example, the zero and span/calibration drift is only checked weekly, whereas the EPA methods require drift checks after each run.

Two very similar standards, ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," and ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," are impractical alternatives to EPA Method 3A for the purposes of the final rule because they lack in detail and quality assurance/quality control requirements. Specifically, these two standards do not include the following: (1) Sensitivity of the method; (2) acceptable levels of analyzer calibration error; (3) acceptable levels of sampling system bias; (4) zero drift and calibration drift limits, time span, and required testing frequency; (5) a method to test the interference response of the analyzer; (6) procedures to determine the minimum sampling time per run and minimum measurement time; and (7) specifications for data recorders in terms of resolution (all types) and recording intervals (digital and analog recorders, only).

The VCS ISO 12039:2001, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," is not acceptable as an alternative to EPA Method 3A. This ISO standard is similar to EPA Method 3A, but is missing some key features. In terms of sampling, the hardware required by ISO 12039:2001 does not include a 3-way calibration valve assembly or equivalent to block the sample gas flow while calibration gases are introduced. In its calibration procedures, ISO 12039:2001 only specifies a two-point calibration while EPA Method 3A specifies a three-point calibration. Also, ISO 12039:2001 does not specify performance criteria for calibration error, calibration drift, or sampling system bias tests as in the EPA method, although checks of these quality control features are required by the ISO standard.

The VCS ISO 11890–1 (2000) part 1, "Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content-Difference Method," is impractical as an alternative to EPA Method 24 because measured nonvolatile matter content can vary with experimental factors such as temperature, length of heating period, size of weighing dish, and size of sample. The standard ISO 11890–1 allows for different dish weights and sample sizes than the one size (58 millimeters in diameter and sample size of 0.5 gram) of EPA Method 24. The standard ISO 11890–1 also allows for different oven temperatures and heating times depending on the type of coating, whereas EPA Method 24 requires 60 minutes heating at 110 degrees Celcius at all times. Because the EPA Method 24 test conditions and procedures "define" volatile matter, ISO 11890–1 is unacceptable as an alternative because of its different test conditions.

The VCS ISO 11890–2 (2000) part 2, "Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content-Gas Chromatographic Method," is impractical as an alternative to EPA Method 24 because ISO 11890–2 only measures the VOC added to the coating and would not measure any VOC generated from the curing of the coating. The EPA Method 24 does measure "cure" VOC which can be significant in some cases and, therefore, ISO 11890–2 is not an acceptable alternative to this EPA method.

Two VCS, EN 12619:1999 "Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality-Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method," are impractical alternatives to EPA Method 25 and 25A for the purposes of the final rule because the standards do not apply to solvent process vapors in concentrations greater than 40 parts per million (ppm) (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Three of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a VCS body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ISO/CD 17895, "Paints and Varnishes-Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints," for EPA Method 24.

Sections 63.3320 and 63.3360 of the final rule list the EPA testing methods and PS included in the final rule. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, PS, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The rule will be effective December 4, 2002.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 8, 2002.

Christine T. Whitman,

Administrator.

For reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C., 7401, *et seq.*

2. Part 63 is amended by revising § 63.14(i). The revision reads as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) The following material is available for purchase from at least one of the following addresses: ASME International, Orders/Inquiries, P.O. Box 2300, Fairfield, NJ 07007–2300; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112: ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for § 63.3360(e)(1)(iii), § 63.4166(a)(3), and § 63.5160(d)(1)(iii).

* * * * *

3. Part 63 is amended by adding subpart JJJJ to read as follows:

Subpart JJJJ—National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating

Sec.

What This Subpart Covers

63.3280 What is in this subpart?
63.3290 Does this subpart apply to me?
63.3300 Which of my emission sources are affected by this subpart?
63.3310 What definitions are used in this subpart?

Emission Standards and Compliance Dates

63.3320 What emission standards must I meet?
63.3321 What operating limits must I meet?
63.3330 When must I comply?

General Requirements for Compliance With the Emission Standards and for Monitoring and Performance Tests

63.3340 What general requirements must I meet to comply with the standards?
63.3350 If I use a control device to comply with the emission standards what monitoring must I do?
63.3360 What performance tests must I conduct?

Requirements for Showing Compliance

63.3370 How do I demonstrate compliance with the emission standards?

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Notifications, Reports, and Records

63.3400 What notifications and reports must I submit?
63.3410 What records must I keep?

Delegation of Authority

63.3420 What authorities may be delegated to the States?

Tables to Subpart JJJJ of Part 63

Table 1 to Subpart JJJJ of Part 63. Operating Limits if Using Add-On Control Devices and Capture System
Table 2 to Subpart JJJJ of Part 63. Applicability of 40 CFR Part 63 General Provisions to Subpart JJJJ

What This Subpart Covers

§ 63.3280 What is in this subpart?

This subpart describes the actions you must take to reduce emissions of organic hazardous air pollutants (HAP) from paper and other web coating operations. This subpart establishes emission standards for web coating lines and specifies what you must do to comply if you own or operate a facility with web coating lines that is a major source of HAP. Certain requirements apply to all who are subject to this subpart; others depend on the means you use to comply with an emission standard.

§ 63.3290 Does this subpart apply to me?

The provisions of this subpart apply to each new and existing facility that is a major source of HAP, as defined in § 63.2, at which web coating lines are operated.

§ 63.3300 Which of my emission sources are affected by this subpart?

The affected source subject to this subpart is the collection of all web coating lines at your facility. This includes web coating lines engaged in the coating of metal webs that are used in flexible packaging, and web coating lines engaged in the coating of fabric substrates for use in pressure sensitive tape and abrasive materials. Web coating lines specified in paragraphs (a) through (g) of this section are not part of the affected source of this subpart.

(a) Any web coating line that is stand-alone coating equipment under subpart KK of this part (national emission standards for the printing and publishing industry) which the owner or operator includes in the affected source under subpart KK.

(b) Any web coating line that is a product and packaging rotogravure or wide-web flexographic press under subpart KK of this part (national emission standards for the printing and publishing industry) which is included in the affected source under subpart KK.

(c) Web coating in lithography, screenprinting, letterpress, and narrow-web flexographic printing processes.

(d) Any web coating line subject to subpart EE of this part (national emission standards for magnetic tape manufacturing operations).

(e) Any web coating line that will be subject to the national emission standards for hazardous air pollutants (NESHAP) for surface coating of metal coil currently under development.

(f) Any web coating line that will be subject to the NESHAP for the printing, coating, and dyeing of fabric and other textiles currently under development. This would include any web coating line that coats both a paper or other web substrate and a fabric or other textile substrate, except for a fabric substrate used for pressure sensitive tape and abrasive materials.

(g) Any web coating line that is defined as research or laboratory equipment in § 63.3310.

§ 63.3310 What definitions are used in this subpart?

All terms used in this subpart that are not defined in this section have the meaning given to them in the Clean Air Act (CAA) and in subpart A of this part.

Always-controlled work station means a work station associated with a dryer from which the exhaust is delivered to a control device with no provision for the dryer exhaust to bypass the control device unless there is an interlock to interrupt and prevent continued coating during a bypass. Sampling lines for analyzers, relief valves needed for safety purposes, and periodic cycling of exhaust dampers to ensure safe operation are not considered bypass lines.

Applied means, for the purposes of this subpart, the amount of organic HAP, coating material, or coating solids (as appropriate for the emission standards in § 63.3320(b)) used by the affected source during the compliance period.

As-applied means the condition of a coating at the time of application to a substrate, including any added solvent.

As-purchased means the condition of a coating as delivered to the user.

Capture efficiency means the fraction of all organic HAP emissions generated by a process that is delivered to a control device, expressed as a percentage.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions into a closed-vent system that exhausts to a control device.

Car-seal means a seal that is placed on a device that is used to change the position of a valve or damper (*e.g.*, from open to closed) in such a way that the position of the valve or damper cannot be changed without breaking the seal.

Coating material(s) means all inks, varnishes, adhesives, primers, solvents, reducers, and other coating materials applied to a substrate via a web coating line. Materials used to form a substrate are not considered coating materials.

Control device means a device such as a solvent recovery device or oxidizer which reduces the organic HAP in an exhaust gas by recovery or by destruction.

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total organic HAP emissions that are introduced into the control device, expressed as a percentage.

Day means a 24-consecutive-hour period.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during start-up, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Existing affected source means any affected source the construction or reconstruction of which is commenced on or before September 13, 2000, and has not undergone reconstruction as defined in § 63.2.

Fabric means any woven, knitted, plaited, braided, felted, or non-woven material made of filaments, fibers, or yarns including thread. This term includes material made of fiberglass, natural fibers, synthetic fibers, or composite materials.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

Flexible packaging means any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, labels, liners and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

Formulation data means data on the organic HAP mass fraction, volatile matter mass fraction, or coating solids mass fraction of a material that is generated by the manufacturer or means other than a test method specified in this subpart or an approved alternative method.

HAP means hazardous air pollutants.

HAP applied means the organic HAP content of all coating materials applied to a substrate by a web coating line at an affected source.

Intermittently-controlled work station means a work stafion associated with a dryer with provisions for the dryer exhaust to be delivered to or diverted from a control device through a bypass line, depending on the position of a valve or damper. Sampling lines for analyzers, relief valves needed for safety purposes, and periodic cycling of exhaust dampers to ensure safe operation are not considered bypass lines.

Metal coil means a continuous metal strip that is at least 0.15 millimeter (0.006 inch) thick which is packaged in a roll or coil prior to coating. After coating, it may or may not be rewound into a roll or coil. Metal coil does not include metal webs that are coated for use in flexible packaging.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Never-controlled work station means a work station that is not equipped with provisions by which any emissions, including those in the exhaust from any associated dryer, may be delivered to a control device.

New affected source means any affected source the construction or reconstruction of which is commenced after September 13, 2000.

Overall organic HAP control efficiency means the total efficiency of a capture and control system.

Pressure sensitive tape means a flexible backing material with a pressure-sensitive adhesive coating on one or both sides of the backing. Examples include, but are not limited to, duct/duct insulation tape and medical tape.

Research or laboratory equipment means any equipment for which the primary purpose is to conduct research and development into new processes and products where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce except in a *de minimis* manner.

Rewind or cutting station means a unit from which substrate is collected at the outlet of a web coating line.

Uncontrolled coating line means a coating line consisting of only never-controlled work stations.

Unwind or feed station means a unit from which substrate is fed to a web coating line.

Web means a continuous substrate (*e.g.*, paper, film, foil) which is flexible enough to be wound or unwound as rolls.

Web coating line means any number of work stations, of which one or more applies a continuous layer of coating material across the entire width or any portion of the width of a web substrate, and any associated curing/drying equipment between an unwind or feed station and a rewind or cutting station.

Work station means a unit on a web coating line where coating material is deposited onto a web substrate.

Emission Standards and Compliance Dates

§ 63.3320 What emission standards must I meet?

(a) If you own or operate any affected source that is subject to the requirements of this subpart, you must comply with these requirements on and after the compliance dates as specified in § 63.3330.

(b) You must limit organic HAP emissions to the level specified in paragraph (b)(1), (2), (3), or (4) of this section.

(1) No more than 5 percent of the organic HAP applied for each month (95 percent reduction) at existing affected sources, and no more than 2 percent of the organic HAP applied for each month (98 percent reduction) at new affected sources; or

(2) No more than 4 percent of the mass of coating materials applied for each month at existing affected sources, and no more than 1.6 percent of the mass of coating materials applied for each month at new affected sources; or

(3) No more than 20 percent of the mass of coating solids applied for each month at existing affected sources, and no more than 8 percent of the coating solids applied for each month at new affected sources.

(4) If you use an oxidizer to control organic HAP emissions, operate the oxidizer such that an outlet organic HAP concentration of no greater than 20 parts per million by volume (ppmv) by compound on a dry basis is achieved and the efficiency of the capture system is 100 percent.

(c) You must demonstrate compliance with this subpart by following the procedures in § 63.3370.

§ 63.3321 What operating limits must I meet?

(a) For any web coating line or group of web coating lines for which you use add-on control devices, unless you use a solvent recovery system and conduct a liquid-liquid material balance, you must meet the operating limits specified in Table 1 to this subpart or according to paragraph (b) of this section. These operating limits apply to emission capture systems and control devices, and you must establish the operating limits during the performance test according to the requirements in § 63.3360(e)(3). You must meet the operating limits at all times after you establish them.

(b) If you use an add-on control device other than those listed in Table 1 to this subpart or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3330 When must I comply?

(a) If you own or operate an existing affected source subject to the provisions of this subpart, you must comply by the compliance date. The compliance date for existing affected sources in this subpart is December 5, 2005. You must complete any performance test required in § 63.3360 within the time limits specified in § 63.7(a)(2).

(b) If you own or operate a new affected source subject to the provisions of this subpart, your compliance date is immediately upon start-up of the new affected source or by December 4, 2002, whichever is later. You must complete any performance test required in § 63.3360 within the time limits specified in § 63.7(a)(2).

(c) If you own or operate a reconstructed affected source subject to the provisions of this subpart, your compliance date is immediately upon startup of the affected source or by December 4, 2002, whichever is later. Existing affected sources which have undergone reconstruction as defined in § 63.2 are subject to the requirements for new affected sources. The costs associated with the purchase and installation of air pollution control equipment are not considered in determining whether the existing affected source has been reconstructed. Additionally, the costs of retrofitting and replacing of equipment that is installed specifically to comply with this subpart are not considered reconstruction costs. You must

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complete any performance test required in § 63.3360 within the time limits specified in § 63.7(a)(2).

General Requirements for Compliance With the Emission Standards and for Monitoring and Performance Tests

§ 63.3340 What general requirements must I meet to comply with the standards?

Table 2 to this subpart specifies the provisions of subpart A of this part that apply if you are subject to this subpart, such as startup, shutdown, and malfunction plans (SSMP) in § 63.6(e)(3) for affected sources using a control device to comply with the emission standards.

§ 63.3350 If I use a control device to comply with the emission standards, what monitoring must I do?

(a) A summary of monitoring you must do follows:

If you operate a web coating line, and have the following:	Then you must:
(1) Intermittently-controlled work stations	Record parameters related to possible exhaust flow bypass of control device and to coating use (§ 63.3350(c)).
(2) Solvent recovery unit	Operate continuous emission monitoring system and perform quarterly audits or determine volatile matter recovered and conduct a liquid-liquid material balance (§ 63.3350(d)).
(3) Control Device	Operate continuous parameter monitoring system (§ 63.3350(e)).
(4) Capture system	Monitor capture system operating parameter (§ 63.3350(f)).

(b) Following the date on which the initial performance test of a control device is completed to demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device used to comply with § 63.3320. You must install and operate the monitoring equipment as specified in paragraphs (c) and (f) of this section.

(c) *Bypass and coating use monitoring.* If you own or operate web coating lines with intermittently-controlled work stations, you must monitor bypasses of the control device and the mass of each coating material applied at the work station during any such bypass. If using a control device for complying with the requirements of this subpart, you must demonstrate that any coating material applied on a never-controlled work station or an intermittently-controlled work station operated in bypass mode is allowed in your compliance demonstration according to § 63.3370(n) and (o). The bypass monitoring must be conducted using at least one of the procedures in paragraphs (c)(1) through (4) of this section for each work station and associated dryer.

(1) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that provides a record indicating whether the exhaust stream from the dryer was directed to the control device or was diverted from the control device. The time and flow control position must be recorded at least once per hour as well as every time the flow direction is changed. A flow control position indicator must be installed at the entrance to any bypass line that could divert the exhaust stream away from the control device to the atmosphere.

(2) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve or damper is maintained in the closed position, and the exhaust stream is not diverted through the bypass line.

(3) *Valve closure continuous monitoring.* Ensure that any bypass line valve or damper is in the closed position through continuous monitoring of valve position when the emission source is in operation and is using a control device for compliance with the requirements of this subpart. The monitoring system must be inspected at least once every month to verify that the monitor will indicate valve position.

(4) *Automatic shutdown system.* Use an automatic shutdown system in which the web coating line is stopped when flow is diverted away from the control device to any bypass line when the control device is in operation. The automatic system must be inspected at least once every month to verify that it will detect diversions of flow and would shut down operations in the event of such a diversion.

(d) *Solvent recovery unit.* If you own or operate a solvent recovery unit to comply with § 63.3320, you must meet the requirements in either paragraph (d)(1) or (2) of this section depending on how control efficiency is determined.

(1) *Continuous emission monitoring system (CEMS).* If you are demonstrating compliance with the emission standards in § 63.3320 through continuous emission monitoring of a control device, you must install, calibrate, operate, and maintain the CEMS according to paragraphs (d)(1)(i) through (iii) of this section.

(i) Measure the total organic volatile matter mass flow rate at both the control device inlet and the outlet such that the reduction efficiency can be determined. Each continuous emission monitor must comply with performance specification 6, 8, or 9 of 40 CFR part 60, appendix B, as appropriate.

(ii) You must follow the quality assurance procedures in procedure 1, appendix F of 40 CFR part 60. In conducting the quarterly audits of the monitors as required by procedure 1, appendix F, you must use compounds representative of the gaseous emission stream being controlled.

(iii) You must have valid data from at least 90 percent of the hours during which the process is operated.

(2) *Liquid-liquid material balance.* If you are demonstrating compliance with the emission standards in § 63.3320 through liquid-liquid material balance, you must install, calibrate, maintain, and operate according to the manufacturer's specifications a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device must be certified by the manufacturer to be accurate to within ±2.0 percent by mass.

(e) *Continuous parameter monitoring system (CPMS).* If you are using a control device to comply with the emission standards in § 63.3320, you must install, operate, and maintain each CPMS specified in paragraphs (e)(9) and (10) and (f) of this section according to the requirements in paragraphs (e)(1) through (8) of this section. You must install, operate, and maintain each CPMS specified in paragraph (c) of this section according to paragraphs (e)(5) through (7) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation to have a valid hour of data.

(2) You must have valid data from at least 90 percent of the hours during which the process operated.

(3) You must determine the hourly average of all recorded readings according to paragraphs (e)(3)(i) and (ii) of this section.

(i) To calculate a valid hourly value, you must have at least three of four equally spaced data values from that hour from a continuous monitoring system (CMS) that is not out-of-control.

(ii) Provided all of the readings recorded in accordance with paragraph (e)(3) of this section clearly demonstrate continuous compliance with the standard that applies to you, then you are not required to determine the hourly average of all recorded readings.

(4) You must determine the rolling 3-hour average of all recorded readings for each operating period. To calculate the average for each 3-hour averaging period, you must have at least two of three of the hourly averages for that period using only average values that are based on valid data (*i.e.*, not from out-of-control periods).

(5) You must record the results of each inspection, calibration, and validation check of the CPMS.

(6) At all times, you must maintain the monitoring system in proper working order including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(7) Except for monitoring malfunctions, associated repairs, or required quality assurance or control activities (including calibration checks or required zero and span adjustments), you must conduct all monitoring at all times that the unit is operating. Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities shall not be used for purposes of calculating the emissions concentrations and percent reductions specified in § 63.3370. You must use all the valid data collected during all other periods in assessing compliance of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(8) Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation, and you must notify the Administrator in accordance with § 63.3400(c).

(9) *Oxidizer.* If you are using an oxidizer to comply with the emission standards, you must comply with paragraphs (e)(9)(i) through (iii) of this section.

(i) Install, calibrate, maintain, and operate temperature monitoring equipment according to the manufacturer's specifications. The calibration of the chart recorder, data logger, or temperature indicator must be verified every 3 months or the chart recorder, data logger, or temperature indicator must be replaced. You must replace the equipment whether you choose not to perform the calibration or the equipment cannot be calibrated properly.

(ii) For an oxidizer other than a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±1° Celsius, whichever is greater. The thermocouple or temperature sensor must be installed in the combustion chamber at a location in the combustion zone.

(iii) For a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius or ± 1 degree Celsius, whichever is greater. The thermocouple or temperature sensor must be installed in the vent stream at the nearest feasible point to the inlet and outlet of the catalyst bed. Calculate the temperature rise across the catalyst.

(10) *Other types of control devices.* If you use a control device other than an oxidizer or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of an alternative monitoring method under § 63.8(f).

(f) *Capture system monitoring.* If you are complying with the emission standards in § 63.3320 through the use of a capture system and control device for one or more web coating lines, you must develop a site-specific monitoring plan containing the information specified in paragraphs (f)(1) and (2) of this section for these capture systems. You must monitor the capture system in accordance with paragraph (f)(3) of this section. You must make the monitoring plan available for inspection by the permitting authority upon request.

(1) The monitoring plan must:

(i) Identify the operating parameter to be monitored to ensure that the capture efficiency determined during the initial compliance test is maintained; and

(ii) Explain why this parameter is appropriate for demonstrating ongoing compliance; and

(iii) Identify the specific monitoring procedures.

(2) The monitoring plan must specify the operating parameter value or range of values that demonstrate compliance with the emission standards in § 63.3320. The specified operating parameter value or range of values must represent the conditions present when the capture system is being properly operated and maintained.

(3) You must conduct all capture system monitoring in accordance with the plan.

(4) Any deviation from the operating parameter value or range of values which are monitored according to the plan will be considered a deviation from the operating limit.

(5) You must review and update the capture system monitoring plan at least annually.

§ 63.3360 What performance tests must I conduct?

(a) The performance test methods you must conduct are as follows:

If you control organic HAP on any individual web coating line or any group of web coating lines by:	You must:
(1) Limiting organic HAP or volatile matter content of coatings.	Determine the organic HAP or volatile matter and coating solids content of coating materials according to procedures in § 63.3360(c) and (d). If applicable, determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere according to § 63.3360(g).

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If you control organic HAP on any individual web coating line or any group of web coating lines by:	You must:
(2) Using a capture and control system.	Conduct a performance test for each capture and control system to determine: the destruction or removal efficiency of each control device other than solvent recovery according to § 63.3360(e), and the capture efficiency of each capture system according to § 63.3360(f). If applicable, determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere according to § 63.3360(g).

(b) If you are using a control device to comply with the emission standards in § 63.3320, you are not required to conduct a performance test to demonstrate compliance if one or more of the criteria in paragraphs (b)(1) through (3) of this section are met.

(1) The control device is equipped with continuous emission monitors for determining inlet and outlet total organic volatile matter concentration and capture efficiency has been determined in accordance with the requirements of this subpart such that an overall organic HAP control efficiency can be calculated, and the continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.3350; or

(2) You have met the requirements of § 63.7(h) (for waiver of performance testing; or

(3) The control device is a solvent recovery system and you comply by means of a monthly liquid-liquid material balance.

(c) *Organic HAP content.* If you determine compliance with the emission standards in § 63.3320 by means other than determining the overall organic HAP control efficiency of a control device, you must determine the organic HAP mass fraction of each coating material "as-purchased" by following one of the procedures in paragraphs (c)(1) through (3) of this section, and determine the organic HAP mass fraction of each coating material "as-applied" by following the procedures in paragraph (c)(4) of this section. If the organic HAP content values are not determined using the procedures in paragraphs (c)(1) through (3) of this section, the owner or operator must submit an alternative test method for determining their values for approval by the Administrator in accordance with § 63.7(f). The recovery efficiency of the test method must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(1) *Method 311.* You may test the coating material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by the manufacturer of the coating material and the results provided to the owner or operator. The organic HAP content must be calculated according to the criteria and procedures in paragraphs (c)(1)(i) through (iii) of this section.

(i) Include each organic HAP determined to be present at greater than or equal to 0.1 mass percent for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 mass percent for other organic HAP compounds.

(ii) Express the mass fraction of each organic HAP you include according to paragraph (c)(1)(i) of this section as a value truncated to four places after the decimal point (for example, 0.3791).

(iii) Calculate the total mass fraction of organic HAP in the tested material by summing the counted individual organic HAP mass fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24.* For coatings, determine the volatile organic content as mass fraction of nonaqueous volatile matter and use it as a substitute for organic HAP using Method 24 of 40 CFR part 60, appendix A. The Method 24 determination may be performed by the manufacturer of the coating and the results provided to you.

(3) *Formulation data.* You may use formulation data to determine the organic HAP mass fraction of a coating material. Formulation data may be provided to the owner or operator by the manufacturer of the material. In the event of an inconsistency between Method 311 (appendix A of 40 CFR part 63) test data and a facility's formulation data, and the Method 311 test value is higher, the Method 311 data will govern. Formulation data may be used provided that the information represents all organic HAP present at a level equal to or greater than 0.1 percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and equal to or greater than 1.0 percent for other organic HAP compounds in any raw material used.

(4) *As-applied organic HAP mass fraction.* If the as-purchased coating material is applied to the web without any solvent or other material added, then the as-applied organic HAP mass fraction is equal to the as-purchased organic HAP mass fraction. Otherwise, the as-applied organic HAP mass fraction must be calculated using Equation 1a of § 63.3370.

(d) *Volatile organic and coating solids content.* If you determine compliance with the emission standards in § 63.3320 by means other than determining the overall organic HAP control efficiency of a control device and you choose to use the volatile organic content as a surrogate for the organic HAP content of coatings, you must determine the as-purchased volatile organic content and coating solids content of each coating material applied by following the procedures in paragraph (d)(1) or (2) of this section, and the as-applied volatile organic content and coating solids content of each coating material by following the procedures in paragraph (d)(3) of this section.

(1) *Method 24.* You may determine the volatile organic and coating solids mass fraction of each coating applied using Method 24 (40 CFR part 60, appendix A.) The Method 24 determination may be performed by the manufacturer of the material and the results provided to you. If these values cannot be determined using Method 24, you must submit an alternative technique for determining their values for approval by the Administrator.

(2) *Formulation data.* You may determine the volatile organic content and coating solids content of a coating material based on formulation data and may rely on volatile organic content data provided by the manufacturer of the material. In the event of any inconsistency between the formulation data and the results of Method 24 of 40 CFR part 60, appendix A, and the Method 24 results are higher, the results of Method 24 will govern.

(3) *As-applied volatile organic content and coating solids content.* If the as-purchased coating material is applied to the web without any solvent or other material added, then the as-applied volatile organic content is equal to the as-purchased volatile content and the as-applied coating solids content is equal to the as-purchased coating solids content. Otherwise, the as-applied volatile organic content must be calculated using Equation 1b of § 63.3370 and the as-applied coating solids content must be calculated using Equation 2 of § 63.3370.

(e) *Control device efficiency.* If you are using an add-on control device other than solvent recovery, such as an oxidizer, to comply with the emission standards in § 63.3320, you must conduct a performance test to establish the destruction or removal efficiency of the control device according to the methods and procedures in paragraphs (e)(1) and (2) of this section. During the performance test, you must establish the operating limits required by § 63.3321 according to paragraph (e)(3) of this section.

(1) An initial performance test to establish the destruction or removal efficiency of the control device must be conducted such that control device inlet and outlet testing is conducted simultaneously, and the data are reduced in accordance with the test methods and procedures in paragraphs (e)(1)(i) through (ix) of this section. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(i) Method 1 or 1A of 40 CFR part 60, appendix A, must be used for sample and velocity traverses to determine sampling locations.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, must be used to determine gas volumetric flow rate.

(iii) Method 3, 3A, or 3B of 40 CFR part 60, appendix A, must be used for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," (incorporated by reference, see § 63.14).

(iv) Method 4 of 40 CFR part 60, appendix A, must be used to determine stack gas moisture.

(v) The gas volumetric flow rate, dry molecular weight, and stack gas moisture must be determined during each test run specified in paragraph (f)(1)(vii) of this section.

(vi) Method 25 or 25A of 40 CFR part 60, appendix A, must be used to determine total gaseous non-methane organic matter concentration. Use the same test method for both the inlet and outlet measurements which must be conducted simultaneously. You must submit notice of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7(b). You must use Method 25A if any of the conditions described in paragraphs (e)(1)(vi)(A) through (D) of this section apply to the control device.

(A) The control device is not an oxidizer.

(B) The control device is an oxidizer but an exhaust gas volatile organic matter concentration of 50 ppmv or less is required to comply with the emission standards in § 63.3320; or

(C) The control device is an oxidizer but the volatile organic matter concentration at the inlet to the control system and the required level of control are such that they result in exhaust gas volatile organic matter concentrations of 50 ppmv or less; or

(D) The control device is an oxidizer but because of the high efficiency of the control device the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of inlet concentration.

(vii) Except as provided in § 63.7(e)(3), each performance test must consist of three separate runs with each run conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic compound concentrations and mass flow rates, the average of the results of all the runs will apply.

(viii) Volatile organic matter mass flow rates must be determined for each run specified in paragraph (e)(1)(vii) of this section using Equation 1 of this section:

$$M_f = Q_{sd} C_c [12][0.0416][10^{-6}] \quad \text{Eq. 1}$$

Where:

M_f = Total organic volatile matter mass flow rate, kilograms (kg)/hour (h).

Q_{sd} = Volumetric flow rate of gases entering or exiting the control device, as determined according to § 63.3360(e)(1)(ii), dry standard cubic meters (dscm)/h.

C_c = Concentration of organic compounds as carbon, ppmv.

12.0 = Molecular weight of carbon.

0.0416 = Conversion factor for molar volume, kg-moles per cubic meter (mol/m³) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(ix) For each run, emission control device destruction or removal efficiency must be determined using Equation 2 of this section:

$$E = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \quad \text{Eq. 2}$$

Where:

E = Organic volatile matter control efficiency of the control device, percent.

M_{fi} = Organic volatile matter mass flow rate at the inlet to the control device, kg/h.

M_{fo} = Organic volatile matter mass flow rate at the outlet of the control device, kg/h.

(x) The control device destruction or removal efficiency is determined as the average of the efficiencies determined in the test runs and calculated in Equation 2 of this section.

(2) You must record such process information as may be necessary to determine the conditions in existence at the time of the performance test. Operations during periods of startup, shutdown, and malfunction will not constitute representative conditions for the purpose of a performance test.

(3) *Operating limits.* If you are using one or more add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance to comply with the emission standards in § 63.3320, you must establish the applicable operating limits required by § 63.3321. These operating limits apply to each add-on emission control device, and you must establish the operating limits during the performance test required by paragraph (e) of this section according to the requirements in paragraphs (e)(3)(i) and (ii) of this section.

(i) *Thermal oxidizer.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (e)(3)(i)(A) and (B) of this section.

(A) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(B) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(ii) *Catalytic oxidizer.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to paragraphs (e)(3)(ii)(A) and (B) or paragraphs (e)(3)(ii)(C) and (D) of this section.

(A) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across

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the catalyst bed at least once every 15 minutes during each of the three test runs.

(B) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(C) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (e)(3)(ii)(D) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(D) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (e)(3)(ii)(C) of this section. The plan must address, at a minimum, the elements specified in paragraphs (e)(3)(ii)(D)(*1*) through (*3*) of this section.

(*1*) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures,

(*2*) Monthly inspection of the oxidizer system including the burner assembly and fuel supply lines for problems, and

(*3*) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency in accordance with this section.

(f) *Capture efficiency.* If you demonstrate compliance by meeting the requirements of § 63.3370(e), (f), (g), (h), (i)(2), (k), (n)(2) or (3), or (p), you must determine capture efficiency using the procedures in paragraph (f)(1), (2), or (3) of this section, as applicable.

(1) You may assume your capture efficiency equals 100 percent if your capture system is a permanent total enclosure (PTE). You must confirm that your capture system is a PTE by demonstrating that it meets the requirements of section 6 of EPA Method 204 of 40 CFR part 51, appendix M, and that all exhaust gases from the enclosure are delivered to a control device.

(2) You may determine capture efficiency according to the protocols for testing with temporary total enclosures that are specified in Methods 204 and 204A through F of 40 CFR part 51, appendix M. You may exclude never-controlled work stations from such capture efficiency determinations.

(3) You may use any capture efficiency protocol and test methods that satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach as described in appendix A of subpart KK of this part. You may exclude never-controlled work stations from such capture efficiency determinations.

(g) *Volatile matter retained in the coated web or otherwise not emitted to the atmosphere.* You may choose to take into account the mass of volatile matter retained in the coated web after curing or drying or otherwise not emitted to the atmosphere when determining compliance with the emission standards in § 63.3320. If you choose this option, you must develop a testing protocol to determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere and submit this protocol to the Administrator for approval. You must submit this protocol with your site-specific test plan under § 63.7(f). If you intend to take into account the mass of volatile matter retained in the coated web after curing or drying or otherwise not emitted to the atmosphere and demonstrate compliance according to § 63.3370(c)(3), (c)(4), (c)(5), or (d), then the test protocol you submit must determine the mass of organic HAP retained in the coated web or otherwise not emitted to the atmosphere. Otherwise, compliance must be shown using the volatile organic matter content as a surrogate for the HAP content of the coatings.

(h) *Control devices in series.* If you use multiple control devices in series to comply with the emission standards in § 63.3320, the performance test must include, at a minimum, the inlet to the first control device in the series, the outlet of the last control device in the series, and all intermediate streams (*e.g.*, gaseous exhaust to the atmosphere or a liquid stream from a recovery device) that are not subsequently treated by any of the control devices in the series.

Requirements for Showing Compliance

§ 63.3370 How do I demonstrate compliance with the emission standards?

(a) A summary of how you must demonstrate compliance follows:

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
(1) Use of "as-purchased" compliant coating materials.	(i) Each coating material used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and each coating material used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-purchased; or.	Follow the procedures set out in § 63.3370(b).
	(ii) Each coating material used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and each coating material used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-purchased.	Follow the procedures set out in § 63.3370(b).
(2) Use of "as-applied" compliant coating materials.	(i) Each coating material used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and each coating material used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-applied; or.	Follow the procedures set out in § 63.3370(c)(1). Use either Equation 1a or b of § 63.3370 to determine compliance with § 63.3320(b)(2) in accordance with § 63.3370(c)(5)(i).

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
	(ii) Each coating material used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and each coating material used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-applied; or.	Follow the procedures set out in § 63.3370(c)(2). Use Equations 2 and 3 of § 63.3370 to determine compliance with § 63.3320(b)(3) in accordance with § 63.3370(c)(5)(i).
	(iii) Monthly average of all coating materials used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and monthly average of all coating materials used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-applied on a monthly average basis; or.	Follow the procedures set out in § 63.3370(c)(3). Use Equation 4 of § 63.3370 to determine compliance with § 63.3320(b)(2) in accordance with § 63.3370(c)(5)(ii).
	(iv) Monthly average of all coating materials used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and monthly average of all coating materials used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-applied on a monthly average basis.	Follow the procedures set out in § 63.3370(c)(4). Use Equation 5 of § 63.3370 to determine compliance with § 63.3320(b)(3) in accordance with § 63.3370(c)(5)(ii).
(3) Tracking total monthly organic HAP applied	Total monthly organic HAP applied does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(d). Show that total monthly HAP applied (Equation 6 of § 63.3370) is less than the calculated equivalent allowable organic HAP (Equation 13a or b of § 63.3370).
(4) Use of a capture system and control device	(i) Overall organic HAP control efficiency is equal to 95 percent at an existing affected source and 98 percent at a new affected source on a monthly basis; or oxidizer outlet organic HAP concentration is no greater than 20 ppmv by compound and capture efficiency is 100 percent; or operating parameters are continuously monitored; or.	Follow the procedures set out in § 63.3370(e) to determine compliance with § 63.3320(b)(1) according to § 63.3370(i) if using a solvent recovery device, or § 63.3370(j) if using a control device and CPMS, or § 63.3370(k) if using an oxidizer.
	(ii) Overall organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis;.	Follow the procedures set out in § 63.3370(f) to determine compliance with § 63.3320(b)(3) according to § 63.3370(i) if using a solvent recovery device, or § 63.3370(k) if using an oxidizer.
	(iii) Overall organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(2) according to § 63.3370(i) if using a solvent recovery device, or § 63.3370(k) if using an oxidizer.
	(iv) Overall organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(h). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 13a or b of § 63.3370). Calculate the monthly organic HAP emission rate according to § 63.3370(i) if using a solvent recovery device, or § 63.3370(k) if using an oxidizer.
(5) Use of multiple capture and/or control devices.	(i) Overall organic HAP control efficiency is equal to 95 percent at an existing affected source and 98 percent at a new affected source on a monthly basis; or.	Follow the procedures set out in § 63.3370(e) to determine compliance with § 63.3320(b)(1) according to § 63.3370(e)(1) or (2).
	(ii) Average equivalent organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(f) to determine compliance with § 63.3320(b)(3) according to § 63.3370(n).
	(iii) Average equivalent organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(2) according to § 63.3370(n).

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
	(iv) Average equivalent organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(h). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 13a or b of § 63.3370) according to § 63.3370(n).
(6) Use of a combination of compliant coatings and control devices.	(i) Average equivalent organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(f) to determine compliance with § 63.3320(b)(3) according to § 63.3370(n).
	(ii) Average equivalent organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(2) according to § 63.3370(n).
	(iii) Average equivalent organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(h). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 13a or b of § 63.3370) according to § 63.3370(n).

(b) *As-purchased "compliant" coating materials.*

(1) If you comply by using coating materials that individually meet the emission standards in § 63.3320(b)(2) or (3), you must demonstrate that each coating material applied during the month at an existing affected source contains no more than 0.04 mass fraction organic HAP or 0.2 kg organic HAP per kg coating solids, and that each coating material applied during the month at a new affected source contains no more than 0.016 mass fraction organic HAP or 0.08 kg organic HAP per kg coating solids on an as-purchased basis as determined in accordance with § 63.3360(c).

(2) You are in compliance with emission standards in § 63.3320(b)(2) and (3) if each coating material applied at an existing affected source is applied as-purchased and contains no more than 0.04 kg organic HAP per kg coating material or 0.2 kg organic HAP per kg coating solids, and each coating material applied at a new affected source is applied as-purchased and contains no more than 0.016 kg organic HAP per kg coating material or 0.08 kg organic HAP per kg coating solids.

(c) *As-applied "compliant" coating materials.* If you comply by using coating materials that meet the emission standards in § 63.3320(b)(2) or (3) as-applied, you must demonstrate compliance by following one of the procedures in paragraphs (c)(1) through (4) of this section. Compliance is determined in accordance with paragraph (c)(5) of this section.

(1) *Each coating material as-applied meets the mass fraction of coating material standard (§ 63.3320(b)(2)).* You must demonstrate that each coating material applied at an existing affected source during the month contains no more than 0.04 kg organic HAP per kg coating material applied, and each coating material applied at a new affected source contains no more than 0.016 kg organic HAP per kg coating material applied as determined in accordance with paragraphs (c)(1)(i) and (ii) of this section. You must calculate the as-applied organic HAP content of as-purchased coating materials which are reduced, thinned, or diluted prior to application.

(i) Determine the organic HAP content or volatile organic content of each coating material applied on an as-purchased basis in accordance with § 63.3360(c).

(ii) Calculate the as-applied organic HAP content of each coating material using Equation 1a of this section:

$$C_{ahi} = \frac{\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}} \quad \text{Eq. 1a}$$

Where:

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

or calculate the as-applied volatile organic content of each coating material using Equation 1b of this section:

$$C_{avi} = \frac{\left(C_{vi}M_i + \sum_{j=1}^{q} C_{vij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}} \quad \text{Eq. 1b}$$

Where:

C_{avi} = Monthly average, as-applied, volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

C_{vi} = Volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{vij} = Volatile organic content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(2) *Each coating material as-applied meets the mass fraction of coating solids standard (§ 63.3320(b)(3)).* You must demonstrate that each coating material applied at an existing affected source contains no more than 0.20 kg of organic HAP per kg of coating solids applied and each coating material applied at a new affected source contains no more than 0.08 kg of organic HAP per kg of coating solids applied. You must demonstrate compliance in accordance with paragraphs (c)(2)(i) and (ii) of this section.

(i) Determine the as-applied coating solids content of each coating material following the procedure in § 63.3360(d). You must calculate the as-applied coating solids content of coating materials which are reduced, thinned, or diluted prior to application, using Equation 2 of this section:

$$C_{asi} = \frac{\left(C_{si}M_i + \sum_{j=1}^{q} C_{sij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}} \quad \text{Eq. 2}$$

Where:

C_{asi} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(ii) Calculate the as-applied organic HAP to coating solids ratio using Equation 3 of this section:

$$H_{si} = \frac{C_{ahi}}{C_{asi}} \quad \text{Eq. 3}$$

Where:

H_{si} = As-applied, organic HAP to coating solids ratio of coating material, i.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

C_{asi} = Monthly average, as-applied, coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

(3) *Monthly average organic HAP content of all coating materials as-applied is less than the mass percent limit (§ 63.3320(b)(2)).* Demonstrate that the monthly average as-applied organic HAP content of all coating materials applied at an existing affected source is less than 0.04 kg organic HAP per kg of coating material applied, and all coating materials applied at a new affected source are less than 0.016 kg organic HAP per kg of coating material applied, as determined by Equation 4 of this section:

$$H_L = \frac{\sum_{i=1}^{p} C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij} - M_{vret}}{\sum_{i=1}^{p} M_i + \sum_{j=1}^{q} M_{ij}} \quad \text{Eq. 4}$$

Where:

H_L = Monthly average, as-applied, organic HAP content of all coating materials applied, expressed as kg organic HAP per kg of coating material applied, kg/kg.

p = Number of different coating materials applied in a month.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

(4) *Monthly average organic HAP content of all coating materials as-applied is less than the mass fraction of coating solids limit (§ 63.3320(b)(3)).* Demonstrate that the monthly average as-applied organic HAP content on the basis of coating solids applied of all coating materials applied at an existing affected source is less than 0.20 kg organic HAP per kg coating solids applied, and all coating materials applied at a new affected source are less than 0.08 kg organic HAP per kg coating solids applied, as determined by Equation 5 of this section:

$$H_S = \frac{\sum_{i=1}^{p} C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij} - M_{vret}}{\sum_{i=1}^{p} C_{Si}M_i + \sum_{j=1}^{q} C_{Sij}M_{ij}} \quad \text{Eq. 5}$$

Where:

H_s = Monthly average, as-applied, organic HAP to coating solids ratio, kg organic HAP/kg coating solids applied.

p = Number of different coating materials applied in a month.

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C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
q = Number of different materials added to the coating material.
C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.
M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.
M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.
C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.
C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.

(5) The affected source is in compliance with emission standards in § 63.3320(b)(2) or (3) if:

(i) The organic HAP content of each coating material as-applied at an existing affected source is no more than 0.04 kg organic HAP per kg coating material or 0.2 kg organic HAP per kg coating solids, and the organic HAP content of each coating material as-applied at a new affected source contains no more than 0.016 kg organic HAP per kg coating material or 0.08 kg organic HAP per kg coating solids; or

(ii) The monthly average organic HAP content of all as-applied coating materials at an existing affected source are no more than 0.04 kg organic HAP per kg coating material or 0.2 kg organic HAP per kg coating solids, and the monthly average organic HAP content of all as-applied coating materials at a new affected source is no more than 0.016 kg organic HAP per kg coating material or 0.08 kg organic HAP per kg coating solids.

(d) *Monthly allowable organic HAP applied.* Demonstrate that the total monthly organic HAP applied as determined by Equation 6 of this section is less than the calculated equivalent allowable organic HAP as determined by Equation 13a or b in paragraph (l) of this section:

$$H_m = \sum_{i=1}^{p} C_{hi} M_i + \sum_{j=1}^{q} C_{hij} M_{ij} - M_{vret} \qquad \text{Eq. 6}$$

Where:
H_m = Total monthly organic HAP applied, kg.
p = Number of different coating materials applied in a month.
C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
q = Number of different materials added to the coating material.
C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.
M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.
M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

(e) *Capture and control to reduce emissions to no more than allowable limit (§ 63.3320(b)(1)).* Operate a capture system and control device and demonstrate an overall organic HAP control efficiency of at least 95 percent at an existing affected source and at least 98 percent at a new affected source for each month, or operate a capture system and oxidizer so that an outlet organic HAP concentration of no greater than 20 ppmv by compound on a dry basis is achieved as long as the capture efficiency is 100 percent as detailed in § 63.3320(b)(4). Unless one of the cases described in paragraph (e)(1), (2), or (3) of this section applies to the affected source, you must either demonstrate compliance in accordance with the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device, or the procedure in paragraph (k) of this section when emissions are controlled by an oxidizer or demonstrate compliance for a web coating line by operating each capture system and each control device and continuous parameter monitoring according to the procedures in paragraph (j) of this section.

(1) If the affected source has only always-controlled work stations and operates more than one capture system or more than one control device, you must demonstrate compliance in accordance with the provisions of either paragraph (n) or (p) of this section.

(2) If the affected source operates one or more never-controlled work stations or one or more intermittently-controlled work stations, you must demonstrate compliance in accordance with the provisions of paragraph (n) of this section.

(3) An alternative method of demonstrating compliance with § 63.3320(b)(1) is the installation of a PTE around the web coating line that achieves 100 percent capture efficiency and ventilation of all organic HAP emissions from the total enclosure to an oxidizer with an outlet organic HAP concentration of no greater than 20 ppmv by compound on a dry basis. If this method is selected, you must demonstrate compliance by following the procedures in paragraphs (e)(3)(i) and (ii) of this section. Compliance is determined according to paragraph (e)(3)(iii) of this section.

(i) Demonstrate that a total enclosure is installed. An enclosure that meets the requirements in § 63.3360(f)(1) will be considered a total enclosure.

(ii) Determine the organic HAP concentration at the outlet of your total enclosure using the procedures in paragraph (e)(3)(ii)(A) or (B) of this section.

(A) Determine the control device efficiency using Equation 2 of § 63.3360 and the applicable test methods and procedures specified in § 63.3360(e).

(B) Use a CEMS to determine the organic HAP emission rate according to paragraphs (i)(2)(i) through (x) of this section.

(iii) You are in compliance if the installation of a total enclosure is demonstrated and the organic HAP concentration at the outlet of the incinerator is demonstrated to be no greater than 20 ppmv by compound on a dry basis.

(f) *Capture and control to achieve mass fraction of coating solids applied limit (§ 63.3320(b)(3)).* Operate a capture system and control device and limit the organic HAP emission rate from an existing affected source to no more than 0.20 kg organic HAP emitted per kg coating solids applied, and from a new affected source to no more than 0.08 kg organic HAP emitted per kg coating solids applied as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (n) of this section. Otherwise, you must demonstrate compliance following the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (k) of this section when emissions are controlled by an oxidizer.

(g) *Capture and control to achieve mass fraction limit (§ 63.3320(b)(2)).* Operate a capture system and control device and limit the organic HAP emission rate to no more than 0.04 kg organic HAP emitted per kg coating material applied at an existing affected source, and no more than 0.016 kg organic HAP emitted per kg coating material applied at a new affected source as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (n) of this section. Otherwise, you must demonstrate compliance following the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (k) of this section when emissions are controlled by an oxidizer.

(h) *Capture and control to achieve allowable emission rate.* Operate a capture system and control device and limit the monthly organic HAP emissions to less than the allowable emissions as calculated in accordance with paragraph (l) of this section. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (n) of this section. Otherwise, the owner or operator must demonstrate compliance following the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (k) of this section when emissions are controlled by an oxidizer.

(i) *Solvent recovery device compliance demonstration.* If you use a solvent recovery device to control emissions, you must show compliance by following the procedures in either paragraph (i)(1) or (2) of this section:

(1) *Liquid-liquid material balance.* Perform a monthly liquid-liquid material balance as specified in paragraphs (i)(1)(i) through (v) of this section and use the applicable equations in paragraphs (i)(1)(vi) through (ix) of this section to convert the data to units of the selected compliance option in paragraphs (e) through (h) of this section. Compliance is determined in accordance with paragraph (i)(1)(x) of this section.

(i) Determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common solvent recovery device during the month.

(ii) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(iii) Determine the volatile organic content of each coating material as-applied during the month following the procedure in § 63.3360(d).

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating material applied during the month following the procedure in § 63.3360(d).

(v) Determine and monitor the amount of volatile organic matter recovered for the month according to the procedures in § 63.3350(d).

(vi) *Recovery efficiency.* Calculate the volatile organic matter collection and recovery efficiency using Equation 7 of this section:

$$R_V = \frac{M_{vr} + M_{vret}}{\sum_{i=1}^{p} C_{vi} M_i + \sum_{i=1}^{q} C_{vij} M_{ij}} \times 100 \qquad \text{Eq. 7}$$

Where:
R_v = Organic volatile matter collection and recovery efficiency, percent.
M_{vr} = Mass of volatile matter recovered in a month, kg.
M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.
p = Number of different coating materials applied in a month.
C_{vi} = Volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
q = Number of different materials added to the coating material.
C_{vij} = Volatile organic content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.
M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(vii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month using Equation 8 of this section:

$$H_e = \left[1 - \frac{R_v}{100}\right]\left[\sum_{i=1}^{p} C_{hi} M_i + \sum_{j=1}^{q} C_{hij} M_{ij} - M_{vret}\right] \qquad \text{Eq. 8}$$

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Where:
H_e = Total monthly organic HAP emitted, kg.
R_v = Organic volatile matter collection and recovery efficiency, percent.
p = Number of different coating materials applied in a month.
C_{ahi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
q = Number of different materials added to the coating material.
C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.
M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.
M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

(viii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied using Equation 9 of this section:

$$L = \frac{H_e}{\sum_{i=1}^{p} C_{si} M_i + \sum_{j=1}^{q} C_{sij} M_{ij}} \quad \text{Eq. 9}$$

Where:
L = Mass organic HAP emitted per mass of coating solids applied, kg/kg.
H_e = Total monthly organic HAP emitted, kg.
p = Number of different coating materials applied in a month.
C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
q = Number of different materials added to the coating material.
C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.
M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(ix) *Organic HAP emission rate based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 10 of this section:

$$S = \frac{H_e}{\sum_{i=1}^{p} M_i + \sum_{j=1}^{q} M_{ij}} \quad \text{Eq. 10}$$

Where:
S = Mass organic HAP emitted per mass of material applied, kg/kg.
H_e = Total monthly organic HAP emitted, kg.
p = Number of different coating materials applied in a month.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
q = Number of different materials added to the coating material.
M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(x) You are in compliance with the emission standards in § 63.3320(b) if:

(A) The volatile organic matter collection and recovery efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(B) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(C) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(D) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section.

(2) *Continuous emission monitoring of capture system and control device performance.* Demonstrate initial compliance through a performance test on capture efficiency and continuing compliance through continuous emission monitors and continuous monitoring of capture system operating parameters following the procedures in paragraphs (i)(2)(i) through (vii) of this section. Use the applicable equations specified in paragraphs (i)(2)(viii) through (x) of this section to convert the monitoring and other data into units of the selected compliance option in paragraphs (e) through (h) of this section. Compliance is determined in accordance with paragraph (i)(2)(xi) of this section.

(i) *Control device efficiency.* Continuously monitor the gas stream entering and exiting the control device to determine the total organic volatile matter mass flow rate (*e.g.*, by determining the concentration of the vent gas in grams per cubic meter and the volumetric flow rate in cubic meters per second such that the total organic volatile matter mass flow rate in grams per second can be calculated) such that the control device efficiency of the control device can be calculated for each month using Equation 2 of § 63.3360.

(ii) *Capture efficiency monitoring.* Whenever a web coating line is operated, continuously monitor the operating parameters established in accordance with § 63.3350(f) to ensure capture efficiency.

(iii) Determine the percent capture efficiency in accordance with § 63.3360(f).

(iv) *Control efficiency.* Calculate the overall organic HAP control efficiency achieved for each month using Equation 11 of this section:

$$R = \frac{(E)(CE)}{100} \quad \text{Eq. 11}$$

Where:
R = Overall organic HAP control efficiency, percent.
E = Organic volatile matter control efficiency of the control device, percent.
CE = Organic volatile matter capture efficiency of the capture system, percent.

(v) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating materials applied, or emission of less than the calculated allowable organic HAP, determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common control device during the month.

(vi) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(vii) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating material as-applied during the month following the procedure in § 63.3360(d).

(viii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month for each month using Equation 12 of this section:

$$H_e = (1-R)\left(\sum_{i=1}^{p} C_{ahi} M_i\right) - M_{vret} \quad \text{Eq. 12}$$

Where:
H_e = Total monthly organic HAP emitted, kg.
R = Overall organic HAP control efficiency, percent.
p = Number of different coating materials applied in a month.
C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(ix) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied using Equation 9 of this section.

(x) *Organic HAP emission rate based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 10 of this section.

(xi) *Compare actual performance to the performance required by compliance option.* The affected source is in compliance with the emission standards in § 63.3320(b) for each month if the capture system is operated such that the average capture system operating parameter is greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(A) The organic volatile matter collection and recovery efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(B) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(C) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(D) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section.

(j) *Capture and control system compliance demonstration procedures using a CPMS.* If you use an add-on control device, you must demonstrate initial compliance for each capture system and each control device through performance tests and demonstrate continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (j)(1) through (3) of this section. Compliance is determined in accordance with paragraph (j)(4) of this section.

(1) Determine the control device destruction or removal efficiency using the applicable test methods and procedures in § 63.3360(e).

(2) Determine the emission capture efficiency in accordance with § 63.3360(f).

(3) Whenever a web coating line is operated, continuously monitor the operating parameters established according to § 63.3350(e) and (f).

(4) You are in compliance with the emission standards in § 63.3320(b) if the control device is operated such that the average operating parameter value is greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3360(e) for each 3-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(i) The overall organic HAP control efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(ii) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(iv) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section.

(k) *Oxidizer compliance demonstration procedures.* If you use an oxidizer to control emissions, you must show compliance by following the procedures in paragraph (k)(1) of this section. Use the applicable equations specified in paragraph (k)(2) of this section to convert the monitoring and other data into units of the selected compliance option in paragraph (e) through (h) of this section. Compliance is determined in accordance with paragraph (k)(3) of this section.

(1) Demonstrate initial compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (k)(1)(i) through (vi) of this section:

(i) Determine the oxidizer destruction efficiency using the procedure in § 63.3360(e).

(ii) Determine the capture system capture efficiency in accordance with § 63.3360(f).

(iii) *Capture and control efficiency monitoring.* Whenever a web coating line is operated, continuously monitor the operating parameters established in accordance with § 63.3350(e) and (f) to ensure capture and control efficiency.

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating materials applied, or emission of less than the calculated allowable organic HAP, determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common oxidizer during the month.

(v) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(vi) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating

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material applied during the month following the procedure in § 63.3360(d).

(2) Convert the information obtained under paragraph (p)(1) of this section into the units of the selected compliance option using the calculation procedures specified in paragraphs (k)(2)(i) through (iv) of this section.

(i) *Control efficiency.* Calculate the overall organic HAP control efficiency achieved using Equation 11 of this section.

(ii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month using Equation 12 of this section.

(iii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied for each month using Equation 9 of this section.

(iv) *Organic HAP based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 10 of this section.

(3) You are in compliance with the emission standards in § 63.3320(b) if the oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in accordance with § 63.3360(e) for each 3-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(i) The overall organic HAP control efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(ii) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(iv) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section.

(l) *Monthly allowable organic HAP emissions.* This paragraph provides the procedures and calculations for determining monthly allowable organic HAP emissions for use in demonstrating compliance in accordance with paragraph (d), (h), (i)(1)(x)(D), (i)(2)(xi)(D), or (k)(3)(iv) of this section. You will need to determine the amount of coating material applied at greater than or equal to 20 mass percent coating solids and the amount of coating material applied at less than 20 mass percent coating solids. The allowable organic HAP limit is then calculated based on coating material applied at greater than or equal to 20 mass percent coating solids complying with 0.2 kg organic HAP per kg coating solids at an existing affected source or 0.08 kg organic HAP per kg coating solids at a new affected source, and coating material applied at less than 20 mass percent coating solids complying with 4 mass percent organic HAP at an existing affected source and 1.6 mass-percent organic HAP at a new affected source as follows:

(1) Determine the as-purchased mass of each coating material applied each month.

(2) Determine the as-purchased coating solids content of each coating material applied each month in accordance with § 63.3360(d)(1).

(3) Determine the as-purchased mass fraction of each coating material which was applied at 20 mass percent or greater coating solids content on an as-applied basis.

(4) Determine the total mass of each solvent, diluent, thinner, or reducer added to coating materials which were applied at less than 20 mass percent coating solids content on an as-applied basis each month.

(5) Calculate the monthly allowable organic HAP emissions using Equation 13a of this section for an existing affected source:

$$H_a = 0.20\left[\sum_{i=1}^{p} M_i G_i C_{si}\right] + 0.04\left[\sum_{i=1}^{p} M_i(1-G_i) + \sum_{j=1}^{q} M_{L_j}\right] \quad \text{Eq. 13a}$$

Where:

H_a = Monthly allowable organic HAP emissions, kg.

p = Number of different coating materials applied in a month.

M_i = mass of as-purchased coating material, i, applied in a month, kg.

G_i = Mass fraction of each coating material, i, which was applied at 20 mass percent or greater coating solids content, on an as-applied basis, kg/kg.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

q = Number of different materials added to the coating material.

M_{Lj} = Mass of non-coating-solids-containing coating material, j, added to coating-solids-containing coating materials which were applied at less than 20 mass percent coating solids content, on an as-applied basis, in a month, kg.

or Equation 13b of this section for a new affected source:

$$H_a = 0.08\left[\sum_{i=1}^{p} M_i G_i C_{si}\right] + 0.016\left[\sum_{i=1}^{p} M_i(1-G_i) + \sum_{j=1}^{q} M_{L_j}\right] \quad \text{Eq. 13b}$$

Where:

H_a = Monthly allowable organic HAP emissions, kg.

p = Number of different coating materials applied in a month.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

G_i = Mass fraction of each coating material, i, which was applied at 20 mass percent or greater coating solids content, on an as-applied basis, kg/kg.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

q = Number of different materials added to the coating material.

M_{Lj} = Mass of non-coating-solids-containing coating material, j, added to coating-solids-containing coating materials which were applied at less than 20 mass percent coating solids content, on an as-applied basis, in a month, kg.

(m) [Reserved]

(n) *Combinations of capture and control.* If you operate more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, you must calculate organic HAP emissions according to the procedures in paragraphs (n)(1) through (4) of this section, and use the calculation procedures specified in paragraph (n)(5) of this section to convert the monitoring and other data into units of the selected control option in paragraphs (e) through (h) of this section. Use the procedures specified in paragraph (n)(6) of this section to demonstrate compliance.

(1) *Solvent recovery system using liquid-liquid material balance compliance demonstration.* If you choose to comply by means of a liquid-liquid material balance for each solvent recovery system used to control one or more web coating lines, you must determine the organic HAP emissions for those web coating lines controlled by that solvent recovery system either:

(i) In accordance with paragraphs (i)(1)(i) through (iii) and (v) through (vii) of this section, if the web coating lines controlled by that solvent recovery system have only always-controlled work stations; or

(ii) In accordance with paragraphs (i)(1)(ii), (iii), (v), and (vi) and (o) of this section, if the web coating lines controlled by that solvent recovery system have one or more never-controlled or intermittently-controlled work stations.

(2) *Solvent recovery system using performance test compliance demonstration and CEMS.* To demonstrate compliance through an initial test of capture efficiency, continuous monitoring of a capture system operating parameter, and a CEMS on each solvent recovery system used to control one or more web coating lines, you must:

(i) For each capture system delivering emissions to that solvent recovery system, monitor the operating parameter established in accordance with § 63.3350(f) to ensure capture system efficiency; and

(ii) Determine the organic HAP emissions for those web coating lines served by each capture system delivering emissions to that solvent recovery system either:

(A) In accordance with paragraphs (i)(2)(i) through (iii), (v), (vi), and (viii) of this section, if the web coating lines served by that capture and control system have only always-controlled work stations; or

(B) In accordance with paragraphs (i)(2)(i) through (iii), (vi), and (o) of this section, if the web coating lines served by that capture and control system have one or more never-controlled or intermittently-controlled work stations.

(3) *Oxidizer.* To demonstrate compliance through performance tests of capture efficiency and control device efficiency, continuous monitoring of capture system, and CPMS for control device operating parameters for each oxidizer used to control emissions from one or more web coating lines, you must:

(i) Monitor the operating parameter in accordance with § 63.3350(e) to ensure control device efficiency; and

(ii) For each capture system delivering emissions to that oxidizer, monitor the operating parameter established in accordance with § 63.3350(f) to ensure capture efficiency; and

(iii) Determine the organic HAP emissions for those web coating lines served by each capture system delivering emissions to that oxidizer either:

(A) In accordance with paragraphs (k)(1)(i) through (vi) of this section, if the web coating lines served by that capture and control system have only always-controlled work stations; or

(B) In accordance with paragraphs (k)(1)(i) through (iii), (v), and (o) of this section, if the web coating lines served by that capture and control system have one or more never-controlled or intermittently-controlled work stations.

(4) *Uncontrolled coating lines.* If you own or operate one or more uncontrolled web coating lines, you must determine the organic HAP applied on those web coating lines using Equation 6 of this section. The organic HAP emitted from an uncontrolled web coating line is equal to the organic HAP applied on that web coating line.

(5) Convert the information obtained under paragraphs (n)(1) through (4) of this section into the units of the selected compliance option using the calculation procedures specified in paragraphs (n)(5)(i) through (iv) of this section.

(i) *Organic HAP emitted.* Calculate the organic HAP emissions for the affected source for the month by summing all organic HAP emissions calculated according to paragraphs (n)(1), (2)(ii), (3)(iii), and (4) of this section.

(ii) *Coating solids applied.* If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, the owner or operator must determine the coating solids content of each coating material applied during the month following the procedure in § 63.3360(d).

(iii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied for each month using Equation 9 of this section.

(iv) *Organic HAP based on materials applied.* Calculate the organic HAP emission rate based on material applied using Equation 10 of this section.

(6) *Compliance.* The affected source is in compliance with the emission standards in § 63.3320(b) for the month if all operating parameters required to be monitored under paragraphs (n)(1) through (3) of this section were maintained at the values established under §§ 63.3350 and 63.3360; and

(i) The total mass of organic HAP emitted by the affected source based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(ii) The total mass of organic HAP emitted by the affected source based on material applied is no more than 0.04 kg organic HAP per kg material applied at an existing affected source and no more than 0.016 kg organic HAP per kg material applied at a new affected source; or

(iii) The total mass of organic HAP emitted by the affected source during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section; or

(iv) The total mass of organic HAP emitted by the affected source was not more than 5 percent of the total mass of organic HAP applied for the month at an existing affected source and no more than 2 percent of the total mass of organic HAP applied for the month at a new affected source. The total mass of organic HAP applied by the affected source in the month must be determined using Equation 6 of this section.

(o) *Intermittently-controlled and never-controlled work stations.* If you have been expressly referenced to this paragraph by paragraphs (n)(1)(ii), (n)(2)(ii)(B), or (n)(3)(iii)(B) of this section for calculation procedures to determine organic HAP emissions for your intermittently-controlled and never-controlled work stations, you must:

(1) Determine the sum of the mass of all coating materials as-applied on intermittently-controlled work stations operating in bypass mode and the mass of all coating materials as-applied on

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never-controlled work stations during the month.

(2) Determine the sum of the mass of all coating materials as-applied on intermittently-controlled work stations operating in a controlled mode and the mass of all coating materials applied on always-controlled work stations during the month.

(3) *Liquid-liquid material balance compliance demonstration.* For each web coating line or group of web coating lines for which you use the provisions of paragraph (n)(1)(ii) of this section, you must calculate the organic HAP emitted during the month using Equation 14 of this section:

$$H_e = \left[\sum_{i=1}^{p} M_{Ci} C_{ahi}\right]\left[1 - \frac{R_v}{100}\right] + \left[\sum_{i=1}^{p} M_{Bi} C_{ahi}\right] - M_{vret} \quad \text{Eq. 14}$$

Where:

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

M_{ci} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in controlled mode and the mass of coating material, i, as-applied on always-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

R_v = Organic volatile matter collection and recovery efficiency, percent.

M_{Bi} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in bypass mode and the mass of coating material, i, as-applied on never-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(4) *Performance test to determine capture efficiency and control device efficiency.* For each web coating line or group of web coating lines for which you use the provisions of paragraph (n)(2)(ii)(B) or (n)(3)(iii)(B) of this section, you must calculate the organic HAP emitted during the month using Equation 15 of this section:

$$H_e = \left[\sum_{i=1}^{p} M_{Ci} C_{ahi}\right]\left[1 - \frac{R}{100}\right] + \left[\sum_{i=1}^{p} M_{Bi} C_{ahi}\right] - M_{vret} \quad \text{Eq. 15}$$

Where:

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

M_{ci} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in controlled mode and the mass of coating material, i, as-applied on always-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

R = Overall organic HAP control efficiency, percent.

M_{Bi} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in bypass mode and the mass of coating material, i, as-applied on never-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(p) *Always-controlled work stations with more than one capture and control system.* If you operate more than one capture system or more than one control device and only have always-controlled work stations, then you are in compliance with the emission standards in § 63.3320(b)(1) for the month if for each web coating line or group of web coating lines controlled by a common control device:

(1) The volatile matter collection and recovery efficiency as determined by paragraphs (i)(1)(i), (iii), (v), and (vi) of this section is at least 95 percent at an existing affected source and at least 98 percent at a new affected source; or

(2) The overall organic HAP control efficiency as determined by paragraphs (i)(2)(i) through (iv) of this section for each web coating line or group of web coating lines served by that control device and a common capture system is at least 95 percent at an existing affected source and at least 98 percent at a new affected source; or

(3) The overall organic HAP control efficiency as determined by paragraphs (k)(1)(i) through (iii) and (k)(2)(i) of this section for each web coating line or group of web coating lines served by that control device and a common capture system is at least 95 percent at an existing affected source and at least 98 percent at a new affected source.

Notifications, Reports, and Records

§ 63.3400 What notifications and reports must I submit?

(a) Each owner or operator of an affected source subject to this subpart must submit the reports specified in paragraphs (b) through (g) of this section to the Administrator:

(b) You must submit an initial notification as required by § 63.9(b).

(1) Initial notification for existing affected sources must be submitted no later than 1 year before the compliance date specified in § 63.3330(a).

(2) Initial notification for new and reconstructed affected sources must be submitted as required by § 63.9(b).

(3) For the purpose of this subpart, a title V or part 70 permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b) and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA to implement and enforce this subpart.

(4) If you are using a permit application in lieu of an initial notification in accordance with paragraph (b)(3) of this section, the permit application must be submitted by the same due date specified for the initial notification.

(c) You must submit a semiannual compliance report according to paragraphs (c)(1) and (2) of this section.

(1) Compliance report dates.

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.3330 and ending on June 30 or December 31, whichever date is the first date following the end of the calendar half immediately following the compliance date that is specified for your affected source in § 63.3330.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the calendar half immediately following the compliance date that is specified for your affected source in § 63.3330.

(iii) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(v) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (c)(1)(i) through (iv) of this section.

(2) The compliance report must contain the information in paragraphs (c)(2)(i) through (vi) of this section:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature certifying the accuracy of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) If there are no deviations from any emission limitations (emission limit or operating limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period, and that no CMS was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(v) For each deviation from an emission limitation (emission limit or operating limit) that applies to you and that occurs at an affected source where you are not using a CEMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(2)(i) through (iii) of this section, and:

(A) The total operating time of each affected source during the reporting period.

(B) Information on the number, duration, and cause of deviations (including unknown cause), if applicable, and the corrective action taken.

(C) Information on the number, duration, and cause for CPMS downtime incidents, if applicable, other than downtime associated with zero and span and other calibration checks.

(vi) For each deviation from an emission limit occurring at an affected source where you are using a CEMS to comply with the emission limit in this subpart, you must include the information in paragraphs (c)(2)(i) through (iii) and (vi)(A) through (J) of this section.

(A) The date and time that each malfunction started and stopped.

(B) The date and time that each CEMS and CPMS, if applicable, was inoperative except for zero (low-level) and high-level checks.

(C) The date and time that each CEMS and CPMS, if applicable, was out-of-control, including the information in § 63.8(c)(8).

(D) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(E) A summary of the total duration (in hours) of each deviation during the reporting period and the total duration of each deviation as a percent of the total source operating time during that reporting period.

(F) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(G) A summary of the total duration (in hours) of CEMS and CPMS downtime during the reporting period and the total duration of CEMS and CPMS downtime as a percent of the total source operating time during that reporting period.

(H) A breakdown of the total duration of CEMS and CPMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.

(I) The date of the latest CEMS and CPMS certification or audit.

(J) A description of any changes in CEMS, CPMS, or controls since the last reporting period.

(d) You must submit a Notification of Performance Tests as specified in §§ 63.7 and 63.9(e) if you are complying with the emission standard using a control device and you are required to conduct a performance test of the control device. This notification and the site-specific test plan required under § 63.7(c)(2) must identify the operating parameters to be monitored to ensure that the capture efficiency of the capture system and the control efficiency of the control device determined during the performance test are maintained. Unless EPA objects to the parameter or requests changes, you may consider the parameter approved.

(e) You must submit a Notification of Compliance Status as specified in § 63.9(h).

(f) You must submit performance test reports as specified in § 63.10(d)(2) if you are using a control device to comply with the emission standard and you have not obtained a waiver from the performance test requirement or you are not exempted from this requirement by § 63.3360(b). The performance test reports must be submitted as part of the notification of compliance status required in § 63.3400(e).

(g) You must submit startup, shutdown, and malfunction reports as specified in § 63.10(d)(5), except that the provisions in subpart A of this part pertaining to startups, shutdowns, and malfunctions do not apply unless a control device is used to comply with this subpart.

(1) If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source

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(including actions taken to correct a malfunction) are not consistent with the procedures specified in the affected source's SSMP required by § 63.6(e)(3), the owner or operator must state such information in the report. The startup, shutdown, or malfunction report must consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy and must be submitted to the Administrator.

(2) Separate startup, shutdown, and malfunction reports are not required if the information is included in the report specified in paragraph (c)(2)(vi) of this section.

§ 63.3410 What records must I keep?

(a) Each owner or operator of an affected source subject to this subpart must maintain the records specified in paragraphs (a)(1) and (2) of this section on a monthly basis in accordance with the requirements of § 63.10(b)(1):

(1) Records specified in § 63.10(b)(2) of all measurements needed to demonstrate compliance with this standard, including:

(i) Continuous emission monitor data in accordance with the requirements of § 63.3350(d);

(ii) Control device and capture system operating parameter data in accordance with the requirements of § 63.3350(c), (e), and (f);

(iii) Organic HAP content data for the purpose of demonstrating compliance in accordance with the requirements of § 63.3360(c);

(iv) Volatile matter and coating solids content data for the purpose of demonstrating compliance in accordance with the requirements of § 63.3360(d);

(v) Overall control efficiency determination using capture efficiency and control device destruction or removal efficiency test results in accordance with the requirements of § 63.3360(e) and (f); and

(vi) Material usage, organic HAP usage, volatile matter usage, and coating solids usage and compliance demonstrations using these data in accordance with the requirements of § 63.3370(b), (c), and (d).

(2) Records specified in § 63.10(c) for each CMS operated by the owner or operator in accordance with the requirements of § 63.3350(b).

(b) Each owner or operator of an affected source subject to this subpart must maintain records of all liquid-liquid material balances performed in accordance with the requirements of § 63.3370. The records must be maintained in accordance with the requirements of § 63.10(b).

Delegation of Authority

§ 63.3420 What authorities may be delegated to the States?

(a) In delegating implementation and enforcement authority to a State under 40 CFR part 63, subpart E, the authorities contained in paragraph (b) of this section must be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: § 63.3360(c), approval of alternate test method for organic HAP content determination; § 63.3360(d), approval of alternate test method for volatile matter determination.

If you are required to comply with operating limits by § 63.3321, you must comply with the applicable operating limits in the following table:

Tables to Subpart JJJJ of Part 63

TABLE 1 TO SUBPART JJJJ OF PART 63.—OPERATING LIMITS IF USING ADD-ON CONTROL DEVICES AND CAPTURE SYSTEM

For the following device:	You must meet the following operating limit:	And you must demonstrate continuous compliance with operating limits by:
1. Thermal oxidizer	a. The average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3360(e)(3)(i).	i. Collecting the combustion temperature data according to § 63.3350(e)(9); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average combustion temperature at or above the temperature limit.
2. Catalytic oxidizer	a. The average temperature at the inlet to the catalyst bed in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3360(e)(3)(ii).	i. Collecting the catalyst bed inlet temperature data according to § 63.3350(e)(9); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average catalyst bed inlet temperature at or above the temperature limit.
	b. The temperature rise across the catalyst bed must not fall below the limit established according to § 63.3360(e)(3)(ii).	i. Collecting the catalyst bed inlet and outlet temperature data according to § 63.3350(e)(9); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average temperature rise across the catalyst bed at or above the limit.
3. Emission capture system	Submit monitoring plan to the Administrator that identifies operating parameters to be monitored according to § 63.3350(f).	Conduct monitoring according to the plan (§ 63.3350(f)(3)).

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.1(a)(1)–(4)	Yes.	

TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ—Continued

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.1(a)(5)	No	Reserved.
§ 63.1(a)(6)–(8)	Yes.	
§ 63.1(a)(9)	No	Reserved.
§ 63.1(a)(10)–(14)	Yes.	
§ 63.1(b)(1)	No	Subpart JJJJ specifies applicability.
§ 63.1(b)(2)–(3)	Yes.	
§ 63.1(c)(1)	Yes.	
§ 63.1(c)(2)	No	Area sources are not subject to emission standards of subpart JJJJ.
§ 63.1(c)(3)	No	Reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Reserved.
§ 63.1(e)	Yes.	
§ 63.1(e)(4)	No.	
§ 63.2	Yes	Additional definitions in subpart JJJJ.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	No	Reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)–(c)	Yes.	
§ 63.5(a)(1)–(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Reserved.
§ 63.5(b)(3)–(6)	Yes.	
§ 63.5(c)	No	Reserved.
§ 63.5(d)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)	Yes.	
§ 63.6(a)	Yes	Applies only when capture and control system is used to comply with the standard.
§ 63.6(b)(1)–(5)	No.	
§ 63.6(b)(6)	No	Reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)–(2)	Yes.	
§ 63.6(c)(3)–(4)	No	Reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Reserved.
§ 63.6(e)	Yes	Provisions pertaining to SSMP, and CMS do not apply unless an add–on control system is used to comply with the emission limitations.
§ 63.6(f)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart JJJJ does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Yes.	
§ 63.6(i)(15)	No	Reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7	Yes.	
§ 63.8(a)(1)–(2)	Yes.	
§ 63.8(a)(3)	No	Reserved.
§ 63.8(a)(4)	No.	
§ 63.8(b)	Yes.	
§ 63.8(c)(1)–(3)	Yes	§ 63.8(c)(1)(i) & (ii) only apply if you use capture and control systems and are required to have a start-up, shutdown, and malfunction plan.
§ 63.8(c)(4)	Yes.	
§ 63.8(c)(5)	No	Subpart JJJJ does not require COMS.
§ 63.8(c)(6)–(c)(8)	Yes	Provisions for COMS are not applicable.
§ 63.8(d)–(f)	Yes	§ 63.8(f)(6) only applies if you use CEMS.
§ 63.8(g)	Yes	Only applies if you use CEMS.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Except § 63.3400(b)(1) requires submittal of initial notification for existing affected sources no later than 1 year before compliance date.
§ 63.9(b)(3)–(5)	Yes.	

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TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ—Continued

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.9(c)–(e)	Yes.	
§ 63.9(f)	No	Subpart JJJJ does not require opacity and visible emissions observations.
§ 63.9(g)	Yes	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(3)	Yes.	
§ 63.9(h)(4)	No	Reserved.
§ 63.9(h)(5)–(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)–(3)	Yes	§ 63.10(b)(2)(i) through (v) only apply if you use a capture and control system.
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2)–(4)	No	Reserved.
§ 63.10(c)(5)–(8)	Yes.	
§ 63.10(c)(9)	No	Reserved.
§ 63.10(c)(10)–(15)	Yes.	
§ 63.10(d)(1)–(2)	Yes.	
§ 63.10(d)(3)	No	Subpart JJJJ does not require opacity and visible emissions observations.
§ 63.10(d)(4)–(5)	Yes.	
§ 63.10(e)(1)–(2)	Yes	Provisions for COMS are not applicable.
§ 63.10(e)(3)–(4)	No.	
§ 63.10(f)	Yes.	
§ 63.11	No.	
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes	Subpart JJJJ includes provisions for alternative ASME test methods that are incorporated by reference.
§ 63.15	Yes.	

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To amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion. (Dec. 2, 2002; 116 Stat. 2449)

H.R. 4727/P.L. 107–310
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H.R. 5716/P.L. 107–313
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107th Congress

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Presidential Determination No. 03–04 of November 29, 2002

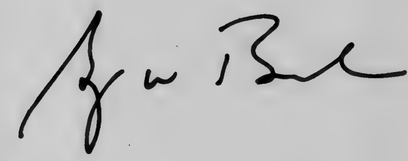
Imposition and Waiver of Sanctions Under Section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003

Memorandum for the Secretary of State

Pursuant to the authority contained in section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 ("the Act") (Public Law 107–228), and pursuant to section 603 of that Act, regarding noncompliance by the PLO and the Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604(a)(2), "Downgrade in Status of the PLO Office in the United States." This sanction is imposed for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later. You are authorized and directed to transmit to the appropriate congressional committees the initial report described in section 603 of the Act.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive that sanction, pursuant to section 604 of the Act. This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later.

You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



The White House,
Washington, November 29, 2002.

[FR Doc. 02–30950
Filed 12–04–02; 8:45 am]
Billing code 4710–10–M

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Rules and Regulations

Federal Register
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–5]

Amendment to Class E Airspace; Fremont, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; correction; and confirmation of effective date.

SUMMARY: This document contains a correction to a direct final rule and confirms the effective date of the direct final rule which revises Class E airspace at Fremont, NE.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 30, 2002 (67 FR 37667–37669). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 3, 2002. No adverse comments were received, and thus this document confirms that this direct final rule became effective on that date.

Correction

In rule document 02–13549 beginning on page 37667 in the issue of Thursday, May 30, 2002, make the following correction:

§ 71.1 [Corrected]

On page 37669, in the first line of the first column, in § 71.1, "lat 41° 27′ 02″N." should read "lat. 41°27′01″N."

Issued in Kansas City, MO on November 21, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–30849 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs; Neomycin Sulfate Soluble Powder; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Bimeda, Inc., and a change of this sponsor's address. The supplemental ANADA provides for use of neomycin sulfate soluble powder in the drinking water of growing turkeys for the control of mortality associated with *Escherichia coli* organisms susceptible to neomycin.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Bimeda, Inc., 288 County Rd. 28, LeSueur, MN 56058–9322, filed a supplement to ANADA 200–050 that provides for use of Neomycin 325 Soluble Powder for making medicated drinking water for administration to cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis (bacterial enteritis) caused by *E. coli* susceptible to neomycin. The supplemental ANADA provides for use of neomycin in the drinking water of growing turkeys for the control of mortality associated with *E. coli* organisms susceptible to neomycin. The supplemental application is approved as of July 10, 2002, and the regulations are amended in 21 CFR 520.1484 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Bimeda, Inc., has informed FDA of a change of sponsor address to 291 Forest Prairie Rd., LeSueur, MN 56058. Accordingly, the agency is amending the regulations in 21 CFR 510.600 to reflect the change of sponsor address.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21

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CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Bimeda, Inc." and in the table in paragraph (c)(2) by revising the entry for "061133" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Bimeda, Inc., 291 Forest Prairie Rd., LeSueur, MN 56058	061133
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
061133	Bimeda, Inc., 291 Forest Prairie Rd., LeSueur, MN 56058
* * * * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 520.1484 is amended by revising paragraphs (a) and (b) to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

(a) *Specifications.* Each ounce of powder contains 20.3 grams of neomycin sulfate (equivalent to 14.2 grams of neomycin base).

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) Nos. 000069, 046573, and 051259 for use as in paragraph (d)(1) of this section.

(2) Nos. 000009 and 061133 for use as in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

Dated: November 19, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30785 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. which provides for the administration of an oxytetracycline injectable solution to lactating dairy cattle.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137, filed a supplement to approved ANADA 200–154 that provides for the use of PENNOX 200 (oxytetracycline) Injection as a treatment for various bacterial diseases in cattle and swine. The supplemental ANADA provides for the administration of this oxytetracycline injectable solution to lactating dairy cattle. The supplemental application is approved as of June 13, 2002, and the regulations are amended in 21 CFR 522.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (d)(1)(iii) in the eighth sentence by removing "053389"; and in the ninth sentence by removing "000069 and 011722" and by adding in its place "000069, 011722, and 053389".

Dated: November 8, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30781 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The ANADA provides for the administration of an oxytetracycline injectable solution to cattle and swine for the treatment of various bacterial diseases.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed original ANADA 200–306 that provides for the use of Oxytetracycline Injection (200 milligrams per milliliter (mg/mL)) as a treatment for various bacterial diseases in cattle and swine. Norbrook's Oxytetracycline Injection (200 mg/mL) is approved as a generic copy of Pfizer's LIQUAMYCIN LA–200, approved under NADA 113–232. The application is approved as of June 18, 2002, and the regulations are amended in 21 CFR 522.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (b) by removing "*Sponsor*" and by adding in its place "*Sponsors*", and by numerically adding "055529"; in paragraph (d)(1)(iii) in the second and ninth sentences by numerically adding "055529"; and in paragraph (d)(2)(iii) in the third sentence by removing "when provided by 000010, 000069, 011722, 053389, 059130, and 061623".

Dated: November 15, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30782 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

New Animal Drugs; Tilmicosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly & Co. The supplemental NADA provides for subcutaneous injection of tilmicosin phosphate solution for the treatment of ovine respiratory disease (ORD). FDA is also amending the regulations to add tolerances for residues of tilmicosin in sheep muscle and liver and in cattle muscle.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569, e-mail: ndas@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplemental application to NADA 140–929 that provides for the use of MICOTIL 300 (tilmicosin phosphate) Injection by subcutaneous injection for the treatment of ORD associated with *Mannheimia* (*Pasteurella*) *haemolytica.* The supplemental NADA is approved as of September 4, 2002, and the regulations are amended in 21 CFR 522.2471 and § 556.735 (21 CFR 556.735) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, § 556.735 is amended by adding a tolerance for residues of tilmicosin in sheep muscle and liver and in cattle muscle, and editorially, to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.2471 is revised to read as follows:

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§ 522.2471 Tilmicosin.

(a) *Specifications.* Each milliliter of solution contains 300 milligrams (mg) tilmicosin base as tilmicosin phosphate.

(b) *Sponsor.* See No. 000986 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.735 of this chapter.

(d) *Special considerations.* (1) Not for human use. Use of this antibiotic in humans may prove fatal. Do not use in automatically powered syringes.

(2) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(e) *Conditions of use*—(1) *Cattle*—(i) *Amount.* 10 mg per kilogram (kg) body weight as a single subcutaneous injection.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (BRD) associated with *Mannheimia (Pasteurella) haemolytica.* For the control of respiratory disease in cattle at high risk of developing BRD associated with *Mannheimia (P.) haemolytica.*

(iii) *Limitations.* Do not use in female dairy cattle 20 months of age or older. Use of this antibiotic in this class of cattle may cause milk residues. Do not slaughter within 28 days of last treatment.

(2) *Sheep*—(i) *Amount.* 10 mg/kg body weight as a single subcutaneous injection.

(ii) *Indications for use.* For the treatment of ovine respiratory disease (ORD) associated with *Mannheimia (P.) haemolytica.*

(iii) *Limitations.* Do not slaughter within 28 days of last treatment.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.735 is amended by revising paragraph (b) to read as follows:

§ 556.735 Tilmicosin.

* * * * *

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue).* The tolerance for parent tilmicosin (the marker residue) is 1.2 parts per million (ppm).

(ii) *Muscle.* The tolerance for parent tilmicosin (the marker residue) is 0.1 ppm.

(2) *Swine*—(i) *Liver (the target tissue).* The tolerance for parent tilmicosin (the marker residue) is 7.5 ppm.

(ii) *Muscle.* The tolerance for parent tilmicosin (the marker residue) is 0.1 ppm.

(3) *Sheep*—(i) *Liver (the target tissue).* The tolerance for parent tilmicosin (the marker residue) is 1.2 ppm.

(ii) *Muscle.* The tolerance for parent tilmicosin (the marker residue) is 0.1 ppm.

Dated: November 21, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30864 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Purina Mills, Inc. The NADA provides for the use of a lasalocid Type A medicated article to make free-choice Type C medicated feed mineral blocks used for increased rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers).

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Amey L. Adams, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7560, e-mail: *aadams1@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812, filed NADA 141–171 that provides for use of BOVATEC 68 (lasalocid) Type A medicated article to make Purina Sugar Mag Block 1440 BVT Medicated Mineral Block, a free-choice Type C medicated feed. The free-choice mineral block is used for increased rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers). The NADA is approved as of August 20, 2002, and the regulations are amended in § 558.311 (21 CFR 558.311) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, § 558.311 is being amended to collocate the entry for another free-choice mineral Type C medicated feed, approved under NADA 138–993, to the new entry created for NADA 141–171. This is being done to improve the readability and clarity of the regulations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning August 20, 2002.

The agency has determined under 21 CFR 25.33(a)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S:C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.311 is amended by adding paragraph (b)(8); in paragraph (d)(7) by adding "and (e)(1)(xviii)" after "(e)(1)(xii)"; by revising (e)(1)(xii); and by adding paragraph (e)(1)(xviii) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(8) 15 percent activity to No. 017800 for use as in paragraph (e)(1)(xviii) of this section.

* * * * *

(e) * * *

(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(xii)	.....	Pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers): For increased rate of weight gain. Intakes of lasalocid in excess of 200 mg/head/day have not been shown to be more effective than 200 mg/head/day.	Feed continuously on a free-choice basis at a rate of not less than 60 mg or more than 300 mg of lasalocid per head per day.	046573
*	*	*	*	*
(xviii) 1440	.....	Pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers): For increased rate of weight gain.	Feed continuously on a free-choice basis at a rate of not less than 60 mg nor more than 200 mg of lasalocid per head per day.	021930 017800

* * * * *

Dated: November 8, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30783 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Tylosin Phosphate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health. The NADA provides for use of approved, single-ingredient salinomycin and tylosin phosphate Type A medicated articles to make two-way combination Type C medicated feeds used as an aid in the prevention of coccidiosis, and for increased rate of weight gain and improved feed efficiency in broiler chickens.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: *candres@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–198 that provides for use of BIO–COX (30 or 60 grams per pound (g/lb) salinomycin activity) and TYLAN (10, 40, or 100 g/lb tylosin phosphate) Type A medicated articles to make two-way combination Type C medicated broiler chicken feeds. The combination Type C medicated feeds contain 40 to 60 g/ton salinomycin and 4 to 50 g/ton tylosin phosphate and are used for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency in broiler chickens. The NADA is approved as of September 4, 2002, and the regulations in 21 CFR 558.550 and 558.625 are being amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.550 is amended by adding paragraph (d)(1)(xxii) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(d) * * *

(1) * * *

(xxii) *Amount per ton.* Salinomycin, 40 to 60 grams; plus tylosin, 4 to 50 grams.

(A) *Indications for use.* As an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Not approved for use with pellet binders. May be fatal if accidentally fed to adult turkeys or horses. Salinomycin as provided by 046573; tylosin phosphate as provided by 000986 in § 510.600(c) of this chapter.

* * * * *

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3. Section 558.625 is amended by adding paragraph (f)(2)(viii) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(2) * * *

(viii) Salinomycin as in § 558.550.

Dated: November 21, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30784 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Decoquinate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma, Inc. The supplemental NADA provides for the use of decoquinate Type A medicated articles to make Type C medicated feeds for cattle, sheep, and goats at a broader range of concentrations for the prevention of coccidiosis.

DATES: This rule is effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: jmessenh@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 39–417 that provides for use of DECCOX (decoquinate) Type A medicated articles to make Type C medicated feeds for cattle, sheep, and goats at a broader range of concentrations for the prevention of coccidiosis caused by various *Eimeria* species. The NADA is approved as of September 4, 2002, and the regulations are amended in 21 CFR 558.195 to reflect the approval. Section 558.195 is also revised to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.195 is revised to read as follows:

§ 558.195 Decoquinate.

(a) *Specifications.* Type A medicated article containing 6 percent decoquinate.

(b) *Approvals.* See No. 046573 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.170 of this chapter.

(d) *Special considerations.* (1) Bentonite should not be used in decoquinate feeds.

(2) Type A medicated articles may be used to manufacture dry or liquid Type B cattle (including veal calf), sheep, and goat feeds as in paragraphs (e)(2) and (e)(3) of this section.

(3) Type C cattle feeds may be manufactured from decoquinate liquid Type B feeds having a pH between 5.0 to 6.5 and containing a suspending agent to maintain a viscosity of not less than 500 centipoises.

(e) *Conditions of use.* It is used as follows:

(1) *Chickens.*

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 27.2		Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. mivati, E. acervulina, E. maxima,* and *E. brunetti.*	Do not feed to laying chickens.	046573
(ii) 27.2	Bacitracin methylene disalicylate 4 to 50	Broiler chickens: As in paragraph (e)(1)(i) of this section; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration; do not feed to laying chickens. Bacitracin methylene disalicylate as provided by No. 046573 in § 510.600(c) of this chapter.	046573
(iii) 27.2	Bacitracin zinc 10 to 50	Broiler chickens: As in paragraph (e)(1)(ii) of this section.	Feed continuously as sole ration; do not feed to laying chickens. Bacitracin zinc as provided by No. 046573 in § 510.600(c) of this chapter.	046573
(iv) 27.2	Bacitracin zinc 12 to 50 plus roxarsone 11 to 45	Broiler chickens: As in paragraph (e)(1)(ii) of this section.	Do not feed to laying chickens; withdraw 5 days before slaughter; as sole source of organic arsenic. Bacitracin zinc and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.	046573

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(v) 27.2	Bacitracin methylene disalicylate 50 and roxarsone 22.7 to 45.4	Broiler chickens: As in paragraph (e)(1)(ii) of this section; as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin; and for improved pigmentation.	Feed continuously as sole ration; do not feed to laying chickens; withdraw 5 days before slaughter. Not for use in breeder chickens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of drinking water may result in leg weakness or paralysis. Bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.	046573
(vi) 27.2	Chlortetracycline 100 to 200	Chickens: As in paragraph (e)(1)(i) of this section; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Feed continuously for 7 to 14 days; do not feed to chickens producing eggs for human consumption.	046573
(vii) 27.2	Chlortetracycline 200 to 400	Chickens: As in paragraph (e)(1)(i) of this section; and for control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to chlortetracycline.	As in paragraph (e)(1)(vi) of this section.	046573
(viii) 27.2	Lincomycin 2	Broiler chickens: As in paragraph (e)(1)(ii) of this section.	Feed as sole ration; do not feed to laying chickens; lincomycin provided by No. 000009 in § 510.600(c) of this chapter.	000009 046573
(ix) 27.2	Roxarsone 45.4	Broiler chickens: As in paragraph (e)(1)(ii) of this section; and for improving pigmentation.	Do not feed to laying chickens; withdraw 5 days before slaughter; as sole source of organic arsenic.	046573

(2) *Cattle.*

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 12.9 to 90.8		Cattle (including ruminating and nonruminating calves and veal calves): For prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii.*	Feed Type C feed or milk replacer at a rate to provide 22.7 milligrams (mg) per 100 pounds (lb) of body weight (0.5 mg/kilogram (kg)) per day. Feed at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to cows producing milk for food. May be prepared from dry or liquid Type B feed containing 0.0125 to 0.5 percent decoquinate. See paragraph (d)(3) of this section.	046573
(ii) 90.9 to 535.7		Cattle (including ruminating and nonruminating calves and veal calves): As in paragraph (e)(2)(i) of this section.	Feed as a top dress at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg/kg) per day. Feed at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to cows producing milk for food. May be prepared from dry or liquid Type B feed containing 0.0125 to 0.5 percent decoquinate. See paragraph (d)(3) of this section.	046573

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Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(iii) 13.6	Chlortetracycline approximately 400 (varying with body weight and feed consumption to provide 10 mg/lb of body weight per day)	Calves, beef and nonlactating dairy cattle: As in paragraph (e)(2)(i) of this section; for treatment of bacterial enteritis caused by *E. coli*; and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline.	Feed Type C feed to provide 22.7 mg decoquinate and 1 gram (g) chlortetracycline per 100 lb body weight (0.5 mg/kg) per day for not more than 5 days. Type C feed may be prepared from Type B feed containing 535.8 to 5,440 g/ton decoquinate and 6,700 to 80,000 g/ton chlortetracycline. When consumed, feed 22.7 mg decoquinate per 100 lb body weight/day for a total of 28 days to prevent coccidiosis. Withdraw 24 hours prior to slaughter when manufactured from CTC (chlortetracycline) Type A medicated articles under NADA 141–147. Zero withdrawal time when manufactured from AUREOMYCIN (chlortetracycline) Type A medicated articles under NADA 141–185. Do not feed to calves to be processed for veal. Do not feed to animals producing milk for food.	046573
(iv) 13.6	Monensin 5 to 30	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; and for improved feed efficiency.	Feed only to cattle fed in confinement for slaughter. Feed continuously as the sole ration to provide 22.7 mg of decoquinate per 100 lb body weight per day and 50 to 360 mg of monensin per head per day. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food. Also see paragraph (d)(1) of this section and § 558.355(d)(8). Monensin as provided by No. 000986 in § 510.600(c) of this chapter.	046573
(v) 13.6	Monensin 5 to 30 plus tylosin 8 to 10	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; for improved feed efficiency; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes.*	Feed only to cattle fed in confinement for slaughter. Feed continuously as the sole ration to provide 22.7 mg of decoquinate per 100 lb body weight per day, 50 to 360 mg of monensin per head per day, and 60 to 90 mg of tylosin per head per day. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food. Also see paragraph (d)(1) of this section and § 558.355(d)(8). Monensin and tylosin as provided by No. 000986 in § 510.600(c) of this chapter.	046573

(3) *Minor species.*

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 12.9 to 90.8		1. Young sheep: For the prevention of coccidiosis caused by *Eimeria ovinoidalis, E. crandallis, E. parva,* and *E. bakuensis.*	Feed Type C feed or milk replacer at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day; feed for at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to sheep producing milk for food.	046573

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
		2. Young goats: For the prevention of coccidiosis caused by *E. christenseni* and *E. ninakohlyakimovae.*	Feed Type C feed or milk replacer at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day; feed for at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to goats producing milk for food.	
(ii) 90.9 to 535.7		1. Young sheep: As in item 1 of paragraph (e)(3)(i) of this section.	Feed as a top dress at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day; feed for at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to sheep producing milk for food.	046573
		2. Young goats: As in item 2 of paragraph (e)(3)(i) of this section.	Feed as a top dress at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day; feed for at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to goats producing milk for food.	

Dated: November 25, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30863 Filed 12–4–02; 8:45 am]

BILLING CODE 4160–01–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is revising its regulations, which implement the Privacy Act of 1974, to exempt two EEOC systems of records from some of the Act's requirements.

EFFECTIVE DATE: December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, Office of Legal Counsel, (202) 663–4669 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: This rule is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362. The Commission published a notice of proposed rulemaking on July 30, 2002, proposing to amend its Privacy Act regulations. The Commission proposed to amend § 611.13 to exempt its system of records EEOC–15, Internal Harassment Inquiries, pursuant to section k(2) of the Privacy Act, from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act. In addition, the Commission proposed to add a new § 1611.14, to exempt its system of records EEOC–16, Office of Inspector General Investigative Files, pursuant to section (j)(2) from sections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) and pursuant to section (k)(2) from sections (c)(3), (d)(1), (d)(2) and (e)(1) of the Act.

Section (k) of the Privacy Act allows an agency to exempt any system of records from the above-referenced subsections of the Act if it consists of "investigatory material compiled for law enforcement purposes." 5 U.S.C. 552(k)(2). Section (j) of the Privacy Act permits an agency to exempt a system of records from sections of the Act, including those noted above, if the system of records is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws." 5 U.S.C. 552(j)(2). The files in the Internal Harassment Inquiries system of records contain information obtained by EEOC in its internal investigations of allegations of harassment filed by EEOC employees. The files in the Office of Inspector General Investigations Files system contain information obtained during investigations by the Office of Inspector General relating to programs and operations of the EEOC. It would impede the law enforcement activities of the Commission, and the Office of Inspector General to apply the disclosure and amendment provisions of the Privacy Act to the two systems of records. The regulation includes detailed reasons for the exemption of the two systems of records from the particular provisions of the Privacy Act.

We did not receive any comments on the proposed changes. This final rule, therefore, adopts the amendments proposed in the notice of proposed rulemaking without change.

Regulatory Procedures:

List of Subjects in 29 CFR Part 1611

For the Commission.

Cari M. Dominguez,

Chair.

Accordingly, chapter XIV of title 29 of the Code of Federal Regulations is amended as follows:

PART 1611—[AMENDED]

1. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a

2. Section 1611.13 is revised to read as follows:

§ 1611.13 Specific Exemptions-Charge and complaint files

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII and Americans with Disabilities Act Discrimination Case

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Files), EEOC–15 (Internal Harassment Inquiries) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of harassment inquiries, and investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, EEOC and agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies if these provisions of the Act applied to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge, complaint, or inquiry, and the general nature of the information contained in it.

(c) Subject individuals of the files in EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII and Americans with Disabilities Act Discrimination Case Files, and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC–3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC/GOVT–1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1614.108(f).

(d) Many of the records contained in system EEOC/GOVT–1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer, accuser or harasser as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminatory employer, accuser or harasser would undermine the investigative process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these four systems of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

3. Section 1611.14 is added to read as follows:

§ 1611.14 Exemptions—Office of Inspector General Files

(a) *General.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in this system falls within the scope of Exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(b) *Specific.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in this system falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG could retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

[FR Doc. 02–30525 Filed 12–4–02; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA–007–FOR]

Iowa Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Iowa abandoned mine land reclamation plan (Iowa plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (DSC) proposed to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Iowa. DSC also proposed to revise the Iowa plan to be consistent with the corresponding Federal regulations and to update other portions of its plan to reflect its current practices. In addition, we are including Iowa's proposal to revise its statute at Iowa Code (IC), Chapter 207.

EFFECTIVE DATE: December 5, 2002.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Plan
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Iowa Plan

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Iowa plan on March 28, 1983. You can find background information on the Iowa plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the March 28, 1983, **Federal Register** (48 FR 12711). You can find later actions concerning the Iowa plan and amendments to the plan at 30 CFR 915.25.

II. Submission of the Amendment

By letter dated June 14, 2002 (Administrative Record No. AML–IA–44), Iowa sent us a proposed amendment to its AMLR plan under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment at its own initiative and in response to a letter dated September 26, 1994 (Administrative Record No. AML–IA–39), that we sent to Iowa in accordance with 30 CFR 884.15(d). Iowa intended to demonstrate its capability to effectively undertake the AMLR emergency program on behalf of OSM. Iowa also intended to revise the Iowa plan to be consistent with the corresponding Federal regulations and to update other portions of its plan to reflect its current practices. In addition, we are including the revisions Iowa made to its statute at Iowa Code, Chapter 207.

We announced receipt of the proposed amendment in the August 13, 2002, **Federal Register** (67 FR 52659). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 12, 2002. We received comments from one Federal agency and one State agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment. Any revisions that we do not discuss below concern nonsubstantive wording changes or editorial changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment..

A. AMLR Emergency Program Demonstration

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR

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program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. In a **Federal Register** notice dated September 29, 1982 (47 FR 42729), we invited states to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf and published guidelines outlining three requirements for State assumption of the AMLR emergency program. For us to grant emergency authority to the State agency, the agency must demonstrate that it has the following: (1) statutory authority to undertake emergencies, (2) technical capability to design and supervise the emergency work, and (3) administrative mechanisms to respond quickly to emergencies either directly or through contractors.

1. Statutory Authority

The DSC has had statutory authority under IC section 207.21 to administer an emergency response program since approval of the Iowa plan on March 28, 1983. In order to implement this authority, Iowa's regulations at Iowa Administrative Code (IAC) 27–50.70 and 27–50.90 provide for right of entry on any land where an emergency exists. In a letter dated November 17, 1982, the Governor of Iowa designated the Iowa Department of Soil Conservation as the State agency responsible for the AMLR Program in Iowa. The Iowa chief legal officer issued an official opinion on November 24, 1982, that the Iowa Department of Soil Conservation is authorized under State law to establish, administer, and conduct a State reclamation program in accordance with the requirements of Title IV of the Federal Surface Mining Control and Reclamation Act of 1977, the regulations promulgated thereunder, and the State Reclamation Plan. Title IV of SMCRA covers both the regular AMLR program and the emergency reclamation program. A State government reorganization in 1986 transferred the same authorities to the Division of Soil Conservation in the Iowa Department of Agriculture and Land Stewardship.

2. Technical Capability

The DSC has demonstrated through past performance that it has the technical capability to implement an AMLR emergency program. In its June 14, 2002, submission of the amendment, Iowa submitted the following statement to demonstrate the DSC's technical capability to design and supervise the emergency work.

DSC has operated a successful AML reclamation program for nearly 20 years. We have completed numerous mine shaft closure projects under that program and have been assisting OSM in its abatement of AML subsidence emergencies since 1995. We have a geotechnical engineer on staff who is familiar with emergency project design practices and we have the ability to prepare project design plans, specifications and contract documents in-house. The DSC staff can also provide in-house project inspection services since emergency projects are normally of short duration. Based on the past experience of the AML Program and the current capabilities of our staff, the Division is seeking authority to assume responsibility for the day-to-day administration of the AML emergency program in Iowa.

Iowa has conducted an AMLR program since 1983. We have found that the Iowa AMLR program is run in a cost efficient and professional manner. Iowa has conducted project design and construction work with a high degree of competence and success. Projects are thoroughly analyzed and conducted in compliance with all National Environmental Policy Act (NEPA) requirements. Construction monitoring, post-construction monitoring, and maintenance processes ensure the projects meet contract specifications, project objectives, and program goals. Over the past few years, Iowa has designed and inspected AMLR emergency projects for us. Technical capabilities used for these emergency reclamation projects are the same as those used for normal, high priority reclamation projects. As of the end of evaluation year 2001, Iowa has reclaimed 55,010 feet of dangerous highwalls, 813 acres of dangerous spoil piles and embankments, 3 dangerous impoundments, 22 hazardous water bodies, 13 vertical openings, 7 miles of sediment-clogged streams, and 610 acres of mine land contributing to flooding problems. These are the same types of abandoned mine land features that Iowa will likely encounter in the AMLR emergency program. We have found that Iowa has developed and refined the in-house investigation, design, and project administration abilities necessary to administer an AMLR program and an AMLR emergency response program.

3. Administrative Mechanisms

During a review of Iowa's revised purchasing and procurement procedures at section 884.13(d)(3), we found that the DSC has the authority to issue contracts for emergency work. For contracts not exceeding $25,000, the contracting method will either be sole-sourced or based on selective solicitation of bids depending upon the severity of the emergency and its locality. For contracts exceeding $25,000, the public notice and competitive bidding requirements of IC Chapter 73A will be followed. These contracting methods are similar to those for Federal agencies and will allow Iowa adequate flexibility to address emergency conditions. Other administrative processes required to implement the emergency program are the same as those already in place for the Iowa AMLR program.

In accordance with section 405 of SMCRA and 30 CFR 884.15, Iowa has submitted an amendment to its AMLR plan, and we have determined, pursuant to 30 CFR 884.14, the following:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The proposed plan amendment meets all requirements of the Federal AMLR program regulations at 30 CFR Chapter VII, Subchapter R.

5. The State has an approved State Regulatory Program.

6. The amendment is in compliance with all applicable State and Federal laws and regulations.

Therefore, we find that the proposed Iowa plan amendment allowing the State to assume responsibility for an AMLR emergency response reclamation program on our behalf is in compliance with SMCRA and meets the requirements of the Federal regulations, and we are approving Iowa's assumption of the AMLR emergency program.

B. Revisions to Iowa's AMLR Plan

Iowa updated its AMLR plan to (1) ensure that it has the administrative mechanisms to quickly respond to AMLR emergencies either directly or through contractors and (2) reflect current state practices. The following table lists the sections of the AMLR plan that Iowa revised.

Plan section	Topic
I. 30 CFR 884.13(a)	A designation by the Governor of the state agency authorized to administer the state reclamation program and to receive and administer grants under 30 CFR part 886.
II. 30 CFR 884.13(b)	A legal opinion from the State Attorney General or the chief legal officer of the state agency that the designated agency has the authority under state law to conduct the program in accordance with the requirements of Title IV of the Act.
III. Policies and procedures for the state abandoned mine land reclamation program (30 CFR 884.13(c)).	A description of the policies and procedures to be followed by the designated state agency in conducting the reclamation program.
IV. Administrative and Management Structure (30 CFR 884.13(d)).	A description of the administrative and management structure to be used in conducting the reclamation program.
V. General Description of AML Reclamation (30 CFR 884.13(e)(2)–(e)(3)).	A general description, derived from available data, of the reclamation activities to be conducted under the state reclamation plan.

We find that the requirements of the revised Iowa AMLR plan meet the requirements of the Federal regulations at 30 CFR 884.13(a) through (e). Therefore we are approving them.

C. Revisions to Iowa's AMLR Statutes

Iowa proposed to amend the following sections in its statute at Iowa Code (IC), Chapter 207.

1. Iowa's statutes listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal statutes.

Topic	State statute	Federal counterpart statute
Priority order for the expenditure of moneys from the AMLR Fund on eligible lands and water.	IC 207.21 subsection 3	Section 403(a) of SMCRA.
Liens	IC 207.23	Section 408 of SMCRA.
Powers and Authority	IC 207.29	Section 413(a) of SMCRA.

Because the above State statutes contain language that is the same as or similar to the corresponding Federal statutes, we find that they are no less stringent than SMCRA. Therefore, we are approving them.

2. IC 207.21 Abandoned Mine Reclamation Program

Iowa proposed to revise IC 207.21 by adding subsections 2.a.(2) through 2.b. to read as follows:

(2) Coal lands and water damaged by coal mining processes and abandoned after August 3, 1977, if they were mined for coal or affected by coal mining processes and if either of the following occurred:

(a) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and April 10, 1981, and any moneys for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

(b) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent during that period and, as of November 5, 1990, moneys immediately available from proceedings relating to the insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

b. If requested by the governor, the division may fill voids and seal tunnels, shafts, and entryways resulting from any previous noncoal mining operation and may reclaim surface impacts of any such noncoal underground or surface mines that were mined prior to August 3, 1977, and which constitute an extreme danger to the public health, safety, general welfare, or property. Sites and areas designated for remedial action pursuant to the Federal Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901 *et seq.*, or which have been listed for remedial action pursuant to the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 7901 *et seq.*, are not eligible for expenditures under this section.

The counterpart Federal provisions are found at sections 402(g)(4)(A) through (B)(ii) and 409(a) of SMCRA, and 30 CFR 875.16. Iowa's proposed provisions have the same meaning as the counterpart Federal provisions except that at IC 207.21 subsection 2.a.(2)(a), sites must have been left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and April 10, 1981. The counterpart Federal provisions for IC 207.21 subsection 2.a.(2)(a) are found at section 402(g)(4)(B)(i) of SMCRA and provide that sites must have been left in either an unreclaimed or inadequately reclaimed condition beginning on August 4, 1977, and ending on or before the date on which the Secretary approved the State's program. Because the dates in Iowa's provision fall within the dates of the Federal provision and because the remaining proposed provisions have the same meaning as their counterpart Federal provisions, we are approving the above revisions to Iowa's program.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On June 19, 2002, under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Iowa plan (Administrative Record No. AML–IA–44.01). We received a letter dated July 22, 2002, from the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) stating that it had no concerns over Iowa's proposed amendment (Administrative Record No. AML–IA–44.02).

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 884.14(a)(6), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 19, 2002, we requested comments on Iowa's amendment (Administrative Record No. AML–IA–44.01). The ACHP did not respond to our request. The State

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Historical Society of Iowa (SHSOI) responded on July 8, 2002 (Administrative Record No. AML–IA–44.04) that the creation, amendment, and promulgation of the proposed administrative policies and procedures are not activities that would result in effects to historic properties, but that actions carried out thereunder may have the potential to cause effects. The SHSOI then stated that Part D [30 CFR 884.13(c)(3)] of Iowa's proposed AML Reclamation Plan stipulates pre-consultation and coordination with other State, Federal, and local entities, including the Iowa SHPO, that may have an interest in any proposed work and that it found this to be consistent with the procedures for consultations that are outlined in the ACHP's Protection of Historic Properties Final Rule (36 CFR Part 800). Further, the SHSOI stated that it had no objections to the amendment and no further comments. We agree that Part D [30 CFR 884.13(c)(3)] of Iowa's proposed AML Reclamation Plan regarding coordination of reclamation work is consistent with the procedures for consultations that are outlined in the ACHP's Protection of Historic Properties Final Rule (36 CFR Part 800). This final rule requires a review to determine the effect on historic properties of Federal or federally assisted undertakings such as emergency abatement projects.

V. OSM's Decision

Based on the above findings, we approve the amendment as submitted by Iowa on June 14, 2002. We approve the AMLR plan and statutes proposed by Iowa with the provision that they be fully promulgated in identical form to the plan and statutes submitted to and reviewed by us and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 915, which codify decisions concerning the Iowa program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 405(d) of SMCRA requires that the state have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this rule effective immediately will expedite that process.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine reclamation programs. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 12, 2002.

Jeffrey D. Jarrett,

Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, 30 CFR Part 915 is amended as set forth below:

PART 915—IOWA

1. The authority citation for Part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 915.25 is added to read as follows:

§ 915.25 Approval of Iowa abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all or portions of these amendments were published in the **Federal Register**, and the State citations or a brief description of each amendment. The amendments in this table are listed in the order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
June 14, 2002	December 5, 2002	Emergency response reclamation program; AMLR Plan sections I. through IV., V.B. and C.; Iowa Code (IC) 207.21 subsection 2.a.(2) through 2.b. and subsection 3.d.; 207.23; and 207.29.

[FR Doc. 02–30608 Filed 12–4–02; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–127–1–7555; FRL–7416–5]

Approval and Promulgation of Implementation Plans for Texas: Transportation Control Measures Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, the EPA is approving a revision to the Texas State Implementation Plan (SIP) that contains the transportation control measures (TCM) rule. The requirements in the State TCM rule address the roles and responsibilities of the Metropolitan Planning Organizations (MPO), implementing transportation agencies, and provide a method for substitution of specific TCMs without a SIP revision in the nonattainment and maintenance areas. The TCM rule is intended to promote effective implementation of TCMs, provide consequences for non-implementation, establish a streamline TCM substitution process and approval, and increase interaction between the Texas Commission on Environmental Quality (TCEQ) [1] and the MPOs in the air quality transportation planning process at the local levels. The EPA is approving this SIP revision under section 110(k) and 182 of the Clean Air Act (CAA). The rationale for the final approval action and other information are provided in this document.

EFFECTIVE DATE: This final rule is effective on January 6, 2003.

ADDRESSES: Copies of the relevant material for this action are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7186.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means EPA.

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I. What Is the Background for This Action?

Section 182(d)(1)(A) of the CAA requires States containing ozone nonattainment areas which are classified as "severe" pursuant to section 181(a) of the CAA to adopt TCM and transportation control strategies to offset any growth in emissions from growth in Vehicle Miles Traveled (VMT) or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the CAA's Reasonable Further Progress (RFP) milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the General Preamble to Title I of the CAA (57 FR 13498), April 16, 1992, and in section 182(d)(1)(A).

In addition, the states may adopt TCMs as control strategies in order to meet the requirements of sections 182(b) and 182(c) of the CAA for RFP and attainment SIPs in the ozone nonattainment areas. The EPA can only accept the emission credits resulting from such TCMs if the State can provide adequate evidence that it will have authority to enforce the TCMs which are identified as a part of the control strategy in the RFP and attainment demonstration SIPs for meeting the ozone standard.[2] The State of Texas has adopted certain TCMs for meeting the RFP and attainment demonstration requirements under sections 182(b) and (c) of the CAA.

Our action today addresses the State's authority, processes, procedures, and responsibilities of each agency regarding implementation and substitution of the TCMs in any SIP in the designated nonattainment or maintenance areas.

[1] Recently, this organization changed its name from Texas Natural Resource Conservation Commission (TNRCC).

[2] See section 110(a)(2)(A) of the CAA.

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II. What Did the State Submit and How Did We Evaluate It?

The Governor of Texas submitted the TCM SIP revision on May 17, 2000. The TCEQ adopted the Texas TCM rule on May 9, 2000, after appropriate public notice and hearing. The TCM rule consists of two parts. 30 Texas Administrative Code (TAC) Chapter 114 Section 114.5 includes "Transportation Planning Definitions." 30 TAC Chapter 114 Section 114.270 contains "Transportation Control Measures," which addresses the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas and provides a method for the substitution of TCMs. The TCEQ developed the TCM rule in cooperation with the MPOs, the Texas Department of Transportation, and in consultation with the Federal Highway Administration, Federal Transit Administration, and the EPA. The State TCM rule identifies the responsibility of each agency and sets forth the procedures and processes for selection of the TCMs, inclusion in the SIP, periodic reporting and record-keeping, corrective measures, emissions reductions and TCM effectiveness, and consequences of non-implementation. In addition, the rule specifically establishes processes and procedures for substitution of any TCM in the SIP that cannot be implemented for any reason by the implementation date in the SIP. The TCM rule guarantees that substituted TCMs will be both equivalent [3] in terms of emissions, and enforceable.[4] The procedures for substitution of the TCMs require public notice and comment period and consultation, but do not require a formal SIP revision and approval by the EPA.

We have reviewed the State TCM processes and procedures, and we have evaluated the provisions of the rule based on the criteria provided in the CAA for development of SIPs in the nonattainment and maintenance areas. We note that neither the CAA nor the EPA rules require the State to develop, and submit as a SIP revision, a TCM rule. Our evaluation is specifically based on sections 110, 176, 182, and consistency of this rule with the CAA. Based on this review, we have determined that the TCEQ's TCM rule provides adequate authority and procedures for implementation and substitution of TCMs in the designated nonattainment and maintenance areas including how equivalency is determined, public participation and EPA concurrence. Therefore, we are approving this SIP revision.

III. Responses to Comments on the Direct Final Action

On July 16, 2001, the EPA published a direct final rule approving this revision to the Texas SIP containing the TCM rule. This rule contained the condition that if any adverse comments were received by the end of the public comment period on August 15, 2001, the direct final rule would be withdrawn, and we would respond to the comments in a subsequent final action. One set of comments was received from the Committees for Land, Air, Water, and Species (CLAWS). The following summarizes the comments and EPA's response to these comments:

Comment 1: This comment states that the criteria for when a TCM substitution is appropriate must be specified. Substitution "for any reason" is not appropriate. MPOs can simply evade non-implementation issues through abuse of the substitution process.

Response: 30 TAC section 114.270(f)(1)(A) requires that a substitute TCM provide for equivalent or greater emissions reductions than the TCM to be replaced. EPA feels that this prevents MPOs from either substituting a TCM with one that does not provide an equivalent level of emissions reductions, or simply withdrawing or failing to implement a TCM.

Furthermore, 30 TAC section 114.270(c) requires that all TCMs be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with 30 TAC section 114.260 (relating to Transportation Conformity); Title 40 Code of Federal Regulations, part 93 (Conformity to State or Federal Implementation Plans of Transportation Plans); the Federal Clean Air Act; and the EPA TCM SIP approval criteria listed in the EPA guidance document "Transportation Control Measures: State Implementation Plan Guidance, EPA 450/2–89–020, September 1990." EPA believes that this ensures that the TCM substitution process will be adequately monitored, tracked, and if necessary properly enforced.

Comment 2: This comment states that the public should have a representative in the working group that evaluates alternative TCMs.

Response: A public hearing is required by 30 TAC section 114.270(f)(5) prior to a substitution being made. The public will have a minimum of 30 days prior to the hearing to submit comments. Comments can also be submitted during the public hearing itself. EPA believes that this affords the public ample opportunity to be engaged in the TCM substitution process.

Comment 3: This comment states that EPA's concurrence period of 14 days is too short and unreasonable. The period should be at least 60 days. EPA must make an independent finding of TCM equivalency and publish it in the **Federal Register**.

Response: As required by 30 TAC sections 114.270(f)(3), and 114.270(f)(4), in order to identify and evaluate possible substitute TCMs, the MPO must form a committee or working group which will consult with EPA Region 6. The MPO, the TCEQ, and the EPA Region 6 must concur with the appropriateness and equivalency of the substitute TCM. Consequently, EPA will be fully engaged in the TCM substitution process prior to the final 14 day concurrence period cited in the comment, and will have ample opportunity to conduct its analysis.

Regarding the second part of the question, EPA does not agree that it must conduct future rulemaking on TCM substitution. In approving the rule today as part of the Texas SIP, EPA finds that under the rule, all TCM substitutions will produce equivalent emission reductions and meet all TCM approval requirements or will be in violation of the approved SIP. The principal reasons for the TCM substitution process are to (1) allow MPOs flexibility in meeting emissions requirements, and (2) to encourage the inclusion of TCMs in the SIP. EPA will be engaged in this process to ensure TCM equivalency of any substitution. If EPA were to publish each TCM finding in the **Federal Register**, along with the presumed public comment period typical of such announcements, much of the intended benefits of a streamlined TCM substitution process would be lost. EPA believes that the State's requirements for a 30-day comment period and public hearing already provide ample opportunity for public involvement in the substitution process.

Comment 4: This comment states substitute TCM equivalency must be evaluated in units of emissions reductions, VMT reductions, and trip start reductions.

Response: As stated in the response to Comment 1, 30 TAC section 114.270(f)(1) (A) requires that a substitute TCM must provide for equivalent or greater emissions reductions than the TCM to be replaced. In addition 30 TAC section 114.270(f)(2) requires that the analysis of substitute TCMs must be consistent with the methodology used for evaluating TCMs in the SIP, including the use of the latest emissions modeling techniques. EPA believes that these requirements will ensure that TCM equivalency will be adequately evaluated.

Comment 5: This comment states that any TCM substitution analysis and evaluation must include a comparative environmental and social justice impact process. An environmental justice representative should be a member of the working group.

Response: EPA fully supports Executive Order 12898, concerning environmental justice. In addition, the Federal Transit Administration and the Federal Highway Administration each have environmental justice policies, to which State Departments of Transportation that receive federal funds must adhere.

The Agency defines environmental justice to mean the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision making processes of the government.

EPA encourages the MPO, in the formation of the committee or working group that will evaluate possible substitute TCMs, (as required by 30 TAC sections 114.270(f)(3)) to include representatives from the portions of the community or communities affected by the TCM substitution and those concerned about environmental justice issues. EPA believes that since the public will have, as provided for by 30 TAC section 114.270(f)(5), a minimum of 30 days prior to the hearing to submit comments, and an opportunity to submit comments during the public hearing itself, ample opportunity for meaningful public involvement in the TCM substitution process will be provided.

Comment 6: This comment states the language concerning "implementation date" must be clarified. The initiation and full implementation of substitute TCMs should be undertaken in the same time frame as the original TCM. If this is not possible, the completion of the substitute TCM's full implementation should occur at the same time as the original TCM. If this is not possible, full implementation should occur as expeditiously as practicable. Any temporal loss of emissions reductions must be backfilled through ERC bank purchases or other offsetting emissions reductions to meet SIP timetables for emissions reductions.

Response: As required by 30 TAC sections 114.270(f)(1)(B) and 114.270(f)(1)(C), a substitute TCM must provide for implementation in the time frame established for the TCM in the SIP. If the implementation date has already passed, measures that require funding must be included in the first year of the next transportation improvement program and metropolitan transportation plan adopted by the MPO. Full implementation must occur not later than two years from the scheduled implementation date of the original TCM. EPA believes that these requirements will ensure that substitute TCMs are implemented as expeditiously as possible, therefore participation in an Emission Reduction Credit (ERC) bank is unnecessary.

Comment 7: This comment states that the enforceability of the substituted and substituting TCM is not evident from the rule. States cannot unilaterally amend their SIPs and rescind a TCM.

Response: Regarding the enforceability issue, 30 TAC section 114.270(f)(1)(D) requires that a substitute TCM must provide for evidence of adequate personnel, funding, and authority under state or local law to implement, monitor, and enforce the measures in order for the TCEQ to approve the substitute TCM. EPA believes that this will ensure that the substituted and substituting TCM will be adequately enforced. Additionally, both the EPA and citizens can take appropriate action for any violation of the approved SIP, which includes violations of the TCM substitution process under sections 113(a)(1), 113(a)(2), and 304 of the CAA. Regarding the second part of the comment, the purpose of the TCM substitution process is to allow substitutions, through an approval process that has been approved into the SIP, without having a separate federal SIP rulemaking. Also, the TCM substitution process is not unilateral, in that the TCEQ, EPA, the MPO, and the public are all involved, and the process has been approved into the SIP as providing for both equivalency in terms of emissions and enforceability of the substituted TCMs.

Comment 8: This comment states that EPA has not provided sufficient analysis of the legal authority to approve such a rule. The CAA requires all SIP measures to be enforceable at all times. The **Federal Register** notice lacks essential analysis of the proposed action.

A related comment states that the proposed action has national ramifications. While the benefits of flexibility in TCM implementation are significant, this must comport with the requirements of the CAA. As proposed, the rule fails to address enforceability and the issues noted above.

Response: EPA believes that a replicable procedure for enforceable TCM substitution is consistent with existing EPA SIP policy. As stated in the Direct Final Rule (66 FR 36921, July 16, 2001) neither the CAA nor the EPA rules require the State to develop, and submit as a SIP revision, a TCM rule. This evaluation is specifically based on the consistency of this rule with sections 110, 176, and 182 of the CAA. Based on this review, we have determined that the TCEQ's TCM rule provides adequate authority and procedures for implementation and substitution of TCMs in the designated nonattainment and maintenance areas including how equivalency is determined, public participation and EPA concurrence. The issue of enforceability is addressed in the response to Comment 7.

IV. What Is Our Final Action?

We are approving the Texas TCM rule which addresses the roles and responsibilities of the MPOs, implementing transportation agencies, and provides a method for substitution of the TCMs without a SIP revision in the nonattainment and maintenance areas. We have evaluated this SIP revision and have determined that the State's rules in TAC 30 Chapter 114 sections 114.5 and 114.270 provide adequate processes and procedures consistent with the CAA for implementing, tracking, and substitution of the TCMs, with equivalent control measures, which are used as a control strategy in the SIPs for attainment and maintenance of the NAAQS. The TCEQ conducted appropriate public participation during development and adoption of this rule at the local level.

V. What Administrative Requirements Apply for This Action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this

[3] 30 TAC section 114.270(f)(1)(A).
[4] 30 TAC section 114.270(f)(1)(D).

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rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 21, 2002.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended:

a. Under Chapter 114, Subchapter A, by adding new section 114.5, Transportation Planning Definition, immediately following section 114.3;

b. Under Chapter 114, Subchapter G, by adding new section 114.270, Transportation Control Measures, immediately after Section 114.260.

3. The table in § 52.2270(e) entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding to the end of the table an entry for "Transportation Control Measures SIP Revision."

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal data	EPA approval date	Explanation
•	•	•	•	•
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
Subchapter A—Definitions				
Section 114.5	Transportation Planning Definition	05/03/2000	12/5/02 and FR page cite.	
•	•	•	•	•
Subchapter G—Transportation Planning				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal data	EPA approval date	Explanation
•	•	•	•	•
Section 114.270	Transportation Control Measures	05/03/2000	12/5/02 and FR page cite.	
•	•	•	•	•

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
•	•	•	•	•
Transportation Control Measures SIP Revision.	All Nonattainment and Maintenance Areas.	05/09/2000	12/5/02 and FR page cite.	Chapter 1. Introduction, Chapter 2. General, and Chapter 3. Criteria and Procedures.

[FR Doc. 02–30764 Filed 12–4–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA31

Organization and Delegation of Powers and Duties; Delegations to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Administrator of the Maritime Administration his authority to enforce the prohibition of shipment of Government-impelled cargoes on vessels if: (1) The vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party; or (2) the operator of the vessel has on more than one occasion had a violation of an international safety convention to which the United States is a party. The authorities relating to this matter are vested in the Secretary of Transportation by 46 U.S.C. 2302(e)(2001), added by section 408(a) of Public Law 105–383, approved November 13, 1998 (112 Stat. 3411, 3430).

EFFECTIVE DATE: December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Director, Office of Management and Information Services, Maritime Administration, MAR–310, Room 7301, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–2811.

SUPPLEMENTARY INFORMATION: The Secretary is delegating to the Maritime Administrator his authority to enforce the prohibition of shipment of Government-impelled cargoes on a vessel if: (1) The vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel; or (2) the operator of the vessel has on more than one occasion had a violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel. The prohibition expires for a vessel on the earlier of (1) one year after the date of the publication in electronic form on which the prohibition is based; or (2) any date on which the owner or operator of the vessel prevails in an appeal of the violation of the relevant international convention on which the determination is based. The term "Government-impelled cargo" means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water. The authorities relating to this matter are vested in the Secretary of Transportation by 46 U.S.C. 2302(e)(2001), added by section 408(a) of Public Law 105–383, approved November 13, 1998 (112 Stat. 3411, 3430).

This amendment adds 49 CFR 1.66(ee) to reflect the Secretary's delegation of his authority to enforce the prohibition of shipment of Government-impelled cargoes on certain vessels to the Maritime Administrator. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Maritime Administration's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Evaluation

Regulatory Assessment

This rulemaking is a non-significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management

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and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the States nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2).

2. In section 1.66, add new paragraph (ee) to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(ee) Exercise the authority vested in the Secretary of Transportation by section 408(a) of Public Law 105–383 approved November 13, 1998, (112 Stat. 3411 and 3430), 46 U.S.C. 2302(e), relating to the enforcement of the prohibition of shipment of Government-impelled cargoes on vessels if (1) the vessel has been detained and determined to be substandard by the Secretary of Transportation for violation of an international safety convention to which the United States is a party; or (2) the operator of the vessel has on more than one occasion had a violation of an international safety convention to which the United States is a party. The term "Government-impelled cargo" means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water.

* * * * *

Issued on November 26, 2002.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02–30852 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2001–11108, Notice 2]

RIN 2127–AI27

Motor Vehicle Safety; Acceleration of Manufacturer's Remedy Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final rule.

SUMMARY: This document adopts a regulation implementing Section 6(a) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to accelerate their programs to remedy a defect related to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard if directed to do so by NHTSA. The agency will impose this requirement if it determines that the manufacturer's remedy program is not likely to be capable of completion within a reasonable time and finds: that there is a risk of serious injury or death if the remedy program is not accelerated; and that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both.

DATES: *Effective Date:* The effective date of the final rule is January 6, 2003. Petitions for Reconsideration: Petitions for reconsideration of the final rule must be received not later than January 21, 2003.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact George Person, Office of Defects Investigation, NHTSA, (202) 366–5210. For legal issues, contact Coleman Sachs, Office of Chief Counsel, NHTSA, (202) 366–5238.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2000, the TREAD Act, Public Law 106–414, was enacted. The statute was an outgrowth, in part, of Congressional concerns over manufacturers' delays in repairing or replacing motor vehicles or motor vehicle equipment items that contain a safety-related defect or fail to comply with a Federal motor vehicle safety standard (FMVSS).

Under 49 U.S.C. 30118(b), the agency may make a final decision that a motor vehicle or item of replacement motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable FMVSS. In addition, under section 30118(c), a manufacturer of a motor vehicle or replacement equipment item is required to notify the agency when it determines, or should determine, that the vehicle or equipment item contains a defect that is related to motor vehicle safety or does not comply with an applicable safety standard.

Under both circumstances, the manufacturer is required to provide notification of the defect or noncompliance to owners, purchasers, and dealers of the affected vehicle or equipment item, and remedy the defect or noncompliance without charge. Section 30119 sets forth statutory requirements for owner notification and requires the manufacturer to give such notice within a reasonable time. *See also* 49 CFR Part 577. However, if the agency makes a final decision under section 30118(b) that a motor vehicle or equipment item contains a safety-related defect or noncompliance, then it prescribes under section 30119(c)(1) the date by which the manufacturer must provide notification to the affected owners, purchasers, and dealers.

49 U.S.C. 30120 further provides that a manufacturer of a defective or noncompliant motor vehicle or replacement equipment item must repair it or replace it with an identical or reasonably equivalent vehicle or equipment item or, in the case of a vehicle, refund the purchase price less depreciation. Under section 30120(c), if a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment item and the repair is not done adequately within a reasonable time, the manufacturer is required to replace the vehicle or equipment item without charge or, for a vehicle, refund the purchase price. Failure to repair within 60 days after the vehicle or equipment item is presented to a dealer in accordance with the manufacturer's notification is prima facie evidence of failure to repair within a reasonable time. The agency can extend the 60-day period if good cause for the extension is shown and the reason is published in the **Federal Register** before the period ends.

Section 30120(d) requires the manufacturer to submit its program for remedying a defect or noncompliance to the agency. Manufacturers fulfill this requirement by submitting defect and noncompliance information reports to NHTSA in accordance with procedures set forth in 49 CFR Part 573. Section 573.6(c)(8) of these regulations requires a manufacturer, as part of its report, to provide a description of the manufacturer's program for remedying the defect or noncompliance. In 1995, NHTSA amended that section (then 573.5(c)(8)) to require a manufacturer to advise NHTSA of the estimated date on which it will begin sending notifications to owners that there is a safety-related defect or noncompliance and that a remedy without charge will be available, and the estimated date on which the notification campaign will be completed. See Section 573.6(c)(8)(ii). In the preamble of the proposed rule that led to the 1995 amendment, NHTSA explained that there had been an increase in the number of recalls in which there was a significant delay in the commencement of the remedy campaign, and, in some instances, an inordinate extension in the duration of the campaign. NHTSA further explained that the amendment was necessary for the agency to assure that the timing and duration of remedy campaigns were appropriate, and to enable it to respond more completely to public questions concerning the timing of recall campaigns. 58 FR 30817, September 27, 1993.

Section 6(a) of the TREAD Act added a new paragraph (3) to 49 U.S.C. 30120(c), which provides that if the Secretary determines that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, the Secretary may require the manufacturer to accelerate the remedy program if the Secretary finds: (A) There is a risk of serious injury or death if the remedy program is not accelerated; and (B) acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both. Although section 30120(c)(3) is self-executing in the absence of implementing regulations, the statute provides that the Secretary may prescribe regulations to carry out its purposes. This authority has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

On December 11, 2001, we issued a notice of proposed rulemaking (NPRM) at 66 FR 64897 that would implement this provision, in which we solicited comments on how we could best approach this task. We received 11 comments in response to the NRPM. These were submitted by the Alliance of Automobile Manufacturers (Alliance), Bendix Commercial Vehicle Systems LLC (Bendix), Delphi Automotive Systems LLC (Delphi), Ford Motor Company (Ford), the Juvenile Products Manufacturers Association, Inc. (JPMA), the National Automobile Dealers Association (NADA), the Rubber Manufacturers Association (RMA), the Truck Manufacturers Association (TMA), Volkswagen of America, Inc., on its own behalf, as well as that of Volkswagen AG and Audi AG (Volkswagen), and Wenda A. Wacker, who commented both as a private citizen and as an employee of the California Department of Motor Vehicles (DMV). In addition, a comment was submitted by Attorney Lawrence Henneberger on behalf of the Motor and Equipment Manufacturers Association (MEMA) and the Original Equipment Suppliers Association (OESA). These comments have provided us with a variety of insights in developing this final rule.

II. Discussion

A. Application

In the NPRM, we proposed that the acceleration of remedy rule apply to manufacturers of motor vehicles and replacement equipment items whose products have been determined to contain a safety-related defect or a noncompliance with a FMVSS. The manufacturing entities that are subject to these requirements are listed in 49 CFR 573.3(a)–(f). We did not receive any comments on the proposed application of this rule. We are adopting this aspect of the rule as proposed.

B. Circumstances Under Which the Administrator May Require a Manufacturer To Accelerate Its Remedy Program

1. Risk of Serious Injury or Death

In the NPRM, we noted that under 49 U.S.C. 30120(c)(3), the decision to require a manufacturer to accelerate its remedy program is to be exercised at the discretion of the Administrator. We proposed that the Administrator be required to make two findings and one determination to invoke this provision. One of the proposed findings, adopted from the statute, was that there is a risk of serious injury or death if the remedy program is not accelerated. See proposed section 573.14(b)(1). We observed that for the Administrator to make this finding, there need only be a risk of serious injury or death, and not necessarily a high probability.

We received several comments with regard to this proposed finding. The Alliance, Ford, JPMA, Delphi, TMA, and NADA all took exception to the statements in the preamble that there need only be a risk of serious injury or death, and not necessarily a high probability, for a manufacturer to be required to provide an accelerated remedy, and that most safety recall campaigns address circumstances where a serious risk of injury or death can be found. The Alliance observed that under such a premise, the agency could find that virtually every recall meets the first test for requiring an accelerated remedy. Contending that Congress believed that an accelerated remedy would only be necessary in rare instances, the Alliance recommended that the text of proposed section 573.14(b)(1) be changed to require the Administrator to find, before requiring an accelerated remedy, "that there is an imminent risk of serious injury or death if the remedy program is not accelerated." Ford, an Alliance member, concurred with the Alliance's comments in this regard. TMA expressed a similar opinion regarding the authorizing language in the TREAD Act.

JPMA asserted that there must be an existing risk of serious injury or death, and not a mere possibility, before the agency could require an accelerated remedy. In its view, this would have the benefit of filtering out recalls that address only minor injuries and those that address injury risks that could arise in the future, but are not present as yet. JPMA asserted that in neither of these circumstances would an accelerated remedy be warranted under the TREAD Act. Likewise, NADA proposed that an accelerated remedy be required only in recalls involving an "unacceptable" risk

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of serious injury or death and where acceleration can be reasonably and safely achieved by expanding the sources of remedy parts, repair centers, or both.

Delphi contended that because Congress gave NHTSA discretionary authority to require an accelerated remedy, it could not have intended for these to be a definitive requirement for exercising that authority. Despite this observation, Delphi requested clarification on the level of risk that would be necessary before NHTSA would require an accelerated remedy.

The agency disagrees with many of these comments. The standard is stated in the statute and it is appropriate to graft that standard into these regulations. We reject comments that may be viewed as raising the bar with regard to when the agency may act. We may consider probabilities and consequences or, put another way, risk and harm. While we agree that accelerated remedies would not be required to address defects that present a risk only of minor injuries, we disagree with JPMA's observation that an accelerated remedy should not be required in circumstances where the risk of injury is low. Similarly, we disagree with the Alliance's proposal that we add the adjective "imminent" before "risk of serious injury." The term "imminent" is not used in the statute and might be subject to varying interpretations. *See Megrig* v. *KFC Western, Inc.*, 516 U.S. 479, 486 (1996). The agency's 35 years of experience in investigating suspected safety-related defects and noncompliances, and monitoring recall campaigns, have given it sensitivity to the assessment of circumstances involving the nature, extent, and timing of risk. We intend to assess the circumstances before requiring a manufacturer to provide an accelerated remedy. As noted in the NPRM, we do not foresee a need for the agency to exercise this authority frequently.

2. Expanding Sources of Replacement Parts or Number of Repair Facilities

As proposed in the NPRM, the second finding the Administrator would need to make before requiring a manufacturer to accelerate a remedy program, also adopted from the statute, was that "acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both." *See* proposed section 574.14 (b)(2). We noted that if warranted under the circumstances, we could require a manufacturer to add additional suppliers and/or production lines and/or production shifts in order to increase the number of available remedy parts. We further noted that in those cases in which the manufacturer identified supplemental repair facilities, it would have to assure that the facility had the parts and expertise needed to adequately perform the remedy.

a. Sources of Replacement Parts

With regard to expansion of the sources of replacement parts, we noted that this finding is most likely to be made when there is a substantial aftermarket supply of the parts necessary to effect the remedy, such as exists for tires, brake rotors, steering and suspension components, and ignition components. We observed, on the other hand, that it is less likely that this finding would be made where there is little or no aftermarket supply, as might be the case for air bags and anti-lock brake system (ABS) control units, since the particular specifications of the remedy part is generally unique to the particular vehicle or supplier involved. Even in the absence of an aftermarket supply, we noted that manufacturers might be able to expand the sources of replacement parts, either by contracting with additional suppliers, or by adding assembly lines or production shifts within their own plants.

Several commenters took issue with our observation that manufacturers could be required to expand the supply of replacement parts needed for a recall by adding assembly lines or production shifts within their own plants. The Alliance contended that it is nearly impossible to add assembly lines or additional work shifts to existing production at affected plants on short notice. First, the Alliance believes that such excess capacity, both in terms of machinery and labor, does not exist. Second, the Alliance observed that diverting a component production line that is dedicated to normal production requirements to the production of components needed for a recall remedy would have a ripple effect that would curtail or stop current production, perhaps even for other manufacturers if the component supplier ships to other vehicle manufacturers. Third, the Alliance stated that existing labor agreements may prohibit the hiring of extra temporary employees, or the purchasing of parts from outside sources not under contract, referred to as "outsourcing," or limit the amount of overtime. Finally, the Alliance contended that there would be international legal implications to any requirement that could affect a manufacturer's production in foreign plants.

Volkswagen, which is a member of the Alliance, added that any extraterritorial directive by NHTSA might trigger a foreign country to respond by passing "claw back" or "blocking" legislation. Volkswagen described such legislation as mandating that domestic companies overseas not comply with U.S. law, and cited its view of the British Protection of Trading Interests Act of 1980. Volkswagen stated that it is possible that the foreign county could also respond by passing "copy-cat" legislation, which would mimic the applicable provisions of U.S. law with respect to U.S.-manufactured vehicles sold in that country. Volkswagen, which does not have production facilities in the United States, recommended that the rule be redrafted to specify that it applies only to production line or shifts located in the United States. Anticipating that NHTSA would not accept this position, Volkswagen suggested, in the alternative, that if the agency does not incorporate this limitation into the rule, that it consult with the U.S. Trade Representative and the State Department before requiring a foreign manufacturer to accelerate a remedy program so that the consequential implications and responses from the foreign government can be explored.

Volkswagen also contended that the need to increase production to assure a supply of recall remedy components could violate labor agreements in foreign countries. It stated, for example, that in Germany, some labor agreements restrict the hiring of temporary employees, preclude purchasing parts from outside sources, limit the amount of overtime, and require pre-approval of the union to add shifts or change a worker's duties. Volkswagen also cited many of the practical problems associated with adding production lines or shifts that were raised by the Alliance. Additionally, Volkswagen cited the economic consequences of shutting down a production line that is used for normal production.

JPMA expressed concern that child restraint manufacturers do not have excess tooling or trained labor that could be used to provide additional production lines or work shifts. The comment urged NHTSA to take these factors into account in recalls affecting these manufacturers.

We do not agree with the premises of many these comments. For example, there is overcapacity in many segments of the global automotive industry. Moreover, if a vehicle manufacturer has greater than expected sales and calls upon suppliers to provide more parts than originally projected, suppliers make adjustments and increase the number of parts delivered. We wish to point out that legitimate production issues will be taken into consideration by the agency in determining, under section 573.14(b)(2), whether an acceleration of remedy program can be "reasonably achieved" by expanding the sources of replacement parts. If there are legal or practical limitations to a manufacturer's ability to comply with an acceleration of remedy directive, these can be identified by the manufacturer in providing the agency with information under section 573.14(c).

Turning to the international law implications of this rule that were raised by Volkswagen, NHTSA wishes to observe that if a foreign-based manufacturer produces vehicles for sale in the United States, that manufacturer is legally obligated to comply with all laws administered by NHTSA that apply to the manufacturers of vehicles sold in this county, including laws governing remedies for safety-related defects and noncompliances. There is nothing in the TREAD Act, or in any other statute administered by the agency, that would exempt foreign manufacturers from meeting these obligations. As discussed previously, NHTSA anticipates that it will only rarely have the need to require a manufacturer to accelerate a remedy program. Foreign-based manufacturers may raise particular issues regarding the expansion of the sources of replacement parts. They should be aware that our primary concern will be to have the problem corrected as quickly as possible, and that we will expect them to surmount difficulties to the fullest extent possible.

b. Number of Repair Facilities

With regard to the expansion of the number of authorized repair facilities, we noted in the NPRM that major vehicle manufacturers have large networks of dealers to perform repairs. As a consequence, we stated that we would ordinarily not expect to find a need for these major manufacturers to expand the number of authorized repair facilities. We observed that other vehicle manufacturers, such as importers of limited-production vehicles and multistage vehicle manufacturers, and most manufacturers of equipment items, do not have established networks of repair facilities. Noting that the need to travel a long distance may discourage vehicle owners from having remedy repairs performed, we stated that we could require such manufacturers to expand the number of repair facilities in order to assure that the campaign is completed in a reasonable time.

The Alliance commented on this aspect of the proposal. While not challenging the agency's assumption that its members[1] should have a sufficient dealer networks to conduct any recall, the Alliance took exception to the notion that its members might be required to provide additional facilities "if an owner would have to travel a large distance to obtain the remedy repair directly from the manufacturer or one of its dealers." The Alliance contended that the TREAD Act was not intended to address the issue of convenience to a vehicle owner and asserted that owners have already factored inconvenience into their purchase decision. The Alliance further noted that if recall parts were to be provided to a repair facility unrelated to the manufacturer that is subject to the acceleration of remedy directive, no infrastructure would be in place to provide those parts and problems could occur in communicating to the unrelated facility the vehicle identification numbers (VINs) of the vehicles to be remedied, verifying the VINs as a basis for authorizing the recall repairs, or recording the recall status of the vehicles involved. The Alliance also noted that its members would not be able to prevent an unrelated facility from "overcharging" for the recall work or charging for additional work on the basis that it is required to remedy a defect.

The agency continues to believe that the proximity of authorized service facilities, or the lack thereof, would be an appropriate consideration in requiring an expansion in the number of repair facilities. We expect that the issue would arise less often in the case of major light vehicle manufacturers than special purpose vehicle manufacturers such as ambulance or school bus manufacturers. In any event, the agency does not believe that it is necessary to address these issues within the text of the final rule. If circumstances should dictate the use of repair facilities unrelated to the manufacturer conducting the recall, it will be up to the manufacturer to work out, by contract or otherwise, the processes necessary to supply required parts and perform required repairs, and to verify that vehicles covered by the recall receive the remedy, as well as to arrange appropriate reimbursement so that owners would not have to pay for the work performed.

[1] BMW, DaimlerChrysler, Fiat, Ford, GM, Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volkswagen, Volvo.

3. Capability of Completion Within Reasonable Time

The NPRM also proposed that before requiring a manufacturer to accelerate its remedy program, the Administrator must also determine that the program is not likely to be capable of completion within a reasonable time. *See* proposed section 573.14(b)(3). We proposed to decide the issue of reasonableness in light of all of the circumstances, including the efforts that the manufacturer has made to complete the remedy program, as well as the safety risks associated with the defect or noncompliance.

We noted that the statute is silent with respect to when we can require a manufacturer to accelerate its program under section 6(a). We expressed the belief that in the interests of motor vehicle safety, it would be appropriate for us to impose such a requirement at any time that the statutory conditions are found to exist.

No comments were submitted regarding this issue. Section 573.14(b)(3) is therefore adopted as proposed.

4. Consultation With Manufacturer

In the NPRM, we stated that we anticipated that there would be consultation between NHTSA and the manufacturer before a manufacturer would be formally required to accelerate the remedy program, but noted that such consultation is not required by the statute. We stated our expectation that in most cases in which we believed that acceleration was appropriate, the manufacturer would take action without being directed to do so by the agency.

There were several comments regarding the issue of agency consultation with affected manufacturers. The Alliance expressed the belief that NHTSA is required under the Administrative Procedure Act to consult with the affected manufacturer before an acceleration of remedy directive is issued and to give the manufacturer an opportunity to be heard on the questions of whether there is a risk of serious injury or death if the remedy program is not accelerated and whether acceleration of the remedy program can be reasonably achieved. RMA also commented that the agency should be obliged to consult with any affected manufacturer before issuing an acceleration of remedy directive. TMA expressed concern over the adequacy of the consultation provisions in the proposed rule and the absence of a provision for the appeal of an

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acceleration of remedy directive short of filing a Federal court action. In their joint comment, MEMA and OESA observed that "if the process is to be an informed one for the agency and one of fairness to affected manufacturers while serving the public interest in avoidance of safety risk, NHTSA should closely consult with a manufacturer before proceeding with an accelerated [remedy] program." Those commenters stated that the need for consultation between an affected manufacturer and NHTSA should be incorporated into the regulatory text and not merely alluded to in the preamble.

The agency does not agree that a manufacturer has a statutory right to consultation. Nonetheless, we have added language to the text of section 573.14(c) to provide for consultation with the affected manufacturer before the agency requires the acceleration of a remedy program. This may enhance the agency's understanding of what is reasonably achievable. Addressing the TMA's comment, we have decided not to provide an opportunity for an administrative appeal of a directive for a manufacturer to accelerate a remedy program. On a practical level, the agency will have consulted with the affected manufacturer before requiring the manufacturer to accelerate a remedy program. Hopefully, this consultation will produce consent to implement an accelerated remedy, and minimize the conflicts that could be the subject of an administrative appeal. In addition, allowing an administrative appeal would introduce delay that would undermine the purpose of the accelerated remedy program.

C. Effect of Acceleration on the Nature and Quality of the Remedy

1. Equivalency of Replacement Parts and Repair Facilities

We stated in the NPRM that we would require manufacturers to assure that replacement parts from additional suppliers used under accelerated remedy programs are equivalent to the remedy parts supplied by the manufacturer, so that there will be no difference in the quality of the remedy received by owners. We noted, however, that in those instances where parts are purchased from manufacturers other than those who would ordinarily supply parts for the vehicle in question, it might be difficult to determine whether or not the part is equivalent. As a consequence, we proposed that the agency would, in appropriate cases, require manufacturers to provide information to owners with respect to any differences among different brands of replacement parts. We also stated that the service procedures must be "reasonably equivalent" to those that would have been used if the remedy program were not accelerated. See proposed Section 573.14(e).

Several comments were received concerning the need for equivalency of replacement parts and repair procedures. The Alliance complained that the proposed rule provided no clarification on who would make the determination of equivalency and the basis on which it would be made. The Alliance asked, for instance, whether the determination would be based on the engineering performance of the remedy or whether warranty and post-recall service availability would also be considered. The Alliance surmised that while aftermarket parts might be readily available for use as replacement components in a recall remedy, the matter of establishing that those parts perform in an equivalent manner to original equipment might be extremely complex and controversial. The Alliance further expressed the belief that the untested and unverified substitution of aftermarket parts may not result in equivalence, and may cause the manufacturer, dealer, and vehicle owner to bear certain additional secondary costs. The Alliance contended that this is particularly true if the aftermarket product is warranted, as these products typically are, by the product manufacturer and not the vehicle manufacturer. The Alliance conjectured that if the aftermarket product should fail, the vehicle owner would be obliged to seek remedy from the product manufacturer as opposed to the vehicle manufacturer. Because the performance of the aftermarket part would in this circumstance be unknown to the vehicle manufacturer, and because equipment manufacturers are, in most respects, not covered by NHTSA's recently issued early warning reporting (EWR) rules, the Alliance contended that any problems in the performance of aftermarket replacement parts might not be reported to the agency. As a consequence, the Alliance asserted that NHTSA must make the determination of equivalence when directing a manufacturer to obtain parts from an alternative source, and must also take responsibility for that determination and its consequences, in place of the vehicle manufacturer.

Ford stated that it concurs in the Alliance's position on the issue of equivalency. In addition, Ford stated that the proposal for the Administrator to find, before requiring a manufacturer to accelerate a remedy program, that acceleration of the program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both, "imposes on the agency a responsibility to gather information necessary to decide whether these extraordinary remedies are appropriate." The comment contended, without support, that the agency is also obligated to ensure that the remedies "do not compromise vehicle safety or interfere with the intellectual property rights of the various parties."

In their joint comment, MEMA and OESA asked who is to make, and take responsibility for, a determination that a replacement part or service facility is "reasonably equivalent," and who is to oversee the testing of alternative parts or the evaluation of additional service facilities. The comment contended that if the agency proceeds with a final rule, it "must articulate standards or baselines" for the term "reasonably equivalent," and "take responsibility for any such determinations made with respect both to additional sources of parts and service facilities." The organizations indicated concern over the involvement of additional suppliers and third party service outlets for which their members will be held accountable, particularly in the context of a safety recall campaign. The comment stated that manufacturers would be reluctant to be part of such a program because of concern over potential product liability exposure for deficiencies in the products and services of others, the negative competitive impact of having to recommend other suppliers' parts and identify them as equivalent to the manufacturer's own, and future recall responsibility if a competitor's product or third party service facility is deficient.

In its comment, Bendix contended that the proposed rule places an undue burden on the affected manufacturer to assure that replacement parts from other sources are compatible and will perform properly as a substitute for the manufacturer's own product. Bendix also asserted that a manufacturer could suffer competitive harm if it were forced to use a competitor's product to accelerate a recall, especially if it was obliged to provide consumers with specific product comparisons. Like MEMA and OESA, Bendix expressed concern over legal issues such as who would take responsibility for the equivalence of the replacement part, and who would be responsible for defective substitute components, particularly if a crash should result or an additional recall should be necessary.

Delphi also took issue with the requirement in the proposed rule for the recalling manufacturer to assure the equivalence of replacement parts. Noting that many of the parts installed on motor vehicles meet QS–9000 and/or ISO–9000 certification, the comment asserted that an alternate supplier must have its parts certified to ensure that this level of quality is maintained. Delphi expressed concern that the recalling manufacturer might have to divulge ordinarily protected intellectual property in assisting an alternate supplier in the production of remedial parts.

The agency has carefully considered each of these comments. We start from the premise that in an accelerated remedy context, a manufacturer will generally need to engage in the procurement of parts in a manner and on a schedule different from its ordinary practices. While exceptional efforts may be required, there are limits. Because the statute authorizes us to require a manufacturer to accelerate its remedy program only if such acceleration "can reasonably be achieved," by definition the burden on the manufacturer will not be insurmountable. We expect to consider the types of issues raised in these comments as part of the consultative process under section 573.14(c).

Finally, the agency will not assume any legal responsibility for determining the equivalency of replacement parts or repair facilities, or for any consequences that result from the use of replacement parts or the service actions under an accelerated remedy. Nothing in the TREAD Act acceleration of remedy provision places liability on the Federal government for its actions or authorizes us to adopt any form of indemnity program.

2. Equivalency of Tires

With regard to passenger car tires, we noted that guidelines are available to assure that tires from alternative sources are at least equivalent to those being replaced. These guidelines, found in the Uniform Tire Quality Grading System (UTQGS), set forth three criteria that buyers can use to make relative comparisons among passenger car tires. *See* 49 CFR 575.104. We proposed that the manufacturer be required to provide tires of a size and type that are suitable for the owner's vehicle and of the same or better UTQGS rating in each category. Alternatively, we observed that a manufacturer could do what Bridgestone/Firestone, Inc. (Firestone) did in connection with its recall of Firestone Radial ATX and Wilderness AT tires. There, Firestone authorized owners to obtain replacement tires of their choice from any tire manufacturer, and agreed to reimburse the owner up to a specified amount per tire. We noted that for the purpose of the acceleration of remedy program, the reimbursement amount would have to be sufficient to allow for the purchase of a tire that is reasonably equivalent to the defective or noncompliant tire.

Two comments were received concerning the equivalency of remedy issue as it pertains to tires. One of these comments, from RMA, recommended that the text of proposed section 573.14(e) be changed to specify that the replacement tire have the same or higher load index and speed rating as the defective or noncompliant tire it is to replace. The second comment, from the Alliance, cited circumstances in which an alternative tire identical in size, type, and Uniform Tire Quality Grading to a tire furnished as original equipment on a vehicle may not in fact be equivalent in terms of "tire ply, steer, noise, rolling resistance, and tire uniformity."

We agree with the RMA suggestion and are including appropriate language in the final rule. Although we recognize the validity of the Alliance's comment, we believe that it would not be practical to specify in the rule that all replacement tires must be equivalent to the recalled tires in every possible respect. Therefore, we will not add the parameters identified by the Alliance to the text of section 573.14(e). However, an agency decision requiring acceleration may specify particular features that must be present to ensure equivalency under the circumstances of a given recall.

3. Equivalency of Child Restraint Systems

We proposed to require that all replacement child restraint systems provided under an accelerated remedy program be of the same type and the same overall quality as the recalled restraints. Examples of the "types" of child restraint systems for purposes of this rule are rear-facing infant seats with a base, rear-facing infant seats without a base, convertible seats (designed for use in both rear- and forward-facing modes), forward-facing only seats, high back booster seats with a five-point harness and belt positioning booster seats. These examples are described in a NHTSA brochure, DOT HS 809 230 (May 2002). These types are listed as examples; if in the future another type of seat is marketed, it can be referenced in any agency decision under this rule.

D. Obligations of a Manufacturer That Is Required To Accelerate Its Remedy Program

Under the proposal in the NPRM, a manufacturer who is required to accelerate its remedy campaign would be required to implement the accelerated remedy program as directed by the agency. We noted that the level of detail and direction provided by the agency might vary, and that it could include expanding the sources of replacement parts provided to the manufacturer's franchised dealers, expanding the number of authorized repair facilities to include facilities not owned or franchised by the manufacturer that have repair or replacement capabilities, or other provisions. We further noted that the agency might require the submission of implementation plans and schedules, and might also require the reimbursement of consumers, particularly where facilities that are not owned or franchised by the manufacturer are involved.

One comment was received regarding these implementation issues. That comment, from TMA, observed that there was nothing in the proposed rule that identified how much lead time the agency would allow a manufacturer to implement an accelerated remedy program. Rather than specifying, within the text of the rule, the amount of lead-time that a manufacturer will be allowed, the agency believes that this matter can be best addressed on a case-by-case basis, after consultation with the manufacturer. This will permit the agency to take a reasoned approach to the implementation of the accelerated remedy program, taking account of the unique circumstances that can exist within any given recall.

E. Manufacturer's Notice to Vehicle or Equipment Owners

In the NPRM, we observed that the notice that a manufacturer who is required to accelerate a remedy campaign would be required to send to owners of the vehicles or equipment items involved would vary, depending on the circumstances. We stated that if the manufacturer has not sent an initial notification to owners under 49 CFR Part 577, relevant information about alternative parts or authorized repair facilities could be included in the initial notification letter. If the manufacturer has already sent an initial notification to owners under 49 CFR Part 577, the manufacturer would in most circumstances be required to send a supplemental letter to all owners except those who have had the remedy

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performed. Proposed section 577.12 included provisions regarding the scope, timing, form, and content of the notice to be sent by the manufacturer.

The Alliance submitted the only comment on the owner notification aspects of the proposed rule. The Alliance recommended that a manufacturer affected by an acceleration of remedy directive be allowed to place within the owner notification letter a statement that parts or services are being provided by suppliers or facilities other than its own, that those parts or services would not be guaranteed by the manufacturer conducting the recall, and that the owner should inquire with the part or service provider to learn whether any warranties are being provided. The agency disagrees with this suggestion, because we are concerned that this sort of language could discourage owners from having defects or noncompliances remedied with the alternate parts or at the alternate facilities, and thus would undermine the purpose of requiring acceleration. However, if a manufacturer believes that the circumstances of a particular recall warrant the inclusion of caveats in the owner notification letter, it may bring those circumstances to our attention during the consultation process.

The Alliance also commented on the specific language to be included in the owner notification letter that was set out in proposed section 577.12(c)(6). That language was intended to alert owners that if they paid for a remedy from a service facility not affiliated with the manufacturer, or for replacement parts from sources other than the manufacturer, those expenses would be eligible for reimbursement. The proposed language would further direct the owner to a website, toll-free telephone number, or mailing address where the owner could obtain information on the costs that are eligible for reimbursement and on the procedures for obtaining reimbursement. The Alliance stated that this language had the potential to confuse consumers. While acknowledging that a manufacturer should be obligated to explain the costs that will be covered, how to obtain reimbursement, and how to obtain additional information from the manufacturer, the Alliance asserted that "NHTSA should not attempt to prescribe the exact wording of the notification, in order to permit manufacturers to conform the style and readability of the language to the rest of the notification letter."

We recently addressed a variety of issues related to reimbursement of costs associated with remedying defects and noncompliances in a separate regulation implementing Section 6(b) of the TREAD Act, "Reimbursement Prior to Recall." *See* 67 FR 64049 (October 17, 2002). In that rule, we decided not to specify exact wording for manufacturer notifications about the possible availability of reimbursement. Rather, we described what needed to be in the owner notification and stated that we would review the manufacturer's proposed language regarding reimbursement as part of our general review of owner notifications under 49 CFR 573.6(c)(10). *See* 67 FR at 64061. We will take the same approach here. To permit manufacturers reasonable flexibility in the wording of the owner notification letter, we have eliminated proposed section 577.12(c)(6).

The Alliance also recommended that proposed section 577.12(c)(2) be changed to reflect that its requirements will not apply if the manufacturer, after consultation with the agency, agrees to take steps voluntarily to accelerate the remedy, rather than pursuant to a directive. The Alliance pointed out that in this circumstance the specific requirements of section 577.12 would not be triggered, because paragraph (a) of that section explains that the notification requirements only apply when the Administrator requires acceleration.

The agency believes that the owner notification requirements in proposed section 577.12 should apply whenever a remedy program is accelerated at the suggestion of the agency, regardless of whether the affected manufacturer agrees "voluntarily" to take steps to accelerate the program following consultation with the agency or is directed to do so. Accordingly, it would not be appropriate to waive the notification requirements altogether for manufacturers who agree to accelerate their remedy program in advance of receiving a formal directive to do so from the agency. To reflect this, we have changed the text of section 577.12(a) to require notification, in accordance section 577.12, "[w]hen the Administrator requires a manufacturer to accelerate its remedy program under section 573.14 of this chapter, or when a manufacturer agrees with a request from the Administrator that it accelerate its remedy program in advance of being required to do so." We have made a corresponding change to proposed section 577.12(c)(2) to emphasize that the statement "that the National Highway Traffic Safety Administration has required the manufacturer to accelerate its remedy program" need only be included in the owner notification letter when the Administrator has directed that the remedy program be accelerated.

F. Accelerated Remedy Programs Involving Reimbursement

We noted in the NPRM that in some circumstances, a remedy campaign could be accelerated without any out-of-pocket expense to the owners of the vehicles or equipment items involved, precluding the need for those owners to be reimbursed by the manufacturer. We observed that in these instances, appropriate financial arrangements could be made between the manufacturer and the dealer or repair facility. For example, when a vehicle is repaired at a dealer who is franchised or authorized by the vehicle manufacturer or when the parts in question (such as a tire) are provided by a facility owned or franchised by the manufacturer, the manufacturer would reimburse the dealer for the cost of the parts as well as the labor, and the owner would not have any out-of-pocket expense. We noted, however, that in other circumstances, the accelerated remedy program might be structured to allow an owner to obtain the remedy from independent third-party parts suppliers and/or repair facilities, pay that independent entity, and then be reimbursed by the manufacturer.

We stated that reimbursement under an accelerated remedy program would be similar in most respects to the applicable provisions of our regulation implementing section 6(b) of the TREAD Act, codified as the third and fourth sentences of 49 U.S.C. 30120(d) ("pre-notification remedy"), with two obvious differences. For one, the periods covered by the respective programs would be different. Under the pre-notification remedy program, reimbursement would be available for expenditures made by vehicle or equipment owners before they receive notification of a defect or noncompliance from the manufacturer. Under an acceleration of remedy program, reimbursement would be available for owner expenditures made after notification from the manufacturer, as provided in the program. Second, under the pre-notification remedy program, reimbursement would be available for a range of remedies addressing the underlying problem. In contrast, under an acceleration of remedy program, reimbursement may not be available at all, or when it is, may be conditioned on the use of a specific remedy. In addition, owners could be limited to obtaining the remedy at specific service facilities under an acceleration of remedy program.

We noted in the NPRM that despite these substantive differences, the general procedures for obtaining reimbursement in the two programs would be very similar. The provisions specifying the documentation a manufacturer may require a claimant to submit to obtain reimbursement would be identical in the two programs, as would the provisions relating to the amount of reimbursement and the time frame for seeking reimbursement, and the method for owners to obtain information about reimbursement availability.

Since the process governing reimbursement under the two programs would virtually be the same, we stated in the NPRM that there was no need for us to repeat those provisions or discuss them in the context of this rulemaking. Instead, we referred interested persons to our discussion of the reimbursement provisions in the preamble to the pre-notification remedy NPRM, and stated that to the extent that we modify the proposal in that NPRM following public comment, we would make corresponding changes to the applicable provisions of the accelerated remedy rule. We published a final rule on pre-notification remedies on October 17, 2002 at 67 FR 64049. In that final rule we made a number of relatively minor substantive changes to the provisions proposed in the NPRM, but these changes would not have a significant effect upon acceleration of remedy programs. As a consequence, there is no need to make corresponding revisions to section 573.14. In the preceding section of this document, we discussed changes that we have made in the text of proposed section 577.12 concerning notification to owners when reimbursement is to be provided as part of an accelerated remedy program.

G. Termination of an Accelerated Remedy Program

In the NPRM, we expressed the belief that a manufacturer should be able to terminate an accelerated remedy program when the conditions that gave rise to the need for an accelerated program no longer exist. We noted that we should not require a manufacturer to authorize the use of alternative replacement parts or to reimburse an owner who purchased such parts if the manufacturer is able to provide the recall remedy promptly. Thus, we proposed to allow a manufacturer that believes that it can meet all future demand for the remedy in a prompt manner through its own normal mechanisms (*e.g.*, its dealers) to request authorization to terminate an accelerated remedy program.

Under section 573.14(g) of the proposed rule, if NHTSA agreed with the manufacturer's request, the manufacturer could terminate the program, provided that notice is given to all owners of unremedied vehicles or equipment items at least 30 days in advance of the termination date of the accelerated remedy program. We invited comment with regard to how such notice should be given. No comments regarding this issue were submitted, and we are not addressing it within the text of this final rule.

III. Regulatory Analyses and Notices

A. Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determination whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defies as "significant action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this final rulemaking action under E.O. 12866 and the Department of Transportation's Regulatory Policies and Procedures. This rulemaking was not reviewed under the executive order and is not considered "significant" under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation. We do not foresee substantially increased costs to a manufacturer because of an accelerated remedy program. First, a remedy program will already be in place at the time that a manufacturer is required by the agency to accelerate that program. The scope of the remedy program is not being expanded under this final rule. The only aspects that will be affected are the time for completion of the remedy and alternative sources of replacement parts or repair facilities needed to perform the remedy. Second, we expect this provision to be invoked infrequently, since in the large majority of cases, the manufacturer's original remedy program will fully address the defect or noncompliance in a timely fashion, or no accelerated remedy will be reasonably available.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance.

We have also considered the impacts of this final rule under the Regulatory Flexibility Act. For the reasons discussed above with regard to E.O. 12866 and the DOT Policies and Procedures, I certify that this final rule will not have significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves motor vehicle and equipment manufacturers that have submitted defect or noncompliance reports. The majority of recalls are not initiated by small entities. The primary impact of this rule will be on major motor vehicle manufacturers. Even this impact will be small because we anticipate that we will only rarely need to require a manufacturer to accelerate its remedy program.

C. National Environmental Policy Act

We have analyzed this rule under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

In the NPRM, we stated that the proposed rule would impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA). *See* NPRM at 66 FR 64090. At that time, we had no experience under the TREAD Act acceleration provision, did not engage in an analysis, and simply assumed that the PRA would be applicable. We have since evaluated this issue, and concluded, for a number of reasons, that the final rule will not

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impose a collection of information burden that would trigger the requirements of the PRA.

First, in a recall, NHTSA may accelerate a remedy based on the statute alone, and the final rule itself provides no independent authority for the agency to require a manufacturer to undertake a collection of information. In any event, 49 CFR Part 573 already contains information collection requirements. To the extent needed, if at all, PRA authorization would be subsumed in periodic renewals of information collection authorizations with regard to Part 573.

Second, even if the final rule could be construed as imposing a collection of information requirement, that requirement would be highly discrete in the context of an individual recall action, of limited extent, and would arise so infrequently as to call the need for PRA approval into question. As indicated in the preceding discussion, the agency does not foresee the need to require manufacturers to provide accelerated remedies with any significant frequency. In fact, the acceleration provision (which, as previously indicated, is self-executing) has not been invoked in the two years since the TREAD Act was enacted.

Third, there are substantial questions as to how many manufacturers would be subject to the final rule or when they would be so subject. As such, additional information collection requirements stemming from the rule, if any, will not affect a sufficient number of manufacturers, or a sufficient share of the manufacturers within each of the industries regulated by the agency, to require the agency to obtain authorization under the PRA. *See* 5 CFR 1320.7(c) and (s).

Lastly, if there were any information collection requirements that result from the final rule, those requirements would arise in the context of agency actions to monitor manufacturers' recalls that either are influenced by agency investigations or are undertaken by a manufacturer exclusively on its own initiative. As such, these information collections appear to be exempt from the coverage of the PRA under OMB regulations at 5 CFR 1320.4(a)(2), which exempt collections of information "during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities."

In any event, we are providing an opportunity for comment on the above by February 3, 2003. If a commenter suggests that there are PRA information collection burdens, the commenter should provide a detailed explanation of the basis for that suggestion in the context of this rule and estimates of the burden, with adequate support.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input" by State and local officials in the development of "regulatory policies that have federalism implications." The E.O. defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule, which is limited in its application to motor vehicle and motor vehicle equipment manufacturers, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.

F. Civil Justice Reform

This rule will not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of whether the material is organized to suit the public's needs, whether the requirements in the rule are clearly stated, whether the rule contains technical language or jargon that is not clear, and whether a different format would make the rule easier to understand. We have endeavored to meet these objectives in preparing this final rule.

List of Subjects

49 CFR Part 573

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 577

Motor vehicle safety.

In consideration of the foregoing, NHTSA is amending 49 CFR Parts 573 and 577 as set forth below.

1. The authority citation for Part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegations of authority at 49 CFR 1.50; 501.2.

2. Part 573 is amended by adding § 573.14 to read as follows:

§ 573.14 Accelerated remedy program.

(a) An accelerated remedy program is one in which the manufacturer expands the sources of replacement parts needed to remedy the defect or noncompliance, or expands the number of authorized repair facilities beyond those facilities that usually and customarily provide remedy work for the manufacturer, or both.

(b) The Administrator may require a manufacturer to accelerate its remedy program if:

(1) The Administrator finds that there is a risk of serious injury or death if the remedy program is not accelerated;

(2) The Administrator finds that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both; and

(3) The Administrator determines that the manufacturer's remedy program is not likely to be capable of completion within a reasonable time.

(c) The Administrator, in deciding whether to require the manufacturer to accelerate a remedy program and what to require the manufacturer to do, will consult with the manufacturer and may consider a wide range of information, including, but not limited to, the following: the manufacturer's initial or revised report submitted under § 573.6(c), information from the manufacturer, information from other manufacturers and suppliers, information from any source related to the availability and implementation of the remedy, and the seriousness of the risk of injury or death associated with the defect or noncompliance.

(d) As required by the Administrator, an accelerated remedy program shall include the manner of acceleration (expansion of the sources of replacement parts, expansion of the number of authorized repair facilities, or both), may require submission of a plan, may identify the parts to be provided and/or the sources of those parts, may require the manufacturer to notify the agency and owners about any differences among different sources or brands of parts, may require the manufacturer to identify additional authorized repair facilities, and may specify additional owner notifications related to the program. The Administrator may also require the manufacturer to include a program to provide reimbursement to owners who incur costs to obtain the accelerated remedy.

(e) Under an accelerated remedy program, the remedy that is provided shall be equivalent to the remedy that would have been provided if the manufacturer's remedy program had not been accelerated. The replacement parts used to remedy the defect or noncompliance shall be reasonably equivalent to those that would have been used if the remedy program were not accelerated. The service procedures shall be reasonably equivalent. In the case of tires, all replacement tires shall be the same size and type as the defective or noncompliant tire, shall be suitable for use on the owner's vehicle, shall have the same or higher load index and speed rating, and, for passenger car tires, shall have the same or better rating in each of the three categories enumerated in the Uniform Tire Quality Grading System. *See* 49 CFR 575.104. In the case of child restraints systems, all replacements shall be of the same type (*e.g.*, rear-facing infant seats with a base, rear-facing infant seats without a base, convertible seats (designed for use in both rear- and forward-facing modes), forward-facing only seats, high back booster seats with a five-point harness, and belt positioning booster seats) and the same overall quality.

(f) In those instances where the accelerated remedy program provides that an owner may obtain the remedy from a source other than the manufacturer or its dealers or authorized facilities by paying for the remedy and/or its installation, the manufacturer shall reimburse the owner for the cost of obtaining the remedy as specified on paragraphs (f)(1) through (f)(3) of this section. Under these circumstances, the accelerated remedy program shall include, to the extent required by the Administrator:

(1) A description of the remedy and costs that are eligible for reimbursement, including identification of the equipment and/or parts and labor for which reimbursement is available;

(2) Identification, with specificity or as a class, of the alternative repair facilities at which reimbursable repairs may be performed, including an explanation of how to arrange for service at those facilities; and

(3) Other provisions assuring appropriate reimbursement that are consistent with those set forth in § 573.13, including, but not limited to, provisions regarding the procedures and needed documentation for making a claim for reimbursement, the amount of costs to be reimbursed, the office to which claims for reimbursement shall be submitted, the requirements on manufacturers for acting on claims for reimbursement, and the methods by which owners can obtain information about the program.

(g) In response to a manufacturer's request, the Administrator may authorize a manufacturer to terminate its accelerated remedy program if the Administrator concludes that the manufacturer can meet all future demands for the remedy through its own sources in a prompt manner. If required by the Administrator, the manufacturer shall provide notice of the termination of the program to all owners of unremedied vehicles and equipment at least 30 days in advance of the termination date, in a form approved by the Administrator.

(h) Each manufacturer shall implement any accelerated remedy program required by the Administrator according to the terms of that program.

3. The authority citation for 49 CFR Part 577 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

4. Part 577 is amended by adding § 577.12 to read as follows:

§ 577.12 Notification pursuant to an accelerated remedy program.

(a) When the Administrator requires a manufacturer to accelerate its remedy program under § 573.14 of this chapter, or when a manufacturer agrees with a request from the Administrator that it accelerate its remedy program in advance of being required to do so, in addition to complying with other sections of this part, the manufacturer shall provide notification in accordance with this section.

(b) Except as provided elsewhere in this section or when the Administrator determines otherwise, the notification under this section shall be sent to the same recipients as provided by § 577.7. If no notification has been provided to owners pursuant to this part, the provisions required by this section may be combined with the notification under §§ 577.5 or 577.6. A manufacturer need only provide a notification under this section to owners of vehicles or items of equipment for which the defect or noncompliance has not been remedied.

(c) The manufacturer's notification shall include the following:

(1) If there was a prior notification, a statement that identifies that notification and states that this notification supplements it;

(2) When the accelerated remedy program has been required by the Administrator, a statement that the National Highway Traffic Safety Administration has required the manufacturer to accelerate its remedy program;

(3) A statement of how the program has been accelerated (*e.g.*, by expanding the sources of replacement parts and/or expanding the number of authorized repair facilities);

(4) Where applicable, a statement that the owner may elect to obtain the recall remedy using designated service facilities other than those that are owned or franchised by the manufacturer or are the manufacturer's authorized dealers, and an explanation of how the owner may arrange for service at those other facilities;

(5) Where applicable, a statement that the owner may elect to obtain the recall remedy using specified replacement parts or equipment from sources other than the manufacturer;

(6) Where applicable, a statement indicating whether the owner will be required to pay an alternative facility and/or parts supplier, subject to reimbursement by the manufacturer; and

(7) If an owner will be required to pay an alternative facility and/or parts supplier, a statement that the owner will be eligible to have those expenditures reimbursed by the manufacturer, and a description of how a consumer may obtain information about reimbursement from the manufacturer consistent with § 577.11(b)(2), (c) and (d).

Issued on: November 26, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–30523 Filed 12–4–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 021021241-2294-02; I.D. 063002E]

RIN 0648-AP86

International Fisheries; Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final Rule; 2002 Management Measures for Yellowfin and Juvenile Bigeye Tuna

SUMMARY: NMFS issues a final rule to implement the 2002 management measures to prevent overfishing of eastern tropical Pacific(ETP) tuna stocks pursuant to recommendations by the Inter-American Tropical Tuna Commission (IATTC). These measures have been approved by the Department of State (DOS) under the terms of the Tuna Conventions Act. The purse seine fishery for tuna in the Convention Area will be closed the month of December, 2002. This action is taken to limit total fishing mortality caused by purse seine fishing in the Convention Area and thus prevent overfishing and maintain the tuna stocks at sustainable levels. In addition, the current bycatch reduction pilot program scheduled to run through 2002 is extended through 2004.

DATES: The purse seine tuna fishery closure is effective December 1, 2002, through December 31, 2002. The termination date for the bycatch reduction program is extended from January 2, 2003, to December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (IATTC) signed in 1949. The IATTC was established to provide an international arrangement to ensure effective international conservation and management of highly migratory species of fish in the Convention Area. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote sustainable fisheries. The Convention Area is defined to include waters of the eastern Pacific Ocean (EPO) bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian.

At its annual meeting June 26–28, 2002, the IATTC adopted a resolution dealing with conservation of ETP tuna stocks. The IATTC considered the use of quotas and partial fishery closures as in 1999, 2000, and 2001; however, after reviewing the administration of these quotas and partial closures and the occasions of non-compliance that resulted, the IATTC recommended that the Convention Area be closed during December 2002. This approach will provide substantial protection against overfishing in a manner that is fair and equitable and enforceable. There will be no need to investigate catch records to determine if incidental catch limits have been exceeded or to distinguish between activities inside and outside the IATTC's Commission Yellowfin Regulatory Area. The Department of State (DOS) approved this recommendation on August 7, 2002.

The closure is based on 2002 assessments of the condition of the tuna stocks in the ETP and the administrative records relating to implementation of quotas in prior years. The assessments indicate that the stocks are healthy, though there is significant uncertainty with respect to the bigeye assessment. The closure is believed to be sufficient to prevent overfishing of any tuna stock.

In addition, the IATTC recommended that the purse seine bycatch reduction and sea turtle conservation measures initially implemented in 2001 and extended through 2002 be further extended through 2004. The DOS approved this measure as well.

A proposed rule to implement these measures was published in the **Federal Register** on November 4, 2002 (67 FR 67139). The public comment period ended on November 19, 2002, and no comments were received.

This document is published under procedures in the Tuna Conventions Act of 1950, which authorizes rules to implement IATTC recommendations that have been approved by the DOS. For the reasons stated here and in accordance with the Tuna Conventions Act of 1950 and its implementing regulations, and consistent with the IATTC recommendation: (1) fishing for tuna by purse seine vessels in the ETP is prohibited from December 1, 2002, through December 31, 2002; (2) no species of tuna may be on board a purse seine vessel in the ETP from December 1, 2002, through December 31, 2002; and (3) any tuna purse seine vessel that normally fishes in the ETP must be in port for the month of December 2002, except that a vessel may transit the ETP to or from the western Pacific (i.e., west of 150 W. longitude) as long as there is an observer on board the vessel who is acting under the authority of the International Dolphin Conservation Program.

Changes from the Proposed Rule

This final rule includes several changes from the proposed rule to be more explicit and in detailed conformance with the IATTC resolution. Specifically, the requirements that prohibit ETP tuna purse seine vessels from possessing tuna and that require ETP tuna purse seine vessels to be in port for the month of December are added as in the IATTC recommendation. It had not been thought necessary to include these in the proposed rule as there was no reason to expect that these vessels would not be at port or would possess tuna in the closure period. However, these were specific provisions of the IATTC recommendation and therefore should be explicit provisions of the final rule. This should not affect the activity of U.S. tuna purse seine fishing vessels. The provision regarding vessels transiting the ETP was also added for clarity; this is an ongoing requirement, but it was specifically included in the IATTC recommendation and is therefore included in the final rule. The transit provision is beneficial for U.S. tuna purse seine fishing vessels that may want to deliver western Pacific-caught tuna to canneries in eastern Pacific nations or that wish to travel from a West Coast port to the western Pacific. These impacts are discussed in the Classification section.

Comments and Responses

No comments were received during the comment period for the proposed rule (67 FR 67139, November 4, 2002), which ended November 19, 2002.

Classification

This action is authorized by the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impacts of this action. As a result, no regulatory flexibility analysis was prepared.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30–day delay in the effective date of this final rule as failure to implement the closure as recommended by the IATTC could reduce the ability of the United States to promote full and complete compliance with IATTC recommendations by all parties as well as non-parties to the IATTC. This would jeopardize the continued effectiveness of the IATTC measures to conserve and manage the stocks under its purview.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: November 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

[FR Doc. 02–30789 Filed 11–29–02; 4:27 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 234
Thursday, December 5, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. OST–96–1505]

RIN 2105–AB39

Withdrawal of Proposed Rulemaking Action; Statement of Enforcement Policy on Rebating

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws an Office of the Secretary (OST) notice of proposed rulemaking (NPRM), which has been superseded by various changes that make the proposed action no longer necessary.

FOR FURTHER INFORMATION CONTACT: Jennifer Abdul-Wali, Office of the General Counsel, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–4723; fax: (202) 366–9313; E-mail: *Jennifer.Abdul-Wali@ost.dot.gov*.

ADDRESSES: You may obtain a copy of this document from the DOT public docket through the Internet at *http://dms.dot.gov*, docket number OST–96–1505. If you do not have access to the Internet, you may obtain a copy of the notice by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You must identify docket number OST–02–13179 and request a copy of the document entitled "Withdrawal of Proposed Rulemaking Actions."

You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you can also get a copy of this document from the **Federal Register** Web site at *http://www.gpo.gov*.

SUPPLEMENTARY INFORMATION: Airlines are required by 49 U.S.C. § 41510, formerly section 403 of the Federal Aviation Act, to file tariffs with the Department that state their passenger fares, cargo rates, and associated charges in foreign air transportation. Under these requirements, it is unlawful for a carrier or ticket agent to charge a purchaser of foreign air transportation any amount other than that stated in their tariff. This prohibition also applies to cargo agents, as well as any other intermediaries providing for the carriage of passengers or cargo. The prohibition applies not only to overcharges, but also to undercharges, including what are commonly known as rebates. For example, a literal reading of the statute would prohibit a travel agent from sharing its commission on international tickets with the purchaser.

Subsequent to the enactment of Section 41510, the Airline Deregulation Act of 1978 was enacted. It resulted in direct competition among air carriers instead of governmental determination of fares and services. Following deregulation, the Department and its predecessor, the Civil Aeronautics Board, exercised prosecutorial discretion in pursuing matters relating to the rebating requirements of the Act. The Department's goals were to encourage competition and encourage low fares for consumers. As a way of reaching these goals, the Department asserted its discretion by pursuing sanctions for rebating only in instances of fraud, invidious discrimination, or conduct that would violate the antitrust laws.

On October 21, 1988, the Department issued an NPRM entitled "Statement of Enforcement Policy on Rebating" (OST Docket No. 45884; 53 FR 41353). The NPRM was in response to concerns raised by travel agents concerning the rebating of international airline prices. The NPRM proposed to establish an enforcement policy concerning the rebating of international airline prices.

The Department received various comments in response to the NPRM. Travel agents complained that, by obeying the law, they were losing business to competitors who ignored it. Other nations said that the Department should enforce the prohibition against rebating more rigorously.

Since publication of the NPRM, many conditions in the airline industry related to rebating have changed. The United States has increasingly negotiated with success for liberal pricing regimes in our bilateral agreements with foreign nations. As a result, in July of 1999, the Department adopted 14 CFR part 293, International Passenger Transportation, a rule that effectively exempts all United States and most foreign carriers (1) from filing any tariffs for travel to and from countries with which the United States has agreements in force that contain double-disapproval pricing rules and (2) from filing tariffs for all but normal economy fares for travel to and from countries without double-disapproval pricing regimes that in practice give carriers unfettered pricing discretion. Additionally, current practice for many air carriers is not to pay a base commission for transportation originating in the United States.

For the reasons outlined above, the Department believes that the proposed enforcement policy is no longer necessary and is withdrawing the 1988 NPRM.

Issued in Washington, DC on November 26, 2002.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02–30851 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI45

Endangered and Threatened Wildlife and Plants; Threatened Status and Special Regulation for the Mountain Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of new information and reopening of the comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), are reopening the comment period for our proposal to list the mountain plover (*Charadrius montanus*) as a threatened species. The proposed listing action was published in the **Federal Register** on February 16, 1999 (64 FR 7587), and new information has become available that is pertinent to the species' biology and the listing factors we are required to consider under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to share new information we have acquired and provide the public a new opportunity to provide comments on this listing proposal.

We are also proposing a special rule under the authority of section 4(d) of the Act, containing the prohibitions necessary to provide for the conservation of the mountain plover. The prohibitions we propose do not include a prohibition against the take of mountain plover during certain routine farming practices until December 31, 2004, in Colorado, Kansas, Nebraska, Oklahoma, and Laramie and Goshen Counties, Wyoming. During this period, research will be conducted to determine the impact of farming practices on cultivated fields to mountain plover nesting success within the southern portion of the breeding range. The finalization of this rule is contingent upon a final listing of the mountain plover as threatened.

DATES: We must receive comments from all interested parties by February 3, 2003. We must receive requests for public hearings by January 21, 2003.

ADDRESSES: Send comments and materials concerning this proposal to the Western Colorado Field Supervisor, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946. You also may e-mail your comments to *al_pfister@fws.gov*. We will make comments and materials we receive available for public inspection, by appointment, during normal business hours at the above address. You also may obtain a copy of the 1999 proposed rule to list the mountain plover (64 FR 7587) from this office, or access it at our Web site at *http://www.r6.fws.gov/mtnplover/*.

FOR FURTHER INFORMATION CONTACT: Robert Leachman, at the above address, telephone 970–243–2778, facsimile 970–245–6933, or e-mail *robert_leachman@fws.gov*. A copy of this notification and other information on the mountain plover can be found on the World Wide Web at *http://www.r6.fws.gov/mtnplover/*.

SUPPLEMENTARY INFORMATION:

Background

This supplementary proposed rule abbreviates the background, life history, and listing factor discussions published in the 1999 proposed rule. Most of the information we reported in 1999 remains substantially valid. New information that represents a significant addition to the mountain plover biology, abundance, and distribution as previously reported is included in this document. We also report new information relating to threats or existing conservation actions that significantly influence evaluation of the listing factors. We have not reported all new information that only affirms previously reported findings, nor do we cite all new information that represents a continuation of ongoing research cited in the 1999 proposed rule that has not materially changed the knowledge of mountain plover biology, distribution, abundance, or conservation needs. We have revised the References Cited to include the new information we have reviewed since 1999. Our References Cited document is available on request (see **ADDRESSES**). We have retained the organization of the 1999 proposed rule in this document to make review and comparison more efficient. Briefly, we have summarized the text of some sections of the 1999 proposed rule followed by pertinent new information, or simply provided a statement for other sections that new information did not materially change findings reported in the 1999 proposed rule. In this supplemental proposed rule document, we also propose to amend the table at 50 CFR 17.11(h) to reflect the proposed special rule for mountain plover.

The mountain plover is similar in size and appearance to a killdeer (*Charadrius vociferus*), eats primarily insects, and is associated with short grass and shrub-steppe landscapes throughout its breeding and wintering range. It is commonly reported on heavily grazed sites, prairie dog colonies, and some cultivated fields. It is known to occur from Canada south across the high plains to Mexico. During the breeding season (late March through August), plovers can be found in Montana, Wyoming, and Colorado, and to a lesser extent in Utah, New Mexico, Arizona, Kansas, Nebraska, Oklahoma, and Texas. Nesting also has been reported in Canada and Mexico. During winter, plovers can be found primarily in the Central Valley and Imperial Valley of California. A few birds winter in Arizona, Texas, and Mexico.

New information now confirms a few breeding mountain plovers in Mexico (Knopf and Rupert 1999a; F. Knopf, U.S. Geological Survey-Biological Resources Division, in litt. 1999), and successful breeding on some cultivated lands in Colorado (T. McCoy, Colorado Natural Heritage Foundation, in litt. 2001). We also have new information describing the population trend of the mountain plover relative to other grassland endemics, based on new Breeding Bird Survey (BBS) data. The BBS information is provided later in this document.

Habitat Characteristics

Short vegetation, bare ground, and a flat topography are recognized as habitat-defining characteristics of the mountain plover, at both breeding and wintering locales. Suitable breeding and wintering habitat characteristics can be provided by naturally occurring physiographic features, grazing by native mammalian herbivores (*e.g.*, prairie dogs) or domestic livestock (*e.g.*, sheep), or some agricultural practices. We now report that mountain plovers also are found on white-tailed (*Cynomys leucurus*) and Gunnison's (*Cynomys gunnisoni*) prairie dog colonies (P. Deibert, Service, pers. comm. 2002; Hawks Aloft, Inc. 2001b). There also is new literature further describing a strong association of mountain plovers with prairie dogs (Dinsmore 2001, Kotliar *et al.* 1999). We also have learned that due to the absence of naturally vegetated suitable habitat, irrigated farmlands and grazed alfalfa fields have become the predominant winter habitat for mountain plovers in the Imperial Valley of California (Wunder and Knopf In draft). While in the Imperial Valley, plovers move onto fields for short periods following harvest, especially where the fields are turned over, burned, or grazed by sheep. Insect availability, furrow depth, size of dirt clods, and the vegetation of contiguous land parcels are believed to influence the suitability of individual cultivated fields (E. Marquis-Brong in litt. 1999a, F. Knopf pers. comm. 2000). Therefore, while cultivated lands are abundant throughout the Central and Imperial Valleys of California, not all of them are suitable wintering habitat.

Life History

We described the mountain plover's life history in 1999 by addressing migration periods, nesting chronology, and common habitat features. Briefly, the mountain plover arrives on its breeding grounds from late March to late April and typically lays three eggs in a shallow depression. Mountain plover nests are loosely congregated, suggesting some colonialization. Chicks begin to fledge in June, and fall migration to winter habitat is well under way in August. Important new information includes a study completed in Montana predicting that 1.9 years is the mean lifespan of a mountain plover and that the observed longevity record is 8 years (Dinsmore 2001). This research also documented that 55

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percent of nests are incubated by males and 45 percent by females (Dinsmore 2001).

Breeding Distribution and Abundance

In 1999, we presented our understanding of the historic and current distribution and abundance of mountain plovers for individual States within their breeding range and for wintering habitat locations in California, Arizona, and Mexico. Briefly, most mountain plovers breed in Montana, Wyoming, and Colorado, and most mountain plovers spend about 5 months on winter habitat in California. New information now shows that the Pawnee National Grassland (Pawnee) population in northeast Colorado has significantly declined since 1991, with fewer than 100 individuals now present at this location (Knopf pers. comm. 2002). More mountain plovers than previously estimated now appear to be in South Park, Park County, Colorado (Granau and Wunder 2001). We provide the following summaries and new information for breeding and wintering locations:

Colorado: We have no better estimate of breeding mountain plover numbers in Colorado than the estimate of about 7,000 individuals provided in the 1999 proposed rule. However, we believe it is important to note some additional information regarding Weld County, Colorado, which was reported in 1999 to be a historic breeding stronghold for the mountain plover. In 1991, Knopf estimated a population of 1,280 mountain plovers on the Pawnee. As we reported in 1999, the Pawnee has experienced several exceptionally wet, cold weather events through June of each year since 1995, which has significantly changed the vegetation. These vegetation conditions continued through 1996 and 1997. The number of successfully nesting mountain plovers counted on transects monitored on the Pawnee declined from 77 in 1990 to 2 in 2001 (F. Knopf in litt. 2001). Knopf (pers. comm. 2002) currently estimates a population of less than 100 individuals on the Pawnee. Consequently, few adult birds and very little reproduction has been observed through 2002. Preliminary results on the Pawnee from 2002, a drought year, indicate success at 69 percent of 13 nests on the native prairie. Fifty nests on experimental burns were 54 percent successful (F. Knopf pers. comm. 2002).

As we reported in 1999, mountain plover research has continued in South Park, Park County, with the most current population estimate there being 1,500 to 2,000 breeding adults (Granau and Wunder 2001). In 2002, 68 nests were identified, with a nest success of 90 percent (F. Knopf pers. comm. 2002).

There also is new information about breeding mountain plovers on short grass prairie pastures and cultivated lands. Nesting habitat was modified by burning, and successful nesting by mountain plovers was documented on burned pastures on the Comanche National Grassland in Baca County in southeastern Colorado in 1999 (Svingen and Giesen 1999, K. Giesen in litt. 1999) and in South Park for several years (Granau and Wunder 2001). As we reported in 1999, mountain plovers are nesting on cultivated fields in southeast Colorado and adjacent States. To further address the implications of cultivated land to mountain plover conservation, new research was initiated in five eastern Colorado counties to better describe nest success and productivity on cultivated lands (T. McCoy in litt. 2001). In 2001, 44 nests were located on cultivated croplands in these counties, but reliable estimates of nest success, productivity, and population recruitment will require additional years of research (T. McCoy in litt. 2001).

During 2002, researchers continued to monitor the breeding activity throughout eastern Colorado. The length of the breeding season varied between 2001 and 2002, with the 2001 season ending in July and the 2002 season continuing into August. The longer 2002 season was attributable to extreme drought conditions in the eastern half of the State. Nest success did not vary substantially between cropland and rangeland in 2001 but did show slightly higher nest success on rangeland in 2002. Predation was the major cause of nest failure, except in 2001, when agricultural practices destroyed more nests on croplands. Of rangeland nests, nest success was slightly higher on grassland with prairie dog colonies than on grasslands without prairie dog colonies (F. Knopf pers. comm. 2002). The researchers suggest that the direction in 2003: (1) Focus studies more precisely on locales where plovers nest in higher densities to maximize sample sizes, (2) rigorously test the emerging pattern of comparable nest success between rangeland and croplands, and (3) test the predictions that plover densities and nest success are highest on prairie-dog towns (F. Knopf pers. comm. 2002).

There is no comprehensive science to precisely document whether the entire Colorado population is declining, stable, or increasing. Data collected from nesting sites in Colorado are not comparable to make such a cumulative State-wide trend assessment. However, credible information documents that nearly all mountain plovers have abandoned the Pawnee, a historically recognized breeding stronghold. Graul and Webster (1976) estimated that there may have been as many as 21,000 mountain plovers on the Pawnee in the early 1970s; Knopf (1991) estimated about 1,280 individuals in 1991, while presently the Pawnee population is less than 100 individuals (F. Knopf pers. comm. 2002).

Montana: Important new information is available from Montana. Mountain plovers no longer occur in Carbon, Teton, and Toole Counties (L. Hanebury pers. comm. 2002). Knowles and Knowles (1996) estimated fewer than 2,000 mountain plovers in Phillips and Blaine Counties, and fewer than 800 individuals at the other 8 occupied locations in the State. Following 6 years of research, Dinsmore (2001) estimated a population of 95 to 180 individual breeding mountain plovers in his study area in southern Phillips County, and he believes it is unlikely that there are more than 700 mountain plovers throughout all of Phillips and Blaine Counties. Dinsmore (2001) now concludes that, while the current mountain plover abundance in south Phillips County is stable, it is not known whether the number of individuals can persist in the long term, and their abundance is entirely dependent on the viability of the resident population of black-tailed prairie dogs. He also believes the estimate of 800 mountain plovers in other areas of Montana made by Knowles and Knowles (1996) is reasonable. Therefore, we believe the best information currently available indicates the total population in Montana is less than 1,500 mountain plovers (Knowles and Knowles 1996, Knowles and Knowles 1998, Dinsmore 2001, Dinsmore pers. comm. 2002). Although the Montana Department of Game, Fish, and Parks provided no data regarding mountain plover distribution and abundance in response to the 1999 proposed rule, department officials stated that, while the mountain plover population may fluctuate, it is still substantial (P. Graham, Montana Game, Fish and Parks, in litt. 1999).

Wyoming: As we reported in 1999, the mountain plover is classified as common in Wyoming, with breeding known or suspected in 20 of 28 latitude/longitude blocks and an estimated population of 1,500 individuals. Additional inventories have been conducted in Wyoming that confirm the current presence of mountain plovers at many of the previously reported locations. For example, surveys conducted in the Powder River Basin in 2001 in preparation for the Wyodak Coal Bed Methane project found 15 mountain plovers (Good *et al.* 2001, Keinath and Eble 2001), and surveys conducted on the Thunder Basin National Grassland found about 20 adults in 2001 (P. Deibert, Service, pers. comm. 2002). Knopf (in litt. 2001) reported that mountain plovers may be more common than previously believed, particularly in Carbon County. From 1999 and 2000, totals of 159 and 105 mountain plover adults were reported from Sweetwater and Carbon Counties respectively, with many fewer individuals reported from Albany, Bighorn, Fremont, Lincoln, Natrona, Park, Sublette, and Washakie Counties (P. Deibert in litt. 2002). This is the best available population estimate for Wyoming.

New Mexico: The 1999 proposed rule reported that most current mountain plover records were from northern New Mexico locations. Additional surveys have confirmed mountain plovers in the locations previously reported (Reeves 1998, 1999, 2000), which included 11 plovers on Navajo Nation Tribal lands. Surveys conducted by Hawks Aloft (2001a, b) found mountain plovers in previously unsurveyed areas of Cibola and Sandoval Counties, and in Taos County. Five of the confirmed breeding sites in Taos County were on Gunnison's prairie dog towns (Hawks Aloft 2001b). Hawks Aloft (2001b) concluded that there is potential for large numbers of mountain plovers in Taos County.

Nebraska: In 2002, the Rocky Mountain Bird Observatory located 64 sites along 320 km (200 mi) of roads and private holdings with 116 adults (F. Knopf pers. comm. 2002). The Observatory estimates that there are approximately 100 nests in the area, and upgrades the estimate of the Nebraska mountain plover population estimate to probably 200 birds.

Other Breeding Areas

Mountain plover breeding was confirmed on a Mexican prairie dog town in 1999, in Nuevo Leon, Mexico (F. Knopf in litt. 1999). We have no substantive additional information to provide regarding other breeding areas reported in the 1999 proposed rule.

Winter Distribution

The 1999 proposed rule provides detailed information regarding the distribution and abundance of mountain plovers on their winter habitat. We concluded that mountain plovers are most numerous in the Central and Imperial Valleys of California. All new information we have reviewed confirms the findings in the 1999 proposed rule. Some of the additional inventories include Wunder and Knopf (in draft) reporting 4,037 mountain plovers in the Imperial Valley in 2001, and a total of 3,421 mountain plovers found during a 9-day survey in the Imperial Valley beginning in late January 2002 (S. Myers, AMEC-Earth and Environmental, pers. comm. 2002).

Total Mountain Plover Population Abundance and Trend Estimates

As previously reported, Knopf (1996b) estimated the North American mountain plover population to be between 8,000 and 10,000 birds. At the time of his estimate, only a 1994 count from California was available. Applying the same assumptions using the more recent winter counts would yield a similar estimate (Hunting *et al.* (in press), Shuford *et al.* 2000, Wunder and Knopf (in draft), S. Myers pers. comm. 2002). We are not aware of any other total population estimates. It now appears that more mountain plovers are wintering in the Imperial Valley than the Central Valley, which is probably the result of habitat loss at other California historic wintering areas (Wunder and Knopf (in draft)). Edson and Hunting (1999) reviewed recent search efforts and records for the Central Valley in California, and classified the mountain plover as rare and local, exceedingly rare, or accidental, for all locations, but admitted that the difficulty in locating mountain plovers may partially contribute to the lack of records.

New research now reports that mountain plover numbers at two historically recognized breeding strongholds (*i.e.*, Phillips County, Montana, and the Pawnee in Colorado) are now small or nearly absent (Dinsmore 2001, F. Knopf pers. comm 2002).

Breeding on Cultivated Fields

The mountain plover is attracted to manmade landscapes (*e.g.*, sod farms and cultivated fields) that mimic their natural habitat associations, or sites with little vegetative cover (*e.g.*, other agricultural lands and alkali flats). Land management practices on cultivated fields may include periods when fields are fallow, idle, or barren. If these fields remain fallow, idle, or barren during April and May, mountain plovers may choose these fields for nesting. Agricultural fields with residual cover less than 10 centimeters (4 inches) tall from March through May also may be attractive to plovers. Spring tilling practices to plant crops or control weeds may then destroy mountain plover nests and eggs (Tim McCoy, Colorado Natural Heritage Program, in litt. 2001; Shackford and Leslie 1995; Shackford *et al.* 1999; Knopf 1996; Knopf and Rupert 1999). Because adults are able to escape from farm machinery, adult survival is considered to be high. While mountain plovers may re-nest on these fields, re-nesting by birds is rarely as successful as first attempts, and mountain plovers will likely abandon nests when the crop grows too tall (Knopf 1996).

Breeding adults, nests, and chicks have been observed on cultivated fields in Colorado, Kansas, Nebraska, Oklahoma, and Wyoming (T. McCoy in litt. 2001, Shackford and Leslie 1995, Shackford *et al.* 1999). Between 1986 and 1995, Shackford *et al.* (1999) inventoried cultivated fields in 8 States within the breeding range of the mountain plover; 97 percent of all nests observed were in Colorado, Kansas, Oklahoma, and southeastern Wyoming. During this inventory, 52 nests were found in these 4 States, with 50 percent of the nests on fallow or bare fields, 23 percent on wheat fields, and the remainder on milo, forb, and corn fields. Although mountain plovers are nesting on cultivated fields in eastern Colorado and adjacent States, a study (Shackford *et al.* 1999) of 46 nests on cultivated fields found that 31 nests failed. The fate of the remaining 15 nests was undetermined. Of the 31 failed nests, 22 nests (48 percent of total) were destroyed by farm machinery. None of the nesting attempts could be documented as successful.

As a result of the inventory, Shackford *et al.* (1999) concluded that fewer birds nest in cultivated fields in northern latitudes because cropland acreage is relatively sparse in Montana and all but the southeastern corner of Wyoming, there is a shorter growing period, and spring wheat planted in northern latitudes is disturbed more frequently than the winter wheat planted in the south. They also noted that the short intervals between disturbances for spring wheat in the north would not normally allow enough time for breeding, nesting, and rearing young. Therefore, it appears that little risk to mountain plovers is posed by farming practices in Montana or Wyoming (except southeastern Wyoming), or by farming practices for dryland winter wheat or irrigated crops at other locations (J. Shackford pers. comm. 1999, F. Knopf pers. comm. 1999).

Previous Federal Action

We addressed the previous Federal actions in the 1999 proposed rule.

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Higher priority listing actions precluded listing work on the mountain plover during Fiscal Years 2000 and 2001. On October 16, 2001, Earthjustice (representing the Biodiversity Legal Foundation, Biodiversity Associates, and Center for Native Ecosystems) submitted a 60-day Notice of Intent to sue to the Secretary of the Department of the Interior and the Fish and Wildlife Service Regional Director for failure to meet listing deadlines for the mountain plover, as required by section 4(b)(6)(A) of the Act. The Service responded to Earthjustice on December 21, 2001, with a commitment to reopen the comment period on the listing proposal by September 30, 2002. This date was subsequently extended to November 30, 2002.

In the February 16, 1999, proposed rule (64 FR 7587) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period for the proposed rule was scheduled to end on April 19, 1999, but was extended to June 21, 1999 (64 FR 19108) to ensure all interested parties had an opportunity to submit comments on the proposal. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Several newspaper articles appeared in Montana, Wyoming, and Colorado following our distribution of background materials to print media. The Service also solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and issues relating to the biological and ecological information for the mountain plover. We received a total of 194 written comments on the 1999 proposed rule. We have reviewed each of these comments and will consider them in developing a final rule.

Public hearings were requested in Nebraska by the U.S. Forest Service; in Montana by the Phillips County Prairie Ecosystem Action Council, the Phillips County Board of County Commissioners, and Erin Crowder; and in Wyoming by the Park County Board of County Commissioners, Wheatland Irrigation District, Wyoming Farm Bureau Federation, Laramie County Conservation District, Platte County Resource District, Antelope Grange, Mountain Valley Livestock, Inc., Ultra Resources, and John and Phyllis Thalken.

Public hearings were held at the following locations and dates:

- Billings, Montana, May 26, 1999.
- Malta, Montana, May 25, 1999.
- Greeley, Colorado, May 25, 1999.
- Lamar, Colorado, May 26, 1999.
- Casper, Wyoming, June 2, 1999.

Notifications of these public hearings were advertised in the following newspapers:

- Greeley Tribune, Greeley, Colorado, May 5, 1999.
- Lamar Daily News, Lamar, Colorado, May 6, 1999.
- Pueblo Chieftain, Pueblo, Colorado, May 6, 1999.
- Billings Gazette, Billings, Montana, May 7, 1999.
- Bozeman Daily Chronicle, Bozeman, Montana, May 7, 1999.
- Great Falls Tribune, Great Falls, Montana, May 7, 1999.
- Independent Record, Helena, Montana, May 7, 1999.
- Lewistown News Argus, Lewistown, Montana, May 5, 1999.
- Phillips County News, Malta, Montana, May 5, 1999.
- Wyoming Tribune Eagle, Cheyenne, Wyoming, May 3, 1999.
- Casper Star-Tribune, Casper, Wyoming, May 7, 1999.

We received written and verbal comments from State and Federal elected officials, State and Federal agencies, non-governmental organizations, and private citizens. Those who have submitted comments on this subject do not need to resubmit their comments. We will respond to all comments received when we issue a final rule.

Peer Review

In compliance with the July 1, 1994, Service Peer Review Policy (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and issues relating to the supportive biological and ecological information for the mountain plover proposed listing rule published in 1999. We considered the responses received from the reviewers in developing this document. To satisfy our peer review policy for this document, and to implement a pilot process adopted by us on August 21, 2000, we have solicited the assistance of Sustainable Ecosystems Institute of Portland, Oregon, to provide the required independent peer review. The purpose of such peer review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this supplemental proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and special regulations.

We will consider all comments and information received during the 60-day comment period on this supplemental proposed rule in a final decision on the listing action. Accordingly, the final determination may differ from the proposed rule and this document.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424), set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). We addressed each of these factors in the 1999 proposed rule. Here, we provide only new pertinent information for each of these factors.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historical and Current Conversion of Grassland in Breeding Range

In the 1999 proposed rule, we provided statistics from the NRCS to show rangeland conversion from 1982 to 1992. We have now reviewed the most current records of rangeland conversions from 1992 to 1997 also available from the NRCS (*http://www.nhq.nrcs.usda.gov/NRI;* K. Musser, NRCS, in litt. 2000). Rangeland decreased during this period by 28,531 ha (70,500 ac) in Colorado; 2,428 ha (6,000 ac) in Kansas; 45,730 ha (113,000 ac) in Montana; 6,880 ha (17,000 ac) in Nebraska; 3,157 ha (7,800 ac) in Oklahoma; and 7,851 ha (19,400 ac) in Wyoming (Service in litt. 2000). Further, a moratorium on sodbusting on State school lands in Montana was rescinded in 1998, which may promote additional conversions in an effort to maximize revenue on State school lands, and meet the objective for acres in production recommended by the Governor's Vision 2005 Task Force on Agriculture (L. Hanebury pers. comm. 2002). The total conversion reported for 1992 to 1997 is small (about 0.07 percent) relative to the total rangeland reported from the above States, and the area of mountain plover habitat converted is unknown due to the lack of vegetative and topographic details regarding each grassland parcel that was converted. While we cannot quantify the acres of mountain plover habitat that have been converted, the records we examined show that grassland conversion continues at present. For example, grassland conversion in Blaine County, Montana, has recently occurred, with about 809 ha (2,000 ac) converted in 2000, and another 809 to 1,012 ha (2,000 to 2,500 ac) scheduled for conversion in 2002 (J. Peters, BLM, pers. comm. 2002). While mountain plovers were not known to occur on any of the parcels converted in Blaine County in 2000, the conversions occurred contiguous to grasslands with known nesting sites. Knowles (pers. comm. 2001) reports that a total of 13 percent of the land area in his Central Montana study area has been sod-busted from 1991 to 1999, and that mountain plovers have abandoned all but one of the sites that were converted.

In 1999, we also provided information regarding the conversion of grasslands to housing subdivisions, citing South Park, Park County, Colorado, as an example. We now have new information that increases our concern that housing development in South Park is a potential threat to mountain plovers and their habitat. Park County is one of the fastest growing counties in Colorado; population growth may double between 1998 and 2005, and may reach 102,600 people by 2020 (Granau and Wunder 2001). The population of mountain plovers in South Park is now estimated to be from 1,500 to 2,000 individuals, making this one of the largest remaining populations of mountain plovers known throughout their breeding range. Sixty-eight percent of mountain plover habitat is privately owned, and 32 percent of this has already been subdivided (Granau and Wunder 2001). The number of residential building permits in Park County tripled between 1991 and 1997. Most of these permits were issued in areas of Park County that are not occupied by mountain plovers, but some were issued in known breeding habitat (Hanson 1997; G. Nichols, Park County, Colorado, in litt. 1998). However, beginning in 1999, the number of building permits issued in areas considered to be mountain plover habitat (*i.e.*, South Park) exceeded those issued in other parts of the county (Granau and Wunder 2001). Both Sherman *et al.* (1996) and Granau and Wunder (2001) identified the vulnerability of known breeding sites to ongoing and residential development. The mountain plover is one of the species addressed during current conservation planning efforts in Park County, but full build-out of those sites currently subdivided would be detrimental to mountain plovers (Granau and Wunder 2001).

Cultivated Areas in Breeding Range as Potential Population Sinks

In the 1999 proposed rule, we stated that we believed that certain cultivated lands created population sinks for the mountain plover, which contributed to species decline. In an effort to better define the implications to mountain plover survival by nesting attempts in cultivated fields, research has been initiated on cultivated fields and rangelands in five counties in eastern Colorado (T. McCoy in litt. 2001). Field research completed in 2001 found 44 nests on cultivated fields and 48 nests on rangeland, confirming the Shackford *et al.* (1999) finding that croplands may represent suitable nesting habitat for mountain plovers. Analysis of research results will begin in 2003, following completion of field data collection, and evaluation of implications to mountain plover survival will be available in 2004. Because current agricultural practices conflict with the mountain plover nesting cycle, we believe they may represent a threat to mountain plover reproduction.

Historical Conversion of Grassland in Winter Range

We provided important details of grassland conversion in California in the 1999 proposed rule. We have learned that since 1997, an additional 3,966 ha (9,800 ac) of grasslands have been converted to dairy farming, orchards, and vineyards in the Central Valley (C. Davis, Service, in litt. 1999). Most of the conversion reported by Davis (in litt. 1999) occurred in the eastern part of the Central Valley, where historically fewer mountain plover sightings have occurred. However, we believe the anticipated urbanization of the Central Valley (see Hunting *et al.* (in press)) will result in the loss of habitat currently occupied by wintering mountain plovers.

We also have learned that the Imperial Valley of California is likely an example of the shift of mountain plover wintering use following loss of grassland habitat. Wunder and Knopf (in draft) believe that greater than 50 percent of all mountain plovers now winter in the Imperial Valley. They believe this shift to agricultural lands in the Imperial Valley probably followed the rapid and nearly complete loss of grassland habitat at historic wintering sites at California's interior and coastal locations. Much of the deterioration of natural habitat was ongoing while the Imperial Valley was being converted to agriculture, and migrating mountain plovers began exploiting the newly available cultivated lands in the Imperial Valley, rather than continuing west to historic wintering locales (*i.e.*, they were "shortstopped" (Wunder and Knopf (in draft)). Mountain plovers in the Imperial Valley now exclusively use alfalfa fields grazed by domestic livestock, or fallow fields, burned sod farms, and sprouting wheat fields. Water conservation, water transfer projects, burning restrictions, and urbanization associated with the North American Free Trade Agreement (NAFTA) may result in changes to agricultural practices (S. Vissman, Service, in litt. 2001). NAFTA is expected to generate increased trade growth in the Imperial Valley, and highway projects are now being planned to improve transportation efficiency (California Department of Transportation 2001). As a result of NAFTA, the Imperial County population is expected to nearly double by 2020 (California Department of Transportation 2001). As a result of the anticipated population growth and impacts to prime farmland, the American Farmland Trust designated Imperial County as 1 of the top 20 threatened major land resource areas in the nation (California Department of Transportation 2001). Between 1982 and 1992, 7,689 ha (19,000 ac) of land in Imperial County were converted to urban uses. The loss of farmland associated with the current level of urbanization in Imperial County has had no measurable impact to wintering mountain plovers, but we believe anticipated growth will result in additional loss of farmland and influence agricultural practices on remaining farmlands (S. Vissman in litt. 2001). Wunder and Knopf (in draft) believe that the modification of agricultural practices, cessation of domestic livestock grazing, or addition of more restrictions on agricultural burning would be detrimental to mountain plovers in the Imperial Valley.

Effects of Range Management on Mountain Plover Habitat

In 1999, we stated that currently accepted domestic livestock grazing management can be detrimental to mountain plover breeding habitat. We have learned mountain plover winter habitat on the Carrizo Plain Natural Area in California also has been adversely impacted by the failure to continue domestic livestock grazing activities. Historically, as much as 50 percent (50,587 ha (125,000 ac)) of these lands were suitable wintering habitat. Following consolidation of properties to establish the Carrizo Plain, livestock grazing rates were adjusted to promote restoration of native plant communities.

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Following an increase in rainfall associated with El Niño events in recent years, the density of vegetation and dry residual matter now exceeds the limits tolerated by mountain plovers. The resistance to livestock grazing expressed by some segments of the public and the emphasis on native plant conservation have adversely affected opportunities to enhance mountain plover habitat. Recently, grazing has been restored to some areas of the Carrizo Plain and mountain plovers have begun to reoccupy these sites (S. Fitton pers. comm 2002). However, there probably is little more than 10 percent (10,117 ha (25,000 ac)) of the Carrizo Plain Area that is currently suitable habitat for mountain plovers (E. Marquis-Brong, BLM, in litt. 1999a).

Mountain plovers on the Pawnee in Colorado are closely associated with heavily grazed, drier sites. The Forest Service is beginning to review grazing management plans for the Pawnee to identify actions that would benefit the mountain plover (J. Sidle, Forest Service, pers. comm. 2002). Currently, there is no schedule for adoption or implementation of revised grazing management prescriptions.

Effects of the Decline of Burrowing Mammals on Mountain Plover Habitat

The 1999 proposed rule cited published literature to describe a strong association of mountain plovers with prairie dogs and kangaroo rats at numerous locations in their breeding and wintering range, and reported the historic losses and potential threats to prairie dogs and kangaroo rats. All new information we have describing the association of mountain plovers and prairie dogs confirms a strong association of mountain plovers with prairie dogs at numerous locations. We also now report that mountain plovers are found on white-tailed and Gunnison's prairie dog colonies (P. Deibert, Service, pers. comm. 2002; Hawks Aloft, Inc. 2001a).

On July 31, 1998, we were petitioned by the National Wildlife Federation to list the black-tailed prairie dog as a threatened species. On February 4, 2000, we published our 12-month finding on this petition (65 FR 5476) and estimated the historic and current population of the black-tailed prairie dog in Montana, Wyoming, and Colorado. This document supports our previous findings regarding the historic decline of prairie dogs. Sylvatic plague now appears to be the greatest threat to prairie dogs and mountain plover habitat, as the amount of prairie dog control and land use conversion impacting prairie dogs have appeared to decline.

We have no new information relating to burrowing rodents on mountain plover wintering range.

Oil, Gas, and Mineral Development in Mountain Plover Breeding Habitat

We addressed the potential for development of mineral resources and the associated impacts to mountain plovers in the 1999 proposed rule. We are now aware of nine authorized or proposed active natural gas and coal bed methane projects in Wyoming that occupy either known or potential mountain plover nesting habitat (*e.g.*, Continental Divide/Wamsutter II Natural Gas Project, Seminoe Road Coal Bed Methane) (P. Deibert in litt. 2002). We also have more thoroughly reviewed mountain plover nesting records from existing mining locations, and have determined they are not adequate to determine the effects of mine development and operation on mountain plover nesting success (P. Deibert pers. comm 2002). It also is conceivable that construction of drill pads and roads could possibly create additional mountain plover habitat, but only when human activities at the sites are compatible with mountain plover nesting behavior. Due to the anticipated rate of growth in this industry, we continue to believe that oil and gas development if not adequately mitigated, represents a potential threat to breeding mountain plovers.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

There is no new information relating to this listing factor.

C. Disease or Predation

There is no new information substantially changing the information presented in the 1999 proposed rule.

D. The Inadequacy of Existing Regulatory Mechanisms

There is no new substantial information relating to the value of other regulatory mechanisms to the conservation of the mountain plover. We have learned that the United States Shorebird Conservation Plan now assigns its highest conservation category score (5) to the mountain plover, one of five shorebirds receiving this ranking (Brown *et al.* 2001). The mountain plover also is designated as threatened by Mexico (S. Jewell, Service, in litt. 2000).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural Factors

New literature now reports that the predicted mean lifespan of a mountain plover is 1.92 years, and females can produce more than one clutch of eggs each year (Dinsmore 2001). The mountain plover's entire lifespan appears to be shorter than that of either the snowy plover (*Charadrius alexandrinus*) (Page *et al.* 1995) or piping plover (*Charadrius melodus*) (Haig 1992), but there is no mean lifespan prediction for any other shorebird (S. Haig, Clemson University, pers. comm. 2002). We are not aware of the implications of total lifespan for species persistence, but we believe a mean lifespan of less than 2 years influences opportunities to reproduce, seek alternate breeding and wintering sites, and engage in intraspecific behavior that may influence population recruitment. Further, the mountain plover's narrow range of habitat requirements combined with high degree of site fidelity (see the 1999 proposed rule) increases its vulnerability to impacts at traditional breeding locales. For example, Graul (1973, 1975) discussed the influence of climatic events on nesting mountain plovers during his research on the Pawnee. While he attributed as much as a 14 percent loss of nests to weather, and also reported the death of chicks to heat, he did not note any population level effects. However, because the average life span of a mountain plover is less than 2 years, and breeding does not occur until 1 year of age, an individual mountain plover will likely have only one breeding season to contribute to population recruitment. An individual mountain plover's contribution to recruitment may therefore be reduced or completely negated by the loss of nest, eggs, or young by natural or manmade events. Consequently, a short lifespan may aggravate the events that influence mountain plover conservation.

Manmade Factors

We have no new substantial information to provide relating to manmade factors.

Critical Habitat

In the 1999 proposed rule, we concluded that designation of critical habitat for the mountain plover was not prudent. Several court cases rendered since 1999 regarding critical habitat now require us to reevaluate the merits of critical habitat for the mountain plover. If designation of critical habitat is prudent, we will develop a proposal to designate critical habitat for the mountain plover as soon as feasible, considering our workload priorities and available funding.

Available Conservation Measures

We summarized the potential conservation measures for the mountain plover in the 1999 proposed rule to include: Management of cultivated lands, implementing grazing plans, changing management of Conservation Reserve Program tracts, modifying seeding criteria for Conservation Reserve Program tracts, and providing habitat modification incentives to private landowners. Also as we reported in 1999, we are coordinating with the NRCS to explore ways to implement these measures on private land. We also summarized other conservation opportunities available under sections 4, 7, 9, and 10 of the Act, listed those Federal agencies we believe are most likely to be affected by a listing action (including the types of actions that may require section 7 consultation), and gave examples of some actions that either may be allowed, or prohibited, under section 9.

Special Rule

When a wildlife species is listed as threatened, the general regulations at 50 CFR 17.31 apply the section 9 prohibitions of the Act, including the take prohibitions, to the species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" any listed wildlife species (*i.e.*, to harass, harm pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or attempt to engage in any such conduct) (16 U.S.C. 1532 (19)).

Section 4(d) of the Act (16 U.S.C. 1533) provides that, whenever a species is listed as a threatened species, the Secretary of the Department of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. This can be accomplished through a "special rule" tailored to meet the needs of a particular threatened species. In that case, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule contains the prohibitions necessary and appropriate to conserve that species.

Such regulations generally are issued and published as special rules in the **Federal Register** along with or following a listing. In this case, we have chosen to concurrently publish this proposed special rule along with the reopening of the comment period for our proposal to list the mountain plover as threatened. We are proposing this special rule under the authority of section 4(d) of the Act containing the prohibitions necessary to provide for the conservation of the mountain plover. The prohibitions we propose do not include the take of mountain plover during certain routine farming practices until December 31, 2004, in the southern portion of the breeding range. During this period, ongoing research will be completed to determine the impact of farming practices on cultivated fields to mountain plover nesting success within the southern portion of the breeding range. The finalization of this special rule is contingent upon the results of research now under way and the final listing of the mountain plover as a threatened species. If this proposed special rule is finalized, the general regulations at 50 CFR 17.31 would not apply to the mountain plover. However, almost all of the prohibitions contained in the general regulations are included in this proposed special rule. Our rationale for a proposed special rule follows.

The February 16, 1999, proposal to list the mountain plover as a threatened species (64 FR 7587) identifies the take of mountain plovers on cultivated fields as one of many possible reasons for the decline of the mountain plover population. The proposed listing rule cites literature describing the loss of mountain plovers to spring tilling practices (see 64 FR 7587). Briefly, the mountain plover is attracted to manmade landscapes that mimic its natural habitat associations. Land management practices on cultivated fields in their breeding range may include periods when fields are fallow, idle, or barren. If these fields remain fallow, idle, or barren during April and May, mountain plovers may choose these fields for nesting, and subsequent spring tilling practices may then destroy mountain plover nests and eggs (Shackford and Leslie 1995, Knopf 1996, Shackford *et al.* 1999, Knopf and Rupert 1999, T. McCoy in litt. 2001).

Because mountain plover nests, eggs, and chicks are being taken by spring tilling practices, but the implications of this loss to the mountain plover population are not known, the USGS–BRD, in coordination with the Service, the Colorado Division of Wildlife, and the Colorado Farm Bureau, initiated scientific research in 2001 on cultivated fields and rangelands. Field research will not be completed until 2003, and analysis of results will not be initiated until 2004.

Justification

We have had numerous discussions with Dr. Fritz Knopf with the U.S. Geological Survey-Biological Resources Division and agricultural producers regarding the significance of spring tilling losses to the mountain plover population. The reasons for our identification of spring tilling as a potential threat are: The general observation by many farmers that the birds are nesting on their fields, the widespread application of these farming practices throughout the southern portion of the mountain plover's breeding range, and the observation of mountain plovers being taken by routine farming practices (T. McCoy in litt. 2001, Shackford *et al.* 1999). However, because there is no current literature comparing mountain plover productivity on noncultivated, traditionally used grasslands with productivity on cultivated fields, the influence of tilling practices on mountain plover recruitment cannot be estimated at this time.

The Colorado Farm Bureau, the Wildlife Management Institute, the U.S. Geological Survey-Biological Resources Division, and the Service recognize that nest success on cultivated fields deserves further study (R. Leachman pers. comm. 2000). Consequently, the USGS–BRD initiated field research in 2001 to evaluate the effects of farming practices on mountain plovers by comparing productivity on cultivated fields with that occurring at noncultivated, traditionally used grassland sites (T. McCoy in litt 2001). In order to generate sufficient data for analysis, the research will continue for 3 consecutive years. We are proposing that incidental take of nesting mountain plovers on cultivated fields in the southern portion of the plover's breeding range be exempt from the prohibitions of section 9 of the Act while the research is being conducted, and for 1 year following to allow data analysis. We believe this interim exemption will allow completion of research to help define the influence of agriculture on nesting mountain plovers, encourage private landowners to participate in research directed at a declining species (*e.g.*, allow researchers access to privately owned land), and contribute to the conservation of the species on private land by further defining farming practices that can have positive or negative effects on the species.

This proposed special rule will allow us to work with the Colorado Farm Bureau, local agricultural producers, and local government representatives to

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determine the specific types of agricultural practices occurring within the breeding range of the mountain plover, determine which of these practices have an effect on mountain plover nesting success, and identify mechanisms that can be implemented to minimize or preclude the impact of the take on the species.

During 2002, researchers continued to monitor the breeding activity of mountain plovers throughout eastern Colorado. The length of the breeding season varied between 2001 and 2002 with the 2001 season ending in July and the 2002 season continuing into August. The longer 2002 season was attributable to extreme drought conditions in eastern Colorado. Nest success did not vary substantially between cropland and rangeland in 2001, but did show slightly higher nest success on rangeland in 2002. Predation was the major cause of nest failure, except in 2001, when agricultural practices destroyed more nests on croplands. Of rangeland nests, nest success was slightly higher on grassland with prairie dog colonies than on grasslands without prairie dog colonies. The researchers suggest that direction in 2003: (1) Focus studies more precisely on locales where plovers nest in higher densities to maximize sample sizes, (2) rigorously test the emerging pattern of comparable nest success between rangeland and croplands, and (3) test the predictions that plover densities and nest success are highest on prairie-dog towns (P. Knopf in litt 2002).

Provisions of the Proposed Rule

Term

We propose to exempt specific types of agricultural practices from the prohibitions on take under 50 CFR 17.31 until December 31, 2004. During this time, the research now ongoing will be continued to determine the effects of different types of farming practices on mountain plover nesting productivity. The finalization of this special rule is contingent upon a final listing of the mountain plover and the results of the scientific research.

Take Prohibitions

We propose that virtually all of the prohibitions under section 9 of the Act that apply to threatened species continue to apply to the mountain plover, to the same extent that they apply to other threatened species under our general regulations at 50 CFR 17.31, except that certain activities would be exempted.

Exempted Activities

We propose to include in this rule the following exemptions from take until December 31, 2004:

The incidental take of mountain plovers during routine farming practices by non-Federal entities on existing summer fallow, cropland idle, or cropland harvested (as defined by U.S. Department of Agriculture, National Agricultural Statistics Service (USDA–NASS) 1997 Census of Agriculture—Appendix (1)), from April 1 to June 30 in Colorado, Kansas, Nebraska, Oklahoma, and Laramie and Goshen Counties, Wyoming.

During the term of this special rule, research will be ongoing on existing summer fallow, cropland idle, and cropland harvested (as defined by U.S. Department of Agriculture, National Agricultural Statistics Service (USDA–NASS) 1997 Census of Agriculture—Appendix (1)) to compare productivity at these sites with that at noncultivated, traditionally used grassland sites to determine the influence that different farming practices have on mountain plover reproductive success. We are targeting these types of activities because previous researchers (Shackford *et al.* 1999, Knopf and Rupert 1999, T. McCoy in litt. 2001) have demonstrated some loss of mountain plover nests on cultivated fields due to agricultural activities.

This special rule would allow us to develop a better understanding of potential conflicts between agricultural practices and nesting mountain plovers, as well as assist in the development of management recommendations that can either preclude or mitigate the effects of these agricultural practices. Situations where mountain plovers coexist with ongoing agriculture may provide valuable insight into habitat conditions required by them, and the specific types of agricultural practices that are compatible with or enhance successful mountain plover reproduction.

We have maintained records of known occurrences of mountain plovers, as well as information on areas that may have high potential for habitat enhancement to improve nesting success throughout their breeding range. We have accumulated information regarding the historic and current distribution of mountain plovers. This information, combined with the information gained from the research discussed in this proposed rule, will assist in development of conservation actions that make the best use of the mountain plover's demonstrated nest site fidelity and in identification of those lands that have the highest potential for habitat enhancement. With this knowledge, our ability to implement an effective long-term recovery program will be enhanced.

Application of Research Results

The proposed exemptions in this proposed special rule would provide for the development of meaningful long-term conservation efforts for the mountain plover on private land. We are optimistic that this rule would invite participation by State and local governments, agricultural interests, and the general public to help minimize risks to the mountain plover. The 3-year research project will provide information that may eventually lead to one or more of the following possibilities:

(1) Extension of the exemption of take resulting from farming practices covered by this rule beyond December 31, 2004;

(2) Identification of management recommendations that avoid "take" under 50 CFR 17.31;

(3) Modification of the scope of exemptions under the 4(d) rule (such as changes to the area covered by the exemption, the seasonal time periods during which the exemption is in effect, or the farming practices covered by the exemption);

(4) Development of Habitat Conservation Plans or Safe Harbor Agreements under section 10 of the Act; or,

(5) Expiration of this 4(d) rule without renewal (*i.e.*, no special regulations providing exemptions to the take prohibitions).

We will provide notice in the **Federal Register** of any such outcomes, and we will propose further rulemaking if appropriate.

Effects of the Special Rule

Future Section 7 Consultations

This special rule does not change the obligation of Federal agencies to consult with us under section 7 of the Act concerning actions they authorize, fund, or carry out that may affect listed species, including the mountain plover.

We believe that the exemption proposed in this special rule will allow completion of scientific research to help define the influence of agriculture on the mountain plover population, encourage private landowners to participate in research efforts directed at this declining species, and contribute to the conservation of the species on private land by further defining farming practices that can have negative and positive effects on the species.

Once completed, this research will assist us in the implementation of

available conservation strategies, such as Habitat Conservation Plans, Candidate Conservation Agreements with Assurances, or Safe Harbor agreements. The research findings will help identify farming practices that may either enhance or prove detrimental to mountain plover nesting success. We intend to pursue and encourage the development of these conservation strategies using recommendations derived from this research.

Section 10(a)(1)(B) authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities such as agriculture, surface mining, and urban development. Incidental take permits must be supported by a Habitat Conservation Plan that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. Such conservation measures may include, for example, no-till practices that leave stubble too tall to be attractive to breeding mountain plovers. On summer fallow, cropland idle, or cropland harvested, the type of farm implement used and the timing of the use may be significant in reducing harm to plovers. These and other techniques to avoid take of plovers or protect plovers can be examined by producers in the development of a Habitat Conservation Plan, Candidate Conservation Agreement with Assurances, or Safe Harbor agreement. A key element in our review of each of these conservation strategies is a determination of the plan's effect upon the long-term conservation of the species. We would approve a Habitat Conservation Plan, and issue a section 10(a)(1)(B) permit, as appropriate, if the plan would minimize and mitigate the impacts of the take and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

Public Comments Solicited

We intend that any final action resulting from this document will be as accurate and as effective as possible. Therefore, we are again seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this document, particularly concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the mountain plover;

(2) The location of any additional breeding, wintering, or migration sites, including areas in Mexico and Canada;

(3) Additional information concerning mountain plover distribution, population size, and/or population trend;

(4) Information regarding current or planned land uses, and their possible beneficial or negative impact to the mountain plover or its habitat (*e.g.*, agricultural conversions, oil and gas development, land exchanges, range management, conservation plans, conservation easements);

(5) Information regarding mountain plovers on their wintering habitats (*e.g.*, preferential use of natural versus agricultural habitats, habitat distribution and abundance, daily routines, night roosts, site fidelity, population abundance);

(6) Additional biological or physical elements that best describe mountain plover habitat and that could be considered essential for the conservation of the mountain plover (*e.g.*, burrowing rodent colonies, vegetation, food, topography);

(7) Information relative to mountain plover distribution and productivity on cultivated lands, short grass prairie, and shrub-steppe habitats;

(8) Alternative farming practices that will reduce or eliminate the take of mountain plovers;

(9) Other management strategies that will conserve the species throughout its range;

(10) Information regarding the benefits of critical habitat designation;

(11) Comments regarding the adverse or beneficial consequences of adopting special regulations regarding take of the mountain plover on cultivated lands in their breeding range;

(12) The types of agricultural practices on cultivated fields that are compatible with maintenance of mountain plover breeding habitat;

(13) Any evidence of successful and/or unsuccessful nesting by mountain plovers on cultivated fields;

(14) Any evidence indicating that additional areas of cultivated lands should be considered for inclusion in this rule;

(15) Any evidence of mountain plovers nesting on cultivated fields on Native American Tribal lands; and

(16) Information regarding grazing practices on Federal lands within the range of the mountain plover and the impacts of this on the plover.

In addition to the information solicited above, we are seeking private landowners interested in participating in the research discussed in the section of this document that explains the proposed special rule. As discussed previously, finalization of the special rule is contingent upon the results of continuing research. Permission from private landowners to allow access to their lands is a critical component of conducting this research project.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations, or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address in **ADDRESSES**.

Final promulgation of the protective regulations on this species will take into consideration the comments and any additional information received by us. Such communications may lead to a final regulation that differs from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be made at least 15 days prior to the close of the public comment period.

Clarity of the Proposed Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

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Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov*.

Required Determinations

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). We also have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with regulations adopted pursuant to section 4(d) when they accompany listing actions. The proposed special regulation for the mountain plover is being developed as an integral component of the mountain plover listing action we proposed in 1999 (64 FR 7587), and for which we are giving notification of the reopening of the comment period today. Consequently, we have determined that neither an Environmental Assessment nor Environmental Impact Statement is necessary for this proposed special regulation to comply with the National Environmental Policy Act and 516 DM.

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act and assigned Office of Management and Budget clearance number 1018–0094, which expires July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.21 and 17.22.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (Executive Order 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statements of Energy Effects is required.

References Cited

As we stated above, we have a complete list of all references cited in this document, as well as others, that are pertinent to the mountain plover. You may request this list from the Assistant Field Supervisor at the Grand Junction, Colorado Field Office (see **ADDRESSES**).

Author

Numerous Service biologists contributed to this document. You should direct any questions to Robert Leachman (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend 50 CFR part 17, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1554; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Plover, mountain	*Charadrius montanus.*	U.S.A. (western)	Entire	T		NA	17.41(c)

3. Amend § 17.41 by adding paragraph (c) to read as follows:

§ 17.41 Special rules-birds.

* * * * *

(c) Mountain plover (Charadrius montanus).

(1) *What activities are restricted or not allowed to protect the mountain plover?* All of the prohibitions of § 17.31 (a) and (b) and exemptions of § 17.32 are applicable to take of the mountain plover except where identified in paragraph (c)(2) of this section.

(2) *What activities are allowed under this special rule for the mountain plover?* The take prohibitions of § 17.31 will not apply to the following:

(i) The incidental take of mountain plovers during routine farming practices on summer fallow, cropland idle, or cropland harvested between April 1 and June 30 in Colorado, Kansas, Nebraska, Oklahoma, and Laramie and Goshen Counties, Wyoming, while the rule in this paragraph (c) is in effect; and,

(ii) Activities covered under a valid permit issued by the Fish and Wildlife Service for conducting research, educational purposes, scientific purposes, enhancement of or propagation for survival of the mountain plover, zoological exhibition, and other conservation purposes in accordance with § 17.32 and under a cooperative agreement with a State under section 6 of the Act (16 U.S.C. 1535), if applicable.

(3) *How long is this special rule in effect?* The rule in this paragraph (c) is effective until December 31, 2004.

(4) *Does this special rule apply to mountain plovers throughout their range?* This special rule applies only to mountain plovers in certain areas of the southern portion of their breeding range (see paragraph (c)(2) of this section). It does not apply to wintering range.

(5) *What types of agricultural activities are covered under this rule?* Agricultural activities conducted on summer fallow, cropland idle, or cropland harvested are covered under the rule in this paragraph (c). Agricultural activities include mechanical practices such as tilling and other machinery-type activities that are used to prepare soil, plant crops, and control weeds.

Dated: November 29, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–30801 Filed 12–4–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI25

Endangered and Threatened Wildlife and Plants; Determinations of Prudency for Two Mammal and Four Bird Species in Guam and the Commonwealth of the Northern Mariana Islands and Designations of Critical Habitat for One Mammal and Two Bird Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis of the proposed designations of critical habitat for the Mariana fruit bat and the Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota. The proposed designations of critical habitat were published in the **Federal Register** on October 15, 2002 (67 FR 63738). The draft economic analysis shows that over a 10-year period, the estimated total direct cost on Guam would be approximately $1.4 million and the estimated total direct cost on Rota would be approximately $149,000. We are now providing notice of extending the comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until January 6, 2003.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the above address and telephone 808/541–3441. Copies of the draft economic analysis also are available on Guam at the Nieves M. Flores Memorial Library, East O'Brien Drive, Hagatna, Guam, phone 671/475–4753, and on Rota at the Northern Marianas College, Songsong, Rota, telephone 670/532–9477. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

A review of the status of 12 Guam and Commonwealth of the Northern Mariana Islands (CNMI) vertebrate species was published on May 18, 1979 (44 FR 29128). This review, which led to the listing of nine species in 1984, resulted from three separate petitions to the Service filed by three Governors or Acting Governors of Guam in 1978, 1979, and 1981, and a fourth petition filed by the International Council for Bird Preservation in 1980. In a proposed rule published on November 29, 1983 (48 FR 53729), the Service determined endangered status for 9 of the 12 species in the 4 petitions. The final listing rule for the nine species, including the six species treated in the current proposed rule, was published on August 27, 1984 (49 FR 33881).

We published a proposed rule to designate critical habitat for these six endangered species on Guam in the **Federal Register** on June 14, 1991 (56 FR 27485). However, we withdrew this proposed rule on April 4, 1994 (59 FR 15696), because most of the lands proposed as critical habitat had by this time been incorporated into the Guam National Wildlife Refuge overlay lands. The Service, therefore, determined that critical habitat designation was not prudent because it would not provide these species with any benefit beyond that already provided by the refuge overlay lands.

Since the withdrawal of the proposed critical habitat, several judicial decisions in court cases examining critical habitat determinations have rejected rationales used by the Service in "not prudent" findings. These cases included *Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997) involving the threatened coastal California gnatcatcher, and *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp.2d 1280 (D. Haw. 1998) involving 245 listed plant species. The decisions in these cases rejected the Service's rationales of "increased threat" and "no benefit" in the case of the gnatcatcher, and of "increased threat," "no benefit on private lands," and "no additional benefit on federal lands" in the case of the Hawaiian plants.

On April 3, 2000, the Marianas Audubon Society and the Center for Biological Diversity filed a suit to challenge the Service's 1994 withdrawal of critical habitat for the six species. On September 7, 2000, the Service filed a motion to voluntarily remand the withdrawal and non-prudency decision based on the subsequent court decisions. This motion set a deadline of June 3, 2003, for the Service to determine prudency and designate final critical habitat, if prudent, for these six species. On January 25, 2002, the Government of Guam filed a motion for preliminary injunction against the Service to prevent our re-consideration of the 1994 "not prudent" critical habitat determinations for the six species. On February 8, 2002, the Service filed its opposition to the Government of Guam's motion for preliminary injunction. On April 16, 2002, the Guam District Court dismissed the Government of Guam's motion for preliminary injunction and issued a ruling upholding the settlement based on a voluntary remand.

On December 7, 2001, we mailed letters to four major landowners (Chamorro Land Trust Commission, U.S. Air Force, U.S. Navy, and Guam National Wildlife Refuge) on Guam informing them that the Service was in the process of determining the prudency of designating critical habitat for the little Mariana fruit bat, Mariana fruit bat, Mariana crow, Guam broadbill, Micronesian kingfisher, and the bridled white-eye and requested from them information on management of lands that currently support or recently

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(within the past 30 years) supported these six species. The letters contained a fact sheet describing the six listed species and critical habitat, the 1991 proposed rule to designate critical habitat, the 1994 withdrawal of the proposed rule, and a questionnaire designed to gather information about land management practices, which we requested be returned to us by January 14, 2002. We received three responses to our landowner mailing with varying types and amounts of information on current land management activities. Some responses included natural resource management plans, cooperative agreements, and descriptions of management activities such as brown treesnake and feral ungulate control. The information provided in the responses was considered and incorporated into the proposed rule published in the **Federal Register** on October 15, 2002 (67 FR 63738).

We propose designating approximately 10,053 hectares (ha) (24,840 acres (ac)) in two units on the island of Guam for the Mariana fruit bat and the Micronesian kingfisher. For the Mariana crow, we propose designating approximately 9,325 ha (23,042 ac) in two units on the island of Guam and approximately 2,462 ha (6,084 ac) in one unit on the island of Rota in the CNMI. On Guam, the boundaries of the proposed critical habitat units for the Mariana fruit bat and Micronesian kingfisher are identical and the boundaries of the proposed critical habitat for the Mariana crow are contained within these identical boundaries. On Rota, critical habitat is proposed only for the Mariana crow.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is now available on the Internet and from the mailing address in the Public Comments Solicited section below.

We are now announcing the availability of the draft economic analysis and the extension of the comment period for the proposed designation of critical habitat for the Mariana fruit bat and the Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota. We will accept public comments on the proposal and the associated draft economic analysis until the date specified in **DATES.** The extension of the comment period gives all interested parties the opportunity to comment simultaneously on the proposal and the associated draft economic analysis.

Public Comments Solicited

We are specifically requesting comments on the following elements of the draft economic analysis:

(1) Whether indirect economic costs, as discussed in sections 6.3–1.4 and 6.3–1.5 of the draft economic analysis, are likely to be incurred, and if so, by whom and in what amounts;

(2) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in sections 6.3–1.4 and 6.3–2.2 of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the benefits of the proposed critical habitat designation;

(3) The extent to which the description of the economic costs of the proposed critical habitat designation to the United States Navy and Air Force are complete and accurate; and

(4) The extent to which military training and readiness may be impacted by the proposed critical habitat designation, as discussed generally in sections 6.3–1.2 and 6.3–1.3 of the draft economic analysis.

We will accept written comments and information during this extended comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *Guam_crithab@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AI25" and your name and return address in your e-mail message.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address under **ADDRESSES** and phone number under **FOR FURTHER INFORMATION CONTACT** above.

Author(s)

The primary author of this notice is Eric VanderWerf (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–30802 Filed 12–4–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 234
Thursday, December 5, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development: One Hundred and Thirty Sixth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty-sixth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8 a.m. to 1 p.m. on January 6, 2003 in the ground floor meeting room of the National Association of State Universities & Land Grant Colleges (NASULGC), at 1307 New York Avenue, NW., Washington, DC.

The program will be devoted to a discussion of a humanitarian compact for developing countries, a progress report on the previous meeting's long-term training agenda item, and further USAID reports on the status of agricultural or rural livelihoods and the involvement of universities.

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact Mr. Lawrence Paulson, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–073, Washington DC 20523–2100 or telephone him at (202) 712–1436 or fax (202) 216–3010.

Lawrence Paulson,

USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Bureau of Economic Growth, Agriculture & Trade.

[FR Doc. 02–30816 Filed 12–4–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

National Appeals Division

Notice of Request for Approval of an Information Collection

AGENCY: National Appeals Division, USDA.

ACTION: Proposed collection.

SUMMARY: Notice. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the National Appeals Division (NAD) to request approval of a voluntary information collection for the purpose of setting customer service standards.

DATES: Comments on this notice must be received by February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Jobe, USDA/NAD Suite 1100, 3101 Park Center Drive, Alexandria, VA 22302, (703–305–2514).

SUPPLEMENTARY INFORMATION:

Title: National Appeals Division Customer Service Survey.

OMB Number: Not yet designated.

Type of Request: Approval of a new information collection.

Abstract: Executive Order 12862 requires Federal Agencies to identify the customers who are, or should be served by the Agency and survey those customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Agencies will then use the results to the survey to establish customer service standards.

The National Appeals Division (NAD) of the U.S. Department of Agriculture was established by the Secretary of Agriculture on October 20, 1994, by Secretary's Memorandum 1010–1, pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, section 271 et seq. (October 13, 1994). The Act consolidated the appellate functions and staffs of several USDA Agencies to provide for independent hearings and reviews of adverse Agency decisions. NAD is responsible for all administrative appeals arising from program activities of assigned Agencies, as well as such other administrative appeals arising from decisions of Agencies and offices of USDA as may be assigned by the Secretary. NAD appeals involve program decisions of the Farm Service Agency, Risk Management Agency, Natural Resources Conservation Service, Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service.

Need of the Information: The information collection in this request is essential for NAD to comply with the requirement of Executive Order 12862 to set customer service standards. The information collected is used only by authorized representatives of USDA.

Estimate of Burden: Public reporting burden for this collection of information is estimate to average 0.25 hours per response.

Respondents: The primary respondents will be individuals and/or households who are participants in Farm Service Agency and Rural Housing Service programs. A small percentage of respondents may be businesses, institutions or state and local governments.

Estimated Number of Respondents: 1176.

Estimated Number of Responses per Respondent: 1.00.

Estimated Total Annual Burden on Respondents: 294.

Copies of this information collection can be obtained from Jerry Jobe, National Appeals Division at (703) 305–2514.

Send comments regarding, but not limited to the following: (a) Whether the collection of the information is necessary for the proper performance of the functions of NAD, including whether the information will have a practical utility; (b) the accuracy of NAD's estimates of the burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other technological collection techniques, or other forms of information technology. Comments should be addressed to Jerry Jobe, Deputy Director for Planning, Training and Quality Control, USDA/NAD, Suite 1100, 3101 Park Center Drive, Alexandria, VA 22302. All responses to this notice will be summarized and included in the request for OMB

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approval. All comments will also become a matter of public record.

Dated: September 4, 2002

Roger J. Klurfeld,

Director, National Appeals Division.

[FR Doc. 02–30835 Filed 12–4–02; 8:45 am]

BILLING CODE 3410–WY–M

DEPARTMENT OF AGRICULTURE

Forest Service

Santa Fe National Forest, Jemez Ranger District; New Mexico; San Diego Range Allotment Permit Issuance

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Santa Fe National Forest announces its intent to prepare an Environmental Impact Statement for Managing Cattle Grazing on the San Diego Range Allotment located on the Jemez Ranger District, New Mexico. The EIS will analyze the potential environmental impacts of managing cattle grazing on the San Diego Cattle Allotment. The EIS will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321–4370a, and the National Forest Management Act 16 U.S.C. 1600–1614, and their respective implementing regulations.

DATES: Comments concerning the scope of the analysis must be received on or before January 13, 2003. The draft EIS is expected to be available for public review in September 2003. The final EIS is expected to be published in December 2003.

ADDRESSES: Send written comments and suggestions on the proposal, or requests to be placed on the project mailing list, to Rita Skinner, Natural Resource Coordinator, Jemez Ranger District, Santa Fe National Forest, PO Box 150, Jemez Springs, NM 87025.

FOR FURTHER INFORMATION CONTACT: Derek Padilla, Range Staff, Jemez Ranger District, at 505–829–3535.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is an underlying need to: Protect non-renewable archaeological resources, minimize conflicts between recreation users and cattle during high use recreation periods, protect riparian areas, and minimize soil and vegetation impacts, while contributing to the social and economic needs associated with traditional grazing practices in Northern New Mexico. The Rescission Act of 1995 (Pub. L. 104–19), Section 504(a)(b)(c), directs the Forest Service to create and adhere to a schedule to complete NEPA for grazing activities and other related issues. In assessing this grazing allotment, the Forest Service will consider the protection of various resources within the allotment and meet the intent of the Rescission Act.

Proposed Action

The Santa Fe National Forest proposes to revise the grazing program on the San Diego Cattle Allotment to address archaeological and other resource concerns on the allotment. Grazing would be authorized through issuance of a new 10-year term grazing permit. The overall grazing system(s) currently in place would remain essentially unchanged. Approximately 2–4 miles of new fence would be constructed and eight miles of existing fence would be reconstructed. Six to eight new water developments (dirt tanks) would be constructed in upland pastures and about two miles of new pipeline and four new water troughs would be installed to address various riparian, recreation, scenery, and archaeological objectives. The number of cattle and grazing seasons would remain essentially unchanged except for a small reduction in head months (through changing the season of use) to accommodate a one-week reduction in spring riparian area grazing.

Possible Alternatives

Alternatives include: No Action (No change from existing management)—Grazing would continue at the current level of 252 head from May 1 to November 30, 116 head from December 1 to April 30, and 12 bulls year-round. A second alternative, the Forest Service proposed action is described in the preceding paragraph. A third alternative would eliminate grazing in a pasture containing a high density of archaeological sites. A fourth alternative would eliminate cattle grazing in high use recreation areas. A fifth alternative (No Grazing) would completely eliminate cattle grazing on the allotment.

Responsible Official

John Peterson, District Ranger, Jemez Ranger District Santa Fe National Forest, P.O. Box 150, Jemez Springs, NM 87025, is the responsible official for this decision. He will document his decision in a Record of Decision.

Nature of Decision To Be Made

The District Ranger of the Jemez Ranger District will decide whether or not livestock grazing activities would be allowed to continue on the allotment, and if so, the decision will identify: the grazing seasons, the timing and duration of grazing, structural range facilities, forage utilization levels, mitigation measures, monitoring and evaluation, and the implementation schedule.

Scoping Process

A project scoping letter was distributed in 1999 to interested individuals and organizations, and was published in the Jemez Thunder newspaper. The proposed project has been listed on the Santa Fe National Forest Schedule of Proposed Projects beginning in December 1998 and as recently as December 2002. Consultation with Native American Tribes was initiated three years ago and is ongoing. Cattle grazing activities associated with this allotment were discussed in detail at public meetings and throughout the scoping and planning effort for the Jemez National Recreation Area, which overlaps this allotment.

Preliminary Issues

Heritage Resources (Archaeology)—Heritage resources has been identified as a key issue. This allotment contains high concentrations of significant archaeological sites. Cattle trailing through sites, congregating, bedding down, trampling, rubbing against standing features, etc. can result in adverse effects to sites including long-term cumulative impacts. The proposed action and alternatives 3 and 5 address this issue to varying degrees. Other issues include:

Recreation—A portion of this allotment is within the Jemez National Recreation Area. The presence of cattle in popular dispersed recreation areas can disrupt the recreational and scenic enjoyment for some visitors to the area. The proposed action and alternatives 4 and 5 address this issue to varying degrees.

Riparian, Water, Fish habitat—Cattle grazing, permittee vehicle use, gathering, and trailing of cattle may affect riparian areas by slowing the rate of recovery of these areas. These same activities may affect water quality and aquatic habitat, particularly when combined with impacts associated with a high level of dispersed recreation use. The proposed action and alternatives 4 and 5 address this issue to varying degrees.

Permits or Licenses Required

Livestock grazing on National Forest System lands is authorized under FSM 2230.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will include a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 27, 2002.

John F. Peterson,

District Ranger, Jemez Ranger District.

[FR Doc. 02–30805 Filed 12–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, December 20, 2002 at 9 a.m. in Coeur d'Alene, Idaho for a field trip and business meeting. The business meeting is open to the public.

DATES: December 20, 2002.

ADDRESSES: The meeting location is the Idaho Panhandle National Forest's Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda includes reviewing a completed project on site during the field trip and reviewing project proposals for fiscal year 2003 during the business meeting. The public forum begins at 1 p.m.

Dated: Novembner 29, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–30804 Filed 12–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, December 16, 2002. The meeting will include routine business, a presentation on Klamath National Forest's fire fuels management activities and the California Division of Forestry and Fire Protection community programs. A presentation by Great Northern Corporation and the Shasta Valley Resource Conservation District will also be made. The meeting will be preceded by a field trip to the Klamath River Community Corridor fuels reduction project. No business will be conducted during the field trip.

DATES: The meeting will be held December 16, 2002 from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: November 27, 2002.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 02–30806 Filed 12–4–02; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: December 10, 2002; 11:30 a.m.–4:30 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues

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relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 2, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 02–30897 Filed 12–03–02; 10:53 am]

BILLING CODE 8230–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Consolidated Commands are:

1. MG John C. Atkinson, Deputy Commanding General (RC)(ARNG), First Army.
2. MG Raymond D. Barett Jr., DCSOPS&T.
3. Mr. Michael F. Bauman, Director TRADOC Analysis Center.
4. MG John R.S. Batiste, Commanding General, 1st Infantry Division.
5. Mr. Laurence H. Burger, Director, Space and Missile Defense Battle Lab.
6. MG Julian H. Burns, Acting Chief of Staff, FORSCOM.
7. Mr. William H. Campbell, III., Deputy Chief of Staff, Resource Management.
8. LTG Joseph M. Cosumano, Jr., Commanding General.
9. Mr. William J. Cooper, MTMC Transportation Engineering Agency.
10. Dr. Charles N. Davidson, Director, USA Nuclear and Chemical Agency.
11. LTG Michael L. Dodson, Deputy Commanding General.
12. MG James E. Donald, Deputy Chief of Staff, G1, FORSCOM.
13. Dr. Henry C. Dubin, Chief Scientist.
14. Mr. Thomas J. Edwards, Program Manager.
15. GEN Larry R. Ellis, Commanding General, FORSCOM.
16. Mr. Hugh M. Exton, Jr., Director, Installation Management Agency—SW.
17. BG Charles W. Fletcher, Jr., Commanding General, 3rd Corps Support Command.
18. MG Warren L. Freeman, Commander, DC–NG.
19. BG R. V. Geraci, Deputy Commanding General Operations/ Deputy Commmanding General, Army Space Command.
20. BG Thomas R. Goedkoop, Assistant Deputy Chief of Staff, G3/5/7.
21. BG Elder Granger, ERMC Commanding General and U.S. Army Europe Command Surgeon.
22. Mr. Jess F. Granone, Director, Space and Missile Defense Technical Center.
23. LTG James R. Helmly, Commanding General, USARC.
24. BG Keith M. Huber, Deputy Commanding General (AC), First Army.
25. MG Robert C. Hughes, Deputy Commanding General (RC) (ARNG), First Army.
26. LTG Joseph R. Inge, Commanding General, First Army.
27. Mr. Robert J. Jefferis, Asst. Deputy Chief of Staff for Resource Management.
28. Ms. Vicky Jefferis, Deputy Chief of Staff, G–8.
29. MG Anthony R. Jones, Chief of Staff.
30. LTG Larry R. Jordan, Deputy Commanding General/Chief of Staff.
31. MG Terry E. Juskowiak, Commander, CASCOM.
32. BG James A. Kelley, Chief of Staff, USA Reserve Command.
33. Mr. J. Stephen Koons, Assistant Deputy Chief of Staff, G–4.
34. Dr. Michael J. Lavan, Director, Advanced Technology Directorate.
35. Mr. William R. Lucas, Jr., Deputy to the Commander, MTMC.
36. Mr. Mark L. Lumer, Principal Assistant Responsible for Contracting/ Contracting & Acquisition Office.
37. Mr. Ronald G. Magee, Director of Operations, (TRADOC Analysis Center).
38. Mr. Maxie L. McFarland, Deputy Chief of Staff for Intelligence.
39. LTG David D. McKiernan, Commanding General, Third Army.
40. Mr. Richard A. McSeveney, Deputy to the Commander for Installation Support.
41. Mr. John C. Metzler Jr., Director of Cemetery Operations.
42. MG Daniel G. Mongeon, Deputy Chief of Staff, G–4.
43. MG William E. Mortensen, Commanding General, 21st Theater Support Command.
44. BG James H. Pillsbury, Deputy Chief of Staff, Logistics.
45. Mr. Jerry V. Proctor, Deputy for Futures.
46. BG Marilyn A. Quagliotti, Deputy Chief of Staff, Information Management & Commander, 5th Signal Command.
47. Mr. William C. Reeves, Jr., Director, Integration/Interoperability for Missile Defense and Assistant to the Deputy Commanding General, RDA.
48. Mr. William Rich, Deputy & Technical Director.
49. Mr. Rodney Robertson, Director, Sensors Directorate.
50. BG Richard J. Rowe, Jr., ADCSDEV.
51. MG Ricardo S. Sanchez, Commanding General, 1st Armored Division.
52. Mr. Robert E. Seger, ADCS for Training Policy, Plans & Programs.
53. MG Gary Speer, Deputy Chief of Staff, Operations.
54. MG Henry W. Stratman, Deputy Commanding General, Third Army.
55. MG Alan W. Thrasher, DCSDEV.
56. MG John M. Urias, Deputy Commanding General, Research, Development and Acquisition.
57. BG(P) Roy M. Umbarger, Deputy Commanding General (ARNG).
58. Ms. Donna K. Vargas, Director of Operations.
59. LTG William S. Wallace, Commander, V Corps.
60. BG Bennie E. Williams, Deputy Commanding General, 21st Theater Support Command.
61. BG Robert M. Williams, Commanding General, 7th Army Training Command.
62. MG Charles E. Wilson, Deputy Commanding General, USARC.
63. BG David T. Zabecki, Commander, 7th Army Reserve Command.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Pub. L. 106–554]

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB or Board) implements these Guidelines pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554, and government-wide Guidelines issued by the Office of Management and Budget (OMB), OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452 (Feb. 22, 2002) (OMB Guidelines). The purpose is to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies that are subject to the Paperwork Reduction Act, 44 U.S.C. 3502(1).

As is the intent of OMB's Guidelines, DNFSB's Guidelines will focus primarily on the dissemination of substantive information rather than information pertaining to basic agency operations. The Guidelines also apply to information other parties provide to the Board, if the other parties seek to have the Board rely upon or disseminate this information or if the Board decides to rely upon or disseminate the information.

These Guidelines are suggestions, recommendations, and policy views of the DNFSB. They are not intended to be, and should not be construed as, legally binding regulations or mandates. They do not create any right or benefit, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies (including the Board or DNFSB), officers, or employees, or any person.

Changes to the final Guidelines in this notice have been made in response to OMB's comments on the Board's draft Guidelines issued September 17, 2002. No public comments were received by the Board.

DATES: The Guidelines are effective October 1, 2002.

ADDRESSES: The Board will publish its information quality standards on its Web site: *http://www.dnfsb.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Neubeiser, Chief Information Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 694–7000.

SUPPLEMENTARY INFORMATION:

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I. Definitions

The definitions set forth below are consistent with the definitions provided in the OMB Guidelines. Unless otherwise stated, information dissemination outside the scope of these definitions is not subject to these Guidelines.

A. "Information" means any communication or representation of knowledge such as facts or data, not opinion, in any medium or form. Information includes textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition also includes information that the Board disseminates from its Web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include Board opinions or conclusions. This definition also does not include information that the Board has indicated is someone's individual opinion.

B. "Dissemination" means agency initiated or sponsored distribution of information intended for the public; excluding:

1. Information not intended for public dissemination;
2. Distribution intended only for government employees or contractors;
3. Procedural, operational, policy, and internal documents prepared for the management and operations of the Board that are not primarily intended for public dissemination;
4. Information designated as "Classified," "Unclassified Controlled Nuclear Information," or "Official Use Only";
5. Outdated or superseded information;
6. Government information intended for intra- or inter-agency use or sharing;
7. Information items intended for inter-agency transmittals or congressional compliance and provided to members of the public as a courtesy (*e.g.*, weekly site representative reports, technical reports, letters);
8. Responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law;
9. Other correspondence with individuals or persons not intended for public dissemination, including, but not limited to, written agreements with particular entities or parties, responses to specific requests for advisory opinions or other advice;
10. Press releases, fact sheets, press conferences or similar communications in any medium that announce, support the announcement, or give public notice of information the Board has disseminated elsewhere;
11. Archival records (*e.g.*, library materials);
12. Public filings, including, but not limited to, submissions in rulemakings or other Board proceedings or matters, requests, petitions, applications, supporting materials, etc. The Guidelines do not apply when the Board distributes this information simply to provide the public with quicker and easier access to materials submitted to the Board that are publicly available. This will generally be the case if the Board has not authored the filings, is not distributing the information in a manner that suggests that the Board endorses or adopts the information, and does not indicate in its distribution that it is using or proposing the use of the information to formulate or support a regulation, guidance, or other Board decision or position;
13. Opinions presented to Congress in response to Congressional requests or statutes and not intended for dissemination to the public;
14. Subpoenas or discovery orders issued in proceedings or court litigation. Orders, opinions, amicus, and other briefs. Adjudicative processes also include factual allegations by the staff during the investigative and litigative

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phases of cases brought by or participated in by the Board. Because there are well-established procedural safeguards and rights to address the quality of factual allegations and adjudicatory decisions, and to provide persons with an opportunity to contest decisions, these Guidelines do not impose any additional requirements on the Board during adjudicative proceedings and do not provide parties to such proceedings any additional rights of challenge or appeal;

15. Legally required disclosures, notices, or other information disseminated by persons or entities other than the Board, where the text of such disclosures, notices, or information is not explicitly prescribed or specified by the Board itself; and

16. Studies, statements, other issuances, or publications by Board employees, officials, contractors, consultants, or others who may be or have been paid, employed, or retained by the Board, where the issuance or publication is not represented as being an official position of the Board or used by the Board in support of its official position. Conversely, if the Board has directed a third party to disseminate information or retains the authority to review and approve the information upon release, then the Board has sponsored the dissemination of the information and the information may be considered a Board dissemination.

C. "Information dissemination product" means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, the agency disseminates to the public. This definition includes any electronic document, storage media, or Web page.

D. "Quality" is an encompassing term comprising utility, objectivity, and integrity.

E. "Utility" refers to the usefulness of the information to its intended users, including the public. When transparency of information is relevant for assessing the information's usefulness from the public's perspective, transparency is addressed to the extent practicable and appropriate in the Board's review of the information. There may be legal limitations, however, on the Board's ability to make publicly available the data or methods underlying a particular information dissemination product, and persons seeking access to such data or methods must comply with certain Board requirements and procedures for requesting such access.

F. "Objectivity" involves two distinct elements, presentation, and substance:

1. "Objectivity" includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner, including whether the information is presented within a proper context and identifying the source of the disseminated information to the extent possible in light of confidentiality protections, if any. In a scientific, financial, or statistical context, the Board may make supporting data and models publicly available so the public can assess whether there may be reasons to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users, subject to any applicable restrictions on disclosure.

2. "Objectivity" also involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, original and supporting data are normally generated, and the analytic results are normally developed, using sound statistical and research methods.

3. To ensure "objectivity" in instances where the Board is responsible for disseminating "influential scientific, financial, or statistical information," the Board shall ensure transparency of data and methods to facilitate the reproducibility of such information by qualified third parties, consistent with any applicable limitations on disclosure.

4. When relying upon third party information, the Board will notify the public if the disseminated information has not been reviewed by the Board, but that the third party attests that the quality of the information is consistent with the Data Quality Act and the OMB Guidelines;

G. "Integrity" refers to the security of information, *i.e.*, protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

H. "Influential," when used in the phrase "influential scientific, financial, or statistical information," means that the Board can reasonably determine that dissemination of information, prepared for public distribution, will have or does have a clear and substantial impact on important public policies or important private sector decisions. Whether a particular Board information dissemination product is "influential" will depend on the nature of the issues for which the Board is responsible and the relationship of the information dissemination product to those issues.

In non-rulemaking contexts, the Board will consider two factors-breadth and intensity-in determining whether information is influential. The Board will consider whether the information affects a broad range of parties. Information that affects a broad, rather than narrow, range of parties is more likely to be influential. The Board will also consider the intensity of the information's impact. Information that has a modest impact on affected parties is less likely to be influential than information that can have a significant impact.

The definition applies to "information" itself, not to decisions that the information may support. Even if a decision or action by the Board is itself very important, a particular piece of information supporting it may or may not be "influential."

I. "Reproducibility" means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. As provided in the OMB Guidelines, this standard does not apply to all agency information or data, but only to "influential scientific or statistical information," if any, disseminated by DNFSB.

1. Original or supporting data: The Board may identify and/or limit the specific types of such data that can practicably be "reproduced," given ethical, feasibility, or confidentiality constraints and, in doing so, may consult, as needed, with relevant scientific and technical communities. The Board shall assure reproducibility for those kinds of original and supporting data according to commonly accepted scientific, financial, or statistical standards.

2. Analytic results relating to original or supporting data: All analytic results shall undergo robustness checks through the Board's rigorous internal quality review process.

3. Analysis of risks to human health, safety, and the environment disseminated by the Board, if any: The Board will apply, as appropriate and feasible, the standards set forth in the Safe Drinking Water Act, 42 U.S.C. Section 300g-1(b)(3)(A), and when promulgating regulations the Board will apply, as appropriate and feasible, the standards set forth in the Safe Drinking Water Act, 42 U.S.C. Section 300g-1(b)(3)(B).

J. "Affected persons" are people who may use, benefit from, or be harmed by the disseminated information.

II. Information Quality Principles

The following quality principles apply as a matter of policy to information disseminated by the Board:

A. Information that the Board prepares for public dissemination, including factual or statistical data, shall meet basic standards of quality, including objectivity, utility, and integrity.

B. The Board treats information quality as an integral part of achieving its performance goals and shall take appropriate steps to incorporate information quality criteria into information dissemination practices.

C. The specific quality standards that the Board adopts in a particular case shall be appropriate for the type of information being disseminated.

These Guidelines explain how the Board achieves information quality, objectivity, utility, and integrity. The Guidelines also describe the administrative mechanism by which affected persons may seek correction of Board disseminated information that they believe does not comply with Section 515, OMB Guidelines, or Board Guidelines.

III. Board's Role in Public Information Dissemination

Section 315 of the National Defense Authorization Act for Fiscal Year 2001, 42 U.S.C. Section 2286d requires the Board to:

(a) Public availability and comment.

Subject to subsections (g) and (h) and after receipt by the Secretary of Energy of any recommendations from the Board under section 2286a of this title (section 312 of the Atomic Energy Act), the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the **Federal Register** such recommendations and a request for the submission to the Board of public comments on such recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit comments, data, views, or arguments to the Board concerning the recommendations.

(b) Response by Secretary.

(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under section 2286a of this title (section 312 of the Atomic Energy Act), a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy shall transmit his response to the Board within 45 days after the date of the publication, under subsection (a) of this section, of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (h) of this section, shall publish such response, together with a request for public comment on his response, in the **Federal Register**.

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(c) Provision of information to Secretary.

The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (a) or (b) of this section.

IV. The Board's Commitment to Quality Information Dissemination

In carrying out its functions, the Board strives to ensure that the information it prepares for public dissemination reflects a level of quality appropriate to the anticipated use of the information. The Board disseminates information consistent with applicable disclosure restrictions (*e.g.*, classified information).

V. Pre-Dissemination Information Quality Review

The Board will review the quality (including objectivity, utility, and integrity) of information before it is disseminated and treat information quality as integral to every step of the Board's development of information, including creation, collection, maintenance, and dissemination.

When appropriate, the Board will demonstrate in its Paperwork Reduction Act clearance packages that each information collection will result in information that will be collected, maintained, and used in a way consistent with the OMB and Board information quality standards.

Internal agency review: The Board performs robust internal reviews to ensure information quality—including objectivity, utility, and integrity—before such information is disseminated.

1. Information disseminated to the public by the Board is normally subject to one or more levels of internal staff, supervisory, or Board review for quality before such information may be disseminated.

2. The number of levels of internal quality review applied in a particular case depends on the nature, scope, and purpose of the information to be disseminated.

Public comment: In rulemakings and certain other agency matters (*e.g.*, Recommendations), information or data may also be subject to public comment. This public comment process provides an opportunity for interested parties, including persons who may be most affected by the dissemination, to corroborate or dispute the objectivity, utility, or integrity of the information or data. In these cases, the Board may provide public access to the underlying data or methods used by the Board (*e.g.*, statistical models, assumptions), to the extent the Board deems relevant to information quality and consistent with controlling law.

VI. Development of Quality Information and Data

Information quality is integral to the development of information that will ultimately be disseminated, including its creation, collection, and maintenance. This process shall enable the Board to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information. The strategies that the Board employs to develop quality information and data include, for example:

A. Using a variety of methods and sources to solicit relevant and reliable information, such as:

1. Voluntary and compulsory methods;

2. Invitations for public comment;

3. Public hearings; and

4. Meetings with public groups, labor representatives and organizations, and industry and professional groups.

B. Soliciting public comment specifically on paperwork burden estimates of information collection activities sponsored by the Board and subject to the Paperwork Reduction Act, if applicable.

C. Conducting independent legal, economic, or statistical research as the Board deems appropriate, using an array of government and private commercial and non-profit databases, agency surveys and questionnaires, etc.

VII. Transparency of Underlying Data and Methods

Consistent with applicable laws, regulations, orders, and policies, the Board shall make underlying data and methods (*e.g.*, sources and assumptions) used for "influential scientific or statistical information" available to the public as is appropriate. OMB Guidelines, para. V.3.b.ii.

Where public access to "influential scientific or statistical" data and methods will not occur due to other compelling interests, the Board shall

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apply rigorous checks to analytic results and document what checks were undertaken. The types of these checks, and the level of detail for documentation thereof, shall depend on the nature of the issues for which the Board is responsible. OMB Guidelines, para. V.3.b.ii.B.ii.

To the extent that underlying data or methods are not part of the Board's public record or otherwise published or publicly available, persons seeking access to such data or methods are required to follow applicable Board requirements and procedures for seeking such access. In all cases, the interest in the transparency of the Board's data and methods shall not override other compelling interests such as national security, privacy, trade secrets, intellectual property, and other confidentiality protections. OMB Guidelines, para. V.b.3.ii.B.i.

VIII. Integrity of Board Information and Data

To preserve the integrity of information and data that the Board may ultimately disseminate, the Board takes appropriate measures to ensure that the security of information and data is not compromised while it is being collected, maintained, or used by the agency. OMB Guidelines, para. V.4. These measures are intended to be consistent with legal requirements such as the Computer Security Act, 40 U.S.C. 759; the Government Information Security Reform Act, 44 U.S.C. 3531, *et seq.*; the Privacy Act, 5 U.S.C. Section 552a; and any other applicable laws, regulations, orders, agreements, or guidance.

These measures extend to Board contractors, consultants, experts or others to the extent such information or data are shared with them on a non-public basis.

IX. Documentation

When necessary or appropriate, the Board substantiates the quality of the information it has disseminated through documentation or other means appropriate to the information. OMB Guidelines, para. III.2.

With respect to pre-dissemination review, this documentation may include intra-or inter-agency memoranda or communications, or other records or materials, including, where applicable, underlying data or methods, demonstrating that the information has been reviewed internally by appropriate agency staff or officials before it is disseminated to the public.

As provided in the OMB Guidelines, the Board will submit a report to OMB describing the number, nature, and resolution of information correction requests by each January 1, beginning in 2004.

X. Administrative Mechanism for Seeking Correction of Information

The Board shall provide and maintain a mechanism in compliance with the OMB Guidelines by which affected persons may seek timely correction of information maintained and disseminated by the Board. See Appendix A for details.

XI. Compliance, Reporting, and Effective Date

The Board's Chief Information Officer, or other designated Board official, shall be responsible for agency compliance with these Guidelines.

The Board shall respond to complaints in a manner appropriate to the nature and extent of the complaint. Examples of appropriate responses include personal contacts via letter or telephone, form letters, press releases, or mass mailings that correct a widely disseminated error or address a frequently raised complaint.

The Board shall submit (and, when required, post on its Web site, publish in the **Federal Register**, or otherwise make available) all reports, or notice thereof, required by Section 515 and the OMB Guidelines. Such reports shall include an annual fiscal year report submitted to the Director of OMB on the number and nature of complaints, if any, received by the Board regarding agency compliance with the OMB Guidelines and how the agency resolved such complaints. This annual report is to be submitted no later than January 1 following the end of the relevant fiscal year, with the first report due January 1, 2004.

Effective Date: Pursuant to Section 515 and paragraph III.4. of the OMB Guidelines, these Board Guidelines shall become effective October 1, 2002. Previously released information that does not meet the information dissemination requirements of these Guidelines are considered archived information and are not subject to these Guidelines (*e.g.*, DNFSB files, publications available on the Web site). If a particular distribution of information is not covered by these Guidelines, the Guidelines may still apply to a subsequent distribution of the information in which the Board adopts, endorses, or uses the information to formulate or support a regulation, guidance, or other Board decision or position.

A. To the extent these Guidelines prescribe procedures for the pre-dissemination quality review of Board information, such procedures shall apply only to information that the Board first disseminates on or after that date.

B. The Guidelines do not apply to outdated or superseded Board information that is provided as background information but no longer reflects Board policy or influences Board decisions.

C. To the extent these Guidelines prescribe a Board administrative mechanism for affected persons to seek correction of information disseminated by the Board, that mechanism shall apply only to information that the Board disseminates on or after that date, regardless of when the Board first disseminated the information.

Appendix A

Administrative Correction Mechanism

The Defense Nuclear Facilities Safety Board (DNFSB, Board) strives to ensure that the information it disseminates to the public is of the highest quality, objectivity, utility, and integrity. To this end, the Office of Management and Budget (OMB) and the DNFSB have issued Guidelines for ensuring and maximizing the quality of information disseminated by the DNFSB, and in accordance with Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554 (Section 515). You may view these Guidelines through the following Web link: *http://www.dnfsb.gov*. Persons affected by non-exempted Board information disseminated on or after October 1, 2002, may request that the Board correct allegedly incorrect information.

How To Seek Correction of Board Information Dissemination Products:

If you are seeking to obtain correction of information disseminated (as defined by the Board's Information Quality Guidelines) by the Board on or after October 1, 2002, because you believe the information does not comply with the Information Quality Guidelines issued by OMB or DNFSB, please submit your request, with the subject "Section 515 Request," by e-mail to: *MAILBOX@DNFSB.gov*

If you send the Board an e-mail, you should know that e-mail is not necessarily secure against interception before it reaches the Board's e-mail system. Therefore, you may prefer instead to deliver or mail your Section 515 request to the following address: Chief Information Officer, C/O Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Whichever method you use, your request must specifically:

- Identify the information you believe does not comply with the OMB or Board Information Quality Guidelines;
- Explain why you believe the information should be corrected. If possible, provide specific recommendations for how the information should be corrected; and
- Describe how you are affected by the alleged information error.

Requests for correction that are specific and provide evidence to support the need for correction will enable a timely response.

Requesters should be aware that they bear the "burden of proof" with respect to the necessity for correction as well as with respect to the type of correction sought.

To learn how we may disclose any information that you provide, please read our Privacy Policy at *http://www.dnfsb.gov/privacy.htm*. To submit a correction request through this process, you must be an "affected person" (*i.e.*, someone who may use, benefit from, or be harmed by the disseminated information) and your request must relate to "information" that is "disseminated" by the Board within the meaning of the Board Guidelines.

You may not use these procedures to request correction of matters which are not "dissemination" of information as outlined in Section I.B. of the Board's Guidelines.

How We Will Handle Your Section 515 Request?

Processing Your Initial Request

Once the appropriate Board staff member has received your request, the Board will provide an initial response to your request within 60 calendar days. If the Board is unable to provide an initial response within the 60 day period, the Board will notify you of the estimated date for an initial response. The Board will also provide you with an explanation of why its determination is delayed.

Delay in the Board's response may be required if you modify your original request, if we need to clarify your request, or if we need to consult with other offices or agencies that may have an interest in the matter. The Board shall be solely responsible for determining how to respond to your request.

Initial Board Response

The Board's initial response will either grant or deny your request, in whole or part, and make appropriate corrections, if any. If your request relates to information in which there is an opportunity for public comment (*e.g.*, Recommendations), you may be required to seek correction of the information through public comment, and your request will be referred to the responsible Board staff for consideration and incorporation into the record of the relevant proceeding. When appropriate, in lieu of an individualized response to your request, the Board may issue or provide you a form letter, press release, or mass mailing that corrects a widely disseminated error or that addresses a frequently raised complaint. Responses may also be posted on the Board's Web site.

In all cases, the correction process shall serve to address the genuine and valid needs of the Board and its constituents without disrupting Board processes. The Board may reject claims that are made in bad faith, without justification, unlikely to have substantial future impact (*e.g.*, harmless error), frivolous, or speculative. The Board shall undertake only the degree of correction that the Board concludes is appropriate for the nature of the information involved. In making this determination, the Board will consider such factors as the significance of the error on the use of the information and the magnitude of the error. The Board will also consider the error's relationship to Board priorities. The Board is not required to change, or in any way alter, the content or status of information simply based on the receipt of a request for correction. The Board need not respond substantively to frivolous or repetitive requests for correction. Furthermore, the Board may not respond to requests that concern information not covered by the Guidelines or from a person whom the information does not affect.

Seeking Reconsideration of the Initial Response

If you disagree with the Board's initial response, you will have 30 calendar days to appeal (*i.e.*, file for reconsideration within the agency). The Board will provide a response to your request for reconsideration within 60 calendar days, unless it notifies you of a later date and explains the reason(s) for the delay. The official conducting the second level of review shall not be the same official that responded to the initial request for correction or that prepared the subject information.

If the Board agrees with the appeal, it will also take steps to notify the public of its decision.

Certain disseminations of information include a comprehensive public comment process (*e.g.*, Recommendations, notices of proposed rulemaking, regulatory analyses, and requests for comment on an information collection subject to the Paperwork Reduction Act). The administrative correction mechanism described in these Guidelines does not apply to dissemination of such a document. Persons questioning information disseminated in such a document must submit comments as directed in that document. However, if the public comment process for the document will take a long time, the Board may consider complaints regarding the quality of disseminated information (as defined by the Board's Guidelines) for review under this administrative correction mechanism.

When engaged in rulemaking, the Board will utilize the notice and comment process required by the Administrative Procedure Act. This process will satisfy the Section 515 administrative correction mechanism requirement. Affected persons must address any correction requests through the rulemaking comment process. Correction requests made through the Section 515 mechanism will not be considered. Information or studies relied upon and cited in rulemaking will be addressed through the rulemaking notice and comment process.

If there is an existing process for reconsideration of a particular sort of information dissemination by the DNFSB, DNFSB will make use of that process.

The Guidelines are not intended to and do not provide any right to judicial review.

Availability of Section 515 Reports

No later than each January 1, beginning in 2004, the agency is required to submit an annual fiscal year report to the OMB Director on the number and nature of Section 515 correction requests received by the Board and how the agency resolved those requests. Copies of these reports will be made publicly available through the Board's Web page.

Dated: December 2, 2002.

John T. Conway,

Chairman.

[FR Doc. 02–30837 Filed 12–4–02; 8:45 am]

BILLING CODE 3670–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–50–A (Auction No. 50); DA 02–3234]

Auction No. 50 Narrowband PCS Spectrum Auction Scheduled for March 26, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of 54 Personal Communications Service (PCS) licenses in the 900 MHz band ("narrowband PCS") scheduled to commence on March 26, 2003. This document also seeks comment on reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before December 9, 2002, and reply comments are due on or before December 16, 2002.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction50@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: *For legal questions:* Chris Shields, Legal Branch at (202) 418–0600. *For general auction questions:* Jeff Crooks, Operations Branch at (202) 418–0660 or Lisa Stover, Operations Branch at (717) 338–2888. Commercial Wireless Division: *For service rule questions:* JoAnn Epps or Melvin Spann, Licensing and Technical Analysis Branch at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 50 Comment Public Notice* released November 26, 2002. The complete text of the *Auction No. 50 Comment Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 50 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals

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II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

1. By the *Auction No. 50 Comment Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the auction of 54 Personal Communications Service (PCS) licenses in the 900 MHz band ("narrowband PCS") scheduled to commence on March 26, 2003 ("Auction No. 50"). This auction will include six regional licenses and 48 Major Trading Area (MTA) licenses. The spectrum to be auctioned remains unsold from a previous auction, or was previously associated with licenses that have been cancelled or terminated. A complete list of licenses available for Auction No. 50 is included as Attachment A of the *Auction No. 50 Comment Public Notice*. The following table describes the licenses that will be auctioned:

Channel No.	Channel description	Frequency bands	Bandwidth (kHz)
Regional Licenses			
16	One 12.5 kHz/50 kHz paired channel	901.8125–901.8250, 930.65–930.70 MHz	62.5
17	One 12.5 kHz/50 kHz paired channel	901.8150–901.8375, 930.70–930.75 MHz	62.5
Regional Subtotal			125
MTA Licenses			
26	One 50 kHz unpaired channel	901.35–901.4 MHz	50
27	One 50 kHz unpaired channel	901.4–901.45 MHz	50
29	One 50 kHz/50 kHz paired channel	901.95–902.0, 930.8–930.85 MHz	100
30	One 50 kHz/100 kHz paired channel	901.65–901.7, 930.3–930.4 MHz	150
31	One 50 kHz/150 kHz paired channel	901.7–901.75, 930.85–931 MHz	200
32	One 12.5 kHz/100 kHz paired channel	901.8375–901.85, 940.9–941 MHz	112.5
MTA Subtotal			662.5
Grand Total			787.5

Note: For Auction No. 50, licenses are not available for every channel number listed in the table in every market. See Attachment A of he Auction No. 50 Comment Public Notice to determine which licenses will be offered.

2. The Balanced Budget Act of1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 50.

Auction Structure

A. Simultaneous Multiple round (SMR) Auction Design

3. The Bureau proposes to award all licenses included in Auction No. 50 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

4. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 50, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$.00001 *kHz* License Area Population with a minimum of $500 per license.

5. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 50 Comment Public Notice*. The Bureau seeks comment on this proposal.

6. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 50 Comment Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

C. Activity Rules

7. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than wait until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

8. The bureau proposes to divide the action into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.*, from Stage One to Stage Two, and form Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retains the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals. For Auction No. 50, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

9. The Bureau seeks comment on these proposals. Comments that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

10. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be submitted.

11. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (i) There are not activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

12. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

13. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open. The Bureau proposes that each bidder in Auction No. 50 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. The Bureau seeks comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction No. 50, the Bureau proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

Bidding Procedures

A. Round Structure

15. The Commission will conduct Auction No. 50 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

16. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

17. The Bureau has discretion to change the bidding schedule in order to

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foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

18. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

19. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioner often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

20. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 50. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

21. Specifically, for Auction No. 50, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$.00001 *kHz* License Area Population with a minimum of $500 per license.

22. The specific minimum opening bid for each license available in Auction No. 50 is set forth in Attachment A of the *Auction No. 50 Comment Public Notice*. Comment is sought on this proposal.

23. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the narrowband PCS spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

24. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each license.

25. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, *etc.*).

26. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained.

27. For Auction No. 50, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as it has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a percentage increment, not to be confused with the bid increment. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license which has received many bids throughout the auction will have a higher percentage increment than a license which has received few bids.

28. The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of new bids received on the license in that round plus one minus the weighting factor times the activity index from the prior round. The percentage increment is then calculated as the smaller of (a) a minimum percentage increment multiplied by one plus the activity index and (b) a specified maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

Equations

$A_i = (C * B_i) + ((1–C) * A_{i–1})$

I_{i+1} = smaller of $((1 — A_i) * N)$ and M

$X_{i+1} = I_{i+1} * Y_i$

Where,

A_i = activity index for the current round (round i)

C = Activity weight factor

B_i = number of bids in the current round (round i)

$A_{i–1}$ = activity index from previous round (round i–1), A_0 is 0

I_{i+1} = percentage increment for the next rouond (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

$X_{i–1}$ = dollar amount associated with the percentage increment

Y_i = high bid from the current round

29. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over then thousand or to the nearest hundred if it is under then thousand.

Examples

License 1

C=0.5, N = 0.1, M = 0.2

Round 1 (2 New Bids, High Bid = $1,000,000)

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

I_2 = The smaller of $((1 + 1) * 0.1) = 0.2$ or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2):

$X_2 = 0.2 * $1,000,000 = $200,000

III. Minimum acceptable bid for round 2 = $1,200,000.

Round 2 (3 New Bids, High Bid = $2,000,000)

i. Calculation of percentage increment for round 3 using the smoothing formula:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

I_3 = The smaller of $((1 + 2) * 0.1) = 0.3$ or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3):

$X_3 = 0.2 * $2,000,000 = $400,000

iii. Minimum acceptable bid for round 3 = $2,400,000.

Round 3 (1 New Bid, High Bid = $2,400,000)

i. Calculation of percentage increment for round 4 using the smoothing formula:

$A_3 = (0.5 * 1) + (0.5 *2) = 1.5$

I_4 = The smaller of $((1 + 1.5) * 0.1) =$ 0.25 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4):

$X_4 = 0.2 * $2,400,000 = $480,000

iii. Minimum acceptable bid for round 4 = $2,880,000.

30. As stated, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times on plus the minimum percentage increment, rounded as described, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N) {rounded} – (minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

31. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. the additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

32. The bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau seeks comment on these proposals.

D. High Bids

33. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will again be determined by the highest gross bid amount received for the license.

34. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a "standing high bid." Bidders are reminded that standing high bids confer activity credit.

E. Information Regarding Bid Withdrawal and Bid Removal

35. For Auction No. 50, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

36. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

37. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

38. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 50 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

F. Stopping Rule

39. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 50, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

40. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

41. However, the Bureau proposes to retain the discretion to exercise any of

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the following options during Auction No. 50:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

42. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

Conclusion

43. Comments are due on or before December 9, 2002, and reply comments are due on or before December 16, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction50@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or captain referring to Auction No. 30 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copied of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

44. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

45. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communication Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–30899 Filed 12–3–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, December 10, 2002, at 10 am.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 12, 2002, at 10 am.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of minutes.

Service awards.

Final Audit: Buchanan Foster, Inc.

Final Audit: Gore 2000, Inc. (Primary).

Final Audit: Gore/Lieberman, Inc. and Gore/Lieberman General Election Legal and Accounting Compliance Fund (General).

Final Audit: Keyes 2000.

Final Audit: Bush-Cheney 2000, Inc.

Final Audit: Bush-Cheney 2000 Compliance Committee, Inc.

Interim Rules and Explanation and Justification for BCRA's Millionaires' Amendment.

Final rules and explanation and justification for BCRA reporting.

Notice of proposed rulemaking on Leadership PACs.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–30953 Filed 12–3–02; 3:42 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; An Evaluation of the National Cancer Institute Science Enrichment Program

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: An Evaluation of the NCI Science Enrichment Program (SEP): Follow-up Survey. *Type of Information Collection Request:* Revision (OMB No. 0925–0510, Expiration 2/28/2003). *Need and Use of Information Collection:* This follow-up survey is part of an evaluation designed to assess the effectiveness of the NCI SEP in meeting its goals of: (1) Encouraging under-represented minority and under-served students who have just completed ninth grade to select careers in science, mathematics, and/or research, and (2) broadening and enriching students' science, research, and sociocultural backgrounds. The program was a 5- to 6-week residential program taking place on two university campuses—University of Kentucky, Lexington, and San Diego State University—in summers 1998–2002. The 5-year evaluation was designed as a controlled, longitudinal study, consisting of the five SEP cohorts and two cohorts of control group students who did not attend the program. The evaluation will provide NCI with valuable information regarding specific components that promoted or limited the program's effectiveness, the extent to which the program was implemented as planned, how much the two regional programs varied, and how the program can be improved or made more effective. NCI will use this information to make decisions regarding continuation and expansion of the program. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* High school and college students. *Cost to Respondents:* $9,600. The annual reporting burden is as follows:

Type of respondents	Average number of respondents/Yr.	Frequency of response	Average time per response	Average annual hour burden
Estimates of Hour Burden: Burden not Previously Approved (1998–2002)				
SEP Participants	200	1	0.5	100
Control Group Students	200	1	0.5	100
Control Group Students	100	[1]2	1.00	100
Total	500			300
Estimates of Hour Burden: Burden Requested				
SEP Participants	500	[2]1	0.5	250
Control Group Students	300	[2]1	0.5	150]
Total	800			400

[1] Pre and post.
[2] Follow up.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Requests for Comments: Written comments and/or suggestions from the public and affected agencies on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Center to Reduce Cancer Health Disparities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 602, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to: *fj12i@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: November 25, 2002.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–30862 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Tobacco Use Supplement to the Current Population Survey: 2003 Tobacco Use Special Cessation Supplement to CPS

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 15, 2002, page 53357 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comments. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Tobacco Use Supplement to the Current Population Survey: 2003 Tobacco Use Special Cessation Supplement to CPS. *Type of Information Collection Request:* Revision of OMB #0925–0368, Expiration 02/28/2003. *Need and Use of Information Collection:* The 2003 Tobacco Use Special Cessation Supplement to the Current Population Survey conducted by the Census Bureau will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, cessation behavior (*i.e.*, quit attempts, successful quitting), use of cessation products and methods, measure level of addiction and plans to quit, workplace smoking policies, health professional advice to stop smoking, and use of different types of cigarettes and potential harm reduction products. This survey will provide invaluable information to government agencies, other scientists and the general public necessary for

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tobacco control research, as well as measure progress toward tobacco control as part of the National Cancer Institute's Extraordinary Opportunities in Tobacco Research. This survey is part of a continuing series of surveys that were sponsored by NCI and fielded periodically over the 1990's by the Census Bureau as part of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) project and made available for general public use. The Tobacco Use Supplements will be continuing over the next decade alternating between a standard or core tobacco use survey (such as the 2001–2002 survey) and a special topic survey focusing on emerging tobacco control issues (such as this 2003 Tobacco Use Special Cessation Supplement). The survey will allow state specific estimates to be made. Data will be collected in February 2003, June 2003 and November 2003 from approximately 265,000 respondents. The National Cancer Institute is co-sponsoring this survey with the Centers for Disease Control and Prevention. *Frequency of Response:* One-time study. *Affected Public:* Individual or households. *Type of Respondents:* Persons 15 years of age or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 88,333; *Estimated Number of Responses per Respondent:* 1; *Averaging Burden Hours Per Response:* 0.1169; and *Estimated Total Annual Burden Hours Requested:* 10,326. The total cost to the respondents is estimated at: $309,800. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503. Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Suite 4005, Bethesda, Maryland 20892–7344, or call non-toll free (301) 496–4970, or FAX your request, to (301) 435–3710, or E-mail your request, including your address, to *ah42@nih.gov* or *Anne Hartman@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 26, 2002.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–30861 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, SBIR Meeting.

Date: December 10, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892. 301–451–2020.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30860 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Estrogenic Regulation of Cocaine Sensitization Teleconference.

Date: December 6, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. (301) 496–5388.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, SPOTRIAS Special Emphasis Panel.

Date: December 16–17, 2002.

Time: 7:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NIDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9549, Bethesda, MD 20892–95429. 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30854 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The purpose of this meeting is to evaluate clinical research projects with yearly direct costs greater than $1 million for their relevance to the mission and the goals of NINDS. The outcome of the evaluation will be a decision whether NINDS should accept the application for scientific review. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Subcommittee of the National Advisory Neurological Disorders and Stroke Council.

Date: December 3, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To evaluate the rationale of large proposed clinical research projects.

Place: 6001 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Dr. Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, 6001 Executive Boulevard, Suite 3309, MSC 9531, Bethesda, MD 20892–9531. 301–496–9248.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30855 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immunostimulatory DNA for Asthma: Principles and Usage.

Date: December 17, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAID/NIH/DEA/SRP/DHHS, 6700–B Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, National Institutes of Allergy and Infectious Diseases, 6700–B Rockledge Drive, Room 3119, Bethesda, MD 20892. (301) 435–1615. kw174b@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30856 Filed 12–04–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Vaccinia Proteomics: Smallpox Vaccines and Antivirals.

Date: December 19, 2002.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAID, 6700–B Rockledge, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC–7616, Rockville, MD 20892. 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30857 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Smoking Cessation and Health.
Date: December 30, 2002.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892. (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MN and E. coli Meningitis.
Date: December 4, 2002.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892. (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Listeria Virulence Factors.
Date: December 4, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892. (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Trichomas Virulence.
Date: December 5, 2002.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892. (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 26, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30858 Filed 12–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 25, 2002, 12:30 p.m. to November 25, 2002, 2 p.m., which was published in the **Federal Register** on November 15, 2002, 67 FR 69228–69229.

The meeting will be held December 4, 2002, from 3:30 p.m. to 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: November 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30859 Filed 12–04–02; 8:45 am]

BILLING CODE 4140–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–037]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: December 19, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* None.
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–986–987 (Final)(Ferrovanadium from China and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 3, 2002.)
5. *Outstanding action jackets:* Nne.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 2, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30895 Filed 12–3–02; 10:39 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

In a series of published notices in the **Federal Register** on October 24, 2002 (67 FR 65361), the Department of Justice gave notice that proposed Consent Decrees between the United States and the following companies had been lodged with the United States District Court for the District of Minnesota:

Agri Energy, L.L.C., *et al.*
Al-Corn Clean Fuel Cooperative
American Standard, Inc., *et al.*
Central MN Ethanol Co-op
Chippewa Valley Ethanol Co., L.L.P., *et at.*
Corn Plus
Diversified Energy Co.
Ethanol 2000, L.L.P., *et al.*
Exol, Broin & Associates, Inc., *et al.*
Gopher State Ethanol, Inc.
Heartland Corn Products
Minnesota Energy
Pro-Corn, L.L.C., *et al.*

The October 24, 2002, notice invited the public to submit comments on the proposed Consent Decrees through November 25, 2002, to the Assisted Attorney General for the Environment and Natural Resource Division.

In these actions the United States sought to resolve claims against the owners and operators of ethanol dry mills in Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b)(1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991).

By today's notice, the Department of Justice is extending the deadline for submission of public comments on any or all of these proposed Consent Decrees through January 24, 2003. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611, and should reference the company name, and DJ. Ref. 90–5–2–1–07784/1–10.

The Consent Decrees may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of any of the Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 2004–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, the requester will be required to provide a check in the amount of 25 cents per page reproduction cost payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30799 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 29, 2002, a consent decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *Allied Waste Systems, Inc.*, Civil Action No. 02–CV–12108–REK. A complaint in the action was also filed simultaneously with the lodging of the consent decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that the defendant Allied Waste Systems, Inc. ("Allied") failed to comply with section 601–618 of the Clean Air Act and regulations at 40 CFR part 82, subpart F, in connection with its collection and handling of refuse and recyclables pursuant to a contract with the City of Boston, Massachusetts. The consent decree requires Allied to pay a cash penalty of $782,550, and implement a Supplemental Environmental Project at a cost of $2,300,000. The consent decree also requires Allied to comply with section 601 through 618 of the CAA and subpart F with regard to the handling and disposal of appliances collected pursuant to its contract with the City of Boston. Allied must also provide training to employees who are involved in tasks with respect to the handling of appliances that may contain refrigerant.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Allied Waste Systems, Inc.*, D.J. Ref.# 90–5–2–1–07046.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $7.75 payable to the "U.S. Treasury."

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 02–30796 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that on October 30, 2002, a proposed consent decree in *United States* v. *DeMert & Dougherty, Inc.*, No. 2:02CV434 (N.D. Ind.), was lodged with the United States District Court for the Northern District of Indiana.

The United States' complaint seeks the recovery, pursuant to CERCLA section 107, 42 U.S.C. 9607, of unreimbursed costs that have been incurred by the United States at the American Chemical Service, Inc. Superfund Site in Griffith, Lake County, Indiana ("ACS Site"), as well as the implementation, pursuant to CERCLA section 106, 42 U.S.C. 9606, of the United States Environmental Protection Agency's selected remedy for the ACS site.

On January 11, 1996, DeMert & Dougherty, Inc. filed for bankruptcy under chapter 11 of the Bankruptcy Code in the U.S. District Court for the Northern District of Illinois. (*In re: DeMert & Dougherty, Inc.* (Bankr. N.D. Ill. (Eastern Div. No. 96 B 0851)).) The case was converted to a chapter 7 bankruptcy on June 27, 1996. In that case, the United States filed a proof of claim pertaining to the costs that it incurred at the ACS site.

Under the proposed consent decree, the United States would receive an allowed general unsecured claim of $2,225,000 in the chapter 7 bankruptcy, which would resolve both the United States' proof of claim and DeMert & Dougherty, Inc.'s liability at the ACS site. Any portion of the $2,225,000 that is received by the United States will be deposited in an ACS special account within the Superfund.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *DeMert & Dougherty, Inc.*, No. 2:02CV434 (N.D. Ind.), D.J. Ref. 90–11–3–1094/5.

The consent decree may be examined at the Office of the United States Attorney, Northern District of Indiana,

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5400 Federal Plaza, Suite 1500, Hammond, Indiana 44320 (contact Assistant United States Attorney Carol A. Davilo, 219–937–5500), and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois (contact Assistant Regional Counsel Michael McClary (312–886–7163). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. Requests for a copy of the proposed consent decree also may be faxed to Ms. Tonia Fleetwood, fax no. 202–616–6584, telephone confirmation number 202–514–1547. In requesting a copy, please refer to *United States* v. *DeMert & Dougherty, Inc.* No. 2:02CV434 (N.D. Ind.), and DOJ Reference Number 90–11–3–1094/4, and enclose a check in the amount of $5.25 (21 pages at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30797 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Galax, Virginia*, Civil Action No. 7:01CV00925, was lodged with the United States District Court for the Western District of Virginia on November 14, 2002.

The consent decree resolves claims pursuant to section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e). for past violations of permit limits for nitrate plus nitrite and total suspended solids, and for failures to monitor stream flow rates. The decree obligates Defendant Galax to pay a civil penalty of $50,000; expend $50,000 over two years to implement supplemental environmental projects consisting of the construction of livestock watering systems, fencing, and other measures to limit agricultural runoff into Chestnut Creek upstream of Galax, Virginia; and operate its sewage pumping stations in a manner designed to eliminate sanitary sewer overflows.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. Each communication should refer on its face to *United States* v. *City of Galax, Virginia*, DOJ #90–5–1–1–07198.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Roanoke, VA 24011–2305; and the Region VIII Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the U.S. Treasury, referencing the DOJ Consent Decree Library, *United States* v. *City of Galax, Virginia*, DOJ #90–5–1–1–07198, to the first-class mail address listed above.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–30798 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on October 8, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DDV CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A&R Cambridge Limited, Cambridge, England, United Kingdom; Axiom Technologies Mfg Pte Ltd., Singapore, Singapore; BBK Electronics Corp., Ltd., Dongguan, Guangdong, People's Republic of China; Compal Electronics, Inc., Neihu, Taipei, Taiwan; Dongguan Albatronics (Far East) Electronics Co., Ltd., Dongguan, Gaungdong, People's Republic of China; Denon, Ltd., Kawasaki-ku, Kawasaki-shi, Kanagawa, Japan; Duplico 2000, S.L., Barcelona, Spain; Hyundai Digital Technology Co., Ltd., Seongnam-Si, Kyoungki-do, Republic of Korea; Kaleidoscape, Inc., Los Altos, CA; L&M Optical Disc West, LLC, Valencia, CA; Marantz Japan, Inc., Sagamihara-shi, Kanagawa, Japan, Media Factory Inc., Fremont, CA; MicroPious Co., Ltd., Pyeong Taek City, GyeongGi-Do, Republic of Korea; NewSoft Technology Corporation, NanKang, Taipei, Taiwan; Optimal Media Production GmbH, Muritz, Germany; Ritek Corporation, Hsin-Chu Industrial Park, Taiwan; Roxio, Inc., Santa Clara, CA; Shanghai HongSheng (Norcent) Technology Co., Ltd., Pudong, Shanghai, People's Republic of China; Shenzhen Landel Electronics Technology Co., Ltd., Saige Zone, Shenzhen, People's Republic of China; SM Summit Holdings Limited, Singapore, Singapore; Societe Nouvelle Arceacem (S.N.A.), Tourouvre, France; Ya Bang Industrial Co. Ltd., DongGuan City, Guangdong, People's Republic of China; and Yuxing Electronics Company Limited, Xicheng District, Beijing, People's Republic of China have been added as parties to this venture.

Also, Alcorn McBride Inc., Orlando, FL; Applied Research Corporation, Taipei Hsien, Taiwan; Concord Disc Manufacturing Corp., Anaheim, CA; Jeong Moon Information Co., Ltd., Kyeongki-Do, Republic of Korea; MARGI Systems, Inc., Fremont, CA; MGI Software Corp., Toronto, Ontario, Canada; Nakamichi Corporation, Tokyo, Japan; OPT Corporation, Naganoken, Japan; Planet Optical Disk Limited FZE, Dubai, United Arab Emirates; Shenzhen Paragon Industries (formerly Shenzhen Sangda Baodian Co., Ltd.), Shenzhen Guangdong, People's Republic of China; Shunde Xiongfeng Electric Industrial Company, Shunde City, Guangdong, People's Republic of China; and Tanway Electronic Factory, Guangzhou, People's Republic of China have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD Copy Control Association ("DDV CCA") intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association ("DDV CCA") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on July 10, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56587).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–30792 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on October 29, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aeroflex Corp., Powell, OH has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on August 2, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56588).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–30793 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on October 23, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bangalore Labs, Bangalore, Karnataka, India; Logical Managed Services, Cincinnati, OH; Global Data Systems, Inc., Pembroke, MA; and Rave Financial Services, Sterling Heights, MI have been added as parties to this venture. Also, Triactive, Austin, TX and MacAfee, Sunnyvale, CA have been dropped as parties to this venture; and S Net, Seoul, Republic of Korea has changed its name to S Com Networkis.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on July 31, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 12, 2002 (67 FR 57853).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–30794 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multi-Terabyte Tape Storage

Notice is hereby given that, on October 29, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multi-Terabyte Tape Storage has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Accutronics Inc., Littleton, CO; Advanced Research Corporation, Minneapolis, MN; Imation Corp., Oakdale, MN; Peregrine Recording Technology Inc., Woodbury, MN; and Read-Rite Corporation, Fremont, CA. The nature and objectives of the venture are to develop the technologies to increase the data density of existing magnetic tape data systems by a factor of 250 and lay the foundation for even greater densities in future systems, leading to cost reductions in data archiving and improving the competitive position of the U.S. data storage industry.

Constance K. Robinson,

Director of Operation, Antitrust Division.

[FR Doc. 02–30790 Filed 12–4–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum

Notice is hereby given that, on July 22, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Optical Internetworking Forum has filed written notifications simultaneously with the Attorney General and Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the

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recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Samsung, Seoul, Republic of Korea; Tsunami Photonics, Dun Laoghaire, Ireland; MergeOptics Gmbh, Berlin, Germany; ASTRI, Kowloon, Hong Kong-China; and Transpera Networks, San Jose, CA, have been added as parties to this venture.

Also, Acorn Networks, Reston, VA; Aerie Networks, Denver, CO, Alidian Networks, San Jose, CA; Alphion, Eatontown, NJ; Appian Communications, Boxborough, MA; Applied Optoelectronics, Sugarland, TX; Atoga Systems, Fremont, CA; Bitmath, Fremont, CA; BrightLink Networks, Sunnyvale, CA; Cenix, Allentown, PA; Cielo Communications, Broomfield, CO; Cinta Networks, Beaverton, OR; CIVCOM, Petach-Tikva, Israel; Corona Optical Systems, Corning, NY; Cplane, Sunnyvale, CA; Crescent Networks, Lowell, MA; CyOptics, Los Angeles, CA; Efficient Channel Coding, Brooklyn Heights, OH; Entridia, Irvine, CA; FirstWave Intelligent Optical Networks, San Jose, CA; Gazillion Bits, Los Altos, CA; GDA Technologies, San Jose, CA; Gemfire, Palo Alto, CA; Genoa, Fremont, CA; Greenfield Networks, Santa Clara, CA; Gtran, Westlake Village, CA; GWS Photonics, Philadelphia, PA; Helic S.A., Alimos, Greece; Kerenix, P.Tikva, Israel; Kestrel Solutions, Mountain View, CA; Kodeos Communications, South Plainfield, NJ; Lambda Crossing, Caesarea, Israel; Laurel Networks, Pittsburgh, PA; Lightbit Corporation, Mountain View, CA; Maple Optical Systems, San Jose, CA; Memlink, Herzelia B, Isreal; MindTree Counsulting Pvt. Ltd, Banashankari, India; Network Photonics, Calgary, Alberta, Canada; Opthos, San Carlos, CA; Optivera, Tel Aviv, Israel; Peregrine Semiconductor, San Diego, CA; Photonami, Inc., Toronto, Ontario, Canada; PicoLight, Boulder CO; Power X Networks, Sale, United Kingdom; Radiant Photonics, Inc., Austin, TX; Redfern Broadband Networks, Sydney, New South Wales, Australia; Silicon Bridge, Fremont, CA; SiPackets, Inc., Fremont, CA; Sparkolor, Santa Clara, CA; Syntera Communications, Fremont, CA; TelOptica, Richardson, TX; TeraBeam Networks, Seattle, WA; Terago Communications, Maple Grove, MN; Transparent Networks, Santa Clara, CA; Trellis Photonics, Yokneam Elite Israel; TriCN Associates, LLC, San Francisco, CA; Valiant Networks, San Jose, CA; Village Networks, Eatontown, NJ; VIPswitch, Brossard, Quebec, Canada; Vivace Networks, San Jose, CA; Yotta Networks, Plano, TX; C Speed Corp., Santa Clara, CA; CIR, Charlottesville, VA; Emperative, Boulder, CO; Geyser Networks, Sunnyvale, CA; Hyperchip, Montreal, Quebec, Canada; Intelliden, Colorado Springs, CO; Jedai Broadband Networks, Red Bank, NJ; Optical Switch, Richardson, TX; Perihelion Associates, Mercerville, NJ; TSRI, Deerfield, IL; White Rock Networks, Dallas, TX; Applied Innovation, Dublin, OH; BellSouth Telecommunications, Atlanta, GA; BT, Ipswich, Suffolk, United Kingdom; Corning Incorporated, Corning, NY; FCI, Dorval, Quebec, Canada; Foundry Networks, San Jose, CA; GlobespanVirata, Cambridge, Cambridgeshire, United Kingdom; Honeywell, Cupertino, CA; Network Associates, Santa Clara, CA; OKI Electric Industry, Tokyo, Japan; Raza Foundries, San Jose, CA; Redback Networks, Vancouver, British Columbia, Canada, Riverstone Networks, Santa Clara, CA; Sorrento Networks, San Diego, CA; Transwitch Corporation, Bedford, MA; TyCom, Eatontown, NJ; WorldCom, Richardson, TX; Nokia, Santa Rosa, CA; Sprint, Westwood, KS; Acelo Semiconductor, Oxnard, CA; API Networks, Inc., Concord, MA; Dynamost, Murray Hill, NJ; Inara Networks, San Jose, CA; Japan Radio Co., Hikakrino-oka, Japan; KAIST, Yusong-gu, Republic of Korea; KPNQwest, Hoeilaart, Belgium; Marvell Technology, Sunnyvale, CA; Matsushita Communication Industrial, Kanagawa, Japan; Norlight Telecommunications, Brookfield, WI; Sonera Carrier Networks Ltd., Oulu, Finland; Tiburon Networks, Andover, MA; VTT Information Technology, Oulu, Finland; Zaiq Technologies, Woburn, MA; Arcor AG & Co., Eschborn, Germany; Fhg—IMK, Sankt Augustin, Germany; Hughes Software Systems Ltd., Haryana, India; and Nakra Labs, North Andover, MA have been dropped as parties to this venture.

The following members have changed their names: CCL to Industrial Technology Research Institute, Hsin Chu, Taiwan; Tality to Cadence Design Systems, Cary, NC; Flextronics Semiconductor to Flextronics, Hillsboro, OR; TILAB S.p.A to Telecom Italia Lab, Torino, Italy; Octillion Communication to Lattice Semiconductor, San Jose, CA; and QOptics to ELEMATICS, Beaverton, OR.

The following members have been involved with mergers: Paracer, Santa Clara, CA has merged into Stratos LightWave, Mountlake Terrace, WA; ONI Systems, San Jose, CA has merged into Ciena, Linthicum, MD; Dorsal Networks, Columbia, MD has merged into Corvis, Columbia, MD; and Octillion Communication, San Jose, CA has merged into Lattice Semiconductor, San Jose, CA.

No other charges have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4709).

The last notification was filed with the Department on July 22, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56590).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 02–30791 Filed 12–04–02; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Surface Logix, Inc.

Notice is hereby given that, on October 30, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Surface Logix, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Surface Logix, Inc., Brighton, MA; and Ancora Pharmaceuticals, Inc., Cambridge, MA. The nature and objectives of the venture are to execute a 3-year project to facilitate carbohydrate-based drug discovery and research by developing and integrating a variety of new technologies tailored to carbohydrate production and detection of their interactions. These technologies include automated synthesis methods to rapidly produce complex carbohydrates (Ancora), a unique surface chemistry platform with which to present these molecules, and a surface-based detection system (Surface Logix). These tools will be used to design quantitative, reproductible assays containing many of the carbohydrate variants found in specific biological interactions. These assays will be configured to measure key interactions between carbohydrates and other biomolecules, thus enabling carbohydrate-based drug discovery.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 02–30795 Filed 12–4–02; 8:45 am]
BILLING CODE 4410–11–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Survivor Death Benefits: OMB 3220–0031.

Under section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow and widowers, children and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee only if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depend on whether the employee was "insured" under the RRA at the time of death. If a deceased employee was not so insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for.

The RRB currently utilizes form(s) AA–11a (Designation for Change of Beneficiary for Residual Lump-Sum), AA–21cert, (Application Summary and Certification), AA–21 (Application for Lump-Sum Death Payment and Annuities Unpaid at Death), G–131 (Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment), and G–273a (Funeral Director's Statement of Burial Charges), to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
AA–11a	400	10	67
AA–21cert (with assistance)	9,700	20	3,233
AA–21 manual (without assistance)	300	40	200
G–131	600	5	50
G–273a	9,600	10	1,600
Total	20,600		5,150

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 02–30787 Filed 12–4–02; 8:45 am]
BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: System Access Application, Form BA–12, 3220–NEW.

Under section 9 of the Railroad Retirement Act (RRA) employers are required to submit reports of employee service and compensation to the Railroad Retirement Board (RRB) as needed for administering the RRA. Under section 6 of the Railroad Unemployment Insurance Act (RUIA), employers are required to submit returns of compensation of employees. The reporting requirements are specified in 20 CFR part 209 and 20 CFR 345.110.

The Government Paperwork Elimination Act (GPEA) requires Federal agencies to provide its customers the option to submit or to transact business with agencies electronically, when practical, as a substitute for paper by October 21, 2003. The RRB will propose to allow employers to submit employee reports of service and compensation routinely via the Internet during 2003.

In order to establish proper control of this process, the RRB must obtain information from employers that will identify employees who will be allowed to use the Internet to submit reporting forms to the RRB and also to determine

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what degree of access (view only, data entry/modification or approval/submission) is appropriate for that employee.

The RRB proposes to use new form BA–12, System Access Application, to secure the necessary information. Initially, form BA–12 will be sent to all covered employers for completion. After the initial round of responses are received, form BA–12 will be used to add/delete employee(s) access to the system, or to update previously supplied information.

Within three days of receipt of an acceptable application, the RRB will mail a logon identification and a password to the employee that will provide access to the RRB's Employer Reporting System.

This is a new information collection. Completion is voluntary and one response will be requested for each employee request for access or any subsequent access modification. The RRB estimates the annual respondent burden as follows:

Estimated number of responses: 900.

Estimated completion time per response: 10–20 minutes.

Estimated annual burden hours: 292.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–30788 Filed 12–4–02; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459, Amdt. # 4]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated November 20, 2002, the above numbered declaration is hereby amended to include Brazoria, Cameron, Fort Bend, Hidalgo, Jasper, Kleburg, and San Jacinto Counties in the State of Texas as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing through November 15, 2002.

In addition, applications for economic injury loans from small businesses located in Angelina, Austin, Jim Hogg, Kenedy, Matagorda, Sabine, San Augustine, Starr, Trinity, Wharton and Willacy Counties in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 27, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–30815 Filed 12–4–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that portions of the airport property located in the north-northwest corner of the airport are not needed for aeronautical use as currently identified on the Airport Layout Plan. The Metropolitan Airports Commission (MAC) proposes the release and acquisition of land parcels in order to acquire land necessary to construct a deicing facility on land currently occupied by the U.S. Navy Reserve. To obtain the property from the U.S. Navy, the MAC is required by Congress to provide a functional replacement facility to the satisfaction of the Secretary of the Navy.

The requirement is contained in Public Law 105–261, Section 2854, which was approved by the U.S. Congress in 1998. The MAC will release and subsequently acquire land from two entities, the Minneapolis Park and Recreation Board (MPRB) and the U.S. Navy Reserve. The MAC committed in the Dual Track Airport Planning Process, Final Environmental Impact Statement/Record of Decision to construct a dedicated deicing pad at the end of Runway 12R. The proposed deicing facility would be located on existing U.S. Navy Reserve property (27.49 acres). To acquire this property, the MAC is proposing the following:

1. Release of fee title of 10 acres of airport land to the MPRB, along with a 15 year lease on an additional 30 acres adjacent to this parcel.

2. Acquisition of fee title by the MAC of an 8-acre parcel of MPRB owned land in an adjacent to the Navy Relocation Site.

3. Release of fee title of 11.8 acres of airport land, including portions of the former MPRB parcel, to the U.S. Navy Reserve.

4. Acquisition of fee title by the MAC of 27.49 acres of land from the U.S. Navy Reserve to allow for the construction of a deicing pad.

The airport land was acquired through FAA Grants, FAAP–9–21–046–507 in 1955, and FAAP–9–21–046–0215 in 1962. The parcel being released to the U.S. Navy has been vacant for several years. The parcel being released to the MPRB is presently wooded and undeveloped. These parcels are not needed for aeronautical use, as shown on the Airport Layout Plan.

The property transactions will facilitate a key part of the MSP 2010 Airport Expansion Program, to build a system of end-of-runway remote deicing pads. It will bring MSP in compliance with FAA Advisory Circulars, fulfill environmental permit requirements as found in the MSP NPDES discharge permit, enhance capacity of MSP during severe weather conditions, and improve the safety of the flying public.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Orcutt, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4354/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Minneapolis-St. Paul International Airport, Minneapolis, MN.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at Minneapolis-St. Paul International Airport, Minneapolis, MN.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Minneapolis, MN, on October 23, 2002.

Nancy M. Nistler,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 02–30848 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–64]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 26, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 30, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13094.

Petitioner: Air North, Inc.

Section of 14 CFR Affected: 14 CFR § 129.28.

Description of Relief Sought: To permit Air North to operate its Hawker Siddeley combination aircraft, until April 9, 2003, without equipping each aircraft with a door, operable from the flightdeck only, that restricts unwanted entry of persons to the flightdeck.

Docket No.: FAA–2002–13347.

Petitioner: Executive Jet Management, Inc.

Section of 14 CFR Affected: 14 CFR 135.145(a).

Description of Relief Sought: To allow Executive Jet Management to replace actual proving flights for each of its turbojet-powered airplanes with an enhanced proving test process that incorporates the use of tabletop simulation.

[FR Doc. 02–30845 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Rule on Application 03–03–C–00–SBN to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at South Bend Regional Airport, South Bend, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at South Bend Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 6, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John C. Schalliol, Executive Director, South Bend Regional Airport at the following address: South Bend Regional Airport, 4477 Progress Drive, South Bend, Indiana 46628.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the South Bend Regional Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory N. Sweeny, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018, (847) 294–7526. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at South Bend Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 12, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the St. Joseph County Airport authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 25, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: January 1, 2023.

Total estimated PFC revenue: $23,898,229.

Brief description of proposed projects: Land acquisition (for the relocation of Lincolnway West, extension of runway 18/36 and airport development); Lincolnway West Relocation. Class or classes of air carriers which the public

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agency has requested not be required to collect PFCs: part 135 air taxi operators operating with less than 15 seats.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the South Bend Regional Airport.

Issued in Des Planes, Illinois on November 21, 2002.

Mark McClardy,

Manager, Planning and Programming Branch, Airport Division, Great Lakes Region.

[FR Doc. 02–30846 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–01–C–00–TVF To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Thief River Falls Regional Airport, Thief River Falls, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Thief River Falls Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 6, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roger DeLap, City Administrator of the City of Thief River Falls, MN at the following address: Thief River Falls City Hall, 405 Third Street East, P.O. Box 528, Thief River Falls, Minnesota 56701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Thief River Falls under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Thief River Falls Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158). On November 12, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Thief River Falls, Minnesota was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 28, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1 2003.

Proposed charge expiration date: June 1, 2023.

Total estimated PFC revenue: $636,828

Brief description of proposed projects: Rehabilitate runway 13/31; install airport signs and miscellaneous taxiway lights; overlay parallel taxiway (for runway 13/31), general aviation taxiway, and air transport apron; acquire aircraft rescue and firefighting vehicle (ARFF); reconstruct commercial aircraft parking apron; construct crosswind runway 3/21 including land acquisition, installation of medium intensity runway edge lights (MIRL), runway end identification lights (REIL), and precision approach path indicator system (PAPI); construct parallel and connecting taxiways (for runway 3/21); prepare passenger facility charge application (PFC); rehabilitate portions of the air carrier parking apron; install deer fence; and rehabilitate non-revenue automobile parking lot.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On Demand Air Carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Thief River Falls City Hall.

Issued in Des Plaines, Illinois on November 21, 2002.

Mark McClardy,

Manager, Airports Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–30847 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–08–C–00–CRW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yeager Airport, Charleston, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 6, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airports Field Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Atkinson, Director of Aviation of the Central West Virginia Regional Airport Authority at the following address: 100 Airport Road, Suite 175, Charleston, West Virginia 25311–1080.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central West Virginia Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Larry F. Clark, Manager, Airports Field Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813, (304) 252–6216. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 13, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Central West Virginia Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 6, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–08–C–00–CRW.

Level of the proposed PFC: $4.50

Proposed charge effective date: April 1, 2003

Proposed charge expiration date: February 1, 2006

Total estimated PFC revenue: $3,134,120

Brief description of proposed projects(s):

—Runway 5/23 Engineering Study
—Obstructional Removal
—Taxiway B Drain Repair
—Strengthen Taxiway B, B1 and General Aviation Apron
—Acquire Snow Equipment (Radio/Friction Meter)
—Acquire Snow Removal Equipment (Enloader)
—Acquire Security Vehicle
—Rehabilitate Airport Lighting (Runway 5/23, Runway 15/33; Taxiways A, B & C)
—Rehabilitate Runway 5/23
—Acquire Snow Removal Equipment (Grader)
—Construct Snow Equipment Storage Building
—Acquire Airline Baggage Lift System
—Install Security Paging System
—Conduct Wildlife Study
—Runway 5 Safety Area Improvement
—Install Apron Signs
—Rehabilitate Runway 15/33
—Replace Lighting Regulators
—Repair Runway 5/23
—Upgrade Runway Scan System

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

—Under FAR part 135—Charter Operators for hire to the general public
—Under FAR part 121—Charter Operators for hire to the general public
—Non-signatory and non-scheduled Air Carriers

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central West Virginia Regional Airport Authority.

Issued in Beckley, West Virginia on November 14, 2002.

Larry F. Clark,

Manager, Beckley AFO, Eastern Region.

[FR Doc. 02–30850 Filed 12–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 214X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Buchanan County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 6.4-mile line of railroad between milepost DC–16.6 at Wyatt and milepost DC–23.0 at Jewell Valley, in Buchanan County, VA.[1] The line traverses United States Postal Service zip codes 24066 and 24622.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 4, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 16, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 26, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 10, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify

[1] NSR states that authority for discontinuance of operations between milepost DC–17.2 and milepost DC–23.0 was granted in *Norfolk and Western Railway Company—Discontinuance Exemption—in Buchanan County, VA*, Docket No. AB–290 (Sub-No. 100X) (ICC served July 16, 1990).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

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that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 5, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: November 26, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30593 Filed 12–4–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use.

OMB Number: 1515–0032.

Form Number: Customs Form 5125.

Abstract: The Customs Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels. The form also certifies the use: total consumption or partial consumption with secure storage for use on next voyage.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 42.

Estimated Total Annualized Cost on the Public: $504.00.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30807 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Blanket Certification of Chemical Substances

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Blanket Certification of Chemical Substances. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Blanket Certification of Chemical Substances.

OMB Number: 1515–0173.

Form Number: N/A.

Abstract: The Customs Regulations require an importer's certification in connection with the importation of chemical substances subject to the Toxic Substances Control Act. This collection reduces the regulatory burden by permitting use of a blanket certification for multiple shipments in lieu of a separate certification for each individual.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 75.

Estimated Total Annualized Cost on the Public: $2,200.00.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30809 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Transfer of Cargo to a Container Station

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Transfer of Cargo to a Container Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Transfer of Cargo to a Container Station.

OMB Number: 1515–0142.

Form Number: N/A.

Abstract: The container station operator may file an application for transfer of a container intact to a container station which is mover from the place of unlading or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 360.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,872.

Estimated Total Annualized Cost on the Public: $18,720.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30810 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of

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Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

OMB Number: 1515–0108.

Form Number: N/A.

Abstract: This declaration is used under conditions where articles are imported and then exported and then reimported free of duty due to the declaration, it is used insured Customs control over duty free merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Individuals, business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 292.

Estimated Total Annualized Cost on the Public: $5,942.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30811 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration of Owner of Merchandise Obtained (Other Than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent

AGENCY: Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent.

OMB Number: 1515–0050.

Form Number: Customs Forms 3347 and 3347A.

Abstract: Customs Form 3347 and 3347A allows an agent to submit, subsequent to making the entry, the declaration of the importer of record which is required by statute. These forms also permits a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 5,700.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 570.

Estimated Total Annualized Cost on the Public: $14,900.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30812 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; North American Free Trade Agreement (NAFTA) Regulations and Certificate of Origin

AGENCY: Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on

proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1515–0204.

Form Number: Customs Form 434 and 446.

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA ; and the resolution of disputes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 5000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 25,760.

Estimated Total Annualized Cost on the Public: $600,000.00.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30813 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Textile and Textile Products

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Textile and Textile Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Textile and Textile Products.

OMB Number: 1515–0140.

Form Number: N/A.

Abstract: Information is needed for Customs to be able to identify the Country of Origin of Textiles. The requirement prevents circumvention of bilateral agreements and ensures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter, or U.S. importer to be filed with the entry.

Current Actions: There are no changes to the information collection.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 45,810.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 133,582.

Estimated Total Annualized Cost on the Public: $51,469,402.00.

Dated:November 26, 2002.

Tracey Denning,

Agency Clearance Officer, , Information Services Branch.

[FR Doc. 02–30814 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room

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3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission.

OMB Number: 1515–0222.

Form Number: N/A.

Abstract: This collection is required to ensure compliance with section 337 of the Tariff Act of 1930, as amended by section 321 of the Uruguay Round Agreements regarding bond procedures for entry of articles subject to exclusion orders issued by the U.S. International Trade Commission.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annualized Cost on the Public: $625.00.

Dated: November 26, 2002.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 02–30808 Filed 12–4–02; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 67, No. 235

Thursday, December 5, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13820; Airspace Docket No. 02–AGL–11]

Modification of Class E Airspace; Flint, MI

Correction

In rule document 02–29900 beginning on page 70534 in the issue of Monday, November 25, 2002, make the following corrections:

1. On page 70534, in the second column, under the heading **EFFECTIVE DATE**, in the first and second lines, "January 23, 2002" should read, "January 23, 2003".

§71.1 [Corrected]

2. On the same page, in the third column, in § 71.1, in the last paragraph, in the third line, "Ayirport" should read, "Airport".

[FR Doc. C2–29900 Filed 12–4–02; 8:45 am]

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Federal Register

Thursday,
December 5, 2002

Part II

National Credit Union Administration

12 CFR Part 701
Organization and Operations of Federal Credit Unions; Proposed Rule

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing amendments to its chartering and field of membership manual to update chartering policies and streamline documentation. These proposed amendments are in response to NCUA's almost four years of experience with existing chartering and field of membership policies.

DATES: Comments must be postmarked or received by February 3, 2003.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518–6540; Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518–6396.

SUPPLEMENTARY INFORMATION:

Background

NCUA's chartering and field of membership policy is set out in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1 and IRPS 02–2. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. It is also published as NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is the document most interested parties use and to which references in the following discussion are made.

In 1998, Congress updated the laws on field of membership with the passage of the Credit Union Membership Access Act ("CUMAA"). On December 17, 1998, in response to CUMAA, the NCUA Board issued a final rule on chartering and field of membership. 63 FR 73022, Dec. 30, 1998, When the NCUA Board issued its final rule it instructed the Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99–1. Accordingly, recommendations were made, and final amendments to NCUA's chartering policy were issued by the NCUA Board in 2000 and again in 2002. 65 FR 64512, Oct. 27, 2000, and 67 FR 20013, Apr. 24, 2002.

Over the past four years, NCUA's Field of Membership Taskforce has continued to monitor and review the implementation of IRPS 99–1 and its amendments in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. In response to this continued oversight, the Field of Membership Taskforce provided a report to the Board this year. The findings and recommendations contained in that report and which are the basis for these amendments, are in response to issues that either arose during the past four years or were identified by the NCUA Board as issues that needed clarification.

A. Proposed Amendments

1. Overlaps

The NCUA Board believes overlaps should generally be permitted and believes it is now appropriate to eliminate overlap protection to the maximum extent feasible. The Board has found no empirical evidence to indicate that overlaps have an adverse impact on credit unions. In fact, past reports to the NCUA Board, and staff experience, indicate that overlaps do not harm credit unions. Overlap protection generally harms the credit union member. Overlaps will allow members to have more choice in credit union financial services and allows members to obtain the service that best meet their individual needs. Therefore, except for select group expansions for multiple group credit unions, the Board proposes to eliminate overlap protection and provide the option to all credit unions to remove any existing exclusionary clauses in its charter.

Under the Federal Credit Union Act (the "Act"), the agency must do an overlap analysis on select group expansions for multiple group credit unions so no significant change can be made in this area. On select group expansions, however, the NCUA Board believes that overlaps of groups of less than 3000 should be classified as an incidental overlap and no overlap analysis should be required.

The NCUA Board believes that if two credit unions want to retain an exclusionary clause that is a business decision for them to make. If, however, one credit union wants the exclusionary clause removed, then it should be approved since, as stated above, the NCUA Board believes there will be no harm to the overlapped credit union. The NCUA Board also believes that the removal of such an exclusionary clause should be treated as a housekeeping amendment.

Therefore, the NCUA Board is proposing to amend Chapter 1, Section IV.D, Chapter 2, Sections II.A. II.B.,II.E, II.G, III.B, III.E, III.G., IV.B, IV.E. and V.E. to accomplish this change in policy.

2. Reasonable Proximity and Service Facility for Select Group Expansions

In addressing the issue of reasonable proximity and service facility, the question was raised whether NCUA's view of this issue was unduly restrictive. This issue is particularly important in view of the continued advancement in electronic delivery systems and alternative methods of providing credit union service. To restate current policy, the NCUA Board does not have any mileage limitations for adding select groups and defines reasonable proximity on a case-by-case basis as was previously discussed in the preamble to IRPS 99–1. 63 FR 71988, 72002–72003, Dec. 30, 1998. The NCUA Board, however, has reconsidered the definition of a service facility for the purpose of the reasonable proximity analysis.

Under CUMAA, if the formation of a separate credit union is not practicable or consistent with the standards set forth in the statute, then a select group can be included in the "field of membership of a credit union that is within reasonable proximity to the location of the group." 12 U.S.C. 1759 (f)(1)(B). The statute then delineates a number of approval criteria that must be satisfied before a select group can be added. The statute does not define a service facility for the purpose of analyzing reasonable proximity.

In defining reasonable proximity, the Board has continually stated that the group to be added must be within the "service area" of a "service facility" of the credit union. After reviewing CUMAA and its legislative history again, the NCUA Board has concluded that its current definition of service facility for the purpose of reasonable proximity is overly restrictive. The Board believes that for a multiple group credit union a service facility should be defined as a place where shares are

accepted for members' accounts, loan applications are accepted, or loans are disbursed. The Board is proposing that ATMs that are wholly-owned by the credit union should be included within the scope of the definition. Furthermore, shared service centers, as long as there is an ownership interest by the credit union, will meet NCUA's service facility definition for select group expansions. The rationale for this position is statutory; that is, wholly-owned ATMs and shared service facilities constitute a credit union for the purpose of the reasonable proximity analysis. It is the Board's intent that select groups that are within reasonable proximity to a credit union, as it is ultimately defined here, may be added to a credit union's field of membership.

Therefore, the Board is amending Chapter 2, Section IV.A.1 of the Chartering Manual to modify the definition of a service facility and to explicitly include ATMs and shared service facilities that a credit union has an ownership interest in as within the definition of a service facility.

3. Associational Common Bond

Under IRPS 99–1, as amended, associational common bonds must have the following three indicia. The group must: (1) Hold meetings open to all members; (2) sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association; and (3) have an authoritative definition of who is eligible for membership. The Chartering Manual then lists other factors that NCUA may consider in determining whether a proper associational common bond exists.

The NCUA Board believes that some groups may have been denied credit union membership because they did not have all three of the required indicia for an associational common bond, although they did possess many of the other factors of a legitimate association. Therefore, the NCUA Board is proposing that the three mandatory requirements be eliminated and be merged into the list of factors to be considered by the agency. The agency will look at the totality of the circumstances when determining whether an associational common bond exists. The Board is also explicitly stating in the Chartering Manual that national associations qualify for credit union service in their entirety if the headquarters are within reasonable proximity to the credit union.

Therefore, the Board is proposing to amend Chapter 2, Section III A.1, to reflect these above cited changes.

4. Occupational Common Bond

The NCUA Board is proposing a fifth definition of occupational common bond. Under existing policy, an occupational common bond is based on:

- Employment, or a long-term contractual relationship equivalent to employment, in a single corporation or other legal entity;
- Employment in a corporation or other legal entity with a controlling ownership interest, which shall not be less than 10 percent, in or by another legal entity;
- Employment in a corporation or other legal entity which is related to another legal entity, such as a company under contract and possessing a strong dependency relationship with another company; and
- Employment or attendance at a school.

The Board has stated previously that an occupational common bond can also legally include designations based on employment in a trade, industry or profession (TIP), but has not implemented such an approach based on agency operational concerns. 65 FR 64512, 64519, Oct. 27, 2000. The Board has continued to review this issue and believes that staff has developed a proposal that will minimize these concerns.

Pursuant to this proposed policy, an occupational common bond could be based on TIP. This type of common bond can include employment at any number of corporations or other legal entities, that while not under common ownership, share a common bond by virtue of producing similar products, providing similar services, or sharing the same profession or trade. For obvious reasons, this type of occupational common bond would not require a letter from the sponsor to charter or convert to this type of occupational common bond credit union. However, when a credit union is chartered or converts to a TIP it must submit a business plan that addresses how it will serve the TIP and how it will verify an individual is part of that TIP. Verification may include a state license, professional license, payroll statements or any other documentation that indicates that an individual is a member of the specified TIP.

The common bond of a TIP credit union is not based on a relationship with a single employer, but rather, on the commonality of interests or characteristics of those groups comprising the TIP. Individuals in those groups will share the same purpose, interests, or endeavors as a result of their employment. If the persons in the different groups possess common interests that are reasonably tied to a common endeavor or purpose, then the groups can be combined to form a single field of membership and, thus, a single common bond credit union. For example, previously, a teachers' credit union could only be chartered to serve a specific school or school district. In fact, all teachers share a unique and strong common purpose. They have common interests and share a common endeavor. This significant commonality of interest constitutes a common bond of profession and meets the statutory requirement of "one group that has a common bond of occupation." Similarly, all members of the U.S. armed forces share a strong commonality of interest beyond the single employer concept of a particular military branch or military installation. The NCUA Board recognizes that because of this commonality of interest it may be easier to define a TIP based on a trade or profession than it may be for defining a TIP for an entire industry.

The TIP common bond charter can be similar to, but distinguishable from, a common bond based on a single corporation or employer. For example, all Navy personnel would qualify as a single common group or TIP, but all teachers would only qualify as a TIP. Therefore, in some instances, a TIP might, for all practical purposes, be the same as a traditional occupational common bond.

While there is some latitude in defining trade, industry, or profession, the groups must have a close nexus and must be narrowly defined. NCUA will evaluate such factors as the nature, size and diversity of the trade, industry, or profession. For example, all manufacturing enterprises in Seattle, Washington, would not qualify since manufacturing, in and of itself, is overly broad and would include manufacturing of all types of products. All television manufacturers in Seattle, however, would qualify, since this relates to a specific type of manufactured product. This TIP, however, would not also include all television retailers.

The TIP must be narrowly defined and in most cases, will contain a geographic limitation. The geographic limitation will generally correspond to the credit union's current or planned service area.

Since a TIP must be narrowly defined it cannot include third-party vendors and other suppliers. In this regard, a TIP might be more limiting than the traditional definition of an occupational common bond. For example, a certified public accountant (CPA) TIP would not include clerical and other

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administrative staff. Another example is the airline service industry. Such a TIP would not include airline manufacturers, but simply the employees involved in airline transport.

Certain generic terms, by their very nature, are overly broad and subject to confusion in defining a TIP. Like manufacturing, the electronics, telecommunications, energy, and entertainment industries are examples of industries that include all types of services and products. It is NCUA's present intent that a TIP should be limited to a specific service or product within that industry, which could also include the exclusive retail outlet for that product or service. For example, the consumer electronics industry includes televisions, cameras, watches, computers, radios, etc. A qualifying TIP in the consumer electronics industry, however, would be limited to, for example, the production, manufacturing, and marketing of computers. As another example, a healthcare TIP would include hospitals, physicians' offices, home healthcare providers, medical & diagnostic labs, clinics and surgery centers. However, a healthcare TIP would not include pharmacies, retail establishments selling healthcare products or dual use services such as therapeutic massages.

As a general rule, if a corporation manufactures multiple products, that corporation's employees could not be included in a manufacturing TIP. Of course, that corporation's employees could be eligible for a single occupational common bond credit union based on employment by a single employer.

The retail business, by its very nature, is difficult to define as a TIP because, in most circumstances, it lacks a close nexus in providing similar products or services. The NCUA Board is seeking comment on how to structure an industry-based, occupational common bond involving the retail business. The NCUA Board is also seeking comment on whether the final version of this rule should contain a preapproved list of acceptable TIPs.

Because of the relative complexity of this TIP policy, it is the Board's intent to allow a TIP to be the occupational common bond only for a single common bond credit union. In addition, as stated above, a TIP credit union will also have a geographic limitation. The proposal also allows multiple common bond credit unions to convert to a TIP credit union based on a single occupational commor bond. Upon such a conversion, the credit union can retain its members of record. Accordingly, the Board is proposing to amend Chapter 1, Section XI and Chapter 2, Section II to incorporate the TIP concept.

5. Economic Advisability and the Process for Select Group Expansions of Less than 3000

Economic advisability is critically important both in the chartering process and in the addition of select groups to a multiple common bond credit union. In the first instance, chartering, NCUA has long taken the position that it will not grant a charter unless it determines that the credit union "will be viable and that it will provide needed services to its members," and will have a "reasonable opportunity to succeed." Ignoring this basic, yet very important, chartering requirement would create unnecessary and undue risks to the National Credit Union Share Insurance Fund. Perhaps equally important is the fact that members of a credit union with no reasonable chance of success are needlessly harmed. Therefore, NCUA's responsibility is to assure that if a credit union is chartered, it has, at a minimum, a reasonable opportunity to succeed in today's financial marketplace. This issue was thoroughly discussed in the preambles to IRPS 99–1 and IRPS 00–1.

Second, NCUA also takes into consideration economic advisability, as well as other criteria, when determining whether to approve the addition of groups to a multiple common bond credit union. CUMAA requires that before NCUA approves the addition of any group, NCUA must determine, in writing, that:

(1) The applicant credit union has not committed any material unsafe and unsound practices within the preceding 1-year period,

(2) The applicant credit union is adequately capitalized,

(3) The applicant credit union has the administrative capability to serve the proposed membership,

(4) The benefit to the members outweighs any potential harm the expansion may have on another credit union, and

(5) The applicant credit union has met such additional requirements as the Board may prescribe.

In effect, an administrative process must be established to address these issues, particularly since the statute requires that the determination must be in writing.

Another essential element NCUA must consider before a group can be added to a multiple common bond credit union is economic advisability relative to whether a group can form a separate credit union. The statute clearly sets forth this standard. It states:

> [T]he Board shall—(A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.

Consequently, NCUA must determine in writing not only that the five statutory criteria are met, but also must determine that the group is not economically advisable for the purposes of forming a separate credit union. The burden, as it should be, is on NCUA to make this determination. This assessment is essentially the same one that NCUA would make if the group requested a separate charter: would a new credit union consisting only of this group have a reasonable chance of survival? In other words, regardless of the group's size, NCUA must determine if the group could stand on its own as a separate credit union. If the group could safely form its own credit union, then the statute requires that it not be considered a group for expansion purposes.

As set forth in the preamble to IRPS 99–1, it remains the intent of the Board that every group being added to a multiple common bond credit union should be analyzed to determine whether the group has the capability and desire to support an independent operation. This requirement, however, must be balanced with operational feasibility. To overlook the complexities of providing financial services will only lead to additional supervisory problems. The regulatory approach, therefore, should incorporate known economic factors and the likelihood of the group's success in establishing and managing a new credit union in today's marketplace.

To ease the regulatory burden of establishing a new credit union, the NCUA Board adopted an express chartering procedure in 2000. However, to restate the discussion in IRPS 99–1, it is the Board's intent that a group desiring a separate charter should have every reasonable opportunity to form a new credit union, but this must be balanced with known economic hurdles and start-up operational requirements. Similarly, a group not wanting to form a separate credit union should be analyzed closely since desire and initiative are critical to successfully chartering a new credit union.

In 1999, in addressing these requirements in relation to the historical data related to chartering new credit unions, the Board developed an expedited process for groups of 200 or less primary potential members.

Although a written determination regarding the various statutory criteria was still required, the expedited process allowed for the processing of groups of 200 or less since it was the Board's view that a group of 200 or less would not be economically advisable. Thus, until October 2000, applicant credit unions applying to add a group of 200 or less simply had to complete the Form 4015–EZ. Additionally, no overlap analysis was required for these small groups. After further study, in 2000, the Board increased the number to 500 in IRPS 00–1.

Empirical experience strongly suggests that the expedited processing number should again be raised. In 2001, a substantial majority of the multiple group expansions approved, 95 percent, were groups of 500 or less. Further, less than one percent of the approved expansions consisted of groups of 3,000 or more. Overall, less than one percent of all applications for multiple group expansions were denied. More importantly though, no group less than 3,000 was denied for the reason it was economically viable to form its own credit union; that is, every group requesting to be added to the field of membership of an existing credit union was determined to not be economically advisable.

NCUA's experience supports the view that only in rare circumstances will a primary potential membership of less than 3,000 be economically advisable. In fact, 3,000 is the same number at or above which Congress requires the agency to look at more closely to determine if the group can form its own credit union. In some circumstances, a smaller number of potential members may be economically advisable, but that appears to be the exception. These smaller groups can be easily identified and processed on a case by case basis.

The NCUA Board believes that, considering the agency's historical experience since 1999, the expedited process number for adding groups should be changed to less than 3,000. In conjunction with this proposed change, it is also proposed that the overlap analysis required of groups of 500 or more should also be changed to 3,000 or more. Again, this is the number at or above which Congress requires the agency to look at more closely to determine if the group can form its own credit union.

6. Community Charters

Over the years, the Board has approved numerous community charter conversions. During this time, the Board has had vast experience in reviewing what constitutes a local community. Because of this experience, the Board is proposing three different definitions of what constitutes a local community.

First, the NCUA Board is proposing that any city, county, or smaller political jurisdiction, regardless of population size, meets the definition of a local community. This has been borne out again and again in community charter packages that the Board has reviewed. Therefore, any credit union that wants to serve such an area would no longer need to provide a letter demonstrating how the area is a community or any other type of documentation demonstrating that the area is a community. This is an irrebutable presumption, regardless of population size. Credit unions can also request an area that comprises only a portion of a county or city and still use the presumption.

Second, the Board has had a vast experience in reviewing local communities that are in multiple jurisdictions. The Board, in an attempt to streamline the conversion process, has reviewed the definition of a metropolitan statistical area and, in general, believes such an area within a certain population size meets the definition of a local community as required by CUMAA and articulated in the Chartering Manual.

The Office of Management and Budget defines a metropolitan statistical area (MSA) as an area that has at least one urbanized area of at least 50,000 and "comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting." 65 FR 82228, 82238, Dec 27, 2000.

The Board believes that any area that is an MSA (or its equivalent), or a portion thereof, having up to a million residents may meet the definition of a local community. This view is based on Board experience and the very definition of an MSA. Although the Board is not legally required to limit the population size for this presumption, the Board's experience is more limited for areas with more than one million residents.

If the proposed community meets the MSA criteria and population limits, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests. If NCUA does not find sufficient evidence of a community interaction and/or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined local community. The credit union must also provide evidence of the political jurisdictions and population. A credit union can also request a local community that exceeds the population limits but more detailed documentation will be necessary to support that the proposed area is a well-defined local community.

Third, based on its historical experience, the Board is increasing the presumption of a local community from 200,000 residents to 500,000 residents for multiple political jurisdictions that are not part of a single MSA. If the credit union meets this criterion, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests. If NCUA does not find sufficient evidence of a community interaction and/or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined local community. The credit union must also provide evidence of the political jurisdictions and population. A credit union can also request a local community that exceeds the population limits but more detailed documentation will be necessary to support that the proposed area is a well-defined local community.

Therefore, the Board is proposing to amend Section V.A.2 of the Chartering Manual to incorporate the three definitions of a local community and the process to obtain each type of community charter.

The Chartering Manual is silent on whether a community charter can apply to convert to serve a different community area. Sometimes a credit union is interested in such a conversion when it serves an area that qualifies as an underserved area and can be added to the field of membership of other credit unions. The NCUA Board believes such a conversion process should be clearly articulated in the Chartering Manual. Therefore, the Board is proposing to amend Section V.F of the Chartering Manual to clearly recognize this unique type of community conversion.

Finally, the Board is clarifying that persons or organizations that regularly do business in the community can be included in the community's charter and are then eligible for membership.

7. Common Bond Conversions

In the sections regarding federal charter conversions for occupational common bond credit unions, associational common bond credit unions, and multiple group common bond credit unions, there is a general three-year prohibition on converting to

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another type of charter, except a community charter. The NCUA Board believes this prohibition unduly limits the flexibility needed for federal credit unions to serve their members and make well-reasoned, business decisions. The Board has not been provided any compelling rationale to retain this prohibition so it is proposing to delete this requirement. Therefore, the NCUA Board is proposing to amend Chapter 2, Sections II.F, III.F, and IV.F to delete this restriction.

8. Charter Conversions

If a state charter wants to convert to federal charter and obtained a group or area through a procedure equivalent to NCUA's emergency merger provision, the credit union can retain that field of membership when it converts to a federal charter. Therefore, the Board is proposing that Chapter IV, Section II should be amended to state that a state charter that converts to a federal charter may retain any groups obtained through a state's emergency field of membership provision. Any subsequent expansions or amendments to the field of membership of the federal charter must comply with federal field of membership policies.

Currently, a multiple group state chartered credit union can convert to a multiple group federal charter and generally retain its multiple groups. Is there a compelling rationale to permit other types of state charters to retain their state fields of membership when converting to federal charters? The NCUA Board is also seeking comment on other ways to streamline the procedure for converting from a state charter to federal charter.

9. The Appeal Process

The Board is aware that some credit unions have become confused about the use of a request for reconsideration during the appeal process. To alleviate this confusion, the Board is clarifying that if a credit union seeks a second reconsideration of an issue, and it is still not approved by the region, it will be treated as an appeal and sent to the central office so that it can be prepared for a Board decision. As a reminder, a reconsideration should provide new evidence and should address any deficiencies cited by the regional director in the disapproval letter.

Chapter 3 on underserved areas does not have a separate appeals section. It has been the practice of the agency to follow the appeals procedure detailed in chapters 1 and 2 of the Chartering Manual. In any case, to alleviate any concern, the NCUA Board is adding an appeal provision to this section.

10. Miscellaneous Clarifications

The NCUA Board is also proposing three other amendments to conform to other proposals made by the NCUA Board or to clarify existing policy. First, Chapter 1, Section XII needs to be amended to conform to the Board's proposal on foreign branching. Any existing or proposed branches on United States military installations or United States embassies are unaffected by this proposal.

Second, the Board is clarifying how corporate accounts can be cited in a credit union's charter by adding them to the list of groups in "Other Persons Eligible for Credit Union Membership." The Board has permitted community charters to adopt standard language which allows corporations or other legal entities within the community to become members without the need for the credit union to request permission from NCUA in each instance. The Board now wishes to streamline this process for single and multiple group charters by allowing them to adopt a standard clause which would permit membership for their corporate and other business sponsors.

The Board wants to clarify an issue involving spin-offs. A spin-off is an affirmative decision to terminate membership. As such, all members of the group to be spun off, regardless of how they voted, will be transferred if the spin-off is approved by the voting membership. Since the group is being removed from the original credit union's field of membership, all accounts must be transferred to the new credit union. The original credit union cannot maintain members of record.

Finally, the NCUA Board is proposing some technical wording changes to all of the chapters in the Chartering Manual and updating the forms in the Appendix. Most of these changes are necessary to conform the language of the Chartering Manual to the proposals described above or to make a section easier to understand. These remaining changes are not substantive.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions, primarily those under one million dollars in assets. The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget control number assigned to § 701.1 is 3133–0015, and to the forms included in appendix D is 3133–0016. NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rules do not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the proposed rules would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and record keeping requirements.

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 02–5, Chartering and Field of Membership Policy (IRPS 02–5). Copies may be obtained by contacting NCUA at the address found in Section 792.2(g)(1) of this chapter.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 02–5) does not appear in the Code of Federal Regulations.

3. IRPS 02–5 is added to read as follows:

Chapter 1—Federal Credit Union Chartering

I—Goals of NCUA Chartering Policy

The National Credit Union Administration's (NCUA) chartering and field of membership policies are directed toward achieving the following goals:

- To encourage the formation of credit unions;
- To uphold the provisions of the Federal Credit Union Act;
- To promote thrift and credit extension;
- To promote credit union safety and soundness; and
- To make quality credit union service available to all eligible persons.

NCUA may grant a charter to single occupational/associational groups, multiple groups, or communities if:

- The occupational, associational, or multiple groups possess an appropriate common bond or the community represents a well-defined local community, neighborhood, or rural district;
- The subscribers are of good character and are fit to represent the proposed credit union; and
- The establishment of the credit union is economically advisable.

Generally, these are the primary criteria that NCUA will consider. In unusual circumstances, however, NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.

Unless otherwise noted, the policies outlined in this manual apply only to federal credit unions.

II—Types of Charters

The Federal Credit Union Act recognizes three types of federal credit union charters—single common bond (occupational and associational), multiple common bond (more than one group each having a common bond of occupation or association), and community.

The requirements that must be met to charter a federal credit union are described in Chapter 2. Special rules for credit unions serving low-income groups are described in Chapter 3.

If a federal credit union charter is granted, Section 5 of the charter will describe the credit union's field of membership, which defines those persons and entities eligible for membership. Generally, federal credit unions are only able to grant loans and provide services to persons within the field of membership who have become members of the credit union.

III—Subscribers

Federal credit unions are generally organized by persons who volunteer their time and resources and are responsible for determining the interest, commitment, and economic advisability of forming a federal credit union. The organization of a successful federal credit union takes considerable planning and dedication.

Persons interested in organizing a federal credit union should contact one of the credit union trade associations or the NCUA regional office serving the state in which the credit union will be organized. Lists of NCUA offices and credit union trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

While anyone may organize a credit union, a person with training and experience in chartering new federal credit unions is generally the most effective organizer. However, extensive involvement by the group desiring credit union service is essential.

The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the proposed members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons — the "subscribers"—present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union;
- The location of the proposed federal credit union and the territory in which it will operate;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares;
- The detailed proposed field of membership; and
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on any of the required documentation filed in obtaining a federal credit union charter may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—General

Before chartering a federal credit union, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. Economic advisability, which is a determination that a potential charter will have a reasonable opportunity to succeed, is essential in order to qualify for a credit union charter.

NCUA will conduct an independent on-site investigation of each charter application to ensure that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) The character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

IV.B—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to ensure that the subscribers are of good "general character and fitness." Prospective officials and employees will be the subject of credit and background investigations. The investigation report must demonstrate each applicant's ability to effectively handle financial matters. Employees and officials should also be competent, experienced, honest and of good character. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of

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fraud and dishonesty. Further, factors such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered credit unions. If the application of a prospective official or employee to serve is not acceptable to the regional director, the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the regional director's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an acceptable new applicant must be provided before the charter can be approved.

IV.C—Member Support

Economic advisability is a major factor in determining whether the credit union will be chartered. An important consideration is the degree of support from the field of membership. The charter applicant must be able to demonstrate that membership support is sufficient to ensure viability.

NCUA has not set a minimum field of membership size for chartering a federal credit union. Consequently, groups of any size may apply for a credit union charter and be approved if they demonstrate economic advisability. However, it is important to note, that often the size of the group is indicative of the potential for success. For that reason, a charter application with fewer than 3,000 primary potential members (*e.g.*, employees of a corporation or members of an association) may not be economically advisable. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members may have to provide more support than an applicant with a larger field of membership. For example, a small occupational or associational group may be required to demonstrate a commitment for long-term support from the sponsor.

IV.D—Present and Future Market Conditions—Business Plan

The ability to provide effective service to members, compete in the marketplace, and to adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a credit union, a business plan based on realistic and supportable projections and assumptions must be submitted.

The business plan should contain, at a minimum, the following elements:

- Mission statement;
- Analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;
- Evidence of member support;
- Goals for shares, loans, and for number of members;
- Financial services needed/desired;
- Financial services to be provided to members of all segments within the field of membership;
- How/when services are to be implemented;
- Organizational/management plan addressing qualification and planned training of officials/employees;
- Continuity plan for directors, committee members and management staff;
- Operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;
- Type of record keeping and data processing system;
- Detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions—*e.g.*, loan and dividend rates;
- Plans for operating independently;
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);
- Source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and
- Evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.

While the business plan may be prepared with outside assistance, the subscribers and proposed officials must understand and support the submitted business plan.

V—Steps in Organizing a Federal Credit Union

V.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit wording for the proposed field of membership (the persons, organizations and other legal entities the credit union will serve) to NCUA early in the application process for written preliminary approval. The proposed field of membership must meet all common bond or community requirements.

Once the field of membership has been given preliminary approval, and the organizer is satisfied the application has merit, the organizer should conduct an organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at these meetings.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

V.B—Charter Application Documentation

V.B.1—General

As discussed previously in this Chapter, the organizer of a federal credit union charter must, at a minimum, provide evidence that:

- The group(s) possess an appropriate common bond or the geographical area to be served is a well-defined local community, neighborhood, or rural district;
- The subscribers, prospective officials, and employees are of good character and fitness; and
- The establishment of the credit union is economically advisable.

As part of the application process, the organizer must submit the following forms, which are available in Appendix D of this Manual:

- Federal Credit Union Investigation Report, NCUA 4001;
- Organization Certificate, NCUA 4008;
- Report of Official and Agreement to Serve, NCUA 4012;
- Application and Agreements for Insurance of Accounts, NCUA 9500; and
- Certification of Resolutions, NCUA 9501.

Each of these forms is described in more detail in the following sections.

V.B.2—Federal Credit Union Investigation Report, NCUA 4001

The application for a new federal credit union will be submitted on NCUA 4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See Chapter 4 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request.

V.B.3—Organization Certificate, NCUA 4008

This document, which must be completed by the subscribers, includes the seven criteria established by the Federal Credit Union Act. NCUA staff assigned to the case will assist in the proper completion of this document.

V.B.4—Report of Official and Agreement to Serve, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official and employee must complete and sign this form. The organizer must review each of the NCUA 4012s for elements that would prevent the prospective official or employee from serving. Further, such factors as serious, unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

V.B.5—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. A federal credit union must qualify for federal share insurance.

V.B.6—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for NCUSIF insurance of member accounts and has authorized the chief executive officer and recording officer to execute the Application and Agreements for Insurance of Accounts. Both the chief executive officer and recording officer of the proposed federal credit union must sign this form.

VI—Name Selection

It is the responsibility of the federal credit union organizers or officials of an existing credit union to ensure that the proposed federal credit union name or federal credit union name change does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the credit union's name:

- Is not already being officially used by another federal credit union;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

The word "community," while not required, can only be included in the name of federal credit unions that have been granted a community charter.

VII—NCUA Review

VII.A—General

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizer. At some point during the review process, a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

NCUA staff will review the application package and verify its accuracy and reasonableness. A staff member will inquire into the financial management experience and the suitability and commitment of the proposed officials and employees, and will make an assessment of economic advisability. The staff member will also provide guidance to the subscribers in the proper completion of the Organization Certificate, NCUA 4008.

Credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizer and subscribers to reduce the likelihood of delays in the chartering process.

The staff member will analyze the prospective credit union's business plan for realistic projections, attainable goals, adequate service to all segments of the field of membership, sufficient start-up capital, and time commitment by the proposed officials and employees. Any concerns will be reviewed with the organizer and discussed with the prospective credit union's officials. Additional on-site contacts by NCUA staff may be necessary. The organizer and subscribers will be expected to take the steps necessary to resolve any issues or concerns. Such resolution efforts may delay processing the application.

NCUA staff will then make a recommendation to the regional director regarding the charter application. The recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective officials to adhere to certain operational guidelines. Generally, the agreement is for a limited term of two to four years. A sample Letter of Understanding and Agreement is found in Appendix B.

VII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and standard bylaws from the regional director. Additionally, the officials will be advised of the name of the examiner assigned responsibility for supervising and examining the credit union.

VII.C—Regional Director Disapproval

When a regional director disapproves any charter application, in whole or in part, the organizer will be informed in writing of the specific reasons for the disapproval. Where applicable, the regional director will provide information concerning options or suggestions that the applicant could consider for gaining approval or otherwise acquiring credit union service. The letter of denial will include the procedures for appealing the decision.

VII.D—Appeal of Regional Director Decision

If the regional director denies a charter application, in whole or in part, that decision may be appealed to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reasons for denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal with a recommendation to the NCUA Board.

Before appealing, the prospective group may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The request will not be considered as an appeal, but as a request for

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reconsideration by the regional director. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the charter application is again denied, the group may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

VII.E—Commencement of Operations

Assistance in commencing operations is generally available through the various credit union trade organizations listed in Appendix E.

All new federal credit unions are also encouraged to establish a mentor relationship with a knowledgeable, experienced credit union individual or an existing, well-operated credit union. The mentor should provide guidance and assistance to the new credit union through attendance at meetings and general oversight review. Upon request, NCUA will provide assistance in finding a qualified mentor.

VIII—Future Supervision

Each federal credit union will be examined regularly by NCUA to determine that it remains in compliance with applicable laws and regulations and to determine that it does not pose undue risk to the NCUSIF. The examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation).

The examiner will be responsible for monitoring the progress of the credit union and providing the necessary advice and guidance to ensure it is in compliance with applicable laws and regulations. The examiner will also monitor compliance with the terms of any required Letter of Understanding and Agreement. Typically, the examiner will require the credit union to submit copies of monthly board minutes and financial statements.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any new board member, credit or supervisory committee member, or senior executive officer. Section 701.14 of the NCUA Rules and Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change.

NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual indicates it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union. If a Notice of Disapproval is issued, the credit union may appeal the decision to the NCUA Board.

IX—Corporate Federal Credit Unions

A corporate federal credit union is one that is operated primarily for the purpose of serving other credit unions. Corporate federal credit unions operate under and are administered by the NCUA Office of Corporate Credit Unions.

X—Groups Seeking Credit Union Service

NCUA will attempt to assist any group in chartering a credit union or joining an existing credit union. If the group is not eligible for federal credit union service, NCUA will refer the group to the appropriate state supervisory authority where different requirements may apply.

XI—Field of Membership Designations

NCUA will designate a credit union based on the following criteria:

Single Occupational: If a credit union serves a single occupational sponsor, such as ABC Corporation, it will be designated as an occupational credit union. A single occupational common bond credit union may also serve a trade, industry, or profession (TIP), such as all teachers.

Single Associational: If a credit union serves a single associational sponsor, such as the Knights of Columbus, it will be designated as an associational credit union.

Multiple Common Bond: If a credit union serves more than one group, each of which has a common bond of occupation and/or association, it will be designated as a multiple common bond credit union.

Community: All community credit unions will be designated as such, followed by a description of their geographic boundaries (*e.g.* city or county).

Credit unions desiring to confirm or submit an application to change their designations should contact the appropriate NCUA regional office.

XII—Foreign Branching

Federal credit unions are permitted to serve foreign nationals within their fields of membership wherever they reside provided they have the ability, resources, and management expertise to serve such persons. Before a credit union opens a branch outside the United States, it must submit an application to do so and have prior written approval of the regional director. A federal credit union may establish a service facility on a United States military installation or United States embassy without prior NCUA approval. Refer to Section 741.11 of NCUA's Rules and Regulations for application and business plan requirements.

Chapter 2—Field of Membership Requirements for Federal Credit Unions

I—Introduction

I.A.1—General

As set forth in Chapter 1, the Federal Credit Union Act provides for three types of federal credit union charters—single common bond (occupational or associational), multiple common bond (multiple groups), and community. Section 109 (12 U.S.C. 1759) of the Federal Credit Union Act sets forth the membership criteria for each of these three types of credit unions.

The field of membership, which is specified in Section 5 of the charter, defines those persons and entities eligible for membership. A single common bond federal credit union consists of one group having a common bond of occupation or association. A multiple common bond federal credit union consists of more than one group, each of which has a common bond of occupation or association. A community federal credit union consists of persons or organizations within a well-defined local community, neighborhood, or rural district.

Once chartered, a federal credit union can amend its field of membership; however, the same common bond or community requirements for chartering the credit union must be satisfied. Since there are differences in the three types of charters, special rules, which are fully discussed in the following sections of this Chapter, may apply to each.

I.A.2—Special Low-Income Rules

Generally, federal credit unions can only grant loans and provide services to persons who have joined the credit union. The Federal Credit Union Act states that one of the purposes of federal credit unions is "to serve the productive and provident credit needs of individuals of modest means." Although field of membership requirements are applicable, special rules set forth in Chapter 3 may apply to low-income designated credit unions and those credit unions assisting low-income groups or to a federal credit union that adds an underserved community to its field of membership.

II—Occupational Common Bond

II.A.1—General

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in five ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond;
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, Section III.A.1); or
- Employment in the same Trade, Industry, or Profession (TIP) (see Chapter 2, Section II.A.2).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served may be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation and subsidiaries;
- Employees of ABC Corporation who are paid from * * *;
- Employees of ABC Corporation who are supervised from * * *;
- Employees of ABC Corporation who are headquartered in * * *; and/or
- Employees of ABC Corporation who work in the United States.

The corporate or other legal entity (*i.e.*, the employer) may also be included in the common bond—*e.g.*, "ABC Corporation." The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of single occupational common bonds are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);
- Employees of and students attending Georgetown University. (common bond—same occupation);
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer); or
- All licensed nurses in Fairfax County (occupational common bond TIP).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor; overly broad TIP);
- Persons employed or working in Chicago, Illinois. (no occupational common bond);

II.A.2—Trade, Industry, or Profession

A common bond based on employment in a trade, industry, or profession can include employment at any number of corporations or other legal entities that—while not under common ownership—have a common bond by virtue of producing similar products or providing similar services.

In general, a geographic limitation is required for a TIP credit union. The geographic limitation will be part of the credit union's charter. More than one federal credit union may serve the same trade, industry, or profession, even if both credit unions are in the same geographic location.

This type of occupational common bond is only available to single common bond credit unions. A TIP cannot be added to a multiple common bond or community field of membership.

To obtain a TIP designation, the proposed or existing credit union must submit a request to the regional director. New charter applicants must follow the documentation requirements in Chapter 1. A business plan on how the credit union will serve the group must be submitted with the request to serve the TIP. The business plan also must address how the credit union will verify the TIP. Examples of such verification include state licenses, professional licenses, organizational memberships, pay statements, union membership, or employer certification. The regional director must approve this type of field of membership before a credit union can convert to a TIP. After conversion, a credit union can retain members of record but cannot add new members from its previous group or groups, unless its part of the TIP.

While proposed or existing single common bond credit unions have some latitude in defining a trade, industry, or profession occupational common bond, it cannot be defined so broadly as to include groups in fields which are not closely related. For example, all textile workers, all nurses, all airline employees, or all U.S. military personnel may qualify under this category. However, employees of all manufacturing companies would not. The common bond relationship must be one that demonstrates a narrow commonality of interests within a specific trade, industry, or profession. If a credit union wants to serve a physician TIP, they can serve all physicians but that does not mean they can also serve all clerical staff in the office. However, if the TIP is based on the health care industry then clerical staff would be able to be served by the credit union. Clients or customers of the TIP are not eligible for credit union membership (*e.g.*, patients in hospitals).

Any company that is involved in more than one industry cannot be included in an industry TIP (*e.g.*, a company that makes tobacco products, food products, and electronics). However, employees of these companies may be eligible for membership in a

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trade/professional occupational common bond.

Section II.B on Occupational Common Bond amendments does not apply to a TIP common bond. Unless NCUA has safety and soundness concerns, removing or changing a geographical limitation can be processed as a housekeeping amendment. If safety and soundness concerns are present, the regional director may require additional information before the request can be processed.

Section II.H applies to TIP designated credit unions except for retirees and corporate accounts.

If a TIP designated credit union wishes to convert to a different TIP or employer-based occupational common bond, or different charter type, it only retains members of record after the conversion.

II.B—Occupational Common Bond Amendments

II.B.1—General

Section 5 of every single occupational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new group sharing the credit union's common bond is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, if the entire field of membership is acquired by another corporation, the credit union can serve the employees of the new corporation and any subsidiaries after receiving NCUA approval.

Third, a federal credit union qualifies to change its common bond from:

- A single occupational common bond to a single associational common bond;
- A single occupational common bond to a community charter; or
- A single occupational common bond to a multiple common bond.

Fourth, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or because a portion of the group is no longer in existence.

An existing single occupational common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the occupational common bond requirement has been met.

The regional director must approve all amendments to an occupational common bond credit union's field of membership. The regional director may approve an amendment to expand the field of membership if:

- The common bond requirements of this section are satisfied;
- The group to be added has provided a written request for service to the credit union; and
- The change is economically advisable.

II.B.2—Corporate Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

II.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

II.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015–EZ must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's occupational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- The number of persons currently included within the group to be added and their locations.

II.C—NCUA'S Procedures for Amending the Field of Membership

II.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

II.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. NCUA will carefully consider the economic advisability of expanding the field of membership of a credit union with financial or operational problems.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

II.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

II.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

II.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director. A second request for reconsideration, will be treated as an appeal to the NCUA Board.

II.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single occupational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

II.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this chapter apply to mergers where the continuing credit union has a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single occupational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

II.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a single occupational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is also an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's original single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

II.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of

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the purchased and/or assumed credit union and, as applicable, the state regulators.

II.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have a common bond (applies only to single occupational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

II.E—Overlaps

II.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single occupational federal credit unions to overlap any other charter without performing an overlap analysis.

II.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership.

If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

II.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

II.F—Charter Conversion

A single occupational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single occupational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

II.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

II.H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Member of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

III—Associational Common Bond

III.A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds should include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and any other equivalent documentation.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, such as:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- Whether the association maintains a membership list;
- Whether the association sponsors other activities;
- The association's membership eligibility requirements; and
- The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups constitute associational common bonds and may qualify for a federal credit union charter.

Student groups (*e.g.* students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter (see Chapter 2,II.A).

Homeowner associations, tenant groups, co-ops, consumer groups, national associations, and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may also qualify as an association.

The terminology "Alumni of Jacksonville State University" is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—*e.g.*, "Sprocket Association"—and will be shown in the last clause of the field of membership.

III.A.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter

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and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration and approval prior to serving members of the association added as a result of the change.

III.A.3—Sample Single Associational Common Bonds

Some examples of associational common bonds are:

- Regular members of Locals 10 and 13, IBEW, in Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 2001;
- Members of the Hoosier Farm Bureau in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1997;
- Members of the Shalom Congregation in Chevy Chase, Maryland;
- Regular members of the Corporate Executives Association, located in Westchester, New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1997;
- Members of the University of Wisconsin Alumni Association, located in Green Bay, Wisconsin;
- Members of the Marine Corps Reserve Officers Association; or
- Members of St. John's Methodist Church and St. Luke's Methodist Church, located in Toledo, Ohio.

Some examples of insufficiently defined single associational common bonds are:

- All Lutherans in the United States (too broadly defined); or
- Veterans of U.S. military service (group is too broadly defined; no formal association of all members of the group).

Some examples of unacceptable single associational common bonds are:

- Alumni of Amos University (no formal association);
- Customers of Fleetwood Insurance Company (policyholders or primarily customer/client relationships do not meet associational standards);
- Employees of members of the Reston, Virginia Chamber of Commerce (not a sufficiently close tie to the associational common bond); or
- Members of St. John's Lutheran Church and St. Mary's Catholic Church located in Anniston, Alabama (churches are not of the same denomination).

III.B—Associational Common Bond Amendments

III.B.1—General

Section 5 of every associational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons who, or legal entities that, join the credit union and are specified in the field of membership can be served. There are three instances in which Section 5 must be amended by NCUA.

First, a new group that shares the credit union's common bond is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its common bond from:

- A single associational common bond to a single occupational common bond;
- A single associational common bond to a community charter; or
- A single associational common bond to a multiple common bond.

Third, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or a portion of the group is no longer in existence.

An existing single associational federal credit union that submits a request to amend its charter must provide documentation to establish that the associational common bond requirement has been met.

The regional director must approve all amendments to an associational common bond credit union's field of membership. The regional director may approve an amendment to expand the field of membership if:

- The common bond requirements of this section are satisfied;
- The group to be added has provided a written request for service to the credit union; and
- The change is economically advisable.

III.B.2—Organizational Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event requiring a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

III.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely impact on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

III.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015–EZ must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's associational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- The number of persons currently included within the group to be added and their locations.

III.C—NCUA Procedures for Amending the Field of Membership

III.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

III.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

III.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

III.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

III.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director. A second request for reconsideration will be treated as an appeal to the NCUA Board.

III.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single associational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

III.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single associational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a single associational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging

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credit union and, as applicable, the state regulators.

III.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

III.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have the same common bond (applies only to single associational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

III.E—Overlaps.

III.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single associational federal credit unions to overlap any other charters without performing an overlap analysis.

III.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership. If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

III.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

III.F—Charter Conversions

A single associational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single associational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

III.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

III.H—Other Persons Eligible for Credit Union Membership

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers;
- Member of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

IV—Multiple Occupational/ Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot include a TIP or expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch network that a credit union has an ownership interest in.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's "paid from" or "supervised from" location is within the service area.

IV.A.2—Sample Multiple Common Bond Field of Membership

An example of a multiple common bond field of membership is:

"The field of membership of this federal credit union shall be limited to the following:

1. Employees of Teltex Corporation who work in Wilmington, Delaware;
2. Partners and employees of Smith & Jones, Attorneys at Law, who work in Wilmington, Delaware;
3. Members of the M&L Association in Wilmington, Delaware, who qualify for membership in accordance with its charter and bylaws in effect on December 31, 1997."

IV.B—Multiple Common Bond Amendments

IV.B.1—General

Section 5 of every multiple common bond federal credit union's charter defines the field of membership and select groups the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new select group is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its charter from:

- A single occupational or associational charter to a multiple common bond charter;
- A multiple common bond to a single occupational or associational charter;
- A multiple common bond to a community charter; or
- A community to a multiple common bond charter.

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Third, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or because the group no longer exists.

IV.B.2—Numerical Limitation of Select Groups

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. The regional director must approve all amendments to a multiple common bond credit union's field of membership.

NCUA will approve groups to a credit union's field of membership if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;
- The credit union is "adequately capitalized." NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.
- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;
- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and
- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

IV.B.3—Documentation Requirements

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015 or NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015–EZ (for groups less than 3,000 potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
  - That the group wants to be added to the applicant federal credit union's field of membership;
  - The number of persons currently included within the group to be added and their locations; and
  - The group's proximity to credit union's nearest service facility.
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015 (for groups of 3,000 or more primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
  - The group's occupational or associational common bond;
  - That the group wants to be added to the federal credit union's field of membership;
  - Whether the group presently has other credit union service available;
  - The number of persons currently included within the group to be added and their locations;
  - The group's proximity to credit union's nearest service facility, and
  - Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards, and provide comments on as many of the following factors as are applicable. A credit union need not address every item on the list, simply those issues that are relevant to its particular request:
- Member location—whether the membership is widely dispersed or concentrated in a central location.
- Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.
- Market competition—the availability of other financial services.
- Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.
- Sponsor subsidies—the availability of operating subsidies.
- The desire of the sponsor.
- Employee interest—the extent of the employees' interest in obtaining a credit union charter.
- Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.
- Administrative capacity to provide services—will the group have the management expertise to provide the services requested.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

IV.B.4—Corporate Restructuring

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion; therefore, the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

IV.C—NCUA'S Procedures for Amending the Field of Membership

IV.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

IV.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. An expanded field of membership may provide the basis for reversing adverse trends. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's adverse trends. The applicant credit union must clearly establish that the approval of the expanded field of membership meets the requirements of Section IV.B.2 of this Chapter and will not increase the risk to the NCUSIF.

IV.C.3—Regional Director's Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

IV.C.4—Regional Director's Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

IV.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. A request for reconsideration will contain new and material evidence. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of date of the last denial by the regional director. A second request for reconsideration will be treated as an appeal to the NCUA Board.

IV.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of select groups, there are three additional ways a multiple common bond federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership of another credit union through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

IV.D.1—Voluntary Mergers

a. All Select Groups in the Merging Credit Union's Field of Membership Have Less Than 3,000 Primary Potential Members.

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or More Select Groups in the Merging Credit Union's Field of Membership has 3,000 or More Primary Potential Members.

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a Single Common Bond Credit Union Into a Multiple Common Bond Credit Union.

A financially healthy single common bond credit union with a primary potential membership of 3,000 or more cannot merge into a multiple common bond credit union, absent supervisory reasons.

d. Merger Approval.

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

IV.D.2—Supervisory Mergers

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of

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insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

IV.D.3—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership rules, the 3,000 numerical limitation, or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions including numerical limitation requirements and without changing the character of the continuing federal credit union for future amendments. Under this authority, any single occupational or associational common bond, multiple common bond, or community charter may merger into a multiple common bond credit union and that credit union can continue to serve the merging credit union's field of membership. Subsequent field of membership expansions of the continuing multiple common bond credit union must be consistent with multiple common bond policies.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

IV.D.4—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to field of membership expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, without regard to field of membership restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments. Subsequent field of membership expansions must be consistent with multiple common bond policies.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

IV.D.5—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new charter or goes to an existing federal charter.

The request for approval of a spun-off group must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

IV.E—Overlaps

IV.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an expansion request if the group has 3,000 or more primary potential members. If cases arise where the assurance given to a regional director concerning the unavailability of credit union service is inaccurate, the

misinformation may be grounds for removal of the group from the federal credit union's charter.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will approve an overlap if the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

IV.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This can be accomplished through a housekeeping amendment.

Credit unions must submit to NCUA documentation explaining the restructuring and provide information regarding the new organizational structure.

IV.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

IV.F—Charter Conversion

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter, which do not qualify in the new charter, cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion.

IV.G—Removal of Groups From the Field of Membership

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support;
- The group initiates action to be removed from the field of membership; or
- The federal credit union wishes to convert to a single common bond.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

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IV.H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Member of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

V—Community Charter Requirements

V.A.1—General

Community charters must be based on a single, geographically well-defined local community, neighborhood, or rural district where individuals have common interests and/or interact. More than one credit union may serve the same community.

NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, attend school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership.

NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined;
- The area is a "well-defined local, community, neighborhood, or rural district;" and
- Individuals must have common interests and/or interact.

V.A.2—Documentation Requirements

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

"Well-defined" means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or a clearly identifiable neighborhood. Although congressional districts and state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community.

The well-defined local community, neighborhood, or rural district requirement is met if:

- The area to be served is in a recognized single political jurisdiction, *i.e.*, a city, county, or its political equivalent, or any contiguous political subdivisions contained therein.

The well-defined local community, neighborhood, or rural district requirement may be met if:

- The area to be served is in multiple contiguous political jurisdictions, *i.e.* a city, county, or its political equivalent, or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 500,000; or
- The area to be served is a Metropolitan Statistical Area (MSA) or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed 1,000,000.

If the proposed area meets either the multiple political jurisdiction or MSA criteria, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests.

If NCUA does not find sufficient evidence of community interaction and/or common interests or if the area to be served does not meet the MSA or multiple political jurisdiction requirements of the preceding paragraph, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district.

It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- A local map designating the area to be served and locations of current and proposed service facilities and a regional or state map with the proposed community outlined; or
- Other documentation that demonstrates that the area is a community where individuals have common interests and/or interact.

An applicant need not submit a narrative summary or documentation to support a proposed community charter, amendment or conversion as a well-defined local community, neighborhood or rural district if the NCUA has previously determined that the same exact geographic area meets that requirement in connection with consideration of a prior application under IRPS 99–1, as amended. Applicants may contact the appropriate regional office to find out if the area they are interested in has already been determined to meet the community requirements. If the area is the same as a previously approved area, an applicant need only include a statement to that effect in the application. Applicants may be required to submit their own summary and documentation regarding the community requirements if NCUA has reason to believe that prior submissions are no longer accurate.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plan submitted with their application.

V.A.3—Special Documentation Requirements for A Converting Credit Union

An existing federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership but outside the new community credit union's boundaries may not be included in the new community charter. Therefore, the credit union is required to notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

The documentation requirements set forth in Section V.A.2 of this Chapter must be met before a community charter can be approved. Demonstrating community support, as discussed in Chapter 1, is not required for converting credit unions. In order to support a case for a conversion to community charter, the applicant federal credit union must develop a business plan incorporating the following data:

- Pro forma financial statements for the first two years after the proposed conversion, including assumptions—*e.g.*, member, share, loan, and asset growth;
- Marketing plan addressing how the community will be served;
- Financial services to be provided to members;
- Location of service facilities; and
- Anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the institution will be viable and capable of providing services to its members.

V.A.4—Community Boundaries

The geographic boundaries of a community federal credit union are the areas defined in its charter. The boundaries can be defined using streets, rivers, railroads, etc.

A community that is a recognized legal entity, may be stated in the field of membership—for example, "Gus Township, Texas" or "Kristi County, Virginia."

A community that is a recognized MSA must state in the field of membership the political jurisdiction(s) that comprise the MSA.

V.A.5—Special Community Charters

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.6—Sample Community Fields of Membership

A community charter does not have to include all four affinities (*i.e.*, live, work, worship, or attend school in a community). Some examples of community fields of membership are:

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois;
- Persons who live, worship, work, or attend school on the University of Dayton campus, in Dayton, Ohio; or
- Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York.
- Persons who live, work, or worship in the Binghamton, New York, MSA, consisting of Broome and Tioga Counties, New York.

Some examples of insufficiently defined community field of membership definitions are:

- Persons who live or work within and businesses located within a ten-mile radius of Washington, D.C. (using a radius does not establish a well-defined area); or
- Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district).
- Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

- Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).
- Persons who live in the first congressional district of Florida. (does not meet the definition of local community, neighborhood, or rural district).

V.B—Field of Membership Amendments

A community credit union may amend its field of membership by adding additional affinities or removing exclusionary clauses. This can be accomplished with a housekeeping amendment.

A community credit union also may expand its geographic boundaries. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests or interact. The credit union must follow the requirements of Section V.A.3 of this chapter.

V.C—NCUA Procedures for Amending the Field of Membership

V.C.1—General

All requests for approval to amend a community credit union's charter must be submitted to the appropriate regional director. If a decision cannot be made within a reasonable period of time, the regional director will notify the credit union.

V.C.2—NCUA's Decision

The financial and operational condition of the requesting credit union will be considered in every instance.

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The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

V.C.3—NCUA Approval

If the requested amendment is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

V.C.4—NCUA Disapproval

When NCUA disapproves any application to amend the field of membership, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

V.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The regional director will not consider the request as an appeal, but a request for reconsideration. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the charter amendment is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director. A second request for reconsideration will be treated as an appeal to the NCUA Board.

V.D—Mergers, Purchase and Assumptions, and Spin-Offs

There are three additional ways a community federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

V.D.1—Standard Mergers

Generally, the requirements applicable to field of membership expansions apply to mergers where the continuing credit union is a community federal charter.

Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries. A community credit union cannot merge into a single occupational/associational, or multiple common bond credit union, except in an emergency merger. However, a single occupational or associational, or multiple common bond credit union can merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the new community charter. While a community charter may take in an occupational, associational, or multiple common bond credit union in a merger, it will remain a community charter.

Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. The merging credit union must notify groups that will be removed from the field of membership as a result of the merger. However, the credit union may continue to serve members of record.

Where a state credit union is merging into a community federal credit union, the continuing federal credit union's field of membership will be worded in accordance with NCUA policy. Any subsequent field of membership expansions must comply with applicable amendment procedures.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

V.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership requirements or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record-keeping; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions, including the service facility requirement, without changing the character of the continuing federal credit union for future amendments. Under this authority, a federal credit union may take in any dissimilar field of membership.

Even though the merging credit union is a single common bond credit union or multiple common bond credit union or community credit union, the continuing credit union will remain a community charter. Future community expansions will be based on the continuing credit union's original community area.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

V.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to community expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most instances, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities may also be acquired without regard to field of membership restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the P&A does not meet the emergency criteria, then only members of record can be obtained unless they otherwise qualify for membership in the community charter.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

V.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All field of membership requirements apply regardless of whether the spun-off group goes to a new or existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the field of membership requirements are met;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a portion of the community, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

V.E—Overlaps

V.E.1—General

Generally, an overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit community credit unions to overlap any other charters without performing an overlap analysis.

V.E.2—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group or community otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

V.F—Charter Conversions

Although rare, a community federal credit union may convert to a single occupational or associational, or multiple common bond credit union. The converting credit union must meet all occupational, associational, and multiple common bond requirements, as applicable. The converting credit union may continue to serve members of record of the prior field of membership as of the date of the conversion, and any groups or communities obtained in an emergency merger or P&A. A change to the credit union's field of membership and designated common bond will be necessary.

Although rare, a community credit union may convert to serve a new geographical area provided the field of membership requirements of V.A.3 of this chapter are met. Members of record of the original community can continue to be served.

V.G—Other Persons With a Relationship to the Community

A number of persons who have a close relationship to the community may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers in the community;
- Member of the immediate family or household; and
- Organizations of such persons

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

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Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

Chapter 3—Low-Income Credit Unions and Credit Unions Serving Underserved Areas

I—Introduction

One of the primary reasons for the creation of federal credit unions is to make credit available to people of modest means for provident and productive purposes. To help NCUA fulfill this mission, the agency has established special operational policies for federal credit unions that serve low-income groups and underserved areas. The policies provide a greater degree of flexibility that will enhance and invigorate capital infusion into low-income groups, low-income communities, and underserved areas. These unique policies are necessary to provide credit unions serving low-income groups with financial stability and potential for controlled growth and to encourage the formation of new charters as well as the delivery of credit union services in low-income communities.

II—Low-Income Credit Union

II.A—Defined

A credit union serving predominantly low-income members may be designated as a low-income credit union. Section 701.34 of NCUA's Rules and Regulations defines the term "low-income members" as those members:

- Who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics; or
- Whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau.

The term "low-income members" also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

To obtain a low-income designation from NCUA, an existing credit union must establish that a majority of its members meet the low-income definition. An existing community credit union that serves a geographic area where a majority of residents meet the annual income standard is presumed to be serving predominantly low-income members.

II.B—Special Programs

A credit union with a low-income designation (except student credit unions) has greater flexibility in accepting non-member deposits insured by the NCUSIF, are exempt from the aggregate loan limit on business loans, and may offer secondary capital accounts to strengthen its capital base. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions (CDRLP) if it is involved in the stimulation of economic development and community revitalization efforts.

The CDRLP provides both loans and grants for technical assistance to low-income credit unions. The requirements for participation in the revolving loan program are in Part 705 of the NCUA Rules and Regulations. Only operating credit unions are eligible for participation in this program.

II.C—Low-Income Documentation

A federal credit union charter applicant or existing credit union wishing to receive a low-income designation should forward a separate request for the designation to the regional director, along with appropriate documentation supporting the request.

For community charter applicants, the supporting material should include the median household income or annual wage figures for the community to be served. If this information is unavailable, the applicant should identify the individual zip codes or census tracts that comprise the community and NCUA will assist in obtaining the necessary demographic data.

Similarly, if single occupational or associational or multiple common bond charter applicants cannot supply income data on its potential members, they should provide the regional director with a list which includes the number of potential members, sorted by their residential zip codes, and NCUA will assist in obtaining the necessary demographic data.

An existing credit union can perform a loan or membership survey to determine if the credit union is primarily serving low-income members.

II.D—Third Party Assistance

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering and low-income designation process. If the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should not exceed the duration of one year subject to renewal.

II.E—Special Rules for Low-Income Federal Credit Unions

In recognition of the unique efforts needed to help make credit union service available to low-income groups, NCUA has adopted special rules that pertain to low-income credit union charters, as well as field of membership additions for low-income credit unions. These special rules provide additional latitude to enable underserved, low-income individuals to gain access to credit union service.

NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all of its members will meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations. Any multiple common bond credit union can add low-income associations to their fields of membership.

A low-income community federal credit union has additional latitude in serving persons who are affiliated with the community. In addition to serving members who live, work, worship, or go to school in the community, a low-income community federal credit union may also serve persons who perform volunteer services, participate in programs to alleviate poverty or distress, or who participate in associations headquartered in the community.

Examples of a low-income community and an associational-based low-income federal credit union are as follows:

- Persons who live in [the target area]; persons who regularly work, worship, attend school, perform volunteer services, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons.
- Members of the Canarsie Economic Assistance League, in Brooklyn, NY, an association whose members all meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations.

III—Service to Underserved Communities

III.A—General

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition of underserved areas in the Federal Credit Union Act. Adding an underserved area will not change the charter type of a federal credit union. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

For an underserved area, the well-defined local community, neighborhood, or rural district requirement is met if:

- The area to be served is in a recognized single political jurisdiction, *i.e.*, a city, county, or its political equivalent, or any contiguous political subdivisions contained therein;
- The area to be served is in multiple contiguous political jurisdictions, *i.e.* a city, county, or its political equivalent, or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 500,000; or
- The area to be served is located in a Metropolitan Statistical Area (MSA) or its equivalent where the population of the MSA or its equivalent does not exceed 1,000,000.

If the area to be served does not meet the MSA or multiple political jurisdiction requirements outlined above, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district.

For an underserved area, an investment area includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater
- An area where the unemployment rate is at least 1.5 times the national average;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;
- An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent;
- An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the five-year period preceding the most recent decennial census of at least 5 percent;
- An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

IV—Appeal Procedures for Underserved Areas

IV.A—NCUA Approval

If the requested underserved area is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

IV.B—NCUA Disapproval

When NCUA disapproves any application to add an underserved area, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

IV.C—Appeal of Regional Director Decision

If the regional director denies an underserved area request, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration must address the reasons for the initial denial. The request will not be considered as an appeal, but a request for reconsideration by the regional director. A request for reconsideration will contain new and material evidence. The regional director will have 30 days from the date of the

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receipt of the request for reconsideration to make a final decision. If the charter amendment is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director. A second request for reconsideration will be treated as an appeal to the NCUA Board.

Chapter 4—Charter Conversions

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation. Certain federal laws and regulations also apply to federally insured state chartered credit unions.

There are two types of charter conversions: federal charter to state charter and state charter to federal charter. Common bond and community requirements are not an issue from NCUA's standpoint in the case of a federal to state charter conversion. The procedures and forms relevant to both types of charter conversion are included in Appendix D.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion and file proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- comply with the requirements of the Federal Credit Union Act, *e.g.*, chartering and reserve requirements; and
- be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including an on-site examination by NCUA where appropriate. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. However, if the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record. The converting credit union may retain in its field of membership any group or community added pursuant to state emergency provisions.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V. If the state chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

II.B—Submission of Conversion Proposal to NCUA

The following documents must be submitted with the conversion proposal:

- Conversion of State Charter to Federal Charter (NCUA 4000);
- Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable, signed by the credit union officials.
- Report of Officials and Agreement to Serve (NCUA 4012);
- The Application to Convert From State Credit Union to Federal Credit Union (NCUA 4401);
- The Application and Agreements for Insurance of Accounts (NCUA 9500);
- Certification of Resolution (NCUA 9501);
- Written evidence of state regulator approval; and
- Business plan, as appropriate, including the most current financial report and delinquent loan schedule.

If the state charter is applying to become a federal community charter, it must also comply with the documentation requirements included in Chapter 2, Sections V.A.2.

II.C—NCUA Consideration of Application to Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert.

II.C.2—On-Site Review

NCUA may conduct an on-site examination of the books and records of the credit union. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement (LUA), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.C.5—NCUA Disapproval

When NCUA disapproves any application to convert to a federal charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

II.C.6—Appeal of Regional Director Decision

If a conversion to a federal charter is denied by the regional director, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's preliminary approval, the board must:

- Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;
- Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;
- Obtain a letter from the private share insurer (includes excess share insurers), if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director; and
- Submit a statement of the action taken to comply with any conditions imposed by the regional director in the preliminary approval of the conversion proposal and, if applicable, submit the signed LUA.

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board of directors has satisfactorily completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. A denial of a conversion application can be appealed. Refer to Section II.C.6 of this chapter.

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date of the conversion, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations.

As of the commencement of operations, the accounting system, records, and forms must conform to the standards established by NCUA.

II.E.4—Credit Union's Name

Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. The credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of "state credit union" stationery immediately, and discontinue using credit cards, ATM cards, etc. within 180 days after the effective date of the conversion, or the reissue date—whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the state chartered name can be used by the member until depleted.

II.E.5— Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

- Report of Officials (NCUA 4501); and
- Financial and Statistical Reports, as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union intends to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the application.

If the converting federal credit union does not intend to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non-federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations, and address the criteria set forth in Section 205(c) of the Federal Credit Union Act.

Where the state credit union will be non-federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal

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insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;
- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to all members (NCUA 4506);
- Evidence that the state regulator is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

III.D—Approval of Proposal To Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigation into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.D.5—NCUA Disapproval

When NCUA disapproves any application to convert to a state charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

III.D.6—Appeal of Regional Director Decision

If the regional director denies a conversion to a state charter, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

III.E—Approval of Proposal by Members

The members may not vote on the proposal until it is approved by the regional director. Once approval of the proposal is received, the following actions will be taken by the board of directors:

- The proposal must be submitted to the members for approval and a date set for a meeting to vote on the proposal. The proposal may be acted on at the annual meeting or at a special meeting for that purpose. The members must also be given the opportunity to vote by written ballot to be filed by the date set for the meeting.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted. The notice must:

—Specify the purpose, time and place of the meeting;

—Include a brief, complete, and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;

—Specify the costs of the conversion, i.e., changing the credit union's name, examination and operating fees, attorney and consulting fees, tax liability, etc.;

—Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;

—Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and

—State in bold face type that the issue will be decided by a majority of members who vote.

- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition, provided federal insurance is maintained. If the proposed state chartered credit union will not be federally insured, 20 percent of the total membership must participate in the voting, and of those, a majority must vote in favor of the proposal. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposal for conversion is approved by a majority of all members who voted, the board of directors will:

- Ensure that all requirements of state law and the state regulator have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert; and
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay. The regional director may set a new date for the conversion to be completed.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state regulator in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effective and completed until the improper actions and steps have been corrected.
- Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.
- If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.
- There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements.
- The credit union shall neither use the words "Federal Credit Union" in its name nor represent itself in any manner as being a federal credit union.
- Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. Unless it violates state law, the credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of "federal credit union" stationery immediately, and discontinue using credit cards, ATM cards, etc. within 180 days after the effective date of the conversion, or the reissue date—whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the federal chartered name can be used by the member until depleted. If the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance.
- If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

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APPENDIX A

GLOSSARY

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA Rules and Regulations, as well as state laws, may be used for further reference.

Adequately capitalized - A credit union is considered adequately capitalized when it has a net worth ratio of at least 6 percent. A multiple common bond credit union must be adequately capitalized in order to add new groups to its charter. The regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

Affinity - A relationship upon which a community charter is based. Acceptable affinities include living, working, worshiping, or attending school in a community.

Appeal - The right of a credit union or charter applicant to request a formal review of a regional director's adverse decision by the National Credit Union Administration Board.

Associational common bond - A common bond comprised of members and employees of a recognized association. It includes individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

Business plan - Plan submitted by a charter applicant or existing federal credit union addressing the economic advisability of a proposed charter or field of membership addition.

Charter - The document which authorizes a group to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Common bond - The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a federal credit union or being included in an existing federal credit union's field of membership: occupational - employment by the same company, related companies or in a trade,

industry, or profession (TIP); and associational - membership in the same association.

Community credit union - A credit union whose field of membership consists of persons who live, work, worship, or attend school in the same well-defined local community, neighborhood, or rural district.

Credit union - A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services.

Economic advisability - An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

Emergency merger - Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to common bond policy.

Exclusionary clause - A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group which otherwise could be included in its field of membership.

Federal share insurance - Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership - The persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

Household - Persons living in the same residence maintaining a single economic unit.

Housekeeping Amendment - A field of membership amendment to delete groups, change group names, change group locations, remove exclusionary clauses, and to add other persons eligible for credit union membership by virtue of their close relationship to a common bond group or the community for community charters.

Immediate family member - A spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Letter of Understanding and Agreement - Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants for a limited time.

Mentor - An individual who provides guidance and assistance to newly chartered, small, or low-income credit unions. All new federal credit unions are encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union.

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Metropolitan Statistical Area (MSA) - The Office of Management and Budget defines a metropolitan statistical area as an urbanized area that has at least one urbanized area in excess of 50,000 and "comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting."

Merger - Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

Multiple common bond credit union - A credit union whose field of membership consists of more than one group, each of which has a common bond of occupation or association.

Occupational common bond - Employment by the same entity or related entities or a Trade, Industry, or Profession.

Once a member, always a member - A provision of the Federal Credit Union Act which permits an individual to remain a member of the credit union until he or she chooses to withdraw or is expelled from the membership of the credit union. Under this provision, leaving a group that is named in the credit union's charter does not terminate an individual's membership in the credit union.

Organizations of such persons - An organization or organizations composed exclusively of persons who are within the field of membership of the credit union.

Overlap - The situation which results when a group is eligible for membership in more than one credit union.

Primary potential members - Members or employees who belong to an associational or occupational group.

Purchase and assumption - Purchase of all or part of the assets of and assumption of all or part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Service area - The area that can reasonably be served by the service facilities accessible to the groups within the field of membership.

Service facility - A place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch network that a credit union has an ownership interest in. A service facility does not include an

ATM for purposes of serving an underserved area.

Single associational common bond credit union - A credit union whose field of membership includes members and employees of a recognized association.

Single common bond credit union - A credit union whose field of membership consists of one group which has a common bond of occupation or association.

Single occupational common bond credit union - A credit union whose field of membership consists of employees of the same entity or related entities

Spin-off - The transfer of a portion of the field of membership, assets, liabilities, shares, and capital of one credit union to a new or existing credit union.

Subscribers - For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Trade, Industry, or Profession (TIP) - A single occupational common bond credit union based on employment in a trade, industry, or profession including employment at any number of corporations or other legal entities that while not under common ownership – have a common bond by virtue of producing similar products or providing similar services.

Underserved community - A local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The area must also be underserved based on other NCUA and federal banking agency data.

Unsafe or unsound practice - Any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund.

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APPENDIX B

LETTER OF UNDERSTANDING AND AGREEMENT

To the Board of Directors and Other Officials
_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the

credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ (day) of _____ (month) _____ (year).

NATIONAL CREDIT UNION ADMINISTRATION BOARD
ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

_____
Regional Director

_____ Federal Credit Union

By:

_____
Chief Executive Officer Date

_____
Chief Financial Officer Date

_____
Secretary Date

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APPENDIX C

NCUA OFFICES

CENTRAL OFFICE

1775 Duke Street
Alexandria, VA 22314-3428

Commercial: 703-518-6300

REGION I - Albany

9 Washington Square
Washington Avenue Extension
Albany, NY 12205-5512

Commercial: 518-862-7400
FAX: 518-862-7420

Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont

REGION II - Capital

1775 Duke Street, Suite 4206
Alexandria, VA 22314-3437

Commercial: 703-519-4600
FAX: 703-519-4620

Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia

REGION III - Atlanta

7000 Central Parkway, Suite 1600
Atlanta, GA 30328-4598

Commercial: 678-443-3000
FAX: 678-443-3020

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands

REGION IV - Chicago

4225 Naperville Road, Suite 125
Lisle, IL 60532-3658

Commercial: 630-955-4100
FAX: 630-955-4120

Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin, West Virginia

REGION V - AUSTIN

4807 Spicewood Springs Road, Suite 5200
Austin, TX 78759-8490

Commercial: 512-342-5600
FAX: 512-342-5620

Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas

REGION VI - Pacific

2300 Clayton Road, Suite 1350
Concord, CA 94520-2407

Commercial: 925-363-6200
FAX: 925-363-6220

Alaska, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming

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APPENDIX D

NCUA FORMS

Form Number	Form Title
NCUA 4000	Conversion of State Charter to a Federal Charter -- FCU Investigation Report
NCUA 4001	FCU Investigation Report
NCUA 4008	Charter
NCUA 4009	Approval of Organization Certificate & Certification of Insurance
NCUA 4012	Report of Official & Agreement to Serve
NCUA 4015	Application for Field of Membership Amendment
NCUA 4015-EZ	Application for Field of Membership Amendment (use for all single common bond expansions and multiple common bond expansions of less than 3,000)
NCUA 4221	Notice of Meeting of Members
NCUA 4401	Application to Convert from a State Credit Union to an FCU
NCUA 4505	Affidavit
NCUA 4506	Ballot for Conversion Proposal
NCUA 9500	Application and Agreement for Insurance of Accounts
NCUA 9501	Certification of Resolutions
NCUA 9600	Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts

CONVERSION OF STATE CHARTER TO FEDERAL CHARTER

FEDERAL CREDIT UNION INVESTIGATION REPORT

This report must be filled in completely and submitted with the other completed forms listed in Chapter 4 and in the instructions for this form.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed Name: _____ Federal Credit Union
Second Choice of Name: _____ Federal Credit Union

2. Contact Person _____ Bus. Tel. No./Area Code: _____ Res. Tel. No./Area Code: _____

3. The credit union will maintain its office at:

_____ (City) _____ (County) _____ (State) _____ (Zip)

4. Permanent mailing address of credit union: _____

5. Define proposed field of membership (Attach a copy of current state charter field of membership): _____

6. The board will have (an odd number 5 to 15) _____ members: the credit committee (an odd number, 3 to 7) _____ members: the supervisory committee (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

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B. CHARACTER AND FITNESS OF SUBSCRIBERS

7. Type or print the list of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**
***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**
***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**
***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**
***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**
***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**
***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**
***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**
***Name*:**	***Address*:**
***Occupation*:**	***Years of Membership*:**

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address: _____
_____
_____

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FORM 4000 INSTRUCTIONS

A. INFORMATION FOR CHARTERS AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 5. The principle office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual*."

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and address of the subscribers should be recorded legibly and completely in item 7 of this report. It is from this information that the Administration prepares Section 3 of the charter. The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Application to Convert, NCUA 4401 – one original;

2. Written evidence regarding whether the state regulator is in agreement with the conversion proposal;

3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;

4. Certificate of Resolution, NCUA 9501 - one original;

5. Organization Certificate, NCUA 4008-one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

6. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;

7. Most current financial report and delinquent loan schedule; and

8. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

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This form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name: _____ Federal Credit Union
   Second choice: _____ Federal Credit Union

2. Contact Person: _____
   Business Tel.: _____
   Residence Tel.: _____
   Address: _____
   _____
   _____

3. The credit union will maintain its offices at:

   _____
   (City, State, County, Zip Code)

3a. Proposed permanent mailing address of credit union:

   _____
   _____
   _____

4. Define proposed field of membership: _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____

5. The board will have (an odd number, 5 to 15) _____members; the credit committee will have (an odd number, 3 to 7) _____members; the supervisory committee will have (3 to 5) _____members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate.)

GENERAL INFORMATION

1. Potential membership: _____

   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).

   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.

   Number of people surveyed: _____
   Number of people responding to survey: _____
   Number of people pledging an initial deposit: _____
   Total dollars pledged: $_____
   Number pledging systematic savings: _____
   Total dollars pledged (per month): $_____

3. Number of persons attending the charter-organization meeting: _____

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____

   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

5. What facilities and assistance, if any, will the sponsor provide?
   _____Office Space (Describe) _____
   _____Office Supplies
   _____Payroll deductions
   _____Funding for start-up costs, if so $_____
   _____Other (Describe) _____
   _____
   _____
   _____

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6. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives?

_____

_____

_____

_____

NOTE: The officials' projected goals for share growth must be recorded in the business plan.

7. What provisions have been made to overcome potential difficulties?

_____

_____

_____

_____

Dates of planned contacts by organizer to determine progress and to assist the group:

(Date) (Date) (Date)

SPECIFIC INFORMATION - OCCUPATIONAL (same company) CHARTER APPLICANTS

1 How long has the sponsor company been in existence? _____

2. What was the highest number of employees during the past three years? _____ Lowest number during the past three years? _____ If a large variance, please explain. _____

_____

_____

_____

_____

3. Are there any contemplated changes in the corporate structure of the company? _____ If yes, explain. _____

_____

_____

_____

_____

4. Have there been any significant changes in the corporate structure in the past three years? _____ If yes, please explain. _____

_____

_____

_____

_____

5. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____ If yes, please explain. _____

_____

_____

_____

_____

6. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

_____

_____

_____

_____

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7. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

8. Are there other employees of the company who are not being included in the proposed field of membership? _____ If so, give the number and location of the other employees and explain why they are not included in the proposed credit union's field of membership. _____

SPECIFIC INFORMATION - OCCUPATIONAL (trade, industry or profession) CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members. _____

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SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

1. State the purpose and goals of the organization sponsoring this charter.

2. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed.

3. In what year was the organization established? _____ Is it incorporated? _____ Where is the headquarters located?

4. Give statistics as to trends in membership during the last five years.

5. What is the frequency of members' meetings? _____ Average attendance: _____ Dues required: _____

6. State the geographic territory where members reside.

7. Submit a copy of the current bylaws of the association, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement, with this application.

8. If the bylaws, constitution or articles of incorporation provide for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members.

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9. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment. _____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

c. What has been done towards organizing a credit union on an employee basis? Discuss fully. _____

SPECIFIC INFORMATION – MULTIPLE COMMON BOND CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members. _____

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SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

1. Community charters must be based on a well-defined local community, neighborhood, or rural district where individuals have common interests and/or interact. Describe how the proposed community area meets these requirements.

NOTE: Please refer to Chapter 2, Section IV of the "*Chartering and Field of Membership Manual*" when answering this question.

2. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals.

3. Describe the proposed area's specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly definable neighborhood.

4. Provide a map which clearly outlines the credit union's proposed community boundaries and identify proposed service facilities.

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C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the Organization Certificate (7 not more than 10 persons). Names should be IDENTICAL to signature on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

2. Are all of the subscribers within the field of membership? _____ Do they appear to be representative of the group described in the definition of the field of membership? _____ If not, explain. _____
_____
_____
_____
_____

3. Does your investigation indicate that the subscribers are persons of good character? _____ If not, explain. _____
_____
_____
_____
_____

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____ If not, explain. _____
_____
_____
_____
_____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____ If so, explain. _____
_____
_____

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_____

_____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served?_____

_____

_____

_____

_____

7. Is an application for a State Charter now pending? _____

8. Has the group ever had a credit union? _____ If so, when did it liquidate or merge? _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature: _____, Organizer
Organizer's Address: _____

_____

_____

Telephone No.: _____ Date: _____

FORM 4001 INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, Item 1 provides space for a second choice.

The territory of operations of a Federal Credit Union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual.*"

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;

2. The nature of the common bond;

3. The attitude of the:

   a. Management of the sponsor organization (if occupational based field of membership);

b. Officers of the sponsor association (if associational based field of membership);

c. Community leaders and/or *officers* of prominent associations or organizations in the area to be served (if community based field of membership);

4. The facilities available for credit union operations;

5. The availability of existing credit union service, and

6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item C. 1. of this report. It is from this information that the National Credit Union Administration prepares Section 3 of the charter. The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008-one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

2. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;

3. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan;

4. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original; and

5. Certificate of Resolution, NCUA 9501 - one original.

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NATIONAL CREDIT UNION ADMINISTRATION

_____ FEDERAL CREDIT UNION

(A corporation chartered under the laws of the United States)

CHARTER NO. _____

NCUA 4008
PAGE 1

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal Credit Union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal Credit Unions.

(1) The name of this credit union shall be _____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

NCUA 4008
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(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond: _____

_____

_____

_____

_____

_____

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS THEREOF we[1] have here unto subscribed our names this

_____ _____ _____
(day) (month) (year)

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Subscribed before me, an officer competent to administer oaths, at _____
CITY/STATE

this _____ _____ _____
(day) (month) (year)

Signed _____

Title _____
(Notary public or other competent officer)

1 At least seven signers none of whom should administer the oath

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APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. Seq.), the foregoing organization certificate and insurance of member accounts of _____ Federal Credit Union are approved this

_____ _____ _____
(day) (month) (year)

_____
CHAIRMAN
NATIONAL CREDIT UNION ADMINISTRATION

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: **NATIONAL CREDIT UNION ADMINISTRATION**

Proposed _____ Federal Credit Union
Title of Newly Elected/Appointed Credit Union

Name: _____ Position: _____
Mr./Ms./Mrs./Miss Last, First, Middle

Maiden Name (If Different From Above): _____

Address (Res.): _____
Street City, State, Zip Code

Phone + Area Code: _____

Place of Birth: _____ Date of Birth: _____

Employer: _____ Social Security Number: _____

Type of Business: _____

Number of years with present employer: _____ Your position title: _____

Education background (enter highest grade completed)
High School: _____ College: _____ Major Field of Study: _____

Other training or experience: _____
_____
_____
_____

Are you willing to accept the position of trust for which you have been selected and to remain in office until a qualified successor is found? ___ YES ___ NO

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal Credit Union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? ___ YES ___ NO

Estimated number of hours per month you will be able to donate as a volunteer: _____

IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON THE FOLLOWING PAGE:

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Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ___ YES ___ NO

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used: _____and,
2. Previous address, (if your address changed over the past 2 years):

_____
_____
_____

3. Name of Spouse: _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side of this form.

_____

Date Signature Witness

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.68 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on the previous page was YES:

CRIMINAL OFFENSE:

Nature of offense: _____
Date of occurrence: _____ **Date of conviction:** _____
Sentence conferred: _____
(Attach a separate sheet if space provided is not adequate)

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CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, Section 205(d), requires that, except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust. To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage: ___ YES ___ NO

AUTHORIZATION TO OBTAIN A CREDIT REPORT

The National Credit Union Administration (NCUA) may evaluate the competence, experience, character, and integrity of any individual who is to serve as an official, employee, or committee member of a federally insured credit union, in accordance with §1790a of the Federal Credit Union Act and Chapter 1, §V.B.4 of the NCUA Chartering and Field of Membership Manual.

NCUA may disapprove any individual whose employment it believes will not be in the best interest of the credit union or of the public. To assist in the evaluation process, NCUA may obtain and review an individual' s credit report.

Your signature on this document authorizes NCUA to obtain a copy of your credit report.

_____

Last First Middle

Social Security Number: _____

Date of Birth: _____

_____

Signature Date

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APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015

USE FOR MULTIPLE COMMON BOND EXPANSION FOR GROUPS OF 3,000 OR MORE PERSONS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____
_____
_____

2. Name and address of the group:

_____
_____
_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's *Chartering and Field of Membership Manual,* Chapter 2:
   - ☐ Section II.A for single occupational common bond groups;
   - ☐ Section III.A for single associational common bond groups; or
   - ☐ Section IV.A for multiple common bond fields of membership.

_____
_____
_____

4. How many primary potential members (excluding immediate family and household members) are in the group:

_____

5. (a) For multiple common bond expansions, what is the distance between the group's location and your credit union's nearest service facility[1] to which the group has access (Reference Chapter 2, Section IV.A.1):

_____
_____

(b) What is the address of this service facility:

_____
_____
_____

[1] A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed.

(c) Describe the service area[2] primarily served by the above service facility:

_____
_____
_____
_____

6. Is the group in the field of membership of any other credit union? Yes___ No___
If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

☐ Provide the name and location of the other servicing credit union:

_____
_____
_____

☐ Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

_____
_____
_____
_____

☐ Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

_____
_____
_____
_____

7. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

- ☐ how the group shares the occupational or associational common bond (for single common bond additions only);
- ☐ that the group wants to be added to the federal credit union's field of membership;
- ☐ whether the group presently has other credit union service available;
- ☐ the number of persons currently included within the group to be added and the group's location(s);

[2] A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.

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- ☐ the group's proximity to the credit union's nearest service facility (for multiple common bond additions only); and
- ☐ why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards (for multiple common bond additions only). *The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.*

8. Other comments:

_____
_____
_____
_____
_____
_____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____ _____ _____
(Typed/Printed Name) (Signature) (Date)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015-EZ

USE FOR MULTIPLE COMMON BOND EXPANSIONS OF LESS THAN 3,000 PERSONS AND ALL SINGLE COMMON BOND EXPANSIONS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____
_____
_____

2. Name and address of group:

_____
_____
_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording:_____
_____
_____

4. How many primary potential members (excluding immediate family and household members) are in the group: _____

5. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

- ☐ that the group wants to be added to the federal credit union's field of membership;
- ☐ the number of persons to be added and the group's location(s);
- ☐ the group's proximity to the credit union's nearest service facility **(for multiple common bond additions only).** _____ **Distance to nearest service facility, and**
- ☐ how the group shares the occupational or associational common bond **(for single common bond additions only)**;

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____ _____ _____
(Typed/Printed Name and Title) (Signature) (Date)

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NOTICE OF MEETING OF THE MEMBERS

_____ **FEDERAL CREDIT UNION**

_____ (City) _____ (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union has been called and will be held at _____ _____ on _____, at _____ o'clock, __.M. for the purpose of considering and voting upon the following resolution:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons:

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union:

The proposed conversion would result in the following costs of conversion (i.e. changing the credit unions name, examination and operating fees, attorney and consulting fees, tax liability, etc):

The board of directors recommends that the members approve the proposal to convert to a State charter

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

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Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, and return it to the following address by no later than the date and the time announced for the meeting of the members:

BY ORDER OF THE BOARD OF DIRECTORS

_____
TITLE: _____
(CHIEF EXECUTIVE OFFICER)

_____
TITLE: _____
(CHIEF RECORDING OFFICER)

Issued _____ (Date)

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____ by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.) _____
_____
_____
_____
_____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully: _____
_____
_____
_____
_____

3. Standard financial and statistical reports as of _____ or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

   a. Interest rates on loans: _____

   b. Charges incident to making loans which are passed on to borrowers: _____

   c. Maturity limits: _____

   d. Unsecured loan limit: _____

   e. Secured loan limit: _____

   f. Types of security accepted: _____

   g. Requirements of amortization (Repayment requirements): _____

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6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act):_____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act: _____

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union:

We hereby authorize the National Credit Union Administration to examine our books and our records.

We, the undersigned _____ Chief Executive Officer and _____ Chief Financial Officer of the _____ Credit Union of _____ State of _____ certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectfully, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____
TITLE: _____
(CHIEF FINANCIAL OFFICER)

_____
TITLE: _____
(CHIEF RECORDING OFFICER)

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AFFIDAVIT
PROOF OF RESULTS OF MEMBERSHIP VOTE PROPOSED CONVERSION

We, the undersigned _____ president/vice president and _____ secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____ _____, this _____
(day) (month) (year)

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____, _____
(year)

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FEDERAL TO STATE CONVERSION

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____ to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date: _____

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FEDERAL TO STATE CONVERSION

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____ to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date: _____

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APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date: _____

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union

_____
(Street Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

6. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

7. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

8. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

9. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

10. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

11. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No. _____ Title _____

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ _____
Chief Executive Officer Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18. Sec. 1001.

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CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____
Chief Executive Officer

_____
Recording Officer, Board of Directors

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INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____ Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered. _____

3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence as discussed in the instructions. Schedule No. _____

4. Potential membership (total number of persons who could be served including present members. _____

5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to item No. 5.) _____

6. Does the credit union operate under standard bylaws provided by the state supervisory authority? Yes ☐ No ☐ (Stop) (Complete a.)

   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____

7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ No ☐ (Stop) (Complete a.)

   a. Explain fully on an attached schedule. Schedule No. _____

8. Attach a copy of the latest State supervisory authority examination. Copies of any correspondence from the accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.

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9. Attach copies of the Balance Sheet and Statement of Income and Expense (or Financial and Statistical Report) for the month preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ (Identify current year statement with (a) after schedule no. and previous Year with (b).)

10. Reserves

Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

_____

11. Delinquent Loans and Charged-off Loans

a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11 a. on page 7. Schedule No. _____

b. List below the requested information on delinquent loans for the latest four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for the same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date	Date	Date	Date
	2 to less than 6 mos.	$	$	$	$
	6 to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals	$	$	$	$
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end and or current period).

	Year	Year	Year	Current Yr. To Date	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					
Total of all Reserves					

• If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities, (including pending law suits or civil actions)? Yes ☐ No ☐ (Stop) (Complete a.)

a. List on an attached schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. _____

13. Do any asset accounts other than loans to members, investments, and real estate have actual values less than the book values shown on the Balance Sheet?

List on a separate schedule a description of such assets, showing at least the following information; account number, description of item, book value and actual value. Schedule No. _____

14. List below or on an attached schedule, any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No. _____ . Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

Description of Item	Current Market Value	Current Book Value
	$	$
	$	$
	$	$

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15. Individual Share and Loan Ledgers:

a. Were the totals of the trial balance of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? _____

b. What are the differences as of the month and preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$	$
Totals of the trial balance of the individual ledgers	$	$
Differences	$	$

16. Supervisory Committee:

a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee?
Effective Date _____

(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts:
Effective Date _____

(1) If all members' accounts have not been verified under controlled conditions during the last two years, what is the supervisory committee's target date for completion of the verification program?
Date _____

c. If it is necessary to complete either 16a(1) or 16 b(1); please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17. List below the credit union's surety bond coverage.

a. Name of carrier _____

b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 562 CU-1, other) _____

c. Basic amount of coverage $_____

d. Bond premium paid to (date) _____

e. What is the amount of coverage required by State law or your bylaws? _____

f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.) _____
_____

18. Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? _____

Attach a schedule describing each activity in full. Schedule No. _____

19. Does the board of directors or management know of any adverse economic condition that is affecting or will affect the credit union's present or future operation or that of the sponsor organization? _____

Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? _____

a. Attach a statement describing the circumstances. Schedule No. _____

21. Lending policies and practices:

a. Complete the following schedule showing the present policies and practices on loans to members.

b. Complete the following schedule of largest loans with the attached instructions pertaining to Item No. 21.

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LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Down Payment (Equity)
1. Credit Union Policies and Practices			[redacted]
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			[redacted]
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Directors, Officers, or Committee Members			
2. State Credit Union Law; Bylaws			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List below or an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21b.

Account No.	Unpaid Loan Bal.	Repayment Period (No. Months)	Status of Repayment		Appraised Collateral Value*	Description of Collateral
			Current	Delinquent (No. Months)		

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CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO'S Organization _____
(Date of obtaining charter from State)

3. Type of organization (check one):

a. General Partnership ☐ c. Joint Ownership ☐

b. Limited Partnership ☐ d. Corporation ☐

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

a. _____ _____ _____
Name Charter Number (If FCU) %

b. _____ _____ _____
Name Charter Number (If FCU) %

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

a. _____ _____ _____
Name Charter Number (If FCU) Amount

b. _____ _____ _____
Name Charter Number (If FCU) Amount

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by CUSO (be as specific as possible). _____

7. Comments (include all other pertinent information, if applicable, not previously discussed). _____

8. Attach the latest Financial and Statistical Report of CUSO, if available.

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FORM 9600 INSTRUCTIONS

APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word "Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When an item specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 5: Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

Item No. 10: Reserves: The term "reserves" means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members.

Item No. 11a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principle, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

Item No. 11b: The schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principle and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks.
4. Deposits or accounts in State central credit unions.
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21 b: The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances

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Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Re-payment" column.

Page 6: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS
STATE CHARTERED CREDIT UNION

TO: The National Credit Union Administration Board Date _____

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____
(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 713 and 741 of NCUA's regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal Credit Unions by Part 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may be regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed

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as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirement of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance Fund. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.208 of NCUA's regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

In support of this application we submit pages 1-6 and Schedules described below:

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APPENDIX E

TRADE ASSOCIATIONS

Credit Union National Association
(CUNA)
P.O. Box 431
Madison, WI 53701
608-231-4000

National Association of Federal Credit
Unions (NAFCU)
3138 N. 10th Street, Suite 300
Arlington, VA 22201
703-522-4770

National Association of State Credit Union
Supervisors (NASCUS)
1901 North Fort Myer Drive
Suite 201
Arlington, VA 22209
703-528-8351

National Federation of Community
Development Credit Unions
(NFCDCU)
120 Wall Street, 10th Floor
New York, NY 10005-3902
212-809-1850

[FR Doc. 02–30400 Filed 12–4–02; 8:45 am]
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TREASURY DEPARTMENT
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 3833/P.L. 107–317
Dot Kids Implementation and Efficiency Act of 2002 (Dec. 4, 2002; 116 Stat. 2766)
H.R. 5504/P.L. 107–318
Anton's Law (Dec. 4, 2002; 116 Stat. 2772)
Last List December 4, 2002

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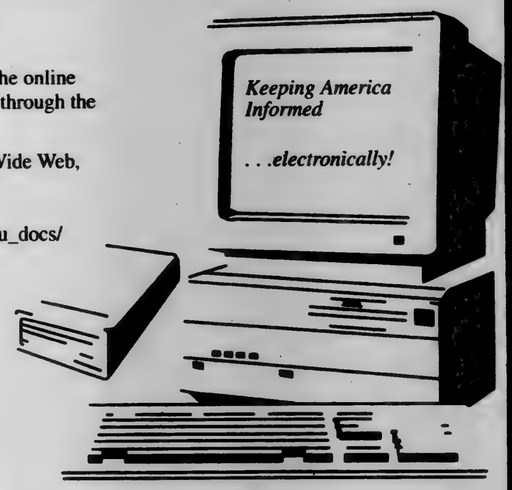
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Presidential Documents

Title 3—

The President

Proclamation 7632 of December 3, 2002

National Drunk and Drugged Driving Prevention Month, 2002

By the President of the United States of America

A Proclamation

Drunk and drugged driving threatens the safety of millions of Americans. Reducing the incidence of impaired driving remains one of our Nation's greatest challenges. As we gather with family and friends to celebrate this holiday season, I urge all Americans to observe National Drunk and Drugged Driving Prevention Month by making responsible choices that will help keep our roads safer for all.

Drunk driving accidents take a life every 30 minutes and injure someone every 2 minutes. In the last 24 months, 41 percent of those killed in traffic accidents, which is almost 35,000 Americans, have been killed in alcohol-related crashes. To better protect our citizens and decrease the number of drunk and drugged driving traffic accidents, we must work together to educate our communities about the seriousness of this offense and we must raise awareness of its devastating consequences.

My Administration supports efforts to save lives and prevent injuries resulting from impaired driving. The Department of Transportation's National Highway Traffic Safety Administration (NHTSA) works with local law enforcement agencies that conduct sobriety checkpoints and saturation patrols; and it also supports State efforts to pass legislation that increases punishment for those who drink and drive.

The NHTSA and its State and local partners are dedicated to eliminating impaired driving and stopping the associated injuries and fatalities. The NHTSA's national safety campaign—**You Drink & Drive. You Lose.**—aims to lower America's impaired driving fatality rate to less than 11,000 people per year by the year 2005. By providing its partner organizations with guidance on overcoming this national challenge, this important campaign is assisting local law enforcement agencies, community groups and organizations, public health professionals, and businesses to coordinate and address this vital issue.

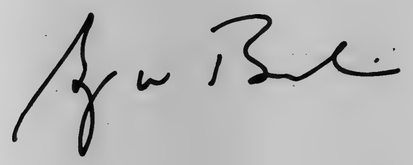
As part of the **You Drink & Drive. You Lose.** campaign, law enforcement agencies across the Nation will be out in full force from December 20, 2002, to January 5, 2003, to stop drunk and drugged driving. During the holiday season, organizations and citizens throughout the country also will be working to prevent this deadly activity by encouraging citizens to choose sober, designated drivers, keep impaired family members and friends off our roads, report drivers who are under the influence, and educate young people about safe, alcohol- and drug-free driving behavior. Through cooperation and determination, every American can do something to make a difference and help stop impaired drivers before they harm others.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 2002 as National Drunk and Drugged Driving Prevention Month. I call upon State and community leaders to join the **You Drink & Drive. You Lose.** national mobilization between December 20, 2002, and January 5, 2003. I also urge all Americans to work to enhance the safety of our Nation's roadways and protect the

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well-being of our drivers, passengers, and pedestrians during this holiday season and every day of the year.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of December, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02-31068
Filed 12-5-02; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NE-47-AD; Amendment 39-12916; AD 2002-21-10]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments, correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2002-21-10, applicable to Pratt and Whitney (PW) model 4000 series turbofan engines, that was published in the **Federal Register** on October 25, 2002 (67 FR 65484). A publish date for service information was inadvertently omitted from one of the compliance paragraphs in the regulatory information. Also, the same service information was inadvertently omitted from the table for Documents That Have Been Incorporated by Reference and the paragraph that follows the table. This document corrects these omissions. In all other respects, the original document remains the same.

EFFECTIVE DATE: November 12, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7133, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: A final rule; request for comments FR Doc. 02-26909, airworthiness directive applicable to Pratt and Whitney (PW) model 4000 series turbofan engines, was published in the **Federal Register** on October 25, 2002 (67 FR 65484). The following corrections are needed:

§ 39.13 [Corrected]

On page 65491, in the Regulatory Information, second column, paragraph (k)(2)(i), sixth line, remove the phrase "September 15, 2001. If the HPC rear hook is." and add in its place "March 15, 2002 or September 15, 2001. If the rear hook is."

Also, on page 65492, in the Regulatory Information, the table for Documents That Have Been Incorporated by Reference is corrected by adding the following:

"PW CIR 51A357, section 72-35-68, Inspection/Check-04, Indexes 8-11. Total pages: 5"	All	Original	March 15, 2002.

Also, on page 65493, in the Regulatory Information, first column, thirteenth line, remove the phrase "PW4ENG72-749, dated June 17, 2002, EM" and add in its place "PW4ENG72-749, dated June 17, 2002, CIR 51A357, section 72-35-68, Inspection/Check-04, Indexes 8-11, dated March 15, 2002, EM".

Issued in Burlington, MA, on November 13, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30342; Amdt. No. 3034]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 6, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700 Washington, DC.

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For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standards Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information is some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on November 22, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2)

2. Part 97 is amended to read as follows:

§ 97.23, § 97.25, § 97.27, § 97.29, § 97.31, § 97.33, and § 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication.*

FDC date	State	City	Airport	FDC No.	Subject
03/11/02	MO	St Louis	Creve Couer	2/2128	RNAV (GPS) Rwy 34, Orig
11/06/02	NC	Raleigh/Durham	Raleigh-Durham Intl	2/1751	ILS Rwy 23L, Amdt 6A
11/07/02	TX	Houston	William P. Hobby	2/1774	RNAV (GPS) Rwy 30L, Orig-B
11/12/02	OK	Duncan	Halliburton Field	2/1875	LOC Rwy 35, Amdt 4B

FDC date	State	City	Airport	FDC No.	Subject
11/13/02	NJ	Lakewood	Lakewood	2/1904	RNAV (GPS) Rwy 6, Orig
11/13/02	NJ	Lakewood	Lakewood	2/1905	RNAV (GPS) Rwy 24, Orig
11/13/02	NJ	Lakewood	Lakewood	2/1906	VOR Rwy 6, Amdt 6
11/13/02	MI	Detroit	Grosse Ile Muni	2/1910	RNAV (GPS) Rwy 22, Orig
11/14/02	MI	Big Rapids	Roben-Hood	2/1942	GPS Rwy 27, Orig
11/15/02	MI	Hastings	Hastings	2/1984	VOR Rwy 12, Orig-A
11/15/02	IL	Salem	Salem-Leckrone	2/1992	NDB Rwy 18, Amdt 10A
11/18/02	MN	St Cloud	St Cloud Regional	2/2033	VOR/DME Rwy 13, Amdt 8B
11/19/02	MI	Detroit	Detroit Metropolitan Wayne County	2/2057	ILS Rwy 22R, Amdt 1

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 336, 338, and 341

[Docket No. 97N–0128]

RIN 0910–AA01

Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monographs for over-the-counter (OTC) antiemetic, antihistamine, antitussive, and nighttime sleep-aid drug products to add a warning statement for oral products containing diphenhydramine citrate or diphenhydramine hydrochloride. The warning advises consumers not to use oral OTC diphenhydramine products with any other product containing diphenhydramine, including products used topically. This final rule also includes the agency's conclusions on additional warning statements and a direction statement for OTC external analgesic drug products containing diphenhydramine hydrochloride. These conclusions will be incorporated into the final monograph for OTC external analgesic drug products in a future issue of the **Federal Register**. FDA is issuing this final rule after considering public comments on the agency's proposed regulation and all new data and information on drug products containing diphenhydramine that have come to the agency's attention.

DATES:

Effective Date: This regulation is effective December 8, 2003.

Compliance Dates: The compliance date for oral products with annual sales less than $25,000 is December 6, 2004. The compliance date for all other oral products is December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 29, 1997 (62 FR 45767), FDA published a notice of proposed rulemaking to amend the tentative final monograph (TFM) for OTC external analgesic drug products (proposed 21 CFR 348.50(c)(10)) to add the following warning statement for diphenhydramine hydrochloride: "Do Not Use:" (these three words in bold print) "on chicken pox, poison ivy, sunburn, large areas of the body, broken, blistered, or oozing skin, more often than directed, or with any other product containing diphenhydramine, even one taken by mouth." The agency also proposed to amend the final monographs for OTC antiemetic (proposed 21 CFR 336.50(c)(8)), antihistamine (proposed 21 CFR 341.72(c)(6)(iv) and (c)(7)) and antitussive (proposed 21 CFR 341.74(c)(4)(viii)(C) and (c)(4)(ix)(C)), and nighttime sleep-aid (proposed 21 CFR 338.50(c)(5)) drug products to add the following warning statement for diphenhydramine ingredients: "Do Not Use" (these three words in bold print) "with any other product containing diphenhydramine, including one applied topically." The agency proposed these warnings based on reports of adverse events when oral and topical diphenhydramine products were used concurrently. In response to that proposal, two manufacturers and a marketing association submitted comments. The agency is responding to those comments and publishing a final rule that applies to oral diphenhydramine products now and to topical diphenhydramine products at a future date.

Twenty-four months after the date of publication in the **Federal Register**, for oral diphenhydramine-containing products with sales less than $25,000, and 12 months after the after the date of publication in the **Federal Register**, for all other such oral products, no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application or abbreviated new drug application. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the compliance dates of the final rule must be in compliance with the applicable monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

II. The Agency's Conclusion on the Comments

(Comment 1) One comment contended that the proposed label changes for diphenhydramine products are not necessary and would have no significant impact. The comment stated that the 23 reported cases of toxicity between 1979 and 1989 discussed in the proposal (62 FR 45767 at 45768) are minute compared to the millions of applications of these topical products. Further, in all cases, the toxicity was due to consumer noncompliance with directions and indications. In the majority of cases, no treatment was required except for discontinuance of the drug, with affected consumers released from medical care in 24 hours. The comment concluded that additional warnings would have no effect on consumers who have obviously ignored the existing warnings.

The agency disagrees. The agency recognizes that the number of reports is small compared to the total doses used. However, there is particular concern because of the reports of toxic psychosis, especially in children, discussed in the proposed rule. There is also concern of underreporting because there is no current reporting

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requirement for topical diphenhydramine products marketed under the proposed OTC drug monograph. As pointed out in the proposal (62 FR 45767 at 45769), a major manufacturer voluntarily revised the warnings for its topical diphenhydramine products after receiving adverse reaction reports. The agency concludes that additional labeling information should help reduce possible misuse of these products and reduce the possibility of serious adverse reactions.

As noted, our decision to require the warning set forth in this final rule is based on other comments made in response to the proposed rule and our analysis of numerous adverse event reports that document the potential health risks associated with the concurrent use of OTC drug products that contain diphenhydramine. Mandating a warning does not require a finding that any or all of the OTC drug products that contain diphenhydramine actually caused an adverse event, and FDA does not so find. Nor does FDA's mandate of a warning repudiate the OTC drug monographs under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that this additional warning is necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks, and reflects our conclusion that even a potential link between the overuse of diphenhydramine and serious adverse health consequences warrants this action (see 21 CFR 330.10(a)).

FDA's decision to act in an instance such as this one need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F. 3d 986, 991 (8th Cir. 2001)). To mandate a warning, or take similar regulatory action, FDA need not show, nor do we allege, actual causation.

The distinction between avoidance of risk through regulation and compensation for injuries after the fact is a fundamental one. In the former, risk assessments may lead to control of a toxic substance even though the probability of harm to any individual is small and the studies necessary to assess the risk are incomplete; society as a whole is willing to pay the price as a matter of policy. In the latter, a far higher probability (greater than 50%) is required since the law believes it is unfair to require an individual to pay for another's tragedy unless it is shown that it is more likely than not that he caused it * * *

In re "Agent Orange" Product Liability Litigation, 597 F. Supp. 740, 781 (E.D.N.Y. 1984), aff'd., 818 F. 2d 145 (2d Cir. 1987) at 781. In making its decision, the agency follows "the preventive perspective that [ ] agencies adopt in order to reduce public exposure to harmful substances." *Glastetter*, 252 F.3d at 991, *quoting Hollander* v. *Sandoz Pharmaceuticals, Corp.*, 95 F. Supp.2d 1230, 1234 n. 9 (W.D. Okla. 2000). This is what we have done here.

(Comment 2) Two comments contended that OTC topical diphenhydramine products indicated for "pain and itch of sunburn and poison ivy" should not be contraindicated for the same uses and that the agency's proposed warning could confuse consumers. The comments added that the proposed labeling could be interpreted to mean that usage on large areas of the body is permitted as long as the product is not used more than three to four times daily. One comment stated that the proposal only cited two reports of toxicity when the drug was applied topically to a widespread area of intact sunburned skin and to a severe case of poison ivy. There were no reported cases when the drug was applied on limited areas of skin compromised with poison ivy or sunburn. The comment recommended that the labeling state "do not use more often than directed," and that this part of the warning be moved to "Directions" because the statement relates to dosing.

Another comment agreed that topical diphenhydramine products should not be used on large areas of skin either intact or with open lesions. However, it objected to warning against use on damaged skin conditions, specifically broken, blistered, or oozing skin, contending that such labeling may confuse consumers seeking use for skin conditions such as minor cuts, minor burns, or insect bites that are characterized by broken, blistered, or oozing skin. Further, the comment was unable to find any adverse event cases reported when the product was applied according to the labeled directions on limited areas of damaged skin. A second comment also was unable to find any adverse reports associated with use on limited areas of damaged skin. It noted the cited cases in the proposal concerned application on compromised skin over a large skin surface. The comment suggested that this problem is best addressed by the warning against use "on large areas of the body."

The agency agrees that topical diphenhydramine products should be indicated for use on limited areas of skin with poison ivy or sunburn and that the warning is intended to alert consumers not to use these products over large areas of the body or more often than directed for any condition. Because sunburn, poison ivy, and other conditions for which topical diphenhydramine is used (e.g., minor cuts and burns, and insect bites) could be characterized by "broken, blistered, or oozing skin," the agency is removing these conditions from the proposed warning.

Since the proposal was published, the agency has established a new labeling format for all OTC drug products (see section III in this document). That labeling format conveys information in a segmented manner. Based on the new labeling format and the revisions described in the previous paragraph, the information in the final warning for topical products would now appear as follows: "Do not use [bullet] on large areas of the body [bullet] with any other product containing diphenhydramine, even one taken by mouth," "Ask a doctor before use [bullet] on chicken pox [bullet] on measles," and under "Directions [bullet] do not use more often than directed." The proposed monograph directions for external analgesic drug products containing diphenhydramine are "Apply to affected area not more than 3 to 4 times daily." The agency concludes that the revised warnings and directions should be clearer and more understandable to consumers.

(Comment 3) One comment recommended changing "Do not use on chicken pox" to "Do not use on chicken pox, except as directed by a physician." The comment cited additional toxicity reports not included in the proposed rule in which diphenhydramine was applied liberally on children with large areas of chicken pox. However, the comment stated that since physicians may find use appropriate in select cases, consumers should be advised to consult their physicians. Another comment agreed because a doctor may advise use on a few itchy spots to help prevent scratching and the scarring that could result.

One comment from a manufacturer proposed that "measles" be included because a case of diphenhydramine toxicity after treatment with diphenhydramine for measles had been reported to the company. The comment noted that the adverse event was similar to the chicken pox cases discussed in the proposed rule, and that both chicken pox and measles may appear as a widespread rash. Another comment concurred and proposed the following: "Ask a doctor before use on chicken pox or measles."

The agency agrees. In the proposal, the agency stated that because none of the case reports was associated with measles, that condition was not specifically listed in the warning (62 FR 45767 at 45771). The agency invited comments related to any adverse events associated with the topical application of diphenhydramine to measles. As there has been at least one measles case report and since chicken pox and measles may appear similar to consumers, the agency is including both conditions in product labeling. The agency did not receive any comments opposed to including measles in labeling. When the monograph for OTC external analgesic drug products becomes final, it will contain the following warning for topical diphenhydramine products: "Ask a doctor before use [bullet] on chicken pox [bullet] on measles."

(Comment 4) Two comments agreed that it was reasonable to add a warning to the labeling of OTC oral diphenhydramine products. The comments recommended revising the last part of the agency's proposed warning from "including one applied topically" to "even one used on skin" for two reasons. First, the revised language comprises six syllables in five words instead of nine syllables in four words, making it easier to read. Second, consumers who do not understand the meaning of the word "topically" are more likely to know what is meant by "on skin."

The agency agrees and has revised the labeling for OTC diphenhydramine oral products to read: "Do not use: [bullet] with any other product containing diphenhydramine, even one used on skin."

(Comment 5) One comment expressed concern over the cost of implementing the new labeling for a small manufacturer of topical products and contended: (1) The proposed labeling is an example of the type of regulation that Executive Order 12866 and the Regulatory Flexibility Act were intended to eliminate; (2) the cost to relabel would be substantially more than the $2,000 to $3,000 the agency mentioned in the proposal because of ordering requirements for tubes and boxes and a low dollar volume of annual sales; (3) existing inventory would have to be destroyed because it would not be used prior to the effective date for new labeling; and (4) there would be excessive costs associated with producing new graphics for labeling all products. The comment did not provide any specific data or figures to support its cost speculation.

The agency disagrees that the proposed labeling is an example of the type of regulation that Executive Order 12866 and the Regulatory Flexibility Act were intended to eliminate. The agency has determined that the additional warning statement is necessary for the safe and effective use of OTC drug products that contain diphenhydramine. The proposed rule (62 FR 45767 at 45772 to 45773) and this final rule (section V of this document) examine the impacts of the rule under Executive Order 12866 and the Regulatory Flexibility Act.

The $2,000 to $3,000 relabeling cost stated by the agency in the proposal (62 FR 45767 at 45772) was based on information that the agency obtained from various drug manufacturers, both small and large. That relabeling cost included the cost associated with producing new graphics for labeling products and the cost of tubes and boxes on which the labeling would be printed.

The agency does not anticipate that significant existing inventory would have to be destroyed because it would not be used prior to the effective date for new labeling. It has been almost 5 years since the proposed rule was published, and existing inventory should have been reduced during this time. In addition, manufacturers still have adequate time to deplete existing stocks of inventory. This final rule has a compliance date of 24 months after its publication in the **Federal Register** for oral products containing diphenhydramine citrate or diphenhydramine hydrochloride with annual sales less than $25,000, and a compliance date of 12 months after its publication in the **Federal Register** for all other oral products. The monograph for topical (external analgesic) drug products containing diphenhydramine [products in tubes] is not yet final and, when issued, will specify the time by which relabeling is required. Manufacturers of topically applied diphenhydramine products are encouraged to implement the new labeling at an earlier date should they need to order additional labeling for their products before the agency issues the final monograph for OTC external analgesic drug products.

Since the proposal was published in 1997, the agency issued a final rule on March 17, 1999 (64 FR 13254) establishing a new standardized labeling format and content for all OTC drug products (the 1999 final rule). That final rule contained an extensive discussion of the costs of relabeling OTC drug products, including the impact on small businesses (64 FR 13254 at 13284 to 13285). In an effort to reduce the economic impact on small businesses, the agency generally provides an additional 12 months of compliance time for relabeling of OTC drug products with annual sales less than $25,000 which is being provided for oral diphenhydramine drug products in this final rule.

III. New Labeling Format

In the 1999 final rule, the agency established standardized format and standardized content requirements for the labeling of OTC drug products set forth in § 201.66 (21 CFR 201.66). The requirements relate to the labeling for diphenhydramine-containing OTC drug products by including bullets prior to certain words under the "Warnings" subheadings "Do not use" and "Ask a doctor before use" and prior to the direction "do not use more often than directed." The subheadings are highlighted in bold type in accordance with § 201.66(c)(5). Pertinent parts of the new labeling are in tables 1 and 2 of this document.

TABLE 1.—WARNING FOR ORAL ANTIEMETIC, ANTIHISTAMINE, ANTITUSSIVE, AND NIGHTTIME SLEEP-AID DRUG PRODUCTS CONTAINING DIPHENHYDRAMINE INGREDIENTS

Warnings
Do not use • with any other product containing diphenhydramine, even one used on skin

TABLE 2.—WARNINGS AND DIRECTION FOR EXTERNAL ANALGESIC DRUG PRODUCTS CONTAINING DIPHENHYDRAMINE INGREDIENTS

Warnings
• For external use only
Do not use • on large areas of the body • with any other product containing diphenhydramine, even one taken by mouth
Ask a doctor before use • on chicken pox • on measles
Directions • do not use more often than directed

IV. The Agency's Final Conclusions

Based on the available evidence, the agency is issuing a final rule amending the final monographs for orally administered OTC antiemetic,

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antihistamine, antitussive, and nighttime sleep-aid drug products containing diphenhydramine to include the new warning in table 1 of this document. This final rule also discusses new warnings and a direction in table 2 of this document that will be incorporated into the final monograph for OTC external analgesic drug products in a future issue of the **Federal Register**, when the complete monograph for those products is published.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed in this section, FDA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to add the same warning statement for four categories of OTC drugs in three different OTC drug monographs that include products containing diphenhydramine taken orally. Based on information in the agency's drug listing system (DLS), there are approximately 95 manufacturers, 59 repackers, and 247 distributors of about 800 to 1,000 oral diphenhydramine products. The agency does not believe these companies would need to increase the package size to add this warning and, thus, they should incur only minor costs to relabel their products. The agency believes that relabeling costs of the type required by this final rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). Assuming that there are about 800 to 1,000 affected SKUs in the marketplace, total one-time costs of relabeling would be $1.6 million ($2,000 per SKU x 800 SKUs) to $3 million ($3,000 per SKU x 1,000 SKUs). The agency believes the actual cost would be lower because most of the labeling changes will be made by private label manufacturers that tend to use simpler and less expensive labeling.

Manufacturers of oral diphenhydramine-containing products will incur most of the costs associated with this final rule. The impact on any one firm will vary based on the number and types of products that need relabeling. About 85 percent of the manufacturers meet the Small Business Administration's definition of a small entity (fewer than 750 employees). In the proposal (62 FR 45767 at 45772 to 45773), the agency estimated that the proposed rule may have a significant impact on some small entities. On further analysis, the agency now believes that the final rule will not have a significant impact on a substantial number of small entities because about one-half of the firms have listed only one diphenhydramine-containing product with the agency, another 30 percent have listed two or three products, and all of the manufacturers produce a number of other OTC drug products not affected by this rule. The agency does not believe the cost to any one firm to relabel its products subject to this final rule will approach 1 percent of the entity's income.

The DLS also identifies approximately 30 manufacturers, 4 repackers, and 53 distributors of about 100 topical diphenhydramine products. The cost for these companies to relabel their products will be discussed in the final monograph for OTC external analgesic drug products.

The agency considered but rejected several alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, the agency also acknowledges that a shorter implementation period could significantly increase the compliance costs and these costs could be passed through to consumers. A longer time period would unnecessarily delay the benefit of new labeling to consumers who self-medicate with these OTC antiemetic, antihistamine, antitussive, and nighttime sleep-aid drug products. The agency rejected an exemption for small entities because the new labeling is also needed by consumers who purchase products marketed by those entities. However, a longer compliance date until 24 months after date of publication in the **Federal Register** is being provided for products with annual sales less than $25,000.

For the reasons in this section and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Parts 336, 338, and 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 336, 338, and 341 are amended as follows:

PART 336—ANTIEMETIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 336 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 336.50 is amended by adding paragraph (c)(8) to read as follows:

§ 336.50 Labeling of antiemetic drug products.

* * * * *

(c) * * *

(8) *For products containing diphenhydramine hydrochloride identified in § 336.10(c).* "Do not use [bullet][1] with any other product containing diphenhydramine, including one used on skin".

* * * * *

PART 338—NIGHTTIME SLEEP-AID DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 338 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

4. Section 338.50 is amended by adding paragraph (c)(5) to read as follows:

§ 338.50 Labeling of nighttime sleep-aid drug products.

* * * * *

(c) * * *

(5) "Do not use [bullet][1] with any other product containing diphenhydramine, even one used on skin".

* * * * *

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

5. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

6. Section 341.72 is amended by adding paragraphs (c)(6)(iv) and (c)(7) as follows:

§ 341.72 Labeling of antihistamine drug products.

* * * * *

(c) * * *

(6) * * *

(iv) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.12(f) and (g).* "Do not use [bullet][1] with any other product containing diphenhydramine, even one used on skin".

(7) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.12(f) and (g).* "Do not use [bullet] with any other product containing diphenhydramine, even one used on skin".

* * * * *

7. Section 341.74 is amended by adding paragraphs (c)(4)(viii)(C) and (c)(4)(ix)(C) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(viii) * * *

(C) "Do not use [bullet][1] with any other product containing diphenhydramine, even one used on skin".

* * * * *

(ix) * * *

(C) "Do not use [bullet] with any other product containing diphenhydramine, even one used on skin".

* * * * *

Dated: November 25, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30641 Filed 12–5–02; 8:45 am]

BILLING CODE 4160–01–S

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–136]

RIN 2115–AE47

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Wreck Lead Bridge, mile 4.4, across Reynolds Channel at Hempstead, New York. This deviation from the regulations allows the bridge to remain in the closed position from 6:30 a.m. on December 10, 2002 through 6:30 a.m. on December 13, 2002. This deviation is necessary to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effective from December 10, 2002 through December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The bridge owner, Long Island Railroad, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs, replacement of structural bracing, couplings, and deteriorated concrete, at the bridge.

Under this deviation the Wreck Lead Bridge, mile 4.4, across Reynolds Channel at Hempstead, New York, may remain in the closed position from 6:30 a.m. on December 10, 2002 through 6:30 a.m. on December 13, 2002.

There have been few requests to open this bridge during the requested time period scheduled for these structural repairs in past years. The Coast Guard and the bridge owner coordinated this closure with the facilities upstream from the bridge and no objections to this scheduled closure were received.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 22, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–30930 Filed 12–5–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–134]

RIN 2115–AE47

Drawbridge Operation Regulations; New Rochelle Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the Glen Island Bridge, at mile 0.8, across New Rochelle Harbor at New Rochelle, New York. This change to the drawbridge operation regulations allows the bridge to remain closed to navigation from 7 a.m. on December 1, 2002 through 5 p.m. on April 1, 2003. This action is necessary to facilitate necessary repairs at the bridge.

DATES: This rule is effective from December 1, 2002 through April 1, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–02–134) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The Coast Guard coordinated the bridge repair project and related temporary bridge closure with the mariners who use this waterway. The mariners agreed that the temporary bridge closure will not affect the needs of waterway users. There is an alternate route to open water that mariners may use during this temporary bridge closure. The effective period of this temporary rule is traditionally the most dormant season for the vessel traffic on this waterway and accordingly, the best time to perform the necessary repairs at the bridge.

The Coast Guard believes that an NPRM is unnecessary because of the relatively low number of opening requests received at the bridge December through April, and the fact that an alternate route is available to the mariners.

Good cause exists for making this regulation effective in less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest. Delaying the start of this project would delay the completion date of this project, disrupting vehicular and marine traffic next spring when traffic is much heavier than during the winter months when this temporary operating schedule will be in effect.

Background and Purpose

The Glen Island Bridge has a vertical clearance of 13 feet at mean high water and 20 feet at mean low water. The existing regulations are listed at 33 § CFR 117.802.

The bridge owner, Westchester Department of Public Works, asked the Coast Guard to temporarily change the drawbridge operation regulations to facilitate mechanical and structural repairs at the bridge to be performed from 7 a.m. on December 1, 2002 through 5 p.m. on April 1, 2003.

The Coast Guard contacted the mariners who operate on New Rochelle Harbor River regarding this temporary bridge closure and no objections were received.

Discussion of Rule

The Coast Guard is temporarily changing the drawbridge operation regulations governing the Glen Island Bridge, mile 0.8, across New Rochelle Harbor at New Rochelle, New York. This temporary change to the drawbridge operation regulations will allow the bridge to remain in the closed position to navigation from 7 a.m. on December 1, 2002 through 5 p.m. on April 1, 2003.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the mariners may use an alternate route to open water.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the mariners may use an alternate route to open water.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From December 1, 2002 through April 1, 2003, in § 117.802, paragraph (a) is temporarily suspended and a new temporary paragraph (c) is added to read as follows:

§ 117.802 New Rochelle Harbor.

* * * * *

(c) The draw of the Glen Island Bridge, mile 0.8, at New Rochelle, New York, need not open for the passage of vessel traffic from 7 a.m. on December 1, 2002 through 5 p.m. on April 1, 2003.

Dated: November 22, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–30931 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 02–004]

RIN 2115–AA97

Security Zones; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around and under all cruise ships located on San Pedro Bay, California, in and near the ports of Los Angeles and Long Beach. These security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: This rule is effective December 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP Los Angeles-Long Beach 02–004) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 28, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; San Pedro Bay, CA" in the **Federal Register** (67 FR 65746). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

On January 18, 2002, we published a similar temporary final rule (TFR) entitled "Security Zones; Port of Los Angeles and Catalina Island" in the **Federal Register** (67 FR 2571) that expired on May 1, 2002.

On May 13, 2002, we published a similar temporary final rule (TFR) entitled "Security Zones; Cruise Ships, San Pedro Bay, CA" in the **Federal Register** (67 FR 31955) that is set to expire December 1, 2002.

The Captain of the Port has determined the need for continued security regulations exists. Accordingly, this final rule creates a permanent regulation for security zones in the same locations covered by the temporary final rule published May 13, 2002.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The current TFR is set to expire December 1, 2002, and any delay in the effective date of this final rule is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and

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waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard is establishing security zones around and under cruise ships entering, departing, or moored within the ports of Los Angeles and Long Beach. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard has determined the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

Discussion of Comments and Changes

We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. Therefore, we have made no changes and will implement the provisions of the proposed rule as written.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We received no letters commenting on this section and have made no changes to the proposed rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

We received no letters commenting on this section and have made no changes to the proposed rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. We received no letters commenting on this section and have made no changes to the proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

We received no letters commenting on this section and have made no changes to the proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

We received no letters commenting on this section and have made no changes to the proposed rule.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

We received no letters commenting on this section and have made no changes to the proposed rule.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

We received no letters commenting on this section and have made no changes to the proposed rule.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

We received no letters commenting on this section and have made no changes to the proposed rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

We received no letters commenting on this section and have made no changes to the proposed rule.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

We received no letters commenting on this section and have made no changes to the proposed rule.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

We received no letters commenting on this section and have made no changes to the proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.1154 to read as follows:

§ 165.1154 Security Zones; Cruise Ships, San Pedro Bay, California.

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the Port of Los Angeles or Port of Long Beach.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within 3 nautical miles of the Federal breakwaters;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored, or is in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway either on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within 3 nautical miles seaward of the Federal breakwaters.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–USCG (8724) or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When a cruise ship approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's security zone unless it is either ordered by, or given permission from, the COTP Los Angeles-Long Beach to do otherwise.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Los Angeles Port Police and the Long Beach Police Department.

Dated: November 26, 2002.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–30934 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK90

Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes regulations regarding provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. It revises the current regulations regarding vocational training and rehabilitation for Vietnam veterans' children suffering from spina bifida to also encompass vocational training and rehabilitation for women Vietnam veterans' children with certain other birth defects. This is necessary to provide vocational training and rehabilitation for such children in accordance with recently enacted legislation.

DATES: *Effective Date:* December 6, 2002.

Applicability Date: This rule is applicable retroactively to December 1, 2001, for benefits added by Public Law 106–419. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Charles A. Graffam, Consultant, Vocational Rehabilitation and Employment Service (282), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (202) 273–7344.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on January 2, 2002 (67 FR 215), we proposed to amend VA's "Vocational Rehabilitation and Education" regulations (38 CFR part 21) by revising the regulations in part 21, subpart M (§§ 21.8010 through 21.8410) concerning the provision of vocational training and rehabilitation. These regulations had only concerned the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida. We proposed to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework, as well as to correct certain references and to make other nonsubstantive changes for purposes of clarity.

Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only

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concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amended 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to as "covered birth defects").

Two companion proposed rule documents concerning the provision of benefits for certain children of Vietnam veterans under that legislation were also set forth in the January 2, 2002, issue of the **Federal Register**. One concerned monetary allowances and the identification of covered birth defects (RIN: 2900–AK67) (67 FR 200). The other concerned the provision of health care (RIN: 2900–AK88) (67 FR 209). With respect to the first document, we published a final rule entitled "Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects" in the July 31, 2002, issue of the **Federal Register** (67 FR 49585).

For the proposed rule on vocational training and rehabilitation, we provided, except for the information collection provisions, a thirty-day period for public comments, which ended on February 1, 2002. Pursuant to the Paperwork Reduction Act, we provided for the information collections in the document a 60-day comment period, which ended on March 4, 2002. We received comments from the Spina Bifida Association of America and from two individuals. None of the comments concerned the information collections.

A comment was received from the Spina Bifida Association of America that discussed the importance of higher education for individuals with disabilities and requested that the regulations be changed to offer "48 months of either vocational or educational assistance." No changes are made based on this comment.

With respect to this commenter's request to include educational assistance, the provisions in proposed 38 CFR 21.8010, 21.8050, and 21.8120 appropriately reflect the legal limits on VA's authority to consider a program of education at an institution of higher learning to be within or outside the scope of vocational training benefits for children who are eligible for benefits under 38 U.S.C. chapter 18. Under the provisions concerning vocational training for children eligible for benefits under 38 U.S.C. chapter 18, 38 U.S.C. 1804(c)(1)(B) provides that a vocational training program "may include a program of education at an institution of higher learning if the Secretary determines that the program of education is predominantly vocational in content." We have no other legal authority to provide benefits for a program of education at an institution of higher learning for these children of Vietnam veterans.

With respect to the commenter's request that 48 months be the length of vocational assistance under these regulations, the proposed regulations in 38 CFR 21.8016, 21.8020, and 21.8170 appropriately reflect the statutory limits on the length of vocational assistance. Under 38 U.S.C. 1804(d)(1) and 1814, 24 months is the maximum length of a vocational training program for these children of Vietnam veterans, except that the Secretary may grant an extension for up to 24 additional months when the requirements of 38 U.S.C. 1804(d)(2) are met.

One of the individual commenters felt that the U.S. government is displaying a bias in favor of women veterans in this regulation and that the hidden effect of Agent Orange may also have remained dormant in men's systems and produced chromosomal disorders in their children. No changes are made based on this comment. Public Law 106–419, which was based on a comprehensive health study conducted by VA of 8,280 women Vietnam-era veterans, provides benefits specifically for women Vietnam veterans' children with certain birth defects. We have no legal authority to award the statute's new vocational training benefits to children of male Vietnam veterans.

The other individual commenter suggested adding to 38 CFR 21.8370 a new paragraph concerning payment of transportation expenses that would constitute a substantive change in the provisions of § 21.8370 concerning those payments. The proposed rule in § 21.8370 has the same language concerning transportation expenses, with the exception of nonsubstantive changes, as in the current § 21.8370 concerning vocational training and rehabilitation for Vietnam veterans' children with spina bifida. We believe that a substantive change to the provisions concerning payment of transportation expenses for beneficiaries under 38 U.S.C. chapter 18 is beyond the scope of this rulemaking.

That same commenter also suggested changing the first sentence of proposed 38 CFR 21.8370(a), which states that "VA will authorize transportation services * * *", by replacing the word "will" with "shall" to show the obligation of VA. The commenter noted that "shall" is used in § 21.8370 as in effect prior to this final rule. In our view, adopting the proposed rule's change from "shall" to "will" would not change the meaning of the sentence. However, we have concluded that neither term is necessary in this context, and we are making in this final rule a nonsubstantive change from the proposed rule for purposes of clarification to state that "VA authorizes transportation services * * *."

We are also making nonsubstantive changes from the proposed rule for purposes of clarity or to remove obsolete nomenclature.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change, except that we are making the changes discussed above and we are adding a statement following each of the sections in the rule with information collection requirements to reflect the approval by the Office of Management and Budget (OMB) of the information collection requirements contained in those sections.

Administrative Procedure Act

This rule provides for new benefits and otherwise merely makes nonsubstantive changes. To avoid delay in furnishing the new benefits, we find that there is good cause to make this final rule effective without a 30-day delay of its effective date. Accordingly, under 5 U.S.C. 553, there is no need for delay in this rule's effective date.

Applicability Dates

This rule is applicable retroactively to the statutory effective date of December 1, 2001, for benefits added by section 401 of Public Law 106–419. This rule is otherwise applicable on the rule's effective date, December 6, 2002, for the already existing program of vocational training and rehabilitation for Vietnam veterans' children determined under 38 CFR 3.814 to suffer from spina bifida.

Paperwork Reduction Act

Information collection requirements associated with this final rule in 38 CFR 21.8014 and 21.8370 have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control numbers 2900–0579 and 2900–0580. The information collection requirements of § 21.8014 concern applications for vocational training benefits for certain children of Vietnam veterans. The information collection requirements of § 21.8370 concern requests for transportation expense reimbursement. (In addition, OMB has approved VA's request to discontinue the information collection approval for 38 CFR 21.8016 concerning an election between benefits because its information collection requirements affect fewer than 10 respondents annually.)

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Executive Order 12866

This final rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only 1,200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veteran's children who suffer from spina bifida or other covered birth defects. They are widely dispersed geographically, and the services provided to them would not have a significant impact on any small businesses. Moreover, the institutions capable of providing appropriate services and vocational training to Vietnam veteran's children with covered birth defects or spina bifida are generally large capitalization facilities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for benefits affected by this rule is 64.128. There is no Catalog of Federal Domestic Assistance program number for other benefits affected by this rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Government contracts, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

In part 21, subpart M is revised to read as follows:

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

General

Sec.
21.8010 Definitions and abbreviations.
21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.
21.8014 Application.
21.8016 Nonduplication of benefits.

Basic Entitlement Requirements

21.8020 Entitlement to vocational training and employment assistance.
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21.8030 Requirement for evaluation of child.
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21.8050 Scope of training, services, and assistance.

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21.8080 Requirement for an individualized written plan of vocational rehabilitation.
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21.8100 Counseling.

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21.8360 Satisfactory conduct and cooperation.

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21.8370 Authorization of transportation services.

Additional Applicable Regulations

21.8380 Additional applicable regulations.

Delegation of Authority

21.8410 Delegation of authority.

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

Authority: 38 U.S.C. 101, 501, 512, 1151 note, 1802, 1804–1805, 1811, 1811 note, 1812, 1814, 1816, 1821–1824, 5112, unless otherwise noted.

General

§ 21.8010 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

Covered birth defect means the same as defined at § 3.815(c)(3) of this title.

Eligible child means, as appropriate, either an *individual* as defined at § 3.814(c)(2) of this title who suffers from spina bifida, or an *individual* as defined at § 3.815(c)(2) of this title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).

Employment assistance means employment counseling, placement and

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post-placement services, and personal and work adjustment training.

Institution of higher education has the same meaning that § 21.4200 provides for the term *institution of higher learning*.

Program of employment services means the services an eligible child may receive if the child's entire program consists only of employment assistance.

Program participant means an eligible child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

Spina bifida means the same as defined at § 3.814(c)(3) of this title.

Vietnam veteran means, in the case of a child suffering from spina bifida, the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a covered birth defect, the same as defined at § 3.815(c)(1) of this title.

Vocational training program means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable an eligible child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

VR&E refers to the Vocational Rehabilitation and Employment activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

(1) CP (Counseling psychologist);
(2) Program of education;
(3) Rehabilitation facility;
(4) School, educational institution, or institution;
(5) Training establishment;
(6) Vocational goal;
(7) VRC (Vocational rehabilitation counselor); and
(8) Workshop.

(Authority: 38 U.S.C. 1804, 1811, 1814, 1821)

§ 21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804, 1812, 1814)

§ 21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;

(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and

(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a), 1822, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001. (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0579)

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1821)

§ 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart.

(Authority: 38 U.S.C. 1804, 1814, 1824)

Basic Entitlement Requirements

§ 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

(1) Section 21.250(a) and (b)(2);
(2) Section 21.252;
(3) Section 21.254;
(4) Section 21.256 (not including paragraph (e)(2));
(5) Section 21.257; and
(6) Section 21.258.

(Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage.*—(1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1822)

Evaluation

§ 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&E Division will evaluate each child who:

(1) Applies for a vocational training program; and

(2) Has been determined to be an eligible child as defined in § 21.8010.

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and

(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8032 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

(1) Assessment of feasibility by a CP or VRC;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and

(4) Evaluation of employability by professional staff of an educational or rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a), 1814)

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b), 1814)

Services and Assistance to Program Participants

§ 21.8050 Scope of training, services, and assistance.

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides

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for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment;

(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board (other than for a period of 30 days or less in a special rehabilitation facility either for purposes of an extended evaluation or to improve and enhance vocational potential);

(7) Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

Duration of Vocational Training

§ 21.8070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as paragraphs (e)(1) and (e)(2) of § 21.8020 provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Estimating the duration of the training period.* In estimating the length of the training period the eligible child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).

(Authority: 38 U.S.C. 1804(d), 1814)

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2), 1814)

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for an eligible child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) An eligible child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e), 1814)

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8074 Computing the period for vocational training program participation.

(a) *Computing the participation period.* To compute the number of months and days of an eligible child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while

receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child does not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) and (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d), 1814)

Individualized Written Plan of Vocational Rehabilitation

§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, an eligible child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&E case manager may determine that the eligible child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&E may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the eligible child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(e) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e), 1814)

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the eligible child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that § 21.8020(e)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(e)(2) and 21.8072 if the new vocational goal in another field or occupational family was identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d), 1814)

(d) *Assistance if child terminates planned program before completion.* If the eligible child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c), 1814)

Counseling

§ 21.8100 Counseling.

An eligible child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&E and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(8), 1804(c), 1814)

Vocational Training, Services, and Assistance

§ 21.8120 Vocational training, services, and assistance.

(a) *Purposes.* An eligible child may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

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(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For an eligible child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words "under § 21.282" in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

Evaluation and Improvement of Vocational Potential

§ 21.8140 Evaluation and improvement of vocational potential.

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the eligible child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of an eligible child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial or extended evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment pursuant to §§ 17.900 through 17.905 of this title for the spina bifida, covered birth defects, or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph (b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.

(Authority: 38 U.S.C. 1804(c), 1814)

Supplies

§ 21.8210 Supplies.

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to an eligible child receiving:

(1) An initial or extended evaluation;

(2) Vocational training, services, and assistance to reach the point of employability; or

(3) Employment services.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:

(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;

(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;

(3) Section 21.222(b)(1)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c), 1814)

Program Costs

§ 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Vocational Training Program Entrance, Termination, and Resources

§ 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date an eligible child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d), 1814)

§ 21.8282 Termination of a vocational training program.

A case manager may terminate a vocational training program under this subpart for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, administrative error, or finding that the child no longer has a covered birth defect. An eligible child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error or unless VA finds the child no longer has a covered birth defect. The effective date of termination will be the earliest of the following applicable dates:

(a) *Fraud.* If an eligible child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.

(b) *Administrative error.* If an eligible child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.

(c) *Change in status as an eligible child with a covered birth defect.* If VA finds that a child no longer has a covered birth defect, VA will terminate the award of benefits effective the last day of the month in which such determination becomes final.

(d) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&E efforts to motivate an eligible child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8284 Additional vocational training.

VA may provide an additional period of training or services under a vocational training program to an eligible child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:

(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;

(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;

(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

(1) Performing the duties of the occupation for which VA provided training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c), 1814)

§ 21.8286 Training resources.

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Limitations.* The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.

(Authority: 38 U.S.C. 1804(c), 1814)

Rate of Pursuit

§ 21.8310 Rate of pursuit.

(a) *General requirements.* VA will approve an eligible child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Continuous pursuit.* An eligible child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

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(c) *Responsibility for determining the rate of pursuit.* VR&E staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

Authorization of Services

§ 21.8320 Authorization of services.

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan or IEAP are considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Leaves of Absence

§ 21.8340 Leaves of absence.

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Basis for leave of absence.* The VR&E case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&E case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Effect on entitlement.* During a leave of absence, VA suspends the running of the basic 24-month period of entitlement, plus any extensions thereto, until the child resumes the program.

(Authority: 38 U.S.C. 1804(c), 1814)

Satisfactory Conduct and Cooperation

§ 21.8360 Satisfactory conduct and cooperation.

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If an eligible child fails to meet these requirements for satisfactory conduct or cooperation, the VR&E case manager will terminate the child's vocational training program. VA will not grant an eligible child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c), 1814)

Transportation Services

§ 21.8370 Authorization of transportation services.

(a) *General.* VA authorizes transportation services necessary for an eligible child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

(1) Transportation for evaluation or counseling under § 21.376;

(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;

(3) Special transportation allowance under § 21.154; and

(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Documentation.* VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c), 1814)

(f) *Nonduplication.* If a child is eligible for reimbursement of transportation services both under this section and under § 21.154, the child will receive only the benefit under § 21.154.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0580)

(Authority: 38 U.S.C. 1804(c), 1814)

Additional Applicable Regulations

§ 21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 1814, 5112)

Delegation of Authority

§ 21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a), 1804, 1814)

[FR Doc. 02–30779 Filed 12–5–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 262–0371; FRL–7413–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on April 24, 2002 (67 FR 20078), and concern glass melting furnaces. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on January 6, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On April 24, 2002 (67 FR 20078), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4354	Glass Melting Furnaces	02/21/02	03/05/02

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments

EPA's proposed action provided a 30-day public comment period. During this period, we received no adverse comments.

III. EPA Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP. This permanently terminates all sanction and FIP clocks associated with our September 1, 2000 final action on a previous version of Rule 4354.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 3, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(301) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(a) * * *

(301) Amended regulation for the following APCD was submitted on March 5, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4354, adopted September 14, 1994 and amended February 21, 2002.

* * * * *

[FR Doc. 02–30765 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–049–7174a; A–1–FRL–7418–5]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; One-hour Ozone Attainment Demonstration for the New Hampshire Portion of the Boston-Lawrence-Worcester, MA–NH Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This action approves New Hampshire's one-hour ozone attainment demonstration for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, submitted by the New Hampshire Department of Environmental Services on June 30, 1998. This action is based on the requirements of the Clean Air Act (CAA) as amended in 1990, related to one-hour ozone attainment demonstrations. EPA is establishing an attainment date of November 15, 2007 for the entire multi-state nonattainment area, and is approving the attainment-level motor vehicle emissions budgets submitted by New Hampshire for the New Hampshire portion of the nonattainment area. A notice of proposed rulemaking was published on this action on October 21, 2002. EPA received no comments on that proposal.

EFFECTIVE DATE: This rule will become effective on January 6, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment weekdays from 9 a.m. to 4 p.m., at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, 11th floor, Boston, MA; and at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. What New Hampshire SIP Revision is the Topic of This Action?
II. What Previous Action Has Been Taken on This SIP Revision?
III. What Motor Vehicle Emissions Budgets (MVEBs) Are We approving?
IV. EPA Action
V. Administrative Requirements

I. What New Hampshire SIP Revision Is the Topic of This Action?

A one-hour ozone attainment demonstration SIP was submitted on June 30, 1998 by the New Hampshire Department of Environmental Protection for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. The SIP revision was subject to public notice and comment by the state and a hearing was held in June 1998.

II. What Previous Action Has Been Taken on This SIP Revision?

EPA published a Notice of Proposed Rulemaking (NPR) for the New Hampshire attainment demonstration SIP on October 21, 2002 (67 FR 64582). In that action, EPA proposed to approve the ozone attainment demonstration and attainment-level motor vehicle emissions budgets submitted by the state. The rationale for EPA's action is discussed in full in the proposal, and readers are referred to the proposal for further information. EPA received no comments on the proposal.

EPA proposed approval of the Massachusetts ozone attainment demonstration for this nonattainment area on October 15, 2002 (67 FR 63586), and proposed an attainment date of November 15, 2007 for the entire nonattainment area including the New Hampshire portion. Final action on the Massachusetts ozone attainment demonstration for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area can be found in a document published elsewhere in this issue of the **Federal Register**.

III. What Motor Vehicle Emissions Budgets (MVEBs) Are We Approving?

On June 30, 1998, New Hampshire submitted its ozone attainment demonstration to EPA which establishes attainment-level motor vehicle emissions budgets for both VOC and NO_X. The VOC and NO_X budgets established by the New Hampshire ozone attainment demonstration were formally determined adequate by EPA on August 19, 1998. The motor vehicle emissions budgets established by this plan that we are approving today are 10.72 tons per day for VOC and 21.37 tons per day for NO_X for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. Because EPA is establishing an attainment date of November 15, 2007 for the entire nonattainment area, New Hampshire will be required to use 2007 as a milestone year in future transportation conformity determinations.

IV. EPA Action

EPA is approving the ground-level one-hour ozone attainment demonstration SIP for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. EPA is approving the attainment date for this area as November 15, 2007. EPA also approves the attainment-level volatile organic compound and nitrogen oxide motor vehicle emissions budgets for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area for use in transportation conformity.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2002.

Robert W. Varney,

Regional Administrator, EPA—New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

2. Section 52.1523 is amended by revising the table to read as follows:

§ 52.1523 Attainment dates for national standards.

* * * * *

Air quality control region	SO_2		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
NH portion Androscoggin Valley Interstate AQCR 107	a	b	a	a	a	a
Central NH Intrastate AQCR 149	a	b	a	a	a	a

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Air quality control region	SO_2		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
NH portion Merrimack Valley-Southern NH Interstate 121:						
Belknap County	a	b	a	a	a	a
Sullivan County	a	b	a	a	a	a
Cheshire County	a	b	a	a	a	d
Portmouth-Dover-Rochester area (See 40 CFR 81.330)	a	b	a	a	a	e
NH portion Boston-Lawrence-Worcester area (See 40 CFR 81.330)	a	b	a	a	a	f
Manchester area (See 40 CFR 81.330)	a	b	a	a	a	c

a. Air quality levels presently below primary standards or area is unclassifiable.
b. Air quality levels presently below secondary standards or area is unclassifiable.
c. November 15, 1993.
d. November 15, 1995.
e. November 15, 1999.
f. November 15, 2007.

3. Section 52.1534 of subpart EE is amended by adding paragraph (b) to read as follows:

§ 52.1534 Control strategy: Ozone

* * * * *

(b) Approval—Revisions to the State Implementation Plan submitted by the New Hampshire Department of Environmental Protection on June 1, 1998. The revisions are for the purpose of satisfying the one-hour ozone attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act, for the Boston-Lawrence-Worcester, MA-NH serious ozone nonattainment area. The revision establishes a one-hour attainment date of November 15, 2007 for the Boston-Lawrence-Worcester, MA-NH serious ozone nonattainment area. This revision establishes motor vehicle emissions budgets of 10.72 tons per day of volatile organic compounds (VOC) and 21.37 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the New Hampshire portion of the Boston-Lawrence-Worcester, MA-NH serious ozone nonattainment area.

[FR Doc. 02–30840 Filed 12–5–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA069–7205a; A–1–FRL–7418–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; One-hour Ozone Attainment Demonstration for the Massachusetts Portion of the Boston-Lawrence-Worcester, MA–NH Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This action approves Massachusetts' one-hour ozone attainment demonstration for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, submitted by the Massachusetts Department of Environmental Protection on July 27, 1998, and supplemented on September 6, 2002. This action is based on the requirements of the Clean Air Act (CAA) as amended in 1990, related to one-hour ozone attainment demonstrations. EPA is establishing an attainment date of November 15, 2007, for the entire multi-state nonattainment area, and is approving the 2007 motor vehicle emissions budgets submitted by Massachusetts for the Massachusetts portion of the nonattainment area. EPA is also finding the 2003 motor vehicle emissions budgets submitted previously by Massachusetts inadequate. A notice of proposed rulemaking was published on this action on October 15, 2002. EPA received comments on that proposal. In this action, EPA responds to those comments.

EFFECTIVE DATE: This rule will become effective on January 6, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment weekdays from 9 a.m. to 4 p.m., at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th Floor, Boston, MA; and Division of Air Quality Control, Department of Environment Protection, One Winter Street, 8th Floor, Boston, MA 02108. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. What Massachusetts SIP Revision Is the Topic of This Action?
II. What Previous Action Has Been Taken on This SIP revision?
III. What Motor Vehicle Emissions Budgets (MVEBs) Are We Approving?
IV. What SIP Elements Did EPA Need To Take Action on Before Full Approval of the Attainment Demonstration Could Be Granted?
V. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Those?
VI. EPA Action
VII. Administrative Requirements

I. What Massachusetts SIP Revision Is the Topic of This Action?

A one-hour ozone attainment demonstration SIP was submitted on July 27, 1998, by the Massachusetts Department of Environmental Protection for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. The SIP revision was subject to public notice and comment by the State and a hearing was held in June 1998. A supplement to the attainment demonstration SIP was submitted by the Massachusetts Department of Environmental Protection on September 6, 2002. The attainment demonstration supplement included a reasonably available control measures (RACM) analysis and 2007 motor vehicle emissions budgets for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. In the supplement, Massachusetts requested an attainment date for this area of November 15, 2007, and included a demonstration of how attainment will be reached by that date. The supplemental SIP revision was also subject to public notice and comment by Massachusetts, and a hearing was held in July 2002.

II. What Previous Action Has Been Taken on This SIP Revision?

EPA published a notice of proposed rulemaking (NPR) for the Massachusetts attainment demonstration SIP on October 15, 2002 (67 FR 63586). In that action, EPA proposed to approve the ozone attainment demonstration submitted by the state, which includes a RACM analysis and 2007 motor vehicle emissions budgets with an attainment date of November 15, 2007. The proposed notice states EPA's conclusions regarding the approvability of the various portions of the SIP, which will not be repeated here. EPA also proposed to find the 2003 motor vehicle emissions budgets inadequate. The 2003 budgets were from the Massachusetts ozone attainment demonstration submitted in 1998. Readers are directed to the proposal for further information.

Comments received on the NPR for the attainment demonstration SIP for the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area and EPA's responses are discussed in section V. below.

EPA proposed approval of the New Hampshire ozone attainment demonstration for this nonattainment area on October 21, 2002 (67 FR 64582). Final action on the New Hampshire ozone attainment demonstration for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area can be found in a document published elsewhere in this issue of the **Federal Register**.

III. What Motor Vehicle Emissions Budgets (MVEBs) Are We Approving?

On September 6, 2002, Massachusetts submitted motor vehicle emissions budgets for the 2007 attainment year for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area in their SIP. The attainment year motor vehicle emissions budgets established by this plan that we are approving are 86.700 tons per day for VOC and 226.363 tons per day for NO_X for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. Under EPA's policy[1] for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on the EPA Web site for public comment on September 17, 2002. As the SIP was available electronically on the Massachusetts Department of Environmental Protection Web site at *www.state.ma.us/dep/bwp/daqc/daqcpubs.htm#sip*, the public comment period was open for thirty days. No comments were received by EPA on these budgets during the adequacy comment period. EPA also received no comments on our October 15, 2002, proposed approval of these budgets. EPA is approving these 2007 motor vehicle emissions budgets because they are consistent with the control measures in the SIP, and the SIP as a whole demonstrates attainment of the 1-hour ozone standard. The rationale for our approval is detailed in the October 15, 2002, proposed action.

EPA is making a finding of inadequacy on the 2003 motor vehicle emission budgets of 117.118 tons per summer day for VOC, and 243.328 tons per summer day for NO_X. As the area will not attain the one-hour ozone standard in the year 2003, the motor vehicle emissions budgets for the year 2003 are no longer consistent with attainment. These 2003 motor vehicle emissions budgets which were submitted on July 27, 1998, were previously found adequate through a February 19, 1999. EPA letter, which we issued prior to EPA's Guidance for Determining the adequacy of the submitted budgets issued November 3, 1999, With this final action these budgets are no longer adequate and can no longer be used in future conformity determinations.

The approved 2007 motor vehicle emissions budgets would apply in all future conformity determinations for an analysis year of 2007 and later. Note that a conformity determination with an analysis year between the present and 2006 would use the year 1999 motor vehicle emissions budgets of 147.108 tons per summer day of VOC and 262.580 tons per summer day of NO_X established in the approved post-1996 rate-of-progress plan for Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area (67 FR 55121). However, at this time there is no analysis year required prior to 2007.

IV. What SIP Elements Did EPA Need To Take Action on Before Full Approval of the Attainment Demonstration Could Be Granted?

In the proposed rulemaking for the Massachusetts attainment demonstration SIP published on October 15, 2002, EPA stated that it intended to publish final rulemaking on the Massachusetts Low Emission Vehicle (LEV) program regulations which replaced the previously federally approved Massachusetts LEV I rules either before or at the same time as publication of final approval of the attainment demonstration. Approval of the emission reductions associated with this measure is needed to fully approve the attainment demonstration.

Final approval of Massachusetts LEV SIP was granted by EPA Region I's Regional Administrator on November 26, 2002. This approval will be published elsewhere in the **Federal Register**. The approval LEV SIP will be promulgated at 40 CFR 52.1120(c)(132).

V. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Those?

EPA received comments on the Notice of Proposed Rulemaking published on October 15, 2002 (67 FR 63586). A letter dated November 13, 2002, from the Alliance of Automobile Manufacturers ("the Alliance") provided comments on two separate EPA proposed rulemaking notices published in the **Federal Register** on October 15, 2002: EPA's proposed approval of the Massachusetts's one-hour ozone attainment demonstration for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area (67 FR 63586), and EPA's proposed approval of the Massachusetts low-emission vehicle (LEV) program (67 FR 63583). The following discussion summarizes and responses to the comments that pertain to EPA's proposed approval of the Massachusetts ozone attainment demonstration. Those comments that pertain exclusively to the proposed approval of the Massachusetts LEV program are responded to in the final rulemaking action on that program signed by EPA Region I's Regional Administrator on November 26, 2002. The comments and responses in the Massachusetts LEV notice are included in the record for this final rule and apply to this notice. Publication of the Massachusetts LEV approval notice will be published elsewhere in the **Federal Register**. The approval LEV SIP will be promulgated at 40 CFR 52.1120(c)(132).

Comment: The Alliance states that the two notices published in the **Federal Register** on October 15 (67 FR 63583 and 63586) can be read inconsistently. According to the Alliance, in one notice EPA proposes to fully approve the attainment demonstration SIP revision submitted by Massachusetts, and in the other notice EPA "explains several reasons why full approval is not appropriate" for the Massachusetts LEV program.

[1] Memorandum from G. MacGregor, dated May 14, 1999, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision."

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Response: As stated in the proposed approval of the Massachusetts LEV program (67 FR 63583), EPA proposed to approve all of the components of the LEV program that are necessary to achieve the emission reductions associated with the LEV program, which the state relies on for purposes of its attainment demonstration. In EPA's proposed action on the Massachusetts LEV program, EPA proposed no action on the zero emission vehicle (ZEV) program, however that does not affect the level of emission reductions from the Massachusetts LEV program. The motor vehicle emissions budgets established in the attainment plan do rely on the emission reductions from the December 24, 1999, version of the Massachusetts LEV program, which we are approving elsewhere in the **Federal Register**. This approval of the Massachusetts LEV program does not include the Massachusetts ZEV program. As such, there are no inconsistencies between the two proposed approvals published on October 15, 2002.

Comment: The Alliance requests clarification of one portion of Table 2 in the SIP revision notice (67 FR 63586, at 63591), which states that "EPA will publish final rules for the CA LEV II SIP before or at the same time as we publish final rules on the attainment demonstration." The Alliance state: "It is impossible to predict with any certainty when the necessary rulemaking will occur in California to amend the current ZEV rule, when the amended California program will be submitted to EPA, and what action EPA will take on that program under section 209. Because California withdrew from EPA's consideration the current version of the ZEV program in July 2002, both EPA and all the affected stakeholders have to await developments in California. We assume that it is not EPA's intent to delay action on the rest of the SIP submittal until EPA can proceed in the manner required by section 209 of the Clean Air Act with respect to ZEV regulations."

Response: As stated in the proposed approval of the Massachusetts LEV program (67 FR 63583), it was EPA's intent to approve the Massachusetts' December 24, 1999, version of 310 CMR 7.40, the "Low Emission Vehicle Program" except for those portions dealing with zero emission vehicles. Since the ZEV portion of the Massachusetts LEV program does not contribute further emission reductions to the attainment demonstration, EPA can fully approve the attainment demonstration, based on its approval of the LEV program, while not taking action on Massachusetts ZEV program. EPA stands by its statement in the proposed rule that it would not take final approval action of the attainment demonstration before it took final action approving the LEV SIP. As explained above, final approval of Massachusetts LEV SIP was granted by EPA Region I's Regional Administrator on November 26, 2002. This approval did not take any action on sections 310 CMR 7.40(2)(a)5, 7.40(2)(a)6, 7.40(2)(a)3, 7.40(10) and 7.40(12) that pertain to the ZEV program.

VI. EPA Action

As described above, EPA does not believe any of the comments received on the proposal published for the attainment demonstration SIP revision for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area change the basis for our proposed approval. Thus, EPA is approving the ground-level one-hour ozone attainment demonstration SIP for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. EPA is also approving the attainment date for this area as November 15, 2007. EPA also approves both the RACM analysis and the 2007 volatile organic compound and nitrogen oxide motor vehicle emissions budgets for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area for use in transportation conformity. Lastly, EPA is finding the 2003 motor vehicle emissions budgets previously submitted by Massachusetts inadequate.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 10–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2002.

Robert W. Varney,

Regional Administrator, EPA-New England.

1. Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

2. Section 52.1127 is amended by revising the table to read as follows:

§ 52.1127 Attainment dates for national standards.

Air quality control region	Pollutant					
	SO_2		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
AQCR 42: Hartford-New Haven-Springfield Interstate Area (*See* 40 CFR 81.26)	(a)	(b)	(a)	(a)	(a)	(c)
AQCR 117: Berkshire Intrastat Area (*See* 40 CFR 81.141)	(a)	(b)	(a)	(a)	(a)	(c)
AQCR 118: Central Mass Intrastate Area (*See* 4r0 CFR 81.142)	(a)	(b)	(a)	(a)	(a)	(d)
AQCR 119: Metropolitan Boston Intrastate Area (*See* 40 CFR 81.19)	(a)	(b)	(a)	(a)	(a)	(d)
AQCR 120: Metropolitan Providence Interstate Area (*See* 40 CFR 81.31)	(a)	(b)	(a)	(a)	(a)	(d)
AQCR 121: Merrimack Valley-Southern NH Interstate Area (*See* 40 CFR 81.81)	(a)	(b)	(a)	(a)	(a)	(d)

a. Air quality presently below primary standards or area is unclassifiabale.
b. Air quality levels presently secondary standatrds or area is unclassifiable.
c. December 31, 2003.
d. November 15, 2007.

3. Section 52.1129 of subpart W is amended by adding paragraph (d) to read as follows:

§ 52.1129 Control strategy: Ozone.

* * * * *

(d) Approval—Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental protection on July 27, 1998, and September 6, 2002. The revisions are for the purpose of satisfying the one-hour ozone attainment demonstration requirements of section 182(c)92)(A) pof the Clean Air Act, for the Boston-Lawrence-Worcester, MA–NH serious ozone nonattiainment area. The revision establishes a one-hour attainment date of November 15, 2007l, for the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. This revision establishes motor vehicle emissions budgets for 2007 of 86.7 tons per day of volatile organic compounds and 226.363 tons per day of nitrogen oxides to be used in transportation conformity in the Massachusets portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area.

[FR Doc. 02–30841 Filed 12–5–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 61

[ND–001–0005a & 0007a; FRL–7419–1]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA has received adverse comments on our October 7, 2002 direct final rule (see 67 FR 62395) to approve revisions to various air pollution control rules in the North Dakota State Implementation Plan (SIP), which were submitted by the Governor of North Dakota with a letter dated June 21, 2001. In the October 7, 2002 direct final rule (67 FR 62395), we stated that if we received adverse comments by November 6, 2002, the direct final rule would be withdrawn and would not take effect. EPA has received adverse comments from the Dakota Resource Council, submitted with a letter dated November 6, 2002. The comments are specific to the North Dakota air pollution control rule regarding prevention of significant deterioration. Therefore, the sections of the direct final rule regarding the revisions to the North Dakota air pollution control rules are being withdrawn and all public comments received will be addressed in a subsequent final rule based on EPA's October 7, 2002 proposed rule (*see* 67 FR 62432). EPA will not institute a second comment period on this action.

Please note that this withdrawal does not withdraw or impact the sections of EPA's October 7, 2002 direct final rule regarding notice of delegation of authority for New Source Performance Standards nor the change to the

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approved plan to remove the State's part 61 National Emission Standards for Hazardous Air Pollutants regulations from the federally-approved SIP (and related update to the part 61 table).

EFFECTIVE DATE: The additions of 40 CFR 52.1820(c)(32) is withdrawn as of December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the October 7, 2002 **Federal Register** (67 FR 62432).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, and Vinyl chloride.

Accordingly, the addition of 40 CFR 52.1820(c)(32) is withdrawn as of December 6, 2002.

Dated: November 26, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–30941 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7416–9]

RIN 2060–AJ57

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: The EPA is taking final action today on certain amendments to the national emission standards for the portland cement manufacturing industry, which were originally promulgated on June 14, 1999 under the authority of section 112 of the Clean Air Act (CAA). The amendments make improvements to the implementation of the emission standards, primarily in the areas of applicability, testing, and monitoring where issues and questions were raised since promulgation of the rule.

On April 5, 2002, the EPA promulgated amendments to the national emission standards for the portland cement manufacturing industry as a direct final rule with a parallel proposal. On July 2, 2002, we withdrew certain provisions in the direct final rule in order to assess adverse comments. This action promulgates the amendments previously withdrawn based on the parallel proposal published on April 5, 2002.

EFFECTIVE DATE: December 6, 2002.

ADDRESSES: Docket A–92–53, containing supporting information used in developing these amendments, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460 in room B–108, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all of the information considered by EPA in the development of these final rule amendments. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–92–53.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of these final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 4, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to these final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Regulated Entities. Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Industry	32731	3241	Owners or operators of portland cement manufacturing plants.
Tribal associations	32731	3241	Owners or operators of portland cement associations manufacturing plants.
Federal agencies	(1)	(1)	(1)

[1] None.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The following outline is provided to aid in reading this preamble to these final rule amendments.

I. Background
II. Response to Comments
A. Applicability of Rule to Crushers Following Raw Material Storage
B. Operating Limits for Kilns and In-Line Kiln/Raw Mills with Alkali Bypasses
C. Performance Test Requirements When Operating Conditions Change
D. Conveying System Transfer Points
E. Visible Emission Monitoring At Highest Load or Capacity
III. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background

On June 14, 1999 (64 FR 31898), we published the final rule entitled "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry" (40 CFR part 63, subpart LLL). The American Portland Cement Alliance (APCA) petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the final rule under section 307(b)(1) of the CAA. (See 42 U.S.C. 7607(b)(1).) The APCA and the EPA have agreed to the terms of a settlement agreement and its implementation.

Consistent with the settlement agreement, we promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) on April 5, 2002. We issued the amendments as a direct final rule (67 FR 16614) with a parallel proposal (67 FR 16625) which we would finalize in the event that we received any adverse comments on the direct final rule. The amendments made specific changes to the NESHAP, generally relating to applicability, performance testing, and monitoring.

We received a total of five comment letters on the direct final rule amendments. Three comment letters were from the APCA, one was from an individual cement company, and one was from a private citizen. These commenters mainly requested additional clarification of and corrections to the final rule amendments. In response to some of the comments we received, we published a notice containing corrections and clarifications of two issues arising from explanatory language in the preamble to the direct final rule amendments (67 FR 44766, July 5, 2002).

Two adverse comments on the direct final rule amendments were included in the industry comments, and we also received three adverse comments from the private citizen. Consequently, we withdrew those amendments for which adverse comments were received (67 FR 44371, July 2, 2002). The amendments withdrawn were §§ 63.1340(c), 63.1344(a)(3), 63.1349(e)(3), and 63.1350(a)(4)(v) through (vii), (c)(2)(i), (d)(2)(i), and (e). In the withdrawal document, we stated that the adverse comments would be addressed in a subsequent final rule based on the proposed rule published on April 5, 2002. The remaining amendments not withdrawn became effective July 5, 2002.

After full and careful consideration of the adverse comments, we are promulgating the proposed amendments with a few minor changes summarized as follows. In the amendment related to the exemption from monitoring totally enclosed conveying system transfer points (§ 63.1350(a)(4)(v) through (vii)), we now require that the enclosures for these transfer points be operated and maintained as total enclosures on a continuing basis, as part of the source's operations and maintenance plan. In the amendments related to the daily monitoring of certain affected sources (§ 63.1350(c)(2)(i), (d)(2)(i), and (e)), we are dropping the requirement that the monitoring be conducted in accordance with § 63.7(e).

II. Response to Comments

A. Applicability of Rule to Crushers Following Raw Material Storage

Comment: The proposed amendment to § 63.1340(c) would clarify that primary and secondary crushers are not subject to the rule regardless of their location in the production line relative to raw material storage. One commenter argued that it is inappropriate to exempt crushers because the final rule explicitly qualified the applicability of the rule to crushers that follow raw material storage. Further, the commenter stated that if the present emission limit does not represent maximum achievable control technology (MACT), EPA must use available data to set a standard for crushers, or absent this, the promulgated standard should not be altered. The commenter stated that the new source performance standard (NSPS) applicability is irrelevant because it may not represent MACT, and not all sources are subject to the NSPS.

Response: As discussed in the preamble to the proposed rule (63 FR 14194, March 24, 1998), the final rule (64 FR 31900, June 14, 1999), and the direct final rule amendments that we withdrew (67 FR 16615, April 5, 2002), we never intended for the rule to cover crushers (whether located before or after raw material storage). The phrase "which precedes the raw material storage" was included inadvertently. While most crushers are located before raw material storage, a few may be located after raw material storage. Instead of clarifying that crushers are not covered by the rule, the existing rule language erroneously implies that crushers following raw material could be subject to the rule. Crushers are not included in this source category and it has never been our intent to include them in the rule. Further, we disagree that the applicability of the NSPS for the portland cement manufacturing industry (40 CFR 60, subpart F) is irrelevant. Although we have some discretion in defining the affected sources covered under a rule, we typically try to maintain consistency with previous regulatory history. See CAA section 112(c)(1), which states that EPA should endeavor in the MACT source listing process to be as consistent as possible with the categorization and subcategorization scheme used for issuing NSPS; in this case, EPA is acting consistently with the source category definition used for establishing NSPS. We are, therefore, amending the final rule as we proposed to clarify that primary and secondary crushers are not covered by the final rule regardless of

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their location relative to raw material storage.

As to the comments regarding the emission limit and MACT for crushers under this rule, since crushers are not affected sources, there is no emission limit that applies to crushers.

B. Operating Limits for Kilns and In-Line Kiln/Raw Mills With Alkali Bypasses

Comment: Section 63.1344 of the final rule establishes operating limits for kilns and in-line kiln/raw mills. Paragraph (a)(3) of that section pertains to the operating temperature limit of an in-line kiln/raw mill equipped with an alkali bypass. The proposed amendment to § 63.1344(a)(3) would clarify that the operating limit for gas stream temperature at the inlet to the alkali bypass particulate matter (PM) control device may be established during a performance test either with or without the raw mill being in operation. One commenter objected to this amendment because EPA did not provide test data to support the assumption that the raw mill status does not affect alkali bypass emissions.

Response: The EPA does not believe that data are needed to support the Agency's view that the raw mill operating status does not affect the alkali bypass gas emissions, because the portion of the exhaust gas sent through the alkali bypass is directed there before the remaining exhaust gas reaches the raw mill. Thus, the raw mill operating status has no effect on levels of dioxin/furan (D/F; the HAP of concern for this emission point) in the gas stream. In contrast, we believe that the raw mill operational status could affect D/F emission levels in the main exhaust gas stream because, unlike alkali bypass emissions, this gas stream does pass through the raw mill. The rule accounts for these potential emissions. See paragraphs (1) and (2) of § 63.1344(a). But there is no reason to think the alkali bypass emissions would be affected by the raw mill operational status, since, as explained, these emissions do not pass through the raw mill. The amendment, thus, appropriately provides additional flexibility to the facility by allowing the test for D/F emissions from the alkali bypass to be conducted whether or not the raw mill is operating.

C. Performance Test Requirements When Operating Conditions Change

Comment: Paragraphs (1) and (2) of § 63.1349(e) require a new performance test if a plant anticipates making a significant operational change that may adversely affect compliance with an applicable D/F or PM emission limitation. We proposed to add new paragraphs (e)(3)(i) through (iv) allowing a source to operate under the planned operational change conditions for a period not to exceed 360 hours, provided that certain conditions are met. Two industry representatives support the proposed amendment but object to one of the four conditions that would be required—conducting and completing the test within the 360-hour period. The commenters argue that the test requirement should not be automatic because the operator may determine (after operating for 360 hours) that the operational change is not appropriate. They stated that portland cement plants should be allowed to file a notification stating that the operational change will not be implemented.

Response: The additional time allowed under the amendments allows the operator to fine-tune process operations under the new conditions (*e.g.*, a PM control device inlet temperature higher than the current temperature operating limit) and to conduct the test(s). One purpose of requiring that the performance test be conducted is to avoid sources claiming a waiver from their temperature operating limit under the guise of an operational change that they never intend to implement. Without the performance test requirement, a loophole is created whereby sources could take advantage of the 360 hours we give them to operate at a temperature higher than their operating limit any number of times without demonstrating compliance. Additionally, the change suggested by the commenters is outside the scope of what was agreed to under the terms of the settlement agreement. For these reasons, we have decided to promulgate the amendment as proposed, without the change recommended by the commenters.

D. Conveying System Transfer Points

Comment: Section 63.1350(a) of the existing rule establishes informational requirements for the operation and maintenance (O&M) plan. Paragraph (a)(4) of this section deals with procedures for visible emissions monitoring. The proposed amendments would add new paragraphs (a)(4)(v) through (vii) that exempt conveying system transfer points from visible emission monitoring if the transfer points are totally enclosed. One commenter stated that the proposed monitoring exemption must include specific criteria and methods to establish permanent total enclosure status.

Response: As stated in the preamble to the proposed amendments and in background language of the settlement agreement (but not in the rule text), "the enclosures for these transfer points shall be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan." We agree with the commenter, and because this issue is already discussed in the settlement agreement, we have added this statement to the rule text.

E. Visible Emission Monitoring At Highest Load or Capacity

Comment: Paragraphs (c)(2)(i), (d)(2)(i), and (e) of § 63.1350 of the existing rule require daily visible emission observations for certain affected sources when the emission unit is operating at the highest load or capacity level reasonably expected to occur. The proposed amendments would revise these paragraphs to require that performance tests be conducted under representative conditions in accordance with § 63.7(e). Two industry representatives believe the reference to § 63.7(e) is inappropriate and should be removed.

Response: We agree that the reference to § 63.7(e) is inappropriate because it pertains to performance tests, not monitoring requirements. We have removed the phase "in accordance with § 63.7(e)" from the final rule amendments.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these final rule amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the amendments. Thus, Executive Order 13132 does not apply to these final rule amendments.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These final rule amendments do not have tribal implications, as specified in Executive Order 13175, because they will not have any substantial direct effects on an Indian tribe, the relationship between the Federal Government and an Indian tribe, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to these final rule amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (63 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final rule amendments are not subject to Executive Order 13045 because they are not an economically significant regulatory action as defined by Executive Order 12866, and because they are based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

These final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor do the amendments significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to these amendments.

G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A portland cement manufacturing company with less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3)

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a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of applicability, testing, and monitoring. We have, therefore, concluded that today's final rule amendments will have no adverse impacts on any small entities and may relieve burden in some cases.

Although the final rule amendments will not have a significant economic impact on a substantial number of small entities, we worked with the portland cement industry, including small entities, throughout the rulemaking process. Meetings were held on a regular basis with industry representatives in connection with the settlement agreement to discuss the development of the final rule, exchange information, and solicit comments on final rule requirements.

H. Paperwork Reduction Act

The information collection requirements in the existing rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control No. 2060–0416. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1801.02) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr*.

Today's action makes clarifying changes to the existing rule and imposes no new information collection requirements on industry. Because only clarifying changes are being made, there is no additional burden on industry as a result of these final rule amendments and the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an Agency does not use available and applicable voluntary consensus standards.

Because today's action contains no new test methods, sampling procedures or other technical standards, there is no need to consider the availability of voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart LLL—[Amended]

2. Section 63.1340 is amended by revising paragraph (c) to read as follows:

§ 63.1340 Applicability and designation of affected sources.

* * * * *

(c) For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. Any equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage is not subject to this subpart. In addition, the primary and secondary crushers of the on-site nonmetallic mineral processing plant, regardless of whether they precede the raw material storage, are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

* * * * *

3. Section 63.1344 is amended by revising paragraph (a)(3) to read as follows:

§ 63.1344 Operating limits for kilns and in-line kiln/raw mills.

(a) * * *

(3) If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass specified in paragraph (b) of this section and established during the performance test, with or without the raw mill operating, is not exceeded.

* * * * * *

4. Section 63.1349 is amended by adding new paragraph (e)(3) to read as follows:

§ 63.1349 Performance testing requirements.

* * * * *

(e) * * *

(3) In preparation for and while conducting a performance test required in paragraph (e)(1) of this section, a source may operate under the planned operational change conditions for a period not to exceed 360 hours, provided that the conditions in paragraphs (e)(3)(i) through (iv) of this section are met. The source shall submit temperature and other monitoring data that are recorded during the pretest operations.

(i) The source must provide the Administrator written notice at least 60 days prior to undertaking an operational change that may adversely affect compliance with an applicable standard under this subpart, or as soon as practicable where 60 days advance notice is not feasible. Notice provided under this paragraph shall include a description of the planned change, the emissions standards that may be affected by the change, and a schedule for completion of the performance test required under paragraph (e)(1) of this section, including when the planned operational change period would begin.

(ii) The performance test results must be documented in a test report according to paragraph (a) of this section.

(iii) A test plan must be made available to the Administrator prior to testing, if requested.

(iv) The performance test must be conducted, and it must be completed within 360 hours after the planned operational change period begins.

* * * * *

5. Section 63.1350 is amended by:

a. Adding paragraphs (a)(4)(v) through (vii);

b. Revising paragraph (c)(2)(i);

c. Revising paragraph (d)(2)(i); and

d. Revising paragraph (e) introductory text.

The revisions and additions read as follows:

§ 63.1350 Monitoring requirements.

(a) * * *

(4) * * *

(v) The requirement to conduct Method 22 visible emissions monitoring under this paragraph shall not apply to any totally enclosed conveying system transfer point, regardless of the location of the transfer point. "Totally enclosed conveying system transfer point" shall mean a conveying system transfer point that is enclosed on all sides, top, and bottom. The enclosures for these transfer points shall be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan.

(vi) If any partially enclosed or unenclosed conveying system transfer point is located in a building, the owner or operator of the portland cement plant shall have the option to conduct a Method 22 visible emissions monitoring test according to the requirements of paragraphs (a)(4)(i) through (iv) of this section for each such conveying system transfer point located within the building, or for the building itself, according to paragraph (a)(4)(vii) of this section.

(vii) If visible emissions from a building are monitored, the requirements of paragraphs (a)(4)(i) through (iv) of this section apply to the monitoring of the building, and you must also test visible emissions from each side, roof and vent of the building for at least 1 minute. The test must be conducted under normal operating conditions.

* * * * *

(c) * * *

(2) * * *

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A to part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the representative performance conditions. The duration of the Method 9 test shall be at least 30 minutes each day.

* * * * *

(d) * * *

(2) * * *

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A to part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the representative performance conditions. The duration of the Method 9 test shall be at least 30 minutes each day.

* * * * *

(e) The owner or operator of a raw mill or finish mill shall monitor opacity by conducting daily visual emissions observations of the mill sweep and air separator PMCD of these affected sources in accordance with the procedures of Method 22 of appendix A to part 60 of this chapter. The Method 22 test shall be conducted while the affected source is operating at the representative performance conditions. The duration of the Method 22 test shall be 6 minutes. If visible emissions are observed during any Method 22 visible emissions test, the owner or operator must:

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[FR Doc. 02–30844 Filed 12–5–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0237; FRL–7274–6]

Cyromazine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of cyromazine in or on bean, dry at 3.0 parts per million (ppm). The Interregional Research Project Number 4 (IR-4), requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective December 6, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0237, must be received on or before February 4, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

• Industry (NAICS 111, 112, 311, 32532), *e.g.*, Crop production, Animal production, Food manufacturing, and Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0237. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of July 17, 2002 (67 FR 4697) (FRL–7185–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0E6219) by IR-4. The notice included a summary of the petition prepared by Novartis Crop Protection Inc., Greensboro, NC 27419, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.414 be amended by establishing a tolerance for residues of the insecticide cyromazine, (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine), in or on dry bean (except cowpea) at 3.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of cyromazine on dry bean at 0.3 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyromazine are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents—rat	NOAEL = 3.0 (milligram/kilogram/day (mg/kg/day) LOAEL = 30 mg/kg/day based on alteration in the liver weight changes in males

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3150	90-Day oral toxicity—dog	NOAEL = 7.5 mg/kg/day LOAEL = 25 mg/kg/day based on alteration in liver weight in males
870.3200	21-Day dermal toxicity	NOAEL = > 2,010 mg/kg/day LOAEL = > 2,010 mg/kg/day. No dermal irritation was noted. No treatment related systemic toxicity was noted.
870.3700	Developmental toxicity in rodents—rat	Maternal NOAEL = 100 mg/kg/day LOAEL = 300 mg/kg/day based on clinical signs (red or clear nasal discharge) and decrease body weights Developmental NOAEL = 300 mg/kg/day LOAEL = 600 mg/kg/day highest dose tested (HDT) based on increased incidence of minor skeletal variations
870.3700	Developmental toxicity in non-rodents—rabbit	Maternal NOAEL = 10 mg/kg/day LOAEL = 30 mg/kg/day based on reduced body weight Developmental NOAEL = > 60 mg/kg/day (HDT) LOAEL was not established
870.3800	2–Generation reproduction—rat	Parental/Systemic NOAEL = 50 mg/kg/day LOAEL = 150 mg/kg/day based on based on decreased body weights that were associated with decreased food efficiency Reproductive NOAEL = > 150 mg/kg/day LOAEL = Not determined. No effects were noted on reproductive parameters at HDT Offspring NOAEL = 50 mg/kg/day LOAEL = 150 mg/kg/day based on based on decreased body weights at birth and through weaning
870.4100	Chronic oral toxicity—dogs	NOAEL = 7.5 mg/kg/day LOAEL = 75.0 mg/kg/day based on alteration in the hematological parameters (hemoglobin and hematocrit)
870.4300	Combined chronic/carcinogenicity—rats	NOAEL = 0.75 mg/kg/day LOAEL = 7.5 mg/kg/day based on based on decreased body weight There is no evidence of carcinogenicity.
870.4200	Carcinogenicity—mice	NOAEL = 7.5 mg/kg/day LOAEL = 50.0 mg/kg/day based on decreased body weight There is no evidence of carcinogenicity
	Mammalian chromosomal aberration	Negative for mutagenicity in Chinese hamster study
870.5100	Mutagenic—point mutation *Salmonella typhimurium*	Negative results for point mutations in TA1537, TA98, TA100, with and without activation
870.5450	Mutagenic—dominant lethal—mouse	Negative mutagen

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently

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used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for cyromazine used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYROMAZINE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary General population including infants and children	Not Applicable (NA)	NA	An appropriate end point attributable to a single dose (exposure) was not observed in oral toxicity studies.
Chronic dietary All populations	NOAEL = 7.5 mg/kg/day UF = 100 Chronic RfD = 0.075 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD/FQPA SF = 0.075 mg/kg/day	6-Month Feeding—dog LOAEL = 75 mg/kg/day based on alterations in hematological parameters [hematocrit, and hemoglobin (males)], body weight and body weight gain decreases and increase in several organ weights
Incidental oral Short-term (1 to 30 days) (Residential)	NOAEL = 10	LOC for MOE = 100 (Residential)	Developmental toxicity—rabbit study. LOAEL = 30 mg/kg/day based on decreases in body weight gain and food consumption.
Incidental Oral Intermediate-term (1 to 6 months) (Residential)	NOAEL = 7.5 mg/kg/day	LOC for MOE = 100 (Residential)	6-Month feeding—dog LOAEL = 75 mg/kg/day based on alterations in hematological parameters [hematocrit, and body weight gain decreases and increase in several organ weights].
Dermal (any time period) (Residential)	NA	NA	Dermal risk assessments were not performed since no hazard was identified via dermal exposure; there are no concerns for pre-/post-natal toxicity and dermal exposure is not expected since there are no registered residential uses.
Short-term inhalation (1 to 30 days) (Residential)	Oral NOAEL= 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental toxicity—rabbit study LOAEL = 30 mg/kg/day based on decreases in body weight gain and food consumption
Intermediate-term inhalation (1 to 6 months) (Residential)	Oral study NOAEL = 7.5 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	6-Month feeding—dog study LOAEL = 75.0 mg/kg/day based on alterations in hematological parameters [hematocrit, and hemoglobin (males)], body weight and body weight gain decreases and increase in several organ weights.
Long-term inhalation (>6 months) (Residential)	Oral study NOAEL= 7.5 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	6-Month feeding—dog study LOAEL = 75.0 mg/kg/day based on alterations in hematological parameters [hematocrit, and hemoglobin (males)], body weight and body weight gain decreases and increase in several organ weights.
Cancer	NA	NA	Based on weight-of-the-evidence, classified in Category E "no evidence of carcinogenicity in humans"

* The reference to the Food Quality Protection Act Safety Factor (FQPA SF) refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.414) for the residues of cyromazine, in or on a variety of raw agricultural commodities. There are currently tolerances for cyromazine use on a number of food crops including cucurbits, leafy vegetables, onions, lima beans, pepper, potato, and tomato. Tolerances exist as well for livestock commodities. Cyromazine is generally used on terrestrial crops as a foliar spray throughout the growing season, although for onions it is used as a seed treatment and for poultry it is used as a feed-through to control flies breeding in poultry waste. There are no existing or pending residential uses of cyromazine. Risk assessments were conducted by EPA to assess dietary exposures from cyromazine in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, an acute dietary exposure assessment was not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic dietary exposure estimates are based on tolerance level residues for plant and poultry commodities and on anticipated residue estimates for ruminant commodities. Dietary exposure estimates are also factored by the estimated (weighted average) usage of cyromazine, or "percent crop treated" (PCT) data.

iii. *Cancer.* Cyromazine is classified into Group E (non-carcinogen) based on carcinogenicity studies in rats and mice following long-term dietary administration. A quantified carinogenic risk estimate is not appropriate for cyromazine.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows.

Cantaloupe 0.3%; cucurbits 0.1%; lettuce 2.6%; leafy vegetables, other 9.4%; celery 14.2%; spinach 6.0%; onions 2.4%; pepper 5.3%; peppers, bell 9.0%; tomatoes 5.8%; tomatoes, fresh 22.2%; and watermelon 1.5%.

The Agency believes that the three conditions listed in this unit have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which cyromazine may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cyromazine in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of cyromazine.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would exceed human health levels of concern.

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Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to cyromazine they are further discussed in the aggregate risk sections in Unit E.

Based on the FIRST and SCI-GROW models the EECs of cyromazine for chronic exposures are estimated to be 16 parts per billion (ppb) for surface water and 5.0 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyromazine is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Cyromazine is a member of the triazine class of chemicals. EPA evaluated available scientific evidence to determine whether a common mechanism of toxicity exists among certain triazine-containing pesticides. Based on the available weight-of-evidence, cyromazine can not be grouped with other triazines based on a common mechanism of toxicity. EPA determined that only atrazine, simazine, propazine, and their specified degradants could be grouped based a common mechanism of toxicity for disruption of the hypothalamic-pituitary-gonadal (HPG) axis. For purposes of this tolerance action, EPA has concluded that cyromazine does not have a common mechanism of toxicity with other triazine-containing compounds. If additional data become available to support its inclusion in a common mechanism group, these data will be considered. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for pre-natal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Pre-natal and post-natal sensitivity.* The developmental and reproductive toxicity data from a pre-natal developmental study in rats, a pre-natal developmental study in rabbits, and a 2-generation reproductive toxicity study in rats, did not indicate increased susceptibility of young rats on rabbits to *un urero* and/or post-natal exposure.

3. *Conclusion.* There is a complete toxicity data base for cyromazine and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor to protect infants and children should be reduced to 1x. The FQPA factor was reduced based on reliable data supporting the following weight-of-evidence considerations:

i. There are no data deficiencies and hence there are no residual uncertainties for pre- and/or post-natal exposure, and no additional traditional SFs are needed with regard to the completeness of the cyromazine toxicity data base;

ii. There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with cyromazine;

iii. There is no evidence of increased susceptibility of young rats in the reproduction study with cyromazine; and

iv. There are also no residual uncertainties identified in the exposure data bases.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* There were no toxicological effects attributable to a single exposure (dose) observed in the oral toxicity studies. A dose and an endpoint for an acute RfD was not selected. Therefore, acute risk from exposure to cyromazine is not expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cyromazine from food will utilize 2.0% of the cPAD for both males and females of the U.S. population, and 4.0% of the cPAD for children 1–6 years old, subpopulation at greatest exposure. There are no residential uses for cyromazine that result in chronic residential exposure to cyromazine. Based the use pattern, chronic residential exposure to residues of cyromazine is not expected. In addition, there is potential for chronic dietary exposure to cyromazine in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CYROMAZINE

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Males	0.075	2.0	16	5	2,550
Female	0.075	2.0	16	5	2,200
Children	0.075	4.0	16	5	700

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cyromazine is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Cyromazine has been classified as a chemical showing "no evidence of carcinogenicity in humans." The Agency concludes that pesticidal uses of cyromazine are not likely to pose a carcinogenic risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to cyromazine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Analytical methods, AG-408 and AG-417, as listed in the Food and Drug Administration's Pesticide Analytical Manual (PAM) II, are adequate for tolerance enforce purposes.

B. International Residue Limits

There are currently no codex, Canadian or Mexican limits for residues of cyromazine on dry bean.

V. Conclusion

Therefore, the tolerance is established for residues of cyromazine, (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine), in or on dry bean (except cowpea) at 3.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0237 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 4, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office

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of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0237, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 15, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.414 is amended by alphabetically adding a commodity to the table in paragraph (a)(1) to read as follows:

§ 180.414 Cyromazine, tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Bean, dry, except cowpea	3.0
* * * * *	*

* * * * *

[FR Doc. 02–30839 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7797]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Risk Communication Division, Federal Insurance and Mitigation Administrator, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania:				
Bullskin, Township of, Fayette County ..	421622	Mar. 23, 1976, Emerg.; April 16, 1991, Reg. December 6, 2002, Susp.	12/6/02	12/6/02.
Everson, Borough of, Fayette County ...	420462	July 2, 1975, Emerg.; August 1, 1979, Reg. December 6, 2002, Susp.	.....do	Do.
Hempfield, Township of, Westmoreland County.	420878	April 16, 1973, Emerg.; September 29, 1978, Reg. December 6, 2002, Susp.	.....do	Do.
Mount Pleasant, Township of, Westmoreland County.	420888	Sept. 26, 1973, Emerg.; July 18, 1977, Reg. December 6, 2002, Susp.	.....do	Do.
Scottsdale, Borough of, Westmoreland County.	420896	Jan. 26, 1973, Emerg.; November 18, 1981, Reg. December 6, 2002, Susp.	.....do	Do.
Upper Tyrone, Township of, Fayette County.	420467	June 6, 1973, Emerg.; March 15, 1979, Reg. December 6, 2002, Susp.	.....do	Do.
Region V				
Indiana: Hamilton, Town of, DeKalb and Steuben Counties.	180248	Nov. 20, 1975, Emerg.; August 19, 1986, Reg. December 6, 2002, Susp.	.....do	Do.
Region VIII				
Wyoming:				
Dubois, Town of, Fremont County	560018	May 9, 1997, Emerg.; November 1, 1998, Reg. December 6, 2002, Susp.	.....do	Do.
Fremont County, Unincorporated Areas	560080	July 8, 1975, Emerg.; February 1, 1979, Reg. December 6, 2002, Susp.	.....do	Do.
Region II				
New Jersey:				
Florham Park, Borough of, Morris County.	340342	July 21, 1972, Emerg.; September 14, 1979, Reg. December 20, 2002, Susp.	12/20/02	12/20/02.
Rahway, City of, Union County	345314	June 30, 1970, Emerg.; December 17, 1971, Reg. December 20, 2002, Susp.	.....do	Do.
New York: Campbell, Town of, Steuben County.	360768	April 19, 1973, Emerg.; September 17, 1980, Reg. December 20, 2002, Susp.	.....do	Do.
Region III				
West Virginia:				
Buckhannon, City of, Upshur County	540199	July 8, 1975, Emerg.; September 4, 1986, Reg. December 20, 2002, Susp.	.....do	Do.
Region V				
Elgin, City of, Cook and Kane Counties	170087	May 29, 1975, Emerg.; March 1, 1982, Reg. December 20, 2002, Susp.	.....do	Do.
South Elgin, Village of, Kane County	170332	June 13, 1975, Emerg.; July 16, 1981, Reg. December 20, 2002, Susp.	.....do	Do.
Region IX				
California:				
Davis, City of, Yolo County	060424	July 31, 1979, Emerg.; November 15, 1979, Reg. December 20, 2002, Susp.	.....do	Do.
Yolo County, Unincorporated Areas	060423	Mar. 16, 1973, Emerg.; December 16, 1980, Reg. December 20, 2002, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 2, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–30911 Filed 12–5–02; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020814193–2282–02; I.D. 070102C]

RIN 0648–AQ05

Fisheries of the Exclusive Economic Zone Off Alaska; Extend the Interim Groundfish Observer Program Through December 31, 2007, and Amend Regulations for the North Pacific Groundfish Observer Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to extend the applicability date of the existing regulations for the interim North Pacific Groundfish Observer Program (Observer Program), which otherwise expire December 31, 2002, through 2007. This final rule also amends regulations governing the Observer Program. These changes clarify and improve observer certification and decertification processes; change the duties and responsibilities of observers and observer providers to eliminate ambiguities and strengthen the regulations; and grant NMFS the authority to place NMFS staff and other qualified persons aboard vessels and at shoreside or floating stationary plants to increase NMFS' ability to interact effectively with observers, fishermen, and processing plant employees. These parts of the action are necessary to improve Observer Program support of the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) for those industry sectors already subject to such requirements. The intended effect is better managed fishery resources that result in the effective conservation of marine resources and habitat.

DATES: Amendments to § 679.50 are effective December 31, 2002. Amendments to § § 679.2, 679.79(a)(3), and 679.43(e) are effective January 1, 2003.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained by contacting the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. Send comments on information collection requirements to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228; or *sue.salveson@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background

Groundfish fisheries in waters of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands management area (BSAI) are managed under quotas set annually for groundfish species and for several other species that the groundfish fishery is prohibited from retaining. These quotas may be apportioned among areas, seasons, gear types, processor and catcher vessel sectors, cooperatives, and individual fishermen. Both retained and discarded catch are credited against these annual quotas, which generally are based on stock assessments generated principally by NMFS and on recommendations from the North Pacific Fishery Management Council (Council). NMFS' Alaska Region is responsible for monitoring the progress of fisheries toward attainment of those quotas and allocations thereof and for closing the fisheries when quotas are reached. Stock assessments, quota monitoring, and management require collection of data from the fishery to account for all groundfish and prohibited species catch, including the portion of the catch that is discarded. North Pacific groundfish observers aboard vessels and at shoreside or floating stationary processors collect the data necessary for these purposes.

Observer requirements have been in place in Alaska since the mid–1970s, when the Fishery Conservation and Management Act (later re-named the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)) was implemented and monitoring and phasing out foreign groundfish fisheries in the U.S. Exclusive Economic Zone (EEZ) was a priority. Because these foreign fisheries ended by 1991, the Observer Program infrastructure was changed to provide observer coverage for domestic vessels and shoreside processing plants participating in the Alaskan groundfish fisheries. A domestic Observer Program was developed by NMFS in consultation with the Council and implemented through Amendment 18 to the GOA FMP and Amendment 13 to the BSAI FMP (54 FR 50386, December 6, 1989, and 55 FR 4839, February 12, 1990). The Observer Program established observer coverage requirements that have remained generally unchanged through 2002.

High quality observer data are a cornerstone of Alaska groundfish fisheries management. Numerous changes to the Observer Program have been implemented to promote continued collection of quality data. These changes have ranged from relatively minor adjustments to the Program to changes that would address fundamental concerns. Minor adjustments, for example, may address logistic or data acquisition concerns. Changes that would address fundamental concerns, however, may address issues of data quality, the distribution of costs for observer coverage, and accountability of observer providers and observers for maintaining specified performance standards. Several attempts for long term restructuring of the Observer Program to address these fundamental issues have failed. One attempt to rectify these failures has been the Council's recommendation for establishment of an interim Observer Program in anticipation of developing a long term restructuring plan. The existing observer Program expires at the end of 2002.

At its April 2002 meeting, the Council recommended an extension of the interim Observer Program through 2007, as well as changes to the program to address several legal concerns, to clarify responsibilities of observers and observer providers and to authorize placement of NMFS staff aboard vessels or at shoreside or floating processors to support observer functions. As in past years, the Council's recommended action is intended to allow additional time for the development and analysis of alternatives that would address

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numerous issues facing the Observer Program, including ways to improve the quality of data collected by observers and to redistribute costs for observer coverage. The Council intends to select and implement a preferred alternative to address those issues and concerns by January 1, 2008. The Council's recommended action would also improve regulations governing observer and observer provider responsibilities through modifications and additions to existing observer and observer provider duties and obligations. This action would further increase the ability of NMFS to interact effectively with observers, fishermen, and processing plant employees by authorizing NMFS to place NMFS staff and authorized individuals aboard groundfish and halibut vessels and at shoreside and stationary floating processors that require observer coverage.

The objective of these actions is to ensure that the Observer Program will continue to perform and improve its critical scientific, conservation, and management functions. As noted above, data provided by the Observer Program are, collectively, a critical element in the conservation and management of groundfish, other living marine resources, and their habitat. These data contribute to the current level of confidence in the management of federally managed fisheries in Alaska. Accurate catch accounting results in prosecution of fisheries at harvest levels that better approach actual allocations without exceeding them, thereby maintaining resource management objectives and avoiding, to the extent practicable, losses of revenue from potential misallocations resulting from the underharvest of total allowable catch (TAC). In recent years, the reliance on observer data for individual vessel accounting has been of particular importance in the management of the Western Alaska Community Development Quota (CDQ) program and American Fisheries Act (AFA) fisheries.

Because of the critical uses of observer data, extending the Observer Program beyond 2002 is essential. Improvements to the Observer Program are necessary to address both perceived and actual sources of data quality problems. In the absence of observer data or of some equivalent alternative source of fishery data, NMFS cannot fulfill its conservation and management obligations, as prescribed under the Magnuson-Stevens Act and other law.

On September 16, 2002, a proposed rule to extend the Observer Program through December 31, 2007, with modifications, was published in the **Federal Register** for a 30–day public review and comment period that ended October 11, 2002. Four letters of comments were received during the comment period that cumulatively contained 40 unique comments on the proposed rule. These comments and NMFS' responses are summarized under Response to Comments. The proposed rule discusses the history of the Observer Program, describes various attempts to modify its infrastructure to address long term concerns about data quality and accountability, and details descriptions of and justification for the changes to the Observer Program that are implemented under this action. These changes are summarized below.

Initial Permitting or Certification Determination. This final rule establishes an application procedure for both observers and observer providers and creates a mechanism for an official, or board of officials, appointed by the Regional Administrator, Alaska Region, NMFS (Regional Administrator), to review applications, determine who meets the certification or permitting criteria, and issue the appropriate certification or permit.

The denial of an observer certification or observer provider permit will be appealable. The Alaska Region's Office of Administrative Appeals (OAA) will review denials for both observers and observer providers upon request. Each decision from the OAA will be referred to the Regional Administrator. If the Regional Administrator does not act to overturn the OAA decision within 30 days, the OAA decision becomes the final agency action. Final agency action can be further appealed to the U.S. District Court. The specific processes for appeals of a denial of an observer provider permit or an observer certification are summarized below (See Observer Provider Permit Application and Observer Certification Process).

Permit vs. Certification for Observer Providers. This final rule changes the nomenclature for observer provider licensing that will result in the providers being "permitted," rather than "certified," to provide observer services to industry. Just as commercial fishing is authorized by a permit, observer providers will receive a permit from the agency, clarifying the role of observer providers in the structure of NMFS fishery regulations. Whereas a certification grants permission to the holder to perform tasks with some minimum required training, a permit is more business-oriented, granting permission to perform activities that do not require training by the agency.

Observer Provider Permit Application Requirements. Under the final rule, new persons wishing to provide observer services in Alaska groundfish fisheries would be required to apply for a permit that authorizes this activity. Applications may be submitted at any time.

Observer providers previously certified by NMFS to provide observers and who actively deployed observers in Alaska groundfish fisheries in 2002 would be considered to be qualified for these permits in 2003 by their demonstrated performance and their existing documentation on file. Such providers will not be required to submit a new application, and the owner(s) will be issued a permit based on their existing record. These observer providers will continue to be accountable for any violations of regulations that occurred while they were functioning as NMFS-certified observer providers prior to January 1, 2003. Upon issuance of a new observer provider permit, these observer provider permit holders must comply with all applicable regulations promulgated by NMFS while participating in the Observer Program. Former NMFS-certified providers need only comply with those regulations in force at the time of their participation in the program.

Because accurate identification of the business' ownership is required for issuance of the permit, each existing NMFS-certified provider will be required to correct or update any changes to ownership, management, and/or contact information set forth under § 679.50(i)(1)(ii)(A)and (B) of this final rule within 30 days of receiving a permit. Subsequent changes in ownership of an observer provider that involve a new person will require the observer provider to submit a new permit application prior to the effective date of the new ownership arrangement.

A new applicant for an observer provider permit will be required to submit a narrative application that contains information necessary for NMFS to evaluate the applicant to determine if he or she is qualified to be an observer provider. Observer providers contribute an important service to NMFS by recruiting, hiring, and deploying high-quality individuals to serve as observers. NMFS must ensure that observer providers meet minimum requirements so that this important service is consistently maintained. NMFS would permit all applicants who: (1) demonstrate that they understand the scope of applicable regulations; (2) document how they will comply with those regulations; (3) demonstrate that they have the business infrastructure necessary to carry out the job; (4) are free from conflict of interest; (5) do not have past performance problems on a Federal contract or any history of decertification as either an observer or observer provider; and (6) are free from criminal convictions for certain serious offenses that could reflect on their ability to carry out the role of an observer provider.

Each application for an observer provider permit must contain several elements. These elements are fully described and justified in the proposed rule (67 FR 58452, September 16, 2002) and are summarized below as follows:

(A) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company including, but not limited to, owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(B) Contact information for the owner, authorized agent, and company information. This information includes mailing addresses, physical location of the company, telephone and fax numbers, and business e-mail address for each office and authorized agent.

In addition, an applicant with ownership based outside of the United States would be required to identify an authorized agent and provide contact information for that agent, including mailing address, and phone and fax numbers where the agent can be contacted for official correspondence.

(C) A signed acknowledgment, under penalty of perjury, from each owner, or owners, board members and officers, of a corporation, certifying that they are free from a conflict of interest as defined in the final rule at § 679.50(i)(3). NMFS will provide an acknowledgment template form, which applicants may use to satisfy this part of the application.

(D) A statement signed under penalty of perjury from each owner, or owners, board members and officers of a corporation, describing any criminal convictions, performance ratings on any Federal contracts held by the observer provider, and any previous decertification while working as an observer or observer provider.

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to recruiting, hiring, deployment, and personnel administration.

(F) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider, and the arrangements to be used to achieve such responsibilities and duties.

The final rule also requires observer providers to notify and update NMFS through the Observer Program Office within 30 days when any of the required elements listed in § 679.50(i)(1)(ii)(A) and (B) of the final rule change. Signed statements from new board members or corporation officers under § 679.50(i)(1)(ii)(C) or (D) also will be required (See changes from the proposed rule to the final rule). These requirements will help facilitate the communication between NMFS and observer providers and help ensure ongoing credibility and accountability of observer providers.

Observer Provider Permit Application Evaluation. The Regional Administrator will appoint NMFS' staff members to a review board that will evaluate applications for an observer provider permit. The board will evaluate each application to determine whether it is complete and whether established criteria are met (see below). The board could seek further clarification from the applicant if necessary. Once the board's review is complete, it would make a determination on the application.

The criteria that will be used to evaluate an application are listed below; the proposed rule (57 FR 58452, September 16, 2002) explained why each criterion is needed.

(1) Absence of conflict of interest. Observer providers cannot have a conflict of interest as defined under § 679.50(i)(3) of this final rule.

(2) Absence of criminal convictions related to embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property; or the commission of any other offense indicating a lack of business integrity or business honesty that would seriously and directly affect the fitness of an applicant in providing observer services under this section.

(3) Performance ratings on a Federal contract. This evaluation criterion would help eliminate applicants with a history of past performance problems as a Federal contractor.

(4) Absence of any history of decertification as either an observer or observer provider.

The review board will make an initial administrative determination to approve the application or provide written notice of an evidentiary period for the applicant to provide additional information or evidence to support the application. If the review board approves the application, NMFS will issue an observer provider permit to the applicant. The applicant will then be authorized to provide observers to industry and will also be subject to the regulations governing observer providers.

If the review board provides an applicant with written notice of an evidentiary period to provide further information, it would be due to the application being deficient in some manner. The written notice will identify where the application is deficient and provide the applicant with a 60–day period to provide additional information to correct the deficiency. After that 60–day period, the review board will review any additional material provided and issue an Initial Administrative Determination (IAD) that would either approve or deny the application.

An applicant for an observer provider permit who is issued an IAD denying the application may appeal the determination to the OAA. Under existing regulations at § 679.43, the OAA would review the appeal and make an independent judgement. No right to administrative appeal for the OAA decision is available. However, the Regional Administrator, on his or her own initiative, may overturn the OAA decision; in this case, the Regional Administrator's decision would become final agency action. This Regional Administrator discretion will be required to be exercised within 30 days. If the Regional Administrator does not act to overturn the OAA decision within 30 days, the OAA decision becomes the final agency action. Final agency actions can be further appealed to the U.S. District Court. As part of the change to this appeals process under this final rule, regulations at § 679.43 are amended to provide for the establishment of an Address of Record for the observer provider applicant who wishes to appeal an adverse IAD.

Observer Provider Permit Duration. A permit issued to an observer provider will remain effective through December 31, 2007, unless: (1) the observer provider company has a new owner, which requires that a new permit application process be initiated under § 679.50(i)(1)(vi) of the final rule; (2) the permitted provider ceases to deploy observers to groundfish fisheries in the North Pacific during a period of 12 continuous months under § 679.50(i)(1)(vii) of the final rule; or (3) the permit issued to an observer provider is suspended or revoked under § 679.50(i)(1)(viii) of the final rule.

If a permit lapses after a period of 12 months of inactivity as described above,

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NMFS will issue an IAD to the permit holder stating that NMFS records indicate that the permit has lapsed and that the permit holder has the opportunity to appeal the determination. The IAD will also detail the appeals process available to the permit holder. Permit holders who appeal this IAD will be issued an interim permit so they can operate while their appeal is reviewed.

Observer Provider Sanctions. This final rule changes the process for observer provider permit revocation or suspension from an administrative process conducted by the Observer Program Office and the Alaska Regional Office to an enforcement process. Exclusive use of the agency's enforcement process for permit sanctions will enhance the agency's ability to obtain compliance with its regulations and create a consistent permit suspension and revocation process. Under this process, potential violations of performance standards by an observer provider are investigated by NMFS Enforcement and referred to General Counsel for Enforcement, Alaska Region (GCEL/AK). GCEL/AK may initiate civil prosecution proceedings and may issue a Notice of Violation and Assessment (NOVA) to the provider. The NOVA advises the provider of the alleged violation and the monetary amount of the assessment. The NOVA also describes the appeals process, which is presided over by an Administrative Law Judge (ALJ).

The NOVA and Notice of Permit Sanction procedures are established at 15 CFR part 904. This final rule removes all the observer provider suspension and decertification procedure regulations at § 679.50, to the extent they are replaced by 15 CFR part 904. The Observer Program/Alaska Regional Office will cease to maintain a separate process for suspension or revocation of an observer provider permit. Under 15 CFR part 904, appeals of enforcement actions are heard through an ALJ system. The ALJ is an entity independent from NOAA and the observer provider. The ALJ's decision is appealable to the U.S. District Court.

Certification Requirements and Procedures for North Pacific Groundfish Observers. Individuals wishing to be certified as North Pacific Groundfish Observers are required to complete an observer training course and to meet other requirements established by the Observer Program Office. Such certification allows them to be deployed through private observer provider companies to vessels and processors in Alaska that harvest or process groundfish and require observer coverage. NMFS provides certification training throughout the calendar year, depending on the availability of trainers and training needs.

Observers who completed sampling activities between June 30, 2001, and December 31, 2002, and have not since been decertified or had their certification suspended will be considered to have met certification requirements under this final rule. NMFS will issue each of these observers a new certification and certification training endorsement prior to their first deployment after December 31, 2002, unless NMFS determines that the observer has not been deployed, performed sampling duties, and debriefed successfully in the preceding 18 months. Under the final rule, these observers would be required to obtain subsequently the appropriate endorsements (described below) to their certification prior to each subsequent deployment. These observers will be subject to any enforcement actions for violations that occurred prior to January 1, 2003, as well as to all regulations governing observers beginning January 1, 2003.

Observer Certification Process. This final rule modifies existing procedures and adds certain new requirements. The Observer Program will continue to require that new candidates for observer certification meet standards developed to ensure that individuals will be able to complete their duties and responsibilities and work safely in the marine environment. Under the final rule, NMFS will certify individuals who: (1) meet any educational or other requirements for registration in an observer certification training class; (2) successfully complete the NMFS-approved observer certification training class; and (3) meet all pre-deployment requirements set forth in the final rule, including education requirements at § 679.50(i)(2)(i)(A)(*1*) through (*4*), a signed statement that discloses any criminal convictions under § 679.50(i)(2)(x)(A)(*1*)(*iv*), and a physical examination as required under § 679.50(i)(2)(x)(C).

The observer provider is required to submit substantiating information for certification, with one exception, to NMFS at least 5 business days prior to the beginning of a scheduled observer training. If the required observer information is not submitted 5 business days prior to the beginning of a scheduled training session, the observer provider could still register a candidate for a subsequent training session, provided all relevant materials are submitted in a timely manner for that training session. The exception to the above submission deadline is that the required, signed statement from a licensed physician asserting that the observer candidate is in proper health and physical condition for the job must be submitted prior to certification. While individuals whose certification has expired previously can be re-certified by successfully completing specified requirements, an individual who has previously been decertified cannot obtain a new observer certification.

The determination to either certify or deny certification will be made by a certification official within the Observer Program, appointed by the Regional Administrator. As is current practice, certification will be issued when the candidate has demonstrated his or her abilities and has met all certification requirements.

If a candidate fails training, he or she will be verbally notified on or before the last day of training. Within 10 business days of the verbal notification, the candidate and his or her observer provider will be notified in writing. The written notification will indicate the reasons the candidate failed the training and whether the candidate would be allowed to retake the training. If the candidate is allowed to retake the training, the conditions for re-training will be specified in the notice. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification.

Candidates' appeals from an IAD to deny certification would be made to the OAA rather than to the Observer Program Office, as is the current practice. Regulations at § 679.43 are amended under this final rule to provide for the establishment of an Address of Record for the observer or observer candidate who wishes to appeal an adverse IAD. A candidate who appeals the IAD and prevails will not receive certification until after the final resolution of that appeal. If unsuccessful, the candidate could further appeal to the U.S. District Court.

Endorsements. This final rule replaces the current system of pre-deployment certification with a system of certification endorsements. Under this action, observers will receive a certification that will expire with the expiration of the interim Observer Program on December 31, 2007. To ensure that observers are properly prepared for each assignment, the following series of endorsements to the certification will be required to deploy as an observer:

(1) Certification training endorsement. A certification training endorsement will signify the successful completion of the training course required to obtain observer certification. This endorsement will be granted with the initial issuance of an observer certification and will be required for any deployment as an observer in the BSAI or GOA groundfish fisheries. This endorsement will expire when the observer has not been deployed and performed sampling duties as required by the Observer Program for a period of time, specified by the Observer Program Office, after his or her most recent debriefing. An observer may renew this endorsement by successfully completing the certification training course once more.

(2) Annual general endorsements. Each observer will be required to obtain an annual general endorsement to his or her certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer will be required to successfully complete the annual briefing requirements specified in writing by the Observer Program Office.

(3) Deployment endorsements. Each observer who has completed an initial deployment after certification or an annual briefing will be required to receive a deployment endorsement to his or her certification prior to any subsequent deployments that year. An observer will be able to obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements, including, but not limited to, all briefing attendance requirements, and by maintaining all performance and conduct standards. These requirements will be specified in writing by the Observer Program Office during the observer's most recent debriefing.

(4) Level 2 and Level 2 "Lead" endorsements. Observers wishing to deploy aboard vessels participating in CDQ fisheries and in AFA fisheries as "level 2" observers currently are required to meet specific levels of observer experience and to successfully complete additional training to obtain a "CDQ" certification. Under this final rule, these requirements would not change, with one nomenclature exception. The term "CDQ certification" will be changed to "Level 2 endorsement" on the observer's basic certification. This change reflects the similarities in the additional level of experience and training required to monitor the CDQ and AFA fisheries. The term "Level 2" is more generic in terms of applicability to various fisheries management programs, specifically denoting an observer with a higher level of experience and training. The certification will be changed to an endorsement for the reasons stated above. Similar changes for current Level 2 "lead" observer certifications are made as well. A level 2 "lead" endorsement reflects specific experience on different types of vessels using different gear types.

One minor change to criteria for obtaining the Level 2 endorsement is that an observer would be required to receive an evaluation rating that the observer has met NMFS' deployment expectations for his or her most recent deployment. Current regulations require a deployment rating of "1" or "2" (meets or exceeds NMFS' deployment expectations), but the Observer Program has changed its deployment rating system. This action will require that an observer receive an evaluation by NMFS that indicates that the observer's performance met Observer Program expectations for the previous deployment.

Observer Sanctions. Observer suspension and decertification proceedings currently occur entirely within the Observer Program, including both initial determinations on sanctions and appeals of those determinations. Only criminal proceedings against observers under 15 CFR part 904 occur outside the Observer Program, with NMFS Enforcement, U.S. Department of Justice and NOAA General Counsel conducting those efforts. The final rule will maintain initial observer suspension and decertification determinations within the purview of the Observer Program but moves appeals of these determinations to the OAA to provide more assurance of objectivity in final decision making. The Observer Program will continue to address less serious observer misconduct or poor performance issues through policies and procedures that currently are in practice. These written policies are available to observers during certification training and subsequently from the Observer Program Office upon request.

Under this final rule, the Regional Administrator will appoint an observer suspension/decertification officer or officers to review cases referred by Observer Program staff for suspension or decertification, or both, and to issue a written notice to the observer if NMFS intends to proceed with the action. If the action is pursued, this notice will detail the reasons for and the terms of the action. The notice will also indicate to the observer his or her right to appeal the decision and the procedure for filing such an appeal. The observer would have an opportunity to present documentation that would show mitigating circumstances or refute the evidence before the official. Under this procedure, the observer suspension/decertification officer will create a written record. If the observer does not contest the proposal to decertify or suspend the certificate, the observer suspension/decertification officer's initial decision will become final.

If the observer wants to appeal an adverse initial determination by the observer suspension/decertification officer(s), the decision will be referred to the OAA. The OAA will provide a hearing officer who has special training in reviewing administrative records. Additionally, the OAA could preside over fact-finding hearings, hear testimony or review evidence and issue written decisions with determinations of factual issues and application of the regulations. The OAA's determination will be referred to the Regional Administrator. The Regional Administrator, on his or her own initiative, may overturn the OAA decision; in this case, the Regional Administrator's decision would become final agency action. The Regional Administrator will be required to exercise this discretion within 30 days. If the Regional Administrator does not act to overturn the OAA decision within 30 days, the OAA decision becomes the final agency action. Final agency actions can be further appealed to the U.S. District Court.

The OAA system will provide an efficient mechanism for decisions on observer appeals, suited to observers' needs for a straight-forward procedure and for pursuing appeals and resolution. Rather than resulting in monetary fines, these cases result in administrative sanctions, which the OAA is appropriately prepared to address.

The agency will continue to refer to NMFS' Alaska Enforcement Division (AED) certain cases for investigation that may involve serious observer misconduct, such as the exceptional cases where observers should be prosecuted for criminal offenses or receive monetary sanctions for egregious violations of the regulations. These would be instances of fraud, assault, or other more serious violations. Prosecution of these cases will continue to be handled by GCEL/AK, with appeals directed to ALJs. Successful prosecution of these cases will result in penal sanctions. Penal sanctions are those penalties that result from criminal prosecution or from civil prosecution that result in monetary fines.

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Predictably, given past experience, these will be very rare actions. Only one such observer case has been referred to GCEL/AK.

Observer and Observer Provider Responsibilities. The final rule modifies existing observer and observer provider responsibilities to clarify NMFS' intent and to eliminate ambiguities. Five new observer provider responsibilities, described below, also are established to better address observer and observer provider performance issues of particular concern.

New observer provider responsibilities. Five new provisions are established to require (1) that a new observer drug and alcohol policy provided by NMFS to observer providers is included in written contracts or contract addendums between observer providers and observers; (2) that observer providers verify valid U.S. Coast Guard vessel safety decals before placing an observer aboard; (3) that limitations placed upon reassignment of observers to vessels and/or processors be followed; (4) that observer duties be completed prior to an observer's assignment being changed; and (5) that observer providers provide observer candidates with a NMFS-produced pamphlet describing the duties of an observer. The NMFS-produced pamphlet describing the duties and working environment of the observer will be available prior to 2003 and will be required to be issued to observer candidates by observer providers during candidate interviews under this final rule.

A full description of the new responsibilities and reasons for them are set forth in the preamble to the proposed rule (67 FR 58452, September 16, 2002) and are not repeated here. NMFS did propose an additional requirement, which is included in the final rule, that will require observer providers to have a signed written contract or contract addendum with each observer prior to each deployment. Most observer providers already follow this practice. However, this provision is necessary to ensure the observer's protection against potential non-payment for work performed and as added insurance of observer compliance with certain assigned duties and requirements.

Authority to Place NMFS' Staff and Individuals Authorized by NMFS as Observers on Vessels, Shoreside Processors, and Stationary Floating Processors. This final rule authorizes NMFS to deploy staff and individuals authorized by NMFS as observers on fishing vessels and at shoreside processors and stationary floating processors that currently are required to carry NMFS-certified observers. This action is necessary to improve the ability of observers to operate successfully in these environments, resulting in more effective monitoring of groundfish harvest, bycatch, and impacts to protected species and the marine environment for conservation and management purposes. NMFS expects this action to improve its working relationship with industry and improve sampling conditions and support for observers in the field by allowing for more interaction and collaboration among NMFS staff, industry, observers, and observer providers.

The Magnuson-Stevens Act provisions authorizing collection of information for purposes of conservation and management of a fishery provide statutory authority to place observers aboard vessels. However, current regulations at § 679.2 define an observer as "any individual who is awarded NMFS certification to serve as an observer under this part, is employed by an observer contractor (provider) for the purpose of providing observer services to vessels, shoreside processors, or stationary floating processors under this part, and is acting within the scope of his/her employment." This final rule modifies the definition of an observer to include NMFS staff and individuals authorized by NMFS and provides the regulatory authority to deploy staff to vessels or processors to perform observer duties or collect related information to be used for the conservation and management of marine resources.

Staff observers will provide information that could be used to better train, support, and debrief groundfish observers. Staff observer deployments will be used to improve fisheries conservation and management through: (1) solving sampling issues specific to individual vessels, shoreside processors, or stationary floating processors; (2) creating new sampling protocols; (3) developing and implementing research projects; (4) maintaining knowledge of current vessel, shoreside processor, or stationary floating processors operations; and (5) providing on-site training for an observer(s) employed by an observer provider. Further discussion and justification of this program is presented in the preamble to the proposed rule (67 FR 58452, September 16, 2002).

Observer Coverage Requirements and Observer Procurement. This final rule requires vessels, shoreside processors, or stationary floating processors to carry NMFS staff or other individuals authorized by NMFS upon written request by the agency. These individuals will be deployed in lieu of, or in addition to, observers procured through private observer provider companies. Determinations regarding the most appropriate use of staff observers will be made with consideration of observer accounts of sampling difficulty, alternative ways to collect data, and improvements that could be made on vessels and at processing facilities that would facilitate data collection and enhance data quality. Evaluation of observer sampling protocols related to new or existing management and research needs will also be considered.

A majority of staff deployments to vessels and processors are expected to satisfy requirements for observer coverage as specified in §§ 679.7(f)(4) and 679.50(c) and (d). A determination on whether any staff deployment will meet coverage requirements for a specific vessel or processor will be made by NMFS in advance of each staff deployment. Notification of the determination will be made in writing to the vessel owner and/or operator, as well as to any observer provider contracted by the vessel to provide observer coverage. This determination largely will be based on whether NMFS staff or individuals authorized by NMFS are deployed to perform the duties of an observer. If the duties of the deployed staff observer do not include complete collection of data normally performed by an observer procured through a permitted observer provider for purposes of meeting regulatory coverage requirements, the staff observer deployment may not be used to satisfy observer coverage requirements.

The Observer Program would work with vessels and processors that are selected to carry NMFS staff or an individual authorized by NMFS to determine when and where deployments would begin and end. NMFS also will notify affected observer providers to the extent that the deployment of NMFS staff or other authorized individuals would affect prior arrangements for observer coverage. NMFS will not have regulatory authority to order a vessel to port to commence such a deployment. However, a vessel selected for a deployment will be required to work with NMFS to develop deployment logistics. This will include communicating vessel schedule and logistics to NMFS. NMFS does not intend to alter fishing operations or schedules in order to facilitate these deployments and will be responsible for transportation and shoreside lodging costs associated with staff deployments.

Requests for Staff Observers. Owners and operators of vessels, shoreside processors, and stationary floating processors, observers, and observer providers will be able to submit written requests for assistance from NMFS to improve observer data quality or resolve observer sampling issues. Fulfilling these requests will be at the discretion of NMFS, and requests will be evaluated according to specific needs and staff resources.

Response to Comments

Four letters were received during the public review and comment period on the proposed rule. These letters contained 40 unique comments that are summarized and responded to below.

Comment 1: The permit process for the observer providers needs to include observer input as part of the evaluation process. In our opinion, the permit is analogous to a Federal contract and services provided under such contracts are evaluated at regular intervals. We do not feel that a permitted provider should be exempt from similar evaluations.

Response: NMFS disagrees that issuance of an observer provider permit is analogous to a Federal contract. NMFS does value the input from observers concerning the performance of their observer providers and has given observers the opportunity to provide that input through an anonymous exit survey at the end of each cruise. A portion of this survey questions observers specifically about their observer provider's performance. At least once a year, NMFS summarizes this information and reviews it with each provider. NMFS will continue this type of review under the new regulations. NMFS has not conducted formal evaluations of observer provider performance for many years and does not intend to begin doing so. NMFS will continue to address performance issues as they arise with individual providers.

Comment 2: Previously, the regulations included a caveat to lower hiring standards if an insufficient number of applications were submitted from candidates with bachelor degrees. Is this regulation no longer applicable?

Response: A December 30, 1997, final rule extended the Observer Program through 1998 and included a change to the non-codified elements of the Observer Program that outline observer qualifications. For prospective observers, the change established: (1) minimum education and experience requirements, (2) specific coursework and skills requirements, and (3) that candidates successfully complete a screening test of basic mathematics, algebra, and computer skills. Since this was a new, non-codified requirement, NMFS included a caveat that if a sufficient number of candidates meeting these requirements were not available, the observer provider could seek approval from NMFS to substitute individuals with either a senior standing in an acceptable major, or an Associate of Arts degree in fisheries, wildlife science, equivalent degree, or other relevant experience or training.

The caveat was inserted to help providers during the transition to higher standards, but the education and experience requirements have been in place for over 4 years and NMFS feels the observer providers are finding and recruiting qualified applicants. For that reason, the non-codified exception to these requirements has been removed and is no longer applicable.

Comment 3: At § 679.50 (i)(2)(vii), the proposed rule states, "Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not: (B) deploy an observer for more than 90 days;". It would be useful to define when deployment time starts and stops. Our current understanding is that the countdown begins the day the observer boards his or her first vessel and ends the day the observer disembarks his or her last vessel. With the current wording, deployment time could be defined as starting when an observer leaves the site of their briefing for the field and continuing until they leave the field to debrief.

Response: Deployment is defined at § 679.2. The definition reads, "Deployment means the period between an observer's arrival at the point of embarkation and the date the observer disembarks for travel to debriefing." To further clarify, arrival at the point of embarkation is when an observer boards his or her first vessel or arrives onsite at his or her first processor.

Comment 4: We have requested that safety training for prior observers be modified to coincide with requirements of sea-going NMFS staff, other survey staff such as IPHC, or other observer programs. This request does not appear to be addressed in the proposed rule. We would like to see this policy modified within the Observer Program regardless of whether it appears in the final rule.

Response: Safety training is an important priority in the Observer Program. In September and October 2002, NMFS held four meetings on observer safety to gather ideas. Participants in these meetings included representatives from the Association for Professional Observers, observers, observer providers, NMFS staff, and Observer Training Center (OTC) staff. Once compiled, the results of each meeting will be used to modify and improve the safety training observers receive. In addition, NMFS has been working with the OTC to evaluate observer training and to explore options for offering returning observers advanced training.

Comment 5: Paragraph one on page 58468 of the proposed rule states, "The proposed regulation would require that observers complete a NMFS electronic vessel and/or processor survey prior to their final debriefing..." Did you mean "prior to being deployed in a non-groundfish fishery?"

Response: NMFS agrees that the proposed rule preamble language was not completely accurate. However, the proposed regulatory text did correctly require that observers complete a NMFS electronic vessel and/or processor surveys before performing other jobs or duties which are not part of NMFS groundfish observer requirements.

Comment 6: The proposed rule states development and implementation of research projects are a component that will justify NMFS placement of staff on board vessels. We support this justification but request the agency publish an annual report or summary of these projects. We have requested specific information on data needs and priorities from NMFS for almost a decade to no avail. Some people feel the lack of agency articulation regarding data needs is a major stumbling block in redesigning/restructuring the Observer Program.

Response: If requested by the Council, NMFS will provide periodic reports on NMFS staff involvement in the development and implementation of research projects that this rule making will allow. NMFS may also pursue other outlets such as the Alaska Fisheries Science Center's Quarterly Report. The broader issue of requesting specific information on data needs and priorities is beyond the scope of this rule making. Nonetheless, NMFS is committed to working with the Council and other interested parties in providing information necessary to support long term planning for the Observer Program. Also see response to Comment 30.

Comment 7: It concerns us to find proposed regulations in the **Federal Register** that had previously been rejected, were significantly altered after being accepted by the Council, or were entirely new and not previously discussed in a public forum.

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Response: NMFS acknowledges that the development of regulatory text after Council action, and the subsequent agency and NOAA General Counsel review of draft text, resulted in numerous changes or additions to regulatory text to meet or clarify intent. NMFS disagrees that regulatory provisions were included in the proposed rule that had been "rejected" by the Council. The opportunity for prior public notice and comment on the proposed regulations is intended to give additional opportunity for public review of policy and intent beyond the Council process and how that intent is incorporated in proposed rule making. While not all detailed issues may be addressed in the Council process, they must be addressed by NMFS during the public rule making process. This process complies with the Magnuson-Stevens Act, the Administrative Procedure Act, and other applicable law.

Comment 8: Section 679.50 (h) Procurement of observer services. As written in the proposed rule, this regulation has no qualification or certification process for NMFS staff assigned to vessels. Significant potential exists for untrained individuals to be assigned to vessels in lieu of qualified observers.

Response: It would serve no purpose for NMFS to deploy untrained individuals in lieu of observers. NMFS intends to deploy NMFS staff and other qualified persons who meet or exceed the requirements an observer must meet. Most if not all individuals being considered for deployment are former groundfish observers who currently train or debrief groundfish observers.

Comment 9: Without a cap on the number of days NMFS can deploy staff on vessels, the possibility arises that NMFS could use this regulation to alter the Observer Program extensively without further deliberation in the Council process. The potential impact on free enterprise has not been considered, nor the enforcement and monitoring implications to the vessels.

Response: NMFS presented several options to the Council that would have limited the number of annual deployment days. Following deliberation on these options, the Council selected no annual cap. NMFS does not have the budget or staff to extensively impact free enterprise with respect to providing observer services and intends to deploy NMFS staff or qualified persons in lieu of observers only when necessary. NMFS fails to see how the lack of a cap on NMFS deployments has enforcement and monitoring implications for vessels.

Comment 10: We would like to request that NMFS notify the observer provider that a vessel they provide coverage for will be required to carry NMFS staff at the same time NMFS notifies the vessel or processor.

Response: NMFS agrees that observer providers need as much advance notice as possible when a vessel or processor will carry NMFS staff in lieu of an observer. NMFS will make these notifications to observer providers.

Comment 11: The owner and operator's right to contact NMFS in writing to request assistance in improving observer data quality and resolving observer issues at § 679.50 (e)(3) should be extended to observers and observer providers.

Response: Observers and observer providers may contact NMFS with requests and the appropriate changes have been made to § 679.50 (e)(3).

Comment 12: In the preamble on page 58457 NMFS would require all observer applicants to meet all pre-deployment requirements established by the Observer Program. We are uncertain what these requirements are and how they would affect the observer providers and observers.

Response: The preamble to the proposed rule states that NMFS would certify individuals who: (1) meet any educational or other requirements for registration in an observer certification training class; (2) successfully complete the NMFS-approved observer training class; and (3) meet all pre-deployment requirements established by the Observer Program. The pre-deployment requirements were described in the proposed rule in two places, at § 679.50 (i)(2)(i)(A)(*1–4*) on page 58473 and § 679.50 (i)(2)(x)(A)(*1*)(*iv*) and (i)(2)(x)(C) on page 58474. The preamble to the final rule clarifies that these requirements are set forth in regulations.

Comment 13: NMFS states they will notify observer candidates in writing if the candidate fails the training class. We would like to request that NMFS also notify the observer providers in writing if an observer candidate fails.

Response: NMFS has amended § 679.50 (j)(1)(iii)(B)(*4*)(*ii*) to clarify NMFS' responsibilities if an observer candidate fails training. On or before the last day of training, NMFS will verbally notify the observer candidate whether he or she has failed training and also provide the reasons for failure. Within 10 business days, NMFS will notify the observer candidate in writing. The notification will indicate the reasons the candidate failed and whether the candidate can retake the training.

NMFS is not able to provide either verbal or written notification of this type to observer providers under the Privacy Act unless the observer candidate has signed a written waiver authorizing the disclosure of this information to an observer provider. However, contract provisions between observer providers and observer candidates could include such a waiver so that NMFS could release this information to observer providers. Similarly, observer candidates could provide their observer provider any written correspondence from NMFS. Given Privacy Act constraints and options to observer providers to obtain this information under consent of an observer candidate, NMFS is not pursuing a regulatory change that would authorize the release of verbal or written notification to observer providers.

Comment 14: Under the proposed regulation change an observer candidate will be notified whether he or she will be allowed to retake the training class should he or she fail training. We request that NMFS clarify the criteria for applicants retaking the NMFS training class.

Response: Historically, NMFS has not allowed candidates to retake training if they failed the NMFS certification training. NMFS has allowed candidates to retake training if they withdrew from training to address personal issues that developed during the course of the training or to address deficiencies noted prior to the end of training. NMFS will continue to allow candidates who meet the two conditions noted above to retake training. Outside of those conditions, candidates may fail for a host of reasons ranging from behavior problems to lack of technical skills. For this reason, each observer candidate must be evaluated on a case-by-case basis taking into account the reasons behind their failure. Regardless of whether NMFS decides an observer can or cannot retake the certification training, NMFS' decision can be appealed by the observer under the new regulations.

Comment 15: Under the proposed rule, NMFS would require observer providers to contact the Observer Program within 5 days after completion of an observer's deployment to schedule a debriefing. Please clarify if that is 5 calendar days or 5 business days?

Response: NMFS has clarified the requirement at § 679.50(i)(2)(x)(E) as 5 business days.

Comment 16: We would like clarification as to how NMFS-provided pamphlets and other literature describing observer duties and the Observer Program's drug and alcohol policy may be distributed to observer candidates. Does each candidate need to be mailed or faxed a hard copy or can this information be provided electronically (e.g., e-mail or web site)? We are also unsure what the content of the pamphlet on observer duties will be.

Response: The informational pamphlet on observer duties and the Observer Program's drug and alcohol policy will be available in hard copy upon request and on the Observer Program's web site. NMFS agrees that this information can be provided to observer candidates electronically. The pamphlet on observer duties will describe what role observers fill, the job training, living and working conditions, observer job duties, and basic requirements to qualify as an observer.

Comment 17: The proposed rule requires observer providers to distribute copies of the NMFS drug and alcohol policies to their observers. We are not opposed to having or distributing such policies, but we would like the opportunity to comment on such policies before distributing them.

Response: NMFS solicited comments from a variety of sources and distributed a draft of the Drug and Alcohol policy to all observer providers on August 26, 2002. NMFS requested comments by September 15, 2002, but no comments were received by the deadline. One observer provider commented after the deadline and their comments will be taken into account as we finalize the policy. If subsequent input on this policy suggest the policy should be modified, NMFS will consider doing so.

Comment 18: The proposed rule requires a statement from observer (provider) applicants "describing any criminal convictions" by the applicant, which are later described in § 679.50(i)(1)(iii)(A)(*2*) as: (i) embezzlement, theft, forgery, bribery, falsification, destruction of records, making false statements, receiving stolen property, or (ii) any other crimes of dishonesty, as defined by Alaska State Law or Federal Law that would seriously and directly affect the fitness of an applicant in providing observer services. While we understand the rationale behind this regulation, this was never discussed as part of the application process and we recommend it be removed from the rule.

Response: Criminal conviction disclosure will be in place for persons wishing to become new observer providers and any new persons in the management, organizational structure, and ownership structure of an observer provider. Without this information, NMFS could not be assured of having knowledge of new applicants, managers or owners, and it is in the public interest for NMFS to screen these applicants. This screening process includes an evaluation of their criminal convictions because convictions relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property could influence a person's ability to fulfill the expectations of an observer provider and predispose an applicant toward future compliance issues. Given these factors, NMFS needs to have the ability to assess persons relative to potential regulatory compliance issues and protect the fishing industry and observers from individuals whose credibility and accountability to the program are questionable. Also see response to Comment 7.

Comment 19: In reference to observer candidates disclosing criminal convictions, we are concerned that this regulation, in its present form, has not been discussed with the observer providers. We are also concerned about the use and intent of this regulation. Will some applicants not be admitted to training and could prior observers lose their job? We would like to see specific information and guidelines as to how NMFS will use this information. The types of convictions an observer must disclose is vague, the regulation should be refined to include either felonies as discussed with the Council or be expanded similar to the observer provider disclosure.

Response: This regulation was discussed at length during the Council process. Observers whose certification was current prior to this rule taking effect will not be required to disclose their history unless their certification lapses and they need to reapply for certification (see § 679.50(j)(iii)). Applicant disclosure of criminal convictions will be used to screen applicants and may be grounds for not admitting individuals to training. NMFS received specific guidance from the Council on this issue and the Council motion suggested NMFS screen applicants on a case-by-case basis and that applicants disclose their past criminal record without regard to the type of conviction. The outcome of each screening will be based on the nature of the criminal conviction as it relates to the job NMFS expects observers to perform.

Comment 20: Some of the background provided as supplementary information for this rule making is clearly out of date. For instance (from the proposed rule, pg. 58452), "Competitive pressure to reduce coverage costs to the industry keeps observer salaries low, resulting in reduced observer availability." Observer salaries will range from $3,900 per month for new observers to $5,610 per month for experienced observers in 2003. Also, "Instability in the fishing and observer provider industries has created situations in the past where observers were not paid for work performed." That would have been 1994 or so: if observer morale is still low, as the background alleges, events of 1994 can not be blamed.

Response: NMFS agrees that some of the issues experienced within the Observer Program in past years no longer appear to be a problem. However, we have no assurance that similar issues will not be encountered again in the future. A strong, credible Observer Program is of paramount importance to the monitoring and management of the North Pacific fishery resources. Recognition of this fact continues to provide the initiative for improvements to this program, including this final rule.

Comment 21: The new permitting, certification, and decertification procedures for observers and observer providers appear in large part to be a continuation of current practice dressed up in new terminology. We want to point out that any new system of "observer certification endorsements" needs to be implemented in such a way as to allow the "certification official" to issue these endorsements on the very afternoon an observer completes training or briefing. If the new system is not able to meet this time line, it will result in an Observer Program that is less efficient and less responsive to industry needs which will cost industry more money.

Response: NMFS understands the need for timely decisions for all observer endorsements under the new system. The system will be set up such that the certification official can issue endorsements the same day observers successfully complete training or briefing, which will ensure they are available for immediate deployment.

Comment 22: The proposed rule calls for providers to replace lost or damaged gear, but that raises the question as to whether gear that wears out due to normal use is also our responsibility. It would also be helpful if the Observer Program would provide us with a list of required and optional gear that NMFS provides for observers and with a list of vendors and replacement cost for each item in the event we need to purchase replacement gear. Would the observer provider replace the gear itself or simply reimburse NMFS? How and when will NMFS notify us that gear has been lost or damaged? We request that NMFS be required to notify providers within 5 business days of receiving an observer's gear of any items in need of

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replacement. This will allow us to recoup costs from our observers if gear was lost or damaged due to negligence.

Response: Upon request, NMFS can provide a list of required and optional gear that includes a list of accountable items. NMFS does not expect observer providers to replace gear that wears out due to normal use. NMFS does not have a way of accepting reimbursements for lost or damaged gear. Instead, observer providers are expected to purchase replacement gear and have it shipped to the nearest Observer Program facility. If an accountable gear item is lost or damaged NMFS will notify observer providers within 5 business days of learning accountable gear has been lost or damaged. Included with that notification will be a list of vendors and estimated cost for replacement.

Comment 23: This proposed rule requires observer providers to provide observers as requested by vessels and processors who need to fulfill their observer coverage requirements. Will we be required to respond to any such request, even if it is made by a vessel who failed to pay us last year? By a vessel we abandoned as unsafe last month? By a vessel who calls only two weeks or two days before needing an observer? By a vessel with which we have no contract? The answer we will give to any of these questions is "No", but the question is, by so answering, will we be in violation? If the answer to that question is "Yes", then the proposed text needs to be re-written. We suggest the wording to this regulation be changed to, "An observer provider must provide an observer for deployments as requested by vessels and processors, with which the provider has a current signed contract, to fulfill vessel and processor requirements..." Similar wording was proposed in an earlier draft, but it has been changed. This change is necessary to protect the provider from being penalized for not providing observers for vessels that have not been offered a contract.

Response: The proposed rule does not change existing regulatory text addressing the expectation that observer providers supply observers as requested by vessels and processors to fulfill industry observer coverage requirements. As in the past, NMFS and NOAA will take into account any and all mitigating factors (such as those outlined in the comment) prior to making a decision to pursue an enforcement action against an observer provider. While NMFS supports private contract arrangements between observer providers and their clientele, NMFS is not optimistic about a contract requirement being able to unilaterally assure industry that observers always will be available when necessary to satisfy coverage requirements, particularly if a lack of planning results in last minute requests. NMFS also recognizes countervailing needs of observer providers and vessel or processor owners and operators who require observer services to maintain compliance with observer coverage requirements. Observer providers cannot be forced to enter into a contract arrangement with a person they believe represents inappropriate business or safety risks. Conversely, industry members need assurance that observer services will be available when they need them so that fishing operations are not negatively impacted. NMFS is optimistic that the existing program can be enhanced in the future to address these issues and is working with the Council and its Observer Advisory Committee to develop alternatives for analysis.

Comment 24: The proposed rule requires that a written contract exist between observer providers and observers. Most observers are currently employed by providers who have a contract with the Alaska Fisheries Division of the United Industrial Workers. These providers have contracts with the union, not with individual observers. To be accurate, the text should require either "written contracts" for non-union providers or "written contract addendums" for union providers.

Response: NMFS recognizes there are both union and non-union observer providers and has made a change to the regulation language at § 679.50(i)(2)(i)(C) to include both contracts and contract addendums.

Comment 25: During the Council process it was decided that language would be added that allows for observers to verbally agree to a contract extension. In some cases observers are working different contracts (i.e., ADF&G Shellfish, NMFS Marine Mammal). Observer providers may ask a prior observer to switch between assignments in the field. Providers should only be required to provide new contracts if there is a substantial change in contract language or during the first contract for a new calendar year. We suggest the language, "The contract must be signed by the observer and observer provider prior to the observer's deployment..." be replaced with, "The contract must be signed by the observer and observer provider prior to the observer's initial deployment in a new calendar year..."

Response: For each cruise an observer participates in it is important there be a signed contract or contract addendum between the observer and observer provider. As pointed out in Comment 24, not all observer providers have a contract with the union, therefore, without this regulation NMFS has no assurances that observers will have the protection of a contract. In addition, regulations such as § 679.50(i)(2)(v) rely on there being a contract between the observer and observer provider.

Comment 26: Observers often line up work while they are traveling and without access to fax, e-mail, or mail. In addition, observers often arrive in Seattle and depart for Anchorage that same evening, and in such cases we should not be expected to get a contract addendum to them until they are already in briefing. In other cases, observers who have been granted a briefing waiver and are being deployed on an emergency basis (to take the place of an injured or ill observer for instance) do not stop in Seattle or Anchorage before reaching their port of embarkation. In these cases we should not be expected to get a contract addendum to them until early in their field deployment. As written, this requirement for a contract between an observer and their provider will decrease the flexibility we have developed to cope with unforseen coverage problems. We are bound by our contract with the union whether or not we have a signed addendum with an observer; as a union contractor, we find this regulation unnecessary.

Response: Regulations at § 679.50(i)(2)(C) require that a written contract must be signed prior to an observer's deployment. According to § 679.2, a deployment begins upon arrival at the point of embarkation (see also response to Comment 3). Except for emergency situations, as outlined in the comment, obtaining a signed written contract should not be problematic for observer providers. At least one observer provider has an office in each of the major ports or cities observers travel through on their way to deployments (i.e., Anchorage, Seattle, Kodiak and Dutch Harbor). Given the fact that an observer must travel through at least one of these locations in order to reach a vessel or processor, NMFS believes observer providers will have ample opportunity to get a contract or contract addendum to observers prior to their deployment. See also response to Comments 24 and 25.

Comment 27: We are opposed to the proposed regulation that NMFS would require observer providers to obtain a signed contract from the observer prior to deployment. We had a teleconference on this issue and after much discussion, NMFS said they would not pursue this regulation. This proposed regulation was not included in the changes proposed to the Council so they have not had an opportunity to comment on it.

Response: NMFS would like to clarify. The meeting referred to in the comment occurred on November 7, 2001, which was very early on in the regulatory process. At this meeting NMFS agreed to not pursue a requirement that observer providers have a signed contract with each observer before the observer enters training or briefing. NMFS agreed to this for the reasons outlined in Comment 26. The regulation was resurrected in a new format, which requires a signed contract prior to deployment, as the regulations were developed for reasons outlined in the response to Comment 25. See also response to Comment 7.

Comment 28: In the section of the proposed regulations that deals with new physical ailments prior to observer deployment, we believe the word "not" has been misplaced. We believe the regulation should read, "An observer provider must assign to vessels or shoreside or floating processors only observers: who have not informed the observer provider at the time of embarkation that he or she is experiencing any new physical ailments or injury since submission of the physician's statement..." By rewording the regulation observers will only be required to contact their provider if there is a problem, which will cut down on unnecessary communication expenses and free up time better spent dealing with observers who have informed us of an illness or injury. We think it is a mistake to single out "physical" ailments for reporting. Mental illness needs to be included in whatever language is settled upon.

Response: NMFS agrees and has made the necessary word change and added mental illness to § 679.50(i)(2)(iii)(B).

Comment 29: Observers are responsible for informing us in a timely manner if they are sick or injured, and we are responsible for having their illness or injury addressed before they return to work, whether on the same or another vessel. Under our approach, medical personnel determine whether an observer can work or not. Usually the medical personnel and the observer are in agreement as to the observer's fitness, but where there is disagreement, the situation is most likely to be one where the observer thinks they can go on working, but medical staff disagree. The proposed text, which would allow the provider to take an observer's word as to their fitness, could lead us to deploy observers who are less fit as a group than the observers who get deployed under our current approach.

Response: NMFS agrees. See response to comment 28.

Comment 30: We view this regulatory package as yet another short-term band-aid for problems that require a long-term solution. The background statement indicates the Observer Advisory Committee and Council have failed to develop a new plan. The agency needs to take the lead to revamp the Observer Program by instituting the Research Plan (or something similar) with or without the Council's approval. The Council process has not produced a solution in over a decade; why should we expect this to change within the next five years?

Response: NMFS agrees that long term solutions to several longstanding issues within the Observer Program have been difficult to identify, develop, and implement. NMFS recognizes that a leadership role exists for the agency in providing long term changes to the Observer Program and is committed to refocusing effort toward this goal. NMFS recognizes, however, that effective change will require support from the Council and intends to work within the public Council process to develop and ultimately implement necessary changes. Notwithstanding lack of action since repeal of the Research Plan in 1995, we remain optimistic that meaningful changes can and will be pursued over the next 5–year period.

Comment 31: The proposed rule states, "Vessels carrying observers are required under regulations at § 679.50(f)(1)(ii) to have on board a valid commercial fishing vessel safety decal issued by the Coast Guard. However, obtaining this decal through a Coast Guard inspection is a voluntary program and vessels are not prevented from operating without one." This language is confusing since many vessels require 100 percent observer coverage and the general prohibitions of the Magnuson-Stevens Act (MSA) at § 600.725(s) state that vessels may not "fish without an observer when the vessel is required to carry an observer." The proposed rule seems to conflict with the MSA.

Response: NMFS would like to clarify statements made in the preamble to the proposed rule. Vessels carrying observers are required under regulations at § 679.50(f)(1)(ii) to have on board a valid commercial fishing vessel safety decal issued by the Coast Guard. From the perspective of the Coast Guard, this program is voluntary as the Coast Guard does not require commercial fishing vessels to undergo these inspections. NMFS, however, mandates otherwise in regulations that require fishing vessels carrying observers to obtain a Coast Guard inspection in order to be issued a valid commercial fishing vessel safety decal. Thus, while the Coast Guard program is voluntary, obtaining a valid safety decal is mandatory under NMFS regulations for vessels carrying observers. NMFS disagrees that this approach conflicts with the Magnuson-Stevens Act.

Comment 32: While we would prefer that staff be able to verify fishing vessel safety decals, it just is not possible for staff to be in every single port where we deploy observers. If an observer verifies the decal, will that alone meet this NMFS requirement? If our records indicated that an observer verified the decal last week or last month and that it is still current, does that suffice, or does the next observer need to call it in too? Would it be more efficient to have safety decal information provided by the Observer Program and/or the Coast Guard about who has current stickers and/or safety concerns/complaints?

Response: On page 58467 of the proposed rule, NMFS outlined who could verify fishing vessel safety decals to satisfy this requirement. One of the options allows observer provider employees, including observers, to verify the presence of a valid decal and convey that information to the observer provider via phone, fax, or e-mail. As outlined above, this verification must be conveyed to the observer provider prior to the observer(s) embarking. A decal must be verified before every observer or set of observers embarks on a vessel. In addition to decals expiring, they can be revoked by the Coast Guard if safety violations are noted. For this reason, NMFS believes the most efficient way to verify safety decal information is for the observer provider to do it prior to each observer embarking on a vessel.

Comment 33: A fishing vessel safety decal does not ensure a vessel is currently safe. Decals are good for two years! Having a Coast Guard safety decal is not an effective solution to the problem at hand. We feel the regulations should be strengthened on the backside of the issue. What steps does an observer provider take if an observer reports an unsafe vessel? Our policy has always been to support the observer should he or she decide not to board a vessel due to safety concerns.

Response: NMFS agrees that having a valid fishing vessel safety decal does not guarantee a vessel is safe. However, it does mean that the vessel has undergone an inspection by Coast Guard personnel who are specialists in fishing vessel safety. If an observer reports an unsafe vessel to their provider, regulations at § 679.50(i)(2)(x)(I)(3)

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require the observer provider to report any concerns about vessel safety or marine casualty to the Observer Program within 24 hours. NMFS has a long history of working with the Coast Guard to investigate and correct safety issues. Observer providers and other entities are encouraged to forward specific safety suggestions to the Coast Guard. Also see response to Comment 4.

Comment 34: NMFS should focus on improving the communication between NMFS, providers, USCG, and vessels to create a database of safety issues. NMFS must notify providers if observers or NMFS staff raise safety concerns about a vessel. NMFS should develop training protocols to ensure observers can verify vessel safety. The proposed regulation on verifying fishing vessel safety decals does not adequately address the issue, and it will be difficult to enforce. It seems the main purpose of this regulation is to protect NMFS' liability interests and not the real issue of vessel safety.

Response: NMFS has worked very closely with the Coast Guard, NMFS Enforcement, observer providers, and the fishing industry when vessel safety issues arise. This cooperation will continue in the future. NMFS continues to develop observer safety training and works in cooperation with the Coast Guard to ensure observers are able to identify and verify safety equipment when they board a vessel. Safety issues identified by NMFS staff and observers are documented and passed on to the appropriate authorities for resolution. Specific recommendations on how to improve observer safety are welcome. Also see responses to Comment 4 and Comments 31 - 33.

Comment 35: The regulation requiring mid-cruise data reviews has been debated endlessly, and we agree with the final wording in principle, but we request it be amended to read, "The observer does not at any time during their deployment travel through a location where Observer Program staff are available and able to complete in a timely manner an in-person data review." We are concerned that if NMFS staff are not able to complete mid-cruises in a timely manner (e.g., due to office closures, observers arriving in Anchorage after business hours, etc.) that observers, vessels, and observer providers will be forced to wait. We would also like NMFS to clarify that the observer providers will not have to change their normal logistics if doing so would adversely affect the deployment of observers. For example, there will be situations where an observer will fly through Anchorage but only to make a connecting flight to another port.

Response: As worded, this regulation states that NMFS staff must be available for an observer to complete an in-person mid-deployment data review. If an observer will be traveling on a weekend, holiday, or after business hours through a location where the Observer Program has staff, NMFS has committed to making staff available for in-person mid-deployment data reviews. NMFS staff expect observer providers to advise them in advance in these situations. If after such notification NMFS staff are not available, the observer provider would be required to ensure their observer complete a phone or fax mid-deployment data review as described in the observer manual. In certain situations it may be necessary for NMFS to affect normal deployment logistics if an observer's errors were so egregious that the agency felt they could only be dealt with in-person. NMFS does not believe this will happen very often, but affecting logistics for an in-person data review would be in the public's interest if it does.

Comment 36: In the preamble, NMFS states, "The duties of an observer aboard a vessel delivering to a shoreside or floating processor are complete only when the vessel has finished offloading its catch and the observer has sampled that catch as it flows past the observer on a conveyor, typically as the fish enters the plant." This is true of pollock but not of cod, rockfish, flatfish, etc. In its current form, this topic has not been addressed and will place unnecessary financial burden on both observer providers and industry.

Response: The preamble language of the proposed rule was too vague and did not adequately describe the new regulation. However, the regulatory text was correct. At § 679.50(i)(2)(vii)(D) the regulations state, "An observer provider must not: (D) Move an observer from a vessel or floating or shoreside processor before that observer has completed his or her sampling or data transmission duties." NMFS asserts that in the pollock fishery an observer samples the catch typically as it enters the plant, but observers delivering from other fisheries typically do not have duties at the plant other than transmitting their data to NMFS. The regulation clearly describes that observers must be allowed to sample and transmit their data, neither of which will place an unnecessary burden on observer providers or industry.

Comment 37: There was no discussion of a NMFS-provided pamphlet to be distributed to physicians by the observer provider at any time during the Council process. We have not had time to review this regulation with the Council or NMFS and are uncertain what function it would serve. We feel it would duplicate unnecessarily information that is already provided to observers, observer providers, and physicians. We request this regulation be removed for proper review.

Response: NMFS did not specifically discuss the distribution of the pamphlet to physicians with the Council. NMFS did, however, discuss the necessity for this pamphlet to be distributed to potential observers. The purpose of the pamphlet, in part, is to provide consistent, factual information about observing to observer candidates so that they can make an informed decision as to whether observing is for them. NMFS feels that physicians, who judge an observer candidate's fitness for this job, should have that same information. Regulations at § 679.50(i)(2)(x)(C) require that, "...prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work..." NMFS feels distribution of the NMFS-provided pamphlet to physicians by observer providers is the most effective way to ensure they make informed decisions on observer fitness. See also response to Comment 16.

Comment 38: Within the proposed regulation at § 679.50(j)(2)(ii)(D)(3) we are unclear what "substantially affected" means in this context. For example, if an observer has a boyfriend/girlfriend that works on a vessel, can the observer be deployed to a different vessel within the same fishing company? Please clarify and provide examples.

Response: If the performance or non-performance of an observer's duties would benefit or harm the value or substance of vessel or processing plant personnel or the profits such individuals receive, it would meet the definition of "substantially affected." NMFS encourages observer providers to seek guidance from NMFS for unique situations to better ensure that conflict of interest standards are not violated.

Comment 39: With respect to observer provider responsibilities in the proposed rule, item 2 under § 679.50(i)(2)(i)(C) requires the observer's signed contract to contain, as a condition of continued employment, a provision that catch messages be submitted to the Observer Program at least every 7 days. If an observer has been deployed to shoreside fisheries and is not able to submit their catch message prior to their next assignment (due to waiting for a fish ticket, paperwork not complete, no access to communications equipment at the plant, etc.) and the observer is deployed to a vessel that will not return to port within seven days so the catch message may be submitted, is the observer in breach of contract? We request NMFS clarify what "unless otherwise specified by the Observer Program" means as it relates to this proposed wording.

Response: NMFS has specified that catch messages be received at least every 7 days because that schedule typically satisfies the quota tracking needs. In certain situations (e.g., a fishery is about to close), NMFS requests that observers submit their catch messages twice per week or daily to allow for a more exact estimation of when fishing needs to cease before the quota is exceeded. The wording, "unless otherwise specified by the Observer Program" is necessary to accommodate more frequent data needs in these situations. As outlined in the comment, situations exist when an observer cannot submit their catch message at least every 7 days, and NMFS fully understands this. When catch messages are not being received at least every 7 days, NMFS will examine the situation and make a determination as to whether the observer is being negligent in the performance of their duties and therefore not fulfilling an element of their contract. This information will be provided to the observer provider.

Comment 40: NMFS would like to require that observer providers submit in a weekly deployment/logistics report the location of unassigned observers. This is another new requirement added with no previous discussion. We would like NMFS to provide information as to why this is important and how it will be used. An unassigned observer's location may change several times before the next weekly report is submitted. Why does NMFS need to know where these individuals are?

Response: Following the Council process and during the development of these regulations, NMFS recognized that groundfish observers work as observers in other fisheries and sometimes have breaks in the middle of a cruise. NMFS also recognized that it did not always know where these observers were. At times NMFS needs to locate these individuals to get data that has not been received, correct data that may be erroneous, or put them in contact with NMFS Enforcement for a violation they witnessed. While NMFS understands than an observer's location may be in flux, the agency feels it is important to know where observers with an open cruise are or at least have an idea of where they are throughout their cruise so they may be contacted.

Changes From the Proposed rule to the Final Rule

Several changes from the proposed rule to the final rule are implemented under this action. These changes and the reasons for them are listed below.

PROPOSED RULE CITATION AND TEXT	FINAL RULE CITATION AND TEXT	REASONS FOR CHANGE
§ 679.50(e)(3) Vessel, shoreside processor, and stationary floating processor owners and operators may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, 7600 Sand Point Way NE, BIN C15700 Building 4, Seattle, Washington 98115–0070 or transmitted by facsimile to 206–526–4066.	§ 679.50(e)(3) ..... Vessel, shoreside processor, and stationary floating processor owners and operators, as well as observers and observer providers may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, P.O. Box 15700, Seattle, Washington 98115–0070 or transmitted by facsimile to 206–526–4066..	Changed as a response to Comment 11 and an update to the mailing address of the NMFS Observer program
§ 679.50(e)(1), (h), and (h)(1)-(2)	Replace the term "carry" with "use"	The proposed rule terminology referring to vessels and shoreside processors "carrying" observers or NMFS staff or individuals authorized by NMFS, is not technically correct with respect to shoreside processors. Thus, replacing word "used" with "carry" in the regulatory text will more uniformly apply to both vessels and shoreside processors.
§ 679.50(h)(1) and (2)	Add the phrase "or for other conservation and management purposes" to the end of each paragraph.	This addition is necessary to acknowledge that the possibility exists that the deployment of NMFS staff or an individual authorized by NMFS may result in deployments to vessels or processors beyond those currently required at § 679.50(c) and (d), or § 679.7(f)(4). Vessels and processors currently not required to carry observers under § 679.50(c) and (d) or § 679.7(f)(4) would not be subject to deployment of NMFS staff or other authorized individuals for purposes of paragraph (h) of this section in this final rule.

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PROPOSED RULE CITATION AND TEXT	FINAL RULE CITATION AND TEXT	REASONS FOR CHANGE
§679.50(i)(1)(v) (v) Agency determination on an application.–(A) Approval of an application. If an IAD is made to approve the application, the observer provider permit application review board will issue an observer provider permit to the applicant upon determination by the review board that the application is complete and all evaluation criteria are met.	§679.50(i)(1)(v) ..... (v) Agency determination on an application.–(A) Approval of an application. Upon determination by the review board that the application is complete and all evaluation criteria are met, an IAD is made to approve the application and the observer provider permit application review board will issue an observer provider permit to the applicant..	This revision simply reflects a technical edit to clarify regulatory text.
§679.50(i)(2)(i)(B)(*2*) Provide to the candidate a copy of the Observer Program's drug and alcohol policy. Observer job pamphlets and the drug and alcohol policy are available from the Observer Program Office at the address listed in paragraph (e)(3) of this section.	§679.50(i)(2)(i)(B)(*2*) ..... Provide to the candidate a copy of the Observer Program's drug and alcohol policy. Observer job pamphlets and the drug and alcohol policy are available from the Observer Program Office at the address listed in paragraph (e)(3) of this section or at the Observer Program's web site at *http://www.afsc.noaa.gov/refm/observers/default.htm*..	Changed as a response to Comment 16 to clarify that Observer Program documents and policy guidance also can be obtained from the Observer Program website.
§679.50(i)(2)(i)(C) A written contract must exist between the observer provider and each observer employed by the observer provider. The contract must be signed by the observer and observer provider prior to the observer's deployment and must contain the following provisions for continued employment:	§679.50(i)(2)(i)(C) ..... For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that must contains the following provisions for continued employment:.	Changed as a response to Comment 24
§679.50(i)(2)(iii)(B) Who have informed the provider at the time of embarkation that he or she is not experiencing any new physical ailments or injury since submission of the physician's statement as required in paragraph (i)(2)(ix)(C) of this section that would prevent him or her from performing their assigned duties; and	§679.50(i)(2)(iii)(B) ..... Who have not informed the provider prior to at the time of embarkation that he or she is not experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (i)(2)(ix)(C) of this section, that would prevent him or her from performing his or her assigned duties; and.	Changed as a response to Comment 28. A similar provision also was added to the list of responsibilities of observer providers at §679.50(i)(2)(i)(C)(*4*) that requires providers to include a provision in their contract or contract addendum with observers that observers inform them of any newly developed mental or physical aliment prior to embarkation.
§679.50(i)(2)(x)(E) Observer debriefing registration. The observer provider must contact the Observer Program within 5 days after the completion of an observer's deployment	§679.50(i)(2)(x)(E) ..... Observer debriefing registration. The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment.	Changed as a response to Comment 15.
§679.50(i)(2)(x)(G) Copies of contracts with observer providers and observers.	§679.50 (i) (2) (x) (G) ..... Copies of observer provider contracts with entities requiring observer services and with observers..	The revision to the heading of this paragraph (G) is edited to more accurately reflect the content of the regulatory text in this paragraph
§679.50(i)(2)(x)(H) Change in observer provider management and contact information. An observer provider must submit notification of any change to the information submitted on the provider's permit application under paragraph (i)(1)(ii)(A) or (B) of this section. Within 30 days of the effective date of such change, this information must be submitted by fax or mail to the Observer Program Office at the address listed in paragraph (e)(3) of this section.	§679.50(i)(2)(x)(H) ..... Change in observer provider management and contact information. Except for changes in ownership addressed under paragraph (i)(1)(vi) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraph (i)(1)(ii)(A) through (D) of this section. Within 30 days of the effective date of such change, this information must be submitted by fax or mail to the Observer Program Office at the address listed in paragraph (e)(3) of this section. Any information submitted under (i)(1)(ii)(C) or (i)(1)(ii)(D) of this section will be subject to NMFS review and determinations under (i)(1)(iii) through (viii) of this section..	Changes in observer provider management information, including changes to board members or corporate officers who provide input into company decisions and operating protocol, must be assessed relative to potential conflict of interest and culpability as set forth under (i)(1)(ii)(C) and (D). This is necessary for the same reasons this information is important in the original observer provider application process.

PROPOSED RULE CITATION AND TEXT	FINAL RULE CITATION AND TEXT	REASONS FOR CHANGE
§679.50(i)(3)(iii) Limitations on conflict of interest. Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.	§679.50(i)(3)(iii) ..... Limitations on conflict of interest. Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers..	Many activities are regulated by NMFS, but only regulated fishing and fish processing activities are related to the conflict of interest issue being considered. Thus, the intended effect of this revision to the proposed rule is to narrow the scope of activities that could lead to conflict of interest concerns.
(j)(1)(iii)(A) Existing Observers. Observers who completed sampling activities between June 30, 2001, and December 31, 2002, and have not had his or her certification revoked during or after that time period, will be considered to have met certification requirements under this section. These observers will be issued a new certification prior to their first deployment after December 31, 2002.	(j)(1)(iii)(A) ..... Existing Observers. Observers who completed sampling activities between June 30, 2001, and December 31, 2002, and have not had his or her certification revoked during or after that time period, will be considered to have met certification requirements under this section. These observers will be issued a new certification prior to their first deployment after December 31, 2002, unless NMFS determines that the observer has not been deployed, or has not performed sampling duties, or has not been debriefed successfully in the preceding 18 months..	This change is necessary to limit automatic re-certification to only those prior observers who were deployed within the 18 months preceding their first deployment after December 31, 2002. An 18–month time frame is reasonable, given the changes in fisheries and fishery regulations that typically occur over this time period that could affect the applicability of certification training received prior to 2003.
(j)(1)(iii)(B) (*4*) (*ii*) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: the reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions, or; whether the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (j)(1)(iv)(A) of this section.	(j)(1)(iii)(B)(4)(ii) ..... If a candidate fails training, he or she will be verbally notified of the unsatisfactory status of his or her training in writing on or before the last day of training. Within 10 business days of the verbal notification, the observer candidate will be notified in writing. The written notification will indicate why the candidate failed the training; whether the candidate can retake the training, and whether the candidate may or may not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (j)(1)(iv)(A) of this section..	Change in response to Comment 13 and to provide a more realistic time frame for written notification.
§679.50 (j) (1) (v) (A) Certification training endorsement. A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement is required* * *	§679.50(j)(1)(v)(A)Certification training endorsement. A certification training endorsement signifies the successful completion of the training course required to obtain observer certification this endorsement. A certification training endorsement is required ***.	Technical edit to clarify the subject of the regulatory text.

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PROPOSED RULE CITATION AND TEXT	FINAL RULE CITATION AND TEXT	REASONS FOR CHANGE
§ 679.50 (j) (3) (iii) Issuance of initial administrative determination. Upon determination that suspension or decertification is warranted under paragraph (j)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.	§ 679.50(j)(3)(iii) ..... Issuance of initial administrative determination. Upon determination that suspension or decertification is warranted under paragraph (j)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or those cases in which public health, interest, or safety require such actions. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action..	NMFS is revising the proposed rule regulatory text to more accurately reflect the specific legal process for suspension and decertification of certified observers at time of issuance of an IAD under 5 U.S.C. 558.

Classification

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act and which have been approved by OMB under OMB control number 0648–0318. These requirements and their associated burden estimates per response are: 60 hours for application for a new observer provider permit; 15 minutes for observer candidates to provide copies of college transcripts and disclosure statements to their observer provider; 15 minutes for observer providers to submit to NMFS copies of observer candidates' college transcripts and disclosure statements; 5 minutes for notice of observer physical examination; 2 hours for observer time for a physical examination; 7 minutes for notice of projected observer assignment; 7 minutes for submission of information to register observers for different types of briefing sessions; 12 minutes for certificate for insurance; 15 minutes for copies of different types of contracts; 7 minutes for weekly deployment/logistics report; 7 minutes for notice of observer debriefing registration; 2 hours for report of observer harassment, observer safety concerns, or observer performance problems; 30 minutes for Industry Request for Assistance in Improving Observer Data Quality Issues; 15 minutes for the addition of permit information updates by observer providers to keep permit information current; 40 hours for the observer provider appeals process if a provider disagrees with agency action to deny issuance of a permit; and 20 hours for an observer candidate's appeal if denied certification.

The response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which describes the impact this final rule may have on small entities. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings. A copy of the FRFA is available from NMFS (see **ADDRESSES**). No comments on the IRFA were received during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was summarized in the proposed rule (67 FR 58452, September 16, 2002).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 27, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679- FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition for "Observer Contractor" is removed; the definition for "Observer" is revised, and the definition of "Observer Provider" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Observer means any

(1) Individual who is awarded NMFS observer certification to carry out observer responsibilities under this part, and who is employed by an observer provider for the purposes of providing observer services to vessels, shoreside processors or stationary floating processors under this part; or

(2) NMFS staff or other individual authorized by NMFS deployed, at the direction of the Regional Administrator, aboard vessels or at shoreside processors or stationary floating processors for purposes of providing observer services as required for vessels, shoreside processors or stationary floating processors under § 679.50(c) or (d), or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

* * * * *

Observer Provider means any person or commercial enterprise that is granted a permit by NMFS to provide observer services to vessels, shoreside processors, or stationary floating processors for observer coverage credit as required in subpart E of this part.

* * * * *

3. In § 679.7, paragraph (a)(3) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(3) *Groundfish Observer Program.* (i) Fish or process groundfish except in compliance with the terms of the Groundfish Observer Program as provided by subpart E of this part.

(ii) Except where observer services are provided by NMFS staff or other individuals authorized by NMFS under § 679.50(e), provide observer services to the North Pacific Groundfish fisheries without an observer provider permit issued under § 679.50(i)(1).

* * * * *

4. In § 679.43, paragraph (e) is revised to read as follows:

§ 679.43 Determinations and appeals.

* * * * *

(e) *Address of record.* General - NMFS will establish as the address of record the address used by the applicant in initial correspondence to NMFS concerning the application. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

* * * * *

5. In § 679.50 make the following amendments:

a. Revise the references "(h)(1)(i)(D) and (E)" to read "(j)(1)(v)(D) and (E)" in paragraphs (c)(4)(i), (c)(4)(ii), and (c)(4)(vi)(B) and (c)(4)(vi)(C);

b. Revise the reference "(h)(1)(i)(D)" to read "(j)(1)(v)(D)" in paragraphs (c)(4)(iv), (c)(4)(v)(A), and (d)(4)(i);

c. Revise the reference "(h)(1)(i)(E)" to read "(j)(1)(v)(E)" in paragraphs (c)(4)(iii), (c)(4)(v)(B), and (c)(4)(vi)(A).

d. Revise the reference "(h)(1)(i)(E)(*1*)" to read "(j)(1)(v)(E)" in paragraph (c)(6)(ii).

e. Remove paragraph (j); redesignate paragraphs (e) through (i) as (f) through (j), respectively; add a new paragraph (e); and revise the section heading and the newly redesignated paragraphs (h), (i), and (j) to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(e) *NMFS staff observers.* (1) Any vessel, shoreside processor, or stationary floating processor required to comply with observer coverage requirements under paragraph (c) or (d) of this section or under § 679.7(f)(4) must use, upon written notification by the agency, NMFS staff or an individual authorized by NMFS for purposes of coverage requirements as specified in paragraphs (c) and (d) of this section or for other conservation and management purposes.

(2) Prior to deployment of NMFS staff or individuals authorized by NMFS, the agency will provide written notification to the owner or operator of a vessel, shoreside processor, or stationary floating processor whether observer coverage credit will be granted for that deployment.

(3) Vessel, shoreside processor, and stationary floating processor owners and operators, as well as observers and observer providers, may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, P.O. Box 15700, Seattle, Washington 98115–0070 or transmitted by facsimile to 206–526–4066.

* * * * *

(h) *Procurement of observer services.* Owners of vessels, shoreside processors, or stationary floating processors required to use observers under paragraphs (c) and (d) of this section must arrange for observer services from a permitted observer provider, except that:

(1) Owners of vessels, shoreside processors, or stationary floating processors are required to procure observer services directly from NMFS when the agency has determined and notified them under paragraph (e) of this section that their vessel, shoreside processor, or stationary floating processor will use NMFS staff or an individual authorized by NMFS in lieu of an observer provided through a permitted observer provider to satisfy requirements under paragraphs (c) and (d) of this section or for other conservation and management purposes.

(2) Owners of vessels, shoreside processors, or stationary floating processors are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and notified them under paragraph (e) of this section, that their vessel, shoreside processor, or stationary floating processor will use NMFS staff or individuals authorized by NMFS, in addition to an observer provided through an observer provider to satisfy requirements under paragraphs (c) and (d) of this section or for other conservation and management purposes.

(i) *Observer provider permitting and responsibilities*–(1) *Observer provider permits*–(i) *General.* (A) Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

(B) *New observer providers.* An applicant seeking an observer provider permit must submit a completed application by fax or mail to the Observer Program Office at the address listed in paragraph (e)(3) of this section.

(C) *Existing observer providers as of 2002.* NMFS-certified providers who deployed observers under the North Pacific Groundfish Observer Program in 2002 are exempt from the requirement to apply for a permit and will be issued an observer provider permit, except that a change in ownership of an existing observer provider after January 1, 2003, requires a new permit application under paragraph (i)(1)(vi) of this section if the change involves a new person. Such observer providers must submit to the Observer Program Office within 30 days of receiving the observer provider permit issued under this paragraph any changes or corrections regarding information required under paragraphs (i)(1)(ii)(A) and (i)(1)(ii)(B) of this section.

(ii) *Contents of application.* An application for an observer provider permit shall consist of a narrative that contains the following:

(A) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a

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corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(B) *Contact information*–(*1*) *Owner(s) information.* The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(*2*) *Business information.* Current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(*3*) *Authorized agent.* For observer providers with ownership based outside the United States, identify an authorized agent and provide contact information for that agent including mailing address and phone and fax numbers where the agent can be contacted for official correspondence. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of an observer provider. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with the process.

(C) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they are free from a conflict of interest as described under paragraph (i)(3) of this section.

(D) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer or observer provider.

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(F) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider as set out under paragraph (i)(2) of this section, and the arrangements to be used.

(iii) *Application evaluation.* (A) The Regional Administrator will establish an observer provider permit application review board to review and evaluate an application submitted under paragraph (i)(1) of this section. The board will be comprised of NMFS staff. Issuance of a permit will be based on the completeness of the applicant's application, as well as the following evaluation criteria for each owner, or owners, board members, and officers if a corporation:

(*1*) Absence of conflict of interest as defined under paragraph (i)(3) of this section;

(*2*) Absence of criminal convictions related to:

(*i*) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(*ii*) The commission of any other crimes of dishonesty, as defined by Alaska State law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(*3*) Satisfactory performance ratings on any Federal contracts held by the applicant; and

(*4*) Absence of any history of decertification as either an observer or observer provider;

(B) The evaluation by the review board will provide a basis for the board's initial agency determination (IAD) on whether the application is complete and all evaluation criteria are met.

(iv) *Evidentiary period.* The observer provider permitting review board will specify, by letter via certified return-receipt mail, a 60–day evidentiary period during which a candidate may provide additional information or evidence to support the application, if the application is found to be deficient.

(v) *Agency determination on an application*–(A) *Approval of an application.* Upon determination by the review board that the application is complete and all evaluation criteria are met, an IAD is made to approve the application and the observer provider permit application review board will issue an observer provider permit to the applicant.

(B) *Denial of an application.* An application will be denied if the observer provider permit application review board determines that the information provided in the application was not complete or all the evaluation criteria were not met. The observer provider permit application review board will prepare and send a written IAD to the applicant upon evaluation of a completed application. The IAD will identify any deficiencies in the application or any information submitted in support of the application. An applicant who receives an IAD that denies his or her application may appeal under § 679.43. An applicant who appeals the IAD will not be issued an interim observer provider permit and will not receive a permit unless the final resolution of that appeal is in favor of the applicant.

(vi) *Transferability.* An observer provider permit is not transferable. An observer provider that experiences a change in ownership that involves a new person must submit a new permit application and cannot continue to operate until a new permit is issued under this paragraph.

(vii) *Expiration of Permit.* (A) The observer provider permit will expire after a period of 12 continuous months during which no observers are deployed by the provider under this section to the North Pacific groundfish industry.

(B) The Regional Administrator will provide a written determination to an observer provider if NMFS deployment records indicate that the permit has expired. An observer provider who receives a written IAD of permit expiration may appeal under § 679.43. A permit holder who appeals the IAD will be issued an extension of the expiration date of the permit until after the final resolution of that appeal.

(viii) *Sanctions.* Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(*2*) *Responsibilities of observer providers.* Observer providers must:

(i) *Provide qualified candidates to serve as observers.* (A) To be qualified, a candidate must have:

(*1*) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(*2*) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(*3*) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(*4*) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(B) Prior to hiring an observer candidate, the observer provider must:

(*1*) Provide to the candidate copies of NMFS-provided pamphlets and other literature describing observer duties; and

(*2*) Provide to the candidate a copy of the Observer Program's drug and alcohol policy. Observer job pamphlets and the drug and alcohol policy are available from the Observer Program Office at the address listed in paragraph (e)(3) of this section or at the Observer Program's web site at *http://www.afsc.noaa.gov/refm/observers/default.htm*.

(C) For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that contains the following provisions for continued employment:

(*1*) That the observer comply with the Observer Program's drug and alcohol policy;

(*2*) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office at least every 7 days, unless otherwise specified by the Observer Program;

(*3*) That the observer completes in-person mid-deployment data reviews, unless:

(*i*) The observer is specifically exempted by the Observer Program, or

(*ii*) The observer does not at any time during their deployment travel through a location where Observer Program staff are available for an in-person data review and the observer completes a phone or fax mid-deployment data review as described in the observer manual; and

(*4*) The observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required in paragraph (i)(2)(ix)(C) of this section that would prevent him or her from performing their assigned duties;

(ii) *Ensure that observers complete duties in a timely manner.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(A) Once an observer is scheduled for a final deployment debriefing under paragraph (i)(2)(ix)(E) of this section, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(B) Complete NMFS electronic vessel and/or processor surveys before performing other jobs or duties which are not part of NMFS groundfish observer requirements;

(C) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(D) Return all sampling and safety gear to the Observer Program Office.

(iii) *Observer vessel and processor assignment.* An observer provider must assign to vessels or shoreside or floating processors only observers:

(A) With valid North Pacific groundfish observer certifications and endorsements to provide observer services;

(B) Who have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (i)(2)(ix)(C) of this section that would prevent him or her from performing his or her assigned duties; and

(C) Who have successfully completed all NMFS required training and briefing before deployment.

(iv) *Response to industry requests for observers.* An observer provider must provide an observer for deployment as requested by vessels and processors to fulfill vessel and processor requirements for observer coverage under sections (c) and (d) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties.

(v) *Observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vi) *Observer deployment logistics.* An observer provider must provide all logistics to place and maintain the observers aboard the fishing vessels or at the site of the processing facility. This includes all travel arrangements, lodging and per diem, and any other services required to place observers aboard vessels or at processing facilities.

(vii) *Observer deployment limitations.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(A) Deploy an observer on the same vessel or at the same shoreside or stationary floating processor for more than 90 days in a 12–month period;

(B) Deploy an observer for more than 90 days in a single deployment;

(C) Include in a single deployment of an observer assignments to more than four vessels, including groundfish and all other vessels, and/or shoreside processors; or

(D) Move an observer from a vessel or floating or shoreside processor before that observer has completed his or her sampling or data transmission duties.

(viii) *Vessel safety decal verification.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (g)(1)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) an employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) the observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(ix) *Communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed at shoreside or floating processor facilities, in transit, or in port awaiting vessel or processor reassignment.

(x) *Communications with the Observer Program Office.* An observer provider must provide all of the following information to the Observer Program Office by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Observer training and briefing.* Observer training and briefing registration materials. This information must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer certification training or briefing session. Registration materials consist of the following:

(*1*) Observer training registration, including:

(*i*) Date of requested training;

(*ii*) A list of observer candidates. The list must include each candidate's full name (i.e., first, middle and last names), date of birth, and sex;

(*iii*) A copy of each candidate's academic transcripts and resume; and

(*iv*) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions.

(*2*) Observer briefing registration, including:

(*i*) Date and type of requested briefing session and briefing location; and

(*ii*) List of observers to attend the briefing session. Each observer's full name (first, middle, and last names) must be included.

(B) *Projected observer assignments.* Prior to the observer or observer candidate's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, shoreside processor, or stationary floating

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processor assignment, gear type, and vessel/processor code; port of embarkation; target species; and area of fishing.

(C) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared pamphlet, provided to the candidate by the observer provider as specified in paragraph (i)(2)(i)(B)(*1*) of this section. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(D) *Observer deployment/logistics reports.* A deployment/logistics report must be submitted by Wednesday, 4:30 pm, Pacific local time, of each week with regard to each observer deployed by the observer provider during that week. The deployment/logistics report must include the observer's name, cruise number, current vessel, shoreside processor, or stationary floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates. If the observer is currently not assigned to a vessel, shoreside processor, or stationary floating processor, the observer's location must be included in the report.

(E) *Observer debriefing registration.* The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel, or shoreside or stationary floating processor assignment name(s) and code(s), and requested debriefing date.

(F) *Certificates of Insurance.* Copies of "certificates of insurance", that name the NMFS Observer Program leader as the "certificate holder", shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(*1*) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*2*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*3*) States Worker's Compensation as required.

(*4*) Commercial General Liability.

(G) *Copies of observer provider contracts with entities requiring observer services and with observers.* Observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraphs (c) and (d) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. Said copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request for the contract at the address or fax number listed in paragraph (e)(3) of this section. Signed and valid contracts include the contracts an observer provider has with:

(*1*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(i) and (c)(1)(iv) of this section;

(*2*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(ii), (c)(1)(v), and (c)(1)(vii) of this section;

(*3*) Shoreside processors or stationary floating processors required to have observer coverage as specified at paragraph (d)(1) of this section;

(*4*) Shoreside processors or stationary floating processors required to have observer coverage as specified at paragraph (d)(2) of this section; and

(*5*) Observers.

(H) *Change in observer provider management and contact information.* Except for changes in ownership addressed under paragraph (i)(1)(vi) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraphs (i)(1)(ii)(A) through (D) of this section. Within 30 days of the effective date of such change, this information must be submitted by fax or mail to the Observer Program Office at the address listed in paragraph (e)(3) of this section. Any information submitted under (i)(1)(ii)(C) or (i)(1)(ii)(D) of this section will be subject to NMFS review and determinations under (i)(1)(iii) through (viii) of this section.

(I) Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under § 679.7(g) or § 600.725(o), (t) and (u);

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7), or processor safety;

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described at (h)(2)(i) or (h)(2)(ii) of this section.

(xi) *Replacement of lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(*3*) *Limitations on conflict of interest.* Observer providers:

(i) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed under an FMP for the waters off the coast of Alaska, including, but not limited to,

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(B) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska, or

(C) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska.

(ii) Must assign observers without regard to any preference by representatives of vessels, shoreside processors, or floating stationary processors other than when an observer will be deployed.

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(j) *Observer certification and responsibilities*—(1) *Observer Certification*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (j)(1)(v) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements.* (A) Existing Observers. Observers who completed sampling activities between June 30, 2001, and December 31, 2002, and have not had their certification revoked during or after that time period, will be considered to have met certification requirements under this section. These observers will be issued a new certification prior to their first deployment after December 31, 2002, unless NMFS determines that the observer has not been deployed, or has not performed sampling duties, or has not been debriefed successfully in the preceding 18 months.

(B) *New Observers.* NMFS will certify individuals who:

(*1*) Are employed by a permitted observer provider company at the time of the issuance of the certification;

(*2*) Have provided, through their observer provider:

(*i*) Information identified by NMFS at paragraphs (i)(2)(x)(A)(*1*)(*iii*) and (*iv*) of this section and in writing from the Observer Program; and

(*ii*) Information identified by NMFS at paragraph (i)(2)(x)(C) of this section regarding the observer candidate's health and physical fitness for the job;

(*3*) Meet all education and health standards as specified in paragraphs (i)(2)(i)(A) and (i)(2)(x)(C) of this section, respectively;

(*4*) Have successfully completed a NMFS-approved training as prescribed by the Observer Program.

(*i*) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*ii*) If a candidate fails training, he or she will be verbally notified of the unsatisfactory status of his or her training on or before the last day of training. Within 10 business days of the verbal notification, the observer candidate will be notified in writing. The written notification will indicate why the candidate failed the training; whether the candidate can retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (j)(1)(iv)(A) of this section.

(*5*) Have not been decertified under paragraph (j)(3) of this section.

(iv) *Agency determinations on observer certification*—(A) *Denial of a certification.* The NMFS observer certification official will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in paragraph (j)(1)(iii) of this section. The IAD will identify the reasons certification was denied and what requirements were deficient.

(B) *Appeals.* A candidate who receives an IAD that denies his or her certification may appeal pursuant to § 679.43 of this part. A candidate who appeals the IAD will not be issued an interim observer certification and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(C) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (j)(1)(iii) of this section.

(v) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy as indicated.

(A) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain this endorsement. A certification training endorsement is required for any deployment as an observer in the Bering Sea and Aleutian Islands groundfish fisheries and the Gulf of Alaska groundfish fisheries and will be granted with the initial issuance of an observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. Renewal can be obtained by the observer successfully completing certification training once more. Observers will be notified of any changes to the endorsement expiration period prior to that change taking place. Observers who have been issued certificates under paragraph (j)(1)(iii)(A) of this section will be issued a new certification training endorsement upon issuance of their observer certification prior to their first deployment after December 31, 2002.

(B) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified

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in writing by the Observer Program during the observer's most recent debriefing.

(D) *Level 2 endorsements.* A certified observer may obtain a Level 2 endorsement to their certification. A Level 2 endorsement is required for purposes of performing observer duties aboard vessels or stationary floating processors or at shoreside processors participating in the CDQ or AFA fisheries as prescribed in paragraphs (c) and (d) of this section. A Level 2 endorsement to an observer's certification may be obtained by meeting the following requirements:

(*1*) Be a prior observer in the groundfish fisheries off Alaska who has completed at least 60 days of observer data collection;

(*2*) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;

(*3*) Successfully complete a NMFS-approved Level 2 observer training as prescribed by the Observer Program; and

(*4*) Comply with all of the other requirements of this section.

(E) An observer who has achieved a Level 2 endorsement to their observer certification as specified in paragraph (j)(1)(v) (D) of this section may additionally receive a Level 2 "lead" observer endorsement by meeting the following requirements:

(*1*) A Level 2 "lead" observer on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or on a mothership.

(*2*) A Level 2 "lead" observer on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(*3*) A Level 2 "lead" observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

(vi) *Expiration of a certification.* The observer certification will expire on December 31, 2007.

(*2*) *Standards of observer conduct*--(i) *Limitations on conflict of interest.* (A) Observers:

(*1*) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, including, but not limited to,

(*i*) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(*ii*) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska, or

(*iii*) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska.

(*2*) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(*4*) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor in a North Pacific fishery while employed by an observer provider.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(ii) *Standards of Behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Violating the drug and alcohol policy established by and available from the Observer Program;

(*2*) Engaging in the use, possession, or distribution of illegal drugs; or

(*3*) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(3) *Suspension and Decertification*--(i) *Suspension and decertification review official.* The Regional Administrator will establish an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(ii) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(A) When it is alleged that the observer has committed any acts or omissions of any of the following:

(*1*) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(*2*) Failed to abide by the standards of conduct for observers as prescribed under paragraph (j)(2) of this section;

(B) Upon conviction of a crime or upon entry of a civil judgement for:

(*1*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(*2*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*3*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(iii) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (j)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or those cases in which public health, interest, or safety require such actions. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action.

(iv) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to § 679.43.

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Proposed Rules

Federal Register
Vol. 67, No. 235
Friday, December 6, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1136]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff commentary.

SUMMARY: This proposal would revise the official staff commentary to Regulation Z, which implements the Truth in Lending Act. The commentary interprets the requirements of Regulation Z. The proposed update would clarify the status of certain credit card-related fees. It also discusses the rules for replacing an accepted credit card with one or more cards; the treatment of private mortgage insurance payments in disclosing the payment schedule; and the selection of Treasury security yields for the purpose of determining whether a mortgage loan is covered by provisions in Regulation Z that implement the Home Ownership and Equity Protection Act.

DATES: Comments must be received on or before January 27, 2003.

ADDRESSES: Comments should refer to Docket No. R–1136 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson may also be delivered, between 8:45 a.m. and 5:15 p.m., to the Board's mail facility in the West Courtyard, located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy or Dan S. Sokolov, Attorneys, or Daniel G. Lonergan, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board has delegated to officials in the Board's Division of Consumer and Community Affairs authority to issue official staff interpretations of Regulation Z. These interpretations, except in unusual circumstances, are incorporated in the official staff commentary (12 CFR part 226 (Supp. I)), which provides guidance to creditors in applying the regulation to specific transactions. Good faith compliance with the commentary affords creditors protection from liability under section 130(f) of TILA. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

Comments on all aspects of the proposed revision to the official staff commentary are invited. It is expected that final revisions to the commentary will be adopted in March 2003. To the extent the revisions impose new requirements on creditors, the effective date for mandatory compliance would be October 1, 2003. See TILA section 105(d).

II. Proposed Revisions

Subpart B—Open-End Credit

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Representatives of the credit card industry have requested official guidance on the status under Regulation Z of two fees charged to consumers in connection with open-end credit plans—a fee imposed when a consumer requests that a particular payment on the credit plan be expedited and a fee imposed when a consumer requests expedited mailing of a credit card. Because the proper characterization of these fees under TILA previously has been unclear, the proposal would revise comment 6(b) to provide guidance on how these fees should be treated for purposes of Regulation Z. For purposes of the proposal, "expedited" refers to any form of payment or delivery other than the standard mail service generally made available to the creditor's customers.

Under Regulation Z, creditors must disclose fees that are "finance charges," which are defined as "charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." For open-end credit plans, fees that are not finance charges must be disclosed as "other charges" if they are significant fees related to the plan. Regulation Z does not require disclosure of charges that are not considered finance charges or "other charges."

Card issuers increasingly have been making expedited payment services available to consumers. The expedited payment service provides consumers an alternative to mailing a payment that might not reach the card issuer by the due date. To avoid being assessed a late payment fee, the consumer requests expedited payment service for a lesser charge. The service is typically an electronic funds transfer or a draft on the customer's checking account.

A fee charged for expediting a consumer's payment would not appear to be incidental to the extension of credit if this payment method is not established as the regular payment method for the account. Accordingly, the proposal indicates that an expedited payment charge under these

circumstances would not be a finance charge.

Comment 6(b)–1 provides examples of "other charges" that must be disclosed to consumers under Regulation Z. The proposal would revise comment 6(b)–1 to indicate that a card issuer's fee for expediting a particular payment should be disclosed as an "other charge" provided that the method of payment was not authorized in advance as the regular payment method for the account. The charge appears to be a significant charge related to the credit plan because the fee is for a service provided in connection with a consumer's payment on the account and because typically the fee is paid to enable the consumer to avoid a late payment fee that is also considered to be an "other charge" for purposes of Regulation Z. Moreover, both expedited payment fees and late payment fees might be imposed on many consumers participating in a credit card plan and, for some consumers, might be regularly occurring charges.

The proposal would also amend comment 6(b)–2, which provides examples of charges that are not "other charges" under Regulation Z, to indicate that a card issuer's fee for expediting delivery of a credit card is not required to be disclosed either as a finance charge or as an "other charge" under the regulation. An expedited delivery fee does not appear to be a finance charge because it would not be incidental to the extension of credit where the card is also available to consumers by standard mail service without paying the fee.

Moreover, the charge would not appear to be an "other charge" under Regulation Z. The service does not appear to be a significant part of the credit plan because the card is also available without paying the fee and because the service is requested by consumers only occasionally, such as when a consumer seeks to replace a lost or stolen credit card and requests expedited mailing.

Staff notes that where a creditor merely passes through a third-party delivery charge, such as an express courier fee, and the creditor does not require the use of the service or retain any portion of the fee, the fee is not a finance charge or "other charge" that must be disclosed under Regulation Z.

Section 226.9—Subsequent Disclosure Requirements

9(c) Change in Terms

Comment 9(c)(2)–1 would be revised to indicate that a change-in-terms notice is not required when the change involves the fee charged for expediting a consumer's payment. Card issuers generally inform consumers of the amount of the specific charge at the time the consumer agrees to the expedited service. As noted above, consumers typically request the service and pay the expedited payment fee to avoid a late fee. Accordingly, the proposed comment would treat expedited payment fees that are disclosed as "other charges," consistent with the treatment of fees for unanticipated late payment, which also do not require a change-in-terms notice.

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards

Section 132 of TILA, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to requests or applications for cards. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. Existing comment 12(a)(2)–5, the "one-for-one rule," interprets these statutory and regulatory provisions by providing that, in general, a creditor may not issue more than one credit card as a renewal of or substitute for an accepted card (as that term is defined under Regulation Z). The existing staff commentary, however, does not construe Section 132 as requiring one-for-one replacement in all circumstances: existing comment 12(a)(2)–6 provides that an accepted credit/debit card may be replaced by a credit card, and a second card with only debit functions (with or without overdraft capability), since debit cards may be issued on an unsolicited basis under the Electronic Fund Transfer Act and the Board's Regulation E.

Advances in the technology used to send transaction information have allowed card issuers to issue credit cards in different sizes and formats. These changes may generally enhance consumer convenience. A merchant's equipment, however, may determine whether a consumer can use a particular credit card. Certain cards that are reduced in size can be used only if they are swiped through a card reader, while some merchants and automated teller machines use equipment that requires insertion of a "full-size" credit card. Accordingly, some card issuers have requested guidance on the issuance of cards using new technologies, which are intended to supplement but not necessarily replace a cardholder's existing card.

To address these developments, comment 12(a)(2)–6 would be revised consistent with the statute and legislative purpose, to indicate that card issuers may replace an accepted card with more than one renewal or substitute card on the same account where the consumer's total liability for unauthorized use with respect to the account does not increase. In addition, any replacement cards must access only the account of the accepted card and all cards issued under that account must be governed by the same terms and conditions.

Section 132 was one of several credit card provisions added to TILA in 1970, in response to the then-existing practice of mailing unsolicited credit cards to consumers. Proponents of these provisions asserted that unsolicited credit card mailings encouraged some consumers to spend beyond their means, were inconvenient to dispose of, were too easily stolen in the mails, and were a source of anxiety for consumers worried about theft and their own personal liability for unauthorized use. The legislative history also reflects concern about the resulting inconvenience to consumers of refuting unwarranted claims of liability.

Under section 133 of TILA, consumers have no liability for unauthorized use of a credit card unless they have accepted the card. A credit card issued as a renewal or substitution is not deemed to be accepted until it is received by the cardholder. See 12 CFR 226.12(a), footnote 21. To avoid monetary losses from the theft of credit cards sent though the mail, card issuers generally send cards that are not activated and employ security procedures requiring the consumer to verify receipt of the card. These industry practices should be as effective when replacing an accepted card with one or more renewal or substitute cards.

The proposed commentary revision is limited to interpreting the provision in section 132 of TILA that allows an unrequested card to be sent as a renewal of or substitution for an accepted card. Comment is also solicited on whether it would be appropriate to apply this view to additional cards issued for an existing account on the conditions specified in the proposal even when there is no renewal of or substitution for the cardholder's existing card.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule

The disclosures for closed-end loans must include the number, amounts, and timing of payments scheduled to repay

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the obligation. Premiums paid for insurance that protects the creditor against the consumer's default or other credit loss (sometimes referred to as private mortgage insurance) are finance charges that must be included in the payment schedule. Under the Homeowners Protection Act of 1998, such insurance generally must terminate before the term of the loan expires, and the payment schedule should reflect this fact. Comment 18(g)–5 would be revised to provide additional guidance on how mortgage insurance premiums should be disclosed on the payment schedule when some premiums are collected in advance and escrowed at the time the loan is closed. The proposed comment provides an example to facilitate compliance.

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

A technical amendment to comment 19(b)(1)–2 is proposed to change the citation to comment 19(b)–5, as amended (65 FR 17129, March 31, 2000). No substantive change is intended.

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Section 226.32 implements the Home Ownership and Equity Protection Act of 1994 (HOEPA), which is part of the Truth in Lending Act. HOEPA requires additional disclosures and provides substantive protections for certain home-secured loans carrying rates or fees above a specified amount. HOEPA's rate-based trigger covers mortgage loans where the annual percentage rate (APR) on the loan exceeds the yield on Treasury securities with a comparable maturity by a specified number of percentage points (8 for first-lien loans, 10 for subordinate-lien loans). For purposes of determining coverage under HOEPA, the loan's APR is compared with the yield on Treasury securities as of the 15th day of the month immediately preceding the month of application. Comment 32(a)(1)(i)–4 would be revised to clarify how creditors should determine the applicable yield on Treasury securities.

Currently, comment 32(a)(1)(i)–4 provides that creditors may use the actual results of Treasury auctions or the Board's "Selected Interest Rates" (statistical release H–15), which is published daily and lists the yield on actively traded issues adjusted to constant maturities. The H–15 is posted on the Board's Internet Web site at: *http://www.federalreserve.gov/releases/h15/update*. The comment would be revised to respond to requests for additional guidance on using the H–15. In addition, for the reasons discussed below, the option to use actual auction results would be eliminated.

H–15 constant maturities. The H–15 lists yields for various instruments. Creditors that rely on the H–15 have asked for additional guidance on the appropriate instrument to use when the loan maturity is comparable with more than one instrument. For example, the H–15 lists yields for 6-month Treasury bills as well as for actively traded Treasury securities adjusted to constant maturities of 6 months. To ease compliance and aid in uniformity, the proposed comment would clarify that creditors should use the Treasury constant maturities listed on the H–15.

Loans with 30-year maturities. Creditors relying on the H–15 have requested guidance on which Treasury security is deemed to have a maturity comparable with 30-year mortgage loans. The Department of the Treasury recently ceased auctioning 30-year securities; the H–15 currently lists a long-term average of the yields for Treasury securities with terms to maturity of 25 years and over, and refers to Treasury's formula for estimating a 30-year yield.

The proposed comment would clarify that for purposes of HOEPA's rate-based trigger, creditors should compare the APR on 30-year loans (and other loans longer than 20 years) with the yield for a 20-year constant maturity, and not with the average long-term yield for maturities over 25 years or an estimate for a 30-year yield.

Actual auction results. The proposal would revise comment 32(a)(1)(i)–4 to eliminate the option to use yields of actual auction results. Currently, the longest maturity for auctioned Treasury securities is 10 years, while home-secured loans commonly have terms of 15 years or more. Further, Treasury auctions are held infrequently. The H–15 is updated daily, which affords a more precise determination of the yield for Treasury securities as of the fifteenth day of the month preceding the application, the date mandated by HOEPA. Requiring all creditors to use the H–15 would ensure uniform application of HOEPA by eliminating the possibility that some creditors could use yields from auctions held several months before the loan application, which might differ significantly from the yields updated daily on the H–15. Many creditors already rely on the H–15 rather than actual auction results, and the revision is not expected to significantly affect creditor practices.

Additional Issue

Some financial institutions offer a service to transaction account customers that is commonly referred to as "bounce protection." Institutions apparently provide "bounce protection" in lieu of establishing an overdraft line of credit for the customer. The service varies among institutions and questions have been raised about whether there are circumstances in which the service might be covered by TILA and Regulation Z.

Although the institution generally reserves the right not to pay particular items, under these bounce protection programs, the institution typically establishes a dollar limit for the account holder, and then routinely pays overdrafts on the account up to that amount without a case-by-case assessment. Account holders whose overdrafts are paid pursuant to this service are assessed a fee; in some cases it may be the same amount that would be charged for an overdraft item that is returned unpaid or that is paid by the institution on an ad hoc basis.

In the case of the traditional overdraft line of credit, a financial institution pays an overdraft on a consumer transaction account and extends consumer credit. An institution is not a "creditor" subject to the disclosure requirements of TILA and Regulation Z, however, if the extension of credit is not subject to a finance charge. *See* § 226.2(a)(17). Under Regulation Z, a finance charge does not include a charge imposed by a financial institution for paying items that overdraw an account unless, as is typically the case for overdraft lines of credit, the payment of such items and the imposition of the charge are previously agreed upon in writing. *See* § 226.4(c)(3).

Fees imposed in connection with "bounce protection" services may or may not meet the definition of a finance charge. *See* § 226.4. Information and comment are solicited on how "bounce protection" services are designed and operated and how these services should be treated for purposes of TILA in order to assist the Board in determining whether and how to provide guidance on potential coverage under Regulation Z or to address possible concerns under fair lending or other laws.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1136 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov*. If accompanied by an original document in paper form, comments also may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed commentary is clearly stated and effectively organized, and how the Board might make the commentary easier to understand.

List of Subjects in 12 CFR Part 226

Consumer protection, Disclosures, Federal Reserve System, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226:

a. Under *Section 226.6—Initial Disclosure Statement*, under *6(b) Other charges*, paragraph 1.i. and paragraph 2. are revised.

b. Under *Section 226.9—Subsequent Disclosure Requirements*, under *9(c)(2) Notice Not Required*, paragraph 1. is revised.

c. Under *Section 226.12—Special Credit Card Provisions*, under *Paragraph 12(a)(2)*, paragraph 6. is revised.

d. Under *Section 226.18—Content of Disclosures*, under *18(g) Payment schedule*, paragraph 5. is revised.

e. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(1)*, paragraph 2. is amended by removing "comment 19(b)–4" and adding "comment 19(b)–5" in its place.

f. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(i)*, paragraph 4. is revised.

Supplement I to Part 226—Official Staff Interpretations

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Subpart B—Open-End Credit

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Section 226.6—Initial Disclosure Statement

* * * * *

6(b) Other charges.

1. *General; examples of other charges.*

* * *

[i. Late payment and over-the-credit-limit charges.]

►i. Over-the-credit-limit charges, late payment charges, and charges imposed for expediting a consumer's payment provided that method of payment was not established as the regular payment method for the account.◄

* * * * *

2. *Exclusions.* The following are examples of charges that are not "other charges":

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under § 226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (see commentary to § 226.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (See also comment 7(b)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

►ix. Fees to expedite delivery of a credit card, either at account opening or during the life of the account, when card delivery is also available by standard mail service without paying the fee.◄

* * * * *

Section 226.9—Subsequent Disclosure Requirements

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9(c)(2) Notice Not Required.

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

►vi. A change in late payment charges or over-the-limit-charges, or a change in the charge for expediting a consumer's payment provided that method of payment was not established in advance as the regular payment method for the account.◄

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Section 226.12—Special Credit Card Provisions

12(a) Issuance of credit cards.

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Paragraph 12(a)(2).

* * * * *

6. *One-for-one rule—exception* ►*s.*◄ The regulation does not prohibit the card issuer from:

►*i.*◄ Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

►ii. Replacing an accepted card with more than one renewal or substitute card, provided that: any replacement cards access only the account of the accepted card; all cards issued under that account are governed by the same terms and conditions; and under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.◄

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Subpart C—Closed-End Credit

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Section 226.18—Content of Disclosures

* * * * *

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18(g) Payment schedule.

* * * * *

5. *Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. ►The payment schedule must reflect the legal obligation. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If the legal obligation provides that the creditor will collect 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule should reflect 130 premium payments. If the legal obligation provides that the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments.◄ (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments 17(c)(1)–8 and 17(c)(1)–10.)

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 226.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

32(a) Coverage.

Paragraph 32 (a)(1)(i).

* * * * *

►4. *Treasury securities.* To determine the yield on comparable Treasury securities for the annual percentage rate test, creditors may use the yield on actively traded issues adjusted to constant maturities published in the Board's "Selected Interest Rates" (statistical release H–15). Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity. If the loan's maturity is exactly halfway between security maturities, the annual percentage rate on the loan should be compared with the yield for Treasury securities having the lower yield. For example:

i. If the H–15 contains a yield for Treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the annual percentage rate for an 8-year mortgage loan is compared with the yield of securities having a 7-year maturity, and the annual percentage rate for a 9-year mortgage loan is compared with the yield of securities having a 10-year maturity.

ii. If a mortgage loan has a term of 15 years, and the H–15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the annual percentage rate for a 15-year mortgage loan with the yield for constant maturities of 10 years.

iii. If a mortgage loan has a term of 30 years, and the H–15 does not contain a yield for 30-year constant maturities, but contains a yield for 20-year constant maturities, and an average yield for securities with remaining terms to maturity of 25 years and over, then the annual percentage rate on the loan is compared with the yield for 20-year constant maturities.◄

[4. *Treasury securities.* To determine the yield on a Treasury security for the annual percentage rate test, creditors may use the Board's "Selected Interest Rates" (statistical release H–15) or the actual auction results. Treasury auctions are held at regular intervals for the different types of securities. These figures are published by major financial and metropolitan newspapers and are also available from Federal Reserve Banks. Creditors must use the yield on the security that has the nearest maturity at issuance to the loan's maturity. For example, if a creditor must compare the annual percentage rate to Treasury securities with either 7-year or 10-year maturities, the annual percentage rate for an 8-year loan is compared with securities that have a 7-year maturity; the annual percentage rate for a 9-year loan is compared with securities that have a 10-year maturity. If the loan maturity is exactly halfway between, the annual percentage rate is compared with the Treasury security that has the lower yield. For example, if the loan has a maturity of 20 years and comparable securities have maturities of 10 years with a yield of 6.501 percent and 30 years with a yield of 6.906 percent, the annual percentage rate is compared with 10 percentage points over the yield of 6.501 percent, the lower of the two yields.]

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By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, November 26, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30545 Filed 12–5–02; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration.

ACTION: Advanced notice of proposed rulemaking (ANPRM).

SUMMARY: The U.S. Small Business Administration (SBA) is considering ways to improve coverage of the Certified Development Company (CDC) Loan Program (the "CDC Program" or the "504 Program") to ensure that all small businesses have access to long-term fixed-rate financing. After a review of public comments, SBA will consider proposing amendments to existing program regulations that will improve overall program management. SBA also anticipates that some changes suggested by commenters may ultimately require new legislation.

SBA is revisiting the 504 Program policies as a prudent management exercise in light of major changes in the economy, the financial services industry, technology, and in CDCs' operations since the program's inception in 1980. The review has also been prompted by SBA's on-going discussions with the 504 industry and by specific requests made to SBA to expand CDCs' product base to include 7(a) loans or Small Business Investment Companies. In particular, SBA is seeking comments on the following: Whether the 504 Program is meeting its statutory purpose as defined in section 501(a) of the Small Business Investment Act; the appropriate long-term goals and annual performance measures for the program given its statutory requirement; the appropriate data elements required to assure solid program oversight while minimizing public data collection burdens; operational or regulatory impediments to providing long-term financing in rural or urban areas; and programmatic changes that could increase CDC competition and increase small businesses' access to loans.

This ANPRM and request for comments are intended to stimulate dialogue on these and other issues pertaining to the CDC Program.

DATES: All interested parties are invited to submit written comments. Comments must be received on or before February 4, 2003.

ADDRESSES: Mail written comments to: James E. Rivera, Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. Comments may be sent by e-mail to *ANPR@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Gail H. Hepler, Chief, 504 Loan Policy Branch, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. Questions may be sent by e-mail to *gail.hepler@sba.gov* or by telephone at (202) 205–7530. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

History and Purpose of the 504 Program

During the late 1970s and early 1980s, the prime interest rate and unemployment reached historically high levels. It was generally believed that long-term, fixed-rate money was not available at a reasonable cost to small businesses because of these high prevailing rates and that this was hindering job creation.

Congress enacted Section 503 of Title V of the Small Business Investment Act in 1980. The 504 Program was intended to provide fixed-rate financing for small businesses at favorable terms unavailable in the marketplace. Congress specified in the Act that this program "foster economic development and create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns . . ."

The statute authorizes SBA to guarantee debentures backing long-term, fixed-asset loans (504 Loans) issued by Certified Development Companies (CDCs). It also authorizes SBA to pool the guarantees and sell interests in the pools to investors.

SBA guarantees the debentures pursuant to terms and conditions set forth in SBA regulations. These regulations are found at 13 CFR Part 120. Sections 120.800 through 120.991 are exclusive to the CDC Program. In support of the statutory mandate to create or preserve jobs, SBA currently requires each CDC to affirm that its 504 loan portfolio creates, on average, one job per $35,000 of CDC financing.

Certified Development Companies

Since enactment of the 504 program, the CDC industry has been developed to meet the job creation and economic development goals of the program. Several hundred CDCs either were started in local communities or amended their existing operations to participate in the program. There are currently approximately 270 CDCs. Each CDC has a specific geographic area of operations. In general, CDCs have a membership comprised of financial institutions, community organizations, businesses, and government organizations responsible for economic development in the CDC's area of operations. Over the years, SBA has made changes to the CDC program to help ensure its vitality. For example, the original job opportunity objective was one job created or retained per $15,000 of guaranteed debenture investment. In 1990, SBA raised the job opportunity objective to one job per $35,000 of guaranteed debenture investment to reflect the inflationary factors of the previous 10 years. Congress also has amended the program legislation in a variety of ways including incorporating other economic development goals such as assisting businesses located in rural areas or veteran-owned businesses.

The characteristics of individual CDCs vary significantly. Some are independent entities devoted primarily to making 504 Loans. Others are part of local or state governments. These organizations use the 504 Program along with many other economic development programs such as HUD 108 and EDA revolving loan funds. For these entities, the 504 Program is but one program in an array of economic development tools. Any cash flow over and above related 504 staff and overhead expenses is available to these CDCs to support other economic development activities such as establishing revolving loans funds or microloan programs. Most CDCs fall in between these two types of entities.

The role of a CDC in the 504 Program loan process has expanded over the years. Initially, the CDC identified prospective small business borrowers and assisted with application processing and servicing. SBA made all credit decisions and approved, in advance, all servicing actions. The CDC did not have any financial stake in the loan other than the on-going servicing fee that it was paid by the borrower. As the program has evolved and SBA's personnel resources have diminished, CDCs, along with other types of lenders, have developed substantial SBA lending expertise and have assumed greater processing, closing, and servicing responsibilities. Some CDCs even liquidate defaulted loans. These responsibilities have increased the ability of CDCs to serve small business borrowers.

Under the Premier Certified Lenders Program (PCLP) authorized by the Congress through Public Law 103–403, approved October 22, 1994, participating CDCs have increased authority to perform origination, servicing, and liquidation functions for their 504 Loans. By statute, all PCLP CDCs are required to deposit into a reserve fund one percent of the value of all PCLP loans that they fund. Cash from these reserve funds is then available to reimburse SBA for 10 percent of any loss incurred by SBA in connection with any individual PCLP loan. The reserve also creates a financial incentive for PCLP CDCs to originate high-quality loans and to service and liquidate their loans in a prudent manner. PCLP authority is limited to those CDCs that demonstrate on an on-going basis sound and effective loan processing, servicing, and liquidation practices.

Accomplishments

As a result of the CDC Program, long-term, fixed-asset financing by SBA has grown dramatically since its inception. Almost 5,500 504 loans for an approximate total of $2.47 billion were approved in FY 2002. Over the life of the program, more than $15 billion has been funded. Combined with the required private sector financing this represents $42 billion in funding for growing small businesses. This tremendous growth is largely attributable to the solid program structure, the hard work of the CDCs, and the ability of the program to provide financing appropriate for the economic times. Overall, more than 39,000 loans have been approved resulting in the creation or retention of over 1,000,000 jobs since 1980.

Policy Considerations

Since the CDC program was initially authorized, both the CDC industry and the economic environment in which it operates have changed significantly. As a result, it is vitally important that the SBA and those interested in the 504 Program work together to re-examine existing program policies and to consider new or revised policies to assure the program's continuing vitality and compliance with its statutory purpose, to foster economic development and create or preserve jobs.

For example, a CDC that has managed to accumulate substantial cash reserves from its fee income has requested that SBA permit it to establish a subsidiary to make 7(a) Guaranty loans. This subsidiary would be initially financed by the CDC, managed by the CDC, and owned 100 percent by the CDC to make 7(a) loans. Other CDCs wishing to expand or new CDCs that wish to establish themselves where existing, active CDCs operate are finding it increasingly difficult to meet the membership requirements and have asked for waivers of the membership requirements. While SBA may have the legal discretion to grant these requests, it is not clear whether or how these changes would serve the broader purpose of the statutory authorization. It

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is in this context that SBA seeks public input on these and other issues.

In addition, SBA continues to be concerned that a large proportion of the counties in the country are not receiving 504 financing even though there are active CDCs that include those counties in their areas of operations. For example, of the 67 counties in Alabama, 31 did not receive any 504 Loan approvals for the 24 month-period between November 1, 1999 and October 31, 2001. During that same time period, 59 of the 75 counties in Arkansas did not. Nationwide, more than 64 percent of the counties did not receive one 504 Loan approval per 100,000 population per year averaged over a two-year period. Most of these counties are included in one or more CDC's area of operations. A large proportion of these counties have small populations.

SBA needs additional information to determine the reasons why these areas are not receiving 504 financing. If there is a lack of demand for small business capital in general, or if there are other, more attractive, small business financing opportunities in these areas, a change that would permit additional CDC competition in these areas, such as a relaxation of the CDC membership requirements may not have any appreciable effect. Similarly, a new CDC loan product designed specifically for rural counties, such as a stand-alone debenture that does not require the participation of a first mortgage lender, might be warranted, but only if existing 504 loans do not meet the existing unmet demand for small business capital.

Issues raised by the noted circumstances as well as those arising through the SBA/financial services industry dialogue are among those addressed by the questions posed to the public for comment in this advance notice of proposed rulemaking. Additional questions relate to issues raised in connection with regulations published on July 11, 2000 (65 FR 42624) which permitted CDCs to apply to expand their areas of operations beyond their state of incorporation into a contiguous state beyond a local economic area.

Financial markets change over time, and the Agency wants to insure that the CDC Program is flexible enough to meet the long-term, fixed-asset needs of small businesses in all geographic locations.

Request for Comments

While SBA has posed specific questions in this ANPRM, SBA seeks input from the public on the entire 504 program. The public, including the CDCs and small businesses, are welcome to provide comment on all aspects of the program, from its regulatory structure to the ability of the program to meet its statutory goals, and to suggest amendments to the program. SBA is also willing to consider changes that may require additional statutory authorization. SBA intends to pursue feasible suggestions that further the statutory purposes of the program.

SBA would like feedback on whether the program is meeting its goals to bring economic development loan funds into local communities. The Agency also seeks to determine if there are unmet needs in business lending that the financial services industry is not serving. As the SBA is a "gap lender," the Agency is interested in hearing from both SBA borrowers and individuals who may wish to use the 504 Program in the future.

In addition, as part of SBA's review of the 504 program, SBA is evaluating its goals and performance measurements for the 504 Program, particularly in the context of the Government Performance and Results Act of 1993 (Pub. L. 103–62).

SBA invites public comments on the following questions as well as any other topic related to the 504 program. Comments may be addressed to one, all, or any combination of the following questions. Questions are grouped under the following headings for ease of review by the public.

Questions About Overall 504 Program Effectiveness

1. Does the problem which the 504 Program was created to remedy, lack of small business access to long-term fixed-rate capital, still exist? What evidence exists to demonstrate this need?

2. Is the 504 Program optimally designed to address the problem?

3. Is the 504 Program designed to make a unique contribution in addressing the problem (*i.e.*, not needlessly redundant of any other Federal, state, local or private effort)? Are there financial products in the private market that can remedy this problem?

4. Does the 504 Program collaborate and coordinate effectively with related programs that share a similar purpose?

5. How would the 504 Program demonstrate adequate progress in meeting the statutory goals of the program?

6. What long-term performance goals would be appropriate for the 504 Program? Performance goals should be specific, ambitious, focused on outcomes, and meaningfully reflect the purpose of the program. In other words, how can we demonstrate the scale of the problem and show that the 504 Program is working to remedy the problem?

7. What kind of evaluation would be most beneficial in measuring program effectiveness, both over the short term and the long term? Does the program currently gather the information necessary to make this evaluation?

8. Does the performance of this program compare favorably to other programs with similar purposes, if any, and goals?

Questions to Current and Potential Small Business Borrowers

9. Because 64% of all counties nationally did not receive any 504 funding averaged over a 2-year period, are the CDCs meeting all of the public demand for capital in both rural and urban areas?

10. Would "special programs" in rural areas attract the needed capital that does not currently exist in the market today?

11. Is the process for receiving a 504 Loan reasonable compared to other business lending? Substantive comments/recommendations are encouraged to provide the broadest benefit to the Agency.

12. Does the cost, time and requirements of receiving a 504 Loan make the program unattractive compared to the 7(a) program?

13. Is the 504 Program fulfilling its mission to bring fixed-rate financing to small business? If not, what steps can be taken to further the mission of the program?

14. Many of the stated uses for 504 funding are similar to requests for funding for 7(a) loans. Are the programs redundant, are there additional changes that are required to the 504 Program to fill the lending gap to small business borrowers?

CDC Organizational Structure

15. Should the CDC membership requirements be changed? If so, how should they be changed and still meet the test that the membership represents the economic development interests of the CDC's area of operations? For example, should a CDC be permitted to only have financial institutions as members? Should there be fewer members than 25?

16. Should SBA permit for-profit CDCs again? If so,why? If not, why not? Should the existing, for-profit CDCs be required to become non-profit CDCs and thus meet the regulations governing all other CDCs? If so, by what period of time?

17. Should SBA establish requirements to assure that a CDC remains viable? For example, should SBA establish a minimum cash reserve requirement? If so, at what level?

18. What modifications to the regulations governing PCLP CDCs should be considered to increase participation by a larger number of CDCs?

Increasing Geographic Coverage by the 504 Program

19. If a CDC has an existing area of operations in which it is not meeting the "adequately served" benchmark of one 504 Loan per 100,000 population per year averaged over a 2-year period, should it be permitted to expand its area of operations? Should it be required to shrink its area of operations?

20. Should this same CDC have to shrink its area of operations by those counties in which it has not made a 504 Loan? If so, when? What would be the period of time that would be reviewed?

21. Even if a county is "adequately served," should a new CDC or an existing CDC be permitted to apply to include that county in its area of operations if there is only one CDC currently including that county in its area of operations?

22. Depending on when a statewide CDC was approved and depending on whether other CDCs have been decertified or have been converted to Associate Development Companies, a statewide CDC may or may not include the entire state in its area of operations. Should all statewide CDCs be permitted to include the entire state in their area of operations?

23. Should the definition of "adequately served" change to something other than one 504 Loan per 100,000 population per year averaged over twenty-four months? If so, what would be a better benchmark?

24. When the Section 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations "formed by local citizens whose primary purpose is to improve their community's economy. They assist in the planned economic growth of the community by promoting and assisting the development of small business concerns in their area." (Legislative History, Pub. L. 100–590, p. 22) Should SBA eliminate the requirement that a CDC have a specific area of operations? If so, how would the purpose of economic development be defined and monitored for each CDC?

25. Would permitting applications for a multi-state CDC where the state is not contiguous to the CDC's state of incorporation provide greater access and a wider range of choices for borrowers?

26. Should CDCs be required to adequately serve certain areas (*e.g.* rural areas, enterprise zones) as a prerequisite to serving other areas? If so, what would be the requirement for "adequately served" in this case?

27. Should SBA relax its standard of two CDC loan approvals per year for those CDCs that operate in a rural area?

28. How can SBA best assure that small businesses in rural areas, where lack of population density makes lending more difficult and more expensive, have appropriate access to the 504 Program?

29. Should SBA promulgate regulations that recognize that operational difference between CDCs that, because of local government affiliation or support, are limited to serving specified areas, and those CDCs that do not have such constraints.

30. In order to encourage a variety of thoughtful comments, the following are potential scenarios presented to encourage commenters to consider the ramifications of various approaches to ensuring equal access by all eligible borrowers, regardless of their geographic location. These are not meant to address every issue that may be relevant but are designed to illuminate the various approaches that could be applied to encourage complete coverage.

Scenario 1: Make all CDCs statewide CDCs with no restrictions.

Discussion: This would eliminate the need for SBA to determine if a county was considered adequately served. The number of CDCs would be controlled by local economic development professionals. If local economic development professionals considered an area to be adequately served, they would not propose the addition of more CDCs. This should also reduce the problem that some new CDCs now have with finding government representatives for the board of directors. There should be an adequate number of individuals available to serve on a CDC board when the geographic region is the whole state. The benefits to this approach are (1) a CDC would know that any county in a state would be open and (2) SBA staff would not have to process requests for expansion within a state. A potential downside is the possibility that CDCs may not adequately serve rural areas if access to the more populous areas is not restricted. Conversely, it is also possible that competition in the urban areas would encourage CDCs to do a better job seeking deals in rural areas.

Scenario 2: Redefine "adequately served" to 1 loan for every 10,000 in population. For rural counties, do not apply the prohibition for "adequately served". Allow any statewide CDC to market and do projects throughout the state and not just in the counties where there is no CDC as well as those counties where there is a local CDC and the statewide CDC was approved to overlap with the local CDC. Also the statewide CDC's loan activity would not be included in the "adequately served" calculation. This would permit local CDCs to expand into counties that the statewide CDC is also in. All existing CDCs would have 1 year to meet the new definition of "adequately served". After 1 year, any county that was not adequately served would be available to other new or expanding CDCs.

Discussion: The current definition of "adequately served" only requires that a CDC make 2 loans in a county over a two year period per 100,000 population. By only requiring 2 loans in a 2-year period this standard has the effect of limiting access to the program in over 83% of all counties. Raising the standard has the benefit of continuity of process. The same procedures now used to determine if a county is adequately served could be used for new determinations. The 1 loan per 10,000 population standard is slightly higher than what the portfolio averages now (30,000 loans divided into 282,000,000 Americans).

Scenario 3: Determination of an appropriate level of coverage is based on a combination of total population and population density. This scenario is designed to encourage more access in areas capable of supporting multiple CDCs while providing shelter from "cherry picking" in rural, more difficult to serve areas. Areas that meet the following criteria will be considered sheltered exceptions:

1. County population is less than 125,000; or

2. County population is more than 125,000 but less than 500,000, and the population density of the county is less than the population density of the entire state. Neither of these criteria would apply in any state where the population density is greater than 600 per square mile.

CDCs that serve a county (or portion of a county) meeting the sheltered criteria will have "right of first refusal" on a loan in that county. The CDC must act to the satisfaction of the borrower within 30 days or the borrower may opt to use the services of another CDC willing to consider the loan, even if that CDC does not serve the sheltered county. New CDCs can be approved in sheltered areas where there is no coverage, or where an existing CDC poses no objection. As an exception to policy, SBA may declare as sheltered, a portion of a county that does not meet

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the criteria, if the geographic distance from a heavily populated portion of the county is sufficient to support a contention that the area should qualify as sheltered.

For areas not meeting the sheltered criteria, any CDC who can service a loan would be allowed to make a loan. All existing CDCs would be grandfathered into their current areas of operations. New CDCs (and expansions of existing CDCs) could occur so long as they met the representation requirements.

Any borrower in an area that does not have CDC coverage can be served by any CDC that has the capacity to service the loan. Generally, we should assume that anything less than 75 miles from the CDC's office is acceptable. In western states, the DD may make the call if there is a concern.

Discussion: This approach assumes that CDCs serving rural areas should be provided some assistance in ensuring a sufficient level of 504 activity to sustain their operations but does not penalize a potential borrower if the CDC cannot effectively handle the loan request. From an administrative standpoint, the "adequately served" decision is much easier, because it is based on population and population density statistics that can be made readily available to the public by putting U.S. Census data on SBA's Web site.

504 Loan and Debenture Structure

31. Presently only 10 and 20-year fixed-rate debentures are offered. Would 504 Program economic development objectives be better served if SBA made changes to the terms of debentures offered?

32. What would the costs and benefits to borrowers, CDCs, private sector lenders, and any other party be if SBA provided a debenture product that amortizes monthly rather than semi-annually?

33. Are there benefits to allowing CDCs to jointly participate in a 504 Loan project?

34. Would a stand-alone debenture (no third-party lender requirement) for projects located in rural counties make 504 financing more attractive in these under-represented counties? If so, should there be a dollar limit on the project?

Performance Requirements

35. SBA has developed a system that enables SBA and the CDC to track a CDC's 504 Loan portfolio performance as measured against SBA-established benchmarks as well as the CDC's peer group. In order to insure the quality of the 504 Loan portfolio as well as the accessibility of the program that could be severely jeopardized if defaults increase and/or recoveries decrease, resulting in an increase in future borrowers' fees to maintain the program at its zero subsidy, should SBA establish 504 Loan portfolio performance requirements by CDC as a regulation? If so, since CDCs with large portfolios have a proportionately greater effect on the overall portfolio performance, but CDCs' with small portfolios are disproportionately affected by the failure of 1 loan, should there be a minimum portfolio size under which the regulation takes affect? If so, what should the size be?

36. Should SBA require CDCs to have a financial stake in the performance of all of their 504 Loans, not just in the performance of any loan processed under PCLP authority? If so, what should be the requirement?

Operational/Logistical Issues

37. What regulatory impediments are there to processing or closing 504 Loans?

38. If a 7(a) lender closes and disburses a loan that SBA subsequently determines to be ineligible, SBA can deny liability under its regulations. If a CDC closes and disburses a 504 Loan that SBA subsequently determines to be ineligible, what financial or other penalty should be imposed on the CDC?

Definition of Economic Development

39. Current regulations require a CDC to provide evidence to SBA that it has created at least one job per $35,000 of 504 debentures that it has issued. At the two-year anniversary of the small business's receipt of the loan proceeds, the CDC is required to document how many jobs were actually created. Should SBA require CDCs to provide evidence of other economic development in their Areas of Operations in addition to creating jobs? If so, what other evidence of economic development should be required, and what quantitative measures should be used?

40. Should SBA develop a list of acceptable "economic development activities" in which SBA permits a CDC to invest its resources? If yes, what activities should be included? What activities should be excluded?

Participation in Other Programs

41. Should SBA permit a CDC to contribute to the financial support of a 7(a) lender? Is this economic development as intended by Congress when it created the development company loan program?

42. Should SBA permit a CDC to establish an affiliate relationship with a 7(a) lender through a management contract? Are there any benefits or drawbacks for borrowers?

43. Should SBA permit a CDC to establish or acquire a 7(a) lender subsidiary? Is this economic development as intended by Congress? What are the benefits and drawbacks for borrowers?

44. SBA's regulations prohibit a financial institution, among others, from controlling a CDC. (§ 120.824) Should SBA permit a 7(a) lender to establish a CDC affiliate or subsidiary controlled by the 7(a) lender?

45. Should SBA permit a CDC to financially contribute to an SBIC? If so, under what limitations?

46. Should SBA permit a CDC to establish an affiliate relationship with an SBIC through a management contract?

47. Should SBA permit a CDC to establish an SBIC subsidiary? If so, under what limitations?

48. Should SBA permit a separate corporation to have control through common management of the corporation, a CDC, and other corporations such as a 7(a) lender, an SBIC and so on? If so, under what limitations?

Comments on any other aspect of the CDC Program are also welcome. SBA reminds commenters that all submissions by commenters are available to the public upon request.

Dated: December 2, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–30905 Filed 12–5–02; 8:45 am]

BILLING CODE 8025–01–P

POSTAL SERVICE

39 CFR Part 111

Indemnity Claims; Notice of Changes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its standards concerning indemnity claims as set forth in the *Domestic Mail Manual* (DMM) S010, Indemnity Claims; and related provisions of S913, Insured Mail, and S920, Collect on Delivery (COD) Mail. Other than the proposed changes concerning time periods for filing claims and retention periods for undelivered Insured Mail, the changes clarify existing DMM provisions or codify, in the DMM, policies not currently set forth in that manual.

DATES: Comments must be received on or before 30 days from date of publication.

ADDRESSES: Written comments should be mailed or delivered to the manager, Revenue and Field Accounting, 475 L'Enfant Plaza SW, Room 8831, Washington, DC 20260–5242. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gilbert LeMarier, 202–268–3333.

SUPPLEMENTARY INFORMATION: The proposed changes fall into several categories. Each is addressed separately below.

I. Claim Filing Time Limits

The Postal Service is redesigning the claims system to ensure a more timely response to claims filed by our customers. The Customer Claims Response System (CCRS) will provide an interactive means, utilizing Web technology, to capture claim information from designated field units and to expedite claim adjudication. The product tracking system will be utilized to obtain delivery information.

In conjunction with the redesign of the claim system, time limits for filing a claim will be revised. The current policy that a customer must file a claim immediately when the contents of an article are damaged or missing will now have a clearly stated time limit of no later than 45 days from the mailing date. Also, for a lost article, a customer would be able to file sooner for certain special service products. Insured and bulk insured service customers would be able to file a claim 21 days from the mailing date versus the current 30-day requirement. Customers of COD mail, Express Mail COD, and registered COD special services would be able to file a claim 45 days from the mailing date versus the current 60-day requirement.

For Insured Mail, Registered Mail, and COD services, the Postal Service proposes that the maximum time limit for filing a claim be reduced to no later than 180 days from the mailing date. These proposed changes will enhance the efficient and timely processing of claims and reduce the retention period of undeliverable, accountable mail.

II. Retention Periods

The Postal Service also proposes to reduce the retention of undelivered Insured Mail items. Currently, undeliverable mail is forwarded to mail recovery centers (MRCs). Under current procedures, information about undeliverable accountable mail items (Insured Mail, Registered Mail, and COD mail) is logged into a national claims database and the accountable article is held for 1 year from the date of receipt, the maximum time limit allowed for filing a claim from the mailing date. The Postal Service proposes that retention periods for accountable mail be shortened to 180 days from the date of receipt to match the new proposed maximum time limit allowed for filing a claim. This also would relieve capacity constraints on MRCs.

III. Documentation in Support of Claims

Under current mailing standards, only the sender may file a claim for the complete loss of Registered Mail, Insured Mail, COD, or Express Mail articles. The Postal Service proposes that either the sender or addressee, whoever is in possession of the mailing receipt, may now file a claim for the complete loss of a Registered Mail, numbered Insured Mail, COD, or Express Mail article. Only the sender would be allowed to file a claim for the complete loss of an unnumbered, insured article.

As evidence of value when a sales receipt or invoice is not available, the acceptance of a customer's statement with sufficient detail to determine whether the value claimed is accurate would be accepted only for items valued up to $100. Other acceptable evidence of value would be a copy of a canceled check, money order receipt, credit card statement, or other documentation indicating the amount paid. For Internet transactions conducted through a Web-based payment network, acceptable evidence of value is a computer printout of an online transaction identifying the purchaser and seller, price paid, date of transaction, description of item purchased, and an indication the status of the transaction is *completed*.

As is the case with current policy, customer statements, receipts, or other evidence of value supplied by the customer will not necessarily be determinative of the value of the lost or damaged article, particularly if other information indicates the actual value at the time of mailing is different.

IV. Damage

To file a claim, the addressee must present the article, packaging, and mailing container to the Postal Service for inspection. If the sender, in conjunction with the CCRS, files the claim and the damaged article is in the custody of the addressee, the sender's Post Office or designated site will enter the claim data into the CCRS. The CCRS will generate a letter to the addressee instructing that the article, packaging, and container be presented to the Postal Service for inspection.

V. Additional Grounds for Denial of Claims

The Postal Service proposes that indemnity will not be paid for collect on delivery (COD), Insured Mail, Registered Mail, or for Express Mail service in the following situations:

- Mailer refusing to accept delivery of the mailpiece on return.
- Mail not bearing the complete names and addresses of the sender and addressee, or both the recipient's address and return address, and therefore is undeliverable.
- Event tickets received after the event.
- Software installed onto computers that have been lost or damaged.
- A personal check remitted to the mailer for a COD article and not honored by the financial institution upon which it is drawn.
- Damaged articles not claimed within the prescribed time limits set forth in *Postal Operations Manual* (POM) 147.3.
- Personal time used to make handmade, hobby, or craft items.

VI. Time Limit To Appeal to the Consumer Advocate

The Postal Service proposes to clarify the time limit in which a customer may forward an appeal to the Consumer Advocate, Headquarters. If the manager of Claims Appeals at the St. Louis Accounting Service Center (ASC) sustains a denial of a claim, any further appeal must be filed with the Consumer Advocate, within 60 days from the date of that decision.

VII. Valid Mailing Receipt

The Postal Service proposes to clarify that the appropriate mailing receipt must be postmarked in order to be acceptable evidence of insurance.

VIII. COD Changes

The Postal Service proposes to clarify that the mailer of a collect on delivery (COD) article may not stipulate "CASH ONLY" and that the recipient has the option to pay the charges by cash or personal check.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following revisions of the *Domestic Mail Manual* (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. The following sections of the *Domestic Mail Manual* (DMM) are revised as set forth below:

Domestic Mail Manual (DMM)

* * * * *

S Special Services

S000 Miscellaneous Services

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

2.1 Who May File

A claim may be filed by:

[*Reletter current items a, b, c, and d as new items b, c, d, and e. Add new item a to read as follows:*]

a. Only the sender, for the complete loss of an unnumbered, insured article.

[*Revise new item b to read as follows:*]

b. Either the sender or addressee, who is in possession of the mailing receipt, for the complete loss of a registered, numbered insured, COD, or Express Mail article.

* * * * *

2.2 When to File

[Revise 2.2 to read as follows:]

A customer must file a claim no later than 45 days from the mailing date when the contents of an article are damaged or missing from the mailing container. For a lost article, a customer must file a claim within the time limits in the chart below.

Mail type or service	When to file (from mailing date)	
	No sooner than (days)	No later than (days)
Bulk Insured	21	180
COD	45	180
Express Mail	7	90
Express Mail COD	45	90
Insured	21	180
Registered	15	180
Registered COD	45	180

Exceptions: Claims for loss of insured and COD articles (including insured articles sent to APO and FPO addresses) originating at or addressed to post offices outside the contiguous 48 states may be filed only:

a. After 45 days if article sent First-Class Mail, space available mail (SAM), or parcel airlift (PAL) services.

b. After 45 days if article sent COD.

c. After 75 days if article sent by surface.

* * * * *

2.5 Evidence of Insurance

For a claim involving registered, insured, COD, or Express Mail service, the customer must present any of the following evidence showing that the particular service was purchased:

[Revise item a to read as follows:]

a. The original postmarked mailing receipt issued at the time of mailing (reproduced copies are not acceptable).

* * * * *

[Revise item c to read as follows:]

c. The original sales receipt from an automated retail terminal listing the mailing receipt number and insurance amount, only if the original mailing receipt is not available (reproduced copies are not acceptable).

2.6 Evidence of Value

The customer must submit acceptable evidence to establish the cost or value of the article at the time it was mailed. (Other evidence may be requested to help determine an accurate value.) Examples of acceptable evidence are:

* * * * *

[Revise item b to read as follows:]

b. For items valued up to $100, the customer's own statement describing the lost or damaged article and including the date and place of purchase, the amount paid, and whether new or used (only if a sales receipt or invoice is not available). If the article is handmade, the statement must include the price of the materials. The statement must describe the article in sufficient detail to determine whether the value claimed is accurate.

* * * * *

[Add new item g to read as follows:]

g. A copy of a canceled check, money order receipt, credit card statement, or other documentation indicating the amount paid.

[Add new item h to read as follows:]

h. For Internet transactions conducted through a Web-based payment network, a computer printout of an online transaction identifying the purchaser and seller, price paid, date of transaction, description of item purchased, and assurance that the transaction status is completed.

2.7 Missing Contents

[Revise 2.7 to read as follows:]

If a claim is filed because some or all of the contents are missing, the addressee must present the container and packaging to the Postal Service when a claim is filed. Failure to do so results in the denial of the claim.

2.8 Damage

[Revise 2.8 to read as follows:]

If the addressee files the claim, the addressee must present the article with the packaging and mailing container to the Postal Service for inspection. If the sender files the claim, the St. Louis ASC will notify the addressee by letter to present the article, packaging, and container to the Postal Service for inspection. Failure to do so results in the denial of the claim.

2.9 Proof of Loss

[Revise introductory text and item a to read as follows:]

To file a claim, the sender must provide proof of loss for unnumbered, insured mail. Proof of loss is not required for registered mail, numbered insured, COD, or Express Mail claims. Any one of these documents is acceptable:

a. A letter or statement from the addressee, dated at least 21 days after the date that the unnumbered insured article was mailed, reporting that the addressee did not receive the article. The statement or a copy of it must be attached to the claim.

* * * * *

[Delete item c.]

2.10 Duplicate Claim

[Revise 2.10 to read as follows.]

A customer must file any duplicate claim for any mail type or service within the following time limits:

No sooner than 30 days and no later than 60 days from the date the original claim was filed.

[Delete the table.]

* * * * *

2.14 Nonpayable Claims

[Revise introductory text to read as follows:]

Indemnity is not paid for collect on delivery (COD), insured mail, registered mail, or Express Mail services in these situations unless otherwise stated:

* * * * *

[Revise item r to read as follows:]

r. Negotiable items (defined as instruments that can be converted to cash without resort to forgery), currency, or bullion except as provided in S911.2.0 for registered mail items or S010.2.12.c for Express Mail items.

* * * * *

[Add items ac through aj to read as follows:]

ac. Mailer refusing to accept delivery of the parcel on return.

ad. Mail not bearing the complete names and addresses of the sender and addressee, or not deliverable to either the addressee or sender.

ae. Event tickets (*e.g.*, nonrefundable tickets for concert, theater, sport, or similar events) received after the event and, for insurance purposes, insured for loss, not for delay or receipt after the event for which they were purchased.

af. Software installed onto computers that have been lost or damaged.

ag. Personal check remitted to the mailer for a COD article and not honored or otherwise payable by the financial institution upon which it is drawn. If the personal check is lost in transit, it is the mailer's responsibility to obtain a replacement check from the addressee. Indemnity to the mailer is limited to stop payment charges incurred by the addressee for the issuance of a replacement check, if the mailer establishes that the addressee incurred the charge and was reimbursed by the mailer for this amount.

ah. Damaged articles not claimed within the prescribed time limits set forth in *Postal Operations Manual* 147.3.

ai. Personal time used to make handmade, hobby, craft, or similar items.

* * * * *

3.0 PAYMENT

* * * * *

3.3 Dual Claim

[Revise 3.3 to read as follows:]

If the sender and the addressee both claim insurance and cannot agree on which one should receive the payment, any payment due is made to the sender unless the claim has already been paid to the addressee upon presentation of the mailing receipt.

* * * * *

4.0 ADJUDICATION

* * * * *

4.2 Appeal

[Revise 4.2 to read as follows:]

A customer may appeal a claim decision by filing a written appeal within 60 days of the date of the original decision. Except for an unnumbered, insured article, the customer must send the appeal directly to Claims Appeals (see G043 for address). For an unnumbered, insured article, the customer must send the appeal to the post office where the claim was filed. That post office forwards the appeal to the manager of Claims Appeal at the St. Louis ASC.

4.3 Final USPS Decision

[Revise 4.3 to read as follows:]

If the manager of Claims Appeals at the St. Louis ASC sustains the denial of a claim, then the customer may submit an additional appeal within 60 days for final review and decision to the Consumer Advocate, Postal Service Headquarters, who may waive standards in S010 in favor of the customer.

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S913 Insured Mail

* * * * *

2.0 MAILING

* * * * *

[Revise 2.7 to read as follows:]

2.7 Receipt

For each insured article mailed, the mailer receives the appropriate postmarked receipt:

a. Form 3813 when the insurance coverage is $50 or less.

b. Form 3813–P when the insurance coverage is more than $50.

c. Form 3877 when multiple accountable mail articles are mailed at one time.

* * * * *

S920 Convenience

* * * * *

S921 Collect on Delivery (COD) Mail

* * * * *

3.0 MAILING

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3.4 Indelible Ink, Mailer Errors

[Revise 3.4 to read as follows:]

The particulars required on the form must be filled in by hand with ink, typewritten, or computer printed. The Postal Service is not responsible for errors that a mailer makes in stating charges to be collected. The mailer can not stipulate "CASH ONLY". The recipient has the option to pay the charges by cash or personal check.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–30935 Filed 12–5–02; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 021113274–2274–01; I.D. 031501A]

RIN 0648–AO79

Atlantic Highly Migratory Species; Exempted Fishing Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule in accordance with framework procedures for adjusting the management measures of the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). This proposed rule would modify existing regulations for Atlantic highly migratory species (HMS) exempted fishing activities. The intent of the changes is to improve monitoring of exempted fishing activities for Atlantic HMS. NMFS will hold a public hearing to receive comments from fishing participants and other members of the public regarding the proposed exempted fishing specifications.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on January 6, 2003.

The public hearing date is December 16, 2002, 7 p.m.—9 p.m.

ADDRESSES: Written comments on the proposed rule should be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to the Highly Migratory Species Management Division (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). Comments will not be accepted if submitted via e-mail or the internet.

The public hearing location is: Sea World Adventure Park, Ports of Call

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Building, 7007 Sea World Drive, Orlando, Florida, 32821.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly at 301–713–2347, fax 301–713–1917, e-mail *Sari.Kiraly@noaa.gov*.

SUPPLEMENTARY INFORMATION: Under 50 CFR 635.32, and consistent with 50 CFR 600.745, NMFS may authorize for limited testing, public display, and scientific data collection purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an Exempted Fishing Permit (EFP) or a Scientific Research Permit (SRP) issued by NMFS in accordance with criteria and procedures specified in those sections. As necessary, an EFP or SRP would exempt the named party(ies) from otherwise applicable regulations under 50 CFR part 635. Such exemptions could address fishery closures, possession of prohibited species, commercial permitting requirements, and retention and minimum size limits.

This proposed action was developed in response to ongoing concerns related to past EFPs for the purpose of capturing regulated HMS, particularly sharks collected for public display, and is intended to strengthen the existing regulations that govern such EFP related activities. The proposed rule is in accordance with framework procedures for adjusting management measures provided in the Final HMS FMP, and Amendment 1 to the Billfish FMP.

Exempted Fishing Operations

With respect to exempted fishing activities, NMFS proposes the following new requirements:

(1) Collectors of HMS for display purposes would be required to notify the local NMFS Office for Law Enforcement 72 hours prior to departing on a collection trip in federal or state waters as to collection plans and location, and number of animals to be collected. Also, at the end of each collection trip, upon return to port the collector would be required to call the local NMFS Office for Law Enforcement to report the conclusion of the trip and whether any regulated HMS were collected. In addition, in cases of HMS being shipped to other locations, the collector would be required to notify the local NMFS Office for Law Enforcement 48 hours prior to shipment.

(2) In lieu of the conventional dart tags currently supplied to collectors by NMFS, all live HMS collected for the purpose of public display would be required to have microchip Passive Integrated Transponder (PIT) tags, which will be supplied by NMFS, implanted by the collector. The use of PIT tags is intended to eliminate problems that frequently occur following implantation of the conventional dart tags. Collectors would not be required to obtain PIT tag readers, but are advised to do so in order to verify that the PIT tag is properly implanted and can be read, and also to have available should law enforcement authorities other than NMFS Enforcement board the fishing vessel. If a NMFS law enforcement officer is unable to detect with the NMFS reader a PIT tag in a HMS collected for display, the collection will be deemed unauthorized.

(3) To minimize mortality associated with the live capture of HMS, permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, would be specified on a case-by-case basis. If such measures are not effective in limiting mortalities, other restrictions, such as allowing the use of only certain types of gear for the live capture of HMS for display, could be instituted to minimize the possibility of dead discards.

(4) NMFS would reserve the right to place on-board an authorized collection vessel a fisheries observer to monitor activities governed by an EFP.

(5) The proposed rule also modifies EFP requirements for swordfish offloading. For the directed swordfish fishery, if vessel monitoring systems (VMS) are installed on vessels, separate EFPs to allow delayed offloading would no longer be required.

Reporting Requirements

NMFS proposes to enhance data collection and reporting by requiring the following:

(1) To reinforce the importance of the year-end report to NMFS concerning the activities conducted under the EFP, in addition to the information currently required for submission, all applications for permit renewals would also be required to include the year-end report from the previous year in order to be considered complete. Renewal applications would not be deemed complete until the year-end report containing all the specified information, is submitted.

(2) In addition to reporting the retention of live HMS, all dead HMS caught and discarded under the permit would have to be reported - these dead discards will be counted against appropriate annual quotas. Additionally, any HMS collected under state-issued permits by persons issued federal EFPs would have to be reported to NMFS within 5 days of collection. Reporting of HMS collected under state permits will provide important information as to the actual numbers of animals that are being removed from the stocks. If no HMS are collected in either federal or state waters in any given month, a "no-catch" report would have to be submitted to NMFS within 5 days of the last day of that month.

(3) Several prohibitions are proposed to be added or modified to address a) submission of false information on permit applications or activity reports, and b) violations of any of the terms and conditions of the EFP. These prohibitions are needed to facilitate enforcement of EFP application and reporting requirements. Essentially, they extend the permitting, record-keeping, and reporting requirements otherwise applicable to vessels and dealers to those persons issued EFPs.

Request for Comments

In addition to the changes proposed in this proposed rule, comments are requested on the below-listed potential regulatory requirements. These measures are not being proposed at this time. If, after receiving comments, NMFS decides to issue regulations to implement any of these provisions, NMFS will publish a proposed rule.

(1) To qualify for an EFP for the live collection of HMS for public display purposes, the applicant would be required to demonstrate that holding facilities adequate for animal husbandry are maintained. NMFS will consider accreditation in the American Zoo and Aquarium Association (AZA), or equivalent standards, as meeting these requirements.

(2) Based on available information on disease or mortalities while in captivity, NMFS could limit the issuance of EFPs for the collection of HMS species that are not likely to survive well in captivity, until such time that the best available new information indicates otherwise. This measure could potentially reduce mortality of HMS held in captivity.

(3) EFPs for the purpose of collecting live animals for public display could be issued only to aquariums and other display facilities that meet the AZA standards for such facilities - third party collectors would no longer be issued EFPs, but would be allowed to collect HMS as a third party contractor to the authorized institution.

(4) Public display facilities, including aquariums that are not otherwise authorized by a collection permit, would be required to obtain from NMFS a display permit in order to maintain HMS in captivity. To qualify for this permit, applicants would need to demonstrate the adequacy of the facility for animal husbandry. NMFS would consider accreditation in the AZA, or equivalent standards, as meeting these requirements.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, and Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*

For the purposes of NOAA Administrative Order (NAO) 216–6, the AA has preliminarily determined that this action would not have a significant effect, individually or cumulatively, on the human environment, that it has been sufficiently analyzed in a prior FMP, and that it involves only minor technical additions, corrections or changes to the regulations. Accordingly, under sections 5.05 and 6.03a3(b) of NAO 216–6, this action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement for exempted fishing activity reporting has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 5 minutes per notification phone call at the beginning and completion of a collection trip and upon shipment of any animals. The estimated time to prepare a catch report required by an EFP issued for display collection is 5 minutes, and to prepare a "no-catch" report the estimated time is 2 minutes. The estimated application preparation and year-end report preparation times for display EFPs are 30 minutes each. Application of a PIT tag to a HMS captured for display is estimated to take 2 minutes.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency; whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (*see* **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows. Most of the entities that would be affected by this proposed rule would be considered small entities. The cost to EFP applicants is minimal, estimated at $3.75 per applicant for the letter, information card, and telephone calls needed to apply, report, and notify. The cost of PIT tags will be incurred by NMFS, which will supply the tags to each permittee. If NMFS decided to select a vessel governed by an EFP for observer coverage, pursuant to 50 CFR 645.7, there would be no significant economic impact. NMFS would provide the observer, and the vessel operator would only be required to provide accommodations and food for the observer equivalent to those provided to the crew. Thus, there would be no significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis was not prepared for this proposed rule.

The proposed action would not significantly change the operations of any HMS fishery and is not expected to increase threats to endangered or threatened species listed under the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of sea turtle species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternative specified in the BiOp in a final rule July 9, 2002 (67 FR 45393). The measures proposed would not have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible and irretrievable commitment are expected from this proposed action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

It is not anticipated that this proposed action would have any impacts on essential fish habitat and, therefore, no consultation is required.

The AA has determined that this action would have no impacts on the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management plans under the Coastal Zone Management Act. Accordingly, NMFS has submitted consistency determinations to those states with a request for concurrence.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing , Fishing Vessels, Foreign Relations, Intergovernmental Relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 2, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.28, paragraph (c)(1)(i)(A) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a longline. However, Atlantic swordfish legally taken prior to the effective date of the closure may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline on board, provided the harvesting vessel does no fishing after the closure in the Atlantic Ocean north of 5° N. lat., and reports positions with a vessel monitoring system, as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the **Federal Register** for publication notification of the change at least 14 days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of

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catch by vessels fishing under the incidental catch quota.

* * * * *

3. In § 635.32, paragraphs (c)(1) and (c)(4) are revised, and paragraphs (c)(3)(i) through (c)(3)(iv) are added to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits. Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purposes of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register** for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests. Applications for permit renewals are required to include the year-end report from the previous year in order to be considered complete. Renewal applications will be deemed incomplete unless a complete package, including the year-end report containing all the specified information is submitted.

* * * * *

(3) * * *

(i) Collectors of HMS for display purposes must notify the local NMFS Office for Law Enforcement 72 hours, excluding weekends and holidays, prior to departing on a collection trip in federal or state waters as to collection plans and location, and the number of animals to be collected. Also, at the end of each collection trip, upon return to port the collector must call the local NMFS Office for Law Enforcement to report the conclusion of the trip and whether any regulated HMS were collected. In addition, in the case of HMS being shipped to other locations, the collector must notify the local NMFS Office for Law Enforcement 48 hours prior to shipment.

(ii) All live HMS collected for the purpose of public display are required to have microchip Passive Integrated Transponder (PIT) tags, which will be supplied by NMFS, implanted by the collector. Collectors are not required to obtain PIT tag readers, but are advised to do so in order to verify that the PIT tag is properly implanted and can be read. If a NMFS law enforcement officer is unable to detect a PIT tag in a HMS collected for display with the NMFS reader, the collection will be deemed unauthorized.

(iii) Permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, will be specified on a case-by-case basis. If such measures are not effective in limiting mortalities, other restrictions, such as allowing the use of only certain types of gear for the live capture of HMS for display, may be instituted to minimize the possibility of dead discards.

(iv) NMFS reserves the right to place on-board an authorized collection vessel a fisheries observer to monitor activities governed by an EFP.

(4) Written reports on fishing activities and disposition of catch for each fish collected under the permit must be submitted to NMFS, at an address designated by NMFS, within 5 days of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS at an address designated by NMFS. NMFS will provide specific conditions and requirements consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks in the EFP. In addition, all dead HMS caught and discarded under the permit must be reported. Also, any HMS collected under state-issued permits by persons issued federal EFPs must be reported to NMFS within 5 days of collection. If no HMS are collected in either federal or state waters in any given month, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

4. In § 635.71, paragraphs (a)(6) and (a)(26) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit or scientific research permit issued under the authority of § 635.32.

* * * * *

(26) Violate the terms and conditions or any provision of a permit issued under § 635.4, or an exempted fishing permit or scientific research permit issued under the authority of § 635.32.

* * * * *

[FR Doc. 02–30874 Filed 12–3–02; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 235
Friday, December 6, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of the information collection and supporting documents may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 412–.
Form Number: N/A.
Title: PVO Classification Form.
Type of Submission: New.
Purpose: The U.S. Agency for International Development (USAID) requires all private voluntary organizations (PVOs) that wish to be eligible to compete for most forms of foreign economic assistance administered by USAID to register with the Agency. Registration provides a resource for USAID officials to access financial and program information on PVOs. The PVO Registry is a central clearinghouse for information on PVOs working in countries where elsewhere the U.S. Government would not have knowledge of the activities. To confirm the data is collected in a formalized and consistent manner, USAID has developed the Classification Form's list of sectors and countries that will show where qualified and interested PVOs registered with USAID are working.

Annual Reporting Burden:
Respondents: 450.
Total annual responses: 450.
Total annual hours requested: 150 hours.

Dated: November 25, 2002.

Joanne Paskar,
Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–30894 Filed 12–5–02; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revision of Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice to amend Privacy Act system of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes to amend the Privacy Act system of records FCIC–.7, entitled Accounts Receivable. The system of records is maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA. The accounts receivable system of records is being revised to reflect changes in the administration and management of the Federal crop insurance program and to reflect more completely the types of information collected and maintained in this system of records.

EFFECTIVE DATE: This notice will be effective without further notice on January 6, 2003, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Chief, Fiscal Operations Branch, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, MO 64133–4676, telephone (816) 926–7033.

SUPPLEMENTARY INFORMATION: RMA is responsible for the administration of FCIC programs that affect agricultural producers in the United States. Programs are administered through the Washington D.C. Headquarters Office, Kansas City Office, ten regional offices and six compliance offices. At all of the above locations, RMA collects information about individuals and other legal entities; and retains, utilizes, and distributes information from the Privacy Act Systems of Records.

Information contained in the system will include name, address, tax identification numbers, and information relating to debt identification, such as policy number and basis for establishing debt. Debtors identified are indebted to FCIC or private insurance companies reinsured by FCIC. Information captured will be used to facilitate collection and tracking of delinquent debtors until such time as debts are satisfied.

Revisions to the existing system of records are being made in the following areas:

The system location has been revised to reflect government reorganization and downsizing. In addition to the Kansas City Office, the system is now located in regional offices, and compliance offices of the Risk Management Agency. Addresses for these offices are now available from the Deputy Administrator, Insurance Services, Risk Management Agency, Room 6709, Mail Stop 0805, 1400 Independence Avenue, SW., Washington, DC 20250–0805. All references to addresses have been revised to reflect these changes. Categories of individuals have been expanded to include other legal entities. Categories of records have been revised and expanded to reflect more completely the types of information collected and maintained. This information includes individual identifying information, indebtedness information, and collection action by FCIC.

The current routine uses are revised as follows: Routine use number (1) has been revised to include agencies that regulate. Routine use number (2) has been revised to permit disclosure to any judicial or administrative tribunal if the record sought is relevant. Routine uses number (3) and number (5) have been revised to update the authority for reporting debts to credit reporting and collection agencies. Routine use number (7) has been deleted. Routine use number (8) has been combined with

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routine use number (3). Routine use number (9) has been renumbered as use number (7) and revised to refer to those programs conducting computer matching.

New routine uses have been added as follows: A new routine use number (8) permits referral of delinquent debts to the Department of Treasury, Financial Management Service, through participation in the Treasury Offset Program, and to other Federal agencies for administrative offset of eligible Federal payments, and for cross-servicing of debtor accounts. A new routine use number (9) allows delinquent debt to be disclosed to employers for wage garnishment. New routine use (10) permits information to be disclosed to private insurance companies reinsured by FCIC for tracking of delinquent debtors. New routine use number (11) permits information to be disclosed for research and analysis to identify potential areas of fraud, waste or abuse. A new routine use number (12) permits information to be disclosed for use in the administration, analysis, and evaluation of the Federal crop insurance program.

In compliance with Federal regulations, retention and disposal of records has been revised to include shredding of records supplied by other Federal agencies.

The source of information in these records has been expanded to include identification of delinquent debtors and debts certified to FCIC from private insurance companies reinsured by FCIC.

In conformance with 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, the Department of Agriculture sent a report describing the proposed changes to the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Reform, United States House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on November 27, 2002.

Signed at Washington, DC, on November 27, 2002.

Ann M. Veneman,

Secretary of Agriculture.

USDA/FCIC–7

SYSTEM NAME:

Accounts Receivable.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Kansas City Office, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676 and regional and compliance offices for the Federal Crop Insurance Corporation. Addresses of the regional offices may be obtained from the Deputy Administrator, Insurance Services, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Stop 0805, Room 6709–S, Washington, DC 20250–0803.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on any individual or other legal entity that is indebted to the Federal Crop Insurance Corporation (FCIC) or a private insurance company.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of standardized records containing identifying information on individuals or other legal entities such as the name of individuals legally responsible for the debt, address, tax identification number (social security number or employer identification number); information relating to debt identification, such as policy number; codes identifying the type of debt and the basis for establishing the debt; date the debt arose; principal debt amount; interest rate and date interest accrues on the debt; information related to changes in debt amount and debt status; and brief remarks that identify or clarify actions being taken by FCIC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be used as follows:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto.

(2) Disclosure to a court, magistrate or administrative tribunal or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that FCIC determines that the records sought are relevant to the proceeding.

(3) Disclosures may be made from this system with respect to debts to a credit reporting agency in accordance with 31 U.S.C. 3701, 3711(f), 3720B, 4 CFR 102.3, 4 CFR 3.35 and 7 CFR part 400, subpart K in order to assist in collecting delinquent debts.

(4) Referral of past due legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS), to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made in accordance with 31 U.S.C. 3720 A, and 26 CFR 301.6402–6T.

(5) Referral to a collection agency, when FCIC determines such referral is appropriate for collecting the debtor's account in accordance with 31 U.S.C. 3711, 3718; 7 CFR part 400, subpart K; 7 CFR 3.36.

(6) Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of that individual.

(7) Referral of information regarding indebtedness to the Department of Defense, and the United States Postal Service, for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the FCIC in order to collect debts in accordance with the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, administrative or salary offset procedures, or through the use of collection agencies.

(8) Referral of delinquent debts to the Department of Treasury, Financial Management Service, and other Federal agencies for administrative offset of eligible Federal payments and for cross-servicing of debtor accounts in accordance with 31 U.S.C. 3716; 7 CFR part 3, subpart B.

(9) Referral of delinquent debts to the debtor's employer for wage garnishment in accordance with 31 U.S.C. 3720D.

(10) Disclosure may be made to private insurance companies delivering the FCIC program as authorized by the Federal Crop Insurance Act.

(11) Disclosure to contractors or other Federal agencies to conduct research and analysis to identify patterns, trends, anomalies, instances and relationships of private insurance companies, agents, loss adjusters and policyholders that may be indicative of fraud, waste, and abuse.

(12) Disclosure to private insurance companies, contractors, cooperators, partners of FCIC, and other Federal agencies for any purpose relating to the sale, service, administration, analysis of the Federal crop insurance program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically, on computer printouts, microfiche, and in the file folders at the Kansas City Office.

RETRIEVABILITY:

Records may be indexed and retrieved by name of individual, tax identification number (including social security number), or contract number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices that are locked during non-duty hours. File folders and other hard copy records are stored in locked file cabinets. The electronic records are controlled by password protection and the computer network is protected by means of a firewall.

RETENTION AND DISPOSAL:

Records are maintained until the indebtedness is paid. Unless shredding is required by Federal regulations, paper records are delivered to custodial services for disposal as waste paper. Electronic records may be erased after the debt is settled and upon the expiration of the records retention period established by the National Archivist.

SYSTEM MANAGER(S) AND ADDRESS:

Fiscal Operations Branch, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676. Telephone: (816) 926–7033.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Kansas City Office. The request for information should contain the individual's name and address; tax identification number (including social security number); State(s) and county(ties) where such individual farms; and individual crop insurance policy number(s), if known. Before information about any record is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system, that pertains to such individual, by submitting a written request to the Privacy Act Officer, Risk Management Agency, Program Support Staff, Room 6620-SB, AG Stop 0821, 1400 Independence Avenue, SW., Washington, DC 20250–0821. The envelope and letters should be marked, Privacy Act Request. A request for information should contain: name, address, ZIP code, tax identification number (including social security number), name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Procedures for contesting records are the same as the procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the insurance company, individual debtor or from other Federal agencies.

[FR Doc. 02–30742 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Twin Creek Timber Sale; Caribou-Targhee National Forest, Bear Lake County, ID

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, and regenerate new stands of trees in upper Georgetown Canyon of the Caribou National Forest in Bear Lake County, Idaho. The proposed project is located in T. 10 S., R. 44, Sections 1, 12, 13, 24 and T. 10 S., R. 44 E. sections 6 and 7, Boise Meridian. Implementing a regeneration cut to lodgepole pine stands will provide an Allowable Sale Q of sawlogs to industry and help meet the desired future condition for function, structure, and composition to lodgepole pine stands on suitable timberlands in the Georgetown Watershed.

The Montpelier Ranger District of the Caribou National Forest proposes to harvest an estimated 2,500,000 million board feet of commercial timber on approximately 329 acres. All 329 acres would receive group seed tree cut. All units considered for cutting are mature lodgepole pine. An estimated 7.0 miles of road would need to be reconstructed, 1.9 miles would need to be constructed, 1.0 mile of existing road would be opened and 1.0 mile would be closed. Some road construction would occur on private ground. Approximately 54 acres would be harvested in the Dry Ridge Inventoried Roadless Area, #04164. All merchantable timber would be yarded using tractors. Natural regeneration is planned for in all the proposed cutting units. Logging slash will be available for firewood to the public. The remaining logging slash will then be burned. Ten to fifteen tons per acres of large woody debris will be left in each cutting unit for nutrient recycling.

The issues identified during scoping and the analysis process will determine alternatives to the proposed action. The no action alternative will be analyzed.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received within 30 days of the date of publication of this Notice in the **Federal Register**. No scoping meetings are planned at this time. Information received will be used in preparation of the draft EIS and final EIS.

ADDRESSES: Send written comments to Caribou-Targhee National Forest, Montpelier Ranger District, 322 North 4th Street, Montpelier, Idaho 83254.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Eric Mattson, Caribou-Targhee National Forest, Montpelier Ranger District, 322 N. 4th Street, Montpelier, Idaho 83254 (Telephone: (208) 847–0375).

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from Federal, State and local agencies, as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

The responsible official is Jerry B. Reese, Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, Idaho 83401.

The decision to be made is: The Forest Service needs to decide whether

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to continue the present course of action (the no action alternative) or to implement the proposed action with applicable mitigation measures, or to implement an alternative to the proposed action with its applicable mitigation measures.

The tentative date for filing the Draft EIS is 15 February 2003. The tentative date for filing the final EIS is 15 April 2003. The comment period on the draft environmental impact statement will be open for 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give viewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 (1978). Also, environmental objections that could be raised at the draft impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period of the Draft Environmental Impact statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to the in the Final Environmental Impact Statement. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentially should be aware that, under the FOIA, confidentially may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentially, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: November 20, 2002.

Jerry B. Reese,

Forest Supervisor, Caribou-Targhee National Forest, Intermountain Region, USDA Forest Service.

[FR Doc. 02–30912 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle National Forests, Bonner County, Idaho and Pend Oreille County, Washington; Chips Ahoy Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Priest Lake Ranger District on the Idaho Panhandle National Forests will prepare an environmental impact statement (EIS) on a proposal to treat forest vegetation over approximately 980 acres. The treatments are being proposed to restore forest communities to a more historical composition and structure and re-introduce fire into these ecosystems. Treatments include 780 acres of regeneration harvest and 200 acres of commercial thinning.

DATES: Comments concerning the scope of the analysis must be received within 30 days from the date of this notice in the **Federal Register** and during the draft EIS period. The draft environmental impact statement is expected in March 2003 and the final environmental impact statement is expected June 2003.

ADDRESSES: Send written comments to Chips Ahoy Project, Attn: Steve Johnson, Forest Supervisor's Office, 3815 Shreiber Way, Coeur d'Alene, ID 83815.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Project Leader, Idaho Panhandle Supervisor's Office at the above address, by calling (208) 765–7224, or *ssjohnson@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The project area is located within Bonner County, Idaho, and Pend Oreille County, Washington. The project area is located approximately twenty miles north of the community of Priest River, Idaho. A past bark beetle outbreak, in combination with root diseases, other insects and diseases and winter storm damage has left many of these stands poorly stocked.

Purpose and Need for Action

The purpose and need for this action is to restore dry forest communities to a more natural composition and structure and re-introduce fire into these ecosystems and increase the amount of wet forest communities that are dominated by western white pine and western larch trees.

Proposed Action

The proposed action is separated into three categories, vegetative treatments, fuel treatments and road treatments. The proposal is to treat forest vegetation over approximately 980 acres within the project area. Different types of treatments would be used depending upon the existing condition of the forest stands. These treatments include regeneration treatments on 780 acres and commercial thinning on the remaining 200 acres. After the tree cutting operations are complete, approximately 930 acres, or 95 percent of the vegetative treatment areas would be underburned to reduce the fuels, prepare the sites for reforestation, and to re-introduce fire onto these sites as a natural process. The remaining 5 percent of the vegetative treatment would not be burned. In order to access some of the proposed vegetative treatment areas, approximately 2.5 miles of temporary road would be constructed. These temporary roads would be recontoured following their use. Resource protection measures will be included to protect resources such as snags, soils, heritage resources, water quality and wildlife.

Responsible Official

Ranotta K. McNair, Forest Supervisor, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, ID 83815.

Nature of Decision To Be Made

The Forest Supervisor of the Idaho Panhandle National Forests will decide whether or not to implement this project, and if so, in what manner.

Scoping Process

The agency invites written comments and suggestions on the scope of the analysis. In addition to this notice, a proposed action letter will be sent to interested government officials, agencies, groups, and individuals on the Chips Ahoy mailing list. No public meetings are currently planned.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Specific written comments on the proposed action will be most helpful.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 25, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–30380 Filed 12–05–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Frenchtown Face Ecosystem Restoration Project; Ninemile Range District, Lolo National Forest, Missoula County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the effects of timber harvest, prescribed burning, road management changes, weed spraying, and stream channel restoration in a 44,000 acre project area approximately 25 miles northwest of Missoula, Montana.

DATES: Comments concerning the scope of the analysis should be received in writing no later than 30 days following publication of this notice.

ADDRESSES: Send written comments to: Deborah L. R. Austin, Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula, MT 59804.

FOR FURTHER INFORMATION CONTACT: Brian Riggers, EIS Team Leader, Building 24, Fort Missoula, Montana 59804, (406) 329–3793, or e-mail *briggers@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Lolo National Forest proposes to harvest trees on approximately 4,300 acres of low elevation benchlands within the project area. Most of these acres would be underburned following harvest, and an additional 6,500 acres of prescribed burning to reduce fuel levels would occur in areas not harvested (a total of about 10,400 acres of burning overall). Approximately 79 miles of road management changes are proposed. Most (48 miles) of these involve removing drainage structures and restoring vegetation on previously closed roads, but approximately 31 additional mile of low use or grown in roads would also be formally closed. Finally, weeds would be treated within about 6,000 acres where they currently occur. Approximately 1,200 acres would be aerially sprayed.

Lands affected are within the Mill, Roman, Houle, Sixmile, and lower Ninemile Creek (including Butler, Kennedy, and McCormick Creeks) watersheds. The project area is bounded by the Clark Fork River and Ninemile Creek to the southwest, and the Ninemile/Flathead Reservation divide to the northeast.

The purpose of the proposal is to carry out the goals and direction stated in the Lolo National Forest Plan using ecosystem management principles. The objectives are to:

(1) Reduce the potential for high severity fires within the low elevation ponderosa pine and Douglas-fir forests, while also improving fire protection on private property with all ownerships.

(2) Maintain/improve forest health and reduce the risk of damage from insects and disease while maintaining a natural appearing landscape.

(3) Reduce the expansion of new or less extensive weed species, and control exsisting weeds, under a comprehensive block planning effort.

(4) Reduce roads while maintaining reasonable access for recreation, but limiting further recreational development.

(5) Maintain/improve water quality and fish habitat throughout the landscape.

(6) Maintain/improve wildlife security and habitat.

(7) Protect and interpret historic sites.

Public involvement was conducted in 2002 through public meetings, letters,

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and phone conversations. Values and desires that people have for the management of this landscape were identified. these were used to collaboratively develop purpose and need statements, which this proposed action is based upon. Issues and comments identified during this earlier scoping that were not specific components of the proposed action will be carried forward and addressed through alternative development. During this process the Forest Service is seeking written comment, particularly addressing possible issues or alternatives. A scoping document has been prepared and mailed to parties known to be interested in the proposed action.

The effects of the proposed action on vegetation, fire, wildlife, fisheries, recreation, historic interpretation, and the scenic character of the landscape have been identified as preliminary key issues. These issues will be used to develop a range of alternatives (including a no action alternative where none of the activities in the proposed action would be implemented) and assess environmental consequences.

Public participation is an important part of the development and analysis of this project. In addition to the initial collaboration, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed action. There will be additional public meetings throughout this process. If you are interested in obtaining dates or information on these, please contact Brian Riggers at the location listed above.

The Federal Forest Service is the lead agency for preparing this EIS. They will consult with the United States Fish and Wildlife Service. The responsible official who will make the decision is Deborah L. R. Austin, Forest Supervisor. She will make a decision between alternatives after considering comments, responses, environmental consequences, applicable laws, regulations, and policies. The decision and rational will be documented in a Record of Decision.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 2003. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date of the EPA's notice of availability.

It is very important that those interested in management of the Frenchtown Face project area participate at that time. Completion of the final EIS is scheduled for July 2003.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS (Final Environmental Impact Statement) may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 15, 2002.

Deborah L.R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 02–30879 Filed 12–5–02; 8:45 am]

BILLING CODE 3211O–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, December 12, 2002, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on December 12th begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review previous meeting minutes and approve, RAC member/subcommittee reports, Paul Chappell proposal example presentation, NEPA Overview with Questions and Answers, Proxy votes and absent voting members/Quorum, Overhead Discussion and Decision. Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 02–30892 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Aging Flood Control Dams In Oklahoma

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of record of decision.

SUMMARY: M. Darrel Dominick, responsible Federal official for projects administered under the provisions of Section 14 of Public Law 83–566 (enacted by Section 313 of Public Law 106–472, otherwise known as "The Small Watershed Rehabilitation Amendments of 2000") in the State of Oklahoma, is hereby providing notification that a record of decision to proceed with the installation of the Rehabilitation of Aging Flood Control Dams in Oklahoma is available. Single copies of this record of decision may be obtained from M. Darrel Dominick at the address shown below.

FOR FURTHER INFORMATION CONTACT: M. Darrel Dominick, State Conservationist, Natural Resources Conservation Service, State Office, 100 USDA Suite 206, Stillwater, Oklahoma, 74074–2655, telephone (405) 742–1227.

Dated: November 22, 2002.

M. Darrel Dominick,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

[FR Doc. 02–30910 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for "Self-Help Technical Assistance Grants" (Rural Development Instruction 1944–I).

DATES: Comments on this notice must be received by February 4, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Daryl L. Cooper, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, Stop 0783, 1400 Independence Ave., SW., Washington DC 20250–0783, Telephone (202) 720–1366.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1944–I, Self-Help Technical Assistance Grants.

OMB Number: 0575–0043.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension of currently approved information collection.

Abstract: This subpart set forth the policies and procedures and delegates authority for providing technical assistance funds to eligible applicants to finance programs of technical and supervisory assistance for self-help housing, as authorized under section 523 of the Housing Act of 1949 loan program under 42 U.S.C 1472. This financial assistance may pay part of all of the cost of developing, administering or coordinating program of technical and supervisory assistance to aid very low- and low-income families in carrying out self-help housing efforts in rural areas. The primary purpose is to locate and work with families that otherwise do not qualify as homeowners, are below the 50 percent of median incomes, and living in substandard housing. RHS will be collecting information from non-profit organizations to enter into grant agreements. These non-profit organizations will give technical and supervisory assistance, and in doing so, they must develop a final application for section 523 grant funds. This application includes Agency forms that contain essential information for making a determination of eligibility.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Public or private nonprofit organizations, State, Local or Tribal Governments.

Estimated Number of Respondents: 160.

Estimated Number of Responses per Respondent: 50.56.

Estimated Number of Responses: 160.

Estimated Total Annual Burden on Respondents: 4,933.05.

Copies of this information collection can be obtained from Jean Mosely, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0041.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosely, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 27, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–30920 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 5, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in

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connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Fluid Element Filter, 2940–00–832–6054.
NPA: Gaston Skills, Inc., Gastonia, North Carolina.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Rochester Midland Envirocare Products, 7930–00–NIB–0253, Carpet & Upholstery Cleaner, 7930–00–NIB–0254, Food Service Cleaner, 7930–00–NIB–0255, Glass Cleaner, 7930–00–NIB–0256, Hand Soap, 7930–00–NIB–0257, LiquiBac, 7930–00–NIB–0258, Low Foam All Purpose Cleaner, 7930–00–NIB–0259, Neutral Disinfectant, 7930–00–NIB–0260, Tough Job, 7930–00–NIB–0261, Washroom & Fixture Cleaner.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Administrative Services, National Park Service, Harpers Ferry Center, Harpers Ferry, West Virginia.
NPA: Hagerstown Goodwill Industries, Inc., Hagerstown, Maryland.
Contract Activity: National Park Service, Harpers Ferry, West Virginia.
Service Type/Location: Custodial Service, James M. Hanley Federal Building and U.S. Courthouse, Syracuse, New York.
NPA: Oswego Industries, Inc., Fulton, New York.
Contract Activity: GSA/PBS Upstate New York Service Center , Syracuse, New York.
Service Type/Location: Custodial Service, Walter Reed Army Medical Center, Main Section, Washington, DC, Forest Glen Section, Montgomery County, Maryland, Buildings 1, 5, 11, 52, 53, 92, 121, 154, 156, 163, 169, 178, 500, 501, 508, 511, 512, 601, 602, 604, 605.
NPA: Mt. Vernon-Lee Enterprises, Inc., Newington, Virginia.
Contract Activity: MEDCOM Contracting Center–NA, Washington, DC.
Service Type/Location: Facilities Maintenance, Mississippi ANG CRTC/LGC, Gulfport, Mississippi.
NPA: Mississippi Goodworks, Inc., Gulfport, Mississippi.
Contract Activity: ANG CRTC/LGC, Gulfport, Mississippi.
Service Type/Location: Janitorial/Custodial, National Park Service, C&O Canal National Historical Park Visitor Center, Cumberland, Maryland.
NPA: Hagerstown Goodwill Industries, Inc., Hagerstown, Maryland.
Contract Activity: National Park Service, C&O Canal NHP, Hagerstown, Maryland.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–30908 Filed 12–5–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.
ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: January 5, 2003.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.
FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.
SUPPLEMENTARY INFORMATION:

Additions

On May 10, September 20, October 4, October 11, and October 18, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 F.R. 31765, 59249, 62224, 63376, and 64351) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services the Government.
2. The action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Award Certificate Binder, 7510–01–390–0712.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Plate, Paper, 7350–01–263–6700, 7350–01–263–6701.
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.
Contract Activity: GSA, General Products Center, Fort Worth, Texas.

Services

Service Type/Location: Base Supply Center, U.S. Army Signal Center, Fort Gordon, Georgia.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: U.S. Army Signal Center, Fort Gordon, Georgia.
Service Type/Location: Cleaning Services, Laguna Atascosa NWR, Rio Hondo, Texas.
NPA: Training, Rehabilitation & Development Institute, Inc., San Antonio, Texas.
Contract Activity: Department of Interior, New Mexico.
Service Type/Location: Grounds Maintenance, Army Research Laboratory (ARL), Adelphi, Maryland.
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland.
Contract Activity: U.S. Army Robert Morris Acquisition Center (ARL), Adelphi, Maryland.
Service Type/Location: Recycling Service, Cape Cod National Seashore, Wellfleet, Massachusetts.
NPA: Nauset, Inc., Hyannis, Massachusetts.
Contract Activity: National Park Service, Wellfleet, Massachusetts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. The action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Cleaner, Water Soluble, 6840–01–367–2912, 7930–01–367–2910, 7930–01–367–2959, 7930–01–367–2961, 7930–01–367–2963.
NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.
Contract Activity: GSA, General Products Center, Fort Worth, Texas.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–30909 Filed 12–5–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–2002]

Foreign-Trade Zone 50—Long Beach, CA, Application for Subzone, Ricoh Electronics, Inc. (Copiers, Printers, Thermal Paper and Related Products), Orange County, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, requesting special-purpose subzone status for the copier, printer, thermal paper and related products manufacturing plant of Ricoh Electronics, Inc., at sites in the Orange County, California, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 19, 2002.

Ricoh's California facilities consist of five sites in the Orange County, California, area: *Site 1* (3 buildings/212,700 sq. ft. on 15 acres with a possible expansion of an additional building of 100,000 sq. ft.) is located at 2320, 2310, and 2300 Redhill Avenue, Santa Ana; *Site 2* (1 building/100,000 sq. ft. on 4.5 acres) is located at 17482 Pullman Street, Irvine; *Site 3* (1 building/107,370 sq. ft. on 5.1 acres) is located at 1062 McGaw Street, Irvine; *Site 4* (1 building/ 57,131 sq. ft. on 3.4 acres) is located at 2660 Barranca Parkway, Irvine; and, *Site 5* (2 buildings/318,458 sq. ft. on 15 acres) is located at 1100 Valencia Avenue & 1101 Bell Avenue in Tustin, California.

The facilities (800 employees) are requesting subzone status to produce digital copiers and remanufactured copiers (HTSUS 9009.12.0000—duty rate 3.7%), laser and multi-function printers (HTSUS 8471.60.5100 and 8472.90.8000—duty free), copier and printer peripherals, such as sorters, large capacity trays (HTSUS 8473.30.3000 and 8473.40.6000—duty free), and storage cabinets (HTSUS 9403.10.0040—duty free); printed circuit boards (HTSUS 8473.30.5000 and 8473.40.8000—duty free), secure fax machines (HTSUS 8517.21.0000—duty free), electronic data storage units (HTSUS 8471.70.9000 duty free), thermal label paper (HTSUS 4811.41.1000—duty rate 1.2% and HTSUS 4811.50.2050—duty free); tag paper (HTSUS 4811.90.8000—duty rate of 0.4%), thermal transfer ribbon (HTSUS 9612.10.9030—duty rate of 8.1%), TC film (HTSUS 3920.62.0000—duty rate 4.2%), toner cartridges (HTSUS 8473.30.5000, 8473.40.8000, 8517.90.0400, and 9009.99.4000—duty free), toner and developer (HTSUS 3707.90.3290—duty rate 6.5%), and remanufactured toner cartridges. The company may add other similar Ricoh products to its product line in the future.

Foreign-sourced materials will account for some 40 percent of finished product value, and include items from the following general categories: vegetable waxes; quartz; mineral oils; carbon; inorganic acids and oxygen compounds of nonmetals; aluminum oxide; iron oxides; titanium oxides; sulfates; carbonates; silicates; oxometallic or peroxometallic acids; acyclic alcohols; phenols; ethers; saturated acyclic monocarboxylic acids; polycarboxylic acids; amine function compounds; diazo-, azo-or azoxy-compounds; organic derivatives of hydrazine; organo-sulfur compounds; heterocyclic compounds; other organic compounds; paints and varnishes; surface-active agents; artificial waxes and prepared waxes; prepared glues and other prepared adhesives; photographic film; photographic paper, paperboard; chemical preparations for photographic uses; finishing agents; rubber accelerators; organic composite solvents and thinners; prepared binders for foundry molds; polymers of ethylene/propylene/styrene/vinyl chloride/vinyl acetate and acrylic; epoxide resins; polyamides in primary forms; amino-resins; silicones; cellulose; tubes, pipes and hoses; self-adhesive plates; sheets, film, foil, tape; other articles of plastics; other articles of unvulcanized rubber; conveyor or transmission belts; wood packing cases and boxes, uncoated paper and paperboard; paper cartons and boxes, cellulose wadding or fibers; bobbins, spools, cops and similar supports of paper pulp; cleaning seals for cartridge assembly; fabricated asbestos fibers; glass spheres; metal fasteners; copper springs; aluminum foil; aluminum tube or pipe fittings; tungsten; base metal mountings; metal office fasteners; air or vacuum pumps, air or other gas compressors and fans; centrifuges; automatic data processing machines; other office machines and parts and accessories; molds for metal foundry; taps, cocks, valves; ball or roller bearings; transmission shafts and cranks; gaskets and similar joints of metal sheeting; electric motors and generators; electrical transformers, static converters and inductors; electromagnets, permanent magnets; primary cells and primary batteries; industrial or laboratory electric furnaces and ovens; electric instantaneous or storage water heaters, electric space heating apparatus, electrothermic hairdressing apparatus; electrical apparatus for line telephony or telegraphy, videophones; electrical capacitors; electrical resistors; printed circuits; electrical apparatus for switching or protecting electrical circuits; electrical filament or discharge lamps; diodes, transistors, photosensitive semiconductor devices;

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electronic integrated circuits and microassemblies; insulated wire and cable; insulating fittings for electrical machines; waste and scrap of primary cells and batteries; mirrors; lenses; photographic cameras; photocopying apparatus; instruments and appliances used in dental, medical, veterinary and surgical sciences; measuring instruments; counters, automatic regulating or controlling instruments or apparatus; contact static eliminator brush for copiers; and typewriter ribbons.

Zone procedures would exempt Ricoh from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free, with some up to 8.1%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 12.5 percent, weighted average 4.3%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

The closing period for their receipt is February 4, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 19, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, One World Trade Center, Suite 1670, Long Beach, California.

Dated: November 26, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–30871 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2002]

Foreign-Trade Zone 26—Atlanta, GA; Application for Subzone Ricoh Electronics, Inc. (Toner Cartridges, Related Toner Products and Thermal Paper Products), Lawrenceville, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting special-purpose subzone status for the toner cartridges, related toner products, and thermal paper products manufacturing plant of Ricoh Electronics, Inc. (Ricoh Electronics) in Lawrenceville, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 19, 2002.

Ricoh Electronics' plant (73.13 acres/351,058 square feet, with a possible expansion of one additional building and expansion to existing buildings totaling 486,000 square feet) is located at 1125 Hurricane Shoals Road in Lawrenceville, Georgia.

The facility (340 employees) is requesting subzone status to produce thermal label paper (HTSUS 4811.41.1000—duty rate 1.2% and 4811.51.2050—duty free), tag paper (HTSUS 4811.90.8000—duty rate .4%), TC film (HTSUS 3920.62.0000—duty rate 4.2%), thermal transfer ribbon (HTSUS 9612.10.9030—duty rate 8.1%), toner cartridges (HTSUS 8473.30.5000, 8473.40.8000, 8517.90.0400, and 9009.99.4000—duty free), toner and developer (HTSUS 3707.90.3290—duty rate 6.5%), and remanufactured toner cartridges. The company may add other Ricoh products such as highly advanced digital copiers, laser and multi-function printers, copier and printer peripherals (such as sorters, large capacity trays, and copier stands), printed circuit boards, secure fax machines, eCabinets (electronic data storage units), and other products to their manufacturing line in the future. Foreign-sourced materials will account for some 40 percent of finished product value, and include items from the following general categories: Vegetable waxes; quartz; mineral oils; carbon; inorganic acids and oxygen compounds of nonmetals; aluminum oxide; iron oxides; titanium oxides; sulfates; carbonates; silicates; oxometallic or peroxometallic acids; acyclic alcohols; phenols; ethers; saturated acyclic monocarboxylic acids; polycarboxilic acids; amine function compounds; diazo-, azo- or azoxy-compounds; organic derivatives of hydrazine; organo-sulfur compounds; heterocyclic compounds; other organic compounds; paints and varnishes; surface-active agents; artificial waxes and prepared waxes; prepared glues and other prepared adhesives; photographic film; photographic paper, paperboard; chemical preparations for photographic uses; finishing agents; rubber accelerators; organic composite solvents and thinners; prepared binders for foundry molds; polymers of ethylene/propylene/styrene/vinyl chloride/vinyl acetate and acrylic; epoxide resins; polyamides in primary forms; amino-resins; silicones; cellulose; tubes, pipes and hoses; self-adhesive plates; sheets, film, foil, tape; other articles of plastics; other articles of unvulcanized rubber; conveyor or transmission belts; wood packing cases and boxes, uncoated paper and paperboard; paper cartons and boxes, cellulose wadding or fibers; bobbins, spools, cops and similar supports of paper pulp; cleaning seals for cartridge assembly; fabricated asbestos fibers; glass spheres; metal fasteners; copper springs; aluminum foil; aluminum tube or pipe fittings; tungsten; base metal mountings; metal office fasteners; air or vacuum pumps, air or other gas compressors and fans; centrifuges; automatic data processing machines; other office machines and parts and accessories; molds for metal foundry; taps, cocks, valves; ball or roller bearings; transmission shafts and cranks; gaskets and similar joints of metal sheeting; electric motors and generators; electrical transformers, static converters and inductors; electromagnets, permanent magnets; primary cells and primary batteries; industrial or laboratory electric furnaces and ovens; electric instantaneous or storage water heaters, electric space heating apparatus, electrothermic hairdressing apparatus; electrical apparatus for line telephony or telegraphy, videophones; electrical capacitors; electrical resistors; printed circuits; electrical apparatus for switching or protecting electrical circuits; electrical filament or discharge lamps; diodes, transistors, photosensitive semiconductor devices; electronic integrated circuits and microassemblies; insulated wire and cable; insulating fittings for electrical machines; waste and scrap of primary cells and batteries; mirrors; lenses; photographic cameras; photocopying apparatus; instruments and appliances used in dental, medical, veterinary and surgical sciences; measuring instruments; counters, automatic regulating or controlling instruments or apparatus; contact static eliminator brush for copiers; and typewriter ribbons.

Zone procedures would exempt Ricoh Electronics from Customs duty payments on foreign materials used in production for export. Some 25 percent of the toner products are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free, with some up to 8.1%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 12.5 percent, weighted average 4.7%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is February 4, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 19, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Export Assistance Center, Marquis Two Tower, Suite 200, 285 Peachtree Center Avenue, NE., Atlanta, Georgia 30303–1229.

Dated: November 21, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–30872 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 54–2002]

Foreign-Trade Zone 202—Los Angeles, CA Area; Application for Expansion and Reorganization

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority to expand and reorganize its zone in the Los Angeles, California area, within and adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 21, 2002.

FTZ 202 was approved on July 14, 1994 (Board Order 693, 59 FR 37464, July 22, 1994) and expanded on August 26, 1996 (Board Order 842, 61 FR 46763, September 5, 1996) and July 9, 1999 (Board Order 1043, 64 FR 38887, July 20, 1999). The zone project currently consists of 15 sites (4,514) at port facilities, industrial parks and warehouse facilities in Los Angeles County.

The applicant is now requesting authority to expand and reorganize the general-purpose zone to include on a permanent basis Temporary Sites 12, 13 and 14, to restore 44 acres deleted from Site 9, to permanently delete 78 acres from Site 3, and, to include seven new sites in Los Angeles and the adjacent "Inland Empire" area.

The sites to be made permanent are as follows: *Site 12* (8 acres)—1981 East 213th Street, Carson; *Site 13* (19 acres)—1501 E. Victoria Street, Carson; and, *Site 14* (88 acres)—adjacent to Site 1, at 300, 301, 400, and 401 Westmont Street, San Pedro. *Site 9*, which is located at the Harbor Gateway Center, will be restored to its original 128 acres. *Site 3*, at the International Trade & Technology Center, will be decreased by 78 acres (new total—564 acres). The proposed new sites would include: *Proposed Site 16* (163 acres)—Artesia Corridor Commerce Park (owned by AMB Properties Corp.), northbound side of the intersection of S. Wilmington Avenue and Highway 91 (the Redondo Beach Freeway), Compton; *Proposed Site 17* (9 acres, 2 parcels)—Tri-Modal's Lucerne facility (7 acres—owned by Tri-Modal Distribution Services, Inc.), 22560 Lucerne Street, Carson, and Tri-Modal's Watson Center facility (2 acres), 1411 Watson Center Road, Carson; *Proposed Site 18* (13 acres)—Tri-Modal's Carson facility (owned by Tri-Modal Distribution Services, Inc.), 2011 East Carson Street, Carson; *Proposed Site 19* (71 acres)—Chino South Business Park (owned by the Carson Companies), bounded by Kimball Avenue, Euclid Avenue, Cypress Avenue and Bickmore Avenue, Chino; *Proposed Site 20* (531 acres)—Park Mira Loma West (owned by Industrial Developments International), located on the southeast side of the intersection of Highway 60 (the Pamona Freeway) and Interstate 15 (the Ontario Freeway), Mira Loma; *Proposed Site 21* (156 acres)—Pattillo Properties Redlands Commerce Center (owned by Robert Pattillo Properties), bounded by California Street on the east and San Bernardino Avenue on the south, Redlands; and, *Proposed Site 22* (227 acres)—Bixby Land Company Redlands Business Center (owned by Bixby Land Company), bounded by San Bernardino Avenue, California Street, Mountain View and West Lugonia Avenues, Redlands. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or
2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is February 4, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 19, 2003).

A copy of the application and accompanying exhibits will be available during this time for public inspection at

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address number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 350 S. Figueroa Street, Suite 509, Los Angeles, California 90071.

Dated: November 26, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–30873 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges from India: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 28, 2002, the Coalition Against Indian Flanges ("petitioners") requested an administrative review of Bhansali Ferromet Pvt. Ltd., Echjay Forgings Limited, Isibars, Limited ("Isibars"), Panchmahal Steel, Ltd., Patheja Forgings and Auto Parts, Ltd., and Viraj Forgings, Ltd. The Department initiated the review on March 27, 2002 (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002)). On November 1, 2002, the Department circulated among interested parties an issues and decision memorandum for the intent to rescind the administrative review for Isibars. *See Memorandum for the File From Michael Ferrier Through Richard Weible: Issues and Decision Memorandum for the Intent to Rescind the Antidumping Duty Administrative Review of Certain Forged Stainless Steel Flanges from India for Isibars, Limited ("Isibars")* (November 1, 2002) *("Isibars Memo")* (public document, on file in the Department's Central Records Unit in Room B–099). We invited interested parties to comment on the Department's intent to rescind the review with respect to Isibars and did not receive any comments. Therefore, we are rescinding this administrative review with respect to Isibars.

EFFECTIVE DATE: December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1394.

The Applicable Statute

Unless otherwise indicated, all citations are to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Scope of the Review

The products under review are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of stainless steel flanges. They are weld-neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Background

On February 28, 2002, petitioners requested an administrative review of the six companies, including Isibars. The period of review is February 01, 2001 through January 31, 2002. On April 20, 2002, the Department issued the antidumping questionnaire. On May 28, 2002, Isibars submitted its section A response to the Department's questionnaire. On June 4, 2002 the Department issued its section A supplemental questionnaire. On July 3, 2002, Isibars submitted its response to the section A supplemental questionnaire. On August 12, 2002, Isibars submitted revised versions of its sections A and C responses to the Department's original antidumping questionnaire. On August 15, 2002, the respondent submitted section D of the Department's questionnaire. On September 10, 2002, and September 17, 2002, the Department issued sections C and D supplemental questionnaires, respectively. On September 24, 2002, Isibars submitted its response to the Department's supplemental C questionnaire. On October 8, 2002, Isibars submitted its supplemental section D response. On November 1, 2002, the Department issued an issues and decision memorandum stating our intent to rescind the administrative review for Isibars. The Department circulated this memorandum among interested parties and received no comments.

Rescission, in Part, of Antidumping Administrative Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period of review, there were no entries, exports, or sales of subject merchandise. On November 1, 2002, the Department issued an issues and decision memorandum stating our intent to rescind the administrative review for Isibars in light of the information on the record that Isibars did not sell, ship, or enter the subject merchandise during the period of review ("POR").

In our memorandum, the Department noted that since Isibars only produces the billet, and does not forge the billet into a flange, Isibars is not the producer of the subject merchandise. Additionally, Isibars stated on the record of this proceeding that it did not negotiate and fix the price of the subject merchandise with the U.S. customer. We concluded that Isibars was not an exporter of the subject merchandise during the POR. U.S. Customs data confirmed that Isibars did not have any entries of forged stainless steel flanges during the POR to the United States. In our memorandum, we recommended rescinding this administrative review with respect to Isibars since there were no sales, entries, or exports of the subject merchandise by Isibars, in accordance with section 351.213 (d)(3) of the Department's regulations. For a more detailed discussion of these points, *see Isibars Memo*. Since the Department has not received any comments regarding the rescission of the administrative review for Isibars, the Department is adopting the position set forth in the *Isibars Memo* and rescinds the administrative review of the antidumping order on certain forged stainless steel flanges with respect to Isibars for the period February 1, 2001 through January 31, 2002. The Department will issue appropriate instructions to Customs.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 27, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30869 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People's Republic of China.

SUMMARY: On August 2, 2002, the Department of Commerce ("the Department") published the notice of initiation of a five-year sunset review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC"), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1] On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited sunset review of this antidumping duty order. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Amir R. Eftekhari or James P: Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5331 or (202) 482–3330.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR part 351 (2002) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope of Review

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the investigation and order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under HTSUS subheading 0306.19.00.10 and 0306.29.00.00. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this proceeding is dispositive.

Background

On August 2, 2002, the Department published the notice of initiation of the five-year sunset review of the antidumping duty order on freshwater crawfish tail meat from the PRC in accordance with section 751(c) of the Act.[2] On August 16, 2002, the Department received a Notice of Intent to Participate on behalf of the Crawfish Processors Alliance ("CPA") and its members; the Louisiana Department of Agriculture and Forestry ("LDAF"); Bob Odom, Commissioner; and the Domestic Parties[3] (collectively, "the domestic interested parties") as specified in section 351.218(d)(1)(i) of the Sunset Regulations.

On September 3, 2002, the Department received a complete substantive response from the domestic interested parties, as specified in the Sunset Regulations under section 351.218(d)(3)(i).

The Department did not receive a substantive response from any respondent interested party in this proceeding. Consequently, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C), the Department conducted an expedited (120-day) sunset review of this order.

Analysis of Comments Received

All issues raised by the domestic interested parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated November 29, 2002, which is adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the Department's main building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://ia.ita.doc.gov/frn*, under the heading "November 2002." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

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[1] *Notice of Initiation of Five Year "Sunset" Review of Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 50420 (August 2, 2002).

[2] *Notice of Initiation of Five Year "Sunset" Review of Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 50420 (August 2, 2002).

[3] The "Domestic Parties" are an ad hoc association comprising the CPA, LDAF, Commissioner Odom, and each of the individual members of the CPA listed in Exhibit A of the Petitioner's Substantive Response dated September 2, 2002. The Domestic Parties are "'an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) of {19 U.S.C. 1677(9)}{771(9)(C)(D)(E) of the Act} with respect to the domestic like product,' and are an interested party under 19 U.S.C. 1677(9) {771(9)(F) of the Act}."

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Manufacturer/producers/ exporter	Weighted-average margin (percent)
China Everbright Trading Company	156.77
Binzhou Prefecture Foodstuffs Import & Export Corp	119.39
Huaiyin Foreign Trade Corp	91.50
Yancheng Foreign Trade Corp	108.05
Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp	122.92
Yancheng Baolong Aquatic Foods Co., Ltd	122.92
Huaiyin Ningtai Fisheries Co., Ltd	122.92
Nantong Delu Aquatic Food Co., Ltd	122.92
PRC-wide Rate	201.63

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 27, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30870 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On November 29, 2002, Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V. ("SICARTSA") filed a first request for panel review with the United States Section of the NAFTA Secretariat pursuant to article 1904 of the North American Free Trade Agreement. Panel Review was requested of the Final Affirmative Injury Determination made by the United States International Trade Commission, respecting Carbon and Certain Alloy Steel Wire Rod from Canada. This determination was published in the **Federal Register**, (67 FR 66662) on November 1, 2002. The NAFTA Secretariat has assigned case number USA–CDA–2002–1904–09 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a request for panel review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("rules"). These rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first request for panel review was filed with the United States Section of the NAFTA Secretariat, pursuant to article 1904 of the Agreement, on November 27, 2002, requesting panel review of the final determination described above.

The rules provide that:

(a) A party or interested person may challenge the final determination in whole or in part by filing a complaint in accordance with rule 39 within 30 days after the filing of the first request for panel review (the deadline for filing a complaint is December 27, 2002);

(b) A party, investigating authority or interested person that does not file a complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a notice of appearance in accordance with rule 40 within 45 days after the filing of the first request for panel review (the deadline for filing a notice of appearance is January 13, 2003); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 2, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–30902 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On November 27, 2002, Ivaco Inc and Ivaco Rolling Mills Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel Review was requested of the Final Affirmative Injury Determination made by the United States International Trade Commission, respecting Carbon and Certain Alloy Steel Wire Rod from Canada. This determination was published in the **Federal Register**, (67 FR 66662) on November 1, 2002. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–09 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 27, 2002, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the First Request for Panel Review (the deadline for filing a Complaint is December 27, 2002);

(b) A Party, investigating authority or interested person that does not file a complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the First Request for Panel Review (the deadline for filing a Notice of Appearance is January 13, 2003); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 2, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–30903 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–GT–P

THE COMMISSION OF FINE ARTS

2003 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Pub. L. 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 2003 in the amount of $7,000,000.00. All requests for information and applications for grants should be received by 31 December 2002 and addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, National Building Museum, Suite 312, 441 F Street, NW., Washington, DC 20001–2728. *Phone:* (202) 504–2200.

Deadline for receipt of grant applications is March 1, 2003.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for a grant, organizations must be located in the District of Columbia, must be non-profit, non-academic institutions of demonstrated national repute, and must have annual incomes, exclusive of federal funds, in excess of one million dollars for each of the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 02–30883 Filed 12–5–02; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of September 16, 2002 (67 FR 58358), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), to announce the agency's intention to seek extension of approval of collections of information in regulations implementing two flammability standards for carpets and rugs. The regulations are codified at 16 CFR parts 1630 and 1631, and prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of products subject to the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs.

Two comments were received in response to that notice. The Carpet and Rug Institute ("CRI") commented that the washing requirement in § 1630.4(ii) is not an acceptable method for cleaning carpet materials and suggested that the staff consider the AATCC Test Method 171–2000, "Carpets: Cleaning of; Hot Water Extraction Method," as a more appropriate method for consideration. CRI further commented that the testing and recordkeeping is not a significant burden for the industry when measured against the benefits of consumer protection and product liability.

Shaw Industries, Inc. suggested that § 1630.4(ii) be changed to reference the same AATCC test method and also commented on the Eli Lily Pharmaceuticals, Inc. ("Lily") discontinuation of methenamine tablets specified as the source of ignition. The CPSC staff is aware that Lily no longer produces the methenamine tablet specified as the ignition source in the standards. The staff is in the process of evaluating methenamine pills from several different manufacturers and developing draft technical amendments to the standards that will provide performance requirements for the ignition source, rather than specifying a manufacturer. The staff will also consider other relevant issues, such as laundering procedures, as appropriate during the amendment process.

After considering these comments, the staff believes it should nevertheless seek approval of the collection of information. Therefore, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for extension of approval of those collections of information without change.

Additional Information About the Request for Reinstatement of Approval of Collections of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Surface Flammability of Carpets and Rugs, 16 CFR Part 1630; Standard for the Surface Flammability of Small Carpets and Rugs, 16 CFR Part 1631.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of products subject to the flammability standards for carpets and rugs.

Estimated number of respondents: 120.

Estimated average number of hours per respondent: 500 per year.

Estimated number of hours for all respondents: 60,000 per year.

Estimated cost of collection for all respondents: $1,584,000.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by January 6, 2003, to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301)

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504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: November 29, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–30866 Filed 12–5–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–11: Early Career Principal Investigator Program in Applied Mathematics, Collaboratory Research, Computer Science, and High-Performance Networks

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for grants in support of its Early Career Principal Investigator Program. The purpose of this program is to support research in applied mathematics, collaboratory research, computer science, and networks performed by exceptionally talented scientists and engineers early in their careers. The full text of Program Notice 03–11 is available via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html*.

DATES: To permit timely consideration for award in Fiscal Year 2003, completed applications in response to this notice must be received by February 20, 2003, to be accepted for merit review and funding in Fiscal Year 2003.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel J. Barish, Office of Advanced Scientific Computing Research, SC–31/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 903–5800, e-mail: *sam.barish@science.doe.gov*.

SUPPLEMENTARY INFORMATION:

Program Mission

The primary mission of the Office of Advanced Scientific Computing Research, which is carried out by the Mathematical, Information, and Computational Sciences (MICS) Division, is to discover, develop, and deploy the computational and networking tools that enable researchers in the scientific disciplines to analyze, model, simulate, and predict complex physical, chemical, and biological phenomena important to DOE. To accomplish this mission, the MICS Division fosters and supports fundamental research in advanced scientific computing applied mathematics, collaboratory research, computer science, and networking—and operates supercomputers, a high performance network, and related facilities. Further descriptions of the base research portion of the MICS portfolio, which is the scope of this Notice, is provided below.

Applied Mathematical Sciences Research

The objective of the applied mathematics component of the MICS research portfolio is to support research on the underlying mathematical understanding as well as the numerical algorithms needed to enable effective description and prediction of physical, chemical, and biological systems such as fluids, materials, magnetized plasmas, or protein molecules. This includes, but is not limited to, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

In addition to the existing research topics described, MICS plans to invest in new areas of applied mathematics research to support DOE's mission. Such investments may include research in multiscale algorithms, the mathematics of feature identification in large datasets, asymptotically optimal algorithms for solving PDEs, fast multipole and related hybrid methods, and algorithms for handling complex systems with constraints. The MICS research portfolio in Applied Mathematics emphasizes investment in long-term research that will result in the next generation of computational tools for scientific discovery.

Collaboratory Research

Collaboratories link geographically dispersed researchers, data, and tools via high performance networks to enable remote access to facilities, access to large datasets, shared environments, and ease of collaboration. The objective of the collaboratory component of the MICS portfolio is to support research for developing the software infrastructure that will enable universal, ubiquitous, easy access to remote resources or that will contribute to the ease with which distributed teams work together. Enabling high performance for distributed scientific applications is an important consideration. The middleware component for collaboratories encompasses activities in

- Building the application frameworks that allow discipline scientists to express and manage the simulation, analysis, and data management aspects of overall problem solving

- Supporting construction, management, and use of widely distributed application systems
- Facilitating human collaboration through common security services, and resource and data sharing
- Providing remote access to, and operation of, scientific and engineering instrumentation systems.
- Managing and securing the computing and data infrastructure as a persistent service.

This announcement also calls for grant applications to address the fundamental issues involved in providing uniform software services that manage and provide access to heterogeneous, distributed resources, that is, high-performance middleware services that support DOE's science mission. The emphasis is on investment in long-term research that will result in the next generation of high-performance software infrastructure for scientific discovery.

Computer Science Research

The objective of the computer science component of the MICS research portfolio is to support research that results in a comprehensive, scalable, and robust high performance software infrastructure that translates the promise and potential of high peak performance to real performance improvements in DOE scientific applications. This software infrastructure must address needs for: Portability and interoperability of complex high performance scientific software packages; operating systems tools and support for the effective management of terascale and beyond systems; and effective tools for feature identification, data management, and visualization of petabyte-scale scientific data sets. The Computer Science component encompasses a multi-discipline approach with activities in:

- Program development environments and tools—Component-based, fully integrated, terascale program development and runtime tools, which scale effectively and provide maximum performance, functionality, and ease-of-use to developers and scientific end users.
- Operating system software and tools—Systems software that scales to tens of thousands of processors, supports high performance application-level communication, and provides the highest levels of performance, fault tolerance, reliability, manageability, and ease of use for system administrators, tool developers, and end users.
- Visualization and data management systems—Scalable, intuitive systems fully supportive of DOE application requirements for moving, storing, analyzing, querying, manipulating, and visualizing multi-petabytes of scientific data and objects.
- Problem Solving Environments—Unified systems focused on the needs of specific scientific applications, which enable radically improved ease-of-use of complex systems software and tools by domain application scientists.

The MICS research portfolio in Computer Science emphasizes investment in long-term research that will result in the next generation of high performance tools for scientific discovery.

High-Performance Networks Research

In the next few years, complex science experiments in DOE are expected to generate several petabytes of data that will be transferred to geographically distributed terascale computing facilities for analysis and visualization by thousands of scientists across the world. In addition, many emerging energy research problems require coordinated access to distributed resources—people, data, computers, and facilities. This emerging, distributed terascale-science environment calls for ultra-high-speed networks—networks that can deliver multi-gigabits/sec throughput to scientific applications securely. Grant applications in network research must therefore address the issues of ultra high-speed networks by focusing on:

- Ultra high-speed network protocols—radical new approaches to ultra high-speed transport protocols that will outperform existing Transmission Control Protocol (TCP) and User Designed Datagram (UDP) to efficiently harness the abundant bandwidth made possible by Dense Wave Division Multiplexing (DWDM) optical technologies. This may include transport mechanisms such as Remote Direct Memory Access (RDMA) over Lambda and OS-bypass over Lambda, that are capable of delivering and sustaining multi-Gigabits/sec (Gbs) throughput to high-end scientific applications.
- Intelligent high-speed network interfaces—to significantly improve the end-to-end performance by addressing host system congestion issues, such as dynamically programmed transport protocol off-loading, OS bypass, electro-optical middleware, and high-speed I/O.
- High-speed cyber security systems—that operate efficiently at ultra high-speed (2.5 Gbs and 10 Gbs). Such systems should be based on a sound theoretical foundation and formal techniques, and in addition could exploit Artificial Intelligence (AI) techniques, such as fuzzy logic, neural networks, and genetic algorithms to improve their effectiveness.
- Network modeling and traffic engineering—new techniques for modeling and characterization of chaotic behaviors in complex traffic patterns, dynamic behavior of protocols, cyber security systems, and congestion control mechanisms.

Grant applications addressing the above problems must go beyond the development of tools and emphasize mathematical analysis, formal specification, and rigorous techniques for validating the performance of their proposed solutions.

Background: Early Career Principal Investigator Program

This is the second year of the Early Career Principal Investigator Program. A principal goal of this program is to identify exceptionally talented applied mathematicians, collaboratory researchers, computer scientists, and high-performance networks researchers early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is restricted to applicants who meet all of the following criteria:

(1) Hold a tenure-track regular academic faculty position.

(2) Have earned a Ph.D. degree or equivalent after July 1, 1998.

(3) Are conducting research in applied mathematics, collaboratories, computer science, or high-performance networks.

Applications should be submitted through a U.S. academic institution. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities, such as part of the PI's salary, graduate and/or undergraduate students, post-doctoral researchers, equipment and facilities, and travel. However, no salary support will be provided for other faculty members or senior personnel.

Applicants who have submitted or will be submitting similar grant applications to other programs are eligible for this notice, as long as the details of the other submission are contained in the grant application to DOE. Applicants who have an NSF CAREER award, or are applying for such an award, are eligible for this notice. Applicants do not have to be U.S. citizens, and may be non-permanent resident aliens or have an H1b visa.

Program Funding

It is anticipated that up to $2 million will be available for up to twenty (20)

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awards for exceptional applications in FY 2003 to meet the needs of the program, contingent upon the availability of appropriated funds. The maximum support that can be requested under this notice is $100,000 per year for three years.

Multiple-year funding of grant awards is expected, with funding provided on an annual basis subject to the availability of funds, progress of the research, and programmatic needs. The typical duration of these grants is three years, and they will not normally be renewed after the project period has been completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to DOE or other Federal funding agencies. We expect that the awards will be announced and the projects will begin in early summer 2003.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, which are listed in descending order of importance as codified at 10 CFR 605.10(d):

(1) Scientific and/or Technical Merit of the Project;

(2) Appropriateness of the Proposed Method or Approach;

(3) Competency of Applicant's Personnel and Adequacy of Proposed Resources;

(4) Reasonableness and Appropriateness of the Proposed Budget.

The evaluation of applications under item 1, Scientific and Technical Merit, will pay attention to the responsiveness of the proposed research to the challenges of the MICS base research programs in Applied Mathematics, Collaboratory Research, Computer Science, and Network Research.

It is expected that the application will include involvement of graduate and/or undergraduate students in the proposed work.

Applicants are encouraged to collaborate with DOE National Laboratory researchers. The collaborations may include one, or more, extended visits to the laboratory by the applicant each year. Such an arrangement, if proposed, must be clearly explained in the grant application. Furthermore, a letter of support from the DOE National Laboratory collaborator(s) should be included with the application. A list of the DOE National Laboratories can be found at: *http://www.sc.doe.gov/sub/lab_map/index.htm.*

Grantees under the Early Career Principal Investigator Program may apply for access to high-performance computing and network resources at several National Laboratories. Such resources include, but are not limited to, the National Energy Research Scientific Computing (NERSC) Center: *http://www.sc.doe.gov/ascr/mics/nersc/index.html*; the Advanced Computing Research Testbeds *http://www.sc.doe.gov/ascr/mics/acrt/index.html*; the Energy Sciences Network *http://www.sc.doe.gov/ascr/mics/esnet/index.html*; and the High-Performance Networking Research effort at the Oak Ridge National Laboratory; *http://www.csm.ornl.gov/net.*

The evaluation under item 2, Appropriateness of the Proposed Method or Approach, will consider the quality of the proposed plan, if any, for interacting with a DOE National Laboratory.

Please note that external peer reviewers are selected with regard to both their scientific expertise in the subject area of the grant application and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator and the submitting institution.

Submission Information

Each grant application submitted should clearly indicate on which of the four following components of the MICS research portfolio the application is focused: Applied Mathematical Sciences Research, Collaboratory Research, Computer Science Research, or High-Performance Networks Research.

The Project Description should be 20 pages or less, exclusive of the bibliography and other attachments. It must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone, FAX and E-mail listed, and a short curriculum vita for the applicant.

To provide a consistent format for the submission, review, and solicitation of grant applications under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Science Financial Assistance Program, 10 CFR part 605. Access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

(The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.)

Issued in Washington, DC on December 2, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30917 Filed 12–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41719 entitled "Innovative Water Management Technologies and Concepts for Coal-Fired Electric Utility Boilers" to solicit applications for cost-shared research projects directed at innovative water management technologies and concepts for coal-fired electric utility boilers. Specifically, the solicitation will provide for the development of cost-effective solutions to emerging regulations and restrictions on water use and impacts on water quality associated with the generation of electricity by coal-fired power plants. Applications will be solicited in four (4) technical areas of interest: (1) *Non-Traditional Sources of Process and Cooling Water;* (2) *Innovative Cooling Technology;* (3) *Advanced Cooling Water Intake Technology;* and (4) *Advanced Pollutant Measurement and Treatment Technology.* Applications are being sought for applied research at the bench-scale to field-scale level for time periods of one (1) to three (3) years.

The solicitation supports the overall goal of the Department of Energy/Office of Fossil Energy's Innovations for Existing Plants (IEP) Program to develop advanced technology and knowledge products that enhance the environmental performance of the existing fleet of coal-fired power plants. The solicitation is part of the path forward of the Energy-Water Management component of the IEP roadmap (*http://www.netl.doe.gov/coalpower/environment*). The goal of this research is to reduce water consumption per kWh of electricity produced by 25% by 2010, and reduce

impacts of electricity production on water quality.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about December 13, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Donna J. Jaskolka, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: *jaskolka@netl.doe.gov*, Telephone Number: (412) 386–6016.

SUPPLEMENTARY INFORMATION: Electric utility boilers are the second largest user of water in the United States, ranking only slightly behind irrigation in terms of total annual water use (USGS, Circular 1200, 1998). The majority of the water used by power plants is for cooling. The steam cycle requires a large amount of water to condense the low-pressure steam from the turbine. Recent regulations proposed under section 316(b) (*http://www.epa.gov/waterscience/316b/*) of the Clean Water Act (*http://www.epa.gov/region5/water/cwa.htm*) to protect against the impingement and entrainment of aquatic organisms in cooling systems could restrict the amount of water that power plants can withdraw for cooling and/or require the installation of new intake structure technology. Retrofitting from once-through cooling systems to recirculating cooling towers can negatively impact plant efficiency due to increased turbine back pressure. Power plant operations can also be disrupted due to the colonization of Zebra mussels and other types of bio-fouling on cooling water intake grates and screens.

Water quality issues will also continue to receive attention in terms of coal power systems. Coal utilization byproducts (CUBs) such as scrubber solids and fly ash must be managed properly in order that all current and future surface and groundwater regulations are met. Concerns about the fate of mercury, arsenic, and other trace metals in CUB leachates could negatively impact the commercial use and disposal of these materials. More stringent control of air emissions under the Clean Air Act could result in cross-media transfer of pollutants from air to water. For example, pending mercury regulations could bring about the need for additional monitoring, processing, and treatment of scrubber liquors and other aqueous streams associated with air pollution control equipment. In addition, coal pile runoff and other plant-wide discharges may come under further scrutiny in response to future Clean Water Act and Safe Drinking Water Act requirements.

DOE–NETL held a workshop in July 2002 with key stakeholders from industry, government agencies, regional and state regulators, research organizations, and academia to obtain input on the need for a private-partner research effort to address these emerging issues. A summary of the workshop proceedings can be found at *http://www.netl.doe.gov/coalpower/environment.* The workshop participants identified a number of near-, mid-, and long-term research opportunities directed at reducing the impact of coal power generation on water availability and quality. In response, DOE–NETL is issuing a solicitation focused on four areas of interest related to coal-based electric utilities and water. Details concerning the solicitation are described below. This solicitation will serve to help ensure the continued availability of low-cost electricity from coal while meeting growing demands for clean water.

The objective of this solicitation is to solicit applications for cost-shared research projects directed at innovative water management technologies and concepts for coal-fired electric utility boilers. Specifically, the solicitation will provide for the development of cost-effective solutions to emerging regulations and restrictions on water use and impacts on water quality associated with the generation of electricity by coal-fired power plants. All applicants should clearly describe how the technology, if successfully developed and applied, would impact the cost of operating a coal-fired power plant in terms of impacts on COE (cost of electricity) relative to existing technology. The applicant should also provide a projection of the market penetration of the proposed technology or concept in terms of both existing and new coal-fired electric utility boilers. Applications will be solicited to address four technical topic areas:

(1) Non-Traditional Sources of Process and Cooling Water

Applications are being sought to evaluate and develop cost-effective approaches to using non-traditional (*i.e.*, not from freshwater or saline surface water supply) sources of water for cooling and other power plant needs. Examples include surface and underground mine pool water, coal-bed methane produced water, and industrial and/or municipal wastewater. The technical, cost and permitting issues associated with collecting, treating, transporting, storing, and discharging/disposing of these non-traditional waters should be considered.

(2) Innovative Cooling Technology

Applications are being sought to improve both wet and dry recirculating cooling tower systems. Innovative methods of plume abatement are desired to reduce water loss and minimize visual impacts from cooling towers. Improvements in the energy penalty associated with wet and dry cooling versus once-through cooling are also sought. Research to reduce the higher capital and operating costs associated with dry cooling versus wet cooling and the development of hybrid wet-dry systems that optimize the advantages of wet and dry cooling towers is also sought.

(3) Advanced Cooling Water Intake Technology

Future regulations to protect aquatic organisms under Section 316(b) of the Clean Water Act may impact the operation of cooling water intake structures on new and existing power plants. Applications are sought to meet performance standards for intake structures that would be required by section 316(b) regulation. Specifically, advanced intake structure technologies such as intake screen systems, passive intake systems, diversion or avoidance systems, and fish handling systems are sought. Innovative methods to control bio-fouling of intake structures, which will be more of a problem with the lower intake water velocities required to reduce fish impingement are also sought.

(4) Advanced Pollutant Measurement and Treatment Technology

Future controls on the emission of mercury and possibly other hazardous air pollutants (*e.g.* selenium, arsenic) have raised concerns about the ultimate fate of these contaminants once they are removed from the flue gas. Preventing these air pollutants from being transferred to surface or ground waters will be critical. Applications are sought for advanced technologies to detect, measure, and remove mercury, arsenic, selenium and other pollutants from the aqueous streams of coal-based power plants such as blowdown water, wet scrubber effluents, and ash pond waters. Advanced technologies are also sought for removal of chemicals used in treatment of cooling water.

It is anticipated that there will be five to seven (5–7) Financial Assistance (Cooperative Agreement) awards with

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performance periods ranging from 12 to 36 months. The total estimated award value for all projects selected under this solicitation is approximately $4.8 million; this amount includes the mandatory minimum recipient cost share of 20%..

Eligibility for participation in the Program Solicitation is considered to be full and open. All interested parties may apply, except as noted herein. Applications submitted by or on behalf of (1) Another Federal agency, (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) Contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–03NT41719

(**Note:** The limit on participation by an M&O contractor for an individual project under this solicitation cannot exceed 25% of the total project cost.).

Once released, the solicitation will be available for downloading from the IIPS webpage (*http://e-center.doe.gov*). At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business*. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on November 20, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30916 Filed 12–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–13: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on strategies leading to long-term immobilization of contaminants in place to reduce the risk to humans and the environment. Research should address bioremediation of uranium, technetium, plutonium, chromium or mercury. NABIR is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (groundwater and sediments). Applications should describe research projects in one or more of the following program elements: Biogeochemistry, Biotransformation, Community Dynamics and Microbial Ecology, Biomolecular Science and Engineering, Assessment, and Bioremediation and its Societal Implications and Concerns. Studies that integrate research from more than one NABIR element are strongly encouraged.

DATES: Researchers are strongly encouraged (but not required) to submit a preapplication for programmatic review. Preapplications will be accepted on an ongoing basis, however, early submission of preapplications is encouraged, to allow time for review for programmatic relevance. A brief preapplication should consist of one or two pages of narrative describing the research objectives and methods.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 11, 2003, to be accepted for merit review and to permit timely consideration for awards late in Fiscal Year 2003 or in early Fiscal Year 2004.

ADDRESSES: Preapplications referencing Program Notice 03–13 should be sent by E-mail to *anna.palmisano@science.doe.gov*.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Remediation Sciences Division, SC–75/Germantown Building, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, telephone: (301) 903–9963, E-mail: *anna.palmisano@science.doe.gov*, fax: (301) 903–8519. The full text of Program Notice 03–13 is available via the Internet using the following Web site address: *http://www.sc.doe.gov/production/ grants/grants.html*.

SUPPLEMENTARY INFORMATION:

Background

For more than 50 years, the U.S. created a vast network of more than 113 facilities for research, development, testing and production of nuclear weapons. As a result of these activities, subsurface contamination has been identified at over 7,000 discrete sites across the U.S. Department of Energy complex. With the end of the Cold War threat, the DOE has shifted its emphasis to remediation, decommissioning, and decontamination of contaminated groundwater, sediments, and structures at its sites. DOE is currently responsible for remediating 1.7 trillion gallons of contaminated groundwater and 40 million cubic meters of contaminated soil. It is estimated that more than 60% of DOE facilities have groundwater contaminated with metals or radionuclides. More than 50% of all DOE facilities have soils or sediments contaminated with radionuclides and metals. While virtually all of the contaminants found at industrial sites nationwide can also be found at DOE sites, many of the metals and most of the radionuclides are unique to DOE sites. The NABIR program aims: (1) To provide the fundamental knowledge that may lead to new remediation technologies or strategies for radionuclides and metals; and (2) to advance the understanding of the key microbiological and geochemical processes that control the effectiveness of in situ immobilization as a means of long term stewardship, and how these processes impact contaminant transport.

While bioremediation of organic contaminants involves their biotransformation to benign products such as carbon dioxide, bioremediation of radionuclides and metals involves their removal from the aqueous phase to reduce risk to humans and the environment. Microorganisms can directly affect the solubility of radionuclides and metals by changing their oxidation state to a reduced form that leads to in situ immobilization. Or, microorganisms can indirectly immobilize radionuclides and metals through the reduction of inorganic ions that can, in turn, chemically reduce contaminants to less mobile forms. The long term stability of these reduced contaminants is as yet unknown.

Currently, the fundamental knowledge that would allow cost-effective deployment of in situ subsurface bioremediation of radionuclides and metals is lacking. The focus of the NABIR program is on radionuclides and metals that: (1) Pose the greatest potential risk to humans and the environment at DOE sites; and (2) are amenable to for immobilization by means of bioremediation. Thus, research is focused on the radionuclides uranium, technetium and plutonium and the metals chromium and mercury. Radioactive contaminants such as tritium and cobalt are not a focus because of their relatively short half lives, and strontium and cesium are not addressed because they are not readily amenable to biotransformation. Research is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (both groundwater and sediments). NABIR research is oriented toward areas that have low levels of widespread contamination; it is too costly to clean up those situations with existing technologies. Uranium, technetium, and chromium can be especially mobile in the subsurface under certain conditions; they are risk-driving contaminants at some DOE sites. The effects of co-contaminants such as nitrate, complexing agents (such as EDTA) and chlorinated solvents (such as trichloroethylene and carbon tetrachloride) on the behavior of radionuclides and metals in the subsurface is also of interest to the NABIR program.

NABIR Program

The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on strategies leading to long-term immobilization in place of contaminants to reduce the risk to humans and the environment. The NABIR program encompasses both intrinsic bioremediation by naturally occurring microbial communities, as well as accelerated bioremediation through the use of biostimulation (addition of inorganic or organic nutrients). The NABIR Program supports hypothesis-driven, basic research that is more fundamental in nature than demonstration projects. Research on phytoremediation will not be supported by this solicitation; a separate solicitation for a Joint Interagency Program on Phytoremediation Research can be found at: *http://www.sc.doe.gov/production/grants/Fr03–04.html*.

Naturally occurring subsurface microbes may be involved in intrinsic bioremediation of radionuclides and metals by reduction and immobilization, either directly or indirectly. However, these natural processes typically occur at fairly slow rates, and there may be a need to use biostimulation to enhance the rates. The primary focus of the NABIR program is on biostimulation strategies, due to the ubiquity of metal-reducers in nature. Immobilized radionuclides and metals are not removed from the subsurface as may occur with excavation, pump and treat, or biodegradation of organic contaminants. Immobilization is focused on containment in vadose zone and groundwater plumes. As such, it may be a strategy applied to prevent the discharge of deep or widely distributed contaminants from the vadose zone to groundwater, or from groundwater to a receiving water body (*e.g.*, the Columbia River at Hanford). *In situ* immobilization of contaminants is one approach to long term stewardship, which is the post-closure responsibility of DOE at its contaminated sites. Long term stewardship involves long-term monitoring and other maintenance activities to ensure that residual in-ground contaminants do not spread further. Therefore, an important aspect to the NABIR program is to assess factors controlling the long-term stability of the immobilized contaminants and to devise approaches (biological/chemical) to maintain their immobilization through the stewardship phase.

The NABIR program consists of four interrelated Science Elements (Biogeochemistry, Biotransformation, Community Dynamics and Microbial Ecology, and Biomolecular Science and Engineering). Innovative method development for the Science Elements is supported under the Assessment Element. The program also includes an element addressing ethical, legal and societal issues called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program strongly encourages researchers to integrate laboratory and field research at DOE or DOE-relevant sites. More information on the NABIR program may be found at: *http://www.lbl.gov/NABIR*.

The NABIR Field Research Center (FRC) and Other Field Research Sites

The NABIR FRC provides a site for investigators to conduct field-scale research and to obtain DOE-relevant subsurface samples for laboratory-based studies of bioremediation. The FRC is located on the U.S. Department of Energy Oak Ridge Reservation in Oak Ridge, Tennessee, and it is operated by the Environmental Sciences Division of the Oak Ridge National Laboratory. The contaminated and background (uncontaminated control) areas are located in Bear Creek Valley (BCV) within the Y–12 Plant area. *See: http://www.esd.ornl.gov/nabirfrc* for more detailed information on the NABIR FRC.

The contaminated research site at the FRC is a 98-hectare plot containing

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uranium, nitrate, technetium, strontium, and cadmium in groundwater, soils, and sediments. To a lesser extent, metals such as mercury, copper, zinc, and lead, and organics such as acetone, methylene chloride, tetrachloroethylene, and toluene are also present. The contaminated area includes the commingled groundwater plumes that originated from a combination of the S–3 Waste Disposal Ponds and the Bone Yard/Burn Yard. Both the background and contaminated areas are well-characterized and well-instrumented, and should be available for a duration of five to ten years. The water table resides between 0 and 3 m below the surface and is readily accessible through multilevel groundwater monitoring wells.

The initial focus of NABIR field research is on in situ biostimulation experiments to promote immobilization of uranium. Understanding natural and stimulated uranium biotransformation in the presence of high nitrate and low pH in unconsolidated residuum and fractured rock is one of the biggest challenges at the FRC at Oak Ridge, and at other DOE sites. NABIR researchers conduct controlled, field-scale hypothesis testing at the FRC. In addition, the FRC is currently providing subsurface samples for 20 laboratory-based NABIR projects. These projects span all NABIR Science Elements as well as the cross-cutting Assessment and BASIC Elements. Site characterization activities are ongoing and will result in a rich database for use by NABIR researchers. The FRC is responsible for data management, systems integration, and fundamental hydrological and geochemical modeling of the contaminated and background sites. The FRC makes these data and models accessible to all NABIR researchers.

While the FRC provides a major focus for the NABIR program, it is recognized that other sites that represent the different hydrogeological regimes found at DOE sites will also be valuable to researchers. A large fraction of the national inventory of DOE wastes resides in unconsolidated, porous media in relatively thick, vadose zones and in groundwaters low in soluble organic carbon. For this reason, NABIR investigators are encouraged to take advantage of opportunities to collect and analyze samples from arid western environments that typify the Hanford Reservation and Uranium Mill Tailings Remedial Action (UMTRA) sites. For further information on NABIR Field Research, please contact Mr. Paul Bayer *(paul.bayer@ science.doe.gov)*, the NABIR Field Activities Manager.

NABIR investigators may want to take advantage of the capabilities of the Environmental Molecular Sciences Laboratory (EMSL) at the Pacific Northwest National Laboratory *(http://www.emsl.pnl.gov)*. EMSL provides users with unique and state-of-the-art resources including facilities for high field magnetic resonance, high performance mass spectrometry, interfacial and nanoscale science, molecular science computing, and optical imaging and spectroscopy.

Current Request for Applications

Research projects that address the scientific aims of individual NABIR elements including Biogeochemistry, Biotransformation, Community Dynamics, Biomolecular Science and Engineering, as well as the cross cutting elements Assessment and BASIC are solicited in this announcement. Integrative, interdisciplinary studies that involve research from more than one element are especially encouraged. The focus is on field research, or laboratory studies that can be scaled to the field, to provide supporting information for current or future field research. The NABIR Field Research Center (FRC) provides an opportunity for researchers to work at a DOE site in collaboration with scientists from different research elements. Studies at the NABIR FRC show that microbial reduction of radionuclides and metals is affected by the presence of nitrate and low pH. Thus, research into microbial mechanisms involved in the reduction of radionuclides and metals in this type of subsurface environment is of special interest.

Biogeochemistry: The goal of this element is to understand the fundamental biogeochemical reactions that would lead to long-term immobilization of metal and radionuclide contaminants in the subsurface. The focus is on reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases. Biogeochemical reactions in subsurface environments are influenced by a wide variety of factors, including the availability of electron donors and acceptors, the nature of the microbial community, the chemical species or form of contaminant, the hydrogeology of the site, and the nature of the environmental matrix. Often several competing redox reactions make the prediction of the substrates, products, and kinetics difficult. The biogeochemical reactions are further complicated by the sorption of contaminants and reaction products to mineral surfaces, and the presence of natural organic matter and co-contaminants. The research challenge is to identify and prioritize the key biogeochemical reactions that are needed to predict the rate and extent of reactions that result in the immobilization of radionuclides and metals. New and creative scientific approaches are sought that address the following fundamental research questions:

- To *increase immobilization* of radionuclides and metals, what are the principal biogeochemical reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases (with an emphasis on natural geological matrices)? What are the thermodynamic and kinetic controls on these reactions? How do factors such as co-contaminants, sorption processes, and terminal electron acceptors (*e.g.*, nitrate, iron, sulfate), influence these reactions?
- Under what conditions would the contaminants *remobilize*, and what alterations to the environment would increase the long term stability of metals and radionuclides in the subsurface?
- What influence do hydrological processes such as reactive transport, advective/dispersive transport and colloidal transport have on the biological availability, biotransformation, and movement of radionuclides and metals?

Biotransformation: The goal of this element is to understand the mechanisms of microbially mediated transformation of metals and radionuclides in subsurface environments leading to *in situ* immobilization and long term stability. Physiological studies of the biotransformation of metals and radionuclides by subsurface microorganisms will provide the knowledge base needed to understand intrinsic bioremediation and to stimulate biotransformation *in situ*.

DOE subsurface sites encompass a range of redox environments where contaminants such as uranium are present. One challenge is to understand the impact of these environments on microbial physiological processes involved in the biotransformation of radionuclides and metals to an immobilized form. Knowledge of the metabolic pathways for biotransformation of these contaminants by naturally occurring microbial communities in vadose zones, saturated zones and the waste plume is needed. A second challenge is to accelerate the rates of these physiological processes *in situ*, in complex subsurface environments. Biotransformation of metals and radionuclides in the subsurface is poorly understood, and predictive models based on laboratory studies have not always accurately simulated the observed fate of metals and radionuclides in the field. It is important to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics in the field. Research is needed to address questions such as:

- What are the primary metabolic pathways for biotransformation of radionuclides and/or metals by subsurface microorganisms at DOE sites, such as the FRC? Physiological processes studied at the laboratory scale will need to demonstrate how results will be scaled to the field.
- How can metal reduction be harnessed or accelerated to immobilize radionuclides and/or metals in the subsurface? Can *in situ* production of organic acids, chelators, or extracellular polymers affect contaminant mobility?
- What environmental controls affect microbial physiological processes involved in radionuclide and metal biotransformations leading to immobilization in vadose and saturated zones? What factors inhibit these biotransformations *in situ?*
- How can we quantify *in situ* biotransformation kinetics so that these parameters can be applied to numerical models of field scale bioremediation?

Community Dynamics and Microbial Ecology: The goal of this element is to determine the potential for natural microbial communities to immobilize radionuclides and metals. In particular, research focuses on: (1) Understanding the structure and function of microbial communities in the subsurface at DOE sites contaminated with metals and radionuclides; and (2) identifying and optimizing the in situ growth of microorganisms that transform radionuclides and metals. This research will enhance our ability to predict the effectiveness of intrinsic bioremediation and to optimize microbial community composition for in situ immobilization of these contaminants. Diverse microbial communities can be found in subsurface environments. These communities represent an untapped catalytic potential for biotransformation of radionuclides and metals. Most of these microbes, however, are as yet uncultured using current methods. One challenge is to determine if sufficient genotypic and/or phenotypic potential exists to support natural and/or accelerated (biostimulated) bioremediation. Knowledge of microbial community structure and function may ultimately provide the ability to control or stimulate subsurface communities capable of biotransformation of radionuclides and metals. A second challenge is to optimize the community structure and activity for immobilization and metals, and to determine the long term stability of bioremediative communities. Research is needed to address questions such as:

- Is there sufficient biological activity and diversity in subsurface environments to support natural and/or accelerated bioremediation of metals and radionuclides?
- What are the effects of metal and radionuclide contamination on microbial community structure and function, particularly on populations that transform radionuclides and metals? What are the effects of key physical, chemical and hydrological factors on community structure and function, as it relates to immobilization of metals and radionuclides?
- What is the role of consortial interactions in subsurface environments contaminated with radionuclides and metals? Such interactions might include competition for electron donors and acceptors, or consortial interactions in the biotransformation of metals and radionuclides.
- What is the potential importance of gene transfer in natural microbial communities at subsurface sites contaminated with radionuclides or metals?

Those studies that link structure to function of microbial communities that immobilize metals and/or radionuclides at DOE sites are especially encouraged.

Biomolecular Science and Engineering: Research in this element provides a knowledge base, at the biomolecular level, of the processes leading to the in situ immobilization of radionuclides and metals by indigenous subsurface microorganisms. The primary goal of this element is to understand the genetic, biochemical, and regulatory processes that mediate biotransformation of these specific radionuclides and metals, leading to their immobilization. Characterization of genes, gene products, and genetic regulatory networks associated with these biotransformations is key to this understanding. Detailed studies of the enzymatic mechanisms for reduction of radionuclides and/or metals are needed to increase our understanding of in situ processes and to identify gene targets for better molecular assessment of radionuclide and metal reduction. Secondary goals include: (1) Understanding molecular mechanisms of resistance of subsurface microorganisms to radionuclide and metal toxicity; (2) understanding, at a molecular level, the processes of lateral transfer between microbes of genes involved in biotransformation of these radionuclides and metals; (3) developing novel technologies to provide insights into biomolecular mechanisms of metal and radionuclide biotransformation; and (4) developing approaches to manipulate pathways and enzyme systems that mediate these biotransformations.

DOE subsurface sites encompass a wide range of environments with a diversity of microbial communities and contaminants. One of the challenges of the Biomolecular Science and Engineering Element is to select microbes for studies that are active members of subsurface microbial communities. A second challenge is to extrapolate laboratory findings on pure cultures under laboratory conditions to complex in situ environmental conditions. This extrapolation is especially critical in studying gene expression, which may be modified by changes in local cellular environments in the subsurface. A third challenge is to take advantage of genomic and other data derived from the DOE Microbial Genome Program *(http://www.ornl.gov/microbialgenomes)* on subsurface microorganisms to increase our understanding of how genes relevant to bioremediation are expressed in the environment. Research is needed to address questions such as:

- How are genes regulated in subsurface microorganisms that are responsible for biotransformation and immobilization of radionuclides and metals? How are genes regulated in these microorganisms to promote survival in the presence of potentially toxic levels of these contaminants?
- What are the effects of key environmental parameters on regulation and expression of genes involved in metal/radionuclide reduction? For example, how do pH and co-contaminants such as nitrate impact the biochemistry and gene expression and regulation of uranium and technetium reduction?
- What are the basic biomolecular mechanisms of uranium and technetium reduction and reoxidation in microorganisms, primarily those indigenous to the subsurface? How can biomolecular processes be manipulated to enhance the sustainability of immobilization of uranium, technetium or chromium? Are there novel biomolecular mechanisms that can be used to immobilize mercury or plutonium?
- What are the biomolecular mechanisms involved in lateral transfer

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of metal/radionlucide reduction genes in subsurface microbial communities?

Applications should primarily focus on indigenous subsurface microorganisms that can precipitate and immobilize these radionuclides and metals. The ultimate goal of this element is to improve our ability to predict and manipulate the activities of microbes *in situ*, particularly in an *in situ* immobilization scenario.

Assessment: Assessment is a cross-cutting element with a goal to develop innovative methods to assess processes and endpoints in support of the NABIR Science Elements. Thus, assessment projects are being sought that support the Science Elements of Biogeochemistry, Biotransformation, Community Dynamics/Microbial Ecology, and Biomolecular Science and Engineering. Methods may range from molecular to field scale, but they should improve the understanding of *in situ* bioremediation processes in subsurface environments contaminated with radionuclides and metals. Priority will be given to research applications that could lead to fieldable, cost-effective, real time assessment techniques and/or instrumentation. NABIR will not fund projects that examine endpoints relating to human health risks. Research should address the development of innovative and effective methods for assessing or quantifying:

- Biogeochemical or biotransformation processes and rates, and microbial community structure and function relative to bioremediation of metals and radionuclides.
- Bioremediation end points, in particular, the concentration, speciation and stability of radionuclide and metal contaminants.

Techniques must enable NABIR science and address specific science needs of the program. The applicant should explain the potential impact and contribution to the NABIR program, as well as the relevance and potential usefulness of the innovation.

Bioremediation and its Societal Implications and Concerns (BASIC): The objective of this element is to identify and explore societal issues associated with NABIR. BASIC is designed to provide information on issues that might influence the implementation of NABIR science and to involve NABIR scientists in discussions about the societal implication of their research. The BASIC program may also provide an avenue to identify key issues and sensitivities involved in bioremediation strategies, such as immobilization of metals and radionuclides *in situ* as a means of long-term stewardship.

Major focus areas for BASIC research include (1) Identifying and prioritizing societal and regulatory issues associated with bioremediation of metals and radionuclides in subsurface environments, particularly strategies that entail immobilization in place; (2) fostering collaboration between NABIR scientists and site stakeholders and (3) enhancing the understanding and communication of NABIR research to stakeholder communities and others. Quantitative approaches and integration with other NABIR program elements are strongly encouraged. BASIC grants will not extend beyond two years beyond the award date. All grant applications should provide a plan for evaluation of progress or outcomes. Where a product (guidelines, recommendations, documents, *etc.*) is the result, dissemination plans including timelines must be discussed.

The NABIR program also encourages smaller grant applications (up to $35,000 total costs) for innovative and exploratory activities within the BASIC area. Such exploratory grants could be used to carry out pilot investigative research on an issue consistent with any of the above areas of BASIC research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. Such small grant applications must use the standard DOE application forms procedures outlined below, but should have a narrative section no more than five pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date.

Integrative Studies

This solicitation especially encourages those studies that integrate research from more than one NABIR research element through laboratory and/or field research. This interdisciplinary research should focus on achieving the primary goals of the NABIR program through collaborative studies in which the experimental design integrates two or more NABIR elements. Interdisciplinary teams may include participation from two or more research areas that might include: microbiology, geochemistry, hydrology, environmental engineering, numerical modeling or other disciplines. Partnering with specific field experiments may provide information for hypothesis testing. Such integrative studies might include, for example:

- Employing numerical modeling to integrate information from more than one element, such as Biogeochemistry, Biotransformation, and Community Dynamics and Microbial Ecology, to better predict *in situ* immobilization of metals and radionuclides.
- Studies of the effects of key physical, geochemical and hydrological parameters on the structure and function of subsurface microbial communities engaged in metal/radionuclide biotransformation and immobilization.
- Integration of new methods in the Assessment element with actual application to studies of biotransformation or biogeochemistry of radionuclide/metal reduction and precipitation.
- Linking chemical speciation of radionuclides and metals in subsurface environments to the bioavailability of those contaminants to microorganisms.
- Studies on the changes of subsurface microbial community structure and function, and the effect on net rates of biotransformation during biostimulation experiments.
- Partnership between any of the Science Elements and research in BASIC.

Additional Information for Applications

It is anticipated that up to $3 million will be available for multiple awards to be made in late Fiscal Year 2003 and early Fiscal Year 2004 in the categories described above, contingent on availability of appropriated funds. An additional sum, up to $3 million, will be available for competition by DOE National Laboratories under a separate solicitation (LAB 03–13). Applications for all elements except for BASIC may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Applications for BASIC may request support for two years, or one year for exploratory activities. Annual budgets for projects are expected to range from $100,000 to $300,000 total costs. Annual budgets for integrative studies involving participants representing more than one research element may range up to $450,000. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

For renewals, progress on previous NABIR funded research will be an important criterion for evaluation. As part of the evaluation, program policy factors also become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Federal and non-federal reviewers will be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). *Applicants who have had prior NABIR support must include a Progress Section with a brief description of results and a list of publications derived from that funding.* Attachments should include short (2 pages) curriculum vitae, QA/QC plan, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages).

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate; for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR Program is available at the following Web site: *http://www.lbl.gov/NABIR/*. For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, SC–74/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585–1290; phone: (301) 903–3338; fax: (301) 903–8519; E-mail: *karen.carlson@science.doe.gov*; for hard copies of background material mentioned in this solicitation.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605).

Issued in Washington DC on December 2, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30918 Filed 12–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–15; Ocean Carbon Sequestration Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research on Carbon Sequestration in the Oceans.

DATES: Applicants are strongly encouraged to submit a brief preapplication for programmatic review by January 31, 2003, although later preapplications will still be accepted. The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 20, 2003, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003 and early Fiscal Year 2004.

ADDRESSES: Preapplications should be sent e-mail to Dr. Anna Palmisano at *anna.palmisano@science.doe.gov*.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, SC–74, Office of Biological and Environmental Research, Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, telephone: (301) 903–9963, E-mail: *anna.palmisano@science.doe.gov*, fax: (301) 903–8519. The full text of Program

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Notice 03–15 is available via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION:

Predictions of global energy use in the next century suggest a continued increase in carbon emissions and rising concentrations of carbon dioxide (CO_2) in the atmosphere unless major changes are made in the way we produce and use energy—in particular, how we manage carbon. One way to manage carbon is to use energy more efficiently to reduce our need for a major energy and carbon source—fossil fuel combustion. A second way is to increase our use of low-carbon and carbon-free fuels and technologies, such as nuclear power and renewable sources such as solar energy, wind power, and biomass fuels. The third way to manage carbon is by "carbon sequestration": The capture and long term storage of carbon either from the global energy system or directly from the atmosphere in oceanic or terrestrial ecosystems.

Any viable system for sequestering carbon must have several key characteristics. It must be effective and cost-competitive with alternative means, such as renewable energy. Unintended environmental consequences must be benign compared to alternative solutions, including no action. A carbon sequestration system must be able to be monitored quantitatively and verified, because contributions to carbon sequestration almost certainly need to be measured. Research sponsored by this program could contribute to any of these goals.

This solicitation invites applications for basic research projects on the purposeful enhancement of carbon sequestration in the oceans. Although many options exist to capture and sequester carbon dioxide, the focus of this solicitation is on fundamental research that would enable: (a) the enhancement of the absorption and retention of atmospheric carbon dioxide by ocean biota; and (b) scientifically-based analyses of the viability of using the deep ocean to store carbon dioxide that has been already separated, captured, and transported. The proposed research should be fundamental in nature, and address one or more of the technical areas of interest described below. Applications that test demonstrations of engineered technologies are not relevant to this solicitation.

Technical Areas of Interest

The ocean represents a large current sink for the sequestration of anthropogenic CO_2 emissions as well as a large potential for purposeful enhancement of the current sink. Two strategies for enhancing carbon sequestration in the ocean are the focus of the DOE Ocean Carbon Sequestration Research Program. One strategy is enhancement of the net oceanic uptake from the atmosphere by fertilization of phytoplankton with micronutrients, such as iron. A second strategy is the direct injection of a relatively pure CO_2 stream to ocean depths greater than 1000 m. Sources of CO_2 for direct injection might include power plants or other industries. This solicitation seeks applications that specifically address the long term effectiveness and potential environmental consequences of ocean sequestration by these two strategies. The program currently funds projects in a wide range of scientific disciplines including marine biology and ecology; biological, physical, and chemical oceanography; computational science and modeling; and physical chemistry and engineering. Titles and abstracts of research projects currently being funded under the DOE Ocean Carbon Sequestration Research Program may be accessed at *http://cdiac2.esd.ornl.gov/ocean.html*.

Iron Fertilization

Much has been learned about the important role of iron in photosynthesis over the past 15 years through both laboratory and field experiments on iron enrichment. Iron deficiency has been shown to limit the efficiency of photosystem II in phytoplankton. Evidence from paleoceanographic samples also links iron supply with marine primary production and carbon flux. However, critical questions remain: How does iron enrichment accelerate carbon flux in high nutrient, low chlorophyll (HNLC), low nutrient, low chlorophyll (LNLC), sub-mixed layer and coastal ecosystems? What are the time scales of remineralization of the fixed carbon? What are the long term ecological and biogeochemical consequences of fertilization on surface and midwater processes? Basic research is needed on the coupling of iron and carbon cycles in the ocean. Our understanding of the biogeochemistry of iron (its concentrations, sources, sinks and ligands) in marine systems is also insufficient to assess the viability of using iron fertilization as a strategy for enhancing carbon sequestration.

The accurate measure of carbon flux following iron fertilization is critical to the objective evaluation of this strategy for carbon sequestration. We need to understand the regulation of carbon fluxes and the role of mineral ballast in export of organic carbon from the surface to the deep ocean. The potential impact of iron fertilization on the global carbon budget, as well as verification and duration of carbon sequestration are yet unknown. The complexity of marine ecosystems necessitates careful research on unintended environmental consequences of iron fertilization. These consequences may include the potential to impact key oceanic biogeochemical cycles as well as on populations of marine organisms and their trophodynamic interactions.

Research may focus on experimental/observational studies and/or predictive modeling. Integrative studies that couple experimental observations and numerical modeling approaches are encouraged. Such studies should develop, improve, and test models that can be used to simulate and predict quantities of carbon sequestered from iron fertilization. Relevant focus areas for enhancement of the biological pump through iron fertilization may include:

1. Improving the effectiveness of ocean fertilization as a strategy for long term (decades, centuries) carbon sequestration.

- Determining to what extent increased carbon fixation in surface waters would result in an increase in carbon sequestered in the deep ocean, and how long it would remain sequestered. This includes quantifying the export of particulate organic carbon and particulate inorganic carbon to the deep sea, and mineralization or dissolution of all forms at depth.
- Understanding the role of micronutrients (such as iron) and macronutrients (such as nitrogen and phosphorus) in regulation of the biological pump. Research on coupling of iron and carbon cycles might include studies of photo-oxidation, complexation adsorption/desorption, export and mineralization.
- Developing numerical models (regional or global) for carbon sequestration, especially those that provide a measurable output that allows for model testing. Models might be used to predict the efficiency of sequestration as a function of mid and deep water transport of carbon and remineralization.

2. Determining environmental consequences of long term ocean fertilization.

- Examining changes in structure and functioning of marine ecosystems (composition of phytoplankton and zooplankton communities, ocean food webs and trophodynamics), resulting from ocean fertilization.
- Examining changes in natural oceanic biogeochemical cycles (carbon, nitrogen, phosphorus, and silicon) resulting from iron fertilization.
- Developing numerical models at an ecosystem level that predict downstream effects of fertilization on productivity and nutrient removal.

Research proposed on iron fertilization should also support the USGCRP Carbon Cycle Science Initiative (*http://www.gcrio.org/OnLnDoc/pdf/carb_cycle_toc.html*). In particular, the proposed research should provide the scientific foundation for assessing both the viability of using iron fertilization to enhance sequestration and storage of carbon dioxide and/or the potential for unintended effects of this carbon sequestration strategy.

Direct Injection

The overarching questions for this area of research are: Can direct CO_2 injection effectively sequester CO_2 in the ocean with minimal adverse environmental impacts? How and where might direct injection of CO_2 be most effective as a carbon sequestration strategy? What are the plume dynamics and hydrate behavior at depth? Fundamental research is needed to: assess the efficiency and consequences of direct injection; calculate the maximum ability of the ocean to sequester a maximum tolerable level of CO_2, while minimizing the impact on marine ecosystems. Current scientific literature on the physiology of deep sea animals suggests a high sensitivity of deep sea animals to acidosis and hypercapnia (CO_2 stress), however, there are few data on impacts of specific levels of CO_2 on animals from various marine habitats. Moreover, there are virtually no data on the potential effects of CO_2 on microbially-mediated biogeochemical transformations of nutrients in the deep sea. Models are needed that provide information on the fate of injected CO_2, particularly in the 100m to 100km range, from the point of injection. The ultimate goal is to be able to develop a coupled model that can predict the fate of injected CO_2 and its chemical, physical and biological effects on marine ecosystems.

Research may focus on experimental/observational studies and/or predictive modeling. Integrative studies that couple both experimental and numerical modeling are encouraged, especially those incorporate feedback between experiments and models. Such projects should involve experimental studies to test and improve models, and modeling studies to help identify and design experiments needed to fill key gaps in our understanding. Examples of relevant research areas for direct injection of carbon dioxide into the deep ocean include:

1. Determining the environmental consequences of direct injection of CO_2 into the ocean in midwater or deep sea habitats.

- Determining the effects of changes in pH and CO_2 on the physiology and survival of organisms (including microbes) from midwater and deep sea habitats. These studies might include lethal or sublethal effects on organisms.
- Understanding the effects of sustained release of concentrated CO_2 on biogeochemical processes, and on ecosystem structure and function. This might include investigations of biogeochemical interactions of seafloor sediments with a hydrated CO_2 plume.
- Effects of secondary of contaminants on plume and/or hydrate physical/chemical properties, and related effects on indigenous fauna.

2. Improving the effectiveness of direct injection of CO_2 for carbon sequestration.

- Understanding the longer-term fate of carbon that is added to the ocean including the carbonate chemistry of mid- and deep-ocean water.
- Investigation of physico-chemical behavior of a dense phase hydrate stream. Research might focus on such characteristics as determination of hydrate dissolution rates for a concentrated swarm, and calculation of plume dispersion and perturbation to state variables at depth.
- Addressing weaknesses in aspects of the Ocean General Circulation Models (OGCMs), specifically their ability to simulate accurately western boundary currents, ocean bottom currents, plume to eddy circulation; and testing models using natural or experimental tracers.
- Coupling near-field with far-field effects of CO_2 injection, for example, coupling plume modeling at the basin and global scale with ocean circulation models.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html*.

Program Funding

It is anticipated that up to $1,500,000 (per year) will be available for awards in this area during Fiscal Year 2003, contingent upon availability of appropriated funds. An additional $1,000,000 will be available for competition by DOE National Laboratories under a separate solicitation (LAB 03–15). Projects involving single investigators or small groups of investigators may be funded at a level up to $300,000 per year for up to 3 years. Integrative studies, multi-investigator studies that combine experimental/observational approaches with numerical modeling may be funded at a level of up to $400,000 per year for 3 years. Applications for field experiments involving larger groups of investigators will be considered, but must be approved at a preapplication level. Multiple year funding of awards is expected, and is also contingent upon availability of funds, progress of the research, and continuing program need.

Preapplications

An informal preapplication may be submitted by E-mail. The preapplication should identify the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Ocean Carbon Sequestration Research Program. Preapplications are strongly encouraged prior to submission of a full application, especially for large, field-based collaborations. Notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Formal Applications

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

For renewals, progress on previous DOE-funded research will be an important criterion for evaluation. The evaluation will include program policy

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factors such as the relevance of the proposed research to the terms of the announcement, the agency's programmatic needs, and the uniqueness of approach. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both non-federal and federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 20 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. *Applicants who have had prior Ocean Carbon Sequestration Research Program support must include a Progress Section with a brief description of results and a list of publications derived from that funding.* On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages).

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington DC on December 2, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30919 Filed 12–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–356–001]

Canyon Creek Compression Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 26, 2002, Canyon Creek Compression Company (Canyon) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets, to be effective December 1, 2002.

Canyon states that the purpose of this filing is to comply with the Commission's Order dated November 22, 2002 which allows Canyon's rates and revised tariffs to go into effective December 1, 2002, subject to specified revisions.

Canyon states that copies of the filing are being mailed to each person designated on the official service list in Docket No. RP02–356–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30821 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–105–000]

Centra Pipelines Minnesota Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 25, 2002, Centra Pipelines Minnesota Inc. (Centra Minnesota), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, a revised tariff sheet to reflect changes in its Index of Customers. Centra Minnesota requests an effective date of November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30826 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–104–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 25, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2003:

Thirty-Seventh Revised Sheet No. 11
Fourth Revised Sheet No. 171
Sixth Revised Sheet No. 332
Fifth Revised Sheet No. 343

CIG states that these tariff sheets provide for the discontinuation of the Account No. 858 Stranded Costs Surcharge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30825 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–107–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 25, 2002, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on the Appendix attached to the filing, to become effective January 1, 2003.

El Paso states that these tariff sheets revise the Gas Research Institute surcharges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30828 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–110–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 26, 2002, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Seventh Revised Sheet No. 5, Tenth Revised Sheet No. 6, and Sixth Revised Sheet No. 10, proposed to be effective January 1, 2003.

Equitrans states that the tariff sheets described above reflect the revised funding surcharges for the Gas Research Institute (GRI) for the year 2003. These surcharges were approved by the Commission in its letter order issued September 19, 2002, in Docket No. RP02–354–000, in which it also approved GRI's funding for its year 2003 research, development, and demonstration (RD&D) program and its 2003–2007 five-year RD&D plan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions

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on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30830 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–19–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 25, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fifth Revised Sheet No. 174, to become effective November 11, 2002.

FGT states that on October 11, 2002 it filed a revised tariff sheet to modify its tariff to allow FGT to terminate service contracts with replacement shippers for temporary capacity releases if the releasing shipper is no longer creditworthy and certain other conditions are met. Subsequently, on November 8, 2002, the Commission issued an order accepting FGT's filing, subject to FGT's filing a revised tariff sheet within 15 days providing that FGT may terminate contracts with replacement shippers when it has terminated the contract with the releasing shipper. In the instant filing, FGT states that it is proposing the tariff modifications as required by the order. However, FGT requests that the Commission defer action on accepting and making the modifications effective until after ruling on the request for rehearing, which FGT is filing concurrent with the instant filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30831 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–006]

Kern River Gas Transmission Company; Notice of Negotiated Rates

November 29, 2002.

Take notice that on November 26, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 495; Original Sheet No. 496; and Sheet Nos. 497–499 (Reserved), to be effective December 1, 2002.

Kern River states that the purpose of this filing is to implement negotiated rate transactions between Kern River and Coral Energy Resources; Kern River and Eagle Mountain City; Kern River and Questar Gas Company; and Kern River and Sempra Energy Trading Corporation, in accordance with the Commission's Policy Statement on alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30819 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–337–005]

Kern River Gas Transmission Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 25, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Original Sheet No. 200 (Effective January 1, 2003); Pro Forma Sheet No. 8; Pro Forma Sheet Nos. 69–B through 69–F; Pro Forma Sheet No. 214; and Pro Forma Sheet Nos. 339 through 342, to be effective as indicated.

Kern River states that the purpose of this filing is to comply with the Commission's October 31, 2002 "Order on Compliance Accepting and Rejecting Tariff Sheets" by submitting tariff sheets (1) to revise Kern River's segmentation provisions to clarify that forward haul and backhaul nominations to the same delivery point may exceed a shipper's transportation rights when capacity at the delivery point is available; and (2) to propose a new park and loan (PAL) service.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30820 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docekt No. RP03–101–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

November 29, 2002.

Take notice that on November 22, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Sixth Revised Sheet No. 4D, to be effective January 1, 2003.

Pursuant to the Commission's Order issued September 19, 2002 in Docket No. RP02–354, KMIGT submits the proposed tariff sheet reflecting the required changes to the Gas Research Institute (GRI) surcharges in its tariff.

KMIGT states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30824 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–106–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 25, 2002, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 11 to become effective January 1, 2003.

Mojave states that this tariff sheet revises the Gas Research Institute surcharges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30827 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–108–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 26, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 414 to be effective December 1, 2002.

Natural states that the purpose of this filing is to update its list of non-conforming agreements. Also, Natural tenders for filing copies of the Firm Transportation Rate Discount Agreement with Aquila, Inc. d/b/a Aquila Networks.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

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with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30829 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–27–000]

Niagara Mohawk Power Corporation v. Huntley Power LLC; NRG Huntley Operations, Inc.; Dunkirk Power LLC; NRG Dunkirk Operations, Inc.; Oswego Harbor Power, LLC; NRG Oswego Operations, Inc; Notice of Complaint

November 29, 2002.

Take notice that on November 26, 2002 Niagara Mohawk Power Corporation (Niagara Mohawk), a subsidiary of National Grid USA, tendered for filing a complaint against Huntley Power LLC; NRG Huntley Operations, Inc.; Dunkirk Power, LLC; NRG Dunkirk Operations, Inc.; Oswego Harbor Power, LLC; and NRG Oswego Operations, Inc. (the Generators).

This complaint requests that the Commission make certain findings of fact and amplify its policies on self-supply and the scope of its jurisdiction vis-á-vis state regulators to enable enforcement of amounts owed by the Generators for station service provided to them by Niagara Mohawk.

Copies of the filing were served upon each of the Generators.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before December 16, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30817 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 29, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No:* 4113–061.

c. *Date filed:* September 27, 2002.

d. *Applicant:* Oswego Hydro Partners L.P.

e. *Name of Project:* Phoenix Project.

f. *Location:* The project is located on the Oswego River, Phoenix and Oswego Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Sean Fairfield, One South Plaza, Suite 103, PO Box 2175, Glen Falls, NY 12801, (905) 465–4518.

i. *FERC Contact:* Hillary Berlin at (202) 502–8915.

j. *Deadline for filing comments, motions to intervene and protest:* December 31, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (4113–061) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The licensee is requesting to amend the minimum flow requirement under article 38 for the June 1 through October 31 period. During this period, the downstream dissolved oxygen (DO) level would be monitored daily if the flow falls below 1900 cubic-feet-per-second (cfs), and the following actions would be taken: if DO falls below 5 mg/l and river flow is below 1500 cfs, all flows will be directed over the flashboards/spillway/tainter gates; if DO falls below 5 mg/l and river flow is between 1500 cfs and 1900 cfs, all but 700 cfs will be directed over the flashboards/spillway/tainter gates; for flows in excess of 1900 cfs, a minimum flow of 300 cfs will be directed over the flashboards/spillway/tainter gates; if DO is above 5 mg/l and river flow is less than 1900 cfs, a minimum flow of 300 cfs will be directed over the flashboards/spillway/tainter gates. The licensee is proposing to amend the license to incorporate the above minimum flow regime, including daily testing of DO in a manner consistent with that undertaken over the past four years. The licensee's proposed flow regime is per a revised Water Quality Certificate issued on August 30, 2002.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30818 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–71–000]

Overthrust Pipeline Company; Notice of Tariff Filing

November 29, 2002.

Take notice that on November 13, 2002, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 and First Revised Volume No. 1-A, the following tariff sheets, to be effective December 13, 2002:

Original Volume No. 1
Seventh Revised Sheet No. 3
First Revised Volume No. 1–A
Fifth Revised Sheet No. 2

Effective November 1, 2001, Questar Pipeline Company (Questar Pipeline) purchased NGPL-Overthrust Inc.'s (NGPL) 18 percent ownership interest in Overthrust and effective July 1, 2002, Questar Overthrust Pipeline Company (Questar Overthrust) purchased CIG Overthrust, Inc.'s (CIG) 10 percent ownership interest in Overthrust. The purchase of NGPL's interest by Questar Pipeline and the purchase of CIG's interest by Questar Overthrust, results in Questar Corporation affiliates owning 100 percent of the general partnership. Revised Sheet No. 3 to Original Volume No. 1 and revised Sheet No. 2 to First Revised Volume No. 1–A reflects a revised Preliminary Statement.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30833 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–462–002]

Southern Natural Gas Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 25, 2002, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 126A, with an effective date of October 1, 2002.

Southern states that the purpose of this filing is to implement certain modifications to its tariff sheet in compliance with the Commission's Order issued on November 14, 2002, in the captioned proceeding to provide that Title Transfer Tracking Service Providers are subject to the standard NAESB intraday nomination cycles.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the

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Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30822 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–72–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 29, 2002.

Take notice that on November 13, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 2002.

Transco states that the purpose of the instant filing is to track rate changes attributable to: (1) Transportation service purchased from Dominion Transmission, Inc. (Dominion) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS, and (2) transportation service purchased from Texas Gas Transmission Corporations (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This filing is being made pursuant to tracking provisions under Section 3 of Transco's Rate Schedule GSS, Section 4 of Transco's Rate Schedules LSS and FT–NT.

Transco states that included in Appendices B and C attached to the filing are the explanations of the rate changes and details regarding the computation of the revised GSS, LSS and FT–NT rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30834 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–20–001]

Transwestern Pipeline Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 25, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 95J, to become effective November 11, 2002.

Transwestern states that on October 11, 2002, Transwestern proposed tariff revisions setting forth the criteria that would permit Transwestern to terminate a temporary capacity release (October 11 Filing). Specifically, Transwestern added a new section 30.4 (g) to Transwestern's General Terms and Conditions, Transporter's Right to Terminate a Temporary Capacity Release. Under this new section Transwestern proposed two conditions by which Transwestern would terminate a temporary capacity release upon 30-days' written notice. Those conditions were that: (1) The Releasing Shipper had failed to maintain creditworthiness in accordance with Rate Schedule FTS–1 and Sections 13 and 30 of the General Terms and Conditions of Transwestern's Tariff, and (2) that the rate stated in the effective Replacement Shipper's Service Agreement is less than the Releasing Shipper's contract rate. Transwestern states that on November 8, 2002, the Federal Energy Regulatory Commission ("Commission") issued an order ("Order") accepting the proposed tariff revisions subject to Transwestern modifying the provisions to provide that Transwestern may terminate the contract with the Replacement Shipper only after it has terminated the contract with the Releasing Shipper. The instant filing reflects the modification directed by the Commission's Order. However, Transwestern requests that the Commission defer action on accepting and making the modification effective until after ruling on the request for rehearing, which Transwestern is filing concurrent with the instant filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30832 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–100–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 22, 2002, Williams Gas Pipelines Central, Inc. (Central) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective January 1, 2003:

Twenty-Second Revised Sheet No. 6A

Central states that pursuant to "Order Approving Settlement," issued by the Commission on April 29, 1998, in Docket No. RP97–149–003, et al. (83 FERC ¶ 61,093 (1998)) and Central's FERC Gas Tariff, Original Volume No. 1, Article 25 of its General Terms and Conditions, Central is filing to reflect the new GRI surcharges to be collected on nondiscounted transportation services for the 2003 calendar year. These funding units were reaffirmed in the Commission's letter order dated September 19, 2002, in Docket No. RP02–354–000.

Central states that copies of this filing have been served on all of Central's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30823 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–190–000, et al.]

CMS Panhandle Lake Charles Generating Company LLC, et al.; Electric Rate and Corporate Filings

November 21, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. CMS Panhandle Lake Charles; Generation Company LLC

[Docket No. ER03–190–000]

Take notice that on November 19, 2002, CMS Panhandle Lake Charles Generation Company LLC filed a Notice of Succession with regard to the market-based sales Rate Schedule FERC No. 1 of its predecessor, PanEnergy Lake Charles Generation Inc., to be effective October 19, 2001 and a Notice of Cancellation of that same Rate Schedule to be effective December 31, 2002.

Comment Date: December 10, 2002.

2. Peaker LLC

[Docket No. ER03–191–000]

Take notice that on November 19, 2002, Peaker LLC (Seller) petitioned the Commission for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates.

Comment Date: December 10, 2002.

3. Southern California Edison Company

[Docket No. ER03–192–000]

Take notice that on November 20, 2002, Southern California Edison Company (SCE) tendered for filing a Notice of Cancellation of FERC Tariff, First Revised Original Volume No. 6, Service Agreement No. 6, effective August 3, 2002. The Interconnection Facilities Agreement is between SCE and Mountainview Power Company L.L.C.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California. SCE request effective date of December 8, 2002.

Comment Date: December 11, 2002.

4. Southern California Edison Company

[Docket No. ER03–193–000]

Take notice that on November 20, 2002, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and Energy Unlimited, Inc. (EUI). The purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will perform the work necessary to develop the easement documents including, but not limited to, survey of the existing site and for legal description, mapping, title, and estimate of land acquisition costs for EUI to interconnect its generating facility to SCE's distribution system.

Copies of this filing were served upon the Public Utilities Commission of the State of California and EUI.

Comment Date: December 11, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER03–194–000]

Take notice that on November 19, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Duke Energy Fayette, LLC (Duke Energy).

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by Duke Energy and PJM. Copies of this filing were served upon Duke Energy and the state regulatory commissions within the PJM region.

Comment Date: December 10, 2002.

6. Little Bay Power Corporation

[Docket No. ER03–195–000]

Take notice that on November 19, 2002, pursuant to Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Little Bay Power Corporation (Little Bay) filed with the Federal Energy Regulatory Commission a Notice of Termination of its market-based rate tariff. Little Bay requests waiver of the Commission's prior notice requirements so that the termination may be effective January 1, 2003.

Comment Date: December 10, 2002.

7. Great Bay Power Corporation

[Docket No. ER03–196–000]

Take notice that on November 19, 2002, pursuant to Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Great Bay Power Corporation (Great Bay) filed with the

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Federal Energy Regulatory Commission a Notice of Termination of Great Bay's market-based rate tariffs, FERC Electric Tariff Nos. 2 and 3. Great Bay requests waiver of the Commission's prior notice requirements so that the terminations may be effective January 1, 2003.

Comment Date: December 10, 2002.

8. Southern California Edison Company

[Docket No. ER03–197–000]

Take notice that on November 20, 2002, Southern California Edison Company (SCE) tendered for filing the Shiprock-Four Corners Project 345-kV Switchyard Interconnection Agreement (IA) among the Four Corners Participants (SCE, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company) and the Interconnection Participants (Public Service of Colorado, Tri-State Generation and Transmission Association, Inc., and the United States of America acting by and through the Administrator, Western Area Power Administration, Department of Energy).

The IA establishes the rates, terms and conditions for installation, operation and maintenance of interconnection facilities related to the interconnection of the Interconnection Participants' transmission line from Shiprock Substation, located in Shiprock, New Mexico, to a 345–kV switchyard at the Four Corners Project which is jointly owned by the Four Corners Participants. Copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment Date: December 10, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30962 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7419–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notice of Intent for Storm Water Discharges Associated With Construction Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Notice of Intent for Storm Water Discharges Associated With Construction Activity, EPA ICR Number 1842.04, OMB Control Number 2040–0188, that expires on March 31, 2003). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 4, 2003.

ADDRESSES: Please send comments on the proposed ICR to Jack Faulk, USEPA, Office of Wastewater Management, Water Permits Division, 1200 Pennsylvania Avenue, NW, EPA East, Room 7329E, Mail Code 4203M, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Please direct questions or a request for a copy of the ICR to: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: *faulk.jack@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which have storm water discharges associated with large construction activity (40 CFR 122.26(b)(14)(x)) to waters of the U.S.

Title: Notice of Intent for Storm Water Discharges Associated With Construction Activity, EPA ICR Number 1842.04, OMB Control Number 2040–0188, that expires on March 31, 2003.

Abstract: This ICR calculates the burden and costs associated with the preparation of the Notice of Intent (NOI) for Storm Water Discharges Asssociated with Construction Activity under an NPDES General Permit, and the Storm Water Pollution Prevention Plan (SWPPP). EPA uses the data contained in the NOIs to track facilities covered by the storm water general permit and assess permit compliance. EPA has developed a format for construction NOIs. The standard one page form is called: Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity Under a NPDES General Permit (EPA Form Number 3510–6). The construction NOI form requires the following information to be submitted and signed and certified to by an authorized representative of the project:

—Name, address, phone number of the facility.
—Status of the owner/operator (whether federal, state, public, or private).
—Name and location of the project (City, State, ZIP, Latitude, Longitude, County).
—Whether the facility is located on Indian Country Lands.
—Whether a Storm Water Pollution Prevention Plan (SWPPP) has been prepared.
—Optional: location for viewing SWPPP and telephone number for scheduling viewing times: Address, City, State, ZIP.
—The name of the receiving water.
—Estimated construction start date and completion date.
—The estimated area to be disturbed (to nearest acre).
—An estimate of the likelihood of a discharge.
—Whether any protected species or critical habitat in the project area.
—Which section of part I.B.3.e.(2) of the permit through which permit eligibility with regard to protection of endangered species is satisfied.

Respondents are required to obtain coverage under the NPDES General Permit for storm water discharges associated with construction activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38.5 hours per response by large construction NPDES permittees. EPA estimates that annually 201,213 large construction projects will perform activities covered by this ICR. These NPDES permittees are expected to provide 201,213 responses to State and Federal permit authorities annually. Additionally, 45 states/territories will perform information collection activities. Nationally, NPDES permittees will spend 7,738,888 hours per year on information collection activities as a result of the Storm Water Construction General Permit NOI and SWPPP requirements. The 45 states/territories are expected to spend 186,323 hours per year on information collection activities. Capital and start-up costs associated with the large construction NOI and SWPPP are expected to be negligible. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 8, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–30943 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http//www.epa.gov/compliance/nepa/*. Weekly receipt of Environmental Impact Statements filed November 25, 2002, through November 29, 2002, pursuant to 40 CFR 1506.9.

EIS No. 020485, Final Supplement, AFS, WI, MI, Bond Falls Hydroelectric Project Related to Terms and Conditions for Geology and Soils, Water Quality and Quantity, Fisheries, Terrestrial, Recreation, Aesthetic, Cultural, Socioeconomic and Land Use Resources, Ontonagon River Basin, Valas County, WI and Ontonagon and Gogebic Counties, MI, Wait Period Ends: January 6, 2003, Contact: Karen Steven (906) 932–1330.

EIS No. 020486, FINAL EIS, SFW, AZ, Roosevelt Habitat Conservation Plan, Issuance of an Incidental Take Permit To Allow Continued Operation of Roosevelt Dam and Lake, Implementation, Gila and Maricopa Counties, AZ, Wait Period Ends: January 6, 2003, Contact: Sherry Barrett (520) 670–4617.

EIS No. 020487, FINAL EIS, FTA, NC, Phase I Regional Rail System Improvements, Durham to Raleigh to North Raleigh, Implementation, Durham and Wake Counties, NC, Wait Period Ends: January 6, 2003, Contact: Alex McNeil (404) 562–3511. This document is available on the Internet at: *http://www.rideTTA.org*.

EIS No. 020488, FINAL SUPPLEMENT, AFS, WY, Squirrel Meadows Grand Targhee Land Exchange Proposal, New Information and Current Environmental and Socioeconomic Conditions, Implementation, Targhee National Forest, Teton County, NY, Wait Period Ends: January 6, 2003, Contact: Cheryl Probert (208) 557–5821.

EIS No. 020489, DRAFT EIS, AFS, NM, Sacramento, Dry Canyon and Davis Grazing Allotments, Proposal to Authorize Livestock Grazing Activities, Lincoln National Forest, Sacramento Ranger District, Otero County, NM, Comment Period Ends: January 27, 2003, Contact: Frank R. Martinez (505) 682–2551.

EIS No. 020490, DRAFT EIS, AFS, AK, Licking Creek Timber Sale, Proposal To Harvest up To Approximately 33,5456 CCF (16.8 MMBF) of Timber, Tongass National Forest, Ketchikan-Misty Fiords Ranger District, Revillagigedo Island, Ketchikan, AK, Comment Period Ends: January 21, 2003, Contact: Kathy O'Connor (907) 228–4124.

EIS No. 020491, DRAFT EIS, FHW, MN, Trunk Highway 371 Corridor Project, Construction from Junction with U.S. Truck Highway 10 to 0.5 miles North to County State Aid Highway 48, Morrison County, MN, Comment Period Ends: February 10, 2003, Contact: Cheryl Martin (651) 291–6120.

EIS No. 020492, DRAFT SUPPLEMENT, COE, TX, Dallas Floodway Extension (DFE) Project, Additional Information, Upper Trinity River Basin, Flood Damage Reduction and Environmental Restoration, Dallas County, TX, Comment Period Ends: January 21, 2003, Contact: Gene T. Rice, Jr. (817) 886–1374.

EIS No. 020493, DRAFT EIS, COE, CA, San Diego Harbor Deepening (Central Navigation Channel) Involves Three Components: Deepening Federal Central Navigation Channel; Disposal of the Dredged Material at the LA–5 Ocean Disposal Site and Relocation, Disposal and Abandonment of a 69 kV Electrical Site, San Diego County, Comment Period Ends: January 21, 2003, Contact: Joy Jaiswal (213) 452–3851.

EIS No. 020494, DRAFT EIS, AFS, WI, Cayuga Project Area, To Implement Various Resource Management Projects, Chequamegon-Nicolet National Forest, Great Divide Ranger District, Ashland County, WI, Comment Period Ends: January 21, 2003, Contact: Debra Sigmund (715) 634–4821. This document is available on the Internet at: *http://www.fs.fed.us/r9/cnnf/natres/index.htm1*.

EIS No. 020495, DRAFT EIS, NPS, FL, Biscayne National Park General Management Plan Amendment, To Evaluate the Effects of Several Alternatives for the Long-Term Management Plan, Stillsville, Biscayne National Park, Homestead, Miami-Dade County, FL, Comment

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Period Ends: February 13, 2003, Contact: Linda Canzanelli (305) 230–1144. This document is available on the Internet at: *http://www.nps.gov/bisc/stiltsvillewelcome.htm.*

EIS No. 020496, FINAL EIS, AFS, CA, Red Star Restoration Project, Removal of Fire-Killed Trees, Fuel Reduction, Road Reconstruction and Decommissioning and Associated Restoration, Tahoe National Forest, Foresthill Ranger District, Placer County, CA, Wait Period Ends: January 06, 2003, Contact: Karen Jones (530) 367–2224. This document is available on the Internet at: *http://www.r5.fs.fed.us/tahoe/management.*

EIS No. 020497, FINAL EIS, DOE, WA, Grand Coulee-Bell 500-kV Transmission Line Project, Construction and Operation, U.S. Army COE Section 10 Permit Issuance, Douglas, Lincoln, Spokane and Grant Counties, WA, Wait Period Ends: January 06, 2003, Contact: Inez Graetzer (503) 230–3786.

Amended Notices

EIS No. 020473, DRAFT EIS, BLM, NV, Ivanpah Energy Center Project, Proposes to Construct and Operate a 500 Megawatt (MW) Gas-Fired Electric Power Generating Station in Southern Clark County, NV, Due: January 21, 2003, Contact: Jerrold E. Crockford (505) 599–6333. Revision of FR Notice Published on 11/22/2002: CEQ Comment Period Ending 1/3/2003 has been Corrected to 1/21/2003.

EIS No. 020475, DRAFT EIS, USN, CA, China Lake Naval Air Weapons Station, Proposed Military Operational Increases and Implementation of Associated Comprehensive Land Use and Integrated Natural Resources Management Plans, Located in the North and South Range, Inyo, Kern and San Bernardino Counties, CA, Due: February 18, 2003, Contact: John O'Gara (976) 939–3614. Revision of FR Notice Published on 11/22/2002: Contact Person's Phone Number Corrected from 076–093–9321 to 760–939–3614.

Dated: December 3, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–30948 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–FHW–J40157–MT Rating EC2, US 89 from Fairfield to Dupuyer Corridors Study, Reconstruction, Widening, Realignment and Route Connection between Yellowstone National Park to the South with Glacier National Park to the North, Teton and Pondera Counties, MT.

Summary: EPA expressed environmental concerns regarding impacts to wetlands and other aquatic resources. EPA recommended further analysis, disclosure and mitigation of these impacts. In addition, EPA recommended consultation with the Montana Department of Environmental Quality (MDEQ) to assure concurrence on proposed highway construction activities and compatibility with TMDL development.

ERP No. D–FRC–L05227–00 Rating EO2, Box Canyon Hydroelectric Project, (FERC Project No. 2042–013), New License Application for an existing 72-Megawatt (Mw) Hydroelectric Project, Public Utility District (PUD) No. 1, Pend Oreille River, Pend Oreille County, WA and Bonner County, ID.

Summary: EPA identified environmental objections with the preferred alternative because: (1) A comprehensive strategy for reducing elevated total dissolved gas concentrations has not been developed, (2) analyses needed to resolve questions related to fish passage at the project have not been completed and (3) studies needed to define project effects and mitigation have not been conducted nor completed.

ERP No. D–IBR–K39075–CA Rating EC2, Red Bluff Diversion Dam (RBDD) Fish Passage Improvement Project, Anadromous Fish Passage Improvements both Upstream and Downstream, Tehama-Colusa Canal Authority (TCCA), Tehama, Glenn, Colusa and Yolo Counties, CA.

Summary: EPA agreed with the project sponsors that the "Gates-Out" or "2-Month Gates-In" alternatives best meet the purpose and need of improving fish passage, while improving the reliability of agricultural water supply in the Tehama-Colusa and Corning Canal Systems. EPA expressed environmental concerns regarding hazardous materials, air quality and water quality impacts and requested additional information regarding these issues.

ERP No. DA–FHW–J40030–UT Rating EC2, US 189, Utah Valley to Heber Valley Widening and Realignment between the Junctions with UT–52 and US 40, Funding, Provo Canyon, Utah and Wasatch Counties, UT.

Summary: EPA expressed environmental concerns about the potential direct, indirect and cumulative impacts to aquatic resources. EPA requested that future documentation disclose impacts to aquatic resources and develop new alternatives that are responsive to the social and natural changes in the environment.

Final EISs

ERP No. F–AFS–J65013–MT Moose Post-Fire Project, Decrease in Potential Mortality from Bark Beetles to the remaining Live Douglas-fir and Spruce Trees, Merchantable Wood Fiber Recovery, Future Fire Risk Reduction and existing Road Access Modifications, Glacier View Ranger District, Flathead National Forest, Flathead County, MT.

Summary: EPA supports the selection of Alternative 3 although EPA continues to express environmental concerns regarding potential water quality impacts associated with logging in the watershed of Big Creek, a 303(d) listed stream.

ERP No. F–BLM–K65242–CA Coachella Valley California Desert Conservation Area Plan Amendment, Santa Rosa and San Jacinto Mountains Trails Management Plan, Implementation, Riverside and San Bernardino Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–H39010–KS Tuttle Creek Dam Safety Assurance Program, Flood Control, Water Supply, Water Quality, Fish and Wildlife, Recreation and Navigation Support Enhancements, Big Blue River, Riley and Potawatomie Counties, KS.

Summary: EPA has no objections to the preferred alternative of stabilizing the dam's foundation without drawdown.

ERP No. F–FHW–G40167–LA LA–1 Improvements Project, Golden Meadow to Port Fourchon Highway Construction, Funding, U.S. Army COE Section 10 and 404, NPDES and U.S. Coast Guard Bridge Permits Issuance, Lafoufche Parish, LA.

Summary: EPA has no objection to the selection and implementation of the preferred alternative.

ERP No. F–IBR–K61154–AZ Reach 11 Recreation Master Plan, Central Arizona Project (CAP) Canal, Between Cave Creek and Scottsdale Roads for Recreational Purposes and a Flood Detention Basin, City of Phoenix, Maricopa County, AZ.

Summary: EPA found that the Final EIS adequately addresses the issues raised in our comment letter on the Draft EIS.

ERP No. FA–FRC–L05208–WA Rocky Creek Hydroelectric Project, (FERC No. 10311–002) Construction and Operation of a 8.3 Megawatt (Mw) Project, License Application, Rocky Creek, Skagit County, WA.

Summary: EPA continues to have environmental objections to the proposed project because it would: (1) Pose a high risk of landslides that could significantly impact aquatic and terrestrial habitat and water quality, (2) degrade water quality in Martin Creek, designated an "extraordinary" water body by the State of Washington and (3) undermine the environmental and biological protection provisions of the State of Washington Habitat Conservation Plan.

Dated: December 3, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–30949 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0332; FRL–7282–6]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0332, must be received on or before January 6, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Richard Keigwin, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7618; e-mail address: keigwin.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0332. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

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entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0332 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0332. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0332.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall# #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0332. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol:* 352–ANL. *Applicant*: E.I. du Pont de Nemours and Company. *Product Name*: DuPont Famoxadone (DPX-JE874) Technical Fungicide. Fungicide. *Active ingredient*: Famoxadone at 97.8%. *Proposed classification/Use*: None. For the manufacture of fungicides only.

2. *File Symbol*: 352–ANU. *Applicant*: E.I. du Pont de Nemours and Company. *Product Name*: DPX-KP481 50DF Fungicide. Fungicide. *Active ingredients*: Famoxadone at 25% and Cymoxanil at 25%. *Proposed classification/Use*: None. For control of downy mildew in cucurbits and lettuce and for the control of early blight and late blight in potatoes and fruiting vegetables.

3. *File Symbol*: 3125–LLN. *Applicant*: Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: KWG 4168 300 CS. Fungicide. *Active ingredient*: Spiroxamine at 30.9%. Proposed classification/Use: None. For control of powdery mildew on grapes.

4. *File Symbol*: 3125–LLR. *Applicant*: Bayer CropScience. Product Name: Spiroxamine Technical. Fungicide. *Active ingredient*: Spiroxamine at 96.6%. *Proposed classification/Use*: None. For use in the manufacture of fungicides.

5. *File Symbol*: 7969–ROA. *Applicant*: BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. Product Name: BAS510 02F Turf Fungicide. Fungicide. *Active ingredient*: 3-Pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl) at 70.0%. *Proposed classification/Use*: None. For disease control on golf course turfgrass.

6. *File Symbol*: 7969–ROI. *Applicant*: BASF Corporation. *Product Name*: BAS510 F Manufacturing Use Product. Fungicide. *Active ingredient*: 3-Pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'- biphenyl)-2-yl) at 99.0%. *Proposed classification/Use*: None. For use in fungicide formulations.

7. *File Symbol*: 7969–ROO. *Applicant*: BASF Corporation. *Product Name*: BAS516 02 F Crop Fungicide. Fungicide. *Active ingredients*: 3-Pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl) at 25.2% and pyraclostrobin at 12.8%. *Proposed classification/Use*: None. For use on berries, bulb vegetables, grapes, carrots, pistachio, tree nuts, stone fruits, and strawberries.

8. *File Symbol*: 7969–ROT. *Applicant*: BASF Corporation. *Product Name*: BAS510 02 F Crop Fungicide. Fungicide. *Active ingredient*: 3-Pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl) at 70.0%. *Proposed classification/Use*: None. For use on berries, dry and succulent beans, bulb vegetables, canola, carrots, fruiting vegetables, grapes, lettuce, peanuts, pistachio, potatoes, tree nuts, stone fruits, and strawberries.

9. *File Symbol*: 11656–OI. *Applicant*: Western Farm Services, Inc., P.O. Box 1168, Fresno, CA 93715. *Product Name*: Bud Break Plant Growth Regulator. Plant Growth Regulator. *Active ingredients*: Ammonium nitrate at 36.0% and Calcium nitrate at 31.0%. *Proposed classification/Use*: None. For agricultural use only.

10. *File Symbol*: 62719–GTG. *Applicant*: Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. *Product Name*: Quinoxyfen Technical. Fungicide. *Active ingredient*: Quinoxyfen at 97.7%. *Proposed classification/Use*: None. For manufacturing use only.

11. *File Symbol*: 62719–GTL. *Applicant*: *Product Name*: Quintec. Fungicide. *Active ingredient*: Quinoxyfen at 22.58%. *Proposed classification/Use*: None. A protectant fungicide for the control of powdery mildew on grapes and hops.

12. *File Symbol*: 62719–GTU. *Applicant*: Dow AgroSciences LLC. *Product Name*: Quinoxyfen Manufacturing Use Concentrate. Fungicide. *Active ingredient*: Quinoxyfen at 53.5%. *Proposed classification/Use*: None. For manufacturing use only.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 26, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–30945 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0316; FRL–7281–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register**.

DATES: The deletions are effective on June 4, 2003, or on January 6, 2003 for product registration 019713–00263, unless the Agency receives a withdrawal request on or before dates given above. The 30–day comment period applies to product registration 019713–00263 only.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before dates given above.

ADDRESSES: Withdrawal requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0316 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0316. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the

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Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Active Ingredient	Delete From Label
000264–00325	SEVIN Brand 97.5% Manfacturing Concentrate Insecticide	Carbaryl	Poultry
001327–00041	Fulex Nicotine Fumigator	Nicotine	Greenhouse food crops
001812–00355	Trilin	Trifluralin	Eggplant, onion
004581–00402	TOPSIN M 70W Turf and Ornamentals	Thiophanate-methyl	Sod farms
004581–00405	TOPSIN M 4.5F Turf and Ornamentals	Thiophanate-methyl	Sod farms
019713–00263	Drexel Diazinon 5G	Diazinon	Celery
019713–00539	Drexel Metolachlor Technical	Metolachlor	Turf use
060063–00017	Sipcam Metolachlor Technical	Metolachlor	Turf use

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before dates indicated in **DATES** section of this notice to discuss withdrawal of the application for amendment. This 30 or 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.— REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709
001327	Fuller System, Inc., Box 3053, Woburn, MA 01888
001812	Griffin L.L.C., Box 1847, Valdosta, GA 31603

TABLE 2.— REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Company No.	Company Name and Address
004581	Cerexagri, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19046
019713	Drexel Chemical Co, 1700 Channel Ave., Box 13327, Memphis, TN 38113
060063	Sipcam Agro USA, Inc., 300 Colonial Parkway, Suite 230, Roswell, GA 30076

III. What is the Agency Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before dates indicated in **DATES** section of this notice.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 21, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division.

[FR Doc. 02–30944 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0319; FRL–7281–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0319, must be received on or before January 6, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: gandhi.bipin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide manufacturer, or antimicrobial pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111), e.g., Crop Production.
- Industry (NAICS 112), e.g., Animal Production.
- Industry (NAICS 311), e.g., Food manufacturing.
- Industry (NAICS 32532), e.g., Pesticide Manufacturing.
- Industry (NAICS 32561), e.g., Antimicrobial Pesticide.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0319. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-

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mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0319. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0319. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0319.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0319. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

3E6523

EPA has received a pesticide petition (PP 3E6523) from Akzo Nobel Industrial Specialties, Inc., 15200 Almeda Road, Houston, TX 77053 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.960 to establish an exemption from the requirement of a tolerance for α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates, poly(oxyethylene) content is 4–12 moles. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Akzo Nobel is petitioning that α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates be exempt from the requirement of a tolerance based upon the definition of a low risk polymer under 40 CFR 723.250(e). Therefore, an analytical method to determine residues of α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates in raw agricultural commodities (RACs) is not required.

B. Toxicological Profile

As part of the EPA policy statement on inert ingredients, the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without the data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the required studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. Akzo Nobel Industrial Specialties, Inc. believes that the data and the information described below are adequate to ascertain the toxicology and characterize the risk associated with the use of α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates, poly(oxyethylene) content is 4–12 moles which represent C_8 alkyl ether citrate (CAS Registration Number: 330977–00–9), C_{10}-C_{16} alkyl ether citrates (CAS Registration Number: 330985–58–5) and C_{16}-C_{18}-alkyl ether citrates (CAS Registration Number: 330985–61–0) as inert ingredients in pesticide formulations.

In the case of certain chemical substances that are defined as "polymers" the EPA has established a set of criteria which identify categories of polymers that present low risk. These criteria (codified in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The EPA believes that polymers meeting the criteria noted below will present minimal or no risk.

α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates, poly(oxyethylene) content is 4–12 moles which represent C_8 alkyl ether citrate (CAS Registration Number: 330977–00–9), C_{10}-C_{16} alkyl ether citrates (CAS Registration Number: 330985–58–5) and C_{16}-C_{18}-alkyl ether citrates (CAS Registration Number: 330985–61–0) conform to the definition of a polymer given in 40 CFR 723.250(b) and meet the following criteria that are used to identify low risk polymers.

1. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are not cationic polymers, nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

2. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates contain as an integral part of their composition the atomic elements carbon, oxygen, and hydrogen.

3. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates do not contain as an integral part of their composition any elements other those listed in 40 CFR 723.250(d)(2)(ii).

4. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are not designed, nor are they reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are not manufactured or imported from monomers and/or other reactants that are not already included on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are not water absorbing polymers.

7. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates do not contain any group as reactive functional groups.

8. The minimum number-average molecular weights of polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are listed as shown below:

- C_8 alkyl ether citrate (CAS Registration Number: 330977–00–9) 1,300 daltons
- C_{10}-C_{16} alkyl ether citrates (CAS Registration Number: 330985–58–5) 1,100 daltons
- C_{16}-C_{18}-alkyl ether citrates (CAS Registration Number: 330985–61–0) 1,300 daltons

Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

9. The polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates have number-average molecular weights greater than 1,100 and contain less than 10% oligomeric material below molecular weight of 500 and less than 25% oligomeric material below 1,000 molecular weight.

In addition, the monomers/reactants that are used for the production of polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates have prior clearances by the Food and Drug Administration (FDA) under 21 CFR for food contact applications, and by the Environmental Protection Agency under 40 CFR for use in pesticide formulations applied to raw agricultural commodities (RAC).

1. Citric acid (CAS Registration Number: 77–92–9) was affirmed by FDA as generally recognized as safe (GRAS) under 21 CFR 184.1033 for use in food for human consumption.

2. Citric acid (CAS Registration Number: 77–92–9) is cleared under 40 CFR 180.1001(c) and (e) as an inert ingredient in pesticide formulations applied to RAC. It is included in Inerts - List 4A.

3. Fatty alcohols are widely present in oils, fats and waxes which are used in human food. Some waxes (bees wax, candelilla wax and carnauba wax) are GRAS substances (21 CFR Part 184). Bees wax and carnauba wax are in Inerts - List 4B.

4. C_8-C_{18} Alcohols are List 3 inerts. Ethoxylated C_{10}-C_{16} alcohols (CAS Registration Number: 68002–97–1) and ethoxylated C_{16}-C_{18} alcohols (CAS Registration Number: 68439–49–6) are included in Inerts - List 3. Ethoxylated C_9-C_{16} alcohols (CAS Registration Number: 97043– 91–9) are in Inerts - List 4B.

C. Aggregate Exposure

Although exposure to three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates may occur through dietary sources, the chemical characteristics of these polymers lead to the conclusion that there is a reasonable certainty of no harm from aggregate exposure to these polymers.

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The Agency has maintained that polymers meeting the polymer exemption criteria will present minimal risk to human health when used as inert ingredients in pesticide products applied to food crops. EPA has also established exemptions from tolerance for polymeric materials used as pesticide inert ingredients that it considers to be intrinsically safe based on the fact that they are listed on the TSCA Inventory or meet the requirements of the amended TSCA polymer exemption and are thereby not subject to the requirements of the pre-manufacturing notification.

Any exposure resulting from the approval of three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates in pesticide formulations for use on growing crops or to RAC after harvest is not warranted.

D. Cumulative Effects

At this time there is no information to indicate that any toxic effects produced by three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates having a number average molecular weight of at least 1,100 would be cumulative with those of any other chemical substance(s). Given the categorization of these polymers as a "low risk polymer" (40 CFR 723.250) and their proposed use as inert ingredients in pesticide formulations, there is no reasonable expectation of increased risk due to cumulative exposure.

E. Safety Determination

1. *U.S. population.* As a matter of policy, EPA has in the past established exemptions from tolerance for polymeric substances used as pesticide inert ingredients that it considers to be intrinsically safe based on the fact that they are listed on the TSCA Inventory or meet the requirements of the amended TSCA polymer exemption and are thereby not subject to the requirements of premanufacture notice (PMN). The Agency has maintained that polymers meeting the polymer exemption criteria will present minimal risk to human health when used as inert ingredients in pesticide formulations.

2. *Infants and children.* FFDCA section 408 provides that EPA shall supply an additional tenfold margin of safety for infants and children in the case of threshold effects where prenatal and/or postnatal toxicity are found or there is incompleteness of the database, unless EPA concludes that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through the use of margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low expected toxicity of these three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates, a safety factor analysis is not required for assessing the risk. For the same reasons the additional safety factor is unnecessary.

F. International Tolerances

Akzo Nobel Industrial Specialties, Inc. is not aware of any country requiring a tolerance for the three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates having a number average molecular weights of at least 1,100. Nor have there been any CODEX Maximum Residue Levels (MRLs) established for any food crops at this time.

[FR Doc. 02–30946 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0211; FRL–7283–3]

Imazethapyr; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0211, must be received on or before January 6, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305 5697; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0211. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0211 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0211. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0211.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0211. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be

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included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4 If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 27, 2002.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 6F4746

EPA has received a pesticide petition (PP 6F4746) from BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for the sum of the residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid) as its free acid or its ammonium salt (calculated as the acid), and its metabolite 2-[4, 5-dihydro-4-methyl-4-(1-methylethyl-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridinecarboxylic acid both free and conjugated in or on nongrass animal feed crops, forage, hay and seed at 3.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of imazethapyr in clover is adequately understood. Based on studies conducted on soybean, edible and forage legumes, corn and canola, parent imazethapyr and common metabolites CL 288511 and CL 182704 are the only residues of concern for tolerance setting purposes.

2. *Analytical method.* A practical analytical method for detecting and measuring imazethapyr residues of concern in alfalfa and clover commodities was submitted to EPA with the alfalfa petition. The analytical method for alfalfa and clover forage, hay and seed is based on Capillary Electrophoresis (CE) with limits of quantitation (LOQ) of 0.50 ppm. This validated method was approved for analysis in alfalfa and is appropriate for the enforcement purposes of this petition.

3. *Magnitude of residues.* A total of twelve field trials were conducted with imazethapyr and its metabolites on clover to demonstrate the residues in clover forage, hay and seed. In all clover residue studies, imazethapyr was applied at 0.094 lb ae/A, the maximum proposed label rate. Clover samples were cut at 15 DAT and 30 DAT, the proposed preharvest interval (PHI). At 30 DAT, all forage samples contained residues of imazethapyr and CL 288511 at less than 0.5 ppm. In most 30 DAT forage samples, residues of CL 182704 were below the LOQ (0.5 ppm). No hay samples had residues of imazethapyr above the LOQ (0.5 ppm). There was only one hay sample containing residues of CL 288511 above the LOQ. In all cases, for the 15 and 30 DAT forage and hay samples, the primary residue was CL 182704 (the glucose conjugate of CL 288511). Since CL 182704 is the derivitized form of CL 288511, the residues were converted to a total CL 288511 equivalent residue basis. Seed and seed screening samples were collected from studies conducted at two sites. In both studies, residues of imazethapyr, CL 288511 and CL 182704 were less than the LOQ.

The proposed tolerance for nongrass animal feeds is 3.0 ppm for imazethapyr, CL 288511 and the glucose conjugate, CL 182704. Residue levels of imazethapyr and CL 288511 in clover are all below the proposed tolerance. When residues of CL 182704 are adjusted to CL 288511 equivalents residues, the total equivalent CL 288511 residues are below the proposed 3.0 tolerance level in all clover studies.

B. Toxicological Profile.

A complete, valid and reliable database of mammalian and genetic toxicology studies supports the proposed tolerance for imazethapyr on nongrass animal feeds. This database was previously reviewed by the EPA in support of the tolerance petitions and registration of imazethapyr on soybeans, legume vegetables, corn, alfalfa and peanuts.

1. *Acute toxicity.* Imazethapyr technical is considered to be nontoxic (Toxicity Category IV) to the rat by the oral route of exposure. In an acute oral toxicity study in rats, the LD_{50} value of imazethapyr technical was greater than 5,000 milligrams/kilogram/ body weight (mg/kg b.w.) for males and females. The results from an acute dermal toxicity study in rabbits indicate that imazethapyr is slightly toxic (Toxicity Category III) to rabbits by the dermal route of exposure. The dermal LD_{50} value of imazethapyr technical was greater than 2,000 mg/kg b.w. for both male and female rabbits. Imazethapyr technical is considered to be non-toxic (Toxicity Category IV) to the rat by the respiratory route of exposure. The 4–hour LC_{50} value was greater than 3.27 mg/l (analytical) and greater than 4.21 mg/l (gravimetric) for both males and females. Imazethapyr technical was shown to be non-irritating to rabbit skin (Toxicity Category IV) and mildly irritating to the rabbit eye (Toxicity Category III). Based on the results of a dermal sensitization study (Buehler), imazethapyr technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicity.* Imazethapyr technical was tested in a battery of four *in vitro* and one *in vivo* genotoxicity assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazethapyr does not pose a mutagenic or genotoxic risk.

3. *Reproductive and developmental toxicity.* The developmental toxicity study in Sprague Dawley rats conducted with imazethapyr technical showed no evidence of developmental toxicity or teratogenic effects in fetuses. Thus, imazethapyr is neither a developmental toxicant nor a teratogen in the rat. The no observed adverse effect level (NOAEL) for maternal toxicity was 375 mg/kg b.w./day, based on clinical signs of toxicity in the dams (e.g. excessive salivation) at 1,125 mg/kg b.w./day. Imazethapyr technical did not exhibit developmental toxicity or teratogenic effects at maternal dosages up to and including 1,125 mg/kg b.w./day, the highest dose tested (HDT).

Results from a developmental toxicity study in New Zealand White rabbits with imazethapyr technical also indicated no evidence of developmental toxicity or teratogenicity. Thus, imazethapyr technical is neither a developmental toxicant nor a teratogen in the rabbit. The NOAEL for maternal toxicity was 300 mg/kg b.w./day, based on decreased food consumption and body weight gain, abortion, gastric ulceration and death at 1,000 mg/kg b.w./day, the next HDT. The NOAEL for developmental toxicity and teratogenic effects was determined to be > 1,000 mg/kg b.w./day based on no developmental toxicity or fetal malformations associated with the administration of all doses.

The results from the 2–generation reproduction toxicity study in rats with imazethapyr technical support a NOAEL for reproductive toxicity of 10,000 ppm (equivalent to 800 mg/kg b.w./day). The NOAEL for non-reproductive parameters (i.e. decreased weanling body weights) is 5,000 ppm.

4. *Subchronic toxicity.* A short-term (21–day) dermal toxicity study in rabbits was conducted with imazethapyr technical. No dermal irritation or abnormal clinical signs were observed at dose levels up to and including 1,000 mg/kg b.w./day HDT, supporting a NOAEL for dermal irritation and systemic toxicity of 1,000 mg/kg b.w./day. In a subchronic (13–week) dietary toxicity study in rats with imazethapyr technical, no signs of systemic toxicity were noted, supporting a NOAEL of 10,000 ppm the highest concentration tested (HCT) (equivalent to 820 mg/kg b.w./day).

In a subchronic (13–week) dietary toxicity study in dogs with imazethapyr technical, no signs of systemic toxicity were noted, supporting a NOAEL of 10,000 ppm (equivalent to 250 mg/kg b.w./day), the (HCT).

5. *Chronic toxicity.* A 1–year dietary toxicity study was conducted with imazethapyr technical in Beagle dogs at dietary concentrations of 0, 1,000, 5,000 and 10,000 ppm. In this study, the NOAEL for systemic toxicity was 1,000 ppm (equivalent to 25 mg/kg b.w./day), based on slight anemia, i.e., decreased red cell parameters observed at 5,000 and 10,000 ppm concentrations. No treatment-related histopathological lesions were observed at any dietary concentration, including the HCT (10,000 ppm).

In a 2–year chronic dietary oncogenicity and toxicity study in rats conducted with imazethapyr technical, the NOAEL for oncogenicity and chronic systemic toxicity was 10,000 ppm (equivalent to 500 mg/kg b.w./day), the HCT. An 18–month chronic dietary oncogenicity and toxicity study in mice with imazethapyr technical supports a NOAEL for oncogenicity of 10,000 ppm, the HCT (equivalent to 1,500 mg/kg b.w./day), and a NOAEL for chronic systemic toxicity of 5,000 ppm (equivalent to 750 mg/kg b.w./day), based on decreased body weight gain in both sexes).

The EPA has classified imazethapyr as negative for carcinogenicity (evidence of non-carcinogenicity for humans) based on the absence of treatment-related tumors in acceptable carcinogenicity studies in both rats and mice.

6. *Animal metabolism.* The rat, goat and hen metabolism studies indicate that the qualitative nature of the residues of imazethapyr in animals is adequately understood.

In three rat metabolism studies conducted with radiolabeled imazethapyr technical the major route of elimination of the herbicide was through rapid excretion in urine and to a much lesser extent in feces. In the first study, almost 100% of the administered material was recovered in excreta within 96 hours (89–95% in urine, 6–11% in feces). The major residue in urine and feces was parent compound. Approximately 2% of the dose was metabolized and excreted as the a-hydroxyethyl derivative of imazethapyr. In the second study, the test material was rapidly and completely eliminated unchanged in the urine within 72 hours of dosing. After 24 hours, 92.1% of radioactivity was excreted in the urine with 4.67% in the feces. There was no significant bioaccumulation of radioactivity in the tissues from this rat metabolism study (< 0.01 ppm after 24 hours). In the third study, four groups treated with radiolabeled imazethapyr readily excreted > 95% of the test material in the urine and feces within 48 hours. A high percentage (97–99%) of the test material was excreted in the urine as unchanged parent, the remainder as the a-hydroxyethyl derivative of imazethapyr. For all three studies, the major route of elimination of the herbicide in rats was through rapid excretion of unchanged parent compound in urine. It is clear that imazethapyr and its related residues do not accumulate in tissues and organs. In the goat metabolism study, parent ^{14}C-imazethapyr was dosed to lactating goats at 0.25 ppm and 1.25 ppm. Results showed ^{14}C-residues of < 0.01 ppm in milk and < 0.05 ppm in leg muscle, loin muscle, blood, fat, liver and kidney. Laying hens dosed at 0.5 ppm and 2.5 ppm with ^{14}C-imazethapyr showed ^{14}C-residues of < 0.05 ppm in eggs and all tissues (blood, muscle, skin/fat, liver and kidney).

Additional animal metabolism studies have been conducted with CL 288511 (main metabolite in treated crops fed to livestock) in both laying hens and lactating goats. These studies have been repeated to support subsequent use extensions on crops used as livestock feed items which would theoretically result in a higher dosing of imazethapyr derived residues to livestock (i.e., corn, alfalfa). In these studies, lactating goats dosed at 42 ppm of ^{14}C-CL 288511 showed ^{14}C-residues of < 0.01 ppm in milk, leg muscle, loin muscle and omental fat. ^{14}C-Residues in blood were mostly < 0.01 ppm but reached 0.01 ppm on two of the treatment days. ^{14}C-Residue levels in the liver and kidney were 0.02 and 0.09 ppm, respectively. Laying hens dosed at 10.2 ppm of ^{14}C-imazethapyr showed ^{14}C-residues of < 0.01 ppm in eggs and all tissues (blood, muscle, skin/fat, liver and kidney). ^{14}C-imazethapyr or ^{14}C-CL 288511 ingested

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by either laying hens or lactating goats was excreted within 48 hours of dosing. These studies indicate that parent imazethapyr and CL 288511-related residues do not accumulate in milk or edible tissues of the ruminant.

7. *Metabolite toxicology.* Metabolism studies in soybean, peanut, corn, alfalfa and canola indicate that the only significant metabolites are the a-hydroxyethyl derivative of imazethapyr, CL 288511 and its glucose conjugate CL 182704. The a-hydroxyethyl metabolite has also been identified in minor quantities in the previously submitted rat metabolism studies and in goat and hen metabolism studies. No additional toxicologically significant metabolites were detected in any of the plant or animal metabolism studies.

8. *Endocrine disruption.* Collective organ weight data and histopathological findings from the 2–generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in three different animal species demonstrate no apparent estrogenic effects or treatment-related effects of imazethapyr on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* The potential dietary exposure to imazethapyr has been calculated from the proposed tolerance for use on rice and previously established tolerances for peanuts, legume vegetables, soybeans, alfalfa, endive, lettuce, and corn. This very conservative chronic dietary exposure estimate used the proposed tolerance of 0.5 parts per million (ppm) for rice, and tolerance values of 0.1 ppm for peanuts, 0.1 ppm for legume vegetables, 0.1 ppm for soybeans, 3.0 ppm for alfalfa, 0.1 ppm for endive (escarole), 0.1 ppm for lettuce, and 0.1 ppm for corn. In addition, these estimates assume that 100% of these crops contain imazethapyr residues. In support of this tolerance petition, a proposed tolerance of 3.0 ppm for nongrass animal feeds would not be expected to contribute significantly to this dietary risk assessment.

2. *Food.* Potential exposure to residues of imazethapyr in food will be restricted to intake of rice, peanuts, legume vegetables, soybeans, alfalfa (sprouts), endive, lettuce, and corn. Using the assumptions discussed above, the Theoretical Maximum Residue Concentration (TMRC) values of imazethapyr were calculated for the U.S. general population and subgroups. Based on the tolerances given above, the TMRC values for each group are:

- 0.000419 mg/kg b.w./day for the general U.S. population.
- 0.001104 mg/kg b.w./day for all infants (> 1 year).
- 0.001298 mg/kg b.w./day for non-nursing infants.
- 0.000870 mg/kg b.w./day for children 1 to 6 years of age.
- 0.000610 mg/kg b.w./day for children 7 to 12 years of age.

The TMRC values indicate that non-nursing infants are the most highly exposed population subgroup.

3. *Drinking water.* As a screening-level assessment for aggregate exposure, the U.S. EPA evaluates a drinking water level of comparison (DWLOC), which is the maximum concentration of a chemical in drinking water that would be acceptable in light of total aggregate exposure to that chemical. In 1990, the EPA set the reference dose (RfD) for imazethapyr at 0.25 mg/kg b.w./day, based on the NOAEL from the 1–year dietary toxicity study in dogs of 25 mg/kg b.w./day and a 100-fold uncertainty factor. Based on the cRfD of 0.25 mg/kg b.w./day and the EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of imazethapyr in water. For the adult population the chronic DWLOC was 8735 ppb and for children the DWLOC was estimated to be 2491 parts per billion (ppb).

Chronic drinking water exposure analyses were calculated for imazethapyr using EPA screening concentration in ground water (SCI-GROW), and genetic expected environmental concentration (GENEEC) for surface water. The SCI-GROW value is 16.54 ppb and the calculated peak GENEEC value is 5.96 ppb by aerial application. For the U.S. adult population, the estimated exposures of imazethapyr residues in ground water and surface water are approximately 0.19% and 0.07%, respectively, of the DWLOC. The estimated exposures of children to imazethapyr residues in groundwater and surface water are approximately 0.66%, and 0.24%, respectively, of the DWLOC. Therefore, the exposures to drinking water from imazethapyr use are negligible.

4. *Non-dietary exposure.* Imazethapyr products are not currently registered or requested to be registered for residential use; therefore the estimate of residential exposure is not relevant to this tolerance petition.

D. Cumulative Effects

Imazethapyr is a member of the imidazolinone class of herbicides. Other compounds of this class are registered for use in the U.S. However, the herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxyacid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of the imidazolinone compounds in animals. We are aware of no information to indicate or suggest that imazethapyr has any toxic effects on mammals that would be cumulative with those of any other chemical. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of action.

E. Safety Determination

1. *U.S. population.* The RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. In 1990, the EPA set the RfD for imazethapyr at 0.25 mg/kg b.w./day, based on the NOAEL from the 1–year dietary toxicity study in dogs of 25 mg/kg b.w./day and a 100-fold uncertainty factor. The chronic dietary exposure of 0.000419 mg/kg b.w./day for the general U.S. population will utilize only 0.2% of the RfD of 0.25 mg/kg b.w./day. EPA generally has no concern for exposures below 100% of the RfD. Due to the low toxicity of imazethapyr, an acute exposure dietary risk assessment is not warranted. The complete and reliable toxicity database, the low toxicity of the active ingredient, and the results of the chronic dietary exposure risk assessment support the conclusion that there is a "reasonable certainty of no harm" from the proposed use of imazethapyr on imidazolinone tolerant rice, canola and nongrass animal feeds.

2. *Infants and children.* The conservative dietary exposure estimates of all registered uses including the proposed tolerance for rice show exposures of 0.001104, 0.000440, 0.000870, and 0.000610 mg/kg b.w./day which will utilize 0.4, 0.2, 0.3, and 0.2% of the RfD for all infants (< 1 year), nursing infants, children 1-6 years, and children 7-12 years, respectively. The chronic dietary exposures for non-nursing infants, the most highly exposed subgroup, will utilize only 0.5% of the RfD. Results from the 2-generation reproduction study in rats and the developmental toxicity studies in rabbits and rats indicate no increased sensitivity to developing offspring when compared to parental toxicity. These results also indicate that imazethapyr is neither a developmental toxicant nor a teratogen in either the rat or rabbit. Therefore, an additional safety factor is not warranted, and the RfD of 0.25 mg/kg b.w./day, which utilizes a 100-fold safety factor is appropriate to ensure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There are no Codex maximum residue levels established or proposed for residues of imazethapyr on nongrass animal feeds.

[FR Doc. 02–30947 Filed 12–5–02; 8:45 a.m.]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7419–2]

Alaric, Inc. Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative order on consent.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an administrative order on consent, pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, regarding the Alaric, Inc. Superfund Site, located in Tampa, Hillsborough County, Florida, with the following parties: Lee W. Oglesby, Sr. and Carolyn M. Oglesby, as individuals; the Lee W. Oglesby, Sr. Living Trust, dated September 22, 1998, as amended; Lee W. Oglesby, Sr., as trustee and beneficiary of the Lee W. Oglesby, Sr. Living Trust, dated September 22, 1998, as amended; and successor trustees of the Lee W. Oglesby, Sr. Living Trust, dated September 22, 1998, as amended. The settlement is designed to resolve fully each settling party's liability at the Site through a covenant not to sue under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and provide contribution protection. EPA will consider public comments on the proposed settlement within thirty (30) days of publication of this notice. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center, Waste Management Division, CERCLA Program Services Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: November 20, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–30942 Filed 12–5–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–48–A (Auction No. 48); DA 02–1441]

Auction of Licenses for the Lower and Upper Paging Bands Scheduled for May 13, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of 8,874 licenses in the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz) and 1,328 licenses in the upper paging bands (929–931 MHz) scheduled to commence on May 13, 2003. This document also seeks comment on reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before December 13, 2002, and reply comments are due on or before December 18, 2002.

ADDRESSES: Comments and reply comments must be sent by electronic mail to *auction48@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Rosemary Cabral at (202) 418–0660. *For general auction questions:* Roy Knowles at (717) 338–2888 or Barbara Sibert at (717) 338–2888. *For service rule questions:* Bettye Woodward at (202) 418–1345.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 48 Comment Public Notice* released on November 7, 2002. The complete text of the *Auction No. 48 Comment Public Notice* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 48 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* The complete list of licenses available for this auction will be provided in electronic format only, available as "Attachment A" to the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/.*

1. By the *Auction No. 48 Comment Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the auction of 8,874 licenses in the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz) and 1,328 licenses in the upper paging bands (929–931 MHz) scheduled to commence on May 13, 2003 ("Auction No. 48"). This auction will include licenses that remained unsold from a previous auction or were defaulted on by a winning bidder in a previous auction. Due to the large volume of licenses in Auction No. 48, the complete list of licenses available for this auction will be provided in electronic format only, available as "Attachment A" to the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/.*

2. In the *Paging Reconsideration Order*, 64 FR 33762 (June 24, 1999), the Commission concluded that the lower bands licenses should be awarded in each of the 175 geographic areas known as Economic Areas (EAs), and the upper band licenses should be awarded in each of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs both encompass the United States, Guam and Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa.

3. The following tables contain the Block/Frequency Cross-Reference List for the paging bands:

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35 MHz Lower Bands Unpaired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency
CA	35.19–35.21	CE	35.29–35.31	CI	35.45–35.47	CM	35.57–35.59
CB	35.21–35.23	CF	35.33–35.35	CJ	35.49–35.51	CN	35.59–35.61
CC	35.23–35.25	CG	35.37–35.39	CK	35.53–35.55	CO	35.61–35.63
CD	35.25–35.27	CH	35.41–35.43	CL	35.55–35.57	CP	35.65–35.67

43 MHz Lower Bands Unpaired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency
DA	43.19–43.21	DE	43.29–43.31	DI	43.45–43.47	DM	43.57–43.59
DB	43.21–43.23	DF	43.33–43.35	DJ	43.49–43.51	DN	43.59–43.61
DC	43.23–43.25	DG	43.37–43.39	DK	43.53–43.55	DO	43.61–43.63
DD	43.25–43.27	DH	43.41–43.43	DL	43.55–43.57	DP	43.65–43.67

152 MHz and 158 MHz Lower Bands Unpaired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency
EA	152.230–152.250	EC	158.090–158.110
EB	152.830–152.850	ED	158.690–158.710

152 MHz Lower Bands Paired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency
FA	152.015–152.045 / 158.475–158.505	FJ	152.555–152.585 / 157.815–157.845
FB	152.045–152.075 / 158.505–158.535	FK	152.585–152.615 / 157.845–157.875
FC	152.075–152.105 / 158.535–158.565	FL	152.615–152.645 / 157.875–157.905
FD	152.105–152.135 / 158.565–158.595	FM	152.645–152.675 / 157.905–157.935
FE	152.135–152.165 / 158.595–158.625	FN	152.675–152.705 / 157.935–157.965
FF	152.165–152.195 / 158.625–158.655	FO	152.705–152.735 / 157.965–157.995
FG	152.195–152.225 / 158.655–158.685	FP	152.735–152.765 / 157.995–158.025
FH	152.495–152.525 / 157.755–157.785	FQ	152.765–152.795 / 158.025–158.055
FI	152.525–152.555 / 157.785–157.815	FR	152.795–152.825 / 158.055–158.085

454 MHz Lower Bands Paired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency
GA	454.0125–454.0375 / 459.0125–459.0375	GN	454.3375–454.3625 / 459.3375–459.3625
GB	454.0375–454.0625 / 459.0375–459.0625	GO	454.3625–454.3875 / 459.3625–459.3875
GC	454.0625–454.0875 / 459.0625–459.0875	GP	454.3875–454.4125 / 459.3875–459.4125
GD	454.0875–454.1125 / 459.0875–459.1125	GQ	454.4125–454.4375 / 459.4125–459.4375
GE	454.1125–454.1375 / 459.1125–459.1375	GR	454.4375–454.4625 / 459.4375–459.4625
GF	454.1375–454.1625 / 459.1375–459.1625	GS	454.4625–454.4875 / 459.4625–459.4875
GG	454.1625–454.1875 / 459.1625–459.1875	GT	454.4875–454.5125 / 459.4875–459.5125
GH	454.1875–454.2125 / 459.1875–459.2125	GU	454.5125–454.5375 / 459.5125–459.5375
GI	454.2125–454.2375 / 459.2125–459.2375	GV	454.5375–454.5625 / 459.5375–459.5625
GJ	454.2375–454.2625 / 459.2375–459.2625	GW	454.5625–454.5875 / 459.5625–459.5875
GK	454.2625–454.2875 / 459.2625–459.2875	GX	454.5875–454.6125 / 459.5875–459.6125
GL	454.2875–454.3125 / 459.2875–459.3125	GY	454.6125–454.6375 / 459.6125–459.6375
GM	454.3125–454.3375 / 459.3125–459.3375	GZ	454.6375–454.6625 / 459.6375–459.6625

929–931 MHz Upper Bands Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency
A	929.0125	AA	931.0125	AN	931.3375	BA	931.6625
B	929.1125	AB	931.0375	AO	931.3625	BB	931.6875
C	929.2375	AC	931.0625	AP	931.3875	BC	931.7125
D	929.3125	AD	931.0875	AQ	931.4125	BD	931.7375
E	929.3875	AE	931.1125	AR	931.4375	BE	931.7625
F	929.4375	AF	931.1375	AS	931.4625	BF	931.7875
G	929.4625	AG	931.1625	AT	931.4875	BG	931.8125
H	929.6375	AH	931.1875	AU	931.5125	BH	931.8375
I	929.6875	AI	931.2125	AV	931.5375	BI	931.8625
J	929.7875	AJ	931.2375	AW	931.5625	BJ	931.9625
K	929.9125	AK	931.2625	AX	931.5875	BK	931.9875
L	929.9625	AL	931.2875	AY	931.6125	.....	.....
.....	931.3125	AM	.....	AZ	931.6375	.....	.....

Note: For Auction No. 48, licenses are not available in every block listed in the tables. The complete list of licenses available for Auction No. 48 will be provided in electronic format only, available as "Attachment A" to the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*.

4. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau seeks comment on the following issues relating to Auction No. 48.

I. Auction Structure

A. Simultaneous Multiple Round (SMR) Auction Design

5. The Bureau proposes to award the licenses included in Auction No. 48 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

6. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.

7. The Bureau proposes to make the upfront payments equal to the minimum opening bids, which are established based on similar facts as described in section II.B. The specific upfront payments for each license are set forth in the list of licenses available for Auction No. 48 ("Attachment A"), available with the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*. The Bureau seeks comment on this proposal.

8. The Bureau further propose that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment, listed in the license inventory available for Auction No. 48 ("Attachment A"), available with the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

C. Activity Rules

9. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than wait until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

10. The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

11. For Auction No. 48, the Bureau proposes the following activity requirements:

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Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths ($^{50}/_{49}$).

12. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

13. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

14. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

15. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

16. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

17. The Bureau proposes that each bidder in Auction No. 48 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. The Bureau seeks comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

18. The Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

F. Information Available to Bidders During the Course of the Auction

19. In the *Paging Second Report and Order*, 62 FR 11616 (March 12, 1997), the Commission concluded that, due to the large number of licenses to be auctioned, limiting the disclosure of information to bidders during the course of paging auctions (*e.g.*, revealing only high bids and total number of bids on each license and withholding bidder identities) might help to speed the pace of the auctions. In the *Paging Reconsideration Order*, the Commission directed the Bureau to seek further comment on this issue. Based on its experience in Auctions No. 26 and No. 40, in which the information was disclosed, the Bureau tentatively concludes that it is unnecessary to withhold bidder identities in Auction No. 48. The Bureau seeks comment on this tentative conclusion. In addition, as in Auctions No. 26 and No. 40, the Bureau proposes to disclose all information relating to the bids during Auction No. 48 after each round of bidding closes, including all bids and withdrawals placed in each round, the identity of the bidder placing each bid or withdrawal, and the net and gross amounts of each bid or withdrawal. The Bureau seeks comment on this proposal.

II. Bidding Procedures

A. Round Structure

20. The Commission will conduct Auction No. 48 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network, will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

21. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

22. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

23. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

24. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

25. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 48. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective auction tool.

26. Because multiple licenses in the same geographic area are being auctioned at the same time, under the same general conditions, the Commission believes that it is appropriate to use a common baseline to establish the minimum opening bid formula for all the licenses in the auction. The gross high bids from the prior Lower and Upper Paging Bands Auction (Auction No. 40) provide the most comprehensive paging baseline. Therefore, the Bureau proposes to base the minimum opening bid for each license available in Auction No. 48 on the average of the corresponding gross high bids received in Auction No. 40, as follows:

- For a license being auctioned by MEA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 40 in the same MEA.
- For a license being auctioned by EA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 40 in the same EA.

The Commission will set a "floor" for minimum opening bids at $500 for licenses in both the upper paging bands (929–931 MHz) and the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz).

27. This formula is intended to apply to all geographic paging licenses in Auction No. 48, and takes into account considerations discussed. The specific proposed minimum opening bid for each license available in Auction No. 48 is set forth in the list of licenses provided in electronic format as "Attachment A" of the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*. Comment is sought on this proposal.

28. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the paging bands. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

29. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

30. For Auction No. 48, the Bureau proposes to set the defined increment for each license based on a percentage of the standing high bid on the license or, if no bid has been placed on the license, a percentage of the minimum opening bid for the license. The defined increment will be calculated as follows. Presuming, for example, that the percentage being used is 20 percent, we will multiply the standing high bid (or, if no standing high bid exists for the particular license, the minimum opening bid) by 1.2. (If the percentage being used is 30 percent, we would multiply by 1.3, etc.) The product will be rounded as follows: amounts below $1,000 will be rounded to the nearest $10; amounts above $1,000 but below $10,000 will be rounded to the nearest $100; and amounts above $10,000 will be rounded to the nearest $1,000. The defined increment then will be determined by subtracting the standing high bid (or, if applicable, the minimum opening bid) from the rounded result. At the start of the auction, the Bureau proposes to use 20 percent to calculate the defined increment. The Bureau also proposes to retain discretion to change the percentage used to calculate the defined increment if we determine that circumstances so dictate. Further, the Bureau proposes to retain discretion to set a floor for the increment used to calculate the minimum acceptable bid at an absolute dollar amount.

31. In addition, the Bureau proposes that it have discretion to use a smaller defined increment to calculate acceptable bids higher than the minimum acceptable bid. The smaller defined increment would be calculated using a smaller percentage than the percentage used to calculate the defined increment that sets the minimum acceptable bid. For example, 20 percent might be used to calculate the defined increment for the minimum acceptable bid and 10 percent might be used to calculate the smaller defined increment used to calculate higher acceptable bids. In all other respects, the smaller defined increment would be calculated in exactly the manner described for the initial defined increment, including rounding.

32. For example, the Bureau could calculate bids using 20 percent to calculate the defined increment for the minimum acceptable bid and 10 percent to calculate the smaller defined increment. Assuming that the standing

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high bid on a given license is $50,000, in the next round,

Defined Increment=Rounded (Standing High Bid * 1.2)—Standing High Bid
=Rounded ($50,000 * 1.2)—$50,000
=Rounded ($60,000)—$50,000
=$60,000—$50,000
=$10,000
Minimum Acceptable Bid=Standing High Bid + Defined Increment
=$50,000 + $10,000
=$60,000
Smaller Defined Increment=Rounded (Standing High Bid * 1.1)—Standing High Bid
=Rounded ($50,000 * 1.1)—$50,000
=Rounded ($55,000)—$50,000
=$55,000—$50,000
=$5,000
One Increment Higher Than Minimum Acceptable Bid=Minimum Acceptable Bid + (Smaller Defined Increment * 1)
=$60,000 + ($5,000 * 1)
=$60,000 + $5,000
=$65,000
Two Increments Higher Than Minimum Acceptable Bid=Minimum Acceptable Bid + (Smaller Defined Increment * 2)
=$60,000 + ($5,000 * 2)
=$60,000 + $10,000
=$70,000

33. This procedure would enable bidders unwilling to raise the standing high bid by twice the defined increment to place bids higher than the minimum acceptable bid. Thus, in the example, a bidder wanting to bid above the minimum acceptable bid but unwilling to raise the standing high bid of $50,000 by twice the defined increment of $10,000 ($20,000 or 40 percent) would have the flexibility to bid $65,000, raising the standing high bid by $15,000.

34. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the defined increment, as stated.

35. In summary, the Bureau proposes it have discretion at any time during the auction to change the initial 20 percent used to calculate the defined increment and/or to set an absolute dollar amount floor for the increment used to calculate the minimum acceptable bid. The Bureau also proposes that it have additional discretion to calculate the minimum acceptable bid using one percentage and to calculate higher acceptable bids using another percentage, as described. The Bureau's decision to exercise its discretion with regard to minimum acceptable bids and bid increments would be announced via the Automated Auction System. The Bureau seeks comment on these proposals.

D. High Bids

36. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will again be determined on the highest gross bid amount received for the license. The Bureau seeks comment on this proposal.

37. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a "standing high bid." Bidders are reminded that standing high bids confer activity credit.

E. Information Regarding Bid Withdrawal and Bid Removal

38. For Auction No. 48, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove selected bids function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

39. A high bidder may withdraw its standing high bids from previous rounds using the withdrawal function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

40. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

41. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 48 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

F. Stopping Rule

42. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 48, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

43. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

44. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 48:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

45. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

III. Conclusion

46. Comments are due on or before December 13, 2002, and reply comments are due on or before December 18, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction48@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 48 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850. Parties that have previously filed comments or reply comments for Auction No. 48 need not refile them.

47. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions & Industry Analysis Division.

[FR Doc. 02–30500 Filed 12–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 02–3285]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On December 3, 2002, the Commission released a public notice announcing the December 11, 2002 conference call meeting and agenda of the North American Numbering Council (NANC). The conference bridge number for domestic participants is (800) 377–4273 (toll free). The call in number for international participants is (816) 650–0771 (caller pays). The Chairperson to ask for is Robert Atkinson. Due to limited port space, NANC members and Commission staff will have first priority on the call. Members of the public may join the call as remaining port space permits or may attend in person at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room 6–B516, Washington, DC 20554. The intended effect of this action is to make the public aware of the NANC's conference call meeting and agenda scheduled for December 11, 2002. This notice of the December 11, 2002, NANC conference call meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to the NANC's need to discuss a time sensitive issue before the next scheduled meeting.

This statement complies with the General Services Administration Management regulations implementing the Federal Advisory Committee Act. *See* 41 CFR section 101–6.1015(b)(2).

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The address is: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5A420, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. Participation on the conference call is limited. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Wednesday, December 11, 2002 1 PM

To discuss NANC recommendation to the Federal Communications Commission regarding the Petition of the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communications Commission's Contamination Threshold Rule.

Federal Communications Commission

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 02–30952 Filed 12–5–02; 8:45 am]

BILLING CODE 6712–01–P

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.G. 552b), notice is hereby given that at 10:42 a.m. on Tuesday, December 3, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 4, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–31078 Filed 12–4–02; 3:34 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011626–008.

Title: Alianca/Columbus/Crowley/P&O Nedlloyd Agreement.

Parties: Alianca Navegacao e Logistica Ltda., Hamburg-Sud, d/b/a Columbus Line and Crowley American Transport, P&O Nedlloyd Limited, P&O Nedlloyd B.V., Oceanica AGW Com. e Rep. Ltda., d/b/a Mercosul Line.

Synopsis: The proposed amendment adds Panama to the geographic scope of the agreement. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: December 3, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–30896 Filed 12–5–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. MB Financial, Inc., Chicago, Illinois; to merge with South Holland Bancorp, Inc., South Holland, Illinois, an thereby indirectly acquire South Holland Trust & Savings Bank, South Holland, Illinois.

Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. FSB Bancshares, Inc., Knoxville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Henderson, Tennessee.

Board of Governors of the Federal Reserve System, December 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30882 Filed 12–5–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Market Research Collection for the Office of Citizen Services and Communications

AGENCY: General Services Administration (GSA).

ACTION: Notice of a new one-time collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration, Office of Acquisition Policy will submit to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Market Research for the Office of Citizen Services and Communication.

This information collection will be used to determine the utility and ease of use of GSA's Web site *http://www.GSA.gov*. The respondents include individuals and representatives form businesses currently holding GSA contracts.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of the functions of the agency including whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology.

DATES: *Comment Due Date:* February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Sharon Holcombe, Office of Citizen Services and Communications, (202) 501–2719.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection is to inform the General Services Administration (GSA) on how to best provide service and relevance to the American public via GSA's Web site, *http://www.GSA.gov*. The information collected from an online survey, focus groups, and Web site usability testing, will be used to refine the *http://www.GSA.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other-for-profit groups.

B. Annual Reporting Burden

Respondents: 190.

Responses Per Respondent: 1.

Total Responses: 190.

Hours Per Response: 72.6 minutes.

Total Burden Hours: 230.

Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite Market Research Collection for the Office of Citizen Services and Communication in all correspondence.

Dated: October 2, 2002.

Michael Carleton,

Chief, Information Officer.

[FR Doc. 02–30868 Filed 12–5–02; 8:45 am]

BILLING CODE 6820–CX–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0463]

Guidance for Industry; Implementation of the Federal Food, Drug, and Cosmetic Act Regarding the Use of the Term "Catfish;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry; Implementation of Section 403(t) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(t)) Regarding the Use of the Term 'Catfish.'" Section 10806 of the Farm Security and Rural Investment Act of 2002 amends the Federal Food, Drug, and Cosmetic Act (the act) to provide that a food shall be deemed to be misbranded "[i]f it purports to be or is represented as catfish, unless it is fish classified within the family *Ictaluridae*." This guidance assists importers and domestic distributors of fish previously called "catfish" in selecting a new common or usual name that is consistent with the act.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

Submit written requests for single copies of this guidance to the Office of Seafood (HFS–400), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-adhesive address label to assist that office in processing your request, or include a fax number to which the guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this guidance document.

FOR FURTHER INFORMATION CONTACT: Spring C. Randolph, Center for Food Safety and Applied Nutrition (HFS–415), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2303, FAX 301–436–2599.

SUPPLEMENTARY INFORMATION:

I. Background

On May 13, 2002, Public Law 107–171, entitled the Farm Security and Rural Investment Act of 2002 (FSRIA), became law. Section 10806 of the FSRIA amends the food misbranding provision in section 403 of the act (21 U.S.C. 343) to provide that a food shall be deemed to be misbranded "[i]f it purports to be or is represented as catfish, unless it is fish classified within the family *Ictaluridae*." This amendment overrides prior guidance that lists fish other than those from the family Ictaluridae as fish bearing the acceptable name "catfish."

The guidance document states that, consistent with the amendment to section 403 of the act, importers, domestic distributors, and sellers of fish in interstate commerce bearing the term "catfish," that are not classified within the family *Ictaluridae*, may no longer use the term "catfish" on labeling, in whole or as part of their common or usual name. This guidance relates to all fish that are distributed in interstate commerce, including imports.

The document discusses how to apply FDA's common or usual name "general principles" regulation (21 CFR 102.5) in determining a name that can be used for the fish once known as "catfish," but for which that name can no longer be used.

This guidance represents the agency's current thinking on acceptable common or usual names for fish bearing the name "catfish" that are not from the family *Ictaluridae*. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

This guidance is a level 1 guidance issued consistent with FDA's good guidance practices (GGPs) regulation (§ 10.115 (21 CFR 10.115)). Consistent with GGPs, the agency is soliciting public comment, but is implementing the guidance document immediately in accordance with § 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate. Section 403(t) of the act is now in effect and must be implemented immediately. Thus, FDA is making the guidance effective immediately.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number

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found in brackets in the heading of this document. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.cfsan.fda.gov/~dms/guidance.html.

Dated: November 15, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30901 Filed 12–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Request for Generic Clearance to Conduct Voluntary Customer/Partner Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Voluntary Customer Satisfaction Surveys.

Type of Information Collection Request: Extension. OMB Control No. 0925–0476, with an expiration date of March 31, 2003.

Need and Use of Information Collection: Executive Order 12962 directed agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a "Federal Reinvention Laboratory " with a goal of improving its methods of delivering information to the public. An essential strategy in accomplishing reinvention goals is the ability to periodically receive input and feedback from customers about the design and quality of the services they receive.

The NLM provides significant services directly to the public including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and Web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to continue to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service.

Frequency of Response: Annually or biennially.

Affected Public: Individuals or households; businesses or other for profit; state or local governments; Federal agencies; non-profit institutions; small businesses or organizations.

Type of Respondents: Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public. Annual reporting burden is as follows:

Title of survey	Type of survey	Number of respondents	Estimated response time	Burden hours
Evaluation of Clinical Studies Database	Web-based	1,000	.167	167
Visible Human Project—Image Processing Tools	Electronic Mail	1,000	.25	250
PubMed	Web-based	5,000	.0835	418
Entrez	Web-based	2,000	.0835	167
GeneMap	Web-based	2,000	.0835	167
NCBI Web Site	Web-based	2,000	.0835	167
NLM Service Desk Survey	Interactive Voice Response telephone	400	.0835	33
NLM Onsite Reading Room Use	Exit Interview	500	.167	84
NLM Electronic Mail Customer Survey	Electronic Mail	1,000	.0835	84
MEDLINEplus User Survey	Web-based	500	.0835	59
Survey of Unified Medical Language System (UMLS) Use	Mail Survey	1,000	.5	500
NLM Services Satisfaction Survey	Web-based	2,000	.0835	167
Total		18,400		2,263

There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact Ronald F. Stewart, National Library of Medicine, Building 38, Room 2N13, 8600 Rockville Pike, Bethesda, MD 20894, or call 301–496–6491 (not a toll-free number). You also may e-mail your request to: *ron_stewart@mail.nlm.nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: December 2, 2002.

Jon G. Retzlaff

Executive Officer, National Library of Medicine.

[FR Doc. 02–30865 Filed 12–5–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998, court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 27, 2002.

John D. Garrity,

Director, Office of Special Needs, Assistant Programs.

[FR Doc. 02–30571 Filed 12–5–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Fish and Wildlife Service announces a meeting designed to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The meeting will be held on Wednesday, December 11, 2002, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, 900 S. Orme Street, Arlington, VA 22204; (703) 521–1900.

Summary minutes of the conference will be maintained by the Council Coordinator at 4501 N. Fairfax Drive, Room 4036, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Laury Parramore, Council Coordinator, at (703) 358–1711.

SUPPLEMENTARY INFORMATION: The Sport Fishing and Boating Partnership Council was formed in January 1993 to advise the Secretary of the Interior through the Director, U.S. Fish and Wildlife Service, about sport fishing and boating issues. The Council represents the interests of the public and private sectors of the sport fishing and boating communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council includes the Director of the Service and the president of the International Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, aquatic resource outreach and education, and tourism. The Council will convene to discuss: (1) The Council's continuing role in providing input to the Fish and Wildlife Service on the Service's strategic vision for its Fisheries Program; (2) the Council's work in its role as a facilitator of discussions with Federal and State agencies and other sportfishing and boating interests concerning a variety of national boating and fisheries management issues; and (3) the Council's role in providing the Interior Secretary with information about the implementation of the Strategic Plan for the National Outreach and Communications Program. The Interior Secretary approved the Strategic Plan in February 1999, as well as the five-year, $36-million federally funded outreach campaign authorized by the 1998 Sportfishing and Boating Safety Act that is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization.

Dated: November 27, 2002.

Steve Williams,

Director.

[FR Doc. 02–30891 Filed 12–5–02; 8:45 am]

BILLING CODE 4316–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0041).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart K "Oil and Gas Production Rates."

DATES: Submit written comments by February 4, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference "Information Collection 1010–0041" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team,

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(703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations and form MMS–140 that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart K, Oil and Gas Production Rates.

OMB Control Number: 1010–0041.

Form Number: Form MMS–140.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1334(g)(2) states "* * * the lessee shall produce such oil or gas, or both, at rates * * * to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan." This authority and responsibility are among those delegated to the Minerals Management Service (MMS). The regulations at 30 CFR part 250, subpart K, concern oil and gas production rates and implement these statutory requirements. The information collection requirements in subpart K and form MMS–140 are the subject of this notice.

We use the information collected to determine if produced gas can be economically put to beneficial use, to analyze the risks of transporting the liquid hydrocarbons against the value of the resource, and to account for volumes of flared gas and burned liquid hydrocarbons. The MMS uses the information in its efforts to conserve natural resources, prevent waste, and protect correlative rights including the Government's royalty interest. Specifically, MMS uses the information to review records of burning liquid hydrocarbons and venting and flaring actions to ensure that they are not excessive; to determine maximum production and maximum efficient rates; to compare the volume of hydrogen sulfide (H_2S) flared and the sulphur dioxide (SO_2) emitted to the specified amounts in approved contingency plans; to monitor monthly atmospheric emissions of SO_2 for air quality; to review applications for downhole commingling to ensure that action does not result in undervalued royalties; and to ensure that operations are effective and result in optimum ultimate recovery.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion or monthly.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 14,189 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart K	Reporting & recordkeeping requirement	hour burden
1101(b)	Request approval to produce within 500 feet of a lease line	5
1101(c)	Request approval to produce gas cap of a sensitive reservoir	12
1102	Submit forms MMS–126, MMS–127, and MMS–128. (Burden covered under 1010–0039, 1010–0018, and 1010–0017.).	
1102(a)(5)	Submit alternative plan for overproduction status. (We are not currently collecting this information.)	
1102(b)(6)	Request extension of time to submit results of semiannual well test	½
1103(a)	Request approval of test periods of less than 4 hours and pretest stabilization periods of less than 6 hours	½
1103(c)	Provide advance notice of time and date of well tests	½
1104(c)	Submit results of all static bottomhole pressure surveys obtained by lessee. Information is submitted on form MMS–140 in the Gulf of Mexico Region.	1
1105(a), (b)	Request special approval to flare or vent oil-well gas	6
1105(c)	Request approval to burn produced liquid hydrocarbons	1
1105(f)	Submit monthly reports of flared or vented gas containing H_2S.	2
1105(f)	H_2S Contingency, Exploration, or Development and Production Plans. (Burden covered under 1010–0053 and 1010–0049.).	
1106	Submit application to commingle hydrocarbons produced from multiple reservoirs and inform other lessees having an interest.	6
1107(b)	Submit proposed plan for enhanced recovery operations	12
1107(c)	Submit periodic reports of volumes of oil, gas, or other substances injected, produced, or reproduced	2
1100–1107	General departure and alternative compliance requests not specifically covered elsewhere in subpart K	2
	Reporting Subtotal	
1105(d), (e)	Maintain records for 2 years detailing gas flaring or venting	13
1105(d), (e)	Maintain records for 2 years detailing liquid hydrocarbon burning	½

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before an ICR is submitted to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 27, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–30954 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: National Park Service, Interior.

ACTION: Notice of request for extension of a currently approved information collection

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's intention to request an extension for a currently approved information collection in support of its Concession Management Program.

DATES: Comments in this notice must be received no later than January 6, 2003.

ADDRESSES: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Interior Department, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Please also send a copy of your comments to Cynthia L. Orlando, Concession Program Manager, National Park Service, Department of the Interior, 1849 C Street, NW (2410), Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

Title: Proposed Sale of Concession Operations.

OMB Number: 1024–0126.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. Concession authorizations may be assigned, sold, transferred or encumbered by the concessioner subject to prior written approval of the NPS. The NPS requires that certain information be submitted for review prior to the consummation of any sale, transfer, assignment, or encumbrance.

16 U.S.C. 5957 provides that no concessions contract or leasehold surrender interest may be transferred, assigned or sold, or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary. Regulations at 36 CFR part 51, subpart J, require that certain information be submitted for review by the NPS prior to the consummation of any sale, transfer, assignment or encumbrance.

The information requested is used to determine whether or not the proposed transaction will result in an adverse impact on the protection, conservation, or preservation of the resources of the unit of the National Park System, decreased services to the public, the lack of a reasonable opportunity for profit over the remaining term of the authorization, or rates in excess of existing approved rates to the public. In addition, pursuant to the regulations at 36 CFR part 51, the value of rights for intangible assets such as the concession contract, right of preference in renewal, user days, or low fees, belong to the Government.

If any portion of the purchase price is attributable either directly or indirectly to such assets, the transaction may not be approved. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Without such information, the NPS would be unable to determine whether approval of the proposed transaction would be adequate.

Estimate of Burden: Approximately 80 hours per response.

Estimated Number of Respondents: Approximately 20.

Estimated number of Reponses per Respondent: One.

Estimated Total Annual Burden on Respondents: 1600 Hours.

A list of information required to be submitted with a request for sale, assignment, transfer or encumbrance of a concession authorization is set forth at 36 CFR part 51, subpart J.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection to the Office of Management and Budget at

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the address in the **ADDRESSES** section. For further information about this information collection request, you may contact Erica Smith-Chavis at 202/513–7144, or by written request (see **ADDRESSES**). All comments will also become a matter of public record.

Dated: November 25, 2002.

Cynthia L. Orlando,

Concession Program Manager.

[FR Doc. 02–30922 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is awarded, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
BAND001	Bandelier Trading, Inc.	Bandelier National Monument.
BRCA002	Bryce-Zion Trail Rides	Bryce Canyon National Park.
CANY001	Adventure Bound, Inc.	Canyonlands National Park.
CANY002	Abercrombie & Kent America Adventures, Ltd.	Canyonlands National Park.
CANY003	NAVTEC Expeditions, Inc.	Canyonlands National Park.
CANY004	Colorado Outward Bound School	Canyonlands National Park.
CANY005	Colorado River & Trail Expeditions, Inc.	Canyonlands National Park.
CANY006	Don Hatch River Expeditions, Inc.	Canyonlands National Park.
CANY007	Holiday River Expeditions, Inc.	Canyonlands National Park.
CANY009	Moki Mac River Expeditions, Inc.	Canyonlands National Park.
CANY010	O.A.R.S. Canyonlands, Inc.	Canyonlands National Park.
CANY011	Western River Expeditions, Inc.	Canyonlands National Park.
CANY012	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY014	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY015	Holiday River Expeditions, Inc.	Canyonlands National Park.
CANY016	Tour West, Inc.	Canyonlands National Park.
CANY017	Western River Expeditions, Inc.	Canyonlands National Park.
CANY018	American Wilderness Expeditions, Inc.	Canyonlands National Park.
CANY019	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY020	World Wide River Expeditions, Inc.	Canyonlands National Park.
DINO001	Adventure Bound Tours, Inc.	Dinosaur National Park.
DINO002	American River Touring Assoc.	Dinosaur National Park.
DINO003	Colorado Outward Bound School	Dinosaur National Park.
DINO005	Holiday River Expeditions, Inc.	Dinosaur National Park.
DINO006	Don Hatch River Expeditions, Inc.	Dinosaur National Park.
DINO008	Dinosaur River Expeditions	Dinosaur National Park.
DINO009	O.A.R.S., Inc.	Dinosaur National Park.
DINO011	National Outdoor Leadership School, Inc.	Dinosaur National Park.
DINO012	Sheri Griffith Expeditions	Dinosaur National Park.
DINO014	Eagle Outdoor Sports	Dinosaur National Park.
DINO016	Adrift Adventures, Inc.	Dinosaur National Park.
GRTE001	Grand Teton Lodge Co.	Grand Teton National Park.
GRTE024	Jackson Hole Ski Corp	Grand Teton National Park.
GRTE025	Rendezvous Ski Tours	Grand Teton National Park.
GRTE032	Spring Creek Ranch	Grand Teton National Park.
GRTE046	Gros Ventre River Ranch	Grand Teton National Park.
GRTE047	The National Outdoor Leadership School	Grand Teton National Park.
MEVE001	Aramark Mesa Verde Co.	Mesa Verde National Park.
WHSA001	White Sands Concessions	White Sands National Monument.
YELL001	West Park Hospital	Yellowstone National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

Dated: October 31, 2002.

Richard G. Ring,

Associate Director, Administration, Workforce Development and Business Practices.

[FR Doc. 02–30923 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession permits, with the exception of construction on National Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term of up to one year from the date of permit expirations.

SUPPLEMENTARY INFORMATION: The permit listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of the current concessions permit, with one exception, and pending the development and public solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period of up to one year from the expiration of the current concession permit. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity, the temporary contract does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.	Concessioner name	Park
BICA007	LuCon Corporation	Bighorn Canyon National Recreation Area.
CANY022	O.A.R.S. Canyonlands, Inc.	Canyonlands National Park.
CANY024	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY025	NAVTEC Expeditions, Inc.	Canyonlands National Park.
CANY026	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY027	3–D River Visions, Inc.	Canyonlands National Park.
DINO010	Faron & Wayne Wilkins	Dinosaur National Park.
GLAC004A	Glacier Wilderness Guides, Inc.	Glacier National Park.
GLAC006	Glacier Wilderness Guides, Inc.	Glacier National Park.
GLAC010	Edward Desrosier (Sun Tours)	Glacier National Park.
GLCA021	Banner Health System	Glen Canyon National Recreation Area.
GOSP001	McFarland Distributing	Golden Spike National Historic Site.
GRCA033	Grand Canyon Railway, Inc.	Grand Canyon National Park.
GRTE034	Wilderness Ventures	Grand Teton National Park.
GRTE037	Trail Creek Ranch	Grand Teton National Park.
GRTE038	Teton Valley Ranch	Grand Teton National Park.
GRTE049	Diamond Cross Ranch	Grand Teton National Park.
JODR003	Cache Creek Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR004	Heart 6 Ranch Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR005	Old Faithful Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR006	High Country Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR007	Goosewing Ranch Snowmobile Safaris	John D. Rockefeller, Jr. Memorial Parkway.
JODR008	Best Adventures, Inc.	John D. Rockefeller, Jr. Memorial Parkway.
JODR009	Jackson Hole Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR010	National Park Adventures	John D. Rockefeller, Jr. Memorial Parkway.
JODR012	Cowboy Village Resort at Togwotee	John D. Rockefeller, Jr. Memorial Parkway.
JODR013	Rocky Mountain Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR014	Yellowstone Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
LIBI001	Institute for Micro-Business Development	Little Bighorn Battlefield National Monument.
ROMO003	Andrews, Bicknell & Crothers LLC	Rocky Mountain National Park.
YELL102	Beardsley Outfitting	Yellowstone National Park.
YELL103	Triangle X Ranch	Yellowstone National Park.
YELL104	Horse Creek Ranch	Yellowstone National Park.
YELL105	Bear Paw Outfitters	Yellowstone National Park.
YELL106	Jackson Hole Llamas	Yellowstone National Park.
YELL107	Wyoming Wilderness Outfitters	Yellowstone National Park.
YELL108	Bleu Sky Pack Station, Inc.	Yellowstone National Park.
YELL110	Diamond J. Ranch	Yellowstone National Park.
YELL113	7D Ranch	Yellowstone National Park.
YELL114	Wilderness Connection	Yellowstone National Park.
YELL115	Gary Fales Outfitting	Yellowstone National Park.
YELL117	Mountain Trail	Yellowstone National Park.
YELL118	Yellowstone Mountain Guides	Yellowstone National Park.
YELL120	Slough Creek Outfitters	Yellowstone National Park.
YELL121	Yellowstone Llamas	Yellowstone National Park.
YELL122	Sheep Mesa Outfitters	Yellowstone National Park.
YELL123	Castle Creek Outfitters	Yellowstone National Park.
YELL124	Jack's Horses	Yellowstone National Park.
YELL125	Big Bear Lodge	Yellowstone National Park.
YELL126	Heimer Outfitting	Yellowstone National Park.
YELL127	Medicine Lake Outfitters	Yellowstone National Park.
YELL130	Skyline Guest Ranch	Yellowstone National Park.
YELL131	Hell's A Roarin'	Yellowstone National Park.
YELL132	Nine Quarter Circle Ranch	Yellowstone National Park.
YELL134	John Henry Lee Outfitters	Yellowstone National Park.
YELL137	Wilderness Pack Trips	Yellowstone National Park.
YELL138	Rendezvous Outfitters	Yellowstone National Park.
YELL139	Triple Tree Ranch	Yellowstone National Park.
YELL140	Black Otter Guide Service	Yellowstone National Park.
YELL141	Lost Fork Ranch	Yellowstone National Park.
YELL144	Lone Mountain Ranch	Yellowstone National Park.

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Concessioner ID No.	Concessioner name	Park
YELL145	Crescent B Outfitters	Yellowstone National Park.
YELL146	Bar Z Guest Ranch	Yellowstone National Park.
YELL147	Farvalley Ranch	Yellowstone National Park.
YELL148	Teton Ridge Ranch	Yellowstone National Park.
YELL149	T Lazy T Outfitters	Yellowstone National Park.
YELL156	Two Ocean Pass Ranch/Outfitters	Yellowstone National Park.
YELL157	Beartooth Plateau	Yellowstone National Park.
YELL158	Wilderness Trails	Yellowstone National Park.
YELL159	Ron Dube's Wilderness Adventure	Yellowstone National Park.
YELL162	Grizzly Ranch	Yellowstone National Park.
YELL164	Gallatin Way Ranch	Yellowstone National Park.
YELL165	Gunsel Horse Adventures	Yellowstone National Park.
YELL166	Elkhorn Ranch	Yellowstone National Park.
YELL168	Llamas of West Yellowstone	Yellowstone National Park.
YELL169	Shoshone Lodge Outfitters	Yellowstone National Park.
YELL170	Diamond K Outfitters	Yellowstone National Park.
YELL300	Yellowstone Expeditions	Yellowstone National Park.
YELL301	Loomis Enterprises	Yellowstone National Park.
YELL302	Yellowstone Tour and Travel	Yellowstone National Park.
YELL303	Yellowstone Alpen Guides	Yellowstone National Park.
YELL304	International Leisure Hosts	Yellowstone National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: October 31, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–30925 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concid ID No.	Concessioner name	Park
LP–CUVA001–94	American Youth Hostels	Cuyahoga Valley National Park.
CC–HOSP001–80	City/Hot Springs Tower	Hot Springs National Park.
CC–HOSP004–88	Libbey Memorial	Hot Springs National Park.
CP–INDU003–94	Michiana Industries	Indiana Dunes National Landmark
CP–ISRO001–95	The Royale Line	Isle Royale National Park.
CP–ISRO007–95	GRPO–ISRO Trans Line	Isle Royale National Park.
CC–WASO001–82	National Park Concessions, Inc.	
CC–JEFF001–96	Compass Group USA	Jefferson National Expansion Memorial
LP–MWRP001–95	Eastern National Parks & Monuments	Midwest Regional Office
CP–ENPMA01–91	Eastern National Parks & Monuments	
CC–MORU001–93	Xanterra Parks & Resorts	Mount Rushmore National Memorial
CC–OZAR012–88	Akers Ferry Canoe	Ozark National Scenic Riverway.
LP–OZAR037–91	Akers Ferry Tube Rent	Ozark National Scenic Riverway.
CC–OZAR001–88	Alley Spring Canoe	Ozark National Scenic Riverway.
CC–OZAR003–86	Alley Spring Canoe	Ozark National Scenic Riverway.
CC–OZAR015–94	Big Spring Lodge	Ozark National Scenic Riverway.
CC–OZAR050–97	Big Spring River Camp tube	Ozark National Scenic Riverway.
CC–OZAR016–89	Carr's Grocery/Canoe	Ozark National Scenic Riverway.
CC–OZAR040–97	Carr's Tube Rental	Ozark National Scenic Riverway.
CC–OZAR011–97	Current River Canoe	Ozark National Scenic Riverway.
CC–OZAR010–97	Deer Run Campground	Ozark National Scenic Riverway.
CC–OZAR013–97	Eminence Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR023–97	Hawthorne Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR002–97	Jack's Fork Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR020–97	Jadwin Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR024–97	The Landing Canoe	Ozark National Scenic Riverway.
CC–OZAR036–97	Maggard Canoe/Boat	Ozark National Scenic Riverway.

Concid ID No.	Concessioner name	Park
CC–OZAR008–97	Round Spring Canoe	Ozark National Scenic Riverway.
CC–OZAR028–97	Running River Canoe	Ozark National Scenic Riverway.
CC–OZAR007–97	Silver Arrow Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR049–97	Smalley's Motel Tube	Ozark National Scenic Riverway.
CC–OZAR018–97	Two Rivers Canoe	Ozark National Scenic Riverway.
CC–OZAR005–97	Wild River Canoe	Ozark National Scenic Riverway.
CC–OZAR014–97	Windy's Canoe Rental	Ozark National Scenic Riverway.
CC–SLBE005–86	Manitou Island Transit	Sleeping Bear Dunes National Landmark.
CC–SLBE008–99	Blough Firewood	Sleeping Bear Dunes National Landmark.
CC–THRO001–98	Shadow County Outfitters	Theodore Roosevelt National Park.
LP–WICA002–98	Black Hills Parks	Wind Cave National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: October 25, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–30926 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed one year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed one year under the terms and conditions of current contracts as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.	Concessioner name	Park
AMIS002	Lake Amistad Resort and Marina	Amistad National Recreation Area.
AMIS003	Rough Canyon Marina, Inc.	Amistad National Recreation Area.
CACA001	Cavern Supply Co., Inc.	Carlsbad Caverns National Park.
CURE001	Elk Creek Marina, Inc.	Curecanti National Recreation Area.
GLAC001	Glacier Park Boat Company, Inc.	Glacier National Park.
GLAC003	Mule Shoe Outfitters, Inc.	Glacier National Park.
GLAC004B	Belton Chalets/Sperry Chalets	Glacier National Park.
GLCA001	Wilderness River Adventures	Glen Canyon National Recreation Area.
GLCA003	Wahweap Lodge and Marina, Inc.	Glen Canyon National Recreation Area.
GRCA004	Grand Canyon Trail Rides	Grand Canyon National Park.
GRCA005	Verkamp's, Inc.	Grand Canyon National Park.
GRTE003	Signal Mountain Lodge	Grand Teton National Park.
GRTE009	Exum Mountain Guides	Grand Teton National Park.
LAMR002	Lake Meredith Marina, Inc.	Lake Meredith National Recreation Area.
PAIS001	Padre Island Park Company	Padre Island National Seashore
PEFO001	Xanterra Parks and Resorts, LLC	Petrified Forest National Park.
ROMO001	Rex G. & Ruth G. Maughan-(Trail Ridge Store).	Rocky Mountain National Park.
TICA001	Carl and Betsy Wagner	Timpanogos Cave National Monument.
YELL400	Ace Snowmobile Rental	Yellowstone National Park.
YELL401	Gary Fales Outfitting	Yellowstone National Park.
YELL402	Backcountry Adventures	Yellowstone National Park.
YELL403	Yellowstone Arctic—Yamaha	Yellowstone National Park.
YELL404	Loomis Enterprises	Yellowstone National Park.
YELL405	Pahaska Tepee	Yellowstone National Park.
YELL406	Yellowstone Adventures	Yellowstone National Park.
YELL407	Targhee Snowmobile Tours	Yellowstone National Park.
YELL408	Two Top Snowmobile Rental	Yellowstone National Park.
YELL409	Three Bear Lodge	Yellowstone National Park.
ZION001	Bryce-Zion Trail Rides	Zion National Park.

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EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/565–1210.

Dated: October 31, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–30924 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–2]

Certain Steel Wire Garment Hangers From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) (the Act).

SUMMARY: Following receipt of a petition properly filed on November 27, 2002, on behalf of CHC Industries, Inc., Palm Harbor, FL; M&B Hangers Co., Leeds, AL; and United Wire Hanger Corp., South Hackensack, NJ, the Commission instituted investigation No. TA–421–2, Certain Steel Wire Garment Hangers from China, under section 421(b) of the Act to determine whether certain steel wire garment hangers [1] from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and E (19 CFR part 206).

EFFECTIVE DATE: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of confidential business information (CBI) under an administrative protective order (APO) and CBI service list.—Pursuant to section 206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearing.—The Commission has scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on January 9, 2003, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 2, 2003. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 6, 2003 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is January 3, 2003. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is January 13, 2003. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of market disruption or threat thereof and/or remedy on or before January 13, 2003. Parties may submit final comments on market disruption or threat thereof on January 23, 2003 and on remedy, if necessary, on January 29, 2003. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy.—Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing brief, posthearing brief, or final comments on remedy.

Authority: This investigation is being conducted under the authority of section 421 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: December 2, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30881 Filed 12–5–02; 8:45 am]

BILLING CODE 7020–02–P

[1] Certain steel wire garment hangers, fabricated from steel wire in gauges from 9 to 17, inclusive (3.77 to 1.37 millimeters, inclusive), whether or not galvanized or painted, whether or not coated with latex or epoxy or other similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles, tubes or struts. After fabrication, such hangers are in lengths from 7 to 20 inches, inclusive (177.8 to 508 millimeters, inclusive), and the hanger's length or bottom bar is composed of steel wire and/or saddles, tubes or struts. The product may also be identified by its commercial designation, referring to the shape and/or style of the hanger or the garment for which it is intended, including but not limited to Shirt, Suit, Strut and Caped hangers. Specifically excluded are wooden, plastic, aluminum and other garment hangers that are covered under separate subheadings of the Harmonized Tariff Schedule of the United States (HTS). The products subject to this investigation are classified in subheading 7326.20.00 of the HTS and reported under statistical reporting number 7326.20.00.20. Although the HTS subheading is provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

DEPARTMENT OF JUSTICE

National Drug Intelligence Center; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; reinstatement, with change, of a previously approved collection for which approval has expired. National drug threat survey.

The United States Department of Justice, National Drug Intelligence Center has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 4, 2003. This process is in accordance with 5 CFR 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Manuel A. Rodriguez, General Counsel, National Drug Intelligence Center, Fifth Floor, 319 Washington Street, Johnstown, PA 15901.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* NDIC Form #A–34c, National Drug Intelligence Center.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* Federal State and Local law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment. It provides direct access to detailed drug offense data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 3500 respondents who will each require an average of 30 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection.* The total annual public burden hours for this information collection is estimated to be 1750 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: December 2, 2002.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 02–30876 Filed 12–5–02; 8:45 am]

BILLING CODE 4410–DC–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection. Application for individual manufacturing quota for a basic class of controlled substances.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substances.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 189. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

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Primary: Business or other for-profit.
Other: None.
Abstract: Title 21, United States Code, section 826, and Title 21, Code of Federal Regulations (CFR) 1303.22 require that any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II and who desires to manufacture a quantity of such class must apply on DEA Form 189 for a manufacturing quota for such quantity of such class.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 264 responses, provided by 44 respondents. The estimated time required for the average respondent to respond is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 132 annual burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 2, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–30877 Filed 12–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection application for procurement quota for controlled substances.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Procurement Quota for Controlled Substances.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 250. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.
Other: None.
Abstract: Title 21, United States Code, section 826, and Title 21, Code of Federal Regulations (CFR), 1303.12(b) require that United States companies who desire to use any basic class of controlled substances listed in Schedule I or II for purposes of manufacturing during the next calendar year shall apply on DEA Form 250 for a procurement quota for such class. DEA is required by statute (21 U.S.C. 826(c)) to limit the production of Schedule I and II controlled substances to the amounts necessary to meet "the estimated legitimate medical, scientific, research and industrial needs of the United States."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 284 respondents, completing 818 annual responses. Each response is estimated to take 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 818 annual burden hours associated with this information collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: December 2, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–30878 Filed 12–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional

statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. The decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Maryland
MD020021 (Mar. 01, 2002)

Volume III

None

Volume IV

Minnesota
MN020007 (Mar. 01, 2002)
MN020008 (Mar. 01, 2002)
MN020012 (Mar. 01, 2002)
MN020013 (Mar. 01, 2002)
MN020015 (Mar. 01, 2002)
MN020027 (Mar. 01, 2002)
MN020031 (Mar. 01, 2002)
MN020043 (Mar. 01, 2002)
MN020058 (Mar. 01, 2002)
MN020059 (Mar. 01, 2002)
MN020061 (Mar. 01, 2002)
MN020062 (Mar. 01, 2002)

Volume V

None

Volume VI

Oregon
OR20001 (Mar. 01, 2002)

Volume VII

California
CA020009 (Mar. 01, 2002)
CA020019 (Mar. 01, 2002)
CA020029 (Mar. 01, 2002)
CA020030 (Mar. 01, 2002)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 27th day of November, 2002.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–30773 Filed 12–5–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–146)]

NASA Advisory Council, Space Science Advisory Committee Solar System Exploration Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

DATES: Monday, December 16, 2002, 8:30 a.m. to 5 p.m., and Tuesday, December 17, 2002, 8:30 a.m. to 5:30 p.m.

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ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC 20546, room 3H46.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Solar System Exploration Program—Current Status

—Mars Exploration Program—Current Status

—Mars Exploration Program—Planning for Future

—Discussion of Draft 2003 Roadmap for Solar System Exploration

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. Due to the increased security at NASA facilities, any members of the public who wish to attend this meeting of the Solar System Exploration Subcommittee must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (5 p.m. EDT on December 10, 2002) prior to the date of the public meeting. Identification information is to be provided to Marian Norris, 202/358–4452, mnorris@hq.nasa.gov. Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. NASA may provide for simulcast in an overflow facility. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202/358–1600).

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–30936 Filed 12–5–02; 8:45 am]

BILLING CODE 8380–50–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 21, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Lifecycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Lifecycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–3120. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–03–1, 10 items, 9 temporary items). Records of the Office of Response and Restoration, including such files as incident response and waste site financial records, data, documentation, inputs, and outputs for an electronic system used to coordinate watershed information, coastal resource coordinator records, and hazardous materials response records relating to medium and minor spills. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of hazardous materials response records that document major spills, including related finding aids. Files relating to medium and minor spills that significantly document agency policies or spills in ecologically sensitive areas will be brought to NARA's attention for appraisal on a case-by-case basis.

2. Department of Defense, Defense Intelligence Agency (N1–373–03–1, 1 item, 1 temporary item). Backup tapes containing information used for accountability and control of access regarding agency information systems.

3. Department of Defense, Defense Commissary Agency (N1–506–02–6), 53 items, 53 temporary items). Records relating to inspections and investigations conducted by the Office of the Inspector General. Included are such records as congressional correspondence, process reviews, referrals, complaints, hotline case files, trends and analysis files, and staff assistance reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–02–1, 7 items, 5 temporary items). Media relations files relating to the clearance and dissemination of press materials as well as articles appearing in the press concerning health care issues. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of news releases, press conference transcripts, and related background materials.

5. Department of Justice, Civil Division (N1–60–02–7, 6 items, 1 temporary item). Electronic versions of comments relating to the "September 11th Victim Compensation Fund of 2001" received by the agency or created for posting on the agency Web site. Proposed for permanent retention are recordkeeping copies of comments as well as an electronic database used for tracking the comments.

6. Department of State, Bureau of Public Affairs (N1–59–03–2, 4 items, 3 temporary items). Bibliographic and biographic card files and source documents for special historical projects carried out by the Office of the Historian. Proposed for permanent retention are general files relating to a project on U.S.-Russian relations in the period 1816 to 1865.

7. National Aeronautics and Space Administration, Agency-wide (N1–255–01–1, 7 items, 6 temporary items). Problem reporting and corrective action reports, quality assurance surveillance records, including audits, studies, and inspection stamp issuance documents, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of safety, reliability and quality assurance records that relate to flight hardware.

8. National Aeronautics and Space Administration, Agency-wide (N1–255–01–2, 3 items, 2 temporary items). Project-level records that support the certification of flight readiness and flight readiness reviews. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of programmatic records for the certification of flight readiness and flight readiness reviews for manned space flight programs and projects.

9. National Aeronautics and Space Administration, Agency-wide (N1–255–01–3, 5 items, 5 temporary items). Forms that document the shipment of equipment to and from agency installations by commercial shippers or contractors. Also included are electronic copies of records created using electronic mail and word processing.

10. National Aeronautics and Space Administration, Office of Public Affairs (N1–255–03–01, 1 item, 1 temporary item). Water-damaged materials from the agency's headquarters still photograph reference collection that could not be recovered, including captions, transparencies, negatives, and hardcopy prints and slides.

11. National Commission on Library and Information Science, Library Statistics Program (N1–220–02–29, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to forums sponsored by the agency and the National Center for Education Statistics. Recordkeeping copies of these files are proposed for permanent retention.

12. Office of Navajo and Hopi Indian Relocation, Relocation Operations Division (N1–220–02–20, 1 item, 1 temporary item). A slide presentation stored in two projector cartridges for which there is no accompanying script nor are the slides annotated.

13. Office of Navajo and Hopi Indian Relocation, Executive Direction Division (N1–220–02–21, 2 items, 1 temporary item). Sound recordings of public hearings and meetings conducted by the agency during calendar years 1979 to 1983 from which no information is retrievable. Proposed for permanent retention are sound recordings of public hearings and meetings conducted by the agency during these years from which information is retrievable.

14. Overseas Private Investment Corporation, Human Resources Department (N1–420–03–1, 3 items, 3 temporary items). Forms and other records completed by separating employees. Included are electronic copies of records created using electronic mail and word processing.

15. Peace Corps, Office of the Inspector General (N1–490–02–4, 11 items, 8 temporary items). Records relating to inspections and evaluations, investigations, and audits. Also included are electronic copies of records created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of selected audit files, reports to Congress, and country evaluation reports.

16. Tennessee Valley Authority, Education, Training and Diversity (N1–142–02–1, 10 items, 9 temporary items). Correspondence files, training manuals, and course materials. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are electronic versions of correspondence files created by the Senior Vice President for Education, Training, and Diversity.

Dated: November 29, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–30880 Filed 12–5–02; 8:45 am]

BILLING CODE 7515–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

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Extension: Rule 34b–1; File No. 270–305; OMB Control No. 3235–0346.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• *Rule 34b–1 (17 CFR 270.34b–1) under the Investment Company Act of 1940, Sales Literature Deemed to be Misleading.*

Rule 34b–1 under the Investment Company Act (17 CFR 270.34b–1) governs sales material that accompanies or follows the delivery of a statutory prospectus ("sales literature"). Rule 34b–1 deems to be materially misleading any investment company sales literature, required to be filed with the Commission by section 24(b) of the Investment Company Act (15 U.S.C. 80a–24(b)),[1] that includes performance data unless it also includes the appropriate uniformly computed data and the legend disclosure required in advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482).

Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

The Commission estimates that respondents file approximately 37,000 responses with the Commission, which include the information required by rule 34b–1. The burden from rule 34b–1 requires slightly more than 2.4 hours per response resulting from creating the information required under rule 34b–1.[2] The total burden hours for rule 34b–1 is 89,143 per year in the aggregate (37,000 responses x 2.4092702 hours per response). Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 34b–1 is mandatory. The information provided under rule 34b–1 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: November 22, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30885 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Investment Company Act upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. *See* rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3).

[2] The estimated burden per response is 2.9 hours for 686 responses and 2.4 hours for the remaining, giving a more exact weighted average burden per response of approximately 2.4092702.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25840; 812–12524]

Maxim Series Fund, Inc., *et al.*; Notice of Application

December 2, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants seek an order to permit certain registered investment companies to (a) pay an affiliated lending agent, and the lending agent to accept, fees based on a share of the revenues generated from securities lending transactions, and (b) lend portfolio securities to affiliated broker-dealers.

Applicants: Maxim Series Fund, Inc. ("Maxim"), Orchard Series Fund ("Orchard"), Barclays Global Investors Funds ("BGIF"), Master Investment Portfolio ("MIP"), iShares, Inc., and iShares Trust (collectively, the "Trusts"), Barclays Global Fund Advisors ("BGFA"), and Barclays Global Investors, N.A. ("BGI").

Filing Dates: The application was filed on May 23, 2001, and amended on August 12, 2002, and November 27, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Barclays Global Investors, N.A., 45 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts are registered under the Act as open-end management investment companies and are either a Maryland corporation or a Delaware statutory trust. Each Trust consists of multiple series (the Trusts and their series, the "Funds"). BGFA, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the MIP, iShares, Inc., and iShares Trust Funds and as investment sub-adviser to the Maxim and Orchard Funds and is a wholly-owned subsidiary of BGI. BGI is a national banking association and acts as a securities lending agent on behalf of fiduciary accounts and collective trust funds.

2. Applicants request that the order also apply to any registered management investment company and series thereof that currently is or in the future may be advised or sub-advised by BGFA, or any successor in interest (included in the term "Funds"),[1] and any other broker-dealers now or in the future controlling, controlled by, or under common control with BGI ("Affiliated Broker-Dealers"). All entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that relies on the order in the future will comply with the terms and conditions in the application.

3. Each Fund is, or will be, authorized to lend its portfolio securities. The Funds seek to participate from time to time as lenders in a securities lending program administered by BGI (the "Program").[2] Under the Program, BGI acts as securities lending agent for each of the Funds pursuant to a securities lending agency agreement ("Lending Agreement"). BGI will enter into securities loan agreements ("Loan Agreements") on behalf of a Fund with registered broker-dealers, including Affiliated Broker-Dealers, that wish to borrow securities owned by the Fund ("Borrowers"). Applicants represent that the duties to be performed by BGI as lending agent will not exceed the parameters set forth in *Norwest Bank, N.A.* (pub. avail. May 25, 1995).

4. Pursuant to the Loan Agreements, BGI will deliver portfolio securities to the Borrowers, who have been approved by a Fund, in exchange for cash collateral or other types of collateral, such as U.S. government securities. Cash collateral will be delivered in connection with most loans. BGI will invest the cash collateral on behalf of the Fund in accordance with specific parameters established by the Fund. These guidelines include the permissible investment of the cash collateral, as well as a list of eligible types of investments.

5. With respect to loans that are collateralized by cash, the Borrower will be entitled to receive a fee based on the amount of cash collateral. The Fund is compensated on the spread between the net amount earned on the investment of cash collateral and the Borrower's fee. In the case of collateral other than cash, the Fund will receive a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities as specified in the Loan Agreement. BGI may invest the cash collateral in certain short-term instruments through one or more joint accounts which will operate in reliance on the no-action letter issued to *The Chase Manhattan Bank* (pub. avail. Jul. 24, 2001). BGI may also invest the cash collateral in money market funds, including those managed by BGFA, in reliance on an exemptive order.

6. Applicants request an order to permit (a) the Funds to pay BGI, and BGI as lending agent to accept, fees based on a share of the proceeds derived from the Program, and (b) the Funds to lend portfolio securities to Affiliated Broker-Dealers.

Applicants' Legal Analysis

A. Payment of Lending Agent Fees to BGI

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Because BGI is the parent company of BGFA, an investment adviser for each Fund, BGI is an affiliated person of an affiliated person (or second-tier affiliate) of the Funds. Applicants state that a fee arrangement between a lending agent and a lending registered investment company, under which compensation is based on a percentage of the revenue generated by the securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d–1. Accordingly, applicants request an order under section 17(d) of the Act and rule 17d–1 under the Act to permit each Fund to pay, and BGI to accept, fees that are based on a share of the proceeds derived by the lending Funds in connection with the Program.

2. In determining whether to approve a joint transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

3. Applicants propose that each Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with BGI, as lending agent, will meet the standards of rule 17d–1:

a. In connection with the approval of BGI as lending agent for a Fund and implementation of the proposed fee arrangement, a majority of the board of directors or trustees (the "Board"), including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act (the "Disinterested Members"), of the Fund will determine that (i) the contract with BGI is in the best interest of the Fund and its shareholders; (ii) the services performed by BGI are required for the Fund; (iii) the nature and quality of the services provided by BGI are at least equal to those provided by others offering the same or similar services; and (iv) the fees for BGI's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

b. Each Fund's Lending Agreement with BGI will be reviewed at least annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Members) makes the findings referred to in paragraph (a) above.

c. In connection with the initial implementation of the proposed fee arrangement whereby BGI will be compensated as lending agent based on a percentage of the revenue generated by a Fund's participation in the Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

d. The Board, including a majority of the Disinterested Members, will (i) determine at each regular quarterly

[1] The term "successor" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Applicants represent that BGI's personnel providing day-to-day lending agency services to the Funds will not provide investment advisory services to the Funds or participate in any way in the selection of portfolio securities for, or any other aspects of the management of, the funds.

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meeting whether the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which it was determined that each loan was made in accordance with the procedures set forth above and the conditions to the application.

4. Applicants state that, under the terms of a Lending Agreement, BGI or an affiliate may indemnify a Fund against losses incurred by the Fund resulting from a default by one or more Borrowers that participate in the Program. Applicants request an order under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Funds to purchase the right to indemnification by BGI or an affiliate in instances of Borrower default, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) to permit a Fund to accept an indemnification payment from BGI or an affiliate in exchange for the Fund's right to proceed against the defaulting Borrower ("Indemnification").

5. Sections 17(a)(1) and (2) of the Act make it unlawful for an affiliated person of a registered investment company or an affiliated person of that person, acting as principal, to knowingly sell or purchase any security or other property to or from the company. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants state that Indemnification is an increasingly common term provided by non-affiliated securities lending agents to investment companies. Applicants state that Indemnification, if any, will be part of the Lending Agreement between BGI and a Fund and no separate fee will be charged for the Indemnification without obtaining further exemptive relief from the Commission. Applicants state that the Indemnification right will not be applied differently based on the identity of a Borrower. Furthermore, applicants state that a Fund's Board will be asked to review any Indemnification settlements made by the Fund at each quarterly Board meeting. A Fund will not accept any amount less than the full amount of the loss under an Indemnification settlement without obtaining an exemptive order from the Commission.

B. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or an affiliated person of such person, acting as principal, to borrow money or other property from the registered investment company. Applicants state that because the Affiliated Broker-Dealers may be deemed to be controlled by or under common control with BGI and under common control with BGFA, the Affiliated Broker-Dealers may be deemed to be affiliated persons of BGI and/or BGFA, and also second-tier affiliated persons of the Funds. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing portfolio securities from the Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Funds to lend portfolio securities to Affiliated Broker-Dealers. Applicants state that the Funds seek to diversify the Borrowers to whom they lend in order to ensure the stability and efficiency of the Program. Applicants submit that because only a few Borrowers may seek to borrow a particular security at a given time, a prohibition on lending to Affiliated Broker-Dealers could disadvantage a Fund.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated Borrowers.[3] In this regard, applicants state that at least 50% of the loans made by the Funds, on an aggregate basis (by each "group of investment companies," as defined in section 12(d)(1)(G) of the Act), will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Fund, including a majority of the Disinterested Members. All transactions with the Affiliated Broker-Dealers will be reviewed periodically by an officer of the Funds. The Fund's Board, including a majority of the Disinterested Members, also will review quarterly reports on all lending activity.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Payment of Lending Agent Fees

1. The Program will comply with all present and future applicable guidelines of the Commission and staff regarding securities lending arrangements.

2. The approval of a Fund's Board, including a majority of Board members who are Disinterested Members, shall be required for the initial and subsequent approvals of BGI's service as lending agent for the Fund pursuant to the Program, and for any periodic review of loan transactions for which BGI acted as lending agent pursuant to the Program.

B. Lending to Affiliated Broker-Dealers

1. The Funds on an aggregate basis (by each "group of investment companies," as defined in section 12(d)(1)(G) of the Act) will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one Borrower on the approved list will be in accordance with a schedule to be approved by the Fund's Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Fund, computed at market value.

3. A Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

4. a. All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by each Fund's Board and by a majority of the Disinterested Members ("Schedule of Spreads").

b. The Schedule of Spreads will set forth rates of compensation to each Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all Borrowers of a Fund's securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

d. If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

e. The Program will be monitored on a daily basis by an officer of the Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to each Fund's Board, including a majority of the Disinterested Members.

5. Each Fund's Board, including a majority of the Disinterested Members, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of the requested order and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such procedures for their continuing appropriateness.

6. The Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30913 Filed 12–5–02; 8:45 am]

BILLING CODE 8010-01-P

[3] A "spread" is the compensation earned by a Fund, as lender, from a securities loan. The compensation is in the form either of a lending fee payable by the Borrower to the Fund (where non-cash collateral is posted) or of the excess—retained by the Fund—over a rebate rate payable by the Fund to the Borrower (where cash collateral is posted and then invested by the Fund).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25839; 812–12874]

Stratigos Fund, L.L.C., et al.; Notice of Application

December 2, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit a limited liability company to transfer its assets to a registered closed-end investment company in exchange for interests in the closed-end investment company.

Applicants: Stratigos Fund, L.L.C. ("Stratigos"), Balius Fund, L.L.C. ("Balius") and CIBC Oppenheimer Advisers, L.L.C. ("Adviser").

Filing Dates: The application was filed on August 27, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o CIBC World Market Corp., 622 Third Avenue, 8th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Stratigos, a Delaware limited liability company, is registered under the Act as a closed-end management investment company. Balius, a Delaware limited liability company, is not registered under the Act in reliance on section 3(c)(7) of the Act. Limited liability company interests ("Interests") in Stratigos and Balius are not registered under the Securities Act of 1933, as amended (the "1933 Act"), and are sold to investors ("Members") in a private placement in reliance upon section 4(2) of the 1933 Act and Regulation D under the 1933 Act.

2. The Adviser, a Delaware corporation, serves as (a) Stratigos' investment adviser and (b) the managing member of Balius and, in that capacity, has overall responsibility for the management, operation and administration of Balius, including Balius' investment activities. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. As of July 31, 2002, the Adviser owned an Interest in Stratigos with a net asset value of $52,452.31 (which represented 0.74% of the value of the outstanding Interests in Stratigos as of such date). As of July 31, 2002, Canadian Imperial Holdings, Inc. ("CIHI"), an affiliated person of the Adviser, owned an Interest in Balius with a net asset value of $67,459.64 (which represented 0.81% of the value of the outstanding Interests in Balius as of such date).

3. Applicants propose that, pursuant to an agreement and plan of acquisition ("Acquisition Agreement"), Balius will transfer to Stratigos substantially all of its assets, which will consist of cash and the portfolio securities of Balius that (a) are permissible investments under the investment policies and restrictions of Stratigos, as set forth in its offering memorandum ("Offering Memorandum") and its limited liability company agreement ("Company Agreement"), and (b) have readily available market quotations (the "Assets"), in exchange for Interests of Stratigos (the "Exchange"). All of

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Balius' known liabilities (excluding short positions in securities and options) will be paid by Balius prior to the Exchange, and no liabilities of Balius (excluding short positions and options) will be transferred to Stratigos. Under the Acquisition Agreement, Interests of Stratigos delivered to Balius will have an aggregate net asset value equal to the net asset value of the Assets transferred by Balius to Stratigos. The Assets will be valued in accordance with the valuation policies of Stratigos as set forth in its Offering Memorandum and Company Agreement ("Valuation Procedures"). Interests in Stratigos received by Balius in the Exchange will be distributed to the Members of Balius and will be allocated to each Member of Balius in proportion to that Member's closing capital account in Balius, as determined immediately before the Exchange, in complete liquidation of Balius. The Exchange is scheduled to occur on or about December 31, 2002. No brokerage commissions, fees (except for customary transfer fees, if any) or other remuneration will be paid by Stratigos or Balius in connection with the Exchange. Stratigos and Balius each will pay its *pro rata* share, based on their relative net assets on the date of the Exchange, of the expenses incurred in connection with the Exchange. Applicants agree not to make any material changes to the Acquisition Agreement without prior approval of the Commission or its staff.

4. On August 1, 2002, the board of managers of Stratigos (the "Board"), including a majority of the members who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Managers"), approved the Acquisition Agreement. In approving the Acquisition Agreement, the Board concluded that: (a) The Exchange is consistent with the policies of Stratigos, as recited in its registration statement, (b) the terms of the Exchange, including the consideration to be received by Stratigos, are reasonable and fair and do not involve overreaching on the part of any concerned, (c) participation by Stratigos in the Exchange is in the best interests of Stratigos and its Members and the Interests of existing Members of Stratigos will not be diluted as a result of the Exchange, and (d) the Exchange is consistent with the general purposes of the Act. These findings, and the basis upon which they were made, are recorded in the minute books of Stratigos.

5. With respect to Balius, the Adviser (as Balius' managing member) believes that the Exchange is in the best interests of Balius and the Members of Balius. The Exchange is required to be approved by Members of Balius that represent more than 50% of the aggregate value of the outstanding interests of Balius.

6. The Exchange will not be effected until: (a) The Commission has issued the requested order; and (b) Stratigos and Balius have received an opinion of counsel substantially to the effect that the Exchange will not result in taxable income to Balius, Stratigos or their respective Members.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person controlling, controlled by, or under common control with, the other person; and, if the other person is an investment company, its investment adviser. Section 2(a)(9) of the Act, in relevant part, defines "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official positions with such company."

2. Applicants state that Balius could be deemed to be an affiliated person of Stratigos because Balius and Stratigos might be deemed to be under the common control of the Adviser. Thus, applicants state that the proposed Exchange may be prohibited under section 17(a) of the Act.

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction is for no consideration other than cash. Applicants state that the relief provided by rule 17a–7 may not be available for the Exchange because the Exchange will involve consideration other than cash (*i.e.*, Interests of Stratigos) and certain of the assets transferred will be valued in accordance with the Valuation Procedures, rather than the methodology set forth in paragraph (b) of rule 17a–7.[1] Applicants also state that Balius may be deemed to be affiliated with Stratigos for reasons other than those set forth in the rule 17a–7. There is a possibility that, as a result of withdrawals of capital by Members of Balius and Stratigos prior to the Exchange, the Adviser or CIHI may, at the time of the Exchange, own five percent or more of the outstanding Interests in Stratigos or Balius, or both.

4. Rule 17a–8 exempts certain transactions (including mergers, consolidations or purchases or sales of substantially all of the assets of a company (collectively, "Asset Acquisitions")) otherwise prohibited by section 17(a) of the Act, provided, among other requirements, that the Asset Acquisition is between registered investment companies or between a registered investment company and an eligible investment fund (as defined in the rule) ("Eligible Unregistered Fund"). Applicants state that the relief provided by rule 17a–8 may not be available for the Exchange because the Exchange will involve Balius, which is not a registered investment company nor an Eligible Unregistered Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) of the Act if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

6. Applicants submit that the terms of the Exchange meet the criteria contained in section 17(b) of the Act. Applicants state that the Interests issued by Stratigos will have an aggregate net asset value equal to the aggregate net asset value of the assets acquired from Balius. Because the Valuation Procedures will be those used by Stratigos to value its portfolio securities, the Interests of existing Members of Stratigos will not be diluted as a result of the Exchange. Applicants also state that the investment objective and policies of Balius are substantially similar to those of Stratigos. Applicants further state that the Board, including a majority of the Independent Managers, has approved the Acquisition Agreement and that the Exchange will comply with the terms of paragraph (b) of rule 17a–7, except as described in the application, paragraphs (c), (d), (e), (f) and (g) of rule 17a–7 and the provisions of rule 17a–8 (as those provisions apply to a merger of an Eligible Unregistered Fund with a registered investment company).

[1] Under the Valuation Procedures, domestic exchange traded or NASDAQ listed equity securities are valued at their last composite sales price as reported on the exchanges where those securities are traded. If no sales of such securities are reported on a particular day, the securities are valued based upon their composite bid prices for securities held long, or their composite ask prices for securities held short, as reported by such exchanges. The rationale for this approach is that in the absence of an actual sale price, the bid would best reflect the price at which Stratigos could expect to sell securities held long and the ask would best reflect the price at which Stratigos could expect to purchase the securities held short if it were required to do so.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition: The Exchange will comply with the terms of paragraph (b) of Rule 17a–7, except as described in the application, paragraphs (c), (d), (e), (f) and (g) of Rule 17a–7 and the provisions of Rule 17a–8 (as these provisions apply to a merger of an Eligible Unregistered Fund with a registered investment company).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30914 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 71599, December 2, 2002.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional Meeting.

The Securities and Exchange Commission held an additional Closed Meeting on December 3, 2002 at 2:30 p.m. The subject matter of that meeting was a regulatory matter bearing enforcement implications.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 4, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–31021 Filed 12–4–02; 12:57 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 9, 2002:

A Closed Meeting will be held on Tuesday, December 10, 2002, at 10 a.m., and an Open Meeting will be held on Wednesday, December 11, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, December 10, 2002 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature; and
Institution and settlement of injunctive actions.

The subject matter of the Open Meeting scheduled for Wednesday, December 11, 2002 will be:

1. The Commission will consider whether to adopt the repeal of Rule 11Ac1–7 under the Securities Exchange Act of 1934. Rule 11Ac1–7 requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, and to disclose the better published quote available at that time, unless the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan.

2. The Commission will consider whether to propose amendments to Forms N–1A, N–2, N–3, proposed Form N–CSR, and Articles 6 and 12 of Regulation S–X as well as new rule 30b1–4 and new Form N–Q under the Investment Company Act. The proposals would (1) require a registered management investment company to file a schedule of its complete portfolio holdings with the Commission on a quarterly basis; (2) permit a registered management investment company to include a summary portfolio schedule in reports to shareholders and exempt money market funds from including a portfolio schedule in reports to shareholders, provided that the complete portfolio schedule is filed with the Commission and available to shareholders upon request; (3) require a registered management investment company to include a tabular or graphic presentation of a fund's portfolio holdings in its reports to shareholders; (4) require a mutual fund to disclose in its reports to shareholders fund expenses borne by shareholders during the reporting period; and (5) require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

3. The Commission will consider whether to adopt amendments to rule 203A–2(f) under the Investment Advisers Act of 1940 to exempt certain investment advisers that provide advisory services through the Internet from the prohibition on Commission registration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31022 Filed 12–4–02; 12:58 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46929; File No. SR–CSE–2002–17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to an Extension of an Existing Pilot Amending CSE Rule 12.6, Customer Priority, To Require Designated Dealers to Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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notice is hereby given that on November 21, 2002, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change for a pilot period. through May 31, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the termination date of the pilot that amends CSE rule 12.6, Customer Priority, by adding new Interpretation .02, which requires a CSE Designated Dealer ("Specialist") to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.[3] Under the pilot rule, the Specialist is required to better a customer limit order at the NBBO by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. The Exchange is requesting an extension of the pilot, and the exemption letters associated therewith.[4] The proposed extension of the pilot requires no changes to the Initial Pilot rule text, which is available at the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange rule 12.6[5] by adding an interpretation to the rule covering the trading of securities in subpenny increments.[6] New Interpretation .02 to the rule will require a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or by at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[7]

The purpose of the new Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or marketable limit orders. Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[8] in general, and section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange requests that this rule be approved on a pilot basis through May 31, 2003, to be co-extensive with the conditional temporary exemptive relief granted concurrently by the Commission in the Instant Exemption Letter.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2002–17 and should be submitted by December 27, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[10] and, in particular section 6(b)(5) of the Act.[11] As discussed above, through the Instant Exemption Letter, the Division has extended the relief granted by the Amended Exemption Letter. The Commission believes that the proposed rule change should provide protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of Exchange Specialists in appropriate circumstances.

The Commission finds good cause for approving the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to provide uninterrupted protection to customer limit orders in subpenny increments in Nasdaq securities and expedite the protection of customer limit orders in subpenny increments in listed securities.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CSE–2002–17) is hereby approved on an accelerated basis for a pilot period through May 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30887 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (File No.SR–CSE–2001–06) ("Initial Pilot"). *See also* Securities Exchange Act Release No. 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) ("Pilot Extension").

[4] *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown, General Counsel, CSE (July 26, 2002) ("Initial Exemption Letter") and letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (November 27, 2001) ("Initial Exemption Request"). *See also* letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, General Counsel, CSE (September 25, 2002) (amending and extending the Initial Exemption Letter) ("Amended Exemption Letter") and letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (September 18, 2002) ("Amended Exemption Request").

[5] CSE rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such a member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[6] In conjunction with this proposed rule change, the CSE has requested that the Commission extend the relief provided by the Initial Exemption Letter and the Amended Exemption Letter pursuant to rules 11Ac1–1(e) (17 CFR 240.11Ac1–1(e)), 11Ac1–2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. *See* Letter to Annette Nazareth, Director, Division, Commission, from Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (November 20, 2002) ("Instant Exemption Request"). Concurrent with the instant accelerated approval, the Commission has granted the Instant Exemption Request. *See* letter from Alden S. Adkins, Associate Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (November 27, 2002) ("Instant Exemption Letter").

[7] Interpretation .01 to rule 12.6 provides that "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46930; File No. SR–DTC–2002–08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Unitary Action Procedures

November 27, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 13, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–2002–08) as described in Items I, II, III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to adopt procedures to enable its nominee, Cede & Co., to exercise certain rights as the recordholder of securities on deposit at DTC where Cede & Co. is permitted to act with respect to 100% of the securities on deposit or not act at all under applicable law. (This is known as a "Unitary Action" situation.) When involved in a situation that purports to require a Unitary Action under applicable law, DTC would still attempt to follow the procedures it applies when exercising rights that do not purport to require a Unitary Action.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries set forth in sections A, B, and C below of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under DTC's current procedures in situations not involving Unitary Actions for solicitations when an issuer has announced an annual or special shareholders meeting or consent solicitation and where a record date has been established, DTC assigns applicable Cede & Co. voting rights or consenting rights to its participants that have securities credited to their accounts on the record date and issues an omnibus proxy and forwards it to the issuer or trustee. DTC also assists its participants in exercising other rights available to Cede & Co. as the recordholder of securities on deposit at DTC. Examples of the rights that participants may exercise through DTC are the right to dissent and seek an appraisal of stock, the right to inspect a stock ledger, and the right to accelerate a bond. Participants may seek DTC's assistance in exercising such rights on their own behalf or on behalf of their customers. DTC will act in these matters only upon written instructions from participants with securities credited in their DTC free accounts.

When involved in a situation that purports to require a Unitary Action under applicable law, DTC would nevertheless attempt to follow the procedures described in the preceding paragraph. If, for example, a foreign bankruptcy court stated that it would accept votes for approval of a plan of bankruptcy from bondholders holding through DTC from Cede & Co. but only in the form of a 100% yes or no vote or not at all, DTC would attempt to assign its voting rights to its participants or otherwise act in accordance with its participants' instructions.

DTC will not be liable for any losses arising from actions it takes or fails to take in connection with Unitary Actions other than those losses that are directly caused by DTC's gross negligence or willful misconduct.

In Unitary Action situations, DTC may incur unusual expenses (*e.g.*, hiring outside counsel) that are specifically attributable to the securities that are subject to the Unitary Action. Under DTC Rule 20, DTC may charge back to each participant holding a position in Unitary Action security such participant's pro rata share (based on the number of shares or the principal

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

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amount of bonds or notes) of DTC's expenses related to DTC's taking or not taking an action in connection with a Unitary Action.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will clarify the procedures that DTC will follow in situations calling for Unitary Actions and thereby promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–2002–08 and should be submitted by December 27, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30889 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Previously, DTC had filed another proposed rule change to establish procedures for Unitary Actions. Securities Exchange Act Release No. 34–45316 (Jan. 18, 2002), 67 FR 4299 (Jan. 29, 2002) (File No. SR–DTC–2001–05). In response to a comment letter from the Corporate Actions Division of the Securities Industry Association (Mar. 25, 2002) and conversations with Board members of that Division, DTC withdrew that proposed rule change and submitted the present filing.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46933; File No. SR–ISE–2002–22]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc. ("ISE") Relating to Pilot Fee Waivers

December 2, 2002.

On October 3, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to waive certain fees on a pilot basis. The proposed rule change, as amended, would waive the following fees through May 31, 2003: firm proprietary execution fees for trading in the ISE Block Mechanism; firm proprietary execution fees for all trades on options on the iShares S&P 100 Index Fund; and the $.10 licensing surcharge fee for all firm proprietary trades in options on the iShares S&P 100 Index Fund. The ISE filed an amendment to the proposed rule change on October 9, 2002.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on October 28, 2002.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission believes that the proposed fee waivers, to be effective until May 31, 2003, are reasonable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[7], that the proposed rule change, as amended (SR–ISE–2002–22), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30915 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 8, 2002, and attachment ("Amendment No. 1"). In Amendment No. 1, the ISE proposes to correct the rule text of the proposed rule change to clarify that the pilot period for the fee waivers would end on May 31, 2003.

[4] Securities Exchange Act Release No. 46698 (October 21, 2002), 67 FR 65818.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46931; File No. SR–NSCC–2002–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating To Clearing Fund Requirements and Letters of Credit Collateralization

November 27, 2002.

I. Introduction

On July 16, 2002, the National Securities Clearing Corporation filed with the Securities and Exchange Commission ("Commission") and on July 25, 2002, and November 25, 2002, amended a proposed rule change File No. SR–NSCC–2002–05 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on August 27, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Under NSCC's current rules, each member, except for a Mutual Fund/Insurance Services Member, is required to maintain a minimum contribution to the clearing fund of $10,000. The first $10,000 of a member's contribution must be in cash, and if all or a part of the member's contribution is collateralized with letters of credit, the greater of $50,000 or ten percent of the member's contribution up to a maximum of $1,000,000 is required to be in cash:

To assure NSCC of more cash to meet any liquidity needs, NSCC is modifying rule 4 (Clearing Fund) and procedure XV (Clearing Fund Formula and Other Matters) of its rules and procedures to require that, except with respect to a Mutual Fund/Insurance Services Member: (1) The first 40%, but no less than $10,000, of a member's required deposit to the clearing fund must be in cash and (2) with respect to the remaining amount, no more than 25% of the required deposit may be collateralized with a letter of credit. Mutual Fund/Insurance Services Members' clearing fund requirements will remain unchanged.

Based on NSCC's current calculations, increasing the percentage of cash that must be deposited to the clearing fund will impact approximately 48 member firms. Reducing the permitted use of letters of credit will affect 21 of the approximately 33 member firms that post letters of credit. NSCC will implement these clearing fund changes no earlier than 30 days after the Commission approves the proposed rule change.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. [3] By increasing the minimum percentage of cash that NSCC members must deposit to meet their required deposits to the clearing fund and by lowering the maximum percentage of their required clearing fund deposit that may be collateralized with letters of credit, the rule change will result in NSCC maintaining a higher percentage of cash in its clearing fund which will make the clearing fund more liquid. This will result in NSCC being in a better position to address any situation in which the clearing fund is called into play. As a consequence, NSCC will be better able to provide for the safeguarding of funds and securities under its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2002–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30888 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46389, (August 21, 2002), 67 FR 55053 (August 27, 2002).

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46924; File No. SR–NASD–2002–170]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Primex Auction System®

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 26, 2002, the National Association of Securities Dealers, Inc., through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and subparagraph (f)(2) of rule 19b–5.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System® ("Primex" or "System") as a Pilot Trading System, pursuant to rule 19b–5 of the Act,[5] until January 15, 2003, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of rule 19b–5,[6] Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System ("PTS"), as defined in paragraph (c)(2) of rule 19b–5 of the Act.[7] As such, Nasdaq was not required to file a proposed rule change under rule 19b–4 of the Act[8] as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of rule 19b–5, a system must comply with three criteria to maintain its status as a PTS.[9] One such

[4] 17 CFR 240.19b–5(f)(2).

[5] 17 CFR 240.19b–5.

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 240.19b–5(c)(2).

[8] 17 CFR 240.19b–4.

[9] Pursuant to rule 19b–5(c)(2), to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least

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criteria is that, for each security traded in the PTS, the PTS cannot trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex exceeded this threshold for many securities. Therefore, Nasdaq filed a proposed rule change seeking permanent approval of Primex.[10] Nasdaq also filed a proposed rule change to continue operating the System for up to six months while the Commission considered granting permanent approval.[11] This six-month period expired on October 31, 2002. On October 31, 2002, Nasdaq filed a proposed rule change, which was effective upon filing, to continue to operate Primex as a PTS until November 30, 2002.[12] The Commission is still considering Nasdaq's filing seeking permanent approval of Primex. Accordingly, Nasdaq is filing this proposed rule change to continue operating Primex as a PTS until January 15, 2003, or until the Commission grants permanent approval, whichever period is shorter. Primex continues to operate in the manner described in the form PILOT filing, as amended.[13]

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of sections 15A(b)(6)[14] and 11A(a)(1) of the Act.[15] Section 15A(b)(6) of the Act [16] requires the rules of the NASD to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1) of the Act [17] sets forth a finding of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations.

Nasdaq believes this proposed rule change is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because it will allow Nasdaq to continue operating Primex while the Commission considers permanent approval. Among other things, the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. To ensure the protection of investors, orders will not be executed at prices inferior to the National Best Bid or Offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,[18] and subparagraph (f)(2) of rule 19b–5 thereunder,[19] because the proposal will permit Nasdaq to continue operating Primex as a PTS while the Commission considers granting permanent approval. The proposal does not modify any rule or the operation of Primex.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,[20] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–170 and should be submitted by December 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30886 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization.

[10] Securities Exchange Act Release No. 45983 (May 23, 2002) 67 FR 38152 (May 31, 2002).

[11] Securities Exchange Act Release No. 45982 (May 23, 2002) 67 FR 38163 (May 31, 2002).

[12] Securities Exchange Act Release No. 46756 (October 31, 2002), 67 FR 68221 (November 8, 2002).

[13] Form PILOT-NASD–2001–01.

[14] 15 U.S.C. 78o–3(b)(6).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78k–1(a)(1).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(5).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 4, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, (202) 205–7570 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Disaster Home/Business Loan Inquiry Record.
Form No: 700.
Description of Respondents: Victims in Presidential declared disaster.
Annual Responses: 53,478.
Annual Burden: 13,370.
Title: Governor's Request for Disaster Declaration.
Form No: N/A.
Description of Respondents: Victims in Presidential declared disaster.
Annual Responses: 57.
Annual Burden: 1,140.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–30893 Filed 12–5–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service, Performance Review Board Members

ACTION: Notice of members of the FY 2002 Performance Review Board.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following have been designated to serve on the FY 2002 Performance Review Boards for the U.S. Small Business Administration:

1. John Whitmore, Chief of Staff;
2. Michael Barrera, National Ombudsman;
3. Lloyd Blanchard, Chief Operating Officer;
4. Richard Spence, Assistant Administrator for Congressional and Legislative Affairs;
5. Kaaren Street, Associate Deputy Administrator for Entrepreneurial Development;
6. Monika Edwards Harrison, Assistant Administrator for Human Resources;
7. James Rivera, Associate Administrator for Financial Assistance;
8. Francisco Marrero, District Director, South Florida;
9. Alberto Alvarado, District Director, Los Angeles;
10. Linda Williams, Associate Administrator for Government Contracting;
11. Eric Benderson, Associate General Counsel for Litigation.

Dated: December 2, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–30904 Filed 12–5–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13962]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 2115–0086 and 2115–0551

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Application for Measurement of Vessels for Tonnage and (2) Vessel Reporting Requirements. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before February 4, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–13962] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–13962], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Application for Measurement of Vessels for Tonnage.
OMB Control Number: 2115–0086.
Summary: The information for this collection is used to determine a vessel's tonnage. Tonnage is used as a basis for licensing, inspection, safety requirements, and operating fees.
Need: 46 U.S.C 14104 requires the measurement of certain vessels for tonnage. 46 CFR part 69 prescribes the rules for this measurement.
Respondents: Owners of vessels.
Frequency: On occasion.
Burden: The estimated burden is 33,000 hours a year.

2. *Title:* Vessel Reporting Requirements.
OMB Control Number: 2115–0551.
Summary: The collection of information requires the owner, charterer, managing operator, or agent of a U.S.-flagged vessel to immediately notify the Coast Guard if there is reason to believe the vessel is in distress or lost. The report must be followed up with written confirmation within 24 hours to the Coast Guard.
Need: 46 U.S.C. 2306 authorizes the Coast Guard to implement the reporting requirements necessary to determine whether a vessel is in distress or lost and to take appropriate action to provide needed assistance.
Respondents: Owners, charterers, managing operators, or agents.

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Frequency: On occasion.
Burden: The estimated burden is 137 hours a year.

Dated: November 27, 2002.

C.I. Pearson,

Director of Information and Technology.

[FR Doc. 02–30929 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number 2002–11809]

Notice of Public Hearing; The North County Transit District

The North County Transit District (NCTD), located in Oceanside, California, has sought a permanent waiver of compliance from certain parts of Title 49 of the Code of Federal Regulations, including Part 210 (Railroad Noise Emission Compliance Regulations), Part 217 (Railroad Operating Rules), Part 218 (Railroad Operating Practices), Part 219 (Control of Alcohol and Drug Use), Part 221 (Rear End Marking Devices), Part 223 (Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses), Part 225 (Railroad Accidents/Incidents—Report Classification, and Investigations), Part 229 (Railroad Locomotive Safety Standards), Part 231 (Railroad Safety Appliance Standards), Part 238 (Passenger Equipment Safety Standards), Part 239 (Passenger Train Emergency Preparedness), and Part 240 (Qualification and Certification of Locomotive Engineers).

NCTD seeks approval of shared track usage and waiver of certain FRA regulations involving planned light rail passenger operations on the same track with freight trains between Oceanside and Escondido, California (Oceanside-Escondido Rail Project). FRA has jurisdiction over the 22-mile portion of the Oceanside-Escondido Rail Project that is also used for freight rail carrier service. The freight operator on the Oceanside-Escondido Rail Project is the Burlington Northern and Santa Fe Railway Company (BNSF), which currently conducts operations over this trackage. NCTD proposes to operate light rail vehicles on the same track as BNSF freight trains using temporal separation under which freight operations and passenger operations will not be conducted during the same part of the day. For further information about freight and passenger shared track usage, see "Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment," 65 FR 42529 (July 10, 2000). See also "Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems," 65 FR 42626 (July 10, 2000).

The Federal Railroad Administration (FRA) issued a public notice of the NCTD waiver petition and sought comments from interested parties (67 FR 14768, March 27, 2002). All documents pertaining to this petition are in the public docket, including NCTD's detailed waiver request, and are available for inspection and copying. The documents are also available on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

After examining the railroad's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal. The purpose of this public hearing is to afford the Railroad Safety Board the opportunity to gather additional information from all interested parties and to explore all available options and concerns before making a final decision on the NCTD petition. FRA will deliberate all of its options, which may include denial, approval, conditional approval, or approval in part and denial in part.

The public hearing is set for 10 a.m. (PST), on Thursday, January 23, 2002, North County Transit District Office, 810 Mission Avenue, Oceanside, California, 92054–2825. Interested parties are invited to present oral statements at the hearing. The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR part 211.25) by a representative designated by the FRA.

The hearing will be a nonadversarial proceeding and will include no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 2, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–30927 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 34079]

San Jacinto Rail Limited—Construction Exemption—and the Burlington Northern and Santa Fe Railway Company—Operation Exemption—Build-Out to the Bayport Loop Near Houston, Harris County, TX

AGENCIES: *Lead:* Surface Transportation Board. *Cooperating:* U.S. Coast Guard, Federal Aviation Administration, National Aeronautics and Space Administration.

ACTION: Notice of availability of Draft Environmental Impact Statement and notice of public meetings.

SUMMARY: On August 30, 2001, San Jacinto Rail Limited (SJRL) and the Burlington Northern and Santa Fe Railway (BNSF) (referred to collectively as the Applicants) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction by SJRL and operation by BNSF of a new rail line near Houston, Harris County, Texas. The project, known as the Bayport Loop Build-Out, would involve construction of approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop). The Proposed Action includes rail operations to and from the new rail line near Ellington Field over trackage rights on Union Pacific Railroad Company's (UP's) GH&H line and UP's East Belt, Terminal, Lafayette, and Baytown Subdivisions to the storage yard operated by CMC Railroad at Dayton, approximately 30 miles east of Houston. The project would require actions by several Federal agencies, including the Board, the U.S. Coast Guard (USCG), and the National Aeronautics and Space Administration (NASA), and may require actions by the Federal Aviation Administration (FAA).

The Board, through its Section of Environmental Analysis (SEA) and in cooperation with USCG, FAA, and NASA, has published a Draft Environmental Impact Statement (Draft EIS) for the Bayport Loop Build-Out Project. This Draft EIS is an analysis of the potential environmental impacts of the Applicants' proposal and its reasonable and feasible alternatives, including the No-Action Alternative. The Build Alternatives, which are the Alternatives involving construction, would cause moderate wetland, surface water, and biological impacts. SEA recommends that the Board impose the Applicants' proposed voluntary mitigation measures as a condition of petition approval. The mitigation measures address these moderate impacts as well as a range of additional issues of interest to the community. The Proposed Action and Alternatives would cause negligible effects on all other impact areas. SEA invites public and agency comments on all aspects of the Draft EIS. Comments must be faxed or postmarked by the close of the comment period, which is January 27, 2003. Information on how to submit comments is set forth below.

SEA, working with the three cooperating agencies, will make its final recommendations on the project, including environmentally preferable alternative(s) and environmental mitigation, to the Board in the Final EIS, after considering all public comments on the Draft EIS. The Final EIS will be issued after public comments have been received, reviewed, and fully evaluated. Notice of availability of the Final EIS will be published in the **Federal Register**.

Following issuance of the Final EIS, the Board will make its final decision regarding this project and any environmental conditions it might impose. In reaching its final decision in this proceeding, the Board will take into account the full environmental record, including the Draft EIS, the Final EIS, and all public and agency comments received. The cooperating agencies will issue their decisions based on the same environmental record.

FOR FURTHER INFORMATION CONTACT: Ms. Dana White, SEA Project Manager, toll-free at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339). The Web site for the Surface Transportation Board is *www.stb.dot.gov*.

Mr. Phil Johnson, U.S. Coast Guard, (504) 589–2965.

Ms. Nan Terry, Federal Aviation Administration, (817) 222–5607.

Ms. Perri Fox, National Aeronautics and Space Administration, (281) 483–3157.

SUPPLEMENTARY INFORMATION:

Floodplains Notification: As required by Executive Order 11988 (Floodplain Management), SEA is providing Notice that the Proposed Action would involve new construction in a floodplain. SEA's preliminary determination is that floodplains along Horsepen Bayou, Armand Bayou, Spring Gully, Big Island Slough, and Taylor Bayou and various unnamed tributaries and flood control channels could not be avoided by the Proposed Action or the other Build Alternatives because of the linear nature of the proposed project. SEA has also determined that the floodplain impacts would be similar for the Proposed Action and the other Build Alternatives.

The Proposed Action would not cause an adverse effect or incompatible development in a floodplain because the facility would be designed, constructed, and maintained to accommodate flood flows and minimize impacts to floodplains. The proposed design would include properly sized, sited, constructed, and maintained bridges and culverts, and new drainage ditches on both sides of the rail bed along most of the alignment. The floodways along Horsepen Bayou, Armand Bayou, Big Island Slough, and Spring Gully and the main channel of Taylor Bayou would be spanned by bridges. In addition, the design and specifications for bridges, culverts, channels, and related structures would satisfy Harris County Flood Control District requirements. All bridge crossings would accommodate flood flows from the 24-hour, one-percent probability storm and would conform to all applicable design standards required by the National Flood Insurance Program. The design of crossings of flood control channels or connections to drainage channels would require approval from the Engineering Division and the Flood Control Division of the Harris County Public Infrastructure Department.

Wetlands Finding and Notification: As required by Executive Order 11990 (Protection of Wetlands), the FAA and NASA are providing Notice that the Proposed Action and the other Build Alternatives would involve new construction in wetlands. The FAA and NASA have reached a preliminary determination that construction in wetlands could not be avoided because of the linear nature of the proposed project. The Proposed Action and the other Build Alternatives include all practicable measures to avoid and minimize harm to wetlands, which includes restoration, creation, and preservation of wetlands.

Joint 404/401 Permit Application: The Applicants have submitted a Joint Permit Application under Section 404/401 of the Clean Water Act to the U.S. Army Corps of Engineers (USACE). The USACE will issue a Public Notice on the Joint Permit Application. For information on the Applicants' Joint Permit Application contact: John Machol, U.S. Army Corps of Engineers, Regulatory Branch, CESWG–PE–R, Jadwin Building, 2000 Fort Point Road, Galveston, TX 77550.

Public Availability: The entire Draft EIS is available on the Board's Web site (*http://www.stb.dot.gov*) in a downloadable format by clicking on the "Decisions & Notices" button and searching by Service date or Docket Number. The Draft EIS will be listed as an Environmental Review under the "TYPE" category. Because of the size of the document, distribution of the entire Draft EIS has been limited to governmental agencies, elected officials, community groups, and parties of record. This Notice of Availability has been distributed to over 1,000 other interested parties, including private citizens.

SEA has also distributed the Draft EIS to the repositories listed below and asked that the entire Draft EIS be made publicly available in their reference section. A Spanish translation of the Executive Summary of the Draft EIS will also be available at the repositories. Copies of the Draft EIS in hardcopy or on CD-ROM and the Executive Summary translation are also available by calling the toll-free number at 1–888–229–7857.

San Jacinto College, Central Campus Library

8060 Spencer Highway, Pasadena, TX 77505, (281) 476–1850.

San Jacinto College, North Campus Library

5800 Uvalde Street, Houston, TX 77015, (281) 459–7116.

San Jacinto College, South Campus

13735 Beamer Road, Houston, TX 77089, (281) 922–3416.

University of Houston, Clear Lake Campus, Alfred Neumann Library

2700 Bay Area Boulevard, Houston, TX 77058, (281) 283–3930.

Freeman Memorial Branch Library

16602 Diana Lane, Houston, TX 77062, (281) 488–1906.

Harris County Public Library, Evelyn Meador Branch

2400 N. Meyer Road, Seabrook, TX 77586, (281) 474–9142.

Harris County Public Library, South Houston Branch

607 Avenue A, South Houston, TX 77587, (713) 941–2385.

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Pasadena Public Library, Fairmont Branch

4330 Fairmont Parkway, Pasadena, TX 77504, (713) 998–1095.

Pasadena Public Library, Main Branch

1201 Jeff Ginn Memorial, Pasadena, TX 77506, (713) 477–0276.

Deer Park Public Library

3009 Center Street, Deer Park, TX 77536–7099, (281) 478–7208.

Houston

500 McKinney Avenue, Houston, TX 77002, (713) 247–2222.Public Library

Park Place Regional Library

8145 Park Place Boulevard, Houston, TX 77017, (832) 393–1970.

Patricio Flores Library

110 North Milby Street, Houston, TX 77003, (832) 393–1780.

Melcher Branch Library

7200 Keller, Houston, Texas 77012, (832) 393–2480.

Bracewell Branch Library

10115 Kleckley, Houston, Texas 77075, (832) 393–2580.

Tuttle Branch Library

702 Kress, Houston, Texas 77020, (832) 393–2100.

Stanaker Branch Library

611 S/Sgt. Macario Garcia, Houston, Texas 77011, (832) 393–2080.

Liberty Municipal Library

Geraldine D. Humphreys Cultural Center, 1710 Sam Houston Avenue, Liberty, TX 77575, (936) 336–8091.

Sam Houston Regional Library

Archives & Information Services, FM 1011, Liberty, TX 77575, (936) 336–9921.

Dayton Library

307 West Houston, Dayton, TX 77535, (936) 258–7060.

Crosby Branch Library

135 Hare Road, Crosby, TX 77532–8895, (281) 328–3535.

Lee College Library

15010 FM 2100 Road, Crosby, TX 77532, (281) 328–1111.

Austin Memorial Library

220 South Bonham, Cleveland, TX 77327, (281) 592–3920.

Kingwood Branch Library

4102 Rustic Woods Drive, Kingwood, TX 77345, (281) 360–6804.

Kingwood College Library

20000 Kingwood Drive, Kingwood, TX 77339, (281) 312–1693.

Public Comment: Written comments on the Draft EIS must be postmarked or faxed by January 27, 2003. The public and any interested parties are encouraged to make written comments on all aspects of this Draft EIS. SEA will consider all comments in preparing the Final EIS and the Final EIS will respond to all substantive comments. When submitting comments on the Draft EIS, please be as specific as possible and substantiate your concerns and recommendations. Please mail written comments to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

To ensure proper handling of your comments, please mark your submission: *Attention:* Dana White, Section of Environmental Analysis, Environmental Filing FD No. 34079.

Due to delays in the delivery of mail currently being experienced by Federal agencies in Washington, DC, SEA encourages that comments be faxed to 1–866–293–4979. Faxed comments will be given the same weight as mailed comments; therefore, persons submitting comments by fax do not have to also send comments by mail.

Further information about the project can be obtained by calling SEA's toll-free number at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339).

Public Meetings: In addition to receiving written comments, SEA will host two public meetings on the Draft EIS. At each meeting, SEA will give a brief presentation and interested parties will be invited to make oral comments. SEA will have a transcriber present to record the oral comments in either English or Spanish. Written comments may also be submitted at the meetings. Meetings will be held at the following locations, dates, and times:

Pasadena Convention Center, 7902 Fairmont Parkway, Pasadena, TX, January 14, 2003, 7—9 p.m.

Cesar E. Chavez High School, 8501 Howard Drive, Houston, TX, January 15, 2003, 7—9 p.m.

Both meetings will follow the same format and agenda; it is not necessary to attend both meetings.

Pre-Registration for Public Meetings: Persons wanting to speak at a public meeting are strongly urged to pre-register by calling the toll-free Environmental Hotline for this project at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339) and leaving their name, telephone number, the name of any group, business, or agency affiliation, if applicable, and the date of the meeting at which they wish to speak. The deadline for pre-registration for all meetings is January 7, 2003.

Persons will be called to speak at each meeting in the order in which they pre-registered. Those wishing to speak who did not pre-register will be accommodated at each meeting as time allows. Those wishing to speak at more than one meeting will also be accommodated as time allows and after all others have had an opportunity to participate. As SEA would like as many persons as possible to participate and given that there will be a limited amount of time at each meeting, all speakers are strongly encouraged to prepare summary oral comments, and submit detailed comments in writing. SEA also encourages groups of individuals with similar comments to designate a representative to speak for them. A translator will be available at both meetings for Spanish-speakers wishing to speak.

The Web site for the Surface Transportation Board is *www.stb.dot.gov.*

Decided: November 20, 2002.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30907 Filed 12–5–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the TSA invites public comment on one currently approved public information collection, which will be submitted to OMB for renewal.

DATES: Comments must be received on or before February 4, 2003.

ADDRESSES: Comments may be mailed or delivered to the TSA at the following address: Office of Security, TSA–14, Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Ferris, Office of Security, TSA–14, Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590, (202) 385–1190.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the TSA solicits comments on this current collection of information to evaluate the necessity of the collection; the accuracy of the agency's estimate of the burden; the quality, utility, and clarity of the information to be collected; and possible ways to minimize the burden of the collection. These comments are solicited in preparation for submission to renew the clearance of the following information collection:

1.2110–0007, Employment Standards-Parts 107 and 108 of the Federal Aviation Regulations. Section 105 of Public Law 101–604, the Aviation Security Improvement Act of 1990, directed the FAA to prescribe standards for the hiring, continued employment and contracting of air carrier and appropriate airport security personnel. These standards were developed and implemented at 14 CFR parts 107 and 108. The Aviation and Transportation Security Act of 2001, Public Law 107–71, transferred to TSA the responsibility for civil aviation security, including the prescribing of employment standards for the hiring, continued employment and contracting of air carrier and appropriate airport security personnel. In February 2002, TSA implemented regulations at 49 CFR parts 1542 and 1544 prescribing employment standards and the FAA regulations in 14 CFR parts 107 and 108 were repealed. Airport operators will maintain at their principal business office at least one copy of evidence of compliance with training requirement for all employees having unescorted access privileges to security areas. This is a record-keeping burden and the affected public is estimated at 1,300 airport operators and air carrier checkpoints. The estimated annual record-keeping burden is 16,300 hours.

Issued in Washington, DC, on December 2, 2002.

Susan L. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 02–30932 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 27, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 6, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1511.

Regulation Project Number: REG–209828–96 NPRM.

Type of Review: Extension.

Title: Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts.

Description: The regulations revise the requirements for requesting a schedule of ruling amounts based on a formula or method.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 5 hours.

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1514.

Regulation Project Number: REG–209040–88 NPRM.

Type of Review: Extension.

Title: Qualified Electing Fund Elections.

Description: The regulations permit certain shareholders to make a special section 1295 election with respect to certain prepared shares of a PFIC. Taxpayers must indicate on a Form 8621 and attach a statement containing certain information and representations. Form 8621 must be filed annually. The shareholder also must obtain, and retain a copy of, a statement from the corporation as to its status as a PFIC.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,030.

Estimated Burden Hours Per Respondent/Recordkeeper: Varies.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 600 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–30875 Filed 12–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of amendment of system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new routine use to a VA system of records entitled "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA" (55VA26). The routine use will clarify the circumstances under which VA will provide individually identified information on veterans having active VA-guaranteed loans. VA will provide this information upon request, to individuals and entities that issue Interest Rate Reduction Refinancing Loans (IRRRL) where the requester has a pending IRRRL application from an individual who has an active VA-guaranteed loan. VA is also updating the Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records because VA is initiating a new, web-based application that will allow IRRRL lenders to obtain this information directly from the VA system.

DATES: Comments must be received on or before January 6, 2003. If no public comment is received during the 30 day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, this routine use is effective January 6, 2003.

ADDRESSES: You may mail or hand deliver written comments concerning the proposed new routine use to the

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Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. All relevant material received before January 6, 2003, will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: In the course of administering the VA loan guaranty program, VA must provide information to the lenders who make loans to veterans which VA guarantees. In the case of an IRRRL, a lender who is considering making such a loan to a loan applicant would need to know whether the veteran currently has an active VA loan on the books. Data concerning a veteran's use of the loan guaranty benefit is contained in the VA system of records entitled "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA" (55VA26).

VA has developed a new routine use for 55VA26 to permit VA to disclose individually identified veteran loan guaranty information from that system of records to an active VA lender, lender's agent, mortgage broker, or other program participant, as necessary to originate a VA IRRRL to that veteran.

The proposed routine use will provide Privacy Act authority for VA to disclose this identified information to lenders only for the purpose of originating IRRRLs. Lenders must still comply with any applicable confidentiality requirements before disclosing any information to VA in order to learn whether the loan applicant has a current VA loan. Examples of confidentiality requirements are the rules providing for the protection of non-public personal information published by various Federal entities under 15 U.S.C. 6801–6809. See, *e.g.*, 16 CFR part 313, 12 CFR part 716.

Currently lenders needing information to originate IRRRLs contact a VA facility either by telephone or e-mail. VA personnel then access internal VA records and obtain the requested information. VA personnel then communicate the necessary information to the requesting lenders by telephone or e-mail. Under the new procedure, recognized program participants will be able to use a VA-developed, Internet-based application to retrieve the data directly from VA records without the need of VA personnel. This will allow the lender almost instant access to the information required and eliminate the need for VA personnel to research and reply to the lender. This change is being made for reasons of improved efficiency. Of the approximately 15,000 VA-approved lenders, about 5,000 make VA-guaranteed home loans in a given year and could potentially need to request information from VA to originate a refinancing loan.

VA takes very seriously its responsibility to securely maintain the privacy data maintained on veterans in VA systems of records and does not intend to release any information under this routine use that is not necessary to the processing of a particular transaction. Releases of information pursuant to this use will be limited to the case of a veteran applying for an IRRRL. The information provided will be limited to the VA loan number, veteran's name, entitlement code, original loan amount, guaranty amount, and status of the loan (*i.e.*, active or paid in full).

In order to obtain information from the VA system, the party requesting the information must establish the fact that it is a participant in the VA home loan program, through the use of the VA lender identification number assigned by VA Loan Guaranty Service to that party. The requester will log on to the application through the Internet using the requester's 10-digit VA lender ID and a password unique to the requester. Lending entities are required to keep the assigned passwords confidential in accordance with established VBA procedures, and to promptly report any compromise of their assigned passwords. The requester must also provide the veteran's name and social security number and such other information as may be necessary to identify the record or records in question.

As a precaution, to ensure that the information is in fact being requested on behalf of the veteran to whom the record pertains, and in order to process a pending transaction with, or application of, a VA beneficiary, rather than for commercial solicitation purposes, the lender will have to supply either the 12-digit VA loan number or the month and year of the loan being refinanced. IRRRL lenders currently provide this information either orally or by e-mail when requesting information under the current system described above.

VA is amending the Safeguards portion of the Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of the Records in the System by adding a paragraph at the end of that portion to reflect the safeguards applicable to lender IRRRL access to the VA system.

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that the specific routine use proposed for the transfer of this information is appropriate.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 37916–18, July 25, 1994.)

The proposed routine use will be added to the system of records entitled "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA" (55VA26) as published at 40 FR 38095, August 26, 1975, and amended at 48 FR 49961, October 28, 1983; 51 FR 24781, July 8, 1986; 51 FR 28289, August 6, 1986; 52 FR 721, January 8, 1987; 53 FR 49818, December 9, 1988; 56 FR 2064, January 18, 1991; 56 FR 15666, April 17, 1991; 58 FR 50629, September 28, 1993 and 62 FR 35545 (July 1, 1997).

Approved: November 15, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

The system of records identified as "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA" (55VA26), published at 40 FR 38095, August 26, 1975 and amended at 48 FR 49961, October 28, 1983; 51 FR 24781, July 8, 1986; 51 FR 28289, August 6, 1986; 52 FR 721, January 8, 1987; 53 FR 49818, December 9, 1988; 56 FR 2064, January 18, 1991; 56 FR 15666, April 17, 1991; 58 FR 50629, September 28, 1993; and 62 FR 35545 (July 1, 1997), is revised to add a new routine use number 34 as follows:

55VA26

SYSTEM NAME:

Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

34. Any information in this system may be disclosed to an active VA lender, lender's agent, mortgage broker, or other program participant in response to a request from that individual or entity if that information is necessary in connection with the origination of a VA-guaranteed Interest Rate Reduction Refinancing Loan (IRRRL). In order to obtain information under this routine use, the party requesting the information must establish the fact that it is a participant in the VA home loan program through the use of a VA lender identification number. The requester must also provide the veteran's name and social security number and the month and year of the loan being refinanced or the 12-digit VA loan number.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

* * * * *

A VA-approved, active VA lender, lender's agent, mortgage broker, or other program participant may obtain access to the computerized VA system maintaining this system of records for the purpose of learning whether an applicant for a VA-guaranteed IRRRL has a current VA-guaranteed loan under the following circumstances. The lender must log on to the system using the unique 10-digit lender identification number assigned by VA and a unique password. The lender also must enter information identifying the specific veteran for whom the IRRRL lender seeks information, including the veteran's name, social security number and other identifying information, such as the 12-digit loan number for the veteran's current VA-guaranteed loan or the month and year of the loan.

[FR Doc. 02–30780 Filed 12–5–02; 8:45 am]

BILLING CODE 8320–01–P

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Corrections

Federal Register
Vol. 67, No. 235
Friday, December 6, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–850, A–583–826]

Collated Roofing Nails from the People's Republic of China and Taiwan: Final Results of Five Year Sunset Reviews and Revocation of Antidumping Duty Orders

Correction

In notice document 02–29915 beginning on page 70578 in the issue of Monday, November 25, 2002, make the following correction:

On page 70578, in the third column, under the **EFFECTIVE DATE** heading, in the first line, "November 25, 2002" should read, "November 19, 2002".

[FR Doc. C2–29915 Filed 12–5–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Hybrid Inhalation System for Precious Materials

Correction

In notice document 02–30569 appearing on page 71942 in the issue of Tuesday, December 3, 2002, make the following correction:

On page 71942, in the third column, under the heading **SUPPLEMENTARY INFORMATION**, in the fifth line, "sued" should read, "used".

[FR Doc. C2–30569 Filed 12–5–02; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1065

[AMS–FRL–7380–2]

RIN 2060–AI11

Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)

Correction

In rule document 02–23801 beginning on page 68242 in the issue of Friday, November 8, 2002, make the following correction:

§1065.210 [Corrected]

1. On page 68415, in § 1065.210, in Table 1, in the third column, the heading "Value[1]" should read, "Value".
2. On page 68416, in § 1065.210, in Table 1, in the third column, the heading "Value[1]" should read, "Value".
3. On the same page, in the same section, in Table 2, in the third column, the heading "Value[1]" should read, "Value".

[FR Doc. C2–23801 Filed 12–5–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
December 6, 2002

Part II

Department of Transporation

Federal Aviation Administration

14 CFR Parts 119 et al.
Aging Airplane Safety; Final Rule and Notices

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183

[Docket No. FAA–1999–5401; Amdt. Nos. 119–6, 121–284, 129–34, 135–81, and 183–11]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This final rule requires airplanes operated under title 14, Code of Federal Regulations (14 CFR) part 121, U.S.-registered multiengine airplanes operated under 14 CFR part 129, and multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo inspections and records reviews by the Administrator or a designated representative after their 14th year in service and at specified intervals thereafter. These inspections and records reviews will ensure that the maintenance of these airplanes' age-sensitive parts and components has been adequate and timely.

The final rule also prohibits operation of these airplanes after specified deadlines unless damage-tolerance-based inspections and procedures are included in their maintenance or inspection programs. Operators of airplanes initially certificated with nine or fewer passenger seats, however, may incorporate service-history-based inspections instead of damage-tolerance-based inspections and procedures in those airplanes' maintenance or inspection programs. This final rule does not apply to airplanes operated between any point within the State of Alaska and any other point within the State of Alaska.

This rule represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991 and helps to ensure the continuing airworthiness of aging airplanes operating in scheduled service.

DATES: This interim final rule is effective December 8, 2003. Comments must be received on or before February 4, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–1999–5401 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to this interim final rule in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Airplane Maintenance Division, AFS–304, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7355; facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim final rule is based on comments received on notice no. 99–02 entitled "Aging Airplane Safety." The final rule is significantly different from the proposed action due largely in response to the comments received. In some instances, the FAA agreed in total or in part with many comments. In other instances, we did not agree with the commenters' suggestions citing the need and providing further justification and rationale for certain requirements, as proposed.

The FAA believes it has developed a rule that fulfills its regulatory responsibility to meet the requirements of the Aging Aircraft Safety Act, and considers the impact on those affected and the recommendations and alternatives received in response to comments received. However, the FAA continually seeks to find ways to implement its rules at lower cost without compromising safety. To this end, we solicit comments from interested parties on how implementation costs for this rule could be further reduced. Substantive comments should be accompanied by cost estimates to the extent possible. Any recommendations for alternatives to the final rule adopted here should demonstrate that the alternative would provide a level of safety equivalent to this rule.

In particular, the FAA invites commenters to focus on alternatives posed by the Air Transport Association. For example, the ATA suggested that the proposal be framed as an Airworthiness Directive. As explained herein, the FAA does not agree that ADs should be used to implement the new requirements. Airworthiness Directives are used to address unsafe conditions that have already been identified. This rule is to ensure the continuing structural airworthiness of aircraft as they continue in service.

Further, the ATA believes the requirements of this rule exceed the requirements of the Aging Aircraft Safety Act [AASA) by requiring an unsegmented simultaneous review of each affected airplane and its records. The FAA has revised the inspection requirements to enable operators who have segmented maintenance programs, for example, to work with their principal maintenance inspector to agree on which inspection examines the largest portion of the airplane. The operator can make the airplane available to the FAA during that inspection to ensure the inspection and records review is complied with in a comprehensive, efficient, and cost effective manner.

However, an operator who uses segmented maintenance programs may still be required under the rule adopted here to open and make available for inspection additional areas of the airplane to fulfill the requirements of the AASA. As explained in this preamble, we believe that opening additional areas may be necessary to ensure adequate inspections. However, we are sensitive to the additional cost that operators may incur when opening the aircraft more than originally planned. Therefore, commenters are invited to revisit this issue. If an inspection regime can be developed that would provide an equivalent level of safety by limiting the amount of the aircraft opened at any one time, the FAA will consider revising the rule.

The FAA appreciates the significant contributions industry and the public has played in developing this significant and controversial rulemaking action. The comments have helped considerably to ensure the continuing airworthiness of aging airplanes.

The FAA has summarized in the preamble the comments received on the notice of proposed rulemaking along with the FAA's decision on each comment. Individual comments can be viewed in the docket (FAA–1999–5401)

established for this rulemaking action. We invite you to provide additional comment on the interim final rule. We will consider all comments received on or before the closing date for comments. This final rule may be amended in light of comments received.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation (DOT)'s electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page, type in the last four digits of the docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the docket summary information for the docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov*.

Background

Statutory Requirements

In October 1991, Congress enacted title IV of Public Law 102–143, the "Aging Aircraft Safety Act of 1991" (AASA), (subsequently codified as section 44717 of title 49, United States Code (49 U.S.C.)) to address aging aircraft concerns that arose from an accident involving a Boeing 737 in April 1988. That airplane experienced explosive decompression as a result of structural failure, after being subjected to a high number of pressurization cycles. Section 402 of the AASA instructed the Administrator to "initiate a rulemaking proceeding for the purpose of issuing a rule to assure the continuing airworthiness of aging aircraft." Section 402 also required "the Administrator to make such inspections and conduct such reviews of maintenance and other records of each aircraft used by an air carrier to provide air transportation as may be necessary to determine that such is in a safe condition and is properly maintained for operation in air transportation."

The AASA specified that these inspections and records reviews should be carried out "as part of each heavy maintenance check (HMC) of the aircraft conducted on or after the 14th year in which the aircraft has been in service." The statute also specified that an air carrier must be able to demonstrate as part of the inspection "that maintenance of the aircraft's structure, skin, and other age-sensitive parts and components have been adequate and timely enough to ensure the highest degree of safety."

The AASA further instructed the Administrator to issue a rule requiring that an air carrier make its aircraft available for inspection as may be necessary to comply with the rule.

History

The FAA's efforts to address the safety of older airplanes is known collectively as the "Aging Airplane Program." That program addresses transport category airplanes, commuter category airplanes, engines, maintenance, and research. Through the program, the FAA determined that the Airbus A300; Boeing 707, 720, 727, 737, and 747; British Aerospace (BAe) BAC 1–11; Fokker F–28; Lockheed L–1011; and McDonnell Douglas DC–8, DC–9/MD–80, and DC–10 airplanes were approaching design-life goals established by each airplane's type certificate holder. To permit the continued safe operation of these airplanes the FAA adopted a policy of mandated structural modifications and inspections through a series of airworthiness directives (ADs) that address specific design deficiencies that could lead to airplane structural damage.

Type certificate holders also established recommended Corrosion Prevention and Control Programs (CPCPs) for a number of aging transport category airplanes. Corrosion can progressively degrade an airplane's strength until its structure can no longer sustain its designed load. These CPCPs serve as a supplement to existing maintenance requirements.

Additionally, the FAA (1) evaluated methodologies to assess airplane structural repairs, (2) revised Supplemental Structural Inspection Documents (SSIDs), and (3) evaluated the revised Structural Maintenance Program General Guidelines Document, for older airplanes.

On April 2, 1999, the FAA issued a notice of proposed rulemaking (NPRM) entitled "Aging Airplane Safety" (64 FR 16298, notice No. 99–02). The comment period for notice No. 99–02 closed on August 2, 1999; however, the FAA reopened the comment period (64 FR 45090) and that comment period closed on October 18, 1999. The FAA issued this NPRM primarily to expand the use of damage-tolerance-based supplemental structural inspection programs (SSIPs) to a larger proportion of the airplanes used in air transportation and mandate the inspections and records reviews required by the AASA.

Related Activity

Based on the comments received to that NPRM and the related proposed advisory circulars simultaneously made available for comment, the FAA decided not to publish Advisory Circular (AC) 91–MA, "Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Damage-Tolerance-Based Inspections and Procedures. However, draft AC 120–XX "Aging Airplanes Records Reviews and Inspections," now retitled "Aging Airplane Inspections and Records Reviews" and revised to reflect the final rule, is being made available for additional comment. This revised draft AC will provide guidance pertaining to aging airplane inspections and records reviews to be accomplished to satisfy the requirements of the final rule "Aging Airplane Safety". The FAA has issued concurrently with this final rule a notice of availability for draft AC 120–XX seeking substantive comments.

Additionally, the FAA considers that draft AC 91–56B, "Continuing Structural Integrity Program for Airplanes," and draft AC 91–60A, "The Continued Airworthiness of Older Airplanes," are appropriate to the requirements of this final rule. The FAA therefore also has issued concurrently with this final rule notices of availability for proposed AC 91–56B and AC 91–60A. The public will be

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afforded the opportunity to comment on the revisions contained in these proposed ACs.

The FAA revised AC 91–56A, "Continuing Structural Integrity Program for Large Transport Category Airplanes," to AC 91–56B, "Continuing Structural Integrity Program for Airplanes." This revised AC will provide guidance for operators of the airplanes affected by this final rule on how to incorporate an FAA-approved Aging Aircraft Program into their FAA-approved maintenance or inspection program.

Traditionally, AC 91–56 and AC 91–56A have provided guidance to operators of large transport category airplanes on how to develop a damage-tolerance-based SSIP, which was contained in appendix 1 to the AC. The FAA determined that the guidance provided in appendix 1 to AC 91–56A is applicable to small transport category airplanes as well as to large transport category airplanes.

AC 91–56B

Advisory Circular 91–56 and AC 91–56A only considered the effects of repairs and modifications approved by the type certificate holder, and the effects of repairs and modifications performed by operators on individual airplanes. Appendix 1 to AC 91–56B has been expanded to take into consideration the effect of all major repairs, major alterations, and modifications approved by the type certificate holder.

In addition, proposed appendix 1 to AC 91–56B includes an expanded discussion on repairs, alterations, and modifications to take into consideration all major repairs and operator-approved alterations and modifications on individual airplanes.

AC 91–56B also gives a brief description of the current Mandatory Modifications Program, CPCP, and Repair Assessment Program. The AC also states that the "Evaluation for Widespread Fatigue Damage" will be the subject of a future rulemaking activity.

AC 91–60A

Like AC 91–56A, AC 91–60 provides guidance for operators of the airplanes affected by this final rule on how to develop a service-history-based maintenance or inspection program. AC 91–60 has been updated in AC 91–60A to reflect current maintenance and inspection practices and to be consistent with the acceptable methods of compliance for this final rule.

Other Guidance

The FAA also will develop additional guidance and training material for FAA Aviation Safety Inspectors (ASIs), and representatives of the Administrator authorized to conduct the inspections and records reviews specified in this rule prior to the conduct of those inspections and reviews.

Significant Changes

Based on the comments received the FAA made several significant changes to the proposed rule language in notice No. 99–02. The revised rule language is part of this final rule.

The FAA extended the repeat inspection and records review interval from 5 years to 7 years to allow operators to align inspection and records review intervals more closely with scheduled HMC intervals.

Also, while notice No. 99–02 specified that inspections should be established for affected airplanes using damage tolerance techniques, this final rule adds an exception for multiengine airplanes initially certificated with nine or fewer passenger seats and operated under part 129 and part 135 scheduled operations. The requirement to keep flight cycles has been removed. Those airplanes can have a service-history-based SSIP instead of a damage-tolerance-based SSIP.

In addition, the FAA extended the 3-year requirement for initial inspections on airplanes over 24 years old to 4 years. This will provide the FAA with additional time to develop guidance and training material for designees and FAA inspectors.

Finally, the FAA has decided not to apply this final rule to airplanes operated by a certificate holder between any point within the State of Alaska and any other point within the State of Alaska.

Discussion of Comments

A total of 63 commenters submitted 247 comments to Docket No. FAA–1999–5401. Commenters generally opposed the proposal; they submitted 131 comments against the proposed rule and 16 comments in support of the changes. In addition, 100 comments either included supplementary information or did not clearly argue for or against the proposed rule. A discussion of comments submitted, organized by issue, follows.

Statutory Requirements

Section 44717 of 49 U.S.C. requires the following actions:

- The Administrator must "prescribe regulations that ensure the continuing airworthiness of aging aircraft."
- The Administrator must "make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation." These inspections and reviews "shall be carried out as part of each HMC of the aircraft conducted after the 14th year in which the aircraft has been in service."
- Each air carrier must "demonstrate to the Administrator, as part of the inspection, that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety."
- Each air carrier must make its aircraft, as well as any records about the aircraft that the Administrator may require to carry out the review, available for inspection as necessary to comply with the rule issued by the Administrator.
- The regulations must establish procedures to be followed for carrying out such an inspection.

Applicable Airplane Types

Comments: Some commenters indicate the NPRM addresses more airplane types than the AASA intended to address. Because the AASA specifies inspections and reviews must be carried out as part of each HMC of an airplane and light airplanes do not undergo HMCs, the National Air Transportation Association (NATA) asserts the AASA was not intended to address light airplanes. The NATA further contends the proposal disregards the unique inspection programs of light airplanes, and claims the FAA has not found deficiencies in those programs. Also according to the NATA, the FAA has not proven through inspections, maintenance reviews, or research that light airplanes are unsafe. Accordingly, the NATA states that the FAA is not justified in requiring small businesses that operate light airplanes to invest large sums of money in developing and implementing an inspection program intended for larger airplanes. The State of Alaska Department of Transportation and Public Facilities (ADOT&PF) agrees with the NATA's position.

FAA Response: The FAA disagrees. The AASA does not specifically address types of aircraft. It applies to "each aircraft an air carrier uses to provide air transportation." This includes all air carriers, including smaller operators who conduct commuter operations, regardless of the size of the airplane. However, in response to commenters' concerns, the FAA is revising the provisions of the rule pertaining to the imposition of requirements for supplemental inspection programs. The final rule permits relief from the requirement for all affected airplanes to have damage-tolerance-based inspections and procedures in their aircraft maintenance and inspection programs. All multiengine airplanes initially certificated with nine or fewer passenger seats may have service-history-based SSIPs instead of damage-tolerance-based inspections and procedures. These regulations will be implemented in 2010. Service-history-based SSIPs are estimated to cost significantly less than damage-tolerance-based SSIPs to develop and implement. In addition, airplanes operating between any point within the State of Alaska and any other point within the State of Alaska are exempt from the requirements of this final rule.

U.S. Military Airplanes

Comments: Many commenters question which types of airplanes or operations would be affected by the proposal. One commenter asks whether the proposal would apply to U.S. Air Force commercial derivative airplanes (that is, Boeing 737 airplanes operated by the U.S. Air Force). The commenter notes the Air Force requires Boeing to comply with FAA directives and rules on those derivative airplanes. Another commenter asks whether the proposal would apply to Boeing 757 executive airplanes (military C–32 program).

FAA Response: This final rule only applies to specified airplanes operating under parts 121, 129, and 135. Aircraft that are not U.S.-registered and operated by the U.S. military are not required to comply with the provisions of this rule. However, any U.S.-registered aircraft operating under part 121, 129, or 135 is subject to the requirements of the rule, regardless of the status of its operator.

Imported Older Airplanes

Comments: One commenter questions how the proposal would affect requirements for imported airplanes older than 14 years. The commenter notes 44 countries have safety standards for imported airplanes and the United States is not among those countries. According to the commenter, the 100-hour inspection (appendix D to 14 CFR part 43) is the closest the United States comes to having such a requirement, but most DARs and many FAA regions ignore this requirement.

FAA Response: The FAA disagrees. The proposal was intended to bring airplanes under the Aging Airplane Program after the effective date of the rule. Therefore, with respect to the requirements of this rule, an imported airplane brought into operation under part 121, 129, or 135 will not differ from an airplane used domestically under 14 CFR part 91 and brought into operation under parts 121, 129, or 135; each airplane will have to be brought under the appropriate maintenance or inspection program and undergo the applicable aging airplane inspections and records reviews prior to being operated under those parts. Additionally, any airplane, domestic or imported, that does not have a supplemental inspection program that meets the requirements of this rule will not be eligible for air carrier operations after the dates specified in this rule.

Applicable Operations

Comments: The Alaska Air Carriers Association (AACA) opposes the proposal and states it should be withdrawn. According to the AACA, the NPRM could lead to the end of scheduled turbopropeller commuter airline growth in Alaska and force a return to the use of out-of-production, piston-powered, single-engine airplane operations in rural Alaska. The AACA contends this proposal would force air carriers that have reached the financial and operational thresholds of using larger, turbine-powered equipment to pay a "compliance penalty" to operate that equipment. Additionally, the AACA contends many of Alaska's rural communities would experience decreased air service and increased costs of living, and be forced to accept travel in smaller airplanes known to have six times more accidents than twin-engine airplanes used currently.

The AACA notes the FAA has implemented numerous significant regulatory changes during the past 15 years (for example, the "Commuter Rule"), but the aviation safety record in Alaska has not changed significantly, despite the high costs.

According to the AACA, some additional safety measures are necessary. However, the AACA states measures in Alaska should include (1) restoring the previous high levels of service from Flight Service Stations; (2) improving aviation weather reporting, forecasting, information distribution, and air-to-ground communications facilities; and (3) developing additional navigational aids and approach procedures to allow instrument flight rules flight and airport runway, ramp, and apron improvements.

As an alternative to the proposal, the AACA states it would develop an FAA-approved program to accommodate the additional safety intent of the rule, addressing safety as well as the operational limitations unique to Alaska. The program would provide guidance, through development of a customized and comprehensive training program for regularly scheduled maintenance and inspection procedures. To ensure compliance with this initiative, the program would include an independent audit element and be made available to all members of the AACA, as a function of the AACA Safety and Resource Center.

The State of Alaska Department of Transportation and Public Facilities (ADOT&PF) noted that "this NPRM, over the next ten years has the potential to effectively economically shut down multiple aircraft operators in Alaska." The ADOT&PF further stated that the number of aircraft impacted is nearly 100 percent of the twin-engine aircraft fleet servicing Alaska aviation needs. These comments were echoed by a number of Alaska operators that stated that implementation of the NPRM would result in the "termination" of their operations and that "the nature of the rural transportation infrastructure in Alaska requires relief from these requirements."

According to the NATA, the proposal would substantially affect interstate commerce in many areas, including Nevada, Arizona, New England, and the southeastern United States. Also, the NATA asserts this proposal may cripple the majority of the State of Alaska's transportation network.

FAA Response: The FAA has received numerous comments noting the possible effect of the proposal on intrastate aviation in Alaska. The FAA notes however that the proposal would not apply to aircraft operated by a certificate holder in on-demand or cargo-only operations conducted under part 135. This exclusion remains in the final rule.

The FAA also recognizes that the AASA does not specifically mandate the supplemental inspections proposed in notice 99–02 and set forth in this rule. However, the FAA clearly is within its authority to require such inspection programs under its broad mandate to promote safety as set forth in 49 U.S.C. 44701.

The FAA also notes that Congress, both in the Federal Aviation Reauthorization Act of 1996 (Public Law 104–264) and in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106–181), required the Administrator "in amending title 14, Code of Federal Regulations, in a manner affecting intrastate aviation in Alaska * * * to consider the extent to which Alaska is not served by transportation modes other than aviation and * * * establish such regulatory distinctions the Administrator considers appropriate."

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Section 40113 of 49 U.S.C. was amended to effectuate this provision.

In view of the clear Congressional mandate for the FAA to consider the unique role of aviation in providing transportation within the State of Alaska and the possible loss of critical air services to rural communities within the State, the FAA has revised the proposal. The final rule will not apply to aircraft operated by certificate holders between any point within the State of Alaska and any other point within the State of Alaska.

Regulatory Activity Since 1991 and Recordkeeping

Comments: One commenter states that the proposal seems to disregard all regulatory activity since 1991 that addresses aging airplanes, as well as existing recordkeeping requirements to show compliance with such aging airplane activity.

FAA Response: The FAA disagrees. The FAA has taken into account relevant regulatory activity since 1991 in the development of this rule, such as CPCPs, structural modification programs, the repair assessment rule, and SSIPs. In spite of these regulatory activities, we continue to believe the additional inspections and records reviews are warranted to ensure age-sensitive parts and components are maintained.

Inspections and Records Reviews

Comments: Some commenters state the proposal does not meet the intent of the AASA. According to the Air Transport Association of America (ATA), FAA requirements exceed AASA requirements in the proposal by requiring an unsegmented simultaneous review of each affected airplane and its records. The ATA also notes the AASA does not require the FAA to establish how often airplane inspections and records reviews must be conducted. The Regional Airline Association (RAA) agrees with the ATA and further asserts that the AASA is not intended to disrupt an air carrier's maintenance program, but the FAA proposal certainly would force air carriers to change their programs at considerable cost.

FAA Response: To minimize cost, operators who have segmented maintenance programs, progressive inspection programs, or approved aircraft inspection programs (AAIPs) should work with their principal maintenance inspector (PMI) or DAR to agree on which inspection examines the largest portion of the airplane. The operator can make the airplane available to the FAA during that inspection to ensure the inspection and records review required by this rule is complied with in a comprehensive, efficient, and cost effective manner. However, the operator using a segmented maintenance program, progressive inspection program, or AAIP must recognize that the PMI or DAR conducting the inspection may require additional areas of the airplane to be open and available for inspection at the discretion of the FAA.

As mentioned previously, the FAA has changed the inspection and records review interval from 5 years to 7 years to allow operators to align their aircraft inspection and records review intervals more closely with scheduled HMC intervals.

Damage-Tolerance-Based Inspection Techniques

Comments: The General Aviation Manufacturer's Association (GAMA) contends that the AASA does not direct the FAA to specify damage tolerance analysis and inspection techniques as the only acceptable method for ensuring the continued airworthiness of aging airplane structural designs certificated before such techniques were available. The GAMA states there are other methods that have been developed in conjunction with the FAA and industry that are based on structural fatigue analysis, fatigue tests, and field experience correlation, where applicable.

FAA Response: The FAA agrees that the AASA does not specifically require the FAA to mandate the use of damage-tolerance-based inspection techniques. However, 49 U.S.C. 44717 states that the Administrator "shall prescribe regulations that ensure the continuing airworthiness of aging aircraft" and that the Administrator shall make the necessary inspections "that the Administrator decides may be necessary to enable the Administrator to decide whether the aircraft is in safe condition."

The FAA recognizes that there was a collaborative effort based on the use of structural fatigue analysis, fatigue tests, and field experience correlation to develop appropriate inspections and procedures to ensure the continuing airworthiness of aging aircraft. The FAA, however, has determined that except for those multiengine airplanes initially certificated with nine or fewer passenger seats operated under part 129 or used in scheduled operations under part 135, these inspections and procedures should be established using damage-tolerance-based techniques. Those multiengine airplanes initially certificated with nine or fewer passenger seats can use inspection programs that include service-history-based inspections and procedures instead of damage-tolerance-based inspections and procedures.

Requirements Beyond the Scope of the AASA

Comments: The ATA states the proposal goes beyond inspections and records reviews by supplementing airplane type design and requiring that airplanes meet certification requirements developed quite recently. According to the ATA, if necessary, the proposal should be framed as an AD, and "manufacturers" should be required to adapt their maintenance programs. According to the ATA, "manufacturers" are in a better position than operators to have the design data and service history required to modify their programs.

FAA Response: The FAA agrees that the rule, in certain aspects, exceeds the AASA's mandate to conduct inspections and records reviews. The AASA requires an initial inspection as part of each HMC of the aircraft conducted after the beginning of an airplane's 14th year in service, and thereafter at each HMC. It does not establish specific inspection intervals based on calendar time nor does it mandate the requirement for an operator to include specific supplemental inspection procedures in an aircraft's maintenance program.

Yet, as stated in the preamble to the NPRM and in keeping with the AASA's mandate to ensure the continuing airworthiness of aging aircraft, the FAA considered options for setting repeat inspection intervals. The FAA reviewed the variables used in establishing the parameters used by operators to carry out scheduled maintenance requirements such as flight hours, calendar time, or a combination of both. The FAA also considered the phasing and segmenting of HMCs and found that the intervals varied from 1 to 27 years. Therefore, the FAA chose to establish a fixed repeat inspection interval.

The FAA realizes that the repeat inspections established in this final rule may not be consistent with current operator maintenance schedules. However, the FAA notes that the ATA itself, in memorandum 96–AE–014, dated March 11, 1996, recommended that "a 'C' check compliance period (18 months) or 'D' check period (5 years) be adopted for all rules unless it can be shown that a shorter time interval is required for safety reasons." The FAA, in keeping with the AASA's mandate, established a repeat inspection interval as part of this final rule.

The FAA does not agree that ADs should be used to implement the new requirements. The FAA is not issuing this rule to address an unsafe condition. This rule is to ensure the continuing structural airworthiness of air carrier aircraft as they continue in service. Also, this rule will allow operators the flexibility to adjust their maintenance or inspection program based on service history and design review.

Furthermore, applying the AASA requirements to all airplanes, regardless of operation, would go significantly beyond the mandate of the act, which requires the Administrator to issue a rule requiring an inspection and records review of each aircraft used in air transportation for compliance with aging aircraft requirements.

Using operational rules (parts 121, 129, and 135) to mandate inspections, supplemental inspections, and records reviews is compatible with what the FAA has done with other maintenance and inspection programs, such as those specified in the final rule entitled, "Repair Assessments for Pressurized Fuselages," which was published in the **Federal Register** on April 25, 2000 (65 FR 24108). It also corresponds more closely to the intent Congress specified in the applicability of the AASA.

Inspections

Summary of Proposal/Issue: The purpose of the proposal was to verify that each operator can demonstrate it has accomplished all required maintenance tasks, including the damage-tolerance-based SSIPs proposed in the NPRM. The AASA specifies that the inspections and records reviews be carried out as part of each airplane's HMC after the 14th year in service. The NPRM divides airplanes into three categories for these inspections to ensure the oldest airplanes are inspected first. The NPRM also proposes that all aging airplane inspections and records reviews be repeated at specified intervals. However, the proposal includes a provision for extending the thresholds and intervals to accommodate unforeseen scheduling conflicts.

The NPRM also requires operators to notify the FAA within a specific time period before an airplane is available for an inspection and records review.

Existing Maintenance Programs Make the Rule Redundant

Comments: Most commenters believe the requirement to accomplish inspections and records reviews is redundant. One operator asserts "every air carrier" already has a continuous airworthiness program and an FAA-approved maintenance program, which include corrosion prevention, corrosion control, and damage-tolerance-based SSIPs. Also, that operator believes "every" carrier also must have a Continuing Analysis and Surveillance System (CASS) and must analyze structural defects for their approved maintenance reliability programs for principal structural elements. The commenter notes the regulation and oversight of maintenance programs is a daily FAA requirement. The ATA notes FAA Certificate Management Offices are responsible for overseeing an air carrier's Continuous Airworthiness Maintenance Program (CAMP) and CASS and ensuring an air carrier's airplanes are operated and maintained according to FAA regulations and the air carrier's operations specifications. The ATA notes these responsibilities do not begin only after an airplane has been in service for 14 years. Furthermore, the RAA emphasizes that the FAA has complete authority to determine whether an operator has deficiencies in its maintenance program.

One commenter states that the FAA should revise the proposal to compensate for existing maintenance programs that address aging airplane concerns. For example, the 14-year in-service threshold should be increased to 20 years to coincide with the Aging System Task Force definition, which established "20 years since an airplane's certification" as the nominal age threshold. Another commenter states that the FAA should provide special consideration for low-utilization airplanes that may have more than 14 years of total service. A third commenter states the proposed inspections should be associated with the renewal or continued effectiveness of "an airline's standard airworthiness certificate" and should include all phases of continued airworthiness in addition to aging airplane considerations. However, that commenter questions the reason for a 14-year time period. The Air Line Pilots Association (ALPA), however, supports proposed inspections for airplanes after 14 years in service.

FAA Response: The requirements to accomplish inspections and records reviews stem directly from the AASA, which states, in part, that the FAA shall prescribe regulations that "at a minimum, require the Administrator to make such inspections, and conduct such reviews of maintenance and other records, of each aircraft used by an air carrier to provide air transportation as may be necessary to enable the Administrator to determine that such aircraft is in safe condition and properly maintained for operation in air transportation."

In addition, the AASA specifies that inspections and records reviews "shall be carried out as part of each heavy maintenance check of the aircraft conducted after the 14th year in which the aircraft has been in service."

Differences Between Current and New Inspections and Records Reviews

Comments: Several commenters are uncertain how the proposed inspections and records reviews would differ from those currently conducted by ASIs. The ATA notes that § 121.153(a) currently requires airplanes to be maintained in an airworthy condition, which would include compliance with any mandated aging airplane requirements. Also, some commenters contend this proposal represents a shift of responsibility from air carriers to the FAA in ensuring airplane airworthiness. These commenters state they are uncertain why the FAA desires such a shift.

Another commenter recommends that the FAA allow an air carrier's quality assurance department to conduct the proposed inspections and records reviews when an FAA representative is unavailable. ALPA supports the proposal, which would permit certain representatives of the Administrator to conduct inspections.

FAA Response: Section 44717(b)(2) 49 U.S.C. states that the aging aircraft inspections "*shall* be carried out as provided under [49 U.S.C.] § 44701(a)(2)(B) and (C) * * *" (emphasis added). Section 44701(a) reads as follows:

> (a) The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing * * *
>
> (2) Regulations and minimum standards in the interest of safety for * * *
>
> (B) Equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling (of aircraft, aircraft engines, propellers, and appliances); and
>
> (C) A qualified private person, instead of an officer or employee of the Administrator, to examine and report on the inspecting, servicing and overhauling.

Section 44717(b)(2) was added in 1994 as part of the recodification of the FAA's enabling legislation. The AASA and the recodified § 44717(a)(1) require the Administrator to make the aging airplane inspections.

The rules prescribed by the Administrator under § 44701(a)(2)(B) establish regulations and minimum standards for many different activities by nongovernment persons, including air carrier maintenance organizations and repair stations. Section 44701(a)(2)(C) requires the

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Administrator to establish regulations and minimum standards for qualified private persons who examine and report on inspecting, servicing, and overhauling. It does not address the delegation of authority to act on behalf of the Administrator nor does it describe persons who act on behalf of the Administrator. A certificate holder and its employees are not employees of the Administrator, nor are they necessarily representatives of the Administrator in accordance with § 44702(d).

Congress clearly intended that the Administrator would determine "whether an aircraft is in safe condition and maintained properly for operation in air transportation." This is evident in § 44717(a)(1), which requires the Administrator to perform the inspections and records reviews. It also is consistent with the legislative history of the AASA. The FAA notes, however, the AASA was never intended to relieve the operator from the responsibility for the airworthiness of the aircraft as described in current § 121.363, § 129.14 (ICAO Annex 6, chapter 8), or § 135.413. there is no language in § 44717 that implies that operators are to be relieved of compliance with regulations issued under § 44701.

Furthermore, the FAA notes that the text of the AASA, and the recodification thereof, instructs the Administrator to establish a program to provide FAA inspectors and engineers with the necessary training to conduct auditing inspections of airplanes operated by air carriers for corrosion and metal fatigue (see § 44717(c)(2)(A)). If it had been the intent of Congress to have private persons make those inspections instead of FAA employees (or perhaps designees), that text would have been changed.

The above interpretation is also consistent with the general position that the recodification of the FAA's enabling act was not intended to change the substantive law.

Given the extensiveness of the scope and quantity of airplane inspections required by § 44717(a)(1), the Administrator could still elect to use "a qualified private person" to conduct those inspections and records reviews under a delegation of authority. Hence, the FAA intends to use DARs to help in conducting the inspections and records reviews required by § 44717(a)(1). Such action is consistent with the act and gives meaning to the provisions of 49 U.S.C. 44717(b)(2) in its context. This interpretation also gives meaning to "qualified private person" in the context of implementing the Aging Airplane Program.

Incompatibilities Between Current Practices and the Proposal

Comments: One commenter emphasizes that current regulations do not allow a used airplane to be placed on an operator's certificate until its records have been reviewed by the Administrator. Another commenter notes a complete records review is not possible for some airplanes because the history of those airplanes has not been maintained. Yet another commenter asserts compliance with current FAA-scheduled maintenance program requirements along with FAA verification of records accuracy on a routine interval is a more logical approach than that presented in the proposal.

FAA Response: The FAA disagrees. Section 44717, 49 U.S.C. states that the FAA—

> shall prescribe regulations that ensure the continuing airworthiness of aging aircraft and that the Administrator shall make the inspections, and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation that the Administrator decides may be necessary to enable the Administrator to decide whether the aircraft is in safe condition.

The statute further specifies that these regulations shall—

> require an air carrier to demonstrate to the Administrator, as part of the inspection, that maintenance of the airplane's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety.

The alternate courses of action described by commenters, including existing practices, do not relieve the FAA of its obligations under the statute.

Burdens of Proposed Inspection Intervals

Comments: Many commenters assert the proposal is burdensome to operators and the FAA. The ATA states the proposal for inspections at 5-year intervals is contrary to the intent of the AASA and would require air carriers to redefine their maintenance programs to match the 5-year intervals. According to the ATA, the FAA may be exceeding its mandate if this requirement is implemented. Several commenters support the ATA's position stating that the FAA should revise the proposal so inspection intervals align with operator maintenance programs. One commenter asserts the first inspection after the rule becomes effective should be required 5 years from the rule's effective date or during the next HMC, whichever is later, regardless of the age of the airplane.

The ATA asserts that the inspection interval requirement would subject carriers to disruptions if the FAA fails to provide the air carrier with timely notice that the aging airplane inspections and records reviews have been completed. The proposal states that the FAA may take an airplane out of service before analyzing the results of an aging airplane inspection and records review.

FAA Response: The FAA recognizes that the AASA does not establish specific repeat inspection intervals based on calendar time. However, because of the wide variances in HMC intervals and maintenance programs, the FAA chose to establish a fixed repeat interval. The FAA notes that HMC intervals vary greatly among operators. Operators have segmented maintenance programs, progressive inspection programs, or approved aircraft inspection programs that do not easily lend themselves to the use of HMC intervals for the conduct of the mandated inspections and records reviews.

Even though the AASA requires an initial inspection as part of each HMC after the beginning of an airplane's 14th year in service, and thereafter at each HMC, the FAA believes that an inspection interval based on calendar time is consistent with the AASA. A fixed repeat interval is consistent with the intent of the AASA that requires the Administrator to "assure the continuing airworthiness of aging aircraft." The repeat intervals established in the rule will allow the Administrator to ensure that "each aircraft used by an air carrier to provide air transportation is in a safe condition and properly maintained for operation in air transportation."

As previously noted, the ATA recommended, in memorandum 96–AE–014, dated March 11, 1996, that "a 'C' check compliance period (18 months) or 'D' check period (5 years) be adopted for all rules unless it can be shown that a shorter time interval is required for safety reasons." The FAA, in keeping with the AASA's mandate, established a repeat inspection interval as part of this final rule that is consistent with this recommendation.

The FAA realizes that the repeat inspection intervals established in this final rule may not be consistent with current operator maintenance schedules. Therefore, based on the comments received, the FAA has changed the proposed 5-year repeat interval to a 7-year interval to be more compatible with air carriers' HMCs.

In addition, the FAA extended the 3-year requirement for initial inspections on airplanes over 24 years old to 4 years to provide the FAA with additional time to develop guidance and training material for designees and FAA inspectors.

Ninety-Day Reporting Requirement

Comments: The ATA believes the FAA should modify the proposal to allow 90 days for an operator to provide a report to the Administrator on findings and conclusions related to aging airplane effects from an HMC and the maintenance activities in the interval since that HMC. Additionally, the ATA recommends the FAA provide a similar 90-day timeframe during which the FAA would be required to provide an operator with written acknowledgment of such a report and a determination of the FAA's acceptability.

One ATA member suggests that an operator submit a summary report, for like airplanes in the air carrier's fleet, of findings and conclusions related to aging airplane effects from the HMC and the maintenance activities in the interval since that HMC within 60 days of each 90-day period. According to this ATA member, quarterly summary reports can depict trends more easily than individual airplane check reports.

FAA Response: The FAA agrees that submission of a 90-day inspection and records review report would be a beneficial practice. This should be agreed to between each operator and its PMI. However, because this would add a burden to operators and was not required by the AASA, such a report will not be added to the final rule but will be an acceptable option to assist operators in demonstrating compliance with the provisions of this rule.

Accomplishment of Records Reviews and Inspections

Comments: One commenter asserts the proposal could result in enormous costs to operators if ASIs or DARs fail to make inspections and reviews in a timely manner. Also, the RAA states that the proposal that an air carrier cannot operate its airplanes until inspections and records reviews are completed is excessive. The RAA is particularly concerned about such a case in which the lack of personnel to conduct an inspection and records review causes grounding of an airplane. Other commenters question the FAA's ability to conduct or train representatives to perform the proposed inspections and reviews. One commenter states that the FAA should consider an alternative to the inspections and records reviews that would have an ASI or DAR at an air carrier's facility each night a carrier conducts a scheduled segmented inspection.

FAA Response: The FAA acknowledges the commenter's concerns. To ensure rapid implementation of the inspections and records reviews, this final rule includes provisions to allow for DARs to perform those required inspections and reviews. The FAA anticipates that there will be an increased demand for DARs as a result. In the short run, this may create problems with the availability of DARs, given their current supply and the time it takes for an individual to become a DAR. Over time, it will be possible for qualified individuals to become DARs and fill the demand. Additionally, the FAA will not require operators of affected aircraft to immediately comply with the inspections and records reviews after the effective date of the rule. Significant multi-year implementation periods have been provided in the rule to ensure sufficient trained personnel will be available to accomplish the inspections and reviews without disruption to certificate holders' operations. As a result, the industry's needs will be met and operators will be able to comply with the requirements of the AASA in a timely manner.

Also, operators should be aware that while this final rule imposes restrictions on airplanes operating under parts 121, 129, and 135 until the required inspections and records reviews have been accomplished, it does not affect any part 91 operations conducted by part 121, 129, and 135 air carriers, such as training or positioning flights.

Regarding the comment on the effects of the rule and the FAA's workload, the FAA is committed to train a group of inspectors and DARs to perform the inspections and records reviews required by this final rule. The FAA will also monitor the performance of those inspectors and DARs.

Each operator should plan each inspection and records review and schedule it with the appropriate ASI or DAR. The ASI/DAR inspection and records review should normally follow the inspection by maintenance personnel. However, if an unforeseen scheduling conflict occurs, the final rule permits a 90-day extension to accomplish the inspection and records review. An unforeseen scheduling conflict may arise, for example, if an operator finds that the hangar space dedicated for the incoming aircraft is not available because of additional work required on the aircraft currently in the hangar. The Administrator may approve an extension of up to 90 days, provided the operator presents to the PMI written justification for the scheduling conflict. Also, the FAA will accept electronic, facsimile, or other forms of notification. The request for an extension should provide the PMI ample opportunity to respond to the operator's request.

Single Airplane Versus Fleets

Comments: Several operators note the proposal would require review of airplanes on an individual basis rather than as a fleet. These operators strongly oppose the proposal, indicating the process would be too expensive, time-consuming, and unlikely to increase airplane safety. According to these operators, most audit programs sample the fleet and require additional review only when problems are discovered. One commenter recommends that the FAA implement a fleet sampling program beginning with the oldest airplanes in a fleet type, with inspections every 5 years on a different airplane within that fleet. Another commenter recommends the FAA allow air carriers to complete these remaining airplane inspections and records reviews.

FAA Response: The FAA disagrees. The AASA states that each airplane that has exceeded its 14th year in service should have an inspection and records review to determine the adequacy and timeliness of the maintenance of the aircraft's age-sensitive parts and components. Therefore, fleet audit programs do not meet the Congressional mandate and are not suitable.

The FAA again notes that the proposed 5-year interval has been changed to a 7-year interval to be more compatible with the air carriers' HMCs. However, with respect to air carriers completing inspections and records reviews, the AASA states specifically that the Administrator must accomplish the required inspections and records reviews.

The FAA recognizes that operators will incur additional expenses as a result of this rule. The FAA has therefore worked to minimize the cost. Affected airplanes initially certificated with nine or fewer passenger seats have been allowed to have incorporated into their inspection program service-history-based SSIPs instead of damage-tolerance-based SSIPs. Additionally, provisions that allow for delayed compliance until 2010 of certain airplanes with damage-tolerance-based and service-history-based inspection programs have also been included in the rule.

Limiting Inspection Scope

Comments: The ATA recommends requiring only that portion of an airplane scheduled for detailed maintenance and repair at an HMC after

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the 14th year of service be made available along with corresponding records. According to the ATA, this revision of the proposal would allow the air carrier to demonstrate the adequacy and timeliness of its continuous maintenance and surveillance programs and other aging airplane programs without having to examine every part, component, or record of an airplane.

FAA Response: The FAA agrees in part. As stated in the NPRM—

> Although it is the FAA's intent to carry out records reviews and inspections to the extent that the aircraft structure is accessible during the HMC maintenance visit, the FAA may require additional access to determine that the maintenance of the airplane's age-sensitive parts and components has been adequate and timely.

The FAA expects the air carrier to identify the most comprehensive HMC within the interval identified in the rule as the time for the conduct of the inspections and records reviews.

The intent of the final rule is that aging airplane inspection and records reviews should be concurrent with the HMC maintenance being accomplished on each airplane and the FAA has revised the rule to facilitate this action.

Access to Airplane Structure

Comments: Many commenters express concern about allowing an ASI or DAR access to areas of inspected airplanes that may not be opened during HMCs to determine whether the airplanes meet the requirements of the NPRM. These commenters question what criteria would be used to determine whether such additional access is required. The ATA contends if additional access is required, it should be negotiated in advance with the air carrier or mandated under existing authority without signaling ASIs or DARs that they should be opening additional areas at all HMCs.

FAA Response: The FAA disagrees. It is not the FAA's intent to disrupt operators' scheduled maintenance in such a way that it would impact their schedules. However, each airplane subject to the final rule cannot be returned to service until the Administrator or a designee has completed its inspection and records review and notifies the operator accordingly. The FAA agrees that it would behoove the operator to schedule these inspections with the ASI or DAR well in advance of scheduled maintenance visits; however, the FAA does not intend to limit its access to those areas inspected under the provisions of the operator's appropriate maintenance or inspection program.

Although it is the FAA's intent to carry out the inspections and records reviews to the extent that the airplane structure is accessible during the maintenance visit, at the discretion of the ASI or DAR, the FAA may require additional access to confirm that the maintenance of the airplane's age-sensitive parts and components has been adequate and timely as required by the AASA.

Acceptable Records

Comments: The ATA states that conflicts would undoubtedly arise when an airplane is inspected and the records for that airplane are located elsewhere. The ATA asserts an air carrier should not be required to move the airplane or its records in such cases. Several commenters agree with the ATA's position. According to the ATA, the FAA should allow for the use of electronic or other copies of records. Also, the ATA states that the FAA should allow for the use of a summary of maintenance actions in place of original airplane records, to focus on aging effects rather than recordkeeping compliance. The Aerospace Industries Association of America, Inc. (AIAA), opposes the potential need to maintain a duplicate set of records. The AIAA further contends that reliance on automated records is inadequate, even though it may help ensure consistency in format.

FAA Response: The FAA agrees with commenters that these are legitimate issues related to airplane records. The FAA recognizes that airplanes subject to this rule are maintained at FAA-approved repair stations throughout the world. It would place an undue burden on the air carrier or operator to provide original maintenance records that are kept at their main base. Therefore, the FAA will accept a status summary of maintenance actions in lieu of original airplane records provided the status summary meets the requirements of the rule. Also, the FAA will accept electronic, facsimile, or other copies of airplane records as long as the information is accurate and complete. These details should be coordinated individually with each ASI or DAR.

Sixty-Day Notification Requirement

Comments: Several commenters object to the requirement that an air carrier must notify the Administrator 60 days before an airplane and its records are available for review. According to one commenter, although the current proposal increases the advanced notification requirement from 30 days (as set forth in the Aging Airplane Safety NPRM published October 5, 1993 (58 FR 51944)) to 60 days, it does not respond to the original complaints by several commenters that normal surveillance of an operator's fleet would provide the FAA with ample time to find out the details of a carrier's heavy maintenance schedule.

FAA Response: The FAA disagrees. In 1993, the FAA proposed in its Aging Airplane Safety NPRM a 30-day time period to notify the Administrator before an airplane and its records would be available for review. In notice no. 99–02, the FAA extended this time period to 60 days. The FAA believes that this notification is necessary because notification obtained through normal surveillance of an operator's fleet may be insufficient to ensure the FAA has sufficient time to schedule its resources and minimize the impact on the air carrier.

Ninety-Day Extensions

Comments: One ATA member states the proposed 90-day extension provisions should be open-ended to take into account unforeseen scheduling conflicts of an airplane and possible delays resulting from FAA resource constraints. However, the ATA generally supports the extension provision.

FAA Response: The FAA disagrees and contends that 90 days is a sufficient time period for an operator to resolve an unforeseen scheduling conflict. Operators must therefore plan to account for this requirement. An unforeseen scheduling conflict may arise, for example, if an operator finds that the hangar space dedicated for the incoming aircraft is not available because of additional work required on the aircraft currently in the hangar. The Administrator may approve an extension of up to 90 days, provided the operator presents to the PMI written justification for the scheduling conflict. Also, the FAA will accept electronic, facsimile, or other forms of notification. The request for an extension should provide the PMI ample opportunity to respond to the operator's request. The 90-day extension provision is adopted as proposed.

Cargo-Modified Airplanes

Comments: According to comments, the FAA should create a separate category of inspections for cargo-modified airplanes to require shorter intervals between their baseline inspection programs, unless the FAA takes into account enough precautions during the supplemental type certificate (STC) substantiation process.

FAA Response: The FAA disagrees. The final rule is applicable to those airplanes modified by cargo conversion STCs. The inspections mandated by the AASA should not be a substitute for routine maintenance. If maintenance is necessary at shorter intervals, the documentation of that maintenance will be a part of the records review.

Definitions

Comments: Commenters state that the FAA should define the term "age-sensitive parts." According to the U.K. Civil Aviation Authority (CAA), other documents, such as AC 25.571–1C, "Damage Tolerance and Fatigue Evaluation of Structure," and AC 91–MA, "Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Damage-Tolerance-Based Inspections and Procedures," and many aging initiatives do not define clearly the affected structural parts and the various sources of deterioration.

In addition, commenters suggest that the FAA should define more clearly the difference between a "minor" and a "major" repair or structural alteration, for reporting purposes.

FAA Response: The FAA interprets "age-sensitive parts and components" to mean, for the purpose of this rule, those parts and components of the primary structure of an airplane that are susceptible to fatigue or corrosion.

Minor and major repairs, and structural alterations, are already defined in 14 CFR. Additional definitions would be beyond the scope of the AASA and are not addressed in this final rule.

Recordkeeping Requirements

Summary of Proposal/Issue: The FAA proposes in §§ 121.368(d), 129.33(c), 135.422(d) and 135.422a(d) to require a certificate holder to make certain specific airplane records available to the Administrator for review. These records must contain the following information:

- Total years in service of the airplane;
- Total flight hours of the airframe;
- Total flight cycles of the airframe (not required by § 135.422a(d));
- Date of the last inspection and records review;
- Current status of the life-limited parts of the airframe;
- Time since the last overhaul of all structural components required to be overhauled on a specific time basis;
- Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;
- Current status (including the method of compliance) of ADs, the CPCP, and other inspections and procedures required;
- A list of major structural alterations; and
- A report of major structural repairs and the current inspection status of those repairs.

Current Recordkeeping Requirements

Comments: Commenters note most of this information already is required to be maintained by operators under current regulations.

The AIAA states proposed § 121.368(d) duplicates the requirements of current § 121.380. The AIAA further asserts that § 121.380 is more comprehensive than proposed § 121.368(d), particularly regarding ADs. Because most operators of large transport airplanes have developed elaborate maintenance recordkeeping requirements based on § 121.380, the AIAA recommends the FAA revise proposed § 121.368(d) to allow compliance with § 121.380 as an alternative.

FAA Response: Airplane records for air carriers operating under part 121 must be maintained under § 121.380. Proposed § 121.368(d) requires retention of certain records that are not part of current § 121.380 or § 121.707, such as airframe flight cycles, total years in service of the airplane, damage-tolerance inspections, and date of last inspection records review. However, there is no restriction on operators using records maintained under current § 121.380 to comply with part of the requirements of § 121.368.

Part 129 Recordkeeping Requirements

Comments: One commenter states the FAA has never established definitive records and documentation requirements and that part 129 operators use documents developed by "listings companies" and airplane owners. The commenter also notes there is no coordination of guidelines among the various FAA regions, and between ASIs and FAA headquarters. Additionally, the commenter notes most "offshore" operators maintain more complete and detailed records systems than U.S. operators; according to the commenter, a main area of weakness is centered around parts and assemblies that have been overhauled by U.S.-based repair stations, which often fail to deliver proper records with parts.

FAA Response: The FAA has established definitive recordkeeping requirements for persons operating aircraft under part 129. As a signatory to the Convention on International Civil Aviation, the United States requires each commercial operator of a U.S.-registered aircraft to maintain that aircraft in accordance with ICAO Annex 6, part I. Current § 129.14 requires each air carrier and foreign person operating a U.S.-registered aircraft in common carriage to ensure each aircraft is maintained in accordance with a program approved by the Administrator. The FAA approves maintenance programs under § 129.14 that, at a minimum, comply with ICAO Annex 6, part I. Section 129.33 requires records beyond those required by programs under current § 129.14.

Annex 6, part I, Standard 8.8, Records, contains recordkeeping requirements, as follows:

> (1) 8.8.1. An operator shall ensure that the following records are kept:
> (a) In respect of the entire aeroplane: the total time in service;
> (b) In respect of the major components of the aeroplane:
> (1) The total time in service;
> (2) The date of the last overhaul;
> (3) The date of the last inspection;
> (c) In respect of those instruments and equipment, the serviceability and operating life of which are determined by their time in service;
> (1) Such records of the time in service as are necessary to determine their serviceability or to compute their operating life;
> (2) The date of the last inspection.
> (2) 8.8.1.1. These records shall be kept for a period of 90 days after the end of the operating life of the unit to which they refer.

Flight Cycles, Landings, and Total Years in Service

Comments: Commenters state that current regulations do not require certificate holders to log flight cycles or landings; therefore, the FAA should specify that tracking this information is a new requirement. Also, the FAA should define "flight cycle" in 14 CFR 1.1 and develop guidelines for establishing a baseline number of airframe flight cycles if an operator has not been maintaining this information.

In addition, commenters suggest that the FAA publish guidelines to be used in cases where a true determination of total years of service for an airplane is not possible.

FAA Response: Under parts 121 and 129, operators track flight cycles to determine the current status of life-limited parts for each airframe, engine, propeller, and appliance. However, the FAA has revised the part 135 inspection and records review rules for airplanes initially certificated with nine or fewer passenger seats by eliminating the requirement to track total flight cycles on the airframe. The FAA has made this change to the rule because the inspection programs for these aircraft

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may include service-history-based SSIPs instead of only damage-tolerance-based inspections and procedures. In addition, operators should be able to determine the total number of years in service of an airplane subject to the rule. If the operator cannot determine the total number of years in service of an airplane, the FAA will rely on the date of manufacture of the airplane in question.

Designated Airworthiness Representatives

Summary of Proposal/Issue: Because of the many airplanes that will have to be inspected over a short period of time and the anticipated growth of the aging fleet, the FAA proposed permitting DARs to accomplish the inspections and records reviews required by the rule. Proposed § 183.33(a) expands the authority of DARs to permit them to make findings necessary to determine the continuing effectiveness of airworthiness certificates by conducting the inspections and records reviews required by §§ 121.368, 129.33, 135.422, and 135.422a.

General

Comments: Commenters generally oppose this provision. Several commenters, including the RAA, indicate the FAA is exceeding the intent of the AASA by delegating inspection authority and responsibility from the FAA to DARs.

FAA Response: The FAA disagrees. The AASA requires the inspections and records reviews to be performed by the Administrator. There is, however, no statutory prohibition on the Administrator delegating the responsibilities specified under the AASA. A DAR is a designee of the FAA and a representative of the Administrator and, therefore, is qualified to accomplish the inspections and records reviews required by this final rule.

Qualifications of DARs

Comments: Several commenters assert that delegating to DARs the responsibility of performing inspections and records reviews is a mistake, because DARs are not qualified to conduct the proposed inspections and records reviews. One commenter notes familiarity with the section of 14 CFR pertinent to records documentation and states that there has never been a requirement for a "DAR certificate."

In addition, several commenters contend a PMI assigned to an operator or an operator's own quality control inspectors may be more qualified to conduct the proposed inspections and records reviews than either an ASI or a DAR not familiar with the operator. The RAA asserts requiring an ASI or DAR to conduct the inspections and records reviews is unprecedented and impractical, and would confuse the FAA's oversight responsibilities with that of an air carrier's responsibility for the airworthiness of its airplanes. Another commenter states the FAA should specifically and individually test and establish the capabilities of all DARs who are authorized to perform the inspections and reviews as stated in the proposal. Additionally, one commenter recommends that the FAA permit operator designees or Designated Engineering Representatives (DERs), in addition to DARs, to conduct the inspections and records reviews. Finally, one commenter states that under such a system, air carriers should make available to the FAA any and all records and findings necessary for the FAA to evaluate an airplane.

FAA Response: While the AASA allows properly qualified persons to act on behalf of the FAA to conduct inspections and records reviews, the FAA acknowledges that many DARs currently may not be properly trained or qualified to conduct the required inspections and records reviews. The FAA will develop a training program and guidance material to enable DARs to properly accomplish the requirements of this rule. For this reason, initial inspections and records reviews are not required to be completed until a number of years after the effective date of the rule. After the FAA develops the training program and guidance material, ASIs and DARs will be trained and qualified to conduct the inspections and records reviews required by this rule.

Regarding the commenter's reference to air carrier quality control inspectors, they are not representatives of the FAA and, therefore, would not be eligible to conduct the required inspections and records reviews under the AASA.

However, an operator could facilitate the application of a member of its staff to become a DAR. There is an established procedure on how DARs are appointed, and the FAA does not foresee using a test to make this assessment. The FAA is unsure what the commenter means by the term "operator designees." However, DARs are the only designees allowed to conduct records reviews. Performing such reviews is not within the scope of a DER's delegation.

In response to the commenter's assertion that there has never been a requirement for a "DAR certificate," the FAA notes that a DAR is issued a Certificate of Authority and a Certificate of Designation in accordance with 14 CFR 183.13.

Lack of FAA Resources

Comments: Many commenters question the FAA's assumptions about its ability to conduct inspections and records reviews. The ATA states its members are concerned that the ASI force, even augmented by DARs, would be insufficient to support the proposed inspections and reviews. According to ATA members, airlines currently find it difficult to hire qualified aircraft maintenance employees and predict a shortage in the near future of qualified ASIs and DARs. These members believe this situation would result in inexperienced ASIs and DARs conducting the inspections and reviews, and further delays in returning airplanes to service.

FAA Response: The FAA disagrees. The FAA believes that there will be enough ASIs and DARs to accomplish needed inspections and records reviews and has therefore adopted a rule that permits the initial inspections and records reviews to be completed a number of years after the effective date of the rule. As previously stated, the FAA will train a group of inspectors and DARs to perform the inspections and records reviews required by this final rule and subsequently monitor the performance of those inspectors and DARs.

Supplemental Damage-Tolerance-Based Inspections and Procedures

Summary of Proposal/Issue: Supplemental damage-tolerance-based inspections and procedures refer to an "inspection program that specifies the procedures, thresholds, and repeat intervals that have been developed using damage tolerance principles." Damage-tolerance-based inspections and procedures are developed by a type certificate holder or operator based on an engineering evaluation of likely sites where damage could occur, considering expected stress levels, material characteristics, and projected crack growth rates. The damage-tolerance-based inspections and procedures specified in the proposal can be developed using one of the following methods:

- Damage-tolerance-based inspections and procedures that comply with the damage tolerance provisions for metallic structure listed in 14 CFR 23.573, amendment 23–45, or subsequent amendments;
- Damage-tolerance-based inspections and procedures that comply with 14 CFR 25.571, amendment 25–45, or subsequent amendments;
- Advisory Circular (AC) 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," or AC 91–56A, "Continuing Structural Integrity Program for Large Transport Category Airplanes"; or
- Any other method the Administrator finds complies with the principles of damage tolerance.

Damage-tolerance-based inspections and procedures may be approved through an amended type certificate or STC process for airplanes certificated under a type certificate and associated amendments dated before those that require damage tolerance as part of airplane type design. Damage-tolerance-based inspections and procedures for certain older airplanes also may be approved by a Letter of Approval issued by the FAA Aircraft Certification Office (ACO) or office of the Small Airplane Directorate or Transport Airplane Directorate having cognizance over the type certificate for the affected airplane.

Also, for some airplanes, the FAA has approved major structural modifications under an STC. The original type certificate holder may not have sufficient technical data pertinent to these modifications to assist the airplane operator in conducting a damage tolerance assessment of the modification. In these situations, the FAA expects the operator to work with the STC holder to develop damage-tolerance-based inspections and procedures for that modification. If necessary, as an alternative, an operator may conduct its own damage tolerance assessments using competent engineering personnel, inspection findings from the current maintenance program, the airplane's design database, and model fleet experience.

General

Comments: One operator asserts the proposal would result in the grounding of approximately 62 percent of the commuter fleet.

FAA Response: The commenter has provided no data to substantiate its claim.

Alternatives to Damage Tolerance

Comments: An Alaskan operator is not opposed to a SSIP that would be implemented in a cost-effective manner through incorporation into the operator's AAIP and developed by either the FAA or the "manufacturer." The commenter states the FAA and "manufacturers" have the competent engineering staff and access to the relevant design information, while the operators do not.

The RAA notes the FAA fails to reference in the NPRM any technical basis for rejecting the alternative inspection program for smaller airplanes (submitted by the ARAC Small Transport/Commuter Airplane Airworthiness Assurance Working Group (SAAWG)). According to the RAA, damage tolerance analysis may be the most realistic analysis for certain principal structural elements but not necessarily all principal structural elements.

FAA Response: The FAA appreciates the significant efforts of the SAAWG to explore alternative inspection programs for small- and commuter-sized aircraft. Based on the comments received, the FAA has changed the regulation to require damage-tolerance-based SSIPs for affected airplanes initially certificated with 10 or more passenger seats and service-history-based SSIPs for airplanes initially certificated with 9 or fewer passenger seats. Acceptable means of compliance for damage-tolerance-based SSIPs are contained in AC 91–56 and AC 91–56A, and acceptable means of compliance for service-history-based SSIPs are contained in AC 91–60. The FAA is requesting comments on draft AC 91–56B and AC 91–60A. Once these ACs become final, they too will be considered an acceptable means of compliance with this rule.

Nonmandated Supplemental Structural Inspection Programs

Comments: The RAA states that proposed provisions to allow certain airplanes (with AD-mandated SSIPs) to operate until December 20, 2010, without damage tolerance programs discriminates against regional airplane operators with equivalent structural inspection programs not mandated by SSIP ADs.

FAA Response: In this final rule, the FAA allows airplanes initially certificated with 9 or fewer passenger seats to have service-history-based SSIPs that will be valid indefinitely. For those airplanes that were initially certificated with 10 or more passenger seats, the FAA expects damage-tolerance-based SSIPs for these aircraft to be completed within 4 years after the effective date of the rule. However, the FAA is delaying implementation of the requirement for damage-tolerance-based inspections with respect to those airplanes with AD-mandated non-damage-tolerance-based SSIPs until December 20, 2010.

Potentially Mandated Supplemental Structural Inspection Programs

Comments: The RAA notes there may be airplane fleet types that are in the process of qualifying for an approved SSIP AD program but that may not be included in the final rule because the program was not complete at the time of publication of the NPRM. According to the RAA, several regional/commuter original equipment manufacturers (OEMs) report that they have submitted "SIPs" to the FAA as early as 1990, but the FAA has not adopted the ADs to mandate changes to the affected operators' maintenance programs.

The RAA further asserts most airplanes with SSIPs are considerably older than the regional airplane types cited in the NPRM as having damage-tolerance-based "maintenance inspection programs." Although the RAA appreciates the value of SSIPs, the RAA notes that the service experience for demonstrating structural integrity of the affected regional/commuter airplane types without SSIPs has been excellent.

FAA Response: The commenter did not distinguish between damage-tolerance-based SSIPs and service-history-based SSIPs. Those airplanes that have service-history-based SSIPs implemented through ADs will have until December 20, 2010, before they will have to comply with the damage tolerance requirements of this final rule. Those airplanes that do not have a service-history-based SSIP will have to comply with the damage tolerance requirements within 4 years after the effective date of this final rule.

Approval of Damage-Tolerance-Based Supplemental Structural Inspection Programs

Comments: Regarding the FAA's proposal that airplane damage tolerance requirements may be approved through an amended or supplemental type certificate when necessary, one type certificate holder questions whether it is the FAA's intent to require type certificate holders to submit applications (FAA form 8110–12) for a type certificate amendment. If so, the type certificate holder warns that ACOs may become overwhelmed, which is a workload situation the FAA failed to consider in its cost-benefit analysis. The type certificate holder also questions whether it is the FAA's intent to modify the type certificate data sheet as a result of incremental changes to type design (as per the definition of an amended type certificate) or as the result of an STC.

FAA Response: The FAA disagrees. The FAA understands that there are many ways to accomplish approved damage-tolerance-based or service-history-based SSIPs, such as amended type certificates, STCs, letters of approval issued by the FAA, or service bulletins issued by the type certificate

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holder and approved by the FAA. However, each operator is ultimately responsible for ensuring each of its airplanes has the appropriate inspection programs for the baseline airplane structure, which is the airplane structure as designed by the original type certificate holder, and each specific major repair, modification, and alteration to the baseline structure.

Regarding the comment on FAA workload, the FAA has considered the effects of the rule on the FAA workload and has concluded that the workload will be within acceptable levels during the implementation period.

Letter of Approval

Comments: The NPRM includes a provision that damage-tolerance-based inspections and procedures for certain older airplanes also may be approved by a letter of approval issued by the FAA. The type certificate holder questions whether this process is intended to address damage-tolerance-based inspections and procedures prepared by someone other than the type certificate holder. Also, the type certificate holder requests the FAA clarify whether the letter would be placed in the airworthiness limitations section of an airplane's maintenance manual, in the Airplane Flight Manual, in logbooks, or in another procedural manual.

FAA Response: Inspection programs other than those developed by the airplane type certificate holder will be approved through a letter of approval by the FAA ACO or office of the Small Airplane Directorate or Transport Airplane Directorate responsible for that airplane's type certificate. The inspection programs required by this rule are for specific operations under part 121, 129, or 135 only and are to be added to the operator's maintenance or inspection program. Airplanes not being operated under the conditions specified in this rulemaking are not required to have these inspection programs. Adding such programs to the airworthiness limitations section of an airplane's maintenance manual is not appropriate because it would require that all operators comply with the program, not just those operators identified in this rulemaking.

Structural Assessment of Major Repairs, Alterations, and Modifications

Comments: Transport Canada states the proposal is unclear about how an STC holder is required to support its designs as far as a structural assessment is concerned. Transport Canada notes major modifications/alterations (including major repairs) may have resulted in a significant alteration to the design, affecting the usage spectrum associated with the STC. According to the commenter, this may result in an undue burden on the operator who may need to perform a damage-tolerance-based assessment without assistance from the type certificate holder. Transport Canada states it is inappropriate to require a type certificate holder to provide assistance in such cases. Transport Canada recommends the FAA provide procedures to allow an operator to implement a supplemental integrity program for its airplanes when the type certificate holder is not able to do so because of an STC or major repair.

FAA Response: This rulemaking states that no operator may operate an airplane after 4 years after the effective date of the rule unless the maintenance or inspection program for that airplane includes damage-tolerance-based or service-history-based SSIPs, as applicable. This program applies to the baseline structure of the airplane, which is that structure designed by the original type certificate holder, as well as any existing or future major repairs, major alterations, or modifications. The exceptions to the 4-year requirement are listed in §§ 121.370a, 129.16, and 135.168.

Modifications to the baseline structure can be accomplished by an STC or by the type certificate holder who has certificated a major type design change. The preamble to the NPRM states that the operators should work with STC holders and type certificate holders to accomplish a damage tolerance assessment of the modified structure, but in the event that the STC holder or type certificate holder is not able or willing to help the operator, then the operator will be responsible for accomplishing the damage tolerance assessment. As stated in the preamble to the NPRM, the operator may (1) accomplish the assessment if it has the capability or (2) contract the appropriate persons to accomplish the assessment. The FAA recognizes that this may be a burden on the operator, but the AASA requires the Administrator to ensure the continuing airworthiness of aging airplanes. The FAA has determined that damage-tolerance-based and service-history-based SSIPs are the best way to achieve that goal.

The FAA also has revised AC 91–56A, which provides detailed guidance to type certificate holders and operators regarding the accomplishment of damage tolerance assessments of repaired, altered, or modified structures.

Compliance Alternatives

Comments: Commenters recommend various alternatives to the proposed regulations on damage-tolerance-based SSIPs. The ATA states incorporation of mandated programs, including "supplemental structural inspection document programs," CPCPs, repair assessment programs, and compliance with air carrier maintenance programs, provides the means necessary to comply with the proposed rule. Other commenters agree with the ATA's position.

FAA Response: The FAA agrees in part and has revised the rule to permit the use of service-history-based SSIPS for certain aircraft. The programs the commenters describe only satisfy part of the requirements of this final rule. SSIPs only address certain portions of an airplane's structure while the damage-tolerance-based or service-history-based SSIPs specified by this rule address the entire primary structure of an airplane, including the baseline structure, and major repairs, major alterations, and modifications to baseline structure.

The "Repair Assessment for Pressurized Fuselages" final rule (65 FR 24108, April 25, 2000) established new §§ 121.370 and 129.32. These sections require a repair assessment program for many of the airplanes also affected by this final rule. These include the Airbus A300, excluding the –600 series; Boeing 707, 720, 727, 737, and 747; BAe BAC 1–11; Fokker F28; and Lockheed L–1011; and McDonnell Douglas DC–8, DC–9/MD–80, and DC–10. However, §§ 121.370 and 129.32 address only fuselage pressure boundary repairs (fuselage skin, door skin, and bulkhead webs).

Meeting the requirements of §§ 121.370 and 129.32 is an acceptable means of compliance with this final rule to the extent that these requirements address repairs to the fuselage pressure boundary for the above-noted airplanes. Operators will have to accomplish additional work to fully comply with this rule. They must establish damage-tolerance-based SSIPs or service-history-based SSIPs, as applicable, for major repairs, major alterations, and modifications to structures not affected by the repair assessment program, such as fuselage frames and longerons, and wing and empennage structures.

Alternatives to Damage-Tolerance-Based Supplemental Structural Inspection Programs

Comments: One foreign aircraft type certificate holder states that the 3- to 10-year compliance thresholds in the NPRM require further detail regarding

the intended program before they can be implemented. The type certificate holder specifically would like the FAA to further discuss alternate means of complying with this proposed rule. An FAA-approved repair station specializing in the major repair, alteration, and heavy maintenance of deHavilland DHC–6 airplanes also states the required implementation of existing proven type certificate holder inspections and procedures is a more appropriate response to the airworthiness concerns presented by the FAA than the implementation of new, costly programs. Although the commenter admits damage-tolerance-based "inspections and procedures" may prove useful in the successful maintenance of DHC–6 airplanes, the commenter states that current safe-life-based component replacement requirements and inspections have proven successful for over 30 years and should be retained.

The GAMA asserts that a regime of replacing components and parts when they reach their design service lives is one way to ensure structural integrity. Other commenters support the GAMA position, noting a damage-tolerance-based SSIP alone is too restrictive. According to the GAMA, these regimes should be appropriate for particular structural configurations and should employ a schedule of supplemental inspections, as necessary. The GAMA states reliance on frequent, repetitive inspection under a damage-tolerance-based approach would allow for greater human error. Additionally, the GAMA disagrees with the FAA's implied requirement that "manufacturers" must be responsible for developing or assisting operators in the development of damage-tolerance-based inspections and procedures. Also, the GAMA notes several "manufacturers" already have developed and made available appropriate structural integrity inspection programs.

Transport Canada agrees with the GAMA position and states a structural integrity inspection program must include mandatory component replacement (safe life), as well as a mandatory inspection program with a CPCP to ensure the fatigue inspections and part replacement remains valid. According to Transport Canada, including a component replacement (safe life) program is important for the following reasons:

- A safe life program may be required to avoid the risks associated with structural degradation caused by a form of widespread fatigue damage known as multiple site damage (MSD). According to Transport Canada, failure to detect MSD exposes an airframe to a risk of sudden crack coalescence, possibly leading to total structural failure without adequate warning. To ensure structural integrity, Transport Canada asserts a structure that is at risk for MSD must be replaced or repaired at the appropriate interval. According to Transport Canada, an inspection program may not alleviate the risk that there may be cracks too small to be detected reliably. Transport Canada lists several methodologies, including fracture mechanics (crack-growth) techniques and tear-down techniques, that could be used to determine the appropriate component/part replacement (safe life) interval.
- For aging airplanes, particularly in the small commuter class (for example, CAR 3 aircraft, 14 CFR part 23 aircraft, and SFAR 41 aircraft), component design was not influenced by damage tolerance inspection principles. As such, it may be impractical, in an airworthiness sense, to apply the damage tolerance requirements in a retroactive manner. Transport Canada notes the designers of these airplanes may not have considered the inspectability of their designs and may have designed components to be replaced to ensure structural integrity.

The Civil Aviation Safety Authority of Australia (CASA) supports damage-tolerance-based inspections and procedures and recommends changing the phrase "* * * unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures" to "* * * unless the maintenance program for that airplane includes inspections or other procedures developed in accordance with §§ 23.571 to 23.574, or § 25.571, as applicable" for the following reasons:

- *Consistency with the design rules*—While operational rules may match current design rules, they should not exceed them as proposed in the NPRM, because the NPRM is more restrictive. Part 23 allows three fatigue control options while the NPRM allows only damage-tolerance-based inspections.
- *To allow more than one method of analysis*—For light airplanes, this change would allow a conventional fatigue evaluation as well as a crack-growth analysis to determine inspection thresholds and life limits for all structures, not just fail-safe structures.
- *To allow more than one method of control*—There are two ways to control fatigue: safety by inspection and safety by retirement. Neither method is superior and each has its place. Retirement is a practical alternative to inspection and Australian operators routinely replace wing spar lower caps on small twin-engine airplanes. This procedure costs less than an engine overhaul and is required less often. Often operators choose to replace rather than inspect. The CASA suggests the FAA allow and promote replacement and modification in accordance with its policy to avoid relying on continuing inspection for in-service cracking.
- *To reduce the cost of compliance*—Consistency with the design rules would allow immediate acceptance of airplanes whose maintenance programs have already complied with the part 23 fatigue rules in Australia, the United Kingdom, and (to a lesser extent) the United States.
- *To avoid duplication in regulations and guidance material.*

FAA Response: The FAA notes that the method of compliance with the rule is currently outlined in AC 91–56A and AC 91–60. The FAA is requesting comments on draft AC 91–56B and AC 91–60A. Once these ACs become final, they too will be considered an acceptable means of compliance with this rule. For each airplane initially certificated with 10 or more passenger seats, the inspection program will be based on damage tolerance. Many of the new regional commuter airplanes have already been certificated to damage tolerance requirements.

Operators are ultimately responsible for ensuring a damage-tolerance-based SSIP is developed for airplanes initially certificated with 10 or more passenger seats. The FAA encourages airplane type certificate holders to participate in this development. Even if certain airplanes were not initially certificated to a damage tolerance requirement, completing a damage-tolerance-based SSIP is still possible on the airplanes' structures.

In response to the CASA comments, the FAA has deliberately made changes to parts 121, 129, and 135 to address the continuing airworthiness of aging airplanes. This method of compliance is consistent with the AASA. The CASA's comment with reference to the certification requirements of part 23 are appropriately noted, but any changes to part 23 would only affect new designs. Procedures on how to develop a damage-tolerance-based SSIP are described in AC 91–56A.

As discussed earlier in this final rule, the FAA requires a service-history-based SSIP for airplanes initially certificated with 9 or fewer passenger seats, but retains the proposed requirement of damage-tolerance-based SSIPs for airplanes initially certificated with 10 or more passenger seats.

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Mandating Damage-Tolerance-Based Supplemental Structural Inspection Programs Through Airworthiness Directives

Comments: Several commenters state that the implementation of damage-tolerance-based SSIPs on any additional airplane types should be addressed in ADs for those airplane types.

FAA Response: The FAA disagrees. The inspection programs required by this rule are for specific operations under part 121, 129, or 135 only and are to be added to the operator's maintenance or inspection program. Adding such programs through an AD would require that all operators comply, not just those operators identified in this rulemaking. The damage-tolerance-based SSIP must still be approved by the FAA ACO or office of the Small Airplane Directorate or Transport Airplane Directorate responsible for each affected airplane's type certificate and the final rule has been revised to reflect this approval requirement.

Damage-Tolerance-Based Supplemental Structural Inspection Programs for Small Transport Airplanes

Comments: According to the ADOT&PF, a damage-tolerance-based "inspection program" is not an appropriate inspection program for smaller airplanes and components that were not designed to have damage-tolerance-based inspections. Many smaller transport category airplanes are not manufactured to enable applicable components to be reconfigured for damage-tolerance-based inspections. The commenter believes real-world experience is a better indicator of mechanical failure; neither accident records nor Structural Difficulty Reports support a mandatory damage-tolerance-based "program" for smaller airplanes.

Also, the ADOT&PF notes that developing a damage-tolerance-based "inspection program" requires engineering data for the affected components. These data are not available for most airframes and components; therefore, each user of each type of airframe would be required to reverse engineer the components at great expense. According to the commenter, the only cost-effective way to establish a damage-tolerance-based "inspection program" is for the FAA or the "manufacturer" to develop such a program for only those airframe components compatible with such a retrofit program and to make the data available to users.

The commenter further states retrofitting damage-tolerance-based "programs" may introduce risks to continued airworthiness caused by inspection access issues; that is, inspecting can result in maintenance problems. Additionally, the commenter notes that operators of aging airplanes eventually phase out older airplanes because the maintenance costs for these airplanes increase as the airplane ages; therefore, focusing on aging airplane inspection may not be necessary.

FAA Response: In this final rule, the FAA requires a service-history-based SSIP for airplanes initially certificated with 9 or fewer passenger seats, but retains the proposed damage-tolerance-based SSIPs for airplanes initially certificated with 10 or more passenger seats.

Applicability to Large Transport Category Airplanes

Comments: One commenter states proposed § 121.370a(a) could be misinterpreted to apply equally to large transport category airplanes. To eliminate confusion, the commenter recommends the FAA alter this paragraph to read as follows:

> Except as otherwise provided in this section, no certificate holder may operate an airplane listed in appendix [N] under this part after [insert date 4 years after the effective date of the rule] unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

FAA Response: The FAA disagrees. Except for airplanes operated by a certificate holder between any point in Alaska and another point in Alaska, § 121.370a is applicable to all airplanes that operate under part 121, including large transport category airplanes.

Part 121 Proposed Changes

Comments: The RAA recommends the FAA remove all part 121 provisions in the NPRM. The RAA asks that the FAA replace them with the requirement that each certificate holder incorporate into its maintenance program either a damage-tolerance-based inspection program or a structural integrity inspection program for each airplane operated by that certificate holder. The inspection program should require approval by the FAA ACO having cognizance over the type certificate for the affected airplane. According to the RAA, compliance should be required under the guidelines specified in proposed § 121.368(b).

The GAMA recommends the FAA revise § 121.370a(a), (b), and (c) by allowing the use of an FAA-approved structural integrity inspection program based on fatigue analysis and fatigue tests, in addition to the proposed damage-tolerance-based SSIP.

Transport Canada recommends the FAA revise § 121.370a to include and explicitly state that component replacement (safe life) programs are acceptable as a means of ensuring continued structural integrity as an airframe ages.

FAA Response: The FAA disagrees. All airplanes operating under part 121 must have a maintenance program based on damage tolerance regardless of the passenger seating capacity. Many of those airplanes were designed with multiple load path fail-safe or multiple load path crack-arrest design features; therefore, the inspection thresholds can be based on a conventional fatigue analysis and tests with an appropriate scatter factor based on AC 25.571–1C.

Compliance Timeframe for Establishing Damage-Tolerance-Based Supplemental Structural Inspection Programs

Comments: According to the ATA, the requirement in proposed § 121.370a(a) to establish a damage-tolerance-based "inspection program" within 4 years of the effective date of the rule is unreasonable because damage-tolerance-based "inspections" usually are imposed at a cycle threshold greater than 75 percent of the design-life goal. For example, an anomalous result of the proposal would be for a Boeing 737–800. The Boeing 737–800 is not fully damage tolerance designed and would be required to have a complete SSID within 4 years even though it has been in service only 2 years. The paragraph should be limited to airplanes that do not otherwise have FAA-mandated aging programs, or it could state that such airplanes already meet the paragraph's requirements. One foreign aircraft type certificate holder asks the FAA to reconsider the proposed compliance dates for affected airplanes in proposed § 121.370a.

FAA Response: The FAA disagrees. For any airplane certificated before the effective date of the rule, the operators must have a damage-tolerance-based SSIP in place within 4 years from the effective date of the rule. For an airplane certificated after the effective date of the rule by an amended type certificate that preceded Amendment 25–45 (43 FR 46238 published in 1978), the FAA has revised §§ 121.370a and 129.16 to allow operators to have a damage-tolerance-based SSIP in place within 4 years of the date of the amended type certification. Although this rule specifies dates when a damage-tolerance-based SSIP will be required, the actual inspection thresholds may occur much later. The FAA believes the times specified in this final rule are adequate.

Proposed Changes to §§ 121.135 and 121.369

Comments: One operator states that § 121.135, Manual content, and/or § 121.369, Manual requirements, can be revised to include the proposed § 121.370a damage-tolerance-based "inspection requirements."

FAA Response: The FAA disagrees. The requirement for a damage-tolerance-based SSIP is independent of any requirement for inclusion in an operator's manual. It has been added to § 121.370a to keep all the requirements for aging airplane supplemental inspections in part 121 in one section.

Part 129 Proposed Changes

Comments: The RAA recommends the FAA remove all part 129 provisions in the NPRM. The RAA asks that the FAA replace them with the requirement that each certificate holder incorporate into its maintenance program either a damage-tolerance-based "inspection program" or a structural integrity inspection program for each airplane operated by that certificate holder. The inspection program should require approval by the FAA ACO having cognizance over the type certificate for the affected airplane. According to the RAA, compliance should be required under the guidelines specified in proposed § 129.33(b).

The GAMA recommends that the FAA revise § 129.16(a), (b), (c), and (d) by allowing the use of an FAA-approved structural integrity inspection program based on fatigue analysis and fatigue tests, in addition to a proposed damage-tolerance-based "inspection program." Additionally, the GAMA notes that the preamble to the NPRM refers to requiring damage-tolerance-based "inspections and procedures" earlier than December 20, 2010, for airplanes with nine or fewer passenger seats operated under part 129. The GAMA states that the preamble does not properly reflect the proposed requirement in § 129.16(b).

Transport Canada recommends the FAA revise § 129.16 to include and explicitly state that component replacement (safe life) programs are acceptable as a means of ensuring continued structural integrity as an airframe ages.

FAA Response: In this final rule, the FAA requires a service-history-based SSIP for airplanes initially certificated with 9 or fewer passenger seats, but retains the proposed damage-tolerance-based SSIPs for airplanes initially certificated with 10 or more passenger seats.

A large number of airplanes operating in part 129 were designed with multiple load path fail-safe or multiple load path crack-arrest design features; therefore, the inspection thresholds can be based on a conventional fatigue analysis and tests with an appropriate scatter factor based on AC 25.571–1C.

Airplanes initially certificated with nine or fewer passenger seats will not require a service-history-based SSIP until December 20, 2010, unless the airplane is listed in appendix B to part 129. For those airplanes, a schedule based on the design-life goal is shown in § 129.16(d).

Section 129.16(a)

Comments: One commenter states proposed § 129.16(a) could be misinterpreted to apply equally to large transport category airplanes. Similar to its comment regarding § 121.370a, the commenter recommends the FAA reference appendix B to part 129 in § 129.16(a).

FAA Response: The FAA disagrees. Section 129.16(a) is applicable to all U.S.-registered multiengine airplanes that operate under part 129, which includes large transport category airplanes.

The FAA proposed to revise § 129.1(b) to specify the applicability of the aging airplane requirements to some operations conducted under part 129. In this regard, the FAA inadvertently failed to cite § 129.32 and proposed § 129.33 in proposed § 129.1(b). This final rule corrects that omission.

In addition, the FAA has revised the rest of § 129.1 to make it easier to read. The paragraph (a) reference to the "exception" in paragraph (b) was not accurate, because the requirements referenced in paragraph (b) add to those in paragraph (a), as opposed to conflicting with them. Thus, the FAA has deleted from paragraph (a) "except as provided in paragraph (b) of this section." The FAA has added headings to paragraphs (a) and (b), and has placed the definition of "foreign person" and "years in service" in a new paragraph (c). Paragraph (b) now specifically includes the applicability of §§ 129.14, 129.16, 129.20, 129.32, and 129.33 to operations of U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

The FAA has not made any substantive changes to part 129, other than adding the aging airplane requirements and specifying that the requirements would only apply to U.S. multiengine airplanes operated under the part.

Part 135 Proposed Changes

Comments: The RAA recommends the FAA remove all part 135 provisions in the NPRM. The RAA asks that the FAA replace them with the requirement that each certificate holder incorporate into its maintenance program either a damage-tolerance-based "inspection program" or a structural integrity inspection program for each airplane operated by that certificate holder. The inspection program should require approval by the FAA ACO having cognizance over the type certificate for the affected airplane. According to the RAA, compliance should be required under the guidelines specified in proposed § 135.422(b).

The GAMA recommends the FAA revise § 135.168(a), (b), (c), and (d) by allowing for use of an FAA-approved structural integrity inspection program based on fatigue analysis and fatigue tests, in addition to a proposed damage-tolerance-based "inspection program." Additionally, the GAMA notes the preamble to the NPRM refers to requiring damage-tolerance-based "inspections and procedures" sooner than December 20, 2010, for airplanes with nine or fewer passenger seats operated under part 135. The GAMA states the preamble does not properly reflect the proposed requirement in § 135.168(b).

Transport Canada recommends the FAA revise § 135.168 to include and explicitly state that component replacement (safe life) programs are acceptable as a means of ensuring continued structural integrity as an airframe ages.

Although generally supportive of the proposal, the CASA is concerned about the practicalities and details of the proposed rule, particularly for light airplanes operating under part 135.

The U.K. CAA notes that the NPRM states that it "does not propose requirements for on-demand passenger or cargo carrying operations under part 135." However, the NPRM does introduce a new § 135.168. The CAA questions how the distinction would be made so that on-demand operations are exempt from the rule.

FAA Response: The FAA disagrees. In response to the U.K. CAA's comment, this rule is applicable to operators conducting scheduled operations as defined in § 119.3. The three requirements for scheduled operations include: five round trips per week, one route between two or more points, and the publication of a schedule. On-demand or cargo-only operations conducted under part 135 are not affected by this rule.

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In this final rule, the FAA requires a service-history-based SSIP for airplanes initially certificated with 9 or fewer passenger seats, but retains the proposed damage-tolerance-based SSIPs for airplanes initially certificated with 10 or more passenger seats.

Proposed Appendixes

Summary of Proposal/Issue: To assist in implementing the proposed rule, the FAA included appendixes that list the FAA-established design-life goals of several airplane types commonly used in scheduled service. Proposed appendix N to part 121 lists the airplanes and design-life goals referenced in proposed § 121.370a. Proposed appendix B to part 129 lists the airplanes and design-life goals referenced in proposed § 129.16. Proposed appendix G to part 135 lists the airplanes and design-life goals referenced in proposed § 135.168.

General

Comments: The RAA states the proposed appendixes would conflict with other FAA-approved certification documents unless they are updated continually. The RAA notes several of the design-life goals provided are inaccurate and, once adopted, would require constant revision. According to the RAA, several foreign-based airframe OEMs contend that the proposed fatigue lives for their fleet types are inaccurate and that extensions have been approved by foreign regulatory authorities. Also, the RAA states the design-life goals do not account for the differences in design-life goals that exist between the various airplane structures (for example, wings, fuselage, and vertical and horizontal stabilizers).

FAA Response: This rulemaking action is intended to ensure the continued airworthiness of the affected airplanes by requiring SSIPs based on damage tolerance or service history. In response to the RAA's comment, the FAA has published the design-life goals of certain airplanes in the appendixes of the final rule to provide a quick reference to operators. The FAA has not imposed any new requirements through these appendixes. However, as a result of comments received, the FAA has corrected the appendixes to reflect current FAA-approved design-life goals. The FAA has no intention to further delay implementation of the damage-tolerance-based SSIPs.

For airplanes initially certificated with nine or fewer passenger seats, the FAA originally proposed an inspection program that includes damage-tolerance-based SSIPs. In response to the comments received, this final rule adds an exception for multiengine airplanes initially certificated with nine or fewer passenger seats and conducting scheduled operations under part 129 or part 135. Those airplanes can have a service-history-based SSIP instead of a damage-tolerance-based SSIP.

Airplanes operating under part 121 must have damage-tolerance-based SSIPs 4 years after the effective date of the rule. For those airplanes listed in the appendix, from 4 years after the effective date of the rule, the certificate holder may operate that airplane until the date the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. As noted in the preamble to the proposal, the design-life goals listed are a result of information from the type certificate holder, the airworthiness authorities of other countries, or the FAA.

Appendix N to Part 121

Comments: Commenters provide specific comments regarding proposed appendix N to part 121. The RAA states that the information provided in appendix N to part 121 can be obtained from other sources and is therefore redundant. Another commenter believes the FAA should include in appendix N any airplane that has design-life goals established for flight cycles and afford them the same opportunities to develop "SIPs" based on these goals. According to the commenter, the FAA also should consider providing another appendix to part 121 listing those airplanes that have existing FAA-approved "SIPs" that meet the proposed requirements.

FAA Response: The FAA disagrees. Appendix N is necessary to determine when damage-tolerance-based SSIPs are required for airplanes with design-life goals; appendix N lists those design-life goals. The rest of the airplanes operating under part 121 must comply within 4 years after the effective date of the rule.

The FAA did not want to provide another appendix to part 121 because a list of SSIPs mandated through specific ADs may have to be revised. If these ADs were listed in such an appendix, the FAA would have to revise the appendix through rulemaking action each time a SSIP was changed.

Appendix B to Part 129

Comments: Regarding proposed appendix B to part 129, the RAA states the information provided in the appendix can be obtained from other sources and is therefore redundant.

FAA Response: Appendix B is necessary to determine when damage-tolerance-based SSIPs are required for airplanes with design-life goals.

Appendix G to Part 135

Comments: Regarding proposed appendix G to part 135, the RAA states the information provided in appendix G can be obtained from other sources and is therefore redundant.

Another commenter operating in Alaska states there is no technical basis for including some airplanes in appendix G and not others. The commenter cites the example of the Piper Seneca, which could operate until 2010 without a "SIP" even though it may be older and have "higher time" than a Piper PA31–350 that would have to comply 6 years earlier. This results in arbitrary and capricious rules. Operators who are fortunate, whose airplanes were the subject of "non-damage-tolerance-based ADs" before the rule change, also could operate until 2010.

According to the commenter, the FAA should consider allowing all nonpressurized airplanes of nine or fewer passenger seats to operate without a "SIP" until 2010 and reevaluate these airplanes based on the experience with larger pressurized airplanes. The NPRM is not clear about whether compliance would be delayed for airplanes with nine or fewer passenger seats. Such a change would dramatically reduce the burden to small businesses and would be a negligible change to the rule.

FAA Response: The FAA agrees in part. Appendix G is necessary to determine when damage-tolerance-based or service-history-based SSIPs are required for airplanes with design-life goals.

In response to the commenter's suggestion that the FAA delay compliance with this final rule for airplanes initially certificated with nine or fewer passenger seats, the FAA agrees and has amended proposed § 135.168 to reflect this change.

BAe Jetstream Model 3101 or 3201

Comments: British Aerospace (Operations) Limited states that the design-life goals listed in this proposal for the Jetstream 3101 and 3201 do not represent current figures published in approved aircraft maintenance documentation. The commenter indicates that the U.K. CAA approved revised figures in 1997. According to the commenter, the revised Jetstream 3101 lives of the components of the airframe are as follows: (1) 45,750 landings for the wing, (2) 46,200 landings for the fuselage, (3) 60,360 landings for the vertical stabilizer, and (4) 45,000 landings for the horizontal stabilizer. The revised Jetstream 3201 lives of the components of the airframe are as follows: (1) 30,000 landings for the

wing, (2) 46,200 landings for the fuselage, (3) 55,500 landings for the vertical stabilizer, and (4) 40,000 landings for the horizontal stabilizer.

FAA Response: The FAA agrees. Using correlation between flight hours and landings specified in notice no. 99–02, the FAA has revised appendix N to part 121, appendix B to part 129, and appendix G to part 135 to reflect the new design-life goals for the Jetstream 3101. The Jetstream 3201's design-life goal remains at 30,000 hours.

Beech 1900 (Any Model)

Comments: The Raytheon Aircraft Company (Raytheon) states the wings on Beech 1900 aircraft use a damage tolerance approach based on test data to define an inspection program. The fuselage uses a fail-safe approach based on test data to define an inspection program. Also, the empennage currently is a safe-life item based on analysis only. Raytheon recommends the FAA include this information in the proposal.

FAA Response: The FAA recognizes that Beechcraft uses a damage tolerance approach based on test data to define an inspection program for the Beech 1900 wings. The FAA also recognizes that the fuselage uses test data to define an inspection program, and the empennage is a safe-life item based on analysis only.

The FAA finds that an inspection program based solely on test data is not consistent with the requirements of the final rule. A damage-tolerance-based SSIP still needs to be developed for the Beech 1900 within the timeframes listed in this rulemaking.

Beech 300, 300LW, B300, or B300C

Comments: Raytheon states the wings on these airplanes use a damage tolerance approach based on test data to define an inspection program.

The fuselage uses a fail-safe approach based on test data to define an inspection program. Also, the empennage currently is a safe life item based on analysis only. Raytheon recommends the FAA include this information in the final rule.

FAA Response: The FAA recognizes that Raytheon uses a damage tolerance approach based on test data to define an inspection program for the Beech 300 empennage. The FAA also recognizes that the fuselage uses test data to define an inspection program.

The FAA finds that a SSIP based solely on test data is not consistent with the requirements of the final rule. A damage-tolerance-based SSIP still needs to be developed for the Beech 300 within the timeframes listed in this rulemaking.

Beech 99 (Any Model)

Comments: Raytheon recommends the FAA note in the proposal that currently there is a Continued Airworthiness Program in place for Beech 99 models, based on full-scale tests and field experience. According to Raytheon, this program details inspections of all major components: wing, fuselage, and empennage. Raytheon states the current 46,000-hour life limit is based on analysis supported by test data.

FAA Response: The FAA acknowledges that Raytheon has a continued airworthiness program in place for the Beech 99 models based on full-scale tests and field experience. The FAA also acknowledges that the current 46,000 hour limit is based on analysis supported by test data.

The FAA finds that an inspection program based solely on test data is not consistent with the requirements of the final rule. A damage-tolerance-based SSIP still needs to be developed for all Beech 99 models within the timeframes listed in this rulemaking.

Cessna 402

Comments: One operator states that DOT/FAA/AR–98/66 (Supplementation Inspection Document Development Program for the Cessna Model 402) and Cessna Aircraft Company Structures Report No. S–402–76–2 (Model No. 402) do not support design-life goals for the Cessna 402C (7,700 hours for the wing structure was cited in the proposal). The commenter notes all tests were conducted in accordance with fail-safe requirements in § 23.572, Metallic wing, empennage, and associated structures.

An Alaskan operator states that AD 79–10–15, "Cracks in Wing Structure," on the Cessna 402 has been very successful in addressing aging airplane concerns. However, while the NPRM proposes inspections every 5,000 hours, the AD requires inspections every 400 hours. This demonstrates that the "one-size-fits-all" approach does not address the safety needs of aging airplanes. According to the commenter, inspection of such a critical primary structure can and should be undertaken much more frequently than every 5,000 hours, especially for airplanes with fewer than 10 seats. For example, the commenter's fleet of Chieftains operates under an approved airworthiness inspection program that ensures all critical structures are inspected every 360 hours.

FAA Response: The FAA is requiring service-history-based SSIPs for each multiengine airplane initially certificated with nine or fewer passenger seats. However, Cessna has developed a damage-tolerance-based SSIP, and the FAA strongly encourages operators to incorporate this program into their existing inspection programs.

The Cessna-developed damage-tolerance-based SSIP provides sufficient continuing airworthiness information to meet the intent of a service-history-based SSIP and can be used to comply with that requirement.

The FAA has corrected the design-life goal for the Cessna 402 in appendix B to part 129 to 7,700 hours, which is based on the design-life goals established by U.K. and Australian airworthiness authorities. With respect to the commenter's reference to a 5,000-hour repetitive inspection interval number, it is unclear where the commenter obtained this number, which is not applicable to the Cessna 402 SID program.

This final rule includes the requirement for service-history-based SSIPs for airplanes initially certificated with nine or fewer passenger seats. Guidance for complying with a service-history-based SSIP will be provided in an AC. The FAA is requesting comments on draft AC 91–56B and AC 91-60A. Once these ACs become final, they too will be considered an acceptable means of compliance with this rule. Based on service experience, different inspection thresholds and intervals may be required for different aircraft models.

deHavilland DHC–6 (Any Model)

Comments: Bombardier Aerospace (Bombardier) notes that the deHavilland DHC–6 Series 300 originally was certificated with a 66,000-hour safe life with a one-time wing replacement mandated at 33,000 hours. However, Bombardier and Transport Canada concluded in 1996 that continued operation of this airplane type under the originally certificated safe-life provisions (augmented by damage-tolerance-based inspection of those parts of the structure where this was practicable) was the most appropriate course of action for ensuring the (certification) level of safety of these airplanes is preserved. The commenter also notes that Transport Canada issued AD CF–96–15 on September 17, 1996, for all models of the DHC–6 Twin Otter airplanes requiring these additional actions to ensure continued structural integrity. The commenter notes the FAA has not mandated this program and requests that the FAA do so as part of its aging airplane safety initiative. Additionally, according to Bombardier, the retirement time for the DHC–6 (100,

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200, or 300 series) is 66,000 hours or 132,000 flights, whichever occurs first. According to Bombardier, the design-life goal for the DHC–6 is identified incorrectly in the proposed appendixes as 33,000 hours.

One FAA-approved repair station specializing in the major repair, alteration, and heavy maintenance of DHC–6 airplanes notes DHC–6 component life limits are provided in deHavilland PSM 1–6–11, "Structural Components Service Life Limits." The structural components addressed in this document include the wing box, strut, and FS 219 fuselage lower frame. According to the commenter, these "manufacturers" limits have been validated successfully through decades of field experience. The use of damage tolerance analysis to further assess airplane structure is redundant. According to the commenter, although certain remaining components might be subject to further structural fatigue evaluation, several of these components are either replaceable, already inspected at continuous intervals, or not considered fatigue-critical. The commenter states a more appropriate fatigue analysis approach would be to establish safe-life criteria for these additional components.

Transport Canada states that the NPRM statement "This Canadian AD, issued in September of 1996, mandates the retirement of the airplane at 66,000 hours" is incomplete. Airplane retirement at 66,000 hours is dependent on the completion of the mandatory supplemental integrity requirements in Canadian AD CF–96–15. To achieve the 66,000-hour design-life goal, a program of inspections and parts replacements is required. Transport Canada recommends that the statement be amended to say, "* * * the retirement of the airplane at 66,000 hours is required as a result of AD CF–96–15, providing all the requirements of the AD are accomplished."

Transport Canada also states that the DHC–6 meets the requirements of § 511.34 of the Canadian Aviation Regulations, Supplemental Integrity Instructions, per Transport Canada AD CF–96–15, which requires additional actions to ensure continued structural integrity as an airframe ages. Transport Canada was unaware of a similar FAA-mandated AD.

Twin Otter International, Ltd. (TOIL), states that the DHC–6 should not have to comply with damage-tolerance-based inspection techniques for the following reasons:

- deHavilland designed the Twin Otter (DHC–6–300) with the intention that fatigue-critical components (that is, fuselage mainframe, wing struts, and wing boxes) must be replaced upon reaching either a flight hour or a cycle limit, whichever occurs first. Although the life limit of the wing struts and fuselage mainframe originally were established at 30,000 hours/60,000 cycles, Transport Canada, in revision 4 to the life limits manual (Structural Components Service Life Limits Manual, PSM–1–6-11), raised the wing strut life to 36,000 hours/72,000 cycles and the mainframe life to 39,000 hours/78,000 cycles. These components are inspected frequently using strict damage criteria. The commenter notes that the life of wing boxes (30,000 hours/60,000 cycles) can be raised to 33,000 hours/66,000 cycles with incorporation of a service bulletin that adds structural reinforcement. The commenter adds that each of these components is inspected frequently in accordance with strict damage criteria. Also, upon reaching their life limits, the components must be replaced completely or, in the case of wing boxes, re-lifed (which may be done only once). Because of re-lifing, Transport Canada established a safe life for DHC–6 wing boxes of 66,000 hours/132,000 cycles. TOIL also notes that two STCs have been approved to extend the life of DHC–6–300 wing boxes.
- TOIL maintains its DHC–6 airplanes in accordance with the factory inspection and maintenance program Equalized Maintenance for Maximum Availability (EMMA), which requires certain scheduled inspections every 100 hours. If EMMA is followed, TOIL states that there is no additional benefit to implementing damage-tolerance-based inspection procedures.
- TOIL believes corrosion, not structural fatigue, is the cause of structural damage in the DHC–6. TOIL reminds the FAA that on August 24, 1994, Transport Canada issued an AD requiring all DHC–6 airplanes to be subject to exhaustive and repetitive corrosion inspections.
- In 1994, the Aviation Rulemaking Advisory Committee (ARAC) Technical Oversight of Aging Airplanes working group generally accepted the "manufacturer's" method of ensuring continued structural integrity based on structural fatigue analysis, fatigue tests, and field experience correlation. Additionally, TOIL notes that the AASA does not mandate damage-tolerance-based analysis and inspection techniques. However, the AASA recognizes that the continued airworthiness of airplanes could be ensured through other means, particularly those airplane designs not based on damage tolerance guidelines.

FAA Response: The FAA believes that the commenter's reference to the ARAC Technical Oversight of Aging Airplanes group actually refers to the Technical Oversight Group Aging Aircraft (TOGAA) that works with the FAA, but that group does not directly participate in ARAC group activities. The FAA assumes that the commenter is referring to the TOGAA in its comment.

In November 1996, the Commuter Assessment Review Team (CART), which included members from the TOGAA, visited deHavilland to determine what difficulties were associated with conducting a damage tolerance assessment of the DHC–6. The CART found that deHavilland had the capability to perform a damage tolerance assessment of the DHC–6 if they chose to do so. At that meeting, the members of the TOGAA on the CART recommended that deHavilland perform a damage tolerance assessment of the DHC–6.

Congress, through the AASA, instructed the Administrator to "prescribe regulations that ensure the continuing airworthiness of aging aircraft." The AASA also stated that air carriers must "demonstrate to the Administrator, as part of the inspection, that the maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety."

The FAA has determined that to ensure the continuing airworthiness of these aging aircraft, each airplane operated under part 121, each U.S.-registered multiengine airplane that was initially certificated with 10 or more passenger seats operated under part 129, and each multiengine airplane that was initially certificated with 10 or more passenger seats operated in scheduled operations under part 135 should be required to have a damage-tolerance-based SSIP included in its maintenance or inspection program.

For the DHC–6, if the aircraft is used in any of the affected operations, then the operator must have a damage-tolerance-based SSIP included in each aircraft's maintenance or inspection program, in accordance with the schedule in this rulemaking.

Regarding the commenter's discussion of component life limits, the FAA used these limits to establish the design-life goal for many of the airplanes identified in the appendixes. The design-life goal for the DHC–6 was chosen based on the wing life-limit of 33,000 hours. Also, the FAA has determined that a damage-tolerance-based SSIP must be accomplished for all airplanes initially certificated with 10 or more passenger seats. In addition, for DHC–6 airplanes that are in service 4 years after the effective date of the rule and have not yet reached the design-life goal, the FAA has determined that a damage-tolerance-based SSIP must be in place by 33,000 hours or by December 20, 2010, whichever occurs sooner. As a result, the FAA has not issued an AD similar to Canadian AD CF–96–15.

Comments: One Alaskan commenter argues that no replacement airplanes are being manufactured that can match the rugged and unpressurized DHC–6 Twin Otter. The commenter uses the airplanes to provide essential service to many communities in Alaska that have no other source of air transportation. The commenter claims that relegating the airplanes to part 135 cargo operations as a result of the rule change would be a great disservice to the Alaskan people and would degrade safety because the airplanes would be replaced by single-engine, single-pilot airplanes with nine or fewer passenger seats.

FAA Response: Regarding the Alaskan commenter's contention that the DHC–6 provides essential service to many communities in Alaska, the FAA has decided to permit relief from all requirements of this rule for those airplanes operating between any point within the State of Alaska and any other point within the State of Alaska. This change is reflected in §§ 121.368(a), 121.370a(a), 135.168(a), 135.422(a), and 135.422a(a).

Embraer EMB–110

Comments: Empresa Brasileira de Aeronautica S.A. (Embraer) states that the expected fleet in operation by December 2010 would have a substantial residual life (based on original certification criteria). The proposed rule would significantly impact operators and "manufacturers" and would put a sizeable portion of the EMB–110 fleet in an economically impracticable situation unless the FAA makes some simplified methodology available.

Embraer understands that the particular characteristics of each airplane's design would be taken into consideration to allow alternative courses of action. In the case of the EMB–110, two facts must be taken into account: (1) Contrary to the proposal, the EMB–110 is not a pressurized airplane, and (2) a service bulletin permitting the extension of the "design service goal" from 30,000 to 45,000 flight hours is available.

FAA Response: The FAA acknowledges the comment; however, the commenter did not provide any evidence that the 45,000 flight hour design-life goal in the service bulletin has been approved by the Brazilian regulatory authority. Therefore, the FAA is not changing the design-life goal of the EMB–110 from 30,000 to 45,000 flight hours. These airplanes will be required to have a damage-tolerance-based SSIP within the timeframes mandated in this rulemaking. The FAA encourages Embraer to support development of the damage-tolerance-based SSIP for the EMB–110.

Piper Navajo and PA–31 Series

Comments: One operator indicates it has spoken with a representative from New Piper, Inc., regarding the impacts of this proposal. The commenter notes that the Piper Aircraft Corporation that originally produced the PA–31 series went bankrupt. New Piper, Inc., supports out-of-production airplanes only on any issues affecting the airworthiness of those airplanes. The commenter fears that because Australia and the United Kingdom already have established an arbitrary maximum airframe limit, New Piper simply might endorse that limit. The commenter opposes such acceptance. The commenter notes that the Piper Chieftain series of airplanes have relatively few stresses placed on them compared to pressurized airframes.

One Alaskan operator states that the design lives set for the PA–31–350 airplanes (excluding the pressurized version) appear to have no basis and are unrealistically low. The average fleet service life already exceeds the design life set by the proposal. The commenter knows of no failures of primary structure on these airplanes that would justify attributing such a limit to aging. According to the operator, neither the FAA nor the "manufacturer" has set a design-life goal on the airplanes, and it is unreasonable to rely on a design life set by a foreign country that did not certificate the airplanes. The commenter also states that there is no evidence that the foreign country conducted any analysis to develop the design life for the airplanes. The commenter's company has operated several PA–31–350 airplanes in excess of 20,000 hours total time without any indication that the airplanes have reached their design life.

FAA Response: The FAA has revised the rule so that operators of airplanes initially certificated with nine or fewer passenger seats may develop a service-history-based SSIP instead of a damage-tolerance-based SSIP.

Short Brothers SD3–30

Comments: The European Aging Aircraft Working Group (EAAWG) states that the SD3–30 meets the requirements of AC 91–56 and the FAA should consult the "manufacturer" to clarify this issue.

FAA Response: Through informal discussions with the U.K. CAA, the FAA has learned that the Short Brothers 3–30 and 3–60 airplanes meet the intent of AC 91–56, but the U.K. CAA is unable to present documentation to confirm that the FAA has previously accepted the U.K. CAA finding. This final rule requires that the operators of these airplanes include damage-tolerance-based SSIPs in the maintenance program for each airplane within the timeframes in this rulemaking. If the type certificate holder can demonstrate that the existing maintenance program for each airplane meets the intent of AC 91–56, then compliance with this rule will be made considerably easier for each operator. Operators can use the type certificate holder's program as the basis for their damage-tolerance-based SSIPs, altering each one as necessary to account for any modifications and repairs incorporated into specific airplanes in an operator's fleet.

Because documentation from the U.K. CAA is not available at the time this final rule is being published, the economic analysis portion of this rule reflects costs associated with development of damage-tolerance-based SSIPs of the Short Brothers 3–30 and 3–60 airplanes assuming none currently exist.

Short Brothers SD3–60

Comments: Bombardier Aerospace Short Brothers (USA), Inc., states that the proposal lists a design-life limit of 28,800 hours for the SD3–60. However, the commenter states that type certificate data sheet A41EU, note 3, states the life limit is as listed in chapter 5 of the approved Maintenance Manual Document Ref. 360/MM. According to the commenter, this manual states the airplane has an economic structural limit of 57,600 flight hours or 100,000 flights (whichever occurs first). The commenter notes that the manual requires a structural half-life audit at 28,800 flight hours or 50,000 flights.

The EAAWG states that the SD3–60 meets the requirements of AC 91–56 and the FAA should consult the "manufacturer" to clarify this issue.

FAA Response: Through informal discussions with the U.K. CAA, the FAA has learned that the Short Brothers 3–30 and 3–60 airplanes meet the intent of AC 91–56, but the U.K. CAA is unable to present documentation to confirm that the FAA has previously accepted the U.K. CAA finding. This final rule requires that the operators of

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these airplanes include damage-tolerance-based SSIPs in the maintenance program for each airplane within the timeframes in this rulemaking. If the type certificate holder can demonstrate that the existing maintenance program for each airplane meets the intent of AC 91–56, then compliance with this rule will be made considerably easier for each operator. Operators can use the type certificate holder's program as the basis for their damage-tolerance-based SSIPs, altering each one as necessary to account for any modifications and repairs incorporated into specific airplanes in an operator's fleet.

Because documentation from the U.K. CAA is not available at the time this final rule is being published, the economic analysis portion of this rule reflects costs associated with development of damage-tolerance-based SSIPs of the Short Brothers 3–30 and 3–60 airplanes assuming none currently exist.

Short Brothers SD3–Sherpa

Comments: Short Brothers PLC proposes that the FAA amend the proposal so that (1) the reference to SD3–30 in line 4 of the proposed appendixes section of the preamble for the Short Brothers SD3–Sherpa (64 FR 16304) correctly reads "SD–3 Sherpa"; (2) 40,000 hours in line 10 reads "35,000 flights"; and (3) the SD3–60 Sherpa airplanes and the following descriptive text be included:

> The Short Brothers SD3–60 Sherpa is a 32-seat airplane configured for 30 passenger seats and 2 pilot seats. The SD3–60 Sherpa was certificated in the United States in 1996 under U.K. certification basis and to the additional validation requirements of part 25, Amendment No. 35. The "manufacturer" has limited the maintenance program to 12,000 flights as defined in the airplane maintenance manual.

FAA Response: The FAA recognizes that some of the references made to the SD3–60 and SD–3 Sherpa as stated in the NPRM (64 FR 16304) were incorrect. All of the appendices in the final rule have been revised to reflect the correct information.

Non-Damage-Tolerance-Based Structural Supplemental Inspection Programs

Summary of Proposal/Issue: The FAA notes that non-damage-tolerance-based SSIPs based on AC 91–60, "The Continued Airworthiness of Older Airplanes," have been mandated by ADs on the following airplanes: Convair 340, 440, 580, and 600 series; Douglas DC–3 and DC–6; Fokker F–27; and Lockheed Electra. Although inspections and procedures based on AC 91–60 address known service difficulties, they do not anticipate the possibility of future fatigue cracks that could be predicted through the use of damage tolerance principles. The FAA has determined that some inspection programs developed in accordance with AC 91–60 do not qualify as damage-tolerance-based inspections and procedures because they are either based solely on service experience or combine partial damage-tolerance-based assessments with service experience. For these reasons, the proposed rule would not allow continued use of inspection programs based on AC 91–60 alone. Instead, the FAA proposes to require damage-tolerance-based inspections and procedures to supplement or replace existing inspection programs based on AC 91–60 no later than December 20, 2010.

Inspection Programs in Accordance With AC 91–60

Comments: The GAMA notes, contrary to the FAA's statements, that some AC 91–60 inspections and procedures programs have been designed to anticipate the possibility of future cracking in the structure and have specified appropriate inspections and procedures to find such occurrences. The FAA should revise its incorrect and broad generalization.

FAA Response: The FAA agrees. The existing AC 91–60 inspection programs were accomplished by different type certificate holders that made different assumptions to create their individual programs. The FAA understands that differences exist between these programs. The minimum standard for a service-history-based SSIP was provided in AC 91–60.

Fokker F–27

Comments: Several commenters question the FAA's assertion that the Fokker F–27 "SIP" is not based on damage tolerance principles. According to these commenters, the Fokker F–27 "SIP," Document No. 27438, part 1, has been declared by the FAA as having been prepared in accordance with AC 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," which qualifies the program as an acceptable damage-tolerance-based inspection program. One operator notes Fokker performed full-scale and detailed tests as well as fatigue analysis (calculations) of the Fokker F–27 primary structure during the original certification process of the airplane. These tests were performed to ultimate loads. The fatigue inspection requirements and structural life limits resulting from those tests were included in the "SIP." Additionally, the operator notes Fokker continues to add service experience, including stress corrosion, to the program. Also, Fokker continues to evaluate the areas of concern, new designs and developments, and service experience using damage tolerance assessments.

FAA Response: The FAA agrees. Based on a review of our records, the FAA has determined that the Fokker F–27 SSIP mandated by AD was approved by the FAA as a damage-tolerance-based inspection program in compliance with AC 91–56.

Convair 580

Comments: One operator states the Convair 580 has had excellent engineering and product support for over 45 years and has a well-proven structural integrity inspection document and corrosion inspection programs. The operator also asserts that it has implemented AD 88–22–06 (revised to AD 92–06–06), "Boeing: Amendment 39–6490," and AD 92–25–13, "General Dynamics, Convair Division: Amendment 39–8427." According to the operator, implementation of these ADs added 132 new inspection tasks relating to the AASA. Additionally, the operator has implemented AD 90–13–13, "General Dynamics (Convair): Amendment 39–6638," and AD 74–16–01, "General Dynamics: Amendment 39–1904, as amended by Amendment 39–3206." Another commenter states the type certificate data sheet holder for the Convair 580 indicated it would cost approximately $2.5 million for an operator of this airplane to develop a damage-tolerance-based "SIP," because the historical data required for development do not exist.

FAA Response: The FAA has determined that Convair 340/440/580 aircraft can operate until December 20, 2010. At that time, a damage-tolerance-based SSIP will be required. The FAA encourages the current type certificate holder to develop a damage-tolerance-based SSIP to support this airplane in service.

Lockheed L–188 Electra

Comments: According to one operator, the Lockheed L–188 Electra SID program was developed using damage-tolerance-based principles and was not based solely on empirical service data. In a separate comment, Lockheed Martin Aeronautical Systems (Lockheed) indicates to operators of the Lockheed L–188 Electra that the cost to develop an aging airplane program and perform its inspections and modifications would need to be addressed by each operator. According to Lockheed, operators should consider the following options:

- Individually or as a group, develop an Electra aging airplane program;
- Fund a third party to develop an Electra aging airplanes program, which Lockheed would be willing to do if funded by operators; or
- Petition the FAA for relief using the AC 90–60 non-damage-tolerance-based "SIP" issue to defer action until 2010.

FAA Response: The FAA agrees. Based on a review of our records, the FAA has determined that the Lockheed L–188 SSIP mandated by AD was approved by the FAA as a damage-tolerance-based SSIP in accordance with AC 91–56.

DC–6 and C–46

Comments: One commenter who currently operates Douglas DC–6 and Curtiss C–46 airplanes notes it may continue to operate either or both types of airplanes beyond 2010. The commenter further states that if it does upgrade to newer airplanes, the newer airplanes probably will not have damage-tolerance-based inspections in their maintenance programs. Additionally, the commenter notes the lack of "manufacturer" support in developing adequate damage-tolerance-based "inspection programs." According to the commenter, the Curtiss company no longer supports its airplanes. Also according to the commenter, Boeing (which acquired Douglas) has indicated to the commenter that it is not considering supporting the DC–6 (and probably nothing older than the DC–10) in this area.

FAA Response: The FAA has established that a damage-tolerance-based SSIP must be developed for the DC–6 by December 2010 and for the C–46 within 4 years after the effective date of the rule, or those airplanes will not be eligible for operations in part 121, or part 129, or in scheduled operations in part 135. In the future, operators of these airplanes will have to make decisions on how best to support the operation of these airplanes.

Other FAA Initiatives

Comments: One commenter singled out the Fokker F–28 jet, noting there was significant activity a few years ago on a repair assessment program for elements of damage tolerance. According to the commenter, because there has been no regulatory activity (that is, establishment of repair requirements) on repairs for the Fokker F–28, it would be inappropriate to review repairs for damage-tolerance-based inspections.

FAA Response: The final rule titled "Repair Assessment for Pressurized Fuselages" (65 FR 24108, April 25, 2000) that became effective May 25, 2000, is applicable to the Fokker F–28. Therefore, operators must make a damage tolerance assessment of the repairs to the Fokker F–28 fuselage pressure boundary.

Discussion of Economic or Cost Comments

Summary of Proposal/Issue: In accordance with Executive Order 12866, the FAA prepared an economic analysis of the proposed changes to the Code of Federal Regulations. The FAA assessed the costs associated with the following items:

- Implementation of damage-tolerance-based inspections and procedures for those scheduled operators of multiengine airplanes not currently subject to these inspections and procedures.
- Operator development of these procedures for the affected airplane models.
- Additional FAA inspections and records reviews mandated by Congress.

The FAA noted in its analysis that the attributed costs of this proposal do not include the expense of making repairs that may be found necessary during either an operator's damage-tolerance-based inspections or the FAA's oversight inspections. The FAA does not attribute these repair costs in the proposal because current regulations require that repairs be made as necessary to ensure the airworthiness of an airplane. Also, the FAA noted that its analysis did not address directly the costs the proposal eventually would impose on airplanes produced after the effective date of the rule.

The FAA identified two benefits in the proposed rule: (1) Age-related accidents would be prevented and (2) the FAA and the industry would be able to monitor the airworthiness of the affected airplanes as they age and either take timely corrective action to maintain their continued airworthiness or retire them from service before they become unairworthy; consequently, the airplanes would be able to stay in service longer because their continued airworthiness would be monitored, rather than the airplanes being retired at an arbitrary age.

Comments: Commenters generally believe the FAA underestimated the costs associated with this proposal. One commenter provided the following comments regarding the Initial Regulatory Flexibility Determination completed by the FAA: In the "Compliance Assistance" section, the NPRM indicates the FAA has undertaken a research program to develop a simplified damage-tolerance-based methodology directly applicable to commuter-sized airplanes. The company states that if this document has not yet been issued, the FAA should consider withholding issuance of the final rule until such adequate guidance material is available.

FAA Response: In its efforts to assist small entities and other affected parties in complying with the rule, the FAA will publish two ACs for comment with this final rule. One of these is AC 91–56B, "Continuing Structural Integrity Program for Airplanes," and it will provide guidance for implementing a damage-tolerance-based SSIP. The other document is AC 91–60A, "The Continued Airworthiness of Older Airplanes," which will provide guidance for implementing a service-history-based SSIP. Notices of availability for these two ACs are published concurrently with this rule, with a request for public comments. The research referred to by the commenter has not yet been published. The document is in final review and will be published in the near future.

Comment: Additionally, the GAMA and other commenters contend the following statement is incorrect for "SIPs" developed using comprehensive fatigue analysis, fatigue tests, and the correlation of field service data, as applicable: "* * * non-damage-tolerance-based program would induce lower costs but with a concomitant reduction in safety assurance" (64 FR 16314). Also, GAMA states this statement contradicts the FAA's assertion that the proposed rule does not increase the intended level of safety but maintains the level of safety established at type design (64 FR 16311).

FAA Response: The FAA maintains that damage-tolerance-based SSIPs provide the highest level of safety and that service-history-based SSIPs provide something less than that. In the NPRM, the FAA proposed that full damage-tolerance-based SSIPs be imposed on all affected airplanes after 2010. After reviewing the comments, the FAA had to consider the cost, the exceptional difficulty in obtaining the necessary data for airplanes with fewer than nine seats, and the capability of the airlines operating these smaller airplanes to effectively accomplish these requirements. As a result of the review and based on the comments received, the FAA is revising the proposal to allow airplanes initially certificated

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with nine or fewer passenger seats to have service-history-based SSIPs.

Comment: The ATA estimates aligning HMCs with the inspections at 5-year intervals alone would cost more than $1.3 billion. According to ATA, one member states this alignment would add $21 million annually to its costs. Another ATA member asserts the proposal would require each airplane to be kept in heavy maintenance a minimum of 2 days longer than scheduled (compared with the FAA's estimate of 0.7 to 1.6 days). According to that operator, this additional time would result in $80,000 in lost revenue (compared with the FAA's estimate of 7 percent of the value of capital, or $2,700 per inspection). Another ATA member with 230 airplanes estimates the proposed rule would cost that operator as much as $150 million during each 5-year cycle and recommends the FAA consider a separate rule for part 121 operators of large transport category airplanes. Six ATA members representing more than 50 percent of the total domestic ATA fleet estimate the proposed rule would cost the group of part 121 operators of large transport category airplanes more than $236 million per year.

FAA Response: Based on the comments received, the FAA has changed the repeat inspection and records review interval from 5 years to 7 years to allow an operator to align the inspection and records review interval more closely with the scheduled HMC interval. This does not require the operator to have its HMC at the initial or repetitive limits set by this rule. The scheduled HMC can occur at any time within those intervals, and the FAA inspection and records review can be held concurrently with the HMC. The intervals shown in the rule are maximum intervals. In addition, it is not the FAA's intent to disrupt operators' scheduled maintenance in such a way that it would significantly impact their schedules. However, each airplane subject to the final rule cannot be returned to service after the specified interval until the Administrator or a designee has completed its inspection and records review and notifies the operator accordingly.

With regard to cost estimation, a time estimate of 2 days per airplane inspection, as suggested by the commenter, was used in the final regulatory evaluation for the oversight inspection of an airplane by an ASI or DAR. This time estimate was used for the large transport airplanes that have damage-tolerance-based SSIPs (the great majority of the affected airplanes).

With regard to downtime costs, the FAA maintains that a reasonable approximation of the cost for the oversight inspection of an airplane by ASIs/DARs is the rate of return applied to the value of the productive capital asset used by the business enterprise (rather than revenue lost per day). Seven percent is the rate of interest that OMB directs agencies to use in present-value calculations. Moreover, such an approach has the advantage of being applied uniformly over the entire air carrier industry. By comparison, "revenue lost per day" varies considerably across companies in the industry and is affected by different accounting procedures. In addition, utilization rates vary across equipment. The FAA estimates the total cost to the industry where revenue lost by one firm is gained by another.

Calculations were made that resulted in estimates of intervals between C-checks and D-checks, in terms of years, for some large transport airplanes (including Boeing models). These calculations showed that the C-checks take place, on the average, every 1 to 2 years depending on the airplane model type. D-checks are estimated to take place, on the average, every 5 to 12 years depending on the airplane model type. Thus, the initial inspection and records review (4 or 5 years after the effective date of the rule) could likely take place at a C-check; while the repeat inspection and records review, at 7-year intervals, could take place at a D-check or a C-check. In addition, those operators that use a segmented D-check schedule will have more opportunity to accommodate the initial and repeat inspections and records reviews. The increasing use of non-destructive inspection techniques should facilitate inspections at C- or D-checks.

Comment: One operator states the FAA assumption that only 50 percent of all fleets affected by the proposal would require modification is too conservative. The operator contends almost 100 percent of the fleets mentioned in the proposal would have to be modified to some extent. The operator further states the high costs of this modification would cause many operators to go out of business.

FAA Response: In the NPRM, the FAA's cost estimates for modifications included airplanes initially certificated with nine or fewer passenger seats (part 135), because they also were supposed to implement damage-tolerance-based SSIPs. This group of airplanes will now be required to implement service-history-based SSIPs. Consequently, the number of airplanes needing modifications is reduced. However, there has been an increase in the number of part 121 airplanes needing damage-tolerance-based SSIPs since the publication of the NPRM.

Therefore, in the absence of substantiation to support the contention of the comment, the economic analysis keeps the 50 percent as a reasonable estimate.

Comment: Based on its own economic analysis of the effects of a 5-year fixed interval "on airplane" inspection with extensive additional access, one part 121 air carrier states the proposal would result in an increased maintenance expense of $404 million for that carrier's fleet alone. The carrier asserts this expense would affect future travel costs but provide no increase in passenger safety for part 121 operations.

FAA Response: Based on the comments received, the FAA has changed the repeat inspection and records review interval from 5 years to 7 years to allow the operator to align the inspection and records review interval more closely with the scheduled HMC interval (C-check or D-check).

Comment: One commenter states the FAA's cost impact analysis on air carrier records preparation does not account for the time carrier employees spend during the inspections and records reviews. The commenter notes that a carrier's employees would have to prepare the airplane records as well as provide a support role during the inspections and records reviews.

Another commenter states the FAA failed to consider adequately the costs of reviewing each repair on each airplane, updating airplane structural repair manuals for damage tolerance repairs, and training professional engineering personnel in damage tolerance repair design.

FAA Response: In the NPRM and the final regulatory evaluation, there is cost estimation for personnel of the operator to prepare the airplane and its records for the inspection and records review by ASIs or DARs.

The FAA estimated the cost of damage-tolerance-based SSIPs per affected airplane, including repairs.

With regard to updating airplane structural repair manuals (SRMs), that cost should be minimal and it is included in the development and review cost. Several type certificate holders of large transport category airplanes have already updated their SRMs to include the results of damage tolerance assessments of repairs.

With regard to training professional engineering personnel, the commenter does not provide information as to the purpose of the training for professional engineers in damage tolerance repair design. The cost of engineering time to develop damage-tolerance-based SSIPs has been estimated using a fully burdened engineering rate of $95 per hour. This rate can be applied for engineering services (to develop the SSIP) provided by the type certificate holder, a consulting firm, or the operator's own engineering personnel.

Comment: One part 135 Alaskan operator provided the following comments regarding costs of the proposed rule:

- The FAA expects operators to work with STC holders and the original airplane "manufacturer" to develop damage-tolerance-based supplemental inspection programs, which would require that each unique combination of type design and STC require a separate inspection program. The commenter therefore asserts the cost analysis is off by a factor equal to the number of unique type design and STC combinations for each type design.
- The FAA's estimate that 209 part 135 multiengine airplanes would be affected by this rule seems low. (ADOT&PF agrees, estimating that approximately 727 of the 3,198 airplanes in commercial service in Alaska would be affected (the airplanes not counted are single-engine airplanes). According to the ADOT&PF, almost all of these airplanes are more than 14 years old and none have a current damage-tolerance-based inspection program.)
- The commenter does not disagree with the FAA's reasons for excluding the costs of repairs that may result from an operator's damage-tolerance-based inspections or the FAA's oversight inspections; however, because air carriers should maintain their airplanes in an airworthy condition, the new regulations are redundant.
- The enormous costs associated with the proposal would deplete the pool of funds available to maintain airplanes and limit the use and development of other more efficient initiatives that could improve aging airplane safety at a lower cost. The commenter cites two examples: (1) Requiring replacement of all avionics and autopilot wiring after 25 years of service, and (2) requiring all commuter carriers to operate only under instrument flight rules.
- The proposed rule places the economic burden on operators, not "manufacturers" as stated in the NPRM. The operator notes the redundant expenses operators would incur in developing "SIPs."
- The operator questions the FAA's assumption that developing "SIPs" for related models would produce efficiencies. The commenter indicates operators would be unwilling to develop "SIPs" for models related to their own models. Furthermore, if an operator did develop a "SIP" that might be useful to other operators, the developing operator would be hesitant to transfer development information without charging a fee.
- The proposal underestimates the costs associated with developing damage-tolerance-based inspection techniques. According to the operator developing such techniques may (1) take more than 80 hours and (2) require extensive training for mechanics responsible for implementing the programs.
- The FAA's estimated 20-year annualized cost stream figure is misleading and inaccurate because operators would face costs sooner than 20 years. Furthermore, the economic analysis fails to consider costs beyond 2018.
- The economic analysis fails to consider that financing costs are particularly high for commuter operators.

FAA Response: The final rule excepts part 135 multiengine airplanes initially certificated with nine or fewer passenger seats from the requirement to incorporate damage-tolerance-based SSIPs. These operators are to implement service-history-based SSIPs in 2010. Also, the rule provides an exception for those airplanes operated between any point within the State of Alaska and any other point within the State of Alaska.

The final rule covers part 135 multiengine airplanes in scheduled service and the NPRM used a count of these airplanes. The commenter refers to a count of 727 airplanes as being in "commercial" service rather than in "scheduled" service. A count of airplanes in "commercial" service includes scheduled and unscheduled operations.

The rule places the responsibility for developing the SSIP on the operators. However, the FAA anticipates that a number of type certificate holders will choose to support the development of the SSIP because it affects the future marketability of their airplanes. For those cases where a type certificate holder does not develop a damage-tolerance-based SSIP, the FAA anticipates that operators of a particular model will recognize the advantages of cooperating and jointly financing the development of a SSIP for that model. This can be done through the airplane type certificate holder or through an aviation engineering/consulting firm. Moreover, the final rule excepts part 135 multiengine airplanes initially certificated with nine or fewer passenger seats from implementing damage-tolerance-based SSIPs.

With regard to efficiencies in developing SSIPs, that factor was removed from the cost-estimating methodology in the final regulatory evaluation. With regard to charging a fee, such a fee can be charged. Then, the cost of developing a damage-tolerance-based SSIP can be shared by all the affected operators.

The development of a damage-tolerance-based SSIP was estimated in the NPRM to take between 10,000 to 25,000 hours. The 80 hours was an estimate of the time needed for an operator to incorporate the damage-tolerance-based SSIP into its maintenance program.

With respect to training mechanics, it is not expected that airline mechanics will need additional training to do damage-tolerance-based inspections. Airline mechanics, through their training and work experience, already have the necessary skills to do such inspections. Most airlines have nondestructive testing capability already and it is only a matter of including those inspections in their maintenance or inspections programs.

The 20-year annualized cost does not mean that operators would not face costs sooner than 20 years. They will face costs sooner, and those costs have been incorporated in the economic assessment.

The period used to analyze the costs of the rule is a 20-year period. In the NPRM, the time period was 1999–2018. In the final regulatory evaluation, it is 2001–2020. If the period becomes longer than this (*e.g.*, 2001–2025), the estimated (undiscounted) costs of the rule will increase.

The final rule contains relieving actions. Airplanes initially certificated with nine or fewer passenger seats have been excepted from damage-tolerance-based SSIPs and, instead, need to implement service-history-based SSIPs in 2010. The repeat inspections interval has been increased from 5 to 7 years. Finally, the FAA will make available advisory material through AC 91–56B and AC 91–60A. This material will be useful to small and commuter operators.

Comments: Commenters also note the FAA is unable to quantify the benefits associated with the proposed rule, thus the proposal seems unjustified. However, according to the GAMA, some reliable information on potential benefits associated with the proposed rule is available in the form of results compiled from the AATF program and other "manufacturer" programs where results have been shared with the FAA.

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FAA Response: Based on the comments received, the FAA has revised the final rule to allow airplanes initially certificated with nine or fewer passenger seats to have service-history-based SSIPs. In addition, the FAA has decided to permit relief from the damage tolerance and SSIP requirements of this rule airplanes operating between any point within the State of Alaska and any other point within the State of Alaska. This change is reflected in §§ 121.368(a), 121.370a(a), 135.168(a), and 135.422(a).

The FAA economic analysis provides a reasoned determination that the benefits of the rule justify the costs. The FAA and Congress believe that the risk of accidents does exist. This rule is expected to prevent aging aircraft accidents. The FAA and industry will be better able to monitor the aircraft airworthiness and thus comply with the AASA. This rule is expected to prevent potential aging-related accidents and to extend the airworthy life of affected aircraft.

Comment: One commenter asserts the FAA must provide for alternative inspection methods other than those based on damage tolerance criteria. According to the commenter, maintaining a damage-tolerance-based inspection and records program is administratively cost prohibitive, especially for smaller carriers. Also, the FAA has failed to demonstrate that such alternative approaches are less safe than damage-tolerance-based programs.

FAA Response: The FAA maintains that damage-tolerance-based SSIPs provide the highest level of safety and that service-history-based SSIPs provide something less. In the NPRM, the FAA proposed that full damage tolerance inspections be imposed on all airplanes after 2010. After reviewing the comments, the FAA had to consider the cost, the exceptional difficulty in obtaining the necessary data for fewer than 9 seats, and the capability of the airlines operating these smaller airplanes to effectively accomplish these requirements. As a result, based on the comments received, the FAA is revising the proposal to allow airplanes that were initially certificated with nine or fewer passenger seats to have service-history-based SSIPs.

Comment: This commenter, who operates deHavilland DH–6 Twin Otter airplanes, presumes that deHavilland would not fund a damage-tolerance-based program for the Twin Otter because the airplane has been out of production since 1988. The commenter also presumes that for liability reasons, deHavilland would not provide the necessary engineering and test data upon which a damage-tolerance-based program would be developed by operators of that airplane. Therefore, the commenter asserts it would have to retain a company such as Structural Integrity Engineering to develop its damage-tolerance-based "inspection program." According to the commenter, Structural Integrity Engineering reports that the commenter should expect to spend between $500,000 and $600,000 on the analysis and an additional $250,000 in flight testing to validate flight loads and other criteria.

Because of these liability concerns, the commenter would not sell its damage-tolerance-based "inspection program" to other DHC–6 operators as a means of defraying the initial investment of at least $750,000. In addition, because more of its customers cannot afford to maintain personnel trained and certified in ultrasonic inspection techniques, the commenter would have to add additional personnel and keep them qualified to support its customers. According to the commenter, its "lease rents" would decline in proportion to increased maintenance costs. The commenter states it cannot place a cost on a reduction in rents or in how that income loss could reduce DHC–6 hull values. However, the commenter estimates it would cost at least $100,000 per year in additional personnel costs for the commenter and potentially reduce the DHC–6 hull values by between $400,000 and $500,000 (a total of $15.6 to $19.5 million for the commenter's fleet of 39 DHC–6s).

FAA Response: The FAA recognizes that operators are responsible for the development of their inspection programs. However, the FAA expects type certificate holders to support the operators in the development of those programs. This should be particularly likely when the type certificate holder is still producing a particular airplane model, which is the case for the great majority of the affected airplane models. Operators of an airplane model also may engage and fund the type certificate holder of the airplane to develop a damage-tolerance-based SSIP. In the event that a type certificate holder chooses not to support the airplane, and if the operator is unable to economically justify the development of the damage-tolerance-based inspections, along with other operators of the same model, the airplane will be ineligible for operation in scheduled service in the United States.

Comment: An Alaskan operator obtained an estimate to develop a "SIP" for PA–31–350 airplanes and was advised that without the original design data from the "manufacturer," the cost would approximately double. For an airplane no longer in production, there is no incentive for "manufacturers" to voluntarily provide such data to the operator; it only extends their liability. The commenter alleges that "manufacturers" have strong incentives to impede the development of cost-effective "SIPs" for out-of-production models because withholding data would force airplane retirements and generate demand for new airplanes.

FAA Response: Based on the comments received, the FAA is revising the proposal to allow airplanes initially certified with nine or fewer passenger seats to have service-history-based SSIPs, which includes the PA–31–350. However, for airplanes initially certificated with 10 or more passenger seats, a damage-tolerance-based SSIP is required to ensure the continuing airworthiness of these aircraft.

Fairchild has developed a damage-tolerance-based SSIP for its Metro aircraft. However, the FAA realizes that other type certificate holders may choose not to support the development of SSIPs and that this may lead to the retirement of certain airplanes. The FAA notes that each operator, not the type certificate holder, is responsible for ensuring the continuing airworthiness of its aging aircraft.

International Trade Considerations

One international operator submitted a comment on the International Trade Impact Analysis completed by the FAA. The operator states—

• In encouraging foreign governments to adopt this proposal, the FAA must accept the inspection and review findings of those governments without further FAA-approved review or inspection. The operator indicates the CASA probably will adopt this NPRM; therefore, incurring costs for non-U.S.-registered fleets.

• The international trade impact analysis is underestimated. The NPRM could affect international trade if restrictions apply to the importation of second-hand airplanes into the United States.

Another international operator noted that the proposal will have an effect on foreign trade by increasing operating costs for foreign operators of U.S.-registered aircraft due to the additional costs associated with compliance with this rule.

FAA Response: The commenter's assertion that the FAA must accept the inspection and review findings of foreign governments without further FAA-approved inspection and review is erroneous. The FAA agrees that if another country adopts this rule, it will impact airplanes registered in that country; however, that cost is not a direct cost of this rule.

The rule applies to all affected U.S.-registered airplanes. It does not apply to non-U.S.-registered airplanes. The FAA notes, however, that anyU.S.-registered airplane will be subject to the requirements of this rule whether it is purchased from a seller in a U.S location or from a seller in a foreign location. Owners of foreign-registered airplanes seekingU.S. registration and prospective owners of such airplanes are aware of the need to comply with applicable U.S. regulations and should take these requirements into account before attempting to transfer a foreign-registered aircraft to the U.S. registry. It is their responsibility to ensure that an aircraft imported into the United States complies with current U.S. regulatory requirements.

Editorial Comments

Summary of Proposal/Issue: Several commenters addressed editorial items related to the proposed rule.

Comments: Commenters recommend that the FAA—

• Correct the appendix references in § 135.168 to read "appendix G."

• Correct the appendix references in § 121.370a to read "appendix N."

• Better define what is meant by the term "age-related fatigue damage." The EAAWG asks whether the term means corrosion fatigue or refers to the more conventional understanding of damage resulting from repeated cyclic loading.

• Better describe what is meant by "fatigue." According to the EAAWG, the description of this term in the Description of Benefits section of the preamble to the proposal implies fatigue may be something other than cracking, although cracking is the specific concern of the proposal.

• Reconsider the use of the term "supplemental" to refer to inspections in §§ 121:370a, 129.16, and 135.168. According to the CASA, whether inspections are supplemental or integral to the basic maintenance program is irrelevant. Also, the CASA states these inspections increasingly would become integral rather than supplemental.

FAA Response: The term "age-related fatigue damage" is damage resulting from repeated cyclic loading, not from corrosion. "Fatigue" is related to cracking only. The FAA disagrees with the comment on the use of the word "supplemental." Such inspections are supplements to the normal maintenance program, and the use of the term "supplemental" is accepted by the industry and is used in FAA advisory material.

The FAA also has corrected the appendix references in §§ 121.370a and 135.16.

Other Issues

Part 23 Airplanes

Comments: The NATA recommends that the FAA suspend the proposed rules for scheduled part 135 air carriers operating part 23 airplanes initially certificated with nine or fewer passenger seats. According to the NATA, currently there are no systemic structural problems in these airplanes that require implementing damage-tolerance-based inspections. The NATA proposes to assist the FAA in conducting evaluations of current inspection and maintenance requirements for these airplanes to determine whether an unsafe condition exists.

The NATA proposes a different method of addressing aging concerns for part 23 airplanes initially certificated with nine or fewer passenger seats certificated before 1993:

• The FAA should identify airplanes for which damage-tolerance-based inspections have been developed and approved by the FAA.

• The FAA should identify airplanes for which the "manufacturer" has developed a SSIP or a supplemental corrosion inspection program.

• For any airplane not covered by the above provisions, the FAA should develop a special inspection to enhance the scheduled periodic/annual inspection currently required. The inspections should be developed through the use of structural difficulty reports and other such reports available to the FAA.

• The owner/operator of any affected airplanes in air carrier service should be required to implement, no later than 14 years after the date of manufacture, a SSIP designated by the "manufacturer." If the "manufacturer" has not designated such a program, the operator should be required to implement the FAA's SSIP.

FAA Response: The FAA disagrees with the suggested changes to the rule. However, based on the comments received, the FAA has amended the final rule to specify that airplanes initially certificated with nine or fewer passenger seats can accomplish service-history-based SSIPs instead of damage-tolerance-based SSIPs as proposed in the NPRM.

New Rulemaking Mandating CPCP and Other Programs

Comments: One commenter proposes that the FAA initiate a new rulemaking to mandate structural integrity programs and CPCPs instead of AD action supplemented with structural and corrosion reliability programs for airplanes with non-damage-tolerance-based "inspection programs."

FAA Response: The FAA agrees and is considering rulemaking to impose CPCPs for the same fleet of airplanes as is covered by this rule.

Operations Specifications

Comments: One operator proposes an aging airplane program that would function through amendments to operations specifications. Under this program, an operator's quality department would have responsibility for records reviews, airplane inspections, and reporting of results. Also, the FAA could focus on providing oversight through sampling or unannounced inspections and records reviews.

FAA Response: The FAA disagrees. The inspection programs must be approved by the FAA ACO or office of the Small Airplane Directorate or Transport Airplane Directorate responsible for each airplane's type certificate. The final rule has been revised to reflect this approval requirement. Once approved, each air carrier's operations specifications can be revised to include these inspections in each airplane's maintenance or inspection program.

DAR Services

Comments: A number of commenters state that the FAA underestimated the cost for DAR services. One commenter states that the increased inspection and DAR costs would add significantly to the costs per flight hour for low utilization operators.

Another commenter indicates he has been a DAR since 1983 and generally charges $125 per hour for services performed (based on appendix A to part 187, Methodology for Computation of Fees for Certification Services Performed Outside the United States, and AC 187–1, Flight Standards Service Schedule of Charges Outside the United States). The ATA estimates the costs of hiring a DAR would be no less than $100 per hour, compared with the FAA's estimate of $55 per hour.

Other commenters worry that the operator would have to bear the costs of the DAR inspections and records reviews. One operator states that some FAA offices routinely direct operators to

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seek the services of a DAR whenever the task can be accomplished by a DAR, indicating the FAA office is too busy.

FAA Response: The FAA has established that the benefit of doing the inspections and records reviews outweighs the associated costs of using DARs to accomplish these tasks. However, the FAA will establish policy on how DARs will be used, and the FAA has revised the regulatory evaluation to reflect the cost of DAR services.

In the NPRM cost calculations, the FAA used $95 per hour for the burdened hourly wage of DARs. The FAA used $55 per hour for other types of skills. In the cost calculations of the final regulatory evaluation, the FAA used $100 per hour for the burdened wage rate of DARs. With regard to the availability of FAA inspectors, the cost-estimation methodology recognizes the possible obstacles with the supply and availability of FAA inspectors, and has consequently assumed that 60 percent of this cost will be for the use of DAR services and 40 percent will be for the use of FAA inspector services. The total cost of the rule remains the same.

Regulatory Evaluation Summary

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreement (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local or tribal government, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rule: (1) Has benefits which do justify its costs, is a "significant regulatory action" as defined in the Executive Order, and is "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will have a significant impact on a substantial number of small entities; (3) will have a neutral impact on international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Introduction

This rule represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. Section 44717 of title 49 instructs the Administrator to "prescribe regulations that ensure the continuing airworthiness of aging aircraft" and to "make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation."

Consistent with section 44717 of title 49, the purpose of the rule is to ensure the continuing airworthiness of aging airplanes operating in commercial air transportation. The implementation of this rule ensures that: (1) Modern damage-tolerance analysis and inspection techniques will be applied to older airplane structures that were certificated before such techniques were available, and (2) the FAA will conduct mandatory aging-aircraft inspections and records reviews.

Since the publication of the NPRM, the FAA made changes to the final rule consistent with the enabling legislation to ensure the airworthiness of aging aircraft, while factoring in public comments about the economic consequences. The net effect is that all operators have more time to be in compliance with this rule and that operators of smaller aircraft implement less rigorous inspections. Despite these cost-reduction factors, the estimated total cost of the rule is higher than that initial regulatory evaluation, due to cost adjustments resulting from information provided by the industry.

Differences Between the Current Rules and the Aging Rule

There is strong evidence that the current system of maintenance inspections is not working effectively in the detection, and repairing, cracks on airplanes during regular maintenance inspections, while these cracks are still small. This section discusses the differences between the current rules and the aging rule in order to show the focused emphasis of the aging rule toward the early detection of cracks.

There are significant differences between the requirements under *current* rules for aircraft inspection/maintenance and the *new* requirements of the "Aging Airplane Safety" rule. Under current operation rules—with an exception [1]—there are no requirements for operators to accomplish a damage-tolerance based inspection program for any airplane; however, the FAA has mandated DT–SSIPs for large transport airplanes by the use of ADs. These ADs are applicable to the operators. The manufacturers agreed to provide DT-SSIPs to the operators. However, there is no rule mandating this, and it has been taking a long time for the manufacturers to develop the DT-SSIPs. Consequently, for some airplane models, there are various degrees of implementation of damage-tolerance-based standards, while for other airplane models, there is still no such implementation. For example, for the Boeing 757 and 767 models, it took 18 years for DT-based SSIPs to be implemented. The MD–80 model still does not have an implemented DT-based SSIP—after 18 years.

Currently, the inspection programs of small transport airplanes (such as DeHavilland/DHC–6) are not damage-tolerance based. Parts of these airplanes were certificated to either *safe-life* or *fail-safe* requirements. Under existing programs, that use these requirements, there are no provisions for inspections specifically focused on cracks. These inspection programs (which are provided by the original equipment manufacturer) involve a general visual inspection, but the mechanics may never look in areas that are hard to inspect visually—such as the horizontal stabilizer.

In contrast to the *current* situation/rules, this final rule will require DT-based SSIPs within a reasonable length of time (4 years) after the effective date of the rule—so that all (part 121) transport airplanes will have DT-based SSIPs applicable for each model. Damage-tolerance standards emphasize inspections and procedures to detect cracks at an early stage. These cracks can then be repaired. By contrast, the current inspection and maintenance programs of airplanes do not place special emphasis on cracks. Under the current system, the finding of cracks depends more on the quality of the particular mechanic doing the inspection, and on the particular inspection programs adopted by different airlines (or repair stations). Consequently, there is considerable variability in the detection of these cracks, across the U.S. commercial airplane fleet.

[1] " That exception is the recently implemented rule on "Repair Assessment for Pressurized Fuselages," which requires damage-tolerance assessment of repairs to the fuselage pressure boundary of eleven aging, large transport airplane models.

The damage-tolerance-based program uses both *non-invasive* and *invasive* techniques to detect cracks on airplanes. By contrast, the current non-DT-based programs use simpler and fewer non-invasive techniques, and they do *not* use invasive techniques at all. The damage-tolerance-based program uses (new) non-invasive technology—such as eddy current, ultrasonic waves, and magnetic particle inspections—to detect cracks, particularly small cracks. The existing non-DT-based maintenance programs do not require the use of these techniques; eddy current is used only if it is mandated by an AD for a previous cracking problem.

Also, DT-based SSIPs implement inspections for fatigue "*hot spots*"—that is, areas on the aircraft where cracks may develop. In this way, it will be possible for an airline to detect and follow the progress of these spots, or potential cracks, and repair them promptly.

With regard to *invasive techniques*, the damage-tolerance-based inspections and procedures will mandate that operators of the affected airplanes inspect—by invasive techniques—in areas where that they probably would not have inspected before, such as the horizontal stabilizer. To get access to the stabilizer, operators may have to install access doors. Inside the horizontal stabilizer, there are ribs and spar caps that are covered by airplane skin. These components can crack without being detected by an inspection from the outside. A crack in a horizontal stabilizer can result in the loss of control of the aircraft—and lead to an accident.

The comprehensive status of the U.S. airplane fleet with regard to cracking is fairly unknown. It is known that the fleet is aging and the metal of airplanes' structures is accumulating more flight cycles, resulting in an increasing risk of fatigue cracks and a catastrophic airplane accident. The *current ad hoc* approach relies heavily on airplane mechanics reporting cracks from visual inspections (leading to repairs). These inspections have resulted in the discovery of large cracks. If/when the discovery of cracks is deemed to be a serious problem, the FAA issues an AD for a particular model (and part of the airplane). In contrast to the current *ad hoc* approach, this rule will require *all* commercial airplanes to have damage-tolerance based SSIPs which include *directed* inspections for cracks.

Benefits

The purpose of this rule is to play a key-role in assuring the continued structural airworthiness of air carrier airplanes as they continue in service. The rule puts into place one integral part of the FAA's "Aging Aircraft Program", initiated in 1988, to address the unique problems associated with older airplanes. This initiative was undertaken because significant numbers of air-carrier airplanes were, and are, continuing to operate beyond their original design service goals. The Aging Airplane Program was launched with participation by airplane operators and manufacturers, and with the specific goal of identifying maintenance procedures that are necessary beyond current requirements to deal with the phenomena of aging materials.

After an extended period of working with industry's Airworthiness Assurance Task Force and the Airworthiness Assurance Working Group within the Aviation Regulatory Advisory Committee (ARAC), the FAA has concluded that four distinct areas of airplane aging need to be individually addressed. These areas are (1) fatigue cracking, (2) corrosion, (3) damage tolerance of structural repairs, and (4) widespread fatigue damage. Protection from fatigue cracking is the most generalized of these four areas, and was the first area of focus by the FAA. The agency issued a notice of proposed rulemaking on fatigue cracking on April 2, 1999, entitled "Aging Airplane Safety".

Structural properties of materials change as a result of prolonged and/or repeated application of stress cycles on those materials. After some duration of cyclic stress, the material will fail under the applied load because of fatigue. One manifestation of fatigue in materials is cracking. In principal-structural elements of the airplane, cracking due to fatigue can result in a catastrophic failure of the aircraft. Left unchecked, it is not a question of whether the repeated loadings on aircraft will produce a major structural failure but, rather, when that failure will occur. At the time when the NPRM for this final rule was published, more than 29 percent of the airplanes affected by that proposal were already 20 years old or older; 14 percent were over 30 years old; and 7 percent of the airplanes were over 40 years old. The average age of the U.S. airplane fleet has increased, in recent times, from 13.3 years in 1995 to 14.2 years in 1999 (even with retirement of older airplanes).

There is growing evidence of significant occurrence of fatigue cracks on airplanes and the potentially dire consequences of such cracks. This evidence includes: (1) The accident of the Aloha Boeing 737–200, on April 28, 1988, when 18 feet of upper fuselage separated from the airplane in flight; and (2) the substantial, accumulated data showing the development of significant numbers of cracks on airplanes. In the Aloha accident, the National Transportation Safety Board determined the probable cause of the accident to be metal fatigue and corrosion. In addition, many cracks have been found over time on airplanes, including some that are quite long—thus, increasing the risk of accidents. These cracks are typically the result of fatigue from aging. The evidence of significant risk of airplane accidents as a result of cracks is described below, and includes: (1) A relative risk assessment, followed by (2) the record of Service Difficulty Reports, and ending with (3) a discussion of the Airworthiness Directives issued on fatigue and cracking for the U.S. commercial fleet.

Relative Risk Assessment

This benefit analysis provides an estimate of the increasing *relative* risk of accidents over time, based upon existing data and some conservative assumptions. The FAA believes that the analysis results in a reasonable estimate of how much the accident risk, due to fatigue cracking, increases over time with aging aircraft, in the absence of the rule. The analysis is not an estimate of actual future accidents.

To date, the airplane fleets affected by this rule have not experienced a fatigue-related accident, resulting in loss of life or serious injury, although the Aloha accident (mentioned previously) was partly attributed to the age of the airplane involved. The Aloha accident was followed by a series of ADs, on operators, whose successful implementation depended on the voluntary development of DT–SSIPs by manufacturers. The development of these DT–SSIPs has been taking a relatively long time, and is still not completed. Moreover, numerous instances of serious cracking have been discovered among the fleet even during currently-required inspections that do not systematically investigate for fatigue cracking, as is required by this rule. This suggests that a fatigue problem does exist. An attempt is made here to provide an estimate of the magnitude of that problem—now and in the future.

Based upon extensive testing, it is common engineering practice to assume that materials fail from fatigue according to a normal probability curve. The "mean" or highest point of the bell-shaped normal curve denotes the point at which half of the test samples have failed; or, stated another way, that is the point where the probability that any one

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sample will have failed is one-half. Engineers often define "Safe life" as outside three standard deviations of the curve, to the left of the mean.

An airplane is made up of a great many different and independent elements, each with its own failure characteristics. Consideration of the probabilities of time-to-failure resulting from fatigue for an entire airplane can be analyzed in terms of a normal distribution. The Central Limit Theorem allows the useful assumption that a plot of the means, of the various times-to-failure of a sufficient number of samples of individual parts of an airplane, will approximate a normal distribution, without regard to the actual underlying distribution of various times-to-failure of the parts. Using this approach, it can reasonably be assumed that in the absence of some preventive action, the fleet of aircraft affected by this rule would experience fatigue failure according to an approximately normal distribution curve. This analysis makes such as assumption. A normal curve is defined by its mean and standard deviation, and unfortunately neither of those numbers is known for the fleet of affected airplanes. As a result, a reasonably accurate failure curve cannot be constructed.

However, by making some conservative assumptions, a curve of relative failure risk may be developed that could yield some useful indications. The *relative* risk curve would be identical to the *actual* failure curve if the failure curve could be identified. Therefore, the relative risk curve is also assumed to be approximately a normal distribution. The mean and standard deviation of this curve are also unknown. However, for the purpose of discussing relative risk, it is assumed that the mean of the relative risk curve is 50 years of age. That is to say, the probability of fatigue failure risk reaches 50 percent at age 50, if no preventive action is taken. If the curve under discussion were an actual failure curve, it would mean that one-half of the fleet would have experienced fatigue failure by age 50 if no preventive actions were taken.

For the purpose of discussing relative failure risk—not actual failure risk—it is assumed that the point of three standard deviations on the risk curve (to the left of the mean) occurs at the age of 14 years. This matches the statutory requirement and the requirements of this rule that additional preventive actions be initiated at that time. Three standard deviations matches the often-used engineering convention that a component is "safe" outside that point (to the left of the mean).

The curve is defined with a mean of 50 years and a standard deviation of 12 years ((50–14)/3). Interpolating from a standard normal probability table, the probabilities associated with such a curve by aircraft age are shown in Table 1. As previously stated, available data are not sufficient to claim that this table shows the fraction of the fleet that would experience fatigue failure with age, in the absence of this rule, but it may be a reasonable indicator of relative risks of failure for individual aircraft.

A very small risk of failure occurs by age 14 years (0.001), as shown in Table 1. By age 22, however, the relative risk is ten times greater—one order of magnitude (at 0.01). By age 35, the risk of failure is one-hundred times greater, than that at age 14—two orders of magnitude (at 0.1). If the maximum, acceptable "safe life" risk occurs when an airplane reaches the point of three standard deviation from the mean, at 14 years of age, then this analysis indicates that this maximum acceptable risk is exceeded by one order of magnitude by age 22, and two orders of magnitude by age 35.

A similar tabulation was done for relative probabilities of fatigue failure if the mean is assumed to be 62 years, instead of 50 years. (62 years, instead of 60 or 65 years, was selected simply for ease of interpolation from the standard normal curve table.) In this case, the relative risk increases by one order of magnitude when an airplane reaches age 25 and two orders of magnitude by age 42.

Although the above brief risk analysis is not precise and depends upon assumptions that could be varied, it does provide an idea of how the risk to aging aircraft increases over time. From this analysis, there is no question that over the years, the risk of fatigue failure for an airplane's structural parts increases. When the above analysis is applied to the fleet of airplanes affected by the rule, there is a strong indication that the level of safety from fatigue crack accidents has significantly declined. The analysis suggests that in the absence of the action proposed by this rule, the accident risk has increased beyond "safe life" by one order of magnitude when an aircraft reaches around 22 to 25 years of age. Over 25 percent of the fleet has reached or exceeded that age range. Further, the analysis suggests that the accident risk has increased to two orders of magnitude, beyond "safe life", in the 35 to 40 years of age range. Over 10 percent of the fleet has reached or exceeded that range.

TABLE 1.—RELATIVE RISK OF FATIGUE-CRACKING ACCIDENT, WITH AGE

[Mean = 50 years]

Age (years)	Relative risk	Age (years)	Relative risk
14	0.0013	33	0.0793
15	0.0018	34	0.0918
16	0.0023	35	0.1056
17	0.003	36	0.123
18	0.0039	37	0.1401
19	0.0049	38	0.1587
20	0.0062	39	0.1814
21	0.008	40	0.2033
22	0.0099	41	0.2266
23	0.0122	42	0.2546
24	0.0154	43	0.281
25	0.0188	44	0.3085
26	0.0228	45	0.3409
27	0.0281	46	0.3707
28	0.0336	47	0.4013
29	0.0401	48	0.4364
30	0.0485	49	0.4681
31	0.0571	50	0.5
32	0.0668		

Service Difficulty Reports

A review of Service Difficulty Reports (SDRs) shows that a significant problem exists with cracks on airplanes in the U.S. commercial fleet. SDRs are reports that provide information on the incidents (as opposed to accidents) of airplanes related to maintenance problems. The reports are typically completed by airline (or repair station) mechanics, and are then sent to, and collected by, the FAA. An objective of the submission and collection of SDRs is to track problems with aircraft parts and components. The findings of SDRs can lead to the issuing of airworthiness directives (ADs), when conditions observed are deemed to create a significant, adverse effect on air-transport safety.

The FAA searched the National Aviation Safety Data Analysis Center (NASDAC) for service difficulty reports since 1990—for part 121 airplanes—using three keywords: "crack", "aging", or "fatigue". The search resulted in over 94,000 records or SDRs. Of these, about 93 percent, or 88,000 SDRs, were on "cracks" (while the remaining were on "corrosion"). *Eighty-eight thousand* records are a significant number of problems involving aircraft cracks. These cracks were found on all the main parts of the airplane structure: fuselage, wings, and doors (of both passenger and cargo airplanes). Therefore, this assessment of SDRs shows a wide prevalence of cracks on U.S. commercial airplanes.

Airworthiness Directives

Airworthiness Directives (ADs) are issued when serious problems with airplanes are discovered that—if not repaired—have a high likelihood of resulting in an accident. So, ADs are issued quickly in order to maintain the airworthiness of the affected airplanes and thus prevent accidents. Given the threat of an accident, when an AD is issued, operators have a limited time to resolve the problem and often require unscheduled maintenance.

A tabulation was made of ADs issued by the FAA for problems with airframe "fatigue" and "cracking"—for a recent period of less than one year: January 1 through September 2000. The results show that 56 such ADs were issued by the FAA over that time period. These ADs apply to various parts of the airplane structure and these parts include: Fuselage, wings, door frames, deck floor beams, etc. A count of the affected parts indicates that:

(1) Ten ADs were issued for cracks found on the fuselage skin;

(2) Nine ADs were issued for cracks on wings;

(3) Eight ADs were issued for cracks found on, and around, doors.

(4) Eight ADs were issued for cracks found on (and around) bulkheads.

(5) Two ADs were issued for cracks found on the tail assembly (which includes the horizontal and vertical stabilizers, and rudder).

These Airworthiness Directives on cracks, also, affect *all* of the well-known airplane *models*. They include: Aerospatiale, Airbus, Boeing, Bombardier, British Aerospace, Dornier, Fairchild, Fokker, Lockheed, and McDonnell Douglas. Also, some of these ADs affect an *entire airplane* series. For example, an AD applies to the Airbus A–300 Series, while another AD refers to the Boeing 727 Series. Still another AD applies to the Boeing 737–200C Series, the Boeing 747 Series, and the Boeing 777 Series.

If cracks are left undetected—and, thus, untreated—they grow. Subsequently, they can result in accidents. With regard to crack *sizes* and *growth* of cracks, one can refer—as an example—to the "Airworthiness Directive; Boeing Model 747 Series Airplanes", Final rule; request for comments (Docket No. 2000–NM–206–AD). In the text of this AD, it is pointed out that "The FAA has received reports that, during regular maintenance of certain Boeing Model 747 series airplanes, operators detected cracking of certain areas of the fuselage skin adjacent to the drag splice fitting. One operator reported finding four skin cracks, which ranged in length from *0.19 to 1.37 inches*, under the drag splice fitting of the right side underwing. On another airplane, there was detection of a *8.5-inch long crack* under the drag splice fitting of the left side. Moreover, another operator found a *25-inch long diagonal crack* between station (BS) 982 and BS 990 at stringers 37L through 38L." These data show the existence of different-size cracks found on different airplanes (of the same airplane model). The cracks (in this particular case) range in size from 0.19 inches to 25 inches. Therefore, these data indicate that under current inspection/maintenance procedures, which are not based on damage-tolerance standards, cracks have gone unnoticed and have become quite large.

The text in the same AD goes on to emphasize the serious, potential consequences of cracks. It states that "Such conditions, if not corrected, could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane." Depressurization means that the fuselage of the aircraft is breached and that can result in an accident. When a fuselage is under pressure, if a crack gets long enough, it will fast fracture.[2] When a crack fast fractures and is not arrested, the fuselage will experience a rapid depressurization event. Rapid depressurization can result in a number of serious adverse effects on the airplane and passengers. At best, after the airplane has suffered depressurization, the passengers ride in an unheated aircraft, breathe through oxygen masks, and hope for a safe landing. Another possible result, however, is an airplane accident. There are examples of catastrophic accidents occurring as a result of rapid depressurization; these accidents were not caused by cracks but they show the dire consequences of rapid depressurization. In one accident, in 1974, a DC–10 operated by Turkish Airlines, lost a door and had rapid depressurization. This caused the floor of the airplane to move and sever control cables—with catastrophic results. The accident killed 246 people. In another accident, in 1985, a B–747 operated by Japan Airlines experienced a failure in the aft pressure bulkhead (from a bad repair). This affected the control system and the airplane crashed in a mountain—killing 524 people. It was very fortunate that the Aloha accident resulted in only one fatality.

[2] When a crack fractures at a rapid rate. A cleavage fracture may run as fast as 1 mile/second (1600 meters/second), a dimple fracture as fast as 1500 feet/second (500 meters/second), although it may be slower.

Therefore, cracks are a serious airworthiness problem, as evidenced by the necessity to issue numerous ADs. These cracks have affected critical parts of the entire airplane structure across all the airplane types used in commercial aviation. The use of ADs is meant to address a *specific* problem during a specific time period. It is not an effective way to address a *widespread* problem that affects the entire U.S. commercial airline fleet—such as cracks. The "Aging Airplane Safety" rule provides a comprehensive and effective way to address that problem.

In sum, it is accepted that after some duration of cyclic stress, metal will fail under applied load because of fatigue. From the relative risk assessment discussed above, it is clear that risk of metal fatigue increases by orders of magnitude as the airplanes age. Since 1990, there are over 88,000 airplane service difficulty reports that identify cracks found on all the main parts of airplane structure. There is not only abundant evidence of pervasive cracking in airplanes, but also many of these cracks have led to airworthiness problems. These risks are not acceptable. The FAA concludes that action must be taken to avoid this unacceptable risk. The inspections and records reviews required by this rule are expected to achieve the goal of maintaining an acceptable risk from fatigue cracking accidents.

Costs

Differences Between Costs of the NPRM and Final Rule

There are several differences between preliminary regulatory evaluation of the NPRM and the final regulatory evaluation of the rule. Some of these differences reduce the costs of the rule, while others increase these costs. The net effect is for the estimated costs in the final regulatory evaluation to exceed substantially the costs estimated in the NPRM. These changes are explained in more detail below.

The following changes from the NPRM to the final rule, based on information from public comments, reduced the cost of some requirements of the rule:

(1) The time between repeat intervals was increased from 5 years to 7 years—in order for the required inspections to be better accommodated by the schedule for heavy maintenance checks.

(2) For airplanes that will be 25 years or more on the rule effective date, the time interval for the initial inspection was increased from 3 to 4 years.

(3) In the final rule, operators of part 135 airplanes are exempt from damage-

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tolerance inspections. Instead, they only need to implement a service-history based SSIP—and that by 2010.

(4) In the final rule, operations within Alaska are exempt from the rule's requirements.

Despite the above factors that reduced costs, the estimated total cost of the rule in the final regulatory evaluation is significantly greater than the total cost of the rule estimated in the NPRM. This increased cost was affected by the following factors:

(1) The number of affected airplanes was higher in the final regulatory evaluation. The number of part 121 airplanes that need DT SSIPs increased from 925 in the NPRM to 1,596 in the final regulatory evaluation.

(2) For part 121 airplanes that have DT SSIPs, the cost estimation in the final rule increased the downtime for FAA/DAR inspections and records review to 2 days.

(3) In the final regulatory evaluation, efficiency factors were not applied in the writing/development of damage-tolerance-based SSIPs.

(4) The average airplane values used in the final regulatory evaluation were higher than those used in the preliminary regulatory evaluation. This results in increased downtime costs.

As a result of the above changes, the total estimated cost of the rule increased from $99.6 million in the NPRM to $173.5 million in the final rule—in present value. The cost of the part 135 operators declined from $8.5 million to $1.7 million, in present value.

Also, with respect to the distribution of the cost for inspections/records review by FAA inspectors/DARs, in the final regulatory evaluation it was assumed that 60% of this activity will be conducted by DARs, while 40% will be conducted by FAA inspectors. In the NPRM, the cost methodology assumed that the cost of this activity would be shared 50%–50% between FAA inspectors and DARs. Consequently, the methodology of the final regulatory evaluation increased the cost of this activity for the operators.

The rule will affect the operators of airplanes under part 121 that currently have (or are expected to have by 2004) damage-tolerance-based SSIPs incorporated into their maintenance program. In addition, those operators of airplanes under part 121 that are not currently required to incorporate a damage-tolerance-based SSIP into their maintenance program will need to develop such a program. The rule will also generate costs for operators of multi-engine airplanes that are operated in scheduled service under part 135 and initially certificated with 10 or more passenger seats. These operators are required to develop and implement damage-tolerance-based SSIPs by the year 2010. Many of the airplanes in this group have moved over time into part 121; consequently, their costs are measured through the part 121 airplane list.

The rule will also generate costs for operators of multi-engine airplanes that are operated in scheduled service under part 135 and initially certificated with nine or fewer passenger seats. These operators are required, by the final rule, to develop and implement service-history-based SSIPs by the year 2010. Service-history-based SSIPs have considerably lower costs than damage-tolerance-based SSIPs. In the NPRM, the proposed rule required that the operators of these airplanes also implement damage-tolerance-based SSIPs. However, as a result of public comments and additional consideration, this final rule exempts those airplanes from damage-tolerance-based SSIPs and, instead, requires the lower-cost service-history-based SSIPs.

The estimated costs of this rule do not include the expenses of making repairs to airplanes that may be found necessary during either the SSIP-directed inspections, conducted by the airplane mechanics, or the oversight inspections conducted by the FAA inspectors or DARs. While the FAA recognizes that such repairs can sometimes constitute a considerable expense, the costs of these repairs are not attributable to this rule because existing FAA regulations require that repairs be made to assure the continued airworthiness of the airplane.

Also, the economic evaluation focuses on existing airplanes and does not address the costs that the rule will eventually impose on newly-produced airplanes. The requirements of this rule on newly-produced airplanes are beyond (or nearly so) the 20-year time period of this study. Consequently, these costs, particularly their present value, are expected to constitute a relatively small proportion of the costs calculated in this study.

Costs for Part 121 Airplanes That Have Damage-Tolerance-Based SSIPs

For those part 121 operators that have (or will have by 2004) a damage-tolerance-based SSIP, the rule will not impose costs for damage-tolerance-based inspections conducted by their mechanics or for downtime of airplanes caused by these inspections. The rule will require that these airplanes implement inspections and records reviews by FAA inspectors or Designated Airworthiness Representatives (DARs), at designated time intervals. This requirement will result in additional costs for the affected operators. These inspections/records review are expected to result in additional time that an airplane is out-of-service. While this downtime cost estimates in the NPRM were based on loss-of-service estimates that ranged from 0.7 to 1.6 days per airplane inspection, in these cost calculations, the downtime has been increased to 2.0 days. This increase in downtime reflects the input of public comments.

The estimated cost of airplane downtime is based on a rate of return to capital approach, in which the operational airplane is the productive capital and there is a return associated with its use. Consequently, out-of-service cost can be estimated through the loss of capital services of the aircraft. The value of this loss is measured by the rate of return to capital (aircraft). This analysis uses 7 percent per annum as the average rate of return to capital; this rate is also preferred by the Office of Management and Budget for present-value calculations. Consequently, downtime costs were calculated as the product of the 2 downtime days, divided by 365 days (per year), multiplied by the rate-of-return to capital, at 7 percent. The resulting estimate is a downtime cost per airplane (in a model group), per inspection. To obtain the cost of downtime for a model group, the downtime cost per airplane is multiplied by the number of airplanes in that model group. The total downtime cost of the rule is the summation across model groups and over time. Thus, the estimate for downtime costs, for part 121 airplanes with damage-tolerance-based SSIPs over the period of analysis, is $98.4 million, undiscounted. Assuming an average of two inspections per airplane over the 20-year period of analysis, and using 7,620 airplanes and 2 days per inspection, one estimates downtime costs at $3,228 per day per airplane (undiscounted).

This figure (of $3,228 per day) is significantly different/lower than figures provided by some public comments of $80,000 in lost revenue per inspection which—given a two-day downtime period—would result in $40,000 lost revenue per day. On should note that the relevant variable to measure for downtime cost is lost net income—that is, "revenue minus costs" of operating the airplane. And lost net income would be substantially lower than lost revenue per day for an airplane. When an airplane is out-of-service, there is loss of revenue but costs of operation are also not incurred (pilot salaries, fuel, maintenance, *etc.*).

There were also adjustments to these cost estimates. The estimated total cost of the rule, for this group of airplanes, was computed under the hypothesis that all of the affected airplanes that exist today will continue to be operating through the end of the study period—year 2020. In actuality, however, over time there will be normal replacement and retirement, by operators of these airplanes. Consequently, a substantial portion of these costs will not be incurred. The evaluation assumes that at least one-third of the potential $245.0 million costs will not be incurred due to normal replacement and retirement of aircraft. This assumption is the same as that used in the initial regulatory evaluation.

Cost of the Rule for Part 121 Airplanes That Need To Incorporate Damage-Tolerance-Based SSIPs Into Their Maintenance Program

Steps in Cost Estimation

The relevant tasks and associated costs of the rule for these airplanes include:

(1) Development of the damage-tolerance-based SSIP.

(2) Incorporation of damage-tolerance-based SSIPs into operators' maintenance programs.

(3) Review/approval by FAA of operators' damage-tolerance-based SSIP and of their incorporation into the operators' maintenance programs.

(4) Modification costs.

(5) Inspections—conducted by airline mechanics.

(6) Downtime costs for airplanes for inspections—by airline mechanics.

(7) Cost for operator personnel to prepare the airplane and its records for the FAA inspector or DAR, to conduct their inspection and records review.

(8) Direct costs for FAA inspectors/DARs, to conduct inspections and records reviews of the affected airplanes.

(9) Downtime cost of airplane for the above inspection and records review by FAA/DARs.

With regard to the downtime costs of airplanes for inspections by mechanics, the evaluation assumes that each 40 hours of inspection work, caused by this rule, will require one additional day of airplane downtime. The methodology again uses the rate of return to capital approach, with 7 per cent per year. Consequently, the cost of aircraft downtime, for mechanic inspections, for the affected airplanes over the period of analysis is estimated at $3.1 million, undiscounted.

With regard to the downtime costs of these airplanes for inspection/records review by FAA/DARs, the additional downtime is estimated to range between 0.7 and 1.6 days per airplane inspection—depending on airplane value. Subsequently, the cost of downtime is calculated by the rate of return to capital approach (using 7 percent). The result is an estimate of $702,000 undiscounted, for downtime costs of the affected airplanes.

Adjustments to Cost Estimates

For some models, the potential cost of complying with the requirements of the rule could constitute a significant proportion of (or may actually exceed) the economic values of the airplanes involved. Consequently, for each airplane model group, the estimated potential cost of compliance was compared with the estimated economic value of the airplanes in that model group. In cases where the potential compliance cost exceeds 50 percent of the group value, the methodology assumes that an SSIP will not be developed and implemented. Consequently, the related compliance costs for the rule will not be incurred. Instead, it is expected that the affected models will be retired or transferred out of scheduled service. The estimated forced out-of-service costs for these models are estimated to be 50 percent reduction in their economic value.

However, this (apparent) reduction in the cost of the rule is accompanied by an increase in another type of cost. This includes the hardship and economic dislocation that will result from the reduction in operations, or by possibly going out of business, by some operators. This hardship can include the loss of jobs by employees of the affected operators, and the subsequent negative effects of this on themselves (their households) and their communities. These costs are recognized although not quantified.

Other Adjustments to the Cost Estimates

The estimated cost of the rule for this group of airplanes was computed under the scenario whereby all of the affected airplanes that exist today will continue to fly through the end of the study period (year 2020). In actuality, however, there will be normal replacement and retirement of these airplanes (by operators) and, consequently, a substantial portion of these costs will not be incurred. The replacement cycle for this group of airplanes can vary widely. For some mainstream scheduled commuter carriers, it is common practice for airplanes to be routinely replaced. In a number of cases, few if any of the costs of this rule will be incurred. Conversely, the economics of some smaller, or niche carriers, are such that airplanes may continue to fly for 40 years or more. Given available information, the evaluation assumes that at least one-third of the potential $163.8 million costs will not be incurred, as a result of normal replacement/retirement of airplanes—leaving an estimated cost of $104.4 million.

Part 135 Airplanes

This final rule exempts certain part 135 airplanes from implementing DT-based SSIPs. These are multi-engine airplanes, operated in scheduled service, initially certificated with nine or fewer passengers. Instead of a DT SSIP, the operators of these airplanes will have to implement a service-history-based SSIP—by the year 2010. A service-history-based SSIP is estimated to cost significantly less than a damage-tolerance-based SSIP—in general, 0.20 of the cost of a DT-based SSIP. The cost of the rule for this group of airplanes is estimated at $1.7 million, discounted ($2.9 million, undiscounted).

Costs to the FAA

The rule is also estimated to have costs of $91.0 million undiscounted to the FAA. Virtually, the entire amount of these costs is for FAA inspectors to conduct inspections and records review. This cost estimate is based on the assumption that 40 percent of the inspections/records review will be conducted by the FAA inspectors while 60 percent will be conducted by DARs.

Table 2 presents the total costs of the rule, over the period of analysis—for the operators (and manufacturers) of the affected airplanes and the FAA. Total costs are estimated at $362.9 million, undiscounted, with a present value of $173.5 million.

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TABLE 2.—TOTAL COST OF THE RULE
[Dollars in millions, 2001–2020]

	Undiscounted costs	Discounted costs
Operators of airplanes that have damage-tolerance-based SSIPs	$164.1	$72.2
Operators of airplanes that need damage-tolerance-based SSIPs	104.9	59.6
Operators of airplanes that need service-history-based SSIPs	2.9	1.7
FAA costs	91.0	40.0
Total Costs	362.9	173.5

Comparison of Costs and Benefits

The changes required by the rule are necessary to ensure the continuing airworthiness of aging airplanes. The FAA finds that the expected benefits of the rule justify its costs. The total estimated costs of the rule are $173.5 million, discounted ($362.9 million, undiscounted). The benefits have been assessed through several perspectives as explained below.

There is growing evidence of significant occurrence of fatigue cracks on airplanes and the potentially dire consequences of such cracks. The evidence of significant risk of airplane accidents, as a result of cracks, include: (1) The Aloha accident; (2) the results of the relative risk assessment; (3) the number of Service Difficult Reports on cracks; and (4) the Airworthiness Directives issued for fatigue and cracking on the U.S. commercial aviation fleet.

The relative risk assessment showed that while a small risk of failure—due to fatigue cracks—exists by year 14 of an airplane's service life, by age 22, that risk is 10 times greater (one order of magnitude). Furthermore, by age 35, the risk is 100 times greater than at age 14 (two orders of magnitude). Over 25 percent of the fleet has reached or exceeded the range of 22 to 25 years of age. Over 10 percent of the fleet has reached or exceeded 35 years of age.

In addition, a search resulted in 88,000 Service Difficulty Reports on cracks, since 1990. This number of records indicates a prevalent and significant problem with cracks in the aircraft fleet. Furthermore, the significant number of ADs on cracks on airplanes—issued during a recent period (of less than a year) also indicates the existence of a serious problem with cracks on the U.S. commercial fleet. ADs are issued quickly to remedy problems that have a high likelihood of resulting in accidents. Each AD, by itself, is proof that a significant accident risk exists.

Therefore, based on the above evidence, the FAA finds that the expected benefits of this rule justify its expected costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals, and to consider the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed, or final, rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For the NPRM, the FAA conducted a complete initial regulatory flexibility analysis to assess the impact on small entities. This rule will affect commercial operators of airplanes, in the specified part of the CFR. For these operators, a small entity is defined as one with 1,500 or fewer employees. As there are operators that met that criteria for a small business, calculations were carried out to assess whether the rule will have a significant impact on a substantial number of these operators.

Issues Addressed in the Final Regulatory Flexibility Analysis (FRFA)

The central focus of the FRFA, like the Initial Regulatory Flexibility Analysis (IRFA), is the requirement that agencies evaluate the impact of a rule on small entities and analyze regulatory alternatives that minimize the impact when there will be a significant economic impact on a substantial number of small entities.

The requirements, outlined in section 604(a)(1–5), are listed and discussed below:

(1) *A succinct statement of the need for, and objectives of, the rule.*—This rule represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. Section 44717 of title 49 instructs the Administrator to "prescribe regulations that ensure the continuing airworthiness of aging aircraft." The law also requires the Administrator to make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation. The objectives of the rule is to ensure the continuing airworthiness of aging airplanes operating in air transportation.

(2) *A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments.*—There were very few public comments explicitly on the Initial Regulatory Flexibility Analysis. There were a substantial number of comments from part 135 operators that complained about the financial burden that the proposed rule would place on them. Small commercial operators (less than 1,500 employees) come from this group, as well as from part 121 operators.

In response to public comments, the FAA made several changes to the final rule:

(i) The primary change is that part 135 airplanes operating in scheduled operations, initially certificated with nine passenger seats or less, are exempted from implementing damage-tolerance-based SSIPs. Instead, they are to implement service-history-based SSIPs—and those by 2010. The SH SSIPs are estimated to cost 20 percent of the cost of a DT SSIP (to develop and implement).

(ii) The interval between repeat inspections was extended in the final rule to seven years, from five years in the NPRM.

(iii) For the initial inspection, the interval from the effective date of the rule was extended from 3 to 4 years for airplanes greater than 25 years old.

(3) *A description of, and an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available.*—The FAA estimated the number and input of small entities as follows. First, small operators in part 121 were selected, by using a database that listed part 121 operators, with their number of employees and annual revenue. This database came from a study on small business done for the FAA by a consulting firm (GRA, Incorporated). The search identified 58 operators with 1500 or fewer employees, and with known annual revenue. Then, airplanes of these operators were identified—by using data from the BACK database. This search identified small entities operating under part 121, with affected airplanes (those in part 121 that had DT SSIPs and those that need DT SSIPs).

Next, the net present value of the cost of the rule was calculated for each operator. As these cost calculations are based on airplane model groups, the resulting net present value (NPV) for one airplane is obtained by dividing the cost of the group by the total number of airplanes in that group. The result is an "average" net present value per airplane. The NPV per airplane is then multiplied by the number of airplanes of that operator, in that model group. If there is more than one model group, per operator, the NPVs of the model groups are summed to derive the net present value of the cost of this rule for the affected operators. Subsequently, these discounted costs are used to derive annualized costs, for each affected small operator.

With respect to part 135 operators, a search was made in the GRA database that listed part 135 operators, along with the number of employees and annual revenues per firm. The identified small operators were then checked against a database of the FAA which listed the names of part 135 operators and their airplanes. This search identified 26 small entities operating under part 135, including two operators that operate under parts 135 and 121. For part 135 operators, the net present value of the rule's cost and annualized cost were derived in the same manner as for part 121 operators.

Annualized costs for the affected operators were then divided by annual revenues of the operators. The results show that for all—except two—of the listed 58 small operators, under part 121, the ratio of annualized cost to revenues is substantially less than one percent. For one operator, the ratio is 5.9 percent, while for another operator, it is 1.1 percent. With regard to part 135 operators, of the 24 identified operators, all but two show a ratio of annualized cost to annual revenue that is less than one percent. Thus, of the 82 identified small operators—under part 121 and/or part 135—all except four have a ratio of annualized cost to annual revenue that is substantially less than one percent.

(4) *A description of the projected reporting, record-keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*—In order for the FAA to fulfill its obligation under 49 U.S.C. 44717, this rule will require that certain records be made available by the operator. Most of the records that will be required under this rule for part 121 airplanes are currently required by other regulations. Consequently, there is expected to be a minimal additional paperwork, for these airplanes, as a result of the rule. Concerning part 135 airplanes, their exemption from DT SIPPs is expected not to result in additional paperwork for their operators.

(5) *A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*—In order to decrease the cost burden for the final rule, the FAA will exempt operators of part 135 airplanes from implementing damage-tolerance-based (DT) SSIPs. These operators are nearly all small entities. Instead of the DT-based SSIP requirement, these operators' aircraft will be subject to a Service-History (SH)-based supplemental inspection program to be implemented by the year 2010. The SH-based SSIP is estimated to be 20 percent of the cost of a DT-based SSIP.

Furthermore, in its efforts to assist small entities and other affected parties operating part 135 airplanes, the FAA will publish (with the final rule) an advisory circular, AC 91–60A "The Continued Airworthiness of Older Airplanes".

Description of Alternatives

The FAA has considered several alternative approaches to this rulemaking and has attempted to minimize the potential economic impact of the rule, especially the impact on the operation of aircraft most likely to be used by small entities. At the same time, the agency needs to meet its primary responsibility for aviation safety and its particular obligation under 49 U.S.C. 44717 to ensure the continuing airworthiness of aging aircraft.

The FAA made two changes to the requirements of the final rule that significantly lower compliance costs of operators. First, the FAA chose to lengthen the time period between inspections from 5 to 7 years. This longer period lowers the compliance cost of the affected operators as the inspections can occur at a heavy maintenance check. Second, the FAA exempted part 135 operators from the most expensive requirement of the rule. Part 135 operators are nearly all small entities.

Compliance Assistance

In its efforts to assist small entities and other affected parties in complying with the rule, the FAA will be publishing two advisory circulars (for comment) with the final rule. One is AC 91–56B "Continuing Structural Integrity Program for Airplanes" and it will provide guidance for complying with a DT SSIP. The other document is AC 91–60A "The Continued Airworthiness of Older Airplanes", which will provide guidance for complying with a service-history based SSIP. These circulars will be published concurrently with this rule, with a request for comments.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential affect of this final rule and has determined that it will impose the same costs on domestic and international

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entities and thus will have a neutral trade impact.

Unfunded Mandates Analysis

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate, in a proposed or final agency rule, that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Paperwork Reduction Act

Information collection requirements in the final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Numbers: 2120–0020–, 2120–0008, and 2120–0039. Part 129 record requirements can be found in International Civil Aviation Organization Annexes.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade. This includes both barriers affecting the export of American goods and services to foreign countries, and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities, and thus will have a neutral trade impact.

Unfunded Mandates Analysis

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate, in a proposed or final agency rule, that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 119

Air carriers, Air transportation, Aircraft, Aviation safety, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 119, 121, 129, 135, and 183 of title 14, Code of Federal Regulations as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Amend § 119.3 by adding the definition of "years in service" after the definition of "When common carriage is not involved or operations not involving common carriage" to read as follows:

§ 119.3 Definitions.

* * * * *

Years in service means the calendar time elapsed since an aircraft was issued its first U.S. or first foreign airworthiness certificate.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Add § 121.368 to read as follows:

§ 121.368 Aging airplane inspections and records reviews.

(a) *Applicability.* This section applies to all airplanes operated by a certificate holder under this part, except for those airplanes operated between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Operation after inspection and records review.* After the dates specified in this paragraph, a certificate holder may not operate an airplane under this part unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the certificate holder must demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes exceeding 14 years in service but not 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service but not 24 years in service on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(c) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (b) of this section.

(d) *Airplane and records availability.* The certificate holder must make available to the Administrator each airplane for which an inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with records containing the following information:

(1) Total years in service of the airplane;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last inspection and records review required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 121.370a of this part;

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for those repairs.

(e) *Notification to Administrator.* Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

5. Add § 121.370a to read as follows:

§ 121.370a Supplemental inspections.

(a) *Applicability and general requirements.* After December 5, 2007, a certificate holder may not operate an airplane under this part unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures. Paragraphs (b), (c), and (d) of this section list the exceptions to this requirement. This section does not apply to an airplane operated by a certificate holder under this part between any point within the State of Alaska and any other point within the State of Alaska.

(b) *New model added through type certificate amendment.* This paragraph applies to each airplane added to a type certificate after December 8, 2003, that has a certification basis that does not include a requirement for damage-tolerance-based inspections and procedures. A certificate holder may not operate that airplane more than 4 years after the date of the type certificate amendment unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(c) *Design-life goal airplanes.* If on or after December 5, 2007, the time in service of an airplane reaches the design-life goal listed in appendix N to this part, the certificate holder may operate that airplane until the date the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the certificate holder may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(d) *Airworthiness directive-mandated service-history-based inspections.* Until December 20, 2010, a certificate holder may operate an airplane for which an airworthiness directive requires the maintenance program to include service-history-based inspections and procedures. After that date, the certificate holder may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(e) *Approvals.* The inspections and procedures required by this section to

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be included in the certificate holder's maintenance program for an airplane must be approved by the FAA Aircraft Certification Office or office of the Small Airplane Directorate or Transport Airplane Directorate having cognizance over the type certificate for the affected airplane.

6. Add appendix N to part 121 to read as follows:

APPENDIX N TO PART 121.—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hours)
Raytheon (Beech) Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	45,000
—BAe Jetstream 3201	19+2	A56EU	30,000
deHavilland Aircraft Co.: DHC–6	22+2	A9EA	33,000
Dornier Luftfahrt GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer): Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Corporation:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman: PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Short Brothers PLC:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3–Sherpa	39+2	A41EU	40,000

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

8. Revise § 129.1 to read as follows:

§ 129.1 Applicability and definitions.

(a) *Foreign air carrier operations in the United States.* This part prescribes rules governing the operation within the United States of each foreign air carrier holding the following:

(1) A permit issued by the Civil Aeronautics Board or the U.S. Department of Transportation under 49 U.S.C. 41301 through 41306 (formerly section 402 of the Federal Aviation Act of 1958, as amended), or

(2) Other appropriate economic or exemption authority issued by the Civil Aeronautics Board or the U.S. Department of Transportation.

(b) *Operations of U.S.-registered aircraft solely outside the United States.* In addition to the operations specified under paragraph (a) of this section, §§ 129.14, 129.16, 129.20, 129.32, and 129.33 also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

(c) *Definitions.* For the purpose of this part—

(1) *Foreign person* means any person who is not a citizen of the United States and who operates a U.S.-registered aircraft in common carriage solely outside the United States.

(2) *Years in service* means the calendar time elapsed since an aircraft was issued its first U.S. or first foreign airworthiness certificate.

9. Add § 129.16 to read as follows:

§ 129.16 Supplemental inspections for U.S.-registered aircraft.

(a) *Multiengine airplanes with 10 or more passenger seats.* After December 5, 2007, a foreign air carrier or foreign person may not operate a U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats under this part unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures. Paragraphs (c), (d), and (e) of this section list the exceptions to this requirement.

(b) *Multiengine airplanes with nine or fewer passenger seats.* After December 20, 2010, a foreign air carrier or foreign person may not operate a U.S.-registered multiengine airplane initially type certificated with nine or fewer passenger seats under this part unless the inspection program for that airplane includes service-history-based inspections and procedures. Paragraphs (d) and (e) of this section list the exceptions to this requirement.

(c) *New model added through type certificate amendment.* This paragraph applies to each U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats that is added to a type certificate after December 8, 2003, that has a certification basis that does not include a requirement for damage-tolerance-based inspections and procedures. A foreign air carrier or foreign person may not operate that airplane more than 4 years after the date of the type certificate amendment unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(d) *Design-life goal airplanes.* If on or after December 5, 2007, the time in service of the airplane reaches the design-life goal listed in appendix B to this part, the foreign air carrier or foreign person may operate the airplane until the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the foreign air carrier or foreign person may not operate the airplane unless it complies with paragraph (a) or paragraph (b) of this section.

(e) *Airworthiness directive-mandated service-history-based inspections.* Until December 20, 2010, a foreign air carrier or foreign person may operate a U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats and for which an airworthiness directive requires the maintenance program to include service-history-based inspections and procedures. After that date, the foreign air carrier or foreign person may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(f) *Approvals.* The inspections and procedures required by this section to be included in the certificate holder's maintenance program for an airplane must be approved by the FAA Aircraft Certification Office or office of the Small Aircraft Directorate or Transport Airplane Directorate having cognizance over the type certificate for the affected airplane.

10. Add § 129.33 to read as follows:

§ 129.33 Aging airplane inspections and records reviews for U.S.-registered multiengine aircraft.

(a) *Operation after inspection and records review.* After the dates specified in this paragraph, a foreign air carrier or foreign person may not operate a U.S.-registered multiengine airplane under this part unless the Administrator has notified the foreign air carrier or foreign person that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the foreign air carrier or foreign person must demonstrate to the Administrator that the maintenance of age sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years in service on* December 8, 2003; *initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes exceeding 14 years in service but not 24 years in service on* December 8, 2003; *initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service, but not 24 years in service, on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on* December 8, 2003; *initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(b) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (b) of this section.

(c) *Airplane and records availability.* The foreign air carrier or foreign person must make available to the Administrator each U.S.-registered multiengine airplane for which an inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with the records containing the following information:

(1) Total years in service of the airplane;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last inspection and records review required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 129.16 of this part;

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for those repairs.

(d) *Notification to Administrator.* Each foreign air carrier or foreign person must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

11. Add appendix B to part 129 to read as follows:

APPENDIX B TO PART 129.—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hours)
Raytheon (Beech) Aircraft Co.:			
—Beech 99 (all models)	19+2	A14CE	46,000
—Beech 1900 and 1900C	13+2	A24CE	45,000
—Beech 300 and 300LW	15+2	A24CE	30,000
—Beech B300 and B300C	19+2	A24CE	30,000
—Beech 1900D	15+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	45,000
—BAe Jetstream 3201	19+2	A56EU	30,000
Cessna Aircraft Co.:			
—Cessna 402 Series (all models except 402C)	8+2	A7CE	12,000
—Cessna 402C	8+2	A7CE	7,700

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APPENDIX B TO PART 129.—DESIGN-LIFE GOALS—Continued

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hours)
deHavilland Aircraft Co.: DHC–6	22+2	A9EA	33,000
Dornier-Luftfahrt GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer): Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Corporation:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman: PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Piper Aircraft Inc., The New:			
—PA 31 Navajo	6+2	A20SO	11,000
—PA 31–300 Navajo	6+2	A20SO	15,500
—PA 31P Pressurized Navajo	6+2	A8EA	14,000
—PA 31T Cheyenne and Cheyenne II	7+2	A8EA	12,000
—PA 31–350 Chieftain and (T–1020)	9+2	A20SO	13,000
—PA 31–325 Navajo CR	9+2	A20SO	11,000
—PA 31T2 Cheyenne II XL	5+2	A8EA	11,400
—PA 31T3 (T–1040) without tip tanks	9+2	A8EA	17,400
—PA 31T3 (T–1040) with tip tanks	9+2	A8EA	13,800
Short Brothers PLC:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3–Sherpa	39+2	A41EU	40,000

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

13. Add § 135.168 to read as follows:

§ 135.168 Supplemental inspections.

(a) *Applicability.* This section applies to each multiengine airplane operated by a certificate holder in scheduled operations under this part, except for those operations conducted between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Multiengine airplanes with 10 or more passenger seats.* After December 5, 2007, a certificate holder may not operate, in scheduled operations under this part, a multiengine airplane initially type certificated with 10 or more passenger seats unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures. Paragraphs (d), (e), and (f) of this section list the exceptions to this requirement.

(c) *Multiengine airplanes with nine or fewer passenger seats.* After December 20, 2010, a certificate holder may not operate, in scheduled operations under this part, a multiengine airplane initially type certificated with nine or fewer passenger seats unless the inspection program for that airplane includes service-history-based inspections and procedures. Paragraph (e) of this section lists the exception to this requirement.

(d) *New model added through type certificate amendment.* This paragraph applies to each U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats added to a type certificate after December 8, 2003, that has a certification basis that does not include a requirement for damage-tolerance-based inspections and procedures. A certificate holder may not operate that airplane, in scheduled operations, more than 4 years after the date of the type certificate amendment unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(e) *Design-life goal airplanes.* If on or after December 5, 2007, the time in service of the airplane reaches the design-life goal listed in appendix G to this part the certificate holder may operate that airplane in scheduled operations until the date the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the certificate holder may not operate the airplane in scheduled operations unless it complies with paragraph (b) or paragraph (c) of this section.

(f) *Airworthiness directive-mandated service-history-based inspections.* Until December 20, 2010, a certificate holder may operate an airplane for which an airworthiness directive requires the maintenance program to include service-history-based inspections and procedures. After that date, the certificate holder may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(g) *Approvals.* The inspections and procedures required by this section to be included in the certificate holder's maintenance program for an airplane must be approved by the FAA Aircraft Certification Office or office of the Small Aircraft Directorate or Transport Airplane Directorate having cognizance over the type certificate for the affected airplane.

14. Add § 135.422 to read as follows:

§ 135.422 Aging airplane inspections and records reviews for multiengine airplanes certificated with 10 or more passenger seats.

(a) *Applicability.* This section applies to multiengine airplanes with 10 or more passenger seats operated by a certificate holder in scheduled operations under this part, except for those airplanes operated by a certificate holder between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Operation after inspections and records review.* After the dates specified in this paragraph, a certificate holder may not operate a multiengine airplane in scheduled operations under this part unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the certificate holder must demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes exceeding 14 years in service but not 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service, but not 24 years in service, on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(c) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (c) of this section.

(d) *Airplane and records availability.* The certificate holder must make available to the Administrator each airplane for which a inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with the records containing the following information:

(1) Total years in service of the airplane;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last inspection and records review required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 135.168 of this part;

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for those repairs.

(e) *Notification to Administrator.* Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

15. Redesignate existing § 135.423 as § 135.424.

16. Add new § 135.423 to read as follows:

§ 135.423 Aging airplane inspections and records reviews for multiengine airplanes certificated with nine or fewer passenger seats.

(a) *Applicability.* This section applies to multiengine airplanes certificated with nine or fewer passenger seats operated by a certificate holder in scheduled operations under this part, except for those airplanes operated by a certificate holder between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Operation after inspections and records review.* After the dates specified in this paragraph, a certificate holder may not operate a multiengine airplane in scheduled operations under this part unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the certificate holder must demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years of service in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes not exceeding 14 years in service but not 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service, but not 24 years in service, on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(c) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (c) of this section.

(d) *Airplane and records availability.* The certificate holder must make available to the Administrator each airplane for which an inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with the records containing the following information:

(1) Total years in service of the airplane;

(2) Total flight hours of the airframe;

(3) Date of the last inspection and records review required by this section;

(4) Current status of life-limited parts of the airframe;

(5) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(6) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

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(7) Current status of the following, including the method of compliance:
(i) Airworthiness directives;
(ii) Corrosion Prevention and Control Programs; and
(iii) Inspections and procedures required by § 135.168 of this part;
(8) A list of major structural alterations; and
(9) A report of major structural repairs and the current inspection status for these repairs.

(e) *Notification to Administrator.* Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

17. Add appendix G to part 135 to read as follows:

APPENDIX G TO PART 135.—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hours)
Raytheon (Beech) Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	45,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	45,000
—BAe Jetstream 3201	19+2	A56EU	30,000
Cessna Aircraft Co.:			
—Cessna 402 Series (all models except 402C)	8+2	A7CE	12,000
—Cessna 402C	8+2	A7CE	7,700
deHavilland Aircraft Co.:			
—DHC–6	22+2	A9EA	33,000
Dornier-Luftfahrt GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer): Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Corporation:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman: PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Piper Aircraft Inc., The New:			
—PA 31 Navajo	6+2	A20SO	11,000
—PA 31–300 Navajo	6+2	A20SO	15,500
—PA 31P Pressurized Navajo	6+2	A8EA	14,000
—PA 31T Cheyenne and Cheyenne II	7+2	A8EA	12,000
—PA 31–350 Chieftain and (T–1020)	9+2	A20SO	13,000
—PA 31–325 Navajo CR	9+2	A20SO	11,000
—PA 31T2 Cheyenne II XL	5+2	A8EA	11,400
—PA 31T3 (T–1040) without tip tanks	9+2	A8EA	17,400
—PA 31T3 (T–1040) with tip tanks	9+2	A8EA	13,800
Short Brothers PLC:.			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3–Sherpa	39+2	A41EU	40,000

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

18. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 45303.

19. Amend § 183.33 by revising paragraph (a) to read as follows:

§ 183.33 Designated Airworthiness Representative.

* * * * *

(a) Perform examination, inspection, and testing services necessary to issue, and to determine the continuing effectiveness of, certificates, including issuing certificates, as authorized by the Director of Flight Standards Service in the area of maintenance or as authorized by the Director of Aircraft Certification Service in the areas of manufacturing and engineering.

* * * * *

Issued in Washington, DC, on November 1, 2002.

Marion C. Blakey,

Administrator.

[FR Doc. 02–30111 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 91–60A, The Continued Airworthiness of Older Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed advisory circular (AC) 91–60A, which provides guidance on the development and use of a service-history-based Structural Supplemental Inspection Program (SSIP) to ensure the continued airworthiness throughout their operational life of all U.S.-registered multiengine airplanes operated under 14 CFR part 129 or part 135 and initially certificated with 9 or fewer passenger seats. This guidance material addresses the requirement of the "Aging Airplane Safety Rule" for the development and use of a service-history-based SSIP. This proposed AC outlines an acceptable method, but not the only method, of compliance with this rule. A previous notice of availability was published in the **Federal Register** in error on November 20, 2002, and should be disregarded.

DATES: Comments must be received on or before February 4, 2003.

ADDRESSES: Send all comments on the proposed AC to: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: (202) 267–7355.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or at *http://faa.gov/avr/afs/acs/ac-idx.htm*. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 91–60A and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC.

Discussion

This proposed AC provides guidance on how to develop a service-history-based maintenance or inspection program to design approval holders, owners, and operators of all U.S.-registered multiengine airplanes operated under 14 CFR part 129 or part 135 and initially certificated with 9 or fewer passenger seats. This proposed AC reflects current maintenance and inspection practices and includes acceptable methods of compliance with the "Aging Airplane Safety Rule." The proposed AC lists structural points that require more frequent maintenance as an airplane ages and discusses the development of a continuous airworthiness program, including participation by design approval holders and implementation by airplane owner/operators.

Issued in Washington, DC on November 21, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–30110 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 120–XX, Aging Airplane Inspections and Records Reviews

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 120–XX, which provides guidance pertaining to aging airplane records reviews and inspections that are accomplished to satisfy the requirements of the final rule entitled Aging Aircraft Safety which was enacted in response to a statutory requirement, the Aging Aircraft Safety Act of 1991. A previous notice of availability was published in the **Federal Register** in error on November 20, 2002, and should be disregarded.

DATES: Comments must be received on or before February 4, 2003.

ADDRESSES: Send all comments on the proposed AC to: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone number: (202) 267–7355.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone number: (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or at *http://faa.gov/avr/afs/acs/ac-idx.htm*. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 120–XX, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Discussion

To address aging aircraft concerns, in October 1991, Congress enacted Title IV of Public Law 102–143, known as the Aging Aircraft Safety Act of 1991, which was subsequently codified as 49 U.S.C. 44717. The law instructed the Administrator to prescribe regulations that would ensure the continued airworthiness of aging aircraft. The law also instructed the Administrator to conduct inspections and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation. These inspections and records reviews were intended to enable the Administrator to decide whether aging aircraft are in a safe condition and maintained properly for operation in air transportation. The law also required the Administrator to establish procedures to be followed for performing such inspections.

In addition to imposing obligations on the Administrator, the law stated that air carriers must demonstrate that the maintenance of their aircraft's age-sensitive parts and components has been adequate and timely, and operators must make their aircraft and aircraft records available for inspection.

Issued in Washington, DC on November 21, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–30109 Filed 12–5–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 91–56B, Continuing Structural Integrity Program for Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed Advisory Circular (AC) 91–56B, which provides guidance on developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational life. This proposed AC addresses airplanes affected by the "Aging Airplane Safety Rule" and provides guidance on the development and use of a damage-tolerance-based Supplemental Structural Inspection Program (SSIP) for all airplanes operated under Title 14, Code of Federal Regulations (14 CFR) part 121; all U.S.-registered multiengine airplanes operated under 14 CFR part 129 certificated with 10 or more passenger seats; and all multiengine airplanes used in scheduled operations under 14 CFR part 135 certificated with 10 or more passenger seats. This AC outlines an acceptable method, but not the only method, of compliance with the Aging Airplane Safety Rule. A previous notice of availability was published in the **Federal Register** in error on November 20, 2002, and should be disregarded.

DATES: Comments must be received on or before February 4, 2003.

ADDRESSES: Send all comments on the proposed AC to: Brent Bandley, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, ANM–120L, Federal Aviation Administration; 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone number: (562) 627–5237, facsimile: (562) 627–5210.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, ANM–120L, Federal Aviation Administration; 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone number: (562) 627–5237, facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or at *http://faa.gov/avr/afs/acs/ac-idx.htm*. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 91–56B, and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC.

Discussion

This proposed AC provides guidance to type certificate holders and airplane operators on how to incorporate an FAA-approved Aging Aircraft Program into FAA-approved maintenance or inspection programs. Previous versions of this AC (AC 91–56 and AC 91–56A) provided guidance to operators of large transport category airplanes on how to develop a damage-tolerance-based SSIP. In this proposed AC, the FAA expands this guidance to small transport category airplanes. In addition, AC 91–56 and AC 91–56A considered only the effects of repair and modifications approved by the type certificate holder and the effects of repairs and operator-approved modifications on individual airplanes. This proposed AC considers the effect of all major repairs, major alterations, and modifications approved by the type certificate holder. In addition, the AC includes an expanded discussion of repairs, alterations, and modifications to take into consideration all major repairs and operator-approved alterations and modifications on individual airplanes. The proposed AC also describes the current Mandatory Modifications Program, Corrosion Prevention and Control Program, the Repair Assessment Program, and Evaluation for Widespread Fatigue Damage.

Issued in Washington, DC on November 21, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–30108 Filed 12–5–02; 8:45 am]

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Federal Register

Friday,
December 6, 2002

Part III

Department of Agriculture

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning; Proposed Rules

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AA86

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service is proposing changes to the National Forest System Land and Resource Management Planning Rule adopted November 9, 2000. These proposed changes are a result of a review conducted by Forest Service personnel at the direction of the Office of the Secretary. The review affirmed much of the 2000 rule and the underlying concepts of sustainability, monitoring, evaluation, collaboration, and use of science. Although the 2000 rule was intended to simplify and streamline the development and amendment of land and resource management plans, the review concluded that the 2000 rule is neither straightforward nor easy to implement. The review also found that the 2000 rule did not clarify the programmatic nature of land and resource management planning. This proposed rule is intended to improve upon the 2000 rule by providing a planning process which is more readily understood, is within the agency's capability to implement, is within anticipated budgets and staffing levels, and recognizes the programmatic nature of planning.

DATES: Comments must be received in writing by March 6, 2003. Comments received after this date will be considered and placed in the record only if practicable.

ADDRESSES: Send written comments to: USDA FS Planning Rule, Content Analysis Team, PO Box 8359, Missoula, MT 59807; via email to *planning_rule@fs.fed.us;* or by facsimile to Planning Rule Comments at (406) 329–3556. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The agency cannot confirm receipt of comments. Persons wishing to inspect the comments need to call (801) 517–1023 to facilitate an appointment. In addition, the Forest Service preliminary draft directives on ecological, social, and economic sustainability, the business model cost study done to estimate predicted costs to implement the 2000 and proposed rules, the Civil Rights Impact Assessment, and the cost-benefit analysis accompanying this proposed rule are expected to be posted during the comment period on the World Wide Web/Internet at *www.fs.fed.us/emc/nfma.* These materials, when available, also may be obtained from the Director, Ecosystem Management and Coordination Staff, Forest Service, USDA, Mail Stop 1104,1400 Independence Avenue, SW, Washington, DC 20250–1104.

FOR FURTHER INFORMATION CONTACT: Jody Sutton, Content Analysis Team Program Coordinator, Forest Service, (801) 517–1023.

SUPPLEMENTARY INFORMATION:

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Background

The Forest Service (the agency), an agency within the United States Department of Agriculture (the Department), is responsible for managing the lands and resources of the National Forest System, which include 192 million acres in 44 states, Puerto Rico, and the Virgin Islands. The System is composed of 155 national forests, 20 national grasslands, 1 national prairie, and other miscellaneous lands under the jurisdiction of the Secretary of Agriculture (the Secretary).

The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 *et seq.*), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949 *et seq.*; 16 U.S.C. 1601–1614), requires the Secretary to promulgate regulations under the principles of the Multiple-Use Sustained-Yield Act of 1960 that set out the process for the development and revision of land and resource management plans (16 U.S.C. 1604(g)). The first planning rule, adopted in 1979, was substantially amended on September 30, 1982 (47 FR 43026), and was amended in part on June 24, 1983 (48 FR 29122), and on September 7, 1983 (48 FR 40383). The 1982 rule, as amended, has guided the development, amendment, and revision of the land and resource management plans (LRMP or plans) that are now in place for all national forests and grasslands, including an initial plan recently completed for the Midewin National Tall Grass Prairie that was recently added to the National Forest System (NFS).

The Forest Service has undertaken several reviews of the planning process implemented under the 1982 rule. The first review took place in 1989, when the Forest Service, with the assistance of the Conservation Foundation, conducted a comprehensive review of

the planning process and published the results in a summary report, "Synthesis of the Critique of Land Management Planning" (1990). The critique concluded that the agency spent too much time on planning; that planning costs too much; and, therefore, that the Forest Service needed a more efficient planning process. These findings are still considered valid and are a prime consideration in the development of this proposed rule.

Subsequently, the Forest Service published an Advance Notice of Proposed Rulemaking (56 FR 6508; Feb. 15, 1991) regarding possible revisions to the 1982 rule. A proposed rule was published in 1995 (60 FR 18886); however, the Secretary elected not to proceed with that proposal.

In response to suggestions from persons who commented on the 1995 proposed rule, the Secretary convened a 13-member Committee of Scientists (Committee or COS) in late 1997 to evaluate the Forest Service's planning process and recommend changes. In 1998, the COS held meetings across the country to invite public participation in their discussions. The Committee's findings were issued in a final report, "Sustaining the People's Lands" (March 1999). A proposed rule based on the COS report was published on October 5, 1999 (64 FR 54074), and a final rule was adopted on November 9, 2000 (65 FR 67514).

The 2000 Planning Rule

In response to many of the findings in the 1990 Critique of Land Management Planning and the 1999 COS report, the Forest Service attempted to prepare a planning rule that would provide a more efficient planning process. The 2000 planning rule (also referred to as the 2000 rule) changed the Forest Service planning process by: (1) Establishing ecological, social, and economic sustainability as the overall stewardship goal for managing the National Forest System; (2) identifying maintenance and restoration of ecological sustainability as the first priority for management of National Forest System lands; (3) requiring collaboration with the general public, interested organizations, Tribal, State and local governments, and Federal agencies in all phases of the planning process; (4) expanding monitoring and evaluation requirements; (5) specifying the use of scientists and establishing detailed requirements for the application of science in the planning process; and (6) providing a dynamic planning framework for solving problems and addressing issues at the appropriate scale. The 2000 rule applies not only to plan amendments and revisions, but also to project-level planning and decisionmaking.

The general goals of the 2000 rule are laudable. A major improvement achieved in that rule is the emphasis on sustainability, which assists the Forest Service in providing for multiple uses over time. The 2000 rule also promotes efficiency in that it eliminates zero-based plan revisions as recommended in the 1990 critique, and it removes some analytical requirements of the 1982 rule, such as the requirements for developing benchmarks, which are no longer considered helpful. The 2000 rule also emphasizes public involvement more than the 1982 rule. The 2000 rule gives explicit direction on the use of science in the planning process, while the 1982 rule relied on knowledge shared through an interdisciplinary team approach without procedural requirements for the use of science. The 2000 rule replaces the post-decisional administrative appeal process for challenging plans with a pre-decisional objection process. The 2000 rule also delegates the authority for plan decisions to the Forest, Grassland, or Prairie Supervisor, rather than to the Regional Forester. The 2000 rule also recognizes the plan as a dynamic document.

Despite the positive aspects of the 2000 rule, however, the number of very detailed analytical requirements, the lack of clarity regarding many of the requirements, the lack of flexibility, and the lack of recognition of the limits of agency budgets and personnel led to a reconsideration of this rule.

Subsequent Reviews of the 2000 Planning Rule

After adoption of the 2000 rule, the Secretary received a number of comments from individuals, groups, and organizations expressing concerns regarding the implementation of the 2000 rule. In addition, lawsuits challenging promulgation of the rule were brought by a coalition of 12 environmental groups from 7 states and by a coalition of industry groups (*Citizens for Better Forestry* v. *USDA,* No. C–01–0728–BZ–(N.D. Calif., filed February 16, 2001)) and (*American Forest and Paper Ass'n* v. *Veneman,* No. 01–CV–00871 (TPJ) (D.D.C., filed April 23, 2001)). As a result of these lawsuits and concerns raised in comments to the Secretary, the Department initiated a review of the 2000 rule focusing on its "implementability." The "NFMA Planning Rule Review," completed in April 2001, concluded that many of the concerns regarding implementability of the rule were serious and required immediate attention.

In addition, the Forest Service developed a business analysis model of the 2000 rule and conducted a workshop with field-level planners to determine the implementability of the 2000 rule based on this business model. The business model reflected business activities directly applied from the 2000 rule and provided the basis for a systematic evaluation of the rule for implementability.

The business model identified the following nine major categories of planning activities and associated sections of the 2000 rule:

(1) Collaboration (primarily §§ 219.12 through 219.18);

(2) Best Science/Science Consistency (primarily §§ 219.22 through 219.25 with consideration of relative text in §§ 219.11 and 219.20);

(3) Recommendations (primarily §§ 219.3 through 219.9 with consideration of relative text in §§ 219.19, 219.20, 219.21, 219.26, and 219.27);

(4) Sustainability (primarily §§ 219.19 through 219.21 with consideration of relative text in § 219.11);

(5) Developing/Revising Plan Decisions (primarily §§ 219.6 through 219.9 and 219.11 with consideration of relative text in §§ 219.20, 219.26, 219.28, and 219.29);

(6) Write Plan Documentation (primarily §§ 219.11 and 219.30);

(7) Maintain the Plan (primarily § 219.31);

(8) Objections and Appeals (primarily § 219.32); and

(9) Miscellaneous (public notifications and selected NEPA activities).

Within the context of the nine categories defined, the facilitated workshop centered on answering two questions: (1) Are the business requirements clearly understood? (2) What is the agency's perceived ability to execute the requirements?

An important consideration in this business model analysis was that it was conducted by planning practitioners who have current field-level experience. They are the agency experts in a variety of resource areas, including assessing what can reasonably be accomplished, considering existing knowledge and information, the issues relevant to planning areas, and local staffing and funding situations.

This review and analysis found the following:

(1) The 2000 rule has both definitions and analytical requirements that are very complex, unclear, and, therefore, subject to inconsistent implementation

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across the agency; for example, species viability, population monitoring, and the range of variation within the current climatic period;

(2) Compliance with the regulatory direction on such matters as ecological sustainability and science consistency checks would be difficult, if not impossible, to accomplish; and

(3) The complexity of the 2000 rule makes it difficult and expensive to implement.

Sustainability. The planners particularly questioned whether or not the agency could achieve the ecological, social, and economic sustainability standards established in § 219.19 of the 2000 rule. Similar concerns were noted regarding the viability provisions for the diversity of plant and animal communities, also in § 219.19 of the rule. The reviewers found that the ecological sustainability requirements in the rule are not only complex, but needlessly so. Although the 2000 rule was intended to increase the focus on ecosystem-level analyses for addressing the diversity of plant and animal communities and, thereby, reducing the far more costly species-by-species approach, the means to accomplish the intent of the rule are not clear. There was disagreement among the reviewers about the degree of potential reduction in the species-by-species analysis burden in the 2000 rule.

The role of science. The reviewers affirmed the importance of using the best available science in planning. However, the detailed provisions of the 2000 rule for the use of science and scientists in the planning process raised many concerns.

(1) Field-level planners believed the 2000 rule includes unnecessarily detailed procedural requirements for scientific peer reviews, broad-scale assessments, monitoring, and science advisory boards.

(2) Moreover, these requirements do not recognize the limits of budgets for use of science, nor does the 2000 rule clearly relate use of science to the scope of issues in the planning process.

(3) The 2000 rule also does not recognize limitations on the availability of scientists. The reviewers believed it to be unwise to place such detailed requirements on the use of scientists in the rule given the ambiguities of the rule text and the limited availability of scientists. Although science is needed to inform the Responsible Official, the reviewers concluded that the 2000 rule anticipates a level of involvement by scientists that may or may not be needed considering the planning issues or the anticipated amount of project activities during on-the-ground implementation of the plan.

Monitoring. Reviewers identified three major issues arising from the monitoring requirements of the 2000 rule. First, the unnecessarily detailed requirements for monitoring and evaluation in the 2000 rule are likely beyond the capacity of many units to perform. Second, it was considered to be generally confusing throughout the rule to mix programmatic and project level planning direction. Third, the monitoring requirements in the 2000 rule are overly prescriptive and do not provide the Responsible Official sufficient discretion to decide how much information is needed.

Also, during development of this revised proposed planning rule, it became apparent that monitoring should be focused on whether on-the-ground management is achieving desired conditions identified in the plan. This focus was not clear in the 2000 rule, as its monitoring direction primarily required a broad array of techniques intended to measure indicators of sustainability. This conceptual change reflects a fundamental difference in philosophy between the 2000 rule and this proposed rule. The 2000 rule tends to be highly prescriptive regarding a variety of aspects of planning. This proposed rule tends to focus more on results, rather than on techniques for achieving results. The Responsible Official is guided by a very large body of law, regulation, and policy that helps ensure responsible management on the ground. The much lower amount of procedural detail in this new proposed rule reflects the agency's assumption that the Responsible Officials will discharge planning duties responsibly and will conduct planning within the bounds of authority.

Transition from the 1982 to the 2000 rule. The reviewers also identified concerns with the transition requirements of the 2000 rule. There is a lack of clarity about how projects are to be compliant with the 2000 rule and how the entire rule is to be used in the more limited scope of plan amendments. Planners expressed uncertainty about how transition to the 2000 rule would occur, particularly for site-specific decisions. Finally, to fully implement the 2000 rule the planners felt the relatively short transition period provided is unrealistic given the complexities and uncertainties identified.

Having considered the reports of the review teams, the Acting Deputy Under Secretary for Natural Resources and Environment requested that the Chief of the Forest Service develop a proposed rule to revise the 2000 rule.

Provisions and Intent of the Proposed Rule

Overview

The Forest Service is now proposing changes to the planning rule at 36 CFR part 219, adopted November 2000, to address issues and concerns raised in the various reviews. The proposed rule retains many of the basic concepts in the 2000 rule, namely sustainability, public involvement and collaboration, use of science, and monitoring and evaluation. The agency has attempted to substantially improve these aspects of the 2000 rule by eliminating unnecessary procedural detail, clarifying intended results, and streamlining procedural requirements consistent with agency staffing, funding, and skill levels.

Because of the concerns identified regarding the 2000 rule and because this proposed rule changes the 2000 rule, it is necessary to explain exactly how and why the 2000 rule has been adjusted in this proposal. However, the agency believes it is productive to begin this overview with a vision of the planning process and the contents of resource management plans. The Forest Service believes the direction of many aspects of current planning activities and the basic concepts of the 2000 rule are very valuable and reflect the expectations of the American people for planning on their public lands.

Planning

The agency expects programmatic planning to be accomplished in the following ways:

- The extent of a plan analysis will be proportional to the kinds of decisions being made.
- Plans will be kept up to date, because planning will be simpler and thus, plans will be more efficiently amended.
- Plan revision will be based on a "need for change."
- Plan monitoring and evaluation will be emphasized more and will measure the success of adaptive management efforts, and the attainment of, or progress toward, desired conditions. This monitoring and evaluation will provide key information to help keep plans current and will help inform project-level decisionmaking. States, other Federal agencies, local governments, Tribes, and the public will be more closely involved in monitoring efforts.
- Public involvement is expected to be collaborative, vigorous, and focused on consensus-based identification of and reasonable choices for desired conditions.
- Planning will continue to actively involve our Federal, State, county, and Tribal partners.
- Science will be integrated throughout the planning process, from initial data collection and interpretation, through issue identification, to the analysis process, to development and design of monitoring, and later to evaluation of monitoring results.
- The agency's strategic plan, national assessments, and monitoring results will provide useful information for the development of land and resource management plans and a national context for planning.
- Planning analysis will be more focused on desired conditions rather than speculative and detailed examination of future project effects.
- Planning will continue to focus on addressing baseline conditions and trends applicable to the planning issues. Baseline condition and trend analysis will clearly display anticipated progress toward desired conditions if active management occurs and also what may happen if active management is restricted.
- Planning analysis will focus on reasonable choices for zoning the landscape.
- Planning will recognize budget limitations in order to help the Responsible Official prioritize and balance competing planning activities, such as choosing the appropriate approach for monitoring watersheds.

Plan Contents

The agency's vision of planning expects a land and resource management plan to contain:

- Broad, programmatic direction for a forest, grassland, or prairie. Plans will make such key strategic decisions as identification of priority areas for wildfire hazard reduction; designating major utility corridors; identification of areas of especially high diversity, or areas containing rare or unique species, ecosystems, or biotic communities that need certain protections; identification of lands at the broad-scale (not an acre-by-acre determination) suitable for timber harvest or grazing, or other consumptive uses; identification of areas suitable for motorized use; and identification of areas where certain types of recreation use may be emphasized.
- More specific statements of desired conditions for such resources as vegetation, recreation, cultural and heritage resources, and watersheds, developed within the context of ecological, economic, and social systems.
- More specific outcome-based objectives (*i.e.*, measurable standards of performance).
- A set of standards that set appropriate limitations on activities to help achieve desired conditions. Standards will be fewer, simpler, and better allow for adaptive management than existing plans.
- Identified special areas, such as areas recommended for wilderness or wild and scenic river status. Plans will continue to include specific direction for these areas.
- As needed, associated materials such as maps or other documents necessary to make plan decisions.
- Plans will be brief and will refer to, rather than repeat, what is already in the Forest Service Directive System, existing law, regulation, or policy.
- Collaborative work with the public and emphasis on consensus building should lead to fewer unresolved issues and, therefore, fewer plan alternatives.

The goal of the agency is to have a planning rule that is simpler and easier to implement than the 2000 rule and that allows the agency to more easily adapt to changing issues and opportunities. Available agency budgets, personnel availability, and other resource limitations are recognized as important because they help provide a framework for the Responsible Official to make decisions such as the following: What issues can the Responsible Official reasonably address? What method will be used to solicit meaningful public involvement? What are the pressing resource needs? What data needs to be collected? Does the unit need to hire specialists to support the planning action? Are contracts needed to obtain various kinds of information? Recognition of budget availability and limitations helps the Responsible Official make choices about how to weigh and balance competing needs and to consider the costs and benefits of various actions for optimal results.

The proposed rule retains the important improvements of the 2000 rule. These include:

- Emphasis on sustainability;
- Strong public involvement and collaboration;
- Use of science throughout the planning process;
- An emphasis on monitoring and evaluation as fundamental to adaptive management;
- Need-for-change planning;
- Use of the objection process;
- The identification of the Forest, Grassland, or Prairie Supervisor as the Responsible Official; and
- The concept of planning as a dynamic process.

The Forest Service believes the proposed rule will apply these important improvements more efficiently than does the 2000 rule. The Forest Service believes that the proposed rule provides as efficient a planning process as possible within the scope of the National Forest Management Act (NFMA) requirements. In addition to retention of the key improvements, the agency also looked to earlier versions of published and unpublished proposed planning rules as sources of ideas in revising specific sections. Finally, the Forest Service has applied over 20 years of planning experience to craft this proposed rule.

It is also useful at this point to discuss in more detail one important component of the body of direction that governs the Responsible Official's actions. The Forest Service Directive System consists of the Forest Service Manual (FSM) and Handbook (FSH), which codify the agency's policy, practice, and procedure. The system serves as the primary basis for the internal management and control of all programs and the primary source of administrative direction to Forest Service employees.

The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff in more than one unit to plan and execute assigned programs and activities. The FSH is the principal source of specialized guidance and instruction for carrying out the direction issued in the FSM. Examples include Handbooks on land management planning and environmental analysis.

As discussed throughout this proposed rule, the Directive System plays and will continue to play an important role in directing field employees on how to conduct planning.

Section 219.5 of the 2000 rule is a specific example of direction better included in the agency's Directive System. The agency believes that much of the process direction, such as potential uses of an assessment (*e.g.*, identification of additional research needs), or who has responsibility for a broad-scale assessment (Regional Foresters and Station Directors), or examples of what a local analysis should describe (*e.g.* likely future conditions, characterizations of the area of analysis) are more appropriately addressed in the Directive System, not

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a codified rule. Pursuant to NFMA, the Forest Service will provide notice and give the public an opportunity to comment on the proposed Forest Service Manual direction for this proposed rule because of the substantial public interest in this direction (36 CFR 216.4).

The agency must improve its planning processes so that direction and resources will be in place to manage the National Forest System (NFS) lands more effectively. The trend in planning over the past 20 years has been towards more complexity with the result that limited funds and personnel available to the agency are being disproportionately spent on planning and analysis. With this proposal, the agency seeks to produce a planning rule that sets the stage for planning to be done in a reasonable manner, at reasonable costs, in a reasonable amount of time, and thus provide a sound and rational framework for managing National Forest System lands.

The agency has evaluated the entire cost of planning for both the 2000 rule and proposed rule. The evaluation shows that there will be efficiencies and reduced costs associated with implementation of the proposed rule.

Increasing efficiency and reducing costs are important. The Forest Service believes that the public's primary expectation is that the agency do a good job of land management. The agency needs to balance its planning efforts with its efforts to actually manage the land through the application of plan direction to subsequent actions. There is urgency to make planning more efficient, as there are issues, activities, and resource concerns that are not halted during the planning process and which may pose increased concerns when planning occurs over excessively long timeframes. There is a growing population that will recreate on National Forest System lands whether the agency is prepared to deal with these uses or not. There are growing needs for watershed restoration for such purposes as prevention of flooding and the attendant adverse effects on people, property, and resource health. There are increasing demands for energy resources. Many NFS lands have a critical wildfire problem. Spending disproportionate agency time and money on planning and analysis that is not commensurate with the scope and effect of the decision to be made reduces the agency's ability to address serious land management issues.

Additionally, the Forest Service has seldom been able to revise its plans prior to NFMA's 15-year deadline. There have been several reasons for this delay, but one consistent cause has been the excessive length of time needed to plan under existing procedures. Please refer to the November 30, 2001, **Federal Register** notice (66 FR 59775), which contains the agency's schedule to systematically approach the NFMA 15-year revision deadline for NFS units, considering critical resource and social/economic issues. Reviewers may also refer to the Forest Service Ecosystem Management Coordination staff Web site at *www.fs.fed.us/emc/nfma* for the latest update of the agency-wide land and resource management plan (LRMP) revision schedule.

The Forest Service believes this proposed rule, if adopted, would improve and streamline the planning process. In accordance NFMA, plans are to be revised from time to time when the Secretary finds conditions on a unit have significantly changed, but at least every 15 years. Plan revisions that take four, five, or six or more years to complete are not responsive to the vision of NFMA, are not responsive to changing issues, and are in danger of exhausting public interest and involvement. When plans cannot be easily amended, many people feel that they need to have all their concerns resolved in a plan revision, because that will be the direction in place for many years. This viewpoint not only can increase contentiousness in planning, but also result in unreasonably high expectations of what a plan does. Several aspects of this proposed rule will improve the ability to not only revise plans more easily, but also to amend them more easily.

As stated, the proposed rule is intended to reflect the programmatic nature of planning and provide a process that is within the agency's ability to implement. Fundamental to programmatic planning is the premise that plans are permissive; that is, they allow, but do not mandate, certain activities to take place within the plan area. Consequently, the proposed rule emphasizes that plans themselves generally are not actions that significantly affect the quality of the human environment, nor do they dictate site-specific actions.

The agency must align its planning processes and performance responsibly. This means targeting dollars spent on planning to those activities that will yield clear benefits. Programmatic land and resource management planning cannot do more than establish a framework for management in an ever-changing environment. The Forest Service believes that the proposed rule provides as efficient a planning process as possible within the framework of NFMA direction.

A detailed explanation of the proposed rule that would amend the rules at 36 CFR Part 219 follows.

Section-by-Section Explanation of the Proposed Rule

Table I at the end of this document provides a section-by-section comparison of the 2000 rule and the proposed rule.

Proposed section 219.1—Purpose and applicability. The Multiple-Use Sustained-Yield Act of 1960 (MUSYA) establishes that NFS lands must be administered for outdoor recreation, range, timber, watershed, and wildlife and fish values. The Act authorizes and directs the Secretary to develop and administer these resources for multiple use and the sustained yield of the several products and services that are obtained from management of the surface resources. The Act defines multiple use as the management of all the various renewable surface resources of the NFS lands so that they are utilized in the combination that will best meet the needs of the American people. The Act further provides that sustained yield of the several products and services means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the NFS without impairment of the productivity of the land.

The Forest Service has embraced the concept of sustainability to guide the agency in meeting requirements of MUSYA. Sustainability addresses the "sustained yield" aspect of MUSYA because it requires balancing resource management with the needs of current and future generations "in perpetuity." The concept of sustainability will assist the Responsible Official in assuring that Forest Service management of the various renewable resources will be administered without impairment of the productivity of the land, as required by MUSYA. Sustaining the productivity of the land and its renewable resources means meeting present needs without compromising the ability to meet the needs of future generations. Meeting present and future needs does not imply all individual needs can be met at one time, either now or in the future.

The concepts of multiple use and sustainability are addressed in § 219.1 of the 2000 rule. Because these concepts are so fundamental to planning, they are retained in § 219.1 of this proposed rule. As does the 2000 rule, this proposed rule affirms the health of the land and sustaining its resources within the authority granted by MUSYA as the overall goal for managing the National Forest System.

This section of the rule sets forth a clear process for establishing, amending, and revising plans and for monitoring plan implementation. As provided in § 219.1 of the 2000 rule, this proposed rule also recognizes that planning may consider many time frames and geographic areas and that it is an ongoing process. However, the proposed rule would not determine the selection or implementation of site-specific actions. Rather, the proposed rule requires documentation that a future project decision is consistent with the plan. The agency believes that a rule which focuses solely on programmatic-level planning will be better understood and more consistently applied than a rule that includes direction on both programmatic and project-level decisionmaking. Agency guidelines on project-level planning are specified in FSM 1950 and FSH 1909.15.

The USDA Office of General Counsel, Natural Resources Division working paper entitled "Overview of Forest Planning and Project Level Decisionmaking," describes the nature of the agency's two-staged decisionmaking process. The paper is available on the World Wide Web at *www.fs.fed.us/emc/nfma*. The relevant issues, levels and kinds of analysis needed, and decisions to be made in a programmatic plan are quite different from those required for development of site-specific projects. The paragraph in this section regarding the applicability of the proposed rule is the same as § 219.34 of the 2000 rule, except that it adds a reference to subsequent statutes in order to allow for any future additions to the National Forest System.

Proposed section 219.2—Nature and scope of a land and resource management plan. This section of the proposed rule establishes the fundamental purpose of a plan and provides specific requirements on how that purpose will be met. In contrast to §§ 219.1–219.5 of the 2000 rule, this proposed section describes the nature of a land and resource management plan concisely, and, thereby, sets the stage for a planning process that is more flexible and efficient.

Proposed paragraph (a) of this section establishes that the fundamental purpose of a plan is (1) to establish the desired conditions to be achieved through the management of the lands and various renewable resources of the National Forest System and (2) to guide the Forest Service in fulfilling its responsibilities for stewardship of the National Forest System to best meet the present and future needs of the American people. This concept is central to the planning vision. In contrast to the lengthy and non-regulatory exposition of §§ 219.1–219.5 of the 2000 rule, § 219.2 of this proposed rule concisely describes the nature of a land and resource management plan.

Proposed paragraph (b) is somewhat similar to § 219.2 of the 2000 rule in that it sets out principles on which that rule is based. Rather than dwelling on principles modifying the rules, however, paragraph (b) imposes core requirements for which the Responsible Official will be held accountable in plan development, amendment, or revision. While brief and concise, these requirements touch all the major principles covered in § 219.2 of the 2000 rule—sustainability, use of science, consultation with government agencies and Tribes, public participation, interdisciplinary planning, and monitoring and evaluation.

Proposed paragraph (c) recognizes the role of plans in integrating the various statutory authorities applicable to National Forest System management. It also recognizes the Forest Service Directive System as the primary source of agency-wide management direction relevant to planning and management of National Forest System lands and resources. Planning is conducted in the context of the body of environmental laws, regulations, Executive orders, and policy. The plan itself does not generally repeat existing law, regulation, Executive order, or policy but rather interprets their requirements as they apply to the plan area.

Although the proposed rule does not explicitly address integrating statutory authorities, it does at § 219.1(a) identify the principal authorities applicable to National Forest System lands.

Paragraph (d) of proposed § 219.2 describes the force and effect of land and resource management plans, making clear that:

- These plans do not grant, withhold, or modify any contract, permit, authorization, or other legal instrument;
- These plans do not subject anyone to civil or criminal liability; and
- These plans create no legal rights.

This proposed paragraph better recognizes the programmatic nature of plans than the 2000 rule, and therefore, more accurately describes the nature of a land and resource management plan. Since a plan provides only the framework for management, a plan normally does not specifically authorize any ground-disturbing activities nor does it specifically commit funding or resources. Therefore, the analysis associated with a plan should be proportional to the level of decisions made in a plan. Also, a plan focuses on desired conditions. It zones the forest, grassland, or prairie into defined areas where activities could occur to help meet those desired conditions and sets out a program for monitoring progress toward desired conditions. This kind of plan can be supported by an analysis that evaluates, on a broad level, the areas' suitability for future potential activities.

The type of plan level analysis that the Forest Service has found most useful for developing a plan, and for project analysis thereafter, is baseline and general trend analysis, which gives as complete a picture of the forest or grassland as possible at one time and provides the best information of trends of natural processes and of uses in the plan area and surrounding lands. The Forest Service will continue such analyses in the planning process. The Forest Service believes that environmental analyses are most useful when done in the development of site-specific decisions that will execute on-the-ground management. More specifically, while a plan guides project implementation, extensive up-front effects disclosure is generally too speculative to be useful for project analysis. Thus, the opportunity to "tier" a project's NEPA analysis to a plan EIS, as provided in NEPA regulations (40 CFR 1502.20), is useful only for certain aspects of analysis and in practice has proven more theoretical than real. The Forest Service therefore intends to conduct most detailed analysis on the site-specific project level.

Plan management direction should be flexible and allow for adaptive management. Monitoring should not only measure progress toward desired conditions but also help measure the success of adaptive management strategies and actions.

A plan is generally a zoning document. It may allow for later, site-specific authorization of activities and may restrict activities in specific areas. There are different ways this zoning is applied depending on the type of existing or potential future activities. For example, a plan may allow transportation development or motorized use on some portions of the National Forest System unit, but not on others. Such a plan decision does not immediately authorize road construction, but rather identifies zones where road construction may occur in the future, based on an appropriate project-specific NEPA analysis, public involvement, and a future decision.

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Another example of zoning-type direction in a plan is direction that would restrict motorized access in areas where it has been allowed in the past or that would restrict other recreation uses that are currently allowed. The plan itself does not normally execute the restriction. Rather, the restriction would have to be implemented with a subsequent process, such as a closure order or other instrument.

It must be recognized that a plan is not the final word deciding forever the fate of an area of land, determining that some actions will certainly occur and others never will occur, over all or part of the plan area. According to the Forest Service's vision of planning, plans can and should be dynamic documents, which can and should be reconsidered throughout their existence and readily amended when circumstances call for change.

In summary, the plan is a framework for future on-the-ground management decisions. Site-specific projects are proposed and developed within the constraints of the plan, and are subject to the National Environmental Policy Act and other applicable laws and regulations.

Proposed section 219.3—Levels of planning and planning authority. This section of the proposed rule identifies three levels of planning—national, regional, or unit (national forest, grassland, or prairie) level. As in the 2000 rule, the Forest, Grassland, or Prairie Supervisor is the Responsible Official for a land and resource management plan, unless the Regional Forester or the Chief chooses to act as the Responsible Official for a specific amendment or revision.

The key planning elements listed in § 219.3(d) of the 2000 rule are omitted from the proposed rule because they are unnecessary. Proposed § 219.5 provides direction on indicators or a need to amend or revise a plan. §§ 219.7–219.9 discuss the steps to develop a new plan or amend or revise a plan. § 219.10 discusses application of plan direction and § 219.11 provides for plan monitoring or evaluating plans. It is not necessary to summarize these planning elements in a single section. The 2000 rule § 219.3 key element number 7 is not needed because the proposed rule does not provide direction for site-specific decisions. Additionally, in contrast to the 2000 rule, § 219.3 in this proposed rule does not contain direction for site-specific actions. As noted previously, the focus of this proposed rule is the development, amendment, and revision of plans, not site-specific project planning. The Forest Service uses a staged decisionmaking process in which land and resource management plans establish the guidance that governs site-specific project planning and decisionmaking.

One new provision of § 219.3 is the recognition of the need to ensure that management direction for designated areas of experimental forests is consistent with the research being conducted and concurred in by the appropriate Station Director. The need for this direction emerged from review by Forest Service Research and Development employees.

Proposed section 219.4—Decisions embodied in plans. This proposed section, in paragraphs (a)(1)–(6), retain the five types of plan decisions found in the 2000 rule. Those decisions are "desired conditions," "objectives," "standards," "the identification and designation of suitable and unsuitable land uses," and "the identification of requirements for monitoring and evaluation." For efficiency and clarity, § 219.26 of the 2000 rule, which governs identifying and designating suitable uses, has been incorporated into § 219.4 as proposed paragraph (a)(4). Overall, this section of the proposed rule is similar to § 219.7 of the 2000 rule, although reorganized in this proposal. The proposed rule, however, more explicitly tracks the National Forest Management Act (NFMA).

In proposed paragraph (a)(3) of section 219.4, the rule states "Standards generally should be adaptable and assess performance measures." The following is an example of an adaptable standard that assesses performance measures: "No pre-commercial thinning is allowed in lynx habitat unless at least three years of monitoring of snowshoe hares shows that hares are present and are not a limiting factor for lynx. In these cases, pre-commercial thinning may occur on no more than 20 percent of the hare habitat."

Proposed paragraph (a)(3)(ii) of section 219.4 addresses maximum size openings. The 2000 rule does not provide for maximum size openings. As in the 1982 rule, the proposed rule reinstates this statutory requirement and uses the same maximum size limits, by forest cover type.

An additional required standard is added at § 219.4(a)(3)(vii) on the use and application of culmination of mean annual increment (CMAI). The addition of CMAI direction was added to the proposed rule in order to clarify how this NFMA requirement is to be applied because there has been some confusion in this area. This new requirement specifies that CMAI considerations apply only to regeneration harvest of even-aged tree stands on suitable lands that are harvested for timber production purposes. This section allows for exceptions to the application of CMAI to be made in the plan; for example, a plan could provide exceptions for wildlife openings or for fuel reduction or fuel breaks.

The 2000 rule provides that lands are not suited for a particular use if law, regulation, or Executive order would prohibit the use, if the use is incompatible with the mission or policies of the National Forest System, or if the use would involve substantial and permanent impairment of the productivity of the land. The proposed rule retains the 2000 rule's criteria concerning laws, regulations or Executive orders and the criteria concerning productivity of the land. However, the proposed rule changes the provision of § 219.7(d) of the 2000 rule in two ways. First, the proposed rule no longer uses the criteria of incompatibility with the mission or policies of the National Forest System, because this is so broad that it would not be a useful criterion for the Responsible Official to consider. Instead, the proposed rule adopts a much more explicit criterion to consider; that is, "If agency resource management directives prohibit the use." Second, the proposed rule adds a criterion for determining if lands are not suited for a particular use: "If the use is incompatible with the desired conditions as established for the plan." This criterion was added to clearly recognize that the decisions made in adopting a plan may result in prohibiting some uses on all or parts of a plan area. In addition, this proposed section adds a clarification in paragraph (b) that assessments, surveys, and similar efforts are not plan decisions nor do they constitute a proposed action. This regulatory finding is essential to avoid public and employee confusion about what is a plan decision and what is not.

Proposed section 219.5—Indicators of need to amend or revise a plan. This section focuses on emerging issues and new information as indicators of the need to amend or revise a plan. Paragraph (a) of this proposed section is very similar to paragraph (a) of § 219.4 of the 2000 rule in identifying a variety of sources from which issues or problems may come to be addressed in planning. However, proposed paragraph (a) differs from the 2000 rule in that the reference to evaluation of collaboratively developed landscape goals has been removed from this section because of confusion regarding the intent of this provision in the 2000 rule. The concept of collaboratively developed landscape goals is addressed in this preamble in the discussion of proposed § 219.12—Collaboration, cooperation and consultation. Proposed § 219.5 retains the concept of engaging the public in development of desired conditions as a cornerstone of planning. Paragraph (a) of proposed § 219.5 also differs from the 2000 rule by including a specific requirement for obtaining inventory data, as required by NFMA.

The 1982 rule used the term "issues" many times, and issue identification was a cornerstone of how planning was done, but the 1982 rule was not specific concerning the sources from which an issue could arise, except that public participation was a key element of issue identification. In contrast, the 2000 rule specifies how issues originate and gives detailed description of the Responsible Official's consideration of issues.

Proposed paragraph (b)(1) lists factors the Responsible Official may use to determine if an issue or opportunity is timely. Like the 2000 rule, this section makes clear that the Responsible Official has full discretion to make this determination. The requirements in § 219.4(b)(2)(ii), (iii), (iv), (vi), and (vii) of the 2000 rule address the extent to which "consideration" of the issues relate to opportunities of the planning unit to contribute to various elements of resource protection and sustainability. The proposed rule does not include these specific criteria, because it may not be practicable to consider these criteria at the initial stage of planning. There is often a lack of information when issues arise, and it is not always known how the issues relate to the National Forest System unit's contribution to sustainability. For example, there may not be complete information early in the issue identification stage related to opportunities to contribute to recovery of threatened or endangered species. This consideration may not be appropriate or efficient to consider until later in the planning process when the best available science may be assembled, when better inventory data may become available, or when public involvement may help discover opportunities that were not earlier known.

This proposed section does not retain the provision at § 219.4(b)(2)(v) that the Responsible Official should consider the extent to which addressing an issue relates to the potential for negative environmental effects on minorities. Potential negative effects are most meaningfully identified and addressed in the analysis phase of planning. Executive Order 12898 and Departmental Regulation 43004–4 (1978) require the Forest Service to determine if proposed actions would create disproportionate adverse effects on minority populations and, if so, to mitigate those effects to the extent practicable. The Forest Service complies with these requirements through its NEPA procedures. Scoping, the process of accepting public comments on a proposed action, should indicate whether environmental justice issues exist and the social and economic effects analysis would display the depth and range of those impacts and possible mitigation. The agency affirms that any action it can affect that would cause a disproportionate adverse effect on minority populations would be addressed through a NEPA procedure, thus there would be no controllable effects that the agency would not disclose, analyze, and mitigate to the extent practicable.

Proposed paragraph (b)(2) of this section incorporates the intent of § 219.5 of the 2000 rule with regard to addressing information needs and requires the Responsible Official to keep information gathering within reasonable costs and timeframes. However, this proposed paragraph does not carry forward the detailed provisions of § 219.5 of the 2000 rule for conducting broad-scale assessments and local analysis. These provisions are considered unduly detailed and too inflexible to apply to all National Forest System units, which have a wide variety of issues and information needs as well as differences in budgets and staffing levels. Needed direction on what constitutes broad-scale assessments and local analyses and how the Responsible Official should develop and use this information is more appropriately described in the agency's Directive System.

Proposed paragraph (b)(2) makes clear that a decision to consider or not consider an issue or opportunity is not subject to administrative objection.

Proposed section 219.6—Compliance with National Environmental Policy Act. This proposed section is intended to replace § 219.6 of the 2000 rule, which defines proposed actions, requires compliance with Forest Service NEPA procedures, and ties scoping to issue development.

Applicability of NEPA. NFMA section 6(g)(1) requires the Secretary of Agriculture to specify "procedures to insure that land management plans are prepared in accordance with" NEPA, including "direction on when and for what plans an environmental impact statement shall be prepared" (16 U.S.C. 1604(g)(1)). Thus, NFMA provides the statutory authority for the Secretary to specify not only what should be included in a plan, but also when and how the documentation of NEPA compliance applies to the planning process. This includes determining whether a plan decision's NEPA compliance is to be documented in an EIS, an EA and FONSI, or whether a plan decision may be categorically excluded from NEPA documentation.

The proposed rule maintains the planning process requirements already familiar to the public. These include public notice, public involvement, analysis, public comment on the draft plan, and an objection process for contesting planning decisions. The proposed planning process is intended to be open to all stakeholders and well-informed regarding the environmental effects of the proposed plan and appropriate alternatives.

Plan analysis and documentation: The 2000 rule at section 219.9 requires documentation of a plan revision in an EIS and allows the Responsible Official to determine whether or not to prepare an EIS for a plan amendment. The proposed rule at section 219.6, in contrast, applies this authority in a different manner and outlines the environmental analysis and documentation requirements for revisions. An EIS at the planning stage will not be required if the decision to adopt a plan revision or amendment is not an action significantly affecting the quality of the human environment or if a component of a plan does not yet authorize an action that commits funding or resources that could have a significant effect on the quality of the human environment. In addition, all plans in revision were adopted with full EIS analysis. Therefore, where the existing EIS and subsequent plan and/or project level documentation have adequately evaluated the significance of plan direction, no further supplementation is required.

Plans that only establish goals, objectives, standards, land allocations, monitoring requirements, and desired resource conditions do not authorize site-specific implementing actions and would not be expected to have significant effects on the environment or effects that have not been previously addressed in prior NEPA documents. As noted above, the question with respect to NFMA planning is when and how—not whether—to follow NEPA where it applies. NFMA specifically authorizes the Secretary of Agriculture to decide how and when to do NEPA environmental analysis for National Forest System plans. The agency may, based on the implementation of the proposed rule, identify a category of

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plan decisions that do not individually or cumulatively have significant effects and may be categorically excluded from NEPA documentation through a subsequent rule-making process. However, plan decisions including actions that may have significant effects on the human environment must analyze and describe those effects in a more detailed environmental document, including an EIS where relevant. The following examples illustrate this principle.

- A plan decision revising or amending a plan's desired conditions, objectives, and standards for rangeland conditions would not ordinarily be an action with significant environmental effects. However, plan direction substantially increasing or reducing livestock grazing on a part or all of the plan area would be an action requiring further NEPA documentation of the effects of such a decision prior to plan approval.
- Plan direction revising or amending a plan's desired vegetative conditions, objectives, and standards to achieve such conditions would not ordinarily be an action with significant environmental effects. However, if plan direction imposes a substantial change in vegetative conditions, such as conversion of vegetation type, or if the plan decision includes a specific project or set of projects to reach those desired conditions, then further NEPA documentation for those actions must occur prior to plan approval.
- A plan decision revising or amending a plan's objectives for travel management within the plan area would not ordinarily constitute an action with significant environmental effects. However, when such a plan decision would substantially modify ongoing uses within the plan area, then NEPA documentation would be required for that proposed action prior to plan approval.
- Plan direction that revises or amends goals and objectives for consumptive and non-consumptive National Forest water uses and for special use authorizations would not ordinarily be an action with significant environmental effects. However, if a plan would impose substantial new or changed by-pass flows on current special use authorizations for the diversion of water, then NEPA documentation of the effects of that proposed action would be required prior to plan approval.
- Plan direction that revises or amends goals and objectives for oil and gas leasing would not ordinarily be an action with significant environmental effects. However, when a plan specifies stipulations for oil and gas leasing which have not been previously analyzed, NEPA disclosure would be required prior to plan approval.

Plan and project analysis: In contrast to the 2000 rule, the proposed rule at § 219.6(b) requires the detail of analysis at the plan and project level to be proportional to the decisions proposed. The proposed rule requires plans to provide substantial baseline data and trend analysis, which can include the description of direct, indirect, and cumulative effects information at a broad scale appropriate to planning, while requiring more detailed fine-scale NEPA analysis, including the description of direct, indirect, and cumulative effects, to be conducted when a site-specific action at the project level is proposed to implement the plan. Experience has shown that site-specific NEPA analysis, based upon more general plan-level analysis, provides a more timely and accurate assessment of the effects of Forest Service management actions than could otherwise be projected under more hypothetical reasoning in more detailed NEPA analysis at the plan level.

The proposed rule requires plans to be based on substantial analysis of pertinent issues regardless of the level of NEPA analysis and documentation. These plan analyses would: (1) Serve to help the Responsible Official, the public, and others develop land allocations, standards, desired conditions, and other plan decisions; (2) help limit the effects of future projects by application of the plan allocations, standards, desired conditions, and other plan decisions; and (3) provide information useful for analyzing project effects.

For example, both options in proposed section 219.13, developed to ensure that the NFMA diversity requirements are met, require ecological analyses. Option 2 in this proposed rule contains very specific analytical requirements. It focuses ecological analyses at both ecosystem and species levels of ecological organization, requires analyses of diversity across multiple geographic areas and timeframes, and stresses the importance of analyses conducted over large geographic areas or long timeframes. Option 2 requires description of the influence of the ecological condition, structure, and land use history of the surrounding landscape, as well as of natural and human-induced disturbance regimes, and a discussion on how these factors influence a forest's or grassland's ability to achieve biological diversity objectives. These analyses are a key part of both the proposed planning rule and the analysis of the ecological effects of proposals for plan decisions. This analysis will also provide essential baseline and trend data that will inform the analysis of the direct and indirect effects of plan implementation at the project level.

Cumulative effects analysis: Cumulative effects analysis normally involves analysis both at the plan level and at the project level. Under the proposed rule, plan-level analysis would evaluate existing conditions and broad trends at the geographic scale of the plan area. For example, depending on applicable issues, plan analysis may examine habitats for wide-ranging species at various geographic scales and discuss trends for that habitat. Plan analysis may examine recreation use and trends near a community. Plan analysis may also examine the current distribution and likelihood of spread for noxious weeds and whether existing roads may serve as vectors for that spread.

Analysis for site-specific projects will provide additional information that, when combined with the plan-level analysis and monitoring information collected and maintained on the plan's monitoring requirements, would serve as a basis for evaluating the cumulative effects of projects carried out under the plan. For example, where plan analysis documents the quantity and quality of habitat that is available for a wide-ranging species, that plan-level analysis, combined with applicable monitoring data and other inventory information, can provide much of the information needed to describe the cumulative effects of project and other past, current, and reasonably foreseeable projects upon the habitat available for that species.

Likewise, if plan analysis indicates that a particular recreation use is high and increasing the risk of loss of a rare plant, then plan direction may require particular measures for rare plant protection near trails in the recreation use area and a closer and more detailed examination for cumulative effects analysis associated with recreation management decisions. If plan-level analysis indicates that uses of existing roads are contributing to the spread of noxious weeds, and monitoring indicates that open roads from nearby projects are contributing to the spread, the project-level cumulative effects analysis may be required to assess mitigation measures that may be needed to restrict travel for the area.

Project level NEPA compliance: As stated elsewhere in this preamble, agency guidelines on project-level planning are specified in FSM 1950 and FSH 1909.15. Whether a proposed project is categorically excluded from NEPA documentation, or is considered in an EA or EIS depends upon whether that project would have a significant effect on the environment.

For those projects that the agency believes there may be significant effects, an EIS will be prepared to display those effects. Pursuant to the FSH requirements, EIS's are required for actions in certain circumstances, for example, herbicide application, or road construction in an inventoried roadless area. In addition, the Forest Service typically documents other types of projects in an EIS. For example, large timber sale projects are normally documented in an EIS. Another example of a type of project that may be documented in an EIS would be an approval of a plan of operation for a large hard-rock mining operation.

The reason to do an EA is to determine whether or not an EIS is necessary and to document agency NEPA compliance when an EIS is not necessary. The EA will briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or to reach a finding of no significant impact for the proposed action.

Projects typically documented in an EA are those projects that, at the time of the proposal, the Forest Service believes will not have significant environmental effects. Examples of types of projects typically documented in an EA include smaller timber sale projects, road construction, campground construction; special use authorizations, and fuels reduction.

The FSH also lists categories of actions that are excluded from NEPA documentation because they do not individually or cumulatively have a significant effect on the human environment and have been found to have no such effect in procedures adopted by the agency in implementation of the regulations. Existing categories include road maintenance, administrative site maintenance, or trail construction.

Whether a project is documented in an EIS or an EA or whether it is categorically excluded from NEPA documentation, land and resource management plan analyses will provide critical baseline and trend data that will inform the site-specific analysis for the project. Project level NEPA documentation will analyze project effects as needed, depending on the nature of the project and the applicable issues, and known information. Project analyses will supplement and use monitoring data, pertinent assessments, inventories, research, and the plan analysis information. This plan analysis information will be available regardless of whether the plan is documented in an EA, EIS, or categorically excluded from NEPA documentation.

Categorical exclusion for planning: If this proposed rule is adopted, conforming changes would be required in FSH 1909.15, section 20.6. A new categorical exclusion pertaining to categories of plan decisions may be adopted for plan decisions that do not individually or cumulatively have a significant effects on the human environment and are found to have no such effect by the agency based on the implementation of this proposed rule. A separate **Federal Register** notice would be published to provide public notice of the proposed category and request for comment.

Public comment: The agency recognizes that the manner in which the proposed rule applies NEPA with respect to new plans, plan amendments, and plan revisions is a departure from the approach taken in the 2000 rule and the 1982 rule requiring an EIS for plan revisions, significant amendments, or new plans. This departure is based on the agency's extensive experience with land and resource management planning over the years. That experience indicates that attempting to draw precise conclusions about the environmental effects of plan direction is subject to analytical uncertainty and is ultimately of limited value for purposes of informed decision-making in compliance with NEPA. However, the agency recognizes that some level of NEPA documentation for plan direction is warranted, and that there may be substantial disagreement over the extent of NEPA analysis and documentation that is appropriate. With this proposed rule, the Forest Service is attempting to strike an appropriate balance between broad-scale plan-level analysis and finer-scale project-level analysis with sufficient inter-relationship between the two to ensure NEPA compliance for all decisions. Therefore, the Forest Service specifically requests comments and suggestions from the public regarding how the "significance" of land and resource management plan direction is applied in this proposed rule, what plan decisions authorize an action or commit funding or resources that could have a significant effect on the environment and the circumstances for which an EA or EIS for a plan would be appropriate.

It is useful to summarize the differences between elements of NEPA application in the 2000 rule and in this proposed rule. This summary consolidates discussion present in other parts of this preamble.

Type of NEPA documentation: The 2000 rule requires preparation of an EIS for a plan revision (36 CFR 219.9(d)). The proposed rule states plans may be categorically excluded from documentation in an EA or EIS when the Responsible Official determines that the action fits an established Categorical Exclusion category and no extraordinary circumstances are present.

Public involvement: The 2000 rule has detailed requirements on who should be involved in planning (§§ 219.13–219.17). The proposed rule has essentially the same requirements, although they are more succinctly stated. These requirements would still apply for plans categorically excluded from documentation in an EA or EIS.

The Forest Service will ensure that categorically excluding land and resource management plans from documentation in an EA or EIS does not result in an adverse or disproportionate effect on groups of people identified under Title VI of the Civil Rights Act, the Executive Order 12898—Environmental Justice or other civil rights laws, regulations, and orders. These identified groups include minorities, seniors, women, subsistence lifestyle populations, Tribes, and low income populations. By definition in NEPA, a categorical exclusion address only those actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required (40 CFR 1508.4). Pursuant to agency policy set out in Forest Service Handbook 1909.15, Chapter 10, the Responsible Official would still be required to identify potentially affected and interested agencies, organizations, and individuals during the planning process, regardless of which type of documentation is used. Additionally, specific Forest Service guidance on scoping under NEPA will still apply to categorical exclusions.

Issues: The 2000 rule has very detailed requirements for issue identification. The proposed rule does not. While the proposed rule would still require the Responsible Official to document a rationale for issue identification in the proposed rule, it is likely that this documentation would be briefer as he or she would not need to cross reference an extensive list of issue sources (refer to § 219.5 in this preamble). The requirements in the proposed rule for issue identification would still apply for plans categorically excluded from documentation in an EA or EIS.

Analysis: The 2000 rule contains very detailed requirements for what can be

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termed "analysis" in §§ 219.5, 219.9, and 219.20–219.25. The proposed rule has much simpler requirements. In addition, as pointed out previously in this preamble, the agency has a vision of an analysis that is more proportional to the decisions being made and that the analysis will be much briefer. The number and complexity of requirements in the 2000 rule make it unlikely that a proportional analysis effort would be successful.

Alternatives: The 2000 rule does not directly address alternatives to consider in developing a new plan, revision, or amendment. This proposed rule also does not directly address alternatives, but the preamble does in the planning "vision" and signals the agency's intention to work toward consensus with the public with an expected result of fewer alternatives.

Neither the 2000 rule nor this proposed rule set out specific NEPA requirements in the planning regulation, in accordance with the desire not to repeat direction contained in law, regulation or Executive order.

Proposed section 219.7—Amending a plan. As with the 2000 rule, this section of the proposed rule characterizes an amendment to a plan as an addition to, the modification of, or the rescission of one or more of the plan decisions listed in § 219.4. As with the 2000 rule (at § 219.18(b)), paragraph (a) of this proposed section specifically excludes administrative corrections as amendments. Paragraph (b) of this proposed section identifies issues or opportunities as provided in § 219.5 as potential sources for plan amendments. Proposed paragraph (c) requires that the Responsible Official provide opportunities for consultation and collaboration as addressed in § 219.12 during plan amendment. The process to produce an amendment, including the identification of issues or opportunities, the use of applicable information, an effects analysis, and provisions for consultation opportunities for consultation are the same in the 2000 rule and the proposed rule. While the process steps are the same, the rules are organized differently. The 2000 rule lists all the steps for amendment in § 219.8, while the proposed rule addresses issues in § 219.5, use of applicable information in § 219.13, and effects analysis in § 219.6 by reference to NEPA. The two rules differ in the specific requirements to accomplish the steps in the amendment process. These differences are addressed in the discussion for those individual sections in this proposed rule.

Proposed paragraph (d) defines a significant amendment and requires a 90-day comment period for a draft proposed significant amendment, as referenced in § 219.6 and as required by NFMA, (16 U.S.C. 1604 (f) (4)).

Under the 1982 planning rule, when amending the plan, the Forest Service has to cope with two processes to determine significance for two different statutes. First, under NFMA, the Forest Service had to determine whether an amendment is a significant change to a plan. Even if an amendment was determined not to be a significant change to the plan, the amendment still required an EIS if it was determined under NEPA to be a major Federal action significantly affecting the quality of the human environment. This direction has proven confusing to agency personnel and to the public. The 2000 rule uses only the NEPA definition for significance. This proposed rule defines a "significant amendment," as one that would have a significant affect on the quality of the human environment. The proposed rule also provides for a new category of interim amendments in § 219.7(f) to enable the agency to make more rapid adjustments to management direction when necessary, such as when a threatened or endangered species is newly listed or initially discovered to exist in a particular area. In fact, a rapid response to the needs of threatened or endangered species is the prime reason this category of amendment is included. In 1995, for example, the Southern Region of the Forest Service amended their plans to provide interim standards and guidelines for the federally listed red-cockaded woodpecker. This interim direction was to remain in effect up to three years until individual plans could be amended or revised with longer term direction.

An interim amendment would expedite needed amendments to a plan, while the agency initiates further analysis and decisionmaking for a permanent amendment. The proposed rule would establish a maximum duration of four years for an interim amendment; however, there are a number of alternative views on the duration and process for these interim amendments, and the agency would especially welcome public comment concerning their use.

Proposed section 219.8—Revising a plan. The proposed rule requires a description of the current management situation and an assessment of the adequacy of existing plan direction, a summary of timely and relevant issues to be addressed, and a summary of relevant information. The proposed rule requires consultation with federally recognized Indian Tribes, State and local governments and other Federal agencies and contains requirements for public notice of intent to revise a plan. These requirements are much simpler than either the 1982 or 2000 rules.

The 2000 rule and the proposed rule are fundamentally different with regard to the amount of information and analysis required to initiate a revision. At § 219.20 of the 2000 rule, the Responsible Official must develop or supplement extensive information to address ecosystem sustainability and must provide comparable information at § 219.21 to address social and economic sustainability.

To initiate a revision of a plan, § 219.9 of the 2000 rule established requirements related to collaboration; identification of issues; analyses and information; identification of special areas; identification of specific watersheds in need of protective or restoration measures; identification of lands classified as not suitable for timber production; identification of and evaluation of inventoried roadless and unroaded areas; and development of an estimate of anticipated outcomes for the next 15 years. Each of these requirements refers in turn to additional requirements elsewhere in the planning regulations. For example, paragraph (b)(4)of § 219.9 of the 200 rule states in order to begin the revision process, the Responsible Official must, "Evaluate the effectiveness of the current plan in contributing to sustainability (§§ 219.20–219.21) based on the information, analyses, and requirements described in § 219.20 (a) and (b) and § 219.21 (a) and (b), and provide for an independent scientific peer review (§ 219.22) of the evaluation."

As the agency launched the November 2000 rule, field-level planners and resource professionals expressed uncertainty about the degree and scope of analysis and information gathering required to initiate a plan revision. They also were concerned about the potential controversy that might be associated with a plan developed under these untested and unclear requirements. Also questioned was the appropriateness of and the agency's ability to conduct pre-revision analysis and presenting some of this information at the revision initiation stage. For example, identification of new proposals for special areas or wilderness recommendations benefit from public involvement and input, which is more fully developed later in the planning process, not at the pre-revision stage.

The agency supports sharing as much known information as possible with the public at the early stage of revision initiation, but it does not believe the extensive information and analysis requirements of the 2000 rule are necessary. In fact, the extensive work required to initiate revision will create further delays in revision of plans.

Both the proposed rule and the 2000 rule address the statutory requirements for plan initiation; however, the 2000 rule includes more extensive direction on the revision process than does the proposed rule. Both also include public notice requirements. The 2000 rule includes a 45-day public comment period. The proposed rule does not include a specified comment period, although notice is required to invite comment. This proposed change would allow the Responsible Official to tailor the comment period for initiation of plan revision to the scope and complexity of planning issues and opportunities for the unit.

The proposed rule and 2000 rule have the same substantive requirement for a 90-day public comment period of a draft proposed revision.

Proposed section 219.9—Developing a new plan. This proposed section recognizes that, over time, additional units may be added to the National Forest System, such as occurred with the recently established Midewin Prairie in Illinois. Should Congress establish a new national forest, grassland, prairie, or other unit of the National Forest System, the Responsible Official must determine whether a separate plan is needed or whether an existing plan can be amended. If a new plan is needed, the Responsible Official must follow the requirements of this regulation. The 2000 rule did not address this issue.

Proposed section 219.10—Application of plan direction. Paragraph (a) of this proposed section addresses the statutory requirements of the NFMA (16 U.S.C. 1604(h)(3)(i)) that permits, contracts, and other legal instruments must be consistent with the applicable plan. This paragraph is similar to the provisions of the 2000 rule at § 219.10 requiring all site-specific project decisions, permits, contracts, and other authorizations to be consistent with the applicable plan, which is required by NFMA.

However, unlike the 2000 rule, this proposed paragraph adds a specific requirement that project decisions disclose the relationship of the project to the plan desired conditions. While all project decisions must be consistent with the plan, it is not practical to require each project decision to be in strict compliance with all aspects of a plan's desired conditions. Sometimes a project may have positive effects on one aspect of desired conditions and negative effects on another. It is also possible that a project may have short-term negative effects that relate to a specific desired condition, with predicted long-term positive effects. At other times a project may have neutral effects related to desired conditions. These examples illustrate the complexity of the relationship of a particular project to the desired conditions in a plan. The agency therefore, has chosen not to include a specific requirement that projects comply with the plan's desired conditions, but rather a requirement that the project decision disclose how the decision relates to the applicable plan desired conditions.

Also in contrast to the 2000 rule, this proposed paragraph specifically requires that a new plan, amendment, or revision decision document consider the effects of the plan on occupancy and use already authorized. This change is proposed to ensure that there will be an orderly transition when a new plan, amendment, or revision is authorized. This proposed section also acknowledges that modifications of instruments authorizing ongoing occupancy and use of the plan area necessary to make them consistent with the changes in the plan are subject to any valid existing rights.

Paragraph (b) of this proposed section provides that direction in plans undergoing amendment or revision would remain in effect until the Responsible Official signs a decision document for a new amendment or revision. This provision is the same as in § 219.10 of the 2000 rule.

Paragraph (c) of this proposed section makes clear that nothing in the rule itself requires a change of approved projects while new information is being assessed. This provision is proposed to clarify the effect of considering new information and fills a gap in both the 1982 rule and the 2000 rule.

Paragraph (d) of this proposed section retains the provisions of § 219.10 of the 2000 rule that lists options available to a Responsible Official when a proposal for a project or activity would not be consistent with plan direction.

Paragraph (e) of this proposed section recognizes the need for testing and research projects to gain information and knowledge that will assist the land manager. This paragraph makes clear that testing and research projects are subject to all applicable laws, regulations, and Executive orders and must be consistent with the plan. This is a new paragraph developed to acknowledge the important role of research in National Forest System land management and the role of NFS lands as sites for research. This provision also further strengthens the emphasis of this proposed rule on monitoring and evaluation.

Proposed section 219.11—Monitoring and evaluation. As at § 219.11 of the 2000 rule, this proposed section specifies that plans must include requirements for monitoring and evaluation, although this proposed rule does not refer to such requirements as a "strategy." This proposed section provides direction on the purpose of monitoring and evaluation, the data sources that may be used, the coordination of monitoring that may occur, possible evaluation activities, and direction on record keeping. Paragraph (a) provides that the Responsible Official ensure that monitoring occurs and that monitoring methods may be adjusted without plan amendment or revision. As with the 2000 rule, monitoring could be conducted jointly with other interested parties such as other governmental agencies, Tribes, and scientific and academic organizations.

Paragraph (b) lists situations where evaluation may be used to determine, among other things: trend identification; information and analysis validation; use of performance measures to assess the effects of programs, projects, and activities; and the effectiveness of plan standards. Paragraph (c) of this proposed section would require information to be collected from any of a variety of sources to meet the monitoring requirements. Paragraph (d) requires findings and conclusions to be published annually in reports that are made available to the public.

At § 219.11(b), the 2000 rule requires that if there is a need for monitoring and evaluation of site-specific actions, decision documents must include a description of the monitoring and evaluation and the Responsible Official must determine that funding is adequate to conduct monitoring and evaluation before authorizing the site-specific project. This provision is not retained in the proposed rule which is limited to programmatic planning.

The monitoring and evaluation provisions of the proposed rule differ from the monitoring provisions of the 2000 rule, which impose far more detailed and specific requirements for monitoring characteristics of sustainability, ecological conditions, and populations of focal species/species-at-risk and for site-specific activities. Monitoring is very important, but given the testing and experimentation inherent in monitoring and evaluation, Responsible Officials need considerable flexibility to design monitoring strategies to fit local

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situations. The specificity of the 2000 rule does not allow for such flexibility and discretion. To the extent that guidance is needed on who should do monitoring, how monitoring should be done, what monitoring should be done, and how monitoring information should be evaluated, that can best be provided through the agency's Directive System rather than specified in a rule.

For example, the detailed provisions in § 219.11(a)(1)(ii)(B) and (C) of the 2000 rule are being evaluated for issuance in the Forest Service Manual or Handbook. Some of these current regulatory requirements will be made optional in order to be responsive to variations in funding, staffing, and information needs among individual National Forest System units.

Other monitoring and evaluation provisions of the 2000 rule that are proposed to be removed from the rule are those for which there is no corresponding provision elsewhere in the proposed rule. Also, at § 219.23(c), the 2000 rule requires that scientists play a significant role in developing and evaluating monitoring strategies. The agency certainly believes use of science is important in monitoring and in evaluating results; however, the agency has determined upon review that the degree of required participation of Forest Service research scientists specified in the 2000 rule would overburden the Research and Development mission area of the Forest Service. Moreover, not every plan amendment or revision will require the same degree and intensity of scientific review.

Monitoring may take many forms and include different requirements for the understanding of science and involvement by scientists. Different types of monitoring require different levels of scientific rigor in their development and application. For example, if a plan has a standard to keep fences repaired and gates closed to aid with the restoration of certain degraded riparian systems, then monitoring to assess the ability of the managers to keep the fences standing and the gates closed requires little, if any, involvement of science. However, to assess if keeping the fences closed and gates repaired was an effective approach to reach the desired condition of a restored riparian system may well require development and application of particularly rigorous, scientifically valid monitoring protocols. The consistency evaluation process described in Section 219.14 would evaluate the likelihood that the designed monitoring plan would be able to determine the effectiveness of the action (keeping the gates closed and fences repaired) in achieving the objective of ecosystem restoration.

As this proposed rule was being developed, a great deal of internal discussion occurred regarding direction for, and decisions on, adaptive management and on whether the proposed rule needed to specifically address this concept. The term "adaptive management" has been used formally and informally within the agency to describe the process of continually adjusting management techniques in response to new information, knowledge, or technologies. The Forest Service recognizes that uncertainty and unknowns exist in the course of achieving any natural resource management goal. The adaptive management process relies on focused monitoring to measure success in achieving desired conditions and to determine if there is the need to make further changes in strategies and implementation. Whether such monitoring would be scientifically rigorous would depend on the resource, the use, and the specific situation.

The 2000 rule uses the term "adaptive management," and explains adaptive management concepts and purposes, but it has no specific requirements for how the concept and purposes were to be carried out. Although the agency believes that adaptive management concepts are valid, the agency maintains that it is not necessary for the planning rule to specifically address these concepts beyond stating that measurement of adaptive management results is one of the purposes of monitoring and stating in § 219.4 that the need to provide adaptive management is one reason why plan standards should not be overly rigid.

A plan can allow for and address adaptive management without specific direction to do so in the planning rule. Essentially, there is no real difference between the 2000 rule and the proposed rule in the area of adaptive management. Under both rules, plans can include adaptive management strategies and methods in their direction.

In fact, both conceptually and operationally, adaptive management is integral to the planning process laid out in this proposed rule, and monitoring and evaluation represent a fundamental component of the adaptive management process, as was the case in the 2000 rule. In this context, an essential linkage exists between plan requirements for monitoring and evaluation, discussed previously, and those for the ecological component of sustainability, discussed later in this preamble under proposed section 219.13. The ecological information and analyses focused on assessing ecosystem and species diversity, as specified in proposed § 219.13(b)(1), contribute directly to adoption of plan decisions that provide for ecosystem and species diversity in the plan area within the multiple use objectives of the plan. Results of monitoring and evaluation are among the information and analyses that may contribute to the development of future plan decisions affecting diversity. Moreover, monitoring and evaluation provide an essential feedback loop to assess whether implementation of plan direction is producing progress toward attainment of desired conditions and plan objectives, as well as the basis for deciding whether plan direction should be modified or changed through plan amendments or revision.

As specified in § 219.11(a), data and other information pertinent to characteristics of ecosystem and species diversity, as determined relevant by the Responsible Official, should be included in the monitoring information to be collected. Evaluation of this information should reveal whether progress toward achievement of diversity objectives is being achieved, or whether plan direction or plan implementation must be changed. In this sense, and with specific reference to the ecological component of sustainability, monitoring and evaluation complete the essential feedback loop of adaptive management to assess whether plan direction is achieving the NFMA requirement that plans provide for diversity in a multiple use context. Monitoring and evaluation focused on the characteristics of diversity thus inform both the development of plan decisions and the decision to undertake plan amendments or revisions, thereby ensuring that adaptive management is an integral part of this revised planning rule.

Proposed section 219.12—Collaboration, cooperation, and consultation. This proposed section combines §§ 219.12 through 219.17 of the 2000 rule. Paragraph (a) of this section is similar to paragraph (a) of § 219.12 of the 2000 rule in requiring the Responsible Official to provide early and frequent opportunities for the public to participate in the planning process, using any of several specified roles, and to encourage such participation. Paragraphs (a)(1) and (a)(2) incorporate the provisions of §§ 219.13, 219.14, 219.16 and 219.17 of the 2000 rule which address engaging Federal agencies, State and local governments, interested individuals and organizations, and private landowners in planning, and paragraph (a)(3) incorporates the provisions of § 219.15 of the 2000 rule, which address engaging federally recognized Tribes in planning.

The 2000 rule at § 219.12(b) requires Forest Service participation with others in efforts to cooperatively develop landscape goals. Although the cooperative development of landscape goals may be of value in some planning efforts, this specific activity should not be a requirement because it will not always be useful and may often be unachievable with participating groups. The proposed rule does not refer to collaboratively developed landscape goals; rather, at § 219.12(b), the proposed rule clarifies that the Responsible Official should consider participating in existing groups to address resource management issues within the community. The agency also feels that the list of objectives for collaboration in the 2000 rule are not necessary as they are more appropriately defined under existing law or through the collaboration process itself.

In contrast to the 2000 Rule at § 219.18, this proposed section on collaboration, cooperation, and consultation does not include a provision for requiring advisory committees. That provision requires that each national forest or grassland have access to an advisory committee. Having considered employee concerns over this provision, the agency now considers this provision to be inadvisable. There are many valid methods for effectively engaging the public. An advisory committee may be the most effective method in some circumstances, the least effective in others.

Each Forest, Grassland, or Prairie Supervisor currently has the option of requesting establishment of an advisory committee under the Federal Advisory Committee Act (FACA) and implementing regulations issued by the General Service Administration (GSA). The 2000 rule requires that each Forest or Grassland Supervisor have access to an advisory committee with knowledge of local conditions and issues. While the rule does not require each planning unit to have its own committee, many believe that the local conditions and issues requirement effectively require a separate committee for most planning units.

The costs of establishing and administering FACA committees is high in terms of Federal employee time and salaries to charter the committees, manage the nomination and selection process, and to set up meetings. There are also meeting facility costs as well as costs for reimbursement of committee members for their transportation, meals, and lodging. While these costs may well be justified to address issues for some planning units, they might be an unwise use of funds on other units. Also, the process for establishing committees can be a long one. The Act and implementing GSA regulations require substantial administrative work including drafting charters, nominating members, checking nominees' backgrounds, giving **Federal Register** notice, considering public input, and giving notice of the committee members selected. By law, committees must be re-chartered every two years.

Requiring most units to undertake the expenditure of time and funds for establishing and re-establishing FACA committees imposes a significant continuing administrative responsibility. Instead of mandating a "one-size-fits-all" national approach to public input, the agency believes that it is better to provide Responsible Officials flexibility to design public involvement strategies to best meet the local needs the most cost effective way.

In summary, the proposed rule reduces the amount of process-related descriptions of the public involvement processes. The agency's intention is to continue and support vigorous and active public interaction and involvement without mandating which process would most effectively support this interaction. Consequently, this proposed rule drops the non-substantive portions of the 2000 rule, such as detailed examples of how people, groups, and organizations can contribute to the planning effort.

Proposed section 219.13—Sustainability. This proposed section contains direction for how the specific social, economic, and ecological components of sustainability are to be applied. This section of the proposed rule replaces § 219.19 through § 219.21 of the 2000 rule. This proposed rule emphasizes the interconnection between the ecological, social, and economic components of sustainability and requires consideration of each in the planning process.

However, the proposed rule departs from the 2000 rule on several important points. Sustainability under this proposed rule is viewed as a single objective with interdependent social, economic, and ecological components. In contrast to the 2000 rule, this concept of sustainability is linked more closely to the MUSYA in that economic and social components are treated as interdependent with ecological aspects of sustainability, rather than as secondary considerations. This change in emphasis is not intended to downplay the importance of ecological sustainability or of maintaining the health and productivity of the land.

The proposed rule also affirms the commitment of the Forest Service to meet the NFMA requirement that plans provide for the diversity of plant and animal communities and tree species and retains the joint focus of the 2000 rule by considering and evaluating both ecosystem diversity and species diversity, in order to reach plan decisions that provide for diversity within the multiple use objectives of the plan.

The proposed rule addresses social and economic sustainability at § 219.13(a). Even though social and economic issues are different they are discussed together because both social and economic components of sustainability address the well-being of communities that are dependent on the National Forests. There are elements of analysis that have implications for both economic and social sustainability. For example, demographics (such as population, age, income, employment, home ownership, school, growth) have implications for both economic and social sustainability. Conversely, there are other elements of social and economic analysis that are clearly distinct. For example, a social analysis might help identify Native American use of medicinal plants to ensure the agency considers how these plants may be protected. A social analysis might also help identify what local people particularly value about National Forest System lands. An economic analysis might identify the interconnectedness between goods and services produced from NFS lands and the economy in surrounding communities in terms of employment and income; for example, the recreation use of NFS lands and service industries. To assess social and economic sustainability, the Forest Service proposes to require the Responsible Official to: (1) Identify values that interested and affected persons want to see sustained; (2) consider how human activities and social and economic conditions and trends affect NFS lands; (3) identify the benefits NFS lands provide; and (4) examine how land management decisions affect social and economic conditions.

The Forest Service understands that sustainable social and economic systems are very complex and that programmatic planning decisions form only a part of the environment in which these systems operate. The agency acknowledges that it cannot assure

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sustainability of those systems. The Forest Service can, however, engage the public in planning, identify social and economic issues, and analyze the relationship of planning to social and economic systems, and, thereby, make positive contributions to communities. As stated in the preamble to proposed § 219.1, plans consider the uses of variable renewable resources within the context of multiple use so the resources of the NFS lands are utilized in a combination that will best meet the needs of the American people.

Paragraph (a) of § 219.13 of the proposed rule incorporates the social and economic components of sustainability in § 219.21 of the 2000 rule, but removes the many highly detailed, discretionary elements from the rule. This simplification is proposed in response to concerns that many of the detailed requirements of § 219.21 do not reflect the variety of social and economic issues that arise across the range of National Forest System lands; that available information may not be sufficient to meet these requirements; and that the required level of detail may not meet the needs of an agency whose administrative units vary in funding and staffing levels. Processes for conducting social and economic analysis are already in the agency's Directive System, are most appropriately located there, and are currently being revised and updated.

Two options for the ecological component of sustainability are included in paragraph (b) of § 219.13 of the proposed rule, which incorporates the intent of § 219.20 of the 2000 rule for the ecological component of sustainability. The National Forest Management Act (NFMA) (16 U.S.C. 1604 (g)(3)(b)) requires that plans provide for the diversity of plant and animal communities based on the suitability and capability of the land area, and where appropriate and to the extent practicable, provide for steps to preserve the diversity of tree species similar to that existing in the region controlled by the plan, within the multiple use objectives of the plan (referred to hereafter as the NFMA diversity requirement). There has been extensive, ongoing debate concerning how to meet the NFMA diversity requirement ever since the Act was passed. The proposed rule includes two distinct options for meeting the diversity requirement in § 219.13(b).

The first option in this proposed rule was developed by modifying the 2000 rule and establishes the viability of vertebrates and vascular plants well distributed within their ranges in the plan area as the primary basis for judging achievement of the NFMA diversity requirement. This first option significantly streamlines the 2000 rule by removing many of the prescriptive operational details and making other changes described in this preamble.

Drawing heavily on the expertise of its research scientists, the agency developed a second option on ecological sustainability that provides a clear alternative to Option 1. In Option 2, the primary basis for judging achievement of the NFMA diversity requirement is the requirement that plan decisions foster the maintenance and restoration of biological diversity in the plan area, at ecosystem and species levels, within the range of diversity characteristic of native ecosystems in the larger landscape within which the plan area is embedded.

In preparing two distinct options to meet the NFMA diversity requirement, the agency seeks to stimulate meaningful public discussion and input on this important topic so that the Secretary can make an informed choice at the final rule stage. To ensure that the agency has access to knowledgeable and diverse views on this topic, the Forest Service also plans to host a workshop of subject matter specialists in a variety of policy, management, and resource fields to discuss the strengths and shortcomings of the two proposed options, or variations of these options, for achieving the NFMA diversity requirement. Information regarding this workshop will be provided in a separate **Federal Register** notice.

Comparison to 2000 Planning Rule

Both options in the proposed rule are considerably streamlined and shorter as compared to § 219.20 of the 2000 rule. As discussed earlier in this preamble, the agency's review of the 2000 planning rule judged the section on the ecological component of sustainability to be needlessly complex and overly prescriptive and to lack the flexibility needed to tailor or adapt the required ecological information and analyses to the issues identified by the Responsible Official, the risks to ecological sustainability, and the availability of information relevant to the particular plan area. To respond to this criticism, most of the operational details of the analyses of ecosystem and species diversity in § 219.20(a)(1)(i)(A)–(E), § 219.20(a)(2)(i)(A)–(H), and § 219.20(a)(2)(ii)(A)–(D), as well as the qualifications regarding how plan decisions should be applied in § 219.20(b)(1)(i)–(v) and § 219.20(b)(2)(ii)–(iv), will be transferred, perhaps in modified form, to the Forest Service Directive System or to other technical guidance documents (*e.g.*, white papers), sometimes as requirements but more often as optional methods for the Responsible Official to consider and use as appropriate. Because this shift in approach to sustainability represents a major change from the 2000 rule and because the specific operational details as to how to provide for diversity of plant and animal communities and tree species represent a controversial topic, the agency has posted this preliminary draft material pertinent to both options on the World Wide Web/Internet and made these documents available at the address listed earlier in this document for consideration and review during the public comment period.

Several concepts that were essential features of the required ecological information and analyses in the 2000 rule are now treated as optional elements of the analyses and will be covered in the Directive System or other guidance documents. For example, neither of the diversity options specifically requires broad-scale assessments as did the 2000 rule, but each will make use of information from such assessments, where they represent the best science available, and as stepped down from the assessment area to the plan area. Similarly, neither option specifically requires that focal species be identified for the plan area and evaluated to provide insights concerning the ecological integrity of the larger ecological system with which they are associated. Again, however, both options permit such a use of focal species on an optional basis. Option 2, in particular, states that individual species may be identified for analysis in order to develop a more complete understanding of the condition and trends of ecosystems, which is conceptually equivalent to the manner in which focal species were a required element of the diversity analyses in the 2000 rule. As a final example, neither option specifically requires use of the concept of the range of variability under the natural disturbance regime of the current climatic period, but Option 1 identifies range of variability as being among the approaches that may be used to evaluate ecosystem diversity.

Both options also eliminate language concerning how plan decisions must address federally listed threatened and endangered species because consideration of federally listed species is integral to the consideration of diversity under either option and because the planning rule need not repeat existing requirements of law. The 2000 rule at § 219.20(b)(3) included requirements that plan decisions promote the recovery of federally listed threatened and endangered species, provide for implementing conservation agreements, and address requirements and recommendations from biological opinions. These requirements are not included under either Option 1 or Option 2 of the proposed rule. The agency reaffirms its commitment to comply with provisions of the Endangered Species Act (ESA), including conducting programs for the conservation of endangered and threatened species consistent with the multiple use objectives of plans, but sees no reason to specify this in the rule itself. The ESA is among the relevant statutes listed under 219.2(c)(1).

Following adoption of a final new planning rule, and contingent on which diversity option is selected, the agency fully intends to develop detailed operational guidance on the means to implement the procedural requirements of the new planning rule, particularly with reference to procedures for meeting the NFMA diversity requirement. This will include detailed guidance in the agency Directive System, as well as "white papers" and other documents.

Option 1—§ 219.13(b) Ecological Component of Sustainability

Option 1 of the proposed rule is most similar to corresponding sections on ecological sustainability in the 2000 rule. In fact, Option 1 was developed from the 2000 rule by significantly streamlining the rule and eliminating significant amounts of procedural detail, as discussed earlier in this preamble. In this option, plan decisions would be developed to provide a high likelihood of supporting, over time, the viability of native and desired non-native vertebrates and vascular plants well distributed within their ranges in the plan area. This viability standard serves as the primary basis for judging achievement of the NFMA diversity requirement in Option 1. This option also contains an ecosystem diversity standard, so that plan decisions would be developed to provide measurable progress toward maintenance or restoration of ecological conditions that support the desired characteristics of ecosystem diversity. However, it is the species viability standard that will provide the clearest measure of achievement of the NFMA diversity requirement under Option 1.

Under this option of the proposed rule, analysis of the ecological component of sustainability follows a hierarchical, sequential approach. This option requires ecosystem diversity to be evaluated first, with the goal of ensuring that plan decisions provide measurable progress toward maintaining or restoring ecological conditions that support the diversity of plant and animal communities and tree species, and other characteristics of ecosystem diversity. Species diversity would be evaluated only after consideration of ecosystem diversity. This hierarchical, sequential approach is based on the assumption that conditions capable of supporting viability for most species are likely to be met through provisions for ecosystem diversity. Where this is not the case, species at risk would be identified and separate analyses of species diversity performed. This approach provides the Responsible Official flexible options for meeting the analytical requirements of Option 1 as the Responsible Official determines the scope and scale of the analysis. There are some required characteristics of ecosystem and species diversity and accompanying evaluation factors, although far fewer than in the 2000 rule. The Responsible Official is not limited to only those characteristics or analytical processes if other information or techniques are available or appropriate.

The desired conditions, objectives, standards, identification of suitable and unsuitable land uses, and any special designations and other management areas of a plan should provide the framework for management that would maintain or restore ecological conditions that the Responsible Official determines will provide a high likelihood of supporting, over time, the viability of native and desired non-native vertebrates and vascular plants well distributed within their ranges in the plan area. Note that "high likelihood" is not necessarily a statistical or mathematical determination. Rather, it is an application of expert agency judgment based on a reasonable review and consideration of available information.

Option 2—§ 219.13(b) Ecological Component of Sustainability

The second option for addressing the ecological component of sustainability was developed initially by agency research scientists to provide a clear and distinct alternative to Option 1. Several specific objectives or perspectives influenced development of Option 2, including: (1) Focus required ecological analyses, as well as the final management standard against which plan decisions are to be judged, at both ecosystem and species levels of ecological organization; (2) require analyses of diversity across multiple geographic areas and timeframes, and especially stress the importance of analyses conducted over large geographic areas or long timeframes; (3) emphasize the influence of the ecological condition, structure, and land use history of the surrounding landscape, as well as of natural and human-induced disturbance regimes, on the ability to manage NFS lands to achieve biological diversity objectives; and (4) require a more rigorous and structured set of analyses of diversity than contained in Option 1.

Option 2 focuses attention on the general objective of maintaining and restoring ecological conditions that provide for biological diversity in the plan area and on the more specific objective of maintaining and restoring ecosystem diversity within landscapes, and within the framework of larger-scale ecosystem analyses, of maintaining and restoring species diversity within ecosystems. In this sense, Option 2 adopts an explicitly hierarchical approach to analyses of biological diversity, as does Option 1.

Option 2 focuses attention directly on evaluating and maintaining biological diversity in the planning or assessment area. Biological diversity is an inclusive concept employed in the scientific and conservation literature to refer to the variety of living things together with their interactions and processes. It is defined at various levels of ecological organization, but especially three—genes, species, and ecosystems. The general concept of biological diversity incorporates the concept of the diversity of plant and animal communities and tree species as originally used in the language of the NFMA diversity requirement. However, the term "biological diversity" also reflects significant progress in the sciences of ecology and conservation biology over the past 20–25 years. Scientific progress in these fields has revealed substantial new information such as factors that regulate biological diversity and the relationship between biological diversity and ecosystem function and resilience. As a consequence, and consistent with progress in scientific knowledge and conservation practice, the overriding objective of the approach in Option 2 is to focus planning analyses on factors that foster the maintenance and restoration of biological diversity in the planning or assessment area, at both ecosystem and species levels of ecological organization.

Option 2 directs the Responsible Official, in the planning process, to follow and fully disclose results of a structured approach to considering and assessing biological diversity at two levels of ecological organization: ecosystem and species. Analyses of

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biological diversity at these two levels should be tailored to the particular planning or assessment area, to the availability of information, to the issues identified in the planning process, and to the risks to ecological sustainability.

Consideration and evaluation of ecosystem diversity within the framework of biological diversity constitutes the core approach of Option 2 and is the primary focus of ecological information and analyses. Option 2 focuses attention on similar characteristics of ecosystem diversity as Option 1, but adds additional spatial attributes to the list of characteristics to be considered. Similarly, in addition to analyses specified in Option 1, Option 2 focuses evaluations on identification of unique or rare ecosystems and ecosystems at risk, specific threats to these systems, and measures required for their conservation or restoration.

In Option 2, consideration and evaluation of species diversity is a complementary approach that extends ecosystem analyses to provide a more complete understanding of the effects of past, current, and anticipated future management direction on biological diversity, including the status of species and the ecosystems in which they occur. This second option requires that species should be selected for evaluation to develop a more complete understanding of the condition and trends of ecosystems, or where substantive concerns exist regarding the continued persistence of the particular species within the planning or assessment area. In such cases, evaluations under Option 2 should identify specific threats to these species and specific measures required for their conservation or restoration.

In addition to the primary evaluations of biological diversity specified at ecosystem and species levels, Option 2 also requires three additional types of analyses of biological diversity at ecosystem and species levels. First, this option requires that biological diversity be evaluated across multiple geographic areas and time frames, especially over large areas and long time frames, to assess the dynamics of wide-ranging species and cumulative impacts of management actions on, among other factors, biological diversity. Second, Option 2 requires that impacts of natural and human disturbance regimes on biological diversity be evaluated, including consequences of altered disturbance regimes for diversity. Third, this second option requires evaluations of the effects of landscape context on biological diversity, where landscape context refers to the ecological condition, structure, and land use history of the planning or assessment area and effects on biological diversity. Of special interest in these evaluations are differences in ecological structure and condition between NFS lands and surrounding or interspersed ownerships and the consequence of such differences for options and opportunities to manage NFS lands to achieve biological diversity objectives at ecosystem and species levels.

In contrast to Option 1, Option 2 formulates a substantially different and more general biological diversity standard for judging achievement of the NFMA diversity requirement. Specifically, this option requires that plan decisions foster the maintenance and restoration of biological diversity in the plan area at both ecosystem and species levels within the range of biological diversity characteristic of native ecosystems in the surrounding landscape within which the plan area is embedded. When reaching plan decisions regarding biological diversity, Option 2 requires the Responsible Official to consider disturbance regimes and landscape context and the effects of these factors on options and opportunities to manage NFS lands in order to achieve biological diversity objectives.

The biological diversity standard embedded in Option 2 provides a degree of flexibility in managing NFS lands to achieve biological diversity objectives in a multiple use framework. However, this flexibility is clearly bounded. Some amount of change in the abundance, extent, and distribution of components of biological diversity at ecosystem and species levels is acceptable within the intent of fostering the maintenance and restoration of biological diversity in the plan area at ecosystem and species levels within the range of diversity characteristic of native ecosystems in the planning or assessment area. The loss of an ecosystem type or species from all or a significant portion of the plan area or a substantial reduction in abundance, extent, or distribution within all or a substantial portion of the plan area as a result of actions under the direct control of Forest Service land managers, however, is not consistent with, and thus outside the bounds of, the standard established for Option 2.

If Option 2 is selected for inclusion in a final rule, the agency will need to develop detailed guidance in the Directive System and other appropriate outlets (*e.g.*, white papers) regarding how to implement and apply the standard it contains for biological diversity. Determining whether this standard is being achieved and thus whether the NFMA diversity requirement is being met will require monitoring data that will allow an assessment as to whether amounts and components of diversity, at both ecosystem and species levels, are within the bounds or range of what would be expected of natural or native ecosystems located within the larger landscape in which the plan area is embedded. It will also require baseline information that allows clear determination of the range of ecosystem and species diversity that is reasonable to expect for native ecosystems in this larger landscape, relative to the characteristics of ecosystem and species diversity enumerated in Option 2. In this sense, this standard is conceptually similar to the ecosystem diversity standard referenced to the expected range of variability in the 2000 rule, but here it is applied at both ecosystem and species levels of ecological organization. As compared to the 2000 rule, this option explicitly recognizes the important effect that both landscape context and disturbance regimes can have on the ability to maintain or restore biological diversity within the range of diversity that is characteristic of native ecosystems in the surrounding landscape, especially when landscape structure and disturbance regimes have been significantly altered by past human activities.

In reaching plan decisions related to biological diversity, Option 2 requires the Responsible Official to consider the landscape context in which NFS lands exist and to use that information as a basis for identifying the special role and unique contributions of NFS lands for conserving and restoring biological diversity within the larger landscape in which the plan area exists.

Comparison of Option 1 and Option 2

For both options, the consideration and evaluation of diversity is important not only in order to meet the NFMA diversity requirement, but also because diversity is viewed in each option as an important indicator or surrogate for other important characteristics of ecosystems. In addition to diversity (diversity of plant and animal communities and tree species in Option 1, biological diversity in Option 2), both options define the ecological component of sustainability as including the productivity, health, and function of ecosystems and the quality of soil, water, and air resources. In relation to these characteristics of ecosystems, maintaining key ecological processes that are responsible for sustaining the functioning and resilience of ecosystems is of fundamental concern. However, it is difficult to observe or measure ecological processes directly in a planning or management environment. Thus, information on the presence, distribution, abundance, and spatial relations of the biological and physical components of ecosystems is commonly used to make inferences with reference to ecological processes of interest. In this context, the maintenance and restoration of diversity, as evaluated in both Option 1 and Option 2, is considered to be the primary indicator of the maintenance of key ecological processes of ecosystems.

Both options maintain the agency's fundamental commitment to the conservation and restoration of ecosystems and species through implementation of the NFMA diversity requirement, but adopt different approaches to doing so. Option 1 establishes a clear viability standard as the primary basis for judging achievement of the NFMA diversity requirement, and as the basis against which to evaluate plan decisions. However, it also specifies a less detailed set of analyses, with much of the detail that was found in the 2000 rule to be moved to the Directive System as optional elements of the analysis. Option 2, in contrast, requires a more complete and robust set of analyses, but replaces the very specific viability standard of Option 1 with a more general biological diversity standard, at both ecosystem and species levels. This biological diversity standard, which is the basis in Option 2 for judging achievement of the NFMA diversity requirement requires that plan decisions foster biological diversity in the plan area within the range of diversity that is characteristic of native ecosystems within the landscape in which the plan area is embedded. In this sense, Option 2 is more like the 2000 rule in terms of specifying more detailed and complete analyses of diversity, whereas Option 1 is more like the 2000 rule in terms of establishing species viability as a primary standard for judging achievement of the NFMA diversity requirement.

Both options establish a hierarchical approach to analyses of ecosystem and species diversity, although Option 2 does so more explicitly in the rule language. Some of the comparable details of the relationship between analyses of ecosystem and species diversity in Option 1 have been moved to the Directive System. Both options focus first on analyses and achievement of ecosystem diversity, with attention to analyses of species diversity added to address the needs of species not met by attention to ecosystem diversity. Details of analyses of ecosystem diversity under the two options are similar. Option 2 adds several spatial attributes to the list of characteristics of ecosystem diversity to be considered, and it also gives greater explicit attention to analyses of rare and unique ecosystems and ecosystems at risk, but the differences between the two options in terms of ecosystem analyses are not large.

The two options differ more substantially in their approach to analyses at the species level than at the ecosystem level. Option 1 focuses analyses on species at risk, their habitat requirements, and threats placing them at risk. Option 2 places similar emphasis on requiring detailed analyses for particular species for which continued persistence within the planning or assessment area is a substantive concern. However, such analyses do not emphasize species of vertebrates and vascular plants as they do under Option 1. Option 2 specifies that species may be selected for analysis to address specific planning issues and to develop more complete understanding of the condition and trends of ecosystems. Unlike Option 1, it also includes community analyses to determine whether maintenance of ecosystem diversity is sufficient to maintain the existing pool of species within the planning or assessment area.

The above comments notwithstanding, the primary focus of analyses under Option 2 is at landscape and ecosystem levels of ecological organization. The primary intent of Option 2 is to complete analyses that lead to provisions for maintaining the broad-scale structure and condition of the landscape in the plan area and the identity, spatial arrangement, and characteristics of ecosystems within that landscape. Most analyses under Option 2 will concentrate on these outcomes. Option 2 does call for detailed analyses of individual species where significant concerns have been raised relative to continued persistence of particular species. Other types of species analyses specified in Option 2, however, are focused on ecosystems rather than on individual species. Community analyses seek to assure that provisions for maintaining ecosystem diversity will maintain the existing pool of species, and some individual species analyses seek to provide more detailed information regarding the condition and trends of ecosystems, similar to the focal species concept of the 2000 rule. Option 1 also requires a variety of ecosystem analyses, but it is less specific regarding a need for landscape scale analyses. Because Option 1 retains a clear species viability standard for vertebrates and vascular plants, it is likely that greater emphasis will be placed on analyses focused on species persistence or viability under this option than under Option 2. While both diversity options are explicitly hierarchical and call for species analyses following and within the framework provided by ecosystem analyses, it is likely that Option 2 would place greater emphasis on ecosystem and landscape level analyses than Option 1, while Option 1 would place greater emphasis on species level analyses than Option 2. However, the exact balance between ecosystem and landscape focused analyses and species focused analyses under either option will vary depending on the nature and condition of the plan area and the identified planning issues.

Option 2 specifies several additional types of ecological information and analyses that should be included in the approach to considering and evaluating biological diversity at ecosystem and species levels. Specifically, Option 2 requires that biological diversity be evaluated with respect to spatial and temporal scales and patterns, natural and human disturbance regimes, and landscape context. Similar details in Option 1 are optional and have been moved to the Directive System.

Option 2 emphasizes more strongly than Option 1 the critical role that landscape context plays in shaping planning decisions and evaluations of biological diversity. Landscape context refers to the ecological condition and structure of ecosystems and landscapes on National Forest System lands as compared with other surrounding and interspersed lands, as well as the land use history of the planning or assessment area (National Forest System and surrounding lands). Landscape context can play a very significant role in limiting or facilitating a land manager's options and opportunities to manage NFS lands to achieve biological diversity objectives. Option 2 requires explicit consideration of landscape context in reaching plan decisions affecting biological diversity.

Option 2 also focuses more explicit attention on addressing spatial scale and patterns, requires evaluations of biological diversity at multiple spatial scales as appropriate, and emphasizes the importance of analyses at large spatial scales, which may require coordination in planning across multiple National Forest System administrative units or Regions. In a similar manner, Option 2 routinely calls for analyses and evaluations of biological diversity at the spatial scale of the planning or assessment area, which is typically larger than the plan area and which includes other

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surrounding and interspersed ownerships as appropriate. In contrast, Option 1 specifies analyses and evaluations of diversity at the spatial scale of the plan area.

As noted above, Option 2 does not establish species viability as the primary basis for judging achievement of the NFMA diversity requirement. However, viability analyses may be appropriate under Option 2 for select species for which substantive concerns have been identified regarding continued persistence within the planning or assessment area; such analyses represent a legitimate analytical approach for species at risk of extinction globally or extirpation from the planning or assessment area. Where such concerns exist for particular species, these concerns must be addressed in analyses of biological diversity. Thus, Option 2 recognizes that viability analyses or similar analyses are potentially useful tools. Recognizing limitations of such analyses, however, Option 2 does not prescribe a specific approach for viability analyses. It permits a flexible approach shaped by issues identified in the planning process and by the present state of conservation biology theory and practice. It also does not limit the species for which viability analyses might be appropriate. Species other than vertebrates and vascular plants might be selected for analysis based on specific concerns raised in the planning process.

One final attribute common to both diversity options is the fundamental importance of linking ecological information and analyses completed in the planning process to monitoring and adaptive management. Under the 1982 planning rule, planning has become a costly process that limits resources available for on-the-ground management and monitoring. Reviews of the 2000 rule concluded it would have resulted in even higher planning costs. Moreover, it has become increasingly clear that the agency's ability to forecast future ecological conditions is limited and characterized by considerable uncertainty. As a consequence, both diversity options envision transferring the investment in upfront ecological analyses as part of planning to on-the-ground management, rigorous and scientifically based monitoring of resource conditions with reference to progress in achieving desired conditions, careful evaluation of monitoring results, and adjustment of management direction in an adaptive management context. Thus, inherent in each option is the fundamental premise that planning must be placed more directly into the framework of plan implementation through adaptive management if it is to contribute to progress toward achievement of desired conditions and to sustaining the health and productivity of the land and its resources.

The following questions help define and frame the issues that must be resolved in developing any workable approach to providing for biological diversity in the planning process. The agency encourages those who wish to comment on the diversity options in the proposed rule to consider these questions in formulating their comments:

(1) What elements of biological diversity (*e.g.*, ecosystems, communities, processes, species or species groups, focal species, etc.) should be considered and evaluated in the forest planning process? At what levels of ecological organization (landscape, ecosystem, species, gene, etc.) should these elements be evaluated?

(2) Over what geographic areas and timeframes should diversity be evaluated?

(3) What is an appropriate management standard against which achievement of the NFMA diversity requirement should be judged (*e.g.*, population viability of select taxa or range of biological diversity of native ecosystems in the surrounding landscape)? What is an appropriate baseline or reference state or condition for this standard?

(4) In reaching decisions regarding achievement of the NFMA diversity requirement, how should the planning process consider and evaluate differences in current conditions between NFS lands (the plan area) and the surrounding landscape?

(5) How does a plan provide for diversity of plant and animal communities and tree species within the context of the multiple use objectives of the plan?

(6) What is the capability of the Forest Service to implement Option 1, Option 2, or variations of these options in order to provide for biological diversity in a multiple use context, given limitations of available information, personnel and financial resources?

Table II at the end of this document compares the key features contained in the ecological sustainability section of the 2000 rule with the two options for ecological sustainability in the proposed rule.

Proposed section 219.14—The consideration of science in planning. This section of the proposed rule combines § 219.22 through § 219.25 of the 2000 rule. The proposed rule retains the emphasis on the use of science in planning from the 2000 rule. However, the proposed rule differs from the 2000 rule by focusing on the use of science, rather than on scientists, in the planning process.

Section 219.14 of the proposed rule requires the use of independent peer reviews, science advisory boards, or other appropriate means to evaluate the consistency and application of science used in the planning process. Procedures for these methods will be provided in the agency's Directive System. Section 219.14 provides for a science consistency review process to determine whether scientific information of appropriate content, rigor, and applicability has been considered, evaluated, and synthesized in the documents that underlie the land management plan in a manner that keeps it consistent with that science. In its basic form, a science consistency review is used to evaluate whether a plan has:

- Considered and used the best available scientific information;
- Evaluated and disclosed the uncertainties of that scientific information;
- Evaluated and disclosed the consequences, substantial risks, and uncertainties from applying that scientific information to the proposed management alternatives; and
- Interpreted and applied that information reasonably and accurately.

The goal of the science consistency review is to produce a plan that meets these review criteria and to thus allow the Responsible Official to make a finding that a plan is consistent with available scientific information. The criteria apply to all aspects of the planning process, including the Responsible Official's delineation of the appropriate time frame and geographic extent of the analyses to be conducted, the analyses themselves, and the monitoring plan set up to evaluate the effectiveness of the on-the-ground management to meet the desired conditions in a plan. This science consistency review process encompasses relevant standards of the Data Quality Act concerning quality, objectivity, utility, and integrity of information used in science-related decisionmaking (Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, Sec. 515)).

Both the 2000 rule and the proposed rule require that the Responsible Official ensure that science is considered, correctly interpreted, and applied in planning, and that incomplete or unavailable information, scientific uncertainty, and risk be evaluated and disclosed. When conducted independently, this evaluation and disclosure of uncertainty and risk provide a crosscheck to an appropriate interpretation and application of science and help to clarify the limitations of the information base, which informs plan decisions. The 2000 and proposed rules are substantively the same in their overall goals of achieving consistent use of scientific information. They differ in that the 2000 rule provides many requirements on how this goal was to be met; the proposed rule does not. The agency will place needed technical detail that provides "how-to" direction in its Directive System. For example, although the 2000 rule provides flexibility for when independent scientific peer reviews should occur, the rule also provides technical detail about how scientific peer reviews should be conducted. This level of detail is not necessary or appropriate for a rule, but the agency will need to provide guidance to its employees on how various scientific reviews may be conducted.

The 2000 rule at § 219.23 requires specific involvement by the Research and Development (R&D) mission area of the Forest Service in broad-scale assessments. As stated in the explanation of § 219.5, the proposed rule does not require that level of assessment, so it does not address who should be involved.

The 2000 rule at § 219.23(c) requires use of scientists to design and evaluate monitoring strategies and requires an independent, scientific peer review of plan monitoring on at least a biennial basis.

The agency often needs scientific expertise in monitoring; however, there are certain types of monitoring where the need for direct scientific expertise is quite limited. For example, monitoring may include surveys of road condition to determine if drainage structures are working properly, or it may involve continuation of use of long-standing inventories such as the Christmas bird count. Thus, monitoring does not always need scientific expertise applied to its design, evaluation, and review. The agency believes that the Responsible Official should be able to determine the appropriate level of involvement of scientists in designing and evaluating monitoring as well as in reviewing monitoring plans. The science review process will clarify if this involvement is at the appropriate level, given the issues involved.

The proposed rule retains the requirement that the Responsible Official document that the new plan, plan amendment, or revision was developed using the best available science in a manner that keeps the plan consistent with that science. In contrast to the 2000 rule, this proposed rule is explicit that the determination of best available science must be made in the context of the issues being considered in a plan development, amendment or revision. These proposed changes will ensure that the Responsible Official uses the best available science pertinent to the resource uses and conditions being addressed in a plan. Again, the science review process will provide an important cross-check on the Responsible Official's appropriate use of science.

There are terms related to science that are used in the 2000 rule and the proposed rule that require additional explanation and context. One term is "uncertainty" as used in the context of scientific uncertainty. If there are uncertainties associated with plan decisions that utilize scientific information, then those uncertainties must be described.

Another term requiring additional explanation is "risk" as used in the context of scientific risk. If there are known risks associated with plan decisions, then those risks must be described. Risk arises from uncertainty in science, from assumptions made in analysis, from occurrences such as catastrophic events, and from trade-offs made in development of the plan. Trade-offs occur when a Responsible Official decides to accept negative impacts to one resource in order to achieve benefits for another resource.

For example, a plan may have a desired condition for streams that includes components of shading, nutrient loading, reduction of sedimentation, and the recruitment of large organic debris to the stream. Science may show that a 100-foot buffer strip prohibiting harvest of trees is optimum to reduce sedimentation in streams. However, science may also show that the trees in that 100-foot buffer should be of a certain size to optimize shading, nutrient loading, and large organic debris to the stream. Allowing thinning within buffer strips may be desirable, depending upon specific stand characteristics, to achieve a stand structure that better meets the desired condition for streams. The Responsible Official may trade off the short term risk of higher sedimentation rates associated with thinning trees for achieving the desired outcomes of shading, nutrient loading, and recruitment of large organic debris in the long term. This risk should be evaluated and disclosed by the Responsible Official.

Substantial risk also occurs when the aggregate sources of risk result in the likelihood that the desired resource or output condition cannot be achieved. For example, in the situation described previously, a large catastrophic fire may cause additional sedimentation, resulting in an inability to achieve the desired condition. This aggregate risk of allowing thinning and potential impacts from catastrophic fire must be evaluated and disclosed.

Appropriate interpretation of science depends upon the applicability of scientific information to the relevant planning issue. For example, if one assumes that there is an issue regarding the growth of Douglas-fir at high elevations on a forest and there is a study on the growth of Douglas-fir at low elevation, that study may be available and relevant to the extent that it relates to the same species of tree, but it could not be correctly interpreted to say that the results of the low elevation study were indicative of high elevation growth. Appropriate interpretation also involves using all of the relevant information, not just selecting part of that information. When the results of two studies relevant to an issue suggest somewhat different outcomes, uncertainty associated with science arises and the risk associated with decisions based on that science may increase. In such cases, the uncertainty in that science needs to be evaluated and disclosed.

The reviews of the 2000 rule indicate that the Forest Service is not likely to have the resources necessary to involve scientists to the degree required by the 2000 rule. Also, there is not necessarily a need for rigorous scientific reviews when levels of anticipated actions are expected to be low with fewer environmental consequences within the control of the agency. Changing the focus from the role of scientists to the appropriate use of science makes the proposed rule more practical and realistic.

The 2000 rule at § 219.23 requires the establishment of science advisory boards and provides that the Responsible Official may use a science advisory board. Again, the agency believes that there is no need in the planning rule to require one specific method to ensure that the best available science is used appropriately. Some may claim that the agency is reducing its emphasis on the use of good science because of the reduction of the many specific detailed requirements on how best to obtain and use the best available science in the proposed rule. The

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agency strongly supports the use of science in planning, but believes that the detailed requirements of the 2000 rule added an unnecessary level of bureaucracy and cost to planning.

Proposed section 219.15—Special designations. This section of the proposed rule is very similar to the provisions of § 219.27 of the 2000 rule. In cases where the Congress has made special designations, the planning objective is to provide management direction according to Congressional intent. In other cases, Responsible Officials have the authority to make special designations through the planning process. This section of the proposed rule would also retain the requirement that inventoried roadless areas be evaluated and considered for recommendation as potential wilderness areas during the plan revision process. This section would also retain the provision of the 2000 rule to allow such roadless and wilderness evaluations and recommendations at other times by a plan amendment. The two rules mainly differ primarily in the examples for the different categories of specially designated areas.

Proposed section 219.16—Determination of lands available for timber harvest and suitable for timber production. This section of the proposed rule meets the statutory requirements of the NFMA and retains the intent of § 219.28 of the 2000 rule with one exception. For lands where timber may be harvested for timber production purposes, the 2000 rule at § 219.28(b) requires that not only must these lands be available, capable of being harvested without damage to other resources, and capable of regeneration, but that the analysis must show that the costs of timber production are justified by ecological, social, or economic benefits. This requirement goes far beyond the statutory language of NFMA, and a concern has developed within the agency about how this justification would be developed and documented. Therefore, the proposed rule does not retain this portion of the 2000 rule. Instead, the Responsible Official must consider physical, ecological, economic, social, and other pertinent factors when establishing timber production in a plan for any lands not identified in paragraph (a) of § 219.16.

This proposed section retains the same three categories as § 219.28 of the 2000 rule and retains the requirement that plans identify lands where timber may not be harvested, lands where timber may be harvested with an objective of timber production, and lands where timber may be harvested or cut for the purpose of meeting other multiple use resource management objectives. This section also provides some examples of these other multiple use objectives.

Proposed section 219.16 addresses only the suitability of lands for timber production. Suitability for other purposes is addressed at § 219.4(a)(4) of the proposed rule.

Proposed section 219.17—Limitation on timber harvest. This section of the proposed rule meets the statutory requirements of NFMA and retains the intent of § 219.29 of the 2000 rule with two important changes. The 2000 rule requires the calculation of long-term sustained yield to include all lands where timber may be harvested. Under the proposed rule, the calculation of long-term sustained yield would apply only to those lands where timber production would be a management objective. The intent of estimating long-term sustained yield of potential timber harvest is to ensure that lands where timber production is a management objective can continue to produce sustained levels of harvest in the future. Therefore, it is not reasonable or necessary to calculate sustained yield from lands that are not allocated to that purpose. It is also very difficult to accurately estimate harvest levels when timber is harvested for such purposes as wildlife openings, because these types of harvests are not normally planned on a scheduled basis. Also, in cases such as development of fuel breaks or meadow restoration, it is not desirable to reforest harvested lands, and in these cases, calculation of long-term sustained yield is not logical. In other words, it is not necessary to calculate yield if reforestation and later growth and harvest are not desired.

In addition, the 1982 rule established at § 219.27—Management direction, allowable sale quantity (ASQ) as the quantity of timber that may be sold from the area of suitable land covered by the forest plan for a period specified by the plan. Neither the 2000 rule, nor this proposed rule provides for allowable sale quantity, and in contrast, uses long-term sustained yield as the upper limit of timber that may be harvested during the planning period. This change was made in the 2000 rule and is continued in the proposed rule, primarily because the sustained yield requirement is adequate, and dropping the requirement that planning establish an ASQ reduces the risk of misperception that ASQ is a target to be achieved, rather than a limit to harvest.

In the 2000 rule at § 219.29(a), if a unit has less than 200,000 acres of forested lands, two or more forests may be combined for the purpose of estimating the amount of timber that could be sold annually on a sustained-yield basis. This provision is covered in § 219.17(a) of this proposed rule. It is similar to the provision in the 2000 rule, except that the 200,000-acre unit size is not cited because it is already included in NFMA. The proposed rule also clarifies that the limitation on timber harvest in § 219.17(b) is to be applied on a decadal basis.

Proposed section 219.18—Plan documentation, maintenance, and availability. This section of the proposed rule would retain the requirements of § 219.31 of the 2000 rule for availability of planning records and for establishing a provision for administrative corrections to planning documents that would not be decisions under NEPA. Paragraph (a) of this proposed section also would supercede § 219.30 of the 2000 rule. Like that section, proposed paragraph (a) would provide a description of a plan, but would remove the detailed provisions of § 219.30(a) through (e) of the 2000 rule which requires a summary of the plan, a display of public uses, plan decisions, and a display of actions and outcomes, including projected implementation schedules. The rationale for the simplification in the proposed rule is that much of the information required in the 2000 rule is unnecessarily prescriptive, is already located in the planning record which is readily available, or is already provided for by other means. The 2000 rule requires a summary of the plan and contains considerable detail about what this summary should contain. The agency believes that it is not necessary to provide the Responsible Official detailed instructions about how to summarize a plan. For example, the 2000 rule requires, as part of the summary, a display of public uses. The proposed planning rule at § 219.4 already addresses suitability of certain lands for certain uses. In another example, the 2000 rule requires a display of actions and outcomes. This requirement is already outlined in Forest Service Handbook 1905.15 which requires making available a quarterly schedule of proposed actions that may undergo environmental analysis and documentation, so there is no need to have a separate process to display anticipated projects.

Proposed section 219.19—Objections to new plans, plan amendments or plan revisions. This section of the proposed rule differs from other sections of this rule in that it provides essential detail for the procedures necessary to initiate and carry out the objection process. The

Committee of Scientists, in their 1999 report, recommended that the Forest Service seek to harmonize its administrative appeal process with those of other Federal agencies. Accordingly, the 2000 rule adopted an objection process that provides for a pre-decisional objection opportunity instead of a post decision administrative appeal. The proposed rule modifies the objection process and models it more closely on the protest process used by the Bureau of Land Management (BLM) (found at 43 CFR part 1600). The proposed rule adopts the BLM regulatory approach with some necessary modifications to recognize the different organizational structure of the Forest Service.

The proposed rule differs from the 2000 rule in the following specific ways. The proposed rule does not require publication of objections received. Unlike the 2000 rule, the proposed rule includes specific requirements that the content of the public notice announcing a new plan, amendment, or revision be made for public review and subject to pre-decisional objection process. The 2000 rule does not limit who can file an objection. The proposed rule does not allow other Federal entities to file an objection, because there are other avenues for Federal agencies to work together to resolve concerns. This exclusion of Federal agencies is a long-standing procedure of Forest Service administrative appeal provisions at 36 CFR parts 215 and 251, Subpart C. The Forest Service is required to involve other Federal agencies, at Section 219.12. The proposed objection process, like that in the 2000 rule, is intended primarily other governments, such as federally recognized Indian Tribes, States, and counties, and for the public. Neither the appeal process in the 1982 rule nor the proposed objection process is suitable to resolve concerns between sister agencies in the executive branch. The Forest Service anticipates that other agencies will be able to resolve most planning concerns informally. Where it is anticipated that there may be concerns that are not easily resolved by planners and other agency personnel, various techniques such as establishments of Memorandums of Understanding or local working agreements may be used. Some agencies also have regulatory authority; for example, EPA has review authority pursuant to section 309 of the Clean Air Act. These techniques and authorities are successfully being used now and will continue to be used in the future.

The two rules are similar in what must be in an objection, but the proposed rule, unlike the 2000 rule, specifically requires that an objector provide an explanation of why the objector believes that the environmental disclosure documents and proposed final documents are inconsistent with law, regulation, Executive order, or policy and any recommendations for change. The proposed rule drops the requirement of the 2000 rule that objectors describe their participation in the planning process and provide relevant documents submitted during the process. The 2000 rule allows objectors to request meetings with a Reviewing Officer. The proposed rule does not address meetings, because although nothing prevents an objector from requesting meetings, the agency does not want to set up expectations that meetings should be requested, or that those requests would be granted in every case. The agency has learned that meetings are helpful in many cases, but not in all, and the Forest Service would like to provide flexibility to the Reviewing Officer to work through the review process in an effective manner. The proposed rule also drops the provisions for inclusion of "interested persons" in the meetings between the Forest Service and the objectors. This change occurred in the proposed rule because meetings are not specifically addressed and also so that the objection process would more closely mirror the BLM process, which does not provide for involvement of interested persons.

Proposed section 219.20—Appeals of plan amendments in site-specific project decisions. This proposed section makes clear that the administrative review process established in 36 CFR 215.7(a) applies to site-specific project decisions that include non-significant plan amendments, rather than subjecting such decisions to the objection process for new plans and revisions.

Proposed section 219.21—Notice of plan decisions and effective dates. At paragraph (a), this section of the proposed rule provides direction on where public notification of decisions for new plans, amendments, and revisions is to occur. Proposed paragraph (b) provides that new plans, significant amendments, and plan revisions are effective 30 days after notice of the plan decisions has been published. This proposed paragraph also provides that decisions for nonsignificant amendments are effective immediately. This new section of the proposed rule fills a void in the 2000 rule.

Proposed section 219.22—Transition. This section of the proposed rule is a modification of the transitional procedures of § 219.35 of the 2000 rule. The proposed rule does not explicitly require use of science for implementing and amending existing plans during the transition period, as provided in the 2000 rule at § 219.35(a), because use of science is adequately addressed through an interdisciplinary team approach without specific procedural requirements. The proposed rule does not address lands not suited for timber production in the same manner as the 2000 rule at § 219.35(c). The agency believes that the 1982 rule requirement adequately responded to NFMA and has incorporated similar language from the 1982 rule into the proposed rule.

The proposed rule would remove the provisions for site-specific decisions at § 219.35(d) of the 2000 rule because these decisions are explicitly excluded from the proposed rule. The provisions in the 2000 rule for removal of regional guides (§ 219.35(e)) and establishment of a revision schedule (§ 219.35(g)) are not included in this proposal because the regional guides have already been removed.

The transition requirements for monitoring reports at § 219.35(f) of the 2000 rule are dropped from the proposed rule, because it is acceptable for the monitoring done under the 1982 rule to continue until the plans are completed under the proposed rule. The proposed transition includes the option to continue any amendments or revisions that were initiated under the 1982 rule or to adjust the process to follow this proposed regulation or parts thereof. The Department issued an interim final rule on May 20, 2002, to extend until a new revised planning rule is adopted, the date by which all plan amendments or revisions must be in compliance with the 2000 rule (67 FR 35431).

Proposed section 219.23—Definitions. This section sets out the special terms used in this proposed rule and their definitions. Some definitions are the same as those in the 2000 rule. These are: "Diversity of plant and animal communities," "ecological conditions," "major vegetation types," "native species," "species viability," and "successional stages."

Some terms found in § 219.36 of the 2000 rule are not included because they are not used in the proposed rule or their meanings are self-evident. These are: "Candidate species," "conservation agreement," "current climatic period," "desired condition," "ecological sustainability," "ecosystem composition," "ecosystem processes," "focal species," "inherently rare species," "productive capacity of ecological systems," "reference landscapes," "undeveloped areas," and "unroaded areas."

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The terms included in this proposed rule that were not used in the 2000 rule are: "Biological diversity," "culmination of mean annual increment," "cultural/heritage resources," "disturbance regime," "ecosystem diversity," "energy resources," "environmental disclosure document," "federally recognized Indian Tribe," "forest land," "health," "high likelihood of viability," "mean annual increment," "newspaper(s) of record," "plan," "planning area," "productivity," "science consistency," "species diversity," "species persistence," "timber harvest," "visitor opportunities," and "wilderness."

The following explains changes to definitions that are used in this proposed rule and in the 2000 rule.

1. The definition of "adaptive management" is slightly changed for clarity. Also, the 2000 rule discusses the role of adaptive management in sustainability, while the proposed rule discusses the role of adaptive management in terms of efficiency and responsiveness of management.

2. The definition of "assessment or analysis area" is changed in the proposed rule by dropping analysis area and defining assessment areas. Assessment areas are larger than planning areas and typically involve multiple ownerships.

3. The definition of "desired non-native species" is changed in the proposed rule to improve clarity and to make sure the definition is consistent with each of the diversity options and also with the new definition of species.

4. The definition of "ecosystem structure" is changed in the proposed rule to refer to the arrangements and relationships among ecosystem components. This broadened the definition to encompass all of the aspects of structure that are of importance in both of the proposed rule's options for ecological sustainability.

5. The definition in the 2000 rule for "Forest Service NEPA procedures" is shorter and is now identified as "NEPA procedures" in the proposed rule, but contains no substantive changes.

6. The definition for "inventoried roadless areas" is substantially changed. The 2000 rule includes specific criteria for consideration of roadless areas identified as those in the November 2000 Roadless Area Conservation Final Environmental Impact Statement, Volume 2. The proposed rule does address criteria for roadless area consideration and does not limit areas to be considered from the November 2000 Roadless Area Conservation maps. The proposed rule allows information from a variety of sources.

7. The definition of "native species" is changed in the proposed rule to improve clarity and to make sure the definition is consistent with each of the diversity options and also with the new definition of species.

8. The definition for "plan area" is not substantially changed, but is broadened in the proposed rule to make clear that a plan area may have more than one Responsible Official.

9. The definition for "range of natural variability" is retained except that the term "current climatic period" is dropped because of considerable disagreement and confusion regarding the identification and use of this time period.

10. The definition of "Responsible Official" is changed in the proposed rule to conform it with changes made to other sections of the rule and to reflect that the proposed rule addresses only forest planning and not project level decisions.

11. The definition of "species" is changed in the proposed rule to make clear the distinction between the two diversity options in terms of which species may be considered in forest planning.

12. The definition for "species-at-risk" in the proposed rule removes references to species that may, but are not required to, be on the list and removes references to "focal species," a term not used in the proposed rule.

13. The definition of "timber production" is changed in the proposed rule by dropping the reasons for harvest.

Conclusion

This proposed planning rule has been prepared by the Forest Service at the direction of the Office of the Secretary of Agriculture to address problems identified through a Departmental review of the 2000 planning rule. That review focused on the agency's ability to implement the 2000 rule. The concerns identified in the review centered on confusing text contained the 2000 rule as well as on the extensive resources, primarily funding and skilled personnel, that would be required to adequately implement the various new planning concepts and requirements of the 2000 rule.

The intended effects of the proposed rule are to simplify, clarify, and otherwise improve the planning process and to enable the Forest Service to more efficiently implement an improved planning process while retaining the key concepts of the 2000 rule for sustainability, collaboration, monitoring and evaluation, and the use of science. The proposed rule is substantially shorter than the 2000 rule as it removes highly procedural and technical instructions more appropriate for the agency's Directive System. Grounded in both law and practical experience, the proposed rule affirms forest health and sustainability as the overall goal for management of National Forest System lands.

Written comments are requested and will be considered in adoption of a final rule. Reviewers should note that greater weight will be given to original, substantive comments than to form letters, check-off lists, pre-printed post cards, petitions, or similar duplicative materials.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System planning and decisionmaking, this proposed rule has been designated as significant and, therefore is subject to Office of Management and Budget review under Executive Order 12866.

Two studies investigating the costs of land and resource management planning are associated with the proposed rule: (1) A cost-benefit analysis addressing the comparative costs and benefits of the 1982, 2000, and proposed rules, and (2) a comprehensive assessment of the estimated costs of the 2000 and proposed rules.

For the cost-benefit analysis, the cost estimates were developed for planning activities under the 1982 rule with the assistance of Headquarters, Regional, and Forest level planning specialists, using cost data for plan revisions recently completed based on planning as currently practiced under the 1982 rule. These costs were included in a report to the House and Senate Committees on Appropriations entitled, "Forest Service Land and Resource Management Planning: The Status of

Activities," dated January 31, 2002. The costs contained in this report, however, only included planning costs at the forest or grassland level. They did not include the costs incurred at other organizational levels. The cost-benefit analysis relied on results from the costing study to approximate the likely costs of regional office, contracts, and science support to forests or grasslands under the 1982 regulation. An empirical estimate of the per plan cost of resolving appeals under the 1982 regulation was also made.

The results of the 2002 NFMA Costing study were used to estimate the costs associated with planning activities under the 2000 regulation and this proposed 2002 rule. The costing study used a business modeling process and is the most comprehensive study on Forest Service planning costs ever conducted. It identifies and directly compares major cost centers for both the 2000 regulation and this proposed 2002 rule and includes field validation of the estimates by agency planners and interdisciplinary specialists who participate in planning.

The cost-benefit analysis prepared on this proposal focuses on key activities in land and resource management planning for which costs can be estimated under the 1982 rule, the existing 2000 rule, and the proposed rule. The key activities include regional guides, collaboration, science support, effects analysis for the 2000 and proposed rule, and "revise plan" for the 1982 rule, evaluation of sustainability and diversity, and the resolution of disputes over plan decisions. The cost-benefit analysis compares the costs and benefits for these activities with practices under the 1982 planning rule. This proposed rule would reduce costs by eliminating regional guides, shortening the length of the planning process, and providing the Responsible Official with more discretion to decide how to conduct the planning process.

Based on costs that can be quantified, this proposed rule is estimated to save an average $1.1 million annually compared to the expected costs under the 1982 rule. Cost savings under the proposed rule are estimated to be about $27.7 million per year compared to the 2000 rule. The discounted value of the cost savings over the 15-year planning horizon is estimated to be $8.6 million for the proposed rule when compared to the 1982 regulation and approximately $240 million when compared to the 2000 regulation.

As noted in the cost-benefit analysis for the proposed rule, the NFMA costing study assumed traditional application of plan analysis. It also did not take into consideration possible savings if a plan revision analysis was categorically excluded or documented in an Environmental Assessment, rather than an Environmental Impact Statement. Both these areas of potential savings could be substantial. In addition to the analysis of the costs and benefits of this proposed rule, this rule has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this rule. The rule imposes no requirements on either small or large entities. Rather, the rule sets out the process the Forest Service will follow in planning for the management of the National Forest System. The rule should provide opportunities for small businesses to become involved in national forest, grassland, and prairie plan decisions. Moreover, by streamlining the planning process, small businesses should see more timely decisions that affect outputs of products and services. The recognition of the Multiple-Use Sustained-Yield Act and how it affects the social and economic components of sustainability should provide for better balancing of conflicting impacts and issues.

Environmental Impacts

An environmental assessment was prepared for the 2000 rule. This assessment was not required by law, regulation, or agency policy; however, the agency elected to prepare the extra documentation at that time to ensure that no procedural defects might occur. In the case of this proposed rule, the agency proposes to categorically exclude this action, because it is clearly within an established category, there are no extraordinary circumstances related to the action, and this approach will further the agency's efforts to streamline process. The agency invites public comments on environmental effects of the proposed rule.

This proposed rule would establish the administrative procedures and requirements to guide developing, amending, and revising National Forest System land and resource management plans. As such, the proposed rule has no direct and immediate effects regarding the occupancy and actual use of National Forest System land. Rather, the environmental effects of this proposed rule will not be known until specific plans are created, amended, or revised under the rule. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." The action of "establishing procedures for amending or revising Forest Land and Resource Management Plans' is specifically listed as one of the examples of this category. There are no extraordinary circumstances related to this action. Although an environmental assessment will not be prepared, the agency has prepared a cost-benefit analysis and a Civil Rights Impact Analysis (CRIA), because as discussed previously in this section, the Office of Management and Budget has determined that this rule is otherwise significant. Both the cost-benefit analysis and the CRIA may be found on the World Wide Web/Internet at the address listed earlier in this document.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this proposed rule would guide the development, amendment, and revision of National Forest System land and resource management plans. These plans are programmatic documents that set the standards and other parameters for making future project-level resource management decisions. As such, these plans will address access requirements associated with energy exploration and development within the framework of multiple use, sustained-yield management of the surface resources of the NFS lands. These plans may designate major rights-of-way corridors for utility transmission lines, pipelines, and water canals. The effects of these plans on energy supply, distribution, or use are, of necessity, considered on a case-by-case basis as plan amendments or revisions are proposed and adopted. Consistent with the Executive order, direction to incorporate consideration of energy supply, distribution, and use in the planning process will be included in the agency's administrative directives for implementing the proposed rule, notice of which will be given at the time of adoption of a final rule.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

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et seq.), the information collection or reporting requirements included in § 219.19 of the proposed rule for the objection process were previously approved by the Office of Management and Budget and assigned control number 0596–0158, expiring on October 31, 2003, under the 2000 rule.

This proposed rule retains the objection process established in the 2000 rule but simplifies it. The proposed rule removes the requirements for interested parties, publication of objections, and formal requests for meetings (36 CFR 219.32). These changes would result in a minor reduction in the burden hours from the collection of information that would be insignificant to the total 12,100 annual hours requested by the agency.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 12875, Government Partnerships, and Executive Order 13132, Federalism. The agency has made a preliminary assessment that the rule conforms with the Federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

In addition, the agency has reviewed the consultation requirements under Executive Order 13132, which calls for enhanced consultation with State and local governmental officials and emphasizes increased sensitivity to their concerns. Section 219.8 of this proposed rule shows sensitivity to federalism concerns by requiring the Responsible Official to provide opportunities for involvement of State and local governments in the planning process. In the spirit of these requirements, the agency has consulted with the Western Governors' Association and the National Association of Counties to obtain their views on a preliminary draft of this proposed rule. The Western Governors' Association supported the general approach to create a rule that works and placed importance on the quality of collaboration for implementation. Agency representatives also contacted the International City and County Managers Association, National Conference of State Legislators, The Council of State Governments, Natural Resources Committee of the National Governors Association, U.S. Conference of Mayors, and the National League of Cities to share information about the proposed planning rule prior to the publication of this proposed rule. Based on comments received on this proposed rule in response to this notice, the agency will determine if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Consultation With Tribal Governments

Pursuant to Executive Order 13084, Consultation and Coordination with Indian Tribal governments, the agency has assessed the impact of this action on Indian Tribal governments and has determined that the proposed rule does not significantly or uniquely affect communities of Indian Tribal governments. The proposed rule deals with the administrative procedures to guide the development, amendment, and revision of National Forest System land and resource management plans and, as such, has no direct effect regarding the occupancy and actual use of National Forest System land. At § 219.8, the proposed rule requires consultation with federally recognized Tribes when planning.

The agency has also determined that this action does not impose substantial direct compliance cost on Indian Tribal governments. This proposed rule does not mandate Tribal participation in National Forest System planning. Rather, the rules impose an obligation on Forest Service officials to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. This proposed rule only modifies the administrative process for amending and revising land and resource management plans for National Forests, Grasslands, and Prairies.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict were to be identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department would not require the parties to use administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, it is proposed to revise Part 219 of Title 36 of the Code of Federal Regulations to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Planning for Land and Resource Management Plans

Sec.
219.1 Purpose and applicability.
219.2 Nature and scope of a land and resource management plan.
219.3 Levels of planning and planning authority.
219.4 Decisions embodied in plans.
219.5 Indicators of need to amend or revise a plan.
219.6 Compliance with National Environmental Policy Act.
219.7 Amending a plan.
219.8 Revising a plan.
219.9 Developing a new plan.
219.10 Application of plan direction.
219.11 Monitoring and evaluation.
219.12 Collaboration, cooperation, and consultation.
219.13 Sustainability.
219.14 The consideration of science in planning.
219.15 Special designations.
219.16 Determination of lands available for timber harvest and suitable for timber production.
219.17 Limitation on timber harvest.
219.18 Plan documentation, maintenance, and availability.
219.19 Objections to amendments or revisions of plans.
219.20 Appeals of plan amendments in site-specific project decisions.
219.21 Notice of plan decisions and effective dates.
219.22 Transition.
219.23 Definitions.

Subpart B—[Reserved]

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

§ 219.1 Purpose and applicability.

(a) The rules of this subpart set forth a process for establishing, amending, and revising land and resource management plans for the National Forest System as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act (16 U.S.C. 1600 *et seq.*). This subpart is based on the principle that planning occurs over multiple time frames and various geographic areas and is a continuous process that reveals when and where plan decisions need to be adjusted. These rules also identify the nature and scope of decisions made in a land and resource management plan and define the required elements of a plan. The provisions of this regulation are applicable to all units of the National Forest System as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960, the overall goal of managing the National Forest System is to sustain in perpetuity the productivity of the land and the multiple use of its renewable resources. Management of renewable resources is to be in the combination that will best meet the needs of the American people. Achieving sustainability is essential to providing multiple uses over time. Thus, National Forest System management focuses on maintaining or restoring the health of the land in order to provide a sustainable flow of uses, values, benefits, products, services, and visitor opportunities.

§ 219.2 Nature and scope of a land and resource management plan.

(a) *Fundamental purpose of a plan.* A land and resource management plan (also referred to as a plan) establishes the desired conditions to be achieved through the management of the lands and various renewable resources of the National Forest System. A plan guides the Forest Service in fulfilling its responsibilities for stewardship of the National Forest System to best meet the needs of the American people.

(b) *Requirements.* The Responsible Official is responsible for ensuring that the planning process and the plan meet the following requirements:

(1) Planning must address issues at the appropriate time frames and geographic scales using the best available science and other knowledge and information. Analysis shall be proportional to the decisions to be made in a plan and shall focus broadly on the environmental baseline and trends in order to provide information to help develop a plan.

(2) Planning must be conducted using an interdisciplinary, collaborative approach.

(3) Consultation with States and local governments, Federal agencies, and federally recognized Indian Tribes must occur early and often in the development of an initial plan or subsequent amendment or revision.

(4) The planning process must provide opportunities for the interested public, both organizations and individuals, to participate in planning to guide the stewardship of their national forests, grasslands, and prairies, and other units of the National Forest System.

(5) A plan must provide for uses, benefits, products, services, and visitor opportunities that are appropriate to and consistent with the multiple use objectives outlined in the plan.

(6) A plan must address the social, economic, and ecological components of sustainability for the land and resources within the plan area, consistent with the Multiple-Use Sustained-Yield Act of 1960 and with the NFMA diversity requirement that plans provide for the diversity of plant and animal communities and tree species consistent with the multiple-use objectives of the plan.

(7) A plan must identify the monitoring and evaluation necessary to assess the achievement of desired conditions and to indicate whether direction in the plan should be modified, as necessary, to address new issues, new information, and changed conditions.

(8) The management direction in a plan should reflect the limits and likely variability of agency budgets.

(c) *Integration of authorities.* Plans integrate the requirements of statutes, Executive orders, regulations, and agency policy that apply to the lands and resources of the National Forest System.

(1) Statutory authorities related to planning and management of the National Forest System include the Organic Administration Act of 1897, as amended (16 U.S.C. 473 *et seq.*); the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*); Wilderness Act (16 U.S.C. 1131 *et seq.*); Clean Air Act (42 U.S.C. 7401 *et seq.*); Clean Water Act of 1948, as amended by the Federal Water Pollution Control Act Amendments of 1977 and the Water Quality Act of 1987 and other laws (33 U.S.C. 1251 *et seq.* 1323 *et seq.*); and other relevant laws.

(2) Agency-wide management policy and procedure relevant to planning and resource management are issued through the Forest Service Directive System (36 CFR 200.4).

(d) *Force and effect of plans.* A land and resource management plan prepared under this subpart is strategic and programmatic in nature. A plan provides guidance and direction applicable to future site-specific projects and activities. Plans also may restrict some activities or establish other requirements applicable to particular areas. The direction in a plan does not normally create, authorize, or execute any ground-disturbing activity. A plan, in and of itself, does not grant, withhold, or modify any contract, permit, or other legal instrument, does not subject anyone to civil or criminal liability, and creates no legal rights.

§ 219.3 Levels of planning and planning authority.

(a) The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service Strategic Plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306; 31 U.S.C. 1115–1119; 31 U.S.C. 9703–9704) which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*). The Strategic Plan establishes goals, outcomes, performance measures, and strategies that apply to management of the National Forest System as well as to the other Forest Service mission areas.

(b) The National Forest, Grassland, or Prairie Supervisor is the Responsible Official for development and adoption of a new land and resource management plan for lands under the responsibility of the Supervisor, as well as for amendment or revision of a plan, unless a Regional Forester, the Chief, or the Secretary chooses to act as the Responsible Official for a specific plan, amendment, or revision.

(c) A Regional Forester, the Chief, or the Secretary may amend or revise multiple plans, where social, economic, or ecological issues or opportunities occur on more than one national forest,

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grassland, prairie, or other comparable unit and a single, comprehensive planning effort is determined to be the most efficient and effective approach to addressing issues or opportunities. Where National Forest System lands are adjacent, two or more Responsible Officials may undertake joint planning that concludes with each official signing the decision document(s).

(d) Management direction in plans for areas designated as experimental forests must be consistent with the research activity being conducted on these areas and concurred with by the associated Station Director.

§ 219.4 Decisions embodied in plans.

(a) A plan constitutes the programmatic management direction for all or part of a plan area (§ 219.23) and embodies the following decisions:

(1) *Desired conditions.* A plan must describe the desired conditions toward which management of the lands and resources of the plan area is to be directed. Identification of desired conditions is a primary focus of a plan.

(2) *Objectives.* A plan must establish objectives intended to contribute to the achievement of desired conditions. Objectives, which are concise statements of measurable, time-specific outcomes, are pursued through the implementation of programs, projects, and other on-the-ground activities within the plan area.

(3) *Standards.* A plan must establish standards that state the permissions or limitations applicable to land uses and management actions within the plan area. Standards are measurable requirements that are explicitly identified in a plan as "standards." Standards are established to achieve the desired conditions and objectives of a plan and to comply with applicable laws, regulations, Executive orders, and agency directives. In establishment of standards, the Responsible Official must identify, consider, and address special conditions or situations involving hazards to the various resources. Standards generally should be adaptable and assess performance measures. A plan shall include but not be limited to the following standards:

(i) Limitations on even-aged timber harvest methods including provisions to require harvest in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources and the regeneration of the timber resource, including requirements that even-aged harvest may occur only upon a finding that it is appropriate and that clearcutting may occur only upon a finding that it is the optimum method to meet the objectives and requirements of the plan;

(ii) Maximum size openings created by timber harvest according to geographic areas, forest types, or other suitable classifications for areas to be cut in one regeneration harvest operation. This limit may be less than, but will not exceed, 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types. These size opening limits shall include provisions to exceed the established limits after appropriate public notice and review by the officer one level above the Responsible Official provided that such limits shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm;

(iii) Requirements for achieving aesthetic objectives, including requirements that cut blocks, patches, or strips that are shaped and blended to the extent practicable with the natural terrain;

(iv) Requirements for maintaining or restoring ecological conditions that support desired characteristics of ecosystem and species diversity in order to, within the multiple use objectives of the plan, provide for the diversity of plant and animal communities based on the suitability and capability of the plan area and, where appropriate and to the degree practicable, provide for steps to preserve the diversity of tree species similar to that existing in the plan area;

(v) Requirements for maintaining or restoring soil and water resources, including protection for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, when management activities are likely to seriously and adversely affect water conditions on fish habitat;

(vi) Requirements that timber harvest projects be considered through interdisciplinary review, assessing the potential environmental, biological, aesthetic, engineering, and economic impacts on the sale area, as well as the consistency of the sale with the multiple use of the general area, and that the harvesting system used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber; and

(vii) Requirements for assuring that even-aged stands of trees scheduled for harvest during the planning period have generally reached culmination of mean annual increment of growth. This requirement applies only to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is a management objective.

(A) The culmination of mean annual increment of growth requirement does not apply to cutting for experimental or research purposes; to non-regeneration harvests, such as thinning or other stand improvement measures; to management of uneven-aged stands or to stands under uneven-aged silvicultural systems; and to salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack.

(B) A plan must identify categories of activities that are exceptions to the culmination of mean annual increment if necessary to meet resource objectives, such as wildlife habitat enhancement, visual enhancement, or riparian area improvement. Exceptions to the culmination of mean annual increment requirement and the reasons for these exceptions must be specifically disclosed during the public participation process for a plan.

(4) *Identification of suitable and unsuitable land uses.* National Forest System lands are generally suitable for a variety of uses such as outdoor recreation, livestock grazing, timber harvest (§ 219.16), energy resource development, mining activities, watershed restoration, cultural and heritage interpretation, and other uses. Rather than determine the suitability of all lands for all uses, a plan should assume that all lands are potentially suitable for a variety of uses except when specific areas are identified and determined not to be suited for one or more uses. A plan must identify National Forest System lands as not suited for a certain use under any of the following circumstances:

(i) If law, regulation, or Executive order prohibits that use;

(ii) If agency resource management directives prohibit the use;

(iii) If the use would result in substantial and permanent impairment of the productivity of the land or renewable resources; or

(iv) If the use is incompatible with the desired conditions established for all or part of the plan area.

(5) *Special designations and other management areas.* Consistent with § 219.15 of this subpart, a plan may designate specific areas for special management or provide direction for managing previously established special areas such as wilderness, national trails, national monuments, and national recreation areas. Additionally, a plan may establish and provide direction for other types of management areas.

(6) *Monitoring and evaluation requirements.* Each plan must establish monitoring and evaluation requirements, including the establishment of performance measures, in accordance with § 219.11. The primary focus of monitoring is to measure the maintenance of, or progress toward, desired conditions through establishment and assessment of performance measures. The information and conclusions that emerge from monitoring and evaluation provide an important basis for determining whether there is a need to change a plan. Essential components of the monitoring and evaluation process are data collection, analysis, data storage, interpretation of the analyses, and reporting of the results.

(b) Assessments, surveys, analyses, monitoring results, and other studies are not plan decisions nor do they constitute agency proposed or final actions.

§ 219.5 Indicators of need to amend or revise a plan.

The Responsible Official may propose to amend or revise a plan based on the consideration of issues or opportunities.

(a) *Origination of issues or opportunities.* Issues or opportunities may originate from a variety of sources. These may include inventories, user surveys, assessments, analyses, monitoring and evaluation results, and collaborative activities and discussions with those interested in National Forest System management, as well as proposals made by individuals, organizations, Tribes, or government entities. Disturbance events such as floods, wind, fire, and insect infestation may create conditions that require modification of plan direction. New regulations or laws also may necessitate amendment or revision of a plan. Each Responsible Official must obtain appropriate inventory data on the various renewable resources and soil and water, including pertinent maps, graphic material, and explanatory aids.

(b) *Consideration of issues and opportunities.* (1) When an issue or opportunity arises, the Responsible Official has the discretion to determine whether and to what extent the matter is appropriate and timely for consideration in a proposed amendment or revision. Factors that the Responsible Official may weigh to determine whether consideration of an issue or opportunity is appropriate and timely include, but are not limited to, the following:

(i) The scientific basis and merit of available information and analyses, including the results of monitoring and evaluation;

(ii) The scope, complexity, intensity, and geographic scale of the issue or opportunity;

(iii) Statutory requirements or valid existing rights; and

(iv) Organizational and available resources, including current and likely Forest Service budgets.

(2) If the Responsible Official determines that an issue or opportunity should be addressed in an amendment or revision, the Responsible Official should review the best available science and other relevant knowledge and information as part of the planning process. Whenever possible, the Responsible Official should use existing information to address issues or opportunities. However, new information or a supplemental or new inventory, assessment, or analysis may be developed as appropriate to the scope, timeframe, and geographic extent of an issue or opportunity, provided that additional information can be obtained at a reasonable cost and in a timely manner. A decision whether or not to consider an issue or opportunity is not subject to objection under this subpart.

§ 219.6 Compliance with National Environmental Policy Act.

(a) The Responsible Official must comply with NEPA procedures (§ 219.23) and incorporate them as necessary and appropriate throughout the planning process. The Responsible Official must determine how NEPA applies in the development of a new plan, plan amendment, or plan revision. The Responsible Official shall ensure that the level of NEPA analysis for planning is proportional to the decisions being made.

(b) If the Responsible Official determines that a new plan, plan amendment, or plan revision, or a component thereof, would be an action significantly affecting the quality of the human environment, or authorizes an action that commits funding or resources that could have a significant effect on the quality of the human environment, then an environmental impact statement would be required. A new plan, plan amendment, or plan revision may be categorically excluded from documentation in an Environmental Assessment or Environmental Impact Statement as provided in agency NEPA procedures.

§ 219.7 Amending a plan.

(a) A plan may be amended to add, modify, or rescind one or more of the plan decisions described in § 219.4. As provided for in § 219.18, administrative corrections and additions are not amendments.

(b) An amendment arises from consideration of issues or opportunities and a determination of a need to change a plan as described in § 219.5.

(c) During the amendment process, the Responsible Official must provide opportunities for consultation and collaboration as required by § 219.12 of this subpart.

(d) A plan amendment for which an EIS is prepared is a significant amendment. The Responsible Official must publish a Notice of Intent to prepare an EIS in the **Federal Register** and provide a 90-day comment period on a draft proposed significant amendment and accompanying Draft EIS.

(e) The Responsible Official must give prior notice of the opportunity to object to any proposed amendment and any associated final environmental disclosure documents that are subject to the objection process established at § 219.19 of this subpart.

(f) An interim amendment may be used to establish plan direction of limited duration as follows:

(1) Only a Regional Forester or a higher level official may be the Responsible Official for an interim amendment;

(2) An interim amendment must specify the duration of the amendment, which is not to exceed four years. An amendment may be renewed in accordance with procedures in § 219.7(f)(3);

(3) The Responsible Official shall notify the public in newspaper(s) of record, and allow public comment, before an interim amendment is renewed beyond the four year period; and

(4) An interim amendment is not subject to the objection process of § 219.19.

§ 219.8 Revising a plan.

(a) *Initiating revision.* Unless otherwise provided by law, a plan must be revised at least every 15 years, or a plan must be revised sooner if a Responsible Official determines that conditions within the plan area have significantly changed.

(1) To initiate the plan revision process, the Responsible Official must prepare the following:

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(i) A description of the current management situation for the plan area and an analysis of existing plan direction;

(ii) A summary of issues or opportunities that the Responsible Official determines to be appropriate and timely for consideration (§ 219.5); and

(iii) A summary of any current and new information relevant to the issues or opportunities determined appropriate for consideration.

(2) Using the description prepared under paragraph (a)(1)(i) of this section and the summaries prepared under paragraphs (a)(1)(ii) and (iii) of this section, the Responsible Official must consult with Federally recognized Indian Tribes, State and local governments, and other Federal agencies in conformance with § 219.12 of this subpart.

(b) *Public notice to revise a plan.* After completion of the requirements of paragraph (a) of this section, the Responsible Official must give notice of the initiation of a plan revision. If an EIS is to be prepared, then a Notice of Intent to prepare an EIS must be published in the **Federal Register**. If an EIS is not to be prepared, a notice of initiation of the revision must be published in the newspaper(s) of record. The notice must inform the public of the availability of the documentation listed in paragraph (a) of this section; include a summary of the identified issues and opportunities; invite the public to comment on these issues and opportunities and to identify any other issues and opportunities that they feel should be addressed during revision; include an estimated schedule for the revision process; and specify the time available and process for the public to submit comments.

(c) *Notice of availability of draft proposed revision.* The Responsible Official must provide a 90-day comment period on a draft proposed revised plan and any accompanying environmental disclosure documents. A notice of the availability of the proposed draft revision must be provided as follows:

(1) For any revision for which the Chief or the Secretary is the Responsible Official or for which an environmental impact statement is prepared, notice of the proposed draft revision and availability of the DEIS must be published in the **Federal Register**.

(2) For all other revisions, notice of the availability of the proposed draft revision, specifics regarding the time available, and process for comments must be published in newspaper(s) of record (§ 219.23).

(d) *Notice of objection process.* Before the Responsible Official approves a revised plan, the Responsible Official must give notice that the proposed final revised plan and any final environmental disclosure documents are subject to the objection process at § 219.19 of this subpart.

§ 219.9 Developing a new plan.

(a) If Congress establishes a new National Forest, Grassland, Prairie, or other comparable unit of the National Forest System, the Regional Forester must determine if the unit requires a separate plan or if an existing plan can be amended or revised to apply to the lands within the new unit.

(b) If the Regional Forester determines that a separate plan is required for a new unit of the National Forest System, the Responsible Official for the new unit must develop and approve a plan that establishes the desired conditions, objectives, standards, any special management areas, and monitoring and evaluation requirements and that identifies any suitable or unsuitable land uses within the plan area as provided in § 219.4 of this subpart. The Responsible Official shall initiate and conduct planning and conduct government-to-government consultation and public involvement as provided in §§ 219.8, 219.12, and all other applicable sections of this subpart.

§ 219.10 Application of plan direction.

(a) *Application of a new plan, plan amendment, or plan revision to existing authorizations and approved projects and to project decisions issued after the approval of the plan or amendment.* Permits, contracts, and other instruments authorizing the use and occupancy of National Forest System lands must be consistent with the standards in the plan for that unit. New project decisions must disclose the relationship of the project to applicable plan desired conditions. When changes are proposed to a plan, the Responsible Official must take into consideration the possible effects of the proposed changes on occupancy and use currently authorized through permits, contracts, or other instruments. The decision document accompanying a new plan, plan amendment, or plan revision must address the application of new plan direction to ongoing activities or uses authorized by existing permits, contracts, or other instruments. Any modifications of permits, contracts, or other instruments authorizing occupancy and use of the plan area necessary to make them consistent with the plan as developed, amended, or revised are subject to valid existing rights. Such modifications should be made as soon as practicable following development, amendment, or revision of the plan.

(b) *Application of plan direction during amendment or revision process.* Direction in a plan remains in effect until that direction is changed through amendment or revision.

(c) *Application of plan direction to approved projects in light of new information.* Nothing in this subpart requires deferral, suspension, or modification of approved projects while new information is being assessed. Approved projects are those for which a Responsible Official has signed a decision document.

(d) *Amendments made through site-specific project decisions.* If a proposed site-specific project or action would not be consistent with the standards of the plan (§ 219.4), the Responsible Official may, subject to valid existing rights, take one of the following steps:

(1) Modify the proposed site-specific project or action to make it consistent with the plan;

(2) Reject the proposal; or

(3) As part of the project decision, amend the plan to modify one or more standards or to exempt application of one or more standards to the project or action to allow for its implementation.

(e) *Testing and research.* Management of National Forest System lands and resources should provide the land manager a continuous flow of new information and knowledge. Testing and research projects are integral to gaining this information and knowledge. Projects proposed to test assumptions, management methodologies, or other aspects of resource management must comply with all applicable laws and regulations and must be consistent with the plan standards. Where a research or testing project would not be consistent with plan standards, paragraph (d) of this section applies.

§ 219.11 Monitoring and evaluation.

Monitoring and evaluation should assess, over appropriate timeframes and geographic areas and at a reasonable cost, the effects of activities on achievement of desired conditions and objectives of a plan, the results of adaptive management, and, as provided in § 219.4, contribute to determining whether a plan needs to be changed or whether plan implementation needs to be adjusted.

(a) *Monitoring requirements.* The Responsible Official must ensure the timely collection of information needed to meet the monitoring requirements of a plan as well as the interpretation and evaluation of monitoring information.

Monitoring information should include, but not be limited to, data and other information pertinent to characteristics of ecosystem and species diversity, as determined relevant by the Responsible Official.

(1) *Changes in monitoring methods.* Monitoring methods may be changed in response to new information or changed circumstances without plan amendment or revision.

(2) *Coordination of monitoring.* To the extent practicable, monitoring may be conducted jointly with other Federal agencies, federally recognized Indian Tribes, State and local governments, scientific and academic communities, and others.

(b) *Evaluation requirements.* Evaluation includes, but is not limited to, such activities as:

(1) Identifying trends and conditions;

(2) Validating information and analyses used to adopt, amend, or revise a plan;

(3) Assessing, through the use of identified performance measures and other methods, the effects of programs, projects, and activities in achieving the desired conditions and objectives for the plan; and

(4) Determining the effectiveness of plan standards.

(c) *Data sources.* Data also may come from a variety of sources, including other Federal agencies, Indian Tribes, State and local governments, scientific and academic institutions, and others. Monitoring data also may come from project analysis, surveys, inventories, administrative studies, and research.

(d) *Records and reporting.* Findings and conclusions from monitoring and evaluation must be disclosed annually and made available to the public. The disclosure should summarize the monitoring results for the year; present significant findings and conclusions, if any; discuss implications for current and future management of the administrative unit; and describe actions taken or planned in response to findings made in previous reports. While the monitoring and evaluation disclosure shall be produced annually, specific monitoring items and evaluation of specific resources or conditions may occur at other intervals.

§ 219.12 Collaboration, cooperation, and consultation.

The Responsible Official must use an interdisciplinary, collaborative approach to planning by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies, federally recognized Indian Tribes, State or local governments, or other interested or affected communities, groups, or persons, consistent with applicable laws.

(a) *Providing opportunities for collaboration in Forest Service planning.* The Responsible Official must provide early and frequent opportunities for individuals and entities to participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected agencies, organizations, groups, and individuals. The Responsible Official shall determine the methods and timing of opportunities to participate in the planning process.

(1) *Engaging interested individuals and organizations.* The Responsible Official must provide for and encourage participation by interested individuals and organizations, including private landowners whose lands are within, adjacent to, or otherwise affected by management actions on National Forest System lands.

(2) *Engaging State and local governments and Federal agencies.* The Responsible Official must provide opportunities for the coordination of Forest Service natural resource management planning efforts with those of other land management agencies. The Responsible Official also must meet with and provide early opportunities for other government agencies to be involved in the planning process for National Forest System lands. During the planning process, the Responsible Official should seek assistance, where appropriate, from other State, local government, and Federal agencies and scientific and academic institutions to help address management issues or opportunities.

(3) *Engaging Indian Tribes.* The Forest Service shares in the Federal Government's overall trust responsibility for federally recognized Indian Tribes. The Responsible Official must consult with and invite federally recognized Indian Tribes to participate in the planning process and also provide opportunity for coordinated planning efforts. In working with federally recognized Indian Tribes, the Responsible Official must honor the government-to-government relationship between Tribes and the Federal Government.

(b) *Forest Service participation in other planning efforts.* When appropriate, the Responsible Official should consider participating with existing groups organized for public purposes in their land and resource management planning efforts.

§ 219.13 Sustainability.

Consistent with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), the Responsible Official must ensure that the plan provides for desired conditions, objectives, standards, special area recommendations, and monitoring based upon consideration of the three interdependent components of sustainability: Social, economic, and ecological. A plan by itself cannot ensure sustainability but provides an overall framework to guide on-the-ground management. Sustaining the productivity of the land and its renewable resources is achievable only by the continuous and dynamic process of planning, implementing projects under the plan, monitoring, adapting management as a result of monitoring, and where necessary and appropriate, amending or revising the plan or modifying proposed site-specific projects to meet the desired conditions.

(a) *Social and economic components of sustainability.* To understand the social and economic contributions that National Forest System lands presently make and may make in the future, the Responsible Official must consider and assess economic and social information at relevant timeframes and geographic areas as appropriate to the issues. Social and economic information may be obtained from others or developed and analyzed through assessments, analyses, inventories, monitoring results, or other methods. In assessing social and economic conditions and trends relevant to the issues being addressed through plan development, amendment, or revision, the Responsible Official should:

(1) Engage and participate with interested and affected parties to identify the values they want to see sustained and the benefits they accrue from National Forest System lands;

(2) Consider how human activities and social and economic conditions and trends affect the ecological component of sustainability on and around National Forest System lands, and how people can contribute to maintaining and restoring the health of National Forest System lands; and

(3) Gather and analyze social and economic information to assess, at the appropriate timeframes and geographic scales, how land management has affected and may affect the contribution of National Forest System lands to social and economic systems. This includes identifying the benefits National Forest System lands provide; analyzing conditions and trends of social and economic systems; and analyzing the relationships between

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people and the national forests, grasslands, and prairies.

Option 1 for Paragraph (b)

(b) *Ecological component of sustainability.* The ecological component of sustainability includes, but is not limited to, the following elements: The productivity, health, and function of ecosystems; the diversity of plant and animal communities and tree species; and the quality of soil, water, and air resources. As part of planning, the Responsible Official must follow a hierarchical, sequential approach to consider and assess both ecosystem diversity and species diversity. Ecosystem diversity should be considered and evaluated first, leading to development of plan direction that provides for the needs of most species of plants and animals. Where the needs of particular species, species assemblages, or other species groupings are not likely to be met through plan direction for ecosystem diversity, species diversity should be considered and evaluated for these species, species assemblages, or other species groupings. Consideration and evaluation of ecosystem and species diversity includes development and analysis of information over relevant timeframes and geographic areas as determined by the Responsible Official.

(1) *Ecological information and analyses.* Analyses of ecosystem and species diversity should be proportional to the issues identified by the Responsible Official, risks to ecological sustainability, and availability of information relevant to the plan area. Information and analyses may be identified, obtained, or developed through a variety of methods, including assessments, analyses, and monitoring. The ecological information and analyses must include the following components:

(i) *Consideration and evaluation of ecosystem diversity.* Characteristics and evaluation of ecosystem diversity should be identified and completed at the scope and scale determined to be appropriate by the Responsible Official. Evaluations should describe the contribution of National Forest System lands to ecosystem diversity within the area of analysis.

(A) *Characteristics of ecosystem diversity.* Characteristics of ecosystem diversity include, but are not limited to, a description of composition (such as major vegetation types, rare communities, aquatic systems, and riparian systems); structure, including successional stages; principal ecological processes, including historic and current disturbance regimes; and soil, water, and air resources within the area of analysis.

(B) *Evaluation of ecosystem diversity.* Evaluations of ecosystem diversity should include the status of the characteristics of ecosystem diversity identified in paragraph (b)(1)(i)(A) of this section; a description of the historic and current effects of human activities on characteristics of ecosystem diversity; risks to ecosystem health; an evaluation of water and air quality and soil productivity; and an estimation of current and foreseeable future consumptive and non-consumptive National Forest System water needs and the quantity and quality of water needed to support those uses.

(ii) *Consideration and evaluation of species diversity.* Characteristics and evaluation of species diversity should be identified and completed at the scope and scale determined to be appropriate by the Responsible Official. Evaluations should describe the contribution of National Forest System lands to species diversity within the area of analysis.

(A) *Characteristics of species diversity.* Characteristics of species diversity include, but are not limited to, the known number and identity of plant and animal species within the area of analysis, and the status, distribution, and geographic ranges of plant and animal species within the area of analysis. Species, species assemblages, or other species groupings may be used to characterize species diversity.

(B) *Evaluation of species diversity.* Evaluations of species diversity should identify species-at-risk, their habitat requirements, and threats placing them at risk, based on current conditions and trends and management direction. The level of detail of the analyses performed should be proportional to the issues identified by the Responsible Official and the associated risk to species viability. Evaluations should include assessments of risk to species viability and identification of ecological conditions capable of supporting species viability over time. Where little information is available for particular species, assessments may be qualitative. The assessment evaluations may be simplified by the use of groups of species or species that serve as surrogates for evaluating species diversity.

(2) *Plan decisions.* The Responsible Official must provide for the diversity of plant and animal communities and tree species within the plan area consistent with the multiple use objectives of the plan while sustaining the productivity of the land. When developing plan decisions, the Responsible Official must consider the information and analyses described in paragraph (b)(1) of this section. The following requirements apply over relevant timeframes and geographic areas that the Responsible Official determines to be appropriate:

(i) *Ecosystem diversity.* Plan decisions should provide for measurable progress toward the maintenance or restoration of ecological conditions that will support the diversity of plant and animal communities and tree species and other characteristics of ecosystem diversity. A variety of approaches may be used, such as conservation strategies designed for one or a group of species-at-risk, or management practices that emulate effects of natural disturbance regimes or result in characteristics of ecosystem diversity within the range of variability expected to occur under current disturbance regimes.

(ii) *Species diversity.* Plan decisions should provide for ecological conditions that the Responsible Official determines provide a high likelihood of supporting over time the viability of native and desired non-native vertebrates and vascular plants well distributed within their ranges in the plan area. When assessing "high-likelihood" and "well distributed," the Responsible Official shall consider factors under agency authority and relative to species life history and distribution within the plan area. Where conditions capable of supporting viability for particular species or species groups are not likely to be met through provisions for ecosystem diversity, specific plan objectives or standards should be developed for those species or species groupings.

Option 2 for Paragraph (b)

(b) *Ecological component of sustainability.* The ecological component of sustainability includes, but is not limited to, the following elements: The productivity, health, and function of ecosystems; biological diversity at ecosystem and species levels; and the quality of soil, water, and air resources. As part of the planning process, the Responsible Official must ensure that the hierarchical approach described in paragraph (b)(1) of this section is followed to consider and assess biological diversity at two levels of ecological organization, ecosystem and species. Consideration and evaluation of ecosystem diversity constitutes the core approach and is the primary focus of ecological information and analyses. Consideration and evaluation of species diversity is a complementary approach that extends ecosystem analyses to address specific planning issues. Biological diversity should be considered and evaluated

over appropriate timeframes and geographic areas as determined by the Responsible Official. Assessments of biological diversity at ecosystem and species levels should address effects of natural and human disturbances and of the ecological condition, structure, and land use history of the planning or assessment area.

(1) *Ecological information and analyses.* Analyses of biological diversity at ecosystem and species levels should be proportional to the issues identified by the Responsible Official, risks to ecological sustainability, and availability of information relevant to the planning or assessment area. Information and analyses may be identified, obtained, or developed through a variety of methods, including assessments, analyses, and monitoring and, where appropriate, should extend to the larger landscape in which the plan area is embedded. Ecological information and analyses must be based upon an assessment of the components described in the following paragraphs and tailored to the particular planning or assessment area and the specific issues identified in the planning process:

(i) *Consideration and evaluation of ecosystem diversity.* Characteristics and evaluation of ecosystem diversity should be identified and completed over timeframes and geographic areas determined to be appropriate by the Responsible Official. Analyses should describe and assess the contributions of National Forest System lands to ecosystem diversity in the planning or assessment area.

(A) *Characteristics of ecosystem diversity.* Characteristics of ecosystems that should be considered within the planning or assessment area include, but are not limited to: ecological composition, structure, and processes; spatial extent, distribution, and relations; geology and landforms; and soil, water, and air resources.

(B) *Evaluation of ecosystem diversity.* Evaluations of ecosystem diversity should identify ecosystems in the planning or assessment area and characterize their ecological structure, composition, processes, and spatial relations.

(*1*) Analyses should evaluate the status of the characteristics of ecosystem diversity identified in paragraph (b)(1)(i)(A) of this section and risks or threats to these characteristics, including impacts of past, current, and anticipated management direction on ecosystem diversity.

(*2*) Analyses should evaluate the condition and quality of water and air resources, the condition of stream networks and channels and of watersheds, and the quality and productivity of soils, and should estimate current and foreseeable future consumptive and non-consumptive National Forest System water needs and the quantity and quality of water needed to support those uses.

(*3*) Evaluations should identify unique areas, including rare ecosystems, compositional or structural elements, and ecosystems at risk, specific risks or threats to these areas, and measures required for their conservation or restoration.

(ii) *Consideration and evaluation of species diversity.* Characteristics and evaluation of species diversity should be identified and completed over timeframes and geographic areas determined to be appropriate by the Responsible Official. Analyses should describe and assess the contributions of National Forest System lands to species diversity in the planning or assessment area. Analyses of species and species groups should be undertaken to provide a more complete understanding of impacts of past, current, and anticipated management direction on biological diversity, including the status of species and the ecosystems in which they occur. In a hierarchical context, species analyses should be conducted within the framework of, and should incorporate information from, larger-scale ecosystem analyses.

(A) *Characteristics of species diversity.* Characteristics of species diversity that should be considered within the planning or assessment area include, but are not limited to, the composition and richness (number of species) of the existing pool of species and the abundance, distribution, geographic range, and status of individual species chosen for analysis.

(B) *Evaluation of species diversity.* Individual species should be identified for evaluation to address a particular planning issue, to develop a more complete understanding of the condition and trends of ecosystems, or where substantive concerns exist regarding the continued persistence of the particular species within the planning or assessment area. Evaluations of species diversity should be conducted along two tracks with related purposes. Community analyses should determine whether maintenance of ecosystem diversity is sufficient to maintain the existing pool of species within the planning or assessment area. Individual species analyses should evaluate impacts of past, current, and anticipated management direction on individual species selected for analysis.

(*1*) Evaluations should identify species or species groups found within the planning or assessment area, including native and non-native species, and, where feasible, compile information on species status, spatial distribution, geographic range, abundance, and population trends.

(*2*) Evaluations should analyze the composition and distribution of communities and species assemblages across the planning or assessment area; examine relations of community or assemblage measures to underlying biophysical conditions, with particular attention to attributes affected by management actions; and analyze impacts of past, current, and anticipated management direction on individual species selected for analysis.

(*3*) Evaluations must identify species for which substantive evidence exists that continued persistence in the planning or assessment area is at risk, specific risks or threats to these species, and measures required for their conservation or restoration.

(iii) *Further analyses of biological diversity.* In addition to the information and analyses identified in paragraphs (b)(1)(i) and (ii) of this section, the following additional information and analyses should be included in the approach to considering and assessing biological diversity at ecosystem and species levels.

(A) *Consideration and evaluation of spatial and temporal scales and patterns.* Biological diversity at ecosystem and species levels should be evaluated across multiple timeframes and geographic areas. The Responsible Official should follow a spatially explicit approach to assessments of biological diversity, by considering such factors as abundance, extent, patch size, distribution, and interspersion of ecosystems and species populations over time and by focusing on specific landscape features as well as their sizes, shapes, and spatial relationships. Where appropriate, detailed analyses should be conducted over large geographic areas and long timeframes, which extend beyond the plan area and planning time horizon of specific National Forest System administrative units. Analyses at these large scales are appropriate for evaluating dynamics of wide-ranging species and cumulative impacts of management actions on biological diversity. Evaluations of biological diversity over large geographic areas should be coordinated across multiple National Forest System administrative units.

(B) *Consideration and evaluation of disturbance regimes.* The Responsible Official should consider and evaluate

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impacts of disturbance regimes, natural and human-induced, on biological diversity at ecosystem and species levels over appropriate geographic areas and timeframes. Evaluation of disturbance regimes should help clarify the land manager's opportunities and options for achieving biological diversity objectives. Analyses should characterize current and recent disturbance regimes in terms of spatial extent and distribution, periodicity, type, and intensity and should evaluate impacts on biological diversity in the planning or assessment area. Evaluations should consider impacts of past, current, and anticipated management direction on disturbance regimes and consequences of altered disturbance regimes for biological diversity in the planning or assessment area.

(C) *Consideration and evaluation of landscape context.* The Responsible Official should consider and evaluate the landscape context for assessments of biological diversity at ecosystem and species levels. Analyses of landscape context should evaluate and characterize the ecological condition, structure, and land use history of the planning or assessment area and evaluate effects on biological diversity. Analyses also should consider and evaluate differences in the ecological condition and spatial structure of ecosystems and landscapes between National Forest System lands and adjacent ownerships. Based on these differences, the Responsible Official should identify and evaluate options for and any special role of National Forest System lands to contribute to maintenance or restoration of biological diversity in the planning or assessment area, especially unique or rare elements of biological diversity, as well as factors that would limit options and opportunities for managing National Forest System lands to achieve biological diversity objectives.

(2) *Plan decisions.* The Responsible Official must provide for biological diversity at ecosystem and species levels within the plan area consistent with the multiple use objectives of the plan while sustaining the productivity of the land. When developing plan decisions, the Responsible Official must consider the limits of agency authorities and must consider and fully disclose results of the ecological information and analyses described in paragraphs (b)(1)(i) through (iii) of this section. The following requirements apply over relevant timeframes and geographic areas that the Responsible Official determines to be appropriate:

(i) *Biological diversity.* Plan decisions, to the extent feasible, should foster the maintenance or restoration of biological diversity in the plan area, at ecosystem and species levels, within the range of biological diversity characteristic of native ecosystems within the larger landscape in which the plan area is embedded. In reaching plan decisions, the Responsible Official should consider current and recent disturbance regimes as well as the ecological condition, structure, and land use history of the planning or assessment area, and effects of these factors on options and opportunities to manage National Forest System lands to achieve biological diversity objectives.

(ii) *Contributions of NFS lands.* When reaching plan decisions, the Responsible Official must identify and evaluate the special role and unique contributions of National Forest System lands in maintaining and restoring biological diversity within the larger landscape in which the plan area is embedded.

§ 219.14 The consideration of science in planning.

(a) Decisions embodied in a plan must be consistent with the best available science. As part of the planning record, the Responsible Official must:

(1) Demonstrate how the planning process considered and made use of the best available science within the context of the issues being considered;

(2) Evaluate and disclose any substantial uncertainties in that science;

(3) Evaluate and disclose substantial risks associated with plan decisions based on that science; and

(4) Validate that the science was appropriately interpreted and applied.

(b) To meet the requirements of paragraph (a) of this section, the Responsible Official must use independent peer review, a science advisory board, or other appropriate means to evaluate the consistency and application of science used in the planning process.

§ 219.15 Special designations.

(a) A plan is the mechanism by which the Responsible Official may allocate specific areas to special designations and recommend areas for special designation by higher-level authorities. The plan also provides management direction for specially designated areas and areas recommended for special designation within the plan area.

(b) Special designations are areas within the National Forest System that are identified for their unique or special characteristics and include the following:

(1) *Congressionally designated areas.* Congressionally designated areas may include, but are not limited to, wilderness, wild and scenic rivers, national trails, scenic areas, recreation areas, and national monuments.

(2) *Administratively designated areas.* These areas include, but are not limited to, geological areas, significant caves, botanical areas, cultural/heritage areas, research natural areas, and scenic byways.

(3) *Inventoried roadless areas.* Unless otherwise provided by law, inventoried roadless areas within the National Forest System must be evaluated and considered for recommendation as potential wilderness areas during the initial plan development or the plan revision process. As part of this evaluation, the Responsible Official must review and validate the maps of inventoried roadless areas within the plan area or adjust them as necessary and appropriate. The Responsible Official also may evaluate these areas at other times as determined appropriate.

§ 219.16 Determination of lands available for timber harvest and suitable for timber production.

(a) *Lands not suitable for timber production.* The plan must identify lands within the plan area not suitable for timber production. These lands include, but are not limited to the following:

(1) Land that is not forest land (as defined at § 219.23);

(2) Land where technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land;

(3) Lands where there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest;

(4) Lands where timber production would violate statute, Executive order, regulation, or agency directives;

(5) Those lands that have been withdrawn from timber production by the Secretary of Agriculture or the Chief of the Forest Service; and

(6) Lands where timber production would not be justified after considering physical, ecological, social, economic, and other pertinent factors. However, lands not suited for timber production may be available for timber harvest pursuant to paragraph (c) of this section.

(b) *Lands suitable for timber production.* After considering physical, ecological, social, economic, and other pertinent factors to the extent feasible, a Responsible Official may establish timber production as an objective in a plan for any lands not identified in paragraph (a) of this section. The Responsible Official must review lands not suited for timber production at least once every 10 years, or as otherwise prescribed by law, to determine their suitability for timber production. As a result of this 10-year review, timber production may be established as a plan objective for any lands found to be suitable for such purpose through amendment or revision of the plan.

(c) *Lands where trees may be harvested for multiple use values other than timber production.* Designation of lands as unsuitable for timber production does not preclude the harvest of trees for other multiple use values. Except for lands described at (a)(2) of this section, trees may be harvested to create temporary or permanent openings for wildlife habitat improvement; to establish fuel breaks or reduce fuels; to create vistas; to enhance recreation use; to manage cultural/heritage sites; to salvage dead or dying trees; or to achieve other multiple use purposes not related to timber production.

§ 219.17 Limitation on timber harvest.

(a) *Estimate of the long-term sustained-yield capacity.* The Responsible Official must estimate the amount of timber that could be harvested annually in perpetuity on a sustained-yield basis from National Forest System lands identified as suitable for timber production (§ 219.16(b)). This estimate must be based on the yield of timber that could be harvested consistent with achievement of objectives or desired conditions in the applicable plan and a specified management intensity consistent with these multiple use objectives. Increased harvest levels may be based on intensified management practices, such as reforestation, thinning, and tree improvement if such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act. Such estimates of yield shall be adjusted downward if anticipated practices are not successfully implemented to achieve objectives or desired conditions. The Responsible Official may combine one or more administrative units, or parts of administrative units, for the purpose of estimating the amount of timber that could be harvested annually on a sustained-yield basis.

(b) *Limitation on timber harvest.* Within any decade, the Responsible Official must limit the average annual quantity of timber sold during that decade from the lands identified as suitable for timber production to a quantity equal to or less than that estimated in paragraph (a) of this section.

(c) *Exceptions to limitations of timber harvest.* The Responsible Official may sell timber from areas that are substantially and adversely affected by fire, wind, or other events, or for which there is an imminent threat from insects or disease, and may either substitute such timber for timber that would otherwise be sold or, if not feasible, sell such timber over and above the limit established in paragraph (b) of this section. If departure from the quantity of timber established in paragraph (b) of this section is necessary to meet overall multiple use objectives of the plan, the requirements in 16 U.S.C. 1611 must be followed.

§ 219.18 Plan documentation, maintenance, and availability.

(a) *Plan description.* A plan is a set of documents that integrates and displays the desired conditions, objectives, standards, and other management direction that apply to a unit of the National Forest System. Included among the documents in a plan are text, maps, tables, charts, and other information relevant to how the plan area is to be managed. Other records considered or created during the planning process, such as the science review (§ 219.14), are not part of the plan, but these records must be made available for public review as provided in paragraph (c) of this section.

(b) *Maintenance of the plan.* The following administrative corrections and additions may be made at any time, are not plan amendments or revisions, and do not require public notice or the preparation of an environmental document under NEPA procedures:

(1) Corrections and updates of data and maps;

(2) Corrections of typographical errors or other non-substantive changes; and

(3) Changes in monitoring methods (§ 219.11).

(c) *Availability of planning documents.* Each National Forest, Grassland, or Prairie Supervisor must maintain a complete set of the planning documents that constitute the plan for the unit. The planning records must be available to the public during the planning process as well as after adoption of a plan, plan amendment, or revision.

§ 219.19 Objections to new plans, plan amendments, or plan revisions.

(a) *Exceptions.* Before approving a new plan, plan amendment, or plan revision, the Responsible Official shall provide the public, both individuals and entities, at least 30 calendar days for pre-decisional review of a proposed plan, amendment, or revision. Where an EIS or EA is prepared, the FEIS or EA shall also be made available for review. Written objections to a proposed plan, amendment, or revision may be submitted to the Reviewing Officer, except as follows:

(1) When an amendment is made in conjunction with a site-specific project decision as provided in § 219.20;

(2) When the amendment is an interim amendment as provided in § 219.7;

(3) When the entity is a Federal agency; or

(4) When the Responsible Official for the decision is the Secretary of Agriculture.

(b) *Public notice of the objection period.* Public notice of the availability of a proposed plan, amendment, or revision and the objection period must be provided as follows:

(1) For any proposed plan, amendment, or revision for which the Chief or the Secretary is the Responsible Official, the notice must be published in the **Federal Register**.

(2) For all other proposed plans, amendments, or revisions, legal notice must be published in newspaper(s) of record as defined in § 219.23 of this subpart.

(c) *Content of public notice of the objection.* Public notice of the opportunity to file objections and of the objection period published pursuant to this section must include the following:

(1) A concise identification of the proposed plan, amendment, or revision;

(2) The name, title, and address of the Responsible Official;

(3) Information on the availability of the proposed plan, amendment, or revision and the final environmental disclosure document, if any;

(4) Identification of when the objection period begins (the day following the notice's publication) and the date the objection period ends; and

(5) The name of the Reviewing Officer and the addresses where an objection must be sent.

(d) *Submitting objections.* (1) Except as provided in paragraph (a) of this section, any person or non-Federal entity may submit written objections regarding a proposed plan, amendment, or revision to the Reviewing Official. Only original substantive comments that meet objection content requirements set out in paragraph (d)(2) of this section will be accepted. Form letters, check-off lists, pre-printed post cards, or similar duplicative materials will not be accepted as objections. Objections that

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are mailed must be postmarked no later than the last day of the specified time period. Objections that are submitted by any means other than U.S. mail must be received by the Reviewing Official within the time period described in the public notice. When the objection period would expire on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day. No other extension of the time period may be granted.

(2) An objection must contain the following:

(i) The name, mailing address, and if possible, telephone number of the objector. Where an objection is filed by an organization or other entity on behalf of multiple objectors, the objection must indicate the representative contact, who will notify the other objectors of the objection response and any other written correspondence related to the objection that may occur;

(ii) An identification of the specific proposed plan, amendment, or revision that is the subject of the objection; and

(iii) A concise statement explaining how the environmental disclosure documents, if any, and proposed plan, amendment, or revision are inconsistent with law, regulation, Executive order, or policy and any recommendations for change.

(e) *Responding to objections.* (1) The Reviewing Officer must review the objections and relevant information to determine whether or not the proposed plan, amendment, or revision and any accompanying environmental disclosure documentation, if any, are consistent with law, regulation, Executive order, or policy with respect to the issue(s) raised in the objection. In conducting a review under this section, the Reviewing Official may discuss the objection with the Responsible Official or the objectors. The Reviewing Officer may render one response to multiple objections. The Reviewing Officer's response must be in writing and must be sent to the objecting party by certified mail, return receipt requested, and to the Responsible Official.

(2) If the Reviewing Officer concludes that the proposed plan, amendment, or revision and accompanying environmental disclosure documents, if any, are consistent with law, regulation, Executive order, and policy, the Responsible Official may proceed to make a decision.

(3) If the Reviewing Officer concludes that the proposed plan, amendment, or revision, and accompanying environmental disclosure documents, if any, are not consistent with law, regulation, Executive order, and policy, in whole or in part, the Reviewing Officer must describe what further action is required by the Responsible Official prior to approving the new plan, amendment, or revision. Upon approval of the plan, amendment, or revision, no further objection is available.

(f) *Use of other administrative review processes.* Where the Forest Service is a participant in a multi-Federal agency effort that is subject to objection under this part, the Responsible Official may waive the objection procedures of this part and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the Responsible Official for the Forest Service must have agreement with the Responsible Official of the other agency or agencies to provide a joint response to those who file for administrative review of the multi-agency effort.

(g) *Compliance with the Paperwork Reduction Act.* The information collection requirements associated with submitting an objection have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.20 Appeals of plan amendments in site-specific project decisions.

If a plan amendment is made in conjunction with a site-specific decision, a person may appeal the plan amendment and the site-specific decision only as described in 36 CFR 215.7(a).

§ 219.21 Notice of plan decisions and effective dates.

(a) *Notice of decision.* Following approval of a plan, amendment, or revision the Responsible Official must provide notice of the decision in the newspaper(s) of record (§ 219.23), or, if the Chief or Secretary is the Responsible Official, in the **Federal Register**, and by other appropriate means, as needed.

(b) *Effective date.* A new plan, significant plan amendment, or revised plan is effective 30 days after publication of notice of the decision. Any other amendment is effective immediately upon publication of notice of the decision.

§ 219.22 Transition.

(a) For the purposes of this paragraph, the reference to a new plan, amendment, or revision initiated before the effective date of this rule, means that the agency has issued a Notice of Intent or other public notice announcing the commencement of a plan amendment or revision as provided for in the Council on Environmental Quality regulations at 40 CFR 1501.7 or in Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, section 11.

(b) Until 90 days after the effective date of this rule, a Responsible Official may elect to initiate an amendment, continue an amendment or a revision under the planning regulations in effect prior to November 9, 2000, or the Responsible Official may conform the amendment or revision process to the provisions of this subpart.

(c) For new plans, amendments, or revisions initiated under the November 2000 rule, the Responsible Official must adjust the planning process to conform to this subpart.

(d) In conforming a previously initiated planning process to the requirements of this subpart, the Responsible Official is not required to halt the process and start over. Rather, the Responsible Official should integrate the requirements of this subpart into the future steps and procedures of plan development, amendment, or revision process.

(e) The Responsible Official shall give notice of how the planning process will be adjusted to conform to the requirements of this subpart in the newspaper(s) of record.

§ 219.23 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order in this section:

Adaptive management: An approach to natural resource management where actions are designed and executed and effects are monitored for the purpose of learning and adjusting future management actions, which improves the efficiency and responsiveness of management.

Assessment area: A geographic area within which ecosystems or their components or processes are analyzed. An assessment area may include multiple ownerships and is typically much larger than a planning area.

Biological diversity: A general and inclusive concept that refers to the variety of living things together with their interactions and processes. Biological diversity is defined at various levels of ecological organization, but especially three: genes, species, and ecosystems. In the context of land and resource management planning, attention is focused specifically on the diversity of ecosystems within landscapes and of species within ecosystems.

Culmination of mean annual increment: The age in the growth cycle of an even-aged stand at which the mean annual increment for volume of wood is at a maximum. Mean annual increment shall be based on expected growth of stands, according to intensities and utilization standards assumed in the forest plan or its supporting document. Mean annual increment shall be expressed in cubic measure.

Cultural/Heritage resources: Archeological, historic, or architectural sites, structures, places, objects, ideas, traditions, etc. identified by field inventory, historical documentation, or evidence that are of importance to specified social or heritage groups and/or scientific and management endeavors.

Desired non-native species: Those species of plants or animals that are not indigenous to an area but are highly valued for social, cultural, economic, or ecological reasons.

Disturbance regime: Actions, functions, or events that influence or maintain the structure, composition, or function of terrestrial or aquatic ecosystems. Natural disturbances include, among others, drought, floods, wind, fires, insects, and pathogens. Human-caused effects include, among others, actions such as recreational use, livestock grazing, mining, road construction, timber harvest, and the introduction of exotic species.

Diversity of plant and animal communities and tree species: The distribution and relative abundance or extent of plant and animal communities and their component species, including tree species, occurring within an area.

Ecological conditions: Components of the biological and physical environment that can affect the diversity of plant and animal communities and tree species, including species viability, and the productive capacity of ecological systems. These could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive and exotic species.

Ecosystem diversity: The variety and relative extent of ecosystem types, including their composition, structure, and processes, within all or part of a planning area.

Ecosystem structure: The horizontal, vertical, and numerical arrangement and relationships among the components of ecosystems. Possessing both physical and biological aspects, structure is the result of interactions among species and with the physical environment.

Energy resources: Renewable energy resources include biomass, hydropower, wind, solar and geothermal, and non-renewable energy resources include coal, oil and gas, and coal bed methane.

Environmental disclosure document: Environmental assessment, environmental impact statement, finding of no significant impact and notice of intent.

Federally recognized Indian Tribe: An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Forest land: Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for nonforest uses. Lands developed for non-forest use include areas for crops, improved pasture, residential, or administrative areas, improved roads of any width, and adjoining road clearing, and power line clearing of any width.

Health: A condition wherein a forest, grassland, or prairie has the capacity across the landscape for renewal, for recovery from a wide range of disturbances, and for retention of its ecological resilience while meeting current and future needs of people for desired levels of values, uses, products, and services.

High likelihood of viability: Habitats are of sufficient quality, distribution, and abundance to allow species populations to be well-distributed and interactive and to have a high probability of persisting over multiple generations (within the bounds of the life history of the species and the capability of the landscape) within the plan area. The focus is on providing habitat for species resilience, long-term survival over multiple generations, and long-term adaptability.

Inventoried roadless areas: Areas identified in a set of inventoried roadless area maps, contained in Forest Service records, or any subsequent update or revision of those maps.

Major vegetation types: Plant communities, which are typically named after dominant plant species that are characteristic of the macroclimate and geology of the region or sub-region.

Mean annual increment: The total increment of a stand (standing crop plus thinning) up to a given age divided by that age.

Native species: Species indigenous to the plan, planning or assessment area.

NEPA procedures: The term used to refer to the requirements of 40 CFR parts 1500 through 1508, as supplemented by Forest Service NEPA directives issued in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15, which implement the National Environmental Policy Act of 1969.

Newspaper(s) of record: Those principal newspapers of general circulation annually identified and published in the **Federal Register** by each Regional Forester to be used for publishing notices as required by 36 CFR 215.5.

Plan: A plan is a repository that integrates and displays the desired conditions, objectives, standards, and other plan decisions that apply to a unit of the National Forest System. The plan also contains maps and other information relevant to how the plan area is to be managed.

Plan area: The geographic area of National Forest System administered lands covered by an individual plan and subject to the programmatic direction of a plan. The area may include all or part of one or more administrative units and may be administered by one or more Responsible Officials. The Responsible Official's decision is only for the plan area.

Planning area: The geographic area considered during analysis and development of one or more plans. A planning area is typically larger than a plan area but smaller than an assessment area.

Productivity: Use of this term is derived from the MUSYA and subsequent statutes, which require that NFS lands be administered to provide various renewable resources (recreation, range, timber, watershed, wildlife, and fish) without impairment of the productivity of the land. In this context, productivity means the capacity of NFS lands and the ecological systems thereon to provide the various renewable resources in certain amounts over time. In this sense, it is an ecological term, not an economic one.

Range of variability: The expected range of variation in ecosystem composition and structure that would be expected under current natural disturbance regimes. These regimes include the type, frequency, severity, and magnitude of disturbance in the absence of fire suppression and extensive commodity extraction.

Research Natural Areas: An area in as near a natural condition as possible, which exemplifies typical or unique vegetation and associated biotic, soil, geologic, and aquatic resources. The area is set aside to preserve a representative sample of an ecological community primarily for scientific and educational purposes.

Responsible Official: The Official with the authority and responsibility to oversee the planning process and to make plan decisions.

Reviewing Officer: The supervisor of the Responsible Official who is proposing adoption of a new plan, plan amendment, or revision.

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Species: For purposes of this rule, potentially any member of the currently accepted and scientifically defined kingdoms of organisms, which is described as a species in a peer-reviewed scientific publication. The term "species," as identified here, includes all species listed under the Endangered Species Act as threatened, endangered, candidate, or proposed for listing by the U.S. Fish and Wildlife Service or National Marine Fisheries Service. Under diversity Option 1, with the exception of species-at-risk, consideration of species under this rule is explicitly limited to vertebrates and vascular plants. Under diversity Option 2, species may include any described species belonging to any of the defined kingdoms of organisms.

Species-at-risk: Federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area.

Species diversity: The variation in the number and relative abundance of species within all or part of a planning area.

Species persistence: The likelihood that a species will continue to exist or occur within a geographic area of interest and over a defined period of time as a functioning member of the species pool of that area. In the context of land management planning, species persistence is the likelihood that actions or factors under the direct control of land managers will not directly cause the extinction, globally or locally within the planning or assessment area, of a species of interest, or will not cause the density or total population size of that species to decline to such a low level that the risk of extinction due to factors outside the control of the land manager, including chance events, is deemed to be unacceptably high.

Species viability: A species consisting of self-sustaining and interacting populations that are well distributed through the species' range. Self-sustaining populations are those that are sufficiently abundant and have sufficient diversity to display the array of life history strategies and forms to provide for their long-term persistence and adaptability over multiple generations.

Successional stages: The different structural and compositional phases of vegetation development of forests and grasslands that occur over time following disturbances that kill, remove, or reduce vegetation and include the major developmental or seral stages that occur within a particular environment.

Timber harvest: The removal of trees for wood fiber utilization.

Timber production: The sustained long-term management, harvest and regeneration of trees for wood fiber utilization. For purposes of this regulation, the term timber production includes the production of fuel wood and wood for other products.

Visitor opportunities: The spectrum of settings, landscapes, scenery, facilities, services, access points, information, learning-based recreation, wildlife, natural features, cultural and heritage sites, etc. that are available for National Forest System visitors to use and enjoy.

Wilderness: Any area of land designated by Congress as part of the National Wilderness Preservation System that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136, section 2(c)).

Dated: November 26, 2002.

Dale N. Bosworth,

Chief.

Note: The following tables will not appear in the Code of Federal Regulations.

TABLE I.—SECTION-BY-SECTION COMPARISON OF THE 2000 RULE WITH THE PROPOSED RULE

2000 Rule	Proposed rule
§219.1 Purpose	§219.1 Purpose and Applicability.
§219.1 Purpose	§219.2 Nature and scope of a land and resource management plan.
§219.3 Overview.	
§219.2 Principles	§219.2 Nature and scope of a land and resource management plan.
§219.3 Overview.	§219.3 Levels of planning and planning authority.
§219.4 Identification and consideration of issues	§219.5 Indicators of need to amend or revise a plan.
§219.5 Information development and interpretation	§219.5 Indicators of need to amend or revise a plan.
§219.6 Proposed actions	§219.4 Decisions embodied in plans.
§219.7 Plan decisions	§219.4 Decision embodied in plans
	§219.6 Compliance with National Environmental Policy Act.
§219.8 Amendment	§219.7 Amending a plan.
§219.9 Revision	§219.8 Revising a plan
	§219.9 Developing a new plan.
§219.10 Site-specific decisions	§219.10 Application of plan direction.
§219.11 Monitoring and evaluation for adaptive management	§219.11 Monitoring and evaluation.
§219.12 Collaboration and cooperatively developed landscape goals	§219.12 Collaboration, cooperation, and consultation.
§219.13 Coordination among federal agencies	§219.12 Collaboration, cooperation, and consultation.
§219.14 Involvement of state and local governments	§219.12 Collaboration, cooperation, and consultation.
§219.15 Interaction with American Indian Tribes and Alaska Natives	§219.12 Collaboration, cooperation, and consultation.
§219.16 Relationships with interested individuals and organizations	§219.12 Collaboration, cooperation, and consultation.
§219.17 Interaction with private landowners	§219.12 Collaboration, cooperation, and consultation.
§219.18 Role of advisory committees.	Removed.
§219.19 Ecological, social, and economic sustainability	§219.13 Sustainability.
§219.20 Ecological sustainability.	§219.13 Sustainability.
§219.21 Social and economic sustainability	§219.13 Sustainability.
§219.22 The overall role of science in planning	§219.14 The consideration of science in planning.
§219.23 The role of science in assessments, analysis, and monitoring	§219.14 The consideration of science in planning.
§219.24 Science consistency evaluations	§219.14 The consideration of science in planning.
§219.25 Science advisory boards	§219.14 The consideration of science in planning.
§219.26 Identifying and designating suitable uses	§219.4 Decisions embodied in plans.

TABLE I.—SECTION-BY-SECTION COMPARISON OF THE 2000 RULE WITH THE PROPOSED RULE—Continued

2000 Rule	Proposed rule
§219.27 Special designations	§219.15 Special designations.
§219.28 Determination of land suitable for timber harvest	§219.16 Determination of lands available for timber harvest and suitable for timber production.
§219.29 Limitation on timber harvest.	§219.17 Limitation on timber harvest.
§219.30 Plan documentation.	Removed.
§219.31 Maintenance of the plan and planning records	§219.18 Plan documentation, maintenance, and availability.
§219.32 Objections to amendments or revisions	§219.19 Objections to new plans, plan amendments, or plan revisions.
§219.33 Appeals of site-specific decisions	§219.20 Appeals of plan amendments in site-specific project decisions.
§219.34 Applicability	§219.1 Purpose and applicability
	§219.21 Notice of plan decisions and effective dates.
§219.35 Transition	§219.22 Transition.
§219.36 Definitions	§219.23 Definitions.

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Table II - Side-by-Side Comparison of Options for Ecological Sustainability

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
§219.19 Ecological, social, and economic sustainability. Sustainability, composed of interdependent ecological, social and economic elements, embodies the Multiple Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).	**§219.13 Sustainability.** Same as 2000 rule	**§219.13 Sustainability.** Same as 2000 rule
The first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability to provide a sustainable flow of uses, values, products, and services from these lands.	Does not recognize ecological sustainability as a stand-alone entity. Recognizes sustainability as having three interdependent components: social, economic, and ecological.	Same as 2002 Option 1
§219.20 Ecological sustainability. Ensure that plans provide for maintenance or restoration of ecosystems at appropriate spatial and temporal scales to be determined by the Responsible Official.	**§219.13 (b) Ecological component of sustainability.** The ecological component of sustainability includes, but is not limited to, the following elements: the productivity, health, and function of ecosystems; the diversity of plant and animal communities and tree species; and the quality of soil, water, and air resources. As part of planning, the Responsible Official must follow a hierarchical, sequential approach to consider and assess ecosystem and species diversity. Provides flexibility for Responsible Official to determine appropriate methods.	**§219.13 (b) Ecological component of sustainability.** The ecological component of sustainability includes, but is not limited to, the following elements: the productivity, health, and function of ecosystems; biological diversity at ecosystem and species levels; and the quality of soil, water, and air resources. As part of the planning process, the Responsible Official must ensure that a hierarchical approach is followed to consider and assess biological diversity at two levels of ecological organization, ecosystem and species. Assessments of biological diversity at ecosystem and species levels should address effects of natural and human disturbances and of the ecological condition, structure, and land use history of the planning or assessment area.
§219.20(a) Ecological information and analyses. Ecosystem diversity and species diversity are components of ecological sustainability.	**§219.13(b)(1) Ecological information and analyses.** Analyses of ecosystem and species diversity should be proportional to the issues identified by the Responsible Official, risks to ecological sustainability, and availability of information relevant to the plan area. Information and analyses may be identified, obtained, or developed through a variety of methods, including assessments, analyses, and monitoring.	**§219.13(b)(1) Ecological information and analyses.** Analyses of biological diversity at ecosystem and species levels should be proportional to the issues identified by the Responsible Official, risks to ecological sustainability, and availability of information relevant to the planning or assessment area. Information and analyses may be identified, obtained, or developed through a variety of methods, including assessments, analyses, and monitoring, and where appropriate should extend to the larger landscape in which the plan area is embedded. Ecological information and analyses must be based upon an assessment of two main components, ecosystem diversity and species diversity, and additional analyses

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
		considering three factors, spatial and temporal scales and patterns, disturbance regimes, and landscape context.
The planning process must include the development and analysis of information regarding these components at a variety of spatial and temporal scales.	Consideration and evaluation of ecosystem and species diversity includes development and analysis of information over relevant timeframes and geographic areas as determined by the Responsible Official.	Biological diversity should be considered and evaluated over appropriate timeframes and geographic areas as determined by the Responsible Official.
(1) Characteristics of ecosystem and species diversity. Characteristics of ecosystem and species diversity must be identified for assessing and monitoring ecological sustainability.	**(1)(i) Consideration and evaluation of ecosystem diversity.** Ecosystem diversity should be considered and evaluated first, leading to development of plan direction that provides for the needs of most species of plants and animals. Characteristics and evaluation of ecosystem diversity should be identified and completed at the scope and scale determined to be appropriate by the Responsible Official. Evaluations should describe the contribution of NFS lands to ecosystem diversity within the area of analysis.	**(1)(i) Consideration and evaluation of ecosystem diversity.** Consideration and evaluation of ecosystem diversity constitutes the core approach and is the primary focus of ecological information and analysis. Characteristics and evaluation of ecosystem diversity should be identified and completed over timeframes and geographic areas determined to be appropriate by the Responsible Official. Analyses should describe and assess the contributions of NFS lands to ecosystem diversity in the planning or assessment area.
(i) Ecosystem diversity. Characteristics of ecosystem diversity include, but are not limited to: **(A) Major vegetation types (B) Water resources (C) Soil resources (D) Air resources and**	**(1)(i)(A) Characteristics of ecosystem diversity.** Characteristics of ecosystems include, but are not limited to, a description of composition, structure, and processes; and soil, air, and water resources within the area of analysis.	**(1)(i)(A) Characteristics of ecosystem diversity.** Characteristics of ecosystems that should be considered within the planning or assessment area include, but are not limited to, ecological structure, composition, and processes; spatial extent, distribution, and relations; geology and landforms; and soil, water, and air resources.
(E) Focal species: focal species that provide insights to the larger ecological systems with which they are associated.	Addresses species-at-risk and native and desired non-native vertebrates and vascular plants.	Species may be selected for analysis to develop more complete understanding of condition and trends of ecosystems.

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
ii) Species diversity. Characteristics of species diversity include, but are not limited to, the number, distribution, and geographic ranges of plant and animal species, including focal species and species-at-risk that serve as surrogate measures of species diversity. Species-at-risk and focal species must be identified for the plan area.	**(1)(ii) Consideration and evaluation of species diversity.** Where the needs of particular species, species assemblages, or other species groupings not likely to be met through plan direction for ecosystem diversity, species diversity should be considered and evaluated. Characteristics and evaluation of species diversity should be identified and completed at the scope and scale determined to be appropriate by the Responsible Official. Evaluations should describe the contribution of NFS lands to species diversity within the area of analysis.	**(1)(ii) Consideration and evaluation of species diversity.** Consideration and evaluation of species diversity is a complementary approach that extends ecosystem analyses to address specific planning issues. Characteristics and evaluation of evaluation of ecosystem diversity should be identified and completed over timeframes and geographic areas determined to be appropriate by the Responsible Official. Analyses should describe and assess the contributions of NFS lands to ecosystem diversity in the planning or assessment area. Analyses of species and species groups should be undertaken to provide a more complete understanding of impacts of past, current, and anticipated management direction on biological diversity, including the status of species and the ecosystems in which they occur. In a hierarchical context, species analyses should be conducted within the framework of, and should incorporate information from, larger-scale ecosystem analyses.
	(1)(ii)(A) Characteristics of species diversity. Similar to 2000 rule, except there is no requirement for identifying focal species. Species, species assemblages, or other species groups may be used to characterize species diversity.	**(1)(ii)(A) Characteristics of species diversity.** Characteristics of species diversity include, but are not limited to, the composition and richness (number of species) of the existing pool of species, and the abundance, distribution, geographic range, and status of individual species chosen for analysis.
(2) Evaluation of ecological sustainability. Evaluations of ecological sustainability must be conducted at the scope and scale determined by the Responsible Official to be appropriate.	Evaluations must be conducted at the scope and scale determined by the Responsible Official to be appropriate to the issues being addressed in the planning process.	Evaluations of ecological sustainability should be tailored to the particular planning or assessment area and the issues identified in the planning process.
(i) Evaluation of ecosystem diversity. **(A) Information about focal species.**	**(1)(i)(B) Evaluation of ecosystem diversity.** No specific requirement for focal species.	**(1)(i)(B) Evaluation of ecosystem diversity.** No specific requirement for focal species, but species may be selected for analysis to develop a more complete understanding of the condition and trends of ecosystems.
(B) A description of the biological and physical properties of the ecosystem.	An evaluation of water and air quality and soil productivity.	Analyses should evaluate the condition and quality of water and air resources, the condition of stream networks and channels and of watersheds, and the quality and productivity of soils.

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
(C) A description of the principal ecological processes occurring at the spatial and temporal scales. Descriptions must include disturbance regimes of the current climatic period.	Evaluations of ecosystem diversity should include the status of the characteristics of ecosystem diversity in (1)(i)(A) of this section, and risks to ecosystem health. Includes disturbance regimes but does not reference the climatic period.	Evaluations of ecosystem diversity should identify ecosystems in the planning or assessment area and characterize their ecological structure, composition, processes, and spatial relations.
(D) A description of the effects of human activities on ecosystem diversity.	A description of the historic and current effects of human activities on the characteristics of ecosystem diversity.	Analyses should evaluate the status of the characteristics of ecosystem diversity identified in (1)(i)(A) of this section and risks or threats to these characteristics, including impacts of past, current, and anticipated management direction on ecosystem diversity. Evaluations should identify unique areas, including rare ecosystems, compositional or structural elements, and ecosystems at risk, specific risks or threats to these areas, and measures required for their conservation or restoration.
(E) An estimation of the range of variability of the characteristics of ecosystem diversity.	No requirement to establish range of variability.	No requirement to establish range of variability, but must be able to identify and describe the range of biological diversity characteristic of native ecosystems within the larger landscape in which the plan area is embedded.
(F) An evaluation of the effects of air quality on ecological systems including water.	No specific requirement - the need to evaluate effects of air quality on ecological systems driven by identified issues.	Same as 2002 Option 1
(G) An estimation of current and foreseeable future Forest Service consumptive and non-consumptive water uses.	An estimation of current and foreseeable future consumptive and non-consumptive National Forest System water needs, and the quantity and quality of water needed to support those uses.	Analyses should estimate current and foreseeable future consumptive and non-consumptive National Forest System water needs, and the quantity and quality of water needed to support those uses.
(H) An identification of reference landscapes.	No requirement for identifying reference landscapes.	No requirement for identifying reference landscapes.
(ii) Evaluations of species diversity. Evaluations of species diversity must include, as appropriate, assessments of the risks to species viability.	**(1)(ii)(B) Evaluation of species diversity.** Evaluations of species diversity should identify species-at-risk, their habitat requirements, and threats placing them at risk, based on current conditions and trends and management direction.	**(1)(ii)(B) Evaluation of species diversity.** Individual species should be identified for evaluation to address a particular planning issue, to develop a more complete understanding of the condition and trends of ecosystems, or where substantive concerns exist regarding the continued persistence of the particular species within the planning or assessment area. Evaluations of species diversity should be conducted along two complementary tracks with related purposes. Community analyses should determine whether maintenance of ecosystem diversity is sufficient to maintain the existing pool of species within the

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2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
		planning or assessment area.
(A) The viability of each species listed under the Endangered Species Act as threatened, endangered, candidate, and proposed species must be assessed. Individual species assessments must be used for these species.	Evaluations should include assessments of risk to species viability and identification of ecological conditions capable of supporting species viability over time.	Individual species analyses should evaluate impacts of past, current, and anticipated management direction on individual species selected for analysis.
(B) For all other species, including other species-at-risk and those species for which there is little information, a variety of approaches may be used.	The level of detail of the analyses performed should be proportional to the issues identified by the Responsible Official and the associated risk to species viability.	Evaluations should identify species or species groups found within the planning or assessment area, including native and non-native species, and, where feasible, compile information on species status, spatial distribution, geographic range, abundance, and population trends.
(C) Except as provided in paragraph (A), assessments of functional, taxonomic, or habitat groups rather than individual species may be appropriate.	The assessment evaluations may be simplified by the use of groups of species or species that serve as surrogates for evaluating species diversity.	Evaluations should analyze the composition and distribution of communities and species assemblages across the planning or assessment area; examine relations of community or assemblage measures to underlying biophysical conditions, with particular attention to attributes affected by management actions; and analyze impacts of past, current, and anticipated management direction on individual species selected for analysis.
(D) In analyzing viability, species assessments may rely on general conservation principles and expert opinion.	Where little information is available for particular species, assessments may be qualitative.	Evaluations must identify species for which substantive evidence exists that continued persistence in the planning or assessment area is at risk, specific risks or threats to these species, and measures required for their conservation or restoration.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	**(1)(iii) Further analyses of biological diversity.** In addition to the information and analyses identified in (b)(1)(i)-(ii) of this section, the following additional information and analyses should be included in the approach to considering and assessing biological diversity. **(1)(iii)(A) Consideration and evaluation of spatial and temporal scales and patterns.** Biological diversity should be evaluated across multiple timeframes and geographic areas.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	The Responsible Official should follow a spatially explicit approach to assessments of biological diversity, by considering such factors as abundance, extent, patch size, distribution, and interspersion of ecosystems and species populations over time, and by focusing on specific landscape features as well

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
		as their sizes, shapes, and spatial relationships.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	Where appropriate, detailed analyses should be conducted over large geographic areas and long time frames. Analyses at these large scales are appropriate for evaluating dynamics of wide-ranging species and cumulative impacts of management actions on biological diversity. Evaluations of biological diversity over large geographic areas should be coordinated across multiple National Forest System administrative units.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	**(1)(iii)(B) Consideration and evaluation of disturbance regimes.** The Responsible Official should consider and evaluate impacts of disturbance regimes, natural and human-induced, on biological diversity at ecosystem and species levels over appropriate geographic areas and timeframes. Evaluation of disturbance regimes should help clarify the land manager's opportunities and options for achieving biological diversity objectives.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	Analyses should characterize current and recent disturbance regimes in terms of spatial extent and distribution, periodicity, type, and intensity and should evaluate impacts on biological diversity in the planning or assessment area. Evaluations should consider impacts of past, current, and anticipated management direction on disturbance regimes and consequences of altered disturbance regimes for biological diversity in the planning or assessment area.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	**(1)(iii)(C) Consideration and evaluation of landscape context.** The Responsible Official should evaluate the landscape context for assessments of biological diversity at ecosystem and species levels. Analyses of landscape context should evaluate and characterize the ecological condition, structure, and land use history of the planning or assessment area, and evaluate effects on biological diversity.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	Analyses should consider and evaluate differences in the ecological condition and spatial structure of ecosystems and landscapes between National Forest System lands and adjacent ownerships. Based on these differences, the Responsible Official should identify and evaluate options for and any special role of National Forest System

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2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
		lands to contribute to maintenance or restoration of biological diversity in the planning or assessment area, as well as factors that would limit options and opportunities for managing NFS lands to achieve biological diversity objectives.
(b) Plan decisions. When making plan decisions that will affect ecological sustainability, the Responsible Official must use the information developed under §219.20 (a) The following requirements must apply at the spatial and temporal scales that the Responsible Official determines to be appropriate to the plan decision:	**§219.13 (b)(2) Plan decisions.** The Responsible Official must provide for the diversity of plant and animal communities and tree species within the plan area consistent with the multiple use objectives of the plan while sustaining the productivity of the land. When developing plan decisions, the Responsible Official must consider the information and analyses described in (b)(1) of this section. The following requirements apply over relevant timeframes and geographic areas that the Responsible Official determines to be appropriate:	**§219.13 (b)(2) Plan decisions.** The Responsible Official must provide for biological diversity at ecosystem and species levels within the plan area consistent with the multiple use objectives of the plan while sustaining the productivity of the land. When developing plan decisions, the Responsible Official must consider the limits of agency authorities, and must consider and fully disclose results of the ecological information and analyses described in (b)(1)(i)-(iii) of this section. The following requirements apply over the relevant timeframes and geographic areas that the Responsible Official determines to be appropriate:
No specific section on this topic.	No specific section on this topic.	**(2)(i) Biological diversity.** Plan decisions, to the extent feasible, should foster the maintenance or restoration of biological diversity in the plan area, within the range of biological diversity characteristic of native ecosystems within the larger landscape in which the plan area is embedded. In reaching plan decisions, the Responsible Official should consider current and recent disturbance regimes as well as the ecological condition, structure, and land use history of the planning or assessment area, and effects of these factors on options and opportunities to manage NFS lands to achieve biological diversity objectives.
No specific section on this topic.	No specific section on this topic.	**(2)(ii) Contributions of NFS lands.** When reaching plan decisions, the Responsible Official must identify and evaluate the special role of and unique contributions of NFS lands in maintaining and restoring biological diversity within the larger landscape in which the plan area is embedded.
Provides for a two part plan decision - one for ecosystem diversity and one for species viability.	Same as 2000 Rule.	Provides for one integrated decision on biological diversity.
(1) Ecosystem Diversity. Plan decisions affecting ecosystem diversity must provide for maintenance or restoration of the characteristics of ecosystem	**(2)(i) Ecosystem diversity.** Plan decisions should provide for measurable progress toward the maintenance or restoration of ecological conditions that will	See above – §219.13(b)(2); ecosystem diversity is an integral component of biological diversity. Use of the range of variability is not specified, but may be used if appropriate.

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
composition and structure within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period in accordance with (i) through (v).	support the diversity of plant and animal communities and tree species and other characteristics of ecosystem diversity. A variety of approaches may be used, such as conservation strategies designed for one or a group of species-at-risk, or management practices that emulate effects of natural disturbance regimes or result in characteristics of ecosystem diversity within the range of variability expected to occur under the current disturbance regimes.	
Provisions (i), (ii), (iii), (iv), (v)	Forest Service Directives as appropriate	Forest Service Directives as appropriate
(2) Species diversity. (i) Plan decisions affecting species diversity must provide for ecological conditions that the Responsible Official determines provide a high likelihood that those conditions are capable of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area, except as provided in (ii) - (iv).	**(2)(ii) Species diversity.** Plan decisions should provide for ecological conditions that the Responsible Official determines provide a high likelihood of supporting over time the viability of native and desired non-native vertebrates and vascular plants well distributed within their ranges in the plan area. When assessing "high-likelihood" and "well distributed," consider factors under agency authority and relative to species life history and distribution within the plan area. Where conditions capable of supporting viability for particular species or species groups are not likely to be met through provisions for ecosystem diversity, specific plan objectives or standards should be developed for those species or species groupings.	See above – §219.13(b)(2); species diversity is an integral component of biological diversity.
Exceptions (ii), (iii), (iv)	Forest Service Directives as appropriate	Forest Service Directives as appropriate
219.20(b)(3) Federally listed threatened and endangered species. (i) Plan decisions must provide for implementing actions in conservation agreements with the Fish and Wildlife Service or the National Marine Fisheries Service that provide a basis for not needing to list a species.	See above – 219.13(b)(2)(ii); recovery of federally listed species is an integral component of species diversity. Endangered Species Act requirements are not restated in the proposed rule.	See above – 219.13(b)(2)(i); recovery of federally listed species is an integral component of biological diversity. Endangered Species Act requirements are not restated in the proposed rule.
(ii) Plan decisions must include, at the scale determined by the Responsible Official to be appropriate to the plan decision, reasonable and prudent measures and associated terms and conditions contained in final biological opinions. Plan decision documents must provide a rationale for adoption or		

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2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
rejection of discretionary conservation recommendations contained in final biological opinions.		

[FR Doc. 02–30683 Filed 12–5–02: 8:45 am]
BILLING CODE 3410–11–C

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AA86

National Forest System Land and Resource Management Planning; Diversity Options Workshop

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; notice of workshop.

SUMMARY: Elsewhere in this part of today's **Federal Register**, the Forest Service is publishing a proposed rule to revise the land and resource management planning process for National Forest System lands. As part of that rule, the agency is proposing two options that would fulfill the statutory requirements of the National Forest Management Act that forest plans provide for the diversity of plant and animal communities consistent with the multiple-use objectives of the land and resource management plan. To provide further comment on the diversity options presented in the proposed rule, the agency will hold a Diversity Options Workshop, scheduled for February 18–20, 2003, in the general Washington, DC area. The agency will invite up to 80 persons who represent a variety of interests, expertise, backgrounds, and perspectives to participate in the workshop. The agency hereby requests nominations of persons to invite to the workshop.

DATES: The workshop is scheduled for February 18–20, 2003, in the general Washington, DC area. The workshop begins the evening of February 18, 2003, and an evening session may also be held on February 19, 2003. The workshop is scheduled to adjourn at 3:30 p.m. on February 20, 2003. Nominations for the workshop must be received no later than January 6, 2003.

ADDRESSES: The agency has contracted with the Meridian Institute to plan, organize, and facilitate the workshop. It is strongly suggested that nominations be submitted electronically via the Internet at *www.merid.org/diversityoptions*. Those wishing to submit nominations by other means must contact the Meridian Institute at (202) 354–6450 for further instructions.

FOR FURTHER INFORMATION CONTACT: Questions regarding the workshop should be directed to Shawn Walker, Meridian Institute, (202) 354–6450 or at *shawnwalker@merid.org*. Questions regarding the proposed rule should be directed to Jody Sutton, Content Analysis Team Program Coordinator, Forest Service at (801) 517–1023.

SUPPLEMENTARY INFORMATION: The workshop will address scientifically sound and practical forest planning approaches to implementing the statutory requirements of the National Forest Management Act (NFMA) with respect to diversity as well as the advantages and disadvantages of the two proposed diversity options or variations of these options. The two proposed diversity options are presented in the proposed land and resource management planning rule published elsewhere in this part of today's **Federal Register**. The discussion and information generated by workshop participants will aid the Forest Service in determining how to meet the diversity requirements of the NFMA. The workshop is designed for participants to remain on site to encourage informal discussions as well as attendance at the planned plenary and breakout sessions.

Selection Process

Workshop participants will be selected and invited through an open nomination process. Both self-nominations and nominations of others will be accepted from anyone wishing to submit a nomination based on the criteria described below.

- Balanced representation of interests among the selected participants to include highly qualified individuals from the variety of scientific disciplines relevant to a discussion of the diversity options; and
- Balanced representation of individuals from a diversity of geographic regions and circumstances who have practical experience in the land and resource management planning process and plan implementation.

To assist in evaluating the nomination process the following information on nominees would be helpful:

1. Background/Expertise
   a. Scientific or technical expertise
   b. Legal or policy experience with diversity of plant and animal communities
   c. Direct experience with the land and resource planning process and plan implementation
2. Relevant Affiliations
   a. Government
   b. Industry Sectors
   c. Non-Governmental Organizations
   d. Other
3. Geographic Location of Relevant Work Experience: Local, State, Regional (eastern U.S., western U.S., etc.), or National
4. Scope of Work: Local, State, Regional, or National

Conclusion

The agency invites nomination of qualified persons to attend the Diversity Options Workshop described in this notice. Both self-nominations and nominations of others for the workshop will be accepted and will be reviewed using the preceding participant selection criteria.

Dated: November 27, 2002.

Sally D. Collins,

Associate Chief.

[FR Doc. 02–30682 Filed 12–5–02; 8:45 am]
BILLING CODE 3410–11–P

Federal Register

Friday,
December 6, 2002

Part IV

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles: Amendment to the Tier 2 Motor Vehicle Emission Regulations; Proposed Rule and Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7416–6]

RIN 2060–AI23

Control of Air Pollution from New Motor Vehicles: Amendment to the Tier 2 Motor Vehicle Emission Regulations; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to clarify and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (65 FR 6698, February 10, 2000, hereinafter referred to as the Tier 2 rule). Today's action proposes minor revisions to clarify the regulations governing compliance with the Tier 2 rule, and it proposes to modify the Tier 2 program to provide for cleaner diesel engines than were anticipated during the interim Tier 2 program (through the 2006 model year).

In the "Rules and Regulations" section of this **Federal Register**, we are making these technical amendments as a direct final rule without prior proposal because we view these technical amendments as noncontroversial revisions and anticipate no adverse comment.

We have explained our reasons for these technical amendments in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the portions of the direct final rule receiving such comment and those portions will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: If we do not receive a request for a public hearing, written comments are due January 6, 2003. Requests for a public hearing must be received by December 23, 2002. If we do receive a request for a public hearing, it will be held on January 9, 2003, starting at 10 a.m. In that case, the public comment period will close on February 10, 2003.

ADDRESSES:

Comments: All comments and materials relevant to today's action should be submitted to Public Docket No. A–97–10 at the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hearing: If we do receive a request for a public hearing, it will be held at the EPA National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Drive, Ann Arbor, Michigan.

Docket: Materials relevant to this rulemaking are contained in Public Docket Number A–97–10 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Roberts French, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4380, fax (734) 214–4050, e-mail *french.roberts@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is proposing to clarify and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (65 FR 6698, February 10, 2000, hereinafter referred to as the Tier 2 rule). Today's action proposes minor revisions to clarify the regulations governing compliance with the Tier 2 rule, and it proposes to modify the Tier 2 program to provide for the certification of cleaner diesel engines than were anticipated during the interim Tier 2 program (through the 2006 model year).

However, in the "Rules and Regulations" section of today's **Federal Register**, we are promulgating these revisions as a direct final rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. This proposal incorporates by reference all of the reasoning, explanation, and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer to the direct final rule that is located in the "Rules and Regulations" section of this **Federal Register** publication. The direct final rule will be effective on March 6, 2003, unless we receive adverse comment by January 6, 2003, or if we receive a request for a public hearing by December 23, 2002. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the direct final rule.

I. Regulated Entities

Entities potentially affected by this action are those that manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes[a]	SIC codes[b]	Examples of potentially regulated entities
Industry	336111 336112	3711	Automobile and light truck manufacturers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

II. Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the date of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (either select a desired date or use the Search feature).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule is not a "significant regulatory action."

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A motor vehicle manufacturer with fewer than 1000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have any adverse economic impact on small entities. Today's proposed rule proposes to amend certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), such that regulated entities will find it easier to comply with the requirements of the Tier 2 rule. More specifically, today's action proposes to make minor revisions to clarify the regulations governing compliance with the Tier 2 rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute.

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unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consults with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule revises certain provisions of earlier rules that adopted national standards to control vehicle emissions and gasoline fuel sulfur levels. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions.

III. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–30842 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7416–7]

RIN 2060–AI23

Control of Air Pollution From New Motor Vehicles: Amendments to the Tier 2 Motor Vehicle Emission Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to clarify and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (hereinafter referred to as the Tier 2 rule). Today's action makes minor revisions to clarify the regulations governing compliance with the Tier 2 rule, and it modifies the Tier 2 program to provide for the certification of cleaner diesel engines than were anticipated during the interim Tier 2 program (through the 2006 model year).

DATES: This direct final rule is effective on March 6, 2003, without further notice, unless we receive adverse comments by January 6, 2003, or if we receive a request for a public hearing by December 23, 2002. Should we receive any adverse comments on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A–97–10 at the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Docket: Materials relevant to this rulemaking are contained in Public Docket Number A–97–10 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Roberts French, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4380, fax (734) 214–4050, e-mail *french.roberts@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule will be effective on March 6, 2003, without further notice unless we receive adverse comment by January 6, 2003, or a request for a public hearing by December 23, 2002. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the date of publication from EPA's **Federal Register** Internet web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (either select a desired date or use the Search feature).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

Regulated Entities

Entities potentially affected by this action are those that manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	336111 336112	3711	Automobile and light truck manufacturers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

I. Overview of Technical Amendments

The technical amendments described below pertain to the Tier 2/Gasoline Sulfur regulations finalized by EPA on February 10, 2000 (65 FR 6698), hereafter referred to as the Tier 2 rule or the Tier 2 program. Although we attempt to provide some context in the following discussions, the emission control program that we are amending is very complex and detailed and cannot be described completely in this direct final rule. Readers are advised to consult the documents associated with this rulemaking if they require more information than is provided in this direct final rule. Information regarding the Tier 2 rule that readers may be interested in consulting may be found on the EPA Web site at *http://www.epa.gov/otaq/tr2home.htm*.

The Tier 2/Gasoline Sulfur program is designed to significantly reduce the

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emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles. The program is a comprehensive regulatory initiative that treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower levels of sulfur in gasoline. The program, which begins in model year 2004, phases in a single set of exhaust emission standards that will, for the first time, apply to all passenger cars, light trucks, and larger passenger vehicles operated on any fuel. To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, the Tier 2 program also requires reduced gasoline sulfur levels nationwide. The Tier 2 program did not require similar changes for diesel fuel sulfur levels, but a separate rule mandated the reduction of highway diesel fuel sulfur levels beginning in September, 2006 (66 FR 5001, January 18, 2001). The program will bring about major reductions in annual emissions responsible for ozone and particulate matter problems.

A. Light-duty Diesel Provisions Under the Interim Tier 2 Program

The Tier 2 rule when fully phased in contains eight emission standards "bins" (bins 1 through 8). Each bin is a set of emission standards to which manufacturers can certify their vehicles, provided that each manufacturer meets a specified fleet average NO_X standard. Two additional bins—bins 9 and 10—are available only during the interim program (2004 through the 2006 model year for light-duty vehicles (LDVs) and light light-duty trucks (LLDTs), and through the 2008 model year for heavy light-duty trucks (HLDTs) and medium-duty passenger vehicles (MDPVs)).[1] [2] This direct final rule clarifies some aspects of the interim program requirements for light-duty diesel vehicles certifying to bins 9 and 10.

[1] One additional temporary bin (bin 11) is available that applies only to MDPVs through the 2008 model year.

[2] "Light-duty vehicle" means a passenger car or a derivative of a passenger car, seating 12 persons or less. "Light-duty truck" means a vehicle with a gross vehicle weight rating of up to 8500 pounds and a curb weight of up to 6000 pounds that is designed primarily for transportation of property or more than 12 persons, or that has off-road capabilities. "Light light-duty truck" means a light-duty truck" with a gross vehicle weight rating of to 6000 pounds, and a "heavy light-duty truck" is a light-duty truck with a gross vehicle weight rating of more than 6000 pounds. A "medium-duty passenger vehicle" is a new class of vehicle introduced in the Tier 2 program that includes sport-utility vehicles and passenger vans rated at between 8500 and 10,000 pounds gross vehicle weight rating.

In addition to bins of exhaust emission standards for the Federal Test Procedure (FTP), the Tier 2 rule also established exhaust emission standards for the Supplemental Federal Test Procedure (SFTP). The SFTP procedures are intended to control emissions that occur during types of driving that are not well-represented on the FTP, including rapid accelerations and decelerations, high speed driving, and driving with the air conditioner operating.

With the exception of some adjustments to the interim program to account for the lack of availability of low sulfur diesel fuel, an overarching principle of the Tier 2 program is the applicability of the same Tier 2 standards to all LDVs and LDTs, regardless of the fuel they are designed to use. Diesel powered LDVs and LDTs tend to be used in the same applications as their gasoline counterparts, and we believe that they should therefore meet the same standards. We stated in the Tier 2 final rule that major technological innovations will not be required for gasoline vehicles to meet the Tier 2 standards, but that the standards will be especially challenging for diesel vehicles and will likely require the application of advanced aftertreatment technologies. These aftertreatment technologies are dependent on the availability of clean diesel fuel, without which they are not effective and may be susceptible to damage. For this reason, we included some provisions in the initial years of the Tier 2 program to enable diesels to meet the interim requirements without the availability of low sulfur diesel fuel. We also allowed manufacturers to certify vehicles to an interim bin 10 during the initial years of the program. We stated that we believed diesel engines could meet the full useful life requirements in bin 10 without the need for low sulfur diesel fuel (65 FR 6739). Beyond the interim program, however, we have provided for the availability of clean diesel fuel starting in mid-2006 (66 FR 5001, January 18, 2001), and thus the program was structured so that diesels will be treated no differently than gasoline vehicles when the final Tier 2 program is effective and applicable to the entire fleet.

Section IV.B.4.a of the Tier 2 rule preamble (65 FR 6740) briefly explains the bin 10 provisions as they relate to diesel vehicles. Specifically, we stated that diesel vehicles "may opt not to meet the intermediate life standards associated with this bin." In addition, a footnote to the table of Tier 2 intermediate useful life standards for the Federal Test Procedure (FTP) reads "Intermediate life standards are optional for diesels certified to bin 10" (65 FR 6741). Although not specifically stated in this language, it was EPA's intent to exempt diesel vehicles from the intermediate life standards of both the FTP and SFTP. As was noted in the Tier 2 rule, low sulfur diesel fuel may be needed for diesels to meet the intermediate useful life standards of the interim Tier 2 program, yet low sulfur diesel fuel will not be widely available during the time frame of the interim program (65 FR 6740). This exemption was intended to apply only for the temporary duration of bin 10. The Tier 2 rule provided the option for diesels of opting out of the intermediate life standards of bin 10 in order to enable light-duty diesels to continue to be manufactured in the absence of low sulfur fuel, while their gasoline-fueled counterparts will already be able to enjoy the advantages of clean low sulfur fuel in meeting the interim standards. Further, the intermediate useful life standards for diesels certifying to bin 10 during the interim program are not necessary because diesel engine-out emissions (*e.g.*, emissions from diesel vehicles not equipped with aftertreatment emission control devices) are typically stable or decreasing as mileage is accumulated.

Although we intended to make optional for diesels the FTP intermediate useful life standards, the SFTP 4,000-mile standards, and the SFTP intermediate useful life standards during the interim program, the regulatory language does not capture this intent and requires diesel vehicles certifying to bin 10 to comply with full useful life SFTP standards and either the 4,000-mile or intermediate life SFTP standards. Specifically, the regulations currently require that all vehicles subject to SFTP standards must meet a 4,000-mile standard and a full useful life standard. The regulations currently provide that diesel vehicles have the option of complying with an intermediate useful life standard instead of the 4,000-mile standard through the 2006 model year.

In this direct final rule, we are amending the regulations to be consistent with the original intent that for diesel vehicles certifying to bin 10, compliance with the intermediate useful life standards of both the FTP and the SFTP be optional. This optional compliance will only be available as long as bin 10 is available. In the case of the SFTP standards, this means that, like the FTP, diesel vehicles will only be required to meet a full useful life standard. This change primarily applies to NO_X emissions, as there is no intermediate useful life standard for particulate matter (PM) on either the FTP or SFTP.[3]

This direct final rule also revises the regulations applicable to diesel vehicles certified to bin 9 so that the intermediate useful life FTP and SFTP standards will also be optional for bin 9 diesel vehicles. When the Tier 2 rule was finalized more than two years ago, we limited the diesel intermediate life option to bin 10 because the information available at the time suggested that it would be challenging for diesel vehicles to meet the bin 10 standards in the absence of low sulfur diesel fuel, and no vehicle manufacturers were predicting that diesels would be able to meet the standards of more stringent bins during the interim program. However, in the time since the finalization of the Tier 2 rule we have learned that light-duty diesel vehicles are under development that are capable of meeting the bin 9 exhaust emission standards and could be introduced during the interim Tier 2 program. One manufacturer of these vehicles has therefore requested that the regulations be modified such that the bin 9 requirements for diesels mirror those of bin 10 by providing diesels the option of opting out of meeting the intermediate useful life standards. Certification to the bin 9 standards would be a significant achievement in the advancement of light-duty diesel technology in the initial years of the Tier 2 program, as the NO_X standard is one-half that of the bin 10 NO_X standard (0.3 grams per mile for bin 9 and 0.6 grams per mile for bin 10). Further, the PM standard for bin 9 is 0.06 grams per mile, whereas the bin 10 PM standard is 0.08 grams per mile. If we had anticipated at the time of finalizing the Tier 2 rule that diesels would be capable of meeting the bin 9 standards in the absence of low sulfur diesel fuel, we would have extended the intermediate life opt-out option to diesels certifying to both bin 9 and bin 10 standards.

Therefore, in this direct final rule we are modifying the provisions of the Tier 2 interim program such that the bin 9 provisions are consistent with bin 10. We are doing this by extending the intermediate life opt-out option to diesels certifying to bin 10 or bin 9. Diesel vehicles require this additional flexibility for bin 9 during the interim period for the same reasons that this option was provided for bin 10, as discussed above (*i.e.*, the lack of availability of low sulfur diesel fuel). As discussed, this option would allow diesel light-duty vehicles to comply with only the full useful life standards of both the FTP and SFTP during the interim program. This change will likely result in the introduction of cleaner diesels than otherwise would be the case (during the interim period), and furthermore, we view the possibility of diesels being able to certify to the bin 9 standards as a great success story for clean diesels that will facilitate the transition of diesel vehicles to successfully meeting the Tier 2 standards. We believe this revision will encourage development and application of diesel engines with engine-out emissions even lower than initially expected when the Tier 2 rule was promulgated. This could stimulate implementation of technological advances that may reduce diesel emissions in future years.

[3] In general, limits or emissions of other regulated pollutants (*e.g.*, HC, CO) are not as significant a challenge for diesel vehicles as are NO_X and PM standards.

B. Definition of Small Volume Manufacturer

The Tier 2 rule added a new definition to 40 CFR part 86, subpart S for "U.S. Sales." This new definition specifies that the term means sales in the United States, excluding sales in California and in states that have adopted the California emissions control program for motor vehicles under section 177 of the Clean Air Act. This new definition became necessary to ensure that vehicles sold in states not subject to the federal emissions control program would not be included in the determination of a manufacturer's fleet average emissions level. However, the new definition inadvertently changed the intended use of the term in some other sections of the Tier 2 regulations. In particular, the term "U.S. sales" is used to determine the eligibility of manufacturers for provisions applicable to small volume manufacturers (see 40 CFR 86.1801–01(d), 86.1838–01(b)(1), and 86.1838–01(b)(2)). Applying the new definition of U.S. sales in these cases could result in an incorrect determination of eligibility for small volume manufacturer provisions, because the small volume provisions intended to use the term to mean sales in all U.S. states and territories, including California and the section 177 states. Therefore, this direct final rule is amending 40 CFR 86.1801–01(d), 86.1838–01(b)(1), and 86.1838–01(b)(2) such that the term "U.S. sales" is replaced with "sales in all states and territories of the United States." The word "state" is used in this context consistently with the definition of "State" in section 302(d) of the Clean Air Act, and includes the District of Columbia, Puerto Rico, and other parts of the United States that are not formally considered to be states.

C. Supplemental Federal Test Procedure Requirements for Interim Non-Tier 2 Vehicles

40 CFR 86.1811–04(f)(4) currently states that "[i]nterim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards * * * may meet the gasoline Tier 1 SFTP requirements found at § 86.1811–01(b)." The effect of the language in the current regulations is to apply the Tier 1 SFTP standards for LDVs to LDT1s *and* LDT2s (since LLDT encompasses both LDT1s and LDT2s). However, the Tier 1 SFTP regulations applicable to LDT2s are different from the SFTP standards applicable to LDVs and LDT1s. In addition, the Tier 1 SFTP emission standards in § 86.1811–01(b) are applicable only to LDVs. The Tier 1 standards for LDT1s are in 86.1812–01, and those for LDT2s are in § 86.1813–01. The intent of paragraph 40 CFR 86.1811–04(f)(4) was to, in the specific cases noted in the paragraph, provide the option of meeting the Tier 1 SFTP standards in a manner consistent with the type and definition of the vehicle. Therefore, in this direct final rule we are amending 40 CFR 86.1811–04(f)(4) to state, in its entirety:

Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards from Table S04–1 in paragraph (c) of this section may meet the gasoline Tier 1 SFTP requirements found at §§ 86.1811–01(b), 86.1812–01(b), 86.1813–01(b), for LDVs, LDT1s, and LDT2s, respectively.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

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- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a "significant regulatory action."

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A motor vehicle manufacturer with fewer than 1000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's direct final rule on small entities, we have determined that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not have any adverse economic impact on small entities. Today's rule revises certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), such that regulated entities will find it easier to comply with the requirements of the Tier 2 rule. More specifically, today's action makes minor revisions to clarify the regulations governing compliance with the Tier 2 rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consults with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule revises certain provisions of earlier rules that adopted national standards to control vehicle emissions and gasoline fuel sulfur levels. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 6, 2003.

III. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—[Amended]

2. Section 86.1801–01 is amended by revising paragraph (d) to read as follows:

§ 86.1801–01 Applicability.

* * * * *

(d) *Small volume manufacturers.* Special certification procedures are available for any manufacturer whose projected or actual combined sales in all states and territories of the United States of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 85.1509) are fewer than 15,000 units for the model year in which the manufacturer seeks certification. The small volume manufacturer's light-duty vehicle and light-duty truck certification procedures and described in § 86.1838–01.

* * * * *

3. Section 86.1811–04 is amended by:

a. Revising paragraph (c)(4)(iv);

b. Revising Table S04–2 in paragraph (c)(6);

c. Revising paragraph (f)(4); and

d. Adding paragraph (f)(7).

The revisions and additions read as follows:

§ 86.1811–04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

* * * * *

(c) * * *

(4) * * *

(iv) For diesel vehicles certified to bin 9 or bin 10, intermediate life standards are optional regardless of whether the manufacturer certifies the test group to a full useful life of 120,000 miles or 150,000 miles.

* * * * *

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(6) * * *

TABLE S04–2.—TIER 2 AND INTERIM NON-TIER 2 INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST MASS EMISSION STANDARDS

[grams per mile]

Bin No.	NO_x	NMOG	CO	HCHO	PM	Notes
11	0.6	0.195	5.0	0.022	.....	a c f h
10	0.4	0.125/0.160	3.4/4.4	0.015/0.018	.....	a b d f g h
9	0.2	0.075/0.140	3.4	0.015	.....	a b c f g h
8	0.14	0.100/0.125	3.4	0.015	.....	b f h i
7	0.11	0.075	3.4	0.015	.....	f h
6	0.08	0.075	3.4	0.015	.....	f h
5	0.05	0.075	3.4	0.015	.....	f h

Notes:
[a] This bin deleted at end of 2006 model year (end of 2008 model year for HLDTs and MDPVs).
[b] Higher NMOG, CO and HCHO values apply for HLDTs and MDPVs only.
[c] This bin is only for MDPVs.
[d] Optional NMOG standard of 0.195 g/mi applies for qualifying LDT4s and qualifying MDPVs only.
[e] Optional NMOG standard of 0.100 g/mi applies for qualifying LDT2s only.
[f] The full useful life PM standards from Table S04–1 also apply at intermediate useful life.
[g] Intermediate life standards of this bin are optional for diesels.
[h] Intermediate life standards are optional for vehicles certified to a useful life of 150,000 miles.
[i] Higher NMOG standard deleted at end of 2008 model year.

(f) * * *

(4) Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards from Table S04–1 in paragraph (c) of this section may meet the gasoline Tier 1 SFTP requirements found at §§ 86.1811–01(b), 86.1812–01(b), 86.1813–01(b), for LDVs, LDT1s, and LDT2s, respectively.

* * * * *

(7) For diesel vehicles certified to the bin 9 or bin 10 standards of paragraph (c) of this section, 4000 mile SFTP and intermediate life SFTP standards are optional regardless of whether the manufacturer certifies the test group to a full useful life of 120,000 miles or 150,000 miles.

* * * * *

4. Section 86.1838–01 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) to read as follows:

§ 86.1838–01 Small volume manufacturer certification procedures.

* * * * *

(b) * * *

(1) * * *

(i) The optional small-volume manufacturers certification procedures apply to LDV/Ts and MDPVs produced by manufacturers with sales in all states and territories of the United States, including all vehicles and engines imported under provisions of 40 CFR 85.1505 and 85.1509 (for the model year in which certification is sought) of fewer than 15,000 units (LDV/Ts, MDPVs, heavy-duty vehicles and heavy-duty engines combined).

(ii) If the aggregated sales in all states and territories of the United States of the manufacturer, as determined in paragraph (b)(3) of this section are fewer than 15,000 units, the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) may certify under the provisions of paragraph (c) of this section.

(2) * * *

(i) If the aggregated sales in all states and territories of the United States, as determined in paragraph (b)(3) of this section are equal to or greater than 15,000 units, then the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) will be allowed to certify a number of units under the small volume test group certification procedures in accordance with the criteria identified in paragraphs (b)(2)(ii) through (iv) of this section.

* * * * *

[FR Doc. 02–30843 Filed 12–5–02; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.R. 3833/P.L. 107–317

Dot Kids Implementation and Efficiency Act of 2002 (Dec. 4, 2002; 116 Stat. 2766)

H.R. 5504/P.L. 107–318

Anton's Law (Dec. 4, 2002; 116 Stat. 2772)

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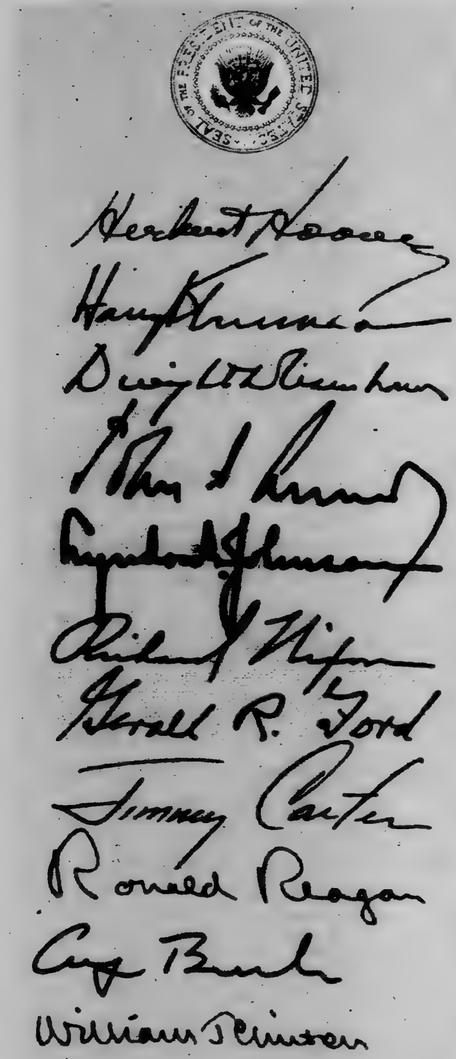
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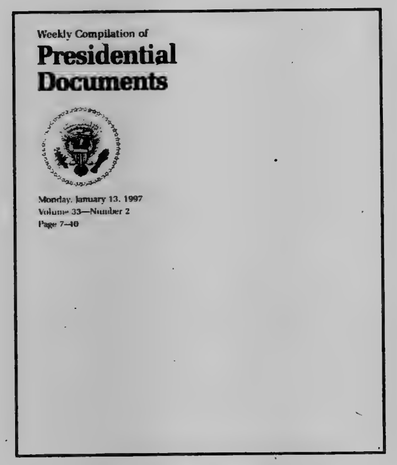
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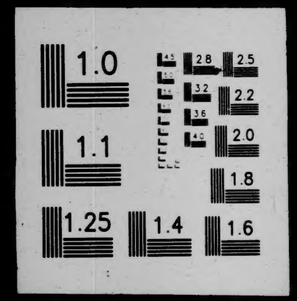
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